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Tuesday
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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WASHINGTON, DC

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WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1397–93]

Unavailability of Transit Without a Visa to Citizens of the Former Socialist Federal Republic of Yugoslavia

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with requests for comments.

SUMMARY: This interim rule amends 8 CFR 212.1(f)(3) by adding the Republics of the former Socialist Federal Republic of Yugoslavia to the list of countries whose nationals are prohibited from transiting through the United States without a visa. Civil disorders and resulting deterioration of economic conditions in the former Socialist Federal Republic of Yugoslavia have been accompanied by a substantial increase in the fraudulent use of the Transit Without Visa (TWOV) procedure. This rule is necessary to eliminate the abuse of the TWOV program by nationals of those Republics which were formerly a part of the Socialist Federal Republic of Yugoslavia which include Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia.

DATES: This rule is effective January 19, 1993. Interested persons are invited to submit written comments on or before February 18, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 2001–D, Washington, DC 20536. Please include INS number 1397–93 on your correspondence to ensure proper and timely handling.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, Telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(C) of the Immigration and Nationality Act (the Act) provides authority to the Attorney General acting jointly with the Secretary of State to waive nonimmigrant visa requirements for aliens who are in continuous and direct transit through the United States and are using a carrier who has entered into a TWOV agreement with the Immigration and Naturalization Service (the Service) as provided in section 238(c) of the Act.

The Service is facing an increasing problem with aliens using the TWOV privileges to gain entry into the United States by claiming political asylum. Specifically there has been an increase in the abuse of the TWOV program by nationals of the Republics that formally comprised the Socialist Federal Republic of Yugoslavia. As a result air carriers transporting these aliens have become victims of this abuse since they are liable for fines and detention costs associated with TWOV participants who do not depart the United States in a timely manner. Therefore until further notice, the Service is adding all the Republics that formerly comprised the Socialist Federal Republic of Yugoslavia to the list of countries whose nationals will not be able to transit the United States without a visa.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comments, is based upon the "good cause" exception found at 5 U.S.C. 553(b) (A)–(B) and 553(d) (2)–(3). The reasons and the necessity for the immediate implementation of this interim rule are as follows: this rule is necessary to prevent an anticipated sharp increase in the abuse of the TWOV procedure by nationals of the former Socialist Federal Republic of Yugoslavia in the near future. Further, there is a reasonable concern that publication of this rule with an effective date 30 or 60 days after publication could lead to the counter productive result of a surge of individuals attempting to make fraudulent use of the TWOV procedure during the interval between the publication of the rule and its effective date. To preempt such a reaction, the rule is made effective upon the date of its publication.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visa, Ports of entry, Travel restrictions.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by revising the first sentence in paragraph (f)(3) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(f) * * *

(3) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Libya, Pakistan, Sri Lanka, or a national of a Republic of the former Socialist Federal Republic of Yugoslavia which includes Bosnia, Croatia, Serbia, Montenegro, Slovenia, and Macedonia. * * *

* * * * *

Dated: January 12, 1993.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–1136 Filed 1–15–93; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–39–AD; Amendment 39–8470; AD 93–01–16]

Airworthiness Directives; Beech Model 1900C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Model 1900C airplanes. This action requires inspecting the pneumatic deice lines and the deice distributor valve for fuel leakage, replacing any fuel contaminated parts, and modifying the wet wing fuel barriers. The Federal Aviation Administration (FAA) has received reports of fuel leakage from the wet wing fuel barriers into the pneumatic deice system and deice boots, which could enter into the electrically-heated stall warning vane housing. The actions specified by this AD are intended to prevent an airplane fire caused by this condition.

DATES: Effective March 8, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 8, 1993.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Model 1900C airplanes was published in the **Federal Register** on September 3, 1992 (57 FR 40359). The action proposed to require inspecting the pneumatic deice lines and the deice distributor valve for fuel leakage, replacing any fuel contaminated parts, and modifying the wet wing fuel barriers. The proposed actions would be accomplished in accordance with the Accomplishment Instructions section of Beech Service Bulletin No. 2430, dated March 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 145 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 21 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $119 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $184,730.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93–01–16 Beech Aircraft Corporation: Amendment 39–8470; Docket No. 92–CE–39–AD.

Applicability: Model 1900C airplanes, serial numbers UC–1 through UC–174 and UD–1 through UD–6 (also referred to as Model C–12J), certificated in any category.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent an airplane fire caused by fuel entering the electrically-heated stall warning vane housing, accomplish the following:

(a) Inspect the pneumatic deice lines and the deice distributor valve for fuel leakage in accordance with Parts I and II of the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2430, dated March 1992. Prior to further flight, replace any fuel contaminated parts in accordance with Part II of the Accomplishment Instructions section of the referenced service information.

(b) Modify the wet wing fuel barriers in accordance with Parts III and IV of the Accomplishment Instructions section of Beech SB No. 2430, dated March 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The inspection and modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2430, dated March 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas

67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8470) becomes effective on March 8, 1993.

Issued in Kansas City, Missouri, on January 11, 1993.

Barry D. Clements,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1175 Filed 1–15–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 97

[Docket No. 27103; Amdt. No. 1527]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the type and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference. Issued in Washington, DC on January 1, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant tot he authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49 (b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
12/14/92	GA	Winder	Winder	2/7494	VOR/DME RNAV RWY 23, ORIG.
12/18/92	CA	Santa Maria	Santa Maria Public	2/7573	LOC/DME BC–A AMDT 10.
12/18/92	OR	Tillamook	Tillamook	2/7572	NDB–A AMDT 1.
12/21/92	OH	Mansfield	Mansfield Lahm Muni	2/7600	ILS RWY 32 AMDT 15.
12/21/92	OH	Mansfield	Mansfield Lahm Muni	2/7601	NDB RWY 32 AMDT 11.
12/22/92	MA	Boston	General Edward Lawrence Logan Intl.	2/7625	ILS/DME RWY 33L AMDT 21.
12/22/92	MO	Kansas City	Kansas City Downtown	2/7608	ILS RWY 3 AMDT 1.
12/22/92	MO	Kansas City	Kansas City Downtown	2/7609	NDB RWY 19 AMDT 16.
12/22/92	RI	Block Island	Block Island State	2/7619	VOR RWY 28 AMDT 3.
12/22/92	WV	Parkersburg	Wood County-Gill Robb Wilson Field.	2/7623	ILS RWY 3 AMDT 10.
12/23/92	MA	Bedford	Laurence G. Hanscom Field	2/7658	NDB RWY 11 AMDT 19.
12/23/92	MA	Bedford	Laurence G. Hanscom Field	2/7659	ILS RWY 11 AMDT 22.
12/23/92	MA	Bedford	Laurence G. Hanscom Field	2/7660	VOR RWY 23 AMDT 8.
12/23/92	MA	New Bedford	New Medford Muni	2/7655	ILS RWY 5 AMDT 24.
12/23/92	MA	New Bedford	New Bedford Muni	2/7661	LOC BC RWY 23 AMDT 10.
12/23/92	TX	Austin	Robert Mueller Muni	2/7641	ILS RWY 31L AMDT 32.
12/28/92	IA	Burlington	Burlington Muni	2/7715	NDB RWY 36 AMDT 8.

NFDC Transmittal Letter Attachment

Santa Maria

Santa Maria Public
California
LOC/DME BC–A AMDT 10...
Effective: 12/18/92

FDC 2/7573/SMX/ FI/P Santa Maria Public, Santa Maria, CA. LOC/DME BC–A AMDT 10...Koaks DME FIX...RZS R-286/29 DME. Delete Initial Segment Gaviota VORTAC (GVO) to KOAKS DME FIX. Delete Note...Radar Required. Delete note...Activate MALSR RWY 12—CTAF. This becomes LOC/DME BC–A AMDT 10A.

Winder

Winder
Georgia
VOR/DME RNAV RWY 23, ORIG...
Effective: 12/14/92

FDC 2/7494/WDR/ FI/P Winder, Winder, GA. VOR/DME RNAV RWY 23, Orig....S–23 MDA 1400 HAT 471 All Cats. This becomes VOR/DME RNAV RWY 23, ORIG A.

Burlington

Burlington Muni
Iowa
NDB RWY 36 AMDT 8...
Effective: 12/28/92

FDC 2/7715/BRL/ FI/P Burlington Muni, Burlington, IA. NDB RWY 36 AMDT 8....MIN ALT LAMBS INT 1260′. THIS IS NDB RWY 36 AMDT 8A.

Boston

General Edward Lawrence Logan Intl
Massachusetts
ILS/DME RWY 33L AMDT 21...
Effective: 12/22/92

FDC 2/7625/BOS FI/P General Edward Lawrence Logan Intl, Boston, MA. ILS/DME RWY 33L AMDT 21...S–ILS 33L VIS CAT D RVR 1800. THIS IS ILS/DME RWY 33L AMDT 21A

New Bedford

New Bedford Muni
Massachusetts
ILS RWY 5 AMDT 24...
Effective: 12/23/92

FDC 2/7655/EWB/ FI/P New Bedford Muni, New Bedford, MA. ILS RWY 5 AMDT 24...MIN ALT AT EW LOM 1500 LOC ONLY. THIS IS ILS RWY 5 AMDT 24A.

Bedford

Laurence G. Hanscom Field
Massachusetts
NDB RWY 11 AMDT 19...
Effective: 12/23/92

FDC 2/7658/BED/ FI/P Laurence G. Hanscom Field, Bedford, MA. NDB RWY 11 AMDT 19...Circling Cat B 720/HAA 587. This is NDB RWY 11 AMDT 19A.

Bedford

Laurence G. Hanscom Field
Massachusetts
ILS RWY 11 AMDT 22...
Effective: 12/23/92

FDC 2/7659/BED/ FI/P Laurence G. Hanscom Field, Bedford, MA. ILS RWY 11 AMDT 22...Circling MDA/HAA CAT A 700/567, B/C 720/587. THIS IS ILS RWY 11 AMDT 22A.

Bedford

Laurence G. Hanscom Field
Massachusetts
VOR RWY 23 AMDT 8...
Effective: 12/23/92

FDC 2/7660/BED/ FI/P Laurence G. Hanscom Field, Bedford, MA. VOR RWY 23 AMDT 8...Circling CAT A 700/HAA 567. This is VOR RWY 23 AMDT 8A.

New Bedford

New Bedford Muni
Massachusetts
LOC BC RWY 23 AMDT 10...
Effective: 12/23/92

FDC 2/7661/EWB/ FI/P New Bedford Muni, New Bedford, MA. LOC BC RWY 23 AMDT 10...ADD Notes... INOP table does not apply to CATS A, B, C. for INOP MALSR increase S–23 CAT D VIS 1/4 mile and Providence ALSTG MINS S–23 CAT C VIS 1/4 mi. This is LOC BC RWY 23 AMDT 10A.

Kansas City

Kansas City Downtown
Missouri
ILS RWY 3 AMDT 1...
Effective: 12/22/92

FDC 2/7608/MKC/ FI/P Kansas City Downtown, Kansas City, Mo. ILS RWY 3 AMDT 1... all CATS S–LOC–3 MDA/HAT 1240/496. This becomes ILS RWY 3 AMDT 1A.

Kansas City

Kansas City Downtown
Missouri
NDB RWY 19 AMDT 16...
Effective: 12/22/92

FDC 2/7609/MKC/ FI/P Kansas City Downtown, Kansas City, MO. NDB RWY 19 AMDT 16...all CATS S–19/circling MDA/HAT(HAA) 1460/702(701). RIS VOR/DME MIN unchanged. This becomes NDB RWY 19 AMDT 16A.

Mansfield

Mansfield Lahm Muni
Ohio
ILS RWY 32 AMDT 15...
Effective: 12/21/92

FDC 2/7600/MFD/ FI/P Mansfield Lahm Muni, Mansfield, OH. ILS RWY 32 AMDT 15...delete note...when using Cleveland...thru...table does not apply. Add note... When using Cleveland Hopkins altimeter setting... 1. For inoperative MALSR increase all S–ILS 32 visibilities 1/2 mile. 2. inoperative table does not apply to S–LOC 32 CATS A/B. This is ILS RWY 32 AMDT 15A.

Mansfield

Mansfield Lahm Muni
Ohio
NDB RWY 32 AMDT 11...
Effective: 12/21/92

FDC 2/7601/MFD/ FI/P Mansfield Lahm Muni, Mansfield, OH. NDB RWY 32 AMDT 11...delete note...CAT B 2–32 visibility...thru...altimeter setting minimums. Add note... For inoperative MALSR increase CAT B S–32 visibility 1/2 mile when using Cleveland Hopkins altimeter setting. This is NDB RWY 32 AMDT 11A.

Tillamook

Tillamook
Oregon
NDB–A AMDT 1...
Effective: 12/18/92

FDC 2/7572/S47/ FI/P Tillamook, Tillamook, OR. NDB–A AMDT 1... correct CRS and DSTC (LYNSY TO TKW NDB) to 118.00/5.80. Remove light note. ALTN MINS NA. This becomes NDB–A AMDT 1A.

Block Island

Block Island State
Rhode Island
VOR RWY 28 AMDT 3...
Effective: 12/22/92

FDC 2/7619/BID/ FI/P Block Island State, Block Island, RI. VOR RWY 28 AMDT 3...Change minimum altitude at SEY VOR/DME 4 DME from 720 to 580. This is VOR RWY 28 AMDT 3A.

Austin

Robert Mueller Muni
Texas
ILS RWY 31L AMDT 32...
Effective: 12/23/92

FDC 2/7641/AUS/ FI/P Robert Mueller Muni, Austin, TX. ILS RWY 31L AMDT 32...Increase sidestep RWY 31R CAT C VIS TO 1½ miles. This is ILS RWY 31L AMDT 32A.

Parkersburg

Wood County-Gill Robb Wilson Field
West Virginia
ILS RWY 3 AMDT 10...
Effective: 12/22/92

FDC 2/7623/PKB/ FI/P Wood County-Gill Robb Wilson Field, Parkersburg, WV. ILS RWY 3 AMDT 10...Delete GS unusable below 940′. This becomes ILS RWY 3 AMDT 10A.

[FR Doc. 93–1161 Filed 1–15–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27102; Amdt. No. 1526]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters, Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on January 1, 1993.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective April 1, 1993*

Paso Robles, CA, Paso Robles Muni, VOR/DME RWY 19, Amdt. 3

****Effective March 4, 1993*

Seattle, WA, Boeing Field/King County Intl, ILS RWY 13R, Amdt.

****Effective February 4, 1993*

Salisbury, MD, Salisbury-Wicomico County Regional, ILS RWY 32, Amdt. 5
Roxboro, NC, Person County, LOC RWY 6, Amdt. 2
Harrisburg, PA, Harrisburg Intl, VOR RWY 31, Orig.
Lebanon, TN, Lebanon Muni, VOR/DME–A, Amdt. 8
Lebanon, TN, Lebanon Muni, NDB RWY 18, Amdt. 3
Dallas, TX, Addison, LOC RWY 33, Amdt. 2
Dallas, TX, Addison, NDB RWY 15, Amdt. 4
Dallas, TX, Addison, ILS RWY 15, Amdt. 8
Dallas, TX, Addison, VOR/DME RNAV RWY 33, Orig.
Charleston, WV, Yeager, VOR–A, Amdt. 12
Charleston, WV, Yeager, VOR/DME RNAV RWY 15, Amdt. 2
Charleston, WV, Yeager, VOR/DME RNAV RWY 33, Amdt. 2
Huntington, WV, Tri-State/Milton J. Ferguson Fld, NDB RWY 12, Amdt. 17
Huntington, WV, Tri-State/Milton J. Ferguson Fld, ILS RWY 12, Amdt. 10
Huntington, WV, Tri-State/Milton J. Ferguson Fld, ILS RWY 30, Amdt. 4
Huntington, WV, Tri-State/Milton J. Ferguson Fld, RADAR–1, Amdt. 5.

[FR Doc. 93–1162 Filed 1–15–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

RIN 0960–AC95

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility for Benefits for Children of Armed Forces Personnel Stationed Overseas

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule reflects the provisions of section 8009 of the Omnibus Budget Reconciliation Act of 1989, Public Law (Pub. L.) 101–239, which amended sections 1611(f) and 1614(a)(1)(B) of the Social Security Act (the Act). These provisions provide that certain children of armed forces personnel living overseas may continue to be eligible for supplemental security income (SSI) benefits while living outside the United States. These provisions are effective with respect to benefits for months after March 1990.

EFFECTIVE DATES: This rule is effective on January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION:

This regulation reflects the provisions of section 8009 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, which amended section 1614(a)(1)(B) of the Act. As amended, section 1614(a)(1)(B) provides that SSI eligibility may continue for a child living outside the United States with a parent if that parent is a member of the armed forces of the United States who is assigned to permanent duty ashore outside the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States, if the child is a United States citizen and was eligible for SSI for the month before the month the parent reported for overseas duty. This provision applies to SSI benefits that may be paid for months after March 1990.

Additionally, section 8009 of Public Law 101–239 amended section 1611(f) of the Act to provide that a child as described in section 1614(a)(1)(B)(ii) need not be present in the United States to remain eligible for payment.

Some sections of the regulations that deal with section 8009 are being amended in a separate submittal dealing with suspension and termination events affecting eligibility under the SSI program. Final rules providing that a child as described in section 1614(a)(1)(B)(ii) qualifies for an exception to the rules of ineligibility for SSI and suspension of benefits resulting from being outside the United States will be set out at §§ 416.214 and 416.1344(a) and published shortly.

We now are revising § 416.202 of the regulations to reflect that a child as described in section 1614(a)(1)(B)(ii) of the Act may live outside the United States and continue to be eligible for SSI benefits. In addition, we are adding § 416.215 to reflect that eligibility for SSI benefits may continue for months after March 1990 for a child living outside the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States when the child:

- Is a citizen of the United States;
- Is living with a parent who is a member of the armed forces of the United States assigned to permanent duty ashore outside the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States; and
- Was eligible for an SSI benefit (including any federally administered State supplementary payment) for the month before the parent reported for such duty.

Public Comments

These rules were published as a notice of proposed rulemaking (NPRM) at 56 FR 58198 on November 18, 1991. We received one letter commenting on the proposed rules.

Comment: The commenter expresses concern that the new subparagraph at § 416.215(a)(2), which states that a child of Armed Forces personnel living overseas may continue to be eligible for SSI if he or she is a citizen of the United States, appears to limit eligibility to citizens of the United States. The commenter's position is that Congress did not intend to so restrict eligibility, and the commenter suggests that this section also refer to nationals of the United States, aliens lawfully admitted for permanent residence in the United States, and aliens with permanent residence in the United States under color of law.

Response: The commenter is correct that new § 416.215(a)(2) limits continued SSI eligibility to children overseas who are citizens of the United States. This limitation is required because the Act clearly provides at section 1614(a)(1)(B) that only an individual who (i) "is a resident of the United States * * *," or (ii) "is a child who is a citizen of the United States, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to a permanent duty ashore outside the United States * * *" can be eligible for SSI benefits. Therefore, we are rejecting the change suggested.

We are adopting this rule as proposed.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the costs are expected to be less than $100 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This regulation imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 15, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 29, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. Section 416.202 is amended by revising paragraph (b) to read as follows:

§ 416.202 Who may get SSI benefits.

* * * * *

(b) You are a resident of the United States (§ 416.1603), and—

(1) A citizen or a national of the United States (§ 416.1610);

(2) An alien lawfully admitted for permanent residence in the United States (§ 416.1615);

(3) An alien permanently residing in the United States under color of law (§ 416.1618); or

(4) A child of armed forces personnel living overseas as described in § 416.215.

* * * * *

3. Section 416.215 is added to read as follows:

§ 416.215 You are a child of armed forces personnel living overseas.

(a) *General rule.* After March 31, 1990, you may be eligible for continuation of SSI benefits if you live overseas and if—

(1) You are a child as described in § 416.1856;

(2) You are a citizen of the United States;

(3) You are living with a parent as described in § 416.1881 who is a member of the armed forces of the United States assigned to permanent duty ashore outside the United States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States; and

(4) You are eligible for an SSI benefit (including any federally administered State supplementary payment) for the month before your parent reported for such duty.

(b) *Living with.* You are considered to be living with your parent who is a member of the armed forces if—

(1) You physically live with the parent who is a member of the armed forces overseas; or

(2) You are living in the same household as the military parent but your presence overseas is due to his or her permanent duty assignment.

[FR Doc. 93–1101 Filed 1–15–93; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF JUSTICE

28 CFR Part 26

[AG Order No. 1655–93]

Implementation of Death Sentences in Federal Cases

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: On November 30, 1992 the Justice Department published a proposed rule establishing procedures for executing death sentences in federal civilian cases. (57 FR 56536.) The Department has carefully reviewed the public comments received concerning the proposed rule. As a result of the review, the Department is eliminating the requirement in the proposed rule that a physician be present at the execution and the provision that a physician may be called upon to examine the body of the prisoner to determine death. A provision has been added to the final rule making clear that medical professionals may decline to participate in the execution for reasons of medical ethics. Finally, a minor change has been made to charge the Director of the Federal Bureau of Prisons with establishing procedures for disposing of the prisoner's remains.

EFFECTIVE DATE: This rule is effective February 18, 1993.

FOR FURTHER INFORMATION CONTACT: Roy M. Nanovic, Office of General Counsel, Federal Bureau of Prisons, 320 First Street, NW., room 754, Washington, DC 20534, (202) 307–3062.

SUPPLEMENTARY INFORMATION: The twenty-three comments received concerning the proposed rule came from medical associations and physicians, criminal defense attorneys, advocates for prisoners' rights and the media, and from private citizens. All of the comments suggested changes to the proposed rule and several urged its retraction. The Department carefully reviewed and considered all of the comments before preparing this final rule.

Participation by Physicians

Nearly half the comments on the proposed rule came from medical associations and physicians objecting to the provisions that a physician be present at the execution, § 26.4(c)(1), and that a physician or other qualified personnel determine that the prisoner has died, § 26.4(g). The longest submissions were from the American Medical Association (AMA) and the American College of Physicians. These two associations agreed with most other physicians and medical associations commenting on the rule that medical ethics prohibit physicians from pronouncing the death of a prisoner. The two associations and other commenters also stated that medical ethics prohibit physicians from even attending an execution in a professional capacity. Some commenters suggested revising the proposed rule to permit federal employees to decline to participate in executions not only on religious and moral grounds, as presently expressly provided, but also for reasons of medical ethics. Three commenters recommended expressly forbidding physician participation.

The commenters' accounts of the precise dictates of medical ethics varied, and the AMA noted that within that single organization physicians' role in executions has been the subject of "evolving AMA policy for more than a decade." As recently as 1980 the AMA stated that a "physician may make a *determination* or certification of death * * *." Current Opinion 2.06 of the Council on Ethical and Judicial Affairs (emphasis added). It should be noted that the pronouncements of the AMA and other associations do not themselves bind physicians, but do influence the ethical rules applied by state medical societies and boards.

The Department wishes to ensure orderly, professional executions that conform with established medical ethics. Again, as recounted by the AMA, that organization and others recently have made aggressive changes in their positions on the ethics of physicians' participation in the death penalty. Ultimately the Department may determine that a responsibly-conducted execution cannot conform with all of the medical associations' statements on medical ethics. For instance, the position adopted by the College of Physicians, and under review by the AMA, that medical ethics prohibit physicians from "providing psychiatric information to certify competence to be executed" threatens to eliminate what the Supreme Court has essentially determined to be a constitutionally-required predicate to executions. Nor is it clear that such a prohibition—or indeed, the prohibitions on physician presence or pronouncement of death at executions—follows, as the AMA and College contend, from the Hippocratic injunction to "do no harm." It is noteworthy, finally, that most state death penalty procedures entail more physician involvement than desired by the AMA and College of Physicians.

Nonetheless, it cannot be said at this point that the statements of medical ethics offered by the associations and physicians who commented on the proposed rule necessarily conflict with orderly, professional executions. Perhaps, when it has developed detailed procedures for lethal injection, or has experience administering the injections, the Department will conclude that a physician need not be present. The proposed rule contemplated that the Bureau of Prisons might wish to select someone other than a doctor—a coroner, for instance—to pronounce death; here, too, there is no reason to insist in the rule itself that death might be pronounced by a physician.

The rule has therefore been revised to eliminate the requirement of a physician's presence, and to eliminate the reference to a physician determining death. Because the Department may conclude that a physician's presence *is* necessary to a responsible execution, physician participation will not be barred. However, § 26.5 has been revised to make clear that medical professionals may decline to participate in executions on the basis of medical ethics.

Need and Authority for Regulations

Several commenters urged retracting the proposed rule in its entirety. Two commenters developed this point at length. U.S. Representative Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights of the U.S. House of Representatives, wrote that the rule was not currently necessary and that only Congress could establish such procedures. These points and many others were made in a submission by Mr. Paul Dodyk of the law firm Cravath, Swaine & Moore. Mr. Dodyk stated that he commented on behalf of numerous criminal defense associations. Though not stated in his submission, Mr. Dodyk is adverse to the United States as counsel of record for the only prisoner currently under federal sentence of death, the convicted drug dealer and murderer David Ronald Chandler. *United States* v. *Chandler*, Nos. 91–7466 & 91–7577 (11th Cir. appeal filed May 24, 1991).

Representative Edwards and Mr. Dodyk stated that the proposed rule is not needed because there are currently few cases in which the death penalty has been imposed or is being sought. This is an odd assertion on its face;

given the existence of valid capital statutes, the responsible thing to do is to establish the procedures needed to implement them. The assertion is particularly odd coming from Mr. Dodyk, who currently is arguing in the Eleventh Circuit that his client Chandler may not be executed under procedures established after the acts for which he is sentenced to death. In other words, while suggesting to the Department that no rule be promulgated until *after* many prisoners are sentenced to death, Chandler's attorney is simultaneously contending in federal appellate court that procedures must be in place *before* sentencing.

It is indisputable that 1988 amendments to 21 U.S.C. 848, providing the death penalty in certain drug cases, have increased the number of federal capital cases. Moreover, contrary to the assertions of both commenters, the current position of the Department of Justice is that the capital sentencing provisions of 18 U.S.C. 1111(b) may constitutionally be employed in certain circumstances. As pointed out by Rep. Edwards and Mr. Dodyk, Department officials previously have stated otherwise. But the Department has revisited the issue since first examining it and has concluded in light of recent Supreme Court decisions such as *Lowenfield* v. *Phelps,* 484 U.S. 231 (1988), that sentencing procedures such as at section 1111(b) may constitutionally be employed in conjunction with crimes statutorily-defined to include aggravating factors. The Department has so argued in several cases. Finally, that the Department sought to establish death penalty procedures by legislation does not, as Rep. Edwards and Mr. Dodyk suggested, preclude establishing the procedures by other means.

Representative Edwards and Mr. Dodyk offered two reasons why the Department was powerless to promulgate the proposed regulations: Congress's repeal of the death penalty procedures previously codified at 18 U.S.C. 3566 specifically bars establishing procedures by regulation; and the proposed regulations exceed the Department's authority.

If law in a particular field may be created either by legislation or agency rule, Congress's repeal of a statute establishing the law does not, by force of law, prohibit the agency from issuing a rule that establishes a similar law in the same field. One might contend that such an act *implies* Congress's will that no such rule exist. But the Department is unaware of any legislative history to this effect. (Section 3566 was repealed in the 1984 Sentencing Reform Act's massive overhaul of the criminal code.) And any such implication arising from section 3566's repeal is outweighed by the implication arising from the many existing federal capital statutes, enacted both before and after section 3566's repeal, that Congress does indeed want the death penalty implemented. Reasonable explanations exist for repeal of section 3566 by a Congress that still wanted the death penalty implemented: Perhaps, for instance, Congress no longer wanted the federal method of execution dependent on procedures in the states, some of which were increasingly under constitutional challenge. On the other hand, to contend that Congress has decreed that the sentence of death ought to be imposed for certain crimes, but also decreed that the sentence not be implemented, is to attribute to Congress irrational conduct.

Mr. Dodyk argued that regardless of section 3566's repeal, the Executive Branch lacks the authority to establish the time, place, and method of executions. He relied principally on the rule enunciated in *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and on the non-delegation doctrine and other theories implicating the executive power.

Chevron is inapposite. That case concerns the courts' and executive agencies' relative authorities to interpret certain statutory language. If *Chevron* may be said to speak at all to the Executive Branch's authority to implement the laws, it does so only insofar as the issue is whether the Executive Branch has adopted a permissible construction of particular statutory language.

As for the Justice Department's "delegated authority," the Department does not need explicit authority to issue regulations establishing death penalty procedures. The Department is authorized to rely on the authority of the federal courts, acting pursuant to the All Writs Act, 28 U.S.C. 1651(a), to order that their sentences be implemented. Thus, § 26.2 directs the governments's attorney in a capital case to file with the court a proposed Judgment and Order consistent with the regulations. Officers and employees of the Department have the duty and authority to comply with such orders pursuant to the statutory instruction to the United States Marshals Service to "obey, execute, and enforce all orders of United States District Courts," 28 U.S.C. 566(a), and to call upon such entities as the Bureau of Prisons for "all necessary assistance to execute its duties," 28 U.S.C. 566(c). The authority and duty of the Marshals Service to execute court orders includes the authority to specify procedures for execution consistent with the court order. Finally, 5 U.S.C. 301 empowers the Attorney General to promulgate regulations channeling the discretion of the officers acting under his direction.

Mr. Dodyk contended that "the Executive and the United States courts have repeatedly taken the position that the time, place, and method of executions are matters within the authority of the Congress." This statement again betrays the mistaken premise that once Congress exercises authority over a matter that matter falls within Congress' *exclusive* authority. The statement is also wrong as a factual account in all three respects. The time and place of executions have to the Department's knowledge never been fixed by Congress. The place of execution was generally left by Congress and the courts to the discretion of the Marshal. For 47 years, until repeal of 18 U.S.C. 3566, Congress allowed the method of execution to turn on the method used in the state in which the prisoner was sentenced. When the district court rebuffed Chandler's argument that a death sentence could not be imposed in the absence of established procedures, and commented in *dicta* that assuredly, "Congress" would have to establish procedures before Chandler's execution, it hardly can be taken to have determined that the Executive Branch lacked authority to do the same. *United States* v. *Chandler,* No. CR90–H–266–E, Order of May 30, 1991 at 4.

It is true that federal practice for some time was for the court to fix the date of execution. But Mr. Dodyk offered no reason why this procedure is the only one permissible under the Constitution. In some states the governor issues the warrant. See for example Fla. Stat. Ann. § 922.09 (1985); and Pa. Stat. Ann. title 61 Sec. 2123 (1992 Supp.). The 1855 opinion of the Attorney General cited in Mr. Dodyk's comments does not, as the comments stated, show that "from the earliest days of the Republic, execution dates have been set by the sentencing court." The opinion shows the opposite, describing a "contrariety" of practice in which sometimes it was the President who fixed the date of execution. 7 Op. Att'y Gen. 561, 562 (1855). And indeed, in an 1818 opinion, Attorney General Wirt reported that judges sitting in circuit in Baltimore had determined that courts had no authority to fix the day of execution; they believed a warrant from the President was required. The Attorney General resolved that the President would "issue warrants for execution in all cases where they are made necessary by the practice of the States in which the sentence is passed." 1 Op. Att'y Gen. 228 (1818). Finally, far from contemplating the unilateral exercise of executive authority described by Mr. Dodyk's comments, the proposed rule directs government attorneys to seek *a court order* directing that execution be by lethal injection, and at a date and place determined by the Department of Justice. § 26.2. Indeed, the very provision the comments find an "invasion" of the prerogatives of the federal judiciary begin with the qualifying language, "Except to the extent a court orders otherwise * * *" § 26.3(a)(1). Section 26.4 also begins with that qualifier.

The rule will not be retracted.

Method of Execution

Only two commenters directly objected to lethal injection as the method of execution. One observed that finding a vein in which to inject the lethal agent is difficult when the prisoner has a history of heavy drug use. Another commenter raised similar technical concerns. The Department is aware of the problem, but is confident it can be overcome. In developing the precise procedures for administering lethal injections, the Bureau of Prisons and Marshals Service will consider such technical concerns. The second commenter opposing lethal injection charged that it is too painful a method. The Department disagrees, and regards lethal injection as less problematic than the alternatives. Other commenters expressed concern that lethal injection might necessitate physician participation, a point discussed above. In the final rule, the method of execution is unchanged.

Role of Director of Bureau of Prisons in Setting Execution Date

Several commenters objected that the proposed rule charged the Director of the Bureau of Prisons (BOP) with setting the date of the prisoner's execution. Four suggested that the Director might be swayed by political pressure, personal bias, or her sense of being an "adversary" of the prisoner.

The Director of the BOP traditionally is drawn from the ranks of career correctional officers rather than "political" appointees, and consequently may fairly be said to be less subject to political pressures than the elected state court judges and governors who set execution dates. The Director already possesses ultimate authority over many aspects of federal prisoners' lives, and the Bureau has an exemplary record of allowing only professional considerations to determine its treatment of prisoners.

It was also suggested that a court might be better suited by its familiarity with the case to set the execution date, and that the Director's institutional knowledge might impair her decision. But the knowledge the Director will bring to the decision—knowledge of institutional resources and circumstances that might interfere—makes the Director *better* suited than a judge to determine the execution date. Having the Director set the date is also a more efficient procedure than repeated resort to the courts.

Two commenters suggested that the Director's role in setting execution dates might undermine her relations with prisoners. But the Director is an executive based in Washington, DC whose job does not entail regular direct interaction with prisoners.

Finally, Mr. Dodyk's submission objected to the proposed provisions that an execution date be set "no sooner than 60 days from the entry of the judgment of death," and that "[i]f the date designated for execution passes by reason of a stay of execution, then a new date shall be designated promptly by the Director of the Federal Bureau of Prisons when the stay is lifted." § 26.3(a)(1). Mr. Dodyk argued that "the time necessary for the appeal and consideration of a sentence of death * * * obviously exceed[s] 60 days." This criticism overlooks Federal Rule of Criminal Procedure 38(a), which provides that "a sentence of death shall be stayed if an appeal is taken from the conviction or sentence," and Federal Rule of Appellate Procedure 4(b), requiring that "in a criminal case the notice of appeal by a defendant shall be filed in the district court within 10 days after entry of * * * the judgment or order appealed from." The rules will cooperate to ensure that a defendant intending to appeal will, by that very act, preserve the time needed to prepare the appeal. Officers and employees of the Department will, of course, respect a stay imposed by Rule 38(a).

As for the requirement that the Director appoint a new execution date "promptly" upon the lifting of a stay of execution, this is hardly, as Mr. Dodyk suggested, a command to "permit a defendant to be executed while his or her * * * certiorari petition is pending before the courts." Finally, the Department doubts Mr. Dodyk's contention that vesting determination of the execution date in the Director rather than the courts will produce a "flood" of "wasteful and repetitive" litigation. Rather, it will curb needless and time-consuming resort to the courts. The provision is unchanged.

Communication with Courts

The staff attorneys for the United States Court of Appeals for the Third Circuit suggested that the rule require the Director of BOP to "affirmatively contact the federal courts potentially involved in any litigation concerning a scheduled execution." The Department will maintain close contact with the courts during emergency capital litigation. As the Department gains practical experience with these new procedures, it will consider whether there is a need to amend the rule to require such coordination.

Media Access to the Prisoner and Execution

Several commenters said that the proposed rule unnecessarily or unconstitutionally curtailed the media's ability to visit the prisoner and document the execution. In separate parts, the proposed rule restricts access to the prisoner in the seven days prior to the execution, and access to the execution itself. §§ 26.4(b), (c)(4).

The regulations do not bar media access to the prisoner in the week before the execution. Rather, they expressly preserve access for the prisoner's family, attorneys, and spiritual advisers, and condition access for other outsiders on approval by the Director of BOP and a request by the prisoner. In upholding a prison regulation that expressly barred "media interviews with specific individual inmates," the Supreme Court stated that "newsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public." *Pell* v. *Procunier,* 417 U.S. 817, 834 (1973). The Department has been cited no decision holding, as suggested by commenter Reporters Committee for Freedom of the Press, that the Constitution requires governments to write *into law* the standards that will determine whether a given reporter is admitted.

Similar objections were raised to the proposed provision that not more than 10 representatives of the press, selected by the Warden, may attend the execution. But here, too, the Constitution does not require, as the Reporters Committee suggested, that the government write *into law* how prison authorities will fill the 10 places allocated to representatives of the media. As for the concern that "reporters who publish critical stories may find themselves outside the prisons walls when [the execution] is carried out"—such a turn of events is at this early stage entirely conjectural. Two commenters suggested that both policy and the Constitution dictated that the prisoner ought to select representatives of the press present at the execution. As a policy matter, the Department believes that this authority should lie with the government rather than a condemned criminal. No provision of the Constitution requires otherwise.

Finally, objections were raised to the proposed rule's provision that "no photographic or other visual or audio recording of the execution shall be permitted." § 26.4(g). The Reporters Committee and a staff attorney of The National Prison Project objected on constitutional grounds, while another commenter suggested that national broadcast of executions might deter crime or inform public opinion on the death penalty.

Claims of First Amendment right to broadcast executions have twice been denied in the courts. *Garrett* v. *Estelle*, 556 F.2d 1274 (5th Cir. 1974); and *KQED, Inc.* v. *Vasquez*, No. C–90–1383 RHS, 1991 U.S. Dist. LEXIS 19791 (N.D. Cal., June 13, 1991). The Department is unaware of a case where the claim prevailed. As for the impact nationwide transmission might have on crime or public opinion of the death penalty, the Department values preserving the order, privacy, and solemnity of the proceeding more than these speculative effects. The provisions are unchanged.

Access of Others to the Prisoner and Execution

The proposed regulation preserves access to the prisoner in the seven days prior to execution for the prisoner's "spiritual advisers," "defense attorneys" and "members of his family." § 26.4(b). Several commenters addressed the provisions. One described its terms as "vague," "open-ended," and "confusi[ng]." The terms designating people who may attend the execution ("relatives," "citizens," and "representatives of the press") were also said to need explanation. Clearer terms would be difficult to identify and the original terms are kept in the final rule. The commenter also charged that these restrictions are "without any factual basis." In truth, they are based on prior Department policy and practices of the states.

Mr. Dodyk and another commenter noted that associates other than family may provide valuable consolation to the prisoner. Such associates may be admitted under the proposed rule, with the approval of the Director of BOP. The final rule continues to limit presumptive access to "family," since to include "friends" would be to expand greatly the number of people the prisoner is entitled to see in this period when the regulations impose no numerical limit on visitors. The Bureau of Prisons will be sensitive to the solace that friends outside the family may provide in a prisoner's final days.

One commenter suggested that the regulation limit the number of Justice Department attorneys the Deputy Attorney General may designate to attend the execution under § 26(c)(2). The commenter expressed concern that the number should be "predetermined to avoid [a] circus atmosphere." The provision is unchanged, since the Deputy Attorney General will be sufficiently interested in avoiding a "circus atmosphere" to "predetermine" an appropriate number of government attorneys.

Disposition of Prisoner's Remains

The proposed rule provided that the prisoner's remains would be disposed of in "a manner determined by the Warden." § 26.4(h). Two commenters suggested allowing the prisoner, his family, or his designee to decide how to dispose of the remains. Numerous considerations must affect the disposition of the remains (including, for example, whether the prisoner had family, and whether, if he did, he nonetheless designated others to receive the body). the Department prefers not to attempt to address these many considerations in the proposed rule. In order to make plain that these matters must be given close attention in advance of the execution, however, the Department has altered the proposed rule to state that the prisoner's remains will be disposed of "according to procedures established by the Director of the Federal Bureau of Prisons."

Wrongfulness of Death Penalty

Two commenters expressly based their objections to the regulations on their moral opposition to the death penalty. The moral judgment of the American people, as expressed in numerous acts of Congress, is of course different, and it is the obligation of the Justice Department and Attorney General to faithfully execute the Congress's enactments.

List of Subjects in 28 CFR 26

Law enforcement officers, Prisoners.

Accordingly, chapter 1 of title 28 of the Code of Federal Regulations is amended by adding a part 26 to read as follows:

PART 26—IMPLEMENTATION OF DEATH SENTENCES IN FEDERAL CASES

Sec.
26.1 Applicability.
26.2 Proposed Judgment and Order.
26.3 Date, time, place, and method of execution.
26.4 Other execution procedures.
26.5 Attendance at or participation in executions by Department of Justice personnel.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510.

§ 26.1 Applicability.

The regulations of this part apply whenever a sentencing hearing conducted in a United States District Court has resulted in a recommendation or determination that a criminal defendant be sentenced to death for commission of an offense described in any federal statute.

§ 26.2 Proposed Judgment and Order.

(a) Whenever this part becomes applicable, the attorney for the government shall promptly file with the sentencing court a proposed Judgment and Order. The proposed Judgment and Order shall state, in addition to any other matters required by law or otherwise appropriate, that:

(1) The sentence shall be executed by a United States Marshal designated by the Director of the United States Marshals Service;

(2) The sentence shall be executed by intravenous injection of a lethal substance or substances in a quantity sufficient to cause death;

(3) The sentence shall be executed on a date and at a place designated by the Director of the Federal Bureau of Prisons; and

(4) The prisoner under sentence of death shall be committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence.

(b) The attorney for the government shall append to the proposed Judgment and Order a Return by which the designated United States Marshal may inform the court that the sentence of death has been executed.

§ 26.3 Date, time, place, and method of execution.

(a) Except to the extent a court orders otherwise, a sentence of death shall be executed:

(1) On a date and at a time designated by the Director of the Federal Bureau of Prisons, which date shall be no sooner than 60 days from the entry of the judgment of death. If the date

designated for execution passes by reason of a stay of execution, then a new date shall be designated promptly by the Director of the Federal Bureau of Prisons when the stay is lifted;

(2) At a federal penal or correctional institution designated by the Director of the Federal Bureau of Prisons;

(3) By a United States Marshal designated by the Director of the United States Marshals Service, assisted by additional personnel selected by the Marshal and the Warden of the designated institution and acting at the direction of the Marshal; and

(4) By intravenous injection of a lethal substance or substances in a quantity sufficient to cause death, such substance or substances to be determined by the Director of the Federal Bureau of Prisons and to be administered by qualified personnel selected by the Warden and acting at the direction of the Marshal.

(b) Unless the President interposes, the United States Marshal shall not stay execution of the sentence on the basis that the prisoner has filed a petition for executive clemency.

§ 26.4 Other execution procedures.

Except to the extent a court orders otherwise:

(a) The Warden of the designated institution shall notify the prisoner under sentence of death of the date designated for execution at least 20 days in advance, except when the date follows a postponement of fewer than 20 days of a previously scheduled and noticed date of execution, in which case the Warden shall notify the prisoner as soon as possible.

(b) Beginning seven days before the designated date of execution, the prisoner shall have access only to his spiritual advisers (not to exceed two), his defense attorneys, members of his family, and the officers and employees of the institution. Upon approval of the Director of the Federal Bureau of Prisons, the Warden may grant access to such other proper persons as the prisoner may request.

(c) In addition to the Marshal and Warden, the following persons shall be present at the execution:

(1) Necessary personnel selected by the Marshal and Warden;

(2) Those attorneys of the Department of Justice whom the Deputy Attorney General determines are necessary;

(3) Not more than the following numbers of person selected by the prisoner:

(i) One spiritual adviser;

(ii) Two defense attorneys; and

(iii) Three adult friends or relatives; and

(4) Not more than the following numbers of persons selected by the Warden:

(i) Eight citizens; and

(ii) Ten representatives of the press.

(d) No other person shall be present at the execution, unless leave for such person's presence is granted by the Director of the Federal Bureau of Prisons. No person younger than 18 years of age shall witness the execution.

(e) The Warden should notify those individuals described in paragraph (c) of this section as soon as practicable before the designated time of execution.

(f) No photographic or other visual or audio recording of the execution shall be permitted.

(g) After the execution has been carried out, qualified personnel selected by the Warden shall conduct an examination of the body of the prisoner to determine that death has occurred and shall inform the Marshal and Warden of his determination. Upon notification of prisoner's death, the Marshal shall complete and sign the Return described in § 26.2(b) or any similar document and shall file such document with the sentencing court.

(h) The remains of the prisoner shall be disposed of according to procedures established by the Director of the Federal Bureau of Prisons.

§ 26.5 Attendance at or participation in executions by Department of Justice personnel.

No officer or employee of the Department of Justice shall be required to be in attendance at or to participate in any execution if such attendance or participation is contrary to the moral or religious convictions of the officer or employee, or if the employee is a medical professional who considers such participation or attendance contrary to medical ethics. For purposes of this section, the term "participation" includes personal preparation of the condemned individual and the apparatus used for execution and supervision of the activities of other personnel in carrying out such activities.

Dated: January 13, 1993.

William P. Barr,

Attorney General.

[FR Doc. 93–1218 Filed 1–15–93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 954

RIN 0701–AA40

Acquisition of Information Concerning Persons and Organizations Not Affiliated With the Department of Defense

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of the Air Force is amending title 32, chapter VII of the CFR by removing part 954, Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense. This rule is removed because it has limited applicability to the general public. This action is the result of departmental review. The intended effect is to insure that only regulations which substantially affect the public are maintained in the Air Force portion of the Code of Federal Regulations.

EFFECTIVE DATE: February 18, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, SAF/AAIA, Pentagon, Washington, DC 20330–1000, telephone (703–614–3431).

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 954

Investigations, National defense, Security measures.

Authority: 10 U.S.C. 8013.

PART 954—[REMOVED]

Accordingly, 32 CFR, chapter VII, is amended by removing part 954.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1168 Filed 1–15–93; 8:45 am]

BILLING CODE 3910-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH–6–1–5597; A–1–FRL–4555–2]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Emission Control Methods for Cutback and Emulsified Asphalt

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision corrects deficiencies in the State's volatile organic compound (VOC) regulations in response to the Clean Air Act requirement that States "fix-up" their reasonably available control technology (RACT) rules. The intended effect of this action is to approve a revision to New Hampshire's SIP which incorporates the current federal RACT requirements for VOC. These RACT corrections are a requirement of the Clean Air Act (CAA) as amended in 1990 (Section 182 (a)(2)(A)). This action is being taken under Section 110 and part D of the Clean Air Act.

EFFECTIVE DATE: This action will become effective March 22, 1993, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Jerry Kurtzweg, U.S. Environmental Protection Agency, 401 M Street SW., (ANR–443) Washington, DC 20460; and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box [illegible]33, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 were enacted on November 15, 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amendment section 172(b) as that requirement was interpreted in pre-amendment guidance. The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Portions of New Hampshire are classified as marginal, moderate, and serious. Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline. On May 15, 1992, the State of New Hampshire submitted a formal revision to its State Implementation Plan (SIP) in response to the RACT fix-up requirement. The SIP revision consists of amendments to Chapter Env-A 1200 of the New Hampshire Rules Governing the Control of Air Pollution. In this SIP revision, NH has amended Env-A 1204.12 Emission Control Methods for Cutback and Emulsified Asphalt to correct deficiencies concerning RACT, as required under Section 182(a)(2)(A) of the Clear Air Act Amendments of 1990. New Hampshire's submittal addresses the deficiencies related to the cutback asphalt regulation described in the **Federal Register** on October 22, 1991 (56 FR 54554–54560).

Summary of SIP Revision

In Chapter Env-A 1204.12, New Hampshire revised the limits on maximum solvent contents allowed for four types of emulsified asphalt to be consistent with the limits specified in EPA guidance. The State also added a new solvent use category to address state-specific concerns. New Hampshire's regulation and EPA's evaluation are detailed in a memorandum, dated August 23, 1992, entitled "Technical Support Document—New Hampshire SIP Revision Concerning Amendments to Chapter Env-A 1200 of the Regulation Governing the Control of Air Pollution (Cutback and Emulsified Asphalt)."

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no comments are received, the public is advised that this action will be effective on January 15, 1993.

Final Action

EPA is approving Chapter Env–A 1200 "Emission Control Methods for Cutback and Emulsified Asphalt". This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 14, 1992.

Julie Belaga,
Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the State Implementation Plan consisting of amendments to Chapter Env–A 1204.12 *Emission Control Methods for Cutback and Emulsified Asphalt* submitted by the New Hampshire Air Resources Division on May 15, 1992.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated May 15, 1992 submitting a revision to the New Hampshire State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the State of New Hampshire effective on January 17, 1992: Chapter Env–A 1200: PART Env–A 1204.12 *Emission Control Methods for Cutback and Emulsified Asphalt.*

3. In § 52.1525 table 52.1525 is amended by adding a new adoption date to the State citation, "Env–A 1200" to the entry for "Prevention, Abatement, and Control of Stationary Source Air Pollution Part" to read as follows:

§ 52.1525 EPA-approved New Hampshire state regulations.

* * * * *

TABLE 52.1525.—EPA-APPROVED RULES AND REGULATIONS—NEW HAMPSHIRE

Title/subject	State citation chapter	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
*	*	*	*	*	*	*
Prevention, Abatement, and Control of Stationary Source Air Pollution Part.	Env–A 1200	1/17/92	January 19, 1993	[FR citation from published date].	(c)(46)	Revisions to Section Env–A 1204.12.

* * * * *

[FR Doc. 93–1189 Filed 1–15–93; 8:45 am]

BILLING CODE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433, 435, and 436

[MB-48-FC]

RIN 0938–AF65

Medicaid Program; Exemption of Poverty Level Pregnant Women from the Cooperation Requirements of Establishing Paternity and Obtaining Medical Support and Payments as a Condition of Eligibility; Technical Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: In general, as a condition of eligibility for Medicaid coverage, each legally able applicant and recipient is required by section 1912(a) of the Social Security Act (the Act) to cooperate with the State in establishing the paternity of any eligible child born out of wedlock and in obtaining medical support and payments. The condition is required to be met unless the individual establishes good cause of not cooperating. Section 4606 of the Omnibus Budget Reconciliation Act of 1990, (OBRA '90), Public Law 101–508, provides an exemption to this requirement for certain pregnant women and women in the postpartum period, as described in section 1902(l)(1)(A) of the Act. We have identified this group as "poverty level pregnant women". This final rule with comment period modifies our regulations to incorporate and interpret this exemption.

DATES: *Effective Date:* The provisions of this rule are effective on February 18, 1993.

Comment Period: Written comments will be considered if they are mailed or delivered to the appropriate address, as provided below, and received by 5 p.m. on March 22, 1993.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–048–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–048–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Robert Nakielny, (410) 966–4466.

SUPPLEMENTARY INFORMATION:

I. Background

Medicaid is a cooperative Federal-State program authorized under title XIX of the Social Security Act (the Act) to provide medical care to persons of limited means. Eligible individuals generally include those individuals who receive financial assistance under title IV–A (Aid to Families with Dependent Children (AFDC)) and title XVI (Supplemental Security Income (SSI)), as well as certain other specified groups of individuals identified in section 1902(a)(10) of the Act. Each State determines the scope of its program within limitations and guidelines established by statute in section 1902(a)(10) and the Secretary's implementing regulations at 42 CFR chapter IV, subchapter C, part 435 and part 436.

One mandatory eligibility group is identified in section 1902(a)(10)(A)(i)(IV) as certain women described in section 1902(1)(1)(A) of the Act, and an optional eligibility group of poverty level pregnant women is identified in section 1902(a)(10)(A)(ii)(IX).

Section 1902(1)(1)(A) describes women during pregnancy (and during the 60-day period beginning on the last day of pregnancy) who are not members of any other Medicaid eligibility group and whose family income does not exceed the income level established by the State. The income level is expressed in terms of a percentage of the Federal poverty line, and, therefore, we will identify the section 1902(1)(1)(A) group as "poverty level pregnant women". This reference includes the coverage of these women until the last day of the month in which the 60-day postpartum period ends. Individuals in this group are eligible only to receive medical assistance for services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions which may complicate pregnancy.

As provided for in section 1902 of the Act, each State submits a State plan that, when approved by HCFA, provides the basis for granting Federal funds (Federal financial participation (FFP)) to cover part of the expenditures incurred by the State for medical assistance and the administration of the program. Conditions for payment of FFP are primarily derived from section 1903 of the Act, and are implemented in our regulations at 42 CFR part 433.

Section 1912(a)(1) of the Act requires, as a condition of eligibility for medical assistance, that each legally able applicant and recipient must:

- Assign to the State his or her rights, or the rights of any other individual eligible under the plan for whom he or she can legally make an assignment, to medical support and to payment for medical care from any third party;
- Unless the individual establishes good cause for not cooperating, cooperate with the State in establishing the paternity of a child born out of wedlock and in obtaining medical support and payments; and
- Unless the individual establishes good cause for not cooperating, cooperate in identifying and providing information to assist the State in pursuing third parties who may be liable to pay for care and services under the plan.

Section 4606 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508, enacted on November 5, 1990, amended one provision of section 1912(a)(1) of the Act to provide an exemption from the requirement of cooperating in establishing paternity and obtaining medical support and payments for poverty level pregnant women described in section 1902(l)(1)(A) of the Act. While poverty level pregnant women are exempt from the cooperation requirements in section 1912(a)(1)(B), these individuals are required to comply with similar provisions in sections 1912(a)(1) (A) and (C). In order to reconcile this apparent inconsistency, we have interpreted the exemption in section 1912(a)(1)(B) as applying only to the father of a child born out of wedlock, and entities whose liability derives from the father, e.g., the father's insurer. Therefore, the poverty level pregnant woman may not be required as a condition of eligibility to cooperate with the State in establishing paternity or in obtaining support and payments for medical care from, or derived from, the father of the child born out of wedlock. The poverty level pregnant woman is still required to assign her rights, and the rights of any other person eligible for Medicaid for whom she can legally make an assignment, to the State for support and payment of medical care from any third party, and to cooperate with the State and provide information to be used in pursuing any other third party who may be liable to pay for care and services under the plan.

While poverty level pregnant women are exempt from the paternity-related cooperation requirements, as a condition of Medicaid eligibility, they are, nevertheless, entitled to child support enforcement (CSE) services under the title IV–D program. These services include establishing paternity, locating absent parents, and obtaining child and spousal support, including medical support. The Medicaid agency should ascertain whether the poverty level pregnant woman wishes CSE services and refer those who do to the CSE agency.

II. Regulation Provisions

The assignment of rights requirements relating to cooperation in establishing paternity and in obtaining medical support and payments as a condition of eligibility for Medicaid are included in existing regulations at §§ 433.145, 433.147, 435.604, and 436.604. We are amending these sections to reflect the changes made by section 4606 of Public Law 101–508 which amended section 1912(a)(1)(B) of the Act, and to make minor editorial or conforming changes.

The OBRA '90 amendment provides that individuals described in section 1902(l)(1)(A) of the Act (poverty level pregnant women) are not required, as a condition of eligibility, to cooperate with the State in establishing paternity and in obtaining medical support and payments, that is ordinarily required by section 1912(a)(1)(B) of the Act.

Section 1912(a)(1)(B) of the Act expressly exempts the poverty level pregnant woman from having to cooperate in establishing an eligible child's paternity and in obtaining the support and payments described in section 1912(a)(1)(A) for herself or her child. The support and payments, in section 1912(a)(1)(A) are both medical support and payments for medical care from any third party. Therefore, section 1912(a)(1)(B) appears to exempt pregnant women from helping to obtain payments from any liable third party. Section 1912(a)(1)(C), however, separately requires that an applicant or recipient cooperate with the State in identifying and providing information to assist the State in pursuing any third party who may be liable to pay for care and services. The poverty level pregnant women in section 1902(1)(1)(A) are not exempt from the section 1912(a)(1)(A) assignment requirements and the section 1912(a)(1)(C) cooperation requirements.

The Secretary's interpretation of the statute is consistent with the legislative history. The report of the House Committee on the Budget states that the committee bill was designed to exempt pregnant women from the cooperation requirements with respect to establishing paternity and obtaining child support (H. Rept. No. 881, 101st Cong., 2d Sess., 106–107, *reprinted in* 1990 U.S. Code Cong. & Admin. News 2017, 2119). The Conference Report to accompany H.R. 5835 reiterates this purpose and notes that the conference agreement adopted the House bill (H.R. Conf. Rept. No. 964, 101st Cong., 2d Sess. 839–840, *reprinted in* 1990 U.S. Code Cong. & Admin. News 2374, 2544–2545). The legislative history does not suggest that Congress intended to relieve poverty level pregnant women from the requirement of cooperating with the State in pursuing a responsible third party who may be liable to pay for medical care available under the plan. Therefore, we believe that the amendment by Public Law 101–508 to section 1912 of the Act exempts poverty level pregnant women from helping States to obtain support and payments for medical care from, or derived from, the father of the child born out of

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wedlock. These women must still assign their rights to the State in accordance with section 1912(a)(1)(A) and otherwise cooperate in obtaining other forms of third party payments such as, for example, payments from private insurance or tort settlements.

The Secretary's interpretation of the statutory requirements is clearly stated in this final rule. The general rule is this: An applicant or recipient must cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any eligible child. Individuals described in section 1902(1)(1)(A) of the Act, poverty level pregnant women, are exempt from the section 1912(a)(1)(B) requirements involving cooperation in establishing paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock. Poverty level pregnant women must, however, cooperate in identifying and providing information to the Medicaid agency in pursuing other third parties who may be liable to pay for care and services under the plan. This revision does not alter the existing provisions that any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

To reflect the above described provisions, we are revising paragraph (a) of § 433.145, to clarify that an applicant or recipient is required to:

- Assign rights to medical support and to payment for medical care from any third party;
- Except for individuals described in section 1902(1)(1)(A) of Act (poverty level pregnant women), cooperate with the agency in establishing paternity and in obtaining medical support and payments; and
- Cooperate in identifying and providing information to assist the agency in pursuing third parties who may be liable to pay for care and services under the plan.

We also clarify that unless the individual demonstrates good cause for not cooperating, cooperation is required.

In § 433.147, we clarify the section title by revising it to read, cooperation in establishing paternity, and in obtaining medical support and payments and in identifying and providing information to assist in pursuing third parties who may be liable to pay. In paragraph (a) we clarify that an individual who assigns his or her rights must cooperate in establishing paternity of a child born out of wedlock and in obtaining medical support and payments for himself or herself and any other person for whom the individual can legally assign rights, except that individuals described in section 1902(l)(1)(A) of the Act (poverty level pregnant women) are exempt from these requirements involving paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock. We also make several editorial changes to improve readability of the section.

In §§ 435.604, and 436.604, we clarify that an applicant or recipient is required to:

- Assign rights to medical support and to payment for medical care from any third party;
- Except for individuals described in section 1902(l)(1)(A) of the Act (poverty level pregnant women), cooperate with the agency in establishing paternity and in obtaining medical support and payments; and
- Cooperate in identifying and providing information to assist the agency in pursuing third parties who may be liable to pay for care and services under the plan.

We also clarify that unless the individual establishes good cause for not cooperating, cooperation is required.

III. Waiver of Notice of Proposed Rulemaking

Section 4207(j) of Public Law 101–508 gives the Secretary authority to issue regulations on an interim or other basis as may be necessary to implement the amendments made by the provisions of Public Law 101–508.

This regulation updates our rules to properly reflect statutory provisions of section 4606 of Public Law 101–508. These statutory provisions are effective on November 5, 1990. Without these changes, our regulations conflict with statutory provisions. While we have determined that prompt publication of these regulations best serves those agencies and individuals governed by the regulations, we are providing a 60-day comment period for public comments on the rule.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on rules, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and will respond to the comments in the preamble in any subsequent rule that we issue.

V. Technical Correction

We are making a technical correction to § 435.408 and § 436.408 to correct a paragraph reference in regulations originally published on September 7, 1990, at 55 FR 36813 and subsequently republished as a technical correction on March 14, 1991, at 56 FR 10807. References to revised § 435.408(a)(13) and § 436.408(a)(13) are incorrect. The correct references are § 435.408(b)(13) and § 436.408(b)(13) respectively. These sections set forth the standards for documentation that a State agency may accept and must review to establish that the Immigration and Naturalization Service has placed the alien in a category that qualifies the individual for Medicaid consideration. These changes are effective October 9, 1990, the effective date of the original publication of the regulations in the **Federal Register**.

VI. Paperwork Reduction Act of 1980

This final rule with comment period contains no information collection or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 *et seq.*).

VII. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a final regulatory impact analysis for any final regulation that meet one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals and States are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final regulation that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

Although we are unable to estimate actual costs or savings, the provisions contained in this rule are not expected to result in an annual economic impact of $100 million or more. States may incur some increased costs as a result of individuals being exempt from cooperating in establishing paternity and in obtaining medical support and payments from, or derived from, the father. However, since those individuals are not precluded from cooperating and may, in fact, voluntarily cooperate in establishing paternity, we believe the impact is minimal. In addition, by removing impediments to prenatal and postpartum care, the provisions implemented by this rule are expected to reduce infant mortality and save money which would otherwise be spent on costly services such as neonatal intensive care.

Therefore, we have determined, and the Secretary certifies, that this final rule is not a major rule and would not have a significant economic impact on a substantial number of small entities. Also, this rule would not have a significant impact on the operations of a substantial number of small rural hospitals. We have not prepared a regulatory impact analysis, a small rural hospital analysis, or an initial regulatory flexibility analysis.

List of Subjects

42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR chapter IV, subchapter C, is amended as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

A. Part 433, subpart D is amended as follows:

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1902(a)(4), 1902(a)(18), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912, and 1917 of the Social Security Act (42 U.S.C. 1302, 1396(a)(4), 1396a(a)(18), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1996b(d)(5), 1396b(o), 1396b(p), 1396b(r), 1396k, and 1396p.

2. In § 433.145, paragraph (a) is revised to read as follows:

§ 433.145 Assignment of rights to benefits—State plan requirements.

(a) A State plan must provide that, as a condition of eligibility, each legally able applicant or recipient is required to:

(1) Assign to the Medicaid agency his or her rights, or the rights of any other individual eligible under the plan for whom he or she can legally make an assignment, to medical support and to payment for medical care from any third party;

(2) Cooperate with the agency in establishing paternity and in obtaining medical support and payments, unless the individual establishes good cause for not cooperating, and except for individuals described in section 1902(l)(1)(A) of the Act (poverty level pregnant women), who are exempt from cooperating in establishing paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock; and

(3) Cooperate in identifying and providing information to assist the Medicaid agency in pursuing third parties who may be liable to pay for care and services under the plan, unless the individual establishes good cause for not cooperating.

* * * * *

3. In § 433.147, the section title and paragraph (a) are revised to read as follows:

§ 433.147 Cooperation in establishing paternity and in obtaining medical support and payments and in identifying and providing information to assist in pursuing third parties who may be liable to pay.

(a) *Scope of requirement.* The agency must require the individual who assigns his or her rights to cooperate in—

(1) Establishing paternity of a child born out of wedlock and obtaining medical support and payments for himself or herself and any other person for whom the individual can legally assign rights, except that individuals described in section 1902(l)(1)(A) of the Act (poverty level pregnant women) are exempt from these requirements involving paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock; and

(2) Identifying and providing information to assist the Medicaid agency in pursuing third parties who may be liable to pay for care and services under the plan.

* * * * *

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

B. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Technical Correction

§ 435.408 [Amended]

On page 10807, column 1, in FR document 91–5922, published on March 14, 1991, the amendatory language "5. In § 435.408, paragraph (a)(13) is revised to read as follows:" is corrected to read "5. In § 435.408 paragraph (b)(13) is revised to read as follows:" and the citation to paragraph "(a)" under the text of § 435.408 is corrected to read "(b)".

3. In § 435.604, paragraph (a) is revised to read as follows:

§ 435.604 Assignment of rights to benefits.

(a) As a condition of eligibility, the agency must require legally able applicants and recipients to:

(1) Assign rights to the Medicaid agency to medical support and to payment for medical care from any third party;

(2) Cooperate with the agency in establishing paternity and in obtaining medical support and payments, unless the individual establishes good cause for not cooperating, and except for individuals described in section 1902 (l)(1)(A) of the Act (poverty level pregnant women), who are exempt from cooperating in establishing paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock; and

(3) Cooperate in identifying and providing information to assist the Medicaid agency in pursuing third parties who may be liable to pay for care and services under the plan, unless the individual establishes good cause for not cooperating.

* * * * *

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

C. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Technical Correction

§ 436.408 [Amended]

On page 10807, column 2, in FR document 91–5922, published on March 14, 1991, the amendatory language "5. In § 436.408, paragraph (a)(13) is revised to read as follows:" is corrected to read "5. In § 436.408 paragraph (b)(13) is revised to read as follows:" and the citation to paragraph "(a)" under the text of § 436.408 is corrected to read "(b)".

3. In § 436.604, paragraph (a) is revised to read as follows:

§ 436.604 Assignment of rights to benefits.

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(2) Cooperate with the agency in establishing paternity and in obtaining medical support and payments, unless the individual establishes good cause for not cooperating, and except for individuals described in section 1902(l)(1)(A) of the Act (poverty level pregnant women), who are exempt from cooperating in establishing paternity and obtaining medical support and payments from, or derived from, the father of the child born out of wedlock; and

(3) Cooperate in identifying and providing information to assist the Medicaid agency in pursuing third parties who may be liable to pay for care and services under the plan, unless the individual establishes good cause for not cooperating.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: June 16, 1992.

William Toby, Jr.,

Acting Administrator, Health Care Financing Administration.

Approved: August 21, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 93–972 Filed 1–15–93; 8:45 am]

BILLING CODE 4120-01-M

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42 CFR Parts 435, 436, and 440

[MB–001–FC]

RIN 0938–AA56

Medicaid Program; Eligibility and Coverage Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These regulations amend the requirements for coverage of certain groups of individuals under Medicaid and the requirements for determining Medicaid eligibility. The regulations relate to coverage of individuals in optional categorically needy groups; aged, blind and disabled individuals in States that use more restrictive requirements for Medicaid than those under the Supplemental Security Income (SSI) program; individuals receiving optional State supplementary payments; individuals under age 21 who are not receiving AFDC; individuals who are ineligible for cash assistance under the Social Security Act because of requirements that do not apply under Medicaid; and medically needy groups. In addition, the regulations revise the methodologies for determining income and resource eligibility under Medicaid, including financial responsibility of relatives, and for determining financial eligibility of medically needy groups, including determining medically needy income levels.

These regulations interpret provisions of the Tax Equity and Fiscal Responsibility Act of 1982, as amended by several acts, including, most recently, the Omnibus Budget Reconciliation Act of 1987, the Medicare Catastrophic Coverage Act of 1988, the Family Support Act of 1988, the Omnibus Budget Reconciliation Act of 1989, and the Omnibus Budget Reconciliation Act of 1990. We are also making some administrative changes to achieve more efficient operation of the Medicaid Program.

DATES: *Effective Dates:* These regulations are effective on February 18, 1993, except for §§ 435.604, 435.606, 436.604, and 436.606, which are effective April 19, 1993.

Compliance Dates: We will not hold a State out of compliance with the requirements of this final rule if the State submits preprinted plan amendments and required attachments by April 19, 1993, for all provisions other than §§ 435.604, 435.606, 436.604, and 436.606. States must comply with §§ 435.604, 435.606, 436.604, and 436.606, and submit preprinted plan amendments and required attachments for these sections, by the latest of: (1) July 19, 1993; (2) the first day of the next fiscal year in which appropriations apply following January 19, 1993, if State legislation is needed to appropriate funds to implement the provisions of these sections; or (3) the first day of the calendar quarter following the end of the next session of the State legislature that convenes after January 19, 1993, if the State needs authorizing legislation to implement the provisions of these sections.

Comment Date: We will consider public comments on the provisions of §§ 435.604, 435.606, 436.604, and 436.606 of these regulations only if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 16, 1993.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, attention: MB–001–FC, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, attention: Laura Oliven, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

If you prefer, you may deliver your written comments to: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD, 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–001–FC. Comments will be available for public inspection as they are received, beginning approximately 3 weeks after publication, in room 309–G of the Departmental offices at 200 Independence Avenue, SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (202–690–7890).

FOR FURTHER INFORMATION CONTACT: Marinos Svolos, (410) 966–4451.

SUPPLEMENTARY INFORMATION:

I. General Background

Title XIX of the Social Security Act (the Act) provides authority for States to operate Medicaid programs to provide medical assistance to certain needy individuals. The costs of administration and services of approved State Medicaid programs qualify for Federal financial participation (FFP). In general, States that have established Medicaid programs must provide medical assistance to families and children and aged, blind, and disabled individuals who are receiving, or are deemed to be receiving, cash assistance under the Aid to Families with Dependent Children (AFDC) Program, Supplemental Security Income (SSI) Program, and mandatory State supplement (SSP) programs, and to certain low-income pregnant women, infants, and children. These groups of individuals are identified as the mandatory categorically needy eligibility groups. States may also choose to cover certain other categorically needy related individuals, such as individuals receiving optional State supplementary payments, individuals who are eligible for but choose not to receive cash assistance which would make them eligible for Medicaid, and individuals who would be eligible to receive these types of cash assistance if they were not institutionalized. These elective groups are identified as the optional categorically needy eligibility groups.

In addition, States have the option of providing Medicaid to certain individuals who would be eligible for cash assistance (AFDC or SSI or SSP only), except that their income and resources exceed allowable levels. These groups of individuals are identified as the medically needy eligibility groups.

This document basically deals with incorporation in the Medicaid regulations of substantive changes made in the composition of these eligibility groups of individuals and in the criteria used to determine their financial eligibility under Medicaid. The substantive changes were initially made by the Omnibus Budget Reconciliation Act of 1981 (OBRA '81) Public Law 97–35 and the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), Public Law 97–248 and further amended by the Deficit Reduction Act of 1984 (DRA), Public Law 98–369; the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272; the Omnibus Budget Reconciliation Act of 1986 (OBRA '86), Public Law 99–509; the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93; the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 102–203; the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100–360; the Family Support Act of 1988, Public Law 100–485; the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), Public Law 101–239; and the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Public Law 101–508. This document also contains additional changes, most of which have been issued as proposals, that are made as a result of administrative decisions to improve program administration and efficiency.

On September 26, 1989, we published in the **Federal Register** (54 FR 39421), a notice of proposed rulemaking (NPRM). In summary, this NPRM proposed to implement certain provisions of TEFRA, as amended by the several laws cited above, relating to clarification of coverage of optional categorically needy groups and individuals under 21; the required use of a single income and resource standard for determining financial eligibility for medically needy individuals; the required use of related cash assistance program methodologies in determining financial eligibility of the medically needy; and the option to use more liberal income and resource methodologies in determining financial eligibility of certain groups. In addition, this NPRM proposed to clarify various other eligibility requirements (for example, financial eligibility requirements for AFDC-related, non-cash assistance individuals and establishment of medically needy income levels for one-person families within FFP limitations), and to respond to public comments related to the provision of Medicaid services that we had received on a September 30, 1981 regulation that implemented provisions of OBRA '81.

We received over 1,100 pieces of correspondence in response to the September 1989 NPRM. Because of the multiple subjects contained in the NPRM which we must address in this final rule, we will discuss separately, by subject area, the NPRM provisions, the public comments received related to that area and the Department's response, and the provisions of the final regulations.

II. Optional Categorically Needy Groups

A. Background

Section 137(b)(7) of TEFRA established authority (previously not specified in the Act) for States to cover optional categorically needy individuals as distinct Medicaid eligibility groups and described in the groups of individuals that may be covered under section 1902(a)(10)(A)(ii) of the Social Security Act. Section 1902(a)(10)(A)(ii) of the Act relates the optional categorically needy groups to the group or groups of individuals described in section 1905(a) of the Act, which contains the definition of medical assistance. The section 1905(a) definitional listing includes aged individuals, blind individuals, disabled individuals, individuals under age 21 (or, at State option, under age 20, 19, or 18), relatives specified in section 406(b)(1) of the Act who are living with children who are (or would be if needy) dependent children under AFDC (referred to in this document as "specified relatives") and pregnant women. This definitional listing also includes persons essential to individuals receiving cash assistance under the programs of old age assistance, aid to blind, aid to the permanently and totally disabled and aid to the aged, blind, and disabled that are applicable in the Territories.

B. NPRM Provisions

In the September 1989 NPRM, we proposed to amend the existing regulations under § 435.201, which contains a basic provision for States to exercise flexibility in covering individuals as optional eligibility groups, to specify the individuals listed in section 1905(a) of the Act as those from which the State may choose its optional categorically needy eligibility groups. The regulations would then conform to the provisions of the Act as clarified under TEFRA. We also proposed to make conforming changes in §§ 435.210, 435.211, 435.220, and 435.223 which contain the specific requirements for individuals included in the optional categorically needy coverage groups.

C. Public Comments

We did not receive any major comments on the proposed provisions.

D. Provisions of the Final Regulations

We are adopting the proposed changes in §§ 435.201, 435.210, 435.211, 435.220, and 435.223 of the regulations as final, without modifications.

III. Aged, Blind, and Disabled Individuals in Section 102(f) States

A. Background

Section 1902(f) of the Act allows States to use more restrictive criteria than SSI in determining Medicaid eligibility for aged, blind, and disabled individuals. The more restrictive criteria may not be more restrictive than those under the State's approved Medicaid plan in effect on January 1, 1972. Under section 1902(r)(2) of the Act, as added by MCCA, section 1902(f) States are permitted to use methods for determining income and resource eligibility for aged, blind, and disabled individuals that are more liberal than those used under SSI. However, the more liberal methods adopted by a section 1902(f) State under the section 1902(r)(2) authority must be consistent with the FFP limits established under section 1903(f) of the Act.

States that choose to use eligibility requirements and methods for the aged, blind, or disabled that are more restrictive than those used to determine eligibility for SSI may use more restrictive nonfinancial eligibility conditions, financial eligibility conditions, or both. These more restrictive requirements may apply to the aged, blind, and disabled, or any combination of these groups. For example, a State may use more restrictive eligibility requirements for the aged and provide Medicaid to all blind or disabled SSI recipients. Although these States may use more restrictive eligibility requirements, they must, as a minimum, allow all SSI recipients and individuals deemed to be SSI recipients to apply for Medicaid and have their eligibility determined using the more restrictive eligibility requirements for mandatory categorically needy individuals.

States that choose to cover aged, blind, or disabled individuals under section 1902(f) of the Act and that do not have a medically needy program must allow certain of these individuals to deduct the cost of incurred medical expenses from income (referred to as spend down) in order to become eligible as categorically needy. We have required these States to allow any individual whose income exceeds the categorically needy income level to spend down to the categorically needy income levels established by the State under section 1902(f), which may be lower than the SSI income standards.

Section 1902(f) States may also use more liberal income standards than those used under SSI through an election to provide Medicaid to optional categorically needy groups under the provisions of section 1902(a)(10)(A)(ii). For example, section 1902(f) States may use more liberal income standards by electing to provide Medicaid to recipients of optional State supplements, institutionalized individuals who satisfy a special income level, or low-income (poverty related) groups of aged and disabled individuals. Election of the income standards higher than SSI results in an extension (or replacement) of the more restrictive income standards established under section 1902(f). For example, if a section 1902(f) State elects to provide Medicaid to aged, blind, and disabled individuals who have incomes up to standards which do not exceed 100 percent of the Federal poverty level, the poverty-level related standard elected by the State becomes the categorically needy income standard for all aged and disabled individuals in that State who have income equal to or below that standard. Individuals with income above the higher optional categorically needy standard must spend down to the SSI income standard, a more restrictive standards, or the medically needy standard in order to become Medicaid eligible.

Section 1902(f) States may make optional supplementary payments to SSI recipients and to individuals who have income above the SSI income standards. If these States elect to provide Medicaid to individuals by virtue of their receipt of these State supplementary payments under section 1902(a)(10)(A)(ii) (IV) or (XI), the State must provide Medicaid to all individuals who are members of the group it has elected to cover. Moreover, if payments are made to persons who would otherwise be eligible under a State's 1902(f) plan and the supplementary payments meet the optional State supplement requirements of section 1902(a)(10)(A)(ii)(XI) (which permits the use of more restrictive income disregards in determining eligibility under the State supplement program), a State may, but is not required to, use its optional State supplement standards to determine Medicaid eligibility for categorically needy individuals included under its optional State supplement program. (This optional group is discussed in detail later in this document.)

B. NPRM Provisions

In the September 1989 NPRM, we proposed to clarify coverage of aged, blind, and disabled individuals under section 1902(f) as mandatory categorically needy (§ 435.121), as optional categorically needy (§ 435.230), and as medically needy (§ 435.330). Specifically:

1. Mandatory Categorically Needy

In order to clarify the section 1902(f) provision, we proposed to retain the requirement under the existing § 435.121 to limit the minimum required eligibility group of aged, blind, and disabled individuals to which the more restrictive requirements would apply to recipients of SSI and certain individuals who, for purposes of Medicaid, are deemed to be SSI recipients. We also proposed to broaden the deemed SSI recipient group to include individuals who qualify under section 1619(b)(3) of the Act as added by Public Law 99–643.

Under the proposed revision of § 435.121, States would be required to consider as mandatory categorically needy those aged, blind, or disabled SSI recipients who meet the more restrictive criteria used by the State and whose income meets the State's more restrictive income standard. In determining whether an individual meets the more restrictive income standard, the individual's income would be reduced by deducting any SSI payments that he or she receives, any State supplementary payments that meet the conditions specified in the Medicaid regulations (which were proposed to be redesignated as §§ 435.232 and 435.234) and incurred medical expenses permitted under the Medicaid regulations. Under the proposed revision, to the extent permitted by section 1902(r) of the Act, these States would also be permitted to use methodologies for determining income and resource eligibility that are less restrictive than those of the SSI program.

After TEFRA and subsequent amendments to the Medicaid statute, we reexamined section 1902(f) and its application to categorically needy and medically needy groups. As a result of this reexamination, we had proposed in the September 1989 NPRM to limit the definition of categorically needy individuals in section 1902(f) States that do not have medically needy programs. We proposed to change our policy that allows any aged, blind, and disabled individual in these States whose income exceeded the categorically needy income level to spend down to the State's categorically needy income levels established under section 1902(f) (which in some cases may be lower than the SSI income standard). We proposed to change our policy to indicate that individuals who, on the basis of their income, would not be eligible for cash assistance, or who meet certain specified less restrictive standards or criteria, would have their Medicaid eligibility determined under the spenddown process only if the State had a medically needy program. We proposed this limitation on the definition of categorically needy individuals in section 1902(f) States that do not have a medically needy program because we did not believe that the Medicaid statute authorized section 1902(f) States to establish a medically needy spenddown type program for the aged, blind, and disabled without having to provide equivalent coverage for AFDC-related groups. (In passing section 1902(f) of the Act, the Congress indicated that it did not intend to require States to broaden Medicaid coverage beyond SSI or State supplement recipients, but to permit States to restrict coverage if they chose to do so.) The Congress clarified under OBRA '81 and TEFRA that if a State wished to cover the medically needy, the minimum coverage is for AFDC-related individuals.

2. Optional Categorically Needy

In the September 1989 NPRM, we proposed to add a new § 435.230 to allow section 1902(f) States to establish optional categorically needy eligibility groups of aged, blind, and disabled individuals. These groups would include individuals who would be eligible as mandatory categorically needy under § 435.121 except that they are not receiving an SSI payment and whose income before spenddown meets certain other specified levels. Section 1902(f) States also would be permitted to cover, as optional categorically needy, other groups of aged, blind, and disabled individuals who are eligible under criteria that, at State option, extend beyond SSI criteria—for example, those receiving an optional State supplement and those receiving home and community based services.

This proposal would allow section 1902(f) States to set up optional categorically needy groups of individuals who are eligible for but are not receiving cash assistance, as allowed in non-section 1902(f) States. We believed that this was appropriate in view of the OBRA '81 clarification of coverage of optional categorically needy groups.

3. Medically Needy Group

In the September 1989 NPRM, we proposed to allow section 1902(f) States to cover as medically needy any aged, blind, or disabled individual who, except for financial criteria, meets the eligibility criteria for mandatory or optional categorically needy coverage applied under the authority of section 1902(f). States would be permitted to allow these medically needy individuals to establish financial eligibility by applying less restrictive income and resource methodologies than SSI under section 1902(r)(2) of the Act, as added by MCCA, and by deducting incurred medical expenses from income in accordance with financial eligibility requirements specified in the existing regulations under § 435.831. We proposed to retain in § 435.330 the basic provisions for eligibility of aged, blind, and disabled individuals as medically needy in section 1902(f) States. We proposed to revise the section to make it consistent with the proposed revisions under §§ 435.121 and 435.230 for mandatory and optional categorically needy eligibility in section 1902(f) States and to clarify the financial eligibility conditions included under section 1902(r)(2).

C. Public Comments and Departmental Responses

Comment: Several commenters recommended that the regulations be substantially rewritten to better clarify the option under section 1902(f) to use more restrictive income and resource eligibility rules for aged, blind, and disabled individuals.

Response: We agree that the rules governing eligibility of aged, blind, and disabled individuals in section 1902(f) States are complicated and have further revised the regulations that address the establishment of the eligibility conditions for the groups in an attempt to make the provisions clearer. Specifically, we have rewritten § 435.121, which covers the mandatory categorically needy group; rewritten proposed § 435.230, which describes the option for section 1902(f) States to include optional categorically needy eligibility groups; and rewritten the proposed redesignated and revised § 435.631 (previously § 435.731 before the redesignation), which describes general income requirements. We have also deleted the proposed redesignated and revised § 435.632, which was previously § 435.732 and which provided procedures for determining income eligibility in States using more restrictive requirements than SSI. We have incorporated the income procedures of proposed § 435.632 in §§ 435.121 and 435.230, including the requirement for deductions of incurred medical and remedial care expenses. This will help readers to better understand the application of the spenddown rules in section 1902(f) States and other eligibility criteria applicable to aged, blind, and disabled individuals.

Comment: Several commenters stated that they had difficulty relating the section 1902(f) rules to other eligibility groups and recommended clarification in the final rule. They requested clarification of Medicaid eligibility, in section 1902(f) States, of qualified Medicare beneficiaries under sections 1902(a)(10)(E)(i) and 1905(p) of the Act, qualified disabled and working individuals (QDWIs) under sections 1902(a)(10)(E)(ii) and 1905(s) of the Act, and individuals who are deemed to be SSI recipients under section 1619(b)(3) of the Act. They also wanted clarification of how the provisions for protection of income and resources of community spouses of institutionalized individuals under section 1924 of the Act related to the section 1902(f) rules and to the medically needy provisions.

Response: We have clarified the regulation under § 435.121 (previously paragraph (f) and now paragraph (b)) to provide that section 1902(f) States must include under their plans mandatory eligibility of individuals who meet the requirements of section 1619(b)(3) of the Act, even though they may not continue to meet the States' more restrictive eligibility requirements under section 1902(f). We also have included a provision under § 435.121(b) to specify that section 1902(f) States must provide mandatory eligibility to QMBs and QDWIs who meet the requirements of sections 1902(a)(10)(E)(i) and 1905(p) and sections 1902(a)(10)(E)(ii) and 1905(s), respectively, without consideration of the more restrictive eligibility requirements. Proposed amendments to incorporate the provisions for the establishment of the eligibility groups of QMBs and QDWIs in the HCFA regulations are being developed in separate documents. Until these HCFA regulations on QMBs and QDWIs eligibility groups are published, States are required to provide mandatory eligibility in accordance with the specified provisions of the Social Security Act.

We also are in the process of developing proposed regulations to interpret the provisions of section 1924 of the Social Security Act relating to the protection of income and resources of institutionalized individuals for community spouses. Section 1924 provides that the provisions of that section supersede any provisions of section 1902(f) that are inconsistent with them. Therefore, States are bound to implement section 1924 on the basis of their reasonable interpretation of the law. We have included an appropriate reference to the section 1924 requirements in § 435.121(a).

Comment: One commenter recommended that § 435.121 provide for the income deductions for title II (monthly social security benefits) increases of former SSI and/or State supplement recipients required under section 503 of Public Law 94–566 and title II increases for certain widow(er)s who receive changes in their title II benefits.

Response: We have not accepted the recommendation. The deductions referred to by the commenter are mandatory deductions for determining whether individuals qualify for the special Medicaid status conferred by the statutes mentioned in the comment. If, after applying the deductions, an individual qualifies for the status, he or she is, in effect, deemed to be an SSI recipient. For purposes of determining the type of Medicaid they will be eligible to receive when they spend down, States electing the option under section 1902(f) must treat these individuals as SSI recipients. We have amended § 435.121 to refer to the regulations at §§ 435.135, 435.137, and 435.138 to make clear that these individuals will be categorically needy if they spend down their excess income. These cross-referenced regulations contain the specific requirements for eligibility for these special status groups. We have also added a cross-reference to §§ 435.135 and 435.138 in § 435.230 (the provision that governs the options available to section 1902(f) States with respect to the categorically needy). This is because, with respect to individuals covered in §§ 435.135 or 435.138, States have the option to disregard certain portions of the individual's title II benefits in determining their Medicaid eligibility. (All States must disregard the relevant title II income in determining whether an individual qualifies for the special status under §§ 435.135, 435.137, and 435.138.) The treatment of certain title II increases received by certain disabled widow(er)s was the subject of litigation in *Darling* v. *Bowen*. We published final regulations to implement the court decisions in that case on November 21, 1990 (55 FR 48601). The preamble to that document and the regulation at 42 CFR 435.137 contained in that document specify the special treatment adopted by virtue of the court orders for individuals covered under section 1634(b) of the Act.

Comment: One commenter believed that the proposed § 435.230(b) should be revised to make it clear that this section does not establish eligibility requirements for section 1902(f) States for their optional categorically needy groups. The commenter believed that the purpose of the section was to establish the income and resource standards used to determine who is optional categorically needy. The commenter also believed that the preamble and the regulation text would be interpreted to require section 1902(f) States to use the cash assistance rules to establish eligibility for the optional categorically needy.

Response: We have not made any changes in these final regulations in response to this comment, other than for clarification purposes. We intend that § 435.230 establish eligibility requirements for optional categorically needy groups in section 1902(f) States. The eligibility criteria for these individuals are complicated and contain requirements that might legitimately be classified as financial criteria. However, it is necessary for us to include such financial criteria to describe the composition of the eligibility group. This section must be read in conjunction with other regulatory and statutory provisions that establish criteria, standards, and methods for determining income and resource eligibility for the specific optional groups described in the section.

Comment: Several commenters disagreed with our proposed interpretation of how election by section 1902(f) States of the option to use more liberal income and resource methods under section 1902(r)(2) of the Act affects these States' continued authority to use more restrictive income and resource methods under section 1902(f). They believed that section 1902(f) States, by virtue of section 1902(r)(2), must adopt methods of counting income and resources for the aged, blind, and disabled that are at least as liberal as those of the SSI program. The commenters based their objection to the proposed interpretation on a Federal District Court decision in *Mowbray* v. *Kozlowski and Sullivan* (No. 89–3355).

Response: We appealed this District Court decision on which the commenters based their arguments. In *Mowbray v. Kozlowski*, 914 F.2d 593 (4th Cir. 1990), the Court of Appeals reversed the lower court's decision and upheld the continued right of section 1902(f) States to use more restrictive methods for determining Medicaid eligibility of their aged, blind, and disabled individuals.

Comment: One commenter stated that aged, blind, and disabled persons in section 1902(f) States are not subject to FFP limits under section 1903(f) of the Act. Thus, the commenter believed that we should not impose a dollar cap on the more liberal income policies that section 1902(f) States may propose under section 1902(r)(2).

Response: We disagree with the commenter. There is no exception to the income limitations for purposes of FFP specified in section 1903(f) of the Act for section 1902(f) States. Section 1902(f) explicitly refers to section 1903(f) in connection with the calculation of the income spenddown to be used by section 1902(f) States. Since section 1902(f) only provides States with the authority to use eligibility rules that are more restrictive than the SSI rules, it does not confer upon those States authority to violate the section 1903(f) FFP caps, which exempt actual SSI recipients. The section 1902(f) option acts as a shield against other provisions of the Medicaid statute which would otherwise compel States to cover any aged, blind, or disabled individual who would not have been eligible under the State's requirements in effect on January 1, 1972. It is not a source of affirmative authority to cover other individuals. This view has been confirmed by the U.S. Courts of Appeal for the 4th and 8th Circuits in *Savage* v. *Toan*, 795 F.2d 643 (8th Cir. 1986) and *Morris* v. *Morrow*, 783 F.2d 457 (4th Cir. 1986).

Comment: One commenter read the proposed regulation to prohibit section 1902(f) States from targeting the eligibility groups for whom more liberal section 1902(r)(2) policies could be applied, unlike States that do not use more restrictive eligibility requirements for the aged, blind, and disabled.

Response: The regulation does not limit section 1902(f) States' ability to target the groups for whom these States wish to apply more liberal income and resource methodologies. In fact, section 1902(f) States have more flexibility than non-section 1902(f) States to target groups because they may apply more liberal policies to SSI recipients whose eligibility is determined under the more restrictive requirements under § 435.121.

Comment: A number of commenters objected to our interpretation of which individuals could spend down their income to become eligible for Medicaid as categorically needy in a section 1902(f) State without a medically needy program.

Response: We have reexamined the law in light of this comment and have decided not to adopt the proposed change that would limit the definition of categorically needy in section 1902(f) States that do not include a medically needy program. We believe there is still a legal basis to support the policy currently being applied by the section 1902(f) States without medically needy programs. These States will be permitted to allow aged, blind, and disabled individuals whose income exceeds the income standard established by the State to spend down income to become categorically needy. However, these States may allow these individuals to spend down only to the lower of an income standard that equals the standard used under SSI based on an individual's living arrangement or the more restrictive standard established under section 1902(f).

Comment: One commenter believed that the regulations should be revised to permit SSI criteria States to use more restrictive eligibility requirements for any Medicaid group of aged, blind, and disabled individuals. SSI criteria States are those that use SSI program requirements to determine Medicaid eligibility for the aged, blind, and disabled, but do not automatically add SSI recipients to their Medicaid rolls. SSI recipients must file a separate Medicaid application with the State. The commenter reaches this conclusion because the commenter believed that their is explicit authority for such States to use more restrictive income eligibility policies for recipients of optional State supplements when such States do not have agreements with the Social Security Administration to determine eligibility for such supplemental payments for the State.

Response: There is no statutory authority allowing SSI criteria States to use more restrictive income eligibility methods except for the explicit authority in the optional State supplement option under section 1902(a)(10)(A)(ii)(XI). If these States wish to use more restrictive eligibility requirements for groups other than those defined under this section of the law, the State must elect the option described under section 1902(f) and implemented in § 435.121.

D. Provisions of the Final Regulations

We have adopted the proposed regulations as final, with the modifications discussed under the Public Comments and Departmental Responses portion of this section.

IV. Individuals Receiving Optional State Supplementary Payments

A. Background

Sections 1902(a)(10)(A)(ii)(IV) and 1902(a)(10)(A)(ii)(XI) of the Act provide for Medicaid eligibility of aged, blind, and disabled individuals who are receiving an optional State supplementary payment. Section 1902(a)(10)(A)(ii)(XI) of the Act, as added by section 4104 of OBRA '87 and amended by section 411(k) of MCCA, provides for Medicaid coverage of optional State supplement recipients as an optional categorically needy group in section 1902(f) States and in States that use SSI eligibility criteria but do not have section 1616 or 1634 agreements with the Social Security Administration (under which the Social Security Administration processes applications for Medicaid). Section 1905(j) describes State supplement recipients as those individuals who are receiving SSI or who, except for income, would be eligible to receive SSI benefits. Therefore, SSI criteria are used to determine eligibility for State supplements. Section 1905(j) also defines optional State supplement criteria that States may use to establish Medicaid eligibility. These criteria also must be used to determine if such payments are deducted from income for purposes of determining eligibility in States that elect to use more restrictive eligibility requirements than SSI.

Under section 1902(a)(10)(A)(ii)(XI), section 1902(f) States that do not have agreements with the Social Security Administration to administer their State supplementary benefits may use more restrictive income deductions than permitted non-section 1902(f) States and section 1902(f) States that have the Social Security Administration administer their State supplementary payments (State supplementary payments made under the authority of section 1902(a)(10)(A)(ii)(IV) of the Act).

B. NPRM Provisions

In the September 1989 NPRM, we proposed to incorporate the provisions of section 1902(a)(10)(A)(ii)(XI) of the Act in the new § 435.234. Since section 1902(a)(10)(A)(ii)(XI) of the Act referred to recipients of an optional State supplementary payment, we also included in the proposed § 435.234 the acceptable categories of State supplementary payments that are currently found in the regulation at § 435.230 (which was proposed to be redesignated as § 435.232) applicable to non-section 1902(f) States. These categories were derived from our interpretation of the definition of a State supplementary payment under section 1905(j). They also apply to States that elect to provide Medicaid under section 1902(a)(10)(A)(ii)(IV) of the Act to individuals eligible to receive supplementary payments. For organizational reasons, because of the redesignations and addition to the regulations, we also proposed to redesignate § 435.231 as § 435.236.

C. Public Comments and Departmental Responses

Comment: One commenter believed that § 435.234 should be revised to make clear that more restrictive eligibility requirements may not be used to determine Medicaid eligibility if more restrictive eligibility requirements are not actually used to determine eligibility for the optional State supplement.

Response: We disagree with the commenter. We do not believe there is a basis in the law to require section 1902(f) States to provide Medicaid to all of their State supplement recipients. However, the more restrictive requirements are used to determine both Medicaid and State supplement eligibility when a State elects the option under section 1902(a)(10)(A)(ii)(XI), as implemented through § 435.234.

Comment: One commenter stated that § 435.234 does not allow less restrictive eligibility requirements under the authority of section 1902(r)(2) and should be revised to reflect this option.

Response: We do not believe it is necessary for this section to reflect this option, as it is covered under § 435.230 as revised. Section 435.234 also allows less restrictive income policy under the authority of section 1902(a)(10)(A)(ii)(XI). Therefore, a State that wishes to limit its more liberal methods only to income may do so without relying on section 1902(r)(2).

Comment: One commenter requested that we clarify whether section 1902(f) States that include recipients of optional State supplements under their plans must use their optional State supplement standards for all aged, blind, and disabled, or only for aged, blind, or disabled individuals in special living arrangements (for example, persons in domiciliary care) when the supplement is available only to persons in special living arrangements.

Response: We have revised the regulations (the new § 435.230(e) rather than § 435.234) to specify that if the State elects to use the higher optional State supplement standard under section 1902(a)(10)(A)(ii)(XI) of the Act, the State must use the standard to determine Medicaid eligibility for all individuals who are receiving a supplement. However, States electing the option under section 1902(a)(10)(A)(ii)(IV) must use these standards to determine Medicaid eligibility for persons who would be eligible to receive the supplement if they were not living in an institution, even though they are not receiving a payment.

D. Provisions of the Final Regulations

We have adopted as final the proposed § 435.230 (Individuals receiving only optional State supplements in non-section 1902(f) States), redesignated and revised as § 435.232 without further modifications.

We have redesignated § 435.231 as 435.236 with no further changes in the regulation text.

We have adopted as final the new § 435.234 that specifies the eligibility requirements for individuals receiving only optional State supplements in States using more restrictive eligibility requirements than SSI and certain States using SSI criteria.

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V. Individuals Under age 21

A. Background

Under existing § 435.222, certain needy individuals under age 21 (or, at State option, under age 20, 19, or 18) who are not receiving cash assistance may be covered by a State as optional categorically needy. In determining categorical eligibility of this group, we have historically applied the criteria of the AFDC program because that program has generally applicable standards that are directed to the needs of children and has the appropriate financial eligibility criteria related to the group (as opposed to the SSI program that covers aged, blind, and disabled individuals). Thus, § 435.222 was limited to providing coverage to those individuals under age 21 who were not eligible for AFDC because they did not qualify as dependent children, for example because both parents are in the home and the principal wage earner is employed, even though they may meet other AFDC eligibility requirements.

Section 1902(a)(10)(A) of the Act (one of the statutory basis for § 435.222) was amended by section 137(b)(7) of TEFRA to specifically identify the optional categorically needy groups. Under section 1902(a)(10)(A)(ii), States have the option of providing Medicaid as categorically needy to any group or groups of individuals described in section 1905(a) who are not described as mandatory categorically needy under section 1902(a)(10)(A)(i). As a subset of this option, States may elect to cover reasonable categories of individuals described in section 1905(a)(1) (children under age 21, or at State option, under age 20, 19, or 18) who meet the descriptions of the optional groups. One permissible optional categorically needy group under section 1902(a)(10)(A)(ii)(I) consists of children under age 21 who meet the financial criteria of the AFDC program. This group is commonly known as the "Ribicoff children".

B. NPRM Provisions

Because many States have elected to cover Ribicoff children, in the September 1989 NPRM we proposed to specifically identify this group in the regulations by revising § 435.222 to conform to the language of section 1902(a)(10)(A)(ii)(I), of which it is a subset. Because section 1902(a)(10)(A)(ii)(I) of the Act only refers to individuals meeting financial criteria, we proposed to eliminate the current reference in § 435.222 to meeting the definition of a dependent child. In choosing to cover this group, we proposed that States would still be permitted to select, as an option, the age group classifications of children under 21 allowed under section 1905(a) of the Act—that is, those under age 20, 19, or 18. We wish to note that in applying financial criteria to optional categorically needy groups, States have the option of using less restrictive criteria than those under the cash assistance program under the provisions of section 1902(r)(2).

C. Public Comments and Departmental Responses

Comment: One commenter suggested that reasonable classifications of children under § 435.222 should include unborn children.

Response: We have not adopted the commenter's suggestion because the Medicaid program does not permit eligibility for unborn children. Interested parties who wish a further discussion of the noncoverage of unborn children under Medicaid are referred to the preamble to a final Departmental regulation published at 55 FR 36816, September 7, 1990.

Comment: One commenter suggested that the States' options to provide Medicaid to children would be clearer if § 435.222 and § 435.223 (which describes the coverage group of individuals who would be eligible for AFDC if coverage under the State's AFDC plan were as broad as allowed under title IV–A) were combined.

Response: We have not made any changes to accommodate this commenter's concern as we believe that separate rules to describe two distinct groups are more easily understood.

D. Provisions of the Final Regulations

We have adopted the proposed revision to § 435.222 as final. We have made a technical change to reflect a statutory language change—the references to "skilled nursing facility" and "intermediate care facility" are changed to "nursing facility."

VI. Relative Responsibility in Determining Financial Eligibility

A. Background

The Medicaid provisions under section 1902(a)(17)(D) of the Social Security Act specify that, in determining financial eligibility, States must not take into account the financial responsibility of any individual for an applicant or recipient unless that individual is a spouse, or a parent of a child who is under age 21 or is blind or disabled. Numerous sections of the existing regulations specify details for determining relative responsibility for the categorically needy and the medically needy (§§ 435.602, 435.712, 435.723, 435.724, 435.734, 435.821, 435.822, and 435.823).

B. NPRM Provisions

In the September 1989 NPRM, we proposed to delete most of the specific details contained in the cited sections on the financial responsibilities of relatives which was consistent with the proposal to delete the detailed provisions on financial eligibility methodologies that are reiterations of cash assistance methodologies. We proposed to maintain the provisions of section 1902(a)(17)(D) as exceptions to using the cash assistance methodologies. Also, we proposed to include a provision under § 435.602 that incorporates the section 1902(r)(2) provision, as added by MCCA, that allows States to use less restrictive methodologies for determining relative responsibility than the cash assistance methodologies for specified groups. In addition, we proposed to incorporate the provisions for section 1902(f) States to use more restrictive financial responsibility requirements. We also proposed to specify that, in States that elect to cover children up to age 21, the methodologies of the ADFC program for determining financial responsibilities of relatives or less restrictive requirements chosen by the State would apply as if the individuals were under age 18 (or 19).

C. Public Comments and Departmental Responses

Comment: One commenter stated that § 435.602 should be revised to delete paragraph (a)(3) because the policy reflected in the paragraph has been superseded by the provisions of section 1924 of the Act relating to institutionalized individuals with spouses living in the community. Paragraph (a)(3) states that income of eligible couples is considered together throughout the month one spouse enters a Medicaid institution, but ceases to be counted together the following month.

Response: The commenter is partially correct. Section 1924 of the Act, as added by MCCA, does supersede the provisions of § 435.602 where they are inconsistent with this provision in regard to financial eligibility determinations for institutionalized spouses who have spouses living in the community. This is because section 1924 provides that no income is deemed to be available from the community spouse. However, the policy set forth in § 435.602(a)(3) remains in effect for purposes of determining community spouses' eligibility. Thus, the regulation text has been revised to clarify this limitation, and to reflect a change in SSI policy which became effective on October 1, 1990. Under the SSI policy change, eligible couple status ceases as of the month after the month of separation. Thus, not only is income treated separately, irrespective of living arrangements, but resources as well (20 CFR 416.1802(b) (1) and (2)). We are developing a separate document to incorporate the specific section 1924 provisions in the Medicaid regulations.

D. Provisions of the Final Regulations

We have adopted as final the proposed revisions to § 435.602, with the change to paragraph (a)(3) cited under the response to comments. We are also deleting, as proposed, §§ 435.712, 435.723, 435.724, 435.734, 435.821, 435.822, and 435.823. We are also making a change to reflect a revision of policy on determining relative financial responsibility for individuals who are not receiving or deemed to be receiving AFDC as discussed in the next section of this document.

VII. Individuals Who Are Ineligible for Cash Assistance Because of Requirements That Do Not Apply Under Title XIX of the Act; Standard Filing Unit

A. Background

Generally, most individuals who are eligible for AFDC or SSI cash assistance under the Social Security Act are eligible for Medicaid. However, there are some AFDC or SSI cash assistance policies that are specifically prohibited in the statute from use under Medicaid.

When specific prohibitions exist under the Medicaid statute, we must take two actions in determining Medicaid eligibility for AFDC-related (non-cash assistance) cases. (For purposes of the following discussion, "AFDC-related (non-cash assistance)" cases mean applicants and recipients who have either been denied AFDC because of requirements that are prohibited under Medicaid; or applicants or recipients who are not receiving cash assistance but whose financial eligibility for Medicaid is being determined through application of AFDC financial criteria.) First, we require States to provide Medicaid to persons who are denied AFDC or SSI (or the relevant adult cash assistance programs in Guam, Puerto Rico, and the Virgin Islands) solely because a policy prohibited for purposes of Medicaid was used to deny eligibility for cash assistance. We implement this requirement through regulations at §§ 435.113, 435.122, 435.401(a), 436.111, and 436.401(a). Second, we determine what policy States will use in lieu of the prohibited cash assistance policy to determine Medicaid eligibility for other AFDC-related (non-cash assistance) eligibility groups.

Currently, one section of the Medicaid law (section 1902(a)(17)(D)) contains a requirement which specifically precludes the use of certain AFDC eligibility policies under Medicaid. As discussed earlier, under section 1902(a)(17)(D) of the Act, the financial responsibility of individuals for applicants and recipients is limited to: (1) an applicant or recipient for his or her respective spouse; and (2) parents for their children who are either under age 21 or who are blind and disabled, regardless of age. AFDC, on the other hand, sometimes requires attributing income and resources from persons other than spouses or parents as available to the applicant or recipient. The process of considering an individual's income or resources to be available to a member of the assistance unit, from an individual who is not a member of that unit (in the absence of actual contribution of the income or resources to the unit), is generally referred to as "deeming." AFDC policies require deeming to the assistance unit from stepparents, grandparents, alien sponsors, and legal guardians.

Section 1902(a)(17)(D), by contrast, does not permit deeming from any individuals other than spouses or parents. Thus, we cannot apply the AFDC policy of deeming from stepparents (in States in which stepparents are not considered under State law to be parents), grandparents, alien sponsors, and legal guardians. However, consistent with section 1902(a)(17)(D), a stepparent's income could be counted as available to the stepparent's spouse if income is actually contributed to a stepchild. Similarly, section 1902(a)(17)(D) does not preclude counting of grandparent's income as available to the minor parent of the grandchild since the grandparent is the parent of the grandchild's parent. Accordingly, in determining Medicaid eligibility for AFDC-related (non-cash assistance) applicants and recipients, we count spouses' and parents' income and resources in determining the Medicaid eligibility of their respective spouses and children.

The AFDC statute, section 402(a)(38) of the Act, requires that all potentially eligible siblings living in the home be included as members of the AFDC filing unit, regardless of how a particular child's income and resources affect the eligibility of other family members. This AFDC policy, commonly known as the "standard filing unit rule," was enacted by section 2640 of DRA and became effective on October 1, 1984. Before that date, families could choose to exclude from AFDC assistance units potentially eligible family members such as siblings with income of their own. Medicaid followed this AFDC policy and permitted individuals to be excluded from the eligibility unit.

Once the standard filing unit rule became effective for AFDC, consistent with section 1902(a)(10) of the Act, HCFA required States to use it in determining the Medicaid eligibility of AFDC-related (non-cash assistance) individuals. However, the use of the standard filing unit rule under Medicaid was subsequently held by numerous Federal courts to violate section 1902(a)(17)(D). We now no longer permit any State to apply the standard filing unit rule to Medicaid eligibility determinations as a result of the court decisions.

B. NPRM Provisions

We presented in the preamble to the NPRM a number of alternative policies to the mandatory use of the AFDC filing unit rule in Medicaid. One option set forth was to return to the AFDC and Medicaid policies in place before the standard filing unit policy went into effect. Under those policies, families would choose to include or exclude from the Medicaid unit otherwise eligible family members. However, when a family chose to include a particular family member, they would also choose to make the income and resources of that person available to the entire family unit. We indicated that this was our preferred option.

Another alternative outlined in the NPRM was a proration policy. Under this method of determining income and resource eligibility standards, individual income and resources standards for each member of an AFDC-related Medicaid family unit would be used. The individual income eligibility standards would be prorated amounts of standards used under the plan for a family of the same size and which are consistent with FFP limits. After further analysis of the various options in light of the court orders, we have decided that the proration reflects the best interpretation of the appellate courts' view of section 1902(a)(17)(D) and of section 1903(f), which defines family income limits for purposes of FFP. A more detailed discussion of the proration policy appears at the end of the discussion of public comments on this subject area.

C. Public Comments and Departmental Responses

Comment: Some commenters agreed and others disagreed with our proposed method of determining eligibility for AFDC-related (non-cash assistance) individuals by returning to policies used prior to implementation of the AFDC standard filing unit policy. The commenters that disagreed believed the pre-DRA policy would continue to violate section 1902(a)(17)(D) of the Act if we chose to apply that policy. We did not received any specific suggestions on how to avoid the problem of multiple individuals in the same household filing as separate units of one.

Response: A Federal District Court in *Sneede* v. *Kizer*, et al., No. C89–1932 TEH (N.D. Cal.), has ruled that the proposed return to the pre-DRA policy of counting income and resources of family members who voluntarily apply for Medicaid violates section 1902(a)(17)(D) of the Act. That court also prohibited California and all other States in the Ninth Circuit from using certain proration methods. This decision was affirmed by the Court of Appeals for the Ninth Circuit. Despite the Ninth Circuit's decision, after considering the comments and the relevant Court of Appeals decisions, we are convinced that proration is the only method we are aware of that fulfills the otherwise contradictory mandates of section 1902(a)(17) and section 1903(f)—to take into account the income of spouses for spouses and parents for their minor children and at the same time not exceed a family income cap based on family size. (The Ninth Circuit's decision did not address the cap issue.) Therefore, we have revised the regulations to incorporate a proration approach that will be applicable, except in the Ninth Circuit.

We recognize that the approach contained in the regulations may not be ideal. However, it is our best attempt to harmonize the competing demands of the various provisions of the Medicaid statute as interpreted by most of the courts. Our approach also attempts to implement these conflicting statutory dictates in a manner consistent with simplicity of administration, in contrast with the complex systems required to comply with the mandate of the *Sneede* decision. We will explore potential legislative solutions to deal with this overall issue.

Since the proration approach was suggested in the proposed rule, we believe that the public had an opportunity to provide comments on it and are adopting it in the final rule. However, we recognize that the details of the approach were not presented in the proposed rule. Therefore, we are soliciting comments on the proration approach in this document.

Also, since we are prohibited by the *Sneede* decision from implementing the proration approach in California and in other States within the Ninth Circuit, our regulations provide that the proration approach does not apply in those States. These States must use an approach that is consistent with the statute and that satisfies the order of the Court.

Under the proration method, States will be required to establish a Medicaid budgetary unit consisting of the following individuals who are living in the home: (1) Siblings under 21 who do not receive SSI benefits or a State supplement, who are within the degree of relationship to be included in the same AFDC filing unit, and who are potentially eligible under the plan; (2) parents; and/or (3) other relatives described in section 1905(a) of the Act who are included under the plan or who are essential persons as defined under the agency's approved AFDC plan. Individual members of the budgetary unit will then have their income and resource eligibility determined using separate standards. However, the standards used will be calculated based on proration of existing standards. For example, if a low-income (poverty level-related) standard for a budgetary unit of four would normally be used, that standard would be divided by four to arrive at individual standards for the various members of the unit. Parents' countable income and resources will be prorated equally among their dependents living in the home. The proration will take into account the needs of the parents as well. A more detailed discussion of the application of this method follows in the section on "Provisions of the Final Regulations."

Comments: One commenter stated that the proposed method of determining eligibility for families that includes stepparents and grandparents is vague and could result in deterring certain parents and minor parents from applying for Medicaid, or could result in double deeming.

Response: As discussed above, we have adopted a different method that is included in this rule.

D. Provisions of the Final Regulations

We have adopted, as final without changes, the proposed revisions of §§ 435.113 and 436.111 that describe the individuals who are eligible for Medicaid because of the application of rules in the cash assistance programs that cannot be applied in determining Medicaid eligibility.

We have revised §§ 435.601, 435.602, 436.601, and 436.602 and added new §§ 435.604 and 435.606 to specify policies on establishment of the Medicaid budgetary units and how income and resource eligibility is to be determined for AFDC-related (non-cash assistance) Medicaid eligibility groups—that is, applicants and recipients who are not receiving or deemed to be receiving cash assistance but whose financial eligibility for Medicaid is being determined through application of AFDC financial criteria. As discussed in our response to public comments, we have decided to adopt the proration method of determining eligibility for these individuals. Under this method, individual members of the Medicaid budgetary unit will have their income and resource eligibility determined using separate standards that are calculated based on proration of existing standards. Parents' countable income and resources will be prorated equally among their dependents living in the home, including non-SSI dependents who may not be members of the budgetary unit. The proration will also take into account the needs of the parents.

Implementation of this new method of calculating income and resources requires that we address how certain types of income are counted and how certain disregards are calculated. Specifically, we must address the calculations of the AFDC $30 and ⅓ or $30 earned income disregard and how lump sum payments are calculated. Under § 435.606, States will use the same method as the AFDC program to determine whether individual budgetary unit members are entitled to the $30 and ⅓ or $30 earned income disregard. This will determine eligibility for the disregard.

The AFDC method of counting lump sum nonrecurring income will not be used in its entirety because combined family standards will not be used to determine eligibility for budgetary units; financially responsible relatives' income will be prorated and distributed to the members of the Medicaid budgetary unit for whom they are responsible. Individual members of the budgetary unit may be eligible under different eligibility groups. For example, a family with two children may have one child eligible as a qualified child and the other as a low-income (poverty level-related) child, while the parents may be medically needy. Although we will not be using a strict application of the AFDC rule, we have retained the basic concept that the Congress adopted for treating lump sum nonrecurring income under the AFDC program by requiring that such income be used to meet current and future needs. Under the final rule, lump sum income will generally be divided by the State's AFDC need standard for a family of the same size to determine the number of months the lump sum income will be counted in determining the family's Medicaid eligibility. However, when the lump sum income is income of a non-financially eligible relative, the lump sum is prorated by the AFDC standard for one person. We selected the AFDC need standard because all States have AFDC need standards and, unlike a medically needy or poverty-level related standard which may not apply to all individuals, the AFDC need standard can be applied uniformly in making this calculation. Moreover, the AFDC need standard is a more equitable standard because it results in a lower per month impact than any of the alternatives. However, States are not required to recalculate these amounts based on changes in family circumstances unless the State's AFDC plan calls for shortening the period of AFDC ineligibility when there are changes in family circumstances.

Another AFDC policy that does not lend itself to the new method of determining Medicaid eligibility is the AFDC method of allocating income of a caretaker to a dependent who is not part of the Medicaid budgetary unit. This is because amounts allocated are based on AFDC standards. In the final rule, we are including such dependents in the proration of a financially responsible relative's income and resources as we believe this is the most equitable approach and harmonizes the budgeting method and the allocation policy. For example, if a parent had three dependents living in the home, but only two could be eligible, the parent's income would be divided by four rather than three.

We have made a conforming change to § 435.600 that describes the scope of the subpart in which the new §§ 435.604 and 435.606 are incorporated.

VIII. Medically Needy Coverage: Reasonable Categories of Individuals Under 21

A. Background

Section 137(b)(17) of TEFRA removed the reference to "reasonable categories" of individuals under age 21 (or, at State option, under age 20, 19, or 18) in the list of individuals who may be provided medical assistance under section 1905(a)(i) of the Act. However, section 137(b)(17), in amending section 1902(a)(10)(A) to clarify coverage of the optional categorically needy, provided for optional coverage of "reasonable categories" of individuals under 21. The existing regulation at § 435.308 contains a provision for coverage of reasonable categories of individuals under 21 as medically needy. In setting up the medically needy eligibility groups, we chose groups similar to the groups of individuals covered as mandatory categorically needy and optional categorically needy. Under TEFRA, optional categorically needy coverage of individuals under age 21 (or at State option, under 20, 19, or 18) still may be limited to reasonable categories of individuals under 21. Later legislation, for example, DRA and COBRA, has set up additional eligibility groupings of children. Accordingly, we believe that, except for the required medically needy eligibility groups of individuals under 18 and pregnant women, States have the option of covering reasonable categories of individuals under age 18 (or, at State option, under age 19, 20, or 21) as medically needy.

B. NPRM Provisions

In the September 1989 NPRM, we proposed to revise § 435.308 to allow States with medically needy programs to cover reasonable categories of children under age 21 (or 20, 19, or 18) as medically needy, in addition to providing the required medically needy eligibility for individuals under 18 who, except for income and resources, would be eligible for Medicaid as individuals described in section 1902(a)(10)(A)(i). This revision would allow States the option to cover as medically needy (1) the same group of reasonable categories of individuals under age 21 (or 20, 19, or 18) that they cover as optional categorically needy under § 435.222 or (2) to select different reasonable categories for their medically needy program than those they cover as optional categorically needy.

C. Public Comments and Departmental Responses

Comment: One commenter found that the discussion and regulation text allowing reasonable categories of children was unclear. Specifically, the commenter suggested that the regulation at § 435.222 explicitly state that States may include reasonable categories under either the optional categorically needy grouping or under the medically needy option. The commenter suggested that the medically needy option under § 435.308 also should be revised to reflect both options.

Response: We do not believe that it is appropriate to cite the medically needy option for coverage of reasonable groups of children in the regulations covering optional categorically needy and vice versa. The medically needy regulation at § 435.308, as it exists in the Code of Federal Regulations, already contains the reasonable categories provision with examples of the reasonable classifications. We are making a technical change to update the reasonable classification entry to substitute the phrase "nursing facility" for the reference to "intermediate care facility," to conform to a change to section 1919 of the Act that was made by section 4211 of OBRA '87 and is effective October 1, 1990.

D. Provisions of the Final Regulations

We have adopted the proposed revisions to § 435.222 as final with one change to make the technical substitution discussed above.

IX. Medically Needy Income and Resource Standards

A. Background

Section 137(b)(8) of TEFRA amended section 1902(a)(10)C)(i) of the Act to require States to use a single standard for income eligibility and a single standard for resources eligibility for all medically needy groups. However, even though section 1902(a)(10)(C)(i) requires a single standard, section 1902(*f*) of the Act allows States to use more restrictive criteria for aged, blind, and disabled individuals. Therefore, States that elect coverage under section 1902(*f*) may use a more restrictive income standard and resource standard only in determining eligibility of aged, blind, and disabled individuals as medically needy. In addition, section 1902(a)(17) of the Act provides that the single standard set by the State must be reasonable, as determined by the Secretary.

B. NPRM Provisions

In the September 1989 NPRM, we proposed to allow States as much flexibility as permitted under the law in establishing the amount of their medically needy income and resources standards. For non-section 1902(*f*) States, we proposed to allow States to set their single medically needy income standard at an amount that is (1) no lower than the lowest income standard generally applied under the cash assistance programs related to the group or groups of individuals covered by the State under the medically needy option and (2) no higher than the maximum amount allowed for FFP purposes under section 1903(*f*) of the Act.

In section 1902(*f*) States, with respect to medically needy specified relatives, individuals under 21, and pregnant women, we proposed to apply the same criteria as used for non-section 1902(f) States for establishing the single medically needy income standard. However, we proposed to permit section 1902(f) States to establish a separate medically needy income standard for aged, blind, and disabled individuals or for any grouping of categories of aged, blind, or disabled individuals that is more restrictive (lower) than the standard established for specified relatives, individuals under 21, and pregnant women. We proposed to require that the more restrictive medically needy income standard for aged, blind, or disabled individuals must be set at an amount that is no lower than the higher of (1) the lowest income standard currently applied to the categorically needy aged, blind, or disabled individuals under the State's more restrictive section 1902(f) criteria or (2) the medically needy income standard in effect under the State's January 1, 1972 Medicaid plan.

In regard to the resource standard, in non-section 1902(f) States, we proposed to specify that the medically needy resource standard must be no less than the lower of (1) the resource standard used in the State's AFDC plan or (2) the resource standard of the SSI program for an assistance unit of the same size. For section 1902(f) States, the proposed requirements for determining the resource standard in non-section 1902(f) States would apply also to specified relatives, individuals under 21, and pregnant women because section 1902(f) applies only to the aged, blind, and disabled. However, we proposed that the resource standard for aged, blind, and disabled individuals must be no lower than the higher of (1) the lowest resource standard the State applies to the categorically needy under its more restrictive section 1902(f) criteria or (2) the medically needy resource standard in effect under the State's January 1, 1972 Medicaid plan.

To provide for equitable treatment among recipients, we proposed that the income standard and the resource standard would not be allowed to diminish with an increase in the size of the assistance unit.

We proposed to revise § 435.811 to incorporate these provisions; to delete § 435.812; and to make conforming changes to § 435.814.

C. Public Comments and Departmental Responses

Comment: One commenter objected to the proposed rule for establishing income and resource standards. Under the proposed rule, States may not decrease the standards based on an increase in the number of persons in the assistance unit but neither must they increase such standards. The commenter believed that States must increase the standard when there is an increase in the number of persons in the assistance unit.

Response: We disagree with the commenter's suggestion. The Medicaid statute does not require States to increase income standards by family size. We cannot interpret the requirements on States for establishing medically needy income eligibility standards differently than we do the accompanying limits established for purposes of providing FFP to States which provide Medicaid to the medically needy. Under section 1903(f)(1) of the Act, FFP is limited to medically needy families whose countable income, after deducting incurred medical and remedial care expenses, does not exceed 133⅓ percent of the amount a family of the same size would receive under AFDC if they had no income. Under section 1903(f)(1)(B)(ii), the Secretary is authorized to adjust the amount of the FFP limit when he or she finds that the operation of uniform maximum limits in the AFDC program limits the amount of FFP States receive because of differences in family size. This discretion supports the notion that the medically needy income eligibility standards need not always increase by family size. If the Congress intended that the FFP limits always increase by family size, the statute would direct the Secretary to adjust those limits when a maximum payment standard is encountered in the AFDC program.

Moreover, because the Medicaid program is a State-operated program, it is our policy to allow State flexibility where permitted under the Medicaid statute. This is clearly an instance where there is leeway for States to exercise flexibility. In addition, the cash assistance program policies that are, in part, the underlying basis for many of the Medicaid eligibility rules, do not always adjust income and resource standards based on family size. Indeed, the SSI program only has two types of standards, one for individuals, and another for couples. The AFDC program does not require income eligibility standards to increase by family size and sets a single maximum resource standard for families of all sizes. Accordingly, the final rule offers the flexibility provided in the proposed rule.

Comment: One commenter objected to the proposed provision that would require States to set their medically needy income and resources standards at amounts that are no lower than the lowest standard used under cash assistance programs that are related to the medically needy program. The commenter believed that such standards should be set at the highest amount established under those cash assistance programs. The commenter argued that there is no Congressional authorization for the proposed rule because the commenter believes that the Congress, in implementing the TEFRA provisions requiring the Secretary to return to a single income and resource standard, also required the Secretary to return to the pre-1981 regulations that required States to use the highest of the cash assistance standards.

Response: We do not agree with the commenter's argument. The Medicaid statute does not support the commenter's assertion. Indeed, section 1902(a)(10)(C)(i)(III) simply requires States with medically needy programs to describe the single standard to be employed in determining income and resource eligibility. Since Medicaid is a State-operated program, we believe States should retain the discretion to set their income and resource levels at the lowest amount established for the cash assistance programs if they choose.

The commenter alleges that TEFRA required HCFA to restore pre-1981 regulations that required States to use the highest of the cash assistance standards. The legislation did not contain this mandate. When the Congress has intended to overturn regulations and reinstate previous ones in the past, it has done so explicitly and we believe the Congress would have done so in this case if it had intended to do so. For example, unlike the TEFRA amendment, section 1902(r)(1) specifically overturned Medicaid post-eligibility regulations and reinstated the policy in effect prior to the most recent change in those regulations by placing the old regulation text into the statute.

In addition, the specific intent of the Congress resulting in the TEFRA amendment is the subject of controversy given subsequent Congressional actions. The TEFRA medically needy amendments mandated that States use "the same income and resource methods" as the corresponding cash assistance program in medically needy eligibility determinations. However, when HCFA implemented this mandate, the Congress disagreed with HCFA's implementation of the law that the Congress had passed. In response to HCFA following the law, the Congress imposed the DRA moratorium, and ultimately passed section 1902(r)(2) and amended section 1902(a)(10)(C)(i)(III) to remove the "same methods" requirement imposed by TEFRA. Therefore, we do not believe it would be appropriate to speculate on the Congressional intent embodied in TEFRA that did not specify the levels States were to adopt for the medically needy income and resource eligibility. Indeed, the pre-TEFRA statute did not require States to use the highest cash assistance levels for these eligibility standards. That was solely a regulatory requirement imposed on States by HCFA. We believe the pre-OBRA '81 mandate is no longer appropriate, given the flexibility afforded States by OBRA '81 to cover some, but not all, medically needy groups and to tailor their Medicaid eligibility groups more appropriately based upon their financial circumstances. Thus, we have not adopted the commenter's recommendation.

D. Provisions of the Final Regulations

We have adopted as final, without modifications, the proposed revisions of §§ 435.811, 435.814, 435.840, and 435.843. We have also deleted as proposed §§ 435.812 and 435.841 and corrected cross-references in §§ 435.725, 435.726, 435.733, 435,735, and 435.832. In addition, we have corrected cross-references in § 436.832 relating to post-eligibility treatment of income of institutionalized individuals in the Territories and corrected an error in § 435.733 that incorrectly referenced AFDC in a provision that related to eligibility of aged, blind, and disabled individuals under section 1902(f).

X. Methodologies for Treatment of Income and Resources

A. Background

Section 137(b)(8) of TEFRA amended section 1902(a)(10)(C)(i)(III) of the Act to specify that, in determining income and resource eligibility for the medically needy, the State must use the same methodologies as those used in determining eligibility under the State plan of the appropriate cash assistance program or the SSI program, whichever is most closely related to the covered medically needy group. Thus, in States that provided Medicaid to all SSI recipients, the methodologies for determining the income and resources of aged, blind, or disabled medically needy individuals were those of the SSI program; for specified relatives, individuals under 21 and pregnant women, the methodologies were those of the AFDC program.

Following a moratorium on compliance actions against States' application of less restrictive financial eligibility methodologies that was imposed by DRA, the Congress passed section 303(e) of MCCA to specify that the financial methodologies for determining eligibility of the medically needy must be no more restrictive (rather than the same) as those under the SSI program or those under the State plan that is most closely categorically related. Section 303(e) also added a new section 1902(r)(2) (that was further amended by the Family Support Act of 1988) that permits States, at their option, to use less restrictive income and resource methodologies in determining eligibility of the following groups: qualified pregnant women and children, low-income (poverty level) pregnant women and infants, qualified Medicare beneficiaries, optional categorically needy individuals, medically needy individuals, and aged, blind, and disabled individuals in section 1902(f) States. These optional income and resource methodologies may be less restrictive, but no more restrictive than, for aged, blind, and disabled individuals groups, the methodologies under SSI; and for other groups, the methodologies under the State plan most closely categorically related. A methodology is considered to be no more restrictive if, by using the methodology additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are, by use of that methodology, made ineligible for Medicaid.

B. NPRM Provisions

In the September NPRM, we proposed to add a new § 435.601 to specify that, generally, States must use the cash assistance methodologies in determining financial eligibility unless they chose to apply less restrictive income and resource methodologies for the eligibility groups specified in section 1902(r)(2). In section 1902(f) States, the agency would be allowed to use more restrictive eligibility requirements and include less restrictive income and resource methodologies in determining eligibility, if they choose. The new § 435.601 would specify the groups to which the general section on financial eligibility requirements and methodologies would apply. If a State chooses less restrictive methodologies under section 1902(r)(2), the State must specify the methodology in the State plan and specify to which group it will apply.

We identified the following items as those that we do not consider to be methodological and which are not subject to application of the section 1902(r)(2) rules: Retrospective monthly accounting, the monthly reporting of income, conditional payment status, budget periods, and effective date of eligibility.

The proposed regulations also specified that the less restrictive methodology applied must be comparable for all persons within each category of assistance. We would not permit States to use less restrictive methods based on living arrangements. However, this occurs legitimately when a less restrictive method is applied to an eligibility group that only includes institutionalized persons. The proposed rule also specified that the less restrictive methodologies must be consistent with FFP requirements and limitations specified in the existing regulations in accordance with section 1903(f) of the Act.

We proposed to make organizational changes to bring all of the general financial eligibility requirements into a cohesive grouping. We also proposed not to restate any details of the requirements that merely repeated the cash assistance requirements. In addition, because of the organizational changes, we proposed to create a separate specific subpart for post-eligibility financial requirements.

C. Public Comments and Departmental Responses

Comment: A number of comments were received on the proposed regulations implementing section 1902(r)(2) and those clarifying the FFP limits under section 1903(f). Commenters believed that HCFA is incorrectly limiting States' flexibility to use more liberal income methods under section 1902(r)(2), by making the more liberal income methods subject to the FFP limits of section 1903(f). They contended that the legislative history of the section 1902(r)(2) provision does not indicate that the Congress intended that more liberal methods be limited by FFP limits.

Response: We disagree with the commenters. The passage of section 1902(r)(2) was the Congress' solution to the problem identified in 1984 when it first imposed the DRA moratorium on the Department. Under the moratorium, the Secretary was not permitted to take adverse actions against States because they were using more liberal income and resource methods than those used under the cash assistance programs. The Senate Report accompanying the 1987 amendment to the moratorium made clear that:

> The moratorium does not eliminate the limits on income and resources of eligible individuals and families under section 1903(f) (including the requirement that the

applicable medically needy income level not exceed the amount determined in accordance with standards prescribed by the Secretary to be equivalent to 133⅓ percent of the most generous AFDC eligibility standard, and the income of individuals receiving a State supplementary payment in a medical institution or receiving home and community-based waiver services under a special income standard not to exceed 300 percent of the SSI standard). S. Rep. No. 109, 100th Cong., 1st Sess. at 24–25.

The language of section 1902(r)(2) does not refer to the section 1903(f) limits. Nor was section 1903(f) modified to enable States, through section 1902(r)(2) authority, to avoid its limitations, even though the Congress has recently amended section 1903(f) to expand the list of eligibility groups that are exempt from its restrictions. Moreover, the legislative history of section 1902(r)(2) does not deal with the section 1903(f) limits nor suggest any different application of the limits than provided for under the DRA moratorium. Since, as its legislative history indicates, section 1902(r)(2) is essentially the permanent codification of the DRA moratorium, we see no reason to interpret it in a manner that would conflict with the explicit guidance provided by the Senate Report with respect to its predecessor.

Comment: Several commenters disagreed with HCFA's interpretation that AFDC and SSI "conditional eligibility policies" are not resource methods. One commenter defined conditional payments status as a circumstance under which a person is considered eligible if he or she agrees to dispose of a resource that would otherwise make the person ineligible. One commenter stated that two States have approved conditional eligibility policies under their Medicaid programs.

Response: The commenters appeared to be viewing "conditional eligibility" more broadly than the cash assistance programs. Under those programs, "conditional eligibility" is granted because the value of real property, which would make an applicant ineligible, is excluded for a specified period, provided the applicant makes a reasonable effort to sell the property and signs an agreement to repay the agency from the proceeds of the sale the cash payments received during the conditional eligibility period. We are precluded by section 1917(b)(1) of the Act from permitting States from recovering costs of medical assistance correctly paid, except from the estate of certain individuals. Conditional eligibility under Medicaid would result in either an incorrect payment (payment for an ineligible individual) which the State has no authority to make, or in a correct payment to an eligible individual but which cannot be recovered in his or her lifetime.

While Medicaid is provided to persons receiving conditional payments, the cash assistance conditional eligibility rules are not resource methods for purposes of determining eligibility for other Medicaid eligibility groups. This differs from a policy that allows persons to receive Medicaid while a "reasonable effort to sell" real property is being made, as there is no condition that the agency be repaid for the Medicaid expenditures made while the person is attempting to sell the property. A policy of the latter type is approvable.

It is also possible for States to amend their plans to allow applicants to reduce their resources to allowable limits by the end of a month, and attain eligibility for that month. This is a more liberal policy than the SSI program policy that bases eligibility on the amount of resources held on the first day of the month. Under the equivalent AFDC policy, resources must be below the prescribed limit throughout a month.

Contrary to the statement of one of the commenters, the two States cited in the comment do not have in their approved plans "conditional eligibility" policies of the type used by the cash assistance programs.

Comment: One commenter disagreed that the AFDC and SSI income and resource policies should not be published as part of the Medicaid regulations. The commenter further expressed the view that HCFA has the responsibility to determine how the cash assistance rules are to be applied for purposes of Medicaid eligibility and that HCFA improperly delegates rulemaking on SSI eligibility rules to SSA because SSA does not have to consider comments which show untoward results when SSI rules are applied to Medicaid.

Response: The rule is not being revised to include AFDC and SSI rules because, as we stated in the NPRM preamble, this would be administratively impractical and unnecessary. The rules are published elsewhere in the Code of Federal Regulations and would only be redundant. Simply publishing the cash assistance rules in Medicaid regulations cannot result in modifying the cash assistance rules. The Congress has established the cash assistance rules as the baseline for the Medicaid rules. Commenters do have the opportunity to raise their Medicaid concerns when cash assistance rules are proposed by the relevant component. In addition, such an approach would require unnecessary and redundant rulemaking when there are changes in cash assistance program policies.

We agree with the commenter that HCFA has responsibility to determine how cash assistance policies affect Medicaid eligibility. HCFA has the additional responsibility to advise States when cash assistance income and resource policies are not to be used for Medicaid eligibility. HCFA also has responsibility to advise States on how to apply unusually complex cash assistance policies in the context of specific Medicaid eligibility groups when this is found to be necessary. However, we believe that the best vehicle for this purpose is the State Medicaid Manual which is explicitly designed to expand the discussion of policies contained in the regulations and to provide additional guidance to States on how to implement certain policies.

We disagree with the commenter that HCFA has delegated its rulemaking authority to SSA. The Secretary has the very difficult task of overseeing implementation of the various laws governing the individual programs consistent with Congressional intent. To the extent that it is possible to reach a policy outcome for one program that does not have an untoward result for another program which must rely on that policy, the agencies, and the Secretary, attempt to do so. However, due to the complexities of the laws and the responsibility to implement policies consistent with Congressional intent, it is not always possible to implement cash assistance policies that do not have even an unintended result when applied in the context of the Medicaid program.

Comment: One commenter did not agree with the interpretation of the effective date for section 1902(r)(2) plan amendments—specifically, that more liberal policies are effective retroactively only when in a plan approved prior to the date of enactment. The commenter stated section 1902(r)(2) plans should be approved retroactively to October 1, 1982.

Response: We disagree with the commenter. Section 1902(r)(2) authorizes States to use more liberal methods for specified groups listed in the law and defines a more liberal method as one that is no more restrictive with respect to any individual than the relevant cash assistance program methods. It does not authorize the retroactive submission and approval of new State plan amendments for periods prior to the quarter in which they are submitted. Indeed, if it were to do so, it would produce an anomalous result, since no FFP would be available for those additional expenditures. The statutes appropriating Federal funds for the Medicaid program have continuously contained a restriction on increased expenditures that result from State plans or plan amendments. The appropriations statutes limit the maximum possible retroactive effect of new plan amendments that result in increased expenditures to the first day of the quarter in which the amendment was submitted.

We recognize that section 303(g)(6) of MCCA provides that section 1902(r)(2) "shall apply to medical assistance furnished on or after October 1, 1982." In our view, this does not alter the restrictions contained in the appropriations statutes nor in the regulations that govern the maximum retroactivity that may be afforded to State plans and plan amendments. Rather, it protects expenditures that States made during that period under plans or plan amendments that were approved and that were in effect during that period. Indeed, the Conference Report on MCCA characterized existing law by noting that "some States covering the aged and disabled medically needy use less restrictive income methods than are applied under the SSI program." (H.R. Rept. No. 661, 100th Cong., 2d Sess. at 259.) Some of those States were operating under State plans amendments that had been approved, albeit erroneously (at the time of their approval). The effect of section 303(g)(6) is to legitimize those expenditures. This section also permits approval of amendments that were pending before the Secretary which otherwise would have been disapproved. However, those pending amendments cannot be given a retroactive effective date any earlier than the beginning of the quarter in which they were submitted.

Comment: Several commenters indicated that the rule should include regulations responding to legislative changes for post-eligibility treatment of income for institutionalized persons, as to how income and resources of institutionalized spouses with spouses living in the community are counted for eligibility purposes, hospice care, and changes to eligibility requirements for pregnant women and children whose income eligibility is based on a specified percentage of the poverty level.

Response: Because of the complexity of these specific changes in the law and consistent with the Administrative Procedure Act, we do not believe it would be appropriate to include them in this regulation without the opportunity for prior public comment. We are developing separate proposed regulation documents for these provisions. We have, however, included in these final regulations, as appropriate, references to the specific provisions of the Social Security Act when the need arose relating to the rules governing institutionalized individuals with community spouses and coverage of certain poverty level groups. Until final regulations are published, States must apply the rules in accordance with their best interpretation of the statute.

Comment: One commenter questioned why States are not permitted to apply less restrictive section 1902(r)(2) income and resource rules to persons in the eligibility group described in § 435.324 (Medically needy coverage of the disabled in States that cover individuals receiving SSI).

Response: States may use the authority of section 1902(r)(2) to establish less restrictive income and resource rules for the group described in § 435.324. Therefore, we believe the commenter intended to reference individuals receiving only optional State supplements in States using more restrictive eligibility requirements than SSI and certain SSI criteria (§ 435.234) instead of those individuals under § 435.324. Section 435.601, which interprets section 1902(r)(2), does not preclude use of more liberal income and resource methods for this group either. However, it would only be necessary to use section 1902(r)(2) authority if a State wished to use more liberal resource methods. This is because there is a separate authority under section 1902(a)(10)(A)(ii)(XI) (reflected in § 435.234) to use more liberal income methods than those used under the most closely related cash assistance program, SSI.

Comment: One commenter expressed the view that the regulatory impact analysis for the income and resource provisions is wholly inadequate and incomplete. The commenter believed that the proposal does not have a "limited economic impact" as the analysis suggests. The commenter believed that HCFA has failed to consider how the proposed rules will impact States and does not believe that States will use State dollars to pick up negatively affected recipients by expanding their Medicaid options to include the medically needy. The commenter further states that the proposed rules will affect small rural hospitals because there will be fewer Medicaid recipients in rural areas, thus increasing the financial risks of such hospitals.

Response: The regulatory impact statement has been revised to reflect the fiscal impact of policies contained in the final rule. However, the fiscal impact of policy changes the commenter believed were not sufficiently addressed in the NPRM regulatory impact statement are not addressed in the statement in this final rule because the proposed policy change that would have limited spenddown in section 1902(f) States that do not have medically needy programs was not adopted.

Comment: One commenter suggested that if an editorial change were to be made to § 435.700 on the scope of the regulations, this change be published at a later date for notice and comment.

Response: The commenter did not notice that the change was made in the NPRM. The regulation text appearing under the heading "Subpart H—Specific Post-Eligibility Financial Requirements for the Categorically Needy" actually belonged under the section heading "§ 435.700 Scope." The section heading was inadvertently omitted in the printing of the regulation text. This section merely states briefly the requirements that are covered in the subpart H.

D. Provisions of the Final Regulations

We have adopted as final the proposed §§ 435.601 and 435.602 provisions that specify use of financial eligibility methodologies and the conforming revisions of §§ 435.1005 and 435.1007. We have included a title for § 435.700 that was inadvertently omitted in printing. We have deleted §§ 435.711, 435.721, and 435.850 through 435.852. We have adopted as final the proposed conforming changes to §§ 435.831 and 435.845. We have transferred §§ 435.722, 435.731, and 435.740 to subpart G and redesignated them as §§ 435.622, 435.631, and 435.640. Section 435.631 is further revised to make the provisions clearer, in response to public comments on the clarity of the regulation sections on eligibility in 1902(f) States. In this clarification, we have also deleted § 435.732 (which was proposed to be redesignated as § 435.632) and have incorporated the provisions of that section in § 435.121 as revised. Subpart H now retains only the provisions that relate to post-eligibility determinations.

XI. Medically Needy Income Levels for One-Person Families

A. Background

Section 1903(f)(1)(B)(i) of the Act specifies that FFP is not available in expenditures for medical assistance to medically needy individuals whose income exceeded 133⅓ percent of the highest payment level in the State AFDC program for a family of the same size without any income or resources. Section 1903(f) provides some flexibility to the requirement under section 1903(f)(1)(B)(i) by specifying that, under certain circumstances, in determining the FFP limitation for a family consisting of one person, States may base the FFP limitation on 133⅓ percent of an amount that is reasonably related to the AFDC payment amount for two or more persons.

Section 435.1007(a)(2) of the regulations, which interprets section 1903(f)(3), specifies that FFP is available in expenditures for medical assistance for single individuals whose annual income (after deductions of medical expenses) does not exceed 133⅓ percent of an amount reasonably related to the highest money payment that would ordinarily be made under the State's AFDC plan to a family of two persons without any income or resources.

Some States have interpreted the provisions of § 435.1007(a)(2) to permit them to establish a medically needy income level for one person that is based on 133⅓ percent of an amount that bears a reasonable relationship to the AFDC payment amount for two persons, even if this established amount is greater than 133⅓ percent of their AFDC payment amount for one person. Although an amount established in this manner technically complies with the existing regulations, section 1903(f)(3) clearly indicates that "reasonable relationship" for determining the FFP limitation for a family consisting of one individual applies only if the State's AFDC plan does not provide for aid to a family consisting of one individual. This is consistent with the House Committee Report (H.R. Rep. No. 544, 90th Cong., 1st Sess., 119) for the section 1903(f)(3) which describes the section as a provision that will facilitate the calculations necessary under the FFP limitation. The reasonable relationship provision could only have been necessary to facilitate the calculation of the limitation for a one-person family when there was no AFDC payment amount for a family of one. In addition, we believe that some of the confusion on the application of this provision resulted from the meaning of varying terms used in the discussion of FFP limitations (payment amounts, payment levels, and payment standards).

B. NPRM Provisions

In the September 1989 NPRM, we proposed to revise § 435.1007(a)(2) to provide that if a State's AFDC plan actually contains a payment amount for one person, the State must base the medically needy income level for one person on 133⅓ percent of the AFDC amount most frequently paid to one person in order for FFP to be available. At the time of the publication of the NPRM, all existing AFDC plans included payment amounts for one person families.

We also proposed to incorporate in § 435.1007 the exception to the 133⅓ percent rule for families consisting of two adults that was established for the State of California by section 4106 of OBRA '87. Section 4106 allows California in case of a family consisting only of two individuals, both of whom are adults and at least one of whom is aged, blind, or disabled, to use the amount of AFDC most frequently made to a family of one adult and two children for purposes of computing the 133⅓ percent cap.

The issue raised by the proposed rule has now been addressed by the Congress. In section 4718 of OBRA '90, the Congress endorsed the interpretation of the FFP limit for families consisting of a single individual which was contained in the proposed rule. However, section 4718 provides a specific exception for certain States to depart from this rule. The exception only authorizes those States which, as of June 1, 1989, has a State plan (or policy in effect at that time which was reflected in manuals and which is submitted to the Department) which used an amount reasonably related to the AFDC payment standard for a family of two, to continue to use this amount for purposes of the 133⅓ percent FFP limit. All other States are subject to the language of section 1903(f)(1).

Several technical corrections were also proposed.

C. Public Comments and Departmental Response

Comment: One commenter suggested that all States should have the option to use their AFDC payment standards for three persons to establish their medically needy income standards for families of two, as permitted for the State of California.

Response: As indicated in the NPRM, the Congress established a separate FFP level for family units of two for the State of California. This is an explicit deviation for California only from the dictate of section 1903(f) that the level be set at 133⅓ percent of the AFDC payment standard for a family of the same size. A family of two adults is not the same size as a family of three consisting of one adult and two children. The FFP limits under section 1903(f) are set by the Congress. Thus, there is no legislative authority for HCFA to allow other States to use the special FFP limit established under section 1903(f) for California.

Comment: A large number of comments we received in the NPRM disagreed with the Secretary's interpretation of the law governing the proposed rule to limit the FFP income level for one person medically needy families to 133⅓ percent of the AFDC payment standards for one. Some believed that the proposed provision violated the Medicaid law. Others were concerned that these families would have to incur more medical expenses before they could become Medicaid eligible if the proposed rule were finalized. Still others believed that the FFP cap was unreasonably low.

Response: We do not agree with the commenters' conception of the proposed provision. The commenters advanced several arguments. Significantly, the commenters did not dispute the fact that section 1903(f)(1)(B) limits FFP in State expenditures to families with incomes at or below 133⅓ percent of the highest amount that would ordinarily be paid to an AFDC family of the same size. Nor did they dispute that section 1903(f)(3) provides that in the case of a family consisting of one individual that the amount used for purposes of the FFP cap is the amount that would ordinarily be paid to an AFDC family consisting of one person "if such plan provided for aid to such family." Rather their claim is based upon a reasonable relationship of the amounts payable under the AFDC plan to families consisting of two or more persons to a family consisting of one person "*if such plan provided for the aid to such a family.*" (Emphasis added). They assert that when the Congress passed this provision all States must have had standards for one under their AFDC plans and this language therefore gives States the right to set the FFP limit for a family of one at 133⅓ percent of the AFDC payment standard for a family of two.

This argument is not persuasive. First, if the Congress knew that all States had AFDC standards for one, there would have been no reason for it to have included the language "if such plan provided for aid to such a family" on the provision. That language rebuts that contention outright. The Congress must have believed that some States did not (or, at some time in the future might not) have AFDC standards for a family of one.

Second, section 1903(f), when read with the parenthetical phrases removed provides that " 'the highest amount which would ordinarily be paid' to such family under the State's (AFDC) plan * * * shall be the amount determined by the State agency * * * to be the amount of aid which would ordinarily be payable under such plan to a family * * * consisting of one person if such plan provided for such aid to such a family." This clearly demonstrates that the purpose of section 1903(f)(3) was to give States a mechanism to determine the standard for one, when their AFDC plans did not have that standard. The first parenthetical clause provides that the amount is to be determined by the State agency "on the basis of a reasonable relationship to the amounts payable under such (AFDC) plan to families consisting of two or more persons." Thus, the grammatical reading of the provision results in the reasonable relationship test being used only when there is no available standard of one. The proposed regulation, which we are adopting as final and modifying to reflect the OBRA '90 change discussed earlier, simply provides that where the standard of one actually exists, any relationship between the standard for two and the real standard of one does not result in the standard of one being unreasonable.

Third, it is apparent that where there is a standard of one available in the AFDC program, there is no need to engage in the hypothetical construction of a standard for one based on a relationship between the standard for two and the standard for families of greater size.

Fourth, section 1903(f)(1)(B)(i) vests the Secretary with the authority to prescribe standards for determining the amount which is to be equivalent to the 133⅓ percent standard. This provision, delegating the authority to the Secretary, is only subject to one exception, section 1903(f)(1)(B)(ii). Section 1903(f)(3) is not an exception to the Secretary's authority to set these standards.

Fifth, the commenters complaint that use of a cap based upon the actual AFDC standard for one is unreasonable since the AFDC standards for one are "artificially low." This comment is actually a compliant about AFDC standards, and the lack of a requirement on States to increase such standards to account for cost-of-living increases. The commenters dissatisfaction with the AFDC statute should not result in an alteration of Medicaid standards when there is a direct link to the AFDC standards under the Medicaid statute. Moreover, when the Congress passed the 133⅓ percent cap, it deliberately chose to tie the cap to the cash assistance program with the lowest payment levels. See *Schweiker* v. *Hogan*, 457 U.S. 569 (1982). Accordingly, the commenters' complaint should not be with our interpretation of the statutory requirements, but of the fundamentally restrictive nature of the cap itself.

D. Provisions of the Final Regulations

We are adopting the proposed revision of § 435.1007 as final, without further modifications, except to take into consideration the OBRA '90 change.

XII. Other Proposals

A. Age Requirements

We proposed to delete a provision in the regulations at § 435.520(a) (2) and (3) that specified that no Medicaid State plan would be approved by the Secretary which imposed any age requirement that excludes any individual who has not as yet attained the age of 19 and is a dependent child under AFDC. TEFRA deleted the provision under section 1902(b)(2) of the Act that was the basis for this regulatory provision. We also proposed to make an organizational change in the section by redesignating portions of the section as a new § 435.522.

We did not receive any public comments on these proposals and are, therefore, adopting them as final.

B. Determination of Dependency

In the September 1989 NPRM, we proposed to make a technical change to § 435.510 of the Medicaid regulation that describes the Medicaid categorical requirement relating to determination of dependency. We proposed to remove the reference to a child "under age 21" to reflect the current AFDC policy that defines dependency.

We did not receive any public comments on this proposal and are, therefore, adopting it as final.

C. Medicaid Coverage of Certain Disabled SSI Recipients in Section 1902(f) States

In the September 1989 NPRM, we proposed to incorporate into the Medicaid regulations (§ 435.121(d)) a policy that we had enunciated in manual instructions and that had been upheld in a U.S. District Court decision relating to Medicaid eligibility of certain disabled children under age 18. In section 1902(f) States, any disabled child under age 18 who is an SSI recipient and who also meets a State's current AFDC eligibility criteria must be provided Medicaid eligibility regardless of whether or not the child is currently eligible as a blind or disabled individual under the State's more restrictive section 1902(f) criteria.

We did not receive any public comments on this proposal and are, therefore, adopting the proposed regulations as final.

D. Regulations Governing Guam, Puerto Rico, and the Virgin Islands

In the September 1989 NPRM, we indicated that, where appropriate, we proposed to revise the regulations under 42 CFR part 436 governing Medicaid eligibility in the Territories to conform them to the changes made in the comparable eligibility groups and financial eligibility criteria under 42 CFR part 435. The final regulations in this document incorporate those proposed changes as final.

E. Technical Changes

In the September 1989 NPRM, we proposed to make three technical changes: (1) To delete an outdated section of the regulations, § 435.1, which merely contains a summary of the legislative history of the Medicaid statute as incorporated in the regulations; (2) to add a definition of *cash assistance* and revise the definitions of *categorically needy* and *medically needy*; and (3) to revise one of the regulations (§ 435.230 which was redesignated as § 435.232) describing the eligibility group of individuals receiving only optional State supplements to include in a listing of individuals eligible for Medicaid coverage those individuals who are receiving State-administered supplementary payments.

We did not receive any public comments on these proposals and are, therefore, adopting them as final.

We are also making the following technical changes in these final regulations:

- In § 435.4 under the definition of *categorically needy*, we are changing the citation to section 1926 of the Social Security Act to section 1928 to conform to a legislative redesignation.
- In the amendatory language of item 41 under part 435, we are restoring the reference to § 435.821 as being deleted that was inadvertently omitted in the NPRM. One commenter highlighted this error. The amendatory language in the NPRM should have read: "41. The center heading before § 435.821, § 435.821, § 435.822, and § 435.823 are removed."

XIV. Waiver of Proposed Rulemaking

The Administrative Procedure Act (5 U.S.C. 553) requires us to publish a general notice of proposed rulemaking in the Federal Register and afford prior public comment on proposed rules. Such notice must include a statement of the time, place, and nature of rulemaking proceedings, reference to the legal authority under which the rule is proposed, and the terms of substance of the proposed rule or a description of the subjects and issues involved. However, this requirement does not apply when an agency finds good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rules issued. For the reasons presented below, we find that good cause exists to dispense with notice and comment procedure. At this juncture, the notice and comment procedure would be impractical and contrary to the public interest.

The specific language of §§ 435.604, 435.606, 436.604, and 436.606 of these final regulations was not published as part of the September 1989 NPRM. These sections specify methods for determining income and resource eligibility standards for AFDC-related (non-cash assistance) Medicaid family units. As stated earlier, in the preamble of the September 1989 NPRM, we presented a number of alternatives to the now prohibited mandatory use of the AFDC standard filing unit rule in determining income and resource eligibility for AFDC related Medicaid family units that are not receiving cash assistance. Even though in the NPRM we stated that it was our preference to return to the pre-DRA policy of counting income and resources of family members who voluntarily apply for Medicaid, we discussed other options, among which was the use of a method of prorating income and resource standards to determine income and resource standards for individual members of the Medicaid family unit.

We believe it is imperative that we provide States with definitive guidance in this policy area because States only know that they cannot use AFDC standard filing unit policy, but do not know what to use instead. Absent a national policy, States are floundering and have requested specific policy guidance. Therefore, States need a definitive Federal policy as quickly as possible. We indicated in the NPRM that our preferred policy approach was to return to the Medicaid policy in effect before the change in AFDC policy. However, the comments on that proposal reached no consensus. Some commenters liked the proposed policy; others liked it but believed that the courts might invalidate it; others objected to it.

Given the public comments in response to the preferred policy presented in the NPRM and the Appeal Court decisions on use of the AFDC standard filing unit rules, we believe the proration method set forth in the NPRM and included in this final rule best harmonizes current statutory provisions and the Appeal Court decisions. The proration method is being presented in this rule as a final with the opportunity for public comment.

This method is not a new policy alternative. It was presented in the NPRM as a policy alternative for the final rule. No comments on this policy alternative were received in response to the NPRM. However, because the final rule describes the method more fully, we are publishing it as a final, but the public will have an opportunity to comment on the more specific regulatory language. The comment period will be 30 days following publication of the regulation. Because the proration method was presented as a policy alternative in the NPRM and we did not receive any adverse comments, we do not believe it is in the public interest to delay implementing a national policy in order to publish another proposed rule.

States must comply with §§ 435.604, 435.606, 436.604, and 436.606 by the latest of: (1) 6 calendar months from the date of this final rule; (2) the first day of the next fiscal year for which appropriations apply following publication of the final regulations if State legislation is needed to appropriate funds to implement the change; or (3) the first day of the calendar quarter following the end of the next session of the State legislature that convenes after the date of publication of the final rule if the State needs authorizing legislation to implement the change. This compliance date will allow us opportunity to address any changes required as a result of any public comments received in advance of the effective date.

XV. Effective and Compliance Date of Regulations

In the September 1989 NPRM, we indicated that we would make the proposed regulations, when issued in final, effective 30 days following the date of publication of the final regulations in the **Federal Register**. However, we indicated that, because the effective date for the final regulations would not permit States time to comply with the revised State plan requirements, we would not hold a State out of compliance with the requirements if the State submits the preprinted plan amendments and required attachments by 90 days from the publication date of the final regulations.

One commenter stated that the effective date for the implementation of the policies contained in the proposed rule was unrealistic because of the complexity of the provisions and the possible need for State legislation in order to implement.

We do not agree that 90 days is too short a period to comply with the policies as most of them codify self-implementing statutory provisions and States already have policies in place. However, we believe States will require more time to implement the new income and resource proration method of determining Medicaid eligibility for AFDC-related (non-cash assistance) groups under §§ 435.604, 435.606, 436.604, and 436.606. Therefore, we are making the effective date of these sections of the regulations 90 days from the date of publication of the final regulations, and the compliance date the latest of: (1) 6 calendar months from the date of publication of the final rule; (2) the first day of the next fiscal year for which appropriations apply following the date of publication of the final rule if State legislation is needed to appropriate funds to implement the change; or (3) the first day of the calendar quarter following the end of the next session of the State legislature that convenes after the date of publication of the final rule if the State needs authorizing legislation to implement the change.

XVI. Regulations Implementing Services Provisions of OBRA

We are adopting as final, without modifications, the proposed changes to the coverage of services regulations included in the September 1989 NPRM. These changes implemented sections 2171 and 2172 of OBRA '81. In the September 1989 NPRM, we also responded to public comments that we had received on final regulations with a comment period published on September 30, 1981.

XVII. Response to Public Comments

Because of the large number of items of correspondence we normally receive on a rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date specified in the "Comment Period" section of this preamble and respond to them in the preamble to any final rule that we issue.

XVIII. Paperwork Burden

Sections 435.601(f) and 436.601(f) of this final rule contain information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). Since 1981, there have been a number of statutory changes that affect the income and resource methodologies that States use to determine the financial eligibility of individuals for Medicaid. Under these final regulations, States will be required to specify in their State Medicaid plans their current income and resource methodologies. Public reporting burden for this collection of information is estimated to be one hour per response. A notice will be published in the **Federal Register** when OMB approval is received.

XIX. Regulatory Impact Analysis

A. Introduction

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order 12291 criteria for a major rule; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicaid providers as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan statistical area and has fewer than 50 beds.

These final regulations contain several provisions relating to coverage of certain groups of individuals under Medicaid. In addition, the regulations revise the methodologies for determining income and resource eligibility under Medicaid, including financial responsibility of relatives, and for determining financial eligibility of medically needy groups, including determining medically needy income levels. At the time the NPRM was issued, we had anticipated an estimated $45 million per year reduction in the amount of FFP in Medicaid expenditures as a result of the provision that would have prohibited States from using two-person medically needy income levels for one-person families if the States had established one-person families medically needy income levels. However, the savings that we estimated would result from a change in how States could establish income eligibility standards for a medically needy family if one were negated by a change in the law under section 4718 of OBRA '90. In addition, our most recent data compiled from simulations using Census Bureau Current Population Survey data and current State practice indicate a zero program cost for all of the provisions contained in this final rule.

We believe that each provision of these final regulations minimizes any unnecessary burden on the public, and that the best regulatory options have been selected. Further, we believe that these regulations will not lead to increased costs. Therefore, we have determined that these provisions will have a negligible cost effect and that a regulatory impact analysis is not required.

Because these final regulations affect only States and individuals, we have determined, and the Secretary certifies, that these final regulations do not have a significant economic impact on a substantial number of small entities and do not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs—health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs—health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR chapter IV, subchapter C is amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—General Provisions and Definitions

2. The heading of subpart A is revised to read as set forth above.

§ 435.1 [Removed]

3. Section 435.1 is removed.

4. Section 435.4 is amended by revising the definitions of *Categorically needy* and *Medically needy* to read as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Categorically needy refers to families and children, aged, blind, or disabled individuals, and pregnant women, described under subparts B and C of this part who are eligible for Medicaid. Subpart B of this part describes the mandatory eligibility groups who, generally, are receiving or deemed to be receiving cash assistance under the Act. These mandatory groups are specified in sections 1902(a)(10)(A)(i), 1902(e), 1902(f), and 1928 of the Act. Subpart C of this part describes the optional eligibility groups of individuals who, generally, meet the categorical requirements or income or resource requirements that are the same as or less restrictive than those of the cash assistance programs and who are not receiving cash payments. These optional groups are specified in sections 1902(a)(10)(A)(ii), 1902(e), and 1902(f) of the Act.

* * * * *

Medically needy refers to families, children, aged, blind, or disabled individuals, and pregnant women listed under subpart D of this part who are not listed in subparts B and C of this part as categorically needy but who may be eligible for Medicaid under this part because their income and resources are within limits set by the State under its Medicaid plan (including persons whose income and resources fall within these limits after their incurred expenses for medical or remedial care are deducted) (Specific financial requirements for determining eligibility of the medically needy appear in subpart I of this part.);

* * * * *

5. Section 435.113 is revised to read as follows:

§ 435.113 Individuals who are ineligible for AFDC because of requirements that do not apply under title XIX of the Act.

The agency must provide Medicaid to:

(a) Individuals denied AFDC solely because of policies requiring the deeming of income and resources of the following individuals who are not included as financially responsible relatives under section 1902(a)(17)(D) of the Act;

(1) Stepparents who are not legally liable for support of stepchildren under a State law of general applicability;

(2) Grandparents;

(3) Legal guardians;

(4) Alien sponsors who are not organizations; and

(5) Siblings.

(b) Individuals denied AFDC because of the involuntary inclusion of all eligible siblings living in the home as members of AFDC filing units.

6. Section 435.121 is revised to read as follows:

§ 435.121 Individuals in States using more restrictive requirements for Medicaid than the SSI requirements.

(a) *Basic eligibility group requirements.* (1) If the agency does not provide Medicaid under § 435.120 to aged, blind, and disabled individuals who are SSI recipients, the agency must provide Medicaid to aged, blind, and disabled individuals who meet eligibility requirements that are specified in this section.

(2) Except to the extent provided in paragraph (a)(3) of this section, the agency may elect to apply more restrictive eligibility requirements to the aged, blind, and disabled that are more restrictive than those of the SSI program. The more restrictive requirements may be no more restrictive than those requirements contained in the State's Medicaid plan in effect on January 1, 1972. If any of the State's 1972 Medicaid plan requirements were more liberal than of the SSI program, the State must use the SSI requirement instead of the more liberal requirements, except to the extent the State elects to use more liberal criteria under § 435.601.

(3) The agency must not apply a more restrictive requirement under the provisions of paragraph (a)(2) of this section if:

(i) The requirement conflicts with the requirements of section 1924 of the Act, which governs the eligibility and post-eligibility treatment of income and resources of institutionalized individuals with community spouses;

(ii) The requirement conflicts with a more liberal requirement which the agency has elected to use under § 435.601; or

(iii) The more restrictive requirement conflicts with a more liberal requirement the State has elected to use under § 435.234(c) in determining eligibility for State supplementary payments.

(b) *Mandatory coverage.* If the agency chooses to apply more restrictive requirements than SSI to aged, blind, or disabled individuals, it must provide Medicaid to:

(1) Individuals who meet the requirements of section 1619(b)(3) of the Act even though they may not continue to meet the requirements of this section; and

(2) Qualified Medicare beneficiaries described in section 1905(p) of the Act and qualified working disabled individuals described in section 1905(s) of the Act without consideration of the more restrictive eligibility requirements specified in this section.

(3) Individuals who:

(i) Qualify for benefits under section 1619(a) or are in eligibility status under section 1619(b)(1) of the Act as determined by SSA; and

(ii) Were eligible for Medicaid under the more restrictive criteria in the State's approved Medicaid plan in the reference month—the month immediately preceding the first month in which they became eligible under section 1619(a) or (b)(1) of the Act. "Were eligible for Medicaid" means that individuals were issued Medicaid cards by the State for the reference month. Under this provision, the reference month for determining Medicaid eligibility for all individuals under section 1619 of the Act is the month immediately preceding the first month of the most recent period of eligibility under section 1619 of the Act.

(c) *Group composition.* The agency may apply more restrictive requirements only to the aged, to the blind, to the disabled, or to any combination of these groups. For example, the agency may apply more restrictive requirements to the aged and disabled under this provision and provide Medicaid to all blind individuals who are SSI recipients.

(d) *Nonfinancial conditions.* The agency may apply more restrictive requirements that are nonfinancial conditions of eligibility. For example, the agency may use a more restrictive definition of disability or may limit eligibility of the disabled to individuals age 18 and older, or both. If the agency limits eligibility of disabled individuals to individuals age 18 or older, it must provide Medicaid to individuals under age 18 who receive SSI benefits and who would be eligible to receive AFDC under the State's approved plan if they did not receive SSI. If the agency imposed an age limit for disabled individuals under its 1972 approved State plan but does not use that limit, it must apply the same nonfinancial requirement to individuals under age 18 that it applies to disabled individuals age 18 and older.

(e) *Financial conditions.* (1) The agency may apply more restrictive requirements that are financial conditions of eligibility.

(2) Any income eligibility standards that the agency applies must:

(i) Equal the income standard (or Federal Benefit Rate (FBR)) that would be used under SSI based on an individual's living arrangement; or

(ii) Be a more restrictive standard which is no more restrictive than that under the approved State's January 1, 1972 Medicaid plan.

(3) If the categorically needy income standard established under paragraph (e)(2) of this section is less than the optional categorically needy standard established under § 435.230, the agency must provide Medicaid to all aged, blind, and disabled individuals who have income equal to or below the higher standard.

(4) In a State that does not have a medically needy program that covers aged, blind, and disabled individuals, the agency must allow individuals to deduct from income incurred medical and remedial expenses (that is, spend down) to become eligible under this section. However, individuals with income above the categorically needy standards may only spend down to the standard selected by the State under paragraph (e)(2) of this section which applies to the individual's living arrangement.

(5) In a State that elects to provide medically needy coverage to aged, blind, and disabled individuals, the agency must allow individuals to deduct from income incurred medical and remedial care expenses (spend down) to become categorically needy when they are SSI recipients (including individuals deemed to be SSI recipients under §§ 435.135, 435.137, and 435.138), eligible spouses of SSI recipients, State supplement recipients, and individuals who are eligible for a supplement but who do not receive supplementary payments. Such persons may only spend down to the standard

selected by the State under paragraph (e)(2) of this section. Individuals who are not SSI recipients, eligible spouses of SSI recipients, State supplement recipients, or individuals who are eligible for a supplement must spend down to the State's medically needy income standards for aged, blind, and disabled individuals in order to become Medicaid eligible.

(f) *Deductions from income.* (1) In addition to any income disregards specified in the approved State plan in accordance with § 435.601(b), the agency must deduct from income:

(i) SSI payments;

(ii) State supplementary payments that meet the conditions specified in §§ 435.232 and 435.234; and

(iii) Expenses incurred by the individual or financially responsible relatives for necessary medical and remedial services that are recognized under State law and are not subject to payment by a third party, unless the third party is a public program of a State or political subdivision of a State. These expenses include Medicare and other health insurance premiums, deductions and coinsurance charges, and copayments or deductibles imposed under § 447.51 or § 447.53 of this chapter. The agency may set reasonable limits on the amounts of incurred medical expenses that are deducted.

(2) For purposes of counting income with respect to individuals who are receiving benefits under section 1619(a) of the Act or are in section 1619(b)(1) of the Act status but who do not meet the requirements of paragraph (b)(3)(ii) of this section, the agency may disregard some or all of the amount of the individual's income that is in excess of the SSI Federal benefit rate under section 1611(b) of the Act.

§ 435.201 Individuals included in optional groups.

(a) The agency may choose to cover as optional categorically needy any group or groups of the following individuals who are not receiving cash assistance and who meet the appropriate eligibility criteria for groups specified in the separate sections of this subpart:

(1) Aged individuals (65 years of age of older);

(2) Blind individuals (as defined in § 435.530);

(3) Disabled individuals (as defined in § 435.541);

(4) Individuals under age 21 (or, at State option, under age 20, 19, or 18) or reasonable classifications of these individuals;

(5) Specified relatives under section 406(b)(1) of the Act who have in their care an individual who is determined to be dependent (or would, if needy, be dependent) as specified in § 435.510; and

(6) Pregnant women.

(b) If the agency provides Medicaid to any individual in an optional group specified in paragraph (a) of this section, the agency must provide Medicaid to all individuals who apply and are found eligible to be members of that group.

(c) States that elect to use more restrictive eligibility requirements for Medicaid than the SSI requirements for any group or groups of aged, blind, and disabled individuals under § 435.121 must apply the specific requirements of § 435.230 in establishing eligibility of these groups of individuals as optional categorically needy.

8. Section 435.210 is revised to read as follows:

§ 435.210 Individuals who meet the income and resource requirements of the cash assistance programs.

The agency may provide Medicaid to any group or groups of individuals specified in § 435.201 (a)(1) through (a)(3) and (a)(5) and (a)(6) who are not mandatory categorically needy, who meet the income and resource requirements of the appropriate cash assistance program for their status (that is, the State's approved AFDC plan or SSI, or optional State supplements in States that provide Medicaid to optional State supplement recipients).

9. Section 435.211 is revised to read as follows:

§ 435.211 Individuals who would be eligible for cash assistance if they were not in medical institutions.

The agency may provide Medicaid to any group or groups of individuals specified in § 435.201(a) who are in title XIX reimbursable medical institutions and who:

(a) Are ineligible for the cash assistance program appropriate for their status (that is, AFDC or SSI, or optional State supplements in States that provide Medicaid to optional State supplement recipients) because of lower income standards used under the program to determine eligibility for institutionalized individuals; but

(b) Would be eligible for aid or assistance under the State's approved AFDC plan, SSI, or an optional State supplement as specified in § 435.232 and § 435.234 if they were not institutionalized.

10. Section 435.220 is amended by revising the section heading and paragraph (a) to read as follows:

§ 435.220 Individuals who would meet the income and resource requirements under AFDC if child care costs were paid from earnings.

(a) The agency may provide Medicaid to any group or groups of individuals specified under § 435.201 (a)(4), (a)(5), and (a)(6) who would meet the income and resource requirements under the State's approved AFDC plan if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure.

* * * * *

11. Section 435.222 is amended by revising the section heading and paragraph (a), republishing the introductory text to paragraph (b), and revising paragraph (b)(3) to read as follows:

§ 435.222 Individuals under age 21 who meet the income and resource requirements of AFDC.

(a) The agency may provide Medicaid to individuals under age 21 (or, at State option, under age 20, 19, or 18); or reasonable categories of these individuals as specified in paragraph (b) of this section, who are not receiving cash assistance under any program but who meet the income and resource requirements of the State's approved AFDC plan.

(b) The agency may cover all individuals described in paragraph (a) of this section or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

* * * * *

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

* * * * *

12. Section 435.223 is amended by revising paragraph (a) to read as follows:

§ 435.223 Individuals who would be eligible for AFDC if coverage under the State's AFDC plan were as broad as allowed under title IV–A.

(a) The agency may provide Medicaid to any group or groups of individuals specified under § 435.210 (a)(4), (a)(5), and (a)(6) who:

(1) Would be eligible for AFDC if the State's AFDC plan included individuals whose coverage under title IV–A is optional (for example, Medicaid may be provided to members of families with an unemployed parent even though AFDC is not available to them under the State's AFDC plan); or

(2) Would be eligible for AFDC if the State's AFDC plan did not contain eligibility requirements more restrictive than, or in addition to, those required under title IV–A.

* * * * *

13. Section 435.230 is redesignated as § 435.232 and paragraph (a) introductory text is revised, a new paragraph (a)(9) is added, paragraph (b) introductory text is republished and paragraph (b)(3) is revised to read as follows:

§ 435.232 Individuals receiving only optional State supplements.

(a) If the agency provides Medicaid to individuals receiving SSI under § 435.120, it may provide Medicaid, in one or more of the following classifications, to individuals who receive only an optional State supplement that meets the conditions specified in paragraph (b) of this section and who would be eligible for SSI except for the level of their income.

* * * * *

(9) Reasonable groups of individuals, as specified by the State, receiving State-administered supplementary payments.

(b) Payments under the optional State supplement program must be:

* * * * *

(3) Available to all individuals in each classification in paragraph (a) of this section and available on a statewide basis. However, the plan may provide for variations in the income standard by political subdivision according to cost-of-living differences.

14. A new § 435.230 is added to subpart C under the undesignated center heading "Options for Coverage of the Aged, Blind, and Disabled" to read as follows:

§ 435.230 Aged, blind, and disabled individuals in States that use more restrictive requirements for Medicaid than SSI requirements: Optional coverage.

(a) *Basic optional coverage rule.* If the agency elects the option under § 435.121 to provide mandatory eligibility for aged, blind, and disabled SSI recipients using more restrictive requirements than those used under SSI, the agency may provide eligibility as optional categorically needy to additional individuals who meet the requirements of this section.

(b) *Group composition.* Subject to the conditions specified in paragraphs (d) and (e) of this section, the agency may provide Medicaid to individuals who:

(1) Meet the nonfinancial criteria that the State has elected to apply under § 435.121;

(2) Meet the resource requirements that the State has elected to apply under § 435.121; and

(3) Meet the income eligibility standards specified in paragraph (c) of this section.

(c) *Criteria for income standards.* The agency may provide Medicaid to the following individuals who meet the requirements of paragraphs (b)(1) and (b)(2) of this section:

(1) Individuals who are financially eligible for but not receiving SSI benefits and who, before deduction of incurred medical and remedial expenses, meet the State's more restrictive eligibility requirements described in § 435.121;

(2) Individuals who meet the income standards of the following eligibility groups:

(i) Individuals who would be eligible for cash assistance except for institutional status described in § 435.211;

(ii) Individuals who are enrolled in an HMO or other entity and who are deemed to continue to be Medicaid eligible for a period specified by the agency up to 6 months from the date of enrollment and who became ineligible during the specified enrollment period, as described in § 435.212;

(iii) Individuals receiving home and community-based waiver services described in § 435.217;

(iv) Individuals receiving only optional State supplements described in § 435.234;

(v) Institutionalized individuals with income below a special income level described in § 435.236;

(vi) Aged and disabled individuals who have income below 100 percent of the Federal poverty level described in section 1905(m) of the Act.

(3) Individuals who qualify for special status under §§ 435.135 and 435.138, and with respect to whom the State elects to disregard some or the maximum amount of title II payments permitted to be disregarded under those sections.

(d) *Use of more liberal methods.* The agency may elect to apply more liberal methods of counting income and resources that are approved for this eligibility group under the provisions of § 435.601.

§ 435.231 [Redesignated as § 435.236]

15. Section 435.231 is redesignated as § 435.236.

16. A new § 435.234 is added to subpart C to read as follows:

§ 435.234 Individuals receiving only optional State supplements in States using more restrictive eligibility requirements than SSI and certain States using SSI criteria.

(a) In States using more restrictive eligibility requirements than SSI or in States that use SSI criteria but do not have section 1616 or 1634 agreements with the Social Security Administration for eligibility determinations, the agency may provide Medicaid to individuals specified in paragraph (b) of this section who receive only a State supplement if the State supplement meets the conditions specified in paragraph (c) of this section.

(b) The agency may provide Medicaid to all individuals receiving only State supplements if, except for their income, the individuals meet the more restrictive eligibility requirements under § 435.121 or SSI criteria, or to one or more of the following classifications of individuals who meet these criteria:

(1) All aged individuals.

(2) All blind individuals.

(3) All disabled individuals.

(4) Only aged individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(5) Only blind individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(6) Only disabled individuals in domiciliary facilities or other group living arrangements as defined under SSI.

(7) Individuals receiving a Federally-administered optional State supplement that meets the conditions specified in this section.

(8) Individuals in additional classifications specified by the Secretary.

(9) Reasonable groups of individuals, as specified by the State, receiving State-administered supplementary payments.

(c) Payments under the optional supplement program must be:

(1) Based on need and paid in cash on a regular basis;

(2) Equal to the difference between the individual's countable income and the income standard used to determine eligibility for supplements. Countable income is income remaining after deductions are applied. The income deductions may be more restrictive than required under SSI (see § 435.1006 for limitations on FFP in Medicaid expenditures for individuals receiving optional State supplements); and

(3) Available to all individuals in each classification in paragraph (b) of this section and available on a statewide

basis. However, the plan may provide for variations in the income standard by political subdivision according to cost-of-living differences.

17. In § 435.301, paragraph (a) is revised, the introductory texts of paragraphs (b) and (b)(2) are republished, and paragraph (b)(2)(ii) is revised to read as follows:

§ 435.301 General rules.

(a) An agency may provide Medicaid to individuals specified in this subpart who:

(1) Either:

(i) Have income that meets the applicable standards in §§ 435.811 and 435.814; or

(ii) If their income is more than allowed under the standard, have incurred medical expenses at least equal to the difference between their income and the applicable income standard; and

(2) Have resources that meet the applicable standards in §§ 435.840 and 435.843.

(b) If the agency choose this option, the following provisions apply:

* * * * *

(2) The agency may provide Medicaid to any of the following groups of individuals:

* * * * *

(ii) Specified relatives (§ 435.310).

* * * * *

18. In § 435.308, paragraph (a) is revised, the introductory text of paragraph (b) is republished, and paragraph (b)(3) is revised to read as follows:

§ 435.308 Medically needy coverage of individuals under age 21.

(a) If the agency provides Medicaid to the medically needy, it may provide Medicaid to individuals under age 21 (or, at State option, under age 20, 19, or 18), as specified in paragraph (b) of this section:

(1) Who would not be covered under the mandatory medically needy group of individuals under 18 under § 435.301(b)(1)(ii); and

(2) Who meet the income and resource requirements of subpart I of this part.

(b) The agency may cover all individuals described in paragraph (a) of this section, or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

* * * * *

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. When the agency covers such individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

* * * * *

19. Section 435.310 is revised to read as follows:

§ 435.310 Medically needy coverage of specified relatives.

(a) If the agency provides for the medically needy, it may provide Medicaid to specified relatives, as defined in paragraph (b) of this section, who meet the income and resource requirements of subpart I of this part.

(b) *Specified relatives* means individuals who:

(1) Are listed under section 406(b)(1) of the Act and 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be (or would, if needy, be) dependent, as specified in § 435.510.

20. Section 435.330 is revised to read as follows:

§ 435.330 Medically needy coverage of the aged, blind, and disabled in States using more restrictive eligibility requirements for Medicaid than those used under SSI.

(a) If an agency provides Medicaid as categorically needy only to those aged, blind, or disabled individuals who meet more restrictive requirements than used under SSI and elects to cover the medically needy, it may provide Medicaid as medically needy to those aged, blind, or disabled individuals who:

(1) Do not qualify for Medicaid as categorically needy under § 435.121 or § 435.230; and

(2) If applying as blind or disabled, meet the definition of blindness or disability established under § 435.121.

(b) Except as specified in paragraph (c) of this section, the agency must apply to individuals covered under the option of this section the same financial and nonfinancial requirements that are applied to individuals covered as categorically needy under §§ 435.121 and 435.230.

(c) In determining the financial eligibility of individuals who are considered as medically needy under this section, the agency must apply the financial eligibility requirements of subparts G and I of this part.

§ 435.510 [Amended]

21. Section 435.510 is amended by removing the phrase "under age 21" from paragraph (a).

22. Section 435.520 is revised to read as follows:

§ 435.520 Age requirements for the aged.

The agency must not impose an age requirement of more than 65 years.

23. A new § 435.522 is added to subpart C under the undesignated center heading "Age" to read as follows:

§ 435.522 Determination of age.

(a) Except as specified in paragraphs (b) and (c) of this section, in determining age, the agency must use the common-law method (under which an age reached the day before the anniversary of birth).

(b) For families and children, the agency must use the popular usage method (under which an age is reached on the anniversary of birth), if this method is used under the State's AFDC plan.

(c) For aged, blind, or disabled individuals, the agency must use the popular usage method, if the plan provides under § 435.121, § 435.230, or § 435.330, for coverage of aged, blind, or disabled individuals who meet more restrictive eligibility requirements than those under SSI.

(d) The agency may use an arbitrary date, such as July 1, for determining an individual's age if the year, but not the month, of his birth is known.

24. Section 435.600 is revised to read as follows:

§ 435.600 Scope.

This subpart prescribes:

(a) General financial requirements and options for determining the eligibility of both categorically and medically needy individuals specified in subparts B, C, and D of this part. Subparts H and I of this part prescribe additional financial requirements.

(b) Methods the Medicaid agency must use to establish Medicaid budgetary units and determine financial eligibility for families and children who are not AFDC or deemed AFDC recipients and whose eligibility the agency determines through application of AFDC financial criteria applicable to Medicaid.

25. A new § 435.601 is added to subpart G to read as follows:

§ 435.601 Application of financial eligibility methodologies.

(a) *Definitions.* For purposes of this section, "cash assistance financial methodologies" refers to the income and resources methodologies of the AFDC, SSI, or State supplement programs, or, for aged, blind, and disabled individuals in States that use more restrictive criteria than SSI, the methodologies established in accordance with the requirements of §§ 435.121 and 435.230.

(b) *Basic rule for use of cash assistance methodologies.* Except as specified in paragraphs (c), (d), and (e) of this section or in § 435.121 in determining financial eligibility of individuals as categorically and medically needy, the agency must apply the financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status.

(c) *Financial responsibility of relatives.* The agency must use the requirements for financial responsibility of relatives specified in § 435.602.

(d) *Use of less restrictive methodologies than those under cash assistance programs.* (1) At State option, and subject to the conditions of paragraphs (d)(2) through (d)(5) of this section, the agency may apply income and resource methodologies that are less restrictive than the cash assistance methodologies in determining eligibility of the following groups:

(i) Qualified pregnant women and children under the mandatory categorically needy group under § 435.116;

(ii) Low-income pregnant women, infants, and children specified in section 1902(a)(10)(i)(IV), 1902(a)(10)(A)(i)(VI), and 1902(a)(10)(A)(i)(VII) of the Act;

(iii) Qualified Medicare beneficiaries specified in sections 1902(a)(10)(E) and 1905(p) of the Act;

(iv) Optional categorically needy individuals under groups established under subpart C of this part and section 1902(a)(10)(A)(ii) of the Act;

(v) Medically needy individuals under groups established under subpart D of this part and section 1902(a)(10)(C)(i)(III) of the Act; and

(vi) Aged, blind, and disabled individuals in States using more restrictive eligibility requirements than SSI under groups established under §§ 435.121 and 435.230.

(2) The income and resource methodologies that an agency elects to apply to groups of individuals described in paragraph (d)(1) of this section may be less restrictive, but no more restrictive (except in States using more restrictive requirements than SSI), than:

(i) For groups of aged, blind, and disabled individuals, the SSI methodologies; or

(ii) For all other groups, the methodologies under the State plan most closely categorically related to the individual's status.

(3) A financial methodology is considered to be no more restrictive if, by using the methodology, additional individuals may be eligible for Medicaid and no individuals who are otherwise eligible are by use of that methodology made ineligible for Medicaid.

(4) The less restrictive methodology applied under this section must be comparable for all persons within each category of assistance (aged, or blind, or disabled, or AFDC related) within an eligibility group. For example, if the agency chooses to apply less restrictive income or resource methodology to an eligibility group of aged individuals, it must apply that methodology to all aged individuals within the selected group.

(5) The application of the less restrictive income and resource methodologies permitted under this section must be consistent with the limitations and conditions on FFP specified in subpart K of this part.

(e) *Exception for AFDC-related individuals.* In determining the eligibility of individuals who are not AFDC or deemed AFDC recipients and whose eligibility the agency determines by applying AFDC financial criteria applicable to Medicaid, the agency must establish Medicaid budgetary units and determine financial eligibility in accordance with §§ 435.604 and 435.606.

(f) *State plan requirements.* (1) The State plan must specify that, except to the extent precluded by §§ 435.602, 435.604, and 435.606, in determining financial eligibility of individuals, the agency will apply the cash assistance financial methodologies and requirements, unless the agency chooses to apply less restrictive income and resource methodologies in accordance with paragraph (d) of this section.

(2) If the agency chooses to apply less restrictive income and resource methodologies, the State plan must specify:

(i) The less restrictive methodologies that will be used; and

(ii) The eligibility group or groups to which the less restrictive methodologies will be applied.

26. Section 435.602 is revised to read as follows:

§ 435.602 Financial responsibility of relatives and other individuals.

(a) *Basic requirements.* Subject to the provisions of paragraphs (b), (c), and (d) of this section, in determining financial responsibility of relatives and other persons for individuals under Medicaid, the agency must apply the following requirements and methodologies:

(1) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not consider income and resources of any relative as available to an individual.

(2) In relation to individuals under age 21 (as described in section 1905(a)(i) of the Act), the financial responsibility requirements and methodologies that apply include considering the income and resources of parents or spouses whose income and resources would be considered if the individual under age 21 were dependent under the State's approved AFDC plan, whether or not they are actually contributed, except as specified under paragraphs (c) and (d) of this section. These requirements and methodologies must be applied in accordance with the provisions of the State's approved AFDC plan.

(3) When a couple ceases to live together, the agency must count only the income of the individual spouse in determining his or her eligibility, beginning the first month following the month the couple ceases to live together.

(4) In the case of eligible institutionalized spouses who are aged, blind, and disabled and who have shared the same room in a title XIX Medicaid institution, the agency has the option of considering these couples as eligible couples for purposes of counting income and resources or as eligible individuals, whichever is more advantageous to the couple.

(b) *Requirements for States using more restrictive requirements.* Subject to the provisions of paragraph (c) of this section, in determining financial eligibility of aged, blind, or disabled individuals in States that apply eligibility requirements more restrictive than those used under SSI, the agency must apply:

(1) The requirements and methodologies for financial responsibility of relatives used under the SSI program; or

(2) More extensive requirements for relative responsibility than specified in § 435.602(a) but no more extensive than the requirements under the Medicaid plan in effect on January 1, 1972.

(c) *Use of less restrictive methodologies.* The agency may apply income and resources methodologies that are less restrictive than those used under the cash assistance programs as specified in the State Medicaid plan in accordance with § 435.601(d).

(d) *AFDC-related (non-cash assistance) groups.* The agency must apply the procedures specified in §§ 435.604 and 435.606 to establish budgetary units and determine financial eligibility of individuals who are not AFDC or deemed AFDC recipients and whose eligibility the agency determines by applying AFDC financial criteria applicable to Medicaid.

§ 435.603 [Redesignated]

§ 435.604 [Redesignated]

27. Sections 435.603 and 435.604 are redesignated as §§ 435.608 and 435.610 respectively.

28. New §§ 435.604 and 435.606 are added to subpart G to read as follows:

§ 435.604 Methods for establishing income and resource eligibility standards for AFDC-related (non-cash assistance) groups.

(a) The agency must establish financial eligibility standards for AFDC-related individuals who are not AFDC or deemed AFDC recipients and to whom the agency applies AFDC financial criteria in accordance with the procedures specified in this section.

(b) The agency must establish Medicaid budgetary units for families and children. Each budgetary unit must include the following individuals who are living in the home:

(1) Children under 21 who:

(i) Do not receive SSI benefits (or a State supplement);

(ii) Are within the degree of relationship to be included in the same AFDC filing unit; and

(iii) Are potentially eligible under the approved State Medicaid plan;

(2) Parents of children described in paragraph (b)(1) of this section; and

(3) Other relatives described in section 1905(a) of the Act who are included under the plan, or who are (or would, if the child received AFDC, be) essential persons with respect to children described in paragraph (b)(1) of this section as defined under the agency's AFDC plan.

(c) The agency must determine an appropriate prorated income and resource standard for each member of the budgetary unit.

(d) The agency must establish individual prorated income and resource standards for all size families for all AFDC-related eligibility groups under its approved plan (that is, prorated standards based on an equal division of the relevant payment standards—AFDC, poverty level standards, and standards for the medically needy—by the number of persons in the Medicaid budgetary unit). The total standard for each budgetary unit must not exceed the FFP limits established under § 435.1007.

(e) The agency must establish statewide income and resource standards for each budgetary unit size for all groups. In States where the approved AFDC plan and the Medicaid plan for the medically needy contain geographical differentials, the agency must establish standards for each budgetary unit size for these groups, reflecting the geographical differentials in lieu of statewide standards.

(f) The agency must determine the relevant resource standard to be used for each member of the budgetary unit. The standards to be used must be the standard for the same size as the budgetary unit and must be for the appropriate group for which the individual's eligibility is being determined. The agency must also consolidate the income and resource standards for parents and for other married relatives.

(g) The provisions of this section do not apply to the State of California and other States in the Ninth Judicial Circuit.

§ 435.606 Procedures for determining income and resource eligibility for AFDC-related (non-cash assistance) eligibility groups.

(a) The agency must use the procedures specified in this section to determine financial eligibility of individuals who are not AFDC or deemed AFDC recipients and to whom the agency applies AFDC financial criteria applicable to Medicaid.

(b) For purposes of determining income eligibility and resource eligibility, the agency must:

(1) Determine the amount of income and the amount of resources owned by each member of the Medicaid budgetary unit;

(2) Prorate the amount of income and the amount of resources of the parents by the number of persons in the budgetary unit for whom they are financially responsible under § 435.602 and themselves;

(3) Determine the amount of income and the amount of resources owned by relatives, other than parents, and essential persons;

(4) Add to each child's income and resources his or her prorated share of his or her parents' income and resources.

(c) To determine financial eligibility, the agency must compare the income and resources of each member of the Medicaid budgetary unit determined under paragraph (b) of this section first to the appropriate prorated standard for any categorically needy eligibility group for which he or she is potentially eligible. If a budgetary unit member's income and resources are equal to or less than the individual income and resource standard, the individual is financially eligible as categorically needy. If income and resources exceed the standards and the medically needy are included under the plan, the agency must compare the individual's income and resources determined under paragraph (b) of this section to prorated medically needy standards to determine Medicaid eligibility.

(d) If one or more members of the Medicaid budgetary unit receive AFDC, or Medicaid under § 435.113, the agency must use the methods described in paragraphs (b) and (c) of this section to determine income and resource eligibility for the members of the Medicaid budgetary unit who are not receiving Medicaid under those provisions. Medicaid budgetary unit members who receive AFDC or Medicaid under § 435.113 remain members of the budgetary unit for purposes of determining eligibility for the other budgetary unit members.

(e) The agency must apply AFDC income disregards, or more liberal disregards approved under § 435.601, to each Medicaid budgetary unit member's income, except in the case of allocating income from parents and spouses to their dependents living in the home who are not members of the Medicaid budgetary unit. In determining the amount to be allocated to these dependents, the agency must treat them as if they are in the Medicaid budgetary unit.

(f) The agency must use the actual method used by the AFDC program for determining whether the $30 and 1/3 or $30 earned income disregard is applied to individual family members whose eligibility is being determined under categorically needy eligibility groups.

(g) The agency must compute the amount of lump sum nonrecurring income to use for the current and future months by dividing the lump sum by the AFDC need standard comparable to the Medicaid budgetary unit for the month the lump sum is received.

(h) The agency may consider parents, other relatives and essential persons whose eligibility under the plan is dependent upon having a needy dependent child living in the home as eligible only if there is a dependent child in the Medicaid budgetary unit. A determination that the parents, other relatives, or essential persons are needy under the individual budgetary unit calculations is not sufficient to establish these individuals' eligibility for Medicaid.

29. The heading of subpart H and § 435.700 are revised to read as follows:

Subpart H—Specific Post-Eligibility Financial Requirements for the Categorically Needy

§ 435.700 Scope.

This subpart prescribes specific financial requirements for determining the post-eligibility treatment of income of categorically needy individuals, including requirements for applying patient income to the cost of care.

30. The center headings appearing before § 435.711 and before § 435.721 are removed.

§§ 435.711–435.712 [Removed]

31. Sections 435.711 and 435.712 are removed.

§ 435.721 [Removed]

§ 435.723 [Removed]

§ 435.724 [Removed]

32. Sections 435.721, 435.723, and 435.724 are removed.

33. Section 435.722 is redesignated as § 435.622 under subpart G and paragraph (a) is revised to read as follows:

§ 435.622 Individuals in institutions who are eligible under a special income level.

(a) If an agency, under § 435.231, provides Medicaid to individuals in medical institutions, nursing facilities, and intermediate care facilities for the mentally retarded who would not be eligible for SSI or State supplements if they were not institutionalized, the agency must use income standards based on the greater need for financial assistance that the individuals would have if they were not in the institution. The standards may vary by the level of institutional care needed by the individual (hospital, nursing facility, or intermediate level care for the mentally retarded), or by other factors related to individual needs. (See § 435.1005 for FFP limits on income standards established under this section.)

* * * * *

§ 435.725 [Amended]

34. Section 435.725 is amended as follows:

a. The section heading is revised to read "§ 435.725 Post-eligibility treatment of income of institutionalized individuals in SSI States: Application of patient income to the cost of care."

b. In paragraph (c)(2)(iii), the cross-reference to "§ 435.812" is revised to read "§ 435.811".

c. In paragraph (c)(3)(iii), "State's AFDC plan" is revised to read "State's approved AFDC plan" and "established under subpart I of this part" is revised to read "established under § 435.811, if the agency provides Medicaid under the medically needy coverage option".

§ 435.726 [Amended]

35. In § 435.726, in paragraph (c)(3)(iii), the cross reference to "subpart I of this part" is revised to read "§ 435.811".

36. The undesignated center heading appearing before § 435.731 is removed.

37. Section 435.731 is redesignated as § 435.631 under subpart G and revised to read as follows:

§ 435.631 General requirements for determining income eligibility in States using more restrictive requirements for Medicaid than SSI.

(a) *Income eligibility methods.* In determining income eligibility of aged, blind, and disabled individuals in a State using more restrictive eligibility requirements than SSI, the agency must use the methods for treating income elected under §§ 435.121 and 435.230, under § 435.601. The methods used must be comparable for all individuals within each category of individuals under § 435.121 and each category of individuals within each optional categorically needy group included under § 435.230 and for each category of individuals under the medically needy option described under § 435.800.

(b) *Categorically needy versus medically needy eligibility.* (1) Individuals who have income equal to, or below, the categorically needy income standards described in §§ 435.121 and 435.230 are categorically needy in States that include the medically needy under their plans.

(2) Categorically needy eligibility in States that do not include the medically needy is determined in accordance with the provisions of § 435.121 (e)(4) and (e)(5).

§ 435.732 [Removed]

38. Section 435.732 is removed.

§ 435.733 [Removed]

39. Section 435.733 is amended as follows:

a. The section heading is revised to read "§ 435.733 Post-eligibility treatment of income of institutionalized individuals in States using more restrictive requirements than SSI: Application of patient income to the cost of care."

b. In paragraph (c)(2)(ii), "The medically needy standard for an individual;" is revised to read "The amount of the medically needy income standard for one person established under § 435.811, if the agency provides Medicaid under the medically needy coverage option."

c. In paragraph (c)(3)(iii), "State's AFDC plan" is revised to read "State's approved AFDC plan" and "established under subpart I of this part" is revised to read "established under § 435.811, if the agency provides Medicaid under the medically needy coverage option".

§ 435.734 [Removed]

40. Section 435.734 is removed.

§ 435.735 [Amended]

41. In § 435.735, in paragraph (c)(3)(iii), the cross-reference to "subpart I of this part" is revised to read "§ 435.811".

§ 435.740 [Redesignated as § 435.640]

42. The undesignated center heading before § 435.740 is removed. Section 435.740 is redesignated as § 435.640 under subpart G.

43. The heading of subpart I and § 435.800 are revised to read as follows:

Subpart I—Specific Eligibility and Post-Eligibility Financial Requirements for the Medically Needy

§ 435.800 Scope.

This subpart prescribes specific financial requirements for determining the eligibility of medically needy individuals under subpart D of this part.

44. The center heading before § 435.811 and § 435.811 are revised to read as follows:

Medically Needy Income Standard

§ 435.811 Medically needy income standard: General requirements.

(a) Except as provided in paragraph (d)(2) of this section, to determine eligibility of medically needy individuals, a Medicaid agency must use a single income standard under this subpart that meets the requirements of this section.

(b) The income standard must take into account the number of persons in the assistance unit. Subject to the limitations specified in paragraph (e) of this section. The standard may not diminish by an increase in the number of persons in the assistance unit. For example, if the income level in the standard for an assistance unit of two is set at $400, the income level in the standard for an assistance unit of three may not be less than $400.

(c) In States that do not use more restrictive requirements than SSI, the income standard must be set at an amount that is no lower than the lowest income standards used under the cash assistance programs that are related to the State's covered medically needy eligibility group or groups of individuals under § 435.301. The amount of the income standard is subject to the limitations specified in paragraph (e) of this section.

(d) In States that use more restrictive requirements for aged, blind, and disabled individuals than SSI:

(1) For all individuals except aged, blind, and disabled individuals, the

income standard must be set in accordance with paragraph (c) of this section; and

(2) For all aged, blind, and disabled individuals or any combination of these groups of individuals, the agency may establish a separate single medically needy income standard that is more restrictive than the single income standard set under paragraph (c) of this section. However, the amount of the more restrictive separate standard for aged, blind, or disabled individuals must be no lower than the higher of the lowest categorically needy income standard currently applied under the State's more restrictive criteria under § 435.121 or the medically needy income standard in effect under the State's Medicaid plan on January 1, 1972. The amount of the income standard is subject to the limitations specified in paragraph (e) of this section.

(e) The income standards specified in paragraphs (c) and (d) of this section must not exceed the maximum dollar amount of income allowed for purposes of FFP under § 435.1007.

(f) The income standard may vary based on the variations between shelter costs in urban areas and rural areas.

§ 435.812 [Removed]

45. Section 435.812 is removed.

46. Section 435.814 is revised to read as follows:

§ 435.814 Medically needy income standard: State plan requirements.

The State plan must specify the income standard for the covered medically needy groups.

47. The center heading before § 435.821 is removed.

§ 435.821 [Removed]

§ 435.822 [Removed]

§ 435.823 [Removed]

48. Sections 435.821, 435.822, and 435.823 are removed.

49. Section 435.831 is amended by revising paragraph (a) to read as follows:

§ 435.831 Income eligibility.

* * * * *

(a) *Determining countable income.* To determine an individual's countable income, the agency must deduct amounts that would be deducted in determining income eligibility as provided under § 435.601.

* * * * *

50. Section 435.832 is amended by revising the section heading and paragraph (c)(2)(iii) and (c)(3)(iii)(B) to read as follows:

§ 435.832 Post-eligibility treatment of income of institutionalized individuals: Application of patient income to the cost of care.

* * * * *

(c) * * *

(2) * * *

(iii) The amount of the medically needy income standard for one person established under § 435.811.

(3) * * *

(iii) * * *

(B) The medically needy income standard established under § 435.811.

* * * * *

51. The center heading before § 435.840 and § 435.840 are revised to read as follows:

Medically Needy Resource Standard

§ 435.840 Medically needy resource standard: General requirements.

(a) To determine eligibility of medically needy individuals, a Medicaid agency must use a single resource standard that meets the requirements of this section.

(b) In States that do not use more restrictive criteria than SSI for aged, blind, and disabled individuals, the resource standard must be established at an amount that is no lower than the lowest resource standard used under the cash assistance programs that relate to the State's covered medically needy eligibility group or groups of individuals under § 435.301.

(c) In States using more restrictive requirements than SSI:

(1) For all individuals except aged, blind, and disabled individuals, the resource standard must be set in accordance with paragraph (b) of this section; and

(2) For all aged, blind, and disabled individuals or any combination of these groups of individuals, the agency may establish a separate single medically needy resource standard that is more restrictive than the single resource standard set under paragraph (b) of this section. However, the amount of the more restrictive separate standard for aged, blind, or disabled individuals must be no lower than the higher of the lowest categorically needy resource standard currently applied under the State's more restrictive criteria under § 435.121 or the medically needy resource standard in effect under the State's Medicaid plan on January 1, 1972.

(d) The resource standard established under paragraph (a) of this section may not diminish by an increase in the number of persons in the assistance unit. For example, the resource standard for an assistance unit of three may not be less than that set for a unit of two.

§ 435.841 [Removed]

52. Section 435.841 is removed.

53. Section 435.843 is revised to read as follows:

§ 435.843 Medically needy resource standard: State plan requirements.

The State plan must specify the resource standard for the covered medically needy groups.

54. Section 435.845 is revised to read as follows:

§ 435.845 Medically needy resource eligibility.

To determine eligibility on the basis of resources for medically needy individuals, the agency must:

(a) Consider only the individual's resources and those that are considered available to him under the financial responsibility requirements for relatives in § 435.602.

(b) Deduct the amounts that would be deducted in determining resource eligibility for the medically needy group as provided for in § 435.601 or under the criteria of States using more restrictive criteria than SSI as provided for in § 435.121. In determining the amount of an individual's resources for Medicaid eligibility, States must count amounts of resources that otherwise would not be counted under the conditional eligibility provisions of the SSI or AFDC programs.

(c) Apply the resource standard specified under § 435.840.

55. The center heading appearing before § 435.850 is removed.

§§ 435.850–435.851 [Removed]

56. Sections 435.850 and 435.851 are removed.

§ 435.852 [Removed]

57. Section 435.852 is removed.

58. Section 435.1005 is revised to read as follows:

§ 435.1005 Recipients in institutions eligible under a special income standard.

For recipients in institutions whose Medicaid eligibility is based on a special income standard established under § 435.236, FFP is available in expenditures for services provided to those individuals only if their income before deductions, as determined by SSI budget methodology, does not exceed 300 percent of the SSI benefit amount payable under section 1611(b)(1) of the Act to an individual in his own home who has no income or resources.

59. Section 435.1007 is revised to read as follows:

§ 435.1007 Categorically needy, medically needy, and qualified Medicare beneficiaries.

(a) FFP is available in expenditures for covered services provided to

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categorically needy recipients, medically needy recipients, and qualified Medicare beneficiaries, subject to the restrictions contained in subpart K of this part and as provided in paragraphs (b) and (e) of this section. However, the restrictions listed in paragraphs (b) and (e) of this section do not apply to expenditures for medical assistance made on behalf of qualified Medicare beneficiaries under section 1905(p) of the Act; individuals receiving Medicaid as categorically needy under section 1902(a)(10)(A)(i) (I), (II), (III), (IV), (V), (VI), or (VII) and section 1902(a)(10)(A)(ii) (I), (IX), or (X) of the Act; individuals who are eligible to receive benefits (or would be eligible for those benefits if they were not in a medical institution); and any individuals deemed to be members of the groups identified in this sentence.

(b) Except as provided in paragraphs (c) and (d) of this section, FFP is not available in State expenditures for individuals (including the medically needy) whose annual income after deductions specified in § 435.831 (a) and (c) does not exceed the following amounts, rounded to the next higher multiple of $100.

(1) For individuals, 133⅓ percent of the highest money payment amount most frequently made to one-person families without income and resources under the State's AFDC plan.

(2) For couples and families of two or more, 133⅓ percent of the highest money payment most frequently made under the State's AFDC plan to a family of the same size without income and resources. If the State's AFDC plan specifies a maximum family size beyond where there is no increase in benefits, the medically needy income levels for families whose size exceeds that maximum will be determined by adding an amount for each family member over the maximum size. These amounts must be reasonably related to the amounts by which the State's AFDC plan increases benefits for additional family members in families below the maximum size.

(c) In the case of a family consisting only of two individuals, both of whom are adults and at least one of whom is aged, blind, or disabled, the State of California may use the amount of the AFDC payment most frequently made to a family of one adult and two children for purposes of computing the 133⅓ percent limitation (under the authority of section 4106 of Public Law 100–230).

(d) For purposes of paragraph (b)(1) of this section, a State that as of June 1, 1989, has in its State plan (as defined in section 2373(c)(5) of Public Law 98–369 as amended by section 9 of Public Law 100–93) an amount for individuals that was reasonably related to 133⅓ percent of the highest amount of AFDC which would ordinarily be paid to a family of two without income or resources may use an amount based upon a reasonable relationship to such an AFDC standard for a family of two.

(e) FFP is not available in expenditures for services provided to categorically needy and medically needy recipients subject to the FFP limits if their annual income, after the cash assistance income deductions are applied and before the less restrictive income deductions under § 435.601(c) are applied, exceeds the 133⅓ percent limitation described under paragraphs (b), (c), and (d) of this section.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436 is amended as follows:

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise noted.

2. Section 436.3 is amended by revising the definitions of "Categorically needy" and "Medically needy" to read as follows:

§ 436.3 Definitions and use of terms.

* * * * *

Categorically needy refers to families and children, aged, blind or disabled individuals, and pregnant women listed under subparts B and C of this part who are eligible for Medicaid. Subpart B of this part describes the mandatory eligibility groups who, generally, are receiving or deemed to be receiving cash assistance under the Act. These mandatory groups are specified in sections 1902(a)(10)(A)(i) and 1902(e) of the Act. Subpart C of this part describes the optional eligibility groups of individuals who, generally, meet the categorical requirements that are the same as or less restrictive than those of the cash assistance programs but are not receiving cash payments. These optional groups are specified in sections 1902(a)(10)(A)(ii) and 1902(e) of the Act.

* * * * *

Medically needy means families, children, aged, blind, or disabled individuals, and pregnant women listed in subpart D of this part who are not listed in subparts B and C of this part as categorically needy but who may be eligible for Medicaid under this part because their income and resources are within limits set by the State under its Medicaid plan (including persons whose income and resources fall within these limits after their incurred expenses for medical or remedial care are deducted). (Specific financial requirements for determining eligibilitv of the medically needy appear in subpart I of this part.)

* * * * *

3. Section 436.111 is revised to read as follows:

§ 436.111 Individuals who are not eligible for cash assistance because of a requirement not applicable under Medicaid.

(a) The agency must provide Medicaid to individuals who would be eligible for OAA, AB, APTD, or AABD except for an eligibility requirement used in those programs that is specifically prohibited under title XIX of the Act.

(b) The agency also must provide Medicaid to:

(1) Individuals denied AFDC solely because of policies requiring the deeming of income and resources of the following individuals who are not included as financially responsible relatives under section 1902(a)(17)(D) of the Act:

(i) Stepparents who are not legally liable for support of stepchildren under a State law of general applicability;

(ii) Grandparents

(iii) Legal guardians;

(iv) Aliens sponsors who are not organizations; and

(v) Siblings.

(2) Individuals denied AFDC because of the involuntary inclusion of all eligible siblings living in the home as members of AFDC filing units.

4. Section 436.201 is revised to read as follows:

§ 436.201 Individuals included in optional groups.

(a) The agency may choose to cover as optional categorically needy any group or groups of the following individuals who are not receiving cash assistance and who meet the appropriate eligibility criteria for groups specified in the separate sections of this subpart:

(1) Aged individuals (65 years of age or older);

(2) Blind individuals (as defined in § 436.530);

(3) Disabled individuals (as defined in § 436.541);

(4) Individuals under age 21 (or, at State option), under age 20, 19, or 18) or reasonable classifications of these individuals;

(5) Specified relatives under section 406(b)(1) of the Act who have in their care an individual who is determined to be dependent) as specified in § 436.510;

(6) Pregnant women; and

(7) Essential spouses specified under § 436.230.

(b) If the agency provides Medicaid to any individual in an optional group specified in paragraph (a) of this section, the agency must provide Medicaid to all individuals who apply and are found eligible to be members of that group.

5. The center heading appearing before § 436.210 and § 436.211 are revised to read as follows:

Options for Coverage of Families and Children and Aged, Blind, and Disabled Individuals, Including Pregnant Women

§ 436.210 Individuals who meet the income and resource requirements of the cash assistance programs.

The agency may provide Medicaid to any group or groups of individuals specified under § 436.201(a)(1), (a)(2), (a)(3), (a)(5), and (a)(6) who are not mandatory categorically needy and who meet the income and resource requirements of the appropriate cash assistance program for their status (that is, OAA, AFDC, AB, APTD, or AABD).

6. Section 436.211 is revised to read as follows:

§ 436.211 Individuals who would be eligible for cash assistance if they were not in medical institutions.

The agency may provide Medicaid to any group or groups of individuals specified in § 436.201(a) who are in title XIX reimbursable medical institutions and who:

(a) Are ineligible for the cash assistance program appropriate for their status (that is, OAA, AFDC, AB, APTD, or AABD) because of lower income standards used under the program to determine eligibility for institutionalized individuals; but

(b) Would be eligible for aid or assistance under the State's approved plan under OAA, AFDC, AB, APTD, or AABD if they were not institutionalized.

7. Section 436.212 is amended by revising paragraph (a) to read as follows:

§ 436.212 Individuals who would be eligible for cash assistance if the State plan for OAA, AFDC, AB, APTD, or AABD were as broad as allowed under the Act.

(a) The agency may provide Medicaid to any group or groups of individuals specified under § 436.201(a) who:

(1) Would be eligible for OAA, AFDC, AB, APTD, or AABD if the State's plan under those programs included individuals whose coverage under title I, IV–A, X, XIV, or XVI of the Act is optional (for example, the agency may provide Medicaid to individuals who are 18 years of age and who are attending secondary school full-time and are expected to complete their education before age 19, even though the State's AFDC plan does not include them); or

(2) Would qualify for OAA, AFDC, AB, APTD, or AABD if the State's plan under those programs did not contain eligibility requirements more restrictive than, or in addition to, those required under the appropriate title of the Act. (For example, the agency may provide Medicaid to individuals who would meet the Federal definition of disability, 45 CFR 233.80, but who do not meet the State's more restrictive definitions.)

* * * * *

8. The center heading appearing before § 436.220 is removed and § 436.220 is amended by revising the section heading and paragraph (a) to read as follows:

§ 436.220 Individuals who would meet the income and resource requirements under AFDC if child care costs were paid from earnings.

(a) The agency may provide Medicaid to any group or groups of individuals specified under § 436.201(a)(4), (a)(5), and (a)(6) who would meet the income and resource requirements under the State's AFDC plan if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure.

* * * * *

9. Section 436.222 is amended by revising the section heading and paragraph (a), republishing the introductory text to paragraph (b), and revising paragraph (b)(3) is revised to read as follows:

§ 436.222 Individuals under age 21 who meet the income and resource requirements of AFDC.

(a) The agency may provide Medicaid to individuals under age 21 (or at State option, under age 20, 19, or 18) or reasonable categories of these individuals as specified in paragraph (b) of this section, who are not receiving cash assistance but who meet the income and resource requirements of the State's approved AFDC plan.

(b) The agency may cover all individuals described in paragraph (a) of this section or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

* * * * *

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. If the agency covers these individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

* * * * *

10. In § 436.301, paragraph (a) is revised, the introductory texts of paragraphs (b) and (b)(2) are republished, and paragraph (b)(2)(ii) is revised to read as follows:

§ 436.301 General rules.

(a) A Medicaid agency may provide Medicaid to individuals specified in this subpart who:

(1) Either:

(i) Have income that meets the standard in § 436.811; or

(ii) If their income is more than allowed under the standard, have incurred medical expenses at least equal to the difference between their income and the applicable income standards; and

(2) Have resources that meet the standard in §§ 436.840 and 436.843.

(b) If the agency chooses this option, the following provisions apply:

* * * * *

(2) The agency may provide Medicaid to any or all of the following groups of individuals:

* * * * *

(ii) Specified relatives (§ 436.310).

* * * * *

11. In § 436.308, paragraph (a) is revised, the introductory text of paragraph (b) is republished, and paragraph (b)(3) is revised to read as follows:

§ 436.308 Medically needy coverage of individuals under age 21.

(a) If the agency provides Medicaid to the medically needy, it may provide Medicaid to individuals under age 21 (or at State option, under age 20, 19, or 18) as specified in paragraph (b) of this section:

(1) Who would not be covered under the mandatory medically needy group of individuals under 18 under § 436.301(b)(1)(ii); and

(2) Who meet the income and resource requirements of subpart I of this part.

(b) The agency may cover all individuals described in paragraph (a) of this section, or reasonable classifications of those individuals. Examples of reasonable classifications are as follows:

* * * * *

(3) Individuals in nursing facilities when nursing facility services are provided under the plan to individuals within the age group selected under this provision. When the agency covers such individuals, it may also provide Medicaid to individuals in intermediate care facilities for the mentally retarded.

* * * * *

12. Section 436.310 is revised to read as follows:

§ 436.310 Medically needy coverage of specified relatives.

(a) If the agency provides for the medically needy, it may provide Medicaid to specified relatives, defined in paragraph (b) of this section, who meet the income and resource requirements of subpart I of this part.

(b) *Specified relatives* means individuals who:

(1) Are listed under section 406(b)(1) of the Act and in 45 CFR 233.90(c)(1)(v)(A); and

(2) Have in their care an individual who is determined to be (or would, if needy, be) dependent, as specified in § 436.510.

§ 436.510 [Amended]

13. Section 436.510 is amended by removing the phrase "under age 21" from paragraph (a).

14. Section 436.520 is revised to read as follows:

§ 436.520 Age requirements for the aged.

The agency must not impose an age requirement of more than 65 years.

15. A new § 436.522 is added to subpart F under the undesignated center heading "Age" to read as follows:

§ 436.522 Determination of age.

(a) In determining age, the agency must use the common law method (under which an age is reached the day before the anniversary of birth) or the popular usage method (under which a specific age is reached on the anniversary of birth), whichever is used under the corresponding State plan for OAA, AFDC, AB, APTD, or AABD.

(b) The agency may use an arbitrary date, such as July 1, for determining an individual's age if the year, but not the month, of his birth is known.

16. Section 436.600 is revised to read as follows:

§ 436.600 Scope.

This subpart prescribes:

(a) General financial requirements and options for determining the eligibility of both categorically needy and medically needy individuals specified in subparts B, C, and D of this part. Subparts H and I of this part prescribe additional financial requirements.

(b) Methods the Medicaid agency must use to establish Medicaid budgetary units and determine financial eligibility for categorically needy and medically needy families and children who are not AFDC or deemed AFDC recipients and whose eligibility the agency determines through application of AFDC financial criteria applicable to Medicaid.

17. A new § 436.601 is added to subpart G to read as follows:

§ 436.601 Application of financial eligibility methodologies.

(a) *Definitions.* For purposes of this section, "cash assistance financial methodologies" refers to the income and resources methodologies of the OAA, AFDC, AB, APTD, and AABD programs.

(b) *Basic rule for use of cash assistance methodologies.* Except as specified in paragraphs (c), (d), and (e) of this section, in determining financial eligibility of individuals as categorically and medically needy, the agency must apply the cash assistance financial methodologies and requirements of the cash assistance program that is most closely categorically related to the individual's status.

(c) *Financial responsibility of relatives.* The agency must use the requirements for financial responsibility of relatives specified in § 436.602.

(d) *Use of less restrictive methodologies than under cash assistance program.* (1) At State option, and subject to the conditions of paragraphs (d)(2) through (d)(5) of this section, the agency may apply income and resource methodologies that are less restrictive than the cash assistance methodologies in determining financial eligibility of the following groups:

(i) Qualified pregnant women and children under the mandatory categorically needy group under § 436.120;

(ii) Low-income pregnant women, infants, and children specified in section 1902(a)(10)(i) (IV), (VI), and (VII) of the Act;

(iii) Qualified Medicare beneficiaries specified in sections 1902(a)(10)(E) and 1905(p) of the Act;

(iv) Optional categorically needy individuals under groups established under subpart C of this part and section 1902(a)(10)(A)(ii) of the Act; and

(v) Medically needy individuals under groups established under subpart D of this part and section 1902(a)(10)(C)(i)(III) of the Act.

(2) The income and resource methodologies that an agency elects to apply to groups of individuals under paragraph (c)(1) of this section may be less restrictive, but no more restrictive, than:

(i) For groups of aged, blind, and disabled individuals, the SSI methodologies; or

(ii) For all other groups, the methodologies under the State plan most closely categorically related to the individual's status.

(3) A financial methodology is considered to be no more restrictive if, by using the methodology, additional individuals may be eligible for Medicaid and no individuals who are otherwise eligible are by use of that methodology made ineligible for Medicaid.

(4) The less restrictive methodology applied under this section must be comparable for all persons within each category of assistance (aged, or blind, or disabled, or AFDC-related) within each eligibility group. For example, if the agency chooses to apply a less restrictive income or resource methodology to aged individuals, it must apply that methodology to an eligibility group of all aged individuals within the selected group.

(5) The application of the less restrictive income and resource methodologies permitted under this section must be consistent with the limitations and conditions on FFP specified in subpart K of this part.

(e) *Non-AFDC and deemed AFDC recipients.* In determining the eligibility of individuals who are not AFDC or deemed AFDC recipients and whose eligibility and agency determines through application of AFDC financial criteria applicable to Medicaid, the agency must establish Medicaid budgetary units and determine financial eligibility in accordance with §§ 436.604 and 436.606.

(f) *State plan requirements.* (1) The State plan must specify that, except to the extent precluded by §§ 436.602, 436.604, 436.606 in determining financial eligibility of individuals, the agency will apply the cash assistance financial methodologies and requirements, unless the agency chooses to apply less restrictive income and resource methodologies, in accordance with paragraph (d) of this section.

(2) If the agency chooses to apply less restrictive income and resource methodologies, the State plan must specify:

(i) The less restrictive methodologies that will used; and

(ii) The eligibility groups or groups to which the less restrictive methodologies will be applied.

18. Section 436.602 is revised to read as follows:

§ 436.602 Fianancial responsibility of relatives and other individuals.

(a) Subject to the provisions of paragraphs (b), (c) and (d) of this section, in determining financial responsibility of relatives and other persons for individuals under Medicaid, the agency must use the following financial eligibility requirements and methodologies.

(1) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not consider income and

resources of any relative as available to an individual.

(2) In relation to individuals under 21 (as described in section 1905(a)(i) of the Act), the financial responsibility requirements and methodologies include considering the income and resources of parents or spouses whose income and resources would be considered if the individual under age 21 were dependent under the State's approved AFDC plan, whether or not they are actually contributed, except as specified in paragraphs (c) and (d) of this section. These requirements and methodologies must be applied in accordance with provisions of the State's approved AFDC plan.

(3) When a couple ceases to live together, the agency must count only the income and resources of the individual in determining his or her eligibility, beginning the first month following the month the couple ceases to live together.

(b) The agency may apply income and resource methodologies that are less restrictive than the cash assistance methodologies as specified in the State plan in accordance with § 436.601(d).

(c) The agency must apply the procedures specified in §§ 436.604 and 436.606 to establish budgetary units and determine financial eligibility of individuals who are not AFDC or deemed AFDC recipients and whose eligibility the agency determines by applying AFDC financial criteria applicable to Medicaid.

§ 436.603 [Redesignated]

§ 436.604 [Redesignated]

19. Sections 436.603 and 436.604 are redesignated as §§ 436.608 and 436.610 respectively.

20. New §§ 436.604 and 436.606 are added to read as follows:

§ 436.604 Methods for establishing income and resource eligibility standards for AFDC-related (non-cash assistance) groups.

(a) The agency must establish financial eligibility standards for AFDC-related individuals who are not AFDC or deemed AFDC recipients and to whom the agency applies AFDC financial criteria in accordance with the procedures specified in this section.

(b) The agency must establish Medicaid budgetary units for families and children. Each budgetary unit must include the following individuals who are living in the home:

(1) Children under 21 who:

(i) Do not receive AB, AABD, or APTD;

(ii) Are within the degree of relationship to be included in the same AFDC filing unit; and

(iii) Are potentially eligible under the approved State Medicaid plan;

(2) Parents of children described in paragraph (b)(1) of this section; and

(3) Other relatives described in section 1905(a) of the Act who are included under the plan, or who are (or would, if the child received AFDC, be) essential persons with respect to children described in paragraph (b)(1) of this section as defined under the agency's AFDC plan.

(c) The agency must determine an appropriate prorated income and resource standard for each member of the budgetary unit.

(d) The agency must establish individual prorated income and resource standards for all size families for all AFDC-related eligibility groups under its approved plan (that is, prorated standards based on an equal division of the relevant payment standards—AFDC, poverty level standards, and standards for the medically needy—by the number of persons in the budgetary (unit). The total standard for each for each budgetary unit must not exceed the FFP limits established under § 435.1007.

(e) The agency must establish statewide income and resource standards for each budgetary unit size for all groups. In States where the approved AFDC plan and the Medicaid plan for the medically needy contain geographical differentials, the agency must establish standards for each budgetary unit size for these groups, reflecting the geographical differentials in lieu of statewide standards.

(f) The agency must determine the relevant resource standard to be used for each member of the budgetary unit. The standards to be used must be the standard for the same size as the budgetary unit and must be for the appropriate group for which the individual's eligibility is being determined. The agency must also consolidate the income and resource standards for parents and for other married relatives.

(g) The provisions of this section do not apply to Guam.

§ 436.606 Procedures for determining income and resource eligibility for AFDC-related (non-cash assistance) eligibility groups.

(a) The agency must use the procedures specified in this section to determine financial eligibility of individuals who are not AFDC or deemed AFDC recipients and to whom the agency applies AFDC financial criteria applicable to Medicaid.

(b) For purposes of determining income eligibility and resource eligibility, the agency must:

(1) Determine the amount of income and the amount of resources owned by each member of the Medicaid budgetary unit;

(2) Prorate the amount of income and the amount of resources of parents by the number of persons in the budgetary unit for whom they are financially responsible under § 435.602 and themselves;

(3) Determine the amount of income and the amount of resources owned by relatives, other than parents, and essential persons;

(4) Add to each child's income and resources his prorated share of his or her parents' income and resources.

(c) To determine financial eligibility, the agency must compare the income and resources of each member of the Medicaid budgetary unit determined under paragraph (b) of this section first to the appropriate prorated standard for any categorically needy eligibility group for which he or she is potentially eligible. If a budgetary unit member's income and resources are equal to or less than the individual income and resource standard, the individual is financially eligible as categorically needy. If income and resources exceed the standards and the medically needy are included under the plan, the agency must compare the individual's income and resources determined under paragraph (b) of this section to prorated medically needy standards to determine Medicaid eligibility.

(d) If one or more members of the Medicaid budgetary unit receive AFDC or Medicaid under § 436.111, the agency must use the methods described in paragraphs (b) and (c) of this section to determine income and resource eligibility for the members of the Medicaid budgetary unit who are not receiving Medicaid under those provisions. Medicaid budgetary unit members who receive AFDC, or Medicaid under § 436.111, remain members of the budgetary unit for purposes of determining eligibility for the other budgetary unit members.

(e) The agency must apply AFDC income disregards, or more liberal disregards approved under § 436.601, to each Medicaid budgetary unit member's income, except in the case of allocating income from parents and spouses to their dependents living in the home who are not members of the budgetary unit. In determining the amount to be allocated to these dependents, the agency must treat them as if they are in the Medicaid budgetary unit.

(f) The agency must use the actual method used by the AFDC program for determining whether the $30 and ⅓ or $30 earned income disregard is applied to individual family members whose eligibility is being determined under categorically needy eligibility groups.

(g) The agency must compute the amount of lump sum nonrecurring income to use for the current and future months by dividing the lump sum by the AFDC need standard comparable to the Medicaid budgetary unit for the month the lump sum is received.

(h) The agency may consider parents, other relatives and essential persons whose eligibility under the plan is dependent upon having a needy dependent child living in the home as eligible only if there is a dependent child in the Medicaid budgetary unit. A determination that the parents, other relatives, or essential persons are needy under the individual budgetary unit calculations is not sufficient to establish these individuals' eligibility for Medicaid.

(i) The provisions of this section do not apply to Guam.

21. The heading of subpart H and §§ 436.700 and 436.711 are removed and reserved.

22. The undesignated center heading appearing before § 436.811 and § 436.811 are revised to read as follows:

Medically Needy Income Standard

§ 436.811 Medically needy income standard: General requirements.

(a) To determine eligibility of medically needy individuals, the agency must use a single income standard for all covered medically needy groups that meets the requirements of this section.

(b) The income standard must take into account the number of persons in the assistance unit. The standard may not diminish by the number of persons in the unit (for example, if the income level in the standard for an assistance unit of two is set at $400, the income level in the standard for an assistance unit of three may not be less than $400).

(c) The income standard must be set at an amount that is no lower than the lowest income standard used on or after January 1, 1966, to determine eligibility under the cash assistance programs that are related to the State's covered medically needy group or groups of individuals under § 436.301.

(d) The income standard may vary based on the variations between shelter costs in urban areas and rural areas.

§ 436.812 [Removed]

23. Section 436.812 is removed.

24. Section 436.814 is revised to read as follows:

§ 436.814 Medically needy income standard: State plan requirements.

The State plan must specify the income standard for the covered medically needy groups.

25. The center heading before § 436.821 is removed.

§ 436.821 [Removed]

26. Section 436.821 is removed.

§ 436.832 [Amended]

27. Section 436.832 is amended as follows:

a. The section heading is revised to read as follows:

§ 436.832 Post-eligibility treatment of income of institutionalized individuals: Application of patient income to the cost of care.

b. In paragraph (c)(2)(ii), the cross-reference "§ 436.814" is revised to read "§ 436.811".

c. In paragraph (c)(3)(iii)(A), the cross-reference to "§ 436.814" is revised to read "§ 436.811".

28. The center heading appearing before § 436.840 and § 436.840 are revised to read as follows:

Medically Needy Resource Standard

§ 436.840 Medically needy resource standard: General requirements.

(a) To determine eligibility of medically needy individuals, the Medicaid agency must use a single resource standard that is set at an amount that is no lower than the lowest resource standard used on or after January 1, 1966, to determine eligibility under the cash assistance programs that are related to the State's covered medically needy group or groups of individuals under § 436.301.

(b) The resource standard established under paragraph (a) of this section may not diminish by an increase in the number of persons in the assistance unit. For example, the resource level in the standard for an assistance unit of three may not be less than that set for an assistance unit of two.

§ 436.841 [Removed]

29. Section 436.841 is removed.

30. Section 436.843 is revised to read as follows:

§ 436.843 Medically needy resource standard: State plan requirements.

The State plan must specify the resource standard for the covered medically needy groups.

31. Section 436.845 is amended by republishing the introductory text of this section and by revising paragraphs (a), (c), and (d) to read as follows:

§ 436.845 Medically needy resource eligibility.

To determine eligibility on the basis of resources for medically needy individuals, the agency must:

(a) Consider only the individual's resources and those that are considered available to him under the financial responsibility requirements for relatives under § 436.602;

* * * * *

(c) Deduct the value of resources that would be deducted in determining eligibility under the State's plan for OAA, AFDC, AB, APTD, or AABD or under the State's less restrictive financial methodology specified in the State Medicaid plan in accordance with § 436.601. In determining the amount of an individual's resources for Medicaid eligibility, States must count amounts of resources that otherwise would not be counted under the conditional eligibility provisions of the AFDC program.

(d) Apply the resource standards established under § 436.840.

32. The center heading appearing before § 436.850 is removed.

§ 436.850 [Removed]

§ 436.851 [Removed]

§ 436.852 [Removed]

33. Sections 436.850, 436.851, and 436.852 are removed.

PART 440—SERVICES: GENERAL PROVISIONS

C. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 440.220, the introductory text of paragraph (a) is republished and paragraph (a)(2) is revised to read as follows:

§ 440.220 Required services for the medically needy.

(a) A State plan that includes the medically needy must specify that the medically needy are provided, as a minimum, the following services:

* * * * *

(2) Ambulatory services, as defined in the State plan, for:

(i) Individuals under age 18; and

(ii) Groups of individuals entitled to institutional services.

* * * * *

3. Section 440.250 is amended by revising paragraph (h) to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(h) Ambulatory services for the medically needy (§ 440.220(a)(2)) may be limited to:

(1) Individuals under age 18; and

(2) Groups of individuals entitled to institutional services.

* * * * *

Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Programs

Dated: September 29, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: September 30, 1992.

Louis H. Sullivan,

Secretary.

[FR Doc. 93–880 Filed 1–15–93; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 4

RIN 1092–AA10

Department Hearings and Appeals Procedures

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends regulations which govern the effect of an administrative decision pending appeal before the Interior Department's Office of Hearings and Appeals. The provisions of the regulations currently provide that the filing of a notice of appeal automatically suspends the effect of the decision appealed from pending the outcome on appeal, unless the Director of the Office of Hearings and Appeals or an Appeals Board exercises discretion to provide that the decision appealed from will be in full force and effect immediately. Under the amended rule the decision appealed from will become effective at the expiration of the time for filing a notice of appeal where no petition for a stay is filed, or 45 days after the time for filing a notice of appeal where a timely petition for a stay is filed, unless the Director or an Appeals Board has determined otherwise in accordance with specified standards.

EFFECTIVE DATE: February 18, 1993.

FOR FURTHER INFORMATION CONTACT: Nadine Markham-Itteilag, Branch of Administrative Law and General Legal Services, Division of General Law, Office of the Solicitor, room 6531, Main Interior Building, 1849 C Street, NW., Washington, DC 20240, (202) 208–5216.

SUPPLEMENTARY INFORMATION

I. Background and Discussion

On Friday, September 25, 1992, the Department of the Interior published for comment in the **Federal Register** a proposed rule to amend its regulations at 43 CFR 4.21, which govern the effect of an administrative decision pending appeal before the Department's Office of Hearings and Appeals. This rule was proposed in order that there would be an analysis of individual appeals to determine whether a stay of decision is appropriate rather than the procedure under the current rules, whereby a stay is imposed in every appeal, without regard to whether a stay of decision is requested or is appropriate. The amended rule does not take away any substantive right of appeal that currently exists. The rule does require an appellant who desires a stay of decision pending appeal to file a petition for a stay that justifies why a stay is necessary according to specified standards.

It should be noted that, as stated in the text of the rule, whenever there is a conflict between the provisions of § 4.21 and a special rule applicable to a particular type of proceeding, for example, the new regulations governing administrative appeals of orders issued by the Minerals Management Service's Royalty Management Program at 30 CFR 243.2 (57 FR 44991, Sept. 30, 1992), the special rule will govern.

The Department of the Interior received comments on the proposed rule from nine sources. Two of the sources were components of the Department: The Division of Energy and Mineral Resources of the Bureau of Land Management (BLM) and the Director of the Billings Area Office of the Bureau of Indian Affairs (BIA). A summary of the comments and the Department's responses to the comments follows.

Reaction to the Proposed Revision to the Department's Appeal Procedures

Eight of the nine commenters generally supported the Department's proposal to revise its appeal procedures regarding the effect of an administrative decision pending appeal before the Office of Hearings and Appeals. Six of the eight commenters who supported the proposal, however, raised concerns regarding either the substance of the proposed rule or specific portions of the proposed text. Several of these commenters urged changes to the text of the rule to address specific concerns. These concerns and requests for changes to the proposed text of the rule will be addressed in greater detail later in the discussion.

The ninth commenter objected to the proposed revision and recommended that the proposed rulemaking be withdrawn. The commenter indicated that the revision would allow a decision to be in full force and effect even though the decision would not yet be "final" in that it could be reversed on appeal by one of the Department's Appeals Boards. The commenter argued that to allow a decision to become effective while an appeal is still pending and until a final judgment has been made would unfairly burden those being regulated because the amended rule requires the appellant to prove the need for a stay. The commenter feared that this requirement would have a chilling effect on appellants. The commenter argued that requiring the appellant to justify why a stay of decision pending appeal is warranted would relieve the agency of its burden to justify the decision. The commenter stated that the burden of justifying a decision properly falls upon the agency or the Board rendering a decision and that these entities should continue to assume this burden.

The Department believes that revision of its general rules governing the effect of the filing of an appeal on a Departmental decision is desirable and will ultimately improve the Department's appeals process. The Department does not believe it is unfair to require an appellant to assume the burden of demonstrating the necessity for a stay of a decision pending appeal. The current procedures can result, and have been demonstrated to result, in unfairness to third parties, who are often prevented from proceeding in good faith on the basis of well-documented and thoroughly considered departmental decisions because an appellant can, by the mere filing of an appeal, no matter how frivolous, automatically halt the implementation of a Departmental decision, without having to show that such an interruption is justified.

While it is true that, under the revised procedures, an appellant will need to address the merits of the decision in its petition for a stay, the ultimate burden of justifying the decision on appeal still rests firmly upon the agency. The revised appeal procedures, which mandate that the appellant justify the reasons for a stay, do not take away any substantive right of appeal that currently exists, and do not alter the rights and burdens of the parties with respect to justifying the ultimate disposition of an appeal.

Proposed Revision of Other Regulations That Govern Specific Types of Appeals Before the Office of Hearings and Appeals

Two commenters referenced current petitions for rulemaking that would amend other provisions governing the Department's appeals process. One commenter expressed the view that amending the specific regulations governing coal mining appeals would be preferable to amending the Department's general administrative appeal provisions.

This rulemaking does not preclude the consideration of revisions to other portions of the Department's appeals regulations such as those referred to by the commenters. The Department believes, however, that amending the general stay provisions is an appropriate way to deal with its concerns about stays of decision pending appeals. The petitions for other rulemaking referenced by the commenters are outside the scope of this rulemaking but are being fully considered by the appropriate Departmental offices.

Effect of the Rule on the Bureau of Indian Affairs' Leasing Programs

The commenter from the BIA raised a concern about the effect of the proposed revision on the BIA's leasing programs. The commenter explained that the BIA has a policy commitment to lease all lands not currently under lease in order to ensure a continued flow of income to its wards pursuant to its trustee responsibilities. If the BIA cancels a lease held by an individual and the cancellation were to go into full force and effect pending appeal, the BIA's fulfillment of its commitment to issue a new lease to a different lessee would likely occur before all appeal avenues were exhausted. Were the original decision of the BIA ultimately to be overturned by the Interior Board of Indian Appeals, the BIA would be exposed to further lease cancellation problems.

The potential difficulties that concern the BIA commenter may be easily avoided, however, if the BIA refrains from issuing new leases while appeals for which a stay is not granted are pending before the Board of Indian Appeals. The BIA's commitment to issue leases is a policy that is capable of suspension in any particular pending appeal. Further, any of the regulations governing specific administrative appeals before the Department may be amended to impose different procedures from those outlined in § 4.21 and to be excepted, in whole or in part, from the provisions in § 4.21.

Retroactive Effect

Two commenters suggested that the new regulation should be applied to existing appeals before the Office of Hearings and Appeals.

Given that the rule will require the Office of Hearings and Appeals to begin ruling on petitions for a stay of decision, the Department believes it would be unwise to overwhelm the Office at the outset by encouraging an inundation of petitions for cases that are currently pending before the Office of Hearings and Appeals. Further, it would be unfair to change the rules in mid-appeal for existing appellants. The Department, after giving much consideration to the matter, has concluded that the new rule shall not be given retroactive effect.

Authority of the Secretary of the Interior To Take Jurisdiction of an Appeal

One commenter believed that the language granting the Director or an Appeals Board the authority to order that a decision be stayed pending appeal implied that the Secretary would lack the same authority and could be construed to restrict the Secretary's power under 43 CFR 4.5 to assume jurisdiction of any appeals matter at any stage. The commenter suggested that the final regulation expressly state that the Secretary may order a decision to be in effect immediately.

The Department disagrees with the commenter's concern that the language of the rule implies any lack of authority on the part of the Secretary. Just as the current language of § 4.21, which refers only to the Director or an Appeals Board does not imply any lack of jurisdiction on the part of the Secretary, neither does the wording of the amended rule. The provisions of 43 CFR 4.5(a) are quite clear that the Secretary may take jurisdiction of any case before any employee or employees of the Department at any stage, and may review any decision of an employee or employees, or direct reconsideration of a decision. The Department believes that to reference the Secretary in the text of the rule where reference is made to the Director or an Appeals Board might imply that the Secretary is bound by the same time limits imposed upon the Office of Hearings and Appeals in reaching a determination on a stay issue. The Department prefers to avoid any implication of such a limit upon the authority of the Secretary conferred by 43 CFR 4.5.

The "75-day Grace Period"

Three commenters believed that the Department should eliminate provisions in the proposed rule that could prevent a decision from becoming effective for up to 45 days after the appeal period expires, in the event that a petition for a stay is filed. The commenters suggested that the rule be revised to indicate that a departmental decision will remain effective during the pendency of an appeal, beginning the date the decision is issued, unless determined otherwise. Two commenters suggested the removal of proposed paragraphs (a)(1), (a)(2) and (a)(5) in order to accomplish this objective.

The Department has considered the commenters' concerns and declines to adopt their suggestions to eliminate any waiting period whatsoever before a decision becomes effective pending appeal. One of the primary purposes of the rule is to simplify the Department's appeals process. The Department believes that, if all decisions become effective before the time for filing an appeal has expired, and before the Office of Hearings and Appeals has had the opportunity to give full consideration to a petition for a stay, the appeals process could become more cumbersome and complex than warranted. Further, the revision to the rule is intended to eliminate "automatic" consequences in the appeals process, and to allow instead for analysis of the merits of individual situations in determining whether a stay is appropriate. The Department believes that in order to afford equitable treatment to all parties it is better, for purposes of this generally-applied rule, to postpone the effective date of a decision for the minimal time of up to 75 days from the date of the initial decision in order to afford the opportunity to determine whether a stay of decision pending appeal is appropriate.

One commenter noted an inconsistency between the summary statement preceding the proposed rule, which stated that a decision would be in full force and effect immediately, and the text of the proposed rule. The inconsistency has been corrected in the summary text of this notice.

Construction with Other Procedural Regulations in Title 43 of the Code of Federal Regulations

One commenter noted that the Department's newly promulgated Oil and Gas/Geophysical rules at 43 CFR parts 3150 and 3160 (57 FR 44333, Sept. 25, 1992), which are excepted from the provisions of § 4.21(a), do not provide a period for an appellant to file a petition for a stay, or for the Office of Hearings and Appeals to act on the petition for a stay, before a decision goes into full force and effect. The commenter urged that the provisions in § 4.21(a) be altered to place a Departmental decision in full force and effect immediately to achieve consistency with the provisions of 43 CFR parts 3150 and 3160.

Given the wide variety of Departmental decisions which may be appealed, it may be inappropriate in some circumstances to place a decision into immediate full force and effect. Accordingly, this final rule provides for a reasonable time in which to file a petition for a stay, and in which the Director or an Appeals Board may grant or deny a stay petition. Where appropriate, individual bureaus may amend any of the regulations governing specific administrative appeals to provide for a different effect and to be excepted from the provisions of § 4.21(a). While consistency in the standards and procedures for obtaining a stay is a desired end, the differences between this rule and other specific appeals rules allow for flexibility in determining when and if to place decisions into immediate full force and effect based on the types of decisions being made.

Division of Section 4.21(a) into Paragraphs (a) and (b)

Another commenter was concerned that the text of the rule at proposed § 4.21(a), which would require the Director or an Appeals Board to act upon a petition for a stay within 45 days, does not appear to apply to situations governed by "other pertinent regulations," among them the amended provisions of part 3160. The commenter argued that the combined effect of the two rules leaves a "hiatus," which establishes no time limit within which an Appeals Board must act on a stay requests for a decision issued under part 3160. The commenter requested that § 4.21(a) include direction indicating how appellate officials should handle stay requests which are governed by other regulations and therefore are not governed by § 4.21(a).

The amended parts 3150 and 3160 specifically provide that the provisions of § 4.21(a) shall not apply. Because proposed § 4.21(a) does not apply to decisions governed by other pertinent appeals regulations, for example, parts 3150 and 3160, the procedural provisions in proposed § 4.21(a) would not necessarily have applied to all petitions for stays. Therefore, while the Department has retained the provision that allows time to file a stay petition before a decision goes into full force and effect in § 4.21(a), the procedural changes created by this rule have been moved from paragraph (a) to a new paragraph (b) so as to apply, except where otherwise provided by law or other pertinent regulation, to all petitions for stays to the Director or an appeals Board. Proposed paragraph (b) is redesignated as paragraph (c), and existing paragraph (c) will now become paragraph (d).

Requirement that the Petition for a Stay of Decision be Submitted With the Notice of Appeal

One commenter suggested that the final rule make clear that stay requests will not be entertained unless they are filed at the time of the notice of appeal.

The Department believes that the commenter has inadvertently overlooked the word "together" which appears in the text of the proposed rule at paragraph (a)(2). The Department believes that the text of the rule makes clear that the petition for a stay is to be filed together with a timely notice of appeal. The Department prefers its proposed language to that suggested by the commenter, which would substitute the words "along with" for "together."

The Criteria for Demonstrating Whether a Stay of Decision Pending Appeal is Warranted

Two commenters suggested that the listed criteria for whether a stay is appropriate be altered to achieve greater consistency with judicial review guidelines. They suggested that, rather than merely addressing the listed criteria, the applicant for a stay must be made to demonstrate with specificity that the threatened injury to the applicant outweighs the possible harm to the adverse parties against whom the stay is sought, that the likelihood the appellant will succeed on the merits is "substantial", that there is "substantial" likelihood of immediate irreparable harm if a stay is not granted, and that the public interest "will be furthered by" (as opposed to "favors") the issuance of a stay.

The Department declines to heighten the standard for meeting the four criteria listed in paragraph (b)(1). The Department believes, as a matter of policy, that a lesser standard is warranted for parties wishing to obtain an administrative review of a decision as opposed to judicial review in federal court.

The Burden of Proof Necessary To Obtain a Stay of Decision Pending Appeal

Two commenters suggested that the regulation should clearly state that the burden of proof to obtain a stay rests with the appellant. They indicated their belief that the proposed rule implies that the appellant must do no more than "show" the reasons for relief. They proposed that the rule clearly state that the appellant bears the burden of proving that its appeal satisfies each of the four criteria listed. One commenter proposed that the rules should specify in particular that the appellant's petition for a stay must meet each of the criteria listed. The commenter also objected that the proposed rule does not specifically limit the criteria to be considered to the four listed elements. The commenter further objected that the proposed rule would allow for the Director or an Appeals Board to assign greater weight to any of the criteria over the others in ruling on a petition for a stay. Another commenter suggested that the final rule provide guidance as to how the criteria should be balanced.

The Department agrees with the general thrust of the comments and has inserted language in § 4.21 at paragraph (b)(2), and has modified the language at paragraph (b)(1), to make clear that the burden is on the appellant to demonstrate in the petition for a stay that a stay is necessary under each of the criteria.

The Department also agrees with the commenter that in reaching a decision on a request for a stay, the Director or an Appeals Board is to consider whether all four criteria listed in § 4.21(b)(1) have been met. The Department believes, however, that the language of the rule sufficiently restricts the appellate official to the four criteria listed and therefore has declined to modify the text of the rule as suggested by the commenter. Further, the Department does not believe it is necessary to guide or limit the appellate official in his or her ability to balance the relative weights of the criteria.

Parties Entitled To File a Petition for a Stay of Decision Pending Appeal

One commenter suggested that the final regulation provide that only a party who has filed a notice of appeal that meets all prerequisites for maintaining an appeal before the Board be allowed to seek a stay. The commenter notes that, as drafted, the proposed regulation would have allowed a party opposed to an action to seek a stay of decision even if it could not maintain an appeal in its own right.

The Department agrees with the commenter and has added language to the rule to paragraph (a)(2) to provide that only a party who otherwise may file an appeal with the Office of Hearings and Appeals may file a petition for a stay of decision.

Service of the Petition for a Stay of Decision Pending Appeal on Affected Parties

Three commenters suggested that the rule require that a party who files a petition for a stay must serve a copy of such petition on parties affected by the decision. One commenter suggested that such affected parties should also have the right to file a response to the petition for a stay within 20 days of service of a copy of the petition. Another commenter would limit the time for a response to 10 days and provide that replies to the response would be disregarded in ruling on the petition. Another commenter suggested that the regulations provide the opportunity for a hearing on the motion for a stay.

The Department has adopted the commenters' suggestions that an appellant who files a petition for a stay should be required to serve a copy of the petition on parties to the decision being appealed and that such parties should be afforded the opportunity to respond to the petition. A new paragraph (b)(3) has been inserted in the text of the final rule to provide the necessary procedural guidance. In order that a stay determination may be made as expeditiously as possible, the Department believes that a 10-day limit for a response to a petition is preferable to a longer period. Further it is the Department's position that the procedures added in § 4.21(b)(3) will allow sufficient time for the appellate official to fully consider the merits of a petition for a stay and responses thereto.

In order that the appellate official will have time to decide a stay issue within the 45 day limit, it would be impracticable to provide for replies to responses in the rule. The Department declines to adopt the suggestion, however, that the rule provide that appellate official must disregard replies to a response in deciding on a petition for a stay. Such a change is not necessary because the rule does not provide for parties to reply to a response.

The Department has declined to adopt the suggestion that the regulation at § 4.21 provide the opportunity for a hearing on a petition for a stay. The appellate officials in the Office of Hearings and Appeals may hold hearings, if they deem it necessary, in accordance with the authorities and procedures contained in the subparts that specifically govern the appeal in question. The Department does not think it necessary to burden this amended rule with a reference to a hearing as none exists in the current rule.

Comment on the Text of Proposed Section 4.21(b)

One commenter proposed an amendment to the language of proposed § 4.21(b) in light of the fact that this section creates an administrative requirement to file a request for a stay before the decision becomes a final agency action appealable to Federal court. The commenter argues that this requirement has no substantive purpose where decisions are made immediately effective under the provisions of other regulations governing appeals procedures in title 43 of the CFR.

The Department has adopted the suggestion of the commenter and has added language to proposed § 4.21(b) (§ 4.21(c) in the final rule) to make clear the conditions under which a Departmental decision becomes final agency action subject to judicial review when an alternative appeals regulation has provided that the provisions of § 4.21(a) will not apply to appeals processed under that regulation.

II. Related Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined that this rule is not a major rule under Executive Order 12291. No regulatory impact analysis has been prepared. The Department has also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630, Taking Implications Assessment

This rule does not represent a governmental action capable of interference with constitutionally protected property rights. As it does not limit existing appeal rights, it would not infringe any private property rights. Therefore, the Department of the Interior has determined that this rule will not cause a taking of private property.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Environmental Effects

The Department has determined that this rule is categorically excluded from the National Environmental Protection Act (NEPA) process because it is of an administrative, financial, legal, technical and procedural nature, and therefore neither an environmental assessment nor an environmental impact statement is required. (40 CFR 1508; 516 DM 2.3A).

Executive Order 12778, Civil Justice Reform

The Department of the Interior has certified to the Office of Management and Budget that this final regulation meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12278.

Drafting Information

The author of this rule is Nadine Markham-Itteilag, Attorney-Advisor, Branch of Administrative Law and General Legal Services, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

List of Subjects in 43 CFR Part 4

Administrative practice and procedures, Civil rights, Claims, Equal access to justice, Government contracts, Grazing lands, Indians, Lawyers, Mines, Penalties, Public lands, Surface mining.

This final rule is issued under the authority of 43 U.S.C. 1201.

For the reasons set forth in the preamble, 43 CFR 4.21 is revised to read as set forth below.

1. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. 1201, unless otherwise noted.

2. Section 4.21 is amended by dividing paragraph (a) into two paragraphs, (a) and new (b), redesignating paragraphs (b) and (c) to become (c) and (d), and by revising the redesignated paragraph (c).

§ 4.21 General provisions.

(a) *Effect of decision pending appeal.* Except as otherwise provided by law or other pertinent regulation:

(1) A decision will not be effective during the time in which a person adversely affected may file a notice of appeal; when the public interest requires, however, the Director or an Appeals Board may provide that a decision, or any part of a decision, shall be in full force and effective immediately;

(2) A decision will become effective on the day after the expiration of the time during which a person adversely

affected may file a notice of appeal unless a petition for a stay pending appeal is filed together with a timely notice of appeal; a petition for a stay may be filed only by a party who may properly maintain an appeal;

(3) A decision, or that portion of a decision, for which a stay is not granted will become effective immediately after the Director or an Appeals Board denies or partially denies the petition for a stay, or fails to act on the petition within the time specified in paragraph (b)(4) of this section.

(b) *Standards and procedures for obtaining a stay.* Except as otherwise provided by law or other pertinent regulation:

(1) A petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(i) The relative harm to the parties if the stay is granted or denied,

(ii) The likelihood of the appellant's success on the merits,

(iii) The likelihood of immediate and irreparable harm if the stay is not granted, and

(iv) Whether the public interest favors granting the stay;

(2) The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted;

(3) The appellant shall serve a copy of its notice of appeal and petition for a stay on each party named in the decision from which the appeal is taken, and on the Director or the Appeals Board to which the appeal is taken, at the same time such documents are served on the appropriate officer of the Department; any party, including the officer who made the decision being appealed, may file a response to the stay petition within 10 days after service; failure to file a response shall not result in a default on the question of whether a stay should be granted; service shall be made by delivering copies personally or by sending them by registered or certified mail, return receipt requested;

(4) The Director or an Appeals Board shall grant or deny a petition for a stay pending appeal, either in whole or in part, on the basis of the factors listed in paragraph (b)(1) of this section, within 45 calendar days of the expiration of the time for filing a notice of appeal;

(c) *Exhaustion of administrative remedies.* No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective in the manner provided in paragraphs (a)(3) or (b)(4) of this section or a decision has been made effective pending appeal pursuant to paragraph (a)(1) of this section or pursuant to other pertinent regulation.

(d) * * *

Dated: December 18, 1992.

John E. Schrote,

Assistant Secretary, Policy, Management and Budget.

[FR Doc. 93–1102 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-RK-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–91; RM–7514]

Radio Broadcasting Services; Crestview and Westbay, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on reconsideration of the Report and Order in this proceeding, substitutes Channel 284C1 in lieu of Channel 284C2 at Crestview, Florida, and modifies the license of Crestview Broadcasting Company, Inc., Station WAAZ(FM), to specify operation on the higher class channel. See 57 FR 21368, May 20, 1992. Channel 284C1 can be allotted to Crestview in compliance with the Commission's minimum distance separation requirements, with a site restriction 35.9 kilometers (22.3 miles) south of the community. The coordinates for Channel 284C1 at Crestview are North Latitude 30–26–21 and West Longitude 86–33–43. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 25, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Walke, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90–91, adopted December 16, 1992, and released January 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [AMENDED]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 284C2 and adding Channel 284C1 at Crestview.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1097 Filed 1–15–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92–220; RM–8075]

Radio Broadcasting Services; Moose Lake, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 296C3 to Moose Lake, Minnesota, as that community's first local broadcast service in response to a petition filed by Agate Broadcasting of Minnesota. See 57 FR 46368, October 8, 1992. Canadian concurrence has been obtained for this allotment at coordinates 46–27–24 and 92–45–30. With this action, this proceeding is terminated.

DATES: Effective February 25, 1993. The window period for filing applications for Channel 296C3 at Moose Lake will open on February 26, 1993, and close on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–220, adopted December 11, 1992, and released January 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Moose Lake, Channel 296C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1095 Filed 1–15–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–213; RM–8060]

Radio Broadcasting Services; Canton and Louisiana, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 271C3 for Channel 271A at Louisiana, Missouri, and modifies the license for Station KJFM(FM) to specify operation on Channel 271C3 in response to a petition filed by Foxfire Communications, Inc. See 57 FR 44549, September 28, 1992. The coordinates for Channel 271C3 at Louisiana are 39–21–57 and 91–16–30. To accommodate the substitution at Louisiana, we shall also substitute Channel 265C3 for Channel 272C3 at Canton, Missouri, and modify the construction permit for Station KBXB to specify the new channel. The coordinates for Channel 265C3 at Canton are 40–07–33 and 91–31–42. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 25, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–213, adopted December 11, 1992, and released January 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 271A and adding Channel 271C3 at Louisiana, and by removing Channel 272C3 and adding Channel 265C3 at Canton.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1094 Filed 1–15–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 91–104; RM–7668, RM–7763]

Radio Broadcasting Services; Sun Prairie, Reedsburg and Mauston, WI, and Freeport, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275A to Reedsburg, Wisconsin, as that community's second FM broadcast service in response to a counterproposal filed by Dennis and JoAnn Best. See 56 FR 18558, April 23, 1991. The coordinates for Channel 275A are 43–32–00 and 90–04–00. There is a site restriction 5 kilometers (3.1 miles) west of the community. The petition filed by First Choice Communications, Inc. proposing the substitution of Channel 221B1 for Channel 221A at Sun Prairie, Wisconsin, is denied. The upgrade at Sun Prairie required the substitution of Channel 275A for Channel 221A at Mauston, Wisconsin and the substitution of Channel 295A for Channel 221A at Freeport, Wisconsin. With this action, this proceeding is terminated.

DATES: Effective February 25, 1993. The window period for filing applications for Channel 275A at Reedsburg will open on February 26, 1993, and close on March 29, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–104, adopted December 11, 1992, and released January 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., Suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel 275A at Reedsburg.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1098 Filed 1–15–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 51222–6240]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of the meat-count/shell-height standards.

SUMMARY: NMFS issues this notification to implement a temporary adjustment of the meat-count and shell-height standards for the Atlantic sea scallop fishery. This action increases the average meat-count standard to 33 meats per pound (MPP) (meats per 0.45 kg) and the shell-height standard to $3\frac{11}{16}$ inches (94 mm).

DATES: Effective February 1, 1993 through September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Regional Office, 508/281–9273.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR Part 650 implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) authorize the Director, Northeast Region, NMFS (Regional Director), to adjust temporarily the meat-count/shell-height standards (standards) upon finding that specific criteria are met. These criteria, which appear at § 650.22(c), include the finding that: (1) The objective of the FMP would be achieved more readily, or would be better served through an adjustment of the standards; (2) the recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard; (3) the recommended standards for meat count and shell height are consistent with each other; and (4) 50 percent of the harvestable biomass is at scallop sizes smaller than those consistent with the prevailing standards, and a temporary relaxation of the standards would not jeopardize future recruitment to the fishery. Adjustments of the standards may remain in effect for up to twelve months.

After consideration of the criteria, the Regional Director made a recommendation to adjust the standards. In accordance with the regulations, comments on this recommendation were solicited from the New England Fishery Management Council (Council), which voted to support the Regional Director's recommendation, and a public hearing was held on December 2, 1992. Attendance at the public hearings was low, and only four members of the industry commented. The comments were not for or against the recommendation, but were generally directed at adjusting the standards higher than the present regulations would allow.

Two written comments from the industry were also received on the recommendation. One was in support of the recommended adjustment and the other requested adjusting the standards higher than the present regulations would allow.

After consideration of the full record, including: (1) Comments from the public, (2) comments from the Council, (3) new resource and assessment information, and (4) available information on the fishery and the industry, the Regional Director has decided to adjust the meat-count standards to 33 MPP (0.45 kg) with a corresponding shell height standard of 3 and 11/16 inches (94 mm) for the period February 1, 1993 through September 30, 1993.

This adjustment to the standards coincides with the end of the 10 percent spawning season adjustment approved under Amendment 2 to the FMP (53 FR 23634; June 23, 1988). This action was also taken in 1990, 1991 and 1992 at the end of the spawning season adjustment period. Survey information shows that although abundance and recruitment values for the sea scallop resource are among record highs, the resource is dominated by small scallops. This makes attaining an average MPP standard difficult because of the scarcity of large scallops available for mixing. Vessel costs increase because additional time and fuel must be spent in search of large scallops, discard mortality increases on small scallops, and landings decrease despite high resource abundance. These factors conflict with the objectives of the FMP and, therefore, criterion 1 outlined above.

This action meets criterion 2 because it is not expected to reduce catch over the following year by more than 5 percent.

Criterion 3 states that the meat count and shell height standards will remain consistent with each other. Based on recent analysis of historical survey data the 33 MPP (0.45 kg) is consistent with a corresponding shell height standard of 3 and 11/16 inches (94 mm), not 3 and 7/16 inches (87 mm). Due to this new scientific evidence the Regional Director has decided to bring the shell height standard in line with survey data, thereby conforming with criterion 3.

Criterion 4 states that 50 percent of the harvestable biomass must be at sizes smaller than the prevailing standard (30 MPP). Recent survey results show that 53 percent of the harvestable biomass consists of scallops smaller than 30 MPP. Thus this portion of criterion 4 is met. Criterion 4 also states that a temporary relaxation of the standards must not jeopardize future recruitment to the fishery. Sea scallops have their first significant spawning at age four. Age four sea scallops range from approximately 30 count to 50 count. The Regional Director recognizes that caution must be exercised when recommending a temporary adjustment to the meat count standard within this range. It is unlikely, however, that an adjustment of this magnitude, for an eight month period, will jeopardize future recruitment to the fishery.

This temporary adjustment will be effective February 1, 1992 through September 30, 1993. During this period, the meat count standard will be 33 MPP and the shell height standard will be 3 and 11/16 inches (94 mm). October 1, 1993, marks the beginning of the seasonal adjustment to the meat count standard approved under Amendment 2 to the FMP [§ 650.20(c)(1)]. The meat count standard will remain at 33 MPP and the shell height standard will revert to 3 and ½ inches (89 mm) at that time.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 11, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–1132 Filed 1–15–93; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 11
Tuesday, January 19, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Reactor Site Criteria; Notice of Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss industry positions associated with proposed Appendix B, "Criteria for the Seismic and Geologic Siting of Nuclear Power Plants On or After [Effective Date of the Final Rule]," to 10 CFR part 100 and associated guidance documents. The proposed regulation is a revision of Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.

DATES: February 4, 1993 8:30 a.m.

ADDRESSES: 5650 Nicholson Lane, Conference Rooms A and B, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. The proposed regulation, appendix B to 10 CFR part 100, was issued for public comment on October 20, 1992 (57 FR 47802) along with other proposed changes to 10 CFR parts 50, 52 and 100 that pertain to reactor site criteria and earthquake engineering criteria. Draft regulatory guides have been developed to make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the regulations. The availability of the draft regulatory guides and a related standard review plan section was published on November 25, 1992 (57 FR 55601).

The purpose of this meeting is to meet with NUMARC and other industry representatives to discuss industry recommended alternatives to the positions contained in Draft Regulatory Guide DG–1015, "Identification and Characterization of Seismic Sources, Deterministic Source Earthquakes, and Ground Motion." No specific agenda is being proposed.

Dated at Rockville, Maryland, this 11 day of January, 1993, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–1158 Filed 1–15–93; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ACE–04]

Proposed Revocation of Control Zone; Davenport, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revoke the control zone for the Davenport Municipal Airport, Davenport, Iowa. This action is necessary because the weather observation reporting requirements justifying the designation of the control zone at this airport are not being met.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE–530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

The official docket may be examined in the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 E. 12th Street, Kansas City, Missouri. An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Airspace Technician, System Management Branch, Air Traffic Division, ACE–530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental and energy-related aspects of the proposal. Communications should identify the airspace docket number, and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ACE–04." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East

12th Street, Kansas City, Missouri 64106, or calling (816) 426–3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the control zone at Davenport, Iowa. One of the requirements for the designation of a control zone is weather observation and reporting. As of September 1, 1992, weather observations are no longer being taken at the Davenport Municipal Airport. Consequently, the FAA is proposing to revoke the Davenport, Iowa, control zone. After the installation of a fully operational automated weather observing system, steps will be taken to redesignate a control zone. Control zones are published in § 71.171 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be removed subsequently from the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Aviation Safety, Control zones, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ACE IA CZ Davenport, Iowa [Removed]

* * * * *

Issued in Kansas City, Missouri, on December 29, 1992.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 93–1160 Filed 1–15–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Territorial and International Affairs

15 CFR Part 303

[Docket No. 921225–2325]

Proposed Limit on Duty-Free Insular Watches in Calendar Year 1993

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Territorial and International Affairs, Department of the Interior.

ACTION: Proposed rule and request for comments.

SUMMARY: This action invites public comment on proposals to amend 15 CFR part 303, which governs duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam and American Samoa) and the Northern Mariana Islands. The proposed amendments would establish the total quantity and respective territorial shares of insular watches and watch movements which would be allowed to enter the United States free of duty during calendar year 1993 and eliminate two unnecessary provisions.

DATES: Comments must be received on or before February 18, 1993.

ADDRESSES: Address written comments to Frank Creel, Director, Statutory Import Programs Staff, room 4211, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–1660, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in section 110 of Public Law No. 97–446 (96 Stat. 2331 (1983) (19 U.S.C. 1202, note) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in §§ 303.3 and 303.4 of Title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). Section 303.6(h) gives the Secretaries authority to propose changes in § 303.14.

The Departments propose to establish for calendar year 1993 a total quantity and respective territorial shares as shown in the following table:

Virgin Islands	4,080,000
Guam	500,000
American Samoa	500,000
Northern Mariana Islands	500,000
Total	5,580,000

Compared with the total quantity established for 1991 and 1992 (56 FR 9621; March 7, 1991), this amount would be a decrease of 620,000 units, the maximum reduction permitted by statute. The proposed Virgin Islands territorial share would be reduced by 120,000 units. The proposed Guam territorial share would be reduced by 500,000 units. The proposed shares for American Samoa and the Northern Mariana Islands would not change.

Our reasons for proposing these amounts are as follows:

1. There are no producers in Guam, American Samoa and the Northern Mariana Islands. This proposal would leave these territories' shares at the minimum required by the statute.

2. The amount we propose for the Virgin Islands is more than sufficient for the anticipated needs of the existing producers. Of this amount, we expect almost a million units will remain after the annual allocation is made. Unallocated portions of the Virgin Islands share will be available for possible allocation to new firms.

We also propose eliminating § 303.10(c) and § 303.14(b)(4), which require as a condition for duty-free treatment a minimum average wage input per watch and watch movement. Present minimum wage requirements and applicable minimal assembly requirements make it unnecessary to maintain this provision.

Finally, we propose to eliminate the last sentence of § 303.14(b)(2), which requires complete assembly in the territory of the setting mechanism and train assemblies for a watch to qualify for duty-free treatment. We are concerned that the provision may discourage assembly operations which do, in fact, involve substantial labor input (e.g., chronographs).

Classification: Executive Order 12291. In accordance with Executive Order 12291 (46 FR 13193, February 19, 1981), the Departments of Commerce and the Interior have determined that this rule does not constitute a "major rule" as defined by section 1(b) of the Order. It is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required.

This regulation was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the General Counsel of the Department of Commerce has certified that this action will not have a significant economic impact on a substantial number of small entities. Fewer than ten entities are directly affected by this action. The commercial benefits of the program governed by these regulations, for entities both directly and indirectly affected, are less than $100 million per year.

Paperwork Reduction Act. This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* which are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. The proposed amendments will not increase the information burden on the public.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we propose to amend part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for part 303 continues to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2329, 2331 (19 U.S.C. 1202, note); Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note)

§ 303.10 [Amended]

2. Section 303.10(c) is removed and § 303.10(d) is redesignated § 303.10(c).

§ 303.14 [Amended]

3. Section 303.14(b)(2) is amended by removing the last sentence.

4. Section 303.14(b)(4) is removed.

5. Section 303.14(d)(1) is amended by adding "Guam," before "American Samoa".

6. Section 303.14(d)(2) is removed.

7. Section 303.14(d)(3) is redesignated § 303.14(d)(2) and is amended by removing "200,000 units" and adding "the unused portion" in its place.

8. Section 303.14(e) is amended by removing "4,200,000" and adding "4,080,000" in its place and by removing "1,000,000" and adding "500,000" in its place.

Alan M. Dunn,

Assistant Secretary for Import Administration.

Stella G. Guerra,

Assistant Secretary for Territorial and International Affairs.

[FR Doc. 93–1216 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–DS–M, 4310–93–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Deletion of Options Regulation Requiring That Futures Commission Merchants Give Notification of Disciplinary Actions to Their Designated Self-Regulatory Organizations—Regulation 33.4(b)(6)

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange"), by letter dated September 11, 1992, submitted to the Commission a petition for rulemaking to delete Regulation 33.4(b)(6). Under Regulation 33.4(b)(6), a board of trade must adopt rules that require each member futures commission merchant ("FCM") that engages in the offer or sale of part 33 option contracts to give notice to the FCM's designated self-regulatory organization ("DSRO") of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another self-regulatory organization ("SRO"). The Commission believes that the CBT's petition appears to have merit. The CBT states in its petition, and the Commission concurs, that the newly created repository for disciplinary actions, called the National Futures Association Clearinghouse, satisfies the objective of Regulation 33.4(b)(6). All SROs should have access to the pertinent disciplinary information through this Clearinghouse. Therefore, the Commission is proposing to delete Regulation 33.4(b)(6).

DATES: Comments must be received on or before February 18, 1993.

ADDRESSES: Comments should be sent to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254–6314.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Options Pilot Program

Regulation 33.4(b)(6) is part of a group of regulations which pertain to the Commission's options pilot program. On November 3, 1981, the Commission instituted a three-year pilot program for the trading on domestic exchanges of options on non-agricultural futures contracts. 46 FR 54500. The establishment of the pilot program was the culmination of a long history of Commission efforts to provide for the trading of commodity options in a regulated environment. In particular, the Commission sought to gather information through the pilot program which would enable it to determine whether, and in what manner, exchange options trading should be permitted to continue after the pilot program period had ended. Subsequently, the Commission adopted a pilot program that expanded the trading of options to non-agricultural physical commodities. 47 FR 56996 (December 22, 1982). On January 23, 1984, the Commission adopted a separate three-year pilot program that expanded the trading of options on futures contracts to domestic agricultural commodities. 49 FR 2752. Overall, the Commission found that each pilot program had been a success. By February 9, 1987, the Commission had made the programs permanent.[1]

Part 33 of the Commission's regulations govern domestic exchange-traded commodity options transactions.[2] Regulation 33.4, in conjunction with the requirements of the Act, sets forth the requirements which a board of trade must meet in order to be designated as a contract market. Under Regulation 33.4(b)(6), a board of trade must adopt rules that require each member FCM which engages in the offer or sale of part 33 options contracts to give notice to the FCM's DSRO of any disciplinary action taken against the FCM or any of its associated persons by the Commission or by another SRO.[3]

By letter dated September 11, 1992, the CBT petitioned the Commission for deletion of Commission Regulation 33.4(b)(6). In support of its petition, the CBT explained that, along with other future exchanges, it has joined the National Futures Association ("NFA") in implementing a centralized repository for information on exchange disciplinary actions (the "NFA Clearinghouse"). The CBT believes that, because the NFA Clearinghouse includes data on Commission, NFA and exchange disciplinary actions, the reporting requirements imposed on FCMs by Regulation 33.4(b)(6) are now unnecessary and should be abolished.[4] The Commission believes that the CBT's suggestion to delete Regulation 33.4(b)(6) may have merit and, therefore, is proposing to delete this subsection of Regulation 33.4.

II. NFA Clearinghouse Background

In July 1989, the Commission's Division of Trading and Markets ("Division") recommended that the NFA establish and maintain a central repository of Commission, NFA and futures exchange disciplinary actions. The NFA Board of Directors subsequently directed NFA to develop a clearinghouse of disciplinary information which would provide the public, Commission staff and other regulators with one source from which descriptive data concerning Commission, NFA and futures exchanges' disciplinary actions could be retrieved. These data assist regulators, self-regulators, sponsors and others in researching the backgrounds of individuals and firms.[5]

The NFA Clearinghouse went into effect in late January 1991. At that time, several exchanges began to file their disciplinary actions data electronically into the NFA Clearinghouse database through what the NFA refers to as the exchange disciplinary action portion of the Clearinghouse.[6] The NFA Clearinghouse permits the Commission and the exchanges to enter and review disciplinary action data, including disciplinary action taken against an FCM or any of its associated persons by the Commission or by another SRO, via computer terminals at their respective locations.[7]

III. Conclusion

In light of the above, the Commission is proposing that Regulation 33.4(b)(6) be deleted. The Commission believes that the NFA Clearinghouse appears to satisfy the objective of Regulation 33.4(b)(6) by providing a repository for exchange disciplinary actions. Before approval of any final deletion of this regulation, however, the Commission intends to examine exchange and NFA refinements to the operation of the NFA Clearinghouse to ensure that it will serve the purpose of Regulation 33.4(b)(6).

IV. Request for Comments

The Commission invites comment on this proposed action and in particular regarding the following:

1. Whether the proposed deletion of Regulation 33.4(b)(6) would necessitate additional changes to the Commission's regulations?
2. The nature and extent to which customer protection issues would arise under the proposed deletion of Regulation 33.4(b)(6).
3. The nature and extent of potential benefits resulting from the deletion of Regulation 33.4(b)(6) to clearinghouses, FCMs, SROs and customers.
4. Whether the NFA Clearinghouse would serve as an effective substitute repository that is capable of receiving and maintaining all of the disciplinary

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[1] Options trading on non-agricultural futures was made permanent effective August 1, 1986. 51 FR 17464 (May 13, 1986); 51 FR 27529 (August 1, 1986). Options trading on agricultural futures and options on non-agricultural physicals were made permanent effective February 9, 1987. 52 FR 777 (January 9, 1987).

[2] Part 33, including Regulation 33.4, was adopted concurrently with the initial implementation of the first pilot program in 1981.

[3] Since its original adoption in 1981, Regulation 33.4(b)(6) was amended one time by the Commission on May 13, 1986. 51 FR 17464. Specifically, the language of Regulation 33.4(b)(6) was amended to relieve FCMs which are members of more than one SRO from the burden of having to file notices of disciplinary actions with every SRO of which the FCM happens to be a member. Before this amendment to Regulation 33.4(b)(6), FCMs were required to file such notices with every SRO to which they were a member, regardless of whether the underlying conduct even involved a particular SRO or not. As stated above, Regulation 33.4(b)(6) now requires that such materials be filed only with an FCM's designated DSRO.

[4] It should be noted that the Commission, on September 4, 1992, proposed the deletion of two Regulation 33.4 provisions: Regulation 33.4(b)(iii) and Regulation 33.4(b)(8). 57 FR 40626. On December 14, 1992 (57 FR 58976), the deletion of these rules became final. Under these regulations, boards of trade designated as contract markets for options were required to adopt rules requiring member FCMs that engaged in the offer or sale of commodity options regulated under Part 33 to send copies of customer complaints, the record of the final disposition thereof, and copies of all promotional material to the member's DSRO.

[5] As a practical matter, if an exchange wishes to use the NFA Clearinghouse to review disciplinary actions taken against an FCM's associated persons, the exchange must first identify the FCM's associated persons through the NFA's Membership Registration Receivables System, which lists all registered persons and firms. The exchange must then enter each listed associated person as named in the NFA Clearinghouse data base to determine whether the associated person was disciplined or not.

[6] The Joint Compliance Committee ("JCC") assisted the NFA in establishing and implementing the exchange disciplinary action portion of the Clearinghouse. The JCC was formed in May 1989 and consists of senior compliance officials from each exchange and the NFA. Division staff is present at each meeting as observers. The JCC was established to aid the development of improved compliance systems through joint exchange efforts and information sharing among the self-regulators. In addition, the JCC has undertaken efforts to enhance exchange compliance with Commission regulations by developing uniform standards and definitions where appropriate.

[7] Currently, the exchanges remain obligated to submit hardcopy summaries of disciplinary actions to the Commission pursuant to Regulation 9.11. However, the Commission and NFA are taking steps to facilitate the entry of data into the NFA Clearinghouse in lieu of filing hardcopy summaries. Until the Commission changes Regulation 9.11 to require data entry into the NFA Clearinghouse, entries into the NFA Clearinghouse should be made by exchanges within the time frame provided for in Regulation 9.11 for filing summaries, 30 days from the date of disciplinary action.

information Regulation 33.4(b)(6) requires FCMs to file?

Any person interested in submitting written data, views or arguments on the proposed rule amendment should send such comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed deletion will permit contract markets to change rules affecting FCMs and thereby to relieve a regulatory burden. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA. 47 FR 18618–18621 (April 30, 1982). The Commission has previously determined that contract markets and registered FCMs are not small entities for the purpose of the RFA. Therefore, the deletions would not have a significant economic impact on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In Compliance with the PRA, the Commission has submitted this proposed deletion to the Office of Management and Budget. This proposed deletion has no burden.

List of Subjects in 17 CFR Part 33

Regulation of domestic exchange-traded commodity option transactions.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, section 4(b) of said Act, the Commission proposes to amend part 33 of title 17 of the Code of the Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 13a, 13a–1, 13b, 19, and 21, unless otherwise noted.

§ 33.4 [Amended]

2. Section 33.4(b)(6) is removed and reserved.

Issued in Washington, DC, January 12, 1993 by the Commodity Futures Trading Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 93–1105 Filed 1–15–93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960–AD46

Federal Old-age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Limitation of Travel Expenses for Representation of Claimants at Administrative Proceedings

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We propose to amend our regulations concerning payment of certain travel expenses to implement section 5106(c) of Public Law 101–508, the Omnibus Budget Reconciliation Act (OBRA) of 1990, enacted November 5, 1990. Section 5106(c) amends sections 201(j), 1631(h), and 1817(i) of the Social Security Act (the Act) to provide that the amount available for payment under these sections for travel by a representative to attend a proceeding before an administrative law judge (ALJ) or other adjudicator shall not exceed the maximum amount allowable under these sections for travel originating within the geographic area of the office having jurisdiction over the proceeding. The provision is effective for the reimbursement of representatives' travel expenses incurred on or after April 1, 1991.

DATES: To be sure your comments are considered, we must receive them no later than March 22, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1769.

SUPPLEMENTARY INFORMATION: We propose to amend our regulations on the payment of travel expenses of individuals who represent claimants at certain administrative proceedings to reflect the amendments to sections 201(j), 1631(h) and 1817(i) of the Act made by section 5106(c) of OBRA of 1990. In general, sections 201(j), 1631(h) and 1817(i) of the Act provide authority to reimburse certain persons for certain travel expenses which they incur in connection with the Social Security, Supplemental Security Income (SSI) or Medicare program under titles II, XVI and XVIII of the Act, respectively. Among other things, these sections of the Act authorize the payment of certain travel expenses to a claimant's representative for travel to attend a reconsideration interview or a proceeding before an ALJ.

Section 5106(c) of OBRA of 1990 amends sections 201(j), 1631(h) and 1817(i) of the Act of limit the amount available for payment under these sections of the Act for travel by a representative to attend an administrative proceeding before an ALJ or other adjudicator. The amendments under section 5106(c) specify that the amount available for such payment shall not exceed the maximum amount allowable under these sections of the Act for a representative's travel originating within the geographic area of the office having jurisdiction over the proceeding. The Conference Committee Report on OBRA of 1990 states that under the amendments the reimbursement for travel by a representative "could not exceed the maximum amount that would be payable for travel to the site of the reconsideration interview or proceeding before an ALJ from a point with the geographical area served by the office having jurisdiction over the interview or proceeding. "H.R. Rep. No. 964, 101st Cong., 2d Sess. 934 (1990)."

The proposed regulations would amend our regulations relating to the payment of travel expenses of a claimant's representative for travel to attend a disability hearing or hearing before an ALJ under the Social Security or SSI programs to reflect the amendments made by section 5106(c) of OBRA of 1990. The title II regulations on travel reimbursement, like the rules in subpart J of 20 CFR part 404 generally, are made applicable to the Medicare program pursuant to 42 CFR 405.701(c). Therefore, the proposed changes to the title II regulations on travel reimbursement also would affect reimbursement of travel expenses of a representative in connection with certain proceedings under the Medicare program and, thus, would reflect the amendment to section 1817(i) of the Act made by section 5106(c) of OBRA of 1990.

Our existing regulations on the payment of certain travel expenses, §§ 404.999a *et seq.* and §§ 416.1495 *et seq.*, reflect the pertinent provisions of the Act regarding travel reimbursement that were in effect prior to April 1, 1991, the effective date of section 5106(c) of OBRA of 1990. With respect to travel expenses incurred prior to that date, we reimbursed a representative for allowable expenses for travel to a disability hearing or ALJ hearing site from the representative's residence or office (depending upon whether the representative's travel originated from his or her residence or from the office) regardless of its geographic location. Based on travel distance between the hearing site and the representative's travel origination point (residence or office) and subject to the limitations in §§ 404.999c(d) and 416.1498(d), we determined the amount allowable for reimbursement for the ordinary expenses of transportation (§§ 404.999c(a) and 416.1498(a)) and for unusual travel costs (§§ 404.999c(b) and 416.1498(b)) pursuant to the applicable rules governing rates and conditions of payment (§§ 404.999c(c) and 416.1498(c)).

Effective with travel expenses incurred by a representative on or after April 1, 1991, however, section 5106(c) of OBRA of 1990 provides that the amount of reimbursement for such expenses shall not exceed the allowable amount that we could reimburse the representative for travel originating within the geographic area of the office jurisdiction over the proceeding. Accordingly, the proposed regulations would amend our regulations to provide that the amount available to reimburse a representative for travel to attend a disability hearing or a hearing before an ALJ shall not exceed the maximum amount allowable for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

The proposed rules would explain that the geographic area of the office having jurisdiction over the hearing means, as appropriate—

—The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

—If a Federal disability hearing officer holds the disability hearing, the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the disability hearing is held; or

—The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the ALJ hearing.

In cases in which a Federal disability hearing officer holds the disability hearing, the hearing officer travels to the State in which the claimant resides to hold the hearing. In those infrequent cases in which the claimant is not a resident of a State, the Federal disability hearing officer holds the disability hearing in a location in a State that is convenient for the claimant and the hearing officer. The proposed regulations define the geographic area of the office having jurisdiction over the hearing to mean the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the disability hearing is held. This proposed definition is consistent with the congressional intent underlying section 5106(c) of OBRA 1990 in that it treats the claimant and his or her representative in the same manner as if a State agency hearing officer held the disability hearing. In the proposed title II regulations relating to cases in which a Federal disability hearing officer holds the disability hearing, the term "State" has the meaning assigned to it in current § 404.2(c)(5), except that the term also includes the Northern Mariana Islands. In the proposed title XVI regulations relating to such cases, the term "State" means a State as defined in current § 416.120(c)(9).

We propose to base the maximum amount allowable on the distance to the hearing site from the farthest point within the appropriate geographic area. We will determine the maximum amount allowable for travel between these two points under the existing regulations, i.e., subject to the existing limitations in paragraph (d)(1) and paragraph (d)(3) (proposed herein to be redesignated as paragraph (d)(4)) of §§ 404.999c and 416.1498 (relating to travel within United States and a claimant's request for a change to a more distant hearing site) and pursuant to the applicable rules governing rates and conditions of payment under paragraphs (a) through (c) of §§ 404.999c and 416.1498. Under our existing regulations, we will not reimburse a representative's travel expenses unless the distance he or she travels, i.e., the distance to the hearing site from the representative's residence or office (whichever he or she travels from), exceeds 75 miles (§§ 404.999c(d)(2) and 416.1498(d)(2)). The proposed regulations would provide a similar limitation. Under the proposed rules, the point within the appropriate geographic area that is the farthest point from the hearing site would be used as the representative's travel origination point (equivalent to residence or office under the existing regulations) for purposes of determining the maximum amount allowable for reimbursement. The proposed rules provide that if the distance to the hearing site from the farthest point within the appropriate geographic area does not exceed 75 miles, we would not reimburse a representative for any travel expenses. This is consistent that the 75-mile rule in the current regulations.

Under the proposed regulations, actual reimbursement for a representative's travel expenses will be limited to the lesser of: (1) Actual travel expenses incurred and allowable under the regulations (whether travel actually originates within the designated geographic area or outside that area); or (2) the maximum amount allowable for travel to the hearing site from the farthest point within the geographic area of the office having jurisdiction over the hearing.

In practice, the proposed rules would not affect reimbursement of travel expenses of a representative whose travel originates within the geographic area of the office having jurisdiction over the hearing. This is because the expenses incurred and allowable under the regulations for such travel would be less than, or equal to, the maximum amount allowable for travel to the hearing site from the farthest point within the appropriate geographic area.

We propose to amend §§ 404.999c and 416.1498 by redesignating paragraph (d)(3) and (d)(4) and adding a new paragraph (d)(3) which will state and define the limit on the amount of reimbursement for a representative's travel expenses mandated by section 5106(c) of OBRA of 1990. The proposed regulations state that the amount of reimbursement for travel expenses for a representative shall not exceed the maximum amount allowable for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing; define the geographic area of the office having jurisdiction over the hearing; and explain how we determine the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area.

We also propose to amend §§ 404.999c(c) and 416.1498(c) to change the reference from 41 CFR part 101–7 to 41 CFR chapter 301, where the Federal Travel Regulations are now codified.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in negligible administrative costs and savings. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; 93.802–93.805, Social Security; and 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Aged, Blind, Death benefits; Disability benefits, Insurance, Old-Age Survivors, and Disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Medicaid, Reporting and recordkeeping requirements, Supplemental security income (SSI).

Dated: September 4, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 19, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart J of part 404 and subpart N of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b), and (d)–(h), 421(d), and 1302.

2. In § 404.999c(c), the reference to "41 CFR part 101–7" is revised to read "41 CFR chapter 301".

3. Section 404.999c is amended by redesignating paragraph (d)(3) and (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 404.999c What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State (which includes a State as defined in § 404.2(c)(5) and also includes the Northern Mariana Islands) in which the claimant resides or, if the claimant is not a resident of a State, in which the disability hearing is held; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the administrative law judge hearing.

(ii) We or the State agency determines the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraphs (a) through (c) of this section and the limitations in paragraph (d)(1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

4. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; sec. 6 of Public Law 98–460, 98 Stat. 1802.

5. in § 416.1498(c), the reference to "41 CFR part 101–7" is revised to read "41 CFR chapter 301".

6. Section 416.1498 is amended by redesignating paragraph (d)(3) as (d)(4) and adding a new paragraph (d)(3) to read as follows:

§ 416.1498 What travel expenses are reimbursable.

* * * * *

(d) * * *

(3) For travel expenses incurred on or after April 1, 1991, the amount of reimbursement under this section for travel by your representative to attend a disability hearing or a hearing before an administrative law judge shall not exceed the maximum amount allowable under this section for travel to the hearing site from any point within the geographic area of the office having jurisdiction over the hearing.

(i) The geographic area of the office having jurisdiction over the hearing means, as appropriate—

(A) The designated geographic service area of the State agency adjudicatory unit having responsibility for providing the disability hearing;

(B) If a Federal disability hearing officer holds the disability hearing, the geographic area of the State in which the claimant resides or, if the claimant is not a resident of a State, in which the disability hearing is held; or

(C) The designated geographic service area of the Office of Hearings and Appeals hearing office having responsibility for providing the administrative law judge hearing.

(ii) We or the State agency determines the maximum amount allowable for travel by a representative based on the distance to the hearing site from the farthest point within the appropriate geographic area. In determining the maximum amount allowable for travel between these two points, we or the State agency apply the rules in paragraph (a) through (c) of this section and the limitations in paragraph (d)(1) and (4) of this section. If the distance between these two points does not exceed 75 miles, we or the State agency will not reimburse any of your representative's travel expenses.

[FR Doc. 93–1100 Filed 1–15–93; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Ch. 1

[Docket No. 92N–0180]

Withdrawal of Certain Proposed Rules; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to withdraw 10 proposed rules. FDA intends to take this action as part of its continuing comprehensive review of the agency's regulations process, which includes a review of the backlog of proposed rules that the agency has published in the **Federal Register** but for which no final rule, final action, or notice of withdrawal has been issued. This action will help the agency focus its limited resources on higher priority matters. Before withdrawing these proposed rules, the agency invites public comment on its intended action.

DATES: Comments by March 22, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA announced its comprehensive review of the agency's regulations process, including a review of the backlog of advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices for which no final rule or notice of withdrawal has been issued. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA published a final action withdrawing 89 proposals. This action was undertaken partially in response to criticism that the agency's backlog of pending proposals dilutes the agency's ability to concentrate its attention on higher priority regulations, for example, those mandated by statute. FDA's current review encompasses proposed rules that the agency has published in the **Federal Register** but for which no final rules or notices of withdrawal have been issued.

The proposed rules which are the subject of this notice include five proposals which were published before January 1, 1986, but which were not withdrawn in the December 30, 1991, notice; and five other proposed rules which were published on or after January 1, 1986, but which are no longer considered viable candidates for final action.

I. GRAS Proposals

In the December 30, 1991, final withdrawal document, the agency stated that it had decided to defer its decisions on the withdrawal of all of the GRAS proposals included in the notice of intent. The agency also said that it was in the process of reexamining the issues involved in each of these proposed regulations that implement the agency's GRAS review program and expected to decide to either issue a final rule based on the proposal and the received public comments, repropose the rulemaking proceeding, or withdraw the proposal. The agency said it would announce its decision in each case in a future issue of the **Federal Register**.

After further consideration, the agency has decided to continue to defer action on these outstanding GRAS proposals. The agency believes that withdrawal of some or all of these proposals could be misleading to the public and industry with regard to the safety of the proposed GRAS substance or to the use of competing substances for the same purpose in food. However, the agency has not yet determined whether it should issue a final rule based on the comments it already has received or whether it will repropose some or all of these proposals and seek additional comment. The agency will continue its reexamination of the issues involved in each of the proposals in the context of its GRAS review program. As decisions are made, the agency will publish either a final rule or a reproposal in future issues of the **Federal Register**.

II. Other Proposals

The agency has identified five proposals published before 1986, which were not included in the list in the August 28, 1991, notice of intent. The agency is proposing to withdraw each of these.

These five proposals include two of the oldest pending documents: (1) "Infection in Chickens," published in 1964 (no Docket No.) and (2) Docket No. 89N–0421, published in 1971. The "Infection in Chickens" proposal was inadvertently omitted from the August 28, 1991, published list. Docket No. 89N–0421 was also originally proposed for withdrawal in August 1991. FDA received comments from only one firm, which supported the withdrawal of the proposed rule. In December 1991, the agency deferred a decision on this latter proposal, and now, upon further consideration, has decided to withdraw it as well as the "Infection in Chickens" document. These proposals are now outdated and no longer provide the basis for final agency action.

The remaining three proposals (Docket Nos. 79N–0305, 79N–0306, and 77N–0336) were signed by the Secretary of Health and Human Services (HHS) or were companion documents to an HHS proposal when originally published and therefore required consultation with the Office of the Secretary before FDA could propose their withdrawal. That consultation has now occurred, and the Office of the Secretary concurs with FDA's belief that if final action on the issues raised in these proposals is to be made, it should be made in the context of the most current information and regulatory need.

In a continuing effort to refine the regulations process, the agency has identified an additional five pending proposed rules, which it believes should also be withdrawn. These five proposals were published after January 1, 1986 (Docket Nos. 83N–0190, 83N–0192, 85N–0030, 86N–0072, and 89N–0378), and are not currently considered high priority within the agency. Three of these proposals (Dockets Nos. 83N–0190, 83N–0192, and 85N–0030) were invitations for offers to submit or to develop performance standards for certain devices. They are being withdrawn because of procedural changes made by the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629). The SMDA changed the requirement of publishing separate consecutive notices in the **Federal Register** to invite submission of proposed standards and then to initiate the development of a performance standard. Instead, FDA will publish a single notice of proposed rulemaking for the establishment, amendment, or revocation of a performance standard.

For the other two proposals (Docket Nos. 86N–0072 and 89N–0378), the agency proposed changes to these regulations, but after reviewing comments and current data, found its existing regulations to be adequate.

In view of these factors and limited agency resources, FDA tentatively concludes that further action to issue final rules based on each of these five additional proposals is not warranted.

In addition to the reasons discussed above for proposing to withdraw these 10 proposed rules, the agency acknowledges that a relatively large number of regulations are projected to be published in the upcoming year (as reflected in the Unified Agenda of Federal Regulations and the Regulatory Program of the United States Government). Many of these regulations are required to be published by statute. Given the agency's limited resources and its commitment to meet statutory deadlines, FDA must set priorities for its actions on regulations. The proposals listed in this document have been determined to be lower in priority than those on the Unified Agenda and the Regulatory Program, and since it is unlikely that the agency will have an opportunity to consider the issues involved in these proposals in the foreseeable future, the agency believes that these proposals should be withdrawn.

If the agency does withdraw these proposed rules, that action would not preclude the agency from reinstituting proceedings to promulgate rules concerning the issues addressed in the proposals sometime in the future. Should the agency decide to undertake such rulemaking, it will repropose the actions and provide new opportunities for comment. The agency advises, however, that in some cases, the preambles of these proposed rules may still reflect the current position of FDA on the matter addressed. Withdrawal of a proposal is not intended to affect whatever utility the preamble statements may currently have as indications of FDA's position on a matter at the time the proposal was published.

For the reasons set out above, and under the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act, the agency announces its intent to withdraw the following proposed rules, published in the **Federal Register** on the dates indicated. To aid the reader, the table below identifies the title or name of the proposed rule and contains a brief description of what each proposed rule was intended to accomplish.

Title and brief description	Docket No.	FR publication date and cite
Infection in Chickens; Proposed Nomenclature Change; proposal to modify the poultry disease term "chronic respiratory disease" to "complicated chronic respiratory disease".	None	Jan. 1, 1964, 29 FR 15.
Xylitol; Proposed Revocation of Food Additive Regulation; revocation of unlimited use of xylitol in special dietary foods as codified in CFR 121.1114 (as recodified in 21 CFR 172.395).	69N–0421	Oct. 20, 1971, 36 FR 20306.
Imminent Hazard Criteria and Procedure; Proposed Rule; establishment of criteria and procedures for determining whether approval of certain human and animal drugs should be immediately suspended under the "imminent hazard" provisions of the act[1].	79N–0305	Aug. 21, 1979, 44 FR 48979.
Imminent Hazard Determinations; Separation of Functions; Proposed Rule; rules to govern the separation of function in withdrawal proceedings involving products for which an imminent hazard has been made and revocation of FDA criteria for making recommendations to the Secretary concerning imminent hazard determinations.	79N–0306	Aug. 21, 1979, 44 FR 48983.
Export of Investigational New Animal Drugs; Tentative Final Rule; provides for requirements on notification and labeling investigational animal drugs for export[1].	77N–0336	Nov. 9, 1984, 49 FR 44766.
Medical Devices; Invitation for Offers to Submit or to Develop a Performance Standard for Vascular Graft Prosthesis of 6 Millimeters and Greater Diameter; request for any existing standard as a proposed performance standard for the vascular graft prosthesis of 6 millimeters and greater diameter, or to submit an offer to develop such a proposed standard or the agency will proceed to develop a performance standard.	83N–0190	Jan. 6, 1986, 51 FR 564.
Medical Devices; Invitation for Offers to Submit or to Develop a Performance Standard for Central Nervous system Fluid Shunt and Components; request for any existing standard as a proposed performance standard for the central nervous system fluid shunt and components, or to submit an offer to develop such a proposed standard or the agency will proceed to develop a performance standard.	83N–0192	Feb. 26, 1986, 51 FR 6862.
Medical Devices; Invitation for Offers to Submit or Develop a Performance Standard for Continuous Ventilator and Ventilator Tubing; request for any existing standard as a proposed performance standard for the continuous ventilator and for ventilator tubing, or to submit an offer to develop such a proposed standard or the agency will proceed to develop a performance standard.	85N–0030	Apr. 3, 1986, 51 FR 11516.
Review of Investigational Device Exemptions Regulations; Invitation to Submit Comments, Data, and Information; request for information to assist FDA in assessing the benefits, costs, and need for revision of these regulations.	86N–0072	July 25, 1986, 51 FR 26830.
Erythromycin Capsules; Proposed Amendment of Dissolution Standard of Erythromycin Capsules; by amending the current dissolution standard (the Q value) from "85 percent at 45 minutes" to "80 percent at 60 minutes" in 21 CFR 436.542(c) and 452.110c(b)(3).	89N–0378	Oct. 26, 1989, 54 FR 43592.

[1] Signed by the Secretary of HHS.

Interested persons may, on or before March 22, 1993, submit to the Dockets Management Branch (address above) written comments concerning the agency's intent to withdraw the above listed proposed rules in this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and with the docket number of the individual proposed rule set out in the listing above if the comment relates to a specific proposal. FDA will consider any comments received and expects to publish a notice in the **Federal Register** announcing the withdrawal of some or all of the proposed rule listed above. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–1205 Filed 1–15–93; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE40

Schedule for Rating Disabilities—The Cardiovascular System

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rating schedule for the cardiovascular system. This change is based on a

General Accounting Office (GAO) recommendation that medical criteria in the rating schedule be reviewed and updated. The intended effect is to update the Schedule for Rating Disabilities of the cardiovascular system to ensure that it uses current medical terminology and criteria for evaluating disabilities of that system. This is one of the 16 categories of disability in the rating schedule which we plan to revise.

DATES: Comments must be received on or before March 22, 1993. Comments will be available for public inspection until March 30, 1993. This change is proposed to be effective 30 days after the date of publication of the final rules.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170 at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled *VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule* (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists, GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. VA agreed to these recommendations.

In the Federal Register of February 26, 1990, VA published an advance notice of proposed rulemaking advising the public that it was preparing to revise and update the rating schedule for cardiovascular disabilities. Several comments and suggestions were received from various sources including VA employees and government agencies. GAO had also contracted an outside consultant to suggest revisions to the cardiovascular portion of the rating schedule. The primary objective of this review is to update the medical terminology and criteria used to evaluate disabilities rather than to amend the percentage evaluations assigned to each level of severity, albeit some changes in evaluation are proposed.

Several commenters recommended that functional limitations should ultimately determine levels of heart disability, and that the levels of impairment currently shown in the rating schedule are not sufficient to allow meaningful differentiations. Commenters also noted that some of the convalescent periods in the current rating schedule are overly generous, recommended that certain archaic terms be removed from the schedule and noted the lack of a diagnostic code for heart transplants. These issues have all been addressed in this proposal.

Sections 4.100, 4.101, and 4.102 currently preface the cardiovascular schedule. Section 4.100 describes the common types of heart disease and stresses the necessity for accurate diagnosis; § 4.101 discusses rheumatic heart disease and associated principles of service connection; and § 4.102 explains the relationship of varicose veins to phlebitis. We propose to replace these sections with provisions which focus attention on more prevalent conditions and include important rules of service connection.

The opening sentence of § 4.100 currently states that common types of heart disease are of rheumatic, syphilitic, arteriosclerotic, hypertensive, or hyperthyroid etiology. Today, rheumatic fever with resultant heart disease is a rare occurrence among servicepersons, as are syphilitic and hyperthyroid heart disease. We therefore propose to amend the opening sentence to read, "Valvular heart disease, arteriosclerotic heart disease, and arrhythmias are common forms of heart abnormality." We believe this change reflects the types of heart disorder which are most frequently encountered when rating veterans' claims. Section 4.100 will also address the issue of nonservice-connected arteriosclerotic heart disease when it is superimposed upon a service-connected heart disorder. If the signs or symptoms of the superimposed disabilities cannot be satisfactorily disassociated from the service-connected condition, they will be evaluated as resulting from the service-connected disability. Service connection, however, will not attach to arteriosclerosis or its clearly distinguishable complications. It will further require that a coronary occlusion or thrombosis which may occur during military service be service-connected regardless of any preservice history of heart disease. This situation is distinct from the mere identification of previously existing heart disease early in service, which is not necessarily a basis for service connection.

Section 4.101 will provide that hypertension not be rated separately from any underlying renal or thyroid disease, but that arteriosclerotic manifestations developing in a veteran previously service-connected for hypertension be service-connected as secondary to the hypertension.

Varicose veins affecting both legs are usually caused by a single etiology common to both legs. Section 4.102 will provide that if varicose veins in one leg are held service-connected, varicose veins developing in the other leg within three years following military discharge will likewise be considered service-connected in the absence of established intercurrent cause.

Because advances in therapeutic medicine have significantly reduced the length of convalescent periods required following many cardiovascular events and therapeutic procedures, we are proposing to revise most periods of total evaluation provided in the current schedule for rating cardiovascular disabilities. These changes will permit a more accurate and timely determination of the veteran's remaining chronic impairment. The proposed changes have been suggested by physicians experienced in the treatment of cardiovascular conditions, and are designed to reflect the period during which most patients can be expected to recover.

An examination will be scheduled at the expiration of the 100 percent convalescent evaluations to determine the precise level of residual disability. With convalescent periods averaging six months or longer, it is difficult to accurately predict the time of recovery or precise outcome of a claimant's condition. We therefore propose to continue the total evaluation for those conditions until the veteran is examined and the results of this examination have been reviewed by a rating board. At that time, if a reduction in evaluation is warranted, it would be implemented under the provisions of 38 CFR 3.105(e). This instruction will be included in a Note following each diagnostic code which specifies a convalescent period of six months or longer.

Under diagnostic code 7018, the convalescent period for implantable cardiac pacemakers (formerly included under diagnostic code 7015) will be changed from one year to two months.

The period of convalescence for the following diseases or surgical procedures will be changed to three months from the six months currently specified: active rheumatic heart disease under diagnostic code 7000; and myocardial infarctions under diagnostic code 7005. The one year convalescent period for coronary bypass surgery under diagnostic code 7017 will also be changed to three months. The period of convalescence for the following surgical procedures will be changed to six months from the one year period currently provided: Heart valve replacement under diagnostic code 7016; and aortic aneurysms under diagnostic code 7110.

Diagnostic codes 7015, 7016, 7017, and 7110 currently assign one month of total benefits under § 4.30 after surgery followed by a full year of total benefits under disability rating criteria. We propose not to assign § 4.30 benefits in these instances. Instead, a 100 percent rating will be immediately authorized without resort to the provisions of § 4.30.

Following certain events or surgical procedures we are proposing periods of convalescence which are not provided in the current rating schedule. These periods will ensure that a veteran is totally compensated for an appropriate length of time in the event that he or she is unemployed or minimally employed while recovering from illness or surgery. For episodes of infection resulting in heart valve damage, three months of total evaluation for convalescence are proposed under diagnostic code 7000 for valvular heart disease; for treatment following detection of ventricular arrhythmias under diagnostic code 7011, six months; for cardiac transplantation under diagnostic code 7019, one year; and for corrective surgery of any large artery aneurysm under diagnostic code 7111, six months.

Under § 4.104, we propose to retain the division of diagnostic codes classified as "Diseases of the Heart," and "Diseases of the Arteries and Veins." Diagnostic code 7000 will apply to valvular heart diseases in general, as opposed simply to rheumatic heart disease, which has become a less frequently encountered disease among servicepersons. Four levels of evaluation have been defined to reflect functional impairments associated with Valvular heart disease (diagnostic code 7000), and Arteriosclerotic heart disease (diagnostic code 7005). These criteria, which have been included under both of these codes, are as follow:

Any physical activity results in fatigue, palpitation, dyspnea, or anginal pain; or, congestive heart failure which is chronic or persistent. 100

Ordinary physical activity such as walking or climbing stairs at a normal pace and under normal conditions results in fatigue, palpitation, dyspnea, or anginal pain. 60

Strenuous physical activity such as walking or climbing stairs at a rapid pace or under stressful conditions results in fatigue, palpitation, dyspnea, or anginal pain. 30

No limitation of physical activity. 0

These descriptions of functional impairment closely follow classifications used by the New York Heart Association and the Canadian Cardiovascular Society. They are clearer and more consistent than those in the current schedule, and will be used to determine chronic impairment resulting from valvular and arteriosclerotic heart diseases. Under diagnostic code 7011, Ventricular arrhythmias, the criteria have been modified to reflect the nature of these disorders. The 10 percent evaluation level for identifiable valvular lesion will no longer be included under diagnostic code 7000. Instead, residuals of valvular heart disease will be rated according to actual functional impairment.

Endocarditis, pericarditis, and pericardial adhesions under diagnostic codes 7001, 7002, and 7003 are currently rated as rheumatic heart disease. We are proposing to rate these conditions according to the criteria proposed under diagnostic code 7000, Valvular heart disease, since these conditions generally result in heart valve damage. Diagnostic code 7004, Syphilitic heart disease, also currently rated as rheumatic heart disease, will be rated under diagnostic code 7000 if there is valve damage, or under diagnostic code 7110 in the event that the infection causes an aortic aneurysm. The words "bacterial, subacute," which currently follow the word "endocarditis" in the heading of diagnostic code 7001, and "bacterial or rheumatic, acute" after "pericarditis" in the heading of diagnostic code 7002, have been deleted to permit consideration of the wider range of conditions causing endocarditis and pericarditis. The heading of diagnostic code 7005, Arteriosclerotic heart disease, will be followed by parentheses enclosing the words "Coronary artery disease," which is a term commonly used in reference to this disease category.

The rating schedule currently assigns a 30 percent evaluation following a six month convalescent period for residuals of a myocardial infarction. At the expiration of a three month period of convalescence, we propose instead to rate residuals of a myocardial infarction according to the formula for functional impairment of the heart under diagnostic code 7005, Arteriosclerotic heart disease. Rating the actual residuals will allow the assignment of an evaluation reflecting the true severity of the individual disability.

We propose to rate Hypertensive heart disease according to the criteria proposed under Arteriosclerotic heart disease, diagnostic code 7005, since this disease causes similar functional limitations.

Under diagnostic code 7008, we propose to rate hyperthyroid heart disease according to the criteria proposed under diagnostic code 7010, Supraventricular arrhythmia, since arrhythmia is the usual sequela of hyperthyroid heart disease. Hyperthyroid heart disease may alternatively be rated under Hyperthyroidism (diagnostic code 7900) if such symptomatology is predominant. Under diagnostic code 7008, the rating schedule currently directs the rater to "Refer to psychiatric schedule" when a diagnosis of cardiac neurosis is encountered. The mention of cardiac neurosis under diagnostic code 7008 is inappropriate in the context of organic cardiovascular disorders and will therefore be deleted.

The current rating schedule identifies five arrhythmias under the following diagnostic codes: 7010, Auricular flutter, paroxysmal; 7011, Auricular fibrillation, paroxysmal; 7012, Auricular fibrillation, permanent; 7013, Tachycardia, paroxysmal; and 7014, Sinus tachycardia. We propose to replace these codes with the categories of Supraventricular arrhythmias, diagnostic code 7010, and Ventricular arrhythmias, diagnostic code 7011. The new categories represent a distinction among the various arrhythmias based on physiological origin and disabling implications. Diagnostic code 7010 will provide for evaluations of 30 and 10 percent, with criteria generally parallel to those now shown under diagnostic code 7013. Ventricular arrhythmias, which are more serious and lifethreatening, will be evaluated at levels of 100, 60, 30, and 0 percent. In addition to the periods of convalescence and levels of functional impairment previously described, a 100 percent evaluation will be provided in the event that an Automatic Implantable Cardioverter Defibrillator (AICD) is surgically implanted. The AICD is a complex device requiring such frequent follow-up that a total evaluation is warranted following implantation.

The term "auriculoventricular block," the current heading of diagnostic code 7015, is outdated and will be replaced by the term "Atrioventricular block." Proposed criteria at the levels of 60, 30, 10, and 0 percent are unchanged since they adequately reflect anticipated levels of severity. The omission of a 100 percent level, removal of a minimum 30 percent rating, and deletion of Note (2) reflect the proposed use of a separate diagnostic code for implantable pacemakers under diagnostic code 7018. The first sentence of Note (1) currently states that cases of AV block may be encountered with supraventricular tachycardia or pathological bradycardia. The next sentences describe examples of Mobitz blocks, and Wenckebach's phenomenon, and varying degrees of AV block associated with tachyarrhythmias or other severe disturbances in rate or rhythm which should be submitted to the Director of the Compensation and Pension Service for a review of their disabling significance. We propose to eliminate the specific reference to Mobitz blocks and Wenckebach's phenomenon, since there are other types of cases which are appropriate for submission to the Director for review. The words "On the other hand, * * *," which precede the last sentence of Note (1), will also be removed since no useful function is served by their retention.

Following the convalescent periods after heart valve replacement under diagnostic code 7016 and coronary artery bypass under diagnostic code 7017, residual impairments will be rated on the underlying disability, rather than assigning a minimum rating of 30 percent currently specified under these codes.

The heading of "coronary artery bypass" under diagnostic code 7017 will be amended to "coronary bypass surgery," which more accurately describes the procedure in question.

We propose to add two diagnostic codes pertaining to surgical procedures which require periods of convalescence. For implantable cardiac pacemakers (currently included under diagnostic code 7015), diagnostic code 7018 will be added; diagnostic code 7019 will be assigned for cardiac transplantation. Following implantation of a pacemaker with two months of total evaluation for convalescence, residuals will be rated under diagnostic code 7010, 7011, or 7015 depending on underlying dysfunction. A minimum evaluation (now shown as 30 percent under diagnostic code 7015) will not be assigned. After one year of total evaluation for convalescence, residuals of cardiac transplantation surgery will be rated as Arteriosclerotic heart disease (diagnostic code 7005) since the anticipated functional limitations are summarized under that code. As long as the veteran remains on immunosuppressive medication, however, a minimum 30 percent evaluation would be assigned because immunosuppression renders a patient susceptible to potentially serious complications.

Under diagnostic code 7020, we propose to add Cardiomyopathy, which will include diseases of the heart muscle not due to ischemic, hypertensive, congenital, valvular or pericardial disease. Since this category of disease causes functional limitations similar to arteriosclerotic heart disease, it will be rated according to the criteria proposed under diagnostic code 7005.

Several changes are proposed under "Diseases of the Arteries and Veins." We propose to eliminate diagnostic code 7100, Arteriosclerosis, general. The compensable evaluation criterion now shown under this code as "slight weakening of bodily vigor" is too imprecise to be of value in accurately assessing disability. Arteriosclerotic manifestations such as renal, cardiac, or cerebral conditions, will be rated under the body system they affect instead of under a single diagnostic code.

Under diagnostic code 7101, Hypertensive vascular disease, a 60 percent evaluation is currently prescribed for severe symptoms if diastolic blood pressure readings are predominantly 130 or more. A veteran with moderately severe symptoms having diastolic readings predominantly 120 or more is entitled to a 40 percent evaluation. With definite symptoms and diastolic readings predominantly 110 or more, a 20 percent evaluation is prescribed. Since primary hypertension is generally recognized as asymptomatic until complications develop, we propose to remove the requirement for symptomatology at the 60, 40, and 20 percent levels. In recent years, elevated systolic readings have assumed increasing significance in the assessment of disability resulting from hypertension. In addition to the diastolic readings already specified, we propose that hypertension also qualify for the 10 or 20 percent levels in the event certain levels of systolic blood pressure are met or exceeded. Diastolic pressure predominantly 100 or more, or systolic pressure predominantly 160 or more, will qualify for a 10 percent evaluation; diastolic pressure predominantly 110 or more, or systolic pressure predominantly 200 or more, will qualify for 20 percent. Note (1), which currently follows diagnostic code 7101, emphasizes the importance of careful diagnosis and repeated measurements of blood pressure prior to assignment of the 40 percent and 60 percent evaluations. We propose to amend this Note to state that careful and repeated measurements of blood pressure readings are required prior to the assignment of any compensable evaluation.

The heading under diagnostic code 7110 has been changed from "Aneurysm, aortic, fusiform, saccular, dissecting and/or with stenosis" to "Aortic aneurysm of any type." This heading will allow for the rating of all true aortic aneurysms. In addition to a total evaluation following surgical repair, a 100 percent rating will be assigned if an aortic aneurysm of 5 cms. in diameter or greater is detected. The risk of rupture for these patients is such that gainful employment is ordinarily precluded. A minimum evaluation of 20 percent is currently assigned under this diagnostic code following graft insertion. We propose to eliminate a minimum evaluation following surgery, and instead rate residuals according to the organ systems involved and the extent to which they are affected. We believe this procedure will provide a rating specialist more flexibility and accuracy in evaluating a veteran's post-surgical condition.

Under diagnostic code 7112, Aneurysm, any small artery, a compensable level of 10 percent is currently available. The level of evaluation described as "mild" under diagnostic code 7118, Angioneurotic edema, is currently evaluated as 10 percent disabling. We propose to assign non-compensable evaluations for both of these levels. An aneurysm of a small artery is not disabling to any significant degree, nor are "infrequent attacks of slight extent and duration" when considering angioneurotic edema.

We propose to change the wording of the heading under diagnostic code 7111 from "Artery, any large artery, aneurysm of" to "Aneurysm, any large artery." Under diagnostic code 7112, the heading will be changed from "Artery, small, aneurysmal dilatation of" to "Aneurysm, any small artery." These changes are for the sake of simplicity and represent no substantive amendment.

Although not expressly stated, Arteriosclerosis obliterans, diagnostic code 7114, and Thromboangiitis obliterans (Buerger's disease), diagnostic code 7115, are currently rated according to the criteria for diagnostic code 7116, Claudication, intermittent. Arteriosclerosis obliterans and thromboangiitis obliterans are occlusive arterial diseases, and intermittent claudication is a common manifestation of these conditions. Since it is not a disease entity, we propose to delete diagnostic code 7116 (Claudication, intermittent) and establish a general formula for rating occlusive arterial diseases under diagnostic codes 7114 and 7115. Under this formula, we propose to modify the evaluation criteria currently found under diagnostic code 7116. The 60 and 40 percent levels will be changed to permit more accurate assessments of severity. Currently, the criteria for 60 percent are specified as "Persistent coldness of extremity with claudication on minimal walking." For 40 percent, the criteria read as "Well-established cases, with intermittent claudication or recurrent episodes of superficial phlebitis." "Minimal walking" will be defined as less than 3 miles per hour, and physical findings, such as hair loss and skin changes, will be included under the criteria necessary for 40 percent. The criteria for the 100 percent level currently read as "Severe form with marked circulatory changes such as to produce total incapacity or to require house or bed confinement." We propose to eliminate the words "or to require house or bed confinement" since they suggest a degree of entitlement more consistent with special monthly compensation. A similar change to the 100 percent criteria will be made under diagnostic code 7117 for Raynaud's syndrome.

Under diagnostic code 7111, Aneurysm, any large artery, 60 and 40 percent levels are currently assigned for symptomatic states affecting the lower and upper extremities. A 20 percent level is also prescribed as a minimum rating following surgery. Once symptomatic, surgical correction of such aneurysms is generally required because of the serious nature of the condition. We therefore propose to rate the symptomatic states as totally disabling until six months following surgery. Instead of assigning a minimum 20 percent evaluation following surgery, postoperative residuals will be rated according to the formula for rating occlusive arterial diseases following diagnostic codes 7114 and 7115. We believe this procedure will provide a rating specialist more flexibility in assigning an accurate evaluation of a veteran's post-surgical condition.

Under diagnostic code 7117, Raynaud's disease, we propose to amend the heading to "Raynaud's syndrome." This term includes Raynaud's disease as well as Raynaud's phenomenon, and therefore embraces a wider clinical spectrum. The Note following diagnostic code 7117 has been amended to include diagnostic code 7119 when considering unilateral and bilateral involvements. The Note has also been revised in order to clarify the directions for properly calculating percentage evaluations when one or more extremities are affected by vascular disease. No substantive change in rating procedure is intended by this revision.

Under diagnostic code 7119, Erythromelalgia, evaluation criteria are specified as "severe," "moderate," and "mild" for the 40, 20, and 10 percent levels, respectively. No elaborating criteria are provided to explain what these words are intended to mean in this context. Erythromelalgia is very rare and if encountered may be appropriately rated under the criteria for Raynaud's syndrome, diagnostic code 7117. We propose to add an instruction to that effect under diagnostic code 7119.

The words "pronounced," "severe," "moderately severe," and "moderate" now precede the evaluation criteria for the compensable evaluations under diagnostic code 7120, Varicose veins. These words will be removed since they do not significantly help to explain or clarify the specific evaluation criteria which they precede. The 0 percent level under diagnostic code 7120 which is currently shown as "Mild; or with no symptoms" will be eliminated since the criteria provided are not substantially meaningful. Criteria for the non-compensable level will no longer be specified. As with every instance in the rating schedule, when the criteria for compensable evaluations are not met, a 0 percent evaluation will be assigned. Parts of certain criteria under diagnostic code 7120 will be enclosed by parentheses simply to clarify the main ideas intended. A similar change is proposed under diagnostic code 7121, Phlebitis or thrombophlebitis.

We are not proposing to change terminology or assigned evaluations under diagnostic codes 7006, 7113, or 7122. As currently shown, they adequately describe the designated disabilities and levels of severity.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: June 9, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. Sections 4.100, 4.101, 4.102, and 4.104 are revised to read as follows:

§ 4.100 Forms of heart disorder.

Valvular heart disease, arteriosclerotic heart disease, and arrhythmias are common forms of heart abnormality. If arteriosclerotic heart disease which is not service-connected is superimposed upon either a service-connected valvular heart disease or arrhythmia, the signs or symptoms which cannot be satisfactorily disassociated from the service-connected condition shall be evaluated as resulting from the service-connected disability. Since there is no etiological relationship between arteriosclerotic heart disease and a valvular heart disease or arrhythmia, however, service connection will not attach to arteriosclerosis or to its clearly distinguishable complications. Any sudden development during service of coronary occlusion or thrombosis shall be service-connected; however, mere identification of coronary artery disease upon routine examination early in service is not a basis for service connection.

§ 4.101 Hypertension.

Elevation of blood pressure due to thyroid or renal disease should not be rated separately from the primary cause. If any arteriosclerotic manifestations are diagnosed in a veteran who presents a service-connected hypertension, they are to be held service-connected through their relationship to the hypertension.

§ 4.102 Varicose veins.

With severe varicose veins, tests to determine impairment of deep return circulation are essential. With phlebitis, or impairment of deep return circulation, the appropriate higher rating should be applied. With varicose veins developing in one leg during service, and held service-connected, varicose veins subsequently developing in the second leg within three years shall be considered service-connected in the absence of established intercurrent cause.

§ 4.103 [Reserved]

§ 4.104 Schedule of ratings—cardiovascular system.

DISEASES OF THE HEART

	Rating
7000 Valvular heart disease:	
To include rating of rheumatic heart disease and syphilitic heart disease, and sequelae involving valvular heart damage from endocarditis, pericarditis, or trauma.	
Active infections with valvular heart damage for three months following cessation of therapy	100
Any physical activity results in fatigue, palpitation, dyspnea, or anginal pain; or congestive heart failure which is chronic or persistent	100
Ordinary physical activity such as walking or climbing stairs at a normal pace and under normal conditions results in fatigue, palpitation, dyspnea, or anginal pain	60
Strenuous physical activity such as walking or climbing stairs at a rapid pace or under stressful conditions results in fatigue, palpitation, dyspnea, or anginal pain	30
No limitation of physical activity	0
7001 Endocarditis.—Rate as valvular heart disease.	
7002 Pericarditis.—Rate as valvular heart disease.	
7003 Adhesions, pericardial.—Rate as valvular heart disease.	
7004 Syphilitic heart disease.—Rate as valvular heart disease (diagnostic code 7000) or Aortic aneurysm (diagnostic code 7110).	
7005 Arteriosclerotic heart disease (Coronary artery disease):	
To include rating of cardiomyopathies and hypertensive heart disease.	
During and for three months following typical myocardial infarction	100
Any physical activity results in fatigue, palpitation, dyspnea, or anginal pain; or congestive heart failure which is chronic or persistent	100
Ordinary physical activity such as walking or climbing stairs at a normal pace and under normal conditions results in fatigue, palpitation, dyspnea, or anginal pain	60
Strenuous physical activity such as walking or climbing stairs at a rapid pace or under stressful conditions results in fatigue, palpitation, dyspnea, or anginal pain	30
No limitation of physical activity	0
7006 Myocardium, infarction of, due to thrombosis or embolism.—Rate as arteriosclerotic heart disease.	
7007 Hypertensive heart disease.—Rate as arteriosclerotic heart disease.	
7008 Hyperthyroid heart disease.—Rate as Supraventricular arrhythmia (diagnostic code 7010) or Hyperthyroidism (diagnostic code 7900) according to predominant symptomatology.	
Note.—This rating is not to be combined with ratings for hyperthyroidism..	
7010 Supraventricular arrhythmias:	
Atrial fibrillation, paroxysmal or other supraventricular tachycardia, with severe frequent attacks despite therapy	30
Atrial fibrillation, permanent (lone atrial fibrillation); or infrequent or mild attacks documented by ECG or Holter	10
7011 Ventricular arrhythmias (sustained):	
Symptomatic with syncope or dizziness requiring hospitalization for initial evaluation and drug trials from presentation up to six months; or requiring ventricular aneurysmectomy and for six months following hospital admission for surgery; or requiring implantation of an Automatic Implantable Cardioverter Defibrillator	100
Any physical activity may cause palpitations or symptoms of arrhythmia	100
Ordinary physical activity such as walking or climbing stairs at a normal pace and under normal conditions results in palpitations or symptoms of arrhythmia	60
Strenuous physical activity such as walking or climbing stairs at a rapid pace or under stressful conditions results in palpitations or symptoms of arrhythmia	30
No limitation of physical activity	0
Note.—The 100 percent rating for six months subsequent to surgery or treatment shall be assigned as of the date of hospital admission, and shall continue for six months. A VA examination is mandatory at the expiration of the six-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter..	
7015 Atrioventricular block:	
Complete; with Stokes-Adams attacks several times a year despite the use of medication or management of the heart block by pacemaker	60
Complete; without syncope	30
Incomplete; without syncope but occasionally symptomatic	10
Incomplete; asymptomatic, without syncope or need for medicinal control after more than one year	0
Note.—Atrioventricular block, partial or complete, may be present and associated with and related to the supraventricular tachycardias or pathological bradycardia. Such unusual cases should be submitted to the Director, Compensation and Pension Service. Simple delayed P–R conduction time, in the absence of other evidence of cardiac disease, is not a disability.	
7016 Heart valve replacement (prosthesis):	
For six months following hospital admission for implantation	100
Thereafter rate as valvular heart disease or arteriosclerotic heart disease.	
Note.—The 100 percent rating for six months subsequent to surgery shall be assigned as of the date of hospital admission, and shall continue for six months. A VA examination is mandatory at the expiration of the six-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7017 Coronary bypass surgery:	
For three months following hospital admission for surgery	100
Thereafter rate as arteriosclerotic heart disease.	
7018 Implantable cardiac pacemakers:	
For two months following hospital admission for implantation	100
Thereafter rate under diagnostic code 7010, 7011, or 7015.	
Note.—Rate implantation of an Automatic Implantable Cardioverter Defibrillator under diagnostic code 7011.	
7019 Cardiac transplantation:	
For one year following hospital admission for surgery	100
Thereafter rate as arteriosclerotic heart disease, *except* as long as patient is on immunosuppression medication, minimum rating	30
Note.—The 100 percent rating for one year subsequent to surgery shall be assigned as of the date of hospital admission, and shall continue for one year. A VA examination is mandatory at the expiration of the 1-year period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7020 Cardiomyopathy.—Rate as arteriosclerotic heart disease.	
7101 Hypertensive vascular disease (essential arterial hypertension):	
Diastolic pressure predominantly 130 or more	60
Diastolic pressure predominantly 120 or more	40
Diastolic pressure predominantly 110 or more, or systolic pressure predominantly 200 or more	20
Diastolic pressure predominantly 100 or more, or systolic pressure predominantly 160 or more	10
Note (1).—Careful and repeated measurements of blood pressure readings are required prior to the assignment of any compensable evaluation.	

DISEASES OF THE HEART—Continued

	Rating
Note (2).—When continuous medication is shown necessary for control of hypertension with a history of diastolic blood pressure predominantly 100 or more, a minimum rating of 10 percent will be assigned.	
7110 Aortic aneurysm of any type:	
For six months following hospital admission for surgical correction (with any type graft) if 5 cms. or larger in diameter	100
If exertion and exercise is precluded	60
Thereafter rate residual of graft insertion, according to organ systems affected.	
Note.—The 100 percent rating for six months subsequent to surgery shall be assigned as of the date of hospital admission, and shall continue for six months. A VA examination is mandatory at the expiration of the six-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7111 Aneurysm, any large artery:	
Once symptomatic, until surgery is performed and for six months after hospital admission for surgery	100
Rate postoperative residuals under the General Rating Formula for Occlusive Arterial Diseases.	
Note.—The 100 percent rating for six months subsequent to surgery shall be assigned as of the date of hospital admission, and shall continue for six months. A VA examination is mandatory at the expiration of the six-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter.	
7112 Aneurysm, any small artery	0
7113 Arteriovenous aneurysm, traumatic:	
With cardiac involvement, minimum rating	60
Without cardiac involvement with marked vascular symptoms	
Lower extremity	50
Upper extremity	40
With definite vascular symptoms	
Lower extremity	30
Upper extremity	20
7114 Arteriosclerosis obliterans.	
7115 Thrombo-angiitis obliterans (Buerger's disease).	
General Rating Formula for Occlusive Arterial Diseases (diagnostic codes 7114 and 7115):	
Severe, with marked physical signs producing total incapacity	100
Claudication on minimal walking (less than 3 miles per hour on a level grade) with persistent coldness of the extremity	60
Well-established cases of intermittent claudication, with associated physical findings (hair loss, skin changes)	40
Minimal circulatory impairment, with paresthesias, temperature changes and occasional claudication	20
7117 Raynaud's syndrome:	
Severe form with marked circulatory changes producing total incapacity	100
Multiple painful, ulcerated areas	60
Frequent vasomotor disturbances characterized by blanching, rubor, and cyanosis	40
Occasional attacks of blanching or flushing	20
Note (1).—Schedular evaluations under diagnostic codes 7114, 7115, 7117, and 7119 are for application to one arm or leg. If both an arm and a leg are affected and each is seperately evaluated as more than 20 percent disabling, the percentages of both extremities shall be combined and assigned as the evaluation under diagnostic code 7114, 7115, 7117, or 7119. If one or both extremities are evaluated as 20 percent disabling or less, the higher of the two evaluations shall be the total evaluation for both.	
Note (2).—With both arms or both legs affected, each arm or leg seperately evaluated as more than 20 percent disabling, 10 percent shall be added to the higher evaluation and assigned as the total evaluation for both. If one or both extremities are evaluated as 20 percent disabling or less, the higher evaluation shall be used as the total evaluation for both.	
Note (3).—With more than two extremities affected, the extremities shall first be divided into upper and lower groups. An evaluation shall then be determined for each group, the bilateral involvement(s) evaluated according to the procedure described under **Note (2)** above. If each group of upper and lower extremities is separately more than 20 percent disabling, they shall be combined under diagnostic code 7114, 7115, 7117, or 7119. If one or both groups are 20 percent or less, the higher evaluation shall be used as the total evaluation for all extremities.	
Note (4).—Where any part of an extremity has been amputated, the evaluation for amputation under the applicable diagnostic code shall be combined with the rating for the other extremity or extremities derived from the above procedures. Where any part of an extremity has been amputated, a bilateral factor shall be applied only if the opposing extremity affected by peripheral vascular disease is rated more than 20 percent disabling.	
7118 Angioneurotic edema:	
Severe; frequent attacks with severe manifestations and prolonged duration	40
Moderate; frequent attacks of moderate extent and duration	20
Mild: infrequent attacks of slight extent and duration	0
7119 Erythromelalgia.—Rate as Raynaud's syndrome.	
7120 Varicose veins:	
Unilateral or bilateral, criteria for the bilateral 50 percent and unilateral 40 percent levels as described below plus secondary involvement of the deep circulation (as demonstrated by Trendelenburg's and Perthe's tests) and ulceration and pigmentation	
Bilateral	60
Unilateral	50
Involving superficial veins above and below the knee, the long saphenous vein (over 2 cm. in diameter), marked distortion and sacculation, edema, and episodes of ulceration; no involvement of the deep circulation	
Bilateral	50
Unilateral	40
Involving superficial veins above and below the knee, with varicosities of the long saphenous vein (1 to 2 cm. in diameter), and pain or cramping on exertion; no involvement of the deep circulation	
Bilateral	30
Unilateral	20
Varicosities of superficial veins below the knees, pain or cramping on exertion	
Bilateral or unilateral	10
Note.—Severe varicosities below the knee, with ulceration, scarring, or discoloration and painful symptoms will be rated under the criteria for the 30 and 20 percent levels.	
7121 Phlebitis or thrombophlebitis, unilateral, with obliteration of deep return circulation, including traumatic conditions:	
Massive board-like swelling, with severe and constant pain at rest	100
Persistent swelling (subsiding only very slightly with recumbency and elevation) with pigmentation, cyanosis, eczema or ulceration	60
Persistent swelling of leg or thigh, increased on standing or walking one or two hours, readily relieved by recumbency; moderate discoloration, pigmentation and cyanosis or persistent swelling of arm or forearm, increased in the dependent position; moderate discoloration, pigmentation or cyanosis	30
Persistent moderate swelling of leg not markedly increased on standing or walking or persistent swelling of arm or forearm not increased in the dependent position	10
Note.—When phlebitis is present in both lower extremities or both upper extremities, apply bilateral factor.	
7122 Frozen feet, residuals of (immersion foot):	
With loss of toes, or parts, and persistent severe symptoms	
Bilateral	50
Unilateral	30
With persistent moderate swelling, tenderness, redness, etc.	
Bilateral	30
Unilateral	20
With mild symptoms, chilblains	
Bilateral	10
Unilateral	10
Note.—With extensive losses higher ratings may be found warranted by reference to amputation ratings for toes and combination of toes; in the most severe cases ratings for amputation or loss of use of one or both feet should be considered. There is no requirement of loss of toes or parts for the persistent moderate or mild under this diagnostic code.	
7123 Soft tissue sarcoma (of vascular origin)	100
Note.—Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue for six months. A VA examination is mandatory at the expiration of the six-month period and any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter.	

(Authority: 38 U.S.C. 1155)

[FR Doc. 93–1106 Filed 11–15–93; 8:45 am]

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38 CFR Part 4

RIN 2900–AF41

Schedule for Rating Disabilities; Dental and Oral Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend that portion of its Schedule for Rating Disabilities which deals with dental and oral conditions. This review was initiated because of a General Accounting Office (GAO) study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that it be reviewed and updated. The intended effect of these changes is to ensure that this portion of the rating schedule uses current terminology, unambiguous rating criteria, and that it reflects advances which have occurred since the last review. This is one of the 16 categories of disability in the rating schedule which we plan to revise.

DATES: Comments must be received by VA on or before March 22, 1993. Comments will be available for public inspection until March 30, 1993. This change is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the criteria accordingly. VA agreed to these recommendations.

In the **Federal Register** of December 19, 1991, VA published an advance notice of proposed rulemaking advising the public that it was preparing to revise and update the rating schedule for dental and oral conditions. No comments or suggestions were received in response to this notice.

The schedule of ratings for Dental and Oral Conditions currently lists 14 disabilities with assigned diagnostic codes. In addition to these 14 disabilities, the following dental conditions are listed with no diagnostic codes assigned: Carious teeth, treatable; Missing teeth, replaceable; Dento-alveolar abscess; Pyorrhea alveolaris; and Vincent's stomatitis. Unlike other disabilities in the schedule these conditions are not considered disabling; the issue of service connection is addressed by raters only for the purpose of determining entitlement to outpatient dental treatment under the provisions of 38 CFR 3.382 and 17.123. Since the rating schedule is primarily a classification and guide for the evaluation of disabilities, and since the VBA adjudication manual, M21–1, contains procedural instructions regarding dental ratings, inclusion of these non-disabling conditions in the rating schedule serves no useful purpose. We propose to delete them from § 4.150 and add a new section designated as 4.149. Using more contemporary terms for diseases of the teeth and gums, this section will state that they are not compensable conditions, but that they may be considered service-connected solely for the purpose of establishing entitlement to dental examinations or outpatient dental treatment. No substantive change is intended by these proposed revisions.

Osteomyelitis of the maxilla or mandible is currently rated under diagnostic code 9900 according to evaluation criteria under diagnostic code 5000 (osteomyelitis) in the musculoskeletal schedule. We propose to include osteoradionecrosis under diagnostic code 9900. That condition occurs often enough in the veteran population, and its disabling effects are so similar to osteomyelitis, that it warrants inclusion under this category.

Limited motion of the temporomandibular joint is currently rated under diagnostic code 9905. Although a requirement for definite limitation of motion is described at the 10 percent level, and measurements of limited motion are defined at 20 and 40 percent, the types of movement are not specified. The lower jaw is capable of lateral movement as well as vertical (inter-incisal) opening and closing, and we propose to denote categories of both inter-incisal range and lateral excursion. Evaluation levels of 10, 20, 30, and 40 percent are assigned for precise ranges of inter-incisal limited motion, and a 10 percent evaluation is assigned for a limited range of lateral excursion from 0 to 4 millimeters. In accordance with the prohibition against pyramiding (38 CFR 4.14), a Note will be added specifying that ratings for limited inter-incisal movement will not be combined with ratings for limited lateral excursion under this code.

All disabilities of the maxilla are currently evaluated under diagnostic code 9910, which directs that they be rated under the same criteria as disabilities of the mandible. Disabilities of the maxilla are not, in fact, necessarily comparable to those of the mandible and we believe that separate diagnostic codes for disabilities of the maxilla are warranted. We propose to delete diagnostic code 9910 and add the following three diagnostic codes pertaining to the maxilla: 9914, Maxilla, loss of more than half; 9915, Maxilla, loss of half or less; and 9916, Maxilla, malunion or nonunion of. Diagnostic code 9914 will be assigned percentage evaluations of 50 and 100 percent; diagnostic code 9915 will be assigned 0, 20, 30, and 40 percent; and diagnostic code 9916 will be assigned 0, 10, and 30 percent.

Diagnostic code 9913 is assigned for tooth loss resulting from damage to the maxilla or mandible which does not involve a loss of bony continuity. The Note appended to that code directs that use of the code is limited to the effects of trauma and diseases such as osteomyelitis, and that it does not apply to loss of the alveolar process through natural resorption. We propose to replace the term "natural resorption" with the less ambiguous term "periodontal disease." We have also revised the Note to explain why loss of the alveolar process without loss of bone is not compensable.

The evaluation criteria of diagnostic code 9913 currently specify percentage evaluations for loss of upper, lower, posterior, anterior, and lateral teeth in various combinations. The current descriptions of these combinations are

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somewhat confusing, however, and we propose to revise them for the sake of clarity. No substantive change is intended by this proposed revision.

We propose to substitute the word "prosthesis" for the term "prosthetic appliance" under diagnostic codes 9911 (loss of half or more hard palate) and 9912 (loss of less than half of hard palate). This change is for the sake of consistency only, since that is the terminology used under diagnostic code 9913 (loss of teeth) and other diagnostic codes throughout the rating schedule; no substantive change is intended.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: October 8, 1992.

Anthony J. Principi,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. Section 4.149 is added to read as follows:

§ 4.149 Rating diseases of the teeth and gums.

Treatable carious teeth, replacable missing teeth, dental or alveolar abscesses, periodontal disease (pyorrhea), and Vincent's stomatitis are not disabling conditions, and may be considered service-connected solely for the purpose of determining entitlement to dental examinations or outpatient dental treatment under the provisions of §§ 17.120 or 17.123 of this chapter.

3. Section 4.150 is revised to read as follows:

§ 4.150 Schedule of ratings—dental and oral conditions.

	Rating
9900 Maxilla or mandible, chronic osteomyelitis or osteoradionecrosis of	
Rate as osteomyelitis, chronic under diagnostic code 5000.	
9901 Mandible, loss of, complete, between angles	100
9902 Mandible, loss of approximately one-half	
Involving temporomandibular articulation	50
Not involving temporomandibular articulation	30
9903 Mandible, nonunion of	
Severe	30
Moderate	10
Note.—Dependent upon degree of motion and relative loss of masticatory function..	
9904 Mandible, malunion of	
Severe displacement	20
Moderate displacement	10
Slight displacement	0
Note.—Dependent upon degree of motion and relative loss of masticatory function..	
9905 Temporomandibular articulation, limited motion of	
Inter-incisal range	
0 to 10 mm	40
11 to 20 mm	30
21 to 30 mm	20
31 to 40 mm	10
Range of lateral excursion	
0 to 4 mm	10
Note.—Ratings for limited inter-incisal movement shall not be combined with ratings for limited lateral excursion..	
9906 Ramus, loss of whole or part of	
Involving loss of temporomandibular articulation	
Bilateral	50
Unilateral	30
Not involving loss of temporomandibular articulation	
Bilateral	30
Unilateral	20
9907 Ramus, loss of less than one-half the substance of, not involving loss of continuity.	
Bilateral	20
Unilateral	10
9908 Condyloid process, loss of, one or both sides	30
9909 Coronoid process, loss of	
Bilateral	20
Unilateral	10
9911 Hard palate, loss of half or more	
Not replaceable by prosthesis	30
Replaceable by prosthesis	10
9912 Hard palate, loss of less than half of	
Not replaceable by prosthesis	20
Replaceable by prosthesis	0
9913 Teeth, loss of, due to loss of substance of body of maxilla or mandible without loss of continuity	
Where the lost masticatory surface cannot be restored by suitable prosthesis	
Loss of all teeth	40
Loss of all upper teeth	30
Loss of all lower teeth	30
All upper and lower posterior teeth missing	20
All upper and lower anterior teeth missing	20
All upper anterior teeth missing	10
All lower anterior teeth missing	10
All upper and lower teeth on one side missing	10
Where the loss of masticatory surface can be restored by suitable prosthesis	0
Note.—These ratings apply only to bone loss through trauma or disease such as osteomyelitis, and not to the loss of the alveolar process as a result of periodontal disease, since such loss is not considered disabling..	
9914 Maxilla, loss of more than half	
Not replaceable by prosthesis	100
Replaceable by prosthesis	50
9915 Maxilla, loss of half or less	
Loss of 25 to 50 percent:	
Not replaceable by prosthesis	40
Replaceable by prosthesis	30
Loss of less than 25 percent	
Not replaceable by prosthesis	20
Replaceable by prosthesis	0
9916 Maxilla, malunion or nonunion of	
Severe displacement	30
Moderate displacement	10
Slight displacement	0

[FR Doc. 93–1112 Filed 1–15–93; 8:45 am]

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38 CFR Part 4

RIN 2900–AE94

Schedule for Rating Disabilities; Respiratory System

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its Schedule for Rating Disabilities of the Respiratory System. This review was initiated because of a General Accounting Office (GAO) study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that such a review be conducted. The intended effect is to update the respiratory system portion of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances which have occurred since the last review. This is one of the 16 categories of disability in the rating schedule which we plan to revise.

DATES: Comments must be received by VA on or before March 22, 1993. Comments will be available for public inspection until March 30, 1993. This change is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until March 30, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Seavey, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. VA agreed to these recommendations.

In the **Federal Register** of January 8, 1991, VA published an advance notice of proposed rulemaking advising the public that VA was preparing to revise and update the rating schedule for respiratory disabilities. Comments and suggestions were received from the Veterans of Foreign Wars, American Legion, and VA employees. VA also contracted with an outside consultant to suggest revisions. The primary objectives of this review are to update the medical terminology, provide unambiguous rating criteria, and ensure that the schedule reflects recent medical advances.

Commenters suggested that several diagnoses be added and that certain evaluation criteria be changed. In our proposal we have added or reclassified a number of respiratory conditions that commonly occur among veterans, and we have proposed changes in the evaluation criteria for the sake of greater clarity and objectivity.

One commenter recommended that footnotes indicating entitlement to special monthly compensation under title 38, United States Code 1114(k) be added next to diagnostic codes 6518 (laryngectomy) and 6519 (aphonia). The criteria for entitlement to special monthly compensation under that paragraph are contained in 38 CFR 3.350(a). Those criteria are extensive, very complicated, and often do not correspond exactly to evaluation criteria in the rating schedule. For that reason, it is important that raters refer to the regulations governing special monthly compensation rather than relying on cross-references in the rating schedule, especially since it would be difficult if not impossible to cross-reference those regulatory provisions consistently and accurately.

If medical terminology in the rating schedule is outdated, it is difficult for rating specialists to accurately compare medical evidence to requirements of the rating schedule. For that reason, we propose to update some of the medical terms which now appear in the respiratory schedule to ensure that the schedule uses the terms most commonly used in current medical practice. Under the diagnostic code for deflection of nasal septum (6502), the word "deviation" will be substituted for "deflection." Under diagnostic code 6504 (loss of part of nose or scars), the mention of "nares" in the evaluation criteria for 30 percent will be changed to "nasal passages." In addition, since the word "neoplasm" better connotes a pathological abnormality than the term "new growth," we propose to substitute that word under diagnostic codes 6819 and 6820, which pertain to malignant and benign conditions, respectively.

A number of grammatical elements are useful in eliminating ambiguity and ensuring that the schedule presents the rating criteria for listed disabilities as precisely as possible. We are proposing editorial changes, primarily of syntax and punctuation, throughout this portion of the rating schedule. These changes are intended to clarify the rating criteria and represent no substantive amendment.

The current rating schedule uses comparative terms such as "pronounced," "severe," "moderate," and "mild" preceding evaluation criteria for various levels under diagnostic codes 6514 (sphenoid sinusitis), 6516 (chronic laryngitis), 6601 (bronchiectasis), and 6602 (bronchial asthma). Rather than helping to explain or clarify the specific evaluation criteria which they precede, these terms inject an element of ambiguity not otherwise present. For that reason, we propose to delete these labels.

Under several diagnostic codes, evaluation criteria describing respiratory disability are subjective and often inconsistently interpreted. There are also instances in which evaluations are assigned solely on conditions resulting from trauma or surgery rather than actual respiratory dysfunction. To determine the level of disability under several diagnostic codes, we propose to substitute criteria which are objective, quantifiable, and which can be measured through commonly available pulmonary function tests. The measure of forced expiratory volume in one second (FEV–1) represents the percentage of air in the lung which can be expelled in that length of time. When greater than 80 percent, breathing is categorized as normal. This measure has been included under diagnostic codes 6520 (stenosis of larynx including residuals of laryngeal trauma), 6600 (chronic bronchitis), and 6602 (bronchial asthma). The criteria under diagnostic code 6520 currently require a subjective determination as to the degree of respiratory impairment. Criteria under diagnostic codes 6600 and 6602 similarly depend on standards such as coughing and dyspnea which are inherently difficult to measure.

Another measure of respiratory impairment is forced vital capacity (FVC), which is the total volume of air a person can forcibly expire. FVC measurements have been included under the newly proposed rating formula for interstitial lung disease. The ratio of FEV–1 to FVC (FEV–1/FVC) has been included under diagnostic codes 6600 (bronchitis) and 6602 (bronchial asthma).

Another useful test measures the diffusion capacity of the lung for carbon monoxide by the single breath method (DLCO(SB)). Use of this criterion is proposed under diagnostic code 6600 (chronic bronchitis) and the rating formula for interstitial lung disease. The amount of oxygen which can be consumed in a minute is also a useful determinant of lung impairment. This criterion is included under diagnostic code 6600 (chronic bronchitis) and the rating formula for interstitial lung disease.

Atrophic rhinitis is currently rated under one diagnostic code, 6501. Since the condition may arise from three distinct etiologies, however, we propose to delete that code and assign three new diagnostic codes: 6522 for allergic rhinitis, 6523 for bacterial rhinitis, and 6524 for granulomatous rhinitis. The proposed levels of disability are 30 and 10 percent under diagnostic code 6522, and 50 and 10 percent under 6523. A 100 percent evaluation will be assigned under diagnostic code 6524 for Wegener's granulomatosis and midline granuloma, and a 20 percent evaluation will be assigned for other types of granulomatous infection. Percentages under diagnostic code 6524 differ from diagnostic codes 6522 and 6523 because of the more seriously disabling effect and occasionally life-threatening nature of granulomatous diseases.

We propose to eliminate the 0 percent level under diagnostic code 6502 (deviation of nasal septum), which is currently assigned for "slight symptoms," since it serves no useful purpose. As elsewhere in the rating schedule, when the criteria for compensable evaluations are not met, a 0 percent evaluation will be assigned (38 CFR 4.31).

A 50 percent evaluation under diagnostic code 6514, chronic sphenoid sinusitis, currently requires repeated curettage after the development of osteomyelitis. We propose to delete this requirement since curettage is no longer commonly used to treat this condition. We also propose to delete mention of "symptoms mild or occasional" at the 0 percent level, since this description does not assist the rater in the assignment of evaluations.

Under the current rating schedule, healed injuries of the larynx are rated under diagnostic code 6517, and stenosis of the larynx under diagnostic code 6520. We propose to delete diagnostic code 6517 and combine residuals of laryngeal trauma and stenosis of the larynx under diagnostic code 6520, and to evaluate the level of severity according to the results of pulmonary function testing as opposed to the more ambiguous criteria of dyspnea on slight, moderate, or heavy exertion used in the current schedule. Permanent tracheostomy will continue to be rated as totally disabling. We also propose to rate injuries of the pharynx under a new diagnostic code, 6521.

Laryngectomy is currently assigned a 100 percent evaluation under diagnostic code 6518. Since surgical treatment is often confined to partial removal of the larynx, we propose to limit this code to total laryngectomy. The heading will be accordingly amended, and an instruction will be added to rate the residuals of partial laryngectomy as laryngitis under diagnostic code 6516, aphonia under 6519, or stenosis of larynx under 6520.

The evaluation criteria for chronic bronchitis (diagnostic code 6600), and bronchial asthma (6602), have been revised to include the results of pulmonary function testing and other objective characteristics. Veterans with bronchitis who meet the requirements for home oxygen, as outlined in a Note which has been added under diagnostic code 6600, will be assigned a 100 percent evaluation. The evaluation criteria for bronchiectasis (6601) currently rely on a number of subjective indicators such as comparative degrees of dyspnea, anemia, and impairment of general health. The proposed revision will provide more objective measurements of lung involvement, severity of signs and symptoms, and frequency of required treatment. Since bronchiectasis can disrupt pulmonary function in a manner similar to bronchitis (6600), an instruction has been added which permits alternative evaluation under those criteria. Residuals of bronchiectasis will also be rated as bronchitis. Emphysema under diagnostic code 6603, and chronic obstructive pulmonary disease under a newly established diagnostic code 6604, will be rated under the same evaluation criteria as chronic bronchitis since both of these conditions have similar disabling manifestations. The current percentage levels of 100, 60, 30, and 10 percent will not be changed for diseases of the trachea and bronchi under these codes.

Section 356 of title 38, United States Code provided graduated evaluations for tuberculosis, each evaluation assigned for a specified period. Although Public Law 90–493 repealed section 356, that section still applies to any veteran who was receiving or entitled to receive compensation for tuberculosis on August 19, 1968. Diagnostic codes 6701 through 6704, and 6721 through 6724 apply in these protected cases and no changes to those codes are proposed.

Diagnostic codes 6730 (active pulmonary tuberculosis), and 6731 (inactive pulmonary tuberculosis) apply to the evaluation of tuberculosis where the veteran was initially entitled after August 19, 1968. Diagnostic code 6730 currently provides for a total evaluation while pulmonary tuberculosis is active. No change of this code is proposed. Diagnostic code 6731 assigns a 100 percent evaluation for one year following the date that tuberculosis becomes inactive. We propose to eliminate the period of convalescence and to rate residuals of tuberculosis as bronchitis under diagnostic code 6600. This change is warranted because a person whose tuberculosis has been cured through chemotherapy does not ordinarily require a period of prolonged convalescence, and diagnostic code 6600 provides a broad enough range of evaluations to rate actual disability as established by current medical information. The instructions on rating tuberculosis in nonservice-connected pension cases will be retained in a Note following diagnostic code 6730 with no substantive change.

Nontuberculous diseases of the lungs and pleura are currently rated under diagnostic codes 6800 through 6821. These pulmonary conditions can generally be classified as bacterial infections of the lung, interstitial lung disease, mycotic lung disease, or restrictive lung disease. We propose that many of the conditions addressed in the current rating schedule, together with additional representative conditions, be regrouped according to these categories of disability and consecutively numbered. Each group of disabilities will be followed by an appropriate rating formula identifying evaluation criteria common to the listed diseases. This arrangement will facilitate the correct classification and evaluation of similar conditions.

Bacterial infections of the lung listed in the current rating schedule include actinomycosis (diagnostic code 6803), streptotrichosis (6804), and abscess of the lung (6809). We propose to delete these codes and add diagnostic codes 6822, Actinomycosis, 6823, Nocardiosis, and 6824, Chronic lung abscess. Streptotrichosis will not be retained because it is an obsolete term for actinomycosis. Nocardiosis will be added because it is common in this category of disease. The new codes will be rated according to a general formula for bacterial infections. Active infections will be evaluated as 100 percent disabling with residuals rated as bronchitis under diagnostic code 6600.

Diagnostic codes which currently identify interstitial lung diseases include 6800 (anthracosis), 6801 (silicosis), and 6802 (pneumoconiosis). These codes will be deleted. Diagnostic codes 6825, Diffuse interstitial fibrosis (interstitial pneumonitis, fibrosing alveolitis), 6826, Desquamative interstitial pneumonitis, 6827, Pulmonary alveolar proteinosis, 6828, Eosinophilic granuloma of lung, 6829, Drug-induced pulmonary pneumonitis and fibrosis, 6830, Radiation-induced pulmonary pneumonitis and fibrosis, 6831, Hypersensitivity pneumonitis (extrinsic allergic alveolitis), and 6832, Pneumoconiosis (silicosis, asbestosis, anthracosis, etc.) will be added under the category. The inclusion of diseases which are not shown in the current schedule will allow for a more complete representation of this category. These diagnostic codes will be rated according to a general formula for interstitial lung disease. Evaluation levels of 100, 70, 40, 10, or 0 percent will be assigned according to the results of pulmonary function testing, and will replace the criteria of 100, 60, 30, and 10 percent which currently follow diagnostic code 6802 and rely on subjective indicators such as impairment of bodily vigor and dyspnea. The intermediate levels of disability which can be objectively identified through pulmonary function tests justify higher evaluations than the 60 percent and 30 percent which are assigned under the more subjective criteria in the current rating schedule. A 100 percent evaluation will be assigned when the requirements for home oxygen are met in the same manner as for bronchitis under diagnostic code 6600.

Diagnostic codes pertaining to the following mycotic lung diseases will be removed: 6805 (blastomycosis of lung), 6806 (sporotrichosis of lung), 6807 (aspergillosis of lung), 6808 (unspecified mycosis of lung), and 6821 (coccidioidomycosis). Diagnostic codes 6833, Histoplasmosis of lung, 6834, Coccidioidomycosis, 6835, Blastomycosis, 6836, Cryptococcoses, 6837, Aspergillosis, and 6838, Mucormycosis will be added to represent this category of fungal infections. Sporotrichosis will be deleted because it usually affects only the skin and lymph nodes, and lung involvement is uncommon. Mycotic lung diseases will be rated as 100, 50, 30, or 0 percent disabling depending on the activity and severity of the disease. A Note will be added to the formula which is essentially the same Note currently attached to diagnostic code 6821 explaining the principles of service connection for coccidioidomycosis. The term "San Joaquin Valley Fever" will be deleted from the Note since it represents only a stage of coccidioidomycosis and is not synonymous with the disease itself.

Codes currently pertaining to the following restrictive lung diseases will be removed: 6810 (serofibrinous pleurisy), 6811 (purulent pleurisy), 6812 (bronchocutaneous or bronchopleural fistula), 6813 (permanent collapse of the lung), 6814 (spontaneous pneumothorax), 6815 (pneumonectomy), 6816 (lobectomy), and 6818 (residuals of pleural cavity injuries). A rating formula for restrictive lung disease will follow new diagnostic codes 6839, Diaphragm paralysis or paresis, 6840, Spinal cord injury with respiratory insufficiency, 6841, Kyphoscoliosis, pectus excavatum, pectus carinatum, 6842, Traumatic chest wall defect, pneumothorax, hernia, etc., 6843, Post-surgical residual (lobectomy, pneumonectomy, etc.), and 6844, Chronic pleural effusion or fibrosis. Since collapse therapy for tuberculosis is no longer common, a separate code for permanent collapse of the lung will not be retained. The conditions currently rated as pleurisy will be rated as chronic pleural effusion or fibrosis; fistula, pneumonectomy, and lobectomy will be rated under post-surgical residual; pleural cavity injuries and pneumothorax will be rated as traumatic chest wall defect. Diaphragm paralysis, spinal cord injury, and kyphoscoliosis are significant disorders which warrant separate codes. These restrictive lung diseases will be rated according to the same criteria as bronchitis, or the primary disorder.

A Note has been added following the formula for restrictive lung diseases with rating instructions to be applied in specific situations. Under the current diagnostic code for spontaneous pneumothorax (6814), a 100 percent evaluation is provided for six months of convalescence following this event. However, episodes of spontaneous pneumothorax typically resolve with full absorption of air space much sooner. We are thus proposing a three month period of convalescence instead of six. This period of convalescence will be assigned as of the date of hospital admission and continue for three months from the first day of the month following hospital discharge. Empyema will continue to be evaluated as 100 percent disabling while persistent. With a bullet or missile retained in the lung, a 20 percent evaluation will be assigned for discomfort on exertion or limitation of breathing. Coexisting injuries to muscle groups I through IV (diagnostic codes 5301 through 5304) will continue to be combined with injuries of the pleural cavity. Muscle group XXI under diagnostic code 5321, however, pertains to the chest muscles which control respiration. Since separate evaluation of disorders having the same disabling manifestations is prohibited as "pyramiding" under § 4.14, we propose to note that injuries to muscle group XXI will not be combined with ratings for respiratory involvement.

The current rating schedule addresses chronic passive congestion of the lung under diagnostic code 6817 by directing raters to rate the underlying disease. We propose to redesignate diagnostic code 6817 as "Pulmonary vascular disease," since this is the most common cause of passive congestion, and to provide specific evaluation criteria for 100, 60, 30, and 0 percent evaluations.

For malignancies of the respiratory system, diagnostic code 6819 currently provides a 100 percent evaluation for two years following surgery or the cessation of antineoplastic therapy. This provision is applied at the time of rating by assigning a two year total evaluation with a prospective reduction consistent with the protected, known or minimum evaluation. Due to improvements in the administration of chemotherapy and radiation treatments, we believe that a specified convalescent evaluation is no longer warranted, and that a decision to reduce an evaluation should be based on medical findings rather then a regulatory assumption that there has been an improvement. We propose instead to continue the total evaluation after treatment is discontinued and to examine the veteran six months thereafter. If the results of this or any subsequent examination warrant a reduction in evaluation, the reduction would be implemented under the provisions of 38 CFR 3.105(e). This method offers the additional advantage of giving veterans prior notice of any proposed action and an opportunity to present evidence showing that the action should not be taken.

Two diagnostic codes have been added as disabilities of the lungs and pleura: Diagnostic codes 6845, Sarcoidosis, and 6846, Sleep apnea syndromes. Pulmonary sarcoidosis will be rated as 60, 30, or 0 percent disabling, and sleep apnea syndromes will be evaluated as 100, 50, 30, or 0 percent disabling according to specified evaluation criteria. Following the criteria for sarcoidosis, an instruction has been included which allows rating according to pulmonary impairment as for chronic bronchitis (6600). Residuals of infection will also be rated as bronchitis (6600). Extra-pulmonary involvement will be rated under the criteria for rating disabilities of the specific body system affected.

Section 4.96(a), which precedes the respiratory schedule and sets forth the principles relating to combination of respiratory conditions, will be revised to reflect the reassignment of diagnostic codes described above.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: August 11, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for Part 4 is revised to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155, unless otherwise noted.

2. In § 4.96, paragraph (a) is revised to read as follows:

(a) *Rating coexisting respiratory conditions.* Ratings under diagnostic codes 6600 through 6817 and 6822 through 6846 will not be combined with each other. Where there is lung or pleural involvement, ratings under diagnostic codes 6819 and 6820 will not be combined with each other or with diagnostic codes 6600 through 6817 or 6822 through 6846. A single rating will be assigned under the diagnostic code which reflects the predominant disability picture with elevation to the next higher evaluation where the severity of the overall disability warrants such elevation. However, in cases protected by the provisions of Pub. L. 90–493, with the graduated ratings of 50 and 30 percent for inactive tuberculosis, elevation is not for application.

* * * * *

3. Section 4.97 is revised to read as follows:

4.97 Schedule of ratings—respiratory system.

DISEASES OF THE NOSE AND THROAT

	Rating
6502 Septum, nasal, deviation of:	
Traumatic only.	
Marked interference with breathing space	10
6504 Nose, loss of part of, or scars exposing both nasal passage	30
Loss of part of one ala, or other obvious disfigurement	10
6510 Sinusitis, pansinusitis, chronic.	
6511 Sinusitis, ethmoid, chronic.	
6512 Sinusitis, frontal, chronic.	
6513 Sinusitis, maxillary, chronic.	
6514 Sinusitis, sphenoid, chronic.	
General Rating Formula for Sinusitis (diagnostic codes 6510 through 6514):	
Following radical surgery with chronic osteomyelitis, or; severe symptoms after repeated surgeries	50
Frequently incapacitating recurrences, and frequent severe headaches, and purulent discharge or crusting reflecting purulence	30
Infrequent headaches with discharge or crusting or scabbing	10
Detected by X-ray only	0
6515 Laryngitis, tuberculous, active or inactive Rate under §§ 4.88b or 4.89, whichever is appropriate.	
6516 Laryngitis, chronic.	
Marked hoarseness with pathological changes such as inflammation of cords or mucous membrane, thickening or nodules of cords, or submucous infiltration	30
Moderate hoarseness with inflammation of cords or mucous membrane	10
6518 Laryngectomy, total	100
Rate the residuals of partial laryngectomy as laryngitis (6516), aphonia (6519), or stenosis of larynx (6520).	
6519 Aphonia, complete organic.	
Constant inability to communicate by speech	100
Constant inability to speak above a whisper	60
Partial; rate as laryngitis, chronic (6516).	
6520 Larynx, stenosis of, including residuals of laryngeal trauma (unilateral or bilateral):	
Forced Expiratory Volume in one second (FEV–1) less than 40 percent of predicted value, with Flow-Volume Loop compatible with upper airway obstruction, or; permanent tracheostomy	100
FEV–1 of 40 to 55 percent predicted, with Flow-Volume Loop compatible with upper airway obstruction	60
FEV–1 of 56 to 70 percent predicted, with Flow-Volume Loop compatible with upper airway obstruction	30
FEV–1 of 71 to 80 percent predicted, with Flow-Volume Loop compatible with upper airway obstruction	10
Note.— Or rate as aphonia (6519).	
6521 Pharynx, injuries to Stricture or obstruction of pharynx or nasopharynx, or; absence of soft palate secondary to trauma, chemical burn, or granulomatous disease, or; paralysis of soft palate with swallowing difficulty (nasal regurgitation) and speech impairment	50
6522 Allergic rhinitis.	
With polyps	30
Without polyps, but with marked interference with breathing space	10
6523 Bacterial rhinitis.	
Rhinoscleroma	50

DISEASES OF THE NOSE AND THROAT CONTINUED

	Rating
With permanent hypertrophy of turbinates and marked interference with breathing space	10
6524 Granulomatous rhinitis.	
Wegener's granulomatosis, lethal midline granuloma	100
Other types of granulomatous infection	20

DISEASES OF THE TRACHEA AND BRONCHI

	Rating
6600 Bronchitis, chronic	....
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40%, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40 percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; meets requirements for home oxygen	100
FEV–1 of 40 to 55 percent predicted, or; FEV–1/FVC of 40% to 55%, or; DLCO (SB) of 40 to 55 percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56 to 70 percent predicted, or; FEV–1/FVC of 56% to 70%, or; DLCO (SB) 56 to 65 percent predicted	30
FEV–1 of 71 to 80 percent predicted, or; FEV–1/FVC of 71% to 80%, or; DLCO (SB) greater than 65 percent predicted	10
Note.—Requirements for home oxygen are met when arterial oxygen tension on room air in the chronic stable state is less than or equal to 55 mm. of mercury, or oxygen saturation is less than or equal to 88%. If the arterial oxygen tension is equivalent to 56–59 mm. of mercury, or oxygen saturation is equivalent to 89–92%, the following secondary diagnoses are required: edema or congestive heart failure, or; cor pulmonale with EKG P-wave changes greater than or equal to 3 mm. in leads II, III, or AVF, or; erythrocythemia with hematocrit of at least 56%.	
6601 Bronchiectasis.	
Two or more lobes involved with severe hemoptysis, chronic antibiotic usage, or chronic recurrent pneumonia	100
One lobe involved, with severe hemoptysis, chronic antibiotic usage, or chronic recurrent pneumonia	60
Persistent paroxysmal cough at intervals throughout the day with abundant purulent and fetid expectoration, and slight, if any, emphysema or weight loss	30
Minor hemoptysis, or; infrequent antibiotic usage, or; infrequent pneumonia	10
Or rate according to pulmonary impairment as for chronic bronchitis (6600)	....

DISEASES OF THE TRACHEA AND BRONCHI—Continued

	Rating
Note.—Rate residuals of infection as bronchitis (6600).	
6602 Asthma, bronchial.	
FEV–1 less than 40 percent predicted, or; FEV–1/FVC less than 40%, or; attacks occurring more than once weekly with episodes of respiratory failure, or; requires chronic use of systemic (oral or parenteral) high dose glucocorticoids or immuno-suppressive medications	100
FEV–1 of 40 to 55 percent predicted, or; FEV–1/FVC of 40% to 55%, or; frequent visits to a physician for required care of periodic exacerbations, or; periodic chronic low dose courses of systemic (oral or parenteral) corticosteroids	60
FEV–1 of 56 to 70 percent predicted, or; FEV–1/FVC of 56% to 70%, or; chronic bronchodilator therapy, or; inhalational anti-inflammatory medication	30
FEV–1 of 71 to 80 percent predicted, or; FEV–1/FVC of 71% to 80%, or; periodic medication on short term basis	10
Note.—In the absence of clinical findings of asthma at time of examination, a verified history of asthmatic attacks must be of record.	
6603 Emphysema, pulmonary.	
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40%, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40 percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; meets requirements for home oxygen	100
FEV–1 of 40 to 55 percent predicted, or; FEV–1/FVC of 40% to 55%, or; DLCO (SB) of 40 to 55 percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56 to 70 percent predicted, or; FEV–1/FVC of 56% to 70%, or; DLCO (SB) 56 to 65 percent predicted	30
FEV–1 of 71 to 80 percent predicted, or; FEV–1/FVC of 71% to 80%, or; DLCO (SB) greater than 65 percent predicted	10
Note.—Requirements for home oxygen are met when arterial oxygen tension on room air in the chronic stable state is less than or equal to 55 mm. of mercury, or oxygen saturation is less than or equal to 88%. If the arterial oxygen tension is equivalent to 56–59 mm. of mercury, or oxygen saturation is equivalent to 89–92%, the following secondary diagnoses are required: edema or congestive heart failure, or; cor pulmonale with EKG P-wave changes greater than or equal to 3 mm. in leads II, III, or AVF, or; erythrocythemia with hematocrit of at least 56%.	
6604 Chronic Obstructive Pulmonary Disease	....
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40%, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40 percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; meets requirements for home oxygen	100
FEV–1 of 40 to 55 percent predicted, or; FEV–1/FVC of 40% to 55%, or; DLCO (SB) of 40 to 55 percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56 to 70 percent predicted, or; FEV–1/FVC of 56% to 70%, or; DLCO (SB) 56 to 65 percent predicted	30
FEV–1 of 71 to 80 percent predicted, or; FEV–1/FVC of 71% to 80%, or; DLCO (SB) greater than 65 percent predicted	10
Note.—Requirements for home oxygen are met when arterial oxygen tension on room air in the chronic stable state is less than or equal to 55 mm. of mercury, or oxygen saturation is less than or equal to 88%. If the arterial oxygen tension is equivalent to 56–59 mm. of mercury, or oxygen saturation is equivalent to 89–92%, the following secondary diagnoses are required: edema or congestive heart failure, or; cor pulmonale with EKG P-wave changes greater than or equal to 3 mm. in leads II, III, or AVF, or; erythrocythemia with hematocrit of at least 56%.	

DISEASES OF THE LUNGS AND PLEURA—TUBERCULOSIS

	Rating
Ratings for Pulmonary Tuberculosis Entitled On August 19, 1968	
6701 Tuberculosis, pulmonary, chronic, far advanced, active	....
6702 Tuberculosis, pulmonary, chronic, moderately advanced, active	....
6703 Tuberculosis, pulmonary, chronic, minimal, active	....
6704 Tuberculosis, pulmonary, chronic, active, advancement unspecified	100
6721 Tuberculosis, pulmonary, chronic, far advanced, inactive	....
6722 Tuberculosis, pulmonary, chronic, moderately advanced, inactive	....
6723 Tuberculosis, pulmonary, chronic, minimal, inactive	....
6724 Tuberculosis, pulmonary, chronic, inactive, advancement unspecified	....
General Rating Formula for Inactive Pulmonary Tuberculosis:	
For 2 years after date of inactivity, following active tuberculosis, which was clinically identified during service or subsequently	100
Thereafter, for 4 years, or in any event, to 6 years after date of inactivity	50
Thereafter, for 5 years, or to 11 years after date of inactivity	30
Following far advanced lesions diagnosed at any time while the disease process was active, minimum	30
Following moderately advanced lesions, provided there is continued disability, emphysema, dyspnea on exertion, impairment of health, etc.	20
Otherwise	0
Note.—(1): The 100 pct rating under codes 6701 through 6724 is not subject to a requirement of precedent hospital treatment. It will be reduced to 50 pct for failure to submit to examination or to follow prescribed treatment upon report to that effect from the medical authorities. When a veteran is placed on the 100 pct rating for inactive tuberculosis, the medical authorities will be appropriately notified of the fact, and of the necessity under 38 U.S.C. 356 to notify the Adjudication Division in the event of failure to submit to examination or to follow prescribed treatment..	
Note.—(2): The graduated 50 pct and 30 pct ratings and the permanent 30 pct and 20 pct ratings for inactive pulmonary tuberculosis are not to be combined with ratings for other respiratory disabilities. Following thoracoplasty the rating will be for removal of ribs combined with the rating for collapsed lung. Resection of ribs incident to thoracoplasty will be rated as removal.	
Ratings for Pulmonary Tuberculosis Initially Entitled After August 19, 1968	
6730 Tuberculosis, pulmonary, chronic, active	100
Note.—Active pulmonary tuberculosis will be considered permanently and totally disabling for nonservice-connected pension purposes in the following circumstances:.	
(a) Associated with active tuberculosis involving other than the respiratory system.	....
(b) With severe associated symptoms or with extensive cavity formation.	....
(c) Reactivated cases, generally.	....
(d) With definite advancement of lesions on successive examinations or while under treatment.	....
(e) Without retrogression of lesions or other evidence of material improvement at the end of 6 months hospitalization or without change of diagnosis from "active" at the end of 12 months hospitalization. Material improvement means lessening or absence of clinical symptoms, and X-ray findings of a stationary or retrogressive lesion.	....
6731 Tuberculosis, pulmonary, chronic, inactive	0
Note.—Rate residual scar or fibrosis as chronic bronchitis (6600).	
6732 Pleurisy, tuberculous, active or inactive Rate under §§ 4.88b or 4.89, whichever is appropriate.	....

NONTUBERCULOUS DISEASES

	Rating
6817 Pulmonary Vascular Disease.	
Primary pulmonary hypertension, or; chronic pulmonary thromboembolism with evidence of pulmonary hypertension, right ventricular hypertrophy, or right heart failure, or; pulmonary hypertension secondary to other obstructive diseases of pulmonary arteries or veins with evidence of right ventricular hypertrophy or right heart failure	100
Chronic pulmonary thromboembolism requiring anticoagulant therapy, or; following inferior vena cava surgery without evidence of pulmonary hypertension or right ventricular dysfunction	60
Acute pulmonary embolism with residual symptoms	30
Resolved pulmonary thromboembolism with no residual symptoms	0
6819 Neoplasms, malignant, any specified part of respiratory system exclusive of skin growths	100
Note.—Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
6820 Neoplasms, benign, any specified part of respiratory system.	....
The rating will be based on applicable respiratory analogy.	
Bacterial Infections of the Lung	
6822 Actinomycosis	....
6823 Nocardiosis	....
6824 Chronic Lung Abscess	....
General Rating Formula for Bacterial Infections of the Lung (diagnostic codes 6822 through 6824):	
Active infection with systemic symptoms such as fever, night sweats, weight loss, or hemoptysis	100
For post surgical residual and post-treatment fibrosis and scars, rate as for chronic bronchitis (6600).	
Interstitial Lung Disease	
6825 Diffuse interstitial fibrosis (interstitial pneumonitis, fibrosing alveolitis)	....
6826 Desquamative interstitial pneumonitis	....
6827 Pulmonary alveolar proteinosis	....
6828 Eosinophilic granuloma of lung	....
6829 Drug-induced pulmonary pneumonitis and fibrosis	....
6830 Radiation-induced pulmonary pneumonitis and fibrosis	....
6831 Hypersensitivity pneumonitis (extrinsic allergic alveolitis)	....
6832 Pneumoconiosis (silicosis, asbestosis, anthracosis, etc.)	....
General Rating Formula for Interstitial Lung Disease (diagnostic codes 6825 through 6832):	
FVC less than 50% predicted, or; DLCO (SB) less than 40% predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption with cardiorespiratory limitation, or; cor pulmonale or pulmonary hypertension, or; meets requirements for home oxygen (see guidelines under chronic bronchitis)	100
FVC of 50 to 60% predicted, or; DLCO(SB) of 40 to 50% predicted, or; maximum exercise capacity 15 to 20 ml/kg/min oxygen consumption with cardiorespiratory limitation	70
FVC of 61 to 70% predicted, or; DLCO(SB) of 51 to 60% predicted	40
FVC of 71 to 80% predicted, or; DLCO(SB) of 61 to 70% predicted	10
FVC greater than 80% predicted, or; DLCO(SB) greater than 70% predicted	0
Mycotic Lung Disease	
6833 Histoplasmosis of Lung	....
6834 Coccidioidomycosis	....
6835 Blastomycosis	....
6836 Cryptococcoses	....
6837 Aspergillosis	....
6838 Mucormycosis	....
General Rating Formula for Mycotic Lung Disease (diagnostic codes 6833 through 6838):	
Chronic pulmonary mycosis with persistent fever, weight loss, night sweats, or massive hemoptysis	100
Chronic pulmonary mycosis requiring suppressive therapy with no more than minimal symptoms such as occasional minor hemoptysis or productive cough	50
Chronic pulmonary mycosis with minimal symptoms such as occasional minor hemoptysis or productive cough	30
Healed and inactive mycotic lesions, asymptomatic	0
Note.—Coccidioidomycosis has an incubation period up to 21 days, and the disseminated phase is ordinarily manifest within 6 months of the primary phase. However, there are instances of dissemination delayed up to many years after the initial infection which may have been unrecognized. Accordingly, when service connection is under consideration in the absence of record or other evidence of the disease in service, service in southwestern United States where the disease is endemic and absence of prolonged residence in this locality before or after service will be the deciding factor.	
Restrictive Lung Disease	
6839 Diaphragm paralysis or paresis	....
6840 Spinal cord injury with respiratory insufficiency	....
6841 Kyphoscoliosis, pectus excavatum, pectus carinatum	....
6842 Traumatic chest wall defect, pneumothorax, hernia, etc.	....
6843 Post-surgical residual (lobectomy, pneumonectomy, etc.)	....
6844 Chronic pleural effusion or fibrosis	....
General Rating Formula for Restrictive Lung Disease (diagnostic codes 6839 through 6844):	
FEV–1 less than 40 percent of predicted value, or; the ratio of Forced Expiratory Volume in one second to Forced Vital Capacity (FEV–1/FVC) less than 40%, or; Diffusion Capacity of the Lung for Carbon Monoxide by the Single Breath Method (DLCO (SB)) less than 40 percent predicted, or; maximum exercise capacity less than 15 ml/kg/min oxygen consumption (with cardiac or respiratory limitation), or; cor pulmonale (right heart failure), or; right ventricular hypertrophy, or; pulmonary hypertension (shown by Echo or cardiac catheterization), or; episode(s) of acute respiratory failure, or; meets requirements for home oxygen	100
FEV–1 of 40 to 55 percent predicted, or; FEV–1/FVC of 40% to 55%, or; DLCO (SB) of 40 to 55 percent predicted, or; maximum oxygen consumption of 15 to 20 ml/kg/min (with cardiorespiratory limit)	60
FEV–1 of 56 to 70 percent predicted, or; FEV–1/FVC of 56% to 70%, or; DLCO (SB) 56 to 65 percent predicted	30
FEV–1 of 71 to 80 percent predicted, or; FEV–1/FVC of 71% to 80%, or; DLCO (SB) greater than 65 percent predicted	10
Or rate primary disorder.	
Note.—(1)—Requirements for home oxygen are met when arterial oxygen tension on room air in the chronic stable state is less than or equal to 55 mm. of mercury, or oxygen saturation is less than or equal to 88%. If the arterial oxygen tension is equivalent to 56–59 mm. of mercury, or oxygen saturation is equivalent to 89–92%, the following secondary diagnoses are required: edema or congestive heart failure, or; cor pulmonale with EKG P-wave changes greater than or equal to 3 mm. in leads II, III, or AVF, or; erythrocythemia with hematocrit of at least 56%.	
Note.—(2): A 100 percent rating shall be assigned for pleurisy with empyema, with or without pleurocutaneous fistula, until resolved.	
Note.—(3): Following episodes of total spontaneous pneumothorax, a rating of 100 percent shall be assigned as of the date of hospital admission and shall continue for three months from the first day of the month after hospital discharge.	
Note.—(4): Gunshot wounds of the pleural cavity with bullet or missile retained in lung, pain or discomfort on exertion, or with scattered rales or some limitation of excursion of diaphragm or of lower chest expansion shall be rated at least 20 percent disabling. Disabling injuries of shoulder girdle muscles (Groups I to IV) shall be separately rated and combined with ratings for respiratory involvement. Involvement of muscle group XXI (diagnostic code 5321), however, will not be separately rated.	
6845 Sarcoidosis	....

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NONTUBERCULOUS DISEASES—Continued

	Rating
Pulmonary involvement with symptoms of fever, weight loss, and night sweats, requiring systemic high dose corticosteroids for control	60
Pulmonary involvement with persistent mild symptoms requiring chronic low dose or intermittent corticosteroids	30
Chronic hilar adenopathy or stable lung infiltrates without symptoms or physiologic impairment	0
Or rate according to pulmonary impairment as for chronic bronchitis (6600).	
Note.—Rate residuals of infection as bronchitis (6600). For extra-pulmonary involvement, see specific body system.	
6846 Sleep Apnea Syndromes (Obstructive, Central, Mixed) Chronic respiratory failure with carbon dioxide retention or cor pulmonale, or; requires tracheostomy	100
Requires use of breathing assistance device such as continuous positive airway pressure (CPAP) machine	50
Persistent day-time hypersomnolence	30
Asymptomatic but with documented sleep disorder breathing	0

[FR Doc. 93–1107 Filed 1–15–93; 8:45 am]

BILLING CODE 8320–01–U

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38 CFR Part 4

RIN 2900–AF00

Schedule for Rating Disabilities; The Skin

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its Schedule for Rating Disabilities of the Skin. This review was initiated because of a General Accounting Office (GAO) study noting that there has been no comprehensive review of the rating schedule since 1945, and recommending that such a review be conducted. The intended effect is to update this portion of the rating schedule to ensure that it uses current medical terminology, unambiguous criteria, and that it reflects medical advances which have occurred since the last review. This is one of the 16 categories of disability in the rating schedule which we plan to revise.

DATES: Comments must be received by VA on or before March 22, 1993. Comments will be available for public inspection until March 30, 1993. This change is proposed to be effective 30 days after the date of publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until March 30, 1993.

FOR FURTHER INFORMATION CONTACT: John L. Roberts, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled Veterans' Benefits: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. VA agreed to these recommendations.

In the **Federal Register** of May 2, 1991, VA published an advance notice of proposed rulemaking advising the public that it was preparing to revise and update the schedule for rating disabilities of the skin. A number of comments and suggestions were received in response to that notice. Some commenters pointed out the need to add several skin conditions which frequently occur, or suggested that certain codes be deleted because they are rare in the veteran population. Other commenters recommended a revision in the way in which the schedule addresses head and neck scars, and eczema. In addition to publishing an advance notice, we also contracted an outside consultant to recommend changes. The primary objectives of this review are to eliminate ambiguities and to ensure that the rating schedule reflects recent medical advances and uses current medical terminology and criteria.

A number of grammatical elements are useful in eliminating ambiguity and ensuring that the schedule presents rating criteria as precisely as possible. We are proposing editorial changes, primarily of syntax and punctuation, throughout this portion of the schedule. These changes are intended to clarify the rating criteria and represent no substantive amendment.

We propose to change the title of diagnostic code 7800 from "disfiguring scars of the head, face or neck" to a more inclusive heading of "disfigurement of the head, face, or neck," with evaluation criteria based on the prominence of general disfigurement. Part of the Note which now follows diagnostic code 7800 provides authority to elevate evaluations in the presence of marked discoloration or color contrast. We propose to delete this provision because it is subject to inconsistent interpretations. In its place, we propose to add an 80 percent level allowing for more severe cases of disfigurement. That portion of the current Note which refers to the option of extraschedular review under § 3.321(b) will be retained.

We propose to change the headings for diagnostic codes 7801 (third degree burn scars) and 7802 (second degree burn scars) to expand consideration of these disabilities beyond burn scars. For 7801, we propose to change the heading to read "scars, other than head, face or neck, with underlying soft tissue damage causing deep contour defect or limited motion," and 7802 will read "scars, other than head, face, or neck, without underlying soft tissue damage or limited motion." These descriptions will more precisely identify the disability associated with scarring from whatever cause and evaluate the disability according to underlying tissue damage rather than surface scars due to burns. **Note** (1) following code 7801 will be deleted since it refers only to the classification of burn scars. We are adding reference to § 4.25 of this part for clarity.

Surface area of scarring under diagnostic codes 7801 and 7802 is currently shown in decimal fractions of meters and centimeters. For the sake of clarity and consistency, we have converted square feet to square inches, fractional meters to whole centimeters, and rounded the decimal fractions of centimeters to whole numbers. The **Note** following code 7801 referring to evaluation of widely separated scars will be retained and repeated under diagnostic code 7802.

We propose to amend the description of superficial scars under diagnostic code 7803 to reflect more current medical terminology and the common problem of skin instability. The schedule's use of the term "poorly nourished" is not prevalent in medical practice and "repeated ulceration," which is also in the schedule, does not accurately describe what happens when epidermis breaks down. The proposed description, "unstable with frequent loss of epidermal covering," is more accurate and commonly understood.

Except editorial changes for clarity, we propose no change in the evaluation criteria or instructions under diagnostic codes 7804 (painful superficial scars), and 7805 (other scars).

We propose to rate dermatitis as well as eczema under diagnostic code 7806 because these diagnoses are very similar and are often used interchangeably. We propose to add a 100 percent evaluation for the most severe cases of these conditions because the disease may be totally disabling. The term "nervous manifestations" will be deleted from the 50 percent level because it is vague and belongs more appropriately in the psychiatric schedule. We propose minor wording changes in the 50, 30, and 0 percent evaluations for clarity and uniformity with the codes for disfigurement, with no substantive amendment intended.

We are proposing changes in the instructions for rating the two types of leishmaniasis under codes 7807 (Leishmaniasis, americana) and 7808 (Leishmaniasis, old world). We propose to add instructions to rate these diseases according to the severity of the disease as disfigurement under diagnostic code 7800, as scars under 7801, 7802, 7803, 7804, or 7805, or as dermatitis under 7806. This instruction will establish a clearer and more objective basis for evaluation. Although comments were received suggesting that the codes for leishmaniasis be deleted from the schedule because it is rare, we believe that reports of this disease diagnosed among Persian Gulf veterans argue against deletion at this time.

For the sake of clarity, we are proposing to include subacute cutaneous lupus erythematosus in the heading of diagnostic code 7809, Discoid lupus erythematosus. Subacute cutaneous lupus is frequently associated with discoid lupus and is properly evaluated in the same manner. For the sake of clarity, we propose to rate this as dermatitis or eczema.

We propose to delete the following codes because they represent unusual diseases no longer warranting separate categories: pinta (diagnostic code 7810), verruga peruana (7812), and tinea barbae (7814). If at issue, they may be rated under a new diagnostic code 7820 entitled "infections of the skin not listed elsewhere." This new code will include bacterial, fungal, viral, treponemal, and parasitic infections of the skin not specifically listed. These infections will be rated as disfigurement, scars or dermatitis depending on the predominant disability. Addition of this new code will help eliminate use of analogous ratings.

We propose that the heading of diagnostic code 7815, pemphigus, be changed to bullous disorders, which is the common term for a number of similar diseases that should be rated in the same manner.

To insure uniformity we have included rating instructions for dermatophytosis (7813) to be rated as disfigurement, scars, or dermatitis as appropriate (codes 7800 through 7806). Bullous disorders (7815), psoriasis (7816) and what is currently referred to as dermatitis exfoliativa (7817) are to be rated as dermatitis or eczema for uniformity and clarity and rating criteria are provided under each code. Tuberculosis luposa (7811) will continue to be rated in accordance with §§ 4.88b or 4.89, which provide a 100 percent evaluation while the disease is active.

We propose that the heading of "dermatitis exfoliativa" (7817) be changed to "exfoliative dermatitis," which is more commonly used. Erythroderma is another common word for this disease and has been included in parenthesis following the heading.

Since the word "neoplasm" connotes a pathological abnormality better than the term "new growth," we propose to substitute that word under diagnostic codes 7818 and 7819, which pertain to malignant and benign conditions respectively.

We propose to clarify the instructions to rate impairment, disfigurement and scars as the residuals of skin malignancies.

We are proposing that benign neoplasms (7819) also be rated according to impairment of function. We propose to delete the NOTE which directs referral of more serious cases to Central Office. With the addition of criteria for a schedular 100 percent evaluation under diagnostic code 7806 for marked disfigurement, the Note is no longer necessary.

In order to reduce reliance on rating unlisted skin disorders by analogy, we propose to add a number of codes: cutaneous manifestations of collagen-vascular diseases not listed elsewhere (7821), papulosquamous disorders not listed elsewhere (7822), vitiligo (7823), diseases of keratinization (7824), acne (7828), chloracne (7829), scarring alopecia (7830), and alopecia areata (7831). For the sake of objective and consistent evaluations, these conditions will be rated as disfigurement according to the criteria under diagnostic code 7800 or dermatitis under 7806. Rating criteria for the respective evaluations are provided under each code. This broad availability of evaluations will allow for more accurate assignment of percentages in accordance with the facts of each case.

We propose to add three codes for skin diseases which may require immunosuppressive therapy: urticaria (7825), vasculitis (7826), and erythema multiforme and toxic epidermal necrolysis (7827). Evaluation of urticaria will depend on recurrence of the disease and its response to therapy, with levels of 40, 20 and 0 percent provided. Vasculitis and erythema multiforme will be rated as urticaria, or disfigurement or scarring for residuals.

We propose to add hyperhidrosis (7832) to the schedule with evaluation criteria based on response to therapy and the ability to handle paper or tools. A 30 percent evaluation is provided when the disease is unresponsive to therapy, and 0 percent when therapy is successful.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: September 4, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

2. Section 4.118 is revised to read as follows:

§ 4.118 Schedule of ratings—skin.

	Rating
7800 Disfigurement of the head, face, or neck:	
So disfiguring as to preclude occupational interaction with the public	80
Repugnant on casual inspection	50
Disagreeable on casual inspection	30
Noticeable on casual inspection	10
Noticeable, but only on close inspection	0
Note.—The most repugnant, disfiguring conditions, –including scars and diseases of the skin, may be submitted with several unretouched photographs to the Director, Compensation and Pension Service, for consideration under §3.321(b)(1) of this chapter.	
7801 Scars, other than head, face, or neck, with underlying soft tissue damage causing deep contour defect or limited motion:	
Area or areas exceeding 144 square inches (929 sq. cm.)	40
Area or areas exceeding 72 square inches (465 sq. –cm.)	30
Area or areas exceeding 12 square inches (77 sq. cm.)	20
Area or areas exceeding 6 square inches (39 sq. cm.)	10
Note.—Ratings for widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with §4.25 of this part.	
7802 Scars, other than head, face, or neck, without underlying soft tissue damage or limited motion:	
Area or areas approximating 144 square inches (929 sq. cm,)	10
Note.—Ratings for widely separated areas, as on two or more extremities or on anterior and posterior surfaces of extremities or trunk, will be separately rated and combined in accordance with §4.25 of this part..	
7803 Scars, superficial, unstable with frequent loss of epidermal covering	10
7804 Scars, superficial, painful on examination	10
Note.—The 10 percent rating will be assigned even –though the scar may be on tip of finger or toe, and the rating may exceed the amputation value of the area involved.	
7805 Scars, other:	
Rate affected part on limitation of function.	
7806 Dermatitis or Eczema:	
Generalized scaling, crusting, systemic manifestations, —pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7807 Leishmaniasis, americana (mucocutaneous, espundia)	
Rate as disfigurement (diagnostic code 7800), scars (7801, 7802, 7803, 7804, or 7805), or dermatitis (7806), depending upon the predominant disability.	
7808 Leishmaniasis, old world (cutaneous, oriental sore)	
Rate as disfigurement (7800), scars (7801, 7802, 7803, 7804, or 7805), or dermatitis (7806), depending upon the predominant disability.	
7809 Discoid lupus erythematosus or subacute cutaneous lupus erythematosus:	
(Not to be combined with ratings under diagnostic code 6350.)	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7811 Tuberculosis luposa (lupus vulgaris), active or inactive:	
Rate under §§4.88b or 4.89, whichever is appropriate.	
7813 Dermatophytosis:	
Rate as disfigurement (7800), scars (7801, 7802, 7803, 7804, or 7805), or dermatitis (7806) depending upon the predominant disability.	
7815 Bullous disorders including pemphigus vulgaris, pemphigus foliaceous, bullous pemphigoid, dermatitis herpetiformis, epidermolysis bullosa acquisita, benign chronic familial pemphigus (Hailey-Hailey), porphyria cutanea tarda.	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7816 Psoriasis:	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7817 Exfoliative dermatitis (erythroderma)	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7818 Neoplasms, malignant, skin:	
Rate on impairment of function, disfigurement or scars.	
7819 Neoplasms, benign, skin:	
Rate as scars, disfigurement or impairment of function.	
7820 Infections of the skin not listed elsewhere, causing chronic scarring, dyspigmentation or functional complications including bacterial, fungal, viral, treponemal and parasitic diseases.	
Rate as disfigurement (diagnostic code 7800), scars (7801, 7802, 7803, 7804, or 7805), or dermatitis (7806), depending upon the predominant disability.	
7821 Cutaneous manifestations of collagen-vascular diseases not listed elsewhere (including scleroderma, calcinosis cutis and dermatomyositis):	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0

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	Rating
7822 Papulosquamous disorders not listed elsewhere (including lichen planus, large or small plaque parapsoriasis, pityriasis lichenoides et varioliformis acuta (PLEVA), lymphomatoid papulosus, and pityriasis rubra pilaris (PRP).):	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7823 Vitiligo:–	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7824 Diseases of keratinization:	
Generalized scaling, crusting, systemic manifestations, pruritus and so disfiguring as to preclude interaction with the public	100
With ulceration or extensive exfoliation or crusting, and systemic manifestations, or; so disfiguring as to be repugnant on casual inspection	50
With exudation or constant itching, or; extensive lesions, or; so disfiguring as to be disagreeable on casual inspection	30
With exfoliation, exudation, or itching, if involving an exposed surface or extensive area	10
With minimal exfoliation, exudation or itching, if on a nonexposed surface or small area	0
7825 Urticaria:	
Recurrent debilitating episodes which require regular systemic immunosuppressive therapy or are uncontrollable despite any type of therapy	40
Recurrent debilitating episodes which require frequent systemic immunosuppressive therapy	20
Occasional or asymptomatic	0
7826 Vasculitis, primary cutaneous:	
Rate as disfigurement (diagnostic code 7800), or scars, (7801, 7802, 7803, 7804, or 7805), or urticaria (7825), depending upon the predominant disability.	
7827 Erythema multiforme; Toxic epidermal necrolysis:	
Rate as disfigurement (diagnostic code 7800), or scars (7801, 7802, 7803, 7804, or 7805), or urticaria (7825), depending upon the predominant disability.	
7828 Acne:–	
So disfiguring as to preclude occupational interaction —with the public	80–
Repugnant on casual inspection	50–
Disagreeable on casual inspection	30–
Noticeable on casual inspection	10–
Noticeable, but only on close inspection	0
Note.—The most repugnant, disfiguring conditions, ——including scars and diseases of the skin, may be submitted with several unretouched photographs to the Director, Compensation and Pension Service, for consideration under §3.321(b)(1) of this chapter.	
7829 Chloracne:–	
So disfiguring as to preclude occupational interaction —with the public	80–
Repugnant on casual inspection	50–
Disagreeable on casual inspection	30–
Noticeable on casual inspection	10–
Noticeable, but only on close inspection	0
Note.—The most repugnant, disfiguring conditions, ——including scars and diseases of the skin, may be submitted with several unretouched photographs to the Director, Compensation and Pension Service, for consideration under §3.321(b)(1) of this chapter.	
7830 Scarring alopecia:–	
So disfiguring as to preclude occupational interaction —with the public	80–
Repugnant on casual inspection	50–
Disagreeable on casual inspection	30–
Noticeable on casual inspection	10–
Noticeable, but only on close inspection	0
Note.—The most repugnant, disfiguring conditions, ——including scars and diseases of the skin, may be submitted with several unretouched photographs to the Director, Compensation and Pension Service, for consideration under §3.321(b)(1) of this chapter.	
7831 Alopecia areata:	
So disfiguring as to preclude occupational interaction ——with the public	80–
Repugnant on casual inspection	50–
Disagreeable on casual inspection	30–
Noticeable on casual inspection	10–
Noticeable, but only on close inspection	0
Note.—The most repugnant, disfiguring conditions, ——including scars and diseases of the skin, may be submitted with several unretouched photographs to the Director, Compensation and Pension Service, for consideration under §3.321(b)(1) of this chapter.	
7832 Hyperhidrosis:–	
Unable to handle paper or tools because of moisture, and —unresponsive to therapy	30–
Able to handle paper or tools after therapy	0

[FR Doc. 93–1116 Filed 1–15–93; 8:45 am]

BILLING CODE 8320–0–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261 and 268

[FRL–4553–7]

Land Disposal Restrictions for Third Third Scheduled Wastes; Response to Court Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: The Environmental Protection Agency announces the availability of information that has been developed by the Agency in order to implement the September 25, 1992 decision of the U.S. Court of Appeals in *Chemical Waste Management* v. *EPA*, 976 F. 2d 2 (D.C. Cir. 1992). Critical parts of that decision involved treatment standards for wastes that are hazardous because they exhibit a characteristic of hazardous waste. (The underlying rule at issue in the opinion was signed on May 8, 1990, and published on June 1, 1990 (55 FR 22520).) The Agency believes that it is appropriate to make this information available for public review and comment and to consider those comments, since EPA may shortly have to promulgate final regulations to revise treatment standards for characteristic hazardous wastes.

DATES: Comments on this notice must be submitted on or before February 18, 1993.

ADDRESSES: Copies of the supplemental information report may be obtained by calling or visiting the RCRA Docket. The RCRA docket is located in room M2427 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Requests for obtaining the document by telephone may be made by calling (202) 260–9327. Copies cost 0.15 per page. Charges under $25.00 are waived.

Comments on the information in the document must be submitted to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS–305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F93–TTCA–FFFFF.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid

Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington DC 20460, telephone (800) 424–9346, TDD (800) 553–7672 (hearing impaired); in the Washington DC metropolitan area the number is (703) 920–9810, TDD (703) 486–3323. For technical information, contact Kathy Rafferty, Office of Solid Waste (OS–322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (703) 308–8466.

SUPPLEMENTARY INFORMATION: In its May 8, 1990 rule, EPA, among other things, established prohibitions and treatment standards for the wastes in the final third of the statutorily-mandated schedule for the land disposal restrictions program, as required by RCRA section 3004(g)(5). This rule is generally referred to as the "Third Third" rule.[1]

In the critical part of the Third Third rule, the Agency established treatment standards for wastes that are hazardous because they exhibit a particular characteristic of hazardous waste, namely ignitability, corrosivity, or reactivity ("ICR" wastes), or EP toxicity. The Agency maintained that if these wastes exhibit a characteristic at the point they are generated, they may have to be treated pursuant to treatment standard so that threats to human health and the environment are minimized (See RCRA section 3004(m)), notwithstanding that the waste might no longer exhibit a characteristic of hazardous waste before it is disposed and so not be a "hazardous waste". 55 FR 22651–57. In other words, if the waste exhibits a characteristic at the point it is generated, before it can be land disposed it may have to continue to be treated pursuant to section 3004(m) after it stops exhibiting a characteristic.

In the Third Third rule the Agency also indicated, however, that this theory could be applied selectively, and thus determined that most characteristic wastes could be diluted so that they lose their characteristic property, and then be placed in surface impoundments (a type of land disposal unit under RCRA, see RCRA section 3004(k)), provided that the impoundments were part of wastewater treatment systems whose discharge was regulated under the Clean Water Act. EPA also indicated that characteristic wastes could be diluted so that they no longer exhibit a characteristic and then be injected into Class I nonhazardous deepwells regulated under the Safe Drinking Water Act's Underground Injection Control (UIC) program. 55 FR 22657–59. In both cases, the wastes would not be prohibited from land disposal because they would not be hazardous wastes at the point they are land disposed.

Finally, EPA established a treatment standard of deactivation for many ICR wastes. This standard could be achieved, among other ways, by diluting the ICR wastes so that they no longer exhibited the characteristic property.

In its opinion in *Chemical Waste Management* v. *EPA*, 976 F. 2d (D.C. Cir. 1992), the court upheld the Agency's authority to apply land disposal prohibitions at the point characteristic hazardous wastes are generated, but also held that this theory could not be applied selectively. 976 F. 2d at 14, 23. Thus, in one of the key parts of the opinion, the court held that the widespread practice of diluting characteristic wastes to remove their characteristic and then managing the decharacterized wastes in Clean Water Act surface impoundments or Safe Drinking Water Act Class I nonhazardous injection wells may be impermissible because of the absence of full-scale RCRA treatment (i.e., treatment that satisfies section 3004(m)) before land disposal (i.e., before placement of the decharacterized wastes in an impoundment or the injection well). Such a practice is permissible, the court held, only if it could be demonstrated that treatment equivalent to RCRA can be achieved before discharge of the wastes into the environment. *Id.* at 7.

Because section 3004(m) requires treatment to destroy or remove hazardous constituents, the court vacated the deactivation treatment standard for ignitable and corrosive wastes—expressed as "deactivation"—because that standard could be achieved by diluting the wastes to remove the characteristic property and thus failed to require treatment of hazardous constituents in the wastes. The court held that although dilution is adequate treatment to remove the characteristic property, it is not adequate treatment for hazardous constituents that may be present in these wastes above minimize threat levels. *Id.*[2]

The Agency has collected data from industry, as well as Offices within EPA, to support the development of options for establishing revised treatment standards for characteristic wastes. These options and the supporting data are presented in a report available in the docket.

The issue of treatment standards for the characteristic wastes at issue in the Third Third case cannot be separated from the issue of an equivalency demonstration since the great majority of these wastes are treated in Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) wastewater management systems, many of them involving land disposal units. Thus, EPA cannot approach the issue of treatment standards for ICR wastes in a vacuum, but must consider the relation of such standards to facilities engaged in centralized wastewater management. With respect to CWA impoundments treating decharacterized wastes, EPA is seeking comment on three principal options for determining how to demonstrate equivalence: Solely at the point of ultimate discharge to surface waters or to a POTW ("end-of-pipe equivalence"); at end-of-pipe while also demonstrating that hazardous constituents are not leaking or volatilizing from the treatment impoundments at an excessive rate ("surface impoundment integrity"); and at end-of-pipe while assuring surface impoundment integrity, and also providing treatment of sludges that are generated in the impoundment.

Options for integrating RCRA and CWA/SDWA requirements are also presented in the report, as are preliminary assessments of available treatment capacity. EPA has also performed preliminary analyses of the potential cost and impacts to human health and the environment of various treatment options. The Agency is seeking comment on all of these aspects of the report.

EPA may have to issue final rules addressing these questions in the near future. The Agency solicits comment on whether there would be good cause to issue final rules to prevent a situation where many characteristic wastes are prohibited and no treatment standard exists that would allow the wastes to be land disposed legally. EPA also notes that this notice may be the only opportunity presented for public comment.

Dated: January 12, 1993.

Don R. Clay,

Assistant Administrator.

[FR Doc. 93–1188 Filed 1–15–93; 8:45 am]

BILLING CODE 6560-50-M

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[1] (See generally 55 FR 22523–25, summarizing the requirements of the Land Disposal Restrictions program; see also 51 FR 49572 (Nov. 7, 1986) (land disposal restrictions for solvent and dioxin hazardous wastes); 52 FR 25760 (July 8, 1987) (land disposal restrictions for California list hazardous wastes); 53 FR 31138 (August 17, 1988) (land disposal restrictions for wastes in the first third of the statutorily-mandated schedule); and 54 FR 26594 (June 23, 1989) (land disposal restrictions for wastes in the second third of that schedule).

[2] There were aspects of the court's decision that could be read in more than one way. Therefore, EPA filed a petition for rehearing on November 9, 1992, seeking clarification.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 92-9, DA 93-5; RM-7981, RM-8004]

Redevelopment of Spectrum To Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: The Commission's Office of Engineering and Technology granted a two-week extension for filing reply comments to the Further Notice of Proposed Rule Making (Further Notice) in ET Docket No. 92-9 (57 FR 42916, September 17, 1992). This extension was granted in response to a request from the Utilities Telecommunications Council and the American Petroleum Institute. The additional time to prepare and file reply comments will permit parties to evaluate more fully comments filed on the Further Notice.

DATES: Reply comments are due by January 27, 1993.

ADDRESSES: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, Frequency Allocation Branch, (202) 653-8116.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Reply Comments

Adopted: January 7, 1993;
Released: January 7, 1993.
Reply Comment Date: January 27, 1993.

By the Office of Engineering and Technology:

1. The Utilities Telecommunications Council (UTC) and the American Petroleum Institute (API) have requested an extension of time to file reply comments to the Further Notice of Proposed Rule Making in the above-captioned proceeding.

2. UTC and API request that the deadline for filing reply comments be extended from January 13, 1993, to January 27, 1993, in order to fully evaluate comments on the Commission's proposal and a detailed proposal filed in comments by the Telecommunications Industry Association's Fixed Point-to-Point Communications Section on December 11, 1992.

3. Requests for extensions of time are not routinely granted, 47 CFR 1.46(a). However, in order to develop as complete a record as possible, an extension of time is appropriate in this instance. This extension will permit all interested parties sufficient time to review the record and prepare reply comments on the complex issues presented in this proceeding. Accordingly, it is Ordered, that the deadline for filing reply comments is extended to January 27, 1993.

4. This action is taken under authority found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241, and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46. For further information, contact Rodney Small, Office of Engineering and Technology, (202) 653-8116.

Federal Communications Commission.
Bruce A. Franca,
Acting Chief Engineer.

[FR Doc. 93-1113 Filed 1-15-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-8; RM-7713]

Radio Broadcasting Services; Stock Island, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: This document denies the allotment of Channel 248A to Stock Island, Florida, as requested by S-3 Communications Corporation. See 57 FR 03158, January 28, 1992. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-8, adopted December 11, 1992, and released January 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1096 Filed 1-15-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-311, RM-8132]

Radio Broadcasting Services; Iron River, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by James V. Lien, Norma G. Lien and Lenard G. Harvey, proposing the allotment of Channel 297C2 to Iron River, Wisconsin, as that community's first local transmission service. Canadian concurrence will be requested for this allotment at coordinates 46-35-19 and 91-14-44. There is a site restriction 12.3 kilometers (7.7 miles) east of the community.

DATES: Comments must be filed on or before March 4, 1993, and reply comments on or before March 19, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James V. Lien, Norma G. Lien and Lenard G. Harvey, P.O. Box 10, Iron River, Wisconsin 54847.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-311, adopted December 11, 1992, and released January 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1099 Filed 1-15-93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[FRA Docket No. RST-90-1, Notice No. 3]

RIN 2130-AA75

Track Safety Standards; Public Workshops on Miscellaneous Proposed Revisions

AGENCY: Federal Railroad Administration.

ACTION: Notice of public workshops; Correction.

SUMMARY: This document contains a correction to the information provided in Notice No. 2 which was published Tuesday, January 5, 1993 (58 FR 338). The Notice detailed dates and locations of four workshops on proposed revisions of the Track Safety Standards.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-6081

Principal Attorney: Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-0635.

SUPPLEMENTARY INFORMATION: On November 16, 1992, FRA published an Advance Notice of Proposed Rulemaking (see 57 FR 54038) in which it identified those sections of the present Track Safety Standards that FRA is considering for amendment in an effort to improve its safety regulatory program. That ANPRM also announced FRA's plan to conduct four public workshops to discuss possible revisions to the Track Safety Standards. Notice No. 2 in this proceeding, published January 5, 1993 (see 58 FR 338), announced the actual dates and specific locations of those workshops.

Need for Correction

Notice No. 2 contained an erroneous address for the site of the public workshop to be held in Chicago on February 25, 1993. The correct address of the location at which the workshop will be conducted is 111 North Canal Street, Chicago, Illinois 60606.

S. Mark Lindsey,

Chief Counsel.

[FR Doc. 93-1159 Filed 1-15-93; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition to List the Fluvial Population of the Arctic Grayling as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the contiguous U.S. population of the fluvial Arctic grayling (*Thymallus arcticus*) to the List of Threatened and Endangered Wildlife. The Service finds the petition presents substantial information indicating that the requested action may be warranted.

DATES: The finding announced in this notice was made in December 1992. Comments and materials need to be submitted by March 22, 1993 to be considered in the 12-month finding.

ADDRESSES: Information, comments, or questions concerning this petition may be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Federal Building and U.S. Courthouse, 301 South Park, P.O. Box 10023, Helena, Montana 59626-0023. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Harms, State Supervisor, at the above address, telephone (406) 449-5225.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended in 1982 (16 U.S.C. 1531 et seq.), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species.

The Service announces a 90-day finding on a petition requesting the Service to list as endangered the fluvial (permanently stream-dwelling) Arctic grayling (*Thymallus arcticus*) in the contiguous United States and initiates a status review.

A petition dated October 2, 1991, was received by the Service from the Biodiversity Legal Foundation and George Wuerthner on October 9, 1991. The petition requested that the "fluvial Arctic grayling" be listed as endangered throughout its historic range in the conterminous United States. Additionally, the petitioners requested that critical habitat be designated. The petitioners submitted biological, distributional, and historical information, and referenced several scientific articles in support of the petition.

Within the contiguous United States, two geographically isolated fluvial populations of Arctic grayling, referred to by the petitioners as fluvial Arctic grayling, were found in Michigan and in the drainage of the upper Missouri River in Montana and Yellowstone National Park in northwestern Wyoming (Scott and Crossman 1973). The petitioners stated that the fluvial Arctic grayling has been extirpated from most of its historic range in the contiguous United States. As the petitioners recognized, the population of Arctic grayling in Michigan has been extinct since the 1930's (Vincent 1962; Scott and Crossman 1973; S. Walker, U.S. Fish and Wildlife Service, pers. comm., 1992). Because the Michigan population of Arctic grayling is extinct and, therefore, by definition cannot be listed, the finding addressed only the fluvial population of the Arctic grayling found in the upper Missouri River drainage.

The only confirmed remnant of the indigenous fluvial population of Arctic grayling in the upper Missouri River drainage exists in the Big Hole River and the lower reaches of the Big Hole's tributaries in southwestern Montana (Liknes and Gould 1987, Kaya 1990). An additional remnant of the fluvial Arctic grayling population of the upper Missouri River drainage may occur in Ennis Reservoir on the Madison River in Madison County, Montana. For convenience in the subject finding, the fluvial form of the indigenous Arctic grayling from the upper Missouri River drainage in Montana and Wyoming is referred to as the fluvial Arctic grayling.

A status review was first initiated for the "Montana Arctic grayling" (*T. a. montanus*) by a notice of review published December 30, 1982 (47 FR 58454). However, this subspecific designation is not widely accepted (Kaya 1990). The scientific community considers the Missouri River drainage population of the Arctic grayling to be a geographically isolated population of *T. arcticus*.

The petitioners indicated that decline of the fluvial Arctic grayling is a result of many factors. The primary causes cited by the petitioners were habitat degradation resulting from livestock grazing and stream diversions for irrigation, competition with nonnative trout species, and past overharvesting by anglers. Additionally, the petition stated that much of the annual recruitment is lost in irrigation ditches.

The Service found that a combination of elements have contributed to the decline or extirpation of fluvial Arctic grayling. In both the upper Missouri River drainage and Michigan, historic overharvest appears to have initiated declines of the Arctic grayling (Vincent 1962). Competition and/or predation by nonnative trout species are speculated to be important factors contributing to the decline of Arctic grayling (Vincent 1962, Kaya 1990). Furthermore, in Michigan, logging activities diminished the quality of stream habitat through erosion, increased silt deposition, elevated water temperatures, and destruction of streambeds (Vincent 1962).

In the upper Missouri River drainage, dewatering for agricultural irrigation reduces available habitat for grayling and may result in stranding of incubating eggs or young fish, increased predation on young because they are concentrated in the remaining water, and higher water temperatures (Kaya 1990). Fry and juvenile grayling become stranded in irrigation ditches and die when the headgates are closed without opportunity for fish to return to the river (Shepard and Oswald 1989). Additionally, an integral portion of the historic range of the fluvial Arctic grayling has been altered by the extensive construction of dams and reservoirs that have created barriers obstructing migrations to spawning, wintering or feeding areas, and inundated grayling habitat (Vincent 1962, Kaya 1990).

The Act allows the Service to list distinct population segments of vertebrate fish and wildlife. The fluvial form of the Arctic grayling in the upper Missouri River drainage is geographically isolated from other fluvial grayling populations and is behaviorally distinct from lacustrine (live in lakes and spawn in streams) grayling. For these reasons, the Service believes the fluvial form of the Arctic grayling in the upper Missouri River drainage is a distinct population segment.

After reviewing the petition, accompanying documentation, and references cited therein, the Service finds that the petition presents substantial information indicating that listing the fluvial population of the Arctic grayling in the upper Missouri River drainage as endangered may be warranted. Within 1 year from the date the petition was received, a finding as to whether the petitioned action is warranted as required by section 4(b)(3)(B) of the Act.

The petitioners also requested that critical habitat be designated. If the 12-month finding determines that the petitioned action to list the fluvial Arctic grayling as endangered is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule.

References Cited

A complete list of references cited in this rule is available upon request from the Fish and Wildlife Service (see ADDRESSES section).

Author

This notice was prepared by Lori H. Nordstrom of the U.S. Fish & Wildlife Service, Helena, MT, Field Office (see ADDRESSES section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 15, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1054 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 58, No. 11
Tuesday, January 19, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Dynic Corporation, having a place of business in Tokyo, Japan, an exclusive license restricted to the manufacture of products, in whole or in part, in Japan on prospective corresponding Japan patent application based on U.S. Patent Application Serial No. 07/863,274, "Temperature Adaptable Glyoxial-Modified Fibers and Method of Preparing Same," filed in April 3, 1992. Notice of Availability for licensing the invention was given in the **Federal Register** on September 16, 1992.

DATES: Comments must be received on or before March 20, 1993.

ADDRESSES: Send comments to: USDA-ARS-Office of Technology Transfer, Beltsville Agricultural Research Center, Baltimore, Boulevard, Building 005, Room 403, BARC-W, Beltsville, Maryland 20705-2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Technology Transfer at the Beltsville address given above; telephone: COMM: 301-504-6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to license this invention and the company has submitted a complete and sufficient application for a license, promising therein to commercialize the invention in Japan. USDA-ARS will have access to technological information developed during the commercialization. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W. H. Tallent,
Assistant Administrator.

[FR Doc. 93-1174 Filed 1-15-93; 8:45 am]

BILLING CODE 3410-03-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-170. *Applicant:* U.S. Geological Survey, Geologic Division, 345 Middlefield Road, MS 977, Menlo Park, CA 94025-3591. *Instrument:* Portable Very-Broad Triaxial Seismometer, Model STS-2. *Manufacturer:* Streckeisen AG, Switzerland. *Intended Use:* The instrument will be used to record seismic waves at a network of 10 digital seismographs in southern California along the San Jacinto fault which has been identified as a likely site for a major damaging earthquake in the near future. The records from the seismometers will also be used to do basic research on the source properties of large earthquakes. *Application Received by Commissioner of Customs:* November 23, 1992.

Docket Number: 92-173. *Applicant:* Duke University, Department of Physics, Free Electron Laser Laboratory, LaSalle Street Extension, Durham, NC 27706. *Instrument:* Radio Frequency Cavity with Accessories. *Manufacturer:* Institute of Nuclear Physics, CIS. *Intended Use:* The instrument will be used in conjunction with construction of a storage ring for electrons with energies up to 1.2 GeV. Specifically, the instrument will improve the lifetime of the stored electron beam and modify the shape of the electron packets circulating in the storage ring. *Application Received by Commissioner of Customs:* November 13, 1992.

Docket Number: 92-174. *Applicant:* Children's Hospital and Medical Center, 4800 Sandpoint Way, N.E., P.O. Box 5371, MS: CH-37, Seattle, WA 98105. *Instrument:* Electron Microscope System, Model EM 910. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used to provide insight into the etiology of congenital malformations in the following research projects: (a) study of the pathogenesis of congenital aganglionosis coli (Hirschsprung disease) in murine models with particular interest in the morphology of the extracellular gastrointestinal tract and (b) a study directed at understanding the specificity of methotrexate (MTX)-induced congenital facial abnormalities. In addition, the instrument will be used for training residents in the anatomic pathology training program. *Application Received by Commissioner of Customs:* November 13, 1992.

Docket Number: 92-175. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Galveston Laboratory, 4700 Avenue U, Galveston, TX 77551-5997. *Instrument:* (2) Electronic Digital Fish Measuring Boards, Model FMB IV Version F. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instrument will be used in a research project designed to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S.

coast of the southeastern Atlantic. *Application Received by Commissioner of Customs:* November 13, 1992.

Docket Number: 92–177. *Applicant:* James A. Haley Veterans Hospital, 13000 Bruce B. Downs Boulevard, Tampa, FL 33612. *Instrument:* Electron Microscope, Model CM10 PC with Accessories. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for examination of specimens that include kidney biopsies, neoplasms with undifferentiated or anaplastic cells, unusual tumors, lymphoma and leukemia. In addition, the instrument will be used in a course in diagnostic electron microscopy for physicians in their final year of pathology residency training. *Application Received by Commissioner of Customs:* November 23, 1992.

Docket Number: 92–178. *Applicant:* University of Nebraska-Lincoln, Department of Biochemistry, 316 Biochemistry Hall - East Campus, Lincoln, NE 68583–0718. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ESP 300 E. *Manufacturer:* Bruker Instruments Inc., Germany. *Intended Use:* The instrument will be used for analysis of frozen aqueous protein samples and inorganic complexes during investigations conducted for the purposes of (i) detecting free radicals and metal sites in proteins, (ii) characterizing the properties of the system containing the unpaired electron spin, and (iii) detecting and characterizing reactions which occur at the site containing the unpaired electron spin. *Application Received by Commissioner of Customs:* November 30, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–1220 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–DS–F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 92–101. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 4700 Avenue U, Galveston, TX 77551–5997. *Instrument:* (7) Power Packs for Fish Measuring Boards, Model BAT–1. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instruments are power sources for electronic fish measuring boards which are being used in an area of research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. *Application Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92–165. *Applicant:* University of Pennsylvania, 3400 Walnut Street, Philadelphia, PA 19104. *Instrument:* Electron Paramagnetic Resonance Spectrometer, Model ESP 300 E. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* The instrument will be used for the study of electron transfer components and enzyme mechanisms of biological systems. Specifically, it will be used to determine the fine details of protein and cofactor structure both on a steady-state basis and during rapid turnover initiated by light reactions or other rapid perturbations. Also, it will be used to provide important information about cofactor interactions. The objectives of the research are to understand the contributions of protein structure to the reactivity, electrochemistry, and ligation to the direction and rate of electron transfer in biological systems. In addition, the instrument will be used for educating researchers and graduate students in the techniques of Electron Paramagnetic Resonance Spectroscopy. *Application Received by Commissioner of Customs:* October 30, 1992.

Docket Number: 92–166. *Applicant:* National Institute of Arthritis, Musculoskeletal and Skin Diseases/National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model CM20–FEG. *Manufacturer:* Philips Electronic Instruments, The Netherlands. *Intended Use:* The instrument will be used for studies of the structures and assembly properties of biological macromolecules of medical importance by cryo-electron microscopy. The primary objective of this research is to elucidate the structure, in sub-molecular detail, of biologically and medically important particles such as viruses and membrane protein complexes, with a view to relating this information to their functional and pathological properties. *Application Received by Commissioner of Customs:* October 30, 1992.

Docket Number: 92–167. *Applicant:* Bowman Gray School of Medicine of Wake Forest University, Medical Center Boulevard, Winston-Salem, NC 27157. *Instrument:* Stopped-flow Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used in a current research project focused on the structures and mechanisms of unusual flavoproteins involved in streptococcal oxygen metabolism. *Application Received by Commissioner of Customs:* October 30, 1992.

Docket Number: 92–168. *Applicant:* Research Foundation of State University of New York, Administration 335, 1400 Washington Avenue, Albany, NY 12222. *Instrument:* Sky Scanner, Model MS–300. *Manufacturer:* EKO Instruments Trading Company, Ltd., Japan. *Intended Use:* The instrument will be used for measurement of sky radiance and sky luminance at fixed points in the sky to determine distribution of skylight. In addition, the instrument will be used to train graduate students, e.g., in their thesis research. *Application Received by Commissioner of Customs:* October 30, 1992.

Docket Number: 92–169. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* UHV Scanning Tunneling Microscope. *Manufacturer:* Omicron Associates, Germany. *Intended Use:* The instrument will be used for research to characterize the key chemical and structural parameters that define the nucleation and growth processes for a select set of substrate-film combinations. Emphasis will be given to the structural or lattice mismatch factors for oxide-on-oxide films, while the role of interfacial chemistry (impurities, compounds, reactive bonding) will be the thrust for metal film systems. *Application Received by Commissioner of Customs:* November 10, 1992.

Docket Number: 92–171. *Applicant:* Baylor University, Waco, TX 76798. *Instrument:* High Resolution Mass Spectrometer, Model VG ProSpec-3000. *Manufacturer:* VG Analytical Instruments, United Kingdom. *Intended Use:* The instrument will be used for research in the chemistry department encompassing several areas that include but are not limited to the following:

1. Flame infrared emission spectroscopy, a new branch of analytical spectroscopy that shows great promise for chemical analysis.

2. Study of alternative forms of water treatment that do not involve the addition of potentially toxic chemicals for the prevention of scaling and corrosion in industrial process and cooling waters.

3. Analytical spectroscopy, new methods of analysis for samples of environmental interests, and effect of external fields on colloidal suspensions.

4. Enzymology, with special emphasis on mechanism of enzyme action and the design and synthesis of enzyme inhibitors.

5. Research involving the effect of additives in electrochemistry and catalysis at metal-solution interfaces.

6. Research directed toward the development of new methods for the practical synthesis of chiral organic molecules in high optical purity.

7. Research interests which lie along the intersection of electrochemistry and organometallic chemistry.

8. Synthesis of modified purine nucleosides, biochemical studies and general synthetic studies.

Application Received by Commissioner of Customs: November 12, 1992.

Docket Number: 92–172. *Applicant:* Centers for Disease Control, 4770 Buford Highway, NE, Mailstop F17, Atlanta, GA 30341–3724. *Instrument:* Mass Spectrometer System, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used for a variety of analyses, often of components that are present at trace levels in complex matrices in support of Public Health Service projects in toxicology. The primary application will be the investigation and determination of the etiological agents responsible for the Toxic Oil Syndrome that occurred in Spain in 1981 and Eosinophilia Myalgia Syndrome, a similar disease but which occurred in the U.S. in 1989. The instrument is expected to provide insight into the nature of the contaminants that cause these diseases. *Application Received by Commissioner of Customs:* November 12, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–1219 Filed 1–15–93; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-817]

Active-Matrix Liquid Crystal High Information Content Flat Panel Displays and Display Glass Therefor From Japan; Preliminary Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke the Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of changed circumstances antidumping duty administrative review and intent to revoke the order on active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna, Michael Diminich, or Breck Richardson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 43741) an antidumping duty order on active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan (the order). On November 3, 1992, Guardian Industries (Guardian), on behalf of OIS Optical Imaging Systems (OIS), one of the petitioners, submitted a request for a changed circumstances review and revocation of the order. Guardian is the controlling shareholder of OIS. On December 11, 1992, the Department published in the **Federal Register** a notice initiating a changed circumstances review to determine whether to revoke the order on active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan (active-matrix flat panel displays). The Department also found that good cause existed for conducting a changed circumstances review before the end of the second annual anniversary month of the order. Interested parties were given thirty days to comment on the proposed revocation, and an additional seven days to rebut comments submitted by other interested parties.

Scope of the Review

Imports covered by this review are active-matrix liquid crystal high information content flat panel displays and display glass therefor. Active-matrix flat panel displays are large area, matrix addressed displays, no greater than four inches in depth, with a picture element (pixel) count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. Active-matrix flat panel displays utilize a thin-film transistor array to activate liquid crystal at individual pixel locations. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video. Active-matrix flat panel display glass, whether or not integrated with additional components, exclusively dedicated to and designed for use in active-matrix flat panel displays is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes, and also incorporate a material that reacts to a change in voltage (i.e., liquid crystal) and contact pads for interconnecting drive electronics.

Preliminary Results of Review and Intent to Revoke Antidumping Duty Order

Pursuant to sections 751(b) and (c) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping duty order if the Department determines, based on a review under section 751(b) of the Act, that changed circumstances exist sufficient to warrant revocation. Section 352.25(d) of the Department's regulations provides that, if the Department finds that the order under review is no longer of interest to domestic interested parties, such finding constitutes a changed circumstance sufficient to warrant revocation.

The changed circumstances cited by OIS and Guardian as the basis for revocation is the absence of any further interest in maintaining the order. OIS is the only member of the Advanced Display Manufacturers of America (ADMA), the petitioner in this case, known to produce active-matrix flat panel displays. The Department at this time does not know of any other domestic of active-matrix flat panel displays, nor have any yet come forward to object to the proposed revocation of the order. The Department has received three objections: From UCE, Incorporated (UCE) (see letters to the Department dated November 18, 1992; December 17, 1992, and January 6, 1993), from Planar Systems, Inc.

(Planar) (see letter to the Department dated January 11, 1993), and from the Advanced Display Manufacturers of America (ADMA), not including OIS and Magnascreen Corporation (see letter to the Department dated January 11, 1993).[1] However, the objecting parties have not demonstrated that they are producers of active-matrix flat panel displays or any product like active-matrix flat panel displays. Therefore, they have not demonstrated that they have standing to object to the proposed revocation.

On the other hand, the Department has received several submissions supporting the proposed revocation. Apple Computer, Incorporated, International Business Machines Corporation, Rockwell International Corporation, nView (sic), Sun Microsystems Computer Corporation, and Dukane Corporation, all importers of the subject merchandise, support the revocation of the order on the grounds that there is no domestic interest in maintaining the order, that there is no viable domestic source of active-matrix flat panel displays, and that the order has harmed the U.S. computer industry's competitiveness and shifted its production overseas.

We are hereby notifying the public of our intent to revoke the antidumping duty order on active-matrix liquid crystal high information content flat panel displays and display glass therefor from Japan. If this preliminary determination is made final, it will apply to all shipments of the merchandise entered, or withdrawn from warehouse, for consumption on or after February 21, 1991, the date of the preliminary determination of Sales at Less Than Fair Value. Therefore, we intend to instruct the U.S. Customs Service to liquidate all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after February 21, 1991, without regard to antidumping duties. We will instruct the U.S. Customs Service to refund with interest any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review. Moreover, we will not terminate or stay the First Administrative Review of the order unless and until a final determination is made to revoke the order.

Request for Comments

The Department requests written comments from interested parties regarding these preliminary results and the intent to revoke the order, including the effective date of the revocation. Comments may be submitted not later than 30 days after the date of publication of this notice. Rebuttal to written comments, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication. Because the deadline to submit rebuttal comments has not yet expired, all rebuttal comments concerning the initiation of this review will also be taken into consideration for our final results. All written comments shall be submitted in accordance with 19 CFR 353.31(e) and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g). Interested parties may also request a hearing within ten days of the date of publication of this notice. Any hearing, if requested, will be held no less than 40 days after the date of publication of this notice. The Department will publish the final results of this changed circumstances review after the hearing, if any, and after its analysis of any written comments.

This review and this notice are in accordance with sections 751(b) and (c) of the Act and 19 CFR 353.22(f) and 353.25(d) (1992).

Dated: January 12, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-1214 Filed 1-15-93; 8:45 am]

BILLING CODE 3510-DS-M

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[1] The other members of the ADMA are Coloray Display Corporation; Electro-Plasma, Inc.; Photonics Technology, Inc.; Plasmaco, Inc.; Planar Systems, Inc.; Standish Industries, and Tektronix, Inc.

[A-201-802]

Court Decision and Suspension of Liquidation: Gray Portland Cement and Clinker From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: December 10, 1992.

SUMMARY: On November 30, 1992, in *The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, Court No. 90-10-00508, a lawsuit challenging the Department of Commerce's (the "Department") final determination of sales at less than fair value of gray portland cement and clinker from Mexico, the Court of International Trade ("CIT") affirmed the Department's redetermination on remand. As a result, the final dumping margin for one of the respondents, Cemex, S.A. ("Cemex"), has increased from 58.38% to 60.33% *ad valorem*, and the "all others" margin has increased from 58.05% to 59.91% *ad valorem*. Consistent with the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*"Timken"*), Commerce will direct the Customs Service to change the cash deposit rates being used in connection with the suspension of liquidation of the subject merchandise once there is a "conclusive" decision in this case.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-1769.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 1990, the Department published notice of its final determination of sales at less than fair value in connection with its investigation of gray portland cement and clinker from Mexico. Final Determination of Sales at Less than Fair Value; Gray Portland Cement and Clinker from Mexico, 55 FR 29244. In that determination, the Department set forth its finding of final dumping margins, including, *inter alia*, 58.38% *ad valorem* for Cemex and 58.05% *ad valorem* for the "all others" category of Mexican producers and exporters of the subject merchandise. On August 30, 1990, the Department published an antidumping order instructing the Customs Service to collect cash deposits, at the rates set forth in the Department's final determination, on entries of the subject merchandise entered or withdrawn from warehouse for consumption on or after that date. 55 FR 35443.

Following publication of the Department's final determination and order, petitioners filed a lawsuit with the CIT challenging the Department's final determination. Thereafter, the CIT issued an Order dated February 20, 1992 and Slip Opinion 92-24, dated March 5, 1992, in *The Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, Court No. 90-10-00508, remanding the Department's final determination so that the Department could give further consideration to a level of trade issue. On March 23, 1992, the Department filed its required remand results with the CIT. On June 15, 1992, the CIT ordered a second remand to the

Department. The CIT directed the Department to complete all recalculations of the final dumping margins made necessary by the Department's first remand results and also to accept comments from the parties regarding the Department's first remand results and the Department's subsequent recalculations prior to filing second remand results with the CIT. On July 30, 1992, the Department filed its second remand results with the CIT. On November 30, 1992, the CIT affirmed the Department's first and second remand results in their entirety. *The Ad Hoc Committee on AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States,* Court No. 90–10–00508, Slip Op. 92–212. As a result, the final dumping margin for Cemex has increased from 58.38% to 60.33% *ad valorem,* and the "all others" margin has increased from 58.05% to 59.91% *ad valorem.*

Suspension of Liquidation

In its decision in *Timken,* the CAFC held that the Department must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "conclusive" decision in the case. Therefore, pursuant to *Timken,* Commerce must suspend liquidation pending the expiration of the period to appeal the CIT's November 30, 1992 ruling or, if that ruling is appealed, pending a final decision by the CAFC. However, because entries of the subject merchandise already are being suspended pursuant to the antidumping order in effect, the Department need not order the Customs Service to suspend liquidation. Further, consistent with *Timken,* the Department will order the Customs Service to change the relevant cash deposit rates in the event that the CIT's ruling is not appealed or the CAFC issues a final decision affirming the CIT's ruling.

Dated: January 11, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1213 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–804, C–427–805 (France); A–428–811, C–428–812 (Germany); A–412–810, C–412–811 (United Kingdom)]

Notice of Postponement of Final Antidumping and Countervailing Duty Determinations: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France, Germany and the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION ON ANTIDUMPING (AD) DUTY INVESTIGATIONS CONTACT: Edward Easton (France), Cynthia Thirumalai (Germany), or Michael Ready (United Kingdom), Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone numbers: (202) 482–1777, 482–4087 or 482–2316, respectively.

SUPPLEMENTARY INFORMATION ON COUNTERVAILING DUTY (CVD) INVESTIGATIONS CONTACT: Julie Ann Osgood (France), Rick Herring (Germany), or Stephanie Hager (United Kingdom), Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone numbers: (202) 482–5260, 482–3530, or 482–5055, respectively.

Notice of Postponement

The Department of Commerce (the Department) is postponing again the date of its final determinations in these investigations until January 19, 1993.

Postponement of Final AD Determinations

On November 6, 1992, the Department granted, in part, the requests of the respondents in these investigations to postpone the final determinations (57 FR 53691, November 12, 1992). At that time, the Department granted a 25-day postponement, until January 11, 1993. On December 17, 1992, the respondent companies, which account for a significant proportion of subject imports from their respective countries, requested the Department to postpone these final determinations for an additional 25 days from January 11, 1993, to February 6, 1993.

Due to administrative constraints, the Department is unable to grant the request for an additional 25-day postponement in full. In recognition of the concerns of the respondents, however, the Department is postponing to the extent possible its final determinations in these investigations, until January 19, 1993.

Postponement of Final CVD Determinations

On October 16, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended, we aligned the final determinations in the CVD investigations involving the merchandise subject to these investigations with the final determinations in the companion antidumping duty investigations (see 57 FR 48020, October 21, 1992). Therefore, the final CVD determinations in these investigations will now be postponed until January 19, 1993, as well.

This notice is published pursuant to 19 CFR 353.20(b).

Dated: January 11, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1217 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–823]

Postponement of Final Antidumping Duty Determinations of Sales at Less Than Fair Value: Professional Electric Cutting Tools (PECTs) and Professional Electric Sanding/Grinding Tools (PESGTs) From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Smith, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1766.

Postponement

On January 8, 1993, Makita Corporation, Makita U.S.A., Inc. and Makita Corporation of America ("Makita"), respondent in the antidumping duty investigations of PECTs and PESGTs from Japan, requested that the Department of Commerce ("the Department") postpone the final determinations in these investigations another 30 days, until 35 days after publication of our preliminary determinations, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the

Act) (19 U.S.C. 1673d(a)(2)(A)), in order to ensure that the Department has adequate time to consider fully all the issues in these investigations.

We find no compelling reasons to deny this request and are, accordingly, postponing the date of the final determinations until May 19, 1993.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: January 12, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1212 Filed 1–15–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–816]

Postponement of Final Antidumping Duty Determination: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482–2778.

Postponement

On December 30, 1992, Tachia Yung Ho Machine Industry Co., Ltd. (TYH) a respondent in this investigation, requested that the Department of Commerce (the Department) postpone the final antidumping duty determination. TYH requested the full extension of 135 days after the date of publication of the preliminary determination (57 FR 61047, December 23, 1992), pursuant to 19 CFR 353.20(b)(1) of the Department's regulations. The Department finds no compelling reasons to deny the request and is, accordingly, postponing the date of the final antidumping duty determination until May 7, 1993.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 23, 1993, and rebuttal briefs no later than March 30, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing to give interested parties an opportunity to comment on arguments raised in case and rebuttal briefs. Tentatively, the hearing will be held on April 5, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14 Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 735(a)(2) of the Act and 19 CFR 353.19(b).

Dated: January 8, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1215 Filed 1–15–93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Guam Coastal management program and the Waimanu Valley National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires a continuing review of the performance of coastal states with respect to coastal management and the operation and management of estuarine reserves.

The Territory of the Guam was found to be implementing and enforcing their federally approved coastal management program, addressing the national coastal management objectives identified in CZMA section 303(2)(A)-(K), and adhering to the programmatic terms of their financial assistance awards. The Waimanu Valley National Estuarine Research Reserve was found to be not fully adhering to National Estuarine Research Reserve System goals, to their federally approved management plans, and to the terms of their financial assistance awards.

Copies of these findings may be obtained upon request from: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 606–4100.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: January 12, 1993.

W. Stanley Wilson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–1126 Filed 1–15–93; 8:45 am]

BILLING CODE 3510-08-M

Evaluation of State Coastal Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Oregon Coastal Management Program.

This evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of coastal states with respect to coastal management. Evaluation of a coastal management program requires findings concerning the extent to which a state has implemented and enforced the management program approved by the Secretary of Commerce, addressed the coastal management needs identified in CZMA section 303(2)(A) through (K), and adhered to the terms of financial assistance awards funded under the CZMA. These reviews include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the date of the site visit for the listed evaluation, and the date, local time, and location of a public meeting during the site visit:

The Oregon Coastal Management Program site visit will be March 1 through 5, 1993. A public meeting will be held Wednesday, March 3, 1993, at 7 p.m., at the Mark O. Hatfield Marine Science Center, 2030 South Marine Science Drive, Newport, Oregon.

The State will issue notice of the public meeting in local newspapers at least 45 days prior to being held and will issue other timely notices as appropriate.

Copies of the state's most recent performance reports, as well as OCRM's notification and supplemental request letter to the state, are available upon request from OCRM. Written comments from interested parties regarding this program are encouraged at this time and will be accepted until seven days after the site visit. Please direct written comments to Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Ave., NW., Washington, DC 20235. When the final evaluation findings are completed, OCRM will place a notice in the **Federal Register** announcing their availability.

FOR FURTHER INFORMATION CONTACT: Vickie Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1825 Connecticut Avenue, NW., Washington, DC 20235, (202) 606–4100.

Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.

Dated: January 12, 1993.

W. Stanley Wilson,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93–1127 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 4 to Permit No. 663 (P36B).

On November 12, 1992, notice was published in the **Federal Register** (57 FR 53723) that a request to modify Permit No. 663 had been submitted by Mr. Salvatore Cerchio, Moss Landing Marine Laboratories, Moss Landing, CA 95039–0450, to include the Big Island of Hawaii in the study area authorized in the Permit; allow underwater photography; and increase the number of whales authorized to be inadvertently harassed under the Permit to 1000 annually.

Notice is hereby given that on January 8, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and § 222.25 of the Regulations Governing Endangered Species (50 CFR parts 217–222), the National Marine Fisheries Service issued the requested modification to Permit 663 for the above activities subject to the Special Conditions set forth therein.

The modified Permit is available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016).

Dated: January 8, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1138 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P171C).

On November 20, 1992, notice was published in the **Federal Register** (57 FR 54771) that an application had been filed by Deborah A. Glockner-Ferrari and Mark J. Ferrari, Center for While Studies, 39 Woodvine Court, Covington, LA 70433–4724, for a permit to approach, up to three times each, up to 2000 humpback whales (*Megaptera novaeangliae*) annually in Hawaiian waters over a five-year period during the course of photo-identification, observational, and acoustic recording studies, and collection of sloughed skin samples for export to England for genetic analyses for purposes of scientific research.

Notice is hereby given that on January 8, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a permit to the above applicants to harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the findings that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: January 8, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1139 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–22–M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Team (CPT) and Advisory Panel (AP) will hold a public meeting on January 26–27, 1993, at the National Marine Fisheries Service, Honolulu Laboratory Conference Room, 2570 Dole Street, Honolulu, HI. The meeting will begin each morning at 8:30 a.m.

The CPT, AP and industry members will review the Northwestern Hawaiian Islands lobster fishery and the fishery management plan. Topics to be discussed include the status of lobster stocks, research results and plans, outlook for the 1993 fishery, permit transfers and renewals, quota monitoring, enforcement, and State-Federal consistency. Recommendations will be developed for the Council to discuss at its next meeting.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone (808) 541–1974.

Dated: January 13, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management National Marine Fisheries Service.

[FR Doc. 93–1207 Filed 1–15–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT), will hold a public meeting beginning at 1 p.m. on February 2, 1993, and ending at 12 noon, on February 4, 1993. The meeting will be held in the Conference Room of the National Marine Fisheries Service, Southwest Fisheries Science Center, 3150 Paradise Drive, Tiburon, CA.

The GMT will discuss plans for monitoring non-trawl sablefish, trawl Dover sole and thornyhead landings during the 1993 season. Port sampling, data collection and analysis will also be discussed. The GMT will also begin work on several issues related to implementation of the groundfish license limitation program that will go into effect in 1994, as well as a proposed individual quota plan being developed by the Council. Plans for the 1993 stock assessments will be prepared, and the GMT will begin an analysis of by-catch data from the 1992 Pacific whiting fishery.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW., First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 13, 1993.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–1209 Filed 1–15–93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Modification of DOD Regulation 4500.34–R; Identification of DOD-Sponsored Household Goods

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of Availability.

SUMMARY: This is a Notice of the availability of a modification of DOD Regulation 4500.34–R, Appendix A, Tender of Service, Part B. International, Subpart 33. Overseas Shipments, which goes into effect on 1 February 1993. The Military Traffic Management Command (MTMC) reviewed three comments received from carriers concerning the "DOD-Sponsored" issue. The Directorate of Personal Property, MTMC, will modify the procedures in the DOD Personal Property Traffic Management Regulation 4500.34–R, dated October 1991, by which carriers prepare their shipment and billing documents. The modification will hold carriers responsible for ensuring all carrier and agent-prepared documents are annotated with the term "DOD-Sponsored." This action will assist MTMC to effectively monitor and track U.S. and foreign flag vessel and aircraft use.

ADDRESSES: Changes to DOD Regulation 4500.34–R may be obtained from: Headquarters, Military Traffic Management Command, ATTN: MTPP-CI (Mr. Borum), 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Churck Borum, (703) 756–2383.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–1225 Filed 1–15–93; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

CNO Executive Panel; Meeting

Notice was published Thursday January 7, 1993, at 58 FR 3017, that the Chief of Naval Operations Executive Panel will meet on January 21, 1993, from 9:00 am to 5:00 pm, in Alexandria, Virginia. That Meeting has been rescheduled and will be held on January 26, 1993. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

January 8, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-1090 Filed 1-15-93; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Closed Meeting

Notice was published Thursday December 31, 1992, at 57 FR 62571, that the Chief of Naval Operations Executive Panel will meet on January 26, 1993, from 9:00 am to 5:00 pm, in Alexandria, Virginia. That Meeting has been rescheduled and will be held on February 1, 1993. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

January 11, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-1091 Filed 1-15-93; 8:45 am]

BILLING CODE 3810-AE-F

CNO Executive Panel; Closed Meeting

Notice was published Thursday December 31, 1992, at 57 FR 62570, that the Chief of Naval Operations Executive Panel will meet on January 14, 1993, from 9:00 am to 5:00 pm, in Alexandria, Virginia. That Meeting has been rescheduled and will be held on February 2, 1993. All other information in the previous notice remains effective. In accordance with 5 U.S.C. section 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

January 8, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-1092 Filed 1-15-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Financial Assistance Award (Cooperative Agreement)

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of Noncompetitive Financial Assistance Application for a Cooperative Agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2), the DOE Morgantown Energy Technology Center gives notice of its plans to award a five year Cooperative Agreement to the University of North Dakota, Energy and Environmental Research Center, in Grand Forks, North Dakota, in the approximate amount of $25,000,000.

FOR FURTHER INFORMATION CONTACT: Diane L. Roth, U.S. Department of Energy, Morgantown Energy Technology

Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4090, Cooperative Agreement No.: DE–FC21–93MC30098.

SUPPLEMENTARY INFORMATION: The DOE will fund the allowable costs of the Cooperative Agreement. The pending award is based on an application for renewal of a portion of work begun under a Cooperative Agreement presently being funded by DOE. The work to be continued under this renewal will address the Jointly Sponsored Research Program. Under this program the participant will solicit research opportunities in conjunction with private industry which will enhance the fossil energy mission. The work is necessary to ensure continuity of the work currently being performed.

Issued: January 11, 1993.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–1199 Filed 1–15–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests to terminate submitted to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the following energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for termination effective December 31, 1992 as a result of Final Rule (Order No. 523) in Docket No. RM89–16–000. This rule was issued by the Federal Energy Regulatory Commission on April 18, 1990, in accordance with the Natural Gas Wellhead Decontrol Act of 1989, which totally removes price controls on the wellhead gas of natural gas as of January 1993.

DATES: Comments must be filed on or before February 18, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to EIA's Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for termination effective December 31, 1992 were:

(1) FERC–121, Application for Maximum Lawful Price under the Natural Gas Policy Act of 1978—OMB No. 1902–0038;

(2) FERC–314A, Application for Small Producer Exemption—OMB No. 1902–0006;

(3) FERC–530, Gas Producer Certificates: Abandonment/Termination—OMB No. 1902–0051;

(4) FERC–531, Producer Rate Certificates: New Service/Amendments—OMB No. 1902–0052;

(5) FERC–531, Producer Rate Filing—OMB No. 1902–0055;

(6) FERC–534, Gas Producer Rates: Application for Production-Related Costs (Compression Allowances and Protest Procedures under the Natural Gas Policy Act, Section 110—OMB No. 1902–0057;

(7) FERC–548, Staff Adjustments Under Natural Gas Policy Act, Section 502—OMB No. 1902–0085;

(8) FERC–558, Format of Contract Summary, Applications for Certificates of Public Convenience and Necessity—OMB No. 1902–0109;

(9) FERC–559, Independent Producer Rate Change or Initial Billing Statement—OMB No. 1902–0036;

(10) FERC–568, Wellhead Category Determinations—OMB No. 1902–0112;

(11) FERC–569, Refund Obligations (Producers)—OMB No. 1902–0111;

(12) FERC–570, Recordkeeping Requirements for Certain Sales of Natural Gas—OMB No. 1902–0124; and

(13) FERC–590, Wellhead Pricing: Pricing Investigations—OMB No. 1902–0147.

Statutory Authority: Sec. 3506, Pub. L. 96–511, Paperwork Reduction Act of 1980, as amended, 44 U.S.C. 3506(a), (c)(1).

Issued in Washington, DC, January 11, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–1198 Filed 1–15–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Application Accepted for Filing With the Commission

January 12, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* New License for Major Project (Tendered Notice).

b *Project No.:* 2069–003.

c. *Date Filed:* December 18, 1992.

d. *Applicant:* Arizona Public Service Company.

e. *Name of Project:* Childs-Irving Hydroelectric Project.

f. *Location:* Entirely within the Coconino and Tonto National Forests, on Fossil Creek, in Yavapai and Gila Counties, Arizona. T11N, R6E; T11N, R7E; T12N, R6E; T12N, R7E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Fearl M. Parker, Environmental Licensing, Arizona Public Service Company, P.O. Box 53999, Station 9364, Phoenix, Arizona 85072–3999.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Description of Project:* The project as licensed includes two existing developments. The Irving development consists of:

(1) A 5-foot-high concrete diversion structure on Fossil Creek;

(2) A 16,578-foot-long flume;

(3) A 3,278-foot-long penstock;

(4) A powerhouse containing one generating unit with a total installed capacity of 1,600 kW;

(5) A tailrace returning water to the flume of the Childs development;

(6) A 6.31-mile-long transmission line leading to the powerhouse of the Childs development; and

(7) Appurtenant facilities.

The Childs development consists of:

(1) A 5-foot-high diversion structure on Fossil Creek located 350 feet upstream of the Irving powerhouse;

(2) A 23,190-foot-long conduit discharging into the licensee's Stehr Lake;

(3) The 23-acre lake created by a 12-foot-high dam and a 20-foot-high dam;

(4) A 6,281-foot-long pressure tunnel connecting the lake with a penstock;

(5) The 4,800-foot-long penstock;

(6) A powerhouse containing three generating units with a total installed capacity of 5,400 kW;

(7) A tailrace discharging water into the Verde River;

(8) Two 200-foot-long transmission lines interconnecting with the Arizona

Public Service Company transmission grid; and

(9) Appurtenant facilities.

k. With this notice, we are initiating consultation with the *STATE HISTORIC PRESERVATION OFFICER (SHPO)*, as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, (on or before February 16, 1993) and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is March 18, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1128 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–02316T Oklahoma–32]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 12, 1993.

Take notice that on December 30, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Osborne Formation, occurring between 10,340 feet and 10,718 feet, underlying a portion of Grady County, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area is described as Sections 7, 17–20 and 29–31 of Township 9 North, Range 6 West and Sections 11–13 of Township 9 North, Range 7 West, Grady County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1147 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–01948T Louisiana–17]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 12, 1993.

Take notice that on December 21, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lower Hosston Zone, Reservoir A, underlying parts of the West Simsboro Field, Lincoln Parish, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers all of Sections 13, 14, 23 and 24 of Township 18 North, Range 5 West and Sections 18, 19 and 30 of Township 18 North, Range 4 West.

The notice of determination also contains Louisiana's findings that the referenced part of the Lower Hosston Zone, Reservoir A, meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1148 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–02319T Texas–95]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 12, 1993.

Take notice that on December 28, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Sands (L–24, L–25, L–26, L–30, L–31, L–32 and L–33) in Bob West Field underlying a portion of Zapata and Starr Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is within Railroad Commission District 4 and is described as the Southwestern portions of Porcions 55 and 56 which are East of Falcon Reservoir in Starr County, Texas; all of Share No. 28–A, all of Share No. 46, and the Eastern portion of Share No. 29–A in Porcion 14, Zapata County, Texas; and a small portion of Porcion 57 Southwest of old Highway 83 and North of Falcon Dam in Starr County, Texas.

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Sands meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1149 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–150–000, and EL93–10–000]

Boston Edison Company; Initiation of Proceeding and Refund Effective Date

January 13, 1993.

Take notice that on January 12, 1993, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL93–10–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL93–10–000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1150 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT90–8–006]

Mississippi River Transmission Corp.; Filing

January 11, 1993.

Take notice that on January 5, 1993, Mississippi River Transmission

Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A Sixth Revised Sheet No. 72 with a proposed effective date of January 4, 1993.

MRT states that this filing is being made to revise its tariff to reflect organizational changes that are necessary to implement the restructuring of MRT's sales and transportation services in accordance with Order No. 636, *et seq.*

MRT states that copies of its filing are available for inspection at its St. Louis Offices and have been mailed to all affected customers.

Any person desiring to be heard or protect the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure: 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before January 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1129 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–11–017]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

January 11, 1993.

Take notice that on December 22, 1992, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance First Revised Sheet No. 433 and Fourth Revised Sheet, No. 434 to be part of its FERC Gas Tariff, First Revised Volume No. 1–A.

Northwest filing is being made to revise (1) Section 17 "Public Access to Transportation Information" on Sheet No. 433 to accurately reflect the Nominations Department, to which inquiries concerning the availability of interruptible capacity may be directed, and (2) Section 18 "Complaint Procedures" on Sheet No. 434, to remove an incorrect mail stop from the address of the Manager, Transportation and Contract Administration and to update the title of the Director, Marketing Services.

Northwest has requested an effective date of January 21, 1993 for the tendered sheets. Northwest states that copies of Northwest filing is being made to jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1130 Filed 1–15–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Conservation and Renewable Energy

[Docket No. CE–NOI–93–001]

Innovative Utility Communications Technology; Congressional Report on Proposal To Demonstrate

AGENCY: Department of Energy.

ACTION: Notice of Inquiry (NOI) and request for public comment.

SUMMARY: The Department of Energy (DOE) is publishing this notice of inquiry to obtain information on the potential for energy conservation and for the enhancement of public health and safety which may exist in new and innovative communications equipment that can automatically read utility meters, manage energy usage and monitor utility system outages. This information will be used in complying with section 401 of the Telephone Disclosure and Dispute Resolution Act (Act) (Pub. L. 102–556, 102 Stat. 4194) which requires a report to Congress after consultation with the Department of Commerce on a proposal to demonstrate that potential.

DATES: Written comments (7 copies) will be considered if received at the address provided below no later than March 5, 1993.

ADDRESSES: The address is: U.S. Department of Energy, Office of Conservation and Renewable Energy, Notice of Inquiry and Request for Public Comment, Docket No. CE–NOI–93–001, 1000 Independence Avenue SW., room 6B–025, Washington, DC 20585, (202) 586–0561. FAX comments will not be accepted. The comment and the envelope in which the required number of copies is mailed should be marked "Notice of Inquiry and Request for Public Comment, Docket No. CE–NOI–93–001."

FOR FURTHER INFORMATION CONTACT: Dietrich Roesler, Office of Conservation and Renewable Energy, CE–141, U.S. Department of Energy, 1000 Independence Avenue SW., room 5F–064, Washington, DC 20585, (202) 586–1495.

SUPPLEMENTARY INFORMATION:

Background

In this (NOI), the (DOE) requests information on technologies and methodologies to remotely monitor utility meters such as electric, gas and water, of a specific building (a residence or business) or a group of buildings (a commercial, industrial or government facility). The purpose of the NOI is to acquire information in order to develop a proposal to be submitted to Congress, in compliance with section 401 of the Act, to demonstrate the ability of new and innovative communication equipment and services to further the national goals of conserving energy resources and protecting public health and safety. Section 401 of the Act provides as follows:

(a) Demonstration Proposal. Within 180 days after the date of enactment of this Act, the Assistant Secretary of Energy for Conservation and Renewable Energy, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall submit to Congress a proposal for demonstrating the ability of new and innovative communications equipment and services to further the national goals of conserving energy and protecting public health and safety.

"(b) Factors to be Addressed. The demonstration proposal required by subsection (a) shall address:

"(1) The feasibility of using communications technologies to read meters from remote locations;

"(2) The feasibility of managing the consumption of electrical power and natural gas by residences and businesses, thereby reducing the demand for new and additional sources of energy, and controlling the cost of providing improved utility services; and

"(3) The public safety implications of monitoring utility services outages during earthquakes, hurricanes, typhoons, tornadoes, volcanoes, and other natural disasters.

"(c) Project to Demonstrate Energy Conservation Potential. Upon submission of the demonstration proposal to the Congress, the Secretary of Energy shall consider requesting from the Assistant Secretary of Commerce for Communications and Information, the authority to use radio frequencies pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305), to carry out demonstration projects consistent with the proposal that are designed to demonstrate the energy conservation potential of communications technologies and which are administered by the Secretary of Energy."

Existing Technologies and Their Capabilities

There are a number of companies which are presently marketing or developing communication systems for load control, outage detection, and remote meter reading. Existing and more innovative communication technologies are being proposed for use, or are already being used on a limited pilot or test basis, as part of electric and gas utility monitoring and control systems. These systems may have functions that include automated meter reading, time of use pricing, demand-side management (reduction of consumer demand during peak periods by employing conservation or load management techniques), outage detection, system status monitoring, and system control and restoration.

There are several communication mediums which have been used or proposed for automated meter reading and other utility customer service applications. These technologies are: (1) Telephone; (2) radio (includes unlicensed devices operating under part 15 of the Rules of the Federal Communications Commission (FCC), FCC licensed systems in the 902–960 MHz band, subcarriers of FM broadcasting transmitters, and VHF FM radio) (3) power line carrier; (4) coaxial cable; (5) fiber-optic cable; and (6) satellite. They are summarized below.

Telephone

Telephone is a proven, mature communications media suited for automatic meter reading. The telephone system provides a high data rate for two-way communications. Telephone systems are designated as outbound when the meter reading call is initiated at the telephone company office or inbound when the call is initiated at the customer location.

The most common outbound technique uses a subscriber or trunk line access controller which is installed in the phone company central office. This controller is used for testing an individual customer's telephone line and can also be used to initiate a call to a meter on the customer's premises without ringing the customer's telephone.

Another outbound technique permits true "real-time" utility metering of electric, gas, and water meters. The technique has the ability to read any meter unobstructively at any time, as often as desired, under the complete control of the utility company. The equipment is broadly compatible with the typical telephone network, including pair-gain systems.

Inbound telephone techniques share the customer's telephone line to initiate a local call to a central utility office to transmit data and receive instructions on when to call next. The meter reading call is initiated when the customer is not using the telephone and the call will be terminated if the customer decides to use the telephone.

Radio

Radio has proven to be a viable communication media with two-way capability for remote load control and automatic meter reading. VHF radio systems for typical utility communication use a 154 MHz frequency for load control applications. UHF radio systems for utility communication have been allocated in the 900 MHz frequency band. UHF radio communications use a point-to-point technique or wide area packet network.

Point-to-point UHF radio communication uses a master station to send and receive information to remote radios located near the meter. At the remote location, a radio and antenna are used to send and receive signals. Different frequencies can be used for transmitting and receiving.

On the wide area UHF packet network, radios are typically installed and powered on distribution transformer low-voltage secondaries. A radio and all the meters served by one transformer form a node on a wide area network where information packets are transmitted, received and retransmitted by low-power radio transceivers in the 900-MHz band. Because the transmission power of each radio is intentionally low, simultaneous transmissions can take place in the same general service area.

Authorizations for use of radio frequencies by private sector entities are issued by the Federal Communications Commission(FCC). Private sector entities can obtain their frequency authorizations from the FCC by formally applying for an assignment. If the frequency requirements cannot be satisfied by using frequencies in bands currently allocated for such services, then the firm must petition the FCC for a change in the Table of Frequency Allocations. The process of changing an allocation may be very lengthy and time consuming and adding another service may be difficult because many frequency bands have large numbers of users.

Power Line Carrier

A power line carrier (PLC) utilizes a carrier frequency to transmit information over existing distribution lines. Information is encoded on the carrier through the use of different modulation techniques. At the sending end, the modulated carrier is added into a distribution line by means of a coupling capacitor and tuner in the substation. The modulated signal propagates down the distribution line to the receiving end. At the receiving end, a coupling capacitor and tuner separates the power line carrier signal from the power frequency voltage and a demodulator extracts the information encoded in the signal. Power line carrier systems use frequencies below 490 kHz and have a two-way capability. With respect to such a system, footnote US294 to the United States Table of Frequency Allocations, which is set forth in chapter 4 of the National Telecommunication and Information Administration's Manual of Regulations and Procedures for Federal Radio Frequency Management, (May, 1992, edition, revised September, 1992), p. 4–110, states the following: "In the spectrum below 490 kHz electric utilities operate Power Line Carrier (PLC) systems on power transmission lines for communications important to the reliability and security of electric service to the public. These PLC systems operate under the provisions of part 15 of the Federal communication commission's Rules and Regulations or chapter 7 of the National Telecommunications and Information Administrations Manual of Regulations and Procedures for Federal Radio Frequency Management, on an unprotected and noninterference basis with respect to authorized radio users * * *."

Coaxial Cable (CATV)

Areas that are served by cable TV systems operate primarily with coaxial cable as the signal transmission path. Signal amplifiers are placed on the system where necessary. CATV systems have broad bandwidths and portions could be used for meter reading. Most CATV systems are designed for one-way, outbound, communication and would require modification for interactive services.

Fiber Optic Cable

A typical fiber optic link consists of a transmitter, receiver and optical fiber. Repeaters can be placed at intervals if necessary. Fiber optic communications have a broad bandwidth and data rates, and are immune to electromagnetic interference. Fiber optic communication to individual homes and businesses can be used for utility meter and other information transfer applications.

Satellite

Satellite communications use a satellite in geosynchronous orbit. Satellites have transponders which receive an uplink signal and retransmit the signal at a different frequency. Today, microwave frequencies in the 4 to 6 GHz range are used for both uplinks and downlinks. In the future, additional frequency bands will be used for a variety of satellite applications.

Issues for Public Comment

General

With respect to any new or innovative technology identified in response to this NOI, DOE seeks the following information:

(1) The feasibility of reading meters from remote locations and the practicality and reliability of the technology as demonstrated by data from ongoing or completed pilot tests or demonstrations;

(2) The feasibility of managing the consumption of electrical power, natural gas, and/or water by residences, businesses, government facilities, etc.; and how the demand for energy and water are controlled;

(3) The contributions of remote outrage detection and load management to public safety during natural disasters;

(4) The identification of what is new and innovative about the technology that requires demonstration or additional efforts to demonstrate technical feasibility;

(5) The selection rationale for the communications media to be used or developed for this technology;

(6) The potential for this technology to be integrated into a multi-functional (functions in addition to utility functions) communication system at some future date;

(7) The estimated net energy cost savings and net offsetting costs in comparison to existing, commercially available technologies, if any;

(8) The estimated public health and safety benefits in comparison to existing, commercially available technology, if any; and

(9) Surveys and similar evidence of potential customer demand.

Radio

Some of the key technical issues to be considered to improve the economic viability of innovative communications equipment and services are the use of licensed or non-licensed radio emission devices, standardization of data communications and hardware, battery lifetime for remote communications equipment and meters, local wiring for meters and other devices at a customer installation, and the vulnerability of service interruptions during natural disasters.

Since the radio spectrum is a limited resource that must be efficiently used and since section 401 of the Act specifically mentions the potential use of radio frequencies, DOE is also interested in obtaining the following information from firms and organizations seeking to demonstrate technologies that would require radio frequency allocations:

(1) Rationale for the selection of a particular radio frequency band and technology, vis-a-vis wire, fiber optics, coaxial cable, or other available radio frequencies;

(2) Conceptual design and detailed functional requirements of the radio technology you are currently using or planning to use;

(3) Discrete frequencies and spectrum characteristics to be authorized and the preferred frequency bands;

(4) Technical parameters of the radio communications equipment that is being used or planned to be used;

(5) Conditions under which your radio system is able to share a frequency or frequency band with other users;

(6) Conditions and frequency of use for the communications system to be used during normal and natural disaster situations; and

(7) Adequacy of a secondary spectrum allocation for the technology even if it may eventually grow into widespread national use.

Power Line Carrier

The utility, feasibility; and practicability of operation under the above-quoted footnote 204 to the United States Table of Frequency Allocations

Opportunity for Public Comment

Interested persons are invited to respond to this notice by submitting relevant data and views. Seven copies of each comment should be submitted to the Office of Conservation and Renewable Energy in compliance with the instructions set forth above in the "Dates" and "Addresses" sections of this notice.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy marked confidential, as well as six copies from which the confidential information has been deleted. DOE reserves the right to determine the confidential status and treatment of the information or data under 10 CFR part 1004.

Issued in Washington, DC, on January 11, 1993.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 93–159 Filed 1–15–93; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Cases Filed the Week of December 25, 1992 Through January 1, 1993

During the week of December 25, 1992 through January 1, 1993, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 12, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 25, 1992 through Jan. 1, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 30, 1992	Gulf/Bestrom Oil Company, Inc., Grand Rapids, Minnesota.	RR300-217	Request for modification/recission in the Gulf refund proceeding. If granted: The March 14, 1989 Decision and Order (Case No. RF300-4103) issued to Bestrom Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Bobby King Grocery, Alamo, Tennessee	RR300-213	Request for modification/recission in the Gulf refund proceeding. If granted: The December 8, 1992 Dismissal Letter (Case No. RF300-16588) issued to Bobby King Grocery would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
Do	Gulf/City Gulf Service, Myrtle Beach, South Carolina	RR300-218	Request for modification/recission in the Gulf refund proceeding. If granted: The August 31, 1989 Decision and Order (Case No. RF300-8967) issued to City Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Glenn Smith Oil Company, Inc., Muskogee, Oklahoma.	RR300-215	Request for modification/recission in the Gulf refund proceeding. If granted: The May 17, 1990 Decision and Order (Case No. RF300-4104) issued to Glenn Smith Oil Company, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Marchant Oil Company, Spring Valley, Minnesota.	RR300-216	Request for modification/recission in the Gulf refund proceeding. If granted: The November 9, 1988 Decision and Order (Case No. RF300-5196) issued to Marchant Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Gulf/Saunders Oil Co., Sioux City, Iowa	RR300-214	Request for modification/recission in the Gulf refund proceeding. If granted: The November 29, 1988 Decision and Order (Case No. RF300-5195) issued to Saunders Oil Co. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Do	Structural Dynamics Research Corp., Cincinnati, Ohio	LFA-0257	Appeal of an information request denial. If granted: The December 12, 1992 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Structural Dynamics Research Corporation would receive access to the contract awarded to Parametric Technologies based on Sandia National Laboratories RFQ LDR-234.
Dec. 31, 1992	David DeKok, Harrisburg, Pennsylvania	LFA-0258	Appeal of an information request denial. If granted: The November 18, 1992 Freedom of Information Request Denial issued by the Idaho Field Office would be rescinded and David DeKok would receive access to documents concerning the Three Mile Island clean-up.
Do	James L. Schwab, Spokane, Washington	LFA-0259, LFA-0260	Appeals of information request denials. If granted: The December 1, 1992 Freedom of Information Request Denial issued by the Albuquerque Field Office and the December 24, 1991 Freedom of Information Request Denial issued by the Nevada Field Office would be rescinded and James L. Schwab would receive access to documents regarding the new shooting course for DOE and a gambling scheme.

REFUND APPLICATIONS RECEIVED

[Week of Dec. 25, 1992 through Jan. 1, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
12/29/92	Singer's Texaco III.	RF321-19539.
12/29/92	Albert's Texaco	RF321-19540.
12/29/92	Emerson Avenue Texaco.	RF321-19541.
12/30/92	Pinole Gulf	RF300-20804.
12/30/92	Diversified Enterprises.	RF300-20805.
12/30/92	Davies Gulf	RF300-20806.
12/30/92	Mid Continent Systems, Inc.	RF346-18.
12/31/92	Wisconsin Industrial Fuel Oil.	RF309-1427.
12/25/92 thru 01/01/93.	Atlantic Richfield Applications Received.	RF304-13484 thru RF304-13489.

[FR Doc. 93-1200 Filed 1-15-93; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of December 21 Through December 25, 1992

During the week of December 21 through December 25, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Williams, Youle & Koenigs, P.C., 12/21/92, LFA-0252

On November 30, 1992, Williams, Youle & Koenigs, P.C. (Williams) filed an Appeal from a determination issued by the Albuquerque Field Office (Albuquerque) of the DOE in response to a request from Williams submitted under the Freedom of Information Act (FOIA). In that determination, Albuquerque concluded that it did not have any documents responsive to Williams' request for a report, and any supporting material, regarding the award of production bonuses at the Rocky Flats plant which was prepared in compliance with 42 U.S.C. 7256b(b). The DOE determined that, although the report was prepared at DOE Headquarters, it is possible that Albuquerque either contributed to the report or possesses a copy. Therefore, the search that Albuquerque performed was unduly narrow in scope. Accordingly, the Appeal was granted and the matter remanded to Albuquerque for a further search.

Refund Application

Texaco Inc./Harold's Texaco, 12/23/92, RF321-19503

The Office of Hearings and Appeals (OHA) of the Department of Energy issued a Decision and Order concerning an Application for Refund that was filed in the Texaco refund proceeding by Harold Blacker on behalf of Harold's Texaco (Case No. RF321–11815). In that Decision, we rescinded in part a refund that was granted to Mr. Blacker on November 26, 1991. We stated that this refund was based upon Mr. Blacker's certification in his application that he operated Harold's Texaco during the period from January 1973 through December 1979. We further stated that another application had been filed by a claimant who states that he operated this service station during the period from January 1979 through January 1981. Because this claimant was able to adequately document his dates of operation and Mr. Blacker was unable to do so, the OHA determined that Mr. Blacker was incorrectly granted a refund for the period of time from January 1979 through December 1979. Mr. Blacker was therefore required to repay to the DOE the sum of $300.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Apollo-Ridge School District	RF272–82792	12/23/92
Atlantic Richfield Company/Waterbury Petroleum Products, Inc	RF304–13383	12/21/92
Bell County Schools et al	RF272–79273	12/24/92
Borough of Franklin Lakes	RF272–82780	12/24/92
Borough of Middletown	RF272–82786	12/23/92
City of Brookfield	RF272–82609	12/22/92
City of Cayce	RF272–82644	12/21/92
City of Clovis	RF272–82773	12/24/92
City of Cookeville	RF272–82622	12/23/92
Colonial Gas Co	RF272–90468	12/21/92
National Trucking, Inc	RF272–90486	
TNT Red Star Express, Inc	RF272–88720	
El Segundo Unified School District	RF272–82450	12/22/92
Enron Corp./C.W. Heist Bottled Gas Sales	RF340–44	12/23/92
Fairfield Elementary District No. 112	RF272–81667	12/24/92
Gulf Oil Corporation/U.S. Reduction Company	RF300–17951	12/21/92
Jacinto City	RF272–82779	12/23/92
Jackson City School District et al	RF272–83301	12/23/92
Lakefield School District et al	RF272–79000	12/22/92
Leicester Public Schools	RF272–81604	12/22/92
Little Egg Harbor Township School District	RF272–82793	12/21/92
Markesan District Schools	RF272–82794	12/21/92
Miami Public Schools	RF272–81626	12/23/92
Mt. Pleasant School	RF272–81648	12/23/92
New Hanover Township	RF272–82638	12/22/92
School Administrative District No. 53	RF272–82784	12/24/92
Shell Oil Company/Sierra Petroleum et al	RF315–8773	12/23/92
Southgate Trucking Co. et al	RF272–91275	12/24/92
Texaco Inc./Bob Hungate's Texaco et al	RF321–12358	12/24/92
Texaco Inc./C&M Texaco	RF321–19529	12/24/92
Texaco Inc./Erie Airways, Inc. et al	RF321–6725	12/21/92
Texaco Inc./Intermountain Concrete Co. et al	RF321–17460	12/21/92
Texaco Inc./Nally & Haydon, Inc. et al	RF321–17100	12/23/92
Texaco Inc./Parrott's Texaco et al	RF321–10911	12/23/92
Texaco Inc./Renfro's Texaco et al	RF321–16469	12/21/92
Town of Beacon Falls	RF272–82654	12/21/92
Tri-County R–7 Public School	RF272–81602	12/22/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Thomas B. Cockrell Distributor	RF300–17126
Tony & Otto's Gulf	RF300–17758

Copies of the full test of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 12, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–1201 Filed 1–15–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4553–6; ECAO–RTP–0327]

Draft Alternative Fuels Research Strategy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of external review draft.

SUMMARY: This notice announces the availability of an external review draft of the "Alternative Fuels Research Strategy" prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD) and invites comment from the public on the draft strategy.

DATES: The Agency will make the external review draft available for public review and comment on or about January 25, 1993. Comments must be in writing and postmarked by March 25, 1993.

ADDRESSES: To obtain a copy of the external review draft document, interested parties should contact the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; FAX (513) 569–7566; and request the external review draft of the

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"Alternative Fuels Research Strategy." Please provide your name, mailing address, and the EPA document number, EPA/600/AP-92/002.

The draft will also be available for public inspection at the EPA Library, EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

Comments on the draft should be sent to the Project Manager for Alternative Fuels, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Dr. J. Michael Davis, Office of Health and Environmental Assessment, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541-4162.

SUPPLEMENTARY INFORMATION: Following the public meeting of December 1989, announced in 54 FR 49354, EPA's Office of Research and Development prepared a draft, "Alternative Fuels Research Strategy." The purpose of this Research Strategy is to summarize scientific issues and identify research activities and assessments needed to improve the scientific understanding and quantitative estimation of the health and environmental benefits and risks attendant to the introduction and use of alternative fuels in comparison to those associated with the use of conventional petroleum fuels. The ultimate goal of this Research Strategy is to lay the foundation for obtaining information useful in quantitative, comparative risk assessments for human health, ecosystem, and global warming effects.

EPA is soliciting comments on this document from the public. The subject draft document will then be reviewed by the Clean Air Scientific Advisory Committee in a public meeting at a place and time to be announced in a subsequent **Federal Register** Notice.

Dated: January 7, 1993.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 93-1184 Filed 1-15-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4553-4]

Science Advisory Board; Closed Meeting

Under Public Law 92-463, notice is hereby given that a meeting of an ad-hoc Subcommittee of the Science Advisory Board will be held in Washington, DC on March 3-4, 1993 to determine the recipients of the Agency's 1992 Scientific and Technological Achievement Cash Awards. These awards are established to give honor and recognition to EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, and who have published their results in peer reviewed journals.

Pursuant to section 10(d) of the U.S.C. appendix 1 and 5 U.S.C. 522(c), I hereby determine that this meeting is concerned with information exempt from disclosure, and that the public interest requires that this meeting be closed.

In selecting the recipients for the awards, and in determining the actual cash amount of each award, the Agency requires full and frank advice from the Science Advisory Board. This advice will involve professional judgments on those employees whose published research results are deserving of a cash award as well as those that are not. Discussions of such a personal nature, where disclosure would constitute an unwarranted invasion of personal privacy, are exempted under section 10(d) of title 5, U.S. Code, appendix 1. In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for Agency and Congressional review.

The Science Advisory Board shall be responsible for maintaining records of the meeting, and for providing an annual report setting forth a summary of the meeting consistent with the policy of U.S.C. appendix 1, section 10(d).

Dated: January 11, 1993.

William K. Reilly,

Administrator.

[FR Doc. 93-1186 Filed 1-15-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4553-2]

National Smelting and Refining Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the National Smelting and Refining Site, Atlanta, Georgia, with American Biltrite, Inc., and Georgia Metals, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region, IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-5059.

Written comment may be submitted to the person above within 30 days of the date of publication.

Dated: December 30, 1992.

Joseph R. Franzmathes,

Director, Waste Management Division.

[FR Doc. 93-1183 Filed 1-15-93; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-140206; FRL-4182-5]

Access to Confidential Business Information by Subcontractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized: Hampshire Research Associates (HRA), of Alexandria, Virginia; Industrial Economics, Incorporated (IEC), of Cambridge, Massachusetts; Labat-Anderson, Incorporated (LAI), of Arlington, Virginia; and Research Triangle Institute (RTI), of Research Triangle Park, North Carolina, all under subcontract to ICF International Incorporated (ICF), of Fairfax, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Under contract number 68-D2-0064, subcontractors: HRA, of 1600 Cameron St., Alexandria, VA; IEC, of 2067 Massachusetts Ave., Cambridge, MA; LAI, of 2200 Clarendon Blvd., Arlington, VA; and RTI, of 3400 Cornwallis Dr., Research Triangle Park, NC, will assist the Office of Pollution Prevention and Toxics (OPPT) in performing economic and regulatory impact analyses of actual or potential EPA actions taken under TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D2–0064, HRA, IEC, LAI, and RTI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. HRA, IEC, LAI, and RTI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of November 3, 1992 (57 FR 49706), ICF was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to grant access to TSCA CBI to ICF's subcontractors.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide HRA, IEC, LAI, and RTI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract for HRA, IEC, and LAI will take place at EPA Headquarters only. All access to TSCA CBI under this contract for RTI will take place at RTI's Research Triangle Park, NC facility.

HRA, IEC, LAI, and RTI will be authorized access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized, EPA will approve HRA, IEC, LAI, and RTI's security certification statements. Before access to TSCA CBI is authorized, EPA will perform the required inspection of RTI's facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, RTI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

HRA, IEC, LAI, and RTI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 4, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–1180 Filed 1–15–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPT–59957; FRL–4184–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 5 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 93–33, December 28, 1992.

Y 93–34, December 29, 1992.

Y 93–35, 93–36, 93–37, January 5, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD [illegible]02) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non confidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 93–33

Manufacturer. Confidential.

Chemical. (G) Acrylic bead polymer.

Use/Production. (S) Toner for photocopiers. Prod. range: Confidential.

Y 93–34

Importer. Goldschmidt Chemical Corporation.

Chemical. (G) Modified polybutadiene.

Use/Import. (G) Open nondispersive use. Import range: Confidential.

Y 93–35

Manufacturer. King Industries, Inc..

Chemical. (G) Polyurethane polyol.

Use/Production. (G) Abrasion resistant coating. Prod. range: Confidential.

Y 93–36

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester molding resin.

Use/Production. (S) Molding resin. Prod. range: Confidential.

Y 93–37

Manufacturer. Franklin International.

Chemical. (G) Alkyl acrylate - maleate copolymer dispersion.

Use/Production. (G) Removable pressure sensitive adhesive. Prod. range: 16,000–20,000 kg/yr.

Dated: January 11, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc 93–1182 Filed 1–15–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140205; FRL–4182–7]

Access to Confidential Business Information by Research Triangle Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research Triangle Institute (RTI), of Research Triangle Park, North Carolina, for access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W0–0032, contractor RTI, of 3040 Cornwallis Road, Research Triangle Park, NC, will assist the Office of Solid Waste (OSW) in providing scientific support for health and ecological assessment programs conducted under the

Resources Conservation and Recovery Act (RCRA) of 1976 as amended.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W0–0032, RTI will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract. RTI personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide RTI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at RTI's Research Triangle Park, NC facility only.

RTI will be authorized access to TSCA CBI at its facility under the EPA "contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. Before access to TSCA CBI is authorized at RTI's site, EPA will approve RTI's security certification statement, perform the required inspection of its facility, and ensure that the facility is in compliance with the manual. Upon completing review of the CBI materials, RTI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until July 26, 1993.

RTI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 4, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–1181 Filed 1–15–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4553–6]

Combined Sewer Overflow Control Policy: Draft Guidance Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the draft guidance document entitled "Combined Sewer Overflow Control Policy".

DATES: Comments must be received by EPA by March 22, 1993.

ADDRESSES: Copies of this document can be obtained by writing or calling Mr. Richard Kuhlman, Office of Wastewater Enforcement and Compliance, WH–546, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–5828. Comments on the document should be sent to Mr. Richard Kuhlman at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Kuhlman at (202) 260–5828.

SUPPLEMENTARY INFORMATION: The main purposes of the draft Policy are to elaborate on the Environmental Protection Agency's (EPA's) National Combined Sewer Overflow Control Strategy published on September 8, 1989, at 54 FR 37370, and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling combined sewer overflows (CSOs), significant public health and water quality risks remain.

The Policy is being developed to provide guidance to permittees with CSOs, National Pollutant Discharge Elimination System (NPDES) authorities and State water quality standards authorities, on coordinating the planning, selection, sizing and construction of CSO controls that meet the requirements of the CWA and allow for public involvement during the decision-making process.

Contained in the Policy are provisions for developing appropriate, site-specific NPDES permit requirements for all combined sewer systems that overflow as a result of wet weather events and enforcement initiatives to require the immediate elimination of overflows that occur during dry weather, and to ensure that the remaining CWA requirements are complied with as soon as practicable.

The permitting provisions of the Policy were developed as a result of extensive input received during a negotiated policy dialogue. The negotiated dialogue was conducted by the office of Water and the Office of Water's Management Advisory Group. Representatives from State, environmental and municipal organizations participated in the negotiated dialogue.

The enforcement initiatives, including one to be initiated in 1993 on CSOs during dry weather, were developed by EPA's Office of Water and Office of Enforcement.

The major provisions of the Policy are:

CSO permittees should immediately undertake a process to accurately characterize their combined sewer system, demonstrate implementation of nine minimum controls, and develop a long-term CSO control plan. Once the long-term CSO control plan is completed, the permittee will be responsible to implement the plan's recommendations as soon as practicable;

State water quality standard (WQS) authorities should be involved in the long-term CSO control planning effort to coordinate the review and possible revision of WQS and implementation procedures on CSO-impacted waters with the development of the long-term CSO control plan;

NPDES authorities should issue/reissue permits to require immediate compliance with the technology-based and water quality-based requirements of the CWA, and after completion of the long-term CSO control plan, incorporate the following additional permit requirements—performance standards for the selected controls based on average design conditions, a post construction water quality assessment program, monitoring for compliance with WQS, and a reopener clause authorizing the NPDES authority to reopen and modify the permit if it is determined that the CSO controls fail to meet WQS or protect designated uses; and

NPDES authorities should also, as noted above, commence enforcement actions in 1993, against all CSO permittees which have CWA violations due to CSO discharges during dry weather. In addition, NPDES authorities should ensure the implementation of the nine minimum controls, noted above, and incorporate a schedule, with appropriate milestone dates, to implement the required long-term CSO control plan into a civil judicial action or administrative order. Schedules for implementation of the long-term CSO control plan may be phased based on the relative importance of adverse impacts upon which WQS and designated uses, and on a permittee's financial capability.

Notwithstanding the permitting and enforcement provisions of the Policy, permittees will be expected to comply with any CSO-related requirements in NPDES permits, consent decrees or court orders which predate the final policy.

Dated: January 4, 1993.

LaJuana S. Wilcher,

Assistant Administrator for Water.

Dated: January 5, 1993.

Herbert H. Tate, Jr.,

Assistant Administrator for Enforcement.

[FR Doc. 93–1187 Filed 1–15–93; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

DEPARTMENT OF DEFENSE

Department of the Army

[FRL–4553–5]

Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the Section 404 Program

AGENCIES: Environmental Protection Agency; Department of the Army, DOD.

ACTION: Notice.

SUMMARY: Pursuant to their authorities under the Clean Water Act (33 U.S.C. 1251 *et seq.*), the Assistant Administrator for Water of the Environmental Protection Agency (EPA) and the Assistant Secretary of the Army for Civil Works (Army) have amended the January 19, 1989, "Department of the Army/Environmental Protection Agency Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the section 404 Program and the Application of the Exemptions under section 404(f) of the Clean Water Act" (MOA). This amendment provides that the U.S. Army Corps of Engineers (Corps) and EPA will adhere to the 1987 Corps of Engineers Wetlands Delineation Manual (Waterways Experiment Station Technical Report Y–87–1, January, 1987) (1987 Manual) in making their determinations of the geographic scope of waters of the United States under section 404 of the Clean Water Act.

DATES: The effective date of this amendment was January 4, 1993.

ADDRESSES: Copies of this amendment and the original MOA can be obtained by writing to: Mr. Gregory Peck, Chief, Wetlands and Aquatic Resources Regulatory Branch, Mail Code (A–104F), U.S. EPA, 401 M Street SW., Washington, DC 20460; or The Chief of Engineers, U.S. Corps of Engineers, ATTN: CECW–OR, Washington, DC 20314–1000. Copies may also be obtained by contacting the EPA Wetlands Hotline at (800) 832–7828.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Fritz (EPA) at (202) 260–6013 or Mr. Michael L. Davis (Office of the Assistant Secretary of the Army for Civil Works) at (703) 695–1376.

SUPPLEMENTARY INFORMATION: The MOA between the Army and EPA "Concerning the Determination of the Geographic Jurisdiction of the section 404 Program and the Application of the Exemptions under section 404(f) of the Clean Water Act", signed on January 19, 1989, sets forth an appropriate allocation of responsibilities between EPA and the Corps in determining geographic jurisdiction of the section 404 program and the applicability of the exemptions under section 404(f) of the Clean Water Act. This amendment to the MOA provides that EPA and the Corps will use the 1987 Corps of Engineers Wetlands Delineation Manual (Waterways Experiment Station Technical Report Y–87–1, January, 1987) (1987 Manual) in making wetlands determinations.

Background

The language contained in section II of the original OMA states that the Corps will use the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989 Manual) in making its wetlands determinations. However, the Energy and Water Development Appropriations Act of 1992 (Pub L. 102–580) prohibited the Corps from using the 1989 Manual for defining the scope of waters of the United States under the section 404 program. The legislative history of this statutory provision stated that, until a notice and comment rulemaking was completed on a revised manual, the Corps was constrained to employ criteria in a manual the Corps had developed in 1987 but which had not been uniformly adopted by Corps field offices. In response, the Corps began using the 1987 Manual in August, 1991. The Energy and Water Development Appropriations Act of 1993 (Pub. L. 102–377) required the Corps to continue using the 1987 Manual "until a final wetlands delineation manual is adopted". In contrast, EPA has continued to use the 1989 Manual in making jurisdictional determinations, which are principally related to enforcement of section 404 for unauthorized discharges. However, it has also been EPA's practice in judicial enforcement actions to confirm the jurisdictional status of a property under the 1987 Manual. EPA and the Army have been concerned that the use of different manuals by the agencies has the potential for creating confusion and inconsistencies in implementation of the section 404 regulatory program.

On August 14, 1991, EPA, Army, Soil Conservation Service (SCS), and the Fish and Wildlife Service (FWS) proposed to revise the 1989 Manual (56 FR 404460) (proposed manual). On December 19, 1991, EPA, Army, and the SCS proposed to incorporate portions of the proposed manual into the regulations governing the agencies' wetland protection programs (56 FR 65963). The comment period for both proposals ended on January 21, 1992. In response to these proposals, the agencies received comments from more than 100,000 persons. These comments are currently under review by the agencies. In addition, consistent with EPA's Fiscal Year 1993 appropriations (Pub. L. 102–389), EPA is contracting with the National Academy of Sciences (NAS) to prepare a scientific analysis of wetlands delineation, including an evaluation of the scientific validity and practicability of existing wetland delineation manuals.

Reasons for Amending the MOA

As noted above, the Corps is currently obligated by law to use the 1987 Manual in making wetlands determinations. EPA's continued use of the 1989 Manual, therefore, has the potential to confuse the public and the regulated community regarding how areas will be delineated as wetlands. The agencies believe that there is a strong interest in both agencies' using the 1987 Manual to foster consistency and predictability in the administration of the section 404 program. Amendment of the MOA to provide that both agencies will use the 1987 Manual therefore achieves this important objective.

The need for consistency at the present time is particularly important in light of the complex and lengthy rulemaking in which EPA, the Army, SCS and the FWS are currently considering revisions to the 1989 Manual. As noted above, the agencies have received voluminous public comments on the proposed revisions. These extensive comments require careful review by the agencies before a final Manual and rule can be adopted. In addition, as noted above, the NAS will be reviewing the scientific validity and practicality of the various manuals and proposed revisions. When the NAS study is completed, the agencies will review carefully its results in determining how, if appropriate, to incorporate its results into agency rules or guidance. In the interim, Army and EPA believe that it is particularly important that the two agencies that jointly administer the Section 404 program follow consistent guidance in delineating wetlands.

The 1987 Manual, like the 1989 Manual previously used by EPA and the Corps, is a technical guidance document and provides internal procedures for agency field staff for identifying and delineating wetlands. The guidance document serves to advise the public prospectively of the manner in which agency personnel will apply the definition of wetlands to particular sites on a case-by-case basis.

Copies of the 1987 Manual can be purchased by ordering the 1987 Corps of Engineers Wetlands Delineation Manual

(Technical Report Y–87–1) (Document Number ADA 176 734) from the National Technical Information Service, Order Department, Springfield, VA 22161, Telephone: (703) 487–4650.

LaJuana S. Wilcher,

Assistant Administrator for Water, Environmental Protection Agency.

Dated: January 4, 1993.

Nancy P. Dorn,

Assistant Secretary (Civil Works), Department of the Army.

For the reasons set out above, the January 19, 1989, "Department of the Army/Environmental Protection Agency Memorandum of Agreement Concerning the Determination of the Geographic Jurisdiction of the section 404 Program and the Application of the Exemptions under section 404 of the Clean Water Act" is amended by replacing the second sentence of the second paragraph in section II as follows:

> In making their determinations, the Corps and EPA will adhere to the Corps of Engineers Wetlands Delineation Manual (Waterways Experiment Station Technical Report Y–87–1, January, 1987) until further notice, as well as EPA guidance on isolated waters, and other guidance, interpretations, and regulations issued by EPA to clarify EPA positions on geographic jurisdiction and exemptions.

[FR Doc. 93–1185 Filed 1–15–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1924]

Petitions for Reconsideration and Clarification and Application for Review of Actions in Rule Making Proceedings

January 12, 1993.

Petitions for reconsideration and clarification and application for review have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor Downtown Copy Center 9202) 452–1422. Opposition to these petitions and application must be filed by February 3, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service. (MM Docket No. 87–268) Number of Petitions Filed: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Station. (Castle Rock, Colorado Springs, Frisco and Salida, Colorado; Raton, New Mexico) (MM Docket No. 89–172, RM No. 6894) Number of Petitions Filed: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Pleasanton, Hondo and Bandera, Texas) (MM Docket No. 90–466, RM Nos. 7324, 7327, 7987 & 7988) Number of Petitions Filed: 1.

Subject: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91–141) Number of Petitions Filed: 18.

Application for Review

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Boalsburg, Clearfield, Duncansville, Jersey Shore, Laporte, Lewisburg, Lock Haven, Mill Hall, Muncy, Renovo Riverside, St. Marys and Tioga, Pennsylvania) (MM Docket No. 88–496, RM Nos. 6346, 6469, 6625, 6626, & 6627) Number of Applications filed: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1146 Filed 1–15–93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies.

SUMMARY: This report has been prepared by the FDIC pursuant to section 37(c) of the Federal Deposit Insurance Act, as added by section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 37(c) requires each Federal banking agency to report annually to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, telephone (202) 898–8906.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Banking, Finance and Urban Affairs of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate, Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to section 37(c) of the Federal Deposit Insurance Act, as added by section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which reads as follows:

(1) Annual reports required.—Each appropriate Federal banking agency shall annually submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing a description of any difference between any accounting or capital standard used by such agency and any accounting or capital standard used by any other agency.

(2) Explanation of reasons for discrepancy—Each report * * * shall contain an explanation of the reasons for any discrepancy between any accounting or capital standard used by such agency and any accounting or capital standard used by any other agency.

(3) Publication—Each report * * * shall be published in the **Federal Register**.

In previous years, this report was prepared by the FDIC pursuant to Section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Section 1215 was repealed by section 121 of FDICIA.

This introduction is followed by a discussion of the capital and underlying accounting and reporting standards employed by the FDIC as well as the two other federal banking agencies, and Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC), and the federal thrift supervisor, the Office of Thrift Supervision (OYS). Appendix One lists the differences in the capital standards among the FDIC, FRB, OCC and OTS as well as the reasons for these discrepancies. Appendix Two contains the differences in accounting and reporting standards among the banking and thrift agencies.

Capital Standards

The three banking agencies have implemented a common regulatory framework that sets forth two minimum capital standards—a minimum leverage capital requirement and a minimum risk-based capital requirement. In addition to common minimum standards, the definitions of capital used by the banking agencies have generally been consistent with the exception of certain differences in the treatment of intangible assets. However, the banking agencies and the OTS are in the process of developing a uniform approach to the regulatory capital treatment of identifiable intangible assets.

The leverage and risk–based capital requirements only represent minimum standards and the FDIC generally expects banks that it supervises to maintain capital levels well above these minimums, particularly banks that are expanding or experiencing unusual or high levels of risk.

Several sections of FDICIA have required the banking agencies and the OTS to more specifically incorporate capital standards into the supervision and regulation of insured depository institutions. During 1992. the three banking agencies and the OTS adopted uniform prompt corrective action regulations to implement section 131 of FDICIA. Section 131 required the agencies to establish five specific capital categories based on risk-based capital and leverage measures. The FDIC has initiated a risk-related insurance assessment system pursuant to section 302 and has set limits and prohibitions on the acceptance of brokered deposits pursuant to section 301. In both cases, the FDIC's implementing regulations use capital categories to differentiate among institutions. In addition, pursuant to section 308, the FRB has adopted a regulation to limit certain interbank liabilities which is keyed to risk-based capital levels.

Leverage Capital Requirement

Ever since 1985, the banking agencies have employed a capital requirement that establishes a minimum ratio of capital as a percent of total assets (leverage ratio). This leverage capital framework initially required banks to maintain a level of primary capital equal to at least 5.5 percent of total assets and total capital of at least 6 percent. However, in February 1991, the FDIC adopted a revised minimum leverage capital requirement for state nonmember banks.

The FDIC's revised leverage capital rule, which became effective April 10, 1991, replaced the primary and total capital definitions with a single, more narrow definition of capital that is based solely on Tier 1 (or core) capital. Among the items excluded from the more narrow definition is the bank's allowance for loan and lease losses. In most instances, a bank's Tier 1 capital is equal to the amount of common equity capital minus certain intangible assets such as goodwill. Under the revised rule, the most highly-rated banks in terms of safe and sound operation (i.e., those rated a composite "1" under the CAMEL system used by the three federal banking agencies) that are not anticipating or experiencing significant growth are required to meet a minimum Tier 1 leverage capital ratio of at least 3 percent. All other state nonmember banks are required to meet a minimum Tier 1 leverage capital ratio of at least 100 to 200 basis points above the 3 percent level—that is, an absolute minimum leverage ratio of at least 4 percent.

During the second half of 1990, similar leverage capital requirements were adopted by the OCC for national banks and by the FRB for state member banks and bank holding companies. The OCC and FRB leverage ratio requirements also set forth a minimum Tier 1 leverage capital ratio for the most highly-rated banks of 3 percent and an additional cushion of 100 to 200 basis points for all other institutions.

As initially required by FIRREA, the OTS adopted in 1989 a 1.5 percent tangible and 3 percent core capital to total assets leverage standard. However, also consistent with FIRREA, the OTS is finalizing revisions to its existing 3 percent core leverage capital requirement for savings associations so that its minimum leverage capital standard will be at least as stringent as the revised leverage capital requirement that the OCC now applies to national banks. In addition, although goodwill is generally deducted in calculating a savings association's tangible and core capital levels, the OTS allows limited amounts of grandfathered "qualifying supervisory goodwill" to be included in the calculation of core capital during a five-year phase-out period that expires on January 1, 1995.

Risk-Based Capital Requirement

In 1989, the banking agencies adopted a risk-based capital framework based upon the July 1988 Capital Accord developed by the Basle Supervisors' Committee and endorsed by the central bank governors of the G–10 countries. Under the risk-based capital framework, banks are currently expected to meet a minimum ratio of total qualifying capital to risk-weighted assets of 7.25 percent. Effective at year-end 1992, this minimum risk-based capital ratio increases to 8 percent, of which at least one-half (or four percentage points) must be comprised of Tier 1 capital.

In addition to identical ratios, the risk-based framework implemented by the banking agencies generally includes a common definition of capital and a uniform system of risk weights and categories. Nevertheless, some technical differences in language and interpretation exist among the agencies' risk-based capital guidelines. As required by FIRREA, the OTS also adopted in 1989 a risk-based capital standard for savings associations that generally parallels the risk-based standards of the banking agencies but which is different in some respects.

The banking agencies and the OTS are continuing their efforts to revise their risk-based capital standards to ensure that this framework adequately considers an institution's interest rate risk. In this regard, Section 305 of FDICIA mandates that the risk-based capital standards take account of interest rate risk as well as concentration of credit risk and the risks of nontraditional activities. The three banking agencies requested comment in August 1992 on a proposed approach for incorporting interest rate risk into the risk-based capital standards. The OTS is considering issuing an approach for reporting on interest rate risk and requiring the maintenance of adequate capital against this risk. The approach ultimately adopted by the banking agencies in this area could differ from that taken by the OTS.

The differences in the capital standards among the banking agencies and between the banking agencies and the OTS are set forth in Appendix One. In addition to the leverage capital ratio difference mentioned above, the major differences between the capital standards of the banking agencies on the one hand and the OTS on the other include the capital treatment for subsidiaries, intangible assets, and asset sold with recourse. The staffs of the banking agencies and the OTS meet regularly to address differences and inconsistencies in their respective capital standards.

Accounting and Report Standards

Over the years, the banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies are substantially consistent with generally accepted accounting principles (GAAP) as they are applied by commercial banks. The uniform Call Report serves as the basis for calculating risk-based capital and leverage ratios and is also used extensively for other regulatory purpose. Thus, material differences in accounting and reporting standards do not exist among commercial banks and FDIC-supervised savings banks.

OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. However, the TFR differs in material respects from the bank Call Report. Certain of these differences arise from differences in GAAP as applied by banks and thrifts and the few areas in which the banking agencies have adopted regulatory reporting standards at variance with GAAP, as it applied by banks. However, there are also significant differences in the required information and its form of presentation on the two reports so that the required reports are significantly different.

Simplification and Reduction of Differences in Accounting and Reporting Standards

The federal banking agencies and OTS continue to study ways to reduce differences in accounting and reporting standards between the banking agencies and OTS and between GAAP for banks and thrifts. In the latter regard, the FDIC has requested the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA) to consider eliminating the differences in GAAP as applied by thrifts and by banks. Since the FDIC's last report on capital and accounting differences, the AICPA has issued a Statement of Position on accounting for foreclosed assets which will eliminate the current differences in treatment under GAAP of these assets by banks and thrifts. In addition, the FASB issued a proposed accounting standard on loan impairment in June 1992 that would apply equally to banks and thrifts. In addition, the banking agencies continue to look for ways in which the differences between the Call Report standards and GAAP can be eliminated, consistent with the agencies' supervisory responsibilities.

At the same time, the agencies continue working toward the goal of eliminating differences in reporting by banks and thrifts. The banking agencies and OTS have been cooperating on many initiatives relating to accounting and reporting since the FDIC's last report on capital and accounting differences, including an Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans dated November 7, 1991. Among other topics, the policy statement summarizes general principles that the banking agencies and OTS follow when assessing the adequacy of the allowance for loan and lease losses and the policy statement's commentary on this subject is intended to be consistent with GAAP. The policy statement also discusses the valuation of commercial real estate and contains guidelines for the classification of commercial real estate credits. In late 1991, the federal banking agencies and OTS adopted a policy statement on securities activities which provides uniform guidance governing the reporting of assets held for trading or for sale and high risk mortgage derivative products. In addition, the banking agencies and OTS jointly requested public comment on possible regulatory accounting and capital treatments for net deferred tax assets in August 1992 in response to new accounting standards for income taxes issued by the FASB. An interagency announcement of a uniform policy on deferred tax assets is imminent.

Under the auspices of the FFIEC's Task Force on Supervision, a working group of agency staff members from the three banking agencies, OTS, the National Credit Union Administration, and the Farm Credit Administration (ex officio) has reviewed the different approaches each agency takes toward the allowance for loan and lease losses and is continuing to consider the merits of developing an interagency formula for a minimum allowance for all institutions. The working group is currently developing an interagency policy on the allowance for loan and lease losses.

More uniform reporting by all institutions is a long-term goal of the FDIC and would undoubtedly simplify accounting and reporting standards for all depository institutions in the future. The FDIC stands ready to work with the OTS and the other banking agencies to resolve differences between the Call Report and the Thrift Financial Report. A summary of the differences in accounting and reporting standards between the bank Call Report and the TFR and developments since the FDIC's last report on capital and accounting differences are presented in Appendix Two.

Appendix One—Summary of Differences in Capital Standards Among Federal Banking and Thrift Supervisory Agencies

The three federal banking agencies have substantially similar leverage and risk-based capital standards. Nevertheless, the banking agencies view the leverage and risk-based capital requirements as minimum standards and most banking organizations are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk. Most of the differences described below represent inconsistencies between the capital standards used by the banking agencies and those employed by the OTS.

Leverage Capital Requirement

In 1985, the three federal banking agencies established a minimum 5.5 percent primary capital and 6 percent total capital leverage (capital-to-total assets) standard. In February 1991, the FDIC substantially revised its leverage capital rule which is contained in part 325 of its regulations. These revisions became effective April 10, 1991. The revised rule replaced the primary and total capital definitions with a single, narrower definition for leverage capital that is based solely on Tier 1 (or core) capital. It also established a minimum Tier 1 leverage capital requirement of at least 3 percent for the most highly-rated banks (i.e., those with a composite CAMEL rating of (1) that are not anticipating or experiencing any significant growth and that meet certain other conditions. All other state nonmember banks must maintain a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent). These revised minimum leverage requirements are similar to the revised minimum leverage standards that were adopted by the OCC and the FRB in the second half of 1990.

The OTS has a three percent core capital and a 1.5 percent tangible capital leverage requirement for savings associations. Goodwill is generally deducted in calculating a savings association's tangible and core capital levels. However, limited amounts of "qualifying supervisory goodwill" acquired on or before April 12, 1989, can be included in the calculation of core capital during a five-year phase-out period. During 1992, the amount of qualifying supervisory goodwill included in the calculation of core capital cannot exceed 1.0 percentage point (i.e., one-third of the minimum 3 percent leverage ratio requirement). This allowable level phases down to zero, effective January 1, 1995.

Consistent with the requirements of FIRREA, the OTS is finalizing revisions to its leverage standard for savings associations so that its minimum leverage standard will be at least as stringent as the revised leverage standard that the OCC applies to national banks.

Risk-Based Capital Requirement

In 1989, the three federal banking agencies adopted risk-based capital standards consistent with the July 1988 Basle Accord. These standards require minimum risk-based capital (Tier 1 plus Tier 2) for all banking organizations equal to 7.25 percent of risk-adjusted assets as of year-end 1990 and 8 percent as of year-end 1992. Risk-adjusted assets are calculated by assigning risk weights of 0, 20, 50 and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risks. As is the case with leverage ratios, the banking agencies view the risk-based requirement as a minimum ratio. Under the auspices of the Basle Supervisors' Committee, and domestically among themselves, U.S. bank regulatory authorities have been attempting to develop ways of quantifying the risks associated with changes in interest rates, equity investments, traded debt securities, and foreign exchange activities to supplement the basic risk-based capital framework. Furthermore, section 305 of FDICIA mandates that the risk-based capital standards of the banking agencies and of OTS take account of interest rate risk. The three banking agencies requested comment in August 1992 on a proposed approach for incorporating interest rate risk into their risk-based capital standards.

OTS has adopted a risk-based capital standard which, in many respects, is similar to the framework adopted by the banking agencies. The OTS standard currently requires a minimum risk-based capital ratio equal to 7.2 percent of risk-adjusted assets and this percentage is slated to increase to 8 percent by year-end 1992. The OTS has previously proposed to incorporate an additional element for interest rate risk into its risk-based capital requirement and is currently considering issuing an approach for reporting on interest rate risk and requiring the maintenance of adequate capital against this risk.

Equity Investments

To the extent that commercial banks and FDIC-supervised savings banks are allowed to invest in equity securities under applicable federal or state law, such investments are assigned to the 100 percent risk-weight category, for risk-based capital purposes, by all three of the federal banking agencies.

The OTS risk-based capital standards require that thrift institutions deduct certain equity investments from capital over a five-year phase-in period, which ends on July 1, 1994.

FSLIC/FDIC-Covered Assets

The federal banking agencies generally place FSLIC/FDIC-covered assets (assets subject to guarantee arrangements by the FSLIC or FDIC) in the 20 percent risk-weight category. However, the banking agencies have permitted limited exceptions on a case-by-case basis in several large bank assistance transactions.

The OTS places these assets in the zero percent risk-weight category.

Repossessed Assets and Assets More Than 90 Days Past Due

The federal banking agencies require that foreclosed real estate be written down to fair value (see appendix 2, "Specific Valuation Allowances for, and Charge-Offs of, Troubled Real Estate Loans Not in Foreclosure" and "Valuation of Foreclosed Real Estate" for further details) and assigned to the 100 percent risk weight category. Assets 90 days or more past due, including mortgages on one-to-four family residential properties, are assigned to the 100 percent risk weight category. Consistent with the Basle framework, the 100 percent risk weight category is the highest risk category under the risk-based capital guidelines of the banking agencies. However, the volume of these items is a subjective factor used in determining how much capital over the minimum may be necessary.

The OTS created a 200 percent risk-weight category to which repossessed assets and assets more than 90 days past due are assigned. An exception exists for one-to-four family residential property mortgages more than 90 days past due, which are assigned to the 100 percent risk weight category. However, in October 1992, the OTS proposed to remove the 200 percent risk weight category and place repossessed assets and assets more than 90 days past due in the 100 percent risk weight category, which would bring the OTS' treatment of these assets into conformity with that of the banking agencies.

Limitation on Subordinated Debt and Limited Life Preferred Stock

The federal banking agencies limit subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent each year of the five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

Subsidiaries

The federal banking agencies consolidate all significant majority-owned subsidiaries of the parent organization. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank is exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rate basis, bank investments in such subsidiaries may be deducted entirely from capital, or the investments may be risk-weighted at 100 percent depending upon the circumstances. For example, the FDIC deducts investments in, and unsecured advances to, securities subsidiaries of state nonmember banks established pursuant to § 337.4 of the FDIC regulations. Similarly, in accordance with § 325.5(f) of the FDIC regulations, investments in and extensions of credit to certain mortgage banking subsidiaries are also deducted in computing the parent bank's capital. These options, with respect to the consolidation or "separate capitalization" of subsidiaries for the purpose of determining the capital adequacy of the parent organization, provide the banking agencies with the flexibility necessary to ensure that adequate capital is being provided commensurate with the actual risks involved. Such flexibility is essential to ensure a realistic assessment of an institution's capital adequacy.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in those activities that are permissible for national banks and subsidiaries engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, including loans to, subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, including loans to, such subsidiaries that were outstanding as of that date are grandfathered and will be phased out of capital over a five-year transition period that expires on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which have not been phased out of capital are to be consolidated on a pro rata basis.

The phase-out provisions of FIRREA were amended in October 1992 by the Housing and Community Development Act of 1992 with respect to impermissible subsidiaries that are subject to this requirement solely by reasons of their real estate investments and activities. Under this recent legislation, the OTS is authorized to grant extensions of the transition period for the capital deduction on a case-by-case basis if certain conditions are met. If an extension is granted, the transition period will expire on July 1, 1996, instead of July 1, 1994.

Presold Residential Construction Loans

Section 618(a) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA) directs the banking agencies and the OTS to amend their risk-based capital guidelines to lower the risk weight to 50 percent for loans to builders to finance the construction of one-to-four family residential properties that have been presold and meet certain other criteria. Such loans have been considered construction and land development loans and are generally assigned to the 100 percent risk weight category.

The FDIC is in the process of preparing its final rule to implement this statutory requirement. The FRB plans to issue an interim rule amending its risk-based capital guidelines. The OTS and OCC have already issued their final rules lowering the risk weight for presold residential construction loans. There is one difference between the OTS and OCC rules and those being developed by the FDIC and FRB. Under the OTS and OCC rules, the property must be presold before the construction loan is made in order for the loan to qualify for the 50 percent risk weight. The FDIC and FRB amendments would permit loans to builders for residential construction to qualify for the 50 percent risk weight once the property is presold, even if that event occurs after the construction loan has been made.

Qualifying Multifamily Mortgage Loans

The banking agencies currently place multifamily (five units or more) residential mortgage loans in the 100 percent risk-weight category along with most other commercial loans since the risks in both assets are similar.

The OTS allows certain multifamily residential mortgage loans (e.g., those secured by buildings with 5–36 units, a maximum 80 percent loan to value ratio, and 80 percent occupancy rate) to qualify for the 50 percent risk-weight category.

However, section 618(b) of RTCRRIA requires the banking agencies and the OTS to amend their risk-based capital guielines to lower the risk weight of multifamily housing loans that meet certain criteria, and securities collateralized by such loans, from 100 percent to 50 percent. During 1992, each of the agencies issued proposed amendments to its risk-based capital standards that would implement this statutory requirement. The agencies are considering whether any modifications should be made to their proposals based on the comment received and expect to finalize their risk-based capital amendments in early 1993.

Nonresidential Construction and Land Loans

The banking agencies assign loans for real estate development and construction purposes to the 100 percent risk weight category.

OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital in accordance with the same five-year phase-in arrangement as described above for "Equity Investments."

Mortgage-Backed Securities (MBS)

The federal banking agencies, in general, place privately-issued MBS in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued MBS, collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities (also known as "SMMEA" securities) to the 20 percent risk weight category. These are, generally, privately-issued MBS with AA or better investment ratings.

At the same time, the banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss. The FDIC, in conjunction with the other banking agencies and the OTS, is attempting to develop more specific guidance as to the types of "high risk" mortgage-backed securities that meet this definition.

Intangible Assets

The banking agencies do not allow goodwill to be included in capital for commercial banks and FDIC-supervised savings banks.

Pursuant to FIRREA, the OTS allows "qualifying supervisory goodwill" acquired on or before April 12, 1989, to be included as part of core capital through year-end 1994. Supervisory goodwill is goodwill acquired in an acquisition where the fair value of the assets was less than the fair value of the liabilities at the acquisition date or goodwill acquired in the acquisition of a problem institution. However, in accordance with FIRREA and section 18(n) of the Federal Deposit Insurance Act, goodwill acquired after April 12, 1989, cannot be included in calculating regulatory capital under the OTS capital rules. This explicit prohibition against recognizing goodwill also applies to the three federal banking agencies and the capital rules they have adopted for banking organizations.

The banking agencies and the OTS require that identifiable intangible assets (i.e., intangible assets other than goodwill) must meet a three-part test which covers the reliability of cash flows, the existence of active and liquid markets, and the separability of the intangible asset from the bulk of the institution's other assets in order to be eligible for inclusion in capital.

The OCC also imposes a limit of 25 percent of Tier 1 capital on the amount of qualifying intangible assets, including purchased mortgage servicing rights, which can be included in the risk-based capital calculation.

The FRB expects banks to avoid an overreliance on any intangible assets, including purchased mortgage servicing rights, within capital. In addition to excluding goodwill, the FRB gives close scrutiny to any other intangible assets exceeding 25 percent of Tier 1 capital, and generally would expect intangibles not to exceed this threshold. Furthermore, the FRB deducts all intangible assets from a banking organization's capital on a case-by-case basis whenever that organization is undertaking expansion, engaging in new activities, or experiencing unusual risks.

Currently, the FDIC generally deducts all intangible assets, except for limited amounts of purchased mortgage servicing rights, in calculating the leverage and risk-based capital ratios of banks and FDIC-supervised savings banks. More specifically, the amount of purchased mortgage servicing rights that state nonmember banks may include in their capital calculations is limited to no more than 50 percent of core capital. In addition, the FDIC rule sets forth additional criteria for the valuation and recording of these intangible assets, the grandfathering of existing purchased mortgage servicing rights, and an exemption for purchased servicing rights held in a separately capitalized mortgage banking subsidiary.

Furthermore, in accordance with FIRREA and section 5(t)(4)(C) of the revised Home Owner's Loan Act of 1933, the FDIC's treatment of purchased mortgage servicing rights also affected OTS-supervised savings institutions. In this regard, the FDIC's rule directly limited the amount of purchased mortgage servicing rights that savings associations could include in tangible capital under the OTS capital rules to no more than 100 percent of tangible capital.

However, section 475 of FDICIA provides that each federal depository institution regulatory agency will determine the amount of purchased mortgage servicing rights that may be recognized for capital purposes by institutions under its supervision. As a result, the FDIC amended its capital regulation in February 1992 so that its limits on purchased mortgage servicing rights no longer apply to savings associations. Nonetheless, the OTS, as a matter of policy, is requiring all savings associations to continue to comply with the percentage of capital limits and other restrictions on purchased mortgage servicing rights in the FDIC's capital regulation. In addition, as required by FIRREA, and consistent with the FDIC rule, the OTS permits thrift institutions to include only 90 percent of the fair market value of purchased mortgage servicing rights in the calculation of the tangible capital, core (leverage) capital and risk-based capital ratios.

Under the OTS capital rules, the amount of any other identifiable intangible assets that meet a qualifying three-part test can only be included in core capital for leverage and risk-based capital purposes up to a limit of 25 percent of core capital.

In order to eliminate these differing regulatory capital treatments of identifiable intangible assets, the banking agencies and OTS agreed upon a uniform capital approach to these assets. Each of the agencies issued proposed amendments to its capital standards during the second quarter of 1992 in order to implement this uniform approach. As proposed by the agencies, both purchased credit card relationships and purchased mortgage servicing rights could count toward capital requirements, subject to certain limits. Both forms of intangible assets would in the aggregate be limited to 50 percent of core capital (the limit the FDIC now applies only to purchased mortgage servicing rights). In addition, purchased credit card relationships alone would be restricted to no more than 25 percent of an institution's core capital. Any purchased mortgage servicing rights and purchased credit card relationships that exceed these limits, as well as disallowed intangible assets such as goodwill and core deposit intangibles, would continue to be deducted from capital and assets in calculating an institution's core capital.

The proposals also address the valuation of identifiable intangible assets that count toward capital requirements in a manner that is consistent with section 475 of FDICIA. Section 475 provides that the value of purchased mortgage servicing rights included in an institution's capital may not exceed 90 percent of their fair market value and that this value be determined at least quarterly. Furthermore, the proposals also state that, for purposes of calculating regulatory capital (but not for financial statement purposes), the value of purchased mortgage servicing rights and purchased credit card relationship would be limited to the lesser of 90 percent of fair market value, 90 percent of the original purchase price, or 100 percent of remaining unamortized book value. The book value of these intangible assets would need to be determined at least quarterly using a discounted approach which looks to the discounted amount of the estimated future net cash flows from the asset. The valuation and recording criteria in the proposals are consistent with those set forth in the FDIC's existing capital rules for purchased mortgage servicing rights.

The agencies have evaluated the comments received on their proposals and the FDIC, and OCC, and the OTS are currently preparing their final rules on the regulatory capital treatment of identifiable intangible assets. The FRB adopted its final rule on intangibles in early December 1992.

Assets Sold with Recourse

As a general rule, the banking agencies require full leverage and risk-based capital charges on assets sold with recourse, even when the recourse is limited. The exceptions to this rule (for leverage capital purposes only) pertain to pools of 1 to 4 family residential mortgages and to certain farm mortgage loans (see Appendix 2, "Sales of Assets With Recourse" for further details).

For risk-based capital purposes, the OTS limits the capital required on assets sold with limited recourse to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, i.e., the normal capital charge.

Some securitized asset arrangements involve the issuance of senior and subordinated classes of securities. When a bank originates such a transaction and retains a subordinated piece, the banking agencies require that capital be maintained against the entire amount of the asset pool. When a bank acquires a subordinated security in a pool of assets that it did not originate, the banking agencies assign the investment in the subordinated piece to the 100 percent risk weight category.

The OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

In 1990, the federal bank and thrift supervisory agencies, under the auspices of the Federal Financial Institutions Examination Council, issued for public comment a fact-finding paper pertaining to a wide range of issues pertaining to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, including so-called recourse servicing arrangements and limited recourse. The objective of this effort is to develop an appropriate and uniform treatment of recourse arrangements for capital adequacy, other regulatory, and reporting purposes. The comments received were very extensive and generally illustrated the extreme complexity of the subject. In view of the project's significance and complexity, the FFIEC in December 1990 decided to narrow the scope of the initial phase of the recourse project to credit-related risks, including the appropriate treatment of credit-related recourse arrangements that involve limited recourse or that support a third party's assets.

A recourse working group comprised of staff from the FFIEC's member agencies presented an initial report and a set of recommended changes to the agencies' capital standards to the FFIEC in July 1992. The working group was directed to study the expected impact of its recommendations on depository institutions, financial markets, and other affected parties. Plans for this study are being developed.

Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize losses incurred on agricultural loans between January 1, 1984, and December 31, 1991. The unamortized portion of any losses is included as an element of Tier 2 capital under the FDIC's risk-based capital framework. The program also applies to losses incurred between January 1, 1983, and December 31, 1991, as a result of reappraisals and sales of agricultural other real estate owned and agricultural personal property. Thrifts are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of Junior Liens on One to Four Family Properties

In some cases, a bank may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. The FDIC and FRB view these two transactions as a single loan for purposes of determining whether the loan secured by the first lien has been prudently underwritten. The loan secured by the first lien could be assigned to the 100 percent risk weight category, if, in the aggregate, the two loans exceeded a prudent loan-to-value ratio. In such a situation, the loan secured by the first lien would not qualify for the 50 percent risk weight (but, in all cases, the FDIC would assign the loan secured by the second lien to the 100 percent risk weight category regardless of the aggregate loan-to-value ratio). This approach for first liens is intended to avoid possible circumvention of the capital requirement and capture the risks associated with the combined transactions.

The OCC and OTS generally assign the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

Phase-In Requirements

The banking agencies, consistent with the Basle Accord, have adopted transition rules for a two year period beginning December 31, 1990. During this period, banks will be required to maintain at least 7.25 percent risk-based capital, and may take advantage of certain transition rules. For example, up to 10 percent of Tier 1 capital can be comprised of Tier 2 capital elements through the end of 1992. On December 31, 1992, the transition rules expire and all banks must maintain at least 8 percent risk-based capital.

OTS was required by statute to implement its risk-based capital guidelines by December 7, 1989. FIRREA also provides for a different set of transition rules than those afforded banks, although the ultimate date for full implementation is approximately the same. Thrifts are required to maintain 80 percent of the 8 percent risk-based capital standard from December 7, 1989, to December 7, 1990; 90 percent from December 31, 1990, to December 30, 1992; and 100 percent thereafter.

Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, income capital certificates (ICCs), and mutual capital certificates (MCCs) do not exist in the banking industry and are not included in the capital guidelines of the banking agencies.

The capital guidelines of OTS permit thrift institutions to include pledged deposits and nonwithdrawable accounts that meet OTS criteria as well as ICCs and MCCs as capital.

Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance.

OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, OTS guidelines also permit investments in mutual funds to be allocated on a pro-rata basis in a manner consistent with the actual composition of the mutual fund.

Appendix Two—Summary of Differences in Reporting Standards Among Federal Banking and Thrift Supervisory Agencies

Under the auspices of the Federal Financial Institutes Examination Council, the three federal banking agencies have developed uniform reporting standards which must be followed by insured commercial banks and FDIC-supervised savings banks in the preparation of the Reports of Condition and Income (Call Report). The income statement, balance sheet, and supporting schedules presented in the Call Report are used by the federal bank supervisory agencies for off-site monitoring of the capital adequacy of banks and for other regulatory, supervisory, surveillance, analytical, insurance assessment, and general statistical purposes. The reporting standards set forth for the Call Report are based almost entirely on generally accepted accounting principles for banks, and, as a matter of policy, deviate only in those instances where statutory requirements or overriding supervisory concerns have warranted a departure from GAAP. Where departures from GAAP have occurred, the Call Report standard is more conservative than GAAP.[1] Thus, insofar as the federal banking agencies are concerned, uniform accounting standards for regulatory and supervisory purposes have been established.

The OTS has developed and maintains its own separate reporting scheme for the thrift institutions under its supervision. The reporting form used by savings institutions, known as the Thrift Financial Report (TFR), is based on GAAP as applied by thrifts, which differs in some respects from GAAP for banks.

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[1] Based on its review of the accounting principles used by the banks under its supervision for purposes of preparing their Call Reports pursuant to section 121 of FDICIA, the FDIC has determined that the reporting standards that it has adopted for the Call Report that depart from GAAP due to overriding supervisory concerns are appropriate because GAAP in these areas appears to be inconsistent with the objectives and standards for regulatory reporting that are set forth in section 121. These regulatory reporting standards are no less stringent than GAAP.

Specific Valuation Allowances for, and Charge-offs of, Troubled Real Estate Loans Not In Foreclosure

The banking agencies generally consider real estate loans which lack acceptable cash flow or other ready sources of repayment, other than the collateral, as "collateral dependent." When a real estate loan is considered to be collateral dependent and the fair value of the collateral has declined below the loan balance, charge-off or the establishment of a specific valuation allowance is made to reduce the value of the loan to the fair value of the collateral. Fair value is generally determined by a current appraisal. The banking agencies believe that this approach accurately reflects the amount of recovery a financial institution is likely to receive if it is forced to foreclose on the underlying collateral. This approach, followed by the banking agencies, is basically consistent with GAAP as it has been applied by banks.

OTS generally requires specific valuation allowances for troubled real estate loans based on the estimated net realizable value (NRV) of the collateral. NRV represents the estimated future sales price reduced by certain expenses and direct holding costs, including the cost of capital. Thus, NRV is based on the expected cash flows derived from the property discounted by the institution's cost of capital. NRV generally exceeds fair value. This difference is attributable to differences in GAAP as practiced by banking organizations and thrifts.

In October 1992, the OTS proposed to revise its rules to require the use of fair value rather than NRV for the valuation of troubled, collateral-dependent assets. If adopted, this policy would be substantially similar to the banking agencies' policy.

General Valuation Allowances for Troubled Real Estate Loans

The banking agencies expect an institution's general valuation allowance to be sufficient to cover an estimate of inherent losses on all loans in the portfolio, including the remaining balances of individual loans which have been partially charged-off (or where permitted, for which specific valuation allowances have been established). The banking agencies believe that this approach appropriately reflects the risk of additional loss from error in the specific loss estimates. The general valuation allowance required for banking organizations by the banking agencies and under GAAP are basically consistent.

Like the banking regulators, OTS now expects the general valuation allowance for loan and lease losses to be sufficient to cover estimated losses inherent in all loans in the portfolio, including the remaining balances of individual loans where a loss classification has been provided.

In June 1992, the FASB issued a proposed accounting standard on loan impairment that would apply equally to banks, thrifts, and all other creditors. Under this proposal, all individually reviewed impaired loans would be measured at the present value of expected cash flows by discounting these cash flows at the loan's effective interest rate. Any impairment that would need to be recognized would be recorded through a valuation allowance.

Valuation of Foreclosed Real Estate

The banking agencies require that foreclosed real estate be valued at the lower of the recorded amount of the loan or the fair value of the property at the date of foreclosure. The banking regulators usually require additional write-downs of other real estate owned to fair value when fair value declines after foreclosure. The approach followed by the banking agencies is basically consistent with GAAP for banks.

OTS also requires foreclosed real estate to be valued at the lower of the recorded amount of the loan or the fair value of the property at the date of foreclosure. However, valuation allowances for real estate owned after the acquisition date are generally based on the NRV of the property using a cost of capital discount rate, which generally provides an NRV that is greater than fair value. Under the risk-based capital guidelines of the OTS, real estate owned (i.e., foreclosed property) is risk-weighted at 200 percent; that is, it receives double the capital charge that standard risk assets receive. In October 1992, the OTS requested public comment on a proposed policy that would use fair value for the valuation of foreclosed real estate and remove the 200 percent risk weight category for these assets. If adopted, real estate owned would be in the 100 percent risk-weight category for risk-based capital purposes.

In April 1992, the AICPA issued Statement of Position (SOP) 92–3 to provide guidance on accounting for foreclosed assets, including foreclosed real estate. This SOP is effective for year-end financial statements for fiscal years ending on or after December 15, 1992, with earlier application permitted. Under the SOP, after foreclosure, both banks and thrifts will be required to carry each foreclosed property at the lower of (1) the fair value of the asset minus the estimated costs to sell or (2) the cost of the asset. If the fair value of a foreclosed asset minus the estimated costs to sell the asset is less than the asset's cost, the deficiency must be recognized as a valuation allowance against the asset. The valuation allowance should be increased or decreased (but not below zero) for changes in the asset's fair value or estimated selling costs. Implementation of this new accounting rule will eliminate the accounting difference between banks and thrifts for foreclosed real estate.

Futures Contracts, Forwards, and Standby Commitments

The banking agencies, as a general rule, do not permit the deferral of losses on futures, forward, and standby contracts whether or not they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income, and standby contracts must be reported at the lower of cost or market value. The banking agencies adopted this reporting standard as a supervisory policy prior to the adoption of FASB Statement No. 80, which permits hedge or loss deferral accounting under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only for futures and forward contracts used in mortgage banking operations.

OTS practice is to follow FASB Statement No. 80 for futures contacts. In accordance with this statement, when hedging criteria are satisfied, the accounting for the futures contract is related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses which would be reflected as assets on the thrift's balance sheet in accordance with GAAP.

Excess Servicing Fees

As a general rule, the banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing arises when loans are sold with servicing retained and the stated servicing fee rate is greater than a normal servicing fee rate. With the exception of sales of pools of residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset.

In contrast, OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

In-Substance Defeasance of Debt

The banking agencies do not permit banks to report the institution's defeasance of their liabilities in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. In order to qualify for this treatment, the possibility that the debtor will be required to make further payments on the debt, beyond the funds placed in the trust, must be remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet. However, for Call Report purposes, banks must continue to report defeased debt as a liability and the securities contributed to the trust must continue to be reported as assets. No netting is permitted, nor is any recognition of gains or losses on the transaction allowed. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

OTS practice is to follow FASB Statement No. 76.

Sales of Assets With Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if: (1) The transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the resource provisions.

The practice of the banking agencies is generally to allow commercial banks to report transfers of receivables with recourse as sales only when the transferring institution: (1) Retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule does not apply to the transfer of 1 to 4 family or agricultural mortgage loans under any one of the government programs (GNMA, FNMA, FHLMC and Farmer Mac). Transfers of mortgages under these programs are treated as sales for Call Report purposes, provided the transfers would be reported as sales under GAAP. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, the seller's obligation under any resource provision resulting from transfers of mortgage loans under the government programs or in private transfers that qualify as sales is viewed as an off-balance sheet exposure that will be assigned a 100 percent credit conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for any recourse obligation associated with such transactions.

OTS policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under OTS guidelines, off-balance sheet recourse obligations are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The three banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

Negative Goodwill

Under Accounting Principles Board Opinion No. 16, "Business Combinations," negative goodwill arises when the fair value of the net acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to a zero value.

The three banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the internationally agreed-upon Basle Capital Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

Receivables From Sales of Other Real Estate Owned

FASB Statement No. 66, "Accounting for Sales of Real Estate," provides guidance on the methods to be used in accounting for such transactions. The three banking agencies require that receivables resulting from sales of "other real estate owned" that the selling institution cannot account for under the full accrual method must continue to be reported in the balance sheet category for "other real estate owned" when the buyer's initial investment is less than ten percent of the sales value of the real estate sold.

The OTS follows GAAP which may permit receivables resulting from these transactions to be reported as "loans" when the buyer's initial investment is less than ten percent.

Dated at Washington, DC, this 12th day of January, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-1135 Filed 1-15-93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-975-DR]

Massachusetts; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of

Massachusetts (FEMA–975–DR], dated December 21, 1992, and related determinations.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Massachusetts, dated December 21, 1992, is hereby amended to include the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 21, 1992: The counties of Nantucket and Norfolk for Disaster Unemployment Assistance. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 93–1177 Filed 1–15–93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–975–DR]

Massachusetts; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Massachusetts (FEMA–975–DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Massachusetts, dated December 21, 1992, is hereby amended to include Individual Assistance in the form of Disaster Unemployment Assistance in the following areas determined to have been adversely affected by the major disaster: The counties of Barnstable, Dukes, Essex, Plymouth, and Suffolk for Disaster Unemployment Assistance. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 93–1178 Filed 1–15–93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–973–DR]

New Jersey; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–973–DR), dated December 18, 1992, and related determinations.

EFFECTIVE DATE: December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 17, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 93–1179 Filed 1–15–93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of final Fiscal Year 1993, Program Guidelines/Application Solicitation for Labor-Management Committees.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 1993 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, 202/653–5320.

SUPPLEMENTARY INFORMATION:

Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees—FY 1993

A. Introduction

The following is the final solicitation for the Fiscal Year (FY) 1993 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communications with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in section I. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation and should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the forementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 1993, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.). In addition, $56,000 will be reserved for a continuation grant to the State and Local Government Labor-Management Committee for support of the Seventh National Labor-Management Conference in June 1994.

Required Program Elements

1. *Problem Statement.* The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and work-force might prove useful in explaining the problem(s). This section basically discusses WHY the effort is needed.

2. *Results of Benefits Expected.* By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on expansion efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach.* This section of the application specifies HOW the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. *Major Milestones.* This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using October 1993 as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation.* Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment.* Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. Union letters should be submitted on union letterhead.

7. *Other Requirements.* Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to third-party grantees who seek funds on behalf of an entirely different committee.

D. Allocations

FMCS has been given an allocation of $749,000 for this program. Of this amount, $588,000 will be allocated for new submissions, up to $105,000 for the continuation of selected FY91 grantees to September 1993, and $56,000 for support of the Seventh National Labor-Management Conference. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least one award will be made in each category (plant, industry, public sector, and area), providing that FMCS determines that at least one outstanding application exists in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

FMCS reserves the right to retain up to 10 percent of the FY93 appropriation to contract for program support purposes (such as evaluation) other than administration. This may alter the specific amounts available for new or continuation grants.

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at a 50 percent cash match ratio. The total project period can thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at a 50 percent cash match ratio. The total project period can thus normally be no more than 36 months. The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing in-plant applicants;
—Up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committees applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as "in-kind" match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or time spent in training sessions. Applicants generally will not be allowed to claim all or a portion of existing staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY93 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications should be signed by both a labor and management representative and be postmarked no later than June 5, 1993. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus three copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street, NW., Washington, DC 20427. FMCS will not consider videotaped submissions or attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Boards. The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grants and Projects, will finalize the scoring and selection process for those applications recommended by the Board(s). The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY93 grant applicants will be notified of results and all grant awards will be made before September 30, 1993. Applications submitted after the June 5 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grants and Projects.

H. Application Development Training

In FY93, FMCS will offer a free half-day training program to assist potential applicants with the development and writing of an FMCS grant application. This training session will be conducted in Washington, DC, on February 10, 1993. Individuals interested in attending the session should contact FMCS to reserve a space and receive additional information. See Section I for contact information.

I. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained free of charge by contacting Lee A. Buddendeck or Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grants and Projects, 2100 K Street, NW., Washington, DC. 20427; or by calling 202/653–5320.

Bernard E. DeLury,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 93–1089 Filed 1–5–93; 8:45 am]

BILLING CODE 6732-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of October 6, 1992.

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on October 6, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is expanding at a subdued pace. Total nonfarm payroll employment declined somewhat further in September, but the civilian unemployment rate edged down to 7.5 percent. Industrial production is estimated to have declined appreciably since July. Real personal consumption expenditures appear to have risen moderately in the third quarter. Data on housing have been mixed, but on balance they continue to suggest a gradual uptrend in housing expenditures. Recent data on orders and shipments of nondefense capital goods indicate slower growth in outlays for business equipment, while expenditures for nonresidential construction have been weak. The nominal U.S. merchandise trade deficit widened somewhat in July from its average rate in the second quarter. Incoming data on wages and prices suggest that inflation is slowing.

Short-term interest rates have declined somewhat, while longer-term rates are about unchanged since the Committee meeting on August 18. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies fluctuated widely over the intermeeting period but ended the period higher on balance.

Expansion of M2 and M3 resumed in August, though at fairly slow rates, and limited growth appears to have continued in September. Through September both aggregates were estimated to have grown at rates somewhat below the lower ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting on June 30-July 1 reaffirmed the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The Committee anticipated that developments contributing to unusual velocity increases could persist in the second half of the year. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1993, the Committee on a tentative basis set the same ranges as in 1992 for growth of the monetary aggregates and debt measured from the fourth quarter of 1992 to the fourth quarter of 1993. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from September through December at annual rates of about 2 and 1 percent, respectively.

By order of the Federal Open Market Committee, January 8, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93-1145 Filed 1-15-93; 8:45 am]

BILLING CODE 6210-01-F

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[1] Copies of the Record of Policy Actions of the Committee for the meeting of October 6, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates With Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13.5% for the quarter ended December 31, 1992. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 11, 1993.

George H. Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 93–1192 Filed 1–15–93; 8:45 am]

BILLING CODE 4150-04-M

Health Resources and Services Administration

Amended Program Announcement and Final Funding Priority and Special Consideration for Grants for Nurse Practitioner and Nurse Midwifery Programs for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces the final funding preferences, priority and special consideration for fiscal year (FY) 1993 Grants for Nurse Practitioner and Nurse Midwifery Programs, under the authority of section 822, title VIII of the Public Health Service (PHS) Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, Public Law 102–408, dated October 13, 1992.

The program was announced in the **Federal Register** at 57 FR 40683 on September 4, 1992. The announcement included two proposed funding priorities and a proposed special consideration. A comment period of 30 days was established to allow public comment concerning the proposed funding priorities and proposed special consideration. Four comments were received. This notice includes a discussion of the comments received and the final funding priority and special consideration.

In addition, since this program was announced on September 4, 1992, the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, were enacted. These amendments resulted in some changes in the purposes, eligibility and funding factors of this program. This notice will describe these changes.

Approximately $15,100,000 will be available in FY 1993 for this program. Total continuation support recommended is $8,700,000. It is anticipated that $6,400,000 will be available to support 29 competing awards averaging $220,000.

Purpose

Public Law 102–408 amends section 822 of the Public Health Service Act to authorize assistance to meet the costs of projects to:

(1) Plan, develop and operate new programs, or

(2) Maintain or significantly expand existing programs for the training of nurse practitioners and/or nurse midwives who will, upon completion of their studies, be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities and other health care institutions.

Eligibility

Public Law 102–408 amends section 822 of the Public Health Service Act to define eligible applicants as public and nonprofit private schools of nursing or other public and nonprofit private entities located in a State.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the project plan adequately provides for meeting the requirements set forth in § 57.2405 of the program regulations and the Appendix;

2. The potential effectiveness of the proposed project in carrying out the education purposes of section 822 of the Act and 42 CFR part 57, subpart Y;

3. The capability of the applicant to carry out the proposed project;

4. The soundness of the fiscal plan for assuring effective utilization of grant funds; and

5. The potential of the project to continue on a self-sustaining basis after the project period.

The review criterion related to joint program direction by qualified nurse and physician educators has been eliminated. This criterion was important in 1975 when the legislation was first enacted and the programs were in their developmental phase.

Other Considerations

In addition, the following funding factors will be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preferences and Special Considerations

Public Law 102–408 has amended section 822 of the Public Health Service Act to include two statutory funding preferences which are new. Also, the statutory special consideration for programs for the education of nurse practitioners which emphasize education with respect to the special problems of geriatric patients has been eliminated. The statutory special consideration for programs for the education of nurse practitioners and nurse midwives who will practice in health professional shortage areas designated under section 332 of the PHS Act remains. Following are the statutory funding preferences and special consideration.

Preference shall be given to any qualified applicant that (a) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (b) has achieved a significant increase in the rate of placing graduates in such settings during the 2-year period preceding the fiscal year for which an award is sought. This preference may be given only to applicants ranked above the 20th percentile of proposals recommended for approval by the peer review group. Additional information concerning the implementation of this preference has been published in the **Federal Register** at 57 FR 60212, dated December 18, 1992.

Preference shall be given to any qualified applicant that agrees to expend the award to plan, develop, and operate new programs or to significantly expand existing programs.

Special consideration shall be given to qualified applicants that agree to expend the award to train individuals as nurse practitioners and nurse midwives who will practice in health professional shortage areas designated under section 332 of the PHS Act.

Proposed Nonstatutory Funding Priorities and Special Consideration

Four comments were received regarding the proposed funding priorities and special consideration. Generally all comments supported the proposed priorities and special consideration. However, one respondent suggested that, in general, funding factors should reflect an emphasis on applicants which require rural/remote and/or urban underserved clinical rotations and on schools which are formally linked to rural/remote or urban underserved placement systems for their graduates. We believe that these issues are addressed in one of the new statutory funding preferences and in the funding priorities that were proposed. Another respondent believes that indication that a program's graduates choose practices in rural and other underserved areas is a more appropriate indicator than solely the number of rural clinical training experiences. We believe that this issue is addressed in one of the new statutory funding preferences.

The proposed priority for applicant institutions offering substantial training experiences in underserved areas is eliminated because of the overlap with the statutory special consideration. Training experiences in underserved areas are an integral part of preparing nurse practitioners and nurse midwives who will practice in health professional shortage areas.

Following are the final nonstatutory funding priority and special consideration for this program for FY 1993.

A funding priority will be given to applicant institutions which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is needed, please contact: Chief, Advanced Nursing Education Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–36, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333 FAX: (301) 443–8586.

This program, Nurse Practitioner and Nurse Midwifery Programs, is listed at 93.298 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 12, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1143 Filed 1–15–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute; Notice of Meeting of the National Cancer Advisory Board, Subcommittee on Interactions With Voluntary Organizations

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, Subcommittee on Interactions With Voluntary Organizations, National Cancer Institute, National Institutes of Health on January 27, 1993, Room 2A52, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 4 p.m. Attendance will be limited to space available. Agenda items will include an update on ASSIST; coordination of Epidemiology and Statistics between the National Cancer Institute and the American Cancer Society; and the planning for a national meeting on collaborations between NCI and Voluntary and Advocacy Groups.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, in advance of the meeting should contact Mr. Paul Van Nevel, Executive Secretary, Subcommittee on Interactions With Voluntary Organizations, National Cancer Advisory Board, National Cancer Institute, Building 31, room 10A31, National Institutes of Health, Bethesda, Maryland 20892, 301/496–6631.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5708, will provide summary of meeting minutes and a roster of the committee members upon request.

Dated: January 11, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1119 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1993.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

These meetings will be closed thereafter in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. The discussions of these applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, room 4A52, Bethesda, Maryland 20892 (Telephone: 301–496–7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each scientific review administrator whose name, room number, and telephone number are listed below each committee:

Name of Committee: Cellular and Molecular Basis of Disease Review Committee.

Scientific Review Administrator: Dr. Carole Latker, room 9A10, Westwood Building, Telephone: 301–496–7125.

Date of Meeting: March 3, 1993.

Place of Meeting: Building 31–C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: March 3, 8:30 a.m.–9:30 a.m.

Closed: March 3, 9:30 a.m.–adjournment.

Name of Committee: Minority Access to Research Careers Review Subcommittee.

Scientific Review Administrator: Dr. Richard Martinez, 9A18, Westwood Building, Telephone: 301–496–7585.

Dates of Meeting: March 11–12, 1993.

Place of Meeting: Building 31–C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: March 11, 8:30 a.m.–9:30 a.m.

Closed: March 11, 9:30 a.m.–5 p.m.; March 12, 8:30 a.m.–adjournment.

Name of Committee: Pharmacological Sciences Review Committee.

Scientific Review Administrator: Dr. Irene Glowinski, room 9A10, Westwood Building, Telephone: 301–496–7125.

Date of Meeting: March 15, 1993.

Place of Meeting: Building 31–C, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

Open: March 15, 8:30 a.m.–9:30 a.m.

Closed: March 15, 9:30–adjournment.

Name of Committee: Minority Biomedical Research Support Review Subcommittee.

Scientific Review Administrator: Dr. Ernest Marquez, room 9A13, Westwood Building, Telephone: 301–402–0635.

Dates of Meeting: March 18–19, 1993.

Place of Meeting: Building 31–C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20892.

Open: March 18, 8:30 a.m.–9:30 a.m.

Closed: March 18, 9:30 a.m.–5 p.m.; March 19, 8:30 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.859, 93.862, 93.863, 93.880, National Institute of General Medical Sciences, National Institutes of Health)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1120 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Allergy, Immunology, and Transplantation Research Committee on February 3–4, 1993, at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public from 8:30 a.m. to 10 a.m. on February 3, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 10 a.m. until recess on February 3, and from 8:30 a.m. until adjournment on February 4. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, Room 4C22, Bethesda, Maryland 20892, telephone 301–496–8424, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research, National Institutes of Health)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1121 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases on February 25–26, 1993, in Building 31C, Conference Room 10, at the National Institutes of Health, Bethesda, Maryland 20892 which was published in the **Federal Register** on December 11, 1992 (57 FR 239).

This committee was to have convened at 8 a.m. on February 25 and continue until adjournment on February 26. The meeting has been changed to convene on February 24 at 8 a.m. and continue until adjournment on February 26 in Building 31C, Conference Room 10, Bethesda, Maryland 20892.

The meeting will be open to the public from 8 a.m. to 10 a.m. on February 24. The meeting will be closed to the public from 10 a.m. until recess on February 24, 8 a.m. until recess on February 25, and from 8 a.m. until adjournment on February 26.

Dated: January 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1124 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Extramural Program, National Institute of Dental Research, January 27, 1993, at the Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland, which was published in the **Federal Register** on January 8, (58 FR 3291).

The meeting was cancelled due to complications of other commitments and will be rescheduled at a later date.

Dated: January 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1125 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the notice of meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, February 1–2, 1993, in Building 1, Wilson Hall, National Institutes of Health, which was published in the **Federal Register** on January 6 (58 FR 574).

The meeting will be open to the public on February 1, from 8:30 a.m. to 11 a.m. in Wilson Hall, and from 11 a.m. to 1:30 p.m. in Building 31, Conference Room 11A10.

Dated: January 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1123 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute of Mental Health for February 1993.

These meetings will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments.

All meetings will be closed to the public as indicated below in accordance with the provisions set forth in §§ 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and § 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated:

Committee Name: Clinical Subcommittee, Mental Health Special Projects, Review Committee.

Contact: Gwen C. Artis, Room 9C–08, Parklawn Building, Telephone: 301, 443–1367.

Meeting Date: February 10–12, 1993.

Place: Ramada Hotel, 1701 Belmont Avenue, Baltimore, MD 21244.

Open: February 10, 1993, 7 p.m.–8 p.m.

Closed: February 10, 1993, 8 p.m.–10 p.m.; February 11, 1993, 9 a.m.–5 p.m.; February 12, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Subcommittee, Mental Health Special Projects, Review Committee.

Contact: Gwen C. Artis, Room 9C–08, Parklawn Building, Telephone: 301, 443–1367.

Meeting Date: February 17–19, 1993.

Place: Holiday Inn, 7730 Bonhomme Avenue, Clayton, MO 63105.

Open: February 17, 1993, 7 p.m.–8 p.m.

Closed: February 17, 1993, 8 p.m.–10 p.m.; February 18, 1993, 9 a.m.–5 p.m.; February 19, 1993, 9 a.m.–adjournment.

Committee Name: Clinical Subcommittee, Mental Health Special Projects, Review Committee.

Contact: Gwen C. Artis, Room 9C–08, Parklawn Building, Telephone: 301, 443–1367.

Meeting Date: February 24–26, 1993.

Place: The Hilton, 3800 Hillsborough Road, Durham, NC 27705.

Open: February 24, 1993, 7 p.m.–8 p.m.

Closed: February 24, 1993, 8 p.m.–10 p.m.; February 25, 1993, 9 a.m.–5 p.m.; February 26, 1993, 9 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1122 Filed 1–15–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Correction of Date in Notice Concerning Opportunity for a Hearing on Scientific Misconduct Findings

AGENCY: Public Health Service, DHHS.

ACTION: Correction.

A Notice, beginning on page 53125 in the issue of November 6, 1992, entitled "Opportunity for a Hearing on Office of Research Integrity Scientific Misconduct Findings", inadvertently used a wrong date. the third column of page 53125, the notice stated that administrative hearings will be provided for any case that has not been "closed" as of May 29, 1991, the date the Secretary approved a pertinent reorganization of Public Health Service component offices. The actual date of the Secretary's approval, and hence the correct date, is May 29, 1992.

John Gallivan,

PHS Regulations Officer.

[FR Doc. 93–1191 Filed 1–15–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3201; FR–2923–N–01]

Change in Procedure for Processing Developer-Submitted Materials Under 15 U.S.C. 1701 et seq.

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner; HUD.

ACTION: Notice of change in procedures for Interstate Land Sales Registration Division.

SUMMARY: The purpose of this notice is to inform land sales developers subject to the Interstate Land Sales Full Disclosure Act that, effective March 1, 1993, initial Statements of Record, Consolidated Statements of Record and Amendments thereto that are submitted in accordance with 15 U.S.C. 1701 et seq. and 24 CFR 1710.100 through 1710.219 will no longer be routinely subjected to a cover-to-cover examination by the Department prior to the issuance of an effective date. Instead, only a selected number of such filings will, as a matter of course, be subjected to a cover-to-cover examination. If deficiencies in such filings are noted, a Suspension Notice listing those deficiencies and suspending the 30-day automatic effective date provided for at 15 U.S.C. 1706(a) will be sent to the submitting developer. However, all filings will, upon receipt by the Department, be checked to assure that the filings is in a proper format and that the fee required by 24 CFR 1710.35 has been submitted. Developers will receive a Suspension Notice when incomplete submissions are received. When it is determined that a filing not subject to a cover-to-cover examination is complete, the Secretary will issue a notification of effective date which will be within 30 days of the date a complete filing was received by the Department in accordance with 15 U.S.C. 1706.

It is the developer's responsibility to submit complete and accurate information. The Department will rely on the developer's affirmative (24 CFR 1710.219) that the information submitted is full, true, complete and correct. In the event that any untrue statement or omission of a material fact is discovered, the developer will be subject to civil money penalties as specified at 15 U.S.C. 1717a as well as the criminal penalties prescribed by 15 U.S.C. 1717 and 18 U.S.C. 1001 if the violation is found to have been willful.

The processing of requests for Multi-Site Subdivision Exemptions (24 CFR 1710.15), Substantial Compliance Exemptions (24 CFR 1710.16), Advisory Opinions (24 CFR 1710.17), and No Action Letters (24 CFR 1710.18) are not affected by this change in procedure. Requests will continue to be submitted as specified in the CFR and the customary examination and notification will continue.

FOR FURTHER INFORMATION CONTACT: Bruce J. Weichmann, Director, Interstate Land Sales Registration Division, Department of Housing and Urban Development, room 6278, Washington, DC 20410; telephone, (202) 708–0502 or (202) 708–3938 (TDD for hearing-impaired). (These are not toll free numbers).

SUPPLEMENTARY INFORMATION: The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 et seq.) requires that developers using any means or instruments of interstate commerce, or the mails, to sell or lease lots in a subdivision not otherwise exempt, must file with the Secretary of HUD a Statement of Record containing comprehensive disclosures on specified aspects of the offering. Before non-exempt sales or leases can legally be made, the Secretary must issue an effective date for the Statement of Record filed. (Although the Act permits a Statement of Record to become effective automatically 30 days after it was filed if the Secretary has not acted, this situation has rarely occurred.) Prior to the signing of a sale or lease agreement, each prospective purchaser must be given a Property Report that is a compendium of the disclosures supported by the Statement of Record and is intended to provide sufficient information about the developer and the subdivision, and other relevant information so that the prospective purchaser can make an informed decision on the purchase.

Developers wanting to add lots to an effective Statement of Record must file a Consolidated Statement of Record. When there is a change in any material fact contained in an effective Initial or Consolidated Statement of Record or the corresponding Property Report, the developer must file with the Secretary an amendment to the Statement of Record reflecting the change.

Since the effective date of the Act on April 28, 1969, material submitted by developers as Initial or Consolidated Statements of Record and Amendments has been subjected to a cover-to-cover examination to assure that the information submitted on its face meets the statutory and regulatory requirements. Any deficiencies, omissions or unsupported claims noted during the examination are communicated to the developer by way of Suspension Notice. This notification suspends the effective date of the materials filed until the deficiencies, omissions or unsupported claims are corrected. The developer then submits a correcting amendment which is examined in the same detail as the original submissions. If examination of the amendment reveals that the items identified in the Suspension Notice are not corrected or if additional deficiencies, omissions or unsupported claims are noted, another Suspension Notice is issued. This process continues until the material submitted by the developer meets all the statutory and regulatory requirements to the satisfaction of the Secretary after which an effective date is assigned and sales and leases can legally begin.

Effective March 1, 1993, the routine, cover-to-cover examination of each Statement of Record, Consolidated Statement of Record or Amendments thereto received by the Department will be discontinued. The Department will rely on the submitting developer's affirmation required by 24 CFR 1710.219 that the information submitted is "* * * full, true, complete and correct." However, cover-to-cover examinations of Statements of Record, Consolidated Statements of Record and Amendments will be made on a selective basis as determined by the Secretary. The Secretary reserves the right to perform a cover-to-cover examination of any and all such filings and records at any time.

If any subsequent examination of a Statement of Record, Consolidated Statement of Record or Amendment reveals that it contains an untrue statement of a material fact or omits to state a material fact required to be disclosed, the responsible developer will be subject to civil money penalties as specified at 15 U.S.C. 1717a, as well as the criminal penalties prescribed by 15 U.S.C. 1717 and 18 U.S.C. 1001 if the violation is found to have been willful.

15 U.S.C. 1717a provides, among other things, that the Secretary may impose a civil money penalty on any person who knowingly and materially violates any provisions of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701 et seq.; the rules and regulations set forth at 24 CFR 1700 et seq.; or any order issued thereunder. The Secretary may impose up to $1,000 for each violation, except that the maximum penalty for all violations by a particular person during any one year period shall not exceed $1 million. Each violation of this title, or any rule, regulation, or order issued under this title, shall constitute a separate violation with respect to each sale or lease or offer to sell or lease.

15 U.S.C. 1717 provides that a willful violation of any provision of the Act or the regulation, or a willful violation of the disclosure requirements for the Statement of Record or the Property Report, is punishable by a fine not exceeding $10,000 or imprisonment of not more than five years, or both.

18 U.S.C. 1001 provides, among other things, that whoever knowingly and willfully makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than 5 years or both.

Upon receipt of a Statement of Record, Consolidated Statement of Record or Amendment, a review will be made to ascertain whether the material is correct as to form and whether the fee in the proper amount and form required by 24 CFR 1710.35 is included. If the submission is incorrect as to form or if the fee is improper or not included, the developer will be notified by way of a Suspension Notice as specified at 24 CFR 1710.45(a). In addition, an editorial review of the draft property report section may be made on Statements of Record, Consolidated Statements of Record and Amendments that are not selected for a cover-to-cover examination.

In those cases where a Statement of Record, Consolidated Statement of Record or Amendment is received, is not selected for a cover-to-cover examination and contains all required materials, a notification will be forwarded to the submitting developer specifying the effective date that, in all cases, will be within 30 days from the date that a complete submission was received at the Department. This notification may or may not be accompanied by required editorial changes to be made in the property report final version. The notification will also contain reminders of report due dates under the effective registration.

Statements of Record, Consolidated Statements of Record and Amendments that are selected for a cover-to-cover examination will be processed under the procedure employed prior to the change announced in this Notice. If deficiencies are noted from the examination, a Suspension Notice listing those deficiencies and suspending the 30-day automatic effective date provided for at 15 U.S.C. 1706(a) will be sent to the submitting developer. Upon receipt of one or more pre-effective amendment(s) correcting the deficiencies an effective date letter will be sent, after which sales or leases may legally begin.

This change in procedure is excluded from NEPA requirements in accordance with 24 CFR 50.20 (e) and (k) because it is an action under the Interstate Land Sales Full Disclosure Act and only relates to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites.

This Notice does not implement any change in the information collection requirements of the referenced regulations and therefore is not subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. The changes made here do not affect any reporting requirements previously approved and do not propose or impose any new reporting requirements. For the same reasons, the changes do not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

Dated: January 4, 1993.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93-1221 Filed 1-15-93; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO-220-03-4320-12]

Grazing Administration—Exclusive of Alaska; Grazing Fee for the 1993 Grazing Year

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of establishment of grazing fee for the 1993 grazing year.

SUMMARY: The Secretary of the Interior hereby announces that the fee for livestock grazing for the 1993 grazing year is $1.86 per animal unit month on public lands administered by the Bureau of Land Management.

EFFECTIVE DATE: March 1, 1993, through February 28, 1994.

ADDRESSES: Any inquiries should be sent to: Director (220), Bureau of Land Management, Main Interior Bldg., rm. 5650, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Donald D. Waite, 202-653-9193.

SUPPLEMENTARY INFORMATION: Grazing fees for the use of public rangelands are established and collected under the authority of section 3 of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315), and Executive Order 12548 of February 14, 1986. The grazing fees are computed by the formula established in 43 CFR 4130.7-1.

Dated: January 12, 1993.

Daniel Talbot,

Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 93-1142 Filed 1-15-93; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Land Management

[WO-760-03-4410-01-2410]

Public Land and Resources; Planning, Programming, and Budgeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notification of Resource Management Planning Schedule.

SUMMARY: Resource management planning for the Bureau of Land Management (BLM) administered lands is governed by regulations 43 CFR 1610.2(b) requiring the BLM to publish a planning schedule advising the public of the status of resource management plans (RMP's) in preparation. Projected new RMP starts for the 3 succeeding fiscal years are also identified to provide the public an opportunity to comment on the projected planning schedule and to aid coordination with other agencies.

SUPPLEMENTARY INFORMATION: A limited number of new starts for RMP's are projected. There are currently 36 RMP efforts underway (not including amendments and revisions). Seven of the RMP's are forecasted to be completed in fiscal year 1993 and an additional 21 to be completed in fiscal year 1994. These efforts are having a significant effect on the BLM's capability to initiate new RMP's and complete maintenance/monitoring and implementation of the existing RMP's.

Upon completion of a major portion of the current ongoing RMP's, the BLM will start a limited number of new RMP's or RMP revisions within the current agency capability. A priority ranking system will be utilized to allocate the limited new planning efforts. New starts for fiscal year 1994 include the Lower Gila RMP (Arizona) and Snake River/Deep Creek RMP (Idaho). New starts for 1995 include Malheur/Jordon RMP (Oregon) and Price RMP (Utah).

The planning process begins with the publication of a Notice of Intent to initiate an RMP. Public notice and opportunity for participation in each RMP are provided as required by the regulations (43 CFR 1610.2(f)). Publication of the draft RMP and associated draft environmental impact statement as indicated on the schedule is a key opportunity for public comment.

A key to the abbreviations used is provided after the schedule.

DATES: Comments on the schedule shall be submitted by February 18, 1993.

ADDRESSES: Comments should be sent to Director (WO-760), Bureau of Land Management, rm. 406 LS, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tom Walker or Bruce E. Flinn on (202) 653-8824.

Dated: January 11, 1993.

CY Jamison,

Director.

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE

State, district and resource area	Plan name and type (major resource/issue)	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	Fiscal year 1996
Alaska:					
Glennallen	Southcentral RMP (recreation, wildlife	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Arizona:					
Phoenix Kingman	Kingman RMP (realty, ACEC, grazing, wildlife.	FEIS/PRMP ARMP/ROD			
Phoenix	Lower Gila RMP (realty, recreation, wildlife		NOI	DRMP/DEIS	FEIS/PRMP ARMP/ROD
Safford	Safford RMP (recreation, off-road vehicles, ACEC).	ARMP/ROD			
California:					
Bakersfield—Caliente	Caliente RMP (O&G, realty)	PRMP/FEIS	ARMP/ROD		
California Desert—Palm Springs.	South Coast RMP (O&G, realty, forestry, recreation).	PRMP/FEIS ARMP/ROD			
Ukiah—Redding	Redding RMP (T&E, forestry, wildlife)	PRMP/FEIS ARMP/ROD			
Colorado:					
Canon City—Royal Gorge	Royal Gorge RMP (wild and scenic river, grazing, realty, O&G, recreation).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		

TABLE 1.—BUREAU OF LAND MANAGEMENT PLANNING SCHEDULE—Continued

State, district and resource area	Plan name and type (major resources/issue)	Fiscal year 1993	Fiscal year 1994	Fiscal year 1995	Fiscal year 1996
Craig—White River	White River RMP (O&G, riparian, T&E, grazing, oil shale).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Idaho:					
Boise Owyhee	Owyhee RMP (grazing, wildlife)	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Burley	Snake River/Deep Creek RMP (grazing, realty, wildlife).		NOI	DRMP/DEIS	PRMP/FEIS
Salmon Challis	Challis RMP (realty, grazing, T&E, wild & scenic rivers).	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Shoshone Bennett Hills	Bennett Hills RMP (grazing, recreation)	PRMP/FEIS ARMP/ROD			
Montana:					
Lewistown—Judith Valley, Phillips.	Judith/Valley/Phillips RMP (O&G, realty, off-road vehicle).	PRMP/FEIS ARMP/ROD			
Miles City—Big Dry	Big Dry RMP (realty, off-road vehicles)	NOI	DRMP/DEIS PRMP/FEIS	DRMP/DEIS	PRMP/FEIS
Nevada:					
Battle Mountain—Tonopah	Tonopah RMP (O&G, realty)	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Las Vegas—Stateline	Stateline RMP (realty, T&E species)		PRMP/FEIS ARMP/ROD		
New Mexico:					
Las Cruces—Mimbres	Mimbres RMP (off-road vehicles, access, realty).	PRMP/FEIS ARMP/ROD			
Roswell—Roswell	Roswell RMP (O&G, mining, off-road vehicles).	DRMP/DEIS	PRMP/FEIS ARMP/ROD		
Tulsa—Oklahoma	Oklahoma RMP (O&G, coal leasing)	DRMP/FEIS	PRMP/FEIS ARMP/ROD		
	Texas RMP (O&G, coal leasing)			DRMP/DEIS	PRMP/FEIS ARMP/ROD
Oregon:					
Coos Bay	Coos Bay RMP (forestry, watershed, wildlife, realty, ACEC).	PRMP/FEIS	ARMP/ROD		
Eugene	Eugene RMP (forestry, watershed, ACEC, realty).	PRMP/FEIS	ARMP/ROD		
Lakeview—Klamath Falls	Klamath Falls RMP (forestry, watershed, wildlife, range, ACEC).	PRMP/FEIS	ARMP/ROD		
Medford	Medord RMP (forestry, wildlife, watershed, realty, ACEC).	PRMP/FEIS	ARMP/ROD		
Roseburg	Roseburg RMP (forestry, wildlife, watershed, realty, ACEC).	PRMP/FEIS	ARMP/ROD		
Salem	Salem RMP (forestry, wildlife, watershed, realty).	PRMP/FEIS	ARMP/ROD		
Vale	Malheur/Jordan RMP (wildlife, watershed, minerals, range).			NOI	DRMP/DEIS
Eastern States:					
Jackson	Florida RMP (lands, minerals, wildlife, recreation).	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Milwaukee	Michigan RMP (oil and gas)			NOI	DRMP/DEIS
Utah:					
Cedar City—Kanab-Escalante.	Kanab-Escalante RMP (recreation, wildlife)		DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Dixie	Dixie RMP (recreation, range, wildlife)	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Richfield—Henry Mountain	Henry Mountain RMP (ACEC, wildlife)	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Vernal—Diamond Mountain	Diamond Mountain RMP (wildlife, O&G)	PRMP/FEIS	ARMP/ROD		
Price	Price RMP (wildlife, range, O&G)			NOI	DRMP/DEIS
Moab—Grand	Grand RMP Revision (O&G, wildlife, recreation).	NOI	DRMP/DEIS	PRMP/FEIS	ARMP/ROD
Wyoming:					
Casper—Newcastle	Newcastle RMP (O&G)	PRMP/FEIS	ARMP/ROD		
Buffalo	Buffalo RMP revision (O&G, wildlife, range)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	
Rock Springs—Green River	Green River RMP (O&G, grazing, wild horses, cultural resources).	DRMP/DEIS PRMP/FEIS	ARMP/ROD		
Worland—Grass Creek	Grass Creek RMP (wildlife, watershed)	DRMP/DEIS	PRMP/FEIS	ARMP/ROD	

Key to planning schedule abbreviations: ACEC—Area of Critical Environmental Concern; ARMP/ROD—Approved Resource Management Plan and Record of Decision; DRMP/DEIS—Draft Resource Management Plan and Draft Environmental Impact Statement; PRMP/FEIS—Proposed Resource Management Plan and Final Environmental Impact Statement; NOI—Notice of Intent; O&G—Oil and Gas.

[FR Doc. 93–1144 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-84-M

[ID–030–03–4320–12]

Idaho Falls District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the Idaho Falls District Grazing Advisory Board.

SUMMARY: The Idaho Falls District Grazing Advisory Board will meet Thursday, February 18, 1993. Notice of this meeting is in accordance with Public Law 92–463. The meeting will

begin at 9 a.m. at the Idaho Falls District Office at 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public; public comments will be accepted from 9:30 a.m. to 10 a.m.

The agenda includes, but is not limited to drought conditions, weed control, Deep Creek pipeline, and project funding to include both 8100 and Advisory Board projects.

Detailed minutes of the meeting will be maintained in the District Office and will be available for public review during regular business hours (7:45 a.m. to 4:30 p.m., Monday through Friday) within 30 days following the meeting.

Dated: January 7, 1993.

Lloyd H Ferguson,

District Manager.

[FR Doc. 93–1193 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-GG-M

[OR–030–03–4333–01: G3–081]

Vale District Multiple-Use Advisory Council; Meeting

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is given in accordance with Public Law 92–463 that a meeting of the Vale District Multiple-Use Advisory Council will be held February 3, 1993.

The agenda of the meeting will include: Bureau of Reclamation Withdrawal Review; Forest Health; Section 7 Consultation on Salmon; 4-Way Exchange program along the Grande Ronde; Update on Vale District Wild Horse program as it relates to Drought.

The meeting is open to the public. Interested persons may make oral statements to the Council or may file written statements for the Council's consideration. Anyone wishing to make oral statements may do so at 1:00 p.m. on the day of the meeting.

Summary minutes of the Council's meeting will be maintained in the District Office and will be available for public inspection, or personal copies may be purchased for the cost of duplication, within 30 days of the meeting.

DATES: The meeting will begin at 10 a.m. MST Wednesday, October 20, 1992.

ADDRESSES: The meeting will take place in the conference room of the District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918 (Telephone 503 473–3144).

James E. May,

District Manager.

[FR Doc. 93–1194 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-33-M

[NV–930–4210–04; N–54527]

Opening Order, Public Lands; Elko County, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Opening Order Corrected and Amended, Nevada.

SUMMARY: The Opening Order published in the Federal Register on September 11, 1992 is hereby corrected as to the legal description of one parcel and amended to include additional lands that were inadvertently omitted.

EFFECTIVE DATE: February 18, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, P.O. Box 12000, Reno, NV 89520, (702) 785–6530.

SUPPLEMENTARY INFORMATION: In the Opening Order published on September 11, 1992 (57 FR 41773; FR Doc. 92–21967), under T. 40 N., R. 52 E., sec. 33, the legal description is hereby corrected to read W½NW¼SE¼, SE¼NW¼SE¼, W½W½SE¼SE¼. Said Opening Order is also hereby amended to include the following described lands, containing 137.06 acres in Elko County:

Mount Diablo Meridian, Nevada

T. 40 N., R. 55 E.,
  Sec. 36, lots 9–14.
T. 39 N., R. 56 E.,
  Sec. 31, E½E½SW¼SE¼.
T. 44 N., R. 56 E.,
  Sec. 7, lot 16.
T. 42 N., R. 60 E.,
  Sec. 5, lot 8.
T. 32 N., R. 61 E.,
  Sec. 18, lot 12.
T. 38 N., R. 62 E.,
  Sec. 30, lot 12.
T. 42 N., R. 62 E.,
  Sec. 34, lots 5 and 6.
T. 38 N., R. 63 E.,
  Sec. 30, lots 13, 20–23, 26 and 27.

At 10 a.m. on February 18, 1993, the lands described above will be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received prior to or at 10 a.m. on February 18, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 10 a.m. on February 18, 1993, the lands described above will be opened to location and entry under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The lands remain open to mineral leasing.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–1087 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-HC-M

[G–910–G3–0015–4210–04; NMNM 87010]

Albuquerque District, New Mexico; Realty Action; Exchange, Federal Surface in Santa Fe County, NM for Private Surface Within Cibola County Adjacent to the El Malpais National Conservation Area Near Grants, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action on Proposed Land Exchange.

CORRECTION: In notice document 92–23122 in the third column of page 44199 in the issue of Thursday, September 24, 1992, make the following correction: The land description for the Federal surface estate, New Mexico Principal Meridian, T. 12 N., R. 10 E., in sec. 29, "lots 1,3" should read "lots 2,3".

Dated: January 12, 1993.

Patty McLean,

Acting District Manager.

[FR Doc. 93–1203 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-FB-M

[AZ–010–93–4212–08]

Arizona Strip Resource Management Plan; Notice of Intent to Amend

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of Intent to Amend the Arizona Strip Resource Management Plan, Arizona.

SUMMARY: Pursuant to the BLM Planning Regulations (43 CFR 1600) this notice advises the public that the Arizona Strip District, Bureau of Land Management, is proposing to amend the Arizona Strip Resource Management Plan and consider a proposal to identify for possible exchange the following tracts of public land:

Gila and Salt River Meridian, Arizona

T. 40 N., R. 15 W.,
  Sec. 4, Lot 1 (part)—that portion that is on the bluff above the Virgin River. Cadastral survey required. 30 acres (approximately);
T. 40 N., R. 16 W.,
  Sec. 35, SW¼SW¼, 40 acres;
T. 41 N., R. 11 W.,
  Sec. 3, W½W½, 160 acres,
  Sec. 4, E½, E½W½, 480 acres,
  Sec. 9, N½, SW¼, W½SE¼, 560 acres;
T. 41 N., R. 15 W.,
  Sec. 28, SW¼SW¼SW¼(part)—a small triangle southwest of the county road right-of-way. Cadastral survey required. 5 acres (approximately);
T. 42 N., R. 11 W.,
  Sec. 33, Lots 1, 2, SE¼, 220.1 acres,
  Sec. 34 Lots 3, 4, SW¼, 220.1 acres.

The main issue anticipated in this plan amendment is whether the proposed exchange is in the public interest.

A land use plan amendment and environmental assessment will be prepared for the subject lands by an interdisciplinary team including range, wildlife, hydrology, lands, soils, recreation, minerals, forestry, and cultural resource specialists.

DATES: Interested parties may submit comments to the District Manager at the address shown below on or before February 18, 1993.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, Arizona Strip District, 390 N. 3050 East, St. George, Utah 84770.

FOR FURTHER INFORMATION CONTACT: George Cropper, Shivwits Resource Area Manager, Bureau of Land Management, 225 N. Bluff St., St. George, Utah 84770, (801) 673–3545, to obtain additional information regarding this plan amendment. The existing land use plan and maps are available for review at the Shivwits Resource Area office in St. George, Utah.

SUPPLEMENTARY INFORMATION: Publication of this notice will segregate the public lands described in this Notice from the public lands laws, including the mining and mineral leasing laws. The segregative effect of this Notice on the public lands shall end upon issuance of patent, or two (2) years from the publication, January 19, 1995, whichever occurs first

Dated: January 5, 1993

Raymond Mapston,

Arizona Strip District Manager.

[FR Doc. 93–910 Filed 1–15–93; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for the Lost River Sucker (Deltistes luxatus) and Shortnose Sucker (Chasmistes brevirostris) for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Lost River sucker (*Deltistes luxatus*) and shortnose sucker *Chasmistes brevirostris*). These fishes occur in the Klamath Basin of south-central Oregon, Klamath County, and north-central California, Modoc and Siskiyou counties. The Service solicits review and comment from the public on this draft plan.

DATES: Comments from all interested parties must be received on or before February 18, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review this draft recovery plan may obtain a copy by contacting the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846 (phone 916–978–4866) or Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (phone 503–231–6241). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above Sacramento, California address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Sacramento, California address.

FOR FURTHER INFORMATION CONTACT: Peter Sorensen at the above Sacramento, California address (phone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened plants or animals to the point where they are again secure, self-sustaining members of their ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objectives, measurable criteria for the recovery levels for downlisting or delisting of species, and estimate the time and cost needed to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for species listed unless such a plan would not promote the conservation of a particular species. Section 4(*f*) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Lost River and shortnose suckers are threatened with extinction throughout their range. Once abundant enough to support large spawning runs in Upper Klamath Lake tributaries, a cannery, several other commercial operations that processed fish oil, dried fish, and other products on the Lost River, the populations of these species have declined precipitously. The principle causes of decline for these suckers have been the conversion of marsh habitat for agricultural purposes, the resulting deterioration in water quality, loss of spawning habitat caused by damming of rivers and creeks, manipulation of reservoir water levels for irrigation purposes, competition and predation by introduced species, and fragmentation of these species' ranges as a result of damming and diversion of rivers.

In addition to this public notice of review, this draft recovery plan will be distributed for review by members of the Klamath Basin Sucker Working Group and all public agencies with statutory responsibilities to participate in recovery actions for these species. In a court settlement of a lawsuit filed by the Oregon Natural Resources Council, the Service has agreed to an accelerated completion date of the Lost River sucker and shortnose sucker recovery plan. The recovery plan will reflect consideration of all material and comments received during this comment period prior to its approval as a final document.

Public Comments Solicited

The Service solicits written comments on the Lost River and shortnose sucker recovery plan. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 12, 1993.

William E. Martin,

Acting Regional Director.

[FR Doc. 93-1140 Filed 1-15-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 9, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 3, 1993.

Patrick W. Andrus,

Acting, Chief of Registration, National Register.

KENTUCKY

Pulaski County

Battle of Mill Springs Historic Areas, Roughly, three discontiguous areas, one S of Nancy, one in Mill Springs and one to the N across the Cumberland R., Nancy vicinity, 93000001

MASSACHUSETTS

Hampden County

Ludlow Village Historic Districts, Roughly bounded by Winsor, Sewall and State Sts. and the Chicopee R. and crossing the Chicopee R. above Red Bridge Rd., Ludlow, 93000009

Hampshire County

Lincoln—Sunset Historic District, Roughly, Lincoln Ave. from Northampton Rd. to Fearing St., Amherst, 93000008

Prospect—Gaylord Historic District, Roughly, Prospect St. from Northampton Rd. to Hallock St. and Gaylord and Amity Sts. W from Prospect toward Lincoln Ave., Amherst, 93000007

Middlesex County

Fletcher, Henry, House, 224 Concord Rd., Westford, 93000010

Proctor, John, House, 218 Concord Rd., Westford, 93000011

OREGON

Douglas County

Gardiner Historic District, Roughly bounded by 3rd, Camp, 2nd, Pitt, Spring, Front and Garden Sts., Gardiner, 93000003

TEXAS

Burleson County

Reeves—Homack House, 405 W. Fox St., Caldwell, 93000002

VIRGINIA

Charles City County

Mount Stirling, VA 155 E side, 3200 ft. NNE of jct. with VA 614, Providence Forge vicinity, 93000005

Clarke County

Guilford, VA 644 S side, 0.5 mi. W of jct. with VA 658, White Post vicinity, 93000004

Northampton County

Oak Grove, VA 630 N side, 1 mi. W of jct. with US 13. Eastville vicinity, 93000006

[FR Doc. 93-1137 Filed 1-15-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-378X]

Curtis Milburn & Eastern Railroad Co.—Abandonment Exemption—In Lewis County, WA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by Curtis Milburn & Eastern Railroad Company, of 11-miles of rail line in Lewis County, WA, between milepost 0.0 at CM&E Junction, WA, and milepost 10.0 near Curtis, WA.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 18, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 29, 1993, petitions to stay must be filed by February 3, 1993, and petitions for reconsideration must be filed on February 16, 1993. Requests for public use conditions must be filed by February 8, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-378X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and

(2) Petitioner's representative: Adam M. Mycyk, 1350 New York Avenue, NW., suite 800, Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610. [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: December 30, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-1197 Filed 1-15-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-337 (Sub-No. 1X)]

Dakota, Minnesota & Eastern Railroad—Abandonment Exemption—In Brookings, Hamlin, Deuel, and Codington Counties, SD

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon its 39.7-mile line of railroad between milepost 2.5, near Brookings, and milepost 42.2, near Watertown, in Brookings, Hamlin, Deuel, and Codington Counties, SD.

DM&E has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. DM&E has also certified that it has complied with the requirements at 49 CFR 1105.11 and 49 CFR 1152.50(d)(1) (notice to government agencies).

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[1] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 18, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by January 29, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 8, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Byron D. Olsen, 1935 Piper Jaffray Tower, 222 S. Ninth St., Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effect, if any, on the environmental or historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 22, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1196 Filed 1–15–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) Certification by Designated School Official
(2) Form I–538. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The form is primarily used by nonimmigrant students to request off-campus employment authorization certification from a designated school official (DSO). DSO's use the form as a notification procedure to update the Immigration and Naturalization Service's Student School System.
(5) 150,000 annual responses at .063 hours per response
(6) 9,450 annual burden hours
(7) Not applicable under 3504(h)

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Request for Verification of Naturalization
(2) Form N–25. Immigration and Naturalization Service
(3) One time only
(4) Individuals or households. The information is used to obtain information from the records of a clerk of court which may be needed by a person applying for benefits under various provisions of the Immigration and Nationality Act.
(5) 1,000 annual responses at .25 hours per response
(6) 250 annual burden hours
(7) Not applicable under 3504(h)

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(1) Request for Information Selective Service Files
(2) Form N–422. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The information is used from Selective Service to determine eligibility for naturalization as provided in the Immigration and Nationality Act.
(5) 2,000 annual responses at .166 hours per response
(6) 333 annual burden hours
(7) Not applicable under 3504(h)

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(1) Application for Advance Permission to Enter as Nonimmigrant
(2) Form I–192. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The information is used by aliens seeking

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

a waiver of inadmissibility for entry into the U.S. as nonimmigrants under section 212 (d)(3) of the Immigration and Nationality Act.
(5) 5,000 annual responses at .25 hours per response
(6) 1,250 annual burden hours
(7) Not applicable under 3504(h)

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(1) Application for Removal
(2) Form N–243. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The information is used to determine eligibility of an applicant under section 250 of the Immigration and Nationality Act, which provides that an alien in the U.S. who has fallen into distress or needs public aid, may apply for removal from the U.S. at government expense.
(5) 41 annual responses at .166 hours per response
(6) 7 annual burden hours
(7) Not applicable under 3504(h)

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(1) Request for Cancellation of Public Charge Bond
(2) From I–356. Immigration and Naturalization Service
(3) One time only
(4) Individuals or households. The information is used to determine if a bond posted on behalf of an alien in the U.S. should be cancelled.
(5) 2,000 annual responses at .25 hours per response
(6) 500 annual burden hours
(7) Not applicable under 3504(h)

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(1) Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Public Law 97–359 Amerasian
(2) Form I–363. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The information is used to determine whether an affidavit of financial support and intent to petition for legal custody, Form 361, requires enforcement. This action is necessary because of Public Law 97–359, relating to immigration benefits for certain Amerasian aliens.
(5) 50 annual responses at .50 hours per response
(6) 25 annual burden hours
(7) Not applicable under 3504(h)

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(1) Passenger List, Crew List
(2) Form I–418. Immigration and Naturalization Service
(3) On occasion
(4) Businesses or other for-profit. The information is prescribed by the Attorney General for the Service for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.
(5) 95,000 annual responses at 1.00 hour per response
(6) 95,000 annual burden hours
(7) Not applicable under 3504(h)

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(1) Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act
(2) Form I–612. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The information is provided by an alien to request a waiver of the foreign residence requirement.
(5) 1,300 annual responses at .332 hours per response
(6) 432 annual burden hours
(7) Not applicable under 3504(h)

Existing Collection in Use Without an OMB Control Number

(1) Request for Hearing on a Decision in Naturalization Proceedings under section 336 of the Immigration and Nationality Act
(2) Form N–336. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This form will be used by applicants for naturalization to request a new hearing after their application for naturalization was denied.
(5) 5,000 annual responses at 2.75 hours per response
(6) 13,750 annual burden hours
(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: January 13, 1993.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–1170 Filed 1–15–93; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *S.T. Taylor Corp., et al.*, Civ. No. 92–2875–CIV–NESBITT, was lodged with the United States District Court for the Southern District of Florida, on December 21, 1992. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for payment of past costs incurred, and future costs to be incurred, by the United States at the Gold Coast Oil Superfund Site in Miami, Florida. (Soil remediation and on-site construction of a groundwater treatment system have been completed pursuant to an earlier decree with a different group of settlors.) This decree requires the settlors to pay $780,000 in satisfaction of the United States claims against them for response costs incurred and to be incurred at the site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *S.T. Taylor Corp., et al.*, D.J. Ref. 90–11–3–450.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of Florida, 155 South Miami Avenue, Miami, Florida 33130; at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $9.75 for the Gold Coast decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *S.T. Taylor Corp., et al.*, D.J. Ref. 90–11–3–450.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–1167 Filed 1–15–93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Programs, Proposed Total Allocations, Allocation Formulas and Formula Rationales for Program Year 1993 Regular Program and Calendar Year 1993 Summer Youth Employment and Training Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor is publishing the proposed native American allocations, distribution formulas and rationales for the Program Year 1993 (July 1, 1993–June 30, 1994) Title IV–A regular program funded under the Job Training Partnership Act and for the Calendar Year 1993 Summer Youth Employment and Training Program funded under Title II–B of the Job Training Partnership Act.

DATES: Written comments on this proposal are invited and must be received on or before February 12, 1993.

ADDRESSES: Send written comments to Mr. Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, Room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Duus, phone: (202) 219–5504 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 162 of the Job Training Partnership Act (JTPA), the Employment and Training Administration (ETA) of the Department of Labor (DOL) publishes the proposed allocations, allocation formulas and rationales for those formulas for Native American grantees to be funded under JTPA, Title IV–A, section 401 and JTPA Title II–B. The total amounts to be allocated are $61,871,000 for the Program Year 1993 JTPA, Title IV–A, section 401 regular program, and $12,419,308 for the JTPA Title II–B Summer Youth Employment and Training Program (SYETP) for the summer of Calendar Year 1993.

The planning estimates reflect the existing grantees and their currently assigned areas, and are subject to change for such reasons as Administrative Law Judge decisions, the possibility that a grantee will want to have its designation withdrawn, legislative changes, *et al.*

The formula for JTPA, Title IV–A, section 401 provides that 25 percent of the funding will be based on the number of unemployed Native Americans in the grantee's area, and 75 percent will be based on the number of poverty-level Native Americans in the grantee's area.

The formula for allocating the JTPA, Title II–B, SYETP funds divides the funds among eligible recipients based on the proportion that the number of Native American youths in a recipient's area bears to the total number of Native American youths in all eligible recipients' areas.

The rationale for the above formulas is that the number of poverty-level persons, unemployed persons and youths among the Native American population is indicative of the need for training and employment funds.

Statistics on poverty-level persons, unemployed persons and youths among Native Americans used in the above programs are derived from the Decennial Census of the Population, 1980.

Signed at Washington, DC this 12th day of Jan. 1993.

Roberts T. Jones,

Assistant Secretary of Labor.

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1993 TITLE IV–A AND PY 1992 II–B (SUMMER 1993) PROPOSED ALLOTMENTS FOR NATIVE AMERICANS

[December 15, 1992]

Grantee	PY 1993 title IV–A			PY 1992 II–B (summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Inter-Tribal Council of Alabama, 669, South Lawrence Street, Montgomery, Alabama 36104 Grant Number: 99–1–3624–55–255–02	303,687	242,950	60,737	0	0	0
Poarch Band of Creek Indians, HCR 69A, Box 85—B, Atmore, Alabama, 36502 Grant Number: 99–1–0648–55–173–02	99,500	79,600	19,900	2,253	1,802	451
Aleutian/Pribilof Islands Association Inc., 401 East Fireweed Lane, Suite 201, Anchorage, Alaska 99503-2111, Grant Number: 99–0117–55–139–02	48,087	38,470	9,617	33,257	26,606	6,651
Association of Village Council Presidents, Pouch 219, Bethel, Alaska, 99559, Grant Number: 99–1–2713–55–210–02	571,601	457,281	114,320	249,920	199,936	49,984
Bristol Bay Native Association, P.O. Box 310, Dillingham, Alaska 99576, Grant Number: 99–1–0116–55–138–02	141,694	113,355	28,339	75,886	60,709	15,177
Central Council of Tlingit and Haida Indian Tribes of Alaska, 320 W. Willoughby, Suite 300, Juneau, Alaska, 99801, Grant Number: 99–1–0114–55–136–02	177,371	141,897	35,474	124,825	99,860	24,965
Cook Inlet Tribal Council, 670 West Fireweed Lane—Suite 200, Anchorage, Alaska 99503, Grant Number: 99–1–3402–55–243–02	367,187	293,750	73,437	192,239	153,791	38,448
Kawerak Incorporated, P.O. Box 948, Nome, Alaska 99762, Grant Number: 99–1–0123–55–141–02	223,259	178,607	44,652	88,324	70,659	17,665
Kenaitze Indian Tribe, P.O. Box 988, Kenai, Alaska 99611, Grant Number: 99–1–0089–55–135–02	30,459	24,367	6,092	16,763	13,410	3,353
Kodiak Area Native Association, 402 Center Avenue, Kodiak, Alaska 99615, Grant Number: 99–1–0115–55–137–02	64,556	51,645	12,911	32,085	25,668	6,417
Maniilaq Manpower, P.O. Box 725, Kotzebue, Alaska 99752, Grant Number: 99–1–0124–55–142–02	175,194	140,155	35,039	85,079	68,063	17,016
Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926, Grant Number: 99–1–0064–55–121–02	15,895	12,716	3,179	17,484	13,987	3,497
North Pacific Rim, 3300 C Street, Anchorage, Alaska 99503, Grant Number: 99–1–0118–55–140–02	58,305	46,644	11,661	25,055	20,044	5,011
Sitka Community Association, 456 Katlian Street, Sitka, Alaska 99835 Grant Number: 99–1–1776–55–254–02	43,889	35,111	8,778	36,321	29,057	7,264
Tanana Chiefs Conference, Inc., 122 First Avenue, Fairbanks, Alaska 99701, Grant Number: 99–1–3100–55–227–02	389,520	311,616	77,904	206,750	165,400	41,350

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1993 TITLE IV-A AND PY 1992 II-B (SUMMER 1993) PROPOSED ALLOTMENTS FOR NATIVE AMERICANS—Continued

[December 15, 1992]

Grantee	PY 1993 title IV-A			PY 1992 II-B (summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Affiliation of Arizona Ind. Cntrs. Inc., 1515 East Osborne Rd., The Annex, Phoenix, Arizona 85014, Grant Number: 99-1-0268-55-158-02	257,653	206,122	51,531	0	0	0
American Indian Assoc. of Tucson, P.O. Box 2307—131 East Broadway, First Floor, Tucson, Arizona 85705, Grant Number: 99-1-0492-55-164-02	336,208	268,966	67,242	0	0	0
Colorado River Indian Tribes, Route 1, Box 23-B, Parker, Arizona 85344, Grant Number: 99-1-0498-55-165-02	82,342	65,874	16,468	29,922	23,938	5,984
Gila River Indian Community, Box 97, Sacaton, Arizona 85247, Grant Number: 99-1-0054-55-116-02	492,347	393,878	98,469	128,880	103,104	25,776
Hopi Tribal Council, Box 123, Kykotsmovi, Arizona 86039, Grant Number: 99-1-0057-55-117-02	385,811	308,649	77,162	102,564	82,501	20,513
Indian Dev. Dist. of Arizona, Inc., 4560 North 19th Ave., Suite 200, Phoenix, Arizona 85015, Grant Number: 99-1-0053-55-115-02	112,515	90,012	22,503	41,819	33,455	8,364
Native Americans for Community Action, 2717 North Steves Boulevard, Suite 11, Flagstaff, Arizona 86004, Grant Number: 99-1-1777-55-193-02	114,685	91,748	22,937	0	0	0
Navajo Tribe of Indians, P.O. Box 1889, Window Rock, Arizona 86515, Grant Number: 99-1-0059-55-119-002	6,837,760	5,470,208	1,367,552	2,261,627	1,809,302	452,325
Pascua Yaqui Tribe, 7474 S. Camino De Oeste, Tucson, Arizona 85746, Grant Number: 99-1-3289-55-237-02	38,658	30,926	7,732	8,922	7,138	1,784
Phoenix Indian Center, Inc., 2601 North Third Street—Suite 100, Phoenix, Arizona 85004, Grant Number: 99-1-0195-55-153-02	707,392	565,914	141,478	0	0	0
Salt River Pima—Maricopa Ind. Commun., Route 1, Box 216, Scottsdale, Arizona 85256, Grant Number: 99-1-0476-55-162-02	96,255	77,004	19,251	44,793	35,834	8,959
San Carlos Apache Tribe, P.O. Box '0', San Carlos, Arizona 85550, Grant Number: 99-1-0173-55-149-02	314,023	251,218	62,805	112,748	90,198	22,550
Tohono O'Odham Nation, P.O. Box 837, Sells, Arizona 85634, Grant Number: 99-1-0181-55-152-02	429,153	343,322	85,831	121,941	97,553	24,388
White Mountain Apache Tribe, P.O. Box 700, White River, Arizona 85941, Grant Number: 99-1-0174-55-150-02	333,522	266,818	66,704	126,447	101,158	25,289
Am. Indian Center of Arkansas, Inc., 2 Van Circle, Suite 2, Little Rock, Arkansas 72207, Grant Number: 99-1-1778-55-194-02	467,159	373,727	93,432	0	0	0
Amer. Indian Center of Santa Clara Valley, Inc., 919 The Alameda, San Jose, California 95126, Grant Number: 99-1-0499-55-166-02	237,323	189,858	47,465	0	0	0
California Indian Manpower Cstr., 4153 Northgate Boulevard, Sacramento, California 95834, Grant Number: 99-1-2058-55-203-02	3,102,468	2,481,974	620,494	168,806	135,045	33,761
Candelaria American Indian Council, 2635 Wagon Wheel Road, Oxnard, California 93030, Grant Number: 99-1-0086-55-133-02	462,347	369,878	92,469	0	0	0
Indian Human Resources Center, 4040 30th Street, Suite A, San Diego, California 92104, Grant Number: 99-1-2441-55-209-02	452,627	362,102	90,525	0	0	0
Northern Calif. Ind. Dev. Council, Inc., 241 F Street, Eureka, California 95501, Grant Number: 99-1-0686-55-175-02	326,025	260,820	65,205	14,781	11,825	2,956
Southern California Indian Center, Inc., 12755 Brookhurst Street, P.O. Box 2550, Garden Grove, California 92642-2550, Grant Number: 99-1-0170-55-147-02	1,998,778	1,599,022	399,756	0	0	0
Tule River Tribal Council, Dept. of Health, Safety & Welfare, P.O. Box 589, Porterville, California 93258, Grant Number: 99-1-3219-55-230-02	134,100	107,280	26,820	4,056	3,245	811
United Indian Nations, Inc., 1320 Webster Street, Oakland, California 94612, Grant Number: 99-1-2310-55-208-02	644,513	515,610	128,903	0	0	0
Ya-Ka-Ama Indian Educ. and Dev., Inc., 6215 Eastside Road, Forestville, California 95436, Grant Number: 99-1-0082-55-132-02	132,753	106,202	26,551	0	0	0
Denver Indian Center, Inc., 4407 Morrison Road, Denver, Colorado 80219, Grant Number: 99-1-0076-55-129-02	619,122	495,298	123,824	0	0	0
Southern Ute Indian Tribe, P.O. Box 800, Ignacio, Colorado 81137, Grant Number: 99-1-2714-55-211-02	57,276	45,821	11,455	14,691	11,753	2,938
Ute Mountain Ute Tribe, P.O. Box 30, Towaoc, Colorado 81334, Grant Number: 99-1-1143-55-188-02	69,059	55,247	13,812	17,755	14,204	3,551
American Indians for Development, Inc., 29 West Main Street—P.O. Box 117, Meriden, Connecticut 06450, Grant Number: 99-1-0361-55-160-02	192,820	154,256	38,564	0	0	0
Nanticoke Indian Association, Inc., Rt. 4, Box 107A, Millsboro, Delaware 19966, Grant Number: 99-1-3518-55-251-02	39,825	31,860	7,965	0	0	0
Fla. Governors Council on Ind. Affairs, 1020 Lafayette Street—Suite 102, Tallahassee, Florida 32301, Grant Number: 99-1-0692-55-178-02	1,223,244	978,595	244,649	0	0	0
Miccosukee Corporation, P.O. Box 440021, Tamiami Station, Miami, Florida 33144, Grant Number: 99-1-0052-55-114-02	122,661	98,129	24,532	38,214	30,571	7,643
Seminole Tribe of Florida, 6073 Stirling Road, Hollywood, Florida 33024, Grant Number: 99-1-0004-55-076-02	69,082	55,266	13,816	7,480	5,984	1,496
Alulike, Inc., 1024 Mapunapuna Street, Honolulu, Hawaii 96819-4417, Grant Number: 99-1-1179-55-190-02	2,544,310	2,035,448	508,862	1,983,858	1,587,086	396,772
American Indian Services Corporation, 1007 Dillingham Blvd., Suite 102, Honolulu, Hawaii 96817, Grant Number: 99-1-3404-55-244-02	89,709	71,767	17,942	0	0	0
Kootenai Tribe of Idaho, P.O. Box 1269, Bonners Ferry, Idaho 83805, Grant Number: 99-1-3334-55-238-02	33,135	26,508	6,627	1,262	1,010	252
Nez Perce Tribe, P.O. Box 365, Lapwai, Idaho 83540-0365, Grant Number: 99-1-0065-55-122-02	82,888	66,310	16,578	11,807	9,446	2,361

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION PY 1993 TITLE IV–A AND PY 1992 II–B (SUMMER 1993) PROPOSED ALLOTMENTS FOR NATIVE AMERICANS—Continued

[December 15, 1992]

Grantee	PY 1993 title IV–A			PY 1992 II–B (summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Shoshone-Bannock Tribes, Fort Hall Business Council, P.O. Box 306, Fort Hall, Idaho 83203, Grant Number: 99–1–1780–55–195–02	246,119	196,895	49,224	38,304	30,643	7,661
Mid America All Indian Center, Inc., 650 N. Seneca, Wichita, Kansas 67203, Grant Number: 99–1–0168–55–145–02	166,320	133,056	33,264	0	0	0
United Tribes of Kansas and S.E. Neb., P.O. Box 29, Horton, Kansas 66439, Grant Number: 99–1–0178–55–151–02	508,605	406,884	101,721	9,373	7,498	1,875
Inter-Tribal Council of Louisiana, Inc., 5723 Superior Drive—Suite B–1, Baton Rouge, Louisiana 70816, Grant Number: 99–1–0026–55–092–02	460,902	368,722	92,180	5,227	4,182	1,045
Central Maine Indian Association, Inc., 132–144 North Main Street, P.O. Box 3040, Brewer, Maine 04412, Grant Number: 99–1–2719–55–212–02	93,859	75,087	18,772	0	0	0
Tribal Governors, Inc., 93 Main Street, Orono, Maine 04473, Grant Number: 99–1–0001–55–074–02	107,973	86,378	21,595	26,227	20,982	5,245
Baltimore American Indian Center, 113 So. Broadway, Baltimore, Maryland 21231, Grant Number: 99–1–3405–55–245–02	366,645	68,169	73,329	0	0	0
Mashpee—Wampahoag Indian Trobal Council, Inc., P.O. Box 1048, Mashpee, Massachusetts 02649, Grant Number: 99–1–0408–55–161–02	85,211	68,169	17,042	0	0	0
Grand Traverse Band of Ottawa and Chippewa Indians, Route 1 Box 135, Suttons Bay, Michigan 49682, Grant Number: 99–1–2721–55–213–02	56,497	45,198	11,299	2,343	1,874	469
Inter-Tribal Council of Michigan, Inc., 405 East Easterday Avenue, Sault Ste. Marie, Michigan 49783, Grant Number: 99–1–0172–55–148–02	67,680	54,144	13,536	29,111	23,289	5,822
Michigan Indian Employment and Training Services, Inc., 2450 Delphi Commerce Drive, Suite 5, Holt, Michigan 48858, Grant Number: 99–1–1144–55–189–02	937,472	749,978	187,494	0	0	0
North American Indian Assoc. of Detroit, 22720 Plymouth Road, Detroit, Michigan 48239, Grant Number: 99–1–0695–55–180–02	306,002	244,802	61,200	0	0	0
Potawatomi Indian Nation, 53237 Townhill Road, Dowagiac, Michigan 49047, Grant Number: 99–1–3339–55–240–02	156,080	124,864	31,216	0	0	0
Sault Ste. Marie Tribe of Chippewa Indians, 2151 Shunk Road, Sault Ste. Marie, Michigan 49783, Grant Number: 99–1–0507–55–168–02	240,041	192,033	48,008	40,827	32,662	8,165
Southeastern Michigan Indians, Inc., 22620 Ryan Road, P.O. Box 861, Warren, Michigan 48090, Grant Number: 99–1–3220–55–231–02	171,031	136,825	34,206	0	0	0
American Indian Opportunities Ctr., 1845 East Franklin Avenue, Minneapolis, Minnesota 55404, Grant Number: 99–1–3221–55–232–02	535,981	428,785	107,196	0	0	0
Bois Forte R.B.C., P.O. Box 16, Nett Lake, Minnesota 55772, Grant Number: 99–1–0010–55–081–02	39,814	31,851	7,963	8,562	6,850	1,712
Fond Dulac R.B.C., 105 University Road, Cloquet, Minnesota 55720, Grant Number: 99–1–0009–55–080–02	180,113	144,090	36,023	8,111	6,489	1,622
Leech Lake R.B.C., Route 3, Box 100, Cass Lake, Minnesota 56633, Grant Number: 99–1– 0012–55–083–02	183,950	147,160	36,790	46,776	37,421	9,355
Mille Lacs Band of Chippewa Indians, Star Route—Box 194 OIC Bldg., Onamia, Minnesota, 56359, Grant Number: 99–1–0008–55–079–02	33,580	26,864	6,716	8,472	6,778	1,694
Minneapolis American Indian Center, 1530 East Franklin Avenue, Minneapolis, Minnesota 55404, Grant Number: 99–1–0204–55–154–02	313,828	251,062	62,766	11,807	9,446	2,361
Red Lake Tribal Council, P.O. Box 310, Red Lake, Minnesota 56671, Grant Number: 99–1–0017–55–086–02	147,293	117,834	29,459	60,294	48,235	12,059
White Earth R.B.C., Box 418, White Earth, Minnesota 56591, Grant Number: 99–1–0011–55–082–02	164,880	131,904	32,976	48,127	38,502	9,625
Mississippi Band of Choctaw Indians, P.O. Box 6010, Choctaw Branch, Philadelphia, Mississippi 39350, Grant Number: 99–1–0005–55–077–02	319,333	255,466	63,867	49,660	39,728	9,932
Region VII American Indian Council, Inc. 310 Armour Road, Suite 205, North Kansas City, Missouri 64116, Grant Number: 99–1–0967–55–182–02	591,661	473,329	118,332	0	0	0
Assiniboine and Sioux Tribes, Fort Peck Indian Reservation, P.O. Box 1027, Poplar, Montana 59255, Grant Number: 99–1–0033–55–098–02	220,323	176,258	44,065	73,363	58,690	14,673
Blackfeet Tribal Business Council, P.O. Box 1090, Browning, Montana 59417, Grant Number: 99–1–0006–55–078–02	255,572	204,458	51,114	88,143	70,514	17,629
Chippewa Cree Tribe, Rocky Boy Route—P.O. Box 578 Box Elder, Montana 59521, Grant Number: 99–1–0035–55–100–02	102,843	82,274	20,569	28,390	22,712	5,678
Confederated Salish & Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855, Grant Number: 99–1–0031–55–096–02	258,577	206,862	51,715	69,217	55,374	13,843
Crow Indian Tribe, P.O. Box 159, Crow Agency, Montana 59022, Grant Number: 99–1–0030–55–095–02	217,173	173,738	43,435	77,418	61,934	15,484
Fort Belknap Indian Community, P.O. Box 249, Harlem, Montana 59526, Grant Number: 99–1–0032–55–097–02	82,911	66,329	16,582	34,789	27,831	6,958
Montana United Indian Association, P.O. Box 6043, Helena, Montana 59604, Grant Number: 99–1–0074–55–127–02	445,897	356,718	89,179	0	0	0
Northern Cheyenne Tribe, P.O. Box 368, Lame Deer, Montana 59043, Grant Number: 99–1–0034–55–099–02	172,092	137,674	34,418	51,913	41,530	10,383
Indian Center, Inc., 1100 Military Road, Lincoln, Nebraska 68508, Grant Number: 99–1–2722–55–214–02	177,474	141,979	35,495	0	0	0
Nebraska Indian Inter-Tribal Dev. Corp., Route 1—Box 66–A, Winnebago, Nebraska 68071, Grant Number: 99–1–0087–55–134–02	321,886	257,509	64,377	52,363	41,890	10,473
Inter-Tribal Council of Nevada, P.O. Box 7440, Reno, Nevada 89510, Grant Number: 99–1–0058–55–118–02	345,479	276,383	69,096	65,972	52,778	13,194
Las Vegas Indian Center, Inc., 2300 West Bonanza Road, Las Vegas, Nevada 89106, Grant Number: 99–1–0687–55–176–02	96,683	77,346	19,337	0	0	0

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Grantee	PY 1993 title IV–A			PY 1992 II–B (summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Shoshone Paiute Tribes, P.O. Box 219, Owyhee, Nevada 89832, Grant Number: 99–1–2723–55–215–02	170,243	136,194	34,049	18,386	14,709	3,677
Powhatan Renape Nation, Rankokus Reservation—P.O. Box 225, Rankokus, New Jersey 08073, Grant Number: 99–1–3222–55–233–02	305,885	244,708	61,177	0	0	0
Alamo Navajo School Board, P.O. Box 907, Magdalena, New Mexico 87825, Grant Number: 99–1–2724–55–216–02	79,955	63,964	15,991	17,034	13,627	3,407
All Indian Pueblo Council, Inc., 3939 San Pedro, NE—Suite D P.O. Box 3256, Albuquerque, New Mexico 87190, Grant Number: 99–1–3341–55–241–02	132,057	105,646	26,411	64,621	51,697	12,924
Eight Northern Indian Pueblo Council, P.O. Box 969, San Juan Pueblo, New Mexico 87566, Grant Number: 99–1–3223–55–234–02	82,304	65,843	16,461	38,123	30,498	7,625
Five Sandoval Indian Pueblos, Inc., P.O. Box 580, Bernalillo, New Mexico 87004, Grant Number: 99–1–3336–55–239–02	123,953	99,162	24,791	65,251	52,201	13,050
Jicarilla Apache Tribe, P.O. Box 507, Dulce, New Mexico 87528–0507, Grant Number: 99–1–2725–55–217–02	55,766	44,613	11,153	29,832	23,866	5,966
Mescalero Apache Tribe, P.O. Box 227, Mescalero, New Mexico 88340, Grant Number: 99–1–3100–55–226–02	77,873	62,298	15,575	29,021	23,217	5,804
National Indian Youth Council, 318 Elm Street SE, Albuquerque, New Mexico 87102, Grant Number: 99–1–0077–55–130–02	740,018	592,014	148,004	0	0	0
Pueblo of Acoma, P.O. Box 469, Pueblo of Acoma, New Mexico 87034, Grant Number: 99–1–2199–55–204–02	104,534	83,627	20,907	39,565	31,652	7,913
Pueblo of Laguna, P.O. Box 194, Laguna, New Mexico 87026, Grant Number: 99–1–1583–55–191–02	78,458	62,766	15,692	55,428	44,432	11,086
Pueblo of Taos, P.O. Box 1846, Taos, New Mexico 87571, Grant Number: 99–1–2200–55–205–02	33,649	26,919	6,730	12,077	9,662	2,415
Pueblo of Zuni, P.O. Box 339, Zuni, New Mexico 87237, Grant Number: 99–1–0021–55–089–02	300,057	240,046	60,011	122,482	97,986	24,496
Ramah Navajo School Board, Inc., Drawer 10, Pine Hill, New Mexico 87357, Grant Number: 99–1–0146–55–143–02	95,810	76,648	19,162	22,351	17,881	4,470
Santa Clara Indian Pueblo, P.O. Box 580, Espanola, New Mexico 87532, Grant Number: 99–1–3224–55–235–02	20,060	16,048	4,012	5,408	4,326	1,082
Santo Domingo Tribe, P.O. Box 99, Santo Domingo, New Mexico 87052, Grant Number: 99–1–1781–55–196–02	130,617	104,494	26,123	39,565	31,652	7,913
American Indian Community House, Inc., 404 Lafayette Street, 2nd Floor, New York City, New York 10003, Grant Number: 99–1–0348–55–159–02	801,056	640,845	160,211	2,974	2,379	595
Native American Cultural, Center, Inc., 1475 Winton Road North—Suite 12, Rochester, New York 14609, Grant Number: 99–1–3407–55–246–02	294,169	235,335	58,834	6,940	5,552	1,388
Native American Comm. Svcs. of Erie & Niagara Ctys. 1047 Grant Street (Rear)—P.O. Box 86, Buffalo, New York 14207–0086, Grant Number: 99–1–0689–55–177–02	238,573	190,858	47,715	9,734	7,787	1,947
St. Regis Mohawk Tribe, Community Building, Hogansburg, New York 13655, Grant Number: 99–1–0522–55–171–02	170,176	136,141	34,035	26,407	21,126	5,281
Seneca Nation of Indians, 1490 Route 438, Irving, New York 14081, Grant Number: 99–1–0169–55–146–02	316,446	253,157	63,289	52,003	41,602	10,401
Cumberland County Assoc. For Ind. People, 102 Indian Drive, Fayetteville, North Carolina 28301, Grant Number: 99–1–1782–55–197–02	129,516	103,613	25,903	0	0	0
Eastern Band of Cherokee Indians, P.O. Box 481, Cherokee, North Carolina, Grant Number: 99–1–0003–55–075–02	244,106	195,285	48,821	82,916	66,333	16,583
Guilford Native American Assoc. P.O. Box 5623, 400 Prescott Street, Greensboro, North Carolina 27435–0623, Grant Number: 99–1–2727–55–219–02	98,445	78,756	19,689	0	0	0
Haliwa-Saponi Tribe, Inc., P.O. Box 99, Hollister, North Carolina 27844, Grant Number: 99–1–3514–55–247–02	68,613	54,890	13,723	0	0	0
Lumbee Reg. Dev. Assoc., P.O. Box 68, Pembroke, North Carolina 28372–0068, Grant Number: 99–1–0067–55–123–02	1,330,526	1,064,421	266,105	0	0	0
Metrolina Native American Assn., 2[illegible]01–A East Seventh Street, Charlotte, North Carolina 28204, Grant Number: 99–1–2726–55–218–02	100,617	80,494	20,123	0	0	0
North Carolina Comm. of Ind. Affairs, 325 North Salisbury Street, Suite 579, Raleigh, North Carolina 27603–5940, Grant Number: 99–1–0070–55–124–02	327,998	262,398	65,600	0	0	0
Devils Lake Sioux Tribe, P.O. Box 359, Fort Totten, North Dakota 58335, Grant Number: 99–1–0037–55–101–02	122,581	98,065	24,516	36,862	29,490	7,372
Standing Rock Sioux Tribe, Box D, Forth Yates, North Dakota 58538, Grant Number: 99–1–0046–55–109–02	256,530	205,224	51,306	89,585	71,668	17,917
Three Affiliated Tribes—Fort Berthold Reservation, Box 597, New Town, North Dakota 58763, Grant Number: 99–1–0062–55–120–02	173,375	138,700	34,675	53,265	42,612	10,653
Turtle Mountain Band of Chippewa Indians, P.O. Box 900, Belcourt, North Dakota 58316, Grant Number: 99–1–0075–55–128–02	348,603	278,882	69,721	104,096	83,277	20,819
United Tribes Tech. College, 3315 University Drive, Bismarck, North Dakota 58511, Grant Number: 99–1–0206–55–155–02	175,857	140,686	35,171	0	0	0
North American Indian Cultural Centers, 1062 Triplette Boulevard, Akron, Ohio 44306, Grant Number: 99–1–3349–55–242–02	743,852	595,082	148,770	0	0	0
Caddo Tribe of Oklahoma, P.O. Box 487, Binger, Oklahoma 73009, Grant Number: 99–1–1783–55–198–02	28,645	22,916	5,729	11,807	9,446	2,361
Central Tribes of the Shawnee Area, Inc., 121 West 45th Street, Shawnee, Oklahoma 74801, Grant Number: 99–1–0038–55–102–02	82,987	66,390	16,597	47,046	37,637	9,409

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Grantee	PY 1993 title IV-A			PY 1992 II-B (summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465, Grant Number: 99-1-0027-55-093-02	1,449,827	1,159,862	289,965	706,319	565,055	141,264
Cheyenne-Arapaho Tribes, P.O. Box 38, Concho, Oklahoma 73022, Grant Number: 99-1-0048-55-111-02	194,702	155,762	38,940	88,414	70,731	17,683
Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820, Grant Number: 99-1-0042-55-105-02	388,708	310,966	77,742	180,703	144,562	36,141
Choctaw Nation of Oklahoma, Drawer 1210, Durant, Oklahoma 74702-1210, Grant Number: 99-1-0041-55-104-02	791,625	633,300	158,325	317,425	253,940	63,485
Citizens Band Potowatomi Indians, 1901 South Gordon Cooper Drive, Shawnee, Oklahoma 74801, Grant Number: 99-1-2202-55-206-02	196,180	156,944	39,236	148,348	118,678	29,670
Comanche Indian Tribe of Oklahoma, P.O. Box 908, Lawton, Oklahoma 73502, Grant Number: 99-1-3150-55-228-02	161,450	129,160	32,290	114,280	91,424	22,856
Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447, Grant Number: 99-1-0025-55-091-02	589,904	471,923	117,981	341,398	273,118	68,280
Four Tribes Consortium of Oklahoma, P.O. Box 1193, Anadarko, Oklahoma 73005, Grant Number: 99-1-2728-55-220-02	74,002	59,202	14,800	35,420	28,336	7,084
Inter-Tribal Council of N.E. Oklahoma, P.O. Box 1308, Miami, Oklahoma 74355, Grant Number: 99-1-1135-55-183-02	51,716	41,373	10,343	34,428	27,542	6,886
Kiowa Tribe of Oklahoma, P.O. Box 369, Carnegie, Oklahoma 73015, Grant Number: 99-1-0047-55-110-02	209,626	167,701	41,925	81,744	65,395	16,349
Oklahoma Tribal Assistance Program, Inc., P.O. Box 2841—1806 East 15th, Tulsa, Oklahoma 74101, Grant Number: 99-1-0072-55-125-02	342,231	273,785	68,446	187,553	150,042	37,511
Osage Tribal Council, 813 Grandview, Pawhuska, Oklahoma 74056, Grant Number: 99-1-0022-55-090-02	104,484	83,587	20,897	73,273	58,618	14,655
Otoe-Missouria Indian Tribe of Okla., P.O. Box 62—Route 1, Red Rock, Oklahoma 74651, Grant Number: 99-1-2730-55-221-02	37,084	29,667	7,417	20,008	16,006	4,002
Pawnee Tribe of Oklahoma, P.O. Box 470, Pawnee, Oklahoma 74058, Grant Number: 99-1-1785-55-200-02	23,588	18,870	4,718	15,592	12,474	3,118
Ponca Tribe of Oklahoma, White Eagle—Box 2, Ponca City, Oklahoma 74601, Grant Number: 99-1-0029-55-094-02	55,617	44,494	11,123	46,054	36,843	9,211
Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, Oklahoma 74884, Grant Number: 99-1-0051-55-113-02	148,895	119,116	29,779	64,170	51,336	12,834
Tonkawa Tribe of Oklahoma, P.O. Box 70, Tonkawa, Oklahoma 74653, Grant Number: 99-1-1136-55-184-02	43,928	35,142	8,786	45,153	36,122	9,031
United Urban Indian Council, 1501 Classen Blvd., Suite 200, Oklahoma City, Oklahoma 73106-5435, Grant Number: 99-1-2731-55-222-02	308,322	246,658	61,664	210,625	168,500	42,125
Confed. Tribes of Siletz Indians, P.O. Box 549, Siletz, Oregon 97380, Grant Number: 99-1-3153-55-229-02	614,455	491,564	122,891	13,249	10,599	2,650
Confed. Tribes of the Umatilla Ind, Res., P.O. Box 638, Pendleton, Oregon 97801, Grant Number: 99-1-3065-55-225-02	45,584	36,467	9,117	15,682	12,546	3,136
Confederate Tribes of Warm Springs, P.O. Box C—Tenino Road, Warm Springs, Oregon 97761, Grant Number: 99-1-0256-55-157-02	96,198	76,958	19,240	40,737	32,590	8,147
Organization of Forgotten Americans, P.O. Box 1257, 4509 South 6th Street, Suite 206, Klamath Falls, Oregon 97601-0276, Grant Number: 99-1-2732-55-223-02	447,413	357,930	89,483	3,966	3,173	793
Council of Three Rivers, 200 Charles Street, Pittsburgh, Pennsylvania 15238, Grant Number: 99-1-0642-55-172-02	710,347	568,278	142,069	0	0	0
United Am. Indians of the Del. Valley, 225 Chestnut Street, Philadelphia, Pennsylvania 19106, Grant Number: 99-1-0477-55-163-02	203,082	162,466	40,616	0	0	0
Rhode Island and Indian Council, 444 Friendship St., Providence, Rhode Island 02907, Grant Number: 99-1-0510-55-169-02	392,620	314,096	78,524	0	0	0
Catawba Indian Nation, P.O. Box 957, Rock Hill, South Carolina, 29731, Grant Number: 99-1-3516-55-249-02	271,266	217,013	54,253	10,995	8,796	2,199
Cheyenne River Sioux Tribe, P.O. Box 837, Eagle Butte, South Dakota 57625, Grant Number: 99-1-0039-55-103-02	232,091	185,673	46,418	79,221	63,377	15,844
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, South Dakota 57548, Grant Number: 99-1-0073-55-126-02	58,817	47,054	11,763	13,879	11,103	2,776
Oglala Sioux Tribe, P.O. Box G, Pine Ridge, South Dakota 57770, Grant Number: 99-1-0043-55-106-02	732,458	585,966	146,492	217,655	174,124	43,531
Rosebud Sioux Tribe, Box 430, Rosebud, South Dakota 57570, Grant Number: 99-1-0044-55-107-02	433,858	347,086	86,772	110,675	88,540	22,135
Sisseton-Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, South Dakota 57262, Grant Number: 99-1-0045-55-108-02	168,979	135,183	33,796	46,866	37,493	9,373
United Sioux Tribes Dev. Corp., P.O. Box 1193, Pierre, South Dakota 57501, Grant Number: 99-1-0165-55-144-02	717,765	574,212	143,553	61,106	48,885	12,221
Native American Indian Association, 211 Union Street, Suite 932, Stahlman Building, Nashville, Tennessee 37501, Grant Number: 99-1-3515-55-248-02	345,964	276,771	69,193	0	0	0
Alabama—Coushatta Indian Tribal Council, Route 3—Box 640, Livingston, Texas 77351, Grant Number: 99-1-1784-55-199-02	672,464	537,971	134,493	5,137	4,110	1,027
Dallas Inter-Tribal Center, 209 East Jefferson Blvd., Dallas, Texas 75203-2690, Grant Number: 99-1-0078-55-131-02	275,974	220,779	55,195	0	0	0
Tigua Indian Tribe, 119 South Old Pueblo Road—Ysleta Station, El Paso, Texas 79917, Grant Number: 99-1-2099-55-202-02	459,335	367,468	91,867	11,266	9,013	2,253
Indian Center Employment Services, Inc., 1865 South Main, Suite 1, Salt Lake City, Utah 84115, Grant Number: 99-1-3517-55-250-02	421,652	337,322	84,330	0	0	0

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Grantee	PY 1993 title IV–A			PY 1992 II–B (summer 1992)		
	Total	Program	Cost pool	Total	Program	Cost pool
Ute Indian Tribe, P.O. Box 190, Fort Duchesne, Utah 84026, Grant Number: 99–1–0049–55–112–02	75,780	60,624	15,156	33,978	27,182	6,796
Abenaki Self-Help Assn./N.H.Ind. Counc., Box 276, Swanton, Vermont 05488, Grant Number: 99–1–3064–55–224–02	112,287	89,830	22,457	0	0	0
Mattaponi Pamunkey Monacan Consortium, Route 2—P.O. Box 360, King William, Virginia 23068, Grant Number: 99–1–3227–55–236–02	243,691	194,953	48,738	1,532	1,226	306
American Indian Community Center, East 905 Third Avenue, Spokane, Washington 99202, Grant Number: 99–1–1138–55–186–02	724,539	579,631	144,908	113,829	91,063	22,766
Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155, Grant Number: 99–1–1726–55–192–02	205,538	164,430	41,108	48,218	38,574	9,644
Lummi Indian Business Council, 2616 Kwina Road, Bellingham, Washington 98225, Grant Number: 99–1–2204–55–256–02	45,096	36,077	9,019	19,107	15,286	3,821
N.W. Inter-Tribal Council, P.O. Box 115, Neah Bay, Washington 98357, Grant Number: 99–1–0069–55–174–02	46,795	37,436	9,359	31,544	25,235	6,309
Puyallup Tribe of Indians, 2002 East 28th St., Tacoma, Washington 98404, Grant Number: 99–1–1137–55–185–02	165,942	132,754	33,188	19,197	15,358	3,839
Seattle Indian Center, 611 12th Avenue South—Suite 300, Seattle, Washington 98144, Grant Number: 99–1–0511–55–170–02	434,713	347,770	86,943	0	0	0
Western Wash. Ind. Empl. and Trng. Prog., 4505 Pacific Highway East, Suite C–1, Tacoma, Washington 98424, Grant Number: 99–1–1933–55–201–02	874,487	699,590	174,897	125,906	100,725	25,181
Lac Courte Oreilles Tribal Governing Board, Route 2, Box 2700, Hayward, Wisconsin 54843, Grant Number: 99–1–0018–55–087–02	98,514	78,811	19,703	24,604	19,683	4,921
Lac Du Flambeau Band of Lake Superior Chippewa, P.O. Box 67, Lac Du Flambeau, Wisconsin 54538, Grant Number: 99–1–1139–55–187–02	47,431	37,945	9,486	18,927	15,142	3,785
Menominee Indian Tribe, P.O. Box 397, Keshena, Wisconsin 54135–0397, Grant Number: 99–1–0013–55–084–02	75,243	60,194	15,049	46,145	36,916	9,229
Milwaukee Area Am. Ind. Manpower Counc., 634 West Mitchell Street, Milwaukee, Wisconsin 53204–3512, Grant Number: 99–1–0227–55–156–02	1,348,696	1,078,957	269,739	0	0	0
Oneida Tribe of Indians of Wis., Inc., P.O. Box 365–N 7210 Seminary Road, Oneida, Wisconsin 54115–0365, Grant Number: 99–1–0015–55–085–02	206,774	165,419	41,355	30,553	24,442	6,111
Stockbridge-Munsee Community, Route 1, Bowler, Wisconsin 54416, Grant Number: 99–1–0500–55–167–02	62,846	50,277	12,569	9,103	7,282	1,821
Wisconsin Indian Consortium, P.O. Box 181, Odanah, Wisconsin 54861, Grant Number: 99–1–2207–55–207–02	92,387	73,910	18,477	25,686	20,549	5,137
Wisconsin-Winnebago Business Committee, P.O. Box 667–127 Main Street, Black River Falls, Wisconsin 54615, Grant Number: 99–1–0019–55–088–02	200,589	160,471	40,118	14,600	11,680	2,920
Shoshone/Arapahoe Tribes, P.O. Box 920, Fort Washakie, Wyoming 82514, Grant Number: 99–1–0050–55–252–02	225,999	180,799	45,200	68,856	55,085	13,771
National Total	61,871,000	49,496,800	12,374,200	12,419,308	9,935,448	2,483,860

[FR Doc. 93–1190 Filed 1–15–93; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products; Correction

In notice document 92–30841 beginning on page 60538 in the issue of Monday, December 21, 1992, make the following corrections:

On page 60539, remove the entries under the heading "18 Electric motor driven equipment and accessories" which read "12 Approval—Shearer Evaluation" including the corresponding fees and "14 Approval Extension—Shearer Evaluation" including the corresponding fees.

On page 60540, in the last column of the table under "18 Electric motor driven equipment and accessories: 45 Shearer Evaluation", the "Application fee" should read "$100". On the same page, in the last column of the table under "18 Electric motor driven equipment and accessories: 46 Shearer Evaluation Extension", the "Application fee" should read "$100".

Dated: January 8, 1993.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 93-1044 Filed 1–15–93; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–3; Exemption Application No. D–9095, et al.]

Grant of Individual Exemptions; Clow Stamping Company 401(k) Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations

contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Clow Stamping Company 401(k) Plan (the Plan)

Located in Merrifield, Minnesota

[Prohibited Transaction Exemption 93–3; Exemption Application No. D–9095]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) an interest-free loan to the Plan (the Loan) by Clow Stamping Company, Inc., the sponsor of the Plan, with respect to the Plan's proportionate interest in guaranteed investment contract number CG0121403A (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Loan (the Repayment); provided that the following conditions are satisfied:

(a) No interest and/or expenses are paid by the Plan;

(b) The loan is made only in lieu of payments due from Executive Life under the terms of the GIC;

(c) The Repayment is restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Executive Life and/or any other responsible third party with respect to the GIC, and no other Plan assets are used to make the Repayments; and

(d) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

For a more complete statement of the facts and represents supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 19, 1992 at 57 FR 54616.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Buckeye Pipe Line Company

Retirement and Savings Plan (the Plan)

Located in Emmaus, Pennsylvania

[Prohibited Transaction Exemption No. 93–4; Exemption Application No. D–8950]

Exemption

The restrictions of section 406(a), 406 (b)(1) & (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the sale by the Plan to Buckeye Pipe Line Company (the Employer), the sponsor of the Plan, of (a) guaranteed investment contract no. GA–CG01332A3A (the GIC), issued by Executive Life Insurance Company of California (Executive Life), or (b) the Plan's right to receive all proceeds paid by Executive Life, its conservator, any state guaranty fund or any other third parties making any payment with respect to the GIC (the Assignment); (2) the extension of credit by the Employer to the Plan as advances (the Advances) with respect to the GIC; and (3) the Plan's potential repayment of the Advances; provided that the following conditions are satisfied:

(A) The Plan receives a purchase price for the GIC or the Assignment which is not less than the fair market value of the GIC as of the date of the purchase;

(B) The Advances are made solely to fund the payment of benefits by the Plan;

(C) All Advances made prior to any purchase of the GIC or the Assignment will be credited toward the purchase price;

(D) Repayment of the Advances is limited to the amounts received by the Plan from all sources, including the purchase price for the GIC or the Assignment, with respect to the GIC (the GIC Proceeds);

(E) Repayment of the Advances is waived with respect to the amount by which the Advances exceed the GIC Proceeds;

(F) No repayment shall be made to the Employer unless and until the Plan has received GIC Proceeds in a total amount equal to the maturity value of the GIC, as described in the Notice of Proposed Exemption; and

(G) Any GIC Proceeds in excess of the purchase price of the GIC or the Assignment, plus five percent, are paid to or retained by the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 19, 1992 at 57 FR 54613.

EFFECTIVE DATE: This exemption is effective as of December 30, 1991.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Tooze, Shenker, Holloway & Duden

Profit Sharing Plan (the Plan)

Located In Portland, Oregon

[Prohibited Transaction Exemption 93–5; Exemption Application No. D–9077]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a loan of money to Arden E. Shenker, a party in interest with respect to the Plan, from his individual account in the Plan, provided that the following conditions are met:

1. The terms of the loan are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party;
2. The loan does not exceed 25 percent of the assets of the individual account throughout the term of the loan;
3. The loan is secured through a promissory note and a perfected security agreement;
4. The fair market value of the collateral securing the loan is established by an independent real estate appraiser; and
5. The collateral is maintained throughout the loan term at no less than 150 percent of the balance on the loan.

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For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 19, 1992, at 57 FR 54615.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the exployer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of January, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–1172 Filed 1–15–93; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–9012, et al.]

Proposed Exemptions; Digital Wizards, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Digital Wizards, Inc. Profit Sharing Plan (the Plan)

Located in San Diego, California

[Application No. D–9012]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain limited partnership interests (the Property) by the Plan to Digital Wizards, Inc., the sponsoring employer (the Employer) and a party in interest with respect to the Plan, provided that the Plan incurred no fees, commissions, or other expenses in connection with the Sale, and (2) the Plan received as consideration from the Sale no less then the fair market value of the Property as determined by a qualified, independent securities broker/dealer, as of the date of the Sale.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of July 1, 1991.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with individual accounts for each of its 65 participants and total assets of $653,320.93, as of December 31, 1991. The fiduciaries of the Plan are three individuals: Stephen E. Stamper, who is president of the Employer, and Roberta N. Fender and David R. Duke, who are vice presidents of the Employer.

The Employer is a California corporation, which is located in San Diego, California. Three individuals own 81.65 percent of the shares of stock issued by the Employer, and the remaining 18.35 percent of the shares are owned by 8 other individuals. The Employer designs and sells software computer programs for specific applications pursuant to contracts with individual purchasers.

2. The Property is 100 units of limited partnership interests (the Units) in Guaranteed Hotel Investors 1985, L.P., a Delaware limited partnership (the Limited Partnership). The general partner of the Limited Partnership is FFCA Management Company, a Delaware limited partnership located in Phoenix, Arizona, which has two general partners: Franchise Finance Corporation of America, a Delaware corporation and M.H. Fleischer, who is President, Treasurer, and a Director of Franchise Finance Corporation of America.

The Limited Partnership acquired and leased three parcels of land located, respectively, in Irving, Texas, Fort Lauderdale, Florida, and Tampa, Florida. In addition, the Limited Partnership provided permanent financing for the hotel buildings located on the three parcels and supplied financing for the fixtures, furniture, and equipment of each of the hotels. The owner of the hotels is Woolley/Sweeney Partnership, which is owned by Robert E. Woolley and Charles Sweeney.

The applicant represents that the Plan purchased the Units on May 9, 1986, as an investment, at the price of $500 per unit or for the total consideration of $50,000. The Units were acquired by the Plan from a public offering by Franchise Financial Management Corporation (FFMC) through E.F. Hutton & Company, Inc., as sales agent, on a best efforts basis. The applicant represents that FFMC is a Delaware corporation that is not related to the Employer; and also represents that no fiduciaries of the Plan or its participants have been shareholders, directors, officers, or employees of FFMC.

3. The applicant represents that the fiduciaries of the Plan were initially motivated early in 1991 to divest the Units from the Plan when the Plan implemented a new cash or deferred compensation program in conformity with section 401(k) of the Code. A new Plan Administrator was also engaged on behalf of the Plan. The new 401(k) program required that each participant of the Plan be provided periodically with a detailed summary of his or her entire interests in the assets of the Plan. Since the Units were not actively traded and could not be readily tracked and valued by reference to a published listing of trading activity, the new Plan Administrator determined that it would not be able to periodically report to the participants of the Plan the value of the Units in the same manner as other assets of their individual accounts in the Plan. The usefulness of the periodic reports to the Plan participants, the applicant represents, depends upon completeness and accuracy which could not be provided except for the Plan incurring an exorbitant expense.

The applicant represents that the conclusive motivation to divest the Units from the Plan was determined by the fiduciaries early in 1991 when they received adverse information regarding the Limited Partnership. The information received reflected that there had been a decline in value of the Units and that operations of the Limited Partnership had experienced debilitating changes and unfavorable performances. The annual report for 1990 of the Limited Partnership and its quarterly report for the first three months of 1991 reported that the hotel owners, Woolley/Sweeney Partnership, had not renewed bank letters of credit for a total of $10,000,000. These letters of credit provided security to the financial position of the Limited Partnership. In addition, the applicant represents that the hotel owners underlying agreements with the Limited Partnership were not complied with when the franchise agreement between the hotel owners and the Embassy Suites Hotel System was changed, without prior approval of the Limited Partnership, to a new hotel system, Crown Sterling Suites. The quarterly report for the first three months of 1991 describes how the owners of the hotels failed to make scheduled quarterly interest and rental payments to the Limited Partnership. Normally these quarterly payments provided distributions to the investors in the Limited Partnership. The inability to make the quarterly payments by the hotel owners resulted in a draw on the letters of credit for the payment to investors in the Limited Partnership for the quarter ending June 30, 1991. Because the proceeds from the letters of credit would also be needed to pay obligations on the mortgages on the land and hotels, the possibility of distributions to be paid to investors in the future by the Limited Partnership became questionable in the judgment of the fiduciaries of the Plan.

The fiduciaries of the Plan also learned in the early part of 1991 that the value of the Units were declining in value. Shearson Lehman Brothers, Inc. (Shearson), an American Express Company subsidiary, at the request of the fiduciaries of the Plan, determined, as of May 24, 1991, that the value of the Units had declined from the original price of $500 per unit and trading activity reflected that Units traded at $305 per unit. Shearson also advised the fiduciaries of the Plan that selling the Units in the secondary market would take three months or more and the market price at a later date would probably be lower than the price the Employer was offering to pay.[1]

4. On July 1, 1991, the Units were sold for cash by the Plan to the Employer for the sum of $33,550 or for $335.50 per unit, as the Employer desired to pay the Plan a price that was 10 percent greater than the current fair market value of the Units. The Plan incurred no fees, commissions or other expenses from the Sale or the application for exemption from the prohibited transaction provisions of the Act. The applicant represents that the transaction was undertaken by the fiduciaries after a determination was made that it was in the best interests of the Plan and its participants and beneficiaries. This determination was predicated upon consideration given to the changes in the operation of the hotels located on the three parcels leased from the Limited Partnership and the cessation of income from the Property after December 31, 1990; and the continued decline in the market value of the Units, as determined by Shearson, an independent broker. The applicant further represents that the transaction enabled the Plan to divest itself of an asset which has limited potential for appreciation and to reinvest in more productive investments.[2]

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

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[1] Also, Shearson reported that trading activity reflected that the price of the Units declined to $247.37 during the last quarter of 1991.

[2] In this proposed exemption, the Department expresses no opinion as to whether the acquisition or holding of the Units violated any provision of part 4 of title I of the Act.

(a) The Plan received cash for its interests in the Property as of the date of the Sale in an amount that exceeded the fair market value as determined by an independent broker;

(b) The transaction enabled the Plan to avoid any risk from the continued holding of the Property and permitted the cash received from the Sale to be placed in other investments;

(c) The Plan incurred no expenses with respect to the transaction; and

(d) The fiduciaries of the Plan determined that the Sale to the Employer was in the best interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Ophthalmic Associates, P.A. Employees' Money Purchase Pension Plan (the Ophthalmic Money Purchase Plan) Located in Lansdale, Pa

[Application No. D–9205]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) shall not apply to the proposed sale by the Ophthalmic Money Purchase Plan to TJS Realty (the Ophthalmic Partnership), a party in interest, for the total cash consideration of $552,500, of a fee simple interest in one of two office condominiums (the Condominium Interest) that will be partitioned from certain improved real property (the Property), provided (1) the sale is a one-time transaction for cash, (2) the Ophthalmic Money Purchase Plan is not required to pay any real estate fees or commissions in connection therewith, (3) the fair market value of the Condominium Interest is determined by a qualified, independent appraiser; and (4) the designated independent fiduciary approves of the subject transaction.

Preamble

On June 25, 1982, the Department granted Prohibited Transaction Exemption (PTE) 82–103 at 47 FR 27645. PTE 82–103 permitted the Ophthalmic Associates, P.A. Employees' Pension Plan (the Ophthalmic Pension Plan) and the Pearlstine-Salkin Associates Employees Pension Plan (the Pearlstine Pension Plan)[3] to purchase, as tenants in common, 50 percent interests in a two story office building located at 1000 N. Broad Street, Lansdale, Pennsylvania. The sellers of the Property were Ophthalmic Investors Associates (Ophthalmic Investors), a partnership formed by certain principals of Ophthalmic Associates (Ophthalmic), a professional medical corporation engaged in the practice of ophthalmology, and Pearlstine, Salkin, Hardison and Robinson (Pearlstine-Salkin), a professional corporation of attorneys which provides legal services to Ophthalmic and to the plans it has sponsored. The sales price for the Property, as based upon its independently appraised value, was $900,000.

On July 1, 1982, the Ophthalmic Pension Plan and the Pearlstine Pension Plan each made a cash downpayment of $100,000 to Ophthalmic Investors. Both plans took the Property subject to an existing mortgage in the original principal amount of $550,000 and an additional loan of $75,000 (the First Mortgage and the Addendum) which had been entered into by Ophthalmic Investors and an unrelated party. The First Mortgage and the Addendum carried interest rates of 6½ percent and 9½ percent, respectively, and matured on February 1, 1989. Such loans, which were secured by the Property, had a combined outstanding balance of $401,074 as of July 1, 1982.

Although the Ophthalmic and Pearlstine Pension Plans were not required to assume the obligations of Ophthalmic Investors pursuant to the First Mortgage and the Addendum, they were required to make loan payments. Both plans also entered into a second mortgage (the Second Mortgage) in the original principal amount of $298,926 with Ophthalmic Investors for the balance of the sale price. The Second Mortgage was to be repaid over a ten year period commencing on July 1, 1982 and ending on June 30, 1992 at an annual interest rate of 10½ percent. The Second Mortgage was also secured by the Property.

In addition, PTE 82–103 permitted the leasing of the Property (the Lease) by the plans to Pearlstine-Salkin Ophthalmic Associated Investors (PSO), a party in interest. The Lease is a triple-net lease which initially provided for a term of ten years that coincided with the duration of the Second Mortgage. The Lease contains one renewal option for a term of five years. Upon the execution of the Lease, PSO began subleasing portions of the Property to Pearlstine-Salkin, Ophthalmic and CBS Optical, a party in interest.

To effectuate Ophthalmic's desire to terminate the Ophthalmic Pension Plan because of benefit restrictions imposed by the Tax Reform Act of 1986, the Department granted PTE 89–94 on October 31, 1989 at 54 FR 45187. PTE 89–94 permitted the unilateral and gratuitous transfer by the Ophthalmic Pension Plan to the Ophthalmic Money Purchase Plan of a 50 percent interest in the Property plus cash and the assumption by the Ophthalmic Money Purchase Plan of the pre-existing loan, lease and sublease obligations of the Ophthalmic Pension Plan. The value of the transferred benefit was $1,083,144. This amount also represented the value of the accrued benefits of four participants in the Ophthalmic Pension Plan who elected to have their benefits transferred to the Ophthalmic Money purchase Plan.[4]

The applicants represent that payments due under the First Mortgage, the Addendum and the Second Mortgage were timely made by the parties and that there is presently no outstanding indebtedness. In addition, the applicants state that all rental payments under the Lease and the Subleases have been timely paid and rental adjustments have been in compliance with Lease/Sublease terms.

The transactions that are subject to PTEs 82–103 and 89–94 have been monitored by the National Bank of Boyerton (the Bank) located in Boyerton, Pennsylvania. The Bank currently serves as the independent fiduciary on behalf of the Ophthalmic Money Purchase Plan and the Pearlstine 401(k) Plan.

At present, the Ophthalmic Money Purchase Plan and the Pearlstine-Salkin Associates Profit Sharing and Salary Savings Plan and Trust (the Pearlstine 401(k) Plan)[5] lease half of the Property to PSO. In turn, PSO subleases this portion of the Property exclusively to Ophthalmic.[6] With respect to the remainder of the Property, the applicants state that PSO decided not to exercise its option to renew the Lease from the Plans as it affected that portion because PSO's former subtenant, Pearlstine-Salkin, did not wish to sublease office space in the Property beyond the termination date of the initial Lease term. Thus, this portion of the Property has remained vacant and is available for sale or leasing to unrelated parties.

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[3] It is represented that none of the plans described herein is a party in interest with respect to the other within the meaning of section 3(14) of the Act.

[4] The applicants state that six participants actually elected to have their benefits transferred to the Ophthalmic Money Purchase Plan. Thus, the total transferred benefit was $1,385,780 and not $1,083,144.

[5] In 1985, the Pearlstine 401(k) Plan replaced the Pearlstine Pension Plan and became the other holder of the 50 percent tenant-in-common interest in the Property.

[6] CBS Optical, a former sublessee, was merged into Ophthalmic and therefore no longer subleases space in the Property.

On January 27, 1992, the Department published a notice of proposed exemption (the Notice) on behalf of the Ophthalmic Money Purchase Pension Plan at 57 FR 3268. The Notice would permit such plan to sell its 50 percent interest in the Property to the Ophthalmic Partnership. During the comment period, the applicants informed the Department of a change to the Notice. Specifically, the applicants explained that the Plan's 50 percent tenant-in-common interest in the Property would be converted into a fee simple interest in one of two condominium units that would be configured from the Property prior to the proposed sale. The applicants further explained that the reason for the conversion was to allow the Ophthalmic Partnership to obtain third party financing which would have been difficult to secure had the Ophthalmic Partnership acquired a 50 percent tenant-in-common interest in the Property and then attempted to pledge such interest as security for the loan.

Due to the material nature of the change disclosed in the applicants' comment letter, the Department withdrew the Notice from the **Federal Register** on July 31, 1992 at 57 FR 33978. As described below, the applicants request an administrative exemption from the Department which would allow the Ophthalmic Money Purchase Plan to sell its Condominium Interest in the Property to the Ophthalmic Partnership. With respect to the Condominium Interest that will be held by the Pearlstine 401(k) Plan, the applicants propose to sell or lease such interest to an unrelated party. Therefore, no exemptive relief is being requested.

Summary of Facts and Representations

1. The Ophthalmic Money Purchase Plan is a defined contribution plan covering participants of Ophthalmic and CBS Optical. As of December 31, 1991, the Ophthalmic Money Purchase Plan had total assets of $2,702,630. As of October 26, 1992, the Ophthalmic Money Purchase Plan had 28 participants. The Trustees of the Ophthalmic Money Purchase Plan are Drs. Robert V. Connor, Louis Schwartz and Thaddeus S. Nowinski. These individuals are the principal shareholders of Ophthalmic as well as the decision-makers with respect to this Plan's assets.

2. Tentatively called "TJS Realty," the Ophthalmic Partnership will be a real estate partnership comprised of Drs. Schwartz and Norwinski and Dr. Joseph J. Kesselring, a principal of Ophthalmic. The Ophthalmic Partnership, which will be formed upon the granting of the exemptive relief described herein, will have an indefinite duration and it will occupy office space representing the Condominium Interest.

3. On May 10, 1990, the Board of Governors of Ophthalmic (the Board), by unanimous consent, adopted and approved an amendment to the Ophthalmic Money Purchase Plan which provided that no new participants would be admitted, all participants would be 100 percent vested in their accrued benefits and no additional benefits would accrue. Presently, the Board intends to terminate the Ophthalmic Money Purchase Plan because its maintenance does not comport with the revised business objectives of Ophthalmic. Once terminated, the assets of such plan will be liquidated and the benefits will be distributed to the participants.[7]

4. Accordingly, the Trustees request an administrative exemption from the Department to permit the Ophthalmic Money Purchase Plan to sell its interest in one of two condominium units that will be partitioned from the Property to the Ophthalmic Partnership. The Ophthalmic Money Purchase Plan's Condominium Interest consists of approximately 7,455 square feet of office space. The sales price for the Condominium Interest will be based upon its independently appraised value. Further, the Ophthalmic Money Purchase Plan will not be required to pay any real estate fees or commissions in connection with the proposed sale.[8] At the conclusion of the proposed sale, the Ophthalmic Partnership will then lease the Condominium Interest solely to Ophthalmic.

5. The Condominium Interest has been appraised by Mr. Ken L. Steigelman, C.C.I.M., S.I.O.R., S.R.S., A.S.A., an independent appraiser from Line Lexington, Pennsylvania. In an appraisal report dated May 27, 1992, Mr. Steigelman placed the fair market value of the Condominium Interest at $552,500. Mr. Steigelman will again value the Condominium Interest just prior to the proposed sale.

6. The Bank represents that other than serving as an independent fiduciary for the transactions exempted in PTEs 82-103 and 89-94, it has no ownership, debt, familial or business relationships with either the principals of Ophthalmic or Pearlstine-Salkin. The Bank states that it represents a variety of accounts as executor of estates, advises plan trustees regarding the investment and/or administration of plan assets and the preparation of reports to the Internal Revenue Service or the Department. The Bank also states that it acknowledges its duties, responsibilities and liabilities in acting as a fiduciary with respect to the Ophthalmic Money Purchase Plan.

7. The Bank believes that the proposed sale of the Condominium Interest is in the best interest of the Ophthalmic Money Purchase Plan and its participants and beneficiaries because of the favorable market price and market conditions that otherwise might not be available to a party who is not a party in interest. In addition, the Bank believes the proposed sale will allow the Ophthalmic Money Purchase Plan to distribute its assets to its participants and beneficiaries.

The Bank states that it has been apprised through Mr. Steigelman's appraisal that the sales price for the Condominium Interest reflects its fair market value. In this regard, the Bank asserts that Mr. Steigelman's use of the income, market and comparable sales approaches to valuation constitutes a "fair" valuation of the subject Condominium Interest.

As the independent fiduciary, the Bank states that it will monitor the proposed transaction on behalf of the Ophthalmic Money Purchase Plan and, if necessary, take any appropriate actions to safeguard such plan and its participants and beneficiaries.

8. In summary, it is represented that the proposed transaction will satisfy the criteria for an administrative exemption under section 408(a) of the Act because:

(a) The sale of the Condominium Interest by the Ophthalmic Money Purchase Plan to the Ophthalmic Partnership will be a one-time transaction for cash that will not result in the payment of real estate fees or commissions by the Ophthalmic Money Purchase Plan;

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[7] In this regard, the applicants represent that if the Ophthalmic Money Purchase Plan is terminated, participants will have the election to have annuities purchased on their behalf or to receive a lump sum distribution.

[8] After the proposed transaction is entered into, the Ophthalmic Partnership and the Pearlstine 401(k) Plan will each own Condominium Interests in the Property. The applicants represent that the Ophthalmic Partnership is not a party in interest with respect to the Pearlstine 401(k) Plan. The applicants state that the only connection between the Opthalmic Partnership and the Pearlstine 401(k) Plan is that Pearlstine-Salkin, which sponsors the Pearlstine 401(k) Plan also represents the Ophthalmic Partnership.

(b) The fair market value of the Condominium Interest has been determined by Mr. Steigelman, a qualified, independent appraiser;

(c) The Bank, as independent fiduciary, approves of the transaction and believes the sale is in the best interest of the Ophthalmic Money Purchase Plan and its participants and beneficiaries; and

(d) The sale of the Condominium Interest will allow the Trustees to terminate the Ophthalmic Money Purchase Plan and liquidate its assets.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Albert E. Suter Directed IRA Rollover Account (the IRA) Located in St. Louis, Missouri

[Application No. D–9223]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase on November 5, 1991 by the IRA of certain shares of Boatmen's Bancshares, Inc. common stock (the Stock) from Bradley J. Suter, a disqualified person with respect to the IRA, provided that the following conditions were met:

(a) The IRA purchased the Stock for cash at a price which was no more than the fair market value of the Stock at the time of the transaction;

(b) The IRA paid no commissions or other expenses in connection with the transaction; and

(c) The assets of the IRA involved in the transaction represented less than 25% of the total assets of the IRA at the time of the transaction.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective November 5, 1991.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described in section 408(a) of the Code, which is maintained by Albert E. Suter (Mr. Suter) of St. Louis, Missouri.[9] The trustee of the IRA is Boatmen's Trust Company (the Trust Company), a subsidiary of Boatmen's Bancshares, Inc. (BBI), located at 100 North Broadway in St. Louis, Missouri. Mr. Suter is the only participant in the IRA and directs investments for the assets in the IRA. As the November 1, 1991, the IRA had total assets of $240,918.

2. The Stock is common stock issued by BBI which is publicly-traded on the NASDAQ exchange. However, the applicant requests an exemption herein because the IRA purchased certain shares of the Stock directly from Mr. Suter's son, Bradley J. Suter (Bradley) on November 5, 1991. Bradley is the owner of a custodial account at the Trust Company identified as the Michaela S. Suter c/f Bradley F. Suter UGM/LAW/MO Custodian Account #51182–00–4 (Bradley's Account), which was established pursuant to the Missouri Uniform Gift to Minors Act. Bradley's Account owned 2000 shares of the Stock prior to the transaction. The applicant represents that Bradley wanted to divest himself of a portion of his investment in the Stock in order to meet certain cash requirements at the time of the transaction. Mr. Suter determined that the purchase of the Stock by the IRA would be an appropriate and prudent investment for the IRA's portfolio. The applicant states that Mr. Suter was unaware that the subject transaction would be prohibited under the Code.

3. The IRA purchased 622 shares of the Stock from Bradley's Account for $29,195. The purchase price for the Stock was determined by averaging the high and low selling price of the Stock as quoted on the NASDAQ exchange on the date of the transaction. The NASDAQ quotations stated that the high and low selling price for the Stock on November 5, 1991 was $47,375 and $46.5, respectively, which resulted in a selling price of $46.937 per share. The IRA transferred cash directly to Bradley's Account and Bradley's Account transferred the Stock directly to the IRA, as indicated by statements from the Trust Company. The applicant has provided copies of the *New York Times* for November 6, 1991 which indicate that the average market price for the Stock on November 5, 1991, based on quotations from the NASDAQ exchange, was the price the IRA paid for the Stock. The IRA paid no commissions or other expenses in connection with the transaction.

4. Mr. Suter became a member of the Board of Directors of BBI (the Board) on November 13, 1990—approximately one year prior to the purchase of the Stock by the IRA. The applicant states that Mr. Suter's appointment to the Board and his continuing service on the Board was not related in any way to the acquisition and holding of the Stock by the IRA. The applicant states further that the purchase of the Stock by the IRA did not enable Mr. Suter to achieve any personal financial objective unrelated to the interests of the IRA. Prior to the subject transaction, neither Mr. Suter nor any other disqualified person with respect to the IRA (other than Bradley) owned any shares of the Stock. Mr. Suter has not acquired any shares of the Stock outside of the IRA since the transaction. The purchase of the Stock from Bradley's Account represented approximately 12% of the total assets of the IRA as of the date of the transaction. The Stock acquired from Bradley's Account represented a de minimus percentage of the total outstanding shares of the Stock at the time of the transaction.

5. The applicant represents that the purchase of the Stock was an attractive investment opportunity which was in the best interests of the IRA. The IRA acquired the Stock without paying any brokerage commissions or other expenses which ordinarily would have been paid if the IRA had purchased the Stock on the open market. The applicant states that the purchase of the Stock from Bradley's Account was consistent with the investment objectives of the IRA.

6. In summary, the applicant represents that the transaction met the statutory criteria of section 4975(c)(2) of the Code because:

(a) The purchase of the Stock was a one-time transaction for cash

(b) The price paid by the IRA for the Stock was no greater than the fair market value of the Stock on the date of the transaction, based on quotations from the NASDAQ exchange;

(c) No sales commissions or other expenses were paid by the IRA in connection with the transaction;

(d) The acquisition of the Stock by the IRA involved only approximately 12% of the IRA's total assets; and

(e) Mr. Suter, who was the only participant affected by the transaction, believed that the transaction was appropriate for the IRA as an investment for the IRA's portfolio.

NOTICE TO INTERESTED PERSONS: Because Mr. Suter is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing must be received within 30 days of the date of publication of this notice of proposed exemption in the **Federal Register**.

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[9] Pursuant to the provisions contained in 29 CFR 2510.3–2(d), the IRA is not subject to title I of the Act. However, the IRA is subject to title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Money Purchase Pension Plan and Trust Agreement of Dussia and McDavid, Inc. (the Pension Plan) and Profit Sharing Plan and Trust Agreement of Dussia and McDavid, Inc. (the Profit Sharing Plan) Located in Tallahassee, Florida

[Application Nos. D–8964 and D–8965]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32826, August 10, 1990). If the exemption is granted, the restrictions resulting from the application of sections 406(a), 406 (b)(1) and (b)(2) of the Act and sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed lease (the Lease) of space (the Space) in certain real property (the Property) from the Pension Plan and the Profit Sharing Plan (collectively, the Plans) to Dussia and McDavid Inc. (the Employer), a party in interest with respect to the Plans, provided that: (a) terms of the transaction are at least as favorable to the Plans as those obtainable in an arm's length transaction between unrelated parties; (b) an independent fiduciary has determined that the proposed transaction is in the best interests of the Plans and represents that he will monitor the terms and conditions of the Lease and the terms of the exemption throughout its duration; (c) the fair market rentals of the Space have been determined by a qualified, independence appraiser; and (d) the fair market value of the Space involved in the transaction will not exceed 25% of the assets of each of the Plans.

Summary of Facts and Representations

1. Dussia and McDavid, Inc. is a corporation organized under the laws of Florida, owned 50% by Dr. Evan Earl Dussia's P.A. and 50% by Dr. Robert M. McDavid's P.A.. The Plans cover employees of Dr. Dussia's P.A. and Dr. McDavid's P.A. as well as employees of Dussia and McDavid, Inc. Dr. Dussia and Dr. McDavid are trustees of both the Plans and have investment discretion with respect to the assets involved in the proposed transaction.

2. The Plans currently have approximately 15 participants each, including Dr. Dussia and Dr. McDavid. The participants of both Plans are identical. As of December 31, 1991, the balance of the Profit Sharing Plan was $769,258.48, the balance of the Pension Plan was $623,282.67.

3. In 1986, the Plans purchased the Property, a multi-tenant commercial building which is located at 220–224 East College Avenue in Tallahassee, Florida, from an unrelated party for $595,000.[10] The Pension Plan and the Profit Sharing Plan respectively own 37% and 63% of the Property. The Property has a total of 6,791 square feet of rentable space of which 3,250 square feet is vacant. The Space which the Employer intends to lease from the Plans is comprised of approximately 1,575 of the 3,250 square feet of rentable space.

4. Charles B. Harvey (Mr. Harvey) has agreed to represent the Plans as trustee and independent fiduciary with respect to the proposed Lease. Mr. Harvey has experience in the management of real estate and represents that he has been fully briefed by legal counsel on his responsibilities under ERISA. In addition, Mr. Harvey represents that he receives no more than 1% of his annual income from the Employer.

Mr. Harvey represents that the plans should enter into the Lease because the Plans have been unable to completely lease all of the space in the Property to an unrelated party and the terms of the lease require the Plans to receive the fair market rental value for the Space.

5. Jonathan P. Brown (Mr. Brown), an MAI qualified real estate appraiser, licensed to conduct appraisals in the State of Florida, appraised the Property and the Space on behalf of his employer, Boutin, Brown and Butler Real Estate Services. Boutin, Brown and Butler Real Estate Services represents that it receives less than 1% of its annual income from Dussia and McDavid, Inc.

Mr. Brown has determined by applying the revenue projection method and considering all relevant data that the fair market value of the Property is $615,000 which reflects a fair market rental value of the Space of $14.75 per square foot per annum. It is represented that the fair market value of the Space involved in the transaction will not exceed 25% of the assets of each of the Plans.

6. The Lease will be a "triple net lease" and will provide for a five year term. The lessee may renew the lease for an additional period of three years provided the independent fiduciary approves that such renewal is in the best interest of the Plans. Every three years, the rental under the Lease will be adjusted, if necessary, to reflect the current fair market rental value of the Space as determined by an independent appraiser chosen by the independent fiduciary. In addition, the independent fiduciary will have the option to terminate the lease upon ninety days notice of the Employer if such fiduciary feels it would be in the best interests of the Plans. The initial rent will be $1,936.00 per month which equates to the initial fair market rental value of $14.75 per square foot per annum of the Space.

7. In summary, the applicant represents that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because:

(a) The independent fiduciary has determined that the proposed transaction is in the best interests of the Plans and represents that he will monitor the terms and conditions of the Lease and the terms of the exemption;

(b) The fair market rentals to be received by the Plans have been determined by Boutin, Brown and Butler Real Estate Services, an independent appraiser;

(c) The rental payments to be received by the Plans will be adjusted every third year to reflect the fair market rental of the Space; and

(d) The fair market value of the Space involved in the transaction will not exceed 25% of the assets of each of the Plans.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all participants and interested persons within 5 days after publication of the proposed exemption in the Federal Register. All participants and beneficiaries will be mailed a copy of the notice published in the **Federal Register**, with a letter informing them of their right to comment and to request a hearing. Comments and hearing requests on the proposed exemption are due 35 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section

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[10] The Department notes that the decision to acquire and hold the Property are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department, is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the Property.

4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 12th day of January, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–1173 Filed 1–15–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–001]

NASA Advisory Council (NAC) Task Force on Benchmarking of U.S. Aeronautical Facilities

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council Task Force on Benchmarking of U.S. Aeronautical Facilities.

DATES: February 9, 1993, 8 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 107, Building 1218, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23665, 804/864–8686.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Develop Process
—Develop Report Format
—Assign Action for Data Collection
—Develop Schedule and Milestones

Dated: January 11, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–1210 Filed 1–15–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–002]

NASA Wage Committee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage Committee.

DATES: February 17, 1993, 1:30 p.m. to 3:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room No. 5H46, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Green Glasco, Code FPP, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1218.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The Committee's primary responsibility is to consider and make recommendations to the Director, Personnel Division, National Aeronautics and Space Administration, on all matters involved in the development and authorization of a wage schedule for the Cleveland, Ohio, Wage Area pursuant to Public Law 92–392. The agenda for the meeting is as follows:

—Review the survey specifications for the Cleveland, Ohio, Wage Area, which were recommended by the Local Wage Committee.
—Determination whether to recommend acceptance or modification of those survey specifications.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 12, 1993.

John Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–1208 Filed 1–15–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before February 18, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Guidelines and Application Forms for the Collaborative Projects Program, Archaeology Projects Program, and the Humanities, Science, and Technology Program.

Form Number: Not Applicable.

Frequency of Collection: Annual.

Respondents: Humanities scholars and institutions.

Use: Application for funding.

Estimated Number of Respondents: 253 per year.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 52 hours per respondent.

Estimated Total Annual Reporting and Recordkeeping Burden: 25,636 hours.

Thomas S. Kingston,

Assistant Chairman for Operations.

[FR Doc. 93–1108 Filed 1–15–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from various requirements of 10 CFR part 50, appendix J to the Northeast Nuclear Energy Company (NNECO or the licensee) for the Millstone Nuclear Power Station, Unit No. 3, located at the licensee's site in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant exemptions applicable for one cycle of operation, from the periodic retest requirements for performing one Type B test and 37 Type C tests, set forth in 10 CFR part 50, appendix J, section III. Type B tests measure leakage rates across certain specific types of reactor containment penetrations identified in appendix J, section II. Type B test requirements are set forth in appendix J, section III.B. Type C tests measure containment isolation valve leakage rates. Type C test requirements are set forth in appendix J, section III.C. The only Type B test the proposed exemption would apply to is the fuel transfer canal blind flange. The proposed action is in accordance with the licensee's request for schedular exemptions dated November 18, 1992.

The Need for the Proposed Action

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. In particular, NNECO seeks exemption, for 10 months, from the requirement of performing the Type B and C tests.

The licensee seeks the requested exemptions because performance of the Type B and C tests as required by appendix J would require an early shutdown of the plant.

Environmental Impacts of the Proposed Action

The staff has reviewed the proposed exemptions and has concluded that the schedular exemptions from various requirements of 10 CFR part 50, appendix J, sections III.B. and III.C. Type B and C tests will not compromise containment integrity. This conclusion is based, in general, on the periodic containment integrated leak rate test and the favorable Type B and Type C testing results at Millstone 3 to date.

Thus, radiological releases will not differ from those determined previously and the proposed exemptions do not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemptions do not affect plant nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemptions.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemptions, any alternatives with equal or greater associated impact need not be evaluated. The principal alternative to the exemptions would be to deny the exemptions requested. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Millstone Unit 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

For further details with respect to this action, see the request for exemptions dated November 18, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland this 11th day of January 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1157 Filed 1–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–446]

TU Electric Utilities Co., Comanche Peak Steam Electric Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of 10 CFR 70.24 to TU Electric (the applicant). The exemption would apply to the facility operating license for the Comanche Peak Steam Electric Station, Unit 2 (the facility) located in Somervell County, Texas. A similar exemption was requested for Unit 1 by letter dated June 30, 1989. The Unit 1 exemption was granted by the NRC staff and the evaluation is contained in Safety Evalution Report (NUREG–0797), Supplement No. 22.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow an exemption from the requirements of 10 CFR 70.24 for the operation of Comanche Peak, Unit 2 in response to the applicant's request dated December 18, 1992.

The Need for the Proposed Action

The exemption from 10 CFR 70.24 would allow irradiated or unirradiated fuel assemblies to be handled and stored in the Comanche Peak fuel handling building without having a monitoring system which will energize clearly audible alarms if accidental criticality occurs. This exemption will be deemed acceptable provided that no more than two fuel assemblies are outside an approved shipping container, storage rack, or fuel transfer tube at any time and a minimum 12-inch, edge-to-edge distance is maintained between such assemblies. The proposed exemption is needed to permit fueling and refueling operations at Comanche Peak without the criticality monitoring systems specified by 10 CFR 70.24(a).

TU Electric's Comanche Peak Steam Electric Station, Unit 1, currently has an exemption from the criticality monitoring requirements of 10 CFR 70.24. The fuel handling system and storage racks are common equipment to both units; and the refueling procedures are dual unit procedures. The design and administrative controls applicable to Unit 1 to preclude inadvertent criticality will be similarly applied to Unit 2.

Environmental Impacts of the Proposed Action

There are no environmental impacts of the proposed action. Criticality will be precluded by the restriction that no more than two fuel assemblies shall be authorized to be outside of an approved shipping container, storage rack, or the fuel transfer tube at any one time and a minimum 12-inch, edge-to-edge distance is maintained between such assemblies. Because these measures provide assurance that criticality will not occur during receipt, inspection, or storage of fuel, this is an acceptable alternative to a monitoring system. Since the proposed exemption does not otherwise affect radiological plant effluents nor cause any significant occupational exposures, the Commission concludes that there are no radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The Commission has concluded that there are no measurable environmental impacts associated with the proposed exemption. The principal alternative would be for the Commission to deny the requested exemption. This would not reduce the environmental impacts of the plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of Comanche Peak Steam Electric Station, Units 1 and 2 dated September 1981 and Supplement dated October 1989.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applicant's letter dated December 18, 1992. The letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 11th day of January 1993.

For The Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1154 Filed 1–15–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–446]

TU Electric Utilities Co., Comanche Peak Steam Electric Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from a portion of the requirements of appendix J of 10 CFR part 50 to TU Electric (the applicant). The exemption would apply to the facility operating license for the Comanche Peak Steam Electric Station, Unit 2, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow an exemption from the requirements of 10 CFR part 50, appendix J, section III.D.2(b)(ii) for operation of Comanche Peak, Unit 2 in response to the applicant's request dated January 20, 1986.

The Need for the Proposed Action

Section III.D.2(b)(ii) of appendix J states that "Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than P_a." In its request, the applicant requested that the Comanche Peak Unit 2 Technical Specifications be written to instead require an overall air lock leakage test at P_a to be performed only upon completion of maintenance which has been performed on the air lock that could affect the air lock sealing capability. Otherwise, if an air lock is opened during periods when containment integrity is not required and no such maintenance has been performed, a door seal leak rate test (a less time-consuming test) must be performed. This requested exemption is consistent with the staff's position on the acceptable testing frequency necessary to demonstrate air lock sealing capability intended in appendix J. The staff's current position is shown in the Standard Technical Specifications for Westinghouse Pressurized Water Reactors (NUREG–0452, Revision 4). Until Commission rulemaking changes the current requirement in appendix J, an exemption to the present regulation must be granted before the applicant can adopt the requested Technical Specification. The proposed exemption is needed because, based on experience at various plants, the staff found that literal compliance with section III.D.2(b)(ii) of appendix J is not necessary to assure containment leak tightness. The requested exemption is consistent with the staff's technical position and has been granted to many plants, including Comanche peak Unit 1. Literal compliance with the regulation would lead to increase costs and occupational exposure.

Environmental Impacts of the Proposed Action

The proposed exemption to 10 CFR part 50, appendix J, section III.D.2(b)(ii) will assure air lock sealing capability and containment integrity; therefore, this exemption will not increase the probability of accidents and post-accident radiological release, nor otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR part 20. The proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

The principal alternative would be for the Commission to deny the requested exemption. This would result in increased costs and occupational exposure and would not reduce the environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for Comanche Peak Steam Electric Station, Units 1 and 2, dated September 1981 and Supplement dated October 1989.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the applicant's letter dated January 20, 1986. The letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 11th day of January 1993.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1155 Filed 1–15–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–09946; License No. 20–01412–05; EA 92–114]

Order Imposing Civil Monetary Penalty; Baystate Medical Center, Inc., Springfield, MA

I

Baystate Medical Center, Inc. (Licensee) is the holder of Byproduct Material License No. 20–01412–05 (license) issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorize the Licensee to use byproduct materials for diagnostic and therapeutic procedures involving radiopharmaceuticals and brachytherapy devices in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted during May 17–28, 1992. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 21, 1992. The Notice stated the nature of the violations, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in two letters, dated September 10 and 14, 1992, respectively. In its response, the Licensee stated that one of the two violations (Violation A) is incorrect. In addition, the Licensee requested mitigation of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that: (1) The violations did occur as stated in the Notice, and (2) the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:* The Licensee pay a civil penalty in the amount of $2,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be final and effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether Violation A occurred as set forth in the Notice referenced in Section II above, and,

(b) Whether, on the basis of such violation, the Violation B as set forth in the Notice and admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 6th day of January 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On August 21, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during an NRC inspection on May 27–28, 1992, at Baystate Medical Center, Inc. (licensee). The licensee responded to the Notice on September 10, 1992. The licensee indicated that one of the two violations (Violation A), as stated, was incorrect. The licensee also requested mitigation of the civil penalty. The NRC's evaluations and conclusions regarding the licensee's requests are as follows:

1. Restatement of Violation A

10 CFR 35.32 requires, in part, that the licensee establish and maintain a quality management program which must include written policies and procedures to meet the objective that a written directive be prepared for any administration of quantities greater than 30 microcuries of iodine-131. 10 CFR 35.2 defines a written directive as an order in writing for a specific patient, dated and signed by an authorized user prior to administration of a radiopharmaceutical and containing certain information including, for iodine-131, the dosage.

Contrary to the above, as of May 18, 1992, the licensee's quality management program did not include a written procedure to meet the objective that a written directive signed by an authorized user be prepared for administration of quantities greater than 30 microcuries of iodine-131; and, on May 18, 1992, a licensee technologist administered 4.1 millicuries of iodine-131 to a patient without a written directive being reviewed or signed by an authorized user prior to the administration.

2. Summary of Licensee Response to Violation A

In its responses, the licensee states that Violation A is incorrect. The licensee contends that its QM program as submitted does contain the requirement that a written directive be signed by an authorized user for administration of iodine-131 for activities of 30 microcuries to 250 millicuries. The licensee provided a copy of the QM program procedure with its response. In addition, the licensee contends that the only clear violation that occurred is that the technologist did not obtain the authorized user's signature before administration of 4.1 millicuries of iodine-131.

3. NRC Evaluation of Licensee Response

The licensee's QM program, Paragraph C1.1, does require a "written directive;" however, Paragraph C1.1 allows this "directive" to be signed by the authorized user or designated Nuclear Medicine Technologist prior to the administration of the dosage. As stated in Violation A, 10 CFR 35.2 defines a written directive as an order signed by an authorized user. The so-called "written directive" in the licensee's QM Program does not meet the requirement because the directive does not have to be signed by an authorized user and may instead be signed by a nuclear medicine technologist. This distinction is significant because the requirement is intended to ensure that the authorized user becomes involved before the radio-pharmaceutical is administered to the patient. Therefore, the violation did occur as stated in the Notice.

4. Summary of Licensee Response Requesting Mitigation of the Civil Penalty

The licensee requests mitigation of the penalty on the basis that (1) the new QM rule went into effect as of January 27, 1992, and the licensee has made every effort to implement an effective program to maintain full NRC compliance; (2) the licensee's original procedures (Management Audit and In-Service Program) have been a part of the NRC's Regulatory Guide NUREG 0267 on ALARA; (3) the licensee has voluntarily participated and actively contributed to the development of the NRC new regulations (NRC QM rule); (4) the licensee has an excellent record of 24 years of full compliance with NRC regulation; (5) when violations occur, the licensee has self-identified them, reported, and corrected them immediately; (6) the issue of an overexposure as described by the NRC is overstated and is done without any consideration of the clinical outcome to the patient; and (7) when the entire incident is put in proper perspective, the classification as an aggregate violation related to safety is improper.

5. NRC Evaluation of Licensee Response

As previously stated in the Notice of Violation and Proposed Imposition of Civil Penalty, the application of the civil penalty adjustment factors in the NRC Enforcement Policy would normally warrant complete mitigation of the civil penalty because of the licensee's identification of the misadministration and related violations, the prompt and comprehensive corrective actions once the violations were identified, and the licensee's prior good enforcement history. The NRC further acknowledges the licensee's efforts to implement the QM program, its excellent record, and its identification and correction of problems.

In this case, however, the violations resulted in a misadministration and involved a radiation exposure to the thyroid gland that was more than 50% greater than the intended radiation exposure for the thyroid uptake procedure that was being conducted at the time. Therefore, in accordance with the NRC Enforcement Policy, Supplement VI.B.3, these violations constitute a Severity Level II problem. Consistent with the guidance set forth in Section VI.B.2 of the Enforcement Policy, notwithstanding the normal application of the civil penalty adjustment factors, a civil penalty of at least 50% of the base amount is warranted for Severity Level I and II violations involving overexposures.

The licensee argues that the issue of an overexposure should be considered in the context of the clinical outcome to the patient. In this case, the radiopharmaceutical dosage (and, concomitantly, the radiation dose) administered to the patient for the thyroid uptake procedure was approximately 250 times the intended dosage for that procedure. A thyroid uptake procedure is done to determine the disease status of the thyroid gland and to determine, among other things, if a much larger, therapeutic dosage of the radiopharmaceutical should be administered and if so, how much. The fact that the patient was subsequently shown to need the much larger, therapeutic dosage did not enter into NRC's deliberations on the civil penalty, nor should it, as that circumstance was purely fortuitous.

6. NRC Conclusion

The NRC staff concludes that the violations did occur as stated and that the licensee has not provided an adequate basis for further mitigation or reduction of the civil penalty. Accordingly, the proposed civil monetary penalty in the amount of $2,000 should be imposed.

[FR Doc. 93–1156 Filed 1–15–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–245]

Exemption

In the matter of Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit 1).

I

The Northeast Nuclear Energy Company (NNECO, the licensee) is the holder of Facility Operating License No. DPR–21 which authorizes operation of Millstone Nuclear Power Station, Unit 1. The license provides, among other things, that Millstone Unit 1 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a multi-unit boiling water reactor at the licensee's site located in New London County, Connecticut.

II

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. More specifically the following section requires that:

10 CFR part 50, appendix J, section III.A.6.(b)

If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria

> in III.A.5.(b), notwithstanding the periodic retest schedule of III.D, a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive Type A tests meet the acceptance criteria in III.A.5.(b), after which time the retest schedule specified in III.D may be resumed.

Millstone Unit 1 has failed the acceptance criteria for the "As-Found" Type A tests in 1987 and 1991. The Type A test is a test of the entire containment building and is normally performed every 3 to 4 years, such that three tests are conducted every 10-year period. Containment penetrations are also testable by local leak rate tests (Type B and Type C tests) which are required every refueling outage and at least every 2 years.

III

By letter dated November 4, 1992, the licensee requested an exemption to the requirements of section III.A.6.(b) proposing a Corrective Action Plan (CAP) and alternate leakage rate test program in lieu of more frequent Type A tests. The licensee's proposed CAP is consistent with NRC Office of Inspection and Enforcement Information Notice (IN) No. 85-71, issued August 22, 1985. This Information Notice provides guidance to licensees that states in circumstances as described above:

> * * * the general purpose of maintaining a high degree of containment integrity might be better served through an improved maintenance and testing program for containment penetration boundaries and isolation valves. In this situation, the licensee may submit a Corrective Action Plan with an alternative leakage test program proposal as an exemption request for NRC staff review. If this submittal is approved by the NRC staff, the licensee may implement the corrective action and alternative leakage test program in lieu of the required increase in Type A test frequency incurred after the failure of two successive Type A tests.

NNECO's November 4, 1992, submittal showed that during the "As-Found" Type A tests in 1987 and 1991, Type C local leak rates (of containment isolation valves) were the reason for the "As-Found" failures. NNECO's submittal also showed that if the problem penetrations (valves IC-6 and IC-7 in 1987, and penetration X-25/202D (valves AC-7 through AC-12) in 1991) had been excluded, both the "As-Found" and "As-Left" leak rates would have been less than the acceptance criteria provided in appendix J and, therefore, acceptable.

The licensee's justification for the proposed exemption is that the Type A tests failed in the "As-Found" condition in 1987 and 1991 because of a few specific penetrations. These penetrations have (except for one) been demonstrably corrected; corrective action has been taken on the remaining penetration, but the success of the corrective action has not yet been fully confirmed. For the one potentially questionable penetration, the licensee will perform mid-cycle Type C testing. Further, additional corrective action will be taken at the next refueling outage. The NRC staff has reviewed the test reports and the licensee's proposed and implemented CAP. The NRC staff finds that the licensee has identified the problem penetrations that caused the Type A test failures in 1987 and 1991, and has instituted an effective CAP to address these problems. There is reasonable assurance that the containment leakage-limiting function will be maintained and the staff finds that a forced outage to perform a Type A test is not necessary. The normal appendix J Type A test schedule (three tests in 10 years) will require Type A tests at the next two refueling outages (currently expected to be in 1994 and 1996). Additional information concerning the NRC staff's review can be found in a safety evaluation dated January 11, 1993, supporting Amendment No. 60. Millstone Unit 1's Technical Specifications repeat the requirement of appendix J, therefore, NNECO requested a Technical Specification change in a letter dated September 29, 1992, as supplemented by November 6, 1992. On January 11, 1993, the NRC approved NNECO's Technical Specification change concurrently with this exemption.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Commission finds that special circumstances are present in that application of the regulation in these particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule, in that, as discussed in section III, the proposed alternative better meets the purpose of correcting excess leakage. The exemption provides only a one-time temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation by implementing an alternative program to achieve the underlying purpose of the rule.

An exemption is hereby granted from the requirements of section III.A.6.(b) of appendix J to 10 CFR part 50, which require an accelerated Type A containment integrated leak rate test frequency when two consecutive Type A tests have failed to meet their acceptance criteria. The approximately 18-month interval from the 1991 Type A test is waived until the next scheduled refueling outage (currently scheduled for February 1994) based on the licensee's aggressive Corrective Action Plan.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (58 FR 589).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 11th day of January 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-1153 Filed 1-15-93; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

OFPP Policy Letter 80-3; Amendment

AGENCY: Office of Federal Procurement Policy (OFPP), OMB.

ACTION: OFPP is revising OFPP Policy Letter No. 80-3 to implement section 907(a) of the Federal Courts Administration Act of 1992, Public Law 102-572, dealing with the certification of claims pursuant to the Contract Disputes Act (CDA) of 1978, 41 U.S.C. 601, *et seq.*

SUMMARY: In recent years, the claim certification requirement in the CDA, 41 U.S.C. 605(c)(1), has become an impediment to the prompt and efficient resolution of disputes. In particular, persistent litigation has ensued regarding the interpretation of implementing regulations contained in the Federal Acquisition Regulation (FAR) at 33.207(c). FAR 33.207(c), which is derived from section I.7(b) of Policy Letter 80-3, identifies who within a contractor's organization can properly act in certifying a CDA claim. This problem has been exacerbated by the jurisdictional nature of the requirement, which has resulted in the dismissal of suits and appeals by courts and agency boards of contract appeals

and required contractors to begin the process anew.

On March 4, 1992, OFPP published a proposed amendment to Policy Letter 80–3. 57 FR 8495–99 (March 10, 1992). This proposal offered new guidance for determining which individuals may certify CDA claims. The President, however, concluded that a legislative solution would most effectively resolve the problems associated with CDA certification and signed the Federal Courts Administration Act of 1992, P.L. 102–572, into law on October 29, 1992. Section 907(a) of this law amends the CDA by, among other things, identifying who can certify and making clear that certification defects do not deprive tribunals of jurisdiction. Congressional discussion regarding this provision appears at 138 Cong. Rec. S17798–99 (daily ed. October 8, 1992) (statement of Sen. Heflin).

This policy letter amendment revises section I.7 and paragraphs (d) and (h) of the "Disputes" clause in section II of Policy Letter 80–3 to implement section 907(a) of Public Law 102–572. The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council have been advised that expeditious promulgation of a FAR rule implementing Public Law 102–572 and this policy letter amendment is warranted.

FOR FURTHER INFORMATION CONTACT: Mathew Blum, Staff Attorney, Office of Federal Procurement Policy, Office of Management and Budget, Room 9013, 725 17th Street NW, Washington, DC 20503, telephone (202) 395–3501.

Dated: January 11, 1993.

Allan V. Burman,

Administrator.

Policy Letter No. 80–3, Amendment No. 1

To the Heads of Executive Departments and Establishments

Subject: Regulatory Guidance on P.L. 95–563, the Contract Disputes Act of 1978

1. *Purpose.* The purpose of this amendment is to implement section 907(a) of the Federal Courts Administration Act of 1992, P.L. 102–572, dealing with the certification of claims pursuant to the Contract Disputes Act (CDA) of 1978, 41 U.S.C. §§ 601, *et seq.*, as amended by the Federal Courts Improvement Act of 1982, P.L. 97–164, and the Administrative Dispute Resolution Act, P.L. 101–552. This amendment replaces section I.7 and paragraphs (d) and (h) of the "Disputes" clause in section II of Policy Letter 80–3.

2. *Authority.* This amendment to Policy Letter 80–3 is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, codified at 41 U.S.C. 405(a).

3. *Background.* The CDA requires that, for claims over $50,000, a contractor must certify that: (1) the claim is made in good faith, (2) the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. 41 U.S.C. 605(c)(1). As a result of an amendment to the CDA by the Administrative Dispute Resolution Act, certification is also required for claims of any amount in which alternative means of dispute resolution or other mutually agreeable procedures are used. 41 U.S.C. 605(d).

The CDA does not identify who within a contractor's organization can properly act in certifying a claim. However, Federal Acquisition Regulation (FAR) 33.207(c), which is derived from Section I.7(b) of OFPP Policy Letter 80–3, states that:

(1) If the contractor is an individual, the certification shall be executed by that individual.

(2) If the contractor is not an individual, the certification shall be executed by—

(i) A senior company official in charge at the contractor's plant or location involved; or

(ii) An officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

In recent years the certification requirement—in particular FAR 33.207(c)—has been the source of substantial confusion and persistent litigation. This litigation, which has prevented parties from focusing on the merits of their disputes, contravenes the CDA's avowed goal of ensuring the prompt and efficient resolution of disputes between contractors and the Government. *See* 41 U.S.C. 607(e); S. Rep. No. 1118, 95th Cong., 2d Sess., *reprinted in* 1978 U.S. Code Cong. & Admin. News 5235. The problem has been exacerbated by the jurisdictional nature of the requirement, which has resulted in the dismissal of suits and appeals by courts and agency boards of contract appeals and required contractors to begin the process anew.

On March 4, 1992, OFPP issued a proposed amendment to Policy Letter 80–3. 57 Fed. Reg. 8495 (March 10, 1992). This proposal offered new guidance for determining which individuals within a contractor's organization may certify CDA claims. The President, however, concluded that a legislative solution would most effectively resolve the problems associated with CDA certification and signed the Federal Courts Administration Act of 1992, P.L. 102–572, into law on October 29, 1992. Section 907(a) of this law amends the CDA by, among other things, identifying who can certify and making clear that certification defects do not deprive tribunals of jurisdiction. It also requires a certifier to attest that he or she is duly authorized to certify the claim on behalf of the contractor.

This policy letter amendment revises section I.7 and paragraphs (d) and (h) of the "Disputes" clause in section II of Policy Letter 80–3 to implement section 907(a) of P.L. 102–572.

4. *Policy.*

a. The language in section I.7 of Policy Letter 80–3 is amended to read as follows:

(a) Section 6(c)(1) of the CDA requires that a contractor claim over $50,000 be certified that it is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor. This certification is also required for claims of any amount in which alternative means of dispute resolution or other mutually agreeable procedures are used.

(b) Section 6(c)(7) of the CDA provides that the certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(c) Section 6(c)(6) of the CDA provides that the contracting officer shall have no obligation to render a final decision on any claim of more than $50,000 that is not certified in accordance with the CDA if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

(d) Section 907(a)(3) of P.L. 102–572 states that any interest found due under section 12 of the CDA, 41 U.S.C. 611, on a claim for which the certification under section 6(c)(1) is, on or after October 29, 1992, found to be defective shall be paid from the later of the date on which the contracting officer initially received the claim or October 29, 1992.

(e) Contractors submitting contract claims, requests for equitable adjustments to contract terms, requests for relief under P.L. 85–804, or other similar requests that exceed $100,000 under Defense Department contracts should refer to Department of Defense FAR Supplement subpart 233.70 for additional certification requirements.

b. Paragraphs (d) and (h) of the "Disputes" clause in section II of Policy Letter 80–3 are amended to read as follows:

(d) (i) For contractor claims of more then $50,000, or any claim regardless of amount when using alternative dispute resolution procedures, the contractor shall submit with the claim a certification that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

(ii) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(iii) The contracting officer shall have no obligation to render a final decision on any claim of more than $50,000 that is not certified in accordance with the CDA if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective.

(iv) A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of a jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

(h) Any interest found due under section 12 of the CDA, 41 U.S.C. 611, on a claim for which the certification under section 6(c)(1) is, on or after October 29, 1992, found to be defective shall be paid from the later of the date on which the contracting officer initially received the claim or October 29, 1992.

5. *Effective date.* The revisions made by this policy letter amendment are effective as follows:

a. The additional requirement in paragraph (a) of section I.7 as amended and in subparagraph (i) of paragraph (d) of the "Disputes" clause in section II as amended that the certifier attest that he or she is duly authorized to certify the claim on behalf of the contractor (implementing section 907(a)(1)(A) of P.L. 102–572) shall be effective with respect to certifications executed more than 60 days after the effective date of implementing amendments to the FAR.

b. Paragraphs (b) and (c) of section 1.7 as amended, and subparagraphs (ii)–(iv) of paragraph (d) of the "Disputes" clause in section II as amended) dealing with who can certify and certification defects (implementing section 907(a)(1)(B) of P.L. 102–572) are effective with respect to all claims filed before, on, or after October 29, 1992, except for those claims which, before October 29, 1992, have been the subject of an appeal to an agency board of contract appeals or a suit in the United States Court of Federal Claims. Claims that are the subject of suits or appeals filed before October 29, 1992 which are subsequently dismissed without prejudice become subject to these provisions if refiled.

c. Any interest found due under section 12 of the CDA on a claim for which the certification under section 6(c)(1) is, on or after October 29, 1992, found to be defective shall be paid from the later of the date on which the contracting officer initially received the claim or October 29, 1992.

6. *Responsibilities.*

a. *Heads of Agencies.* Heads of departments and agencies are responsible for taking all necessary actions to assure effective implementation of these policies, such as disseminating this policy letter amendment to appropriate acquisition, legal and other staff, developing implemention strategies and initiating staff training. They should specifically ensure that contracting officers review pending claims and new claims in accordance with the law set forth in P.L. 102–572 and the policy set forth herein. Since these policies must be implemented in the FAR, agencies should not duplicate the development of implementing procurement regulations being undertaken by the Defense Acquisition Regulations Council (DARC) and the Civilian Agency Acquisition Council (CAAC). However, implementation of these policies in the FAR must be accomplished within the time period specified in paragraph b below.

b. *Federal Acquisition Regulatory Councils.* Pursuant to subsection 6(a) of the Office of Federal Procurement Policy Act, as amended, (41 U.S.C. § 401, *et seq.*), the DARC and the CAAC shall ensure that the policies established herein are incorporated in the FAR within 60 days from the date this policy letter amendment is published in the **Federal Register.** Promulgation of FAR regulations within that 60-day period shall be considered issuance in a "timely manner" as prescribed in 41 U.S.C. § 405(b).

7. *Information contact.* Questions or inquiries about this policy letter amendment should be directed to Mathew Blum, Staff Attorney, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone (202) 395–3501.

Allan V. Burman,

Administrator.

[FR Doc. 93–1088 Filed 1–15–93; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31725; File No. SR–OCC–92–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Inclusion of the Wilshire Small Cap Index in the Cross-Margining Agreement With the Board of Trade Clearing Corporation

January 11, 1993.

On September 4, 1992, The Options Clearing Corporation ("OCC") filed a proposed rule change (File No. SR–OCC–92–23) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 5, 1992, to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal.

I. Description

The proposed rule change would allow OCC to add a new index to the List of Eligible Contracts[3] that are includable in the cross-margining accounts subject to the Cross-Margining Agreement between OCC and the Board of Trade Clearing Corporation

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31379 (October 29, 1992), 57 FR 52816 (File No. SR–OCC–92–23).

[3] The List of Eligible Contracts is set forth as Exhibit A to the OCC/BOTCC Cross-Margining Agreement. Currently, the Eligible Contracts cleared through OCC are put and call options on the S&P 100 Index, S&P 500 Index, Major Market Index, New York Stock Exchange Composite Index, Financial News Composite Index, and Institutional Index. The Eligible Contracts cleared through BOTCC are futures on the Major Market Index and put and call options on the *futures* on the Major Market Index.

("BOTCC").[4] The additional Eligible Contracts will consist of put and call options on the Wilshire Small Cap Index ("Wilshire"), which are proposed for trading on the Pacific Stock Exchange ("PSE") and will be cleared by OCC, and futures and options on the futures on the Wilshire, which are proposed for trading on the Board of Trade of the City of Chicago and will be cleared by BOTCC.

Options on the Wilshire, futures on the Wilshire, and options on the futures on the Wilshire will be in the same class group because the underlying is the same index. Accordingly, OCC and BOTCC have agreed to allow these contracts to be cross-margined with each other. OCC anticipates, however, that the Wilshire class group will be in a separate product group by itself and, therefore, will not be cross-margined with the broad-based product group.[5]

II. Discussion

OCC believes that the proposal is consistent with the purposes and requirements of section 17A of the Act[6] because it expands a cross-margining system which enhances the safety of the clearing system while providing lower clearing margin costs to OCC's clearing members. Section 17A(a)(1) of the Act[7] specifically encourages the use of efficient, effective, and safe procedures for securities clearance and settlement. Section 17A(b)(3)(F)[8] requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the clearing agency's custody or control or for which it is responsible.

Expanding the List of Eligible Contracts in the OCC/BOTCC cross-margining program should promote more efficient and cost-effective clearance and settlement of securities transactions by increasing margin efficiency and by decreasing the potential for loss in the event of a clearing member default. Margin costs can be safely reduced when positions in one market are hedged by positions in another market, which are based on the same or similar underlying assets, because an increase in the cost of liquidating positions in one market should be offset by the corresponding increases in the values of the hedge positions in the other market. The Commission in recent years has dealt in a comprehensive manner with numerous proposals involving OCC and cross-margining.[9] For the reasons discussed in those orders as well as the reasons discussed above, the Commission believes that this proposal warrants approval in that it will enable OCC to provide for more efficient clearance and settlement while still assuring the safeguarding of funds and securities.

III. Conclusion

For the reasons stated above, the Commission finds that OCC's proposal is consistent with section 17A of the Act.[10]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–OCC–92–23) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1168 Filed 1–15–93; 8:45 am]

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[4] For a description of the various legal, regulatory, and operational issues involved in the OCC/BOTCC cross-margining program, refer to Securities Exchange Act Release No. 29888 (November 8, 1991), 56 FR 58580 (File No. SR–OCC–91–07).

On April 23, 1992, OCC filed a proposed rule change, File No. SR–OCC–92–12, requesting Commission approval for inclusion of options and futures on foreign currencies to the List of Eligible Contracts. Pursuant to a request by OCC, that filing is still pending at the Commission.

[5] Both OCC and BOTCC will be reviewing their existing contracts to determine whether any of them can be placed in the same product group with the Wilshire. Should OCC decide to include the Wilshire class group in a broader product group or decide to include any existing contract in the Wilshire product group so that the Wilshire contracts can be cross-margined with other Eligible Contracts, OCC, prior to inclusion, will submit a section 19(b) proposed rule change to the Commission for approval.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1(a)(1) (1988).

[8] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[9] *E.g.*, Securities Exchange Act Release Nos. 29991 (November 26, 1991), 56 FR 61458 (File No. SR–OCC–90–01) (order approving a proposed rule change to expand the OCC/Chicago Mercantile Exchange cross-margin program) and 30041 (December 5, 1991), 56 FR 64824 (File No. SR–OCC–90–04) (order approving a proposed rule change to expand the OCC/Intermarket Clearing Corporation cross-margin program).

[10] 15 U.S.C. 78q–1 (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–31722; File No. SR–PSE 92–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Waiver of Market Maker Transaction Fees for Options Trading on the Wilshire Small Cap Index

January 11, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 15, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to waive all market maker transaction fees for options trading on the Wilshire Small Cap Index ("Wilshire Index" or "Index"). The waiver will cover three months commencing on the first day that options on the Wilshire Index trade on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange believes that the proposed temporary waiver of market maker transaction fees will result in greater liquidity, enhanced competition and a greater quality of markets for options trading on the Wilshire Index.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it will facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–47 and should be submitted by February 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1117 Filed 1–15–93; 8:45 am]

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[Release No. 34–31724; File No. SR–PHLX–92–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Restrictions on Registered Options Trades

January 11, 1993.

On October 20, 1992, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change which amends Exchange Rule 1014, "Obligations and Restrictions Applicable to Specialists and Registered Options Traders," to prohibit Registered Options Traders ("ROTs") from executing proprietary options transactions in Exchange-listed options on over-the-counter/unlisted trading privilege ("OTC/UTP") securities if, during the preceding hour, the ROT has been physically present on the PHLX's equity trading floor. The proposed trading restrictions will not apply unless the PHLX's reported equity share volume in the OTC/UTP security represents over ten percent of the total reported volume for the OTC/UTP security during the previous calendar quarter.

Notice of the proposed rule change was published for comment in Securities Exchange Act Release No. 31453 (November 13, 1992), 57 FR 54884 (November 20, 1992). No comments were received on the proposal.

The PHLX explains that the proposed rule change was recommended to the Exchange's Board of Governors by its Options Committee in conjunction with a corresponding proposal[3] by the PHLX to list and trade on a UTP basis securities which are designated as National Market System ("NMS") securities and traded through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). The proposed restriction on ROTs is designed to prevent any abusive options trading that may result from ROTs seeking to capitalize on informational advantages acquired while on the PHLX's equity trading floor.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5), in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest by minimizing concerns regarding potential manipulations and abuses of market information which could result from ROTs' trading of Exchange-listed options on OTC/UTP securities which are traded on the PHLX's equity floor. Specifically, by restricting ROTs' ability to execute proprietary options transactions in Exchange-listed options if they have been present on the equity trading floor during the prior hour, the Commission believes, as it has concluded in the past,[4] that the proposed restriction adequately limits the ability of ROTs to use unfairly any material, non-public information they might possess.

The Commission notes that the PHLX's proposal is similar to restrictions adopted previously by the American Stock Exchange, Inc. ("Amex") and by the New York Stock Exchange, Inc. ("NYSE").[5]

In order to monitor compliance with the proposed restriction, the PHLX plans to generate quarterly surveillance reports for every option-stock which has traded over 10% of the consolidated tape volume for the previous quarter; the surveillance report will include all instances where the stock price has increased or decreased by more than ½ point in any of the 26 fifteen minute intervals which comprise the trade day on the equity floor. In each instance where the stock price has increased or decreased by more than ½ point in any of the 26 fifteen minute intervals which comprise the trade day, the Exchange's surveillance staff will identify any suspicious prior option activity and, where ROTs are involved, will inquire with the equity specialist about whether any such ROT had that day visited the respective equity post prior to the suspicious option activity.[6] The Commission believes that these procedures, together with the PHLX's existing surveillance procedures, should allow the PHLX to enforce the proposed restriction and identify and deter potential manipulations and other trading abuses.[7]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1991).

[3] See File No. SR–PHLX–93–04.

[4] See Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556 (order approving File No. SR–Amex–88–16). See also Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250 (order approving file No. NYSE–84–3).

[5] See Amex Rule 958(f) and NYSE Rule 758(b)(iii).

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PHLX–92–27) hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1118 Filed 1–15–93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the subject matter index, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., Suite 925, Washington, DC 20004: telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.,* in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	Federal Register publication
10/1/90—12/31/90	56 FR 44886; 2/6/91
1/1/91—3/31/91	56 FR 20250; 5/2/91
4/1/91—6/30/91	56 FR 31984; 7/12/91
7/1/91—9/30/91	56 FR 51735; 10/15/91
10/1/91—12/31/91	57 FR 2299; 1/21/92
1/1/92—3/31/92	57 FR 12359; 4/9/92
4/1/92—6/30/92	57 FR 32825; 7/23/92
7/1/92—9/30/92	57 FR 48255; 10/22/92

For the convenience of the users of these indexes, this notice contains an order number index that reflects all of the civil penalty decisions issued by the Administrator to date. In the future, the notice for the last quarter of each year will contain an order number index reflecting all of the Administrator's civil penalty decisions for that year. The order number indexes for the first, second, and third quarters will be non-cumulative. This change will make these indexes easier to use.

The order number index will be further modified starting in this notice. In past notices, the order number index indicated which regulations had been cited in each decision. Since that information is included in the subject-matter index, the order number index will no longer contain that information. This change will eliminate a redundancy in the indexes.

As noted at the beginning of the subject matter index and the digests, these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context. The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

In addition, the Administrator's final decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

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[6] See letter from Gerald D. O'Connell, Director of Market Surveillance, PHLX, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation ("Division"), Commission, dated December 18, 1992, and letter from Murray L. Ross, Secretary, PHLX, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, dated December 29, 1992.

[7] In addition to the restriction discussed above, the Commission's approval of the proposal is premised on the belief that the Exchange's trading floors for equities and options on those equities are sufficiently separated such that there is no time and place advantage derived from the physical proximity of the two floors which could be exploited by PHLX members. Thus, any decision by the PHLX to change the location of the options trading floor relative to the stock trading floor, or to modify the means of access between them, would require submission of a proposed rule change under section 19(b) of the Act.

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1991).

Civil-Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator through December 31, 1992.)

Order No. and (service date)	Name and docket No.
89–1 (11/13/89)	Humbert L. Gressani, CP89NE0103.
89–2 (11/13/89)	Gail M. Lincoln-Walker, CP89NM0017.
89–3 (11/13/89)	Steven G. Sittko, CP89NM0013.
89–4 (11/13/89)	Richard Willford Metz, CP89CE0003.
89–5 (11/13/89)	Charles A. Schultz, CP89NM0092.
89–6 (12/21/89)	American Airlines, CP89GL0118, CP89GL0120, CP89GL0127, CP89GL0128.
89–7 (12/21/89)	Betty A. Zenkner, CP89NM0068.
89–8 (12/22/89)	Thunderbird Accessories, CP89SW0251.
90–1 (1/19/90)	Robert J. Jibben, CP89CE0192.
90–2 (1/19/90)	Clifford B. Smith, CP89CE0247.
90–3 (1/29/90)	Richard Willford Metz, CP89CE0003.
90–4 (1/19/90)	Richard C. Nordrum, CP89GL0109.
90–5 (1/19/90)	Hy C. Sussman, CP89SO0210.
90–6 (2/16/90)	Peter M. Dabaghian, CP89WP0277.
90–7 (2/16/90)	Damita Lynn Steele, CP89SO0320.
90–8 (2/16/90)	Jack L. Jenkins, CP89SO0173.
90–9 (2/16/90)	Jessica S. Van Zandt, CP89WP0083.
90–10 (3/19/90)	Merlin R. Webb, CP89WP0141.
90–11 (3/19/90)	Thunderbird Accessories, CP89SW0251
90–12 (4/25/90)	Continental Airlines, CP89NE0031.
90–13 (3/14/90)	Tamara Ann O'Dell, CP89SW0172.
90–14 (3/14/90)	Royce L. Miller, CP89CE0371.
90–15 (3/19/90)	Budde Playter, CP89GL0257.
90–16 (4/5/90)	Rocky Mntn. Helicopters, CP89SO0488.
90–17 (4/9/90)	Ernest Wilson, CP90SW0166; EAJA90SW0001.
90–18 (8/22/90)	Continental Airlines, CP89NE0036.
90–19 (11/7/90)	Continental Airlines, CP89EA0058, CP89EA0047, CP89EA0028, CP89EA0045, CP89NM0029.
90–20 (8/16/90)	Paul Degenhardt, CP89CE0389.
90–21 (8/16/90)	John J. Carroll, CP89NE0285.
90–22 (8/16/90)	USAir, CP89SP0497.
90–23 (9/14/90)	Gordon B. Broyles, CP89SW0214.
90–24 (9/14/90)	Marcia Bayer, CP89SO0130.
90–25 (9/14/90)	Lucious L. Gabbert, CP89WP0287.
90–26 (10/11/90)	Barbara J. Waddell, CP89SO0321.
90–27 (10/11/90)	Lucious L. Gabbert, CP89WP0287.
90–28 (9/25/90)	Frank Puleo, Jr., CP89SO0397.
90–29 (9/25/90)	John C. Sealander, CP89SO0473.
90–30 (9/27/90)	John A. Steidinger, CP89NE0267.
90–31 (10/4/90)	John J. Carroll, CP89NE0285.
90–32 (10/4/90)	Continental Airlines, CP89NE0036.
90–33 (10/11/90)	Eddie L. Cato, CP89SO0398.
90–34 (10/16/90)	David D. Adams, CP89AL0364.
90–35 (10/16/90)	Patricia D. Adams, CP89NM0383.
90–36 (10/23/90)	Skywest Airlines, CP89NM0356.
90–37 (11/7/90)	Northwest Airlines, CP89AL0291.
90–38 (11/7/90)	Continental Airlines, CP89NE0036.
90–39 (11/7/90)	Bevil Hart, CP89SW0455.
90–40 (11/14/90)	Westair Commuter, CP89WP0344.
90–41 (11/14/90)	Westair Commuter, CP89WP0341.
90–42 (11/27/90)	John J. Carroll, CP89NE0285.
90–43 (12/24/90)	Barbara J. Waddell, CP89SO0321.
91–1 (1/2/91)	Henry Nestor, CP89EA0433.
91–2 (1/4/91)	Continental Airlines, CP89NE0031; CP89NE0036; CP89EA0058; CP89EA0047; CP89EA0028; CP89EA0045; CP89NM0029; CP89NM0037; CP89NM0052; CP89NM0057.
91–3 (2/4/91)	Dawn M. Lewis, CP89SO0108.
91–4 (2/11/91)	[Airport Operator], CP89**0220.
91–5 (3/29/91)	Jay H. Jones, CP90SO0172.
91–6 (4/10/91)	Ora L. Lowery, CP90SO0239.
91–7 (4/10/91)	Robert T. Pardue, CP90SO0161.
91–8 (4/11/91)	Watts Agricultural Aviation, CP89WP0148.
91–9 (4/12/91)	Continental Airlines, CP89NM0037; CP89NM0052; CP89NM0057
91–10 (4/11/91)	Craig A. Graham, CP90NM0146.
91–11 (4/11/91)	Continental Airlines, CP89SW0038; CP89EA0049; CP89EA0034; CP89SW0046.
91–12 (4/12/91)	Ronald C. Terry and Christopher J. Menne, CP89SO0491; CP89SO0490.
91–13 (4/19/91)	Jeffrey Glenn Kreamer, CP89NM0009.
91–14 (5/24/91)	Carol Ann Swanton, CP90NM0235.
91–15 (5/24/91)	Richard X. Knipe, CP90EA0293.
91–16 (5/28/91)	Hiram Lopez, CP90EA0007.
91–17 (5/30/91)	KDS Aviation, CP90WP0196.
91–18 (6/3/91)	[Airport Operator], CP89**0476.
91–19 (6/4/91)	Marcia Bayer, CP89SO0310.
91–20 (6/4/91)	Richard A. Bargen, CP90WP0183.
91–21 (6/10/91)	Britt Airways, CP89SW0392.
91–22 (6/13/91)	Omega Silicone Company, 87–152(HM).
91–23 (6/14/91)	Continental Airlines, CP89EA0034; CP89SW0038; CP89SW0046; CP89EA0049.
91–24 (6/21/91)	William John Esau, CP91SO0188.
91–25 (7/3/91)	Janet D. Sanders, CP91SO0188.

Order No. and (service date)	Name and docket No.
91–26 (7/5/91)	Britt Airways, CP89SW0475.
91–27 (7/25/91)	Delta Air Lines, CP90SO0419.
91–28 (7/30/91)	Continental Airlines, CP89NE0300.
91–29 (7/30/91)	Ronald W. Smith, CP90SW0130.
91–30 (8/2/91)	Maria J. Trujillo, CP89WP0452.
91–31 (8/2/91)	Ronald C. Terry & Christopher J. Menne, CP89SO0491, CP89SO0490.
91–32 (8/2/91)	Richard A. Bargen, CP90WP0183.
91–33 (8/12/91)	Delta Air Lines, CP90**0049.
91–34 (8/20/91)	GASPRO, 89–42(HM).
91–35 (8/20/91)	Monique Graham, CP91WP0082.
91–36 (8/20/91)	Earl Howard, CP89NM0328.
91–37 (8/26/91)	Carlisle M. Vereen, CP90WP0196; 91EAJASO0005.
91–38 (9/4/91)	William Esau, CP90SO0105.
91–39 (9/6/91)	America West Airlines, CP89NM0424.
91–40 (9/30/91)	[Airport Operator], CP90**0342.
91–41 (10/31/91)	[Airport Operator], CP90**0343.
91–42 (9/9/91)	Pony Express Courier, 90–48(HM).
91–43 (9/12/91)	Delta Air Lines, CP90SO0387.
91–44 (9/12/91)	Delta Air Lines, CP89SO0420
91–45 (9/11/91)	James Park, CP90EA0133.
91–46 (9/27/91)	Delta Air Lines, CP89SO0418.
91–47 (9/27/91)	Delta Air Lines, CP90SO0053.
91–48 (10/4/91)	Michael Edward Wendt, CP89GL0084.
91–49 (10/8/91)	Lydia Shields, CP90SO0276.
91–50 (10/9/91)	Michael J. Costello, CP89WP0351.
91–51 (10/9/91)	Troy R. Hagwood, CP91EA0105.
91–52 (10/28/91)	KDS Aviation Corp., CP91WP0222; EAJA210005; (CP90WP0196).
91–53 (10/28/91)	Norbert G. Koller, CP89EA0338.
91–54 (11/6/91)	Alaska Airlines, CP89NM0298; CP89NM0299; CP89NM0307; CP89NM0470.
91–55 (12/6/91)	Continental Airlines, CP89**0300; CP89**0361; CP89**0362.
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91–57 (12/4/91)	Britt Airways, CP89SW0475.
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(Current as of December 31, 1992)

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13.211	89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall; 92–57 Detroit Metro. Wayne Co. Airport; 92–74 Wendt; 92–76 Safety Equipment.
13.212	90–11 Thunderbird Accessories; 91–2 Continental Airlines.
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13.214	91–3 Lewis.
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13.220	89–6 American Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter.
13.221	92–29 Haggland; 92–31 Eaddy; 92–52 Cullop.
13.222	92–72 Giuffrida.
13.223	91–12 & 91–31 Terry & Menne; 92–72 Giuffrida.
13.224	90–26 Waddell; 91–4 [Airport Operator]; 92–72 Giuffrida.
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13.227	90–21 Carroll.
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Digests

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from October 1, 1992 through December 31, 1992. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g., April, July, October, and January of each year).

Civil Penalty Case Decisions

Digests

(Current as of December 31, 1992)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of Detroit Metropolitan Wayne County Airport

Order No. 92–57 (10/13/92)

Respondent failed to file a timely notice of appeal and did not show good cause for this failure. Respondent's appeal is dismissed.

In the Matter of Kenneth F. Hoedl

Order No. 92–58 (10/16/92)

Passenger screening. The law judge held that Respondent violated 14 CFR 107.20 (rule requiring individuals to submit to screening in accordance with established procedures). Respondent, who was a ticketed passenger on a soon departing flight, ran off to the gate after setting off the metal detector without satisfying security agents that he was not carrying a weapon or explosive. The Administrator affirmed the law judge's decision. Respondent's own admissions showed that he failed to follow the screening procedures. Respondent admitted that he knew at the time that the security agents were not satisfied that he had successfully completed the metal detector portion of the screening process. He did not deny that he was never given permission to enter the sterile area, and he admitted on cross-examination that he substituted his judgment for that of the security agents. A civil penalty of $1,000 was assessed.

In the Matter of Karen Petek-Jackson

Order No. 92–59 (10/16/92)

Gun case. Respondent forgot that she had packed a .22 caliber revolver in her purse the day before her flight. The law judge held that the FAA had failed to show that the woman either knew or should have known that the gun was in her purse as she went through the security checkpoint. The Administrator reversed the law judge's decision. Neither the small size and weight of the gun, Respondent's habit of not carrying a gun, the stress she was under, nor all of these factors together excused Respondent's action. As the Administrator has previously held, passengers have a duty to know the contents of the items they intend to carry on board a plane. A civil penalty of $1,000 was assessed.

In the Matter of Michael John Costello

Order No. 92–60 (10/22/92)

Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of James W. Romerdahl

Order No. 92–61 (10/23/92)

Respondent withdrew his notice of appeal from the initial decision. Respondent's appeal is dismissed.

In the Matter of USAir, Inc.

Order No. 92–62 (10/28/92)

Complainant withdrew its notice of appeal from the pre-hearing Order Terminating Proceedings, as part of a settlement agreement with Respondent. Complainant's appeal is dismissed.

In the Matter of Bernice Schaefer

Order No. 92–63 (11/12/92)

Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Delta Air Lines, Inc.

Order No. 92–64 (11/30/92)

Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Delta Air Lines, Inc.

Order No. 92–65 (11/30/92)

Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

In the Matter of Sabre Associates, Inc. and Michael K. Moore

Order No. 92–66 (11/30/92)

Complainant withdrew its notice of appeal from the initial decision, and its complaint in this action. Respondents withdrew their cross-appeal of the initial decision. Complainant's appeal and Respondents' cross-appeal are dismissed.

In the Matter of USAir, Inc.

Order No. 92–67 (11/30/92)

Respondent failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of David L. Weintraub

Order No. 92–68 (12/2/92)

Respondent failed to perfect his appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of William H. McCabe

Order No. 92–69 (12/14/92)

Untimely Appeal. The Administrator found that there was no good cause for waiving the requirement to file the notice of appeal within 10 days from the law judge's initial decision. Respondent did not explain why he waited over three months to appeal the law judge's decision. Respondent's appeal is dismissed.

In the Matter of USAir, Inc.

Order No. 92–70 (12/21/92)

Reconsideration Denied. The Administrator denied Respondent's petition for reconsideration of FAA Order 92–48 (July 22, 1992). The Administrator affirmed his prior finding that Respondent air carrier operated an unairworthy aircraft in a careless or reckless manner.

Independent Contractor. Respondent's argument that it was not responsible for the acts and omissions of its pushback operator because she was employed by an independent contractor was rejected. Respondent remains responsible for the acts or omissions of its independent contractor because Respondent is under a duty to perform its pushback operations with care. An air carrier's duty under the Federal Aviation Act to perform its services with the highest possible degree of safety may not be delegated. Alternatively, Respondent would be responsible for the acts and omissions of its pushback operator if her employer was an agent-servant.

Careless or Reckless. The Administrator held that ample legal authority existed for holding that absent extraordinary circumstances, careless or reckless operation follows as a residual violation once operation of an unairworthy aircraft is established.

Reconsideration. The Administrator announced that for the sake of judicial economy, absent good cause, all appellate arguments before the Administrator should be raised on appeal. Arguments that could have been raised on appeal will not be considered on recommendation if they were not presented in the appeal or reply brief. This rule will be applied prospectively.

In the Matter of KDS Aviation Corp.

Order No. 92–71 (12/21/92)

Attorney Fees. The Administrator affirmed the law judge's finding that Respondent was not entitled to attorney's fees under the Equal Access to Justice Act. After examining the evidence available to the agency attorney when the complaint was filed, the Administrator found that it supported Complainant's position that Respondent operated the flight in question without a part 135 operating certificate. Complainant was substantially justified in bringing the action against Respondent because its position was reasonable in law and fact. Whether Complainant would have prevailed on the merits of the litigation if the complaint had not been withdrawn was not a valid consideration.

In the Matter of Salvatore Giuffrida

Order No. 92–72 (12/21/92)

Reconsideration Granted. Complainant sought reconsideration of FAA Order 92–37, in which the Administrator reduced the $500 civil penalty to $200 based upon Respondent's financial hardship. The Administrator granted the petition for reconsideration and reversed FAA Order 92–37.

Weight of Hearsay. The problem in this case was whether Respondent proved his affirmative defense of inability to pay by a preponderance of the reliable, probative and substantial evidence. 14 CFR 13.223. The only evidence pertaining to Respondent's financial circumstances was contained in a letter written by Respondent. Respondent did not appear at the hearing.

The Administrator held that Respondent's letter did not constitute substantial evidence supporting the finding of inability to pay. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson* v. *Perales,* 402 U.S. 389, 402 (1971). This decision turned not only on the self-serving nature of the hearsay evidence at issue here, but also on the likelihood that far more reliable records could have been produced regarding Respondent's economic circumstances. Respondent had not explained why he did not submit pay stubs, a lease, tax returns, or such other records as a reasonable person would accept as reliable and probative on the issues of income and expenses. Also, Complainant's counsel had not been served with the letter early enough to enable him to obtain financial records through discovery.

Standard of Proof. This decision should not be construed as standing for the proposition that the Administrator will apply a substantial evidence standard when reviewing the factual findings of a law judge. While the ultimate question under 14 CFR 13.233(b)(1) is whether the factual findings of the ALJ are supported by a preponderance of the evidence, the preliminary question is whether the evidence that had been introduced is reliable, probative and substantial. In this case, the only evidence that was introduced was hearsay. Although hearsay evidence may, under certain circumstances, support a factual finding, the hearsay evidence in question in this case was not sufficiently reliable, probative and substantial. Thus, Respondent failed to sustain his burden of proof.

In the Matter of Glen E. Wyatt

Order No. 92–73 (12/21/92)

Failure to Surrender Certificate. The Administrator affirmed a $6,000 civil penalty against Respondent, who performed an annual inspection on an aircraft after revocation of his mechanic certificate and inspection authorization. Respondent failed to surrender the revoked documents without valid reason for approximately three years after the effective date of revocation. The Administrator held that the only reasonable interpretation of the regulations pertaining to the surrender of a revoked certificate or authorization is that it must be surrendered by the effective date of the revocation order.

Summary Judgment. A motion for decision under 14 CFR 13.218(f)(5) is appropriate when, as in this case, the administrative law judge found that there were no genuine issues of fact, and only the law remained to be applied.

Limitations Period. Under 14 CFR 13.208(d), a notice of proposed civil penalty must be filed within two years of the alleged violation, if the alleged violation occurred on or after August 2, 1990. A prior limitations period of 5 years applies to alleged violations that occurred before August 2, 1990. The Administrator found that the notice of civil penalty in Respondent's case was issued within these limitation periods.

In the Matter of Michael Edward Wendt

Order No. 92–74 (12/21/92)

Jurisdiction. Respondent has moved for a ruling on whether the FAA Administrator or the National Transportation Safety Board (NTSB) has jurisdiction over his appeal from the law judge's denial of attorney fees and other expenses under the Equal Access to Justice Act (EAJA) in a case arising under the Civil Penalty Demonstration Program. Respondent suggests that the status of this case is unclear due to the recent transfer of appellate jurisdiction over pilot cases from the Administrator to the NTSB.

Despite the transfer of appellate jurisdiction in pilot cases to the NTSB, the Administrator has jurisdiction over this case. The transfer of cases applies only to "violations occurring on or after the date of the enactment of the FAA Civil Penalty Administrative Assessment Act of 1992." 49 U.S.C. App. 1471(a)(3)(F). Although Congress repealed the Civil Penalty Demonstration Program, it specifically provided that the Demonstration Program would continue in effect for violations occurring prior to the enactment of the 1992 Act. 49 U.S.C. App. 1471(b), (c).

In the Matter of Thomas Beck

Order No. 92–75 (12/21/92)

Failure to Appear at Hearing. Respondent forfeited his opportunity to contest both the alleged violations and the sanction amount when he failed to appear at the hearing. As the law judge held, failing to appear at the hearing constitutes a withdrawal of one's request for hearing.

Effect of Filing Motion for Continuance. Merely filing a motion for a continuance of the hearing does not mean it will be granted. This is particularly true when, as here, the motion is filed on the eve of the hearing and contains no valid reasons for granting a continuance.

What Constitutes Answer. Respondent argues erroneously on appeal that he complied with the regulation requiring him to file an answer to the complaint by filing an answer to the notice of proposed civil penalty. A response to agency communications that is sent before the complaint has even been issued cannot be considered an answer to the complaint. Furthermore, the record shows that Respondent knew that his response to the notice of proposed civil penalty did not fulfill the requirement to answer the complaint.

Good Cause. Failure to file an answer is excusable for good cause. Here, however, Respondent never even attempted, after he was informed of the default, to cure it by filing an answer. Even if this case had not already been disposed of on the failure to appear at the hearing, it is highly unlikely that good cause would be found under all the circumstances. A civil penalty of $1,000 is assessed.

In the Matter of Safety Equipment

Order No. 92–76 (12/21/92)

Good Cause for Late Answer. Good cause was found for the late answer in this case because: (1) counsel attempted to protect against his paralegal's errors by asking her to let him see each document before it was filed, though she did not comply; (2) counsel acted promptly to cure the default; (3) the default caused only minimal delay; and (4) no prejudice to the agency has been claimed.

Service of Complaint. Respondent's argument that Complainant failed to serve the complaint properly is rejected. The rules of practice do not require Complainant to have the docket stamp Respondent's copy of the complaint "Filed" before mailing it. Furthermore, nothing in the rules of practice requires Complainant to serve respondents by some sort of restricted service that would exclude service upon counsel's own employees.

Disqualification of Law Judge. Respondent asked that the law judge be disqualified because he allegedly sought to "personally vilify counsel for Respondent" and "demean counsel's character and competence" in retaliation for counsel's criticism of the civil penalty program. Counsel's *ad hominem* attacks on the law judge are unsupported by any evidence in the record. This case is remanded to the law judge.

In the Matter of TCI Corporation

Order No. 92–77 (12/22/92)

Respondent offered 36 quarts of photoresist adhesion promoter ("PAP"), a hazardous material, to Flying Tigers when the PAP was not packaged, labeled, or marked in accordance with the DOT's Hazardous Materials Regulations (HMR). Also, the shipping papers accompanying the PAP were not prepared in accordance with the HMR, and Respondent's employees had not been trained with regard to the requirements of the HMR as required by the HMR. While loading the boxes of PAP, a Flying Tigers employee noticed a hazardous material label that had previously been obscured. Subsequently, Flying Tigers rejected the shipment.

Respondent had purchased the 36 quarts of PAP, a flammable and corrosive liquid, from a chemicals manufacturer. The chemicals manufacturer sent the 6 boxes of PAP by truck to Respondent's freight forwarder. The chemicals manufacturer did not comply with the requirements of the HMR when preparing the PAP for shipment by truck.

The law judge found that Respondent had violated all of the alleged regulations, but reduced the civil penalty sought by Complainant from $35,000 to $5000. Complainant appealed from the reduction of sanction. The Administrator granted Complainant's appeal in part and assessed a $15,000 civil penalty.

Sanction. When determining the appropriate sanction in a hazardous materials case, the Administrator will consider "the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the person found to have committed such violation, the degree of culpability, and any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require." 49 U.S.C. App. 1809(a).

Regarding the nature, extent, and gravity of the violation, the law judge was correct in finding that Respondent's omissions created a "real and serious potential for harm." Because the labels and markings were obscured and the shipping papers did not include the proper shipping name or certification, Flying Tigers had no idea about the hazardous nature of the shipment. Also, each of the six packages contained six times more flammable liquid, corrosive, n.o.s., than permissible under the HMR.

Because it is simply fortuitous that there was no spill, it was inappropriate for the law judge to have regarded the fact that no PAP was released as a mitigating factor.

Regarding Respondent's degree of culpability, the law judge correctly found that Respondent's actions were "inexplicably casual and insensitive to the welfare of the persons who would necessarily come in contact with a shipment of 36 quarts of chemical known by Respondent to be flammable and corrosive. Respondent failed to ask the manufacturer or the freight forwarder whether anything had to be done to prepare this shipment for air transportation, and did not inform its freight forwarder that the manufacturer would not prepare the PAP for overseas air transportation.

Respondent's degree of culpability was diminished somewhat by the negligence of the manufacturer of the PAP, which introduced the PAP into the transportation network and knew that PAP was a hazardous material subject to the HMR. The manufacturer's negligence does not exonerate Respondent but is a mitigating factor.

The freight forwarder's failure to inquire as to whether the shipment contained hazardous materials is not a mitigating factor. Unlike the manufacturer, the freight forwarder did not introduce the PAP into the transportation system without complying with the HMR, and the evidence suggesting that the boxes contained a hazardous material was not especially strong.

Respondent's unfamiliarity with the HMR is also a factor to consider when determining Respondent's degree of culpability.

A violation-free history should be the norm and will not be considered as mitigating an otherwise reasonable civil penalty.

The type of corrective action that warrants a significant reduction in civil penalty under 49 U.S.C. App. 1809(a) is action to ensure that hazardous materials will be handled in compliance with the HMR in the future. Respondent's decision not to handle hazardous materials in the future and its repackaging of the PAP in compliance with the HMR after the shipment was rejected by Flying Tigers do not constitute the type of corrective actions that merit a reduction in sanction.

In the Matter of Trans World Airlines, Inc.

Order No. 92–78 (12/28/92)

Respondent failed to perfect its appeal by filing an appeal brief. Respondent's appeal is dismissed.

In the Matter of Delta Air Lines, Inc.

Order No. 92–79 (12/28/92)

Complainant withdrew its notice of appeal from the initial decision. Complainant's appeal is dismissed.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June, 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. As a result, the Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications:

Avlex, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 822–4669;
Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (301) 798–1098.

Another publishing company, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490, is expected to release its publication of the civil penalty decisions and orders soon.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040 (806) 733–2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and GEnie.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely and accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's final decisions and orders, indexes, and digests are also available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.
Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.
Office of the Assistant Chief Counsel for the Central Region (ACE–7) Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.
Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035.
Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (312) 694–7108.
Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310.
Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.
Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204.
Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.
Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605.
Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270.

Issued in Washington, DC, on January 11, 1993.

Kenneth P. Quinn,

Chief Counsel.

[FR Doc. 93–1165 Filed 1–15–93; 8:45 am]

BILLING CODE 4910–13–M

General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration General Aviation and Business Airplane Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 2, 1993, at 9 a.m. Arrange for oral presentations by January 21, 1993.

ADDRESSES: The meeting will be held in the Board Room, National Business Aircraft Association, Inc., 1200 Eighteenth Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, (AIR–1), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the General Aviation and Business Airplane Subcommittee to be held on February 2, 1993, in the Board Room, National Business Aircraft Association, Inc., 1200 Eighteenth Street NW., Washington, DC 20036. The agenda will include:

- Report from the Accelerated Stalls Working Group.
- Report from the Fuel Indicators Working Group.
- Report on JAR/FAR 23 Working Group.
- Discussion of future activities.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 21, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 12 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on January 8, 1993.

William J. Sullivan,

Executive Director, General Aviation and Business Airplane Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–1163 Filed 1–15–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Use a Passenger Facility Charge (PFC) at Baton Rouge Metropolitan Airport, Baton Rouge, LA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comments on the application to use a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 18, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. William Perkins, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Iray Ledoux, of the Parish of East Baton Rouge, city of Baton Rouge, at the following address: Baton Rouge Metropolitan Airport, Parish of East Baton Rouge, City of Baton Rouge, suite 212, Terminal Building, Baton Rouge, Louisiana 70807.

Comments from air carriers and foreign air carriers may be in the same form as provided to the city of Baton Rouge, Baton Rouge Metropolitan Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. William Perkins, Federal Aviation Administration, Planning and Programming Branch, ASW–610D, Airports Division, Southwest Region, Fort Worth, Texas 76193–0611, (817) 624–5979.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to use a PFC at Baton Rouge Metropolitan Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 6, 1993, the FAA determined that the application to impose a PFC submitted by the city of Baton Rouge was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00.

Actual charge effective date: December 1, 1992.

Approved charge expiration date: December 1, 1998.

Total approved PFC revenue: $9,823,159.00.

Brief description of proposed project(s): Noise Mitigation and Land Acquisition.

Approved classes of air carriers to be exempted from collecting PFC's: Part 135 On-Demand Air Taxis, fixed wing and rotary, and part 121 Supplementary Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, Planning and Programming Branch, ASW–610D, 4400 Blue Mound Road, Fort Worth, Texas 76106–0611.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Baton Rouge. Issued in Fort Worth, Texas on January 6, 1993.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 93–1164 Filed 1–15–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 766 Ref: ATF O 1100.160]

Delegation Order; Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 53, Firearms and Ammunition Excise Taxes

1. *Purpose.* This order delegates certain authorities of the Director in 27 CFR part 53, Firearms and Ammunition Excise Taxes.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to the collection and administration of manufacturers' excise taxes relating to firearms ammunition established under Chapter 4181 Internal Revenue Code of 1986. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01, dated June 6, 1972, and Treasury Department Order 120–03, dated November 5, 1990, authority to take final action on the following matters is delegated to the Associate Director (Compliance Operations).

a. To prescribe all forms required for the administration of 27 CFR part 53, as provided in 27 CFR 53.21.

b. To determine constructive sale prices, pursuant to 26 U.S.C. 4216(b) and 27 CFR 53.94–53.97.

c. To determine the tax base of articles used by a manufacturer pursuant to 26 U.S.C. 4218 and 27 CFR 53.115.

4. *Redelegation.*

a. The authority in paragraph 3a above may be redelegated to personnel in Bureau Headquarters not lower than the position of branch chief.

b. The authorities in paragraphs 3b and 3c, above may be redelegated to regional directors (compliance). Regional directors (compliance) may redelegate these authorities to personnel not lower than the position of chief, technical services.

5. *For Information Contact.* Gail Hosey, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

Daniel R. Black,

Acting Director.

[FR Doc. 93–1103 Filed 1–15–93; 8:45 am]

BILLING CODE 4810–31–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 11
Tuesday, January 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 375.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, January 21, 1993.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has postponed the meeting previously scheduled to 10 a.m., Tuesday, January 26, 1993. The open meeting schedule for January 26 will be:

—Floor Trader Registration and Ethics Training Rules—proposed rules
—Contract Market Emergency Actions—proposed rules

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–1367 Filed 1–14–93; 2:59 pm]

BILLING CODE 6351–01–M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Wednesday, January 27, 1993.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. Financial Report
   B. Membership Report
2. Housing Finance Directorate
   - Status of Community Support Program
3. Office of Strategic Planning
   A. System 2000 Update
   B. GSE Hearing
4. Examination and Regulatory Oversight Division
   - Advances Regulations
   A. Approval of Final Rule
   B. Approval of Interim Final Rule on Advances to Non-Member Mortgagees

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the December Board Minutes
2. Office of Finance
3. 1993 Agency Priorities
4. Office of Strategic Planning
   A. GSE Study Update
   B. System 2000
5. Examination and Regulatory Oversight Division
   - Other Oversight Issues
6. FHLBank System Appointive Directors Confirmation
7. Board Management Issues

The above matters are exempt under one or more of sections 552b(c) (2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,
Managing Director.

[FR Doc. 93–1257 Filed 1–14–93; 10:02 am]

BILLING CODE 6725–01–M

LEGAL SERVICES CORPORATION

Board of Directors Committee Meeting

TIME AND DATE: Meetings of the Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services, and Audit and Appropriations Committees will be held on January 28, 1993. The meetings will commence at 12:00 p.m. and will be held in the following order, with each meeting continuing until all business has been concluded:

1. Provision for the Delivery of Legal Services Committee; and
2. Audit and Appropriations Committee.

PLACE: The Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, DC 20002, (202) 336–8800.

Provision for the Delivery of Legal Services Committee Meeting

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of December 6, 1992 Meeting Minutes.
3. Consideration of Options Related to Grantees' Recruitment and Retention of Staff Attorneys.
4. Consideration of Draft Request for Proposals for Migrant Ombudsman Demonstration Projects.

Audit and Appropriations Committee Meeting

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of December 6, 1992 Meeting.
3. Presentation by Representatives of the American Association of Law Schools on the Continued Funding of Law School Clinical Programs.
4. Presentation by Representative of the Clinical Legal Education Association on the Continued Funding of Law School Clinical Programs.
5. Consideration of Status Report on Leasing of the Corporation's Former Office Space.
6. Consideration and Review of Proposed Fiscal Year 1993 Consolidated Operating Budget.
7. Public Comment Regarding the Fiscal Year 1994 Appropriation Request for the Corporation.
8. Consideration of Proposed Fiscal Year 1994 Appropriation Request for the Corporation.
9. Consideration of Whether to Formally Adopt, and if so, to Adopt, a Corporate Position as to the Corporation's Program Operating Responsibilities as Referred to in the Inspector General Act.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate individuals who are blind or have visual impairment.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 14, 1993.

Patricia D. Batie,
Corporate Secretary.

[FR Doc. 93–1356 Filed 1–14–93; 2:58 pm]

BILLING CODE 7050–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1455]

TIME AND DATE: 10 a.m. (EST), January 20, 1993.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on November 18, 1992.

ACTION ITEMS:

New Business

C—Energy

C1. Supplement to Contract 91NNP–44970C with Ebasco Constructors, Incorporated for Watts Bar Nuclear Plant.

C2. Supplement to Contract TV–83425V with Bechtel Corporation to Provide Architectural/Engineering Services for Browns Ferry Nuclear Plant Subject to Satisfactory Negotiations and Final Review Prior to Execution.

C3. Supplement to Contract 91NMB–80847D with Stone and Webster Engineering

Corporation for Work at Browns Ferry Nuclear Plant Subject to Satisfactory Negotiations and Final Review Prior to Execution.

C4. Amendment of Contract 90P2S–79058B with United Engineers and Constructors for Work at Cumberland Fossil Plant.

C5. Contract with Westinghouse Electric Corporation for Work at Colbert Fossil Plant.

C6. Modification to Contract 70P99–91 with American Commercial Barge Line Company for Coal Barging Services for Cumberland Fossil Plant.

E—Real Property Transactions

E1. Sale of Permanent Easements Affecting 0.177 Acre Portion of TVA's Oakland 161–kV Substation in Fayette County to the State of Tennessee for Highway Purposes.

E2. Sale of Permanent Easement Affecting 0.35 Acre of Chickamauga Lake Land in Bradley and McMinn Counties, Tennessee.

E3. Abandonment of Easement Rights Affecting 0.34 Acre of Chickamauga Lake Land in Hamilton County, Tennessee.

E4. Grant of Permanent Easement Affecting 3.12 Acres of Chickamauga Lake Land in Bradley and McMinn Counties, Tennessee.

E5. Sale of Noncommercial, Nonexclusive Permanent Easements Affecting 0.75 Acre of Tellico Lake Land in Loudon and Monroe Counties, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Personal Services Contract No. TV–76847T with Manpower Temporary Services.

INFORMATION ITEMS:

1. Recommendations Resulting from the 57th Annual Wage Conference 1992—Construction Project Agreement Wage Rates.

2. Requisition 24, Request for Term Coal Proposals from Certified 8(a) Coal Producing Companies.

3. Grant of Ollis Creek Coal Easements to Onyx International, Inc., for Underground and Surface Mining in Return for Royalties on Coal Extracted to Generate Income from TVA Coal Reserves.

4. Proposed Abandonment of Easement Rights Affecting 0.28 Acre of Port Loudoun Lake Land in Loudon County, Tennessee.

5. Memorandum of Agreement with the Tennessee Council of Trout Unlimited.

6. Purchase of the Knoxville Office Complex Towers Property in Downtown Knoxville for use as TVA's Corporate Headquarters Office Complex.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: January 13, 1993.

Edward S. Christenbury,

General Counsel and Secretary

[FR Doc. 93–1260 Filed 1–14–93; 8:45 am]

BILLING CODE 8120-08-M

Corrections

Federal Register
Vol. 58, No. 11
Tuesday, January 19, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL 4552–1]

Disclosure of Confidential Data to Authorized Representatives of the United States and to Potentially Responsible Parties

Correction

In rule document 93–71 beginning on page 458 in the issue of Tuesday, January 5, 1993, make the following corrections:

1. On page 458, in the second column, in heading **B.**, "**Contracts**" should read "**Contractors**".

2. On page 459, in the 2d column, in the 5th complete paragraph, in the 17th line, insert ")" following "**Register**.".

§ 2.301 [Corrected]

3. On page 461, in the third column, in § 2.301, in the heading, "formation" should read "information".

4. On the same page, in the same column, in the same section, delete "**§ 2.208 [Amended]**".

5. On the same page, in the same column, in § 2.301(e), in the first line, "applied" should read "applies"; in the last line, "treat." should read "treatment.".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Proposed Methodology for Implementation of the Statutory General Funding Preference for Selected Grant Programs Under Titles VII and VIII of the Public Health Service Act for Fiscal Year 1993

Correction

In notice document 92–30678 beginning on page 60212 in the issue of Friday, December 18, 1992, in the first column, under SUPPLEMENTARY INFORMATION, in the ninth line, insert the entry "Grants for Predoctoral Training in Family Medicine (section 747(a)),".

BILLING CODE 1505–01–D

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federal register

Tuesday
January 19, 1993

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 32 and 33
Refuge-Specific Hunting and Fishing Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 32 and 33

RIN 1018–AA71

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) makes an administrative change only in moving information regarding refuge-specific regulations for migratory game bird hunting, upland game hunting, big game hunting and fishing into one consolidated regulation. This consolidation and simplification of regulations is in response to Regional and public concerns that regulations regarding hunting and fishing should be easier to locate and readily ascertainable.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; telephone (703) 358–2043.

SUPPLEMENTARY INFORMATION: Refuge-specific regulations for hunting have been located under separate sections with refuges having letter designations under each heading for hunting of migratory game birds, upland game hunting and big game hunting. Fishing regulations were located in a separate part and each State had its own section under which refuge units open to sport fishing were listed. This consolidation of the three types of hunting regulations and the sport fishing regulations into one part will enable the refuge manager and the public to readily ascertain whether hunting (of any type) and fishing are allowed on the refuge at one glance, and will eliminate the cumbersome and time-consuming task of reviewing four (4) different sections to make the same determination.

This administrative change is in keeping with the President's direction that regulations be kept to a minimum and that they encourage economic growth and foster savings. The consolidation of hunting and fishing regulations under one part will save thousands of dollars in printing costs, will enable Service personnel and the public to readily ascertain existing regulations, and promote refuge-specific revisions which will be uniform and consistent from year-to-year, as appropriate.

No revisionary language to the refuge-specific hunting and/or fishing regulations has been made within this administrative change. The different sections on hunting and sport fishing have simply been combined to facilitate easier reading and to allow for easier revisions as they may become necessary. A combined list of refuge units by State which are open to hunting and fishing has been included under § 32.7.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

In the November 25, 1992, issue of the **Federal Register** 57 FR 55686 the Service published a proposed rulemaking to implement the consolidation of the hunting and fishing regulations and invited public comment. The Service received no comments to the consolidation of the regulations except that under the alphabetical listing of the State of Montana the following refuge units should be added to the listing of refuges open to hunting and/or fishing: Halfbreed Lake National Wildlife Refuge, Lamesteer National Wildlife Refuge, National Bison National Wildlife Refuge, Nine-Pipe National Wildlife Refuge, Pablo National Wildlife Refuge, and UL Bend National Wildlife Refuge.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The reformatting of the hunting and fishing regulations is an administrative change only and, therefore, would not have any gross economic effect and would not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. Accordingly, this rule is not a rule intended within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for parts 32 and 33 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0014. Because this reformatting of parts 32 and 33 is not substantive in nature, no information collection requirements are applicable.

Environmental Considerations

Refuge-specific hunting and fishing regulations are subject to a categorical exclusion from the process established under the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) if they do not significantly alter the existing use of a particular national wildlife refuge. Because this reformatting of parts 32 and 33 is not substantive in nature, and no other impact on refuge operations is anticipated, this rulemaking does not alter the existing uses of the refuges involved.

List of Subjects

50 CFR Part 32

Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife Refuges.

50 CFR Part 33

Fishing, Report and recordkeeping requirements, Wildlife refuges.

Accordingly, chapter I, subchapter C, of title 50 of the Code of Federal Regulations is amended as set forth below:

1. Part 32 is revised to read as follows:

PART 32—HUNTING AND FISHING

Subpart A—General Provisions

Sec.
32.1 Opening of wildlife refuge areas to hunting.
32.2 General provisions regarding hunting on wildlife refuges.
32.3 Procedures for publication of refuge-specific hunting regulations.
32.4 Opening of wildlife refuge areas to fishing.
32.5 General provisions regarding fishing on wildlife refuges.
32.6 Procedures for publication of refuge-specific fishing regulations.
32.7 List of refuge units open to hunting and/or fishing.
32.8 Areas closed to hunting.

Subpart B—Refuge-Specific Regulations for Hunting and Fishing

32.20 Alabama.
32.21 Alaska.
32.22 Arizona.

32.23 Arkansas.
32.24 California.
32.25 Colorado.
32.26 Connecticut. [Reserved]
32.27 Delaware.
32.28 Florida.
32.29 Georgia.
32.30 Hawaii.
32.31 Idaho.
32.32 Illinois.
32.33 Indiana.
32.34 Iowa.
32.35 Kansas.
32.36 Kentucky.
32.37 Louisiana.
32.38 Maine.
32.39 Maryland.
32.40 Massachusetts.
32.41 Michigan.
32.42 Minnesota.
32.43 Mississippi.
32.44 Missouri.
32.45 Montana.
32.46 Nebraska.
32.47 Nevada.
32.48 New Hampshire. [Reserved]
32.49 New Jersey.
32.50 New Mexico.
32.51 New York.
32.52 North Carolina.
32.53 North Dakota.
32.54 Ohio.
32.55 Oklahoma.
32.56 Oregon.
32.57 Pennsylvania.
32.58 Puerto Rico. [Reserved]
32.59 Rhode Island. [Reserved]
32.60 South Carolina.
32.61 South Dakota.
32.62 Tennessee.
32.63 Texas.
32.64 Utah.
32.65 Vermont.
32.66 Virginia.
32.67 Washington.
32.68 West Virginia. [Reserved]
32.69 Wisconsin.
32.70 Wyoming.
32.71 Pacific Islands Territory.

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

Subpart A—General Provisions

§ 32.1 Opening of wildlife refuge areas to hunting.

The opening of a wildlife refuge area to hunting will be dependent upon the provisions of law applicable to the area and upon a determination by the Secretary that the opening of the area to the hunting of migratory game birds, upland game, or big game will be compatible with the principles of sound wildlife management and will otherwise be in the public interest. The opening or closing of wildlife refuge areas to hunting shall be in accordance with the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 553). Lands acquired pursuant to the Act of May 18, 1948 (62 Stat. 238, 16 U.S.C. 695) will be opened to hunting only after it has been determined that the major portion of the crops in the vicinity of the area involved have been harvested, that the period of susceptibility of such crops to wildfowl depredation has passed, or that the possibility of these crops being damaged by waterfowl is minor. Lands acquired as "waterfowl production areas" shall annually be open to the hunting of migratory game birds, upland game, and big game subject to the provisions of State law and regulations and the pertinent provisions of parts 25 through 31 of this subchapter: *Provided,* That all forms of hunting or entry on all or any part of individual areas may be temporarily suspended by posting upon occasions of unusual or critical conditions of, or affecting land, water, vegetation, or wildlife populations.

§ 32.2 General provisions regarding hunting on wildlife refuges.

The following provisions shall apply to each person while engaged in public hunting on a wildlife refuge area:

(a) Each person shall secure and possess the required State license.

(b) Each person 16 years of age and older shall secure and possess a Migratory Bird Hunting Stamp while hunting migratory waterfowl.

(c) Each person shall comply with the applicable provisions of Federal law and regulations including this subchapter and the current Federal Migratory Bird Regulations.

(d) Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless further restricted by Federal law or regulation.

(e) Each person shall comply with the terms and conditions authorizing access or use of wildlife refuges, including the terms and conditions under which hunting permits are issued.

(f) Each person shall comply with the provisions of any refuge-specific regulations governing hunting on the wildlife refuge area. Regulations, special conditions and maps of the hunting areas for a particular wildlife refuge are available at that area's headquarters. In addition, refuge-specific hunting regulations for migratory game bird, upland game and big game hunting appear in §§ 32.20 through 32.71.

(g) The use of any drug on any arrow for bow hunting on national wildlife refuges is prohibited. Archers may not have arrows employing such drugs in their possession on any national wildlife refuge.

(h) The unauthorized distribution of bait and the hunting over bait is prohibited on wildlife refuge areas. (Baiting is authorized in accordance with State regulations on national wildlife refuges in Alaska).

(i) The use of nails, wire, screws or bolts to attach a stand to a tree, or hunting from a tree into which a metal object has been driven to support a hunter is prohibited on wildlife refuge areas.

(j) The use or possession of alcoholic beverages while hunting is prohibited.

§ 32.3 Procedures for publication of refuge-specific hunting regulations.

(a) Refuge-specific hunting regulations are issued only at the time of or after the determination and publication of the opening of a wildlife refuge area to migratory game bird, upland game or big game hunting.

(b) Refuge-specific hunting regulations may contain the following items:

(1) Wildlife species that may be hunted;
(2) Seasons;
(3) Bag limits;
(4) Methods of hunting;
(5) Description of areas open to hunting; or
(6) Other provisions as required.

(c) Refuge-specific hunting regulations will not liberalize existing State laws or regulations.

(d) Refuge-specific hunting regulations are subject to change and the public is invited to submit suggestions and comments for consideration at any time.

(e) Refuge-specific hunting regulations are initially published in the daily issue of the **Federal Register** and subsequently appear in 50 CFR 32.20 through 32.71.

(f) Refuge-specific hunting regulations may be amended or new conditions imposed at any time during the hunting season when unpredictable changes occur in wildlife populations, habitat conditions or in other factors affecting a refuge's wildlife resources. Changes in refuge-specific hunting regulations made under the conditions noted in this paragraph (f) can be in force only for the one season to which the changes apply.

§ 32.4 Opening of wildlife refuge areas to fishing.

Wildlife refuge areas may be opened to sport fishing only after a determination is made that this activity is compatible with the purposes for which the refuge was established. In addition, the sport fishing program must be consistent with principles of sound fishery management and otherwise be in the public interest. The opening or closing of wildlife refuge areas to fishing is subject to the rulemaking requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Lands acquired as "waterfowl production areas" are open to sport fishing subject to the provisions of State laws and regulations and the pertinent provisions of parts 25 through 31 of this subchapter: *Provided*, that fishing or entry on all or any part of individual areas may be temporarily suspended by posting upon occasions of unusual or critical conditions of, or affecting, land, water, vegetation or fish and wildlife populations.

§ 32.5 General provisions regarding fishing on wildlife refuges.

The following provisions shall apply to each person while engaged in public sport fishing on a wildlife refuge area:

(a) Each person shall secure and possess the required State license.

(b) Each person shall comply with the applicable provisions of Federal law and regulation including this subchapter.

(c) Each person shall comply with the applicable provisions of the laws and regulations of the State wherein any area is located unless the same are further restricted by Federal law or regulation.

(d) Each person shall comply with the terms and conditions authorizing access and use of the wildlife refuge area.

(e) Each person shall comply with the provisions of any refuge-specific regulation governing fishing on the wildlife refuge area. Regulations for a particular wildlife refuge are available at its headquarters office. In addition, refuge-specific fishing regulations appear in §§ 32.20 through 32.71.

§ 32.6 Procedures for publication of refuge-specific fishing regulations.

(a) Refuge-specific fishing regulations are issued only at the time of or after the opening of a wildlife refuge area to sport fishing.

(b) Refuge-specific fishing regulations may contain the following items:

(1) Fish species that may be taken;
(2) Seasons;
(3) Creel limits;
(4) Methods of fishing;
(5) Description of areas open to fishing; or
(6) Other provisions as required.

(c) Refuge-specific fishing regulations will not liberalize existing State laws or regulations.

(d) Refuge-specific fishing regulations are subject to change and the public is invited to submit suggestions and comments for consideration at any time.

(e) Refuge-specific fishing regulations are initially published in the daily issue of the **Federal Register** and appear subsequently in §§ 32.20–32.71 of this part.

(f) Refuge-specific fishing regulations may be amended as needed when unpredictable changes occur in fish and wildlife populations, habitat conditions or in other factors affecting a refuge's fish and wildlife resources.

§ 32.7 List of refuge units open to hunting and/or fishing.

Refuge units open to hunting and/or fishing in accordance with the provisions of subpart A of this part and §§ 32.20–32.71, inclusive, are as follows:

Alabama

Blowing Wind Cave National Wildlife Refuge
Bon Secour National Wildlife Refuge
Choctaw National Wildlife Refuge
Eufaula National Wildlife Refuge
Wheeler National Wildlife Refuge

Alaska

Alaska Maritime National Wildlife Refuge
Alaska Peninsula National Wildlife Refuge
Arctic National Wildlife Refuge
Becharof National Wildlife Refuge
Innoko National Wildlife Refuge
Izembek National Wildlife Refuge
Kanuti National Wildlife Refuge
Kenai National Wildlife Refuge
Kodiak National Wildlife Refuge
Koyukuk National Wildlife Refuge
Nowitna National Wildlife Refuge
Selawik National Wildlife Refuge
Tetlin National Wildlife Refuge
Togiak National Wildlife Refuge
Yukon Delta National Wildlife Refuge
Yukon Flats National Wildlife Refuge

Arizona

Buenos Aires National Wildlife Refuge
Cabeza Prieta National Wildlife Refuge
Cibola National Wildlife Refuge
Havasu National Wildlife Refuge
Imperial National Wildlife Refuge
Kofa National Wildlife Refuge
San Bernardino National Wildlife Refuge

Arkansas

Big Lake National Wildlife Refuge
Cache River National Wildlife Refuge
Felsenthal National Wildlife Refuge
Holla Bend National Wildlife Refuge
Overflow National Wildlife Refuge
Wapanocca National Wildlife Refuge
White River National Wildlife Refuge

California

Cibola National Wildlife Refuge
Clear Lake National Wildlife Refuge
Colusa National Wildlife Refuge
Delevan National Wildlife Refuge
Havasu National Wildlife Refuge
Humboldt Bay National Wildlife Refuge
Imperial National Wildlife Refuge
Kern National Wildlife Refuge
Kesterson National Wildlife Refuge
Lower Klamath National Wildlife Refuge
Merced National Wildlife Refuge
Modoc National Wildlife Refuge
Sacramento National Wildlife Refuge
Salinas River National Wildlife Refuge
Salton Sea National Wildlife Refuge
San Francisco Bay National Wildlife Refuge
San Luis National Wildlife Refuge
San Pablo National Wildlife Refuge
Sutter National Wildlife Refuge
Tule Lake National Wildlife Refuge
Willow Creek National Wildlife Refuge

Colorado

Alamosa National Wildlife Refuge
Arapaho National Wildlife Refuge
Browns Park National Wildlife Refuge
Monte Vista National Wildlife Refuge

Connecticut

[Reserved]

Delaware

Bombay Hook National Wildlife Refuge
Prime Hook National Wildlife Refuge

Florida

Arthur R. Marshall Loxahatchee National Wildlife Refuge
Cedar Keys National Wildlife Refuge
Chassahowitzka National Wildlife Refuge
Egmont Key National Wildlife Refuge
Hobe Sound National Wildlife Refuge
J.N. "Ding" Darling National Wildlife Refuge
Lake Woodruff National Wildlife Refuge
Lower Suwannee National Wildlife Refuge
Merrit Island National Wildlife Refuge
Pelican Island National Wildlife Refuge
Pinellas National Wildlife Refuge
St. Marks National Wildlife Refuge
St. Vincent National Wildlife Refuge

Georgia

Banks Lake National Wildlife Refuge
Blackbeard Island National Wildlife Refuge
Eufaula National Wildlife Refuge
Harris Neck National Wildlife Refuge
Okefenokee National Wildlife Refuge
Piedmont National Wildlife Refuge
Savannah National Wildlife Refuge
Wassaw National Wildlife Refuge
Wolf Island National Wildlife Refuge

Hawaii

Hakalau Forest National Wildlife Refuge

Idaho

Bear Lake National Wildlife Refuge
Camas National Wildlife Refuge
Deer Flat National Wildlife Refuge
Grays Lake National Wildlife Refuge
Kootenai National Wildlife Refuge
Minidoka National Wildlife Refuge

Illinois

Chautauqua National Wildlife Refuge
Crab Orchard National Wildlife Refuge
Mark Twain National Wildlife Refuge
Upper Mississippi River Wildlife and Fish Refuge

Indiana

Muscatatuck National Wildlife Refuge

Iowa

De Soto National Wildlife Refuge
Mark Twain National Wildlife Refuge
Union Slough National Wildlife Refuge
Upper Mississippi River Wild Life and Fish Refuge

Kansas

Flint Hills National Wildlife Refuge
Kirwin National Wildlife Refuge
Quivira National Wildlife Refuge

Kentucky

Reelfoot National Wildlife Refuge

Louisiana

Atchafalaya National Wildlife Refuge
Bayou Sauvage National Wildlife Refuge
Bogue Chitto National Wildlife Refuge
Cameron Prairie National Wildlife Refuge
Catahoula National Wildlife Refuge
D'Arbonne National Wildlife Refuge
Delta National Wildlife Refuge
Lacassine National Wildlife Refuge
Lake Ophelia National Wildlife Refuge
Sabine National Wildlife Refuge
Tensas River National Wildlife Refuge
Upper Ouachita National Wildlife Refuge

Maine

Rachel Carson National Wildlife Refuge
Moosehorn National Wildlife Refuge
Pond Island National Wildlife Refuge
Sunkhaze Meadows National Wildlife Refuge

Maryland

Blackwater National Wildlife Refuge
Eastern Neck National Wildlife Refuge

Massachusetts

Great Meadows National Wildlife Refuge
Monomoy National Wildlife Refuge
Nantucket National Wildlife Refuge
Oxbow National Wildlife Refuge
Parker River National Wildlife Refuge

Michigan

Harbor Island National Wildlife Refuge
Seney National Wildlife Refuge
Shiawassee National Wildlife Refuge

Minnesota

Agassiz National Wildlife Refuge
Big Stone National Wildlife Refuge
Minnesota Valley National Wildlife Refuge
Rice Lake National Wildlife Refuge
Sherburne National Wildlife Refuge
Tamarac National Wildlife Refuge
Upper Mississippi River Wild Life and Fish Refuge

Mississippi

Bogue Chitto National Wildlife Refuge
Dahomey National Wildlife Refuge
Hillside National Wildlife Refuge
Mathews Brake National Wildlife Refuge
Morgan Brake National Wildlife Refuge
Noxubee National Wildlife Refuge
Panther Swamp National Wildlife Refuge
St. Catherine Creek National Wildlife Refuge
Yazoo National Wildlife Refuge

Missouri

Mark Twain National Wildlife Refuge
Mingo National Wildlife Refuge
Squaw Creek National Wildlife Refuge
Swan Lake National Wildlife Refuge

Montana

Benton Lake National Wildlife Refuge
Black Coulee National Wildlife Refuge
Bowdoin National Wildlife Refuge
Charles M. Russell National Wildlife Refuge
Creedman Coulee National Wildlife Refuge
Hailstone National Wildlife Refuge
Halfbreed Lake National Wildlife Refuge
Hewitt Lake National Wildlife Refuge
Lake Mason National Wildlife Refuge
Lake Thibadeau National Wildlife Refuge
Lamesteer National Wildlife Refuge
Lee Metcalf National Wildlife Refuge
Medicine Lake National Wildlife Refuge
National Bison National Wildlife Refuge
Nine-Pipe National Wildlife Refuge
Pablo National Wildlife Refuge
Red Rock Lakes National Wildlife Refuge
Swan River National Wildlife Refuge
UL Bend National Wildlife Refuge
War Horse National Wildlife Refuge

Nebraska

Crescent Lake National Wildlife Refuge
De Soto National Wildlife Refuge
Valentine National Wildlife Refuge

Nevada

Ash Meadows National Wildlife Refuge
Desert National Wildlife Refuge
Pahranagat National Wildlife Refuge
Ruby Lake National Wildlife Refuge
Sheldon National Wildlife Refuge

New Hampshire

[Reserved]

New Jersey

Edwin B. Forsythe National Wildlife Refuge
Great Swamp National Wildlife Refuge
Supawna Meadows National Wildlife Refuge

New Mexico

Bitter Lake National Wildlife Refuge
Bosque del Apache National Wildlife Refuge
Las Vegas National Wildlife Refuge
Maxwell National Wildlife Refuge
Sevilleta National Wildlife Refuge

New York

Elizabeth A. Morton National Wildlife Refuge
Iroquois National Wildlife Refuge
Montezuma National Wildlife Refuge
Wertheim National Wildlife Refuge

North Carolina

Alligator River National Wildlife Refuge
Cedar Island National Wildlife Refuge
Great Dismal Swamp National Wildlife Refuge
MacKay Island National Wildlife Refuge
Mattamuskeet National Wildlife Refuge
Pea Island National Wildlife Refuge
Pee Dee National Wildlife Refuge
Roanoke River National Wildlife Refuge
Swanquarter National Wildlife Refuge

North Dakota

Arrowwood National Wildlife Refuge
Audubon National Wildlife Refuge
Chase Lake National Wildlife Refuge
Des Lacs National Wildlife Refuge
J. Clark Salyer National Wildlife Refuge
Lake Alice National Wildlife Refuge
Lake Nettie National Wildlife Refuge
Lake Zahl National Wildlife Refuge
Long Lake National Wildlife Refuge
Lostwood National Wildlife Refuge
Slade National Wildlife Refuge
Tewaukon National Wildlife Refuge
Upper Souris National Wildlife Refuge

Ohio

Cedar Point National Wildlife Refuge
Ottawa National Wildlife Refuge

Oklahoma

Little River National Wildlife Refuge
Optima National Wildlife Refuge
Salt Plains National Wildlife Refuge
Sequoyah National Wildlife Refuge
Tishomingo National Wildlife Refuge
Washita National Wildlife Refuge
Wichita Mountains National Wildlife Refuge

Oregon

Ankeny National Wildlife Refuge
Bandon Marsh National Wildlife Refuge
Baskett Slough National Wildlife Refuge
Bear Valley National Wildlife Refuge
Cold Springs National Wildlife Refuge
Deer Flat National Wildlife Refuge
Hart Mountain National Wildlife Refuge
Klamath Forest National Wildlife Refuge
Lewis and Clark National Wildlife Refuge
Lower Klamath National Wildlife Refuge
Malheur National Wildlife Refuge
McKay Creek National Wildlife Refuge
Sheldon National Wildlife Refuge
Umatilla National Wildlife Refuge
Upper Klamath National Wildlife Refuge

Pennsylvania

Erie National Wildlife Refuge
Tinicum National Environmental Center

Puerto Rico

[Reserved]

Rhode Island

[Reserved]

South Carolina

Cape Romain National Wildlife Refuge
Carolina Sandhills National Wildlife Refuge
Pinckney Island National Wildlife Refuge
Santee National Wildlife Refuge
Savannah National Wildlife Refuge

South Dakota

Lacreek National Wildlife Refuge
Pocasse National Wildlife Refuge
Sand Lake National Wildlife Refuge
Wauby National Wildlife Refuge

Tennessee

Chickasaw National Wildlife Refuge
Cross Creeks National Wildlife Refuge
Hatchie National Wildlife Refuge
Lake Isom National Wildlife Refuge
Lower Hatchie National Wildlife Refuge
Reelfoot National Wildlife Refuge
Tennessee National Wildlife Refuge

Texas

Anahuac National Wildlife Refuge
Aransas National Wildlife Refuge
Big Boggy National Wildlife Refuge
Brazoria National Wildlife Refuge
Buffalo Lake National Wildlife Refuge
Hagerman National Wildlife Refuge
Laguna Atascosa National Wildlife Refuge
McFaddin National Wildlife Refuge
San Bernard National Wildlife Refuge
Texas Point National Wildlife Refuge

Utah

Bear River National Wildlife Refuge
Fish Springs National Wildlife Refuge
Ouray National Wildlife Refuge

Vermont

Missisquoi National Wildlife Refuge

Virginia

Back Bay National Wildlife Refuge

Chinocteague National Wildlife Refuge
Great Dismal Swamp National Wildlife Refuge
Mason Neck National Wildlife Refuge
Presquile National Wildlife Refuge

Washington

Columbia National Wildlife Refuge
Conboy Lake National Wildlife Refuge
Julia Butler Hansen Refuge for the Columbian White-tailed Deer
McNary National Wildlife Refuge
Ridgefield National Wildlife Refuge
Toppenish National Wildlife Refuge
Umatilla National Wildlife Refuge
Willapa National Wildlife Refuge

West Virginia

[Reserved]

Wisconsin

Fox River National Wildlife Refuge
Horicon National Wildlife Refuge
Necedah National Wildlife Refuge
Trempealeau National Wildlife Refuge

Wyoming

National Elk Refuge
Pathfinder National Wildlife Refuge
Seedskadee National Wildlife Refuge

Pacific Islands Territory

Johnston Atoll National Wildlife Refuge

§ 32.8 Areas closed to hunting.

Proclamations and orders		State	Land and waters within boundary and adjacent to, or in the vicinity of—	Citation
No.	Date			
	Nov. 20, 1959	Alabama	Wheeler National Wildlife Refuge	24 FR 9513.
	Oct. 15, 1960	do	do	25 FR 9899.
	Nov. 3, 1970	do	Eufaula National Wildlife Refuge	35 FR 16935.
2325	Mar. 21, 1939	Arkansas	Big Lake National Wildlife Refuge	3 CFR Cum. Supp. 4 FR 1309.
	Oct. 24, 1958	do	Holla Bend National Wildlife Refuge	23 FR 8429.
2274	Mar. 15, 1938	do	White River National Wildlife Refuge	3 FR 591.
	July 13, 1963	Delaware	Bombay Hook National Wildlife Refuge	28 FR 6228.
	Oct. 22, 1953	Florida	St. Marks National Wildlife Refuge	18 FR 7837.
	Oct. 20, 1960	do	do	25 FR 10030.
2758	Dec. 2, 1947	do	"Ding" Darling National Wildlife Refuge	3 CFR 1947 Supp., 12 FR 8039.
2239	Apr. 10, 1939	Georgia	Savannah National Wildlife Refuge	3 CFR Cum. Supp.; 4 FR 1595.
	Nov. 3, 1970	do	Eufaula Wildlife Refuge	35 FR 16935.
	Nov. 3, 1970	do	Wassaw National Wildlife Refuge	35 FR 16936.
2746	Oct. 1, 1947	Illinois	Honshoe Lake, Alexander County	3 CFR, 1947 Supp. 12 FR 6521.
	Sept. 9, 1953	do	do	18 FR 5495.
2748	Oct. 2, 1958	Iowa	Upper Mississippi River Wild Life and Fish Refuge	3 CFR, 1958 Supp.; 23 FR 7825.
2322	Feb. 7, 1939	Louisiana	Lacassine National Wildlife Refuge	3 CFR, Cum. Suppl. 4 FR 611.
	Sept. 26, 1962	do	Sabine National Wildlife Refuge	27 FR 9516.
	Nov. 19, 1982	do	Delta National Wildlife Refuge	47 FR 52183.
	Dec. 2, 1969	do	Lacassine National Wildlife Refuge	34 FR 19077.
	Aug. 13, 1960	Maryland	Martin National Wildlife Refuge	25 FR 7741.
2617	Oct. 18, 1948	Massachusetts	Parker River National Wildlife Refuge	3 CFR, 1948 Supp. 13 FR 6115.
	Oct. 2, 1958	Minnesota	Upper Mississippi River Wild Life and Fish Refuge	3 CFR, 1958 Supp. 23 FR 7825.
2200	Oct. 7, 1936	Montana	Red Rock Lakes National Wildlife Refuge	1 FR 1554.
	Aug. 30, 1976	do	Charles M. Russell National Wildlife Refuge	41 FR 31539.
2284	May 9, 1939	North Carolina	Pea Island National Wildlife Refuge	3 FR 912.
2129	July 18, 1935	do	Swanquarter National Wildlife Refuge	49 Stat. 3450.
	Aug. 21, 1963	do	Mackay Island National Wildlife Refuge	28 FR 9209.
	Sept. 22, 1967	do	Pee Dee National Wildlife Refuge	32 FR 13384. 33 FR 749, Jan. 20, 1968.
	Sept. 27, 1964	do	do	49 FR 38141.
2000	June 6, 1932	South Carolina	Cape Romanain National Wildlife Refuge	47 Stat. 2513.
2329	Apr. 10, 1939	do	Savannah National Wildlife Refuge	3 CFR, Cum. Supp.; 4 FR 1595.
	Sept. 13, 1968	do	Cape Romain National Wildlife Refuge	33 FR 12964.
	Oct. 8, 1963	Tennessee	Cross Creeks National Wildlife Refuge	28 FR 10782.
	Aug. 23, 1956	Texas	Aransas National Wildlife Regudge	21 FR 6513.
2370	Oct. 16, 1939	Virginia	Back Bay National Wildlife Refuge	3 CFR, Cum. Supp. 4 FR 4285.
	Aug. 13, 1954	do	Presquile National Wildlife Refuge	19 FR 5290.
	Jan. 5, 1962	do	Back Bay National Wildlife Refuge	27 FR 104; 27 FR 858.
	Aug. 21, 1963	do	Mackay Island National Wildlife Refuge	28 FR 9209.
	Oct. 9, 1969	do	Mason Neck National Wildlife Refuge	34 FR 15653.
2439	Nov. 7, 1940	Washington	Willapa National Wildlife Refuge	3 CFR, Cum. Supp.; 5 FR 4443.
	Oct. 2, 1958	Wisconsin	Upper Mississippi River Wild Life and Fish Refuge	3 CFR, 1958 Supp.; 23 FR 7825.

Subpart B—Refuge-Specific Regulations for Hunting and Fishing

§ 32.20 Alabama.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Blowing Wind Cave National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Sauty Creek Wildlife Management Area regulations apply.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Bon Secour National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.
2. Only nonmotorized boats and boats with electric motors are permitted on Gator and Little Gator Lakes.

Choctaw National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting of squirrel and rabbit is permitted during the State season only through December 15.
3. Hunting of raccoon and opossum is permitted only during February.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only archery hunting is permitted.

3. Hunting is permitted from the opening day of the State season through December 15.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted only from sunrise to sunset.

Eufaula National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, mourning doves, snipe and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting of Canada geese, ducks and coots is permitted only on Mondays, Wednesdays and Saturdays until noon.
3. Hunting is not permitted outside the area assigned to the hunting parties.
4. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.
5. Hunters are required to check in and out of the refuge.
6. Checking bagged game is required.
7. Canada geese may be harvested only until the refuge harvest quota is reached.
8. Hunter may not possess or use more than 25 shells per day when waterfowl hunting.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting is permitted from the first day following the close of the State waterfowl season through the end of the respective seasons.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Archery hunting is permitted on the Alabama portion of the refuge during the entire State archery season except during scheduled youth hunts.
3. Checking of bagged game is required.
4. A two-day youth hunt is permitted during the Alabama and Georgia either-sex firearm season.
5. Only persons age 16 or younger are permitted to hunt with, carry, handle or discharge a firearm during a youth hunt.
6. Youth hunters are required to check in and out of the refuge during the youth hunt.

D. Sport Fishing. Fishing, frogging and turtle trapping are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing, frogging and turtle trapping are permitted year-round in all refuge waters contiguous with the Walter F. George Reservoir.
2. Fishing, including bowfishing, is permited from March 1 through October 31 only from sunrise to sunset on all refuge impoundments and waters other than the Walter F. George Reservoir.

Wheeler National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, racoon and opossum is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Bank fishing is not permitted around the shoreline of the refuge headquarters.
2. All other refuge waters are open to fishing year-round unless otherwise posted.
3. Entry and use of airboats and hovercraft is prohibited on all waters within the refuge boundaries.
4. Entry and use of personalized watercraft, such as but not limited to, jetskis, watercycles, and waterbikes are prohibited on all waters within the boundaries of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile-marker three.

§ 32.21 Alaska.

Alaska refuges are opened to hunting, fishing and trapping pursuant to the Alaska National Interest Lands Conservation Act (Pub. L. 96–487, 94 Stat. 2371). Information regarding specific refuge regulations can be obtained from the Region 7 Office of the U.S. Fish and Wildlife Service, Anchorage, AK, or by contacting the manager of the respective individual refuge.

§ 32.22 Arizona.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Buenos Aires National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and mourning and white-winged doves is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of cottontail rabbit, jackrabbit, coyote, fox, bobcat, ringtail, skunk, coatimundi, badger, raccoon and weasel is permitted on designated areas of the refuge. The following restrictions apply:

1. Hunting is permitted from September 1 through March 31.
2. Quail hunting is prohibited.

C. Big Game Hunting. Hunting of mule deer and white-tailed deer, javelina, feral hogs and mountain lions is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Cabeza Prieta National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of desert bighorn sheep is permitted on designated areas of the refuge subject to the following condition: Entry permits are required.

D. Sport Fishing. [Reserved]

Cibola National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, mourning and white-winged doves is permitted on designated areas of the refuge subject to the following conditions:

1. Non-toxic shot is required for all migratory game bird hunting. It is prohibited to possess migratory game birds with lead shot in possession.
2. Legal weapon shall be shotgun only.
3. Special Use Permits are required for all hunting guides.
4. Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farm worker.
5. Pit or permanent blinds are not permitted.
6. Migratory game bird hunting will cease at 3 p.m. each day.
7. The following additional restrictions apply to Zone IIA:

    i. During the Arizona waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.

    ii. In Farm Unit 2, waterfowl hunters must remain within 50 feet or designated stations while hunting except when actively retrieving downed birds.

    iii. During the goose season, the Hart Mine Marsh Area is closed to hunting until 10 a.m. daily.

    iv. Hunters are restricted to 10 shells per day, except in the Hart Mine Marsh area.

B. Upland Game Hunting. Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. The legal weapon shall be shotguns and bows and arrows.
2. Non-toxic shot is required for Farm Unit 2 and the Island Unit.
3. During the Arizona waterfowl season, hunting of quail and rabbit is not permitted in Farm Unit 2 until noon.
4. Hunting of cottontail rabbit is permitted from September 1, through the last day of the respective State's quail season.
5. Hunting is permitted from one-half hour before sunrise to 3 p.m. daily.
6. Hunting is not permitted within 50 yards of any road or levee or 250 yards of any farm worker.

C. Big Game Hunting. Hunting of mule deer is permitted on designated areas of the refuge subject to the following condition:

1. During the waterfowl season, hunting of deer is not permitted on Farm Unit 2 before 12 p.m. each day.
2. Only antlered deer may be taken.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted during respective State seasons in the channelized portions of the Colorado River in Zone I, and Zone II, and the Old River Channel of the Colorado River.
2. Fishing is permitted from March 15 through Labor Day in Cibola Lake and the channelized portion of the Colorado River in Zone III.

Havasu National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Neither hunters nor dogs may enter closed areas to retrieve game.

2. Pits and permanent blinds are not permitted.

3. The following regulations apply only to Pintail Slough (all refuge lands north of the north dike):

i. Permits are required for waterfowl hunting.

ii. Dove hunting is permitted only during the September season.

B. Upland Game Hunting. Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of quail is not permitted on Pintail Slough.

2. Hunting of cottontail rabbit in Pintail Slough is permitted only during September.

3. Only shotguns and bows and arrows are permitted.

4. Hunting is permitted from ½ hour before sunrise to sunset only.

C. Big Game Hunting. Hunting of desert bighorn sheep is permitted on designated areas of the refuge subject to the following condition: Hunting is only permitted on the part of the Bill Williams Unit south of the Planet Ranch Road in Unit 44A.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: Designated portions of Topock Marsh are closed to all entry from October 1 through January 31.

Imperial National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning and white-winged doves, ducks, coots, moorhens, geese and common snipe is permitted on designated areas of the refuge subject to the following condition: Pits and permanent blinds are not permitted.

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, fox and bobcat is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns and bows and arrows are permitted.

2. Hunting of cottontail rabbit is permitted from September 1 through the last day of the State quail season.

3. Hunting is permitted from ½ hour before sunrise to sunset only.

C. Big Game Hunting. Hunting of mule deer and desert bighorn sheep is permitted on designated areas of the refuge.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: Designated portions of Martinez Lake and Fergerson Lake are closed to entry from October 1 to March 1.

Kofa National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of quail, cottontail rabbit, coyote, fox and bobcat is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of cottontail rabbit, coyote, fox and bobcat is permitted from the opening day of the State quail season through February 28 except as provided below.

2. Hunting of coyote, fox and bobcat is not permitted during the deer season except that deer hunters with valid Unit 45A, 45B and 45C deer permits may take these predators until a deer is taken.

3. Hunting is not permitted in the area known as Crystal Hill Campground.

C. Big Game Hunting. Hunting of mule deer and desert bighorn sheep is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

San Bernardino National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of quail and cottontail rabbits is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotguns are permitted.

2. Cottontail rabbit season shall open on September 1 and close on the last day of the State quail season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

§32.23 Arkansas.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Big Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, beaver and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting of squirrel and beaver is permitted from the opening day of the State fall squirrel season through October 31. Rabbit may also be taken when the State rabbit season coincides with the dates above.

3. Hunting of raccoon and opossum is permitted for three consecutive weekends (Fri-Sun) beginning on the last Friday in October.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only archery hunting is permitted.

3. Hunting is permitted from November 1–December 31.

4. Hunters must check out of the refuge after each day's hunt.

5. Only portable deer stands are permitted and must be removed after each day's hunt.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through October 31 only from sunrise to sunset with the following exceptions: Bank fishing is permitted at any time in the area around Floodway Dam south of the Highway 18 bridge, and fishing only from sunrise to sunset from nonmotorized boats and boats with electric motors is permitted in the Sand Slough-Mud Slough Area from November 1 through the end of February.

2. The use of limb lines and toxic chemical containers for jug fishing is not permitted.

3. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

4. Boats may be launched only in designated areas.

5. ATVs and airboats are prohibited.

6. Frogging is permitted from the beginning of the State frogging season through October 31. The use of archery equipment for taking frogs is not permitted.

Cache River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, snow geese, coots, woodcock, snipe, and mourning doves is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, rabbit, squirrel, raccoon, opossum and beaver is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing or entry is not permitted in the waterfowl sanctuary areas from November 1 through February 28.

2. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

Felsenthal National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting is not permitted during the special teal season.

3. Hunting of ducks and coots is permitted until noon each day.

4. Only portable blinds are permitted.

5. Blinds, boats, and decoys must be removed from the refuge or to a designated area following each day's hunt.

6. Firearms must be unloaded when transported or in refuge campgrounds.

7. Dogs are permitted.

8. Hunting of woodcock is permitted beginning with the State season through January 31.

9. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting of quail, squirrel, and rabbit is permitted only during the State seasons through January 31, except that it is not permitted during the refuge deer gun and muzzleloader hunts.

3. Hunting of raccoon and opossum is permitted only December 1–31 from sunset to sunrise. Bag limit is three raccoons per hunter per night.

4. Beaver and nutria may be taken only from sunrise to sunset during any refuge hunt.

5. Firearms must be unloaded when transported or in refuge campgrounds.

6. Squirrel and rabbit hunting with dogs is permitted beginning January 1.

7. Lead shot is permitted only on designated portions of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Archery hunting is permitted beginning October 1 through December 31, except during quota deer hunts when hunting is permitted only by a special permit.

3. Muzzleloader hunting is permitted during the last consecutive Friday and Saturday in October only.

4. Modern gun hunting is permitted during the second Friday and Saturday of November and the Friday and Saturday following Thanksgiving.

5. Firearms must be unloaded when transported or in refuge campgrounds.

6. Feral hogs may be taken from sunrise to sunset during any refuge hunt with weapons legal for that hunt through January 31.

7. Possession of a deer without a valid quota deer hunt permit during the modern gun and muzzleloader hunts is prohibited.

8. All deer must be checked at designated check stations.

9. Lead shot is permitted only on designated portions of the refuge.

D. Sport Fishing. Fishing, frogging and the taking of turtles and crawfish are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is not permitted in the waterfowl sanctuary area during the waterfowl hunting season with the exception of the main channel of the Ouachita River and the borrow pits along Highway 82.

2. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

Holla Bend National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of raccoon, opossum, squirrel, rabbit, beaver and coyote is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters are required to check in and out of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only archery hunting is permitted.

3. Hunters are required to check in and out of the refuge.

D. Sport Fishing. Fishing, boating and frogging are permitted subject to the following conditions:

1. Fishing and boating in all waters from March 1 through October 31 only from ½ hour before sunrise to ½ hour after sunset.

2. Frogging from April 15 through October 31 only on that part of the old river channel that connects to the Arkansas River channel.

Overflow National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting is not permitted during the special teal season.

3. Hunting of ducks and coots is permitted until noon each day.

4. Only portable blinds are permitted.

5. Blinds, boats, and decoys must be removed from the refuge or to a designated area following each day's hunt.

6. Firearms must be unloaded when transported or in refuge campgrounds.

7. Dogs are permitted.

8. Hunting of woodcock is permitted beginning with the State season through January 31.

9. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon, opossum and nutria is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting of quail, squirrel, and rabbit is permitted only during the State seasons through January 31, except that it is not permitted during the refuge deer gun and muzzleloader hunts.

3. Hunting of raccoon and opossum is permitted only December 1–31 from sunset to sunrise. Bag limit is three raccoons per hunter per night.

4. Beaver and nutria may be taken during the daylight hours of any refuge hunt.

5. Firearms must be unloaded when transported or in refuge campgrounds.

6. Squirrel and rabbit hunting with dogs is permitted beginning January 1.

7. Hunters shall possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Archery hunting is permitted beginning October 1 through December 31, except during quota gun deer hunts when hunting is permitted only by a special permit.

3. Firearms must be unloaded when transported or in refuge campgrounds.

4. Feral hogs may be taken from sunrise to sunset during any refuge hunt with weapons legal for that hunt through January 31.

5. Muzzleloader hunting is permitted during the third consecutive Friday and Saturday in October.

6. Hunters shall possess and use, while in the field, only nontoxic shot.

D. Sport Fishing. [Reserved]

Wapanocca National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 15 through September 30 only from sunrise to sunset.

2. Only boats with motors 10 horsepower or less are permitted on Wapanocca Lake.

3. The use of live carp, shad, buffalo, and goldfish for bait is not permitted.

4. The use of yo-yos, jugs, drops, trotlines and all commercial fishing tackle is not permitted.

5. Big Creek and Ditch 8 are closed to fishing.

6. Length limits for largemouth bass are required as posted.

White River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, beaver, coyote, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through October 31 except as posted and as follows: Fishing is permitted year-round in LaGrueu, Essex, Prairie, and Brooks Bayous, Big Island Chute, Moon Lake next to Highway 1, the portion of Indian Bay south of Highway 1, the Arkansas Post Canal and adjacent drainage ditches, and those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way.

2. A permit is required for the use of any fishing tackle other than hook and line.

3. Trotlines must be reset when receding water levels expose them and cannot be left unattended. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

4. Frogging is permitted from the beginning of the State season through October 31. The use of bow and arrow for taking bullfrogs is not permitted.

§ 32.24 California.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Cibola National Wildlife Refuge

Refer to § 32.22 Arizona for regulations.

Clear Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Air-thrust and inboard waterthrust boats are not permitted.

2. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of pronghorn antelope is permitted on the controlled "U" Unit of the refuge subject to the following conditions:

1. The unit is open to hunting only during the first 2 weekends of the State season.

2. Access to the unit is permitted only through the gate located on Clear Lake Road.

D. Sport Fishing. [Reserved]

Colusa National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Delevan National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Firearms must be unloaded while being transported between parking areas and blind sites.

2. Snipe hunting is only permitted in the free road unit.

3. Hunters assigned to the spaced blind unit are restricted to their original blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

4. Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

B. Upland Game Hunting. Hunting of pheasant is permitted only in the free room areas of the refuge subject to the following condition: A special one-day pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted during daylight hours only from February 1 through October 15.

Havasu National Wildlife Refuge

Refer to § 32.22 Arizona for regulations.

Humboldt Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, common moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for hunting on the Salmon Creek Unit.

2. Hunting on the Salmon Creek Unit is permitted only on Tuesday and Saturday.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Imperial National Wildlife Refuge

Refer to § 32.22 Arizona for regulations.

Kern National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters assigned to the spaced blind unit must travel to and from parking areas and blind sites with firearms unloaded.

2. Hunters assigned to the spaced blind unit must remain within 100 feet of the numbered steel post (blind site) except when pursuing cripples, placing decoys or traveling to and from the parking area.

3. Hunters may not possess more than 25 shells while in the field.

4. Hunters must park in assigned lots.

5. Only nonmotorized boats are permitted.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Pheasant hunting is not permitted in the spaced blind unit.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Kesterson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Only portable blinds and temporary blinds constructed of natural materials are permitted.

2. Portable blinds must be removed from the refuge following each day's hunt.

3. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

4. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. In the controlled waterfowl hunting area, entry permits are required for the first 2 days of the waterfowl season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

2. Shooting hours end at 1:00 p.m. daily on all California portions of the refuge.

3. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

4. Decoys may not be set in retrieving zones.

5. Air-thrust and inboard waterthrust boats are not permitted.

6. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

7. Only nonmotorized boats and boats with electric motors are permitted in Units 4, c, d, e, and f.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. In the controlled pheasant hunting area, entry permits are required for all hunters 16 years of age or older for the first 3 days of hunting. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

2. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Merced National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Firearms must be unloaded while being transported between parking areas and blind sites.

2. Hunters may not use or possess more than 25 shells per day.

3. Hunters assigned to the spaced blind unit are restricted to their assigned blind except for retrieving downed birds, placing decoys or traveling to and from the parking area.

4. Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

5. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Modoc National Wildlife Refuge

A. Hunting of MIgratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for the first weekend only.

2. After the first weekend of the open season, hunting is permitted only on Tuesdays, Thursdays and Saturdays.

3. In the designated spaced blind area, hunters must remain within 50 feet of the established blind stake for the blind assigned to them.

4. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

5. Hunters may not possess more than 25 shells after leaving the parking area.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted only on Dorris Reservoir subject to the following conditions:

1. Fishing is not permitted during the migratory waterfowl hunting season.

2. Fishing is permitted during daylight hours only.

Sacramento National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Firearms must be unloaded while being transported between parking areas and blind sites.

2. Snipe hunting is not permitted in the spaced blind unit.

3. Hunters assigned to the spaced blind unit are restricted to their assigned blind except for retrieving downed birds, placing decoys or traveling to and from the parking area.

4. Hunters must hunt from assigned blinds except when shooting to retrieve crippled birds.

5. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions: A special one-day only pheasant hunt is permitted in the spaced blind unit on the first Monday after the opening of the State pheasant hunting season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Salinas River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge subject to the following condition: Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Salton Sea National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, and moorhens is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters using the Union Tract must use goose decoys.

2. Hunters must hunt from assigned blinds or stakes except when shooting to retrieve crippled birds.

3. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

4. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted only on designated areas of the refuge inundated by the Salton Sea subject to the following conditions:

1. Fishing is permitted from April 1 through September 30.

2. Only boat fishing is permitted.

San Francisco Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may retrieve birds that fall into an area that is closed to hunting, provided that all weapons are left within a legal hunting area.

2. Only portable blinds and temporary blinds constructed of natural materials are permitted.

3. Digging into levees is not permitted.

4. Nonmotorized boats may be used on all 9 ponds for setting out and retrieving decoys or for retrieving downed waterfowl. Nonmotorized boats may also be used for hunting on Ponds 1, 2, 3, 4, 5, and 6 of the Mowry Slough Unit.

5. All decoys, boats and other personal property must be removed from the refuge following each day's hunt.

6. Waterfowl and coot hunters, in that portion of the refuge contained in Alameda County, shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing from designated shoreline trail fishing areas and from the Dumbarton and Ravenswood Piers is permitted during the hours posted at the piers and refuge headquarters.

2. Fishing and all other public entry is not permitted in the entire Mowry Slough from March 15 through June 15.

3. The upper reaches of Mallard Slough are closed to fishing and all other entry from March 1 through August 31.

San Luis National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Only portable blinds and temporary blinds constructed of natural materials are permitted.

2. Portable blinds must be removed from the refuge following each day's hunt.

3. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

4. Hunters may not possess more than 25 shells while in the field.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from ½ hour before sunrise to ½ hour after sunset.

2. Only the use of pole and line or rod and reel is permitted.

San Pablo Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

1. All personal property, except floating blinds, must be removed from the refuge at the end of each hunting day. Floating blinds may be left overnight, but must be removed from the refuge at the end of the waterfowl hunting season.

2. Hunters may use only portable blinds and temporary or floating blinds constructed of biodegradable materials.

3. Blinds may be used by any hunter on a first-come basis each day.

4. Digging into levees is prohibited.

5. Waterfowl, and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasants is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Sutter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Tule Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. In the controlled waterfowl hunting area, entry permits are required for the first 2 days of the waterfowl season for all hunters 16 years of age or older. Hunters under the age of 16 hunting in the controlled area must be accompanied by an adult with a permit. Advance reservations are required for the first 2 days of the hunt.

2. Hunting is permitted until 1:00 p.m. each day.

3. In the designated spaced blind areas, possession of any loaded firearms more than 100 feet from the established blind stakes is not permitted. Hunters select blind sites by lottery at the beginning of each hunt day. Hunters may shoot only from within their assigned blind sites.

4. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

5. Decoys may not be set in retrieving zones.

6. Air-thrust and inboard waterthrust boats are not permitted.

7. Waterfowl, coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. In the controlled pheasant hunting area, entry permits are required for all hunters 16 years of age or older for the first 3 days of hunting. Hunters under the age of 16 hunting the controlled area must be accompanied by an adult with a permit.

2. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Willow Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. The refuge unit is open to sport fishing but has no refuge-specific regulations as it follows guidelines set out in state law.

§ 32.25 Colorado.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Alamosa National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe and mourning doves is permitted on designated areas of the refuge subject to the following condition: Snipe and dove hunting are permitted only during the waterfowl hunting season.

B. Upland Game Hunting. Hunting of pheasant, cottontail rabbit, black-tailed and white-tailed jackrabbit is permitted on designated areas of the refuge subject to the following conditions: Hunting is permitted only when the respective State season coincides with the refuge waterfowl hunting season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Arapaho National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of sage grouse and sharptailed grouse is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of pronghorn antelope is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Browns Park National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of cottontail rabbit is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of mule deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Monte Vista National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe and mourning doves is permitted on designated areas of the refuge subject to the following condition: Snipe and dove hunting are permitted only during the waterfowl hunting season.

B. Upland Game Hunting. Hunting of pheasant, cottontail rabbit, black-tailed and white-tailed jackrabbit is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only when the respective State season coincides with the refuge waterfowl hunting season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

§ 32.26 Connecticut. [Reserved]

§ 32.27 Delaware

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Bombay Hook National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for waterfowl hunting except on the South Upland Hunting Area.

2. Hunting of waterfowl and coots is permitted on the South Waterfowl Area, the West Waterfowl Area, and the Young Waterfowlers Area.

3. Only snow geese may be taken on the Snow Goose Area.

4. Hunting is permitted only from designated sites, except on the South Upland Hunting Area and the Snow Goose Area.

5. The maximum number of hunters permitted per blind is as follows: West Waterfowl and Snow Goose Areas—4; South Waterfowl Area—3; Young Waterfowlers Area—2.

6. The possession of a loaded shotgun while outside a blind or designated site is not permitted unless actively pursuing crippled birds.

7. Waterfowl hunters may not use or possess more than 15 shells per day on the West and Young Waterfowlers Hunt Areas.

8. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

9. Hunting is not permitted from March 1 through August 31.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on the South Upland Hunting Area.

2. Hunting is permitted from ½ hour before sunrise to ½ hour after sunset.

3. Hunting is not permitted from March 1 through August 31.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. A permit is required on the Regular and Headquarters Deer Hunt Areas.

2. Hunting on the Headquarters Deer Hunt Area must be from designated stands only, unless actively tracking or retrieving wounded deer.

3. Only portable tree stands may be used and must be removed from the refuge each day.

D. Sport Fishing. [Reserved]

Prime Hook National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for waterfowl hunting.

2. Only waterfowl and coots may be taken on the Waterfowl and Young Waterfowlers Hunting Areas.

3. Only mourning doves, common snipe, and woodcock may be taken on the North Hunting Area.

4. Access to the waterfowl hunt area is by boat only.

5. Except on the North Hunting Area, hunting is permitted from designated blinds only, with a maximum of three hunters per blind.

6. The possession of a loaded shotgun while outside of a blind is not permitted unless actively pursuing crippled birds.

7. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

8. Hunters using the Young Waterfowlers Hunting Area may not use or possess more than 25 shells per day.

9. Hunting is not permitted from March 1 through August 31.

B. Upland Game Hunting. Hunting of rabbit, squirrel, quail, and pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on the North Hunting Area.

2. Hunting is permitted from ½ hour before sunrise to ½ hour after sunset.

3. Hunting is not permitted from March 1 through August 31.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting on Area A must be from designated stands only, unless actively tracking or retrieving wounded deer.

3. Hunting Areas A and B and the North Hunting Area are open to shotgun and muzzleloader hunting.

4. Archery hunting is permitted on the North Hunting Area only.

5. Archery hunting is not permitted during the October primitive weapons season.

6. Only portable tree stands may be used and must be removed from the refuge each day.

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Boats used on Fleetwood or Turkle ponds must be propelled manually or by electric motors.

2. Those portions of Fleetwood and Turkle ponds having wood duck nesting boxes are closed to public entry from March 1 through June 30.

3. Boats may be launched from designated access points or public roads.

4. Bank fishing and crabbing is permitted only at designated access points and public right-of-ways.

5. The use of air-thrust watercraft is not permitted.

§ 32.28 Florida.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting is permitted Wednesday through Sunday except the refuge is closed to hunting on Christmas Day.

3. Hunting is not permitted during the special teal season.

4. Hunters shall possess and use, while in the field, only nontoxic shot.

5. Guns must be unloaded and cased or dismantled when outside the hunt area and when the boat is enroute to or from the hunting area.

6. Only temporary blinds are permitted.

7. Decoys and other personal property must be removed from the hunting area following each day's hunt.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset on all areas of the refuge except the management impoundments and those areas marked by signs as closed to public entry or fishing.

2. Only the use of rods and reels or poles and lines is permitted, and this fishing equipment must be attended at all times.

3. Commercial fishing or the taking of frogs or turtles is not permitted.

4. The possession or use of trotlines, gigs, jugs, seines, castnets or other fishing devices not described above is not permitted.

Cedar Keys National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.

2. Fishing is permitted year-round from refuge beaches only.

Chassahowitzka National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated area of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Only temporary blinds are permitted.

4. Decoys must be removed from the refuge following each day's hunt.

5. Hunting is permitted only on Wednesday, Saturdays and Sundays.

6. Chassahowitzka Wildlife Management Area regulations apply to the Hernando County portion of the refuge.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit and armadillo is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunting is permitted during the State deer archery, muzzleloading and general gun seasons.

3. Chassahowitzka Wildlife Management Area regulations apply to the Hernando County portion of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Chassahowitzka Wildlife Management Area regulations apply to the Hernando County portion of the refuge.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round, except in a designated sanctuary that is closed to all public entry from October 15 to February 15.

Egmont Key National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.

2. Fishing is permitted year-round, from refuge beaches only.

Hobe Sound National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted year-round only from sunrise to sunset.

J. N. "Ding" Darling National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in refuge waters except in the Mangrove Head Pond, Tower Pond, and Tarpon Bay Slough at the Bailey Tract.

2. Crabbing is permitted with the use of dip nets only; lines, traps, and bait are not permitted.

Lake Woodruff National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Archery hunting is permitted on the first sixteen days of the State archery season.

3. Two four-day blackpowder hunts are permitted beginning on the first and third Thursdays following the close of the archery hunt.

4. During all hunts, hunters are required to remain on their stand from ½ hour before sunrise until 9:00 am.

5. Hunters must wear a visible outer garment of hunter orange material above the waistline.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.

2. The use of snatch hooks is not permitted in refuge impoundments.

3. The use of airboats is not permitted.

Lower Suwannee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in interior creeks, sloughs and ponds from March 1 through October 31 only from sunrise to sunset except that fishing is not permitted in interior creeks, sloughs and ponds during quota big game hunts.

2. Fishing from a boat is permitted in all navigable tidal and freshwater creeks year-round. Boats are not permitted in refuge ponds. Boats may not be left on the refuge overnight.

Merritt Island Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing, crabbing, clamming, oystering and shrimping are permitted on designated areas of the refuge subject to the following conditions:

1. Night fishing is permitted from a boat only. A permit is required.

2. The daily limit is 20 fish for the Kennedy Athletic Recreational Site (K.A.R.S.) Marina in the Banana River, the Eddy Creek "trout hole" in Mosquito Lagoon and the Patillo Creek in the Indian River during the period from November 15 through March 31.

3. Fishing lines must be attended at all times.

4. Vehicle access north and south of Haulover Canal is limited to designated and/or posted access points and launch areas.

5. Boat launching or mooring between sunset and sunrise is permitted only at Beacon 42 Fish Camp and Bairs Cove.

6. Air thrust boats are prohibited.

Pelican Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round.

2. Bank fishing from spoil islands is permitted, during daylight hours only

Pinellas National Wildlife Refuge

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A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is only permitted from boats, into the waters surrounding Tarpon Key.

St. Marks National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and armadillo is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer, turkeys and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Freshwater fishing and crabbing are permitted only from sunrise to sunset.
2. The use of boats with motors of 10 horsepower or less is permitted on the St. Marks Unit only from March 15 through October 15.
3. Launching of commercial or sport net boats at the saltwater boat ramp on C.R. 59 is prohibited.

St. Vincent National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed and sambar deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.
2. Only nonmotorized boats and boats with electric motors are permitted.
3. The use of live minnows as bait is not permitted.
4. Fishing seasons and largemouth bass length limits are as posted.

§ 32.29 Georgia.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Banks Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round only from sunrise to sunset.
2. Night fishing is permitted from March 1 through October 31.
3. Only the use of pole and line or rod and reel is permitted.

Blackbeard Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Freshwater fishing is permitted from March 15 through October 25 from sunrise until ½ hour after sunset.
2. Only nonmotorized boats and boats with electric motors are permitted.
3. The use of live minnows as bait is not permitted.
4. Boats may not be left on the refuge overnight.

Eufaula National Wildlife Refuge

Refer to § 32.20 Alabama for regulations.

Harris Neck National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round, except during refuge hunts.
2. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

Okefenokee National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The use of boats with motors larger than 10 horsepower is not permitted.
2. The use of live minnows as bait is not permitted.
3. Only the use of pole and line or rod and reel is permitted.

Piedmont National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of quail, squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting is not permitted during refuge deer hunts.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from May 1 through September 30 only from sunrise to sunset.
2. The creel limit for black bass is five.
3. Only the use of pole and line or rod and reel is permitted.
4. The use of live minnows as bait is not permitted.
5. Nonmotorized boats and boats with electric motors are permitted only in Pond 2A and Allison Lake.

Savannah National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrels and feral hogs is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on refuge on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on refuge impoundments from March 15 through October 25.
2. Fishing is permitted from boats into tidal creeks from February 1 through October 25.
3. Fishing is permitted from sunrise until ½ hour after sunset.
4. Only nonmotorized boats and boats with electric motors are permitted on impounded waters.
5. Boats may not be left on the refuge overnight.

Wassaw National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round except during refuge hunts.
2. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

Wolf Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round.
2. Fishing from boats is only permitted on Beacon and Wolf Creeks.
3. Bank fishing into estuarine waters is permitted only from sunrise to sunset.

§ 32.30 Hawaii.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Hakalau Forest National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* [Reserved]

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* Hunting of feral pigs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. *Sport Fishing.* [Reserved]

§ 32.31 Idaho.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Bear Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats are not permitted.

B. *Upland Game Hunting.* Hunting of partridge, grouse and cottontail rabbits, including pygmy rabbits, is permitted on designated areas of the refuge.

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following condition: Boats are not permitted in fishing areas.

Camas National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese, ducks, coots, and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. *Upland Game Hunting.* Hunting of pheasant and grouse is permitted on designated areas of the refuge.

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

Deer Flat National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese, ducks, coots, common snipe and doves is permitted on designated areas of the refuge subject to the following conditions:

1. Only ducks and coots may be hunted on the Lake Lowell sector.

2. Only portable and temporary blinds constructed of natural materials are permitted.

3. Nonmotorized boats are restricted to the area bounded by the water's edge and extending to a point 200 yards lakeward in hunting area 1 on the Lake Lowell sector.

4. Nonmotorized boats and boats with electric motors are restricted to the area bounded by the water's edge and extending to a point 200 yards lakeward in hunting area 1 on the Lake Lowell sector.

B. *Upland Game Hunting.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of pheasant, quail and partridge is permitted on the Lake Lowell Sector.

2. Shooting hours on the Lake Lowell sector are the same as those for waterfowl hunting.

3. Hunting is not permitted on the Snake River sector from February 1 through May 31.

C. *Big Game Hunting.* Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the Snake River Sector.

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. During the waterfowl hunting season, fishing is permitted only within the area bounded by the water's edge extending to a point 200 yards lakeward in fishing Areas A and B on the Lake Lowell Sector.

2. Nonmotorized boats are permitted throughout the year except during the waterfowl hunting season when they are restricted to that area within the area bounded by the water's edge extending to a point 200 yards lakeward in fishing Areas A and B on the Lake Lowell Sector.

3. Motorized and nonmotorized boats are permitted from ½ hour before sunrise to ½ hour after sunset from April 15 through September 30.

4. Shoreline fishing is not permitted on the islands of the Snake River Sector from February 1 through May 31.

Grays Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Motorized boats are not permitted.

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

Kootenai National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on Tuesdays, Thursdays, Saturdays and Sundays.

2. Hunters are limited to the use and/or possession of no more than 25 shells per day.

3. All firearms must be unloaded when in the posted retrieving zone for purposes of retrieving downed birds or traveling to or from the hunting area.

4. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. *Upland Game Hunting.* Hunting of ruffed, spruce and blue grouse is permitted subject to the following condition: Hunting is permitted only on that portion of the refuge west of the West Side Road.

C. *Big Game Hunting.* Hunting of deer, elk, black bear, moose and mountain lion is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on that portion of the refuge that lies west of the West Side Road.

D. *Sport Fishing.* Fishing is permitted only on Myrtle Creek subject to the following condition: Only bank fishing and nonmotorized boats are permitted.

Minidoka National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. *Upland Game Hunting.* Hunting of pheasant, partridge and cottontail rabbits, including pygmy rabbit, is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only during the waterfowl season.

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

§ 32.32 Illinois.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Chautauqua National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only in the area outside the main dike in the Liverpool Lake section and north of the entrance to the north ditch known as Goofy Ridge Ditch.

2. The retrieval zone is limited to the river side of the main dike.

3. Only temporary structures or blinds constructed of native materials are permitted.

4. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. From December 15 through October 15 bank fishing is permitted and all refuge waters are open to fishing. From October 16 through December 14 bank fishing is permitted in the posted area that extends from the Recreation Area to the break in the cross dike and along Boatyard #3 to 100 feet west of the radial gate structure, from boats in Goofy Ridge Ditch, and in all waters within the Public Hunting Area. Fishing is permitted during daylight hours only.

2. The use of boats with motors greater than 25 horsepower is prohibited.

3. Private boats must be removed from refuge waters overnight or moored at Boatyard No. 3.

Crab Orchard National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Waterfowl hunting is permitted on designated areas of the refuge under the following conditions:

1. Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greebrair land areas, plus Orchard, Turkey, and Sawmill and Grassy Islands, from sunrise to posted closing times each day during the goose season. Waterfowl hunting in these areas, including lake shorelines, is permitted only from existing refuge blinds during the goose season. Hunters must comply with the special rules posted at the blind drawing site.

2. All hunters are prohibited from possessing alcoholic beverages in the hunting areas.

3. Outside of the controlled goose hunting areas, only portable or temporary blinds may

be used. Blinds may not be located beyond the shoreline of refuge waters, must be removed or dismantled at the end of each day's hunt, and must be located a minimum of 100 yards apart.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Upland game hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

2. No rifles may be used with ammunition larger than .22 caliber rim fire, except black powder weapons up to and including .40 caliber may be used.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. A special permit issued by the Illinois Department of Conservation is required.

2. Hunters using the Closed Area are required to check in at the refuge visitor contact station prior to hunting and must comply with the special rules provided to them.

3. Deer hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Crab Orchard Lake—West of Wolf Creek Road—fishing from boats is permitted all year. Trotlines/jugs must be removed from sunrise until sunset, from Memorial Day through Labor Day; East of Wolf Creek Road—fishing from boats is permitted March 15 through September 30. Fishing from the bank is permitted all year only at the Wolf Creek and Route 148 causeways; on the entire lake—trotlines/jugs must be removed on the last day they are used. It is illegal to use stakes to anchor any trotlines; they must be anchored only with portable weights and must be removed on the last day they are used. All noncommercial fishing methods are permitted except underwater breathing apparatus is prohibited.

2. A–41. Bluegill, Blue Heron, Managers, Honkers and Visitor Ponds. Fishing is permitted only from sunrise to sunset March 15 through September 30. No boats or flotation devices are allowed.

3. It is unlawful to take largemouth bass between 12″ to 15″ in length from Little Grassy Lake; there is no minimum length limit on largemouth bass in effect on Devils Kitchen Lake.

4. Largemouth bass under 15″ in length may not be taken from A–41, Bluegill or Blue Heron Ponds, Crab Orchard Lake or Managers or Honkers Ponds.

5. Largemouth bass under 21″ in length may not be taken from Visitors Pond.

6. It is unlawful to take catfish from their beds by submerging any object except hands under the water.

Mark Twain National Wildlife Refuge

A. Hunting of Migratory Game Birds. Regulations for hunting migratory game birds are as follows:

1. On the Big Timber Division, including Turkey and Otter Islands, only temporary wood or brush blinds are permitted. Blinds cannot be locked or otherwise sealed against public entry. Blinds are open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of the legal shooting hours.

2. On the Gardner Division, waterfowl and coot hunting is permitted only from blinds constructed on sites posted by the Illinois Department of Conservation.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted on the Big Timber Division including Turkey and Otter Islands, and on the Gardner Division.

2. Hunting of squirrel is permitted on the Keithsburg Division from September 1 through September 15.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Hunting of deer is permitted on the Gardner and Big Timber Divisions and on Turkey and Otter Islands.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted all year in the Big Timber Division, Iowa, including Turkey and Otter Island, and in the Gardner Division, Illinois.

2. Fishing is permitted in the Louisa Division, Iowa, from February 1 until the start of the Iowa waterfowl hunting season with the exception of certain designated areas adjacent to the Port Louisa Road that are open all year.

3. Fishing is permitted in the Keithsburg Division, Illinois, from January 1 through September 15. Bank fishing at the Spring Slough access is permitted all year.

4. Fishing is permitted in the Calhoun, Batchtown, and Gilbert Lake Division, Illinois, from December 16 through October 15.

Upper Mississippi River Wild Life and Fish Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for Potter's Marsh in Pool 13 except during the early teal season.

2. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is not permitted between March 1 and the opening of the State fall hunting seasons except that hunting of wild turkey is permitted during the State spring turkey season.

2. Hunting is not permitted on the Goose Island Closed Area in Pool 8.

3. Hunting is permitted on other areas that are closed during the waterfowl hunting season and are designated by signs as "Area Closed" beginning the day after the close of the applicable State duck hunting season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is not permitted on the Goose Island Area in Pool 8.

2. Hunting of deer is permitted on other areas that are closed during the waterfowl hunting season and are designated by signs as "Area Closed" beginning the day after the close of the applicable State duck hunting season.

3. Construction or use of permanent blinds, platforms or ladders is not permitted.

4. All stands must be removed from the refuge at the end of each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions: Fishing on the Spring Lake Closed Area, Carroll County, Illinois, is not permitted from October 1 through the last day of the Illinois waterfowl season. Only hand powered boats or boats with electric motors are permitted on Mertes' Slough in Buffalo County, Wisconsin.

§ 32.33 Indiana.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Muscatatuck National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition:

1. No discharge of firearms is permitted within 100 yards of an occupied dwelling.

2. Hunting is permitted only from sunrise to sunset.

3. Hunting is prohibited from the beginning of the second State muzzleloader deer season through the end of the year.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required during the second State muzzleloader season. Archery hunting is permitted following the second muzzleloader season.

2. Only bow and arrow and muzzleloaders are permitted.

3. The construction and use of permanent blinds, platforms or ladders is not permitted.

4. No discharge of firearms is permitted within 100 yards of an occupied dwelling

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on Stanfield Lake from designated bank areas and from nonmotorized boats from May 15 through October 15 and when ice conditions permit ice fishing.

2. Only fishing with rod and reel or pole and line is permitted.

3. Ice fishing is permitted when ice conditions are safe.

4. The minimum size limit for large-mouth black bass taken from refuge waters is 14 inches.

5. Fishing is permitted during daylight hours only.

6. Frogs and turtles may be taken by hook and line during daylight hours from areas open to fishing.

§ 32.34 Iowa.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

De Soto National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting is permitted until noon each day from November 1 through the end of the State waterfowl season within the zones.
3. Hunters may not use or possess more than 25 shells per day.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only archery hunting is permitted.
3. The construction or use of permanent blinds, platforms or ladders is not permitted.
4. All stands must be removed from the refuge by the close of the season.

D. Sport Fishing. Fishing is permitted in DeSoto Lake subject to the following conditions:

1. Ice fishing is permitted from January 1 through the end of February when conditions are safe.
2. Motor- or wind-driven conveyances are not permitted on the lake from January 1 through the end of February.
3. The use of portable ice fishing shelters is permitted on a daily basis from January 1 through the end of February.
4. Only the use of pole and line or rod and reel is permitted from April 15 through September 30 with the exception that archery and spear fishing are permitted only for nongame fish from April 15 to September 30.
5. Fishing with more than two lines or with more than two hooks on each line is not permitted.
6. The use of trotlines and float lines is not permitted.
7. Minimum length and creel limits are required as posted.

Mark Twain National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

Union Slough National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: State regulations regarding the use of decoys, and governing the construction and use of blinds on game management areas, shall apply.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. The construction or use of permanent blinds, stands or ladders is prohibited.
2. All stands must be removed from the refuge by the end of the season.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 15 through September 30.
2. The use of boats, canoes or other floating devices is not permitted.

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 32.32 Illinois for regulations.

§ 32.35 Kansas.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Flint Hills National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, mourning doves and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following condition: Dogs may not be used for hunting furbearing animals or non-game animals.

C. Big Game Hunting. Hunting of big game is permitted on designated areas of the refuge subject to the following condition: Only shotguns are permitted.

D. Sport Fishing. [Reserved]

Kirwin National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, mourning doves and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. Hunting of pheasant, quail, prairie chicken, squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of rabbits and squirrels is permitted only during that portion of the State "small game season" that occurs during the State "upland game season."

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following condition: Only archery hunting of deer is permitted.

D. Sport Fishing. [Reserved]

Quivira National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, rails, mourning doves, common snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant, bob-white quail, squirrel, and rabbit is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

§ 32.36 Kentucky.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Reelfoot National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on the Long Point Unit (north of Upper Blue Basin) from March 15 through October 15 and on the Grassy Island Unit (south of the Upper Blue Basin) from February 1 through November 15.
2. Fishing is permitted only from sunrise to sunset.

§ 32.37 Louisiana.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Atchafalaya National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Hunting shall be in accordance with Sherburne Wildlife Management Area regulations.

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver and otter is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting shall be in accordance with Sherburne Wildlife Management Area regulations, except that dogs may not be used to hunt rabbits.

C. Big Game Hunting. Hunting of deer and turkey is permitted on designated areas of the refuge subject to the following condition: Hunting shall be in accordance with Sherburne Wildlife Management Area regulations.

D. Sport Fishing. [Reserved]

Bayou Sauvage National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Finfishing and shellfishing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted during daylight hours only from March 16 through October 31, with the following exceptions: bank fishing from U.S. Highway 11 is permitted year-round; the area south of Intracoastal Waterway is permitted year-round; the areas outside the Hurricane Protection Levee, the main Canal from U.S. Highway 11 to the borrow pits (2) within the Blind lagoon Unit, and the area bounded by 1–10, Lake Pontchartrain, and Levee #27 is permitted

from the end of the State waterfowl season (East Zone) through October 31.

2. Only rod and reel or pole and line is permitted for finfishing. All hand lines and crabbing equipment must be attended.

3. The use of trotlines, slat traps, or nets is prohibited, with the following exceptions: bait shrimp may be taken with cast nets; crayfish and crabs with ring nets up to 20 inches in diameter.

4. Daily crab and crayfish limit is 100 pounds per vehicle or boat.

5. Outboard motors not to exceed 25 horsepower are permitted in waterways, canals, and pools within the Hurricane Protection Levee (#26, #27, and #28).

6. Air-thrust boats, motorized pirogues, and go-devils are prohibited in refuge waters.

Bogue Chitto National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer, turkey and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. Only cotton limb lines are permitted.

Cameron Prairie National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Sport fishing is permitted subject to the following conditions:

1. Fishing and public access is permitted during daylight hours only from March 15 through October 15 in areas designated by refuge signs and/or brochures.

2. Fishing and public access may be permitted year-round during daylight hours only in some areas if designated by refuge signs and/or brochures.

3. Access to refuge fishing areas is restricted to roads and trails designated by refuge signs and/or brochures.

4. Outboard motors larger than 25 horsepower are prohibited in refuge waters.

5. Trotlines must be attached with a length of cotton line that extends into the water.

6. Boats may not be left on the refuge overnight.

Catahoula National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted from the opening day of the State season through October 31.

2. Daily permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from ½ hour before sunrise until ½ hour after sunset. Only pole and line or rod and reel fishing is permitted.

2. Boat launching on all refuge waters is permitted only at designated boat ramps. Boats with motors over the maximum size listed are prohibited, whether or not the motors are used for power. Boats may not be left on the refuge overnight.

3. Cowpen Bayou is open to fishing year-round. Only nonmotorized boats or boats with electric motors are permitted.

4. Duck Lake, all outlet waters, and all flooded woodlands are open to fishing and boating from March 1 through October 31. Only nonmotorized boats or boats with motors of 10 horsepower or less are permitted.

5. Muddy Bayou is open to fishing from March 1 through October 31. Only nonmotorized boats or boats with electric trolling motors are permitted.

D'Arbonne National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots, and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of ducks and coots is permitted until noon each day.

2. Boats, decoys and blinds must be removed from the refuge following each day's hunt.

3. Hunting is not permitted during the special teal season.

4. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

5. Firearms must be unloaded while being transported in a vehicle or boat.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of raccoon and opossum is permitted only during January and December of odd numbered years and only during daylight hours during the State squirrel season.

2. Feral hogs may be taken during all refuge hunts.

3. Firearms must be unloaded while being transported in a vehicle or boat.

4. Lead shot is permitted only on designated portions of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

2. Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

3. Firearms must be unloaded while transported in a vehicle or boat.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. Only cotton limb lines are permitted.

Delta National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of ducks, geese, and coots is permitted on Wednesdays, Thursdays, Saturdays, and Sundays until noon during the State duck season.

2. Blinds and decoys must be removed from the refuge following each day's hunt.

3. Camping is permitted in designated areas only.

4. Retrievers are permitted.

5. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted from the day after the waterfowl season closes through the remainder of the State season.

2. Only shotguns are permitted.

3. Dogs are permitted.

4. Camping is permitted in designated areas only.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only still and stalk hunting are permitted.

2. Only portable stands are permitted and they must be removed from the refuge after each day's hunt.

3. Archery hunting is permitted beginning October 1 through October 31.

4. Camping is permitted in designated area only.

D. Sport Fishing. Fishing, shrimping and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing, shrimping and crabbing are permitted only from sunrise to sunset.

2. Only shrimping trawls of 16 feet or less are permitted.

Lacassine National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing and crayfishing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and crayfishing are permitted from ½ hour before sunrise until one hour after sunset during the period of March 1 through October 15.

2. Only pole and line or rod and reel fishing is permitted. Crayfish may be taken only with drop nets or hand lines. The use or possession of any other type of fishing and crayfishing gear is prohibited.

3. No person may take or possess more than 100 pounds of crayfish per vehicle per day.

4. Only boats with motors totaling 25 horsepower or less are permitted in the Lacassine Pool. Entry and use of airboats and hovercraft is prohibited on all waters within refuge boundaries. Boats may not be left on the refuge overnight.

5. Access into refuge marshes and ponds outside the Lacassine Pool is permitted by walking, poling, paddling or rowing. The use of outboard motors in these areas is prohibited.

6. Boat access to the Lacassine Pool is prohibited from November 1 to March 1.

Lake Ophelia National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel, rabbit and raccoon is permitted on designated areas of the refuge subject to the following condition: Daily permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Daily permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and public access is permitted from ½ hour before sunrise until ½ hour after sunset only from March 1 through October 15 in areas posted by refuge signs and/or designated in refuge brochures.

2. Fishing and public access is permitted year-round from ½ hour before sunrise until ½ hour after sunset in areas posted by refuge signs and/or designated in refuge brochures.

3. Access to refuge fishing areas is restricted to those roads and trails posted by refuge signs and/or designated by refuge brochures.

4. Only nonmotorized boats, boats with electric motors, and boats with motors of 25 horsepower or less are permitted in refuge waters. Boats may not be left on the refuge overnight.

5. The ends of trotlines must consist of a length of cotton line that extends from the point of attachment into the water.

Sabine National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on Wednesdays, Saturdays and Sundays except that hunting is permitted daily during the entire western zone teal season.

2. Hunting is permitted until noon each day

3. Hunting is not permitted during the goose-only season and on Christmas Day.

4. Hunters shall possess and use, while in the field, only nontoxic shot.

5. Hunters are required to check in and out of the refuge.

6. Checking bagged game is required.

7. Only portable blinds and blinds constructed of native vegetation are permitted.

8. Decoys and portable blinds must be removed from the refuge following each day's hunt.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing, crabbing, crayfishing, and shrimp cast netting are permitted on designated areas of the refuge subject to the following conditions:

1. Only fishing with rod and reel or pole and line is permitted. Shrimp may be taken only with a cast net. Crabs and crayfish may be taken only with ring nets up to 18 inches in diameter or hand lines. The use or possession of any other type of fishing, crabbing, crayfishing, and shrimping gear is prohibited except that persons using Hog Gulley, Headquarters, or West Cove Canals may only transport shrimp trawls, butterfly nets, or other nets from the boat ramps to Calcasieu Lake and return with their catch. Permits are required for sport jug fishing and gill netting.

2. Fishing and public access is permitted from March 1 through October 15 on designated waterways and pools. Only bank fishing along Highway 27 is permitted year round.

3. Fishing, crabbing, crayfishing, and shrimping is permitted from one hour before sunrise to one hour after sunset.

4. All other refuge waters are open to fishing, crabbing, crayfishing and shrimping from March 15 through October 15 only.

5. No person may take or possess more than 5 quarts of shrimp per vehicle per day except that the daily shrimp and possession limit is 5 gallons per vehicle during the State open inshore water season. Daily crab and crayfish limit is 100 pounds each per vehicle.

6. Boats may not be dragged across levees. Outboard motors up to 25 horsepower are permitted in refuge pools. Outboard motors may be operated in designated refuge canals, waterways, and pools. The operation of any type of boat motor in the refuge marshes is prohibited.

Tensas River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of squirrel, rabbit and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and public access is permitted from sunrise to sunset in areas posted by refuge signs and/or designated in refuge brochures.

2. Only nonmotorized boats and boats with electric motors are permitted in refuge lakes. Boats may not be left on the refuge overnight.

3. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

4. Access to fishing areas is restricted to those roads and trails posted by refuge signs and/or designated by refuge brochures.

Upper Ouachita National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of ducks and coots is permitted until noon each day.

2. Boats, decoys and blinds must be removed from the refuge after each day's hunt.

3. Woodcock hunting is permitted during the State season.

4. Hunting is not permitted during the special teal season.

5. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

6. Firearms must be unloaded while being transported in a vehicle or boat.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of raccoon and opossum is permitted only during December and January of odd numbered years and only during the daylight hours during State squirrel season.

2. Feral hogs may be taken during all refuge hunts.

3. Firearms must be unloaded while being transported in a vehicle or boat.

4. Lead shot is permitted only on designated portions of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

2. Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

3. Firearms must be unloaded while being transported in a vehicle or boat.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. Only cotton limb lines are permitted.

§ 32.38 Maine.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Rachel Carson National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots, woodcock and snipe is permitted on designated areas on the refuge subject to the following condition: Boats, decoys and portable blinds, must be moved from the refuge after each day's hunt.

B. Upland Game Hunting. Hunting of upland game birds, grey squirrel, cottontail rabbit, snowshoe hare, fox, and coyote is permitted on designated areas of the refuge subject to the following conditions: Fox and coyote may be hunted only during the State deer season.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Moosehorn National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. The use of nonmotorized boats only is permitted on Bearce, Conic, and Cranberry Lakes.

2. Fishing is permitted during daylight hours only.

Pond Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted from August 16 through the last day of February.

Sunkhaze Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer, moose, or bear is permitted on designated areas of the refuge subject to the following condition:

1. Gun hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. [Reserved]

§ 32.39 Maryland.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Blackwater National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Handguns and breech-loading rifles are not permitted.

3. In the headquarters hunt area, hunters must remain within 30 feet of their stand, unless actively tracking or retrieving wounded deer.

4. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and crabbing are permitted from April 1 through October 1 during daylight hours only.

2. All fish and crab lines must be attended.

3. Boat launching from refuge lands is not permitted.

4. The use of airboats is not permitted on refuge waters.

Eastern Neck National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only one deer of either sex may be taken.

3. Only archery, shotgun, and muzzleloader hunting is permitted.

4. Loaded weapons are not permitting in parking areas or on blacktopped roads.

5. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. [Reserved]

§ 32.40 Massachusetts.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Great Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted in designated areas of the refuge subject to the following condition:

1. Fishing is permitted along the main channel of the Sudbury River, Concord River and along designated banks of Heard Pond with the following exception: Fishing is not permitted within refuge impoundments.

2. Only foot access is permitted.

Monomoy National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted in designated areas of the refuge subject to the following condition: Anglers must be actively fishing between sunset and sunrise.

Nantucket National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on the ocean beach only.

2. A permit is required for the use of over-the-sand surf fishing vehicles.

Oxbow National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Use or possession of alcoholic beverages while hunting are prohibited.

2. Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is prohibited.

B. Upland Game Hunting. Hunting of upland game birds and small game is permitted on designated areas of the refuge subject to the following conditions:

1. Shotguns only are permitted.

2. Vehicles are restricted to the designated parking area that is accessible from the Still River Depot Road. Entry by routes other than Still River Depot Road is not permitted.

3. Use or possession of alcoholic beverages while hunting are prohibited.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Parker River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Hunters may not use or possess more than 25 shells per day.

4. Hunters using Area B must set out a minimum of six waterfowl decoys and hunt within 50 yards of these decoys.

5. Use or possession of alcoholic beverages while hunting is prohibited.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. A refugee permit is required.

2. Hunting is permitted from ½ hour before sunrise until 2 p.m.

3. Only shotguns, 20 gauge or larger, loaded with slugs are permitted.

4. Attendance at a refuge orientation is mandatory.

5. Hunting is permitted on six days within the framework of the State shotgun deer season.

6. All deer harvested must be brought to the refuge check station whole (undressed).

7. Use or possession of alcoholic beverages while hunting is prohibited.

8. Only antlerless deer may be harvested, under appropriate State permits, on days one and two of the refuge hunt.

D. Sport Fishing. Saltwater fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Saltwater fishing is permitted on the ocean beach only.

2. A permit is required for night fishing and for the use of over-the-sand surf-fishing vehicles.

§ 32.41 Michigan.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Harbor Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and black bear is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Seney National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of woodcock and snipe is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of grouse and snow-shoe hare is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer and bear is permitted on designated areas areas of the refuge subject to the following condition: The use of dogs while bear hunting is not permitted.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Ice Fishing.

i. Fishing is permitted from January 1 through the end of February during daylight hours only.

ii. Ice shanties, houses or shelters are not permitted on F Pool.

iii. Snowmobiles or all-terrain vehicles are not permitted.

2. Summer Fishing.

i. Fishing is permitted from May 15 through September 30 during daylight hours only.

ii. Fishing is permitted on the Creighton, Driggs and Manistique Rivers, Walsh Creek west of the Walsh ditch south to its entry into the C–3 Pool.

iii. Only bank fishing is permitted in refuge pools.

iv. Access to Driggs and Creighton Rivers, Walsh Creek and Walsh Ditch is limited to canoes without motors and to foot traffic along these watercourses.

Shiawassee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Duck and coot hunting is permitted only in Pool 4 and associated marshes.
3. Goose hunting in designated cropland fields and areas of the Shiawassee River is permitted until 12 noon with a required check out time of 1 p.m.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits may be required.

D. Sport Fishing. [Reserved]

§ 32.42 Minnesota.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Agassiz National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and moose is permitted on designated areas of the refuge subject to the following conditions:

1. The construction or use of permanent blinds, platforms or ladders is not permitted.
2. All stands must be removed from the refuge at the end of each day's hunt.

D. Sport Fishing. [Reserved]

Big Stone National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of partridge, pheasant, gray and fox squirrel, cottontail rabbit, jackrabbit, and red and gray fox is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. The construction or use of permanent blinds, platforms or ladders is not permitted.
2. All stands must be removed from the refuge at the end of each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Nonmotorized boats or boats with electric motors are permitted in the Minnesota River channel only.
2. Bank fishing only is permitted on refuge pools and open marshes.
3. Ice fishing shelters must be removed from the refuge following each day's fishing activities.

Minnesota Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only participants in the refuge's Young Wild Fowlers program are permitted to hunt.

B. Upland Game Hunting. Hunting of pheasant, gray and fox squirrel and cottontail rabbit is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Only bank fishing is permitted.
2. Ice fishing is permitted when ice conditions are safe.
3. Ice fishing shelters must be removed from the refuge following each day's fishing activity.

Rice Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of ruffed grouse, spruce grouse, gray and fox squirrel, cottontail rabbit and snowshoe hare is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. The construction or use of permanent blinds, platforms or ladders is not permitted.
2. All stands must be removed from the refuge at the end of each day's hunt.
3. Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from May 1 through November 30.
2. Fishing from nonmotorized boats is permitted only in designated areas.

Sherburne National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, rails, woodcock, and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Field possession of migratory game birds is not permitted on refuge areas closed to migratory game bird hunting.
2. Only nonmotorized boats are permitted, and they must be launched at designated access sites.
3. Boats, decoys and blinds must be removed from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.
4. Entry to hunting areas is not allowed earlier than one and one-half hours before legal shooting hours.

B. Upland Game Hunting. Hunting of ruffed grouse, ring-necked pheasant, gray and fox squirrel, snowshoe hare, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. The construction or use of permanent blinds, platforms or ladders is not permitted.
2. All stands must be removed from the refuge at the end of each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on the St. Francis River only.
2. Nonmotorized boats are permitted only on designated areas of St. Francis River and must be launched from designated access points.

Tamarac National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, rails, woodcock and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is in accordance with White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.
2. Blinds must be removed from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.
3. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of ruffed grouse, gray and fox squirrel, cottontail rabbit, jackrabbit and snowshoe hare is permitted on designated areas of the refuge subject to the following condition: Hunting is in accordance with White Earth Indian Reservation regulations on those parts of the Reservation that are a part of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is in accordance with White Earth Reservation regulations on those parts of the Reservation that are a part of the refuge.
2. The construction or use of permanent blinds, platforms or ladders is not permitted.
3. All stands must be removed from the refuge at the end of each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in North Tamarac Lake and Wauboose Lake all year, in accordance with State seasons.
2. Fishing is permitted on Two Island Lake, Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day.
3. Bank fishing only is permitted in an area 50 yards on either side of the Ottertail River Bridges on County Roads #26 and #126 during State seasons.

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 32.32 Illinois for regulations.

§ 32.43 Mississippi.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Bogue Chitto National Wildlife Refuge

Refer to § 32.37 Louisiana for regulations.

Dahomey National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel, rabbit, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Hillside National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on all refuge waters year-round except for any borrow pond along the Corps of Engineers Hillside flood control levee that is designated as closed by signs.
2. Frogging is permitted on all refuge waters during the State bullfrog season.
3. Trotlines are not permitted in borrow ponds.
4. Commercial fishing is not permitted.

Mathews Brake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following condition: The designated waterfowl sanctuary is closed to entry from December 1 through March 15.

Morgan Brake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Noxubee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, beaver, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: The bag limit for raccoon is one per day and the possession limit is two.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through October 31, except for the Noxubee River and the borrow pits along Highway 25 which are open year-round.
2. Fishing is permitted only from sunrise to sunset. Boats may not be left on the refuge overnight.
3. Limb lines, snag lines and hand grappling are prohibited in the Bluff and Loakfoma Lakes. Only nongame fish may be taken with a bow.
4. All trotline material must be cotton twine. One trotline per person, and no more than two per boat.
5. The length limit for largemouth bass taken from Loakfoma and Ross Branch Lakes is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be released unharmed.
6. Boats are restricted to no-wake speeds on all refuge waters.

Panther Swamp National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

St. Catherine Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Sport fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and access is permitted during daylight hours only from March 1 through September 15 in areas designated by refuge signs and/or leaflets with the exception that fishing and access may be permitted year-round in some areas if designated by refuge signs and/or leaflets.
2. Access to the refuge fishing areas is restricted to roads and trails designated by refuge signs and/or leaflets.
3. Boats may not be left on the refuge overnight.

Yazoo National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Doves may be taken when the dove hunting season coincides with the refuge squirrel and rabbit hunting seasons.

B. Upland Game Hunting. Hunting of squirrel, rabbit, raccoon, opossum, and furbearers is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

§ 32.44 Missouri.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Mark Twain National Wildlife Refuge

Refer to § 32.32 Illinois for regulations.

Mingo National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. *Upland Game Hunting.* Hunting of squirrel and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Turkey hunting is permitted only during the State spring firearm and fall archery seasons.
2. Hunting of squirrel is permitted from the opening of the State season through September 30.
3. Hunters are required to check in and out of the refuge.

C. *Big Game Hunting.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery and historic weapon hunting are permitted.
2. Hunters are required to check in and out of the refuge.
3. The construction or use of permanent blinds, platforms or ladders is not permitted.
4. All stands must be removed from the refuge by the close of the season.

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted during daylight hours year-round in all waters west of Ditch 6 and in all other refuge waters from March 15 through September 30. Fishing in May Pond and Fox Pond is permitted in accordance with posted regulations.
2. Only nonmotorized boats are permitted.
3. Nongame fish may be taken for personal use by nets and seines. All nets must be plainly labeled with the name and address of the user. Trammel and gill nets must be attended at all times. (All other nets may be left set and unattended but not for more than 24 hours.) Game fish may not be possessed by persons using nets or seines on the refuge.

Squaw Creek National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* [Reserved]

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only historic weapon hunting is permitted.
3. Hunters are required to check in and out of the refuge.
4. Stands must be removed from the refuge each day.
5. Hunting is permitted only during the special hunt season established by the State for the refuge.

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following condition: Fish, amphibians, reptiles and crustaceans may only be taken with hand-held pole and line or rod and reel.

Swan Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of geese is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunters shall possess and use, while in the field, only nontoxic shot.

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only historic weapon hunting is permitted.

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through October 15 during daylight hours only.
2. Only nonmotorized boats are permitted on refuge waters with the exception that the use of motors of 10 horsepower or less is permitted on Silver Lake.

§ 32.45 Montana.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Benton Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of ducks, geese, tundra swans, and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Only nonmotorized boats are permitted.
2. Waterfowl hunting is not permitted after November 30.
3. Hunters shall possess and use, while in the field, only non-toxic shot.

B. *Upland Game Hunting.* Hunting of pheasant and partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted through November 30.
2. Hunting is permitted from one-half hour before sunrise to sunset.

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

Black Coulee National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing* [Reserved]

Bowdoin National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of waterfowl, coots, sandhill cranes, and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters are required to check in and out of the refuge.
2. Air-thrust boats and boats with motors greater than 10 horsepower are not permitted.

B. *Upland Game Hunting.* Hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox and coyote is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of fox and coyote is permitted from December 1 to March 1.
2. Hunters are required to check in and out of the refuge.

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

Charles M. Russell National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* [Reserved]

B. *Upland Game Hunting.* Hunting of upland game birds, turkey and coyote is permitted on designated areas of the refuge.

C. *Big Game Hunting.* Hunting of big game is permitted on designated areas of the refuge subject to the following special conditions:

1. Hunting of coyotes is permitted from the first day of the general Statewide antelope season through February 5.
2. Off-road retrieval of downed game by motor vehicle is not permitted.

D. *Sport Fishing.* [Reserved]

Creedman Coulee National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with motors greater than 10 horsepower motors are not permitted.

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

Hailstone National Wildlife Refugee

A. *Hunting of Migratory Game Birds.* The refuge unit is open to the hunting of migratory game birds, but has no refuge-specific regulations as it follows guidelines set out in State law.

B. *Upland Game Hunting.* Hunting of upland game birds is permitted on designated areas of the refuge.

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* [Reserved]

Halfbreed Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* The refuge unit is open to the hunting of migratory game birds but has no refuge-specific regulations as it follows guidelines set out in State law.

B. *Upland Game Hunting.* The refuge unit is open to the hunting of upland game birds but has no refuge-specific regulations as it follows guidelines set out in State law.

C. *Big Game Hunting.* The refuge is open to big game hunting but has no refuge-specific regulations as it follows guidelines set out in State law.

D. *Sport Fishing.* [Reserved]

Hewitt Lake National Wildlife Refuge

A. *Hunting of Migratory Game Birds.* Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with greater than 10 horsepower motors are not permitted.

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* [Reserved]

D. Sport Fishing. [Reserved]

Lake Mason National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: The use of motorized boats is not permitted.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Lake Thibadeau National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following condition: Air-thrust boats and boats with greater than 10 horsepower motors are not permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Lamesteer National Wildlife Refugee

A. Hunting of Migratory Game Birds. The refuge unit is open to the hunting of migratory game birds but has no refuge-specific regulations as it follows guidelines set out in State law.

B. Upland Game Hunting. The refuge unit is open to the hunting of upland game but has no refuge-specific regulations as it follows guidelines set out in State law.

C. Big Game Hunting. The refuge unit is open to big game hunting but has no refuge-specific regulations as it follows guidelines set out in State law.

D. Sport Fishing. [Reserved]

Lee Metcalf National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters may not use or possess more than 25 shells per day.
2. Shooting is permitted only from or within 10 feet of designated blinds.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed and mule deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.
2. Hunters are required to check in and out of the refuge.

D. Sport Fishing. [Reserved]

Medicine Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, snipe, and doves is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant, partridge, and sharp-tailed grouse is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer and antelope is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

National Bison National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. The refuge unit is open to sport fishing but has no refuge-specific regulations as it follows guidelines set out in state law.

Nine-Pipe National Wildlife Refuge

A. Hunting of Migratory Game Birds [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. The refuge unit is open to sport fishing but has no refuge-specific regulations as it follows guidelines set out in state law.

Pablo National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. The refuge unit is open to sport fishing but has no refuge-specific regulations as it follows guidelines set out in state law.

Red Rock Lakes National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer, elk, moose and pronghorn antelope is permitted on designated areas of the refuge.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted from the third week of June through the end of the general State season.

Swan River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Short Fishing. [Reserved]

UL Bend National Wildlife Refuge

A. Hunting of Migratory Game Birds. The refuge unit is open to the hunting of migratory game birds but has no refuge-specific regulations as it follows guidelines set out in state law.

B. Upland Game Hunting. The refuge unit is open to upland game hunting but has no refuge-specific regulations as it follows guidelines set out in state law.

C. Big Game Hunting. The refuge unit is open to big game hunting but has no refuge-specific regulations as it follows guidelines set out in state law.

D. Sport Fishing. The refuge unit is open to sport fishing but has no refuge-specific regulations as it follows guidelines set out in state law.

War Horse National Wildlife Refuge

A. Hunting of Migratory Game Birds. The refuge unit is open to the hunting of migratory game birds but has no refuge-specific regulations as it follows guidelines set out in state law.

B. Upland Game Hunting. Hunting of upland game birds is permitted on designated areas of the refuge.

C. Big Game Hunting. The refuge unit is open to big game hunting but has no refuge-specific regulations as it follows guidelines set out in state law.

D. Sport Fishing. [Reserved]

Willow Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. The refuge unit is open to sport fishing but has no refuge-specific regulations as it follows guidelines set out in state law.

§ 32.46 Nebraska.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Crescent Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer, mule deer, and pronghorn antelope is permitted on designated areas of the refuge subject to the following condition: Checking of bagged game is required.

D. Sport Fishing. [Reserved]

DeSoto National Wildlife Refuge

Refer to § 32.34 Iowa for regulations.

Valentine National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions: Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. Hunting of pheasant, sharp-tailed grouse and prairie chicken is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

§ 32.47 Nevada.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Ash Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, snipe, and dove is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Desert National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of bighorn sheep and deer is permitted on designated areas of the range subject to the following conditions:

1. Bighorn sheep and deer guides are required to obtain a Special Use Permit prior to taking clients on to the range.

2. Natural bighorn sheep mortalities (pick-up heads) found on the range are government property and possession or removal of them from the range is not permitted.

D. Sport Fishing. [Reserved]

Pahranagat National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens, mourning doves and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Only nonmotorized boats or other motorless flotation devices are permitted on the refuge hunting area during the migratory waterfowl hunting season.

2. Hunting of waterfowl, coots, moorhens, and snipe is permitted only on the opening day of the season and alternate days throughout the remainder of the season.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round with the exception of North Marsh which is closed annually during the waterfowl hunting season.

2. Only non-motorized boats and boats with electric motors are permitted on Upper Lake, Middle Pond and Lower Lake.

3. The use of boats, rubber rafts or other flotation devices is not permitted on North Marsh.

Ruby Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, moorhens and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl coot and moorhen hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from one hour before sunrise until two hours after sunset.

2. Only dike fishing is permitted in the areas north of the Brown Dike and east of the Collection Ditch with the exception that fishing by wading and from personal flotation devices (float tubes) is permitted in Unit 21 and portions of Unit 10.

3. Only artificial lures may be used in the Collection Ditch and the associated springs that are open to fishing.

4. Beginning June 15 annually and continuing until December 31 annually, motorless boats and boats with battery powered electric motors are permitted only on the South Sump.

5. Beginning August 1 annually and continuing until December 31 annually, boats propelled with a motor or combination of motors in aggregate not to exceed 10 horsepower rating are permitted on the South Sump.

6. Boats may be launched only from designated landings.

7. No boats of any kind may be stored on the refuge from January 1 through March 31.

8. Fishing is prohibited from the west bank of the Collection Ditch between Bressman Cabin and Passey Springhole, in the hatchery rearing and brooding ponds, Cave Creek west of the County road and from the dike between Units 14 and 20 as posted.

Sheldon National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of quail, grouse and partridge is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer, antelope and bighorn sheep is permitted on designated areas of the refuge.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Big Springs Reservoir—only non-motorized boats are permitted.

2. Dufurrena Ponds—only float tubes and similar flotation devices are permitted.

3. McGee Pond—only individuals 12 years of age and under, or 65 years of age and older, or handicapped individuals, are permitted to fish.

§ 32.48 New Hampshire. [Reserved]

§ 32.49 New Jersey.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Edwin B. Forsythe National Wildlife Refuge

A. Hunting of Migratory Game Birds: Hunting of waterfowl, coots, moorhens and rails is permitted on designated areas of the refuge subject to the following conditions:

1. Waterfowl hunters shall possess and use, while in the field, only non-toxic shot.

2. All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent and pit blinds are not permitted.

3. Waterfowl hunters may not use or possess more than 25 shells per day in Hunting Areas A, B, and C in the Barnegat Division and in Hunting Unit 1 in the Brigantine Division.

4. In Hunting Area B of the Barnegat Division, hunting is restricted to designated sites, with each site limited to one party of hunters. Access is by boat only. A minimum of six decoys per site is required.

5. In Hunting Area C of the Barnegat Division, hunting is restricted to designated areas, with each site limited to one party of hunters.

6. Use of Hunting Unit 3 of the Brigantine Division may be restricted to certified Young Waterfowl Program trainees for up to 30 days as posted.

7. Use or possession of alcoholic beverages while hunting are prohibited.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. A State permit for the appropriate New Jersey Deer Management Zone is required.

2. Refuge hunting hours are consistent with State hunting hours. Hunters may enter the refuge no earlier than two hours before shooting time and leave no later than one hour after the end of shooting hours.

3. Use or possession of alcoholic beverages while hunting is prohibited.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Saltwater fishing is permitted from the beach on Holgate Peninsula and Little Beach Island with the exception of those areas posted as closed.

2. Boat and bank fishing are permitted in and along Lily Lake. Boat ramp facilities are not available; only cartop launches will be permitted.

3. Fishing, clamming and crabbing are not permitted from land or on any waters within tract 122X locally known as the AT&T properties. This area is closed to all public use.

Great Swamp National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved].

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must comply with State laws governing special deer permit hunts.

2. All hunters must attend the refuge hunter orientation and show proof of completion of a refuge firearms proficiency test before hunting.

3. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored orange clothing or material.

4. Use or possession of alcoholic beverages while hunting is prohibited.

Supawna Meadows National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese and ducks is permitted on designated areas of the refuge subject to the following conditions:

1. All goose and duck hunting will close after the last day of the regular duck season for the south zone of New Jersey.

2. Snow goose hunting will begin with the Canada goose season for the south zone of New Jersey only.

3. Loaded and uncased firearms are permitted in an unanchored boat only when retrieving crippled birds.

4. All hunting blind materials, boats, and decoys must be removed at the end of each hunting day. Permanent blinds are not permitted.

5. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. A State permit for the appropriate New Jersey Deer Management Zone is required.

2. In addition to the State permit, a Special Use Deer Hunting Permit issued by the refuge is required.

3. All hunters must attend a refuge hunter orientation session.

4. Use or possession of alcoholic beverages while hunting is prohibited.

D. Sport Fishing. [Reserved]

§ 32.50 New Mexico.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Bitter Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, mourning doves and sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters must use and be in possession of only shells containing steel shot.

2. Permanent blinds and pit blinds are not permitted.

3. Neither hunters nor dogs may enter closed areas to retrieve game.

B. Upland Game Hunting. Hunting of pheasant, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of jackrabbit and cottontail rabbit is permitted only during the waterfowl season.

2. Hunters must use and be in possession of only shells containing steel shot.

3. Only shotguns and bows and arrows are permitted.

4. Quail hunting is prohibited.

C. Big Game Hunting. Hunting of mule deer is permitted on designated areas of the refuge.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 1 through October 15.

2. Fishing is permitted only in Pools 5, 6, 7, 15, and 16.

3. Fishing is permitted from one hour before sunrise until one hour after sunset.

4. The use of boats is not permitted.

Bosque del Apache National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning and white-winged doves and snow, blue and Ross' geese is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for goose hunting.

2. Goose hunters are required to successfully complete a U.S. Fish and Wildlife Service migratory bird identification and hunter training program prior to the hunt.

3. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of jackrabbit and cottontail rabbit is permitted only during the State quail season.

2. Only shotguns and bows and arrows are permitted.

C. Big Game Hunting. Hunting of mule deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required for hunting in the Bottomlands Management Hunt Unit.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from the Saturday of Memorial Day weekend through September 30.

2. Fishing is permitted from ½ hour before sunrise until ½ hour after sunset.

3. Frogging and the use of trotlines, spears, bows and arrows, boats and other flotation devices are not permitted.

Las Vegas National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks and Canada geese is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Hunters age 17 and under must hunt under the supervision of an adult age 21 or older.

4. Hunters or dogs may not enter closed areas to retrieve birds.

5. Hunting is permitted only on designated days of the week. Notice will be given as provided in 50 CFR 25.31.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Maxwell National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from the last Saturday in February through the Sunday nearest October 16.

2. Boats are permitted only on Lake 13 and 14 and only during the fishing season.

3. Fishing is not permitted within 150 feet of headgates.

Sevilleta National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning and white-winged doves, geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters or dogs may not enter closed areas to retrieve birds.

2. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

3. Permanent blinds and pit blinds are not permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

§ 32.51 New York.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Elizabeth A. Morton National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only on the beach and in areas not designated as closed.

2. Fishing is permitted only during daylight hours.

Iroquois National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for waterfowl hunting.

2. Completion of the State waterfowl identification course is required.

3. Hunting is not permitted from March 1 through September 30.

4. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

5. Waterfowl hunters may not use or possess more than 15 shells per day.

6. Waterfowl hunters must provide and use a minimum of six decoys per hunter.

7. Waterfowl hunting is permitted from designated stands only, with a maximum of three hunters per stand.

8. Hunting must occur within 50 feet of a stand marker, unless actively pursuing crippled birds.

B. Hunting of Upland Game. Hunting of upland game birds, small game mammals, legally hunted furbearers and unprotected wildlife is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for night hunting of furbearers.

2. Hunting is not permitted from March 1 through September 30.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition:

1. Hunters, during the State shotgun deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only during daylight hours.

2. Fishing is permitted from July 15 through September 30 and from December 1 through the end of February with the exception that fishing is permitted at all times in Feeder Canal and Oak Orchard Creek.

3. Ice fishing is permitted on Ringneck, Schoolhouse and Center Marshes only from

December 15 through the last day of February when conditions are safe.

4. The use of boats or other flotation devices is not permitted with the exception that nonmotorized boats may be used on Oak Orchard Creek from Knowlesville Road to the cable across the creek approximately two miles downstream.

5. Boats, structures or other equipment must be removed from the refuge after the completion of the day's fishing activities.

Montezuma National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl is permitted on designated areas of the refuge subject to the following condition: Permits/reservations are required in advance.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. All hunters must possess and return at day's end, a valid daily hunt permit card.
2. A Special Use Permit is required for night hunting of furbearers.
3. Hunting is permitted from the close of the refuge deer season through the close of the respective State season.
4. Shotguns only are permitted, except that .22 caliber rim fire firearms may be used to take furbearers at night.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

1. All hunters must possess and return at day's end, a valid daily hunt permit card.
2. Hunting of deer is permitted on designated portions of the refuge by archery, shotgun, or muzzleloader only during established refuge seasons set within the general State deer season.
3. Hunters during the refuge firearms season, must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored blaze orange clothing or material.

D. Sport Fishing. [Reserved]

Wertheim National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Shore and boat fishing is permitted on that portion of the Carmans River between Sunrise and Montauk Highways.
2. Only boat fishing is permitted from Montauk Highway south to the mouth of the Carmans River.
3. Fishing is permitted only during daylight hours.
4. Spearfishing and taking of baitfish and frogs is not permitted.

§ 32.52 North Carolina.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Alligator River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of swans, geese, ducks, coots, snipe, mourning doves and woodcock is permitted on designated areas of the refuge subject to the following conditions:

1. The use of hunting dogs is permitted only on designated areas of the refuge.
2. Hunters are permitted access to the refuge one and one-half hours before sunrise until one hour after sunset.
3. Firearms must be unloaded while being transported in a vehicle or boat.
4. Only portable blinds are permitted and must be removed from the refuge following each day's hunt.

B. Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. The use of hunting dogs is permitted on designated areas of the refuge.
2. Firearms must be unloaded while being transported in a vehicle or boat.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. The use of hunting dogs is permitted only on designated areas of the refuge.
2. Firearms must be unloaded while being transported in a vehicle or boat.
3. Only portable stands are permitted and must be removed from the refuge after each day's hunt.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round only from sunrise to sunset.
2. Only the use of pole and line, rod and reel or cast net is permitted.
3. A permit is required for night fishing.
4. Frogs may be taken by the use of frog gigs only. A permit is required.

Cedar Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, coots, and geese is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.
2. Only portable blinds are permitted.
3. Blinds must be removed from the refuge following each day's hunt.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Great Dismal Swamp National Wildlife Refuge

Refer to § 32.66 Virginia for regulations.

MacKay Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset from March 15 through October 15 with the exception that bank fishing is permitted in Corey's Ditch and the canal adjacent to the Knotts Island Causeway year-round.
2. All fishing lines must be attended.
3. Airboats are not permitted.

Mattamuskeet National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of swans, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and crabbing are permitted from March 1 through November 1 from ½ hour before sunrise to ½ hour after sunset or as posted.
2. Bank fishing and crabbing are permitted year-round along the Highway 94 Causeway and in the immediate vicinity of the Lake Landing water control structure, the Outfall Canal water control structure, and Central Canal Bridge from ½ hour before sunrise to ½ hour after sunset except that the Highway 94 Causeway is open to fishing and crabbing 24 hours per day.
3. Herring (alewife) dipping is permitted from March 1 to May 15 only from sunrise to sunset or as posted.
4. All fish lines and crabbing equipment must be attended.
5. Airboats and sailboats are not permitted.
6. Bank fishing is prohibited along the entrance road from Highway 94 to the Refuge Headquarters.

Pea Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following condition: Fishing and crabbing are prohibited in North Pond, South Pond and Newfield impoundments.

Pee Dee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from opening day of the State season through the last Saturday in September.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of squirrel is permitted for 14 consecutive days beginning Monday following the third Saturday in November.
2. Hunting of quail is permitted from February 1 through February 14.
3. Hunting of rabbit is permitted from February 15 through the end of the State season.
4. Hunting of raccoon and opossum is permitted the first day of the State season through the third Saturday in November.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 1 through October 15.
2. Fishing is permitted only from sunrise to sunset.
3. Only nonmotorized boats and boats with electric motors are permitted on Arrowhead Lake, Andrews Pond and Beaver ponds.
4. Only the use of pole and line or rod and reel is permitted.
5. The use of live minnows as bait is not permitted.

Roanoke River National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of squirrel, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Swanquarter National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of swans, ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.
2. Only portable blinds are permitted.
3. Blinds must be removed from the refuge following each day's hunt.

§ 32.53 North Dakota.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Arrowwood National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of pheasant, sharp-tailed grouse, partridge, rabbit and fox is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted from December 1st through the end of the regular seasons.

C. Big Game Hunting. Hunting of deer is permitted on designated areas subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Audubon National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Refuge and State permits are required for the first one and a half days of the State gun season.
2. Hunting with bow and arrow is permitted only from noon of the day following the close of the State deer firearms season through the close of the State archery season.

D. Sport Fishing. [Reserved]

Chase Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

D. Sport Fishing. [Reserved]

Des Lacs National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Refuge and State permits are required for the first one and one half days of the State gun season.
2. Only persons with valid permits are permitted on the refuge during the first one and one half days of the season.
3. Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following deer gun season.

D. Sport Fishing. [Reserved]

J. Clark Salyer National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant, partridge, grouse and turkey is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Lake Alice National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

1. Possession of firearms in retrieving zones is prohibited.
2. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of upland game and fox is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted on the refuge's Special Archery Unit.
2. Only portable devices or natural materials for temporary blinds and tree stands are permitted.

D. Sport Fishing. [Reserved]

Lake Nettie National Wildlife Refuge

A. Hunting of Migratory Game Birds [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted only from noon of the day following the close of the State deer firearms season until the close of the State archery season.

D. Sport Fishing. [Reserved]

Lake Zahl National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of ring-necked pheasant, sharp-tailed grouse and gray partridge is permitted on designated areas of the refuge subject to the following conditions:

1. Only steel shot may be possessed and used.
2. Hunters may enter the refuge on foot only.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only archery hunting is permitted.
2. Hunting is not permitted from the opening day of the State waterfowl season through the close of the State deer gun season.

D. Sport Fishing. [Reserved]

Long Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of ring-necked pheasant, sharp-tailed grouse and gray partridge is permitted on designated areas of the refuge subject to the following conditions: Only steel shot may be possessed and used.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season and it is permitted following the deer gun season.

D. Sport Fishing. [Reserved]

Lostwood National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of partridge and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is not permitted on the portion of the refuge south of Highway 50 during the State deer gun season.
2. Hunting is permitted on the portion of the refuge north of Highway 50 only after the close of the State deer gun season.

C. Big Game Hunting. Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:

1. Refuge and State permits are required for the first one and one half days of the State gun season.
2. Only persons with valid permits are permitted on the refuge during the first one and one half days of the season.

3. Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

D. Sport Fishing. [Reserved]

Slade National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Archery hunting is permitted through the day before the opening of the State waterfowl season, and it is permitted following the deer gun season.

D. Sport Fishing. [Reserved]

Tewaukon National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of ring-necked pheasant is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted beginning the third day after the start of either the State late archery deer season or the normal State late pheasant whichever is later.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only during the State late archery deer season.

2. In those years when a pheasant hunt is permitted, the refuge deer season closes the day before the pheasant season begins. If the State's late pheasant and deer seasons begin on the same day, deer hunting only is permitted for the first two days after which the refuge pheasant season begins.

D. Sport Fishing. [Reserved]

Upper Souris National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of partridge and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following conditions:

1. Designated areas are closed during the waterfowl and deer gun season.

2. Hunter orange vest and cap are required during the deer seasons.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

D. Sport Fishing. [Reserved]

§ 32.54 Ohio.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Cedar Point National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is allowed from June 1 through August 31 during daylight hours only.

2. Boats or flotation devices are not permitted.

Ottawa National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese and ducks is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is allowed from June 1 through August 31 during daylight hours only.

2. Boats or flotation devices are not permitted.

3. Fishing is restricted to persons 16 years or younger or 65 years or older.

§ 32.55 Oklahoma.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Little River National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel and rabbit is permitted on designated areas of the refuge subject to the following condition: Access is limited to designated roads and trails.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in the area designated on the refuge fishing map brochure.

2. Access to refuge fishing is limited to designated roads and trails.

Optima National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant, bobwhite and scaled quail, cottontail rabbit and jackrabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

C. Big Game Hunting. Hunting of mule deer and white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only fall turkey hunting is permitted.

D. Sport Fishing. [Reserved]

Salt Plains National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, sandhill cranes and mourning doves is permitted on designated areas of the refuge subject to the following conditions:

1. Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

2. Hunters are required to check in and out of the refuge.

B. Upland Game Hunting. Hunting of quail and pheasant is permitted on designated areas of the refuge subject to the following condition: Hunters must check in and out of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. The northern portion of Great Salt Plains Reservoir is closed.

2. Fishing is permitted from April 1 through October 15.

3. The use of firearms for taking frogs is not permitted.

4. Trotlines must be attended daily and removed when fishing is completed.

5. Trotlines are not permitted within 500 feet of the shoreline of the Jet Recreation Area.

6. Posts used to secure or anchor trotlines must reach a minimum of two feet above the water surface and must be marked so that they are clearly visible to boaters.

7. The use of any metallic posts or stakes to secure or anchor trotlines is not permitted.

8. Taking any type of bait from refuge lands or waters is not permitted.

Sequoyah National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl and doves is permitted on designated areas of the refuge subject to the following condition: Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of squirrel, quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and frogging are not permitted in the posted area located south of Vian Creek to Tuff Ramp and north along the western shore of Shally Jones Lake to the mouth of Horton Slough from January 1 through February 15 and October 1 through December 31.

2. Fishing and frogging are not permitted in the Sandtown Bottom area from one hour after sunset to 4:00.

3. The use of firearms for taking frogs is not permitted.

Tishomingo National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves and waterfowl is permitted on designated areas of the refuge subject to the following conditions:

1. The Tishomingo Wildlife Management Unit is open as posted by signs and/or indicated on refuge leaflets, permits and maps.

2. In Zone 1, only duck and coot hunting is permitted.

3. Duck or coot hunters may not use or possess more than 25 shells per day.

4. Goose hunting is only permitted in Zone 2 and only from the goose blinds provided.

5. Goose hunters may not use or possess more than 6 shells per day.

6. Hunters are required to check in and out of the refuge.

7. Waterfowl hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail, squirrel and rabbit is permitted on the Tishomingo Wildlife Management Unit of the refuge subject to the following conditions:

1. Hunting of upland game is not permitted in the goose hunting zone during the goose hunting season.

2. Hunters are required to check in and out of the refuge.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Hunters are required to check in and out of the hunt area.

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and frogging are permitted on all refuge waters from March 1 through September 30 except as noted below in (3).

2. Bank fishing and frogging are permitted in the immediate area of the refuge headquarters boat launching ramp, Goose Pen Pond, Dick's Pond, Big Sandy Creek, Bell Creek and Rock Creek from October 1 through the last day of February.

3. All refuge waters are closed to fishing during the special fall deer hunts.

4. The use of trotlines, juglines, throwlines and other set tackle is permitted only in Cumberland Pool of Lake Texoma and the Washita River from March 1 through September 30, and set tackle must be removed from these waters by October 1.

5. The use of firearms for taking frogs is not permitted.

Washita National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese and sandhill cranes is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters must use and be in possession only of shells containing steel shot.

B. Upland Game Hunting. Hunting of quail and rabbit is permitted on designated areas of the refuge subject to the following condition: Only shotguns and bows and arrows are permitted.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and frogging are permitted from March 15 through October 14 with the exception that the eastern shore of Foss Reservoir from the Lakeview Recreation Area to the Pitts Creek Recreation Area and the eastern bank of Pitts Creek are open to bank fishing and frogging year-round.

2. Access to fishing and frogging is permitted only from the McClure, Riverside, Owl Cove, Pitts Creek and Lakeview Recreation Areas and by boat from Foss Reservoir.

3. Boats and other flotation devices are not permitted on refuge waters from October 15 through March 14.

4. Trotlines must be attended daily and must be removed when fishing is completed.

5. Taking any type of bait from refuge lands and waters is not permitted.

6. The use of firearms for taking frogs is not permitted.

Wichita Mountains National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of elk and white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fish may be taken only with pole and line or rod and reel except that in Elmer Thomas Lake only, nongame fish may be taken with any technique permitted by State regulations.

2. Taking any type of bait from refuge lands or waters is not permitted.

3. Taking of frogs and turtles is not permitted.

§ 32.56 Oregon.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Ankeny National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, pigeons, geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

2. Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.

3. Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays.

4. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

5. Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Bandon Marsh National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe, doves and pigeons is permitted on designated areas of the refuge.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Baskett Slough National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.

2. Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.

3. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

4. Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Bear Valley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots, snipe, doves and pigeons is permitted on designated areas of the refuge.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer only is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting opens concurrent with the State season and closes October 31.

2. No hunting or public entry of any kind is permitted from November 1 to March 31.

D. Sport Fishing. [Reserved]

Cold Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day and New Year's Day.

2. Only shoreline hunting is permitted.

3. Waterfowl hunters are required to space themselves a minimum of 200 yards apart.

4. The use of boats is not permitted.

5. The refuge is closed from 10 p.m. to 5 a.m.

B. Upland Game Hunting. Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day and New Year's Day.

2. Hunting of rabbit is permitted only during the State waterfowl season.

3. Hunting is permitted only by shotgun and bow and flu-flu arrow beginning at noon each day.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through September 30.

2. Bank fishing only is permitted from October 1 through the last day of February.

3. Only nonmotorized boats and boats with electric motors are permitted.

Deer Flat National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, ducks, coots and common snipe is permitted on the Snake River sector subject to the following conditions:

1. Only portable blinds and temporary blinds constructed of natural materials are permitted.

2. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of upland game is permitted on the Snake River Sector subject to the following condition: Hunting is not permitted from February 1 through May 31.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on the Snake River Sector.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Shoreline fishing is not permitted on the islands of the Snake River Sector from February 1 through May 31.

Hart Mountain National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of partridge and quail is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer, antelope and bighorn sheep is permitted on designated areas of the refuge.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted only in Rock Creek, Guano Creek and Warner Pond.

Klamath Forest National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. The use of air-thrust and inboard water-thrust boats is not permitted.
2. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Bank fishing is permitted in the borrow ditches adjacent to the Silver Lake Highway and along the shoreline of Wocus Bay.
2. The use of boats is not permitted.

Lewis and Clark National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Lower Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Only unloaded firearms may be taken through posted retrieving zones when traveling to and from the hunting areas.
2. Decoys may not be set in retrieving zones.
3. The use of air-thrust and inboard water-thrust boats is not permitted.
4. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Only unloaded firearms may be taken through posted retrieving zones when traveling to and from hunting areas.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Malheur National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, geese, ducks, coots, common snipe and pigeons is permitted on designated areas of the refuge subject to the following condition: Motorized boats are not permitted.

B. Upland Game Hunting. Hunting of pheasant, quail, partridge, coyote and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of pheasant, quail, partridge and rabbit is permitted during the last nine days of the State pheasant season in designated zones of Blitzen Valley east of Highway 205. Hunting is also permitted on Malheur Lake during the waterfowl hunting season.
2. Hunting of coyote and rabbit is permitted from September 1 to January 31 on the refuge area west of Highway 205.

C. Big Game Hunting. Hunting of deer and antelope is permitted on designated areas of the refuge.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only during the State trout season.
2. Boats are not permitted, except nonmotorized boats and boats with electric motors are permitted on Krumbo Reservoir.

McKay Creek National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for the opening weekend of the season.
2. Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day and New Year's Day.
3. Waterfowl hunters are required to space themselves a minimum of 200 yards apart.
4. The use of boats is not permitted.
5. The refuge may not be entered before 5 a.m.

B. Upland Game Hunting. Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for both days on opening weekend.
2. Hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.
3. Hunting of rabbit is permitted only during the State waterfowl season.
4. Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted from March 1 through September 30.

Sheldon National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of quail, grouse, and partridge is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer and antelope is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for hunting on the McCormack Unit.
2. In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.
3. Waterfowl hunting parties in the Boardman Unit are required to space themselves a minimum of 200 yards apart.
4. Decoys, boats and other personal property must be removed from the refuge following each days hunt.
5. Hunters may not possess or use more than 20 shells per day.
6. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.
7. The refuge is closed from 10 p.m. to 5 a.m. except for the Hunter Check Station parking lot, which is open each morning two hours prior to State shooting hours for waterfowl.
8. Decoys, boats and other personal property may not be left on the refuge overnight.

B. Upland Game Hunting. Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for hunting on the McCormack Unit for both days on opening weekend.
2. In the McCormack Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.
3. Hunting of rabbit is permitted only during the State waterfowl season.
4. Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on refuge impoundments and ponds from February 1 through September 30. Other refuge waters (Columbia River and its backwaters) are open in accordance with State regulations.
2. Only non-motorized boats are permitted on refuge impoundments and ponds.
3. Fishing is permitted only from 5 a.m. to 10 p.m.
4. Bowfishing is prohibited.

Upper Klamath National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. The use of air-thrust and inboard water-thrust boats is not permitted.
2. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in Pelican Bay, Recreation Creek, Crystal Creek, Odessa Creek, Thomas Creek, Pelican Cut and that portion of Upper Klamath Lake located on the east side of the refuge.
2. Motorized boats shall not exceed 10 miles per hour in any stream, creek or canal and on that portion of Pelican Bay west of a line beginning at designated points on the north shore of Pelican Bay one-fourth mile east of Crystal Creek and extending due south to the opposite shore of the lake.

William L. Finley National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, pigeons, geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. An advance hunting reservation/permit is required for waterfowl, coot and snipe hunting.
2. Dove and pigeon hunters must check in and out of the refuge by use of self-service permits.
3. Waterfowl, coot and snipe hunting is permitted only on Wednesdays, Saturdays and Sundays until noon.
4. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.
5. Waterfowl, coot and snipe hunters may not use or possess more than 25 shells per day.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Only shotgun and archery hunting are permitted.
2. Hunters must check in and out of the refuge by use of self-service permits.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on Muddy Creek from the beginning of the State trout season in April through October 31.
2. The use of boats is not permitted.

§ 32.57 Pennsylvania.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Erie National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted on the refuge from September 1 through the end of February.
2. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.
3. Only motorless boats are permitted for waterfowl hunting. Boats and decoys must be removed from the refuge at the end of each day's hunt.

B. Upland Game Hunting. Hunting of grouse, pheasant, quail, squirrel, rabbit, woodchuck, raccoon, skunk, fox and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for hunting fox and raccoon.
2. Hunting is not permitted from March 1 through August 31.
3. Hunters, during the State firearm deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Target practice or random shooting is not permitted.
2. The construction or use of permanent blinds, platforms and scaffolds is not permitted.
3. Hunters, during the State firearm deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only during daylight hours.
2. Boats without motors are permitted 3,000 feet (to the buoyline) above the Pool 9 dike from the second Saturday in June through September 15.
3. Ice Fishing is permitted on Pools K and 9 when conditions are safe.
4. Only minnows may be taken as bait from refuge lands and waters and a special use permit is required for taking minnows.
5. A permit is required to take turtles.
6. The taking of frogs is not permitted.

Tinicum National Environmental Center

A. Hunting of Migratory Game Birds. [Reserved]

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* [Reserved]

D. *Sport Fishing.* Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only during daylight hours in non-state-controlled areas.
2. Boats are not permitted.
3. Bow fishing is not permitted.
4. A permit is required to take turtles.
5. The taking of frogs is not permitted.

§ 32.58 Puerto Rico. [Reserved]

§ 32.59 Rhode Island. [Reserved]

§ 32.60 South Carolina.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Cape Romain National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of rails is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of squirrel and raccoon is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting of squirrel and raccoon is permitted only during the refuge deer season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Two six-day hunts are permitted beginning on the first Mondays in November and December.

D. Sport Fishing. Fishing, crabbing, and shell fishing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through September 30 only from sunrise to sunset.
2. Only nonmotorized boats and boats with electric motors are permitted.
3. The use of cast nets from Moores Landing Pier is not permitted.

Carolina Sandhills National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves and woodcock is permitted in designated areas of the refuge subject to the following condition: Permits are required.

B. Upland Game Hunting. Hunting of quail, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from March 1 through September 30 with the exception that fishing is permitted year-round in Lake Bee, Lynches River and the Black Creek Bridge Areas on State Road 33, State Road 145, Highway 1 and Wire Road.
2. Fishing is permitted from ½ hour before sunrise to ½ hour after sunset.
3. Only bank fishing is permitted with the exception that nonmotorized boats and boats with electric motors are permitted in Martins Lake, Lake Bee, Lake 16, Lake 17 and May's Lake.
4. Fish baskets, nets, set hooks and trotlines are not permitted.

Pinckney Island National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted year-round.
2. Fishing is only permitted from boats, into the estuarine waters adjacent to the refuge.

Santee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves, ducks, and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Waterfowl hunting is permitted only in October during the State season.
3. Waterfowl hunting is permitted until noon each day.
4. The refuge dove season opens with the state season and ends September 30.
5. Permanent blinds are not permitted.
6. Decoys and non-native blind materials must be removed from the refuge following each day's hunt.

B. Upland Game Hunting. Hunting is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted on inland ponds only from sunrise to sunset or as posted.
2. Fishing is permitted in Cantey Bay, Black Bottom, Savannah Branch and refuge ponds and impoundments from March 1 through September 30

Savannah National Wildlife Refuge

Refer to § 32.29 Georgia for regulations.

§ 32.61 South Dakota.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Lacreek National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of ring-necked pheasant and sharp-tailed grouse is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and mule deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Pocasse National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge.

D Sport Fishing. [Reserved]

Sand Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Wauby National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

§ 32.62 Tennessee.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Chickasaw National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of waterfowl is permitted until noon each day.
2. Only portable blinds and blinds made of native vegetation are permitted.
3. Decoys and blinds must be removed after each day's hunt.
4. Hunters shall possess and use, while in the field, only nontoxic shot.

B Upland Game Hunting. Hunting of squirrel, rabbit, quail, raccoon, and opossum is permitted on designated areas of the refuge subject to the following conditions:

1. Seasons and bag limits are in accordance with State regulations for the Upper Anderson-Tully Wildlife Management Area.
2. Hunting of upland game, except raccoon, is not permitted during firearm deer hunts.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. [Reserved]

Cross Creeks National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrel is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Hunting is permitted from the opening of the State season through October 12.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Archery hunting is permitted during the last 14 days of the State archery season.
2. Tagging and checking of deer at a State check station is required.
3. Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in refuge pools and reservoirs from March 1 through October 31 only from sunrise to sunset.
2. Boat fishing is permitted at any time on Lake Barkley waters.
3. Trotlines, limb lines, jugs and slat baskets are not permitted in refuge pools and reservoirs.
4. Taking of frogs is not permitted.
5. Boats are restricted to "slow speed/minimum wake" on all refuge pools.
6. North Cross Creek, Lee Creek and Commissary Creek areas and boat ramps to these areas are closed to fishing during the refuge waterfowl hunt.
7. The length limit for largemouth bass taken from Elk and South Cross Creeks reservoirs is less than 12 inches and more than 15 inches. Largemouth bass from 12 inches to 15 inches must be immediately released unharmed. Possession of largemouth bass between 12 and 15 inches is prohibited.

Hatchie National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge, subject to the following conditions:

1. Hunting is permitted only on Tuesdays, Thursdays, and Saturdays until noon.
2. Only portable blinds and blinds made of native vegetation may be used.
3. Portable blinds and decoys must be removed from the refuge following each day's hunt.
4. Hunters will possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of quail, squirrel, rabbit, raccoon and opossum is permitted on designated areas of the refuge subject to the following condition: Upland game hunting is not permitted during the refuge deer archery and gun hunting seasons.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted only from sunrise to sunset.
2. Only nonmotorized boats and boats with electric motors are permitted.
3. Fishing is permitted only with pole and line or rod and reel.

Lake Isom National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B Upland Game Hunting. Hunting of squirrels and raccoons is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted from March 15 through October 15 only from sunrise to sunset.

2. Only boats with motors of 10 horsepower or less are permitted.

Lower Hatchie National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted until noon each day.
2. Hunters shall possess and use, while in the field, only nontoxic shot.

3. Only portable blinds and blinds made of native vegetation are permitted.

4. Portable blinds and decoys must be removed from the refuge following each day's hunt.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing is permitted with pole and line or rod and reel only.

Reelfoot National Wildlife Refuge

Refer to § 32.36 Kentucky for regulations.

Tennessee National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. Hunting of squirrels and raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required for the turkey, primitive weapons and conventional gun deer hunts.

D. Sport Fishing. Fishing is permitted on designated portions of the refuge subject to the following conditions:

1. The Duck River Bottoms and Busseltown Unit are closed to boat fishing from November 1 through March 15.

2. Swamp Creek, Botton Ford and Bennett's Creek embayments are closed to fishing from November 1 through March 15.

3. Boats are restricted to "slow speed/minimum wake" on all refuge impoundments open to fishing.

§ 32.63 Texas.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Anahuac National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt on certain portions of the hunting area on weekend days.

2. The refuge unit located north of Onion Bayou and Jackson Ditch, known as the East Unit, is open to hunting only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.

3. Hunting is permitted until noon.

4. Hunters must use and be in possession only of shells containing steel shot.

5. Pits and permanent blinds are not permitted.

6. The refuge unit formerly known as the Pace Tract is open to hunting every day of the early teal season and regular waterfowl season.

7. Only shotguns are permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions.

1. Boats and other flotation devices are not permitted on inland waters. Boats may be launched from the refuge into East Bay.

2. Fishing is permitted only with pole and line, rod and reel or hand-held line.

3. The use of trotlines, setlines, bows and arrows, gigs, or spears is not permitted in inland waters.

Aransas National Wildlife Refuge

A. Hunting of Migratory Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. The entire refuge or any portion thereof may be immediately closed to hunting in the event of the appearance of whooping crane in the hunt area.

2. Hunters are required to report at designated check station(s) upon entering and leaving the refuge.

3. Hunters shall be at least 12 years of age Hunters between the ages of 12 and 17 (inclusive) must hunt under the supervision of an adult 18 years of age or older.

4. Archery hunting is permitted for nine consecutive days beginning the first Saturday after the Monday holiday for Columbus Day in October.

5. Archery hunt bag limits are three deer, no more than two bucks per hunter. There is no limit on feral hogs.

6. Permits are required for the firearms hunt.

7. Firearms hunting is permitted for five consecutive one day hunts beginning the first Wednesday after the Veterans Day holiday in November.

8. Firearms hunters must wear safety orange cap and vest while in hunt units.

9. Firearms hunt bag limit is two deer of either sex per hunter. There is no limit on feral hogs.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 15 through October 15 from sunrise to sunset.

2. Boat launching from refuge lands is not permitted.

3. Access by foot to bays is permitted only at designated entry points.

4. Fishermen must be off the refuge by dark.

5. Fishermen must satisfy the Entrance Fee requirement authorized by the Emergency Wetlands Resources Act.

Big Boggy National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters shall possess and use, while in the field, only nontoxic shot.

2. Pits and permanent blinds are not permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D Sport Fishing [Reserved]

Brazoria National Wildlife Refuge

A. Hunting of Migratory Game Birds Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions.

1. Hunters shall possess and use, while in the field, only nontoxic shot

2. Pits and permanent blinds are not permitted

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing in inland waters is permitted only in Nick's Lake, Salt Lake and Lost Lake.

Buffalo Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds [Reserved]

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following condition: Permits are required.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Hagerman National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of mourning doves is permitted on designated areas of the refuge subject to the following condition: Hunters are required to check in and out of the refuge.

B. Upland Game Hunting. Hunting of squirrel, rabbit, and quail is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters are required to check in and out of the hunt area.

2. Only shotguns and bows and arrows are permitted.

3. Upland game hunting is not permitted during the regular State waterfowl season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following special condition: Permits are required.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. All refuge waters are open to fishing from April 1 through September 30.

2. Fishing is restricted to the shoreline of Lake Texoma and Big Mineral Creek from October through March 31. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds or impoundments.

3. Trotlines may be strung between anchored floats only. Lines may not be attached to rubber bands, sticks, poles, trees or other fixed objects and are not permitted in refuge ponds or impoundments.

4. Fishing is not permitted from bridges or roadways.

Laguna Atascosa National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Archery hunting is permitted in mid-October on specific days listed in the refuge hunt brochure.

3. Firearms hunting is permitted in early December on specified days listed in the refuge hunt brochure.

4. The firearms hunt bag limit is two deer per hunter.

5. Hunters must wear bag hunter orange caps and vests.

6. Deer may not be removed from the refuge without a metal transportation seal being attached to the carcass by a refuge officer.

7. Hunters shall be at least 12 years of age. Hunters between the ages of, and including, 12 and 17 must hunt under the supervision of an adult 21 years of age or older.

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is only permitted by pole and line, rod and reel, or hand-held line. Bait may be taken with cast nets.

2. Crabs may be taken only with dip net, setline, hand-held line, gig or crab trap.

McFaddin National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt on certain portions of the hunting area.

2. Hunting is permitted only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.

3. Hunting is permitted until noon each day.

4. Use of airboats is permitted only in accordance with specific guidelines as provided in 50 CFR 25.31.

5. Pits and permanent blinds are not permitted.

6. Use of airboats is permitted only in accordance with guidelines provided in 50 CFR 25.31.

7. Only shotguns are permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing in inland waters is permitted only with pole and line, rod and reel, or hand-held line.

2. The use of trotlines, setlines, bows and arrows, gigs, or spears is not permitted in inland waters.

San Bernard National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for hunting in the Special Waterfowl Hunting Area (SPWH).

2. The refuge is closed to hunting on Thanksgiving and Christmas Days.

3. Hunters shall possess and use, while in the field, only nontoxic shot.

4. Pits and permanent blinds are not permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: Fishing in inland waters is permitted on the refuge portions of Cowtrap Lake and Cedar Lake only.

Texas Point National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.

2. Hunting is permitted until noon each day.

3. Hunters shall possess and use, while in the field, only nontoxic shot.

4. Pits and permanent blinds are not permitted.

5. Use of airboats is permitted only in accordance with specific guidelines issued as provided in 50 CFR 25.31.

6. Only shotguns are permitted.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and crabbing are permitted on designated areas of the refuge subject to the following condition: Fishing in inland waters is permitted only with pole and line, rod and reel, or hand-held line.

§ 32.64 Utah.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Bear River Migratory Bird Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks, geese, coots and tundra swans is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters are required to check in and out of the refuge.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters are required to check in and out of the refuge.

2. Hunters shall possess and use, while in the field, only nontoxic shot.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Fish Springs National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Ouray National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of mule deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

§ 32.65 Vermont.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Missisquoi National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required to hunt in the Patrick Marsh-Charcoal Creek Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

2. Hunters may not use or possess more than 25 shells per day on the Patrick Marsh-Charcoal Creek Controlled Hunting Area, the Junior Waterfowl Hunting Area, and the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area.

3. Boats are required for access to the permit areas.

4. Hunters within the Patrick Marsh Controlled Hunting Area and the Junior Waterfowl Area must provide and use a minimum of six decoys and hunt within 50 feet of these decoys.

5. Hunters within the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area and the Maquam Swamp Hunting Area must hunt with one retriever per hunting party of up to two hunters per party.

6. No permanent blind construction or blind staking is allowed in the Delta Lakeshore Hunting Area, the Saxe's Pothole-Creek and Shad Island Pothole Hunting Area, and the Maquam Swamp Hunting Area.

7. Waterfowl and coot hunters shall possess and use, while in the field, only nontoxic shot.

B. Upland Game Hunting. Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

1. The use of rifles is not permitted on that portion of the refuge lying east of the Missisquoi River.

2. Hunting is not permitted from January 1 through August 31.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions.

1. Only shotguns may be used on that part of the refuge east of the Missisquoi River during the State regular season.

2. Hunters, during the State firearm deer season, must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following condition: fishing is permitted only from refuge lands along Lake Champlain and the Missisquoi River.

§ 32.66 Virginia.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Back Bay National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer and feral hogs is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only shotguns 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bow and arrow, are permitted.
3. Dogs are not permitted.
4. Possession of loaded firearms or nocked arrows is not permitted on refuge roads or proclamation waters.
5. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing access from refuge headquarters is permitted only by foot, bicycle, and hand-launched boat.
2. Launching trailered boats in the refuge headquarters area is not permitted.

Chincoteague National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required on the nonguided public hunting areas on Wildcat Marsh and Morris Island.
2. On Wildcat Marsh, compartments 1–4 are reserved for guided hunting only, with refuge-designated commercial guides.
3. Permanent blinds are not permitted in public hunting areas.
4. Permanent blinds are permitted in compartments 1–4 on Wildcat Marsh during the season but must be removed within ten (10) days following the end of the season.
5. Blind sites are limited to one party of hunters, with a maximum of 4 hunters per party.
6. Hunters shall possess and use while in the field only non-toxic shot.
7. Public hunting is permitted only on Thursday, Friday, and Saturday during the Virginia waterfowl season.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of sika deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Dogs are not permitted.
3. During the State firearms season, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. Fishing, crabbing and clamming are permitted on designated areas of the refuge subject to the following conditions:

1. Sport fishing, crabbing and clamming are permitted in salt water areas and in that portion of Swan Cove adjacent to Beach Road. All other refuge ponds, impoundments and channels are closed to these activities.
2. Traps and crab pots must be attended.
3. A permit is required to remain on the refuge after normal closing hours.

Great Dismal Swamp National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition:

1. Permits are required.
2. Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.
3. Dogs are not permitted.
4. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.
5. Hunters are required to sign in and out on each hunt day.
6. Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Boat fishing is permitted in Lake Drummond and in the Feeder Ditch on the east side of the lake during daylight hours only.
2. Bank fishing is not permitted.
3. All fishing lines must be attended.
4. A permit is required for vehicular access to the boat ramp on Interior Ditch Road on the west side of Lake Drummond from April 1 through June 15.

Mason Neck National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. Only shotguns 20 gauge or larger loaded with buckshot are permitted.
3. Dogs are not permitted.
4. Only portable tree stands may be used and must be removed at the end of each hunting day.
5. Shotgun hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. [Reserved]

Presquile National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.
2. One deer of either sex may be taken.
3. Dogs are not permitted.
4. Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.
5. Shotgun hunters must remain on their assigned stand unless tracking or retrieving a wounded deer.
6. Archers must remain on their assigned stand from ½ hour before sunrise to 10:00 a.m., after which time they may hunt anywhere within the hunt area.
7. Hunters must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

D. Sport Fishing. [Reserved]

§ 32.67 Washington.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Columbia National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required for hunting in Farm Unit 226–227.
2. In Marsh Unit I and Farm Unit 226–227, hunting is permitted only on Wednesdays, Saturdays and Sundays.
3. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. Hunting of pheasant, quail, partridge and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting of upland game birds and rabbit is permitted only during State seasons that run concurrently with the State waterfowl season.
2. Only shotguns and bows and arrows are permitted.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following condition: Only shotgun and archery hunting are permitted.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Nonmotorized boats and boats with electric motors are permitted on Upper and Lower Hampton, Hutchinson, Royal and Shiner Lakes.
2. Motorized and nonmotorized boats are permitted on all other refuge waters open to fishing except in Marsh Units I and II.
3. Marsh Units I and II are restricted to shoreline fishing only.
4. The taking of bullfrogs is prohibited.

Conboy Lake National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of doves, pigeons, geese, ducks, coots, and common snipe is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of grouse, pheasant, quail and partridge is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Julia Butler Hansen Refuge for the Columbian White-Tail Deer

A. Hunting of Migratory Game Birds. [Open but without refuge-specific regulations.]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

McNary National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Advance reservations are required for hunting refuge farm circles in the McNary Division.

2. In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day and New Year's Day.

3. Only the five most upstream islands on the Hanford Islands Unit are open to hunting.

4. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

5. Hunters may not enter or be on the refuge between one hour after sunset and 5 a.m. or leave decoys, boats, and other personal property on the refuge overnight.

6. Hunters in marked hunt site area must hunt within fifty (50) feet of designated blind sites except when shooting to retrieve crippled birds.

7. Hunters may not possess or use more than 20 shells per day.

8. On Youth Hunt Day only youth aged 10 through 17 accompanied by an adult 18 or older may hunt.

B. Upland Game Hunting. Hunting of pheasant is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted by shotgun and bow and flu-flu arrow beginning at noon each day.

2. In the McNary Division, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing is permitted on designated areas of the McNary, Hanford Islands and Strawberry Island Divisions of the refuge subject to the following conditions:

1. Fishing is permitted on the Hanford Islands and Strawberry Island Divisions from July 1 through September 30.

2. Fishing is permitted on the McNary Division from February 1 through September 30.

3. The use of boats and other flotation devices is not permitted on the McNary Division.

4. Fishing is permitted only from sunrise to sunset.

5. Bowfishing is prohibited.

Ridgefield National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. An advance permit is required to hunt before 10 a.m.

2. Hunting is permitted every other day as prescribed by the refuge hunt schedule.

3. Hunters shall possess and use, while in the field, only nontoxic shot.

4. Hunters may not use or possess more than 20 shells per day.

5. A recreational user fee is required prior to hunting.

6. Hunting is permitted only from assigned blinds except when shooting to retrieve crippled birds.

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing and frogging are permitted on designated areas of the refuge subject to the following conditions:

1. Fishing and frogging are only permitted from March 1 through September 30.

2. Fishing and frogging are only permitted during daylight hours.

Toppenish National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

2. Hunters may not use or possess more than 20 shells per day.

B. Upland Game Hunting. Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only by shotgun or bow and flu-flu arrow beginning at noon each day.

2. Hunting of rabbit is permitted only during the State waterfowl season.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Umatilla National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and common snipe is permitted on designated areas of the refuge subject to the following conditions:

1. In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

2. Waterfowl hunters must space themselves a minimum of 200 yards apart.

3. The refuge, including parking sites, is closed from 10 p.m. to 5 a.m. Decoys, boats and other personal property may not be left on the refuge overnight.

4. Hunters may not use or possess more than 20 shells per day.

5. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

6. Digging or hunting from pit blinds is prohibited.

B. Upland Game Hunting. Hunting of upland game birds and rabbit is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only by shotgun or bow and flu-flu arrow beginning at noon each day.

2. In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

3. Hunting of rabbit is permitted only during the State waterfowl season.

C. Big Game Hunting. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted by shotgun only beginning at noon each hunt day.

2. In the Paterson Slough Unit, hunting is permitted only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

D. Sport Fishing. Refer to § 32.56 Oregon for regulations.

Willapa National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Hunters are required to check in and out of the refuge.

2. Hunting in the Riekkola Unit is permitted only on Wednesdays and Saturdays.

3. A recreation user fee is required prior to entrance into the Riekkola Unit hunting area.

4. Hunters may not use or possess more than 10 shells per day on the Riekkola Unit.

5. Waterfowl and coot hunters shall possess and use, while in the field, only non-toxic shot.

B. Upland Game Hunting. Hunting of blue and ruffed grouse is permitted on the Long Island Unit subject to the following conditions:

1. Permits are required.

2. Only archery hunting is permitted.

C. Big Game Hunting. Hunting of deer, elk and bear is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only archery hunting is permitted.

3. Hunting is permitted only on the Long Island Unit.

D. Sport Fishing. [Reserved]

§ 32.68 West Virginia.

[Reserved]

§ 32.69 Wisconsin.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Fox River National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. The construction or use of permanent blinds, platforms or ladders is not permitted.

D. Sport Fishing. [Reserved]

Horicon National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Only participants in the refuge's Young Wild Fowlers program are permitted to hunt.

B. Upland Game Hunting. Hunting of ring-necked pheasant, gray partridge, squirrel and cottontail rabbit is permitted subject to the following condition: Hunting is permitted from the opening of the respective State season through the State deer firearms season.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting is permitted only during the early archery and State firearms seasons.

2. The construction and use of permanent blinds, platforms or ladders is not permitted.

3. All stands must be removed from the refuge following each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted from April 15 through September 15.

2. Only bank fishing is permitted.

Necedah National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of migratory game birds is permitted only on designated areas of the refuge.

B. Upland Game Hunting. Hunting of wild turkey, ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, and raccoon only is permitted on designated areas of the refuge subject to the following conditions:

1. During the State waterfowl hunting season, guns must be unloaded or cased in the retrieval zone of Refuge Area 5.

2. During the spring turkey hunting season only, persons having an unexpired State Spring Turkey Permit in possession may enter and hunt wild turkeys in Refuge Area 3.

3. Refuge Area 3 is open to hunting after the State deer gun season through the end of the respective State seasons or until February 28, whichever occurs first.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. Hunting with a loaded rifle or shotgun within 50 feet of the centerline of all refuge roads or trails, as shown on the refuge hunting leaflet or discharging these weapons from, across, down, or alongside these roads and trails is prohibited.

2. The construction or use of permanent blinds, platforms or ladders is not permitted.

3. All stands must be removed from the refuge following each day's hunt.

4. Refuge Areas 1, 2, 4, 5, and 6 are open to deer hunting during the State gun and both early and late archery seasons.

5. Refuge Area 3 is open to deer hunting during the State gun and late archery season.

6. Target or practice shooting is not permitted.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Fishing is permitted in Areas 1, 2, 4 and 5 according to State seasons and regulations, except that the Suk Cerney Pool in Area 5 is open only from December 15 through September 15.

2. Fishing is permitted in all waters of Area 3 that are located south of the Turkey Track Road and north of the Sprague-Mather Road including the Goose and Sprague Pools from December 15 through March 15 and from June 1 through September 15.

3. Non-motorized boats are permitted in all areas that are open at the time of fishing.

Trempealeau National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge subject to the following conditions: Permits are required.

B. Upland Game Hunting. Hunting of ring-necked pheasant, ruffed grouse, gray and fox squirrels and cottontail rabbits is permitted on designated areas of the refuge subject to the following condition: Hunting is permitted only on that portion of the refuge lying north and west of the Green Bay and Western Railroad right-of-way.

C. Big Game Hunting. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:

1. A refuge permit is required for archery hunting, and a valid State permit for Quota Area 61B is required for the firearms deer hunt.

2. Firearms hunting is permitted during the first two days of the State firearms deer season. The taking of deer is permitted only by shotgun or muzzleloader.

3. Archery hunting is permitted only during the December State season, and only on part of the refuge lying west of the auto tour road.

4. The construction or use of permanent blinds, platforms, or ladders is not permitted.

5. Portable blinds, or platforms must be removed from the refuge after each day's hunt.

D. Sport Fishing. Fishing is permitted on designated areas of the refuge subject to the following conditions:

1. Only hand-powered craft and boats using trolling motors are permitted.

2. Fishing from boats is not permitted from October 10 through November 30.

§ 32.70 Wyoming.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

National Elk Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunting of elk is permitted on designated areas of the refuge subject to the following conditions:

1. Permits are required.

2. Hunters may not be let out of vehicles on refuge roads.

3. Shooting from or across refuge roads and parking areas is not permitted.

4. The use of citizen band (CB) radios in the hunt area is not permitted.

D. Sport Fishing. [Reserved]

Pathfinder National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge.

C. Big Game Hunting. Hunting of pronghorn antelope and deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Seedskadee National Wildlife Refuge

A. Hunting of Migratory Game Birds. Hunting of geese, ducks, coots and mourning doves is permitted on designated areas of the refuge.

B. Upland Game Hunting. Hunting of sage grouse and cottontail rabbit is permitted on designated areas of the refuge.

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

§ 32.71 Pacific Islands Territory.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Johnston Atoll National Wildlife Refuge

A. Hunting of Migratory Game Birds. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Fishing, lobstering and shell and coral collecting are permitted on designated areas of the refuge subject to the following conditions:

1. Lobsters of 3¼ inch carapace length or more may be taken from the lagoon area from September 1 through May 31, but not by spearing; no female lobsters bearing eggs may be taken at any time.

2. The use of nets, except throw nets, is prohibited.

3. Taking of fish by the use of spear "guns" is prohibited. Hand-propelled spears or "Hawaiian Slings" consisting of a single shaft propelled by a rubber tube are permitted for underwater taking of fish.

PART 33—[REMOVED]

2. Part 33 is removed.

Dated: December 31, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93-483 Filed 1-15-93; 8:45 am]

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Tuesday
January 19, 1993

Part III

Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[A-91-7468; FRL-4553-3]

List of Regulated Substances and Thresholds for Accidental Release Prevention; Requirements for Petitions under Section 112(r) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act Amendments of 1990, signed into law on November 15, 1990, include provisions for chemical accident prevention. The Environmental Protection Agency is proposing a list of regulated substances and threshold quantities as required under section 112(r) of the Clean Air Act as amended. The list is composed of three distinct categories: list of 100 toxic substances, list of 62 flammable substances (gases and volatile liquids), and commercial explosives as defined by the Department of Transportation (DOT) in Division 1.1 (explosives with mass explosion hazard); individual explosives are not included. The list and threshold quantities will determine the need for owners and operators of facilities to comply with future regulations addressing the prevention and detection of accidental releases to be proposed later. EPA is also publishing the requirements for the petition process that will be used to add or delete chemicals from the final list.

DATES: Comments must be submitted on or before March 22, 1993. EPA plans to hold at least one public hearing; date, time and location will be published shortly in the **Federal Register**.

ADDRESSES: Comments may be mailed or submitted to: Environmental Protection Agency, Air Docket (LE-131), Attn: Docket No. A-91-74, Waterside Mall, 401 M St. SW., Washington, DC 20460. Comments must be submitted in duplicate.

Docket: Supporting information used in developing this proposed rule is contained in Docket No. A-91-74. This docket is available for public inspection and copying between 8:30 a.m. and 12 noon, and between 1:30 and 3:30 p.m., Monday through Friday at the address listed below. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, (202) 260-7913, Chemical Emergency Preparedness and Prevention Office, OS-120, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hot Line at 1-800-535-0202.

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I. Introduction

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under section 112(r) of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7412, 7601).

B. Background

Public awareness of the potential danger from accidental releases of hazardous chemicals has increased over the years as serious chemical accidents have occurred around the world (e.g., the 1974 explosion in Flixborough, England, and the 1976 release of dioxin in Seveso, Italy). Public concern intensified following the 1984 release of methyl isocyanate in Bhopal, India, which killed more than 2,000 people living near the facility. A subsequent release from a chemical facility in Institute, West Virginia, sent more than 100 people to the hospital and made Americans aware that such incidents can and do happen in the United States.

In response to this public concern and the hazards that exist, the U.S. Environmental Protection Agency (EPA) began its Chemical Emergency Preparedness Program (CEPP) in 1985, as part of the Agency's Air Toxics Strategy. CEPP was a voluntary program to encourage state and local authorities to identity hazards in their areas and to plan for chemical emergency response actions. In 1986, Congress adopted many of the elements of CEPP in the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III). EPCPA (SARA Title III) requires states to establish state and local emergency planning groups, namely, the State Emergency Response Commissions (SERCs) and the Local Emergency Planning Committees (LEPCs), to develop emergency response plans for each community. EPCRA (SARA Title III) requires facilities to provide information on the hazardous chemicals they have on site; the information collected is available to the public through the SERC/LEPC structure. This information forms the foundation of both the emergency response plans and the public-industry dialogue on risks and risk reduction.

EPCRA (SARA Title III) did not mandate that facilities establish accident prevention programs. However, Congress acknowledged the importance of accident prevention by requiring EPA, under EPCRA (SARA Title III) section 305(b), to conduct a review of emergency systems to monitor, detect, and prevent chemical accidents. The final report to Congress, *Review of Emergency Systems* (EPA, 1988), concluded that the prevention of accidental releases requires an integrated approach that considers technologies, operations, and management practices. The report emphasized the importance of management commitment to safety.

Although EPCRA (SARA Title III) did not directly address accident prevention, EPA recognized that prevention, preparedness, and response form a continuum. Therefore, in 1986, EPA established a chemical accident prevention program to collect information on chemical accidents and work with other groups to increase knowledge of prevention practices and encourage industry to improve safety at facilities. Under this program, EPA developed its Accidental Release Information Program (ARIP) to collect data on the causes of chemical accidents and the steps facilities take to prevent recurrences. EPA also developed a program for conducting chemical safety audits at facilities. Through the audit program, EPA headquarters and regional staff as well as state and local officials learned about integrated approaches to process safety from facilities. EPA has also worked with trade associations, professional organizations, labor, environmental groups, and other Federal agencies to determine how best to reach smaller operations, which the section 305(b) study indicated are less aware of risks than larger facilities. EPA has also been an active participant in international efforts related to chemical accident prevention, particularly through the Organization for Economic Cooperation and Development (OECD), which has held five international workshops from 1989 through 1991 to discuss issues related to accident prevention, preparedness, and response, and has developed guidelines for member countries.

In addition to EPA's work in this area, other agencies and states have developed programs related to chemical accident prevention. Recently, the Occupational Safety and Health Administration (OSHA) has promulgated a final rule on chemical process safety management (57 FR 6356, February 24, 1992). Three states—New Jersey, California, and Delaware—have adopted regulations requiring facilities to prepare and implement risk management plans. A fourth state, Nevada, has recently enacted legislation on chemical process safety management. Professional and trade organizations have also developed programs in this area. For example, the Center for Chemical Process Safety of the American Institute of Chemical Engineers has published guidance on the management of chemical process safety. The Chemical Manufacturers' Association has adopted a Responsible Care™ program, which all members must comply with to maintain membership. The American Petroleum Institute has developed a similar program, Management of Process Hazards; Recommended Practice 750 (RP 750), for its members. In 1982, the European Community adopted the Seveso Directive (82/501/EEC, as amended), which requires facilities handling certain chemicals to develop a safety report that is similar to a risk management plan.

II. Clean Air Act Amendments of 1990 (CAAA)

In the Clean Air Act Amendments of 1990 (CAAA), signed into law on November 15, 1990, Congress added paragraph (r) to section 112 for the prevention of chemical accidents. The goals of the chemical accident prevention provisions are to focus on chemicals that pose a significant hazard to the community should an accident occur, to prevent their accidental release and to minimize the consequences of such releases.

Section 112(r) of the CAA has a number of provisions. It establishes a general duty for owners and operators of stationary sources, who produce, process, handle, or store substances listed under section 112(r)(3) and any other extremely hazardous substances, to comply and perform specific activities to prevent and mitigate accidental releases. The general duty requirements apply to stationary sources regardless of the quantity of substances managed at the facility. Activities such as hazards identification using appropriate hazard assessment techniques, designing, maintaining and operating a safe facility, and minimizing the consequences of accidental releases if they occur would be essential activities that must be performed to satisfy the general duty requirements. Owners and operators of these stationary sources are required in the CAA to conduct, in the same manner and to the same extent as OSHA's general duty clause in section 654 of title 29 of the United States Code, these activities as a matter of general business practice.

Section 112(r)(3) of the CAA requires EPA to promulgate, by November 15, 1992, a list of at least 100 substances ("regulated substances") that are known to cause, or may be reasonably anticipated to cause, death, injury, or serious adverse effects to human health or the environment if accidentally released. EPA is required to set threshold quantities for each listed substance. Under CAA section 112(r)(7), the Act requires EPA to promulgate, by November 15, 1993, reasonable regulations and appropriate guidance to provide for the prevention and detection of accidental releases and for responses to such releases. The accident prevention regulations will apply to stationary sources that have present more than a threshold quantity of a regulated substance. These regulations shall address, as appropriate, the use, operation, repair, and maintenance of equipment to monitor, detect, inspect, and control releases, including training of personnel in the use and maintenance of equipment or in the conduct of periodic inspections. The regulations shall include requirements for a risk management plan (RMP). The RMP shall include a hazard assessment, a prevention program, and a response program. The proposed rule for the Risk Management Program requirements will be published in the **Federal Register** in the future.

The Act establishes a Chemical Safety and Hazard Investigation Board to investigate (or cause to be investigated) chemical accidents at facilities and recommend to Congress, Federal, state, local authorities, and the public actions that can be taken to improve chemical safety. Under the Act, EPA is authorized to conduct studies related to accidental releases, including research on hazard assessments, hydrogen fluoride, and air dispersion modeling.

The CAAA also require OSHA to promulgate a chemical process safety rule (CAAA section 304) to protect employees from hazards associated with accidental releases of highly hazardous chemicals in the workplace. OSHA promulgated a final rule (57 FR 6356, February 24, 1992) requiring a chemical process safety management program for any process involving a highly hazardous chemical at or above a specified threshold quantity. The rule applies to a list of highly hazardous toxic and reactive substances at particular threshold quantities, flammable liquids or flammable gases in quantities of 10,000 pounds or more and to the manufacture of explosives and pyrotechnics.

III. List of Substances and Thresholds

A. Introduction

The Act requires EPA to promulgate, no later than November 15, 1992, an initial list of at least 100 substances that, in the event of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. An accidental release is defined under the Act as "an unanticipated emission * * * into the ambient air from a stationary source." In developing this list, EPA shall use, but is not limited to, the list of extremely hazardous substances (EHSs) promulgated under EPCRA (SARA Title III) section 302.

Congress listed the following 16 substances to be included in the initial list (the Chemical Abstracts Service (CAS) Registry number is provided in parentheses):

chlorine (7782–50–5),
ammonia and anhydrous ammonia (7664–41–7),
methyl chloride (74–87–3),
ethylene oxide (75–21–8),
vinyl chloride (75–01–4),
methyl isocyanate (624–83–9),
hydrogen cyanide (74–90–8),
hydrogen sulfide (7783–06–4),
toluene diisocyanate, represented by:
  —toluene 2,4-diisocyanate (584–84–9)
  —toluene 2,6-diisocyanate (91–08–7)
  —toluene diisocyanate, mixed isomers (26471–62–5)
phosgene (75–44–5),
bromine (7726–95–6),
anhydrous hydrogen chloride (7647–01–0),
hydrogen fluoride (7664–39–3),
anhydrous sulfur dioxide (7446–09–5), and
sulfur trioxide (7446–11–9).

No air pollutant for which a national primary ambient air quality standard has been established shall be included on the list, with the exception of anhydrous sulfur dioxide and sulfur trioxide, which must be included. No substances regulated under title VI of the Act as amended shall be included on the list. Title VI covers ozone depleters, primarily chlorofluorocarbons (CFCs) and halons.

The list of chemicals proposed today will, when final, identify stationary sources that will be covered by chemical accident prevention regulations subsequently adopted under section 112(r) of the Act. The list of substances is intended to focus accidental release prevention efforts on those stationary sources and substances that pose significant hazards to the community. EPA strongly emphasizes, however, that the chemicals proposed today for listing are not the only substances that may pose a threat to communities upon release. There are large numbers of compounds and mixtures in commerce in the United States that in specific circumstances could be considered toxic or otherwise dangerous; however, it would not be feasible to include all such substances and circumstances. The proposed list represents only the first step toward development of an effective accidental release prevention effort by facilities. Without a preliminary list of this kind, it would be more difficult for facilities to identify chemical hazards with the potential to affect the community. This list should serve as a focus in initiating prevention efforts; it is not a list of all substances that could be considered for chemical accident prevention. Similarly, the threshold quantities being proposed may not always represent a level below which no hazard exists. Although stationary sources will be required to comply with the provisions for accidental release prevention only if they have listed substances in quantities exceeding the threshold quantity, it does not mean that these substances in smaller quantities represent no potential hazard to the community. Also, stationary sources have a general duty to comply and perform activities to prevent and mitigate accidental releases regardless of the quantity of the substance handled on site.

EPA is proposing a list of 100 acutely toxic substances, 62 flammable gases and volatile flammable liquids, and high explosives as a category. Proposed threshold quantities for toxic substances are based on a ranking method that considers each substance's toxicity and potential to become airborne and disperse. The proposed threshold quantity for flammable substances is based on the quantity that potentially might be involved in a vapor cloud explosion. The proposed threshold quantity for high explosives is based on the quantity that could produce potentially lethal blast waves from an explosion at a distance of 100 meters. The presence of a threshold quantity at a stationary source would be determined based on the maximum quantity in a single process.

B. Factors Considered in Defining List Criteria

Under CAA section 112(r)(4), the factors to be considered in listing substances are: (a) The severity of acute adverse health effects associated with accidental releases of the substance, (b) the likelihood of accidental releases of the substance, and (c) the potential magnitude of human exposure to accidental releases of the substance. The Act specifies that the Administrator shall use, but is not limited to, the list of extremely hazardous substances (EHSs) under EPCRA (SARA Title III) section 302 for purposes of promulgating the list. The Act also requires that regulations establishing the list shall include an explanation of the basis for establishing the list.

EPA reviewed a number of existing or proposed chemical lists associated with other accident prevention, preparedness and response programs to evaluate criteria for listing regulated substances. These lists, which are related to safety and the protection of human health and the environment, included several EPA lists, lists developed by other Federal agencies, lists developed under state programs, and lists developed under international programs.

The chemical lists reviewed were:

- The EPCRA (SARA Title III) Section 302 List of Extremely Hazardous Substances
- The EPCRA (SARA Title III) Section 313 List of Toxic Chemicals
- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 102 Hazardous Substances List
- The Clean Air Act Section 112(b) List of Hazardous Air Pollutants
- The Department of Transportation's (DOT) Toxic by Inhalation Lists
- OSHA's Proposed List for Process Safety Management Regulations[1]
- The New Jersey Acute Toxic Catastrophe List
- The List from the European Community's (EC) Seveso Directive (subsequently revised)
- The Delaware Prevention Regulations List
- The National Fire Protection Association's (NFPA) Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids
- Flammable Gases and Volatile Flammable Liquids from the DOT Hazardous Materials Table

The criteria used for the development of these lists were reviewed to determine whether they were related to the factors mandated by Congress for list development under CAA section 112(r). Acute toxicity was generally considered in developing these lists of chemicals, but some also used flammability and explosivity as criteria for regulating chemicals. Several lists used a measure of dispersibility (equilibrium vapor pressure) in combination with acute toxicity. Furthermore, some programs used, either exclusively or in part, criteria rather than lists to define covered chemicals.

The EPCRA (SARA Title III) section 302 list, the DOT toxic by inhalation list, the New Jersey acute toxic catastrophe list, the Delaware prevention regulations list, and the list from the European Community's (EC) Seveso Directive are all based on some measures of toxicity and the potential for a chemical to become airborne. The CERCLA list is not based solely on an airborne criterion, but rather is based on a combination of statutory requirements and criteria. OSHA's list is based on a review of chemical lists compiled by a number of Federal and state agencies and other organizations (i.e., EPA, DOT, the World Bank, NFPA, the Health and Safety Commission of the United Kingdom, and the states of Delaware and New Jersey) and it includes chemicals listed for toxicity and reactivity, as well as criteria listings for flammability and explosivity. NFPA's list was developed by committee and includes a compilation of data from various sources. Listed chemicals are ranked according to their flammability, reactivity, and health hazards; the flammability rankings are based primarily on flash point and boiling point. EPA reviewed the DOT Hazardous Materials Table, which lists materials regulated in transportation, to identify flammable substances. The Hazardous Materials Table includes hazard classes and packing groups assigned according to the major hazards of the substances. For flammable liquids, packing groups are assigned primarily by flash point and boiling point.

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[1] EPA's analysis was based on OSHA's proposed rule (55 FR 29150, July 17, 1990). OSHA has since published a final standard (57 FR 6356, February 24, 1992).

EPA's review of the CAA section 112(b) list of hazardous air pollutants and of the EPCRA (SARA Title III) section 313 list of toxic chemicals indicated that both of these lists focus on routine emissions rather than accidental releases. The CAA section 112(b) list is aimed at controlling routine emissions of hazardous air pollutants; the EPCRA (SARA Title III) section 313 list focuses on all emissions, and is aimed at development of information on releases to the environment over time. Although both of these lists include chemicals that have adverse health effects from short-term exposure, the majority of the chemicals listed have the potential for producing adverse effects from long-term exposure rather than short-term exposure. Adverse health effects from long-term exposure are an important consideration when dealing with routine emissions, but are not the primary concern in the event of an accidental release. Therefore, EPA determined that the CAA section 112(b) list and the EPCRA (SARA Title III) section 313 list were not of particular relevance to the development of the list under CAA section 112(r), which focuses on the prevention of catastrophic accidental releases.

The factors specified for consideration in list development cover a broad spectrum (see CAA section 112(r)(4)); therefore, the Agency set out to define these factors more specifically in relation to accidental releases. The Agency's definitions are discussed below.

Severity of Acute Adverse Health Effects

The severity of acute adverse health effects can be related to the inherent hazards of the substances of interest, such as the toxicity of a substance resulting in lethal effects. Accidental releases would most likely lead to short-term exposure of the public, which could cause both immediate and delayed toxic effects. Acute adverse health effects also could result from other inherent hazards, such as the flammability of the substance, or whether the substance is highly reactive. The phenomena associated with these hazards could be, for example, radiant heat from a chemical fire or blast waves from an explosion of a chemical.

As confirmed by a review of death and injury events in EPA's Acute Hazardous Events (AHE) database, the Emergency Response Notification System (ERNS) database, the Accidental Release Information Program (ARIP) database, and other accident data, the physical state (liquid, solid, gas) and physical/chemical properties (toxicity, flammability, explosivity, and volatility) of released substances are important factors in the actual severity of the release. These data show that deaths and injuries from accidental releases of chemicals are strongly correlated with these factors. Because physical state and physical/chemical properties are linked to severity as well as likelihood and potential magnitude of human exposure (discussed below), EPA is proposing to give these factors substantial weight in selecting its proposed list of regulated substances.

Likelihood of Release

There are many measures and surrogates that can be used to define the likelihood of an accidental release. The likelihood of a chemical being accidentally released can be related to typical usage and handling scenarios, such as equipment commonly used in typical facility operations. Ubiquitous substances, because of greater handling and use, may have a greater potential for an accidental release. A history of a large number of accidents in the past, for example, may be an indicator of an existing hazard related to a particular substance and its potential to be involved in accidental releases in the future. Chemicals that are found in large volumes at many locations and chemicals that are particularly prevalent (commodity chemicals, for example) may be more likely to be involved in accidental releases than small-volume, less commonly used chemicals. All of these factors may be relevant in determining the likelihood of accidental release for particular chemical substances. However, the Agency also believes that there may be limitations to reliance on these factors, questions on the amount, validity, and reliability of existing accident history data, and questions about the practicability of incorporating factors that may vary from site to site (e.g., facility operations or type of equipment) in criteria for a national list.

Likelihood can also be related to the possibility of the chemical becoming airborne and having an effect beyond the facility fenceline in the event of an accidental release. This likelihood can be related to its physical/chemical properties. Specific data indicators can include physical state (gas, liquid, or solid) and vapor pressure. Although it is not impossible for solids and non-volatile liquids to become airborne in an explosion, gaseous substances and vapors from volatile liquids are more likely to be released to air and have an effect beyond the facility fenceline. Because the chemical and physical properties of the substances under review are linked to both the likelihood and the severity of chemical accidents, EPA believes that these two factors deserve the greatest weight in determining its proposed list of substances. EPA solicits comments on other factors accounting for severity and likelihood of a release that might be used to determine the list of substances. EPA also solicits comments on the availability of data to support the use of such factors.

Magnitude of Human Exposure

For purposes of today's proposal EPA considers the magnitude of human exposure associated with accidental releases to be related to the severity of the health effects (hazards) and the likelihood of a release (the likelihood that a release will have an effect on the population or environment beyond the facility fenceline). This definition of magnitude of exposure is somewhat different from the traditional risk assessment definition of human exposure, which relates magnitude of exposure to the population and sensitive environments that may be affected by a release from a specific site. EPA solicits comments on the relative merits of using the Agency's approach as a surrogate measure of the magnitude of human and environmental exposure and requests commenters to submit any suggested method for determining magnitude of human or environmental exposure to accidental releases of hazardous substances.

The Agency recognizes factors that might affect the magnitude of human exposure could be site-specific or accident-specific, and could vary widely by location and incident. Proximity to population centers and weather conditions, for example, may play a role in the magnitude of accidental releases. EPA believes that these and other site-specific factors are difficult to use in determining national criteria. EPA solicits comments on these and any other factors and any supporting data which may be useful in selecting the list of substances.

EPA has also estimated, through analysis of information collected through the Accidental Release Information Program (ARIP) database for some of the listed toxics, the likelihood that releases of those toxics reported will result in human or environmental impacts including injury, hospitalization, death, soil contamination, vegetation damage, groundwater contamination, fire, evacuations, and sheltering in place. In these events, the actual human or environmental exposure level is not precisely known and is not predictable with any degree of confidence because of many site-specific factors that influence the result. However, for purposes of this proposal, the level of severity or degree of hazard for the particular substance that generated the off-site impact is known such that the severity of the health effect and the likelihood of release has been used as a surrogate for the actual human exposure level. EPA requests comments and any additional data which could improve our assessment of human exposure.

C. Criteria Options Considered

The CAA mandates EPA to develop a list of substances based on specified criteria, namely severity of adverse health effects, likelihood of accidental releases, and potential magnitude of human exposure. The Act also mandates the inclusion of 16 substances in this list; these substances serve as the starting point for the development of the full list of regulated substances. The Agency identified additional substances based on similarities with the mandated substances and the selection criteria specified in the Act. The options considered for the selection criteria accounted for the inherent hazards of the substances to be listed, as well as for the potential these hazards have to affect the community in case of an accidental release. The hazards considered include toxicity, flammability, reactivity, explosivity, and radioactivity, all of which can result in acute effects from short term exposures. Substances were identified for each of these hazards, but, in addition, the Agency considered the potential impact that the identified substances would have on the community in case of a release. Each hazard, and its potential to pose a threat to the community, was evaluated independently of any other hazard, because of the difficulties of addressing all possible combinations of hazards. A group of toxic substances, a group of flammable substances, and a group of explosive substances are being proposed in today's rule for addition to the 16 mandated substances in the Act.

EPA is proposing to focus on acute effects from short-term exposure to toxics as one priority for development of this list because these effects are believed to be of immediate concern beyond the fenceline in case of an accidental release. EPA is proposing to list 100 acutely toxic substances. EPA is also proposing to consider the physical hazards of flammable and explosive substances because these effects may have an impact on the community beyond the fenceline in the event of an accidental release. For flammable chemicals, EPA is focusing on the effects of blast waves from vapor cloud explosions, because such effects appear to have the potential to affect the community beyond the fenceline. A list of 62 flammable gases and volatile flammable liquids is proposed. EPA considers commercial high explosives, which have the potential to detonate, to be the explosive substances with the greatest potential to affect the community; commercial high explosives are proposed for listing as a category. EPA also considered, based on analyses of accident history data, the relationship between past accidental releases of toxic, flammable, and explosive substances and their associated human and environmental effects, as a tool to determine the likelihood that future events could have similar impacts. EPA seeks comments on this approach. EPA has also attempted to exclude substances from the list that are not in production (or imported) or that are not handled in commercial quantities.

1. Toxicity

To account for the severity of acute health effects from accidental releases of toxic chemicals, EPA is proposing to list a subset of the chemicals already identified as EHSs on the basis of acute toxicity (lethality) under EPCRA (SARA Title III) section 302. For purposes of criteria for listing, severity of acute adverse health effects from toxic chemicals was considered to be best measured by the concentration or dose level that could cause death or serious, irreversible health effects after a short exposure. Chemicals not on the EHS list, but listed under other programs, also were reviewed to determine whether there were other chemicals that should be considered for listing on the basis of the EHS acute toxicity criteria.

EPA believes that using the EHS list to identify priority chemicals for the accidental release prevention provisions is a reasonable approach. The statute directed EPA to use the EHS list as a starting point for the regulated substance list. The EHS list is intended to identify chemicals that could cause serious irreversible health effects from accidental releases because of their acute toxicity. The list has been revised over the years based on reviews of toxicity data. EPA believes that the EHS list provides an appropriate basis for identifying acutely toxic chemicals for the list for accidental release prevention.

Chemicals are listed under section 302 on the basis of animal test data, using the criteria listed below. These criteria are discussed in more detail in *Technical Guidance for Hazards Analysis* (December 1987), a guidance document developed by EPA in conjunction with the Federal Emergency Management Agency (FEMA) and DOT. EPA also included on the EPCRA (SARA Title III) section 302 list chemicals that are less toxic than those meeting these criteria but, because of their known toxicity and high production volume, may pose a threat to the community.

The acute toxicity criteria are:

Inhalation $LC_{50}\leq0.5$ milligrams per liter of air (for exposure time≤8 hours), or

Dermal $LD_{50}\leq50$ milligrams per kilogram of body weight, or

Oral $LD_{50}\leq25$ milligrams per kilogram of body weight

where LC_{50} is the median lethal concentration, or the concentration in air at which 50 percent of the test animals died, and LD_{50} is the median lethal dose, or the dose that killed 50 percent of the test animals. In the absence of LC_{50} or LD_{50} data, LC_{Lo} or LD_{Lo} data were used for listing, where LC_{Lo} is the lethal concentration low, or the lowest concentration in air at which any test animals died, and LD_{Lo} is the lethal dose low, or the lowest dose that killed any test animals.

In addition, EPA chose to focus on physical state, vapor pressure, and accident history in setting criteria related to the likelihood of accidental releases for toxic chemicals. A vapor pressure criterion of 0.5 millimeters of mercury (mm Hg) under ambient conditions is proposed for toxic liquids. This criterion captures most toxic substances that have relatively low volatility but may still pose an airborne hazard in case of an accidental release. Congress mandated the listing of toluene diisocyanate, which has a relatively low ambient vapor pressure; therefore, EPA believes it is appropriate to set the vapor pressure criterion at a level that would include on the list other toxic liquids with relatively low volatility, similar to toluene diisocyanate that also have accident history. Chemicals on the EHS list that are gases under ambient conditions and liquids meeting the vapor pressure criterion of 0.5 mm Hg were considered for listing. Additional chemicals were identified on the basis of high production volume and history of accidents involving death or injury.

EPA also analyzed data in the ARIP database and attempted to establish a relationship between the presence or absence of accident prevention measures at facilities that have had significant accidental releases and the probability that the release will result in damaging and environmental effects. Using the ARIP data, EPA developed estimates of the probabilities that releases of those toxic substances reported through ARIP would result in human or environmental impacts. In this way, EPA attempted to measure the potential magnitude of the impacts resulting from an accidental release of a listed toxic substance as it relates to certain chemical accident prevention requirements at facilities that handle these substances. EPA seeks comments on which type of data (i.e., relationship between accidental releases and human and environmental impacts, accident history, physical/chemical properties) or combination of data could be used to evaluate the magnitude of human exposure for toxics.

EPA is focusing on acute toxicity to identity toxic chemicals as a priority for listing, because acute toxicity is of the most immediate concern in an accidental release. However, there are a number of other possible health effects criteria that might be considered at a future time for listing hazardous substances, including non-lethal acute health effects and chronic health effects, e.g., lung damage, reproductive and developmental toxicity, and neurological effects. EPA invites comments on methods to evaluate substances on the basis of these health effects and on how to rank substances listed on these bases.

2. Flammability

EPA also considered physical hazards of chemicals in relation to acute health effects. EPA is currently reviewing the EPCRA (SARA Title III) section 302 list of chemicals and considering the addition of chemicals to that list based on explosivity, flammability, and reactivity. EPA has published an advance notice of proposed rulemaking (55 FR 35012, August 27,1990) on physical/chemical property criteria for adding chemicals to the section 302 list. The notice announced the availability of technical background documents on the potential criteria for listing explosives and flammables. The Agency is proposing substances for listing today based on the analysis conducted in its review of the EPCRA (SARA Title III) section 302 list. The analysis of flammables and explosives conducted in support of listing under section 302 has been reviewed by EPA's Science Advisory Board. Results of additional analysis that may be carried out as a result of that review in support of the EPCRA (SARA Title III) section 302 list review will be considered prior to publication of a final rule.

EPA's analysis of historical data on accidental releases of flammable chemicals indicate that vapor cloud explosions may pose the most serious hazard from a flammable substance to the community. The heat effects of a fire involving a flammable liquid or gas, or of a fireball from a boiling liquid-expanding vapor explosion (BLEVE), do not have a severe impact for as great a distance from the source as the blast effects of a vapor cloud explosion of the same quantity of a flammable substance. For example, a 1988 vapor cloud explosion at a refinery in Louisiana, involving C3 hydrocarbons (primarily propane), caused damage up to six miles away. Based on the results of EPA modeling of flammable hazards and analysis of the literature, a clear distinction can be made between the results for flammable substances that boil at temperatures below approximately 37° C and higher boiling flammable substances. Analysis of other classification schemes and regulations indicates that flammable gases and volatile flammable liquids are the flammable materials considered of greatest concern by agencies and organizations such as DOT, NFPA, and EEC. The temperature at which clear distinctions in consequences can be made, based on modeling techniques, corresponds to the temperature at which DOT and NFPA have made distinctions in categories of flammable materials (boiling point below 38°C and flash point below 23°C for NFPA flammability rating 4; boiling point below 35°C and flash point below 23°C for DOT packing group I). EPA decided to use the criteria used by NFPA for flammable gases and liquids with the highest degree of hazard (a ranking of 4) for flammability to identify flammable substances. Flammable liquids with a flash point below 73°F (22.8°C) and a boiling point below 100°F (37.8°C), as well as flammable gases, are included under NFPA's highest flammability hazard ranking.

EPA applied the same criteria used for toxics when analyzing the likelihood of releases related to flammable substances. EPA chose to focus on physical state, physical/chemical properties, and accident history in setting criteria related to the likelihood of accidental releases of flammable substances. The volatility of a flammable substance is taken into account by the flash point and boiling point criteria. No additional substances were added after consideration of accident history, because the volatility criterion already covered all substances that otherwise would have been proposed. EPA invites comments on methods to evaluate substances on the basis of these effects and on the ranking of these substances.

EPA examined flammables based on accident history, the inherent hazards of the substances, and the physical/chemical properties that make them likely to be involved in an accident and have an effect beyond the fenceline. Hazard data, physical/chemical properties data, and accident history data were used for this basis. However, unlike the accident database for toxic substances, EPA does not have a database from which to estimate directly a relationship between the presence or absence of accident prevention measures at facilities where significant accidental releases of flammables have occurred and the probability that human or environmental impacts will occur. Nevertheless, historical data demonstrate that flammables can be involved in accidents with the potential for devastating impacts to the community. The Agency believes that the accident prevention measures that have proven effective at facilities that handle toxic substances will be as effective at facilities that handle flammable substances. EPA requests comments and any data that the public can provide to directly estimate the relationship between the presence or absence of accident prevention measures at facilities where accidental releases of these substances have occurred and the probability that human and environmental impacts will occur. EPA also seeks comments on which type of data (i.e., relationship between accidental releases and human and environmental impacts, accident history, physical/chemical properties) or combination of data could be used to evaluate the magnitude of human exposure for flammables.

3. Explosivity

Explosives are already regulated by several agencies and organizations. The Bureau of Alcohol, Tobacco, and Firearms (BATF) regulates the manufacture, processing, use, distribution, and storage of explosive materials; BATF regulations include licensing, permitting, and recordkeeping requirements and requirements for storage of explosives. DOT regulates the transportation of explosives, and other agencies such as OSHA, the Mine Safety and Health Administration (MSHA), the Department of Defense (DOD), and the International Maritime Organization (IMO) regulate certain aspects of the explosives industry. Many state and local governments also have regulations regarding licensing and safety requirements for explosives. EPA's Acute Hazardous Events database and other data on accidents show accidents involving commercial explosive materials that had an impact on the neighboring community. BATF regulations require that explosives be stored at set distances from inhabited buildings, highways, and railways, limiting the potential impact of an accidental explosion. Although explosives are currently regulated by Federal, state, and local governments, these regulations do not uniformly address the issue of identifying hazards using appropriate hazard assessment techniques, designing and maintaining a safe facility, and minimizing the consequences of accidental releases when they do occur. All of these elements are to be addressed in the RMP program regulations, which are intended to help focus on accident prevention. Therefore, the Agency believes these substances should be considered for purposes of list development and accidental release prevention regulations.

Blast waves from accidental explosions have the potential to cause damage to people and property beyond the fenceline. EPA considered high explosives, low explosives, and blasting agents in its analysis of the hazards of explosives. High explosives are generally defined as those materials that detonate if ignited, shocked, or subjected to heat or friction. Detonations result from chemical reactions that proceed at supersonic velocities, generating large volumes of high pressure gas and heat instantaneously, even though no confining vessel or structure exists. In an explosion caused by a high explosive, the rate of energy release is particularly rapid and the shock wave has a very short duration time. In contrast, low explosives deflagrate, or burn relatively slowly in comparison to high explosives. A deflagration generates lower pressures and is less destructive than a detonation. Blasting agents are relatively low sensitivity explosives which cannot be initiated by blasting caps and are unlikely to explode except under special conditions. DOT defines an explosive as "any substance or article, including a device, which is designed to function by explosion (i.e., an extremely rapid release of gas and heat) or which, by chemical reaction within itself, is able to function in a similar manner even if not designed to function by explosion * * *" High explosives are classified by DOT in Division 1.1, defined as explosives that have a mass explosion hazard, where a mass explosion hazard is one that affects almost the entire load instantaneously. Low explosives, Division 1.3 under DOT, are defined as explosives that have a fire hazard and either a minor blast hazard or a minor projection hazard or both, but not a mass explosion hazard. Blasting agents, Division 1.5, are defined as explosives that have a mass explosion hazard but are so insensitive that there is very little probability of initiation or of transition from burning to detonation under normal conditions of transport.

EPA's analysis for revisions to the EPCRA (SARA Title III) section 302 list indicates that blast waves caused by the detonation of commercial high explosives could potentially have an impact on the community. However, EPA's analysis indicates that low explosives, which primarily pose a fire hazard rather than a mass explosion hazard, are less likely to cause a catastrophic event when compared to the same quantity of high explosives. The deflagration or burning of a low explosive generates lower pressures and is less destructive than the detonation of a high explosives, although the Agency recognizes that it may be possible for some low explosives to detonate under unusual conditions, with effects similar to the detonation of a high explosive. Another key distinction between categories of explosives is the likelihood of initiation of an explosion. Blasting agents, for example, have a mass explosion hazard, but it is much more difficult to set off an explosion of a blasting agent, making them less likely to explode accidentally. The Agency recognizes, however, that it is still possible for a blasting agent to detonate accidentally under some circumstances. In this case, the distinctions between blasting agents and high explosives may not be apparent; effects on the community could be felt from explosions of both types of explosives.

EPA examined explosives based on accident history, the inherent hazards of the substances, and the physical/chemical properties that make them likely to be involved in an accident and have an effect beyond the fenceline. Hazard data, physical/chemical properties data, and accident history data were used for this basis. However, unlike the accident database for toxic substances, EPA does not have a database from which to estimate directly a relationship between the presence or absence of accident prevention measures at facilities where significant accidental releases of explosives have occurred and the probability that human or environmental impacts [illegible] occur. Nevertheless, historical [illegible] demonstrate that explosives can be involved in accidents with the potential for devastating impacts to the community. The Agency believes that the accident prevention measures that have proven effective at facilities that handle toxic substances will be as effective at facilities that handle explosive substances. EPA requests comments and any data that the public can provide to directly estimate the relationship between the presence or absence of accident prevention measures at facilities where accidental releases of these substances have occurred and the probability that human and environmental impacts will occur. EPA also invites comments on methods to evaluate substances on the basis of these effects and on the ranking of these substances. EPA also seeks comments on which type of data (i.e., relationship between accidental releases and human and environmental impacts, accident history, physical/chemical properties) or combination of data could be used to evaluate the magnitude of human exposure for explosives.

4. Reactivity

In its analysis for EPCRA (SARA Title III) section 302 list revisions, EPA is currently working to identify approaches for evaluating the hazards associated with other types of substances that may have explosive properties, e.g., unstable substances such as certain peroxides. To evaluate the hazards of these substances, a number of factors must be considered, such as the energy of reaction and whether a probable or possible result of the decomposition of such substances would be a deflagration, with heat radiation the primary consequence, or a detonation, with blast waves the primary consequence. EPA also has examined the chemicals that are highly reactive with air or water; identifying common characteristics or specific properties that cause chemicals to be so reactive with air or water as to pose a hazard to the community requires additional study. For example, chemicals that are reactive with water may react to produce a flammable gas, creating a fire or explosion hazard, or to produce a toxic gas, or they may decompose explosively on contact with water; the consequences of these reactions would be very different. At present, EPA is attempting to evaluate the hazards of reactive chemicals and to develop an adequate technical basis to determine the potential effects on the community. EPA is investigating, for example, computer models that estimate heats of reaction, and the possible use of the heats of reaction to compare the effects of an explosion of an unstable substance to the effects of an explosion of trinitrotoluene (TNT). This methodology would only be appropriate for substances that detonate, which appears to be unlikely for many unstable substances. Unstable and reactive substances will be considered for listing for accidental release prevention if the evaluation indicates potential consequences involving the community. Thus, any decision relating to this type of hazard will be deferred pending additional Agency review. EPA requests comments on methods that might be used to evaluate the potential consequences of accidents involving reactive substances.

5. Radioactivity

EPA is requesting information to determine the need and appropriateness of listing radionuclides under this proposed rulemaking. There are several issues that the Agency considers of importance in making such a determination. Do any or all radionuclides at facilities not licensed by the Nuclear Regulatory Commission (NRC) pose risks of severe health effects in case of an accidental release? If some radionuclides were listed, should they be listed a class of substances, or is it more appropriate to prioritize their hazards and list specific radionuclides of concern? What specific approaches could be taken to develop a methodology that sets thresholds for radionuclides that would represent equivalent hazards to those posed by other substances listed under this rule? Is the volatility of radionuclides relevant to their potential to be released? The Agency is interested in obtaining information on the universe of facilities potentially affected by listing radionuclides; the baseline considered by the Agency is listing of radionuclides as a class with levels similar to those established for NRC-licensed facilities under NUREG 1140, A Regulatory Analysis on Emergency Preparedness for Fuel Cycle and Other Radioactive Materials Licensees (NRC-licensed facilities are exempt from these provisions under the CAA amendments). Finally, the Agency requests comments on how regulations that may be in place for the accidental release prevention of radionuclides at the Federal, state, or local levels would interact with the accident prevention requirements applicable to these substances.

D. List of Substances

1. Proposed List

EPA is proposing a list of 100 toxic chemicals based on the criteria discussed above and the list of chemicals mandated for inclusion. EPA is also proposing a list of 62 flammable gases and volatile flammable liquids. The lists of toxic and flammable chemicals are set forth in § 67.130 of the proposed rule. EPA is also proposing the commercial explosives in Division 1.1 (explosives with a mass explosion hazard), as defined by DOT; individual commercial explosives are not included on the proposed list. In proposing this list, EPA considered the factors specified in the Act: severity of acute adverse health effects associated with accidental releases, the likelihood of accidental releases, and the potential magnitude of human exposure to accidental releases (albeit not directly as function of factors such as population exposed). As noted above, each hazard was evaluated independently. The final list adopted by the Agency may consist of a combination of any of these substances. Substances will be placed on the final list according the statutory criteria and based upon public comment and additional information provided by the public or developed by the Agency as a result of public comment.

a. Toxic Substances. All of the 93 EHSs on the list of 100 toxic chemicals proposed for listing are reported to be toxic by inhalation; inhalation toxicity would be expected to be the greatest hazard to the public from an accidental release to air. The list includes the following categories of chemicals:

- *Gases on the EHS list.* The list includes 22 gases that meet the toxicity criteria based on their presence on the EHS list and meet the criteria for likelihood of accidental releases based on their physical state and the fact that they are in commercial production. Two other gases meeting these criteria, ozone and nitrogen dioxide, have primary national ambient air quality standards and are, therefore, excluded from the list by statute.
- *Liquids on the EHS list with vapor pressure of 0.5 mm Hg or greater.* There are 65 liquids that meet the toxicity criteria by virtue of inclusion on the EHS list and meet the criteria for likelihood of accidental releases because their vapor pressure under ambient conditions is 0.5 mm Hg or higher, and they are in commercial production. Two additional chemicals meeting these criteria, methyl vinyl ketone and methacryloyl chloride, were not included because the toxicity data used for listing are based on inhalation studies that may contain flawed scientific methods. EPA requested comments on these two chemicals in a proposed rule to delete several chemicals from the EHS list. No comments were received, and no additional toxicity data were obtained; therefore, these chemicals were not deleted from the EHS list. However, EPA does not believe it is appropriate to include methyl vinyl ketone and methacryloyl chloride on this proposed list based on toxicity data that may be questionable.
- *Other liquids on the EHS list.* Toluene 2,4-diisocyanate (584–84–9) and toluene 2,6-diisocyanate (91–08–7) are included on the list because Congress mandated the listing of toluene diisocyanate. Four liquids from the EHS list are included because they are produced in high volumes and have been involved in a number of accidents in the past in which deaths or injuries have occurred, based on information from several databases, including the AHE, ERNS, and ARIP databases; therefore, they meet the likelihood criteria, although they have ambient vapor pressures less than 0.5 mm Hg. These chemicals (CAS numbers in parentheses) are: nitrobenzene (98–95–3), parathion (56–38–2), phenol (108–95–2), and sulfuric acid (7664–93–9). (EPA is proposing to include phenol in liquid form only; phenol is a low-melting solid under ambient conditions but is frequently stored and shipped as a liquid above its melting point.) The accident history data and high production volume indicate that these substances pose a great risk to human health and the environment from accidental releases.

Releases to air are reported for all of these substances in EPA's AHE database, even though their vapor pressure is less than 0.5 mm Hg. Sulfuric acid is one of the most frequently reported chemicals involved in incidents with death and injury in EPA's AHE database, and the most frequently reported in all accidents; in addition, it is the highest-volume chemical in commerce in the U.S. The AHE database includes nearly 200 reports of incidents involving sulfuric acid, more than half of them involving releases to air and 60 of them involving deaths or injuries. Air releases were reported in more than half of the incidents with deaths or injuries, including four where explosions were reported. The ARIP database includes nearly 150 reports for sulfuric acid. Migration of sulfuric acid beyond the facility boundaries was reported in a significant number (32) of incidents. In two of these cases, migration of sulfuric acid as a vapor or gas was reported.

For phenol, the AHE database includes reports of 24 incidents, with one-third of them involving releases to air. Deaths or injuries were reported in five phenol incidents, with air releases reported in two of them. The ARIP database includes 10 reports for phenol, with migration beyond the fenceline reported in four of them. In two of these cases, migration beyond the fenceline was reported for phenol vapor.

Parathion incidents were reported 11 times in the AHE database, with releases to air reported in most of them, and deaths or injuries reported in eight of them. Recent regulations have restricted the use of parathion; as a result of the restrictions, the likelihood of accidents involving parathion may decrease. EPA requests comments on whether parathion should be included on the list of regulated substances or whether current regulations are sufficient to prevent accidents involving parathion.

For nitrobenzene, there were four incidents reported in the AHE database, all with releases to air. Two of the incidents involved deaths or injuries, with a large number of deaths reported in one incident, in which an explosion and fire were reported.

- *Non-EHSs.* Two gases proposed for listing, methyl chloride (74–87–3) and vinyl chloride (75–01–4), are not on the EHS list but are mandated for listing. Both of these chemicals have a history of accidents involving death or injury. Both of these chemicals are also highly flammable and would meet the listing criteria for flammability. No other gases, chlorine dioxide (10049–04–4) and cyanogen chloride (506–77–4), were recommended for listing by OSHA, and are included because of their toxicity, potential for airborne release, and production volume. Chlorine dioxide appears to meet the criteria for "other" chemicals on the EHS list, based on toxicity and production volume. Cyanogen chloride does not strictly meet the listing criteria, primarily because the available data are for extremely short exposure periods; however, data indicate that this substance is highly toxic and would probably meet the EHS criteria if adjustments were made for duration of exposure. EPA concluded that listing is appropriate, based on available data.

Congress mandated the listing of both anhydrous ammonia and ammonia; the EHS list includes only one listing for ammonia, with no form specified. EPA is proposing to include both ammonia (anhydrous) (7664–41–7) and ammonia—aqueous (solutions with total ammonia concentration in water of 20 percent by weight or greater). The concentration cut-off was chosen so that commonly used commercial solutions of ammonia would be covered.

Congress also mandated the listing of toluene diisocyanate, without specifying an isomer; EPA is proposing to list toluene diisocyanate (unspecified isomer) (26471–62–5), which is not on the EHS list, in addition to toluene 2,4-diisocyanate (584–84–9) and toluene 2,6-diisocyanate (91–08–7), which are EHSs. The TSCA Inventory includes these three listings for toluene diisocyanate (and no other listings). Including unspecified isomers on the list should help to ensure that all forms of toluene diisocyanate are covered, in conformance with the intent of Congress.

Hydrochloric acid (solution, concentration 25 percent by weight or greater) (7647–01–0), which is not an EHS, is proposed for listing, in addition to anhydrous hydrogen chloride, which is an EHS. The concentration cut-off of 25 percent is intended to cover commonly-used commercial solutions of hydrochloric acid; solutions of hydrochloric acid in these concentrations could release hydrogen chloride gas in the event of a spill. Listing of the solution is proposed on the basis of its potential to release hydrogen chloride, high volume use, and accident history. Hydrochloric acid is one of the most frequently reported chemicals in death and injury events and in all events in the AHE database; the ARIP database also includes many reports of incidents involving hydrochloric acid.

b. *Flammable Substances.* The proposed list of 62 flammable substances includes 43 flammable gases and 19 volatile flammable liquids that meet the criteria for NFPA's highest flammability hazard ranking. These substances were identified from NFPA's Properties of Flammable Liquids, Gases and Volatile Solids and DOT's Hazardous Materials Table; in addition, there was evidence of production of these substances in commercial quantities. EPA is not proposing to cover any of these substances when they are used solely for facility consumption as fuel. Two additional chemicals that met the criteria for listing were excluded from the list because they are covered under title VI of the Act as amended. Some of the substances listed on the basis of toxicity also meet the flammability criteria; they are listed as toxic substances, however, and were not considered for listing as flammables.

c. *Explosive Substances.* EPA is proposing to include all explosives that meet the criteria specified by DOT for Division 1.1 (55 FR 52402, December 21,1990; 49 CFR part 172), which are based on the United Nations Recommendations on the Transport of Dangerous Goods. High explosives are proposed for listing as a class, rather than as individual substances, because explosives are usually mixtures or formulations rather than specific chemicals. An individual chemical could be a component of a high explosive or a low explosive, or could be non-explosive, depending on various factors; e.g., particle size, concentration, and other components of the formulation. EPA is not proposing to list any individual explosive substances.

d. *Toxic Substances Not Proposed for Listing.* Several toxic substances that initially appeared to meet the listing criteria are not proposed for listing at this time. These substances include two that were listed as EHSs on the basis of toxicity data based on inhalation studies that may contain flawed scientific methods. These two substances, methyl vinyl ketone (78–94–4) and methacryloyl chloride (920–46–7), are not proposed for listing today because of the questionable nature of the toxicity data. Two additional substances on the EHS list that did not meet the vapor pressure criterion were considered for listing because they have been involved in a number of accidents with death or injury. These substances, chlordane (57–74–9) and tetraethyllead (78–00–2), are not proposed for listing because recent regulatory developments make it unlikely that they will be produced in commercial quantities in the future; therefore, they are unlikely to be involved in potentially catastrophic accidents. EPA requests comments on the exclusion of these chemicals from the proposed list of substances.

2. Other List Options

As discussed above, the Agency is proposing a list of substances comprised of three distinct categories: toxics, flammables, and explosives. The substances listed under each category conform to the discussed criteria for the particular hazard it presents, and reflect a measure of likelihood of off-site impacts in case of accidental release. Because these categories have been developed independently of each other, the Agency may choose, at the time of final promulgation, to adopt any of these hazard options, or any individual substance covered by these options based on public comment and any additional information provided or developed by the Agency as a result of public comment.

In addition to those options that would be variations of the proposed list of substances (e.g., toxics only; toxics and flammables only; a subset including toxics, flammables and explosives), the Agency also considered an additional option for the list of regulated substances that would meet the statutory criteria. This option is discussed below. The Agency requests comments on any variation of the proposed list, as well as on the additional option for comment.

Entire EHS List. EPA considered the option of adopting the entire list of 360 chemicals regulated under EPCRA (SARA Title III) section 302 as the list of toxic chemicals. These chemicals are listed on the basis of acute toxicity, and, therefore, meet the criterion of severity of acute health effects. Since this list was adopted in 1986, toxicity data for many of the chemicals have been reviewed or are currently under review, data on other properties have been collected and updated, and other chemicals have been reviewed for possible addition to the list. However, the EHS list is based solely upon acute toxicity for most of the substances, without any consideration of their volatility, which relates to the likelihood of that substance being involved in a catastrophic airborne accidental release that carries beyond the facility fenceline. For the initial list of substances for accidental release prevention, EPA proposes to focus on those toxic chemicals posing the greatest potential threat to the community from airborne releases. In this way, the initial list will reflect the statutory criteria of likelihood and magnitude of release. The EHS list includes a number of solids and non-volatile liquids that, although they meet the toxicity criteria, are expected to be much less likely to have an effect beyond the fenceline in the event of an accidental release than those EHSs that are gases and volatile liquids.

E. Threshold Quantities

Under CAA section 112(r)(5), EPA must establish threshold quantities for each substance at the time of listing. The threshold quantity should take into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance, and the amount of the substance known or anticipated to cause death, injury, or serious adverse human health effects. Substances used by farmers as agricultural nutrients may be assigned greater threshold quantities or exempted. Two issues related to threshold quantities were considered: Development of an appropriate threshold quantity for triggering the risk management prevention regulations and development of a method for determining whether a stationary source has present a quantity of a listed chemical greater than the threshold quantity. The Agency does not consider any thresholds to be a precise measure of a "safe" level; no such level can be determined. The risk posed by any chemical release depends on the particular circumstances at the time of the release; for example, releases of the same quantity of the chemical may pose very different threats depending on the location of a facility, weather at the time of the release, the elevation of the source of the release (e.g., a release from a smokestack versus a ground level release), and the pressure and temperature of the substance, among other factors.

1. Review of Threshold Methodologies

In developing threshold quantities, the reporting thresholds associated with the other lists considered and the methods used to develop them were reviewed. This review is discussed below.

Delaware Methodology. The Delaware thresholds for toxic chemicals were determined on the basis of dispersion modeling and a combination of toxicity and vapor pressure; the Delaware "Sufficient Quantity" (SQ) for a toxic chemical is defined as the quantity that would create a potentially lethal concentration at the facility boundary if released over a period of one hour. The thresholds are calculated based on an assumption of a 100-meter distance to the fenceline. If the distance at a facility is greater, the threshold is adjusted upward.

For flammable materials, Delaware provides a calculation method for determination of the SQ based on a comparison with propane. The Delaware calculation is based on the release rate calculated for propane as sufficient to cause death or permanent disability from heat radiation resulting from a fireball at a distance of 100 meters from the point of release. SQs for other flammable substances are calculated based on the properties of the substances compared to the properties of propane. Thresholds can be adjusted upward for fenceline distances greater than 100 meters, as for toxics.

Delaware specifically excludes commercial explosives from its list. For potentially explosive chemicals that are not commercial explosives, SQs are determined by relating explosion energy for a given mass of material to an equivalent mass of TNT. The scaling law, which relates blast overpressure, distance, and mass of TNT, was used to calculate SQs. The SQ for a reactive substance was the quantity calculated to create an overpressure of 2.3 pounds per square inch (psi) at a distance of 100 meters.

New Jersey Methodology. New Jersey thresholds for toxic chemicals are set based on dispersion modeling and mortality curves; a Registration Quantity (RQ) is the quantity that will produce one fatality in a location with 10,000 people per square mile. New Jersey does not currently list flammable or explosive substances.

ORC Methodology. The methodology recommended by the Organization Resources Counselors (ORC) for the development of threshold quantities for toxic chemicals, presented by ORC to OSHA in public hearings, was also reviewed. This method uses dispersion modeling, assuming the total quantity of the substance released immediately becomes airborne, to determine the quantity of a toxic substance that would lead to a concentration that could cause death or permanent disability at a distance of 100 meters from the point of release from a one-hour exposure.

For reactive chemicals, the threshold methodology recommended by ORC was the same as that used by Delaware to develop SQs for explosive chemicals, described above.

EHS TPQ Methodology. The threshold planning quantities (TPQs) developed for EHSs are based on a ranking of the EHSs according to their potential to become airborne, dispersion potential, and toxicological properties, with adjustments based on chemical reactivity and other factors. To develop the TPQs for EHSs, the Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute of Occupational Safety and Health (NIOSH), or an approximation of the IDLH based on animal toxicity data, was used as an index of toxicity. Physical state and volatility were used to derive an index of the chemical's potential to become airborne and disperse. The two indices were combined to produce an overall risk "ranking factor" defined as IDLH/V, where V is the index of potential to become airborne and disperse. TPQs were assigned to groups of EHSs according to their relative ranking.

The index of potential to become airborne and disperse (V) was derived based on physical state and volatility. For EHSs that are gases under ambient conditions, V was assumed to have a value of 1, indicating that in an accidental release, the total quantity of chemical involved in the release could become airborne. For liquids, V was calculated by estimating the rate of volatilization from a pool (assumed to be one centimeter in depth) on a flat, non-absorbing surface using equations presented in Attachment 1 of the Interim Final Rule of November 17, 1986, listing EHSs under EPCRA (SARA Title III) section 302 (51 FR 41580). Liquids were assumed to be at their boiling point, and all liquids were assumed to have the same density as water. A mass transfer coefficient was estimated by reference to water. Because of these assumptions, the only variables used in the calculation of V were the molecular weight and boiling point of the liquid.

The EHSs were ranked according to the ranking factor IDLH/V and assigned TPQs of 1, 10, 100, 500, 1,000, or 10,000 pounds based on order of magnitude ranges in the ranking factor. The TPQs assigned based on the ranking factors were reviewed, and changes were made based on other toxicity data, rapid absorption, chemical reactivity, and consideration of specific handling, formulation, and use information.

2. Proposed Threshold Methodology

Relative Ranking for Toxic Chemicals. To set thresholds for toxic chemicals, EPA is proposing to use a ranking method similar to that used in developing the TPQs for EHSs, as described above, modified to reflect the different purposes of thresholds under this rulemaking; i.e., under EPCRA (SARA Title III) section 302, thresholds only trigger reporting by facilities to state and local planners, while under CAA section 112, facilities with listed substances in quantities exceeding the threshold will be required to comply with prevention requirements, such as the development of risk management plans. Using the revised threshold methodology, a ranking factor based on toxicity and potential to become airborne and disperse was derived as described above. In some cases, revised toxicity data or IDLH values were used. Thresholds were assigned by order of magnitude ranges in the ranking factor; threshold quantity categories are as follows: 500 pounds, 1,000 pounds, 5,000 pounds, and 10,000 pounds. The threshold quantities selected are, at the minimum level of 500 pounds, representative of drum-size containers, and, at the maximum level of 10,000 pounds, consistent with reporting requirements already in place for EPCRA (SARA Title III) under sections 311–312 and 302. Under EPCRA (SARA Title III) sections 311–312, facilities must submit material safety data sheets, chemical lists, or inventory reports on hazardous chemicals to state and local agencies at a threshold for most chemicals of 10,000 pounds. Under EPCRA (SARA Title III) section 302, the maximum TPQ for EHSs is 10,000 pounds; the presence of a TPQ of an EHS requires facilities to notify state and local planners.

A relative ranking method to assign thresholds has advantages over developing substance-specific thresholds based on dispersion modeling because airborne dispersion modeling involves many site-specific and accident-specific parameters, including the distance from the source to the community or fenceline, the conditions under which the chemical is handled (e.g., temperature and pressure), the topography of the area around the facility, and meteorological conditions at the time of the release. The Agency's analysis showed that assumptions made for modeling cause wide variations in the results. In addition, the relative ranking takes into account both toxicity and volatility. Air dispersion modeling alone does not take into account the potential for a substance to become airborne. This relative ranking method also is consistent with the methodology for assigning TPQs under EPCRA (SARA Title III) section 302.

This methodology has been applied to develop thresholds for additional substances that would be listed if EPA chose the option, discussed above, of adopting the entire list of EHSs regulated under EPCRA (SARA Title III) section 302. Refer to the technical background documents in the docket for more information on thresholds for EHSs not proposed for listing. Thresholds have been developed using this methodology for the four toxic chemicals discussed previously, that appeared to meet the listing criteria but have not been proposed for listing because of questionable toxicity data or because they are not expected to be produced in commercial quantities in the future. The thresholds for these chemicals would be: chlordane (57–74–9), 5,000 pounds; methacryloyl chloride (920–46–7), 500 pounds; methyl vinyl ketone (78–94–4), 500 pounds; tetraethyllead (78–00–2), 1,000 pounds.

Threshold Methodology for Flammable Substances. EPA's analysis of the hazards of flammable chemicals indicates that the greatest hazard to the public from these substances is from vapor cloud explosions. Historical data indicate that vapor cloud explosions are unlikely for vapor clouds containing quantities less than 10,000 pounds. The quantity in a vapor cloud resulting from an accidental release of a flammable gas or volatile flammable liquid could vary greatly depending on site-specific and accident-specific conditions, as well as properties of the chemical released. Because it would be difficult to set chemical-specific thresholds based on all these factors, EPA is proposing to set the thresholds for all the listed flammable substances at 10,000 pounds. EPA believes that this threshold is conservative and protective of the public because the vapor cloud resulting from a release of 10,000 pounds would probably contain a quantity less than 10,000 pounds, even though all of the listed flammable substances are gases or volatile liquids. Establishing one threshold for all the flammable substances on the list also simplifies the regulatory process.

Threshold Methodology for Explosives. EPA's analysis of explosives indicates that a blast wave overpressure of 3.0 psi from a detonation could have potentially lethal effects in the community beyond the fenceline of a facility. This overpressure level could cause serious structural damage to buildings, lead to serious wounds from flying glass, and potentially cause eardrum rupture. EPA used the scaling law of distances, which relates quantity of explosive material and distance for a given overpressure, to estimate the quantity of high explosives that would produce an overpressure of 3.0 psi at a distance of 100 meters in the event of a detonation. Based on this calculation, EPA decided to set the threshold for high explosives at 5,000 pounds. Although individual high explosives may vary in their explosive power, the variations are not very great; high explosives function by detonation and produce similar results for a given weight. EPA believes, therefore, that it is appropriate to apply one threshold quantity to all high explosives. This is consistent with the approach used by BATF to set storage distances for high explosives; BATF uses one table of distances for all high explosives. EPA believes that this threshold will apply primarily to manufacturers of high explosives, who have larger quantities available on site with the potential for catastrophic releases. Users of explosives (e.g., for industrial uses, construction, or mining) would probably not have enough high explosives present at one time to meet this threshold; lower quantities on site and existing regulations would reduce the likelihood of catastrophic events at these facilities.

3. Other Threshold Options

The Agency's proposed options for the threshold quantity methodology relate to the physical/chemical properties of the substances and the specific hazard that each substance presents (i.e., toxicity, flammability, explosivity). EPA recognizes however, that the impact of a release in a particular instance may be greater or lesser depending upon site-specific considerations and that there may be other factors that can be accounted for in a methodology to determine a threshold quantity. These other factors may include industry class or facility type in which a particular chemical is typically handled or used. For example, a threshold quantity for a particular chemical could be adjusted if it is typically handled at elevated temperatures and pressures. Other factors that might be considered under this approach include typical SIC codes in which a particular chemical is handled, typical population density and sensitivity around types of facilities that handle a particular chemical (e.g., a chemical may be typically used at remote locations, far from dense population centers or sensitive ecosystems), or process type in which a chemical is typically involved. The advantages of this approach would be that it would more specifically tailor threshold quantities based on common use patterns of a substance. The disadvantage would be that this approach would not apply to ubiquitous chemicals that are used in a wide variety of applications, such as chlorine, ammonia, and sulfuric acid, which are also chemicals that, according to Agency data, are frequently involved in accidental releases and incidents involving deaths and injuries. A greater disadvantage to this approach is that the intrinsic hazard of a chemical will still be present even when it is used outside of a "typical" scenario; it would not account for the potential for chemical accidents in all possible handling or use scenarios. Also, based on current data limitations, EPA believes it is not feasible to develop a methodology that adopts a typical use factor and that would still be applicable uniformly nationwide. The Agency requests comments on methods or supporting data which would permit the use of the aforementioned factors (or other factors) to establish threshold quantities.

In developing the proposed threshold methodologies, the Agency also considered four additional options, which are discussed below. Three of these methodologies are based on intrinsic properties of each substance (i.e., physical/chemical properties, toxicity, explosivity, flammability). The fourth option is the adoption of thresholds already developed by another agency. EPA requests comments on these methodologies.

Vapor Quantity Method (Toxics). EPA considered a method similar to that recommended by ORC for development of threshold quantities for toxics, as described above. To derive threshold quantities by this method, a concentration level equal to the IDLH or its equivalent was assumed to be reached at a distance of 100 meters from the source of the release. A release rate that would produce that concentration level at 100 meters was calculated using air dispersion modeling techniques. The dispersion modeling used was based on equations presented in *Technical Guidance for Hazards Analysis* (EPA, FEMA, and DOT, 1987). For the calculations, moderate conditions of a wind speed of 10 miles per hour (4.4 meters per second), atmospheric stability D, and urban conditions were assumed. The duration of the release was assumed to be 30 minutes, and a quantity was calculated by multiplying the release rate by the duration. Threshold quantities were assigned based on the calculated quantity, with 500 pounds as the lower bound and 10,000 pounds as the upper bound. Refer to the technical background documents in the docket for more information on thresholds developed using this methodology.

This method of assigning thresholds assumes that the total quantity of the substance becomes airborne. It does not consider the chemical properties that might affect the likelihood of an accidental release. The volatility of the listed chemicals is not taken into account; e.g., a gas could be assigned the same threshold as a liquid with relatively low volatility if the toxicity of the substances were similar. Thus, thresholds assigned by this method rank the chemicals primarily by toxicity. Because it seems probable that, under most circumstances, a gas would be more likely to be released to the air than a liquid with a low vapor pressure, it seems reasonable that gases should have lower thresholds than liquids with the same toxicity. In addition, the assumptions (e.g., wind speed, atmospheric conditions, duration of release) used in the dispersion models have a major effect on the results; many different quantities could be calculated for the same chemical, depending on the modeling assumptions made. The conditions affecting an actual release could vary greatly; therefore, the results of chemical-specific calculations such as those used under this method may have little relation to what might happen during an actual release.

TPQ Method (Toxics). EPA also considered using the TPQs under EPCRA (SARA Title III) section 302 as the thresholds for toxic substances under this rulemaking. However, the purpose of the TPQs is to trigger reporting by the facility to state and local emergency planners of the presence of an EHS. The community planners then carry out an analysis of the hazards posed by the substance and use this analysis to set priorities for community planning. The primary purpose of the threshold quantities under this rule, however, is to trigger mandatory prevention requirements to prevent the catastrophic accidental release of a regulated substance. Therefore, thresholds under this rule should represent quantities that are sufficiently hazardous (i.e., pose a risk of catastrophic event) to merit the requirement for a risk management plan on a site-specific basis. These quantities should be higher than the TPQs, which only represent a level where the hazard should be considered for planning purposes. EHSs on the proposed list with TPQs of 1, 10, or 100 pounds generally have threshold quantities of 500 pounds in today's proposed rule, based on the revised methodology; those with TPQs of 500 pounds generally have 1,000-pound thresholds; and those with TPQs of 1,000 pounds generally have threshold quantities of 5,000 pounds. A TPQ of 10,000 pounds generally corresponds to a threshold of 10,000 pounds.

Alternative Overpressure Levels (Explosives). EPA considered basing the threshold quantity for explosives on other overpressure levels; for example, an overpressure of 2.0 psi, a level which could cause the partial collapse of walls and roofs of houses, would give a threshold quantity of 2,000 pounds. However, EPA believes threshold quantities calculated using the overpressure level of 3.0 psi are consistent with quantities that might have a catastrophic effect in case of an accidental release.

Adopting OSHA's Thresholds

For chemicals listed under both OSHA's chemical process safety standard and the list of regulated substances under CAA section 112(r), EPA considered adopting thresholds established by OSHA. Because the OSHA standard is designed to protect employees from hazards associated with accidental releases of OSHA-listed chemicals in the workplace, EPA assumed that the OSHA thresholds represent accepted quantities that, if accidentally released, would be reasonably anticipated to cause death, injury, or serious adverse health effects in the workplace. EPA's proposed thresholds are intended to be protective of the public outside the workplace or off site.

EPA reviewed the thresholds under OSHA's standard for chemicals on both lists and determined that EPA's thresholds generally are greater than or equal to OSHA's thresholds. EPA also noted that there are 15 substances for which EPA's thresholds are lower than OSHA's. These substances (CAS numbers in parentheses) and their OSHA thresholds are: Ammonia (anhydrous) (7664–41–7), 10,000 pounds; ammonia (aqueous solution, concentration greater than 44 percent) (7664–41–7), 15,000 pounds; boron trichloride (10294–34–5), 2,500 pounds; bromine (7726–95–6), 1,500 pounds; chlorine (7782–50–5), 1,500 pounds; chlorine dioxide (10049–04–4), 1,000 pounds; fluorine (7782–41–4), 1,000 pounds; formaldehyde (50–00–0), 1,000 pounds; hydrogen chloride (anhydrous) (7647–01–0), 5,000 pounds; hydrogen cyanide (anhydrous) (74–90–8), 1,000 pounds; hydrogen fluoride (7664–39–3), 1,000 pounds; hydrogen peroxide (concentration 52 percent or greater) (7722–84–1), 7,500 pounds; hydrogen sulfide (7783–06–4), 1,500 pounds; methyl chloride (74–87–3), 15,000 pounds; and methyl mercaptan (74–93–1), 5,000 pounds.

The thresholds proposed today for the list of regulated substances under CAA section 112(r) generally are not equal to those for the highly hazardous substances listed under the OSHA standard. Thresholds that are protective of the worker may differ from levels that are protective of the public. EPA believes it is reasonable for the EPA thresholds generally to be equal to or greater than the OSHA thresholds because workers generally are located closer to the chemicals than the public. EPA recognizes that OSHA's thresholds for the 15 substances discussed above were established by rulemaking, which may indicate a consensus on the amount that can be reasonably anticipated to cause serious adverse effects not only within the workplace but also on the public. This consensus may support raising EPA's thresholds for these 15 substances to OSHA's levels. However, EPA has proposed thresholds lower than OSHA's for these 15 substances because EPA believes that the scientific methodology applied to determine the protective thresholds for these 15 chemicals should be consistent with that used for the remaining substances on the EPA list. By adopting a consistent methodology, EPA can ensure that there is a reasonable relationship between the thresholds for substances on EPA's list that are on OSHA's list and those that are not, and between substances listed in the initial rulemaking and those added subsequently by petition or other revision. The Agency requests comments on these issues and, given the extent to which this rule and the rule promulgated by OSHA overlap, the degree that accidental releases of toxics, flammables and explosives and their corresponding offsite effects will be reduced by the OSHA rule.

EPA requests comments on the proposed methodologies for establishing threshold quantities for toxic, flammable, and explosive substances covered in this proposed rule. EPA also requests comments on options considered for setting thresholds.

4. Determination of Presence of Threshold Quantity

The purpose of the threshold determination is to evaluate (a) whether a facility is covered for a specific regulated substance and (b) whether a particular location within the facility is subject to regulations based on the presence of the substance. In deciding how the presence of a threshold quantity of a listed substance at a facility should be determined, EPA considered several possibilities and reviewed the methods used by other agencies and programs. Under section 302 of EPCRA (SARA Title III), a facility is covered if the total quantity of an EHS present on site at any one time is in excess of its TPQ. New Jersey's threshold also is applied to the maximum quantity on site at any time. Under Delaware's approach, facilities must determine the maximum quantity of a toxic chemical that could be released at one time, using guidance provided by the state to account for facility-specific factors. If this potential release quantity is greater than the threshold, the facility is covered by the Delaware RMP regulations. OSHA proposed that the threshold quantity be based on the amount used in a process, rather than the quantity on site, to determine whether a threshold quantity is present, where a process is defined as "any use, storage, manufacturing, handling, processing, or the on-site movement . . ., or combination of these activities." Vessels that are interconnected or vessels that are not interconnected but could be involved in a potential release are considered a single process.

EPA is proposing to apply the threshold quantity to the maximum total quantity of a substance in a process, using the same definition used by OSHA. This definition would apply to the maximum quantity, at any one time, in a single vessel, or in several vessels that could be involved at one time in a potential release, or in a group of interconnected vessels. Interconnected vessels could include, for example, storage tanks, surge tanks, or weigh tanks that may be connected to another vessel or processing system by pipes, pumps, or other conveyance equipment used to transfer a substance from one vessel to another. The proposed approach to determining whether a facility or location is covered focuses on the quantity of a substance that could be released in a single accident. For example, if a facility uses 300 pounds of chlorine in one process, uses 150 pounds to treat wastewater, and stores 600 pounds, the facility would have a total of 1,050 pounds quantity on site. The proposed threshold quantity for chlorine is 1,000 pounds. If all of the chlorine is kept and used in a single area, where a fire or explosion could affect the chlorine cylinders, more than 1,000 pounds have the potential of being released in a single incident, thereby exceeding the threshold. If, however, the process area, storage area, and wastewater treatment facility are widely separated (and not otherwise interconnected by pipes, pumps, or other conveyance equipment), a single incident would be unlikely to lead to a large chlorine release. EPA also believes that considering only the quantity in one vessel or interconnected vessels would not be sufficiently protective in some cases. For example, debris from an explosion could puncture a nearby container, or a fire could cause a number of containers or pipes to rupture. Therefore, EPA is also proposing that threshold determination consider all vessels located sufficiently close to each other that they might be involved in a release at one time. EPA believes this approach is relatively simple to implement and verify and also reasonably approximates the potential release quantity. The Agency recognizes, however, that this method of threshold determination would not address some potentially hazardous situations. Different materials with the same characteristic (e.g., flammability), or different materials with various hazards, that are stored in close proximity to each other but are all stored in quantities below the threshold quantity, might pose a potential hazard to the community, but the threshold quantity would not be exceeded because each substance is considered individually. EPA believes it is not feasible to attempt to address all potential hazards of combinations of substances. EPA requests comments on the proposed approach.

EPA considered applying the threshold quantity to the total quantity on site at a facility, as under EPCRA (SARA Title III) section 302. A facility would be covered if it had present an amount of a listed substance exceeding its threshold quantity regardless of its location or distribution on the site. This method is clear and unambiguous; no complicated formulas or definitions need to be applied. The Agency believes, however, that it is unlikely that the contents of several vessels that are not interconnected and that are widely separated would be released simultaneously, causing a catastrophic event. Therefore, using the total quantity on site for threshold quantity determination appears to be an overly conservative approach.

Another approach considered was to base determination of the threshold on the maximum quantity of the regulated substance capable of being released in a worst-case accidental release. This approach is used by Delaware for toxic chemicals. Under the Delaware regulation, the facilities must calculate a worst-case potential release quantity based on formulas provided. Some difficulties have been reported with this approach; for example, the calculations require a technical knowledge not available at the full range of potentially covered facilities. Again, EPA believes this approach may present enforcement and compliance problems due to the lack of easily verifiable criteria. EPA requests comments on the proposed definition for threshold quantities and the alternative approaches considered as options.

5. Threshold Exemptions

EPA is proposing several exemptions to limit the quantities of substances included in the threshold determination. EPA would adopt the exemption applied under EPCRA (SARA Title III) which does not consider substances in mixtures if they represent less than one percent of the mixture by weight. Regulated substances in such dilute solutions are unlikely to pose a hazard to the community in the event of an accidental release. In addition, it might not be feasible in many cases for facilities to calculate small quantities of substances that may be contained in mixtures.

EPA also is proposing to exempt substances contained in "articles" from the threshold determination. The OSHA definition of an article would be used (29 CFR 1910.1200(b)). Batteries (after their manufacture) would be considered articles under this definition. In addition, EPA is proposing to exempt substances used for the following purposes from inclusion in the threshold determination: substances that are a structural component of the facility; substances used for routine janitorial maintenance; substances in consumer products; and substances in water drawn from the environment or municipal sources. EPA also would exempt activities in laboratories when under the supervision of a technically qualified person. EPA considers it less likely that substances stored in these exempt forms could be involved in accidental releases of a catastrophic nature.

These proposed exemptions parallel the exemptions provided under EPCRA (SARA Title III) sections 311 and 312 for threshold calculations. EPA recognizes that under EPCRA (SARA Title III) section 302, there are no similar exemptions from threshold determination. However, as noted previously, EPCRA (SARA Title III) section 302 does not require facility-specific prevention measures, in contrast to the requirements of CAA section 112(r). EPA believes these exemptions are necessary to avoid covering facilities whose use of the substances does not merit the substantial regulations required under the CAA and facilities who do not directly use the substance because it is contained in an article, in process water, in other products, or in specific supervised situations. For example, without the article exemption, car dealers and service stations could be covered because of the acid in car batteries. Under EPCRA (SARA Title III) section 302, facility notification to local and state emergency planners may be appropriate in order for them to consider the risk to the community, but mandatory prevention requirements in all cases would be excessive.

In addition, EPA is proposing to exempt listed flammable substances used solely for facility consumption as fuel. This exemption is consistent with OSHA's approach in its proposed rule for process safety management.

6. Considerations for Mixtures

EPA notes that certain listed substances are covered only if they are in concentrations by weight above specified levels; for example, hydrochloric acid would be covered only when it is in solution at a concentration of 25 percent or greater, aqueous solutions of ammonia must be considered only if the concentration is 20 percent or greater, and hydrogen peroxide solutions must be considered if the concentration is greater than 52 percent. Stationary sources would not be required to estimate quantities of more dilute solutions of these substances. These concentrations represent typical industry handling of these mixtures. For mixtures or solutions of other listed substances, determination of whether a threshold quantity is present would be based on the quantity of the listed substance in the mixture or solution. For example, for a 25 percent solution of a listed substance with a threshold quantity of 500 pounds, more than 2,000 pounds of the solution would be needed to exceed the threshold for the listed substance.

IV. Other Issues

A. State Programs

The Act encourages states to develop programs to implement CAA statute requirements. EPA will be publishing guidance to assist in the development of state programs and in the implementation of section 112(r) requirements. Section 112(l)(1) indicates that states may submit State Program Plans outlining the implementation and enforcement of section 112(r) requirements. The chemical list and reporting thresholds EPA adopts will provide a minimum set of requirements for state programs to adopt. States, however, are not restricted from having a more stringent program than the one EPA is proposing.

Several states have developed their own chemical accident prevention regulations. As previously noted, California, Delaware, and New Jersey already have chemical accident prevention regulations that require facilities to develop and implement risk management plans. For each of these programs, the applicability of the regulations is determined by a list of chemicals with reporting thresholds. The California program uses the list and thresholds established under EPCRA (SARA Title III) section 302; that is, the California program covers all 360 extremely hazardous substances on the EPCRA (SARA Title III) section 302 list at their TPQs. New Jersey has developed its own list of chemicals and thresholds. Delaware has also developed a separate list; Delaware's thresholds are dependent on both the quantity of the substance on site and the distance to the nearest population. If an established state program does not include all the substances at the threshold quantity set by EPA (or at a lower, more stringent threshold), the program would have to be revised to bring it into compliance with the Federal requirements when they are promulgated.

B. OSHA's List of Highly Hazardous Chemicals

In developing the proposed list of substances and thresholds, EPA considered the possibility of adopting the list of highly hazardous chemicals and thresholds OSHA lists for its chemical process safety standard. EPA conducted its analysis based on the proposed OSHA standard available at the time, with coordination with OSHA between their proposal and final versions. However, OSHA's list does not include all the substances mandated for listing by Congress. It does not include all EHSs that meet EPA's proposed criteria and includes several substances that EPA cannot list under the Act. It also includes a number of substances that are not in commercial production. EPA is required to consider likelihood of a release; substances that are not in commercial production would be unlikely to be released in significant quantities. Therefore, the OSHA list does not meet EPA's Congressional mandate. Approximately 20 percent of OSHA's list is made up of reactive chemicals. EPA is currently considering whether reactive chemicals pose a potential threat to the public health or welfare (as opposed to worker safety), and is deferring listing such substances for the accidental release provisions pending further analysis of their hazards. For these reasons, EPA determined the OSHA list could not be adopted in its entirety. EPA and OSHA continue to work together to coordinate their lists to the extent possible.

EPA has proposed the same method as OSHA for determining whether the quantity of a substance at a facility exceeds the threshold. However, EPA and OSHA used different methods to assign threshold quantities. EPA's proposed list includes 61 chemicals that also are listed by OSHA (50 on EPA's list of toxic substances and 11 on the list of flammable substances). Of the substances that are listed by both OSHA and EPA, 10 (9 toxics and 1 flammable) have identical thresholds. EPA's thresholds are higher than OSHA's for 36 substances (26 toxics and 10 flammables); because OSHA's thresholds relate to worker protection, while EPA's are intended to protect the community, it is reasonable that EPA's thresholds should be higher. However, OSHA's thresholds are higher for 15 substances.

C. Relationship to EPCRA (SARA Title III) Section 302/303

Under EPCRA (SARA Title III) section 302, EPA published a list of extremely hazardous substances (EHSs) and threshold planning quantities (TPQs). Facilities with EHSs, in quantities exceeding the TPQ must notify the State Emergency Response Commission and Local Emergency Planning Committees. Identification of facilities with EHSs above their TPQs is intended to provide local emergency planners with a basis for further analysis of the potential danger posed by these facilities. The TPQs do not trigger any specific requirements, other than notification and designation of a facility coordinator, for facilities with EHSs, nor do they trigger any specific emergency planning requirements *at the facility* other than cooperation with the state and local planners in the planning process. However, some facilities already may be instituting prevention programs, based especially on the heightened awareness of hazards that has resulted from EPCRA (SARA Title III) section 303 activities. The main distinction between EPCRA (SARA Title III) section 303 requirements and the CAA requirements is that EPCRA (SARA Title III) section 303 focuses on community planning, while the CAA focuses on planning at the facility for accident prevention and response. The list of substances and threshold quantities being proposed under CAA section 112(r) triggers mandatory prevention requirements by facilities for prevention of accidental releases. EPA, therefore, believes it is appropriate that the list of toxic chemicals under CAA section 112(r) should be limited to gases and volatile liquids with evidence of production, unlike the EHS list, which is based only on toxicity, and that the thresholds for toxic chemicals under CAA section 112(r) should be higher than the TPQs under EPCRA (SARA Title III) section 302. In addition, determination of the presence of a TPQ of an EHS under EPCRA (SARA Title III) section 302 is based on the total quantity of the EHS at the facility, while under CAA section 112(r), the proposed method of threshold determination is based on the quantity of the regulated substance in a process. EPA believes it is appropriate under EPCRA (SARA Title III) section 302 to identify facilities based on the total quantity on site; emergency planners can then take factors such as location and distribution of vessels into account when setting priorities for planning. On the other hand, EPA believes it is more appropriate under CAA section 112(r), because of the associated requirements, to consider the quantity that has the potential to be released in a single accident and cause serious effects beyond the fenceline.

EPA may decide to list flammable and explosive substances under EPCRA (SARA Title III) section 302, following completion of its analysis of the hazards of such chemicals. Because of the different purposes of EPCRA (SARA Title III) section 302 and CAA section 112(r), it may be appropriate to have somewhat different lists and thresholds under EPCRA (SARA Title III) section 302. For example, to provide local emergency planners with sufficient information to allow them to set planning priorities for their communities, EPA may use less stringent criteria for listing (e.g., blasting agents as well as high explosives may be listed) and set lower thresholds (e.g., thresholds for explosives may be set using a lower overpressure level, such as 1.0 psi or 2.0 psi) under EPCRA (SARA Title III) section 302.

D. Agricultural Nutrient Exemption

Under CAA section 112(r), EPA is authorized to establish higher threshold quantities for, or exempt entirely, chemicals used as agricultural nutrients when held by farmers. EPA believes that ammonia is the only chemical on the proposed list of substances that would be used as an agricultural nutrient and thus could be subject to the higher threshold or exemption. EPA is proposing to exempt ammonia from the requirements of this rule when held by a farmer as an agricultural nutrient. EPA is proposing this exclusion for two reasons. First, the farms that use ammonia as a fertilizer are primarily growing corn, wheat, and cotton, and involve large acreages and the ammonia is intentionally released to the environment. Second, many elements of chemical accident prevention programs may not be directly relevant to the use of ammonia as a fertilizer. EPA requests comments on the proposed exemption. EPA notes that farm contractors who sell ammonia as a fertilizer would be covered by today's proposed rule.

E. Information Gathering Efforts

Before EPA began writing its proposed rules for accidental release prevention, the Agency decided to seek information from those already implementing similar regulations. EPA staff met extensively with officials in three states and held interviews with seven facilities that have developed RMPs under state laws. To gather more information, EPA held eight focus groups, five with facilities (two each in New Jersey and California, one in Delaware), and three with administering agency officials in California, to elicit their opinions on the regulations and their ideas about the most useful program components. After analyzing the results of these meetings, EPA held a two-day seminar on issues that have arisen at the state level. Officials from California, Delaware, and New Jersey, as well as Minnesota, Texas, New York, and Wisconsin, attended the meetings. On the second day, other groups that had expressed an interest, including trade associations, labor unions, environmentalists, and organizations of public officials, joined the discussion.

Participants were concerned that to the extent possible, the OSHA, EPA, and state chemical lists and related regulations should be consistent. Several facilities indicated that they would like the regulations arranged so that if they are in compliance with one rule, they would be in compliance with all rules, at least for a specific chemical. It was noted that the chemical list should be based on criteria; thresholds should be developed on a risk-based system. In general, the focus group participants found the thresholds used in their states reasonable, regardless of the actual threshold quantities, which varied from state to state. A report on this information gathering effort entitled *Clean Air Act of 1990, Chemical Accident Release Provisions, Report on Focus Groups and Round Table Discussions*, transcripts of the focus group sessions, and a report on the two-day seminar are available in the docket.

V. Petitions for Additions and Deletions

A. Information Required from Petitioner

The Act requires EPA to review the list at least every five years; EPA may revise the list either through petitions or by Agency initiative. EPA is required to develop procedures for the addition and deletion of substances from the list; these procedures are to be consistent with those applicable to the list in CAA section 112(b).

EPA will consider and respond to petitions to modify the list of regulated substances for accidental release prevention within 18 months of submission of the petition. For EPA to complete its review of petitions and publish the results of its determinations in a timely and efficient manner, the data presented in the petition must be complete and technically sound. EPA's review would be facilitated if the petitioner presents the information in the order listed below.

- *Name and address of the petitioner and a brief description of the organization(s) that the petitioner represents, if applicable.*
- *Name, address, and telephone number of a contact person for the petition.*
- *Common chemical name(s), common synonym(s), Chemical Abstracts Service (CAS) number, and chemical formula and structure.* The CAS number is a unique number assigned to chemical substances by the American Chemical Society Chemical Abstracts Service Registry System. The CAS numbers are independent of nomenclature and have no chemical significance. They are assigned as each new chemical enters the CAS Registry System.
- *Action requested.* The petitioner must identify whether the request is to add to or delete from the list of regulated substances for accidental release prevention.
- *Rationale supporting the petitioner's position.* Each petition must present a discussion of the rationale to add or delete each substance based upon the data presented and their relationship to the criteria for addition or deletion. A short summary of the rationale must be submitted along with a more detailed narrative that includes a discussion of the available data on the potential for acute adverse human health effects that occur as a result of exposure to the substance. Physical and chemical data related to the likelihood of accidental releases and the magnitude of human exposure also should be discussed. For a petition to add, data must be submitted showing that the criteria for listing are met. Chemicals meet the criteria for listing if they meet the mammalian toxicity criteria for listing as EHSs (discussed in Section III C of this preamble), are gases or liquids with vapor pressure of 0.5 mm Hg or higher under ambient conditions, and are in production in commercial quantities. Less volatile chemicals that meet the toxicity criteria will be considered for listing if they have a history of involvement in accidents that caused death or injury. For flammable chemicals, data should indicate that the substances are flammable gases under ambient conditions, or that they are liquids with boiling point below 100 °F (37.8 °C) and flash point below 73 °F (22.8 °C). For a petition to delete, data must be submitted demonstrating that the substance would not reasonably be expected to cause death, injury, or serious adverse effects to human health or the environment in the event of an accidental release. Available data on all hazards presented by the chemical should be included.
- *Supporting data.* The petitioner must provide EPA with sufficient information to support scientifically his or her request to add to or delete from the list of regulated substances for accidental release prevention. Duplicate copies of all material submitted and an English translation of any information published in a foreign language should be included with the petition in order to expedite the review process.

All data presented must meet basic criteria for acceptable scientific quality. These include, but are not limited to, appropriate study design, quality of the scientific approach/method, appropriate quality assurance and quality control procedures, and appropriate statistical analyses.

The supporting data for the petition must contain, at a minimum, the following elements:

- *List of supporting documents.* The petitioner must include a summary list of all supporting documents included with the petition.
- *Literature searches.* The petitioner must include a printed copy of all literature searches conducted to identify data available for the substances, including identification of the database(s) searched, the search strategy, dates covered, and printed results. The literature searches must have been conducted within six months prior to submission of the petition.
- *Effects data.* Each petition must include summary tables identifying all studies cited. The petitioner must submit printed copies of the studies cited on these tables. The reports of effects data should include all available reports on effects of short-term exposure to the chemical and should not be limited to reports on the effect for which the chemical was listed. Human studies, animal studies, other environmental effects studies, and supplementary data such as results from short-term *in vitro* tests, toxicokinetic studies, comparative metabolism studies, structure-activity relationships, and other relevant toxicological studies may be submitted.

Studies will be evaluated for adequacy using standard EPA guidance documents and basic toxicologic principles. EPA will place greater confidence in studies that have been published in peer-reviewed scientific journals or books. In addition, the petitioner may be aware of supporting studies, data, or reports that were not published in peer-reviewed journals or books. In such cases, the petitioner should submit a printed copy of each relevant non-peer-reviewed citation. Examples of such citations may include proceedings of scientific meetings, studies conducted at an industrial site for internal purposes, and some government-sponsored reports/assessments.

- *Exposure and accident history data.* The petition should include data related to the potential for serious adverse human health or environmental effects. Relevant physical and chemical properties of the substance (e.g., boiling point and vapor pressure) should be included, with literature citations. Air dispersion modeling results may be included. Assumptions and data used for the modeling should be presented clearly, and documentation for the model used should be included in the submission. Historical data on accidents involving the substance may be included, clearly citing the sources of the data.

B. Petition Process

The guidance presented in this proposed rulemaking is intended to provide a general framework for determining petition adequacy. Because most petitions will have specific issues not covered by this guidance, individuals wishing to petition EPA to modify the list of regulated substances for accidental release prevention are encouraged to request a pre-petition conference with EPA. Such a meeting would facilitate submittal of complete and technically sound petitions. To arrange a pre-petition conference, please contact CAA 112(r) Petition Coordinator, Chemical Emergency Preparedness and Prevention Office (OS–120), 401 M Street SW., Washington DC 20460. At the time a pre-petition conference is requested, the potential petitioner must be prepared to submit a proposed agenda for the meeting and a list of participants.

A petition to modify the list of regulated substances for accidental release prevention under section 112(r) of the Clean Air Act should be sent to the following address to expedite its review. Environmental Protection Agency, Chemical Emergency Preparedness and Prevention Office, OS–120, 401 M Street, SW., Washington, DC 20460.

Upon receipt of a petition, EPA will first review the petition for completeness. If the petition is found to be incomplete, EPA will return it to the petitioner identifying the omissions. The petitioner may correct the deficiencies and resubmit the petition. This action will be considered equivalent to submitting a new petition; thus, EPA will have 18 months to review the petition contents and publish a decision to grant or deny the petition. If the petition is found to be complete, EPA proposes to publish the following two notices in the **Federal Register**:

1. *Notice of Petition Receipt and Request for Comments:* This notice will announce that a complete petition has been received and will identify the following: the petitioner, the action requested (regulated substance, addition/deletion), the rationale and summary of the key data submitted in support of the petition, and the list of studies submitted by the petitioner to support the request. In response to this notice, EPA will request that interested parties submit additional, pertinent scientific information that was not identified by the petitioner if such information might assist EPA in making the decision to grant or deny the petition. Additional data will be accepted for sixty days following publication of this notice. The request for information will constitute a request for public comments on the petition. All pertinent information and comments received will be addressed in the notice granting or denying the petition.

2. *Publication of Decision:* This notice will announce EPA's decision to grant or deny a specific petition.

EPA anticipates publishing the two notices discussed above within 18 months of receiving a complete petition. EPA will not accept additional petitions on the same substance following publication of a final notice of the decision to grant or deny a petition unless new data become available that could significantly affect the basis for the decision made by EPA. If significant additional data are available, interested persons may submit these data through the petition procedures identified in this notice. Reference should be made to previous petitions for a specific substance, identifying the date the petition was submitted and the previous petitioner. Information previously submitted need not be resubmitted but may be cited by reference for reconsideration. EPA requests comments on the proposed information to be required from the petitioner and the proposed petition process.

VI. Discussion of the Proposed Rule

EPA is proposing to add Part 67 to Title 40 of the Code of Federal Regulations, which would include the list of regulated substances and threshold quantities, as well as the requirements for the petition process to add regulated substances to the list or to delete regulated substances from the list.

Proposed § 68.5 would establish the procedures to determine whether a threshold quantity of a regulated substance is present at a stationary source. Specific exemptions to the threshold determination procedure are also included for mixture concentrations, articles, and certain uses and activities.

Proposed § 68.100 would establish the purpose of the subpart as the designation of regulated substances and their threshold quantities, and establishment of the requirements for petitions to add substances or delete substances from the list.

Proposed § 68.120 would specify the requirements for petitions to the Agency to add substances to the list, and to delete substances from the list.

Proposed § 68.125 would exempt ammonia used as an agricultural nutrient when held by a farmer.

Proposed § 68.130 would establish the list of regulated substances, including a list of toxic substances, a list of flammable substances, and a list criterion for commercial high explosives. This section also would establish the threshold quantities for all listed substances.

VII. Required Analyses

A. E.O. 12291

Under Executive Order 12291, the Agency must judge whether a regulation is "major" and thus subject to the requirement for a Regulatory Impact Analysis (RIA). Under E.O. 12291, a major rule is one that is likely to result in:

1. An adverse (cost) impact in the economy of $100 million,

2. A major increase in cost or prices to consumers, individual industries, Federal, state, or local government, or geographic region, or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises in domestic or export markets.

Based on the RIA, EPA estimates that approximately 140,500 facilities will be covered by the three proposed hazards lists and thresholds (i.e., toxic, flammables, and explosives). These facilities include 22,440 manufacturers (18,960 of whom are covered by the OSHA rule); 33,250 public drinking water and waste treatment systems (15,400 covered by OSHA); 50,000 cold storage facilities (42,500 covered by OSHA); 4,460 wholesalers (2,240 covered by OSHA); 1,240 service industry facilities (776 covered by OSHA); 2,980 private utilities (3,000 covered by OSHA); and 20,000 propane retailers. The average number of regulated substances varies from one per facility for cold storage facilities, to 13 per facility for highly complex manufacturing facilities.

EPA has determined the proposed rule is not a major rule for the purposes of E.O. 12291 because the list, by itself, imposes no cost on facilities. The cost impact of the list and thresholds derives from compliance with the risk management regulations and other reasonable regulations, which are triggered by the presence of a regulated substance above its threshold quantity. Because the impact of the list and threshold decisions are felt through the risk management regulations, EPA has prepared a combined preliminary RIA entitled, "Regulatory Impact Analysis in Support of Listing Regulated Substances and Thresholds and Mandating Risk Management Programs for Chemical Accident Prevention, as Required by section 112(r) of the CAA," which analyzes the impacts of various list and threshold options on the risk management requirements. The RIA is available in the docket.

The petition process is the only aspect of this rulemaking that is directly attributed to the listing of substances. EPA estimates that the petition process under this rulemaking will cost a facility submitting a petition an average of $5,000. EPA estimates that there will be 11 petitions a year. EPA anticipates that the cost to the Federal government for processing and reviewing the petitions will be approximately equal to the cost to facilities for filing a petition. The total annual cost is estimated to be $110,000 ($5,000 x 2 x 11 petitions).

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Federal agencies must evaluate the effects of the rule on small entities and examine alternatives that may reduce these effects. Because the proposed rule, by itself, has no cost impact on facilities, a separate Regulatory Flexibility analysis was not conducted, but is included in the combined RIA, available in the docket.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1601.1) and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M St. SW. (PM-22Y), Washington, DC 20460, or by calling (202) 260-2740.

Public reporting burden for this collection of information in the petition process, the only aspect of the proposed rule involving reporting or recordkeeping, is estimated to be approximately 138 hours, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. EPA estimates that there will be 11 petitions a year. The total annual burden is estimated to be 1,518 hours (138 hours x 11 petitions).

Send comments regarding the burden estimate or any other aspect of this collection of information to Chief, Information Policy Branch, PM-223Y, U.S. EPA, 401 M St. SW., Washington, DC 20460, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 68

Chemicals, Hazardous substances, Extremely hazardous substances, Intergovernmental relations, Clean Air Act, Chemical accident prevention.

Dated: December 30, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C of the Code of Federal Regulations is proposed to be amended by adding a new part 68 to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

Subpart A—General

Sec.
68.1 Scope.
68.3 Definitions.
68.5 Threshold determination.

Subpart B—Risk Management Plan Requirements [Reserved]

Subpart C—Regulated Substances for Accidental Release Prevention

68.100 Purpose.
68.120 Petition process.
68.125 Exemptions.
68.130 List of substances.

Authority: 42 U.S.C. 7412(r).

Subpart A—General

§ 68.1 Scope.

This part sets forth requirements for chemical accident prevention steps that must be taken by the owner or operator of stationary sources.

§ 68.3 Definitions.

For the purposes of this part:

Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

Administrator means the administrator of the U.S. Environmental Protection Agency.

Article means a manufactured item that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during end use, and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

CAS means the Chemical Abstracts Service.

Process means any activity involving a regulated substance including any use, storage, manufacturing, handling, or onsite movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Regulated substance is any substance listed under section 112(r)(3) of the Clean Air Act as amended, and § 68.130.

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. A stationary source includes transportation containers that are no longer under active shipping orders and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading.

Threshold quantity means the quantity specified for regulated substances under section 112(r)(5) of the Clean Air Act as amended, and listed in § 68.130 and determined to be present at a stationary source as specified in § 68.5.

Vessel means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

§ 68.5 Threshold determination.

(a) A threshold quantity of a regulated substance as listed in § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

(1) *Concentrations of a regulated substance in a mixture.* If a regulated substance is present in a mixture and

the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the mixture need not be considered when determining whether more than a threshold quantity is present at the stationary source.

(2) *Articles.* Regulated substances contained in articles need not be considered when determining whether more than a threshold quantity is present at the stationary source.

(3) *Uses.* Regulated substances used for the following purposes need not be included when determining whether more than a threshold quantity is present at the stationary source;

(i) Use as a structural component of the stationary source;

(ii) Use of products for routine janitorial maintenance;

(iii) Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substance;

(iv) Use of regulated substances present in process water or non-contact cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion; and

(v) Use solely for consumption as fuel.

(4) *Activities in Laboratories.* If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual as defined in § 720.3(ee) of this chapter, the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exemption does not apply to:

(i) Specialty chemical production;

(ii) Manufacture, processing, or use of substances in pilot plant scale operations; and

(iii) Activities conducted outside the laboratory.

Subpart B—Risk Management Plan Requirements [Reserved]

Subpart C—Regulated Substances for Accidental Release Prevention

§ 68.100 Purpose.

This subpart designates substances to be listed under section 112(r) (3), (4), and (5) of the Clean Air Act, as amended, identifies their threshold quantities, and establishes the requirements for petitioning to add or delete substances from the list.

§ 68.120 Petition process.

(a) Any person may petition the Administrator to modify, by addition or deletion, the list of regulated substances identified in § 68.130. Based on the information presented by the petitioner, the Administrator may grant or deny a petition.

(b) A substance may be added to the list if, in the case of an accidental release, it is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(c) A substance may be deleted from the list if adequate data on the health and environmental effects of the substance are available to determine that the substance, in the case of an accidental release, will not cause death, injury, or serious adverse effects to human health or the environment.

(d) No substance for which a national primary ambient air quality standard has been established shall be added to the list. No substance regulated under title VI of the Clean Air Act, as amended, shall be added to the list.

(e) The burden of proof is on the petitioner to demonstrate that the criteria for addition and deletion are met. A petition will be denied if this demonstration is not made.

(f) The Administrator will not accept additional petitions on the same substance following publication of a final notice of the decision to grant or deny a petition, unless new data become available that could significantly affect the basis for the decision.

(g) Petitions to modify the list of regulated substances must contain the following:

(1) Name and address of the petitioner and a brief description of the organization(s) that the petitioner represents, if applicable;

(2) Name, address, and telephone number of a contact person for the petition;

(3) Common chemical name(s), common synonym(s), Chemical Abstracts Service number, and chemical formula and structure;

(4) Action requested (add or delete a substance);

(5) Rationale supporting the petitioner's position; that is, how the substance meets the criteria for addition and deletion. A short summary of the rationale must be submitted along with a more detailed narrative; and

(6) Supporting data; that is, the petition must include sufficient information to scientifically support the request to modify the list. Such information shall include:

(i) A list of all support documents;

(ii) Documentation of literature searches conducted, including, but not limited to, identification of the database(s) searched, the search strategy, dates covered, and printed results;

(iii) Effects data (animal, human, and environmental test data) indicating the potential for death, injury, or serious adverse human and environmental impacts from acute exposure following an accidental release; printed copies of the data sources, in English, should be provided; and

(iv) Exposure data or previous accident history data, indicating the potential for serious adverse human health or environmental effects from an accidental release. These data may include, but are not limited to, physical and chemical properties of the substance, such as vapor pressure; modeling results, including data and assumptions used and model documentation; and historical accident data, citing data sources.

§ 68.125 Exemptions.

Agricultural nutrients. Ammonia used as an agricultural nutrient, when held by farmers, need not be included when determining whether a threshold quantity is present on site.

§ 68.130 List of substances.

(a) Explosives are covered under section 112(r) of the Clean Air Act if they are classified by DOT in Division 1.1(49 CFR part 172.102) defined as explosives that have a mass explosion hazard, and are present on site in quantities greater than 5,000 pounds.

(b) Regulated toxic and flammable substances under section 112(r) of the Clean Air Act are the substances listed in Tables 1, 2, 3, and 4 of this section. Threshold quantities for listed toxic and flammable substances are specified in the tables.

(c) The bases for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—100 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetone cyanohydrin	75–86–5	5,000	(a)
Acrolein	107–02–8	1,000	(a)
Acrylonitrile	107–13–1	10,000	(a)
Acrylyl chloride	814–68–6	1,000	(a)
Allyl alcohol	107–18–6	5,000	(a)
Allylamine	107–11–9	1,000	(a)
Ammonia (anhydrous)	7664–41–7	1,000	(a, b)
Ammonia (aqueous solution, conc 20% or greater)	7664–41–7	5,000	(a, b)
Aniline	62–53–3	5,000	(a)
Antimony pentafluoride	7783–70–2	1,000	(a)
Arsenous trichloride	7784–34–1	5,000	(a)
Arsine	7784–42–1	500	(a)
Benzal chloride	98–87–3	1,000	(a)
Benzenamine, 3-(trifluoromethyl)-	98–16–8	1,000	(a)
Benzotrichloride	98–07–7	500	(a)
Benzyl chloride	100–44–7	1,000	(a)
Benzyl cyanide	140–29–4	1,000	(a)
Boron trichloride	10294–34–5	1,000	(a)
Boron trifluoride	7637–07–2	1,000	(a)
Boron trifluoride compound with methyl ether (1:1)	353–42–4	5,000	(a)
Bromine	7726–95–6	1,000	(a, b)
Carbon disulfide	75–15–0	10,000	(a)
Chlorine	7782–50–5	1,000	(a, b)
Chlorine dioxide	10049–04–4	500	(a)
Chloroethanol	107–07–3	1,000	(a)
Chloroform	67–66–3	10,000	(a)
Chloromethyl ether	542–88–1	500	(a)
Chloromethyl methyl ether	107–30–2	1,000	(a)
Crotonaldehyde	4170–30–3	10,000	(a)
Crotonaldehyde, (E)-	123–73–9	10,000	(a)
Cyanogen chloride	506–77–4	1,000	(a)
Cyclohexylamine	108–91–8	5,000	(a)
Diborane	19287–45–7	500	(a)
Trans-1,4-dichlorobutene	110–57–6	1,000	(a)
Dichloroethyl ether	111–44–4	10,000	(a)
Dimethyldichlorosilane	75–78–5	1,000	(a)
Dimethylhydrazine	57–14–7	5,000	(a)
Dimethyl phosphorochloridothioate	2524–03–0	1,000	(a)
Epichlorohydrin	106–89–8	10,000	(a)
Ethylenediamine	107–15–3	10,000	(a)
Ethyleneimine	151–56–4	1,000	(a)
Ethylene oxide	75–21–8	5,000	(a, b)
Fluorine	7782–41–4	500	(a)
Formaldehyde	50–00–0	500	(a)
Formaldehyde cyanohydrin	107–16–4	5,000	(a)
Furan	110–00–9	1,000	(a)
Hydrazine	302–01–2	5,000	(a)
Hydrochloric acid (solution, conc 25% or greater)	7647–01–0	5,000	(a)
Hydrocyanic acid	74–90–8	500	(a, b)
Hydrogen chloride (anhydrous)	7647–01–0	1,000	(a, b)
Hydrogen fluoride	7664–39–3	500	(a, b)
Hydrogen peroxide (conc > 52%)	7722–84–1	5,000	(a)
Hydrogen selenide	7783–07–5	500	(a)
Hydrogen sulfide	7783–06–4	1,000	(a, b)
Iron, pentacarbonyl-	13463–40–6	500	(a)
Isobutyronitrile	78–82–0	10,000	(a)
Isopropyl chloroformate	108–23–6	5,000	(a)
Lactonitrile	78–97–7	5,000	(a)
Methacrylonitrile	126–98–7	1,000	(a)
Methyl bromide	74–83–9	5,000	(a)
Methyl chloride	74–87–3	10,000	(a)
Methyl chloroformate	79–22–1	1,000	(a)
Methyl hydrazine	60–34–4	5,000	(a)
Methyl isocyanate	624–83–9	1,000	(a, b)
Methyl mercaptan	74–93–1	1,000	(a)
Methyl thiocyanate	556–64–9	10,000	(a)
Methyltrichlorosilane	75–79–6	1,000	(a)
Nickel carbonyl	13463–39–3	500	(a)
Nitric acid	7697–37–2	5,000	(a)
Nitric oxide	10102–43–9	1,000	(a)
Nitrobenzene	98–95–3	10,000	(a)
Parathion	56–38–2	1,000	(a)
Peracetic acid	79–21–0	1,000	(a)
Perchloromethylmercaptan	594–42–3	1,000	(a)
Phenol (liquid)	108–95–2	10,000	(a)
Phosgene	75–44–5	500	(a, b)
Phosphine	7803–51–2	1,000	(a)
Phosphorus oxychloride	10025–87–3	1,000	(a)

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—100 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Phosphorus trichloride	7719–12–2	5,000	(b)
Piperidine	110–89–4	5,000	(b)
Propionitrile	107–12–0	1,000	(b)
Propyl chloroformate	109–61–5	5,000	(b)
Propyleneimine	75–55–8	10,000	(b)
Propylene oxide	75–56–9	10,000	(b)
Pyridine, 2-methyl-5-vinyl-	140–76–1	1,000	(b)
Sulfur dioxide	7446–09–5	1,000	(a, b)
Sulfuric acid	7664–93–9	5,000	(c)
Sulfur tetrafluoride	7783–60–0	1,000	(b)
Sulfur trioxide	7446–11–9	1,000	(a, b)
Tetramethyllead	75–74–1	1,000	(b)
Tetranitromethane	509–14–8	1,000	(b)
Thiophenol	108–98–5	1,000	(b)
Titanium tetrachloride	7550–45–0	500	(b)
Toluene 2,4-diisocyanate	584–84–9	1,000	(a)
Toluene 2,6-diisocyanate	91–08–7	1,000	(a)
Toluene diisocyanate (unspecified isomer)	26471–62–5	1,000	(a)
Trichloroethylsilane	115–21–9	1,000	(b)
Trimethylchlorosilane	75–77–4	1,000	(b)
Vinyl acetate monomer	108–05–4	5,000	(b)
Vinyl chloride	75–01–4	10,000	(a)

Basis for Listing:

[a] Mandated for listing by Congress.

[b] On EHS list, vapor pressure 0.5 mmHg or greater.

[c] On EHS list, vapor pressure less than 0.5 mmHg, but has been involved in accidents resulting in death or injury.

[d] Toxic gas.

[e] Listed based on toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—100 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
50–00–0	Formaldehyde	500	(b)
56–38–2	Parathion	1,000	(c)
57–14–7	Dimethylhydrazine	5,000	(b)
60–34–4	Methyl hydrazine	5,000	(b)
62–53–3	Aniline	5,000	(b)
67–66–3	Chloroform	10,000	(b)
74–83–9	Methyl bromide	5,000	(b)
74–87–3	Methyl chloride	10,000	(a)
74–90–8	Hydrocyanic acid	500	(a, b)
74–93–1	Methyl mercaptan	1,000	(b)
75–01–4	Vinyl chloride	10,000	(a)
75–15–0	Carbon disulfide	10,000	(b)
75–21–8	Ethylene oxide	5,000	(a, b)
75–44–5	Phosgene	500	(a, b)
75–55–8	Propyleneimine	10,000	(b)
75–56–9	Propylene oxide	10,000	(b)
75–74–1	Tetramethyllead	1,000	(b)
75–77–4	Trimethylchlorosilane	1,000	(b)
75–78–5	Dimethyldichlorosilane	1,000	(b)
75–79–6	Methyltrichlorosilane	1,000	(b)
75–86–5	Acetone cyanohydrin	5,000	(b)
78–82–0	Isobutyronitrile	10,000	(b)
78–97–7	Lactonitrile	5,000	(b)
79–21–0	Peracetic acid	1,000	(b)
79–22–1	Methyl chloroformate	1,000	(b)
91–08–7	Toluene 2,6-diisocyanate	1,000	(a)
98–07–7	Benzotrichloride	500	(b)
98–16–8	Benzenamine, 3-(trifluoromethyl)	1,000	(b)
98–87–3	Benzal chloride	1,000	(b)
98–95–3	Nitrobenzene	10,000	(c)
100–44–7	Benzyl chloride	1,000	(b)
106–89–8	Epichlorohydrin	10,000	(b)
107–02–8	Acrolein	1,000	(b)
107–07–3	Chloroethanol	1,000	(b)
107–11–9	Allylamine	1,000	(b)
107–12–0	Propionitrile	1,000	(b)
107–13–1	Acrylonitrile	10,000	(b)
107–15–3	Ethylenediamine	10,000	(b)
107–16–4	Formaldehyde cyanohydrin	5,000	(b)
107–18–6	Allyl alcohol	5,000	(b)
107–30–2	Chloromethyl methyl ether	1,000	(b)

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[CAS Number Order—100 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
108–05–4	Vinyl acetate monomer	5,000	(b)
108–23–6	Isopropyl chloroformate	5,000	(b)
108–91–8	Cyclohexylamine	5,000	(b)
108–95–2	Phenol (liquid)	10,000	(b)
108–98–5	Thiophenol	1,000	(b)
109–61–5	Propyl chloroformate	5,000	(b)
110–00–9	Furan	1,000	(b)
110–57–6	Trans-1,4-dichlorobutene	1,000	(b)
110–89–4	Piperidine	5,000	(b)
111–44–4	Dichloroethyl ether	10,000	(b)
115–21–9	Trichloroethylsilane	1,000	(b)
123–73–9	Crotonaldehyde, (E)	10,000	(b)
126–98–7	Methacrylonitrile	1,000	(b)
140–29–4	Benzyl cyanide	1,000	(b)
140–76–1	Pyridine, 2-methyl-5-vinyl	1,000	(b)
151–56–4	Ethyleneimine	1,000	(b)
302–01–2	Hydrazine	5,000	(b)
353–42–4	Boron trifluoride compound with methyl ether (1:1)	5,000	(b)
506–77–4	Cyanogen chloride	1,000	(d)
509–14–8	Tetranitromethane	1,000	(b)
542–88–1	Chloromethyl ether	500	(b)
556–64–9	Methyl thiocyanate	10,000	(b)
584–84–9	Toluene 2,4-diisocyanate	1,000	(c)
594–42–3	Perch- loromethylmer- captan	1,000	(b)
624–83–9	Methyl isocyanate	1,000	(a, b)
814–68–6	Acrylyl chloride	1,000	(b)
2524–03–0	Dimethylphosphorochloridothioate	1,000	(b)
4170–30–3	Crotonaldehyde	10,000	(b)
7446–09–5	Sulfur dioxide	1,000	(a, b)
7446–11–9	Sulfur trioxide	1,000	(a, b)
7550–45–0	Titanium tetrachloride	500	(b)
7637–07–2	Boron trifluoride	1,000	(b)
7647–01–0	Hydrogen chloride (anhydrous)	1,000	(a, b)
7647–01–0	Hydrochloric acid (solution, conc 25% or greater)	5,000	(e)
7664–39–3	Hydrogen fluoride	500	(a, b)
7664–41–7	Ammonia (anhydrous)	1,000	(a, b)
7664–41–7	Ammonia (aqueous solution, conc 20% or greater)	5,000	(a, b)
7664–93–9	Sulfuric acid	5,000	(c)
7697–37–2	Nitric acid	5,000	(b)
7719–12–2	Phosphorus trichloride	5,000	(b)
7722–84–1	Hydrogen peroxide (conc > 52%)	5,000	(b)
7726–95–6	Bromine	1,000	(a, b)
7782–41–4	Fluorine	500	(b)
7782–50–5	Chlorine	1,000	(a, b)
7783–06–4	Hydrogen sulfide	1,000	(a, b)
7783–07–5	Hydrogen selenide	500	(b)
7783–60–0	Sulfur tetrafluoride	1,000	(b)
7783–70–2	Antimony pentafluoride	1,000	(b)
7784–34–1	Arsenous trichloride	5,000	(b)
7784–42–1	Arsine	500	(b)
7803–51–2	Phosphine	1,000	(b)
10025–87–3	Phosphorus oxychloride	1,000	(b)
10049–04–4	Chlorine dioxide	500	(b)
10102–43–9	Nitric oxide	1,000	(b)
10294–34–5	Boron trichloride	1,000	(b)
13463–39–3	Nickel carbonyl	500	(b)
13463–40–6	Iron, pentacarbonyl	500	(b)
19287–45–7	Diborane	500	(b)
26471–62–5	Toluene diisocyanate (unspecified isomer)	1,000	(c)

Basis for Listing:

[a] Mandated for listing by Congress.
[b] On EHS list, vapor pressure 0.5 mmHg or greater
[c] On EHS list, vapor pressure less than 0.5 mmHg, but has been involved in accidents resulting in death or injury.
[d] Toxic gas.
[e] Listed based on toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—62 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetaldehyde	75–07–0	10,000	(a)
Acetylene	74–86–2	10,000	(b)
Bromotri- fluorethylene	598–73–2	10,000	(b)
1,3-Butadiene	106–99–0	10,000	(b)

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—62 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Butane	106-97-8	10,000	(f)
1-Butene	106-98-9	10,000	(f)
2-Butene	107-01-7	10,000	(f)
Butene	25167-67-3	10,000	(f)
2-Butene-cis	590-18-1	10,000	(f)
2-Butene-trans	624-64-6	10,000	(f)
Carbon oxysulfide	463-58-1	10,000	(f)
Chlorine monoxide	7791-21-1	10,000	(f)
2-Chloropropylene	557-98-2	10,000	(g)
1-Chloropropylene	590-21-6	10,000	(g)
Cyanogen	460-19-5	10,000	(f)
Cyclopropane	75-19-4	10,000	(f)
Dichlorosilane	4109-96-0	10,000	(f)
Difluoroethane	75-37-6	10,000	(f)
Dimethylamine	124-40-3	10,000	(f)
2,2-Dimethylpropane	463-82-1	10,000	(f)
Ethane	74-84-0	10,000	(f)
Ethyl acetylene	107-00-6	10,000	(f)
Ethylamine	75-04-7	10,000	(f)
Ethyl chloride	75-00-3	10,000	(f)
Ethylene	74-85-1	10,000	(f)
Ethyl ether	60-29-7	10,000	(g)
Ethyl mercaptan	75-08-1	10,000	(g)
Ethyl nitrite	109-95-5	10,000	(f)
Hydrogen	1333-74-0	10,000	(f)
Isobutane	75-28-5	10,000	(f)
Isopentane	78-78-4	10,000	(g)
Isoprene	78-79-5	10,000	(g)
Isopropylamine	75-31-0	10,000	(g)
Isopropyl chloride	75-29-6	10,000	(g)
Methane	74-82-8	10,000	(f)
Methylamine	74-89-5	10,000	(f)
3-Methyl-1-butene	563-45-1	10,000	(f)
2-Methyl-1-butene	563-46-2	10,000	(g)
Methyl ether	115-10-6	10,000	(f)
Methyl formate	107-31-3	10,000	(g)
2-Methylpropene	115-11-7	10,000	(f)
1,3-Pentadiene	504-60-9	10,000	(f)
Pentane	109-66-0	10,000	(g)
1-Pentene	109-67-1	10,000	(g)
2-Pentene, (E)-	646-04-8	10,000	(g)
2-Pentene, (Z)-	627-20-3	10,000	(g)
Propadiene	463-49-0	10,000	(f)
Propane	74-98-6	10,000	(f)
Propylene	115-07-1	10,000	(f)
Propyne	74-99-7	10,000	(f)
Silane	7803-62-5	10,000	(f)
Tetrafluoroethylene	116-14-3	10,000	(f)
Tetramethylsilane	75-76-3	10,000	(g)
Trichlorosilane	10025-78-2	10,000	(g)
Trifluoro- chloroethylene	79-38-9	10,000	(f)
Trimethylamine	75-50-3	10,000	(f)
Vinyl acetylene	689-97-4	10,000	(f)
Vinyl ethyl ether	109-92-2	10,000	(g)
Vinyl fluoride	75-02-5	10,000	(f)
Vinylidene chloride	75-35-4	10,000	(g)
Vinylidene fluoride	75-38-7	10,000	(f)
Vinyl methyl ether	107-25-5	10,000	(f)

Basis for Listing:

[f] Flammable gas.

[g] Volatile flammable liquid.

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTIAL RELEASE PREVENTION

[CAS Number Order—62 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
60-29-7	Ethyl ether	10,000	(g)
74-82-8	Methane	10,000	(f)
74-84-0	Ethane	10,000	(f)
74-85-1	Ethylene	10,000	(f)
74-86-2	Acetylene	10,000	(f)
74-89-5	Methylamine	10,000	(f)
74-98-6	Propane	10,000	(f)

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTIAL RELEASE PREVENTION—Continued

[CAS Number Order—62 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
74–99–7	Propyne	10,000	(f)
75–00–3	Ethyl chloride	10,000	(f)
75–02–5	Vinyl fluoride	10,000	(f)
75–04–7	Ethylamine	10,000	(f)
75–07–0	Acetaldehyde	10,000	(s)
75–08–1	Ethyl mercaptan	10,000	(s)
75–19–4	Cyclopropane	10,000	(f)
75–28–5	Isobutane	10,000	(f)
75–29–6	Isopropyl chloride	10,000	(s)
75–31–0	Isopropylamine	10,000	(s)
75–35–4	Vinylidene chloride	10,000	(s)
75–37–6	Difluoroethane	10,000	(f)
75–38–7	Vinylidene fluoride	10,000	(f)
75–50–3	Trimethylamine	10,000	(f)
75–76–3	Tetramethylsilane	10,000	(s)
78–78–4	Isopentane	10,000	(s)
78–79–5	Isoprene	10,000	(s)
79–38–9	Trifluorochloroethylene	10,000	(f)
106–97–8	Butane	10,000	(f)
106–98–9	1-Butene	10,000	(f)
106–99–0	1,3-Butadiene	10,000	(f)
107–00–6	Ethyl acetylene	10,000	(f)
107–01–7	2-Butene	10,000	(f)
107–25–5	Vinyl methyl ether	10,000	(f)
107–31–3	Methyl formate	10,000	(s)
109–66–0	Pentane	10,000	(s)
109–67–1	1-Pentene	10,000	(s)
109–92–2	Vinyl ethyl ether	10,000	(s)
109–95–5	Ethyl nitrite	10,000	(f)
115–07–1	Propylene	10,000	(f)
115–10–6	Methyl ether	10,000	(f)
115–11–7	2-Methylpropene	10,000	(f)
116–14–3	Tetrafluoroethylene	10,000	(f)
124–40–3	Dimethylamine	10,000	(f)
460–19–5	Cyanogen	10,000	(f)
463–49–0	Propadiene	10,000	(f)
463–58–1	Carbon oxysulfide	10,000	(f)
463–82–1	2,2-Dimethylpropane	10,000	(f)
504–60–9	1,3-Pentadiene	10,000	(f)
557–98–2	2-Chloropropylene	10,000	(s)
563–45–1	3-Methyl-1-butene	10,000	(f)
563–46–2	2-Methyl-1-butene	10,000	(s)
590–18–1	2-Butene-cis	10,000	(f)
590–21–6	1-Chloropropylene	10,000	(s)
598–73–2	Bromotrifluorethylene	10,000	(f)
624–64–6	2-Butene-trans	10,000	(f)
627–20–3	2-Pentene, (Z)	10,000	(s)
646–04–8	2-Pentene, (E)	10,000	(s)
689–97–4	Vinyl acetylene	10,000	(f)
1333–74–0	Hydrogen	10,000	(f)
4109–96–0	Dichlorosilane	10,000	(f)
7791–21–1	Chlorine monoxide	10,000	(f)
7803–62–5	Silane	10,000	(f)
10025–78–2	Trichlorosilane	10,000	(s)
25167–67–3	Butene	10,000	(f)

Basis for Listing:
[f] Flammable gas.
[s] Volatile flammable liquid.

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January 19, 1993

Part IV

Pension Benefit Guaranty Corporation

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Proposed Rule

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

RIN 1212–AA61

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") proposes to amend its regulation governing valuation of plan benefits in terminated single-employer plans that are trusteed by the PBGC. The proposed amendment would revise the methods of valuing annuity benefits (1) to update the regulation's mortality assumptions to reflect recent actuarial practice, (2) to uncouple the regulation's administrative expense ("loading") assumptions from its interest assumptions, and (3) to clarify the valuation of annuity benefits by prescribing a new interest rate structure format that bases valuations on the length of time between the valuation date and the presumed date of each payment. Although the amendment would continue the regulation's historical approach of assigning values to annuity benefits that are in line with private sector group annuity prices, and the PBGC anticipates that, for most plans, this amendment would not significantly affect the valuations produced, the new assumptions and format would greatly enhance public understanding of the PBGC'S valuations. In addition, the PBGC proposes to adopt unisex mortality assumptions when it is calculating de minimis lump sums (i.e., those of $3,500 or less) to be paid to a participant; the PBGC would otherwise continue to use its historical mortality assumptions and its current interest rate structure in the calculation of lump sums.

At the same time, the PBGC proposes to amend its regulation governing valuation of annuity benefits in multiemployer plans following mass withdrawal, so as to adopt the same mortality, loading, and interest assumptions as does the modified single-employer regulation. This change will result in simplification of calculations under the multiemployer regulation as well as greater consistency of annuity valuations between the two programs.

DATES: Comments must be received on or before March 22, 1993.

ADDRESSES: Comments should be addressed to Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006. Comments may be hand-delivered to Suite 7200 at the above address between 9 a.m. and 5 p.m. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 7100 at the above address, between 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Peter H. Gould, Senior Counsel, Office of the General Counsel, at the above address or at (202) 778–8850 ((202) 778–8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation ("PBGC") published a final regulation Valuation of Plan Benefits in Non-Multiemployer Plans (the "single-employer regulation") on January 28, 1981 (46 FR 9492). On March 14, 1986, the title of the regulation was changed to Valuation of Plan Benefits in Single-Employer Plans. The regulation is codified at 29 CFR part 2619.

As explained in the PBGC's initial proposed rulemaking on Valuation of Plan Benefits, published December 12, 1975: "The value of a benefit as of the date of termination is the current value of the cost that the PBGC normally should incur as of the date of termination, in providing the benefit under reasonable assumptions as to mortality, rates of retirement when early retirement is possible, administrative expenses that will be incurred, and investment return assumptions reflecting current and longer term investment opportunities. The PBGC's assumptions will be adjusted from time to time to reflect changes in market conditions and mortality experience." 40 FR at 57982. As explained in the PBGC's Interim Regulation on Valuation of Plan Benefits, published November 3, 1976, the PBGC has set its interest rates for valuation purposes by examining a survey of private sector annuity prices, using those prices as a starting point, and selecting a valuation interest rate (or rates) which when combined with the PBGC mortality table would accurately replicate the price structure reflected in single-premium, nonparticipating group annuity contract prices from the survey. 41 FR at 48485.

On March 25, 1986, the PBGC published a proposed single-employer regulation that would have replaced the current interest rate format structure based on the presumed date a participant is to enter pay status with one based on the length of time that has passed since the valuation date. The 1986 proposed regulation called for as many as fifteen different "select" rates, each of which would apply for a period of one year after the valuation date. To value payments that would occur over fifteen years after the valuation date, the 1986 proposed regulation provided for a single "ultimate" rate. This interest rate format was the one used in the PBGC's multiemployer plan regulation, Multiemployer Pension Plans; Valuation of Plan Assets and Plan Benefits Following Mass Withdrawal, 29 CFR Part 2676, published as a proposed rule on February 19, 1985, and as a final rule on March 25, 1986.

The proposed 1986 single-employer regulation attracted several comments. A number of comments expressed concern about the complexity associated with the use of a "select and ultimate" interest rate format structure calling for the use of up to 15 different "select" rates. In addition, the American Academy of Actuaries suggested that the PBGC might obtain more precise simulation of private sector annuity contract prices if it allowed for the possibility of changing its assumed interest rates after a period exceeding fifteen years. The Academy also suggested that the PBGC begin use of the 1983 Group Annuity Mortality Table ("1983 GAM Table"). In part as a result of these comments, the PBGC decided to study the subject further and withdrew the proposed regulation on February 19, 1987.

The PBGC has now concluded that it can better and more clearly approximate private sector group annuity costs by (1) adopting the more current 1983 GAM table, (2) uncoupling its administrative expense ("loading") assumptions from its interest assumptions, and (3) replacing the current interest rate format, which is based on the length of time between the valuation date and the presumed date a participant is to enter pay status, with one based on the length of time between the valuation date and the date of each presumed monthly payment. Accordingly, the proposed amendment sets forth new mortality, loading, and interest assumptions for the valuation of annuity benefits. The PBGC will select an interest rate (or rates, normally no more than three) which, when combined with the PBGC mortality table and loading assumptions, will accurately approximate the cost of private sector group annuity contracts.

In addition, the PBGC proposes to adopt unisex mortality assumptions when it is calculating de minimis lump sums (i.e., those of $3,500 or less) to be paid to a participant; the PBGC would otherwise continue to use its historical mortality assumptions and interest rate structure in valuing benefits in trusteed plans that are to be paid as lump sums.

The PBGC intends to apply the approach of the proposed amendment, including the new loading and mortality assumptions, to multiemployer plans as well. The interest assumptions in the multiemployer regulation, consistent with the single-employer annuity valuation amendments discussed below, would be modified to remove the 15-year limitation on the commencement of an "ultimate" rate and would ordinarily provide for no more than three interest rates. Thus, the single-employer and multiemployer annuity valuation rules would conform to each other.

The PBGC notes that this proposed regulation is narrowly focused, and thus that it does not address certain other modifications to Part 2619 that may be appropriate; for example, the proposed regulation does not address portions of Part 2619 that have been superseded by legislative action. The PBGC intends to make additional modifications to Part 2619, as appropriate, by subsequent regulatory action.

Mortality

The mortality tables now used by the PBGC to value benefits in trusteed plans were derived from the Unisex Pension-1984 ("UP–1984") table, and were first proposed for adoption by the PBGC in 1975. The UP–1984 table was developed with 1965–1969 data on non-insured plans, covering employees in a wide range of industries, and at that time, it was judged to be the table most likely to be representative of PBGC's experience. 40 FR at 57982, 41 FR at 48485. More germane to the purposes of this proposed amendment, it also was very well suited for the format PBGC adopted to express its interest rates.

Specifically, the interest rates implicit in private sector prices for immediate annuities based on UP–1984 were nearly level, i.e., almost constant, over most ages surveyed, thereby facilitating the use of the same "immediate annuity rate" for all retired lives. The PBGC believes the UP–1984 table was as effective as it was because of its similarity to the table used by most insurers for pricing group annuities at that time, the 1971 GAM mortality table.

Since the UP–1984 table was proposed for adoption in 1975, many private sector insurers have shifted to the 1983 GAM Table when setting group annuity prices. In recent years, the interest rates implicit in the survey prices for immediate annuities based on the UP–1984 table have become progressively less constant, and it has therefore become progressively more difficult to approximate private sector prices for retired life annuities commencing at various ages with a single immediate annuity rate.

Moreover, continued use of the older mortality assumptions has resulted in the PBGC's interest rate assumptions being set lower than they would be under more current mortality assumptions, to ensure that the PBGC's valuations conform to private sector prices. Even though the combination of mortality and interest assumptions accurately replicates private sector group annuity prices, the disparity between the PBGC's low interest rates and familiar private sector rates has resulted in public confusion over the PBGC's interest rate assumptions. The PBGC therefore wishes to adopt new mortality assumptions that will (1) themselves better conform to those used by private sector insurers and (2) permit the PBGC to employ interest rate assumptions that also better conform to those used by private sector insurers, thereby making the annuity valuation process clearer to the public.

The PBGC accordingly proposes to adopt the 1983 GAM Table for annuity valuations. Pursuant to the recommendation of the Committee on Annuities of the Society of Actuaries, the PBGC is adopting a mortality table for healthy female participants that is obtained from the table for healthy males by increasing all age indexes by six years, i.e., a 6-year age setback for females (so that, for example, a 55 year old healthy female would be treated as if she were a 49 year old under the mortality table for healthy males). In addition, the PBGC's mortality tables for participants disabled under their plans' terms but not receiving Social Security disability payments will be obtained from the corresponding tables for healthy participants by decreasing all age indexes by three years, i.e., a 3-year setforward from the healthy lives tables for both males and females (so that, for example, a 55 year old disabled participant who is not receiving Social Security disability payments would be treated as if he or she were a 58 year old under the corresponding mortality table for healthy lives). Mortality tables for participants below age 65 receiving Social Security disability benefits will be determined on the basis of information obtained from the Social Security Administration blended into the 1983 GAM tables at higher ages. These tables will parallel the mortality tables for disabled participants not receiving Social Security disability payments at higher ages. The Tables added to appendix A under the proposed regulation would incorporate the new mortality assumptions to be used in valuing annuity benefits.

The PBGC intends to keep each of its individual valuation assumptions in line with those of private sector insurers, and to modify its mortality assumptions whenever it is necessary in the future to do so to achieve consistency with private insurer assumptions. For example, if the PBGC determines that the mortality assumptions of the 1993 GAM Table have attained significant acceptance among private sector insurers, the PBGC would consider adopting those assumptions by regulation. The PBGC anticipates that it would generally publish any such changes, without further proposed rulemaking, at least 30 days in advance of their effective dates. We note that such changes would not be expected to affect the PBGC's annuity benefit valuations, because the PBGC's interest rates are selected so that, in conjunction with all other assumptions, they will provide annuity prices that are in line with those in the survey.

Loading Assumptions

Certain expenses of administration are incurred by an insurer in connection with the payment of benefits under terminated plans. These "loading" expenses include establishing plan files and studying plan terms to determine benefit entitlements, setting up and updating records, as well as processing pension applications, cutting and mailing checks, etc. Under the present regulation, the PBGC interest assumptions include a downward adjustment so as to incorporate a loading charge. As explained in the preamble to the initial proposed regulation on Valuation of Plan Benefits, "[f]or purposes of benefit valuation normal expenses directly associated with providing a benefit have been estimated and an appropriate adjustment has been made in the applicable assumed rate of investment returns in order to account for those costs. This adjustment [was] made to avoid calculating the effect of the expenses upon the value of a benefit separately which would unnecessarily complicate the calculations required to value a benefit." 40 FR at 57983. The PBGC has concluded that it is now feasible to state explicit loading charges when valuing annuity benefits, without sacrificing simplicity of calculation. Thus, the PBGC has decided to add these costs on directly, rather than through a reduction in interest rates as it now does.

Under the proposed regulation, the PBGC will more clearly simulate the private sector process of annuity benefit valuation by stating explicit loading charges that should approximate the loading charges inherent in private sector annuity prices. The PBGC has decided that it can best approximate private insurer prices by charging loading expenses that are based in part on the total value of plan benefits, thereby recognizing (1) that the computation of benefit valuations entails certain expenses that are roughly proportional to the number of a plan's participants, (2) that private insurers' loading charges, expressed as a percentage of plan benefits, are somewhat lower for larger plans, and (3) that the percentage of a plan's annuity benefits to be assessed as a loading charge should vary slightly as a function of the interest assumptions in effect. Appendix C to the proposed regulation illustrates the form in which explicit loading charges would be stated. The PBGC invites comment on its approach to the specification of "loading" costs in annuity valuations. The PBGC anticipates that it would generally publish any changes to appendix C, without further proposed rulemaking, at least 30 days in advance of their effective dates.

Interest Rates

In adopting the current single-employer regulation, the PBGC, in the interest of administrative efficiency, adopted certain interest assumptions for the valuation of benefits. Benefits in pay status on the valuation date ("immediate annuities") would be valued on the basis that a single interest rate (the "immediate annuity rate") would apply throughout the life (lives) of the participant (and beneficiary). Benefits not in pay status on the valuation date ("deferred annuities") were valued on the basis of up to three additional, lower, interest rates ("deferred rates") assumed to be in effect for various portions of the period preceding the date when the participant was presumed to enter pay status; thereafter, the immediate annuity rate would apply.

Under the proposed amendment, the PBGC will, when valuing annuity benefits, employ one or more (usually no more than three) interest rates for one or more specified time periods following the date of valuation. They will not be based on the presumed date of pay status. The PBGC expects that the rates will be progressively lower for each succeeding time period. The amendment will thus employ an interest rate format similar to that in use for valuing benefits pursuant to the PBGC's multiemployer regulation. The PBGC anticipates that by extending the period during which it may vary its "select" interest rates beyond the 15-year range used under the multiemployer regulation, we may achieve even greater accuracy in replicating private sector annuity charges. The Tables to be added to appendix B under the proposed regulation would set out the format for expressing the interest assumptions to be used in valuing annuity benefits.

The PBGC's historical mortality assumptions and interest rate structure, in addition to applying to the valuation of lump sum payments to living persons, would apply to the calculation of all death benefits. The 5% assumption that under the present single-employer regulation applies to certain death benefits (e.g., the return of accumulated employee contributions upon death) would be abandoned. Because the Pension Protection Act of 1987 (as amended by the Omnibus Budget Reconciliation Act of 1989) requires that employee contributions be credited with interest after the determination date at a rate not less than the applicable PBGC valuation rate, most plans provide for accumulation at that rate. Thus, the use of the usually lower 5% rate for valuing the payment of death benefits increases the value of the death benefit as of the valuation date. The PBGC is therefore changing the interest assumptions under which these death benefits are valued so that they will in most cases produce a value reflecting plan amendments adopted in response to the Pension Protection Act. The 5% assumption had previously been removed from the death benefit valuation rates under the multiemployer regulation. The proposed regulation also adopts the benefit valuation formulas employed by the multiemployer regulation.

As in the past, interest rates under the amendment will be derived from price data obtained from the private insurance industry. Since November 1980, the PBGC has announced its valuation interest rates prospectively, i.e., in advance of the period of time to which they apply. If the PBGC is to continue its practice of announcing its interest rates prospectively, it will be necessary to continue estimating, on the basis of data available some time before the time of publication, the annuity prices that will be proffered in the private sector. In view of the techniques and data available for effecting such estimates, the PBGC has concluded in the past that any imprecision in approximating those future prices is outweighed by the value of permitting private parties to be able to estimate benefit values earlier. The PBGC invites comment on whether this conclusion remains valid.

Several comments submitted in response to the 1986 proposed regulation stated that private parties frequently rely on the PBGC's "immediate annuity" rate for valuing pension entitlements in, inter alia, divorce cases. (The PBGC notes that use of the PBGC interest rates for valuing pension entitlements in divorce cases, or for any other purposes beyond those for which they were intended, may or may not be appropriate.) The comments stated that the complexity of the proposed format would create substantial difficulties for small family law practices and administrators of small plans. The PBGC believes that, inasmuch as the PBGC will continue to value lump sum entitlements on the basis of its historical mortality assumptions and interest structure, any such difficulties would be self-imposed, and that even for any person who uses the new interest structure, the reduction of the expected number of interest rates to two or three and the increased availability of computer software should alleviate these concerns.

The availability of computer software, together with the proposed regulation, will also eliminate the need for a distorting simplification used under the current regulation. As pointed out in the preamble to the current regulation, 46 FR at 9495, the adjustment factor for deferred joint and survivor benefits ignores the possibility of the death of the spouse between the date of valuation and the pay status date. The proposed regulation takes that possibility into account, in a case where no optional form may be elected.

Internal Revenue Code section 417(e) and ERISA section 205(g) incorporate the interest rates that the PBGC uses to value lump sum benefits in PBGC-trusteed plans in determining the ceiling on the interest rates that private sector plans may use to calculate lump sum distributions. Though many plans have chosen to use interest rates for lump sum purposes that are lower than PBGC interest rates, other plans have complied with the Code and ERISA by adopting provisions that are based explicitly on the PBGC's rate format under the existing regulation.

Were the PBGC to apply the new mortality and loading assumptions and the new interest rate structure to the valuation of lump sum benefits in PBGC-trusteed plans, there would be, for ongoing plans and terminations in the private sector, increases in PBGC-determined interest rate ceilings of about 1.5 to 2 percentage points for retired participants and more for younger participants. If plan provisions were not modified to use lower interest rates for lump sums than interest rates under the proposed regulation, participants in ongoing plans and plans terminating in the private sector would receive lower lump sum payments. Further, because more benefits would be calculated as having present values under $3500, plans would be able to increase the number of participants they involuntarily cash out.

If the new mortality and loading assumptions and the new interest rate structures were used to value PBGC lump sum entitlements, they would also have an effect on lump sum amounts paid to participants in PBGC-trusteed plans, although that effect would be more limited. PBGC pays lump sums only to participants whose total benefit values do not exceed $3500, and adoption of the 1983 GAM Table would offset the higher interest rates. Nonetheless, the new interest rate format, along with elimination of the loading component from PBGC's interest assumptions, would result in a greater number of lower-valued lump sum payments to younger participants in PBGC-trusteed plans. (The effect of the PBGC's adoption of unisex mortality assumptions in determining lump sums in underfunded plans trusteed by the PBGC is discussed below.) Because such younger participants generally have much smaller benefits than do other participants, and because the greater deferral periods further decrease the costs of these lower benefits, the reductions would not be large in absolute terms. For some younger participants, however, the reductions in their lump sum amounts under the proposed regulation's assumptions could exceed 50 per cent of the amounts calculated under the current regulation.

Because the PBGC's use of the new mortality and loading assumptions and the new interest rate structure in valuing lump sum entitlements could substantially reduce participants' benefits, both in ongoing and terminated plans, the PBGC believes that it should not at this time apply the proposed annuity valuation system to the valuation of lump sum entitlements. Participant lump sum expectations, under both ongoing and terminated plans, that are based on the PBGC's existing valuation structure were created by Congress, and the PBGC believes that it should not alter those expectations without providing for a period of public discussion and the opportunity to obtain Congressional guidance.

However, the PBGC does not anticipate that the historical mortality assumptions and interest rate structure for lump sum valuations should remain in effect indefinitely, and the PBGC will be seeking guidance in this area from Congress, other administrative agencies, and the public. One possibility is that Congress will decide to modify Code and ERISA provisions so that they would no longer base the requirements for private sector lump sum assumptions on the PBGC's lump sum assumptions. In that event, the PBGC could adopt appropriate lump sum valuation assumptions without its current concern over the impact of its choice of assumptions on private sector lump sums. A second possibility is that public discussion will lead to the conclusion that the current statutory linkage will remain but that the PBGC should revise its lump sum valuation assumptions nonetheless. In either case, the PBGC invites comments as to what those assumptions should be.

In such circumstances, one issue likely to arise would be the mechanism of any transition from the current lump sum valuation assumptions to the new ones. If new assumptions tended to yield substantially different lump sum amounts, it might be appropriate for the PBGC to adopt a new lump sum valuation structure gradually, so as not to disrupt participant expectations based on the current statutory requirements. For example, the PBGC might adopt new regulations providing that PBGC lump sum obligations would be valued on the basis of the rate for 30-year obligations of the United States Treasury. The PBGC might at that time, for example, provide for a 5-year transition to the new rates, with the lump sum entitlement under the present system being modified each year by 20% of the difference between the amounts that would be due under the old and new approaches.

If a substantial change in private sector lump sum valuations would result from changes in permitted assumptions, it might also be appropriate to reconsider the appropriateness of permitting increased interest rate assumptions in the valuation of large private-sector lump sum entitlements. Section 417(e) of the Code and section 205(g) of ERISA now permit private sector plan administrators to employ interest rates that are 20% higher than the PBGC's rates in valuing lump sums in excess of $25,000.

The PBGC intends in any event that if it eventually adopts a lump sum valuation system based on the proposed annuity valuation system, it will not pay to participants receiving lump sums from the PBGC the amount of the loading charge included in the annuity valuation and charged to the plan's sponsor(s) and the members of their controlled group, if any, under section 4062(b) of ERISA. The elimination of the loading component from lump sums paid by the PBGC would be a change in present practice. The change would be justified because the cost of determining participant benefits is a substantial portion of the loading charge, and in the case of a small benefit may approach or even exceed the portion of the loading charge attributable to payment of the participant's benefits.

The PBGC also invites comments on any effects the proposed amendment could have in other contexts where PBGC interest rates are used, such as the merger and spinoff calculations prescribed by Treas. Reg. 1.414(l)–1(b)(5)(ii), or the determination of the accrued benefit derived from the contributions made by an employee under ERISA section 204(c)(2)(B) and Internal Revenue Code section 411(c)(2)(B).

The PBGC's own regulation on Benefit Reductions in Terminated Single-Employer Pension Plans and Recoupment of Benefit Overpayments, 29 CFR part 2623, specifies that "[t]he PBGC will compute interest on overpayments and underpayments using the interest rate established for valuing immediate annuities as set forth in part 2619 * * *." 29 CFR 2623.11(d). The PBGC intends that the immediate annuity rate to be used in lump sum valuations would continue to be used in this context. The PBGC invites comment on this intended approach. For instance, the PBGC might wish to consider paying interest on lump sum entitlements either on the basis of all the rates used to calculate a lump sum or on the basis of a standard short-term interest rate.

Unisex Lump Sum Calculations

Additionally, the proposed regulation will provide that when the PBGC discharges its obligations to a participant in a trusteed plan through a de minimis lump sum payment (i.e., one that does not exceed $3,500; see 29 CFR 2613.8(b)(1)), the value of the participant's benefit will be calculated on the basis of a unisex mortality table; i.e., the PBGC would calculate lump sum payments to men and women using the same mortality assumptions. The PBGC is proposing this change in its current practice to conform to the unisex mortality assumptions ordinarily employed in lump sum calculations by private pension plans; such plans shifted from sex distinct to unisex assumptions to provide equal benefits to males and females in response to court decisions requiring such treatment in certain circumstances. Lump sum payments to women are somewhat lower and lump sum payments to men are somewhat higher under unisex mortality assumptions than they are under mortality assumptions that distinguish participants on the basis of sex, such as those now used by the PBGC.

The PBGC believes that its unisex tables should take into account its experience, i.e., the tables should recognize the historical high percentages of male participants in trusteed plans. The desired mix of male and female participants can be reasonably simulated by increasing the age indexes in male tables by one year, i.e., a 1-year setback from the male table; the same result would be achieved by decreasing the age indexes in female tables by four years. Because the unisex tables thus entail modifications of female mortality assumptions that are greater than the modifications of male mortality assumptions, the decreases in lump sum entitlements for women will be greater than the increases for men. The lump sum amounts paid to female participants will be reduced, while the amounts paid to male participants will be increased. The PBGC anticipates that the amount of the decrease for females would average approximately 8% at age 65 (and up to approximately 16% at younger ages) and the amount of the increase for males would average approximately 2% at age 65 (and up to approximately 4% at younger ages). However, because the maximum de minimis lump sum amount is $3500, the amounts of the changes will not be great.

The Amendment

The major changes made by the amendment would be in subpart C of the single-employer regulation (existing §§ 2619.41 through 2619.48). However, §§ 2619.3(a) and 2619.25(b)(2), which refer to subpart C provisions, would be amended to reflect the correct references. The new appendix A would be enlarged to include new mortality tables that incorporate the recommendations of the Committee on Annuities of the Society of Actuaries. Appendix B would be enlarged to include for each month the new interest rates and the periods during which they would apply to the valuation of annuity benefits. Tables of lives, like those contained in current appendix C, are unnecessary and thus would not be published under the proposed regulation. The new appendix C would set forth expense loading assumptions.

The amendment would have no effect on the first section (§ 2619.41, Purpose and scope) or the last section (existing § 2619.48, Withdrawal of employee contributions) of subpart C, except to renumber the latter as § 2619.44. New § 2619.42(a) restates the rule from existing § 2619.43(b) regarding the form of benefit to be valued. New § 2619.42(b) restates the rule regarding the timing of benefits from existing § 2619.46(b). Most of the other sections of subpart C would be deleted and replaced by slightly reworded versions of §§ 2676.13 through 2676.14 from the multiemployer regulation.

New § 2619.43(a) carries over the substance of existing §§ 2619.43(a) and (c) and 2619.44(a). Like existing § 2619.43(a) (and unlike § 2676.13 in the multiemployer regulation), the new section makes clear that the actuarial formulas set forth in the regulation are to be regarded as standards of accuracy, not as absolute requirements.

Paragraphs (b) through (i) of new § 2619.43 contain actuarial formulas that would replace the formulas now set forth in existing §§ 2619.44, 2619.45, and 2619.47. The new formulas in paragraphs (b) through (i) are identical with those in §§ 2676.13(b) through (i) of the multiemployer regulation. Paragraphs (j) and (k) of new § 2619.43 restate the rules regarding single life cash refund annuities and installment refund annuities from existing §§ 2619.44 (m) and (n).

The following table shows the location of the proposed new formula corresponding to each valuation provision in the existing single-employer regulation.

Existing provision	Proposed provision
2619.44(c)	2619.43(c)(2).
2619.44(d)	2619.43(c)(1).
2619.44(e)	2619.43(g)(2).
2619.44(f)	2619.43(g)(1).
2619.44(g)	2619.43(c)(3).
2619.44(h)	2619.43(e)(2).
2619.44(i)	2619.43(e)(1).
2619.44(j)	2619.43(e)(4).
2619.44(k)	2619.43(e)(4).
2619.44(l)	2619.43(e)(3).
2619.44(m)	2619.43(j).
2619.44(n)	2619.43(k).
2619.45	2619.43(b), (d), (f), (g)(3), (g)(4).
2619.47(b)	2619.43(h)(1).
2619.47(c)	2619.43(h)(2).
2619.47(d)	2619.43(i)(1).
2619.47(e)	2619.43(i)(1).
2619.47(f)	2619.43(i)(2).

The deletion of the formulas in prior § 2619.44 may cause some inconvenience for practitioners wishing to use them to calculate lump sum entitlements using the PBGC's historical interest assumptions, because the new formulas, though yielding the same results, were developed for ease of application with "select and ultimate" assumptions. The PBGC expects that this inconvenience will be minimal in view of the formulas' ready availability in prior publications.

To avoid uncertainty among persons attempting to remain informed of changes in PBGC's assumptions, the PBGC will promulgate a new series of interest assumptions each month as necessary to respond to changes in current rates of investment return and consequent expectations regarding private sector annuity prices. The rate series would be constructed so as to produce values the total of which, for a typical plan, will be in line with the cost of commercial annuities covering the plan's annuity benefits—the same criterion used in setting rates under the existing single-employer regulation.

The multiemployer regulation will be simultaneously amended so that the same mortality, loading, and interest assumptions will be employed to determine the values of benefits under multiemployer plans after a mass withdrawal.

Because the mortality, loading, and interest assumptions will be set out in appendixes to the multiemployer regulation, §§ 2676.14 and 2676.15 will be deleted, and § 2676.16 will be redesignated as § 2676.14.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this proposed regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more, or create a major increase in costs or prices for consumers, individual industries, or geographic regions, or have significant adverse effects on competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. Such plans typically contract with actuarial firms, insurance companies, and other service providers for actuarial services. The larger providers of actuarial services perform valuations by computer, and such providers serve the great majority of small plans. For such service providers, the proposed amendment would necessitate a one-time programming expense that would be amortized over a period of time and spread among not only small plan clients but larger plan clients as well. The economic impact of the amendment on each such small plan would thus be insignificant. Accordingly, compliance with sections 603 and 604 of the Regulatory Flexibility Act is waived.

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, the PBGC proposes to amend parts 2619 and 2676 of chapter XXVI of title 29, Code of Federal Regulations, as follows:

PART 2619—VALUATION OF PLAN BENEFITS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

§ 2619.3 [Amended]

2. In § 2619.3, the first sentence of paragraph (a) is amended by removing the words "§ 2619.46 of".

§ 2619.25 [Amended]

3. In § 2619.25, the second sentence of paragraph (b)(2) is amended by removing the words "§ 2619.46(c)" and adding in their place "subpart C of this part".

4. Sections 2619.42 and 2619.43 are revised to read as follows:

§ 2619.42 Benefits to be valued.

(a) *Form of benefit.* The plan administrator shall determine the form of each benefit to be valued, without regard to the form of benefit valued in any prior year, in accordance with the following rules:

(1) If a benefit is in pay status as of the valuation date, the plan administrator shall value the form of the benefit being paid.

(2) If a benefit is not in pay status as of the valuation date but a valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit so elected.

(3) If a benefit is not in pay status as of the valuation date and no valid election with respect to the form of benefit has been made on or before the valuation date, the plan administrator shall value the form of benefit that, under the terms of the plan, is payable in the absence of a valid election.

(b) *Timing of benefit.* The plan administrator shall value benefits whose starting date is subject to election using the assumption specified in paragraph (b)(1) or (b)(2) of this section.

(1) *Where election made.* If a valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the starting date so elected.

(2) *Where no election made.* If no valid election of the starting date of a benefit has been made on or before the valuation date, the plan administrator shall assume that the starting date of the benefit is the later of—

(i) The expected retirement age, as determined under subpart D of this part, of the participant with respect to whom the benefit is payable, or

(ii) The valuation date.

§ 2619.43 Valuation methods.

(a) *General rule.* The plan administrator shall value annuity benefits as of the valuation date by—

(1) using the mortality assumptions prescribed by Tables VII through XII of appendix A to this part and the interest assumptions prescribed by Table II of appendix B to this part,

(2) using interpolation methods, where necessary, at least as accurate as linear interpolation,

(3) using formulas that are at least as accurate as the formulas set forth in paragraphs (b) through (k) of this section, and

(4) adjusting the values to reflect loading expenses in accordance with appendix C to this part.

For valuing benefits to be paid as lump sums, and for determining whether the lump sum value of a benefit exceeds $3,500, the plan administrator shall value benefits in the same manner as benefits to be paid as annuities except that the mortality assumptions set forth in Tables I through VI of appendix A to this part and the interest assumptions set forth in Table I of appendix B to this part shall apply, and there shall be no adjustment to reflect loading expenses.

(b) *Single-sum payments (other than death benefits).* The present value of a single-sum payment of *1* to be made *n* years after the valuation date is as follows:

(1) If the payment is not contingent on the survival of any person:

$$v^{0:n} = \left(\frac{1}{1+i_{k+1}}\right)^{j} \cdot \prod_{t=1}^{k} \frac{1}{1+i_t} \quad ,$$

where k is the greatest integer such that $k \le n$, $j=n-k$ (hence $0 \le j < 1$), $v^{0:0}=1$, and i_t is the interest rate determined under appendix B applicable to the year ending on the tth anniversary of the valuation date.

(2) If the payment is contingent on the survival of a person aged x on the valuation date:

$${}_{n}p_{x} \cdot v^{0:n} = v^{0:n} \cdot \prod_{t=0}^{n-1} (1 - q_{x+t}) \quad ,$$

where q_x is the probability that a person living at age x will not survive to age $x+1$, as determined under appendix A to this part.

(3) If the payment is contingent on the survival of two persons aged x and y respectively on the valuation date:

$$ {}_np_x \cdot {}_np_y \cdot v^{0:n} \ . $$

(c) *Basic annuities in pay status.* The present value of an annuity due providing payments of $1/m$, m times per year, starting on the valuation date, is as follows:

(1) If the annuity is for a term certain of r years after the valuation date and is not contingent on the survival of any person:

$$ \ddot{a}^{(m)}_{\overline{r|}} = \frac{1}{m} \sum_{t=0}^{r-1} \frac{v^{0:t}(v^{0:t} - v^{0:t+1})}{v^{0:t} - v^{0:t+1/m}} \ . $$

(2) If the annuity is for the life of a person aged x on the valuation date:

$$ \ddot{a}^{(m)}_{x} = \sum_{t=0}^{\infty} (v^{0:t} \cdot {}_tp_x) - \frac{m-1}{2m} \ . $$

(3) If the annuity is for the joint lives of two persons aged x and y on the valuation date:

$$ \ddot{a}^{(m)}_{x:y} = \sum_{t=0}^{\infty} (v^{0:t} \cdot {}_tp_x \cdot {}_tp_y) - \frac{m-1}{2m} \ . $$

(d) *Basic deferred annuities.* The present value of an annuity due providing payments of $1/m$, m times per year, starting n years after the valuation date, is as follows:

(1) If the annuity is for a term certain of r years and is not contingent on the survival of any person:

$$ {}_{n|}\ddot{a}^{(m)}_{\overline{r|}} = \ddot{a}^{(m)}_{\overline{n+r|}} - \ddot{a}^{(m)}_{\overline{n|}} \ . $$

(2) If the annuity is for a term certain of r years and is contingent on the survival for n years of a person aged x on the valuation date:

$$ {}_np_x \cdot {}_{n|}\ddot{a}^{(m)}_{\overline{r|}} \ . $$

(3) If the annuity is for the life of a person aged x on the valuation date:

$$ {}_{n|}\ddot{a}^{(m)}_{x} = \sum_{t=n}^{\infty} (v^{0:t} \cdot {}_tp_x) - v^{0:n} \cdot {}_np_x \cdot \frac{m-1}{2m} \ . $$

(4) If the annuity is for the life of a person aged y on the valuation date and is contingent on the survival for n years of a person aged x on the valuation date:

$${}_{n}p_{x} \cdot {}_{n|}\ddot{a}^{(m)}_{\overline{r|}} \quad .$$

(5) If the annuity is for the joint lives of two persons aged x and y on the valuation date (if upon the death of the person aged y the person aged x may elect an actuarially increased single life annuity or if a new person may succeed to the survivor benefit, the mortality of the person aged y during the deferral period should be ignored; i.e., ${}_{n}p_{y} = 1$):

$${}_{n|}\ddot{a}^{(m)}_{x:y} = \sum_{t=n}^{\infty} (v^{0:t} \cdot {}_{t}p_{x} \cdot {}_{t}p_{y}) - v^{0:n} \cdot {}_{n}p_{x} \cdot {}_{n}p_{y} \cdot \frac{m-1}{2m} \quad .$$

(e) *Joint and survivor annuities in pay status.* The present value of an annuity due providing payments m times per year, starting on the valuation date, in an initial amount of $1/m$ per payment, and in an ultimate amount of s/m per payment, is as follows:

(1) If the annuity is payable in the initial amount for the life of a person aged x on the valuation date and, after the death of that person, in the ultimate amount for the life of a person aged y on the valuation date:

$$\ddot{a}^{(m)}_{x} + s(\ddot{a}^{(m)}_{y} - \ddot{a}^{(m)}_{x:y}) \quad .$$

(2) If the annuity is payable in the initial amount for the joint lives of two persons aged x and y on the valuation date and, after the death of either of those persons, in the ultimate amount for the life of the survivor:

$$\ddot{a}^{(m)}_{x:y} + s(\ddot{a}^{(m)}_{x} + \ddot{a}^{(m)}_{y} - 2 \cdot \ddot{a}^{(m)}_{x:y}) \quad .$$

(3) If the annuity is payable in the initial amount for a term certain of r years after the valuation date or for the life of person aged x on the valuation date (whichever of those two periods is longer) and, after the expiration of the term certain and the death of that person, in the ultimate amount for the life of a person aged y on the valuation date:

$$\ddot{a}^{(m)}_{\overline{r|}} + {}_{r|}\ddot{a}^{(m)}_{x} + s({}_{r|}\ddot{a}^{(m)}_{y} - {}_{r|}\ddot{a}^{(m)}_{x:y}) \quad .$$

(4) If the annuity is payable in the initial amount for a term certain of r years after the valuation date or for the joint lives of two persons aged x and y on the valuation date (whichever of those two periods is longer) and, after the expiration of the term certain and the death of either of the persons, in the ultimate amount for the life of the survivor:

$$\ddot{a}^{(m)}_{\overline{r|}} + {}_{r|}\ddot{a}^{(m)}_{x:y} + s({}_{r|}\ddot{a}^{(m)}_{x} + {}_{r|}\ddot{a}^{(m)}_{y} - 2 \cdot {}_{r|}\ddot{a}^{(m)}_{x:y}) \quad .$$

(f) *Deferred joint and survivor annuities.* The present value of an annuity due providing payments m times per year, starting n years after the valuation date, in an initial amount of $1/m$ per payment, and in an ultimate amount of s/m per payment, contingent on the survival for n years of person aged x on the valuation date, is as follows:

(1) If the annuity is payable in the initial amount for the life of the person and, after the death of that person, in the ultimate amount for the life of a person aged y on the valuation date:

$${}_{n|}\ddot{a}_{x}^{(m)} + s({}_{n}p_{x} \cdot {}_{n|}\ddot{a}_{y}^{(m)} - {}_{n|}\ddot{a}_{x:y}^{(m)}) .$$

(2) If the annuity is payable in the initial amount for the joint lives of the person and a person aged *y* on the valuation date and, after the death of either of those persons, in the ultimate amount for the life of the survivor:

$${}_{n|}\ddot{a}_{x:y}^{(m)} + s({}_{n|}\ddot{a}_{x}^{(m)} + {}_{n}p_{x} \cdot {}_{n|}\ddot{a}_{y}^{(m)} - 2\,{}_{n|}\ddot{a}_{x:y}^{(m)}) .$$

(3) If the annuity is payable in the initial amount for a term certain of *r* years or for the life of the person (whichever of those two periods is longer) and, after the expiration of the term certain and the death of that person, in the ultimate amount for the life of a person aged *y* on the valuation date:

$${}_{n}p_{x} \cdot {}_{n|}\ddot{a}_{\overline{r}|}^{(m)} + {}_{n+r|}\ddot{a}_{x}^{(m)} + s({}_{n}p_{x} \cdot {}_{n+r|}\ddot{a}_{y}^{(m)} - {}_{n+r|}\ddot{a}_{x:y}^{(m)}) .$$

(4) If the annuity is payable in the initial amount for a term certain of *r* years or for the joint lives of the person and a person aged *y* on the valuation date (whichever of those two periods is longer) and, after the expiration of the term certain and the death of either of those persons, in the ultimate amount for the life of the survivor:

$${}_{n}p_{x} \cdot {}_{n|}\ddot{a}_{\overline{r}|}^{(m)} + {}_{n+r|}\ddot{a}_{x:y}^{(m)} + s({}_{n+r|}\ddot{a}_{x}^{(m)} + {}_{n}p_{x} \cdot {}_{n+r|}\ddot{a}_{y}^{(m)} - 2 \cdot {}_{n+r|}\ddot{a}_{x:y}^{(m)}) .$$

(g) *Temporary life annuities and certain and life annuities.* The present value of an annuity due providing payments of *1/m*, *m* times per year, for the life of a person aged *x* on the valuation date or a term certain of *r* years, is as follows:

(1) if the annuity starts on the valuation date and is for the shorter of those two periods:

$$\ddot{a}_{x}^{(m)} - {}_{r|}\ddot{a}_{x}^{(m)} .$$

(2) If the annuity starts on the valuation date and is for the longer of those two periods:

$$\ddot{a}_{\overline{r}|}^{(m)} + {}_{r|}\ddot{a}_{x}^{(m)} .$$

(3) If, contingent on the survival of the person for *n* years, the annuity starts *n* years after the valuation date and is for the shorter of those two periods:

$${}_{n|}\ddot{a}_{x}^{(m)} - {}_{n+r|}\ddot{a}_{x}^{(m)} .$$

(4) If, contingent on the survival of the person for *n* years, the annuity starts *n* years after the valuation date and is for the longer of those two periods:

$${}_{n}p_x \cdot {}_{n|}\ddot{a}^{(m)}_{\overline{r}|} + {}_{n+r|}\ddot{a}^{(m)}_x \quad .$$

(h) *Fixed single-sum death benefits.* The present value of a fixed single-sum payment of *1* to be made upon the death of a person aged **x** on the valuation date is as follows:

(1) If the payment is to be made whenever death occurs:

$$\bar{A}_x = \sum_{t=0}^{\infty} v^{0:t+1/2}({}_{t}p_x - {}_{t+1}p_x) \quad .$$

(2) If the payment is to be made only if the person dies within *r* years after the valuation date:

$$\bar{A}^{1}_{x:\overline{r}|} = \sum_{t=0}^{r-1} v^{0:t+1/2}({}_{t}p_x - {}_{t+1}p_x) \quad .$$

(3) If the payment is to be made only if the person dies at least *n* years after the valuation date:

$$\bar{A}_x - \bar{A}^{1}_{x:\overline{n}|} \quad .$$

(4) If the payment is to be made only if the person dies at least *n* years, but within *n+r* years, after the valuation date:

$$\bar{A}^{1}_{x:\overline{n+r}|} - \bar{A}^{1}_{x:\overline{n}|} \quad .$$

(i) *Variable single-sum death benefits.* The present value of a single-sum payment to be made upon the death of a person aged *x* on the valuation date, if the person dies within *r* years after the valuation date, is as follows:

(1) If the amount payable is initially *r–1/m* and decreases by *1/m*, *m* times per year:

$$\sum_{t=0}^{r-1}\left(r - t - \frac{m+1}{2m}\right) \cdot v^{0:t+1/2} \cdot ({}_{t}p_x - {}_{t+1}p_x) \quad .$$

(2) If the amount payable is initially *1* and increases at an effective interest rate of *j*, compounded annually:

$$\sum_{t=0}^{r-1} (1+j)^{t+1/2} \cdot v^{0:t+1/2} \cdot ({}_{t}p_x - {}_{t+1}p_x) \quad .$$

(j) *Single life cash refund annuity.* A cash refund annuity is an annuity under which if the participant dies after retirement and before the time when he or she has received annuity payments equal to a fixed sum (usually the amount of his or her mandatory employee contributions, with or without interest), then the balance of the fixed sum is paid as a lump-sum death benefit. The plan administrator shall determine the value of a cash refund annuity by adding the values of—

(1) A life annuity payable periodically, valued in accordance with § 2619.43(c)(2), and

(2) A death benefit in the form of decreasing term insurance decreasing periodically, valued in accordance with § 2619.43(i)(1).

(k) *Installment refund annuity.* An installment refund annuity is an annuity under which if the participant dies after retirement and before the time he or she has received annuity payments equal to a fixed amount (usually the amount of his or her mandatory employee contributions, with or without interest), then the balance is paid as a death benefit in periodic installments, each (except possibly the last) equal in amount to the participant's annuity payments. The plan administrator shall compute the value of an installment refund annuity by valuing it as an annuity certain and continuous in accordance with § 2619.43(g)(2). The period certain shall be determined by dividing the fixed amount by the amount of the periodic annuity payment.

§§ 2619.44 through 2619.47 [Removed]

§ 2619.48 [Redesignated as § 2619.44]

5. Sections 2619.44 through 2619.47 are removed, and § 2619.48 is redesignated as § 2619.44.

6. The heading of appendix A to part 2619 and the introductory material preceding Table I of appendix A is revised to read as follows:

Appendix A to Part 2619—Mortality Rate Tables

To determine the value of mortality factors of the form ${}_{t}p_x$ (as defined in § 2619.43(b)(2)) for purposes of applying the formulas set forth in § 2619.43 (b) through (k), and in determining the value of any mortality factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of q_x prescribed in Tables VII through XII of this appendix.

If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the mortality factors involved in the valuation of the death benefit shall be determined as follows. In the case of factors that represent the mortality of the pay status annuitant, the plan administrator shall apply the mortality rates that are applicable to the annuity in pay status under appendix A. In the case of factors that represent the mortality of the death beneficiary, the plan administrator shall apply the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under Table VII or VIII of this appendix.

For determining whether the value of a participant's benefit is $3,500 or less under § 2613.8(b)(1) and, if so, for calculating the value of the benefit, the PBGC will employ the mortality assumptions obtained from Tables I through VI of this appendix by substituting *x+1* for *x* throughout the male mortality table associated with the participant's health status. For example, a healthy female participant's lump sum would be determined using Table I (healthy male participants), modified so that all entries *x* in the table are increased by 1 (q_{16}=.001437; q_{17}=.001414; etc.). The Tables provide, for each age (denoted by *x*), the probability that a person assumed to be living at that age will not survive to attain age *x+1*. (The sample tables for healthy participants are based on data obtained by the Committee on Annuities of the Society of Actuaries from mortality experience through 1983.)

7. Appendix A to part 2619 is amended by adding Tables VII through XII as follows:

Tables VII and VIII—Mortality Tables for Healthy Lives

The values of q_x applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in pay status on the valuation date, and to deferred benefits other than annuities or lump sums, are as follows:

TABLE VII.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

Age *x*	q_x
5	0.000342
6	0.000318
7	0.000302
8	0.000294
9	0.000292
10	0.000293
11	0.000298
12	0.000304
13	0.000310
14	0.000317
15	0.000325
16	0.000333
17	0.000343
18	0.000353
19	0.000365
20	0.000377
21	0.000392
22	0.000408
23	0.000424
24	0.000444
25	0.000464
26	0.000488
27	0.000513
28	0.000542
29	0.000572
30	0.000607
31	0.000645
32	0.000687
33	0.000734
34	0.000785
35	0.000850
36	0.000907
37	0.000966
38	0.001039
39	0.001128
40	0.001238
41	0.001370
42	0.001527
43	0.001715
44	0.001932
45	0.002183
46	0.002471
47	0.002790
48	0.003138
49	0.003513
50	0.003909
51	0.004324
52	0.004755
53	0.005200
54	0.005660
55	0.006131
56	0.006618
57	0.007139
58	0.007719
59	0.008384
60	0.009158
61	0.010064
62	0.011133
63	0.012391
64	0.013868
65	0.015592
66	0.017579
67	0.019804
68	0.022229
69	0.024817
70	0.027530
71	0.030354
72	0.033370
73	0.036680
74	0.040388
75	0.044597
76	0.049388
77	0.054758
78	0.060678
79	0.067125
80	0.074070
81	0.081484
82	0.089320
83	0.097525
84	0.106047
85	0.114836
86	0.124170
87	0.133870
88	0.144073
89	0.154859
90	0.166307
91	0.178214
92	0.190460
93	0.203007
94	0.217904
95	0.234086
96	0.248436
97	0.263954
98	0.280803
99	0.299154
100	0.319185
101	0.341086
102	0.365052
103	0.393102
104	0.427255
105	0.469531
106	0.521945
107	0.586518
108	0.665268
109	0.760215
110	1.000000

TABLE VIII.—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS

Age x	q_x
11	0.000342
12	0.000318
13	0.000302
14	0.000294
15	0.000292
16	0.000293
17	0.000298
18	0.000304
19	0.000310
20	0.000317
21	0.000325
22	0.000333
23	0.000343
24	0.000353
25	0.000365
26	0.000377
27	0.000392
28	0.000408
29	0.000424
30	0.000444
31	0.000464
32	0.000488
33	0.000513
34	0.000542
35	0.000572
36	0.000607
37	0.000645
38	0.000687
39	0.000734
40	0.000785
41	0.000860
42	0.000907
43	0.000966
44	0.001039
45	0.001128
46	0.001238
47	0.001370
48	0.001527
49	0.001715
50	0.001932
51	0.002183
52	0.002471
53	0.002790
54	0.003138
55	0.003513
56	0.003909
57	0.004324
58	0.004755
59	0.005200
60	0.005660
61	0.006131
62	0.006618
63	0.007139
64	0.007719
65	0.008384
66	0.009158
67	0.010064
68	0.011133
69	0.012391
70	0.013868
71	0.015592
72	0.017579
73	0.019804
74	0.022229
75	0.024817
76	0.027530
77	0.030354
78	0.033370
79	0.036680
80	0.040388
81	0.044597
82	0.049388
83	0.054758
84	0.060678
85	0.067125
86	0.074070
87	0.081484
88	0.089320
89	0.097525
90	0.106047
91	0.114836
92	0.124170
93	0.133870
94	0.144073
95	0.154859
96	0.166307
97	0.178214
98	0.190460
99	0.203007
100	0.217904
101	0.234086
102	0.248436
103	0.263954
104	0.280803
105	0.299154
106	0.319185
107	0.341086
108	0.365052
109	0.393102
110	0.427255
111	0.469531
112	0.521945
113	0.586518
114	0.665268
115	0.760215
116	1.000000

Tables IX and X—Mortality Tables for Disabled Lives (Other Than Social Security Disability)

The values of q_x applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are as follows:

TABLE IX.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
2	0.000342
3	0.000318
4	0.000302
5	0.000294
6	0.000292
7	0.000293
8	0.000298
9	0.000304
10	0.000310
11	0.000317
12	0.000325
13	0.000333
14	0.000343
15	0.000353
16	0.000365
17	0.000377
18	0.000392
19	0.000408
20	0.000424
21	0.000444
22	0.000464
23	0.000488
24	0.000513
25	0.000542
26	0.000572
27	0.000607
28	0.000645
29	0.000687
30	0.000734
31	0.000785
32	0.000860
33	0.000907
34	0.000966
35	0.001039
36	0.001128
37	0.001238
38	0.001370
39	0.001527
40	0.001715
41	0.001932
42	0.002183
43	0.002471
44	0.002790
45	0.003138
46	0.003513
47	0.003909
48	0.004324
49	0.004755
50	0.005200
51	0.005660
52	0.006131
53	0.006618
54	0.007139
55	0.007719
56	0.008384
57	0.009158
58	0.010064
59	0.011133
60	0.012391
61	0.013868
62	0.015592
63	0.017579
64	0.019804
65	0.022229
66	0.024817
67	0.027530
68	0.030354
69	0.033370
70	0.036680
71	0.040388
72	0.044597
73	0.049388
74	0.054758
75	0.060678
76	0.067125
77	0.074070
78	0.081484
79	0.089320
80	0.097525
81	0.106047
82	0.114836
83	0.124170
84	0.133870
85	0.144073
86	0.154859
87	0.166307
88	0.178214
89	0.190460
90	0.203007
91	0.217904
92	0.234086
93	0.248436
94	0.263954
95	0.280803
96	0.299154
97	0.319185
98	0.341086
99	0.365052
100	0.393102
101	0.427255
102	0.469531
103	0.521945
104	0.586518
105	0.665268
106	0.760215
107	1.000000

TABLE X.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
8	0.000342
9	0.000318
10	0.000302
11	0.000294
12	0.000292
13	0.000293
14	0.000298
15	0.000304
16	0.000310
17	0.000317
18	0.000325
19	0.000333
20	0.000343
21	0.000353
22	0.000365
23	0.000377
24	0.000392
25	0.000408
26	0.000424
27	0.000444
28	0.000464
29	0.000488
30	0.000513
31	0.000542
32	0.000572
33	0.000607
34	0.000645
35	0.000687
36	0.000734
37	0.000785
38	0.000860
39	0.000907
40	0.000966
41	0.001039
42	0.001128
43	0.001238
44	0.001370
45	0.001527
46	0.001715
47	0.001932
48	0.002183
49	0.002471
50	0.002790
51	0.003138
52	0.003513
53	0.003909
54	0.004324
55	0.004755
56	0.005200
57	0.005660
58	0.006131
59	0.006618
60	0.007139
61	0.007719
62	0.008384
63	0.009158
64	0.010064
65	0.011133
66	0.012391
67	0.013868
68	0.015592
69	0.017579
70	0.019804
71	0.022229
72	0.024817
73	0.027530
74	0.030354
75	0.033370
76	0.036680
77	0.040388
78	0.044597
79	0.049388
80	0.054758
81	0.060678
82	0.067125
83	0.074070
84	0.081484
85	0.089320
86	0.097525
87	0.106047
88	0.114836
89	0.124170
90	0.133870
91	0.144073
92	0.154859
93	0.166307
94	0.178214
95	0.190460
96	0.203007
97	0.217904
98	0.234086
99	0.248436
100	0.263954
101	0.280803
102	0.299154
103	0.319185
104	0.341086
105	0.365052
106	0.393102
107	0.427255
108	0.469531
109	0.521945
110	0.586518
111	0.665268
112	0.760215
113	1.000000

Tables XI and XII—Mortality Tables for Disabled Lives (Social Security Disability)

The values of q_x applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are as follows:

TABLE XI.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.048300
21	0.048300
22	0.048300
23	0.048300
24	0.048300
25	0.048300
26	0.046100
27	0.043600
28	0.041100
29	0.038600
30	0.036200
31	0.033900
32	0.032000
33	0.030200
34	0.028800
35	0.027800
36	0.027200
37	0.027100
38	0.027300
39	0.027600
40	0.028200
41	0.028800
42	0.029700
43	0.030500
44	0.031400
45	0.032200
46	0.033000
47	0.034000
48	0.035300
49	0.036700
50	0.038300
51	0.040100
52	0.042000
53	0.043900
54	0.046000
55	0.048200
56	0.050600
57	0.053100
58	0.055500
59	0.058100
60	0.060300
61	0.062400
62	0.064300
63	0.065700
64	0.066800
65	0.069225
66	0.071813
67	0.074526
68	0.077350
69	0.080366
70	0.083676
71	0.087384
72	0.091593
73	0.096384
74	0.101754
75	0.107674
76	0.114121
77	0.121066
78	0.128480
79	0.136316
80	0.144521
81	0.153043
82	0.161832
83	0.171166
84	0.180866
85	0.191069
86	0.201855
87	0.213303
88	0.225210
89	0.237456
90	0.250003
91	0.264900
92	0.281082
93	0.295432
94	0.310950
95	0.327799
96	0.346150
97	0.366181
98	0.388082
99	0.412048
100	0.440098
101	0.474251
102	0.568941
103	0.568941
104	0.633514
105	0.712264
106	0.807211
107	1.000000

TABLE XII.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.026300
21	0.026300
22	0.026300
23	0.026300
24	0.026300
25	0.026300
26	0.025700
27	0.025300
28	0.024700
29	0.024200
30	0.023700
31	0.023200
32	0.022700
33	0.022200
34	0.021800
35	0.021400
36	0.021200
37	0.021000
38	0.020800
39	0.020800
40	0.020900
41	0.021000
42	0.021300
43	0.021600
44	0.021900
45	0.022400
46	0.022900
47	0.023500
48	0.024200
49	0.024900
50	0.025700
51	0.026400
52	0.027200
53	0.028100
54	0.028800
55	0.029500
56	0.030100
57	0.030700
58	0.031500
59	0.032300
60	0.033100
61	0.033900
62	0.034700
63	0.035500
64	0.036200
65	0.037269
66	0.038527
67	0.040004
68	0.041728
69	0.043715
70	0.045946
71	0.048365
72	0.050953
73	0.053666
74	0.056490
75	0.059506
76	0.062816
77	0.066524
78	0.070733
79	0.075524
80	0.080884
81	0.086814
82	0.093261
83	0.100206
84	0.107620
85	0.115456
86	0.123661
87	0.132183
88	0.140972
89	0.150306
90	0.160006
91	0.170209
92	0.180895
93	0.192453
94	0.204350
95	0.216596
96	0.229143
97	0.244040
98	0.260222
99	0.274572
100	0.290090
101	0.306939
102	0.325290
103	0.345321
104	0.367222
105	0.391188
106	0.419238
107	0.453391
108	0.495667
109	0.548081
110	0.612654
111	0.691404
112	0.786351
113	1.000000

8. Appendix B to Part 2619 is revised to read as follows:

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{\epsilon:n}$ (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $o < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I (SAMPLE RATES)
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	3–1–93	4–1–93	6.25	5.50	4.25	4.00	7	8
2	4–1–93	6–1–93	6.50	5.75	4.50	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{\epsilon:n}$ (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43(b)(i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date. (In the sample table printed below, the interest rates to be used for January 1995 valuation dates are 8.50% for the first 20 years and 5.75% thereafter.)

TABLE II (SAMPLE RATES)

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:		
	i_t for t =	i_t for t =	i_t for t =
January 1995	.0850 1–20	.0575 >20	N/A N/A
February 1995	.0825 1–15	.0600 16–25	.0550 >25

9. Appendix C to Part 2619 is revised to read as follows:

Appendix C to Part 2619—Loading Assumptions

The following tables of loading expenses are in effect for the indicated periods and are to be used to adjust annuity benefit values pursuant to § 2619.43(a)(4).

If the total value of the plan's benefit liabilities (as defined in 29 U.S.C. § 1301(a)(16)), exclusive of the loading charge, is—		The loading charge pursuant to § 2619.43(a)(4) equals—
Greater than	But less than or equal to	
$0	$200,000	5% of the total value of the plan's benefits, plus $200 for each plan participant.
200,000		$10,000, plus a percentage of the excess of the total value over $200,000, plus $200 for each plan participant; the percentage is equal to 1% + (i_i%—7.50%)/10, where i_i is the initial rate set forth in Table II of Appendix B for the valuation of annuities.

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

10. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1). 11. Section 2676.13 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 2676.13 Valuation methods.

(a) *General rule.* Except as otherwise provided in § 2676.14 (pertaining to plans that are closing out), the plan sponsor shall value annuity benefits as of the valuation date by—

(1) Using the mortality and interest assumptions prescribed by Tables VII through XII of appendix A to this part and Table II of appendix B to this part,

(2) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(3) In the case of a benefit described in paragraphs (b) through (i) of this section, applying the formula set forth therein for the present value of that benefit,

(4) In the case of a benefit not described in paragraphs (b) through (i) of this section, applying formulas derived from generally accepted actuarial principles in a manner consistent with the formulas set forth in paragraphs (b) through (i) of this section, and

(5) Adjusting the values to reflect loading expenses in accordance with appendix C to this part.

If the PBGC is trustee of a multiemployer plan, for determining whether the value of a participant's benefit is $3,500 or less under § 2613.8(b)(1) and, if so, for calculating the value of the benefit, the PBGC shall value benefits to be paid as lump sums in the same manner as benefits to be paid as annuities except that the mortality assumptions set forth in Tables I through VI of appendix A to this part and the interest assumptions set forth in Table I of appendix B to this part shall apply, and there shall be no adjustment to reflect loading expenses.

(b) * * *

(2) If the payment is contingent on the survival of a person aged x on the valuation date:

$${}_{n}p_{x} \cdot v^{0:n} = v^{0:n} \cdot \prod_{t=0}^{n-1} (1 - q_{x+t}) \quad ,$$

where q_x is the probability that a person living at age x will not survive to age $x + 1$, as determined under appendix A.

* * * * *

§§ 2676.14 and 2676.15 [Removed]

§ 2676.16 [Redesignated as § 2676.14]

12. Sections 2676.14 and 2676.15 are removed and § 2676.16 is redesignated as § 2676.14.

13. Appendixes A, B, and C to part 2676 are added to read as follows:

Appendix A to Part 2676—Mortality Rate Tables

In determining the value of mortality factors of the form ${}_np_x$ (as defined in § 2676.13(b)(2)) for purposes of applying the formulas set forth in § 2676.13 (b) through (k), and in determining the value of any mortality factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of q_x prescribed in Tables VII through XII of this appendix.

If an annuity for one person is in pay status on the valuation date, and if the payment of a death benefit after the valuation date to another person, who need not be identifiable on the valuation date, depends in whole or in part on the death of the pay status annuitant, then the mortality factors involved in the valuation of the death benefit shall be determined as follows. In the case of factors that represent the mortality of the pay status annuitant, the plan administrator shall apply the mortality rates that are applicable to the annuity in pay status under this appendix. In the case of factors that represent the mortality of the death beneficiary, the plan administrator shall apply the mortality rates applicable to annuities not in pay status and to deferred benefits other than annuities, under Table VII or VIII of this appendix.

If the PBGC is trustee of a multiemployer plan, for determining whether the value of a participant's benefit is $3,500 or less under § 2613.8(b)(1) and, if so, for calculating the value of the benefit, the PBGC will employ the mortality assumptions obtained by substituting *x+1* for *x* throughout the male mortality table associated with the participant's health status. For example, a healthy female participant's lump sum would be determined using Table I (healthy male participants), modified so that all entries *x* in the table are increased by *1* (q_{16}=.001437; q_{17}=.001414; etc.).

The Tables provide, for each age (denoted by *x*), the probability that a person assumed to be living at that age will not survive to attain age *x+1*. (The sample tables for healthy participants are based on data obtained by the Committee on Annuities of the Society of Actuaries from mortality experience through 1983.)

Tables I Through VI

See Tables I through VI of appendix A to part 2619.

Tables VII and VIII—Mortality Tables for Healthy Lives

The values of q_x applicable to annuities in pay status on the valuation date that are not being received as disability benefits, to annuities not in pay status on the valuation date, and to deferred benefits other than annuities, are as follows:

TABLE VII.—MORTALITY TABLE FOR HEALTHY MALE PARTICIPANTS

Age *x*	q_x
5	0.000342
6	.000318
7	.000302
8	.000294
9	.000292
10	.000293
11	.000298
12	.000304
13	.000310
14	.000317
15	.000325
16	.000333
17	.000343
18	.000353
19	.000365
20	.000377
21	.000392
22	.000408
23	.000424
24	.000444
25	.000464
26	.000488
27	.000513
28	.000542
29	.000572
30	.000607
31	.000645
32	.000687
33	.000734
34	.000785
35	.000860
36	.000907
37	.000966
38	.001039
39	.001128
40	.001238
41	.001370
42	.001527
43	.001715
44	.001932
45	.002183
46	.002471
47	.002790
48	.003138
49	.003513
50	.003909
51	.004324
52	.004755
53	.005200
54	.005660
55	.006131
56	.006618
57	.007139
58	.007719
59	.008384
60	.009158
61	.010064
62	.011133
63	.012391
64	.013868
65	.015592
66	.017579
67	.019804
68	.022229
69	.024817
70	.027530
71	.030354
72	.033370
73	.036680
74	.040388
75	.044597
76	.049388
77	.054758
78	.060678
79	.067125
80	.074070
81	.081484
82	.089320
83	.097525
84	.106047
85	.114836
86	.124170
87	.133870
88	.144073
89	.154859
90	.166307
91	.178214
92	.190460
93	.203007
94	.217904
95	.234086
96	.248436
97	.263954
98	.280803
99	.299154
100	.319185
101	.341086
102	.365052
103	.393102
104	.427255
105	.469531
106	.521945
107	.586518
108	.665268
109	.760215
110	1.000000

TABLE VIII.—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS

Age *x*	q_x
11	0.000342
12	.000318
13	.000302
14	.000294
15	.000292
16	.000293
17	.000298
18	.000304
19	.000310
20	.000317
21	.000325
22	.000333
23	.000343
24	.000353
25	.000365
26	.000377
27	.000392
28	.000408
29	.000424
30	.000444
31	.000464
32	.000488
33	.000513
34	.000542
35	.000572
36	.000607
37	.000645
38	.000687
39	.000734
40	.000785
41	.000860
42	.000907
43	.000966
44	.001039
45	.001128
46	.001238
47	.001370
48	.001527
49	.001715
50	.001932
51	.002183
52	.002471
53	.002790
54	.003138
55	.003513
56	.003909
57	.004324
58	.004755
59	.005200
60	.005660
61	.006131

TABLE VIII.—MORTALITY TABLE FOR HEALTHY FEMALE PARTICIPANTS—Continued

Age x	q_x
62	.006618
63	.007139
64	.007719
65	.008384
66	.009158
67	.010064
68	.011133
69	.012391
70	.013868
71	.015592
72	.017579
73	.019604
74	.022229
75	.024817
76	.027530
77	.030354
78	.033370
79	.036680
80	.040388
81	.044597
82	.049388
83	.054758
84	.060678
85	.067125
86	.074070
87	.081484
88	.089320
89	.097525
90	.106047
91	.114836
92	.124170
93	.133870
94	.144073
95	.154859
96	.166307
97	.178214
98	.190460
99	.203007
100	.217904
101	.234086
102	.248436
103	.263954
104	.280803
105	.299154
106	.319185
107	.341086
108	.365052
108	.393102
110	.427255
111	.469531
112	.521945
113	.586518
114	.665268
115	.760215
116	1.000000

Tables IX AND X—Mortality Tables for Disabled Lives (Other Than Social Security Disability)

The values of q_x applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which neither eligibility for, nor receipt of, Social Security disability benefits is a prerequisite, are as follows:

TABLE IX.—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
2	0.000342
3	0.000318
4	0.000302
5	0.000294
6	0.000292
7	0.000293
8	0.000298
9	0.000304
10	0.000310
11	0.000317
12	0.000325
13	0.000333
14	0.000343
15	0.000353
16	0.000365
17	0.000377
18	0.000392
19	0.000408
20	0.000424
21	0.000444
22	0.000464
23	0.000488
24	0.000513
25	0.000542
26	0.000572
27	0.000607
28	0.000645
29	0.000687
30	0.000734
31	0.000785
32	0.000860
33	0.000907
34	0.000966
35	0.001039
36	0.001128
37	0.001238
38	0.001370
39	0.001527
40	0.001715
41	0.001932
42	0.002183
43	0.002471
44	0.002790
45	0.003138
46	0.003513
47	0.003909
48	0.004324
49	0.004755
50	0.005200
51	0.005660
52	0.006131
53	0.006618
54	0.007139
55	0.007719
56	0.008384
57	0.009158
58	0.010064
59	0.011133
60	0.012391
61	0.013868
62	0.015592
63	0.017579
64	0.019804
65	0.022229
66	0.024817
67	0.027530
68	0.030354
69	0.033370
70	0.036680
71	0.040388
72	0.044597
73	0.049388
74	0.054758
75	0.060678
76	0.067125
77	0.074070
78	0.081484
79	0.089320
80	0.097525
81	0.106047
82	0.114836
83	0.124170
84	0.133870
85	0.144073
86	0.154859
87	0.166307
88	0.178214
89	0.190460
90	0.203007
91	0.217904
92	0.234086
93	0.248436
94	0.263954
95	0.280803
96	0.299154
97	0.319185
98	0.341086
99	0.365052
100	0.393102
101	0.427255
102	0.469531
103	0.521945
104	0.586518
105	0.665268
106	0.760215
107	1.000000

TABLE X.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
8	0.000342
9	0.000318
10	0.000302
11	0.000294
12	0.000292
13	0.000293
14	0.000298
15	0.000304
16	0.000310
17	0.000317
18	0.000325
19	0.000333
20	0.000343
21	0.000353
22	0.000365
23	0.000377
24	0.000392
25	0.000408
26	0.000424
27	0.000444
28	0.000464
29	0.000488
30	0.000513
31	0.000542
32	0.000572
33	0.000607
34	0.000645
35	0.000687
36	0.000734
37	0.000785
38	0.000860
39	0.000907
40	0.000966
41	0.001039
42	0.001128
43	0.001238
44	0.001370
45	0.001527
46	0.001715
47	0.001932
48	0.002183

TABLE X.—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS NOT RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	q_x
49	0.002471
50	0.002790
51	0.003138
52	0.003513
53	0.003909
54	0.004324
55	0.004755
56	0.005200
57	0.005660
58	0.006131
59	0.006618
60	0.007139
61	0.007719
62	0.008384
63	0.009158
64	0.010064
65	0.011133
66	0.012391
67	0.013868
68	0.015592
69	0.017579
70	0.019804
71	0.022229
72	0.024817
73	0.027530
74	0.030354
75	0.033370
76	0.036680
77	0.040388
78	0.044597
79	0.049388
80	0.054758
81	0.060678
82	0.067125
83	0.074070
84	0.081484
85	0.089320
86	0.097525
87	0.106047
88	0.114836
89	0.124170
90	0.133870
91	0.144073
92	0.154859
93	0.166307
94	0.178214
95	0.190460
96	0.203007
97	0.217904
98	0.234086
99	0.248436
100	0.263954
101	0.280803
102	0.299154
103	0.319185
104	0.341086
105	0.365052
106	0.393102
107	0.427255
108	0.469531
109	0.521945
110	0.586518
111	0.665268
112	0.760215
113	1.000000

Tables XI and XII—Mortality Tables for Disabled Lives (Social Security Disability)

The values of q_x applicable to annuities in pay status on the valuation date that are being received as disability benefits and for which either eligibility for, or receipt of, Social Security disability benefits is a prerequisite, are as follows:

TABLE XI—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.048300
21	0.048300
22	0.048300
23	0.048300
24	0.048300
25	0.048300
26	0.046100
27	0.043600
28	0.041100
29	0.038600
30	0.036200
31	0.033900
32	0.032000
33	0.030200
34	0.028800
35	0.027800
36	0.027200
37	0.027100
38	0.027300
39	0.027600
40	0.028200
41	0.028800
42	0.029700
43	0.030500
44	0.031400
45	0.032200
46	0.033000
47	0.034000
48	0.035300
49	0.036700
50	0.038300
51	0.040100
52	0.042000
53	0.043900
54	0.046000
55	0.048200
56	0.050600
57	0.053100
58	0.055500
59	0.058100
60	0.060300
61	0.062400
62	0.064300
63	0.065700
64	0.066800
65	0.069225
66	0.071813
67	0.074526
68	0.077350
69	0.080366
70	0.083676
71	0.087384
72	0.091593
73	0.096384
74	0.101754
75	0.107674
76	0.114121
77	0.121086
78	0.128480
79	0.136316
80	0.144521
81	0.153043

TABLE XI—MORTALITY TABLE FOR DISABLED MALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	q_x
82	0.161832
83	0.171166
84	0.180866
85	0.191069
86	0.201855
87	0.213303
88	0.225210
89	0.237456
90	0.250003
91	0.264900
92	0.281082
93	0.295432
94	0.310950
95	0.327799
96	0.346150
97	0.366181
98	0.388082
99	0.412048
100	0.440096
101	0.474251
102	0.568941
103	0.568941
104	0.633514
105	0.712264
106	0.807211
107	1.000000

TABLE XII—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS

Age x	q_x
5	0.000000
6	0.000000
7	0.000000
8	0.000000
9	0.000000
10	0.000000
11	0.000000
12	0.000000
13	0.000000
14	0.000000
15	0.000000
16	0.000000
17	0.000000
18	0.000000
19	0.000000
20	0.026300
21	0.026300
22	0.026300
23	0.026300
24	0.026300
25	0.026300
26	0.025700
27	0.025300
28	0.024700
29	0.024200
30	0.023700
31	0.023200
32	0.022700
33	0.022200
34	0.021800
35	0.021400
36	0.021200
37	0.021000
38	0.020800
39	0.020800
40	0.020900
41	0.021000
42	0.021300
43	0.021600
44	0.021900
45	0.022400

TABLE XII—MORTALITY TABLE FOR DISABLED FEMALE PARTICIPANTS RECEIVING SOCIAL SECURITY DISABILITY BENEFIT PAYMENTS—Continued

Age x	q_x
46	0.022900
47	0.023500
48	0.024200
49	0.024900
50	0.025700
51	0.026400
52	0.027200
53	0.028100
54	0.028800
55	0.029500
56	0.030100
57	0.030700
58	0.031500
59	0.032300
60	0.033100
61	0.033900
62	0.034700
63	0.035500
64	0.036200
65	0.037269
66	0.038527
67	0.040004
68	0.041728
69	0.043715
70	0.045946
71	0.048365
72	0.050953
73	0.053666
74	0.056490
75	0.059506
76	0.062816
77	0.066524
78	0.070733
79	0.075524
80	0.080894
81	0.086814
82	0.093261
83	0.100206
84	0.107620
85	0.115456
86	0.123661
87	0.132183
88	0.140972
89	0.150306
90	0.160006
91	0.170209
92	0.180995
93	0.192453
94	0.204350
95	0.216596
96	0.229143
97	0.244040
98	0.260222
99	0.274572
100	0.290090
101	0.306939
102	0.325290
103	0.345321
104	0.367222
105	0.391188
106	0.419238
107	0.453391
108	0.495667
109	0.548081
110	0.612654
111	0.691404
112	0.786351
113	1.000000

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I.—(SAMPLE RATES)
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	3–1–93	4–1–93	6.25	5.50	4.25	4.00	7	8
2	4–1–93	6–1–93	6.50	5.75	4.50	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots,$ and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date. (In the sample table printed below, the interest rates to be used for January 1995 valuation dates are 8.50% for the first 20 years and 5.75% thereafter.)

TABLE II.—(SAMPLE RATES)
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:		
	i_t for $t=$	i_t for $t=$	i_t for $t=$
January 1995	.0850 1–20	.0575 >20	N/A N/A
February 1995	.0825 1–15	.0600 16–25	.0550 >25

Appendix C to Part 2676—Loading Assumptions

The following tables of loading expenses are in effect for the indicated periods and are to be used to adjust annuity benefit values pursuant to § 2676.13(a)(5).

If the total value of the plan's benefits, exclusive of the loading charge, is—		The loading charge pursuant to § 2676.13(a)(5) equals—
Greater than	But less than or equal to	
$0	$200,000	5% of the total value of the plan's benefits, plus $200 for each plan participant.
$200,000		$10,000, plus a percentage of the excess of the total value over $200,000, plus $200 for each plan participant; the percentage is equal to 1% + (i_1%–7.50%)/10, where i_1 is the initial rate set forth in appendix B for the valuation of annuities.

Issued in Washington, DC, this 12th day of January 1993.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

Public and Indian Housing Drug Elimination Program (PHDEP)—Fiscal Year 1993; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3527; FR-3362-N-01]

NOFA for the Public and Indian Housing Drug Elimination Program (PHDEP)—Fiscal Year 1993

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993.

SUMMARY: This NOFA announces HUD's FY 1993 funding of $145,525,000 under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime. Funded programs must be part of a comprehensive plan for addressing the problem of drug-related crime. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results.

DATES: Applications must be received at the local HUD Field Office on or before Thursday, April 15, 1993, at 3:30 p.m., local time. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A *FAX* is not acceptable.

ADDRESSES: (a) *Application Kit:* An application kit may be obtained and assistance provided, from the local HUD Category A or other Field Office with delegated public housing responsibilities over an applying public housing agency (PHA), or from the Office of Indian Programs (OIP) having jurisdiction over the Indian housing authority (IHA) making an application, or by calling HUD's Resident Initiatives Clearinghouse, telephone 1-800-955-2232. The application package contains information on all exhibits and certifications required under this NOFA.

(b) *Application Submission:* An applicant may submit only one application per HA under each Notice of Funding Availability (NOFA). Joint applications are not permitted under this program. Applications (original and two copies) must be received by the deadline at the local HUD Category A or other Field Office with delegated public housing responsibilities over the applying PHA or, in the case of IHAs, to the local Office of Indian Programs with jurisdiction over the applying IHA, Attention: Director, Public Housing Division or Office of Indian Programs Director, as appropriate. A complete listing of these offices is provided in appendix "A" of this NOFA. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

FOR FURTHER INFORMATION CONTACT: Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3502 or 708-3503. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register**.

Environmental Review

Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR part 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

Coordination of Anti-Crime Efforts

To coordinate anti-crime related activities across local, State, and Federal levels to maximize their effectiveness, applicants are encouraged to contact, and work with, Operation Weed and Seed through the U.S. Department of Justice. Operation Weed and Seed is a comprehensive, multi-agency approach to combatting violent crime, drug use, and gang activity in high-crime neighborhoods. The goal is to "weed out" crime from targeted neighborhoods and then to "seed" the targeted sites with a wide range of crime and drug prevention programs, and human services agency resources to prevent crime from reoccurring. Operation Weed and Seed further emphasizes the importance of community involvement in combating drugs and violent crime. Community residents need to be empowered to assist in solving crime-related problems in their neighborhoods. In addition, the private sector needs to get involved in reducing crime. All of these entities, Federal, State, and local government, the community and the private sector must work together in partnership to create a safer, drug-free environment.

Th Weed and Seed strategy involves four basic elements:

1. Law enforcement must "weed out" the most violent offenders by coordinating and integrating the efforts of Federal, State, and local law enforcement agencies in targeted high-crime neighborhoods. No social program or community activity can flourish in an atmosphere poisoned by violent crime and drug abuse.
2. Local police departments should implement community policing in each of the targeted sites. Under community policing, law enforcement works closely with residents of the community to develop solutions to the problems of violent and drug-related crime. Community policing serves as a "bridge" between the "weeding" (law enforcement) and "seeding" (neighborhood revitalization) components.
3. After the "weeding" takes place, law enforcement and social services agencies, the private sector, and the community must work to prevent crime and violence from reoccurring by concentrating a broad array of human services—drug and crime prevention programs, drug treatment, educational opportunities, family services, and recreational activities—in the targeted sites to create an environment where crime cannot thrive.
4. Federal, State, local, and private sector resources must focus on revitalizing distressed neighborhoods through economic development and must provide economic opportunities for residents.

For further information on Operation Weed and Seed, contact the Office of Planning Management and Budget, Office of Justice Programs, U.S. Department of Justice, 366 Indiana Avenue, NW., Washington, DC 20531. Telephone (202) 307-5966.

I. Purpose and Substantive Description

(a) Authority

This program is authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et. seq.*), and regulations at 24 CFR part 961.

(b) Allocation Amounts

(1) Federal Fiscal Year 1993 Funding. The amount available, to remain available until expended, for funding under this NOFA in FY 1993 is $145,525,000. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 6, 1992, Pub. L. 102-389) (93 App. Act) appropriated $175,000,000 for the Drug Elimination Program and for drug information clearinghouse services (42 U.S.C. 11921-11925) for FY 1993. Of this amount, $5,225,000 is to be used for grants, contracts, or other technical assistance and training for or on behalf of public housing agencies, Indian housing authorities and resident organizations (including the costs of necessary travel for participants in such training). The clearinghouse services have been allocated at $500,000. Section 520 of NAHA sets aside five percent of funds appropriated for the Drug Elimination Program for the Youth Sports Program (YSP), a total figure of $8,750,000 for FY 1993. Section 581 of NAHA expanded the Drug Elimination Program to include Federally assisted, low-income housing, and the 1993 Appropriations Act made $10,000,000 of the total Drug Elimination Program appropriation available for Federally assisted, low-income housing. In addition, the 93 App. Act makes $5,000,000 available for a new youth violence prevention in low-income housing program. The amount remaining in the FY 1993 appropriation after the above deductions, $145,525,000 is the total funding available under the 93 App. Act for PHDEP grants under this NOFA.

HUD is distributing grant funds under this NOFA to each of its 10 Regional Offices according to a formula allocation. The formula allocation is based upon the relationship of the number of public and Indian housing units per region and the level of drug-related crime within each region, using statistics complied by the U.S. Department of Justice, Federal Bureau of Investigation, ("Uniform Crime Reports for Drug Abuse Violations-1990").

(2) Maximum Grant Award Amounts. Maximum grant award amounts are computed on a sliding scale, using either an overall cap to the grant award or a maximum per unit cap, depending upon the number of public housing agency administered or owned, or Indian housing authority administered or owned rental, Turnkey III Homeownership, and Mutual Help Homeownership units. Units in a section 23 Leased Housing Bond-Financed project that have been conveyed or will be conveyed with clear title to the PHA at the end of the bond term will also be included in the unit count. Such a project must be covered by a cooperation agreement during the period of the grant award. Unit counts will be taken from PHA/IHA low-rent public housing operating budget (for HUD-52564) for PHA/IHA fiscal year ending December 31, 1991, March 31, June 30, or September 30, 1992.

Amendments to the Drug Elimination Program made by the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992), permit grants, under certain conditions as given in section (c)(9) of this NOFA, below, to be used to eliminate drug-related crime in housing owned by PHAs that is not housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted. Where an application is submitted for this category of housing, the amount of eligible funding will be determined on the same per-unit basis as for federally assisted housing units, above.

The maximum grant awards are as follows, although, as discussed below, in section I.(b)(4), the Department may adjust the amount of any grant award:

(i) For housing authorities with 1-499 units: the maximum grant award is either a maximum cap of $500 per unit or a maximum grant award of $50,000, whichever is greater;

(ii) For housing authorities with 500-4,999 units: the maximum grant award is $200 per unit, or a maximum grant award of $250,000, whichever is greater;

(iii) For housing authorities with 5,000-44,999 units: the maximum grant award is a maximum cap of $150 per unit, but not more than a total maximum grant ward of $6 million;

(iv) For housing authorities with 45,000 or more units: the maximum grant award is a maximum cap of $100 per unit, or a maximum grant award of $6 million, whichever is greater;

To give an example under this scale, a housing authority with 4,000 units could apply for a maximum grant award of $800,000, i.e. $200 per unit × 4,000 units = $800,000, which is greater than the maximum flat grant award of $250,000.

An applicant shall not apply for more funding than is permitted in accordance with the maximum grant award amount as described above in this section. Any application requesting funding that exceeds the maximum grant award amount permitted will be rejected and will not be eligible for any funding unless a computational error was involved in the funding request. Such an error will be considered a curable defect in the application. Section III. (b) of this NOFA requires applicants to compute the maximum grant award amount for which they are eligible, as follows: eligible dollar amount per unit ×(times) number of units listed in low-rent public housing operating budget (form HUD-52564) for PHA/IHA fiscal year ending December 31, 1991, March 31, June 30, or September 30, 1992. The amount computed in this way must be compared with the dollar amount requested in the application to make certain the amount requested does not exceed the maximum grant award.

(3) Reallocation. Any grant funds under this NOFA that are allocated to a region, but that are not reserved for specific grantees, must be returned to HUD Headquarters for reallocation. All awards will be made to fund fully an application, except as provided in paragraph I.(b)(4) below. Any remaining funds that would only partially fund an application after all higher-ranked applications have been funded will be returned to HUD Headquarters to be reallocated. Amounts that become available due to deobligation of grant amounts will also be reallocated.

All reallocated funds will be awarded on a nationwide basis in the following manner. Each Regional Office will send a list of all its unfunded applications that scored more than 80 points (i.e., 81 or above) to Headquarters. These applications will then be ranked on a nationwide basis and fully funded according to rank until all reallocated funds have been awarded. This method will be followed to ensure a more equitable distribution of reallocated funds among the regions.

(4) Reduction of Requested Grant Amounts and Special Conditions. HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant

agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant fails to implement the program in its plan and/or fails to submit required reports;

(vi) The applicant has demonstrated an inability to manage HUD grants, particularly Drug Elimination Program grants; or

(vii) For any other reason where good cause exists.

(5) Distribution of Funds. In FY 1993, HUD is distributing grant funds to its 10 regional offices in accordance with the following schedule:

HUD region	Allocation
Region I	$7,597,869
Region II	29,575,366
Region III	14,934,804
Region IV	35,800,017
Region V	23,141,069
Region VI	15,485,017
Region VII	4,144,265
Region VIII	2,427,608
Region IX	9,364,029
Region X	3,064,936
Total	145,525,000

(c) Eligibility

Funding under this NOFA is available only for Public Housing Agencies and Indian Housing Authorities. Although section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) makes public housing resident management corporations (RMCs) eligible for Drug Elimination Program funding, the 93 App. Act limited the funds appropriated "for grants to public housing agencies". The authorizing statute includes Indian housing authorities (IHAs) in the term "public housing agencies" and, therefore, IHAs are eligible for funding. Because RMCs, unlike IHAs, constitute a separate entity from PHAs under the authorizing statute, no funds are appropriated for RMCs as direct applicants under the 93 App. Act. However, RMCs may continue to receive funding from PHA/IHA grantees to develop security and drug abuse prevention programs involving site residents as they have in the past.

An application for funding under this program may be for one or more of the following eligible activities. An applicant may submit only one application under each Notice of Funding Availability (NOFA). The following is a listing of eligible activities under this program and guidance as to their parameters:

(1) *Employment of Security Personnel.* (i) *Security Guard Personnel.* Contracting for security guard personnel services in the developments proposed for funding is permitted under this program.

(A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis, such as, patrolling inside buildings, providing guard services at building services entrances to check for ID's, or patrolling and checking car parking lots for appropriate parking decals.

(B) Contract security personnel funded by this program must meet all relevant tribal, State or local government insurance, licensing, certification, training, bonding, or other similar requirements.

(C) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel are required, and as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the security personnel are expressly prohibited from undertaking.

(D) Expenditures for activities under this paragraph may not be incurred until the grantee has executed a contract or written agreement for the additional security services.

(ii) *Employment of HA Police.* Employment of additional HA police in the developments proposed for funding is permitted under this program.

(A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any, (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate to what extent the funded activity will represent an increase over this baseline.

(C) HA police funded by this program must meet all relevant tribal, State or local government insurance, licensing, certification, training, bonding, or other similar requirements.

(D) The applicant and the cooperating local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(1) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(2) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of Local Law Enforcement Agencies for Additional Security and Protective Services.*

(i) Additional security and protective services to be funded under this program must be over and above those that the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate to what extent the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related criminal activities in a public housing community, such as computers accessing national, tribal, State or local government security networks and databases, facsimile machines, telephone equipment, bicycles, and motor scooters may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the HA. Expenditures for activities under this section may not be incurred until the grantee has executed a contract or written agreement for the additional law enforcement services.

(3) *Physical Improvements to Enhance Security.*

(i) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of barriers, lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public housing developments that are designed to enhance security and discourage drug-related activities.

(ii) An activity that is funded under any other HUD program, such as the modernization program at 24 CFR part 968, shall not also be funded by this program.

(iii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iv) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(v) Funding is not permitted for the acquisition of real property.

(vi) All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, etc., are not accessible to person with limited strength, mobility, or to persons who are hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(4) *Employment of Investigators.*

(i) Employment of one or more individuals is permitted under this program to:

(A) Investigate drug-related crime in or around the real property comprising any public housing development; and

(B) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(ii) Investigators funded by this program must meet all relevant tribal, State or local government insurance, licensing, certification, training, bonding, or other similar requirements.

(iii) The applicant, the cooperating local law enforcement agency, and the investigator(s) are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(iv) Under this section, reimbursable costs associated with the investigation of drug-related crime (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those incurred by the investigator.

(v) Funds for activities under this section may not be drawn until the grantee has executed a written agreement or contract with the local law enforcement agency.

(5) *Voluntary Tenant Patrols.*

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. Members must be volunteers and must be tenants of the development that the tenant (resident) patrol represents. Patrols established under this program are expected to patrol for drug-related criminal activity in the developments proposed for assistance, and to report these activities to the cooperating local law enforcement agency and relevant tribal, State and Federal agencies, as appropriate. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the cooperating local law enforcement agency, and the members of the tenant patrol are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect);

(D) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's liability insurance.

(iii) Communication and related equipment eligible for funding under this program shall be equipment that is reasonable, necessary, justified and related to the operation of the tenant patrol and that is otherwise permissible under tribal, State or local law.

(iv) Under this program, bicycles and uniforms (caps and other clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets) to be used by the members of the tenant patrol are eligible items.

(v) Drug elimination grant funds may not be used for any type of financial compensation, such as wages, salaries, and stipends, for voluntary tenant patrol participants.

(vi) Expenditures for activities under this section may not be incurred until the grantee has executed a written agreement or contract with the local law enforcement agency.

(6) *Programs to Reduce the Use of Drugs.* Programs that reduce the use of drugs in and around the premises of public housing developments, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program. The program should facilitate drug prevention, intervention and treatment effort, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities/programs are not eligible for funding under this program.

(i) *Drug Prevention.* Drug prevention programs that will be considered for funding under this part must provide a comprehensive drug prevention approach for public housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing developments, and the applicant must act to bring those available program components onto the premises. Funding is permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training and education activities directly related to "Drug prevention". Activities that should be included in these programs are:

(A) *Drug education opportunities* for public housing residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR part 85.36) with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public housing residents.

(B) *Family and other support services.* Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the development or the community for public housing families.

(C) *Youth services.* Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(D) *Economic/educational opportunities* for residents and youth. Drug prevention programs must demonstrate a capacity to provide public housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(ii) *Intervention.* The aim of intervention is to identify public housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(iii) *Drug treatment.*

(A) Treatment funded under this program shall be in or around the premises of the public housing developments proposed for funding.

(B) Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for public housing residents.

(C) Each proposed drug program should address the following goals:

(1) Increase resident accessibility to drug treatment services;

(2) Decrease criminal activity in and around public housing developments by reducing illicit drug use among public housing residents; and

(3) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal/postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(D) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(1) Applicants may provide the service of formal *referral* arrangements to other treatment programs not in or around the developments where the resident is able to obtain treatment costs from sources other than this program.

(2) Provide family/collateral counseling.

(3) Provide linkages to educational/vocational counseling.

(4) Provide coordination of services to appropriate tribal or local drug agencies, HIV-related service agencies, and mental health and public health programs.

(E) Applicants must demonstrate a working partnership with the Single State Agency or current tribal or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal.

(F) The Single State Agency or authority with drug program coordination responsibilities must certify that the drug treatment proposal is consistent with the State treatment plan; and that the treatment service meets all State licensing requirements.

(G) Funding *is not* permitted for treatment of residents at any in-patient medical treatment programs/facilities.

(H) Funding *is not* permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(I) Funding *is not* permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(7) Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs). Funding under this program is permitted for HAs to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents. Such programs may include voluntary tenant patrol activities, drug education, drug intervention, youth programs, referral, and outreach efforts.

(8) Continuation of Current Program Activities. Current or previous PHDEP grant holders may apply, on the same basis as other applicants, for grants to continue their PHDEP activities or implement other program activities. The Department will evaluate an applicant's performance under any previous Drug Elimination Program grants within the past five years. The Department will review and evaluate the applicant's financial and program performance; reporting and special condition compliance; accomplishment of stated goals and objectives under the previous grant; and program adjustments made in response to previous ineffective performance. Since this is a competitive program, HUD does not guarantee continued funding of any previously funded Drug Elimination Program Grant.

(9) PHA-Owned Housing. Funding may be used for the activities described in sections I.(c) (1) through (7), above,

of this NOFA, to eliminate drug-related crime in housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted, but only if:

(i) The housing is located in high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988; and

(ii) The PHA owning the housing demonstrates, on the basis of information submitted in accordance with the requirements of sections I.(d)(1), below, of this NOFA, that drug-related activity, and the problems associated with it, at the housing has a detrimental affect on or about the real property comprising any public or other federally assisted low-income housing.

Note: The following areas have been designated as high intensity drug trafficking areas:

—New York City (and a surrounding area that includes Nassau County, Suffolk County, and Westchester County, New York, and all municipalities therein; and Union County, Hudson County, and Essex County, New Jersey, and all municipalities therein);

—Los Angeles (and a surrounding area that includes Los Angeles County, Orange County, Riverside County, and San Bernadino County, and all municipalities therein);

—Miami (and a surrounding area that includes Broward County, Dade County, and Monroe County, and all municipalities therein);

—Houston (and a surrounding area that includes Harris County, Galveston County, and all municipalities therein); and

—The Southwest Border (and adjacent areas that include San Diego and Imperial County, California, and all municipalities therein; Yuma County, Maricopa County, Pinal County, Pima County, Santa Cruz County, and Cochise County, Arizona, and all municipalities therein; Hidalgo County, Grant County, Luna County, Dona Ana County, Eddy County, Lea County, and Otero County, New Mexico, and all municipalities therein; El Paso County, Hudspeth County, Culberson County, Jeff Davis County, Presidio County, Brewster County, Pecos County, Terrell County, Crockett County, Val Verde County, Kinney County, Maverick County, Zavala County, Dimmit County, La Salle County, Webb County, Zapata County, Jim Hogg County, Starr County, Hildago County, Willacy County, and Cameron County, Texas, and all municipalities therein).

(10) Ineligible Activities. Funding is not permitted for any of the activities listed below or those specified as ineligible elsewhere in this NOFA.

(i) Funding is not permitted for costs incurred before the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or the actual writing of the application.

(ii) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations.

(iii) Funding is not permitted for compensating informants, including confidential informants.

(iv) Funding is not permitted for the purchase of vehicles, including cars, vans, buses, motorcycles, scooters, or motor bikes, except as specified in this NOFA.

(v) Funding is not permitted to purchase or lease any military or law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles, protective vests, etc.

(vi) Funding is not permitted for any type of compensation, such as wages, salaries or stipends, for voluntary participants.

(vii) Funding is not permitted for cost of leasing, acquiring, constructing or rehabilitating any facility space in a building or unit.

(viii) Funding is not permitted for organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations and similar expenses.

(ix) Funding is not permitted for the costs of entertainment, amusements, or social activities, and for the expenses of items such as meals, beverages, lodgings, rentals, transportation, and gratuities related to these ineligible activities. However, funding is permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training, and education activities directly related to "Drug prevention."

(x) Funding is not permitted for the costs (court costs, attorneys fees, etc.) related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings as provided in paragraph I.(c)(4)(i)(B) of this NOFA.

(xi) Although participation in activities with Federal drug interdiction or drug enforcement agencies is encouraged, the transfer of Drug Elimination Program funds to any Federal agency is not permitted.

(xii) Alcohol-related activities/programs are not eligible for funding under this program.

(xiii) Funding is not permitted under this NOFA for establishing councils, resident associations, resident organizations, and resident corporations since HUD funds these activities under a separate NOFA.

(xiv) Indirect costs as defined in OMB Circular A–87 are not permitted under this program.

(xv) Funding in not permitted for any cash awards, such as scholarships, prizes, etc.

(xvi) Grant funds shall not be used to supplant existing positions or programs.

(d) Selection Criteria and Ranking Factors

HUD will review each application that it determines meets the requirements of this NOFA and assign points in accordance with the selection criteria. An application for funding under this program may be for one or more eligible activities. An applicant may submit only one application under each Notice of Funding Availability (NOFA). Joint applications are not permitted under this program. The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in the selection criteria. After assigning points to each application, HUD will rank the applications in order, by HUD Region. An application must receive a score of at least 80 points out of the maximum of 120 points that may be awarded under this competition to be eligible for funding. HUD will select the highest ranking applications that can be fully funded within each Region. Applications with tie scores will be selected in accordance with the procedures in paragraph I.(e). Any remaining funds will be reallocated and awarded on a nationwide basis as discussed in paragraph I.(b)(3), above. The terms "housing" and "development(s)" as used in the application selection criteria and submission requirements may include, as appropriate, housing described in section I.(c)(9), above, of this NOFA. Each application submitted for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *First Criterion: The extent of the drug-related crime problem in the applicant's development or developments proposed for assistance.* (Maximum Points: 45) To permit HUD to make an evaluation on the basis of this criterion, an application must include a description of the extent of drug-related crime and/or problems associated with it, in the developments proposed for funding. An applicant must explain in what way a problem claimed to be associated with drug-related crime is a result of drug-related crime. The description should provide the following information:

(i) *Objective data.* The best available objective data on the nature, source, and frequency of the problem of drug-related crime and/or the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, tribal, State or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the developments proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's developments (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or that result from drug-related crime; the number of police calls for drug-related crime and associated criminal activity such as thefts or shootings; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth that the applicant can relate to drug-related crime. If crime or other statistics are not available at the development or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs, RCs or ROs. The statistics should be reported both in real numbers, and as an annual percentage of the residents in each development (e.g., 20 arrests in a year for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). The data should cover the most recent past one-year period or other most recent available annual period (an explanation must be provided if the most recent past one-year period data is not used), to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime and/or problems associated with drug-related crime over a period of time. If funding is being sought for housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted, the application must demonstrate that the housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988, and the application must demonstrate that drug-related activity, and the problems associated with it, at the housing has a detrimental affect on or about the real property comprising any public or other federally assisted low-income housing.

(ii) *Other data on the extent of drug-related crime.* To the extent that objective data as described above may not be available, or to complement that data, the assessment may use data from other sources that have a direct bearing on drug-related crime and/or the problems associated with it in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it. Examples of these data include: resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted developments; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime and/or the problems associated with it concerning the nature and frequency of these problems in the developments proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(2) *Second Criterion: The quality of the plan to address the crime problem in the public housing developments proposed for assistance, including the extent to which the plan includes initiatives that can be sustained over a period of several years.* (Maximum Points: 35) In assessing this criterion, HUD will consider the following factors:

(i) To permit HUD to make an evaluation on the basis of this criterion, an application must include the applicant's plan for addressing drug-related crime and/or its associated problems. This means a narrative description of the applicant's activities for addressing drug-related crime and/or its associated problems in each of the developments proposed for assistance under this part must be included in the application. The activities eligible for funding under this program are listed in section I.(c) of this NOFA, above, although the applicant's plan must include all of the activities that will be undertaken to address the problem, whether or not they are funded under this program. If the same activities are proposed for all of the developments that will be covered by the plan, the activities do not need to be described separately for each development. Where different activities are proposed for different developments, these activities and the developments where they will take place must be separately described. The description of the plan in the application must include the following information:

(A) A narrative describing each activity proposed for Drug Elimination Program funding in the applicant's plan, any additional relevant activities being undertaken by the applicant (e.g., a drug treatment program for residents funded by an agency other than HUD), and how all of these activities interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/security techniques, and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current activities.

(1) If grant amounts are to be used for reimbursement of local law enforcement agencies for additional security and protective services under section I.(c)(2) of this NOFA, the application must establish a baseline of services the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract) by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate to what extent the funded activity will represent an increase over this baseline.

(2) If grant amounts are to be used for physical improvements under I.(c)(3) of this NOFA the application should discuss how these improvements will be coordinated with the applicant's modernization program, if any, under 24 CFR part 968.

(3) If grant amounts are to be used for a prevention, intervention or treatment program to reduce the use of drugs in and around the premises of public and Indian housing developments as provided in I.(c)(6) of this NOFA, the application should discuss the nature of the program, how the program represents a prevention or intervention strategy, and how the program will further the HA's strategy to eliminate drug-related crime and/or its associated problems in the developments proposed for assistance.

(B) The anticipated cost of each activity in the plan, a description of how funding decisions were reached, and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each activity.

(C) An activity timetable that includes tasks, deadlines and persons responsible for implementing (beginning, achieving identified milestones, and completing) each activity in the plan.

(D) The role of tenants, and RMCs, RCs, and ROs where they exist, in planning and developing the application for funding and in implementing the applicant's plan. The application must provide the name of the RMC or incorporated RC or RO that will develop any security and drug abuse prevention programs under section I.(c)(7) of this NOFA involving site residents.

(E) The role of any other entities (e.g., tribal, local and State governments and community organizations) in planning and carrying out the plan. This can be shown, for example, by providing letters of support or commitment from governmental or private entities of the financial or other resources (e.g., staff or in-kind resources) that they agree to provide.

(F) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the plan, and how they will be allocated to plan activities that can be sustained over a period of years.

(G) A discussion of how the applicant's plan will service to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135), in accordance with 24 CFR 961.26(d) and 24 CFR 961.29(b)(4).

(H) *Program evaluation.* The plan must specifically discuss how the activities funded under this program will be evaluated by the applicant, so that the program's progress can be measured. The evaluation may also be used to modify activities to make them more successful or to identify unsuccessful strategies. The evaluation must identify the types of information the applicant will need to measure the plan's success (e.g., tracking changes in identified crime statistics); and indicate the method the applicant will use to gather and analyze this information.

(ii) In assessing this criterion, HUD will consider the quality and thoroughness of an applicant's plan in terms of the information requested in section (d)(2)(i) of this NOFA, including the extent to which:

(A) The applicant's plan clearly describes the activities that are being proposed by the applicant, including those activities to be funded under this program and those to be funded from other sources, and indicates how these proposed activities provide for a comprehensive approach to eliminate drug-related crime and/or its associated problems (as described under the first criterion, section (d)(1) of this NOFA, above) in the developments proposed for funding. (Maximum Points: 10)

(B) The applicant's plan provides a cost analysis (budget narrative) for each activity and describes the financial and other resources (under this program and other sources) that may reasonably be expected to be available to carry out each activity. (Maximum Points: 4)

(C) The applicant's plan is realistic in terms of time, personnel, and other resources, considering the applicant's timetable for beginning and completing each component of the plan and the amount of funding requested under this program and other identified resources available to the applicant. (Maximum Points: 3)

(D) As described in the plan, tenants, and RMCs, RCs, and ROs where they exist, are involved in planning and developing the application for funding and in implementing the applicant's plan. (Maximum Points: 4)

(E) As described in the plan, other entities, (e.g., tribal, local and state governments and community organizations) are involved in planning and carrying out the applicant's plan. (Maximum Points: 3)

(F) The plan includes activities that can be sustained over a period of years and identifies resources that the applicant may reasonably expect to be available for the continuation of the activities at the end of the grant term. (Maximum Points: 4)

(G) The applicant's plan will serve to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135), in accordance with 24 CFR 961.26(d) and 24 CFR 961.29(b)(4). (Maximum Points: 3)

(H) The applicant has developed an evaluation process to measure the success of the plan. (Maximum Points: 4)

(3) *Third Criterion: The capability of the applicant to carry out the plan.* (Maximum Points: 20) In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its housing developments, as measured by its performance with respect to operative HUD requirements under the ACC or ACA and the Public Housing Management Assessment Program at 24 CFR 901. In evaluating administrative capability under this factor HUD will also consider, and the application must include in the form of a narrative discussion, the following information:

(A) Whether there are any unresolved findings from prior HUD reports (e.g. performance or finance), reviews or audits undertaken by HUD, the Inspector General, the General Accounting Office, or independent public accountants;

(B) Whether the applicant is operating under court order; and

(C) If applicable, the progress made by a trouble HA in achieving goals established under a Memorandum of Agreement (MOA) executed with HUD. (Maximum Points under paragraph (3)(i)(A) (B) and (C) of this section: 5)

(ii) The application must discuss the extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f) and 24 CFR 100.202, and 29 U.S.C. 794 and 24 CFR Part 8.4 which deal with individuals with disabilities); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR 966, Subpart B, and Section 503 of NAHA; or undertaken other management practices to eliminate drug-related crime and/or its associated problems in its developments. (Maximum Points: 5)

(iii) The application must identify the applicant's participation in HUD grant programs (such as CGP, CIAP, youth sports, child care, resident management, Drug Elimination Program grants, etc.) within the preceding three years, and discuss the degree of the applicant's success in implementing and managing these grant programs. (Maximum Points: 5)

(iv) The application must discuss any other anti-drug related efforts already undertaken by the applicant, including any other Federal, State or local government drug-related grant programs. (Maximum Points: 5)

(4) *Fourth Criterion: The extent to which tenants, the local government and the local community support and participate in the design and implementation of the activities proposed to be funded under the application.* (Maximum Points: 20) In

assessing this criterion, HUD will consider the following factors:

(i) The application must include a discussion of the extent to which community representatives and local government officials are actively involved in the design and implementation of the applicant's plan, as evidenced, for example, by descriptions of planning meetings held with community representatives and local government officials, letters of commitment to provide funding, staff, or in-kind resources, or written comments on the applicants planned activities. (Maximum Points: 7)

(ii) The application must discuss the extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the applicant (as required by the grantee's Annual Contributions Contract with HUD). The application must also include a certification by the Chief Executive Officer (CEO) of a State or a unit of general local government in which the developments proposed for assistance are located that the locality is meeting its obligations under the Cooperation Agreement with the HA, particularly with regard to law enforcement services. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so. Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the application must describe the current level of law enforcement services being provided to the developments proposed for assistance. (Maximum Points: 5)

(iii) The *extent* to which development residents (tenants), and an RMC, RC or RO, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application. The application must include a summary of each written resident and resident organization comment, as required by 24 CFR 961.18, and the applicant's response to and action on these comments. If there are no resident or resident organization comments, the applicant must provide an explanation of the steps taken to encourage participation, even though they were not successful. (Maximum Points: 8)

(e) Ranking Factors

Each application for a grant award that is submitted in a timely manner to the local HUD Field Office with delegated public housing responsibilities or, in the case of IHAs, to the appropriate Office of Indian Programs, and that otherwise meets the requirements of this NOFA, will be evaluated in accordance with the selection criteria specified above. Applications from PHAs will be evaluated and scored by the HUD Field and Regional Offices with jurisdiction over the housing authority. Applications from IHAs will be evaluated and scored by the Office of Indian Programs and Regional Office with jurisdiction over the housing authority. An application must receive a score of at least 80 points out of the maximum of 120 points that may be awarded under this competition to be eligible for funding. Each HUD Regional Office will rank the eligible applications for its region based upon their overall rating scores. Grants will be awarded by each HUD Regional Office to the highest-ranked applications within its region.

In the event that two eligible applications in the region receive the same score, and both cannot be funded because of insufficient funds, the application with the highest score in Selection Criterion 3 "The capability of the applicant to carry out the plan" will be selected. If Selection Criterion 3 is scored identically for both applications, the scores in Selection Criterions 1, 2, and 4 will be compared in this order, one at a time, until one application scores higher in one of the factors and is selected. If the applications score identically in all factors, the application that requests less funding will be selected.

All awards will be made to fund fully an application, except as provided in paragraph I.(b)(4) above. Any remaining funds that would only partially fund an application after all higher-ranked applications have been funded will be returned to HUD Headquarters to be reallocated in accordance with paragraph I.(b)(3), above. Amounts that become available due to deobligation of grant amounts because they could not be awarded will also be reallocated.

(f) General Grant Requirements

The following requirements apply to all programs, functions, or activities that will be used to plan, budget and evaluate the work funded under this program.

(1) Grantees are required to use grant funds under this program in accordance with this NOFA, 24 CFR part 961, 24 CFR part 85, applicable statutes, HUD regulations, Notices, Handbooks, OMB circulars, grant agreements/amendments, and the grantee's approved plan, budget (SF–424A), budget narratives and timetable.

(2) *Applicability of OMB Circulars and HUD fiscal and audit controls.* The policies, guidelines, and requirements of this NOFA, 24 CFR part 961, 24 CFR part 85, and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this program; and OMB Circulars Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs, RCs and ROs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; and OMB Circular No. A–133.

(3) *Cost Principles.* Specific guidance in this NOFA, 24 CFR part 961, 24 CFR part 85, OMB Circular A–87, other applicable OMB cost principles, HUD program regulations, Notices, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable, necessary and justified. PHDEP Funds must be disbursed by the grantee within seven calendar days after receipt of drawdown. Grant funds must be used only for Drug Elimination Program purposes. Direct costs are those that can be identified specifically with a particular activity or function in this NOFA and cost objectives in OMB Circular A–87. Indirect cost are not permitted in this program. Administrative requirements for Drug Elimination Program grants will be in accordance with 24 CFR part 85. Acquisition of property or services shall be in accordance with 24 CFR 85.36. All equipment acquisitions will remain the property of the grantee in accordance with 24 CFR 85.32. IHA procurement standards are in 24 CFR part 905.

(4) *Grant Staff Personnel.*

(i) All persons or entities compensated by the grantee for services provided under a Drug Elimination Program grant must meet all applicable personnel or procurement requirements and shall be required as a condition of employment to meet all relevant State, local and federally-recognized Indian tribal government, insurance, training, licensing, or other similar standards and requirements.

(ii) Compensation for personnel (including supervisory personnel, such as a grant administrator or drug program coordinator, and support staff, such as counselors and clerical staff) hired for grant activities is permitted and may include wages, salaries, and fringe benefits.

(iii) All grant personnel must be necessary, reasonable and justified. Job descriptions must be provided for all grant personnel. Excessive staffing is not permitted.

(iv) PHA–IHA staff employees shall be compensated with grant funds only for work performed directly for PHDEP grant-related activities and shall document the time and activity involved in accordance with 24 CFR 85.20.

(5) *Term of Grant.* The grant project must be completed within, and shall not exceed, 24 months from the date of execution of the grant agreement, unless an extension/grant amendment is approved by the local Field Office. After the award of the grant the maximum extension allowable for any project period is 6 months. Any funds not expended at the end of the grant term shall be remitted to HUD.

(6) *Duplication of Funds.* To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, such as modernization or CIAP, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Grant Program. The grantee must establish an auditable system to provide adequate accountability for funds which it has been awarded. The applicant has the responsibility to ensure there is no duplication of funding sources.

(7) *Sanctions.*

(i) HUD may impose sanctions if the grantee:

(A) Is not complying with the requirements of 24 CFR part 961 or of other applicable Federal law;

(B) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports under § 961.28;

(C) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(D) Does not adhere to grant agreement requirements or special conditions;

(E) Proposes substantial plan changes to the extent that, if originally submitted, would have resulted in the application not being selected for funding;

(F) Engages in the improper award or administration of grant subcontracts;

(G) Does not submit reports; or

(H) Files a false certification, for example, those listed under section I.(d) of this NOFA.

(ii) HUD may impose the following sanctions:

(A) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(B) Disallow all or part of the cost of the activity or action not in compliance;

(C) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(D) Require that some or all of the grant amounts be remitted to HUD;

(E) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(F) Withhold further awards for the program or

(G) Take other remedies that may be legally available.

(8) *Notification.* After completion of the ranking and environmental reviews as required by 24 CFR 961.15(d), HUD will send written notification to all applicants of whether or not they have been selected.

(9) *Grant Agreement.* After an application has been approved, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment schedule, and special conditions, including sanctions for violation of the agreement.

II. Application Process

(a) Application Kit

An application kit may be obtained and assistance provided, from the local HUD Category A or B Field Office or other Field Office with delegated public housing responsibilities over an applying public housing agency (PHA), or from the Office of Indian Programs (OIP) having jurisdiction over the Indian housing authority (IHA) making an application, or by calling HUD's Resident Initiatives Clearinghouse, telephone 1–800–955–2232. The application package contains information on all exhibits and certifications required under this NOFA.

(b) Application Submission

Applications are due on or before Thursday, April 15, 1993, at 3:30 PM, local time. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applications (original and two copies) must be physically received by the deadline at the local HUD Category A or B Field Office or other Field Office with delegated public housing responsibilities over the applying PHA, or, in the case of IHAs, to the local HUD Office of Indian Programs with jurisdiction over the applying IHA, Attention: Director, Public Housing Division or Office of Indian Programs Director, as appropriate. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, the application submitted to HUD shall include, in addition to those listed under section I.(d) of this NOFA, including the plan to address the problem of drug-related crime in the developments proposed for funding, at least the following items:

(a) Applicant Data Form. The applicant must complete the required information for database entry. The form is provided in the application kit.

(b) Application for Federal Assistance, Standard Form SF–424. The SF–424 is the face sheet for the application.

(c) SF–424A, with budget narrative(s) attached that describes each major activity proposed for funding, e.g., employment of security personnel (security guards and HA police), reimbursement of local law enforcement, physical improvements, employment of investigators, tenant patrols, drug prevention, intervention, and treatment programs to reduce the use of drugs).

(d) Applicants must verify its unit count with the local HUD Field Office prior to submitting the application. Applicants *must* compute the maximum grant award amount for which they are eligible (eligible dollar amount per unit x(times) number of units listed in the public housing low-rent public housing operating budgets (form HUD–52564) for PHA/IHA fiscal year ending December 31, 1991, March 31, June 30, or September 30, 1992 and compare it with the dollar amount requested in the application to make certain the amount requested does not exceed the permitted maximum grant award.

(e) Certifications/Assurances. Applications must include:

(1) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR part 24, subpart F. (Applicants may submit a copy of their most recent drug-free workplace certification, which must be dated within the past year.) The certifications and assurances are provided in the application kit.

(2) A certification and disclosure in accordance with the requirements if section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities generally prohibit recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific, contract, grant, or loan.

(3) If applying for drug treatment program funding, a certification by the applicant that the applicant has notified and consulted with the relevant local tribal commission, Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug treatment program has been reviewed by the relevant local tribal commission, Single State Agency or other local authority and is consistent with the tribal or State treatment plan. The certification is provided in the application kit.

(4) A certification by the Chief Executive Officer (CEO) of a State or a unit of general local government in which the developments proposed for assistance are located that (the certification is provided in the application kit):

(i) Grant funds provided under this program will not substitute for activities currently being undertaken on behalf of the applicant by the jurisdiction to address drug-related crime and/or its associated problems;

(ii) Any reimbursement of local law enforcement agencies for additional security and protective services to be provided under section I.(c)(2) of this NOFA meet the requirements of that section.

(5) A certification from the chief of the local law enforcement agency:

(i) If applying for employment of security personnel, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the provider of the security personnel in accordance with the requirements of sections I.(c)(1) of this NOFA;

(ii) If applying for employment of investigators, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the investigators, in accordance with the requirements of sections I.(c)(4) of this NOFA;

(iii) If applying for voluntary tenant (resident) patrol funding, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the voluntary tenant patrol, in accordance with the requirements of sections I.(c)(5) of this NOFA.

(6) A certification by the RMC, RC or RO, or other involved resident group where an RMC, RC or RO do not exist, that the residents participated in the preparation of the grant application with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(f) HUD Form 2880, Applicant Disclosures. The form is provided in the application kit.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(i) Are not necessary for HUD review under selection criteria/ranking factors; and

(ii) Cannot be submitted after the submission due date (application deadline) to improve the quality of the applicant's program proposal.

(c) An example of a curable technical deficiency would be the failure of an applicant to submit a required assurance, budget narrative, certification, applicant data form, summaries of written resident comments, prior grant reports/reviews, incomplete forms such as the SF–424 or lack of required signatures, appendixes and documentation referenced in the application or a computational error based on the use of an incorrect number(s). These items are discussed in the application kit and samples, as appropriate, are provided.

(d) An example of a non-curable defect or deficiency would be a missing SF–424A, plan, or activity timetable.

V. Other Matters

(a) Environmental Impact. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(b) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this rule do not have "federalism implications" within the meaning of the Order. The rule implements a program that encourages HAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to HAs to help them carry out their plans. As such, the program would help HAs combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. In addition, further review under the Order is unnecessary, since the rule generally tracks the statute and involves little implementing discretion.

(c) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, *the Family*, has determined that the provisions of this rule have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. This rule would implement a program that would encourage HAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help; HAs to carry out this plan. As such, the program is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

(d) Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures.

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Section 103 HUD Reform Act. HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(f) Section 112 HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

(g) Prohibition Against Lobbying Activities. The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 7, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Appendix Listing of: HUD Regional Offices, Category A and B Field Offices, and Other Field Offices With Delegated Public Housing Responsibilities, and Offices of Indian Programs

Region I

Jurisdictions: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Boston, Massachusetts Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway St., room 375, Boston, MA 02222–1092, (617) 565–5234, TDD Number: (Commercial) (617) 565–5453

Hartford, Connecticut Office—A

Manager, HUD—Hartford Office, 330 Main St., Hartford, Connecticut 06106–1860, (203) 240–4523, TDD Number: (Commercial) (203) 240–4522

Manchester, New Hampshire Office—B

Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut St., Manchester, New Hampshire 03101–2487, (603) 666–7681, TDD Number: (Commercial) (603) 666–7518

Providence, Rhode Island Office—B

Manager, HUD—Providence Office, 330 John O. Pastore Federal Building & U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351, TDD Number: (Commercial) (401) 528–5364

Region II

Jurisdictions: New York, New Jersey

New York Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–8068, TDD Number: Commercial number not available

Buffalo, New York Office—A

Manager, HUD—Buffalo Office, Lafayette Court, 5th Fl., 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, TDD Number: Commercial number not available

Newark, New Jersey Office—A

Manager, HUD—Newark Office, Military Park Building, 60 Park Place, Newark, New Jersey 07102–5504, (201) 877–1662, TDD Number: (Commercial) (201) 645–6649

Region III

Jurisdictions: Pennsylvania, Washington, DC, Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th St., Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, TDD Number: (Commercial) (215) 597–5564

Washington, DC Office—A

Manager, HUD—Washington Office, Union Center Plaza, Phase II, 820 First St. NE., suite 300, Washington, DC 20002–4502, (202) 275–9200, TDD Number: (Commercial) (202) 275–0967

Baltimore, Maryland Office—A

Manager, HUD—Baltimore Office, 10 North Calvert St., 3rd Fl., Baltimore, Maryland 21202–1865, (410) 962–2121, TDD Number: (Commercial) (410) 962–0106

Pittsburgh, Pennsylvania Office—A

Manager, HUD—Pittsburgh Office, 412 Old Post Office Courthouse Building, 7th Ave. & Grant St., Pittsburgh, Pennsylvania 15219–1906, (412) 644–6428, TDD Number: (Commercial) (412) 644–5747

Richmond, Virginia Office—A

Manager, HUD—Richmond Office, 400 North 8th St., Richmond, Virginia 23240, (804) 771–2721, TDD Number: (Commercial) (804) 771–2820

Charleston, West Virginia Office—B

Manager, HUD—Charleston Office, 405 Capitol St., suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, TDD Number: (Commercial) (304) 347–5332

Region IV

Jurisdictions: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands

Atlanta, Georgia Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring St., S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, TDD Number: (Commercial) (404) 730–2654

Birmingham, Alabama Office—A

Manager, HUD—Birmingham Office, 600 Beacon Parkway West, suite 300, Birmingham, Alabama 35209–3144, (205) 731–1617, TDD Number: (Commercial) (205) 290–7624

Louisville, Kentucky Office—A

Manager, HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, TDD Number: Commercial number not available

Jackson, Mississippi Office—A

Manager, HUD—Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol St., room 910, Jackson, Mississippi 39269–1096, (601) 965–4738, TDD Number: (Commercial) (904) 232–1241

Greensboro, North Carolina Office—A

Manager, HUD—Greensboro Office, 415 North Edgewood St., Greensboro, North Carolina 27401–2107, (919) 333–5361, TDD Number: (Commercial) 919–547–4055

Caribbean Office—A

Manager, HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Ave., San Juan, Puerto Rico 00918–1804, (809) 766–5201, TDD Number: Commercial number not available

Columbia, South Carolina Office—A

Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835–45 Assembly St., Columbia, South Carolina 29201–2480, (803) 765–5592, TDD Number: Commercial number not available

Knoxville, Tennessee Office—A

Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust St., S.W., Knoxville, Tennessee 37902–2526, (615) 549–9384, TDD Number: (Commercial) (615) 545–4379

Nashville, Tennessee Office—B

Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213,, TDD Number: (Commercial) (615) 736–2886

Jacksonville, Florida Office—A

Manager, HUD—Jacksonville Office, suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, Florida 32202–5121, (904) 232–2626, TDD Number: (Commercial) (904) 232–1241

Region V

Jurisdictions: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Chicago, Illinois Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Chicago Regional Office, 626 West Jackson Blvd., Chicago, IL 60606–5601, (312) 353–5680, TDD Number: (Commercial) (312) 353–7143

Chicago—Office of Indian Programs

Director, HUD—Chicago—Office of Indian Programs, 626 West Jackson Blvd., Chicago, IL 60606–1683, (312) 353–1683, TDD Number: (Commercial) (312) 353–7143

Detroit, Michigan Office—A

Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Ave., Detroit, Michigan 48226–2592, (313) 226–7900, TDD Number: Commercial number not available

Indianapolis, Indiana Office—A

Manager, HUD—Indianapolis Office, 151 North Delaware St., Indianapolis, Indiana 46204–2526, (317) 226–6303, TDD Number: Commercial number not available

Grand Rapids, Michigan Office—B

Manager, HUD—Grand Rapids Office, 2922 Fuller Ave., N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100, TDD Number: Commercial number not available

Minneapolis—St. Paul, Minnesota Office—A

Manager, HUD—Minneapolis-St. Paul Office, 220 2nd St. S., Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3002, TTD Number: (Commercial) (612) 370–3186

Cincinnati, Ohio Office—B

Manager, HUD—Cincinnati Office, Federal Office Building, room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884, TDD Number: (Commercial) (513) 684–6180

Cleveland, Ohio Office—B

Manager, HUD—Cleveland Office, One Playhouse Square, 1375 Euclid Ave., rm. 420, Cleveland, Ohio 44114–1670, (216) 522–4065, TDD Number: Commercial number not available

Columbus, Ohio Office—A

Manager, HUD—Columbus Office, 200 N. High St., Columbus, Ohio 43215–2499, (614) 469–5737, TDD Number: Commercial number not available

Milwaukee, Wisconsin Office—A

Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 W. Wisconsin Ave., suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, TDD Number: Commercial number not available

Region VI

Jurisdictions: Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Fort Worth, Texas—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401, TDD Number: (Commercial) (817) 885–5447

Houston, Texas Office—B

Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, suite 200, Houston, Texas 77098–4096, (713) 653–3274, TDD Number: Commercial number not available

San Antonio, Texas Office—A

Manager, HUD—San Antonio Office, Washington Square Building, 800 Dolorosa St., San Antonio, Texas 78207–4563, (512) 229–6800, TDD Number: (Commercial) (512) 229–6885

Little Rock, Arkansas—A

Manager, HUD—Little Rock Office, Lafayette Building, 523 Louisiana, Suite 200, Little Rock, Arkansas 72201, (501) 324–5931, TDD Number: (Commercial) (501) 324–5931

New Orleans, Louisiana Office—A

Manager, HUD—New Orleans Office, Fisk Federal Building, 1661 Canal St., P.O. Box 70288, New Orleans, Louisiana 70112–2887, (504) 589–7200, TDD Number: None Available

Oklahoma City, Oklahoma Office—A

Manager, HUD—Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, Oklahoma 73102–3202,

(405) 231–4181, TDD Number: (Commercial) (405) 231–4891

Oklahoma City—Indian Programs Division

Director, HUD—Oklahoma City Office IPD, Murrah Federal Building, 200 N.W. 5th St., Oklahoma City, OK 73102–3202, (405) 231–4102, TDD Number: Commercial number not available

Albuquerque, NM Office—C

Manager, HUD—Albuquerque Office, 625 Truman Street N.W., Albuquerque, NM 87110–6443, (505) 262–6463, TDD Number: (Commercial) (505) 262–6463

Region VII

Jurisdictions: Iowa, Kansas, Missouri, Nebraska

Kansas City, Kansas—Regional Office

Regional Administrator, Regional Housing Commissioner, Kansas City Regional Office, Gateway Tower II, 400 State Ave., Kansas City, Kansas 66101–2506, (913) 236–2162, TDD Number: (Commercial) (913) 236–3972

Omaha, Nebraska Office—A

Manager HUD—Omaha Office, Braiker/Brandeis Building, 210 S. 16th St., Omaha, Nebraska 68102–1622, (402) 221–3703, TDD Number: (Commercial) (402) 492–3183

St. Louis, Missouri Office—A

Manager, HUD—St. Louis Office, 1222 Spruce St., St. Louis, Missouri 63103–2836, (314) 539–6583, TDD Number: (Commercial) (314) 539–6331

Des Moines, Iowa Office—B

Manager, HUD—Des Moines Office, Federal Building, 210 Walnut St., rm. 239, Des Moines, Iowa 50309–2155, (515) 284–4512, TDD Number: (Commercial) (515) 284–4728

Region VIII

Jurisdictions: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Denver, Colorado—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Denver Regional Office, Executive Office Building, 1405 Curtis St., Denver, Colorado 80202–2349, (303) 844–4513, TDD Number: (Commercial) (303) 844–6158

Denver, Colorado—Office of Indian Programs

Director, HUD—Denver Office OIP, Executive Tower Building, 1405 Curtis St., Denver, CO 80202–2349, (303) 844–4513, TDD Number: (Commercial) (303) 844–6158

Region IX

Jurisdictions: Arizona, California, Hawaii, Nevada, Guam, America Samoa

San Francisco, California—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752 TDD Number: (Commercial) (415) 556–8357

Phoenix, Arizona—Region IX Indian Programs Office

Director, HUD—Phoenix Office of Indian Programs, Two Arizona Center, suite 1650, Phoenix Arizona 85004, (602) 379–4156, TDD Number: (Commercial) (602) 379–4461

Honolulu, Hawaii Office—A

Manager, HUD—Honolulu Office, 300 Ala Moana Blvd., rm. 3318 Honolulu, Hawaii 96850–4991, (808) 541–1323, TDD Number: (Commercial) (808) 541–1356

Los Angeles, California Office—A

Manager, HUD—Los Angeles Office, 1615 W. Olympic Blvd. Los Angeles, California 90015–3801, (213) 251–7122, TDD Number: (Commercial) (213) 251–7038

Sacramento, California Office—B

Manager, HUD—Sacramento Office, 777 12th Ave., Suite 200, P.O. Box 1978, Sacramento, California 95814–1997, (916) 551–1351, TDD Number: (Commercial) (916) 561–1367

Phoenix, Arizona Office,—B

Manager, HUD—Phoenix Office, Two Arizona Center, 400 N. 5th St. Phoenix, Arizona 85004–2361, (602) 261–4434, TDD Number: (Commercial) (602) 379–4461

Region X

Jurisdictions: Alaska, Idaho, Oregon, Washington

Seattle, Washington—Regional Office,

Regional Administrator, Regional Housing Commissioner, HUD—Seattle Regional Office, Arcade Plaza Building, 1321 2nd Ave., Seattle, Washington 89101–2058, (206) 553–5414 TDD Number: (Commercial) (206) 553–4351

Seattle, Washington—Office, of Indian Programs

Director, HUD—Office of Indian Programs, Arcade Plaza Building, 1321 2nd Ave., Seattle, WA 98101–2058, (206) 553–0330, TDD Number: (Commercial) (206) 553–4351

Portland, Oregon Office,—A

Manager, HUD—Portland Office, Cascade Building, 520 SW., 6th Ave., Portland, Oregon 97203–1596, (503) 326–2561, TDD Number: (Commercial) (503) 326–3656

Anchorage, Alaska Office—A

Manager, 222 West 8th Avenue, #64, Anchorage, Alaska 99513–7537, (907) 271–4170, TDD Number: Commercial not available

Director, Anchorage—Indian Housing Division, 701 C Street, Box 64, Anchorage, Alaska 99513 (907) 271–4170

[FR Doc. 93–1025 Filed 1–15–93; 8:45 am]

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federal register

Tuesday
January 19, 1993

Part VI

Department of the Interior

Bureau of Indian Affairs

Mescalero Apache Tribe of New Mexico; Notice of Enactment of Ordinance 92–3

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mescalero Apache Tribe of New Mexico; Enactment of Ordinance 92-3

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is announcing that the Mescalero Apache Tribe of New Mexico has validly enacted Ordinance No. 92-3, duly adopted and approved on May 26, 1992, which has been approved by the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-0994.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows:

Whereas, The Mescalero Apache Tribe, an Indian tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 476) and under its Revised Constitution has full power to act for the Tribe;

Whereas, The Mescalero Apache Tribal Council has the power to act for the Tribe, and to represent the Tribe in all matters under powers vested in it by Article XI of the Revised Constitution of the Mescalero Apache tribe;

Whereas, Pursuant to Article XI, Section 1(d) of the Mescalero Apache Tribe's Revised Constitution, the Mescalero Apache Tribal Council has the power to adopt and approve plans of operation to govern the conduct of any business or industry that will further the economic well-being of the members of the Tribe, and to undertake any activity of any nature whatsoever, not inconsistent with Federal law or the Revised Constitution designed for the social or economic improvement of the Mescalero people;

Whereas, The Tribal Council has judiciously studied the need for additional funds to educate our children, provide for the public safety and welfare, and to operate tribal government;

Whereas, Under the laws of the State of New Mexico, certain permissive lotteries, which encompass all gaming activities involving prize, chance and consideration, may be conducted, provided that the proceeds are utilized for charitable purposes, and the funds are expended within the physical boundaries of the State;

Whereas, It would be a violation of Federal law for the State of New Mexico to have more stringent enforcement on any Indian Reservation than is applicable to non-Indian lands, even if the State of New Mexico had any authority to so enforce;

Whereas, The education of our children, the provision of public services, and other governmental functions (specifically excluding any payment to any individual member or employee of any organization in connection with the operation of the permissive lottery, if that individual is a member or employee of the sponsoring organization), are charitable purposes;

Whereas, Chapter 231 of the Laws of 1981, was signed into law by Governor Bruce King on the 8th day of April, 1981. Said Chapter 231 constitutes an offer to any citizen of the State of New Mexico, including Indian citizens and Indian tribes, to enter into a Compact with the State of New Mexico to conduct the business activities described therein. By passage of Ordinance Number 92-4, the Mescalero Apache Tribe authorized the creation of certain charitable corporations described in Section 30-19-6, N.M.S.A., 1978 Comp.;

Whereas, It is the purpose and intent of this Ordinance to accept the offer of the Governor, and the State of New Mexico, set forth in Chapter 231 of the Laws of 1981; and

Whereas, By virtue of this acceptance by the Tribe, a Compact is created.

Now, therefore, be it resolved, That the Mescalero Apache Tribal Council hereby accepts the offer to compact set forth in Chapter 231 of the Laws of 1981, and directs the President to proceed accordingly.

Be it further resolved, That this Compact be submitted to the Secretary of Interior for approval under 25 U.S.C. 2709.

Be it further resolved, That the President, or his designated representative, or representatives, are directed to meet with the Secretary of Interior to establish procedures which are consistent with the Compact, and under which Class III gaming may be conducted on the Mescalero Indian Reservation.

Dated: January 12, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93-1131 Filed 1-15-93; 8:45 am]

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federal register

Tuesday
January 19, 1993

Part VII

Department of Labor

Office of the Secretary

29 CFR Part 42
Coordinated Enforcement; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 42

RIN 1290–AA11

Coordinated Enforcement

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor is proposing to revise its regulations for coordinated enforcement of farm labor protective statutes. The rule will clarify existing regulatory language and update the regulations by making nomenclature and other technical amendments dictated by subsequent legislation, Departmental administrative reorganizations, and interdepartmental coordination. The regulations' sections also are reorganized for clarification. In addition, the rule will modify some of the Regional quarterly and annual reporting requirements of the existing regulations, delete the Complaint/Directed Action Log, and add a new outreach initiative to the migrant and seasonal farmworker program.

DATES: Comments are invited on the proposed rule. Comments shall be submitted no later than February 18, 1993.

ADDRESSES: Comments shall be submitted, in writing, by mail to the Deputy Secretary of Labor, 200 Constitution Avenue, NW., room S–2114, Washington, DC 20210, Attention: Office of Program Economics, Office of the Assistant Secretary for Policy.

FOR FURTHER INFORMATION CONTACT: Gordon Claucherty, Director, National Farm Labor Coordinated Enforcement Committee staff-level working group. Telephone: (202) 219–6026 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) proposes to revise its regulations for coordinated enforcement of farm labor protective statutes. The rule will clarify existing regulatory language, update the regulations by making nomenclature and other technical amendments necessitated by superseding legislation and Departmental administrative reorganizations, revise guidelines for submitting regional plans and quarterly reports, reorganize the regulations' sections for clarification, and add a new outreach initiative to the migrant and seasonal farmworker programs.

Part 42 was originally promulgated by the Department in 1980 to coordinate the farm labor enforcement activities of the Employment and Training Administration (ETA), the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), and the Office of the Solicitor of Labor (SOL). See 45 FR 39489 (June 10, 1980). Since part 42 was published in 1980, a number of changes have occurred in the Department's farm labor programs, such as: the Farm Labor Contractor Registration Act has been replaced by the Migrant and Seasonal Agricultural Worker Protection Act; the Immigration Reform and Control Act of 1986 has amended the Immigration and Nationality Act (INA) to give the Department a statutory enforcement role under that Act; ESA has reorganized its regional offices and responsibility for directing the regional coordinating committees established in the regulations has been delegated to the Wage and Hour Division's Regional Administrators; and the Assistant Secretary for Policy has assumed a role in farm labor programs at the national level. These and other changes necessitate updating the coordinated enforcement regulations.

In addition, the rule will revise the present guidelines with respect to requirements for the annual plans and quarterly reports submitted by the Regional Farm Labor Coordinated Enforcement Committees (Regional Committees). Since the mission and function statements of the Department's farm labor coordinating agencies are on file in the National office, it is not necessary to duplicate them in the regional plans and reports. Further, since each of the Department's program offices has instituted statistical reporting systems that were not in place when the regulations were originally promulgated, it is not necessary to duplicate these data in the regional plans and reports; instead, the data will be maintained by the program agencies at the regional and national levels in such a way that it can be made available to the National Committee upon request.

Finally, a new emphasis on farm labor outreach activities has been added to the coordinated farm labor enforcement program. The rule will incorporate this initiative into the regulations.

Other than the clarifying and technical changes described above, the rule will not alter the present provisions of part 42 for overseeing the coordination of the Department's farm labor enforcement activities. The rule will maintain a National Committee, consisting of the heads of the above-named agencies and chaired by the Deputy Secretary of Labor. The rule will maintain the Regional Committees, chaired by the Regional Administrators of the Wage and Hour Division and consisting of the Regional Administrators of OSHA, ETA, and Wage and Hour, as well as the Regional Solicitor. Each of the Regional Committees will continue to hold at least one annual public meeting to discuss farm labor issues. The National Committee and the Regional Committees will continue to be assisted in their functions by staff-level working groups, with members from each of the above-named agencies.

The clarification and technical amendments of the regulations do not indicate any lessening of commitment to migrant and seasonal farmworker programs on the part of the Department. Instead, the amendments reflect statutory and administrative changes that have occurred since the rule was first promulgated. The streamlining of the regional reporting requirements, for example, reflects the Department's effort to be more effective and efficient in the coordinated enforcement of the various farm labor statutes. Further, the addition of the Assistant Secretary for Policy to the membership of the National Committee adds strength to that committee. Through the proposed rule updating the part 42 regulations, the Department will demonstrate its firm commitment to migrant and seasonal farmworker programs.

While this rule relates to the internal operations of DOL, the Department chose to notify the public of its intention to clarify and update the regulations. This was done through an Advance Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register**. See 57 32939 (July 24, 1992). Comments were invited on the ANPRM, but none were received.

Regulatory Impact

E.O. 12291

The rule sets forth internal operating structure and process and does not have the financial or other impact to make it a major rule. Therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act

The Department of Labor has notified that Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule establishes no information collection burden on entities outside the Department of Labor.

Catalog of Federal Domestic Assistance Number: This program is not listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects in 29 CFR Part 42

Agriculture, Child labor, Child welfare, Federal aid programs, Housing standards, Intergovernmental relations, Manpower, Migrant labor, Minimum wages, Occupational safety and health, Public health.

Proposed Rule

Accordingly, it is proposed that part 42 of title 29, Code of Federal Regulations, be revised to read as follows:

PART 42—COORDINATED ENFORCEMENT

Sec.
42.1 General statement.
42.2 Purpose.
42.10 National Committee.
42.11 Structure of the National Committee.
42.12 Policy review and actions.
42.20 Regional Farm Labor Coordinated Enforcement Committee.
42.21 Farm Labor Specialists (ESA/WH).
42.22 Farm Labor Contact Persons and Regional Coordinators (OSHA).
42.23 Monitor Advocates (ETA).
42.24 Enforcement strategy.
42.25 Date collection.

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 *et seq.*; 29 U.S.C. 49 *et seq.*, 201 *et seq.*, 651 *et seq.*, 801 *et seq.*

§ 42.1 General statement.

The regulations in this part are promulgated by the Secretary of Labor to describe the coordination of the activities of the following Department of Labor (DOL) agencies: the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), and the Employment and Training Administration (ETA) relating to migrant and seasonal farmworkers (MSFWs).

§ 42.2 Purpose.

The regulations in this part coordinate the activities of ESA, ETA, OSHA, and SOL, and are intended to:

(a) Ensure effective enforcement efforts under the farm labor protective statutes—*i.e.*, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Occupational Safety and Health Act (OSHA), the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA), and the Fair Labor Standards Act (FLSA). These will be referred to in this part as the "protective statutes."

(b) Ensure that the enforcement efforts of DOL agencies are coordinated to maximize their effectiveness, yet minimize unnecessary duplication.

(c) Focus the attention of DOL agencies upon the special employment-related problems faced by migrant and seasonal farmworkers (MSFWs).

(d) Coordinate DOL enforcement efforts with related activities of farmworker groups, federal and State agencies, and other concerned parties outside the DOL whose operations are related to the employment, housing, transportation, and working conditions of MSFWs.

(e) Establish an information exchange which will afford DOL, farmworker groups, and other concerned parties outside DOL the opportunity to exchange information concerning wages, hours and working conditions.

§ 42.10 National Committee.

A National Farm Labor Coordinated Enforcement Committee (National Committee) is hereby established which shall be responsible for: Reviewing policies, guidelines and enforcement goals and strategies for DOL with respect to migrant and seasonal farm labor-related enforcement efforts under the protective statutes; ensuring that policies among the affected DOL agencies are mutually compatible; advising the Secretary on legislative initiatives which would strengthen farm labor-related enforcement efforts; and providing guidance and recommendations to DOL agencies on related enforcement activities.

§ 42.11 Structure of the National Committee.

(a) The National Committee shall consist of the Deputy Secretary of Labor, the Solicitor of Labor, the Assistant Secretary for Policy, and the Assistant Secretaries for ESA, OSHA, and ETA, and shall be headed by the Deputy Secretary.

(b) The Deputy Secretary shall assign the responsibility of directing the necessary staff work required by the National Committee to a Special Assistant, or to an equally high level official of the Deputy Secretary's choice (designee).

(c) The National Committee shall meet on a quarterly basis, or as needed, to review DOL's responsibilities affecting MSFWs, and at any other time as determined by the Deputy Secretary or the Deputy Secretary's designee to be necessary to carry out the National Committee's responsibilities.

(d) There shall be a National Committee staff-level working group including, but not limited to, senior staff representatives from the following agencies and offices:

(1) Employment Standards Administration: Wage and Hour Division (WH);

(2) Employment and Training Administration: U.S. Employment Service (USES), and USES National MSFW Monitor Advocate;

(3) Occupational Safety and Health Administration: Directorates of Compliance Programs, and of Policy;

(4) Office of the Solicitor (SOL): Divisions of Employment and Training Legal Services, and Fair Labor Standards; and

(5) Office of the Assistant Secretary for Policy.

(e) The designee of the Deputy Secretary shall be the chairperson of the National Committee staff-level working group.

(f) The National Committee staff-level working group shall meet monthly or more frequently as requested by that group's chairperson.

(g) A member of the National Committee and/or a member of the National Committee staff-level working group shall attend the annual public meeting of each of the Regional Farm Labor Coordinated Enforcement Committees.

§ 42.12 Policy review and actions.

Where appropriate, the National Committee shall review the policies of OSHA, ESA, ETA, and SOL as they relate to programs that impact on agricultural employment, and shall guide the respective agencies in improving the effectiveness of and coordination among all DOL agencies assigned responsibilities related to MSFWs. These policies and guidance shall include such matters as the following:

(a) The coordination of: Inspections, including housing inspections; reports and procedures of DOL agencies and State agencies designated by DOL to follow up on complaints under any of the protective statutes; and to promptly detect any violations of such statutes.

(b) The expedited enforcement and legal procedures to resolve problems associated with the transient and seasonal nature of MSFWs.

(c) The development of systems for prompt and efficient referral to the appropriate federal or State agency of violations or complaints discovered by or reported to DOL agencies or appropriate State agencies, and prompt and efficient follow-up action by the appropriate agency from the initiation of the investigation through final enforcement action.

(d) The training of all appropriate DOL personnel in order to ensure coordinated and effective enforcement.

(e) The level of enforcement achieved by the remedies or sanctions used by DOL agencies to enforce the protective statutes.

(f) The effectiveness of the Farm Labor Specialists Program.

(g) The effectiveness of the Regional Farm Labor Enforcement Committees.

(h) The implementation and oversight of regional outreach programs.

§ 42.20 Regional Farm Labor Coordinated Enforcement Committee.

(a) Each DOL region shall establish a Regional Farm Labor Coordinated Enforcement Committee (Regional Committee) which shall consist of Regional Administrators of WH, OSHA, ETA, the Regional Solicitor, and the Regional MSFW Monitor Advocate. Each Regional Administrator may designate a representative at the managerial or supervisory level to attend the Regional Committee meetings.

(b) The Regional Committee shall be headed by the Regional Administrator for the Wage and Hour Division.

(c) The Regional Committee shall:

(1) Meet regularly, on at least a quarterly basis.

(2) Exchange information on enforcement and outreach activities.

(3) Develop a written coordinated enforcement strategy each year, specifying for the region all information which the Regional Committee believes is necessary to carry out the program in the region. The written strategy shall be furnished to the National Committee. The National Committee may direct that the regional enforcement strategy be revised based upon the National Committee's review. The regional offices of WH, ETA, and OSHA shall follow the enforcement strategy for the year, with revisions as necessitated by changing circumstances during the year. The National Committee shall be advised of any such revisions.

(i) This strategy shall include at a minimum all information called for by § 42.24 (a) through (i), taking into account particular conditions in the region (*e.g.*, seasonality of the farm labor population). Information called for by § 42.25 ("Data collection") does not need to be included in the written enforcement strategy, but must be maintained by the program agencies and be accessible to the National Committee upon request.

(ii) Other information which shall be included in this document are:

(A) The membership of the Regional Committee and Regional staff level working group;

(B) Plans for coordinated activities with respect to housing safety and health between OSHA, WH, ETA, and SOL;

(C) Information on current design and functioning of the interagency complaint referral system;

(D) Specific steps for providing assistance to stranded migrant farmworkers;

(E) Special problems affecting enforcement under the protective statutes; and

(F) Plans for outreach programs to facilitate cooperation among persons or groups affected by the Department's farmworker programs.

(4) Maintain contacts with State agencies, farm labor groups, growers, and other interested parties.

(5) Coordinate cross-training of DOL enforcement personnel and such other enforcement personnel as may be appropriate within the region.

(d) There shall be a Regional Committee staff-level working group in each region consisting of regional staff representatives from WH, ETA, OSHA, SOL, and OSHA State Plan Farm Labor Coordinators within that region. This working group shall meet at least monthly.

(e) The designated WH Farm Labor Specialist, OSHA Farm Labor Regional Coordinator, and USES Regional MSFW Monitor Advocate in each region shall be available to provide staff support to the Regional Committee.

(f) The Regional Committee shall hold at least one public meeting annually, transcribed or recorded at the option of the Regional Committee, which shall be:

(1) Publicized to all appropriate MSFW, agricultural employers and associations, and farmworker advocates in the region;

(2) Conducted by the director of the Regional Committee with other appropriate DOL agency representatives participating; and

(3) Open to all members of the public.

(g) The Regional Committee shall carry out its responsibilities under this part, and cooperate with the National Committee, in such manner as to ensure the uniform and effective implementation of coordinated enforcement efforts.

§ 42.21 Farm Labor Specialists (ESA/WH).

The Assistant Secretary for ESA shall designate WH Investigators as Farm Labor Specialists (Specialists). The Specialists shall be assigned to WH district offices or field stations under WH district offices with farmworker field activity, as designated by WH. These Specialists shall be responsible for:

(a) Coordinating activities under MSPA and FLSA;

(b) Coordinating activities under the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986, with respect to:

(1) Ensuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification (H–2A) program; and

(2) Reviewing employment eligibility verification and related records;

(c) Conducting MSPA/FLSA/INA farm labor investigations;

(d) Serving as staff advisors and consultants to regional and district officials on MSPA/FLSA/INA enforcement functions;

(e) Coordinating MSPA/FLSA/INA activities with related OSHA and ETA activities (*e.g.*, housing inspections);

(f) Directing special migrant and seasonal farmworker enforcement activities;

(g) Monitoring the farm labor-related activities of certain farm labor contractors and growers in the area to ascertain whether those against whom WH has taken enforcement action are operating in compliance with MSPA, FLSA, and INA;

(h) Conducting technical assistance and public information programs regarding MSPA, FLSA, and INA enforcement functions;

(i) Coordinating referrals to and from other federal and State agencies with farm labor responsibilities;

(j) Advising the Regional Committee regularly on actual farm labor conditions of employment in their geographic areas and otherwise participating in regional coordination activities as directed by the Regional Committee; and

(k) Providing specialized training on MSPA, FLSA, and INA enforcement functions as may be required.

§ 42.22 Farm Labor Contact Persons and Regional Coordinators (OSHA).

(a) OSHA Area Directors shall be responsible for ensuring that:

(1) Migrant farmworker complaints and referrals are evaluated and appropriate action is taken; and

(2) Temporary labor camp (TLC) and field sanitation (FS) inspections are scheduled promptly.

(b) OSHA Area Directors shall designate OSHA compliance officers to serve in the capacity of Farm Labor Contact Persons. These Farm Labor Contact Persons shall be trained in enforcement of the Occupational Safety and Health Act and all OSHA standards affecting FS and TLC and shall be designated with responsibility for conducting a significant number of FS and TLC inspections.

(c) The OSHA Area Directors shall assign the Farm Labor Contact Person to:

(1) Conduct TLC inspections during periods when MSFW housing facilities are occupied, or when it is reasonably predictable the facilities will imminently be occupied;

(2) Conduct FS inspections in accordance with established procedures;

(3) Serve as a technical advisor on MSFW-related matters;

(4) Train other compliance officers to conduct FS and TLC inspections; and

(5) Perform other OSHA duties, including duties not related to MSFW OSHA enforcement.

(d) Regional Administrators for OSHA shall designate a Farm Labor Regional Coordinator to coordinate FS and TLC activities. The Farm Labor Regional Coordinators shall:

(1) Coordinate all MSFW-related activity within the Region's jurisdiction, *i.e.*, enforcement, training, outreach, and public information;

(2) Serve as representatives of the OSHA Regional Administrators on the Regional Committee's staff-level working group; and

(3) Perform other OSHA duties.

(e) OSHA shall request State designees of States having approved occupational safety and health plans, and responsibility for conducting a significant number of FS and TLC inspections, to appoint a State Farm Labor Coordinator. The State Farm Labor Coordinator shall:

(1) Coordinate State OSHA FS and TLC inspections and other MSFW enforcement activities consistent with the objectives of this section; and

(2) Represent the State on the Regional Committee's staff-level working group.

§ 42.23 Monitor Advocates (ETA).

(a) Pursuant to 20 CFR 653.108 each State employment service agency shall appoint a State MSFW Monitor Advocate.

(b) Pursuant to 20 CFR 658.603, ETA shall appoint a Regional MSFW Monitor Advocate in each ETA regional office.

(c) Pursuant to 20 CFR 658.602, ETA shall appoint a National MSFW Monitor Advocate.

§ 42.24 Enforcement strategy.

Each Regional Committee shall annually prepare, on a regional basis, a MSFW labor enforcement strategy for each protective statute pursuant to § 42.20(c)(3). The National Committee staff-level working group shall review these regional strategies and make appropriate recommendations to the National Committee. The National Committee may direct that the regional enforcement strategy be revised to better coincide with overall DOL strategies. In reviewing the enforcement strategies, the National Committee staff-level working group shall pay particular attention to:

(a) The priorities set for the investigation and enforcement activities of compliance officers and investigators.

(b) Available data on the past and current levels of enforcement of the protective statutes in the region, including the data collected pursuant to § 42.25.

(c) The level of attention given to directed activity as distinguished from complaint-initiated compliance activities.

(d) The capability of the agency to respond quickly and thoroughly to emergencies involving violations of any of the protective statutes.

(e) The level of priority given by SOL to farm labor-related enforcement activities under the respective protective statutes.

(f) The ability of agencies to respond quickly and effectively to resolve complaints.

(g) The extent to which agencies follow through with appropriate remedies and sanctions.

(h) The degree to which agencies coordinate and cooperate on a local and regional level.

(i) Other activities of DOL agencies related to MSFW enforcement.

§ 42.25 Data collection.

(a) For each protective statute cited in 42.2(a), WH, OSHA, and SOL shall regularly collect and maintain statistical data reflecting their program and enforcement efforts on a regional and national basis, and shall maintain such data in such a manner that the data can be provided, when needed, to the National and Regional Committees upon request. The data shall be summarized on an annual basis. This data shall include at least the items specified in this section. The data collected will provide a basis for coordination of enforcement of the protective statutes.

(b) The statistical data maintained by WH on MSPA, FLSA, and IRCA enforcement shall include:

(1) Total compliance actions covered by each Act, showing total farm labor contractor (FLC) actions, total farm labor contractor employee (FLCE) actions, total grower actions, total concurrent FLSA actions, and total actions resulting in noncompliance;

(2) Total types of assignments (Employment Service complaint, other complaint, or directed);

(3) Total types of compliance actions (conciliation, full investigation, follow-up investigation, other);

(4) Total compliance hours expended;

(5) Total number of workers affected;

(6) Total violations by categories and type of violation;

(7) Total compliance actions in which civil money penalties (CMPs) are assessed and total amount assessed;

(8) Total compliance actions in which CMPs are collected and total amount collected.

(c) WH shall maintain the following statistical data on FLSA enforcement with respect to employees working within the categories of Agriculture, Agricultural Products, and Agricultural Services, *etc.*, and various subcategories of each of these three major categories:

(1) Total number of completed investigations;

(2) Total hours spent in conducting investigations;

(3) Number of employees found underpaid (total, under minimum wage provisions, under overtime provisions);

(4) Amount of underpayment found due (total, under minimum wage provisions, under overtime provisions);

(5) Total number of employees to whom income was restored; and

(6) Total amount of money restored.

(d) OSHA's field sanitation and temporary labor camp enforcement statistical data shall be maintained for each region on a State-by-State basis, including OSHA State Plan States, and shall include:

(1) Number of complaints received and number of inspections conducted in response;

(2) Number of referrals received and number of inspections conducted in response;

(3) Number of programmed or directed inspections;

(4) Number of violations found by type of violation (serious, willful, repeat and other than serious);

(5) Total number of employees affected by inspections;

(6) Approximate total hours spent on MSFW camp inspections;

(7) Number of inspections for which penalties were proposed and amount proposed; and

(8) Number of inspections for which penalties were collected and amount collected.

(e) SOL shall maintain statistical data on farm labor-related enforcement efforts under each protective statute which shall include:

(1) Total cases received by SOL;

(2) Actions taken on cases (settled, referred to the DOL Office of Administrative Law Judges, civil actions filed, referrals to U.S. Attorneys); and

(3) Results of cases (including injunctions and license revocations and denials).

(f) *Complaint response data*. WH and OSHA shall maintain, annually, a summary of aging data for their respective MSFW-related activities under MSPA, INA, FLSA and OSHA, respectively, showing aging from receipt of a complaint or completion of an investigation until referral to SOL or other final action by the enforcement agency. SOL shall maintain similar data showing aging of matters between receipt by SOL of a case and the completion of some responsive action on the case. Where available, OSHA shall maintain data showing the average length of time between receipt of a complaint and the completion of the action taken in response to the complaint. Where available, WH shall maintain data showing complaints received, complaints on hand, and number of actions completed based on complaints.

Signed at Washington, DC, this 11th day of January, 1993.

Lynn Martin,

Secretary of Labor.

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Part VIII

Department of Education

34 CFR Part 282

Territories and Freely Associated States Educational Grant Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 282

RIN 1810—AA62

Territories and Freely Associated States Educational Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends chapter II of title 34 of the Code of Federal Regulations (CFR), containing regulations for the Office of Elementary and Secondary Education of the Department of Education (Department), to add a new part 282. The new part includes regulations for the Territories and Freely Associated States Educational Grant Program authorized by section 1005(a)(3) of chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as added by section 802(a) of the National Literacy Act of 1991, Pub. L. 102–73. These regulations provide standards and requirements for the administration of that program.

EFFECTIVE DATES: These regulations take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Zulla Toney, Office of Elementary and Secondary Education, School Improvement Programs, U.S. Department of Education, 400 Maryland Avenue, SW., room 2040, FOB–6, Washington, DC 20202. Telephone: (202) 401–1154. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Section 1005(a)(3) of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (the Act), as added by section 802(a) of the National Literacy Act of 1991, provides for a program of competitive grants to local educational agencies (LEAs) in named Territories and Freely Associated States. LEAs in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands are eligible for grants under this program. The grants may be used for educational purposes as described in section 1005(a)(3)(C) of the Act. Section 1005(a)(3)(B) of the Act establishes a formula for determining the amount of the chapter 1 appropriations to be reserved for this program.

A special requirement of this program is that the regional educational laboratory for the Pacific region conduct the competition and recommend to the Secretary the applications that should be funded. The contract to operate the educational laboratory for the Pacific region is currently held by the Pacific Region Educational Laboratory (PREL), located in Honolulu, Hawaii.

These regulations establish the role of PREL with respect to this program in somewhat greater detail than the statute. The regulations provide that PREL receives applications for grants, conducts the competition using a peer review system, and makes recommendations to the Secretary regarding the award of the grants. The Secretary considers these recommendations in accordance with the evaluation criteria contained in the regulations.

These regulations describe the requirements and standards for the administration of the Territories and Freely Associated States Educational Grant Program. More particularly, the regulations provide guidance and requirements regarding the general provisions applicable to this program, the kinds of projects the Secretary assists under this program, how applicants apply for grants, and the procedures the Secretary uses in making grants, including the criteria and other factors that the Secretary uses in evaluating applications.

This program provides support to the Territories and Freely Associated States for activities that will enable students to make progress toward achieving the high levels of educational performance envisioned by the National Education Goals. Funds available under this program may be used by grantees to carry out many of the specific activities outlined in AMERICA 2000, the President's strategy for moving the Nation toward achievement of the National Education Goals by the year 2000.

The appendix to the regulation answers, for the guidance of applicants, questions posed during the development of the regulations that are not reflected in the text of part 282.

Analysis of Comments and Changes

On June 24, 1992, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (57 FR 20452). In response to the Secretary's invitation in the NPRM, seven parties submitted comments. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General

Comment: One commenter expressed appreciation for the local flexibility evident throughout the rules. The commenter indicated that the regulations allow program decisions to be made by LEAs of the Pacific and encouraged the Department to retain maximum flexibility in the final rule.

Discussion: As the commenter indicated, the Secretary sought to provide for maximum LEA flexibility in the development of the regulations. The Secretary believes that this flexibility has been maintained, and indeed enhanced, in the final regulations, within the framework of the governing law.

Changes: None.

§ 282.2 Eligibility

Comment: One commenter asked whether the Territories and Freely Associated States Educational Grant Program changes the role of community colleges in serving as recipients of funds under the Adult Education Act (AEA).

Discussion: Section 1005(a)(3) of the Act, which authorizes this program, does not alter present funding arrangements under the AEA or the role of particular entities in applying for grants under the AEA. However, section 1005(a)(3) provides that LEAs are applicants under this program. Therefore, if an LEA applies for, and is awarded, funds under this program to be used for AEA purposes (see § 282.11(a)(2)), the LEA receives the funds. The LEA may, of course, involve a college, through contract, in providing program services within the entity in question.

Changes: None.

Comment: One commenter requested that the territorial government in question, rather than the LEAs, be named as recipients.

Discussion: The governing statute, section 1005(a)(3), names LEAs as the recipients of funds under this program.

Changes: None.

Comment: One commenter asked that the four States of the Federated States of Micronesia (Truk, Kosrae, Phonpei, and Yap) be specifically named in § 282.2 of the regulations.

Discussion: Section 282.2 provides that an LEA in each of the named jurisdictions is eligible to apply. The term local educational agency is defined in the regulations. Identifying LEAs under this definition is a matter for local resolution in consultation with the Department, if necessary, rather than for Federal determination in these regulations.

Changes: None.

Section 282.13 Limitations on use of funds

Comment: One commenter requested that provision be made for use of program funds for construction and repair of school facilities.

Discussion: Section 1005(a)(3) limits the use of funds to direct educational services. For this reason, the regulations in § 282.13(b)(3) prohibit the use of funds for construction, remodeling, or repair. However, the Secretary believes that section 1005(a)(3) can be interpreted to permit minor remodeling and repair where necessary to facilitate the provision of direct educational services under a project. The Secretary believes that the program objectives would be served by affording recipients the flexibility to use program funds for minor remodeling and repair for this purpose.

Changes: Section 282.13(b)(3) has been revised to provide for the limited use of program funds for minor remodeling and repair, if necessary to provide direct services.

Section 282.15 Services to private school children

Comment: One commenter requested clarification as to whether an LEA may arrange for the participation of private school children in activities assisted under this program.

Discussion: Section 1005(a)(3), which provides the statutory authority for the Territories and Freely Associated States Educational Grant Program, is contained in the chapter 1 statute. However, section 1005(a)(3) permits an LEA that receives program funds to use the funds for a variety of purposes not confined to chapter 1. See section 1005(a)(3)(C) and § 282.11 of these regulations. For example, program funds may be used for activities consistent with the purposes of chapter 2 of title I of the Act, the Adult Education Act, the Individuals with Disabilities Education Act, the Library Services and Construction Act, or the Dwight D. Eisenhower Mathematics and Science Education Act, as well as teacher training, curriculum development, instructional materials, or general school improvement and reform. The activities for which program funds may be used include activities in which private school children normally participate under the applicable program laws. For example, funds under section 1005(a)(3) may be used for "activities consistent with the purposes of" chapter 1. See § 282.11(a)(1).

Under section 1017 of the Act, chapter 1 benefits are made available to private school children on an equitable basis. Serving private school children is thus clearly "consistent with the purpose of" chapter 1. Accordingly, section 1005(a)(3) can be viewed as authorizing an LEA (in the relevant Territory or Freely Associated State) to provide services to private school children if it uses section 1005(a)(3) funds for chapter 1 activities under § 282.11(a)(1) of the regulations. A similar analysis applies to other activities listed in § 282.11(a)(1), (3) and (5). Moreover, the activities listed in § 282.11(b)–(e) are generally assisted under Federal education statutes, such as chapter 2 of title I of the Act, calling for the equitable participation of private school children.

Under these circumstances, if the statutory authority for the activity in question provides for the participation of private school children, the Secretary interprets section 1005(a)(3) as authorizing (but not requiring) the participation of private school children if the activity is carried out by an LEA with program funds. The Secretary does not believe that Congress intended to prohibit the equitable participation of private school children in Federally assisted activities if carried out in the Territories or Freely Associated States—jurisdictions where private schools contribute substantially to the provision of elementary and secondary education. These services must, of course, be provided by the grantee in a manner comparable to that called for under the relevant Federal program statutes in order to ensure consistency with law.

Changes: A new § 282.15 has been added to reflect this interpretation.

Sections 282.31–282.34 Grant procedures

Comment: A number of commenters requested clarification of the process for review of applications and the role of PREL in that process. The commenters raised matters such as the criteria to be used by PREL, the type of reviewers to be selected by PREL, and the effect of PREL's recommendations. One commenter suggested that applications be submitted directly to the Department rather than through PREL.

Discussion: The basic role of PREL in the administration of this program is established by section 1005(a)(3). Section 1005(a)(3)(A) states that the "Pacific Regional laboratory in Honolulu, Hawaii * * * shall conduct a competition for grants under the program."

Subpart C of the final regulations describes the review process. PREL must receive and review applications. PREL must also apply the selection criteria in § 282.35 (see §§ 282.32(c) and 282.34(b)). PREL has wide latitude in selecting reviewers but must provide to the Secretary a plan describing how the review will be conducted. The Department anticipates that this plan will discuss the types of reviewers to be selected in terms of background and experience. Moreover, § 282.32(a) of the regulations, as revised in response to comments, requires PREL to consult with Territories and Freely Associated States regarding the plan, a provision that should provide an opportunity for input regarding reviewer selection.

The recommendations of PREL are considered by the Secretary in determining awards. The Secretary reviews these recommendations and makes the final determination. The Department does not expect to conduct a duplicate application process, but rather to review the recommendations of PREL and underlying documentation.

Changes: None.

Comment: One commenter suggested that the eligible entities have an opportunity to comment on PREL's plan for review, called for by § 282.32(a).

Discussion: The Secretary believes that this suggestion will advance broader participation in the development of the plan by the affected entities.

Changes: Section 282.32(a) has been changed to require PREL to consult with the Territories and Freely Associated States before it submits its plan to the Department.

Section 282.21 LEA applications

Comment: A number of comments that were received informally during the comment period recognized the need for greater coordination among educational agencies and institutions within each of the Territories and Freely Associated States in developing program applications.

Discussion: The Secretary believes that there is a need for greater coordination by LEAs in the development of program applications and that this coordination will enhance the effective use of program funds.

Changes: Section 282.21(b) has been revised to require coordination by an LEA with other appropriate educational agencies, organizations, and institutions that are in the relevant entity and that serve the LEA's area.

Section 282.36 Equitable geographic distribution

Comment: Several commenters urged that grants under this program be made in equal shares to eligible entities.

Discussion: The governing law requires that grants under this program be "competitive grants". The regulations are designed to carry out this requirement. A regulatory provision calling for equal shares to the eligible entities would be inconsistent with the competition requirement in the statute. It might also defeat the program's purpose of targeting funds where they are most needed and can be used most effectively. The equitable geographic distribution requirement permits PREL, in making its recommendations, to take into account appropriate factors in light of local conditions and local input in accordance with the statute.

Changes: None.

Comment: One commenter asked whether the equitable geographic distribution provision in § 282.36 takes into account demographics.

Discussion: The Secretary understands the commenter to ask whether population is one of the factors that could be taken into account under § 282.36. This factor, among others, could be taken into account in applying that section.

Changes: None.

Comment: One commenter recommended that each entity be guaranteed a project.

Discussion: Section 1005(a)(3) requires competition for grants among LEAs in the Territories and Freely Associated States. The Department believes that this provision prohibits an absolute guarantee of a project to each Territory and Freely Associated State.

The regulations do provide for equitable geographic distribution (§ 282.36). This should operate in a way to reflect the considerations raised by the commenter within the framework of the statute.

Changes: None.

Section 282.41 Fiscal agents

Comment: Several commenters questioned the wisdom of § 282.41 in authorizing PREL to serve as a fiscal agent. The commenters recommended the elimination of this provision to avoid the appearance of a conflict of interest.

Discussion: The Secretary believes that accountability for program funds was a major concern of the Congress in the enactment of section 1005(a)(3) and that accountability is essential if this program is to be administered successfully. The use of a fiscal agent by a grantee is one means, although not the exclusive means, of assisting a grantee to maintain accountability. The use of a fiscal agent may facilitate the establishment of an audit trail and may otherwise assist a grantee in accounting for funds, as well as in saving time and expense in responding to audit requests. The distances involved in monitoring grants in the region also warrant special consideration.

For these reasons, the regulations included provisions for the use of a fiscal agent. The regulations also stated that PREL could, at the discretion of a grantee, be used as a fiscal agent, thus providing grantees desiring to use a fiscal agent with an alternative that was available, convenient, knowledgeable, and relatively inexpensive. Given its role in the region, PREL is in a position to provide this form of technical assistance. However, the section has been revised to respond to the concern of commenters regarding the appearance of conflict of interest without precluding the use of PREL as a fiscal agent where it would serve the interest of accountability. It is believed that § 282.41, as revised, addresses the observations of commenters and is in keeping with the broad role given PREL by Congress in section 1005(a)(3).

Changes: The section is revised to provide for the use of PREL as a fiscal agent for a grantee, but only if PREL is selected by the Department to serve in that role. A change is also made in § 282.32 (e) and (f) to strengthen other provisions regarding accountability. In this connection, reference is made to the provisions in EDGAR relating to accountability, including 34 CFR 80.20.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major regulations because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant impact on a substantial number of small entities. These regulations are intended to implement statutory provisions and are designed to provide maximum flexibility in the administration of this program.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Number 84.256 Territories and Freely Associated States Educational Grant Program.)

List of Subjects in 34 CFR Part 282

Education, Elementary and secondary education, Grant programs—education.

Dated: November 16, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 282 to read as follows:

PART 282—TERRITORIES AND FREELY ASSOCIATED STATES EDUCATIONAL GRANT PROGRAM

Subpart A—General

Sec.
282.1 What is the Territories and Freely Associated States Educational Grant Program?
282.2 Who is eligible to receive a grant?
282.3 What regulations apply to the program?
282.4 What definitions apply to the program?

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

282.11 What activities are eligible for assistance?
282.12 What school improvement and reform activities may the grantee conduct under § 282.11(e)?
282.13 What limitations apply to the use of funds under this program?
282.14 What priorities may the Secretary establish?
282.15 What services may be made available to private school children?

Subpart C—How Does One Apply for a Grant?

282.21 How does a local educational agency apply for a grant under this program?

Subpart D—Does the Secretary Make a Grant?

282.31 How is a competition for an award conducted for this program?
282.32 How does PREL conduct a competition?

282.33 How does the Secretary select applications for funding?
282.34 How does the Secretary evaluate an application?
282.35 What selection criteria does the Secretary use?
282.36 To what extent is equitable geographic distribution considered?

Subpart E—What Conditions Must Be Met by a Grantee?

282.40 Do applicable laws and regulations govern LEAs that receive grants?
282.41 May a grantee use a fiscal agent?
282.42 Under what circumstances does the Secretary make continuation awards?
282.43 What reports may the Secretary require?

Authority: 20 U.S.C. 2711(a)(3), unless otherwise noted.

Subpart A—General

§ 282.1 What is the Territories and Freely Associated States Educational Grant Program?

The Territories and Freely Associated States Educational Grant Program is designed to provide financial assistance in the form of competitive grants to local educational agencies (LEAs) in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands. The grants may be used for educational purposes as described in § 282.11.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.2 Who is eligible to receive a grant?

A local educational agency (LEA) in any one of the following jurisdictions is eligible to receive a grant.

(a) Guam.

(b) American Samoa.

(c) The Commonwealth of the Northern Mariana Islands.

(d) Palau.

(e) The Federated States of Micronesia.

(f) The Republic of the Marshall Islands.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.2 What regulations apply to the program?

The following regulations apply to the Territories and Freely Associated States Educational Grant Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs), except that 34 CFR 75.720(b) regarding the frequency of certain reports does not apply.

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 282.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.4 What definitions apply to the program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

Applicant, Application, Department, EDGAR, Grantee, Grants, Project, Secretary

(Authority: 20 U.S.C. 2711(a)(3))

(b) *Other definitions.* The following definitions also apply to this part:

Freely Associated State means (1) the Federated States of Micronesia, (2) the Republic of the Marshall Islands, and (3) Palau if its Compact of Free Association is approved in accordance with law.

Local educational agency (LEA) means a public board of education or other public authority legally constituted within a Territory or Freely Associated State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city school district or other political subdivision of a Territory or Freely Associated State, or a combination of school districts as are recognized in a Territory or Freely Associated State as an administrative agency for its public elementary or secondary schools. The term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

National Education Goals means the following goals to be achieved by the year 2000:

(1) All children will start school ready to learn.

(2) The high school graduation rate will increase to at least 90 percent.

(3) Students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter, including English, mathematics, science, history, and geography, and every school will ensure that all students learn to use their minds well, so that they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy.

(4) Students will be first in the world in science and mathematics achievement.

(5) Every adult will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

(6) Every school will be free of drugs and violence and will offer a disciplined environment conducive to learning.

PREL means the Pacific Region Educational Laboratory in Honolulu, Hawaii, or its successor.

Territory means (1) Guam, (2) American Samoa, (3) the Commonwealth of the Northern Mariana Islands, and (4) Palau until its Compact of Free Association is approved in accordance with law.

(Authority: 20 U.S.C. 2711(a)(3))

Subpart B—What Kinds of Projects Does the Secretary Assist Under This Program?

§ 282.11 What activities are eligible for assistance?

Under this program, the Secretary awards grants for projects to—

(a) Conduct activities consistent with the purposes of—

(1) Title I of the Elementary and Secondary Education Act of 1965, including chapter 1, which includes the Even Start program, and chapter 2 of that title;

(2) The Adult Education Act;

(3) The Individuals with Disabilities Education Act;

(4) The Library Services and Construction Act; or

(5) The Dwight D. Eisenhower Mathematics and Science Education Act;

(b) Develop and provide preservice and inservice training for elementary and secondary school teachers;

(c) Develop curricula;

(d) Develop and acquire instructional materials; or

(e) Develop and conduct general school improvement and reform activities.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.12 What school improvement and reform activities may a grantee conduct under § 282.11(e)?

The following illustrates the types of school improvement and reform activities that a grantee may conduct with funds under this program:

(a) The establishment of skill centers to provide job skills diagnosis and referral services.

(b) The planning, design, and operation of model, innovative schools that—

(1) Employ the most effective methods of teaching and learning;

(2) Use the latest educational technologies; and

(3) Are specially tailored to meet the educational needs of the children in the area to be served.

(c) The establishment of academies to provide intensive training for school leaders and principals in instructional leadership, school-based management, effective school reform strategies, and implementation of school-level accountability mechanisms.

(d) The establishment of academies for teachers to ensure they possess the knowledge and skills to help students meet high standards for academic achievement in the five core academic disciplines listed in the National Education Goals.

(e) Preschool programs that will enable disadvantaged and disabled children to have access to high quality programs that help prepare them for school.

(f) Programs designed to strengthen the knowledge and skills of elementary and secondary students in English, mathematics, science, history, and geography.

(g) Programs that involve families, communities, and businesses in the planning and operation of educational programs for children.

(h) Programs to enhance parental educational choice.

(i) Other programs to advance the National Education Goals or other comprehensive educational goals or priorities established by the relevant Territory, Freely Associated State, or LEA.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.13 What limitations apply to the use of funds under this program?

(a) A grantee may use funds available under this part only to provide direct educational services.

(b) For the purposes of this part, *direct educational services*—

(1) Means activities that are designed to improve student achievement or the quality of education;

(2) Includes instructional services for students and teacher training;

(3) Does not include construction, but includes minor remodeling or repair if the minor remodeling or repair—

(i) Is necessary to provide direct services;

(ii) Does not exceed 10 percent of the amount of the grant; and

(iii) Is specifically approved by the Secretary.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.14 What priorities may the Secretary establish?

(a) The Secretary may establish as a priority, in any fiscal year, one or more of the activities contained in §§ 282.11 and 282.12.

(b) The Secretary announces these priorities in a notice published in the **Federal Register**.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.15 What services may be made available to private school children?

(a) A grantee may provide services to, or for the benefit of, children in private schools under this program if the grantee is carrying out activities described in § 282.11(a) (1), (3), and (5) and § 282.11 (b) through (e).

(b) If the grantee provides services to, or for the benefit of, private school children, it must do so in a manner comparable to that under which these services are provided pursuant to the activity in question when carried out pursuant to an authorization statute specified in § 282.11(a) (1), (3), and (5).

Example: Pursuant to § 282.11(a)(1), an LEA under this program carries out activities consistent with the purposes of Chapter 1 of title I of the Elementary and Secondary Education Act of 1965, as amended. Under chapter 1, private school children receive services on an equitable basis. Private school children may be served under the chapter 1 activity carried out by the LEA with funds under this program. The services may be provided in a manner comparable to that under which they would be provided under chapter 1.

Subpart C—How Does One Apply for a Grant?

§ 282.21 How does a local educational agency apply for a grant under this program?

(a) In order to compete for a grant under this part, an LEA shall submit an application to PREL for consideration. The LEA shall submit the application in accordance with deadlines and other administrative procedures established by PREL.

(b) Prior to submission of the application, the LEA shall, through means selected by it, coordinate, regarding the development of application, with appropriate educational agencies, institutions, and organizations that are in the Territory or Freely Associated State and that serve its area.

(Authority: 20 U.S.C. 2711(a)(3))

Subpart D—How Does the Secretary Make a Grant?

§ 282.31 How is a competition for an award conducted for this program?

PREL conducts competitions for awards for this program on behalf of the Secretary.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.32 How does PREL conduct a competition?

To conduct a competition under this program, PREL shall—

(a) Provide, after consultation with the Territories and Freely Associated States, a plan to the Secretary describing how the review will be conducted;

(b) Use a peer review system to review and rate applications for awards;

(c) Review the applications in accordance with the regulations in this part;

(d) Inform the Secretary of the results of the review;

(e) Make recommendations to the Secretary regarding the award of grants and the adequacy of the steps taken by each applicant for which a grant is recommended to ensure accountability for grant funds and including provisions in 34 CFR 80.20; and

(f) Make recommendations to the Secretary regarding monitoring of grants.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.33 How does the Secretary select applications for funding?

In determining the order of selection for awards under this program the Secretary considers—

(a) The selection criteria in § 282.35; and

(b) The recommendations of PREL.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.34 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant under this part on the basis of the criteria listed in § 282.35. The Secretary awards a maximum of 100 points for all the criteria. The maximum possible score for each criterion is indicated in parentheses after the criterion.

(b) In making recommendations to the Secretary with respect to the award of a grant and the amount to be awarded, PREL shall use the criteria and additional factors included in this subpart.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.35 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Educational need.* (25 points) The Secretary reviews each application to determine the extent of the educational need in the area to be served and the extent to which the proposed project is likely to address that need effectively, including—

(1) The manner in which the applicant has identified the educational need to be addressed by the project;

(2) The relative gravity of the educational need in the applicant LEA as compared with educational need in LEAs in other Territories and Freely Associated States;

(3) The likely effectiveness of the proposed project in addressing the need on a basis that will provide sustained educational benefits throughout the area to be served over an extended period of time; and

(4) The extent to which the proposed project addresses educational goals or priorities as established by the relevant LEA, Territory, or Freely Associated State.

(b) *Relationship to the National Education Goals.* (15 points) The Secretary reviews each application to determine the effectiveness with which the proposed project will further the achievement in the area to be served of one or more of the National Education Goals and of other comprehensive educational goals or priorities established by the relevant LEA, Territory, or Freely Associated State to be served.

(c) *Plan of Operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The adequacy of the description of the services to be provided;

(2) The feasibility of the scope of the project;

(3) The quality of the design of the project;

(4) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the budget period, given the project's budget and other resources;

(iii) Are objective and measurable; and

(iv) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(5) The extent to which the plan is effective and ensures proper and efficient administration of the project;

(6) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding;

(7) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition; and

(8) The extent to which the applicant will coordinate activities with other local or federally funded programs or projects.

(d) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(e) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraph (d)(1) of this section, the Secretary considers—

(i) Experience and training, in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(3) In applying this criterion, the Secretary takes into account special circumstances that may affect the ability of an applicant to recruit experienced or highly credentialed personnel.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes;

(3) To the extent possible, will produce objective and quantifiable data; and

(4) Take into account responses to the project from parents, teachers and other community members in the area to be served.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(g) *Commitment and capacity.* (5 points) The Secretary reviews each application to determine the applicant's commitment to the effective operation of the project, and the likelihood of the applicant's continued efforts to carry out the project when Federal assistance under this part ends.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.36 To what extent is equitable geographic distribution considered?

In determining whether to make an award and in determining the amount of the award, the Secretary considers the extent to which approval of the application will contribute to a fair and equitable geographic distribution of funds and services under this program among the LEAs in the Territories and Freely Associated States.

(Authority: 20 U.S.C. 2711(a)(3))

Subpart E—What Conditions Must be Met by a Grantee?

§ 282.40 Do applicable laws and regulations govern LEAs that receive grants?

An LEA in a Territory or a Freely Associated State that receives a grant under this program is subject to all laws, regulations, and requirements applicable to this program.

(Authority: 20 U.S.C. 2711(a)(3); Pub. L. 99–239, section 105(a))

§ 282.41 May a grantee use a fiscal agent?

(a) A grantee may contract to use a fiscal agent in the financial administration of the grant.

(b) The grantee may use grant funds to reimburse a fiscal agent only for direct costs in carrying out the duties of a fiscal agent.

(c) The Department may select a fiscal agent for a grantee.

(d) PREL may serve as a fiscal agent only if selected by the Department.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.42 Under what circumstances does the Secretary make continuation awards?

(a) The Secretary may make a continuation award for a budget period after the first budget period of an approved multi-year project under this program, if—

(1) The conditions in 34 CFR 75.253(a) are met; and

(2) Any evaluation of the project that has been conducted indicates that the continuation of the project will lead to sustained educational improvement in the area to be served.

(b) In determining whether to make a continuation award, the Secretary requests and takes into account the recommendations of PREL.

(Authority: 20 U.S.C. 2711(a)(3))

§ 282.43 What reports may the Secretary require?

The Secretary may require a grantee to submit reports containing information the Secretary finds necessary to carry out the Secretary's functions under this program.

(Authority: 20 U.S.C. 2711(a)(3))

Note: This appendix will not be codified in the Code of Federal Regulations.

Appendix

The following paragraphs response to questions raised during the development of the regulations for this program that are not specifically addressed in 34 CFR part 282.

1. May two or more local educational agencies apply as a group or consortium?

Two or more local educational agencies may apply as a group for a grant under this program. Group applications must comply with the regulations in §§ 75.127–75.129 of EDGAR. Under these regulations, if a group of LEAs applies for a grant, the members of the group must either designate one member of the group to apply for the grant or establish a separate LEA to apply for the grant. The members of the group must enter into an agreement meeting the requirements of § 75.128(b) of EDGAR. The applicant for the group is the grantee and is legally responsible for the use of all grant funds and ensuring that the project is carried out by the group in accordance with Federal requirements. Each member of the group is legally responsible to carry out the activities it agrees to perform and use the funds that it receives under the group agreement in accordance with Federal requirements that apply to the grant.

2. What are the contents of an application that an LEA must submit?

The Secretary will prepare an application package describing the contents of the application. Sections 75.111–75.117 of EDGAR describe the information required to be included in the application. In general, an applicant must be prepared to describe the project, the key personnel, the resources, and the evaluation plan, and must assure compliance with appropriate requirements of law. The applicant must also include a proposed project period and a timeline, and must demonstrate the applicant's capability to conduct the project.

In addition, the Secretary anticipates that an applicant will be required to describe how the applicant's project will make progress towards achieving one or more of the National Education Goals and other priorities of the applicant.

3. What financial reports will a grantee be required to submit?

Section 80.41 of EDGAR describes a grantee's financial reporting requirements. A grantee shall submit quarterly financial status reports.

4. What is the length of the project and budget periods?

The Secretary approves a project period of up to 36 months and a budget period of not more than 12 months for a grant under this program. Section 75.118 of EDGAR contains regulations regarding applications for continuation awards.

5. What is the role of PREL in the consideration of applications for continuation awards?

The Secretary consults with PREL with respect to the making of these awards.

(Authority: 20 U.S.C. 2711(a)(3))

[FR Doc. 93–1133 Filed 1–15–93; 8:45 am]

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Tuesday
January 19, 1993

Part IX

Department of Commerce

National Oceanic and Atmospheric Administration

Environmental Protection Agency

Coastal Nonpoint Source Pollution State Program Guidance; Notice of Availability

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4553–1]

Coastal Nonpoint Source Pollution State Program Guidance Documents

AGENCIES: National Oceanic and Atmospheric Administration (NOAA), Commerce and Environmental Protection Agency (EPA).

ACTION: Notice of availability of final guidance documents.

SUMMARY: Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) requires States with federally approved coastal zone management programs to develop Coastal Nonpoint Pollution Control Programs to be approved by NOAA and EPA. The State coastal nonpoint programs are to be jointly implemented by State coastal zone management and nonpoint source agencies. Pursuant to section 6217, EPA and NOAA are today publishing two guidance documents to assist States in developing those coastal nonpoint programs.

First, under section 6217(g), EPA is publishing guidance specifying management measures to control nonpoint source pollution from the following sources: agriculture, silviculture, urban runoff, hydromodification, and marinas. The guidance also includes management measures that generally provide other tools available to address nonpoint pollution; these tools include wetlands protection, riparian areas, and vegetated treatment systems. Pursuant to section 6217(b), the management measures specified in State coastal nonpoint pollution control programs must be "in conformity" with this guidance.

Second, EPA and NOAA are jointly publishing guidance on the development and approval of state coastal nonpoint pollution control programs. These programs will be implemented through state coastal zone management programs, approved by NOAA, and nonpoint source control management programs, approved by EPA.

DATES: State coastal nonpoint pollution control programs must be submitted to NOAA and EPA for approval by July 19, 1995. Therefore, EPA's guidance specifying management measures to control nonpoint pollution will be effective immediately. As guidance and therefore a statement of policy, the management measures guidance is not subject to the requirement under 5 U.S.C. section 553(d) that thirty days elapse from the date of publication before the document becomes effective. Moreover, EPA believes it also has good cause to make the management measures guidance effective immediately. First, CZARA section 6217(a) explicitly requires States to submit their programs to NOAA and EPA "[n]ot later than 30 months after the date of the publication of final guidance under subsection (g) of this section." An immediate effectiveness date of this guidance thus fulfills this statutory requirement. Second, CZARA requires NOAA and EPA to withhold on an automatic basis certain grant funds, starting in the fiscal year 1996, from States failing to submit an approvable program. Delay in the effectiveness of this guidance means that States will have less time to submit an approvable program and the Agencies will have less time to determine whether they are in fact approvable, thereby conceivably jeopardizing States' grants for FY 96. Finally, this guidance was to be published on May 5, 1992; commencing the thirty-month clock immediately better reflects the statute's timeframes.

ADDRESSES: Copies of the program approval and development guidance and response to comments on the proposed program guidance may be obtained from Marcella Jansen, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 1825 Connecticut Avenue, NW., Washington, DC 20235. Copies of both the program approval and development guidance and EPA's guidance specifying management measures to control coastal nonpoint pollution are available from Ann Beier, Assessment and Watershed Protection Division (WH–553), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the final economic analyses, the regulatory impact analysis, and response to comments documents are also available from EPA at the same address. Copies of the guidance documents and accompanying analyses are also available for public inspection and copying during normal business hours at: Coastal Zone Information Center, NOAA, room 729, 1825 Connecticut Avenue, NW., Washington, DC 20235 and at the Public Information Reference Unit, U.S. Environmental Protection Agency, room 2404 (rear), 401 M St. SW., Washington, DC 20460. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. Copies of these documents are also available for review in the EPA Regional Office libraries.

FOR FURTHER INFORMATION CONTACT: Ann Beier (EPA) at (202) 260–7085, or Marcella Jansen (NOAA) at (202) 606–4181.

SUPPLEMENTARY INFORMATION:

I. Background

1. What Is Nonpoint Source Pollution?

Nonpoint source pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrologic modification. Technically, the term "nonpoint source" is defined to mean any source of water pollution that does not meet the legal definition of "point source" in section 502(14) of the Clean Water Act. That definition states that the term "point source"; means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

Although diffuse runoff is generally treated as a nonpoint source, runoff that enters and is discharged from conveyances such as those described above are point sources and subject to the permitting requirements of the Clean Water Act. In contrast, nonpoint sources are not subject to federal permit requirements. The distinction between nonpoint sources and diffuse point sources is sometimes blurry. Therefore, at several points in the management measures guidance, EPA provides detailed discussions to help the reader discern whether a particular source is a point source or a nonpoint source.

2. Current National To Control Nonpoint Pollution

a. Nonpoint Source Program

During the first fifteen years of the national program to abate and control water pollution, EPA and the States focused most of their water pollution control activities upon traditional "point sources", such as discharges through pipes from sewage treatment plants and industrial facilities. These point sources are regulated by EPA and the States through the National Pollutant Discharge Elimination System (NPDES) permit program established by section 402 of the Clean Water Act. Discharges of dredged and fill materials into wetlands are also regulated by the U.S. Army Corps of Engineers and EPA under section 404 of the Clean Water Act.

As a result of the above activities, the nation has greatly reduced pollutant loads from point source discharges and has made considerable progress in restoring and maintaining water quality. However, the gains in controlling point sources have not solved all of the nation's water quality problems. Recent studies and surveys by EPA and by State water quality agencies indicate that the majority of the remaining water quality impairments in our nation's rivers, streams, lakes, estuaries, coastal waters, and wetlands result from diffuse runoff such as nonpoint source pollution, and other sources not addressed historically, such as urban storm water discharges and combined sewer overflows.

In 1987, given the progress achieved in controlling point sources, coupled with the growing national awareness of the increasingly dominant influence of nonpoint source pollution on water quality, Congress amended the Clean Water Act (CWA) to focus greater national efforts on nonpoint sources. In the Water Quality Act of 1987, Congress amended Section 101 of the CWA, "Declaration of Goals and Policy", to add the following fundamental principle that it is the national policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

More importantly, Congress enacted section 319 of the CWA, which established a national program to control nonpoint sources of water pollution. Under section 319, States address nonpoint source pollution by assessing nonpoint source pollution problems and causes within the State; adopting management programs to control the identified nonpoint source pollution problems; and implementing the management programs. Section 319 provides for the issuance by EPA of grants to States to assist them in implementing those management programs or portions of management programs that have been approved by EPA.

EPA also administers other programs that address nonpoint sources. These include:

(1) *The National Estuary Program* under section 320 of the Clean Water Act. This program focuses upon point and nonpoint pollution in geographically targeted, high-priority estuarine waters. In this program, EPA assists State, regional and local governments and representatives of industry and the general public, among others, to develop estuary-specific comprehensive conservation and management plans that recommend priority corrective actions to restore and maintain estuarine water quality, and to protect fish populations and other designated uses of the targeted waters.

(2) *The pesticide program established by the Federal Insecticide, Fungicide, and Rodenticide Act.* Among other things, this program authorizes EPA to control pesticides that may threaten ground and surface water. FIFRA provides for the registration of pesticides and imposes enforceable label requirements, which may include maximum rates of application, restrictions on use practices, and classification of pesticides as "restricted use" pesticides (which restricts use to certified applicators trained to handle toxic chemicals).

B. Coastal Zone Management Program

The Coastal Zone Management Act of 1972 established a program for States and Territories to voluntarily develop comprehensive programs to protect and manage coastal resources (including the Great Lakes). In order to receive federal approval and implementation funding, States and Territories had to demonstrate that they had programs, including enforceable policies, that were sufficiently comprehensive and specific to regulate land uses, water uses, and coastal development, and to resolve conflicts among competing uses.

There are 29 federally approved State and Territorial programs. Despite institutional differences, each program must protect and manage important coastal resources, including wetlands, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitats. Resource management and protection is accomplished in a number of ways through State laws, regulations, permits, and local plans and zoning ordinances.

While water quality protection is integral to the management of many of these coastal resources, it was not specifically cited as a purpose or policy of the original statute. The Coastal Zone Act Reauthorization Amendments of 1990 described below specifically charge State coastal programs, as well as State nonprofit source programs, with addressing nonpoint source pollution affecting coastal water quality.

II. Coastal Zone Act Reauthorization Amendments of 1990

A. Background and Purpose of the Amendments

On November 5, 1990, Congress enacted the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). CZARA was intended to address several concerns, a major one of which is the impact of nonpoint source pollution on coastal waters. In section 6202(a) of the Amendments, Congress made a set of findings, of which the following are most pertinent here:

1. Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.
2. Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have grown from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.
3. Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of $12,000,000,000 a year.
4. Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.
5. Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, runoff from agricultural activities may add to coastal pollution.
6. Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect coastal resources.

7. * * *

8. There is a clear link between coastal water quality and land use activities along the shore. State management programs under the

Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality * * *.

Based upon these findings, Congress declared that it is the purpose of Congress in this subtitle [the Coastal Zone Act Reauthorization Amendments of 1990] to enhance the effectiveness of the Coastal Zone Management Act of 1972 by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems. (Section 6202(b))

B. State Coastal Nonpoint Pollution Control Programs

To address more specifically the impacts of nonpoint source pollution on coastal water quality, Congress enacted section 6217, "Protecting Coastal Water," which was codified at 16 U.S.C. 1455b. This section provides that each State with an approved coastal zone management program must develop and submit to EPA and NOAA for approval a Coastal Nonpoint Pollution Control Program. The purpose of the program "shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities."

Coastal nonpoint pollution control programs are not intended to supplant existing coastal zone management programs and nonpoint source management programs. Rather, they are to serve as an update and expansion of existing nonpoint source management programs and are to be coordinated closely with the existing coastal zone management programs. The legislative history indicates that the central purpose of section 6217 is to strengthen the links between Federal and State coastal zone management and water quality programs and to enhance State and local efforts to manage land use activities that degrade coastal waters and coastal habitats. The legislative history further indicates that State coastal zone and water quality agencies are to have co-equal roles, analogous to the sharing of responsibility between NOAA and EPA at the Federal level. See 136 Cong. Rec. E 3724 (statement of Representative Studds).

Section 6217(b) states that each State program must "provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally," and also to provide for implementation of "additional management measures" where coastal water quality is threatened or impaired. States must also address NOAA's recommendations under section 6217(e) for changes to coastal zone boundaries, which are based on findings that inland boundaries must be modified to more effectively manage land and water uses to protect coastal waters.

Congress required that, within 30 months of publication of EPA's final guidance, States must develop and submit to EPA and NOAA for approval their coastal nonpoint pollution control programs. Failure to submit an approvable program (*i.e.*, one that meets the requirements of section 6217(b)) results in a reduction of Federal grant dollars under both the nonpoint source and coastal zone management programs. See section 6217(c) (3) and (4).

C. Management Measures Guidance

Section 6217(g) of CZARA requires EPA to publish (and periodically revise thereafter), in consultation with NOAA, the Fish and Wildlife Service, and other Federal agencies, "guidance for specifying management measures for sources of nonpoint pollution in coastal waters." "Management measures" are defined in section 6217(g)(5) as economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

The management measures guidance is to include at a minimum six elements set forth in section 6217(g)(2):

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

State coastal nonpoint pollution control programs must implement management measures that are in conformity with this management measures guidance.

The legislative history confirms that, as indicated by the statutory language, the "management measures" approach is technology-based rather than water-quality-based. That is, the management measures, in a manner analogous to the technology-based requirements previously established for point sources, are to be based upon technical and economic achievability, rather than on establishing cause and effect linkages between particular land use activities and particular water quality problems. Under the approach adopted by Congress, States will be able to concentrate their resources initially on developing and implementing measures that experts agree will reduce pollution significantly. As explained more fully in the program development and approval guidance, States will supplement the implementation of management measures with additional management measures to address any remaining coastal water quality problems.

The legislative history also indicates that the management measures guidance, while patterned to a degree after the point source effluent guidelines technology-based approach (see 40 CFR parts 400–471 for examples of this approach), is not expected to have the same level of specificity as effluent guidelines. The legislative history recognized that the effectiveness of a particular management measure at a particular site to control nonpoint pollution is subject to a variety of factors too complex to address in a single set of simple, mechanical prescriptions developed at the federal level. Thus, the legislative history indicates that EPA's guidance should offer State officials a number of options and permit them considerable flexibility in selecting management measures that are appropriate for their State. Thus, the management measures published by EPA are generally written to allow such flexibility in implementation.

An additional major distinction drawn in the legislative history between effluent guidelines for point sources and the management measures guidance is that the management measures will not be directly or automatically applied to categories of nonpoint sources as a matter of federal law. Instead, the measures must be established under

State law. Section 306(d)(16) of the CZMA requires state coastal zone programs to contain enforceable policies and mechanisms to implement the applicable requirements of the State coastal nonpoint pollution control program.

D. State Program Development and Approval Guidance

In addition to EPA's management measures guidance, NOAA and EPA are today jointly publishing guidance on the development by States, and approval by NOAA and EPA, of State coastal nonpoint pollution control programs. While not mandated by law, the program guidance is intended to assist States in developing approvable programs.

As discussed above, under section 6217 of CZARA, State coastal nonpoint programs must contain a number of provisions in order to be approvable by EPA and NOAA. First, all state programs must provide for implementation of management measures "in conformity" with technology-based management measures guidance established by EPA under section 6217(g), to "protect coastal waters generally." The guidance addresses this requirement.

In addition, the program guidance addresses other aspects of State programs, including:

1. Identification of land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of (a) coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, or (b) coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources;
2. Identification of critical coastal areas adjacent to coastal waters identified under the preceding paragraph;
3. Implementation of additional management measures applicable to land uses and areas identified under paragraphs (1) and (2) above that are necessary to achieve and maintain applicable water quality standards and protect designated uses;
4. Provision of technical assistance to local governments and the public to implement management measures;
5. Provision of opportunities for public participation in all aspects of the program; and
6. Establishment of mechanisms to improve coordination among State and local agencies and officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety.

The guidance also discusses the process that NOAA is using, in consultation with EPA, to evaluate the landward coastal zone boundary of each coastal State to determine whether it extends inland sufficiently to control land and water uses that have a significant impact on coastal waters of the state and to recommend boundary modifications as necessary. NOAA's recommendation will be based on a determination of the geographic scope of the State's coastal program, necessary to meet the goals of the Act, i.e., to protect coastal waters generally.

Within 30 months after EPA's issuance of management measures guidance, States are required to submit to NOAA and EPA their Coastal Nonpoint Pollution Control Programs for review. Within six months after the date of submission of a State program, NOAA and EPA must jointly review the program. NOAA and EPA must each approve the program if they determine, with the concurrence of the other agency, that the portions of the program under their respective authorities meet the requirements of section 6217. As a matter of policy, if either NOAA or EPA determines that a state has failed to submit an approvable program, the program will not be approved and the statutory penalties will apply.

If a State fails to submit an approvable program as required under section 6217, EPA and NOAA are required to reduce the State's CZMA section 306 grants (used by States to administer their coastal zone management programs) and CWA section 319 grants (used by States to administer their nonprofit source control programs) by 10 percent in 1996; 15 percent in 1997; 20 percent in 1998; and 30 percent in 1999, and each year thereafter, according to formulas set forth for the respective programs in section 6217(c) (3) and (4). In limited situations, EPA and NOAA may grant conditional approval of State coastal nonpoint programs, which would delay application of penalties. Funds would be withheld only if the State fails to meet the conditions established by NOAA and EPA within the one year conditional approval period.

In addition to the statutory provision requiring states to develop approvable programs within 30 months after the final management measures guidance is published, the program guidance grants States three years from the time of program approval to provide for the implementation of management measures in conformity with EPA's management measures guidance. Implementation is defined as having practices in place to control nonpoint pollution (*e.g.*, structural practices "on-the-ground", mechanisms in place to ensure that non-structural practices are being carried out). States are then provided an additional two years for monitoring the effectiveness of the management measures. States then have three more years to implement additional management measure to address remaining coastal water quality threats or impairments. Thus, if the management measures guidance is issued in January 1993, states have until July 1995 to develop programs. Implementation of the "g" guidance measures must occur by 1998, monitoring activities must be undertaken through 2000, and additional measures implemented by 2003.

III. Process Used To Develop These Guidance Documents

A. Management Measures Guidance

Congress established a six-month deadline after passage of the statute (May 5, 1991) for publications of the proposed management measures guidance, and an eighteen-month deadline (May 5, 1992) for publication of the final guidance. EPA published the proposed management measures guidance on June 14, 1991, and in the interest of promoting the broadest possible consideration of the proposal by a wide variety of interested federal and State agencies, affected industries, and citizens groups, provided an initial four-month comment period. See 56 FR 27618 (June 14, 1991). In response to numerous requests from the public, EPA extended the comment period for an additional two months, providing a total of six months for comment on the proposed management measures guidance. See 56 FR 51882 (October 16, 1991).

EPA received 477 public comments on the proposed management measures guidance. EPA's response to those comments is reflected in the final management measures guidance and is summarized in a separate Response to Public Comments document available from EPA.

Subsequently, EPA completed its draft economic analyses and published a **Federal Register** notice requesting public comment on those analyses. 57 FR 26845 (June 16, 1992). EPA also included in this notice a request for further public comment on three specific aspects of the management measures guidance. EPA provided a 30-day comment period for the items set forth in the notice and received 45 comments in response.

In developing the final management measures guidance, EPA continued the practice begun with the proposed guidance of drawing upon a diversity of knowledgeable sources of technical nonpoint source expertise. Since the guidance addresses most significant categories of nonpoint sources that impact or could impact coastal waters, EPA drew upon expertise covering the very wide range of subject areas addressed in this guidance.

Because experts in the field of nonpoint source pollution tend to specialize in particular source categories, EPA formed work groups on a category basis. Thus, EPA established five work groups to develop this guidance:

(1) Agriculture;
(2) Forestry;
(3) Urban;
(4) Marinas and Recreational Boating; and
(5) Hydromodification and Wetlands.

Each of these work groups held several one- or two-day meetings to discuss the technical issues related to the guidance. These meetings, including State and federal non-EPA participation, were very helpful to EPA in formulating the final guidance. In addition, EPA met with representatives of industry and environmental groups in order to hear their views and concerns. However, all decisions on the final guidance's contents were made by EPA. Summaries of the meetings are available at the addresses listed at the beginning of this notice.

B. The State Program Development and Approval Guidance

NOAA and EPA jointly developed the state coastal nonpoint pollution control program guidance. On October 16, 1991, NOAA and EPA published the proposed program guidance for a comment period of 60 days. 56 FR 51882 (Oct. 16, 1991). The public submitted 130 comments on the proposed guidance.

For the state program guidance, NOAA and EPA did not establish formal work groups with other federal and State agencies as were established for the management measures guidance. However, EPA and NOAA met with State agencies' representatives and others to obtain their views on the proposed guidance. Summaries of the meetings are available at the addresses listed above at the beginning of this notice.

C. Economic Achievability of the Management Measures

Congress defined "management measures" to mean "economically achievable measures * * * which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives." EPA has determined that all of the management measures in this guidance are economically achievable, including, where limited data were available, cost-effective. The economic analyses which support this determination are available from EPA.

As a result of these economic analyses, EPA has modified several measures in the guidance to reduce adverse economic impacts. Most significantly, EPA has relaxed the requirements for smaller animal feeding operations. In addition, certain requirements applicable to marinas have also been modified. For example, the requirement to remove 80% of total suspended solids in storm water applies to hull maintenance areas only rather than to the whole marina site.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Pursuant to Executive Order 12291, EPA has also conducted a regulatory impact analysis. This analysis attempted to assess the relative costs and benefits to society of the management measure guidance. The aggregate annual costs of complying with the management measures are estimated to be between $390 million and $590 million (these exclude costs which may be associated with additional management measures which may ultimately be required to meet water quality standards as required by CZARA). Due to limitations in available methodologies to evaluate the benefits of nonpoint source controls, the regulatory impact analysis does not quantify the benefits of implementing the management measures guidance. Rather, benefits are discussed qualitatively in terms of the impact on the environment. EPA expects that important reductions in nonpoint source pollution loadings to surface water will result from the implementation of these measures.

The guidance documents and the Regulatory Impact Analysis were submitted to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12291.

B. Paperwork Reduction Act

The guidance documents contain information collection requirements both for States developing coastal nonpoint pollution control programs and for individuals likely to be affected by the information collection requirements in those state programs. These information collection requirements have been approved by OMB pursuant to the paperwork Reduction Act, 44 U.S.C 3501 *et sec.*, and have been assigned OMB Control Number 2040–0153. The public reporting burden for this collection of information is estimated to be 274,963 hours, with an average of 1.25 hours per respondent. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, PM–223, U.S. EPA, 401 M St., SW., Washington, DC 20460, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

W. Stanley Wilson,
Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Martha G. Prothro,
Acting Assistant Administrator for Water, U.S. Environmental Protection Agency.

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federal register

Tuesday
January 19, 1993

Part X

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 275 and 283

Food Stamp Program: Hunger Prevention Act of 1988; Rules of Practice; Administrative Law Judges; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 275 & 283

[Amdt. No. 348]

Food Stamp Program; Hunger Prevention Act of 1988; Rules of Practice; Administrative Law Judges

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture proposes to implement the rules of practice governing the administrative review process for State agencies challenging food stamp quality control claims. This action is necessary to implement program administrative review requirements mandated by the Hunger Prevention Act of 1988, Public Law 100–435.

DATES: Comments must be received by March 22, 1993 in order to be assured of consideration.

ADDRESSES: Comments should be addressed to John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 907, Alexandria, Virginia 22302. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to John Knaus, Chief, Quality Control Branch, at the above address or by telephone at (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Department has reviewed this action under Executive Order 12291 and Secretary's Memorandum No. 1512–1. It has been determined that this action will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individuals, industries, Federal, State, local government agencies, or geographic regions. Additionally, this action will not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this action has been classified as "non-major."

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V (48 FR 29115), the Food Stamp Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992 memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). Phyllis R. Gault, Acting Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be affected to the extent that they administer the Food Stamp Program. Potential and current participants in the Food Stamp Program will not be affected because this proposed regulation only concerns procedures for administrative appeals by State agencies of quality control claims.

Paperwork Reduction Act

This rulemaking does not contain recordkeeping and reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) and falls within the exceptions to coverage.

Background

Section 16(c) of the Food Stamp Act of 1977, 7 U.S.C. 2025(c), (the "Act"), authorized the Secretary of the U.S. Department of Agriculture (hereinafter "Secretary" and "Department") to implement a system that enhanced payment accuracy in the Food Stamp Program by establishing fiscal incentives for State agencies which administer the program. The Food Stamp Error Rate Reduction System was implemented pursuant to this statutory mandate. State agencies with high error rates, as determined by quality control (QC) procedures, share in the cost of payment errors by having claims assessed against them by the Federal government ("QC claim"). Prior to enactment of the Hunger Prevention Act of 1988, Public Law 100–435 ("HPA"), section 14(a) of the Act, 7 U.S.C. 2023(a), provided that State agencies aggrieved by such QC claims could challenge the claim through an informal administrative review process and subsequent *de novo* review in the Federal district courts.

Section 603 of the HPA amended section 14(a) of the Act to revise the Food Stamp Program's administrative review process for QC claims. Congress intended that the HPA, among other things, amend the QC administrative appeals process to expedite administrative and judicial appeals of QC claims. The amendments to the Food Stamp Act are effective retroactively to October 1, 1985, for QC claims arising out of error rates assessed for periods beginning October 1, 1985 (Fiscal Year 1986) under section 16(c) of the Act, 7 U.S.C. 2025(c).

Two major changes to the QC administrative review process were made by the HPA. First, appeals of QC claims pursuant to section 16(c) of the Act for Fiscal Year 1985 and prior fiscal years were determined by a State Food Stamp Appeals Board ("SFSAB") appointed by the Secretary. Under the HPA, the informal hearing process before the SFSAB will be replaced, for Fiscal Year 1986 and subsequent fiscal year claims, with a formal administrative adjudication to be held before an Administrative Law Judge ("ALJ") appointed pursuant to 5 U.S.C. 3105, in accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 556 and 557). The Office of Administrative Law Judges has been designated by the Secretary, 7 CFR 2.41 (1989), to hold hearings and perform related duties in proceedings subject to 5 U.S.C. 556 and 557. Section 556 sets forth procedural rules governing the conduct of evidentiary hearings; section 557 prescribes the decisional process that is to follow such hearings.

The specific incorporation of section 557 necessarily means that the departmental review procedures contained therein are to apply to section 2025(c) claims. Section 557(b) authorizes the agency to reserve the power to review any decision initially made by an ALJ "[W]hen the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings *unless* there is an appeal to, or review on motion of, the agency within time provided by rule." 5 U.S.C. 557(b) *(emphasis added)*. Unless otherwise provided by statute, the "presiding employee" to which section 557(b) refers is an ALJ. 5 U.S.C. 556(b)(3). Section 2023(a) specifically requires that the presiding employee shall be "one or more administrative law judges." Review by the Secretary constitutes review by "the agency" under section 557(b) because the Secretary is responsible for the "supervision and control" of the USDA, 7 U.S.C. 2202.

The ALJ shall make an initial decision which shall become final and effective without further proceedings unless a review by the Secretary is sought by a party to the proceeding in accordance with these proposed rules. 7 CFR 2.41 (1989). Authority to act as the final deciding officer in adjudicatory proceedings subject to 5 U.S.C. 556 and 557 has been delegated to the Judicial Officer by the Secretary. 7 CFR 2.35 (1989). Accordingly, the Department has proposed that the ALJ shall prepare and issue an initial decision which shall become final and effective without further proceedings unless a review by the Judicial Officer is sought by a party to the proceeding in accordance with these proposed rules. However, no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. 7 CFR 2.41 (1989). If the State agency feels aggrieved by such final determination of the Secretary, it may seek judicial review within thirty days of delivery or service of the final notice of determination. (7 U.S.C. 2023(a)). An appeal to the Federal Court would occur only after the State had exhausted all of its appeal rights as contained in Part 283.

Second, under the HPA, State agencies requesting judicial review of a final determination will no longer be entitled to review in the Federal district courts by trial *de novo*. Judicial review of the final determination shall be on the administrative record created before the ALJ.

In addition, the HPA mandates that a summary appeals procedure (no oral hearing) be made available for QC claims of less than $50,000. Therefore, a new subpart, 7 CFR part 283, subpart C, will describe the summary procedures which may be used in administrative appeals of QC claims of less than $50,000. The new rules of practice for administrative appeals of QC claims in excess of $50,000 shall appear at 7 CFR part 283, subpart B.

The HPA retained the authority of the Secretary to waive some or all of a State's QC claim where the Secretary determines that the State agency has good cause for failure to meet its error rate goal. However, the HPA provides that the ALJs shall not review, on appeal, good cause arguments which shall be made separately and determined solely by the Secretary. Other changes made by the HPA to the good cause waiver request process have been addressed in the final rule entitled "Good Cause Relief From Quality Control Error Rate Liabilities" published in the **Federal Register** on September 28, 1992, 57 FR 44481.

In preparing these proposed rules, existing Departmental regulations related to current procedures for appeals before the ALJs were reviewed. These regulations are entitled "Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes", published in the **Federal Register** on January 4, 1977, 42 FR 743 and "Implementation of the Program Fraud Civil Remedies Act of 1986", published in the **Federal Register** on March 7, 1991, 56 FR 9581. The Department is proposing to adopt the procedures contained in these regulations but has modified certain provisions to take into account the statutory requirements related to the Food Stamp Program's administrative review process for QC claims.

As required by section 603 of the HPA, the Department is proposing regulations which will implement the procedures for hearings before the ALJs for QC claims over $50,000 and a summary procedure (no oral hearing) for QC claims under $50,000. This proposal will establish (1) time frames and procedures for a State agency to file an appeal and request for an oral hearing before the ALJ; (2) procedures for the State agency and FNS to follow during the appeal process, including dismissal of the appeal, settlement, discovery, the filing of briefs and motions, consolidation of issues, the initial ALJ decision, reconsideration of the initial ALJ decision and review by the Judicial Officer; and (3) procedures for the summary appeal process for those States with QC claims under $50,000 or States with QC claims over $50,000 which have either requested the summary procedures or have failed to file a timely request for an oral hearing under the full administrative review procedures. A more detailed explanation of these proposed procedures is provided below.

Definitions—Section 283.3

Appeal

The Department is proposing to define "appeal" as the initial appeal to the ALJ within the required 10-day time period.

Review by the Judicial Officer

This refers to the review by the Judicial Officer of an ALJ initial decision in accordance with § 283.20.

Section 603 of the HPA provides that judicial review of determinations regarding QC claims shall be a review on the administrative record. Therefore, a reference to the loss of the opportunity to appeal the QC claim may also include loss of further appeal rights including the opportunity to appeal to Federal court.

Filing

Section 603 of the HPA retained the provision of section 14(a) of the Food Stamp Act which provided that a State agency aggrieved by a claim may file a written request within 10 days of receipt of the claim for an opportunity to submit information in support of its position. Filing an appeal within the 10 days is mandated by statute and therefore may not be waived or otherwise extended. Under current procedures for appeals before the SFSAB, the appeal is considered to be timely if it is either filed with the Executive Secretary for the SFSAB or postmarked within 10 days of the date of delivery of the notice of claim. Computation of the 10-day time period begins with the day following delivery of the bill for collection. The Department is proposing that the current procedures be retained for appeals before the ALJ. The written request for an opportunity to submit information must be postmarked or received, if hand delivered, by the Hearing Clerk for the ALJ within 10 days of the date of delivery of the bill for collection. The computation of the 10-day time period will be considered as beginning with the day following delivery of the bill for collection.

In addition, the Department is proposing that all filing deadlines established in this regulation will be considered as the date postmarked or, if hand delivered, the date of receipt by the Hearing Clerk or other authorized officer or employee of the Department and will apply equally to the State agency and to the Food and Nutrition Service (FNS). The Department is proposing that the procedure for the computation of the 10-day time period be applicable to the computation of all filing deadlines.

Filing Appeals for QC Claims of $50,000 or More—Section 283.4

In accordance with section 14(a) of the Food Stamp Act, a State agency has 10 days from receipt of a bill for collection to file an appeal. Since this 10-day time limit is mandated by statute and cannot be extended by the ALJ, we are proposing a two-step procedure for filing the appeal under the ALJ procedures.

Notice of Appeal

Under the first step, a State agency would have 10 days from receipt of the bill for collection to file a notice of appeal with the Hearing Clerk. As discussed earlier, the Department is proposing that in order to be considered timely, the notice of appeal must be postmarked, if mailed, or received, if hand delivered, by the Hearing Clerk no later than the tenth day following receipt by the State agency of the bill for collection. If this due date falls on a weekend or Federal holiday, the notice of appeal must be postmarked, if mailed, or received, if hand delivered, by the Hearing Clerk on the next available work day. Failure to file within the statutory time period shall result in a loss of any further appeal rights.

The Department is proposing that the Hearing Clerk acknowledge, by means of a letter, the receipt of the notice of appeal and provide the State agency with instructions as to the filing of the appeal petition. If the State agency files a timely notice of appeal with the Hearing Clerk, collection action on the QC claim shall automatically be stayed until a final determination on the appeal petition has been issued. However, section 602 of the HPA provides that interest on the unpaid claim would accrue either from a date that is 2 years after the date the bill is received or the date of the decision on the administrative appeal, whichever is earlier. The Department's procedures on the calculation of interest are contained in the rule entitled "Food Stamp Program: Miscellaneous Quality Control Provisions of the Hunger Prevention Act of 1988", published in the **Federal Register** on November 27, 1991, 56 FR 60045.

Appeal Petition

Once the notice of appeal is accepted as timely, the Hearing Clerk would notify the Stage agency that the original and two copies of the appeal petition must be filed with the Hearing Clerk and a copy served on the other parties within 30 days of service of the letter from the Hearing Clerk. In accordance with § 283.22, when a document has been served by mail, an additional five days will be added to the time permitted for a response. The Department is proposing that the 30 day deadline for filing the appeal petition may be extended upon written request to the ALJ provided there is good reason for an extension. A request for an extension must be filed prior to the expiration of the original due date. If a State agency fails to file the appeal petition by the original or extended due date, the State agency may, absent a showing of good cause, lose all further opportunity to appeal. The Department is proposing that the appeal petition set forth the factual and legal basis for the appeal, the nature of the relief sought by the State agency and a request for an oral hearing before the ALJ if desired by the State agency.

Section 14(a) of the Food Stamp provides that the determination regarding a QC claim shall be made on the record after an opportunity for an agency hearing. The statute does not mandate that there be an oral hearing before the ALJ on QC claims of $50,000 or more. Rather, it requires that the State agency be provided an opportunity for such hearing. Since it is possible that a State agency may want its appeal decided on the administrative record rather than by means of an oral hearing before the ALJ, the Department is proposing that the oral hearing be optional. Consequently, failure to request an oral hearing at the time that the appeal petition is filed will result in a forfeiture of the opportunity for such a hearing. State agencies with QC liabilities of $50,000 or more which either specifically request that appeals be based upon the administrative record or which fail to request an oral hearing within the required time period will have their appeals decided using the Summary Procedures established for QC claims of less than $50,000.

Good Cause Relief.

Section 603 of the HPA provides that State agencies are precluded from seeking relief under the appeals process of the denial by the Secretary of a good cause waiver request. Although the State agency would be precluded from raising good cause issues before the ALJ, the Department is proposing that facts used by the State agency to support its good cause waiver request, if relevant to other appealable issues, may be used as part of the appeal to the ALJ to support those issues.

Motion to Dismiss—Section 283.5

The Department is proposing that FNS be permitted to file a motion to dismiss if: (1) The notice of appeal or appeal petition is untimely filed by the State agency, (2) the appeal petition is improperly filed, (3) the issues appealed are good cause issues which are not appealable or (4) the appeal petition is incomplete and can not be quickly or easily cured by an amendment. Under this proposal, FNS would be required to provide clear and convincing proof that the appeal should be dismissed. The Department is proposing also that FNS would waive its right to file a motion to dismiss if the motion were not filed prior to or at the same time that FNS filed its answer to the appeal petition.

If an acceptable motion to dismiss is filed, the Department is proposing that the State agency be allowed 20 days from service of the motion to file its objections. Further action on the appeal of the QC claim would be stayed pending an initial decision by the ALJ as to the merits of the motion to dismiss. If the ALJ decides that the State agency's notice of appeal was untimely filed, the ALJ would grant the motion to dismiss. If the ALJ decides that the State agency's appeal petition was not properly filed in accordance with § 283.4, was an appeal of the Secretary's determination on good cause, or was substantially incomplete, the ALJ could either grant the motion to dismiss or provide the State with an opportunity to amend its appeal petition in accordance with § 283.8. An initial decision of the ALJ shall become final and effective without further proceedings unless reconsideration or a review by the Judicial Officer is sought by a party to the proceeding in accordance with §§ 283.17(d) and 283.20 of these proposed rules.

Answer—Section 283.6

The Department is proposing that FNS file an answer within 30 days from service of the appeal petition or, if FNS filed a motion to dismiss prior to filing its answer, 30 days from service of a final decision denying the motion to dismiss. FNS, like the State agency, could request an extension of this due date provided that such request was filed with the ALJ before the expiration of the original due date. The ALJ could grant an extension if appropriate grounds were established.

FNS would admit, deny, or explain each of the State agency's allegations in the answer to the appeal petition. The Department is proposing that failure by FNS to file a timely answer or to respond to each allegation would be considered, for purposes of the appeal, as an admission of the State agency's allegation(s).

Procedures Upon Failure to File an Answer—Section 283.7

The Department is proposing that failure by FNS to file an answer to the appeal petition within the required time period would result in a waiver of the hearing. Under this proposal, the State agency would file a proposed decision and motion for adoption by the ALJ. FNS would be provided an opportunity to file objections to the State agency's proposed decision and motion for adoption within 20 days of service. If the ALJ decided that FNS had filed meritorious objections to the proposed decision and motion for adoption, FNS would be provided an opportunity to file an answer to the appeal petition. The initial decision of the ALJ concerning the State agency's motion or FNS' objections to the motion shall become final and effective 30 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20.

Amendment of Appeal or Answer—Section 283.8

The Department is proposing that the State agency may amend its appeal petition or FNS may amend its answer at any time prior to the other party's filing of a motion for a hearing as provided for in § 283.15.

Once the motion for a hearing has been filed, both parties should be reasonably certain as to the nature of the appeal and related filings. Therefore, the Department is proposing that neither party may amend its appeal or answer unless both parties agree or the ALJ grants leave to a party upon its motion and a showing of good cause.

Withdrawal of Appeal—Section 283.9

The Department is proposing that the State agency be permitted to withdraw its appeal at any time prior to the initial decision by the ALJ on the merits of the appeal. Under this proposal, the State agency would agree to pay the full amount of the QC claim and would waive all rights to further appeal. This would include review by the Department's Judicial Officer or the Federal court.

Consent Decision—Section 283.10

The Department is proposing a procedure whereby the parties could mutually agree to end the appeal process prior to the ALJ issuing an initial decision. Under this proposal, if both parties agree to the proposed consent decision, its terms would be final and not subject to review by the Judicial Officer or by the Federal court. The ALJ would sign the consent decision as agreed to unless there was an obvious error such as a gross discrepancy in the amount of the QC claim. Once signed, the consent decision would be final and would take effect 30 days after service.

Prehearing Conference and Procedure—Section 283.11

The ALJ shall schedule a conference at a reasonable time prior to the hearing to expedite and aid in the disposition of the appeal. The Department is proposing that the ALJ would decide if personal attendance at the prehearing conference is necessary or if the matters could be resolved by telephone conference. If personal attendance at the prehearing conference is determined to be necessary, the conference will be held at the U.S. Department of Agriculture, Washington, DC.

At the prehearing conference, the ALJ would establish the parameters of and schedule for the completion of discovery, discuss issues related to the appeal with the parties or any other actions decided by the parties.

The ALJ will decide if a stenographic record of the prehearing conference will be necessary. If no stenographic record is made, the ALJ will either issue a written order of those actions agreed to at the prehearing conference or, if the prehearing conference takes place within 7 days of the hearing, make a statement on the record at the hearing summarizing the actions taken.

Discovery—Section 283.12

The Department is proposing to allow any party to the appeal to pursue discovery. The ALJ will establish the scope of and schedule for completion of discovery.

Depositions

The Department is proposing that any party to the appeal may file a written motion requesting that the ALJ order the taking of depositions of those individuals identified in the motion. Under this proposal, the use of depositions would be limited to those instances where the ALJ finds that a witness may not be available at the time of the hearing. In accordance with the procedures contained in § 283.18, all parties to the appeal will be served a copy of the motion. Within 14 days of service, or as directed by the ALJ, any party may file a response to the motion for the taking of depositions. The Department is proposing that the party initiating the motion not be permitted to reply to the response unless ordered by the ALJ. If the ALJ decides that one or more depositions are necessary because of witness availability, the ALJ will serve an order on all parties to the appeal.

Since the use of a deposition is limited to only those instances in which it is determined that the testimony of a witness might not be available at the time of the hearing, the Department is proposing that the procedures for deposing a witness will be similar to the procedures for examination of a witness at the hearing. Therefore, the deponent would be examined under oath or affirmation and would be subject to cross-examination. Upon agreement of the parties or as directed by the ALJ, the examination of the witness would be by oral examination or written questions. If the examination is by written questions, the Department is proposing that copies of the questions be served upon the other parties and filed with the officer authorized to administer oaths and take the deposition. The other parties to the appeal may serve cross questions and file these questions with the officer at any time prior to the examination.

The Department is proposing that, as directed by the ALJ, the deposition may be taken by telephone. When a deposition is taken by telephone, it is to be taken at the place where the witness

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is to answer the questions rather than where the questions are asked.

All oral examinations shall be stenographically recorded or, as stipulated to by both parties or at the direction of the ALJ, recorded by other than stenographic means. The stipulation or the order shall designate the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

The Department is proposing that the deposition be introduced at the oral hearing if the ALJ decides that the evidence is admissible and that testimony at the hearing is not possible because (1) the witness has died; (2) the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (3) that the party offering the deposition into evidence has been unsuccessful in its attempt to secure the attendance of the witness at the hearing through use of a subpoena; or (4) that other exceptional circumstances exist and it is in the interest of justice to allow the deposition to be introduced into evidence. Under this proposal, if the party which requested the deposition refuses to offer it into evidence, any party to the appeal may offer all or a portion of the deposition into evidence. Further, if only a portion of the deposition is offered into evidence by a party, any other party may introduce other portions of the deposition into evidence.

Interrogatories

In accordance with the schedule established by the ALJ, any party to the appeal may submit written interrogatories to any other party. The Department is proposing that the number of interrogatories would not exceed 15 questions, including subparts, unless additional questions are authorized by the ALJ and that the responding party would be provided at least 20 days from the date of service or such time as determined upon motion to the ALJ to submit answers to the interrogatories. The answers to the interrogatories are to be signed under penalty of perjury by the person making them and objections to the interrogatories would be signed by the attorney of record or the responding party's authorized representative.

Requests for Admissions

The schedule for submitting and responding to admissions will be established by the ALJ. The Department is proposing that the number of admissions would be limited to 15 unless additional admissions are authorized by the ALJ. The responding party would be allowed no less than 20 days from date of service or such time as determined upon motion to the ALJ to file its answers or objections to the admissions. The matter will be considered admitted if the party to whom the request is directed fails to submit a written answer or objections to the request. The response to the admissions are to be signed by the party to the appeal, its counsel or designated representative.

Request for Production of Documents

The Department is proposing that any party to the appeal may submit a request for production of documents to any other party. The schedule for and scope of the request for production of documents will be established by the ALJ. The documents requested under discovery must be relevant to the issues under appeal. Under this proposal, the frequency or extent of use of discovery methods shall be limited by the ALJ if the ALJ determines that: (i) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. In addition, the party served with the request for documents could file a motion for a protective order stating why discovery of documents should be limited or should not be required. The responding party need not produce documents, or portions of documents, which are privileged.

The party requesting the documents may file a motion to compel production of those documents identified as privileged by the responding party. The initial decision of the ALJ on the motion to compel or the protective order shall become final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

Although any party may obtain documents under the discovery process, it is possible that a party to the appeal would file a Freedom of Information Act (FOIA) request with the Department in order to obtain documents which might not otherwise be available under the rules of discovery. The Department is proposing that no delays or postponements of the QC appeal will be allowed pending receipt of documents requested under FOIA or resolution of issues pertaining to a FOIA request.

Supplementation of Responses

Any party responding to a request under the discovery procedures would be required to file a correction when: (1) The party knows that the response was incorrect when provided, or (2) the party knows that the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

Inclusion in the Record

The party which initiated the requests for information under the discovery process may offer that information into evidence at the oral hearing. If the party initiating the requests refuses to offer this information into evidence, any other party may have the information introduced into the record. Under this proposal, any objections which were raised at the time that the information was provided would be included in the record together with any objections raised at the time that the information is offered into evidence.

Failure To Respond to Discovery

The Department is proposing that a party which is unable to obtain answers or is provided incomplete or evasive answers to questions asked in a deposition or interrogatories may file a motion to compel an answer. This provision would apply also to requests for production of documents. Under this proposal, the motion to compel must be filed within 20 days of the failure to obtain the answers in the deposition or within 20 days of the expiration of the time period for responding to interrogatories or producing documents. The motion to compel is to be served on all parties to the appeal and the deponents where applicable.

Failure To Comply With an Order

The ALJ may initiate proceedings in the appropriate U.S. district court against any party or witness who refuses to be sworn or to comply with an order by the ALJ to answer questions. In addition, the ALJ may decide that, for the purposes of the proceedings, the questions which were asked or the information contained in documents will be established as fact. This means that the party refusing to comply with an order would not be permitted to support or oppose designated claims or defenses and would be prevented from introducing into evidence related documents or testimony. Finally, the ALJ could order that all or a portion of the pleadings be struck from the record.

Exchange of Witness and Rebuttal Witness Lists, Statements or Exhibits

The Department is proposing that witness and rebuttal witness lists, statements or exhibits be shared by the parties at least 15 days prior to the scheduled hearing or as ordered by the ALJ. Failure to provide this information as required could result in the exclusion of testimony of witnesses or the admittance of evidence at the hearing without a showing of cause.

Subpoenas—Section 283.13

In accordance with section 603 of the HPA, the ALJ has the authority to issue and enforce subpoenas. The Department is proposing that any party may file a request for the issuance of a subpoena with the ALJ at least 15 days in advance of the oral hearing. The scope of the subpoena would be limited to the attendance and testimony of witnesses and the production of documentary evidence at the oral hearing. The party requesting the subpoena would be responsible for serving all other parties with a copy of the subpoena.

Fees of Witnesses—Section 283.14

Either party presenting witnesses at the hearing would be allowed to pay these witnesses a fee comparable to the fees which are paid to witnesses in the courts of the United States. The party requesting the appearance of the witness would be responsible for this payment. Witnesses who are current Federal, State or local government employees would not be eligible for these witness fees since these individuals would already be drawing salaries for any time associated with their appearance at the hearing.

Individuals attending the hearing at the request of either party would be eligible to receive reimbursement for travel expenses regardless of their eligibility for payment of witness fees.

Procedure for Hearing—Section 283.15

As discussed earlier, failure by the parties to the appeal to file a request for a hearing along with their appeal petition or answer shall constitute a waiver of the opportunity for an oral hearing. However, in the event that FNS denies any material fact and a hearing had not been requested by either party, the State agency would be provided an opportunity to address the denial of material facts. The Department is proposing that in this situation the State agency could file a motion requesting that a hearing be held on this issue. The ALJ could initiate this action independent of a motion from the State agency.

At any time after the conclusion of the schedule for actions agreed upon during the prehearing conference or established by the ALJ if a prehearing conference had not been conducted, any party may file a motion setting forth the issues which are in dispute and stating that the matter is ready for hearing. As provided for under § 283.18, any party may file a response to the motion within the time period specified by the ALJ. The ALJ will file a notice stating the time and place of the hearing. The Department is proposing that all oral hearings and arguments be held at the U.S. Department of Agriculture, Washington, DC. The parties to the appeal may appear in person or be represented at the hearing by the attorney of record in the appeal or by another representative designated pursuant to these rules.

Debarment of Attorney or Representative

The Department is proposing that the standard of conduct for attorneys or designated representatives will be that which is required before the courts of the United States. The ALJ may order the debarment of a person acting as an attorney or designated representative if that individual is guilty of unethical or contumacious (stubbornly disobedient or rebellious) conduct. The debarment is subject to review by the Judicial Officer in accordance with § 283.20. The Judicial Officer may order that the individual be precluded from further participation only in the current appeal or in any or all proceedings before the Department, as appropriate. The ALJ would suspend the QC appeal to allow the party to obtain other representation; however, the QC appeal would not be delayed or suspended pending action on the request for review by the Judicial Officer.

Failure to Appear

Under this proposal, a party which fails to appear at the hearing without cause would be considered to have waived its opportunity for an oral hearing and admitted any facts presented at the hearing and any material allegations of facts contained in any submission by the other party. However, the party not attending the hearing would not have waived its right to be served a copy of the ALJ's initial decision or to pursue the other administrative options which are available to either party as discussed in further detail under §§ 283.17(d) and 283.20.

The party in attendance at the hearing would be provided the option of filing a proposed decision and motion for adoption in accordance with the procedures under § 283.7 or proceeding with its presentation before the ALJ. Although § 283.7 is meant to apply in those instances in which FNS fails to file an answer to the appeal petition, the Department is proposing that the procedures be available to either party in those instances in which the other party fails to appear at the hearing. If the responding party files meritorious objections to the proposed decision and motion for adoption, the ALJ could find that the responding party had cause for its failure to attend the hearing and order that the hearing be rescheduled. If the party in attendance at the hearing elects to proceed with its presentation before the ALJ, the other party could, as one option, seek review of the ALJ's initial decision based upon that hearing to the Judicial Officer. If the Judicial Officer determines that the other party had cause for not attending the hearing, the Judicial Officer could order that the hearing be reopened for the purpose of taking further evidence in accordance with § 283.20. The other available option is discussed in § 283.17(d).

Evidence

Under this proposal, the testimony of all witnesses at the hearing will be under oath or affirmation and subject to cross-examination. The Department is proposing that after the direct examination of a witness, any party could request that the opposing party produce copies of any statement of the witness which is in its possession and relates to the subject matter of the testimony. This production would be in accordance with the procedures and limitations prescribed in the Jencks Act (18 U.S.C. 3500) which provides that these documents must be provided to the other party for purposes of cross-examination.

The Department is proposing that the ALJ would exclude evidence which is determined to be immaterial, irrelevant, or unduly repetitious. The restriction on unduly repetitious evidence is meant to relieve the ALJ of the duty to hear the same testimony from numerous witnesses.

Objections

Under this proposal any party may make an objection on the admissibility of any evidence, the scope of any examination or cross-examination, or any other ruling by the ALJ. The Department is proposing that an automatic exception will follow if the objection is overruled by the ALJ. The party which raised the objection would not be required to state for the record that the objection may be pursued through the other administrative avenues available to the parties. An objection which is not made with the ALJ can not be raised on review by the Judicial Officer.

Official Records or Documents

The Department is proposing that an official government record or document, if otherwise determined to be admissible, may be admitted into evidence without the production of the person who made or prepared the document. These documents will be considered as authentic. The party would either submit the officially published document or a certified copy of the document. In order to be acceptable, the copy must be certified as correct by an individual having the legal authority to make the certification. With respect to FNS and other Departmental records, this certification would be performed by the Office of General Counsel.

Official Notice

The Department is proposing that the ALJ would have the authority to take official notice of certain facts. Facts which would be deemed to be true would be those which are judicially noticed by the Federal Rules of Evidence for the U.S. Courts and any matter of technical, scientific, or commercial fact of established character. These officially noticed facts would not appear as evidence in the administrative record. The parties to the appeal would be provided an opportunity to rebut these noticed facts.

Offer of Proof

Under this proposal a party which has had evidence excluded by the ALJ is provided an opportunity to make an offer of proof pertaining to the excluded evidence. This offer of proof will be made during the hearing before the ALJ and will be included in the transcript and hearing record. The Department is proposing that if, for example, upon review by the Judicial Officer, it is determined that the ALJ was incorrect in the exclusion of this evidence, the Judicial Officer could consider the evidence, direct that the hearing be reopened to permit the taking of such evidence or make any other order in connection with the evidence which may be appropriate.

Consolidation of Issues—Section 283.16

The Department is proposing a procedure to allow for the consolidation of issues which are common to a number of appeals.

Under this procedure, any part could ask that the ALJ consider all appeals together for purposes of deciding a common issue. Even if not requested by the parties, the ALJ could decide that similar issues should be consolidated to promote administrative efficiency. If consolidation of issues is ordered, the ALJ will hear arguments on the consolidated issues before arguments on the other issues are presented by the parties. The scheduling of arguments would be at the discretion of the ALJ. It is possible that the ALJ could order that all parties be prepared to present arguments related to the other issues at the conclusion of the presentation of arguments on the consolidated issues or that separate hearings be held related to these other issues.

The ALJ could decide that FNS cannot overcome the evidence and arguments presented by the State agencies on the consolidated issues. If the decision on the consolidated issues is sufficient to grant the relief requested by the State agencies, it would not be necessary for the ALJ to render a decision on the other issues raised by the State agencies. The decision of the ALJ would be considered final and effective 30 days after service unless FNS pursued its other administrative options in accordance with §§ 283.17(d) and 283.20. The Department is proposing that if, for example, on review by the Judicial Officer, it is determined that the decision of the ALJ on the consolidated issues was incorrect, the Judicial Officer could direct that the hearing be reopened in accordance with § 283.20

Post-Hearing Procedures—Section 283.17

The Department is proposing that at the conclusion of the hearing, the ALJ would establish a schedule for the parties to file briefs and the proposed findings of facts, conclusions of law and order. These submissions are to be based solely upon the record and officially noticed matters. This schedule also would apply for filing of motions proposing corrections to the transcript. The filing of reply briefs will be at the discretion of the ALJ.

ALJ's Initial Decision

At the conclusion of the time period allowed for the filing of post-hearing submissions and briefs, the ALJ would prepare an initial decision based upon a review of the entire record and all matters officially noticed. This initial decision will be filed and served on all parties to the appeal. The initial decision of the ALJ shall become final and effective 30 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

Motion for Reconsideration

The Department is proposing that either party may file a motion for reconsideration within 30 days of service of the ALJ's initial decision. The filing of a response to the motion for reconsideration will be allowed only at the discretion of the ALJ. A pending decision on a motion for reconsideration would stay further action in the appeal. The ALJ would rule on the motion by denying it or revising the initial decision. No further motions for reconsideration of this ruling would be allowed.

If the ALJ denies the motion for reconsideration or issues a revised initial decision, the initial or revised decision of the ALJ shall become final and effective 30 days after service unless either party seeks review by the Judicial Officer as discussed in § 283.20 of this proposed regulation.

Motions and Requests—Section 283.18

The Department is proposing that unless otherwise directed, all motions and requests will be filed and served by the moving party.

The requests or motions related to review of the ALJ's initial decision as provided in § 283.20 will be filed with the Judicial Officer. With the exception of the motion to dismiss and the motion for reconsideration, any motion or request may be filed at any time during the appeal procedure.

All parties to the appeal will be provided copies of the requests and motions by the moving or requesting party. Within 15 days of service, or as directed by the ALJ or the Judicial Officer, any party may file a response to the request or motion. The Department is proposing that a reply by the party initiating the request or motion not be permitted unless ordered by the ALJ or the Judicial Officer.

The Department is proposing that those motions, requests, or objections which are filed by any party prior to review by the Judicial Officer in accordance with § 283.20, will be ruled on by the ALJ unless, at the discretion of the ALJ, these motions, requests, or objections are certified for a decision by the Judicial Officer. All motions, requests, or objections which are filed after seeking review by the Judicial Officer will be ruled on by the Judicial Officer.

Administrative Law Judges—Section 283.19

The Administrative Law Judges are employees of the Department of Agriculture and have been designated by the Secretary to hold hearings and perform related duties in proceedings in which the Department seeks to impose penalties. In accordance with section 14(a) of the Act, the ALJ has the authority to preside over the taking of evidence, to issue and enforce subpoenas and to appoint expert witnesses. The ALJ would not have the authority to decide upon the validity of Federal statutes or regulations.

The ALJs are subject to normal rules of impartiality and fairness. Therefore, the Department is proposing that any party to the appeal may file a motion for disqualification of the ALJ. Under this proposal, the ALJ would either rule on the motion or would certify the motion to the Judicial Officer. If the ALJ denies the motion for disqualification, this decision would not be subject to review by the Judicial Officer until such time as the ALJ renders an initial decision on the merits of the appeal petition. If any party to the proceedings would then seek review of the initial decision on the merits, the Judicial Officer could review the denial of the motion for disqualification provided that the issue is raised by the party as part of the appeal to the Judicial Officer.

Review by the Judicial Officer—Section 283.20

As discussed earlier, the Department is proposing that the ALJ will issue an initial decision for which any party to the proceedings may seek Judicial Officer review within 30 days of service of that initial decision. If a party to the proceedings has filed a motion for reconsideration in accordance with § 283.17(d), the review by the Judicial Officer would be stayed pending the decision on the motion for reconsideration.

Review Petition

The party seeking the Judicial Officer's review of the initial decision would file a review petition. Examples of issues which could be the subject of Judicial Officer review would include the debarment of an attorney, objections regarding evidence, limitations regarding examination or cross-examination of witnesses, or any other ruling made by the ALJ. The party seeking review by the Judicial Officer may file a supporting brief with its review petition.

Response to Review Petition

The Department is proposing that the party seeking Judicial Officer review shall serve copies of the review petition on all parties to the proceedings. Within 30 days of service of the review petition, any other party to the proceeding may file a response in support of or in opposition to the review petition. The party responding to the review petition may raise any relevant issues which were not included in the review petition.

Record of Appeal

The Hearing Clerk will transmit the record of the appeal to the Judicial Officer after all responses have been filed or the time for filing a response has expired. The record of the appeal will consist of all pleadings, briefs, responses, motions, requests, exhibits, documents, hearing transcript, proposed findings of fact, conclusions of law, orders, the ALJ's initial decision, the motion for reconsideration of the ALJ's initial decision, the decision of the ALJ on the motion for reconsideration and the review petition.

Oral Arguments

The Department is proposing that neither party has the right to appear personally before the Judicial Officer. However, the parties may file a request for an opportunity for oral arguments within the prescribed time period for filing and responding to the review petition. The failure of either party to request an opportunity for oral argument will be considered as a waiver of oral argument. The Judicial Officer will decide whether to grant or deny a request for oral argument and may limit the scope of these arguments.

Scope of Arguments

The Department is proposing that unless otherwise directed by the Judicial Officer, arguments presented for the Judicial Officer's consideration shall be restricted to those issues which were raised in the review petition or the response to the review petition.

Decision of Judicial Officer

The Judicial Officer's decision will be based on the record of the appeal and any matters which were officially noticed. The Department is proposing that the Judicial Officer may affirm, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ. The Judicial Officer's final order would be served upon all parties to the appeal. The order of the Judicial Officer is to be considered a final determination for purposes of judicial review.

Ex Parte Communications—Section 283.21

The Department is proposing that, with the exception of procedural matters, ex parte discussions between the ALJ or Judicial Officer and a party to the appeal will be prohibited. However, the ALJ or Judicial Officer may discuss the merits of the case with any party if all parties have been provided an opportunity to participate in the discussion. The Department is further proposing that the ALJ or Judicial Officer could rule that an ex parte communication is sufficient grounds for a ruling adverse to the party who knowingly engages in conduct prohibited by this section.

Form; Filing; Service; Proof of Service; Computation of Time; and Extensions of Time—Section 283.22

Form

Under current procedures before the SFSAB, parties to the appeal are required to provide the Board with an original and four copies of documents filed with the Board. The Board would retain the original and three copies and would transmit the fourth copy of the documents to the other party to the appeal. The Department is proposing to modify these procedures to provide that each party shall file with the Hearing Clerk an original and two copies. It will be the responsibility of the party filing documents to serve the other parties with a copy of these documents.

Filing

As discussed previously, the Department is proposing that a document is deemed to be filed on the date it is postmarked, if mailed, or the date received by the Hearing Clerk or other authorized party, if hand delivered.

Service

The Department is proposing that all documents, motions, decisions or petitions will be served by personal delivery or by mail. If service is made by mail, an additional five days will be added to the time permitted for any response. As discussed above, it is the responsibility of the party filing the documents to serve a copy of these documents to the other parties to the appeal.

Computation of Time

The Department is proposing that in computing any period of time under this part, the time begins with the day following service of a document on which the filing deadline is based. In addition, calendar days, rather than work days, will be counted when determining deadlines for filing. However, if the deadline for filing falls on a week-end or Federal holiday, the deadline would be extended to include the next business day. These procedures will be followed regardless of the number of days allowed for filing a document.

Extensions of Time

With the exception of the 10 day statutory deadline for filing the notice of appeal, the ALJ may grant extensions to the filing deadlines provided that the request for extension is filed prior to the expiration of the original due date. The Department is proposing that, if time permits, other parties may submit a response to the request for extension.

Procedural Matters—Section 283.23

Representation

The Department is proposing that all parties may be represented by attorneys or other designated representatives. As discussed in § 283.15, any person who appears as a party's attorney or designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

Summary Procedures for Appeals of QC Claims of Less Than $50,000: Subpart C

In accordance with section 603 of the HPA, the Secretary is to provide a State agency with a QC claim of less than $50,000 the opportunity to have its appeal decided using a summary procedure which need not include an oral hearing. The HPA further provides that a State agency or the Department may independently petition to have the appeal decided using the full administrative review procedures which would include an oral hearing.

The Department is also proposing that this summary procedure be used where a State agency with a QC liability of $50,000 or more either specifically requests an appeal based upon the existing administrative record or fails to request an oral hearing within the required time period.

Incorporation of Procedures by Reference—Section 283.24

Section 283.24 contains a listing of certain procedures proposed for QC claims over $50,000 under subpart B of this part which would apply also to QC claims under $50,000 which are handled under the Summary Procedure. The Department is proposing that, unless otherwise provided, these procedures are incorporated by reference into subpart C of this part.

Filing Appeals for QC Claims of Less Than $50,000—Section 283.25

With the exception of the requirement that the State agency request an oral hearing at the time that it files its appeal petition, the Department is proposing that the requirements for filing appeals detailed in § 283.24 for QC claims over $50,000 would apply for the Summary Procedure.

Request That Appeal be Handled Under Procedures in Subpart B for Appeals of QC Claims of $50,000 or More—Section 283.26

The Department is proposing that a State agency which believes that the full administrative review procedure, including an oral hearing, is more appropriate for resolution of its appeal must file a request no later than the date for conclusion of discovery activities as established by the ALJ pursuant to § 283.28. Under this proposal, FNS would be provided 20 days from service of the State agency's request to file a response either in support of or in opposition to the use of the full administrative review procedures. The ALJ would decide which procedure is more appropriate based on the information provided by the State agency and FNS. The initial decision of the ALJ on the use of the full administrative procedures would be final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

Procedure Upon Failure to File an Answer—Section 283.27

The Department is proposing that failure by FNS to file an answer to the appeal petition within the required time period would result in a waiver of the opportunity to file a cross motion for summary judgment in accordance with § 283.30. The remaining procedures under this section are identical to those proposed in § 283.7 for QC claims over $50,000.

Discovery—Section 283.28

With the exception of the provisions related to depositions, the discovery provisions contained in § 283.12(b) would apply to discovery initiated under these Summary Procedures.

Scheduling Conference—Section 283.29

Under the Summary Procedures, a conference may be scheduled at the discretion of the ALJ within a reasonable time after the appeal petition and answer have been filed to establish the schedule for the completion of discovery, the filing of cross motions for summary judgment and any other issues which the ALJ considers appropriate. Similar to the procedures for the prehearing conference contained in § 283.11, the Department is proposing that the ALJ would decide if personal attendance at the scheduling conference is necessary or if the matters could be resolved by telephone conference. If personal attendance at the scheduling conference is determined to be necessary, the conference will be held at the U.S. Department of Agriculture, Washington, DC.

The ALJ would decide if a stenographic record of the scheduling conference will be necessary. If no stenographic record is made, the ALJ would file and serve a written order of those actions agreed to at the scheduling conference.

Cross Motions for Summary Judgment—Section 283.30

Under these Summary Procedures, the decision of the ALJ will be based upon a written record submitted by the parties to the appeal. This written record would include the cross motions for summary judgment and any documentary evidence submitted in accordance with the schedule established by the ALJ under § 283.29. The Department is proposing that the motions for summary judgment be limited to 35 pages, excluding exhibits, unless authorized by the ALJ. Reply briefs would be limited to 15 pages, excluding exhibits. The parties would be limited to 15 pages, excluding exhibits. The parties would have 20 days from service of the initial brief to file any reply brief. Under this proposal, neither party would be permitted to file a response to the reply brief.

Review of the Record—Section 283.31

The Department is proposing that the ALJ may decide that additional information or briefing is needed before a decision can be reached. Under this proposal, the ALJ would notify the appropriate party or parties of the specific information or issues to be addressed and provide a deadline for submission of this information. A copy of the request for additional information will be provided to the other party. In accordance with § 283.22, the party filing the additional information or briefing would be responsible for serving a copy of this filing on the other party to the appeal. Upon receipt of the additional information, the ALJ would provide the other party a deadline for submission of any response to this additional information.

The Department is proposing also that at the conclusion of the time period allowed for the submission of the requested additional information or a response by the other party, the ALJ would render a decision based upon the existing record.

ALJ's Initial Decision—Section 283.32

The Department is proposing that the ALJ would render an initial decision within a reasonable period of time after the deadline for submission of the motions, briefs, reply briefs, supporting materials and any additional information requested by the ALJ. The remaining proposed post-hearing procedures for the full administrative review procedures for claims over $50,000 contained in §§ 283.17(d) and 283.20 would apply to the claims heard under the summary review procedures.

Implementation

In accordance with section 701(b)(5)(C) of the HPA, the amendments to section 14 of the Act are effective on October 1, 1985. Accordingly, the Department proposes to amend 7 CFR part 275 to provide that the provisions of this action are retroactive to October 1, 1985 for all QC review periods after such date.

List of Subjects

7 CFR Part 275

Administrative practice and procedures, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 283

Administrative practice and procedures, Claims, Food stamps, Government procedures, and Penalties.

For the reasons set out in the preamble, 7 CFR part 275 is proposed to be amended and 7 CFR part 283 is proposed to be added as follows:

PART 275—PERFORMANCE REPORTING SYSTEM

1. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. Section 275.23 is amended by revising paragraph (e)(5)(iii) to read as follows:

§ 275.23 Determination of State Agency Program Performance.

* * * * *

(e) * * *

(5) * * *

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with procedures set forth in part 283.

* * * * *

PART 283—APPEALS OF QUALITY CONTROL ("QC") CLAIMS

3. 7 CFR part 283 is added to read as follows:

Subpart A—General

Sec.
283.1 Meaning of words.
283.2 Scope of applicability.
283.3 Definitions.

Subpart B—Appeals of QC Claims of $50,000 or More

283.4 Filing appeals for QC claims of $50,000 or more.
283.5 Motion to dismiss.
283.6 Answer.
283.7 Procedures upon failure to file an answer.
283.8 Amendment of appeal or answer.
283.9 Withdrawal of appeal.
283.10 Consent decision.
283.11 Prehearing conference and procedure.
283.12 Discovery.
283.13 Subpoenas.
283.14 Fees of witnesses.
283.15 Procedure for hearing.
283.16 Consolidation of issues.
283.17 Post-hearing procedure.
283.18 Motions and requests.
283.19 ALJ's.
283.20 Review by the Judicial Officer.
283.21 Ex parte communications.
283.22 Form; filing; service; proof of service; computation of time; and extensions of time.
283.23 Procedural matters.

Subpart C—Summary Procedure for Appeals of QC Claims of Less Than $50,000

283.24 Incorpration of procedures by reference.
283.25 Filing appeals for QC claims of less than $50,000
283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.
283.27 Procedures upon failure to file an answer.
283.28 Discovery.
283.29 Scheduling conference.
283.30 Cross motions for summary judgment.
283.31 Review of the record.
283.32 ALJ's initial decision.

Authority: 7 U.S.C. 2011–2032.

Subpart A—General

§ 283.1 Meaning of words.

As used in this part, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 283.2 Scope and applicability.

The rules of practice in this part, shall be applicable to appeals by State agencies of Food and Nutrition Service quality control (QC) claims for Fiscal Year ("FY") 1986 and subsequent fiscal years pursuant to sections 14(a) and 16(c) of the Food Stamp Act of 1977, as amended, 7 U.S.C. 2023(a) and 2025(c).

§ 283.3 Definitions.

As used in this part, the terms as defined in the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2029 ("Act"), and in the regulations, standards, instructions or orders issued thereunder, shall apply with equal force and effect. In addition, and except as may be provided otherwise in this section:

Administrator means the Administrator, Food and Nutrition Service, U.S. Department of Agriculture ("USDA").

ALJ means any Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344 and assigned to the appeal.

Appeal means the appeal to the ALJ within the required 10-day statutory time period in accordance with the procedures set forth in this part.

Ex parte communication means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include procedural matters.

Filing. A pleading or other document allowed or required to be filed in accordance with this Part shall be considered filed when postmarked, if mailed, or when received, if hand delivered.

FNS means the Food and Nutrition Service, USDA.

Hearing means that part of the appeal which involves the submission of evidence before the ALJ for the record in the appeal.

Hearing Clerk means the Hearing Clerk, USDA, Washington, DC 20250.

Judicial Officer means an officer of the USDA delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1970 ed., Appendix, P. 550), as amended by Public Law No. 97–35, title I, Section 125, 95 Stat. 357, 369 (1981) (7 U.S.C. 2201 note), to perform the adjudicating function involved (7 CFR 2.35(a)), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

QC claim means a claim made pursuant to 7 U.S.C. 2025(c).

Secretary means the Secretary of the USDA.

State agency means:

(1) The agency of State government, including the local offices thereof, which is responsible for the administration of the federally aided public assistance programs within the State, and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency, and

(2) The Indian tribal organization of any Indian tribe determined by the Secretary to be capable of effectively administering a Food Stamp Program in accordance with the Food Stamp Act of 1977, as amended, 7 U.S.C. 2011–2031.

Subpart B—Appeal of QC Claims of $50,000 or More

§ 283.4 Filing appeals for QC claims of $50,000 or more.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of $50,000 or more for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this subpart, within 10 days of receipt by certified mail or personal service of the bill for collection from FNS for a QC claim of $50,000 or more.

(b) *Filing.* The notice of appeal shall be filed with the Hearing Clerk in accordance with § 283.22(b).

(c) *Content of the notice.* (1) A notice of appeal, in order to be considered acceptable, must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of $50,000 or more identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal shall result in a challenge by FNS to the notice, dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20 of this regulation.

(d) *Good cause.* The Secretary's determination concerning good cause is final. The State agency may not appeal a determination by the Secretary concerning whether a State agency had good cause as prescribed in 7 CFR 275.23(e)(5) for its failure to meet the error rate tolerance level established under 7 CFR part 275. The State agency is not precluded from relying upon facts used in support of its good cause waiver request in arguing other appealable issues before the ALJ, if such facts are relevant to the appealable issues.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advice that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number; and;

(iii) Advice that the State agency must file and serve its appeal petition, as set forth in § 283.22 within 30 days of service of the Hearing Clerk's letter. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However, during the stay interest will continue to accrue on the outstanding claim amount in accordance with the Food Stamp Act.

(g) *Content of the appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal;

(2) The nature of the relief sought, and;

(3) A request for an oral hearing, if desired by the State agency. Failure to request an oral hearing will result in a forfeiture of the opportunity for such a hearing. In such event, the appeal shall proceed in accordance with the procedures set forth under subpart C of this part.

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall:

(1) File an answer, pursuant to § 283.22, within 30 days of service of the State agency appeal petition, and;

(2) Advise the Hearing Clerk if FNS wishes to have an oral hearing. The hearing must be requested prior to or at the same time that FNS files its answer. The failure to request an oral hearing by that time will result in a forfeiture of the opportunity for such a hearing.

§ 283.5 Motion to dismiss.

(a) *Filing of motion to dismiss.* Prior to or at the same time as filing the answer, FNS may file a motion to dismiss. The appeal may be challenged on the basis that the notice of appeal was not filed within 10 days, the appeal petition was not filed in accordance with § 283.4, that it is an appeal based upon good cause, or that the appeal petition is substantially incomplete and could not be quickly and easily cured by amendment. The motion must be accompanied by clear and convincing proof of any of these factors alleged as grounds for dismissal.

(b) *Service of motion to dismiss.* FNS shall serve the State agency with a copy of the motion to dismiss. The State agency will have 20 days from date of service to submit objections to the motion.

(c) *Ruling on a motion to dismiss.* The ALJ will rule on the motion to dismiss before any further action proceeds on the basis of the merits of the appeal. The basis of the ruling will be clearly documented and will become part of the official record. If the ALJ denies the motion, FNS shall file its Answer in accordance with § 283.6 within 30 days of service of the ALJ's ruling, unless there is a motion for reconsideration filed pursuant to § 283.179(d) or review by the Judicial Officer is sought pursuant to § 283.20.

(d) *Dismissal of appeal.* If the ALJ finds the basis for the motion to have merit, the appeal may be dismissed. The initial decision of the ALJ shall become final and effective 30 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this regulation.

(e) *Waiver.* Failure to file for dismissal of the appeal by the time the answer is filed will result in waiver of the right to request dismissal.

§ 283.6 Answer.

(a) *Filing and service.* Within 30 days after service of the State agency appeal petition, or within 30 days following service of a ruling in accordance with § 283.5, FNS shall file an answer signed by the FNS Administrator or authorized representative or the attorney of record in the appeal. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer.

(b) *Contents.* The answer shall clearly admit, deny, or explain each of the allegations of the appeal petition and shall:

(1) Clearly set forth any defense asserted by FNS; or

(2) State that FNS admits all the facts alleged in the appeal petition; or

(3) State that FNS admits the jurisdictional allegations of the appeal petition and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file a timely answer shall be deemed, for purposes of the appeal, an admission of the allegations in the appeal petition and failure to deny or otherwise respond to an allegation of the appeal petition shall be deemed for purposes of the appeal, an admission of said allegation, unless FNS and the State agency have agreed to a consent decision pursuant to § 283.10.

§ 283.7 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of hearing. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 20 days after service of such motion and proposed decision, FNS may file objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures or hearing. Copies of the initial decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decision as proposed by State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

§ 283.8 Amendment of appeal or answer.

At any time prior to the filing of a motion for a hearing pursuant to § 283.15(b), the appeal petition or the answer may be amended. Thereafter, such an amendment may be made with consent of the parties, or as authorized by the ALJ upon a showing of cause.

§ 283.9 Withdrawal of appeal.

At any time before the ALJ files an initial decision, the State agency may withdraw its appeal and agree to pay the full amount of the claim. By withdrawing an appeal, the State agency waives all further opportunity to appeal or seek review by the Judicial Officer or by the Federal courts on the claim or related matters.

§ 283.10 Consent decision.

At any time before the ALJ files an initial decision, FNS and the State agency may agree to entry of a consent decision. Such decision shall be filed in the form of a decision signed by the parties with appropriate space for signature by the ALJ and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The ALJ shall enter such decision without further procedures, unless an error is apparent on the face of the document. Such decision shall have the same force and effect as a decision issued after full hearing, and shall be final and shall take effect 30 days after the date of the delivery or service of final notice of such determination. A consent decision is final and may not be reviewed by the Judicial Officer or by the Federal Court.

§ 283.11 Prehearing conference and procedure.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to the hearing. The prehearing conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time, place of the prehearing conference and if personal attendance will be necessary shall be given. The ALJ shall order each of the parties to furnish at the prehearing conference or at another time prior to the hearing the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon at the hearing; and

(4) A list of witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way such as a short statement of the type of evidence they will offer.

(b) The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) At the prehearing conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitation of the number of expert or other witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The nature of and the date by which discovery, as provided in § 283.12, must be completed;

(8) The identification of documents or matter of which official notice may be requested;

(9) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(10) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A prehearing conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at prehearing conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a prehearing conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report, if available, shall suffice, or, in the event the conference takes place within 7 days of the beginning of the hearing, the ALJ elects to make a statement on the record at the hearing summarizing the actions taken.

§ 283.12 Discovery.

(a) *Depositions*—(1) *Motion for taking deposition.* Only upon a finding by the ALJ that a deposition is necessary to preserve testimony as provided in this paragraph, upon the motion of a party to the appeal, the ALJ may, at any time after the filing of the answer, order the taking of testimony by deposition. The motion shall set forth:

(i) The name and address of the proposed deponent;

(ii) The name and address of the person (referred to hereafter in this section as the "officer") qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(iii) The proposed time and place of the examination, which shall be at least 15 days after the date of service of the motion; and

(iv) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for use as provided in accordance with paragraph (a)(7) of this section.

(2) *ALJ's order for taking depositions.* If the ALJ finds that the testimony may not otherwise be available at the

hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) the time and place of the examination;

(ii) the name of the officer before whom the examination is to be made; and

(iii) the name of the deponent. The officer and the time and place need not be the same as those suggested in the motion.

(3) *Qualifications of officer.* The deposition shall be made before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(4) *Procedure on examination.* (i) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. Objections to questions or documents shall be in the short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(ii) The party taking the deposition shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the ALJ. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the appeal and filed with the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(iii) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be taken by telephone. A deposition taken by telephone is to be taken at the place where the deponent is to answer questions propounded to the deponent.

(iv) The parties may stipulate in writing or the ALJ may upon motion order that a deposition be recorded by other than stenographic means. The stipulation or the order shall designate the manner of recording, preserving and filing of the deposition, and may include other provisions to assure that the recorded testimony is accurate and trustworthy.

(5) *Certification by the officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the appeal, in which case there should be anther copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(6) *Corrections to the transcript.* (i) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript of the deposition.

(ii) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(iii) At any time prior to the use of the deposition in accordance with paragraph (a)(7) of this section and after consideration of any objections filed thereto, the ALJ may issue an order making any corrections in the transcript which the ALJ finds are warranted, and these corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(7) *Use of depositions.* A deposition ordered and taken in accordance with the provisions of this section may be used in an appeal under these rules if the ALJ finds that the evidence is otherwise admissible and

(i) That the witness is deceased;

(ii) That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;

(iii) That the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or

(iv) That such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which is relevant to be considered with the part introduced, and any party may introduce any other parts.

(b) *Interrogatories, requests for admissions and requests for production of documents*—(1) *Interrogatories.* A party may submit written interrogatories to any other party to an appeal. The time for submitting and responding to written interrogatories shall be set by the ALJ at the pre-hearing conference, but in no event shall the time for response be less than 20 days from the date of service or within such time as determined upon motion to the ALJ. The number of interrogatories submitted by each party shall not exceed fifteen questions including subparts, unless additional interrogatories are authorized by the ALJ. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed under penalty of perjury by the person making them. Objections shall be signed by the attorney of record in the appeal or by the responding party's authorized representative.

(2) *Request for admissions.* A party may submit a written request for admission of the truth of any matters relevant to the appeal to any other party to the appeal. The time for submitting a written request for admission shall be set by the ALJ at the pre-hearing conference. The number of admissions contained in a request submitted by a party shall not exceed fifteen unless additional admissions are authorized by the ALJ. The matter is admitted unless, within 20 days after service thereof, or within such time as determined upon motion to the ALJ, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter signed by the party, counsel or designated representative. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail why the answering party cannot truthfully admit or deny the matter. An answering party may not give lack of information or knowledge as a reason for the failure to admit or deny unless it is stated that reasonable inquiry has been made and that the information known or readily obtainable is insufficient to enable the party to admit or deny. A party who considers that a matter for which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request; the party may deny the matter or set forth reasons why the matter cannot be admitted or denied.

(3) *Request for production of documents.* (i) Any party may serve upon any other party to the appeal a request for production of documents which are in the possession or control of the party upon whom the request is served. The time for service and

response to such a request shall be set by the ALJ at the pre-hearing conference. Upon payment of fees for search and duplication of documents, any party to the appeal may obtain copies of such documents.

(ii) The ALJ shall limit the frequency or extent of use of discovery methods if the ALJ determines that:

(A) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

(iii) A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating why discovery should be limited or should not be required.

(iv) If such documents include privileged information or information the disclosure of which is proscribed by the Food Stamp Act, such documents need not be produced.

(v) Parties may file a motion to compel seeking production of documents claimed to be privileged.

(vi) Within 20 days of service of a motion to compel or a motion for a protective order, the opposing party may file a response.

(vii) The ALJ may grant a motion to compel production or deny a motion for a protective order only if the ALJ finds that the discovery sought is necessary for the expeditions, fair, and reasonable consideration of the issues; it is not unduly costly or burdensome; it will not unduly delay the proceeding; and the information sought is not privileged.

(viii) The initial decision of the ALJ regarding the motion to compel the production of privileged documents or the motion for a protection order shall become final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

(4) *Postponements or delays.* No hearing, proceeding or other matter under this Part shall be postponed or otherwise delayed pending the response or resolution of issues pertaining to a request for information pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(5) *Supplementation of response.* A party who knows or later learns that a response is incorrect is under a duty to correct such response as soon as possible. A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired. A party is under a duty to supplement responses with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters, and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which such expert(s) is expected to testify, and the substance of the testimony.

(6) *Inclusion in the record.* At the oral hearing or as ordered by the ALJ, depositions to the extent deemed admissible, written interrogatories, written requests for admission and respective responses may be offered in evidence by the party at whose insistance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, written interrogatory, written request for admission or response thereto is offered in evidence by a party, any other party may require that all of it, which is relevant to the part introduced, be offered, and any party may introduce any other parts. Such depositions, written interrogatories, written requests for admission and respective responses thereto should be admissible in evidence subject to such objections as to relevancy, materiality or competency of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

(7) *Failure to respond to discovery.* If a deponent fails to respond or gives an evasive or incomplete answer to a question propounded under 283.12(a) or a party fails to respond or gives evasive or incomplete answers to written interrogatories served pursuant to 283.12(b), the party seeking discovery may apply for an order compelling an answer by filing and serving a motion on all parties and deponents. Such motion must be filed within 20 days following the service of the unresponsive answer upon deposition or within 20 days after expiration of the period allowed for production of documents or answers to interrogatories. A response to the motion may be filed in accordance with § 283.18(d). On matters related to an oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(i) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by order of the ALJ, such refusal may subject the refusing party to proceedings to compel compliance with the ALJ's order in the appropriate United States district court.

(ii) If any party or other person refuses to obey an order made under this section requiring an answer to designated questions or production of documents, the ALJ may order that the matters regarding which questions were asked or the contents of the document or documents or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.

(8) *Protective order.* In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(i) That discovery not be had;

(ii) That the discovery may be had only through a method of discovery other than that requested;

(iii) That certain matters not be required into, or that the scope of discovery be limited to certain matters;

(iv) That discovery be conducted with no one present except persons designated by the ALJ; and

(v) That the contents of discovery or evidence be sealed.

(9) Exchange of witness and rebuttal witness lists, statements and exhibits.

(i) Witness and rebuttal witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with § 283.12(a)(7) of this part, shall be exchanged at least 15 days in advance of the hearing or at such other time as may be set by the ALJ.

(ii) A witness whose name does not appear on the witness list shall not be permitted to testify. Exhibits which were not provided to the opposing party as provided above shall not be admitted into evidence at the hearing absent a showing of cause.

§ 283.13 Subpoenas.

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the appeal may be required by subpoena at the designated place of hearing. Except for cause shown, requests for subpoenas shall be filed at least 15 days prior to the date of the hearing. Subpoenas shall be issued by the ALJ, over the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity and reasonable scope thereof.

(b) *Service of subpoenas.* (1) When the ALJ issues a subpoena under this section, the party who requested such subpoenas shall serve all other parties with a copy of the subpoenas, notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(2) Subpoenas may be served:

(i) By a U.S. Marshal or deputy marshal, or

(ii) By any other person who is not less than 18 years of age, or

(iii) By registering and mailing a copy of the subpoena addressed to the person to be served at the last known principal place of business or residence.

(3) Proof of service may be made:

(i) By the return of service on the subpoena by the U.S. Marshal or deputy marshal, or

(ii) If served by an employee of the Department, by a certificate stating that he personally served the subpoena upon the person named therein, or

(iii) If served by another person, by an affidavit of such person stating that he personally served the subpoena upon the person named therein or

(iv) If service was by registered mail, by an affidavit made by the person mailing the subpoena that it was mailed as provided herein and by the signed return post-office receipt. Where the subpoena is issued on behalf of the Secretary by mail, the return receipt without an affidavit or certificate of mailing shall be sufficient proof of service.

(4) In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed, or, if such person is not immediately available, with any other responsible person authorized to accept service residing or employed at the place of residence or business of the person subpoenaed.

(5) The original of the subpoena, bearing or accompanied by the required proof of service, shall be returned to the official who issued the same. The party at whose request the subpoena is issued shall be responsible for the service thereof.

§ 283.14 Fees of witnesses.

Witnesses summoned under these rules shall be paid the same fees and expenses that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose request the witness appears. Current Federal, State, or local government employees shall not be eligible to receive witness fees.

§ 283.15 Procedure for hearing.

(a) *Request for hearing.* A party may request a hearing on the facts by including such request in its Appeal Petition or Answer, whichever is appropriate. Failure to request a hearing within the time specified shall constitute a waiver of the opportunity for such a hearing. In the event FNS denies any material fact and fails to request a hearing, the matter may be set down for hearing on motion of the State agency or upon the ALJ's own motion.

(b) *Time and place.* If any material issue of fact is joined by the pleadings, the ALJ, upon motion of any party, stating that the matter is at issue and is ready for hearing, shall set a time for the hearing as soon as feasible thereafter, with due regard for the public interest and the convenience and necessity of the State agency and FNS. The hearing shall be held at the U.S. Department of Agriculture, Washington, DC. The ALJ shall file a notice stating the time and place of the hearing. If any change in the time of the hearing is made, the ALJ shall file a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made a part of the transcript or actual notice given to the parties.

(c) *Appearances.* The parties may appear in person or by attorney of record in the appeal or by any other designated representative. Any person who appears as attorney or as a party's designated representative must conform to the standards of ethical conduct required by practitioners before the courts of the United States.

(d) *Debarment of attorney or representative.* (1) Whenever an ALJ finds that a person acting as attorney or designated representative for any party to the appeal is guilty or unethical or contumacious conduct in, or in connection with an appeal, the ALJ may order that such person be precluded from further acting as attorney or representative in the appeal. Review by the Judicial Officer may be taken from any such order, but no appeal of the QC claim shall be delayed or suspended pending disposition of the debarment review by the Judicial Officer. Provided, however, that the ALJ shall suspend the appeal of the QC claim for a reasonable time for the purpose of enabling the party to obtain another attorney or representative.

(2) Whenever it is found, after notice and opportunity for hearing, that a person who is acting or who has acted as attorney or representative for another person in any proceeding before the U.S. Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as the attorney or representative in any or all proceedings before the Department as found to be appropriate.

(e) *Failure to appear.* (1) If FNS or the State agency, after being duly notified, fails to appear at the hearing without cause, that party shall be deemed to have waived the opportunity for an oral hearing and to have admitted any facts which may be presented at the hearing. Such failure by either party shall also constitute an admission of all the material allegations of fact contained in any pleadings submitted by the other party. The party who appears shall have the option of whether to follow the procedure under § 283.7 or to present evidence, in whole or in part, in the form of declarations or by oral testimony before the ALJ.

(2) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the ALJ's initial decision, to file a motion for reconsideration pursuant to § 283.17(d) or to seek review by the Judicial Officer in accordance with § 283.20.

(f) *Order of proceeding.* Except as may be decided otherwise by the ALJ, FNS shall proceed first at the hearing. FNS has the burden of proving, by a preponderance of the evidence, the QC claim against the State agency for a QC error rate in excess of the tolerance level. The State agency will proceed second and must prove, by a preponderance of the evidence, the facts upon which it bases its appeal.

(g) *Evidence.* (1) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(2) Upon a finding of cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the appeal or whose presence is shown by a party to be essential to the presentation of the party's cause.

(3) After a witness called by either party has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the opposing party which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and

subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(4) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not the sort upon which responsible persons are accustomed to rely, shall be excluded by order of the ALJ insofar as practicable.

(h) *Objections.* (1) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross examination or to any other ruling by the ALJ, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the ALJ.

(2) Only objections made before the ALJ may be subsequently relied upon on review by the Judicial Officer.

(i) *Exhibits.* Four copies of each exhibit shall be filed with the ALJ. However, where there are more than two parties in the appeal, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(j) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(k) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character. Provided, that the parties shall be given adequate opportunity to show that such facts are erroneously noticed.

(l) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of a document or other exhibit, it shall be marked for identification and inserted in the hearing record. In either event, if the Judicial Officer, upon review, determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, the evidence shall be considered a part of the transcript and hearing record. If the Judicial Officer determines that the ALJ's ruling excluding the evidence was erroneous and prejudicial, and that it would be inappropriate to have such evidence considered a part of the hearing record without reopening the hearing, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(m) *Transcript.* Hearings shall be recorded and transcribed verbatim. Transcripts thereof shall be made available to any person at actual cost of duplication (5 U.S.C. App. I, Section 11).

§ 283.16 Consolidation of issues.

Similar issues involved in appeals by two or more State agencies may be consolidated upon motion by the State agencies, FNS, or at the discretion of the ALJ if it is decided that consolidation would help to promote administrative efficiency.

(a) *Disposition of consolidated issues.* If the ALJ orders consolidation, the issues consolidated will be considered first. If a hearing has been requested by any of the parties that have had issues consolidated, arguments on the consolidated issues will be heard before arguments on dissimilar issues. The ALJ will take the information into consideration along with arguments on other issues in preparing initial decisions for QC appeals in which some issues have been consolidated.

(b) *Initial decision.* (1) If the ALJ decides the evidence and arguments by the State agencies on the consolidated issues cannot be overcome by the evidence presented by FNS and are sufficient to grant the relief requested by a State agency or all State agencies in which the issue is involved, the ALJ shall prepare an initial decision as provided in § 283.17(c).

(2) FNS may file a motion for reconsideration pursuant to § 283.17(d) or seek review by the Judicial Officer in accordance with § 283.20.

§ 283.17 Post-Hearing procedure.

(a) *Corrections to transcript.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions of law, order and briefs, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed to be a true, correct, and complete transcript of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record. The transcript shall be deemed to be certified without further action by the ALJ.

(3) At any time prior to the filing of the ALJ's initial decision and after consideration of any objections filed as to the transcript, the ALJ may issue an order making any corrections in the transcript that the ALJ finds are warranted. Such corrections shall be entered into the original transcript by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions of law, order, and briefs.* The parties may file proposed findings of fact, conclusions of law and orders based solely upon the record and on officially noticed matters, and briefs in support thereof. Reply briefs may be filed at the discretion of the ALJ. The ALJ shall announce at the hearing the time within which these documents may be filed.

(c) *ALJ's initial decision.* (1) The ALJ within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions of law, orders, and any briefs in support thereof, shall prepare, upon the basis of the record and officially noticed matters, and shall file, an initial decision, a copy of which shall be served upon each of the parties.

(2) Such initial decision shall become final and effective 30 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this regulation.

(3) No decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

(d) *Motion for Reconsideration.* (1) Except as provided in subparagraph 4 of this paragraph, any party may file a motion for reconsideration of the initial decision within 30 days of service of the initial decision. If served by mail, the time for filing a motion for reconsideration will be five days longer in accordance with § 283.22 of this part.

(2) Every such motion must set forth the matters claimed to have been erroneously decided and the basis of the alleged errors. Such motion shall be accompanied by a supporting brief.

(3) Responses to such motions shall be allowed only upon request of the ALJ.

(4) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(5) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(6) If the ALJ denies a motion for reconsideration, the initial decision shall become final and effective 30 days

after service unless review by the Judicial Officer is sought in accordance with 283.20 of this part.

(7) If the ALJ issues a revised initial decision, that decision shall become final and effective 30 days after service unless review by the Judicial Officer is sought in accordance with 283.20 of this part.

§ 283.18 Motions and requests.

(a) *Filing.* All motions and requests shall be filed with the Hearing Clerk, and several upon all the parties by the moving or requesting part, except motions and requests made on the record during the oral hearing. The ALJ assigned to the appeal or the Chief Judge, shall rule upon all motions and requests filed or made prior to seeking review of the ALJ's initial decision pursuant to § 283.20, except motions directly relating to such review. Thereafter, the Judicial Office shall rule on any motions and requests as well as the motions directly relating to the review of the ALJ's initial decision.

(b) *Time for filing.* Any motion or request may be filed at any time, except that:

(1) motions to dismiss pursuant to § 283.5 must be filed within the time allowed for filing an answer and

(2) motions for reconsideration must be filed within 30 days of service of the ALJ's initial decision pursuant to § 283.17(d).

(c) *Comments.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefore.

(d) *Response to motions and requests.* Within 20 days after service on any written motion or request or within such shorter or longer period as may be fixed by the ALJ or Judicial Officer, an opposing party may file a response to the motion or request. The moving party shall have no right to reply to the response; however, the ALJ or Judicial Officer may order that a reply be filed.

(e) *Certification to the Judicial Office.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the seeking of review pursuant to § 283.20 shall be made by and in the discretion of the ALJ. The ALJ may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

§ 283.19 ALJ's.

(a) *Assignment.* No ALJ shall be assigned to serve in any appeal who:

(1) has any pecuniary interest in any matter or business involved in the appeal,

(2) is related by blood or marriage to any party in the appeal, or

(3) has any conflict of interest which might impair the ALJ's objectivity in the appeal.

(b) *Disqualification of ALJ.* (1) Any party to the appeal may, by motion, request that the ALJ withdraw from the appeal on one or more of the grounds set out in paragraph (a) of this section. Such motion shall set forth with particularity the alleged grounds for disqualification. The ALJ may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) The ALJ may withdraw from any appeal for any reason deemed by the ALJ to be disqualifying.

(c) *Powers.* (1) Subject to review as provided elsewhere in this part, the ALJ, in any assigned appeal, shall have the power to:

(i) Rule upon motions and requests;

(ii) Set the time and place of a prehearing conference and the time of the hearing, adjourn the hearing from time to time, and change the time of the hearing;

(iii) Administer oaths and affirmations;

(iv) Regulate the scope and timing of discovery;

(v) Issue and enforce subpoenas as authorized under 7 U.S.C. § 2023(a) and these rules;

(vi) Summon and examine witnesses and receive evidence at the hearing;

(vii) Appoint expert witnesses in accordance with the provisions of Rule 706 of the Federal Rules of Evidence;

(viii) Admit or exclude evidence;

(ix) Hear oral argument on facts or law;

(x) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed material issue of fact;

(xi) Perform all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(xii) Take all other actions authorized under these rules.

(2) The ALJ may not rule upon the validity of Federal statutes or regulations.

(d) *Who may act in the absence of the ALJ.* In case of the absence of the ALJ or the ALJ's inability to act, the powers and duties to be performed by the ALJ under these rules of practice in connection with any assigned appeal may, without abatement of the appeal, unless otherwise directed by the Chief Judge, be assigned to any other ALJ.

§ 283.20 Review by the Judicial Officer.

(a) *Filing of review petition.* (1) Within 30 days after service of the ALJ's initial decision, or any part thereof, any party may seek Judicial Officer review of such decision by filing a review petition with the Hearing Clerk. However, if another party files a motion for reconsideration under § 283.17(d) of this part, consideration of the review petition shall be stayed automatically pending resolution of the motion for reconsideration. If a motion for reconsideration is timely filed, a review petition may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(2) As provided in § 283.15(h), objections made before the ALJ regarding evidence or regarding a limitation on examination or cross-examination or other ruling may be relied upon in a Judicial Officer review.

(3) Each issue set forth in the review petition, and the arguments thereon, shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief in support may be filed simultaneously with the review petition.

(b) *Response to review petition.* Within 30 days after service of a copy of a review petition and any brief in support thereof, any other party to the proceedings may file a response in support of or in opposition to the review petition and in such response any relevant issue, not presented in the review petition, may be raised.

(c) *Transmittal of the record.* (1) Whenever a review petition of an ALJ's initial decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the appeal.

(2) Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions of law, orders, and briefs in support thereof, as may have been filed in connection with the appeal; the ALJ's initial decision; the motion for reconsideration of the ALJ's initial decision; the ALJ's initial decision on the motion for reconsideration and the review petition, and such briefs in support thereof and responses thereto as may have been filed.

(d) *Oral argument.* A party filing a review petition may request, within the prescribed time for filing such review petition, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, the responding party may file a request for such oral argument. Failure to make such request to appear before the Judicial Officer, within the prescribed time period, shall be deemed a waiver of the opportunity for oral argument. There is no right to appear personally before the Judicial Officer. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard by the Judicial Officer on review, whether oral or on brief, shall be limited to the issues raised in the review petition to the Judicial Officer or in the response to such petition, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit adequate preparation on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed within a reasonable time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to commence and conclude the argument.

(h) *Submission of briefs.* By agreement of the parties, a review may be submitted for decision on the briefs, but the Judicial Officer may direct that the review be argued orally.

(i) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented to the ALJ is material, not cumulative, and that there were reasonable grounds for the failure to present such evidence to the ALJ, the Judicial Officer shall remand the matter to the ALJ for consideration of such additional evidence.

(j) *Decision of the Judicial Officer on review.* (1) As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of the record and any matter of which official notice is taken, shall rule on the review.

(2) The Judicial Officer may adopt, reduce, reverse, compromise, remand or approve settlement of any claim initially decided by the ALJ under this part.

(3) The Judicial Officer shall promptly serve each party to the appeal with a copy of the ruling of the Judicial Officer which shall be considered the final determination and contain a statement describing the right to seek judicial review.

(4) Judicial review must be sought within 30 days of service of the final notice of determination by the Judicial Officer pursuant to 7 U.S.C. 2023(a).

§ 283.21 Ex parte communications.

(a) *ALJ; Judicial Officer.* At no time prior to the issuance of the final decision shall the ALJ or Judicial Officer discuss ex parte the merits of the appeal or review with any person who is connected with the appeal or review in an advocative or in an investigative capacity, or with any representative of such person. However, procedural matters shall not be included within this limitation; and furthermore, the ALJ or Judicial Officer may discuss the merits of the case with such a person if all parties to the appeal or review, or their attorneys have been given notice and an opportunity to participate. A memorandum of such discussion shall be included in the record.

(b) *Parties; Interested persons.* No party or other interested person shall make or knowingly cause to be made to the ALJ or Judicial Officer an ex parte communication relevant to the merits of the appeal or review.

(c) *Procedure.* If the ALJ or Judicial Officer receives an ex parte communication in violation of this section, the one who receives the communication shall place in the public record of the appeal or review:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) Copies of all written responses, and memoranda stating the substance of all oral responses thereto.

(4) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the ALJ or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why its claim or interest in the appeal or review should not be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(d) *Decision.* To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly cause such a violation to occur.

§ 283.22 Form; filing; service; proof of service; computation of time; and extensions of time.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this Subpart shall be filed with the Hearing Clerk.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the docket number assigned by the Hearing Clerk, and a descriptive title (e.g. Motion for Extension of Time).

(3) Every pleading and paper shall be signed by and contain the address and telephone number of the representative for the party on whose behalf the paper was filed.

(b) *Filing.* Papers are considered filed when they are postmarked, or, received, if hand delivered. Date of mailing may be established by a certificate from the party or representative or by proof that the document was sent by certified or registered mail.

(c) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by an attorney or designated representative, service shall be made upon such attorney or representative in lieu of the actual party.

(d) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the date, time and manner of service, shall be proof of service.

(e) *Computation of time.* (1) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday or legal holiday observed by the Federal Government, in which event it includes the next business day.

(2) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

(f) *Extensions of time.* Requests for extensions of time shall be submitted to the ALJ, Chief Judge or the Judicial Officer prior to the expiration of the original due date. Except for the filing of a notice of appeal as required by § 283.4(a), the time for the filing of any document or paper required or authorized under the rules in this part may be extended by the ALJ, Chief Judge or the Judicial Officer, if, in the judgment of the ALJ, Chief Judge or the Judicial Officer, there is good cause for the extension. In instances where the time permits notice of the request for extension, time shall be given to the other party to submit views concerning the request.

§ 283.23 Procedural matters.

(a) *Communications from Hearing Clerk.* In order to expedite the appeal process, the Hearing Clerk may develop form letters and transmittal forms to be used for notices, service of papers, requests for information, and all other communications between the Hearing Clerk's Office and the parties.

(b) *Representation.* All parties may be represented by attorneys or by designated representatives. Attorneys or designated representatives appearing for the parties shall file formal notices of appearances and withdrawals with the Hearing Clerk.

Subpart C—Summary Procedure for Appeals of QC Claims of Less than $50,000.

§ 283.24 Incorporation of procedures by reference.

Except as otherwise provided, the following procedures detailed in subpart B of this part shall apply to appeals of QC claims of less than $50,000: §§ 283.5 Motion to Dismiss; 283.6 Answer; 283.8 Amendment of Appeal or Answer; 283.9 Withdrawal of Appeal; 283.10 Consent Decision; 283.18 Motions and Requests; 283.19 ALJ's; 283.20 Review by the Judicial Officer; 283.21 Ex Parte Communications; 283.22 Filings; Service; Extensions of Time; and Computation of Time; and 283.23 Procedural Matters.

§ 283.25 Filing appeals for QC claims of less than $50,000.

(a) *Time.* A State agency may appeal the bill for collection from FNS for a QC claim of less than $50,000 for a food stamp QC error rate in excess of the tolerance level. A State agency must file a written notice of appeal, in accordance with this section, within 10 days of receipt by certified mail or personal service of the bill for collection from FNS for a QC claim of less than $50,000.

(b) *Filing.* The notice of appeal shall be filed with the Hearing Clerk.

(c) *Content of the notice of appeal.* (1) A notice of appeal, in order to be considered acceptable must contain the following information:

(i) A brief and clear statement that it is an appeal from a QC claim of less than $50,000 identifying the period the claim covers, the date and amount of the bill for collection, and the date of receipt of the bill for collection;

(ii) Identification of the State agency as the appellant and FNS as the appellee;

(iii) A statement that the notice of appeal is filed pursuant to section 14(a) of the Food Stamp Act;

(iv) A true copy of the bill for collection which constitutes the basis for the filing of the notice of appeal shall be attached to the notice.

(2) Failure to file an acceptable notice of appeal shall result in a challenge by FNS to the notice and dismissal of the notice by the ALJ and a waiver of the opportunity for further appeal or review by the Judicial Officer unless the State agency pursues the options as discussed in §§ 283.17(d) and 283.20 of this regulation.

(d) *Good cause.* The Secretary's determination concerning good cause is final. The State agency may not appeal a determination by the Secretary concerning whether a State agency had good cause as prescribed in 7 CFR 275.23(e)(5) for its failure to meet the error rate tolerance level established under 7 CFR Part 275. The State agency is not precluded from relying upon facts used in support of its good cause waiver request in arguing other appealable issues before the ALJ, if such facts are relevant to the appealable issues.

(e) *Receipt of notice of appeal and assignment of docket number.* Upon receipt of a notice of appeal, the Hearing Clerk shall assign the appeal a docket number. The Hearing Clerk shall:

(1) Send the State agency a letter which shall include the following information:

(i) Advice that the notice of appeal has been received and the date of receipt;

(ii) The docket number assigned to the appeal and instructions that all future communications related to the appeal shall reference the docket number, and;

(iii) That the State agency must file and serve its appeal petition, as set forth in § 283.22 within 30 days of service of the Hearing Clerk's letter. Failure to file a timely appeal petition may result in a waiver of further appeal rights.

(2) Send FNS a copy of the notice of appeal and a copy of the letter to the State agency.

(f) *Stay of collection.* The filing of a timely notice of appeal shall automatically stay the action of FNS to collect the QC claim asserted against the State agency until a decision is reached on the acceptability of the appeal, and in the case of an acceptable appeal, until a final administrative determination has been issued. However interest will accrue as provided in the Act.

(g) *Content of appeal petition.* The appeal petition shall include:

(1) A brief statement of the allegations of fact and provisions of law that constitute the basis for the appeal, and

(2) The nature of the relief sought.

(h) *FNS answer.* Upon service of the State agency appeal petition, FNS shall file an answer, pursuant to § 283.22, within 30 days of service of the State agency appeal petition.

§ 283.26 Request that appeals be handled under procedures in subpart B for appeals of QC claims of $50,000 or more.

(a) If the State agency does not believe that the summary procedure provided in this subpart is adequate for handling the appeal and that an oral hearing is necessary, the State agency may file, no later than the date established for the conclusion of any discovery pursuant to § 283.28, a request that its appeal be handled under the procedures in subpart B.

(b) The request shall specify why the State agency believes that the summary procedure is inadequate and what harm will result if an oral hearing is not held.

(c) FNS will have 20 days from service of the State agency's request that the appeal be handled under Subpart B to submit arguments either in support of or against the State agency's position.

(d) The ALJ will review the State agency's request and the information submitted by FNS and decide which procedures shall be used in the appeal.

(e) The initial decision of the ALJ on the use of the full administrative procedures shall become final and effective 10 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

§ 283.27 Procedures upon failure to file an answer.

The failure by FNS to file an answer shall constitute a waiver of the opportunity to file a cross motion for summary judgment pursuant to § 283.30. Upon such failure to file, the State agency shall file a proposed decision, along with a motion for adoption thereof, both of which shall be served upon FNS by the State agency. Within 20 days after service of such motion and proposed decision, FNS may file with the Hearing Clerk objections thereto. If the ALJ finds that meritorious objections have been filed, the State agency's motion shall be denied with supporting reasons. If meritorious objections are not filed, the ALJ shall issue an initial decision without further procedures. Copies of the decision or denial of State agency's motion shall be served on each of the parties and shall be included as part of the official record. Where the decisions as proposed by State agency is adopted as the ALJ's initial decision, such decision of the ALJ shall become final and effective 30 days after service unless reconsideration or review by the Judicial Officer is sought as discussed in §§ 283.17(d) and 283.20 of this part.

§ 283.28 Discovery.

Upon motion and as ordered by the ALJ, written interrogatories, written requests for admission and written requests for the production of documents, may be served by any party to the appeal upon any other party and used in accordance with § 283.12(b) of this part.

§ 283.29 Scheduling conference.

(a) *Time and place.* The ALJ shall direct the parties or their counsel to attend a scheduling conference at any reasonable time. The scheduling conference shall be held at the U.S. Department of Agriculture, Washington, DC. Reasonable notice of the time and place of the scheduling conference shall be given. The ALJ shall order each of the parties to furnish at the scheduling conference or at another time the following:

(1) An outline of the appeal or defense;

(2) The legal theories upon which the party will rely;

(3) Copies of or a list of documents that the party anticipates relying upon;

(b) *Procedures.* The ALJ shall not order any of the foregoing procedures that a party can show are inappropriate or unwarranted under the circumstances of the particular appeal.

(c) *Scheduling conference.* At the scheduling conference, the following matters shall be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) Negotiation, compromise, or settlement of issues;

(5) The exchange of copies of proposed exhibits;

(6) The nature of and the date by which discovery, as provided in § 283.28, must be completed;

(7) The identification of documents or matters of which official notice may be requested;

(8) A schedule to be followed by the parties for the completion of the actions decided at the conference; and

(9) Such other matters as may expedite and aid in the disposition of the appeal.

(d) *Reporting.* A scheduling conference will not be stenographically reported unless so directed by the ALJ.

(e) *Attendance at scheduling conference.* In the event the ALJ concludes that personal attendance by the ALJ and the parties or counsel at a scheduling conference is unwarranted or impractical, but decides that a conference would expedite the appeal, the ALJ may conduct such conference by telephone.

(f) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the ALJ concludes that a stenographic report shall suffice.

§ 283.30 Cross motions for summary judgement.

Appeal petitions filed pursuant to this subpart shall be determined upon cross motions for summary judgment unless the matter is heard under subpart B in accordance with § 283.26. Cross motions for summary judgment with supporting briefs and exhibits shall be filed by the parties pursuant to the schedule established by the ALJ in accordance with § 283.29. Motions for summary judgment shall address the issues raised by the pleadings and may be supported by declarations. Motions and accompanying briefs in support of summary judgment shall not exceed 35 pages excluding exhibits unless otherwise authorized by the ALJ. Reply briefs may be filed by the parties. Reply briefs may not exceed 15 pages in length, excluding exhibits, and must be submitted within 7 days of service of initial briefs. There shall be no further pleadings unless otherwise authorized by the ALJ.

§ 283.31 Review of the record.

(a) The ALJ shall review the cross motions for summary judgment, briefs, reply briefs and supporting materials submitted by both FNS and the State agency.

(b) If the ALJ decides that additional information or briefing is required from a party, a request for such information or briefing shall be submitted to such party with a copy to the other party. The request shall identify the additional information or specific issues to be addressed and shall specify the date(s) by which such information or briefing must be provided. Upon receipt of such additional information or briefing, the ALJ shall provide the other party an opportunity to submit responsive information or briefing.

(c) If the party to whom a request for additional information or briefing is made fails to submit the information or brief the issue(s) as requested, the ALJ may decide the appeal based on the existing record.

§ 283.32 ALJ's initial decision.

(a) The ALJ within a reasonable time following receipt of or expiration of the applicable due dates for motions, briefs, reply briefs, supporting materials and any other information requested pursuant to § 283.31 submitted by the State agency and FNS, shall file an initial decision, a copy of which shall be served upon each of the parties.

(b) Such initial decision shall become final and effective 30 days after service unless either party pursues the options as discussed in §§ 283.17(d) and 283.20 of this proposed regulation.

(c) No decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

Dated: January 12, 1993.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 93–1176 Filed 1–15–93; 8:45 am]

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federal register

Tuesday
January 19, 1993

Part XI

Department of Justice

Bureau of Prisons

28 CFR Part 551

Control, Custody, Care, Treatment and Instruction of Inmates; Volunteer Community Service Projects; Interim Rule

VOL
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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

RIN 1120–AA03

Control, Custody, Care, Treatment and Instruction of Inmates; Volunteer Community Service Projects

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document, the Bureau of Prisons is issuing an interim rule on Volunteer Community Service Projects. A volunteer community service project is a project designed to provide for the public good which has been developed by local government or by a non-profit charitable organization for approval by the Bureau of Prison. This rule provides for the voluntary participation by an inmate in a volunteer community service project. The intent of this rule is to promote the public interest and provide for the security and good order of the institution by reducing inmate idleness.

DATES: Effective on January 19, 1993; comments must be submitted on or before March 5, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is issuing an interim rule on Volunteer Community Service Projects. A volunteer community service project is a project designed to provide for the public good (in keeping with the overall goals of the community, such as community-wide beautification and public safety) which has been developed by local government or by a non-profit charitable organization for approval by the Bureau of Prisons. A community service project is not a work assignment. Any inmate who chooses to participate does so voluntarily, and may not receive performance pay for participation in the project. Existing Bureau regulations provide for inmate monetary contributions to an international, national, or local organization, including political parties, so long as the contribution does not violate any law or regulation (See 28 CFR 551.50). This amendment expands this policy by specifying how an inmate may choose to make a contribution of time and effort through participation in an approved volunteer community service project. The charitable activity resulting from participation in a volunteer community service project may not impair contracts for services in the community.

Because this rule poses no additional restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date. While the Bureau believes it is necessary to implement these changes immediately, the Bureau is publishing the procedures as an interim rule in order to invite public comment. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of E.O. 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Public Law 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

Dated: January 13, 1993.

Richard P. Seiter,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99.

2. In 28 CFR part 551, a new subpart F, consisting of § 551.60, is added to read as follows:

Subpart F—Volunteer Community Service Projects

§ 551.60 Volunteer community service projects.

(a) A volunteer community service project is a project sponsored and developed by local government or by a nonprofit charitable organization, submitted to the institution, and recommended by the Warden for approval of the Regional Director. Volunteer community service projects are designed to provide for the public good in keeping with the overall goals of the community, such as community-wide beautification or public safety. The sponsoring organization is responsible for certifying to the Bureau that the community service project does not displace regular employees, supplant employment opportunities ordinarily available within the sponsoring organization, or impair contracts for services. These projects are not work assignments. Any inmate who chooses to participate does so voluntarily, and may not receive performance pay or any other salaried compensation for participation in the project, nor be eligible to submit a claim under the provisions of the Inmate Accident Compensation Program.

(b) An inmate may volunteer to participate in a community service project by submitting a written request for the Warden's approval. The inmate must have custody classification appropriate for the project and be otherwise eligible for the conditions of the project. The decision of the Warden to approve or disapprove an inmate's request shall be documented in writing.

(c) An inmate may appeal the Warden's decision through the Administrative Remedy Procedure (see 28 CFR part 542).

[FR Doc. 93–1202 Filed 1–15–93; 8:45 am]

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federal register

Tuesday
January 19, 1993

Part XII

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 493
Medicare, Medicaid and CLIA Programs; CLIA Fee Collection; Correction and Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 493

[HSQ-206-F]

Medicare, Medicaid and CLIA Programs; CLIA Program Fee Collection; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendments.

SUMMARY: This rule corrects a technical error in a rule entitled, "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA)" which inadvertently deleted some content of another rule entitled, "CLIA Program Fee Collection." Both rules were published in the **Federal Register** on February 28, 1992. We are restoring, without change, the content of §§ 493.602 through 493.634, which was incorrectly removed effective September 1, 1992.

EFFECTIVE DATE: This rule is effective September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Matt Plonski, (410) 966-4662.

SUPPLEMENTARY INFORMATION: In this final rule, we are correcting a technical error in the fee schedule applicable to clinical laboratories, which was published in the February 28, 1992 issue of the **Federal Register**. We are restoring, without change the content of §§ 493.602 through 493.634, which was inadvertently removed.

Background

On February 28, 1992, we published three final rules applicable to laboratories that examine human specimens for the purposes of diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings. The rules implemented provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100-578. The rules were: "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA)," which appeared at 57 FR 7002-7186; "Clinical Laboratory Improvement Act Program Fee Collection," which appeared at 57 FR 7188-7218; and "Medicare and Laboratory Certification Program: Enforcement Procedures for Laboratories," which appeared at 57 FR 7218-7243. The regulation concerning fee collection was effective March 1, 1992, the other two regulations were effective September 1, 1992.

An error occurred in the amendatory language appearing in one of the regulations with the later effective date that produced the unintended result of deleting, effective September 1, 1992, a number of regulations sections in subpart F of part 493 that went into effect March 30, 1992.

Technical Correction

The document entitled, "Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA)," contained the comprehensive requirements with which laboratories must comply in order to meet CLIA requirements. Thus, it appeared first in the order of items presented in the February 28, 1992 issue of the **Federal Register**. This document did not contain any of the requirements dealing with subpart F, General Administration. The content of subpart F was established in the fee collection regulation that followed. As a means of assisting the reader with the organization of the revised part 493, a table of contents for the part was presented at pages 7137 through 7139, including items relating to fee collections that appear in the regulations text of the item that followed in that issue of the **Federal Register**.

An editing error occurred in our preparation of amendatory language in our amendment 3, appearing on page 7139. We included an instruction to remove the text of §§ 493.602 through 493.634, even though we were not setting forth regulations text in that rulemaking document. Ordinarily, this type of editing error would have no consequence because text to which it could apply did not exist, and on the date of publication, no such sections were in effect. However, the regulation's effective date was delayed until September 1, 1992 and the fee collection regulation which created these sections was effective March 30, 1992. The erroneous amendatory language thus deleted the sections beginning September 1, 1992, the effective date of the rule in which the erroneous amendatory language appeared.

We are restoring, without change, the content of §§ 493.602 through 493.634 that were removed in error. This restoration is effective September 1, 1992, thus ensuring continuity of the regulations.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR part 493 is corrected by making the following correcting amendments:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395(s)(16)).

Subpart F—General Administration

2. Subpart F is corrected by adding §§ 493.602, 493.606, 493.610, 493.614, 493.618, 493.622, 493.626, and 493.630 through 493.634 to read as follows:

§ 493.602 Scope of subpart.

This subpart sets forth requirements all laboratories that test human specimens for health purposes must meet in order to apply for and be issued a registration certificate, certificate of waiver, certificate of accreditation, or certificate under section 353 of the Public Health Service Act (42 U.S.C. 263a). It also sets forth the methodology for determining the amount of the fees for issuing registration certificates, certificates of waiver, certificates of accreditation, or certificates and for determining compliance with the applicable standards of the Public Health Service Act (the PHS Act) and for Federal validation of State-exempt laboratories.

§ 493.606 Applicability of subpart.

The rules of this subpart are applicable to those laboratories specified in § 493.3.

§ 493.610 Certificate requirements for laboratories.

(a) Except as specified in paragraph (b), of this section, no person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a registration certificate or a certificate or waiver issued by HHS, or a certificate or a certificate of accreditation issued by HHS that is applicable to the specialty or subspecialties of services offered by the laboratory.

(b) A laboratory licensed by a State whose licensure program is approved by HHS is exempt from CLIA requirements (that is, State-exempt) and does not require a certificate issued by HHS.

§ 493.614 Application procedures.

(a) HHS or its designee will send an application to those laboratories it has identified as potentially being subject to the requirements of CLIA. Those laboratories that do not receive an application must contact HHS or its designee to receive application forms.

(b) A separate application must be filed for each laboratory location. However, laboratories within a hospital that are located at the same street address and under common direction have the option of applying for a single certificate or multiple certificates for the laboratory sites within the same physical location or street address. In addition, not-for-profit or Federal, State, or local government laboratories that engage in limited public health testing (that is, few types of tests) may operate under one certificate. A laboratory that is not at a fixed location, that is, a laboratory that moves from testing site to testing site (such as health screening fairs) or other temporary testing location must file a single application using the address of its designated primary site. A separate certificate, which reflects the address of the designated primary site, is required for each mobile unit providing laboratory testing.

(c) An application for the issuance of a registration certificate, a certificate of waiver, or a certificate or certificate of accreditation applicable to one or more laboratory test procedures or examinations included in the specialties or subspecialties listed in § 493.643(d)(3) must be made to HHS or its designee on a form or forms prescribed by HHS and must be signed by the owner or authorized representative of the laboratory.

(d) The application must include information that describes the characteristics of the laboratory operation and the examinations and other test procedures performed by the laboratory, including—

(1) The names of the test procedures and examinations performed and the total number of test procedures and examinations performed annually, excluding tests for quality control, quality assurance, and proficiency testing purposes;

(2) The methodologies for test procedures and examinations performed; and

(3) The qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory test procedures and examinations.

§ 493.618 Additional application requirements.

In submitting an application for a registration certificate, a certificate of waiver, certificate of accreditation, or a certificate, a laboratory must agree to the following:

(a) To make records available and submit reports to HHS as HHS may require.

(b) To permit inspections by HHS or its designee as specified in subpart Q of this part. (Certificate of waiver laboratories are not subject to routine inspections.)

(c) To treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business. (Certificate of waiver laboratories are not subject to proficiency testing requirements.)

(d) To provide HHS with satisfactory assurances, through an attestation statement, signed by the laboratory owner or authorized representative, that the laboratory will be operated in accordance with the requirements established by the Secretary under section 353 of the PHS Act.

§ 493.622 Appeals procedures.

(a) If HHS denies a laboratory's application for a registration certificate, certificate of waiver, certificate of accreditation, or certificate or limits the laboratory's certificate, HHS gives the laboratory a statement of the grounds on which the denial or limitation is based and an opportunity for an appeal, in accordance with the procedures set forth in part 498 of this chapter.

(b) If a laboratory that is seeking a registration certificate, certificate of waiver, certificate of accreditation, or certificate has its application denied or its certificate limited, it cannot operate as a laboratory under the PHS Act (or, in the case of a limitation, in the areas covered by the limitation) unless the denial or limitation is overturned at the conclusion of the administrative appeals process provided by part 498 of this chapter. (In addition, the laboratory is not eligible for payment under the Medicare or Medicaid programs or, in the case of a limitation, cannot receive Medicare or Medicaid payment for services in the limited areas.)

(c) Additional provisions relating to appeal rights are set forth in §§ 493.626(b), 493.633(b), and 493.634(b).

§ 493.626 Registration certificate.

(a) HHS or its designee initially issues a registration certificate or, if the laboratory meets the requirements, a certificate of waiver to each laboratory, provided that the laboratory meets the application requirements of §§ 493.614 and 493.618 and pays the applicable fee as specified in § 493.638. A registration certificate does not include specialties/subspecialties of service, except as noted in § 493.633, but authorizes the entity to conduct laboratory testing until a determination of the appropriate level of compliance can be made and the appropriate certificate issued. The registration certificate issued in accordance with § 493.633(a)(2) to a laboratory that has a certificate of waiver to allow the laboratory to add a service(s) not listed in the waived test category reflects only the added service(s) noted on the laboratory's application. A registration certificate issued under this section is valid for a period of not more than 2 years or until such time as an inspection to determine program compliance can be conducted or the laboratory demonstrates that it qualifies to receive a certificate of waiver or a certificate of accreditation, whichever is shorter. HHS reissues a registration certificate to any laboratory for which HHS or its designee has not had an opportunity to determine compliance.

(b) Prior to expiration of the registration certificate, HHS notifies the laboratory of the applicable requirements to obtain a certificate of accreditation or a certificate and the amounts of the fees for issuing these certificates and, if applicable, the amount of the fee for determination of compliance. HHS may suspend, revoke, or limit a laboratory's registration certificate for failure to comply with the applicable requirements and may deny the laboratory's application for the applicable certificate. HHS may also impose certain alternative sanctions. HHS provides the laboratory with a statement of the grounds on which the sanctions and denial are based, an opportunity to respond to the imposition of the sanctions, and an opportunity for appeal, in accordance with the procedures set forth in part 498 of this chapter. If the laboratory requests an appeal of a suspension or revocation, it may keep its registration certificate until a decision is made by an Administrative Law Judge (ALJ), unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. In cases where the registration certificate would expire, a registration certificate is reissued to authorize testing until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. HHS may impose certain alternative sanctions prior to a hearing. (In addition, for laboratories receiving payment from the Medicare or Medicaid programs, such payments are suspended on the effective date specified in the notice to the laboratory of the denial of the application for the applicable certificate, even if there has been no appeal decision issued.)

(c) In the event of a non-compliance determination resulting in denial of a laboratory's application for a certificate of accreditation or certificate, HHS may suspend, revoke, or limit a laboratory's registration certificate. HHS may also impose certain alternative sanctions. HHS provides the laboratory with a statement of the grounds on which the sanctions and application denial are based and with an opportunity for an appeal, in accordance with the procedures set forth in part 498 of this chapter. If the laboratory requests an appeal of a suspension, revocation, or limitation, it may keep its registration certificate until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. In cases where the registration certificate would expire, a registration certificate is reissued to authorize testing until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. HHS may impose certain alternative sanctions prior to a hearing. (In addition, for laboratories receiving payment from the Medicare or Medicaid programs, such payments are suspended on the effective date specified in the notice to the laboratory of the denial of the application for the applicable certificate, even if there has been no appeals decision issued.)

§ 493.630 Certificate.

HHS or its designee issued a certificate to each laboratory, provided the laboratory has a registration certificate and meets the application requirements of §§ 493.614 and 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part. A certificate is valid for not more than 2 years.

§ 493.631 Certificate of waiver.

HHS or its designee issues a certificate of waiver to a laboratory if it performs only waived tests, provided the laboratory meets the application requirements of §§ 493.614 and 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part. A certificate of waiver is valid for not more than 2 years.

§ 493.632 Certificate of accreditation.

HHS or its designee issues a certificate to a laboratory accredited by an HHS-approved accreditation organization, provided the laboratory has a registration certificate and meets the application requirements of §§ 493.614 and 493.618, pays the applicable fee as specified in § 493.638, and meets all other applicable requirements of this part. A certificate of accreditation is valid for not more than 2 years.

§ 493.633 Applicability of the certificate, certificate of waiver, and certificate of accreditation.

(a) The certificate of waiver issued is applicable to tests listed in the waived test category. The certificate or certificate of accreditation issued is applicable to those specialties and subspecialties of service offered by the laboratory in accordance with this part.

(1) A laboratory performing only waived tests may not perform any examination or procedure not listed in the waived test category until it has requested and HHS has issued to it a registration certificate that covers the additional examinations or procedures requested by the laboratory. The laboratory may continue to perform waived tests that are covered by the certificate of waiver already issued to the laboratory. The registration certificate is valid for 2 years or until a compliance determination can be conducted, whichever is shorter. After HHS or its designee determines compliance, HHS issues a certificate that includes the additional specialties or subspecialties for which compliance has been determined.

(2) A laboratory possessing a certificate must notify HHS or its designee within 6 months of any changes in methodologies for any test procedure or examination it performs and any additions or deletions of tests or examinations performed. If the laboratory adds testing in a specialty or subspeciality *not* listed on its certificate, HHS or its designee will determine compliance. After HHS or its designee determines compliance, a revised certificate is issued that includes the additional specialties or subspecialties for which compliance has been determined.

(3) A laboratory possessing a certificate of accreditation must notify its approved accreditation organization within 6 months of any changes in methodologies for any test procedure or examination it performs or any additions or deletions of tests or examinations performed so that appropriate actions can be taken by the accreditation organization and a revised certificate can be issued when appropriate.

(b) HHS may suspend, revoke, or limit a laboratory's registration certificate and may impose certain alternative sanctions for failure to comply with the notice requirements of this section. HHS provides the laboratory with a statement of grounds on which the sanctions are based, an opportunity to respond to the imposition of the sanctions, and an opportunity for an appeal, in accordance with the procedures set forth in part 498 of this chapter. If the laboratory requests an appeal of a suspension, revocation, or limitation, it retains its certificate or a reissued certificate until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. HHS may impose certain alternative sanctions prior to a hearing. In addition, for laboratories receiving payment from the Medicare or Medicaid programs, such payments are suspended during the pendency of any hearing for failure to comply with the requirements of this part.

§ 493.634 Notification of changes.

(a) A laboratory must notify HHS or its designee within 30 days if changes occur in—

(1) Ownership;

(2) Name;

(3) Location;

(4) Director; or

(5) Supervisor (only applicable for a high complexity laboratory).

(b) HHS may suspend, revoke, or limit a laboratory's registration certificate, certificate of waiver, or certificate of accreditation or may impose certain alternative sanctions for failure to comply with the notice requirements of this section. In such an event, HHS provides the laboratory with a statement of grounds on which the sanction is based and an opportunity for an appeal, in accordance with the procedures set forth in part 498 of this chapter. If the laboratory requests an appeal of a suspension, revocation, or limitation, it retains its certificate or a reissued certificate until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. (In addition, for laboratories participating in Medicare or Medicaid, payments are suspended during the pendency of any hearing for failure to comply with the notice requirements.)

(c) If a revised certificate is necessary because of the changes identified in paragraph (a) of this section, the laboratory must pay the fee for a revised certificate as required in § 493.639.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 13, 1993.

Neil Stillman,

Deputy Assistant Secretary for Information Resources Management.

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Public Health Service

42 CFR Part 493

[HSQ-202-FC]

Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and Clinical Laboratory Improvement Act Program Fee Collection

AGENCY: Health Care Financing Administration (HCFA), and Public Health Service (PHS), HHS.

ACTION: Final Rule with Comment Period.

SUMMARY: In the February 28, 1992, issue of the **Federal Register** (57 FR 7002), the Department of Health and Human Services established rules that set forth the test performance requirements for laboratories that are subject to the CLIA requirements. This rule corrects both typographical and technical errors made in that document as well as provides some additional clarification after a limited review of the comments we received after the publication of the rule.

DATES: These regulations are effective on January 19, 1993.

COMMENT DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 22, 1993.

ADDRESSES: Mail an original and 3 copies of comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-202-FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) transmissions. In commenting, please refer to file code HSQ-202-FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

For comments that relate to information collection requirements, mail a copy of comments to: Allison Herron Eydt, HCFA Desk Officer, Office of Information and Regulatory Affairs, room 3001, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judy Yost, (410) 597-5907.

SUPPLEMENTARY INFORMATION: On February 28, 1992, we published in the **Federal Register** at 57 FR 7002, rules that set forth the test performance requirements for laboratories that are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA) requirements. We also published in that issue of the **Federal Register** two related rules which established the fees that HCFA charges laboratories for issuance of various CLIA certificates and for inspections and which established sanctions that HCFA may impose on laboratories that are found not to meet Federal requirements relating to CLIA. We received approximately 16,000 comments in response to the publication of the February 28 regulations, but have not yet concluded our analysis of them. A preliminary review of the comments, however, demonstrated to us that there were a few areas of concern that necessitated an immediate response in order to help assure the smoothest possible implementation of CLIA. Our intention is to respond fully to these comments in a later publication. Apart from the few substantive issues that are addressed in this rule, we have identified a number of technical errors and inadvertent omissions from the February 28 regulations that are corrected in this rule along with explanations as needed.

I. Technical Corrections

1. We are clarifying the response we made in the February 28 rule concerning the applicability of CLIA to individuals who either self-administer or receive some assistance in administering their own tests, such as fingerstick blood glucose testing. In the preamble, we had concluded that the Congress did not intend for us to regulate individuals as laboratories when they are self-administering tests in their own homes. While the focus of our discussion was on individuals who may receive some assistance from hospice or home health agency staff, we did not mean to imply that we were thereby excluding from this category those individuals who reside in community living arrangements such as supervised apartments or other assisted living arrangements where the individual is considered to be at home. We would emphasize, however, that we continue to believe that this exclusion from regulation does not extend to individuals residing in nursing facilities or intermediate care facilities for the mentally retarded such as those which are certified for participation in the Medicare or Medicaid programs. In these settings, and others like them, there is such active supervision and responsibility by facility staff in the physical well-being of the individuals who reside there that we believe it is clear that the Congress intended that any laboratory test conducted in such settings would be subject to CLIA regulation.

2. A large number of comments were received, especially from professional organizations, suggesting that many of the test systems proposed for waiver in the proposed rule did not meet the criteria discussed in the preamble to the proposed rule. To clarify the intent of the law, we revised the regulations in the final rule published on February 28, 1992 to include the criteria set forth by the Congress in CLIA. The list of waived tests was carefully reviewed against these legislated criteria and, as a result, many were dropped from the list. Many of these tests would be considered simple and easy if performed by a trained physician or other personnel skilled in laboratory techniques. As stated in the comments, tests requiring this level of skill do not meet the criteria for waived status. The following elaborates on the reasons why particular tests were deleted from the list of waived tests when the revised list was published in the final rule on February 28, 1992.

Some tests were excluded because they required skill in laboratory techniques such as proper preparation of the specimen on a slide or use of a microscope. They also require thorough knowledge of the morphology of organisms and other microscopic structures, interpretive skill to determine the significance of the elements observed, and the ability to distinguish medically significant organisms and structures from background debris and artifacts. These tests include microscopic examination of the following:

Urine sediment
Pinworm preparation
Vaginal wet mount preparation
Gram stains (on discharges and exudates)
Potassium hydroxide (KOH) preparation on cutaneous scrapings
Semen

However, it should be noted that a new category of procedures that are not subject to routine inspections is now located at § 493.16, which includes the following physician-performed microscopy procedures: wet mounts, including preparations of vaginal, cervical or skin specimens; all potassium hydroxide preparations; pinworm examinations; fern tests; post-coital direct, qualitative examinations of vaginal or cervical mucous; and urine sediment examinations. Agglutination tests were excluded from the final rule published on February 28, 1992 because they require interpretive skill to recognize and resolve technical problems and to read the final test results. These skills can only be acquired through training and experience. These tests include:

Antistreptolysin O (ASO) screen-slide card agglutination test;
C reactive protein (CRP) screen-slide card agglutination test;
Rheumatoid factor screen-slide card agglutination test;
Infectious mononucleosis screening-slide card agglutination test

Whole blood clotting time was excluded from the final rule published on February 28, 1992 because the procedure contains a number of manual steps that require extensive training to produce reliable results. The procedure also requires exact timing and sequencing of steps and interpretive skill to determine the end point.

Sickle cell screening tests were excluded from the final rule published on February 28, 1992 because they include an array of procedures that require varying levels of interpretive skill and technical ability. Further, some sickle cell procedures require the use of sophisticated instrumentation.

In addition to excluding tests from the waived list, we are making one addition to the list. After careful analysis of many comments and extensive discussion by the Clinical Laboratory Improvement Advisory Committee, and in accordance with its recommendation, we are waiving "hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout." We have determined that such test systems are simple and accurate with little or no likelihood of erroneous result and pose no reasonable risk of harm if performed incorrectly, thereby conforming to the statutory requirements for waiver. Specifically:

- The hemoglobin analyzer is dedicated to analyzing a single analyte, eliminating any decision on the part of the user.
- Interaction of the sample with the reagent is direct and performed by a built in feature of the hemoglobin analyzer or a component feature such as a collection device designed for use only on the analyzer. This direct interaction of the sample/reagent means that no action is required of the user.
- The hemoglobin analyzer provides direct readout and measurement, precluding the need for any calculation, interpretation, or other action or decision to obtain a result.

This change will also be made in the compilation of categorized tests to be published in the near future.

3. We are establishing a new § 493.16 to include provisions for physician-performed microscopy procedures in response to concerns raised by commenters. We received numerous comments from individual physicians, physician organizations, public and private clinics, public health organizations and agencies concerning specific microscopic examinations personally performed by physicians on specimens derived from their patients as part of a physical examination and evaluation. These microscopic procedures, which have been categorized as moderate complexity, have unique characteristics that are not adequately addressed within the moderate complexity category. The commenters generally suggested that the tests be waived.

We have rejected recategorization of these tests as waived because they do not comply with the statutory requirements for waived tests given the skills and training required to perform these microscopy procedures. However, we acknowledge that unique aspects of these physician-performed microscopy tests make application of all of the requirements for moderate complexity laboratories, specifically the inspection requirements, impractical and unnecessarily intrusive. As part of our evaluation process, we asked the Clinical Laboratory Improvement Advisory Committee (CLIAC) to review the commenters' suggestions regarding this matter. CLIAC was in agreement with creating a category of physician-performed microscopy procedures that would be exempt from routine inspections and supported the development of criteria to use in considering procedures for this category of testing.

These tests have the following unique aspects: (1) Specimens are labile or delay in performing the test could compromise accuracy of the result; (2) the tests are performed by the physician in conjunction with a physical examination; and (3) there are no controls which monitor the complete test process. Consequently, the only time to actually inspect the accuracy of testing would be during the course of a medical examination which would be disruptive and of little benefit. Routine inspections, therefore, should not be required. We are interested in comments on these criteria.

We wish to emphasize that the creation of this new category of testing does not mean that properly trained individuals, other than physicians (such as nurses and nurse-practitioners), may not perform these procedures. Such procedures may be performed provided that the testing personnel meet the qualification requirements of subpart M of part 493 and the laboratory is in compliance with the CLIA requirements for testing of moderate complexity.

In addition, we are interested in comments on whether personnel qualifications for this new category should be expanded to allow practitioners other than physicians, such as nurses, to perform the tests in the new category. Further, we intend to discuss this issue at the next CLIAC meeting in February. We ask that respondents consider the following questions: When these tests are performed in the context of a physical exam, who usually performs the tests? What percentage of the tests conducted are usually performed by a physician and by other health care practitioners? Please identify the different practitioners who perform these tests. How often do health care practitioners other than physicians conduct physical examinations that entail the use of these tests? What are the costs of each test when performed by each type of practitioner? What are the quality, access, and cost implications of providing this exception to a limited set of the professionals who currently perform these tests? What are the research findings regarding the quality of these tests as they relate to training versus experience (in other words, how frequently an individual performs the test)?

The new laboratory category established at § 493.16 to regulate physician-performed microscopy procedures will maintain the moderate complexity level requirements with the following modifications: Under new § 493.53, these laboratories may apply for a certificate for physician-performed microscopy procedures. This is a new category of certificate applicable to laboratories performing only those procedures established at § 493.16(c) or only those procedures performed in combination with any waived tests. A laboratory may apply directly for this certificate, as for the certificate of waiver, and need not make a prior application for a registration certificate. As provided under new § 493.1776, these laboratories will not be subject to routine inspection. (Inspections will only be conducted to evaluate complaints from the public and to determine whether the laboratory is performing tests not included on the laboratory's certificate.) Offsetting these inspection requirements, personnel standards will be more stringent than those required for moderately complex laboratories—only physicians will be authorized to perform these tests. Because physicians have extensive medical training greater than that required by these regulations for personnel performing moderately complex tests, and because these tests are done in the context of a patient examination, we believe that there is assurance that accuracy of testing can be maintained despite the lack of routine inspections. Consistent with the criteria that define the scope of these sets of procedures, the regulatory requirements with respect to quality assurance, quality control, proficiency testing, and patient test management apply as they would to any other test of moderate complexity.

We developed criteria listed in § 493.16(b) that are very specific and reflect the limited regulatory requirements applicable to these procedures. We are requiring that procedures in this category be personally performed by a physician on his or her own patients or patients of a group medical practice in which the physician is a member. These must be microscopic examinations categorized as moderate complexity testing, specimen handling or processing is limited and the specimen is either labile or delay in performing the test could compromise the accuracy of the test result. In addition, control materials are not available to monitor the entire testing process.

At § 493.16(c), we are listing the following six procedures that meet the criteria for categorization as physician-performed microscopy procedures: Wet mounts, including preparations of vaginal, cervical or skin specimens; all potassium hydroxide preparations; pinworm examinations; fern tests; post-coital direct, qualitative examinations of vaginal or cervical mucous; and urine sediment examinations.

In § 493.16(d), we are defining the mechanism for revising the procedures included and the criteria used for determining tests for inclusion in the physician-performed microscopy procedures category.

In § 493.16(e)(1), we are specifying that these procedures would be subject to the applicable requirements specified in subpart C, registration certificate, certificate for physician-performed microscopy procedures, and certificate, subpart F, general administration; or if applicable, subpart D, certificate of accreditation; subpart H, participation in proficiency testing; subpart J, patient test management; subpart K, quality control; and subpart P, quality assurance.

In § 493.16(e)(2), we are defining the particular personnel requirements applicable to these procedures in lieu of the personnel requirements contained in subpart M. Laboratories performing these procedures must have a physician serve as laboratory director and only a physician may perform these procedures on his or her own patients or the patients of a medical group practice of which the physician is a member.

In § 493.16(e)(3), we are specifying that inspections of physician-performed microscopy procedures listed in new § 493.16(c) would only be conducted under the circumstances specified in the new section § 493.1776.

4. At § 493.17 we are describing the criteria and scoring system used to categorize test systems, assays, and examinations by complexity. A number of changes are being made to correct editorial errors in the explanation of how the criteria were applied and scored. When listing the scoring criteria in § 493.17, the terms "and" and "or" were inadvertently used in several places rather than the correct term. We have revised this section to properly place these terms to reflect the intended relationship of components of each criterion to each other (i.e., whether either or both components were required).

5. We are revising § 493.20(b) to include the requirements applicable to those physician-performed microscopy procedures listed in new § 493.16(c).

6. At §§ 493.35(b), 493.43(b), 493.55(b) and 493.614(b) we are defining requirements for application for a certificate of waiver, registration certificate, certificate for physician-performed microscopy procedures, and certificate of accreditation. The rule specified that a laboratory must file a single application for the applicable certificate for each laboratory location, with certain exceptions. One of these exceptions included at §§ 493.35(b), 493.43(b), 493.55(b) and 493.614(b) was mobile vans providing laboratory services. However, the rule may have given the erroneous impression that each individual mobile van involved in providing laboratory services was required to make application for its own certificate. This was not the intent of that rule. Accordingly, we are amending §§ 493.35(b), 493 43(b), 493.55(b) and 493.614(b) to clarify the intent of the requirements by more clearly stating that mobile vans, as well as laboratories with temporary testing locations, such as health screening fairs, may file an application for one certificate to cover all units associated with a primary home base. We are seeking comments, however, on whether there should be some limitations placed on multiple mobile laboratories (including ambulances) placed under a single certificate. For example, should there be a cap on the total volume that mobile laboratories can test under one certificate, and/or should there be a cap on the total number of units that can be included under a single certificate?

7. Based on our preliminary review of comments, we are revising §§ 493.35(b)(2), 493.43(b)(2), 493.55(b)(2) and 493.614(b) to provide a quantitative definition of limited public health testing in order to clarify the term "few types of tests" as used in these sections. In order to qualify for certification as a laboratory doing limited public health testing, not-for-profit or Federal, State or local government laboratories may perform not more than a combination of 15 moderately complex or waived tests. We are also seeking comments about whether there are any other approaches we should consider in defining limited public health testing.

Public health laboratories performing high complexity testing were not included in the exception because we believe that the full weight of the regulations should apply when highly complex tests are performed. Requiring a separate certificate would better assure regular inspection, participation in required proficiency testing, and clearer assignment of personnel responsibilities attendant to highly complex testing.

8. We are revising §§ 493.35(b)(3), 493 43(b)(3), 493.55(b)(3) and 493.416(b) to permit hospitals with various buildings on the same campus to hold a single certificate, as long as the buildings on the campus are contiguous. If a large hospital has several campuses (e.g., several miles apart), separate certificates for each campus would be required. We are making this change to relieve the administrative burden imposed on large hospital systems that the previous language requiring a certificate at each street address caused. We solicit comments on any implications this provision may have for hospitals that have laboratories in satellite facilities in underserved areas. This change affects only hospitals.

9. At § 493 43(c), 493.47, 493.49(a) and (b), and 493.55(c), we are defining the requirements for application for a certificate, issuance of a certificate, application for an accreditation certificate, and issuance of an accreditation certificate for those laboratories performing those physician-performed microscopy procedures listed in new § 493.16(c).

10. Since laboratories in which a physician performs microscopy procedures listed in § 493.16(c) will not be issued a registration certificate, we are revising § 493.45(a) to reflect this policy.

10a. We are revising subpart F to establish a separate certificate for physician-performed microscope procedures. The certificate for physician-performed microscopy procedures is valid for up to 2 years. A laboratory that has been granted a certificate for physician-performed microscopy procedures may perform any examination or procedure that is listed in the physician-performed microscopy procedure category or the waived test category. As is the case with a certificate for waiver, a laboratory may apply directly for a certificate for physician-performed microscopy procedures without applying for a registration certificate. However, before a laboratory that has been granted a certificate for physician-performed microscopy procedures may perform any examination or procedure that is not listed in the physician-performed microscopy procedure category or the waived test category, it must request and receive from HHS a registration certificate that covers the additional examination or procedures.

Regardless of the number of procedures performed by the laboratory, the biennial fee for a certificate for physician-performed microscopy procedures is $150. The fee covers the cost of issuing the certificate, collection of the fees, non-routine inspections and direct administrative costs including those associated with data management and with evaluating tests to determine if a certificate for physician-performed microscopy procedures should be issued. As with other CLIA fee schedule amounts, we intend to review the fee for a certificate for physician-performed microscopy as more definitive cost information becomes available and may revise the fee amount upward or downward in the future.

11. At § 493.801(a)(2)(ii) and 493.1709 we are deleting the phrase "and reliability." These sections of the regulations govern proficiency testing requirements whose focus is testing accuracy only, not reliability. Testing reliability is governed by requirements elsewhere in the CLIA regulations (such as under quality control, quality assurance, patient test management, and personnel) and its inclusion under proficiency testing requirements in the February 28, 1992, rule was inadvertent.

12. We are revising § 493.913(c)(1) to correct the inadvertent omission of antimycobacterial susceptibility which has been a standard part of approved mycobacteriology proficiency testing programs.

13. We are modifying §§ 493.807 and 493.855, in their reference to Medicare and CLIA sanctions for poor laboratory performance, to make these sections parallel with the enforcement procedures set forth at Subpart R of the CLIA regulations.

14. At §§ 493.933(b), and 493.933(c)(2) in the lists entitled "Analyte or Test," we are inserting the phrase "(excluding urine pregnancy tests done by visual color comparison categorized as waived tests)" after "Human Chorionic Gonadotropin." This phrase was inadvertently omitted from the final rule and needs to be included to clearly indicate that proficiency testing would apply to those tests for human chorionic gonadotropin not categorized as waived but would not apply to those urine pregnancy tests done by visual color comparison that have been categorized as waived.

15. The regulation inadvertently may have left the impression that when using a product cleared by the FDA, as meeting CLIA requirements for quality control, the laboratory was not subject to any additional CLIA quality control requirements. We are adding and modifying language at §§ 493.1201, 493.1203, and 493.1223 to clarify, that in fact, quality control requirements in addition to those approved by the FDA still apply regardless of whether a laboratory is using a product cleared by the FDA. FDA clearance merely gives manufacturers one means of satisfying those CLIA quality control requirements listed in §§ 493.1203(b).

16. At § 493.1105 we are modifying the rule so as not to penalize a laboratory that has failed to obtain a written authorization for testing since the laboratory's failure would be through no fault of its own in those cases where the person authorizing the test did not provide the needed written authorization.

17. We are adding a new § 493.1251 to correct the inadvertent omission of a urinalysis quality control requirement from the February 28, 1992, rule. While the performance of dipstick urinalysis is categorized as waived testing, urinalysis performed by an automated method and urine microscopics are categorized as non-waived tests and need to be recognized as a subspecialty under subpart K, Quality Control, in order to determine compliance.

18. At § 493.1257(a)(5), we are modifying the present requirement which states that all cytology slide preparations must be evaluated on the premises to allow for the evaluation of these slide preparations on the premises of a laboratory certified to conduct testing in the subspecialty of cytology. Without this revision, laboratories might conclude that they would be prohibited from referring slides to another appropriately certified laboratory for evaluation or consultation. Since we never intended to prohibit such a common and oftentimes useful practice, we have revised the rule to allow for it.

19. At § 493.1265(b)(2) we are deleting the phrase "and living transplants." We inadvertently included as necessary, the performance of mixed lymphocyte cultures for living donor, solid organ transplants (such as heart, liver and lung). Such testing is rarely performed except for bone marrow transplants. Other serologic testing is the method of choice for living transplants.

20. We are deleting parentage testing from the requirements of § 493.1265(c) which sets forth certain quality control requirements in the areas of histocompatibility. Parentage testing is a procedure used to determine the true identity of an individual's genetic father or mother. These procedures are generally performed to establish paternity in connection with court proceedings involving such matters as child support. We believe that the reference to parentage testing in this regulation was inappropriate since such testing is not for the purpose of

diagnosing illness or otherwise assessing the health of a human being, but rather for an unrelated purpose that has no relationship to the patient care context which helps define the scope of the CLIA statute and these regulations.

21. Inasmuch as a podiatrist must successfully complete a training curriculum similar to a physician and is licensed to practice medicine in 24 of the 50 States, we are recognizing that podiatrists serve in the same personnel categories as doctors of medicine and doctors of osteopathy. Accordingly, we are revising §§ 493.1405, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461 and 493.1489 to include podiatrists.

21a. We are adding new § 493.1406 to incorporate in the regulations requirements included at § 493.1405(b)(6) concerning previously qualified laboratory directors. This section lists prior requirements without change because reorganization of the rule has rendered prior cross references incorrect.

22. We are revising § 493.1443 to specifically incorporate a provision that would permit dentists qualified in pathology to serve as laboratory directors in the area of oral pathology. Although this provision was included in the March 14, 1990, final laboratory regulations, it was inadvertently omitted from the February 28, 1992, rule. It was never our intent to automatically disqualify dentists as laboratory directors in the area of oral pathology since they historically have commonly filled this role. The revised rule would simply enable them to continue to perform in this capacity as originally intended.

23. We are revising § 493.1449(1)(3)(i)(B)(*2*) to delete the inadvertent reference to certification in ophthalmic pathology since the American Board of Ophthalmology certifies in ophthalmology; it does not provide certification in ophthalmic pathology.

24. We are modifying § 493.1449 to clarify that dentists qualified in pathology may serve as technical supervisors in the area of oral pathology if they are properly certified. It was never our intent to exclude dentists from these positions, and it was only through inadvertence that this omission occurred.

25. We are modifying § 493.1461 to prevent the inadvertent exclusion of certain individuals as general supervisors. It was the intent of the February 28, 1992, regulations to carry forward those individuals who qualified or could have qualified as general supervisor under § 493.1427 of the March 14, 1990 regulations. The requirement in the earlier rule included successful performance on the formerly available HEW examination offered under HHS plus six years of post-examination experience. Because this exam was discontinued in 1987, we inadvertently omitted the carrying forward of those individuals who successfully completed the exam in 1987 but who, as of September 1, will have only five years of experience thus rendering them unqualified to continue in a general supervisor capacity under the February 28, 1992, rule.

26. Based on our preliminary review of comments, we are revising § 493.1463(a)(3) and 493.1495(b)(7), to delay until we issue further regulations the effective date of the requirement for on-site supervision for those persons qualified under § 493.1489(b)(4). This will allow us time to more fully analyze comments received on this matter to determine whether a revision of this requirement is necessary. A preliminary review of the comments leads us to believe that the requirement, as currently written, may create unanticipated disruption of laboratories, particularly rural laboratories. This change would permit persons currently employed and performing high complexity testing to continue to work in the absence of on-site supervision, provided the work performed during those times is checked by the general supervisor within 24 hours. We invite comments on how HCFA should address the issue of requiring on-site supervision of testing personnel conducting high complexity tests who do not yet have an associate degree.

27. At § 493.1721, we are adding "and maintained for a period of two years" at the end of the last sentence. This addition is necessary to maintain consistency with the record retention requirements throughout the regulations.

28. We are revising § 493.1461 and 493.1489 to include persons inadvertently omitted from those sections of the rule in the area of blood gas analysis at both the general supervisor and testing personnel levels. Among the criteria for these positions in the February 28 rule were those persons receiving a bachelor's degree only in respiratory therapy. By drafting the rule in this fashion, we inadvertently excluded those persons who receive their bachelor's degree in cardiovascular technology which is substantively equivalent to respiratory therapy in this regard and which qualifies these individuals equally to perform blood gas analysis.

29. We are creating a new § 493.1776 which provides that the physician-performed microscopy procedures listed in § 493.16(c) would not be subject to inspections on a routine basis but would be inspected under the following circumstances: Inspections would be done to evaluate complaints; to determine that only testing authorized by the certificate is being performed and that the laboratory is being operated in a manner that does not constitute an imminent and serious risk to human health; and to collect information to determine the addition, deletion, or continued inclusion of tests in the physician-performed microscopy category.

30. We are correcting the regulations governing inspections at §§ 493.49(b), 493.1175(a), 493.1776, 493.1777(a), and 493.1780 to avoid any misunderstanding that the only CLIA inspections we would conduct would be unannounced. The statute, at section 353(g)(1), clearly provides for inspections that are either announced or unannounced. We did not intend for the regulations to limit the discretion already available to us under the statute, and, accordingly, have changed the regulations to dispel any uncertainty that some might have in this regard by explicitly incorporating the statutory authorization for both kinds of inspections.

31. We are revising the regulations at § 493.1780(e)(1) relating to the retention of records of blood and blood product testing to correct an inadvertent inconsistency with the record retention requirements at § 493.1221.

32. We are amending the regulations at § 493.2001(e)(2) to substitute the word "determination" for "categorization" to avoid confusion with the concept of categorizing non-waived tests. The term "categorization" has been used throughout the rule to refer to the scoring system used to classify non-waived tests according to complexity.

33. We received numerous comments stressing the importance of being aware of actual experience in the field. We intend to increase the number of active practitioners on the CLIAC as vacancies occur. We are interested in comments on the number and types of individuals who should be on the committee.

II. Other Corrections

In this document, we are also making numerous corrections resulting from typographical errors, omissions, and conflicts within the February 28, 1992, rule.

III. Delay of Application of CLIA to Workplace Drug Testing

We received many comments on the final regulations raising questions about the applicability of CLIA to workplace drug testing. Many commenters said that coverage of such testing would have an unintended chilling effect on efforts to establish drug testing programs. The Department wants to encourage drug-free workplace programs, and at the same time we want to ensure the accuracy of drug tests performed in worksite programs. Therefore, we have decided to delay implementation of CLIA as it may affect workplace testing programs until we have investigated the matter in greater detail. We invite comment from all interested parties, especially private sector employers and States which may have some experience in regulating workplace drug testing. We will also be looking to the National Institute on Drug Abuse (NIDA) for additional guidance. In particular, a task force which is presently examining issues involved in applying standards for assuring accuracy and reliability in onsite workplace drug testing will issue its findings soon. We expect to announce a final decision on the application of CLIA to workplace drug testing when the Department publishes its response to comments on the final CLIA regulations.

IV. Waiver of Delayed Effective Date

The final rule with comment period published February 28, 1992, contained provisions that were generally effective September 1, 1992. We have amended those regulations in this **Federal Register** document, and the effective date of this final rule is January 19, 1993. We believe that these revisions and technical corrections are essential to the effective implementation of the program, and to delay the effective date would potentially disrupt public access to laboratory services, unnecessarily expose laboratories to greater costs than are needed to help assure quality testing, and create unnecessary confusion among laboratories in understanding the standards they must meet. For these reasons, we find there is good cause to dispense with a delayed effective date of these regulations.

V. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E. O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule will correct basic inconsistencies and make technical changes in the regulations that established the laboratory standards. These revisions will not result in significant costs to laboratories nor will it jeopardize the health and safety of the individuals administering the tests or the patients receiving them. Thus, we do not believe that any of the changes precipitated by this final rule will meet the $100 million criterion or any other E.O. 12291 criteria. Therefore, this rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required. In addition, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Paperwork Reduction Act of 1980

Our earlier final rule (February 28, 1992, 57 FR 7106–7134) provided an extensive impact analysis of the regulations changes to implement CLIA requirements. The analysis discussed both benefits to the general public and any burden on members of the health care community associated with complying with the CLIA requirements. Some of the projected costs were associated with recordkeeping and reporting requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

The changes being made as a result of this final rule reduce recordkeeping and reporting burden as originally projected, but we are unable to measure specifically the amount of the reduction. A reduction will occur due to the establishment of an additional waived test (hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout). We expect the provisions for physician performed microscopy procedures which are exempt from routine inspections to result in a reduction, as will the clarification concerning when multiple test sites may function under a single certificate. More specific information on reductions in recordkeeping and reporting requirements are being developed and will be submitted to OMB for review. We are interested in public comments on the recordkeeping and reporting burden. Commenters should send comments to the individual listed in the ADDRESS section.

List of Subjects in 42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

PART 493—LABORATORY REQUIREMENTS

Part 493 is amended as follows:

1. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following 1861(s)(11), 1861(s)(12), 1861(s)(13), 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 1302, 1395x(e), the sentence following 1395x(s)(11), 1395x(s)(12), 1395x(s)(13), 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16)).

§ 493.2 [Amended]

2. Section 493.2 is amended as follows:

a. In the definition of *Accredited institution*, in paragraph (c), the phrase "for full credit" is removed.

b. The definition of *CLIA certificate* is revised to read as follows:

CLIA certificate means any of the following types of certificates issued by HCFA or its agent:

(1) *Certificate* means a certificate issued to a laboratory after an inspection that finds the laboratory to be in compliance with all applicable condition level requirements, or reissued before the expiration date, pending an appeal, in accordance with § 493.630, when an inspection has found the laboratory to be out of compliance with one or more condition level requirements.

(2) *Certificate for physician-performed microscopy procedures* means a certificate issued or reissued, pending an appeal, in accordance with § 493.630, to a laboratory in which a physician performs only the microscopy tests listed in § 493.16(b), or issued or reissued to a laboratory in which a physician performs microscopy tests and waived tests as listed in § 493.15(c).

(3) *Certificate of accreditation* means a certificate issued on the basis of the laboratory's accreditation by an accreditation organization approved by HCFA, (indicating that the laboratory is deemed to meet applicable CLIA requirements) or reissued before the expiration date, pending an appeal, in accordance with § 493.632, when a validation or complaint survey has found the laboratory to be noncompliant with one or more CLIA conditions.

(4) *Certificate of registration or registration certificate* means a certificate issued or reissued, pending an appeal, in accordance with § 493.626, to an entity that is not qualified to receive a certificate of waiver or certificate for physician-performed microscopy procedures, that enables the entity to conduct moderate or high complexity laboratory testing until the entity is determined to be in compliance through a survey by HCFA, its agent, or the State; is accredited by an approved accreditation organization; or becomes exempt from CLIA by virtue of it being licensed by a State with a HCFA-approved laboratory licensure program.

(5) *Certificate of waiver* means a certificate issued or reissued, pending an appeal, in accordance with § 493.631, to a laboratory to perform only the waived tests listed at § 493.15(c).

c. The definitions of *Automated, HCFA's agent, Reportable range,* and *Semi-automated* are removed.

d. The definition *Physician* is added in alphabetical order to read as follows:

Physician means an individual with a doctor of medicine, doctor of osteopathy, doctor of podiatric medicine, or equivalent degree who is licensed by the State to practice medicine or podiatry.

e. In the definition of *State-exempt laboratory*, "State-exempt" is revised to read "CLIA-exempt" and placed in appropriate alphabetical order.

§ 493.3 [Amended]

3. In § 493.3(a)(2), "State-exempt" is revised to read "CLIA-exempt".

§ 493.10 [Amended]

4. In § 493.10(c), "State-exempt" is revised to read "CLIA-exempt".

§ 493.15 [Amended]

5. Section 493.15 is amended as follows:

a. In § 493.15(c) introductory text, "as provided under paragraph (c)" is revised to read "as provided under paragraph (d)".

b. Section 493.15(d) is amended by removing paragraph (d)(1) and the paragraph (2) designation.

c. By revising paragraphs (c) (7) and (8) and adding paragraph (c)(9) to read as follows:

§ 493.15 Laboratories performing waived tests.

* * * * *

(c) * * *

(7) Blood glucose by glucose monitoring devices cleared by the FDA specifically for home use;

(8) Spun microhematocrit; and

(9) Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

6. A new § 493.16 is added to read as follows:

§ 493.16 Physician-performed microscopy procedures.

(a) *Requirement.* Procedures to be categorized as physician-performed microscopy procedures must meet the criteria specified in paragraph (b) of this section.

(b) *Criteria.* Procedures must meet the following specifications:

(1) The examination must be personally performed by a physician during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member;

(2) The procedure must be categorized as moderately complex;

(3) The primary instrument for performing the test is the microscope;

(4) The specimen is labile or delay in performing the test could compromise the accuracy of the test result;

(5) Control materials are not available to monitor the entire testing process; and

(6) Limited specimen handling or processing is required.

(c) *Physician performed microscopy examinations.* A laboratory may qualify to perform tests under this provision if it restricts physician-performed microscopy examinations to one or more of the following procedures (or additional procedures added to this list as provided under paragraph (d) of this section), waived tests and no others:

(1) Wet mounts, including preparations of vaginal, cervical or skin specimens;

(2) All potassium hydroxide (KOH) preparations;

(3) Pinworm examinations;

(4) Fern tests;

(5) Post-coital direct, qualitative examinations of vaginal or cervical mucous; and

(6) Urine sediment examinations.

(d) *Revisions to criteria and the list of physician-performed microscopy procedures.*

(1) The Clinical Laboratory Improvement Advisory Committee (CLIAC) will conduct reviews upon request of HHS and recommend to HHS revisions to the criteria for categorization of procedures.

(2) HHS will determine whether a laboratory procedure meets the criteria listed under paragraph (b) of this section for a physician-performed microscopy procedure. Revisions to the list of physician-performed microscopy procedures proposed by HHS will be published in the **Federal Register** as a Notice with an opportunity for public comment.

(e) Laboratories eligible for test performance under the physician-performed microscopy examination provision must—(1) Meet the applicable requirements in subpart C, registration certificate, certificate for physician-performed microscopy procedures, and certificate, subpart F, general administration, or if applicable, subpart D, certificate of accreditation, subpart H, participation in proficiency testing, subpart J, patient test management, subpart K, quality control, and subpart P, quality assurance, of this part.

(2) In lieu of the requirements contained in subpart M, personnel, meet the following requirements:

(i) The laboratory must have a director who—

(A) Possesses a current license as a laboratory director issued by the State in which the laboratory is located, if such licensing is required;

(B) Is a doctor of medicine, doctor of osteopathy, or doctor of podiatry licensed to practice medicine, osteopathy or podiatry in the State in which the laboratory is located; and

(C) Is responsible for ensuring that any procedure listed in paragraph (c) of this section is—

(*1*) Personally performed by a physician on a specimen from his or her own patient or from a patient of a group medical practice of which the physician is a member; and

(*2*) Performed in accordance with the applicable requirements in subparts H, J, K and P of this part.

(ii) Any procedure listed under paragraph (c) of this section must be personally performed by a physician during the patient visit on a specimen from his or her own patient or from a patient of a group medical practice of which the physician is a member.

(3) Be subject to inspection only under the circumstances specified under § 493.1776 but are not routinely inspected to determine compliance with the requirements specified in paragraphs (e) (1) and (2) of this section.

7. Section § 493.17 is amended by revising paragraphs (a) (1) through (3), (5), (6), and paragraph (c)(4) to read as follows:

§ 493.17 Test categorization.

(a) * * *

(1) *Knowledge.*

(i) *Score 1.* (A) Minimal scientific and technical knowledge is required to perform the test; and

(B) Knowledge required to perform the test may be obtained through on-the-job instruction.

(ii) *Score 3.* Specialized scientific and technical knowledge is essential to perform preanalytic, analytic or postanalytic phases of the testing.

(2) *Training and experience.*

(i) *Score 1.* (A) Minimal training is required for preanalytic, analytic and postanalytic phases of the testing process; and

(B) Limited experience is required to perform the test.

(ii) *Score 3.* (A) Specialized training is essential to perform the preanalytic, analytic or postanalytic testing process; or

(B) Substantial experience may be necessary for analytic test performance.

(3) *Reagents and materials preparation.*

(i) *Score 1.* (A) Reagents and materials are generally stable and reliable; and

(B) Reagents and materials are prepackaged, or premeasured, or require no special handling, precautions or storage conditions.

(ii) *Score 3.* (A) Reagents and materials may be labile and may require special handling to assure reliability; or

(B) Reagents and materials preparation may include manual steps such as gravimetric or volumetric measurements.

* * * * *

(5) *Calibration, quality control, and proficiency testing materials.*

(i) *Score 1.* (A) Calibration materials are stable and readily available;

(B) Quality control materials are stable and readily available; and

(C) External proficiency testing materials, when available, are stable.

(ii) *Score 3.* (A) Calibration materials, if available, may be labile;

(B) Quality control materials may be labile, or not available; or

(C) External proficiency testing materials, if available, may be labile.

(6) *Test system troubleshooting and equipment maintenance.*

(i) *Score 1.* (A) Test system troubleshooting is automatic or self-correcting, or clearly described or requires minimal judgment; and

(B) Equipment maintenance is provided by the manufacturer, is seldom needed, or can easily be performed.

(ii) *Score 3.* (A) Troubleshooting is not automatic and requires decision-making and direct intervention to resolve most problems; or

(B) Maintenance requires special knowledge, skills, and abilities.

* * * * *

(C) *Process for device/test categorization utilizing the scoring system under § 493.17(a).* * * *

(4) If a laboratory test system, assay or examination does not appear on the lists of tests in the **Federal Register** notices, it is considered to be a test of high complexity until PHS, upon request, reviews the matter and notifies the applicant of its decision. Test categorization is effective as of the notification to the applicant.

* * * * *

8. Section 493.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 493.20 Laboratories performing tests of moderate complexity.

* * * * *

(b) A laboratory that performs tests or examinations of moderate complexity must meet the applicable requirements in subpart C, registration certificate and certificate, or, if applicable, subpart D, certificate of accreditation; subpart H, participation in proficiency testing; subpart J, patient test management; subpart K, quality control; subpart M, personnel; subpart P, quality assurance; and subpart Q, inspections of this part. For physician-performed microscopy procedures, the personnel requirements contained in § 493.16(e)(2) are applicable in lieu of subpart M of this part and inspections are required only under the circumstances specified in § 493.1776.

(c) If the laboratory also performs certificate of waiver tests listed in § 493.15 compliance with subparts H, J, K, M, P and Q of this part for routine inspections are not required for the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e) and 493.1775.

§ 493.25 [Amended]

9. In § 493.25(c), "§ 493.15(d)" is revised to read "§ 493.15(e)".

10. Section 493.35 is amended as follows:

a. In § 493.35(d) introductory text, "§ 493.15(b)" is revised to read "§ 493.15(c)".

b. In § 493.35(d)(1), "§ 493.15(d)" is revised to read "§ 493.15(e)".

c. Section 493.35(b) is revised as follows:

§ 493.35 Application for certificate of waiver.

* * * * *

(b) *Exceptions.* (1) Laboratories that are not at a fixed location, that is, laboratories that move from testing site to testing site, such as mobile units providing laboratory testing, health screening fairs, or other temporary testing locations may be covered under the certificate of the designated primary site or home base, using its address.

(2) Not-for-profit or Federal, State, or local government laboratories that engage in limited (not more than a combination of 15 moderately complex or waived tests per certificate) public health testing may file a single application.

(3) Laboratories within a hospital that are located at contiguous buildings on the same campus and under common direction may file a single application or multiple applications for the laboratory sites within the same physical location or street address.

* * * * *

§ 493.37 [Amended]

11. Section 493.37 is amended as follows:

a. In § 493.37(b)(1), "§ 493.15(d)" is revised to read "§ 493.15(e)".

b. In § 493.37(g), "examination of test procedures" is revised to read "examination or test procedures".

11a. The heading of subpart C is revised to read as follows:

Subpart C—Registration Certificate, Certificate for Physician-performed Microscopy Procedures, and Certificate

12. Section § 493.43 is amended by revising the section heading and paragraphs (b) and (c) to read as follows:

§ 493.43 Application for registration certificate, certificate for physician-performed microscopy procedures, and certificate.

* * * * *

(b) *Exceptions.* (1) Laboratories that are not at a fixed location, that is, laboratories that move from testing site to testing site, such as mobile units providing laboratory testing, health screening fairs, or other temporary testing locations may be covered under the certificate of the designated primary site or home base, using its address.

(2) Not-for-profit or Federal, State, or local government laboratories that engage in limited (not more than a combination of 15 moderately complex or waived tests per certificate) public health testing may file a single application.

(3) Laboratories within a hospital that are located at contiguous buildings on the same campus and under common direction may file a single application or multiple applications for the laboratory sites within the same physical location or street address.

(c) *Application format and contents.* The application must—(1) Be made to HHS or its designee on a form or forms prescribed by HHS;

(2) Be signed by an owner, or by an authorized representative of the laboratory who attests that the laboratory will be operated in accordance with the requirements established by the Secretary under section 353 of the Public Health Service Act;

(3) Describe the characteristics of the laboratory operation and the examinations and other test procedures performed by the laboratory including—

(i) The name and total number of test procedures and examinations performed annually (excluding waived tests or tests for quality control, quality assurance or proficiency testing purposes);

(ii) The methodologies for each laboratory test procedure or examination performed, or both;

(iii) The qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the examinations and test procedures.

* * * * *

13. Section § 493.45 is amended by revising paragraphs (a) and (b)(2) and republishing the introductory text of paragraph (b) to read as follows:

§ 493.45 Requirements for a registration certificate.

(a) A registration certificate is required—(1) Initially for all laboratories performing test procedures of moderate and high complexity (Exception: For physician-performed microscopy procedures listed in § 493.16(c), the laboratory is not issued a registration certificate but is subject to §§ 493.43 and 493.47 and must apply and obtain a certificate for physician-performed microscopy procedures prior to conducting the procedures listed in § 493.16(c));

(2) For all certificate of waiver laboratories that intend to perform testing in addition to those tests listed in § 493.15(c); and

(3) For any laboratory that intends to perform testing in addition to physician-performed microscopy procedures listed in § 493.16(c) and waived procedures listed in § 493.15(c).

(b) HHS will issue a registration certificate if the laboratory—

* * * * *

(2) Agrees to notify HHS or its designee within 30 days of any changes in ownership, name, location, director or technical supervisor (laboratories performing high complexity testing only);

* * * * *

13a. A new § 493.47 is added to read as follows:

§ 493.47 Requirements for a certificate for physician-performed microscopy procedures.

(a) A certificate for physician-performed microscopy procedures is required—

(1) Initially for all laboratories performing test procedures listed in § 493.16(c); and

(2) For all certificate of waiver laboratories that intend to perform only test procedures listed in § 493.16(c) in addition to those tests listed in § 493.15(c).

(b) HHS will issue a certificate for physician-performed microscopy procedures if the laboratory—

(1) Complies with the requirements of § 493.43; and

(2) Remits the fee for the certificate, as specified in subpart F of this part.

(c) Laboratories issued a certificate for physician—performed microscopy procedures are subject to—

(1) The notification requirements of § 493.53;

(2) The applicable requirements of this subpart and subparts H, J, K, and P of this part. In lieu of the requirements contained in subpart M of this part, for physician-performed microscopy procedures, the laboratory must meet the requirements of § 493.16(e)(2); and

(3) Inspection only under the circumstances specified under § 493.1776, but are not routinely inspected to determine compliance with the requirements specified in paragraphs (c) (1) and (2) of this section.

(d) In accordance with subpart R of this part, HHS will initiate suspension, limitation, or revocation of a laboratory's certificate for physician-performed microscopy procedures for failure to comply with the applicable requirements set forth in this subpart. HHS may also impose certain alternative sanctions. In addition, failure to meet the requirements of this subpart may result in suspension of all or part of payments under Medicare and Medicaid, as specified in subpart R of this part.

(e) A certificate for physician-performed microscopy procedures is valid for a period of no more than 2 years.

14. Section 493.49 is amended by revising paragraphs (a), (b), and (e)(2) and republishing the introductory text of paragraph (e) to read as follows:

§ 493.49 Requirements for a certificate.

(a) HHS will issue a certificate to a laboratory only if the laboratory—(1) Meets the requirements of §§ 493.43 and 493.45 (§ 493.45 is not applicable to physician-performed microscopy procedures);

(2) Remits the certificate fee specified in subpart F of this part; and

(3) Meets the applicable requirements of this subpart and subparts H, J, K, M (not applicable to physician-performed microscopy procedures), P and Q of this part. In lieu of the personnel requirements contained in subpart M, for physician—performed microscopy procedures, the laboratory must meet the requirements of § 493.16(e)(2).

(b) Laboratories issued a certificate—

(1) Are subject to the notification requirements of § 493.51; and

(2) Must permit announced or unannounced inspections by HHS in accordance with subpart Q (provision for conducting inspections of the physician-performed microscopy procedures listed in § 493.16(c) is located at § 493.1776) of this part—

(i) To determine compliance with the requirements of this part. Exception: In accordance with § 493.16(e)(3), inspections of physician-performed microscopy procedures are not routinely conducted);

(ii) To evaluate complaints;

(iii) When HHS has substantive reason to believe that tests are being performed, or the laboratory is being operated in a manner that constitutes an imminent and serious risk to human health; and

(iv) To collect information regarding the addition, deletion, or continued inclusion of tests listed in §§ 493.15 or 493.16 or tests of moderate or high complexity.

* * * * *

(e) In the event of a non-compliance determination resulting in an HHS

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action to revoke, suspend or limit the laboratory's certificate, HHS will—

* * * * *

(2) Offer an opportunity for appeal as provided in subpart R of this part. If the laboratory requests a hearing within 60 days of the notice of sanction, it retains its certificate or reissued certificate until a decision is made by an administrative law judge (ALJ) as provided in subpart R of this part except when HHS finds that conditions at the laboratory pose an imminent and serious risk to human health or when the criteria at § 493.1840(a)(4) and (5) are met.

* * * * *

§ 493.51 [Amended]

15. In § 493.51(a)(5), "Supervisor" is revised to read "Technical supervisor".

15a. In subpart C, a new § 493.53 is added to read as follows:

§ 493.53 Notification requirements for laboratories issued a certificate for physician-performed microscopy.

Laboratories issued a certificate for physician-performed microscopy procedures must notify HHS or its designee—

(a) Before performing and reporting results for any test or examination that is not specified under §§ 493.15 and 493.16(c) for which it does not have a registration certificate as required in subparts C or D of this part; and

(b) Within 30 days of any change in—

(1) Ownership;

(2) Name;

(3) Location; or

(4) Director.

16. Section 493.35 is amended by revising paragraphs (b) and (c) to read as follows:

§ 493.35 Application for registration certificate and certificate of accreditation.

* * * * *

(b) *Exceptions.* (1) Laboratories that are not a fixed location, that is, laboratories that move from testing site to testing site, such as mobile units providing laboratory testing, health screening fairs, or other temporary testing locations may be covered under the certificate of the designated primary site or home base, using its address.

(2) Not-for-profit or Federal, State, or local government laboratories that engage in limited (not more than a combination of 15 moderately complex or waived tests per certificate) public health testing may file a single application.

(3) Laboratories within a hospital that are located at contiguous buildings on the same campus and under common direction may file a single application or multiple applications for the laboratory sites within the same physical location or street address.

(c) *Application format and contents.* The application must—(1) Be made to HHS on a form or forms prescribed by HHS;

(2) Be signed by an owner or authorized representative of the laboratory who attests that the laboratory will be operated in accordance with the requirements established by the Secretary under section 353 of the Public Health Service Act; and

(3) Describe the characteristics of the laboratory operation and the examinations and other test procedures performed by the laboratory including—

(i) The name and total number of tests and examinations performed annually (excluding waived tests and tests for quality control, quality assurance or proficiency testing purposes);

(ii) The methodologies for each laboratory test procedure or examination performed, or both; and

(iii) The qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and test procedures.

* * * * *

§ 493.61 [Amended]

17. Section 493.61(c)(3) is amended to revise "suspension" to read "suspension,".

17a. Section 493.511 is amended by revising paragraph (h) to read as follows:

§ 493.511 Removal of deeming authority and final determination review.

* * * * *

(h) After HCFA withdraws approval of an accreditation organization's deeming authority, the certificates of accreditation of all affected laboratories continue in effect for 60 days after the laboratory receives notification of the withdrawal of approval. HCFA may extend the period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for inspection to another approved accreditation organization for an application for a certificate, certificate for physician-performed microscopy procedures, or certificate of waiver to HCFA, the State agency or other HCFA agent before the initial 60 day period ends.

* * * * *

17b. Section 493.521 is amended by revising paragraph (j) to read as follows:

§ 493.521 Removal of CLIA exemption and final determination review.

* * * * *

(j) After HCFA withdraws approval of a State laboratory licensure program, the exempt status of licensed or approved laboratories in the State continues in effect for 60 days after the laboratory receives notification from the State of the withdrawal of HCFA's approval of the program. HCFA may extend this period for an additional 60 days for a laboratory if it determines that the laboratory submitted an application for accreditation to an approved accreditation organization or an application to HCFA for a certificate, certificate for physician-performed microscopy procedures, or certificate of waiver before the initial 60 day period ends.

* * * * *

18. Section 493.602 is revised to read as follows:

§ 493.602 Scope of subpart.

This subpart sets forth requirements all laboratories that test human specimens for health purposes must meet in order to apply for and be issued a registration certificate, certificate for physician-performed microscopy procedures, certificate of waiver, certificate of accreditation, or certificate under section 353 of the Public Health Service Act (42 U.S.C. 263a). It also sets forth the methodology for determining the amount of the fees for issuing registration certificates, certificates for physician-performed microscopy procedures, certificates of waiver, certificates of accreditation, or certificates and for determining compliance with the applicable standards of the Public Health Service Act (the PHS Act) and the Federal validation of State-exempt laboratories.

19. Section 493.610 is amended by revising paragraph (a) to read as follows:

§ 493.610 Certificate requirements for laboratories.

(a) Except as specified in paragraph (b) of this section, no person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a registration certificate, a certificate for physician-performed microscopy procedures, a certificate of waiver, or a certificate or a certificate of accreditation issued by HHS that is applicable to the specialty or subspecialties of services offered by the laboratory.

* * * * *

20. Section 493.614 is amended by revising paragraph (c) to read as follows:

§ 493.614 Application procedures.

* * * * *

(c) An application for the issuance of a registration certificate, a certificate for physician-performed microscopy procedures, a certificate of waiver, or a certificate or certificate of accreditation applicable to one or more laboratory test procedures or examinations included in the specialties or subspecialties listed in § 493.643(d)(3) must be made to HHS or its designee on a form or forms prescribed by HHS and must be signed by the owner or authorized representative of the laboratory.

* * * * *

21. Section 493.618 is amended by revising the introductory test of this section and paragraph (b) to read as follows:

§ 493.618 Additional application requirements.

In submitting an application for a registration certificate, a certificate for physician-performed microscopy procedures, a certificate of waiver, certificate of accreditation, or a certificate, a laboratory must agree to the following:

* * * * *

(b) To permit inspections by HHS or its designee as specified in subpart Q of this part. (Laboratories that have been granted a certificate for physician-performed microscopy procedures or a certificate of waiver are not subject to routine inspections.)

* * * * *

22. Section 493.622 is amended by revising paragraphs (a) and (b) to read as follows:

§ 493.622 Appeals procedures.

(a) If HHS denies a laboratory's application for a registration certificate, a certificate for physician-performed microscopy procedures, certificate of waiver, certificate of accreditation, or certificate, suspends or limits the laboratory's certificate because of deficiencies that pose immediate jeopardy to laboratory patients, or proposes to suspend, limit or revoke a laboratory's CLIA certificate, HHS gives the laboratory a statement of the grounds on which the denial, suspension, limitation, or revocation is based and an opportunity for an appeal, in accordance with the procedures set forth in subpart R of this part.

(b) If a laboratory that is seeking a registration certificate, a certificate for physician-performed microscopy procedures, a certificate of a waiver, a certificate of accreditation, or a certificate has its application denied or its certificate suspended, limited, or revoked, it cannot operate as a laboratory under the PHS Act (or, in the case of a limitation, perform testing in the areas covered by the limitation) unless the denial, suspension, limitation, or revocation is overturned at the conclusion of the administrative appeals process provided by subpart R of this part. (In addition, the laboratory is not eligible for payment under the Medicare or Medicaid programs or, in the case of a limitation, cannot receive Medicare or Medicaid payment for services which have been under the laboratory's certificate.)

* * * * *

23. Section 493.626 is amended by revising paragraph (a) to read as follows:

§ 493.626 Registration certificate.

(a) HHS or its designee initially issues a registration certificate, a certificate for physician-performed microscopy procedures, or, if the laboratory meets the requirements, a certificate of waiver to each laboratory, provided that the laboratory meets the application requirements of §§ 493.614, 493.616, 493.618, and 493.630 and pays the applicable fee as specified in § 493.638. A registration certificate does not include specialties/subspecialties of service, except as noted in § 493.633, but authorizes the entity to conduct laboratory testing until a determination of the appropriate level of compliance can be made and the appropriate certificate issued. The registration certificate issued in accordance with § 493.633(a)(2) to a laboratory that has a certificate of waiver allows the laboratory to add additional specialties or subspecialties of testing not listed in the waived test category and reflects only the added service(s) noted on the laboratory's application. A registration certificate issued in accordance with § 493.633(a)(2) to a laboratory that has a certificate for physician-performed microscopy procedures to allow the laboratory to add service(s) not listed in the waived test or physician-performed procedure category reflects only the added service(s) noted on the laboratory's application. A registration certificate issued under this section is valid for a period of not more than 2 years or until such time as an inspection to determine program compliance can be conducted or the laboratory demonstrates that it qualifies to receive a certificate of waiver, a certificate for physician-performed microscopy procedures, or a certificate of accreditation, whichever is shorter. HHS reissues a registration certificate to any laboratory for which HHS or its designee has not had an opportunity to determine compliance, or for which HHS has determined that noncompliance exists and the administrative hearing decision is pending, if the laboratory has requested a hearing. Alternative sanctions, as set forth in subpart R of this part, may be imposed during this period.

* * * * *

§ 493.630 [Redesignated as § 493.629]

24. Section 493.630 is redesignated § 493.629 and revised to read as follows:

§ 493.629 Certificate.

(a) *Requirements.* HHS or its designee issued a certificate to each laboratory, provided—

(1) The laboratory has a registration certificate and meets the application requirements of §§ 493.614 and 493.618;

(2) Pays the applicable fee as specified in § 493.638; and

(3) Meets all other applicable requirements of this part.

(b) *Expiration date.* A certificate is valid for not more than 2 years.

(c) *Reissuance when there are deficiencies.*—(1) *No immediate jeopardy.*—(i) If HCFA has proposed to suspend, limit, or revoke the certificate of a laboratory that is not in compliance with one or more condition level requirements which do not pose immediate jeopardy, HCFA reissues the certificate before the expiration date.

(ii) During the time specified in paragraph (c)(1)(i) of this section, alternative sanctions, as set forth under subpart R of this part, may be imposed against the laboratory.

(2) *Expiration date.* The certificate remains in effect until an administrative hearing decision is issued.

(3) *Suspension of payments.* All Medicare and Medicaid payments for services furnished by the laboratory during this period may be suspended/or cancelled.

25. A new § 493.630 is added to read as follows:

§ 493.630 Certificate for physician-performed microscopy procedures.

(a) *Requirements.* HHS or its designee issues a certificate for physician-performed microscopy procedures to a laboratory if it performs only physician-performed microscopy procedures, or only physician-performed microscopy procedures and waived tests, provided that the laboratory—

(1) Meets the application requirements of §§ 493.614 and 493.618;

(2) Pays the applicable fee, as specified in § 493.638; and

(3) Meets all other requirements of this part.

(b) *Expiration date.* A certificate for physician-performed microscopy tests is valid for not more than 2 years.

(c) *Reissuance when there are deficiencies.*—(1) *No immediate* *jeopardy.*—(i) If HCFA has proposed to suspend, limit, or revoke the certificate for physician-performed microscopy procedures of a laboratory that is found by HCFA through a validation or complaint survey to have one or more condition level deficiencies which do not pass immediate jeopardy, HCFA reissues the certificate before the expiration date.

(ii) When HCFA reissues the certificate, as specified in paragraph (c)(1)(i) of this section, alternative sanctions, as set forth in subpart R of this part may be imposed against the laboratory.

(2) *Expiration date.* The certificate remains in effect until an administrative hearing decision is issued.

(3) *Suspension of payments.* All Medicare and Medicaid payments for services furnished by the laboratory during this period may be suspended or cancelled.

25a. Section 493.631 is revised to read as follows:

§ 493.631 Certificate of waiver.

(a) *Requirements.* HHS or its designee issues a certificate of waiver to a laboratory if it performs only waived tests, provided—

(1) The laboratory meets the application requirements of §§ 493.614 and 493.618;

(2) Pays the applicable fee as specified in § 493.638; and

(3) Meets all other applicable requirements of this part.

(b) *Expiration date.* A certificate of waiver is valid for not more than 2 years.

(c) *Reissuance when there are deficiencies*—(1) *No immediate jeopardy.* If HCFA has proposed to suspend, limit, or revoke the certificate of waiver of a laboratory that is found by HCFA through a validation or complaint survey to have one or more deficiencies which do not pose immediate jeopardy, HCFA reissues the certificate before the expiration date pending a hearing decision.

(2) *Expiration date.* The certificate remains in effect until an administrative hearing decision is issued.

(3) *Suspension of payments.* All Medicare and Medicaid payments for services furnished by the laboratory during this period may be suspended or cancelled.

25b. Section 493.632 is revised to read as follows:

§ 493.632 Certificate of accreditation.

(a) *Requirements.* HHS or its designee issues a certificate of accreditation to a laboratory accredited by an HHS-approved accreditation organization, provided—

(1) The laboratory has a registration certificate and meets the application requirements of § 493.614 and 493.618;

(2) Pays the applicable fee as specified in § 493.638; and

(3) Meets all other applicable requirements of this part.

(b) *Expiration date.* A certificate of accreditation is valid for not more than 2 years.

(c) *Reissuance when there are deficiencies*—(1) *No immediate jeopardy.* If HCFA has proposed to suspend, limit, or revoke the certificate of accreditation of a laboratory that is found during a validation or complaint survey not to be in compliance with one or more condition level deficiencies which do not pose immediate jeopardy, HCFA reissues the certificate of accreditation before the expiration date.

(2) *Expiration date.* The certificate of accreditation remains in effect until an administrative hearing decision is issued.

(3) *Suspension of payments.* All Medicare and Medicaid payments for services furnished by the laboratory during this period may be suspended or cancelled.

26. Section 493.633 is revised to read as follows:

§ 493.633 Applicability of certificate, certificate for physician-performed microscopy procedures, certificate of waiver, and certificate of accreditation.

(a) The certificate of waiver issued is applicable only to tests listed in the waived test category. The certificate for physician-performed microscopy procedures is applicable only to those procedures listed in the physician-performed microscopy procedures category, or in the physician-performed microscopy procedures and the waived test category. The certificate or certificate of accreditation issued is applicable to those specialties and subspecialties of service offered by the laboratory in accordance with this part.

(1) A laboratory performing only waived tests may not perform any examination or procedure not listed in the waived test category until it has requested and HHS has issued to it a certificate for physician-performed microscopy procedures or a registration certificate, as appropriate, that covers the additional examinations or procedures requested by the laboratory. The laboratory may continue to perform waived tests that are covered by the certificate of waiver already issued to the laboratory. The registration certificate is valid for 2 years or until a compliance determination can be conducted, whichever is shorter. After HHS or its designee determines compliance, HHS issues a certificate that includes the additional specialties or subspecialties for which compliance has been determined.

(2) A laboratory that has been granted a certificate for physician-performed microscopy procedures may not perform any examination or procedure not listed in the physician-performed microscopy procedure category or the waived test category until it has requested and HHS has issued to it a registration certificate that covers the additional examinations or procedures requested by the laboratory. The laboratory may continue to perform procedures that are covered by the certificate for physician-performed microscopy procedures already issued to the laboratory. The registration certificate is valid for 2 years or until a compliance determination can be conducted, whichever is shorter. After HHS or its designee determines compliance, HHS issues a certificate that includes the additional specialties or subspecialties for which compliance has been determined.

(3) A laboratory possessing a certificate must notify HHS or its designee within 6 months of any changes in methodologies for any test procedure or examination it performs and any additions or deletions of tests or examinations performed. If the laboratory adds testing in a specialty or subspecialty not listed on its certificate, HHS or its designee will determine compliance. After HHS or its designee determines compliance, a revised certificate is issued that includes the additional specialties or subspecialties for which compliance has been determined.

(4) A laboratory possessing a certificate of accreditation must notify its approved accreditation organization within 6 months of any changes in methodologies for any test procedure or examination it performs or any additions or deletions of tests or examinations performed so that appropriate actions can be taken by the accreditation organization and a revised certificate can be issued when appropriate.

(b) HHS may suspend, revoke, or limit a laboratory's registration certificate and may impose certain alternative sanctions for failure to comply with the notice requirements of this section. HHS provides the laboratory with a statement of grounds on which the sanctions are based, an opportunity to respond to the imposition of the sanctions, and an opportunity for an appeal, in accordance with the procedures set forth in subpart R of this part. If the laboratory requests an appeal of a suspension, revocation, or limitation, it retains its certificate or a reissued certificate until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. HHS may impose certain alternative sanctions prior to a hearing. In addition, for laboratories receiving payment from the Medicare or Medicaid programs, such payments may be suspended or cancelled during the pendency of any hearing for failure to comply with the requirements of this part.

27. Section 493.634 is amended by revising paragraph (b) to read as follows:

§ 493.634 Notification of changes.

* * * * *

(b) HHS may suspend, revoke, or limit a laboratory's registration certificate, certificate for physician-performed microscopy procedures, certificate of waiver, or certificate of accreditation or may impose certain alternative sanctions for failure to comply with the notice requirements of this section. In such an event, HHS provides the laboratory with a statement of grounds on which the sanction is based and an opportunity for an appeal, in accordance with the procedures set forth in subpart R of this part. If the laboratory requests an appeal of a suspension, revocation, or limitation, it retains its certificate or a reissued certificate until a decision is made by an ALJ, unless HHS finds that conditions at the laboratory pose an imminent and serious risk to human health. (In addition, for laboratories participating in Medicare or Medicaid, payments may be suspended or cancelled during the pendency of any hearing for failure to comply with the notice requirements.)

* * * * *

28. Section 493.638 is revised to read as follows:

§ 493.638 Registration certificate and certificate fees.

(a) *Basic rule.* Laboratories must pay a fee for the issuance of a registration certificate, certificate for physician-performed microscopy procedures, certificate of waiver, certificate of accreditation, or a certificate, as applicable. Laboratories must also pay a fee to reapply for a certificate for physician-performed microscopy procedures, certificate of waiver, certificate of accreditation, or a certificate. The total of fees collected by HHS under the laboratory program must be sufficient to cover the general costs of administering the laboratory certification program under section 353 of the PHS Act. For registration certificates and certificates, this includes evaluating and monitoring proficiency testing programs and accreditation bodies and implementing, monitoring, and enforcing compliance with section 353 of the PHS Act and collection of fees and issuing registration certificates and certificates. For a certificate of waiver, this includes the cost of issuing the certificate, collection of fees and the administrative costs associated with evaluating tests to determine if a certificate of waiver should be issued. For a certificate for physician-performed microscopy procedures, this includes the cost of issuing the certificate, collection of fees, non-routine inspections, data management, and the administrative costs associated with evaluating tests to determine if a certificate for physician-performed microscopy procedures should be issued, and other direct administrative costs. For a certificate of accreditation this includes the cost of issuing the certificate of accreditation, collection of fees and the administrative costs associated with evaluating programs of accrediting bodies and the costs to conduct sample validation surveys of accredited laboratories.

(b) *Fee amount.* The fee amount is set annually by HHS on a calendar year basis and is based on schedules or ranges of laboratory test volume (excluding tests performed for quality control, quality assurance, and proficiency testing purposes) and scope of specialties tested, with the amounts of the fees in each schedule being a function of the costs for all aspects of general administration of CLIA as set forth in § 493.649 (b) and (c). This fee is assessed and payable at least biennially. The methodology used to determine the amount of the fee is found in § 493.649. The amount of the fee applicable to the issuance of the registration certificate or the issuance or renewal of the certificate for physician-performed microscopy procedures, certificate of waiver, certificate of accreditation, or certificate is the amount in effect at the time the application is received. Upon receipt of an application for a registration certificate, certificate for physician-performed microscopy procedures, certificate of waiver, certificate of accreditation, or certificate, HHS or its designee notifies the laboratory of the amount of the required fee. The amount of the fee is based on whether the laboratory is considered small, medium, or large (based on the volume and scope of testing performed by the laboratory).

29. Section 493.639 is amended by revising paragraph (b) to read as follows:

§ 493.639 Fee for revised certificate.

* * * * *

(b) A laboratory must pay a fee to cover the cost of issuing a revised certificate in any of the circumstances specified in paragraphs (b)(1) and (2) of this section. The fee for issuing an appropriate revised certificate is based on the cost to issue the revised certificate to the laboratory. (An additional fee is also required under § 493.643(d) if it is necessary to determine compliance with additional requirements. If a laboratory with a certificate of waiver wishes to perform tests not listed in the waived test category or the physician-performed microscopy procedure category, it must, as set forth in § 493.626, pay an additional fee for a registration certificate to cover the new testing. If a laboratory with a certificate for physician-performed microscopy procedures wishes to perform tests not listed in the physician-performed microscopy procedure category or the waived test category, it must, as set forth in § 493.626, pay an additional fee for a registration certificate to cover the new testing.)

(1) If after a certificate, certificate of accreditation, certificate for physician-performed microscopy procedures, or certificate of waiver is issued, a laboratory changes its name, location, or its director;

(2) If after a certificate is issued, a laboratory deletes services or wishes to add services and requests that its certificate be changed.

30. Section 493.643 is amended by revising paragraphs (a) and (d) to read as follows:

§ 493.643 Fee for determination of program compliance.

(a) *Fee requirement.* In addition to the fee required under § 493.638, a laboratory regulated subject to the requirements of this part must pay a fee to cover the cost of determining program compliance, unless it is issued a certificate for physician-performed microscopy procedures, certificate of waiver or a certificate of accreditation.

* * * * *

(d) *Additional fees.* (1) If after a certificate, certificate for physician-performed microscopy procedures, or certificate of waiver is issued a laboratory adds services and requests that its certificate be upgraded, the laboratory must pay an additional fee if, in order to determine compliance with additional requirements, it is necessary to conduct an inspection, evaluate personnel, or monitor proficiency testing performance. The additional fee is based on the actual resources and time necessary to perform the activities. HHS revokes the laboratory's certificate for failure to pay the compliance determination fee.

(2) If it is necessary to conduct a complaint investigation, impose sanctions or conduct a hearing, HHS assesses the laboratory, other than a CLIA-exempt laboratory, a fee to cover the cost of these activities. States whose laboratory licensure programs are approved by HCFA are assessed fees for annual random validation inspections, complaint surveys in which the complaints are substantiated, and the cost of the prorata share of general overhead to develop and implement CLIA. If a complaint investigation results in a complaint being unsubstantiated, or if an HHS adverse action is overturned at the conclusion of the administrative appeals process, the government's costs of these activities are not imposed upon the laboratory. Costs for these activities are based on the actual resources and time necessary to perform the activities and are not assessed until after the laboratory concedes the existence of deficiencies or an ALJ rules in favor of HHS. HHS revokes the laboratory's certificate for failure to pay the assessed costs.

31. Section 493.646 is amended by revising paragraph (a) to read as follows:

§ 493.646 Payment of fees.

(a) Except for State-exempt laboratories, all laboratories are notified in writing by HHS or its designee of the appropriate fee(s) and instructions for submitting the fee(s), including the due date for payment and where to make payment. Registration certificates, certificates for physician-performed microscopy procedures, certificates of waiver, certificates of accreditation, or certificates are not issued until the applicable fees have been paid.

* * * * *

32. Section 493.649 is amended by revising the introductory text for paragraph (b) to read as follows:

§ 493.649 Methodology for determining fee amount.

* * * * *

(b) *Determining average hourly rates used in fee schedules.* Three different entities perform activities related to the issuance or reissuance of certificates of waiver, certificates for physician-performed microscopy tests, certificates of accreditation, or certificates and determining program compliance. HHS determines the average hourly rates for the activities of each of these entities.

* * * * *

33. Section 493.801 is amended by revising paragraphs (a)(2)(ii) and (b)(4) to read as follows:

§ 493.801 Condition: Enrollment and testing of samples.

* * * * *

(a) * * *

(2) * * *

(ii) For those tests performed by the laboratory that are not included in subpart I of this part, a laboratory must establish and maintain the accuracy of its testing procedures, in accordance with § 493.1709.

* * * * *

(b) * * *

(4) The laboratory must not send PT samples or portions of samples to another laboratory for any analysis which it is certified to perform in its own laboratory. Any laboratory that HCFA determines intentionally referred its proficiency testing samples to another laboratory for analysis will have its certification revoked for at least one year. Any laboratory that receives proficiency testing samples from another laboratory for testing must notify HCFA of the receipt of those samples.

* * * * *

34. Section 493.807 is revised to read as follows:

§ 493.807 Condition: Reinstatement of laboratories performing tests of moderate or high complexity, or both, after failure to participate successfully.

(a) If a laboratory's certificate is suspended or limited or its Medicare or Medicaid approval is cancelled or its Medicare or Medicaid payments are suspended because it fails to participate successfully in proficiency testing for one or more specialties, subspecialties, analyte or test, or voluntarily withdraws its certification under CLIA for the failed specialty, subspecialty, or analyte, the laboratory must then demonstrate sustained satisfactory performance on two consecutive proficiency testing events, one of which may be on site, before HCFA will consider it for reinstatement for certification and Medicare or Medicaid approval in that specialty, subspecialty, analyte or test.

(b) The cancellation period for Medicare and Medicaid approval or period for suspension of Medicare or Medicaid payments or suspension or limitation of certification under CLIA for the failed specialty, subspecialty, or analyte or test is for a period of not less than six months from the date of cancellation, limitation or suspension of the CLIA certificate.

35. Section 493.855 is amended by revising paragraph (c) to read as follows:

§ 493.855 Standard; Cytology: gynecologic examinations.

* * * * *

(c) If a laboratory fails to ensure that individuals are tested or those who fail a testing event are retested, or fails to take required remedial actions as described in paragraphs (b)(1), (b)(2) or (b)(3) of this section, HCFA will initiate intermediate sanctions or limit the laboratory's certificate to exclude gynecologic cytology testing under CLIA, and, if applicable, suspend the laboratory's Medicare and Medicaid payments for gynecologic cytology testing in accordance with subpart R of this part.

§ 493.901 [Amended]

36. In § 493.901(b)(3), "§§ 493.90 through 493.959" is revised to read, "§§ 493.909 through 493.959".

§ 493.903 [Amended]

37. Section 493.903(b) is amended by revising "testing results" to read "testing program's results" each place it appears.

§ 493.911 [Amended]

38. Section 493.911 is amended as follows:

a. In § 493.911(b)(2), remove the colon following "Enterobacteriaceae".

(b) In § 493.911(c)(6), "samples" is revised to read "challenges".

39. Section 493.913 is amended by revising paragraph (c)(1) to read as follows:

§ 493.913 Mycobacteriology.

* * * * *

(c) * * *

(1) The program determines the reportable mycobacteria to be detected by acid-fast stain, for isolation and identification, and for antimycobacterial susceptibility. To determine the accuracy of a laboratory's response, the program must compare the laboratory's response for each sample with the response that reflects agreement of either 90 percent of ten or more referee laboratories or 90 percent or more of all participating laboratories.

* * * * *

40. Section 493.915 is amended by revising paragraph (c)(5) to read as follows:

§ 493.915 Mycology.

* * * * *

(c) *Evaluation of a laboratory's performance.* * * *

(5) The score for a testing event is the average of the sample scores as determined under paragraph (c)(3) or (c)(4), or both, of this section.

41. Section 493.923 is amended by revising paragraph (b)(2) to read as follows:

§ 493.923 Syphilis serology.

* * * * *

(b) *Evaluation of test performance.* * * *

(2) For quantitative syphilis tests, the program must determine the correct response for each method by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using fixed criteria. The criterion for acceptable performance for quantitative syphilis serology tests is the target value ± 1 dilution.

* * * * *

§ 493.927 [Amended]

42. Section 493.927(b) is amended by revising "Antistreptolysin O, quantitative" to read "Antistreptolysin O".

43. Section 493.933 is amended by revising paragraphs (b) and (c)(2) to read as follows:

§ 493.933 Endocrinology.

* * * * *

(b) *Challenges per testing event.* The minimum number of challenges per testing event a program must provide for each analyte or test procedure is five serum, plasma, blood, or urine samples.

Analyte or Test
Cortisol
Free Thyroxine
Human Chorionic gonadotropin (excluding urine pregnancy tests done by visual color comparison categorized as waived tests)
T3 Uptake
Triiodothyronine
Thyroid-stimulating hormone
Thyroxine

(c) *Evaluation of a laboratory's analyte or test performance.* * * *

(2) For quantitative endocrinology tests or analytes, the program must determine the correct response for each analyte by the distance of the response from the target value. After the target value has been established for each response, the appropriateness of the response must be determined by using either fixed criteria based on the percentage difference from the target value or the number of standard deviations (SDs) the response differs from the target value.

Criteria for Acceptable Performance

The criteria for acceptable performance are—

Analyte or test	Criteria for acceptable performance
Cortisol	Target value +/−25%.
Free Thyroxine	Target value +/−3 SD.
Human Chorionic Gonadotropin (excluding urine pregnancy tests done by visual color comparison categorized as waived tests).	Target value +/−3 SD positive or negative.
T3 Uptake	Target value +/−3 SD.
Triiodothyronine	Target value +/−3 SD.
Thyroid-stimulating hormone.	Target value +/−3 SD.
Thyroxine	Target value +/−20% or 1.0 mcg/dL (greater).

* * * * *

§ 493.937 [Amended]

44. Section 493.937(c)(2) is amended by revising "chemistry" to read "toxicology".

§ 493.945 [Amended]

45. The tables that appear in § 493.945(b)(3)(ii) (C) through (G), are amended by revising the column heading "Correct response category" to read "Examinee's response" each place it appears, and revising the first entry "Examinee's response" to read "Correct response category" each place it appears.

46. Section 493.1103 is amended by revising paragraph (a) to read as follows:

§ 493.1103 Standard; Procedures for specimen submission and handling.

(a) The laboratory must have available and follow written policies and procedures for each of the following, if applicable: Methods used for the preparation of patients; specimen collection; specimen labeling; specimen preservation; conditions for specimen transportation; and specimen processing. Such policies and procedures must assure positive identification and optimum integrity of the patient specimens from the time the specimen(s) are collected until testing has been completed and the results reported.

* * * * *

47. Section 493.1105 is amended by revising the introductory text of the section to read as follows:

§ 493.1105 Standard; Test requisition.

The laboratory must perform tests only at the written or electronic request of an authorized person. Oral requests for laboratory tests are permitted only if the laboratory subsequently requests written authorization for testing within 30 days. The laboratory must maintain the written authorization or documentation of efforts made to obtain a written authorization. Records of test requisitions or test authorizations must be retained for a minimum of two years. The patient's chart or medical record, if used as the test requisition, must be retained for a minimum of two years and must be available to the laboratory at the time of testing and available to HHS upon request. The laboratory must assure that the requisition or test authorization includes—

* * * * *

48. Section 493.1107 is amended by revising the introductory text of the section to read as follows:

§ 493.1107 Standard; Test records.

The laboratory must maintain a record system to ensure reliable identification of patient specimens as they are processed and tested to assure that accurate test results are reported. These records must identify the personnel performing the testing procedure. Records of patient testing, including, if applicable, instrument printouts, must be retained for at least two years. Immunohematology records and transfusion records must be retained for no less than five years in accordance with 21 CFR part 606, subpart I. In addition, records of blood and blood product testing must be maintained for a period not less than five years after processing records have been completed, or six months after the latest expiration date, whichever is the later date, in accordance with 21 CFR 606.160(d). The record system must provide documentation of information specified in § 493.1105 (a) through (f) and include—

* * * * *

49. Section 493.1109 is amended by revising the introductory text of the section to read as follows:

§ 493.1109 Standard; Test report.

The laboratory report must be sent promptly to the authorized person, the individual responsible for using the test results or laboratory that initially requested the test. The original report or an exact duplicate of each test report, including final and preliminary report, must be retained by the testing laboratory for a period of at least two years after the date of reporting. Immunohematology reports and transfusion records must be retained by the laboratory for a period of no less than five years in accordance with 21 CFR part 606, subpart I. In addition, records of blood and blood product testing must be maintained for a period not less than five years after processing records have been completed, or six months after the latest expiration date, whichever is the later date, in accordance with 21 CFR 606.160(d). For pathology, test reports must be retained for a period of at least ten years after the date of reporting. This information may be maintained as part of the patient's chart or medical record which must be readily available to the laboratory and to HHS upon request.

* * * * *

50. Section 493.1201 is revised to read as follows:

§ 493.1201 Condition: General quality control; Moderate or high complexity testing, or both.

(a) *Applicability of subpart K of this part.* Subpart K is divided into two sections, general quality control and quality control for specialties and subspecialties. The quality control requirements are specified in §§ 493.1201 through 493.1285 unless—

(1) An alternative procedure specified in the manufacturer's protocol has been cleared by the Food and Drug Administration (FDA) as meeting certain CLIA requirements for general quality control and specialty/subspecialty quality control, and the manufacturer's instructions contain the following statement,

> Unless this device is modified by a laboratory, the laboratory's compliance with these quality control instructions will satisfy the applicable requirements of 42 CFR 493.1203(b).

or

(2) HHS approves an equivalent procedure that is specified in Appendix C of the State Operations Manual (HCFA Pub. 7).

(b) The laboratory must establish and follow written quality control procedures for monitoring and evaluating the quality of the analytical testing process of each method to assure the accuracy and reliability of patient test results and reports. The laboratory must meet the applicable standards in §§ 493.1202 through 493.1221 of this subpart, unless an alternative procedure specified in the manufacturer's protocol has been cleared by the Food and Drug Administration (FDA) as meeting certain CLIA requirements for quality control or HHS approves an equivalent procedure specified in appendix C of the State Operations Manual (HCFA Pub. 7). HCFA Pub. 7 is available from the Technical Information Service, U.S. Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, telephone number (703) 487–4630.

51. Section 493.1202 is amended by revising paragraphs (b) and (c) to read as follows:

§ 493.1202 Standard; Moderate or high complexity testing, or both: Effective from September 1, 1992 to September 1, 1994.

* * * * *

(b) For each test of moderate complexity performed using a standardized method, or method developed in-house, a device not subject to clearance by the FDA (including any commercially distributed instrument, kit or test system subject to the Food, Drug and Cosmetic Act marketed prior to the Medical Device Amendments, Public Law 94–295, enacted on May 28, 1976, and those identified in 21 CFR parts 862, 864, and 866 as exempt from FDA premarket review), or using an instrument, kit or test system cleared by the FDA through the premarket notification (510(k)) or premarket approval (PMA) process for in-vitro diagnostic use but modified by the laboratory, the laboratory must meet all applicable standards of this subpart.

(c) For all other tests of moderate complexity performed using an instrument, kit or test system cleared by the FDA through the premarket notification (510(k)) or premarket approval (PMA) process for in-vitro diagnostic use, the laboratory must—(1) Follow the manufacturer's instructions for instrument or test system operation and test performance;

(2) Have a procedure manual describing the processes for testing and reporting patient test results;

(3) Perform and document calibration procedures or check calibration at least once every six months;

(4) Perform and document control procedures using at least two levels of control materials each day of testing;

(5) Perform and document applicable specialty and subspecialty control procedures as specified under § 493.1223;

(6) Perform and document that remedial action has been taken when problems or errors are identified as specified in § 493.1219; and

(7) Maintain records of all quality control activities for two years. Quality control records for immunohematology and blood and blood products must be maintained as specified in § 493.1221.

52. Section 493.1203 is revised to read as follows:

§ 493.1203 Standard; Moderate or high complexity testing, or both: Effective beginning September 1, 1994.

For each moderate or high complexity test performed, the laboratory will be in compliance with this section if it:

(a) Meets all applicable quality control requirements specified in this subpart when using a standardized method, a method developed in-house, a device not subject to clearance by the FDA (including any commercially distributed instrument, kit or test system subject to the Food, Drug and Cosmetic Act marketed prior to the Medical Device Amendments, Public Law 94–295, enacted on May 28, 1976, and those identified in 21 CFR parts 862, 864, and 866 as exempt from FDA premarket review), a manufacturer's product modified by the laboratory, or a device (instrument, kit or test system) not cleared by the FDA as meeting certain CLIA quality control requirements; or

(b) Follows manufacturer's instructions when using a device (instrument, kit, or test system) cleared by the FDA as meeting the CLIA requirements for quality control located at §§ 493.1215, 493.1217, and 493.1223, and applicable parts of §§ 493.1205, 493.1211 and 493.1218. In addition, the laboratory must comply with the requirements of §§ 493.1204, 493.1213, 493.1219, and 493.1221 and those parts of §§ 493.1205, 493.1211, and 493.1218 that are unique to the laboratory facility and cannot be met by following manufacturer's instructions.

53. Section 493.1204 is amended by revising paragraph (b) to read as follows:

§ 493.1204 Standard; Facilities.

* * * * *

(b) Safety precautions must be established, posted, and observed to ensure protection from physical, chemical, biochemical and electrical hazards and biohazardous materials.

§ 493.1205 [Amended]

54. Section 493.1205(b) is amended by revising "equipment and" to read "equipment,".

55. Section 493.1213 is amended by revising paragraph (b) to read as follows:

§ 493.1213 Standard; Establishment and verification of method performance specifications.

* * * * *

(b)(1) Each laboratory that introduces a new procedure for patient testing using a device (instrument, kit, or test system) cleared by the FDA as meeting certain CLIA requirements for quality control, must demonstrate that, prior to reporting patient test results, it can obtain the performance specifications for accuracy, precision, and reportable range of patient test results, comparable to those established by the manufacturer. The laboratory must also verify that the manufacturer's reference range is appropriate for the laboratory's patient population.

(2) Each laboratory that introduces a new method or device as specified in either § 493.1202(a) or (b), or § 493.1203(a), must, prior to reporting patient test results—

(i) Verify or establish for each method the performance specifications for the following performance characteristics, as applicable:

(A) Accuracy;

(B) Precision;

(C) Analytical sensitivity;

(D) Analytical specificity to include interfering substances;

(E) Reportable range of patient test results;

(F) Reference range(s); and

(G) Any other performance characteristic required for test performance.

(ii) Based upon the performance specifications verified or established in accordance with paragraph (b)(2)(i) of this section, establish calibration and control procedures for patient testing as required under §§ 493.1217 and 493.1218.

* * * * *

56. Section 493.1215 is amended by revising paragraphs (a) and (b) to read as follows:

§ 493.1215 Standard; Equipment maintenance and function checks.

* * * * *

(a) *Maintenance of equipment, instruments, and test systems.* (1) For manufacturers' equipment, instruments or test systems cleared by the FDA as meeting certain CLIA requirements for quality control, the laboratory must—

(i) Perform maintenance as defined by the manufacturer and with at least the frequency specified by the manufacturer; and

(ii) Document as maintenance performed.

(2) For methods or devices, as specified in either § 493.1202(a) or (b) or § 493.1203(a), the laboratory must—

(i) Establish a maintenance protocol that ensures equipment, instrument, and test system performance necessary for accurate and reliable test results and test result reporting;

(ii) Perform maintenance with at least the frequency specified in paragraph (a)(2)(i) of this section; and

(iii) Document all maintenance performed.

(b) *Function checks of equipment, instruments, and test systems.* (1) For manufacturers' equipment, instruments, or test systems cleared by the FDA as meeting certain CLIA requirements for quality control, the laboratory must—

(i) Perform function checks as defined by the manufacturer and with at least the frequency specified by the manufacturer; and

(ii) Document all function checks performed.

(2) For methods or devices, as specified in either § 493.1202 (a) or (b) or § 493.1203(a), the laboratory must—

(i) Define a function check protocol that ensures equipment, instrument, and test system performance necessary for accurate and reliable test results and test result reporting;

(ii) Perform function checks including background or baseline checks specified in paragraph (b)(2)(i) of this section. Function checks must be within the laboratory's established limits before patient testing is conducted; and

(iii) Document all function checks performed.

57. Section 493.1217 is revised to read as follows:

§ 493.1217 Standard; Calibration and calibration verification procedures.

Calibration and calibration verification procedures are required to substantiate the continued accuracy of the test method throughout the laboratory's reportable range for patient test rests. Calibration is the process of testing and adjusting an instrument, kit, or test system to provide a known relationship between the measurement response and the value of the substance that is being measured by the test procedure. Calibration verification is the assaying of calibration materials in the same manner as patient samples to confirm that the calibration of the instrument, kit, or test system has remained stable throughout the laboratory's reportable range for patient test results. The reportable range of patient test results is the range of test result values over which the laboratory can establish or verify the accuracy of the instrument, kit or test system measurement response. Calibration and calibration verification must be performed and documented as required in this section unless otherwise specified in §§ 493.1223 through 493.1285.

(a) For laboratory test procedures that are performed using instruments, kits, or test systems that have been cleared by the FDA as meeting certain CLIA requirements for quality control, the laboratory must, at a minimum, follow the manufacturer's instructions for calibration and calibration verification procedures using calibration materials specified by the manufacturer.

(b) For each method or device, as specified in either § 493.1202 (a) or (b) or § 493.1203(a), the laboratory must—

(1) Perform calibration procedures—

(i) At a minimum, in accordance with manufacturer's instructions, if provided, using calibration materials provided or specified, as appropriate, and with at least the frequency recommended by the manufacturer; and

(ii) In accordance with criteria established by the laboratory, as required under § 493.1213(b)(2)(i)—

(A) Including the number, type and concentration of calibration materials, acceptable limits for calibration, and the frequency of calibration; and

(B) Using calibration materials appropriate for the methodology and, if possible, traceable to a reference method or reference material of known value; and

(iii) Whenever calibration verification fails to meet the laboratory's acceptable limits for calibration verification; and

(2) Perform calibration verification procedures—

(i) In accordance with the manufacturer's calibration verification instructions when they meet or exceed the requirements specified in paragraph (b)(2)(ii) of this section; or

(ii) In accordance with criteria established by the laboratory—

(A) Including the number, type, and concentration of calibration materials, acceptable limits for calibration verification and frequency of calibration verification;

(B) Using calibration materials appropriate for—

(*1*) The methodology and, if possible, traceable to a reference method or reference material of known value; and

(*2*) Verifying the laboratory's established reportable range of patient test results, which must include at least a minimal (or zero) value, a mid-point value, and a maximum value at the upper limit of that range; and

(C) At least once every six months and whenever any of the following occur:

(*1*) A complete change of reagents for a procedure is introduced, unless the laboratory can demonstrate that changing reagent lot numbers does not affect the range used to report patient test results, and control values are not adversely affected by reagent lot number changes;

Note: If reagents are obtained from a manufacturer and all of the reagents for a test are packaged together, the laboratory is not required to perform calibration verification for each package of reagents, provided the packages of reagents are received in the same shipment and contain the same lot number.

(*2*) There is major preventive maintenance or replacement of critical parts that may influence test performance;

(*3*) Controls reflect an unusual trend or shift or are outside of the laboratory's acceptable limits and other means of assessing and correcting unacceptable control values have failed to identify and correct the problem; or

(*4*) The laboratory's established schedule for verifying the reportable range for patient test results requires more frequent calibration verification than specified in paragraphs (b)(2)(ii)(C)(1), (2), or (3) of this section; and

(3) Document all calibration and calibration verification procedures performed.

58. Section 493.1218 is amended by revising paragraphs (a) and (b) to read as follows:

§ 493.1218 Standard; Control procedures.

* * * * *

(a) For each device cleared by the FDA as meeting certain CLIA requirements for quality control, the laboratory must, at a minimum, follow the manufacturer's instructions for control procedures. In addition, the laboratory must meet the requirements under paragraphs (c) through (e) of this section and, as applicable, paragraph (f) of this section.

(b) For each device, as specified in either § 493.1202 (a) or (b) or § 493.1203(a), the laboratory must evaluate instrument and reagent stability and operator variance in determining the number, type, and frequency of testing calibration or control materials and establish criteria for acceptability used to monitor test performance during a run of patient specimen(s). A run is an interval within which the accuracy and precision of a testing system is expected to be stable, but cannot be greater than 24 hours or less than the frequency recommended by the manufacturer. For each procedure, the laboratory must monitor test performance using calibration materials or control materials or a combination thereof.

(1) For qualitative tests, the laboratory must include a positive and negative control with each run of patient specimens.

(2) For quantitative tests, the laboratory must include at least two samples of different concentrations of either calibration materials, control materials, or a combination thereof with the frequency determined in § 493.1218(b), but not less frequently than once each run of patient specimens.

(3) For electrophoretic determinations—

(i) At least one control sample must be used in each electrophoretic cell; and

(ii) The control sample must contain fractions representative of those routinely reported in patient specimens.

(4) Each day of use, the laboratory must evaluate the detection phase of direct antigen systems using an appropriate positive and negative control material (organism or antigen extract). When direct antigen systems include an extraction phase, the system must be checked each day of use using a positive organism.

(5) If calibration materials and control materials are not available, the laboratory must have an alternative mechanism to assure the validity of patient test results.

* * * * *

59. Section 493.1223 is revised to read as follows:

§ 493.1223 Condition: Quality control—specialties and subspecialties for tests of moderate or high complexity, or both.

The laboratory must establish and follow written quality control procedures for monitoring and evaluating the quality of the analytical testing process of each method to assure the accuracy and reliability of patient test results and reports. Except as specified in § 493.1202(c), the laboratory must meet the applicable general requirements specified in §§ 493.1201 through 493.1221. In addition, the laboratory must meet the applicable requirements of §§ 493.1225 through 493.1285 unless an alternative procedure specified in the manufacturer's protocol has been cleared by the Food and Drug Administration (FDA) as meeting certain CLIA requirements for quality control or HCFA approves an equivalent procedure specified in appendix C of the State Operations Manual (HCFA Pub. 7). Failure to meet any of the applicable conditions in §§ 493.1225 through 493.1285 will result in intermediate sanctions, loss of Medicare or Medicaid approval, and/or revocation of CLIA certification for the entire specialty or subspecialty to which the condition applies, in accordance with subpart R of this part.

60. A new § 493.1251 is added to read as follows:

§ 493.1251 Condition: Urinalysis.

Except for those tests categorized as waived, to meet the quality control requirements for urinalysis, the laboratory must comply with the applicable requirements in §§ 493.1201 through 493.1221.

61. Section 493.1253 is amended by redesignating paragraphs (a) and (b) as paragraphs (b) and (a), respectively, and revising redesignated paragraph (b) and paragraph (c) to read as follows:

§ 493.1253 Condition: Hematology.

* * * * *

(b) For non-manual hematology testing systems, excluding coagulation, the laboratory must include two levels of controls each eight hours of operation.

(c) For all non-manual coagulation testing systems, the laboratory must include two levels of control each eight hours of operation and each time a change in reagents occurs.

* * * * *

62. Section 493.1257 is amended by revising paragraphs (a)(5), (b)(1) and (2) and (d)(3) to read as follows. The introductory text of paragraphs (a), (b) and (d) is republished without revision.

§ 493.1257 Condition: Cytology.

* * * * *

(a) The laboratory must assure that—

* * * * *

(5) All cytology slide preparations are evaluated on the premises of a laboratory certified to conduct testing in the subspecialty of cytology.

(b) The laboratory is responsible for ensuring that—(1) Each individual engaged in the evaluation of cytology preparations by nonautomated microscopic technique examines no more than 100 slides (one patient per slide, gynecologic or nongynecologic, or both) in a 24 hour period, irrespective of the site or laboratory. This limit represents an absolute maximum number of slides and is not to be employed as a performance target for each individual. Previously examined negative, reactive, reparative, atypical, premalignant or malignant gynecologic cases as defined in paragraph (c)(1) of this section, previously examined nongynecologic cytology preparations, and tissues patholoty slides examined by a technical supervisor qualified under § 493.1449 (b) or (k) are not included in the 100 slide limit. (For this section, all references to technical supervisor refer to individuals qualified under §§ 493.1449 (b) and (k).);

(2) For purposes of workload calculations, each slide preparation (nongynecologic) made using automated, semi-automated, or other liquid-based slide preparatory techniques which result in cell dispersion over one-half or less of the total available slide area and which is examined by nonautomated microscopic technique counts as one-half slide.

* * * * *

(d) The laboratory must establish and follow a program designed to detect errors in the performance of cytologic examinations and the reporting of results.

* * * * *

(3) For each patient with a current high grade intraepithelial lesion or above (moderate dysplasia or CIN–2 or above), the laboratory must review all normal or negative gynecologic specimens received within the previous five years, if available in the laboratory (either on-site or in storage). If

significant discrepancies are found that would affect patient care, the laboratory must notify the patient's physician and issue an amended report.

* * * * *

§ 493.1265 [Amended]

63. Section 493.1265 is amended as follows:

a. In paragraph (b)(1), "cultures" is revised to read "cultures,".

b. In paragraph (b)(2), "Bone marrow transplantation and living transplants," is revised to read "Bone marrow transplantation,".

c. In paragraph (c), "or parentage testing" is removed.

64. Section 493.1271 is revised to read as follows:

§ 493.1271 Condition: Transfusion services and bloodbanking.

If a facility provides services for the transfusion of blood and blood products, the facility must be under the adequate control and technical supervision of the pathologist or other doctor of medicine or osteopathy meeting the qualifications in subpart M for technical supervision in immunohematology. The facility must ensure that there are facilities for procurement, safekeeping and transfusion of blood and blood products and that blood and blood products must be available to meet the needs of the physicians responsible for the diagnosis, management, and treatment of patients. The facility meets this condition by complying with the standards in §§ 493.1273 through 493.1285.

65. In § 493.1405, the introductory text of paragraph (b) is republished and paragraphs (b)(2) through (6) are revised to read as follows:

§ 493.1405 Standard; Laboratory director qualifications.

* * * * *

(b) The laboratory director must—

* * * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

(ii) Have had laboratory training or experience consisting of:

(A) At least one year directing or supervising non-waived laboratory testing; or

(B) Beginning September 1, 1993, have at least 20 continuing medical education credit hours in laboratory practice commensurate with the director responsibilities defined in § 493.1407; or

(C) Laboratory training equivalent to paragraph (b)(2)(ii)(B) of this section obtained during medical residency. (For example, physicians certified either in hematology or hematology and medical oncology by the American Board of Internal Medicine); or

(3) Hold an earned doctoral degree in a chemical, physical, biological, or clinical laboratory science from an accredited institution; and

(i) Be certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or the American Board of Medical Laboratory Immunology; or

(ii) Have had at least one year experience directing or supervising non-waived laboratory testing;

(4)(i) Have earned a master's degree in a chemical, physical, biological or clinical laboratory science or medical technology from an accredited institution;

(ii) Have at least one year of laboratory training or experience, or both in non-waived testing; and

(iii) In addition, have at least one year of supervisory laboratory experience in non-waived testing; or

(5)(i) Have earned a bachelor's degree in a chemical, physical, or biological science or medical technology from an accredited institution;

(ii) Have at least 2 years of laboratory training or experience, or both in non-waived testing; and

(iii) In addition, have at least 2 years of supervisory laboratory experience in non-waived testing;

(6) Be serving as a laboratory director and must have previously qualified or could have qualified as a laboratory director under § 493.1406; or

* * * * *

65a. A new § 493.1406 is added to read as follows:

§ 493.1406 Standard; Laboratory director qualifications on or before February 28, 1992.

The laboratory director must be qualified to manage and direct the laboratory personnel and test performance.

(a) The laboratory director must possess a current license as a laboratory director issued by the State, if such licensing exists; and

(b) The laboratory director must:

(1) Be a physician certified in anatomical or clinical pathology (or both) by the American Board of Pathology or the American Osteopathic Board of Pathology or possess qualifications that are equivalent to those required for such certification;

(2) Be a physician who:

(i) Is certified by the American Board of Pathology or the American Osteopathic Board of Pathology in at least one of the laboratory specialties; or

(ii) Is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or other national accrediting board in one of the laboratory specialties; or

(iii) Is certified by the American Society of Cytology to practice cytopathology or possesses qualifications that are equivalent to those required for such certification; or

(iv) Subsequent to graduation, has had 4 or more years of full-time general laboratory training and experience of which at least 2 years were spent acquiring proficiency in one of the laboratory specialties;

(3) For the subspecialty of oral pathology only, be certified by the American Board of Oral Pathology, American Board of Pathology or the American Osteopathic Board of Pathology or possesses qualifications that are equivalent to those required for certification;

(4) Hold an earned doctoral degree from an accredited institution with a chemical, physical, or biological science as a major subject and

(i) Is certified by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis, or other national accrediting board acceptable to HHS in one of the laboratory specialties; or

(ii) Subsequent to graduation, has had 4 or more years of full-time general laboratory training and experience of which at least 2 years were spent acquiring proficiency in one of the laboratory specialties;

(5) With respect to individuals first qualifying before July 1, 1971, have been responsible for the direction of a laboratory for 12 months between July 1, 1961, and January 1, 1968, and, in addition, either:

(i) Was a physician and subsequent to graduation had at least 4 years of pertinent full-time laboratory experience;

(ii) Held a master's degree from an accredited institution with a chemical, physical, or biological science as a major subject and subsequent to graduation had at least 4 years of pertinent full-time laboratory experience;

(iii) Held a bachelor's degree from an accredited institution with a chemical, physical, or biological science as a major subject and subsequent to graduation had at least 6 years of pertinent full-time laboratory experience; or

(iv) Achieved a satisfactory grade through an examination conducted by or under the sponsorship of the U.S. Public Health Service on or before July 1, 1970; or

(6) Qualify under State law to direct the laboratory in the State in which the laboratory is located.

Note: The January 1, 1968 date for meeting the 12 months' laboratory direction requirement in paragraph (b)(5) of this section may be extended 1 year for each year of full-time laboratory experience obtained before January 1, 1958 required by State law for a laboratory director license. An exception to the July 1, 1971 qualifying date in paragraph (b)(5) of this section was made provided that the individual requested qualification approval by October 21, 1975 and had been employed in a laboratory for at least 3 years of the 5 years preceding the date of submission of his qualifications.

66. In § 493.1411, the introductory text of paragraph (b) is republished and paragraphs (b)(2) through (4) are revised to read as follows:

§ 493.1411 Standard; Technical consultant qualifications.

* * * * *

(b) The technical consultant must—

* * * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

(ii) Have at least one year of laboratory training or experience, or both in non-waived testing, in the designated specialty or subspecialty areas of service for which the technical consultant is responsible (for example, physicians certified either in hematology or hematology and medical oncology by the American Board of Internal Medicine are qualified to serve as the technical consultant in hematology); or

(3)(i) Hold an earned doctoral or master's degree in a chemical, physical, biological or clinical laboratory science or medical technology from an accredited institution; and

(ii) Have at least one year of laboratory training or experience, or both in non-waived testing, in the designated specialty or subspecialty areas of service for which the technical consultant is responsible; or

(4)(i) Have earned a bachelor's degree in a chemical, physical or biological science or medical technology from an accredited institution; and

(ii) Have at least 2 years of laboratory training or experience, or both in non-waived testing, in the designated specialty or subspecialty areas of service for which the technical consultant is responsible.

Note: The technical consultant requirements for "laboratory training or experience, or both" in each specialty or subspecialty may be acquired concurrently in more than one of the specialties or subspecialties of service, excluding waived tests. For example, an individual who has a bachelor's degree in biology and additionally has documentation of 2 years of work experience performing tests of moderate complexity in all specialties and subspecialties of service, would be qualified as a technical consultant in a laboratory performing moderate complexity testing in all specialties and subspecialties of service.

* * * * *

67. Section 493.1417 is amended by revising paragraph (b) to read as follows:

§ 493.1417 Standard; Clinical consultant qualifications.

* * * * *

(b) Be a doctor of medicine, doctor of osteopathy or doctor of podiatric medicine and possess a license to practice medicine, osteopathy or podiatry in the State in which the laboratory is located.

§ 493.1423 [Amended]

68. In § 493.1423(b)(4)(i), "Have earned an academic high school diploma" is revised to read "Have earned a high school diploma".

69. In § 493.1443, the introductory text of paragraph (b) is republished, paragraphs (b)(2) and (b)(5) are revised, and paragraph (b)(6) is added to read as follows:

§ 493.1443 Standard; Laboratory director qualifications.

* * * * *

(b) The laboratory director must—

* * *

(2) Be a doctor of medicine, a doctor of osteopathy or doctor of podiatric medicine licensed to practice medicine, osteopathy or podiatry in the State in which the laboratory is located; and

(i) Have at least one year of laboratory training during medical residency (for example, physicians certified either in hematology or hematology and medical oncology by the American Board of Internal Medicine); or

(ii) Have at least 2 years of experience directing or supervising high complexity testing; or

* * * * *

(5) On or before February 28, 1992, be qualified under State law to direct a laboratory in the State in which the laboratory is located; or

(6) For the subspecialty of oral pathology, be certified by the American Board of Oral Pathology, American Board of Pathology, the American Osteopathic Board of Pathology, or possess qualifications that are equivalent to those required for certification.

70. Section 493.1449 is amended by revising paragraphs (c)(2)(i), (d)(2)(i), (e)(2)(i), (f)(2)(i), (g)(2)(i), (h)(2)(i), (i)(2)(i), (j)(2)(i), (1)(3), (m), (n)(2)(i), (o)(1)(i), (p)(1)(i), (q)(2)(i) to read as follows. The introductory text in paragraph (1) is republished.

§ 493.1449 Standard; Technical supervisor qualifications.

* * * * *

(c) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(d) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor or podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(e) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(f) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(g) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(h) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(i) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(j) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(l) If the requirements of paragraph (b) of this section are not met and the laboratory performs tests in the subspecialty of histopathology, the individual functioning as the technical supervisor must—

* * * * *

(3) For tests in ophthalmic pathology, meet one of the following requirements:

(i)(A) Be a doctor of medicine or doctor of osteopathy licensed to practice medicine or osteopathy in the State in which the laboratory is located and—

(B) Must meet one of the following requirements:

(*1*) Be certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology or possess qualifications that are equivalent to those required for such certification; or

(*2*) Be certified by the American Board of Ophthalmology or possess qualifications that are equivalent to those required for such certitication and have successfully completed at least 1 year of formal post-residency fellowship training in ophthalmic pathology; or

(ii) An individual qualified under § 493.1449(b) or paragraph (l)(3)(i) of this section may delegate to an individual who is a resident in a training program leading to certification specified in paragraphs (b) or (l)(3)(i)(B) of this section, the responsibility for examination and interpretation of ophthalmic specimens; or

(m) If the requirements of paragraph (b) of this section are not met and the laboratory performs tests in the subspecialty of oral pathology, the individual functioning as the technical supervisor must meet one of the following requirements:

(1)(i) Be a doctor of medicine or a doctor of osteopathy licensed to practice medicine or osteopathy in the State in which the laboratory is located and—

(ii) Be certified in anatomic pathology by the American Board of Pathology or the American Osteopathic Board of Pathology or possess qualifications that are equivalent to those required for such certification; or

(2) Be certified in oral pathology by the American Board of Oral Pathology or possess qualifications for such certification; or

(3) An individual qualified under § 493.1449(b) or paragraph (m) (1) or (2) of this section may delegate to an individual who is a resident in a training program leading to certification specified in paragraphs (b) or (m) (1) or (2) of this section, the responsibility for examination and interpretation of oral pathology specimens.

(n) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(o) * * *

(1)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(p) * * *

(1)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

(q) * * *

(2)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located; and

* * * * *

§ 493.1451 [Amended]

71. In § 493.1451(b)(4), "parameter" is revised to read "parameters".

72. Section 493.1455 is amended by revising paragraphs (a) and (b) to read as follows:

§ 493.1455 Standard; Clinical consultant qualifications.

* * * * *

(a) Be qualified as a laboratory director under § 493.1443(b)(1), (2), or (3)(i) or, for the subspecialty of oral pathology, § 493.1443(b)(6); or

(b) Be a doctor of medicine, doctor of osteopathy, doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located.

73. Section 493.1461 is amended by revising paragraphs (c)(1) and (d)(2) to read as follows. The introductory text of paragraph (d) is republished.

§ 493.1461 Standard: General supervisor qualifications.

* * * * *

(c) * * *

(1)(i) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located or have earned a doctoral, master's, or bachelor's degree in a chemical, physical, biological or clinical laboratory science, or medical technology from an accredited institution; and

(ii) Have at least 1 year of laboratory training or experience, or both, in high complexity testing; or

* * * * *

(d) For blood gas analysis, the individual providing general supervision must—

* * * * *

(2)(i) Have earned a bachelor's degree in respiratory therapy or cardiovascular technology from an accredited institution; and

(ii) Have at least one year of laboratory training or experience, or both, in blood gas analysis; or

* * * * *

74. In § 493.1463, the introductory test of this section is republished, paragraph (a) is revised, and a new paragraph (c) is added to read as follows:

§ 493.1463 Standard: General supervisor responsibilities.

The general supervisor is responsible for day-to-day supervision or oversight of the laboratory operation and personnel performing testing and reporting test results.

(a) The general supervisor—(1) Must be accessible to testing personnel at all times testing is performed to provide on-site, telephone or electronic consultation to resolve technical problems in accordance with policies and procedures established either by the laboratory director or technical supervisor;

(2) Is responsible for providing day-to-day supervision of high complexity test performance by a testing personnel qualified under § 493.1489;

(3) Except as specified in paragraph (c) of this section, must be onsite to provide direct supervision when high complexity testing is performed by any individuals qualified under § 493.1489(b)(4); and

(4) Is responsible for monitoring test analyses and specimen examinations to ensure that acceptable levels of analytic performance are maintained.

* * * * *

(c) *Exception.* For individuals qualified under § 493.1489(b)(4), who were performing high complexity testing on or before January 19, 1993, the requirements of paragraph (a)(3) of this section are not effective, provided that all high complexity testing performed by the individual in the absence of a general supervisor is reviewed within 24 hours by a general supervisor qualified under § 493.1461.

75. In § 493.1489, paragraphs (b)(1), (b)(4)(i), and (b)(5) are revised to read as follows:

§ 493.1489 Standard; Testing personnel qualifications.

* * * * *

(b) * * *

(1) Be a doctor of medicine, doctor of osteopathy, or doctor of podiatric medicine licensed to practice medicine, osteopathy, or podiatry in the State in which the laboratory is located or have earned a doctoral, master's or bachelor's degree in a chemical, physical, biological or clinical laboratory science, or medical technology from an accredited institution;

* * * * *

(4) * * * (i) Have earned a high school diploma or equivalent; and

* * * * *

(5) For blood gas analysis, the individual must—

(i) Be qualified under § 493.1489(b) (1), (2), (3), or (4);

(ii) Have earned a bachelor's degree in respiratory therapy or cardiovascular technology from an accredited institution; or

(iii) Have earned an associate degree related to pulmonary function from an accredited institution; or

* * * * *

76. Section 493.1495 is amended by revising paragraph (b)(7) and adding a new paragraph (c) to read as follows:

§ 493.1495 Standard; Testing personnel responsibilities.

* * * * *

(b) * * *

(7) Except as specified in paragraph (c) of this section, if qualified under § 493.1489(b)(4), perform high complexity testing only under the onsite, direct supervision of a general supervisor qualified under § 493.1461.

(c) *Exception.* For individuals qualified under § 493.1489(b)(4), who were performing high complexity testing on or before January 19, 1993, the requirements of paragraph (b)(7) of this section are not effective, provided that all high complexity testing performed by the individual in the absence of a general supervisor is reviewed within 24 hours by a general supervisor qualified under § 493.1461.

§ 493.1701 [Amended]

77. In § 493.1701, "complexity of testing performed and reported," is revised to read "complexity of testing performed, and test results reported,".

78. Section 493.1709 is revised to read as follows:

§ 493.1709 Standard; Comparison of test results.

(a) If a laboratory performs the same test using different methodologies or instruments, or performs the same test at multiple testing sites, the laboratory must have a system that twice a year evaluates and defines the relationship between test results using the different methodologies, instruments, or testing sites.

(b) If a laboratory performs tests that are not included under subpart I of this part, Proficiency Testing Programs, the laboratory must have a system for verifying the accuracy of its test results at least twice a year.

79. Section 493.1715 is revised to read as follows:

§ 493.1715 Standard; Communications.

The laboratory must have a system in place to document problems that occur as a result of breakdowns in communication between the laboratory and the authorized individual who orders or receives the results of test procedures or examinations. Corrective actions must be taken, as necessary, to resolve the problems and minimize communication breakdowns.

80. Section 493.1721 is revised to read as follows:

§ 493.1721 Standard; Quality assurance records.

The laboratory must maintain documentation of all quality assurance activities including problems identified and corrective actions taken. All quality assurance records must be available to HHS and maintained for a period of 2 years.

81. Section 493.1775 is amended by revising paragraph (a) to read as follows:

§ 493.1775 Condition: Inspection of laboratories issued a certificate of waiver.

(a) HHS or its designee may conduct announced or unannounced inspections of any laboratory at any time during its hours of operation to assess compliance with the applicable requirements of part 493.

* * * * *

82. A new § 493.1776 is added to read as follows:

§ 493.1776 Condition: Inspection of physician-performed microscopy procedures.

(a) HHS or its designee will conduct announced or unannounced inspections of any laboratory at any time during its hours of operation to—(1) Determine that testing is being performed or the laboratory is being operated in a manner that does not constitute an imminent and serious risk to public health;

(2) Evaluate complaints from the public;

(3) Determine whether the laboratory is performing tests in addition to procedures listed in § 493.16 that are not included on the laboratory's certificate; and

(4) Collect information to determine the addition, deletion, or continued inclusion of tests listed in § 493.16. Applicable requirements for the purpose of this section are located in subpart C, registration certificate, certificate for physician-performed microscopy procedures, and certificate, or if applicable, subpart D, certificate of accreditation; subpart H, participation in proficiency testing; subpart J, patient test management; subpart K, quality control; and subpart P, quality assurance of this part, as well as § 493.16(e).

(b) The laboratory may be required, as part of this inspection, to—(1) Permit HHS or its designee to interview all employees of the laboratory concerning the laboratory's compliance with the applicable requirements of part 493 as noted in paragraph (e) of this section;

(2) Permit HHS or its designee access to all areas of the facility including—

(i) Specimen processing areas;

(ii) Storage facilities for specimens, requests, supplies, records, and reports; and

(iii) Testing and reporting areas.

(3) Permit physicians to be observed performing tests and reporting results;

(4) Permit HHS or its designee upon request to review all information and data necessary to—

(i) Determine that testing is being performed or the laboratory is being operated in a manner that does not constitute an imminent and serious risk to public health;

(ii) Evaluate complaints from the public;

(iii) Determine whether the laboratory is performing tests in addition to procedures listed in § 493.16 that are not included on the laboratory's certificate;

(iv) Collect information to determine the addition, deletion, or continued inclusion of tests listed in § 493.16; and

(5) Provide copies to HHS or its designee of all records and data that the agency requires under these regulations.

(c) The laboratory must provide upon reasonable request all information and data needed by HHS or its designee to make a determination of compliance with the requirements of part 493.

(d) Failure to permit an inspection under this subsection may result in the suspension of Medicare and Medicaid payments to the laboratory or termination of the laboratory's participation in Medicare and Medicaid for payment, and suspension of or action to revoke the laboratory's CLIA certificate in accordance with subpart R of this part.

83. Section 493.1777 is amended by revising the section heading and paragraph (a) to read as follows:

§ 493.1777 Condition: Inspection of all laboratories not issued a certificate of waiver, certificate for physician-performed microscopy procedures, or a certificate of accreditation.

(a) HHS or its designee may conduct unannounced or announced inspections on at least a biennial basis of any laboratory at any time during its hours of operation. To assess compliance with the requirements of part 493, HHS will inspect a laboratory possessing a registration certificate before issuance of a certificate.

* * * * *

84. Section 493.1780 is amended by revising the section heading, paragraphs (a), (b), and (e) to read as follows:

§ 493.1780 Condition: Inspection of accredited and CLIA-exempt laboratories.

(a) HHS or its designee may conduct unannounced or announced, random validation inspections of any accredited or CLIA-exempt laboratory at any time during its hours of operation.

(b) HHS or its designee will conduct unannounced complaint inspections of an accredited or CLIA-exempt laboratory at any time during its hours of operation upon receiving a complaint about that laboratory.

* * * * *

(e) The laboratory must retain—

(1) Immunohematology records for a period of not less than 5 years, in accordance with 21 CFR part 606, subpart I;

(2) Records of blood and blood product testing for a period of not less than 5 years after processing records have been completed, or 6 months after the latest expiration date, whichever is the later date, in accordance with 21 CFR 606.160(d);

(3) Pathology test reports for at least 10 years after the date of reporting, as required in § 493.1109; and

(4) All other laboratory records for at least 3 years unless otherwise specified in part 493.

* * * * *

§ 493.1806 [Amended]

85. In § 493.1806(d), "State-exempt" is revised to read "CLIA-exempt".

86. Section 493.1814 is amended by revising paragraph (b)(3) to read as follows:

§ 493.1814 Action when deficiencies are at the condition level but do not pose immediate jeopardy.

* * * * *

(b) * * *

(3) May impose (or continue, if already imposed) any alternative sanctions that do not pertain to Medicare payments. (Sanctions imposed under the authority of section 353 of the PHS Act may continue for more than 12 months from the last date of inspection, (while a hearing on the proposed suspension, limitation, or revocation of the certificate, registration certificate, certificate of accreditation, or certificate for physician-performed microscopy procedures is pending.)

* * * * *

87. Section 493.1834 is amended by revising paragraphs (b) and (f)(2)(iii) to read as follows:

§ 493.1834 Civil money penalty.

* * * * *

(b) *Scope.* This section sets forth the procedures that HCFA follows to impose a civil money penalty in lieu of, or in addition to suspending, limiting, or revoking the certificate, registration certificate, certificate of accreditation, or certificate for physician-performed microscopy procedures of a laboratory that is found to have condition level deficiencies.

* * * * *

(f) * * *

(2) * * *

(iii) HCFA suspends, limits, or revokes the laboratory's certificate, registration certificate, certificate of accreditation, or certificate for physician-performed microscopy procedures.

* * * * *

88. Section 493.1836 is amended by revising paragraphs (c)(2) and (c)(3) to read as follows:

§ 493.1836 State onsite monitoring.

* * * * *

(c) * * *

(2) If the laboratory does not correct all deficiencies within 12 months, and a revisit indicates that deficiencies remain, HCFA cancels the laboratory's approval for Medicare payment for its services and notifies the laboratory of its intent to suspend, limit, or revoke the laboratory's certificate, registration certificate, certificate of accreditation, or certificate for physician-performed microscopy procedures.

(3) If the laboratory still does not correct its deficiencies, the Medicare sanction continues until the suspension, limitation, or revocation of the laboratory's certificate, registration certificate, certificate of accreditation, or certificate for physician-performed microscopy procedures is effective.

89. Section 493.2001 is amended by revising paragraph (e) to read as follows:

§ 493.2001 Establishment and function of the Clinical Laboratory Improvement Advisory Committee.

* * * * *

(e) The Clinical Laboratory Improvement Advisory Committee or subcommittee, at the request of HHS will review and make recommendations concerning:

(1) Criteria for categorizing tests and examinations of moderate and high complexity;

(2) Determination of waived tests;

(3) Personnel standards;

(4) Patient test management, quality control, quality assurance standards;

(5) Proficiency testing standards;

(6) Applicability to the standards of new technology; and

(7) Other issues relevant to part 493, if requested by HHS.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 1, 1992.

James O. Mason,

Assistant Secretary for Health.

Dated: September 18, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: December 11, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 93-1169 Filed 1-15-93; 8:45 am]

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federal register

Tuesday
January 19, 1993

Part XIII

The President

Presidential Determination Nos. 93–8, 93–9, 93–10, 93–11, 93–12, 93–13—Presidential Determinations on the Eligibility of the Federated States of Micronesia, the Republic of the Marshall Islands, the Cook Islands, the Solomon Islands, Vanuatu, and Western Samoa To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

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Title 3—

The President

Presidential Determination No. 93-8 of January 6, 1993

Presidential Determination on the Eligibility of the Federated State of Micronesia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311(a) and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of the Federated States of Micronesia will strengthen the security of the United States and promote world peace.

You are directed to report this finding to Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 6, 1993.

Justification for Presidential Determination of Eligibility of the Federated States of Micronesia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act (the Act) require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishings of such articles and services to the country concerned will "strengthen the security of the United States and promote world peace."

The Federated States of Micronesia (FSM) occupies a strategic geographic position in the South Pacific. It is a democracy, and has been linked closely to the United States since the end of World War II. From 1945 to 1986, the FSM was a U.N. Trust Territory administered by the United States. Since 1986, the FSM and the United States have been bound by a Compact of Free Association (the Compact) by which the United States assumes responsibility for defense of the FSM.

Little provision was made in the Compact for the transfer of military equipment and services to the FSM because it was felt that the FSM would not require assistance of this kind. However, as the FSM attains political and economic maturity, it is developing an increasing need for military assistance.

Maritime surveillance and the oversight of its fishing areas will consume an increasing percentage of the FSM's budget. This quasi-military activity must be borne largely by the FSM alone, given practical limitations on the U.S. military's ability to divert assets to support such operations. With U.S. concurrence, the FSM already has established a modest maritime surveillance capability using equipment and training donated by the Government of Australia. The FSM's interest in acquiring additional military equipment (vessels, weaponry, ammunition, communications gear, etc.) as well as expert training in maritime surveillance skills will grow over time. Absent ability on the part of the United States to supply appropriate equipment and services, the FSM will turn elsewhere—a development which would complicate our defense arrangements with FSM.

Providing defense articles and services to the FSM will further our long-term goals of promoting stability in the South Pacific, will strengthen our ties to the FSM, and thereby will strengthen the security of the United States and promote world peace.

[FR Doc. 93–1455
Filed 1–15–93; 11:13 am]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 93-9 of January 6, 1993

Presidential Determination on the Eligibility of the Republic of the Marshall Islands To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311(a), and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of Republic of the Marshall Islands will strengthen the security of the United States and promote world peace.

You are directed to report this finding to Congress and to publish it in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, January 6, 1993.

Justification for Presidential Determination of Eligibility of the Republic of the Marshall Islands To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act (the Act) require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishings of such articles to and services to the country concerned will "strengthen the security of the United States and promote world peace."

The Republic of the Marshall Islands (RMI) occupies a strategic geographic position in the South Pacific. It is a democracy, and has been linked closely to the United States since the end of World War II. From 1945 to 1986, the RMI was a U.N. Trust Territory administered by the United States. Since 1986, the RMI and the United States have been bound by a Compact of Free Association (the Compact) by which the United States assumes responsibility for defense of the RMI.

Little provision was made in the Compact for the transfer of military equipment and services to the RMI because it was felt that the RMI would not require assistance of this kind. However, as the RMI attains political and economic maturity, it is developing an increasing need for military assistance.

Maritime surveillance and the oversight of its fishing areas will consume an increasing percentage of the RMI's budget. This quasi-military activity must be borne largely by the RMI alone, given practical limitations on the U.S. military's ability to divert assets to support such operations. With U.S. concurrence, the RMI already has established a modest maritime surveillance capability using equipment. and training donated by the government of Australia. The RMI's interest in acquiring additional military equipment (vessels, weaponry, ammunition, communications gear, etc.) as well as expert training in maritime surveillance skills will grow over time. Absent ability on the part of the United States to supply appropriate equipment and services, the RMI will turn elsewhere—a development which would complicate our defense arrangements with RMI.

Providing defense articles and services to the RMI will further our long-term goals of promoting stability in the South Pacific, will strengthen our ties to the RMI, and thereby will strengthen the security of the United States and promote world peace.

[FR Doc. 93-1456
Filed 1-15-93; 11:14 am]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 93–10 of January 6, 1993

Presidential Determination on the Eligibility of the Cook Islands To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311(a), and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of the Cook Islands will strengthen the security of the United States and promote world peace.

You are directed to report this finding to Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 6, 1993

Justification for Presidential Determination of Eligibility of Cook Islands To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act (the Act) require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishings of such articles to and services to the country concerned will "strengthen the security of the United States and promote world peace."

The Cook Islands occupies a strategic geographic position in the South Pacific. It is a parliamentary democracy, and pursues a friendly, pro-Western foreign policy. There have been regular national elections since independence in 1965. It has a market economy, in which fishing plays a major role.

The Cook Islands recently established a maritime guard. This service will help the country monitor fishing activities in its waters and undertake surveillance in support of national immigration, customs and quarantine laws. Secondary functions will be disaster relief, search and rescue, medical evacuation, and environmental pollution control. This improved capability will enable the Cook Islands to better control its resources and thus will contribute to its development. We anticipate that the Cook Islands will look to the United States and other friendly countries as potential sources for the procurement of defense articles and services to sustain that capability

Providing defense articles and services to the Cook Islands will further our long-term goals of promoting democracy, stability, and economic development in the Cook Islands, and will thereby strengthen the security of the United States and promote world peace.

[FR Doc. 93–1457
Filed 1–15–93; 11:15 am]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 93–11 of January 6, 1993

Presidential Determination on the Eligibility of the Solomon Islands To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311(a) and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of the Solomon Islands will strengthen the security of the United States and promote world peace.

You are directed to report this finding to Congress and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, January 6, 1993.

Justification for Presidential Determination of Eligibility of the Solomon Islands To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act (the Act) require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishings of such articles to and services to the country concerned will "strengthen the security of the United States and promote world peace."

The Solomon Islands occupies a strategic geographic position in the South Western Pacific. It is a parliamentary democracy, and pursues a friendly, pro-Western foreign policy. There have been regular national elections since independence in 1978. It has a market economy, in which fishing plays a major role.

The Solomon Islands recently established a maritime guard. This service will help the country monitor fishing activities in its waters. Secondary functions will be disaster relief, search and rescue/medical evacuation, and environmental pollution control. This improved capability will enable the Solomon Islands better to control its resources and thus will contribute to its development. We anticipate that the Solomon Islands will look to the United States and other friendly countries as potential sources for the procurement of defense articles and services to sustain that capability.

In addition, since 1991, the United States has contributed to the Solomon Islands' security through the International Military Education and Training Program (IMET). Access to the Foreign Military Sales Systems system (FMS) would provide an effective vehicle by which the Solomon Islands Government can purchase educational and other materials related to the IMET program.

Providing defense articles and services to the Solomon Islands will further our long-term goals of promoting democracy, stability, and economic development in the Solomon Islands, and will thereby strengthen the security of the United States and promote world peace.

[FR Doc. 93-1458
Filed 1-15-93; 11:16 am]
Billing code 3195-01-M

Presidential Documents

Presidential Determination No. 93-12 of January 6, 1993

Presidential Determination on the Eligibility of Vanuatu To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of Vanuatu will strengthen the security of the United States and promote world peace.

You are directed to report this finding to Congress and to publish it in the **Federal Register.**

THE WHITE HOUSE,
Washington, January 6, 1993.

Justification for Presidential Determination of Eligibility of Vanuatu To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act (the Act) require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishings of such articles to and services to the country concerned will "strengthen the security of the United States and promote world peace."

U.S. relations with Vanuatu have improved markedly since the establishment of diplomatic relations in 1986. A functioning democracy since independence 1980, Vanuatu initially followed a rigorous non-aligned policy which entailed maintaining arms-length relations with the United States. More recently, however, Vanuatu has assumed a more Western-oriented stance, showing interest in developing closer relations with the United States. The first Peace Corps volunteers arrived in Vanuatu in January 1990. Also in 1990, Vanuatu formally accepted a Memorandum of Understanding which laid the basis for establishment of an International Military Education and Training (IMET) program. The United States budgeted a modest IMET program for Vanuatu in FY 92. Access to the Foreign Military Sales system (FMS) would provide an effective vehicle by which the Vanuatu Government can purchase educational and other materials related to the IMET program.

In addition, Vanuatu recently established a maritime guard. This service will help the country monitor fishing activities in its waters. Secondary functions will be disaster relief, search and rescue, medical evacuation, and environmental pollution control. This improved capability will enable the Vanuatu better to control its resources and thus will contribute to its development. We anticipate that the Vanuatu will look to the U.S. and other friendly countries as potential sources for the procurement of defense articles and services to sustain that capability.

Providing defense articles and services to the Vanuatu will further our long-term goals of promoting democracy, stability, and economic development in the Vanuatu, and will thereby strengthen the security of the United States and promote world peace.

[FR Doc. 93–1459
Filed 1–15–93; 11:17 am]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 93-13 of January 6, 1993

Presidential Determination on the Eligibility of Western Samoa To Be Furnished Defense Articles and Services Under the Foreign Assistance Act and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Section 503(a) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2311(a), and Section 3(a)(1) of the Arms Export Control Act, 22 U.S.C. 2753(a)(1), I hereby find that the furnishing, sale, and/or lease of defense articles and services to the Government of Western Samoa will strengthen the security of the United States and promote world peace.

You are directed to report this finding to Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, January 6, 1993.

Justification for Presidential Determination of Eligibility of Western Samoa To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Section 503 of the Foreign Assistance Act of 1961 and Section 3(a)(1) of the Arms Export Control Act (the Act) require, as a condition of eligibility to acquire defense articles and services from the United States, that the President find that the furnishings of such articles to and services to the country concerned will "strengthen the security of the United States and promote world peace."

U.S. relations with Western Samoa have improved markedly since the establishment of embassies in Apia and Washington in 1988 and 1990. A functioning democracy since independence 1962, Western Samoa follows a friendly pro-Western foreign policy. Its national elections in April 1992 were the country's first held under universal suffrage. Western Samoa has a shared heritage with American Samoa and many of the nationals of that U.S. territory have relatives in Western Samoa. It has a market economy in which fishing plays a major role. The United States is actively considering providing International Military Education and Training (IMET) funds for Western Samoa in FY 93. Access to the Foreign Military Sales System (FMS) would provide an effective vehicle by which the Western Samoa Government can purchase educational and other materials related to the IMET program.

In addition, Western Samoa recently established a maritime guard. This service will help the country monitor fishing activities in its waters. Secondary functions will be disaster relief, search and rescue, medical evacuation, and environmental pollution control. This improved capability will enable Western Samoa to better control its resources and thus will contribute to its development. We anticipate that Western Samoa will look to the U.S. and other friendly countries as potential sources for the procurement of defense articles and services to sustain that capability.

Providing defense articles and services to Western Samoa will further our long-term goals of promoting democracy, stability, and economic development in Western Samoa and will thereby strengthen the security of the United States and promote world peace.

[FR Doc. 93-1460
Filed 1-15-93; 11:18 am]
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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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federal register

Thursday
January 21, 1993

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Presidential Documents

Title 3—

The President

Executive Order 12831 of January 15, 1993

Additional Measures With Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act of 1945, as amended (22 U.S.C. 287c), and section 301 of title 3 of the United States Code, in view of United Nations Security Council Resolutions No. 757 of May 30, 1992, and No. 787 of November 16, 1992, and in order to take additional steps with respect to the actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the national emergency described and declared in Executive Order No. 12808 and expanded in Executive Order No. 12810,

I, GEORGE BUSH, President of the United States of America, hereby order:

Section 1. The following are prohibited, except to the extent provided in regulations, orders, directives, or licenses which may hereafter be issued pursuant to this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted before the effective date of this order:

(a) Any transaction within the United States or by a United States person related to the transshipment of commodities or products through the Federal Republic of Yugoslavia (Serbia and Montenegro); and

(b) Any transaction within the United States or by a United States person relating to any vessel in which a majority or controlling interest is held by a person or entity in, or operating from, the Federal Republic of Yugoslavia (Serbia and Montenegro) regardless of the flag under which the vessel sails.

Sec. 2. Any vessel in which a majority or controlling interest is held by a person or entity in, or operating from, the Federal Republic of Yugoslavia (Serbia and Montenegro) shall be considered as a vessel of the Federal Republic of Yugoslavia (Serbia and Montenegro) regardless of the flag under which the vessel sails.

Sec. 3. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by the International Emergency Economic Powers Act and the United Nations Participation Act, as may be necessary to carry out the purpose of this order. Such actions may include prohibiting or regulating trade and financial transactions involving any areas of the territory of the former Socialist Federal Republic of Yugoslavia as to which there is inadequate assurance that such transactions will not be diverted to the benefit of the Federal Republic of Yugoslavia (Serbia and Montenegro). The Secretary of the Treasury may redelegate the authority set forth in this order to other officers and agencies of the United States Government, all agencies of which are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order, including suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 4. Section 3(i) of Executive Order No. 12810 is hereby revoked.

Sec. 5. The definitions contained in Section 5 of Executive Order No. 12810 apply to the terms used in this order.

Sec. 6. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Sec. 7. (a) This order is effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.

Bush

THE WHITE HOUSE,
January 15, 1993.

[FR Doc. 93–1587
Filed 1–15–93; 4:26 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection and Official Weighing Services

AGENCY: Federal Grain Inspection Service.

ACTION: Interim rule; postponement of effective date.

SUMMARY: The Federal Grain Inspection Service (FGIS) is postponing indefinitely the February 1, 1993, fee increases for Official Inspection and Official Weighing Services. The interim rule was published in the January 8, 1993, **Federal Register** (58 FR 3213). The postponement of the effective date is to provide additional opportunity to review the fee increases as published in the **Federal Register.**

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0624, South Building, P.O. Box 96454, Washington, DC, 20090–6454; telephone (202) 720–0920, FAX (202) 720–4628.

SUPPLEMENTARY INFORMATION: FGIS published in the January 8, 1993, **Federal Register** (58 FR 3213), an interim rule with request for comment, increasing its fees (effective February 1, 1993) by 3.7 percent for official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. The change was intended to cover, as nearly as practicable, the FGIS operating costs, including related supervisory and administrative costs. The change did not include an increase in fees for administration and supervision of Official Agencies or for inspection and weighing services in Canada.

This action postpones indefinitely the February 1, 1993, effective date of the interim rule published in the **Federal Register** on January 8, 1993 (58 FR 8213). The postponement of the effective date will provide additional opportunity to review the fee increases as published in the **Federal Register.** The interim rule provided that comments were to be submitted on or before March 3, 1993, and this date remains unchanged.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: January 13, 1993.

David R. Galliart,
Acting Administrator.

[FR Doc. 93–1248 Filed 1–19–93; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 1001, 1004, 1124

[DA–92–40]

Milk in the New England, Middle Atlantic, and Pacific Northwest Marketing Areas; Determination of Equivalent Nonfat Dry Milk Price Series

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of equivalent price series.

SUMMARY: This action determines two equivalent nonfat dry milk (NDM) price series to be used in computing Class III–A milk prices under the New England, Middle Atlantic, and Pacific Northwest milk orders. The New England and Middle Atlantic orders use the Central States Extra Grade Nonfat Dry Milk price series in the Class III–A price computation. The Pacific Northwest order uses the Western States Grade A Nonfat Dry Milk price series in the Class III–A price computation. The Department has announced that effective January 4, 1993, nonfat dry milk prices will be reported on a different basis for each region. Rather than reporting separate prices for Extra Grade and Grade A NDM, prices will be reported on a combined basis. Under this determination, the new combined Central States NDM price series will be used under the New England and Middle Atlantic orders and the new combined Western States NDM price series will be used under the Pacific Northwest order in the computation of Class III–A prices.

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable provisions of the orders, as amended, regulating the handling of milk in the New England (part 1001), Middle Atlantic (part 1004), and Pacific Northwest (part 1124) marketing areas, it is hereby found and determined that:

(1) Each of the aforementioned three orders provides for a Class III–A classification and pricing of skim milk and butterfat used to produce nonfat dry milk. The Class III–A price formula is based in part on the f.o.b. plant monthly prices of nonfat dry milk. The New England and Middle Atlantic orders use the Central States price series for Extra Grade nonfat dry milk. The Pacific Northwest order uses the Western States price series for Grade A nonfat dry milk. These price series are reported by the Department in Dairy Market News.

(2) The December 11, 1992, issue of Dairy Market News contains notices that effective January 4, 1993, NDM prices for the Central States and Western States regions will be reported on a different basis. Rather than reporting separate prices in each region for Extra Grade and Grade A NDM, prices will be reported in each region on a combined basis. Thus, the separate price series for Extra Grade NDM and for Grade A NDM will be discontinued and will not be available for the use in computing Class III–A prices.

(3) The three orders provide that if for any reason a price or pricing constituent required by the order for computing class prices or for other purposes is not available as prescribed in the order, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

(4) The intent of a NDM price series in the Class III–A price formula is to reflect a representative wholesale market value of NDM each month in the monthly class price computation for milk used to make NDM.

(5) The reason the Department will be reporting only a single NDM price series

in each region is that the declining production of certain grades of NDM has resulted in the lack of representative NDM prices to report.

(6) The new price series for NDM in each region will be based on available wholesale prices of NDM in the respective regions and will be representative of NDM values in each region. The two new price series will properly serve the intent of the NDM price series in the Class III–A price Computations.

(7) Therefore, the new Central States NDM price series is determined to be equivalent to the Central States Extra Grade NDM price series and the new Western States NDM price series is determined to be equivalent to the Western States Grade A NDM price series for purposes of computing the Class III–A prices under the orders.

(8) Notice of proposed rulemaking, public procedure thereon and 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The NDM price series reporting changes were effective January 4, 1993. The orders require that the Class III–A price for January milk deliveries be announced on or before February 5, 1993, and be based on NDM prices during January 1993.

(b) This determination is necessary to have an appropriate NDM price series under each of the orders for the January 1993 Class III–A prices and subsequent monthly price announcements until the orders are amended.

(c) This determination does not require persons affected substantial or extensive preparation prior to the effective date.

(d) This action is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the respective marketing areas.

Therefore, good cause exists for making this determination effective on January 4, 1993.

List of Subjects in 7 CFR Parts 1001, 1004, and 1124

Milk marketing orders.

The authority citation for 7 CFR parts 1001, 1004, and 1124 continues to read as follows:

Authority: Secs 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

Dated: January 13, 1993.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–1245 Filed 1–19–93; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–133–AD; Amendment 39–8454; AD 93–01–01]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model DHC–7 series airplanes, that requires a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. This amendment is prompted by a report of a takeoff procedure that was completed with an inadvertent flap setting of 0 degrees. The actions specified by this AD are intended to prevent a takeoff with an incorrect flap indication of 25 degrees when the flaps are retracted, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane.

DATES: Effective February 25, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Model DHC–7 series airplanes was published in the **Federal Register** on August 17, 1992 (57 FR 36928). That action proposed to require a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the compliance time of 60 days for accomplishing the one-time inspection may be excessive. The commenter considers that the proposed compliance time will expose the affected airplanes, passengers, and flight crew to an increased risk of the addressed unsafe condition. The FAA does not concur with the need for a shorter compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the normal maintenance schedules for the majority of the affected fleet. The proposed compliance time of 60 days was determined to be appropriate in consideration of the average utilization rate of the affected fleet, the practical aspects of an orderly inspection of the fleet during regular maintenance periods, and the availability of required modification parts. In addition, the FAA determined that the probability of the occurrence of the unsafe condition is sufficiently low to warrant a compliance time of 60 days.

One commenter requests that the proposal be amended to include a provision to alert flight crews of potentially inaccurate flap indications. The commenter notes that this could be accomplished by either adding a placard on the instrument panel, or by incorporating the warning in the FAA-approved Airplane Flight Manual (AFM). The FAA does not concur. The FAA has determined that the affected airplanes already have a flap trailing edge caution light, which serves to warn the flight crew that the flap position indication does not agree with actual flap position. The FAA has determined that this warning is sufficient to alert the flight crew to verify the actual flap position prior to takeoff.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 50 airplanes of U.S. registry will be affected by this

AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,500, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-01-01. De Havilland, Inc.: Amendment 39-8454. Docket 92-NM-133-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 3 and subsequent, having Modification No. 7/2093 installed, except airplanes fitted with Customer Special Installation 78358 (flap indication rework); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a takeoff with an incorrect flap indication, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, in accordance with paragraph III. of de Havilland Alert Service Bulletin S.B. A7-27-86, dated December 19, 1991. If any discrepancies are detected, prior to further flight, modify the assembly in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and modification shall be done in accordance with de Havilland Alert Service Bulletin S.B. A7-27-86, dated December 19, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 25, 1993.

Issued in Renton, Washington, on December 21, 1992.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1355 Filed 1-19-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92-NM-236-AD; Amendment 39-8467; AD 93-01-13]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This action requires a visual inspection to detect chafing, scratches, and dents on the fuel line between the main wing tank and the collector tank, and replacement of the fuel line, if necessary; and an inspection to ensure that the clearances between the fuel line and the landing gear parts are within the specified limit, and corrective action, if necessary. This amendment is prompted by reports of chafed and dented fuel feed lines between the main wing tanks and the collector tanks, which was caused by interference between the fuel line and the main landing gear uplock actuator and associated piping. The actions specified in this AD are intended to prevent uncontrolled fuel leakage into the wheel well.

DATES: Effective February 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 5, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-236-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes. The RLD advises that during a recent flight check, an operator of a Model F27 series airplane found a fuel leak in a rear fuel feed line between the main wing tank and the collector tank. Further investigation revealed that the fuel line between these two tanks was chafed and dented due to interference between the fuel line and the main landing gear uplock actuator and associated piping. Inspections of this operator's fleet revealed six additional cases of chafed fuel lines in the left- and right-hand nacelles. This condition, if not corrected, could result in uncontrolled fuel leakage into the wheel well.

Fokker has issued Service Bulletin F27/28–61, dated September 3, 1992, that describes procedures for a visual inspection to detect chafing, scratches, and dents on the fuel line between the main wing tank and the collector tank, and replacement of the fuel line, if necessary; and an inspection to ensure that the clearances between the fuel line and the landing gear parts during retraction and in the uplock position are within the specified limit, and corrective action, if necessary. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–102, Issue 2, dated October 23, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncontrolled fuel leakage into the wheel well. This AD requires a visual inspection to detect chafing, scratches, and dents on the fuel line between the main wing tank and the collector tank, and replacement of the fuel line, if necessary; and an inspection to ensure that the clearances between the fuel line and the landing gear parts are within the specified limit, and corrective action, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–236–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–13. Fokker: Amendment 39–8467. Docket 92–NM–236–AD.

Applicability: Model F27 series airplanes; except Model F27 Mark 050 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontrolled fuel leakage into the wheel well, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection to detect chafing, scratches, or dents on the fuel lines on the left- and right-hand nacelles, in accordance with part 1 of the

Service Bulletin F27/28–61, dated September 3, 1992.

(b) If no chafing, scratches, or dents are found during the inspection required by paragraph (a) of this AD, the fuel line may remain installed. However, within 100 hours time-in-service after the effective date of this AD, perform a visual inspection for clearances between the fuel line and the landing gear parts, in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–61, dated September 3, 1992; and accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If the clearance between the fuel line and the landing gear parts is less than 0.25 inch, prior to further flight, adjust the landing gear components to achieve a minimum clearance of 0.25 inch, in accordance with the service bulletin.

(2) If the clearance between the fuel line and the landing gear parts is 0.25 inch or greater, no further action is required by this AD.

(c) If any chafing or scratches are found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish both paragraphs (c)(1) and (c)(2) of this AD:

(1) Measure the damage depth and accomplish either paragraph (c)(1)(i), (c)(1)(ii,) or (c)(1)(iii) of this AD, as applicable.

(i) If the depth of chafing or scratch damage is equal to or greater than 0.009 inch, prior to further flight, replace the damaged fuel line, in accordance with Chapter 28–00–00 of the Airplane Maintenance Manual.

(ii) If the depth of chafing or scratch damage is 0.004 inch or more, but less than 0.009 inch, re-inspect the damaged fuel line in accordance with paragraph (a) of this AD thereafter at intervals not to exceed 10 hours time-in-service; and replace the damaged fuel line within 50 hours time-in-service after the effective date of this AD, in accordance with Chapter 28–00–00 of the Airplane Maintenance Manual.

(iii) If the depth of chafing or scratch damage is less than 0.004 inch, the fuel line may remain in place.

(2) Perform a visual inspection for clearances between the fuel line and the landing gear parts, in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–61, dated September 3, 1992, and accomplish either paragraph (c)(2)(i) or (c)(2)(ii) of this AD, as applicable.

(i) If the clearance between the fuel line and the landing gear parts is less than 0.25 inch, prior to further flight, adjust the landing gear components to achieve a minimum clearance of 0.25 inch, in accordance with the service bulletin.

(ii) If the clearance between the fuel line and the landing gear parts is 0.25 inch or greater, no further action is required by this AD.

(d) If any dent is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish both paragraphs (d)(1) and (d)(2) of this AD:

(1) Measure the damage depth and accomplish either paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) If the depth of the dent is equal to or greater than 0.1 inch, prior to further flight, replace the dented fuel line, in accordance with Chapter 28–00–00 of the Airplane Maintenance Manual.

(ii) If the depth of the dent is less than 0.1 inch, the fuel line may remain installed.

(2) Perform a visual inspection for clearances between the fuel line and the landing gear parts, in accordance with part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/28–61, dated September 3, 1992; and accomplish either paragraph (d)(2)(i) or (d)(2)(ii) of this AD, as applicable.

(i) If the clearance between the fuel line and the landing gear parts is less than 0.25 inch, prior to further flight, adjust the landing gear components to achieve a minimum clearance of 0.25 inch, in accordance with the service bulletin.

(ii) If the clearance between the fuel line and the landing gear parts is 0.25 inch or greater, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, replacement, and adjustment shall be done in accordance with Fokker Service Bulletin F27/28–61, dated September 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 5, 1993.

Issued in Renton, Washington, on January 11, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1359 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–105–AD; Amendment 39–8453; AD 92–27–18]

Airworthiness Directives; McDonnell Douglas Model DC–10 and KC–10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 and KC–10 (military) series airplanes, that requires visual inspection of the left and right main landing gear (MLG) pistons to detect inward buckling, and replacement of the MLG piston, if necessary. This amendment also requires either modification or replacement of the rebound check valve. This amendment is prompted by several incidents of MLG piston failure. The actions specified by this AD are intended to prevent failure of the MLG piston and subsequent reduced controllability of the airplane during landing.

DATES: Effective February 25, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to McDonnell Douglas Model

DC–10 and KC–10 (military) series airplanes was published in the **Federal Register** on August 27, 1992 (57 FR 38801). That action proposed to require visual inspection of the left and right main landing gear (MLG) pistons to detect inward buckling, and replacement of the MLG piston, if necessary. That action also proposed to require either modification or replacement of the rebound check valve.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that the applicability statement of the AD be revised to delete McDonnell Douglas Model DC–10–30 and –40 series airplanes. The commenter notes that none of the reported incidents of MLG piston failure have occurred on Model DC–10–30 or –40 series airplanes. Additionally, the commenter notes that pistons on Model DC–10–30 and –40 series airplanes have a thicker wall than those on the Model DC–10–10 and –15 series airplanes; therefore, the commenter considers that the thicker wall provides Model DC–10–30 and –40 series airplanes with a greater margin of safety. The FAA does not concur. The manufacturer has conducted an analysis to simulate failure of the MLG rebound check valve on Model DC–10–30 and –40 series airplanes. This analysis revealed that the pistons installed on Model DC–10–30 and –40 series airplanes are at risk for developing excessive rebound chamber pressures. The FAA has concurred with the manufacturer's analysis and has determined that these airplanes are subject to the addressed unsafe condition. To remove them from the applicability statement of this AD would be inappropriate.

The same commenter requests that the compliance time for inspecting, reworking, and replacing the rebound check valve be extended from the proposed 5 years to 7 years for Model DC–10–30 and –40 series airplanes in order to coincide with regular maintenance schedules. This commenter notes that the normal interval for MLG overhaul for airplanes in its fleet is 20,000 landings. Based on this commenter's average utilization rate, the average number of years between MLG overhauls is 7 years. Accomplishment of the inspection and modification of the MLG piston during regularly scheduled gear overhaul would minimize the cost and workload impact on this commenter. The FAA does not concur with the commenter's request to extend the compliance time. The FAA has determined that the compliance time, as proposed, provides ample time within which affected operators can schedule time for a maintenance base visit. It also represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspection, rework, and replacement without compromising safety. Maintenance schedules vary from operator to operator; therefore, an extension of the compliance time to accommodate one operator's schedule would not necessarily ensure that the modification would be accomplished within the regular maintenance schedules of all of the affected operators.

Several commenters request an extension of the compliance time for accomplishing the inspection and modification of the MLG piston from the proposed 2 years to 2.5 years for Model DC–10–10 and –15 series airplanes. These commenters note that to require that the proposed requirements be accomplished within the proposed compliance time would disrupt current MLG maintenance programs and would necessitate that the required actions be accomplished on an unscheduled basis; this would place an unwarranted financial burden on operators and would disrupt not only regularly scheduled maintenance but operation schedules, as well. In addition, one of these commenters notes that it began including the rebound check valve modification in its regular MLG maintenance program at the time of the issuance of McDonnell Douglas DC–10 Service Bulletin 32–227, dated January 21, 1991; to mandate the proposed compliance time would require this operator to revise its current maintenance program schedule that already addresses the requirements of the proposed AD.

Another commenter requests an extension of the compliance time for accomplishing the inspection and modification of the MLG piston from the proposed 2 years to 5 years for Model DC–10–10 and –15 series airplanes. This commenter notes that its fleet has not experienced an occurrence of the subject unsafe condition during 20 years of operating Model DC–10's. This commenter also considers that requiring the modification within the proposed compliance time would impose an unwarranted financial and maintenance burden on this commenter's operations.

The FAA concurs that the compliance time for the inspection and modification requirements for these airplanes can be extended somewhat. Extending the compliance time by 6 additional months will not adversely affect safety, and will allow the modification to be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available, if necessary. Paragraph (a) of the final rule has been revised to specify a compliance time of 30 months. However, the FAA does not concur to extend the compliance time to 5 years. The FAA has determined that Model DC–10–10 and –15 series airplanes (on which the MLG piston has not been previously modified in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, dated January 21, 1991) are especially susceptible to piston buckling failures caused by excessive rebound chamber pressures. Because of this risk, the FAA has determined that the incorporation of the new design rebound check valve on these airplanes must be expedited in order to ensure an acceptable level of safety.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 423 McDonnell Douglas Model DC–10 and KC–10 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 195 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,205 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $299,325, or $1,535 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-27-18. McDonnell Douglas: Amendment 39-8453. Docket 92-NM-105-AD.

Applicability: Model DC-10-10, -15, -30, -40, and KC-10 (Military) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) piston and subsequent reduced controllability of the airplane during landing, accomplish the following:

(a) For Model DC-10-10 and DC-10-15 series airplanes that have not been modified in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, dated January 21, 1991: Within 30 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Conduct a visual inspection of the right and left MLG pistons to detect inward buckling. If inward buckling of the MLG piston is detected, prior to further flight, replace the MLG piston in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(2) Determine if the rebound check valve previously has been replaced in accordance with McDonnell Douglas Service Bulletin 32-60, Revision 3, dated August 7, 1974; or Revision 4, dated November 6, 1974; or Revision 5, dated May 1, 1975; or Revision 6, dated June 20, 1975; (hereafter referred to as "SB 32-60").

(i) If the rebound check valve has not been replaced in accordance with SB 32-60: Within 30 months after the effective date of this AD, replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(ii) If the rebound check valve has been replaced in accordance with SB 32-60: Within 30 months after the effective date of this AD, rework or replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(b) For Model DC-10-10 and DC-10-15 series airplanes that have been modified in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, dated January 21, 1991; and for all Model DC-10-30 and DC-10-40 and KC-10 (military) series airplanes: Within five years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD:

(1) Conduct a visual inspection of the right and left MLG pistons to detect inward buckling, in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992. If inward buckling of the MLG piston is detected, prior to further flight, replace the MLG piston in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(2) Determine if the rebound check valve previously has been replaced in accordance with SB 32-60.

(i) If the rebound check valve has not been replaced in accordance with SB 32-60: Within five years after the effective date of this AD, replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(ii) If the rebound check valve has been replaced in accordance with SB 32-60: Within five years after the effective date of this AD, rework or replace the rebound check valve in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, rework, and replacement shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 25, 1993.

Issued in Renton, Washington, on December 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1358 Filed 1-19-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 91-NM-98-AD; Amendment 39-8452; AD 92-27-17]

Airworthiness Directives; Short Brothers, PLC, Model SD3-30 and SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers, PLC, Model SD3-30 and SD3-60 series airplanes, that requires locking the left and right low pressure (LP) levers in the open position using securing wires, and revising the Airplane Flight Manual (AFM). This amendment is prompted by reports that the LP lever, instead of the crossfeed lever, had been shut. The actions specified by this AD are intended to prevent inadvertent engine shutdown.

DATES: Effective February 25, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Shorts Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Short Brothers, PLC, Model SD3–30 and SD3–60 series airplanes was published in the **Federal Register** on June 14, 1991 (56 FR 27468). That action proposed to require locking the left and right low pressure (LP) levers in the open position using securing wires, and revising the Airplane Flight Manual (AFM).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters request a design change for the levers of the left and right low pressure fuel shut-off valves, in order to provide a tactile indication of which valve lever is grasped, so that the LP levers will feel significantly different from the fuel crossfeed valve lever. The AD proposes to use securing wire to lock the levers of the left and right low pressure fuel shut-off valves to the open position to prevent inadvertent closure; however, the commenters maintain that under certain circumstances, a crew member might mistakenly overcome the resistance of the securing wire and inadvertently close the wrong valve. The FAA does not concur. The FAA considers that securing wire is the best solution available to quickly implement corrective action and that the securing wires will provide adequate deterrence to preclude unintentional usage. However, the FAA will encourage the manufacturer to develop a modification kit which will change the design of the low pressure fuel shut-off valve levers to allow for tactile discrimination of valve levers. Once such a modification is developed and approved, the FAA may consider further rulemaking.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 120 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,800, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–27–17. Short Brothers, PLC: Amendment 39–8452. Docket 91–NM–98–AD.

Applicability: All Model SD3–30 and SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent engine shutdown, accomplish the following:

(a) Within 120 days after the effective date of this AD, lock the left and right low pressure (LP) levers in the open position using securing wires, in accordance with Shorts Service Bulletins SD330–28–35 (for Model SD3–30 series airplanes) or SD360–28–20 (for Model SD3–60 series airplanes), both dated February 22, 1991; as applicable.

(b) Within 120 days after the effective date of this AD, following accomplishment of the modification required by paragraph (a) of this AD, revise the Limitations Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting the following amendments, as applicable:

(1) For Model SD3–30 series airplanes:
  SBH3.3 Amendment p/16,
  SBH3.6 Amendment p/12
(2) For Model SD3–60 series airplanes:
  SB4.3 Amendment p/19,
  SB4.6 Amendment p/12,
  SB4.8 Amendment p/14

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The locking requirement shall be done in accordance with Shorts Service Bulletin SD330–28–35, dated February 22, 1991, and Shorts Service Bulletin SD360–28–20, dated February 22, 1991. The revisions to the Airplane Flight Manual (AFM) shall be done in accordance with the following list of AFM Amendment Documents and related effective pages:

AFM amendment document number	Page No.	Section No.
SBH3.3 Amendment p/16	5, 6	3
	7, 42	4
SBH3.6 Amendment p/12	5, 6	3
	7, 48	4
SB4.3 Amendment p/19	5, 6	3
	7, 50	4
SB4.6 Amendment p/12	5, 6	3
	7, 50	4
SB4.8 Amendment p/14	5, 6	3
	7, 50	4

This incorporation by reference was approved by the Director of the Federal

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Shorts Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 25, 1993.

Issued in Renton, Washington, on December 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1357 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203b

RIN 2700–AA80

Security Programs; Arrest Authority and Use of Force by NASA Security Force Personnel

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document amends agency regulations on security programs to comply with the changes identified by the General Counsel and the Inspector General and approved by Attorney General William P. Barr. This regulation implements section 304(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2456a), by establishing guidelines for the exercise of arrest authority and for the exercise of physical force, including deadly force, in conjunction with such arrest authority.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: John C. Hagen, 202–358–2312.

SUPPLEMENTARY INFORMATION: On February 11, 1992, NASA published its final rule, 14 CFR part 1203b, "Security Programs; Arrest Authority and Use of Force by NASA Security Force Personnel," in the **Federal Register** (57 FR 4926). This amendment changes paragraph 1203b(a)(3) concerning the issue of weapons being aimed to disable, and makes administrative, editorial changes to paragraphs 1203b.107(c)(1) and 1203b.108(d)(2).

NASA has determined that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1203b

Security programs, Arrest authority, Use of force.

PART 1203B—SECURITY PROGRAMS; ARREST AUTHORITY AND USE OF FORCE BY NASA SECURITY FORCE PERSONNEL

For reasons set forth in the Preamble, 14 CFR part 1203b is amended as follows:

1. The authority citation for 14 CFR part 1203b continues to read as follows:

Authority: Sec. 304(f) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2456a).

2. Section 1203b.107 is amended by revising paragraphs (a)(3) and (c)(1) to read as follows:

§ 1203b.107 Use of firearms.

* * * * *

(a) * * *

(3) Shoot to stop.

* * * * *

(c) * * *

(1) The incident shall be reported to the Installation Chief of Security who, in turn, will report it to the NASA Security Office as expeditiously as possible, with as many details supplied as are available.

(3) Section 1203(b).108 is amended by revising paragraph (d)(2) to read as follows:

§ 1203b.108 Management oversight.

* * * * *

(d) * * *

(2) Require security force officers exercising arrest authority to requalify semiannually with their assigned firearms; and

* * * * *

Dated: January 6, 1993.

Daniel S. Goldin,

Administrator.

[FR Doc. 93–1211 Filed 1–19–93; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8470]

RIN 1545–AR21

Intercompany Transfer Pricing Regulations Under Section 482

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. The Tax Reform Act of 1986 amended section 482. These regulations provide guidance implementing the amendment.

EFFECTIVE DATE: April 21, 1993.

FOR FURTHER INFORMATION CONTACT: Sim Seo of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:CORP:T:R (INTL–0401–88) (202–622–3840, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1369. The estimated annual burden per respondent/recordkeeper varies from .5 hours to 10 hours, depending on individual circumstances, with an estimated average 5.25 hours.

These estimates are approximations. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble in the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary regulations amending the Income Tax Regulations (26 CFR part 1) under section 482 of the Internal Revenue Code. Section 482 was amended by the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2561, *et seq.* Proposed regulations under section 482 were issued on January 30, 1992 (INTL–0372–88; INTL–0401–88, 57 FR 3571).

Need for Temporary Regulations

The provisions contained in this Treasury decision are needed immediately to provide guidance to the public with respect to intercompany transfer pricing under section 482. Therefore, it is found impracticable and contrary to the public interest to issue this Treasury decision with prior notice under section 553(b) of title 5 of the United States Code.

Explanation of Provisions

Introduction

The Tax Reform Act of 1986 (the Act) amended section 482 to require that consideration for intangible property transferred in a controlled transaction be commensurate with the income attributable to the intangible. The legislative history of the Act states that the change was intended to assure that the division of income between related parties reasonably reflects the economic activities that each undertakes. See H.R. Rep. 99–281, 99th Cong., 2d Sess. (1986) at II–637. The legislative history also expresses concern that insufficiently stringent standards had been used in determining whether an uncontrolled transfer is comparable to a controlled transfer. The legislative history specifically notes concern about the improper use of comparables with regard to "high-profit" potential intangibles, noting that it is especially difficult to obtain realistic comparables with respect to such intangibles because they seldom if ever are transferred to unrelated parties. See H.R. Rep. 99–426, 99th Cong., 1st Sess. (1985) at 424.

The White Paper

The Conference Committee report on the Act recommended that the Internal Revenue Service (the Service) conduct a comprehensive study of transfer pricing and consider whether regulations under section 482 should be "modified in any respect." In response, the Treasury Department and the Service issued a study of intercompany pricing (Notice 88–123, 1988–2 C.B. 458) on October 18, 1988 (the White Paper). Although the White Paper primarily addressed transfers of intangible property, it also addressed the application of section 482 to other types of transactions.

The White Paper proposed two approaches for determining an arm's length charge for intangible property in light of the commensurate with income standard. The first was a pricing approach that relied on two types of comparable transactions: the exact comparable method and the inexact comparable method. The second approach was an income-based approach that included two methods: the basic arm's length return method (the BALRM) and BALRM with profit split. The BALRM generally allocated income to the parties to a controlled transaction by assigning industry average returns to the assets and functions that the parties devoted to the business activity connected with the controlled transaction. In cases involving the exploitation of so-called "high-profit" intangibles, any residual profit would be divided among the parties on the basis of an estimate of the relative values of the intangibles that each contributed to the activity.

Many comments on the White Paper criticized the BALRM, arguing that the information needed to apply it generally would be unavailable, would be unfair to corporations whose returns vary considerably from the average, and would allocate too much income to U.S. entities. The Service also was urged to assign a greater role to inexact comparables and to reconsider the use of safe harbor rules.

The Proposed Regulations

In response to the comments received on the White Paper, the Internal Revenue Service issued proposed regulations under section 482 on January 30, 1992 (INTL–0372–88; INTL–0401–88, 57 FR 3571) (the proposed regulations). The proposed regulations proposed four major changes in the current regulations under section 482: That the scope and purpose of the regulations be modified to reflect the legislative changes to section 482; that new rules with respect to intangible property transfers be implemented; that the rules with respect to tangible property transfers be modified; and that detailed new cost-sharing regulations be introduced. The most significant change to the tangible and intangible property rules was the introduction of a new pricing method known as the comparable profit interval.

As part of the recommended changes to the scope and purpose of the regulations, the proposed regulations included a statement that a broad principle to be applied in all cases was whether uncontrolled taxpayers exercising sound business judgment would have agreed to the same terms in the same circumstances. In particular, the proposed regulations provided that so-called "round-trip" transactions (an integrated series of controlled transactions in which intangible property is licensed to an affiliate and the affiliate uses the intangible to produce tangible property for sale back to the licensor or another affiliate) be analyzed together.

The existing regulations (§ 1.482–2(d)) contain two approaches for determining an arm's length consideration for intangible property. The preferred approach is based on the comparable uncontrolled price method set forth in the tangible property rules, and the second is based on an analysis of twelve factors. The proposed regulations recommended that these rules be replaced with three new methods: The matching transaction method (the MTM), the comparable adjustable transaction method (the CATM), and the comparable profits method (the CPM).

A controlled transaction would satisfy the MTM if there was an uncontrolled transfer of the same intangible under the same, or substantially similar, economic conditions and contractual terms. This standard represented a tightening of the standards of comparability under the analog to the comparable uncontrolled price method of the existing regulations.

A controlled transaction would satisfy the CATM if there was an uncontrolled transfer of the same or a similar intangible under "adjustable" circumstances. Adjustments to the contractual terms and economic circumstances would be allowed if the effect of any differences could be determined with reasonable accuracy. In addition, the result of the controlled transaction was subject to verification by application of the Comparable Profit Interval (the CPI).

Under the CPM, the operating income resulting from the consideration charged in a controlled transaction (reported operating income) was compared with the reported operating incomes of similar uncontrolled taxpayers. The consideration charged in the controlled transaction would be considered arm's length if the taxpayer's reported operating income fell within the "comparable profits interval" (CPI).

The CPI was constructed in steps. First, "profit level indicators" (*e.g.*, rate of return on assets) for uncontrolled taxpayers in the applicable business classification of the controlled taxpayer were determined and applied to the controlled taxpayer's financial data for a period of three years to compute constructive operating incomes (COIs) for the controlled taxpayer. The COIs that tended to converge comprised the CPI. If a taxpayer's actual results fell outside the CPI, the taxpayer generally was subject to adjustment to a point within the CPI known as the "most appropriate point." Relatively little guidance was provided with respect to determining the constructive operating incomes that converged to form the CPI and to determining the most appropriate point.

Unless one of three narrow exceptions applied, the proposed regulations implemented the commensurate with income standard of the Act by providing that these three methods could be applied to adjust the consideration charged for an intangible in the year of examination despite the fact that the same consideration may have been determined to be arm's length for an earlier taxable year.

The proposed regulations also modified the rules with respect to transfers of tangible property (§ 1.482–2(e)). The principal change was to require that results obtained from the application of the resale price method, the cost-plus method and so-called fourth methods fall within the CPI. This change was made in order to eliminate the need to allocate the value of an item of tangible property between its tangible and intangible components when such property contained elements of both types of property.

Finally, the proposed regulations altered the priority of methods under both the tangible and intangible property rules. While preserving a fixed priority of methods, the proposed regulations stated that it was not necessary to disprove the applicability of a method before applying a lower-priority method. Either the Service or the taxpayer could, however, subsequently establish that a higher-priority method applied and thereby override the results obtained under the lower-priority method.

The Service received numerous comments on the proposed regulations. In addition to receiving helpful comments from a large number of taxpayers and industry or professional groups, the Service received constructive comments from several tax treaty partners, both from individual countries and through such international fora as the Organization for Economic Cooperation and Development.

Commenters criticized several aspects of the proposed regulations. Many criticized the requirement that the results obtained under all methods except for exact comparable fall within the CPI, based on the view that such a requirement would elevate the CPM to equal or greater priority than the more traditional transaction-based methods such as the resale price method. Many commenters felt that elevating CPM to such a high level of priority was inconsistent with the arm's length standard. Other commenters criticized the very tight standards of comparability under the MTM, the narrow scope of the exceptions to the periodic adjustment rule, the degree of knowledge imputed to taxpayers under the sound business judgment rule, the relationship between the tangible and intangible property rules, the lack of guidance with respect to determining convergence and the most appropriate point under the CPM, and the failure to provide a safe harbor. Commenters generally praised the introduction of a range of acceptable results and the use of multi-year averages under the CPI, as well as the relaxation of the strict priority of methods under the existing regulations. Further description of the comments received is set forth in the discussion below.

Provisions of the Temporary Regulations

Section 1.482–1T

The scope and purpose provisions have been reorganized to make clear that the arm's length standard is the guiding principle for all allocations under section 482, and to provide additional guidance for determining comparability under the arm's length standard. Section 1.482–1T(a)(1) reaffirms that the purpose of section 482 is to ensure that taxpayers clearly reflect their income by placing a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the controlled taxpayer's true taxable income. Section 1.482–1T(a)(2) authorizes the district director to allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income among a group of controlled taxpayers when they have not reflected their true taxable income. Section 482–1T(a)(3) provides, as do the current regulations, that only the district director may apply the provisions of section 482, but clarifies that this restriction does not limit the taxpayer's ability to report its true taxable income. It has been asserted in the past that taxpayers were not permitted to report results that differed from transactional results in order to reflect an arm's length result on the tax return. A taxpayer's ability to report results that differ from its transactional results may be limited, however, by section 1059A.

Section 1.482–1T(b) summarizes several key principles that guide the application of section 482. These principles are summarized in this portion of the regulation because they are relevant under subsequent provisions. More specific guidance is provided under such subsequent provisions.

Section 1.482–1T(b)(1) reaffirms that in determining a taxpayer's true taxable income, the standard to be applied is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer (the arm's length standard). In this respect the regulations are consistent with the current regulations and reflect many comments on the proposed regulations, which stressed the importance of adhering to the arm's length standard. The arm's length standard is satisfied if the results of controlled transactions are consistent with the results that would have been realized had uncontrolled taxpayers engaged in a comparable transaction under comparable circumstances. Guidance for determining comparability of an uncontrolled transaction is provided in § 1.482–1T(c), discussed below.

Section 1.482–1T(b)(2) provides rules for determining the method or methods that will be applied in a particular case to test whether transactions between controlled taxpayers are at arm's length. First, § 1.482–1T(b)(2)(ii) provides that for some transactions it may be necessary to apply different methods to related transactions where such transactions are most reasonably tested on a separate basis (such as services and property).

Second, § 1.482–1T(b)(2)(iii)(A) provides a "best method rule" for selecting the method to be applied to test the arm's length character of a controlled transaction. In response to comments, the strict priority of methods in the proposed and current regulations has been abandoned. Rather, a much more flexible approach has been adopted. While the problems with a strict priority of methods are acknowledged, the drawbacks of such rigidity must be balanced against the need to provide some guidance as to which methods are most appropriate for particular cases. The best method rule attempts to achieve this balance by recognizing that the method that provides the most accurate determination of an arm's length result will vary depending upon the facts and circumstances of the transaction under review. In considering which method provides the best measure of an arm's length result, factors to be considered include the completeness and accuracy of the available data, the degree of comparability between controlled and uncontrolled transactions, and the extent of adjustments necessary to apply the method. While the best method rule provides that any available method may be employed to determine an arm's length result without first disproving the applicability of other methods, if it subsequently is demonstrated that under the facts and circumstances another method provides a more accurate determination, the district director must apply such method. Further guidance concerning the circumstances under which particular methods may apply is provided under the provisions describing each method.

In addition, § 1.482–1T(b)(2)(iii)(B) provides for the application of the best method rule when two or more methods produce inconsistent results. If the best method rule does not clearly indicate the preferred method, this paragraph provides that an additional factor to be considered in selecting a method is whether any of the competing methods produce results that are consistent with results obtained under another appropriate method. A similar analysis applies when two or more applications of the same method produce different results.

Section 1.482–1T(c) provides general guidance for determining comparability. General guidance on comparability is provided in this portion of the regulation because the factors set forth in this section are applicable under all the methods. Section 1.482–1T(c)(1)(i) provides that under all methods an arm's length result generally is estimated based on data derived from comparable uncontrolled taxpayers. In determining whether controlled and uncontrolled taxpayers are comparable, functions, risks, contractual terms, economic conditions, and property or services normally must be compared.

Section 1.482–1T(c)(1)(ii) provides that the relative importance of these factors depends on the method applied, because some methods emphasize product comparability, others emphasize functional comparability, and others emphasize broad similarity in terms of products and functions while comparing financial returns.

Section 1.482–1T(c)(2)(i) provides that for two transactions to be comparable, they do not need to be identical, but only must be sufficiently similar that the uncontrolled transaction provides a reasonable and reliable benchmark for estimating an arm's length result. When there are differences between uncontrolled and controlled transactions, § 1.482–1T(c)(2)(ii) permits a reasonable number of adjustments to account for differences between the transactions if they have a definite and reasonably ascertainable effect on the result. If such adjustments cannot be made (either because of a lack of data or the extent of the adjustments renders them unduly speculative), the uncontrolled transaction normally cannot serve as a comparable transaction. Finally, § 1.482–1T(c)(2)(iii) emphasizes that these general standards of comparability are subject to modification under each method.

Section 1.482–1T(c)(3) describes the factors for determining comparability in more detail. The first factor discussed is functions. A functional analysis compares the activities performed by the parties to two transactions. For two transactions to be comparable, the parties normally should perform the same functions with respect to the transactions. A list of functions that normally must be considered is provided.

The second factor that must be considered is risk. For two transactions to be comparable, the risks borne by the parties to each transaction should be similar. Allocation of risk is potentially subject to manipulation by controlled taxpayers, who may purport to allocate risk inconsistently with the substance of their transactions. Accordingly, § 1.482–1T(c)(3)(ii)(B) provides that with respect to adequately documented risk (as described in § 1.482–1T(c)(3)(ii)(C)), the allocation will be subject to review under the following factors: whether the risks assumed are commensurate with the potential economic benefit from the controlled transaction; whether the controlled taxpayer's capacity to absorb losses attributable to the risk is proportionate to the risk; and whether the controlled taxpayer is engaged in the active conduct of a trade or business to which the risk relates and exercises control over the activities that influence the amount of income or loss to be realized from the controlled transaction. These factors are intended to ensure that a controlled taxpayer only will be considered to have assumed a risk in cases where the economic substance of the transaction is consistent with the assumption of such risk. Section 1.482–1T(c)(3)(ii)(C) provides that, with the exception of routine risks (such as those assigned by operation of the Uniform Commercial Code), the district director may disregard a purported allocation of risk unless the taxpayer executed documentation substantiating the asserted allocation of risk, before the result of the risk was known or reasonably knowable, and the actual conduct of the taxpayers was consistent with such allocation. Finally, § 1.482–1T(c)(3)(ii)(D) provides that risks must be allocated consistently from year to year, so that, for example, a risk that causes a taxpayer to earn a below average return in the early years of an activity will tend to cause above average returns in subsequent years for the same taxpayer. It would not be consistent with the arm's length standard for a party to bear a risk when that risk is most likely to cause losses, and then not to derive the subsequent returns attributable to the assumption of the risk in the preceding years.

The third factor is contractual terms. For two transactions to be comparable, the contractual terms that would affect the prices charged should be comparable.

Fourth, § 1.482–1T(c)(3)(iv) provides that the economic conditions surrounding the two transactions also should be similar. Among the economic conditions that must be considered are the realistic alternatives to the actual transactions that were available to the parties. The treatment of alternatives is addressed in more detail in § 1.482–1T(d)(2)(ii), which is discussed below.

Fifth, § 1.482–1T(c)(3)(v) provides that various degrees of similarity between the products or services that are the subject of the controlled and uncontrolled transactions are required under the various methods, and more specific guidance is provided under those methods.

Section 1.482–1T(c)(4) describes special circumstances that require analysis in addition to that described in § 1.482–1T(c)(3) to determine comparability. First, § 1.482–1T(c)(4)(i) provides that in certain cases the arm's length charge may, for a limited time, differ from that charged in an otherwise comparable uncontrolled transaction because the parties in the controlled transaction have agreed to a market penetration strategy. Next, § 1.482–1T(c)(4)(ii)(A) provides rules for making allocations when the controlled taxpayers operate in different geographic markets than the uncontrolled taxpayers. Adjustments reflecting the effect of such differences may be made to the extent information permitting such adjustments is available, and if not, then information from uncontrolled taxpayers operating in the most similar market for which information is available must be used. Finally, in cases where the controlled taxpayer realizes "location savings" from operating in a low-cost jurisdiction and the uncontrolled taxpayers do not realize such savings, § 1.482–1T(c)(4)(ii)(B) provides that the adjustments to make the two transactions comparable must reflect the allocation of location savings that would occur between unrelated parties, taking into account competitive conditions in the low-cost market; the effect of such competition may be that all or a portion of the location savings might inure to the benefit of the other party to the controlled transaction.

Sections 1.482–1T(c)(4) (iii) and (iv) relates to isolated transactions and mineral transactions, respectively, and are consistent with guidance provided in the current regulations.

Section 1.482–1T(d) describes the scope of review under section 482. Consistent with the current regulations, this section provides that a section 482 allocation may be made whenever the taxable income of a controlled taxpayer differs from what it would have been had the controlled taxpayer been dealing at arms length with an uncontrolled party. More specifically, § 1.482–1T(d)(1)(i) provides that the district director is not limited to cases in which the taxpayer intentionally distorted its taxable income, and § 1.482–1T(d)(1)(ii) provides that the district director may make an allocation even if the ultimate income anticipated (by any party to the controlled transaction) from a series of transactions is not realized. Sections 1.842–1T(d)(1) (iii) and (iv) relate to the interactions between section 482 and the nonrecognition and consolidated returns provisions, respectively, and are consistent with guidance set forth in the current regulations.

Section 1.482–1T(d)(2) provides several limitations on adjustments. Section 1.482–1T(d)(2)(i)(A) provides that no allocation will be made when the controlled taxpayer's results fall within a range of arm's length results (the "arm's length range") derived from two or more applications of the same pricing method to different uncontrolled comparables. This rule responds to comments that were received with respect to the CPM under the proposed regulations, in which many commenters approved of the recognition of a range of arm's length results rather than a single arm's length price. It was felt that requiring a single precise result was inconsistent with the fact that the various methods were not always precise measures of an arm's length result, and ignored the economic fact that there often will be more than one arm's length price. The temporary regulations therefore extend the use of a range to all methods. To form a part of the range, however, each application of the applicable pricing method must independently satisfy the criteria for the application of that method and the general comparability standards under § 1.482–1T(c)(2). With the exception of the comparable profit method, there is no limitation on the extent of the range, although a wide range may suggest that insufficient adjustments have been made for differences between the controlled and uncontrolled transactions.

Section 1.482–1T(d)(2)(i)(C) provides that results falling outside the arm's length range may be adjusted to any point in the range, and ordinarily will be adjusted to the midpoint of the range. Section 1.482–1T(d)(2)(i)(D) states that the district director may properly propose an allocation based on a single comparable uncontrolled price. However, if the taxpayer subsequently demonstrates that its results are within a range established by additional comparable transactions, then no allocation will be made.

Section 1.482–1T(d)(2)(ii) provides that it is not necessary for the district director to determine whether the method that a taxpayer employs to determine the amounts charged in its controlled transactions correspond to the method that the taxpayer might have used in uncontrolled transactions. The only relevant consideration is whether the results of those transactions is arm's length, as determined under one of the prescribed methods.

Section 1.482–1T(d)(3) provides guidelines for allocations under section 482. Section 1.482–1T(d)(3)(i) provides that multiple transactions (generally within the same product grouping) may be aggregated for purposes of determining an arm's length result when they are so interrelated that it is necessary to view them as a whole. Section 1.482–1T(d)(3)(ii) provides that the terms of contractual arrangements will be respected as long as the parties' conduct is consistent with such terms. In addition, when no written agreement exists, but the conduct of taxpayers is consistent with an agreement in substance, the district director may conclude that if such parties were unrelated they would have executed an agreement, and therefore may give effect to such an agreement in determining an arm's length result. This section responds to comments indicating that the proposed regulations gave the district director too much latitude to disregard the existence of contracts between controlled taxpayers, by clarifying that such contracts will only be disregarded when the parties themselves do not in economic substance adhere to their terms.

Section 1.482–1T(d)(3)(iii) provides that the district director ordinarily will evaluate controlled transactions based on the structure of the actual transaction, and will not treat the transaction as if it were structured differently. The district director, may, however, consider the alternatives that were available to the taxpayer in determining whether the terms of the controlled transaction would be acceptable to an uncontrolled taxpayer faced with alternatives similar to those that the controlled taxpayer faced.

This analysis is central to the arm's length standard and the traditional notion of comparability. For example, under the comparable uncontrolled price method, the objective is to identify an alternative price at which the taxpayer could have conducted the controlled transaction. This section merely broadens this traditional analysis by permitting examination of other alternatives when the controlled taxpayer has the option of internally obtaining the goods or services that it obtained in the controlled transaction. In such a case, an otherwise acceptable comparable transaction may not provide a reliable measure of an arm's length result if the controlled taxpayer could have obtained the object of the controlled transaction more cheaply by obtaining it from internal sources. This approach duplicates the analysis that an uncontrolled taxpayer would employ in considering whether to obtain a product from an unrelated party or to produce the product itself, and the amount that it would be willing to pay an unrelated supplier of that product. This section responds to comments on the provisions of the proposed regulations indicating that the district director was authorized to impose his own judgment on taxpayers after the fact and to restructure transactions based on perfect *ex post* knowledge of the results of a series of transactions. This provision significantly limits the ability of the district director to examine alternative, generally limiting such authority to permit examination of alternatives only for the purpose of determining an arm's length price.

Section 1.482–1T(d)(3)(iv) provides that the district director will ordinarily evaluate the results of controlled transactions based on data from uncontrolled taxpayers attributable to the same period as the controlled transactions. The district director may, however, use data from different years under certain specified conditions. Data from multiple years also may be relevant for purposes of certain enumerated provisions. If data from other years is employed, such data should be compared to the controlled taxpayer's results from the same years. Section 1.482–1T(d)(3)(iv)(C) provides that the district director may examine results from other years to determine whether the same economic conditions that caused the uncontrolled taxpayer's result also caused the controlled taxpayer's result. For example, in cases where a controlled taxpayer realizes a loss from a controlled transaction, the taxpayer may seek to demonstrate that the loss is within the arm's length range, based upon losses realized by comparable uncontrolled taxpayers. The district director may consider data from other taxable years to determine whether the same conditions that caused the controlled taxpayer's loss also had a similar effect on the uncontrolled taxpayers. If the controlled taxpayer consistently realized losses from year to year, and the uncontrolled taxpayers with losses on average are profitable over a period of years, then the transactions may not be considered to be sufficiently comparable.

Section 1.482–1T(d)(3)(v) permits evaluation of product lines and statistical groupings in a manner analogous to that permitted under the current regulations.

Section 1.482–1T(e) provides procedural rules with respect to collateral adjustments arising as a result of a section 482 allocation. Such adjustments include compensating, correlative and conforming adjustments.

Section 1.482–1T(e)(2) defines a compensating adjustment as an adjustment made to reflect an arrangement between controlled taxpayers for reimbursement or other payments. The arrangement will be given effect if it is written, it provides for adjustments as necessary to ensure that the controlled transactions produce arm's length results, and the adjustments are made before the filing of the controlled taxpayer's timely U.S. income tax return. The adjustment accrues to the recipient as of the earlier of the date of payment or the last day of the taxable year to which it relates. Finally, § 1.482–1T(e)(2)(iii) provides an anti-abuse rule.

Section 1.482–1T(e)(3) provides guidance on correlative adjustments that is generally consistent with the guidance set forth in the current regulations.

Section 1.482–1T(e)(4), relating to conforming adjustments, provides that the Commissioner may provide revenue procedures under which the district director may permit adjustments to conform a taxpayer's accounts to an adjustment under section 482.

Section 1.482–1T(e)(5) provides rules relating to setoffs that are similar to those provided in the current regulations.

In response to many comments requesting that a safe harbor be included in the regulations, § 1.482–1T(f)(1) provides a safe harbor under section 482. A safe harbor has been provided for taxpayers that have relatively small levels of controlled transactions. While taxpayers electing this safe harbor would face a much reduced compliance burden, some taxpayers may find that the results they achieve under the safe harbor are somewhat less favorable than they could have achieved if they did not elect the safe harbor, and others might achieve a more favorable result, reflecting the consequences of a less flexible but more certain rule.

This provision provides that an electing controlled taxpayer will not be subject to an adjustment under section 482 if its taxable income is determined in accordance with published measures of profitability, and the taxpayer complies with various procedural rules. To be eligible for the safe harbor, either the U.S. party or the foreign counterpart to a cross border controlled transaction must have less than $10 million in gross receipts for the year at issue. For this purpose, all U.S. affiliates must be aggregated with the U.S. controlled taxpayer, and all foreign affiliates that also engage in cross border transactions with the U.S. controlled taxpayer must be aggregated. The definition of an eligible taxpayer does not include the U.S. branch of a foreign corporation. It was felt that relatively few taxpayers would benefit from the inclusion of a branch rule, and that the additional complexity entailed in including branches in the definition was not justified. The election to apply the safe harbor may only be revoked with the consent of the Commissioner, and § 1.482–1T(f)(1)(iv)(C) provides that the election will not apply for any year in which the eligible taxpayer test is not met, but that the election will be effective if the taxpayer meets the test in a succeeding year, subject to an anti-abuse rule.

Section 1.482–1T(f)(2), relating to foreign legal restrictions, is reserved.

Section 1.482–1T(f)(3) provides a coordination rule between sections 936 and 482. It provides that in the case of a controlled taxpayer that has made a cost sharing election under section 936(h), the amount of the cost sharing payment required under section 936 will not be less than that required under the section 482 regulations, and further that such payment may not be computed under the provisions of § 1.482–2T(d)(4).

Section 1.482–1T(g) defines ten terms that are employed in the regulations.

An important term used under several methods is "non-routine intangible." This term has not been defined because it has not been possible to formulate an acceptably precise definition. In general, this term means intangible property that is central to the conduct of a business activity and without which the business activity could not be conducted. It normally would be expected that such property is unique or nearly unique, that its use or application is very valuable, and that there consequently would not be examples of substantially similar transactions between unrelated parties. Examples of such an intangible would be a composition of matter patent for a pharmaceutical, or a manufacturing intangible without which a particular product could not be produced. The term would not include intangible property that is a normal result of conducting a business, such as manufacturing economies resulting from protracted manufacturing operations, or intangible property for which there may be acceptable substitutes available in the marketplace at a comparable price.

Section 1.482–2T(d)

Section 1.482–2T(d) provides that guidance with respect to transfers of property is set forth in §§ 1.482–3T through 1.482–5T.

Section 1.482–3T

Section 1.482–3T provides rules with respect to the transfer of tangible property. Five methods are provided: The comparable uncontrolled price method; the resale price method; the cost plus method; the comparable profits method; and other methods. In addition, a sixth method based on profit splits is proposed in the accompanying notice of proposed rulemaking.

Section 1.482–3T(b) describes the comparable uncontrolled price (CUP) method. It is generally similar to the CUP method under the current regulations. For purposes of the best method rule, a result obtained under the CUP method generally will provide the most accurate measure of an arm's length result. Section 1.482–3T(b)(2) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. The property transferred and the underlying circumstances of the two transactions must be substantially the same. This requirement is met if any minor differences can be reflected by a reasonable number of adjustments that have a definite and reasonably ascertainable effect on the amount charged. If there are material differences between the transactions, this method cannot be applied based on the uncontrolled transaction. Although the text of this rule differs somewhat from its counterpart under the final regulations, the changes were intended to be clarifications of the current standard rather than substantive changes.

Section 1.482–3T(c) describes the resale price method. It is generally similar to the resale price method under the current regulations. In response to comments, the results achieved under the resale price method are not subject to a mandatory check under CPI. For purposes of the best method rule, the resale price method ordinarily will provide an accurate measure of an arm's length result if the controlled taxpayer performs a distribution function and does not add substantial value to the goods that are distributed. Section 1.482–3T(c)(3) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. The controlled and uncontrolled transactions should involve distribution of products within the same broad product categories. Adjustments may be made to account for the differences enumerated in § 1.482–1T(c)(3) between the transactions, but only if such differences have a definite and reasonably ascertainable effect on gross profit.

Section 1.482–3T(d) describes the cost plus method. It is generally similar to the cost plus method under the current regulations. As with the resale price method, the results obtained under the cost plus method are not subject to a mandatory check under the CPI. For purposes of the best method rule, the cost plus method ordinarily will provide an accurate measure of an arm's length result if the controlled taxpayer manufactures or assembles goods that are sold to related parties. Section 1.482–3T(d)(3) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. The controlled and uncontrolled transactions should involve production of products within the same broad product categories or within the same industry. Adjustments may be made to account for the differences enumerated in § 1.482–1T(c)(2) between the transactions, but only if such differences have a definite and reasonably ascertainable effect on gross profit. Section 1.482–3T(d)(3)(iv) provides that in determining an appropriate markup percentage, accounting reclassifications may be required to ensure consistent treatment of the elements that enter into the computation of the production price.

Section 1.482–3T(e) provides that when none of the other enumerated methods can reasonably be applied, any other reasonable method may be used. A taxpayer may employ another method only if such method is disclosed on the taxpayer's U.S. income tax return and the taxpayer prepared contemporaneous documentation supporting the method adopted. Such documentation must explain why the method selected provides the most accurate measure of an arm's length price. The taxpayer must furnish such documentation to the district director within 30 days of a written request for such documentation. Section 1.482–3T(e)(3) provides that application of a method under § 1.482–3T(e) does not in itself satisfy the reasonable cause and good faith exception from the application of penalties under section 6662(e) or 6664(c).

Section 1.482–3T(f) provides rules coordinating the application of the tangible property rules with the rules governing transfers of intangible property.

Section 1.482–4T

Section 1.482–4T provides rules with respect to the transfer of intangible property. Three methods are provided: the comparable uncontrolled transactions method; the comparable profits method; and other methods. In addition, the proposed profit split method would apply with respect to transfers of intangibles.

Section 1.482–4T(b) provides a definition of intangible property that is similar to that provided in the proposed regulations.

Section 1.482–4T(c) describes the comparable uncontrolled transactions (CUT) method. Unlike the proposed regulations, which included two comparable transaction methods, only one such method is provided. Comments on the proposed regulations asserted that the scope of the first such method (the MTM) was too narrow, and further that the CPI should not be a mandatory check on the results obtained under the second method (the CATM). In response to these comments, the MTM and the CATM have been combined into a single method, and the results obtained under this method are not subject to mandatory check under the CPI. The removal of this check is offset by incorporating a reference to profit potential in the definition of comparability, reflecting Congressional concern that royalty rates for "high-profit" intangibles could "be set on the basis of industry norms for transfers of much less profitable items." General Explanation of the Tax Reform Act of 1986, H.R. 3838, Public Law 99–514 (May 4, 1987) at 1014. For purposes of the best method rule, a result obtained under the CUT method generally will provide the most accurate measure of an arm's length result. Section 1.482–4T(c)(2) sets forth specific guidance with respect to the standard of comparability that must be satisfied for an uncontrolled transaction to be sufficiently comparable to a controlled transaction under this method. In addition to the factors enumerated in § 1.482–1T(c)(3), the property transferred in the two transactions must be from the same class of intangible property, relate to the same class of products or services, and have substantially the same profit potential. In addition, § 1.482–4T(c)(2)(B) requires that the underlying circumstances of the two transactions must be sufficiently similar that any differences can be reflected by a reasonable number of adjustments that have a definite and reasonably ascertainable effect on the amount charged. These circumstances are similar to the factors listed in the final regulations. Section 1.482–2(d)(2)(iii).

Section 1.482–4T(d) provides that when none of the other enumerated methods can reasonably be applied, any other reasonable method may be used. A taxpayer may employ another method only if such method is disclosed on the taxpayer's U.S. income tax return, the taxpayer prepared contemporaneous documentation supporting the method adopted, explaining why the other enumerated methods cannot be applied, and explaining why the method selected provides the most accurate measure of an arm's length price, and the taxpayer furnishes such documentation to the district director within 30 days of a written request for such documentation. Section 1.482–4T(d)(3) provides that application of a method under § 1.482–4T(d) does not in itself satisfy the reasonable cause and good faith exception from the application of penalties under section 6662(e) or 6664(c).

Section 1.482–4T(e) provides special rules for the transfer of intangible property. Section 1.482 4T(e)(1) provides that the form of the consideration for a transfer of intangible property must be consistent with that which would be adopted by unrelated parties under comparable circumstances, and that consideration normally should be in the form of a royalty.

Section 1.482–4T(e)(2)(i) provides that if an intangible is transferred for a period in excess of one year, the consideration charged is generally subject to annual adjustment to ensure that it is commensurate with the income attributable to the intangible. This provision is required by the 1986 amendment to section 482.

Section 1.482–4T(e)(2)(ii) sets forth two exceptions from this rule. In response to comments on the proposed regulations that indicated that the scope of the exceptions in the proposed regulations was too narrow, the scope of the exceptions from periodic adjustments has been broadened. The first exception provides that no periodic adjustment will be made if certain specified conditions are met, including that the controlled taxpayers entered into a written license agreement with a comparable term to an actual license agreement between uncontrolled taxpayers, the consideration charged was an arm's length amount under the CUT method for the first year in which substantial royalties were required to be paid under the agreement, the comparable license agreement generally did not permit changes to the royalty, and the aggregate profits earned by the controlled transferee from the exploitation of the intangible fall within a range of the profits that were anticipated when the license agreement was executed. The second exception is generally similar, except that it applies if the consideration was determined to be arm's length under any method other than the CUT method.

Section 1.482–4T(e)(3) provides rules for identifying the controlled party that is considered the developer of an item of intangible property that are similar to the rules set forth in the proposed regulations.

Section 1.482–4T(e)(4) clarifies that the arm's length consideration for an intangible is not limited to the prevailing rates in an industry or the rates paid in any uncontrolled transactions that do not meet the requirements of the CUT method. This provision was included to clarify that arm's length consideration in a controlled transaction, particularly for non-routine intangibles that are not ordinarily transferred between uncontrolled taxpayers, may not be limited by the amount of consideration identified in uncontrolled transactions.

Section 1.482–4T(e)(5), relating to lump sum payments, is reserved.

Section 1.482–5T

Section 1.482–5T describes the comparable profits method. The comparable profits method relies on the general principle that similarly situated taxpayers will tend to earn similar returns over a reasonable period of time. In broad outline this method is similar to the comparable profits method set forth under the proposed regulations. Although this method is included in the methods available under both §§ 1.482–3T (tangible property) and 1.482–4T (intangible property), in response to comments it no longer provides a mandatory check on the results obtained under other methods. This method generally will provide an accurate measure of an arm's length result unless the tested party uses a valuable, non-routine intangible that is either (1) acquired from uncontrolled taxpayers, and the tested party assumes significant risks and possesses the right to significant economic benefits from the use of the intangible, or (2) is self-developed. The comparable profits method generally will not provide an accurate measure of an arm's length result in cases involving non-routine self-developed intangibles or many intangibles that were acquired from third parties because it will be difficult, if not impossible, to locate uncontrolled taxpayers that also possess comparable intangible property, and the comparable profits method could understate the income properly attributable to such assets.

Section 1.482–5T(b) provides that the tested party generally will be the controlled taxpayer that performs the simplest and therefore most easily compared operations. In the case of the license of intangible property, this party normally will be the licensee. Generally the comparable profits method will be applied separately to each industry segment (as defined under the section 6038A regulations). In addition, the comparable profits method only is applied after taking into account all other adjustments under section 482.

Section 1.482–5T(c) provides that the standard of comparability required to apply this method is not as strict as under other methods. Some diversity between the transactions, products and functions of the controlled and uncontrolled taxpayers is acceptable. The degree of comparability achieved will, however, affect the reliability of the results, and the size of the arm's length range, as discussed below.

Section 1.482–5T(c)(2) describes a number of adjustments that should be (but are not required to be) made with respect to the comparable parties. Such adjustments are made only to the extent that they have a definite and reasonably ascertainable effect on operating profits. Accounting reclassifications also may be made to ensure that various items are measured consistently.

Section 1.482–5T(d)(i) provides that a result will be an arm's length result if it falls within the range of constructive operating profits, based on a single profit level indicator, derived from comparable parties. As under the comparable profits method of the proposed regulations, constructive operating profit is calculated by measuring profit level indicators of uncontrolled taxpayers, and applying those indicators to the financial data of the tested party to measure an arm's length result for the tested party.

Unlike the other methods, § 1.4825T(d)(ii) provides that the arm's length range can be determined in two ways, depending on the degree of comparability between the tested party and the uncontrolled taxpayers and the adjustments that were made to account for any differences. If the adjustments described in § 1.4825T(c)(2) have been made, the arm's length range will include all the results obtained, as with the other methods. If, however, the specified adjustments are not made, the range will be limited to either the interquartile range, or the range determined by some other statistically valid method. In the latter case the comparable profits method cannot be used if there are less than four comparable parties.

Section 1.482–5T(e) describes the profit level indicators that may be used under the comparable profits method. They include two types of measures: The rate of return on capital employed and financial ratios. Financial ratios include the ratio of operating profit to sales and the ratio of grass profit to operating expenses. Finally, § 1.482–5T(e)(3) provides that other reliable measures may be employed.

Section 1.482–5T(f) sets forth a number of definitions that are relevant for purposes of the comparable profits method.

Section 1.482–6T

Section 1.482–6T, which deals with the profit split method, is reserved under these temporary regulations. However, the provisions of the profit split method are proposed in the accompanying notice of proposed rulemaking.

Advance Pricing Agreements

Based on the Service's experience to date with the advance pricing agreement program, as well as favorable comments received in response to the proposed regulations, the principle of advance pricing agreements continues to be an integral component of the Service's overall section 482 compliance effort. The Service may execute an advance pricing agreement addressing the prospective application of section 482 to any transaction between or among members of a controlled group. Such agreements may also address any collateral income tax consequences related to such transactions. Where an advance pricing agreement is in effect, an allocation under section 482 is permitted only to the extent provided in the agreement. The procedures for obtaining an advance pricing agreement are contained in Revenue Procedure 91-22, 1991-1 C.B. 526.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

Personnel from the Internal Revenue Service and Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.481-1 Through 1.483-2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "§ 1.482-2" and adding new citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * * Section 1.482-1T also issued under 26 U.S.C. 482 and 936. Section 1.482-2T also issued under 26 U.S.C. 482. Section 1.482-3T also issued under 26 U.S.C. 482. Section 1.482-4T also issued under 26 U.S.C. 482. Section 1.482-5T also issued under 26 U.S.C. 482. Section 1.482-2A also issued under 26 U.S.C. 482.

§§ 1.482-1 and 1.482-2 [Redesignated as §§ 1.482-1A and 1.482-2A]

Par. 1a. Sections 1.482-1 and 1.482-2 are redesignated § 1.482-1A and § 1.482-2A and an undesignated centerheading preceding § 1.482-1A is added to read as follows:

Regulations Applicable for Taxable Years Beginning on or Before April 21, 1993

Par. 2. Sections 1.482-0T through 1.482-7T are added to read as follows:

§ 1.482-0T Outline of regulations under section 482.

This section lists the major headings for § 1.482-1T through § 1.482-5T.

§ 1.482-1T Allocation of income and deductions among taxpayers

(a) In general.
  (1) Purpose and scope.
  (2) Authority to make allocations.
  (3) Taxpayer's use of section 482.
(b) Arm's length standard.
  (1) In general.
  (2) Arm's length methods.
  (i) Methods.
  (ii) Selection of category of method applicable to transaction.
  (iii) Choice of method.
  (A) Best method rule.
  (B) Multiple methods.
  (C) Examples.
(c) Comparability.
  (1) In general.
  (i) Basic factors to be evaluated.
  (ii) Basic types of comparables.
  (2) Standard of comparability.
  (i) In general.
  (ii) Comparability adjustments.
  (iii) Example.
  (iv) Standards of comparability under specific methods.
  (3) Factors for determining comparability.
  (i) Functional analysis.
  (ii) Analysis of risks.
  (A) In general.
  (B) Determination of party that bears risk and income commensurate with risk.
  (C) Documentation of risks assumed.
  (D) Consistent allocation of risk.
  (E) Examples.
  (iii) Contractual terms.
  (iv) Economic conditions.
  (v) Property or services.
  (4) Special circumstances.
  (i) Market share strategy.
  (ii) Different geographic markets.
  (A) In general.
  (B) Example.
  (C) Location savings.
  (D) Example.
  (iii) Isolated transactions.
  (iv) Mineral transactions.
(d) Scope of review.
  (1) In general.
  (i) Intent to evade or avoid tax not a prerequisite.
  (ii) Realization of income not a prerequisite.
  (A) In general.
  (B) Example.
  (iii) Nonrecognition provisions may not bar allocation.
  (iv) Consolidated returns.
  (2) Limitations on allocations.
  (i) No allocation where results are within arm's length range.
  (A) In general.
  (B) Determination of arm's length range.
  (C) Adjustment where taxpayer's results are outside arm's length range.
  (D) Arm's length range not prerequisite to allocation.
  (E) Examples.
  (ii) Allocations apply to results, not methods.
  (iii) Example.
  (3) Rules relating to allocations under section 482.
  (i) Aggregation of transactions.
  (A) In general.
  (B) Examples.
  (ii) Contractual arrangements.
  (iii) Allocation based on taxpayer's actual transactions.
  (iv) Example.
  (v) Multiple year data.
  (A) In general.
  (B) Circumstances warranting consideration of multiple year data.
  (C) Comparable effect over comparable period.
  (D) Examples.
  (vi) Product lines and statistical techniques.
(e) Collateral adjustments with respect to allocations under section 482.
  (1) In general.
  (2) Compensating adjustments.
  (i) In general.
  (ii) Treatment of adjustments.
  (iii) Pattern of abuse.
  (iv) Example.
  (3) Correlative allocations.
  (i) In general.
  (ii) Manner of carrying out correlative allocation.
  (iii) Events triggering correlative allocation
  (iv) Examples.
  (4) Adjustments to conform accounts to reflect section 482 allocations.
  (5) Setoffs.
  (i) In general.
  (ii) Examples.
(f) Special rules.
  (1) Small taxpayer safe harbor.
  (i) In general.
  (ii) Eligible taxpayer.
  (iii) Aggregation.
  (iv) Election to apply the appropriate measure of profitability.
  (2) Effect of foreign legal restrictions [Reserved].
  (3) Coordination with section 936.
  (i) Cost sharing under section 936.
  (ii) Use of terms.
(g) Definitions.
(h) Effective dates.

§ 1.482-2T Determination of taxable income in specific situations

(a) [Reserved].
(b) [Reserved].

(c) [Reserved].
(d) Transfer of property.

§ 1.482-3T Methods to determine taxable income in connection with a transfer of tangible property

(a) In general.
(b) Comparable uncontrolled price method.
  (1) In general.
  (2) Standard of comparability.
  (i) In general.
  (ii) Factors for determining comparability and required adjustments.
  (iii) Arm's length range.
  (iv) Examples.
(c) Resale price method.
  (1) In general.
  (2) Determination of arm's length price.
  (i) In general.
  (ii) Applicable resale price.
  (iii) Appropriate gross profit.
  (iv) Arm's length range.
  (3) Standard of comparability.
  (i) In general.
  (ii) Adjustments for differences between controlled and uncontrolled transactions.
  (iii) Sales agent.
  (4) Examples.
(d) Cost plus method.
  (1) In general.
  (2) Determination of arm's length price.
  (i) In general.
  (ii) Appropriate gross profit markup.
  (iii) Consistency in accounting.
  (iv) Arm's length range.
  (3) Standard of comparability.
  (i) In general.
  (ii) Adjustments for differences between controlled and uncontrolled transactions.
  (iii) Purchasing agent.
  (4) Examples.
(e) Other methods.
  (1) In general.
  (2) Conditions for taxpayer's use of other methods.
  (3) Coordination with penalty provisions.
(f) Coordination with intangible property rules.

§ 1.482-4T Methods to determine taxable income in connection with a transfer of intangible property

(a) In general.
(b) Definition of intangible.
(c) Comparable uncontrolled transaction method.
  (1) In general.
  (2) Standard of comparability.
  (i) In general.
  (ii) Factors to be considered in determining comparability.
  (A) Comparable intangible property.
  (B) Comparable circumstances.
  (iii) Arm's length range.
  (iv) Examples.
(d) Other methods.
  (1) In general.
  (2) Conditions for taxpayer's use of other methods.
  (3) Coordination with penalty provisions.
(e) Special rules for transfers of intangible property.
  (1) Form of consideration.
  (2) Periodic adjustments.
  (i) General rule.
  (ii) Exceptions.
  (A) Comparable uncontrolled transactions.
  (B) Methods other than comparable uncontrolled transaction.
  (3) Development of an intangible.
  (i) Identification of the developer.
  (ii) Allocations with respect to transfers by the developer.
  (iii) Allocations with respect to assistance provided to the developer.
  (iv) Examples.
  (4) Consideration not artificially limited.
  (5) Lump sum payments [Reserved].

§ 1.482-5T Comparable profits method

(a) In general.
(b) Tested party.
  (1) In general.
  (2) Determination by industry segment.
  (3) Adjustments for tested party.
(c) Selection of comparable parties.
  (1) Comparability.
  (2) Adjustments to comparable parties.
(d) Determination of arm's length result.
  (1) In general.
  (2) Arm's length range.
(e) Profit level indicators.
  (1) Rate of return on capital employed.
  (2) Financial ratios.
  (3) Other profit level indicators.
(f) Definitions.
(g) Examples.
§ 1.482-6T Profit split method. [Reserved].
§ 1.482-7T Cost sharing. [Reserved]

§ 1.482-1T Allocation of income and deductions among taxpayers

(a) *In general*—(1) *Purpose and scope.* The purpose of section 482 is to ensure that taxpayers clearly reflect income attributable to controlled transactions, and to prevent the avoidance of taxes with respect to such transactions. Section 482 places a controlled taxpayer on a tax parity with an uncontrolled taxpayer by determining the true taxable income of the controlled taxpayer in a manner that reasonably reflects the relative economic activity undertaken by each taxpayer. This § 1.482-1T sets forth general principles and guidelines to be followed under section 482. Section 1.482-2T provides rules for the determination of the true taxable income of controlled taxpayers in specific situations, including controlled transactions involving loans or advances, services, and property. Sections 1.482-3T through 1.482-5T elaborate on the rules that apply to controlled transactions involving property.

(2) *Authority to make allocations.* If a controlled taxpayer has not reported its true taxable income, the district director may make allocations between or among the members of a controlled group. In such cases, the district director may allocate income, deductions, credits, allowances, basis, or any other item or element affecting taxable income (referred to as "allocations"). The appropriate allocation may take the form of an increase or decrease in any relevant amount.

(3) *Taxpayer's use of section 482.* Section 482 grants no right to a controlled taxpayer to apply the provisions of section 482 at will or to compel the district director to apply such provisions. However, section 482 does not limit a taxpayer's ability to report its true taxable income with respect to its controlled transactions. A controlled taxpayer may report the results of its controlled transactions based upon prices different from those actually charged if necessary to reflect an arm's length result. If reported results differ from transactional results recorded in the regular books and records of the taxpayer, such difference must be accounted for in accordance with the provisions of § 1.482-1T(e)(2) (regarding compensating adjustments). A taxpayer that fails to report its true taxable income with respect to its controlled transactions may be subject to penalties under section 6662(e) and other applicable sections.

(b) *Arm's length standard*—(1) *In general.* In determining the true taxable income of a controlled taxpayer, the standard to be applied in every case is that of a taxpayer dealing at arm's length with an uncontrolled taxpayer. A controlled transaction meets the arm's length standard if the results of that transaction are consistent with the results that would have been realized if uncontrolled taxpayers had engaged in a comparable transaction under comparable circumstances. Thus, for purposes of section 482, the "arm's length result" of a controlled transaction is the amount of consideration that would have been charged or paid (or the profits that would have been earned) in comparable transactions between uncontrolled taxpayers. The comparability of controlled and uncontrolled transactions must be determined under the provisions of paragraph (c) of this section.

(2) *Arm's length methods*—(i) *Methods.* Sections 1.482-2T through 1.482-6T provide specific methods to be used by the district director to test whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length results.

(ii) *Selection of category of method applicable to transaction.* The methods listed in § 1.482-2T apply to different types of transactions (*i.e.*, transfers of property, services, loans or advances, and rentals). Accordingly, the district director must select the appropriate method or methods applicable to controlled transactions, and may apply different methods to related transactions where such transactions are most reasonably tested on a separate basis. For example, where services are provided in connection with the transfer of property, the district director may find it appropriate to separately apply the methods applicable to services and property in order to determine an arm's length result. In addition, other applicable provisions of the Code may affect the characterization of a transaction, and therefore affect the methods applicable under section 482. For example, section 483 may characterize a portion of certain deferred payments as interest income.

(iii) *Choice of method*—(A) *Best method rule.* The arm's length result of a controlled transaction must be determined under the method that provides the most accurate measure of an arm's length result under the facts and circumstances of the transaction under review. The factors to be considered in selecting a method include the completeness and accuracy of the data used to apply each method, the degree of comparability between controlled and uncontrolled transactions, and the number, magnitude, and accuracy of the adjustments required to apply each method. An arm's length result may be determined under any of the available methods without first establishing the inapplicability of any other method. If additional evidence becomes available permitting the application of another method that is more accurate, the district director will apply such method to determine an arm's length result. Additional guidance concerning the circumstances under which particular methods may be applicable is provided under the description of each method in §§ 1.482–2T through 1.482–6T. The rule of this paragraph (b)(2)(iii)(A) is hereinafter referred to as the "best method rule."

(B) *Multiple methods.* If two or more methods produce inconsistent results, the best method rule will be applied to select the method that provides the most accurate determination of an arm's length result under the facts and circumstances, without establishing a priority or presumption of correctness to any one method. If the best method rule does not clearly indicate which method should be preferred, and additional factor that may be taken into account in selecting a method is whether any of the competing methods produce results that are consistent with the results obtained under another appropriate method. Further, in choosing between two or more applications of the same method that produce different results, the fact that another method produces results that are consistent with one or more of the competing applications may be taken into account.

(C) *Examples.* The following examples illustrate this paragraph (b)(2)(iii).

Example 1. (i) Manuco manufactures televisions that it sells to Sub, its wholly owned distributor. Sub resells the televisions to unrelated retailers. To test whether the price Sub paid to Manuco is at arm's length, the district director uses data from Unco, an uncontrolled distributor, to apply the resale price method. Numerous substantial adjustments are made to Unco's gross profit margin to reflect differences between the controlled and uncontrolled transactions. This application of the resale price method indicates that the price Sub paid Manuco for the televisions was not an arm's length price.

(ii) Sub, however, provides to the district director data regarding an uncontrolled transaction that, with a small number of minor adjustments, permits the district director to apply the comparable uncontrolled price method, and indicates that the price Sub paid Manuco was an arm's length price.

(iii) Because it requires fewer and smaller adjustments in this situation, the comparable uncontrolled price method provides the most accurate measure of the arm's length price. Therefore, pursuant to the best method rule of paragraph (b)(2)(iii)(A) of this section the district director uses the comparable uncontrolled price method to determine that the price Sub paid to Manuco is an arm's length price.

Example 2. Markco, a foreign distributor, and Manuco, a U.S. manufacturer, are members of the same group of controlled taxpayers. In 1994, Markco buys radios from Manuco for $10 per unit. In 1996, during an audit for the 1994 taxable year, Manuco presents the district director with information showing that an uncontrolled distributor in similar uncontrolled transactions also bought radios for $10, but several adjustments are required to apply the comparable uncontrolled price method. On the other hand, information derived from other uncontrolled transactions indicates under the resale price method that the arm's length price for the controlled transaction between Markco and Manuco is $15. In addition, application of the comparable profit method provides a range of constructive operating profits that is consistent with the $15 price. The consistency of the results from the application of the resale price method with the results from the application of the comparable profits method may be taken into account in selecting which method to use to test whether the $10 paid by Markco to Manuco is an arm's length price.

Example 3. To determine whether the price paid by controlled taxpayer, Corp, to its wholly owned subsidiary for a product was at arm's length, the district director applies the comparable uncontrolled price method to data from three different uncontrolled transactions, UT1, UT2, and UT3. These three applications of the comparable uncontrolled price method produce different results. To determine whether the three applications of the comparable uncontrolled price method are within the arm's length range as provided in § 1.482–1T(d)(2)(i), the district director applies a second method. The results of UT1 and UT3 under the comparable uncontrolled price method are consistent with the results obtained from the application of the second method. The application of the second method, however, produces results that deviate from the results obtained from the application of the comparable uncontrolled price method with respect to UT2. The consistency of the results from UT1 and UT3 with the application of the second method may be taken into account by the district director in determining the arm's length price for the transaction under review.

(c) *Comparability*—(1) *In general*—(i) *Basic factors to be evaluated.* The arm's length character of a controlled transaction is tested by comparing the results of that transaction with the results of uncontrolled taxpayers engaged in comparable transactions under comparable circumstances. For this purpose, the comparability of transactions and circumstances must be evaluated using the following factors, which are further described in paragraph (c)(3) of this section—

(A) Functions;
(B) Risks;
(C) Contractual terms;
(D) Economic conditions; and
(E) Property or services.

(ii) *Basic types of comparables.* The relative importance of any one of the factors listed may depend upon the pricing method being applied. In particular, some methods focus primarily upon an analysis of whether the controlled and uncontrolled transactions involve the same or similar property or service (product comparables). See, for example, the comparable uncontrolled price method under § 1.482–3T(b), and the comparable uncontrolled transaction method under § 1.482–4T(c). Other methods focus primarily upon an analysis of whether the controlled and uncontrolled taxpayers undertake the same or similar functions, employ similar resources, and bear similar risks (functional comparables). See, for example, the resale price and cost plus methods under § 1.482–3T(c) and (d). Finally, other methods determine an arm's length result by ascribing a similar return on capital to taxpayers that are broadly similar in terms of products and functions. See, for example, the comparable profits method under § 1.482–5T. While the terms product comparables and functional comparables describe the primary focus of various methods, each method ordinarily requires analysis of all of the factors that affect comparability under that method. In particular, the analysis of functions and risks will be essential to the application of any method. Thus, for example, two transactions involving identical products may not be sufficiently comparable for purposes of the comparable uncontrolled price method if the relevant functions, risks, or other factors described in paragraph (c)(3) of this section are different.

(2) *Standard of comparability*—(i) *In general.* For two transactions to be considered comparable, an uncontrolled transaction need not be identical or exactly comparable to the controlled transaction, but must be sufficiently similar that it provides a reasonable and reliable benchmark for determining whether the controlled transaction led to an arm's length result.

(ii) *Comparability adjustments.* Where necessary, a reasonable number of adjustments may be made to the results of an uncontrolled transaction to account for material differences between the controlled and uncontrolled transactions if such differences have a definite and reasonably ascertainable effect on prices or profits. Such adjustments should be based on commercial practices, economic principles, or statistical analyses, as applied to the available data. If the differences can be reflected by such adjustments, then the price, profit, or margin of the uncontrolled transaction, as adjusted, constitutes the arm's length result for the controlled transaction.

(iii) *Example.* The following example illustrates paragraph (c)(2)(ii) of this section.

Example. (i) FS manufactures product XX and sells that product to its parent corporation, P. FS also sells product XX to uncontrolled taxpayers at a price of $100 per unit. Except for the volume of each transaction, the sales to P and to uncontrolled taxpayers take place under substantially the same economic conditions and contractual terms. In uncontrolled transactions, FS offers a 2% discount for quantities of 20 per order, and a 5% discount for quantities of 100 per order. If P purchases product XX in quantities of 60 per order, it may be assumed that the arm's length price to P would be $100, less a discount of 3.5%.

(ii) If P purchases product XX in quantities of 1,000 per order, in the absence of further information about uncontrolled transactions at similar order quantities, a volume discount greater than 5% can be assumed only on the basis of proper economic and statistical analysis, not necessarily a linear extrapolation from the 2% and 5% catalog discounts applicable to sales of 20 and 100 units, respectively.

(iv) *Standards of comparability under specific methods.* The general standards of comparability provided in this paragraph (c)(2) are subject to modification under the specific provisions of certain applicable methods. For example, the provisions of § 1.482–3T(b) impose stricter limitations on the adjustments that are permitted for purposes of the comparable uncontrolled price method. Further, in connection with each of the methods, §§ 1.482–T through 1.482–5T provide more detailed guidance concerning the factors described in paragraph (c)(3) of this section.

(3) *Factors for determining comparability.* The following factors must be considered in determining whether two transactions are comparable. In addition, in certain cases involving special circumstances, the rules under paragraph (c)(4) of this section must be considered.

(i) *Functional analysis.* The determination of whether controlled and uncontrolled transactions are comparable requires a comparison of the functions performed by the controlled and uncontrolled taxpayers. This comparison is based upon a functional analysis, which identifies and compares the economically significant activities actually undertaken or to be undertaken by the taxpayers in both controlled and uncontrolled transactions. A functional analysis is not a pricing method and does not itself determine the arm's length result for the controlled transaction under review. Functions that may need to be accounted for in determining the comparability of two transactions include research and development; product design and engineering; manufacturing or process engineering; product fabrication, extraction, and assembly; purchasing and materials management; marketing and distribution functions including inventory management, warranty administration, and advertising and marketing activities; transportation and warehousing; and managerial, legal, accounting and finance, credit and collection, training, and personnel management services.

(ii) *Analysis of risk*—(A) *In general.* The determination of whether controlled and uncontrolled transactions are comparable requires a comparison of the risks borne in each transaction. This comparison ordinarily consists of a two-step analysis. First, the district director must determine which controlled taxpayer bears the risks associated with the transaction, which includes a consideration of whether the income earned by that controlled taxpayer over a reasonable period of time is commensurate with the risk assumed. Second, the district director must determine whether the risks borne by the controlled taxpayer are comparable to those borne by the uncontrolled taxpayer. Risks that ordinarily must be considered include market risks including fluctuations in cost, demand, pricing, and inventory levels; risks associated with the success or failure of research and development activities; financial risks including fluctuations in foreign currency rates of exchange and interest rates; credit and collection risks; product liability risks; and general business risks related to the ownership of property, plant, and equipment.

(B) *Determination of party that bears risk and income commensurate with risk.* In determining the extent to which a controlled taxpayer actually bears a risk and in determining whether the income earned by the controlled taxpayer over a reasonable period of time is commensurate with the risk assumed, the district director will evaluate the economic substance of the controlled transactions. In particular, the district director will determine whether—

(*1*) The controlled taxpayer has a reasonable opportunity to realize an economic benefit that is commensurate with the risks assumed, and that would cause a similarly-situated uncontrolled taxpayer to bear the risk that the controlled taxpayer assumed;

(*2*) The risks that the controlled taxpayer assumed are proportionate to its financial capacity to fund losses that may be expected to occur as a result of the assumption of such risk; and

(*3*) The controlled taxpayer is engaged in the active conduct of a trade or business to which the risk at issue relates, and carries out substantial managerial and operational control over the principal business activities that directly influence the amount of income or loss to be realized. See § 1.367(a)–2T(b)(2) and (b)(3).

(C) *Documentation of risks assumed.* Notwithstanding paragraph (c)(3)(ii)(B) of this section, the district director may disregard a controlled taxpayer's nominal assumption of a risk unless documentation reflecting the allocation of risks among the controlled taxpayers was executed before the result of such risk was known or reasonably knowable by any such taxpayer, and the actual conduct of the controlled taxpayer is consistent with such documentation. However, this rule does not apply to routine risks that are assumed by a controlled taxpayer under normal commercial practices. Thus, for example, where the risk of loss during shipment is assigned under the Uniform Commercial Code, separate documentation of the allocation of such risk would not be necessary.

(D) *Consistent allocation of risk.* Because parties dealing at arm's length bear risks to obtain the potential for greater returns over a reasonable period of time, the allocation of risks among uncontrolled taxpayers is ordinarily consistent over such a period. Thus, risks must also be allocated consistently among controlled taxpayers over such a period, and not reallocated from year to year in response to changes in market conditions without a corresponding change in the transfer price. Thus, for example, a controlled taxpayer that experiences losses as the result of its assumption of market risk during a market downturn, would ordinarily be expected to receive greater returns during other periods.

(E) *Examples.* The following examples illustrate this paragraph (c)(3)(ii).

Example 1. FD, the wholly-owned foreign distributor of USM, a U.S. manufacturer, buys Widgets from its parent under a written five-year contract that was entered into before any transaction between the two parties. FD has adequate financial capacity to fund losses that may be expected to occur as a result of the transaction. Widgets are a new product in the market in which FD operates. Under the terms of the contract, FD must buy 20,000 units of widgets at $5 per unit for each of the five years of the contract, and FD must finance any marketing strategies to introduce Widgets to the foreign market. In Years 1, 2, and 3, a total of only 10,000 Widgets were sold by FD to unrelated parties at $11 per Widget. However, FD, as required by the contract, bought 20,000 units each year. In Year 4, the demand for Widgets rose dramatically. FD was able to sell its entire inventory of Widgets at $25 per Widget. Because the allocation of the market risks borne by FD was documented in a written agreement entered into before the result of the risk was known or reasonably knowable, and the conduct of FD was consistent with the economic substance of the contract, FD will be deemed to bear the market risk.

Example 2. The facts are the same as in *Example 1*, except that in Year 1 FD has only $100,000 in total capital, including loans. In the subsequent years USM does not make any further capital contributions to FD, and FD is unable to obtain any capital through loans from an unrelated party. However, each year, USM continues to send 20,000 Widgets to FD and permits FD to finance the purchase through an extension of credit. Because FD does not have the financial capacity in Years 1 and 2 to finance the market risk, FD does not in substance bear the risk.

Example 3. A wholly-owned foreign subsidiary of a U.S. parent corporation manufactures a product to the design and specifications of the parent. Substantially all of the subsidiary's output is sold to the parent, and the parent substantially controls the time and volume of the subsidiary's production schedules in order to coordinate the subsidiary's output with the parent's own production and sales requirements. The subsidiary does not bear any market risk associated with products sold to the parent. Because the parent regularly purchases substantially all of the subsidiary's output, the result would be the same whether or not there is a written contract between the parent and subsidiary that expressly provides for the parent's purchase of the subsidiary's output. Sub is, however, entitled to a return on other risks it may bear, such as general business risks.

Example 4. S, a Country X corporation, manufactures small motors that it sells to P, its U.S. parent. P incorporates the motors into various products that P manufactures and sells to uncontrolled customers located in the United States. The contract price of the motors sold to P is expressed in Country X currency. Thus, P documents that it assumes all of the currency risk associated with fluctuations in the exchange rate between the U.S. dollar and the Country X currency in connection with the motor sales. In determining whether the price charged for the motors is arm's length, the district director will consider whether P bears that risk in substance, and whether P's income over a reasonable period of time is commensurate with the risk assumed. For this purpose the district director will not ordinarily determine whether an uncontrolled purchaser of the motors would have been willing to assume the same foreign currency risk, but rather will determine what price an uncontrolled purchaser would have been willing to pay for the motors assuming it had, in fact, assumed the currency risk actually borne by P.

(iii) *Contractual terms.* The determination of whether the controlled and uncontrolled transactions are comparable requires a comparison of the significant contractual terms that could affect the prices that would be charged or paid, or the profit that would be earned in the two transactions. These terms include the form of consideration charged or paid; payment terms or related financing arrangements; the volume of products purchased or sold; warranty obligations; rights to updates, revisions, or modifications; the duration of relevant contracts and related termination or renegotiation rights; and collateral transactions or ongoing business relationships between the buyer and the seller, including arrangements for the provision of ancillary or subsidiary services. If the time for payment of the amount charged in a controlled transaction differs from the time for payment of the amount charged in an uncontrolled transaction, the payment term in the controlled transaction should be adjusted to reflect the payment term of the uncontrolled transaction, even if no interest would be allocated or imputed under § 1.482–2(a) or other applicable provisions of the Internal Revenue Code or regulations.

(iv) *Economic conditions.* The determination of whether the controlled and uncontrolled transactions are comparable requires a comparison of the significant economic factors that could affect the prices that would be charged or paid, or the profit that would be earned in the two transactions. These factors include—

(A) The alternatives realistically available to a buyer and seller, respectively;

(B) The similarity of geographic markets;

(C) The relative size of each market, the extent of the overall economic development in each market;

(D) The level of the market;

(E) The relevant market shares for the products, properties, or services transferred or provided;

(F) The location-specific costs of the factors of production and distribution; and

(G) The extent of competition in each market with regard to the property or services under review.

(v) *Property or services.* The determination of whether controlled and uncontrolled transactions are comparable requires a comparison of the property or services transferred in the transactions. With respect to transfers of tangible or intangible property, the degree of similarity required will vary depending upon the method applied. For guidance concerning the specific standard of comparability applicable to transfers of tangible and intangible property, see §§ 1.482–3T through 1.482–5T.

(4) *Special circumstances*—(i) *Market share strategy.* In certain circumstances, the price for a controlled transfer of property may, for a limited time, be other than the amount charged in an otherwise comparable uncontrolled transaction because the controlled transfer is subject to a pricing strategy that is undertaken to enter new markets, to increase a product's share of an existing market, or to meet competition in an existing market (market share strategy). A controlled transaction may be priced in such a manner only if it can be shown that such price would have been charged in an uncontrolled transaction under comparable circumstances, determined under the factors of paragraph (c)(3) of this section, including in particular the analysis of risk under paragraph (c)(3)(ii) of this section. The following additional conditions must also be met—

(A) The controlled taxpayer is engaged in business strategies reasonably likely to achieve the intended results (*e.g.*, the distributor makes corresponding reductions in the resale price to uncontrolled purchasers;

the distributor engages in substantially greater sales promotion activities with respect to the product involved in the controlled transfer than with respect to other products);

(B) The market share strategy is reasonably likely to result in future profits for the controlled taxpayer that reflect an appropriate return on the costs incurred to implement it;

(C) The market share strategy, the related costs and expected returns, and any agreement between the controlled taxpayers to share the related costs are documented before the strategy is implemented; and

(D) The market share strategy is pursued for a period of time that is reasonable taking into consideration the industry and product in question.

(ii) *Different geographic markets*—(A) *In general.* Uncontrolled comparables ordinarily should be derived from the same geographic market in which the controlled taxpayer operates, since there may be significant differences in the relevant costs and the applicable resale price in different markets. If information from the same market is not available, an uncontrolled comparable derived from a different geographic market may be considered if adjustments are made to account for differences between the two markets. If information permitting such adjustments is not available, then information derived from uncontrolled taxpayers located in the most similar location for which reliable data is available may be used, but use of such information may affect the accuracy of the method applied for purposes of the best method rule. For this purpose, a "geographic market" is any geographic area in which the market conditions for the relevant product or service are substantially the same, and may include multiple countries, depending on the market conditions.

(B) *Example.* The following example illustrates paragraph (c)(4)(ii)(A) of this section.

Example. Manuco, a wholly-owned foreign subsidiary of P, a U.S. corporation, manufactures products in Country Z for sale to P. Information on uncontrolled taxpayers performing comparable functions under comparable circumstances in the same geographic market is not available. Since reliable data from uncontrolled manufacturers in the same geographic market is unavailable, adjusted data from uncontrolled manufacturers in other markets may be considered. In this case, comparable uncontrolled manufacturers are found in the United States. Accordingly, data from the comparable U.S. uncontrolled manufacturers, as adjusted to account for differences between the U.S. and Country Z's geographic market, is used to test the arm's length price paid by P to Manuco.

(C) *Location savings.* If an uncontrolled taxpayer operates in a different geographic market than the controlled taxpayer, adjustments may be necessary to account for significant differences in costs attributable to the geographic locations. These adjustments must be based on the effect such differences may have on the consideration charged or paid in the controlled transfer given the relative competitive positions of buyers and sellers in each location. Thus, the fact that production is less costly in the taxpayer's geographic market ordinarily justifies additional profits only where the location savings would increase the profits of uncontrolled taxpayers operating at arm's length, given the competitive positions of buyers and sellers in that market.

(D) *Example.* The following example illustrates paragraph (c)(4)(ii)(C) of this section.

Example. Couture, a U.S. apparel design corporation, contracts with Sewco, its wholly owned Country Y subsidiary, to manufacture its clothes. Costs of production in Country Y are significantly lower than the costs of manufacturing in the United States. Although clothes with the Couture label sell for a premium price, the actual production of the clothes does not require significant specialized knowledge, and could be performed by several apparel-production firms comparable to Sewco in similar geographic markets. Thus, the fact that production is less costly in Country Y will not, in and of itself, justify additional profits derived from lower costs of manufacturing in Country Y inuring to Sewco, because of the competitive effects attributable to the other producers in similar geographic markets capable of performing the same functions at the same low costs.

(iii) *Isolated transactions.* Isolated transactions between uncontrolled taxpayers, and transactions arranged primarily for the purpose of establishing an arm's length result with respect to a controlled transaction, ordinarily will not constitute comparable transactions for purposes of this section. In the case of tangible property, uncontrolled transactions should ordinarily be significant in number and amount, and should occur in the ordinary course of business in order to be considered comparable uncontrolled transactions for purposes of section 482.

(iv) *Mineral transactions.* The price for a mineral product that is sold at the stage at which mining or extraction ends will be determined under the provisions of §§ 1.613–3 and 1.613–4.

(d) *Scope of review*—(1) *In general.* The authority to determine true taxable income extends to any case in which either by inadvertence or design the taxable income, in whole or in part, of a controlled taxpayer is other than it would have been had the taxpayer, in the conduct of its affairs, been dealing at arm's length with an uncontrolled taxpayer.

(i) *Intent to evade or avoid tax not a prerequisite.* In making allocations under section 482, the district director is not restricted to the case of improper accounting, to the case of a fraudulent, colorable, or sham transaction, or to the case of a device designed to reduce or avoid tax by shifting or distorting income, deductions, credits, or allowances.

(ii) *Realization of income not a prerequisite*—(A) *In general.* The district director may make an allocation under section 482 even if the ultimate income anticipated from a series of transactions has not been or is never realized. For example, if one member of a controlled group sells a product at less than an arm's length price to a second member of the group in one taxable year and the second member resells the product to an unrelated party in the next taxable year, the district director may make an appreciate allocation to reflect an arm's length price for the sale of the product in the first taxable year, even though the second member of the group had not realized any gross income from the resale of the product in the first year. Similarly, if one member of a group lends money to a second member of the group in a taxable year, the district director may make an appropriate allocation to reflect an arm's length charge for interest during such taxable year even if the second member does not realize income during such year. Finally, even if two controlled taxpayers realize an overall loss that is attributable to a particular controlled transaction, an allocation under section 482 is not precluded.

(B) The following example illustrates this paragraph (d)(1)(ii).

Example. Sub is a U.S. subsidiary of Parent, a foreign corporation. Parent manufactures product X and sells it to Sub. Sub functions as a distributor of product X to unrelated customers in the United States. The fact that P may incur a loss on the manufacture and sale of product X does not by itself establish that Sub, dealing with P at arm's length, also would incur a loss. An independent distributor acting at arm's length with its supplier would in many circumstances be expected to earn a profit without regard to the level of profit earned by the supplier.

(iii) *Nonrecognition provisions may not bar allocation.* When necessary to prevent the avoidance of taxes or to clearly reflect income, the district director may make an allocation under section 482 with respect to transactions that otherwise qualify for nonrecognition of gain or loss under applicable provisions of the Internal Revenue Code (such as section 351 or 1031).

(iv) *Consolidated returns.* Section 482 and the regulations under that section apply to all controlled taxpayers, whether the controlled taxpayer files a separate or consolidated U.S. tax return. If a controlled taxpayer files a separate return, its true separate taxable income will be determined. If a controlled taxpayer is a party to a consolidated return, the true consolidated taxable income of the affiliated group and the true separate taxable income of the controlled taxpayer must be determined consistently with the principles of a consolidated return.

(2) *Limitations on allocations*—(i) *No allocation where results are within arm's length range*—(A) *In general.* Uncontrolled taxpayers that engage in comparable transactions under comparable circumstances do not always achieve identical results. Taken together, their differing results, each of which is an arm's length result, will establish a range of arm's length results (arm's length range). Thus, an arm's length result of a controlled transaction is not necessarily a single amount, and a result from a controlled transaction will not be subject to allocation under section 482 if it falls within the arm's length range established by two or more uncontrolled comparables.

(B) *Determination of arm's length range.* The arm's length range is determined by applying a single pricing method using two or more uncontrolled comparables, each of which independently establishes an arm's length result under the comparability analysis of paragraph (c) of this section and the provisions of the applicable method. The arm's length range may not be determined by applying two or more methods with respect to the controlled transaction under review. Although the size of an arm's length range will depend upon the facts and circumstances of each case, an unusually wide range may suggest that there are material differences among the uncontrolled comparables that have not been adequately taken into account, and for which adjustments may be required. For guidance concerning the computation of the arm's length range on the basis of multiple year data, see paragraph (d)(3)(v) of this section. For additional guidance concerning the determination of an arm's length range under the comparable profits method, see § 1.482–5T(d).

(C) *Adjustment where taxpayer's results are outside arm's length range.* If the results of a controlled transaction fall outside the arm's length range, the district director may make allocations that adjust the controlled taxpayer's result to any point within the arm's length range. Such adjustment ordinarily will be to the mid-point of the range.

(D) *Arm's length range not prerequisite to allocation.* The rules of this paragraph (d)(2)(i) do not require that the district director establish an arm's length range prior to making an allocation under section 482. Thus, for example, the district director may properly propose an allocation on the basis of a single comparable uncontrolled price that establishes an arm's length result under the provisions of paragraph (c) of this section and § 1.482–3T (b). However, if the taxpayer subsequently demonstrates that its results are within the range established by additional comparable uncontrolled prices that independently establish an arm's length result, then no allocation will be made.

(E) *Examples.* The principles of this paragraph (d)(2)(i) are illustrated by the following examples. In each example, P and S are members of the same group of controlled taxpayers.

Example 1. P, a U.S. corporation, manufactures product X and sells it to S, which acts as P's exclusive distributor of product X in Country M. The district director applies the resale price method to determine whether the transfer price for product X charged by P to S is at arm's length. The district director determines that the transactions of uncontrolled distributors A, B, and C are comparable, under the provisions of §§ 1.482–1T(c) and 1.482–3T(c)(3), to the controlled transaction between P and S. After making appropriate adjustments in accordance with §§ 1.482–1T(c)(2) and 1.482–3T(c)(3)(ii), the gross profit margins for A, B, and C are 8%, 10%, and 12%, respectively; S's gross profit margin is 9.5%. A range of 8% to 12% gross profit margins is not an unusually wide range given the norms of the industry involved. Therefore, because S's gross profit margin is within the range of gross profit margins earned by a group of uncontrolled comparable distributors, the transfer price charged by P for product X is an arm's length price, and no reallocation under this section is necessary.

Example 2. The facts are the same as in *Example 1*, except that S's gross profit margin is 15%. Since this result is not within the arm's length range, the district director allocates income from S to P in order to decrease S's gross profit margin to an amount that is within the arm's length range. Such adjustment would ordinarily be to the mid-point of the arm's length range, or 10%.

(ii) *Allocations apply to results, not methods.* In determining whether the result of a controlled transaction is arm's length, it is not necessary for the district director to determine whether the method or procedure that a controlled taxpayer employs to set the terms for its controlled transactions corresponds to the method or procedure that might have been used by a taxpayer dealing at arm's length with an uncontrolled taxpayer.

(iii) *Example.* The following example illustrates paragraph (d)(2)(ii) of this section.

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells household appliances. FS operates as P's exclusive distributor in Europe. P annually establishes the price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. FS's aggregate gross margin earned in its distribution business is 18%.

(ii) ED is an uncontrolled European distributor of competing household appliances. After adjusting for minor differences in the level of inventory, volume of sales, and warranty programs conducted by FS and ED, ED's aggregate gross margin is also 18%. Thus, the district director may conclude that the aggregate prices charged by P for its appliances sold to FS are arm's length, without determining whether the budgeting, production, and performance evaluation processes of P are similar to such processes used by ED. In addition, the district director does not need to consider whether P and FS have treated inventory and warranty in the same manner as these factors have been treated by ED and its uncontrolled suppliers, since the results of the controlled transactions are the same as the results of the comparable uncontrolled transactions.

(3) *Rules relating to allocations under section 482.* In determining the extent to which an allocation should be made to reflect the true taxable income of a controlled taxpayer, the district director shall take into consideration the following rules.

(i) *Aggregation of transactions*—(A) *In general.* The district director may consider the combined effect of two or more separate transactions (whether before, during, or after the taxable year under review), where such transactions, taken as a whole, are so interrelated that consideration of multiple transactions is necessary to determine the arm's length consideration for the controlled transactions. Generally, transactions will be aggregated only when they involve related products or services, as defined in § 1.6038A–3(c)(7)(vii).

(B) *Examples.* The following examples illustrate this paragraph (d)(3)(i). In each example, P, S1, S2, and S3 are members of the same group of controlled taxpayers.

Example 1. P enters into a license agreement with S1 that permits S1 to use a proprietary manufacturing process and to sell the output from this process throughout a specified region. S1 uses the manufacturing process and sells its output to S2, which in turn resells the output to uncontrolled parties in the specified region. In testing the arm's length character of the royalty paid by S1 to P, the district director may consider the arm's length character of the transfer prices charged by S1 to S2 and the aggregate profits earned by S1 and S2 from the use of the manufacturing process and the sale to uncontrolled parties of the products produced by S1.

Example 2. S1, S2, and S3 are Country Z subsidiaries of U.S. manufacturer P. S1 is the exclusive Country Z distributor of computers manufactured by P. S2 provides marketing services in connection with sales of P computers in Country Z, and in this regard uses significant marketing intangibles provided by P. S3 administers the warranty program with respect to P computers in Country Z, including maintenance and repair services. In testing the arm's length character of the transfer price paid by S1 to P, of the fees paid by S2 to P for the use of P marketing intangibles, and of the service fees earned by S2 and S3, the district director may consider the combined effects of these separate transactions because they are so interrelated that they are most reasonably analyzed on an aggregate basis.

Example 3. The facts are the same as in *Example 2.* In addition, U1, U2, and U3 are uncontrolled taxpayers that carry out functions comparable to those of S1, S2, and S3, respectively, with respect to computers produced by unrelated manufacturers. R1, R2, and R3 are a controlled group of taxpayers (unrelated to the P controlled group) that also carry out functions comparable to those of S1, S2, and S3 with respect to computers produced by their common parent. Prices charged to uncontrolled customers of the R group differ from the prices charged to customers of U1, U2, and U3. In determining whether the transactions of U1, U2, and U3, or the transactions of R1, R2, and R3 may be reliable uncontrolled comparables, the district director may determine that the interrelated R group transactions are more reliable than the wholly independent transactions of U1, U2, and U3, given the interrelationship of the P group transactions.

Example 4. P enters into a license agreement with S1 that permits S1 to use a propriety process for manufacturing product X and to sell product X to uncontrolled parties throughout a specified region. P also sells to S1 product Y which is manufactured by P in the United States, and which is unrelated to product X. Product Y is resold by S1 to uncontrolled parties in the specified region. In testing the arm's length character of the royalty paid by S1 to P for the use of the manufacturing process for product X, and the transfer prices charged for unrelated product Y, the district director ordinarily would not consider the combined effects of these separate and unrelated transactions.

(ii) *Contractual arrangements.* The district director will ordinarily respect the terms of contractual arrangements between controlled taxpayers if such terms are consistent with the economic substance of the underlying transactions and the actual conduct of the parties. If the conduct of controlled taxpayers is inconsistent with their contractual arrangements, the district director may disregard such arrangements and instead give appropriate consideration to the actual conduct of the taxpayers. Similarly, where the regular and continuing conduct of controlled taxpayers is consistent with an agreement in substance, the district director may disregard the absence of a written document setting forth the terms of such an agreement. For example, when a controlled taxpayer that produces tangible property regularly sells substantially all its output to another member of its controlled group, in determining the producer's true taxable income, the district director may determine from the course of conduct of the controlled parties that the producer does not bear the risk that the buyer will fail to purchase its output, even if there is no written contract that expressly requires the buyer to do so. See *Example 3* of paragraph (c)(3)(ii)(E) of this section.

(iii) *Allocation based on taxpayer's actual transactions.* Except where a controlled transaction lacks economic substance, the district director will test the arm's length character of the results of a taxpayer's transaction as actually structured by the taxpayer, and ordinarily will not treat the transaction as if it has been structured in a different manner. Pursuant to the comparability analysis of § 1.482–1T(c)(3), however, the district director may consider the alternatives available to the taxpayer in determining whether the terms of the controlled transaction would be acceptable to an uncontrolled taxpayer faced with the same alternatives and operating under comparable circumstances. In such cases the district director may adjust the consideration charged in the controlled transaction based on the cost of an alternative, but will not restructure the transaction as if the alternative had been adopted by the taxpayer.

(iv) *Example.* The following example illustrates paragraph (d)(3)(iii) of this section.

Example. P and S are controlled taxpayers. P enters into a license agreement with S that permits S to use a proprietary process for manufacturing product X. Using its sales and marketing employees, S sells product X to related and unrelated customers outside the United States. If the license agreement between P and S has economic substance, the district director ordinarily will not restructure the taxpayer's transaction to treat P as if it had elected to exploit directly the manufacturing process. However, the fact that P could have manufactured product X may be taken into account as an alternative, under § 1.482–1T(c)(3)(iv), in determining the arm's length consideration for the controlled transaction. For an example of such an analysis, see § 1.482–4T(c)(2)(iv).

(v) *Multiple year data*—(A) *In general.* When testing the arm's length character of a controlled transaction, the district director will ordinarily compare the results of the controlled transaction under review with the actual prices charged or paid, or the actual profit earned, in uncontrolled transactions in the same year as the taxable year of the controlled taxpayer that is under review. Where appropriate, however, the district director may consider information about the uncontrolled comparables or the controlled taxpayer for one or more years before or after the year under review. Where data of uncontrolled comparables from multiple years is used, data from the controlled taxpayer for the same years ordinarily must be considered. However, if such data is not available, reliable data from other years, as adjusted under paragraph (c)(2)(ii) of this section, may be used. Where data from multiple years is considered, it may be appropriate to compare the controlled taxpayer's average results over the multi-year period with the average results of the uncontrolled comparables over the same period. See *Example 4* of § 1.482–1T(d)(3)(v)(D).

(B) *Circumstances warranting consideration of multiple year data.* Circumstances that may warrant consideration of information from multiple years include the unavailability of adequate and reliable data for the taxable year under review, the effect of business cycles in the controlled taxpayer's industry, or the effects of life cycles of the product or intangible being examined. Information from one or more years before or after the taxable year under review must ordinarily be considered for purposes of applying the provisions of § 1.482–1T(c)(3)(ii) (analysis of risk), § 1.482–1T(c)(4)(i) (market share strategy), § 1.482–1T(d)(2)(i) (arm's length range), § 1.482–4T(e)(2) (periodic adjustments), and § 1.482–5T (comparable profits method).

(C) *Comparable effect over comparable period.* The district director may review data from multiple years to determine whether the same economic conditions that caused the controlled taxpayer's results had a comparable effect over a comparable period of time on the uncontrolled comparables that establish the arm's length range. For example, where a controlled taxpayer that realizes a loss with respect to a controlled transaction seeks to demonstrate that the loss is within the arm's length range, the district director may take into account data from taxable years other than the taxable year of the transaction to determine whether the same economic conditions that resulted in the controlled taxpayer's loss had a comparable effect over a comparable period of time on the uncontrolled comparables. The rule of this paragraph (d)(3)(v)(C) is illustrated by *Example 3* of paragraph (d)(3)(v)(D) of this section.

(D) *Examples.* The following examples, in which S and P are controlled taxpayers, illustrate this paragraph (d)(3)(v). *Examples 1* and *4* also illustrate the principle of the arm's length range of paragraph (d)(2)(i) of this section.

Example 1. P sold product Z to S for $60 per unit in 1995. Applying one of the methods provided in § 1.482–3T to data from uncontrolled comparables for the same year establishes an arm's length range of prices for the controlled transaction from $52 to $59 per unit. Since the price charged in the controlled transaction falls outside the range, the district director would ordinarily make an allocation under section 482. However, in this case there are short-run factors that affect the results of the uncontrolled comparables (and that of the controlled transaction) that cannot be adequately accounted for by specific adjustments to the data for 1995. Therefore, the district director considers results over multiple years to account for these factors. Under these circumstances, it is appropriate to average the results of the uncontrolled comparables over the years 1993, 1994, and 1995 to determine an arm's length range. The averaged results establish an arm's length range of $56 to $58 per unit. For consistency, the results of the controlled taxpayers must also be averaged over the same years. The average price in the controlled transaction over the three years is $57. Because the controlled transfer price of product Z falls within the arm's length range, the district director makes no allocation.

Example 2. (i) P, a Country X corporation, designs and manufactures machinery in Country X. P's costs are incurred in Country X currency. S is the exclusive distributor of P's machinery in the United States. The price of the machinery sold by P to S is expressed in Country X currency. Thus, S bears all of the currency risk associated with fluctuations in the exchange rate between the U.S. dollar and the Country X currency. The prices charged by P to S for 1995 are under examination. In that year, the value of the dollar depreciated against the currency of Country X, and as a result, S's gross margin was only 8%.

(ii) UD is an uncontrolled distributor of similar machinery that performs distribution functions substantially the same as those performed by S, except that UD purchases and resells machinery in transactions where both the purchase and resale prices are denominated in U.S. dollars. Thus, UD had no currency exchange risk. UD's gross margin in 1995 was 10%. UD's average gross margin for the period 1990 to 1998 has been 12%.

(iii) In determining whether the price charged by P to S in 1995 was arm's length, the district director may consider S's average gross margin for an appropriate period before and after 1995 to determine whether S's average gross margin during the period was sufficiently greater than UD's average gross margin during the same period such that S had a reasonable opportunity to realize above normal profits commensurate with the currency risk it bore throughout the period. See § 1.482–1T(c)(3)(ii).

Example 3. P manufactures product X in Country M and sells it to S, which distributes X in the United States. S realizes losses with respect to the controlled transactions in each of five consecutive taxable years. In each of the five consecutive years a different uncontrolled comparable realized a loss with respect to comparable transactions equal to or greater than S's loss. Pursuant to paragraph (d)(3)(v)(C) of this section, the district director examines whether the uncontrolled comparables realized similar losses over a comparable period of time, and finds that each of the five comparables realized losses in only one of the five years, and their average result over the five-year period was a profit. Based on this data, the district director may conclude that the controlled taxpayer's results are not within the arm's length range over the five year period, since the economic conditions that resulted in the controlled taxpayer's loss did not have a comparable effect over a comparable period of time on the uncontrolled comparables.

Example 4. (i) P manufactures product Y and sells it to S, which acts as P's exclusive distributor of product Y in Country N. The arm's length character of the transfer price charged by P to S for the 1993 taxable year for product Y is tested using the resale price method described in § 1.482–3T(c). For the period 1992 through 1994, S had a gross profit margin for each year of 3%. A, B, C and D are uncontrolled distributors of products that compete directly with product Y in country N. A, B, C and D are uncontrolled comparables within the meaning of § 1.482–1T(g)(10), and after making appropriate adjustments in accordance with §§ 1.482–1T(c)(2) and 1.482–3T(c), the gross profit margins for A, B, C, and D are as follows:

	1992	1993	1994	Average
A	12	2	9	7.67
B	10	13	2	8.33
C	2	9	11	7.00
D	8	11	7	8.67

(ii) Based on this data, the district director may conclude that S's gross margin of 3% is not within the arm's length range, despite the fact that A's gross margin for 1993 was only 2 percent, since the economic conditions that caused S's result did not have a comparable effect over a comparable period of time on the results of A or the other uncontrolled comparables.

(vi) *Product lines and statistical techniques.* The methods described in §§ 1.482–2T through 1.482–5T are generally stated in terms of individual transactions. However, because a taxpayer may have controlled transactions involving many different products, or many separate transactions involving the same product, it may be impractical to analyze every individual transaction to determine its arm's length price. In such cases, it is permissible to determine or verify arm's length results by applying the appropriate methods to the overall results for product lines or other groupings. In addition, the district director may determine or verify the arm's length price of all transactions to a controlled taxpayer by employing sampling and other valid statistical techniques.

(e) *Collateral adjustments with respect to allocations under section 482*—(1) *In general.* The district director will take into account appropriate collateral adjustments that affect the amount or the effect of an allocation under section 482. Appropriate collateral adjustments may include compensating adjustments, correlative adjustments, conforming adjustments, and setoffs, as described in this paragraph.

(2) *Compensating adjustments*—(i) *In general.* Except as provided in paragraph (e)(2)(iii) of this section, in making an allocation under section 482, the district director will take into account the effect of an arrangement between members of the group for reimbursement or other compensating adjustments. Such an arrangement will be taken into account only if the taxpayer establishes that—

(A) The reimbursement or other compensating adjustment is made pursuant to a written agreement between the controlled taxpayers;

(B) The arrangement provides for reimbursement or compensating adjustments among members of the group, as necessary to achieve an arm's length result for the controlled transaction under review; and

(C) The adjustments are made before the taxpayer's timely filing (including extensions) of a U.S. income tax return for the taxable year of the transaction.

(ii) *Treatment of adjustments.* A compensating adjustment under this paragraph (e)(2) will be deemed to accrue to the recipient as of the earlier of the date of actual payment or the last day of the taxable year to which it relates. The adjusted results will constitute the taxable income of the taxpayer for all U.S. income tax purposes. On or before the due date (with extensions) of the taxpayer's U.S. income tax return for the taxable year of the transaction, the parties may satisfy an accrued compensating adjustment in any appropriate manner, including cash payment or adjustment to controlled taxpayers' books and records. Appropriate adjustments to the books and records include offsets to other accounts receivable or payable, recharacterizations of dividends paid, or contributions of capital. Any such adjustment to the books and records will relate to the taxable year giving rise to the compensating adjustment. If the compensating adjustment is not satisfied in such manner by the due date (with extensions) of the taxpayer's U.S. income tax return for the taxable year of the transaction, interest will accrue on the receivable from that date. The compensating adjustment may thereafter be satisfied at any time by cash payment or adjustments to the current taxable year's books and records.

(iii) *Pattern of abuse.* The district director may refuse to take into account a compensating adjustment if the district director determines that the controlled taxpayer has engaged in a pattern of transactions designed to abuse the provisions of this paragraph (e)(2).

(iv) *Example.* The following example illustrates this paragraph (e)(2).

Example. (i) FS is a foreign subsidiary of P, a U.S. corporation. P manufactures and sells a variety of household appliances in the United States. Both P and FS are calendar year corporations. FS operates as P's exclusive distributor of appliances in Europe. FS maintains inventory of various appliances, conducts advertising campaigns on behalf of P, and administers P's warranty program in Europe. P annually establishes the transfer price for each of its appliances sold to FS as part of its annual budgeting, production allocation and scheduling, and performance evaluation processes. P and FS have a written transfer pricing agreement that provides for retroactive price adjustments to reflect actual market conditions in a taxable year. The adjustments are made pursuant to a predetermined formula that is specified in the written agreement.

(ii) For purposes of setting transfer prices for 1994 in December 1993, P estimates that FS's sales volume will be 1,000 Foreign Currency Units (FCUs) and its advertising budget will be 15 FCUs. P also estimates that the average gross margin of comparable uncontrolled distributors in 1994 will be 18%. FS's actual sales volume in 1994 turns out to be only 900 FCUs, and its actual advertising expenses were 25 FCUs. FS's actual gross margin in 1994 was 16%. Pursuant to the transfer pricing agreement and price adjustment formula, P makes a price rebate to FS in January 1995 to take account of differences between budgeted and actual results.

(iii) In July, 1995, P determines that the comparable uncontrolled distributors actually earned an average gross margin of 14% in 1994. Pursuant to the price adjustment formula, FS returns a portion of the rebate it received in January. The compensating adjustments made by P and FS in January and July 1995 will be given effect and will be deemed to have accrued as of December 31, 1994.

(3) *Correlative allocations*—(i) *In general.* When the district director makes an allocation under section 482 (referred to in this paragraph (e)(3) as the "primary" allocation), appropriate correlative allocations will also be made with respect to any other member of the group affected by the allocation. Thus, if the district director makes an allocation of income, the district director will not only increase the income of one member of the group, but correspondingly decrease the income of the other member. In addition, where appropriate, the district director may make such further correlative allocations as may be required by the initial correlative allocation.

(ii) *Manner of carrying out correlative allocation.* The district director shall furnish to the taxpayer with respect to which the primary allocation is made a written statement of the amount and nature of the correlative allocation. The correlative allocation must be reflected in the documentation of the other member of the group that is maintained for U.S. tax purposes, without regard to whether it affects the U.S. income tax liability of the other member for any open year. In some circumstances the allocation will have an immediate U.S. tax effect, by changing the taxable income computation of the other member (or the taxable income computation of a shareholder of the other member, for example, under the provisions of subpart F of the Internal Revenue Code). Alternatively, the correlative allocation may not be reflected on any U.S. tax return until a later year, for example when a dividend is paid.

(iii) *Events triggering correlative allocation.* For purposes of this paragraph (e)(3), a primary allocation will not be considered to have been made (and therefore, correlative allocations are not required to be made) until the occurrence of any of the following events with respect to the primary allocation—

(A) The date of assessment of the tax following execution by the taxpayer of a Form 870 (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) with respect to such allocation;

(B) Acceptance of a Form 870–AD (Offer of Waiver of Restriction on Assessment and Collection of Deficiency in Tax Acceptance of Overassessment);

(C) Payment of the deficiency;

(D) Stipulation in the Tax Court of the United States; or

(E) Final determination of tax liability by offer-in-compromise, closing agreement, or final resolution (determined under the principles of section 7481) of a judicial proceeding.

(iv) *Examples.* The following examples illustrate this paragraph (e)(3). In each example, X and Y are members of the same group of controlled taxpayers and each regularly computes its income on a calendar year basis.

Example 1. (i) In 1996, Y, a U.S. corporation rents a building owned by X, also a U.S. corporation. In 1998 the district director determines that the rental charge paid by Y to X was not at arms's length and proposes to adjust X's income to reflect an arm's length rental charge. X consents to the assessment reflecting such adjustment by executing Form 870, a Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment. The assessment of the tax with respect to such adjustment is made in 1998. Thus, the primary allocation, as defined in paragraph (e)(3)(i) of this section, is considered to have been made in 1998.

(ii) The adjustment made to X's income under section 482 requires a correlative allocation with respect to Y's income. The district director notifies X in writing of the amount and nature of the adjustment made with respect to Y. Y had net operating losses in 1993, 1994, 1995, 1996, and 1997. Although a correlative adjustment will not have an effect on Y's U.S. income tax liability for 1996, an adjustment increasing Y's net operating loss for 1996 will be made for purposes of determining Y's U.S. income tax liability for 1998 or a later taxable year to which the increased net operating loss may be carried.

Example 2. (i) in 1995, X, a U.S. construction company, provided engineering services to Y, a U.S. corporation, in the construction of Y's factory. In 1997, the district director determines that the fees paid by Y to X for its services were not arm's length and proposes to make an adjustment to the income of X. X consents to an assessment reflecting such adjustment by executing Form 870. An assessment of the tax with respect to such adjustment is made in 1997. The district director notifies X in writing of the amount and nature of the adjustment to be made with respect to Y.

(ii) The fees paid by Y for X's engineering services properly constitute a capital expenditure. Y does not place the factory into service until 1998. Therefore, a correlative adjustment increasing Y's basis in the factory does not affect Y's U.S. income tax liability for 1997. However, the correlative adjustment must be made in the books and records maintained by Y for its U.S. income tax purposes and such adjustment will be taken into account in computing Y's allowable depreciation or gain or loss on a subsequent disposition of the factory.

Example 3. In 1995, X, a U.S. corporation, makes a loan to Y, its foreign subsidiary not engaged in a U.S. trade or business. In 1997, the district director, upon determining that the interest charged on the loan was not arm's length, proposes to adjust X's income to reflect an arm's length interest rate. X consents to an assessment reflecting such allocation by executing Form 870, and an assessment of the tax with respect to the section 482 allocation is made in 1997. The district director notifies X in writing of the amount and nature of the correlative allocation to be made with respect to Y. Although the correlative adjustment does not have an effect on Y's U.S. income tax liability, the adjustment must be reflected in the documentation of Y that is maintained for U.S. tax purposes. Thus, for example, the adjustment must be reflected in the determination of the amount of Y's earnings and profits for 1995 and subsequent years, and of any other effect it may have on any person's U.S. income tax liability for any taxable year.

(4) *Adjustments to conform accounts to reflect section 482 allocations.* Pursuant to such applicable revenue procedures as may be provided by the Commissioner, the district director may permit adjustments to conform a taxpayer's accounts to reflect allocations made by the district director under section 482.

(5) *Setoffs*—(i) *In general.* When making an allocation under section 482 to determine the taxpayer's true taxable income for a taxable year, the district director will take into account any other controlled transaction in the same taxable year that is not at arm's length and that would result in a setoff against the allocation that would otherwise be made with regard to the first transaction. The district director will take into account such a setoff only if the taxpayer establishes that the other transaction was not at arm's length and the amount of the appropriate arm's length charge. If the effect of the setoff is to change the characterization or source of the income or deductions, or otherwise distort taxable income, in such a manner as to effect the U.S. tax liability of any member, allocations will be made to reflect the correct amount of each category of income or deductions. In order to establish that a setoff to the adjustments proposed by the district director is appropriate, the taxpayer must notify the district director of the basis of any claimed setoff within 30 days after the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments. For this purpose, the term arm's length refers to the amount defined in paragraph (b) of this section, without regard to the rules in § 1.482–2T under which certain charges are deemed to be equal to arm's length.

(ii) *Examples.* The following examples illustrate this paragraph (e)(5). In each example, P and S are members of the same group of controlled taxpayers.

Example 1. P renders services to S in connection with the construction of S's factory. An arm's length charge for such services, determined under § 1.482–2T(b) would be $100,000. During the same taxable year P makes available to S a machine to be used in such construction. P bills S $125,000 for the services, but does not bill for the use of the machines. No allocation will be made with respect to the excessive charge for services or the undercharge for the machine if P notifies the district director of the basis of any claimed setoff within 30 days after the date of a letter by which the district director transmits an examination report notifying the taxpayer of proposed adjustments, and can establish that the excessive charge for services was equal to an arm's length charge for the use of the machine and if the taxable income and income tax liabilities of P and S are not distorted.

Example 2. The facts are the same as in *Example 1*, except that, if P had reported $25,000 as rental income and $25,000 less service income, it would have been subject to the tax on personal holding companies. Allocations will be made to reflect the correct amounts of rental income and service income.

(f) *Special rules*—(1) *Small taxpayer safe harbor*—(i) *In general.* No allocations will be made under section 482 in the case of an eligible taxpayer that—

(A) Elects the provision of this paragraph (f)(1);

(B) Determines aggregate taxable income from all controlled transactions by applying the appropriate profit level indicator that the Commissioner provides in applicable revenue procedures; and

(C) Complies with the procedural requirements set forth in such revenue procedures.

(ii) *Eligible taxpayer.* An eligible taxpayer is a controlled taxpayer that either—

(A) Is a U.S. person with less than $10 million in sales revenue, as defined in § 1.482–5(f)(1), for the taxable year at issue; or

(B) Is a U.S. person that engages in cross-border transactions with a controlled taxpayer that is foreign (foreign controlled taxpayer) and such foreign controlled taxpayer has less than $10 million in sales revenue for the taxable year at issue. For this purpose, a cross-border controlled transaction is a controlled transaction in which property or services are transferred either to or from the United States by a controlled taxpayer.

(iii) *Aggregation.* (A) For purposes of paragraph (f)(1)(ii)(A) of this section, the sales revenue of all U.S. members of the transferee's controlled group must be aggregated.

(B) For purposes of paragraph (f)(1)(ii)(B) of this section, the sales revenue of all foreign controlled taxpayers with which the U.S. person engaged in cross-border transactions must be aggregated.

(iv) *Election to apply the appropriate profit level indicator.* (A) An eligible taxpayer elects under this paragraph (f)(1) to apply the appropriate profit level indicator by attaching to a timely filed U.S. income tax return a written statement indicating that the provisions of this paragraph (f)(1) are being elected. In addition, the written statement shall contain all other information as may be required in applicable revenue procedures.

(B) An election made pursuant to this paragraph (f)(1) will apply to the taxable year in which it was made and to all subsequent taxable years. An election under this paragraph (f)(1) may be revoked only with the consent of the Commissioner.

(C) An election under this paragraph (f)(1) will not apply in any taxable year in which the controlled taxpayer is not an eligible taxpayer. The election will apply in all subsequent years in which the controlled taxpayer again qualifies as an eligible taxpayer. The election will not apply in a subsequent year, however, if the district director determines that the controlled taxpayer has engaged in a pattern of transactions designed to abuse the provisions of this paragraph (f)(1).

(2) *Effect of foreign legal restrictions.* [Reserved]

(3) *Coordination with section 936*—(i) *Cost sharing under section 936.* If a possessions corporation makes an election under section 936(h)(5)(C)(i)(I), the corporation must make a section 936 cost sharing payment that is at least equal to the payment that would be required under section 482 if the electing corporation were a foreign corporation. In determining the payment that would be required under section 482 for this purpose, the provisions of §§ 1.482–1T and 1.482–4T through 1.482–5T will be applied. The provisions of section 936(h)(5)(C)(i)(II) ("Effect of Election"—electing corporation treated as owner of intangible property) do not apply until the payment that would be required under section 482 has been determined.

(ii) *Use of terms.* A cost sharing payment, for the purposes of section 936(h)(5)(C)(i)(I), is calculated using the provisions of section 936 and the regulations thereunder and the provisions of this paragraph (f)(3). The provisions relating to cost sharing under section 482 do not apply to payments made pursuant to an election under section 936(h)(5)(C)(i)(I). Similarly, a profit split payment, for the purposes of section 936(h)(5)(C)(ii)(I), is calculated using the provisions of section 936 and the regulations thereunder, not section 482 and the regulations thereunder.

(g) *Definitions.* The definitions set forth in paragraphs (g)(1) through (10) of this section apply to §§ 1.482–1T through 1.482–6T.

(1) *Organization* includes any organization of any kind, whether a sole proprietorship, a partnership, a trust, an estate, an association, or a corporation (as each is defined or understood in the Internal Revenue Code or the regulations thereunder), irrespective of the place of its organization, operation, or conduct of its trade or business, and regardless of whether it is a domestic or foreign organization, whether it is an exempt organization, or whether it is a member of an affiliated group that files a consolidated U.S. income tax return, or a member of an affiliated group that does not file a consolidated U.S. income tax return.

(2) *Trade* or *business* includes a trade or business activity of any kind, regardless of whether or where organized, whether owned individually or otherwise, and regardless of the place of operation.

(3) *Taxpayer* means any person, organization, trade or business, whether or not subject to any internal revenue tax.

(4) *Controlled* includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. It is the reality of the control that is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted as a result of the actions of two or more taxpayers acting in concert or with a common goal or purpose.

(5) *Controlled taxpayer* means any one of two or more taxpayers owned or controlled directly or indirectly by the same interests. The term *uncontrolled taxpayer* means any one of two or more taxpayers not owned or controlled directly or indirectly by the same interests.

(6) *Group, controlled group* and *group of controlled taxpayers* mean the taxpayers owned or controlled directly or indirectly by the same interests.

(7) *Transaction* means any sale, assignment, lease, license, loan, advance, contribution, or any other transfer of any interest in or a right to use any property (whether tangible or intangible, real or personal) or money, however such transaction is effected, and whether or not the terms of such transaction are formally documented. A transaction also includes the performance of any services for the benefit of, or on behalf of, another taxpayer.

(8) *Controlled transaction* or *controlled transfer* means any transaction or transfer between two or more members of the same group of controlled taxpayers. The term *uncontrolled transaction* means any transaction between two or more taxpayers that are not members of the same group of controlled taxpayers.

(9) *True taxable income* means, in the case of a controlled taxpayer, the taxable income that would have resulted had it dealt with the other member or members of the group at arm's length. It does not mean the taxable income resulting to the controlled taxpayer by reason of the particular contract, transaction, or arrangement the controlled taxpayer chose to make (even though such contract, transaction, or arrangement is legally binding upon the parties thereto).

(10) *Uncontrolled comparable* means the uncontrolled transaction or uncontrolled taxpayer that is compared with a controlled transaction or taxpayer under any applicable pricing methodology. Thus, for example, when applying the comparable profits method, an uncontrolled comparable is any uncontrolled taxpayer from which data is used to establish a constructive operating profit.

(h) *Effective dates.* These regulations are generally effective for taxable years beginning after April 21, 1993. They will not apply with respect to transfers made or licenses granted to foreign persons before November 17, 1985, or before August 17, 1986, for transfers or licenses to others. Nevertheless, they will apply with respect to transfers or licenses before such dates if, with respect to property transferred pursuant to an earlier and continuing transfer agreement, such property was not in existence or owned by the taxpayer on such date. Although these regulations are generally effective for taxable years as stated, the final sentence of section 482 (requiring that the income with respect to transfers or licenses of intangible property be commensurate with the income attributable to the intangible) is generally effective for taxable years beginning after December 31, 1986. For the period prior to the effective date of these regulations, the final sentence of section 482 must be applied using any reasonable method not inconsistent with the statute. The Internal Revenue Service considers a method that applies these regulations or their general principles to be a reasonable method.

§ 1.482–2T Determination of taxable income in specific situations.

(a) through (c). [Reserved]. (For further information see § 1.482–2A (a) through (c).)

(d) *Transfer of property.* For rules governing allocations under section 482 to reflect an arm's length consideration for controlled transactions involving the transfer of property, see §§ 1.482–3T through 1.482–5T.

§ 1.482–3T Methods to determine taxable income in connection with a transfer of tangible property.

(a) *In general.* The arm's length character of the amount charged in a controlled transfer of tangible property must be determined under one of the five methods listed in this paragraph (a). The five methods must be applied in accordance with the provisions of § 1.482–1T. The selection of a method for the particular transaction under review will be subject to the best method rule of § 1.482–1T(b)(2)(iii)(A). The methods are—

(1) The comparable uncontrolled price method, described in paragraph (b) of this section;

(2) The resale price method, described in paragraph (c) of this section;

(3) The cost plus method, described in paragraph (d) of this section;

(4) The comparable profits method, described in § 1.482–5T; and

(5) Other methods, described in paragraph (e) of this section.

(b) *Comparable uncontrolled price method*—(1) *In general.* Under the comparable uncontrolled price method, the arm's length price for a controlled sale of tangible property is equal to the price paid in a comparable uncontrolled transaction. For purposes of applying the best method rule of § 1.482–1T(b)(2)(iii)(A), the comparable uncontrolled price method, when it can be reasonably applied on the basis of available data, ordinarily will provide the most accurate measure of an arm's length price for the transfer of tangible property. This method relies upon a product comparable, as described in § 1.482–1T(c)(1)(ii). Factors to be considered in the application of this method include the access to relevant pricing and other financial information, and the existence of an active market, which would include contemporaneous transactions between uncontrolled taxpayers involving comparable property.

(2) *Standard of comparability*—(i) *In general.* Whether an uncontrolled

transaction is comparable to a controlled transaction must generally be determined under the standards of § 1.482–1T(c). However, for purposes of the comparable uncontrolled price method, transactions are considered comparable only if the tangible property and circumstances of the controlled transaction are substantially the same as those of the uncontrolled transaction. The tangible property and circumstances of an uncontrolled transaction will be considered substantially the same as those of a controlled transaction only if any minor differences between the transactions either have no effect on the amount charged, or can be accounted for by a reasonable number of adjustments to the uncontrolled transaction. If there are material differences between the controlled and uncontrolled transactions, other methods must be applied, such as the resale price method described in paragraph (c) of this section, the cost plus method described in paragraph (d) of this section, or the comparable profits method described in § 1.482–5T. For example, if the functions performed by the taxpayer in the controlled transaction are materially different from the functions performed in the uncontrolled transaction, the comparable uncontrolled price method cannot be applied.

(ii) *Factors for determining comparability and required adjustments.* The comparability of controlled and uncontrolled transactions, the effect of any differences between them on the amount charged, and any adjustment required under paragraph (b)(2)(i) of this section, depend upon the particular property and circumstances involved. Although all of the factors described in § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(A) Quality of the product;

(B) Sales volume;

(C) The level of the market (*e.g.*, wholesale, retail, etc.);

(D) The geographic market in which the transaction takes place;

(E) Date of the transaction;

(F) The alternative commercial arrangements realistically available to the buyer and seller; and

(G) Intangible property associated with the sale.

(iii) *Arm's length range.* Where two or more uncontrolled transactions independently establish an arm's length price under this paragraph (b), such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(iv) *Examples.* The principles of this paragraph (b) are illustrated by the following examples. In each example, X sells the same product in both controlled and uncontrolled sales:

Example 1. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales price is a delivered price and the uncontrolled sales are made f.o.b. X's factory. Since differences in the contractual terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price, the uncontrolled transactions are comparable for purposes of the comparable uncontrolled price method, provided the adjustments are made to the price of the uncontrollable transaction to reflect such differences.

Example 2. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that X affixes its valuable trademark to the property sold in the controlled transactions, but does not affix its trademark to the property sold in the uncontrolled transactions. Since the effects on price of such differences that are attributable to the intangible property associated with the sale of tangible property are ordinarily significant but not reasonably ascertainable, such differences would ordinarily render the uncontrolled transactions noncomparable for purposes of applying the comparable uncontrolled price method.

Example 3. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same except that X, a manufacturer of business machines, makes certain minor modifications in the physical properties of the machines to satisfy specific requirements of a customer in controlled sales, but does not make these modifications in uncontrolled sales. Since minor physical differences in the product generally have a definite and reasonably ascertainable effect on prices, such differences do not normally render the uncontrolled transactions noncomparable for purposes of applying the comparable uncontrolled price method.

Example 4. The circumstances surrounding the controlled and uncontrolled sales are substantially the same, except that, in the controlled sales, the seller bears the warranty obligations that arise upon the resale of the product. If this difference is minor and the effect of this difference on the price can be reasonably ascertained, for purposes of the comparable uncontrolled price method, the uncontrolled sales will be comparable to the controlled sales.

Example 5. The circumstances surrounding the controlled and uncontrolled sales are substantially the same, except for the fact that the volume of controlled sales is greater than the volume of uncontrolled sales. The volume of controlled sales produces a reasonably ascertainable volume discount. The price of the uncontrolled transaction, adjusted to account for the difference in volume from the controlled transaction, provides an arm's length price of the controlled transaction. See also the *Example* under § 1.482–1T(c)(2)(iii).

Example 6. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales are made into country A and the uncontrolled sales are made into country B. In both controlled and uncontrolled transactions, the buyer is a distributor of X's products at the wholesale market level. In this case, differences in geographic markets may result in differences in significant costs and the applicable resale price. Such differences are material and render the uncontrolled transactions noncomparable to the controlled transactions, even if the effect of any such differences could be reasonably ascertained. However, the uncontrolled sales may qualify as comparable uncontrolled transactions for purposes of applying the resale price method described in paragraph (c) of this section.

(c) *Resale price method*—(1) *In general.* The resale price method tests the arm's length character of a controlled transaction by reference to the gross profit margin realized in comparable uncontrolled transactions. The resale price method measures the value of distribution functions and is ordinarily used in cases involving the purchase and resale of tangible property where the distributor has not added substantial value to the tangible goods by physically altering the goods before resale or by the use of intangible property. For this purpose packaging, repackaging, labelling, or minor assembly do not ordinarily constitute physical alteration. This method relies upon a functional comparable, as described in § 1.482–1T(c)(1)(ii).

(2) *Determination of arm's length price*—(i) *In general.* An arm's length price is determined under the resale price method by subtracting the appropriate gross profit from the applicable resale price for the property involved in the controlled transaction under review.

(ii) *Applicable resale price.* The applicable resale price is equal to either the resale price of the particular item of property involved or the price at which contemporaneous resales of the same property are made. Where the property purchased in the controlled sale is resold to one or more related parties in a series of controlled sales before being resold in an uncontrolled sale, the applicable resale price is the price at which the property is resold to an uncontrolled party, or the price at which contemporaneous resales of the same property are made. In such case, the determination of the appropriate gross profit will take into account the functions of all members of the group participating in the series of controlled sales and final uncontrolled resale, as well as any other relevant factors described in § 1.482–1T(c)(3).

(iii) *Appropriate gross profit.* The appropriate gross profit is computed by multiplying the applicable resale price by the appropriate gross profit margin (expressed as a percentage of total revenue derived from sales) earned in comparable uncontrolled transactions. In order to achieve comparability when calculating the appropriate gross profit margin, the elements that enter into the computation of the sales price and the cost of goods sold of the property involved in the controlled and uncontrolled transactions must be the same. Accounting reclassifications may be required to ensure consistent treatment of such items as discounts, returns and allowances, freight-in and freight-out, insurance, and packaging. Whenever possible, gross profit margins should be derived from comparable uncontrolled purchases and resales of the distributor involved in the controlled sale, because similar characteristics are more likely to be found among different resales of property made by the same distributor than among sales made by other distributors. In the absence of comparable uncontrolled transactions by the same distributor, an appropriate gross profit margin may be derived from comparable uncontrolled transactions of other distributors.

(iv) *Arm's length range.* Where two or more uncontrolled transactions independently establish an arm's length price under paragraph (c)(3) of this section, such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(3) *Standard of comparability*—(i) *In general.* The determination of whether an uncontrolled transaction is comparable to the controlled transaction will be made by applying the standards of § 1.482–1T(c). A distributor's gross profit provides compensation for the performance of distribution functions related to the product or products under review, including an operating profit in return for the distributor's investment of capital and the assumption of risks. Therefore, for purposes of the resale price method, close physical similarity of the property involved in the controlled and uncontrolled transactions is not ordinarily necessary to establish the comparability of the distributor's gross profit margin. For example, distributors of a wide variety of consumer durables might perform comparable distribution functions without regard to the specific durable goods distributed. It would ordinarily be expected, however, that the controlled and uncontrolled transactions involve the distribution of products within the same product categories. In the absence of such sales, the prevailing gross profit margins in the general industry involved may be appropriate.

(ii) *Adjustments for differences between controlled and uncontrolled transactions.* Appropriate adjustments for differences must be made to the gross profit margins earned with respect to uncontrolled transactions, pursuant to the standards of § 1.482–1T(c)(2)(ii). For this purpose, it is necessary to consider operating expenses associated with functions performed and risks assumed. If there are differences in functions performed, the effect on price of such differences is not necessarily equal to the differences in the amount of related operating expenses. Although all of the criteria of § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include—

(A) The inventory levels and turnover rates;

(B) The scope and terms of warranties provided;

(C) Sales, marketing, advertising programs and services, (including promotional programs, rebates, and co-op advertising);

(D) Sales volumes;

(E) The level of the market;

(F) Foreign currency risks; and

(G) Extensions of credit and payment terms.

(iii) *Sales agent.* Where the controlled taxpayer is comparable under the standards of comparability under paragraph (c)(3) of this section and § 1.482–1T(c) to a sales agent that does not take title to goods, the commission earned by such sales agent, expressed as a percentage of the uncontrolled sales price of the goods involved, may constitute the appropriate gross profit margin.

(4) *Examples.* The following examples illustrate this paragraph (c).

Example 1. A controlled taxpayer sells property to another member of its controlled group that resells the property in uncontrolled sales. If the applicable resale price of the property involved in the controlled sale is $100 and the appropriate gross profit margin for resales is 20%, the arm's length price of the controlled sale is $80 ($100 minus 20% x $100).

Example 2. (i) A controlled taxpayer, P, sells property to another member of its controlled group, S, which resells such property in uncontrolled sales. S's total reported cost of goods sold is $800, consisting of $600 for property purchased from P and $200 of other costs of goods sold incurred to unrelated parties. S's applicable resale price and reported gross profit are as follows:

Applicable resale price	$1000
Cost of goods sold:	
Cost of purchases from P	600
Costs incurred to unrelated parties	200
Reported gross profit	$200

(ii) The district director determines that the appropriate gross profit margin is 25%. Therefore, S's appropriate gross profit is $250 (*i.e.*, 25% of the applicable resale price of $1000). Because S is incurring costs of sales to unrelated parties, the arm's length price for property purchased from P must be determined under a two-step process. First, the appropriate gross profit ($250) is subtracted from the applicable resale price ($1000). The resulting amount ($750) is then reduced by the costs of sales incurred to unrelated parties ($200). Therefore, the arm's length price in this case equals $550 (*i.e.*, $750 minus $200).

Example 3. If X sells a product to Y in a controlled sale, Y sells the product to Z in a controlled sale, and Z sells the product in an uncontrolled sale, the applicable resale price is the price at which Z sold the product in the uncontrolled sale. The determination of the appropriate gross profit margin will take into account the functions performed by X, Y, and Z, as well as relevant factors described in § 1.482–1T(c).

Example 4. (i) S, a domestic corporation, distributes clothing that it purchases from its foreign parent corporation. S's gross profit margin is 25%. Another domestic corporation, U, distributes comparable clothing that it purchases from uncontrolled taxpayers. U's gross profit margin also is 25%. S's controlled transaction and U's uncontrolled transaction are comparable under paragraph (c)(3) of this section and no adjustment for differences in functions or circumstances is required under § 1.482–1T(c). However, U treats warranty as expenses included in cost of goods sold while S treats warranty as an operating expense. Accordingly, adjustments are required to U's gross margin to ensure accounting consistency between U and S.

(ii) U's warranty represents 10% of U's total revenue from sales. After reclassifying the expense as below-the-line expenses, U's gross profit margin is 35%. Thus, S's appropriate gross profit margin is 35%.

Example 5. P and S are members of the same controlled group. S purchases electric mixers from P and electric toasters from unrelated parties. S performs comparable functions with respect to resales of both the mixers and the toasters, except that it does not warrant the toasters, but does provide a 90-day warranty for the mixers. S normally earns a gross profit on toasters of 20% of gross selling price. The 20% gross profit on the resale of toasters must be adjusted to reflect the difference in functions (the warranty), and as adjusted, is an appropriate gross profit margin.

Example 6. (i) P manufactures Product X, an unbranded widget, and sells it to S, its wholly owned subsidiary. S acts as a distributor of Product X in country M, and sells it to uncontrolled taxpayers in that country. Uncontrolled distributors A, B, and C distribute competing products in country M. All such products are unbranded, and the resale price in country M is $100 per unit.

(ii) Based on an analysis of the functions performed and risks assumed by S and by A, B, and C and a review of their financial statements, the district director has determined the following for 1994:

	S	A	B	C
Reported gross profit ($)	18	22	14	16
Accounting reclassifications	....	(2)	4	1
Comparability adjustments:				
Inventory	....	2	(1)	....
Advertising	....	(2)	2	1
Warranty	....	1	(2)	(1)
Volume	....	....	(1)	(1)
Adjusted gross profit	($)18	20	15	16

(iii) Applying the resale price method to test the arm's length character of the amount paid by P for the distribution functions performed by S, the district director determines that any gross profit between $15 and $20 will produce an arm's length margin, and any price for product X between $80 and $85 would be an arm's length price.

Example 7. The facts are the same as in *Example 6*, except that Product X is a branded widget and the resale price in country M is $110. P owns the worldwide rights to the brand name, including in country M. The district director determines that there has been no transfer of an intangible, and that P retains all rights to the brand name. The district director determines that the resale price method applies to price the distribution functions of S, and that the transactions of distributors A, B, and C are comparable uncontrolled transactions. No additional comparability adjustments are required. Because the entire value of the brand name should inure to the benefit of P, S should continue to earn gross profit of between $15 and $20 to compensate it for its distribution functions. An arm's length transfer price would be any price between $90 and $95.

Example 8. (i) The facts are the same as in *Example 7*, except that the brand name is not widely known within country M, and it does not command any price premium over its competitors. Thus, the resale price of Product X is $100, and the arm's length transfer price in 1994 is between $80 and $85. In year 1996, P and S decide to develop a premium image for Product X in country M. S is to supervise the advertising and other marketing efforts that will be required to develop the brand name in country M. S increases strategic advertising and promotion expenses by $5, for which it is not directly reimbursed by P. However, P reduces the transfer price from $82 to $77.

(ii) The district director determines that there has been no transfer of an intangible from P to S in 1996, and that the resale price method applies to test the arm's length character of the price paid by S to P for product X. The transactions of distributors A, B, and C are comparable uncontrolled transactions after the adjustments shown in *Example 6* are made. However, an additional comparability adjustment is required to reflect the $5 additional advertising and promotional activities undertaken by S. Thus, the district director determines that the adjusted gross profit margins of distributors A, B, and C for 1996 are as follows:

	S	A	B	C
Reported gross profit ($)	23	22	14	16
Accounting reclassifications	....	(2)	4	1
Comparability adjustments:				
Inventory	....	2	(1)	....
Advertising	....	2	7	6
Warranty	....	1	(2)	(1)
Volume	....	....	(1)	(1)
Adjusted gross profit	($)23	25	20	21

(iii) Thus, the district director determines that S should earn a gross profit of between $20 and $25 and an arm's length transfer price in 1996 would be any price between $75 and $80.

Example 9. The facts are the same as in *Example 8*, except that the brand name for Product X takes on value and begins to command a premium price in the marketplace. The value should inure to the benefit of P since there has been no transfer to S of any intangible rights in the brand name. Thus, as the applicable resale price goes up, the transfer price would go up accordingly. In addition, if S begins to reduce its advertising and promotional efforts, the comparability analysis would be adjusted to reflect that change, and the transfer price would again increase.

Example 10. (i) P manufactures and sells Product X to S, its wholly owned subsidiary, and to A, B, and C, which are uncontrolled taxpayers comparable to S. P sells Product X to S, A, B, and C under comparable circumstances for $82. In 1995, S decides to adopt a new marketing strategy and intends to develop a brand name, XY, for Product X with the expectation that it will command a premium price in the marketplace. Thus, S increases its expenditures for strategic advertising and promotion by $5, for which it is not directly reimbursed by P. Moreover, P does not reduce the transfer price below $82. In 1996, Product XY begins to command a price premium in the marketplace, and the resale price for Product XY increases from $100 to $110. P increases its price to S to $92.

(ii) There has been no transfer of an intangible from P to S since S has invested in the development of its own intangible. The district director applies the resale price method to test the arm's length character of the transfer price for Product XY in both 1995 and 1996. In 1995, the investment does not give rise to a price premium. Thus, no comparability adjustment is made to reflect S's investment in strategic advertising intended to develop S's brand name since that investment has not resulted in a price premium and therefore, has not had an effect on S's gross profit in that year. In 1996, as the brand name takes on value and begins to command a price premium, an adjustment must be made to the gross profit margins of the uncontrolled distributors to reflect S's increase in the resale price of Product XY. Assuming the gross profit of distributors A, B, and C is $20, $15, and $16, respectively, after adjustments for differences other than the increase in the S's resale price of product XY, then a further adjustment to their gross profit is made for the difference in market price premium, as follows:

	S	A	B	C
Partially adjusted gross profit ($)	18	20	15	16
Adjustment for price premium	....	10	10	10
Adjusted gross profit ($)	18	30	25	26

S's appropriate gross profit should range between $25 and $30. By increasing the transfer price of product XY sold to S in 1996, P, in effect, obtained the benefit of the price premium that should have insured to S, as a result of its successful market development strategies. Thus, an arm's length price would be any price between $80 and $85 and the $92 price charged by P to S in 1996 is not arm's length.

Example 11. (i) P has developed and manufactures Product X, a diskette that contains proprietary computer software. The computer software can be used without significant ' systems engineering" or "application engineering" by the ultimate customer, and is sold through common retail outlets. P sells the diskette to S, its controlled distributor, and S distributes to diskette to uncontrolled computer sales outlets in country M.

(ii) Regardless of whether the taxpayer characterizes the controlled transaction as a transfer of tangible or intangible property, the district director determines that an analysis of the functions performed and risks assumed by S demonstrates that these functions and risks do not materially differ from the functions and risks of distributors A, B, and C. Thus, the district director determines that the resale price method would apply to the price paid by S for Product X. The value of the software itself (an intangible) is reflected in the resale price of the diskette when it is sold to the uncontrolled computer sales outlets, and is, therefore, established by the marketplace. The entire value of the intangible inures to the benefit of P.

(d) *Cost plus method*—(1) *In general.* The cost plus method tests the arm's length character of a controlled transaction by reference to the gross profit markup realized in comparable uncontrolled transactions. The cost plus method is ordinarily used in cases involving the manufacture, assembly, or other production of goods that are sold to related parties. This method relies upon a functional comparable, as described in § 1.482–1T(c)(1)(ii).

(2) *Determination of arm's length price*—(i) *In general.* An arm's length price for the controlled transfer is equal to the controlled taxpayer's costs of producing the property involved in the controlled transaction plus an amount equal to those costs multiplied by the appropriate gross profit markup.

(ii) *Appropriate gross profit markup.* The appropriate gross profit markup is equal to the gross profit earned in comparable uncontrolled transactions, expressed as a percentage of cost. Whenever possible, the gross profit markup should be derived from comparable uncontrolled sales made by the taxpayer involved in the controlled sale, because similar characteristics are more likely to be found among sales of property made by the same producer than among sales by other producers. In the absence of such sales, an appropriate gross profit markup may be derived from comparable uncontrolled sales of other producers whether or not such producers are members of the controlled group.

(iii) *Consistency in accounting.* The costs of producing the property involved in the controlled transaction and the costs that enter into the computation of the appropriate gross profit markup must be computed in a consistent manner in accordance with sound accounting practices for allocating and apportioning costs, which neither favors nor disfavors controlled transactions in comparison with the uncontrolled transaction. Thus, if the costs used in computing the appropriate gross profit markup are comprised of the full cost of goods sold, including direct and indirect costs, then the cost of producing the property involved in the controlled transaction must be comprised of the full cost of goods sold, including direct and indirect costs. However, if the costs used in computing the appropriate gross profit markup are comprised only of direct costs, then the costs of producing the property involved in the controlled transaction must be comprised only of direct costs. The term "cost of producing" includes the cost of acquiring property that is held for resale.

(iv) *Arm's length range.* Where two or more uncontrolled transactions independently establish an arm's length price under this paragraph (d), such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(3) *Standard of comparability*—(i) *In general.* The determination of whether an uncontrolled transaction is comparable to the controlled transaction will be made by applying the standards of § 1.482–1T(c). A producer's gross profit markup provides compensation for the performance of the production functions related to the product or products under review, including an operating profit for the producer's investment of capital and assumption of risks. Therefore, for purposes of the cost plus method, close physical similarity of the property involved in the controlled and the uncontrolled transactions is not ordinarily necessary to establish the comparability of the producers' gross profit markups. It would ordinarily be expected, however, that the controlled and uncontrolled transactions involve production of products within the same product categories. For example, producers of a wide variety of components for consumer electronics might perform comparable manufacturing and assembly functions without regard to the specific products produced, but producers of pharmaceuticals may not be comparable to producers of apparel. In the absence of such sales, the prevailing gross profit markup in the general industry involved may be appropriate.

(ii) *Adjustments for differences between controlled and uncontrolled transactions.* Appropriate adjustments for differences must be made to the gross profit with respect to comparable uncontrolled transactions, pursuant to the standards of § 1.482–1T(c)(2)(ii). For this purpose, it is necessary to consider operating expenses associated with functions performed and risks assumed. If there are differences in functions performed, the effect on price of such differences is not necessarily equal to the differences in the amount of related operating expenses. Although all of the criteria of § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include—

(A) The complexity of manufacturing or assembly;

(B) Manufacturing, production, and process engineering;

(C) Procurement, purchasing, and inventory control activities;

(D) Testing functions;

(E) Selling, general, and administrative expenses;

(F) Foreign currency risks; and

(G) Extension of credit and payment terms.

(iii) *Purchasing agent.* Where a controlled taxpayer is comparable under the criteria under this paragraph (d)(3) and § 1.482–1T(c)(3) to a purchasing agent that does not take title to property, the commission earned by such purchasing agent, expressed as a percentage of the purchase price of the goods, may constitute the appropriate gross profit markup.

(4) *Examples.* The following examples illustrate the principles of this paragraph (d). In these examples, X and Y are members of the same group of controlled taxpayers.

Example 1. (i) X is a domestic manufacturer of computer chips that sells computer chips to its foreign subsidiary Y. X earns an 8% gross profit markup with respect to its manufacturing operations. UT1, UT2, and UT3 are domestic computer chip manufacturers that sell to uncontrolled foreign purchasers. UT1, UT2, and UT3 earn gross profits markups with respect to their manufacturing operations that range from 6% to 8%.

(ii) The controlled sales by X, and the uncontrolled sales by UT1, UT2, and UT3 are comparable under paragraph (d)(3) of this section. X accounts for supervisory, general, and administrative costs as operating expenses, which are not allocated to its sales to Y. The gross profit markups of UT1, UT2, and UT3, however, reflect supervisory, general, and administrative expenses because they are accounted for as costs of goods sold. Accordingly, the gross profit markups of UT1, UT2, and UT3 must be adjusted as provided in paragraph (d)(3)(ii) of this section to provide accounting consistency.

(iii) After subtracting these expenses from the cost of goods sold of UT1, UT2, and UT3, the gross profit markups of UT1, UT2, and UT3 are between 10% and 12%. Thus, X's 8% gross profit markup is not within the range established by the results of UT1, UT2, and UT3 (assuming no other adjustments are required for other differences that may exist between X and UT1, UT2, and UT3). Consequently, the price at which X sells compact disc players to Y is not arm's length

Example 2. The facts are the same as in *Example 1*, except that under its contract with Y, X uses materials consigned by Y. UT1, UT2, and UT3, on the other hand, purchase their own materials, and their gross profit markups are determined by including the costs of material. The fact that X does not carry an inventory risk by purchasing its own materials while the uncontrolled producers carry inventory is a significant difference that may require an adjustment if the difference has an effect on the gross profit markups of the uncontrolled producers. Inability to reasonably ascertain the effect of the difference on the gross profit markups would render UT1, UT2, and UT3 noncomparable for purposes of applying the cost plus method.

(e) *Other methods*—(1) *In general.* Where none of the methods listed in paragraph (a) (1), (2), (3), or (4) of this section can reasonably be applied under the facts and circumstances of a particular case, another method may be used to determine the arm's length consideration for the controlled transaction. Any method used under this paragraph (e) must be applied in accordance with the provisions of § 1.482–1T.

(2) *Conditions for taxpayers's use of other methods.* A taxpayer may use a method under this paragraph (e) to establish the arm's length consideration for a controlled transaction only if—

(i) The taxpayer discloses the use of the method by attaching an appropriate disclosure statement to the timely filed U.S. income tax return for the taxable year of the controlled transaction;

(ii) The taxpayer prepares contemporaneous supporting documentation setting forth the specific analysis adopted, an analysis of why the method used provides the most accurate measure of an arm's length price, and the data supporting its application; and

(iii) Within 30 days of a written request, the taxpayer furnishes to the district director the documentation described in paragraph (e)(2)(ii) of this section.

(3) *Coordination with penalty provisions.* In the case of a taxpayer that uses a method under this paragraph (e), compliance with the documentation and disclosure requirements of paragraph (e)(2) of this section will not in itself be sufficient to establish reasonable cause and good faith under section 6662(e)(3)(B) or 6664(c)(1) and the regulations thereunder. However, the district director may otherwise determine that the taxpayer acted with reasonable cause and good faith.

(f) *Coordination with intangible property rules.* The methods described in this § 1.482–3T will ordinarily not take adequate account of significant, non-routine intangibles that may be transferred or used with the sale of tangible property. In such cases, it may be necessary to adjust results obtained under the methods described in this section using the principles of § 1.482–4T. Similarly, in appropriate circumstances the methods described in this § 1.482–3T may be applied in connection with the determination of the arm's length consideration for transfers of intangible property, for example, where the value of the property transferred reflects a combination of tangible and intangible elements.

§ 1.482–4T Methods to determine taxable income in connection with a transfer of intangible property.

(a) *In general.* The arm's length character of the amount charged in a controlled transfer of intangible property must be determined under one of the three methods listed in this paragraph (a). The methods must be applied in accordance with the provisions of § 1.482–1T. The selection of a method for a particular transactions under review will be subject to the best method rule of § 1.482–1T(b)(2)(iii)(A). The arm's length consideration for the transfer of an intangible determined under this section must be commensurate with the income attributable to the intangible. The available methods are—

(1) The comparable uncontrolled transactions method, described in paragraph (c) of this section;

(2) The comparable profits method, described in § 1.482–5T; and

(3) Other methods, described in paragraph (d) of this section.

(b) *Definition of intangible.* For purposes of section 482, the term "intangible" means any commercially transferable interest in any item including in the following six classes of intangibles, that has substantial value independent of the services of any individual—

(1) Patents, inventions, formulae, processes, designs, patterns, or know-how;

(2) Copyrights and literary, musical, or artistic compositions;

(3) Trademarks, trade names, or brand names;

(4) Franchises, licenses, or contracts;

(5) Methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data; and

(6) Other similar items.

(c) *Comparable uncontrolled transaction method*—(1) *In general.* Under the comparable uncontrolled transaction method, the arm's length consideration for a controlled transfer of intangible property is equal to the consideration charged or incurred in a comparable uncontrolled transaction. For purposes of applying the best method rule of § 1.482–1T(b)(2)(iii)(A), the comparable uncontrolled transaction method, when it can reasonably be applied on the basis of available information, ordinarily will provide the most accurate measure of an arm's length charge for the transfer of intangible property. Factors to be considered in the application of this method include access to relevant pricing and other financial information and the existence of an active market, including contemporaneous transactions involving comparable property between uncontrolled taxpayers. The amount determined under this method may be adjusted as required by paragraph (e)(2) of this section.

(2) *Standard of comparability*—(i) *In general.* Whether an uncontrolled transaction is comparable to a controlled transaction must generally be determined under the standards of § 1.482–1T(c). For purposes of this section, an uncontrolled transaction is comparable to a controlled transaction if it involves comparable intangible property and takes place under comparable circumstances. The intangible property involved in an uncontrolled transaction is comparable to the property involved in the controlled transaction if the requirements of paragraph (c)(2)(ii)(A) of this section are met. The circumstances involved in an uncontrolled transaction are comparable to those of a controlled transfer if any differences can be accounted for under § 1.482–1T(c)(2)(ii).

(ii) *Factors to be considered in determining comparability*—(A) *Comparable intangible property.* The intangible property involved in an uncontrolled transfer will be considered comparable to the intangible property involved in the controlled transfer if both intangibles—

(*1*) Are in the same class of intangibles, as defined under paragraph (b) of this section;

(*2*) Relate to the same type of products, processes, or know-how within the same general industry or market; and

(*3*) Have substantially the same profit potential. For this purpose, the profit potential of an intangible is measured by the net present value of the benefits to be realized (based on prospective profits to be realized or costs to be saved) through the use or subsequent transfer of the intangible, taking into consideration the capital investment and startup expenses required, the risks to be assumed, and other relevant considerations.

(B) *Comparable circumstances.* In evaluating the comparability of the circumstances of the controlled and uncontrolled transactions, although all of the factors described in § 1.482–1T(c)(3) must be considered, specific factors that may be particularly relevant to this method include the following—

(*1*) The terms of the transfer, including the exploitation rights granted in the intangible, the exclusive or nonexclusive character of any rights granted, any restrictions on use, or any limitations on the geographic area where the rights may be exploited;

(*2*) The stage of development of the intangible (including, where appropriate, necessary governmental approvals, authorizations, or licenses);

(*3*) Any rights to receive periodic updates or improvements to the intangible;

(*4*) The uniqueness of the property and the period for which it remains unique, including the degree and duration of protection afforded to the property under the laws of the relevant countries;

(*5*) The duration of the license contract, or other agreement, and any termination or renegotiation rights;

(*6*) Any economic and product liability risks to be assumed by the transferee;

(*7*) The existence and extent of any collateral transactions or ongoing business relationships between the transferee and transferor; and

(*8*) The functions to be performed by the transferor and transferee, including any ancillary or subsidiary services.

(iii) *Arm's length range.* If two or more comparable uncontrolled transactions independently meet the standard of comparability of this paragraph (c)(2), such transactions will establish an arm's length range, as described in § 1.482–1T(d)(2)(i).

(iv) *Example.* The following example illustrates the principles of this paragraph (c).

Example. (i) P and S are controlled taxpayers. P licenses to S a proprietary process that permits the manufacture of product X at a substantially lower cost than otherwise would be possible. If P directly manufactured and sold product X, a selling price of $2 per unit would cover its costs and provide a reasonable return on its functions and associated risks. Using the proprietary process, S manufactures product X and sells it to related and unrelated parties for a price of $6 per unit.

(ii) an uncontrolled transaction involving the license of a similar proprietary process provides for the payment of a royalty equivalent to $1 per unit. In testing the comparability of the controlled and uncontrolled transactions, under the provisions of § § 1.482–1T(c)(3)(iv) and 1.482–4T(c)(2), the district director may consider P's alternative of producing and selling product X itself as a factor that may affect the amount P would demand as a royalty for the proprietary process if dealing with an uncontrolled taxpayer at arm's length. Given that P owned the proprietary process that would enable it to produce and sell product X for $2 per unit, and that the market price of product X is $6 per unit, P would be unlikely to accept a royalty for the proprietary process of less than $4 per unit. Accordingly, the uncontrolled transaction is not a comparable uncontrolled transaction within the meaning of this paragraph (c). In considering P's alternatives in this manner, the district director does not treat P as if it had actually manufactured and sold product X to the related and unrelated parties. See § 1.482–1T(d)(3)(iii).

(d) *Other methods*—(1) *In general.* Where none of the methods listed in paragraph (a)(1), or (2) of this section can reasonably be applied under the facts and circumstances of a particular case, another method may be used to determine the arm's length consideration for the controlled transaction. A method used under this paragraph (d) must be applied in accordance with the provisions of § 1.482–1T. Pursuant to § 1.482–3T(f) (coordination rule for methods applicable to transfers of tangible and intangible property), methods ordinarily applicable to transfers of tangible property may be applied in connection with the determination of the arm's length consideration for transfers of intangible property, for example, where the value of the property transferred reflects a combination of tangible and intangible elements.

(2) *Conditions for taxpayer's use of other methods.* A taxpayer may use a method under this paragraph (d) to establish the arm's length consideration for a controlled transaction only if—

(i) The taxpayer discloses the use of the method by attaching an appropriate disclosure statement to the timely filed U.S. income tax return for the taxable year of the controlled transaction;

(ii) The taxpayer prepares contemporaneous supporting documentation setting forth the specific analysis adopted, an analysis of why the method used provides the most accurate measure of an arm's length price, and the data supporting its application; and

(iii) The taxpayer furnishes to the district director within 30 days of a written request the documentation described in paragraph (d)(2)(ii) of this section.

(3) *Coordination with penalty provisions.* In the case of a taxpayer that uses a method under this paragraph (d), compliance with the documentation and disclosure requirements of paragraph (d)(2) of this section will not in itself be sufficient to establish reasonable cause and good faith under section 6662(e)(3)(B) or 6664(c)(1) and the regulations thereunder. However, the district director may otherwise determine that the taxpayer acted with reasonable cause and good faith.

(e) *Special rules for transfers of intangible property*—(1) *Form of consideration.* An arm's length consideration for the transfer of intangible property must be in a form that is consistent with a form that would be adopted in transactions between uncontrolled taxpayers under comparable circumstances. If a transferee of an intangible pays nominal or no consideration and the transferor has retained a substantial interest in the property, the arm's length consideration shall be in the form of a royalty unless a different form is demonstrably more appropriate. Paragraph (e)(5) of this section is reserved for rules regarding consideration that takes the form of a lump sum payment for an intangible.

(2) *Periodic adjustments*—(i) *General rule.* If an intangible is transferred under an arrangement that covers more than one year, the consideration charged in each taxable year may be adjusted to ensure that it is commensurate with the income attributable to the intangible. Adjustments made pursuant to this paragraph (e)(2) shall be consistent with the arm's length standard and the provisions of § 1.482–1T. In determining whether to make such adjustments in the taxable year under examination, the district director may consider all relevant facts and circumstances throughout the period the intangible is used. The determination in an earlier year that the amount charged for an intangible was arm's length will not preclude the district director in a subsequent taxable year from making an adjustment to the amount charged for the intangible in the subsequent year. For an exception to this rule see paragraph (e)(2)(ii) of this section.

(ii) *Exceptions*—(A) *Comparable uncontrolled transactions.* No allocation will be made under paragraph (e)(2)(i) of this section if each of the following facts is established—

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, such consideration was an arm's length amount under paragraph (c) of this section for the first taxable year in which substantial periodic consideration was required to be paid under the agreement, and such agreement remained in effect for the taxable year under review.

(*2*) There is a written agreement setting forth the terms of the comparable uncontrolled transaction relied upon to establish the arm's length consideration (uncontrolled agreement), which contained no provisions that would have permitted any change to the amount of consideration, a renegotiation, or a termination of the agreement, in circumstances comparable to those of the controlled transaction in the taxable year under review (or that contained provisions permitting only specified, non-contingent, periodic changes to the amount of consideration);

(*3*) The controlled agreement was substantially similar to the uncontrolled agreement, with respect to the time period for which it is effective and the provisions described in paragraph (e)(2)(ii)(A)(*2*) of this section.

(*4*) The controlled agreement limited use of the intangible to a specified field or purpose in a manner that was consistent with industry practice and any such limitation in the uncontrolled agreement.

(*5*) There were no substantial changes in the functions performed by the controlled transferee since the controlled agreement was executed, except changes necessitated by events that were not foreseeable.

(*6*) The aggregate profits actually earned or the aggregate cost savings actually realized by the controlled taxpayer from the exploitation of the intangible in all open years are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the comparability of the uncontrolled agreement was established under paragraph (c)(2) of this section.

(B) *Methods other than comparable uncontrolled transaction.* No allocation will be made under paragraph (e)(2)(i) of this section if each of the facts set forth in paragraphs (e)(2)(ii)(B) (*1*) through (*4*) of this section is established.

(*1*) The controlled taxpayers entered into a written agreement (controlled agreement) that provided for an amount of consideration with respect to each taxable year subject to such agreement, and such agreement remained in effect for the taxable year under review.

(*2*) The consideration called for in the controlled agreement was an arm's length amount for the first taxable year in which substantial periodic consideration was required to be paid; the arm's length amount was determined under any method other than the comparable uncontrolled transaction method; relevant supporting documentation was prepared contemporaneously with the execution of the controlled agreement; and upon audit, such agreement and documentation is furnished by the taxpayer to the district director within 30 days of a written request.

(*3*) There have been no substantial changes in the functions performed by the transferee since the controlled agreement was executed, except changes required by events that were not foreseeable.

(*4*) The total profits actually earned or the total cost savings realized by the controlled transferee from the exploitation of the intangible in all open years are not less than 80% nor more than 120% of the prospective profits or cost savings that were foreseeable when the controlled agreement was entered into.

(3) *Development of an intangible*—(i) *Identification of the developer.* Except as provided in § 1.482–2A(d)(4) (cost sharing provisions) when two or more members of a controlled group undertake the development of an intangible, one member will be regarded as the developer of the intangible, and, therefore, as its owner for purposes of section 482. The other participating members will be regarded as assisters. Which controlled taxpayer is the developer and which controlled taxpayers are assisters will be determined under all the facts and circumstances. In making this determination, greatest weight must be given to the extent to which each member bears the direct and indirect costs and corresponding risk of developing the intangible, and makes available, without adequate compensation, property or services likely to contribute substantially to developing the intangible. A controlled taxpayer will be treated as bearing the costs of development only if it is legally bound before the costs are incurred to bear the costs without regard to the success of the project. The determination of whether a controlled taxpayer bears the risks of development will be made under the analysis of § 1.482–1T(c)(3)(ii). For this purpose, the risk to be borne with respect to development activity is the possibility that such activity will not result in the production of intangible property or that the intangible property produced will not be of sufficient value to allow for the recovery of the costs of developing it. Other factors that may be relevant in determining which controlled taxpayer is the developer include the location of the development activities, the capability of each controlled taxpayer to carry on the project independently, the extent to which each controlled taxpayer controls the project, and the actual conduct of the controlled taxpayers.

(ii) *Allocations with respect to transfers by the developer.* If the developer of an intangible makes the intangible available to another controlled taxpayer (including any assister), the district director may make an allocation with respect to that transfer to reflect an arm's length consideration for the intangible.

(iii) *Allocations with respect to assistance provided to the developer.* The district director may make allocations to reflect arm's length consideration for assistance provided to the developer by another controlled taxpayer in connection with the development of an intangible. Such assistance may include loans, services, or the use of tangible or intangible property. The amount of any allocation required with respect to that assistance must be determined in accordance with the applicable rules under section 482. For example, if one member of a controlled group allows another member of the group to use tangible property, such as laboratory equipment, in connection with the latter's development of an intangible, any allocations with respect to the developer's use of the tangible property will be determined under § 1.482–2A(c).

(iv) *Examples.* The following examples illustrate the principles of this paragraph (e)(3). In all these examples, it is assumed that X and Y are members of the same group of controlled taxpayers.

Example 1. X, at the request of Y, undertakes to develop a new machine that will function effectively in the climate in which Y's factory is located. Y agrees in writing before X incurs any costs to bear all the direct and indirect costs of the project whether or not X successfully develops the machine. X does not make any of its own property available for use in connection with the project without adequate compensation. The machine is successfully developed and X provides to Y the process necessary to produce it. Y is considered the developer of the process and, therefore, shall not be treated as having obtained it in a transfer subject to the rules of § 1.482–4T. The district director may make appropriate allocations with respect to assistance rendered by X. The district director also may treat any use of the process by X as a transfer by Y that is subject to the rules of § 1.482–4T and make allocations with respect to that transfer.

Example 2. The facts are the same as in *Example 1,* except that Y agrees to bear the costs only if the machine is successfully developed. X is considered the developer and Y is regarded as having obtained the process in a transfer subject to the rules of § 1.482–4T. Therefore, the district director may make allocations to reflect an arm's length consideration for the transfer of the process.

Example 3. X undertakes to develop a new chemical product M in its research and development department and incurs direct and indirect costs of $1 million per year in 1994, 1995, and 1996. X employs the formula for compound N which it developed and owns. The value of the use of the formula for compound N in connection with the project is $750,000. In 1995, four chemists employed by Y spend six months working on the project in X's laboratory. The salary and other expenses connected with the chemists' activities during that period total $200,000 and are paid by Y without charge to X. In 1996, product M is perfected and Y obtains patents on its formula. X is considered the developer of product M because, among other things, it bore the greatest share of the costs and risks incurred in connection with the project and made available valuable property (the formula for compound N). The formula for product M is deemed to have been transferred to Y in 1996 by virtue of Y's obtaining patent rights to product M. The district director may make allocations in that year to reflect arm's length consideration for the transfer. The district director also may make allocations in 1995 with respect to the assistance rendered by Y. If the district director does not make an allocation for 1995 with respect to the services of the chemists in accordance with the provisions of § 1.482–2(b) of this section, the district director may treat the amount of an arm's length consideration as a loan to X from Y.

Example 4. X, a foreign producer of cheese, markets its cheese in countries other than the United States under the trade name DR. X owns all worldwide rights to this name. The name is widely known and is valuable outside the United States but is not known within the United States. In 1995, X decides to enter the U.S. market and organizes U.S.

subsidiary Y to be its U.S. distributor and to supervise the advertising and other marketing efforts that will be required to develop the name DR in the United States. Y incurs $5,000,000 of expenses promoting the name DR in that year for which it is not reimbursed by X. Y is considered the developer of the enhanced U.S. rights to the trade name.

(4) *Consideration not artificially limited.* The arm's length consideration for the controlled transfer of an intangible is not limited by the consideration paid in any uncontrolled transactions that do not meet the requirements of the comparable uncontrolled transaction method described in paragraph (c) of this section. Similarly, the arm's length consideration for an intangible is not limited by the prevailing rates of consideration paid for the use or transfer of intangibles within the same or similar industry.

(5) *Lump sum payments.* [Reserved]

§ 1.482–5T Comparable profits method.

(a) *In general.* The comparable profits method determines the arm's length consideration for a controlled transfer of property by referring to objective measures of profitability (profit level indicators) derived from uncontrolled taxpayers that engage in similar business activities with other uncontrolled taxpayers under comparable circumstances (comparable parties). An arm's length range of results is determined based upon the amounts of profit that the tested party (as defined in paragraph (d) of this section) would have earned if its profit level indicators were equivalent to those of the uncontrolled taxpayers (constructive operating profit). For purposes of applying the best method rule of § 1.482–1T(b)(2)(iii)(A), the comparable profits method ordinarily will provide an accurate measure of an arm's length result unless the tested party, in connection with the controlled transaction, uses valuable, non-routine intangibles that it—

(1) Acquired from uncontrolled taxpayers and with respect to which it bears significant risks and possesses the right to significant economic benefits; or

(2) Developed itself.

(b) *Tested party*—(1) *In general.* For purposes of this section, the tested party ordinarily will be the participant in the controlled transaction that does not use valuable, non-routine intangibles that it either acquired from uncontrolled taxpayers and with respect to which it bears significant risks and possesses the right to significant economic benefits or developed itself. The tested party need not be the taxpayer under examination.

(2) *Determination by industry segment.* Ordinarily, the comparable profit method should be applied separately to each "industry segment" of the tested party, as that term is defined in § 1.6038A–3(c)(7), provided that the operating profit and related assets and liabilities for each such industry segment can be determined reliably for the tested party and the comparable parties.

(3) *Adjustments for tested party.* The tested party's operating income must be adjusted to reflect all other allocations under section 482, other than adjustments pursuant to this section.

(c) *Selection of comparable parties*—(1) *Comparability.* The comparable profits method measures the total return on the business activities of a tested party. Therefore, the controlled and uncontrolled taxpayers need be only broadly similar, and significant product diversity and some functional diversity between the controlled and uncontrolled transactions is acceptable. However, the greater the similarity between the tested party and the comparable party, the more reliable is the measure of an arm's length result under this method. Thus, if reliable data relating to comparable parties that operate within the same industry segment as the tested party is available, such data should be employed for purposes of the application of this method. The degree of comparability between the tested party and the comparable parties will affect the size of the arm's length range, as described in paragraph (d)(2) of this section.

(2) *Adjustments to comparable parties.* Adjustments may be made to the profit level indicators of the comparable parties to improve consistency and to achieve greater similarity between such comparable parties and the tested party. For example, material items reflected in the profit level indicators of the uncontrolled transactions should be measured on a basis consistent with the accounting treatment used by the tested party. Accounting reclassifications may be required to more accurately and consistently relate the level of operating profit to the level of investment before determining profit level indicators for the uncontrolled taxpayer. Similarly, adjustments may be made to the actual operating profits earned and operating assets employed by the comparable parties to account for material differences between the controlled and uncontrolled transactions in terms of the functions performed and risks assumed by the respective taxpayers, or any other facts that materially affect profitability, but only to the extent that such adjustments have a definite and reasonably ascertainable effect on operating profit. If the assets of a comparable party are adjusted, the comparable party's operating income must also be adjusted before computing a profit level indicator in order to reflect the income and expense attributable to the adjusted assets. The adjustments described in this paragraph must be made in order to determine the arm's length range under paragraph (d)(2)(i) of this section. If these adjustments are not made, then paragraph (d)(2)(ii) of this section applies.

(d) *Determination of arm's length result*—(1) *In general.* A controlled transaction will be considered arm's length under this method if the tested party's reported operating profits are within the arm's length range consisting of a range of constructive operating profits derived from comparable parties. Constructive operating profits are calculated by applying profit level indicators derived from the comparable parties to the tested party's financial data for the time period to which the profit level indicators are attributable. For purposes of the comparable profits, each arm's length range will be established with constructive operating profits calculated by using one profit level indicator. Ordinarily, the profit level indicators should be derived from a sufficient number of years to reasonably measure returns that accrue to uncontrolled taxpayers with risk characteristics similar to those of the tested party. Generally such a period should encompass at least the taxable year under review and the preceding two taxable years.

(2) *Arm's length range.* As described in this paragraph (d)(2), the degree of comparability between the tested party and the comparable parties, and the adjustments made to the data of the comparable parties, will affect the size of the arm's length range under the comparable profits method. For rules governing the appropriate adjustment where reported operating profit is outside the arm's length range, see § 1.482–1T(d)(2)(i)(C).

(i) If the comparability standards set forth in paragraph (c) of this section are met and appropriate adjustments under paragraph (c)(2) are made, then the arm's length range will include all the constructive operating profits derived from the comparable parties.

(ii) If the arm's length range is not determined as described in paragraph (d)(2)(i) of this section, then the arm's length range ordinarily will consist of the interquartile range from the 25th to the 75th percentile of the constructive operating profits derived from the profit level indicators of the comparable parties. If other statistical techniques and criteria can be validly applied, they may be used instead of the interquartile range to define the arm's length range. However, an arm's length range cannot not be determined under this paragraph (d)(2)(ii) unless there are at least four comparable parties.

(e) *Profit level indicators.* Profit level indicators are financial ratios that measure the relationships among profits, costs incurred and resources employed. A variety of profit level indicators can be calculated in any given case. The selection of appropriate profit level indicators depends upon a number of factors, including the nature of the activities of the tested party, the reliability of the available data with respect to comparable uncontrolled taxpayers, and the extent to which a particular profit level indicator is likely to produce a reasonable determination of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length, taking into account all of the facts and circumstances of the particular case under review. Profit level indicators that may provide a reliable basis for comparing operating profits of similar controlled and uncontrolled taxpayers include the following—

(1) *Rate of return on capital employed.* The rate of return on capital employed is the ratio of operating profit to operating assets. The rate of return on capital employed ordinarily will provide an acceptable profit level indicator if the tested party has substantial fixed assets or working capital that plays a significant role in generating operating profit.

(2) *Financial ratios.* Financial ratios are defined by relationships between profit and costs or sales revenue. Since financial ratios do not directly relate operating profit to the level of investment and risk in a trade or business, more stringent comparability is ordinarily required than when a rate of return on capital is used as a profit level indicator. Financial ratios that may be appropriate include the following—

(i) Ratio of operating profit to sales; and

(ii) Ratio of gross profit to operating expenses. This ratio is ordinarily an acceptable profit level indicator if the composition of operating expenses for the tested party and the comparable parties are substantially the same.

(3) *Other profit level indicators.* Other profit level indicators not described in this paragraph (e) may be used. Such other measures should be used only when they provide reasonable indications of the income that the tested party would have earned had it dealt with controlled taxpayers at arm's length.

(f) *Definitions.* The definitions set forth in paragraphs (f)(1) through (7) of this section apply for purposes of this section.

(1) *Sales revenue.* "Sales revenue" means the amount of total receipts from sale of goods and the providing of services, less discounts and returns. Accounting principles and conventions that are generally accepted in the trade or industry of the controlled taxpayer under review must be used.

(2) *Gross profit.* "Gross profit" means sales revenue less cost of goods sold.

(3) *Operating expenses.* "Operating expenses" includes all expenses not included in cost of goods sold except for interest expense, foreign income taxes (as defined in § 1.901–2(a)), and domestic income taxes. Operating expenses ordinarily include expenses associated with advertising, promotion, sales, marketing, warehousing and distribution, administration, and a reasonable allowance for depreciation and amortization.

(4) *Operating profit.* "Operating profit" means gross profit less operating expenses. Operating profit includes all income derived from the industry segment being tested by the comparable profits method, but does not include interest and dividends, income derived from activities not being tested by this method, or extraordinary gains and losses that do not relate to the continuing operations of the tested party.

(5) *Reported operating profit.* "Reported operating profit" means the operating profit of the tested party reflected on a timely U.S. income tax return. If the tested party files a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return if the calculation of taxable income on its return for the taxable year takes into account the income attributable to the controlled transaction under review. If the tested party does not file a U.S. income tax return, its operating profit is considered reflected on a U.S. income tax return in any taxable year for which income attributable to the controlled transaction under review affects the calculation of the U.S. taxable income of any other member of the same controlled group. Where the constructive operating profit of the tested party is determined from profit level indicators derived from financial statements or other accounting records and reports of the comparable parties, adjustments may be made to the reported operating profit of the tested party as may be required to account for the material differences between the tested party's operating profit reported for U.S. income tax purposes and the tested party's operating profit for financial statement purposes.

(6) *Operating assets.* "Operating assets" means the value of all assets used in the relevant industry segment of the tested party, including fixed assets and current assets (such as cash, cash equivalents, accounts receivable, and inventories). The term does not include investments in subsidiaries, excess cash, and portfolio investments. Operating assets may be measured by their net book value or by their fair market value, provided that the same method is consistently applied to the tested party and the comparable parties, and consistently applied from year to year. Operating assets must be measured by the average of the values for the beginning of the year and the end of the year. It may be necessary to take into account recent acquisitions, leased assets, routine intangibles that have been purchased or self-developed, currency fluctuations, and other assets or liabilities of the taxpayer that may not be explicitly recorded in the financial statements of the controlled or uncontrolled taxpayer. Appropriate adjustments must be made to ensure that the operating assets of the controlled and uncontrolled taxpayer are measured on a consistent basis. For example, non-interest bearing liabilities, such as accounts payable, payroll liabilities, and taxes payable, that are related directly to the regular and recurring operations of the trade or business, would be required to be deducted from operating assets, if differences in such liabilities are material.

(g) *Examples.* The following examples illustrate the application of this section.

Example 1—Transfer of tangible property resulting in no adjustment. (i) Foreign Parent (FP) is a publicly traded foreign corporation with a U.S. subsidiary (USS) that is under audit for its 1994 taxable year. FP manufactures a consumer product for worldwide distribution. USS imports the assembled product and distributes it within the United States at the wholesale level under the FP name.

(ii) FP does not allow uncontrolled taxpayers to distribute the product. Similar products are produced by other companies but none of them are sold to uncontrolled taxpayers or to uncontrolled distributors.

(iii)(A) The district director decides to apply the comparable profits method to determine an arm's length result for the transactions between USS and FP. Because USS does not own any valuable, non-routine intangibles, the district director selects USS as the tested party. In applying this method to test whether the consideration paid by USS for tangible property was at arm's length, it is necessary to determine whether USS's operating profit is within the arm's length range. The district director reviews the financial reports of USS for the taxable year and the two preceding taxable years. For the taxable years 1992 through 1994, USS shows the following rerults:

	1992	1993	1994	Average
Operating assets	$310,000	$310,000	$310,000	$310,000
Sales	500,000	560,000	500,000	520,000
Cost of goods sold	393,000	412,400	400,000	401,800
Purchases from FP	350,000	365,000	350,000	355,000
Other	43,000	47,400	50,000	46,800
Operating expenses	80,000	110,000	104,600	98,200
Operating profit	27,000	37,600	(4,600)	20,000

(B) The data from USS in paragraph (iii)(A) of this *Example 1*, averaged over three years, results in a ratio of operating profit to operating assets (OP/OA) of 6.5%.

(iv) To identify comparable parties, the district director seeks data from independent operators of wholesale distribution businesses. These companies are further narrowed to select companies in the same industry segment that perform similar functions and assume broadly similar risks to USS. Because USS has working capital that plays a significant role in generating operating profit and because appropriate adjustments can be made to measure the unrelated distributor's assets consistently with those of USS, the district director determines that the rate of return on capital employed will be the profit level indicator. An analysis of the information available on these taxpayers shows that their ratios are fairly stable when at least three years are included in the average. Calculating the average ratio of operating profit to operating assets for each of the uncontrolled distributors and applying each ratio to USS would lead to the following constructive operating profit (COP) for USS:

Unrelated distributor	OP/OA (percent)	USS COP
A	8.0	$24,800
B	23.3	72,230
C	16.9	52,390
D	8.0	24,800
E	11.5	35,650
F	6.3	19,530
G	5.3	16,430
H	2.7	8,370
I	8.5	26,350
J	7.5	23,250

(v) The products sold by the distributors are not similar enough to allow for the range described in paragraph (d)(2)(ii) of this section. Accordingly, the arm's length range is limited to the constructive operating profits that fall within the interquartile range of results. Accordingly, the arm's length range consists of the results ranging from $19,530 to $35,650. USS's average reported operating profit of $20,000 is within this range. Therefore, the district director determines that no allocation should be made to adjust USS's operating income even though its operating income for 1994 shows a loss of $4,600.

Example 2—Transfer of tangible property resulting in adjustment. (i) The facts are the same as in *Example 1* except that USS reported the following income and expenses:

	1992	1993	1994	Average
Assets	$310,000	$310,000	$310,000	$310,000
Sales	500,000	560,000	500,000	520,000
Cost of goods sold	370,000	460,000	400,000	410,000
Purchases from FP	320,000	410,000	350,000	360,000
Other	50,000	50,000	50,000	50,000
Operating expenses	110,000	110,000	110,000	110,000
Operating profit	20,000	(10,000)	(10,000)	0

(ii) Applying the data in paragraph (i) of this *Example 2*, the ratio described in *Example 3* would now produce the ratio of operating profit to operating assets of 0%.

(iii) The arm's length range remains the interquartile range of constructive operating profits derived in *Example 1*: $19,530 to $35,650. Since USS' average operating profit for the years 1992 through 1994 ($0) falls outside the arm's length range, USS' income for 1994 is increased to the median of the range, $24,800.

Example 3—Transfer of intangible to offshore manufacturer. (i) DevCo is a U.S. developer, producer and marketer of widgets. DevCo develops a new "high tech widget" (htw) which it manufacturers at its foreign subsidiary ManuCo located in Country H. ManuCo sells the htw to MarkCo (a U.S. subsidiary of DevCo) for distribution and marketing in the United States. The taxable year 1994 is under audit, and the district director examines whether the royalty rate of 5 percent paid by ManuCo to DevCo is an arm's length consideration for the htw technology. No comparable uncontrolled transactions are available. Because ManuCo did not use any valuable non-routine intangible that it acquired from uncontrolled taxpayers or that it developed, the district director applies the comparable profit method to determine whether the operating income of ManuCo is within the arm's length range. ManuCo's financial data from 1992–1994 is as follows:

	1992	1993	1994	Average
Assets	$24,000	$25,000	$26,000	$25,000
Sales to MarkCo	25,000	30,000	35,000	30,000
Cost of goods sold	6,250	7,500	8,750	7,500
Royalty to DevCo (5%)	1,250	1,500	1,750	1,500
Other	5,000	6,000	7,000	6,000
Operating expenses	1,000	1,000	1,000	1,000
Operating profit	17,750	21,500	25,250	21,500

(ii) Two ratios derived from the data in paragraph (i) of this *Example 3* produce the following results:

	Percent
Operating Profit/Sales (OP/S)	71.7
Operating Profit/Assets (OP/OA)	86.0

(iii) In order to compare ManuCo's results with those of other comparable companies, the district director analyzes companies performing similar functions and assuming similar risks. The district director determines that the price that ManuCo charged to MarkCo for the htw's is an arm's length price under § 1.482–3T(b). No information on uncontrolled taxpayers in country H that perform similar functions is available. The search is broadened for companies performing the most similar functions in the most similar markets. The district director determines that data available in countries M and N provides the best match of companies in a similar market performing similar functions and assuming similar risks.

(iv) Applying the provisions of paragraph (c) of this section to financial information from the set of country M and N companies provides an interquartile range of constructive operating profits from $3,000 to $4,500, with a median of $3,750. ManuCo's average reported operating profit for the years 992 through 1994 of $21,500 falls outside he arm's length range, and an adjustment to increase the royalties that ManuCo paid is made equal to $17,800 (the difference between $21,500 and the median of the arm's length range $3,700).

§ 1.482–6T Profit split method. [Reserved]

§ 1.482–7T Cost sharing. [Reserved]

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par 4. Section 602.101(c) is amended by adding the following citations to the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * *	*
1.482–1T	1545–1298
* * * *	*
1.482–3T	1545–1298
1.482–4T	1545–1298

* * * * *

Shirley D. Peterson,
Commissioner of Internal Revenue.

Approved: January 11, 1993.

Alan J. Wilensky,
Acting Assistant Secretary of the Treasury.

[FR Doc. 93–1109 Filed 1–13–93; 2:10 pm]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 397

[DoD Directive 5330.3]

Defense Printing Service (DPS)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part establishes the Defense Printing Service (DPS) within the Department of the Navy as the consolidated organization for printing and duplicating activities in the Department of Defense, excluding intelligence and tactical activities and National Guard and Reserve organizations. It also designates the Secretary of the Navy as the single manager for the operation of the DPS and assigns responsibilities, functions, and relationships relating thereto.

EFFECTIVE DATE: January 7, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. H. Gioia, 703–695–4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 397

Organization and functions (Government agencies).

Accordingly, title 32, chapter I, subchapter R is amended to add part 397 to read as follows:

PART 397—DEFENSE PRINTING SERVICE (DPS)

Sec.
397.1 Purpose
397.2 Applicability.
397.3 Responsibilities and functions.
397.4 Relationships.

Authority: 10 U.S.C. 131.

§ 397.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under 10 U.S.C., this part:

(a) Establishes the DPS within the Department of the Navy as the consolidated organization for printing and duplicating activities in the Department of Defense, excluding intelligence and tactical activities and National Guard and Reserve organizations.

(b) Designates the Secretary of the Navy as the single manager for the operation of the DPS and assigns responsibilities, functions, and relationships, as prescribed herein.

§ 397.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 397.3 Responsibilities and functions.

(a) The Director of Administration and Management, Office of the Secretary of Defense, shall:

(1) Have principal OSD staff responsibility for the activities of the DPS and provide policy guidance regarding the operation and management of printing and duplicating services in the Department of Defense.

(2) Chair the DoD Printing and Duplicating Services Oversight Group, composed of senior-level representatives of the Secretaries of the Military Departments; Assistant Secretary of Defense for Command, Control, Communications, and Intelligence; and Comptroller of the Department of Defense. Other DoD officials may be invited to participate, as required.

(3) Represent the Department of Defense on printing and duplicating policy matters with the Joint Committee on Printing (JCP), Government Printing Office (GPO), Office of Management and Budget (OMB), and other Government Agencies.

(b) The Secretary of the Navy is designated as the single manager for all DoD printing, both for the operation of DoD in-house printing and duplicating facilities and for the departmental printing procurement functions. In this capacity, the Secretary of the Navy shall:

(1) Appoint a Director of the DPS to manage and operate the DPS and all assigned resources, who shall be under the Secretary of the Navy's authority, direction, and control.

(2) Provide guidance to the Director of the DPS regarding the management of the DPS and its relationships with other commands, organizations, and activities within the Navy, as well as with other DoD Components and Government Agencies.

(3) Finance the operations of the DPS under the Printing and Publications

Services business area of the Defense Business Operations Fund.

(4) Ensure that the Director, DPS, shall:

(i) Organize, direct, and manage the DPS and all its assigned resources; produce or procure printing services; and administer, supervise, and control all assigned programs, services, and functions.

(ii) Provide effective and efficient printing support to DoD Components.

(iii) Conduct a coordinated DoD printing program covering the production, procurement, and distribution of publications through conventional or alternative methods.

(iv) Administer Department-wide printing management systems, programs, and activities, including technical assistance, support services, and information.

(v) Provide advice and assistance on printing matters to the DoD Components and other organizations, as appropriate.

(vi) Act as DoD representative for technical printing and duplicating matters under DPS cognizance with the JCP, GPO, OMB, and other Government Agencies.

(vii) Supports the Director of Administration and Management, OSD, in the performance of his duties under this part.

(c) The Comptroller of the Department of Defense shall advise, and provide policy guidance to, the DPS on the functioning of the Defense Business Operations Fund and other financial management matters.

(d) The Heads of the DoD Components shall cooperate with, and provide necessary information and assistance to, the DPS in setting requirements, arranging for and executing inter-Service support agreements, and enabling the DPS to carry out day-to-day operations in an effective and efficient manner.

§ 397.4 Relationships.

(a) In the performance of assigned responsibilities and functions, the Director, DPS, shall:

(1) Maintain liaison with DoD Components, other Government Agencies, and private sector organizations for the exchange of information concerning assigned programs, activities, and responsibilities.

(2) Use established facilities and services of the Department of Defense and other Government Agencies, whenever practicable, to avoid duplication and to achieve modernization, efficiency, economy, and user satisfaction.

(b) The heads of DoD Components shall coordinate with the Director, DPS, on all matters related to the responsibilities and functions listed in § 397.3(b)(4).

Dated: January 13, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–1324 Filed 1–19–93; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 60, and 61

[MT4–1–5449, ND2–2–5619, SD1–2–5620, SD3–1–5496; FRL–4541–7]

Approval and Promulgation of Implementation Plans; Montana, North Dakota, South Dakota; Delegation of Authority; Wyoming

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking and delegation of authority.

SUMMARY: In this action, EPA is approving revisions to the State Implementation Plans (SIPs) for the states of Montana, North Dakota, and South Dakota, which pertain to the states' regulations for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs). Specifically, EPA is approving the following submittals: The August 20, 1991 submittal of NSPS and NESHAP revisions from the Governor of Montana; the June 30, 1992 submittal of NSPS and NESHAP revisions, excluding the asbestos NESHAP regulations, from the Governor of North Dakota; and the September 25, 1991 and the February 24, 1992 submittals of revised NSPS and asbestos NESHAP regulations from the designee of the Governor of South Dakota. These revisions are being approved because they provide for consistency with Federal regulations.

In addition to approving the above-listed SIP revisions, EPA is also providing notice that it granted delegation of authority to the State of Wyoming on July 29, 1992 to implement and enforce several NSPS which were adopted by the State. This is a result of an April 13, 1992 request for delegation from the State.

EFFECTIVE DATES: The amendments to §§ 52.1370(c), 52.1820(c), 52.2170(c), 60.04(c), and 61.04(c) will become effective on March 22, 1993 unless notice is received by February 22, 1993 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

The delegation of authority to the State of Wyoming became effective on July 29, 1992.

ADDRESSES: Copies of the revisions are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, suite 500, Denver, CO 80202–2466.

Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

Division of Environmental Engineering, State Department of Health and Consolidated Laboratories, 1200 Missouri Avenue, Bismarck, North Dakota 58502–5520.

Division of Environmental Regulation, Department of Environment and Natural Resources, Joe Foss Building, Pierre, South Dakota 57501.

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, Environmental Protection Agency, Region VIII, Air Programs Branch, suite 500, Denver, CO 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: EPA has two options for the approval of a state's NSPS and NESHAPs regulations. Sections 111(c) and 112(1) of the amended Clean Air Act (CAA) permit EPA to delegate to the states authority to implement and enforce standards set forth in 40 CFR parts 60 and 61, NSPS and NESHAPs. EPA also has the option of approving state NSPS and NESHAPs regulations as part of the SIP. The main difference between these two options is in the processing of the State submittal. EPA's enforcement ability generally remains consistent. In either case, as provided for in the CAA, EPA has the authority to take enforcement action for a violation of a NSPS or NESHAP without providing notice of violation or waiting 30 days to take action. However, if the NSPS or NESHAP regulations are approved in the SIP, EPA has responsibility for enforcing the state regulation; whereas, if a state is delegated the authority for NSPS or NESHAP, EPA is only responsible for enforcing the Federal regulation. In either case, EPA can only approve a state regulation that is no less stringent than the respective Federal regulation.

EPA believes that, with respect to NSPS and NESHAPs established under section 111 and 112 of the CAA, Congress intended for EPA to set the "standard," rather than including such standards in section 110 implementation plans (which allows states to set nonattainment area "standards.") EPA's Region VIII has found that many of its states wished to compile all of their air quality regulations into their respective SIPs to improve clarity and coordination of their air program. EPA believes that it does have the authority to approve state NSPS and NESHAP programs in the SIP. However, given the Congressional intent of the NSPS and NESHAP programs, EPA believes it can only approve in the SIP those state regulations that are equivalent to the corresponding Federal regulations, and such approval will be given with the understanding that EPA will retain concurrent enforcement authority for the NSPS and NESHAPs programs as outlined in the CAA.

On October 9, 1991, EPA Region VIII sent a letter to each of its states explaining the differences between SIP approval and delegation of authority for NSPS/NESHAP programs and offering each state the opportunity to change the processing of their NSPS and NESHAP programs. Pursuant to those letters, the States of Montana, North Dakota, and South Dakota decided to have their NSPS and NESHAPs approved in their respective SIPs. The State of Wyoming chose to continue with delegation of authority for its NSPS and NESHAPs. Thus, in this notice, EPA is clarifying those decisions concurrent with its action on the submittals of revised NSPS and NESHAPs from those four states.

Montana

On August 20, 1991, the Governor of Montana requested approval of revisions to the Montana SIP. The revisions consisted of amendments to ARM 16.8.1423, NSPS, and 16.8.1424, NESHAPs. The amendments update the State's NSPS and NESHAPs regulations to incorporate new Federal regulations promulgated between July 1, 1987 and July 1, 1990. On October 2, 1991, EPA notified the State that the SIP submittal was administratively and technically complete, and that the submittal would be approved. In this notice, EPA is approving the State's revisions to the SIP, providing the State with authority to implement and enforce the Federal NSPS in 40 CFR part 60 and the Federal NESHAPs in 40 CFR part 61, as in effect on July 1, 1990, with the exception of 40 CFR 61 subparts B, H, I, K, T, and W, which pertain to radionuclides.

In a March 23, 1992 letter to the State, EPA identified concerns with the State's interpretation of the term "administrator" as it applied to its NSPS and NESHAPs regulations. Some confusion had arisen because the State incorporated by reference the Federal NSPS and NESHAPs regulations, in which "administrator" is defined as the Administrator of EPA, and the State regulations did not specifically redefine "administrator" to be the appropriate State official. On April 20, 1992, the State responded with its interpretation of the term "administrator" in its NSPS and NESHAPs regulations to mean the administrator of the Montana Department of Health and Environmental Sciences or his designee (Bureau Chief of the Montana Air Quality Bureau), except for those authorities that cannot be delegated by the EPA, in which case "administrator" means Administrator of EPA. EPA concurs with the State's interpretation and is clarifying that interpretation in this notice. Also in that letter, the State committed to incorporate a definition of the term "administrator" consistent with its interpretation in the next revisions to its NSPS and NESHAPs regulations.

North Dakota

On June 30, 1992, the Governor of North Dakota submitted a request for approval of revisions to the SIP. The submittal consisted of revisions to the following sections in the State's Air Pollution Control Rules: 33–15–01 General Provisions, 33–15–05 Emissions of Particulate Matter Restricted, 33–15–06 Emissions of Sulfur Compounds Restricted, 33–15–07 Control of Organic Compound Emissions, 33–15–12 Standards of Performance for New Stationary Sources, 33–15–13 Emission Standards for Hazardous Air Pollutants, 33–15–15 Prevention of Significant Deterioration of Air Quality, and 33–15–20 Control of Emissions from Oil and Gas Well Production Facilities.

On August 27, 1992, EPA notified the State that the submittal was administratively and technically complete. In this notice, EPA is approving only the revisions to Chapter 33–15–12, NSPS, and Chapter 33/15/13, NESHAPs, of the North Dakota Administrative Code, with the exception of the State's asbestos regulations in Section 33–15–13–02. EPA will act on the remainder of the SIP submittal, including the asbestos regulations, in a separate notice. The revisions to Chapters 33–15–12 and 33–15–13 incorporate by reference the Federal NSPS in 40 CFR part 60 and the Federal NESHAPs in 40 CFR part 61, as in effect on May 1, 1991, with the exception of 40 CFR part 61, subparts B, H, I, K, M, T, and W (radionuclides and asbestos). EPA has reviewed the revised regulations and determined that they are consistent with the Federal regulations. Therefore, in this notice, EPA is approving the revisions to the State's NSPS and NESHAP regulations.

South Dakota

On September 25, 1991, the Governor's designee submitted revisions to the South Dakota SIP. The submittal consisted of revisions to the State's Air Pollution Control in Article 74:26 of the Administrative Rules of South Dakota. Specifically, revisions were made to the State's regulations for new source review (NSR) permitting, emergency episode plans for PM–10, PM–10 ambient standards and methods of measurement, operation permits, NSPS, and asbestos. The State also submitted regulations for the disposal of medical waste in Article 74:35.

On December 2, 1991, EPA notified the State that the submittal of the revisions to Article 74:26 was administratively and technically complete. In that letter, EPA returned Article 74:35 as incomplete because the State had not provided any response to the numerous public comments received.

On February 10, 1992, the State withdrew Section 74:26:26, Standards of Performance for Municipal Waste Combustors, and Section 74:26:22, Emission Standards for Asbestos Air Pollutants, so that revised regulations for these sections could be submitted for SIP approval.

On February 24, 1992, the State submitted the revised asbestos and municipal waste combustor regulations, along with its Asbestos Control Program in Article 74:31, for approval in the SIP. On April 28, 1992, EPA notified the State that the submittal was administratively and technically complete. In that letter, EPA also explained that it could not take action on the asbestos control program in Article 74:31 because those provisions were mandated by the Toxics Substances Control Act (TSCA), and EPA did not have the authority to approve such a regulation in a SIP required by section 110 of the CAA. Although EPA acknowledges receipt of these regulations, no action will be taken on the regulations.

In this notice, EPA is only taking action on the State's NSPS and asbestos regulations in Sections 74:26:8 through 74:26:26 of the Administrative Rules of South Dakota. The remainder of the SIP submittal will be acted on in a separate notice. EPA has reviewed the State's revisions to its NSPS and asbestos regulations and has found them to be consistent with the respective Federal requirements. Specifically, EPA is approving the NSPS revisions submitted on September 25, 1991 that include the following: Sections 74:26:08–74:26:21 and 74:26:23–74:26:25 of the State's regulations which incorporate by reference 40 CFR part 60, subparts D, Da, Db, E, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, and OOO, as in effect on July 1, 1989. EPA is also approving the revisions submitted on February 24, 1992 that include Section 74:26:26 of the State regulations, which incorporates by reference 40 CFR part 60, subpart Ea, as published in the **Federal Register** on February 11, 1991 (56 FR 5506), and Section 74:26:22 of the State's regulations, which incorporates by reference 40 CFR part 61, subpart M, as in effect on July 1, 1991.

Wyoming

On April 13, 1992, the State of Wyoming submitted revisions to its NSPS regulations. The submittal included the addition of the following NSPS categories: Small industrial-commercial-institutional steam generating units, municipal waste combustors, volatile organic compound (VOC) emissions from the polymer manufacturing industry, VOC emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes, VOC emissions from synthetic organic chemical manufacturing industry distillation operations, VOC emissions from petroleum refinery wastewater systems, magnetic tape coating facilities, and polymeric coating of supporting substrates facilities (40 CFR part 60, subparts Dc, Ea, DDD, III, NNN, QQQ, SSS, and VVV). Pursuant to such submittal, on July 29, 1992, delegation was given with the following letter:

Hon. Mike Sullivan,
Governor of Wyoming, State Capitol, Cheyenne, Wyoming 82002

Dear Governor Sullivan: On April 13, 1992, you requested delegation of authority for revisions to the New Source Performance Standards (NSPS) in Section 22 of the Wyoming Air Quality Standards and Regulations (WAQSR). These revisions brought the State's NSPS up to date with the Federal NSPS in effect as of July 1, 1991.

Subsequent to states adopting NSPS regulations, the EPA delegates the authority for the implementation and enforcement of those NSPS, so long as those regulations are equivalent to the Federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of eight NSPS.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS, including the source applicability dates, by the State of Wyoming. Therefore, pursuant to section 111(c) of the Clean Air Act (CAA), as amended, and 40 CFR part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Wyoming as follows:

(A) Responsibility for all sources located, or to be located in the State of Wyoming subject to the standards of performance for new stationary sources promulgated in 40 CFR part 60. The categories of new stationary sources covered by this delegation are as follows: Small industrial-commercial-institutional steam generating units (subpart Dc), municipal waste combustors (subpart Ea), volatile organic compound emissions from the polymer manufacturing industry (subpart DDD), volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (subpart III), volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (subpart NNN), VOC emissions from petroleum refinery wastewater systems (subpart QQQ), magnetic tape coating facilities (subpart SSS), and polymeric coating of supporting substrates facilities (subpart VVV).

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the CAA, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) Approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. The following are the authorities in the applicable subparts of 40 CFR part 60 that are being delegated in this letter which EPA cannot delegate: (i) 40 CFR part 60.562–2(c), which pertains to equivalency determinations in subpart DDD, Volatile Organic Compound Emissions from the Polymer Manufacturing Industry; (ii) 40 CFR part 60.613(e), which pertains to alternative test methods in Subpart III, Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes; (iii) 40 CFR part 60.663(e), which pertains to alternative test methods in subpart NNN, Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations; (iv) 40 CFR parts 60.711(a)(16), 60.713(b)(1)(i), 60.713(b)(1)(ii), 60.713(b)(5)(i), 60.713(d), 60.715(a), and 60.716, which pertain to equivalency determinations, alternative test methods, and EPA rulemakings in subpart SSS, Magnetic Tape Coating Facilities; and (v) 40 CFR parts 60.743(a)(3)(v) (A) and (B), 60.743(e), 60.745(a), and 60.746, which pertain to alternative test methods, equivalency determinations, and EPA rulemakings in subpart VVV, Polymeric Coating of Supporting Substrates Facilities.

(C) As 40 CFR part 60 is updated, Wyoming should revise its rules and regulations accordingly and in a timely manner.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal regulation (40 CFR part 60), the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our August 2, 1977 letter. A copy of this letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with an associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

In previous letters dated October 9, 1991 and February 6, 1992, EPA expressed concerns with the State's acceptance and enforcement of the Federal NSPS applicability dates. In this submittal, the State has revised the effective dates of its NSPS to be equivalent to the effective dates of the Federal NSPS, and has provided an Attorney General's opinion verifying the State's authority to implement and enforce the Federal NSPS. Therefore, EPA believes that this submittal has adequately addressed our concerns.

If you have any questions on this matter, please call me, or have your staff contact Doug Skie, Chief of our Air Programs Branch, at 293–1750.

Sincerely,
Jack W. McGraw,
Acting Regional Administrator.

Final Action

EPA is approving the revisions to Montana's NSPS and NESHAPs regulations in ARM 16.8.1423 and 16.8.1424, respectively, which were submitted by the Governor for SIP approval on August 20, 1991. This action provides the State with the authority for implementation and enforcement of all Federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, I, K, Q, R, T, and W, pertaining to radionuclides) promulgated as of July 1, 1990. However, the State's NSPS and NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

EPA is also approving the revisions to the North Dakota SIP submitted on June 30, 1992, which include Chapters 33–15–12 (NSPS) and 33–15–13 (NESHAPs) of the State's Air Pollution Control Rules, with the exception of the asbestos regulations in Section 33–15–13–02. This action provides the State with the authority for implementation and enforcement of all Federal NSPS and NESHAPs (except 40 CFR part 61, subparts B, H, I, K, M, Q, R, T, and W, pertaining to radionuclides and asbestos) promulgated as of May 1, 1991. However, the State's NSPS and NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

Lastly, EPA is approving the revisions to the South Dakota SIP, Sections 74:26:08 through 74:26:26 of the Administrative Rules of South Dakota, NSPS and asbestos, which were submitted by the State on September 25, 1991 and February 24, 1992. This action provides the State with the authority for implementation and enforcement of the following subparts of 40 CFR part 60: D, Da, Db, E, F, I, K, Ka, Kb, O, Y, DD, GG, HH, LL, and OOO (as in effect on July 1, 1989); and Ea (as in effect on February 11, 1991). Also, this action provides the State with authority to implement and enforce 40 CFR part 61, subpart M, as in effect on July 1, 1991. However, the State's NSPS and asbestos NESHAP authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR parts 60 and 61.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference.

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

40 CFR Part 61

Air Pollution Control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Vinyl chloride.

Dated: November 13, 1992.

Jack W. McGraw,

Acting Regional Administrator.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart BB—Montana

2. Section 52.1370 is amended by adding paragraph (c)(25) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(25) On August 20, 1991, the Governor of Montana submitted revisions to the plan for new source performance standards and national emission standards for hazardous air pollutants.

(i) *Incorporation by reference.*

(A) Revisions to the Administrative Rules of Montana 16.8.1423, Standards of Performance of New Stationary Sources, and 16.8.1424, Emission Standards for Hazardous Air Pollutants, adopted July 1, 1991, effective July 12, 1991.

(ii) *Additional material.*

(A) Letter dated April 20, 1992 from Jeffrey T. Chaffee, Chief of the Montana Air Quality Bureau, to Doug Skie, Chief of Air Programs Branch, EPA Region VIII.

Subpart JJ—North Dakota

3. Section 52.1820 is amended by adding paragraph (c)(23) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(23) On June 30, 1992, the Governor of North Dakota submitted revisions to the plan for new source performance standards and national emission standards for hazardous air pollutants.

(i) *Incorporation by reference.*

(A) Revisions to the Air Pollution Control Rules, Chapter 33–15–12, Standards of Performance for New Stationary Sources, and Chapter 33–15–13, excluding Section 33–15–13–02, Emission Standards for Hazardous Air Pollutants, effective June 1, 1992.

Subpart QQ—South Dakota

4. Section 52.2170 is amended by adding paragraph (c)(13) to read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(13) On September 25, 1992 and February 24, 1992, the Governor of South Dakota submitted revisions to the plan for new source performance standards and asbestos.

(i) *Incorporation by reference.*

(A) Revisions to the Air Pollution Control Program, Sections 74:26:08–74:26:21 and 74:26:23–74:26:25, New

Source Performance Standards, effective May 13, 1991, Section 74:26:26, Standards of Performance for Municipal Waste Combustors, effective November 24, 1991, and Section 74:26:22, Emission Standards for Asbestos Air Pollutants, effective December 2, 1991.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

Subpart A—General Provisions

2. Section 60.4(c) is amended by revising the table to read as follows:

§60.04 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil Fuel Fired Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric Utility Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Db Industrial-Commercial Institutional Steam Generators	(*)	(*)	(*)	(*)	(*)	(*)
Dc Industrial-Commercial Institutional Steam Generators			(*)		(*)	(*)
E Incinerator	(*)	(*)	(*)	(*)	(*)	(*)
Ea Municipal Waste Combustors			(*)	(*)	(*)	(*)
F Portland Cement Plants	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric Acid Plants	(*)	(*)	(*)		(*)	(*)
H Sulfuric Acid Plant	(*)	(*)	(*)	(*)	(*)	(*)
I Asphalt Concrete Plants	(*)	(*)	(*)		(*)	(*)
J Petroleum Refineries	(*)	(*)	(*)	(*)	(*)	(*)
K Petroleum Storage Vessels (6/11/73–5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum Storage Vessels (5/18/78–7/23/84)	(*)	(*)	(*)	(*)	(*)	(*)
Kb Petroleum Storage Vessels (after (7/23/84)		(*)	(*)	(*)	(*)	(*)
L Secondary Lead Smelters	(*)	(*)	(*)		(*)	(*)
M Secondary Brass & Bronze Production Plants	(*)	(*)	(*)		(*)	(*)
N Primary Emissions from Basix Oxygen Process Furnaces (after 6/11/73).	(*)	(*)	(*)		(*)	(*)
Na Secondary Emissions from Basic Oxygen Process Furnaces (after 1/20/83).	(*)	(*)	(*)		(*)	(*)
O Sewage Treatment Plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary Copper Smelters	(*)	(*)	(*)		(*)	(*)
Q Primary Zinc Smelters	(*)	(*)	(*)		(*)	(*)
R Primary Lead Smelters	(*)	(*)	(*)		(*)	(*)
S Primary Aluminum Reduction Plants	(*)	(*)	(*)		(*)	(*)
T Phosphate Fertilizer Industry: Wet Process Phosphoric Plants	(*)	(*)	(*)		(*)	(*)
U Phosphate Fertilizer Industry: Superphosphoric Acid Plants	(*)	(*)	(*)		(*)	(*)
V Phosphate Fertilizer Industry: Diammonium Phosphate Plants	(*)	(*)	(*)		(*)	(*)
W Phosphate Fertilizer Industry: Triple Super-Phosphate Plants	(*)	(*)	(*)		(*)	(*)
X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	(*)	(*)	(*)		(*)	(*)
Y Coal Preparation Plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy Production Facilities	(*)	(*)	(*)		(*)	(*)
AA Steel Plants: Electric Arc Furnaces (10/21/74–8/17/83)	(*)	(*)	(*)		(*)	(*)
AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (after 8/7/83).		(*)	(*)		(*)	(*)
BB Kraft Pulp Mills	(*)	(*)	(*)		(*)	(*)
CC Glass Manufacturing Plants	(*)	(*)	(*)		(*)	(*)
DD Grain Elevator	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface Coating of Metal Furniture	(*)	(*)	(*)		(*)	(*)
GG Stationary Gas Turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime Manufacturing Plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead-Acid Battery Manufacturing Plants	(*)	(*)	(*)		(*)	(*)
LL Metallic Mineral Processing Plants	(*)	(*)	(*)	(*)	(*)	(*)
MM Automobile & Light Duty Truck Surface Coating Operations	(*)	(*)	(*)		(*)	(*)
NN Phosphate Rock Plants	(*)	(*)	(*)		(*)	(*)
PP Ammonium Sulfate Manufacturing	(*)	(*)	(*)		(*)	(*)
QQ Graphic Arts Industry: Publication Rotogravure Printing	(*)	(*)	(*)		(*)	(*)
RR Pressure Sensitive Tape & Label Surface Coating	(*)	(*)	(*)		(*)	(*)
SS Industrial Surface Coating: Large Appliances	(*)	(*)	(*)		(*)	(*)
TT Metal Coil Surface Coating	(*)	(*)	(*)		(*)	(*)
UU Asphalt Processing & Asphalt Roofing Manufacture	(*)	(*)	(*)		(*)	(*)
VV Synthetic Organix Chemicals Manufacturing: Equipment Leaks of VOC.	(*)	(*)	(*)		(*)	(*)
WW Beverage Can Surface Coating Industry	(*)	(*)	(*)		(*)	(*)
XX Bulk Gasoline Terminals	(*)	(*)	(*)		(*)	(*)
AAA Residential Wood Heaters		(*)	(*)		(*)	(*)
BBB Rubber Tires		(*)	(*)		(*)	(*)
DDD VOC Emissions from Polymer Manufacturing Industry					(*)	(*)
FFF Flexible Vinyl & Urethane Coating & Printing	(*)	(*)	(*)		(*)	(*)
GGG Equipment Leaks of VOC in Petroleum Refineries	(*)	(*)	(*)		(*)	(*)
HHH Synthetic Fiber Production	(*)	(*)	(*)		(*)	(*)
III VOC Emission from the Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit processes.		(*)	(*)		(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued
[(NSPS) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
JJJ Petroleum Dry Cleaners	(*)	(*)	(*)		(*)	(*)
KKK Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.	(*)	(*)	(*)		(*)	(*)
LLL Onshore Natural Gas Processing: SO_2 Emissions	(*)	(*)	(*)		(*)	(*)
NNN VOC Emissions from the Synthetic Organic Chemical Manufacturing Industry Distillation Operations.		(*)	(*)		(*)	(*)
OOO Nonmetallic Mineral Processing Plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool Fiberglass Insulation Manufacturing Plants	(*)	(*)	(*)		(*)	(*)
QQQ VOC Emission from Petroleum Refinery Wastewater Systems		(*)	(*)		(*)	(*)
SSS Magnetic Tape Industry		(*)	(*)		(*)	(*)
TTT Plastic Parts for Business Machines Coatings		(*)	(*)		(*)	(*)
VVV Polymeric Coating of Supporting Substrates		(*)	(*)		(*)	(*)

* Indicates approval of state regulation.
[1] Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

Subpart A—General Provisions

2. Section 61.04(c) is amended by revising the table to read as follows:

§ 61.04 address

* * * * *

(c) * * *

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS
[(NESHAPs) for Region VIII]

Subpart	State					
	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
A General Provisions	(*)	(*)	(*)	(*)	(*)	....
C Beryllium	(*)	(*)	(*)	....	(*)	....
D Beryllium Rocket Motor Firing	(*)	(*)	(*)	....	(*)	....
E Mercury	(*)	(*)	(*)	....	(*)	....
F Vinyl Chloride	(*)	(*)	(*)	....	(*)	....
J Equipment Leaks (Fugitive Emission Sources) of Benzene	(*)	(*)	(*)	....	(*)	....
L Benzene Emission from Coke By-Product Recovery Plants	....	(*)	(*)	....	(*)	....
M Asbestos	(*)	(*)	(*)	(*)	(*)	(*)[2]
N Inorganic Arsenic Emissions from Glass Manufacturing Plants	....	(*)	(*)	....	(*)	....
O Inorganic Arsenic Emissions from Primary Copper Smelters	....	(*)	(*)	....	(*)	....
P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities	....	(*)	(*)	....	(*)	....
V Equipment Leaks (Fugitive Emission Sources)	....	(*)	(*)	....	(*)	....
Y Benzene Emissions from Benzene Storage Vessels	....	(*)	(*)	....	(*)	....
BB Benzene Emissions from Benzene Transfer Operations	....	(*)	(*)	....	(*)	....
FF Benzene Waste Operations	....	(*)	....	....	(*)	....

* Indicates approval of state regulations.
[1] Indicates approval of state regulation. Indicates approval of National Emission Standards for Hazardous Air Pollutants as part of the State Implementation Plan (SIP).
[2] Delegation for asbestos demolition, renovation and spraying operations, and waste disposal for demolition, renovation and spraying operations only.

[FR Doc. 93–1389 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–129; RM–8006]

Radio Broadcasting Services; Grundy Center, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Grundy Broadcasting Company, substitutes Channel 249C3 for Channel 249A at Grundy Center, Iowa, and modifies the license of Station KGCI–FM to specify operation on the higher powered channel. See 57 FR 28163, June 24, 1992. Channel 249C3 can be allotted to Grundy Center in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.2 kilometers (11.3 miles) east to avoid a short-spacing to Station KHBT, Channel 249A, Humboldt, Iowa, and to accommodate petitioner's desired transmitter site. The coordinates for Channel 249C3 at Grundy Center are North Latitude 42–21–25 and West Longitude 92–33–14. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–129, adopted December 22, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 249A and adding Channel 249C3 at Grundy Center.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1287 Filed 1-19-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-131; RM-8005]

Radio Broadcasting Services; Copenhagen, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The commission, at the request of Tia A. Soliday, substitutes Channel 294C3 for Channel 294A at Copenhagen, New York, and modifies Station WWLF-FM's construction permit to specify operation on the higher class channel. See 57 FR 28163, June 24, 1992. Channel 294C3 can be allotted to Copenhagen in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.3 kilometers (7 miles) northeast to avoid a short-spacing to Station WPCX, Channel 295B, Auburn, New York, at coordinates North Latitude 43-56-30 and West Longitude 75-33-00. While the allotment is short-spaced to Station CKO-1, Channel 295C1, Ottawa, Ontario, and vacant Channel 293A at Brockville, Ontario, Canada, we find that the use of Channel 294C3 at Copenhagen will not result in any prohibited interference. Canadian concurrence in the allotment as a specially negotiated allotment has been received because Copenhagen is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-131, adopted December 22, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 294A and adding Channel 294C3 at Copenhagen.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1288 Filed 1-19-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-130; RM-8007]

Radio Broadcasting Services; Canyon City, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blue Mountain Broadcasting, allots Channel 233A to Canyon City, Oregon, as the community's first local aural broadcast service. See 57 FR 28162, June 24, 1992. Channel 233A can be allotted to Canyon City without the imposition of a site restriction, at coordinates North Latitude 44-23-18 and West Longitude 118-56-54. With this action, this proceeding is terminated.

DATES: Effective February 26, 1993. The window period for filing applications will open on March 1, 1993, and close on March 31, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-130, adopted December 22, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Canyon City, Channel 233A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1284 Filed 1-19-93; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AE15

List of Approved Spent Fuel Storage Casks: Additions; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On June 26, 1992 (57 FR 28645), the NRC published for public comment a proposed rule which would amend its list of approved spent fuel storage casks by adding two casks to the list. The proposed amendment would allow holders of power reactor operating licenses to store spent fuel in these approved casks under a general license. The initial comment period for this proposed rule expired on September 9, 1992. Subsequent to the expiration of the public comment period, the NRC took steps to implement the provisions in its regulations (10 CFR 2.790(c)) that provides that information submitted to NRC in a rulemaking proceeding which subsequently forms the basis for a final rule will not be withheld from public disclosure by NRC. The NRC has evaluated the information which forms the basis of this proposed rule. Accordingly, additional supplemental information which was previously categorized as proprietary information has been placed in the Public Document Room and all local public document rooms. The additional information being placed in the PDR at this time only relates to the VSC–24 cask. The second cask (TN–24) will be covered separately in a subsequent notice. In addition, the comment period for the June 26, 1992, proposed rule is being reopened for 30 days to allow comments on the additional information.

DATES: Although the comment period expires on February 22, 1993 comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments or suggestions to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon E. Gunderson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3803, or Mr. James F. Schneider, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2692.

SUPPLEMENTARY INFORMATION: Pursuant to 10 CFR 2.790(c), NRC is placing in the NRC Public Document Room portions of the cask vendor's Safety Analysis Report (SAR), as well as certain information of the vendor, supporting its respective SAR, which the vendor claimed to be proprietary. Although NRC has not yet approved or adopted a final rule in the present rulemaking, NRC is disclosing now the vendor's information described above, in advance of any final rule, during the proposed rulemaking stage.

The information of the cask vendor being disclosed at this time provides added detail to the information NRC previously placed in the NRC Public Document Room at the outset of this rulemaking. It complements and supplements the design information already disclosed, providing further detail on such matters as the vendor's design calculations (often in the form of computer runs) and specific data inputs for models used by the vendor for such calculations, as well as cask design details such as reinforcing steel sizing and shield lid thickness. The information being disclosed therefore provides additional specificity for the public about the technical information that was considered by the NRC staff in preparing the principal NRC documents underlying this rulemaking, that is, the proposed Certificate of Compliance for the cask and the associated NRC staff Safety Evaluation Report and related Environmental Assessment which were previously placed in the NRC Public Document Room at the outset of this proposed rulemaking.

In disclosing the cask vendor's information described above, in advance of any final rule, NRC is giving ghe public an additional opportunity to review the content of such information, and the agency is accordingly extending the public comment period for an additional 30 days for this limited purpose, in case members of the public wish to submit additional comments or supplement their prior comments in this proceeding. However, the agency will consider all comments already received to date (which are available in the NRC Public Document Room), and it is therefore unnecessary for commenters to repeat or resubmit prior comments. Accordingly, commenters are specifically requested to limit their written submissions to comment based on a review of the cask vendor's information now being put in the NRC Public Document Room.

Dated at Rockville, Maryland, this 15th day of January 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–1500 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ANE–45]

Proposed Alteration of VOR Federal Airways, Control Areas and Jet Routes; MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the descriptions of various Federal airways, control areas, and jet routes in the Hyannis, MA, area. The realignment of these Federal airways, control areas, and jet routes is necessary because of the decomissioning of the Hyannis (HYA) very high frequency omnidirectional range/tactical air navigation (VORTAC) and the commissioning of the Marconi, MA (LFV), VORTAC in North Truro, MA.

DATES: Comments must be received on or before March 8, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE-500, Docket No. 92-ANE-45, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ANE-45." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter various VOR Federal airways, control areas and jet routes in the Hyannis, MA, area. The alterations are necessary because the Hyannis VORTAC was decommissioned and relocated to North Truro, MA. The commissioning of the new navigational aid, Marconi VORTAC in North Truro, MA, will necessitate the changes to VOR Federal airways, control areas, and jet routes in that airspace. The coordinates for this airspace docket are based on North American Datum 83. Domestic VOR Federal airways, control areas, and jet routes are published, respectively, in sections 71.123, 71.161, and 71.607 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airways, control areas, and jet routes listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Rules and Procedures Service, FAA, in areas outside domestic airspace of the United States is governed by article 12 of, and annex 11 to, the Convention on International Civil Aviation, which pertain to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes are carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Aviation safety, Control areas, Domestic VOR Federal airways, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–141 [Revised]

From Nantucket, MA; INT Nantucket, 334 °T(349 °M) and Boston, MA, 138 °T(154 °M) radials; to Boston. From Manchester, NH; Concord, NH; Lebanon, NH; Burlington, VT; to Massena, NY.

* * * * *

V–151 [Revised]

From INT Nantucket, MA, 334 °T (349 °M) and Providence, RI, 079 °T(093 °M) radials; Providence, Putnam, CT; Gardner, MA; Keene, NH; Lebanon, NH, Montpelier, VT; Burlington, VT.

* * * * *

V–167 [Revised]

From Hancock, NY; INT Hancock 117° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Providence, RI; INT Providence 101 °T(115 °M) and Marconi, MA, 211 °T(227 °M) radials; Marconi; INT Marconi 346 °T(002 °M) and Kennebunk, ME, 161 °T(178 °M) radials; to Kennebunk. The airspace outside the United States below 2,000 feet MSL, including the portion within Warning Area W–103, is excluded.

* * * * *

Section 71.161 Control Areas Associated With Jet Routes Outside the Continental Control Area

* * * * *

J–150 [Revised]

From Robbinsville, NJ; via Hampton, NY; Marconi, MA; to the INT of Marconi 082°T(098°M) and Boston, MA, 097°T(113°M) radials.

* * * * *

J–174 [Revised]

From Snow Hill, MD, via Hampton, NY; Marconi, MA, to HERIN INT. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45′00″N., long. 74°43′59″W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Section 71.607 Jet Routes

* * * * *

J–79 [Revised]

From Key West, FL, via Miami, FL; Palm Beach, FL; Vero Beach, FL; Ormond Beach, FL; INT Ormond Beach 360° and Charleston, SC, 210° radials; Charleston; Tar River, NC; Franklin, VA; Salisbury, MD; INT Salisbury 018° and Kennedy, NY, 218° radials; Kennedy; INT Kennedy 060° and Nantucket, MA, 254° radials; INT Nantucket 254°T(269°M) and Marconi, MA, 205°T(221°M) radials; Marconi; INT Marconi 006°T(022°M) and Bangor, ME, 206°T(225°M) radials; Bangor.

* * * * *

J–150 [Revised]

From Gordonsville, VA; Nottingham, MD; INT Nottingham 061° and Woodstown, NJ, 225° radials; Woodstown; Coyle, NJ; INT Coyle 075° and Hampton, NY, 231° radials; Hampton; INT Hampton 069°T(082°M) and Marconi, MA, 228°T(244°M) radials; Marconi; to the INT Marconi 082°T(098°M) and Boston, MA, 097°T(113°M) radials.

* * * * *

J–174 [Revised]

From Craig, FL, via INT Craig 020° and Charleston, SC, 210° radials; Charleston; Wilmington, NC; Dixon NDB, NC; Norfolk, VA; INT Norfolk 023° and Snow Hill, MD, 211° radials; Snow Hill; Hampton, NY; INT Hampton 069°T(082°M) and Marconi, MA, 228°T(244°M) radials; Marconi, to the INT of Marconi 090°T(106°M) and Nantucket, MA, 066°T(063°M) radials. Airspace below FL 240 is excluded between Snow Hill and lat. 38°45′00″N., long. 74°43′59″W. Airspace above FL 410 is excluded between Snow Hill and Hampton.

* * * * *

Issued in Washington, DC, on January 11, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–1309 Filed 1–19–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ANE–2]

Proposed Alteration and Establishment of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on May 21, 1992 (57 FR 21633). The NPRM proposed to alter VOR Federal Airway V–58 by renumbering a segment of that airway between Hartford, CT, and Nantucket, MA. That segment of V–58 affected by the proposal would have been renumbered to read V–22. The FAA has determined that withdrawing the proposal at this time is warranted. This action will provide an opportunity to reexamine the operations in the airspace associated with the Bradley International Airport departure procedures.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION: On May 21, 1992, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to alter V–58 by renumbering a segment of the airway and establishing that segment as V–22 (57 FR 21633). This action was proposed to assist air traffic control in eliminating the confusion arising from pilots departing Bradley International Airport and transitioning to V–58. Pilots departing Bradley International Airport with assigned departure instructions to southeast bound routes had intercepted V–58 and inadvertently proceeded west on that airway. Renumbering that segment of the airway to V–22 between Hartford, CT, and Nantucket, MA, would have clarified departure instructions and procedures and limit excessive navigation to the assigned airway. No comments were received on the proposed amendment.

The FAA has decided to withdraw the proposal at this time. In lieu of rulemaking action, the FAA has charted two intersections to define the turning points and assist pilots transitioning from terminal environment to the en route airways. A standard instrument departure route has been developed and published to provide further guidance. The FAA believes that the action taken will clarify the departure procedures and will better serve the airspace users, rather than renaming a segment of that airway.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 92–ANE–2, as published in the **Federal Register** on May 21, 1992 (57 FR 21633), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Washington, DC, on January 11, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–1310 Filed 1–19–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL–21–91]

RIN 1545–AQ45

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed amendments to the Income Tax Regulations relating to substantial and gross valuation misstatements as defined in sections 6662(e) and 6662(h) of the Internal Revenue Code. The regulations would apply to taxpayers who have substantial and gross valuation misstatements attributable to section 482 allocations (Intercompany transfer pricing).

DATES: Written comments must be received by April 21, 1993. A public hearing has been scheduled for May 14, 1993 at 10 a.m. Requests to speak at the hearing, along with outlines of oral comments, must be received by April 23, 1993.

ADDRESSES: Send written comments, requests to speak at the hearing, and outlines of oral comments to be presented to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IL–21–91), room 5228, Washington, DC 20044. The public hearing will be held in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph, with respect to the proposed regulations, telephone (202) 622–3880, and Carol Savage, with respect to the public hearing, telephone (202) 622–8452. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this proposed regulation is contained in § 1.6662–5(j)(5)(ii). This information is required by the Internal Revenue Service to ensure that persons claiming that an amount should be excluded from the calculation of the net section 482 transfer price adjustment have acted with reasonable cause and good faith. The information will be used to document how the result of a controlled transaction was determined. The likely respondents and recordkeepers are business or other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents and recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 20,000 hours.

Estimated average annual burden per recordkeeper: 10 hours.

Estimated number of recordkeepers: 2000.

Background

This document contains proposed amendments to the Income Tax Regulations under sections 6662 and 6664 relating to the imposition of accuracy-related penalties.

Explanation of Provisions

The experience of Internal Revenue Service international examiners has been that the majority of taxpayers are unable to provide an explanation of how their intercompany pricing was established. This may account in large part for the fact that in many cases international examiners' access to a corporation's transfer pricing information is delayed or denied. Moreover, experience has been that many taxpayers do not rely upon any form of comparables or other contemporaneous information either in planning or in defending intercompany transactions. Thus, the taxpayer, not having structrued the transaction with any comparable in mind, seeks to defend its position by finding whatever transaction or method gives rise to a result that most closely approximates the controlled transaction result initially reported. Thus, the lack of contemporaneous documentation of how a controlled transaction result was determined increases the time spent and expense incurred by both the taxpayer and the Service in determining whether that result was arm's length. Further, the lack of documentation explaining the basis for a taxpayer's intercompany pricing tends to increase controversy between taxpayers and the Service, as both seek to develop post hoc analyses of the arm's length character of the taxpayer's transactions. Accordingly, these regulations are designed to encourage taxpayers to document their transfer pricing transactions and to provide that documentation to the Internal Revenue Service upon request.

Section 6662(a) imposes a penalty in the amount of 20 percent of any underpayment to which the section applies. Section 6662(b) lists the types of underpayments to which section 6662(a) applies. One such underpayment is an underpayment attributable to any substantial valuation misstatement under chapter 1 of the Internal Revenue Code.

Section 6662(e) defines a substantial valuation misstatement. These proposed regulations under section 6662(e) contain the rules for determining whether a section 482 allocation constitutes a substantial valuation misstatement under chapter 1 of the Internal Revenue Code on which a penalty of 20 percent of the underpayment of tax may be imposed. Such a substantial valuation misstatement exists if (1) the transfer price for any property or services (or for the use of property) claimed on a return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the arm's length price, or (2) the net section 482 transfer price adjustment exceeds ten million dollars.

Section 6662(h) provides for an increased penalty in the case of a gross valuation misstatement. The proposed regulations provide that the penalty for a gross valuation misstatement is 40 percent of the underpayment of tax attributable to the gross valuation misstatement if (1) the price for any property or services (or for the use of property) claimed on any return in connection with any transaction between persons described in section 482 is 400 percent or more (or 25 percent or less) of the amount determined under section 482 to be the arm's length amount, or (2) the net section 482 transfer price adjustment exceeds twenty million dollars.

Certain adjustments are excluded in determining the ten or twenty) million dollar threshold. Adjustments that are attributable to an allocation under section 482 are excluded if there was reasonable cause for the taxpayer's determination of that price and the taxpayer acted in good faith. The proposed regulations set forth the criteria for determining whether there is reasonable cause and good faith for excluding an adjustment. If a transfer pricing methodology is developed and applied pursuant to an Advance Pricing Agreement in any tax year, then use of such a methodology to establish intercompany transfer prices for a different year may be considered evidence of reasonable cause and good faith. Adjustments that are attributable to a transaction between foreign corporations are also excluded, unless the treatment of that transaction affects the determination of U.S. source income or taxable income that is effectively connected with the conduct of a trade or business within the United States.

The rules of § 1.6664–4 apply for purposes of applying the reasonable cause and good faith exception to substantial and gross valuation misstatements under section 6662(e)(1)(B)(i) and sections 6662(h)(2)(A) (i) and (ii). If those valuation misstatements satisfy the reasonable cause and good faith exclusion provisions under § 1.6662–5(j)(5) of the proposed regulations, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of § 1.6664–4. For purposes of applying the reasonable cause and good faith exclusion to net section 482 transfer price adjustments under section 6662(e)(1)(B)(ii), the rules of § 1.6662–5(j)(5) of the proposed regulations apply. A net section 482 transfer price adjustment for which the rules of § 1.6662–5(j)(5) are not satisfied will not satisfy the reasonable cause and good faith exception under section 6664(c).

Proposed Effective Date

These regulations would apply to taxable years beginning after April 21, 1993. For returns with respect to which the penalty may be imposed that were filed prior to this date, any reasonable interpretation of section 6662(e) is acceptable. The Treasury Department considers these regulations to be a reasonable interpretation of section 6662(e), except that no requirement of contemporaneous documentation may be imposed for past transactions. However, contemporaneous documentation may be helpful in establishing that the taxpayer had reasonable cause and acted in good faith. Taxpayers may elect the application of these regulations to tax returns due prior to this proposed effective date.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, an initial Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying.

A public hearing will be held on May 14, 1993 at 10 a.m. in the Internal Revenue Service Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply to the public hearing.

Persons who have submitted written comments by April 21, 1993, and who also desire to present oral comments at the hearing on the proposed regulation, must submit, not later than April 23, 1993, a request to speak at the hearing, along with an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers thereto.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building before 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.6654–1 through 1.6709–1T

Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding a new citation to read as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.6662–5 also issued under 26 U.S.C. 6662.

* * *

Par. 2. Section 1.6662–0 is amended by revising the entries for § 1.6662–5, paragraph (e) and (j) in the table of contents to read as follows:

§ 1.6662–0 Table of contents.

* * * * *

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

* * * * *

(e) Definitions.
(1) Substantial valuation misstatement.
(i) 200 percent test.
(ii) 200 percent and 50 percent test.
(iii) Ten million dollar threshold.
(2) Gross valuation misstatement.
(i) 400 percent test.
(ii) 400 percent and 25 percent test.
(iii) Twenty million dollar threshold.
(3) Property.
(4) Identical terms used in section 482 regulations.

* * * * *

(j) Transactions between persons described in section 482 and net section 482 transfer price adjustments.
(1) In general.
(i) Penalty of 20 or 40 percent of underpayment.

(ii) Example.
(2) Ten million dollar threshold.
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(3) Special rules in the case of carrybacks and carryovers.
(i) In general.
(ii) Calculation of net section 482 transfer price adjustment for carryback or carryover years not reduced by amount of carryback or carryovers.
(4) Rules for coordinating between two different penalties.
(i) In general.
(ii) Coordination of net section 482 transfer price adjustment under section 6662(e)(1)(B)(ii) and gross valuation misstatement adjustment under section 6662(h)(2)(A) (i) or (ii).
(iii) Coordination of twenty million dollar threshold amount under section 6662(h)(2)(iii) and the ten million dollar threshold under section 6662(e)(1)(B)(ii).
(iv) Examples.
(5) Reasonable cause and good faith exclusion for purposes of net section 482 transfer price adjustments.
(i) In general.
(ii) Contemporaneous documentation.
(iii) Reasonable belief in arm's length result.
(A) Result to be sustained on merits.
(B) Reliance on advice of professional.
(C) Defense of transfer pricing results with a methodology other than that used in preparing return.
(iv) Examples.
(6) Special Rule.
(7) Effective date.

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Par. 3. Section 1.6662–5 is amended by revising paragraphs (e) and (j) to read as follows:

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

* * * * *

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if—

(i) *200 percent test.* The value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 of the Internal Revenue Code is 200 percent or more of the correct amount;

(ii) *200 percent and 50 percent test.* The result of any controlled transaction is 200 percent or more (or 50 percent or less) of the arm's length result determined under section 482; or

(iii) *Ten million dollar test.* The net section 482 transfer price adjustment for the taxable year exceeds ten million dollars.

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if—

(i) *400 percent test.* The value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 of the Internal Revenue Code is 400 percent or more of the correct amount;

(ii) *400 percent and 25 percent test.* The result of any controlled transaction is 400 percent or more (or 25 percent or less) of the arm's length result determined under section 482; or

(iii) *Twenty million dollar test.* The net section 482 transfer price adjustment for the taxable year exceeds twenty million dollars.

(3) *Property.* For purposes of this section, the term "property" refers to both tangible and intangible property. Tangible property includes property such as land, buildings, fixtures, and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts, and choices in action.

(4) *Identical terms used in section 482 regulations.* For purposes of this section, the terms used in these regulations shall have the same meaning as identical terms used in regulations promulgated under section 482.

* * * * *

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments*—(1) *In general*—(i) *Penalty of 20 or 40 percent of underpayment.* If a taxpayer makes a substantial valuation misstatement as defined in paragraph (e)(1) of this section, section 6662(a) imposes a penalty equal to 20 percent of the underpayment of income tax attributable to it. If there is a gross valuation misstatment as defined in paragraph (e)(2) of this section, section 6662(h) increase the penalty to 40 percent of the underpayment of tax attributable to the gross valuation misstatement. The result of a controlled transaction that is reported on the income tax return will be used to determine whether a substantial or gross valuation misstatement exists regardless of whether the amount reported on the return differs from the transaction price. If the taxpayer has filed an amended return, the result of a controlled transaction that is reported on an amended return will be used to determine whether a substantial or gross valuation misstatement exists only if that amended return has been filed before the Service has contacted the taxpayer regarding that taxable year's return. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (j)(1) if it satisfies the requirements of a qualified amended return for purposes of § 1.6662–2(c)(3) as set forth in those regulations or as the Commissioner may prescribed by Revenue Procedure. See § 601.601(d)(2)(ii)(B) of this chapter.

(ii) *Example.* The following example illustrates these principles.

Example. A and B are controlled taxpayers as defined in § 1.482–1T(g)(5). A agrees to pay B $5 apiece for 100,000 units of Product X. A and B also agree to adjust that price, as may be necessary, based on subsequent events pursuant to an agreement under § 1.482–1T(e)(2) (Compensating Adjustments). A and B subsequently make a $10 adjustment to that price. Accordingly, when B files its U.S. income tax return it reports $15 for each Product X sold to A. Applying section 482, the IRS makes a further $3 adjustment, resulting in a final transfer price of $18. Thus, the net section 482 transfer price adjustment is $300,000 (100,000×$3). B has not made a substantial valuation misstatement because the price claimed on B's return ($15) is not 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct price ($18). Further, B's net section 482 transfer price adjustment does not exceed ten million dollars. Accordingly, B is not subject to the substantial valuation misstatement penalty under section 6662(b)(3).

(2) *Ten million dollar threshold.* (i) *Net section 482 transfer price adjustment.* The term "net section 482 transfer price adjustment" means the net increase in the taxable income of a taxpayer for a taxable year that results from all section 482 allocations. Increases in taxable income are netted against decreases, including setoffs as allowed under § 1.482–1T(e)(5). In determining whether the ten million dollar threshold is met, all section 482 transfer price adjustments will be included, notwithstanding that an adjustment may be subject to a penalty under section 6662(h) or 6663. However, no adjustment will be subject to more than one accuracy-related penalty. See paragraph (j)(4) of this section.

(ii) *Reasonable cause and good faith.* In calculating the ten million dollar threshold, any increase in taxable income that is attributable to any redetermination of a result of a controlled transaction shall be excluded if the taxpayer shows that there was reasonable cause for the result reported and it has at all times acted in good faith. See paragraph (j)(5) of this section.

(iii) *Exclusion of certain foreign to foreign transactions.* Solely for purposes of determining whether the ten million dollar threshold is met, any increase in taxable income resulting from an allocation under section 482 that is attributable to any controlled transaction solely between foreign corporations will be excluded unless the treatment of that transaction affects the determination of either corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States. However, the penalty imposed under section 6662(b)(3) will be imposed on any underpayment of a United States shareholder attributable to section 482 allocations with respect to transactions solely between foreign corporations if the ten million dollar threshold is met without regard to the increase that is attributable to any transaction solely between foreign corporations.

(iv) *Examples.* The principles of this paragraph (j) are illustrated by the following examples.

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following section 482 transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$4,000,000	(Attributable to an increase in gross income because of an increase in the royalty).
(2)	4,500,000	(Attributable to an increase in sales proceeds due to a decrease in the profit margin of a related buyer).
(3)	2,000,000	(Attributable to a decrease in the cost of goods sold because of a decrease in the cost plus mark-up of a related seller).
	10,500,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold. The net section 482 adjustment is greater than ten million dollars. Thus, the ten million dollar threshold is met.

Example 2. (i) Applying section 482, the Internal Revenue Service makes the following section 482 transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$11,000,000	
(2)	4,000,000	(Because of a setoff under § 1.482–1T(e)(5)).
(3)	2,000,000	
	9,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold. The net section 482 adjustment is less than ten million dollars. Thus, the ten million dollar threshold is not met.

Example 3. CFC1 and CFC2 are controlled foreign corporations within the meaning of section 957. Applying section 482, the IRS disallows a deduction for twenty five million dollars of the interest expense of CFC1 paid to CFC2, which results in CFC1's U.S. shareholder having an additional subpart F inclusion in excess of ten million dollars. No other adjustments under section 482 are made with respect to the controlled taxpayers. However, the increase has no effect upon the determination of CFC1's or CFC2's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States. Accordingly, the ten million dollar threshold is not met. However, the penalty imposed pursuant to section 6662(b)(3) may still be applicable in the event of a substantial valuation misstatement described in section 6662(e)(1)(B)(i) or a gross valuation misstatement described in section 6662(h)(2).

Example 4. Assume the same facts as in *Example 3,* except that the U.S. shareholder has an additional $100 million section 482 transfer price adjustment for the taxable year attributable to the sale of goods to CFC that is not excluded under section 6662(e)(3)(B). Accordingly, the ten million dollar threshold is met. The penalty will be computed on the underpayment attributable to the total net section 482 transfer price adjustment, including the portion excluded in determining whether the ten million dollar threshold is met in *Example 3* above.

(3) *Special rules in the case of carrybacks and carryovers*—(i) *In general.* The penalty for a substantial or gross valuation misstatement applies to any portion of an underpayment of tax for a year to which a loss, deduction or credit is carried that is attributable to a substantial or gross valuation misstatement for the year in which the carryback or carryover of the loss, deduction or credit arises (the loss or credit year). Any portion of a substantial or gross valuation misstatement attributable to a loss or credit year shall retain its character as a substantial or gross valuation misstatement in any carryback or carryover year. No portion of a substantial or gross valuation misstatement attributable to a loss or credit year shall be used to determine whether there is a separate substantial or gross valuation misstatement attributable to the carryback or carryover year.

(ii) *Calculation of net section 482 transfer price adjustment for carryback or carryover years not reduced by amount of carryback or carryovers.* The amount of a net section 482 transfer price adjustment for a carryback or carryover year is not reduced because of a carryback or carryover of a loss, deduction or credit to that year.

(4) *Rules for coordinating between two different penalties*— (i) *In general.* In determining the penalty imposed with respect to a substantial valuation misstatement under section 6662(b)(3) or a gross valuation misstatement under section 6662(h), no adjustment will be subject to more than one accuracy-related penalty.

(ii) *Coordination of net section 482 transfer price adjustment under section 6662(e)(1)(B)(ii) and gross valuation misstatement adjustment under section 6662(h)(2)(A)(i) or (ii).* In determining whether a net section 482 transfer price adjustment exceeds the ten million dollar threshold amount under section 6662(e)(1)(B)(ii), an adjustment attributable to a gross valuation misstatement under section 6662(h)(2)(A)(i) or (ii) will be taken into account. If the threshold amount is exceeded, the portion of such amount that is attributable to the gross valuation misstatement is subject to the 40 percent penalty under section 6662(h), but will not be subject to the 20 percent penalty under section 6662(a) and section 6662(b)(3). The remaining amount is subject to the 20 percent penalty, even if such amount is less than ten million dollars.

(iii) *Coordination of twenty million dollar threshold amount under section 6662(h)(2)(iii) and the ten million dollar threshold under section 6662(e)(1)(B)(ii).* If a net section 482 transfer price adjustment exceeds the twenty million dollar threshold under section 6662(h)(2)(iii), then the entire amount of the adjustment is subject to the 40 percent penalty under section 6662(h). The adjustment is not subject to an additional 20 percent penalty under sections 6662(a) and 6662(b)(3).

(iv) *Examples.* The following examples illustrate the principles of paragraph (j)(4).

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following adjustments to the taxable income of a taxpayer for the taxable year:

(1)	$2,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	6,000,000	(Not a 200 or 400 percent adjustment).
	8,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold under section 6662(e)(1)(B)(ii). The net section 482 transfer price adjustment is less than ten million dollars. Thus, the ten million dollar threshold has been not met. However, the two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 20 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The six million dollar adjustment is not subject to a penalty under section 6662(b)(3).

Example 2. (i) Applying section 482, the Internal Revenue Service makes the following adjustments to the taxable income of a taxpayer for the taxable year:

(1)	$2,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	9,000,000	(Not a 200 or 400 percent adjustment).
	11,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold under section 6662(e)(1)(B)(ii). The net section 482 transfer price adjustment is greater than ten million dollars. Thus, the ten million dollar threshold has been not met. The two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The nine million dollar adjustment is subject to a penalty under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to the substantial valuation misstatement.

Example 3. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$6,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	15,000,000	(Not a 200 or 400 percent adjustment).
	21,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the twenty million dollar threshold under section 6662(h). The net section 482 transfer price adjustment is greater than twenty million dollars and thus constitutes a gross valuation misstatement. Accordingly, the total adjustment of twenty one million dollars is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the 21 million dollar gross valuation misstatement. The six million dollar adjustment will not be separately included for purposes of any additional penalty.

Example 4. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$4,000,000	(Attributable to an adjustment that is 400 percent or more (or 25 percent or less) of the correct section 482 arm's length result).
(2)	15,000,000	(Not a 200 or 400 percent adjustment).
	19,000,000	

(ii) None of the adjustments is excluded under section 6662(e)(3)(B) in determining the ten million dollar threshold under section 6662(e)(1)(B)(ii). The net section 482 transfer price adjustment is greater than ten million dollars and thus constitutes a substantial valuation misstatement. The four million dollar adjustment constitutes a gross valuation misstatement. Accordingly, the adjustment of four million dollars is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement. The fifteen million dollar adjustment is subject to a penalty, under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to a substantial valuation misstatement for a net section 482 transfer price adjustment exceeding ten million dollars.

(5) *Reasonable cause and good faith exclusion for purposes of net section 482 transfer price adjustments*—(i) *In general.* The determination of whether a taxpayer acted with reasonable cause and in good faith is made by taking into account all relevant facts and circumstances. There are two elements to the reasonable cause and good faith exclusion, both of which must be satisfied by a taxpayer to prevent imposition of the penalty.

(ii) *Reasonable effort to accurately determine proper tax liability.* The first element of the reasonable cause and good faith exclusion is whether the taxpayer has made a reasonable effort to accurately determine its proper tax liability. This determination must be made no later than the time the return is filed for the tax year, and documentation must be contemporaneous with that determination. Such documentation must include an analysis indicating that the result was an arm's length result within the meaning of the regulations promulgated under section 482. It is presumed that the taxpayer did not make a reasonable effort to accurately determine its proper tax liability if it possesses contemporaneous documentation of how a transfer price was determined but does not provide the documentation to the Service within 30 days of the Service's request.

(iii) *Reasonable belief in arm's length result.* The second element of the reasonable cause and good faith exclusion is whether the taxpayer reasonably believed that its transfer pricing methodology produced an arm's length result. The determination of whether the taxpayer has such a reasonable belief is made in light of the experience and knowledge of the taxpayer. Use of one or more methods prescribed in the regulations promulgated under section 482 is a factor to be considered in determining reasonable belief. For this purpose, the methods described in §§ 1.482–3T(e) and 1.482–4T(d) are not considered to be methods prescribed in the regulations promulgated under section 482.

(A) *Result to be sustained on merits.* The taxpayer must show that at the time the taxpayer's income tax return, or amended return as allowed in paragraph (j)(1) of this section, was filed the taxpayer reasonably believed that the result would more likely than not be sustained on its merits. If, at the time the prices were established, the taxpayer had a reasonable belief that its methodology would produce an arm's length result, and the taxpayer had a reasonable belief that the underlying critical assumptions would not change during the taxable year, and at the time the tax return was filed the critical assumptions had not changed, then the taxpayer will have a reasonable belief that its transfer pricing methodology produced an arm's length result. However, if before the tax return was filed, the taxpayer learned that a critical assumption had changed, the taxpayer will have had an obligation to review the reasonableness of its initial result. Finally, if before the return was filed, the taxpayer acquired actual knowledge that a critical assumption had changed and that the pricing methodology did not produce an arm's length result, then the taxpayer was obligated to review the reasonableness of its initial result and make any adjustments necessary to reflect an arm's length result.

(B) *Reliance on advice of professional.* Reliance on the advice of, or a study done by, a professional (including, but not necessarily limited to, an attorney, accountant, or economist (and regardless of whether the professional is an employee of the taxpayer)) is a factor to be taken into account in demonstrating a reasonable belief that a transfer price produced an arm's length result. Reliance on advice or a study will give rise to a reasonable belief that a methodology produced an arm's length result if under all the circumstances that reliance was well-founded. In determining whether that reliance is well-founded consideration should be given to the professional's relevant experience and expertise. Factors to consider in determining whether reliance on a professional's advice or study is well-founded include whether the taxpayer has disclosed all relevant information regarding the controlled transaction to the professional, the methodology and critical assumptions underlying the advice or study, and the quantity and quality of data used in the study relative to the quantity and quality of data available in the taxpayer's industry. Critical assumptions are the objective business and economic criteria that are fundamental to the operation of the taxpayer's transfer pricing methodology. A critical assumption is any fact about the taxpayer, a third party, or an industry that would significantly affect the substantive conclusions of the study if the assumption changed, whether the change was within the taxpayer's control (for example, a new business strategy or mode of conducting an operation, or the cessation or transfer of a business segment or entity covered by the study) or beyond it (for example, a significant deviation from budgeted sales volume, or operating results that differ from the reasonably expected range of arm's length results).

(C) *Defense of transfer pricing results with a methodology other than that used in preparing return.* A taxpayer will not be considered to have acted without reasonable cause and good faith merely because it chooses to defend its transfer pricing results by way of a methodology different than that used in preparing its return, provided the reliance on the initial rationale was reasonable at the time the return was filed.

(iv) *Examples.* The following examples illustrate the application of the reasonable cause and good faith exclusions provided in this paragraph (j)(5).

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$9,000,000	
(2)	2,000,000	
(3)	9,000,000	
	20,000,000	Total section 482 adjustments.

(ii) The taxpayer can show reasonable cause and good faith under section 6662(e)(3)(B)(1) for adjustments number one and two. Accordingly, solely for purposes of determining the threshold, eleven million dollars is excluded from the section 482 transfer pricing adjustments. The net section 482 adjustment is $9 million. Therefore, the ten million dollar threshold is not met.

Example 2. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments to a taxpayer for the taxable year:

(1)	$9,000,000	
(2)	2,000,000	(Attributable to an adjustment that is 200 percent or more (or 50 percent or less) of the correct section 482 price).
(3)	9,000,000	
	20,000,000	Total section 482 adjustments.

(ii) The taxpayer can show reasonable cause and good faith under section 6662(e)(3)(B)(i) for adjustments number one and three. Accordingly, eighteen million is excluded from the section 482 transfer pricing adjustments for purposes of determining the ten million dollar threshold. The net section 482 adjustment is two million. Thus, the taxpayer is not subject to the substantial valuation misstatement penalty under section 6662(b)(3) by virtue of section 6662(e)(1)(B)(ii). However, the taxpayer is subject to the penalty imposed under section 6662(b)(3) by virtue of section 6662(e)(1)(B)(i) on the underpayment of tax attributable to the two million dollar adjustment.

(6) *Special rule.* If the regular tax (as defined in section 55(c)) imposed by chapter 1 of the Internal Revenue Code on the taxpayer is determined by reference to an amount other than taxable income (for example, for purposes of the alternative minimum tax), then that other amount shall be treated as the taxable income of the taxpayer for purposes of section 6662(e)(3). Accordingly, for taxpayers whose regular tax is determined by reference to an amount other than taxable income, the increase in that other amount resulting from section 482 adjustments is the taxpayer's net section 482 transfer price adjustment.

(7) *Effective Date.* For rules relating to transactions between persons described in section 482 and net section 482 transfer price adjustments, these

regulations apply to taxable years beginning after April 21, 1993. Taxpayers may elect the application of these regulations to tax returns due prior to this effective date.

* * * * *

Par. 4. Section 1.6664–0 is amended by revising the entry for § 1.6664–4, paragraph (d) in the table of contents to read as follows:

§ 1.6664–0 Table of contents. * * *

* * * * *

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(d) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

* * * * *

Par. 5. Section 1.6664–4 is amended by adding the text of paragraph (d) to read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

* * * * *

(d) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For purposes of applying the reasonable cause and good faith exception of section 6664(c) to controlled transactions under sections 6662(e)(1)(B)(ii) and (h)(2)(A)(iii) the rules of § 1.6662–5(j)(5) of the proposed regulations apply. A taxpayer that does not satisfy the rules of § 1.6662–5(j)(5) cannot satisfy the reasonable cause and good faith exception under section 6664(c). The rules of this section apply to substantial and gross valuation misstatements under section 6662(e)(1)(B)(i) and sections 6662(h)(2)(A)(i) and (ii). If the standards of the reasonable cause and good faith exclusion provisions under § 1.6662–5(j)(5) of the proposed regulations are met with respect to such valuation misstatements, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of this section.

* * * * *

Shirley D. Peterson,

Commission of Internal Revenue.

[FR Doc. 93–1111 Filed 1–13–93; 2:10 pm]

BILLING CODE 4830-01-M

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26 CFR Parts 1 and 602

[INTL–0401–88]

RIN 1545–AL80

Intercompany Transfer Pricing Regulations Under Section 482

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. The Tax Reform Act of 1986 amended section 482. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking and additional text is proposed in this document.

DATES: Written comments and request for a public hearing must be received by July 20, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0401–88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Sim Seo at (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, Attention: Desk Officer for the Department of Treasury, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer RO:FP, Washington, DC 20224.

The collection of information in this notice of proposed rulemaking is in §§ 1.482–1T, 1.482–3T, 1.482–4T, and 1.482–6T. This information is required by the Internal Revenue Service to implement section 482 of the Internal Revenue Code. This information will be used by the Service to ensure compliance with the relevant statutes and regulations. The likely respondents and/or recordkeepers are businesses. The following estimates are approximations. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual reporting and/or recordkeeping burden: 30,700 hours. The estimated annual burden per respondent is estimated to be 3.6 hours.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** add new §§ 1.482–0T, 1.482–1T, and 1.482–2T through 1.482–7T to the Income Tax Regulations. The final regulations that will result from the regulations proposed in this notice will be based on the text of the temporary regulations and will provide rules relating to intercompany transfer pricing under section 482 of the Internal Revenue Code. For the text of the temporary regulations, see T.D. 8470, published in the Rules and Regulations section of this issue of the **Federal Register**. The preamble to the temporary regulations contains a full explanation of the reasons underlying the issuance of the proposed regulations.

In addition to the text of the temporary regulations, the final regulations that will result from the regulations proposed in this notice will be based on the text of proposed §§ 1.482–1T(f)(2) and 1.482–6T contained in this notice. These provisions are proposed to take the place of reserved sections of the temporary regulations.

Proposed regulations under section 482 were issued on January 30, 1992 (INTL–0372–88, INTL–0401–88, 57 FR 3571). With the exception of the cost sharing provisions of proposed § 1.482–2(g), the proposed regulations issued on January 30, 1992, are withdrawn.

Comments and Public Hearing

Before adopting these regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits timely written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the **Federal Register**.

Explanation of Proposed Regulations

Section 1.482–1(f)(2)

Section 1.482–1(f)(2) provides guidance on the extent to which foreign legal restrictions on payments between controlled taxpayers will be respected for purposes of section 482. In general, section 1.482–1(f)(2)(i) provides that a foreign legal restriction will be recognized for this purpose if the taxpayer demonstrates that the receipt of an arm's length payment was prevented by a foreign legal restriction, and the taxpayer elects the deferred income method of accounting with respect to such payments.

Section 1.482–1(f)(2)(ii) defines an applicable foreign legal restriction as a restriction that is publicly promulgated and generally applicable, with respect to which the controlled taxpayer has exhausted all practicable legal remedies afforded under foreign law for obtaining a waiver, expressly prevents the payment of an arm's length amount within the meaning of section 482, and was not circumvented through other transactions between the controlled taxpayers.

Section 1.482–1(f)(2)(iii) provides that if the restriction meets the definition of an applicable foreign legal restriction and the taxpayer has elected the deferred income method of accounting, any section 482 allocation connected with the transaction will be deferrable until the restriction is removed. Deductions and credits chargeable against a deferred amount are subject to deferral under section 461.

Section 1.482–1(f)(2)(iv) provides an exception from the election requirement in cases in which the taxpayer can demonstrate, based on a comparable uncontrolled transaction, that the transaction as structured was at arm's length.

Section 1.482–6

In response to comments, the scope of application and flexibility of the profit split approach has been significantly expanded from that in the former proposed regulations. Section 1.482–6 describes three profit split methods that may be employed. Like the comparable profits method (§ 1.482–5T), this approach may be used in transactions involving either tangible or intangible property. The basic objective of this approach is to estimate an arm's length return by comparing the relative economic contributions that two parties make to the success of a venture, and dividing the returns from that venture between them on the basis of the value of such contributions.

Since the profit split method either wholly or in part relies on internal data rather than data derived from uncontrolled taxpayers, other methods often will provide the most reliable indicator of an arm's length result. Accordingly, several requirements have been imposed on taxpayers that wish to apply this method to ensure that it only is used in cases where it is the most appropriate method. A taxpayer may apply the profit split method only if both controlled taxpayers own valuable, non-routine self-developed intangible property (or an intangible acquired from an uncontrolled taxpayer, but only if the controlled taxpayer assumes significant risks and possesses the right to significant economic benefits attributable to the intangible) and the intangible contributes significantly to earning the combined income derived from the relevant business activity; there are significant transactions between the controlled taxpayers; and certain administrative requirements are followed. The most important administrative requirement is that the taxpayer must make a binding election to apply the profit split method that may be revoked only with the consent of the Commissioner.

Section 1.482–6(c) provides that the three profit split methods are: the residual allocation rule; the capital employed allocation rule; and the comparable profit split rule.

Section 1.482–6(c)(2) describes the residual allocation rule. This rule is similar to the Basic Arm's Length Return Method profit split that was described in the section 482 White Paper (Notice 88–123, 1998–2 C.B. 458). It consists of two basic steps. First, applying an analysis similar to that described under other methods such as the comparable profits methods, market returns to the parties' routine functions are estimated and allocated to the parties performing them. Such an allocation normally will not account for the income attributable to the exploitation of valuable intangible property, and a residual profit will remain in such cases. On the assumption that this residual amount is attributable to intangible property, the residual amount is divided between the controlled taxpayers based on a measure of their relative value of their contributions of intangible property. Of course, market values normally are unavailable and some other measure than a market price must be employed. Often a reliable measure will be the parties' relative expenditures related to the development of the intangible property exploited. Depending on the facts and circumstances, the expenditures that are compared may be limited to current expenditures, or may be capitalized expenditures over a period of years. Moreover, other measures may be more appropriate in particular cases.

Section 1.482–6(c)(3) describes the capital employed allocation rule. This rule applies only if all the controlled taxpayers participating in the relevant business activity assume an approximately equal level of risk with respect to their capital employed. Risk is measured based on the probability of gain or loss rather than a measurement of total potential gain or loss from an activity. Comment is requested on the merits of a profit split based on this approach and the feasibility of measuring relative levels of risk.

Under the capital employed allocation rule, the parties' combined income is divided between the parties by allocating an equal return to each controlled taxpayer's capital employed. For this purpose, capital employed is equal to the book or fair market value of all operating assets employed in the relevant business activity be determined, plus the value of any intangible property employed. Intangible property value may be estimated by capitalizing past expenditures on intangible development. Tangible and intangible assets can be valued based on their fair market values only if reliable information regarding the fair market value of such assets is available.

Section 1.482–6(c)(4) describes the comparable profit split rule. This rule is similar to the comparable profit split set forth in the former proposed regulations (proposed § 1.482–2(f)(6)(iii)(C)(*3*)). Finally, § 1.482–6(c)(5) provides that other profit splits may be employed where capital is difficult to measure or is not a significant determinant of operating profit. The taxpayer must demonstrate to the district director that such a profit split provides an economically valid basis for the allocation of profit or loss arising from the relevant business activity.

Section 1.482–6(d) describes the administrative requirements that a taxpayer must meet in order to apply the profit split method. In addition to the binding election requirement, the taxpayer also must document, to the satisfaction of the district director, the combined profit or loss attributable to the business activity and explain in such documentation why the profit split method provides the best method for determining an arm's length result under the facts and circumstances; prior to making the binding election the taxpayer must execute a pricing agreement setting forth the allocation method chosen; and the method must be applied consistently by all the parties to the agreement from year to year. Section 1.482–6(e) clarifies that the written pricing agreement has no effect other than satisfying these procedural requirements.

Section 1.482–6(f) provides that, with the exception of the administrative requirements, the district director also must satisfy the requirements that the taxpayer must satisfy in order to apply the profit split method.

Other Comments Solicited

In connection with the issuance of the proposed and temporary regulations under section 482, the Service considered a number of other provisions that have not been included in either the proposed regulations or the temporary regulations. Comment is solicited on these issues, which are described below.

(1) Exception from adjustment using current year data—Comment is requested on the possibility of introducing an exception from the general, multiple year data rule under § 1.482–1T(d)(3)(iv), under which taxpayers would be permitted to determine an arm's length result for a particular year by reference to data derived from comparable uncontrolled transactions that occurred in previous years. Under this exception, the taxpayer would be required to update this data as new information became available. While the district director would be permitted to adjust the taxpayer's results obtained under this approach, such adjustments could be made only on the basis of data derived from transactions occurring in the same years as the transactions that the taxpayer employed to determine its prices.

(2) Definition of valuable, non-routine intangible—A comprehensive definition of the term "valuable, non-routine intangible" is not included in the Temporary Regulations under section 482. Comment is requested on possible precise definitions for this term that could be provided by regulation.

(3) Other methods for determining arm's length consideration for transfers of intangible property—Comment is requested as to whether, in addition to the methods enumerated in § 1.482–4T, a method could be provided that would measure an arm's length result for the transfer of an intangible by discounting the projected costs and benefits to the licensor or the licensee, employing valid measures of the cost of capital such as the capital asset pricing model. Alternatively, the projected costs and benefits of both the licensor and licensee could be determined and any residual amount apportioned between the parties based on a profit split.

(4) Definition of an intangible—Comment is requested as to whether the definition of intangible property incorporated in § 1.482–4T(b) should be expanded to include items not normally considered to be items of intellectual property, such as work force in place, goodwill or going concern value.

Drafting Information

Personnel from the Internal Revenue Service and the Treasury Department participated in the development of these regulations.

List of Subjects

26 CFR 1.481–1 Through 1.483–2T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the notice of proposed rulemaking published on January 30, 1992, (57 FR 3571) is withdrawn with the exception of proposed § 1.482–2(g), and 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.482–1T is amended by adding the text of paragraph (f)(2) to read as follows:

§ 1.482–1T Allocation of income and deductions among taxpayers.

* * * * *

(f) * * *

(2) *Effect of foreign legal restrictions*—(i) *In general.* The district director may make an allocation under section 482 without regard to the effect of any foreign legal restriction, except as provided in paragraph (f)(2)(iv) of this section. However, an allocation under section 482 will be treated as deferrable if the following requirements are met:

(A) The taxpayer must establish to the satisfaction of the district director that the payment or receipt of part or all of the arm's length amount that would otherwise be required under section 482 was prevented because of a foreign legal restriction and circumstances described in paragraph (f)(2)(ii) of this section.

(B) The taxpayer whose U.S. tax liability may be affected by the foreign legal restrictions must elect the deferred income method of accounting, as described in paragraph (f)(2)(iii) of this section, on a written statement attached to a timely U.S. income tax return (or an amended return) filed before the Internal Revenue Service first contacts any member of the controlled group concerning an examination of the return for the taxable year to which the foreign restriction applies. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this paragraph (f)(2)(i) if it satisfies the requirements of a qualified amended return for purposes of § 1.6662–5(j)(1) as set forth in those regulations or as the Commissioner may prescribe by applicable revenue procedures. The election statement must identify the affected transactions, the parties to the transactions, and the applicable foreign legal restrictions.

(ii) *Applicable legal restrictions.* Foreign legal restrictions (whether temporary or permanent) will be taken into account for purposes of this paragraph (f)(2) only if the conditions set forth in paragraphs (f)(2)(ii) (A) through (D) of this section are met.

(A) The restrictions are publicly promulgated, generally applicable to all similarly situated persons (both controlled and uncontrolled), and not imposed as part of a commercial transaction between the taxpayer and the foreign sovereign.

(B) The taxpayer (or other member of the controlled group with respect to which the restrictions apply) has exhausted all effective and practical remedies prescribed by foreign law or practice for obtaining a waiver of such restrictions (other than remedies that would have a negligible prospect of success if pursued).

(C) The restrictions expressly prevented the payment or receipt of part or all of the arm's length amount that would otherwise be required under section 482; a restriction that applies only to the deductibility of an expense for tax purposes is not a restriction on payment or receipt for this purpose.

(D) The related parties subject to the restriction did not engage in any transaction with controlled or uncontrolled parties that had the effect of circumventing the restriction, and have not otherwise violated the restriction in any material respect.

(iii) *Deferred income method of accounting.* If the requirements of paragraph (f)(2)(i) of this section are satisfied, any allocation that may be made under section 482 with respect to such transaction will be treated as deferrable until payment or receipt of the relevant item ceases to be prevented by the foreign legal restriction. For purposes of the deferred income method of accounting under this paragraph (f)(2)(iii), deductions (including the cost or other basis of inventory and other assets sold or exchanged) and credits properly chargeable against any amount so deferred, are subject to deferral under the provisions of § 1.461–1(a)(4).

(iv) *Exception for arm's length transactions.* Regardless of whether the election described in paragraph (f)(2)(i)(B) of this section has been made, an allocation will not be made under section 482 with respect to a controlled transaction if the taxpayer establishes the following to the satisfaction of the district director—

(A) Payment or reimbursement for the controlled transaction was prevented at the time of the transaction because of a foreign legal restriction and circumstances described in paragraph (f)(2)(ii) of this section; and

(B) Uncontrolled transactions that establish a comparable uncontrolled price under § 1.482–3T(b) (in the case of tangible property) or a comparable uncontrolled transaction under § 1.482–4T(c) (in the case of intangible property) demonstrate that, taking into account the foreign legal restriction, the controlled transaction was at arm's length.

(v) *Examples.* The following examples, in which Sub is a Country FC subsidiary of U.S. corporation, Parent, illustrate this paragraph (f)(2).

Example 1. (i) Parent licenses an intangible to Sub. FC law prohibits Sub from paying a royalty to Parent. The requirements of paragraphs (f)(2)(ii) (A), (B), and (C) of this section are satisfied. Parent attached to its timely filed U.S. income tax return a written statement that satisfies the requirements of paragraph (f)(2)(i)(B) of this section, electing the deferred income method of accounting under paragraph (f)(2)(iii) of this section. The arm's length royalty rate for the use of the intangible property in the absence of the foreign restriction is 10% of its sales in country FC.

(ii) The district director makes an allocation of royalty income to Parent, based on the arm's length royalty rate of 10%. Further, the district director determines that because the distribution from Sub to Parent had the effect of circumventing the FC law, the requirements of paragraph (f)(2)(ii)(D) of this section are not satisfied. Thus, Parent did not validly elect the deferred income method of accounting, and the allocation of royalty income cannot be treated as deferrable. In appropriate circumstances, the district director may permit the amount of the distribution to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1T(e)(4).

Example 2. The facts are the same as in *Example 1,* except that Sub distributes an amount equal to 8% of its sales in country FC. Because the distribution has the effect of circumventing the FC law within the meaning of paragraph (f)(2)(ii)(D) of this section, the deferred income method of accounting was not validly elected, and does not apply, with respect to the amount of the distribution. However, the election was properly made, and does apply, with respect to the 2% difference between the arm's length royalty rate and the amount of the distribution. Accordingly, of the 10% royalty allocated to Parent, 2% may be treated as deferrable. In appropriate circumstances, the district director may permit the 8% that was distributed to be treated as payment by Sub of the royalty allocated to Parent, under the provisions of § 1.482–1T(e)(4).

Example 3. The facts are the same as in *Example 1,* except that Country FC law permits the payment of a royalty, but limits the amount to 5% of sales, and Sub pays the 5% royalty to Parent. Parent demonstrates the existence of comparable uncontrolled transactions in which an uncontrolled parties accepted a royalty rate of 5%, even though an arm's length royalty would otherwise have equalled 10%. Because the requirements of paragraph (f)(2)(iv) of this section are satisfied, the district director does not make an allocation of royalty income to Parent under section 482.

* * * * *

Par. 3. The text of § 1.482–6T is added to read as follows:

§ 1.482–6T Profit split method (temporary).

(a) *In general*—(1) *Definition.* Under the profit split method, the arm's length result with respect to one or more controlled transactions is determined by allocating the combined profit or loss of the business activity that includes the controlled transactions (relevant business activity). This allocation must reflect the relative value of each controlled taxpayer's contribution to that combined profit or loss.

(2) *Appropriate share of profits and losses.* The relative value of each controlled taxpayer's contribution to the success of the relevant business activity must be determined in a manner that reflects the functions performed, risks assumed, and resources employed by each participant in the relevant business activity, consistent with the provisions of § 1.482–1T(c)(3). Such an allocation is intended to correspond to the division of profit or loss that would result from an arrangement between uncontrolled taxpayers, each performing the functions of the various controlled taxpayers engaged in the relevant business activity under review. The profit allocated to any particular member of a controlled group is not necessarily limited to the total net profit of the group from the relevant business activity. For example, one member of the group may be entitled to trade at a profit while another member incurs a loss. In addition, it may not be assumed that the combined profit or loss from the relevant business activity should be shared equally, or in any other arbitrary proportion. The specific method of allocation shall be determined under paragraph (c) of this section.

(b) *Scope.* A controlled taxpayer may apply the profit split method if the conditions set forth in paragraphs (b) (1) through (4) of this section are satisfied.

(1) Each controlled taxpayer owns a valuable, non-routine intangible that it either:

(i) Acquired from uncontrolled taxpayers, and with respect to which it assumes significant risks and possesses the right to significant economic benefits, or

(ii) It developed itself (including intangibles developed pursuant to a qualified cost-sharing arrangement in which the controlled taxpayer was an eligible participant).

(2) Such intangible contributes significantly to earning the combined profit from the business activity to which the controlled transactions are attributable.

(3) There are significant transactions between the controlled taxpayers, and the activities of each controlled taxpayer related to the controlled transactions contribute significantly to the combined profit or loss derived from the relevant business activity.

(4) The controlled taxpayer elects to apply the profit split method as provided in paragraph (d)(1) of this section and complies with the procedural requirements set forth in paragraph (d)(2) of this section.

(c) *Application*—(1) *In general.* The allocation of profit or loss under the profit split method must be made in accordance with one of the following allocation rules—

(i) The residual allocation rule, described in paragraph (c)(2) of this section;

(ii) The ratio of capital employed allocation rule, described in paragraph (c)(3) of this section;

(iii) The comparable profit split rule, described in paragraph (c)(4) of this section; and

(iv) Other profit splits, described in paragraph (c)(5) of this section.

(2) *Residual allocation rule.* Under this rule, the combined profit or loss from the relevant business activity is allocated between the controlled taxpayers following a two-step process set forth in paragraphs (c)(2) (i) and (ii) of this section.

(i) *Allocate income to routine contributions.* The first step allocates operating income to each party to the controlled transactions to provide a market return for its contributions to the relevant business activity other than valuable non-routine intangibles. A functional analysis is required to identify these contributions according to the functions performed, resources employed, and risks assumed by each of the controlled taxpayers. Market returns for these contributions should be determined by reference to the returns achieved by uncontrolled taxpayers engaged in similar activities, consistent with the methods described in §§ 1.482–3T, 1.482–4T and 1.482–5T.

(ii) *Allocate residual profit.* Since the profit split method ordinarily will be employed in cases involving the exploitation of non-routine intangible property, the allocation of income to the controlled taxpayers' tangible and routine intangible contributions will not reflect profits attributable to such intangible property, and there normally will be an unallocated residual profit after the allocation of income described in paragraph (c)(2)(i) of this section. This residual profit should, under this second step, generally be divided among the controlled taxpayers based upon the relative value of their contributions of valuable non-routine intangible property to the relevant business activity. These values may be estimated as provided in paragraph (c)(3)(ii) of this section. Where the intangible development expenditures of the parties are relatively constant over time, the relative value of actual expenditures in recent years may be used to estimate the relative value of intangible contributions rather than capitalizing these expenditures. Where the relevant intangible development expenditures are difficult to identify or where the facts and circumstances indicate that comparison of such expenditures does not satisfactorily approximate the relative values of the controlled taxpayers' contributions, other methods of approximating the relative values of the controlled taxpayers contributions of valuable, non-routine intangible property may be appropriate.

(iii) *Example.* The provisions of this paragraph (c)(2) are illustrated by the following example.

Example. (i) XYZ is a U.S. corporation that develops, manufacturers and markets a line of household detergents in the U.S. XYZ's research unit developed a detergent (SOAP) that causes substantially less water pollution than competing products. Since its introduction in the U.S., SOAP has captured a substantial share of the U.S. detergent market.

(ii) XYZ licensed its European subsidiary, XYZ-Europe, to manufacture and market SOAP in Europe. XYZ-Europe is a well-established company that manufactures and markets XYZ products in Europe. XYZ-Europe has a research unit that adapts XYZ products for the European market, as well as a well-developed marketing network that employs brand names that it developed.

(iii) XYZ-Europe's research unit alters the formula for SOAP to adapt it to European washing machines. XYZ-Europe's marketing unit selects a fragrance for SOAP that is intended to appeal to European consumers. Beginning with the 1995 taxable year, XYZ-Europe manufactures and sells SOAP in Europe through its marketing network under one of its brand names.

(iv) Based on these facts, the district director determines that both XYZ and XYZ-Europe contribute valuable, non-routine intangibles to the European SOAP business. The district director uses the residual allocation rule to determine an arm's length royalty for the right to use the SOAP formula.

(v) For the 1995 taxable year, XYZ has no direct expenses associated with the license of the SOAP formula to XYZ-Europe and incurs no expenses related to the marketing of SOAP in Europe. For the taxable year, XYZ-Europe's SOAP sales and pre-royalty expenses are $500 million and $300 million, respectively, resulting in net pre-royalty profit of $200 million related to the SOAP business. The operating assets employed in XYZ-Europe's SOAP business is $200 million. Based on an examination of a sample of European companies performing functions similar to those of XYZ-Europe, the district director determines that an average market return on XYZ-Europe's operating assets in the SOAP business is 10 percent, resulting in a market return of $20 million (10% × $200 million) for XYZ-Europe's SOAP business, and a residual profit of $180 million.

(vi) Under the residual profit split method, it is assumed that the residual profit of $180 million is attributable to the valuable, non-routine intangibles related to SOAP, *i.e.*, the European brand name for SOAP and the SOAP formula (including XYZ-Europe's modifications). To estimate the relative values of these intangibles, the district director compares the ratios of the capitalized value of expenditures as of 1995 on detergent-related research and development and marketing over the 1995 sales related to such expenditures.

(vii) XYZ's detergent research and development expenses support the worldwide detergent sales of the XYZ group. The district director determines that it is appropriate to allocate the value of these expenses based on worldwide detergent sales. Using information on the average useful life of its investments in detergent research and development, the district director capitalizes and amortizes XYZ's detergent research and development expenses. This analysis indicates that the capitalized research and development expenditures have a value of $0.20 per dollar of global detergent sales in 1995.

(viii) XYZ-Europe's expenditures on SOAP research and development and marketing support only its sales in Europe. Using information on the average useful life of XYZ-Europe's investments in marketing and research and development, the district director capitalizes and amortizes XYZ-Europe's expenditures and determines that they have a value in 1995 of $0.40 per dollar of XYZ-Europe's SOAP sales.

(ix) Thus, XYZ and XYZ-Europe together contributed $0.60 in capitalized intangible development expenses for each dollar of XYZ-Europe's detergent sales for 1995, of which XYZ contributed one-third (or $0.20 per dollar of sales). Accordingly, the district director determines that an arm's length royalty for the SOAP license for the 1995 taxable year is $60 million, *i.e.*, one-third of XYZ-Europe's $180 million in residual SOAP profit.

(3) *Capital employed allocation rule*—(i) *In general.* Under this rule, the combined profit or loss from the relevant business activity is allocated to the controlled taxpayer based upon the ratio of the taxpayer's average capital employed in the relevant business activity during the taxable year under review to the total capital employed in the relevant business activity. The capital employed allocation rule applies only if each controlled taxpayer participating in the relevant business activity assumes an approximately equal level of risk with respect to its investment in the relevant business activity. For this purpose, risk is measured on the basis of the probability of success or failure rather than an absolute measure of the maximum potential gain or loss. For example, both participants in a relevant business activity would be considered to have assumed an approximately equal level of risk if their activities are so interdependent that the degree of success or failure of each participant is directly related to the degree of success or failure of the other participant.

(ii) *Operating assets.* For purposes of this paragraph (c)(3), operating assets are defined in § 1.482–5T(f)(6) and are increased to reflect the capital attributable to the intangibles employed in the relevant business activity that were not included in the calculation of operating assets under § 1.482–5T(f)(6). The capital attributable to intangibles may be measured by the fair market value of the intangibles, or the capitalized cost of developing the intangibles and all related improvements and updates, less an appropriate amount of amortization based on the useful life of each intangible. The same method of determining the capital attributable to intangibles must be used consistently from year to year and for all intangibles used in the relevant business activity. In addition, if fair market value is employed to value either the tangible or intangible assets, then all assets must be valued on the basis of fair market value. Intangibles acquired from a controlled taxpayer shall be included only in the capital employed of the taxpayer that is the "developer" of the intangible as defined in § 1.482–4T(e)(4), or a participant that acquired such intangible pursuant to a qualified cost sharing arrangement described in § 1.482–2T(d)(4). When an intangible is used in business activities in addition to the relevant business activity, an appropriate apportionment of the value of the development expenditures for such intangible property shall be taken into account. Such apportionment should be based on the objective measures that most accurately reflect the relative benefits obtained from the developed intangibles in different business activities. Relative net profits or sales of the different business activities in which the intangible property is used may be appropriate bases for apportioning intangible development expenditures.

(iii) *Example.* The provisions of this paragraph (c)(3) are illustrated by the following example.

Example. (i) ABC is a U.S. corporation that manufactures and markets telecommunications equipment in the United States. ABC-Europe is a wholly-owned European subsidiary of ABC that manufactures and markets telecommunications equipment in Europe. Both ABC and ABC-Europe have substantial research and development operations that develop new products and manufacturing processes, improve the products and manufacturing processes of the other, and adapt the products of the other for their respective markets. Thus, both ABC and ABC-Europe use valuable technology and know-how developed by the other. Both companies are engaged in approximately equally risky endeavors. Under these circumstances, the district director determines that the capital employed allocation rule is appropriate for determining the correct allocation of income between ABC and ABC-Europe.

(ii) The following financial information is available for ABC and ABC-Europe for the year 1995, expressed in millions of U.S. dollars and using U.S. GAAP:

	ABC	ABC-Europe	Combined
Sales	1000	800	1800
Expenses	600	480	1080
Operating Profit	400	320	720
Operating Assets	1000	800	1800

(iii) ABC and ABC-Europe regularly and continuously incur annual expenditures for marketing and sales promotion as well as research and development. Using information on the average useful life of ABC and ABC-Europe investments in the development and enhancement of various types of intangible property, these expenditures are capitalized and amortized to yield the following estimates for the value of "intangible capital" in 1995:

	ABC	ABC-Europe	Combined
Marketing and sales promotion	80	40	120
Product R&D	228	72	300
Manufacturing R&D	132	48	180
Total intangible capital	440	160	600

Based upon the above calculations, the total capital imputed to ABC and ABC Europe is:

	ABC	ABC-Europe	Combined
Tangible capital	1000	800	1800
Intangible capital	440	160	600
Total Capital	1440	960	2400
Percent of Total Capital	60	40	100

The combined profit of 720 would be allocated between ABC and ABC-Europe based on their share of total imputed capital as follows:

	ABC	ABC-Europe	Combined
	432	288	720

(4) *Comparable profit split.* A comparable profit split is derived from the combined operating profit of uncontrolled taxpayers whose transactions, functions, product markets, risks and intangibles are similar to those of the controlled taxpayer in the relevant business activity. Under this method, each uncontrolled taxpayer's percentage of the combined operating profit or loss is determined and used to allocate the combined profit or loss of the relevant business activity. This method may be used only if each uncontrolled taxpayer meets the requirements of a functional comparable with respect to one of the controlled parties as described in § 1.482–1T(c)(1)(i), and reliable financial data is available regarding such uncontrolled taxpayers. Further, a comparable profit split may not be used if the combined return on capital earned by the uncontrolled taxpayers varies significantly from the combined return on capital earned by the relevant business activity.

(5) *Other profit splits.* Where capital is difficult to measure, or is not a significant determinant of operating profit, the combined profit or loss from a relevant business activity may be allocated between the controlled taxpayers based upon the appropriate ratios of costs or other factors, if it can be shown to the satisfaction of the district director that such ratios provide an economically valid basis for the allocation of the combined profit or loss of the relevant business activity.

(d) *Administrative requirements*—(1) *Election to apply the profit split method.* A controlled taxpayer that is a participant in a relevant business activity may elect to apply the profit split method by including a written statement electing the provisions of this section in a timely filed U.S. income tax return. Such statement shall define the relevant business activity to which the profit split method will apply, identify all of the participants in such activity, and define the allocation method to be used to determine each participant's proportionate share of the profits or losses from such activity. An election made pursuant to this paragraph (d)(1) will apply to the year of election and to all subsequent taxable years, and may be revoked only with the consent of the Commissioner.

(2) *Procedural requirements.* In addition to making the election described in paragraph (d)(1) of this section, a controlled taxpayer also must comply with the following procedural requirements in order to apply the profit split method for any taxable year:

(i) The controlled taxpayer must document to the satisfaction of the district director:

(A) The total amount of combined profit or loss attributable to the relevant business activity, and

(B) That the profit split method provides the most accurate measure of an arm's length result.

(ii) Prior to making the election under paragraph (d)(1) of this section, the controlled taxpayers must have executed a written pricing agreement describing the relevant business activity and the mechanism under which each participant's share of the combined profit or loss will be determined.

(iii) The allocation method selected must be applied in a consistent manner by each participant and in each year for which the method is applied.

(e) *Limited effect of pricing agreement.* The written pricing agreement required by paragraph (d)(2)(ii) of this section shall be given effect solely for purposes of section 482. The preceding sentence does not, however, prevent the district director from characterizing any transaction between controlled taxpayers in accordance with its economic substance.

(f) *Discretion to apply the profit split method.* If the conditions described in paragraphs (b) (1) through (3) of this section are met, the district director may apply the provisions of this section to determine an arm's length result for one or more controlled transactions, in a manner consistent with the provisions of § 1.482–1T, if necessary to ensure that the division of the controlled taxpayers' combined profit or loss attributable to a relevant business activity reasonably reflects each member's proportionate contribution to the combined profit or loss. In applying the provisions of this paragraph (f), it is not intended to effect a result equivalent to computation of consolidated income under subchapter A, chapter 6 of the Internal Revenue Code.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by adding a new entry to the table to read as follows:

"1.482–6T..1545–1298"

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 93–1110 Filed 1–13–93; 2:10 pm]

BILLING CODE 4830-01-M

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26 CFR Parts 5f and 35a

[INTL–0115–90]

RIN 1545–AP33

Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to the definition of the term "registration-required obligation." This document also contains proposed regulations relating to the repeal of 30 percent withholding on certain types of interest by the Tax Reform Act of 1984. These regulations would provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984 and affect persons issuing or holding registration required debt obligations and persons issuing debt obligations to foreign persons.

DATES: Comments and requests for a hearing must be received by March 22, 1993.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0115–90), room 5228, Washington, DC 20044.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations that amend 26 CFR parts 5f and 35a. These amendments are proposed to clarify and refine the requirements of §§ 5f.163–1 and 35a.9999–5 of the Income Tax Regulations.

Explanation of Provisions

Registration Required Obligations

Section 163(f)(2)(A) of the Internal Revenue Code (Code) provides that the term "registration required obligation" means any obligation (including any obligation issued by a governmental entity) other than an obligation which (i) is issued by a natural person, (ii) is not of a type offered to the public, (iii) has a maturity (at issue) of not more than one year, or (iv) is described in section 163(f)(2)(B) (relating to certain foreign-targeted obligations).

The report of the Senate Finance Committee on the Tax Equity and Fiscal Responsibility Act of 1982 states:

> The Committee believes that a fair and efficient system of information reporting and withholding cannot be achieved with respect to interest bearing obligations as long as a significant volume of long term bearer instruments is issued. A system of book entry registration will preserve the liquidity of obligations while requiring the creation of ownership records that can produce useful information reports with respect to both the payment of the interest and sale of obligations prior to maturity through brokers. Furthermore, registration will reduce the ability of non-compliant taxpayers to conceal income and property from the reach of the income, estate and gift taxes. Finally, the registration requirements may reduce the volume of readily negotiable substitutes for cash available to persons engaged in illegal activities.
>
> The Committee also recognizes the importance of preserving liquidity in financial markets. Thus, a flexible book entry system of registration is permitted and exceptions from the registration requirements are provided for short term obligations, for obligations not offered to the public, and for certain obligations issued abroad. S.Rept. 97–494, Vol. 1 at 242.

The report of the Senate Finance Committee indicates that an obligation that represents a "readily negotiable substitute for cash" should be a registration-required obligation. Such an obligation should be considered "of a type offered to the public" for purposes of section 163(f)(2)(A), and therefore be ineligible for the exemption from registration under section 163(f)(2)(A)(ii).

To determine when an obligation is a readily negotiable substitute for case for this purpose, it is appropriate to use the standard provided sections 453(f) (4) and (5) and the regulations thereunder, which address an analogous concern with negotiability. Under section 453(f)(5)(B) and § 15a.453–1(e)(1)(i)(C), the receipt of a bond or other evidence of indebtedness issued in a form designed to render such obligation readily tradeable in an established securities market is treated as a receipt of payment, and not as an installment obligation, for purposes of section 453. The purpose of section 453(f)(5)(B) and the regulations thereunder is to ensure that certain obligations that may function as substitutes for cash are treated in the same manner as cash, and not as installment obligations. The Service believes that the same standard should apply for purposes of section 163(f)(2)(A) and, therefore, that an obligation treated as in a form designed to render it readily tradable in an established securities market for purposes of section 453(f)(5)(B) and the regulations thereunder should be considered of a type offered to the public for purposes of section 163(f)(2)(A).

Under paragraph (b)(2)(ii)(A) of the proposed regulation, an obligation that is treated as in a form designed to render it readily tradeable in an established securities market under § 15a.453–1(e)(4) is considered to be of a type offered to the public for purposes of section 163(f)(2)(A)(ii). For this purpose, however, the term "established securities market" is defined so as to include foreign, as well as domestic, securities exchanges.

Section 15a.453–1(e)(4)(i) provides that an obligation is deemed to be in a form designed to render such obligation readily tradeable in an established securities market if (A) steps necessary to create a market for the obligation are taken at the time of issuance (or later if taken pursuant to an expressed or implied agreement or understanding which exists at the time of issuance), (B) the obligation is treated as readily tradeable in an established securities market under § 15a.453–1(e)(4)(ii) or (c) the obligation is a convertible obligation described in § 15a.453–1(e)(5).

Under § 15a.453–1(e)(4)(ii)(A), an obligation is treated as readily tradeable in an established securities market for purposes of § 15a.453–1(e)(4)(i)(B) if the obligation is part of an issue or series of issues which are readily tradeable in an established securities market. Alternatively, under § 15a.453–1(e)(4)(ii)(B), an obligation is treated as readily tradeable in an established securities market for purposes of § 15a.453–1(e)(4)(i)(B) if the corporation issuing the obligation has other obligations of a comparable character which are readily tradeable in an established securities market.

Under § 15a.453–1(e)(4)(iii), an obligation is treated as readily tradeable for purposes of § 15a.453–1(e)(4)(ii) if it is regularly quoted by brokers or dealers making a market in such obligation or it is part of an issue a portion of which is in fact traded in an established securities market. Under § 15a.453–1(e)(4)(iv), the term "established securities market" includes a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, an exchange which is exempted from registration under section 5 of the Securities Exchange Act of 1934 because of its limited volume of transactions, and any over-the-counter market. An over-the-counter market is reflected by the existence of an inter-dealer quotation system, defined as any system of general circulation to brokers and dealers which regularly disseminates quotations of obligations by identified brokers or dealers, other than a quotation sheet prepared and distributed by a broker or dealer in the regular course of business and containing only quotations of such broker or dealer.

Under paragraph (b)(2)(ii)(B) of the proposed regulation, an obligation is also considered to be of a type offered to the public if it would be treated as in a form designed to render it readily tradeable in an established securities market under § 15a.453–1(e)(4) if § 15a.453–1(e)(4)(ii)(B) provided for the comparison of the obligation to obligations of other issuers (as well as other obligations of the same issuer). In addition, for purposes of the proposed regulation, the term "established securities market" also includes any exchange or market described in § 1.897–m. Thus an obligation (whether issued by a corporation, a government or political subdivision thereof, or any other person) is considered to be of a type offered to the public if the obligation is comparable in character to other obligations (whether of the same or a different issuer) that are regularly quoted by brokers or dealers making a market in such other obligations or that are in fact traded in an established domestic or foreign securities market. Under § 15a.453–1(e)(4)(ii), the determination of whether there exist obligations of comparable character depends upon the particular facts and circumstances.

Under the proposed regulation, an obligation that is not treated as in a form designed to render it readily tradeable in an established securities market under § 15a.453–1(e)(4), and would not be so treated even if § 15a.453–1(e)(4) were modified as described in paragraph (b)(2)(ii)(B) of the proposed regulation, may nevertheless be considered of a type offered to the public when necessary to carry out the purpose of section 163(f).

Electronic Certification

Under A–9 of § 35a.9999–5(b), interest on a registered form obligation may be treated as portfolio interest by a United States person otherwise required to deduct and withhold tax under section 1441(a) or 1442(a) if that person receives a statement that (i) is signed by the beneficial owner under penalties of perjury, (ii) certifies that such owner is not a United States person or, in the case of an individual, that he is neither a citizen nor a resident of the United States, and (iii) provides the name and address of the beneficial owner. The statement may be made on a Form W–8 or substantially similar substitute. Where one or more financial institutions or clearing organizations stand between the beneficial owner of an obligation and the United States person otherwise required to withhold, A–9 requires the beneficial owner to provide the statement to the lowest institution in the chain and requires each institution in the chain to provide similar statements to the institution above it in the chain and, ultimately, to the United States person otherwise required to withhold. The proposed regulation provides that the required statements may be made electronically, under certain conditions, to a clearing organization by a member financial institution and by a clearing organization to the United States person otherwise required to withhold.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafing Information

The principal author of these regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 5f

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 35a

Employment taxes, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 5f and 35a are proposed to be amended as follows:

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Paragraph 1. The authority citation for part 5f continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 5f.163–1 is amended by revising paragraph (b)(2) to read as set forth below.

§ 5f.163–1 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

* * * * *

(b) * * *

(2) An obligation not of a type offered to the public.

(i) *Readily tradeable obligations.* For purposes of section 163(f)(2)(A)(ii) and this section, an obligation shall be considered to be of a type offered to the public if it either—

(A) Is treated as in a form designed to render such obligation readily tradeable in an established securities market under § 15a.453–1(e)(4) of this chapter; or

(B) Would be treated as in a form designed to render such obligation readily tradeable in an established securities market under § 15a.453–1(e)(4) of this chapter if § 15a.453–1(e)(4)(ii)(B) of this chapter provided for comparison of the obligation to obligations of other issuers (as well as other obligations of the same issuer) and the term "established securities market" were defined to include any exchange or market described in either § 151.453–1(e)(4)(iv) or § 1.897–1(m) of this chapter.

(ii) *Other Obligations.* When necessary to carry out the purposes of section 163(f), an obligation that is not described in paragraph (b)(2)(i) of this section may nevertheless be considered to be of a type offered to the public. The determination as to whether an obligation that is not described in paragraph (b)(2)(i) of this section is of a type offered to the public shall be based on whether similar obligations are in fact publicly offered or traded.

(iii) *Effective date.* Except as otherwise provided in this paragraph (b)(2)(iii), paragraph (b)(2) of this section applies with respect to obligations issued after January 21, 1993. Paragraph (b)(2) of this section shall not apply with respect to obligations issued after January 21, 1993, where substantially all of the financial terms of such obligations were agreed upon by the obligor in writing on or before January 21, 1993.

* * * * *

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Par. 3. The authority citation for part 35a continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 35a.9999–5(b) is amended by revising A–9 to read as follows:

§ 35a.9999–5 Questions and answers relating to repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.

* * * * *

(b) * * *

A–9. (i) Interest on a registered obligation may be treated as portfolio interest by a United States person otherwise required to deduct and withhold tax under section 1441(a) or 1442(a) if that person receives a statement that—

(A) Is signed by the beneficial owner under penalties of perjury;

(B) Certifies that such owner is not a United States person or, in the case of an individual, that he is neither a citizen nor a resident of the United States; and

(C) Provides the name and address of the beneficial owner. The statement may be made, at the option of the person otherwise required to withhold, on a Form W–8 or on a substitute form that is substantially similar to Form W–8. The statement must be prepared, renewed and retained in accordance with the procedures prescribed in § 1.6049–5(b)(2)(iv) of this chapter. If the information provided in the statement changes, the beneficial owner must so inform the person otherwise required to withhold within 30 days of such change.

(ii)(A) Interest paid on a registered obligation also may be treated as portfolio interest if an appropriate statement is provided to the United States person otherwise required to withhold by a securities clearing organization, a bank, or another financial institution that holds customers' securities in the ordinary course of its trade or business (an intermediary). The statement (an intermediary certificate) must be signed under penalties of perjury by an authorized representative of the intermediary and must state—

(*1*) That the intermediary has received from the beneficial owner a Form W–8 (or substitute form) in accordance with the provisions of § 1.6049–5(b)(2)(iv) of this chapter; or

(*2*) That it has received from another intermediary a similar intermediary certificate stating that it, or another intermediary acting on behalf of the beneficial owner, has received the Form W–8 (or substitute form) from the beneficial owner.

(B) In the case of multiple intermediaries between the beneficial owner and the United States person otherwise required to withhold, this intermediary certificate must be given by each intermediary to the one above it in the chain. No particular form is required for the intermediary certificate. However, the intermediary certificate must provide the name and address of the beneficial owner, and a copy of the Form W–8 (or substitute form) provided by the beneficial owner must be attached. The intermediary certificate must be prepared, renewed and retained in accordance with procedures similar to those prescribed in § 1.6049–5(b)(2)(iv) of this chapter. If the information on the Form W–8 (or substitute form) changes, the beneficial owner must so notify the intermediary acting on its behalf within 30 days of such change, and the intermediary must promptly so inform the United States person otherwise required to withhold. This notice also must be given if the intermediary has actual knowledge that the information has changed but has not been so informed by the beneficial owner. In the case of multiple intermediaries between the beneficial owner and the person otherwise required to withhold, this notice must be given by each intermediary to the intermediary above it in the chain.

(iii) The intermediary certificate (including the name and address of the beneficial owner) described in paragraph (ii) of this A–9 may be provided electronically to a qualified clearing organization by an intermediary that is a member of such qualified clearing organization. In such case, a copy of the Form W–8 (or substitute form) provided by the beneficial owner need not be provided by the member intermediary to the qualified clearing organization, but the member intermediary must retain such Form W–8 (or substitute form), or copy thereof received from another intermediary pursuant to this paragraph (b)A–9(ii), for the period described in § 1.6049–5(b)(2)(iv) of this chapter. A clearing organization shall constitute a qualified clearing organization if—

(A) The clearing organization is the last intermediary in the chain before the United States person otherwise required to withhold; and

(B) The member intermediary and the clearing organization have entered into a written agreement pursuant to which an electronic certificate provided under this A–9 has the effect of a physical certificate signed by an authorized representative of the member intermediary and pursuant to which the member intermediary agrees to furnish a copy of the Form W–8 (or substitute form), to the clearing organization promptly upon request. Such written agreement must be entered into prior to the time of electronic certification (and must be in effect at such time) and may be contained in a written agreement of membership in the clearing organization. A qualified clearing organization may itself provide an electronic intermediary certificate to the United States person otherwise required to withhold. In such case, a copy of the Form W–8 (or substitute form), provided by the beneficial owner need not be provided by the qualified clearing organization to such Unites States person. However, the electronic intermediary certificate provided by the qualified clearing organization must state that the qualified clearing organization will furnish (or will cause the relevant member intermediary to furnish) a copy of such Form W–8 (or substitute form), either to such United States person or to the Internal Revenue Service, promptly upon request of such United States person or the Internal Revenue Service. Such United States person shall attach the names and addresses of the beneficial owners provided in the electronic intermediary certificate to the Form 1042S required to be filed with respect to the payment as described in paragraph (b)A–9(iv) of this section. Each sender and recipient of an electronic certificate pursuant to this paragraph (b)A–9(iii) must maintain adequate records as prescribed under § 1.6049–5(b)(2)(iv) of this chapter.

(iv) A United States person otherwise required to deduct and withhold tax under section 1441(a) or section 1442(a) who receives a statement or intermediary certificate described in this paragraph (b)A–9 must make an information return on Form 1042S of the payment with respect to which such statement or intermediary certificate is required for the calendar year in which the payment is made. A payment described in the preceding sentence shall be treated as a payment for which there is a requirement to file a Form 1042S within the meaning of § 1.1461–2(c)(1) of this chapter and thus all the provisions of § 1.1461–2(c) of this chapter relating to the time and manner of filing the Form 1042S relate to the payment. If the statement or intermediary certificate received by such United States person is described in paragraph (b)A–9 (i) or (ii) of this section, a copy of such statement or certificate shall be attached to the Form 1042S required to be filed with respect to the payment. Section 1.1461–2(c) of this chapter will be amended to conform to the provisions of this paragraph.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 93–1195 Filed 1–19–93; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL19–2–5696; IL14–3–5694; FRL–4553–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: In a November 13, 1992, (57 FR 53868) notice of proposed rulemaking, USEPA proposed to disapprove a revision to Illinois' State Implementation Plan (SIP) for particulate matter (PM). The purpose of this SIP revision was to provide Olin Corporation with a variance from Illinois' particulate matter limits. The Illinois Environmental Protection Agency (IEPA) withdrew its underlying SIP revision request for Olin Corporation on December 15, 1992. Thus, USEPA's November 13, 1992, proposal is moot. USEPA is withdrawing this proposed rulemaking and will take no further action on the SIP revision because the State has formally withdrawn the request.

In a December 2, 1992, (57 FR 57047) notice of proposed rulemaking, USEPA proposed to disapprove a site-specific revision to the Illinois sulfur dioxide (SO_2) SIP. The purpose of this SIP revision was to increase the allowable hourly emission of SO_2 at the Central Illinois Public Service Company's Coffeen Generating Station (CIPS Coffeen). IEPA withdrew its underlying SIP revision request for CIPS Coffeen on December 2, 1992. Thus, USEPA's December 2, 1992, proposal is moot. USEPA is withdrawing this proposed rulemaking and will take no further rulemaking action on the SIP revision because the State has formally withdrawn the request.

DATES: This withdrawal of proposed rulemaking becomes effective January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Onischak, U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Section (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. (312) 353–5954.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671(q).

Dated: January 7, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–1333 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

MSS Above 1GHz Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the third and forth meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee ("Committee").

DATES: *Meeting No. 3:* Thursday, February 4, 1993 at 9:30 a.m.

Meeting No. 4: Wednesday, February 10, 1993 at 9:30 a.m.

ADDRESSES: *Meeting No. 3:* Federal Communications Commission, rm. 856, 1919 M Street NW., Washington, DC 20554.

Meeting No. 4: Law Offices of Steptoe & Johnson, 1330 Connecticut Avenue NW., Concourse Level, Conference Room, Washington, DC 20036–1795 at 9:30 a.m.

FOR ADDITIONAL INFORMATION CONTACT: Kathleen Campbell, Administrative Assistant to the Committee, at (202) 634–1952.

SUPPLEMENTARY INFORMATION: The agenda for these meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee is as follows:

1. Opening Remarks/Comments
2. Adoption of Agenda
3. Minutes/Records of Previous Meeting
4. Introduction of Documents
5. Informal Working Group Reports—Issues
6. Acceptance/Approval of Recommended Rules
7. Acceptance/Approval of Report Text
8. Agenda for future meetings—Schedule for future meetings
9. Other Business

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Fern J. Jarmulnek, the Committee's Designated Federal Officer, before the meeting.

In Public Notice, DA 93–24 (released January 8, 1993), the subsequent meeting date schedule included Monday, February 8 as the date for a meeting of this Committee. There will be no meeting for the full committee on February 8. This meeting is now scheduled for February 10 as indicated in this notice. Subsequent Committee meetings are currently scheduled for Thursday, February 18; Thursday, February 25; Thursday, March 4; Tuesday, March 9; Thursday, March 18; Thursday, March 25; and Friday, April 2. All subsequent Committee meetings noted in this paragraph are scheduled to begin at 9:30 a.m. at the Federal Communications Commission, 1919 M Street NW., room 856, Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1388 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[ET Docket No. 92-298; FCC 92-546]

Establishment of a Stereophonic Transmitting Standard in the AM Radio Broadcasting Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to select a transmitting standard for AM stereophonic broadcasting. Specifically, it proposes to adopt the Motorola C–QUAM system as the US standard. This proposal responds to section 214 of the Telecommunications Authorization Act of 1992, which requires the Commission to adopt a single AM stereo broadcasting transmission standard. The effect of the proposed rules would be to eliminate any remaining uncertainty among broadcasters as to the technology they should employ and to foster expansion of the AM stereo service and a corresponding improvement in the overall quality of the AM service.

DATES: Comments must be filed on or before April 5, 1993, and reply comments must be filed on or before April 20, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David L. Means, Office of Engineering and Technology, (301) 725–1585, extension 206.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in ET Docket No. 92–298, adopted December 10, 1992, and released January 6, 1993.

The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC., and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street NW., room 246, Washington, DC 20554.

Synopsis of Notice of Proposed Rulemaking

1. By this action, the Commission proposes to adopt a standard for stereophonic AM broadcast radio service, specifically, the Motorola C-Quam system. This proposal responds to section 214 of the Telecommunications Authorization Act of 1992 (Authorization Act), which requires the Commission to adopt a single AM broadcasting stereo transmission standard.

2. Section 214 of the Authorization Act, which was signed into law on October 27, 1992, states that the Commission shall, within 60 days of enactment of the Act, initiate a rulemaking to adopt a single AM radio stereophonic transmitting equipment standard that specifies the composition of the transmitted stereophonic signal; and, within one year of such date of enactment, adopt such a standard.

3. In 1982, the Commission authorized AM stations to offer stereo service, but it declined to select a single standard from among the five competing AM stereo technical systems. Rather, the Commission concluded that it would be more effective and efficient to allow market forces to determine the course of AM stereo development. Shortly afterward, the field narrowed to two systems: Motorola's C-Quam system and the system marketed by Kahn Communications, Inc./Hazeltine Corporation (the Kahn system).

4. Of the approximately 660 US AM broadcasting stations that have converted to stereo, 591 use the Motorola system and an additional 37 use the Harris Corporation C-Quam compatible system. Fewer than 20 stations now employ the Kahn system. Twenty-six receiver manufacturers incorporate the Motorola system in at least one model; none incorporate the Kahn system. There are approximately 24 million C-Quam receivers currently in use by radio listeners. In the mid-1980's, approximately 280,000 receivers were made that could decode both the Motorola and Kahn signals; however, these are no longer produced. The Motorola system has been adopted as the national standard in six foreign countries; none have adopted the Kahn system.

5. In light of the data presented above, and considering our mandate to select a single standard, we believe the public interest would be best served by adopting the Motorola C-Quam system as the US AM stereo standard. Broadcasters, manufacturers and radio purchasers have, directly or indirectly, demonstrated strong preference for the Motorola system. Adoption of the C-Quam system as the AM stereo standard would eliminate the remaining uncertainty with regard to the AM technology broadcasters should employ and thereby serve to promote expansion of AM stereo transmitting equipment and a corresponding improvement in the quality of the AM service.

6. We believe that selection of an alternative to the Motorola system would set back the clock on the implementation of AM stereo service by undercutting the existing investment in C-Quam equipment by both receiver purchasers and broadcasters. Further, we are aware that many AM broadcasters are struggling financially and may not be able to afford replacement stereo transmitting equipment. Selection of an alternative stereo standard thus could conceivably result in discontinuance of the existing stereo service with no replacement. Such a result would be inconsistent with the legislative intent to advance AM stereo service. In light of these factors, proponents of alternative standards would bear a heavy burden to show that the potential benefits of an alternative technology outweigh the likely costs and delays arising from selection of an alternate standard. Nevertheless, we invite comment on alternatives to the proposed standard.

7. We are proposing to incorporate the Motorola C-Quam standard in part 73 of our rules. We are also proposing to require stations that employ alternative AM stereo systems (i.e., the Kahn and Harris systems) to discontinue such operation as of one year from the effective date of these rules. Any stations converting to AM stereo after the effective date of these rules will be required to employee the system adopted by the Commission. We invite comment on the extent of compatibility of the Harris system with the Motorola system and whether we should permit stations currently employing the Harris system to continue to do so indefinitely. Consistent with our general policies towards improvement of the AM broadcasting service, we will continue to encourage the availability of AM receivers, including AM stereo receivers, that meet appropriate quality standards. Finally, we propose to condition the selection of Motorola's system as the AM stereo standard by requiring Motorola to license its patents to other parties under fair and reasonable terms.

Ex Parte Rules—Non-Restricted Proceeding

8. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Information

9. Pursuant to procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before April 5, 1993, and reply comments on or before April 20, 1993. Extensions of these time periods are not contemplated. All relevant and timely comments will be

considered by the Commission before final action is taken in this proceeding. To file formally, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

Regulatory Flexibility Act

10. As required by section 603 of the Regulatory Flexibility Act, the FCC has prepared the following Initial Regulatory Flexibility Analysis (IRFA) of the expected impact of these proposed policies and rules on small entities:

Reason for Action. This proceeding is being initiated to select an AM radio stereophonic equipment standard, as required under section 214 of the Telecommunications Authorization Act of 1992.

Objectives. The Commission's goal is to select an AM stereophonic transmission standard.

Legal basis. Authority for this proposed rule making is contained in section 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r) and section 214 of the Telecommunications Authorization Act of 1992, Public Law 102–538 (1992).

Reporting, Recordkeeping and other Compliance Requirements. AM stereo transmission equipment would require type acceptance by the FCC to demonstrate compliance with the proposed standard.

Federal Rules that Overlap, Duplicate or Conflict with Proposed Rule. None.

Description, Potential Impact, and Number of Small Entities Involved. This action is expected to expand the operation of AM stereo service and sales of AM stereo receivers. The effect of this proposal would be to necessitate conversion to use of the C-Quam transmission system by approximately 50 AM stations currently using the Kahn or Harris systems in order to continue to provide stereo service.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives. None.

Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the IFRA, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 50 U.S.C. sections 601 et seq. (1981)).

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Amendatory Text

Part 73 of the Code of Federal Regulations is proposed to be amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation in part 73 continues to read:

Authority: 47 U.S.C. 154, 303.

2. Section 73.128 is proposed to be amended by revising paragraph (a), (b) introductory text and adding paragraph (c) to read as follows:

§ 73.128 AM stereophonic broadcasting.

(a) An AM broadcast station may, without specific authority from the FCC, transmit stereophonic programs upon installation of type accepted stereophonic transmitting equipment and the necessary measuring equipment to determine that the stereophonic transmissions conform to the modulation characteristics specified in paragraphs (b) and (c) of this section.

(b) The following limitations on the transmitted wave must be met to insure compliance with the occupied bandwidth limitations, compatibility with AM receivers using envelope detectors, and any applicable international agreements to which the FCC is a party:

* * * * *

(c) Effective (insert date one year after enactment), stereophonic transmissions shall conform to the following additional modulation characteristics:

(1) The audio response of the main (L+R) channel shall conform to the requirements of the ANSI/EIA–549–1988, NSRC–1 AM Preemphasis/Deemphasis and Broadcast Transmission Bandwidth Specifications (NRSC–1).

(2) The left and right channel audio signals shall conform to frequency response limitations dictated by ANSI/EIA–549–1988.

(3) The stereophonic difference (L–R) information shall be transmitted by varying the phase of the carrier in accordance with the following relationship:

$$\phi_c = \tan^{-1}\left(\frac{m(L(t)-R(t))}{1+m(L(t)+R(t))}\right)$$

where:

L(t) = audio signal left channel,
R(t) = audio signal right channel,
m = modulation factor, and
m_{peak} (L(t) + R(t)) = 1 for 100% amplitude modulation,
m_{peak} (L(t) + R(t)) = 1 for 100% phase modulation,

(4) The carrier phase shall advance in a positive direction when a left channel signal causes the transmitter envelope to be modulated in a positive direction. The carrier phase shall likewise retard (negative phase change) when a right channel signal causes the transmitter envelope to be modulated in a positive direction. The phase modulation shall be symmetrical for the condition of difference (L–R) channel information sent without the presence of envelope modulation.

(5) Maximum angular modulation, which occurs on negative peaks of the left or right channel with no signal present on the opposite channel (L(t) = –0.75, R(t) = 0, or R(t) = –0.75, L(t) = 0) shall not exceed 1.25 radians.

(6) A peak phase modulation of +/–0.785 radians under the condition of difference (L–R) channel modulation and the absence of envelope (L+R) modulation and pilot signal shall represent 100% modulation of the difference channel.

(7) The composite signal shall contain a pilot tone for indication of the presence of stereophonic information. The pilot tone shall consist of 25 Hz tone, with 1% or less total harmonic distortion and a frequency tolerance of +/–0.1 Hz, which modulates the carrier phase +/–0.05 radians peak, corresponding to 5% L–R modulation when no other modulation is present. The injection level shall be 5%, with a tolerance of +1, –0%.

(8) The composite signal shall be described by the following expression:

$$E_c = A_c\left[1 + m\sum_{n=1}^{\infty} C_{sn}\cos(\omega_{sn}t + \phi_{sn})\right]\cos\left[-\omega_c t + \tan^{-1}\frac{m\sum_{n=1}^{\infty} C_{dn}\cos(\omega_{dn}t + \phi_{dn}) + .05\sin 50\pi t}{1 + m\sum_{n=1}^{\infty} C_{sn}\cos(\omega_{sn}t + \phi_{sn})}\right]$$

where:

A=the unmodulated carrier voltage

m=the modulation index

C_{sn}=the magnitude of the nth term of the sum signal

C_{dn}=the magnitude of the nth term of the difference signal

ω_{sn}=the nth order angular velocity of the sum signal

ω_{dn}=the nth angular velocity of the difference signal

ω_c=the angular velocity of the carrier

$$\phi_{sn} = \text{the angle of the nth order term} = \tan^{-1}\left[\frac{B_{sn}}{A_{sn}}\right]$$

$$\phi_{dn} = \text{the angle of the nth order term} = \tan^{-1}\left[\frac{B_{dn}}{A_{dn}}\right]$$

A_{sn} and B_{sn} are the nth sine and cosine coefficients of C_{sn}

A_{dn} and B_{dn} are the nth sine and cosine efficients of C_{dn}

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1294 Filed 1–19–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92–313, RM–8140]

Radio Broadcasting Services; Central, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Mel-Mike Enterprises, Inc., seeking the substitution of Channel 237C1 for Channel 237C2 at Central, New Mexico, and the modification of Station KZTT's construction permit to specify the higher class channel. Channel 237C1 can be allotted to Central in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.6 kilometers (11.6 miles) northwest to accommodate petitioner's desired transmitter site and avoid short-spacings to Station KKRK, Channel 237A, Douglas, Arizona, and Station KLAQ, Channel 238C, El Paso, Texas, at coordinates North Latitude 32–52–15 and West Longitude 108–16–57. Mexican concurrence in the allotment is required since Central is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before March 5, 1993, and reply comments on or before March 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard F. Swift, Esq., Tierney & Swift, 1200 Eighteenth Street NW., suite 210, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–313, adopted December 17, 1992, and released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1290 Filed 1–19–93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92–314, RM–8142]

Radio Broadcasting Services; Oliver, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by James J. Humes d/b/a Humes Broadcasters seeking the substitution of Channel 235B1 for Channel 235A at Oliver, Pennsylvania, and the modification of Station WXAK's construction permit to specify operation on the higher class channel. Channel 235B1 can be allotted to Oliver in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.6 kilometers (7.8 miles) east to accommodate petitioner's desired transmitter site, at coordinates North Latitude 39–55–15 and West Longitude 79–34–12. Canadian concurrence is required since Oliver is located within 320 kilometers (200 miles) of the U.S.—Canadian border.

DATES: Comments must be filed on or before March 5, 1993, and reply comments on or before March 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas W. Fletcher, Esq., 9825 Laurel Street, Fairfax, Virginia 22031 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–314, adopted December 17, 1992, and released January 13,1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1289 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–312, RM–8137]

Radio Broadcasting Services; Walhalla, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition field by Roger A. and Kathryn Ann Anderson seeking the allotment of Channel 294C2 to Walhalla, North Dakota, as the community's first local FM service. Channel 294C2 can be allotted to Walhalla in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.3 kilometers 10.1 miles) west to avoid short-spacings to Channels 292C and 296C, Winnipeg, Manitoba, and Channel 294C, Kenora, Ontario, Canada, at coordinates North Latitude 48–55–23 and West Longitude 98–03–11. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before March 5, 1993, and reply comments on or before March 22, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Roger A. and Kathryn Ann Anderson, 1113 Sunflower Lane, Route #1, Hazen, North Dakota 58545 (Petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–312, adopted December 17, 1992, released January 13, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1291 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–02; Notice 01]

RIN 2127–AD48

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel System and Fuel Tank Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On October 12, 1990, NHTSA published an advance notice of proposed rulemaking concerning the possibility of proposing special fuel integrity requirements for vehicles using compressed natural gas (CNG) and liquefied petroleum gas (LPG). Today's notice proposes to establish a new Federal Motor Vehicle Safety Standard (FMVSS) specifying performance requirements for CNG fuel tanks and vehicles using CNG as a fuel. The proposed standard is based on the FMVSS 301, with additional

requirements that apply to the fuel tank alone. In addition to requesting comments on the proposed standard, NHTSA is requesting comment on whether vehicles using LPG as a fuel should be subject to similar requirements. Finally, NHTSA is requesting comment on whether it should make the proposed requirements for CNG vehicles applicable to all vehicles designed to be powered by a gaseous fuel, such as liquefied natural gas or hydrogen.

DATES: Comments on this notice must be received by the agency no later than March 22, 1993.

Proposed effective date: If adopted, the amendments to the Code of Federal Regulations would become effective 30 days after publication of the final rule.

Under those amendments, CNG tanks manufactured on or after September 1, 1994 would be required to comply and CNG vehicles manufactured on or after September 1, 1994 would be required to comply.

ADDRESSES: Comments on this notice should refer to the above docket and notice number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Gary R. Woodford, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4804).

SUPPLEMENTARY INFORMATION:

I. Background

A. Standard No. 301

FMVSS No. 301, Fuel System Integrity, specifies performance requirements for vehicles that use fuel with a boiling point above 32 degrees Fahrenheit. The purpose of the standard is to reduce deaths and injuries from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to passenger cars, multipurpose passenger vehicles (MPV's), trucks, and buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to school buses. However, since CNG and LPG have a boiling point below 32 degrees, vehicles manufactured to use only CNG or LPG as a fuel are not subject to Standard 301.

Standard 301 limits the amount of fuel spillage from the vehicle during and after a barrier crash test and (except for large school buses, i.e., those over 10,000 pounds GVWR) a static rollover test. Large school buses are impacted by a moving contoured barrier at any point and angle.

Fuel spillage must not exceed the following limits. In the fixed or moving barrier tests, from the vehicle's impact with the barrier until the vehicle has ceased motion, spillage must not exceed one ounce; for the five minute period after the vehicle ceases motion, spillage must not exceed five ounces; and for the following 25-minute period, spillage during any one-minute interval must not exceed one ounce. In the static rollover test, fuel spillage from the onset of rotational motion cannot exceed five ounces for the first five minutes of testing at each successive 90 degree increment. For the remaining testing period, at each increment of 90 degrees, fuel spillage cannot exceed one ounce during any one-minute interval.

B. Characteristics of CNG and LPG

Natural gas is a vapor at standard temperature and pressure, 0 degrees Celsius and 101.4 kiloPascals (kPa) (32 degrees Fahrenheit and 14.7 pounds per square inch (PSI)), and is lighter than air. When used as a motor fuel, natural gas is typically stored on-board a vehicle in cylindrical tanks at a pressure of approximately 20,684 kPa gauge pressure (3,000 pounds per square inch gauge, psig). Natural gas is kept in this compressed state to increase the amount that can be stored on-board the vehicle, thus increasing the vehicle's driving range. Currently, there are about 30,000 CNG vehicles operating in the United States.

Liquefied petroleum gas (LPG) is a vapor at standard temperature and pressure but is heavier than air. When used as a motor fuel, LPG is also stored on-board a vehicle in cylindrical tanks. Unlike CNG, however, LPG is stored at a relatively low gauge pressure of 1,724 Kpa (250 psig). At that pressure, LPG exists as liquid. Because of LPG's lower storage pressure on-board vehicles, as compared to that of CNG, LPG presents a lower potential safety risk due to explosion. Indeed, LPG has been used as a motor fuel for over 60 years and has raised few safety problems. Currently, there are approximately 300,000 LPG vehicles operating in the United States.

C. Alternative Motor Fuels

Alternative fuel vehicles have not been numerous to date. However, recent Federal legislation, as well as the need to meet environmental and energy security goals, will lead to increased production and use of those vehicles.

1. Clean Air Act Amendments

The Clean Air Act Amendments of 1990, which established Clean Fuel Requirements, should encourage the further use of CNG. These amendments treat fuel type and content, along with vehicle technology, as a potential source of emission reductions. The Clean Air Act Amendments call for many programs including the Clean-Fueled Fleets Program which applies to some business, utility and government fleets and requires a specified percentage of vehicles purchased for the fleets to meet lower emission standards than those applicable to conventional vehicles. This program alone is expected to substantially increase the number of low-polluting vehicle/fuel combinations in use. Similarly, the Urban Buses Program and the California Pilot Program, both designed to encourage production of clean fuels and vehicles, are expected to significantly increase the number of vehicles designed to use alternative motor fuels.

2. Alternative Motor Fuels Act

Under the Alternative Motor Fuels Act of 1988, the Department of Energy is conducting demonstration programs to encourage use of alternative motor fuels. The alternative fuels include natural gas, methanol, and ethanol. The Federal Transit Administration (FTA) of the Department of Transportation is also encouraging the use of alternative fuels by local transit authorities.

The Alternative Motor Fuels Act further encourages the use of alternative fuels by specifying that any new passenger automobile which meets the applicable range of operation criteria, as well as the other criteria in the Alternative Motor Fuels Act, will have its fuel economy calculated according to a special mileage enhancing procedure. By facilitating a manufacturer's compliance with applicable Corporate Average Fuel Economy Standards, that Act thus encourages the production of dual energy passenger automobiles.

The range of operation criteria was established by NHTSA in a final rule establishing minimum driving range criteria for dual energy passenger automobiles (April 26, 1990; 55 FR 17611). Dual energy passenger automobiles are those capable of operating on an alternative fuel as well as on gasoline or diesel fuel. The minimum driving range for dual energy passenger automobiles operating on alcohol and petroleum fuel is 200 miles; the one for dual energy passenger automobiles operating on natural gas and petroleum fuel is 100 miles.

3. Energy Policy Act of 1992

While the agency was formulating this rulemaking, Congress enacted the Energy Policy Act of 1992. A provision in the Act states that the Secretary of Transportation shall within 3 years after enactment promulgate rules setting forth safety standards in accordance with the National Traffic and Motor Vehicle Safety Act of 1966 applicable to all conversions. (section 507(o)(2)(B))

NHTSA believes that by proposing to establish a new safety standard specifying performance requirements for CNG fuel tanks and soliciting comment about vehicles powered by other alternative fuels, the agency is acting to satisfy the Congressional mandate in § 507 with respect to the conversion of new vehicles. The agency notes that it may be necessary to conduct additional rulemaking to satisfy the Congressional mandate related to the conversion of in-use vehicles to alternative fuel vehicles.

D. Advance Notice of Proposed Rulemaking

Due to its expectation about increasing numbers of vehicles using gaseous fuels and its concerns about the safety of these vehicles, NHTSA published an advance notice of proposed rulemaking (ANPRM) on the fuel system integrity of vehicles using CNG and LPG (55 FR 41561, October 12, 1990). NHTSA requested comments on whether the agency should establish a safety performance standard for the fuel system integrity of vehicles using CNG or LPG as a motor fuel.

In the ANPRM, NHTSA stated that the potential safety problems concerning fuel system integrity of vehicles using CNG or LPG as a motor fuel could be divided into three categories. The categories were (1) crash integrity of vehicle fuel systems; (2) integrity of fuel storage containers; and (3) pressure relief for storage containers.

NHTSA received 28 written comments on the ANPRM from a variety of groups. Fourteen commenters either expressed general support for a Federal motor vehicle safety standard specifying fuel system integrity requirements for CNG vehicles, or recommended specific approaches to regulating the safety of these vehicles. For example, the Insurance Institute for Highway Safety (IIHS) recommended that NHTSA establish a safety standard with a level of performance comparable to that of the current Standard No. 301.

Other commenters opposed such requirements. One of these commenters, the Motor Vehicle Manufacturers Association (MVMA), asserted that there was no clearly established safety need and stated that any NHTSA rulemaking was premature.

Below, NHTSA discusses general comments in the three major areas. Comments relating to specific aspects of the ANPRM are discussed in the next section of this preamble, entitled "Agency Proposal."

1. Crash Integrity—Vehicle Fuel Systems

Given that CNG is stored in a vehicle under relatively high pressure, NHTSA stated its concern in the ANPRM about the potential for fuel leakage and catastrophic fire or explosion in a crash. NHTSA further stated that the location and safe performance of fuel lines and fittings, fuel components, fuel storage cylinders, and the mounting hardware for these components should be such that the fuel leakage is minimized during and after a crash.

In the ANPRM, NHTSA discussed three options to assure a minimum level of safety performance in a crash. The first option was a performance standard comparable to the current Standard No. 301. The second option was a standard consisting of selected portions of the National Fire Protection Association's (NFPA) Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1988 edition (NFPA 52). NFPA 52 is a voluntary industry guideline and contains sections concerning engine fuel systems for vehicles. The third option was a standard consisting of selected portions of the American Gas Association (AGA) Laboratories's Requirements for Natural Gas Vehicle (CNG) Conversion Kits, No. 1–85, August 20, 1985. The AGA requirements apply to on-board CNG equipment designed to operate a dual fuel gasoline/CNG vehicle or dedicated CNG vehicle and form the basis for an AGA program to certify natural gas vehicle conversion systems. Under this option, NHTSA would use the portions of the AGA requirements relevant to the safe performance, location, and securement of fuel system components and storage cylinders.

Six commenters supported a standard similar to Standard No. 301. In addition, the MVMA, GM, Ford, and Chrysler stated that if NHTSA decided to regulate CNG fuel system integrity, they would prefer a standard similar to Standard No. 301. Navistar, GM, and Ford stated that the NFPA 52 and AGA 1–85 standards, while appropriate as design guidelines, are not appropriate for regulatory requirements. These commenters asserted that the NFPA and AGA standards are too design-restrictive and not structured to provide crash integrity. Other commenters, such as Flexible Corporation and CNG Pittsburgh, suggested that NHTSA adopt standards based on both Standard No. 301 and NFPA 52. These commenters suggest that the design-oriented specifications of NFPA 52 address many safety concerns and have been used as an engineering guideline for the development of many existing CNG vehicles. Although they believe the NFPA standard should be supplemented with crash test requirements resembling Standard No. 301, these commenters suggest that the adoption of NFPA 52 would provide consistency and alleviate confusion for existing CNG vehicle manufacturers. Three commenters (NFPA, Ocean Phoenix, and Oklahoma Gas) stated that NHTSA should adopt only NFPA 52 requirements. NFPA strongly believes that the NFPA 52 requirements completely address the safety concerns associated with CNG systems. These commenters also noted that adoption of the existing NFPA 52 would promote consistency, as well as minimize leadtimes and compliance costs for manufacturers.

2. Integrity—CNG Fuel Tank

In the ANPRM, NHTSA stated that additional performance requirements may be appropriate for the fuel storage container, or tank. CNG is stored on-board a vehicle in cylindrical containers at between approximately 16,547 kPa and 24,821 kPa gauge pressure (2,400 and 3,600 psig). The fuel is stored in this compressed state so that there is sufficient fuel capacity to achieve a vehicle driving range comparable to that achievable with conventional fuels. This relatively high storage pressure for CNG could greatly increase the magnitude of any fire, however, because such high pressure would increase the force with which the stored energy in the fuel tank was forced (through a rupture) onto any fire resulting from a crash. Thus, the agency stated in the ANPRM its tentative belief that the integrity of the storage tanks is critical for vehicle safety.

NHTSA also discussed options in the ANPRM for ensuring that containers used to store CNG as a motor fuel have a minimum level of strength and durability. NHTSA suggested that the CNG storage container strength and durability requirements could be based on standards which the Department of Transportation's Research and Special Programs Administration (RSPA) has established for cylinders used to transport hazardous materials.

Commenters supported having container requirements. Five commenters (CGA, SCI, CNG Cylinder, IIHS, and Flexible) recommended that

NHTSA adopt the current RSPA regulations. Three other commenters (NFPA, Ocean Phoenix, and CNG Pittsburgh) commented favorably on the RSPA regulations, as well as voluntary standards of various organizations.

3. Pressure Relief—Fuel Storage Tank

As discussed above, CNG is stored on-board a vehicle in cylindrical containers, or tanks, at a relatively high pressure of about 20,684 kPa gauge pressure (3000 psig). In the event of a fire resulting from a crash, the temperature of the tank and its contents could increase, causing a corresponding increase in pressure. In such a case, the pressure within the tank could cause it to burst; high temperatures could also weaken the tank to the point of rupture.

In light of these concerns, NHTSA stated in the ANPRM that CNG storage tanks should have a means of pressure relief. The pressure relief system would allow venting of the tank contents at a controlled rate and thus would significantly reduce the possibility of the tank bursting and explosively releasing its contents. In the ANPRM, NHTSA also stated that pressure relief may be needed to prevent overfill during refueling operations.

Current RSPA regulations (49 CFR 173.34(d)) require cylinders used to transport CNG to have a pressure relief device capable of preventing rupture of a fully-charged cylinder under fire conditions. As these requirements are specifically designed for a fully-charged cylinder, however, they may not be adequate for ensuring the safe performance of a partially charged cylinder which may require more time for the pressure of its contents to increase sufficiently to activate the pressure relief device. If a partially-charged cylinder is exposed to heat during this time, the cylinder could weaken and fail before the relief device is activated. In the ANPRM, NHTSA requested information on whether CNG cylinders used in motor fuel applications should be equipped with a pressure relief system capable of preventing cylinder rupture, under fire conditions, at all fill levels.

Eleven commenters addressed the issue of pressure relief. Seven commenters supported NHTSA's establishing requirements for pressure relief. NGVC advocated use of its industry working group's standard for CNG fuel storage containers, instead of a NHTSA safety standard. Three commenters opposed pressure relief requirements. One of these commenters, Ford, added that NHTSA should consider performance-oriented requirements if the agency considers pressure relief requirements to be essential.

II. Agency Proposal

After considering the comments on the ANPRM, NHTSA has decided to propose a rule to address the fuel system integrity of vehicles using CNG. NHTSA does not agree with the commenters who asserted that there is no safety need for the rulemaking or that the rulemaking is premature. Since only about 30,000 CNG vehicles currently operate in the United States, NHTSA would not expect there to be extensive crash data. As explained above, however, the number of CNG vehicles is expected to increase substantially in the future.

Given the safety concerns associated with CNG fueled vehicles, the agency tentatively concludes that appropriate safety requirements should be issued before the increase in those vehicles occurs. NHTSA has tentatively concluded that the high pressure at which CNG is stored on-board a vehicle makes it necessary to assure the safety of those vehicles through a fuel system integrity standard.

CNG cylinders can present a significant risk to motor vehicle safety because they contain highly flammable fuels which are stored under high pressure. Due to the pressure, the cylinders are continuously operated at very high levels of stress. Potential safety problems from these conditions can be addressed by specifying the materials used, controlling the design, or setting performance requirements for the cylinders. These requirements are derived while considering factors such as embrittlement, corrosion, stress corrosion cracking, corrosion fatigue, general fatigue, and mechanical damage. These factors can degrade the cylinders throughout their service life. Because these factors are time dependent, performance tests which are conducted when the cylinders are first manufactured may not detect problems with the cylinders that could occur ten to fifteen years into their life. The agency strongly encourages manufacturers of these cylinders to consider these time dependent degradation factors in their design. NHTSA cannot require that the cylinders be subject to periodic inspection during their life, since the agency's authority to regulate these vehicles is limited to their initial manufacture. However, the agency urges that the cylinders be designed to resist these degradation factors for their entire service life, so that at the end of the cylinder service life, adequate margin of safety on burst strength is provided.

After considering the ANPRM comments, NHTSA has decided to base the proposed requirements on Standard 301 because the agency has tentatively concluded that these requirements would effectively limit fuel leakage during crashes and post-crash fires. Further, IIHS commented on the ANPRM that manufacturers currently have the facilities, technology, and expertise to comply with a CNG vehicle safety standard based on Standard 301. NHTSA tentatively agrees with that assessment.

NHTSA has tentatively concluded that the proposed rule would provide passengers of CNG vehicles a level of safety comparable to that provided passengers of vehicles fueled by gasoline or diesel fuel. NHTSA does not believe that this proposed rule would slow the development and marketing of CNG vehicles. To the contrary, it would, if adopted as a final rule, increase consumer confidence concerning safe performance of the fuel systems in CNG vehicles.

NHTSA believes that this proposed rule is consistent with the provisions in the Clean Air Act Amendments of 1990. Section 247(e) of the Clean Air Act states that DOT "shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles." In addition, section 250 of the Clean Air Act states that DOT "shall, in accordance with the [National Traffic and Motor Vehicle Safety Act of 1966], promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles."

NHTSA discusses below the details of the proposed standard, and in particular, the ways in which it differs from current Standard 301.

A. Summary of Proposed Rule

NHTSA is proposing a standard which would apply to both motor vehicles and items of motor vehicle equipment.

As a "vehicle" standard, it would specify fuel leakage limitations for school buses and for vehicles 10,000 pounds or less GVWR using CNG as motor fuel. It would also require vehicles, regardless of GVWR, that are manufactured with a CNG fuel tank to be equipped with a tank that meets proposed specifications for tank integrity. Since CNG is a vapor and not a liquid, the fuel leakage limitations for the vehicle standard would be stated in terms of fuel pressure drop. Fuel pressure would be measured during and after a barrier crash test, as liquid leakage is measured in Standard 301.

The proposed amount of permissible fuel pressure drop is based on the volume of leaked CNG that is equivalent in energy content to the amount of gasoline leakage permitted by Standard 301. NHTSA is proposing to use the energy equivalence of gasoline, instead of diesel or any other 301 fuel, because gasoline is the most common motor fuel. The tanks would be tested full, using nitrogen as the test gas. As discussed in more detail below, NHTSA has tentatively concluded that nitrogen is safer than CNG as a test substance, but sufficiently similar to CNG in important respects.

As an "equipment" standard, the new standard would specify performance requirements for CNG fuel tanks manufactured for motor vehicles, including aftermarket tanks. The standard would define "CNG fuel tank" as any container designed to store CNG as motor fuel on-board a motor vehicle.

The proposed equipment performance requirements are twofold. First, they regulate the strength and durability of the CNG fuel "tank," or container, by specifying limits on tank leakage and deformation in a pressure cycling test and a pressure burst test. The pressure cycling test is intended to ensure that the tank is capable of sustaining the cyclic loads imposed on it by refueling. The burst test is intended to ensure that the tank, or container, is capable of operating at the pressures for which it was designed, with some margin of safety.

Second, the equipment requirements would regulate how the tank may "vent," i.e., expel, its contents under specified conditions of elevated temperature and pressure. The notice proposes that, when subjected to a controlled bonfire test, the tank must vent its contents through a pressure relief device. NHTSA tentatively concludes that the requirement would help reduce the possibility that the tank may explode during refueling, or when exposed to fire in a crash.

B. Vehicle Requirements

1. Applicability of the Proposed Vehicle Requirements

The vehicle requirements would apply to vehicles manufactured to operate on CNG only ("dedicated" CNG vehicles), and to vehicles manufactured to operate on CNG and gasoline or diesel fuel ("dual-fuel" CNG vehicles).

GVWR. The limits on fuel leakage would apply to passenger cars, and to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less. They would also apply to school buses, regardless of their GVWR. These vehicles are the same vehicle types currently covered by Standard 301.

NHTSA has tentatively concluded that it would be inappropriate to apply the fuel leakage limits to CNG vehicles, other than school buses, that have a GVWR greater than 10,000 pounds. The fuel leakage limits are measured in a barrier crash test. Except for school buses, vehicles with a GVWR of more than 10,000 pounds using gasoline or diesel fuel are not subject to the requirements of Standard 301. Further, NHTSA does not currently require any barrier crash tests of vehicles over 10,000 pounds in any safety standard.

NHTSA notes that Transport Canada's CNG fuel system integrity standard includes all motor vehicles with a GVWR over 10,000 pounds. NHTSA further notes that some commenters stated they believe that, in the near future, CNG will primarily be used for vehicles with a GVWR over 10,000 pounds. Accordingly, NHTSA requests comment on whether such vehicles should be subject to the proposed fuel pressure drop limitations.

Any CNG-fueled motor vehicle, regardless of GVWR, would be required to be equipped with CNG storage containers that meet the proposed container requirements.

Dual-fuel vehicles. In the ANPRM, NHTSA discussed whether dual-fuel vehicles should be treated differently than dedicated CNG-fueled vehicles. General Motors and the National Fire Protection Association stated that there was no need for special requirements for dual-fuel vehicles. Thomas Built Buses, Washington State, Ford, and Flexible recommended that dual-fuel vehicles have separate fuel system integrity tests based on the fuels used in the particular vehicle.

After considering comments, NHTSA has tentatively concluded that the energy equivalency of the permissible fuel leakage from dual-fuel vehicles should be the same as that for dedicated vehicles. NHTSA disagrees with commenters who suggest that dual-fuel vehicles be tested once under current Standard 301 as though they operated only on gasoline or diesel fuel and a second time under the proposed CNG standard as though they operated only on CNG. If the agency were to adopt this suggestion, it would result in an allowable level of total fuel leakage for dual-fuel vehicles that is twice what is currently permitted under either current Standard 301 or what the agency is contemplating establishing under the proposed CNG standard for dedicated vehicles. Since a real world crash could cause both fuel systems to leak, the agency believes that safety concerns associated with dual-fuel vehicles are most appropriately addressed by establishing a single, overall fuel leakage limit that applies to the combined energy equivalency of the amount of both types of fuel leaked in a single crash test. Thus, a dual-fuel CNG vehicle would be subjected to a single crash test, and the fuel leakage represented by the pressure drop of the CNG fuel system, coupled with any gasoline or diesel fuel leakage, could not exceed the energy equivalent of the amount specified in the proposed standard for a dedicated CNG vehicle. This is the same energy content to the amount of gasoline currently allowed to leak under Standard 301.

Vehicles manufactured in more than one stage. In comments on the ANPRM, commenters also addressed issues relating to the application of a CNG fuel system integrity safety standard to vehicles manufactured in more than one stage. NHTSA tentatively concludes that it would be practicable for final stage manufacturers of multi-stage vehicles to comply with this proposed rule. With regard to the vehicle requirements, NHTSA notes that the requirements in this proposed rule would only involve those vehicles currently covered under Standard 301. Final stage manufacturers of multi-stage gasoline or diesel powered vehicles are already subject to Standard 301's dynamic crash test requirements.

With regard to the equipment requirements, NHTSA does not anticipate any compliance difficulties for final stage manufacturers. Such manufacturers could purchase CNG fuel tanks from equipment manufacturers who would have certified the compliance of the containers with the strength, durability, and pressure relief requirements of the proposed rule.

Nevertheless, NHTSA requests comment on the agency's tentative conclusion that final stage manufacturers could comply with the proposed requirements and provide the requisite level of safety. NHTSA requests that commenters explain any potential problems final stage manufacturers would face in complying with this proposed rule. If any commenter believes the proposed requirements are impracticable, the commenter should explain the basis for that belief, especially given the current application of Standard 301 to some multi-stage vehicles.

The agency is interested in receiving information from incomplete vehicle manufacturers on whether they plan to manufacture incomplete vehicles with CNG fuel systems. NHTSA is also interested in receiving information from manufacturers of fuel conversion kits on the instructions those manufacturers provide with the kit to persons converting a vehicle from gasoline-powered to dedicated CNG-powered, or dual fuel. In addition, NHTSA requests information on whether devices or designs that are installed on a gasoline-powered vehicle to ensure the vehicle's compliance to Standard 301 can be used to ensure compliance with the dynamically-tested requirements for CNG vehicles proposed today. Finally, NHTSA is also interested in obtaining information from final stage manufacturers and alterers on the types of vehicles they might produce with CNG fuel systems, including the GVWR's of the vehicles.

2. Allowable Leakage

The proposed CNG standard would specify limits on the amount of fuel that may leak from the vehicle's entire fuel system. The amount of allowable CNG leakage for a dedicated vehicle would be equivalent in energy content to the amount allowed for gasoline in Standard 301. CNG leakage from the vehicle would be measured for a 15-minute period following a barrier crash test. The measurements would be taken from impact until the vehicle ceases motion, for the subsequent five minute period, and every minute following the five-minute period, up to 10 minutes.

NHTSA's calculations of the equivalent energy content and procedure for deriving the formulas for allowable CNG leakage are contained in a memorandum to the agency's docket at the above address.

Limits. NHTSA proposes that the following amounts of CNG be allowed to leak during the test procedure. (Allowable CNG leakage by volume is at the standard temperature and pressure of 15.6 degrees Celsius and atmospheric pressure, 101.4 kPa (60 degrees Fahrenheit and 14.7 psi).)

Test condition	Allowable CNG leakage	
	By weight	By volume
From impact until vehicle motion has ceased.	27 grams	39.8 liters.
Subsequent 5-minute period.	135 grams	199 liters.
Subsequent 10-minute period.	27 grams per minute.	39.8 liters per minute.

NHTSA is further proposing that the amount of leakage (volume loss of CNG) be determined by measuring pressure loss in the fuel system, the approach which Ford, Chrysler, and Thomas suggested. Ford's comments included a formula for determining CNG leakage based on pressure loss and a supporting rationale for the derivation of the formula. Ford also suggested allowing a pressure drop which would correspond to an amount of gaseous fuel leakage having the energy content equivalent to the leakage allowed for liquid fuels under Standard 301. After analyzing Ford's comments, NHTSA is proposing a method of regulating CNG leakage that is consistent with Ford's suggested approach. The difference between the two methods is that NHTSA is proposing to measure CNG leakage at specific time increments during the test, whereas Ford suggested measuring total CNG leakage at the end of the test period. (Also, as discussed further below, the suggested Ford procedure measured leakage from the CNG container only, while NHTSA is proposing that fuel leakage from the entire fuel system be measured.)

Under NHTSA's formula, the volumes of CNG leakage specified above would translate into the following allowable pressure drops in units of kPa for CNG fuel systems:

Volume of CNG leakage	Permissible pressure drop
39.8 liters CNG	$13.72(T/V_{FS})$
199.0 liters CNG	$68.6(T/V_{FS})$

where, T = Temperature of the test gas in degrees Kelvin, stabilized to ambient temperature prior to testing.
V_{fs} = The internal volume in liters of the fuel system from which CNG is leaked.

NHTSA emphasizes that the proposed amounts are absolute, instead of percentage pressure changes. These pressure drops are the limiting levels for a given test temperature and vehicle fuel system volume. A pressure drop of the fuel system which is greater than the pressure drop determined by the applicable formula would not be in compliance with the proposed standard. A pressure drop less than or equal to the drop determined by the applicable formula would be in compliance.

The agency tentatively concludes that measuring pressure loss, instead of the amount of gas leaking, addresses the concerns of the commenters who believed that there were extreme difficulties associated with measuring collected gas at a particular location on a vehicle. Further, NHTSA believes that attempts to measure leaking gas under high pressure could endanger test personnel.

No leakage. In the ANPRM, NHTSA discussed the option of allowing no fuel leakage during the crash test, and for up to 30 minutes after motion of the vehicle has ceased. Such a specification appears consistent with Transport Canada's standard for CNG fuel system integrity, which specifies a no leakage requirement. Transport Canada's standard does, however, allow a five percent drop in pressure.

NFPA, Ocean Phoenix, Flexible, Thomas, MVMA, Navistar, GM, Ford, and Chrysler opposed a no-leakage requirement. Commenters stated that any gaseous fuel system under pressure will allow a minimal amount of leakage from fittings and valves. NFPA stated that standards for residential and commercial gas equipment allow a few cubic centimeters of leakage per hour. Chrysler and Ford stated that NHTSA allows a certain amount of leakage from liquid fueled vehicles under Standard 301. MVMA added that it knows of no method for proving zero gas leakage. Ford commented that although Transport Canada has a no-leakage requirement, the standard does not include a method for establishing no leakage. NFPA, MVMA, GM, and Ford suggested that NHTSA establish a minimal leakage level. They indicated that NHTSA could base this level on acceptable leakage levels established for residential appliances or, NHTSA could also select a level that would not present a flammable mixture for a given space. MVMA and GM said that NHTSA would have to consider temperature, pressure, and ambient air movement in establishing a leakage level based on flammability. Alternatively, Ford and GM suggested that NHTSA set allowable CNG leakage at a level equivalent in energy content to that permitted for liquid fuels under Standard 301. Both commenters stated that a no-leakage requirement would be impracticable and unduly restrictive, given that minimal leakage is allowed under Standard 301.

After considering the comments, NHTSA decided against proposing an absolute prohibition against leakage. NHTSA agrees with commenters that any gaseous fuel system under pressure can be expected to leak minimal amounts around its joints and fittings. Also, a no-leakage requirement would be more difficult to enforce, since measuring minuscule losses in pressure would require highly sensitive instruments. While leak detectors (e.g., sensing devices) can identify whether a small amount of gas is leaking, they cannot reliably measure the amount of leakage.

NHTSA further tentatively concludes that the amount of leakage allowed in this proposed rule would have the same safety effect as a zero leakage requirement. NHTSA reached a similar conclusion with regard to Standard 301 when the agency adopted the final rule that established an allowable level of liquid fuel leakage during that standard's crash test (38 FR 22397; August 20, 1973). In that case, NHTSA concluded that limiting fuel spillage to one ounce per minute for the frontal impact and static rollover tests would effectively require manufacturers to design motor vehicles for complete fuel containment, since any spillage allowed by design could well exceed the limit of the standard. NHTSA also concluded that a one ounce per minute spillage allowance would eliminate concern over the few drops of spillage that may be unavoidable in a functioning system.

Similarly here, NHTSA believes that allowing a minimal amount (equivalent in energy content to the amount of gasoline leakage currently allowed) of CNG leakage, would be the functional equivalent of a zero leakage requirement in terms of safety, and yet would also avoid the practicability problems associated with an absolute no leakage requirement. Although NHTSA tentatively concludes that the approach proposed here would be practicable and adequate to ensure safety, NHTSA requests comment on whether a basis other than the equivalent gasoline energy content should be used to establish the allowable level of CNG leakage in a crash test. NHTSA requests that commenters state whether they believe there to be a more appropriate basis for establishing allowable CNG leakage, and include the rationale for their suggested level.

Time intervals. NHTSA is proposing to regulate the amount of CNG leakage over a 15-minute period. NHTSA has tentatively concluded that specifying this period would be appropriate for all CNG vehicles covered by this proposed rule because any CNG that would leak from the fuel system would do so within 15 minutes. Thus, 15 minutes is enough time to measure any pressure drop that would occur.

However, NHTSA requests comment on the appropriateness of its proposal to measure CNG leakage at specific time increments during the test. The agency is proposing this method because it is consistent with the method used in measuring liquid fuel leakage under current Standard 301. However, NHTSA recognizes that it is more difficult to accurately measure small incremental amounts of pressure drop, such as those required (1) after barrier impact and the ceasing of vehicle motion, or (2) after one minute intervals. Therefore, NHTSA requests comment on the feasibility and practicability of specifying gaseous leakage measurements at specific time intervals. NHTSA is particularly interested in information on the availability of devices that are capable of measuring the incremental pressure changes.

Alternatively, as suggested by Ford, the agency could require that total CNG leakage be measured at the end of the test period, using a pressure drop formula similar to the ones derived above. Using that procedure, allowable pressure drop, expressed in kPa, at the end of the 15 minute test period would be: Allowable $P_{Drop} = 219.S(T/V_{FS})$

where, T = Temperature of the test gas in degrees Kelvin, stabilized to ambient temperature prior to testing.

V_{FS} = The internal volume in liters of the fuel system from which CNG is leaked.

Ford stated that prolonged release limits are less important for gaseous fuels which dissipate more rapidly. NHTSA requests comment on the safety consequences of allowing cumulative leakage to be measured at the end of the test period. Also, comments are requested on Ford's approach as applied to dual-fuel vehicles. Under today's proposal, the energy content of the total amount of fuel leaked from the dual-fuel vehicle must not exceed the energy content of gasoline leakage permitted under Standard 301. Using Ford's approach, it would seem that the energy content of the leaked CNG (measured at the end of the 15 minute period) would be added to that of the total amount of diesel/gasoline that had leaked in the different time intervals of the test.

Commenters are requested to provide a supporting rationale in discussing the practicability and safety consequences of each of these approaches for measuring allowable CNG fuel leakage.

Leakage from components of the fuel system. NHTSA also received ANPRM comments addressing the specific fuel components or subsystems from which the standard should allow leakage, and those from which the standard should prohibit leakage. Navistar stated that the standard should permit some negligible amount of leakage from valves and fittings, but not allow leakage from high pressure storage containers. GM, Ford, and Chrysler suggested that fuel system lines downstream of the fuel storage containers be allowed to leak partially or totally, but that the standard should permit no leakage, or only a small amount of leakage, from the fuel storage containers.

NHTSA has tentatively concluded that the allowable CNG leakage level should apply to the vehicle's entire fuel system, instead of only to the fuel storage containers. The proposed standard would define "fuel system" as "All components used to store or supply CNG to the vehicle's engine." Accordingly, under the proposal, any shutoff valve at the fuel storage container would be in the open position to represent vehicle operation. NHTSA believes that a standard which permits limitless leakage from the fuel lines during a crash test could raise serious safety concerns. Under Ford's suggested approach, for example, a vehicle with large volume fuel lines could meet the standard's performance requirements even if the vehicle emitted an amount of CNG greater than the energy equivalent amount of gasoline allowed in Standard 301.

However, NHTSA requests comment on the appropriateness of its proposal to include the entire fuel system in measuring allowable leakage. Under this proposal, vehicle manufacturers would have to know the internal volume of the vehicle's fuel system for use in the pressure drop formula, including lines, components, and fuel storage containers. NHTSA believes that this information is available to manufacturers through design specifications, or that it could be obtained by measuring a given amount of liquid displaced through the fuel system. Commenters are requested to provide information on the practicability of this approach.

As an alternative, the agency could require measurement of allowable leakage from the storage containers only, and permit any amount of leakage from fuel lines and other components downstream of the storage containers. Under such a proposal, a shutoff valve at the fuel storage containers would be in the closed position during testing, and manufacturers would have to know the internal volume of the storage container only. However, this approach assumes all storage containers will have a shutoff valve. NHTSA requests comments on that assumption, and on the safety consequences of allowing unlimited leakage from fuel lines and fuel system components other than the fuel storage containers, particularly for vehicles with large volume fuel lines.

Commenters are requested to provide supporting rationale with respect to the practicability and safety consequences of each of these approaches for measuring allowable fuel leakage.

Measuring fuel leakage. NHTSA has proposed the limits on pressure loss anticipating that each vehicle subject to the limits will be manufactured with a mechanism that will enable the agency and the manufacturers to measure pressure loss. NHTSA believes such a mechanism would probably be a system of pressure gauges or fittings (to which NHTSA could attach gauges or pressure transducers). Since under today's proposal the limits on pressure loss would apply to the entire fuel system, NHTSA further assumes the pressure gauges or fittings would be installed at particular locations in the fuel system such that measurements can be made of any leak that occurs anywhere within the system. Comments are requested on that assumption, and on the regulatory alternatives available to the agency if that assumption is incorrect.

Further, if the manufacturer installed a gauge or pressure transducer, NHTSA tentatively concludes the gauge or pressure transducer would be sufficiently precise and reliable to enable the agency to determine a vehicle's compliance with the pressure loss requirements. The agency assumes that the gauges used by the different manufacturers would have essentially the same degree of accuracy. The agency does not believe that manufacturers would face insurmountable problems complying with a standard that required such a measurement of pressure loss throughout a CNG fuel system. NHTSA requests comments on these issues.

Rollover. NHTSA agrees with the ANPRM commenters who believed that a vehicle rollover test for CNG dedicated vehicles is unnecessary. The rollover requirement is needed for liquid fuel vehicles (including dual-fuel vehicles) because leakage is a function of gravity and the location of the rupture relative to the fuel. Without a rollover test, a rupture in the fuel system above the level of the liquid fuel would not be detected. CNG, however, is pressurized and would quickly escape upon rupture of the fuel system. Thus, for a CNG fuel system, any leakage would be unaffected by vehicle attitude or gravity. Additionally, as Transport Canada does not have rollover requirements to measure the fuel system integrity of CNG vehicles, a decision not to include a rollover requirement in this proposal is consistent with the goal of harmonizing safety standards with Canada.

3. Test Conditions

Test temperature. NHTSA has decided not to specify an ambient test temperature at which the crash test would be performed.

In the ANPRM, NHTSA discussed whether all testing should be done within an ambient air temperature range of 60 to 70 degrees Fahrenheit. Ocean Phoenix and Flexible had no objection to the 60 to 70 degrees range. Thomas, MVMA, Navistar, and Chrysler recommended that the test temperatures be the same as in current Standard 301. Ford and GM recommended that the temperature range be consistent with that specified in other standards involving a crash test. The commenters stated that adopting such a range would promote testing efficiency by allowing tests for various standards (e.g., Standard 204, 212, and 219) to be combined.

Standard 301 does not specify an ambient test temperature. NHTSA believes these commenters may be referring to the test condition for Standard 208, Occupant Crash Protection, for the stabilized temperature of the dummy used in 208's crash tests. (See, S8.1.12 of Standard 208) The Standard 208 crash test is conducted with the dummy's temperature at the levels specified in S8.1.12. These levels are between 66° F and 78° F for the dummy described in subpart B of part 572, and 69° F and 72° F for the subpart E (Hybrid III) dummy.

The agency has tentatively concluded that it is not necessary to specify an ambient temperature in the proposed standard. The proposed rule's formulas for determining allowable pressure drop in the fuel system take into account variations in the temperature at which testing is conducted. Under the proposal, allowable pressure drop in the vehicle's fuel system, expressed in kPa, would be determined through use of the following formulas:

(1) $13.72(T/V_{FS})$ from impact until motion of the vehicle has ceased;

(2) $68.6(T/V_{FS})$ during the 5 minute period following cessation of motion; and

(3) $13.72(T/V_{FS})$ in any 1-minute interval during the subsequent 10 minute period, (where T is the temperature of the test gas in degrees Kelvin, stabilized to ambient temperature prior to testing, and V_{FS} is the internal volume in liters of the system from which CNG is leaked).

As shown here, as the ambient temperature at which testing is conducted rises, so would the amount of allowable pressure drop in the fuel system. However, the amount of allowable CNG leakage would remain constant. Accordingly, NHTSA believes that, although not specifying an ambient temperature would likely result in tests being conducted at varying temperatures, this would not affect vehicles' compliance with the standard. Further, as commenters suggested, not specifying an ambient temperature would facilitate the combining of tests for various standards. NHTSA requests comment on its tentative decision not to specify an ambient temperature for testing under the proposed standard.

Despite NHTSA's tentative conclusion that it is unnecessary to specify a test temperature for crash testing under this proposed rule, the agency is aware of the concern that certain materials that could be used for CNG containers (e.g., certain high strength steels), can lose their ductility at low temperatures (e.g., −40 degrees Celsius (−40 degrees Fahrenheit)), potentially becoming brittle and leading to catastrophic failure of the CNG container. While NHTSA is not proposing a specific test to address this issue, the agency requests comment on whether there is a serious safety problem due to failure of CNG containers at low temperatures. Specifically, NHTSA requests commenters to address the following questions:

1. Is there a safety problem sufficiently serious to warrant establishing low temperature qualification testing of materials for use in CNG fuel storage containers? Please explain why or why not. One such test could involve applying a load to a sample of container material at a low temperature to assess the ductility of the material.

2. If there is a sufficient safety problem, what specific test should be required, and what materials and temperatures should be addressed? Please specify.

3. Please comment specifically on the practicality of using the impact test contained in the American National Standards Institute's (ANSI) standard addressing the basic requirements for CNG vehicle fuel containers: AGA NGV2, which was approved by ANSI on August 6, 1992, found under Section 1–12, "*DESTRUCTIVE TESTS* (d) Impact Test for Steel Containers and Liners" and the performance criteria in Section 1–13 "*ACCEPTABLE RESULTS OF TESTS* (e) Impact Test," where the average energy absorbed by the three specimens would be changed to the energy absorbed by one specimen. In the reference, within section 1–12 (d), to ASTM E 23, "Methods for Notched Bar Impact Testing of Metallic Materials," only the Charpy test procedure would be used and only the impact energy would be measured.

Test pressure—fuel tank. NHTSA is proposing that CNG fuel storage containers be tested at 100 percent of service pressure.

In the ANPRM, NHTSA discussed which level of fuel storage pressure would be appropriate for the CNG fuel storage tank during the barrier crash test. Standard 301 specifies that a vehicle fuel tank is to be filled to 90 to 95 percent of capacity during a crash test of vehicles with liquid fuel. Transport Canada's fuel system integrity standard for CNG vehicles requires the fuel containers to be pressurized to 100 percent of service pressure. This is the pressure at which the container is designed to operate when filled with the gaseous fuel at 20 degrees Celsius (68 degrees Fahrenheit).

NFPA, Flexible, GM, Ford, and Chrysler stated either that a fill level of 90 to 95 percent was appropriate or that they would not object to such a level. Poway and Thomas stated that, for school buses, testing should be performed with the fuel system at maximum pressure.

NHTSA is proposing that CNG fuel storage containers be tested at 100 percent of service pressure for several reasons. Specifying that test condition would be consistent with the level which Transport Canada's standard specifies. Further, as explained below, NHTSA believes that differences between liquid fuels, such as gasoline, and gaseous fuels including CNG, make departure from the current Standard No. 301 level appropriate.

During tests of a fuel system that is designed to use liquid fuels, particularly during a static rollover test, gravity plays a key role in determining the amount of fuel leakage. Other factors, such as the vehicle's attitude, size of the tank rupture, and weight of the liquid fuel also affect the amount of fuel leakage. For liquid fuels, these factors affect leakage independent of the amount of fuel in the tank and therefore, the fuel level is not a critical test procedure specification.

Leakage of gaseous fuels, however, is determined almost wholly by the level of pressure inside a ruptured fuel system instead of vehicle attitude or gravity. Therefore, NHTSA believes it is appropriate to test CNG vehicles with the CNG storage containers at the maximum fill level (i.e., 100 percent service pressure). Without this specification, the test would not simulate a reasonable worst case for CNG vehicles.

Test gas. NHTSA is proposing that nitrogen (N_2) be specified as the test gas.

In the ANPRM, NHTSA discussed possible gases which could be used during compliance tests for CNG vehicles. NHTSA sought a test gas which adequately represents CNG, is safe during crash tests and provides a common baseline from which to derive all leakage measurements. Transport Canada's standard for CNG fuel system integrity specifies the use of nitrogen as a test gas.

NFPA, Ocean Phoenix, Flexible, Ford, Navistar, and GM supported the use of nitrogen as a test gas. No commenter opposed its use, although three commenters suggested the use of dry air, helium, or an inert gas. Ford stated that nitrogen is heavier than CNG and would impose greater loads during testing, but added that the benefits of using nitrogen would exceed the weight. Ford listed nitrogen's ready availability, comparative safety, extensive handling experience, and relatively low cost as benefits to be considered.

NHTSA has tentatively concluded that nitrogen is the most appropriate test gas for this proposed standard for several reasons. Although nitrogen is denser than CNG, both nitrogen and CNG are lighter than air. Since both gases are lighter than air, both would disperse upward into the air through any rupture in the fuel system rather than pooling in cavities of the fuel system or falling to the ground. NHTSA believes that for a given temperature and absolute pressure change in a fuel system, a volume of nitrogen, leaked as a test gas, can be assumed to be equal to the same volume of CNG that would leak under those conditions. NHTSA further agrees with commenters that nitrogen would be safer for crash tests because it is neither flammable nor toxic. Finally, as air is composed of 78 percent nitrogen, nitrogen is readily available for use as a test gas.

Nonetheless, NHTSA requests comment on the potential use of dry air as a test gas, and the consequences of such use.

4. Other Issues

Modified requirements. If commenters believe that any of the proposed requirements are inappropriate for CNG vehicles, the agency requests that they explain why and discuss whether other modifications to Standard 301 would be more appropriate.

Vehicles using LPG and other fuels. While NHTSA has tentatively concluded that the proposed requirements are appropriate for CNG vehicles, the agency is less certain about the appropriateness of today's proposal for vehicles using LPG and other fuels. NHTSA's uncertainty concerns the differences which exist between CNG and the other fuels and which were addressed by commenters on the ANPRM. For example, unlike CNG, LPG has both a liquid and gaseous component when stored in a vehicle fuel tank. Upon rupture of the fuel tank, LPG could leak out as a liquid, a vapor, or a combination of the two. Thus, a test designed for CNG may not be appropriate for LPG.

Further, the agency is uncertain that a fuel system integrity standard for LPG is necessary given that each of the 50 States has adopted some form of the NFPA Standard 58, "Standard for the Storage and Handling of Liquefied Petroleum Gases," in regulating LPG vehicles. Comments are requested on the extent to which an LPG vehicle FMVSS, similar to the one proposed for CNG vehicles, is necessary, and the extent to which it would apply to the same aspects of performance regulated by the States. The agency notes that the widespread adoption of that NFPA standard contrasts dramatically with the States' response to NFPA Standard 52 addressing CNG fuel system integrity. The CNG standard has reportedly been adopted by only one state. Moreover, NFPA Standard 52 specifies requirements that are fairly design restrictive. NHTSA has tentatively concluded therefore that the existence of NFPA Standard 52 does not make the proposed requirements for CNG vehicles unnecessary.

Notwithstanding the States' enactment of NFPA Standard 58, NHTSA requests comment on whether any of the specific requirements proposed here for CNG vehicles are inappropriate for LPG vehicles. If a commenter believes that a particular requirement would be inappropriate, the commenter is requested to recommend more appropriate alternatives.

NHTSA also requests comment on the appropriateness of making requirements similar to those proposed for CNG vehicles apply to all vehicles designed to be powered by a gaseous fuel, including such potential fuels as hydrogen. Assuming there is a need to regulate the fuel system integrity of those vehicles, one possible approach could be to limit fuel pressure drop to a level that represents the amount of fuel equivalent in energy content to the leakage permitted by Standard 301. Alternatively, the agency could allow varying amounts of fuel pressure drop, depending on the specific type of fuel being tested. There might be safety or other reasons why NHTSA might find it desirable to specify an amount of allowable fuel pressure drop that is greater than or less than the amount of fuel equivalent in energy content to the fuel leakage permitted by Standard 301. NHTSA requests that commenters discuss whether they view the approaches suggested here as appropriate for other gaseous fuel vehicles, or whether another approach would more effectively meet safety and practicability concerns.

Detachment of Fuel Storage Containers. NHTSA has tentatively decided not to include a specific requirement for tank retention in this proposed rule. The agency's decision on this point is based on its belief that manufacturers would need to ensure tank retention in order to meet the allowable leakage limits specified for the crash tests.

In the ANPRM, NHTSA discussed the possibility of requiring that fuel storage containers remain attached to the vehicle during a barrier crash test. Transport Canada's CNG fuel system integrity standard includes such a requirement for vehicles with a GVWR of 10,000 pounds or less. Transport Canada's Motor Vehicle Test Methods do not, however, include a method for measuring compliance with this requirement.

Two commenters addressed the issue of detachment of fuel storage containers. Thomas suggested that the agency replace the rollover test with a static load performance test for fuel container and component mountings. MVMA stated that fuel storage tank retention may have been a secondary purpose for proposing a rollover test, but added that tank retention is more demandingly evaluated during barrier crash tests.

Despite NHTSA's tentative conclusion that an express tank retention requirement is not necessary to ensure that CNG containers are securely attached to a vehicle, the agency requests further comment on such a requirement. Commenters favoring the requirement are requested to comment on methods of measuring compliance with it. Further, since there are varying degrees of detachment (ranging from loosening of the container mountings to total detachment of the container from the vehicle), NHTSA requests comment on how the agency should define "container detachment" were it to adopt a prohibition against detachment.

C. Equipment Requirements

The proposed pressure cycling, burst, and bonfire test requirements for CNG fuel tanks would apply to all CNG fuel tanks (i.e., storage containers) manufactured for use on any motor vehicle, regardless of GVWR. Thus, while vehicles with a GVWR over 10,000 pounds (other than school buses) would not be subject to the fuel pressure drop limitations for CNG vehicles, the CNG tanks in those vehicles would be subject to the equipment requirements.

1. Pressure Cycling and Burst Tests

After considering the ANPRM comments, the agency has decided to propose performance-based cycling and burst requirements. The proposal is based on a CNG fuel container standard that the Natural Gas Vehicle Coalition (NGVC) submitted with its ANPRM comments and which was approved by ANSI on August 6, 1992. This standard was developed by an industry working group, under the direction of NGVC. However, NHTSA is not proposing to adopt those provisions of the standard developed by NGVC which the agency believes are too design restrictive.

NHTSA has also tentatively decided not to propose the RSPA regulations for CNG storage containers used on motor vehicles. NHTSA believes that the RSPA regulations do not address the conditions unique to the motor vehicle environment, including increased cycling due to refueling and pressure relief when the cylinder is less than full. Additionally, RSPA regulates design and materials which NHTSA prefers not to do, since the agency's statutory mandate is to provide performance-based safety standards.

Sequential testing. The proposed pressure cycling provision would require that the fuel tank withstand, without any leakage or any deformation exceeding one percent of any circumference, a cycling test at ambient temperature. In the test, the tank would be hydrostatically pressurized to the service pressure, then to not more than 10 percent of the service pressure, for 13,000 cycles. Then, the tank would be hydrostatically pressurized to 125 percent of the service pressure, then to not more than 10 percent of the service pressure, for 5,000 cycles. The cycling rate would not exceed 10 cycles per minute.

A fuel tank which withstood the cycling test without any leakage or circumferential deformation exceeding one percent would then be subjected to the burst test. In the burst test, the tank would have to withstand, again without any leakage or circumferential deformation exceeding one percent, an internal hydrostatic pressure of 3.50 times the service pressure for 60 seconds. The rate of pressurization would not exceed 1,379 Kpa gauge pressure (200 psig) per second.

NHTSA believes that the proposed cycling and burst requirements would be sufficient to establish minimum levels of safety performance for both the strength and durability of CNG fuel tanks used in motor vehicles. Both requirements are consistent with provisions in the drafts developed by the industry working group mentioned above. The tests are also generally consistent with RSPA regulations for cylinders used to transport CNG.

The pressure cycling requirement would help to assure that a CNG tank is capable of sustaining the cycling loads imposed on the tank during refuelings. The number of cycles specified, 18,000, is representative of four refuelings per day, 300 days per year, for 15 years.

The burst test would establish the strength of the CNG container, ensuring that the container is capable of operating at the pressures for which it was designed, with a margin of safety. NHTSA has tentatively concluded that the 3.50 safety factor would not impede technological development, while assuring an acceptable level of safety. The NGVC industry working group's draft standard and the RSPA regulations use safety factors of between 2.25 to 3.50, depending on the material and design involved. However, NHTSA requests comment on whether the 3.50 safety level is appropriate for the proposed test requirement.

Deformation requirement. In both the pressure cycling and burst tests, NHTSA is proposing an allowable circumferential deformation of up to one percent in order to quantify the amount of allowable deformation. The one percent level is based on a similar Society of Automotive Engineers (SAE) requirement involving the performance of air brake reservoirs, SAE Standard J10, August 1985. NHTSA requests comment on whether the one percent level is appropriate for the proposed pressure cycling and burst test requirements.

Time interval. NHTSA is proposing that during the burst test, elevated pressure be sustained for 60 seconds. The RSPA regulations also specify a 60-second period, although the NGVC's draft standard only contains a 10-second time period. However, NGVC's draft includes additional tests to qualify CNG fuel container designs. NHTSA is not proposing those additional tests because the agency believes that they are too design-restrictive, or otherwise inappropriate. NHTSA has tentatively concluded that the test specifications contained in this proposed rule are adequate to promote safety.

2. Pressure Relief—Fuel Storage Tanks

After considering the comments on the ANPRM, NHTSA has decided to propose performance requirements for CNG tanks to address pressure relief concerns. The proposed requirements are based on the draft NGVC fuel storage container standard. That standard, referenced above, specifies a bonfire test for testing pressure relief device effectiveness. While the draft NGVC standard specifies use of CNG during the bonfire test, NHTSA tentatively concludes that nitrogen or air is more appropriate because both are safer than CNG. The agency's proposed bonfire test requirement would have to be met through use of pressure relief devices.

One possible alternative to requiring that all fuel containers have a pressure relief device is to allow containers without pressure relief devices to pass the bonfire test if they do not vent any of their contents. Thus, the containers would either have to vent all their contents through a pressure relief device or possess sufficient strength to enable the container to sustain the heat and pressure buildup produced during the test. However, when no pressure relief device is used, fire intensity and duration become more critical and cylinder rupture in actual fires would be at a very high pressure and be very violent. Therefore, comments in support of such an approach should provide a specific test that would cover an increased fire intensity and duration, to accurately replicate the non-pressure relief situation. The agency requests comment on this option.

3 Certification.

The standard would require persons manufacturing a CNG fuel tank to certify that each tank meets the proposed equipment requirements by permanently labeling the tank with the symbol "DOT," the date of manufacture of the tank, and the name and address of the tank manufacturer. NHTSA believes labeling the tank would provide vehicle manufacturers and consumers with assurance that they are purchasing complying tanks. It would also facilitate enforcement efforts by providing a ready means of identifying the product and the tank manufacturer.

4. Other Issues.

Gas quality. In the ANPRM, NHTSA noted that gas quality (i.e., the level of impurities in the fuel) is a factor that could influence the integrity of the fuel storage tank. Specifically, NHTSA noted that certain compounds in the fuel used for CNG vehicles could lead to stress-corrosion cracking, corrosion fatigue or other harm to the integrity of the fuel storage tanks. This could lead, in turn, to failure of the CNG tanks. NHTSA has considered proposing performance requirements for CNG tanks to guard against corrosion due to poor gas quality. Further, since NHTSA is not aware of any readily available performance test which would address these modes of tank failure, the agency has tentatively decided not to propose a specific test. Despite this tentative decision, the agency requests comments on the following issues related to possible tank corrosion due to poor gas quality:

1. Should NHTSA develop performance requirements for CNG motor fuel containers to protect against corrosion due to poor gas quality? Why or why not?

2. If so, are corrosion fatigue and stress corrosion cracking the major failure modes which need to be addressed, or are there other corrosion concerns due to poor gas quality? Please specify.

3. What specific tests and performance levels should be required to address (a) corrosion fatigue, (b) stress corrosion cracking, and (c) other corrosion? Please specify. Should these tests involve (a) performance requirements for material specimens, (b) performance requirements of the entire CNG fuel container, or (c) both? Please specify.

4. Is there one test or performance requirement which could be used to address all corrosion concerns due to poor gas quality? Please specify.

5. Please comment specifically on the practicality of using the corrosion resistance test contained in the ANSI standard addressing the basic requirements for CNG vehicle fuel containers: AGA NGV2 (approved by ANSI on August 6, 1992) found under Section 1–18 "*DESIGN QUALIFICATION TESTS* (d) Pressure Cycling Tests (2) Environmental Cycling Test," where the first sentence would be changed to say "One representative container free of any protective coating shall be cycle tested as follows, and shall not leak or permanently deform more than one percent of any circumference of the tank."

6. If it is believed that a corrosion test such as the one described in question five or another test should be used, please comment on as an additional pass/fail criterion, conducting a wet-fluorescent magnetic particle inspection of the internal surface of the bisected test cylinder for any indication of stress corrosion cracking.

Shielding. Ford recommended that NHTSA allow shielding against heat and pressure buildup during any bonfire test. NHTSA recognizes that CNG vehicles may be equipped with shielding to protect CNG containers. However, the bonfire test is a test of the containers themselves. NHTSA believes that there will be CNG fuel storage containers sold in the aftermarket. Since the presence or amount of shielding could vary depending upon vehicle make and model, NHTSA believes that any requirements concerning pressure and heat buildup should involve a test without the sorts of shielding that may be found on vehicles. However, NHTSA does not wish to discourage vehicle manufacturers from including shielding in CNG vehicles as an added safety feature.

Rupturing Without Fragmenting. Ford also recommended that NHTSA consider allowing pressure relief through rupture of a CNG container without fragmenting. NHTSA does not believe that such a provision would meet the need for motor vehicle safety. The goal in pressure relief and control is to contain the pressure inside a CNG fuel storage container or relieve it at a controlled rate. However, the agency requests comment on this point. NHTSA requests that commenters supporting Ford's suggestion address how the agency would define the term "without fragmenting" for regulatory and compliance purposes.

Venting. NHTSA also considered including in this proposed rule other possible pressure-related requirements that were discussed in the ANPRM or addressed by commenters. First, NHTSA considered requiring that all pressure relief mechanisms be vented to the outside of the vehicle, away from the passenger, luggage, or other compartments which could expose vehicle occupants to the gaseous fuel. NHTSA discussed this option in the ANPRM. NFPA, Chrysler, Ocean Phoenix, GM, Navistar, and Flexible supported such a requirement. However, Ford asserted that design restrictive regulation of vent locations could be detrimental and is not practicable.

After considering the comments, NHTSA has decided against proposing to specify pressure relief vent locations on CNG vehicles. NHTSA agrees with Ford that such a requirement would be difficult to enforce and unnecessarily design restrictive in view of the wide variations among vehicle designs and models. Further, NHTSA does not have such a requirement for vehicles using liquid fuels, such as gasoline. Although the presence of gaseous fuel could be less obvious to vehicle occupants than that of a liquid fuel, CNG used in motor fuel applications is expected to have an odor that would warn vehicle occupants of the presence of escaping gas. Finally, NHTSA anticipates that vehicle manufacturers will take all necessary steps to assure proper venting because of product liability concerns.

Leak detection. NHTSA is, however, considering requiring an instrument on the vehicle (such as a sensing device) which would detect gaseous leakage of unacceptable levels from the fuel system and provide an appropriate warning to occupants or bystanders. Accordingly, the agency requests responses to the following questions:

1. Should the agency require some type of warning device, such as an audible warning device, to detect and warn of gaseous fuel leakage from a CNG vehicle when parked? Should detection and warning be required during vehicle operation? At what level of leakage should the warning device be required to operate? Please specify.

2. If a warning device is needed, what types of warning devices should be allowed? What are the costs of such devices? Are such devices commercially available or would they need to be developed? Are such devices reliable? Please specify.

Refueling connections. Commenters suggested that NHTSA propose requirements concerning the standardization of CNG refueling connections. Commenters stated that CNG refueling connections for CNG tanks of different service pressures, such as 16,547, 20,684, and 24,821 Kpa gauge pressure (2,400, 3,000 and 3,600 psig), should be of different sizes to prevent over-pressurization during refueling. Commenters stated that there could be a safety problem if, for example, a 24,821 kPa gauge pressure (3,600 psig) refueling nozzle is used to fill a 16,547 kPa gauge pressure (2,400 psig) vehicle fuel system. Commenters also stated that there is a need to (1) prevent flow from the refueling nozzle to the vehicle unless there is a positive connection between the nozzle and vehicle receptacle, (2) allow safe release of high pressure CNG, at the nozzle-to-vehicle interface, before disconnecting the refueling nozzle, and (3) prevent attempts by vehicle operators to tamper with or try to adapt refueling connections (in the absence of standardized connections).

After considering the comments, NHTSA has decided not to propose the recommended requirements. First, NHTSA believes that the potential safety risks associated with over-pressurization of the fuel storage containers are addressed through the proposed bonfire test requirements discussed above. Second, NHTSA believes that voluntary actions by industry will address most, if not all, of the problems raised by commenters. Finally, NHTSA does not believe that the issues commenters raise, with the exception of overfilling the fuel storage containers, present significant safety concerns.

III. Benefits of Proposed Rule

According to a NHTSA technical report on motor vehicle fires in traffic crashes and the effect of FMVSS 301, it is estimated that Standard 301 has reduced fires in all passenger car crashes by 14 percent. ("Motor Vehicle Fires in Traffic Crashes and the Effects of Fuel System Integrity Standard," DOT HS 807 675, November 1990.) Evidence exists that fire rates in injury crashes may be lower for post-standard vehicles, but information was insufficient for definitive statistical conclusions. In fatal passenger car crashes, there was no significant reduction in the fire rate for post-standard vehicles. Data were insufficient to develop reliable estimates of the effect of FMVSS 301 for school buses. In addition, no significant reduction in crash fires was found for post-standard light trucks.

The National Fire Protection Association (NFPA) submitted data on 1984–1988 annual average automobile fire rates to the docket (Docket No. 73–20–N15–027). These data contain information on the number of fires in passenger cars by type of material first ignited (gasoline, LP-gas, or natural gas). However, the data do not indicate whether or not the material was used to fuel the vehicle. The fuel that ignited may not have been in the fuel tank, but may have been on-board the vehicle in a gas can, propane tank, or may not have been in the vehicle at the time of the crash. Thus, these data cannot be used, since they are not sufficient to enable the agency to determine the fire rate of CNG and LPG vehicles in comparison to gasoline fueled vehicles.

The agency can, however, estimate the number of fires in CNG vehicles and LPG vehicles, assuming they have the same fire rate as gasoline powered vehicles. Based on FMVSS 301 fire rates and on one Department of Energy scenario of projected on-road alternative fuel vehicles, by fuel type, there could be 1,690 fires in CNG vehicles and 3,280 fires in LPG vehicles in the year 2010.

IV. Costs of Proposed Rule

NHTSA estimates that testing associated with the proposed vehicle requirements, if adopted in a final rule, would cost approximately $58,530–$63,080 per CNG body style. These costs are separated by CNG container testing costs and vehicle testing costs as follows: The costs for CNG container testing to perform the pressure cycling, burst, and bonfire tests range from a low of $2,250 to $6,800. In addition, the cost of the container is $600 (three containers are required for a total cost of $1,800). Thus, the container testing costs will range from approximately $4,050 to $8,600.

The cost to perform a frontal, lateral and rear impact test is $5,000 (total cost of $15,000 for three tests). The cost of the vehicle, which is destroyed during the test, is approximately $13,160 ($39,480 for the three vehicles to be used in the tests). Thus, the total vehicle testing costs will be approximately $54,480.

The agency does not have any information on potential hardware costs of complying with the proposed requirements. NHTSA requests comments on those costs from vehicle and CNG fuel tank manufacturers.

V. Leadtime

NHTSA is proposing to make the equipment requirements in this proposed rule effective on September 1, 1994. The agency considers this a reasonable time period in light of the agency's belief that manufacturers would at most have to make minor modifications in container design. This belief is based on the similarity between the proposed requirements and RSPA standards currently in effect.

NHTSA is proposing to make the vehicle requirements effective on September 1, 1994 because the agency believes that this would provide a reasonable time period for manufacturers to make any vehicle modifications necessitated by the proposal. NHTSA believes that the proposed dynamic vehicle crash test requirements rule could make it necessary for vehicle manufacturers to make significant design modifications in order to comply. According to the agency's information, most CNG vehicles are currently manufactured in accordance with NFPA Standard 52, which specifies design-oriented requirements and does not specify a barrier crash test. This proposed rule contains provisions including crash tests that simulate actual crash situations, and is thus more stringent than NFPA Standard 52. NHTSA is proposing these more stringent requirements because it believes they are necessary to ensure the integrity of CNG fuel systems, thereby affording the passengers of CNG vehicles a comparable level of protection to that provided by Standard 301.

Although NHTSA has tentatively concluded that an effective date of September 1, 1994, for both the vehicle and equipment requirements provides sufficient leadtime, NHTSA requests comment on this date.

The proposed rule would not have any retroactive effect. Under section

103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

VI. Rulemaking Analyses

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this proposed rule and determined that it is not "major" within the meaning of Executive Order 12291. However, NHTSA has determined that the proposed rule is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of the proposed amendments in a Preliminary Regulatory Evaluation which is included in the docket for this rulemaking. As discussed above, NHTSA estimates that testing associated with the proposed vehicle requirements, if adopted in a final rule, would cost approximately $58,530–$63,080 per CNG body style. NHTSA estimates that the costs associated with the equipment requirements, including the cost of the containers, would range from $4,050–$8,600.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Information available to the agency indicates that currently there are very few businesses converting passenger cars or light trucks to CNG use. Some businesses are converting transit buses or delivery trucks to CNG, but many of these vehicles would not be covered by the vehicle requirements of the proposed rule because the vehicles' GVWRs exceed 10,000 pounds. The agency further believes that as the market expands for CNG vehicles, original vehicle manufacturers will begin to produce these vehicles because they will be able to do so at less expense than converters, i.e., final-stage manufacturers and alterers. Few, if any, original vehicle manufacturers which manufacture CNG vehicles would be considered small businesses.

C. Executive Order 12612 (Federalism)

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. According to the information available to the agency, only one state has adopted NFPA Standard 52 for the regulation of CNG fuel system integrity.

D. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this proposed rule. The agency has determined that this proposed rule, if adopted as a final rule, would have no adverse impact on the quality of the human environment. On the contrary, because NHTSA anticipates that ensuring the safety of CNG vehicles would encourage their use, NHTSA believes that the proposed rule would yield positive environmental consequences because CNG burns cleaner than gasoline or diesel fuels.

VII. Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket at the above address. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and NHTSA recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. A new safety standard, § 571.303, Standard No. 303, *CNG fuel system and fuel tank integrity,* would be added to part 571, to read as follows:

§ 571.303 Standard No. 303; CNG fuel system and fuel tank integrity.

S1. *Scope.* This standard specifies requirements for the integrity of motor vehicle fuel systems using compressed natural gas (CNG), including the CNG fuel systems of dedicated and dual fuel CNG vehicles, and for the integrity of CNG fuel tanks.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel leakage during and after motor vehicle crashes.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses that use CNG as a motor fuel, and to containers designed to store CNG as motor fuel on-board any motor vehicle.

S4. *Definitions.*

CNG fuel tank means a container designed to store CNG as motor fuel on-board a motor vehicle.

Dedicated CNG vehicle means a vehicle equipped with one fuel system and designed to operate on CNG.

Dual-fuel CNG vehicle means a vehicle equipped with two independent fuel systems, one of which is designed to supply CNG and the other gasoline or diesel fuel.

Fuel system means all components used to store or supply CNG to a vehicle's engine.

Service pressure means the internal pressure of a CNG fuel tank when filled to design capacity with CNG at 20 degrees Celsius (68 degrees Fahrenheit).

S5. *General requirements.*

S5.1 *Vehicle requirements.*

S5.1.1 *Vehicles with GVWR of 10,000 pounds or less.* Each passenger car, multipurpose passenger vehicle, truck, and bus with a GVWR of 10,000 pounds or less that uses CNG as a motor fuel and that is manufactured on or after September 1, 1994 shall meet the requirements of S6, except S6.4.

S5.1.2 *Schoolbuses with a GVWR greater than 10,000 pounds.* Each schoolbus with a GVWR greater than 10,000 pounds that uses CNG as a motor fuel and that is manufactured on or after September 1, 1994 shall meet the requirements of S6.4.

S5.1.3 Each passenger car, multipurpose passenger vehicle, truck, and bus that uses CNG as a motor fuel shall be equipped with a CNG fuel tank that meets the requirements of S7.

S5.2 *Equipment requirements; CNG fuel tanks.* Each CNG fuel tank manufactured on or after September 1, 1994 shall meet the requirements of S7.

S5.3 *Fuel system pressure drop: barrier crash.*

(a) For vehicles except for dual-fuel CNG vehicles, the fuel system pressure drop, expressed in kiloPascals (kPa), in any fixed or moving barrier crash shall not exceed:

(1) $13.72(T/V_{FS})$ from impact until motion of the vehicle has ceased;

(2) $68.6(T/V_{FS})$ during the five minute period following cessation of motion; and

(3) $13.72(T/V_{FS})$ in any one-minute interval during the 10 minute period following the five minute period specified in paragraph (a) (2) of this section, where T is the temperature of the test gas in degrees Kelvin, stabilized to ambient temperature before testing, and V_{FS} is the internal volume in liters of the fuel system from which CNG is leaked.

(b) For dual-fuel CNG vehicles, allowable combined CNG and gasoline or diesel fuel leakage in any fixed or moving barrier crash test shall not exceed:

(1) 1,336 kiloJoules (kJ) (1,266.25 Btu), in energy content from impact until motion of the vehicle has ceased;

(2) 6,680 kJ (6,331.25 Btu) during the five minute period following cessation of motion; and

(3) 1,336 kJ (1,266.25 Btu) in any one-minute interval during the 10 minute period following the five-minute period specified in paragraph (b) (2) of this section.

S6. *Test requirements: fuel system integrity.* Each vehicle with a GVWR of 10,000 pounds or less shall meet the requirements of any applicable barrier crash test. A particular vehicle need not meet further requirements after having been subjected to a single barrier crash test.

S6.1 Frontal barrier crash. When the vehicle traveling longitudinally forward at any speed up to and including 30 mph impacts a fixed collision barrier that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, with 50th percentile test dummies as specified in part 572 of this chapter at each front outboard designated seating position and at any other position whose protection system is required to be tested by a dummy under the provisions of Standard No. 208, under the applicable conditions of S8, the fuel pressure drop shall not exceed the limits of S5.3.

S6.2 *Rear moving barrier crash.* When the vehicle is impacted from the rear by a barrier moving at 30 mph, with test dummies as specified in part 572 of this chapter at each front outboard designated seating position, under the applicable conditions of S8, the fuel pressure drop shall not exceed the limits of S5.3.

S6.3 *Lateral moving barrier crash.* When the vehicle is impacted laterally on either side by a barrier moving at 20 mph with 50th percentile test dummies as specified in part 572 of this chapter at positions required for testing to Standard No. 208, under the applicable conditions of S8, the fuel pressure drop shall not exceed the limits of S5.3.

S6.4 *Moving contoured barrier crash.* When the moving contoured barrier assembly traveling longitudinally forward at any speed up to and including 30 mph impacts the test vehicle (schoolbus with a GVWR exceeding 10,000 pounds) at any point and angle, under the applicable conditions of S8.1 and S8.4, the fuel pressure drop shall not exceed the limits of S5.3.

S7. *Test requirements: fuel tank integrity.*

Each CNG fuel tank shall be capable of meeting the requirements of S7.1 through S7.4. However, a particular fuel tank (i.e., test specimen)—

(a) Tested to meet the requirements of S7.2 shall first meet the requirements of S7.1.

(b) Tested for compliance with S7.1 and S7.2 need not meet the requirements of S7.3.

(c) Shall meet the requirements of S7.3 under either Test 1 or Test 2 in S9.

S7.1 *Pressure cycling test.* Each CNG fuel tank shall not leak or permanently deform, more than 1 percent of any circumference of the tank, when tested in accordance with S7.1.1 through S7.1.4.

S7.1.1 The CNG fuel tank is hydrostatically pressurized to the service pressure, then to not more than 10 percent of the service pressure, for 13,000 cycles.

S7.1.2 After being pressurized as specified in S7.1.1, the CNG fuel tank is hydrostatically pressurized to 125 percent of the service pressure, then to not more than 10 percent of the service pressure, for 5,000 cycles.

S7.1.3 The cycling rate does not exceed 10 cycles per minute.

S7.1.4 The cycling is conducted at ambient temperatures.

S7.2 *Burst test.* Each CNG fuel tank shall not leak or permanently deform, more than 1 percent of any circumference of the tank, when subjected to an internal hydrostatic pressure of 3.50 times the service pressure for 60 seconds. The rate of pressurization shall not exceed 1,379 kPa gauge pressure (200 psig) per second.

S7.3 *Bonfire test.* When the CNG fuel tank is exposed to fire under the applicable conditions of S9, for the duration specified in S9.2.1, it shall vent its contents through a pressure relief device.

S7.4 *Labeling.* Each tank shall be permanently labeled with the information specified in paragraphs (a) through (c). The information specified in paragraphs (a) through (c) of this section shall be in English and in letters and numbers that are at least one half inch high.

(a) The tank manufacturer's name and address.

(b) The statement: "Manufactured in ________," inserting the month and year of manufacture of the tank.

(c) Maximum service pressure ________kPa (________psig)

(d) The symbol DOT, constituting a certification by the tank manufacturer that the tank conforms to all requirements of this standard.

S8. *Test conditions: fuel system integrity.* The requirements of S5 and S6 shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

S8.1 *General test conditions.* The following conditions apply to all tests.

S8.1.1 The fuel storage tank(s) is filled to 100 percent of service pressure with nitrogen, N_2.

S8.1.2 After the fuel storage container(s) is filled as specified in S8.1.1, the fuel system other than the fuel storage container(s) is filled with nitrogen, N_2, to normal operating pressures. Any shutoff valve at the fuel tank is in the open position.

S8.1.3 In meeting the requirements of S6.1 through S6.4, if the vehicle has an electrically driven fuel pump that normally runs when the vehicle's electrical system is activated, it is operating at the time of the barrier crash.

S8.1.4 The parking brake is disengaged and the transmission is in neutral, except that in meeting the requirements of S6.4, the parking brake is set.

S8.1.5 Tires are inflated to manufacturer's specifications.

S8.1.6 The vehicle, including test devices and instrumentation, is loaded as follows:

(a) A passenger car, with its fuel system filled as specified in S8.1.1 and S8.1.2, is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the necessary test dummies as specified in S6, restrained only by means that are installed in the vehicle for protection at its seating position.

(b) A multipurpose passenger vehicle, truck, or bus with a GVWR of 10,000 pounds or less, whose fuel system is filled as specified in S8.1.1 and S8.1.2, is loaded to its unloaded vehicle weight, plus the necessary test dummies as specified in S6, plus 136.1 kilograms (kg.) (300 pounds (lb.)), or its rated cargo and luggage capacity weight, whichever is less, secured to the vehicle and distributed so that the weight on each axle as measured at the tire-ground interface is in proportion to its GAWR. If the weight on any axle, when the vehicle is loaded to unloaded vehicle weight plus dummy weight, exceeds the axle's proportional share of the test weight, the remaining weight shall be placed so that the weight on that axle remains the same. Each dummy shall be restrained only by means that are installed in the vehicle for protection at its seating position.

(c) A schoolbus with a GVWR greater than 10,000 pounds, whose fuel system is filled as specified in S8.1.1 and S8.1.2, is loaded to its unloaded vehicle weight, plus 54.4 kg. (120 lb.) of unsecured weight at each designated seating position.

S8.2 *Lateral moving barrier crash test conditions.* The lateral moving barrier crash test conditions are those specified in S8.2 of Standard No. 208, 49 CFR 571.208.

S8.3 *Rear moving barrier test conditions.* The rear moving barrier test conditions are those specified in S8.2 of Standard No. 208, 49 CFR 571.208, except for the positioning of the barrier and the vehicle. The barrier and test vehicle are positioned so that at impact—

(a) The vehicle is at rest in its normal attitude;

(b) The barrier is traveling at 30 mph with its face perpendicular to the longitudinal centerline of the vehicle; and

(c) A vertical plane through the geometric center of the barrier impact surface and perpendicular to that surface coincides with the longitudinal centerline of the vehicle.

S8.4 *Moving contoured barrier test conditions.* The following conditions apply to the moving contoured barrier crash test.

(a) The moving barrier, which is mounted on a carriage as specified in Figure 1, is of rigid construction, symmetrical about a vertical longitudinal plane. The contoured impact surface, which is 629 millimeters (mm) (24.75 inches (in.)) high and 1,981 mm (78 in.) wide, conforms to the dimensions shown in Figure 2, and is attached to the carriage as shown in that figure. The ground clearance to the lower edge of the impact surface is 133±12.7 mm (5.25±0.5 in.) The wheelbase is 3,048±50.8 mm (120±2 in.).

(b) The moving contoured barrier, including the impact surface, supporting structure, and carriage, weighs 1,814.4±22.7 kg (4,000±50 lb.) with the weight distributed so that 408.2±11.3 kg (900±25 lb.) is at each rear wheel and (499.0±11.3 kg (1100±25 lb.) is at each front wheel. The center of gravity is located 1,372±38.1 mm (54.0±1.5 in.) rearward of the front wheel axis, in the vertical longitudinal plane of symmetry, 401 mm (15.8 in.) above the ground. The moment of inertia about the center of gravity is:

$I_x = 367 \pm 18.4$ kg m^2 (271 ± 13.6 slug $ft.^2$)

$I_z = 4{,}711 \pm 236$ kg m^2 (3475 ± 174 slug $ft.^2$)

(c) The moving contoured barrier has a solid nonsteerable front axle and fixed rear axle attached directly to the frame rails with no spring or other type of suspension system on any wheel. (The moving barrier assembly is equipped with a braking device capable of stopping its motion.)

(d) The moving barrier assembly is equipped with G78–15 pneumatic tires with a tread width of 152±25.4 mm (6.0±1 in.), inflated to 165 kPa (24 psi).

(e) The concrete surface upon which the vehicle is tested is level, rigid, and of uniform construction, with a skid number of 75 when measured in accordance with American Society of Testing and Materials Method E–274–65T at 40 mph, omitting water delivery as specified in paragraph 7.1 of that method.

(f) The barrier assembly is released from the guidance mechanism immediately prior to impact with the vehicle.

S9. *Test conditions: fuel tank integrity.*

S9.1 The requirements of S7.3 shall be met under the conditions of S9.2 and under those of S9.3.

S9.2 *Test 1.* The following conditions apply:

S9.2.1 The tank is exposed to fire until it is completely vented.

S9.2.2 Time-pressure readings are recorded at 30 second intervals, beginning when the fire is lighted and continuing until the tank is completely vented.

S9.2.3 The tank is positioned so that its longitudinal axis is either vertical or horizontal.

S9.2.4 The tank is filled with either Nitrogen, or Air.

S9.2.5 The fuel tank is filled to 100 percent of service pressure.

S9.2.6 The tank is tested with the pressure relief device(s) in place.

S9.2.7 The tank is positioned so that no flame contacts any pressure relief device.

S9.2.8 The fire is generated by No. 2 diesel fuel.

S9.2.9 The lowest part of the tank shall be 102 mm (4 in.) above the liquid surface of the diesel fuel at the beginning of the test.

S9.2.10 The quantity of fuel specified in S9.2.8 is contained in a pan, of the dimensions specified in paragraph S9.2.11, at a depth of not less than 100 cm (39.4 in.).

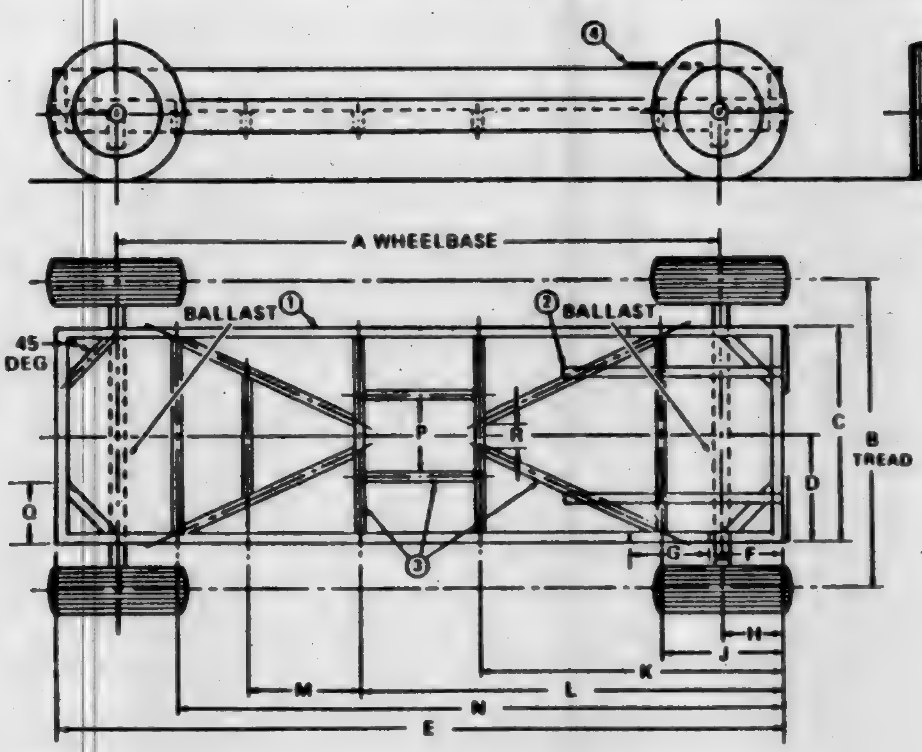
S9.2.11 The dimensions of the pan specified in S9.2.10 are such that:

(a) The length and width of the pan each exceed that of the vertical projection of the fuel container on a horizontal plane below the container by not less than 20 cm (7.9 in.), nor more than 50 cm (19.7 in.).

(b) The sidewalls of the pan project above the level of the fuel by not more than 2 cm (0.8 in.).

S9.3 *Test 2.* The conditions are those specified in S9.2.1 through 9.2.11, except that the fuel container is filled to 25 percent of service pressure.

BILLING CODE 4910-59-M


④
④
A WHEELBASE
BALLAST①
②BALLAST
45 DEG
P
R
C
B TREAD
D
Q
G
F
③
H
J
K
M
L
N
E

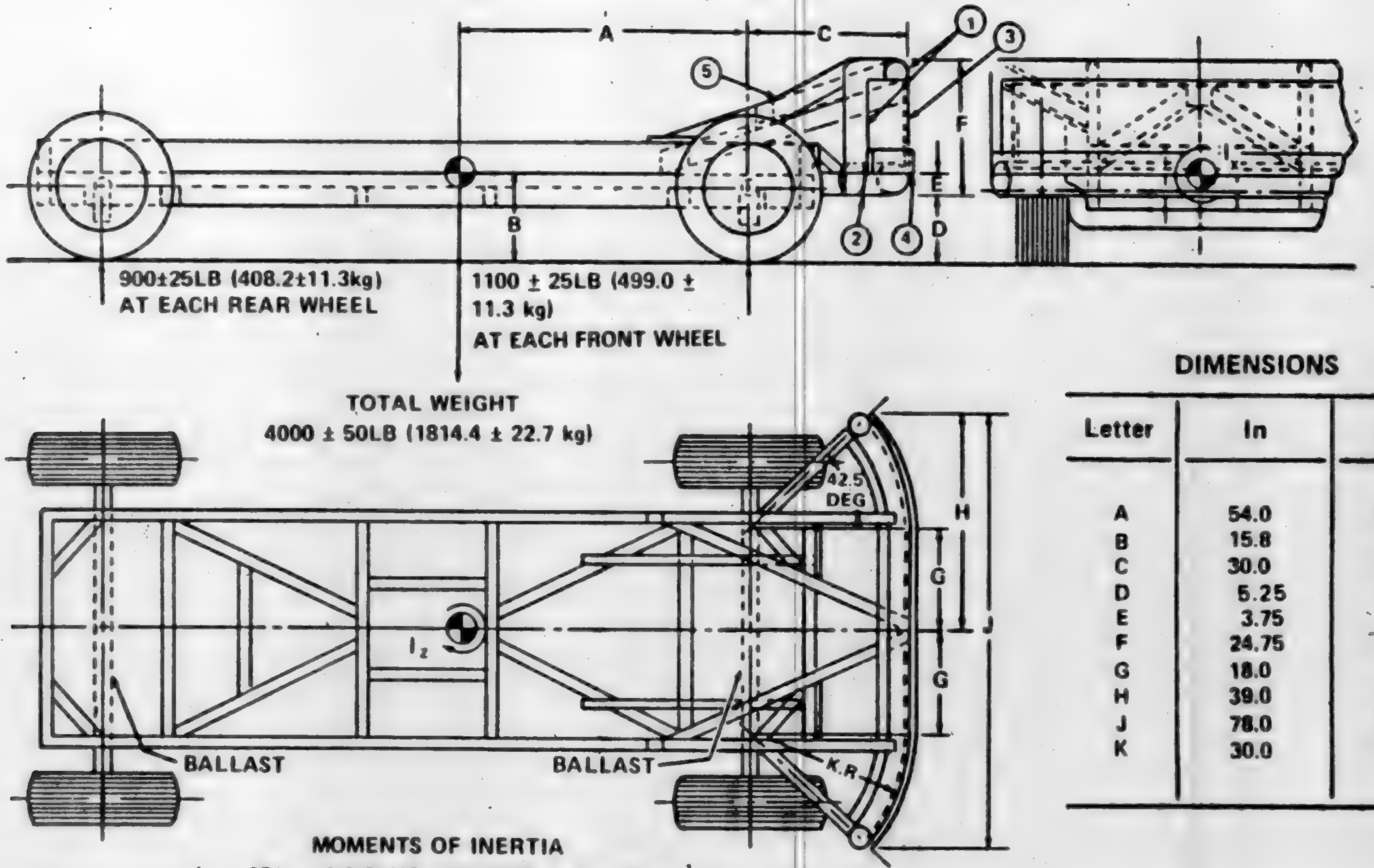
DIMENSIONS

Letter	In	mm
A	120.0	3048
B	60.0	1524
C	42.0	1067
D	21.0	533
E	144.0	3658
F	15.0	381
G	16.0	406
H	12.0	305
J	24.0	610
K	60.0	1524
L	84.0	2134
M	22.0	559
N	120.0	3048
P	16.0	406
Q	12.0	305
R	6.0	152

NOTES:

1. OUTER FRAME 6.0 X 2.0 X 0.19 IN (152 X 51 X 5 mm) STEEL TUBING, TWO PIECES WELDED TOGETHER FOR A 12.0 IN (305 mm) HEIGHT.
2. BALLAST TIE DOWNS.
3. ALL INNER REINFORCEMENTS AND FRAME GUSSETS OF 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.
4. REINFORCE AREAS FOR BOLTING ON FACE PLATES.

FIG. 1—COMMON CARRIAGE FOR MOVING BARRIERS


A
C
①
③
⑤
F
E
D
B
②
④
900±25LB (408.2±11.3kg)
AT EACH REAR WHEEL
1100 ± 25LB (499.0 ± 11.3 kg)
AT EACH FRONT WHEEL
TOTAL WEIGHT
4000 ± 50LB (1814.4 ± 22.7 kg)
42.5 DEG
H
G
J
G
I_z
K.R.
BALLAST
BALLAST

DIMENSIONS

Letter	In	mm
A	54.0	1372
B	15.8	401
C	30.0	762
D	5.25	133
E	3.75	95
F	24.75	629
G	18.0	457
H	39.0	991
J	78.0	1981
K	30.0	762

MOMENTS OF INERTIA

I_x = 271 ± 13.6 SLUG • FT ^{2} (367 ± 18.4 kg • m ^{2})

I_z = 3475 ± 174 SLUG • FT ^{2} (4711 ± 236 kg • m ^{2})

NOTES:

1. UPPER FRAME 4.0 IN DIA X 0.25 IN WALL (102 mm DIA X 6 mm WALL) STEEL TUBING (THREE SIDES).
2. LOWER FRAME 6.0 IN DIA X 0.50 IN WALL (152 mm DIA X 13 mm WALL) STEEL TUBING.
3. FACE PLATE 0.75 IN (19 mm) THICK COLD ROLLED STEEL.
4. LEADING EDGE 1.0 X 4.0 IN (25 X 102 mm) STEEL BAND, SHARP EDGES BROKEN.
5. ALL INNER REINFORCEMENTS 4.0 X 2.0 X 0.19 IN (102 X 51 X 5 mm) STEEL TUBING.

FIG. 2—COMMON CARRIAGE WITH CONTOURED IMPACT SURFACE ATTACHED

BILLING CODE 4910-59-C

Issued on January 13, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–1232 Filed 1–19–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petitioned Action and a Proposed Rule Pertaining to Three Species of Kangaroos in Mainland Australia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding; proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month finding on a petition to remove all populations of the red kangaroo and of the western gray kangaroo, and populations of the eastern gray kangaroo in mainland Australia, from the list of threatened species under the U.S. Endangered Species Act (Act). The Service also announces that it is deferring a decision on a December 20, 1989, petition to reimpose a ban on the commercial importation of products from three species of kangaroos from mainland Australia. This **Federal Register** notice announces a finding that the requested action to delist the three kangaroo species is warranted and proposes a rule to accomplish the delisting. The existing special rule applicable to threatened kangaroo populations is proposed for recision.

DATES: Comments on the proposed rule must be submitted by March 22, 1993. Public hearing requests must be received by March 8, 1993.

ADDRESSES: Comments, information and questions should be sent to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (FAX number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority; Room 750, 4401 North Fairfax Drive; Arlington, Virginia 22203. The petition, findings, supporting data, and comments will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, at the above address, or by phone (703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3) of the Act, as amended in 1982 (Act), requires that, within 12 months of receipt of a petition to add a species to, or remove a species from, the Lists of Endangered and Threatened Wildlife and Plants, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other listing activity. If the finding is that the action is warranted, section 4(b)(3) also requires prompt publication in the **Federal Register** of a proposed regulation to implement such action. The Service now announces a 12-month finding on a November 6, 1990, petition by the Wildlife Legislative Fund of America to remove the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginous*) and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), from the list of threatened species under the Act. The Service also announces it is deferring a decision on a December 20, 1989, petition by Greenpeace USA to reimpose an importation ban on kangaroos and kangaroo products. The term "kangaroo" in the present notice refers to all populations of the three species of macropods, identified above, except *M. g. tasmaniensis*. The three species of kangaroos were listed in 1974 as threatened pursuant to the Act (39 FR 44990), and the commercial importation of kangaroos, their parts, and products was banned. A special rule to allow such importations into the United States after development of adequate State management plans, accompanied the listing. The Service accepted the management programs for four Australian States and lifted the importation ban in 1981 (46 FR 23929), after kangaroo management plans and population survey techniques had been strengthened. The Service allowed continuation of the commercial importation of kangaroos in 1983 (48 FR 34757) and in 1984 withdrew a proposed rule to delist the three species of kangaroos because of the severe and widespread drought of 1982–3 (49 FR 17555).

The Service was petitioned on December 20, 1989, by Greenpeace USA, with subsequent support from other groups, "to reinstate the ban on commercial importation of kangaroos and of kangaroo products." The petitioners contended that Australia's management of kangaroos was inherently flawed and that Australian States did not have adequate and effective conservation programs that ensured the protection of the threatened species. The Service, in order to respond to the December 20, 1989, petition in a meaningful manner, sent three representatives to Australia in March 1990 to investigate the population status of the three kangaroo species (survey methods, numbers and trends), and the implementation of management programs. In addition, the team received comments about the conservation benefit of management plans that allowed the harvest of kangaroos. The Service team spent 12 days meeting with selected members of Parliament, representatives of various nongovernmental organizations, scientists, State and federal natural resource managers, enforcement personnel, grain growers, and ranchers. The team also visited parks, open range, chillers, faunal dealers, ports and exporters. The team presented their findings in a June 5, 1990, report (Nichols, J.D., S.R. Singer, and J.S. Smith. 1990. Review of Kangaroo Management, Australia, March 1990). The Service, in a **Federal Register** notice of August 8, 1990 (55 FR 32276), announced the receipt of the Greenpeace petition and the availability of the June 5, 1990, Service report and requested comments on the status of the three species of kangaroos in Australia. The comment period on the status review of the December 20, 1989, petition extended to November 6, 1990.

The Wildlife Legislative Fund of America submitted a petition dated November 6, 1990, which was received by the Service on the following day. That petition requested that all populations of the red kangaroo (*Macropus rufus*), the western gray kangaroo (*M. fuliginous*), and the eastern gray kangaroo (*M. giganteus*), except the subspecies (*M. g. tasmaniensis*), be removed from the list of threatened species under the Endangered Species Act.

The Wildlife Legislative Fund petition presented the June 5, 1990, report prepared by Service personnel as the principal basis for their petition. Among other things, the petitioners cited the conservative estimates of the 1987 kangaroo populations (red kangaroos—7.5 million, western gray kangaroos—1.7 million, and eastern gray kangaroos—4.7 million) and the fact that kangaroo conservation programs exist within individual range states as reasons for delisting the species.

The Service, in a **Federal Register** notice of June 12, 1991 (56 FR 26971), found that the action requested in the

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November 6, 1990, petition may be warranted and requested additional comments as part of a continuing status review of kangaroos and kangaroo management in Australia. The comment period was reopened until September 10, 1991. That comment period was later extended to September 24, 1991, in a **Federal Register** notice dated September 17, 1991 (56 FR 47060).

The present assessment of the status of the three kangaroo species in mainland Australia finds that New South Wales, Queensland, South Australia, and Western Australia have developed and implemented adequate and effective conservation programs that ensure the protection of these macropod species. The Service directly evaluated kangaroo management in Australia by sending Service representatives to Australia in March 1990 and July 1992, and by requesting and evaluating information about kangaroo management obtained from Commonwealth and State governments. The three species are protected by appropriate legislation, have populations regularly monitored by direct and indirect procedures, and are managed by a complex licensing system which regulates the extent of the legal harvest. The Service announces it is deferring a decision on the December 20, 1989, petition by Greenpeace USA to reimpose the ban on kangaroos and kangaroo products. The Service with this Notice also finds that the action requested in the Wildlife Legislative Fund's November 6, 1990, petition to delist the three kangaroo species in mainland Australia is warranted. Kangaroo populations are high and management is good so it is unlikely that these kangaroos will become endangered in the foreseeable future. This **Federal Register** notice provides a proposed rule to effect the delisting action as well as a recision of the special published rule allowing imports of kangaroo products into the United States. The Service notes that the delisting action, if finalized, would lead to the dismissal of the Greenpeace petition on procedural grounds because there would not be any mechanism for the imposition of the importation ban under the Act (i.e., if the species is no longer listed as threatened, the Service has no authority to impose an importation ban).

The Service also notes that a decision that these kangaroos should not be on the list of endangered and threatened fauna under the Act seems consistent with listing decisions made by other bodies. The species are not on the Appendices to the Convention in International Trade in Endangered Species of Wild Fauna and Flora (CITES). In addition the three species of kangaroos are described as abundant by the Australian Conservation Foundation. The species are not on lists published by the International Union for Conservation of Nature and Natural Resources (IUCN), the Council of Nature Conservation Ministers, World Wide Fund for Nature Australia (WWF), or Fund for Animals Ltd., that variously identify species of Australian fauna they find to be endangered, threatened, or vulnerable.

Summary of Comments and Recommendations

The Service received over 32,000 cards and letters bearing about 35,000 signatures from citizens of more than 40 countries in response to the August 8, 1990, and June 12, 1991, requests for comments. Virtually all correspondents supported the request to ban the importation of kangaroo products into the U.S. and/or advocated the retention of threatened status for the species.

Many of the more lengthy comments pertain to a perceived illogic in the kangaroo management programs of Western Australia, South Australia, New South Wales, and Queensland. Each State has legislation protecting macropods and each State has management programs implementing the extensive culling of kangaroos. Actions to harvest protected species are considered incongruous activities by many persons. The commercial kill of macropods (mostly of red and gray kangaroos) in the four States could total 5.2 million kangaroos in 1992. Many persons questioned whether harvests of this magnitude could possibly represent sustainable yields. Other comments received by the Service questioned the assessments made in the Nichols *et al.* report, cited perceived flaws in the kangaroo management programs of individual States, suggested that the kangaroo skin and meat industries (rather than killing to prevent or mitigate for agricultural damage) were driving the kangaroo harvests, and hinted at nefarious activities and political corruption within governmental bodies. Comments submitted on several occasions by the Australian Commonwealth and Australian State governments have described the kangaroo management programs in detail. The substance of some of the more lengthy comments are addressed in some detail below.

Comment 1.—Some comments criticized the report "Review of Kangaroo Management—Australia, March 1990" prepared by the Service team because the review suggested the Service consider delisting the three kangaroo species without having evaluated the three species using the criteria of the Endangered Species Act. These comments further argued that the petition submitted by the Wildlife Legislative Fund should not have been accepted by the Service because its basis was an inappropriate suggestion in the Service report.

Service Response.—The Service agrees that the recommendation for delisting presented in the "Review . . ." was not in and of itself adequate to support a delisting finding. However, the Service accepted the November 6, 1990, petition because it presented sufficient information that the action "may be warranted." A status review was initiated in the August 8, 1990, notice (55 *Federal Register* 32276) and continued in the June 12, 1991, notice (56 *Federal Register* 26971). A status review was also relevant to a decision on the December 1989 petition to ban imports (for example, no separate ban is necessary if the species were found to be endangered and no ban could be imposed by the Service under the ESA or any other authority if the species were found to be neither endangered nor threatened).

Comment 2.—Several comments considered the Service report "Review of Kangaroo Management—Australia, March 1990" to be flawed either because the information the Service team obtained and reported was incorrect or because the Service team did not adequately interpret that information.

Service Response.—The Service notes that the Australian inspection was a brief and intense effort to obtain on-site information about population monitoring procedures, product tagging procedures, law enforcement practices and the implementation of management programs. It is an important listing of that information and a useful assessment of kangaroo management in Australia.

Comment 3.—The Service should not delist the three species because the commercial harvest system is driven by commercial greed rather than conservation interests.

Service Response.—Whether the harvest system is driven by greed, conservation, or any other motivation is not a listing issue. Species are evaluated under the Act on the basis of five prescribed listing criteria. This evaluation for the three kangaroo species is described later in this **Federal Register** notice. The listing criteria consider, among other things, whether causes and extent of mortalities (overutilization) endanger or threaten the species. The nature of the commercial harvest system is important to this evaluation under the Act because the commercial harvest is the greatest source of human-induced mortality impacting the kangaroos. The Service notes that the commercial harvest is a licensed and managed operation conducted within the bounds of a harvest quota system. Harvest quotas are determined on the basis of population information, seasonal conditions and the perceived requirements by rural persons for damage mitigation. Quotas comprise that portion of the current living kangaroo population that can apparently be safely harvested without threatening the welfare of the species. The commercial industry is the mechanism by which a substantial portion of the quota is harvested and utilized. About 70 percent of the quota has been commercially harvested in recent years.

Comment 4.—The Service should not delist the three species because the harvest quota system is insensitive to environmental or other conditions that may adversely impact kangaroos during an annual period.

Service Response.—The harvest quota system has a capability to be sensitive to short-term changes that may impact kangaroo populations. Additional aerial surveys, ground surveys and property and chiller inspections can be accomplished at any time within a state if there are indications that kangaroo populations may be undergoing unexpected changes throughout the year. The harvest in any state can be expanded, restricted or terminated by cancelling, withholding or placing restrictions on the issuance of licenses and by limiting the numbers of animals that can be taken.

Comment 5.—The Service should retain threatened status for the three kangaroo species because Commonwealth, State and Territorial Governments have not fully implemented the 27 recommendations of the Australian Senate Select Committee and because Queensland has not yet fully implemented the terms of the 1990 Settlement Agreement between Greenpeace Australia, Queensland and the Commonwealth of Australia.

Service Response.—The Commonwealth has indicated (ANPWS 1991 A) that it has considered all the recommendations of the Senate Select Committee. Many of the recommendations are relevant at the State level and they have been implemented where applicable and possible. Additional funding has been sought from the Commonwealth Government to implement recommendations relevant at the Federal level. Queensland National Parks and Wildlife Service has implemented basic changes in its kangaroo management system to respond to some of the commitments in the Settlement Agreement (ANPWS 1991 A). Some issues require research, experimentation or basic changes in policy and will require time before full implementations occurs. The fact that recommendations of the Senate Select Committee and the Settlement Agreement may not have been fully implemented at this time may be grounds for further negotiations in Australia but are not grounds for making a listing decision under the Act.

The Service team received written comments supporting current kangaroo management programs when they made their March 1990 inspection. Those comments were incorporated in the team's June 5, 1990, report "Review of Kangaroo Management-Australia, March 1990". The Service also recieved comments from Australian authorities during the open comment periods. One comment from the Australian Embassy was in response to a query about the killing of kangaroos in Hattan-Kulkyne National Park in Victoria. The Commonwealth has no legislative involvement in kangaroo management in Victoria because Victoria does not export kangaroo parts and products and thus has not developed a kangaroo management plan for Commonwealth approval. Victoria has determined that the Hattah-Kulkyne National Park still retains elements of endemic woodlands and considers the park to be a biosphere reserve of this endemic woodland. The goal for the Park is principally to redevelop the endemic woodland, and excess kangaroos apparently need to be culled so herbivore damage to revegetation is minimized. The Service fully accepts this explanation.

The Australian National Parks and Wildlife Service (ANPWS) provided comments and attachments in response to the August 8, 1990, **Federal Register** notice and in response to the "Review of Kangaroo Management-Australia, March 1990". The ANPWS submission identified the parties responsible for wildlife management in Australia and discussed: the abilities of the individual States to reduce harvest within a resonable time period in order to cope with changed environmental conditions or population parameters; the abilties to detect illegal trade in skins and meat; the magnitude of the non-commercial kill; research proposals to further evaluate kangaroo populations in Queensland; information about the effect of recent floods in Queensland and New South Wales on the kangaroo populations and harvest; and actions taken on recommendations made by the Australian Senate Select Committee on Animal Welfare. The submission also included information pertaining to the review of the Queensland Kangaroo Management Program by the Administative Appeals Tribunal, the kangaroo cull in Hattah-Kulkyne National Park and extensive response to recommendations and criticisms made in the report "Review of Kangaroo Management-Australia, March 1990" and in the Greenpeace USA petition of December 20, 1989. ANPWS also provided comments in response to the June 12, 1991, **Federal Register** notice wherein it described objectives for kangaroo management, the regulatory mechanisms for enforcing trade restrictions in kangaroo products, the response of the Australian Government to the 27 recommendations in the Australian Senate Select Committee report, how Queensland National Parks and Wildlife Service responded to recommendations in the Settlement Agreement, and the nature of population and habitat surveys in Western Australia. ANPWS and the National Parks and Wildlife Services of Queensland and New South Wales also provided information to Service personnel in July 1992 pertaining to current population and harvest statistics and the current management plans for the four States allowing commercial harvests.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the lists or deleting species from the lists of endangered and threatened wildlife. A species shall be listed or reclassified on the basis of the best scientific or commercial data available after conducting a review of the species' status with regard to the five following evaluation factors: (A) The present or threatened destruction, modification or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and, (E) other natural or manmade factors affecting its continued existence.

The present findings and the proposed recision of the special rule are based on an assessment of the five listing criteria within the Act. The assessment considers the present biological status of the three kangaroo species in mainland Australia. The assessment does not evaluate whether the commercial utilization of kangaroos violates their protected status as listed in domestic legislation or the legitimacy of the commercial kangaroo industry. Those are Australian domestic issues. The Service assumes that kangaroo products are a legitimate product of the land if kangaroos are managed as a sustainable resource, and if Australian society approves of the harvest. The Service's evaluation focuses on whether the commercial enterprise threatens the existence of kangaroos and whether governments adequately manage the kangaroo resource.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Extensive kangaroo habitats have been lost or seriously degraded where urbanization and several forms of intensive agriculture have occurred. The eastern gray kangaroo has lost important habitats to development and agriculture in eastern Queensland, New South Wales (NSWNPWS 1991 A) and throughout Victoria. The species, however, is considered abundant and widespread over large areas of eastern Australia where rainfall exceeds 250 mm but has little seasonal trend or where summer rains exceed winter rains (ANPWS 1991). That publication summarizes habitats for the eastern gray kangaroo as including semi-arid mallee scrub, woodland, and forest. The densities of eastern gray kangaroos are frequently low in the more arid portion of their potential range, where they may be confined to narrow belts of woodland bordering watercourses, and are sometimes high elsewhere. The 1991 density of gray kangaroos, for example, was estimated at about 1 per km sq in arid extreme northwestern New South Wales and averaged more than 10 per km sq on about 125,000 km sq of habitat in mesic northcentral New South Wales (NSWNPWS 1991 B). Caughley, *et al.* (1987) listed densities for eastern gray kangaroos that were greater than 20 kangaroos per km sq on some transects in extreme southcentral Queensland as determined from 1980–1982 aerial surveys. The western border of the range of the species has apparently moved westward since European settlement because of the establishment of numerous semi-permanent watering points for stock. Pastoral development is considered to have generally favored the eastern gray kangaroo (NSWNPWS 1991 A).

The red kangaroo is considered abundant over much of inland Australia in areas receiving less than 500 mm annual rainfall (ANPWS 1991). The species occurs in mulga and mallee scrub, shrubland, woodland, grassland, and desert. The species seems to prefer open plains with scattered trees or shrubs. The 1991 density of red kangaroos was estimated at less than 3 per km sq in central NSW but at more than 14 per km sq on about 125,000 km sq of habitat in arid extreme northwestern NSW (NSWNPWS 1991 A). Caughley, *et al.* (op. cit.) listed densities greater than 20 per km sq for the red kangaroo on some transects determined from 1980–1982 aerial surveys. Red kangaroos occur in almost a continuous distribution but at varying densities over all the pastoral areas and a large portion of the interior of South Australia. The red kangaroo favors the open but better watered country inside the 2000 km dingo proof fence in lands used primarily for sheep grazing. Red kangaroo densities are much lower outside the fence (SANPWS 1991). The habitat changes associated with sheep grazing such as closely spaced stock water, the production of shrubland with ephemeral grasses, and the exclusion of the dingo are considered favorable for the red kangaroo.

The western gray kangaroo occurs across the south of the continent from Western Australia to extreme southcentral Queensland but generally not east of the great divide. This distribution generally corresponds to the area where winter rainfall predominates. Caughley, *et al.* (op. cit.) listed densities greater than 10 per km sq for transects in a relatively small area of southwestern New South Wales as determined from 1980–1982 aerial surveys. The increase of watering points to aid the pastoral industry has been beneficial to the western gray kangaroo but intensive agriculture has adversely impacted some habitats. Arnold (1990), for example, indicated that the sizes of some populations of western gray kangaroos have declined significantly where habitat fragmentation to favor intensive agriculture has occurred in southwestern Western Australia. Arnold (op. cit.) further believes losses to kangaroo populations will continue in these areas as the remnant native vegetation continues to be degraded. The western gray kangaroo occurs widely through the southern agricultural area of South Australia and extends into the central pastoral areas. This macropod is considered to be basically a dweller of scrublands and woodlands that grazes at the edges of adjacent grasslands. That portion of the gray kangaroo's range in the pastoral zone of South Australia has been favored by management actions beneficial to sheep production. A portion of the gray kangaroo's range in the southern agricultural zone has been degraded or destroyed by extensive habitat destruction caused by the clearing of native vegetation for agricultural and industrial purposes and for urban and suburban developments (SANPWS 1991).

The three species of kangaroos occur over a vast region of Australia. Census lines representative of about 2.25 million km sq of habitat are routinely surveyed by air to estimate kangaroo numbers. Kangaroos are abundant in major portions of this habitat. As indicated below, an extensive series of Parks and Reserves totaling over 400,000 km sq has been and is being developed which will contribute directly to the conservation of macropods throughout their natural range. Current kangaroo populations could exceed those present before European man arrived on the continent. This seems possible because kangaroos have a reproductive capability efficiently attuned to the boom or bust nature of the usual precipitation-range forage cycle on arid lands and because kangaroos have been an impressive and inadvertent beneficiary of the sheep management system which included the clearing of woodlands, production of watering points, and the control of predators. Kangaroos that inhabit vast areas of Australia in impressive numbers can not be considered threatened because of habitat and range conditions even though much native range is severely degraded. Kangaroos do well when habitats are in adequate condition due to sufficient rainfall and more poorly when droughts occur. This cyclic or fluctuating pattern in response to the vegetative condition of rangelands is a normal periodicity in the arid land system and does not in itself comprise a threat to the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The intent of kangaroo conservation in Australia is to maintain viable populations of the three species of kangaroos over their existing range and minimize the deleterious effects that high densities of these species may have on agricultural and pastoral products. Management is an art in the arid-zone ecosystems that comprise much of interior Australia where lands normally cycle in productivity in response to a variable rainfall. Viable kangaroo populations need to be maintained when range productivity and carrying capacities are low, but kangaroos can represent a usable range resource when populations and range productivities are increased. The Australian National Parks and Wildlife Service and the Parks and Wildlife Services of the individual states regularly monitor population trends of red and gray kangaroos. The species are protected on National Parks and Reserves which total about 5 percent of the continental land area (over 400,000 km sq). Some of these lands represent important kangaroo habitats. The species can be legally killed, but not commercially utilized, by permitted actions in many urban, suburban and agricultural areas for damage mitigation reasons. A major commercial harvest of kangaroos occurs in large designated areas of Queensland, New South Wales, South Australia, and Western Australia. The magnitude and characteristics of this commercial harvest are regulated by the ANPWS as a wildlife management strategy. The total commercial is conducted within the framework of a harvest quota system. The commercial quota is the maximum number of kangaroos of a designated species that may enter domestic or international commerce during a specific year after having been taken in accordance with approved State management plans.

Kangaroo population trends are estimated from large-scale aerial and/or ground surveys. These population trends reflect all forms of mortality acting on kangaroos. Commercial harvest quotas are determined from estimates of the living population and are intended to regulate the harvest which is the principle human-caused form of mortality. The commercial harvesting of kangaroos is directly controlled through the licensing of shooters and their operations.

The population surveys are accomplished during winter (June–August), annually in South Australia, New South Wales, and Queensland and triennially in Western Australia. The raw data from surveys represent index values that can be compared to develop trends, or they can be expanded by the use of suitable correction factors to provide estimates of kangaroo populations. Correction factors strive to account for differences in the behavior of kangaroo species regarding their sightability and the ability to sight kangaroos in different habitats. Research is ongoing to further enhance the quality of surveys and correction factors. Population trends in Western Australia, where aerial surveys are only accomplished at 3-year intervals, are estimated from monthly reports of the commercial harvest, the intermittent aerial surveys and ground surveys and patrols by appropriate staff (WADCLM 1991 A and B).

Harvest quotas are determined on the basis of population information, estimates of habitat quality, and the perceived or estimated requirements for damage mitigation. Conservation interests are considered to drive the establishment of harvest quotas because quotas are usually fixed as conservative proportions of the estimated populations. Individual States could temporarily set quotas at high rates if their stated management goal was to reduce statewide or localized kangaroo populations to more sustainable levels.

The 1991 harvest quota for red kangaroos in Western Australia was 290,000, or 12 percent of the 1990 estimated population of 2,370,000 (WADCLM 1991 A), and the 1991 harvest quota for gray kangaroos was 45,000, or 4 percent of the 1990 estimated population of 1,073,000 (WADCLM 1992 B). About 185,000 red kangaroos and 38,000 gray kangaroos were commercially killed in 1991 in Western Australia, which equaled about 8 percent and 4 percent, respectively, of that State's 1990 population estimates. The 1991 harvest quota for red kangaroos in the commercial utilization zone of South Australia was 408,000, or 21 percent of the 1990 estimated population of 1,950,000, and the 1991 harvest quota for gray kangaroos was 31,700, or 16 percent of the 1990 estimated population of 194,000. About 214,000 red kangaroos (11 percent) and 15,000 gray kangaroos (8 percent) were apparently killed for the commercial trade in South Australia in 1991. The 1991 harvest quota for red kangaroos in the commercial utilization zone of New South Wales was 706,000, or 16 percent of the 1990 estimated population of 4,500,000, and the 1991 harvest quota for gray kangaroos was 804,000, or 20 percent of the 1990 estimated population of 4,050,000. About 496,000 red kangaroos and 360,000 gray kangaroos were commercially killed in 1991 in New South Wales, which equaled about 11 percent and 9 percent, respectively, of that State's 1990 population estimates. The 1991 harvest quota for red kangaroos in the commercial utilization zone of Queensland was 480,000, or 26 percent of the 1990 estimated population of 1,820,000, and the 1991 harvest quota for gray kangaroos was 1,300,000, or 58 percent of the 1990 estimated population of 2,230,000. Queensland authorities believe the 4,050,000 estimate for red and gray kangaroos is a conservative and substantial underestimation of the true population because currently used correction factors apparently are unable to adequately depict populations, especially of gray kangaroos, within the dense tree and scrub cover in the southcentral mulga zone. One intent of the harvest program in Queensland is apparently to reduce kangaroo numbers, especially those of the eastern gray kangaroo, to what is viewed as more sustainable levels. The Service notes that Queensland has not described what that more desirable level might be but that Queensland is committed to the retention of viable populations of macropods of each species throughout their existing range. The total national commercial quota in 1991 for red and gray kangaroos was 4,065,000, which was 22 percent of the estimated 1990 red and gray kangaroo population of 18,187,000. The 1991 commercial kill was 2,798,000, which was 69 percent of the commercial quota and 15 percent of the stated 1990 population estimate. The 1991 commercial kill would be an even smaller proportion of the total population if the Queensland kangaroo population was significantly underestimated. An additional 99,300 red and gray kangaroos (less than 1 percent of the national population estimate) were reported killed during 1991 for damage mitigation purposes outside the commercial harvest quotas.

Queensland has received criticism in past years for its harvest management system. That system has been substantially modified in the past two years (QNPWS 1992). Queensland now establishes its kangaroo harvest quota in the following manner. Survey data from fixed-wing aircraft, helicopters and ground surveys are utilized to provide population estimates. A conservative possible harvest quota is formulated from this mid-winter survey information. This statewide potential quota is reviewed by the Area Director, Regional Director, and the Manager-Wildlife Management, Queensland. The potential quota is then passed before the Macropod Management Committee (a State Ministerial committee) to receive public input from the rural community, pastoralists, graziers, shooters, dealers, the Department of Primary Industries, conservation groups, and politicians whose constituents are impacted by kangaroos. The committee advises on the acceptability of the proposed quota and may make recommendations about the quota. The proposed quota and the comments are passed to the Queensland Minister, who determines the final quota to be submitted to the Commonwealth for approval. Commonwealth approval may be gained after the proposal has been reviewed by ANPWS and the Commonwealth Minister's Scientific Advisory Committee on Kangaroos.

The commercial utilization area (CUA) in South Australia occurs on about 282,000 km sq of pastoral landscape, which comprises about 28 percent of the State's land area. The harvest quota in South Australia is based on the winter aerial survey of the commercial utilization area and is developed for each of 10 kangaroo management zones within the CUA. The commercial quota is set as a best estimate of the maximum number of each species that may need to be killed to contain deleterious effects on stock, crops or property without jeopardizing the viability of kangaroo populations (SANPWS 1991). The proposed quota has to be approved by the appropriate South Australian Minister before its submission to the Commonwealth. The Commonwealth Minister subjects the proposed quota to review by ANPWS and the Minister's Scientific Advisory Committee on Kangaroos before any implementation of the kangaroo management program can occur.

The commercial utilization zone covers the western two-thirds of New South Wales. The harvest quota in the State is based on population estimates from the most recent annual surveys, recent trends in population numbers and distribution, harvest monitoring data, information about non-harvest mortality and non-commercial harvest mortality, climatic conditions over at least the past year, current land use, the proportion of the population not subject to damage mitigation culling, and the demand for agricultural damage mitigation culling (NSWNPWS 1991 A). The proposed quota is subject to peer review and must be approved by the appropriate New South Wales Minister before its submission to the Commonwealth. The quota must be approved by the Commonwealth Minister, after its review by ANPWS and the Minister's Scientific Advisory Committee on Kangaroos, before the harvest program can be implemented.

The commercial harvest zone may total about one-half of Western Australia. Parks, reserves, and State forest lands occupied by and providing protective status to western gray and/or red kangaroos may total 100,000 km sq within this vast state. The harvest quota in Western Australia is conservatively established on the basis of current population trends, seasonal conditions, the review of previous annual harvests, the proportion of the habitat and population not subject to harvesting, current land use practices, and the significance of the take outside the commercial quota (WADCLM 1991 A and B). The proposed quota is subject to peer review and must be approved by the appropriate Western Australian Minister before being forwarded to the Commonwealth Government. The Commonwealth Minister (after review by ANPWS and the Minister's Scientific Advisory Committee on Kangaroos) must approve the quota before the harvest program can be implemented.

Individual states have the capability to monitor their kangaroo harvest. For example, Queensland has recently established a Macropod Management System which is a new and large computerized database containing information about shooters' records, dealers' records' location of kill, date of kill, sex and species of kill, etc. The database has the capability to track harvest information to assure managers that certain populations are not being overharvested. A computerized database in Western Australia, built on harvest data, allows for the analysis of total commercial take by management area, trends in the sex ratio of the commercial take, trends in the average weight of kangaroos in the commercial take, and trends in the commercial take per unit effort (WADCLM 1991 A and B). South Australia is collecting, but not yet utilizing in its kangaroo management program, monitoring data about catch per unit of effort, sex ratio of the kill, and average weight of carcass by sex for each species (SANPWS 1991). New South Wales obtains specific information from trappers, chillers, and faunal dealers to determine catch per unit effort, average carcass weight by sex per species, sex ratios of kill, and the distribution of the harvest. This information is available by management zone and on a statewide basis (NSWNPWS 1991 A).

The monitoring and assessment of population trends and harvest returns as specified in the approved kangaroo management programs is intended to ensure the conservation of the species. The monitoring of the harvest presumably provides continual assessment of the health of the macropod populations so overutilization will not occur.

The States and Commonwealth governments have the capability to police and regulate the commercial take of kangaroos so overutilization will not occur. State governments control any illegal trade in kangaroos through regular and random field inspections of shooter and dealer operations and checks on the returns required from them. Law enforcement staff may also respond to reports of illegal activities. The primary focus in law enforcement activities at the State or Territory level is to detect illegal trade long before material may be proposed for export. This is feasible because of the relatively small number of people involved in the commercial kangaroo industry and the kangaroo meat or skins in a secretive manner. There is also little incentive to become involved in illegal activities when quotas are not being reached (on average only about 70 percent of the total quotas have been taken in recent years) (ANPWS 1992).

The Commonwealth capability to control illegal trade rests primarily with Customs officers and the Australian Federal Police. Checks on permitted exports of kangaroo products by Customs officers usually are restricted to the inspection of paperwork associated with the export. Customs officers will conduct more detailed inspections and enforcement activities where intelligence indicates that illegal activities may be occurring (ANPWS 1992). The Wildlife Enforcement Squad within the ANPWS is intended to coordinate enquiries/investigations into allegations of illegal trade in wildlife.

Annual surveys are good indicators that kangaroo populations are not being overutilized. For example, population estimates for red and grey kangaroos (with numbers commercially harvested listed in parentheses) for New South Wales from 1987–1991 total, respectively, 5.4 million (0.47 million), 5.5 million (0.42 million), 7.6 million (0.50 million), 8.6 million (0.63 million), and 9.1 million (0.86 million). Population estimates for 1987 and 1988 are only for the western plains while those in 1989–1991 are based on populations in both the western plains and the tablelands. The total population in NSW apparently increased at least during the years 1989–1991. Index numbers for Queensland for the same period (with numbers commercially harvested listed in parentheses) are estimated at 4.8 million (1.60 million), 4.7 million (1.65 million), 4.1 million (1.62 million), 4.1 million (1.58 million), and 3.0 million (1.49 million). The 1992 index estimate was about 4.1 million which is similar to the 1989 and 1990 levels. Queensland considers its population figure to be an index rather than an estimate because a greater but yet unknown correction factor may be necessary to expand raw data from aerial surveys into population estimates, to account for difficulties in making aerial counts of eastern gray kangaroos in woodland habitats. Mulga woodlands comprise about 190,000 km sq in Queensland and are especially difficult to census from the air. Brigalow woodlands are also difficult to census but many of these lands have been extensively modified to favor agriculture. Comparable data for annual populations are apparently not available for South Australia and Western Australia. South Australia had an estimated population of 963,000 red and 208,000 western gray kangaroos in 1987 and 1,950,000 red and 194,000 western gray kangaroos in 1990. Western Australia had an estimated population of 2,329,000 red and 652,000 western gray kangaroos in 1987 and 2,178,000 red and 1,070,000 gray kangaroos in 1990. A combined total of about 0.30–0.45 million red and gray kangaroos were commercially harvested annually between 1987–1991, from South Australia and Western Australia.

Drought events can directly affect kangaroo numbers. Data from New South Wales for the 1980s provides a best illustration of population fluctuations associated with droughts. The data unfortunately provide an imperfect comparison because both census procedures and evaluation areas changed during the decade. The trend seems clear, however, a population build up to 1982, a major population reduction measured in 1983 and 1984 in response to the severe drought in summer 1982–1983, and a gradual population recovery to 1990. The population estimated from 1981, with commercial kill numbers in parentheses, are 7,046,000 (489,000); 9,400,000 (664,000); 5,500,000 (400,000); 2,738,000 (229,000); 4,155,000 (326,000); 4,662,000 (445,000); 5,425,000 (473,000); 5,498,000 (421,000); 7,582,000 (500,000); and 8,550,000 (633,000). The sheep range may be entering a drought period in 1992, so both kangaroo numbers and harvest numbers could be expected to diminish in future years.

The major problem in the sheep range is too little herbage and too many herbivores. Efforts to implement a total grazing management policy call for the elimination of feral herbivores and introduced rabbits coupled with reductions in numbers of sheep and kangaroos. The Service notes it is administratively easy to attain reductions of kangaroo numbers through implementation of the commercial harvest but it is also essential to significantly reduce sheep numbers. The Service supports efforts to enhance the value of kangaroos so that graziers may find reasons to manage kangaroos as assets rather than liabilities.

Kangaroo populations are relatively high and range conditions may be deteriorating at this time because of a continuing drought. The Service recognizes that a high 1992 harvest goal of 4,942,000 red and gray kangaroos is an attempt to reduce kangaroo numbers to levels close to their long-term averages in order to minimize economic losses to graziers and so extensive starvation and increased range degradation may not occur. This is a valid management strategy if accompanied by reductions in numbers of domestic herbivores and if reduced harvest quotas occur in the future, should kangaroo populations decline significantly during this ongoing drought event. The Service finds that red and gray kangaroo populations are not being overutilized in mainland Australia at this time.

C. Disease or Predation.

There is no evidence that kangaroos at this time are threatened by disease or predation. Predation by dingos may have been an important limiting factor before the arrival of Europeans. Dingo predation has been severely curtailed to enhance sheep husbandry, and kangaroos have inadvertently benefitted from this action. Mortality of red and gray kangaroos, believed caused by an unidentified post-flood agent, was observed in southwestern Queensland following the April 1990 floods. The impact was short-term (ANPWS 1990), however, presumably because regenerating vegetation stimulated increases in subsequent kangaroos populations.

D. The Inadequacy of Existing Regulatory Mechanisms

Red and gray kangaroos have protected status in all parts of their respective distributional ranges throughout Australia under relevant State or Territory legislation. The responsibility for wildlife conservation rests with individual State or Territorial governments through their faunal conservation authorities (ANPWS 1991). The decision to provide for a commercial harvesting industry is determined by State or Territory government policy and legislation. The Commonwealth has no power in law to influence how States and Territories manage red and gray kangaroos except for those populations subject to export or international agreements. The commonwealth would be powerless, for example, to directly intervene should any individual State or Territory, with no export program, develop or operate an intrastate program that was counter to the Commonwealth views of conservation and management. The ANPWS, however, is aware of the level of protection provided in mainland States and Territories that do not seek to export kangaroo products and the Commonwealth is satisfied that management in those mainland and States and Territories (Victoria, Northern Territory, Australian Capital Territory) is in significant agreement with Commonwealth views of conservation and management (ANPWS 1992).

The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the harvest of kangaroos. Each of these four States has a kangaroo management program which includes provision for the reduction of harvests, if necessary, and each State has the responsibility to implement the provisions of its individual kangaroo management programs. The largest populations of red and gray kangaroos occur in the four States, and the Commonwealth Government does have a mechanism to enhance the protection of those populations. That mechanism exists through the Wildlife Protection (Regulation of Exports and Imports) Act of 1982 [WP(REI)A]. The WP(REI)A consolidated wildlife controls into a single act so the Commonwealth could more effectively implement the objectives of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Commercial trade is permitted only if it has been conclusively established that the native species will not become threatened because of the inadequate control of exports or through the import of some non-native species. The Commonwealth Minister for the Arts, Sport, the Environment and Territories can approve or disapprove of proposed management programs for individual species after having been advised of their merit by the ANPWS and the Minister's Scientific Advisory Committee on Kangaroos. State governments in Western Australia, South Australia, New South Wales, and Queensland have each developed kangaroo management plans that have been approved by the Commonwealth so that an export trade in kangaroo products is allowed from each of those States. The kangaroo management plan for each State has a monitoring provision for both population trends and harvest returns to ensure that conservation of the species is the foremost objective.

An approved kangaroo management program specifies that kangaroo products for export must be from kangaroos taken in a specified and approved manner. An approved kangaroo management program must contain sufficient biological information so it can be evaluated. There also needs to be ample proof that the biological information has been considered in developing the program, and discussions must have occurred between the State and Commonwealth governments so the management program attain acceptable standards. The management program must ensure that taking in the wild will not be detrimental to the survival of the species, will be carried out at minimal risk to the continuing role of that species in the ecosystem, will occur in a humane manner, and that adequate periodic monitoring and assessment of the effects of the taking of specimens will occur to ensure the long-term survival of the species.

The kangaroo management programs are generally based on multiple-use tenets and are designed to ensure the continued survival of kangaroos throughout their range. The program assume that kangaroos are successful native herbivores whose numbers frequently need to be controlled. The programs are based on population monitoring and use a licensing system to control the legal culling of animals. The individual States have the responsibility to ensure that the killing of kangaroos does not significantly affect the distribution and abundance of the species.

The general objectives of the kangaroo management programs are to (1) maintain viable populations of kangaroos throughout their natural range, (2) minimize the effects of kangaroos on pastoral and agricultural development, (3) maintain populations of kangaroos at levels that will not produce long-term adverse impacts to habitat, and (4) manage the species as a renewable resource. Implementation to achieve objectives includes enabling legislation and an administering organization with sufficient funding to accomplish appropriate research, management, and monitoring activities.

The New South Wales National Parks and Wildlife Service controls the harvest of kangaroos through the National Parks and Wildlife Act 1974. All kangaroos entering commercial trade must be legally taken in accordance with this Act, and it is an offense to kill kangaroos or have them in possession without an appropriate license. Landholders have to approach the NSWNPWS for a permit to kill kangaroos on their property, and tags are issued if the killing is found to be warranted. Shooters, commercial dealers, and tannery operators are each licensed so controls exist at several levels of the commercial harvest. The total allowable commercial kill occurs within the framework of the commercial quota. The development of the quota has been described in a general manner under factor B above.

The legislation protecting and conserving nature in Queensland is the Faunal Conservation Act 1974, soon to be replaced by the Nature Conservation Act 1992. The Nature Conservation Act 1992 creates classes of protected areas; designates classes of wildlife; and provides for development of conservation plans to protect, use and manage protected areas, critical habitats, and classes of wildlife. The Queensland kangaroo management program describes how the activities of shooters and dealers are regulated, how the size and/or composition of the population is to be monitored, the regulations and checks to prevent illegal harvest or over-harvest, and other measures to ensure the conservation of the species. The approval of Queensland's kangaroo management program by the Commonwealth Government indicates an assurance that commercialism will not threaten the survival of kangaroo populations throughout their range.

Kangaroos and all native fauna in South Australia are protected under the National Parks and Wildlife Act 1972. A permit is required to take any animal for damage mitigation purposes and any kangaroo that enters the commercial trade must be tagged with a species-specific tag. Quotas are developed after the direct monitoring of populations on an annual basis, and individual properties may be monitored through ground surveys and property inspections before receiving a quota. Quotas are released in stages so management can respond to changes in climatic conditions. Kangaroo shooters are licensed to shoot on individual properties.

The Department of Conservation and Land Management has the responsibility for the conservation and protection of all flora and fauna under the Western Australia Conservation and Land Management Act of 1984. The Department has authority under the Wildlife Conservation Act 1950 and associated regulations to control the killing of red and gray kangaroos. Landowners and their agents may take kangaroos non-commercially for damage mitigation purposes in open-season areas. Kangaroos can only be taken under a damage license specifically issued to particular properties in non open-season areas. The harvest is monitored by using species-specific tags and by monitoring monthly reports from licensed shooters and dealers. Population trends are monitored on a triennial basis because of the State's vast area and because kangaroo densities are frequently low.

Critics of the kangaroo management program in Australia cite the incongruity of legislation granting protection to the species and the presence of a commercial industry that is responsible for the harvest of several million kangaroos per year. Critics also state that few studies substantiate claims that kangaroos are major depredators of range and agricultural crops, so that arguments that kangaroos are harvested to reduce damage especially to range products are specious, especially when sheep numbers remain too high for fragile ranges. The Service believes that any perceived incongruity in domestic laws needs to be resolved domestically and is not a reason for an ESA listing decision. It is additionally not necessary for the Service to address the argument that the commercial killing of kangaroos is solely for damage mitigation purposes to make a decision on a listing status. Kangaroos incidentally prosper at this time because of land management accomplished for other purposes. Active kangaroo management essentially only regulates kind and level of take so that overutilization does not occur and so that sustainable populations are maintained throughout their range. Regulatory mechanisms in place are adequate to perform this function.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Kangaroo populations fluctuate in response to environmental and climatic conditions. Appropriate wildlife management agencies routinely evaluate kangaroo populations over a wide area and monitor current harvest statistics to track population trends. This activity is intended to provide a sufficient understanding so that harvest activities, can be slowed or terminated if that becomes necessary. This may be appropriate, especially during drought, when kangaroo populations may become reduced and are most vulnerable to population control activities.

There is great concern among critics that management programs both for individual States and the Commonwealth are insensitive to the plight of kangaroos during environmental stress periods as during the 1982–1983 drought. The perceived insensitivity at that time was an apparent inability or unwillingness to reduce the commercial harvest of kangaroos in what critics considered a timely manner during an environmental stress period. The critic argue that demands from the pastoral industry and the commercial kangaroo industry superseded important kangaroo management decisions. The present concern with insensitivity is that many kangaroo habitats are experiencing droughts during 1992 at a time when a record macropod harvest quota of 5.2 million animals (including 4,942,000 red and gray kangaroos) has been established. The Commonwealth indicates (ANPWS 1992) that the determination of quotas during a dry period as during a normal period is on the basis of estimated kangaroo populations. Droughts are quite variable in their duration and distribution and kangaroo populations do not automatically decline in response to dry seasonal conditions. The 1983 harvest quotas were set at high levels because kangaroo populations measured during the June–August 1982 winter period were still high. The actual harvest during 1983 was considerably less than the actual quota and the quotas in 1984 and 1985 were maintained below 2 million animals as populations recovered. Kangaroo populations have risen across Australia since that time and quotas have correspondingly increased. The 1992 quota also reflected high kangaroo population estimates during the winter of June–August 1991. The future harvest quota is expected to diminish if kangaroo populations diminish because of the 1992 drought event. Quotas are expected to be maintained at the lower level until populations again recover. It is a proper management tenet to progressively destock the land as a dry season develops into a drought. Wild animal populations can only be reduced in such circumstances by killing animals or leaving them to die from lack of feed or water. Harvesting of kangaroos going into a drought ensures that limited resources are maintained for a longer period as populations decline.

States have additional regulatory mechanisms to reduce actual harvest to levels below the commercial quota. Licenses to take animals may be amended to restrict the numbers taken in a particular area, to limit harvesting to certain species, or to cease hunting altogether. Thus, management may progressively restrict and then cease all harvesting of kangaroos in response to declining populations. Following the 1982–83 drought in New South Wales, a moratorium on harvesting was applied to some of the worst affected areas to enable populations to recover. Should a severe drought occur during the 1990's, States can be expected to respond in an appropriate manner to changes in the kangaroo populations. The ultimate assurance that conservation of the species will be given primary consideration is the approval and review of ongoing operations of State management programs by the Commonwealth Government (ANPWS 1992).

Control over the methods used to kill kangaroos rests with State and Territory management personnel and is determined by relevant State and Territory legislation. Thus, new harvest technologies that could threaten kangaroo populations cannot be introduced without governmental approval.

Summary of Petition Findings

The Service's regulations at 50 CFR 424.11(d) allow a species to be delisted by reason of extinction, recovery or because the original listing data was in error, if the best scientific and commercial information available indicates the species is neither threatened nor endangered. The Service proposes to delist these three species of kangaroos on the basis of their successful recovery. Recovery in this instance pertains to the fact that present kangaroo populations are substantial and kangaroo management programs have been developed and implemented that are sufficient to maintain sustainable kangaroo populations throughout their present range.

The Service proposed on April 1, 1974 (39 FR 11903) to list the three species of kangaroos as endangered foreign wildlife. The Service, at that time, noted that reductions in kangaroo habitat and range were evident due to the expansion of human activities, the replacement of native vegetation by exotic plant species, and man's alterations of habitat for a number of reasons. The Service also suggested that: Commercial exploitation in combination with natural losses might exceed the kangaroo's reproductive capability; the information base was inadequate to develop kangaroo management plans; regulations were inconsistent between States, and no coordinated management plan existed; the control and monitoring of the kangaroo harvest was inadequate; no indications existed that harvest quotas were designed to ensure sustained yields; the funding and staffing for conservation activities were inadequate; only limited quantities of land had been set-aside for conservation reserves; and the impacts of periodic droughts and floods had not been adequately considered in kangaroo management. The Service with the publication of the April 1, 1974, proposed rule sought additional information about kangaroos and kangaroo management. The Service, after evaluation the additional information received in response to the proposed rule, determined on December 30, 1974 (39 FR 44900), that the three species of kangaroos were more appropriately classified as threatened. The Service, at that time, also prohibited the importation of kangaroos for commercial purposes. The Service stated in that **Federal Register** notice that while substantial acreages of kangaroo habitat had been lost, those acreages were small relative to the total available kangaroo habitat and range. The Service further noted there was no evidence to suggest overutilization, on a species population basis, nationwide. All states were acknowledged as having harvest quotas, and trends throughout Australia indicated the enhanced regulation of kangaroo harvests. The Service noted that: inadequacies existed in attaining population data for survey and monitoring actions; regulations and management policies were not uniform between States; and no national coordination existed in kangaroo management activities. Both acreages of lands set aside for native wildlife and law enforcement capabilities were found to be deficient. The Service determined that management was sufficient, however, so the species were not likely to become extinct. The Service declared that prohibitions against commerce in kangaroos and kangaroo products from the three threatened species could be lifted, in the future, upon receiving appropriate certification from the Australian Government. That certification for an individual Australian State would declare that the individual State had developed an effective sustained yield management program for the kangaroo species, and that the taking of kangaroos in that individual State would not be detrimental to the survival of the species.

The Service in a **Federal Register** notice of April 29, 1981 (46 FR 23929) indicated that Western Australia, South Australia, Queensland, and New South Wales had developed effective sustained yield programs for the three species of kangaroos and had adequately indicated that the taking of the three species of kangaroos would not be detrimental to the survival of the species. That notice additionally established a special rule (50 CFR 17.40(a)) which permitted the importation of red, eastern gray and western gray kangaroos, and their parts and products, into the United States. The Greenspeace USA petition of December 20, 1989, sought to reinstate the ban on commercial importation of kangaroos products by asking for repeal of the special rule at 50 CFR 17.40(a).

The Service in two **Federal Register** notices of April 8, 1983, proposed to delist the three species of kangaroos (48 FR 15428) and to continue the commercial importation of kangaroos (48 FR 15434). The final rule allowing the continuation of the importation of kangaroos was published on August 1, 1983 (48 FR 34757). The proposed rule to delist the three kangaroo species provided an estimate of about 18 million kangaroos in the surveyed areas of Western Australia, South Australia, Queensland and New South Wales. The proposed rule also indicated that kangaroos are legally protected species and their legal taking is only by permitted actions. Law enforcement was viewed as adequate, the Commonwealth Government was noted to have a mechanism to regulate the export of kangaroo products, survey and monitoring procedures were being developed, a nature conservation reserve system was being established, and kangaroo management programs were being developed and implemented. The declared intent of kangaroo management was to reduce agricultural damage and not necessarily to provide sustained yields of kangaroo products. It was additionally pointed out that the status of kangaroos had not been affected by the lifting of the ban on the commercial importation of kangaroo products into the United States. The Service withdrew the proposed rule to delist the three kangaroo species on April 24, 1984 (49 FR 17555) after receiving new data from the Australian Government that the severe drought in the summer of 1982–3 had caused significant reductions in kangaroo populations. It was noted that the drougt was broken in winter 1983, that kangaroos were again beginning to breed, but the ability of kangaroo populations to recover from the major 1982–3 population fluctuation was unknown. It was further noted that the delisting action could be reconsidered after the Service had a better understanding of how kangaroo populations recover from drought events.

The present proposed rule notes that conditions the Service found to justify a delisting action in 1983 are measurably improved in 1992. Kangaroo populations are now managed on a sustained yield basis, and a better understanding exists of how kangaroo populations fluctuate with and recover from drought events. The sensitivity of Australian Commonwealth and State Governments to the management and control of harvest during drought events seems to be improved. The basic for this delisting action is the successful recovery of kangaroo populations. The present kangaroo populations may realistically be about what they were when the species were first listed as threatened in 1974, but kangaroo populations are considered recovered because management by Commonwealth and State governments has achieved a level of proficiency that reasonably guarantees the well-being of kangaroos throughout their present range. Kangaroos in mainland Australia are managed at least as well and may be as numerous as are deer of the genus *Odocoileus* in North America.

The Service finds that extensive kangaroo habitats remain in mainland Australia, that management for pastoral industries may favor kangaroo production, and that an extensive series of National Parks and Reserves have been established (some of which are important to kangaroos). The Service also finds that adequate kangaroo management plans have been developed and implemented. Kangaroo populations are systematically and periodically assessed, and population data, environmental conditions, and public consultation inputs are weighed in the development of harvest quotas. The harvest operation is found to be a licensed action that occurs on individual properties at the request and permission of landholders. Authorities within the States have the responsibilities and capabilities to monitor the harvest so that overutilization will not threaten the substantial kangaroo population existing within individual states. Disease and/or predation do not threaten these kangaroos species. The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the kangaroo harvest. The Commonwealth has the capability to approve, disapprove or require modification of kangaroo management programs from those States wishing to export kangaroo products so a consistency in planning and implementing management actions occurs within mainland Australia. The States have the responsibility to regulate all aspects of the kangaroo harvest, to provide adequate law enforcement, to conduct appropriate management and research, to monitor populations especially during drought events, and the States have the ability to modify harvests if environmental or other variables unexpectedly impact kangaroo populations. It is the present good condition of kangaroo management in mainland Australia that causes the Service to find the action recommended by the petition to delist the three species of kangaroos, filed by the Wildlife Legislative Fund of America, to be warranted.

The Monitoring of Recovered Kangaroo Species

Requirements of the Act for monitoring of recovered species also apply to foreign species. Those requirements include the implementation of a monitoring program to ensure that the species continues to fare well after the delisting action is finalized. The Service is primarily dependent on input from the foreign country in the monitoring of recovered species in foreign lands.

Monitoring plans frequently address population parameters, distribution, the health of the species, the conditions of the habitat for the species, and any new threats identified as relevant to the species. The monitoring plan for the 3 kangaroos would require that the Commonwealth Government provide an annual report to the Service, by the end of the calendar year, for each of the five years following the finalization of this rule. The monitoring plan would need to contain information describing:

1. Estimated populations for each species within each harvest State using best technologies currently available;
2. Details of commercial and non-commercial mortalities, using best technologies currently available;
3. Current distribution of the species, using best technologies currently available;
4. Extent of lands set-aside for parks and reserves that provide protected and useful habitats for kangaroos;
5. Changes in regulatory programs that impact the well-being of the species;
6. New threats to the species; and
7. Progress towards the successful implementation of the Total Grazing Management Policy (TGMP) that strives to balance the forage demands of all herbivore consumers with available range resources to enhance the conservation of range ecosystems. Programs that enhance the value of kangaroos so they are managed as important wildlife resources are important aspects of a TGMP. It is anticipated that a successful TGMP will have long-term population goals for kangaroo species in different ecosystems. The Service recognizes that short-term population fluctuations in response to drought or some other environmental event are not evidence

that long-term population goals are not being achieved.

The Service has the responsibility to annually review the monitoring reports and to access the continued recovery of the species. Three alternatives exist after the 5-year monitoring program has been concluded. They are: (1) If the species no longer meet the 5-factor test for recovery then they should be relisted using the emergency listing procedures; (2) if the species are stable but threats are increasing then the monitoring efforts should continue; and (3) if the species are stable or increasing and the 5-factor test is still met, then the monitoring effort can be discontinued. The Service can invoke emergency listing procedures at any time in response to a significant threat to the well being of any of the three species.

Effects of this Proposed Rule

Individuals of any species listed as Threatened can be imported into the United States, with suitable permits, for scientific purposes, enhancement of propagation or survival of the species, educational purposes, zoological exhibition, or special purposes consistent with the purposes of the Act. A special regulation was published at the time that the red, eastern gray, and western gray kangaroos were listed as Threatened in 1974 that made it unlawful to import these species, or their parts or products, into the United States for commercial purposes until the Australian States could assure the United States that they had effective management plans for the kangaroos, and that taking would not be detrimental to their survival. On April 29, 1981, the Australian States met those conditions, and a special regulation was published in the Federal Register (46 FR 23938) which made it lawful to import the three species of kangaroos for commercial purposes provided they were tagged or otherwise identified as removed from the wild in accordance with the management plans of the Australian States. The Service published a Final Rule on August 1, 1983 (48 FR 34757) permitting the commercial importation of kangaroos to continue.

The effect of this delisting action will be negligible because the restrictive activities associated with the Threatened classification have already been permitted by the Special Rule at 50 CFR 17.40(a)(1)(i)(B). If the present proposed rule is made final then the eastern gray kangaroo (*Macropus giganteus,* all subspecies except *tasmaniensis*), the red kangaroo (*M. rufus*), and the western gray kangaroo (*M. fuliginous*) will be removed from the list of Endangered and Threatened Wildlife as codified in 50 CFR 17.11, and as is presently the case, none of the restrictions, regulations, or prohibitions of the Act would apply to them.

The subspecies *M. g. tasmaniensis* is retained on the list of endangered species in 50 CFR 17.11 because no assessment of this subspecies or of kangaroo management in Tasmania was undertaken in this evaluation.

The special rule in 50 CFR § 17.40(a)(1)(i)(B) which allowed the import of eastern gray, red, and western gray kangaroos, including parts and products of such wildlife which have been tagged or otherwise identified as removed from the wild, in accordance with the management plans of Australian States, into the United States without permits for individual shipments, otherwise required by 50 CFR part 17(a), would be rescinded. *M. g. tasmaniensis* is restricted to Tasmania, and Tasmania has not prepared a kangaroo management plan for this subspecies so the Commonwealth government has not allowed any export of *M. g. tasmaniensis* or their parts and products. The proposed rescinding of § 17.40(a) will therefore not be relevant to this non-traded but endangered subspecies.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments should be related to factors A–E described above.

Final promulgation of the regulations on the subject species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of publication of the proposal, must be in writing, and should be directed to the party named in the above ADDRESSES section.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

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ANPWS 1990. Australian National Parks and Wildlife Service response to the report "Review of kangaroo management March 1990." Aust. Nat. Parks Wildl. Serv., Canberra. 28pp.

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QNPWS 1992. 1992–1994 management program for the commercially taken macropods in Queensland. Queensland National Parks and Wildl. Serv., Brisbane. 13pp + Appendices.

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WADCLM. 1991 A. Management program for the western grey kangaroo in Western Australia 1992–1994. Western Australia Dept. Conserv. and Land Mgmt., Perth. 11pp + 2 Figs. + App. A.

WADCLM. 1992 B. Management program for the red kangaroo in Western Australia 1992–1994. Western Australia Dept. Conserv. and Land Mgmt., Perth. 11pp + 2 Figs. + App. A.

Author

Dr. Henry L. Short, Office of Scientific Authority, U.S. Fish and Wildlife

Service, Washington, DC 20240 (703–358–1708).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Rule

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. It is proposed to amend § 17.11(h) by removing the entries for the eastern gray kangaroo (*Macropus giganteus*, all subspecies except *tasmaniensis*), the red kangaroo (*M. rufus*) and the western gray kangaroo (*M. fuliginous*) from the List of Endangered and Threatened Wildlife.

§ 17.40 [Amended]

3. It is proposed to remove and reserve paragraph (a) of § 17.40.

Dated: January 14, 1993.

Bruce Blanchard,

Deputy Director.

[FR Doc. 93–1363 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-191-1]

Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits, Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service, during the month of November 1992. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons that they may request to be placed on a mailing list to receive the list.

FOR FURTHER INFORMATION CONTACT: Ms. Maxine Kitto, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245. For copies of the list or to be placed on the mailing list, write to Ms. Kitto at the above address.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses for Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month the Veterinary Biologics section of Biotechnology, Biologics and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of November 1992. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 13th day of January 1993.

Lonnie J. King,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–1306 Filed 1–19–93; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Decision Notice (DN) and Finding of No Significant Impact (FONSI) for the California Spotted Owl Interim Guidelines Environmental Assessment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that on January 13, 1993, Regional Forester Ronald E. Stewart for the Pacific Southwest Region approved the Decision Notice (DN) and Finding of No Significant Impact (FONSI) for the California Spotted Owl Interim Guidelines Environmental Assessment. It is his decision to adopt the findings of a technical team of wildlife biologists for approximately two years or until a longer term strategy to maintain viability of the owl is adopted. The DN amends the Regional Guide and ten forest plans, which include the Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus and Tahoe National Forests, as well as the Lake Tahoe Basin Management Unit.

The Decision Notice and Finding of No Significant Impact are available upon request from the Regional Forester, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, phone (415) 705–2870.

Dated: January 13, 1993.

Richard O. Benjamin,
Acting Regional Forester.

[FR Doc. 93–1262 Filed 1–19–93; 8:45 am]

BILLING CODE 3410-11-M

Food Safety and Inspection Service

[Docket No. 93–001N]

National Advisory Committee on Microbiological Criteria for Foods; Subcommittee Meetings

Notice is hereby given that subcommittee meetings of the National Advisory Committee on Microbiological Criteria for Foods will be held on Tuesday through Friday, February 2–5, 1993. The meetings will be held at the Sheraton World Resort, 10100 International Drive, Orlando, Florida 32821, telephone (407) 352–1100. The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been processed using good manufacturing practices.

Schedule sessions are as follows:

(1) Tuesday, February 2, 8:30 a.m. to 4:30 p.m.—Concurrent sessions of the Meat and Poultry and Seafood Subcommittee.
(2) Wednesday, February 3, 8:30 a.m. to 4:30 p.m.—Seafood Subcommittee; 8:30 a.m. to 12 noon—Meat and Poultry Subcommittee; 1 p.m. to 4:30 p.m.—Risk Analysis Subcommittee.
(3) Thursday, February 4, 8:30 a.m. to 4:30 p.m.—HACCP Subcommittee.
(4) Friday, February 5, 8:30 a.m. to 4:30 p.m.—Campylobacter Subcommittee.

The Committee meetings are open to the public on a space available basis. Comments of interested persons may be filed prior to the meeting in order that they may be considered and should be addressed to Mr. Bill Dennis, Assistant to the Administrator, U.S. Department of Agriculture, Food Safety and Inspection Service, room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. In submitting comments, please refer to docket number 93–001N. Background materials are available for inspection by contacting Mr. Craig Fedchock, Advisory Committee Specialist, on (202) 720–9150.

Done at Washington, DC, on January 14, 1993.

Donald L. White,

Associate Administrator Food Safety and Inspection Service.

[FR Doc. 93–1307 Filed 1–19–93; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 2106–01 and 2106–02]

Roman Trzaskowski; Decision and Order

In the matter of: Roman Trazaskowski, individually and doing business as Rotra Trading Co. with addresses at 32–38 Cromwell Street Collingwood, Victoria Australia and 51–55 Johnson Street Fitzroy, Victoria Australia, Respondents.

On March 3, 1992, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued a Charging Letter against Roman Trzaskowski, individually and doing business as Rotra Trading Co. (hereinafter collectively referred to as Respondents), alleging that Respondents violated the provisions of § 787.6 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991)) (the Act),[1] in that on or about September 12, 1987 and on or about November 18, 1987, Respondents reexported U.S.-origin electronic equipment from Australia to Austria, without obtaining from the Department the reexport authorization required.

Respondents filed an answer to the Charging Letter. After the answer was filed, the Department and Respondents entered into a Consent Agreement pursuant to § 788.17(a) of the Regulations, whereby they agreed to settle the matter by the Department's imposing a civil penalty of $5,000, the payment of $2,500 of which is suspended, and the Department's denying Respondents export privileges for five years, two and one-half years of which is suspended, as set forth below.

The Administrative Law Judge has recommended that I approve the terms of the Consent Agreement and I approve those terms.

Therefore, it is ordered:

1. A civil penalty in the amount of $5,000 is assessed against Respondents. The sum of $2,500 shall be paid within 30 days from the date of entry of this Order. As authorized by § 788.16(c) of the Regulations, payment of the remaining balance of $2,500 shall be suspended for a period of five years and shall thereafter be waived, provided that, during the period of suspension, Respondents have committed no violation of the Act or any regulation, order or license issued under the Act. Payment shall be made in the manner specified in the attached instructions.

2. All outstanding individual validated licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

3. Roman Trzaskowski, individually and doing business as Rotra Trading Co., with addresses at 32–38 Cromwell Street, Collingwood, Victoria, Australia, and 51–55 Johnson Street, Fitzroy, Victoria, Australia, and all successors, assigns, officers, partners, representatives, agents and employees, for a period of five years from the date of the entry of this Order, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

4. As authorized by § 788.16(c) of the Regulations, the denial period herein provided for shall be suspended for a period of two and one-half years beginning two and one-half years from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Respondents have committed no violation of the Act or any regulation, order or license issued under the Act. The suspended portion of the denial period is also contingent upon Respondents' timely payment of the civil penalty, as provided for herein. If Respondents fail or refuse to pay the civil penalty imposed, the suspended portion of the denial period will be reinstated.

5. Trzaskowski has agreed that he will reasonably cooperate with the Department's continuing investigation into the facts and circumstances that gave rise to the allegations set forth in the Charging Letter. Trzaskowski's failure or refusal to reasonably cooperate shall result in the revocation of the suspended portion of the civil penalty and the suspended period of denial of export privileges.

6. After notice and opportunity for comment, any person, firm, corporation, or business organization related to

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[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

7. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

8. The Charging Letter and the Consent Agreement shall be made available to the public. A copy of this Order shall be served upon Respondents and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Dated: January 12, 1993.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

[FR Doc. 93-1233 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 71-91]

Foreign-Trade Zone 56—Oakland, CA; Withdrawal of Application for Subzone Status for Apple Computer Plant

Notice is hereby given of the withdrawal of the application submitted by the City of Oakland, California, grantee of FTZ 56, requesting authority for subzone status for the electronic data processing and communications equipment manufacturing plant of Apple Computer, Inc., in Fremont, Alameda County, California. The application was filed on November 5, 1991 (56 FR 58354, 11/19/91).

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 13, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93-1347 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 625]

Approval of Export Manufacturing Activity (Luggage, Bags, and Cases) Within Foreign-Trade Zone 9, Honolulu, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u) (the Act), and the Foreign-Trade Zones (FTZ) Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, § 400.28(a)(2) of the Board's regulations, requires approval of the Board prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, the Department of Business, Economic Development and Tourism of the State of Hawaii, grantee of FTZ 9, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of the Hawaii Bag Company, Inc., to manufacture leather and plastic luggage, bags and cases for export under zone procedures within FTZ 9, Honolulu, Hawaii (filed 11/22/92, A(32b1)-4-92; Doc. 40-92, assigned 12/29/92);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, Therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's Regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28.

Signed at Washington, DC, this 11th day of January, 1993, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93-1348 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 626]

Resolution and Order Approving the Application of the Greater Metropolitan Foreign Trade Zone Commission for Special-Purpose Subzone Status for Export Activity Davisco International, Inc. (Intermediate Dairy Products) St. Peter, Nicollet, and Le Sueur, MN

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Metropolitan Foreign Trade Zone Commission, grantee of Foreign-Trade Zone 119, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on January 10, 1992, and amended on October 6, 1992, requesting special-purpose subzone status for export activity at the intermediate dairy products manufacturing facilities of Davisco International, Inc., in St. Peter, Nicollet, and Le Sueur, Minnesota, adjacent to the Minneapolis-St. Paul Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, subject to a restriction requiring that all foreign-origin dairy products admitted to the subzone shall be reexported, as indicated in the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), including section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Davisco International, Inc., St. Peter, Nicollet, and Le Sueur, Minnesota

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C.

81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Foreign Trade Zone Commission, Grantee of Foreign-Trade Zone No. 119, for authority to establish a special-purpose subzone for export activity at the intermediate diary products manufacturing facilities of Davisco International, Inc., in St. Peter and Nicollet, Minnesota, was filed by the Board on January 10, 1992, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–92, 57 FR 3163, 1–28–92);

Whereas, the applicant amended the application on October 6, 1992, to request subzone status for an additional Davisco plant site located in Le Sueur, Minnesota (57 FR 47042, 10–14–92); and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 119A) at the Davisco International, Inc., facilities in St. Peter, Nicollet, and Le Sueur, Minnesota, at the four locations described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 11th day of January, 1993, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1349 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 627]

Expansion of Foreign-Trade Zone 130; Blaine, WA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Port of Bellingham of Whatcom County (Washington), Grantee of Foreign-Trade Zone No. 130, for authority to expand its general-purpose zone in Blaine, Washington, within the Blaine Customs port of entry, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the **Federal Register** on January 16, 1992 (Docket 84–91, 57 FR 1897);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Blaine, Washington, area; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on November 6, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 11th day of January, 1993.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1350 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–357–405]

Barbed Wire and Barbless Fencing Wire From Argentina; Determination Not To Revoke the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on barbed wire and barbless fencing wire from Argentina.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order or finding, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for five consecutive annual anniversary months and no interested party objects to the revocation (19 CFR 353.25(d)(4)(iii) (1992)). We had not received a request to conduct an administrative review of the antidumping duty order on barbed wire and barbless fencing wire from Argentina (48 FR 49126, November 13, 1986) for the last four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on November 5, 1992, we published in the **Federal Register** a notice of intent to revoke the antidumping duty order and served written notice of the intent to revoke to each interested party on the Department's service list.

On November 30, 1992, Keystone Consolidated Industries, Inc., Insteel Industries, Inc. and Oklahoma Steel & Wire Co., interested parties under 19 CFR 353.2(k), objected to our intent to revoke this antidumping duty order. Therefore, because interested parties object to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: January 6, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–1343 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–819]

Final Determination of Sales at Less Than Fair Value: Ferrosilicon From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0371.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on November 5, 1992 (57 FR 52759), the following event occurred.

On November 23, 1992, petitioners filed a case brief regarding the Department's use of best information available (BIA) in the preliminary determination.

On January 8, 1993, a "reseller" of ferrosilicon from the People's Republic of China (PRC) filed a request for postponement of the final determination for 60 days.

On January 12, 1993, petitioners submitted comments to the Department objecting to any postponement of the final determination.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is December 1, 1991, through May 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Tariff Act of 1930, as amended, (the Act), that the use of BIA is appropriate for sales of the subject merchandise in this investigation. In deciding to use BIA, section 776(c) provides that the Department of Commerce (the Department) may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, exporters of ferrosilicon from the PRC did not respond to any request for information.

As outlined in the preliminary determination, the Department made several attempts to obtain information from the American Embassy in Beijing, the Embassy of the PRC, from the Ministry of Foreign Economics, Relations, and Trade, and from the Chamber of Commerce. However, the Department received no information from any of these sources. Consequently, we based our preliminary determination in this investigation on BIA. As BIA, we used the highest margin listed in the notice of initiation for this investigation, which was based on the petition.

Fair Value Comparisons

To determine whether sales of ferrosilicon from the PRC were made at less than fair value, we compared the United States price, (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on BIA, which was information supplied by petitioners. Petitioners based their estimate of USP on the average U.S. f.o.b. import value of ferrosilicon for the period September 1991 to February 1992. Petitioners made no adjustments to the estimated USP because they stated that they were unable to obtain information regarding foreign transportation costs.

Foreign Market Value

We based FMV on BIA, which was information supplied by the petitioner. Petitioners calculated FMV on the basis of the valuation of the factors of production for AIMCOR, a U.S. producer of ferrosilicon. In valuing the factors of production, petitioners used India as a surrogate country. For purposes of the initiation, we accepted India as having a comparable economy and being a significant producer of comparable merchandise, pursuant to section 773(c)(4) of the Act.

Petitioners used AIMCOR's factors for raw material and processing material inputs, electricity, and labor. The raw material, energy and labor factors for producing ferrosilicon are based on AIMCOR's actual experience from October 1990 through September 1991. However, petitioners made an adjustment to the labor factor to account for more labor-intensive ferrosilicon operations existing in the PRC. Overhead expenses are expressed as a percentage of the cost of manufacture as experienced by AIMCOR.

Petitioners based labor and electricity values on 1991 wage rates and energy rates in India. Petitioners based on the value of raw material costs for steel scrap, quartzite, coke, bituminous coal, diesel fuel, and water on Indian values. Petitioners based the value of raw material costs for electrode paste on a delivered import price from Italy to India. Petitioners based raw material costs for charcoal and woodchips, and other processing materials on AIMCOR's average costs from October 1990 through September 1991.

Pursuant to section 773(c) of the Act, petitioners added the statutory minima of 10 percent for general expenses and eight percent for profit, and an amount for shipment preparation.

Interested Party Comment

A reseller of ferrosilicon from the PRC, asserting that it accounts for a significant percentage of ferrosilicon imported from the PRC in 1991, requested that the Department postpone the final determination for 60 days in order to study the situation regarding ferrosilicon from the PRC, to consult with its PRC suppliers and U.S. customers and to decide whether to retain counsel for purposes of evaluating its procedural and legal rights in this investigation.

Petitioner responded that the Department should not postpone the final determination because such an extension is not available to the party requesting postponement for purposes of 19 CFR 353.20(b), there is no evidence that this party was a reseller of a major portion of ferrosilicon from the PRC during the POI, and under the circumstances of this investigation, the requested extension would serve no purpose.

DOC Position

We agree with petitioner. We declined to postpone the final determination because the party requesting postponement does not qualify as a "reseller" in this investigation, pursuant to 19 CFR 353.2(s), because its sales were not used to calculate either FMV or USP. Therefore, the party in question cannot request a postponement under 19 CFR 353.20(b).

Moreover, insofar as the requesting party wanted the additional time to consult with its suppliers, any new information obtained therefrom could not be utilized by the Department in its less than fair value calculation because the deadline for submission of factual information, pursuant to 19 CFR 353.31, had passed. Therefore, it would have been futile to postpone the final determination.

Accordingly, the Department denied the request to postpone the final determination.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ferrosilicon from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin (percent)
All manufacturers/producers/exporters	137.73

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only remainder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)) and 19 CFR 353.20.

Dated: January 12, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1344 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–802]

3.5 Inch Microdisks and Coated Media Thereof From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from one respondent, Hitachi Maxell, Ltd. (HML), the Department of Commerce has conducted an administrative review of the antidumping duty order on 3.5 inch microdisks and coated media thereof (microdisks) from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, HML, and the period April 1, 1991 through March 31, 1992.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Thomas F. Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–6312/3814.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1992, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (57 FR 11934) of the antidumping duty order on microdisks from Japan (54 FR 13406, April 3, 1989). On April 29, 1992, one respondent, HML, requested an administrative review. We initiated the review, covering April 1, 1991 through March 31, 1992, on May 22, 1992 (57 FR 21769). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the **Federal Register** on November 15, 1991 (56 FR 58040). An amendment of those results was published in the **Federal Register** on December 23, 1991 (56 FR 66430) to correct clerical errors.

Scope of the Review

Imports covered by the review are shipments of 3.5 inch microdisks and coated media thereof from Japan, currently classifiable under Harmonized Tariff Schedule (HTS) item number 8523.20.0000. The HTS item number is provided for convenience and for Customs purposes. The written descriptions remain dispositive.

A 3.5 inch microdisk is a treated or untested magnetically coated polyester disk with a steel hub encased in a hard plastic jacket. These microdisks are used to record and store encoded digital computer information for access by a 3.5 inch floppy disk drive. The 3.5 inch microdisk includes single-sided, double-sided, or high-density formats.

Coated media is the flexible recording material used in the finished microdisk. Media consists of a polyester base film to which a coating of magnetically charged particles is bonded. The 3.5 inch microdisk is intended for use specifically in a 3.5 inch floppy disk drive.

The review covers one Japanese manufacturer/exporter of this merchandise to the United States, HML, and the period April 1, 1991 through March 31, 1992.

Such or Similar Comparisons

Pursuant to section 771(16) of the Tariff Act, we established two categories of "such or similar" merchandise: (1) 3.5 inch mircodisks and (2) coated media.

In order to determine whether there were sufficient sales of microdisks and coated media in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within the such or similar category to the volume of third-country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Tariff Act.

HML had sufficient home market sales of 3.5 inch microdisks to serve as a basis for calculating FMV for microdisks.

There were no sales of coated media in the home market or in any third country during the period of review (POR). Therefore, the basis of FMV for coated media sales to the United States is constructed value (CV).

United States Price

We calculated the United States price based on exporter's sales price (ESP) in accordance with section 772(c) of the Tariff Act.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance, discounts, rebates, credit expenses, indirect selling expenses, and U.S. brokerage and handling. In accordance with section 772(d)(1)(C) of the Tariff Act, we added uncollected duties and taxes, which would have been collected if the merchandise had not been exported.

In accordance with section 772(e)(2) of the Tariff Act, we made further deductions, where appropriate for advertising. We also made deductions for commissions and indirect selling expenses, including inventory carrying costs, and indirect selling expenses associated with U.S. sales that were incurred in Japan.

For microdisks manufactured in the United States from Japanese coated media, we also deducted all value-added in the United States, pursuant to section 772(e)(3) of the Tariff Act. The value-added consists of the cost associated with the production and sale of the complete microdisk, other than the cost associated with the imported media, and a proportional amount of profit or loss related to the value-added. Profit or loss was calculated by deducting from the sales price of the microdisk all production and selling cost incurred by the company for the microdisk. The total profit or loss was then allocated proportionately to all components of cost.

In determining the cost incurred to produce the microdisk, the Department included (1) the cost of manufacture (COM), (2) movement and packing expenses, and (3) selling and administrative expenses, R&D expenses, and interest expenses.

Foreign Market Value

We calculated FMV based on home market sales prices or CV in accordance with section 773 of the Tariff Act.

We calculated FMV for comparison to U.S. ESP sales of microdisks based on packed, delivered prices of identical merchandise in the home market. We made deductions, where appropriate, for brokerage and handling, foreign inland freight, selling expenses, indirect selling expenses, packing, discounts, inventory carrying costs and imputed credit.

The deduction for indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56(b) of the Department's regulations. We added U.S. packing costs to the FMV in accordance with section 773 of the Tariff Act. We made an upward adjustment to the tax-exclusive home market prices for the uncollected duties and taxes we computed for the U.S. price in accordance with section 772(d)(1)(C) of the Tariff Act. We computed the value added tax (VAT) adjustment based on a price net of all movement charges.

All coated media sold in the United States was further manufactured by Maxell Corporation of America into microdisks. There were no sales of coated media in the home market or in any third country during the POR. Because there were no sales of such or similar merchandise, we used the CV of the imported coated media in order to calculate the MFV of the coated media in accordance with sections 773(a)(2) and 773(e) of the Tariff Act.

Therefore, for coated media sold in the United States for further manufacture, we calculated FMV based on CV, in accordance with section 773(e) of the Tariff Act. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing.

We used actual general expenses in accordance with section 773(e)(1)(B)(i) of the Tariff Act, because these expenses exceeded the statutory minimum of ten percent. For profit, we applied eight percent of the combined cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Tariff Act, because the actual amount was less than the statutory minimum of eight percent. Then we added U.S. packing costs to FMV.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period April 1, 1991 through March 31, 1992:

Manufacturer/producer/exporter	Margin (percent)
Hitachi Maxell Ltd	8.83

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of the review the Department will issue appraisement instructions on HML directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of Japanese 3.5 inch microdisks and coated media entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for HML will be 8.83 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate shall continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters shall be 8.83 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first work day thereafter. Case briefs from interested parties may be submitted not later than 14 days before the date of the hearing. Rebuttal briefs and rebuttal comments, limited to issues raised in the case briefs, may be filed not later than 7 days after the submission of the case briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 13, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1345 Filed 1–19–93; 8:45 am]

BILLING CODE [illegible]

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Modification of Scientific Research Permit (P278C).

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 579 issued to Dr. Brent S. Stewart, Hubbs Marine Research Center, 1700 South Shores Road, San Diego, California 92109 (52 FR 3037), has been modified to extend the effective date through March 31, 1993. This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910; and Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: January 12, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1266 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTIONS: Issuance of Scientific Research Permit (P524).

On November 20, 1992, notice was published in the **Federal Register** (57 FR 54771) that an application had been filed by The University of Hawaii at Manoa, Kewalo Basin Marine Mammal Laboratory, 1129 Ala Moana Boulevard, Honolulu, Hawaii 96814, to approach, up to four times each, up to 2000 humpback whales (*Megaptera novaeangliae*) annually in Hawaiian waters over a five-year period during the course of photo-identification, observational, and acoustic recording studies, and aerial surveys for purposes of scientific research.

Notice is hereby given that on January 12, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a permit to the above applicants to harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the findings that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: January 12, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1267 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit (P319C).

On November 16, 1992, notice was published in the **Federal Register** (57 FR 54051) than an application had been filed by Randall S. Wells, Ph.D., Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236, to approach up to 3000 Atlantic bottlenose dolphins (*Tursiops truncatus*) for photo-identification, censuses, behavioral observations, and underwater acoustic recordings.

Notice is hereby given that on January 13, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain Conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

The Permit and supporting documentation are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: January 13, 1993.

Michael F. Tillman, Ph.D.,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1268 Filed 1–19–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

January 13, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted to reflect new base limits for the July 1, 1992 through June 30, 1993 agreement year. These adjustments were agreed to in an exchange of letters dated November 16 and December 30, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 24597, published on June 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 13, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1992 and extends through June 30, 1993.

Effective on January 25, 1993, you are directed to amend further the directive dated June 5, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Indonesia:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	6,289,232 square meters.
313	11,598,879 square meters.
314	40,418,783 square meters.
317/617/326	17,562,221 square meters of which not more than 2,640,240 square meters shall be in Category 326.
625/626/627/628/629	18,697,807 square meters.
331/631	1,289,684 dozen pairs.
340/640	1,107,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after June 30 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-1271 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Egypt

January 13, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements to require manufacturer's identification.

EFFECTIVE DATE: February 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the Arab Republic of Egypt is being amended, for goods produced or manufactured in Egypt and exported from Egypt on and after February 15, 1993, to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa be provided on the textile visa document.

The name and address of the company should be placed somewhere on the front of the original export visa document, not within the circular visa stamp. It should be preceded by the label "manufacturer's identification" or "M.I.D." The name is the full name of the company which performs the substantial part of the manufacturing of the product. The address should include the street name or P.O. Box number (if available), and the city and/or province where the manufacturing occurs. In the case of a shipment covered by a single export visa document containing products which are each manufactured by a number of different companies, the name and address of each company involved should be listed on the export visa document. If additional space is needed for listing the name and address of the firms, the back of the export visa document may be used. Responsible officials will make their best efforts to determine the name and address of a firm or firms which best meet the basic criterion of being an actual manufacturer of the product. This information should appear on the export visa document prior to export from Egypt. However, for goods exported during the period February 15, 1993 through March 14, 1993, the importer may type this information on the front of the original visa document. For goods exported on or after March 15, 1993 without the M.I.D. on the export visa document, a new visa containing this information must be obtained.

See 52 FR 48857, published on December 28, 1987.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 13, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Egypt which were not properly visaed by the Government of the Arab Republic of Egypt.

Effective on February 15, 1993, for goods produced or manufactured in Egypt and exported from Egypt on and after February 15, 1993, you are directed to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa be placed on the textile visa document. This information shall appear on the export visa document prior to export from Egypt. However, for goods exported during the period February 15, 1993 through March 14, 1993, the importer may type this information on the front of the original visa document.

Shipments entered for consumption, or withdrawn from warehouse for consumption according to this directive which are not accompanied by an appropriate export visa which includes the identification of the manufacturer on the visa document shall be denied entry and a new visa containing this information must be obtained

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1269 Filed 1–19–93; 8:45 am]

BILLING CODE 3510-DR-F

Request for Public Comments on Bilateral Textile Consultations With Indonesia on Certain Cotton, Wool, and Man-Made Fiber Textile Products

January 13, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6704. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 30, 1992, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended and extended, between the Governments of the United States and Indonesia, the United States Government requested consultations with the Government of Indonesia with respect to robes and dressing gowns in Categories 350/650 and men's and boys' trousers, breeches and shorts in Category 447.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 350/650 and 447, the Government of the United States has decided to control imports during the ninety-day period which began on December 30, 1992 and extends through March 29, 1993.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 350/650 and 447, produced or manufactured in Indonesia and exported during the prorated period beginning on March 30, 1993 and extending through June 30, 1993, of not less than 23,328 dozen (Categories 350/650) and 3,679 dozen (Category 447).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 350/650 and 447, under the agreement with Indonesia, or to comment on domestic production or availability of products included in Categories 350/650 and 447, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Indonesia.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 350/650 and 447. Should such a solution be reached in consultations with the Government of Indonesia, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Indonesia

Category 350/650—Cotton and Man-made fiber robes and dressing gowns

December 1992

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, from Indonesia reached 84,184 dozen in year ending October 1992, 24 percent above the 67,761 dozen imported in the year ending October 1991. During the first ten months of 1992, Category 350/650 imports from Indonesia reached 68,762 dozen, an increase of 15 percent over the January-October 1991 level.

The sharp and substantial increase in Category 350/650 imports from Indonesia is causing a real risk of disruption in the U.S. market for cotton and man-made fiber robes and dressing gowns.

Import Penetration and Market Share

U.S. production of cotton and man-made fiber robes and dressing gowns, Category 350/650, declined from 3,385,000 dozen in 1987 to 1,599,000 dozen in 1991, a 53 percent decline. This decline continued in 1992, with U.S. production falling to 586,000 dozen during the first six months of 1992, 13 percent below the January-June 1991 level. In contrast, U.S. imports of cotton and man-made fiber robes and dressing gowns, Category 350/650, increased from 1,342,000 dozen in 1987 to 1,983,000 dozen in 1991, an increase of 48 percent. Category 350/650 imports continued to increase in 1992, up 12 percent in the first ten months of 1992 over the January-October 1991 level.

The ratio of imports to production tripled, increasing from 40 percent in 1987 to 124 percent in 1991. This trend continued in 1992, with the ratio of imports to production reaching 153 percent during January-June 1992. The domestic manufacturers' share of the U.S. market fell from 72 percent in 1987 to 45 percent in 1991, a decline of 27 percentage points. This decline continued, with the domestic manufacturers' share of the U.S. market falling to 39 percent during the first half of 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 70 percent of Category 350/650 imports from Indonesia during the year ending October 1992 entered the U.S. under HTSUSA number 6208.91.1010—women's cotton bathrobes and dressing gowns. These bathrobes and dressing gowns entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable bathrobes and dressing gowns.

Market Statement—Indonesia

Category 447—Men's and boys' wool trousers, breeches and shorts

December 1992

Import Situation and Conclusion

U.S. imports of men's and boys' wool trousers, slacks and shorts, Category 447, from Indonesia reached 17,824 dozen in the year ending October 1992, more than double the 7,680 dozen imported during the year ending October 1991. During the first ten months of 1992, imports of men's and boys' wool trousers, slacks and shorts, Category 447, from Indonesia reached 16,647 dozen, nearly three times the 6,014 dozen imported during the January-October 1991 period. Indonesia became the sixth largest supplier of men's and boys' wool trousers, slacks and shorts to the U.S. market, accounting for 6 percent of total Category 447 imports in the first ten months of 1992. During the comparable period in 1991, Indonesia ranked eighth among the major suppliers, accounting for 3 percent of total Category 447 imports.

The sharp and substantial increase in Category 447 imports from Indonesia is causing a real risk of disruption in the U.S. market for men's and boys' wool trousers, slacks and shorts.

Import Penetration and Market Share

U.S. production of men's and boys' wool trousers, slacks and shorts, Category 447, has declined in every year since 1988, falling from 858,000 dozen in 1988 to 350,000 dozen in 1991, a 59 percent decline. Production continues to decline in 1992, falling from 175,000 dozen during the first half of 1991, to the 173,000 dozen produced during January-June 1992. Imports for men's and boys' wool trousers, slacks, and shorts, Category 447, declined in 1989 and 1990, then increased to 279,000 dozen in 1991, 12 percent above the 1990 level. Imports are surging in 1992, up 20 percent in the first ten months of 1992 over the January-October 1991 level. The ratio of imports to domestic production increased from 54 percent in 1987 to 80 percent in 1991. This increase continued in 1992, with the ratio of imports to production reaching 95 percent for the first half of 1992. The domestic manufacturers' share of the men's and boys' wool trousers, slacks, and shorts market declined from 65 percent in 1987, to 56 percent in 1991, a decline of 9 percentage points. This decline continued in 1992, with the domestic manufacturers' share of the U.S. market falling to 51 percent during the first half of 1992.

Duty-Paid Value and U.S. Producers' Price

Approximately 99 percent of Category 447 imports from Indonesia during the year ending October 1992 entered the U.S. under HTSUSA number 6203.41.1010—men's wool trousers and breeches. These men's wool trousers and breeches entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable men's wool trousers and breeches.

Committee for the Implementation of Textile Agreements

January 13, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Agreement, effected by exchange of notes dated September 25 and October 3, 1985, as amended and extended, between the Governments of the United States and Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 25, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 350/650 and 447, produced or manufactured in Indonesia and exported during the period beginning on December 30, 1992 and extending through March 29, 1993, in excess of 27,744 dozen (Categories 350/650), and 4,768 dozen (Category 447).[1]

Textile products which have been exported to the United States on and after July 1, 1992 in Categories 350/650 shall remain subject to the Group II limit, and in Category 447 shall remain subject to the subgroup limit in Group II established in the directive dated June 5, 1992 for the period July 1, 1992 through June 30, 1993.

Textile products in Categories 350/650 and 447 which have been exported to the United States prior to December 30, 1992 shall not be subject to the limits established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-1272 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DR-F

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[1] The limits have not been adjusted to account for any imports exported after December 29, 1992.

Request for Public Comments on Bilateral Textile Consultations With United Arab Emirates on Certain Cotton and Man-Made Fiber Textile Products

January 13, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on categories for which consultations have been requested, call (202) 482-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 28, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of United Arab Emirates with respect to cotton and man-made fiber textile products in Category 219, produced or manufactured in United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of United Arab Emirates, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Category 219, produced or manufactured in United Arab Emirates and exported during the twelve-month period which began on December 28, 1992 and extends through December 27, 1993, at a level of not less than 619,476 square meters.

A summary market statement concerning Category 219 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 219, or to comment on domestic production or availability of products included in Category 219, is invited to submit 10 copies of such comments or information to J. Hayden Boyd, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of United Arab Emirates.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 219. Should such a solution be reached in consultations with the Government of United Arab Emirates, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements

Market Statement—United Arab Emirates

Category 219—Duck fabric

December

Import Situation and Conclusion

U.S. imports of duck fabric, Category 219, from United Arab Emirates reached 619,476 square meters during the year ending October 1992. United Arab Emirates is a new supplier of duck fabric with imports beginning in January 1992. In just ten months (January October 1992) United Arab Emirates has become the twelfth largest supplier of duck fabric to the U.S., accounting for nearly one percent of total Category 219 imports for the January-October 1992 period.

The sharp and substantial increase in Category 219 imports from United Arab Emirates is disrupting the U.S. market for duck fabric.

Import Penetration and Market Share

U.S. production of duck fabric dropped from 63,436,000 square meters in 1989 to 49,534,000 square meters in 1991, a 22 percent decline. Production continued to decline in 1992 falling to 24,100,000 square meters during the first half of 1992, 10 percent below the January-June 1991 level. In contrast, U.S. imports of duck fabric, Category 219, increased from 70,962,000 square meters in 1989 to 80,275,000 square meters in 1991, a 13 percent increase. Category 219 imports surged in 1992, increasing by 19 percent in the first ten months of 1992 over the January-October 1991 level.

The U.S. producers' share of the U.S. duck fabric market dropped 9 percentage points, falling from 47 percent in 1989 to 38 percent in 1991. The drop in the U.S. producers' market share continued in 1992, falling to 33 percent during the first half of 1992. The ratio of imports to domestic production increased from 112 percent in 1989 to 162 in 1991, and reached 201 percent during the first half of 1992.

Duty-Paid Value and U.S. Producers' Price

All of Category 219 imports from United Arab Emirates during the first ten months of 1992 entered the U.S. under HTSUSA number 5209.19.0060—85 percent or more by weight, unbleached cotton duck fabric other than plain weave, weighing more than 200 grams per square meter. These fabrics entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable duck fabrics.

[FR Doc. 93-1270 Filed 1-19-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment and First Meeting of the Department of Defense (DoD) Depot Maintenance Consolidation Study Group

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92-463, "Federal Advisory Committee Act," notice is hereby given that the DoD Depot Maintenance Consolidation Study Group is being established.

The DoD Depot Maintenance Consolidation Study Group is being established under severely restrictive time constraints to provide advice and recommendations to the Chairman of the Joint Chiefs of Staff and the Secretary of Defense on the existing and future depot maintenance structure in each of the Military Services and the Coast Guard of the Department of Transportation. The principal objective of the Study Group is to determine how best to organize Defense depots to meet peacetime and warfighting requirements, and to identify excess capacity and duplication in the DoD depot maintenance systems. The Study Group will launch an intensive Ad hoc effort to develop alternatives to existing depot maintenance structures that will support acceptable readiness requirements, sustain forces during crisis response and contingency operations, and return equipment to necessary readiness standards upon redeployment. It is expected that the Study Group will complete all tasks in less than a year.

The Study Group will be comprised of a well-balanced team of approximately ten senior experts in depot maintenance operations, and will include representatives from the Military Services, industry, and the private sector. The Group composition reflects consideration for the functions to be performed and the interest groups potentially affected

Because of the urgency to initiate the study as soon as possible, less than the normally allotted time is being taken for this notice of establishment and first meeting. The Study Group recommendations must be made and reviewed in sufficient time to dovetail with other retrenchment recommendations for consideration by the Secretary of Defense, and potential submission to the Base Realignment and Closure Commission, which is due to commence hearings again early this year. Moreover, the Study Group will convene in an open meeting on January 26, 1993 at 1 p.m. in room 2E 827, the Pentagon, Washington, DC.

For further information regarding the DoD Depot Maintenance Consolidation Study, contact Col. John T. Burton, 703-697-1137.

Dated: January 14, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-1322 Filed 1-14-93; 2:15 pm]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Nuclear Agency (DNA)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Nuclear Agency will meet in closed session on January 28–29, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the technology base program and technology application programs of the Defense Nuclear Agency (DNA) to determine the impact on national security of the possible cessation of underground nuclear weapons effects testing, and the planned reduction in developing new nuclear-survivable weapon systems.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: January 14, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–1323 Filed 1–19–93; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Armaments, Munitions, and Chemical Command (AMCCOM) Contractor Performance Certification Program (CP) 2

AGENCY: U.S. Army Armament, Munitions and Chemical Command, DoD.

ACTION: Notice.

SUMMARY: The AMCCOM (CP) 2 is a voluntary program open to all contractors who have had or anticipate having AMCCOM, Armament Research Development Engineering Center (ARDEC), or Chemical Biological Defense Agency (CBDA) contracts.

Under this program, contractors who exhibit a total commitment to maintaining an effective design/development process, and producing a quality product; have implemented and utilize process control, employment preventive/proactive audit procedures, demonstrate aggressive and continuous efforts to improve quality and productivity, and stand behind their product are formally recognized. The certification process is rigorous—often taking two years to complete. However, there are significant benefits that result from this effort. For certified facilities, government oversight is reduced and certain requirements, which may be required for non-certified contractors, are waived due to the decreased risk to the Government. Additional emphasis is anticipated in future contracting as we continue our pursuit of best value contracting.

FOR FURTHER INFORMATION CONTACT: For further information concerning design/development for non-chemical items contact: Bob Scott or Ron Moore, ARDEC, SMCAR-QR, Dover, NJ 07806–5000, (201) 724–02550 or (201) 724–2141.

For further information concerning design/development for chemical items contact: Jim Pennington or Bud Lilly, CBDA, SCBRD-ODQ-Q, Edgewood, MD 21010–5423, (410) 671–1151 or (410) 671–2441.

For further information concerning production certification contact: David D. House or Celia M. Hadden, AMCCOM, AMSMC–QAD–P, Rock Island, IL 61299–6000, (309) 782–6467.

SUPPLEMENTARY INFORMATION: Contractors voluntarily initiate the certification process by expressing a total commitment to quality and formally requesting acceptance into the program. An extensive initial review of the contractor's facility is conducted jointly with the contractor and areas which require improvement are identified. Once the contractor meets improvement thresholds and passes a final audit, he/she is formally recognized as a (CP) 2 certified contractor. Contractors who become (CP) 2 certified gain the advantages inherent in producing quality designs/products. Production advantages include reduced scrap and rework costs, reduced contractor inspection (since the processes are controlled), reduced inventory requirements, and reduced paperwork (due to the reduction in defective material and the corresponding reports). These advantages should enable, but do not guarantee, a more competitive bid price posture in response to solicitations. Additionally, certain testing and reporting requirements which are normally imposed on non (CP) 2 contractors, are waived for (CP) 2 contractors. We are constantly pursuing methods of expanding the certification process in order to increase the mutual benefits of certification. The ANSI Q90 series qualify program requirements forms the basis for the design/development criteria and we are currently assuring the (CP) 2 production certification criteria appropriately accommodates the ANSI Q90 series as well as MIL–Q–9858A, Quality Program Requirements. Additionally, we are investigating means of assuring the benefits of dealing with certified contractors are factored into the contract award process. It is anticipated that the benefits of certification will continue to increase in future contracting.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–1226 Filed 1–19–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Draft Remedial Investigation/Feasibility Study-Environmental Impact Statement for Remedial Action at the Chemical Plant Area of the Weldon Spring Site, Weldon Spring, Missouri

AGENCY: Department of Energy (DOE).

ACTION: Extension of public comment period.

SUMMARY: DOE, after consultation with the Environmental Protection Agency Region VII (EPA), has decided to extend to February 19, 1993, the public comment period on the draft remedial investigation/feasibility study-environmental impact statement (RI/FS-EIS) for remedial action at the Chemical Plant Area at the Weldon Spring Site, Weldon Spring, Missouri (DOE/EIS-0185D, EPA EIS No. 920463).

DATES: Comments on the draft RI/FS-EIS should be postmarked by February 19, 1993, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the draft RI/FS-EIS should be addressed to: Stephen McCracken, Project Manager, Weldon Spring Site Remedial Action Project (WSSRAP), U.S. Department of Energy, 7295 Highway 94 South, St. Charles, Missouri 63304. Telephone: (314) 441-8978. Fax number: (314) 447-0739.

FOR FURTHER INFORMATION CONTACT: For further information on WSSRAP, contact Stephen McCracken at the above address. For further information on DOE's National Environmental Policy Act (NEPA) procedures, contact: Carol Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-4600 or (800) 472-2758. For further information on DOE's Comprehensive Environmental Response, Compensation, and Liability

Act (CERCLA) procedures, contact: Kathleen Taimi, Director, Office of Environmental Compliance, EH-22, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586-2113.

SUPPLEMENTARY INFORMATION: On November 27, 1992, the Environmental Protection Agency published a notice in the **Federal Register** (57 FR 56339) announcing the availability of DOE's draft RI/FS-EIS (DOE/EIS-0185D, EPA EIS No. 920463) and the close of the public comment period on January 20, 1993. DOE's draft RI/FS-EIS for remedial action at the Chemical Plant Area at the Weldon Spring Site integrates NEPA values with the requirements of CERCLA. In response to requests from several parties to extend the comment period, and to ensure that all interested parties have the opportunity to comment, DOE, after consultation with EPA, is extending the comment period to February 19, 1993. Comments should be postmarked by February 19, 1993, to ensure consideration; comments postmarked after that date will be considered to the extent practicable.

Issued in Washington, D.C., January 14, 1993.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93-1506 Filed 1-19-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP93-144-000, et al.]

High Island Offshore System, et al.; Natural Gas Certificate filings

January 11, 1993.

Take notice that the following filings have been made with the Commission:

1. High Island Offshore System

[Docket No. CP93-144-000]

Take notice that on January 4, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to section (7)(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Transcontinental Gas Pipe Line Corporation (Transco).

In its application, HIOS proposes to terminate the firm transportation service which HIOS is rendering in accordance with HIOS' Rate Schedule T-4, as well as associated Interruptible Overrun Transportation Service volumes rendered in accordance with HIOS' Rate Schedule I. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T-4, effective June 10, 1993, in accordance with the terms of such rate schedule and in accordance with timely notices given by Transco to HIOS.

HIOS requests that the abandonment be conditioned upon Transco remaining subject to and liable for any transition costs, exit fees, or other similar charges that are imposed as a result of HIOS' restructuring pursuant to Order Nos. 636, *et seq.*

Comment date: February 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp.

[Docket No. CP93-146-000]

Take notice that on January 6, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93-146-000, an application pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate approximately 13.3 miles of 16, 20, and 24-inch mainline pipeline as replacements for 13.3 miles of aged and deteriorated 12, 16, and 20-inch pipeline in various counties in Ohio, West Virginia, and Pennsylvania.

Specifically, Columbia intends to construct and operate approximately 1.1 miles of 16-inch pipeline in two sections to replace approximately 1.1 miles of 12-inch pipeline designated as Columbia's L Line in Medina County, Ohio.

Also, Columbia proposes to construct and operate approximately 8.2 miles of 16 and 20-inch pipeline in three sections to replace approximately 8.2 miles of 16-inch pipeline designated as Columbia's 1570 Line in Marion, Wetzel and Monongalia Counties, West Virginia and Green County, Pennsylvania.

Columbia states that the third project involves the construction and operation of 4.0 miles of 24-inch pipeline as replacement of approximately 4.0 miles of 20-inch pipeline designated as Columbia's KA Line in Mercer and Summers Counties, West Virginia.

The proposed construction is estimated to cost $11,366.

Comment date: February 1, 1993, in accordance with Standard Paragraph F at the end of the notice.

3. Equitrans, Inc.

[Docket No. CP93-140-000]

Take notice that on December 31, 1992, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, PA 15275, filed in Docket No. CP93-140-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon field sales services to certain customers under Rate Schedules W-1 and W-3, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Equitrans states that no service has been performed under Rate Schedule W-1 and no revenue has been earned since September, 1972, and that no service has been performed under Rate Schedule W-3 and no revenue has been earned since November, 1966. In the interim as indicated by Equitrans, the underlying contracts expired. As a result, Equitrans seeks authorization to abandon the sales service and to terminate Rate Schedules W-1 and W-3 on the basis that the underlying contracts have expired and that there is no contractual obligation to continue the sales.

Comment date: February 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1240 Filed 1-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST93-477-000; ST93-1389-000]

Acadian Gas Pipeline System; Self-Implementing Transactions

January 13, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-477	Acadian Gas Pipeline System.	Natural Gas P/L Co. of Am., et al.	11-02-92	C	5,000	N	I	10-06-92	Indef.
ST93-478	CNG Transmission Corp	Texas Ohio Gas, Inc	11-02-92	G-S	5,000	N	I	10-06-92	Indef.
ST93-479	CNG Transmission Corp	Transport Gas Inc	11-02-92	G-S	1,100	N	I	10-03-92	Indef.
ST93-480	Gulf Energy Pipeline Co	Natural Gas P/L Co. of America.	11-02-92	C	1,500	N	I	10-01-92	Indef.
ST93-481	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co.	11-02-92	C	200	N	I	10-01-92	Indef.
ST93-482	Gulf Energy Pipeline Co	Natural Gas P/L Co. of America.	11-02-92	C	1,000	N	I	10-01-92	Indef.
ST93-483	Arkla Energy Resources	Western Gas Resources	11-02-92	G-S	50,000	N	I	10-23-92	Indef.
ST93-484	Arkla Energy Resources	Tidewest Trading & Transport Co.	11-02-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-485	Arkla Energy Resources	Anthem Energy Co., L.P	11-02-92	G-S	100,000	N	I	10-01-92	Indef.
ST93-486	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-02-92	C	12,000	N	I	10-17-92	Indef.
ST93-487	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-02-92	C	5,000	N	I	10-17-92	Indef.
ST93-488	Delhi Gas Pipeline Corp	Ozark Gas Transmission System.	11-02-92	C	375,000	N	I	10-17-92	Indef.
ST93-489	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-02-92	C	3,000	N	I	10-16-92	Indef.
ST93-490	Delhi Gas Pipeline Corp	ANR Pipeline Co	11-02-92	C	375,000	N	I	10-14-92	Indef.
ST93-491	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-02-92	C	2,000	N	I	10-15-92	Indef.
ST93-492	Gulf Coast Natural Gas Co.	Trunkline Gas Co	11-02-92	C	25,000	N	I	10-03-92	Indef.
ST93-493	Gulf Coast Natural Gas Co.	Transcontinental Gas P/L Corp.	11-02-92	C	50,000	N	I	09-08-92	Indef.

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[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-494	Gulf Coast Natural Gas Co.	Tennessee Gas Pipeline Co.	11-02-92	C	10,000	N	I	10-10-92	Indef.
ST93-495	Sabine Pipe Line Co	IGM Pipeline Co	11-02-92	G-S	22,500	N	F	10-01-92	Indef.
ST93-496	Sabine Pipe Line Co	Natural Gas P/L Co of America.	11-02-92	G	100,000	N	I	10-01-92	Indef.
ST93-497	Colorado Interstate Co	Texaco Gas Marketing Inc.	11-02-92	G-S	8,000	N	I	10-13-92	04-30-93
ST93-498	Natural Gas P/L Co of America.	Superior Natural Gas Corp.	11-02-92	G-S	50,000	N	I	10-02-92	Indef.
ST93-499	Natural Gas P/L Co of America.	Northern American Resources Co.	11-02-92	G-S	10,000	N	F	10-06-92	10-31-92
ST93-500	Panhandle Eastern Pipe Line Co.	American Central Gas Cos.	11-02-92	G-S	57,688	N	F	10-01-92	10-31-92
ST93-501	Tennessee Gas Pipeline Co.	Woodward Marketing, Inc.	11-02-92	G-S	200,000	N	I	10-02-92	Indef.
ST93-502	Tennessee Gas Pipeline Co.	Providence Gas Co	11-02-92	B	15,000	N	I	10-01-92	Indef.
ST93-503	Tennessee Gas Pipeline Co.	Essex County Gas Co	11-02-92	B	900	N	F	10-01-92	Indef.
ST93-504	Kern River Gas Transmission Co.	Nevada Cogeneration Assoc. #2.	11-02-92	G-S	13,000	N	F	10-02-92	Indef.
ST93-505	Transcontinental Gas P/L Corp.	Commonwealth Gas Pipeline Corp.	11-02-92	B	265,000	N	I	07-27-90	Indef.
ST93-506	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	11-02-92	B	3,000	N	I	10-12-89	Indef.
ST93-507	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-02-92	B	300,000	N	I	06-18-90	Indef.
ST93-508	Transcontinental Gas P/L Corp.	City of Greenwood	11-02-92	B	50,000	N	I	07-27-90	Indef.
ST93-509	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	11-02-92	B	75,000	N	I	07-23-90	Indef.
ST93-510	Transcontinental Gas P/L Corp.	Spindletop Gas Distribution System.	11-02-92	B	125,000	N	I	08-15-92	Indef.
ST93-511	Transcontinental Gas P/L Corp.	City of Richmond	11-02-92	B	265,000	N	I	06-16-90	Indef.
ST93-512	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-02-92	B	700,000	N	I	08-06-90	Indef.
ST93-513	Transcontinental Gas P/L Corp.	Mid Louisiana Gas Co	11-02-92	B	76,000	N	I	05-14-90	Indef.
ST93-514	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-02-92	B	275,000	N	I	07-27-90	Indef.
ST93-515	Transcontinental Gas P/L Corp.	Delmarva Power & Light Co.	11-02-92	B	150,000	N	I	07-27-90	Indef.
ST93-516	Transcontinental Gas P/L Corp.	City of Greenwood	11-02-92	B	150,000	N	I	08-06-90	Indef.
ST93-517	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc	11-02-92	B	110,000	N	I	09-17-91	Indef.
ST93-518	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-02-92	B	75,000	N	I	07-27-90	Indef.
ST93-519	Transcontinental Gas P/L Corp.	Virginia Natural Gas, Inc	11-02-92	B	265,000	N	I	07-18-90	Indef.
ST93-520	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-02-92	B	700,000	N	I	08-10-90	Indef.
ST93-521	Transcontinental Gas P/L Corp.	Philadelphia Gas Works	11-02-92	B	120,000	N	I	08-06-90	Indef.
ST93-522	Transcontinental Gas P/L Corp.	Public Service of NC, Inc	11-02-92	B	125,000	N	I	07-25-90	Indef.
ST93-523	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-02-92	B	15,000	N	I	05-30-89	Indef.
ST93-524	Transcontinental Gas P/L Corp.	City of Laurens	11-02-92	B	90,000	N	I	09-12-90	Indef.
ST93-525	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-02-92	B	290,000	N	I	07-11-90	Indef.
ST93-526	Kern River Gas Transmission Co.	Pacific Gas and Electric Co.	11-03-92	G-S	200,000	N	I	10-04-92	Indef.
ST93-527	Trunkline Gas Co	Interstate Gas Supply, Inc.	11-03-92	G-S	10,000	N	I	10-05-92	Indef.
ST93-528	Enogex Inc	Black Marlin Pipeline Co	11-03-92	C	100,000	N	I	10-01-92	Indef.
ST93-529	Enogex Inc	Arkla Energy Resources	11-03-92	C	100,000	N	I	10-02-92	Indef.
ST93-530	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-03-92	B	700,000	N	I	08-06-90	Indef.
ST93-531	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-03-92	B	700,000	N	I	05-05-89	Indef.
ST93-532	Transcontinental Gas P/L Corp.	Polaris Pipeline Corp	11-03-92	B	95,000	N	I	01-15-92	Indef.
ST93-533	Transcontinental Gas P/L Corp.	Corpus Christi Transmission Co.	11-03-92	B	250,000	N	I	05-23-91	Indef.
ST93-534	Transcontinental Gas P/L Corp.	Public Service Co of NC, Inc.	11-03-92	B	800,000	N	I	05-25-90	Indef.
ST93-535	Transcontinental Gas P/L Corp.	Baltimore Gas and Electric Co.	11-03-92	B	600,000	N	I	06-19-90	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93–536	Trunkline Gas Co	Stellar Gas Co	11–04–92	G–S	30,000	N	I	10–15–92	Indef.
ST93–537	Trunkline Gas Co	Philbro Distributors Corp	11–04–92	G–S	100,000	N	I	10–23–92	Indef.
ST93–538	Trunkline Gas Co	Tejas Hydrocarbons Co	11–04–92	G–S	100,000	N	I	10–07–92	Indef.
ST93–539	Trunkline Gas Co	Energy Development Corp.	11–04–92	G–S	75,000	N	I	10–24–92	Indef.
ST93–540	Trunkline Gas Co	Phillips Petroleum Co	11–04–92	G–S	20,000	N	I	10–10–92	Indef.
ST93–541	Trunkline Gas Co	Marathon Oil Co	11–04–92	G–S	30,000	N	I	10–08–92	Indef.
ST93–542	Trunkline Gas Co	O & R Energy, Inc	11–04–92	G–S	50,000	N	I	10–24–92	Indef.
ST93–543	Trunkline Gas Co	Amoco Energy Trading Corp.	11–04–92	G–S	50,000	N	I	10–09–92	Indef.
ST93–544	Trunkline Gas Co	Mobil Natural Gas, Inc	11–04–92	G–S	100,000	N	I	10–07–92	Indef.
ST93–545	Trunkline Gas Co	Kerr-McGee Corp	11–04–92	G–S	3,521	N	I	10–10–92	Indef.
ST93–546	Trunkline Gas Co	Stellar Gas Co	11–04–92	G–S	50,000	N	I	10–23–92	Indef.
ST93–547	Trunkline Gas Co	Stellar Gas Co	11–04–92	G–S	50,000	N	I	10–06–92	Indef.
ST93–548	Natural Gas P/L Co. of America.	CNG Producing Co	11–04–92	G–S	10,000	N	I	10–08–92	Indef.
ST93–549	Natural Gas P/L Co. of America.	Gasmark Ltd	11–04–92	G–S	100,000	N	I	10–06–92	Indef.
ST93–550	Natural Gas P/L Co. of America.	Tristar Gas Co	11–04–92	G–S	50,000	N	I	10–06–92	Indef.
ST93–551	Transcontinental Gas P/L Corp.	Texaco Gas Marketing, Inc.	11–04–92	B	170,000	N	I	10–20–92	Indef.
ST93–552	Transcontinental Gas P/L Corp.	City of Richmond	11–04–92	B	150,000	N	I	03–30–90	Indef.
ST93–553	Transcontinental Gas P/L Corp.	Atlanta Gas Light Co	11–04–92	B	70,000	N	I	08–16–90	Indef.
ST93–554	Transcontinental Gas P/L Corp.	Philadelphia Electric Co	11–04–92	B	150,000	N	I	04–16–90	10–09–90
ST93–555	Westar Transmission Co	Transwestern Pipeline Co.	11–05–92	C	25,000	N	I	10–26–92	Indef.
ST93–556	Kentucky West Virginia Gas Co.	Lindsey and Elliot	11–05–92	G–S	100	N	I	10–15–92	Indef.
ST93–557	Trunkline Gas Co	BP Gas, Inc	11–05–92	G–S	12,405	N	I	10–08–92	Indef.
ST93–558	Trunkline Gas Co	Central Illinois Public Service Co.	11–05–92	G–S	5,000	N	I	10–07–92	Indef.
ST93–559	K N Energy, Inc	BHP Petroleum, Inc	11–05–92	G–S	5,500	N	I	10–05–92	09–01–94
ST93–560	K N Energy, Inc	Texaco Exploration & Production.	11–05–92	G–S	10,000	N	I	09–01–92	Indef.
ST93–561	K N Energy, Inc	Kanco Gathering Co	11–05–92	G–S	70,000	N	I	10–09–92	12–31–08
ST93–562	Northern Natural Gas Co	Bridgegas U.S.A., Inc	11–05–92	G–S	200,000	N	F/I	10–01–92	Indef.
ST93–563	Transok Gas Trans. Co	ANR P/L Co., et al	11–05–92	C	50,000	N	I	10–27–92	Indef.
ST93–564	Texas Gas Transmission Corp.	Texaco Inc	11–05–92	G–S	100,000	A	I	10–22–92	Indef.
ST93–565	Stingray Pipeline Co	Panhandle Eastern Pipeline Co.	11–05–92	K.	1,400	N	F	11–01–92	10–31–93
ST93–566	Oasis Pipe Line Co	Transwestern Pipeline Co.	11–05–92	C	100,000	N	I	09–16–92	Indef.
ST93–567	Oasis Pipe Line Co	El Paso Natural Gas Co	11–05–92	C	50,000	N	I	09–29–92	Indef.
ST93–568	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11–05–92	C	100,000	N	I	10–29–92	Indef.
ST93–569	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11–05–92	C	25,000	N	I	10–13–92	Indef.
ST93–570	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11–05–92	C	100,000	N	I	10–20–92	Indef.
ST93–571	CNG Transmission Corp	Direct Gas Supply	11–05–92	G–S	210,000	N	I	10–10–92	Indef.
ST93–572	CNG Transmission Corp	Equitable Resources	11–05–92	G–S	15,000	N	I	10–10–92	Indef.
ST93–573	CNG Transmission Corp	Equitable Resources	11–05–92	G–S	25,000	N	I	10–10–92	Indef.
ST93–574	CNG Transmission Corp	Equitable Resources	11–05–92	G–S	10,000	N	I	10–10–92	Indef.
ST93–575	CNG Transmission Corp	Equitable Resources	11–05–92	G–S	10,000	N	I	10–10–92	Indef.
ST93–576	CNG Transmission Corp	Equitable Resources	11–05–92	G–S	20,000	N	I	10–10–92	Indef.
ST93–577	CNG Transmission Corp	Transport Gas, Inc	11–05–92	G–S	1,100	N	I	10–09–92	Indef.
ST93–578	CNG Transmission Corp	Equitable Resources	11–05–92	G–S	25,000	N	I	10–10–92	Indef.
ST93–579	Houston Pipe Line Co	Black Marlin Pipeline Co	11–05–92	C	100,000	N	I	09–23–92	Indef.
ST93–580	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11–05–92	C	100,000	N	I	09–01–92	Indef.
ST93–581	Houston Pipe Line Co	Florida Gas Transmission Co.	11–05–92	C	50,000	N	I	09–04–92	Indef.
ST93–582	Houston Pipe Line Co	Sabine Pipeline Co	11–05–92	C	100,000	N	I	09–01–92	Indef.
ST93–583	Houston Pipe Line Co	United Gas Pipe Line Co	11–05–92	C	50,000	N	I	09–19–92	Indef.
ST93–584	Houston Pipe Line Co	Trunkline Gas Co	11–05–92	C	50,000	N	I	09–17–92	Indef.
ST93–585	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11–05–92	C	10,000	N	I	09–17–92	Indef.
ST93–586	Transok Gas Transmission Co.	ANR Pipeline Co., et al	11–05–92	C	100,000	N	I	10–22–92	Indef.
ST93–587	Transtexas Pipeline Co	United Gas Pipe Line Co	11–06–92	C	5,000	N	I	10–06–92	Indef.
ST93–588	Colorado Interstate Gas Co.	North American Resource Co.	11–06–92	G–S	10,000	N	I	10–16–92	Indef.
ST93–589	Exxon Gas System, Inc	Enogex Services Corp	11–06–92	C	25,000	N	I	10–17–92	Indef.
ST93–590	Exxon Gas System, Inc	Energy Consultants, Inc	11–06–92	C	5,000	N	I	10–07–92	Indef.
ST93–591	Questar Pipeline Co	Kansas Public Service	11–06–92	B	40,000	N	I	10–17–92	Indef.
ST93–592	Questar Pipeline Co	Union Pacific Fuels, Inc	11–06–92	G–S	90,000	N	I	10–17–92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-593	Questar Pipeline Co	Industrial Gas Resource Corp.	11-06-92	G-S	4,000	N	I	11-01-92	Indef.
ST93-594	Endevco Pipeline Co	Texas Eastern Transmission Corp.	11-06-92	C	25,000	N	I	01-01-90	Indef.
ST93-595	Endevco Pipeline Co	Texas Eastern Transmission Corp.	11-06-92	C	30,000	N	I	01-01-92	Indef.
ST93-596	Endevco Pipeline Co	Champion International Corp.	11-06-92	C	20,000	N	I	01-01-92	12-10-97
ST93-597	Kern River Gas Transmission Co.	Chevron U.S.A., Inc	11-06-92	G-S	100,000	N	F	10-10-92	Indef.
ST93-598	Tennessee Gas Pipeline Co.	ANR Pipeline Co	11-06-92	G	34,000	N	I	07-21-92	Indef.
ST93-599	Tennessee Gas Pipeline Co.	Mobil Natural Gas, Inc	11-06-92	G-S	100,000	N	I	10-23-92	Indef.
ST93-600	Mississippi River Trans. Corp.	Exxon Co., U.S.A	11-06-92	G-S	20,000	A	F	10-09-92	Indef.
ST93-601	Mississippi River Trans. Corp.	Semco Energy Services, Inc.	11-06-92	G-S	20,000	N	I	10-09-92	Indef.
ST93-602	Mississippi River Trans. Corp.	Western Gas Resources, Inc.	11-06-92	G-S	50,000	N	I	10-09-92	Indef.
ST93-603	Williams Natural Gas Co	Western Gas Interstate Co.	11-06-92	G-S	200	N	I	10-07-92	10-01-93
ST93-604	Northwest Pipeline Corp	IGI Resources, Inc	11-06-92	G-S	29,000,000	N	F	10-07-92	10-31-92
ST93-605	Trancontinental Gas P/L Corp.	City of Greenwood	11-06-92	B	65,500	N	I	11-22-88	Indef.
ST93-606	Louisiana Resources P/L Co., L.P.	Olympic Fuels	11-06-92	C	20,000	N	I	11-01-92	Indef.
ST93-607	Louisiana Resources P/L Co., L.P.	Florida Gas Transmission Co.	11-06-92	C	10,000	N	I	11-01-92	Indef.
ST93-608	Delhi Gas Pipeline Corp	Williams Natural Gas Co	11-06-92	C	13,000	N	I	10-24-92	Indef.
ST93-609	Delhi Gas Pipeline Corp	El Paso Natural Gas Co	11-06-92	C	20,000	N	I	10-11-92	Indef.
ST93-610	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-06-92	C	6,000	N	I	10-16-92	Indef.
ST93-611	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	1,500	N	I	10-01-92	Indef.
ST93-612	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	150	N	I	10-18-92	Indef.
ST93-613	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	50	N	I	10-18-92	Indef.
ST93-614	Panhandle Eastern Pipe Line Co.	Western Gas Resources, Inc.	11-06-92	G-S	20,000	N	I	10-07-92	Indef.
ST93-615	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11-06-92	G-S	250	N	I	10-01-92	Indef.
ST93-616	United Gas Pipe Line Co	Canadian Occidental of Calif., Inc.	11-06-92	G-S	524,000	N	I	10-26-92	02-23-93
ST93-617	United Gas Pipe Line Co	Pogo Producing Co	11-06-92	G-S	125,000	N	I	10-22-92	02-19-93
ST93-618	United Gas Pipe Line Co	Shell Gas Trading Co	11-06-92	G-S	209,600	N	I	10-20-92	02-17-93
ST93-619	United Gas Pipe Line Co	NGC Transportation, Inc	11-06-92	G-S	157,200	N	I	10-15-92	02-17-93
ST93-620	United Gas Pipe Line Co	Polaris Pipeline Corp	11-06-92	G-S	20,960	N	I	10-20-92	02-17-93
ST93-621	United Gas Pipe Line Co	Transco Energy Marketing Co.	11-06-92	G-S	104,800	N	I	10-21-92	02-18-93
ST93-622	United Gas Pipe Line Co	Chervon U.S.A. Inc	11-06-92	G-S	104,800	N	I	10-19-92	02-16-93
ST93-623	Algonquin Gas Transmission Co.	Distrgas of Massachusetts Corp.	11-09-92	B	52,412	N	F	10-15-92	10-31-92
ST93-624	Channel Industries Gas Co.	Northern Natural Gas Co	11-09-92	C	75,000	N	I	10-24-92	Indef.
ST93-625	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	11-09-92	G-S	40,000	N	I	10-16-92	Indef.
ST93-626	Enogex Inc	Black Marlin Pipeline Co	11-09-92	C	10,000	N	I	10-03-92	Indef.
ST93-627	Northwest Pipeline Corp	Colorado Interstate Gas Co.	11-09-92	G	2,000	N	I	10-21-92	Indef.
ST93-628	Transcontinental Gas P/L Corp.	City of Roanoke	11-09-92	B	15,000	N	I	09-11-87	Indef.
ST93-629	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	11-09-92	B	100,000	N	I	10-15-92	Indef.
ST93-630	Tennessee Gas Pipeline Co.	Riley Natural Gas Co	11-09-92	G-S	25,000	N	I	10-10-92	Indef.
ST93-631	United Texas Transmission Co.	Brooklyn Interstate Natural Gas.	11-09-92	G-I	12,000	N	I	10-10-92	Indef.
ST93-632	United Texas Transmission Co.	Natural Gas P/L Co. of America.	11-09-92	C	2,800	Y	I	10-17-92	Indef.
ST93-633	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp	11-09-92	G-HT	5,000	N	I	09-01-92	Indef.
ST93-634	Rocky Mountain Natural Gas Co.	Northwest Pipeline Corp	11-09-92	G-HT	10,000	N	I	11-07-90	10-24-93
ST93-635	United Gas Pipeline Co	Vesta Energy Co	11-09-92	G-S	104,800	N	I	10-15-92	02-12-93
ST93-636	United Gas Pipe Line Co	Western Gas Resources, Inc.	11-09-92	G-S	75,000	N	I	10-15-92	02-12-93
ST93-637	Gasdel Pipeline System Inc.	FMI Hydrocarbons Co	11-09-92	G-S	122,793	N	I	11-01-92	Indef.
ST93-638	Gasdel P/L System Incorp.	FMI Hydrocarbons Co	11-09-92	G-S	5,960	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-639	Gasdel P/L System Incorp.	Amerada Hess Corp	11-09-92	G-S	4,900	N	I	11-02-92	Indef.
ST93-640	Arkla Energy Resources	Arkla Energy Marketing Co.	11-09-92	G-S	25,000	A	F	11-01-92	Indef.
ST93-641	Arkla Energy Resources	Scana Hydrocarbons, Inc.	11-09-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-642	Arkla Energy Resources	Global Petroleum Corp	11-09-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-643	Arkla Energy Resources	NJR Energy Corp	11-09-92	G-S	2,651	N	F	11-01-92	Indef.
ST93-644	Southern Natural Gas Co.	Petroleum Source & Systems Group.	11-09-92	G-S	4,000	N	I	11-01-92	Indef.
ST93-645	Southern Natural Gas Co.	Town of Bay Springs	11-09-92	B	150	N	F	11-01-92	03-31-93
ST93-646	Southern Natural Gas Co.	Dowling Energy, Inc	11-09-92	G-S	5,000	N	I	10-29-92	Indef.
ST93-647	Southern Natural Gas Co.	Yuma Gas Corp	11-09-92	G-S	50,000	N	I	10-15-92	Indef.
ST93-648	Southern Natural Gas Co.	City of La Grange	11-09-92	G-S	2,211	N	F	10-13-92	10-01-97
ST93-649	Southern Natural Gas Co.	City of La Grange	11-09-92	G-S	4,659	N	F	10-01-92	10-01-97
ST93-650	Kern River Gas Trans. Co.	Nevada Cogeneration Associates.	11-10-92	G-S	13,000	N	F	10-12-92	Indef.
ST93-651	Transok Gas Trans. Co	ANR P/L Co., et al	11-10-92	C	25,000	N	I	11-01-92	Indef.
ST93-652	Transok Gas Trans. Co	ANR P/L Co., et al	11-10-92	C	10,000	N	I	11-02-92	Indef.
ST93-653	Transok Gas Trans. Co	ANR P/L Co., et al	11-10-92	C	50,000	N	I	11-01-92	Indef.
ST93-654	Transok Gas Trans. Co	Arkla Energy, Inc., et al	11-10-92	C	25,000	N	I	11-01-92	Indef.
ST93-655	El Paso Natural Gas Co	Amoco Energy Trading Corp.	11-10-92	G-S	50,000	N	I	10-21-92	Indef.
ST93-656	El Paso Natural Gas Co	Anthem Energy Co., L.P	11-10-92	G-S	1,030	N	I	10-31-92	Indef.
ST93-657	Five Flags Pipe Line Co	Okaloosa Gas District	11-10-92	C	13,000	N	I	04-01-92	03-31-97
ST93-658	Transcontinental Gas P/L Corp.	Victoria Gas Corp	11-10-92	G-S	220,000	N	I	10-22-92	Indef.
ST93-659	Transcontinental Gas P/L Corp.	South Carolina Pipeline Corp.	11-10-92	B	875,000	N	I	07-16-90	Indef.
ST93-660	U-T Offshore System	Panhandle Eastern Pipe Line Co.	11-10-92	K	1,000	N	I	11-01-92	10-31-93
ST93-661	Transcontinental Gas P/L Corp.	CNG Transmission Corp	11-10-92	G	725,000	N	I	10-25-92	Indef.
ST93-662	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-10-92	B	150,000	N	I	11-03-92	Indef.
ST93-663	United Gas Pipe Line Co	Western Gas Resources, Inc.	11-12-92	G-S	71,500	N	I	10-29-92	02-26-93
ST93-664	United Gas Pipe Line Co	Aquila Energy Marketing Corp.	11-12-92	G-S	52,400	N	I	10-27-92	02-24-93
ST93-665	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	44,016	N	I	10-27-92	02-24-93
ST93-666	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	85,412	N	I	10-27-92	02-24-93
ST93-667	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	83,010	N	I	10-27-92	02-24-93
ST93-668	United Gas Pipe Line Co	Calcasieu Gas Gathering System.	11-12-92	G-S	60,000	N	I	10-27-92	02-24-93
ST93-669	United Gas Pipe Line Co	Stellar Gas Co	11-12-92	G-S	524,000	N	I	10-30-92	02-27-93
ST93-670	United Gas Pipe Line Co	Hadson Gas Systems, Inc.	11-12-92	G-S	20,000	N	I	10-27-92	02-24-93
ST93-671	United Gas Pipe Line Co	Prior Intrastate Corp	11-12-92	G-S	524,000	N	I	10-27-92	02-24-93
ST93-672	United Gas Pipe Line Co	NGC Transportation, Inc	11-12-92	G-S	157,200	N	I	10-27-92	02-24-93
ST93-673	United Gas Pipe Line Co	MG Natural Gas Corp	11-12-92	G-S	41,920	N	I	10-30-92	02-27-93
ST93-674	Transok, Inc	Arkla Energy Resources	11-12-92	C	50,000	N	I	10-20-92	Indef.
ST93-675	Transok, Inc	Panhandle Eastern Pipe Line Co.	11-12-92	C	50,000	N	I	10-23-92	Indef.
ST93-676	Transok, Inc	Natural Gas P/L Co. of America.	11-12-92	C	100,000	N	I	10-29-92	Indef.
ST93-677	Transok, Inc	Northern Natural Gas Co	11-12-92	C	100,000	N	I	10-17-92	Indef.
ST93-678	Transamerican Natural Gas Corp.	United Gas Pipe Line Co	11-12-92	C	10,000	N	I	09-10-92	Indef.
ST93-679	Transamerican Natural Gas Corp.	Natural Gas P/L Co. of America.	11-12-92	C	20,000	N	I	10-10-92	Indef.
ST93-680	Transamerican Natural Gas Corp.	United Gas Pipe Line Co	11-12-92	C	10,000	N	I	10-09-92	Indef.
ST93-681	Transamerican Natural Gas Corp.	Texas Eastern Transmission Co.	11-12-92	C	5,000	N	I	10-20-92	Indef.
ST93-682	Tennessee Gas Pipeline Co.	AGIP Petroleum Co., Inc	11-12-92	G-S	100,000	N	I	10-31-92	Indef.
ST93-683	Tennessee Gas Pipeline Co.	T.W. Phillips Gas and Oil Co.	11-12-92	G-ST	112,474	N	I	10-31-92	Indef.
ST93-684	Tennessee Gas Pipeline Co.	AGIP Petroleum Co., Inc	11-12-92	G-ST	1,000,000	N	I	10-31-92	Indef.
ST93-685	Tennessee Gas Pipeline Co.	Western Gas Marketing USA Ltd.	11-12-92	G-S	450,000	N	I	10-25-92	Indef.
ST93-686	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc	11-12-92	G-S	10,000	N	F	11-01-92	04-30-93

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93–687	Great Lakes Gas Trans. L.P.	ANR Pipeline Co	11–12–92	G	19,084	N	F	11–01–92	10–31–05
ST93–688	Trunkline Gas Co	Santanna Natural Gas Corp.	11–12–92	G–S	100,000	N	I	10–29–92	Indef.
ST93–689	Panhandle Eastern Pipe Line Co.	MG Natural Gas Corp	11–12–92	G–S	21,030	N	F	10–01–92	Indef.
ST93–690	Texas Eastern Transmission Corp.	East Ohio Gas Co	11–12–92	B	21,500	N	I	10–23–92	Indef.
ST93–691	Texas Eastern Transmission Corp.	City of Belmont	11–12–92	B	19,750	N	I	10–16–92	Indef.
ST93–692	Florida Gas Transmission Co.	Procter & Gamble Cellulose Co.	11–12–92	G–S	15,050	N	I	10–13–92	Indef.
ST93–693	Florida Gas Transmission Co.	TECO Power Services	11–12–92	G–S	62,600	N	I	10–16–92	Indef.
ST93–694	Natural Gas P/L Co. of America.	Midcon Marketing Corp	11–12–92	G–S	1,000	A	I	11–01–92	02–28–93
ST93–695	Enogex Inc	United Gas Pipe Line Co	11–12–92	C	50,000	N	I	10–27–92	Indef.
ST93–696	Enogex Inc	Ozark Gas Transmission System.	11–12–92	C	50,000	N	I	10–28–92	Indef.
ST93–697	Enogex Inc	Arkla Energy Resources	11–12–92	C	50,000	N	I	10–29–92	Indef.
ST93–698	Enogex Inc	Phillips Gas Pipeline Co	11–12–92	C	50,000	N	I	11–01–92	Indef
ST93–699	Enogex Inc	Ozark Gas Transmission System.	11–12–92	C	50,000	N	I	11–07–92	Indef.
ST93–700	Enogex Inc	Black Marlin Pipeline Co	11–12–92	C	50,000	N	I	03–14–92	Indef.
ST93–701	Enogex Inc	Black Marlin Pipeline Co	11–12–92	C	15,000	N	I	04–29–92	Indef.
ST93–702	Enogex Inc	EL Paso Natural Gas Co	11–12–92	C	5,300	N	I	03–18–92	Indef.
ST93–703	Enogex Inc	Black Marlin Pipeline Co	11–12–92	C	100,000	N	I	04–01–92	Indef
ST93–704	Enogex Inc	Natural Gas P/L Co. of America.	11–12–92	C	50,000	N	I	05–16–92	Indef.
ST93–705	Enogex Inc	Northern Natural Gas Co	11–12–92	C	50,000	N	I	06–01–92	Indef.
ST93–706	Enogex Inc	Natural Gas P/L Co. of America.	11–12–92	C	10,000	N	I	01–01–92	Indef.
ST93–707	Moraine Pipeline Co	Wisconsin Natural Gas Co.	11–12–92	G–S	30,000	Y	F	11–01–92	08–31–01
ST93–708	Natural Gas P/L Co. of America.	Tansok Gas Co	11–12–92	G–S	20,000	N	F	11–01–92	03–31–93
ST93–709	Mojave Pipeline Co	Southern California Edison Co.	11–12–92	G–S	100,000	N	I	10–08–92	08–30–93
ST93–710	Mojave Pipeline Co	Santa Fe Energy Resources, Inc.	11–12–92	G–S	20,000	N	F	06–15–92	06–15–07
ST93–711	Mojave Pipeline Co	Natural Gas Clearinghouse.	11–12–92	G–S	400,000	N	I	04–25–92	04–23–93
ST93–712	Mojave Pipeline Co	Meridian Oil, Inc	11–12–92	G–S	150,000	N	I	09–28–92	09–28–07
ST93–713	Mojave Pipeline Co	Mobil Natural Gas, Inc	11–12–92	G–S	20,000	N	F	04–01–92	04–01–07
ST93–714	Mojave Pipeline Co	Los Angeles Dept. of Water & Power.	11–12–92	G–S	50,000	N	I	08–22–92	08–22–07
ST93–715	Mojave Pipeline Co	Los Angeles Dept. of Water & Power.	11–12–92	G–S	50,000	N	F	08–22–92	08–22–07
ST93–716	Mojave Pipeline Co	Eron Gas Marketing, Inc	11–12–92	G–S	400,000	N	I	06–12–92	03–31–92
ST93–717	Mojave Pipeline Co	Bridgegas U.S.A., Inc	11–12–92	G–S	200,000	N	I	03–26–92	03–26–93
ST93–718	Mojave Pipeline Co	Access Energy Corp	11–12–92	G–S	100,000	N	I	03–29–92	03–29–93
ST93–719	Mojave Pipeline Co	Texco, Inc	11–12–92	G–S	185,000	N	I	03–01–92	03–01–07
ST93–720	Mojave Pipeline Co	United States Borax & Chemical Corp.	11–12–92	G–S	185,000	N	F	03––1–92	03–01–07
ST93–721	Northwest Pipeline Corp	Bonneville Fuels Marketing Corp.	11–12–92	G–S	2,400	N	F	09–01–92	Indef.
ST93–722	Northwest Pipeline Corp	Williams Gas Marketing Co.	11–12–92	G–S	100,000	A	F	10–13–92	Indef.
ST93–723	Eaton Rapids Gas Storage System.	Citizens Gas & Coke Utility.	11–12–92	G–ST	35,000	N	N/A	11–01–92	03–31–93
ST93–724	Transcontinental Gas P/L Corp.	Hadson Gas Systems	11–12–92	G–S	500,000	N	I	12–19–91	Indef.
ST93–725	Transcontinental Gas P/L Corp.	Channel Industries Gas Co.	11–12–92	B	500,000	N	I	07–31–92	Indef.
ST93–726	Transcontinental Gas P/L Corp.	Amerada Hess Corp	11–12–92	G–S	750,000	N	I	04–14–92	Indef.
ST93–727	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11–12–92	B	274,000	N	I	02–19–90	Indef.
ST93–728	Transcontinental Gas P/L Corp.	Amerada Hess Corp	11–12–92	G–S	600,000	N	I	10–23–92	Indef.
ST93–729	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	11–12–92	B	65,000	N	I	04–03–92	Indef.
ST93–730	Transcontinental Gas P/L Corp.	Energy Development Corp.	11–12–92	G–S	600,000	N	I	10–22–92	Indef.
ST93–731	Transcontinental Gas P/L Corp.	Entrade Corp	11–12–92	G–S	500,000	N	I	12–19–91	Indef.
ST93–732	Transcontinental Gas P/L Corp.	Entrade Corp	11–12–92	G–S	100,000	N	I	05–26–92	Indef.
ST93–733	Transcontinental Gas P/L Corp.	Equitable Resources Marketing Co.	11–12–92	G–S	160,000	N	I	06–05–92	Indef.
ST93–734	Transcontinental Gas P/L Corp.	Eastex Gas Transmission Co.	11–12–92	B	25,000	N	I	02–10–92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-735	Transcontinental Gas P/L Corp.	North Carolina Gas Service.	11-12-92	B	105,000	A	I	10-22-87	Indef.
ST93-736	Transcontinental Gas P/L Corp.	CNG Transmission Corp	11-12-92	G	36,384	A	F	11-01-91	07-31-96
ST93-737	Transcontinental Gas P/L Corp.	Philadelphia Gas Works	11-12-92	B	280,000	N	I	02-16-90	Indef.
ST93-738	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11-12-92	B	12,317	N	I	11-01-91	Indef.
ST93-739	Transcontinental Gas P/L Corp.	Excon Gas System, Inc	11-12-92	B	35,000	N	I	01-16-92	Indef.
ST93-740	Transcontinental Gas P/L Corp.	Gasmark, Inc	11-12-92	G-S	1,093,000	N	I	07-23-92	Indef.
ST93-741	Transcontinental Gas P/L Corp.	Town of Wadley	11-12-92	B	3,600	A	I	04-22-89	Indef.
ST93-742	Transcontinental Gas P/L Corp.	Union Gas Co	11-12-92	B	140,000	A	I	01-08-89	Indef.
ST93-743	Transcontinental Gas P/L Corp.	Bridgeline Gas Distribution Co.	11-12-92	B	236,000	N	I	07-17-92	Indef.
ST93-744	Transcontinental Gas P/L Corp.	Louisiana Gas Marketing Co.	11-12-92	B	94,000	N	I	08-25-90	Indef.
ST93-745	Transcontinental Gas P/L Corp.	Public Service Co. of NC, Inc.	11-12-92	B	350,000	N	I	08-01-91	Indef.
ST93-746	Transcontinental Gas P/L Corp.	AGF Direct Gas Sales, Inc.	11-12-92	G-S	23,500	N	I	10-22-92	Indef.
ST93-747	Transcontinental Gas P/L Corp.	Gaslantic Corp	11-12-92	G-S	20,000	N	I	08-11-92	Indef.
ST93-748	Transcontinental Gas P/L Corp.	Pennsylvania Gas & Water Co.	11-12-92	B	120,000	N	I	02-01-91	Indef.
ST93-749	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	11-12-92	G	2,549,730	N	I	09-30-92	Indef.
ST93-750	Transcontinental Gas P/L Corp.	Endevco Marketing Co	11-12-92	G-S	4,246,420	N	I	06-10-92	Indef.
ST93-751	Transcontinental Gas P/L Corp.	Corpus Christi Transmission Co.	11-12-92	B	243,000	N	I	07-01-91	Indef.
ST93-752	Transcontinental Gas P/L Corp.	O&R Energy, Inc	11-13-92	G-S	800,000	N	I	04-23-92	Indef.
ST93-753	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11-13-92	B	5,000	N	I	04-10-91	Indef.
ST93-754	Transcontinental Gas P/L Corp.	Marathon Oil Co	11-13-92	G-S	130,000	N	I	09-21-92	Indef.
ST93-755	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-13-92	G-S	200,000	A	I	09-06-91	Indef.
ST93-756	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-13-92	G-S	400,000	A	I	10-24-91	Indef.
ST93-757	Transcontinental Gas P/L Corp.	Lynchburg Gas Co	11-13-92	B	105,000	A	I	10-22-87	Indef.
ST93-758	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-13-92	B	205,000	A	I	12-03-87	Indef.
ST93-759	Transcontinental Gas P/L Corp.	Delmarva Power & Light Co.	11-13-92	B	420,000	A	I	11-01-88	Indef.
ST93-760	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co., Inc.	11-13-92	B	2,450,000	A	I	12-01-87	Indef.
ST93-761	Transcontinental Gas P/L Corp.	Public Service Co. of NC, Inc.	11-13-92	B	6,000	A	I	10-22-87	Indef.
ST93-762	Transcontinental Gas P/L Corp.	City of Madison	11-13-92	B	8,400	A	I	04-22-89	Indef.
ST93-763	Transcontinental Gas P/L Corp.	Philadelphia Gas Works	11-13-92	B	1,400,000	A	I	04-25-89	Indef.
ST93-764	Enogex Inc	Phillips Gas P/L Co	11-13-92	C	20,000	N	I	11-01-92	Indef.
ST93-765	Northern Natural Gas Co	Mobil Natural Co	11-13-92	G-S	100,000	N	F/I	10-01-92	Indef.
ST93-766	Northern Natural Gas Co	AG Processing, Onc	11-13-92	G-S	60,000	N	F/I	11-01-92	Indef.
ST93-767	Transcontinental Gas P/L Corp.	Alabama Gas Corp., et al.	11-13-92	B	425,000	A	I	10-09-92	Indef.
ST93-768	Transcontinental Gas P/L Corp.	KCS Energy Marketing, Inc.	11-13-92	G-S	55,000	N	I	03-23-92	Indef.
ST93-769	Transcontinental Gas P/L Corp.	Municipal Gas Authority	11-13-92	B	500,000	N	I	09-03-92	Indef.
ST93-770	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-13-92	B	600,000	N	I	02-22-90	Indef.
ST93-771	Transcontinental Gas P/L Corp.	Polaris P/L Corp	11-13-92	G-S	100,000	N	I	12-13-91	Indef.
ST93-772	Transcontinental Gas P/L Corp.	Nerco Oil & Gas, Inc	11-13-92	G-S	875,000	N	I	05-21-92	Indef.
ST93-773	Transcontinental Gas P/L Corp.	City of Lexington	11-13-92	B	68,400	N	I	02-20-90	Indef.
ST93-774	Transcontinental Gas P/L Corp.	City of Laurens	11-13-92	B	63,000	N	I	03-13-90	Indef.
ST93-775	Transcontinental Gas P/L Corp.	City of Kings Mountain	11-13-92	B	31,500	N	I	07-11-90	Indef.
ST93-776	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-13-92	B	40,000	N	I	10-25-91	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-777	Transcontinental Gas P/L Corp.	City of Shelby	11-13-92	B	81,200	N	I	04-16-90	Indef.
ST93-778	Texas Gas Trans. Corp	Citizens Gas and Coke Utility.	11-13-92	G-S	25,000	N	F	11-01-92	Indef.
ST93-779	Texas Gas Trans. Corp	Energas Corp	11-13-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-780	Texas Gas Trans. Corp	Energas Corp	11-13-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-781	Texas Gas Trans. Corp	ANR P/L Co	11-13-92	G	300,000	N	I	11-01-92	Indef.
ST93-782	Texas Gas Trans. Corp	ANR P/L Co	11-13-92	G	10,000	N	F	11-01-92	Indef.
ST93-783	Texas Gas Trans. Corp	City of Elizabethtown	11-13-92	B	75	N	I	10-31-92	Indef.
ST93-784	Equitrans, Inc	Tejas Hydroarbons Co	11-13-92	G-S	48,425	N	I	10-31-92	Indef.
ST93-785	Arkla Energy Resources	Associated Natural Gas Co.	11-13-92	B	28,000	N	F	11-01-92	Indef.
ST93-786	Arkla Energy Resources	Arkla Energy Marketing Co.	11-13-92	G-S	25,000	A	F	11-01-92	Indef.
ST93-787	Arkla Energy Resources	Arkansas Oklahoma Gas Corp.	11-13-92	G-S	1,500	N	F	11-01-92	Indef.
ST93-788	Tennessee Gas P/L Co	GTE Products Corp	11-13-92	G-S	3,000	N	I	10-29-92	Indef.
ST93-789	Channel Industries Gas Co.	Northern Natural Gas Co	11-13-92	C	65,000	N	I	10-15-92	Indef.
ST93-790	Williams Natural Gas Co	Anadarko Trading Co	11-16-92	G-S	1,029	N	I	11-03-92	04-01-93
ST93-791	Texas Eastern Trans. Corp.	Texas Southeastern Gas Co.	11-13-92	B	20,000	N	I	10-21-92	Indef.
ST93-792	Lone Star Gas Co	Arkla, Inc., et al	11-16-92	C	100,000	N	I	10-13-82	Indef.
ST93-793	K N Energy, Inc	Anadarko Trading Co	11-16-92	G-S	30,000	N	I	10-15-92	Indef.
ST93-794	Algonquin Gas Trans. Co.	Colonial Gas Co	11-16-92	G-S	50,000	N	I	11-01-92	Indef.
ST93-795	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11-16-92	G-S	10,200,000	N	I	11-01-92	Indef.
ST93-796	Algonquin Gas Trans. Co.	Entrade Corp	11-16-92	G-S	260,000	N	I	11-01-92	Indef.
ST93-797	Algonquin Gas Trans. Co.	Iroquois Gas Trans. System.	11-16-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-798	Williston Basin Interest. P/L Co.	Hiland Partners	11-16-92	G-S	150	Y	F	10-16-92	10-14-93
ST93-799	Lone Star Gas Co. no information.	....	....		....			....	
ST93-800	Tennessee Gas Pipeline Co.	Pawtucket Power Associates L.P.	11-16-92	G-S	12,695	N	F	11-01-92	Indef.
ST93-801	ANR Pipeline Co	Murphy Oil USA, Inc	11-16-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-802	ANR Pipeline Co	Neenah Foundry Co	11-16-92	G-S	400	N	F	11-01-92	11-30-08
ST93-803	ANR Pipeline Co	Coast Energy Group, Inc	11-16-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-804	ANR Pipeline Co	Nebraska Public Gas Agency.	11-16-92	G-S	858	N	F	11-04-92	09-30-02
ST93-805	United Gas Pipe Line Co	Munson Operations Inc	11-16-92	G-S	5,000	N	I	10-19-92	02-16-93
ST93-806	United Gas Pipe Line Co	Yuma Gas Corp	11-16-92	G-S	78,600	N	I	11-04-92	03-04-93
ST93-807	United Gas Pipe Line Co	Kogas, Inc	11-16-92	G-S	42,900	N	F	11-01-92	03-01-93
ST93-808	United Gas Pipe Line Co	Texaco Gas Marketing Inc.	11-16-92	G-S	41,920	N	I	10-15-92	02-12-93
ST93-809	United Gas Pipe Line Co	Texican Natural Gas Co	11-16-92	G-S	3,000	N	F	11-01-92	03-01-93
ST93-810	United Gas Pipe Line Co	KCS Energy Marketing, Inc.	11-16-92	G-S	78,600	N	I	11-06-92	03-06-93
ST93-811	United Gas Pipe Line Co	MG Natural Gas Corp	11-16-92	G-S	4,500	N	F	11-01-92	03-01-93
ST93-812	United Gas Pipe Line Co	Arkla Energy Resources	11-16-92	G-S	150,000	N	I	11-01-92	03-01-93
ST93-813	Valero Transmission, L.P	United Gas Pipe Line Co	11-17-92	C	17,500	N	I	10-21-92	Indef.
ST93-814	Valero Transmission, L.P	Florida Gas Transmission Co.	11-17-92	C	16,000	N	I	10-21-92	Indef.
ST93-815	Transtexas Pipeline	United Gas Pipe Line Co	11-17-92	C	17,500	N	I	10-21-92	Indef.
ST93-816	Transtexas Pipeline	Texas Eastern Transmission Corp.	11-17-92	C	3,117	N	I	10-24-92	Indef.
ST93-817	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	11-17-92	G-S	200,000	N	I	11-01-92	Indef.
ST93-818	Tennessee Gas Pipeline Co.	Endevco Oil & Gas Co	11-17-92	G-S	220,000	N	I	11-01-92	Indef.
ST93-819	Tennessee Gas Pipeline Co.	Texaco Gas Marketing, Inc.	11-17-92	G-S	202,800	N	I	11-01-92	Indef.
ST93-820	El Paso Natural Gas Co	Brooklyn Interstate Nat. Gas Corp.	11-17-92	G-S	50,000	N	I	11-04-92	Indef.
ST93-821	Exxon Gas System, Inc	Moss Bluff Gas Storage Systems.	11-17-92	C	5,000	N	I	09-09-92	Indef.
ST93-822	Columbia Gas Transmission Corp.	PPG Industries, Inc	11-17-92	G-S	240	Y	F	11-01-92	03-31-93
ST93-823	Columbia Gas Transmission Corp.	USS/KOBE Steel Co	11-17-92	G-S	5,500	Y	F	11-01-92	Indef.
ST93-824	Columbia Gas Transmission Corp.	Access Energy Corp	11-17-92	G-S	2,535	Y	F	11-01-92	03-31-93
ST93-825	Columbia Gas Transmission Corp.	Schuller International, Inc.	11-17-92	G-S	200	Y	I	11-02-92	10-31-93
ST93-826	Columbia Gas Transmission Corp.	Auxier Road Gas Co., Inc.	11-17-92	B	600	Y	I	11-03-92	Indef.
ST93-827	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-17-92	B	18,000	Y	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-828	Columbia Gas Transmission Corp.	Access Energy Corp	11-17-92	G-S	991	Y	F	11-01-92	03-31-93
ST93-829	Florida Gas Transmission Co.	Hadson Gas Systems, Inc.	11-17-92	G-S	100,000	N	I	10-23-92	Indef.
ST93-830	Black Marlin Pipeline Co	Delhi Gas Pipeline Corp	11-17-92	B	100,000	A	I	11-01-92	Indef.
ST93-831	Williams Natural Gas Co	City of Eskridge	11-17-92	G-S	120	N	I	11-01-92	11-01-93
ST93-832	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	11-17-92	G-S	750	Y	F	11-01-92	Indef.
ST93-833	Columbia Gas Transmission Corp.	W.E. Burchett, Jr., Agent	11-17-92	G-S	1,622	N	F	11-01-92	Indef.
ST93-834	Columbia Gas Transmission Corp.	Entrade Corp	11-17-92	G-S	1,452	N	F	11-01-92	03-31-93
ST93-835	Columbia Gas Transmission Corp.	J.D. Drilling Co	11-17-92	G-S	6,002	Y	F	11-01-92	Indef.
ST93-836	Williams Natural Gas Co	Vesta Energy Co	11-17-92	G-S	11,139	N	F	11-01-92	04-01-93
ST93-837	Transcontinental Gas P/L Corp.	Trinity Pipeline, Inc	11-17-92	G-S	500,000	N	I	03-09-92	Indef.
ST93-838	Transcontinental Gas P/L Corp.	Scana Hydrocarbons, Inc.	11-17-92	G-S	420,000	N	I	08-25-92	Indef.
ST93-839	Transcontinental Gas P/L Corp.	TXG Gas Marketing Co	11-17-92	G-S	200,000	N	I	11-20-90	Indef.
ST93-840	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-17-92	G-S	100,000	A	I	10-21-91	Indef.
ST93-841	Texas, Gas Transmission Corp.	Transok Gas Co	11-17-92	G-S	15,000	N	I	11-06-92	Indef.
ST93-842	Texas Gas Transmission Corp.	Louisville Gas & Elect. Co.	11-17-92	G-S	20,000	N	F	11-01-92	Indef.
ST93-843	Texas Gas Transmission Corp.	Public Service Elect. & Gas Co.	11-17-92	G-S	5,117	N	F	11-01-92	Indef.
ST93-844	Texas Gas Transmission Corp.	New Jersey Natural Gas Co.	11-17-92	G-S	10,000	N	F	11-01-92	Indef.
ST93-845	Texas Gas Transmission Corp.	KCS Energy Marketing, Inc.	11-17-92	G-S	20,000	N	I	11-01-92	Indef.
ST93-846	Texas Gas Transmission Corp.	City of Bloomfield	11-17-92	G-S	213	N	F	11-01-92	10-31-93
ST93-847	Texas Gas Transmission Corp.	City Gas Co	11-17-92	G-S	610	N	F	11-01-92	10-31-93
ST93-848	Texas Gas Transmission Corp.	Fountaintown Gas Co., Inc.	11-17-92	G-S	550	N	F	11-05-92	10-31-93
ST93-849	Texas Gas Transmission Corp.	City of Grant City	11-17-92	G-S	68	N	F	11-05-92	10-31-93
ST93-850	Texas Gas Transmission Corp.	City of Moulton	11-17-92	G-S	49	N	F	11-06-92	10-31-93
ST93-851	Texas Gas Transmission Corp.	City of Wetmore	11-17-92	G-S	30	N	F	11-01-92	10-31-93
ST93-852	Texas Gas Transmission Corp.	City of Alta Vista	11-17-92	G-S	60	N	F	11-01-92	10-31-93
ST93-853	ONG Transmission Co	Phillips Gas Pipeline Co	11-18-92	C	25,000	N	I	10-23-92	Indef.
ST93-854	Tennessee Gas Pipeline Co.	Cornerstone Production Corp.	11-18-92	G-S	150,000	N	I	10-23-92	Indef.
ST93-855	Tennessee Gas Pipeline Co.	CNG Trading Co	11-18-92	G-S	650,000	N	I	11-02-92	Indef.
ST93-856	Tennessee Gas Pipeline Co.	SCM Chemicals, Inc	11-18-92	G-S	1,750	N	F	11-01-92	Indef.
ST93-857	Transcontinental Gas P/L Corp.	Citizens Gas Supply Corp.	11-18-92	G-S	150,000	N	I	08-03-90	Indef.
ST93-858	Transcontinental Gas P/L Corp.	Coastal States Gas Transmission.	11-18-92	G-S	50,000	N	I	10-16-91	Indef.
ST93-859	Transcontinental Gas P/L Corp.	Coastal States Gas Transmission.	11-18-92	B	26,000	N	I	11-04-92	Indef.
ST93-860	Transcontinental Gas P/L Corp.	Citizens Gas Supply Corp.	11-18-92	G-S	75,000	N	I	03-12-91	Indef.
ST93-861	Transcontinental Gas P/L Corp.	Coastal Gas Marketing Co.	11-18-92	G-S	100,000	N	I	07-12-92	Indef.
ST93-862	Transcontinental Gas P/L Corp.	Coastal Gas Marketing Co.	11-18-92	G-S	100,000	N	I	01-25-91	Indef.
ST93-863	Transcontinental Gas P/L Corp.	Conoco, Inc	11-18-92	G-S	134,316	N	I	08-11-91	Indef.
ST93-864	Transcontinental Gas P/L Corp.	Eastex Hydrocarbon, Inc	11-18-92	G-S	300,000	N	I	11-01-92	Indef.
ST93-865	Transcontinental Gas P/L Corp.	CNG Transmission Corp	11-18-92	G	71,548	N	I	11-01-92	10-31-12
ST93-866	Arkla Energy Resources	Weyerhaeuser Co	11-18-92	G-S	300	N	F	11-16-92	Indef.
ST93-867	Palo Duro Pipeline Co., Inc.	Natural Gas P/L Co. of America.	11-18-92	C	50,000	Y	I	10-23-92	Indef.
ST93-868	United Texas Transmission Co.	Natural Gas P/L Co. of America.	11-18-92	C	13,000	Y	I	10-24-92	Indef.
ST93-869	Williams Natural Gas Co	Grove Municipal Service Authority.	11-18-92	G-S	5,000	N	F	11-01-92	11-01-93
ST93-870	Valero Transmission, L.P	Texas Eastern Transmission Corp.	11-18-92	C	30,000	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-871	Valero Transmission, L.P	Tennessee Gas Pipeline Co.	11-18-92	C	5,263	N	I	11-01-92	Indef.
ST93-872	Valero Transmission, L.P	United Gas Pipe Line Co	11-18-92	C	9,140	N	I	11-01-92	Indef.
ST93-873	Valero Transmission, L.P	Texas Eastern Transmission Co.	11-18-92	C	9,000	N	I	11-01-92	Indef.
ST93-874	Valero Transmission, L.P	Tennessee Pipeline Co	11-18-92	C	25,000	N	I	10-13-92	Indef.
ST93-875	Florida Gas Transmission Co.	Longhorn Pipeline Co	11-18-92	B	50,000	N	I	11-01-92	Indef.
ST93-876	Florida Gas Transmission Co.	Peoples Gas System, Inc.	11-18-92	B	100,000	N	I	10-30-92	Indef.
ST93-877	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-18-92	B	7,500	Y	I	11-01-92	Indef.
ST93-878	Columbia Gas Transmission Corp.	Interstate Natural Gas Co.	11-18-92	G-S	1,310	Y	F	11-01-92	Indef.
ST93-879	Columbia Gas Transmission Corp.	Cumberland Gas Co	11-18-92	G-S	220	N	F	11-01-92	Indef.
ST93-880	Columbia Gas Transmission Corp.	Coshocton Stainless Div. of Armco.	11-18-92	G-S	460	Y	F	11-01-92	Indef.
ST93-881	Columbia Gas Transmission Corp.	PPG Industries, Inc	11-18-92	G-S	210	Y	F	11-01-92	03-31-93
ST93-882	Columbia Gas Transmission Corp.	West Ohio Gas Co	11-18-92	B	3,800	Y	F	11-01-92	Indef.
ST93-883	Columbia Gas Transmission Corp.	West Ohio Gas Co	11-18-92	B	6,200	Y	F	11-01-92	Indef.
ST93-884	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11-18-92	B	2,500	Y	I	11-01-92	Indef.
ST93-885	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	11-18-92	G-S	2,145	Y	F	11-01-92	03-31-93
ST93-886	Columbia Gas Transmission Corp.	Southeastern Gas Co	11-18-92	G-S	5,092	Y	F	11-01-92	Indef.
ST93-887	Columbia Gas Transmission Corp.	Gas Access Systems, Inc.	11-18-92	G-S	6,500	Y	F	11-01-92	03-31-93
ST93-888	Columbia Gas Transmission Corp.	American Standard, Inc	11-18-92	G-S	1,350	Y	F	11-01-92	03-31-93
ST93-889	Columbia Gas Transmission Corp.	Triangle Resource Group.	11-18-92	G-S	2,874	N	I	10-29-92	Indef.
ST93-890	Columbia Gas Transmission Corp.	Latrobe Steel Co	11-18-92	G-S	3,000	N	I	11-01-92	Indef.
ST93-891	Columbia Gas Transmission Corp.	Dayton Power and Light Co.	11-18-92	G-S	4,336	Y	I	11-01-92	Indef.
ST93-892	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc.	11-18-92	G-S	4,500	N	I	11-01-92	03-31-93
ST93-893	Columbia Gas Transmission Corp.	Miami Valley Resources, Inc.	11-18-92	G-S	820	Y	F	11-01-92	Indef.
ST93-894	Columbia Gas Transmission Corp.	Williams Allen & Lewis Jessie, SR.	11-18-92	G-S	484	N	F	11-01-92	Indef.
ST93-895	Columbia Gas Transmission Corp.	MSL Oil & Gas Corp	11-18-92	G-S	10,000	N	I	11-10-92	Indef.
ST93-896	Lone Star Gas Co	Northern Natural Gas Co., et al.	11-19-92	C	15,000	N	I	10-23-92	Indef.
ST93-897	Lone Star Gas Co	Northern Natural Gas Co., et al.	11-19-92	C	30,000	N	I	10-24-92	Indef.
ST93-898	Transok, Inc	Panhandle Eastern Pipe Line Co.	11-19-92	C	10,000	N	I	11-07-92	Indef.
ST93-899	Transok, Inc	Panhandle Eastern Pipe Line Co.	11-19-92	C	100,000	N	I	11-01-92	Indef.
ST93-900	Transok, Inc	Williams Natural Gas Co	11-19-92	C	50,000	N	I	11-15-92	Indef.
ST93-901	Transok, Inc	Black Marlin Pipeline Co	11-19-92	C	50,000	N	I	11-01-92	Indef.
ST93-902	Transok, Inc	Phillips Gas Pipeline Co	11-19-92	C	50,000	N	I	11-01-92	Indef.
ST93-903	Transok, Inc	Phillips Gas Pipeline Co	11-19-92	C	20,000	N	I	11-02-92	Indef.
ST93-904	Oasis Pipe Line Co	Natural Gas P/L Co. of America.	11-19-92	C	100,000	N	I	10-06-92	Indef.
ST93-905	Oasis Pipe Line Co	Transwestern Pipeline Co.	11-19-92	C	100,000	N	I	10-17-92	Indef.
ST93-906	Oasis Pipe Line Co	Tennessees Gas Pipeline Co.	11-19-92	C	30,000	N	I	10-18-92	indef.
ST93-907	Southern Natural Gas Co.	Chevron U.S.A., Inc	11-19-92	G-S	15,000	N	I	11-01-92	11-30-92
ST93-908	Southern Natural Gas Co.	Florida Gas Transmission Co.	11-19-92	G	25,000	N	I	11-01-92	Indef.
ST93-909	Sea Robin Pipeline Co	Freeport-McMoran Oil and Gas Co.	11-19-92	G-S	90,000	N	I	11-06-92	Indef.
ST93-910	Sea Robin Pipeline Co	Superior Natural Gas Corp.	11-19-92	G-S	6,587	N	I	11-07-92	10-31-93
ST93-911	Sea Robin Pipeline Co	Eagle Natural Gas Co	11-19-92	G-S	10,000	N	I	11-03-92	02-28-93
ST93-912	Sea Robin Pipeline Co	Sonat Marketing Co	11-19-92	G-S	7,409	Y	I	11-11-92	11-30-92
ST93-913	Natural Gas P/L Co. of America.	Midcon Marketing Corp	11-19-92	G-S	2,009	A	F	10-20-92	10-31-92
ST93-914	Stingray Pipeline Co	Arcadian Corp	11-19-92	K-S	50,000	N	I	11-01-92	Indef.
ST93-915	Northwest Pipeline Corp	Hadson Gas, Systems, Inc.	11-19-92	G-S	600,000	N	I	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-916	Williams Natural Gas Co	Aquila Energy Marketing Corp.	11-19-92	G-S	400	N	I	11-01-92	04-01-93
ST93-917	Tenngasco Gas Supply Co.	Tennessee Gas Pipeline Co.	11-19-92	C	20,000	N	I	10-31-92	04-01-95
ST93-918	Tennessee Gas Pipeline Co.	National Fuel Gas Supply Corp.	11-19-92	G-S	200,000	N	I	10-26-92	Indef.
ST93-919	Tennessee Gas Pipeline Co.	Paragon Gas Corp	11-19-92	G-S	40,000	N	I	11-01-92	Indef.
ST93-920	Tennessee Gas Pipeline Co.	Tenngasco Corp	11-19-92	G-S	2,000,000	N	I	11-28-92	Indef.
ST93-921	Southern Natural Gas Co.	Canton Municipal Utilities.	11-19-92	B	150	N	I	11-02-92	02-28-93
ST93-922	Southern Natural Gas Co.	Peoples Gas System	11-19-92	B	10,050	N	I	11-10-92	04-30-04
ST93-923	Houston Pipe Line Co	United Gas Pipe Line Co	11-19-92	C	25,000	N	I	10-27-92	Indef.
ST93-924	Houston Pipe Line Co	Natural Gas P/L Co. [illegible] America.	11-19-92	C	5,000	N	I	10-01-92	Indef.
ST93-925	Houston Pipe Line Co	Florida Gas Transmission Co.	11-19-92	C	20,000	N	I	10-01-92	Indef.
ST93-926	Houston Pipe Line Co	Tennessee Gas Pipeline Co.	11-19-92	C	100,000	N	I	10-16-92	Indef.
ST93-927	Houston Pipe Line Co	Seagull Interstate Corp	11-19-92	C	36,000	N	I	10-01-92	Indef.
ST93-928	Houston Pipe Line Co	Natural Gas P/L Co. of America.	11-19-92	C	20,000	N	I	10-28-92	Indef.
ST93-929	Houston Pipe Line Co	Seagull Interstate Corp	11-19-92	C	50,000	N	I	10-10-92	Indef.
ST93-930	Houston Pipe Line Co	Texas Eastern Transmission Corp.	11-19-92	C	50,000	N	I	10-22-92	Indef.
ST93-931	Transcontinental Gas P/L Corp.	Alanta Gas Light Co	11-19-92	B	6,222	A	F	06-28-92	04-30-98
ST93-932	Transcontinental Gas P/L Corp.	Alanta Gas Light Co	11-19-92	B	107,600	A	F	07-07-92	03-31-10
ST93-933	Transcontinental Gas P/L Corp.	Appalachian Gas Sales	11-19-92	B	219	A	F	08-01-91	04-25-98
ST93-934	Transcontinental Gas P/L Corp.	City of Lexington	11-19-92	B	219	N	F	09-01-91	04-06-98
ST93-935	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	11-19-92	G	13,715	N	F	08-01-91	03-31-05
ST93-936	Transcontinental Gas P/L Corp.	Superior Natural Gas Corp.	11-19-92	G-S	75,000	N	I	10-07-91	Indef.
ST93-937	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-19-92	G-S	50,000	N	I	07-20-92	Indef.
ST93-938	Transcontinental Gas P/L Corp.	PSNC Production Corp	11-19-92	G-S	370,000	N	I	11-01-91	Indef.
ST93-939	Transcontinental Gas P/L Corp.	TEJAS Power Corp	11-19-92	G-S	450,000	N	I	09-20-90	Indef.
ST93-940	Transcontinental Gas P/L Corp.	Columbia Gas Transmission Corp.	11-19-92	G	2,500	N	F	08-01-91	12-04-99
ST93-941	Transcontinental Gas P/L Corp.	Consolidated Edison Co. of NY.	11-19-92	B	2,014	A	F	08-01-91	3-31-98
ST93-942	Transcontinental Gas P/L Corp.	The Brooklyn Union Gas Co.	11-19-92	B	1,902	N	F	08-01-91	11-30-98
ST93-943	Transcontinental Gas P/L Corp.	Fort Hill Natural Gas Authority.	11-19-92	B	11,900	A	F	08-01-91	10-31-04
ST93-944	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-19-92	G-S	200,000	N	I	05-24-91	Indef.
ST93-945	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-19-92	G-S	365,000	A	I	11-25-91	Indef.
ST93-946	Transcontinental Gas P/L Corp.	Long Island Lighting Co	11-19-92	B	1,902	A	F	08-01-91	03-01-91
ST93-947	Transcontinental Gas P/L Corp.	City of Kings Mountain	11-19-92	B	87	N	F	09-01-91	11-30-98
ST93-948	Transcontinental Gas P/L Corp.	City of Union	11-19-92	B	262	N	F	11-01-91	05-02-98
ST93-949	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-19-92	G-S	35,000	N	I	02-19-92	Indef.
ST93-950	Transcontinental Gas P/L Corp.	City of Danville	11-19-92	B	26,000	N	F	07-28-92	04-01-99
ST93-951	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	11-19-92	G-S	112,000	N	I	02-27-92	Indef.
ST93-952	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-19-92	G-S	1,050,000	A	I	08-31-92	Indef.
ST93-953	Transcontinental Gas P/L Corp.	North Atlantic Utilities, Inc.	11-19-92	G-S	60,000	N	I	04-05-91	Indef.
ST93-954	Transcontinental Gas P/L Corp.	Valero Gas Marking, L.P	11-19-92	G-S	1,964	N	I	04-19-92	Indef.
ST93-955	Transcontinental Gas P/L Corp.	Calcasieu Gas Gathering System.	11-19-92	G-S	380,000	N	I	11-22-91	Indef.
ST93-956	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	11-19-92	G-S	96,000	N	I	10-21-91	Indef.
ST93-957	Transcontinental Gas P/L Corp.	City of Union	11-19-92	B	70,000	N	I	03-16-89	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93–958	Transcontinental Gas P/L Corp.	Catex Energy, Inc	11–19–92	G–S	1,650,000	N	I	07–06–91	Indef.
ST93–959	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11–19–92	G–S	600,000	A	I	10–02–91	Indef.
ST93–960	Transcontinental Gas P/L Corp.	LL & E Gas Marketing, Inc.	11–19–92	G–S	20,000	N	I	02–10–92	Indef.
ST93–961	Transcontinental Gas P/L Corp.	Brooklyn Union Gas Co	11–19–92	B	237,628	N	F	10–01–92	Indef.
ST93–962	Transcontinental Gas P/L Corp.	Pennsylvania Gas and Water Co.	11–19–92	B	3,937	A	F	08–01–91	03–25–98
ST93–963	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11–19–92	B	1,449	N	F	08–01–91	04–04–98
ST93–964	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Corp.	11–19–92	B	1,449	A	F	08–01–91	04–25–98
ST93–965	Transcontinental Gas P/L Corp.	North Carolina Natural Gas Co.	11–19–92	B	1,811	A	F	08–01–91	04–04–98
ST93–966	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	11–19–92	B	1,751	N	F	12–01–91	04–04–98
ST93–967	Transcontinental Gas P/L Corp.	City of Kings Mountain	11–19–92	B	87	N	F	09–01–91	11–30–98
ST93–968	Transcontinental Gas P/L Corp.	Comm. of Public Works, Greer.	11–19–92	B	91	N	F	09–01–91	11–30–98
ST93–969	Transcontinental Gas P/L Corp.	Frederick Gas Co., Inc	11–19–92	B	4,500	N	F	08–01–91	03–31–05
ST93–970	Transcontinental Gas P/L Corp.	Southern Gas Co., Inc	11–19–92	B	22,000	N	I	03–01–91	Indef.
ST93–971	Transcontinental Gas P/L Corp.	Commonwealth Gas Services.	11–19–92	B	6,377	A	F	08–01–91	03–31–05
ST93–972	Transcontinental Gas P/L Corp.	Public Service Co. of NC	11–19–92	B	3,324	N	F	08–01–91	03–31–98
ST93–973	Transcontinental Gas P/L Corp.	Public Service Co. of NC	11–19–92	B	4,075	A	F	02–08–92	04–04–98
ST93–974	Transcontinental Gas P/L Corp.	City of Shelby	11–19–92	B	262	N	F	09–01–91	05–02–98
ST93–975	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11–19–92	B	6,222	N	F	08–01–91	03–01–98
ST93–976	Transcontinental Gas P/L Corp.	City of Lexington	11–19–92	B	219	N	F	08–01–91	03–25–98
ST93–977	Transcontinental Gas P/L Corp.	Comm. of Public Works, Greer.	11–19–92	B	87	N	F	09–01–91	11–30–98
ST93–977	Transcontinental Gas P/L Corp.	Comm. of Public Works, Greer.	11–19–92	B	87	N	F	09–01–91	11–30–98
ST93–978	Channel Industries Co	Natural Gas P/L Co. of America.	11–20–92	C	75,00	N	I	10–24–92	Indef.
ST93–979	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	11–20–92	B	15,000	N	F	11–01–92	Indef.
ST93–980	East Tennessee Natural Gas Co.	Petroleum Source & System Group.	11–20–92	G–S	12,000	N	I	11–01–92	Indef.
ST93–981	East Tennessee Natural Gas Co.	International Power Co	11–20–92	G–S	2,000	N	I	11–06–92	Indef.
ST93–982	East Tennessee Natural Gas Co;	Virginia Gas Co	11–20–92	G–S	5,000	N	I	11–04–92	Indef.
ST93–983	East Tennessee Natural Gas Co.	Roanoke Gas Co	11–20–92	G–S	4,895	N	F	11–01–92	Indef.
ST93–984	East Tennessee Natural Gas Co.	Atlanta Gas Light Co	11–20–92	G–S	18,600	N	F	11–01–92	Indef.
ST93–985	Sabine Pipe Line Co	Phibro Energy USA, Inc	11–20–92	G–S	50,000	N	F	11–01–92	Indef.
ST93–986	Sabine Pipe Line Co	Gasmark, Ltd	11–20–92	G–S	160,000	N	I	11–01–92	Indef.
ST93–987	Dow Pipeline Co	Natural Gas P/L Co. of America.	11–20–92	C	10,000	N	I	11–01–92	11–01–94
ST93–988	Lone Star Gas Co	United Gas Kpipe Line Co., et al.	11–20–92	C	15,000	N	I	10–23–92	Indef.
ST93–989	Panhandle Eastern Pipe Line Co.	Southern Michigan Gas Co.	11–20–92	G–S	17,400	N	F	11–01–92	Indef.
ST93–990	Panhandle Eastern Pipe Line Co.	Village of Franklin	11–20–92	G–S	500	N	F	10–01–92	Indef.
ST93–991	Panhandle Eastern Pipe Line Co.	Union Electric Co	11–20–92	G–S	17,320	N	F	11–01–92	Indef.
ST93–992	Panhandle Eastern Pipe Line Co.	Tarpon Gas Marketing Ltd.	11–20–92	G–S	19,880	N	F	11–01–92	Indef.
ST93–993	Panhandle Eastern Pipe Line Co.	NITEX	11–20–92	G–S	6,000	N	F	11–01–92	Indef.
ST93–994	Panhandle Eastern Pipe Line Co.	Entrade Corp	11–20–92	G–S	100,000	N	I	11–01–92	Indef.
ST93–995	United Gas Pipe Line Co	Fina Natural Gas Co	11–20–92	G–S	42,107	N	I	11–01–92	03–10–93
ST93–996	United Gas Pipe Line Co	Fina Natural Gas Co	11–20–92	G–S	104,800	N	I	11–12–92	03–12–93
ST93–997	United Gas Pipe Line Co	MG Natural Gas Corp	11–20–92	G–S	41,920	N	I	11–09–92	03–09–93
ST93–998	United Gas Pipe Line Co	United Gas Services Co	11–20–92	G–S	628,800	N	I	11–09–92	03–09–93
ST93–999	United Gas Pipe Line Co	Shell Gas Trading Co	11–20–92	G–S	209,600	N	I	11–10–92	03–10–93
ST93–1000	United Gas Pipe Line Co	KCS Energy Marketing, Inc.	11–20–92	G–S	78,600	N	I	11–09–92	03–09–93

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ST93–1001	United Gas Pipe Line Co	Coastal Gas Marketing Co.	11–20–92	G–S	262,000	N	I	11–11–92	03–11–93
ST93–1002	United Gas Pipe Line Co	Oxy USA Inc	11–20–92	G–S	3,000	N	I	11–10–92	03–10–93
ST93–1003	United Gas Pipe Line Co	Amerada Hess Corp	11–20–92	G–S	86,460	N	I	12–12–92	03–12–93
ST93–1004	Gateway Pipeline Co	Louis Dreyfus Energy Corp.	11–20–92	G–S	100,000	N	I	11–07–92	03–03–93
ST93–1005	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–20–92	G–S	111,500	N	I	04–11–91	Indef.
ST93–1006	Transcontinental Gas P/L Corp.	Transworld Oil U.S.A., Inc.	11–20–92	G–S	2,810,000	N	I	07–06–91	Indef.
ST93–1007	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	11–20–92	G–S	158,000	N	I	11–26–91	Indef.
ST93–1008	Transcontinental Gas P/L Corp.	Conoco, Inc	11–20–92	G–S	83,500	N	I	08–06–90	Indef.
ST93–1009	Transcontinental Gas P/L Corp.	CNG Trading Co	11–20–92	G–S	420,000	N	I	11–05–92	Indef.
ST93–1010	Transcontinental Gas P/L Corp.	Enmark Gas Corp	11–20–92	G–S	265,000	N	I	09–15–92	Indef.
ST93–1011	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11–20–92	G–S	2,500,000	N	I	12–19–91	Indef.
ST93–1012	ANR Pipeline Co	Cibola Corp	11–20–92	G–S	100,000	N	F	11–01–92	Indef.
ST93–1013	ANR Pipeline Co	Entrade Corp	11–20–92	G–S	500,000	N	I	11–01–92	Indef.
ST93–1014	ANR Pipeline Co	Aquila Energy Marketing Corp.	11–20–92	G–S	100,000	N	F	11–01–92	Indef.
ST93–1015	ANR Pipeline Co	Hadson Gas System	11–20–92	G–S	100,000	N	F	11–01–92	Indef.
ST93–1016	ANR Pipeline Co	Coastal Gas Marketing Co.	11–20–92	G–S	750,000	N	F	11–01–92	Indef.
ST93–1017	ANR Pipeline Co	Coastal Gas Marketing Co.	11–20–92	G–S	750,000	N	F	11–01–92	Indef.
ST93–1018	ANR Pipeline Co	Cibola Corp	11–20–92	G–S	100,000	N	I	11–01–92	Indef.
ST93–1019	ANR Pipeline Co	Hadson Gas Systems	11–20–92	G–S	100,000	N	F	11–01–92	Indef.
ST93–1020	ANR Pipeline Co	Entrade Corp	11–21–92	G–S	500,000	N	I	11–01–92	Indef.
ST93–1021	ANR Pipeline Co	Texaco Gas Marketing Inc.	11–21–92	G–S	100,000	N	F	11–01–92	Indef.
ST93–1022	ANR Pipeline Co	Coastal Gas Marketing Co.	11–21–92	G–S	750,000	N	F	11–01–92	Indef.
ST93–1023	Williston Basin Inter. P/L Co.	Rainbpw Gas Co	11–20–92	G–S	283,173	A	I	11–04–92	07–31–94
ST93–1024	Panhandle Eastern Pipe Line Co.	Amgas, Inc	11–20–92	G–S	260	N	I	11–01–92	Indef.
ST93–1025	Panhandle Eastern Pipe Line Co.	Tarpon Gas Marketing Ltd.	11–20–92	G–S	19,880	N	F	11–01–92	Indef.
ST93–1026	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	11–20–92	G–S	23,900	N	I	11–01–92	Indef.
ST93–1027	Panhandle Eastern Pipe Line Co.	Schuller International, Inc.	11–20–92	G–S	4,000	N	F	11–01–92	Indef.
ST93–1028	Panhandle Eastern Pipe Line Co.	City of Lacygne	11–20–92	G–S	850	N	I	10–01–92	Indef.
ST93–1029	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	11–20–92	B	10,000	N	F	11–01–92	Indef.
ST93–1030	Panhandle Eastern Pipe Line Co.	Western Gas Resources, Inc.	11–20–92	G–S	150,000	N	I	11–01–92	Indef.
ST93–1031	Panhandle Eastern Pipe Line Co.	Nitex	11–20–92	G–S	26,000	N	F	11–01–92	Indef.
ST93–1032	Panhandle Eastern Pipe Line Co.	Tarpon Gas Marketing Ltd.	11–20–92	G–S	19,880	N	F	11–01–92	Indef.
ST93–1033	Panhandle Eastern Pipe Line Co.	Pandhandle Eastern Pipe Line Co.	11–20–92	G	950	Y	I	11–01–92	Indef.
ST93–1034	Trunkline Gas Co	Neste OY	11–20–92	G–S	50,000	N	I	11–01–92	Indef.
ST93–1035	Trunkline Gas Co	Conoco, Inc	11–20–92	G–G	20,161	N	F	11–01–92	Indef.
ST93–1036	Trunkline Gas Co	Ensearch Gas Co	11–20–92	G–S	30,000	N	I	11–01–92	Indef.
ST93–1037	Natural Gas P/L Co. of America.	Pan-Alberta Gas (U.S.) Inc.	11–20–92	G–S	150,000	N	F	11–01–92	07–31–93
ST93–1038	Natural Gas P/L Co. of America.	Vesta Energy Co	11–20–92	G–S	30,000	N	I	10–21–92	Indef.
ST93–1039	Natural Gas P/L Co. of America.	Central Illinois Public Serv. Co.	11–20–92	G–S	5,000	M	F	11–01–92	10–31–97
ST93–1040	Northern Border Pipeline Co.	Mobil Natural Gas Inc	11–20–92	G–S	30,000	Y	I	11–01–92	Indef.
ST93–1041	Northern Border Pipeline Co.	Husky Gas Marketing Inc.	11–20–92	G–S	100,000	Y	I	11–01–92	Indef.
ST93–1042	Northern Border Pipeline Co.	Tenaska Marketing Ventures.	11–20–92	G–S	50,000	Y	I	10–31–92	03–31–94
ST93–1043	Northern Border Pipeline Co.	Prairielands Energy Marketing, Inc.	11–20–92	G–S	12,000	Y	I	11–01–92	Indef.
ST93–1044	Northern Natural Gas Co	Iowa-Illinois Gas & Elect. Co.	11–20–92	G–S	1,340,880	N	F/I	11–01–92	Indef.
ST93–1045	Northern Natural Gas Co	Sanborn Municipal Gas Utility.	11–20–92	G–S	27,180	N	F/I	11–01–92	Indef.
ST93–1046	Northern Natural Gas Co	Midwest Natural Gas, Inc.	11–20–92	G–S	269,082	N	F/I	11–01–92	Indef.

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ST93-1047	Northern Natural Gas Co	Michigan Gas Co	11-20-92	G-S	1,929,931	N	F/I	11-01-92	Indef.
ST93-1048	Northern Natural Gas Co	Austin Utilities Dept	11-20-92	B	632,388	N	F/I	11-01-92	Indef.
ST93-1049	Northern Natural Gas Co	Manning Municipal Gas Dept.	11-20-92	G-S	41,374	N	F/I	11-01-92	Indef.
ST93-1050	Northern Natural Gas Co	Interstate Power Co	11-20-92	G-S	2,347,295	N	F/I	11-01-92	Indef.
ST93-1051	Northern Natural Gas Co	Iowa Electric Light and Power Co.	11-20-92	B	5,761,254	N	F/I	11-01-92	Indef.
ST93-1052	Northern Natural Gas Co	Graettinger Municipal Gas.	11-20-92	G-S	12,533	N	F/I	11-01-92	Indef.
ST93-1053	Northern Natural Gas Co	Manilla Municipal Gas	11-20-92	G-S	11,325	N	F/I	11-01-92	Indef.
ST93-1054	Northern Natural Gas Co	Fairbank Municipal Utilities.	11-20-92	G-S	20,365	N	F/I	11-01-92	Indef.
ST93-1055	Northern Natural Gas Co	Harwarden Municipal Utilities.	11-20-92	G-S	35,163	N	F/I	11-01-92	Indef.
ST93-1056	Northern Natural Gas Co	Municipal Gas Utility, Cedar Falls.	11-20-92	G-S	679,500	N	F/I	11-01-92	Indef.
ST93-1057	Northern Natural Gas Co	Circle Pines Utilities	11-20-92	G-S	86,825	N	F/I	11-01-92	Indef.
ST93-1058	Transtexas Pipeline	Texas Eastern Transmission Corp.	11-23-92	C	10,000	N	I	10-24-92	Indef.
ST93-1059	Valero Transmission, L.P	Natural Gas P/L Co. of America.	11-23-92	C	20,000	N	I	11-01-92	Indef.
ST93-1060	Valero Transmission, L.P	El Paso Natural Gas Co	11-23-92	C	13,117	N	I	10-01-92	Indef.
ST93-1061	K N Energy, Inc	K N Gas Marketing, Inc	11-23-92	G-S	5,110	A	I	11-01-92	Indef.
ST93-1062	K N Energy, Inc	Transok, Inc	11-23-92	B	50,000	N	I	06-01-92	Indef.
ST93-1063	Lone Star Gas Co	Tennessee Gas Pipeline Co.	11-23-92	C	40,000	N	I	10-21-92	Indef.
ST93-1064	TransTexas Pipeline	Tennessee Gas Pipeline Co.	11-23-92	C	30,000	N	I	10-29-92	Indef.
ST93-1065	Valero Transmission, L.P	Texas Eastern Transmission Corp.	11-23-92	C	10,062	N	I	10-22-92	Indef.
ST93-1066	Valero Transmission, L.P	Transwestern Pipeline Co.	11-23-92	C	200	N	I	11-01-92	Indef.
ST93-1067	Valero Transmission, L.P	Tennessee Gas Pipeline Co.	11-23-92	C	30,000	N	I	10-29-92	Indef.
ST93-1068	Alabama-Tennessee Nat. Gas Co.	City of Sheffield	11-23-92	B	678	A	I	11-01-92	11-01-95
ST93-1069	Alabama-Tennessee Nat. Gas Co.	City of Sheffield	11-23-92	B	835	A	I	11-01-92	11-01-00
ST93-1070	Alabama-Tennessee Nat. Gas Co.	City of Dacatur	11-23-92	B	1,371	A	I	11-01-92	11-01-95
ST93-1071	Alabama-Tennessee Nat. Gas Co.	City of Decatur	11-23-92	B	1,690	A	I	11-01-92	11-01-00
ST93-1072	Alabama-Tennessee Nat. Gas Co.	City of Decatur	11-23-92	B	6,000	A	I	11-01-92	11-01-95
ST93-1073	Alabama-Tennessee Nat. Gas Co.	City of Athens	11-23-92	B	1,018	A	I	11-01-92	11-01-00
ST93-1074	Alabama-Tennessee Nat. Gas Co.	City of Tuscumbia	11-23-92	B	407	A	I	11-01-92	11-01-00
ST93-1075	Alabama-Tennessee Nat. Gas Co.	City of Tuscumbia	11-23-92	B	330	A	I	11-01-92	11-01-95
ST93-1076	Alabama-Tennessee Nat. Gas Co.	City of Florence	11-23-92	B	3,087	A	I	11-01-92	05-01-01
ST93-1077	Alabama-Tennessee Nat. Gas Co.	City of Russellville	11-23-92	B	938	A	I	11-01-92	11-01-00
ST93-1078	Alabama-Tennessee Nat. Gas Co.	City of Huntsville	11-23-92	B	5,281	A	F/I	11-01-92	11-01-00
ST93-1079	Alabama-Tennessee Nat. Gas Co.	City of Huntsville	11-23-92	B	4,284	A	F/I	11-01-92	11-01-95
ST93-1080	Delhi Gas Pipeline Corp	Williams Natural Gas Co	11-23-92	C	13,000	N	I	10-24-92	Indef.
ST93-1081	Tennessee Gas pipeline Co.	Mississippi Valley Gas Co.	11-23-92	B	20,000	N	F	11-03-92	Indef.
ST93-1082	Tennessee Gas Pipeline Co.	Fulton Cogeneration Associates.	11-23-92	G-S	6,050	N	F	11-01-92	Indef.
ST93-1083	Tennessee Gas Pipeline Co.	Masonite Corp	11-23-92	G-S	531	N	F	11-01-92	Indef.
ST93-1084	Tennessee Gas Pipeline Co.	T.W. Phillips Gas and Oil Co.	11-23-92	G-S	3,000	N	F	11-01-92	Indef.
ST93-1085	Tennessee Gas Pipeline Co.	Clinton Gas Marketing, Inc.	11-23-92	B	50,000	N	I	03-05-91	Indef.
ST93-1086	Tennessee Gas Pipeline Co.	CNG Transmission Corp	11-23-92	G	47,886	N	F	11-02-92	Indef.
ST93-1087	K N Energy, Inc	Equitable Resources Marketing Co.	11-23-92	G-S	20,000	N	I	11-02-92	Indef.
ST93-1088	K N Energy, Inc	Cibola Corp	11-23-92	G-S	5,423	N	F	11-02-92	Indef.
ST93-1089	ANR Pipeline Co	St. Joseph Light & Power Co.	11-23-92	G-S	614	N	F	11-01-92	10-31-93
ST93-1090	ANR Pipeline Co	Miami Valley Resources	11-23-92	G-S	10,000	N	I	11-01-92	Indef.
ST93-1091	ANR Pipeline Co	City of Lineville	11-23-92	G-S	22	N	F	11-01-92	10-31-93
ST93-1092	ANR Pipeline Co	Aquila Energy Marketing Corp.	11-23-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1093	ANR Pipeline Co	Sioux Pointe, Inc	11-23-92	G-S	20,000	N	I	11-01-92	Indef.

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ST93–1094	ANR Pipeline Co	Great River Oil & Gas Corp.	11–23–92	G–S	60,000	N	I	10–26–92	Indef.
ST93–1095	ANR Pipeline Co	Lincoln Natural Gas Co., Inc.	11–23–92	G–S	200	N	F	11–01–92	10–31–93
ST93–1096	ANR Pipeline Co	Martin Exploration Management Co.	11–23–92	G–S	5,000	N	I	11–01–92	Indef.
ST93–1097	ANR Pipeline Co	Reynolds Metals Co	11–23–92	G–S	1,200	N	F	11–03–92	10–31–93
ST93–1098	ANR Pipeline Co	Access Energy Corp	11–23–92	G–S	50,000	N	I	11–01–92	Indef.
ST93–1099	Panhandle Eastern Pipe Line Co.	Keystone Steel & Wire Co.	11–23–92	G–S	4,127	N	F	11–01–92	Indef.
ST93–1100	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co	11–23–92	G–S	10,600	N	F	11–01–92	Indef.
ST93–1101	Panhandle Eastern Pipe Line Co.	Nitex, Inc	11–23–92	G–S	20,000	N	I	11–01–92	Indef.
ST93–1102	Panhandle Eastern P/L Co.	National Steel Corp	11–23–92	G–S	7,455	N	F	11–01–92	Indef.
ST93–1103	Panhandle Eastern P/L Co.	O&R Energy, Inc	11–23–92	G–S	10,000	N	I	11–01–92	Indef.
ST93–1104	Panhandle Eastern P/L Co.	Centra Gas Ontario Inc	11–23–92	G–S	15,000	N	F	11–01–92	Indef.
ST93–1105	Panhandle Eastern P/L Co.	Washington Gas Light Co.	11–23–92	B	23,000	N	F	11–01–92	Indef.
ST93–1106	Algonquin Gas Trans. Co.	Orange & Rockland Utilities, Inc.	11–23–92	G–S	125,000	N	I	11–06–92	Indef.
ST93–1107	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11–23–92	B	77,500	N	F	11–11–92	11–01–02
ST93–1108	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11–23–92	B	77,500	N	F	11–01–92	11–01–92
ST93–1109	Algonquin Gas Trans. Co.	New York State Ele. and Gas Corp.	11–23–92	B	6,250	N	F	11–01–92	Indef.
ST93–1110	U–T Offshore System	Panhandle Eastern Pipe Line Co.	11–23–92	K–S	80,000	N	I	10–23–92	Indef.
ST93–1111	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	11–23–92	B	77,500	N	F	11–01–92	11–01–02
ST93–1112	Algonquin Gas Trans. Co.	Distrigas of Massachusetts Corp.	11–23–92	B	77,500	N	F	11–01–92	11–01–02
ST93–1113	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	11–23–92	B	10,200,000	N	I	11–07–92	Indef.
ST93–1114	Algonquin Gas Transmission Co.	Entrade Corp	11–23–92	G–S	200,000	N	I	11–11–92	Indef.
ST93–1115	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	11–23–92	B	77,500	N	I	11–01–92	11–01–02
ST93–1116	Northern Natural Gas Co	Peoples Natural Gas Co	11–23–92	G–S	80,175,900	N	F	11–01–92	Indef.
ST93–1117	Northern Natural Gas Co	Virginia Public Utilities	11–23–92	G–S	1,000	N	F/I	11–01–92	Indef.
ST93–1118	Northern Natural Gas Co	Natural Gas, Inc	11–23–92	G–S	181,502	N	F/I	11–01–92	Indef.
ST93–1119	Northern Natural Gas Co	Sioux Center Muni. Nat. Gas. Util.	11–23–92	G–S	273,750	N	F/I	11–01–92	Indef.
ST93–1120	Northern Natural Gas Co	Watertown Municipal Utilities Dept.	11–23–92	G–S	709,700	N	F/I	11–01–92	Indef.
ST93–1121	Northern Natural Gas Co	Western Resources Inc	11–23–92	G–S	3,846	N	F/I	11–01–92	Indef.
ST93–1122	Northern Natural Gas Co	Iowa Southern Utilities Co.	11–23–92	G–S	271,347	N	F/I	11–01–92	Indef.
ST93–1123	Northern Natural Gas Co	Midwest Gas	11–23–92	G–S	4,500	N	F/I	11–01–92	Indef.
ST93–1124	Northern Natural Gas Co	Hutchinson Utilities Commission.	11–23–92	G–S	1,963,700	N	F/I	11–01–92	Indef.
ST93–1125	Natural Gas P/L Co. of America.	Central Illinois Pub. Serv. Co.	11–23–92	B	10,000	N	F	11–01–92	10–31–97
ST93–1126	Williams Natural Gas Co	Kansas Municipal Gas Agency.	11–23–92	G–S	11,000	N	F	11–01–92	04–01–93
ST93–1127	Phillips Gas Pipeline Co	Commercial Natural Gas, Inc.	11–23–92	B	10,000	Y	I	11–01–92	Indef.
ST93–1128	Phillips Gas Pipeline Co	Enron Industrial Natural Gas Co.	11–23–92	B	50,000	Y	I	09–04–92	Indef.
ST93–1129	Phillips Gas Pipeline Co	Centran Corp	11–23–92	B	50,000	Y	I	10–23–92	Indef.
ST93–1130	Valero Transmission, L.P	Tennessee Gas Pipeline Co.	11–23–92	C	9,000	N	I	10–01–92	Indef.
ST93–1131	Northern Border Pipeline Co.	Enron Gas Marketing, Inc.	11–23–92	G–S	75,000	A	I	11–01–92	Indef.
ST93–1132	Northern Border Pipeline Co.	Amerada Hess Corp	11–23–92	G–S	40,000	Y	I	11–01–92	Indef.
ST93–1133	Transcontinental Gas P/L Corp.	Seagull Marketing Services, Inc.	11–23–92	G–S	860,000	A	I	03–24–92	Indef.
ST93–1134	Transcontinental Gas P/L Corp.	Philadelphia Electric Co	11–23–92	B	300,000	N	I	07–20–90	Indef.
ST93–1135	Transcontinental Gas P/L Corp.	Industrial Energy Services Co.	11–23–92	G–S	270,000	N	I	12–09–91	Indef.
ST93–1136	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–23–92	B	87	A	F	02–01–92	06–30–96
ST93–1137	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–23–92	B	87	A	F	02–01–92	06–30–96
ST93–1138	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11–23–92	B	87	A	F	01–31–92	06–30–96

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1139	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	262	A	F	01-31-92	06-30-98
ST93-1140	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-23-92	B	80,000	N	I	03-22-89	Indef.
ST93-1141	Transcontinental Gas P/L Corp.	Oryx Gas Marketing L.P	11-23-92	G-S	1,542,450	N	I	11-11-92	Indef.
ST93-1142	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-23-92	G-S	2,981,700	N	I	09-24-92	Indef.
ST93-1143	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11-23-92	B	4,900	A	F	08-01-91	12-31-98
ST93-1144	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	11-23-92	B	1,750	N	F	08-01-91	03-02-98
ST93-1145	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	44	A	F	02-01-92	06-30-98
ST93-1146	Transcontinental Gas P/L Corp.	Union Gas Co	11-23-92	B	10,350	A	F	08-01-91	03-31-05
ST93-1147	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-23-92	B	411,527	A	F	09-01-92	10-31-05
ST93-1148	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	44	A	F	01-31-92	06-30-09
ST93-1149	Transcontinental Gas P/L Corp.	Municipal Gas Authority of Georgia.	11-23-92	B	44	A	F	02-01-92	06-30-98
ST93-1150	Transcontinental Gas P/L Corp.	National Fuel Gas Supply Corp.	11-23-92	B	25,442	A	F	08-01-91	10-31-04
ST93-1151	Transcontinental Gas P/L Corp.	City of Union	11-23-92	B	181	N	F	08-01-91	02-25-98
ST93-1152	Transcontinental Gas P/L Corp.	Transco Energy Marketing Co.	11-23-92	B	100,000	A	F	08-01-91	10-31-02
ST93-1153	Transcontinental Gas P/L Corp.	Public Service Co. of NC	11-23-92	B	2,187	A	F	08-01-91	03-23-98
ST93-1154	Transcontinental Gas P/L Corp.	Public Service Electric & Gas Co.	11-23-92	B	6,222	A	F	08-01-91	03-01-98
ST93-1155	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co.	11-23-92	B	6,440	A	F	08-01-91	10-31-03
ST93-1156	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11-23-92	B	1,123,000	N	I	12-10-91	Indef.
ST93-1157	Transcontinental Gas P/L Corp.	City of Buford	11-23-92	B	87	A	F	01-31-92	06-30-98
ST93-1158	Transcontinental Gas P/L Corp.	South Jersey Gas Co	11-23-92	B	2,187	A	F	08-01-91	02-28-03
ST93-1159	Transcontinental Gas P/L Corp.	City of Shelby	11-23-92	B	11,600	A	F	10-30-92	03-31-00
ST93-1160	Transcontinental Gas P/L Corp.	City of Richmond	11-23-92	B	9,693	N	F	08-01-91	03-31-05
ST93-1161	Transcontinental Gas P/L Corp.	UGI Utilities, Inc	11-23-92	B	2,011	N	F	08-01-91	12-31-98
ST93-1162	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	11-23-92	B	55,000	N	F	08-01-91	12-31-00
ST93-1163	Tennessee Gas Pipeline Co.	CNG Transmission Corp	11-24-92	G	531	N	F	11-01-92	Indef.
ST93-1164	Tennessee Gas Pipeline Co.	O&R Energy, Inc	11-24-92	G-S	300,000	N	I	11-01-92	Indef.
ST93-1165	Tennessee Gas Pipeline Co.	Roanoke Gas Co	11-24-92	B	5,046	N	F	11-01-92	Indef.
ST93-1166	Tennessee Gas Pipeline Co.	Baltimore Gas & Electric Co.	11-24-92	B	4,097	N	F	11-01-92	Indef.
ST93-1167	Channel Industries Gas Co.	Natural Gas P/L Co. of America.	11-24-92	C	75,000	N	I	10-29-92	Indef.
ST93-1168	Viking Gas Transmission Co.	City of Perham	11-24-92	B	1,309	N	F	11-01-92	Indef.
ST93-1169	Tennessee Gas Pipeline Co.	Enron Gas Marketing Inc	11-24-92	G-S	703,297	N	I	11-01-92	Indef.
ST93-1170	Tennessee Gas Pipeline Co.	Consolidated Edison Co. of NY, Inc.	11-24-92	G-S	31,212	N	F	11-08-92	Indef.
ST93-1171	Tennessee Gas Pipeline Co.	Gasmark Ltd	11-24-92	G-S	75,000	N	I	10-29-92	Indef.
ST93-1172	Colorado Interstate Gas Co.	Montana Power Co	11-24-92	B	15,000	N	I	11-01-92	Indef.
ST93-1173	Colorado Interstate Gas Co.	ANR Pipeline Co	11-24-92	G	35,000	N	I	11-01-92	10-31-93
ST93-1174	Texas Eastern Transmission Corp.	Energy Consultants, Inc	11-24-92	G-S	3,500	N	I	11-04-92	Indef.
ST93-1175	Texas Eastern Transmission Corp.	Equitrans, Inc	11-24-92	G	100,000	N	I	11-01-92	Indef.
ST93-1176	Panhandle Eastern Pipe Line Co.	Aluminum Co. of America.	11-24-92	G-ST	4,771	N	F	11-01-92	Indef.
ST93-1177	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co	11-24-92	G-ST	4,970	N	F	11-01-92	Indef.
ST93-1178	Panhandle Eastern Pipe Line Co.	Miami Valley Resources, Inc.	11-24-92	G-S	4,629	N	F	11-01-92	Indef.

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ST93-1179	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	11-24-92	G-ST	9,940	N	F	11-01-92	Indef.
ST93-1180	Panhandle Eastern Pipe Line Co.	Missouri Public Service .	11-24-92	G-ST	5,940	N	F	11-01-92	Indef.
ST93-1181	Panhandle Eastern Pipe Line Co.	Interstate Gas Supply, Inc.	11-24-92	G-S	2,000	N	F	11-01-92	Indef.
ST93-1182	Panhandle Eastern Pipe Line Co.	Aluminum Co. of America.	11-24-92	G-S	2,923	N	F	11-01-92	Indef.
ST93-1183	Trunkline Gas Co	Unigas Energy, Inc	11-24-92	G-S	30,000	N	F	11-01-92	Indef.
ST93-1184	Trunkline Gas Co	Panhandle Trading Co ...	11-24-92	G-S	100,000	N	I	11-01-92	Indef.
ST93-1185	ANR Pipeline Co	Wisconsin Southern Gas Co., Inc.	11-24-92	G-S	280	N	F	11-01-92	10-31-93
ST93-1186	ANR Pipeline Co	Wisconsin Public Service Corp.	11-24-92	G-S	20,000	N	F	11-01-92	Indef.
ST93-1187	ANR Pipeline Co	Michigan Gas Utilities	11-24-92	B	14,700	N	F	11-01-92	Indef.
ST93-1188	ANR Pipeline Co	Enron Gas Marketing	11-24-92	G-S	200,000	N	F	11-01-92	Indef.
ST93-1189	ANR Pipeline Co	Ohio Valley Gas Corp	11-24-92	B	1,500	N	F	11-01-92	Indef.
ST93-1190	ANR Pipeline Co	Coast Energy Group, Inc	11-24-92	G-S	75,000	N	F	11-01-92	Indef.
ST93-1191	ANR Pipeline Co	Enron Gas Marketing	11-24-92	G-S	200,000	N	F	11-01-92	Indef.
ST93-1192	ANR Pipeline Co	Triumph Gas Marketing Co.	11-24-92	G-S	100,000	N	F	11-01-92	Indef.
ST93-1193	ANR Pipeline Co	City of New Boston	11-24-92	G-S	44	N	F	11-01-92	10-31-93
ST93-1194	ANR Pipeline Co	Michigan Consolidated Gas Co.	11-24-92	B	100,000	N	F	11-01-92	Indef.
ST93-1195	ANR Pipeline Co	Enron Gas Marketing	11-24-92	G-S	200,000	N	F	11-01-92	Indef.
ST93-1196	Northern Natural Gas Co	Wisconsin Gas Co	11-24-92	G-S	25,000	N	F/I	11-01-92	Indef.
ST93-1197	Northern Natural Gas Co	City of Tipon	11-24-92	G-S	595	N	F/I	11-01-92	Indef.
ST93-1198	Northern Natural Gas Co	Northern Illinois Gas Co	11-24-92	B	70,000	N	F/I	11-01-92	Indef.
ST93-1199	Northern Natural Gas Co	Sioux Center Municipal Nat. Gas Ut.	11-24-92	G-S	350	N	F/I	11-01-92	Indef.
ST93-1200	Northern Natural Gas Co	Northern Illinois Gas Co	11-24-92	B	116,058	N	F/I	11-01-92	Indef.
ST93-1201	Northern Natural Gas Co	Northern Minnesota Utilities.	11-24-92	G-S	5,100	N	F/I	11-01-92	Indef.
ST93-1202	Northern Natural Gas Co	Northwestern Public Service Co.	11-24-92	G-S	29,907	N	F/I	11-01-92	Indef.
ST93-1203	Northern Natural Gas Co	Hibbing Public Utility Commission.	11-24-92	G-S	1,782	N	F/I	11-01-92	Indef.
ST93-1204	Northern Natural Gas Co	Superior Water Light & Power Co.	11-24-92	G-S	6,150	N	F/I	11-01-92	Indef.
ST93-1205	Northern Natural Gas Co	Harlan Municipal Utilities	11-24-92	G-S	1,840	N	F/I	11-01-92	Indef.
ST93-1206	Northern Natural Gas Co	Minnegasco, Div. of Arkla, Inc.	11-24-92	B	575,049	N	F/I	11-01-92	Indef.
ST93-1207	Northern Natural Gas Co	City of Preston	11-24-92	G-S	378	N	F/I	11-01-92	Indef.
ST93-1208	Northern Natural Gas Co	Muny Natural Gas	11-24-92	G-S	539	N	F/I	11-01-92	Indef.
ST93-1209	Northern Natural Gas Co	Madison Gas and Electric Co.	11-24-92	G-S	33,481	N	F/I	11-01-92	Indef.
ST93-1210	Northern Natural Gas Co	Wisconsin Natural Gas Co.	11-24-92	G-S	11,620	N	F/I	11-01-92	Indef.
ST93-1211	Northern Natural Gas Co	St. Croix Valley Nat. Gas Co., Inc.	11-24-92	G-S	3,812	N	F/I	11-01-92	Indef.
ST93-1212	Northern Natural Gas Co	Western Gas Utilities	11-24-92	G-S	3,202	N	F/I	11-01-92	Indef.
ST93-1213	Northern Natural Gas Co	Wisconsin Gas Co	11-24-92	G-S	58,875	N	F/I	11-01-92	Indef.
ST93-1214	Northern Natural Gas Co	Sheehan's Natural Gas Co.	11-24-92	G-S	205	N	F/I	11-01-92	Indef.
ST93-1215	Northern Natural Gas Co	Owatonna Public Utilities	11-24-92	G-S	7,001	N	F/I	11-01-92	Indef.
ST93-1216	Northern Natural Gas Co	City of Whittemore	11-24-92	G-S	333	N	F/I	11-01-92	Indef.
ST93-1217	Transcontinental Gas P/L Corp.	City of Covington	11-24-92	B	262	A	F	01-31-92	06-30-98
ST93-1218	Nyotex Gas Transport ...	Columbia Gas Transmission Corp.	11-24-92	C	15,000	N	I	11-05-92	Indef.
ST93-1219	Nyotex Gas Transport ...	Columbia Gas Transmission Corp.	11-24-92	C	15,000	N	I	11-06-92	Indef.
ST93-1220	Columbia Gas Transmission Corp.	Interstate Gas Supply, Inc.	11-24-92	G-S	15,000	N	I	11-11-92	Indef.
ST93-1221	Columbia Gas Transmission Corp.	Dayton Power & Lilght Co.	11-24-92	B	800	N	F	11-01-92	03-31-93
ST93-1222	Columbia Gas Transmission Corp.	Felton-McCord & Associates, Inc.	11-24-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1223	Columbia Gas Transmission Corp.	Ashland Exploration, Inc	11-24-92	G-S	93,792	N	I	11-01-92	Indef.
ST93-1224	Columbia Gas Transmission Corp.	Stand Energy Corp	11-24-92	G-S	5	Y	F	11-01-92	03-31-93
ST93-1225	Columbia Gas Transmission Corp.	Interstate Gas Marketing, Inc.	11-24-92	G-S	70	N	F	11-01-92	Indef.
ST93-1226	Columbia Gas Transmission Corp.	Dayton Power & Light Co.	11-24-92	B	700	N	F	11-15-92	03-31-93
ST93-1227	Columbia Gas Transmission Corp.	Access Energy Corp	11-24-92	G-S	3,978	Y	F	11-04-92	03-31-93
ST93-1228	Columbia Gas Transmission Corp.	Mark Resources Corp	11-24-92	G-S	2,800	[illegible]	I	11-01-92	Indef.
ST93-1229	Columbia Gulf Transmission Co.	AGIP Petroleum Co., Inc	11-24-92	G-S	50,000	N	I	10-31-92	Indef.

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ST93-1230	Columbia Gulf Transmission Co.	Consolidated Fuel Corp	11-24-92	G-S	20,000	N	I	11-02-92	Indef.
ST93-1231	Columbia Gulf Transmission Co.	Onxy Gas Marketing L.P	11-24-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1232	Columbia Gulf Transmission Co.	Texaco Gas Marketing, Inc.	11-24-92	G-S	200,000	N	I	11-02-92	Indef.
ST93-1233	Columbia Gulf Transmission Co.	Onxy Gas Marketing L.P	11-24-92	G-S	70,000	N	I	10-31-92	Indef.
ST93-1234	Questar Pipeline Co	Celsius Energy Co	11-25-92	G-S	90,000	N	I	11-14-92	Indef.
ST93-1235	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	11-25-92	C	50,000	N	I	11-05-92	Indef.
ST93-1236	Transok, Inc	Natural Gas P/L Co. of America.	11-25-92	C	50,000	N	I	11-01-92	Indef.
ST93-1237	Tennessee Gas Pipeline Co.	Colonial Gas Co	11-25-92	G-S	7,504	N	I	11-01-92	Indef.
ST93-1238	Tennessee Gas Pipeline Co.	Alatenn Energy Marketing Co.	11-25-92	G-S	5,000	N	I	11-01-92	Indef.
ST93-1239	Tennessee Gas Pipeline Co.	Orchard Gas Corp	11-25-92	G-S	27,000	N	I	11-01-92	Indef.
ST93-1240	Tennessee Gas Pipeline Co.	Corning Natural Gas Corp.	11-25-92	G-S	5,956	N	I	11-01-92	Indef.
ST93-1241	Tennessee Gas Pipeline Co.	Atlanta Gas Light Co	11-25-92	B	18,979	N	I	11-01-92	Indef.
ST93-1242	Tennessee Gas Pipeline Co.	Iroquois Gas Trans. System L.P.	11-25-92	G	10,000	N	I	11-01-92	Indef.
ST93-1243	Tennessee Gas Pipeline Co.	Oryx Gas Marketing L.P	11-25-92	G-S	5,000	N	F	11-02-92	03-31-93
ST93-1244	Tennessee Gas Pipeline Co.	Procter & Gamble Paper Products Co.	11-25-92	G-S	4,444	N	F	11-01-92	Indef.
ST93-1245	Channel Industries Gas Co.	THC Pipeline Co	11-25-92	C	50,000	N	I	11-01-92	Indef.
ST93-1246	Kern River Gas Transmission Co.	A A Production, Inc	11-25-92	G-S	4,800	N	I	11-01-92	Indef.
ST93-1247	Viking Gas Transmission Co.	Northern Minnesota Utilities.	11-25-92	B	8,366	N	F	11-01-92	Indef.
ST93-1248	Viking Gas Transmission Co.	City of Hawley	11-25-92	G-S	504	N	F	11-01-92	Indef.
ST93-1249	Lone Star Gas Co	El Paso Natural Gas Co	11-25-92	C	42,000	N	I	11-01-92	Indef.
ST93-1250	Lone Star Gas Co	El Paso Natural Gas Co	11-25-92	C	75,000	N	I	11-01-92	Indef.
ST93-1251	Williston Basin Inter. P/L Co.	Indland Oil & Oil Gas Corp.	11-25-92	G-S	7,714	A	I	11-16-92	03-21-93
ST93-1252	Williston Basin Inter. P/L Co.	Coastal Gas Marketing Co.	11-25-92	G-S	117,725	A	I	10-27-92	06-18-94
ST93-1253	Transcontinental Gas P/L Corp.	Tejas Power Corp	11-25-92	G-S	3,665,000	N	I	05-08-91	Indef.
ST93-1254	Transcontinental Gas P/L Corp.	Consolidated Edison Co	11-25-92	B	7,880,000	N	I	10-16-92	Indef.
ST93-1255	Transcontinental Gas P/L Corp.	Texaco Gas Marketing, Inc.	11-25-92	G-S	6,175,000	N	I	06-04-92	Indef.
ST93-1256	Transcontinental Gas P/L Corp.	Piedmont Natural Gas Co., Inc.	11-25-92	B	352,000	N	I	10-26-92	Indef.
ST93-1257	Transcontinental Gas P/L Corp.	Aquila Energy Marketing Co.	11-25-92	B	1,050,000	N	I	02-16-92	Indef.
ST93-1258	Transcontinental Gas P/L Corp.	Arco Natural Gas Marketing, Inc.	11-25-92	G-S	8,859,000	N	I	03-23-92	Indef.
ST93-1259	Transcontinental Gas P/L Corp.	BP Gas, Inc	11-25-92	G-S	820,000	N	I	08-08-91	Indef.
ST93-1260	Transcontinental Gas P/L Corp.	Polaris Pipeline Corp	11-25-92	G-S	1,750,000	N	I	08-09-91	Indef.
ST93-1261	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-25-92	G-S	4,860,000	N	I	09-24-92	Indef.
ST93-1262	Transcontinental Gas P/L Corp.	MG Natural Gas Corp	11-25-92	G-S	900,000	N	I	10-13-92	Indef.
ST93-1263	Transcontinental Gas P/L Corp.	Mobil Natural Gas, Inc	11-25-92	G-S	15,255,213	N	I	10-28-92	Indef.
ST93-1264	Transcontinental Gas P/L Corp.	Conoco, Inc	11-25-92	G-S	80,000	N	I	08-10-90	Indef.
ST93-1265	Transcontinental Gas P/L Corp.	Heath Petra Resources, Inc.	11-25-92	G-S	571,000	N	I	07-01-91	Indef.
ST93-1266	Transcontinental Gas P/L Corp.	Stella Gas Co	11-25-92	G-S	1,900,000	N	I	09-04-92	Indef.
ST93-1267	Transcontinental Gas P/L Corp.	Eastex Hydrocarbons, Inc.	11-25-92	G-S	80,000	N	I	10-13-92	Indef.
ST93-1268	Transcontinental Gas P/L Corp.	Heath Petra Resources, Inc.	11-25-92	G-S	846,000	N	I	10-29-91	Indef.
ST93-1269	Transcontinental Gas P/L Corp.	Texaco Gas Marketing, Inc.	11-25-92	G-S	4,516,425	N	I	06-30-92	Indef.
ST93-1270	ANR Pipeline Co	Iowa Electric Light and Power Co.	11-25-92	G-S	1,340	N	F	11-01-92	10-31-93
ST93-1271	ANR Pipeline Co	Public Service Electric & Gas Co.	11-25-92	G-S	12,850	N	F	11-01-92	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST[illegible]272	ANR Pipeline Co	Iowa Southern Utilities Co.	11–25–92	G–S	8,462	N	F	11–01–92	10–31–93
ST93–1273	ANR Pipeline Co	Miami Valley Resources, Inc.	11–25–92	G–S	846	N	F	11–01–92	10–31–93
ST93–1274	ANR Pipeline Co	Anchor Glass Container Corp.	11–25–92	G–S	3,518	N	F	11–01–92	Indef.
ST93–1275	Panhandle Eastern Pipe Line Co.	Northern Illinois Gas Co	11–25–92	G–S	507	N	F	11–01–92	Indef.
ST93–1276	Panhandle Eastern Pipe Line Co.	Access Energy Corp	11–25–92	G–S	14,721	N	F	11–01–92	Indef.
ST93–1277	Panhandle Eastern Pipe Line Co.	Central Illinois Public Service Co.	11–25–92	G–S	9,940	N	F	11–01–92	Indef.
ST93–1278	Panhandle Eastern Pipe Line Co.	Access Energy Corp	11–25–92	G–S	14,721	N	F	11–01–92	Indef.
ST93–1279	Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc.	11–25–92	G–S	15,000	N	F	11–01–92	Indef.
ST93–1280	Northern Natural Gas Co	Rock Rapids Municipal Utilities.	11–25–92	G–S	525	N	F/I	11–01–92	Indef.
ST93–1281	Northern Natural Gas Co	Remsen Municipal Utilities.	11–25–92	G–S	280	N	F/I	11–01–92	Indef.
ST93–1282	Northern Natural Gas Co	Peninsular Gas Co	11–25–92	G–S	560	N	F/I	11–01–92	Indef.
ST93–1283	Northern Natural Gas Co	Guthrie Center Municipal Utilities.	11–25–92	G–S	420	N	F/I	11–01–92	Indef.
ST93–1284	Northern Natural Gas Co	Emmetsburg Municipal Utilities.	11–25–92	G–S	700	N	F/I	11–01–92	Indef.
ST93–1285	Northern Natural Gas Co	Cascade Municipal Utilities.	11–25–92	G–S	120	N	F/I	11–01–92	Indef.
ST93–1286	Northern Natural Gas Co	Woodbine Municipal Gas System.	11–25–92	G–S	90	N	F/I	11–01–92	Indef.
ST93–1287	Northern Natural Gas Co	Midwest Gas, Midwest Power Systems.	11–25–92	B	141,600	N	F/I	11–01–92	Indef.
ST93–1288	Northern Natural Gas Co	Wisconsin Power and Light Co.	11–25–92	G–S	13,665	N	F/I	11–01–92	Indef.
ST93–1289	Northern Natural Gas Co	Northwest Natural Gas Co.	11–25–92	B	67	N	F/I	11–01–92	Indef.
ST93–1290	Northern Natural Gas Co	Gasco, Inc	11–25–92	G–S	50,000	N	F/I	07–02–92	Indef.
ST93–1291	Northern Natural Gas Co	Great Plains Natural Gas Co.	11–25–92	G–S	3,410	N	F/I	11–01–92	Indef.
ST93–1292	Northern Natural Gas Co	City of West Bend	11–25–92	G–S	150	N	F/I	11–01–92	Indef.
ST93–1293	Northern Natural Gas Co	Wisconsin Southern Gas Co., Inc.	11–25–92	G–S	1,500	N	F/I	11–01–92	Indef.
ST93–1294	Northern Natural Gas Co	Peninsular Gas Co	11–25–92	G–S	315	N	F/I	11–01–92	Indef.
ST93–1295	Northern Border Pipeline Co.	Western Gas Marketing, Inc.	11–25–92	G–S	50,000	A	F/I	11–01–92	01–31–94
ST93–1296	Northern Border P/L Co	Suncor Inc	11–25–92	G–S	50,000	Y	I	11–01–92	Indef.
ST93–1297	Northern Border P/L Co	Iowa Electric Light & Power Co.	11–25–92	B	25,000	N	I	11–01–92	10–31–94
ST93–1298	Columbia Gas Transmission Corp.	Columbia Gas of Ohio, Inc.	11–25–92	G–S	1,525	Y	F	11–09–92	03–31–93
ST93–1299	Columbia Gas Transmission Corp.	Access Energy Corp	11–25–92	G–S	686	Y	F	11–11–92	03–31–93
ST93–1300	Columbia Gas Transmission Corp.	Access Energy Corp	11–25–92	G–S	1,755	Y	F	11–11–92	03–31–93
ST93–1301	Columbia Gas Transmission Corp.	Access Marketing Services, Inc.	11–25–92	G–S	1,082	N	F	11–01–92	Indef.
ST93–1302	CNG Transmission Corp	New Jersey Natural Gas Co.	11–25–92	G–S	20,000	N	I	11–01–92	Indef.
ST93–1303	CNG Transmission Corp	New Jersey Natural Gas Co.	11–25–92	G–S	4,749	N	I	11–01–92	Indef.
ST93–1304	CNG Transmission Corp	Public Service Electric & Gas.	11–25–92	G–S	6,150	N	I	11–01–92	Indef.
ST93–1305	CNG Transmission Corp	AGF Direct Gas Sales, Inc.	11–25–92	G–S	10,000	N	I	11–01–92	Indef.
ST93–1306	CNG Transmission Corp	Morgantown Energy Technology.	11–25–92	G–S	1,000	N	I	11–01–92	Indef.
ST93–1307	CNG Transmission Corp	Texas Ohio Gas, Inc	11–25–92	G–S	5,000	N	I	11–01–92	Indef.
ST93–1308	CNG Transmission Corp	O&R Energy, Inc	11–25–92	G–S	100,000	N	I	11–01–92	Indef.
ST93–1309	CNG Transmission Corp	Stand Energy Corp	11–25–92	G–S	200	N	I	11–01–92	Indef.
ST93–1310	CNG Transmission Corp	Rochester Gas and Elect. Corp.	11–25–92	G–S	100,000	N	I	11–01–92	Indef.
ST93–1311	CNG Transmission Corp	Access Energy Corp	11–25–92	G–S	100,000	N	I	11–01–92	Indef.
ST93–1312	Gas Transport, Inc	Hope Gas, Inc	11–25–92	B	475	N	I	01–01–93	06–30–94
ST93–1313	Natural Gas P/L Co. of America.	Industrial Energy App., Inc.	11–25–92	G–S	2,386	N	F	11–01–92	10–31–97
ST93–1314	Natural Gas P/L Co. of America.	Midcon Marketing Corp	11–25–92	G–S	25,000	A	F	11–01–92	10–31–93
ST93–1315	Natural Gas P/L Co. of America.	Midcon Marketing Corp	11–25–92	G–S	5,000	A	F	11–01–92	02–28–93
ST93–1316	Natural Gas P/L Co. of America.	Minnegasco	11–25–92	B	25,500	N	F	11–01–92	03–31–93
ST93–1317	Natural Gas P/L Co. of America.	Minnesota Mining and Manufact. Co.	11–25–92	G–S	1,500	N	F	11–01–92	10–31–93

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-1318	Natural Gas P/L Co. of America.	Aquila Energy Marketing Corp.	11-25-92	G-S	50,000	N	F	11-01-92	11-30-92
ST93-1319	Natural Gas P/L Co. of America.	American Central Gas Cos., Inc.	11-25-92	G-S	5,000	N	F	11-01-92	03-31-93
ST93-1320	Natural Gas P/L Co. of America.	Wisconsin Natural Gas Co.	11-25-92	B	30,000	N	F	11-01-92	11-01-02
ST93-1321	Ozark Gas Transmission System.	Centran Corp	11-27-92	G-S	100,000	N	F/I	11-07-92	Indef.
ST93-1322	Ozark Gas Transmission System.	Bridgegas U.S.A., Inc	11-27-92	G-S	100,000	N	F/I	10-30-92	Indef.
ST93-1323	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-27-92	C	20,000	N	I	11-12-92	Indef.
ST93-1324	Delhi Gas Pipeline Corp	ANR Pipeline Co	11-27-92	C	10,000	N	I	11-01-92	Indef.
ST93-1325	Delhi Gas Pipeline Corp	Northern Natural Gas Co., Inc.	11-27-92	C	33,000	N	I	10-30-92	Indef.
ST93-1326	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-27-92	C	20,000	N	I	10-30-92	Indef.
ST93-1327	Delhi Gas Pipeline Corp	Northern Natural Gas Co	11-27-92	C	17,000	N	I	11-12-92	Indef.
ST93-1328	Delhi Gas Pipeline Corp	Phillips Gas Pipeline Co	11-27-92	C	375,000	N	I	11-01-92	Indef.
ST93-1329	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	11-27-92	C	11,000	N	I	11-01-92	Indef.
ST93-1330	Delhi Gas Pipeline Corp	Arkla Energy Resources	11-27-92	C	3,150	N	I	11-01-92	Indef.
ST93-1331	Delhi Gas Pipeline Corp	Natural Gas P/L Co. of America.	11-27-92	C	17,000	N	I	11-01-92	Indef.
ST93-1332	Lone Star Gas Co	Texas Eastern Transmission Co.	11-27-92	C	50,000	N	I	11-01-92	Indef.
ST93-1333	Columbia Gulf Transmission Co.	Aquila Energy Marketing Corp.	11-30-92	G-S	13,400	N	F	11-01-92	Indef.
ST93-1334	Viking Gas Transmission Co.	Great Plains Natural Gas Co.	11-30-92	B	7,841	N	F	11-01-92	Indef.
ST93-1335	Channel Industries Gas Co.	THC Pipeline Co	11-30-92	C	75,000	N	I	11-01-92	Indef.
ST93-1336	Channel Industries Gas Co.	Anadarko Trading Co	11-30-92	G-I	20,000	N	I	11-01-92	Indef.
ST93-1337	Viking Gas Transmission Co.	ANR Pipeline Co	11-30-92	G	206,448	N	I	11-01-92	Indef.
ST93-1338	Viking Gas Transmission Co.	Northern States Power Co.	11-30-92	B	30,800	N	F	11-01-92	Indef.
ST93-1339	Viking Gas Transmission Co.	Wisconsin Gas Co	11-30-92	G-S	6,445	N	F	11-01-92	10-31-02
ST93-1340	Viking Gas Transmission Co.	City of Perham	11-30-92	G-S	655	N	I	11-01-92	10-01-92
ST93-1341	Viking Gas Transmission Co.	Midwest Gas	11-30-92	B	1,098	N	F	11-01-92	Indef.
ST93-1342	Viking Gas Transmission Co.	Peoples Natural Gas Co	11-30-92	B	3,127	N	F	11-01-92	11-01-02
ST93-1343	Iroquois Gas Trans. System, L.P.	Brooklyn Interstate Natural Gas.	11-30-92	G-S	11,600	N	F	11-01-92	10-31-93
ST93-1344	Iroquois Gas Trans. System, L.P.	Niagara Mohawk Power Corp.	11-30-92	G-S	51,000	N	F	11-01-92	10-31-93
ST93-1345	Iroquois Gas Trans. System, L.P.	Kamine/Besicorp Carthage L.P.	11-30-92	G-S	14,200	N	F	11-01-92	10-31-93
ST93-1346	Iroquois Gas Trans. System, L.P.	Connecticut Natural Gas Corp.	11-30-92	B	10,000	N	F	11-01-92	Indef.
ST93-1347	Tennessee Gas Pipeline Co.	Pawtucket Power Assoc	11-30-92	G-S	15,000	N	I	11-03-92	Indef.
ST93-1348	Tennessee Gas Pipeline Co.	Entrade Corp	11-30-92	G-S	11,500	N	F	11-01-92	Indef.
ST93-1349	Tennessee Gas Pipeline Co.	Commonwealth Gas Co	11-30-92	G-S	9,439	N	F	11-02-92	Indef.
ST93-1350	Tennessee Gas Pipeline Co.	North Penn Gas Co	11-30-92	G-S	5,000	N	F	11-03-92	Indef.
ST93-1351	Tennessee Gas Pipeline Co.	Cincinnati Gas and Electric Co.	11-30-92	B	42,000	N	F	11-01-92	Indef.
ST93-1352	Tennessee Gas Pipeline Co.	Granite State Gas Trans., Inc.	11-30-92	G-S	15,200	N	F	11-09-92	Indef.
ST93-1353	Tennessee Gas Pipeline Co.	Essex County Gas Co ...	11-30-92	G-S	5,172	N	F	11-01-92	Indef.
ST93-1354	Transcontinental Gas P/L Corp.	City of Shelby	11-30-92	B	50,000	N	I	08-11-87	Indef.
ST93-1355	Transcontinental Gas P/L Corp.	Municipal Gas Authority of GA.	11-30-92	G-S	87	A	F	08-01-87	Indef.
ST93-1356	Transcontinental Gas P/L Corp.	Southwestern Virginia Gas Co.	11-30-92	B	5,850	N	F	02-01-92	01-31-11
ST93-1357	Transcontinental Gas P/L Corp.	Alabama Gas Corporation-Clanton.	11-30-92	B	3,460	N	F	02-01-92	12-31-01
ST93-1358	Transcontinental Gas P/L Corp.	Alabama Gas Corporation-Thomaston.	11-30-92	B	270	N	F	02-01-92	12-31-01
ST93-1359	Transcontinental Gas P/L Corp.	Hadson Gas Systems, Inc.	11-30-92	G-S	61,050	N	I	07-10-92	Indef.
ST93-1360	Transcontinental Gas P/L Corp.	TEJAS Power Corp	11-30-92	B	130,000	N	I	01-03-89	Indef.
ST93-1361	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11-30-92	B	3,040,000	N	I	04-30-90	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93–1362	Transcontinental Gas P/L Corp.	NGC Transportation, Inc	11–30–92	B	3,040,000	N	I	04–03–92	Indef.
ST93–1363	Transcontinental Gas P/L Corp.	Union Gas Co	11–30–92	B	3,000	A	F	08–01–91	Indef.
ST93–1364	Gulf Energy Pipeline Co	Trunkline Gas Co	11–30–92	C	10,000	N	I	11–01–92	Indef.
ST93–1365	Northwest Pipeline Corp	Northwest Natural Gas Co.	11–30–92	G–S	242,922	N	F	11–01–92	Indef.
ST93–1366	Northwest Pipeline Corp	Cascade Natural Gas Corp.	11–30–92	G–S	179,068	N	F	11–01–92	Indef.
ST93–1367	Northwest Pipeline Corp	Utah Gas Service Co	11–30–92	G–S	6,433	N	F	11–01–92	Indef.
ST93–1368	Northwest Pipeline Corp	Union Pacific Fuels, Inc	11–30–92	G–S	20,000	N	F	11–01–92	Indef.
ST93–1369	Northwest Pipeline Corp	IGI Resources, Inc	11–30–92	G–S	113,024	N	F	11–01–92	Indef.
ST93–1370	Northwest Pipeline Corp	Washington Natural Gas Co.	11–30–92	G–S	230,797	N	F	11–01–92	Indef.
ST93–1371	Northwest Pipeline Corp	Washington Water Power Co.	11–30–92	G–S	148,532	N	F	11–01–92	Indef.
ST93–1372	Northwest Pipeline Corp	City of Ellensburg	11–30–92	G–S	6,000	N	F	11–01–92	Indef.
ST93–1373	Northwest Pipeline Corp	Wyoming Industrial Gas Co.	11–30–92	G–S	2,750	N	F	11–01–92	Indef.
ST93–1374	Northwest Pipeline Corp	City of Enumclaw	11–30–92	G–S	2,572	N	F	11–01–92	Indef.
ST93–1375	Mississippi River Trans. Corp.	TEJAS Hydorcarbons Co	11–30–92	G–S	100,000	N	I	02–27–92	Indef.
ST93–1376	Colorado Interstate Gas Co.	Montana Power Co	11–30–92	B	15,000	N	I	11–01–92	Indef.
ST93–1377	Colorado Interstate Gas Co.	City of Colorado Springs	11–30–92	B	33,340	N	I	11–01–92	09–30–96
ST93–1378	Colorado Interstate Gas Co.	Montana Power Co	11–30–92	B	10,000	N	I	11–01–92	Indef.
ST93–1379	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	11–30–92	B	10,000	A	I	11–09–92	Indef.
ST93–1380	Colorado Interstate Gas Co.	Grand Valley Gas Co	11–30–92	G–S	10,000	N	I	11–01–92	Indef.
ST93–1381	Black Marlin Pipeline Co	Houston Pipe Line Co.	11–30–92	B	10,000	A	I	10–29–92	Indef.
ST93–1382	Northern Natural Gas Co	Midwest Gas	11–30–92	G–S	950	N	F/I	11–01–92	10–31–95
ST93–1383	Northern Natural Gas Co	Rolfe Municipal Gas	11–30–92	G–S	72	N	F/I	11–01–92	Indef.
ST93–1384	Northern Natural Gas Co	Iowa Electric Light & Power Co.	11–30–92	B	20,00	N	F/I	11–01–92	Indef.
ST93–1385	Northern Natural Gas Co	City of Duluth	11–30–92	G–S	3,000	N	F/I	11–01–92	Indef.
ST93–1386	Northern Natural Gas Co	City of Duluth	11–30–92	G–S	3,000	N	F/I	11–01–92	Indef.
ST93–1387	Northern Natural Gas Co	ANR Pipeline Co	11–30–92	G–S	86,512	N	F/I	11–01–92	Indef.
ST93–1388	Northern Natural Gas Co	Westbrook Municipal Light & Power.	11–30–92	B	203	N	F/I	11–01–92	Indef.
ST93–1389	Northern Natural Gas Co	Nebraska Kpublic Gas Agency.	11–30–92	G–S	124	N	F/I	11–01–92	Indef.

*Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,373, 10/10/85).

**Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

***Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 93–1238 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–009]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

January 13, 1993.

Take notice that Trunkline Gas Company (Trunkline) on January 8, 1992 tendered for filing the following tariff sheet to is FERC Gas Tariff, Original Volume No. 1:

Fifteenth Revised Sheet No. 21–F

Trunkline proposes that this tariff sheet become effective November 1, 1992.

Trunkline states that this tariff sheet was inadvertently omitted from Trunkline's tariff filing on October 1, 1992 in the above-referenced proceeding.

Trunkline states that copies of this filing are being mailed to Trunkline's jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1236 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–31–001]

Arkla Energy Resources; Filing of Revised Tariff Sheets in Compliance With Commission Order

January 13, 1993.

Take notice that on January 7, 1993, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective January 1, 1993:

Rate Schedule No. G–2

Second Revised Volume No. 1

First Revised Substitute Fifteenth Revised Sheet No. 11

Rate Schedule No. CD
Second Revised Volume No. 1
First Revised Substitute Fifteenth Revised Sheet No. 16

AER states that the above tariff sheets are being filed in compliance with the Commission's order dated December 23, 1992 in AER's quarterly PGA effective January 1, 1993, to reflect revised pagination and corrections to the current adjustments for the overrun/deficiency rates. AER also states that the tariff sheets contain no change in total rates.

AER states that copies of the filing is being mailed to the customers served under AER's jurisdictional Rate Schedules and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1237 Filed 1-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-286-000]

Consumers Power Co.; Filing

January 13, 1993.

Take notice that on December 18, 1993, Consumers Power Company (Consumers) tendered for filing a Notice of Termination of Consumers' FERC Electric Rate Schedule No. 60.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1241 Filed 1-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-114-000]

Montana Power Co.; Filing

January 13, 1993.

Take notice that on December 11, 1993, the Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an Amendment No. 1 to its original filing of a Transmission Agreement executed by the United States of America, Department of Energy acting by and through the Bonneville Power Administration and Montana Intertie Users (Colstrip Project). This Amendment No. 1 provides additional information requested by Commission staff.

Copies of the filing were served upon the Bonneville Power Administration, PacifiCorp, Portland General Electric Company, Puget Sound Power & Light Company and The Washington Water Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1242 Filed 1-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-293-000]

Northern States Power Company (Minnesota); Filing

Janauary 13, 1993.

Take notice that on December 23, 1992, Northern States Power Company (Minnesota) (NSP) tendered for filing a Facilities Agreement Between NSP and the Water, Light and Power Commission of the City of East Grand Forks, Minnesota (City). NSP Rate Schedule FERC No. 387. The Facilities Agreement will replace the transmission service portion of the Resale Agreement, and sets forth the terms and conditions and rates for service to the City for the period January 1, 1993 to December 31, 2012.

NSP requests that the Facilities Agreement be accepted for filing effective January 1, 1993, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before January 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1243 Filed 1-19-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-4-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 13, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 8, 1993, tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A to the filing.

The proposed effective date of these revised tariff sheets is January 8, 1993.

Texas Eastern states that these tariff sheets are being filed pursuant to section 23, Purchased Gas Cost Adjustment contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff and pursuant to Order No. 483 issued November 10, 1987 in Docket No. RM86-14. As contemplated in Docket No. RM86-14 and Order No. 483, this filing constitutes an out-of-cycle PGA rate increase. Texas Eastern states that in compliance with § 154.308(b)(2) of the Commission's Regulations, a report containing detailed computations for the derivation of the current adjustment to be applied to Texas Eastern's effective rates is enclosed in the format as prescribed by FERC Form No. 542–PGA (Revised) and FERC's "Notice of Criteria for Accepting Electronic PGA Filings," dated April 12, 1991.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a commodity sales rate increase from Texas Eastern's November 1, 1992, quarterly PGA, which was filed on October 1, 1992, in Docket No. TQ93–2–17, of $2.0505/dth. The proposed sales rate increase is based upon the change in Texas Eastern's projected unit cost of purchased gas for the twenty-four day period beginning January 8, 1993, and ending January 31, 1993, and is necessitated by the "after-market" phenomenon discussed in Texas Eastern's December 31, 1992, flex filing in Docket No. TF93–2–17 (the December 31 filing). In particular, Texas Eastern noted in its December 31 filing that it had in the past experienced sales losses to third parties, due to Texas Eastern's status as a regulated merchant that is required by the Commission's PGA regulations to file its rates, and that the December 31 filing might be effective for a very short period of time. The December 31 flex filing was submitted in order to reflect more closely Texas Eastern's actual cost of purchased gas in accordance with the policies announced by the Commission in Order Nos. 483 and 483–A, and numerous PGA decisions since issuance of such orders. However, "after-market" spot gas prices indeed undercut Texas Eastern's filed PGA rate and caused Texas Eastern to lose sales to third parties. Texas Eastern's average daily sales level to date for January 1993 is approximately 90 Mdth/d. The deterioration of Texas Eastern's sales increased the proportion of "must-take" gas as a percentage of total purchases. Since Texas Eastern's "must take" gas is, generally, higher priced, Texas Eastern's WACOG has increased as a result.

Texas Eastern states that the continued deterioration of Texas Eastern's sales also highlights the need for Texas Eastern's contract assignment program, described more fully in Texas Eastern's annual PGA filing made in Docket No. TA93–1–17 on December 2, 1992, as a cost mitigation measure. As stated in the December 2 filing, Texas Eastern's contract assignment program is a means of mitigating somewhat the unpredictable and significant daily and monthly swings between sales and transportation that are primarily due to lower-priced spot gas available to the market. Texas Eastern believes that its contract assignment program is the most effective means of minimizing Texas Eastern's take-or-pay buydown costs associated with the assigned contracts. As stated in the December 2 filing, contract assignment costs will be recovered by Texas Eastern pursuant to mechanisms consistent with Order No. 636.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1235 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

United Gas Pipe Line Co., Request Under Blanket Authorization

[Docket No. CP93–150–000]

January 11, 1993.

Take notice that on January 7, 1993, United Gas Pipe Line Company (United), P. O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP93–150–000 a request pursuant to §§ 157.205 and 157.211(a)(2) of the Regulations under the Natural Gas Act for authorization to install a meter station and communication equipment to enable United to transport natural gas to serve United Gas Services Company (UGS), under United's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act under United's FTS Rate Schedule, all as more fully set forth in the request on file with the Commission and open for public inspection.

United states that it is authorized to provide natural gas transportation service to UGS under a transportation agreement dated December 19, 1990. United further states that the service provided to UGS would be interruptible and would therefore have no impact on United's curtailment plan.

United further states it will revise, construct and operate the proposed facilities in compliance with 18 CFR, part 157, subpart F, and that the proposed activities will not affect United's ability to serve its other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1239 Filed 1–19–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Renewal

Pursuant to section 14(a)(12)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the High Energy Physics Advisory Panel (HEPAP) has been renewed for a 2-year period beginning in January 1993. The Panel will continue to provide advice to the Secretary of Energy, through the Director, Office of Energy Research, on long-range planning and priorities in the national high energy physics program, including Superconducting Super Collider activities.

The renewal of the HEPAP has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Panel will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Panel may be obtained from Rachel Murphy at (202) 586–3279.

Issued in Washington, DC on January 14, 1993.

Marcia L. Morris,

Deputy Advisory Committee, Management Officer.

[FR Doc. 93–1327 Filed 1–19–93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4553–8]

Open Meeting of the Environmental Financial Advisory Board (EFAB) on February 9, 1992

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board on Tuesday, February 9, 1992 from 9 a.m. to 4 p.m. the Meeting will be held at the Radisson Park Terrace Hotel located at 1515 Rhode Island Avenue NW., Washington, DC.

EFAB is chartered with providing authoritative analysis and advice to the EPA Administrator on environmental finance. This meeting will address important financing issues related to ensuring environmental progress and economic revitalization. The Board's committees will proceed with work examining: Ways to finance environmental facilities in communities on the U.S./Mexican border; development and implementation of university-based Environmental Finance Centers; and methods for integrating risk and finance considerations to improve environmental decision-making.

The meeting will be open to the public, but seating is limited. For further information, please contact Joanne Lynch, U.S. EPA on (202) 260–1459.

Dated: January 12, 1993.

John J. Sandy,

Director, Resource Management Division.

[FR Doc. 93–1334 Filed 1–19–93; 8:45 am]

BILLING CODE 6560-50-M

[OPP–00347; FRL–4185–8]

State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Ground Water Protection and Pesticide Disposal will hold a 2–day meeting, beginning on January 28, 1993, and ending on January 29, 1993. This notice announces the location and times for the meeting and sets forth tentative agenda topics.

DATES: The SFIREG Working Committee on Ground Water Protection and Pesticide Disposal will meet on Thursday, January 28, 1993 from 8:30 a.m. to 5 p.m. and on Friday, January 29, 1993 beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport - Crystal City, 300 Army-Navy Drive, Arlington, Virginia, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By Mail: Shirley M. Howard, Office of Pesticide Programs (H7506C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location and telephone number: room 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG Working Committee includes the following:

1. Reports from the SFIREG Working Committee Members on State Ground Water Protection & Pesticide Disposal projects.
2. Update on FIFRA Section 19 (f)(2).
3. Discussion on the Bulk Containment Policy Questions & Answers Document.
4. Status of Draft Questions & Answers Document on Ground Water Protection.
5. Status of Comprehensive State Ground Water Protection Program Working Committee.
6. Other topics as appropriate.

Dated: January 13, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–1364 Filed 1–19–93; 8:45 am]

BILLING CODE 6560-50-F

[OPP–00336; FRL–4077–2]

Proposed Residue Chemistry Guidelines; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability, request for comments.

SUMMARY: This notice announces the availability of and requests comments on two proposed guidelines: (1) Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides, and (2) Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment. These guidelines are being proposed as supplemental guidance to Subdivision O of the Pesticide Assessment Guidelines, which provides guidance for registrants in the conduct of tests to support registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA).

DATES: Comments must be received by March 22, 1993.

ADDRESSES: Copies of these proposed guidelines may be obtained from the Pesticide Docket, Office of Pesticide Programs, Public Response and Program Resources Branch, room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: For Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides contact by mail: Joel Garbus, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: room 805B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5405.

For Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment, contact by mail: Michael S. Metzger, Health Effects Division (H7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: room 816G, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5883.

SUPPLEMENTARY INFORMATION: Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA requires registrants and applicants for registration of food use pesticides to provide information concerning the amount of pesticide residue found in or on agricultural commodities. These data are used to ensure that pesticides do not pose unreasonable risks to human health. Specific data requirements for food-use pesticides are codified in 40 CFR 158.240, and guidelines for the conduct of these studies are made available through the National Technical Information Service (NTIS). This notice announces the availability of, and requests comments on, two proposed guidelines—Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides and Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment. These new guidelines will complement existing guidelines and will lead to a more formal and uniform approach to assessing both short and long-term dietary health risk.

The proposed acute residue data collection guideline is a portion of the overall scheme that EPA has been developing over the past few years to evaluate the potential for health risk from short-term dietary exposure. Current Agency guidelines are designed to address residue levels in or on composite samples (i.e., samples consisting of many individual items of one commodity, such as several potatoes). The proposed guidelines will enhance EPA's ability to evaluate acute risks by outlining procedures for obtaining and assessing residue levels in individual serving sizes of food commodities. The Agency is concerned about the potential for dietary risks from single servings of food containing unusually high levels of residues. Although there is reason to believe that such risks are generally limited, EPA is working to develop a science-based regulatory scheme to assess the potential for such risks. In order to accomplish this, EPA needs to know the range of residues likely to be present in a single serving and the levels of dietary exposure that cause acute toxicity i.e., the minimum amount of residue that would cause an adverse effect from consumption in a single serving.

These studies will not be required in all cases. The Agency will establish criteria for classifying a pesticide as an acute toxicant, and will establish data requirements and procedures for quantifying minimum acute toxicity levels. Internal procedures are being developed to identify and prioritize those pesticides that should be tested in this way and to deal with acute dietary risk in a systematic manner. The Guidelines for the Collection of Residue Data for Acutely Toxic Pesticides will describe for registrants and applicants how to conduct studies to generate data to determine potential short-term exposure to pesticides with acute toxicological effects. The Agency will continue to seek public participation in all facets of the development of this approach.

The Guidelines for the Use of Anticipated Residues in Dietary Exposure Assessment discuss estimating pesticide residues in food at the time of consumption. The guidelines address a number of subjects which have bearing on the assessment of potential dietary exposure including the use of existing residue data, pesticide usage information, statistical considerations, movement of commodities in commerce, and generation of data for anticipated residue determination. These criteria are currently being used by the Agency on a case-by-case basis in performing dietary risk assessments. The Agency wishes to establish a standard approach for estimating dietary risk.

These proposed guidelines will be reviewed by the FIFRA Scientific Advisory Panel, an independent panel of experts required under FIFRA section 25(d), following receipt and incorporation, as appropriate, of public comments and then published in final form as addenda to Subdivision O (Residue Chemistry) of the Pesticide Assessment Guidelines within the next fiscal year. These guidelines will enhance the ability of pesticide registrants to plan, estimate costs, and design studies that EPA will likely require.

Dated: December 21, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–1335 Filed 1–19–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Channel 35, Jacksonville, NC

1. The Commission has before it the following mutually exclusive applications for a new commercial television station to operate on Channel 35, Jacksonville, North Carolina.

Applicant, city, and state	File No.	MM Docket No.
A. Local Television Associates, Inc.; Jacksonville, NC.	BPCT–911106KF	92–309
B. Charles Fitzgerald; Jacksonville, NC.	BPCT–920114KF	....
C. Webber/Moore Broadcasting Company Limited Partnership; Jacksonville, NC.	BPCT–920114KG	....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
FAA	B
Comparative	A–C
Ultimate	A–C

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1919 M Street NW., room 246, Washington, DC 20037. Telephone No. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 93–1280 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Channel 46, Panama City Beach, FL

1. The Commission has before it the following mutually exclusive applications for a new commercial television station to operate on Channel 46, Panama City Beach, Florida.

Applicant, city, and state	File No.	MM Docket No.
A. Sunkissed Broadcasting, Inc.; Panama City Beach, FL.	BPCT–910617KE	92–307
B. Beach TV Properties, Inc.; Panama City Beach, FL.	BPCT–910815KE	....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues

has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
Comparative	A & B
Ultimate	A & B

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1919 M Street NW., room 246, Washington, DC 20037, Telephone No. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Divisions, Mass Media Bureau.

[FR Doc. 93–1292 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Channel 54, Slidell, LA

1. The Commission has before it the following mutually exclusive applications for a new commercial television station to operate on Channel 54, Slidell, Louisiana.

Applicant, city, and state	File No.	MM Docket No.
A. Caroline K. Powley d/b/a Unicorn Slide; Slidell, LA.	BPCT–900518KO	92–308
B. Trudy M. Mitchell; Slidell, LA.	BPCT–900726KG	....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading	Applicant(s)
FAA	A
Environmental Impact	A
Comparative	A & B
Ultimate	A & B

3. If there is any non-standardized issue(s) in this proceeding, the full test of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1919 M Street NW., room 246, Washington, DC. 20037. Telephone No. (202) 452–1422.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 93–1293 Filed 1–19–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; City of Oakland, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200087–005.

Title: Oakland/Maersk Pacific Terminal Agreement.

Parties:

City of Oakland
Maersk Pacific Ltd.

Synopsis: The amendment reflects an adjustment in certain fees and charges assessed under the Agreement.

Agreement No.: 224–200671–001.

Title: Port of Seattle/Distribution and Auto Service, Inc. Terminal Agreement.

Parties:

The Port of Seattle ("Port")
Distribution and Auto Service, Inc.

Synopsis: The modification provides for the Port to increase the lease premises for Distribution and Auto Service, Inc., from 40 acres to fifty acres and to make the necessary adjustments in the rental payments for the acreage increases.

Agreememt No.: 203–011398.

Title: Nippon Yusen Kaisha, Hapag Lloyd, A.G., and Neptune Orient Lines, Ltd. Far East/United States/North Europe Space Charter and Sailing Agreement.

Parties:

Nippon Yusen Kaisha
Hapag Lloyd, A.G.
Neptune Orient Lines, Ltd.

Synopsis: The proposed Agreement permits the parties to charter and subcharter space among themselves, coordinate sailings and agree, on a voluntary basis, on rates and service contracts in the trade (1) between ports and points in the Far East and ports and points in the U.S. Atlantic, Gulf and Pacific Coasts (including Alaska) and (2) between ports and points in North Europe and ports and points in the U.S. Atlantic, Gulf and Pacific Coasts (including Alaska).

Dated: January 14, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–1302 Filed 1–19–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Bancshares Company; Formations of; Acquisitions by; and Merger of Bank Holding Companies; Correction

This notice corrects a previous Federal Register notice (FR Doc. 92–29998) published at page 58805 of the issue for Thursday, December 10, 1992.

Under the Federal Reserve Bank of Kansas City heading, the entry for Citizens Bancshares Company is revised to read as follows:

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Citizens Bancshares Company, Chillicothe, Missouri; to acquire 100 percent of the voting shares of Blackwater Bancshares, Inc., Blackwater, Missouri, and thereby indirectly acquire Farmers Stock Bank, Blackwater, Missouri.

Comments on this application must be received by February 4, 1993.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1312 Filed 1-19-93; 8:45 am]

BILLING CODE 6210-01-F

M.E. Black Dunklin, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *M.E. Black Dunklin*, Pine Bluff, Arkansas, to acquire an additional 7.25 percent for a total of 34.93 percent; M.E. Black Farms, Inc., Pine Bluff, Arkansas, to acquire 20.0 percent; George H. Dunklin, Jr., Humphrey, Arkansas, to acquire an additional 3.48 percent for a total of 4.02 percent; and Deborah D. Tipton, Memphis, Tennessee, to acquire an additional 3.48 percent for a total of 3.89 percent of the voting shares of Bancshares of West Memphis, Inc., West Memphis, Arkansas, and thereby indirectly acquire Bank of West Memphis, West Memphis, Arkansas.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1313 Filed 1-19-93; 8:45 am]

BILLING CODE 6210-01-F

Mid Am, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 16, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mid Am, Inc.*, Bowling Green, Ohio; to acquire 100 percent of the voting shares of a national banking assocation to be named, and to be located in Xenia, Ohio.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NationsBank Corporation*, Charlotte, North Carolina, Charter Bancshares, Inc., Houston, Texas, and CBH, Inc., Wilmington, Delaware; to acquire 100 percent of the voting shares of University National Bank, Galveston, Texas.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1314 Filed 1-19-93; 8:45 am]

BILLING CODE 6210-01-F

Saban, S.A., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Such activities will be conducted worldwide.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 16, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saban, S.A.*, Panama City, Panama, and Republic New York Corporation, New York, New York; to engage *de novo* through its subsidiary, Republic Asset Management Corporation, New York, New York, in acting as investment or financial adviser pursuant to § 225.25(b)(4); foreign exchange advisory and transactional services pursuant to § 225.25(b)(17); providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19); and acting as a futures commission merchant pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 13, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1315 Filed 1-19-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 902 3283]

Archer Daniels Midland Company; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois-based firm from making any claims, unless substantiated by competent and reliable evidence, that any of its product or plastic product additives are degradable when disposed of in landfills, or that such products or additives offer any environmental benefit.

DATES: Comments must be received on or before March 22, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S–4002, Washington, DC 20580. (202) 326–3158.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of: Archer Daniels Midland Company, a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Archer Daniels Midland Company, A corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Archer Daniels Midland Company, by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent Archer Daniels Midland Company is a Delaware corporation with its office and principal place of business at 4666 Faries Parkway, Decatur, Illinois 62526.

2. Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

Archer Daniels Midland product means any plastic product or any plastic product that contains the plastic product additive defined below, that is advertised, offered for sale, sold, or distributed to the public by respondent, its successors and assigns; and also means any plastic product or any plastic product that contains the plastic product additive defined below, that is offered for sale, sold, or distributed to the public by third parties under private labeling agreements with respondent, its successors and assigns.

Plastic product additive means *Polyclean, ADM Master Batch,* or any other ingredient added to plastic that is advertised, offered for sale, sold, or distributed to the public by respondent, its successors and assigns; and also means any such ingredient that is offered for sale, sold, or distributed to the public by third parties under licensing or other agreements with respondent, its successors and assigns.

I

A. *It is Ordered* That respondent Archer Daniels Midland Company, a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive in or affecting commerce, as "commerce" is defined in the Federal

Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols:

(1) That any Archer Daniels Midland product or plastic product additive is "degradable," "biodegradable," or "photodegradable" when disposed of in a sanitary landfill; or,

(2) Through the use of such terms as "degradable," "biodegradable," "photodegradable," or any substantially similar term or expression, that any such product or any such product containing such additive offers any environmental benefit compared to other products when consumers dispose of them as trash that is buried in a sanitary landfill or incinerated,

Unless at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable scientific evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

B. *Provided, however,* respondent will not be in violation of this Order, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive, if it truthfully represents that such products or such additives are designed to degrade or break down and become part of usable compost, when disposed of in programs or facilities that collect yard waste or municipal solid waste for composting (that is, the accelerated breakdown of waste into soil-conditioning material), provided that the labeling of such products or such additives and any advertising referring to the degradability of such products or such additives discloses clearly, prominently, and in close proximity to such representation:

(1) That such products are not designed to effectively degrade in landfills; and further discloses

(2) (a) In the case of products designed to be disposed of in yard waste composting programs, that such programs may not be available in the consumer's area; or, in the case of products designed to be disposed of in municipal solid waste composting facilities, that such facilities are generally unavailable in the U.S., or

(2) (b) Depending upon whether the product is designed to be disposed of in yard waste composting programs, or municipal solid waste composting facilities, the approximate percentage of the U.S. population having access to yard waste compositng programs, or having access to municipal solid waste composting facilities.

Provided further, That the disclosures contained in (2)(a) and (2)(b) above pertaining to yard waste composting programs need not be made in advertising or on product labels if such products or additives are distributed and advertised only to consumers residing in areas served by yard waste composting programs. Similarly, the disclosures contained in (2)(a) and (2)(b) above pertaining to municipal solid waste composting facilities need not be made in advertising or on product labels if such products or additives are distributed and advertised only to consumers residing in areas served by municipal solid waste composting facilities.

For purposes of this provision, a disclosure elsewhere on the product package shall be deemed to be "in close proximity" to such terms if there is a clear and conspicuous cross-reference to the disclosure. The use of an asterisk or other symbol shall not constitute a clear and conspicuous cross-reference. A cross-reference shall be deemed clear and conspicuous if it is of sufficient prominence to be readily noticeable and readable by the prospective purchaser when examining the principal display panel of the package. The principal display panel of the package is that part of the package that faces the consumer when presented under normal and customary conditions of display for retail sale.

If the advertising and labeling of any Archer Daniels Midland product or plastic product additive otherwise complies with subpart A of Part I of this Order, respondent will not be in violation of this Order if it does not make the disclosures in this proviso (Subpart B).

II

It is Further ordered That respondent Archer Daniels Midland Company, a corporation, its successors and assigns, and its officers, and respondent's representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Archer Daniels Midland product or plastic product additive in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, by words, depictions, or symbols, that any Archer Daniels Midland product or plastic product additive offers any environmental benefit, unless at the time of making such representation, respondent possesses and relies upon a reasonable basis, consisting of competent and reliable evidence that substantiates such representation. To the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies, or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

III

Nothing in this Order shall prevent respondent from using any of the terms cited in Parts I and II, or substantially similar terms or expressions, if necessary to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

IV

It is Further ordered That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All tests, reports, studies, surveys, or other materials in its possession or control that contradict, qualify, or call into question such representation or the basis upon which respondent relied for such representation.

V

It is Further ordered That respondent shall distribute a copy of this Order within sixty (60) days after service of this Order upon it to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements or other such sales materials covered by this Order.

VI

It is Further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation, such as a dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII

It is Further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Archer Daniels Midland Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the advertising of Archer Daniels Midland plastic products and plastic product additives. The Commission's complaint charges that the respondent's advertising contained unsubstantiated representations concerning its products' alleged biodegradability and the environmental benefits that could be obtained when they were disposed of as trash. The complaint alleges that the respondent represented that its products offer a significant environmental benefit when consumers dispose of them as trash, and that they will completely break down, biodegrade, and disappear in six months to two years after consumers dispose of them as trash that is buried in landfills.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires the respondent to cease representing that any of its plastic products or plastic product additives, or plastic products it manufactures and sells to third parties for further sale or distribution to the public, are "degradable," "photodegradable," or "biodegradable" when disposed of in a sanitary landfill, or more specifically, through the use of such terms or substantially similar terms, that such plastic products offer any environmental benefit when disposed of as trash in a sanitary landfill, unless the respondent has a reasonable basis for such representations at the time they are made.

Part I also contains a proviso that allows the respondent to advertise and label plastic products as "compostable" or "degradable" without violating Part I of the proposed order. The respondent may use the terms in labeling, and in advertising that refers to the products' "degradability," if such products will in fact degrade or break down into usable compost (soil-conditioning material) either in yard waste composting programs or municipal solid waste composting facilities. To avoid possible confusion about the benefit of a compostable product degrading in sanitary landfills, the proviso also requires the respondent to disclose clearly, prominently, and in close proximity to such terms its products "are not designed to effectively degrade in landfills." Furthermore, in the case of products designed to be disposed of in yard waste composting programs, the respondent must also disclose either that yard waste composting programs may not be available in the consumer's area, or the approximate percentage of the U.S. population having access to such composting programs. In the case of products designed to be disposed of in municipal solid waste composting facilities, the respondent must also disclose either that such facilities are generally unavailable in the U.S., or the approximate percentage of the U.S. population having access to such facilities. These disclosures concerning limited availability need not be made if the respondent's products are distributed and advertised only to consumers residing in areas served by such programs or facilities. This composting proviso is meant to provide a "safe harbor" which the respondent may use in making compost claims.

Part II of the proposed order provides that if the respondent represents in advertising or labeling that its plastic products offer any environmental benefit, it must have a reasonable basis consisting of competent and reliable evidence that substantiates the claims.

Part III of the proposed order allows the respondent to use the terms cited in Parts I and II, or substantially similar terms, and not be in violation of the proposed order, if it is necessary for the respondent to comply with any federal rule, regulation, or law governing the use of such terms in advertising or labeling.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93-1320 Filed 1-19-93; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

[Between: 12/21/92 and 12/31/92]

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Tenneco Inc., Indiana Energy, Inc., EnTrade Corp ..	93-0315	12/21/92
Bell Atlantic Corp., BCE Inc., National Telephone Directory Corp	93-0357	12/21/92

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

[Between: 12/21/92 and 12/31/92]

Name of acquiring person; name of acquired person; name of acquired entity	PMN No.	Date terminated
Rubbermaid Inc., Vance P. Braxton III, Iron Mountain Forge Corp	93–0371	12/21/92
Ciba-Geigy Ltd., Fisons plc, Fisons plc	93–0374	12/21/92
Capital Holding Corp., Aachener und Munchener Beteiligungs-Aktiengesellschaft, Academy Insurance Group, Inc	93–0387	12/21/92
Marlis S.A., Matra S.A., Matra S.A	93–0403	12/21/92
Bouygues S.A., Donald L. Harrison, Delta Asphalt, Inc. and Southern Illinois Stone Co	93–0291	12/22/92
MMB S.A., Matra/Hachette S.A., Matra/Hachette S.A	93–0401	12/22/92
General Electric Corp., Barry Forman, Allegiance Capital Corp	93–0402	12/22/92
General Electric Corp., Roger Marriott, Allegiance Capital Corp	93–0404	12/22/92
Merrill Lynch & Co., Inc., Borg-Warner Corp., Borg-Warner Automotive, Inc	93–0422	12/22/92
Merrill Lynch Capital Appreciation Ptnship. #VIII L.P., Borg-Warner Corp., Borg-Warner Automotive, Inc	93–0423	12/22/92
Unilever N.V., Barry S. Helpern, The Isaly Klondike Company and Popsicle Industries, Ltd	93–0313	12/23/92
Motorola, Inc., Phillip N. and Mary A. Lyons, Airwave Communications Corp. (Los Angeles)	93–0360	12/23/92
The Washington Water Power Co., Sunrise Energy Services, Inc., Sunrise Energy Services, Inc	93–0416	12/24/92
Taihei Shokuhin Kogyo Kabushiki Kaisha, Donald L. Bren, The Irvine Co	93–0418	12/24/92
CMI Industries, Inc., Chatham Manufacturing, Inc., Chatham Manufacturing, Inc	93–0354	12/28/92
Norwest Corp., Z-Landerbank Bank Austria AG, LB Credit Corp	93–0400	12/28/92
Sonoco Products Co., Golder, Thomas, Cressy Fund III Limited Partnership, Crellin Holding, Inc	93–0421	12/28/92
Heaven Hill Distilleries, Inc., Guinness PLC, Guinness America, Inc. and Dubonnet Wine Corp	93–0425	12/28/92
President and Fellows of Harvard College, President and Fellows of Harvard College, Harken Anadarko Partners, L.P	93–0430	12/28/92
Darwin Deason, Darwin Deason, Dataplex Acquisition Corp	93–0433	12/28/92
Ronald O. Perelman, Vestar/Triple C Investment Limited Partnership, Triple C Acquisition Corp	93–0438	12/28/92
J.M. Voith GmbH, Winton M. Blount, BI Industries, Inc	93–0439	12/28/92
Brynwood Partners II Limited Partnership, SmithKline Beecham plc, SmithKline Beecham Consumer Brands Inc	93–0442	12/28/92
H.F. Johnson Distributing T/V t/b of Samuel C. Johnson, Bristol-Myers Squibb Co., The Drackett Company plus certain assets of BMS	93–0148	12/29/92
Century Telephone Enterprises, Inc., San Marcos Telephone Company, Inc., San Marcos Telephone Company, Inc	93–0369	12/29/92
Fisher Scientific International Inc., Charles L. Barancik, Hamilton Industries, Inc	93–0431	12/29/92
Doyon, Ltd., Doyon, Ltd., Doyon Drilling Inc. J.V. (partnership)	93–0437	12/29/92
The Edward W. Scripps Trust, Blade Communications, Inc., Monterey Peninsula Herald Co	93–0231	12/30/92
Blade Communications, Inc., The Edward W. Scripps Trust, Pittsburgh Press Co	93–0234	12/30/92
Equipment Managment & FinanceLimited Partnership, PacifiCorp, PCL, Inc	93–0440	12/30/92
Namco, Ltd., Bally Manufacturing Corp., Bally's Aladdin's Castle, Inc	93–0444	12/30/92
Ford Motor Co., James Moran, World Omni Leasing, Inc. and World Omni Financial Corp	93–0445	12/30/92
Mr. Cham Uswachoke, Olin Corporation, Indy Electronics, Inc	93–0446	12/30/92
W.R. Stephens Trust, Petrolon, Inc., Petrolon, Inc	93–0472	12/31/92
MTH Holdings, Inc., Peter J. Schmitt Holdings, Inc., Debtor-in-Possession, Peter J. Schmitt Co., Inc	93–0496	12/31/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–1321 Filed 1–19–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

U.S. Advisory Board on Child Abuse and Neglect; Meeting

AGENCY: U.S. Advisory Board on Child Abuse and Neglect, Administration for Children and Families, ACF, Department of Health and Human Services, DHHS.

ACTION: Notice of the thirteenth meeting of the U.S. Advisory Board on Child Abuse and Neglect in McLean, Virginia from 1 pm., February 9, 1993 to 3:30 p.m., February 12, 1993.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in McLean, Virginia from 1 p.m., February 9, 1993 through 3:30 p.m., February 12, 1993. This meeting is closed to the public except for Wednesday, February 10 (from 9 a.m. to 12 p.m.) to protect the free exchange of internal views among the members and to avoid undue interference with the operation of the Board.

ADDRESSES: The meeting will be held at: Ritz Carlton Hotel, 1700 Tyson Boulevard, McLean, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, room 303D, Humphrey Building, Washington, DC 20201, (202) 690–8178.

SUPPLEMENTARY INFORMATION: During the closed portions of the meeting, the Board will discuss: The form, content, nature and scope of the 1992, 1993, and 1994 annual reports of the Board; special Board reports on child protective services reform and research, and Board governance and administrative issues. During the open portions of the meeting, the Advisory Board will: Receive a briefing from a Transition Team member; and receive and update on developments relevant to the Board within the National Center on Child Abuse and Neglect.

Dated: January 7, 1993.

Preston Bruce, Jr.,

Acting Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 93–1361 Filed 1–19–93; 8:45 am]

BILLING CODE 4130–01–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Science Advisory Board to the National Center for Toxicological Research

Date, time, and place. February 2, 1993, 1 p.m., and February 3, 1993, 9 a.m., Bldg. 13, Conference rm., National Center for Toxicological Research, Jefferson, AR.

Type of meeting and contact person. Open board discussion, February 2, 1993, 1 p.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; open board discussion, February 3, 1993, 9 a.m. to 12 m.; closed board deliberations, 1 p.m. to 2 p.m.; Ronald F. Coene, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3155.

General function of the board. The board advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs to fulfill regulatory responsibilities.

Agenda—Open board discussion. The board will conduct a review of the Science Advisory Board Subcommittee site visit draft reports on three research programs of the center: (1) Quantitative Risk Assessment, (2) Developmental Toxicology, and (3) Neurotoxicology. The board will engage in discussions on these reports and come to final conclusion on the recommendations to be made to the director concerning these center programs.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before January 21, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed board deliberations. The board will discuss information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy relevant to the intramural scientific program. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)). A final agenda will be available on January 25, 1993, from the contact person.

Generic Drugs Advisory Committee

Date, time, and place. February 10, 11, and 12, 1993, 8 a.m., Holiday Inn, Silver Spring Plaza, Plaza Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, February 10, 1993, 8 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m., unless public participation does not last that long; open committee discussion, February 11, 1993, 8 a.m. to 4:30 p.m.; open public hearing, unless public participation does not last that long, 4:30 p.m. to 5:30 p.m.; open committee discussion, February 12, 1993, 8 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 4 p.m.; Ermona B. McGoodwin or Mary Elizabeth Donahue, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee gives advice on scientific and technical issues concerning the safety and effectiveness of human generic drug products for use in the treatment of a broad spectrum of human diseases and makes appropriate recommendations to the Commissioner of Food and Drugs, and the Director of the Center for Drug Evaluation and Research. The committee may also review agency-sponsored intramural and extramural biomedical research programs in support of FDA's generic drugs regulatory responsibilities.

Agenda—Open committee discussion. On February 10, 1993, the committee will discuss issues on bioequivalence including statistical analysis issues. On February 11, 1993, the committee will discuss bioequivalence issues related to metrics of rate and extent, and research programs sponsored by the Office of Generic Drugs. On February 12, 1993, the committee will discuss issues on bioequivalence related to narrow therapeutic range drugs such as phenytoin.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 3, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. On February 12, 1993, the committee will review trade secret and/or confidential commercial information relevant to an abbreviated new drug application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Antiviral Drugs Advisory Committee

Date, time, and place. February 18, 1993, 8 a.m., and February 19, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 18, 1993, 8 a.m. to 8:30 a.m., unless public participation does not last that long; open committee discussion, 8:30 a.m. to 12 m.; open public hearing, 1 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 5 p.m.; open committee discussion, February 19, 1993, 8:30 a.m. to 12 m.; closed committee deliberations, 12 m. to 4 p.m.; Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 12, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On the morning of February 18, 1993, the committee will discuss new drug applications (NDA's) 20–264 and 20–296 for the use of megestrol acetate (Megace® OS, Bristol-Myers Squibb) in oral suspension and in 250 milligram tablets for the treatment of cachexia. In the afternoon of February 18, 1993, the committee will also consider overview information and outcome parameters in chronic fatigue syndrome. On February 19, 1993, there will be presentations providing members with updated regulatory information.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Biological Response Modifiers Advisory Committee

Date, time, and place. February 18, 1993, 4 p.m., Food and Drug Administration, Bldg. 29, Conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion, 4 p.m. to 4:30 p.m.; closed committee deliberations, 4:30 p.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Jack Gertzog, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–9054.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 10, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural scientific programs of the Laboratory of Cellular and Molecular Biology and the Laboratory of Molecular Pharmacology of the Division of Biochemistry and Biophysics, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Pulmonary-Allergy Drugs Advisory Committee

Date, time, and place. February 25 and 26, 1993, 8:30 a.m., Parklawn Bldg. Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, February 25, 1993, 8:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m; open committee discussion, 1 p.m. to 5 p.m.; open public hearing, February 26, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

Agenda—Open committee discussion. On February 25, 1993, the committee will receive an overview of center activities as they relate to the advisory committee process and will discuss NDA 19–547, Pro-Air® (procaterol) metered-dose inhalator, Warner Lambert. On February 26, 1993, the committee will discuss NDA 20–236, Serevent® (salmeterol xinafoate) inhalation, Glaxo.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 12, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. February 25 and 26, 1993, 9 a.m., rm. 503A–529A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, February 25, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; closed presentation of data, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 12 m. to 5 p.m.; open public hearing, February 26, 1993, 9 a.m. to 10 a.m., unless public participation does not last that long; closed presentation of data, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 12 m. to 5 p.m.; Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1180.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before February 11, 1993, and submit a brief statement of the general nature and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss home uterine activity monitors used for the early detection of preterm labor, including draft guidelines for premarket testing and, possibly, premarket approval applications (PMA's).

Closed presentation of data. The committee will discuss trade secret and/or confidential commercial information regarding home uterine activity monitors. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding home uterine activity monitors. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

FDA regrets that it is publishing this notice in the **Federal Register** less than 15 days prior to the meeting of the Science Board to the National Center for Toxicological Research because of scheduling difficulties and time constraints due in part to the holidays.

Dated: January 13, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–1276 Filed 1–15–93; 8:45 am]

BILLING CODE 4160–01–U

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Science Board to the Food and Drug Administration

Date, time, and place. February 2, 1993, 9 a.m., Federal Bldg. 8, rm. 1409, 200 C St. SW., Washington, DC.

Type of meeting and contact person. Open board discussion, 9 a.m. to 3 p.m.; open public hearing, 3 p.m. to 4 p.m., unless public participation does not last that long; Sheryl Rosenthal, Office of the Senior Advisor for Science (HF–33), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5839.

General function of the board. The board shall provide advice primarily to the agency's Senior Science Advisor and, as needed, to the Commissioner and other appropriate officials on specific complex and technical issues as well as emerging issues within the scientific community in industry and academia. Additionally, the board will provide advice to the agency on keeping pace with technical and scientific evolutions in the fields of regulatory science; on formulating an appropriate research agenda; and on upgrading its scientific and research facilities to keep pace with these changes. It will also provide the means for critical review of agency sponsored intramural and extramural scientific research programs.

Agenda—Open board discussion. The board will receive a general orientation about FDA and an overview of the existing scientific research at the agency. An introduction to the operations of the Center for Biologics Evaluation and Research and the Office of Regulatory Affairs will also be presented.

Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the board. Those desiring to make formal presentations should notify the contact person before January 26, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Comments will be limited to 5 minutes.

Fertility and Maternal Health Drugs Advisory Committee

Date, time, and place. February 4 and 5, 1993, 8:30 a.m., Parklawn Bldg., Conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 4, 1993, 8:30 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, February 5, 1993, 8:30 a.m. to 4 p.m.; Philip A. Corfman, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3510.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics and gynecology.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 21, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 4 and 5, 1993, the committee will discuss issues related to providing oral contraceptives without prescription.

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. February 11, 1993, 12:30 p.m. and February 12, 1993, 8 a.m., Ramada Inn, Ambassador rm., 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, February 11, 1993, 12:30 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 6 p.m. Open public hearing, February 12, 1993, 8 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before January 27, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 11, 1993, the committee will discuss guidance documents for temporomandibular joint implants and periodontal test kits. If time permits, the committee will provide recommendations on classification of the following devices: (1) Root apex locator, (2) temporomandibular implants, (3) electrical anesthesia devices, and (4) bone-filling and augmentation materials. On February 12, 1993, an update on dental amalgam will be presented. The committee will discuss a new drug application for a root canal filling material.

Cardiovascular and Renal Drugs Advisory Committee

Date, time, and place. February 18, 1993, 9 a.m., and February 19, 1993, 8:30 a.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD. (Parking in the Clinical Center visitor area is reserved for Clinical Center patients and their visitors. If you must drive, please use an outlying lot such as lot 41B. Free shuttle bus service is provided from lot 41B to the Clinical Center every 8 minutes during rush hour and every 15 minutes at other times.)

Type of meeting and contact person. Open public hearing, February 18, 1993, 9 a.m to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 6 p.m.; open committee discussion, February 19, 1993, 8:30 a.m. to 5 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419–259–6211 or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in cardiovascular and renal disorders.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 10, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On February 18, 1993, the committee will discuss: (1) New drug application (NDA) 19–885/S–001, Acoupril (quinapril HCl, Parke-Davis) tablets for congestive heart failure; (2) NDA 19–558/S–007, Prinivil (lisinopril, Merck Research Laboratories) tablets for congestive heart failure; and (3) NDA 19–777/S–007, Zestril (lisinopril, Stuart/ICI Pharmaceuticals) tablets for congestive heart failure. On February 19, 1993, the committee will discuss: (1) NDA 18–343/S–048, Capoten (captopril, Bristol-Myers Squibb) tablets for the prevention of congestive heart failure, the SAVE (Survival and Ventricular Enlargement) trial; and (2) NDA 18–998/S–032, Vasotec (enalapril maleate, Merck Research Laboratories) tablets for the prevention of congestive heart failure, the SOLVD (Studies of Left Ventricular Dysfunction) Prevention trial.

Board of Tea Experts

Date, time, and place. February 25 and 26, 1993, 10 a.m., New York Regional Laboratory, rm. 700, 850 Third Ave., Brooklyn, NY.

Type of meeting and contact person. Open public hearing, February 25, 1993, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; open committee discussion, February 26, 1993, 10 a.m. to 4:30 p.m.; Robert H. Dick, New York Regional Laboratory, Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 718–965–5730.

General function of the board. The board advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss and select tea standards.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

FDA regrets that it is publishing this notice in the **Federal Register** less than 15 days prior to the meeting of the Science Board to the Food and Drug Administration because of scheduling difficulties and time constraints due in part to the holidays.

Dated: January 13, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–1275 Filed 1–15–93; 8:45 am]

BILLING CODE 4160-01-U

Health Care Financing Administration

[OPHC–026–N]

Health Maintenance Organizations; HMO Qualification Determinations and Compliance Actions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (FQHMOs) during the period April 1, 1992 through September 30, 1992. It also includes the service expansion area for one FQHMO that had been inadvertently omitted from the previous **Federal Register** notice that covered the period August 6, 1991 through March 31, 1992. Additionally, it sets forth compliance actions taken by the Office of Prepaid Health Care Operations and Oversight for the period April 1, 1992 through September 30, 1992. This notice is being published in accordance with our regulations set forth at 42 CFR 417.144 and 417.163, which require publication in the **Federal Register** of certain determinations relating to FQHMOs.

FOR FURTHER INFORMATION CONTACT: Christine Boesz, (202) 619–0840.

SUPPLEMENTARY INFORMATION:

A. Qualification Determinations

As part of our evaluation and determination of whether an entity qualifies as a Federally qualified health maintenance organization (FQHMO), our regulations set forth at 42 CFR 417.144(e), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses, and descriptions of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs as well. Our last notice containing this information was published in the **Federal Register** on July 27, 1992 (57 FR 33202) and corrected on September 11, 1992 (57 FR 41810).

There are three categories of FQHMOs: Operational, transitionally qualified, and pre-operational. Definitions of these terms are set forth at 42 CFR 417.141.

The Office of Prepaid Health Care Operations and Oversight has determined that the following entities are operational FQHMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) or have expanded their previously qualified service areas:

1. New FQHMO

CIGNA Health Plan of Tennessee (Group Model, see section 1310(b)(1) of the Act), 1801 West End Avenue, Nashville, Tennessee 37203. The Federally qualified service area of CIGNA Health Plan of Tennessee include the following counties in their entirety: Cheatham, Davidson, Robertson, Rutherford, Summer, Williamson, and Wilson.

Date of qualification: August 10, 1992.

2. Service Area Expansions and Regional Components of Existing FQHMOs

a. *Inter Valley Health Plan (IVHP)* (individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 300 South Park Avenue, suite 300, Pomona, California 91766. IVHP's previously Federally qualified service area has been expanded to include the following zip codes in Los Angeles and Orange Counties:

Los Angeles County

90021
90022
90031 through 90033
90040 through 90042
90063
90065
90071
90601 through 90606
90631
90638
90640
90660
90720
91001
91007
91011
91020
91030
91046
91101 through 91108
91201 through 91208
91801
91803

Orange County

90620 through 90624
90630
90670
90680
92613
92621
92631 through 92635
92640
92641
92645
92664 through 92670
92686
92687
92801 through 92808

Date of qualification for service area expansion: April 2, 1992.

b. *PacifiCare of California (PC)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 5995 Plaza Drive, Cypress, California 90630. PC's previously Federally qualified service area has been expanded to include the following zip codes in Santa Barbara County:

93010
93067
93101
93103
93105
93108 through 93111
93117
93214
93254
93427
93429
93434
93440
93441
93454
93455
93460
93463

Date of qualification for service area expansion: May 6, 1992.

c. *Health Net (HN)* (Individual practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), Post Office Box 9103, Van Nuys, California 91409. HN's previously Federally qualified service area has been expanded to include Santa Cruz County in its entirety and the following zip codes in Fresno, Madera, and Tulare Counties:

Fresno County

93242
93602
93606
93609
93612
93613
93616
93622
93625
93626
93630
93631
93648 through 93652
93654
93657
93662
93667
93700 through 93712
93714 through 93718
93720 through 93722
93724 through 93729
93740
93741
93744
93745
93747
93750
93755
93759 through 93762
93764
93765
93771 through 93780
93782
93784
93786
93790 through 93794

Madera County

93614
93637 through 93639
93643 through 93645

Tulare County

93618
93666
93673

Date of qualification for service area expansion: June 18, 1992.

d. *Sisters of Providence Good Health Plan of Oregon (A.K.A. Good Health Plan (GHP))* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 1235 NE 47th, Suite 220, Portland, Oregon 97213. GHP's previously Federally qualified service area has been expanded to include Clatsop County in its entirety.

Date of qualification for service area expansion: June 29, 1992.

e. *Prudential Health Care Plan (A.K.A. PruCare of North Texas (PruCare))* (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 4100 Alpha

Road, Suite 400, Dallas, Texas 75244–4327. PruCare's previously Federally qualified service area has been expanded to include the following counties in their entirety: Hood, Parker, and Somervell, and the remaining areas of Denton, Ellis, Johnson, and Kaufman Counties that were not previously Federally qualified.

Date of qualification for service area expansion: July 1, 1992.

f. *FHP, Inc. (FHP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 9900 Talbert Avenue, Fountain Valley, California 92708. FHP's previously Federally qualified service area has been expanded to include Hemet, High Desert, San Diego (South Bay and Coastal North), Simi Valley, Orange County, and the following zip codes in the referenced counties:

Los Angeles County

90001 through 90008
90010 through 90029
90031 through 90040
90042 through 90049
90056 through 90059
90061 through 90065
90067 through 90069
90071
90077
90201
90210 through 90212
90220 through 90223
90230
90232
90240 through 90242
90245
90247 through 90250
90254
90255
90260
90262
90265
90266
90270
90272
90274
90277
90278
90280
90290 through 90293
90301 through 90310
90401 through 90405
90501 through 90505
90507 through 90510
90601 through 90608
90637 through 90640
90650
90660
90670
90701
90706
90710
90712 through 90717
90723
90731
90732
90744 through 90746
90748
90749
90801 through 90810
90813 through 90815
90822
90853
91001
91006
91010
91011
91016
91020
91024
91030
91040
91042
91046
91101
91103 through 91108
91201 through 91208
91214
91301 through 91304
91306
91307
91311
91316
91324 through 91326
91331
91335
91340
91342 through 91345
91352
91356
91364
91367
91401 through 91403
91405
91406
91411
91423
91436
91501
91502
91504 through 91506
91601
91602
91604 through 91608
91702
91706
91711
91722 through 91724
91731 through 91733
91740
91744 through 91746
91748
91750
91754
91765 through 91768
91770
91773
91775
91776
91780
91789 through 91792
91801
91803
93510
93534
93535
93543
93544
93550
93551
93553
93563

Riverside County

91719
91720
91752
91760
92320
92501
92503 through 92509
92530
92543
92544
92548
92549
92553
92555
92557
92561
92562
92567
92570
92583 through 92586
92589
92595
92596

San Bernardino County

91701
91709
91710
91730
91739
91743
91761 through 91764
91786
92301
92307
92308
92316
92318
92324
92335
92336
92342
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92407 through 92411

San Diego County

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91945 through 91948
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91976 through 91979
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92007 through 92009
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92019 through 92021
92024 through 92028
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92059 through 91962
92064 through 92071
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92082 through 92084
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92101 through 92111
92113 through 92124
92126 through 92131
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92155

Ventura County

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91360 through 91362
93015
93021
93040
93063
93065

Date of qualification for service area expansion: July 27, 1992.

g. *Humana Medical Plan, Inc. (HMP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 500 West Main Street, Post Office Box 1438, Louisville, Kentucky 40201–1438. HMP's Federally qualified regional component (Humana-Daytona) now includes Flagler and Volusia Counties in their entireties.

Date of qualification for the regional component: August 17, 1992.

h. *FHP, Inc. (FHP)* (Individual Practice Association Model, see sections 1302(5) and 1310(b)(2)(A) of the Act), 9900 Talbert Avenue, Fountain Valley, California 92708. FHP's Federally qualified regional component includes Clark County, Nevada in its entirety and the following zip codes in Mohave County, Arizona:

85360
86401
86411
86412
86427
86430
86431
86433
86436 through 86438
86440 through 86444

Date of qualification for the regional component: September 4, 1992.

3. This notice also includes the following service area expansion that had been inadvertently omitted from the July 27, 1992 Federal Register notice, which covered the period August 6, 1991 through March 31, 1992:

SANUS Texas Health Plan, Inc. (SANUS) (Direct Contract Model, see section 1310(b)(2)(B) of the Act), 8600 Freeport Parkway, Irving, Texas 75063. SANUS' previously Federally qualified service area has been expanded to include the following counties in their entirety: Cooke, Delta, Fannin, Grayson, Hood, Hopkins, Hunt, Kaufman, Rains, Somervell, and Wise. Also, the approved service area includes the incorporated city of Mineral Wells located in the County of Palo Pinto.

Date of qualification for service area expansion: March 23, 1992.

B. Notices of Revocation

Organization	Date issued	Reason
Health Plan of America, Cypress, California	4/23/92	Voluntary relinquishment (merger).
Rutgers Community Health Plan, Somerset, New Jersey	6/11/92	Voluntary relinquishment (merger).
Samaritan Health Plan Inc., Milwaukee, Wisconsin	9/10/92	Voluntary relinquishment (merger).
HMO Minnesota, St. Paul, Minnesota	9/11/92	Voluntary relinquishment.

C. Availability of Additional Information

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address: Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4406 Cohen Building, 330 Independent Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons should contact Margie Sharif for an appointment, telephone (202) 619–0845.

Authority: (42 U.S.C. 300e) Title XIII of the Public Health Service Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance; and Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: January 12, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–1224 Filed 1–19–93; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3564]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 8, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Mortgage Record Change.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Mortgagees who participate in the HUD/FHA insurance programs must report mortgage portfolio activity to the Department regarding change of investor and/or service.

Form Number: HUD–92080.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92080	9,062		245.64		.1		222,600

Total Estimated Burden Hours: 222,600.

Status: Extension.

Contact: Donald L. Kline, HUD, (202) 708–1994. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Description of Materials.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–92005 is needed so that builders and sponsors can describe the materials and assembly of dwellings and other improvements to the property. This form and the drawings define the scope and limits of the construction and is used by HUD to estimate value for FHA mortgage insurance.

Form Number: HUD–92005.

Respondents: Businesses or Other For-Profit, Federal Agencies or Employees and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92005	2,500		40		.5		50,000

Total Estimated Burden Hours: 50,000.

Status: Extension.

Contact: Kenneth L. Crandall, HUD, (202) 708–2720. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: American Housing Survey—1993 National Sample.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: The 1993 AHS-National is a longitudinal study that collects current information on the quality, availability, and cost of the housing inventory. It also provides information on the characteristics of occupants. Federal and local government agencies use AHS data to evaluate housing issues.

Form Number: AHS–21, 22, 23, 26(L), 27(L), 28(L), and 394.

Respondents: Individuals or Households.

Frequency of Submission: Biennially.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	62,000		1		.54		33,552

Total Estimated Burden Hours: 33,552.

Contact: Duane T. McGough, HUD, (202) 708–1060. Daniel H. Weinberg, Census, (301) 763–8550. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Requisition for Disbursement of Section 202 Loan Funds.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–92403–EH will be used by the non-profit borrower entity to obtain disbursement on its HUD-funded building loan under the Section 202

Housing Program for the Elderly or Handicapped. Its use during the construction period will enable the borrower to obtain funds to settle his obligations or reimbursement in a timely, manner.

Form Number: HUD–92403–EH.

Respondents: Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92403–EH	550		3		.5		825

Total Estimated Burden Hours: 825.

Status: Extension.

Contact: Evelyn Berry, HUD, (202) 708–2866. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Single Family Property Disposition Program for the Homeless, Interim Rule.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The purpose of this program is to make available, through sale or lease, to applicants approved by HUD, certain HUD-acquired single family properties for use by the homeless.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	300		1		2		600

Total Estimated Burden Hours: 600.

Status: Extension.

Contact: Arin Sudduth, HUD, (202) 708–0740. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Single Family Accounting Management System (SAMS) Public Reporting Forms.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: In managing its program to dispose of acquired single family properties, HUD reimburses contractors and vendors for their services in maintaining, marketing, and selling HUD homes, and collects funds from the sales of these properties. Several forms capture the information necessary for HUD to record and process financial transactions in this automated Single Family Accounting Management System.

Form Number: SAMS–1100, 1101, 1103, 1104, 1106, 1108, 1110, 1111, 1115, 1116, 1116A, 1117, and 1300.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1–75		Varies		272,150		54,520

Total Estimated Burden Hours: 54,520.

Status: New.

Contact: Augusta J. Benge, HUD, (202) 708–4029. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Mortgagee Request for Extension of Time Requirements.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD–50012 will be used by mortgagees when requesting an extension for completion of foreclosure and claim actions.

Form Number: HUD–50012.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–50012 Recordkeeping	2,000		2		.20		800
	2,000		1		.50		1,000

Total Estimated Burden Hours: 1,800.

Status: Extension.

Contact: Leslie Bromer, HUD, (202) 708–1719. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Single Family Property Disposition; Program for Sales to Nonprofits and Governmental Entities.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Demonstration Program facilitates the sale of HUD acquired Single Family properties to private nonprofit organizations and governmental entities for resale to low and moderate income families. The program will also help to stabilize neighborhoods and to expand affordable homeownership opportunities for low and moderate income families.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	10		1		50		500

Total Estimated Burden Hours: 500.

Status: Reinstatement.

Contact: Marion F. Conell, HUD (202) 708–0740. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

Proposal: Urban Revitalization Demonstration Program.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The information provided by the applicant will be reviewed by HUD and evaluated against rating criteria for possible grant funding. HUD will review and determine the feasibility and effectiveness of both planning and implementation applications to conduct this demonstration program. Applicants will be notified of their selection/rejection.

Form Number: HUD–52825, 50070 and 52820.

Respondents: State or Local Governments.

Frequency of Submission: Quarterly and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	50		1		Varies		17,634

Total Estimated Burden Hours: 17,634.

Status: New.

Contact: Janice Rattley, HUD, (202) 708–1800, Angela Antonelli, OMB, (202) 395–6880.

Dated: January 8, 1993.

[FR Doc. 93–1282 Filed 1–19–93; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. R–93–3454; FR–3300–N–02]

Community Development Technical Assistance Program Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of competition winners.

SUMMARY: In accordance with section 104(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions the Department has made under the Community Development Technical Assistance Program, following a national competition, to economically empower low-income residents in Community Development Block Grant (CDBG) communities, especially riot damaged areas of Los Angeles, California. The announcement contains the names and addresses of the award winners and the amounts of the awards.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Robert M. Duncan, Office of Economic Development, Department of Housing and Urban Development, room 7144, 451 Seventh Street, SW., Washington, DC 20410; his telephone number is (202) 708–3773. The TDD number is (202) 708–0564. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In a Notice published on June 29, 1992 (57 FR–3300–N–01), the Department announced the availability of up to $12.1 million in grants to provide technical assistance in support of local economic empowerment, including business development and job training initiatives, for low-income residents in CDBG communities.

This competition was authorized under title I, section 107(b)(4) of the Housing and Community Development Act of 1974, and conducted pursuant to program requirements contained in 24 CFR 570.400 and 570.402 (the Community Development Technical Assistance Program). The purpose of the competition is to provide technical assistance to help communities create public-private partnerships among city officials, private sector organizations, and a broad array of local neighborhood groups and organizations to:

Create and implement an economic employment program including supporting the implementation of Federal enterprise zones (if enacted) and on-going State enterprise zone efforts;

Establish comprehensive activities to link economic empowerment and job training efforts to benefit lower income residents; and

Implement applicants' programs through a coalition of diverse public and private organizations.

The Notice announced the availability of $12.1 million and was divided into three subcompetitions. The first subcompetition allocated $4.0 million to be awarded to CDBG entitlement jurisdictions within Los Angeles County that were able to demonstrate extensive physical damage resulting from the civil disturbances occurring during April–May 1992. Nine applicants responded to the Notice by the closing date of August 6, 1992; these were scored and selected for funding according to the "Factors for Award" contained in the June 29, 1992 Notice. Eight applicants were able to demonstrate extensive physical damage resulting from the April–May 1992 civil disturbances and were scored. One applicant was not able to demonstrate extensive physical damage resulting from the April–May 1992 civil disturbances and did not receive consideration under this subcompetition. However, the applicant was considered under the $6.6 million subcompetition in accordance with the terms of the Notice.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 102–235, approved December 15, 1989), HUD is publishing the names of the winners of the $4.0 million technical assistance subcompetition to economically empower low-income residents in Community Development Block Grant Communities, especially in riot damaged areas of Los Angeles, California, and in connection with implementation of enterprise zones.

1. City of Los Angeles, 215 W. 6th Street, Los Angeles, CA 90014. Parker C. Anderson, Community Development Department, 213–485–4682	1,052,631
2. Los Angeles County, 2525 Corporate Place, Monterey Park, CA 91754. Edna Bruce, Community Development Commission, 213–260–2187	1,052,631
3. City of Long Beach, 333 W. Ocean Blvd. Long Beach, California 90802. Michael K. Parker, Community Development Department, 310–590–6843	491,228
4. City of Compton, 205 South Willowbrook Avenue, Compton, CA 90220. Timothy Iverson, Office of Grants Management Services, 310–605–5580	280,702
5. City of Huntington Park, 6550 Miles Avenue, Huntington Park, CA 90255. Tim Anusiem, Community Development Department, 213–582–6161.	280,702
6. City of Inglewood, One Manchester Blvd., Inglewood, CA 90301. Patricia Way, Department of Community Development and Housing, 310–412–5230.	280,702
7. City of Lynwood, 11330 Bullis Road, Lynwood, CA 90262. Sol Blumenfeld, Community Development Department, 310–603–0220.	280,702
8. City of Pasadena, 100 North Garfield Avenue, Pasadena, CA 91109. Anthony Randolph, Department of Northwest Programs, 818–405–3567.	280,702

The second subcompetition allocated $6.6 million to be awarded to CDBG entitlement jurisdictions other than those California jurisdictions identified under the $4.0 million subcompetition. Fifty applicants responded to the Notice by the closing date of August 6, 1992; these were scored and selected for funding according to the "Factors for Award" contained in the June 29, 1992 Notice. One applicant that had responded under the $4.0 million subcompetition was not able to demonstrate extensive physical damage resulting from the April-May 1992 civil disturbances and was included in the $6.6 million competition in accordance with the provisions of the Notice. The $6.6 million that was available permitted full or partial funding of the 20 most qualified applicants.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 102–235, approved December 15, 1989), HUD is publishing the names of the winners of the $6.6 million technical assistance subcompetition to economically empower low-income residents in Community Development Block Grant Communities in connection with implementation of enterprise zones.

1. City of Syracuse, 201 E. Washington Street, Syracuse, NY 13202. Christine Abate, Department of Community Development, 315–473–2616	$200,000
2. City of Philadelphia, 1650 Arch Street, 19th floor, Philadelphia, PA 19103. James Cuorato, Department of Commerce, 215–686–8585	350,000
3. City of Oakland, 1333 Broadway, suite 900, Oakland, CA 94610. Gwen McCormick, Office of Economic Development and Employment, 510–238–3015	350,000
4. City of Albany, 230 South Jackson, suite 315, Albany, GA 31701. Rudy Goddard, Community Development Division, 912–430–5283	200,000
5. Metropolitan Government of Nashville and Davidson County, 701 South Sixth Street, Nashville, TN 37206. Gerald F. Nicely, Metropolitan Development and Housing Agency, 615–252–8410	200,000
6. City of San Diego, 1200 Third Avenue, Suite 1620, San Diego, CA 92101. Michael D. Jenkins, Enterprise Zone Program, 619–236–6089	350,000
7. City of Pittsfield, City Hall, 70 Allen Street, room 205, Pittsfield, MA 01201. Andree Tremoulet, Office of Community and Economic Development, 413–499–9368	324,500
8. City of Boston, 43 Hawkins Street, Boston, MA, 02114. Jerry Rubin, Economic Development and Industrial Corporation, 617–635–3342	350,000
9. City of Kansas City, City Hall, 11th floor, 414 E. 12th Street, Kansas City, MO 64106. James M. Vaughn, Department of Housing and Community Development, 816–274–2201	350,000
10. City of Dallas, 1500 Marilla Street, room 4/B/N, Dallas, TX 75201. Dennis B. Martinez, Economic Development Department, 214–670–1685	350,000
11. City of Fort Wayne, One Main Street, Fort Wayne, IN 46802. Greg Purcell, Division of Community and Economic Development, 219–427–1131	200,000
12. City of Phoenix, One N. First Street, suite 700, Phoenix, AZ 85004–2357. Kim Dorney, Community and Economic Development Department, 602–262–5040	350,000
13. City of Kansas City, One McDowell Plaza, Kansas City, KS 66101. Edward C. Smith, Division of Community Development, 913–573–5100	350,000
14. City of Cleveland, 601 Lakeside Avenue, Cleveland, OH 44114. Joseph A. Marinucci, Department of Economic Development, 216–664–2406	350,000
15. City of Fort Worth, 1000 Throckmorton, Fort Worth, TX 76102. Tom Higgins, Economic Development Office, 817–871–6192	350,000
16. City of Las Vegas, 400 E. Stewart, Las Vegas, NV 89101. Kenneth Williams, Urban Development, 702–229–6462	260,858
17. Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507. Irene Gooding, Division of Housing and Community Development, 606–258–3070	312,775
18. City of Indianapolis, 200 E. Washington Street, Indianapolis, IN 46204. Leslie Rubin, Department of Metropolitan Development, Division of Planning, 317–327–5151	350,000
19. City of Altanta, 68 Mitchell Street, SW., Atlanta, GA 30335. Muriel Mitchell, Department of Housing, 404–330–6420	350,000
20. Jefferson County, 805 North 22nd Street, Birmingham, AL 35203–2385. James F. Fenstermaker, Office of Planning and Community Development, 205–325–5761	350,000

The third subcompetition allocated $1.5 million to be awarded to states for technical assistance or for distribution to non-entitlement CDBG-eligible units of general local government. Eight applicants responded to the Notice by the closing date of August 6, 1992; these were scored and selected for funding according to the "Factors for Award" contained in the June 29, 1992 Notice. Two of the eight applicants did not score above the 50 point minimum threshold required to be considered for funding. The $1.5 million that was available permitted full funding of the 6 applicants that meet the 50 point minimum threshold.

In accordance with section 102(a)(4)(C) of the Department of

Housing and Urban Development Reform Act of 1989 (Pub. L. 102–235, approved December 15, 1989), HUD is publishing the names of the winners of the $1.5 million technical assistance subcompetition to economically empower low-income residents in Community Development Block Grant Communities in connection with implementation of enterprise zones.

1. The State of Wisconsin, P.O. Box 7970, Madison, WI 53707. Kathleen Heady, Department of Development, 608–267–2045.	$249,981
2. The State of Texas, P.O. Box 13941, Austin, TX 78711–3941. Ruth Cedillo, Department of Housing and Community Affairs, 512–475–3882.	250,000
3. The State of New Mexico, Joseph Montoya Building, 1100 St. Francis Drive, Santa Fe, NM 87503. William E. Garcia, 505–827–0381.	250,000
4. The State of Massachusetts, 100 Cambridge Street, room 1802, Boston, MA 02202. Carolyn Britt, Massachusetts Executive Office of Communities and Development, Bureau of Small Cities, 617–727–7180.	200,521
5. The State of Nebraska, P.O. Box 9466, Lincoln, NE 68509. Jenne Rodriguez, Nebraska Department of Economic Development, 402–471–4388.	232,283
6. The State of Rhode Island, State House, room 111, Providence, RI 02903. Troy Centazzo, Governor's Office Housing, Energy, Intergovernmental Relations, 401–277–2080.	123,882

Dated: January 13, 1993.

Don I. Patch,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 93–1281 Filed 1–19–93; 8:45 am]

BILLING CODE 4210–29–M

[Docket No. N–93–3440; FR–3294–N–04]

Announcement of Allocations for Housing Opportunities for Persons With AIDS; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice; correction.

SUMMARY: This notice corrects the list of HUD Field Offices contained in the announcement of availability of funding for the Housing Opportunities for Persons with AIDS program for applicants from North Carolina and Washington.

Accordingly, in FR Doc. 92–30976, published in the **Federal Register** on December 28, 1992 (57 FR 61752), the Department corrects the list of HUD Field Offices of page 61753, third column as follows:

(1) The address listed for "North Carolina" is removed and replaced with the following: Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707; (919) 547–4005; TDD (919) 547–4055.

(2) The address listed for "Washington" is removed and replaced with the following: John Peters, Federal Office Building, 909 First Avenue, suite 200, Seattle, WA 98104–100, (206) 220–5150; TDD (206) 220–5185.

Dated: January 13, 1993.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 93–1283 Filed 1–19–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–600–03–4120–02–241A]

Request for Public Comment Concerning the Inclusion of Certain States Under Federal Coalbed Methane Recovery Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public comment period.

SUMMARY: The Bureau of Land Management requests public comment on the inclusion of certain States under the provisions of section 1339. OWNERSHIP OF COALBED METHANE, of the Energy Policy Act of 1992, Public Law 102–486. Under the provisions of this Section, the Secretary of the Interior will compile a list of Affected States and will administer this section in those States on lands where the United States is the owner of the surface estate or where the United States has transferred the surface estate but reserves the subsurface mineral estate.

ADDRESSES: Written comments should be addressed to: State Director, Eastern States, Bureau of Land Management, Mail Stop 920, 7450 Boston Boulevard, Springfield, Virginia 22153.

DATES: Comments received on or before March 8, 1993, will be considered prior to publishing the initial list of Affected States.

FOR FURTHER INFORMATION CONTACT: Ken FitzPatrick, Bureau of Land Management, at the above address, or telephone (703) 440–1731.

SUPPLEMENTARY INFORMATION: Not later than 180 days after the October 24, 1992, enactment of the Energy Policy Act of 1992, Public Law 102–486, the Secretary of the Interior, with the participation of the Secretary of Energy, shall publish in the **Federal Register** a list of Affected States which shall be comprised of States:

(1) In which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that disputes, uncertainty, or litigation exist(s), regarding the ownership of coalbed methane gas;

(2) In which the Secretary of the Interior, with the participation of the Secretary of Energy, determines that development of significant deposits of coalbed methane gas is being impeded by such disputes, uncertainty, or litigation regarding ownership of such coalbed methane;

(3) Which do not have in effect a statutory or regulatory procedure or existing case law permitting and encouraging the development of coalbed methane gas within the State; and

(4) Which do not have extensive development of coalbed methane gas.

Any Affected State shall be deleted from the list of Affected States upon receipt by the Secretary of the Interior of a Governor's petition requesting such deletion, a State law requesting such deletion, or a resolution requesting such deletion enacted by the legislative body of the State. Under the provisions of this Section, the following States are included on the list until the Secretary of the Interior publishes a new list of Affected States: Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Tennessee, and West Virginia. This Section also declares that States which shall not be included on the list are Alabama, Colorado, Louisiana, Mississippi, Montana, New Mexico, Utah, Virginia, Washington, and Wyoming. Other States with significant coal production will be considered for inclusion on this list, and the States currently on the list will be considered for removal.

In implementing this Section, the Secretary of the Interior, with the participation of the Secretary of Energy, shall—(A) consider existing and future coal mining plans, (B) preserve the mineability of coal seam, and (C) provide for the prevention of waste and maximization of recovery of coal and coalbed methane gas in a manner which will protect the rights of all entities owning an interest in such coalbed resources.

If an Affected State has not placed in effect, by statute or by regulation, a substantial program promoting the permitting, drilling, and production of coalbed methane wells (including pooling arrangements) within that State within 3 years after becoming an Affected State, the Secretary of the Interior, with the participation of the Secretary of Energy, shall administer this section and shall promulgate such regulations as are necessary to carry out this Section in that State. Federal provisions applicable to the listed States in parts "e" through "p" of this section include Spacing, Spacing Units, Development Under Pooling Arrangement, Escrow Account, Approval of the Secretary of the Interior, Authorization to Stimulate a Coal Seam, Notice and Objection, Plugging, Notice and Objection by Other Parties, Venting for Safety, Other Laws, and Definitions.

The information sought from comment on this notice includes the following—(A) Should a State be listed? Why? Why not? (B) Should a listed State be removed from the list? Why? Why not? (C) Any other relevant information.

The text of section 1339, OWNERSHIP OF COALBED METHANE., of the Energy Policy Act of 1992, Public Law 102–486, is available from the above address.

Dated: January 14, 1993.

Hillary A. Oden,

Assistant Director, Energy and Mineral Resources.

[FR Doc. 93–1360 Filed 1–19–93; 8:45 am]

BILLING CODE 4310-GJ-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-03-4210-04; IDI-27420]

Realty Action; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—IDI–27420; exchange of public and private lands in Ada, Elmore, Owyhee, and Washington Counties, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 1 N., R. 1 E.,
  Sec. 6, E½SE¼, E½E½W½SE¼,
  Sec. 7, E½NE¼, E½E½W½NE¼,
  Sec. 8, NW¼,
  Containing 360 acres in Ada County;
T. 6 S., R. 4 E.,
  Sec. 25, NW¼SW¼, S½S½,
  Sec. 26, SE¼NE¼, E½SE¼,
  Containing 320 acres in Owyhee County.

In exchange for the above described public lands, BLM will acquire the following described private lands from The Nature Conservancy:

Boise Meridian, Idaho

T. 13 N., R. 4 W.,
  Sec. 20, SE¼SW¼,
  Sec. 29, E½NW¼, SW¼NW¼, SW¼, W½SE¼,
  Containing 400 acres in Washington County;
T. 4 S., R. 2 E.,
  Sec. 10, Lots 1, 5, & 6, NW¼NE¼,
  Sec. 11, N½SW¼,
  Containing 233.5 acres in Elmore County.

The purpose of this exchange is to dispose of public lands that have, for a number of years, been farmed under BLM permit, possess very little public resource value or potential, are difficult and uneconomic to manage, and would be better managed in private ownership, in exchange for private lands that contain important raptor and raptor prey habitat, important upland game habitat, valuable recreation potential, and over a mile of frontage on the Snake River. The public interest will be well served by the completion of this exchange, as the consummation thereof will fulfill the Secretary's Fish and Wildlife 2000, Recreation 2000, and riparian management initiatives.

The values of the lands to be exchanged are approximately equal. Full equalization of values will be accomplished prior to closing through either acreage adjustment or cash payment in an amount not to exceed 25 percent of the value of the lands to be transferred out of Federal ownership.

DATES: Interested parties may submit comments to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705 on or before March 8, 1993. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Bruneau Resource Area Realty Specialist, at (208) 384–3338.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws, except the exchange provisions of the Federal Land Policy and Management Act, and mining laws, but not the mineral leasing laws. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

Excepting and Reserving to the United States: 1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1980 (43 U.S.C. 945).

Subject To: 2. Those rights for electric powerline line purposes granted to Idaho Power Company, its successors or assigns, by Rights-of-Way No. IDI–4243, IDI–8913, IDI–013210, IDI–013448, and IDI–013610, pursuant to the Act of March 4, 1911 (43 U.S.C. 961).

3. Those rights for irrigation pipeline purposes granted to Robert V. and K. Marlene Anderson, their heirs, successors, or assigns, by Right-of-Way No. IDI–9711, pursuant to the Act of March 3, 1891 (43 U.S.C. 946–951).

4. Those rights for drainage ditch purposes granted to Kent Kohring, his heirs, successors, or assigns, by Right-of-Way No. IDI–25382, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

5. Those rights for irrigation canal purposes granted to J.G. Kohring, his heirs, successors, or assigns, by Right-of-Way No. IDI–015847, pursuant to the Act of March 3, 1891 (43 U.S.C. 946–951).

Dated: January 8, 1993.

Roger E. Schmitt,

Associate District Manager.

[FR Doc. 93–1279 Filed 1–19–93; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1993 is 8.25 percent.

DATES: This discount rate is to be used for the period October 1, 1992, through and including September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Norbert S. Ries, Special Programs Manager, Investigations and Oversight Branch, U.S. Bureau of Reclamation, D–5110, Building 67, Denver Federal Center, Denver CO 80225–0007. Telephone 303–236–5247.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8.25 percent for fiscal year 1993.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 7.87 percent. The rate of 8.25 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: January 13, 1993.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 93–1261 Filed 1–19–93; 8:45 am]

BILLING CODE 4310-[illegible]-M

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Final Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Development in Highlands County, FL

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Wal-Mart Stores, Incorporated, of Bentonville, Arkansas, (applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize, for a period of 1 year, the incidental take of a threatened species, the Florida scrub jay (*Aphelocoma coerulescens coerulescens*), known to occupy the site in Sebring, Highlands County, Florida. In addition to the scrub jays, three other federally listed threatened wildlife species are assumed present on the property, even though the survey conducted did not provide positive evidence of these species. The proposed permit would, therefore, also authorize the incidental take of eastern indigo snakes (*Drymarchon corais couperi*), blue-tailed mole skinks (*Eumeces egregius lividus*), and sand skinks (*Neoseps reynoldsi*), in the event they are impacted as a result of development of the site.

Although no incidental take authorization is required for listed plant species, impacts to these species must be addressed in the intra-Service consultation required pursuant to section 7(a) of the Act. Listed plant species occurring onsite are Highlands scrub hypericum (*Hypericum cumulicola*), scrub blazing star (*Liatris ohlingerae*), papery whitlow-wort (*Paronychia chartacea*), a wireweed (*Polygonella basiramia*), and scrub plum (*Prunus geniculata*). Two plant species onsite that are proposed for listing as endangered are the short-leaved rosemary (*Conradina brevifolia*) and the sandlace (*Polygonella myriophylla*).

The Service also announces the availability of a final environmental assessment/habitat conservation plan (EA/HCP) for the incidental take permit application. Copies of the EA/HCP can be obtained by making requests to the addresses below. The Service is soliciting data on any of the above-listed wildlife or plant species to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA/HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA/HCP should be received on or before February 22, 1993.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA/HCP may obtain a copy by writing the Regional Office or the Jacksonville, Florida, Field Office. Documents will be available by written request for public inspection, by appointment, during normal business hours at the Regional Office, or the field office. Written data or comments concerning the application and the EA/HCP should be submitted to the Regional Office. Please reference permit under PRT–774603 in your comments.

Assistant Regional Director (FWE/SE), U.S. Fish and Wildlife Service, Suite 1276, 75 Spring Street, SW., Atlanta, Georgia 30303. (telephone 404/331–3580, fax 404/730–3419).

Field Supervisor U.S. Fish and Wildlife Service, 3100 University Blvd. South, Suite 120, Jacksonville, Florida 32216 (telephone 904–232–2580, fax 904–232–2404).

FOR FURTHER INFORMATION CONTACT: Dawn Zattau at the above Jacksonville, Florida, Field Office.

SUPPLEMENTARY INFORMATION: Wal-Mart Stores, Incorporated (applicant) proposes to develop 24 acres of land located in Sebring, Highlands County, Florida. This site is known to support two families to Florida scrub jays, and is suitable to support eastern indigo snakes, blue-tailed mole skinks, and sand skinks. The application includes a habitat conservation plan (HCP), combined with the environmental assessment (EA), which outlines the steps the applicant intends to take to mitigate for impacts to the species.

The EA considers the environmental consequences of six alternatives. The no-build alternative would probably result in continued succession of the scrub habitat onsite, resulting in the eventual loss of listed species over time. The conservation acquisition alternative would still require compliance with incidental take prohibitions of the Act, and any management actions would need to take these prohibitions into account. Since the site is almost completely surrounded by urban development, little value would be gained for species preservation by conserving this site. Other sites were considered by the applicant, but would result in environmental impacts at these sites. For each of the above alternatives, the development potential for the proposed site would still be an issue, and there would be a potential for continued disturbance from the surrounding urbanization. Other site plans were also considered by the applicant, including construction of a smaller store and elimination of required stormwater treatment facilities. Construction of a smaller store was deemed economically unfeasible by the applicant.

Elimination of the stormwater treatment would result in revocation of local permits, and the project could not be built. The proposed action would result in the loss of four scrub jays in two families, as well as the potential loss of any eastern indigo snakes, blue-tailed mole skinks, and sand skinks which may use the site. As mitigation for the incidental take of these species, the applicant proposes to provide funds needed to purchase and perpetually manage 40 acres of high quality scrub habitat located adjacent to Archbold Biological Station, a privately-funded scrub research facility. The final alternative discussed involves delisting the scrub jay. Federal delisting would not negate the take prohibitions found in Florida statutes, and is not warranted on a biological basis.

Dated: January 11, 1993.

Warren T. Olds, Jr.,

Assistant Regional Director.

[FR Doc. 93–1311 Filed 1–19–93; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service (MMS)

Information Collection Submitted to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget; Paperwork Reduction Project (1010–XXXX); Washington, DC 20503, telephone (202) 395–7340, with copies to John V. Mirabella; Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: 30 CFR part 254, Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines

OMB approval number: 1010–XXXX

Abstract: This information will be used by the Regional Supervisor to determine if a spill-response plan submitted for a platform or pipeline meets the MMS requirements as stated in 30 CFR part 254.

Bureau form number: None

Frequency: Once with minor annual updates

Description of respondents: Offshore lessees and facility operators

Estimated completion time: 48.6 hours

Annual responses: 350

Annual burden hours: 17,000 (rounded)

Bureau Clearance Officer: Dorothy Christopher (703) 787–1238

Dated: January 12, 1993.

Richard Roldan,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 93–1346 Filed 1–19–93; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–641–642 (Preliminary)]

Ferrosilicon From Brazil and Egypt

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–641–642 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil and Egypt of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 26, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 12, 1993.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on January 12, 1993, by AIMCOR, Pittsburgh, PA; Alabama Silicon, Inc., Bessemer, AL; American Alloys, Pittsburgh, PA; Globe Metallurgical, Inc., Cleveland, OH; Silicon Metaltech, Inc., Seattle, WA; United Autoworkers of America (locals 523 and 12646); United Steelworkers of America (locals 2528, 3081, and 5171); and Oil, Chemical & Atomic Workers (local 389).

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on February 3, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brad Hudgens (202–205–3189) not later than January 28, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: January 13, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-1322 Filed 1-14-93; 2:15 pm]

BILLING CODE 7020-02-M

[Investigation No. 332-340]

Enterprise for the Americas Initiative: Regional Economic Trends and Summary of Likely Effects of a Hemispheric Free Trade Zone

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: January 13, 1993.

SUMMARY: Following receipt on December 22, 1992, of a request from the United States Trade Representative (USTR) the Commission instituted investigation No. 332-340 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing certain requested information with respect to regional economic trends in the 30 countries currently included in the Enterprise for the Americas Initiative (EAI) and a summary of likely effects of a hemispheric free-trade zone. The USTR has requested that the Commission submit its report by April 23, 1993, and has indicated that portions of the report will likely be classified.

FOR FURTHER INFORMATION CONTACT: Information on the study may be obtained from Karen Laney-Cummings, Office of Industries (202-205-3443). The media should contact Edward Carroll, Acting Director, Office of Public Affairs (202-205-1819). Hearing impaired persons are advised that information on this matter can be obtained by contacting the TDD terminal on 202-205-1810.

BACKGROUND: More specifically, the USTR has requested that the Commission's report contain the following information:

(1) A brief country-by-country overview of recent economic developments in the 30 countries identified on the list supplied by USTR that have significantly influenced U.S. relations with such countries, including present trade and investment patterns in these regions.

(2) A brief discussion of the likely effect of a hemispheric free-trade zone with Latin American and Caribbean countries on the U.S. economy and its relationships with other countries in the region, including Canada and Mexico.

(3) The likely effect on broad U.S. industrial and other sectors (e.g., agriculture, textiles, chemicals, services, etc.) of a hemispheric free-trade zone. The USTR requested that this discussion provide a general profile of comparable Latin American sectors, an indication of the relative sizes of the U.S. and Latin American sectors; those major Latin American industries that compete with U.S. industries in domestic and export markets; the regional distribution of the competing U.S. industries; those Latin American industries that complement U.S. industries in the U.S. market; and an indication of the effects on the U.S. sectors.

In preparing its report, the USTR requested that the Commission assume, "strictly for analytical purposes," (a) a single agreement that would be tailored after the North American Free Trade Agreement (NAFTA) in terms of duty reductions, staging, quota elimination, other liberalizations, and safeguards; (b) that Mexico and Canada will both participate in the hemispheric agreement; and (c) the NAFTA will be implemented. The USTR noted that "the eventual form and nature of any possible hemispheric free-trade agreement is, of course, unknown at this time."

The 30 countries currently included in the EAI are Argentina, Brazil, Bolivia, the Caribbean Community (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago), Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

In her letter the USTR noted that section 5 of the Enterprise for the Americas Initiative Act of 1992 (Pub. L. 102-532, approved Oct. 27, 1992) requires that the President transmit a report to the Congress on the likely effect of free trade with Latin American and Caribbean countries within 8 months of the date of enactment.

PUBLIC COMMENT: Submissions from the public in connection with the investigation will be accepted by the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, through February 15, 1993.

Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

By order of the Commission.

Issued: January 14, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-1330 Filed 1-19-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-346]

Certain Magnetic Switches For Coaxial Transmission Lines and Products Containing the Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 15, 1992, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Sector Microwave Industries, Inc., 999 Grand Boulevard, Deer Park, New York 11729 and Victor Nelson 999 Grand Boulevard, Deer Park, New York 11729. The complaint alleges violation of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain magnetic switches for coaxial transmission lines and products containing the same, by reason of alleged infringement of claim 6 of U.S. Letters Patent 4,965,542, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Kent R. Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2579.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 13, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain magnetic switches for coaxial transmission lines and products containing the same, by reason of alleged infringement of claim 6 of U.S. Letters Patent 4,965,542; and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Sector Microwave Industries, Inc., 999 Grand Boulevard, Deer Park, New York 11729.
Victor Nelson, 999 Grand Boulevard, Deer Park, New York 11729.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Com Dev Ltd., 155 Sheldon Drive, Cambridge, Ontario, Canada NIR 7H6.

(c) Kent R. Stevens, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–L, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: January 14, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1331 Filed 1–19–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927–5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for ICC, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Revision of a currently approved form.

Bureau/Office: Office of Compliance & Consumer Assistance.

Title of Form: Annual Performance Report.

OMB Form Number: 3120–0006.

Agency Form Number: OCP–101.

Frequency: Annually.

No. of Respondents: 125.

Total Burden Hours: 3125.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1352 Filed 1–19–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32213]

Growth Resources of Wellsboro Foundation and Wellsboro and Corning Railroad Co.—Acquisition and Operation Exemption—Consolidated Rail Corp.; Exemption

Growth Resources of Wellsboro Foundation (GROW) Wellsboro and Corning Railroad Company (W&C), noncarriers, have filed a notice of exemption for GROW to acquire and W&C to operate approximately 35.5 miles of certain rail lines owned by

Consolidated Rail Corporation (Conrail). W&C will become a class III rail carrier.[1]

The rail lines involved in the transaction consist of two segments:

(1) The Corning Secondary between milepost 74.7, in the Township of Erwin, NY, and milepost 106.15, in the Township of Delmar, PA, near Wellsboro Junction, PA; and

(2) The Wellsboro Industrial Track between milepost 0.0, near Wellsboro Junction, PA and milepost 3.9, in the Township of Charleston, PA.

GROW will also acquire from Conrail and W&C will operate incidental trackage rights over approximately 0.7 miles of track between milepost 74.7, Line Code 2322, in Erwin, and the connection with Conrail's West Wye Track at milepost 74.5± and continuing westerly to Conrail's Gang Mills Yard, Gang Mills, NY, a total distance of approximately 0.5 miles, together with various lead tracks and yard tracks within Gang Mills Yard as designated by Conrail. These rights will permit traffic on the acquired lines to be interchanged with Delaware & Hudson Railway Company at Gang Mills Yard. Consummation was expected to occur on or before December 31, 1992, but after the effective date of this notice.[2]

Any comments must be filed with the Commission and served on:

(1) Eric M. Hocky, Rubin Quinn Moss & Patterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106; and

(2) Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

GROW shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1353 Filed 1–19–93; 8:45 am]

BILLING CODE 7035-01-M

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[1] This proceeding is related to Finance Docket No. 32214, wherein Richard D. Robey has concurrently filed a notice of exemption for the continuance in control of W&C when W&C becomes a rail carrier upon consummation of the transaction described in this notice.

[2] The notice of exemption in this proceeding was filed December 21, 1992. Under the Commission's rules, the exemption is effective 7 days after the notice is filed. 49 CFR 1150.32(b).

[Finance Docket No. 32214]

Richard D. Robey—Continuance in Control Exemption—Wellsboro and Corning Railroad Co., Inc.; Exemption

Richard D. Robey has filed a notice of exemption to continue in control of Wellsboro and Corning Railroad Company, Inc. (W&C) upon the latter's becoming a rail carrier. W&C and Growth Resources of Wellsboro Foundation (GROW), noncarriers, have concurrently filed a notice of exemption in Finance Docket No. 32213, Growth Resources of Wellsboro Foundation and Wellsboro and Corning Railroad Company—Acquisition and Operation Exemption—Consolidated Rail Corporation, for GROW to acquire and W&C to operate approximately 35.5 miles of rail line owned by Consolidated Rail Corporation in the Commonwealth of Pennsylvania and the State of New York. W&C expected the transaction to be consummated on or about December 31, 1992.

Mr. Robey controls and is an officer of five other class III rail carriers—North Shore Railroad Company (NSRC), The Nittany and Bald Eagle Railroad Company (N&B), The Shamokin Valley Railroad Company (SVRC), West Shore Railway Services, Inc. (WSRS), and The Sturbridge Railroad Company, Inc. (SRC).

This transaction involves the continuance in control of nonconnecting carriers where:

(1) The rail lines of NSRC, N&B, SVRC, WSRS, SRC, and W&C will not connect with each other or any railroads in their corporate family;

(2) The transaction is not part of a series of anticipated transactions that will connect the railroads with each other or any railroad in their corporate family; and

(3) The transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on Richard R. Wilson, Vuono, Lavelle & Gray, 2310 Grant Building, Pittsburgh, PA 15219.

Decided: January 13, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1351 Filed 1–19–93; 8:45 am]

BILLING CODE 7035-01-M

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[1] Although the parties in the verified notice of exemption indicate their belief that "there is no requirement for the imposition of labor protective conditions," pursuant to 49 CFR 1180.2(d), these class exemptions do not relieve a carrier of its statutory obligation to protect the interests of employees. See 49 U.S.C. 10505(g)(2) and 11347.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By notice dated November 24, 1992, and published in the **Federal Register** on December 1, 1992, (57FR56932), Knight Seed Company, Inc., 151 W. 126th Street, Burnsville, Minnesota 55337, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 6, 1993.

Anthony J. Senneca,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–1300 Filed 1–19–93; 8:45 am]

BILLING CODE 4410-09-M

Office for Victims of Crime

Discretionary Grant Program and Application Information for Fiscal Year 1993

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Public announcement of availability of the funds and application information under the Discretionary

Grant Program authorized by section 1404(c) of the Victims of Crime Act (VOCA) of 1984, Public Law 98–473, as amended, 42 U.S.C. 10603(c).

SUMMARY: The Office for Victims of Crime is publishing this notice to announce the availability of discretionary funds for new training and technical assistance and direct assistance programs to improve the services rendered to victims of crime. Application information is provided.

DATES: All applications are due by the close of business (5 p.m. e.s.t.) March 22, 1993.

ADDRESSES: Office for Victims of Crime, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Josephine Morrow, Special Projects Division, (202) 514–6444 or the persons whose names follow the individual programs below.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Program Descriptions
  Competitive Programs
III. Eligibility Requirements
IV. Application Requirements
V. Procedures and Criteria for Selection
VI. Submission Requirements
VII. Civil Rights Compliance

I. Introduction

The Office for Victims of Crime (OVC) is a component of the Office of Justice Programs within the U.S. Department of Justice that serves as the Federal focal point for all crime victim issues. In addition to ensuring that the criminal justice system addresses the victim's legitimate rights and interests, OVC's program activities include providing victim assistance and compensation grants to the States; training and technical assistance; and emergency services to victims of Federal crimes. See 42 U.S.C. 10601–10605.

OVC's FY 93 discretionary grant programs respond to the recommendations set forth in the 1992 Final Report of the President's Task Force on Victims of Crime and to the objectives of Operation Weed and Seed, the President's multi-agency approach to urban revitalization which consists of comprehensive efforts to combat violent crime and cultivate community development. Operation Weed and Seed combines rigorous law enforcement measures with social, educational, and economic programs to rejuvenate high-crime neighborhoods, prevent violent crime from recurring, and respond to the needs of community residents, many of whom are crime victims. In keeping with the Weed and Seed objectives, a number of OVC discretionary programs are designed to foster victim participation in the criminal justice system. Other training and technical assistance programs that enhance victim assistance services will be targeted to specific participant groups, such as law enforcement personnel and public housing residents at designated Weed and Seed sites. Further information specific to Operation Weed and Seed program components is included in the individual program descriptions.

II. Program Descriptions

Competitive Programs

State Victim Conference Support Initiative

$75,000

The goal of this project is to provide support to multi-disciplinary, statewide victim conferences to enhance the quality and breadth of training that the conferences have to offer.

Since 1986, OVC has provided national-scope training for victim service providers. Each year the training has been offered through a series of regional conferences. With the growth of the victims movement and the increasingly specialized areas of expertise involved in responding to victims of crime, OVC believes that providing regional training conferences on a set of basic topics is no longer the most effective way to meet the training needs of the field. To meet demand, training should be in-depth, skills-oriented training on a variety of topics targeting criminal justice, medical and mental health personnel, as well as victim service providers and victim advocates. The training must be responsive to the specific requirements of each locale, taking into consideration types of crime, gaps in services and knowledge, the level of coordination among service providers, and State legislative mandates.

OVC may award grants of up to $7,500 each to 10 applicants to support conference activities within a 12-month period. Applicants will be State agencies or qualified private organizations with sufficient capability and stature to manage a statewide victims conference. To be eligible, the applicant must be designated in writing by the State Victim Compensation and Victim Assistance Administrators as the appropriate organization to sponsor the statewide conference. The State Victim Compensation or Victim Assistance agency, with the concurrence of the other, is also eligible to function as conference sponsor. Previous experience and history with organizing and sponsoring statewide conferences will be taken into account during the selection process.

Under the grant program, States may select workshop topics from the list of OVC-sponsored special training and technical assistance projects. The availability of any particular topic is subject to the availability of a qualified trainer at the time requested. Specific trainers will be scheduled in order to ensure that a diversity of expertise is offered. At least 80 percent of the grant funds is to be allotted for the purchase of workshop presentations from the list; or in special cases, other workshop presentations may be purchased with OVC approval. In purchasing selected presentations, funds will be used to pay trainers' consultant fees of up to $200 per day and travel expenses. In addition, up to 30 percent of each award may be allotted to the development of conference materials, special assistance with conference planning, and purchase of conference space.

In addition to the selection criteria applicable to all programs which are listed below, proposals for this initiative will be assessed on the conference plan submitted, as well as the justification of the need for conference support and for the specific type(s) of training requested. Special consideration will be given to States which have not previously sponsored statewide victim conferences.

Each grantee will be required to submit a conference report assessing the impact of the grant, including participant evaluations of workshops sponsored by the grant.

Workshop Topics

1. Multi-Disciplinary Response to Sexual Assault Victims
2. Prosecutorial Response to Crime Victims
3. Victim Services in Community Corrections (Probation and Parole)
4. Victim Services in Institutional Corrections
5. Law Enforcement and Victim Service Provider Response to Bias Crime Victims
6. Law Enforcement Training on Identifying Sexually Exploited Youth
7. Law Enforcement Response to Victims of Domestic Violence
8. Judicial Training on Victim Issues
9. Civil Remedies for Victims
10. Mental Health Treatment of Crime Victims
11. Training for Mental Health Professionals in Responding to Child Victims of Physical and Sexual Abuse
12. Elderly Abuse
13. Legal Advocacy for Rural Domestic Violence Victims

14. Serving Hispanic Victims of Crime
15. Clergy Response to Crime Victims
16. Crisis Response Team Training
17. Serving Victims of Property Crimes
18. Dealing with Media's Role in Reporting Crime Victimization
19. Managing Victim Assistance Volunteers
20. Victim Services in the Inner-City
21. Children Grieving Violent Death

For further information contact: Susan Laurence, Special Projects Division, (202) 307–5950.

Indian Nations Conference

$155,000

The goal of this project is to improve the response of victim service professionals to Native American victims of crime and to enhance the investigation, prosecution, and handling of cases involving the sexual and physical abuse of children.

Through the Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program, OVC has awarded grants to fifteen States to support victim assistance programs for 52 tribes and tribal organizations and, under the Children's Justice Act (CJA) Discretionary Grant Program for Native Americans, has provided direct funding to 23 tribes and tribal organizations to improve the investigation, prosecution, and case handling of child abuse in Indian country. Since 1988, OVC has sponsored a biennial national conference entitled "Indian Nations: Justice for Victims of Crime" to address services for crime victims through comprehensive training of VAIC service providers. In addition, OVC has funded two training conferences for tribes and organizations participating in the CJA program. This fifth national conference will address the training needs of professionals working to assist victims of violent crime in Indian country including staff implementing CJA programs.

This project will be implemented by a grantee chosen competitively from among proposals submitted in response to this solicitation. One grant of up to $155,000 will be awarded for a 12-month period. The grantee will review current information on victim assistance and CJA programs in Indian country and evaluations from previous Indian Nations and CJA conferences and, with the assistance of a planning committee, develop an agenda for a three-day training conference. The grantee will then present a national training conference that will enhance the skills of victim service providers; train professionals who are involved in the investigation, prosecution, and management of child abuse cases; promote an interdisciplinary strategy that combines legal, law enforcement, and victim assistance approaches to responding to Native American crime victimization and child abuse; and present established and new models of assisting Native American crime victims, including traditional healing ceremonies. The grantee will be expected to award grant-funded scholarships to those who work in crime victim assistance efforts and/or the handling of child abuse cases and who would otherwise be unable to attend. Finally, the grantee will complete an overall evaluation of the training provided and make recommendations for meeting future training needs.

Contact: Bill Brantley, Federal Crime Victims Division, (202) 514–6444.

Multi-jurisdictional, Interagency Model for Investigating and Prosecuting Cases of Child Pornography and Juvenile Prostitution

$225,000

The goal of this program is to improve the investigation and prosecution of cases involving sexual exploitation of children and juveniles and to provide crisis intervention and assistance to child and juvenile victims. This project, jointly sponsored by OVC and the Office of Juvenile Justice and Delinquency Prevention, will involve the U.S. Attorney, the Federal Bureau of Investigation (FBI), and other related Federal, State, and local law enforcement agencies.

Estimates of the number of juveniles involved in prostitution range from 200,000 to 300,000 nationally. Many of these children are runaway or throwaway children without secure homes who are extremely vulnerable to sexual exploitation, which may include their involvement in the production of pornography. According to the Attorney General's Commission on Pornography, the production of child pornography frequently entails serious physical and psychological harm to children. A second harmful effect of child pornography is its influence on viewers of these sexually explicit materials. Research has shown that a "modeling effect" may occur whereby those who view materials portraying violence and degradation of children may desire to recreate the acts, thus furthering the victimization of children. Though the gravity of the problem has been acknowledged, cases of child sexual exploitation are often not pursued because they are time consuming and resource intensive.

The grantee for this project will develop a prototype multi-jurisdictional task force to address child pornography and juvenile prostitution aggressively. The task force will implement centrally coordinated and managed investigations involving Federal, State, and local investigative agencies. These investigations will identify and locate procurers who recruit juveniles and furnish the available information to law enforcement agencies, including the U.S. Postal Service, U.S. Customs, and the FBI in a wide geographic area. The task force will also develop a law enforcement-based interdisciplinary model that involves child protective, social, mental health, and medical services in providing assistance and support to child victims in crisis from the initial investigation through adjudication to readjustment; provide training for law enforcement officials and others involved in the project; and initiate an effort to raise public awareness of the harm associated with child pornography and juvenile prostitution. As this project will require support from the U.S. Attorney, the FBI, and local law enforcement, OVC will consider only those sites in which Federal and local law enforcement officials agree to commit adequate resources to form a multi-jurisdictional effort. The funds for this project cannot be used for law enforcement efforts but must be targeted to assisting child and youth victims in crisis, and providing training and initiating public awareness efforts.

Contact: Marti Speights, Federal Crimes Division, (202) 514–6444.

III. Eligibility Requirements

In addition to special eligibility requirements listed within the individual program descriptions (above), the following apply: Applications are invited from public and private agencies and organizations. Applications will be accepted from for-profit agencies as long as they agree to waive any profit and accept only actual allowable costs. Applicants must demonstrate that they have ample expertise and/or prior experience in the design and conduct of projects of a nature similar to that for which they are applying.

Applicants must also demonstrate that they have the management capability, fiscal integrity, and financial responsibility, including but not limited to, an acceptable accounting system and internal controls, and compliance with grant fiscal requirements. Applicants who fail to demonstrate that they have the capability to manage the program will be ineligible for funding consideration.

IV. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative. All applications must include the information outlined in this section of the solicitation (Section IV. Application Requirements) in Part IV, Program Narrative of the application (SF–424). The program narrative of the application should not exceed 35 double-spaced pages in length.

In accordance with Executive Order No. 12549, 28 CFR 67.510, applications must also provide Certifications Regarding Lobbying; Debarment, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (Form 4061/6), which will be supplied with the application package, and must be submitted with the application.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000.

The following information must be included in the application (SF–424) Part IV Program Narrative:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this grant on the basis of the eligibility criteria established in section III of this solicitation. Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified in each program description listed above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative. Applicants are invited to append examples of prior work products of a similar nature to their application.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Programs Accounting System and Financial Capability Questionnaire (OJP Form 7120/1). Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form. The CPA certification (Section H) is required only of those applicants who have not previously received Federal funding.

B. Program Goals and Objectives—A brief statement of the applicant's understanding of the goals and objectives of the program should be included. The application should also include a problem statement and a discussion of the potential contribution of this program to the field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives of each program. A detailed discussion of how the activities and products of each program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involve in implementing the program, describe how they will allocate available resources to implement the project, and also describe how the program will be managed.

The plan must also include an organizational chart depicting the roles and describing the responsibilities of key organizational and functional components and a list of key personnel responsible for managing and implementing the major stages of the project. Applicants must present detailed position descriptions, qualifications, and selection criteria for each position. This documentation and individual résumés may be submitted as appendices to the applications.

E. Time-Task Plan—Applicants must develop a time-task plan for the duration of the project periods, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products. Applicants should also indicate the anticipated cost schedule per month for the entire project period.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program.

G. Program Budget—Budgets must be accompanied by a detailed justification for all costs, including the basis for computation of these costs. Applications containing contract(s) must include detailed budgets for each organization's expenses.

H. Evaluation—Each grant recipient will be required to submit formal findings from an assessment or evaluation, within 60 days of the completion of each year's activities and within 90 days of project completion. Each application must provide a plan for assessing or evaluating the project.

V. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements set forth in Section IV. Applications will be evaluated by a peer review panel according to the OVC Competition and Peer Review Guidance. The selection criteria and their point values (weights) are as follows:

A. The problem to be addressed by the project is clearly stated. This criterion includes a concise, well-justified statement of the problem. (5 points)

B. The goals and objectives of the proposed project are clearly defined. This criterion includes a brief statement of the goals and objectives of the project as well as an understanding of project requirements and definitions of key terms. (10 points)

C. The project design is sound and contains program elements directly linked to the achievement of project objectives. This criterion includes appropriateness and technical adequacy of the approach to the activities and products of each stage of the program for meeting the goals and objectives. (25 points)

D. The project management structure is adequate to the successful conduct of the project. (Total 25 points) This criterion includes:

1. Adequacy and appropriateness of the project management structure and the feasibility of the time-task plan. (10 points)

2. The qualifications of staff identified to manage and implement the program, including staff to be hired through contracts (if any). This criterion includes the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (15 points)

E. Organizational capability is demonstrated at a level sufficient to support the project successfully. This criteria includes the extent and quality of organizational experience in the development, delivery and coordination of programs of similar nature. (25 points)

F. Budgeted costs are reasonable, allowable, and cost-effective for the activities to be undertaken. This criterion includes completeness and appropriateness of the proposed costs in relation to the proposed strategy and tasks to be accomplished. (10 points)

Applications submitted in response to competitive announcements will be evaluated by a peer review panel. The results of the peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist OVC in considering competing applications and in selection of the application for funding. The final award decision will be made by the OVC Director.

VI. Submission Requirements

All applicants responding to this solicitation are subject to the following requirements:

1. Upon request to OVC, the necessary forms for application will be provided, along with Department of Justice certification information.

2. Applicants must submit the original signal application (Standard Form 424) and two copies to OVC. Applicants should also include Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements (Form 4061/6), in order to meet the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D) and the Disclosure of Lobbying Activities Form (SF LLL) in accordance with 31 U.S.C. 1352.

3. All applications must be received by mail or hand delivered to OVC by 5 p.m. E.S.T. on March 22, 1993. Those applications sent by mail should be addressed to: Office for Victims of Crime, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to OVC, 633 Indiana Avenue, NW., Washington, DC between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

OVC will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. Applications will be reviewed as Peer Review Panels can be convened. Every effort will be made to review applications in a timely manner.

VII. Civil Rights Compliance

A. All recipients of OVC assistance, including any contractors, must comply with the non-discrimination requirements of the Victims of Crime Act of 1984, as amended; title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; subtitle A, title II of the Americans with Disabilities Act (ADA) (1990); title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR part 42, subparts C, D, E, and G; and Department of Justice regulations on disability discrimination, 28 CFR part 35 and part 39.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

Brenda G. Meister,

Acting Director, Office for Victims of Crime.

[FR Doc. 93–1246 Filed 1–19–93; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment Standards Administration

Black Lung Program Provider Enrollment Form
1215–0137; CM–1168
On occasion
Businesses or other for-profit; small businesses or organizations 6,500 respondents; 5 minutes per response; 525 total burden hours; 1 form.

The CM–1168 requests profile information on providers to afford both timely reimbursement for medical services provided to Black Lung claimants and a list of active providers for miner referral.

Revision

Occupational Safety and Health Administration

Construction Crane or Derrick Annual Inspection Record State or local governments' businesses or other for-profit; small businesses or organizations.

As a result of the Federal 21, 1990, Supreme Court Decision, 110 S. Ct. 929, 58 U.S.L.W. 4200, OSHA is no longer seeking Office of Management and Budget (OMB) clearance for those paperwork activities involving the employer and the third party (employee) disclosure contained in 29 CFR 1926.550(a)(6).

Signed at Washington, DC, this 11th day of January 1993.

Kenneth A. Mills,

Department Clearance Officer.

[FR Doc. 93–1342 Filed 1–19–93; 8:45 am]

BILLING CODE 4510-26-M

Glass Ceiling Commission; Postponement of Open Meeting

SUMMARY: Pursuant to title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of Establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776).

This notice is to postpone indefinitely the open meeting scheduled for Monday, January 25, 1993. This meeting was previously announced in the **Federal Register** on January 6, 1993 at 58 FR 584.

The postponement is necessary to allow sufficient time for Secretary-Designate Robert Reich to be briefed on Glass Ceiling Commission activities.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth Leonard, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2018, Washington, DC 20210, (202) 219–8271.

Signed at Washington, DC, this 13th day of January 1993.

Lynn Martin,

Secretary of Labor.

[FR Doc. 93–1265 Filed 1–19–93; 8:45 am]

BILLING CODE 4510-23-M

Employment and Training Administration

[TA–W–28,098]

Marilyn Fashions, Inc., Windber, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1992 in response to a worker petition which was filed on behalf of workers at Marilyn Fashions, Incorporated, Windber, Pennsylvania.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purposes; and the investigation has been terminated.

Signed at Washington, DC, this 11th day of January 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–1263 Filed 1–19–93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 1, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 1, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 4th day of January 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Midwest Portland Cement Co (Co)	Zanesville, OH	01/04/93	12/28/92	28,161	Portland Cement.
Joan and Jay (Workers)	Lynchburg, VA	01/04/93	12/18/92	28,162	Ladies' blouses, pants, skirts, dresses.
Idaho Forest Inds (Workers)	St. Anthony, ID	01/04/93	12/11/92	28,163	Softwood dimensional lumber.
HMC Acquisition Corp (Workers)	Westfield, PA	01/04/93	12/18/92	28,164	Ladies' undergarments.
Genicom Corporation (Workers)	Waynesboro VA	01/04/93	12/14/92	28,165	Parts for computers.
Dresser Rand Co (Workers)	Olean, NY	01/04/93	12/21/92	28,166	Gas & oil compressors.
Nelson/Weather-Rite (Co)	Secaucus, NJ	01/04/93	12/15/92	28,167	Industrial rainwear & camping gear.
Brainard Strapping (USWA)	Warren, OH	01/04/93	12/18/92	28,168	Steel strapping.
General instrument Corp (Workers)	Hicksville, NY	01/04/93	10/20/92	28,169	Schottky rectifier wafers.
Custom Plywood Corp (Workers)	Anacortes, WA	01/04/93	10/27/92	28,170	Plywood used to build concrete forms.
Utica Corp., Mohawk Street (IAM)	Whitesboro, NY	01/04/93	12/23/92	28,171	Fan and turbine blades.
Semiconductor Specialties Corp (Workers).	Kane, PA	01/04/93	12/18/92	28,172	Polysilicon products.
Texas Exploration & Production Co (Workers).	Midland, TX	01/04/93	12/12/92	28,173	Oil and gas.
TransAmerican Natural Gas Corp (Workers).	Houston, TX	01/04/93	12/22/92	28,174	Natural gas.
Sandoz Chemicals Corp (Co)	Fair Lawn, NJ	01/04/93	12/22/92	28,175	Scouring assistance & optical brighteners
Revlon, Inc. (UAW)	Edison, NJ	01/04/93	12/07/92	28,176	Cosmetics, perfumes and creams.
Pacific Uniform Mfg. Co (Workers)	Conyers, GA	01/04/93	12/18/92	28,177	Industrial garments.
Northwest Airlines, Inc. (Workers)	St. Paul, MN	01/04/93	12/02/92	28,178	Aircraft mechanics.
Raymel Corp. (Workers)	Hialeah, FL	01/04/93	12/19/92	28,179	Men's & childrens' pullovers.
West Point Pepperell, Inc (Workers)	Biddeford, ME	01/04/93	12/29/92	28,180	Blankets & other accessories.

APPENDIX—Continued

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Hill-Loma, Inc (Workers)	Gorham, ME	01/04/93	12/27/92	28,181	Multipurpose metalworking machines
Utica Corp., Halsey Road (IAM)	Whitesboro, NY	01/04/93	12/23/92	28,182	Fan and turbine blades

[FR Doc. 93-1264 Filed 1-19-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON JUDICIAL DISCIPLINE AND REMOVAL

Public Hearing

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Public hearing.

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public hearing before the National Commission on Judicial Discipline and Removal will be held on January 29, 1993 in Washington, DC. The hearing will commence at 1:15 p.m. and adjourn at approximately 5 p.m. The precise location of the hearing will be room 226, Dirksen Senate Office Building, U.S. Senate, Washington, DC.

AUTHORITY: The hearing will be the fourth one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States, and the Conference of State Chief Justices. The National Commission, established by Public Law 101-650 (Title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate. The due date for the Commission's final report is August 1, 1993. The Commission is not authorized to consider specific complaints against federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: The hearing will be open to the public.

MATTERS TO BE CONSIDERED: Testimony will be received from representatives of public interest groups and other interested citizens informing the Commission of their views regarding the Commission's investigation and study of problems involved in the discipline and removal from office of Article III Federal judges.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave, NW., Washington, DC 20037-3202; or call (202) 254-8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

William J. Weller,

Deputy Director

[FR Doc. 93-1251 Filed 1-19-93; 8:45 am]

BILLING CODE 6820-DB-M

Public Meetings

AGENCY: National Commission on Judicial Discipline and Removal.

ACTION: Notice of public meeting .

SUMMARY: Notice is hereby given in the public interest and pursuant to the Federal Advisory Committee Act that a public meeting of the National Commission on Judicial Discipline and Removal will be held on January 28 and 29, 1993, in Washington, DC. On January 28, the first session of the meeting will convene at 9:30 a.m. and adjourn at approximately 12:30 p.m., and the second session of the meeting will convene at 1:30 p.m. and adjourn at approximately 5 p.m. On January 29, the third session of the meeting will convene at 9:15 a.m. and adjourn at 12:15 p.m. All three sessions of the meeting will be held in the Federal Judiciary Building's Main Conference Room, located on the Fourth Floor of the Federal Judiciary Building at One Columbus Circle, NE.

AUTHORITY: This public meeting will be the seventh one for the National Commission, a body composed of thirteen members appointed by the Speaker of the House, the President, the President *pro tem* of the Senate, the Chief Justice of the United States and the Conference of State Chief Justices. The National Commission, established by Public Law 101-650 (Title IV), is assigned three statutory duties. The first is to investigate and study the problems and issues involved in the tenure (including discipline and removal) of Article III (appointed to serve for life) Federal judges. The second is to evaluate the advisability of proposing alternatives to current arrangements with respect to such problems and issues, including alternatives for the discipline and removal of Federal judges that would require constitutional amendments. Finally, the Commission is required to prepare and submit a report to the Congress, the Chief Justice, and the President setting forth a detailed statement of its findings and conclusions together with any recommendations for legislative and administrative actions as are considered appropriate. The due date for the Commission's final report is August 1, 1993. The Commission is not authorized to consider specific complaints against Federal judges.

Ordinarily the provisions of the Federal Advisory Committee Act are not applicable to legislative or judicial agencies. Nonetheless, since the Commission is composed of representatives of all three branches of the Federal government, a good faith commitment to open meetings is incorporated in the Commission's By-laws.

STATUS: All three sessions of the meeting will be open to the public. A portion of the second session of the meeting may be held in executive session to consider administrative matters involving privacy interests.

MATTERS TO BE CONSIDERED: This meeting will be the third in a series of

Commission sessions designed to consider draft reports from consultants who have prepared papers about specific research topics assigned to them. This meeting will consider seven draft reports.

During the first meeting session of January 28, the Commission will review three draft reports: A report on the history of judicial resignation, by Emily Van Tassel, Deputy Historian at the Federal Judicial Center; a report on legal issues related to the disqualification of federal judges convicted of bribery by Jerome Marcus, Assistant U.S. Attorney in the Eastern District of Pennsylvania; and a report on the relationship between federal judicial resignation and statutorily authorized judicial retirement and employment benefits, by Professor Dan M. McGill of the University of Pennsylvania.

During the second meeting session on January 28, the Commission conducted Commission business before reviewing two draft reports: a study of existing arrangements for dealing with complaints of judicial misbehavior within the Judicial Branch, prepared by the Federal Judicial Center; and a study of how judicial branch disciplinary arrangements are perceived to be working by judges generally, and by the public, prepared by the Justice Research Institute of Philadelphia.

During the third meeting session on January 29, the Commission will review two draft reports: a study of the judiciary's administration of specific statutorily authorized powers vested in the judicial circuit councils and the Judicial Conference of the United States, prepared by Professor Richard L. Marcus of the Hastings College of Law of the University of California; and a draft report examining the relationship between judicial administration and judicial discipline, prepared by Professor Charles Geyh of Widener University School of Law.

CONTACT PERSONS FOR FURTHER INFORMATION: Contact Michael J. Remington or William J. Weller at the National Commission on Judicial Discipline and Removal, suite 690, 2100 Pennsylvania Ave, NW., Washington, DC 20037-3202; or call (202) 254-8169.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be available for public inspection during regular working hours at the Commission office approximately thirty (30) working days following the meeting.

William J. Weller,

Deputy Director.

[FR Doc. 93-1250 Filed 1-19-93; 8:45 am]

BILLING CODE 6820-08-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on February 5, 1993 from 9 a.m.-5:30 p.m. and February 6 from 8:30 a.m.-2 p.m. in room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 5 from 9 a.m.-5:30 p.m. and February 6 from 9:15 a.m.-2 p.m. The topics for discussion will include opening remarks; report on Cultural Diversity Issues Meeting; and Program Review and/or Guidelines and/or Application Review for the Arts in Education, Challenge/Advancement, Dance, Design Arts, Expansion Arts, Folk Arts, International, Literaure, Local Arts Agencies, Media Arts, Museum, Music, Policy, Planning and Research, Opera-Musical Theater, Presenting & Commissioning, Special Constituencies, State & Regional, Theater, and Visual Arts Programs.

The remaining portion of this meeting on February 6 from 8:30 a.m.-9:15 a.m. is for the purpose of reviewing nominations for the National Medal of Arts to be awarded by the President during 1993. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (6) and 9(B) of section 552b of title 5, United States Code.

Also, if in the course of application review it becomes necessary for the Council to discuss non-public financial information about individuals, such as salary information, submitted with grant applications, the Council will go into closed session for that limited purpose only pursuant to subsection (c)(4) of section 552b of title 5, United States Code. Such closure would be in accordance with the determination of the Chairman of November 24, 1992.

Any interested persons may attend, as observers, Council discussions and reviews which are open to the public.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93-1273 Filed 1-19-93; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Performing Arts: Theater Section) to the National Council on the Arts will be held on February 9, 1993 from 9:15 a.m.-6 p.m., February 10-11 from 9 a.m.-7 p.m., and February 12 from 9 a.m.-4:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 9 from 9:15 a.m.-10:30 a.m. and February 12 from 2 p.m.-4:30 p.m. for opening remarks, general program overview, policy discussion and guidelines review.

The remaining portions of this meeting on February 9 from 10:30 a.m.-6 p.m., February 10-11 from 9 a.m.-7 p.m., and February 12 from 9 a.m.-2 p.m. are for the purpose of Panel review discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1274 Filed 1–19–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

January 14, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 17, 1992 the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Gary D. Miller on January 12, 1993.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 93–1341 Filed 1–19–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: New
2. Title of the information collection: "Survey of NRC Materials Licensees"
3. The form number if applicable: Not applicable
4. How often the collection is required: One time
5. Who will be required or asked to report: NRC Materials Licensees
6. An estimate of the number of responses annually: 4,800
7. An estimate of the total number of hours needed annually to complete the requirement or request: 7,200 hours (1.5 hours per response)
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable
9. Abstract: NRC materials licensees are being asked to provide information concerning their approximate annual gross receipts and number of employees to enable the NRC to update and refine its economic profile and determine the economic impact of NRC regulatory actions on those licensees.

Copies of the submittal may be inspected, or copied for a fee, from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–______, NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1301 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: 10 CFR part 71—Packaging and Transportation of Radioactive Material.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Applications for package certification may be made at any time. Required reports are collected and evaluated on a continuing basis as events occur.
5. Who will be required or asked to report: All NRC specific licensees who place byproduct, source, or special nuclear material into transportation, and all persons who wish to apply for NRC approval of package designs for use in such transportation.
6. An estimate of the number of responses: 760.
7. An estimate of the total number of hours needed annually to complete the requirement or request: Approximately 87 hours per response plus 18 hours per recordkeeper. The total annual industry burden is estimated to be 72,752 hours.
8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.
9. Abstract: NRC regulations in 10 CFR part 71 establish requirements for packaging, preparation for shipment, and transportation of licensed material, and prescribe procedures, standards, and requirements for approval by NRC of packaging and shipping procedures for fissile material and for quantities of licensed material in excess of Type A quantities.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0008), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1299 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–286]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, appendix J, paragraph III.D.3, Type C Tests, to the Power Authority of the State of New York (the licensee) for the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The licensee would be exempt from the requirements of 10 CFR part 50, appendix J, paragraph III.D.3, to the extent that an extension would be allowed for performing Type C local leak rate tests (LLRTs) on containment isolation valves. These LLRTs are currently required to be performed at intervals no greater than 2 years. The exemption would allow Type C LLRTs to be performed at intervals no greater than 30 months.

By letter dated July 17, 1992, as supplemented December 23, 1992, the licensee applied for a technical specifications (TS) amendment and requested an exemption from the Code of Federal Regulations' (CFR) requirements to allow Type C LLRTs to be performed at intervals no greater than 30 months.

The Need for the Proposed Action

The licensee commenced operating on 24-month fuel cycles, instead of the previous 18-month fuel cycles, starting with fuel cycle 9. Fuel cycle 9 started in August 1992. The requirements of 10 CFR part 50, appendix J, paragraph III.D.3, indicate that Type C LLRTs must be performed during each reactor shutdown for refueling at intervals no greater than 2 years (24 months). In order to conform with this regulation, the licensee would have to shut down Indian Point Nuclear Generating Unit No. 3 and enter a forced outage prior to the next scheduled refueling outage. The next refueling outage is scheduled to commence in the September 1994 time frame.

The NRC staff had previously recognized that certain regulations would not accommodate fuel cycles longer than 18 months. Consequently, the NRC staff issued Generic Letter 91–04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle." This generic letter provides guidance to licensees on how to prepare requests for TS amendments and regulation exemptions which are needed to accommodate a 24-month fuel cycle. The licensee's letter of July 17, 1992, as supplemented December 23, 1992, which, in part, requested an exemption from the Code of Federal Regulations requirements to allow Type C LLRTs to be performed at intervals no greater than 30 months, followed the guidance of Generic Letter 91–04.

Environmental Impacts of the Proposed Action

The proposed exemption does not increase the probability or consequences of accidents previously analyzed and the proposed exemption does not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous LLRTs performed at Indian Point Nuclear Generating Unit No. 3, and has provided the methodology used in extrapolating the previous LLRT data to the proposed 30-month intervals. The requested exemption is also based on increasing the margin to the allowed combined leakage rate limit by 25 percent. The licensee has provided a sound basis for concluding that the containment leakage rate would be maintained within acceptable limits with a maximum LLRT interval of 30-months. The NRC staff has determined the licensee's actions are consistent with the guidance provided in Generic Letter 91–04. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves LLRTs on containment isolation valves. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant nonradiological environmental impact associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Indian Point Nuclear Generating Plant Unit No. 3," dated February 1975.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the exemption under consideration.

For further details with respect to this action, see the licensee's application for exemption dated July 17, 1992, as supplemented December 23, 1992. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., DC, and the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 12th day of January 1993.

For The Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I-1 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1298 Filed 1–19–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Computers in Nuclear Power Plant Operations

The ACRS Subcommittee on Computers in Nuclear Power Plant Operations will hold a meeting on February 9, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, February 9, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss current and proposed methods, including the risk-based method for evaluating computer software for safety-critical applications in nuclear power plants. In addition, it will discuss recent utility experience with conversion of analog instrumentation and control systems to software-based digital instrumentation and control systems in existing plants. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with the NRC staff, its consultants, industry representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Douglas Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (E.S.T.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 12, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–1296 Filed 1–19–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published December 23, 1992 (57 FR 61104). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1993 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Computers in Nuclear Power Plant Operations, February 9, 1993, Bethesda, MD. The Subcommittee will discuss current and proposed methods used to evaluate software for safety-critical applications, including the use of risk-based criteria. In addition, it will discuss recent utility experience with conversions of analog instrumentation and control systems to software-based digital instrumentation and control systems.

Advanced Pressurized Water Reactors, February 10, 1993, Bethesda, MD. The Subcommittee will begin its review of the NRC staff's Draft Safety Evaluation Report (NUREG–1462) for certification of the ABB CE System 80+ Design.

Planning and Procedures, February 10, 1993, Bethesda, MD (3 p.m.–5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Thermal Hydraulic Phenomena, March 4 and 5, 1993, Idaho Falls, ID. The Subcommittee will review the status of the PWR version of the RELAP5/MOD–3 code with emphasis on analytical programs in support of the AP600 design certification effort.

Joint Materials and Metallurgy/Structural Engineering, March 10, 1993, Bethesda, MD. The Subcommittees will discuss: (1) The status of the NRC staff's concerns regarding steam generator tube degradation, and (2) the industry proposal on piping design improvements to reflect current technical knowledge for ALWR plants.

ACRS Full Committee Meetings

394th ACRS Meeting, February 11–13, 1993, Bethesda, MD. Items are tentatively scheduled.

A. *Key Policy Issues for Preapplication Designs*—Review and comment on key policy issues identified by the NRC staff for resolution with respect to advanced reactor designs such as the MHTGR, PIUS, PRISM, and CANDU–3. Representatives of the NRC staff, of the Department of Energy and of the industry will participate, as appropriate.

B. *Fitzpatrick Nuclear Power Plant*—Briefing and discussion regarding restart of the Fitzpatrick nuclear plant following an extended shutdown for plant and organizational changes. Representatives of the licensee and of the NRC staff will participate, as appropriate.

C. *Research on Organizational Factors*—Briefing and discussion regarding NRC sponsored research on organizational factors. Representatives of the NRC staff and of the industry will participate, as appropriate.

D. *Atomic Safety and Licensing Board Panel (ASLBP)*—Briefing by and discussion with representatives of the ASLBP regarding the current and anticipated activities of the ASLBP.

E. *Multiple System Responses Program*—Briefing by and discussion with representatives of the NRC staff regarding the status of the staff's work for dealing with the potential generic safety issues identified in the Multiple System Responses Program.

F. *ACRS Subcommittee Activities*—Reports on and discussion of the status of ACRS subcommittee assignments, including use of digital instrumentation and control systems in nuclear power plants, and ABB–CE System 80+ design, and procedures for conduct of ACRS business. Representatives of the NRC staff will participate, as appropriate.

G. *Future ACRS Activities*—Discuss topics proposed for consideration by the full Committee.

H. *Resolution of ACRS Recommendations*—Discuss replies from the NRC Executive Director for Operations regarding the NRC staff reaction to recent ACRS comments and recommendations.

I. *NRC Regulatory Review Group*—Discuss the proposed charter for and activities of the NRC Regulatory Review Group. The purpose of this group will be to conduct a comprehensive and disciplined review of power reactor regulations and related NRC process, programs, and implementation practices. Representatives of the NRC staff and of the industry will participate, as appropriate.

J. *Briefing on Recent Changes to the Regulations on the Conduct of Government Employees*—Briefing by and discussion with representatives of the NRC Office of the General Counsel on the impact on ACRS members of the implementation of the recent Office of Government Ethics government-wide changes to the regulation on the conduct of government employees.

K. *Schedules of NRC Review of Proposed Advanced Reactor Designs*—Briefing by and discussion with representatives of the NRC staff on the current schedules for the NRC staff's review of proposed advanced reactor designs.

*L. *Miscellaneous*—Discuss information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy and matters discussed but not completed during previous meetings as time and availability of information permit.

395th ACRS Meeting, March 11–13, 1993, Bethesda, MD. Agenda to be announced.

396th ACRS Meeting, April 15–17, 1993, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, February 5, 1993—Postponed to March 5, 1993 (tentative), Bethesda, MD.

51st ACNW Meeting, February 24–25, 1993, Bethesda, MD. Items are tentatively scheduled.

A. Meet with the Commission to discuss items of mutual interest.

B. Briefing on Standards of Ethical Conduct for Employees of the Executive Branch.

C. Briefing on decommissioning plans for the Shoreham Nuclear Power Plant.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Joint Meeting of the ACNW Working Group/ACRS Subcommittee on Occupational and Environmental Protection Systems, March 5, 1993 (tentative), Bethesda, MD. The Working Group/Subcommittee will review the following proposed final regulatory guides related to the implementation of the revised 10 CFR part 20:

(1) DG–8006, "Control of Access to High and Very High Radiation Areas in Nuclear Power Plants,"

(2) DG–8009, "Interpretation of Bioassay Measurement," and

(3) DG–8013, "ALARA Radiation Protection Program for Effluents from Materials Facilities."

ACNW Working Group on Low-Level Waste Repository Performance Indicators, March 23, 1993, Bethesda, MD. The Working Group will consider the development of a performance indicator system to be used in monitoring various aspects of low-level radioactive waste handling and disposal.

52nd ACNW Meeting, March 24–25, 1993, Bethesda, MD. Agenda to be announced.

53rd ACNW Meeting, April 28–29, 1993, Bethesda, MD. Agenda to be announced.

Dated: January 13, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–1297 Filed 01–19–93; 8:45 am]

BILLING CODE: 7590–01–M

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 24, 1992, through January 7, 1993. The last biweekly notice was published on January 6, 1993 (58 FR 590).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 22, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: October 5, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.1.2 relating to the Auxiliary Feedwater (AFW) System. Specifically, two additional action statements would be added to the Limiting Condition for Operation (LCO), and Surveillance Requirements (SR) 4.7.1.2.a and 4.7.1.2.c would be modified. One of the new action statements added to the LCO would apply when two AFW pumps are inoperable; the other new action statement would apply when all three AFW pumps are inoperable. SR 4.7.1.2.a would be revised by replacing the specific pump-performance parameter specified with the performance requirements that would be developed for the pumps by the Inservice Testing Program. Additionally, it would clarify that the provisions of TS 4.0.4 do not apply for entry into Mode 3 for testing the steam-driven AFW pump, and a footnote would be added to specify the minimum steam system pressure when the steam-driven auxiliary feedwater pump is tested. SR 4.7.1.2.c would be reworded and a footnote would be added to clarify when the requirement is applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes would impose additional more restrictive actions to be taken if more than one AFW pump is inoperable, would specify minimum conditions for conducting surveillance tests, would clarify when a surveillance requirement applies, and would replace the specific pump performance parameter with parameters established and periodically reevaluated through the inservice testing program. The probability of occurrence or consequences of any accident previously evaluated would not be increased by the proposed amendment because the capability and availability of the AFW pumps to perform their function are not reduced.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely clarify or add operability and surveillance requirements for AFW pumps.

C. The proposed changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve a change of equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: September 16, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Limiting Condition for Operation (LCO) 3.6.1.3 relating to the Containment Air Locks. Specifically, the amendments would modify LCO 3.6.1.3 for both Units to include the condition when more than one air lock is affected by inoperable components. (The current LCO does not reflect that the Beaver Valley Power Station, Units 1 and 2, designs each include two containment air locks.) Additionally, a new action statement would be added to provide guidance for when a containment air lock interlock mechanism is inoperable. Two footnotes would be added to the LCO action statements. The first footnote, applying to action a.1. would allow passage through the outer operable air lock door to repair the inner inoperable air lock door. The second footnote, applying to action c.2. would allow passage through the air lock (with the interlock mechanism inoperable) provided an individual is dedicated to control passage to ensure that one air lock door only is opened at a time. The existing footnotes would be redesignated to maintain document consistency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The probability of occurrence of any accident previously evaluated would not be increased by the proposed amendments because the changes do not involve any accident initiation scenario. The consequence of any accident previously evaluated is not increased by the proposed amendments because the changes to the action statements would continue to ensure that at least one door in each air lock is maintained closed. Furthermore, the changes do not affect the structural integrity or leaktightness of the containment structures. Therefore, the ability of the containment to restrict the release of fission product radioactivity is maintained.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility operations are conducted or involve a change to equipment or features which affect the operational characteristics of the facility. Containment air locks are designed to maintain containment integrity while allowing access to the containment. The proposed amendments will assure that the air lock operation is as assumed in the original design.

C. The proposed changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the leak rates for the containments would remain within the assumptions of the design basis accident. The assumed leak rates are maintained provided at least one door in each air lock is closed, which the proposed amendments would ensure.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: November 2, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specification 3.9.4 relating to the Containment Building Penetrations. Specifically, the amendments would modify Limiting Condition for Operation 3.9.4.c.1 for both Units to allow for the use of an approved functional equivalent to an isolation valve, blind flange, or manual valve on penetrations that provide direct access from the containment atmosphere to the outside atmosphere. The proposed amendments would permit various other operations, such as steam generator tube eddy current testing, to be performed simultaneously with other refueling operations. To perform, for example, eddy current testing, temporary cables must be run into the containment to the steam generator being tested through a spare electrical penetration.

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes would permit the use of an approved functional equivalent to valves or blind flanges to accomplish containment closure when necessary during refueling operations. During refueling operations, significant containment pressurization is not likely, therefore, the use of a functionally equivalent closure will provide assurance of containment closure thus maintaining the ability of the containment to restrict the release of fission product radioactivity. Therefore, the changes will not cause an increase in the consequences of an accident previously evaluated. Since the use of the functional equivalent penetration closure does not change the manner in which facility operations are conducted during refueling, the probability of an accident previously evaluated is not changed.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility operations are conducted during refueling or involve a change to equipment or features which affect the operational characteristics of the facility. The proposed changes merely permit the use of a functionally equivalent penetration closure.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the functionally equivalent penetration closure would maintain the ability of the containment to restrict the release of radioactive material in the event of a refueling accident.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Dockets Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit No. 1 and Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: November 16, 1992

Description of amendment request: The proposed amendments would modify Unit 1 and Unit 2 Technical Specification 3.6.2.2 relating to the Containment Recirculation-Spray System and would modify Figure 3.6-1 of the Unit 1 Technical Specifications only. Specifically, the amendments would modify the ACTION statements for both Units to address the inoperability of combinations of containment recirculation-spray subsystems that are not addressed currently. Additionally, for Unit 1 only, Figure 3.6-1 and SURVEILLANCE REQUIREMENT 4.6.2.2.e.3 would be revised to reflect that the required minimum flow through each recirculation-spray heat exchanger is 8000 gpm; this change would remove the temporary provision for a lower minimum flow that was applicable only to Cycle 8.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The changes would add a new ACTION statement for each Unit that addresses the inoperability of two recirculation-spray subsystems (the current ACTION statements address only the inoperability of one subsystem). The added ACTION statement is more restrictive (than the one currently in place) with respect to the time allowed to restore operability or to shutdown the Unit. The changes do not involve a modification to plant equipment nor do they affect the manner by which the facility is operated. Therefore, there is no change to the probability or consequences of any accident. The removal of the temporary provision permitting the recirculation-spray heat exchanger flow to be as low as 6000 gpm is purely administrative since the provision, which was incorporated by Amendment 156, was valid for Cycle 8 only.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated or involve a change to equipment or features which affect the operational characteristics of the facility. The proposed changes merely add additional restrictions with regard to the time the facility can be operated with more than one recirculation-spray subsystem inoperable.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve a change to equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: December 22, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 4.4-2, "Steam Generator Tube Inspection," to allow continued operation of the plant with two uninspected tubes in the "B" steam generator, until the next planned steam generator tube inspection.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

This change has no actual impact on any previously analyzed accident in the FSAR [final safety analysis report]. A double-ended break of one steam generator tube is postulated as part of the ANO-2 [Arkansas Nuclear One, Unit 2] Design Basis accident evaluation. Failure to examine these two tubes with bobbin coil eddy current does not in any way alter the consequences of this previously evaluated accident.

Of the 8291 tubes in the 'B' steam generator that were to be inspected, the two tubes not examined represent less than 0.025% of the total number. As previously discussed, these two tubes were examined with the bobbin coil probe as recent as 2R8 (spring 1991)with no detectable degradation of any type evident. Considering that only 120 of 8411 tubes in this steam generator (per TS required Bobbin Coil testing) have developed defects requiring repair (i.e., ≥40% TW [through wall]) through 2R8, delaying the examination of two tubes (out of 8291 tubes) for a maximum of seven months past 2R9 is statistically insignificant.

It should be noted that ANO-2 TSs allow for 24 months between eddy current testing of steam generator [SG] tubes, even when 100% inspection is required. The 2R8 inspection of these tubes was completed on April 3, 1991. ANO-2 TSs would allow the tubes to be examined as late as April 3, 1993, had the 2R9 outage been scheduled this late. The actual date of the SG inspection outage has been scheduled for April 30, 1993. Therefore, the actual delay time for the examination of the two tubes, past the TS allowable 24 months, is less than 2 months. Considering the rate of degradation/propagation of axial flaws and/or batwing wear (the damage mechanisms that bobbin coil testing is likely to detect), this delay is not considered significant.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2- Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The scope of this change does not establish a potential new accident precursor. ANO's design basis accident analyses include the consequences of a double-ended break of one steam generator tube which bounds other postulated failure mechanisms. CE's experience with nuclear steam generators indicates the probability of complete severance of the Inconel vertical U-tubes is remote. The only known cause for such a failure would be a circumferential crack. Circumferential cracking has only been detected at the hot leg expansion transition region in the ANO-2 SGs. The subject two tubes were examined at the hot leg expansion transition region with the RPC [rotating pancake coil] for detection of curcumferential cracking and were found to have no detectable circumferential defects. Therefore, the probability of a double-ended break is considered to be remote.

Defect mechanisms for which inspections were not performed on these two tubes (batwing support wear and axial cracking at support plates) would not be expected to result in double-ended rupture. The type of ruptures that could be expected from these types of defects are "fish mouth" in nature and would not likely result in a double-ended break. The consequences of "fish mouth" ruptures in either of the subject two tubes are bounded by the ANO-2 design basis accident analyses considering a double-ended break of one steam generator tube.

Since the type of accident that could be postulated to occur to ANO steam generator tubes not receiving bobbin coil eddy current testing during 2R9 is bounded by the "double-ended break" scenario already included in the design basis analyses, it is concluded that this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Marginof Safety.

As previously stated, a double-ended rupture of one steam generator tube is accounted for in the ANO-2 design basis accident analyses. Safety margins to detect and repair tube defects prior to rupture are reflected by the 40% TW plugging criteria and 0.5 GPM [gallons-per-minute] primary-to-secondary leakage limit stated in ANO-2 TSs. As stated in the ANO-2 TS Bases, cracks having a primary-to-secondary leakage less than the 0.5 GPM limit during operation will have an adequate margin of safety to withstand the loads imposed during normal operation and by postulated accidents. Considering that the two tubes in question were examined with the bobbin coil probe as recently as spring 1991 with no detectable degradation, and considering that mechanisms are in place to detect and mitigate tube leakage in a very timely manner, delaying the examination of two tubes for less than 2 months past the TS recognized 24 month inspection frequency does not significantly reduce the margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

Therefore, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 11 and 18, 1992

Description of amendment request: The proposed amendment would revise the Technical Specifications to allow continued operation for 72 hours with more than one full-length or part-length Control Element Assembly (CEA) inoperable due to electronic or electrical problems in the Control Element Drive Mechanism Control System (CEDMCS), provided that all affected CEAs remain trippable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will allow 72 hours for diagnosis and repair of electronic or electrical malfunctions associated with the CEDMCS. This is acceptable, since the extension of the allowable outage time only applies to CEAs which remain trippable, and assurance of the CEA's primary safety function of shutting down the reactor upon initiation of a reactor trip signal is maintained. The change does not alter the specified requirements of CEA position, insertion, or alignment limits and will have no affect [sic] on the power distribution limits or SHUTDOWN MARGIN as described in the safety analysis. This change will not affect the ability of the CEAs to perform their intended safety function when a safety system setting is reached. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not alter operation of the plant or the manner in which it is operated. The change does not involve any modification to the operation limits or physical design of the affected systems or components. Thus no new failure modes are introduced or associated with the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

The proposed change will have no adverse impact on the protective boundaries, safety limits or margin of safety. The change will allow appropriate actions commensurate with one or more CEAs inoperable due to an electronic or electrical problem in the CEDMCS. Since the extension of the allowable outage time only applies to CEAs which remain trippable, assurance of the CEAs primary safety function of shutting down the reactor upon initiation of a reactor trip signal is maintained. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Florida Power and Light Company, et al., Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: November 30, 1992

Description of amendment request: The proposed amendment revises Technical Specifications Tables 3.3-3, 3.3-4, and 4.3-2 where they apply to the Emergency Bus Undervoltage Protection Devices and will permit improvements to be made in the undervoltage protective relaying scheme.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Commission has provided a standard for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will result in a better overall posture of the plant under degraded voltage conditions. The new settings will result in improved protection for the equipment at all voltage levels while at the same time minimizing the possibility of unnecessary challenges to the safety systems. Namely, the higher settings at the 4160 volt electrical system level will enhance protection offered to the 480 volt system equipment under all operating modes and the lower settings of the 480 volt system protective relays will not initiate the transfer of power to the on-site sources under accident conditions until the level of voltage may become injurious to the equipment. Therefore, the proposed change does not increase the probability of accidents previously analyzed.

Since the time interval assumed in the safety analyses for connection of the safety-related buses to the emergency diesel-generators is not exceeded by the new settings, the proposed change does not increase the consequences of an accident previously analyzed.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of an accident from any accident previously evaluated.

The proposed change does not change the operation, function or modes of plant operation. The ability of the degraded grid voltage protection scheme to detect the degraded voltage at any of the busses and to transfer the power from the off-site to the on-site sources is being maintained. No new hazards are created or postulated which may cause an accident different from any accident previously analyzed. The new relay settings represent an enhancement resulting in a more sensitive protective scheme allowing continuous operation without unnecessary challenges to the safety systems while offering an adequate protection to all the safety equipment.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The ability of the degraded grid voltage detection system is enhanced by the changes being proposed and is confirmed by the existing surveillance requirements. The new settings will result in a more sensitive detection and reduce possibility of spurious actuation, therefore the margin of safety is being increased. Further, the new settings will also result in enhancing the maintenance/calibration activities. The associated bases of the design are not affected since the new relay settings allow a better fulfillment of the original criteria of protecting the Class 1E equipment from damage due to prolonged exposure to degraded voltage, and, therefore, the proposed amendment does not involve a reduction in the margin of safety.

Based on the above, FPL has determined that the proposed license amendment does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of an accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety; and therefore does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant,Unit No. 1, St. Lucie County, Florida

Date of amendment request: December 17, 1992

Description of amendment request: The proposed amendment revises Technical Specification (TS) 3.3.3.2 by changing the operability requirements for the Incore Detection System. Linear Heat Rate TS 4.2.1.4.b.1 is also revised by increasing the measurement-calculational uncertainty factor commensurate with the number of inoperable incore detector locations. The proposed amendment facilitates full power operation of St. Lucie Unit 1 for the remainder of Cycle 11 and will remain effective from the date of issuance until April 30, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The standards used to arrive at a determination that a request for amendment involves no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which state that no significant hazards considerations are involved if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is discussed as follows:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment allows operation with a reduced number of operable incore detector strings which provide an alternate means of monitoring nuclear core power distributions. A physical change to the facility is not involved and the incore detection system does not perform automatic interlock, control, or protective functions. The number of operable incore detectors has no impact on the probability that a particular accident will occur. Therefore, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The proposed amendment requires an increase in the core peaking factor measurement uncertainties commensurate with the reduction of number of operable incore detectors to ensure that peaking factors are conservatively calculated. This increase represents more conservative alarm settings for the operable incore detectors which are set to activate whenever the peak linear heat rate approaches an allowable limit as determined by the plant accident analyses. Limiting peaking factors specified in the design basis for the nuclear core or assumed in the Updated Final Safety Analysis Report (UFSAR) remain unchanged and the amendment is only applicable to the present fuel cycle. Therefore, the proposed amendment will not significantly increase the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the physical design of the facility and a new failure mode is not introduced as a result of the reduction in the minimum required number of operable incore detector locations. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

The physical facility is not changed by the proposed amendment and use of increased measurement uncertainty factors are required commensurate with the reduction in the minimum allowable number of incore detector locations. The increased measurement uncertainty factors assure that power distribution calculations based on the incore system will continue to be conservative and that the existing Limiting Conditions for Operation specified for linear heat rate and core peaking factors will not be exceeded. Therefore, use of the modified specification will not involve a significant reduction in a margin of safety.

Based upon the above, we have determined that the amendment request does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction a margin of safety, and therefore does not involve any significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of amendment request: December 15, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.6.A.2.f and its Acceptance Criteria by rewording and incorporating Condition 1, and deleting Conditions 2 and 3. Condition 4 would be reworded and incorporated into the Remedial Action for Technical Specification 3.19.A.4. The Basis of TS 3.19.A.4 and 4.6 also would be revised to delete reference to the previous operating position of low pressure injection motor opetated valves LSI-M-11, 21, and 31, and their use as pressure isolation barriers. (Note that "Remedial Action" is an administrative correction of "Exception".) Finally, the Exception to Technical Specification 4.6.A.1.b would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

As presented in the Final Safety Analysis Report (FSAR), accident analyses involving activation of emergency core cooling systems (ECCS) require eleven separate valves to change position to admit coolant injection flow into the reactor coolant system (RCS). The proposed amendment would align each low pressure safety injection (LPSI) system loop motor operated valve (LSI-M-11, 21, and 31) in the normally open position. Such positioning will eliminate the chance that a single active failure of these valves would degrade the ECCS function, and thus will improve the overall probability of proper ECCS function on demand.

The safety class boundary between the reactor coolant and low pressure coolant systems is not affected by the proposed change. Current, NRC approved standards for such boundaries require two in-line check valves between such systems, and periodic leak testing of the valves. Maine Yankee satisfies the boundary standards by providing three, in-series check valves grouped into two separate isolation barriers. Isolation barrier (a) is comprised of the two check valves closest to the RCS; isolation barrier (b) is formed by the check valve closest to the LPSI system. Both isolation barriers in each LPSI loop are leak tested each refueling outage. Leakage limits specified by TS 4.6.A.2.f (Criterion 1) remain, but the plant may not start up or operate for more than 24 hours if barrier leakage exceeds TS 4.6.A.2.f.

Based on a probablistic risk consideration, the staff concludes that there is a slight decrease in core damage probability when the plant is operated with low pressure coolant injection motor operated valves LSI-M-11, 21 and 31 open. Thus, the probability or consequences of an accident previously evaluated is not increased.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

No unanalyzed FSAR accident would be created by this valve alignment change. Maine Yankee has operated with valves LSI-M-11, 21, and 31 shut to provide an additional pressure barrier between the reactor coolant system (high pressure) and each loop of the low pressure coolant injection system. This pressure isolation function was intended to protect LPSI system piping from being overpressurized, should the associated isolation check valves between the reactor coolant and low pressure injection systems leak. With the installation of a third isolation check valve to form two isolation barriers in each loop of the LPSI system, the pressure isolation function provided by valves LSI-M-11, 21, and 31 is rendered unnecessary.

Containment isolation, system safety classification, and postulated ECCS spillage in loss-of-coolant-accidents (LOCA) remain unchanged. The possibility of ECCS equipment malfunction is reduced, because there would be fewer components that need to change position as a result of a LOCA.3. Involve a significant reduction in a margin of safety.

The leak test history of the pressure isolation barrier (a) and (b)check valves provides a basis for discontinuing the use of LPSI motoroperated valves LSI-M-11, 21, and 31 as backup pressure isolation barriers. The set of leakage test data collected since 1982 shows that neither barrier (a) nor barrier (b) has approached its leakage rate limit. This leakage test data set shows that the barriers provide adequate overpressure protection for the LPSI system.

Based on a review of the licensee's analysis, and on the staff's analysis detailed above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: December 7, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 3/4.3 and 4.2.2.1 and associated Bases. The proposed revisions would increase the surveillance test intervals and allowable out-of-service times for various instruments. The proposed changes would be in accordance with General Electric Company's Licensing Topical Reports which have been reviewed and approved by the NRC staff. Also, the allowable out-of-service times would be clarified in accordance with the most recently approved Boiling Water Reactors (BWR) Owners Group letters which were used in the development of NUREG-1434, "Improved Standard Technical Specifications." The proposed changes would permit specified instrument channel functional tests to be performed quarterly rather than weekly or monthly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A, assessed the impact of changing RPS [Reactor Protection System] surveillance test intervals (STIs) and allowable out-of-service times (AOTs) on the RPS failure frequency, the scram frequency and equipment cycling. Specifically, Section 5.7.4 "Significant Hazards Assessment" of NEDC-30851P-A states that:

"Fewer challenges to the safeguards system, due to less frequent testing of the RPS, conservatively results in a decrease of approximately one percent in core damage frequency. This decrease is based upon the following:

- Based on the plant specific experience presented in Appendix J, the estimated reduction in scram frequency (0.3 scrams/yr) represents a 1 to 2 percent decrease in core damage frequency based on the BWR plant specific Probabilistic Risk Assessments (PRAs) listed in Table 5-8.
- The increase in core damage frequency due to less frequent testing is less than one percent. This increase is even lower (less than 0.01 percent) when the changes resulting from the implementation of the Anticipated Transients Without Scram (ATWS) rule are considered. Therefore, this increase is more than offset by the decrease in CDF [core damage frequency] due to fewer scrams.
- The effect of reducing unnecessary cycles on RPS equipment, although not easily quantifiable also results in a decrease in core damage frequency.
- The overall impact on core damage frequency of the changes in allowable out-of-service time is negligible."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, namely the increase in probability of a scram failure due to RPS unavailability is insignificant, and the overall probability of an accident is actually decreased as the time the scram (RPS) instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP2 differs from the generic plant analyzed in Licensing Topical Report NEDC-30851P-A, the net effect of the plant-specific differences do not alter the generic conclusions. Also, the BWROG 92102 letter clarifications used in the development of NUREG 1434, "Improved Standard Technical Specifications", for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Reports NEDC-30851P-A Suppl 2/NEDC 31677P-A assessed the impact of changing STIs and AOTs for BWR Isolation Instrumentation common/not common to RPS and ECCS instrumentation. Specifically, Section 4.0 "Summary of Results" of NEDC30851P-A Supp1 2 states that:

"The results indicate that the effects on probability of failure to initiate isolation are very small and the effects on probability or frequency of failure to isolate are negligible in nearly every case. In addition, the results indicate that increasing the AOT to 24 hours for tests and repairs has a negligible effect on the probability of failure of the isolation function. These combined with changes to the testing intervals and allowed out-of-service times for RPS and ECCS instrumentation provide a net improvement to plant safety and operations".

Section 5.6 "Assessment of Net Effect of Changes" of NEDC-31677P-A states that:

"A reduction in core damage frequency (CDF) of at least as much as estimated in the ECCS instrumentation analysis can be expected when the isolation actuation instrumentation STIs are changed from one month to three months. The chief contributor to this reduction is the channel functional tests for the MSIVs. Inadvertent closure of the MSIVs will cause an unnecessary plant scram. This reduction in CDF more than compensates for any small incremental increase (10% or 1.0E-07/year) in calculated isolation function failure frequency when the STI is extended to three months".

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the consequences of an accident previously evaluated, namely the probability of an isolation failure due to isolation instrumentation unavailability is insignificant, and the increase in overall probability of an accident is actually decreased as the time the scram (RPS) instrumentation logic operates as designed is increased resulting in less inadvertent scrams during testing and repair. Also, the BWROG OG90-579-32A letter clarifications used in the development of NUREG 1434, "Improved Standard Technical Specifications", for AOTs which enhanced wording to ensure "loss of function" does not occur, results in no significant increase in the probability or consequences of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30936P-A (Parts 1 and 2) assessed the impact of changing STIs and AOTs for all BWR ECCS Actuation Instrumentation. Specifically, Section 4.0 "Technical Assessment of Changes" of NEDC-30936P-A (Part 2) states that:

"The results indicate an insignificant (less than 5E-7 per year) increase in water injection function failure frequency when STIs are increased from 31 days to 92 days, AOTs for repair of the ECCS actuation instrumentation are increased from one hour to 24 hours, and AOT's for surveillance testing are increased from two to six hours. For all four BWR models the increase represents less than 4% increase in failure frequency. However, when other factors which influence the overall plant safety are considered, the net result is judged to be an improvement in plant safety".

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability or consequences of an accident previously evaluated; namely the increase in probability of a water injection failure due to ECCS instrumentation unavailability is insignificant and the net result is judged to be an improvement in plant safety. Furthermore, the proprietary plant-specific analysis contained in this submittal demonstrates that although NMP2 differs from the generic model analyzed in Licensing Topical Report NEDC-30936P-A, the net affect of the plant specific differences do not alter the generic conclusions. Also, the BWROG OG90-319-32D letter clarifications used in the development of NUREG 1434, "Improved Standard Technical Specifications" for AOTs, results in no significant increase in the probability or consequences of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-1 assessed the impact of changing STIs and AOTs on selected systems failure frequency. Specifically, Section 2.0 "Summary" of GENE-770-061 states that:

"Technical bases are provided for selected proposed changes to the instrumentation STIs and AOTs that were identified in the BWROG Improved BWR Technical Specification activity. These STI and AOT changes are consistent with approved changed to the RPS, ECCS, and isolation actuation instrumentation. These proposed changes do not result in degradation to overall plant safety".

From these Bases, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated.

Bases contained in GE Topical Report GENE-770-06-2, assessed the impact of changing STIs and AOTs on BWR RCIC failure frequency. Specially, Section 2.0 "Summary" of GENE-770-06-2 states that:

"The STI and AOT changes to the RCIC actuation instrumentation are justified based on their small effect on the water injection function unavailability and consistency with comparable changes to actuation instrumentation for the other ECCS sub systems".

From this bases, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated.

The generic analysis contained in Licensing Topical Report NEDC-30851P-A, Suppl 1, assessed the impact of changing Rod Block STIs on Rod Block failure frequency. Specifically, Section 5 (BNL's Tech. Eval. Report - Attachment 2 to the NRC SER) of NEDC-30851P-A Suppl 1 states that:

"The BWR Owners' Group proposed changes to the Technical Specifications concerning the test requirements for BWR control rod block instrumentation. The changes consist of increasing the surveillance test intervals from one to three months. These test interval extensions are consistent with the already approved changes to STIs for the Reactor Protection System. The technical analysis reviewed and verified as documented herein indicates that there will be no significant changes in the availability of the control rod block function if these changes are implemented. In addition, there will be a negligible impact on the plant core melt frequency due to the decreased testing."

From this generic analysis, the BWR Owners' Group concluded that the proposed changes do not significantly increase the probability of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will not alter the physical characteristics of any plant systems or components and all safety-related systems and components remain within their applicable design limits. Thus, system and component performance is not adversely affected by this change, thereby assuring that the design capabilities of those systems and components are not challenged in a manner not previously assessed so as to create the possibility of a new or different kind of accident.

The addition of allowable out-of-service times (AOTs) and the increase in surveillance test intervals (STIs) does not alter the function of the ECCS, Isolation, Rod Block and Selected Instrument Systems nor involve any type of plant modification and no new modes of plant operation are involved with these changes. Finally, the approved BWR Owners' Group clarifications are enhancements to allowable out-of-service times (AOTs) and do not create the possibility or [of] a new of [or] different kind of accident. Therefore, operation in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic studies contained in the LTRs and has concurred with the BWR Owners' Group that the proposed changes do not significantly affect the availability of the RPS, ECCS, Isolation, Rod Block, or Selected Instrument Systems. The proposed addition of AOTs for the instruments addressed in the LTRs provide reasonable time for making repairs and performing tests. The lack of AOTs in the current Technical Specification (TS) creates a hurried atmosphere during repairs and tests which could cause an increased risk of error. Also, placing an individual channel in a tripped condition because no AOT exists, as in the current TS, increases the potential of an inadvertent scram. The proposed AOTs provide realistic times to complete the required actions without increasing the overall instrument failure frequency. The approved BWR Owners' Group Clarifications are enhancements to allowable out-of-service times (AOTs) and do not involve a significant reduction in a margin of safety.

The incorporation of extended STIs does not result in significant changes in the probability of instrument failure, as demonstrated by the LTRs. These changes, when coupled with the reduced probability of test-induced plant transients and equipment failures, result in an overall increase in the margin of safety. Also, the sensor calibration frequency has not changed. Therefore, assurance exists that the setpoints will not be affected by drift. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 15, 1992

Description of amendment request: The proposed amendment would allow a one-time extension of the 7 day Limiting Condition for Operation (LCO) to fourteen days during the current operating cycle (Cycle 16), to permit extensive maintenance to be performed on the "B" diesel generator while the reactor is at power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In order to provide added assurance that the "A" EDG will perform its function if required, the "A" EDG will be tested for operability prior to entering into the "B" EDG LCO period. The Technical Specifications also require that during the LCO period, all remaining Low Pressure Core Cooling and Containment Cooling Systems connected to the operable EDG remain operable. Vermont Yankee has developed a detailed LCO maintenance plan for EDG LCO maintenance. This plan has been successfully used during prior EDG LCO maintenance and will be invoked for this evolution as well. In addition, the Vernon Hydro Station dedicated tie-line, which historically has demonstrated a very high reliability, is required by Vermont Yankee procedure to be available to supply power to Emergency Bus 3 during the "B" EDG LCO. Any previously analyzed event postulated during the seven day extension period can be mitigated by the other available systems. The proposed LCO extension has no significant impact on the consequences of any previously analyzed event.

The proposed extension would allow the "B" EDG to remain inoperable for an additional seven days beyond the present seven day LCO allowed by Technical Specifications. The unavailability of one EDG is not a part of the initiation of any of the analyzed accidents. Therefore, the proposed change does not increase the probability of an accident previously evaluated.

As discussed above, a seven day extension to an already existing seven day LCO period would involve no significant increase in the probability of occurrence or consequences of a design basis accident during the extension period.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change would not create the possibility of a new or different kind of accident from those previously evaluated. The proposed change would have no impact on the possibility of a new or different initiating event. The proposed change requests a one time extension of 7 days beyond the already authorized 7 day "B" EDG LCO. Any previously analyzed event postulated during the seven day extension period can be mitigated by the other available systems.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change would not involve a significant reduction in the margin of safety. As discussed above, approval of this request involves an insignificant reduction in the margin of safety because of the availability of other plant electrical systems, including the Vernon tie line, and the short duration of the extension period.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: December 11, 1992

Description of amendment request: The proposed changes to the Technical Specifications (TS) would eliminate the operability requirements for the reactor coolant system loop stop valve interlocks and establish requirements for operation of the loop stop valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below and concluded that the proposed changes to the TS will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed changes do not increase the probability or consequences of a loop startup accident or a loss of shutdown decay heat removal. The risk of inadvertent criticality in cold shutdown or refueling shutdown is sufficiently low that administrative controls can be used in lieu of the loop stop valve interlock system in those conditions. The proposed restrictions on loop stop valve operation preclude a significant positive reactivity addition or loss of Reactor Coolant System inventory when an isolated loop is returned to service. Locking closed the stop valves of an isolated loop with power removed prevents inadvertent opening and potential boron dilution or loss of inventory. Requirements for boron concentration, temperature, and relief line flow for an isolated and filled loop ensure no significant positive reactivity addition occurs when returning the loop to service. Verifying that a drained loop is initially empty ensures that liquid present in the loop does not dilute the Reactor Coolant System. Requiring a minimum Reactor Coolant System water level precludes a loss of RHR [residual heat removal] pump suction when filling a drained loop by opening the loop stop valves.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any new failure modes or accident precursors. Eliminating the operability requirements for the loop stop valve interlocks does not create any new or different kind of accident scenarios. The loop startup accident has been analyzed with no credit taken for loop stop valve interlock operation. The loop stop valves will not be operated in a different manner from which they were designed to operate. Furthermore, the plant conditions for which loops may be isolated have been limited to cold shutdown and refueling shutdown.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification requirements for return of an isolated loop to service fulfill the function of the loop stop valve interlocks. Adequate controls have been established to virtually eliminate the potential for an inadvertent valve opening in an isolated loop, causing a boron dilution or cold water addition accident. These controls also virtually eliminate the potential for a loss of shutdown cooling caused by the opening of a stop valve in an isolated and drained loop. Furthermore, startup of an isolated loop is now limited to only cold shutdown or refueling shutdown. Calculations have shown that an inadvertent loop startup at cold shutdown will not result in an inadvertent criticality regardless of the temperature differential between loops. At cold shutdown conditions the positive reactivity effects of changing moderator temperature are substantially less than the available shutdown margin. Therefore, the margin of safety as defined in any Technical Specification is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station (YNPS), Franklin County, Massachusetts

Date of amendment request: December 21, 1992

Description of amendment request: The proposed amendment would revise the License and Technical Specifications to reflect the permanently shutdown and defueled status of the plant. This change would eliminate those requirements applicable only to an operating nuclear power station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

YNPS holds a Possession Only License which permanently restricts the facility from power operations and from moving nuclear fuel into the containment building.

Maintenance of the facility has been significantly simplified with the reduction in the numbers of systems, structures and components required for the permanently shutdown and defueled condition. The accident analyses have been revised, incorporating the new restrictions and configurations, and conclude the only credible accident remaining is the fuel handling accident.

The changes described herein incorporate the changes and analytical results into the Possession Only License and its Technical Specifications, simplifying and clarifying both. As such, these changes will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated. The revised analyses indicate that only the fuel handling accident remains credible. The proposed changes incorporate into the Technical Specifications requirements from these analyses and thus do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The propcsed changes integrate into the Technical Specifications previously evaluated accidents and thus do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety. The proposed changes incorporate into the Defueled Technical Specifications the margin of safety associated with the current safety analyses and thus do not involve a significant reduction in a margin of safety.

Based on the above considerations, it is concluded that there is reasonable assurance that the maintenance of Yankee Nuclear Power Station consistent with the proposed changes, will not endanger the health and safety of the public.

This proposed change has been reviewed by the Plant Operations Review Committee and the Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusettts 02110-2624

NRC Project Director: Seymour H. Weiss

Notice of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: March 19, 1992

Brief description of amendments: These amendments remove certain fuel-cycle-specific parameters from the technical specifications and require that a unit-specific Core Operating Limits Report be submitted to NRC instead, as discussed in NRC Generic Letter 88-16.

Date of issuance: December 30, 1992

Effective date: December 30, 1992

Amendment Nos.: 69, 55, and 42

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18169) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 30, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 9, 1992

Brief description of amendments: The amendments revise the TS regarding diesel fuel oil requirements.

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment Nos.: 177 and 154

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 12, 1992 (57 FR 53783) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 29, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 25, 1992

Brief description of amendments: The amendments revise Technical Specification 4.7.1.2.a.4 to exclude the surveillance requirement to verify valve positions every 31 days for those valves that are locked, sealed, or otherwise secured in their correct positions and which are in the direct flow path of the auxiliary feedwater system. These valves are included in a Calvert Cliffs Facility program which provides administrative control requirements for locked valves.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos.: 178 and 155

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48812) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 1, 1992

Brief description of amendments: The amendments make changes to Technical Specification 3.8.2.1 by adding additional requirements to the Limiting Condition for Operation.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos.: 179 and 156

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45075) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: July 9, 1990, as supplemented January 17, and December 28, 1992.

Brief description of amendment: The amendment provides consistency with the overtime work limits promulgated by Generic Letter 82-12 and also renumbers subsequent items within Technical Specification 6.2.3.

Date of issuance: December 30, 1992

Effective date: December 30, 1992

Amendment No.: 144

Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32324) The January 17, and December 28, 1992, letters provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the

FEDERAL REGISTER.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: September 14, 1990, revised and supplemented March 15, 1991 and December 20, 1991.

Brief description of amendment: The amendment revised the Technical Specifications (TS) to reflect changes in reactor vessel pressure/temperature limits in accordance with Generic Letter 88-11. The amendment also deleted Table 4.4.6.1.3-1, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule," from the TS and relocated it to the Updated Safety Analysis Report.

Date of issuance: December 18, 1992

Effective date: December 18, 1992

Amendment No.: 45

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 24, 1991 (56 FR 33961) The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 18, 1992.No significant hazards consideration comments received: Yes.Petitioners, Ohio Citizens for Responsible Energy (OCRE) and Susan L. Hiatt, requested a hearing in response to the July 24, 1991, notice of opportunity for hearing. In their request for hearing, the petitioners stated their agreement with the Staff's "no significant hazards" finding and agreed that the amendment was merely an administrative matter. By Memorandum and Order dated March 18, 1992, the Atomic Safety and Licensing Board (ASLB) denied the petition to intervene and request for a hearing after it ruled that the petitioners had failed to establish standing to intervene in this license amendment proceeding. On April 2, 1992, the petitioners filed a Notice of Appeal to the ASLB decision that is awaiting NRC resolution.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 13, 1992, as supplemented December 1, 1992

Brief description of amendments: The amendments delete cycle-dependent core operating limits from the Technical Specifications to allow 10 CFR 50.59 reviews for future core reloads for all Oconee units. These limits will be relocated in the Core Operating Limits Report in accordance with the guidance provided in Generic Letter 88-16.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos.: 197, 197, and 194

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 2, 1992 (57 FR 40210) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: August 18, 1992, as supplemented by letter dated September 2, 1992.

Description of amendment request: The amendment adds License Condition 2.C(9) which provides for a limited extension of the performance interval for certain surveillance tests that are conducted during a refueling outage.

Date of issuance: December 31, 1992

Effective date: December 31, 1992

Amendment No.: 168

Facility Operating License No. DPR-66.

Amendment added License Condition 2.C(9).

Date of initial notice in **Federal Register**: October 14, 1992 (57 FR 47128). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 19, 1992 as supplemented December 3, 1992

Brief description of amendment: The amendment modifies TS 4.0.5, Applicability, and TS 3/4.4.3, Reactor Coolant System (RCS) Leakage. The amendment modifies the TS regarding the licensee's inservice inspection (ISI) program to include a statement of compliance with the NRC staff's position on schedule, methods, personnel, and sample expansion given in GL 88-01 and revises the RCS leakage monitoring requirements.

Date of issuance: December 23, 1992

Effective date: December 23, 1992

Amendment No: 104

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 2, 1992 (57 FR 40212) The additional information contained in the supplemental letter dated December 3, 1992, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 23, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 21, 1992

Brief description of amendment: The amendment revised the Technical Specifications by reducing the steam pressure requirements for surveillance testing of the turbine-driven emergency feedwater pump.

Date of issuance: January 6, 1993

Effective date: January 6, 1993

Amendment No.: 80

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 25, 1992 (57 FR

55579) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: August 21, 1992

Brief description of amendments: These amendments make administrative changes to the St. Lucie Unit 1 and Unit 2 Technical Specifications and achieve consistency throughout the Technical Specifications by removing outdated material, making minor text changes, and correcting errors.

Date of issuance: December 24, 1992

Effective date: December 24, 1992

Amendment Nos.: 118, 60

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 14, 1992 (57 FR 47130) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 24, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: February 7, 1992

Description of amendment request: The amendment deleted from Technical Specifications (TSs), numerous component lists as recommended in NRC Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications," and the reactor vessel specimen withdrawal schedule as recommended in GL 91-01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specifications." Proposed TSs and Bases changes regarding primary containment and drywell average air temperature are not included in this amendment and will be handled as a separate request.

Date of issuance: December 24, 1992

Effective date: Immediately, to be implemented within 60 days

Amendment No.: 68

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40214) the Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1992.No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: August 31, 1992

Brief description of amendment: This amendment makes two corrections to the core operating limits presented in Technical Specification 5.14.1. Specifically, item 5.14.1.c is deleted and item 5.14.1.i is changed to specify that the excore symmetric offset limits apply with the incore monitors operable.

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment No.: 135

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55582) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1992No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: October 28, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 6.2.2.f and TS Table 6.2-1 to be consistent with current NRC requirements regarding supervision and performance of core alterations. The amendment requires that all core alterations be performed by qualified personnel and be supervised by a Senior Reactor Operator or by a Senior Reactor Operator Limited to Fuel Handling.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment No.: 137

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992, (57 FR 55583) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 14, 1992

Brief description of amendments: The amendments changed the Technical Specifications to provide consistency and ensure technical accuracy between Salem, Units 1 and 2, allow entry into Mode 1 with one main feedwater pump out-of-service, and delete all reference to three and four loop operation and require the unit to be taken to one mode below the mode of applicability instead of two.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos. 138 and 116

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45087) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 2, 1991, and supplement dated September 30, 1992

Brief description of amendments: These amendments revise the fire protection license condition and relocate the fire protection technical specifications to plant procedures and to the Updated Final Safety Analysis Report in accordance with the guidance provided in Generic Letters 86-10 and 88-12.

Date of issuance: January 5, 1993

Effective date: January 5, 1993

Amendment Nos. 139 and 117

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** April 1, 1992 (57 FR 11116) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: June 22, 1992

Brief description of amendment: The proposed amendment would change Technical Specifications by removing the schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specification Surveillance Requirement 4.3.1 in accordance with the guidance described in Generic Letter (GL) 91-01, "Removal of the schedule for the Withdrawal of Reactor Vessel Material Specimens from Technical Specification." Further, Technical Specification 4.3.1.2 will be deleted since this specification is implicitly described in the proposed specification 4.3.1.1. In addition, RG&E shall maintain the Commission's approved version of the specimen withdrawal schedule in the Updated Final Safety Analysis Report (USFAR). The addition of this schedule will be in the next revision of the USFAR in accordance to 10 CFR 50.71(e).

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment No.: 50

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55589) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1992No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: October 29, 1992

Brief description of amendment: The amendment deletes diesel generator automatic start capability requirements in Modes 5 and 6 from the San Onofre, Unit 1 Technical Specification.

Date of issuance: December 29, 1992

Effective date: December 29, 1992

Amendment No.: 152

Facility Operating License No. DPR-13: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992(57 FR 55591) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 29, 1992.No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: December 18, 1991

Brief description of amendment: The amendment revised Technical Specification Section 4.4.9.1.2, Figures 3.4-2, 3.4-3, and 3.4-4, Tables 4.4-5 and B 3/4.4-1 and associated Bases for Reactor Coolant System Pressure/Temperature Limits by modifying plant heatup and cooldown curves and the maximum allowable PORV setpoint curve for cold overpressure protection.

Date of issuance: December 24, 1992

Effective date: December 24, 1992

Amendment No.: 76

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28206) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Dated at Rockville, Maryland, this 12th day of January 1993.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects-III/IV/VOffice of Nuclear Reactor Regulation

[Doc. 93-1151 Filed 1-19-93; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF MANAGEMENT AND BUDGET

Financial Accounting Principles and Standards

AGENCY: Office of Management and Budget.

ACTION: Proposed New OMB Circular.

SUMMARY: Proposed new Office of Management and Budget (OMB) Circular, "Financial Accounting Principles and Standards," which establishes the policies and procedures for approving and publishing financial accounting principles and standards.

DATES: Comments on this proposal must be in writing and must be received by February 22, 1993.

ADDRESSES: Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget, room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steven Arisumi, Financial Standards and Reporting Branch, Office of Federal Financial Management, (202) 395–3993.

SUPPLEMENTARY INFORMATION: OMB will issue Statements of Federal Financial Accounting Standards (SFFAS). This notice describes the process OMB will use and specifies that the SFFAS shall be considered generally accepted accounting principles for Federal agencies.

Jack Arthur,

Assistant Director for Administration.

Circular A–xxx

To the Heads of Executive Departments and Agencies

SUBJECT: Financial Accounting Principles and Standards

1. *Purpose.* This Circular establishes the policies and procedures for approving and publishing financial accounting principles and standards. It also establishes the policies to be followed by Executive Branch agencies and OMB in seeking and providing interpretations and other advice related to the standards.

2. *Background.* The Secretary of the Treasury, the Director of the Office of

Management and Budget (OMB), and the Comptroller General of the United States ("the Principals") established the Federal Accounting Standards Advisory Board (FASAB) in October 1990 by a memorandum of understanding (MOU). The role of FASAB is to deliberate upon and make recommendations to the Principals on accounting principles and standards for the Federal Government and its agencies. The MOU states that if the Principals agree with the recommendations, the Comptroller General and the Director of OMB will publish the accounting principles and standards.

3. *Coverage.* The provisions of this Circular apply to all Executive Branch departments and agencies.

4. *Definitions.* As used in this Circular:

a. *Executive agency* ("agency") means any executive branch department, independent commission, board, bureau, office, agency, or other establishment of the Federal Government, including independent regulatory commissions and boards. It does not include federally-owned or controlled corporations that are preparing financial statements in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board, or the legislative or judicial branches of the Federal Government.

b. *Accounting standards* are those conventions, rules, and procedures necessary to define acceptable accounting practice at a particular time. Accounting standards include not only broad guidelines of general application but also detailed practices and procedures.

c. *Interpretation of Federal Financial Accounting Standards* is a document of narrow scope that provides clarifications of original meaning, additional definitions, or other guidance pertaining to an existing Statement of Federal Financial Accounting Standards (SFFAS).

5. *Policy.*

a. *FASAB Recommendations.* The Director of OMB will review each statement of accounting principles, standards, or concepts recommended by FASAB and decide upon the appropriateness of the statement and its desirability for the Federal Government. If the recommended statement, or any other statement, is agreed to by the Director, the Secretary of the Treasury, and the Comptroller General, the Director will issue a SFFAS, signed by the Director. Each SFFAS, or a notice of its availability, will be published in the Federal Register and distributed throughout the Federal Government.

b. *Status of the SFFASs.* SFFASs shall be considered generally accepted accounting principles (GAAP) for Federal agencies. Agencies shall apply the SFFASs in preparing financial statements in accordance with the requirements of the Chief Financial Officers Act of 1990. Auditors shall consider SFFASs as authoritative references when auditing financial statements.

c. *Interpretations of the SFFASs.* Agencies and individuals desiring guidance relative to the standards shall request such guidance from OMB, to the attention of the Office of Federal Financial Management. OMB will respond to the request by providing technical assistance, unless it decides that the response should be an Interpretation of Federal Financial Accounting Standards. In that event, OMB will provide written copies of the request to the Comptroller General and the Secretary of the Treasury; examine, as appropriate, applicable literature and consult with knowledgeable persons; draft an Interpretation of Federal Financial Accounting Standards; consistent with the intent of the MOU, obtain the consensus of Treasury and GAO on the interpretation; and publish the Interpretation of Federal Financial Accounting Standards.

Interpretations of Federal Financial Accounting Standards will be signed by the Director or Deputy Director for Management, acting in the capacity of chief official responsible for financial management in the United States Government. Also, the Comptroller General and Secretary of the Treasury may publish a response.

d. *Applicability to Budget Execution.* The SFFASs shall have no affect on the manner in which agencies budget for, monitor and control the expenditure of budgetary resources. Those requirements are defined in OMB Circulars A–11 and A–34 and other OMB documents.

e. *Other Directives.* OMB may, from time to time, issue other instructions to the agencies regarding accounting and/or financial reporting.

6. *Inquiries.* For information concerning this Circular, contact the Financial Standards and Reporting Branch, OFFM, telephone 202–395–3993.

Richard Darman,

Director.

[FR Doc. 93–1247 Filed 1–19–93; 8:45 am]

BILLING CODE 3110–01–F

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Notice of Meeting

Summary: The Presidential Commission on the Assignment of Women in the Armed Forces will hold its final meeting on Wednesday, January 27th. The Chairman and several Commissioners will be briefed by staff on significant facts and highlights that were examined throughout the months of testimony.

Location: Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Avenue NW., suite 275 North, Washington, DC, (202) 376–6905, room: Main Conference Room.

Dates: Wednesday, January 27th, 1 p.m.–5 p.m., General Meeting, Contact: Magee Whelan or Kevin Kirk, (202) 376–6905.

Status: Open to public.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102–190). The 15-member Commission assessed the laws and policies governing the assignment of women in the military and made recommendations on such matters to the President November 15, 1992. Copies of the final report are now available by writing to the Commission at the above address.

W.S. Orr,

Staff Director.

[FR Doc. 93–1325 Filed 1–19–93; 8:45 am]

BILLING CODE 6820–CD–M

RAILROAD RETIREMENT BOARD

1993 Railroad Experience Rating Proclamation

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board is required by paragraph (1) of section 8(c) of the Railroad Unemployment Insurance Act (ACT) (45 U.S.C. 358(c)(1)), as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The Board is further required by section 8(c) of the Act to publish the amounts so determined and proclaimed. Pursuant to section 8(c), the Board gives notice of the following system-wide factors used in the computation of individual employer contribution rates for 1993:

(1) The balance to the credit of the Railroad Unemployment Insurance Act (RUI) Account, as of June 30, 1992, is $395,527,634.73;

(2) The balance of any new loans to the account, including accrued interest, is zero;

(3) The system compensation base is $2,742,248,385.35;

(4) The system unallocated charge balance is –$102,831,381.08

(5) The pooled credit ratio is 0.0531;

(6) The pooled charge ratio is zero;

(7) The surcharge rate is zero.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 1992. The balance in notice (2) is based on data as of September 30, 1992. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 1993.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Gerald E. Helmling, Chief of Experience Rating, Bureau of Unemployment and Sickness Insurance, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4567, (FTS) 386–4567.

Dated: January 12, 1993.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–1278 Filed 1–19–93; 8:45 am]

BILLING CODE 7905–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0157]

Shared Ventures, Inc.; Notice of Surrender of License

Notice is hereby given that Shared Ventures, Inc., 6550 York Avenue South, Edina, Minnesota 55435 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Shared Ventures, Inc. was licensed by the Small Business Administration on September 18, 1981.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchise derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 29, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–1252 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

Los Angeles District Advisory Council; Public Meeting

The U.S. Small Business Administration Los Angeles District Advisory Council will hold a public meeting at 11 a.m. on Thursday, January 28, 1993, at the Small Business Development Center, 363 South Park Avenue, suite 100, Pomona, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Michael A. Lee, District Director, U.S. Small Business Administration, 330 N. Brand Blvd., suite 1200, Glendale, California 91203, (213) 894–2977.

Dated: January 12, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils

[FR Doc. 93–1253 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

Newark District Advisory Council; Public Meeting

The U.S. Small Business Administration Newark District Advisory Council will hold a public meeting at 9 a.m. on Tuesday, January 19, 1993 at the New Jersey Business & Industry Association, 102 West State Street, Trenton, New Jersey, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645–3580.

Dated: January 6, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–1255 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

San Antonio District Advisory Council; Public Meeting

The U.S. Small Business Administration San Antonio District Advisory Council will hold a public meeting at 10 a.m. on Thursday, February 18, 1993 at the Sheraton Fiesta Hotel, 37 NE. Loop 410, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Rodney W. Martin, District Director, U.S. Small Business Administration, 7400 Blanco Road, suite 200, San Antonio, Texas 78216–4300, (210) 229–4530.

Dated: January 12, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–1256 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

Montpelier District Advisory Council; Public Meeting

The U.S. Small Business Administration Montpelier Advisory Council will hold a public meeting at 10 a.m. on Wednesday, February 3, 1993, at the Vermont Chamber of Commerce, Granger Road, Berlin, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: January 12, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils

[FR Doc. 93–1254 Filed 1–19–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 8, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of the date of filing.

Docket Number: 48590.

Date filed: January 5, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC23 MV/P 0193 dated December 9, 1992. Mail Vote 607—Central Africa to TC3.

Proposed Effective Date: January 15, 1993.

Docket Number: 48594.

Date filed: January 8, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC123 Reso/P 0105 dated November 13, 1992. North/Mid/South Atlanta Resos r–1 to r–26.

Proposed Effective Date: March 1, 1993.

Docket Number: 48595.

Date filed: January 8, 1993.

Parties: Members of the International Air Transport Association.

Subject: CAC/Reso/174 dated December 18, 1992. Finally Adopted Resolutions R–1 To R–5.

Proposed Effective Date: April 1, 1993.

Docket Number: 48596.

Date filed: January 8, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1334 dated November 17, 1992. Within Africa passenger resos r–1 to r–23.

Proposed Effective Date: April 1, 1993.

Docket Number: 48597.

Date filed: January 8, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1332 dated November 17, 1992. Middle East-Africa passenger resos r–1 to r–17.

Proposed Effective Date: April 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–1244 Filed 1–19–93; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Flight Service Station at Livingston, MT; Closing

Notice is hereby given that on or about February 17, 1993, the flight service station at Livingston, Montana, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Great Falls, Montana. This information will be reflected in the FAA Organization Statement the next time it is issued. Section 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on January 15, 1993.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 93–1317 Filed 1–19–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Impact Statement; Allegany County, MD

AGENCIES: Federal Highway Administration (FHWA), DOT. National Park Service (NPS), DOI.

ACTION: Notice of intent.

SUMMARY: The FHWA and NPS are issuing this notice to advise the public that an Environmental Impact Statement and section 4(f) Evaluation will be prepared for a proposed roadway and park improvement project in Allegany County, MD.

FOR FURTHER INFORMATION CONTACT: Mr. David Lawton, Planning, Research, Environment and Safety Engineer, Federal Highway Administration, The Rotunda—suite 220, 711 West 40th Street, Baltimore, Maryland 21211 or Mr. Jeff Knoedler, Regional Liaison—Transportation Planning, National Park Service—National Capital Region, 1100 Ohio Avenue, SW., Washington, DC 20242.

SUPPLEMENTARY INFORMATION: The FHWA and NPS, in cooperation with the U.S. Army Corps of Engineers (COE) and the Maryland State Highway Administration, will prepare an Environmental Impact Statement (EIS) and section 4(f) Evaluation on a proposal to construct the Canal Parkway and redevelop the C&O Canal National Historical Park in Allegany County, Maryland.

The proposed improvements would involve the construction of a new roadway between MD 51 and the Wiley Ford Bridge for a distance of about two miles. Improvements to the existing Virginia Avenue railroad underpass and the redevelopment of the C&O Canal National Historical Park, from Baltimore Street to Ford Avenue, are also being considered as alternatives.

The purpose of the transportation improvements are to provide improved access into the South Cumberland area. Currently this area is served by a two-lane underpass of the CSX Railroad (Virginia Avenue "Subway"). Due to the physical constraints of the existing intersection, turning movements are difficult for trucks traveling into South Cumberland.

Further, these improvements are considered necessary because this is the only access from I–68 and Downtown Cumberland to South Cumberland and the Cumberland Regional Airport. Since it is a restricted width access point, emergency services could be interrupted due to traffic congestion, accidents, flooding and other events that could cause the underpass to be closed.

The C&O Canal National Historical Park offers visitors the opportunity to appreciate the setting in which it lies and the natural and human history that can be studied along its way. Visitors are also able to enjoy the recreational use of the canal, the parklands and the adjacent Potomac River. Improvements to this park are considered necessary to enhance the opportunities for visitors to experience these resources.

The alternatives under consideration include (1) taking no action, (2) constructing an additional two-lane underpass along Virginia Avenue, (3) constructing an interchange with MD 51 and building a two-lane roadway on new location located west of Lexington Avenue that would connect into Ford Avenue near its intersection with River Avenue, (4) constructing a two-lane parkway which would connect to MD 51 near Wineow Street and extend south along the abandoned westernmost CSX railroad tracks parallel to the C&O Canal (this alignment would pass west of Queen Street and connect into Ford Avenue near the River Avenue intersection), (5) redeveloping the C&O Canal National Historical Park from Baltimore Street to the Wiley Ford Bridge.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A public hearing will be held in the fall of 1993. Public notice will be given of the time and place of this hearing.

The Draft EIS and section 4(f) Evaluation will be available for public and agency review and comment prior to the public hearing. A scoping meeting for this project was held in February of 1988.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed action and EIS should be directed to the FHWA or NPS at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program).

Issued on January 13, 1993.

A. P. Barrows,

Division Administrator, Maryland Division, Federal Highway Administration.

Robert Stanton,

Regional Director, National Capital Region, National Park Service.

[FR Doc. 93–1230 Filed 1–19–93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Announcing the Second Meeting of the Crashworthiness Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting announcement.

SUMMARY: This notice announces the second meeting of the Crashworthiness Subcommittee to the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the April 1992 meeting to examine research questions regarding crashworthiness of vehicles under 10,000 pounds GVW.

DATES AND TIMES: The meeting is scheduled for February 8, 1993, from 10:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in room 8236 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Crashworthiness Subcommittee will include presentations on NHTSA's ongoing frontal crash testing and computer modeling and biomechanics research using finite element models.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88–01—Crashworthiness Subcommittee) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Office of Research and Development, 400 Seventh Street SW., Room 6206, Washington, DC 20590, telephone: (202) 366–4862.

Issued on January 14, 1993.

Ralph J. Hitchcock,

Chairman, Crashworthiness Subcommittee, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 93–1338 Filed 1–19–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 13, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0127.

Form Number: None.

Type of Review: Extension.

Title: Application for Bonding of Smelting and Refining Warehouses.

Description: A manufacturer engaged in smelting or refining of metalbearing materials shall submit an application for the bonding of the plant to the district director, giving the location of the plant and the nature of the work to be performed.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 6.

Estimated Burden Hours Per Respondent: 18 hours.

Frequency of Responses: Other (One-time application).

Estimated Total Reporting Burden: 576 hours.

Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–1316 Filed 1–19–93; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 13, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0845.

Form Number: None.

Type of Review: Extension.

Title: Regulations Under Tax Conventions—France (part 514).

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1138.

Regulation ID Number: INTL–955–86 Final (T.D. 8350).

Type of Review: Extension.

Title: Requirements For Investments to Qualify Under section 936(d)(4) as Investments in Qualified Caribbean Basis Countries.

Description: The collection of information is required by the Internal Revenue Service to verify that an investment qualifies under Internal Revenue Code (IRC) section 936(d)(4). The recordkeepers will be possession corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

Respondents: Businesses or other-profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 30 hours.

Frequency of Response: Other.

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Underhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 93–1318 Filed 1–19–93; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 13, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0833

Form Number: None.

Type of Review: Extension.

Title: Regulations Under Tax Conventions—Sweden (Part 520).

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1545–0841.

Form Number: None.

Type of Review: Extension.

Title: Regulations Under Tax Conventions—Austria (Part 516).

Description: This information is needed to secure for individuals and businesses the benefits to which they are entitled under the tax convention and to facilitate the administration and enforcement of the tax laws of the United States.

Respondents: Individuals or households, Businesses or other profit.

Estimated Number of Respondents: 50.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 13 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–1319 Filed 1–19–93; 8:45 am]

BILLING CODE 4830-01-M

Customs Service

Transfer Pricing; Related Party Transactions

AGENCY: U.S. Customs Service, Treasury.

ACTION: The United States Customs Service is publishing this Notice in an effort to inform the public of the Customs valuation laws concerning the appraisement of transactions between related parties. In the Notice Customs will explain: (1) The definition of related parties; (2) the tests for determining whether transaction value is the proper basis of appraisement; and (3) Customs right to question the acceptability of transfer prices declared to Customs as the entered value as well as importers' rights and obligations.

Definition of Related Parties

The U.S. valuation system is based on the Agreement to Implement Article VII of the General Agreement on Tariffs and Trade ("the GATT Valuation Agreement"). The provisions of the GATT Valuation Agreement were incorporated into U.S. law through the Trade Agreements Act of 1979 (19 U.S.C. 1401a; TAA).

Transaction value is the primary basis of appraisement under Article 1 of the GATT Valuation Agreement and under the TAA. Transaction value is defined in section 402(b)(1) of the TAA as the "price actually paid or payable for the merchandise when sold for exportation to the United States" plus specified statutory additions. As will be discussed in the next section, the GATT Valuation Agreement and the TAA contain special provisions under transaction value for arrangements involving related parties.

Under section 402(g) of the TAA the following persons are treated as related:

(A) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) An officer or director of an organization and an officer or director of another organization, if each such individual is also an officer or director in the other organization.

(D) Partners.

(E) Employer and employee.

(F) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(G) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

In the Statement of Administrative Action ("the SAA"), adopted by Congress, the phase "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person" is understood to cover the following situations:

(1) Where one of them directly or indirectly controls the other;

(2) Where both of them are directly or indirectly controlled by a third person; or

(3) Where together they directly or indirectly control a third person.

Customs has not had occasion to issue any decisions pertaining to the meaning of the term "control" as set forth in section 402(g)(1)(G) and the SAA above.

At the international level, the Note to Article 15 of the GATT Valuation Agreement, Paragraph 4(e) states: For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Determinations of "control" will be made on a case by case basis within the context of the administrative review procedures available to the importing public under sections 174 and 177 of the Customs Regulations (19 CFR part 176 and 19 CFR part 177).

Tests for Determining the Acceptability of Transaction Value for Related Party Transactions

Under 402(b)(2)(B) of the TAA transaction value between a related buyer and seller is acceptable if the buyer meets one of the following two tests: (1) Circumstances of the Sale or (2) Test Values.

Under the "Circumstances of the sale" test, Customs examines the relevant aspects of the transaction, including: (1) The way in which the buyer and the seller organize their commercial relations, and (2) the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price.

The Statement of Administrative Action contains examples that demonstrate that the price has not been influenced by the relationship. These examples include a showing that the price was settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to it. A further example is a showing that the price is adequate to ensure recovery of all costs plus a profit that is equivalent to the firm's overall profit realized over a representative period of time in sales of merchandise of the same class or kind.

The test value method allows the importer to demonstrate the acceptability of transaction value if the transaction value of the imported merchandise closely approximates:

(i) The transaction value of identical merchandise, or of similar merchandise, in sales to unrelated buyers in the United States;

(ii) The deductive value or computed value for identical merchandise or similar merchandise.

See, section 402(b)(2)(B) of the TAA.

Under the GATT Valuation Agreement, the "test" values must be values that have been previously accepted by the customs administration. See Note to Article 1, Paragraph 2, note 4. Thus, the "test" values must be previously accepted appraised values for identical or similar merchandise.

Customs Right to Question Transfer Prices and Importers' Obligations to Provide Information

Article 17 of the GATT Valuation Agreement contains the following language.

> Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

Further, in paragraph 7 of the Protocol to the Agreement, which is part of the GATT Valuation Agreement, the parties agreed that Article 17 recognized that customs administrations may need to make enquiries concerning the statements, documents and declarations presented to customs. In addition, the parties recognized that customs administrations have the right to expect the full cooperation of importers in these enquiries.

The Technical Committee on Customs Valuation ("the Technical Committee"), established under the GATT Valuation Agreement to operate under the auspices of the Customs Cooperation Council ("the CCC") addressed the rights and obligations of customs administrations and importers under the Agreement when related party transactions are involved. The Technical Committee document is Commentary 14.1 entitled "Application of Article 1, Paragraph 2".

The Technical Committee recognized at the beginning of the Commentary that transaction value is the primary basis of appraisement for imported goods and should be used to the greatest extent possible. This concept is contained in the Preamble to the GATT Valuation Agreement. Further, the Technical Committee reiterated the provisions that the parties to a transaction must be unrelated under the conditions set forth for transaction value, but if the parties are related, then transaction value is acceptable if one of the two test previously discussed is met. The Technical Committee summed up this idea as follows: "This textual construction means that the existence of a relationship between buyer and seller raises a question which serves to alert the importer and Customs as to the acceptability of the price as the basis of the transaction value." Commentary 14.1, paragraph 2.

The Technical Committee then stated that in cases where it can be shown that the test value method can be met then transaction value could be accepted and there would not be a need to enquire into the circumstances surrounding the sale. Commentary 14.1, paragraph 3. In the absence of a test value, the Technical Committee provided, in paragraphs 5 through 18 of the Commentary, the following questions and answers as guidance for Customs administrations and importers in applying the circumstances of the sale test:

Question 1: Does the existence of a relationship, as defined in paragraph 4 of Article 15, between the buyer and the seller give Customs the right to reject the transaction value?

Answer: No. Relationship, in itself, is not grounds to reject transaction value. Subparagraph 2(a) of Article 1 is clear on this point. The existence of a relationship does, though, serve to alert Customs to the fact that there may be a need to enquire as to the circumstances surrounding the sale.

Question No. 2: Does Customs need to have grounds to enquire into the circumstances surrounding the sale?

Answer: No. Subparagraph 2 (a) of Article 1 directs that the circumstances surrounding a sale between related persons shall be examined. However, the Interpretative Notes to Article 1, paragraph 2 provide, in paragraph 2 thereof, that an examination of the circumstances will not be required in every case but only in those where Customs has doubts about the acceptability of the price.

Question No. 3: Does the Agreement provide detailed guidance as to the doubts about the acceptability of a price that would cause Customs to enquire into the circumstances surrounding the sale?

Answer: No. However, the very structure of the Agreement is such that the existence of a relationship itself gives cause to question whether the price between the seller and the buyer is or is not influenced by the relationship as the price can only be used as the basis of transaction value in circumstances where the relationship has not influenced the price.

In addition, Article 17 provides that nothing in the Agreement shall prevent Customs from satisfying itself as to the truth or accuracy of any statement, document or declaration. Such a declaration would include that made by the related buyer, explicitly or implicitly depending upon the documentation and declaration requirements of the importing country, when the transaction value method is used, i.e., "the price is not influenced because of my relationship with the seller."

Question No. 4: Does Customs have to communicate its "doubts" to the importer when seeking information on the circumstances surrounding the sale or on whether the price has been influenced by the relationship between the buyer and the seller?

Answer: No. Nothing in the Agreement requires Customs to justify the reasons for it requesting information from an importer with regard to an import transaction. Indeed, paragraph 7 of the Protocol and Article 17 recognize that Customs may need to make enquiries concerning the truth or accuracy of any statement, document or declaration presented to them for Customs valuation purposes and have the right to expect the full cooperation of importers in those enquiries. There is no precondition placed upon Customs to the effect that it must justify its reasons for inquiring into a transaction. There is, however nothing to prevent Customs from informing an importer of the reasons for its doubts. This would be desirable if it is able to do so.

Question No. 5: If Customs has grounds for believing that the price of goods in a transaction has been influenced by the relationship does it have to advise the importer of the reason why it so believes?

Yes. Subparagraph 2(a) of Article 1 provides that, where Customs has grounds for considering that transaction value is unacceptable because the relationship has influenced the price and that Article 1 does not therefore apply to the transaction, Customs shall communicate its grounds to the importer. Moreover, the importer must be given a reasonable opportunity to respond and is entitled to be advised in writing of the grounds for Customs' beliefs.

Question No. 6: Is the importer responsible for ensuring that the price has not been influenced by the relationship before declaring the goods to be valued under the provisions of Article 1?

Answer: Yes. When declaring the Customs value under the transaction value method the importer has an obligation to ensure to the greatest extent possible that the price is not influenced. This is placed upon the importer by virtue of Article 1 which stipulates that the transaction value shall be used provided that the buyer and seller are not related or, where the buyer and seller are related, it can be shown that the relationship did not influence the price.

Question No. 7: If Customs has previously examined the circumstances surrounding a sale and the relationship between the buyer and seller in general and has found that the relationship had not influenced the price, is Customs precluded from requesting the same or further information at a later date?

Answer: No. Although it is not intended that Customs examine the circumstances surrounding each and every sale, whenever Customs has a doubt about the acceptability of a price it may direct a new enquiry to the importer.

U.S. Customs examines transfer prices by asking importers to supply information concerning which test they believe they meet for the acceptability of transaction value. In addition, Customs examines transfer pricing in the context of many audits. Customs will continue to focus on this issue and urges importers to provide the information necessary for this analysis.

In addition, Customs encourages any party that may be concerned about whether transaction value is the proper basis of appraisement for its imported merchandise to discuss the transactions with the appropriate field personnel and/or to submit a ruling request under 19 CFR 177.1 *et seq.* to the Commissioner of Customs, Attention Office of Regulations and Rulings, Commercial Rulings Division, 1301 Constitution Avenue, NW., Washington, DC 20229.

Dated: January 13, 1993.

Samual H. Banks,

Assistant Commissioner Commercial Operations.

[FR Doc. 93-1305 Filed 1-19-93; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

NIS University Partnerships Program

AGENCY: United States Information Agency.

ACTION: Notice, request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between universities and colleges in the United States and the Newly Independent States of the former Soviet Union. The purpose of this university partnerships program is to foster curriculum development and teaching methodologies, and to modernize the administrative structure at NIS institutions of higher education. Special funding for this program is provided under the Freedom for Russian and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). With this funding USIA will support institutional relationships with the NIS through grants for a period of two (2) years beginning with the 1993–94 academic year (approximately September 1, 1993).

The NIS University Partnerships Program is limited to the following specific academic disciplines:

(1) Law;
(2) Business/economics;
(3) Education/educational reform; and
(4) Government/public policy/public administration. Proposals should focus on reform in one of these eligible disciplines.

The program invites proposals for two-way projects only and is limited to the Newly Independent States of the former Soviet Union: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. USIA will strive to achieve broad geographic diversity in awarding the grants.

Proposals may involve the development of new academic programs or the building and/or restructuring of an existing program. Participating institutions should be prepared to exchange faculty and staff for teaching/lecturing and consulting for a period not less than one month. Each year at least one U.S. participant should be in residence at the partner institution for one semester to serve in a coordinating role. Other activities which serve the purpose of this program include: Provision for team teaching; U.S. visits by foreign faculty to update their academic and professional skills, observe teaching techniques and strengthen their subject area expertise; expansion of library holdings; textbook development; development of audio-visual instructional materials; and the translation or reprinting of U.S. texts and other materials.

Participating institutions must maintain their faculty and staff in partial salary and full benefits. USIA will provide up to $300,000 for each proposal selected for funding over a two-year period. Subject to the availability of funds, USIA anticipates that approximately 10–12 grants will be awarded in the competition.

Proposals will be accepted to establish new institutional linkages or to allow for innovation and strengthening of existing partnerships. Feasibility studies to plan linkages will not be considered.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign institutions are encouraged to consult about the proposed project with U.S. Information Service (USIS) offices in countries where they exist.

DATES: Deadline for proposals: Proposals must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on April 5, 1993. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents be accepted which are postmarked on April 5, 1993 but received at a later date. It is the responsibility of grant applicants to ensure that their proposal is received by the above deadline. Grants should begin not later than September 1, 1993.

ADDRESSES: The original and 14 complete copies of the proposal should be submitted by the deadline to: U.S. Information Agency, Ref.: NIS University Partnerships Program, Office of Grants Management, E/XE, room 357, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, interested institutions should contact Ms. Camille Barone or Ms. Deborah Trent at (202) 619–5289, or write to the following address: Specialized Programs Unit (E/ASU), Office of Academic Programs, U.S. Information Agency, 301 4th Street, SW., room 349, Washington, DC 20547.

SUPPLEMENTARY INFORMATION

Overview

The NIS University Partnerships Program is authorized and funded under the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). USIA administers annual university affiliations programs under the authority of the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act).

The NIS University Partnerships Program is separate from the USIA University Affiliations Program competition announced annually in this publication. Institutions planning to submit proposals for both competitions should note that USIA will not fund the same project activities under two different grants.

Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden estimate, to USIA Clearance Office, M/ADD, room 624, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. (Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 12/31/95.)

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Eligibility

In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of universities and/or community colleges, individually or as systems, are also eligible. U.S. universities and community colleges applying under this program may collaborate with U.S. scholarly, professional, or international educational associations and organizations. Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized and highly regarded independent research institutes. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium. Participants representing the U.S. institution, traveling under USIA grant support, must be U.S. citizens. Participants representing the foreign institution must be citizens, nationals, or permanent residents of one of the Newly Independent States.

The Agency encourages proposals from eligible Historically Black Colleges and Universities (HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also strongly encouraged to apply.

Proposed Budget

A comprehensive line item budget must be submitted with the proposal by the deadline. Funds requested from the Agency must not exceed $300,000. Specific guidelines for budget preparation are available in the application packet. **Note:** Grants awarded to eligible institutions with fewer than four years of experience in conducting international exchange programs will be limited to $60,000. Funding requests from these institutions must not exceed this amount.

Allowable Costs

International travel (via American flag carriers).
Domestic travel.
Maintenance (including lodging, meals and incidental expenses).
One planning trip per institution for one participant.
Honoraria or compensation for in-country work (up to $150 per day per participant).
Membership in U.S. professional associations and attendance at professional conferences in the U.S. for foreign participants.
Educational materials, not to exceed 25% of the total requested grant amount, which may also include the translation and publication of instructional materials.
Medical insurance for foreign participants during U.S. visits.

Under direct costs, such as office supplies and communications expenses (including telephone, facsimile, postage and delivery) may not exceed 10% of the total requested grant amount.

Application Requirements

Proposals must be submitted within the deadline and conform to the selected countries and academic fields identified in this announcement. The proposal package must include one original and 14 complete copies and all required documentation. Proposals should be presented as follows:

1. *A proposal cover sheet* (in addition to the Bureau cover sheet) with names of both institutions, name of foreign country, project directors including their addresses, telephone and fax numbers, and academic field(s) of proposal. A sample cover sheet format is included in the application packet.

2. *An executive summary* (abstract) of proposed project, not to exceed one single-spaced page.

3. *A narrative,* not to exceed twenty double-spaced pages, including descriptions of institutions and participating academic departments or schools; a detailed description of the proposed partnership program, including names and qualifications of designated project directors; a statement of need for the proposed program; a detailed description of proposed activities, including who will travel, when, where, and how activities will occur for each year; anticipated benefits of the program to participating institutions; and a plan for institutional evaluation of the project.

4. *A comprehensive line item budget* outlining specific expenditures and sources from which funds are anticipated. Detailed information

concerning eligible and ineligible items and required budget format is available in the application packet.

5. *Documentation of institutional support* for the proposed linkage, including signed letters of endorsement from the president, chancellor, or director of the U.S. and foreign institutions, making specific reference to the NIS University Partnerships Program and committing the institution to maintaining its exchange participants on partial salary and customary benefits during the exchange. A general letter of support or an agreement between the participating institutions without reference to the maintenance of salaries and benefits will not fulfill this requirement. A grace period will be granted to applicants for the submission of this documentation. It must be received at USIA by 5 p.m. Washington, D.C. time on April 19, 1993. A sample letter of endorsement and commitment is included in the application packet.

6. *Brief academic resumes,* not to exceed two single-spaced pages, of participating faculty/staff from both institutions, clearly indicating level of language skills, relevant overseas experience, knowledge of prospective partner country, relevant scholarly and non-scholarly travel, publications, and research activities. **Note:** All pages in excess of the two-page limit will be discarded.

Review Process

The NIS University Partnerships Program review process will be conducted in three stages: technical, academic, and Agency. Proposals will be deemed technically eligible only if they adhere to the guidelines established herein and in the application packet. Technically eligible proposals will be forwarded to *ad hoc* panels of area and subject specialist academics who will weigh their academic merit, potential for fostering curriculum reform and development, and feasibility. All proposals recommended for funding by the *ad hoc* academic panels will be reviewed in the Agency for relevance to the objectives of the Freedom Support Act of 1992 by the Office of Academic Programs, the European Area Office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and discipline expertise which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by a clear statement of program goals and means to accomplish the goals, and detailed description of project with statement on how the proposed project will be implemented and evaluated.
2. Probable impact of the proposed partnership in achieving Freedom Support Act goal of reforming educational administration and curricula at the NIS partner institution.
3. If the proposal requests support for an established active linkage, evidence that the NIS University Partnerships funding would result in innovation in the exchange relationship.
4. Evidence that theme(s) of proposed project fits field(s) stated in the announcement.
5. Feasibility of the program plan as it relates to the stated goals and selected topics and activities.
6. Quality of scholarly and professional credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required).
7. Appropriateness of length of exchange visits given project goals.
8. Evidence of strong institutional commitment by participating institutions.
9. Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties.
10. Evidence from American institutions of prior experience in the NIS and previous relations with proposed NIS partner institutions.

Agency Review Criteria

USIA will consider proposals recommended by academic review panels for further review. Agency considerations will be based on:

1. Academic quality, reflected in academic review panel's comments and recommendations.
2. Promise of long-term impact in achieving Freedom Support Act objectives.
3. Feasibility of program plan.
4. USIA overseas post assessments of need and feasibility.
5. Cost-effectiveness.
6. Geographic diversity in the NIS.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: January 13, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–1171 Filed 1–19–93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 12
Thursday, January 21, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

LEGAL SERVICES CORPORATION

Board of Directors Annual Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 4740.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 29, 1993, scheduled to commence at 9:30 a.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

CHANGES IN THE MEETING:

MATTERS TO BE CONSIDERED:

The following will be considered as sub-item "a." of agenda item number 7.

a. Presentation by Representative of the Clinical Legal Education Association on the Continued Funding of Law School Clinical Programs.

In addition, the following will be considered as sub-items "a.," "b.," and "c." of agenda item number 12.

a. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1993 Consolidated Operating Budget.

b. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1994 Appropriation Request.

c. Consideration of Recommendation on Whether to Formally Adopt, and if so, to Adopt, a Corporate Position as to the Corporation's Program Operating Responsibilities as Referred to in the Inspector General Act.

The revised agenda is as follows.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of December 7, 1992 Meeting.
3. Election of Officers.
   a. Election of Chairperson.
   b. Election of Vice Chairperson.
4. Formation of Standard Operating Board Committees.
   a. Audit and Appropriations Committee;
   b. Office of the Inspector General Oversight Committee;
   c. Operations and Regulations Committee; and
   d. Provision for the Delivery of Legal Services Committee.
5. Formation of Special Board Committees.
   a. Special Reauthorization Committee.
   b. Other.
6. Status Report on the Competition Effort.
7. Presentation by Representatives of the American Association of Law Schools on the Continued Funding of Law School Clinical Programs.
   a. Presentation by Representative of the Clinical Legal Education Association on the Continued Funding of Law School Clinical Programs.
8. Chairman's and Members's Reports.
9. Consideration of Operations and Regulations Committee Report.
   a. Consideration of Amendments to Sections 1610 and 1611 of the Corporation's Regulations.
   b. Consideration of Amendment to Section 1612 of the Corporation's Regulations.
10. Consideration of Office of the Inspector General Oversight Committee Report.
11. Consideration of Provision for the Delivery of Legal Services Committee Report.
12. Consideration of Audit and Appropriations Committee Report.
   a. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1993 Consolidated Operating Budget.
   b. Consideration of Committee's Recommendation on the Corporation's Fiscal Year 1994 Appropriation Request.
   c. Consideration of Recommendation on Whether to Formally Adopt, and if so, to Adopt, a Corporate Position as to the Corporation's Program Operating Responsibilities as Referred to in the Inspector General Act.
13. Consideration of Special Reauthorization Committee Report.
14. President's Report.
15. Inspector General's Report.

CLOSED SESSION (Continued)

16. Consideration of Board's Special Counsel's Report on the Matter of *Gawler v. LSC, et al.*
17. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.
18. Consultation with Board by President on Personnel-Related Matters.
19. Approval of Minutes of Executive Session Held on December 7, 1992.

OPEN SESSION: (Resumed)

20. Consideration of Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate individuals who are blind or have visual impairment.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 15, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–1509 Filed 1–15–93; 3:17 pm]

BILLING CODE 7050-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 18, 25, February 1, and 8, 1993.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of January 18

Thursday, January 21

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by NUMARC on Industry Review of NRC Regulations and Regulatory Process (Public Meeting)
(Contact: NUMARC—Joe Colvin, 202–872–1280)

Friday, January 22

2:00 p.m.
Briefing on Status of Medical Use Activities (Public Meeting)
(Contact: John Greeves, 301–504–3334)

Week of January 25—Tentative

Friday, January 29

10:00 a.m.
Briefing on Implementing Guidance for the Maintenance Rule and Industry Verification and Validation Effort (Public Meeting)
(Contact: William Russell, 301–504–1274)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by Agreement States on Their Activities in Medical Use Area (Public Meeting)
(Contact: Carlton Kammerer, 301–504–2321)

Week of February 1—Tentative

Wednesday, February 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Monday, February 8

10:00 a.m.
Briefing by IIT on Oncology Services Incident (Public Meeting)
(Contact: Carl Paperiello, 708–790–5517)
2:00 p.m.

Periodic Briefing on EEO Program (Public Meeting) (Contact: Jim McDermott, 301-492-4661)

Tuesday, February 9

2:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: William Bateman, 301-504-1711)
4:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: January 15, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-1557 Filed 1-15-93; 3:41 pm]

BILLING CODE 7590-01-M

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federal register

Thursday
January 21, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Fort Peck Irrigation Project, MT; Proposed Operation and Maintenance Assessment Rate Increase; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fort Peck Irrigation Project, MT; Proposed Operation and Maintenance Assessment Rate Increase

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register** on February 4, 1992, 57 FR 4312, a proposal to increase the operation and maintenance assessment rate of the Fort Peck Irrigation Project by 70 cents. No adverse comments were received by the project during the 30-day comment period.

DATES: Effective upon publication in the **Federal Register**.

ADDRESSES: This notice will be published and posted at the following locations:

U.S. Post Offices

Poplar, Montana 59255
Wolf Point, Montana 59201

Newspaper

Herald News
Wolf Point, Montana 59201

Bureau of Indian Affairs

Fort Peck Agency
Poplar, Montana 59255

FOR FURTHER INFORMATION CONTACT: Fort Peck Superintendent, Bureau of Indian Affairs, Fort Peck Agency, Poplar, Montana 59255.

SUPPLEMENTARY INFORMATION: The Fort Peck Irrigation Project Manager met with the Fort Peck Water Users Association on January 6, 1992 and held a public meeting with the landowners and water users of the project on January 7, 1992. In agreement with the Fort Peck Water Users Association, landowners and water users present at the meetings, the project will increase the O&M rate by 70 cents.

The Fort Peck Irrigation Project's O&M rate will increase from $13.30 per assessable acre to $14 per assessable acre.

Appeal Process

Chapter 25, part 2 of the Code of Federal Regulations outlines the appeal process for this administrative action. Appeals must be in writing and received by the Billings Area Director, Bureau of Indian Affairs, 316 North 26th Street, Billings, Montana 59101 within 30 days after publication in the **Federal Register**.

Authority: The authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of O&M rates and related information is published pursuant to the Code of Federal Regulations, chapter 25, part 171 and under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order No. 3150, section 7b.

Dated: January 8, 1993.

Deborah J. Maddox,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93-1227 Filed 1-19-93; 8:45 am]

BILLING CODE 4310-02-M

federal register

Thursday
January 21, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Mission Valley Power Utility, MT; Power Rate Adjustment; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, MT; Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final notice.

SUMMARY: Pursuant to 25 CFR 175.13 the Bureau of Indian Affairs has proposed and is now finalizing a power rate adjustment to reflect increased cost of purchased power for the Mission Valley Power Utility. The final determination on power rate adjustment is based on increased cost of power purchased from Montana Power Company's Kerr Dam Hydroelectric Facility. The increased cost of purchased power is the product of Montana Power Company's authority, under their Federal Energy Regulatory Commission license for Kerr Dam, to annually adjust their power rates based on the Consumer Price Index.

DATES: Interested parties were provided the opportunity to submit written comments on the proposed pass-through power rate adjustment to the Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Ave., Portland, Oregon 97232–4169 during the period 30 days subsequent to December 4, 1992. The pass-through rate adjustment is now final and effective on the date of this publication or January 1, 1993, which ever date occurs later.

FOR FURTHER INFORMATION CONTACT: Portland Area Director, Portland Area Office, Bureau of Indian Affairs, 911 NE. 11th Ave., Portland, Oregon 97232–4169, telephone (503) 231–6750.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce a final decision on the adjustment in the Mission Valley Power Utility (MVP) electric power rates. This adjustment is the result of an increase in the electric power rates charged by Montana Power Company (MPC), one of three sources of electric power marketed by MVP. Pursuant to the Federal Energy Regulatory Commission license for the Kerr Dam Hydroelectric Facility, MPC is allowed to adjust their electric power rates annually based on the Comsumer Price Index.

The affected public and interested parties were provided an opportunity to provide input to the Portland Area Director's decision on the proposed pass-through rate increase during the period from November 4, 1992 to December 4, 1992. No comments were received during the 30 day comment period.

Prior to September 5, 1992 MPC's electric rate was 14.24 mills per kilowatt hour (kWh). This rate increased to 14.57 mills per kWh effective September 5, 1992, an increase of .33 mills.

Pursuant to the authority provided in 25 CFR 175.13 the Bureau of Indian Affairs has finalized the decision to adjust consumer electric power rates charged by the Mission Valley Power Utility to reflect the increased electric power cost charged by MPC. The following table identifies the finalized power rate adjustment by consumer class.

Consumer class	Present rate (per kWh)	Proposed rate (per kWh)
Residential	$0.04375	$0.04385
No. 2 General [1]	0.0516	0.05170
Irrigation	0.03440	0.3450
Commercial [2]		
Block 1 (first 18,000 kWh)	0.04135	0.04145
Block 2 (over 18,000 kWh)	0.03328	0.03338

[1] Includes metered street lighting rates.
[2] Small and large commercial classes.

Based on 1,200 kWh usage a Mission Valley Power residential customer's bill would increase from $63.50 under the current rate to $63.62 under the proposed adjusted rate.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of final determination of the power rate adjustment and related information is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order No. 3150, section 7b, and in accordance with § 175.13 of title 25 of the Code of Federal Regulations, which provides for the adjustment of electric power rates to reflect changes in the cost of purchased power or energy.

Dated: January 8, 1993.

Deborah J. Maddox,

Acting Deputy Commissioner of Indian Affairs.

[FR Doc. 93–1258 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Thursday
January 21, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Mohegan Tribe and Nation, CT; Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the

Mohegan Tribe and Nation, c/o Eleanor Fortin, P.O. Box 58, Voluntown, Connecticut 06384

has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on October 6, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated: January 5, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–1259 Filed 1–19–93; 8:45 am]

BILLING CODE 4310–02–M

Thursday
January 21, 1993

Part V

Environmental Protection Agency

40 CFR Part 307

Hazardous Substance Superfund: Response Claims Procedures; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 307

[FRL–4012–6]

Response Claims Procedures for the Hazardous Substance Superfund

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is promulgating this regulation to establish the procedures for filing, evaluating, and resolving claims asserted against the Hazardous Substance Superfund (the Fund) established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), (CERCLA or the Act). These claims must be for costs incurred in responding to releases or threats of releases of hazardous substances, pollutants, or contaminants. In addition, this regulation establishes procedures for notifying concerned parties regarding limitations on the payment of response claims. This regulation is consistent with EPA's revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

EFFECTIVE DATE: This final rule is effective February 22, 1993.

ADDRESSES: The official record for this rulemaking is in the Superfund Docket, located in room 2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone number (202) 260–3046. The record is available for inspection by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: William O. Ross, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603–8798, or the RCRA/CERCLA Hotline, (800) 424–9346, (TDD (800) 553–7672) (or in the Washington, DC metropolitan area (703) 920–9810 (TDD (703) 486–3323)).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Response to Comments on Each Subpart (a detailed index is set forth at the beginning of this section)
III. Summary of Supporting Analyses

I. Introduction

EPA is today promulgating the Response Claims Procedures for the Hazardous Substance Superfund (40 CFR part 307) (hereafter referred to as the RCP). Today's final rule is based on the procedures proposed on September 13, 1989, at 54 FR 37892. Six commenters submitted a variety of specific comments on the **Federal Register** proposal.

This regulation provides the forms and procedures required by section 112(b)(2) of CERCLA for filing response claims authorized by sections 111(a)(2) and 122(b)(1) of the Act. The RCP applies only to claims submitted for reimbursement from the Fund established by section 517 of SARA. This regulation is intended for use by any individual, private entity, potentially responsible party (PRP), or foreign entity eligible to submit a claim pursuant to sections 111(a)(2) or 122(b)(1) of CERCLA. Such persons, as prescribed by CERCLA section 112, must use the forms and procedures as promulgated in this rule. EPA will utilize the procedures in this rule, which are issued under the authority of CERCLA section 112, to implement its authority to reimburse from the Fund parties who are potentially liable for a release and who agree to conduct response actions pursuant to section 122(b)(1) of CERCLA.

The RCP addresses only response claims; i.e., claims for necessary response costs incurred as a result of carrying out the NCP. The NCP is established under section 311(c) of the Clean Water Act, as amended (33 U.S.C. 1321 (c)) and is revised under section 105 of CERCLA. The purpose of the NCP is to provide the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants or contaminants.

The preamble to the proposed rule provided a detailed explanation of the provisions of the RCP. The preamble to today's final rule consists mainly of responses to public comments received on the proposed RCP. Therefore, both preambles should be reviewed for clarification of issues on the meaning or intent of today's final rule. Unless directly contradicted or superseded by this preamble or rule, the preamble to the proposed rule reflects EPA's intent in promulgating today's procedures.

The preamble to today's rule responds to the public comments received on the proposed RCP. In general, a separate discussion is provided for each section of the proposed rule on which comments were received. If a particular section of the proposed rule is not listed below, comments were not received on that section.

Each of the discussions in the second section of this preamble is organized as follows: (1) A summary of the comments received on each issue is presented under the heading "Comment;" (2) EPA's response to the comments is set out under the heading "Response;" and (3) any revisions made to the proposed rule language are presented under the heading "Final Rule." Revisions to the proposed rule that are simply editorial or that do not reflect substantive changes may not be described under the heading "Final Rule." In addition, citations, particularly to the NCP, have been updated or corrected, where appropriate.

EPA recently initiated an evaluation of its policy and practices in regard to mixed funding, including preauthorization and procedures for evaluating response claims. The evaluation is being conducted in part in response to criticisms that the Agency has used its authorities for mixed funding too infrequently and has erected barriers to those interested in qualifying for mixed funding, including preauthorization. Although no conclusions are yet available from this evaluation, EPA will consider making revisions to today's rule that are deemed necessary to comport with the findings and recommendations accepted in this evaluation.

II. Response to Comments on Each Subpart

Index to Response to Comments

Section numbers used in this index and in headings in preamble sections below refer to section designations in the final rule.

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Appendix B—Claim for CERCLA Response Action

Subpart A—General

Comment

One commenter indicated that the proposed RCP is straightforward and easy to comprehend. Another commenter endorsed EPA's effort to develop the proposed procedures and indicated that the proposed rule furthers the Agency's policy of encouraging private sector cleanups. However, a number of commenters expressed the opinion that the proposed rule is overly detailed, time-consuming, costly, complicated, and bureaucratic.

Response

EPA believes that the proposed RCP is not overly detailed, time-consuming, costly, complicated, or bureaucratic for the following reasons. Under section 111 of CERCLA, EPA, through delegation by the President (Executive Order (E.O.) 12580, 52 FR 2923, January 29, 1987), is assigned the responsibility of overseeing and managing the Fund. One of the Agency's primary roles in overseeing and managing the Fund is to ensure appropriate uses of Fund monies.

Specifically, CERCLA section 111(a)(2) provides that payment of any claim for necessary response costs incurred by "any other person" shall be made, provided that "such costs must be approved * * * and certified by the responsible Federal official." The Agency, therefore, believes that the RCP is consistent with Congressional intent with respect to ensuring the appropriate uses of Fund monies. In order to fulfill this responsibility, the RCP was developed in a manner under which the Agency can determine whether: (1) The response costs were "necessary"; (2) the response costs were incurred "as a result of carrying out" the NCP; (3) the response costs were "approved" under the NCP; and (4) the response costs were "certified" by the Agency.

In addition, section 112(b)(1) of CERCLA authorizes EPA, through delegation (E.O. 12580), to develop and promulgate the procedures for submitting response claims against the Fund. EPA believes that the procedures contained in the rule are necessary to ensure appropriate uses of Fund monies and to make certain that Fund monies that are available for response claims are expended in accordance with environmental and public health priorities. Through its review of applications for preauthorization and response claims under the RCP, the Agency may grant preauthorization to pay for only those response actions that are of sufficient priority to merit Fund expenditures.

EPA believes that the RCP will also reduce the likelihood that a response action undertaken by a potential claimant will either create new or exacerbate existing environmental problems at a site. As stated above, section 111(a)(2) of CERCLA requires that payment of response claims from the Fund must be for response costs incurred in carrying out the NCP. Under the RCP, the Agency will have an opportunity to review a response action proposed by an applicant in order to ensure that it is consistent with the NCP and to evaluate the technical capabilities of that applicant to conduct the proposed response action. Moreover, in order to be reimbursed for response costs incurred, a PRP must conduct the response action in a manner consistent with the NCP, the Consent Decree, and the Preauthorization Decision Document (PDD).

Finally, EPA believes that a potential claimant should have a reasonable assurance of reimbursement when presenting a claim against the Fund. This reasonable assurance is achieved by identifying and describing in the RCP the Agency's expectations and standards that will be applied when a claimant seeks reimbursement of the response costs incurred.

Final Rule

EPA is promulgating the final rule as proposed, with the exception of the specific changes discussed below.

Comment

Several commenters also stated that the unnecessarily burdensome requirements set forth in the proposed procedures may discourage PRPs from entering into mixed-funding agreements, which would run contrary to the Congressional intent in establishing the CERCLA section 122 mixed-funding provision.

One of these commenters stated that under the Agency's Superfund settlement policy, the mixed-funding policy, and the detailed procedural and substantive requirements of the proposed rule, EPA has erected a significant and largely unnecessary obstacle to the negotiation of mixed-funding settlements. According to the commenter, at a minimum, the Agency has made the settlement process more time-consuming and costly for the Federal Government and PRPs to negotiate. The commenter expressed the belief that the approach under the proposed rule, while possibly conserving Superfund monies in the short term, is counter-productive and contrary to Congressional intent in the long run, as it makes it less attractive and more costly for PRPs to enter into Superfund settlements.

Another commenter noted that mixed-funding agreements routinely provide for EPA oversight, and often for State involvement as well, and that this substantial, continuous oversight throughout the project ensures that the work is not only necessary and protective of human health and the environment, but is also managed and performed in an efficient manner. However, because the proposed rule imposes a variety of requirements that are unnecessary in the settlement context, and adds another level of EPA oversight, it will result in substantial costs being devoted to meeting excessive administrative requirements instead of being used toward the efficient cleanup of sites. The inefficiency caused by the proposed rule will, therefore, make mixed-funding settlements less attractive financially to PRPs. The commenter also stated that the imposition of these numerous requirements and additional Agency oversight in mixed-funding situations will serve to stifle not only the initiative and efficiency of PRPs, but also that of EPA and Department of Justice (DOJ) negotiators.

Finally, one of these commenters maintained that because the proposed procedures are costly and time-consuming, and because the process is complicated, it is unlikely that EPA will be willing to wait for the process to take place. Also, the burdensome process will discourage the submission of applications for preauthorization from innocent landowners of contaminated sites as well as from PRPs with less than 100 percent responsibility for contaminating a site. The commenter also noted that by imposing overly burdensome requirements concerning the filing of applications for preauthorization and the awarding of response claims, the Agency has not fulfilled the intent of Congress.

Response

The Agency disagrees with the commenters who maintained that the RCP will create an obstacle to or discourage a PRP from negotiating a mixed-funding settlement with the Federal Government because the RCP will make reaching the settlement more costly and time-consuming. EPA believes that the promulgation of the

RCP, which sets forth clearly the requirements for a PRP to obtain prior approval to conduct a response action and, subsequently, to seek reimbursement of the costs incurred, in combination with the Model CERCLA Remedial Design/Remedial Action (RD/RA) Consent Decree, will actually encourage more mixed-funding settlements and will, therefore, result in a greater number of voluntary cleanups being undertaken by PRPs at Superfund sites.

Under section 107 of CERCLA, PRP liability is strict, joint, and several, unless PRPs can clearly demonstrate that the harm at a site is divisible. Because of joint and several liability, the negotiation of a mixed-funding settlement should be preferable to PRPs. The alternative of negotiating a mixed-funding settlement with the Agency can significantly reduce the overall financial burden for a PRP.

EPA also believes that the RCP will not serve to stifle the initiative of EPA and DOJ negotiators. In situations where EPA has determined that the most effective method to clean up a site is through the use of a mixed-funding agreement, the Agency will actively pursue negotiations with PRPs.

The Agency does not agree that the RCP adds a costly, additional level of EPA oversight to response actions conducted under mixed-funding settlements. In fact, ongoing oversight may be diminished because the RCP clearly illuminates the requirements concerning overall management of the response action, procurement of response action contractors, implementation, and documentation, the ongoing oversight of these areas may be diminished. A brief discussion of the Agency's "focused approach" to overseeing a remedial design and remedial action performed by a PRP under a mixed-funding settlement should help to clarify this point.

A preauthorized response action undertaken pursuant to a mixed-funding settlement presents an unusual management situation for EPA because the response action is partially reimbursed by the Agency but is carried out by a private party. Because EPA, prior to entering the agreement, will have evaluated the applicant's capabilities to perform the response action consistent with the NCP, EPA has determined that a resource-intensive, day-to-day oversight of the preauthorized response action will not be necessary. However, the Agency has developed a focused approach to oversight in an effort to ensure that a PRP carries out the RD/RA consistent with the NCP, the Consent Decree, and the PDD, and to hold the PRP accountable and responsible for all activities at the site.

Under this approach, the Agency will focus on the most significant aspects of the response action, such as scheduling, major modifications, emergency actions, and project closeout. EPA will oversee these activities by reviewing and approving certain key documents submitted by the PRP throughout the RD/RA, such as the RD and RA work plans, project schedules, preliminary design, final design, and Construction Quality Assurance and Construction Quality Control Plans. In addition, as part of the Consent Decree, EPA may require the PRP to retain an Independent Quality Assurance Team to evaluate the remedial and quality control activities. Thus, the level of EPA's oversight effort may be increased or decreased over time, depending on the capabilities of the PRP's design and construction teams, the nature of the technology selected, and the provisions of the Consent Decree and the PDD. A more detailed discussion of this focused approach to oversight is contained in the "Interim Final Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties" (OSWER Directive 9355.5–01, February 1990).

EPA disagrees with the commenters that it is unlikely that the Agency will be willing to wait for the response claims process to take place. EPA will preauthorize a response action only if the response action is of sufficient priority to merit Fund expenditure. The Agency will consider all applications for preauthorization against the alternatives of initiating an enforcement action or conducting the remedial action through a cooperative agreement or a contract. If the Agency determines that a response action by a private party or a PRP under the response claims process is the best available means to address a release at a site, EPA will grant preauthorization for the proposed response action at the site through the response claims process. In addition, the Agency has already issued and plans to issue further guidance on the claims process for applicants and claimants that will reduce the amount of time necessary to complete the required procedures at each stage of the response claims process.

Final Rule

EPA is promulgating the final rule as proposed, with the exception of the specific changes discussed below.

Comment

Another commenter stated that the proposed NCP should be revised to allow a private-party response action to be exempt from on-site permit requirements. The commenter maintained that the EPA oversight associated with the PDD and the subsequent evaluation of the clean-up process is adequate to address the on-site environmental concerns. The commenter also encouraged EPA to publish in the **Federal Register** (on a periodic basis) the identity of those parties that have submitted either an application for preauthorization or a claim form. This commenter felt that the commitment to do this on an annual basis would document the success that the claims approach has had for encouraging PRP-lead CERCLA response actions.

Response

Suggestions concerning the permit waiver provisions of CERCLA section 121(e)(1) were considered in the revisions to the NCP and are therefore inappropriate for this rulemaking effort. Under the revised NCP, the Agency at § 300.400(e)(1), has determined that certain types of response actions may qualify for the permit waiver contained in CERCLA section 121(e)(1). CERCLA section 121(e)(1) provides that no Federal, State, or local permit shall be required for the portion of any removal or remedial action conducted entirely on-site, where such remedial action is selected and carried out in compliance with CERCLA section 121. Response actions qualifying for the permit waiver include those conducted by a lead agency pursuant to CERCLA sections 104, 106, 120, 121, and 122. Response actions by a lead agency include those response actions conducted by a private party pursuant to CERCLA sections 106 or 122. Such response actions will also qualify for the permit waiver.

Because EPA does not at this time anticipate preauthorizing removals or RI/FSs, except on a limited basis, most applications for preauthorization will be for RD/RAs. However, EPA will only preauthorize remedial actions for site that is on the NPL, provided that it does not intend to: (1) compel a PRP to clean up the site using enforcement mechanisms under CERCLA section 106; or (2) initiate a Fund-financed response through a contract or cooperative agreement. Thus, EPA's use of preauthorization will be limited primarily to RD/RAs conducted by PRPs pursuant to mixed-funding settlements.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.11 Scope and Applicability

Comment

Several commenters questioned how the final rule will affect PDDs that were issued by the Agency prior to the effective date of the rule. These commenters suggested that EPA should explicitly state in the final rule that the procedures contained in the rule do not in any way alter the effect or interpretation of any pre-existing PDDs, and that the terms of any previously executed PDD will take precedence in the event of procedural or substantive conflicts with the rule.

Response

EPA concurs with these commenters that the procedures set forth in the RCP should not in any way alter the effect or interpretation of any PDDs that were issued by the Agency prior to the effective date of the final rule. In the event of a procedural or substantive conflict between the final rule and a previously issued PDD, the terms and conditions of the previously issued PDD will take precedence.

However, a potential claimant whose proposed response action was preauthorized by the Agency prior to the effective date of the RCP who determines that one or more provisions of the RCP are more favorable to him than the terms and conditions contained in the previously issued PDD may elect to comply with the provisions of the RCP. If a potential claimant elects to comply with the provisions of the RCP, he must notify the appropriate EPA Regional Office in writing of this election prior to such provisions taking effect, but not later than the time of the submittal of any claim. The Regional Office, in turn, will acknowledge receipt of such notice of election to comply with the provisions of the RCP and may revise the PDD as appropriate.

Final Rule

Section 307.11 is modified as follows:

1. Section 307.11(b) is added to the rule as follows:

> "This part does not affect the terms and conditions contained in PDDs issued prior to the effective date of this part. However, a potential claimant may elect to comply with the provisions of this part, rather than the terms and conditions of a PDD issued prior to the effective date of this part, if he so chooses. Written notice of this election must be provided to EPA by the potential claimant prior to such provision taking effect, but not later than the time of the submittal of any claim to EPA. EPA will provide a written acknowledgement of the potential claimant's election and may revise the PDD as appropriate."

2. The section has been renumbered accordingly.

Section 307.13 Computation of Time

In order to clarify how EPA will compute any period of time described or allowed in the RCP, the Agency is adding new § 307.13—Computation of Time.

Final Rule

Subpart A is modified as follows:

1. New § 307.13—Computation of Time—is added to the rule as follows:

> "In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day."

2. Sections 307.13 and 307.14 are redesignated as new §§ 307.14 and 307.15.

Section 307.14 Definitions

Comment

A commenter stated that the definition and potential interpretation of the term "necessary costs" is critical to the operation of the procedures contained in the proposed rule. A "necessary cost" is defined as one that is determined by EPA to be "required," "reasonable," "allocable," and "otherwise allowable." The commenter expressed concern that the potential interpretation of these criteria introduces an excessive element of risk and uncertainty into the claims process. The commenter recommended that EPA should constrain its review of whether costs are "necessary" to avoid potentially unfair, inconsistent, or unduly burdensome claims review procedures. The commenter also suggested that any costs that the PRP incurred in good faith, in substantial compliance with the PDD, and that are not unreasonable, should be paid promptly and in full. Reimbursement of such costs should not be denied, reduced, or delayed due to trivial or inconsequential deficiencies in the paperwork.

Response

The Agency disagrees that the potential interpretation of the term "necessary costs" introduces an excessive element of risk and uncertainty into the claims process. Section 111(a)(2) of CERCLA authorizes the Agency, through delegation (E.O. 12580), to use the Fund to reimburse a claimant only for "necessary" response costs incurred as a result of conducting a preauthorized response action. The Agency has defined the term "necessary costs," in part, to provide more certainty as to the meaning of this term. EPA has explicitly defined the term "necessary costs" under § 307.14 of the RCP as follows:

"Necessary response costs are costs determined to be:

(1) Required (based upon the site-specific circumstances);

(2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);

(3) Allocable (incurred specifically for the site at issue); and

(4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles) * * *."

In addition, EPA has developed and will issue guidance to prospective claimants on the response claims process that addresses the determination of "necessary" response costs.

EPA generally agrees with the commenter that the PRP should be reimbursed for response costs promptly and in full if the PRP incurs response costs in good faith, in substantial compliance with the Consent Decree and the PDD, and the costs are not unreasonable. As provided for in the RCP, if a claim sufficiently fulfills the requirements established in the PDD, the Agency will promptly award the claim and reimburse the claimant in the amount of the approved response costs. Also, payment of a claim will not be denied, reduced, or delayed due to trivial or inconsequential deficiencies in the paperwork. For mixed-funding claims, once a perfected claim has been received by the Agency, EPA will pay the amount due within 60 days or interest will begin accruing on that amount. However, the Agency would like to emphasize that in order for EPA to be able to adequately evaluate a claim in a timely manner, the claimant must submit complete and accurate information and documentation.

Final Rule

In order to clarify the meaning of the term "perfected," the Agency is making a minor revision to the definition of this term in § 307.14. The definition of "perfected" will read as follows:

"Perfected means the point at which EPA determines that the written demand for a sum certain (i.e., claim) has the documentation necessary to substantiate the appropriateness of the amounts claimed; i.e., the claim is technically complete."

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

Section 307.21 Nature of Eligible Claims

Comment

One commenter urged the Agency to promulgate a final rule that would allow for the use of mixed-funding settlements for remedial actions at both National Priorities List (NPL) and non-NPL sites. The commenter argued that the statutory language of CERCLA section 122 does not prohibit mixed-funding settlements for remedial actions at non-NPL sites. The commenter also stated that mixed-funding settlements at non-NPL sites make practical sense, since there are occasional hazardous waste sites that warrant expedited remediation, although the sites have not yet gone through the lengthy process to qualify for listing on the NPL.

Response

EPA does not agree with this commenter. Section 122(a) of CERCLA, which authorizes the use of mixed-funding agreements, requires that such agreements be facilitated, whenever practicable, that are " * * * in the public interest and *consistent with the National Contingency Plan* in order to expedite effective remedial actions and minimize litigation." (Emphasis added.) Section 111(a)(2) of CERCLA requires that payment of a claim must be for necessary response costs that were incurred " * * * as a result of *carrying out the National Contingency Plan*." (Emphasis added.)

Section 300.68(a)(1) of the 1985 NCP (and §§ 300.425(b) and 300.700(d)(3)(iii) of the 1990 NCP) provides that only those releases at sites included on the NPL will be eligible for Fund-financed remedial actions. This principle was upheld in State of Ohio v. U.S. EPA, 838 F.2d 1325 (D.C. Cir., 1988). The NPL is EPA's list of the most serious hazardous waste sites identified for possible long-term remedial response. Thus, the NPL is used to identify priorities among releases and potential releases and serves as a basis to guide the allocation of Fund resources among releases. The purpose of the NPL restriction is to ensure that the limited monies in the Fund are used only at sites that have been identified as posing the greatest potential threats to human health and the environment. Inclusion on the NPL, however, is not a precondition for the preauthorization of removal actions or remedial planning activities.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Another commenter stated that the proposed rule will result in a costly process for a PRP to obtain Agency approval to conduct a cleanup. The commenter maintained that the additional planning and management costs incurred by an applicant must also be reimbursed from the Fund.

Response

The costs incurred for obtaining EPA's grant of preauthorization is a cost associated with the negotiation of a settlement and, as such, is not reimbursable from the Fund. The preauthorization process is an application for a benefit (i.e., a reimbursement from the Fund). Thus, the costs associated with such applications are not reimbursable. In addition, the preauthorization process is an opportunity for a PRP to propose his methods for management of the remediation at a site and to receive comments from EPA concerning the eventual reimbursement of the eligible response costs. Consequently, the preauthorization process is in the best interests of both the Agency and the applicant. It is the applicant, and not EPA, who determines in the first instance whether his application is sufficient and in compliance with EPA's guidance. The more complete the draft application, the more streamlined the preauthorization process becomes for both parties.

A PRP would be legally responsible for clean-up costs at a site, including planning and management costs, regardless of whether or not the PRP had entered into a mixed-funding agreement. As discussed above, section 111(a)(2) of CERCLA authorizes the reimbursement of claims only for "necessary" response costs. All costs that meet the criteria for "necessary costs" contained in the RCP will be eligible for reimbursement from the Fund. In addition, section 112(b)(3) of CERCLA provides that a claimant shall bear the burden of proving his claim. Therefore, if a claimant can demonstrate that particular planning and management costs meet the criteria for "necessary costs" and are otherwise eligible, these costs will be reimbursed from the Fund.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter raised a number of issues concerning the requirements for contractor claims under mixed-funding settlements. First, the commenter noted that § 307.21(c)(1) of the proposed rule requires that a contractor claim must arise from work within the scope of the contract. This commenter maintained that in most contracts, including those for work at Superfund sites, one of the primary types of contractor claims is for "changes" or "extras." The commenter stated that in situations where a "changes" claim does not fundamentally alter the basic response technology or scope of work, the contractor claim should be processed and reimbursed without the need for submitting a revised application for preauthorization. This commenter also recommended that the proposed rule should be clarified by allowing contractor claims that are " * * * within the general scope of work * * * " established by the contract.

Response

EPA disagrees with this commenter. The preamble to the proposed rule stated that contractor claims must " * * * arise from work that is preauthorized and that is within the scope of the contract at issue." Change orders should never be used for modifications beyond the "scope of the contract." A PDD that is issued to a potential claimant will not require a revised application for preauthorization to expand the scope of a specific contract. However, if a particular PDD, for example, authorizes both site excavation and construction, and a contract is awarded for construction only, the site excavation component cannot be "added" to this contract by a change order. Similarly, in order to be reimbursed from the Fund, a design component could not be "added" to this contract without submitting a revised application for preauthorization.

The Agency concurs with the commenter's statement that contractor claims that are within the "general" scope of work established by the contract should be allowed. However, EPA believes the addition of the word "general" to the regulatory language is unnecessary because the Agency already interprets the phrase " * * * within the scope of work * * * " as meaning within the "general" scope of work established by the contract. Moreover, the phrase is generally understood as having such a meaning.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Second, the commenter noted that § 307.21(c)(3) of the proposed rule will result in EPA denying contractor claims if the claims are "caused by the mismanagement of the claimant." This commenter maintained that the term "mismanagement" is an open-ended standard and is ambiguous. The commenter stressed that the final rule should delete the mismanagement standard and clarify that contractor claims for cost overruns are reimbursable from the Fund "unless they are due to the negligence of the PRPs or the contractor."

Response

The Agency does not agree that the mismanagement standard concerning contractor claims should be deleted or that the term "mismanagement" is open-ended or ambiguous. In general, public funds will not be used to reimburse a claimant when there is fraud, waste, abuse, or mismanagement of the response action. Therefore, EPA believes that it is essential that claimants be held responsible for the competent management of the response action and of their contractors. In addition, § 307.32(h) of the RCP provides for the adjustment of costs where a response action is determined to be ineffective due to acts of omission or commission of the claimant himself, the claimant's employees, or the claimant's contractor.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Third, the commenter stated that § 307.21(c)(4) of the proposed rule also provides that contractor claims may be denied if they are "caused by the claimant's vicarious liability for the improper actions of others." This commenter noted that contractors hired by PRPs to perform remedial construction are usually independent contractors and, therefore, the PRPs are generally not vicariously liable for their actions. The commenter suggested that the Agency consider eliminating PRP vicarious liability as a grounds for denying Fund reimbursement of contractor claims in order to avoid unfair denials of legitimate claims. The commenter also stated that if EPA decides to continue to include the concept of vicarious liability, the rule should at least clarify that a PRP may be found vicariously liable only under the following circumstances: (1) where the PRP negligently hires an incompetent contractor; or (2) where the PRP assumes direct control of the day-to-day operations of the contractor.

Response

EPA disagrees that the claimant vicarious liability standard should be modified or deleted as a grounds for denying contractor claims. A claimant's vicarious liability refers to the liability for the actions of others that a claimant must accept as a part of his general management responsibility. The Agency believes that a claimant must accept this management responsibility if the claimant is to competently direct and oversee a response action at a site.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.22 Preauthorization of Response Actions

Comment

Several commenters discussed issues related to the preauthorization of response actions in the context of mixed-funding agreements, and emphasized the need to streamline the process. One commenter stated that in the context of mixed-funding settlements for remedial actions under Consent Decrees at NPL sites where Records of Decision (RODs) have been issued, the proposed requirements for the submission of information in the application for preauthorization are excessive and redundant. This commenter concurred with the suggestion in the preamble to the proposed rule (at 54 FR 37905) that the preauthorization process be streamlined by incorporating existing documents by reference in the application.

Another commenter indicated that because cleanups under mixed-funding settlements are subject to public comment, Federal court review, and EPA approval and oversight, the same regulatory safeguards needed for non-PRP cleanups should not apply to cleanups conducted under mixed-funding settlements. The commenter stressed that the information required by a number of the application provisions can be easily obtained from other sources (e.g., the work plan, the remedial investigation/ feasibility study (RI/FS), the Consent Decree). This commenter suggested that EPA propose a separate rule that would be applicable only to mixed-funding claims and that would contain a streamlined application process. This commenter also recommended that PRP applications not be required to include information on the identity of other PRPs or persons who may have received special or general notice letters from EPA, because the Agency will already have the desired information in its possession. Finally, this commenter stated that if the Agency elects not to propose a separate rule or not to continue with the current system of mixed-funding preauthorization which, in the commenter's view, has proven to be workable in a number of instances, the proposed rule should be revised appropriately to take into account the unique nature of mixed-funding settlements.

A commenter also noted that mixed-funding settlements are subject to Federal court approval as part of a Consent Decree. The commenter questioned whether the extent and complexity of the information required in the application for preauthorization is necessary when the settlement is already subject to court review and enforcement. In addition, the commenter suggested that EPA reevaluate the extent of the preauthorization requirements for mixed-funding settlements, because the Agency's need for adequate response claims information must be balanced with its need to maximize mixed-funding settlements, consistent with the mandate of SARA and the recent management review of the Superfund program ("A Management Review of the Superfund Program," William K. Reilly, Administrator, U.S. EPA, 1989).

Finally, one of these commenters suggested that although the proposed rule encourages private party cleanups, the Agency should simplify the process, wherever possible, to allow for PRPs to initiate cleanups promptly, without unnecessary government intervention or delay.

Response

Although a mixed-funding settlement with a PRP will provide for public comment, Federal court review and approval, and EPA oversight, the Agency believes that the preauthorization requirements for a mixed-funding settlement that are set forth in the RCP are necessary to ensure appropriate uses of Fund monies and to guarantee that Fund resources that are available for mixed-funding settlements are expended in accordance with environmental and public health priorities. EPA, however, does recognize the unique nature of mixed-funding settlements under the preauthorization process.

As referenced above, the Agency has developed guidance on the mixed-funding/response claims process for applicants and claimants. The guidance effectively streamlines the process for requesting the Agency's prior approval for a PRP to conduct a response action by allowing PRP applicants to utilize information that was developed for the Consent Decree as a basis for meeting the information requirements of the application for preauthorization. This process will reduce the amount of new information that a PRP must develop and, therefore, will reduce the time and cost required to prepare an application.

However, the Agency disagrees that a separate rulemaking is necessary for mixed-funding claims. EPA will utilize the procedures in the RCP, which are issued under the authority of section 112 of CERCLA, to implement its authority to reimburse from the Fund parties who are potentially liable for releases and who agree to conduct response actions pursuant to section 122(b)(1) of CERCLA. EPA believes that both mixed-funding claims and claims that are authorized by CERCLA section 111(a)(2) can be effectively regulated under a single rulemaking and that the proposal of a separate rule for mixed-funding claims is neither necessary nor would it be an efficient use of Agency resources.

In addition, EPA disagrees that an applicant should not be required to provide or include information in the application for preauthorization on the identity of any known PRP, including the applicant and persons who may have received special or general notice letters from the Agency. Section 307.22(b)(3) of the RCP requires applicants to provide the identity of any such person. This requirement applies to all requests for preauthorization, by both PRP and non-PRP applicants. The emphasis of this requirement concerns applicants identifying any additional PRPs that are unknown to the Agency. In meeting this requirement, applicants may assist EPA in identifying and locating additional PRPs who can be brought into the negotiations to arrive at a mixed-funding settlement agreement or from whom EPA can recover the costs of the Fund-financed portion of the preauthorized response action. Rather than requiring an applicant to determine whether EPA has sent special or general notice letters to all parties on the applicant's list of PRPs, the Agency is requesting that the applicant provide a complete list of PRPs. In order to clarify the intended purpose of the requirement, EPA has modified the requirement to stress that the applicant must identify any known potentially responsible parties.

Final Rule

Section 307.22(b)(3) is modified as follows:

> "The identity of any potentially responsible parties known to the applicant, (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;"

Comment

One commenter recommended that EPA should not rule out the preauthorization of an RI/FS, even in a situation where no agreement has been reached with the PRP concerning the PRP conducting the final response action. The commenter concluded that the legislative history of CERCLA makes it clear that mixed funding is appropriate for conducting an RI/FS, even though there is no guarantee that the PRP will conduct the response action. The commenter also noted that the use of a mixed-funding agreement for performing an RI/FS would be useful because it would establish an early precedent of cooperation between EPA and the PRP, while, at the same time, expediting the preliminary stages of the cleanup.

Response

EPA wishes to clarify that it has not ruled out the preauthorization of an RI/FS to be conducted by a PRP under a mixed-funding settlement. As noted by another commenter, in fiscal year 1989, the Agency preauthorized an RI/FS on the technical merits of a single study of the ground water at three contiguous sites in Tampa, Florida. It is Agency policy, however, that preauthorization of an RI/FS in the context of a mixed-funding agreement is generally not available unless the PRP agrees to undertake any response action that EPA may subsequently determine is necessary. This is because EPA has concluded that it would be an inefficient use of Agency resources to negotiate settlement agreements that are limited in scope to RI/FSs. In addition, there is generally insufficient information available to both a potential applicant and the Agency during the early stages of RI/FS negotiation to evaluate fully the relative merits of a mixed-funding agreement.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

A commenter recommended that the preauthorization provision in § 307.22(f)(3) requiring an applicant to obtain the assurance of State cooperation be amended to require that the PRP need only establish that he has made a "good faith" effort to obtain such an assurance of cooperation. The commenter stressed that under the proposed rule, a State's refusal to cooperate for various reasons could significantly delay or even imperil a settlement and cleanup. The commenter stated that the Agency should not expand the authorities concerning States' role in Superfund response actions that are carefully established by statute and should not provide the States with what is tantamount to veto power over all mixed-funding settlements by requiring a PRP to assure State cooperation as a condition of preauthorization.

Response

While the Agency believes that its intent is clear when § 307.22(f)(3) is read in conjunction with the instructions for the Application for Preauthorization, EPA will clarify the requirement concerning the assurance of State and Indian Tribe cooperation. Sections 104(c)(2) and 126(a) of CERCLA provide that EPA will consult with affected States or Indian Tribes before determining the appropriate remedial action to be taken at a site pursuant to section 104. Preauthorized response actions are not response actions under section 104 of CERCLA. However, as a matter of policy, the Agency, or the applicant, will seek to coordinate preauthorized response actions with the appropriate State. In the preamble to the proposed rule (at 54 FR 37903), the Agency stated that "the applicant seeking preauthorization of a remedial action is *encouraged*, at the time the application for preauthorization is filed, to obtain a letter signed by the designated State or Indian Tribe hazardous waste official that: (1) concurs with the proposed action; and (2) assures the cooperation of the State or Indian Tribe in the proposed action." (Emphasis added). The preamble also stated that "If the applicant does not supply a letter from the State or Indian Tribe official, documentation must be supplied that *every reasonable effort* was made to obtain the cooperation of the State or Indian Tribe." (Emphasis added).

The submission of a letter by an applicant will minimize or eliminate entirely the time required by EPA for coordination and consultation with States or Indian Tribes. The absence of this letter, however, will not be used as the basis for denying preauthorization to an applicant as long as documentation is supplied that indicates that "every reasonable effort" was made to obtain the cooperation of the State or Indian Tribe. Consequently, the proposed rule does not provide States or Indian Tribes with what is tantamount to veto power over all mixed-funding settlements.

Final Rule

Section 307.22(f)(3) is modified and will read as follows:

> "Documentation of reasonable effort to obtain the cooperation of the State or Indian Tribe;"

Comment

One commenter suggested that the proposed policy stipulating that it is not appropriate to preauthorize a response action unless long-term operation and maintenance (O&M) will be undertaken and/or paid for by a party other than EPA is not prudent and is not required by CERCLA. The commenter stated that there is no reason to arbitrarily limit mixed-funding settlements to capital costs or to require a settling PRP to provide assurance of long-term O&M expenses. Instead, the issue of O&M expenses is better left for resolution through negotiation in an appropriate Consent Decree.

Response

EPA does not agree with this commenter. It is true that the provision concerning O&M is not specifically required by CERCLA. However, it is EPA policy, as stated in "Evaluating

Mixed-Funding Settlements Under CERCLA," 53 FR 8279, March 14, 1988, that the Agency will not pay for O&M costs necessary to maintain the effectiveness of a response measure following its completion under a mixed-funding settlement. The Agency does not believe it is appropriate to preauthorize a response action under a mixed-funding settlement that provides for the payment of O&M costs by EPA because the Agency would not utilize Fund monies for these costs under a CERCLA section 104 response action that is financed from the Fund.

Moreover, it is important to note that it is the PRP, not EPA, who remains legally responsible and accountable for the continued success of the response action. The reason for authorizing a PRP to conduct an RD/RA is to place the responsibility for a successful cleanup of hazardous waste disposal sites on those who are liable. The Agency policy not to preauthorize a remedial action unless the PRP assumes the long-term O&M costs is designed to conserve the limited resources of the Fund.

The final rule provides examples of how claimants may finance O&M costs. A PRP or other claimant may satisfy long-term O&M activities, if applicable, in one of two ways: (1) By posting a bond or other financial assurance, satisfactory to EPA, which is sufficient in amount to cover the costs of necessary long-term O&M; or (2) by submitting a written assurance from the State to provide for long-term O&M of the response action. The mixed-funding guidance (at 53 FR 8284) cited above also notes that "The Agency will generally resort to enforcement actions rather than committing Fund money for cleanup at the site when both the PRPs and the State refuse to be responsible for O&M."

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Section 307.22(i) of the proposed rule provides that if a preauthorized response action requires modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be submitted by the PRP and approved by EPA before different or additional response activities can be undertaken at the site, if such activities are to be eligible for compensation from the Fund. One commenter maintained that this requirement is wasteful and unnecessary in mixed-funding situations. The commenter noted that if extra response work under a mixed-funding agreement is to be conducted, it is likely that EPA, in its oversight capacity, will have requested or approved the work, and the PRP should not be obligated to obtain approval for what the Agency has initiated or already has concluded is necessary.

Response

EPA does not agree with this commenter. In accordance with section 111(a)(2) of CERCLA and § 300.700(d) of the revised NCP, all response actions and costs must be approved in advance by EPA through the preauthorization process in order for a claim to be submitted against the Fund. This requirement avoids ambiguity as to whether particular activities are within the scope of the preauthorized response action, which protects the interests of both the potential claimant and the Agency. Without advance approval of response activities by EPA, a potential claimant has no assurance that the costs will be deemed eligible. The revised application for preauthorization needs, therefore, to reflect the specific changes concerning the modified response activities or the additional response costs, and the Agency will consider these changes only.

EPA's involvement in the response activities at a site, through the focused approach to oversight, will tend to minimize the time required for the approval of the activities and will, therefore, provide an indication of whether the additional work is appropriate. However, EPA's oversight does not involve constant monitoring of whether additional amounts of money are available in the Fund.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.23 EPA's Review of Preauthorization Applications

Comment

A number of commenters expressed concern about the time required for EPA's review of an application for preauthorization. One commenter suggested that the proposed rule would benefit from setting a time limit for EPA's review of a completed application. This commenter also suggested that the Agency identify a timeframe in which a PDD would be prepared. Another commenter noted that as part of its management review of the Superfund program, EPA stated that it will establish a single, integrated timeline for both enforcement and Fund-financed activities. Thus, EPA indicated that it will establish deadlines for completing negotiations, and follow-up with enforcement or response actions. At the same time, the management review acknowledged that the preparation of PDDs by EPA Headquarters has already led to delays. This commenter expressed concern that these conflicting constraints "may mean that mixed-funding settlement offers will be caught in a time squeeze and will not be accepted by the Agency."

Response

The Agency does not believe that it is advisable to include time limits within the regulatory language of the RCP for the review and evaluation of applications for preauthorization or for the preparation of a PDD. The time required by the Agency to review and evaluate an application for preauthorization and to prepare the corresponding PDD will fluctuate because of the wide range of conditions and response activities for which applicants will be seeking preauthorization. EPA has not included these time limits in the proposed or final rule because the Agency believes that it is important to thoroughly review each application for preauthorization and to carefully prepare the corresponding PDD, rather than to attempt to complete these activities under a self-imposed regulatory deadline.

However, EPA has set an internal goal of 45 days for the review and approval of an application for preauthorization under a mixed-funding settlement ("Evaluating Mixed-Funding Settlements Under CERCLA," 53 FR 8279, at page 8282, March 14, 1988). In all cases, the Agency will attempt to review applications for preauthorization and to prepare PDDs in as expeditious a manner as possible.

The Agency would also like to stress the importance of receiving complete and accurate information from applicants submitting applications for preauthorization. When reviewing an application for preauthorization, a lack of complete and accurate information can lengthen unnecessarily the time required by EPA to reach a decision concerning preauthorization. An applicant should be careful to meet the requirements contained in the RCP and to follow the corresponding guidance issued by the Agency when he is preparing an application for preauthorization.

In addition, mixed-funding settlements should not be denied by EPA because of time conflicts between any deadlines set for the completion of negotiations or follow-up enforcement actions and the time required by the Agency to prepare a PDD. Section 122(e) of CERCLA provides that EPA may not commence an action under sections 104(a) or 106 of CERCLA for 120 days after providing notice to a PRP. A PRP has 60 days from the date of receipt of such notice to submit a good-faith offer to EPA. The time required by EPA to prepare a PDD will be significantly less than this time period. Also, as applicants and EPA gain more experience with mixed-funding, preparation of the PDD should not delay the settlement process.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter stated that even after an application for preauthorization is filed, the temptation for the Agency to deny preauthorization will be great because there are more timely ways to address the hazardous waste problems at sites and because there is such competition for Fund money. The commenter suggested that in the case of a legitimate application, this temptation must be resisted and the Agency must be required to reasonably process and approve the request for preauthorization and associated claim.

Response

In response to this comment, the Agency believes that a distinction needs to be made between an application for preauthorization that is submitted by a non-PRP and an application that is submitted by a PRP under a mixed-funding agreement. With regard to an application submitted by a non-PRP, the Agency will first consider an enforcement action against a PRP or a Fund-financed CERCLA section 104 action conducted by trained response action personnel. In evaluating a non-PRP application for preauthorization, EPA will consider the time required to implement either one of these options versus the time required to determine the capability of the applicant to undertake the proposed response activities. EPA will preauthorize a response action by a non-PRP only when it determines that such an option is the best available means to address a release at a site.

With regard to an application for preauthorization that is submitted by a PRP under a mixed-funding agreement, it is EPA's stated policy that the Agency will utilize a mixed-funding settlement, if appropriate, to settle for less than 100 percent of response costs. Pursuant to CERCLA section 122(a), EPA will consider whether: (1) Mixed funding is in the public interest for the NPL site; (2) the response action can be carried out consistent with the NCP; (3) a mixed-funding agreement will expedite the remedial action; and (4) a mixed-funding agreement will minimize the need for litigation. EPA will generally accomplish preauthorization through a mixed-funding settlement within the timeframe for settlements established by statute and EPA policy.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

A commenter noted that there does not appear to be an appeal process available to address the denial of preauthorization upon the Agency's failure to issue a PDD. The commenter maintained that this appeal process must be allowed.

Response

The RCP does not provide for an appeal process to address the denial of preauthorization because EPA's preauthorization of a proposed response action pursuant to CERCLA is entirely discretionary. CERCLA section 122(b)(2) provides that decisions regarding the availability of Fund financing for mixed-funding agreements are not subject to judicial review under CERCLA section 122(d).

The Agency will grant preauthorization of a response action through the preauthorization process only if the response action is of sufficient priority to merit Fund expenditure. Section 300.700(d)(3) of the revised NCP provides that: "All applications for preauthorization will be reviewed to determine whether the request should receive priority for funding. EPA, *in its discretion*, may grant preauthorization of a claim." (Emphasis added).

Although there is no formal process for appealing the Agency's decision to preauthorize a response action, under certain circumstances, EPA may reconsider an application. For example, § 307.23(d) of the RCP provides that if an application for preauthorization was denied because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications for or uses of the Fund, the applicant may resubmit the application in another fiscal year. Also, if an applicant was denied preauthorization because of deficiencies in the application for preauthorization, the applicant may attempt to correct the deficiencies and resubmit the revised application to the Agency.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter argued that for a number of reasons, the proposed rule should not require potential claimants who are conducting response actions under mixed-funding settlements to strictly adhere to the Federal Government procurement requirements relating to allowable costs (i.e., 48 CFR part 31, subparts 31.1 and 31.2). First, the commenter noted that cleanups by PRPs often do not involve government contractors and, therefore, the benefits of these requirements normally associated with government contract work do not apply. Nevertheless, under the proposed rule, PRPs and private contractors involved in mixed-funding cleanups must comply with government procurement cost principles that do not permit, or substantially limit, the recovery of many types of ordinary private business costs. Second, the commenter noted that compliance with government procurement cost principles will, in fact, increase the cost of mixed-funding cleanups because of the additional general and administrative expenses incurred by the PRP. Finally, the commenter stated that the concept of allowability is not relevant to most claims for remedial action costs, because most contracts for remedial construction will be awarded using sealed bidding procedures and will result, therefore, in firm fixed-price arrangements. The commenter noted that under this type of contract arrangement, reimbursement of construction contractors will be based on the contract price, rather than on the actual costs incurred.

In addition, this commenter noted that the proposed rule requires that to qualify for mixed-funding settlements, PRPs must ensure, to the maximum extent practicable, open and free competition in the selection of a private contractor to conduct the cleanup; must provide administrative procedures for the settlement of bid protests, claims disputes, and other related procurement matters; and must establish a subcontract administration system. In conclusion, the commenter recommended that the final rule should substantially streamline any required procurement procedures and tailor them to the necessity of conducting private hazardous waste cleanups quickly and efficiently.

Similarly, another commenter noted that it should be remembered that a PRP submitting claims is not a government contractor, and should not be required to adhere to the same level of detailed procedural and paperwork requirements as are government contractors. This commenter suggested that Federal procurement standards should be applied, if at all, in a flexible manner that seeks to achieve the "spirit," but not the letter, of the Federal Acquisition Regulations.

Response

EPA agrees that PRPs conducting response actions under mixed-funding settlements should not be required to adhere strictly to the Federal procurement requirements relating to allowable costs. The Agency would like to stress that the proposed RCP did not propose this requirement, nor does the final rule contain such a requirement.

As a guide to applicants, the rule requires that applicants describe proposed procurement procedures that are consistent with the substantive provisions and limitations, or the "spirit," of appropriate Federal procurement requirements (i.e., 40 CFR part 35, subpart O, and 48 CFR part 31, subparts 31.1 and 31.2).

The RCP holds claimants to four major principles:

(1) Procurement transactions must provide, to the maximum extent practicable, open and free competition in selecting contractors, must not unduly restrict or eliminate competition, and, where applicable, must select the lowest responsive, responsible bidder; (2) contracts may be awarded to persons on the List of Parties Excluded from Federal Procurement or Non-Procurement only with EPA's prior approval; (3) all fixed-price contracts for construction must include a "differing site conditions" clause, unless EPA waives the requirement; and (4) procurement practices must be consistent with sound business judgment and good administrative practices.

EPA will use Federal cost principles as a guide in reviewing and adjusting claims. These principles should also provide some assurances to potential claimants as to which and how much of the costs the Agency will reimburse. Applying appropriate Federal cost principles to the procurement of goods and services during the course of response actions under mixed-funding settlements will not impair or prohibit quick and efficient cleanups by private parties. The applicant should, therefore, refer to Office of Management and Budget (OMB) Circular A–122 (for non-profit organizations); OMB Circular A–87 (for States and political subdivisions): and 48 CFR part 31, subparts 31.1 and 31.2 (for profit-making organizations) because the Agency will use these documents as a guide in determining whether costs are "eligible."

The Agency would like to clarify the preauthorization requirement concerning procedures for the settlement of bid protests, claims disputes, and other related procurement matters. The RCP does not require that applicants provide detailed procedures for the settlement of bid protests, claims disputes, and other related procurement matters that are in compliance, or even consistent, with Federal procurement requirements. EPA recognizes that the Federal requirements are complicated and that it would be burdensome for potential claimants to attempt to adhere to these requirements while conducting a private sector cleanup. The RCP does, however, require that applicants provide a description of the process they will use to settle bid protests, claims disputes, and other related procurement matters. The only requirement regarding this process is that it be a fair and adequate process that is consistent with sound business judgment and good administrative practice.

In addition, EPA has developed and issued guidance on procurement procedures and other management practices that an applicant may adopt to help ensure that costs are eligible for reimbursement from the Fund ("Procurement Under Preauthorization/Mixed-Funding," OSWER Directive 9225.1–01, April 1989). This guidance should be valuable in assisting an applicant in developing procurement procedures that are not inconsistent with appropriate Federal cost principles.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter discussed the proposed requirement that claims be submitted to EPA only for completed, identifiable phases of a response action. The commenter stated that this requirement is in conflict with an existing PDD, which allows for the filing of claims at specified time intervals after certain expenditure levels are met. This commenter maintained that this requirement seems to suggest that the preauthorization process will be encumbered by the need to negotiate the identity of those "preauthorized phases" at which claims for reimbursement may be submitted. The commenter suggested that the proposed rule be revised to permit the submission of claims at specified time intervals and for amounts that may be appropriate in view of the project requirements.

Other commenters stated that EPA should re-evaluate the provision contained in the proposed rule that the Agency may require a cleanup commitment for an entire site or the completion of all site work before reimbursement is provided for the remediation of a particular operable unit. One commenter noted that with most construction projects, interim payments prior to the completion of a total activity are necessary in order to finance the completion of an entire operation. Any requirement for a commitment to clean up an entire site on a particular timeline would not promote the public policy goal of cleaning up the high risk areas of a site prior to cleaning up the low risk areas. Another commenter maintained that the deferral of claims submission and payment will certainly decrease the financial value and incentive for PRPs to settle that is created by mixed-funding settlements. These commenters suggested an approach under which the Agency would preauthorize and pay claims upon the completion of any milestones, authorized phases, or operable units agreed upon in the Consent Decree.

Response

The Agency would like to reiterate that PDDs issued before the effective date of the final RCP will remain in full force and effect. Consequently, there will not be any conflict between procedures contained in the rule and previously issued PDDs, including procedures concerning the timing of when claims may be submitted. (See RCP section 307.11(b).)

EPA does not agree that the preauthorization process will become encumbered by the need to negotiate the identity of those "preauthorized phases" at which claims for reimbursement may be submitted. Under the proposed rule, the Agency may preauthorize an entire response action, a stage of a response action (e.g., RD/RA), an operable unit, or a stage of an operable unit. The PDD, therefore, may provide that claims shall be paid from the Fund in the same manner. However, the Agency may also require a commitment to finish site cleanup, or a phase of site cleanup, prior to reimbursement. The purpose of this requirement is to ensure that a project, once initiated, is completed in a timely manner.

Reimbursements by EPA are based upon the completion of discrete, identifiable segments of response activities. In response to this comment, the Agency is revising the RCP, the application for preauthorization, and the claim form to specifically encourage applicants to propose reimbursement based upon cash-flow considerations, completion of phases of work, or discrete activities. The goal of an applicant should be to balance major capital expenditures and the completion of discrete tasks against the number and frequency of claims.

Although EPA has reserved the right to condition the payment of a claim on a commitment to clean up an entire site or on the completion of all site work, all applications that have been preauthorized to date authorize the submission of multiple claims. In addition, the rule contemplates the submission of multiple claims (e.g., see § 307.30(e) regarding the presentation of subsequent claims to non-settling PRPs). As stated above, the RCP, the application for preauthorization, and the claim form have been revised to facilitate the negotiation of Consent Decree milestones to be completed prior to the submission of a claim.

Final Rule

Section 307.22 is modified as follows:

1. Section 307.22(b)(9) is redesignated as § 307.22(b)(10) and a new § 307.22(b)(9) is added and will read as follows:

> "Proposed schedule for the submission of claims;".

2. The section has been renumbered accordingly.

Section 307.23(b)(17) is modified as follows:

> "Whether the proposed schedule for filing a claim(s) is based upon the completion of the project, an operable unit, or a discrete phase of the response work."

The Application for Preauthorization is modified as follows:

Section VIII of the application is redesignated as section VIII.A. and a new section VIII.B. is added that requires the applicant to provide a proposed schedule for the submission of claims. The instructions for this new section encourage applicants to propose reimbursement based upon cash-flow considerations and to balance major capital expenditures and the completion of discrete tasks against the number and frequency of claims.

The claim form is modified as follows:

Sections III and IV.A. of the claim form are modified to use the term "preauthorized phase" instead of "operable unit."

Comment

A commenter disagreed with the preauthorization requirement in § 307.23(e) that requires an applicant to obtain the necessary site access for EPA or the lead agency. The commenter noted that under CERCLA, it is EPA, not the PRP, that has the authority to compel access to a site in order to conduct a response action. The commenter also noted that recent additions to the revised NCP confirm EPA's authority to obtain site access on behalf of a PRP who is performing work under a settlement. The commenter stated that by requiring the PRP to obtain access at the risk of losing preauthorization for a mixed-funding agreement, the proposed rule fails to acknowledge EPA's central role on questions of site access. This commenter suggested, therefore, that this requirement be eliminated for mixed-funding settlements.

Response

EPA believes that this commenter has misinterpreted the requirement concerning site access. It is true that, under CERCLA sections 104(e)(5) and (6), EPA has the legal authority to compel access to a site in order to conduct a response action. Once EPA has secured or the owner has provided such access, the PRP must *assure* EPA access at all times to the site and any property to which access is required for oversight and monitoring of implementation of the Consent Decree. Section 307.23(e) of the rule provides that "The applicant as a condition of preauthorization shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring." (Emphasis added). With the Agency's focused approach to oversight of a PRP-conducted response action, the Oversight Official is a representative of EPA who reports to the Remedial Project Manager (RPM) and supports the RPM in monitoring PRP compliance with the Consent Decree, the plans and specifications, and the Construction Quality Assurance and Quality Control Plans. The responsibilities that the RPM may choose to assign to the Oversight Official include:

- Making on-site observations of the work in progress to determine if the work is generally proceeding in accordance with the plans and specifications, and the Construction Quality Assurance and Quality Control Plans; and
- Immediately notifying the authorized representative of the Remedial Action Contractor or PRP of any observed activities presenting imminent and substantial endangerment to the public health or welfare or the environment, and following up the notification with an appraisal of the situation to the RPM.

In order to fulfill these responsibilities, the Oversight Official must be assured of access to the site, and this assurance of access must be given to the Agency at the time that the application for preauthorization is accepted by EPA and the Consent Decree is approved by the Federal district court. The potential claimant is required to provide the Oversight Official with sufficient access to the site so that EPA may fulfill its oversight and monitoring role at the site.

In addition, during the processing of a response claim, EPA will often require access to records that support the claim. Such records are often located within the physical boundaries of the site.

Final Rule

EPA is promulgating the final rule as proposed.

Subpart C—Procedures for Filing and Processing Response Claims

Section 307.30 Requesting Payment from the Potentially Responsible Party

Comment

One commenter stated that the proposed provision in § 307.30(a) that requires a claimant to present a claim to any known PRPs before submitting the claim against the Fund does not make much sense in the context of mixed-funding settlements. This commenter explained that, in many cases, the Agency decides to enter a mixed-funding settlement to pay for the recalcitrant PRPs' share and then to sue the recalcitrant PRPs to recoup its expenditures. Thus, if recalcitrant PRPs are unwilling to join a settlement with EPA, they will most certainly be unwilling to settle with other PRPs later. Therefore, the commenter expressed the opinion that this requirement is generally futile in mixed-funding situations.

Response

The Agency does not agree with this commenter. EPA will utilize the procedures in the rule, which are issued under the authority of CERCLA section 112, to implement its authority to reimburse from the Fund parties who are potentially liable for a release and who agree to conduct a response action pursuant to a mixed-funding agreement under CERCLA section 122(b). CERCLA section 112(a) provides that no claim may be asserted against the Fund unless it has first been presented to any known PRPs. After a claim against non-settling PRPs remains unsatisfied for 60 days after presentation to the non-settling PRPs, the claimant may present the claim to the Fund for payment. The claimant should submit to EPA with his claim a copy of any reply or correspondence received from the non-settling PRPs. In addition, a potential claimant may become aware of other PRPs during the course of a response action or the financial capability of PRPs may change, thus altering the probability of recovery.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

Another commenter encouraged the Agency to clarify the process in

§ 307.30(e) under which a claimant may obtain a formal agreement from EPA concerning the requirement that a claimant must first present a claim to any known PRPs. The proposed rule acknowledged that the repeated submission of a claim to recalcitrant PRPs would generally constitute a futile act. The commenter noted that neither the proposed rule nor the proposed claim form indicate how the claimant is to obtain the formal agreement from EPA under which the claimant does not have to repeat the presentation of claims to recalcitrant PRPs. This commenter suggested that the process be outlined in the final rule, and that it would be useful to specify a time period after which a claimant is entitled to consider the lack of response by the Agency to be a denial of the claim.

Response

EPA does not agree that this process should be codified in the RCP. The inclusion of more detailed procedures in the rule would tend to limit the flexibility of the parties to make such determinations. In response to this comment, however, EPA is revising the claim form and has revised its mixed-funding guidance (cited above) to advise a claimant that he may request a formal agreement from EPA pursuant to § 307.30(e) concerning the presentation of any subsequent claims at the time a claim is presented to any known non-settling PRPs. Thus, if the claimant intends to file separate claims for eligible costs incurred for discrete portions of the RD/RA, he will have to present each of those claims to the other PRPs. In such instances, if the PRP to whom the first claim was presented denied liability, refused to settle, or ignored the request for payment, and EPA agrees that there is no reason to believe that the PRP will honor subsequent claims, the denial of the first claim will be considered to be a denial of any subsequent claims. Therefore, the claimant may seek EPA's agreement at any time a claim is presented. The claimant will be advised of EPA's decision when the claimant is notified in writing regarding the award or denial of the claim.

Final Rule

The claim form is modified as follows:

The instructions for section II.B. of the claim form have been modified to inform the claimant that he may seek EPA's agreement (concerning the presentation of subsequent claims to PRPs) at any time a claim is presented. The claimant will be advised of EPA's decisions when the claimant is notified in writing regarding the award or denial of the claim.

Section 307.32 Verification, Award, and Administrative Hearings

Comment

A commenter raised a number of issues concerning the evaluation and award of response claims. This commenter stated that it is essential that the claims review process be an expeditious, fair, and reasonable one, in which unnecessary "nit picking" is avoided both in determining whether a claim is technically complete (i.e., "perfected") and whether particular costs should be paid. The commenter noted that a balance must be achieved between avoiding wasteful payment of unnecessary costs and erecting an unduly bureaucratic, stringent, and costly claims review process that wastes the resources of both EPA and the PRP.

The commenter also expressed concern that, under the claims review process, EPA employees or contractors who will review the settling PRP's claims may be different from: (1) The EPA employees with whom the mixed-funding settlement and scope of work were negotiated; (2) the EPA employees who oversaw the performance of the remedial action under the Consent Decree; and (3) the EPA employees with whom the PDD was negotiated. The commenter stated that the former may question or disallow reimbursement for work directed or approved by the latter, with potentially unfair results. This commenter maintained, therefore, that it is important that the particular response actions and the resulting costs that are directed or approved by EPA Regional technical personnel are similarly approved by those responsible for reviewing claims for reimbursement of such costs.

Response

The Agency concurs with the commenter's statement that the claims review process should be expeditious and fair, and must not waste the resources of EPA or PRPs. However, the Agency must also comply with section 111(a)(2) of CERCLA and reimburse only claims for "necessary response costs" in "carrying out the NCP." In addition, EPA must fulfill its responsibility as manager of the Fund by ensuring that Fund monies are expended for appropriate purposes consistent with the scope of the preauthorized response action.

EPA cannot guarantee that the Agency personnel involved in the negotiations will also process the response claims. The claims procedures require the contributions of the Office of Regional Counsel, the Regional program office, and a Claims Adjuster. Once a claim is "perfected," the Agency will determine whether the response action was consistent with the terms and conditions of the Consent Decree; whether the response action was carried out in a manner consistent with the NCP and with the terms and conditions of the PDD; and whether the costs of the response action are otherwise "eligible."

Moreover, the Agency has developed internal guidelines concerning the negotiation of mixed-funding settlements, and the evaluation and award of claims, that will ensure that the process is carried out in a consistent and fair manner throughout each stage on a national level. As provided in the RCP at § 307.32(f), if a potential claimant performs the preauthorized response activities in accordance with the terms and conditions contained in the Consent Decree and the PDD, reimbursement of the costs of these activities will be awarded by the Agency from the Fund. EPA has sought to minimize chance of arbitrary Agency decisions through the preauthorization application process, the terms and conditions of PDDs, guidance that has been developed for all parties, and this rule.

Final Rule

EPA is promulgating the final rule as proposed.

Comment

One commenter maintained that the proposed provision in § 307.32(g) that would deny reimbursement of a claim whenever a PRP claimant compromises and releases his claim against other PRPs without EPA's approval could inhibit the settlement of third-party disputes at Superfund sites. This commenter argued that by adding the requirement of EPA approval, the Agency is interjecting itself into the process of settling private claims and that this requirement will have the adverse effect of slowing down the settlement process and potentially inhibiting such settlements. The commenter recommended that the proposed rule should clarify that EPA approval of a private settlement among PRPs should only be required when the settlement purports to release EPA's own claims.

Response

The Agency must approve a release of liability given to a PRP by a potential claimant only if the release purports to release anyone from liability to the United States. PRPs, of course, may settle their own liability to each other on their own terms, at any time. However, no PRP has the authority to release anyone from liability to the United States.

Only when EPA pays a claim to a PRP does the Agency acquire the right to recover those costs that have been paid. Section 112(c)(1) of CERCLA provides that payment of any claim shall be subject to the claimant subrogating to the United States all rights of the claimant to the extent that the claimant's response costs are compensated from the Fund.

The Agency is revising the RCP to clarify this provision.

Final Rule

Section 307.32(g) is modified as follows:

> "No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance."

Comment

Several commenters urged EPA to set time limits or goals for the evaluation and award of response claims. One commenter suggested that the Agency specify a time period within which EPA will review and reach a determination on a perfected claim. The commenter believed that 30 to 45 days is a reasonable period of time for this activity. This commenter also noted that there is no apparent reason why it should take EPA 50 days from the time it makes a determination to award a claim to the time it pays the claim. Another commenter maintained that internal responsiveness guidelines are necessary, especially for the first claims that are received, in order to demonstrate that the claims procedures can provide timely decisions for those parties willing to initiate site cleanups on their own.

Response

The time required to review a response claim will vary due to the wide range of site conditions and response activities that must be analyzed during the claims review process. Once a claim is "perfected," the Agency will conduct a detailed review and will award the claim as expeditiously as possible. However, § 307.32(i) of the rule provides that for claims submitted under mixed-funding agreements, once the claim has been "perfected," the Agency must pay the amount due within 60 days or interest on that amount will begin to accrue. However, EPA may request additional information during the course of a detailed review if it is determined that such information is necessary to properly evaluate the claim. In this case, the 60-day time period will be suspended from the date the Agency requests the information until the date the requested information is received.

EPA has modified section 307.32 to make clear the major time limits specified in the RCP, including those for the payment of interest on some claims, and the impact of an appeal on the payment of a disputed amount.

Final Rule

Section 307.32 is modified as follows:

1. Section 307.32(i)(2) is modified as follows:

> "Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, the period as stated in paragraph (1) of this section or the accrual of interest is suspended from the date the Agency requests the information from the claimant until the date the requested information is received."

2. Section 307.32(i)(3) is redesignated as § 307.32(i)(4) and a new § 307.32(i)(3) is added to the rule as follows:

> "Where a claim is denied in whole or in part by EPA, and the claimant requests an administrative hearing in accordance with paragraph (o) of this section, interest on the disputed amount begins to accrue 50 days after an award by the Administrative Law Judge, unless an appeal is filed. If either party files an appeal with a Federal district court, interest will not accrue until 20 days after the final judicial decision."

3.The section has been renumbered accordingly.

Comment

Several commenters stated that the proposed rule does not address the issue of whether EPA can and/or will reimburse PRPs for interest on the Fund-share portion of mixed-funding costs for the period of time that those monies may have been advanced by the PRP (e.g., to pay construction contractors). These commenters stressed that a claimant loses investment opportunities by funding remediation costs that will eventually be borne by the Federal Government and, in essence, is lending the Federal Government money while waiting to be paid from the Fund. These commenters urged EPA to revise the rule to provide that interest may begin to accrue at the time costs allocable to the Fund are paid by the claimant.

Response

EPA disagrees with these commenters. Pursuant to section 122(b)(1) of CERCLA, mixed-funding agreements may provide that EPA " * * * will reimburse the parties to the agreement from the Fund, with interest, for certain costs of actions under the agreement * * *." The statute, as well as the legislative history, however, does not specify a method for the calculation of this interest. EPA evaluated several different alternatives for calculating this interest. In its role as manager of the Fund, the Agency has determined that interest will accrue on amounts due to PRPs if EPA fails to pay the amount due within 60 days of perfection of the claim as set forth in § 307.32(i) of the RCP. In order to protect finite fund resources, the Agency does not believe that it is an appropriate or efficient use of Fund resources to allow that interest will begin to accrue at the time costs allocable to the Fund are paid by the claimant.

Final Rule

EPA is amending the rule at § 307.32(i)(2) and (3) to add language concerning the payment of interest on claims to PRPs under mixed-funding settlements. (See discussion above.)

Subpart D—Payments and Subrogation

Section 307.41 Subrogation of Claimant's Rights to the Fund

Comment

One commenter discussed the proposed provision in § 307.41(b) that requires a PRP to assist EPA in cost-recovery actions against other non-settling PRPs. The commenter noted that the costs of such assistance may be substantial, and that such costs can be recovered by the Agency as part of ordinary "response costs" from the non-settling PRPs. Therefore, the commenter urged that these cost-recovery assistance costs should be paid for by the Fund, rather than by the PRP who cooperated with EPA.

Response

The Agency does not agree that these costs should be paid for by the Fund as a general rule. In most cases, EPA will initiate cost-recovery actions against the non-settling PRPs and assistance from the claimant will be vital to these cost-recovery actions. Assistance from the claimant, contractors, and subcontractors may include the furnishing of personnel, the testimony of witnesses, or providing documents and any other materials needed to assist EPA in the cost-recovery action. In particular, the claimant's contractors and subcontractors must be available to testify in all proceedings relating to EPA's cost-recovery efforts.

EPA does not believe that it is an appropriate use of Fund resources to pay for the cost-recovery assistance activities of a claimant under a mixed-funding settlement because the PRP would be responsible for these costs, regardless of whether or not he were involved in a mixed-funding settlement. In addition, the claimant may recover these costs from the non-settling PRPs.

However, in certain situations, expenses incurred by the claimant as a result of assistance in cost-recovery actions initiated by the United States will be reimbursed in accordance with applicable procedures (i.e., 28 U.S.C.

1821 as implemented by 28 CFR part 21, which addresses witness fees) or court rules governing appearance fees and travel expenses.

Final Rule

EPA is promulgating the final rule as proposed.

Section 307.42 Fund's Obligation in the Event of Failure of Remedial Actions Taken Pursuant to CERCLA Section 122

Comment

Several commenters supported the concept contained in § 307.42(a) that in the event of the failure of a preauthorized remedial action, the Fund should be available to pay the same proportion of the new remedial action as was applied to the original action. These commenters stated, however, that the regulatory language should be modified to be consistent with the language of CERCLA section 122(b)(4), which provides that the Fund "shall contribute" (not "may contribute") proportionally to the further cleanup. One commenter also stated that the submission of a full new application for preauthorization should not be necessary in such instances, and that the existing PDD should simply be amended to authorize the new work.

Response

The Agency agrees that the regulatory language concerning cost share for the failure of a preauthorized remedial action should be changed to reflect the statutory language of CERCLA section 122(b)(4). Therefore, § 307.42(a) of the final rule has been changed to read: " * * * the Fund *shall be* available for the costs of any new cleanup required * * *." (Emphasis added.)

In the event of a failure of a preauthorized remedial action, any modifications to the preauthorized remedial action or additional response costs that would be included under the new cleanup would have to be preauthorized by EPA. These modifications or additional costs must be preauthorized by the Agency through a revised application for preauthorization. This application for preauthorization, however, would only have to reflect revisions to the relevant parts of the application. EPA has determined that this requirement is valuable to both EPA and the applicant since it ensures that there is written documentation of the need for these modifications and, if approved, the Agency's commitment that the costs will be reimbursed if the response action is conducted consistent with the NCP, the Consent Decree, and the new PDD.

Final Rule

Section 307.42(a) is modified as follows:

> "In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund shall be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action."

Appendix A—Application for Preauthorization of a CERCLA Response Action

Comment

One commenter endorsed the prompt publication of the application for preauthorization. This commenter stated that the application is a useful reference document that helps to clarify the application process.

Response

Prior to the promulgation of the final RCP, PRPs have been submitting preauthorization requests to the Agency for approval of proposed response actions under mixed-funding settlement agreements. EPA has been reviewing these preauthorization requests on a case-by-case basis. The Agency has provided these PRPs with a copy of the draft application for preauthorization as a guide for submitting a preauthorization request. However, neither the proposed nor the revised application for preauthorization is legally in effect until the effective date of this final rule.

Final Rule

EPA is promulgating the final rule as proposed. However, EPA is modifying the application for preauthorization to require an applicant to submit a proposed schedule for the submission of claims. (See discussion of § 307.23.)

Comment

One commenter expressed concern over the estimated amount of time required to complete the application for preauthorization. This commenter stated that the estimate set forth in the proposed rule is very low. The commenter also noted that the actual time that is likely to be required to complete the application, as well as the time necessary for the required approval by the Agency, may conflict with the special notice and negotiation deadlines imposed by EPA.

Response

It is difficult to estimate precisely the time required to complete the application for preauthorization because the application has not been officially used and because of the wide range of response activities for which applicants may seek to obtain preauthorization. Moreover, in light of the capabilities of an applicant, the applicant's management plan, and the hazardous waste problems unique to each site, no two applications for preauthorization are identical and, therefore, the time required to develop these applications will vary accordingly. However, the Agency agrees with the commenter that the estimate of 95 to 173 hours for completing the application for preauthorization is low. Therefore, based on its continuing response claims experience, the Agency is increasing the burden estimate for the application for preauthorization to 186 to 330 hours per response, with an average of 258 hours per response.

It should be noted that, as commenters stated elsewhere, much of the information required by the application, especially under mixed-funding settlements, will be available from existing EPA documents, such as the RI/FS, ROD, or Consent Decree. Also, the Agency has issued guidance (cited above) on the response claims process that addresses the preparation of the application for preauthorization. This guidance will assist applicants in preparing an application for preauthorization and will, consequently, reduce the amount of time necessary to complete the application.

EPA does not believe that the time necessary to complete the application for preauthorization, as well as the time required for review and approval by the Agency, will conflict with the special notice and negotiation deadlines imposed by EPA. Under the CERCLA section 122(e) special notice deadline, EPA may not commence an action under sections 104(a) or 106 of CERCLA for 120 days after providing such notice to a PRP. A PRP has 60 days from the date of receipt of such notice to submit a good-faith offer to EPA. The preauthorization process may begin only after the good-faith offer has been made by the PRP. The Agency has not imposed a deadline for the submission of a final application. In addition, EPA provides in its guidance (cited above) on evaluating mixed-funding settlements that it has set an internal goal of 45 days for the review and approval of an application for preauthorization under a mixed-funding settlement.

Final Rule

The application for preauthorization is modified to increase the burden estimate for completing the application from 95 to 173 hours per response, with an average of 134 hours per response, to an estimate of 186 to 330 hours per response, with an average of 258 hours per response.

Appendix B—Claim for CERCLA Response Action

Comment

One commenter endorsed the prompt publication of the claim form, and stated that the form is useful and helps to clarify the claims process. However, another commenter stated that although the claim form is short in length and general in scope, it consists of a number of open-ended essay questions. The commenter noted that although the form appears to give substantial flexibility to the claimant in explaining and documenting proposed response activities and estimated costs, the form also introduces considerable uncertainty as to the level of detail and extent of documentation that the Agency will require in order to find that claimed costs are adequately explained. This commenter suggested that some guidance should be given as to the amount and level of detail concerning the required information and documentation.

Response

In developing the claim form, the Agency attempted to provide substantial flexibility to claimants regarding the description and documentation of response activities and costs. EPA has developed a "Guidance Manual for Participating in the Response Claims Process: Preauthorizing PRP Remedial Designs/Remedial Actions" (cited above), which includes guidance on completing the claim form, and which specifically addresses the issue of the amount and level of detail of information the claim form requires. This guidance will be available from Agency Headquarters or from any EPA Regional Office.

The Agency is also modifying the claim form to add information requirements concerning the location of cost documentation and any other records and the identification of which Federal cost principles were used by the claimant. These additional requirements will allow EPA to review and reach a decision on submitted claims in a more timely and efficient manner.

Final Rule

The claim form is modified as follows:

1. A new section IV.F. is added to the claim form that requires the claimant to provide the name and address of the location where all cost documentation and any other records relating to the claim will be maintained.

2. A new requirement is added to sections V.B. and C. of the claim form that requires the claimant to specify which of the Federal cost principles were used and to explain the basis for the selection of that principle.

3. Additional modifications to the claim form have been made. (See the discussions of § § 307.23 and 307.30.)

III. Summary of Supporting Analyses

Proposed and final rules issued by Federal agencies are governed by several statutes and executive orders. These include Executive Order (E.O.) 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order (E.O.) No. 12291

Executive Order No. 12291 requires that regulations be classified as "major" or "non-major" for purposes of review by the Office of Management and Budget (OMB). A Regulatory Impact Analysis is required for a "major" rule. According to E.O. 12291, "major" rules are regulations that are likely to result in:

1. An annual adverse (cost) effect on the economy of $100 million or more; or

2. A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation is a "non-major" rule under Executive Order 12291 because it is unlikely to result in any of the economic impacts identified above. Therefore, the Agency has not prepared a Regulatory Impact Analysis for this regulation.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 generally requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have "significant economic impact on a substantial number of small entities." Today's rule involves reimbursement of the costs of certain parties for responding to a hazardous substance release. This is a benefit authorized by CERCLA, and does not adversely affect the private sector economy. EPA, therefore, certifies that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations, and units of government. EPA certifies that a Regulatory Flexibility Analysis is not necessary.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2050-0106.

Public reporting burden for the collection of information under the "Application for Preauthorization of a CERCLA Response Action," is estimated to vary from 186 to 330 hours per response, with an average of 258 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Public reporting burden for the collection of information under the "Claim for CERCLA Response Action," is estimated to vary from 25 to 59 hours per response, with an average of 42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimates or any other aspects of this collection of information, including suggestions for reducing the burden, to the following addresses: Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attention: Desk Officer for EPA.

List of Subjects in 40 CFR Part 307

Administrative practices and procedures, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: December 19, 1992.

William K. Reilly,

Administrator.

Appendix to Preamble

Forms applicable to the CERCLA response claims process, EPA Form 2075-3 and EPA Form 2075-4, may be obtained from EPA Headquarters, CERCLA Response Claims, Office of Emergency and Remedial Response, (5203 G) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Forms may also be obtained from the EPA regional offices at these addresses:

(a) Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203

(b) Region II, 26 Federal Plaza, New York, New York 10278

(c) Region III, 841 Chestnut Street, Philadelphia, Pennsylvania 19107

(d) Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

(e) Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604
(f) Region VI, 1445 Ross Avenue, Dallas, Texas 75202
(g) Region VII, 726 Minnesota Avenue, Kansas City, Missouri 66101
(h) Region VIII, 999 18th Street, Denver, Colorado 80202
(i) Region IX, 75 Hawthorne Street, San Francisco, California 94105
(j) Region X, 1200 Sixth Avenue, Seattle, Washington 98101

Completed forms must be submitted to the Administrator at EPA Headquarters or his designee.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding part 307 to read as follows:

PART 307—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) CLAIMS PROCEDURES

Subpart A—General

Sec.

307.10 Purpose.
307.11 Scope and applicability.
307.12 Use of number and gender.
307.13 Computation of time.
307.14 Definitions.
307.15 Penalties.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

307.20 Who may present claims.
307.21 Nature of eligible claims.
307.22 Preauthorization of response actions.
307.23 EPA's review of preauthorization applications.

Subpart C—Procedures for Filing and Processing Response Claims

307.30 Requesting payment from the potentially responsible party.
307.31 Filing procedures.
307.32 Verification, award, and administrative hearings.
307.33 Records retention.

Subpart D—Payments and Subrogation

307.40 Payment of approved claims.
307.41 Subrogation of claimants' rights to the Fund.
307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA section 122.

Appendix A to Part 307—Application for Preauthorization of a CERCLA Response Action

Appendix B to Part 307-Claim for CERCLA Response Action

Appendix C to Part 307 —Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Appendix D to Part 307—Notice of Limitations on the Payment of Claims for Response Actions, Which is to be Placed in Public Dockets

Authority: 42 U.S.C. 9601 *et seq.*; sections 4 and 9, E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Subpart A—General

§ 307.10 Purpose.

This part prescribes the appropriate forms and procedures for presenting claims for necessary response costs as authorized by section 112(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (herein referred to as CERCLA, or the Act) (42 U.S.C. 9601 *et seq.*). Such claims may be presented to the Hazardous Substance Superfund (the Fund) established by section 9507 of the Internal Revenue Code of 1986. See section 101(11) of CERCLA.

§ 307.11 Scope and applicability.

(a) The following may be submitted only through the procedures established by this part: claims for responses to a release or substantial threat of release of a hazardous substance into the environment; claims for responses to a release or substantial threat of release of any pollutants or contaminants into the environment, which may present an imminent and substantial danger to public health or welfare; and claims for response actions undertaken pursuant to settlement agreements in which the Federal Government agrees to reimburse a portion of the cost. Under this part, persons may bring claims for necessary costs incurred in carrying out the National Contingency Plan (NCP) (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) and revised pursuant to section 105 of CERCLA. Only response actions that EPA has preauthorized are eligible for reimbursement through the claims process of section 112 of CERCLA. Authority for the payment of claims for response costs is provided by section 111(a)(2) of CERCLA. Authority for the reimbursement of certain costs incurred by parties to a settlement agreement entered pursuant to section 122 of CERCLA is provided by section 122(b) of CERCLA.

(b) This part does not affect the terms and conditions contained in Preauthorization Decision Documents (PDDs) issued prior to the effective date of this part. However, a potential claimant may elect to comply with the provisions of this part, rather than the terms and conditions of a PDD issued prior to the effective date of this part, if he so chooses. Written notice of this election must be provided to EPA by the potential claimant prior to such provision taking effect, but not later than the time of the submittal of any claim to EPA. EPA will provide a written acknowledgement of the potential claimant's election and may revise the PDD as appropriate.

§ 307.12 Use of number and gender.

As used in this part, words in the singular also include the plural and vice versa, and words in the masculine gender also include the feminine, as the case may require.

§ 307.13 Computation of time.

In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day.

§ 307.14 Definitions.

Terms that are not defined in this section or restated herein, shall have the meaning set forth in section 101 of CERCLA or the 1990 NCP or any final revision thereto. As used in this part, the following words and terms shall have the meanings set forth below:

Act or *CERCLA* both mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986.

Administrative hearing means an administrative adjudication required by section 112(b)(2) of CERCLA in the event a claimant contests a determination of his claim made by the U.S. Environmental Protection Agency (EPA).

Assistance agreement means the legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant or cooperative agreement (see 40 CFR part 35) and will specify: budget and project periods; the Federal share of eligible project costs; a description of the work to be accomplished; and any special conditions.

Claim means a demand in writing for a sum certain presented to the Fund in accordance with sections 111 and 112 of CERCLA.

Claimant means any person who presents a claim to the Fund for reimbursement under section 112(b)(1) of CERCLA.

Contractor claim means the disputed portion of a written demand or written assertion by any contractor who has contracted with a person (i.e., the owner) for the conduct of a preauthorized response action, seeking as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or related to a contract, which has been finally rejected or not acted upon by the owner and which is subsequently settled by the owner or is awarded by a third party in accordance with the disputes clause of the contract document.

Eligible claim means any claim that has satisfied the requirements set forth in § 307.21(b).

Facility as defined by section 101(9) of CERCLA, means any:

(1) Building, structure, installation, equipment, pipe or pipeline (including any pipe into sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(2) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Fund means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hazardous substance as defined by section 101(14) of CERCLA, means:

(1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*);

(2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA;

(3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6801 *et seq.*) (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);

(4) Any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act;

(5) Any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. 7401 *et seq.*); and

(6) Any imminently hazardous chemical substance or mixture with respect to which the Administrator of EPA (Administrator) has taken action pursuant to section 7 of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*). The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under paragraphs (1) through (6) of this definition, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

National Contingency Plan, or *NCP* means the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) developed under section 311(c) of the Federal Water Pollution Control Act and revised pursuant to section 105 of CERCLA.

Necessary costs means "necessary response costs" as required by section 111(a)(2) of CERCLA for Fund reimbursement of a preauthorized response action. Necessary response costs are costs determined to be:

(1) Required (based upon the site-specific circumstances);

(2) Reasonable (nature and amount do not exceed that estimated or which would be incurred by a prudent person);

(3) Allocable (incurred specifically for the site at issue); and

(4) Otherwise allowable (consistent with the limitations and exclusions under the appropriate Federal cost principles). See OMB Circular A–122 (non-profit organizations); OMB Circular A–87 (States and political subdivisions); and 48 CFR part 31, subparts 31.1 and 31.2 (profit-making organizations).

NPL means the National Priorities List established pursuant to section 105 of CERCLA and 40 CFR 300.425, which consists of uncontrolled hazardous substance facilities in the United States that need to be addressed under CERCLA authorities. Only NPL sites are eligible for Fund-financed remedial action.

Operable unit means a discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of release, or pathway of exposure. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site. Operable units will not impede implementation of subsequent actions, including final action at the site.

Party means EPA or a claimant.

Perfected means the point at which EPA determines that the written demand for a sum certain (i.e., claim) has the documentation necessary to substantiate the appropriateness of the amounts claimed; i.e., the claim is technically complete.

Person as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

Political subdivision means any general purpose unit of a local or State government.

Pollutant or *Contaminant* as defined by section 101(33) of CERCLA, includes, but is not limited to, any element, substance, compound, or mixture, including disease-causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14)(A) through (F) of the Act, nor does it include natural gas, liquefied natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and such synthetic gas).

Preauthorization means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP. The process of preauthorization consists of three steps:

(1) EPA's receipt of the application for preauthorization;

(2) EPA's review and analysis of the application; and

(3) EPA's issuance of the Preauthorization Decision Document, which sets forth the terms and conditions for reimbursement.

Preauthorized response actions are response actions approved through the preauthorization process.

Respond or *Response* as defined by section 101(25) of CERCLA, means remove, removal, remedy, and remedial action, all such terms (including removal and remedial action) including enforcement activities related thereto.

Response claim means a preauthorized demand in writing for a sum certain for response costs referred to in section 111(a)(2) of CERCLA, including certain costs of actions referred to in section 122(b)(1) of CERCLA.

§ 307.15 Penalties.

(a) If any person knowingly gives a material statement or representation in the application for preauthorization or in the claim that is false, misleading, misrepresented, or misstated, and EPA relies upon such a statement or representation in making its decision, the preauthorization or the award by EPA may be withdrawn following written notice to the claimant.

(b) Any person who knowingly gives, or causes to be given, any false information as part of an application for preauthorization or of a claim (including any person who meets the conditions of paragraph (a) of this section) may, upon conviction, be fined or imprisoned in accordance with CERCLA section 112(b)(1) and other laws.

Subpart B—Eligible Claimants; Allowable Claims; Preauthorization

§ 307.20 Who may present claims.

(a) Subject to the provisions of this subpart, claims for the costs of response actions may be asserted against the Fund by any person other than the United States Government, States, and political subdivisions thereof, except to the extent the claimant is otherwise compensated for the loss. States and political subdivisions may assert such claims if they are potentially responsible parties subject to an agreement reached pursuant to section 122(b)(1) of CERCLA.

(b) Claims presented by an individual must be signed by that individual. If, because of death, disability, or other reasons satisfactory to EPA, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent, executor, administrator, or other legal representative. A claim presented by an entity or an authorized agent, executor, administrator, or other legal representative must be presented in the name of the claimant. The claim must be signed by the authorized agent, executor, administrator, or other legal representative (including the title or legal capacity of the person signing) and be accompanied by evidence of the authority to present a claim on behalf of the claimant as authorized agent, executor, administrator, or other legal representative.

(c) A claim for response costs as to which any release from liability was executed between the claimant and a potentially responsible party may be presented against the Fund to the extent that the claimant obtained EPA's approval prior to executing such release and provided that the other requirements of this part are met.

(d) A foreign claimant may present a response claim to the Fund, to the same extent that a United States claimant may assert a claim, if:

(1) The requirements of § 307.21 and § 307.22 are met; and

(2) The release of a hazardous substance occurred in the navigable waters of the United States, including the territorial sea, or in or on the territorial sea or adjacent shoreline of a foreign country of which the claimant is a resident; and

(3) The claimant is not otherwise compensated for the loss; and

(4)The hazardous substance was released from a facility or from a vessel located adjacent to or within the navigable waters or was discharged in connection with activities conducted under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331 *et seq.*), or the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501 *et seq.*); and

(5) Recovery is authorized by a treaty or an executive agreement between the United States and the foreign country involved, or if the Secretary of State, in consultation with the Attorney General and other appropriate officials, certifies that such country provides a comparable remedy for United States claimants.

§ 307.21 Nature of eligible claims.

(a) Claims may be asserted against the Fund for necessary costs incurred for response actions due to a release or substantial threat of release of a hazardous substance into the environment; a release or substantial threat of release of pollutants or contaminants into the environment that may present an imminent or substantial danger to public health or welfare; or actions taken by a potentially responsible party subject to an agreement reached pursuant to section 122(b)(1) of CERCLA. Claims must be filed in accordance with § 307.22. Claims may be asserted for the costs of removal actions, remedial planning activities, and remedial actions.

(b) Costs will be considered to be eligible under this section if:

(1) The response action is preauthorized by EPA pursuant to § 307.22;

(2) The costs are incurred for activities within the scope of EPA's preauthorization;

(3) The response action is conducted in a manner consistent with the NCP; and

(4) The costs incurred are necessary costs pursuant to § 307.11 of this part.

(c)Money in the Fund may be used for paying any claim under this section for expenses incurred for the payment of contractor claims either through settlement of such claims or an award by a third party to the extent EPA determines that:

(1) The contractor claim arose from work within the scope of the contract at issue and the contract was for preauthorized response activities;

(2) The contractor claim is meritorious;

(3) The contractor claim was not caused by the mismanagement of the claimant;

(4) The contractor claim was not caused by the claimant's vicarious liability for the improper actions of others;

(5) The claimed amount is reasonable and necessary;

(6) The claim for such costs is filed by the claimant within 5 years of completion of the preauthorized response action; and

(7) Payment of such a claim will not result in total payments from the Fund in excess of the maximum amount for which claims were preauthorized.

(d) An award by a third party on a contractor claim under paragraph (c) of this section should include:

(1) Findings of fact;

(2) Conclusions of law;

(3) Allocation of responsibility for each issue;

(4) Basis for the amount of award; and

(5) The rationale for the decision.

(e) Money in the Fund may not be used for paying any claim under this section for expenses incurred for procurement transactions that were not conducted in a manner that provided to the maximum extent practicable, open and free competition; unduly restricted or eliminated competition; and did not provide where applicable for the award of contracts to the lowest responsive, responsible bidder where the selection was made principally on the basis of price.

(f) Money in the Fund may not be used for paying any claim under this section for expenses incurred by a person operating pursuant to a procurement contract or assistance agreement with the United States.

(g) Money in the Fund may not be used for paying any claim under this section for expenses incurred for the payment of persons who are on the "List of Parties Excluded From Federal Procurement or Non-Procurement" at the time the contract is awarded, unless EPA approval is obtained in advance.

(h) Unless EPA waives this requirement prior to the award of a construction contract, money in the Fund may not be used for paying any claim under this section for expenses incurred under such a construction contract that does not contain a "differing site conditions" clause equivalent to the following:

(1) The contractor shall promptly, and before such conditions are disturbed, notify the claimant in writing of:

(i) Subsurface or latent physical conditions at the site differing materially from those listed in this contract, or

(ii) Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Upon notification by the construction contractor, the claimant shall promptly investigate the conditions. If the claimant finds that conditions materially differ and will cause an increase or decrease in the contractor's cost or the time required to perform any part of the work under its contract, whether or not changed as a result of such conditions, the claimant shall make an equitable adjustment and modify the contract in writing.

(3) No claim of the contractor under the differing site conditions clause shall be allowed unless the contractor has given the notice required in paragraph (h)(1) of this section. However, the claimant may extend the time prescribed in paragraph (h)(1) of this section.

(4) No claim by the contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(i) Where money in the Fund has been used to pay for any response costs under this section, no other claim may be paid out of the Fund for the same costs.

§ 307.22 Preauthorization of response actions.

(a) No person may submit a claim to the Fund for a response action unless that person notifies the Administrator of EPA or his designee prior to taking such response action and receives preauthorization by EPA. In order to obtain preauthorization, any person intending to submit a claim to the Fund must fulfill the following requirements before commencing a response action:

(1) Notify the lead agency through the National Response Center (as described in 40 CFR 300.125), if there is acute threat of fire, explosion, or direct human contact with hazardous substances, pollutants, or contaminants or other emergency situation, to determine if there is sufficient time to submit an application for preauthorization;

(2) Submit an application for preauthorization (EPA Form 2075–3, found at Appendix A of this part) to the Administrator or his designee; and

(3) Obtain the approval of the Administrator or his designee before initiating the response action.

(b) All applications for preauthorization must include, where available:

(1) A description of the location and nature of the release or threatened release of a hazardous substance or pollutant or contaminant (e.g., type and location of vessel or facility, population at risk, routes of exposure);

(2) A description of the nature and quantity of the hazardous substance or pollutant or contaminant which has been or may be released, including whether the substance is on the list of hazardous substances set forth pursuant to section 102 of CERCLA;

(3) The identity of any potentially responsible parties known to the applicant (including the applicant), and any contact with such parties, including, but not limited to, any correspondence, agreements, or litigation with such parties;

(4) Evidence of the applicant's eligibility to file a claim pursuant to § 307.20;

(5) An explanation of why the proposed response action is necessary, and how the proposed action is consistent with 40 CFR 300.700(d)(4)(ii);

(6) A description of the applicant's capability (including financial and technical capability) to implement the proposed response action;

(7) Proposed schedule of activities;

(8) Projected costs of response activities, with the basis for those projections (projections shall be based on actual anticipated costs without a contingency for unanticipated conditions);

(9) Proposed schedule for the submission of claims;

(10) The proposed contracting procedures;

(11) Proposed procedures for project management, EPA oversight, and reporting of progress of the project; and

(12) The assurances of timely initiation and completion.

(c) Applications for preauthorization to undertake a removal action shall, in addition to the requirements in paragraph (b) of this section, include:

(1) A summary or copy of the preliminary assessment; and

(2) A description of the proposed removal action for which the claim will be made, which environmental requirements are applicable or relevant and appropriate, and how the removal will comply with such requirements.

(d) Applications for preauthorization to undertake a remedial investigation and feasibility study shall, in addition to the requirements in paragraph (b) of this section, include:

(1) The scope of the proposed study;

(2) A proposed site sampling plan and quality assurance procedures;

(3) The plan for the development of alternatives;

(4) Approaches to consideration of alternatives to land disposal;

(5) Plans for initial screening of alternatives;

(6) Proposed procedures for the detailed analysis of alternatives; and

(7) Proposed considerations in selection of the remedy.

(e) Applications for preauthorization to undertake a remedial alternative other than that selected by EPA, or where EPA has not selected a remedy, shall, in addition to the requirements in paragraph (b) of this section, include a discussion of how the proposed remedy:

(1) Differs from the one selected by EPA, if applicable;

(2) Achieves protection of public health and welfare and the environment and complies with legally applicable or otherwise relevant and appropriate Federal, State, and local requirements pursuant to 40 CFR 300.400(g) or waivers to those requirements in 40 CFR 300.430(f)(1)(ii)(C). The application shall also include a discussion of pertinent Federal and State guidance, advisories, and criteria;

(3) Will be cost-effective as set out in section 121(a) of CERCLA and 40 CFR 300.430(f)(1)(ii)(D);

(4) Mitigates and minimizes future risks;

(5) Improves the reliability of the remedy;

(6) Utilizes new or innovative technology, if appropriate;

(7) Employs treatment that reduces the volume, toxicity or mobility of the hazardous substances;

(8) Impacts projected costs; and

(9) Takes into account Appendix D of 40 CFR part 300.

(f) Applications for preauthorization to undertake a remedial action, including those described in paragraph (e) of this section, shall in addition to the requirements in paragraph (b) of this section, include:

(1) A description of the proposed remedial action for which the claim will be made;

(2) A proposed site sampling plan and quality assurance procedures;

(3) Documentation of reasonable effort to obtain the cooperation of the State or Indian Tribe;

(4) A bond or other financial assurance to cover the costs of necessary long-term operation and maintenance of the response action or written assurance from the State to provide such long-term operation and maintenance;

(5) Proposed procedures using sealed bidding to select the construction contractor, or an explanation of why the applicant intends to use any other method; and

(6) Documentation showing that the response will be carried out in accordance with applicable or relevant and appropriate environmental requirements. Documentation should include the potential impacts on any environmentally sensitive areas.

(g) Claims of business confidentiality may be asserted for information submitted to EPA under this subpart. Information claimed confidential will be disclosed by EPA only to the extent permitted by CERCLA, this subpart, and part 2, subpart B, of this chapter.

(1) Any claim of business confidentiality must accompany the information when it is submitted to EPA. Claims must be asserted as prescribed on the forms. Items claimed confidential on the forms and attachments to the forms must be clearly marked by circling or bracketing them.

(2) The applicant or response claimant must provide EPA with two copies of its submittal if any information is claimed confidential.

(i) One copy of the submittal must be complete, with items claimed confidential clearly marked in accordance with paragraph (g)(1) of this section.

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be deleted. EPA may make this second copy available to the public.

(iii) If the applicant does not provide a redacted copy, the application for preauthorization is incomplete. If the claimant does not provide a redacted copy, the claim against the Fund will not be perfected by EPA. EPA will not process such submittals until it receives the redacted copy.

(3) If a submitter of a response claim or an application for preauthorization does not assert a claim of business confidentiality for information at the time the information is submitted to EPA, the Agency may make the information public without further notice to the submitter.

(h) In addition to the foregoing, an application for preauthorization filed by a potentially responsible party for partial reimbursement of response costs shall include:

(1) A copy of the settlement agreement, or the most recent draft of any pending agreement, reached between such parties and the Federal Government; and

(2) If the application is to undertake a remedial investigation and feasibility study, an affirmation that the applicant will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contractor with respect to the site at issue and an agreement to reimburse the Fund for any costs incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study.

(i) If it is subsequently determined that the preauthorized response actions require modification or if it appears that project costs will exceed approved costs, a revised application for preauthorization must be approved by EPA before different, or additional, actions can be undertaken, if such actions are to be eligible for compensation from the Fund.

(j) Unless otherwise specified and agreed to by EPA, the terms, provisions, or requirements of a court judgment, Consent Decree, administrative order (whether unilateral or on consent), or any other consensual agreement with EPA requiring a response action do not constitute preauthorization to present a claim to the Fund.

§ 307.23 EPA's review of preauthorization applications.

(a) EPA shall review each preauthorization application and will notify the applicant of the decision to grant or deny preauthorization. Decisions to grant preauthorization will be memorialized in a PDD.

(b) Each application for preauthorization must include information sufficient for EPA to determine whether the response will be consistent with 40 CFR 300.700(d). EPA will evaluate applications based on the following non-exclusive list of criteria, as appropriate:

(1) Whether the release is within the scope of CERCLA;

(2) The seriousness of the problem or importance of the response activity when compared with competing demands on the Fund;

(3) Whether there is sufficient time to process the request for preauthorization (e.g., if a removal action is proposed);

(4) Whether the party liable for the release or threat of release of the hazardous substance is unknown, or if known, has been notified of the application for preauthorization and is unwilling or incapable of performing the response in a reasonable period of time;

(5) Whether the State, a political subdivision, or an Indian Tribe is willing to undertake the response action through a contract or a cooperative agreement;

(6) The cost and effectiveness of the proposed response actions when compared with other alternatives;

(7) Whether proposed response can be carried out in accordance with the NCP and other environmental requirements;

(8) The applicant's eligibility to file a claim; his capabilities, experience, and technical expertise; and his knowledge and familiarity with the NCP and relevant guidance;

(9) Whether the party is proposing to conduct a cleanup through an administrative order or a Consent Decree with the Government regarding the site for which the request is made (if the applicant is a potentially responsible party);

(10) Whether the applicant, if he is a potentially responsible party seeking to undertake a remedial investigation and feasibility study, has affirmed that he will not directly or indirectly benefit from the preauthorization as a response action contractor, or as a person hired or retained by such a contract with respect to the site at issue, and agrees to reimburse the Fund for any cost incurred under, or in connection with, the oversight contract or arrangement for the remedial investigation and feasibility study;

(11) Whether the proposed costs are eligible and the applicant has proposed appropriate procurement, contract management, project management, financial management and documentation procedures;

(12) Whether the applicant has met the necessary assurances, financial responsibilities, and other requirements;

(13) Provisions for long-term operation and maintenance of the site, if appropriate;

(14) Whether the applicant has consulted with the State or Indian Tribe on the proposed response action;

(15) The applicant's proposed procedures for oversight and the reporting of project issues and progress;

(16) Cooperation of the applicant at any earlier stage of response activity; and

(17) Whether the proposed schedule for filing a claim(s) is based upon the completion of the project, an operable unit, or a discrete phase of the response work.

(c) The Administrator may grant preauthorization for all or part of a proposed response action, but not less than a stage of an operable unit or of a response action.

(1) The Administrator may set a limit on the amount that may be claimed as reimbursement from the Fund for any response action.

(2) The Administrator may condition the preauthorization on such inspection, monitoring, reporting, safety, and long-term operation and maintenance requirements as he deems necessary. The costs of such requirements may not necessarily be reimbursed from the Fund.

(3) The Administrator may condition the preauthorization on such time period for starting and completing the response action as he may deem necessary.

(4) The Administrator may condition the preauthorization on such financial or other assurance from the claimant or other entity as he may deem necessary to ensure completion of work at the site.

(5) The Administrator will not subject potentially responsible parties who may wish to undertake a remedial investigation and feasibility study to a lesser standard of liability nor will he give such parties preferential treatment in EPA's review of applications for preauthorization.

(d) If EPA denies a preauthorization because of an insufficient balance in the Fund or the low priority assigned to the response action when weighed against other applications or uses of the Fund, the applicant may resubmit the application in another fiscal year. If preauthorization is denied because of the inability of the applicant to demonstrate his experience and capabilities, the applicant may resubmit the application form only after correcting the deficiencies, or by proposing an alternative approach.

(e) If EPA grants preauthorization, the applicant may begin the approved response action subject to the terms and conditions contained in the PDD. The applicant, as a condition of preauthorization, shall assure that the lead agency shall have such site access as may be necessary for oversight and monitoring.

(f) If the applicant is unable to initiate or complete the preauthorized response action, the applicant shall immediately notify EPA in writing.

(g) EPA will not grant preauthorization for any response actions where:

(1) The proposed action is not a response action authorized under CERCLA;

(2) There is a significant threat to the public health or the environment caused by acute threat of fire, explosion, direct human contact with a hazardous substance, or other similar hazardous situations requiring immediate action, and there is insufficient time to process an application for preauthorization;

(3) The proposed response is a remedial action and the site is not on the NPL; or

(4) The action is to be performed by a State, political subdivision, Indian Tribe through an assistance agreement with the United States, or a person operating pursuant to a contract with the United States.

(h) EPA will deny preauthorization to a person whom the Agency believes is a liable party under section 107 of CERCLA unless negotiations are underway aimed at reaching a judicial or administrative settlement. Such parties may be preauthorized under this paragraph to submit claims to the Fund for response costs up to the maximum amount specified in the PDD.

Subpart C—Procedures for Filing and Processing Response Claims

§ 307.30 Requesting payment from the potentially responsible party.

(a) A claimant must present all claims to any person who is known to the claimant and who may be liable under section 107 of CERCLA at least 60 days before filing a claim against the Fund. The presentation to the potentially responsible party must be a written request for payment, delivered either by certified mail (return receipt requested) or in such a manner as will establish the date of receipt. At a minimum this request must contain:

(1) The name of the claimant (commercial entity or individual);

(2) The name, title, and address of any authorized representative;

(3) The location of the release and cleanup;

(4) The date of the release, if known;

(5) The owner of the property, if other than the claimant;

(6) A description of the response action taken; and

(7) The amount of the request (in dollars);

(8) If applicable, notice of intent to file a subsequent application for preauthorization or claim against the Fund for additional operable units or for a stage of a response action.

(b) Where the potentially responsible party is unknown, the claimant must make a good-faith effort to identify the potentially responsible party prior to submitting a claim. If the potentially responsible party is identified, the claimant must then comply with the procedures of § 307.30(a). Where a potentially responsible party cannot be identified, the claimant may submit a claim to the Fund pursuant to § 307.31. Claims submitted under this paragraph must be accompanied by documentation of efforts to identify potentially responsible parties.

(c) If the claimant and the potentially responsible party agree to a settlement involving a release from liability, the claimant may submit a claim against the Fund for any costs that are not recovered provided the claimant complies with the provisions of § 307.20(c), which require EPA's prior approval of such releases from liability.

(d) If the claim is denied by the potentially responsible party, or has not been satisfied after 60 days of presentation to such party, the claimant may submit a claim to the Fund in accordance with § 307.31.

(e) If the first claim was denied by the potentially responsible party or not responded to, and EPA agrees that there is no reason to believe that subsequent claims would be honored by such potentially responsible party, the denial of the first claim, or lack of response, shall be considered denial of every subsequent claim.

§ 307.31 Filing procedures.

(a) A response claim must be submitted on EPA Form 2075–4 and must include:

(1) Documentation showing that the claimed response activities were preauthorized by EPA;

(2) Documentation showing that the response activity was accomplished in a manner consistent with the PDD, noting any deviation from preauthorized activities;

(3) Documentation that a search to identify potentially responsible parties was conducted in accordance with § 307.30 and of any contacts with such parties; and

(4) Substantiation that all claimed costs are necessary costs.

(b) Claimants (or their authorized representatives) may amend their claims at any time before final action by EPA. Amendment of claims after final action by EPA will be allowed only at EPA's discretion. Each amendment must be submitted in writing and must be signed by the claimant or authorized representative. The time limitations of § 307.32(i) refer to the date by which an amendment is filed.

(c) Claimants may not pursue both an action in court against potentially responsible parties and a claim against the Fund at the same time for the same response costs. EPA will return claims presented under this subpart when the Agency determines that a claimant has initiated an action for recovery of the same response costs, in court, against a party potentially liable under section 107 of CERCLA.

§ 307.32 Verification, award, and administrative hearings.

(a) Upon receipt of a response claim, EPA will verify that it complies with all filing requirements. Where the claim is incomplete or has significant defects, EPA will return the claim to the claimant with written notification of its deficiencies.

(b) A claim returned to the claimant for failure to comply with the filing requirements may be resubmitted to EPA.

(c) For purposes of this part, a response claim is deemed perfected when EPA determines that the claim complies fully with the specified filing requirements; i.e., the claim is technically complete. When the claim is perfected, a notice will be provided to the claimant of EPA's receipt and acceptance of the claim for evaluation.

(d) EPA may adjust claims and in making a determination whether costs are allowable, EPA will be guided by the Federal cost principles (non-profit organizations—OMB Circular A–122; States and political subdivisions—OMB Circular A–87; profit-making organizations—48 CFR part 31, subparts 31.1 and 31.2).

(e) In evaluating claims, EPA will determine whether the claimant has settled and satisfactorily completed in accordance with sound business judgment and good administrative practice all contractual and administrative matters arising out of agreements to perform preauthorized response actions. This includes the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontracts, settlement of protests, claims disputes, and other related procurement matters. EPA will examine how the claimant assured (e.g., by the use of a subcontract administration system) that work was performed in accordance with the terms, conditions, and specifications of such agreements.

(f) Awards will be made:

(1) Only for necessary costs of completing the response action or stage of an operable unit or of a response action;

(2) Only to the extent that the response actions were preauthorized by EPA pursuant to § 307.23;

(3) Only to the extent that the cleanup was performed effectively, as provided in 40 CFR 300.120(e)(3) and 300.400(h); and

(4) Only to the extent that the cleanup was performed in compliance with the terms and conditions of the PDD.

(g) No award will be made on a claim where the claimant has purported to release a potentially responsible party from liability to the United States for the same costs unless EPA has approved the release in advance.

(h) Where a response action is determined to have been ineffective due to acts or omissions of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.

(i) For claims submitted in connection with a settlement reached under section 122(b)(1) of CERCLA only, interest will be paid on amounts due if EPA fails to pay the amount within 60 days of a perfected claim.

(1) Interest shall accrue on the amounts due the claimant where EPA fails to pay the claim for the preauthorized response action within 60 days of EPA's receipt of a perfected claim.

(2) Where the claim is technically complete but EPA requires additional information in order to evaluate the amount claimed, the period as stated in paragraph (i)(1) of this section or the accrual of interest is suspended from the date the Agency requests the information from the claimant until the date the requested information is received.

(3) Where a claim is denied in whole or in part by EPA, and the claimant requests an administrative hearing in accordance with paragraph (o) of this section, interest on the disputed amount begins to accrue 50 days after an award by the Administrative Law Judge, unless an appeal is filed. If either party files an appeal with a Federal district court, interest will not accrue until 20 days after the final judicial decision.

(4) The rate of interest paid on a claim is the rate of interest on investments of the Fund established by Subchapter A of Chapter 98 of the Internal Revenue Code of 1954.

(j) For claims submitted in connection with a settlement reached under section 122(b) of CERCLA, a preauthorized potentially responsible party will be entitled to full reimbursement only where the response action is conducted in complete satisfaction of the requirements set forth in the consent order or decree.

(k) Future site-specific actions required by preauthorized potentially responsible parties, and any future obligations on the Fund, shall be governed by § 307.42.

(l) Any withdrawal of preauthorization will be preceded by written notice from EPA. The application for preauthorization will be deemed invalid and no award will be made from the Fund where the claimant is determined by EPA to be liable under section 107 of CERCLA for the costs for which the claim is made, and the application for preauthorization did not disclose that the claimant may be a person described as follows:

(1) The owner and operator of a vessel or a facility;

(2) Any person, who at the time of disposal of any hazardous substance, owned or operated any facility at which such hazardous substances were disposed of;

(3) Any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance; or

(4) Any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance.

(m) If EPA determines that it cannot complete its evaluation of a claim because of insufficient information, it will request the necessary information from the claimant. If EPA determines that it cannot complete its evaluation of a claim because the records, documents, and other evidence were not maintained in accordance with generally accepted accounting principles and practices consistently applied, or were for any reason inadequate to demonstrate that claimed costs are necessary costs, EPA will adjust the claim accordingly. Further consideration of such amounts will depend on the adequacy of subsequent documentation. Any additional information requested by EPA must be submitted within 30 days, unless a different period of time is specified by EPA. The failure of the claimant to provide in a timely manner the requested information without reasonable cause may be cause for denial of the claim.

(n) Once the claim is perfected, EPA will proceed to:

(1) Make an award on the claim; or

(2) Decline to make an award.

(o) If the claimant is dissatisfied either with EPA's denial of a claim or with the amount of an award, the claimant may request that EPA arrange an administrative hearing in accordance with section 112(b) of CERCLA. The request for an administrative hearing must occur within 30 days of being notified of EPA's decision.

(p) Notice of an award under paragraph (f) of this section will be given by First Class Mail within five (5) days of the date of the decision. Payment of approved claims will be made according to § 307.40.

§ 307.33 Records retention.

A claimant receiving an award from the Fund is required to maintain all cost documentation and any other records relating to the claim, and to provide EPA with access to such records. These records must be maintained until cost recovery is initiated by EPA. If, after ten (10) years from the date of award of the final claim, EPA has not initiated a cost recovery action, the claimant need no longer retain the records. The claimant shall, however, notify EPA of the location of the records, and allow EPA the opportunity to take possession of the records before they are destroyed. The claimant shall cause to be inserted in all agreements between itself and contractors performing work at the site a clause providing for the same requirement to maintain records and to provide access to records as that required of the claimant.

Subpart D—Payments and Subrogation

§ 307.40 Payment of approved claims.

(a) Payment of claims will be made, as applicable, within:

(1) 50 days of EPA's decision to make an award, if the claimant does not request an administrative hearing;

(2) 50 days of an award by an administrative tribunal if no appeal of such award is taken; or

(3) 20 days of the final judicial decision of any appeal taken.

(b) Payment of a claim shall not be seen as EPA's final acceptance of the claimant's response action. Final acceptance shall await EPA's determination that the response action was conducted in accordance with the terms and conditions of the PDD or the consent order or decree, as applicable.

§ 307.41 Subrogation of claimants' rights to the Fund.

(a) The United States acquires by subrogation all rights of the claimant to recover the amount of the claim paid by the Fund from the person or persons liable under section 107 of CERCLA for the release giving rise to the response action.

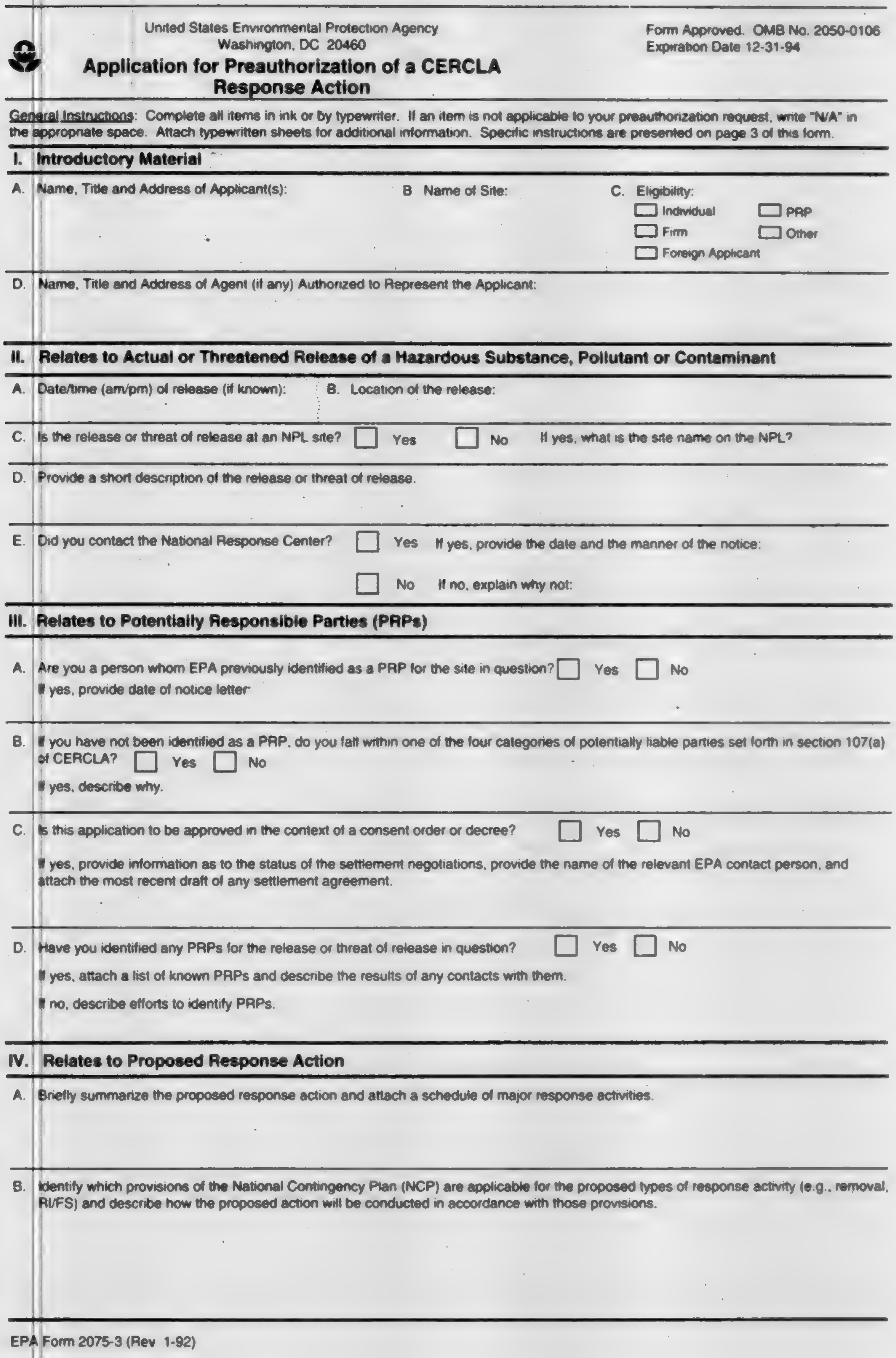
(b) Claimants shall assist in any cost recovery action that may be initiated by the United States. The claimant and the claimant's contractors shall furnish the personnel, services, documents, and materials needed to assist EPA in the collection of evidence to document work performed and costs expended by the claimant or the claimant's contractors at the particular site in order to aid in cost recovery efforts. The claimant and the claimant's contractors shall also provide all requested assistance in the interpretation of documents detailing work and costs that may be needed as evidence, and shall testify on behalf of the United States in any judicial or administrative cost recovery proceeding regarding the response costs claimed. All of the claimant's contracts for implementing the PDD shall expressly require their contractors to provide this cost recovery assistance.

§ 307.42 Fund's obligation in the event of failure of remedial actions taken pursuant to CERCLA Section 122.

(a) In the case of the failure of a completed remedial action taken by a potentially responsible party pursuant to a remedial action preauthorized in connection with a settlement under section 122(b)(1) of CERCLA, the Fund shall be available for the costs of any new cleanup required, but shall not be obligated to a proportion exceeding that proportion contributed by the Fund for the original remedial action.

(b) The Fund is not obligated by preauthorization of a response action to reimburse the claimant for subsequent remedial actions if those subsequent remedial actions are necessary as a result of the failure of the claimant, his employees or agents, or any third party having a contractual relationship with the claimant to properly perform authorized activities or otherwise comply with the terms and conditions of the PDD, and the Consent Decree or order regarding the site cleanup entered into by EPA and the claimant.

Appendix A to Part 307—Application for Preauthorization of a CERCLA Response Action



United States Environmental Protection Agency
Washington, DC 20460

Form Approved. OMB No. 2050-0106
Expiration Date 12-31-94

Application for Preauthorization of a CERCLA Response Action

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your preauthorization request, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Applicant(s):

B. Name of Site:

C. Eligibility:
☐ Individual ☐ PRP
☐ Firm ☐ Other
☐ Foreign Applicant

D. Name, Title and Address of Agent (if any) Authorized to Represent the Applicant:

II. Relates to Actual or Threatened Release of a Hazardous Substance, Pollutant or Contaminant

A. Date/time (am/pm) of release (if known):

B. Location of the release:

C. Is the release or threat of release at an NPL site? ☐ Yes ☐ No If yes, what is the site name on the NPL?

D. Provide a short description of the release or threat of release.

E. Did you contact the National Response Center? ☐ Yes If yes, provide the date and the manner of the notice:
☐ No If no, explain why not:

III. Relates to Potentially Responsible Parties (PRPs)

A. Are you a person whom EPA previously identified as a PRP for the site in question? ☐ Yes ☐ No
If yes, provide date of notice letter

B. If you have not been identified as a PRP, do you fall within one of the four categories of potentially liable parties set forth in section 107(a) of CERCLA? ☐ Yes ☐ No
If yes, describe why.

C. Is this application to be approved in the context of a consent order or decree? ☐ Yes ☐ No
If yes, provide information as to the status of the settlement negotiations, provide the name of the relevant EPA contact person, and attach the most recent draft of any settlement agreement.

D. Have you identified any PRPs for the release or threat of release in question? ☐ Yes ☐ No
If yes, attach a list of known PRPs and describe the results of any contacts with them.
If no, describe efforts to identify PRPs.

IV. Relates to Proposed Response Action

A. Briefly summarize the proposed response action and attach a schedule of major response activities.

B. Identify which provisions of the National Contingency Plan (NCP) are applicable for the proposed types of response activity (e.g., removal, RI/FS) and describe how the proposed action will be conducted in accordance with those provisions.

EPA Form 2075-3 (Rev 1-92)

C Address how the proposed response action will be consistent with the NCP with regard to the following performance standards:

1. Worker training, health and safety, and the safety of the public.
2. Community relations plan.
3. Compliance with legally applicable, or relevant and appropriate, Federal and State environmental requirements (ARARs).

V. Relates to Applicant's Capabilities

Describe your capabilities to carry out the proposed response actions.

VI. Relates to State or Indian Tribe Consultation

Has a letter signed by the designated State or Indian Tribe official been attached? ☐ Yes ☐ No If no, explain.

VII. Relates to Long-Term Operations and Maintenance (O&M) (if applicable)

☐ I will provide a bond or other financial assurance for O&M. ☐ The State has agreed to provide for O&M.

Attach documentation to support your assertion.

VIII. Relates to Projected Costs

A. Provide the projected costs for each proposed response activity and attach an explanation of why each of these costs is "necessary."

1. ______________ $______________
2. ______________ $______________
3. ______________ $______________
4. ______________ $______________

TOTAL $______________

B. Provide a proposed schedule for the submission of claims.

IX. Relates to Project Management

A. Describe the management structure to be put in place to implement the proposed project and to control financial matters.

B. Describe your procedures for comprehensively documenting the work performed and the costs incurred for all phases of the proposed response action.

C. Describe your procedures for reporting to EPA on the progress of the proposed project and for EPA oversight.

D. Describe your proposed procurement procedures.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Applicant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS TO APPLY
FOR PREAUTHORIZATION OF A CERCLA RESPONSE CLAIM

This form is to allow parties to apply for EPA preauthorization of a claim against the Hazardous Substances Superfund (Fund) as authorized by sections 111(a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). EPA preauthorization is required before a party can begin response work if that party desires Fund reimbursement of his/her response costs. The regulatory procedures for obtaining preauthorization from EPA are found at 40 CFR Part 307. The public reporting burden for the completion of this form is estimated to vary between 186 and 330 hours – averaging 258 hours per application. These estimates include the time needed to review instructions, search existing data services, gather and maintain the data needed for completing and reviewing the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) or any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W
Washington, D.C 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W
Washington, D.C 20503
Attention: Desk Officer for EPA

The applicant bears the burden for demonstrating that scarce Fund resources should be utilized for this project. Consequently, all preauthorization applications should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the applicants' best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the applicant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the applicants provide appendices. In these appendices, the applicants shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the applicant shall provide clear cross-references between this form and the appendices.

Applicants should consult 40 CFR section 307.22(g) to assert any claims of business confidentiality.

When completed this form should be sent to:

U.S. Environmental Protection Agency
401 M Street, S.W
Washington, D.C 20460
Attention: Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I A. Provide the name, title and address of the person(s) submitting this application. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B. Self-explanatory

C. Check all that apply

D. "Agent" refers to any duly authorized agent, executor, administrator, or other legal representative of the applicant. If this preauthorization application is submitted by such an agent, he/she must present evidence of authority to so represent the applicant. (See 40 CFR Section 307.20)

II A-C Self-explanatory

D. This description must include the following information: the type of vessel and facility, the type and quantity of hazardous substance (including whether the substance is listed under CERCLA section 102), and a description of the surrounding population and/or environmental risk.

E. Self-explanatory

III A. Check whether you are a person who EPA previously identified as a potentially responsible party (PRP).

B. Check whether you have reason to believe, without regard to whether a defense under Section 107(b) may be available, that you may be a person described as follows:

1) the owner or operator of a vessel or facility;

2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of;

3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substance, or

4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels, or sites selected by such person, from which there is a release, or a threatened release of a hazardous substance, which causes the incurrence of response costs.

C. If you checked YES for item A or B and NO for this item, explain why this application is not to be approved in the context of a consent order or decree. Describe the status of any settlement negotiations.

D. List all PRPs known to you. Describe any contacts with PRPs and any reply from such parties. If PRPs are unknown, describe efforts to locate PRPs.

IV A. Self-explanatory

B. Describe the response action(s) that is the subject of this request (e.g., removal, RI/FS, selection of remedy, design, construction), and methods proposed for carrying out such actions, including site sampling plan and quality assurance procedures. Address the requirements contained in 40 CFR 307.22.

C. Worker/community health and safety plan. The worker plan must comply with OSHA Safety and Health standards at 29 CFR Part 1910.120. The community plan must address the protection of area residents from the physical, chemical and/or biological hazards particular to the site and the selected response.

Community Relations Plan. The applicant need not develop a plan if the response action is of short duration or a community relations plan already exists for the site at issue.

ARARs. See 40 CFR Sections 300.400(g), 300.430(f)(3)(iv)

V Include a discussion of financial and technical/scientific capabilities.

VI If a letter of cooperation signed by the designated State or Indian Tribe is not attached to an application to undertake a remedial action, explain efforts made by the applicant to obtain such cooperation.

VII Self-explanatory

VIII A. The figures provided on the form should be the overall cost for a particular type of response activity (e.g., removal, RI/FS, design). Documentation should be attached to support each cost figure. In addition, the applicant must explain why each of the proposed costs is "necessary." "Necessary" costs are those which are 1) required, 2) reasonable, 3) allowable and 4) allocable according to Federal cost principles. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local government and Federally recognized Indian Tribes), OMB Circular A-122 (non-profit organizations), 48 CFR sections 31.1–31.2 (profit-making organizations).

B. A proposed schedule for the submission of claims should be provided. Applicants are encouraged to propose reimbursement based upon cash-flow considerations. The goal of an applicant should be to balance major capital expenditures and the completion of discussed tasks against the number and frequency of claims.

IX Self-explanatory

United States Environmental Protection Agency
Washington, DC 20460

Claim for CERCLA Response Action

Form Approved. OMB No. 2050-0106
Expiration Date 12-31-94

General Instructions: Complete all items in ink or by typewriter. If an item is not applicable to your claim, write "N/A" in the appropriate space. Attach typewritten sheets for additional information. Specific instructions are presented on page 3 of this form.

I. Introductory Material

A. Name, Title and Address of Claimant(s):

B. Name of Site:

C. Preauthorization Decision Document (PDD):
Number ____________________
Date ____________________
(attach copy)

D. Name, Title and Address of Agent (if any) Authorized to Represent the Claimant:

II. Relates to Potentially Responsible Parties (PRPs)

A. Has the claimant made a reasonable effort to identify any PRPs (other than any who may be parties to this claim)? Describe those efforts.

B. Has the claimant presented a request for reimbursement to known PRPs (other than any who may be parties to the claim)?
☐ Yes ☐ No
Attach names, addresses and dates of presentation. Describe any responses.

C. If a partial settlement was reached with PRPs after presentation of the claim as described in II.B., did EPA approve any release?
☐ Yes ☐ No If no, explain.

D. Is there any action pending in court regarding this site or response actions?
☐ Yes ☐ No If yes, explain.

III. Relates to Claims for a Preauthorized Phase

A. Is this a claim for a preauthorized phase? ☐ Yes ☐ No
If no, provide the completion date of the subject response action and skip B, C, D and E.

B. How many claims are authorized in the PDD?

C. For which preauthorized phase are you filing a claim at this time?

D. Is completion of the next preauthorized phase on schedule?
☐ Yes ☐ No If no, explain.

E. Estimated date for submitting claim for the next preauthorized phase.

IV. Relates to Response Action

A. Was the response/preauthorized phase completed in accordance with the PDD? ☐ Yes ☐ No If yes, skip B

B. Was a modification to the preauthorization request submitted to and approved by EPA?
☐ Yes -- Supply number and date ____________________
☐ No -- Explain how and why response differs from PDD.

C. Was the response completed in accordance with the Statement of Work and the Work Plan? ☐ Yes ☐ No If yes, skip D

D. Explain how and why the response differs from the Statement of Work and/or the Work Plan.

E. Address how each of the PDD terms and conditions were met (in the order that they appear in the PDD). Provide documentation of such adherence in an appendix.

F. Provide the name and address of the location where all cost documentation and any other records relating to the claim will be maintained.

EPA Form 2075-4 (Rev 1-92)

V. Relates to Amount of Response Claim

A. Provide the following summary information:

Re Current Claim Submission.

Type of Response Activity(ies) Represented by Claim - ________

Total Eligible Response Costs Represented by Claim - $________

Percentage of Claimed Costs to Total Response Costs - ________ %

Dollar Amount of Reimbursement Claimed - $________

Re Any Past Claim Awards Under the Subject PDD:

Number of Previous Claims - ________

Total Sum of Previous Awards - $________

Re PDD:

Reimbursement Cap Set For All Claim Submissions - $________

B. Provide the following breakdown of the eligible response costs asserted in this claim submission

Labor $________

Travel $________

Equipment $________

Materials and Supplies $________

Contractual Services $________

Other Direct Costs $________

Indirect Costs $________

TOTAL RESPONSE COSTS $________

With the exception of contractual services, provide detailed summaries of the components of each of the above cost categories. Address how the costs incurred were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

C. Provide a cost breakdown of all contractual services performed for this claim submission. Explain how the incurred costs were required under the PDD and reasonable, allowable and allocable according to Federal cost principles. Specify which of the Federal cost principles were used and explain the basis for that selection.

Certification

I certify that all information herein is true to the best of my knowledge. I agree to supply additional information, as requested, in support of this application and access to the site for purpose of inspection.

Signature of Claimant Date

CERCLA Penalty for Presenting Fraudulent Claim

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Superfund may, upon conviction, be fined in accordance with the applicable provisions of Title 18 of the United States Code or imprisoned for not more than 3 years (or not more than 5 years in the case of a second or subsequent conviction), or both. (42 USC 9612 (b)(1))

Civil Penalty for Presenting Fraudulent Claim

The claimant is liable to the United States for a civil penalty of $2,000 and an amount equal to two times the amount of damages sustained by the Government because of the acts of that person, including costs of the civil action.

Criminal Penalty for Presenting Fraudulent Claim or Making False Statements

The claimant will be charged a maximum fine of not more than $10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001)

INSTRUCTIONS FOR SUBMITTING A CLAIM FOR A CERCLA RESPONSE ACTION

This form is for claims against the Hazardous Substances Superfund as authorized by sections 111 (a)(2) and 112 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). Claims can only be awarded for reasonable response costs incurred pursuant to a preauthorization decision document (PDD) issued by EPA. The regulatory procedures for obtaining preauthorization from EPA and for the submission and award of claims are found at 40 CFR Part 307

The public reporting burden for the completion of this form is estimated to vary between 25 and 59 hours - - averaging 42 hours per claim. These estimates include the time needed to: review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. Any comments concerning the burden estimate (including suggestions for reducing the burden) and any other aspect of this form should be sent to the following addresses:

Chief, Information Policy Branch, PM-223
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

and

Office of Information and Regulatory Affairs
Office of Management and Budget
726 Jackson Place, N.W
Washington, D.C. 20503
Attention: Desk Officer for EPA

The claimant bears the burden for demonstrating that his response costs should be reimbursed. Consequently all claim submissions should be factually thorough, well-documented and based on sound analysis. Due to the complexity of the issues involved, it is in the claimant's best interest to organize the submission so that it can be easily read by EPA officials.

In many cases, the spaces provided on this form will be insufficient for a full presentation of the information solicited. In such circumstances, the claimant shall attach typewritten sheets and provide clear cross-references between the items on this form and the attachments.

A number of items will also require that the claimants provide appendices. In these appendices, the claimant shall supply sufficient documentation to support the statements presented in the form. Since it would be impractical and undesirable to include all supporting data, the appendices should usually consist of detailed summaries of the primary data. However, the original documents should be identified, catalogued and available for presentation, if requested. As with the attachments, the claimant shall provide clear cross-references between this form and the appendices.

Claimants should consult 40 CFR Section 307.22 (g) to assert any claims of business confidentiality

When completed, this form should be sent to:
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
Attention Director, Office of Emergency and Remedial Response (OS-220)

The sections below provide instructions for particular items on the claim form.

I A Provide the name, title and address of the person(s) submitting this claim. If the claim is submitted by a group of persons who have created a legal entity to act as claimant, information should be provided concerning the identity and location of both the entity and the constituent parties.

B Provide the site name as it appears on the PDD

C Supply the number and date of the PDD for this claim. A copy of the PDD shall also be provided in an appendix If the claimant has been granted preauthorization to modify the PDD, these amendments must be described and copies provided:

D "Agent" refers to any duly authorized agent, executor administrator or other legal representative of the claimant. If this claim is submitted by such an agent, he/she must present evidence of authority to so represent the claimant.

II A. Self-explanatory.

B. Pursuant to 40 CFR Section 307.33(e), if 1) the first claim was denied by the responsible party or not responded to within 60 days, and 2) EPA agrees that there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, shall be considered a denial of every subsequent claim. The claimant may seek EPA's agreement at any time a claim is presented. The claimant will be advised of EPA's agreement when the claimant is notified in writing regarding the award or denial of the claim.

C.-D. Self-explanatory

III -IV Self-explanatory

V A. Self-explanatory

B. This item is concerned with the actual response costs incurred during the time period represented by this claim submission -- not the percentage of those response costs for which the claimant is seeking reimbursement. Federal cost principles are presented in the following documents: OMB Circular A-87 (State and local governments and Federally recognized Indian Tribes); OMB Circular A-122 (non-profit organizations); 48 CFR 31.1, 31.2 (profit-making organizations). If the claim represents more than one stage of response activity, indicate this on the form and provide similar cost breakdown in an appendix. These instructions are applicable to Item V.C. below.

C. Contractual services will vary depending on the response action performed and the operable unit represented by the claim submission. Typical categories of response activity include:

Security
Groundwater sampling
Construction
    Administrative Expenses
    Materials
Operation & Maintenance.

Appendix C to Part 307—Notice of Limitations on the Payment of Claims for Response Actions, Which Is to be Placed in the Federal Register Preamble Whenever Sites Are Added to the Final NPL

Limitations on the Payment of Claims for Response Actions

Sections 111(a)(2) and 122(b)(1) of CERCLA authorize the Fund to reimburse certain parties for necessary costs of performing a response action. As is described in more detail at [insert January 21,1993 citation of publication of this rule], 40 CFR part 307, there are two major limitations placed on the payment of claims for response actions. First, only private parties, certain potentially responsible parties (including States and political subdivisions), and certain foreign entities are eligible to file such claims. Second, all response actions under sections 111(a)(2) and 122(b)(1) must receive prior approval, or "preauthorization," from EPA.

Appendix D to Part 307—Notice of Limitations on the Payment of Claims for Response Actions Which Is to be Placed in Public Dockets

Statutory Limitations on the Payment of Claims for Response Actions Filed Pursuant to Sections 111(a)(2) and 122(b)(1) of CERCLA

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) authorizes a number of mechanisms for responding to a release, or threat of release, of hazardous substances or pollutants or contaminants. One of these mechanisms is response claims. Section 111(a)(2) of CERCLA authorizes the Environmental Protection Agency (EPA or the Agency) to compensate claimants for necessary response costs if certain conditions are met. Section 122(b)(1) of CERCLA authorizes EPA to reimburse certain potentially responsible parties for a portion of the costs of response actions conducted pursuant to a settlement agreement. These conditions are outlined below.

First, only private parties, parties to section 122(b)(1) agreements (including States and political subdivisions thereof) and foreign entities are eligible for payment through the response claims mechanism. Federal, State, and local government units, and Indian Tribes can receive funding for response activities through other authorities of section 111(a) or section 123 of CERCLA.

Second, eligible claimants can only be reimbursed for costs that are incurred in carrying out the National Contingency Plan (NCP), 40 CFR part 300. In order to be in conformity with the NCP, all claims must receive prior approval, or "preauthorization," from EPA. This means that before response work is initiated, the party must:

(1) Notify EPA of its intent to file a claim;

(2) Demonstrate that the release merits priority consideration;

(3) Propose activities to remedy the release that can be carried out consistent with the NCP; and

(4) Demonstrate the capabilities necessary to carry out such activities in a safe and effective manner.

In order for potentially responsible parties to be eligible for reimbursement they must conduct the response actions as specified in a Consent Decree or administrative order. Only if EPA preauthorizes a response action can the party begin work, and later file a claim for reimbursement of costs.

The limitations placed on the payment of claims for response actions and the procedures for filing such claims are described in more detail at [insert January 21, 1993 citation of publication of this rule], 40 CFR part 307. Additional information can be obtained by contacting William O. Ross, Office of Emergency and Remedial Response (5203 G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 603–8798, or the RCRA/CERCLA Hotline, (800) 424–9346 (or (703) 920–9810 in the Washington, DC metropolitan area).

[FR Doc. 93-1228 Filed 1-19-93; 8:45 am]

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Thursday
January 21, 1993

Part VI

Department of Health and Human Services

Administration for Children and Families

45 CFR Parts 1304, 1305, and 1308
Head Start Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 1304, 1305, and 1308

RIN 0970–AB01

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF).

ACTION: Final rule.

SUMMARY: This final rule adds to the existing regulations governing Head Start grantee and delegate agency policies a new part 1308 pertaining to performance standards for services to children with disabilities in the Head Start program. These regulations set forth specific performance standards, including eligibility criteria, and provide guidance to Head Start grantees and delegate agencies.

In addition, this final rule makes changes in parts 1304 and 1305 to:

(1) Assure that services are provided promptly to such children; and

(2) Make technical and conforming changes to comport with part 1308 and with changes in the definition of children with disabilities in the Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act (EHA).

DATES: This rule is effective February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families, Administration for Children and Families, P.O. Box 1182, Washington, DC, 20013, (202) 245–0572.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement in a proposed and final rule. This final rule contains information collection requirements in sections: 1308.19, Developing individualized education programs (which was section 1308.5 in the NPRM); 1308.4, Purpose and scope of disabilities service plan; and 1308.18 Disabilities health services coordination, (which was section 1308.15 in the NPRM). The information collection in the NPRM was approved earlier by OMB (Approval Number 0980–0203). That approval has expired.

The public reporting burden for the collection of information requirements in this final regulation, including the time for reviewing instructions, gathering and maintaining the data needed, and completing the records, is estimated as follows:

Requirement	Annual No. of respondents	Average time per response	Average annual frequency	Annual burden hours
§ 1308.4:				
Purpose and Scope of Disabilities Service Plan	(1 plan per program) 1910	10 hours	One	19,100
§ 1308.19:				
Developing Individualized Education Programs	(1 plan per child)	1.5 hours per child	One	105,079
	70,053 children (37 children average per program).			
§ 1308.18(d)(3):				
Disabilities Health Services Coordination	1910 programs	1 minute (average per program).	One	32
Total Annual Burden Hours				124,211

None of these requirements asks grantees to undertake substantially new recordkeeping or reporting tasks beyond general present practice.

We are currently requesting reapproval for the information collection. However, comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden may be sent to the Head Start Bureau, Administration on Children, Youth and Families, P.O. Box 1182, Washington, DC 20013 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503.

II. Program Description

Head Start, as authorized under the Head Start Act (the Act), is a national program providing comprehensive child development services. These services are provided primarily to low-income children, age three to five, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children. Parents receive training and education that foster their understanding of and involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs. In fiscal year 1991, Head Start was funded to serve 596,295 children through a network of 1,910 grantees and delegate agencies. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily low-income children and their families, Head Start's regulations permit up to 10 percent of the children in local programs to be from families that are not low-income. The Act also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to children with disabilities. Such children are expected to participate in the full range of Head Start activities with their non-disabled peers, and to receive needed special education and related services.

Each grantee is required to report annually on the services provided to children with disabilities as part of the Head Start Program Information Report (PIR). In FY 1991, Head Start served 70,053 children who were certified by professionals as having disabilities. This constituted 12.8 percent of the total enrollment.

Head Start Services to Children With Disabilities

Beginning in 1972, Head Start mounted a major initiative to provide services to children with disabilities. It is now the largest provider of services for preschool children with disabilities in a mainstream setting in the nation.

Since that time, the number of children with disabilities receiving services has tripled.

During those early years, advances were made in providing services to preschool children with disabilities and in helping Head Start programs improve their ability to meet individual special needs. Recent research and demonstration activities have provided new information on effective practices in working not only with children with disabilities, but also with their parents. Improvements have occurred in the ability to assess how a child is functioning in the motor, communication, social and cognitive areas; in the development of technology to help young children with disabilities meet their potential; and in curriculum development and program evaluation. Also, new evidence of the importance of early assistance and of the role of parents in programs for children with disabilities has become available. We have attempted to incorporate these new developments into this final rule.

Head Start services to children with disabilities are delivered in the context of and are influenced by the requirements in section 504 of the Rehabilitation Act of 1973 and the Individuals With Disabilities Education Act (IDEA), (22 U.S.C. 1400 et seq.) formerly the Education of the Handicapped Act.

As a result of this legislation and a variety of advocacy efforts, during the last decade many States have passed laws requiring that services be provided to younger children with disabilities. Special education and related services, such as physical therapy, were mandated as of 1991 for all three through five year olds with disabilities under IDEA. The responsibilities of State Education Agencies in ensuring that all eligible children receive a free appropriate public education have been clarified in the guidelines, facilitating coordination. Many Head Start programs now provide services through a combination of Head Start staff and personnel from other agencies. Coordination with specialized community agencies has become necessary to make the best use of limited resources. Currently, 54 percent of enrolled children with disabilities receive services from both Head Start and other agencies.

III. Purpose and Provisions of the Final Rule

Currently, all Head Start programs must meet all of the requirements of the Program Performance Standards as specified in the regulations at 45 CFR part 1304 including §§ 1304.2–2, 1304.3–3(b)(10), 1304.3–4(a)(1) and 1304.3–8(a)(5) which refer to services for children with disabilities. These Performance Standards clearly define the services for children who do not have disabilities. Some standards for services to children with disabilities and services to meet the special needs of their parents were distributed to grantees between 1973 and 1983 through various transmittal memoranda and other policy issuances. However, no standards previously have been set forth in regulation. The new part 1308 establishes standards in regulation, including eligibility criteria for enrollment of children with disabilities, and offers general guidance, in an appendix to part 1308, for the provision of services to children with disabilities and for services to meet the special needs of their parents. Specifically, these regulations will require Head Start programs to:

—Design comprehensive services which meet program standards for locating and serving children with disabilities and their parents;

—Develop an Individualized Education Program (IEP) to provide appropriate special services for each child who meets eligibility criteria for such services because of disability;

—Screen children by 45 calendar days after program services begin in the Fall, rather than within 90 days as currently recommended, in order that services may be provided in a timely manner;

—Use revised evaluation criteria to determine eligibility for special education and related services and for assistance in obtaining them;

—Designate a coordinator of services for children with disabilities, with special responsibilities; and

—Operate in accordance with standard guidance on the use of funds for special services for children who have disabilities.

These regulations also include some technical amendments to certain sections of 45 CFR parts 1304 and 1305 which are mandated by legislation. We are making changes in parts 1304 and 1305 to:

(1) Assure that services are provided promptly to children with disabilities; and

(2) To comport with part 1308 and with changes in the definition of children with disabilities in the IDEA.

Section 640(d) of the Head Start Act (42 U.S.C. 9835) requires the program to use the same definition of children with disabilities found in IDEA.

IV. Rulemaking History

During 1984 and 1985, extensive consultation was held with the field concerning the adequacy and usefulness of the eligibility criteria described in Transmittal Notice 75.11, issued September 11, 1975, and on the comprehensiveness of the guidance in Transmittal Notice 73.4, issued February 28, 1973, on services to children with disabilities. Head Start directors, coordinators, professional organizations, and technical assistance providers of Head Start services for children with disabilities provided suggestions, comments, and recommendations. The comments indicated a need to correlate, combine and update the various pieces of information available to Head Start grantees, providing comprehensive standards which incorporate legislative changes and advances in the state-of-the-art in the last decade.

On October 19, 1988, the Department published, with a 60-day comment period, a Notice of Proposed Rulemaking (NPRM) (53 FR 41088) for services to children with disabilities in the Head Start program. The NPRM proposed regulations to complement the Head Start Program Performance Standards which govern services to all enrolled children.

A new part 1308 was proposed to provide standards for serving children with disabilities and their families. In addition, non-binding guidance to assist grantees and delegate agencies in meeting the provisions of part 1308 was provided in an appendix. The NPRM also contained technical and conforming changes in 45 CFR parts 1304 and 1305 to mainly (1) make the definition of children with disabilities comport with the current definition in the IDEA; and (2) revise the timeline for the screening of children to allow for timely provision of needed services.

In response to the NPRM, the Department received a total of 500 letters and memoranda with 2,000 comments from grantees, State agencies, professional associations, universities, public schools, advocacy groups, parents and interested parties.

V. Section by Section Discussion of the Final Rule

General

The 500 letters and memoranda we received provided 2,000 comments pertaining to one or more of the sections in the proposed regulation. The majority of the comments were in favor of aligning the regulation more closely with applicable provisions of the IDEA, as amended.

The overwhelming majority of the comments expressed concern about the proposed requirement to complete screening of children earlier in the program year to allow for timely services. Nearly all commenters approved of the concept of timely screening and agreed with its importance, but reported that additional resources would be necessary to make this possible.

Many of the comments expressed support for the more specific information provided in the regulation and, particularly, in the accompanying guidance. A number also expressed specific concerns regarding particular sections of the proposed regulation.

We have reviewed all of the comments received and have responded to the major recommendation to bring the regulations into closer alignment with the IDEA. This recommendation affected many of the sections because of the comprehensiveness of the IDEA and because of the fiscal year 1990 and 1991 amendments made to the definitions and requirements in IDEA. For example, the amendments added a new category of disability, traumatic brain injury. Autism was made a separate category. Developmental delay was added at State discretion. Assistive technology services and devices were added as related services. We have included these changes.

In response to many requests to delineate the responsibilities of Head Start grantees and delegate agencies with respect to the responsibilities of State Education Agencies (SEAs) and Local Education Agencies (LEAs) in providing services for three- through five-year-old children with disabilities who meet Head Start income eligibility requirements, we have stated requirements governing grantees in the performance standards and described ways in which they can coordinate with SEAs and LEAs in the guidance.

In addition, we have responded where feasible to the commenters' concerns by modifying several sections of the NPRM. A section has been added to incorporate eligibility criteria for serving four- and five-year-old children with learning disabilities. Attention deficit disorders was added under the Health Impairment category.

We have also responded to the concern about the need for more resources to carry out timely screening and evaluation of children by delineating recent legislative and other changes, such as an expanded mandate for the Early and Periodic Screening, Diagnosis and Treatment program, which make timely screening feasible. To allow time for accessing these resources, the final rule includes a provision that screening may begin in the spring before program services begin in the fall.

In addition, we have revised the order in which the performance standards appear in order to make the regulation easier to use.

The regulation still begins with a discussion of the basic overall framework provided by the disabilities service plan as it did in the NPRM, but in the final rule the order of activities begins with the recruitment and identification of children and proceeds chronologically in the order in which grantees carry out the work of a program year, beginning with planning and screening. The major component headings remain the same as those in the NPRM and in the Head Start Program Performance Standards in 45 CFR part 1304. These regulations can therefore easily be merged with those Performance Standards at a future date. Several commenters noted that it would be much less difficult to understand the complex information involved in serving children with disabilities if the topics were presented in chronological order.

Part 1308

Sections 1308.1 and 1308.2 Purpose and Scope

These first two sections explain that Head Start grantees and delegate agencies must meet the requirements of part 1308.

Section 1308.3 Definitions

Comment: A number of commenters noted that some of the definitions of terms, such as "related services," which also appear in the IDEA regulations were not defined in the same way in the NPRM. They stated a belief that consistent definitions would reduce confusion and facilitate coordination and transition of children from Head Start to local education agencies. Some commenters asked that "day" be defined in order to clarify whether we mean "calendar" or "work" day when the term is used in the rule.

Response: We have made the definitions consistent with those in the IDEA, which includes "individualized education program" and expanded "related services," with minor adjustments to the others for clarification purposes and to make them age-appropriate for preschool children enrolled in Head Start. We deleted the term "mainstream" as the term does not appear in legislation and have defined the word "day".

We have updated the definition of children with disabilities to comport with the amended definition in IDEA. The Head Start Act at section 640(d) requires the Head Start Program to use the IDEA definition of children with disabilities. It now includes children with traumatic brain injury and adds, at State discretion, children experiencing developmental delay.

Section 1308.4 Disabilities Service Plan

The purpose of this section is to assure that each Head Start grantee or delegate agency has a plan for providing services to children with disabilities in as organized a manner as possible. The section does not require lengthy written information, but calls for specificity.

Comment: Favorable comments were received on this section. Commenters believed that the disability service plan provisions are helpful. The consensus among those who replied to this section was that Head Start program standards for children with disabilities should be consistent with those of the IDEA. Many commenters requested clarification on what services Head Start should provide for children with disabilities in light of the mandate in IDEA to extend services to children beginning at age three in the 1991–92 program year. In addition, the commenters asked what qualifications are necessary for professionals providing those services in Head Start. The majority requested more training for teachers and supervisors serving children with disabilities so that grantees and delegate agencies could provide the quality of special services they would like to be able to provide, and so that they would continue to be recognized as placement sites by other agencies. The majority of the commenters stated that additional resources would be necessary to provide and administer comprehensive services.

Many stated that the amount of funds available to them under Program Account 26 for special expenses due to a child's disability was insufficient to meet needs.

Response: We have stated the responsibilities of Head Start programs in providing services in § 1308.4 and clarified the related responsibilities of the SEAs and LEAs in the accompanying guidance. In addition, in the guidance we describe resources which have become available because of legislative changes in the EPSDT/Medicaid program and the expanded scope of the services for children from the Supplementary Security Income program and from title V of the Social Security Act, as well as those which can be negotiated through interagency agreements with LEAs now that States have extended their mandates to serve children in the three through five age range. We believe that these and other additional resources will make timely services possible.

Since the NPRM was published, ACYF has consolidated a number of program accounts and developed a new grant application form. The new grantee application form lists line items for expenditures to meet needs caused by a disability, but grantees will no longer use a number of the separate program accounts which they used when the NPRM was published, including Program Account 26. Therefore, references to this account in the NPRM at § 1308.4 (e) and (f) have been eliminated. However, the final rule provides for expenditures for the same essential services and expenditures, including salaries. The provisions of the NPRM at § 1308.4(f)(1) have been made more specific in the final rule at § 1308.4(o) (1) and (3).

In paragraph (g), we have added a requirement that the plan must address strategies, as appropriate, for the transition from infant toddler programs, as well as the transition from Head Start into the next placement. The purpose of this is to assure continuity in services for the children and their parents.

Also, in paragraph (j) we have added two options for consideration in preparing the plan which are:

(1) Shared supervisory personnel when necessary to meet State requirements or qualifications; and

(2) Having two children share one enrollment slot when each child's IEP calls for part-time service.

We believe these two options, if used, will help with cost containment and enable more children to receive services.

Paragraph (o) on allowable expenditures includes references to the Americans with Disabilities Act as it applies to the participation of persons with disabilities and the elimination of architectural barriers.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

In this section, we require that Head Start outreach and recruitment efforts include specific approaches to recruiting children with disabilities. This section has been reordered. It was § 1308.17 in the NPRM. This section has been expanded as a result of: (1) The passage of IDEA, which extends the right to services to all three- through five-year-old children with disabilities, (2) the Americans With Disabilities Act of 1990, (3) State legislation regarding immunizations, and (4) requests to clarify the nature of the mandate to assure that at least ten percent of enrollment opportunities are made available to children with disabilities. In addition, the section has been modified to reflect recent clarification by ACYF of the primary responsibility of the grantee rather than the social services coordinator for outreach and recruitment.

Comment: Commenters requested clarification of the responsibilities of staff members for the recruitment and enrollment of children with disabilities. Some commenters stated the opinion that children with severe disabilities are not appropriately placed in Head Start.

Response: We have clarified the primary responsibility of the grantee rather than the social services coordinator as proposed in the NPRM for recruiting and enrolling children with disabilities. This change has been made in response to comments and clarification by ACYF.

The guidance reiterates the provisions of Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794) and cites the Americans with Disabilities Act (42 U.S.C. 12101) which was passed after the publication of the NPRM regarding services for children with severe disabilities. It clarifies that the Individualized Education Program (IEP) determines appropriate placement on an individual basis.

Paragraph (b) in the NPRM has been clarified and strengthened in paragraph (c) of the final regulation in response to comments asking for more information on when Head Start is an appropriate placement for a child with a disability. Paragraph (c)(4) has been added in response to requests to delineate the responsibility of a grantee which has already enrolled children with disabilities as ten percent of its enrollment in the event that more children with disabilities apply. This section states that in this case children who have a disability and non-disabled children would compete for the available enrollment opportunities.

In paragraph (e)(3), we have added a requirement that grantees must meet applicable State laws regarding immunization of preschool children to reduce the spread of communicable diseases. In most states these laws have been passed since the publication of the NPRM. Attention to immunization during recruitment and enrollment can prevent disabilities which can follow some diseases.

Section 1308.6 Assessment of Children

The name of this section of the NPRM has been changed from "Evaluation of children" to "Assessment of children" to conform with best current practice and eliminate confusion. It proposes timely screening of children (by 45 days after program services begin in the fall) and timely evaluation of any children who need further assessment to determine whether they have a disability.

Comment: The largest number of comments were made in response to this section of the NPRM. Commenters asked for clarification of days, as calendar or work days. They asked for modification of date of enrollment to date when program services begin in the fall, because children enroll at various times beginning in the spring for the following year.

The vast majority of commenters stated that the proposed timeline for completing screening of children by 45 days after program services for children begin in the fall was unrealistic under the conditions which were in effect at the time of the comment period. They cited these conditions as: Lack of sufficient qualified personnel to conduct the screening; barriers to interagency coordination; scarcity of health providers, including dentists and doctors willing to serve as EPSDT/Medicaid providers; problems in rural areas with few professionals, long distances and weather problems; and some uncooperative parents. Nevertheless, these commenters were philosophically in favor of screening which would allow special services to be provided earlier in the Head Start program year.

Several commenters cited a perceived need for time for children to adjust prior to screening, at least 90 days. A few commenters apparently misconstrued the NPRM, thinking that screening would exclude parents. They recommended that parents be present if possible to allay any fears children might have. Other commenters stated that they already complete screening by 45 days after program services have begun in the fall with no negative effects. They stated that for them screening is a very positive activity with high community involvement. A number of commenters noted that lack of summer staff makes timely screening more difficult.

Response: The name of this section has been changed from "Evaluation of children" to "Assessment of children" because it discusses all three steps in the overall process of assessment of children, which includes screening and evaluation. This wording is consistent with the IDEA and general usage in the field and should facilitate coordination.

Currently, there is no standard for the screening period, but guidance in the Head Start Program Performance Standards suggests a period of up to 90 days. While this was intended as the outside limit of the timeframe, it has been interpreted by some as the standard which grantees should strive to reach. In response to many questions we have defined days as calendar days, in the definitions, § 1308.3, which we discussed earlier. We elected to use calendar days instead of working days because they are consistent everywhere.

In paragraph (b)(1), we have also adopted the suggestion to change the wording from "screening is to be completed within 45 days after enrollment" to "by 45 days after program services begin in the fall." This is consistent for all programs and removes any misconception that screening should be compressed within 45 days in the early fall.

The guidance for paragraph (b) points out that the timeline does not preclude beginning the screening process early, including the spring before a child enters Head Start. This enables a grantee to complete parts of the screening, such as physical examinations, which do not require familiarity and orientation, early. Sufficient time would still remain in the fall to accustom children to the Head Start program and to other parts of the screening process, such as hearing tests and simple developmental tasks.

Assessment is a complex process, and it was clear from some of the examples cited by commenters that there continues to be confusion in the field about the differences between two steps in the overall assessment process: (1) Screening for all the children, and (2) subsequent evaluation for only those children needing further assessment to determine whether or not they have a disability. A number of the concerns cited about screening described problems with the lengthier evaluation process instead of with the screening process. In the final rule we have clarified the distinction between screening and evaluation, numbering and highlighting the steps in the overall assessment process. In addition, we have added a clarification in paragraph (e)(ii) that the personnel performing the evaluation must be State certified or licensed in response to numerous questions and comments. This provision was added to assure quality of services and to reflect current best practice.

In the guidance for paragraph (b), information has been provided on resources which have recently become available from other agencies as a result of legislative and judicial actions. Guidance is provided on the development of effective State and local interagency agreements to help reduce barriers to coordination. A Federal level agreement between the Departments of Health and Human Services and Education is described. These developments should improve access to assessment services for grantees, including those in rural areas.

We agree with the comment that best practice in screening involves the parents whenever possible. We have reiterated in the guidance for paragraph (d) that parental involvement is highly desirable.

With respect to the commenters' requests for a statement of the level of qualifications to be required for staff serving children with disabilities in Head Start, we have required in § 1308.4(k) that services be provided by or supervised by staff meeting State qualifications by the 1994–95 program year. Suggested resources and strategies to achieve this goal were listed in the guidance.

Comment: With respect to the evaluation of children referred for further assessment to determine whether they may have a disability, many commenters said it would be difficult to meet the timeline proposed in the NPRM to initiate evaluation within 15 days after screening or referral. The reasons given were the same as those cited in the comments on the proposed timeline for screening. A second factor was raised by some commenters who stated that the proposed timeline is not the same as that used by LEAs in their area.

Response: We have reiterated that the increases in resources available through recent legislative and other changes which were cited in response to concerns about the timing of screening apply to evaluation also. These changes make timely action more feasible. Since the passage of IDEA, a child can be referred for an evaluation as early as on the child's third birthday, which should help expedite the process. The guidance for § 1308.4(a) clarified that the LEA has responsibility to assure that an evaluation meeting the requirements of IDEA is provided for all children who are referred to the LEA for evaluation.

The IDEA does not specify a timeline for initiating evaluation. Each LEA can determine its own timeline. We have decided to encourage the initiation of evaluation when Head Start provides the evaluation as soon as possible after screening or referral, but not to require it within 15 days because many grantees receive evaluations from the LEAs. We have also added guidance for § 1308.4(a) to encourage completing steps in the process of evaluation which are consistent with LEA standards at a minimum.

Comment: The proposed regulations require that a multidisciplinary team evaluate all children, including those referred for possible speech or language disabilities. Most of the commenters approved of the requirement that a multidisciplinary team conduct the evaluations of children who need further assessment. Many, however, expressed concern about cost and availability of qualified and willing professionals. Some commenters believed that a qualified speech/language pathologist or other communication specialist alone could evaluate children with possible speech and language problems and that a team is not needed. Others supported the use of a team because speech and language problems can be indications of other disabilities. They believe a thorough evaluation is needed to determine the scope and, if possible, the cause of the problem.

Response: We have retained the requirement at § 1308.6(e)(5) that a team be used, but allowed for leeway in professional judgment as to how many tests or procedures may be needed for an accurate evaluation of an individual child.

Comment: Grantee commenters unanimously disapproved of the proposed provision that if Head Start is providing for an evaluation one member of the evaluation team who is not a Head Start employee certify the child as having a disability. Commenters supported their comments by stating that this provision was duplicative, costly and unnecessary.

Response: This provision in the NPRM stemmed from practice in prior years, when one professional member of an evaluation team who was not a Head Start employee certified that a child had a disability. We agree with the commenters and have modified this provision at paragraph (e)(2)(iv) so that when Head Start provides for the evaluation, a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability makes the evaluation. A qualified professional employed by Head Start would therefore be eligible as a member of the multidisciplinary team. To insure sufficient Head Start staff involvement, the grantee is to assure that information from observations by teachers and other staff, information from parents and knowledge of cultural and linguistic factors are taken into account in making the determination.

Section 1308.7 Eligibility Criteria: Health Impairments

Comment: A number of commenters recommended that the term diagnostic criteria used in previous guidance memoranda and in the NPRM be replaced by the term eligibility criteria. These criteria state the conditions which a child must meet in order to be eligible for services for children with disabilities in the Head Start program. The term eligibility criteria is more precise, less medically oriented and reflects current usage.

Response: We have accepted the recommendation for this section and the other appropriate sections of this final rule.

Comment: A number of commenters noted that there were inconsistencies among the eligibility criteria which were proposed in the NPRM, those set forth in the IDEA, as amended, and those established in the various States by State Education Agencies. Commenters stated that this created difficulties in assessment and evaluation procedures, transition to public school, coordination with other agencies and conferring with parents. The clear majority of commenters recommended that eligibility criteria be made generally consistent with the IDEA regulations. There was divided opinion, however, about three of the proposed eligibility criteria: learning disabilities, emotional/behavioral disorders and mental retardation. They are discussed in the section analyses to follow.

Many commenters complimented the increased specificity of the proposed criteria.

Response: We have accepted the recommendation that eligibility criteria be made as consistent as feasible with the criteria in the IDEA. This course of action allows for the exercise of professional judgment by the evaluation team and recognizes the importance of reducing confusion for parents and service providers. This decision will facilitate coordination.

Comment: Opinion was divided concerning the proposed classification of autism. The NPRM had classified autism as an emotional or behavioral impairment. A number of commenters stated that it should be classified as a health impairment. One reason cited for this opinion is that many parents of children with autism felt strongly that this impairment is properly classified as a health impairment; another reason is that it was so classified in the predecessor to IDEA—the Education of the Handicapped Act. Others believed it should be a separate category. In 1990 IDEA listed autism as a separate category.

Response: We have accepted the recommendation to classify autism as a separate category for consistency. It is included at § 1308.15.

Comment: There were also divided opinions on the inclusion of severe dental caries as a health impairment as proposed in the NPRM. Many grantees expressed concern about the serious dental problems of many of the children and the difficulty of obtaining and paying for treatment. They were in favor of retaining this category as a means of obtaining services, but were concerned about potential cost. Many other respondents favored omitting serious dental problems because they were not convinced that they affect learning and require special education. They, too, expressed concern about cost.

Response: We have decided to omit this category for two reasons. Since the NPRM was published, there have been legislative changes to the EPSDT program. These changes require that children meeting income eligibility requirements must receive dental treatment from EPSDT. Secondly, many commenters approved of the concern shown for dental problems, but did not believe they should be considered as disabilities. They cited difficulties in coordinating with the IDEA if they were included. As one of the major overall recommendations was to strive for consistency with the IDEA as far as appropriate, we are omitting severe dental problems as a disability category.

Comment: Many commenters disagreed with the inclusion of obesity and malnutrition as disabilities. It was pointed out by some commenters that obesity may be culturally sensitive matter and that the nutrition component of Head Start provides assistance in obtaining food supplements as needed.

Response: We agree and have eliminated these conditions from the health impairment category.

Comment: A number of commenters requested that severe asthma be included as one of the examples of health impairments listed in this section. It was not listed in the NPRM. Fewer respondents asked that HIV, AIDS, substance abuse, Hepatitis B and Fetal Alcohol Syndrome be listed as well.

Response: We have added asthma because this is a prevalent health problem for children whose families meet income eligibility criteria. We concurred with the recommendation to list AIDS, because it is increasingly prevalent among young children. The other conditions are addressed in the guidance and are not specifically listed because the section states that the list is not restricted to the conditions named. If a child with Fetal Alcohol Syndrome, for example, is found to need special education and related services, the child would qualify under the disability manifested by the child.

Comment: A number of commenters requested that attention deficit disorders, including hyperactivity, be included as a disability. They stated parent concerns that if these disabilities are not attended to early, the prognosis for learning and social/emotional development is poor.

Response: We have added a paragraph on attention deficit disorders, recognizing that the age of onset is during the early childhood and preschool years. Head Start staff have requested additional assistance to deal with attention problems and hyperactivity. The Office of Special Education Programs in the United States Department of Education issued a policy statement in 1991 which gives SEAs permission to use this category if they choose to. In accordance with the recommendations of professionals working with young children with this disorder, we have incorporated regulations on this disability in the section on health impairments at paragraph (d). Paragraph (d), among other things, requires that grantees use caution so that only the children whose functioning is most severely affected be classified as having an attention deficit disorder. This stipulation is made based upon experience and best practice in order to assure that young children are not over-referred.

Section 1308.8 Eligibility Criteria: Emotional/Behavioral Disorders

Comment: We received conflicting opinions concerning the proposed category "behavior disorders" which we had proposed in the NPRM. We had proposed this term to replace the term previously used in Head Start guidance, "seriously emotionally disturbed." We had taken that action because some grantees, parents and diagnosticians found the term seriously emotionally disturbed objectionable. On the other hand, the majority of commenters recommended consistency with the eligibility criteria in the IDEA, which include serious emotional disturbance. Some of these commenters stated they made this recommendation to assure that children with severe problems would be included in the definition and receive services. A number suggested that a category combining the terms behavioral and emotional would best represent current thinking in the field.

Response: Balancing the valid but differing points of view, we have decided to use the term "emotional/behavioral disorder" in response to the concerns of parents, grantees and professionals and to include within the definition descriptive language which encompasses the IDEA definition of serious emotional disturbance.

In § 1308.8(c), we deleted the requirement for a physical examination that was in the NPRM. As a child will already have had a regular physical examination, we are requiring a review of the results of the physical examination.

Section 1308.9 Eligibility Criteria: Speech or Language Impairments

Comment: Many commenters stated that the information provided in the guidance for this section is helpful and requested that it be incorporated into the standard. A number of commenters, including professional associations in the field of speech, language and hearing, recommended that the term "communication impairment" which was proposed in the NPRM be replaced with "speech and language impairments" for consistency with IDEA.

Response: We have made those changes.

Comment: The NPRM proposed that a child with a delay of one year below the norm in speech or language level be eligible for services. A number of respondents believed the proposed one year delay would be too stringent.

Response: Further analysis of the effect of the proposed NPRM criterion on children who are three or four years old shows it is more stringent for them than five year olds. The criterion proposed in the NPRM has been replaced by functional criteria with less dependence on formal testing. This brings the criterion into alignment with the IDEA criterion.

Comment: The NPRM proposed using the term communication disorders to encompass both speech and language impairments. One rationale for doing so was that speech problems have received a great deal more attention than language problems. Also, both these problems are listed in the IDEA definition. A number of commenters stated that it would be helpful to them in coordinating with LEAs and obtaining related services if the final regulation would use the term speech or language impairments and include the IDEA criteria found in 34 CFR part 300.

Response: We have made that change.

Section 1308.10 Eligibility Criteria: Mental Retardation

Comment: The NPRM contained language which retains the term "mental retardation." We received a number of requests to change this term to "developmentally delayed." A number of commenters believed that the proposed criterion based upon standardized testing is too stringent and requested that it be eliminated. Some commenters stated they would prefer the term "deferred diagnosis."

Response: We have decided to retain the term mental retardation for clarity and to avoid confusion with delays which may be caused by factors other than a disability.

Using the term mental retardation is responsive to the overall recommendation to be consistent with the eligibility criteria in the IDEA regulations. We have removed the proposed criterion based on standardized testing and brought the standard into conformity with the requirements of the IDEA.

Beginning in 1991, three through five year old children may be served as developmentally delayed at State discretion under IDEA if they meet State eligibility criteria. We have incorporated this option in the eligibility criterion category termed Other Impairments at § 1308.17 of this final rule. The Other Impairments category, which was proposed in the NPRM, therefore now includes children who may be designated as developmentally delayed by an SEA. This option is more specific than the term "deferred diagnosis" suggested by some commenters, but serves the same purpose of providing services for children who do not meet the other eligibility criteria.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Comment: The NPRM contained only one section to encompass both deafness and less severe hearing losses. The NPRM did, however, contain standards for each of the two levels of hearing impairment. Some commenters suggested we separate deafness and less severe hearing losses into two levels for clarity. A number of professional organizations suggested that we use criteria more in accord with the IDEA criteria in lieu of using decibel levels, which are insufficient to describe functional hearing.

Response: In accord with the overall recommendation that we align the regulations more closely with the IDEA, we have adapted the criteria to conform to the IDEA language.

Comment: Many of the comments about the section which discussed milder hearing loss in the NPRM (§ 1308.11) focused on the proposed inclusion of otitis media, recurrent middle ear infections with fluctuating hearing loss, as a disability. Commenters were divided on the issue: those who agreed with including the condition had concerns about the additional costs for qualified staff and services, while those who disagreed with the inclusion of the condition thought that it was not severe enough to warrant inclusion. Some commenters noted that otitis media is one of the most prevalent childhood illnesses and that, when it occurs during the early language learning years, it can result in delays in speech and language. Speech and language problems are the most common disabilities among preschool children.

Response: We have decided to retain this condition, but have made some modifications. We have provided that only children with persistent recurrent problems are included and have stipulated that, when the condition is no longer present, they are no longer considered to have a disability. We believe the inclusion of this condition can have a significant positive impact on the effectiveness of Head Start services and prevent later learning, hearing and communication disabilities. It can also reduce long-term costs. An additional rationale for inclusion is that fluctuating hearing loss is included in the IDEA definition of hearing impairment-hard of hearing. Our inclusion of this category is therefore in accord with the major overall recommendation for consistency with the IDEA.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Commenters did not raise any issues with this section. We made technical clarifications to paragraph (a) in order to have the criteria comport with the IDEA criteria regulations.

Section 1308.13 Eligibility Criteria: Visual Impairment

Comment: One commenter stated that under the NPRM definition in paragraph (a)(1), the child is sightless or has such limited vision that the child must rely on hearing and touch as the child's chief means of learning, was unnecessary because under paragraph (a)(2) the vision loss meets the definition of legal blindness in the State of residence. The commenter thought that using the State definition was sufficient and provided more useful information. One commenter requested that vision training be listed as a possible related service in the guidance section.

Response: We agree with the recommendation to eliminate paragraph (a)(1). Services related to functional vision services for children with diagnosed visual impairments are already listed as a possible related service and are considered more appropriate for this population.

Section 1308.14 Eligibility Criteria: Learning Disabilities

This is a new section. The NPRM did not include learning disabilities as a category, but instead stressed cooperating with the education staff in efforts to prevent future learning problems. For some years prior to the publication of the NPRM learning disabilities had been included as a category. A number of grantees had reported that it was difficult to use, especially for younger children, and there was disagreement among professionals on its appropriateness for preschool children. For those reasons the NPRM did not include a learning disabilities category. This section has been added to the final regulation in response to comments.

Comment: Opinion was strongly divided on whether learning disabilities should be included as a category for Head Start. Many advocacy groups, a number of professional associations, some parents and some grantees urged inclusion of learning disabilities. Specific learning disabilities are included in the IDEA, 20 U.S.C. 1401, but not all SEAs elect to include learning disabilities in their eligibility criteria for preschoolers.

Many other commenters, however, particularly grantees, responded favorably to the omission of learning disabilities as a criterion in the NPRM, particularly for three-year-olds, since the definition relates to problems with reading, writing and mathematical skills. A number of respondents stated a belief that it is difficult or impossible to determine whether a three-year-old child has a learning disability. They believe that including the category may inadvertently focus unduly on pre-academic skills, especially for three-year-olds. Other commenters, however, cited examples of obtaining valuable assistance for preschoolers as a result of early diagnosis of a learning disability from their experience in Head Start. These commenters included some parents whose children had benefitted from early assistance for learning problems.

Response: After considering the overall recommendation for consistency with the IDEA, the recommendations of advocates, parents, interested professionals and grantees, and the varying professional opinions in the fields of early childhood education and special education, we have decided to include the category with an emphasis on precursor skills for four- and five-year-old children, but not for three-year-olds. In the rule, the term includes such conditions as perceptual disabilities, brain injury and aphasia.

We have, however, stated that when a three-year-old child is referred with a professional diagnosis as having a learning disability, or if the grantee wishes to exercise the option, the grantee may serve the child as learning disabled.

Section 1308.15 Eligibility Criteria: Autism

This is a new section. While autism was previously included as a disability in Head Start, it had not been listed as a separate disability category. The 1990 amendments to IDEA established autism as a separate disability.

Comment: A considerable number of commenters requested that autism be included under "Health impairment" or listed as a separate category. Most of the commenters, particularly parents and professionals citing new research on the probable causes of autism, disapproved of including children with this disability under the category "Behavior disorders" as proposed in the NPRM.

Response: We have accepted the recommendation that autism be considered a separate disability for consistency with IDEA and to facilitate coordination with LEAs.

Section 1308.16 Eligibility Criteria: Traumatic Brain Injury

This is a new section. The 1990 amendments to IDEA established traumatic brain injury as a separate category in recognition of the large number of children suffering injuries, especially in car accidents, which necessitate special education and related services.

Comment: While commenters did not address this disability by name, they recommended that the criteria be consistent with IDEA.

Response: We have accepted the recommendation. The rationale is to foster consistency, ease of coordination and transition.

Section 1308.17 Eligibility Criteria: Other Impairments

This section has been reordered and expanded. It was § 1308.14 of the NPRM and provided that if the State criteria developed by the SEA contains a category in addition to the eligibility criteria in the NPRM §§ 1308.7 through 1308.18 §§ 1308.7 through 1308.17 of the final rule) under which the child would be eligible for special education and related services, the child would also be eligible for special education and related services in Head Start. Examples are categories such as "preschool disabled," "educationally handicapped," "in need of special education services" or "non-categorically disabled."

In 1991, IDEA included "developmentally delayed" for three through five year old children meeting State criteria at State option as a disability. Numerous commenters responding to the NPRM section on mental retardation requested that "developmentally delayed" be included in these performance standards.

Comment: Commenters uniformly approved of this section as facilitating coordination, simplifying transition for parents, and ensuring that a child in Head Start would not be denied services which would be available to a preschool child in an SEA-sponsored program. The respondents requested that further information and examples be provided.

Response: We have retained this section to ensure equal access to services for children three through five years old whom the State considers in need of special education and related services. We have added "developmentally delayed" as a disability in States which elect to use that option for children three through five years old to this section for consistency with IDEA, in response to comments, and because it is optional at State discretion.

Comment: Some commenters recommended that a category be provided for children who are deaf-blind for consistency with IDEA regulations.

Response: We have accepted this recommendation and the final rule includes "deaf-blindness" under this category. A few children who are deaf-blind are served in Head Start and this will allow for accurate accounting.

Comment: Several commenters recommended that a category be provided for children with two or more disabilities, other than deaf-blindness, for consistency with IDEA regulations and for complete reporting.

Response: We have accepted this recommendation.

Section 1308.18 Disabilities/Health Coordination

Comment: Commenters stated that the information on the administration of medications to children with disabilities should be clarified.

Response: It has been made more specific.

Section 1308.19 Individualized Education Programs

This section has been re-ordered and was § 1308.5 in the NPRM. It requires Head Start programs to develop an IEP for each child with disabilities if the

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LEA does not do so. It specifies requirements for an IEP developed by a grantee, including, among other things, statements of the child's present level of functioning, annual goals, activities to meet the goals and dates for initiation of these activities. It also requires that a team, including the Head Start disabilities coordinator, the child's teacher or home visitor, a member of the team which evaluated the child and determined the need for special education and related services, and others develop the IEP, with parental involvement. The accompanying guidance for this section provides information on the areas for which the SEA and LEA have responsibility and suggests ways for Head Start to coordinate with LEAs and other agencies.

Comment: There were 209 comments on this section of the NPRM, including 115 from grantees. A significant number of comments were favorable about the content as proposed in the NPRM, but reflected the opinion that requirements for the IEP process should be modified to be consistent with those of the LEA. Commenters specified that when Head Start rather than the LEA develops an IEP for a Head Start eligible child, these standards should contain requirements for procedures to assure specific parental rights (e.g., parental permission for initial evaluation, notice of intent to change the child's IEP and use of assessment procedures and instruments which are free of cultural bias) in accordance with the provisions of the IDEA regulations. Many of these commenters also indicated that it has become more difficult to access resources, that fiscal support for services for children with disabilities within Head Start and from other agencies has eroded, and that additional funds would be required to hire or contract with qualified personnel to provide the services outlined in the IEPs. Commenters requested clarification of the role of Head Start and of the LEA in the IEP process.

Response: We have responded by including the parental rights procedures in § 1308.19(k) and by making the IEP process consistent with that of the LEA insofar as appropriate. In the guidance we have described the areas for which the LEA has primary responsibility for all children with disabilities and provided optional suggestions for collaboration.

Comment: An overwhelming majority of those responding asserted that it would be impossible under present conditions to meet the 30 day timeline proposed in the NPRM between the date of determination that a child has a disability, with the subsequent development of an IEP, and the beginning of special services to meet the child's need. The reasons included: Shortages of transportation; shortages of qualified personnel; barriers to interagency coordination; time believed needed for children to adjust to being in the program; excessive staff burden; and lack of cooperation by some parents.

Response: We have decided to modify the language of the requirement to conform to the IDEA regulations language, requiring that grantees hold the IEP meeting within 30 days after the determination that the child has a disability but eliminating the proposed requirement that services begin within 30 days after the development of the IEP. Instead we are asking that services begin as soon as possible after the development of the IEP, which is consistent with IDEA regulations.

Comment: A number of commenters who asked for delineation of the relative responsibilities under the Head Start mandate to serve children with disabilities and under IDEA asked for clarification of Head Start staff involvement in the development of IEPs, since they are often prepared by LEAs. Some also recommended that the IEP include consideration of the strengths of the child and family as well as the child's disability.

Response: We have included in § 1308.19(c) a requirement that a representative from Head Start must participate in the IEP meeting and subsequent placement decision for any child meeting Head Start eligibility requirements. This will assure mutual decision-making when both Head Start and the LEA are the potential service providers. We have also required that when Head Start develops the IEP, the child's unique strengths, developmental potential and the family strengths and circumstances be considered along with the child's needs and disability, in keeping with the Head Start family focus and philosophy.

Comment: Many commenters requested requirements for parental involvement and rights in the IEP process which are consistent with those in the IDEA regulations.

Response: We have incorporated in § 1308.19(d) requirements for parental notification, efforts to assure that parents understand the purpose and proceedings and are encouraged to participate, receive information in their native language, and are offered a copy of the IEP. Requirements to document efforts to involve the parents in cases when the efforts fail, are delineated. The purpose of including these requirements is to ensure that parents are given every opportunity for informed participation consistent with the opportunities offered under IDEA.

Section 1308.20 Nutrition Services

Comment: This section was reordered. It was § 1308.16 of the NPRM and discusses special nutritional concerns related to children with disabilities. The only comments on this section requested that speech therapists, occupational therapists and nutritionists be listed as appropriate consultants for feeding and eating problems of children with disabilities.

Response: We have incorporated that suggestion which is in accord with current accepted practice. In addition, we have added parents of children with severe disabilities as recipients of assistance from consultants on nutrition problems. This will assure that parents will learn about proper nutrition for their children and develop feeding skills.

Section 1308.21 Parent Participation and Transition of Children

Comment: This section of the NPRM was § 1308.18 and discussed enabling parents to access services and the need to prepare ahead to help families make the transition to another program following Head Start. Commenters found this section helpful, but requested that transition into Head Start from infant/toddler programs be discussed along with the information on transition after Head Start.

Response: After the publication of the NPRM, the passage of IDEA extended parent participation provisions to the parents of all preschool children with disabilities who are entitled to special education and related services. In addition, changes were made to the Supplemental Security Income (SSI) Program and to the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Parents of children enrolled in Head Start programs need to be informed about these programs. We have added a requirement in paragraph (6) that parents be informed of their rights under IDEA and a requirement in paragraph (7) that parents be informed of resources which may be available to their children from SSI and EPSDT. We have accepted the useful suggestion that transition into Head Start from infant/toddler programs be addressed, in paragraph (1).

Comment: Commenters also asked for more specific information on the responsibilities of Head Start staff and of the LEA for helping children make the transition to public schools and for fostering family involvement.

Response: Such information, together with information on the usefulness of interagency agreements which include plans for transition, has been added to the guidance in response.

Technical Revisions to Parts 1304 and 1305

We have made technical revisions to certain sections of 45 CFR parts 1304 and 1305 to (1) assure that services are provided promptly to children with disabilities; and (2) to comport with part 1308 and with changes in the definition of children with disabilities in IDEA.

Section 1304.1–2 Definitions

The definition of children with disabilities in paragraph (b)(3) of this section has been amended for the reasons stated in the above paragraph. While the definition has been used in Head Start for a number of years, amendments to the definition previously have not been incorporated in Head Start regulations. There were no comments on this section.

Section 1304.3–3 Medical and Dental History, Screening and Examination

This section requires that health screening be completed by 45 days after program services for children begin in the fall, or for a child who enters late, by 45 days after the child enters, to comport with § 1308.6. No comments were received addressed to this section. Comments on this topic were addressed to § 1308.6 which delineated the requirement in detail.

Section 1305.2 Definitions

This section brings the definition of children with disabilities into conformity with the definition in §§ 1308.3 and 1304.1–2, cited above. There were no comments on this section.

VI. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department has determined that this rule is not a major rule within the Executive Order because it will not have an annual effect on the economy of $100 million or more; nor result in a major increase in costs or prices for consumers, any industries, any governmental agencies, or any geographic region; and, it will not have an adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-born enterprises in domestic or import markets.

The final rule provides performance standards and guidance for Head Start grantees and delegate agencies serving children with disabilities and their parents. It requires, among other things, that Head Start grantees (1) design comprehensive services which meet program standards for locating and serving children with disabilities and their parents; (2) develop an individualized education program for each child who meets eligibility criteria for such services because of disability; and (3) screen children by 45 calendar days after program services begin in the fall to assure services may be provided in a timely manner. The final rule will not have a significant economic impact on Head Start grantees and delegate agencies as the rule will not significantly increase costs to the Head Start program.

As stated earlier, many Head Start programs now provide services through a combination of Head Start staff and personnel from other agencies. They carry out coordination activities with specified community agencies and other appropriate Federal programs such as SSI in order to make the best use of limited resources.

Therefore, we see no appreciable increase in costs to the Head Start program. The Department concluded that this final rule is not a major rule within the meaning of the Executive Order because it does not meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," we prepare an analysis describing the rules impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

While this regulation would affect small entities, it is not substantial, and in many instances the small entities already meet some of the requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

List of Subjects

45 CFR Part 1304

Dental health, Education of disadvantaged, Grant program/social programs, Health care, Mental health programs, Nutrition, Parental involvement, Reporting requirements.

45 CFR Part 1305

Education of children with disabilities, Education of disadvantaged, Grant program/social programs, Handicapped.

45 CFR Part 1308

Education of children with disabilities, Grant program/social program, Health care, Parental involvement, Reporting requirements.

(Catalog of Federal Domestic Assistance Program Number 93,600, Project Head Start)

Editorial Note: This document was received at the Office of the Federal Register on January 13, 1993.

Date: May 20, 1992.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: July 10, 1992.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, title 45, chapter XIII, subchapter B of the Code of Federal Regulations is amended as follows:

1. Part 1308 is added to read as follows:

PART 1308—HEAD START PROGRAM PERFORMANCE STANDARDS ON SERVICES FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.

1308.1 Purpose.
1308.2 Scope.
1308.3 Definitions.

Subpart B—Disabilities Service Plan

1308.4 Purpose and scope of disabilities service plan.

Subpart C—Social Services Performance Standards

1308.5 Recruitment and enrollment of children with disabilities.

Subpart D—Health Services Performance Standards

1308.6 Assessment of children.
1308.7 Eligibility criteria: Health impairment.
1308.8 Eligibility criteria: Emotional/behavioral disorders.
1308.9 Eligibility criteria: Speech or language impairments.
1308.10 Eligibility criteria: Mental retardation.
1308.11 Eligibility criteria: Hearing impairment including deafness.
1308.12 Eligibility criteria: Orthopedic impairment.
1308.13 Eligibility criteria: Visual impairment including blindness.
1308.14 Eligibility criteria: Learning disabilities.

1308.15 Eligibility criteria: Autism.
1308.16 Eligibility criteria: Traumatic brain injury.
1308.17 Eligibility criteria: Other impairments.
1308.18 Disabilities/health services coordination.

Subpart E—Education Services Performance Standards

1308.19 Developing individualized education programs (IEPs).

Subpart F—Nutrition Performance Standards

1308.20 Nutrition services.

Subpart G—Parent Involvement Performance Standards

1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

Appendix to Part 1308—Head Start Program Performance Standards on Services to Children With Disabilities

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for 3- through 5-year-old children with disabilities enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR part 1304. The purpose of this part is to ensure that children with disabilities enrolled in Head Start programs receive all the services to which they are entitled under the Head Start Program Performance Standards at 45 CFR part 1304, as amended.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

§ 1308.3 Definitions.

As used in this part:

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

(b) The term *children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities; and who, by reason thereof, need special education and related services. The term *children with disabilities* for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

(d) The term *day* means a calendar day.

(e) The term *delegate agency* means a public or private non-profit agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(f) The term *disabilities coordinator* means the person on the Head Start staff designated to manage on a full or part-time basis the services for children with disabilities described in part 1308.

(g) The term *eligibility criteria* means the criteria for determining that a child enrolled in Head Start requires special education and related services because of a disability.

(h) The term *grantee* means the public or private non-profit agency which has been granted financial assistance by ACYF to administer a Head Start program.

(i) The term *individualized education program* (IEP) means a written statement for a child with disabilities, developed by the public agency responsible for providing free appropriate public education to a child, and contains the special education and related services to be provided to an individual child.

(j) The term *least restrictive environment* means an environment in which services to children with disabilities are provided:

(1) to the maximum extent appropriate, with children who are not disabled and in which;

(2) special classes or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(k) The term *Performance Standards* means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(l) The term *related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services, and parent counseling and training. It includes other developmental, corrective or supportive services if they are required to assist a child with a disability to benefit from special education, including assistive technology services and devices.

(1) The term *assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(2) The term *assistive technology service* means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: The evaluation of the needs of an individual with a disability; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and training or technical assistance to professionals who employ or provide services involved in the major life functions of individuals with disabilities.

(m) The term *responsible HHS official* means the official who is authorized to make the grant of assistance in question or his or her designee.

(n) The term *special education* means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability. These services include classroom or home-based instruction, instruction in hospitals and institutions, and specially designed physical education if necessary.

Subpart B—Disabilities Service Plan

§ 1308.4 Purpose and scope of disabilities service plan.

(a) A Head Start grantee, or delegate agency, if appropriate, must develop a disabilities service plan providing strategies for meeting the special needs of children with disabilities and their parents. The purposes of this plan are to assure:

(1) That all components of Head Start are appropriately involved in the integration of children with disabilities and their parents; and

(2) That resources are used efficiently.

(b) The plan must be updated annually.

(c) The plan must include provisions for children with disabilities to be included in the full range of activities and services normally provided to all Head Start children and provisions for any modifications necessary to meet the special needs of the children with disabilities.

(d) The Head Start grantee and delegate agency must use the disabilities service plan as a working document which guides all aspects of the agency's effort to serve children with disabilities. This plan must take into account the needs of the children for small group activities, for modifications of large group activities and for any individual special help.

(e) The grantee or delegate agency must designate a coordinator of services for children with disabilities (disabilities coordinator) and arrange for preparation of the disabilities service plan and of the grantee application budget line items for services for children with disabilities. The grantee or delegate must ensure that all relevant coordinators, other staff and parents are consulted.

(f) The disability service plan must contain:

(1) Procedures for timely screening;

(2) Procedures for making referrals to the LEA for evaluation to determine whether there is a need for special education and related services for a child, as early as the child's third birthday;

(3) Assurances of accessibility of facilities; and

(4) Plans to provide appropriate special furniture, equipment and materials if needed.

(g) The plan, when appropriate, must address strategies for the transition of children into Head Start from infant/toddler programs (0–3 years), as well as the transition from Head Start into the next placement. The plan must include preparation of staff and parents for the entry of children with severe disabilities into the Head Start program.

(h) The grantee or delegate agency must arrange or provide special education and related services necessary to foster the maximum development of each child's potential and to facilitate participation in the regular Head Start program unless the services are being provided by the LEA or other agency. The plan must specify the services to be provided directly by Head Start and those provided by other agencies. The grantee or delegate agency must arrange for, provide, or procure services which may include, but are not limited to special education and these related services:

(1) Audiology services, including identification of children with hearing loss and referral for medical or other professional attention; provision of needed rehabilitative services such as speech and language therapy and auditory training to make best use of remaining hearing; speech conservation; lip reading; determination of need for hearing aids and fitting of appropriate aids; and programs for prevention of hearing loss;

(2) Physical therapy to facilitate gross motor development in activities such as walking prevent or slow orthopedic problems and improve posture and conditioning;

(3) Occupational therapy to improve, develop or restore fine motor functions in activities such as using a fork or knife;

(4) Speech or language services including therapy and use of assistive devices necessary for a child to develop or improve receptive or expressive means of communication;

(5) Psychological services such as evaluation of each child's functioning and interpreting the results to staff and parents; and counseling and guidance services for staff and parents regarding disabilities;

(6) Transportation for children with disabilities to and from the program and to special clinics or other service providers when the services cannot be provided on-site. Transportation includes adapted buses equipped to accommodate wheelchairs or other such devices if required; and

(7) Assistive technology services or devices necessary to enable a child to improve functions such as vision, mobility or communication to meet the objectives in the IEP.

(i) The disabilities service plan must include options to meet the needs and take into consideration the strengths of each child based upon the IEP so that a continuum of services available from various agencies is considered.

(j) The options may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Shared personnel to supervise special education services, when necessary to meet State requirements on qualifications;

(4) Administrative accommodations such as having two children share one enrollment slot when each child's IEP calls for part-time service because of their individual needs; and

(5) Any other strategies to be used to insure that special needs are met. These may include:

(i) Increased staff;

(ii) Use of volunteers; and

(iii) Use of supervised students in such fields as child development, special education, child psychology, various therapies and family services to assist the staff.

(k) The grantee must ensure that the disabilities service plan addresses grantee efforts to meet State standards for personnel serving children with disabilities by the 1994–95 program year. Special education and related services must be provided by or under the supervision of personnel meeting State qualifications by the 1994–95 program year.

(l) The disabilities service plan must include commitment to specific efforts to develop interagency agreements with the LEAs and other agencies within the grantee's service area. If no agreement can be reached, the grantee must document its efforts and inform the Regional Office. The agreements must address:

(1) Head Start participation in the public agency's Child Find plan under Part B of IDEA;

(2) Joint training of staff and parents;

(3) Procedures for referral for evaluations, IEP meetings and placement decisions;

(4) Transition;

(5) Resource sharing;

(6) Head Start commitment to provide the number of children receiving services under IEPs to the LEA for the LEA Child Count report by December 1 annually; and

(7) Any other items agreed to by both parties. Grantees must make efforts to update the agreements annually.

(m) The disabilities coordinator must work with the director in planning and budgeting of grantee funds to assure that the special needs identified in the IEP are fully met; that children most in need of an integrated placement and of special assistance are served; and that the grantee maintains the level of fiscal support to children with disabilities consistent with the Congressional mandate to meet their special needs.

(n) The grant application budget form and supplement submitted with applications for funding must reflect requests for adequate resources to implement the objectives and activities in the disability services plan and fulfill the requirements of these Performance Standards.

(o) The budget request included with the application for funding must address the implementation of the disabilities service plan. Allowable expenditures include:

(1) *Salaries.* Allowable expenditures include salaries of a full or part-time coordinator of services for children with disabilities (disabilities coordinator), who is essential to assure that programs have the core capability to recruit, enroll, arrange for the evaluation of children, provide or arrange for services to children with disabilities and work with Head Start coordinators and staff of other agencies which are working cooperatively with the grantee. Salaries of special education resource teachers who can augment the work of the regular teacher are an allowable expenditure.

(2) *Evaluation of children.* When warranted by screening or rescreening results, teacher observation or parent request, arrangements must be made for evaluation of the child's development and functioning. If, after referral for evaluation to the LEA, evaluations are not provided by the LEA, they are an allowable expenditure.

(3) *Services.* Program funds may be used to pay for services which include special education, related services, and summer services deemed necessary on an individual basis and to prepare for serving children with disabilities in advance of the program year.

(4) *Making services accessible.* Allowable costs include elimination of architectural barriers which affect the participation of children with disabilities, in conformance with 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Program and Activities Receiving or Benefiting from Federal Financial Assistance and with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101). The Americans with Disabilities Act requires that public accommodations including private schools and day care centers may not discriminate on the basis of disability. Physical barriers in existing facilities must be removed if removal is readily achievable (i.e., easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative methods of providing the services must be offered, if those methods are readily achievable. Alterations must be accessible. When alterations to primary function areas are made, an accessible path of travel to the altered areas (and the bathrooms, telephones and drinking fountains serving that area) must be provided to the extent that the added accessibility costs are not disproportionate to the overall cost of the alterations. Program funds may be used for ramps, remodeling or modifications such as grab bars or railings. Grantees must meet new statutory and regulatory requirements that are enacted.

(5) *Transportation.* Transportation is a related service to be provided to children with disabilities. When transportation to the program site and to special services can be accessed from other agencies, it should be used. When it is not available, program funds are to be used to provide it. Special buses or use of taxis are allowable expenses if there are no alternatives available and they are necessary to enable a child to be served.

(6) *Special Equipment and Materials.* Purchase or lease of special equipment and materials for use in the program and home is an allowable program expense. Grantees must make available assistive devices necessary to make it possible for a child to move, communicate, improve functioning or address objectives which are listed in the child's IEP.

(7) *Training and Technical Assistance.* Increasing the abilities of staff to meet the special needs of children with disabilities is an allowable expense. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for disabilities coordinators, teachers and parents to attend training and technical assistance events related to special services for children with disabilities;

(ii) The provision of substitute teaching staff to enable staff to attend training and technical assistance events;

(iii) Fees for courses specifically related to the requirements of the disabilities service plan, a child's IEP or State certification to serve children with disabilities; and

(iv) Fees and expenses for training/technical assistance consultants if such help is not available from another provider at no cost.

Subpart C—Social Services Performance Standards

§ 1308.5 Recruitment and enrollment of children with disabilities.

(a) The grantee or delegate agency outreach and recruitment activities must incorporate specific actions to actively locate and recruit children with disabilities.

(b) A grantee must insure that staff engaged in recruitment and enrollment of children are knowledgable about the provisions of 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, and of the Americans with Disabilities Act of 1990, (42 U.S.C. 12101).

(c) A grantee must not deny placement on the basis of a disability or its severity to any child when:

(1) The parents wish to enroll the child,

(2) The child meets the Head Start age and income eligibility criteria,

(3) Head Start is an appropriate placement according to the child's IEP, and

(4) The program has space to enroll more children, even though the program has made ten percent of its enrollment opportunities available to children with disabilities. In that case children who have a disability and non-disabled children would compete for the available enrollment opportunities.

(d) The grantee must access resources and plan for placement options, such as dual placement, use of resource staff and training so that a child with a disability for whom Head Start is an appropriate placement according to the IEP is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;

(2) Inaccessibility of facilities;

(3) Need to access additional resources to serve a specific child;

(4) Unfamiliarity with a disabling condition or special equipment, such as a prosthesis; and

(5) Need for personalized special services such as feeding, suctioning, and assistance with toileting, including catheterization, diapering, and toilet training.

(e) The same policies governing Head Start program eligibility for other children, such as priority for those most in need of the services, apply to children with disabilities. Grantees also must take the following factors into account when planning enrollment procedures:

(1) The number of children with disabilities in the Head Start service area including types of disabilities and their severity;

(2) The services and resources provided by other agencies; and

(3) State laws regarding immunization of preschool children. Grantees must observe applicable State laws which usually require that children entering State preschool programs complete immunizations prior to or within thirty

days after entering to reduce the spread of communicable diseases.

(f) The recruitment effort of a Head Start grantee must include recruiting children who have severe disabilities, including children who have been previously identified as having disabilities.

Subpart D—Health Services Performance Standards

§ 1308.6 Assessment of children.

(a) The disabilities coordinator must be involved with other program staff throughout the full process of assessment of children, which has three steps:

(1) All children enrolled in Head Start are screened as the first step in the assessment process;

(2) Staff also carry out on-going developmental assessment for all enrolled children throughout the year to determine progress and to plan program activities;

(3) Only those children who need further specialized assessment to determine whether they have a disability and may require special education and related services proceed to the next step, evaluation. The disabilities coordinator has primary responsibility for this third step, evaluation, only.

(b) *Screening, the first step in the assessment process,* consists of standardized health screening and developmental screening which includes speech, hearing and vision. It is a brief process, which can be repeated, and is never used to determine that a child has a disability. It only indicates that a child may need further evaluation to determine whether the child has a disability. Rescreening must be provided as needed.

(1) Effective with the beginning of the 1993–94 program year, grantees must provide for the health and developmental screening of all Head Start children by 45 calendar days after the start of program services in the fall, or for children who enroll after program services have begun by 45 calendar days after the child enters the program. This does not preclude starting screening in the spring before program services begin in the fall.

(2) Grantees must make concerted efforts to reach and include the most in need and hardest to reach in the screening effort, providing assistance but urging parents to complete screening before the start of the program year.

(3) Developmental screening is a brief check to identify children who need further evaluation to determine whether they may have disabilities. It provides information in three major developmental areas: visual/motor, language and cognition, and gross motor/body awareness for use along with observation data, parent reports and home visit information. When appropriate standardized developmental screening instruments exist, they must be used. The disabilities coordinator must coordinate with the health coordinator and staff who have the responsibility for implementing health screening and with the education staff who have the responsibility for implementing developmental screening.

(c) Staff must inform parents of the types and purposes of the screening well in advance of the screening, the results of these screenings and the purposes and results of any subsequent evaluations.

(d) *Developmental assessment, the second step,* is the collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, attention skills, self-help, social and receptive skills and expressive language. The disabilities coordinator must coordinate with the education coordinator in the on-going assessment of each Head Start child's functioning in all developmental areas by including this developmental information in later diagnostic and program planning activities for children with disabilities.

(e) *The disabilities coordinator must arrange for further, formal, evaluation of a child who has been identified as possibly having a disability, the third step.* (1) The disabilities coordinator must refer a child to the LEA for evaluation as soon as the need is evident, starting as early as the child's third birthday.

(2) If the LEA does not evaluate the child, Head Start is responsible for arranging or providing for an evaluation, using its own resources and accessing others. In this case, the evaluation must meet the following requirements:

(i) Testing and evaluation procedures must be selected and administered so as not to be racially or culturally discriminatory, administered in the child's native language or mode of communication, unless it clearly is not feasible to do so.

(ii) Testing and evaluation procedures must be administered by trained (State certified or licensed) personnel.

(iii) No single procedure may be the sole criterion for determining an appropriate educational program for a child.

(iv) The evaluation must be made by a multidisciplinary team or group of persons including at least one teacher or specialist with knowledge in the area of suspected disability.

(v) Evaluators must use only assessment materials which have been validated for the specific purpose for which they are used.

(vi) Tests used with children with impaired sensory, manual or communication skills must be administered so that they reflect the children's aptitudes and achievement levels and not just the disabilities.

(vii) Tests and materials must assess all areas related to the suspected disability.

(viii) In the case of a child whose primary disability appears to be a speech or language impairment, the team must assure that enough tests are used to determine that the impairment is not a symptom of another disability and a speech or language pathologist should be involved in the evaluation.

(3) Parental consent in writing must be obtained before a child can have an initial evaluation to determine whether the child has a disability.

(4) Confidentiality must be maintained in accordance with grantee and State requirements. Parents must be given the opportunity to review their child's records in a timely manner and they must be notified and give permission if additional evaluations are proposed. Grantees must explain the purpose and results of the evaluation and make concerted efforts to help the parents understand them.

(5) The multidisciplinary team provides the results of the evaluation, and its professional opinion that the child does or does not need special education and related services, to the disabilities coordinator. If it is their professional opinion that a child has a disability, the team is to state which of the eligibility criteria applies and provide recommendations for programming, along with their findings. Only children whom the evaluation team determines need special education and related services may be counted as children with disabilities.

§ 1308.7 Eligibility criteria: Health impairment.

(a) A child is classified as health impaired who has limited strength, vitality or alertness due to a chronic or acute health problem which adversely affects learning.

(b) The health impairment classification may include, but is not limited to, cancer, some neurological disorders, rheumatic fever, severe asthma, uncontrolled seizure disorders, heart conditions, lead poisoning, diabetes, AIDS, blood disorders, including hemophilia, sickle cell anemia, cystic fibrosis, heart disease and attention deficit disorder.

(c) This category includes medically fragile children such as ventilator dependent children who are in need of special education and related services.

(d) A child may be classified as having an attention deficit disorder under this category who has chronic and pervasive developmentally inappropriate inattention, hyperactivity, or impulsivity. To be considered a disorder, this behavior must affect the child's functioning severely. To avoid overuse of this category, grantees are cautioned to assure that only the enrolled children who most severely manifest this behavior must be classified in this category.

(1) The condition must severely affect the performance of a child who is trying to carry out a developmentally appropriate activity that requires orienting, focusing, or maintaining attention during classroom instructions and activities, planning and completing activities, following simple directions, organizing materials for play or other activities, or participating in group activities. It also may be manifested in overactivity or impulsive acts which appear to be or are interpreted as physical aggression. The disorder must manifest itself in at least two different settings, one of which must be the Head Start program site.

(2) Children must not be classified as having attention deficit disorders based on:

(i) Temporary problems in attention due to events such as a divorce, death of a family member or post-traumatic stress reactions to events such as sexual abuse or violence in the neighborhood;

(ii) Problems in attention which occur suddenly and acutely with psychiatric disorders such as depression, anxiety and schizophrenia;

(iii) Behaviors which may be caused by frustration stemming from inappropriate programming beyond the child's ability level or by developmentally inappropriate demands for long periods of inactive, passive activity;

(iv) Intentional noncompliance or opposition to reasonable requests that are typical of good preschool programs; or

(v) Inattention due to cultural or language differences.

(3) An attention deficit disorder must have had its onset in early childhood and have persisted through the course of child development when children normally mature and become able to operate in a socialized preschool environment. Because many children younger than four have difficulty orienting, maintaining and focussing attention and are highly active, when Head Start is responsible for the evaluation, attention deficit disorder applies to four and five year old children in Head Start but not to three year olds.

(4) Assessment procedures must include teacher reports which document the frequency and nature of indications of possible attention deficit disorders and describe the specific situations and events occurring just before the problems manifested themselves. Reports must indicate how the child's functioning was impaired and must be confirmed by independent information from a second observer.

§ 1308.8 Eligibility criteria: Emotional/behavioral disorders.

(a) An emotional/behavioral disorder is a condition in which a child's behavioral or emotional responses are so different from those of the generally accepted, age-appropriate norms of children with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress or classroom behavior. A child is classified as having an emotional/behavioral disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) Seriously delayed social development including an inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers);

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative);

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Has a professional diagnosis of serious emotional disturbance.

(b) The eligibility decision must be based on multiple sources of data, including assessment of the child's behavior or emotional functioning in multiple settings.

(c) The evaluation process must include a review of the child's regular Head Start physical examination to eliminate the possibility of misdiagnosis due to an underlying physical condition.

§ 1308.9 Eligibility criteria: Speech or language impairments.

(a) A speech or language impairment means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's learning.

(b) A child is classified as having a speech or language impairment whose speech is unintelligible much of the time, or who has been professionally diagnosed as having speech impairments which require intervention or who is professionally diagnosed as having a delay in development in his or her primary language which requires intervention.

(c) A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

(d) A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

(e) A child should not be classified as having a speech or language impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem; or

(3) Delays in developing the ability to articulate only the most difficult consonants or blends of sounds within the broad general range for the child's age.

§ 1308.10 Eligibility criteria: Mental retardation.

(a) A child is classified as mentally retarded who exhibits significantly sub-average intellectual functioning and exhibits deficits in adaptive behavior which adversely affect learning. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records. An assessment of the child's functioning must also be made in settings outside the classroom.

(c) Valid and reliable instruments appropriate to the age range must be used. If they do not exist for the language and cultural group to which the child belongs, observation and professional judgement are to be used instead.

(d) Determination that a child is mentally retarded is never to be made on the basis of any one test alone.

§ 1308.11 Eligibility criteria: Hearing impairment including deafness.

(a) A child is classified as deaf if a hearing impairment exists which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and learning is affected. A child is classified as hard of hearing who has a permanent or fluctuating hearing impairment which adversely affects learning; or

(b) Meets the legal criteria for being hard of hearing established by the State of residence; or

(c) Experiences recurrent temporary or fluctuating hearing loss caused by otitis media, allergies, or eardrum perforations and other outer or middle ear anomalies over a period of three months or more. Problems associated with temporary or fluctuating hearing loss can include impaired listening skills, delayed language development, and articulation problems. Children meeting these criteria must be referred for medical care, have their hearing checked frequently, and receive speech, language or hearing services as indicated by the IEPs. As soon as special services are no longer needed, these children must no longer be classified as having a disability.

§ 1308.12 Eligibility criteria: Orthopedic impairment.

(a) A child is classified as having an orthopedic impairment if the condition is severe enough to adversely affect a child's learning. An orthopedic impairment involves muscles, bones, or joints and is characterized by impaired ability to maneuver in educational or non-educational settings, to perform fine or gross motor activities, or to perform self-help skills and by adversely affected educational performance.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

§ 1308.13 Eligibility criteria: Visual impairment including blindness.

(a) A child is classified as visually impaired when visual impairment, with correction, adversely affects a child's learning. The term includes both blind and partially seeing children. A child is visually impaired if:

(1) The vision loss meets the definition of legal blindness in the State of residence; or

(2) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(b) A child is classified as having a visual impairment if central acuity with corrective lenses is between 20/70 and 20/200 in either eye, or if visual acuity is undetermined, but there is demonstrated loss of visual function that adversely affects the learning process, including faulty muscular action, limited field of vision, cataracts, etc.

§ 1308.14 Eligibility criteria: Learning disabilities.

(a) A child is classified as having a learning disability who has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in imperfect ability to listen, think, speak or, for preschool age children, acquire the precursor skills for reading, writing, spelling or doing mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, and aphasia.

(b) An evaluation team may recommend that a child be classified as having a learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in (a) above when provided with appropriate learning experiences for the age and ability; or

(2) The child has a severe discrepancy between achievement of developmental milestones and intellectual ability in one or more of these areas: oral expression, listening comprehension, pre-reading, pre-writing and pre-mathematics; or

(3) The child shows deficits in such abilities as memory, perceptual and perceptual-motor skills, thinking, language and non-verbal activities which are not due to visual, motor, hearing or emotional disabilities, mental retardation, cultural or language factors, or lack of experiences which would help develop these skills.

(c) This definition for learning disabilities applies to four and five year old children in Head Start. It may be used at a program's discretion for children younger than four or when a three year old child is referred with a professional diagnosis of learning disability. But because of the difficulty of diagnosing learning disabilities for three year olds, when Head Start is responsible for the evaluation it is not a requirement to use this category for three year olds.

§ 1308.15 Eligibility criteria: Autism.

A child is classified as having autism when the child has a developmental disability that significantly affects verbal and non-verbal communication and social interaction, that is generally evident before age three and that adversely affects educational performance.

§ 1308.16 Eligibility criteria: Traumatic brain injury.

A child is classified as having traumatic brain injury whose brain injuries are caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with resulting impairments that adversely affect educational performance. The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

§ 1308.17 Eligibility criteria: Other impairments.

(a) The purposes of this classification, "Other impairments," are:

(1) To further coordination with LEAs and reduce problems of recordkeeping;

(2) To assist parents in making the transition from Head Start to other placements; and

(3) To assure that no child enrolled in Head Start is denied services which would be available to other preschool children who are considered to have disabilities in their State.

(b) If the State Education Agency eligibility criteria for preschool children include an additional category which is appropriate for a Head Start child, children meeting the criteria for that category must receive services as children with disabilities in Head Start programs. Examples are "preschool disabled," "in need of special education," "educationally handicapped," and "non-categorically handicapped."

(c) Children ages three to five, inclusive, who are experiencing developmental delays, as defined by their State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, and who by reason thereof need special education and related services may receive services as children with disabilities in Head Start programs.

(d) Children who are classified as deaf-blind, whose concomitant hearing and visual impairments cause such severe communication and other developmental problems that they cannot be accommodated in special education programs solely for deaf or blind children are eligible for services under this category.

(e) Children classified as having multiple disabilities whose concomitant impairments (such as mental retardation and blindness), in combination, cause such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments are eligible for services under this category. The term does not include deaf-blind children, for recordkeeping purposes.

§ 1308.18 Disabilities/health services coordination.

(a) The grantee must ensure that the disabilities coordinator and the health coordinator work closely together in the assessment process and follow up to assure that the special needs of each child with disabilities are met.

(b) The grantee must ensure coordination between the disabilities coordinator and the staff person responsible for the mental health component to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications, including prescription and over-the-counter drugs, to children with disabilities in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Obtain the doctor's instructions and parental consent before any medication is administered.

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents.

(3) Record changes in a child's behavior which have implications for drug dosage or type and share this information with the staff, parents and the physician.

(4) Assure that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart E—Education Services Performance Standards

§ 1308.19 Developing individualized education programs (IEPs)

(a) When Head Start provides for the evaluation, the multidisciplinary evaluation team makes the determination whether the child meets the Head Start eligibility criteria. The multidisciplinary evaluation team must assure that the evaluation findings and recommendations, as well as information from developmental assessment, observations and parent reports, are considered in making the determination whether the child meets Head Start eligibility criteria.

(b) Every child receiving services in Head Start who has been evaluated and found to have a disability and in need of special education must have an IEP before special education and related services are provided to ensure that comprehensive information is used to develop the child's program.

(c) When the LEA develops the IEP, a representative from Head Start must attempt to participate in the IEP meeting and placement decision for any child meeting Head Start eligibility requirements.

(d) If Head Start develops the IEP, the IEP must take into account the child's unique needs, strengths, developmental potential and the family strengths and circumstances as well as the child's disabilities.

(e) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication, self-help, and cognitive areas of development, and the identification of needs in those areas requiring specific programming.

(2) A statement of annual goals, including short term objectives for meeting these goals.

(3) A statement of services to be provided by each Head Start component that are in addition to those services provided for all Head Start children, including transition services.

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals.

(5) The identification of the personnel responsible for the planning and supervision of services and for the delivery of services.

(6) The projected dates for initiation of services and the anticipated duration of services.

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short-term objectives are being achieved or need to be revised.

(8) Family goals and objectives related to the child's disabilities when they are essential to the child's progress.

(f) When Head Start develops the IEP, the team must include:

(1) The Head Start disabilities coordinator or a representative who is qualified to provide or supervise the provision of special education services;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) At least one of the professional members of the multidisciplinary team which evaluated the child.

(g) An LEA representative must be invited in writing if Head Start is initiating the request for a meeting.

(h) The grantee may also invite other individuals at the request of the parents and other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's disability.

(i) A meeting must be held at a time convenient for the parents and staff to develop the IEP within 30 calendar days of a determination that the child needs special education and related services. Services must begin as soon as possible after the development of the IEP.

(j) Grantees and their delegates must make vigorous efforts to involve parents in the IEP process. The grantee must:

(1) Notify parents in writing and, if necessary, also verbally or by other appropriate means of the purpose, attendees, time and location of the IEP meeting far enough in advance so that there is opportunity for them to participate;

(2) Make every effort to assure that the parents understand the purpose and proceedings and that they are encouraged to provide information about their child and their desires for the child's program;

(3) Provide interpreters, if needed, and offer the parents a copy of the IEP in the parents' language of understanding after it has been signed;

(4) Hold the meeting without the parents only if neither parent can attend, after repeated attempts to establish a date or facilitate their participation. In that case, document its efforts to secure the parents' participation, through records of phone calls, letters in the parents' native language or visits to parents' homes or places of work, along with any responses or results; and arrange an

opportunity to meet with the parents to review the results of the meeting and secure their input and signature.

(l) Grantees must initiate the implementation of the IEP as soon as possible after the IEP meeting by modifying the child's program in accordance with the IEP and arranging for the provision of related services. If a child enters Head Start with an IEP completed within two months prior to entry, services must begin within the first two weeks of program attendance.

Subpart F—Nutrition Performance Standards

§ 1308.20 Nutrition services.

(a) The disabilities coordinator must work with staff to ensure that provisions to meet special needs are incorporated into the nutrition program.

(b) Appropriate professionals, such as physical therapists, speech therapists, occupational therapists, nutritionists or dietitians must be consulted on ways to assist Head Start staff and parents of children with severe disabilities with problems of chewing, swallowing and feeding themselves.

(c) The plan for services for children with disabilities must include activities to help children with disabilities participate in meal and snack times with classmates.

(d) The plan for services for children with disabilities must address prevention of disabilities with a nutrition basis.

Subpart G—Parent Involvement Performance Standards

§ 1308.21 Parent participation and transition of children into Head Start and from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the staff must carry out the following tasks:

(1) Support parents of children with disabilities entering from infant/toddler programs.

(2) Provide information to parents on how to foster the development of their child with disabilities.

(3) Provide opportunities for parents to observe large group, small group and individual activities describe in their child's IEP.

(4) Provide follow-up assistance and activities to reinforce program activities at home.

(5) Refer parents to groups of parents of children with similar disabilities who can provide helpful peer support.

(6) Inform parents of their rights under IDEA.

(7) Inform parents of resources which may be available to them from the Supplemental Security Income (SSI) Program, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program and other sources and assist them with initial efforts to access such resources.

(8) Identify needs (caused by the disability) of siblings and other family members.

(9) Provide information in order to prevent disabilities among younger siblings.

(10) build parent confidence, skill and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) Grantees must plan to assist parents in the transition of children from Head Start to public school or other placement, beginning early in the program year.

(c) Head Start grantees, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment.

Appendix to Part 1308—Head Start Program Performance Standards on Services to Children with Disabilities

This appendix sets forth guidance for the implementation of the requirements in part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. This guidance is not binding on Head Start grantees or delegate agencies. It provides assistance and possible strategies which a grantee may wish to consider. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various disabilities.

Section 1308.4 Purpose and scope of disabilities service plan

Guidance for Paragraph (a)

In order to develop an effective disabilities service plan the responsible staff members need to understand the context in which a grantee operates. The Head Start program has operated under a Congressional mandate, since 1972, to make available, at a minimum, ten percent of its enrollment opportunities to children with disabilities. Head Start has exceeded this mandate and serves children in integrated, developmentally appropriate programs. The passage of the Individuals With Disabilities Education Act, formerly the Education of the Handicapped Act, and its amendments, affects Head Start, causing a shift in the nature of Head Start's responsibilities for providing services for children with disabilities relative to the responsibilities of State Education Agencies (SEA) and Local Education Agencies (LEA).

Grantees need to be aware that under the IDEA the State Education Agency has the responsibility for assuring the availability of a free appropriate public education for all children with disabilities within the legally required age range in the State. This responsibility includes general supervision of educational programs in all agencies, including monitoring and evaluating the special education and related services to insure that they meet State standards, developing a comprehensive State plan for services for children with disabilities (including a description of interagency coordination among these agencies), and providing a Comprehensive System for Personnel Development related to training needs of all special education and related service personnel involved in the education of children with disabilities served by these agencies, including Head Start programs.

Each State has in effect under IDEA a policy assuring all children with disabilities beginning at least at age three, including those in public or private institutions or other care facilities, the right to a free appropriate education and to an evaluation meeting established procedures. Head Start is either:

- The agency through which the Local Education Agency can meet its obligation to make a free appropriate public education available through a contract, State or local collaborative agreement, or other arrangement; or
- The agency in which the family chooses to have the child served rather than using LEA services.

Regardless of how a child is placed in Head Start, the LEA is responsible for the identification, evaluation and provision of a free appropriate public education for a child found to be in need of special education and related services which are mandated in the State. The LEA is responsible for ensuring that these services are provided, but not for providing them all. IDEA stresses the role of multiple agencies and requires their maintenance of effort.

The Head Start responsibility is to make available directly or in cooperation with other agencies services in the least restrictive environment in accordance with an individualized education program (IEP) for at least ten percent of enrolled children who meet the disabilities eligibility criteria. In addition, Head Start continues to provide or arrange for the full range of health, dental, nutritional, developmental, parent involvement and social services provided to all enrolled children. Head Start has a mandate to recruit and enroll income-eligible children and children with disabilities who are most in need of services and to coordinate with the LEA and other groups to benefit children with disabilities and their families. Serving children with disabilities has strengthened Head Start's ability to individualize for all children. Head Start is fully committed to the maintenance of effort as required for all agencies by the IDEA and by the Head Start Act (Section 640(a)(2)(A)). Head Start is committed to fiscal support to assure that the services which children with disabilities need to meet their special needs will be provided in full, either directly or by a combination of Head Start funds and other resources.

These Head Start regulations facilitate coordination with the IDEA by utilizing identical terms for eligibility criteria for the most part. However, Head Start has elected to use the term "emotional/behavioral disorder" in lieu of "serious emotional disturbance," which is used in the IDEA, in response to comments and concerns of parents and professionals. Children who meet State-developed criteria under IDEA will be eligible for services from Head Start in that State.

In order to organize activities and resources to help children with disabilities overcome or lessen their disabilities and develop their potential, it is essential to involve the education, health, social services, parent involvement, mental health and nutrition components of Head Start. Parents, staff and policy group members should discuss the various strategies for ensuring that the disabilities service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Advance planning and scheduling of arrangements with other agencies is a key factor in assuring timely, efficient services. Local level interagency agreements can greatly facilitate the difficult tasks of locating related service providers, for example, and joint community screening programs can reduce delays and costs to each of the participating agencies.

Guidance for Paragraph (b)

The plan and the annual updates need to be specific, but not lengthy. As changes occur in the community, the plan needs to reflect the changes which affect services.

Guidance for Paragraph (c)

Grantees should ensure that the practices they use to provide special services do not result in undue attention to a child with a disability. For example, providing names and schedules of special services for children with disabilities in the classroom is useful for staff or volunteers coming into that classroom but posting them would publicize the disability of the individual children.

Guidance for Paragraph (d)

Staff should work for the children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Grantees should help children with disabilities develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. They should be included on field trips, as their experience may have been limited, for example, by an orthopedic impairment.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups, it should provide pictures and books which show children and adults with disabilities, including those in active roles

Staff should plan to answer questions children and adults may have about disabilities. This promotes acceptance of a child with disabilities for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand disabilities and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from resource access projects contractors, which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including children with disabilities in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different skill levels. Staff need to help some children with disabilities move into developmentally appropriate play with other children.

Research has shown the effectiveness of work in small groups for appropriately selected children with disabilities. This plan allows for coordinating efforts to meet the needs of individual children as listed in their IEPs and can help focus resources efficiently.

If a deaf child who uses or needs sign language or another communication mode is enrolled, a parent, volunteer or aide who can use that mode of communication should be provided to help the child benefit from the program.

In order to build the language and speech capabilities of many children with disabilities who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them how to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experiences have been limited by other disabilities to express their own ideas and to communicate during play and throughout the daily activities is motivating and can contribute greatly to their progress.

Guidance for Paragraph (e)

The Disabilities Service Coordinator should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency to serve children with disabilities including coordination with other program components and community agencies and work with parents.

Guidance for Paragraph (f)

For non-verbal children, communication boards, computers and other assistive technology devices may be helpful. Technical assistance providers have information on the Technology Related Assistance for Individuals with Disabilities Act of 1988, 29 U.S.C. 2201 *et seq.* States are funded through this legislation to plan Statewide assistive technology services, which should include services for young children. Parents should be helped to understand the necessity of including assistive technology services and devices in their child's IEP in order to obtain them.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children or promote learning. For example, rugs or other sound-absorbing surfaces make it easier for some children to hear stories or conversation. Different surfaces on floors and play areas affect some children's mobility.

45 CFR Part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance which implements the Rehabilitation Act of 1973 and the Americans with Disabilities Act require that all Federally assisted programs, including Head Start, be accessible to persons with disabilities including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible. Information on the accessibility standards is available from RAPs or the U.S. Department of Justice, Civil Rights Division, Coordination and Review Section, P.O. Box 66118, Washington, DC 20035–6115.

Staff should ensure that children with physical disabilities have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy, Easter Seal Societies or SEAs can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert, such as a physical therapist, because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for Paragraph (h)

The plan should specify:

- Overall goals of the disability effort.
- Specific objectives and activities of the disability effort.
- How and when specific activities will be carried out and goals attained.
- Who will be responsible for the conduct of each element of the plan.
- How individual activities will be evaluated.

The plan should address:

- Enrollment information, including numbers of children and types of disabilities, known and estimated.
- Identification and recruitment of children with disabilities. Participation in Child Find and list of major specialized agencies approached.
- Screening.
- Developmental Assessment.
- Evaluation.
- The multidisciplinary team and its work.
- The process for developing IEPs.

- The provision of program services and related services.
- Program accessibility.
- Recordkeeping and reporting.
- Confidentiality of information.
- Any special safety needs.
- Medications.
- Transportation.
- The process for identifying and meeting training and technical assistance needs.
- Special parent involvement needs.
- Planned actions to increase the ability of staff to serve children with more severe disabilities and the number of children with more severe disabilities served.
- Transitioning of children in and out to the next program.

Particular attention should be given to addressing ways to:

- Involve parents throughout the disability effort, and
- Work with other agencies in serving children with disabilities. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described, as well as the process for developing local agreements with other agencies. The RAPs can provide samples and models for the process of developing agreements with LEAs.

Guidance for Paragraph (j)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as an Easter Seal Society or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. All services to be provided, including those provided by collaborating agencies, should be described in the IEP. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide equipment and transportation while a development center might provide a facility and physical therapy for a Head Start child. Some LEAs provide resource teachers while Head Start provides a developmentally appropriate program in an integrated setting.

Hiring additional staff may be necessary to meet the needs of children with severe disabilities. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with the increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the disabilities service coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical disabilities.

Volunteers trained by professionals to work specifically with children with disabilities can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific follow-up activities with individual children.

Guidance for Paragraph (k)

State standards for qualifications of staff to provide special education and related services affect Head Start's acceptance as a placement site for children who have been evaluated by an LEA. Head Start grantees, like LEAs, are affected by shortages of staff meeting State qualifications and are to work toward the goal of meeting the highest State standards for personnel by developing plans to train current staff and to hire new staff so that eventually the staff will meet the qualifications. Grantees should discuss their needs for pre-service and in-service training with SEAs during annual updates of interagency agreements for use in the planning of joint State level conferences and for use in preparation of Comprehensive State Personnel Development plans. They should also discuss these needs with LEAs which provide in-service training.

The program should provide training for the regular teachers on how to modify large group, small group or individual activities to meet the needs of children with disabilities. Specific training for staff should be provided when Head Start enrolls a child whose disability or condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, performing intermittent nonsterile catheterization, changing collection bags, suctioning, or operating leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with disabilities and to preventing disabilities. Ongoing training and technical assistance in support of the disabilities effort should be planned to complement other training available to meet staff needs. Each grantee has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

The best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

The core capability of the program is enhanced when speech, language and other therapy is provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs and time spent transporting children to clinics and other settings. When university graduate students are utilized to provide special services as part of their training, it is helpful to arrange for their supervisors to monitor their work. Grantees arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on-site. Grantees should negotiate when developing interagency agreements to have services provided on-site to the greatest extent possible.

The Head Start Act, Section 648 (42 U.S.C. 9843) (a)(2), calls for training and technical assistance to be offered to all Head Start programs with respect to services for children with disabilities without cost through resource access projects which serve each region of the country. The technical assistance contractors contact each grantee for a needs assessment and offer training. While their staffs are small and their budgets limited, they are experienced and committed to meeting as many needs as they can and welcome inquiries. A brochure with names and addresses of the technical assistance providers is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

The SEA is responsible for developing a Comprehensive System of Personnel Development. It is important that Head Start training needs be conveyed to this group for planning purposes so that all available resources can be brought to bear for staff training in Head Start. Grantees should take advantage of free or low-cost training provided by SEAs, LEAs, community colleges and other agencies to augment staff training.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. The Lighthouse of New York City has developed a training program on early childhood and vision which was field-tested in Head Start and is suitable for community agencies. Head Start and the American Optometric Association have signed a memorandum of understanding under which member optometrists offer eye health education and screening. State-funded adult education and training programs or community colleges make available parenting, child development and other courses at low or no cost. Grantees should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The disabilities coordinator needs to work closely with the education and health coordinators to provide or arrange training for staff and parents early in each program year on the prevention of disabilities. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently.

The disabilities coordinator should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

Guidance for Paragraph (l)

The RAPS can provide information on agreements which have been developed between Head Start and SEAs and between Head Start and LEAs and other agencies. Such agreements offer possibilities to share training, equipment and other resources, smoothing the transition from Head Start to public or private school for children and their parents. Some of these agreements specify cost- and resource-sharing practices. Tribal Government Head Start programs should maximize use of Bureau of Indian Affairs, LEA and Head Start funds through cooperative agreements. Indian grantees should contact ACYF for referral to technical assistance in this regard. Grantees should bear in mind that migrant children are served in the majority of States and include consideration of their special needs, including the necessity for rapid provision of special education and related services, in agreements with LEAs and other agencies.

Guidance for Paragraph (m)

In developing the plan and the budget which is a part of the grant application process, it is important to budget adequately for the number of children with disabilities to be served and the types and severity of their disabilities. The budget should reflect resources available from other agencies as well as the special costs to be paid for from Head Start funds. The Head Start legislation requires Head Start to access resources to meet the needs of all the children enrolled, including those with disabilities.

An effective plan calls for the careful use of funds. The Disabilities Services Coordinator needs to keep current with the provisions of Part B of the IDEA and the services which may be available for three through five year-old children under this Act. Coordinators also need to utilize the expanded services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program and Supplemental Security Income program.

To assist in the development of the plan, it may be helpful to establish an advisory committee for the disability effort or to expand the scope of the health advisory committee.

Guidance for Paragraph (o)

Examples of evaluation costs which can be covered include professional assessment by the multidisciplinary evaluation team, instruments, professional observation and professional consultation. If consultation fees for multidisciplinary evaluation team members to participate in IEP meetings are not available from another source, they are allowable expenditures and need to be provided to meet the performance standards.

Many children with disabilities enrolled in Head Start already receive services from other agencies, and grantees should encourage these agencies to continue to provide services. Grantees should use other community agencies and resources to supplement services for children with disabilities and their families.

By planning ahead, grantees can pool resources to schedule the periodic use of experts and consultants. Grantees can time-share, reducing travel charges and assuring the availability of scarce expertise. Some LEAs and other agencies have enabling legislation and funds to contract for education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Individuals With Disabilities Education Act. The amount of the allocation to each SEA and to the public schools is affected by the number of three through five year old children with IEPs in place by December 1 of each year. By establishing good working relationships with State Public Health personnel and including them on advisory committees, health resources can be more easily utilized.

It may be helpful to explore the possibility of a cooperative agreement with the public school system to provide transportation. If the lack of transportation would prevent a child with disabilities from participating in Head Start, program funds are to be used to provide this related service before a delay occurs which would have a negative effect on the child's progress. The major emphasis is on providing the needed special help so that the child can develop to the maximum during the brief time in Head Start.

The Americans with Disabilities Act of 1990 (42 U.S.C. 12101) requires that new buses (ordered after August 26, 1990) by public bus systems must be accessible to individuals with disabilities. New over-the-road buses ordered by privately operated bus and van companies (on or after July 26, 1996 or July 26, 1997 for small companies) must be accessible. Other new vehicles, such as vans, must be accessible, unless the transportation company provides service to individuals with disabilities that is equivalent to that operated for the general public. The Justice Department enforces these requirements.

Efforts should be made to obtain expensive items such as wheelchairs or audiometers through resources such as Title V (formerly Crippled Children's Services). Cooperative arrangements can be made with LEAs and other agencies to share equipment such as tympanometers. Special equipment such as hearing aids may be obtained through EPSDT or from SSI funds for those children who have been found eligible. Some States have established libraries of assistive technology devices and rosters of expert consultants.

Section 1308.5 Recruitment and Enrollment of Children With Disabilities

Guidance for Paragraph (a)

Head Start can play an important role in Child Find by helping to locate children in need and hardest to reach, such as immigrants and non-English speakers. In cooperation with other community groups and agencies serving children with disabilities, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with disabilities who meet eligibility requirements and whose parents desire the child's participation.

Integrating children with severe disabilities for whom Head Start is an appropriate placement is a goal of ACYF. Grantees should bear in mind that 45 CFR part 84, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance or the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a disabling condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided. Many children who appear to have serious impairments are nevertheless able to make greater gains in an integrated setting than in a segregated classroom for children with disabilities.

The key factor in selecting an appropriate placement is the IEP. The need of the individual child and the ability of the child to benefit are determining factors. Likewise, the amount of time per day or week to be spent in the regular setting and/or in other settings is determined by the IEP. The IEP of a child with a severe emotional/behavioral disorder, for example, might realistically call for less than full day attendance or for dual placement. Another factor to consider is that according to the PIR, the majority of children with severe impairments are provided special services by both Head State staff and staff of other agencies, sharing the responsibility. Many grantees have successfully served children with moderate and severe disabilities.

The disabilities coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and the names of LEA Child Find contact persons to the director to facilitate joint identification of children with disabilities. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Title V, Maternal and Child Health Block Grants, Title XIX (EPSDT/Medicaid), Migrant Health Centers, Developmental Disabilities programs, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Grantees need to develop lists of appropriate referral sources. These include hospital child life programs, SSI, early intervention programs funded by Part H of the IDEA or other sources, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, Association for Retarded Citizens chapters, Developmental Disabilities Planning Councils, Protection and Advocacy Systems, University Affiliated Programs, the LEA Child Find, and the medical community.

Head Start programs are encouraged to increase the visibility of the Head Start mainstreaming effort within the community by:

- Including community child service providers on policy council health and disability advisory boards and in other relevant Head Start activities.
- Making presentations on Head Start mainstreaming experiences at local, State and Regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and the Association for the Care of Children's Health.

- Participating in interagency planning activities for preschool infant and toddler programs such as the State Interagency Coordinating Councils supported under the IDEA.

Guidance for Paragraph (b)

Grantees should maintain records of outreach, recruitment, and service activities for children with disabilities and their families.

Each grantee should develop a policy on what types of information are to be included in a comprehensive file for each disabled child. The policy should outline the locations where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program central office (where the disability services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality needs to be maintained in a manner which allows for access to information by appropriate staff while meeting applicable Head Start and State requirements.

Guidance for Paragraph (d)

Staff should assist families who need help in obtaining immunizations before the program year begins, bearing in mind that a goal of parent involvement and social service activities is to encourage independence and develop skills in meeting timelines when seeking services for children. Care should be taken that children are not denied enrollment, but that their families receive the necessary assistance to meet entrance requirements. "Healthy Young Children: A Manual for Programs," (a cooperative effort of the Administration for Children, Youth and Families, the American Academy of Pediatrics; the Division of Maternal and Child Health, U.S. Department of Health and Human Services; Georgetown University Child Development Center; Massachusetts Department of Public Health, and the National Association for the Education of Young Children, 1988, copyright, NAEYC) contains best practice guidance.

Section 1308.6 Assessment of Children

Guidance for Paragraph (b)

Early screening is essential because of the time required for the steps necessary before special services can begin. It has been very difficult for some grantees to complete health screenings in a timely manner for several reasons including the lack of resources, especially in rural areas; the need to rely on donated services from agencies whose schedules have been especially overloaded during September and October after the start of the Head Start program year; lack of summer staff in most programs; and the difficulty in reaching some families. Lack of coordination among agencies with legislative responsibility for identifying children with disabilities has resulted in duplication and unacceptable delays in providing required services for many grantees. Other grantees, however, have demonstrated the ability to complete screenings early in the program year without difficulty. Many programs already complete screening by 45 days after the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Grantees are encouraged to schedule well in advance with clinics and with such providers as EPSDT and the Indian Health Service for timely screening and any subsequent evaluations that may be needed.

Recently, a number of legislative and legal requirements have increased the resources available for the screening and evaluation of children. Title XIX, EPDST/Medicaid, has new requirements for screening and evaluation, as well as treatment; the Social Security Administration has modified eligibility requirements for children with disabilities so that more services will be available; and all States have assured that services will be provided from at least age three under IDEA so that LEAs in more States will be engaged in identifying and evaluating children from birth to age six.

In response to these changes, the Department of Health and Human Services and the Department of Education, through the Federal Interagency Coordinating Council, have developed a cooperative agreement for coordinated screening. Head Start is one of the participating agencies which will work together to plan and implement community screenings, assisting the LEAs which have the major responsibility for identifying every child with a disability under the IDEA. In addition, programs may elect to make some summer staff available for activities to close out program work in the spring and prepare for the fall.

These developments make timely screening feasible. They also make it possible to expedite immunizations. State-of-the-art coordinated screening programs make immunizations available.

This coordination can focus staff energy on assisting families to have their children immunized during the screening phase rather than making repeated follow-up efforts after the program for children has begun. Coordinated screening also provides an excellent parent education opportunity. Information on child development, realistic expectations for preschoolers and such services as WIC can be provided during the screening. Some communities have combined screening with well-received health fairs.

The staff should be involved in the planning of screening to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age-appropriate norms should be used. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist. The RAPs can provide information on the characteristics of screening instruments.

Current best practice indicates that individual pure tone audiometry be used as the first part of a screening program with children as young as three. The purpose is to identify children with hearing impairments that interfere with, or have the potential to interfere with communication. The recommended procedure is audiometric screening at 20 dB HL (re ANSI–1969) at the frequencies of 1000, 2000, and 4000 Hz, (and at 500 Hz unless acoustic immittance audiometry is included as the second part of the screening program and if the noise level in the room permits testing at that frequency.) Acoustic immittance audiometry (or impedance audiometry) is recommended as the second part of the program to identify children who have middle-ear disorders.

The audiometric screening program should be conducted or supervised by an audiologist. Nonprofessional support staff have successfully carried out audiometric screening with appropriate training and supervision.

When a child fails the initial screening, an audiometric rescreening should be administered the same day or no later than within 2 weeks. A child who fails the rescreening should be referred for an evaluation by an audiologist.

Current best practice calls for annual hearing tests. Frequent rescreening is needed for children with recurrent ear infections. Grantees who contract or arrange for hearing testing should check to assure that the testing covers the three specified frequencies and that other quality features are present. Speech, hearing and language problems are the most widespread disabilities in preschool programs and quality testing is vital for early detection and remediation.

Playing listening games prior to testing and getting use to earphones can help children learn to respond to a tone and improve the quality of the testing.

Some grantees have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity especially for teachers. State requirements for qualifications should be checked and non-professional screeners should be trained.

Some programs have involved trained students from schools of nursing, child development or special education graduate students, or medical students who must carry out screening work as part of their required experience.

Guidance for Paragraph (d)

Parents should be provided assistance if necessary, so that they can participate in the developmental assessment.

Grantees should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions which can affect their child's development and learning.

Development assessment is an ongoing process and information from observations in the Head Start center and at home should be recorded periodically and updated in each developmental area in order to document progress and plan activities.

Disabilities coordinators, as well as education staff, need to be thoroughly familiar with developmental assessment activities such as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments. Knowledge of normal child development and understanding of the culture of the child are also important.

Guidance for Paragraph (e)

While the LEA is responsible for assuring that each child who is referred is evaluated in accordance with the provisions of IDEA and usually provides the evaluation, grantees may sometimes provide for the evaluation. In that event, grantees need to assure that evaluation specialists in appropriate areas such as psychology, special education, speech pathology and physical therapy coordinate their activities so that the child's total functioning is considered and the team's findings and recommendations are integrated.

Grantees should select members of the multidisciplinary evaluation team who are familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as they relate to the overall diagnostic process and the use of specific tests.

Grantees should be certain that team members understand that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom also need special education and related services. The intent of the evaluation procedures is to provide information to identify children who have disabling conditions so they can receive appropriate assistance. It is also the intent to avoid mislabeling children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a regular comprehensive program meeting the Head Start Performance Standards.

When a grantee provides for the evaluation of a child, it is important that the Head Start eligibility criteria be explained to the evaluation team members and that they be informed as to how the results will be used.

Grantees should require specific findings in writing from the evaluation team, and recommendations for intervention when the team believes the child has a disability. The findings will be used in developing the child's IEP to ensure that parents, teachers and others can best work with the child. Some grantees have obtained useful functional information by asking team members to complete a brief form describing the child's strengths and weaknesses and the effects of the disability along with suggestions for special equipment, treatment or services. The evaluators should be asked in advance to provide their findings promptly in easily understood terms. They should provide separate findings and, when they agree, consensus professional opinions. When planning in advance for evaluation services from other agencies, grantees should try to obtain agreements on prompt timing for delivery of reports which are necessary to plan services.

To assist the evaluation team, Head Start should provide the child's screening results, pertinent observations, and the results of any developmental assessment information which may be available.

It is important that programs ensure that no individual child or family is labeled, mislabeled, or stigmatized with reference to a disabling condition. Head Start must exercise care to ensure that no child is misidentified because of economic circumstances, ethnic or cultural factors or developmental lags not caused by a disability, bilingual or dialectical differences, or because of being non-English speaking.

If Head Start is arranging for the evaluation, it is important to understand that a child whose problem has been corrected (e.g., a child wearing glasses whose vision is corrected and who does not need special education and related services) does not qualify as a child with a disability. A short-term medical problem such as post-operative recovery or a problem requiring only medical care and health monitoring when the evaluation specialists have not stated that special education and related services are needed does not qualify as a disability.

The evaluation team should include consideration of the way the disability affects the child's ability to function as well as the cause of the condition.

Some children may have a recent evaluation from a clinic, hospital or other agency (other than the LEAs) prior to enrolling in Head Start. If that evaluation did not include needed functional information or a professional opinion as to whether the child meets one of the Head Start eligibility criteria, the grantee should contact the agency to try to obtain that information.

Some children, prior to enrolling in Head Start, already have been diagnosed as having severe disabilities and a serious need for services. Some of these children already may be receiving some special assistance from other agencies for their disabilities but lack developmental services in a setting with other children. Head Start programs may best meet their needs by serving them jointly, i.e., providing developmental services while disability services are provided from another source. It is important in such situations that regular communication take place between the two sites.

Beginning in 1990, State EPSDT/Medicaid programs must, by law, evaluate and provide services for young children whose families meet eligibility criteria at 133 percent of the poverty levels. This is a resource for Head Start and it is important to become aware of EPSDT provisions.

Section 1308.7 Eligibility Criteria: Health Impairment Guidance

Guidance for Paragraph (c)

Many health impairments manifest themselves in other disabling conditions. Because of this, particular care should be taken when classifying a health impaired child.

Guidance for Paragraph (b)

Because AIDS is a health impairment, grantees will continue to enroll children with AIDS on an individual basis. Staff need to be familiar with the Head Start Information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency Virus (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS) dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. It provides guidance in the event that a child with disabilities presents a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned. Staff should be aware that there is a high incidence of visual impairment among children with HIV and AIDS.

Guidance for Paragraph (c)

Teachers or others in the program setting are in the best position to note the following kinds of indications that a child may need to be evaluated to determine whether an attention deficit disorder exists:

(1) Inability of a child who is trying to participate in classroom activities to be able to orient attention, for example to choose an activity for free time or to attend to simple instructions;

(2) Inability to maintain attention, as in trying to complete a selected activity, to carry out simple requests or attend to telling of an interesting story; or

(3) Inability to focus attention on recent activities, for example on telling the teacher about a selected activity, inability to tell about simple requests after carrying them out, or inability to tell about a story after hearing it.

These indicators should only be used after the children have had sufficient time to become familiar with preschool procedures and after most of the children are able easily to carry out typical preschool activities.

Culturally competent staff recognize and appreciate cultural differences, and this awareness needs to include understanding that some cultural groups may promote behavior that may be misinterpreted as inattention. Care must be taken that any deviations in attention behavior which are within the cultural norms of the child's group are not used as indicators of possible attention deficit disorder.

A period of careful observation over three months can assure that adequate documentation is available for the difficult task of evaluation. It also provides opportunity to provide extra assistance to the child, perhaps through an aide or special education student under the teacher's direction, which might improve the child's functioning and eliminate the behavior taken as evidence of possible attention deficit disorder.

Attention deficit disorders are not the result of learning disabilities, emotional/behavioral disabilities, autism or mental retardation. A comprehensive psychological evaluation may be carried out in some cases to rule out learning disability or mental retardation. It is possible, however, in some instances for this disability to coexist with another disability. Children who meet the criteria for multiple disabilities (e.g., attention deficient disorder and learning disability, or emotional/behavioral disorder, or mental retardation) would be eligible for services as children with multiple disabilities or under their primary disability.

Teacher and parent reports have been found to provide the most useful information for assessment of children suspected of having attention deficit disorder. They are also useful in planning and providing special education intervention. The most successful approach may be a positive behavior modification program in the classroom, combined with a carryover program in the home. Prompt and clear response should be provided consistently. Positive reinforcement for appropriate behavior, based on rewards such as stickers or small items desired by the child has been found effective for children with this disorder, along with occasional withholding of rewards or postponing of desired activities in the face of inappropriate behavior. Effective programs suggest that positive interactions with the child after appropriate behavior are needed at least three times as often as any negative response interactions after inappropriate behavior. Consultants familiar with behavior modification should be used to assist teachers in planning and carrying out intervention which can maintain this positive to negative ratio while shaping behaviors. These behavior interventions can be provided in mainstream placements with sufficient personnel.

Suggested Primary Members of A Head Start Evaluation Team for Health Impaired Children:

Physician.
Pediatrician.
Psychologist.
Other specialists related to specific disabilities.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Family counseling.
Genetic counseling.
Nutrition counseling.
Recreational therapy.
Supervision of physical activities.
Transportation.
Assistive technology devices or services

Section 1308.8 Eligibility Criteria: Emotional/Behavioral Disorders

Guidance for Paragraph (a)

Staff should insure that behavior which may be typical of some cultures or ethnic groups, such as not making eye contact with teachers or other adults or not volunteering comments or initiating conversations are not misinterpreted.

The disability, social service and parent involvement coordinators should consider providing extra attention to children at-risk for emotional/behavioral disorders and their parents to help prevent a disability. Members of the Council of One Hundred, Kiwanis, Urban League, Jaycees, Rotary, Foster Grandparents, etc. may be able to provide mentoring and individual attention.

Suggested Primary Members of a Head Start Evaluation Team for Emotional/behavioral Disorders:

Psychologist, psychiatrist or other clinically trained and State qualified mental health professionals.
Pediatrician.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Behavior management.
Environmental adjustments.
Family counseling.
Psychotherapy.
Transportation.
Assistive technology.

Section 1308.9 Eligibility Criteria: Speech or Language Impairment

Guidance for Paragraph (a)

Staff familiar with the child should consider whether shyness, lack of familiarity with vocabulary which might be used by testers, unfamiliar settings, or linguistic or cultural factors are negatively influencing screening and assessment results. Whenever possible, consultants trained in assessing the speech and language skills of young children should be selected. The child's ability to communicate at home, on the playground and in the neighborhood should be determined for an accurate assessment. Review of the developmentally appropriate age ranges for the production of difficult speech sounds can also help reduce over-referral for evaluation.

Suggested Primary Members of a Head Start Evaluation Team for Speech or Language Impairment:

Speech Pathologist.
Language Pathologist.
Audiologist.
Otolaryngologist.
Psychologist.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Environmental adjustments.
Family counseling.
Language therapy.
Speech therapy.
Transportation.
Assistive technology devices or services.

Section 1308.10 Eligibility Criteria: Mental Retardation

Guidance for Paragraph (a)

Evaluation instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments that the child may have (e.g., a child who is visually impaired should not be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

Suggested primary members of a Head Start evaluation team for mental retardation:

Psychologist.
Pediatrician.

Possible related services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.11 Eligibility Criteria: Hearing Impairment Including Deafness

Guidance for Paragraph (a)

An audiologist should evaluate a child who has failed rescreening or who does not respond to more than one effort to test the child's hearing. If the evaluation team determines that the child has a disability, the team should make recommendations to meet the child's needs for education and medical care or habilitation, including auditory training to learn to use hearing more effectively.

Suggested Primary Members of a Head Start Evaluation Team for Hearing Impairment:

Audiologist.
Otolaryngologist.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication, speechreading or manual communication.
Transportation.
Use of amplification.
Assistive technology devices or services.

Section 1308.12 Eligibility Criteria: Orthopedic Impairment

Guidance for Paragraph (a)

Suggested Primary Members of a Head Start Evaluation Team for Orthopedic Impairment:

Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.
Rehabilitation professional.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Assistive technology.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Eligibility Criteria: Visual Impairment Including Blindness

Guidance for Paragraph (a)

Primary Members of an Evaluation Team for Visual Impairment including Blindness:

Ophthalmologist.
Optometrist.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Functional vision assessment and therapy.

Section 1308.14 Learning Disabilities

Guidance for Paragraph (a)

When a four or five-year-old child shows signs of possible learning disabilities, thorough documentation should be gathered. For example, specific anecdotal information and samples of the child's drawings, if appropriate, should be included in the material given to the evaluation team.

A Master's degree level professional with a background in learning disabilities should be a member of the evaluation team.

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Vision evaluation.
Neurology.
Psychology.
Motor development.
Hearing evaluation.
Child psychiatry.
Pediatric evaluation.

Section 1308.15 Autism

A child who manifests characteristics of the condition after age three can still be diagnosed as having autism. Autism does not include children with characteristics of serious emotional disturbance.

Suggested possible members of a Head Start evaluation team:

Psychologist.
Pediatrician.
Audiologist.
Psychiatrist.
Language pathologist.

Possible related services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Family support services.
Language therapy.
Transportation.

Section 1308.16 Traumatic Brain Injury

Traumatic brain injury does not include congenital brain injury.

Suggested possible members of an evaluation team included:

Psychologist.
Physical therapist.
Speech or language pathologist.

Possible related services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Rehabilitation professional.
Occupational therapy.
Speech or language therapy.
Assistive technology.

Section 1308.17 Other Impairments

This category was included to ensure that any Head Start child who meets the State eligibility criteria as developmentally delayed or State-specific criteria for services to preschool children with disabilities is eligible for needed special services either within Head Start or the State program.

Suggested primary members of an evaluation team for other impairments meeting State eligibility criteria for services to preschool children with disabilities.

Pediatrician.
Psychologist.
Other specialists with expertise in the appropriate area(s).

Possible Related Services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Occupational therapy.
Speech or language therapy.
Family Counseling.
Transportation.

Deaf-blindness

Information on assistance or joint services for deaf-blind children can be obtained through SEAs.

Multiple Disabilities

A child who is deaf and has speech and language impairments would not be considered to have multiple disabilities, as it could be expected that these impairments were caused by the hearing loss.

Suggested primary members of a Head Start evaluation team:

Audiologists.
Special educators.
Speech, language or physical therapists.
Psychologists or psychiatrists.
Rehabilitation professional.

Possible related services:

(Related services are determined by individual need. These "possible related services" are merely examples and are not intended to be limiting.)

Speech, language, occupational or physical therapists as needed.

Assistive technology devices or services.
Mental health services.
Transportation.

Section 1308.18 Disabilities/Health Services Coordination

Guidance for Paragraph (a)

It is important for staff to maintain close communication concerning children with health impairments. Health and disability services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to ensure that they receive ongoing medical treatment to prevent speech and language delay. They should ensure that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education services districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17 percent of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for Paragraph (b)

The disabilities services coordinator needs to assure that best use is made of mental health consultants when a child appears to have a problem which may be symptomatic of a disability in the social/emotional area. Teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, the events which appear to precipitate the tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be used primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of children with disabilities which provide needed support and a forum for talking over mutual concerns. Parents needing community mental health services may need direct assistance in accessing services, especially at first.

The disability services coordinator needs to work closely with staff across components to help parents of children who do not have disabilities become more understanding and knowledgeable about disabilities and ways to lessen their effects. This can help reduce the isolation which some families with children with disabilities experience.

Guidance for Paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Awareness of possible side effects is of particular importance when treatment for a disability requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.19 Developing Individual Education Programs (IEPs)

Guidance for Paragraph (a)

The IEP determines the type of placement and the specific programming which are appropriate for a child. The least restrictive environment must be provided and staff need to understand that this means the most appropriate placement in a regular program to the maximum extent possible based on the IEP. Because it is individually determined, the least restrictive environment varies for different children. Likewise, the least restrictive environment for a given child can vary over time as the disability is remediated or worsens. A mainstreamed placement, in a regular program with services delivered by regular or special staff, is one type of integrated placement on the continuum of possible options. It represents the least restrictive environment for many children.

Following screening, evaluation and the determination that a child meets the eligibility criteria and has a disability, a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies which may cooperate in providing services and especially with LEAs or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the LEAs and use that format to foster coordination. However, the format of the IEP to be developed for children in Head Start can vary according to local option. It should be developed to serve as a working document for teachers and others providing services for a child.

It is recommended that the staff review the IEP of each child with a disability more frequently than the minimum once a year to keep the objectives and activities current.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his or her special needs and this should be the first option considered. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the findings and recommendations of the multi-disciplinary evaluation team, observation and developmental assessment information from the Head Start staff and parents, parental information and desires, and the IEP to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year. For example, a child with autism whose IEP called for part-time services in Head Start in the fall might improve so that by spring the hours could be extended.

If Head Start is not an appropriate placement to meet the child's needs according to the IEP, referral should be made to another agency.

Helpful specific information based on experience in Head Start is provided in manuals and resource materials on serving children with disabilities developed by ACYF and by technical assistance providers. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers; and
- Developing appropriate curriculum activities and home follow-up activities.

Guidance for Paragraph (j)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in ongoing planning. Care should be taken to put parents at ease and to eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve parents actively, not just to obtain their signature on the IEP.

It is important to involve the parents of children with disabilities in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through on the child's treatment plan, to the extent possible. It is especially helpful for Head Start to assist parents in developing confidence, strategies and techniques to become effective advocates for their children and to negotiate complicated systems. Under IDEA, a federally-funded Parent Training and Information Program exists whereby parent training centers in each State provide information, support and assistance to parents enabling them to advocate for their child. Information regarding these centers should be given to parents of a child determined to have a disability. Because some parents will need to advocate for their children over a number of years, they need to gain the confidence and skills to access resources and negotiate systems with increasing independence.

Some parents of children with disabilities are also disabled. Staff may need to adjust procedures for assisting parents who have disabilities to participate in their children's programs. Materials to assist in this effort are available from technical assistance providers.

Section 1308.20 Nutrition Services

Guidance for Paragraph (a)

Vocabulary and concept building, counting, learning place settings, social skills such as conversation and acceptable manners can be naturally developed at meal or snack time, thus enhancing children's skills. Children with disabilities often need planned attention to these areas.

The staff person who is responsible for nutrition and the disabilities services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the disabilities services coordinator should alert staff to watch for practices leading to baby bottle caries. This is severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juice or sugar water or letting the child carry around a bottle for long periods of time. The serious dental and speech problems this can cause are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician or a medical consultant.

Section 1308.21 Parent Participation and Transition of Children From Head Start to Public School

Guidance for Paragraph (a)

Grantees should help parents understand the value of special early assistance for a child with a disability and reassure those parents who may fear that if their child receives special education services the child may always need them. This is not the experience in Head Start and most other preschool programs where the majority of children no longer receive special education after the preschool years. The disabilities coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of disabilities and develop to their full potential.

The disabilities coordinator should help program staff deal realistically with parents of children who have unfamiliar disabilities by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or home visits do not overlook possible disabilities among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for Paragraphs (b) and (c)

As most Head Start children will move into the public school system, disabilities coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Disabilities coordinators need to ensure that the Head Start program:

- Provides information on services available for LEAs and other sources of services parents will have to access on their own, such as dental treatment;
- Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;
- Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;
- Familiarizes parents and staff of the receiving program's characteristics and expections;
- Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;
- Provides information on services available under the Individuals With Disabilities Education Act, the federally-funded parent training centers and provisions for parent involvement and due process; and
- Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop activities for smooth transition into Head Start from Part H infant/toddler programs funded under IDEA and from Head Start to kindergarten or other placement. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Part H programs, Head Start and LEAs. ACYF has developed materials useful for transition. American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans should be used as working documents and reviewed for annual update, so that the foundation laid in Head Start is maintained and strengthened.

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

2. The authority citation for part 1304 is revised to read as follows:

Authority: 42 U.S.C. 9801 et seq.

3. In part 1304, wherever the term "OCD" is used change to "ACYF" and wherever the term "Office of Child Development" is used change to "Administration on Children, Youth and Families."

4. Section 1304.1–2 is amended by revising paragraphs (a), (c) and (i) to read as follows:

§ 1304.1–2 Definitions.

* * * * *

(a) The term *ACYF* means the Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, and includes appropriate Regional Office staff.

* * * * *

(c) The term *Commissioner* means the Commissioner of the Administration on Children, Youth and Families.

* * * * *

(i) The term "children with disabilities" means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities who, by reason thereof need special education and related services. The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

5. Section 1304.3–3 is amended by revising paragraph (b) introductory text to read as follows:

§ 1304.3–3 Medical and dental history, screening and examinations.

* * * * *

(b) Effective with the beginning of the 1993–94 program year, grantees must provide for health and developmental screenings by 45 days after the beginning of services for children in the fall, or for a child who enters late, by 45 days after the child enters into the program and must include:

* * * * *

PART 1305—ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEAD START

6. The authority citation for part 1305 is revised to read as follows:

Authority: 42 U.S.C. 9801 et seq.

7. Section 1305.2 is amended by revising paragraph (a) to read as follows:

§ 1305.2 Definitions.

(a) *Children with disabilities* means children with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments or specific learning disabilities who, by reason thereof need special education and related services. The term "children with disabilities" for children aged 3 to 5, inclusive, may, at a State's discretion, include children experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, need special education and related services.

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Part VII

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Part 3500

Real Estate Settlement Procedures Act; Statement of Approved Accounting Methods; Interpretive Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-93-1634; FR-3430-I-01; RESPA Interpretive Rule 1993-1]

Real Estate Settlement Procedures Act; Statement of Approved Accounting Methods under Section 10

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner (HUD).

ACTION: Interpretive rule.

SUMMARY: On November 2, 1992 the Department issued a final rule revising its regulations under the Real Estate Settlement Procedures Act (RESPA), also known as Regulation X. In its Final Rule, the Department reserved § 3500.17 for matters involving escrow accounts, including escrow accounting procedures and implementation of sections 10(a)(1) and (2) and sections 10(b)(c) and (d) of RESPA representing escrow account statement requirements as added by the National Affordable Housing Act of 1990, and set forth in a proposed rule published in the **Federal Register** on December 9, 1991. The Department withdrew all previous RESPA related legal opinions, including one issued on February 6, 1980 by Deputy Assistant Secretary Patricia Worthy interpreting the original provisions of section 10 of RESPA. Because of the uncertainty created by these circumstances, the Department has determined to use its authority under section 19(a) of RESPA to issue an Interpretive Rule regarding its interpretation of allowable accounting methods for escrow accounts covered by section 10 of RESPA, which include every escrow account established in connection with a federally related mortgage loan as defined by RESPA, whether created before or after the effective date of RESPA (December 22, 1974).

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: David Williamson, Director, RESPA Enforcement, room 5241 (202-708-4560) or Fred Eggers, Deputy Assistant Secretary, Office of Economic Affairs, Office of Policy Development and Research, room 8204, (202-708-3080) Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410-8000. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: The purpose of this Interpretive Rule is to state the position of the Department regarding allowable accounting methods under section 10 of RESPA. RESPA provides that: A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower—

(1) To deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premium, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of the first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve month period; or

(2) To deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the amount of the estimated taxes, insurance premiums and other charges with respect to the property which are reasonably anticipated to be paid on dates during the ensuing twelve-months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period: *Provided, however,* That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow accounts to avoid or eliminate such deficiency.

Section 10 sets limits on the amounts which lenders and servicers may require borrowers to deposit in escrow accounts for payments of taxes, insurance premiums or other charges with respect to a mortgaged property when the accounts are established and while the accounts are ongoing. The Section does not, however, specify the permissible accounting methods servicers may use in analyzing escrow accounts to ensure that they meet these limits. Under an aggregate accounting method, the account is analyzed as a whole and the limits are applied to the whole account. Under an individual- or single-item accounting method, each item is accounted separately, and the limits are applied to each item.

On February 6, 1980, former HUD Deputy Assistant Secretary Patricia Worthy issued an opinion which stated, among other things, that section 10 does not mandate any specific accounting method. It also indicated that "individual item accrual" (also frequently known as "individual- (or) single-item analysis") was permitted under section 10. The opinion stated: "As we understand this accounting method, each obligation (e.g. school tax, township tax, each separate assessment and each insurance payment) is treated separately and sufficient funds collected to pay each obligation without taking from funds collected to pay other obligations. In effect, if not in operation, separate accounts are maintained to meet each obligation."

On April 21, 1980, Departmental counsel issued a related opinion that installments paid by a servicer of a single annual tax liability could not be treated as separate obligations for purposes of permitted escrows under section 10. Both of the above-cited opinions were collected in Barron's Federal Regulation of Real Estate and were well known in the mortgage loan servicing community. Federal Housing Administration Handbook "Administration of Insured Mortgages", originally published in 1974 and published in the **Federal Register** on November 10, 1976, permitted the use of either the "aggregate" or "single-item" method of escrow account analysis.

On February 4, 1991, the Comptroller General of the United States issued an opinion to Henry Gonzalez, Chairman, Subcommittee on Housing and Community Development of the House Committee on Banking, Finance and Urban Affairs which stated in relevant part: "After reviewing the statute, its legislative history and all other pertinent materials, we have concluded that the practice of 'single-item analysis' is not prohibited under provisions of Section 10." The Comptroller General further suggested that HUD should clarify its position in regulations.

The Department is preparing a rule and an accompanying regulatory impact analysis growing out of its study of escrow accounting practices in the United States, and also dealing with escrow account statements under sections (10) (b), (c), and (d) established by the 1990 Housing Act. This rulemaking was not completed at the time the Department issued a Final Rule on November 2, 1992 substantially revising other provisions of the Regulation X, the RESPA regulation. The Department therefore reserved 24 CFR 3500.17 for escrow account provisions. However, because the November 2, 1992 Final Rule withdrew all previous RESPA informal legal opinions, there has been uncertainty concerning the Department's position on acceptable methods of escrow accounting under RESPA. Therefore, pending new rulemaking establishing a new § 3500.17, the Department announces its interpretation of section 10 of RESPA, regarding acceptable accounting methods for purposes of section 10. The public is reminded, however, that inasmuch as rulemaking may lead to a change or changes in the Department's policies respecting escrow accounting including policies respecting escrow accounting procedures, that this interpretation only pertains pending adoption of a final rule by the Department in accordance with the Administrative Procedures Act or until this interpretive rule is withdrawn or superseded.

The Interpretive Rule

[RESPA Interpretive Rule 1993–1]

Escrow Accounting Methods

The Department of Housing and Urban Development interprets section 10(a) (1) and (2) of the Real Estate Settlement Procedures Act (RESPA) with respect to permissible escrow accounting methods as follows:

Both "individual- (or) single-item analysis" and "aggregate (or) composite analysis" are acceptable escrow accounting methods under sections 10(a) (1) and (2) of RESPA for determining the maximum amounts which may be accumulated in escrow accounts for purposes of this Section. (Nothing in this interpretation shall prevent mortgage loan documents from specifying an accounting method or any other limitation which leads to lesser escrow amounts than would result from these analyses.) Under individual- (or) single-item analysis, each item accounted for may represent only a single payee and the account for that payee may not be subdivided into separate sub-accounts. The following appendix contains examples of algorithms which illustrate these accounting methods. These illustrations should not be interpreted as, in any manner, establishing minimum balance requirements for escrow accounts; they are intended only to illustrate these methods.

Appendix

"Aggregate (or) composite analysis" is a method of computing required escrow balances and deposits considering all escrow items as a whole. The following explains the accompanying chart:

Step 1. Under the aggregate method, in establishing required payments from the borrower, the servicer would first project a trial monthly (month-end) balance for the account as a whole over the next twelve months (a trial running balance), assuming each estimated disbursement is made in the month it is due and assuming payments from the borrower equal to 1/12 of the estimated total annual escrow account disbursements are received each month.

Step 2. The servicer would then examine the monthly trial balance and would add to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero and adjust all subsequent monthly balances accordingly.

Step 3. The servicer then would add to the monthly balances, if it chooses a "cushion" under Section 10 of RESPA, up to one-sixth of the estimated total annual escrow account disbursements. This amount represents up to two months of escrow payments to the servicer (net of any increases or decreases because of prior year shortages or surpluses respectively).

Under this algorithm, when the account is being newly established, at settlement, the monthly balance prior to the first payment (see step 3) is the amount to start the escrow account. If there are disbursements after settlement but prior to the first monthly payment, funds may also be collected for these disbursements. For ongoing accounts, the servicer should compare the actual balance in the account to the projected monthly balance after Step 3 to determine any shortage to be made up by the borrower over the period or any surplus to be returned to the borrower.

"Individual- (or) single-item analysis" is a method of computing required escrow balances and deposits considering each escrow item independently. The following explains the accompanying chart:

Step 1. Under the single-item method, in establishing required payments from the borrower, the servicer would first project a separate trial monthly (month-end) balance for each item over the next twelve months (a trial running balance), assuming each estimated disbursement is made in the month it is due and assuming payments from the borrower equal to 1/12 of the estimated total annual escrow account disbursements for each item are received each month.

Step 2. The servicer would then examine the monthly trial balance for each item and would add to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance for that item to zero and would adjust all subsequent monthly balances accordingly.

Step 3. The servicer then would add to the monthly balances for each item, if it chooses a "cushion" under Section 10 of RESPA, up to one-sixth of the estimated total annual disbursements for that escrow item. This amount represents up to two months of escrow payments for each item to the servicer (net of any increases or decreases because of prior year shortages or surpluses respectively).

Under this algorithm, when the account is being newly established, at settlement, the monthly balance prior to the first payment (see step 3) is the amount to start the escrow account. If there are disbursements after settlement but prior to the first monthly payment, funds may also be collected for these disbursements. For ongoing accounts, the servicer should compare the actual balance for each item in the account to the projected monthly balance after Step 3 to determine any shortage to be made up by the borrower over the period or any surplus to be returned to the borrower. Under this method, a shortage or surplus is based on an analysis of the sum of all individual item accounts.

Examples Illustrating Aggregate and Single-Item Analyses

Disbursements: $360 for school taxes disbursed on September 20; $1,200 for county property taxes—$500 disbursed on July 25, $700 disbursed on December 10.

Cushion: Two months.

Settlement: May 15.

First Payment: July 1.

	Single-item						Aggregate		
	Taxes			School taxes			All		
	Pmt	Disb	Bal	Pmt	Disb	Bal	Pmt	Disb	Bal
Step 1—Initial Trial Balance									
June	0	0	0	0	0	0	0	0	0
July	100	500	−400	30	0	30	130	500	−370
August	100	0	−300	30	0	60	130	0	−240
September	100	0	−200	30	360	−270	130	360	−470
October	100	0	−100	30	0	−240	130	0	−340
November	100	0	0	30	0	−210	130	0	−210
December	100	700	−600	30	0	−180	130	700	−780
January	100	0	−500	30	0	−150	130	0	−650
February	100	0	−400	30	0	−120	130	0	−520
March	100	0	−300	30	0	−90	130	0	−390
April	100	0	−200	30	0	−60	130	0	−260
May	100	0	−100	30	0	−30	130	0	−130
June	100	0	0	30	0	0	130	0	0
Step 2—Adjusted Trial Balance—Increase Monthly Balances to Eliminate Negative Balance									
June	0	0	600	0	0	270	0	0	780
July	100	500	200	30	0	300	130	500	410
August	100	0	300	30	0	330	130	0	540
September	100	0	400	30	360	0	130	360	310
October	100	0	500	30	0	30	130	0	440
November	100	0	600	30	0	60	130	0	570
December	100	700	0	30	0	90	130	700	0
January	100	0	100	30	0	120	130	0	130
February	100	0	200	30	0	150	130	0	260
March	100	0	300	30	0	180	130	0	390
April	100	0	400	30	0	210	130	0	250
May	100	0	500	30	0	240	130	0	650
June	100	0	600	30	0	270	130	0	780
Step 3—Trial Balance With Cushion									
June	0	0	800	0	0	330	0	0	1040
July	100	500	400	30	0	360	130	500	670
August	100	0	500	30	0	390	130	0	800
September	100	0	600	30	360	60	130	360	570
October	100	0	700	30	0	90	130	0	700
November	100	0	800	30	0	120	130	0	830
December	100	700	200	30	0	150	130	700	260
January	100	0	300	30	0	180	130	0	390
Febuary	100	0	400	30	0	210	130	0	520
March	100	0	500	30	0	240	130	0	650
April	100	0	600	30	0	270	130	0	780
May	100	0	700	30	0	300	130	0	910
June	100	0	800	30	0	330	130	0	1040

Dated: January 14, 1993.

Arthur Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

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Thursday
January 21, 1993

Part VIII

Department of Education

Office of Special Education and Rehabilitative Services

Notices of Funding Priorities and Inviting Applications for New Awards Under the Rehabilitation Research and Training Centers Program

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services

Final Funding Priorities for FY 1993 and 1994 for Certain Rehabilitation Research and Training Centers

AGENCY: Department of Education

ACTION: Notice of final funding priorities for fiscal years 1993 and 1994 for certain rehabilitation research and training centers.

SUMMARY: The Secretary announces final priorities for several Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1993–1994. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Yvonne Fleming, U.S. Department of Education, 400 Maryland Avenue, SW., room 3418, Switzer Building, Washington, DC 20202–2572. Telephone: (202) 205–8532. Deaf and hearing-impaired individuals may call (202) 205–5516 for TDD services.

SUPPLEMENTARY INFORMATION: This notice contains 12 final priorities under the RRTC program. Four of the priorities are in various aspects of spinal cord injury; three cover aspects of traumatic brain injury; and there is one priority each in the areas of stroke, neuromuscular diseases, multiple sclerosis, arthritis, and functional assessment. NIDRR has published additional proposed priorities for other RRTCs and other programs for fiscal years 1993–1994, and the final versions of those priorities will be published later. Authority for the RRTC program of NIDRR is contained in section 204(b) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762).

Under this program, the Secretary makes awards to public agencies and to nonprofit and for-profit private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. The statute provides that RRTCs must be operated in collaboration with institutions of higher education.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

The final priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These priorities would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities. On July 6, 1992, the Secretary published a notice of proposed priorities in the **Federal Register** (57 FR 29766). The Department of Education received 616 letters commenting on the proposed priorities. A number of modifications were made to the priorities as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priorities does not solicit applications. A notice inviting applications is published in a separate notice in this issue of the **Federal Register**.

Description of the Rehabilitation Research and Training Center Program

RRTCs are established to conduct coordinated and advanced programs of rehabilitation research on designated rehabilitation problem areas and to provide training to researchers and service providers. Each Center must disseminate and encourage the use of new rehabilitation knowledge and publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

The statute requires that each Center conduct training for providers of rehabilitation services at various levels, which may include undergraduate, in-service, and postgraduate education. Each RRTC also must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. NIDRR encourages all Centers to include individuals with disabilities and minorities as trainees in clinical and research training.

Each Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The Secretary expects each RRTC to conduct a multifaceted program of research to develop solutions to problems confronting individuals with disabilities in order to achieve the goals specified in the priority. Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes. However, the regulatory selection criteria for the program (34 CFR 352.31) require that applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department of Education is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

NIDRR is in the process of developing a revised long-range plan focused on achieving six goals for individuals with disabilities: (1) Full integration into the community, (2) full employment, (3) independence and empowerment, (4) maximum human functioning and health, (5) improved vocational rehabilitation services, and (6) the translation of new knowledge and technology into practice. The priorities in this notice are derived from the long-range planning process and are intended to achieve one or more of these six outcomes.

The publication of these final funding priorities does not obligate the Department of Education to fund projects in any or all of these areas. Funding of particular projects depends on the availability of funds and the quality of the applications received. The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: The Background section for some of the priorities may contain substantive requirements that must be followed by each applicant for those priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

Priority 1—Rehabilitation in Neuromuscular Diseases Background

Neuromuscular diseases (NMDs) of all types affect approximately 500,000 children and adults in the United States. NMDs affect all the components of the neuromuscular organ system, and most of the NMDs are slowly progressive or even static over a relatively normal life span. However, some NMDs can produce severe physical disabilities in young children, result in wheelchair use by age 10, and even (as in the case of Duchenne muscular dystrophy) lead to early mortality (REHAB BRIEF, Vol. XI, No. 9, 1988).

NMDs can also strike productive adults without warning in mid-life, cause physical incapacities and seriously impair health, physical and cognitive functioning, ability to work, and family life. Individuals with NMD incur muscular weakness and atrophy, limb contractures, spinal deformity, restrictive lung disease, cardiovascular complications, and cognitive and psychosocial impairments in various degrees and combinations. The rates of progression may vary among diseases and among individuals.

Rehabilitation is necessary to inhibit deformity, prolong locomotive functions, preserve and enhance manipulation skills, maximize independent functional skills, and assist the individual to maintain and enhance a normal social, behavioral, and vocational profile (Goodgold, General Principles of Management and Evaluation of Neuromuscular Disease, PM&R: State of the Art Reviews, Vol. 2, No. 4, 1988). Rehabilitation should consider the individual's total needs, and include attention to pulmonary, cardiovascular, and other complications, as well as musculoskeletal and psychosocial care. The relatively high incidence of cognitive impairment in certain neuromuscular diseases has important implications for educational and vocational planning (Fowler, Johnson, Yang, 1988).

Individuals with NMDs have significant needs for vocational rehabilitation services to enable them to maintain or regain appropriate employment. Research at the University of California at Davis indicates that many service providers underestimate the vocational potential of individuals with NMDs, focusing instead on the life-threatening implications of some NMDs. As a result, the vocational rehabilitation service system needs additional strategies and training to optimize services to this population.

Priority: An RRTC in NMD rehabilitation shall focus on developing interventions to improve the lives of individuals with NMDs, and, to accomplish this, shall—

- Develop and validate quantitative measures and techniques to assess functioning, including measures of endurance, mobility, strength, and cognitive performance, and use these measures to both document the natural course of NMDs and to evaluate rehabilitation interventions;
- Develop and evaluate rehabilitation interventions, including technological aids and devices and exercise training, among others, to preserve maximum physical functioning, longevity, and independence, and assist individuals with NMDs to attain and maintain employment;
- Develop and evaluate techniques to restore and enhance psychosocial and cognitive functioning;
- Develop and evaluate strategies to improve vocational rehabilitation services and vocational outcomes for this population;
- Develop and evaluate strategies to assist individuals and their families to adjust to the impact of NMDs and to maintain quality of life; and
- Develop and evaluate new strategies to address life-long needs for health care, rehabilitation, psychosocial well-being, employment, and independent living for individuals with NMDs and their families.

Priority 2—Rehabilitation and Multiple Sclerosis Background

Multiple Sclerosis (MS) is an adult-onset neurological disease that affects the message-carrying nerve fibers of the central nervous system. Some of the common symptoms include fatigue, loss of coordination, numbness, vision problems, muscle weakness, difficulty walking, spasticity, and urinary and bowel problems. There are widely varying combinations of symptoms and rates of exacerbation among individuals. Some have few symptoms, which remain fairly consistent over time, while a small number rapidly develop severe disabilities. Most cases fall between the extremes, and are characterized by exacerbations followed by periods of remission.

Multiple sclerosis is a frequent cause of disability in the young adult population. The total population of individuals with MS in the United States is probably 250,000–500,000 (Baum and Rothschild, Annals of Neurology, 1981, v. 10), and, since a substantial number may incur severe disability over several decades, MS is a disease that has considerable social and economic impact. The age of onset is usually between 20 and 45 years—with a mean age of onset of 33—and most of those affected are women. Because MS strikes individuals in their most productive years, just when they are assuming major family and career responsibilities, its impact is often significant (Scheinberg, Multiple Sclerosis: A Guide for Patients and Their Families, 1983). And because MS has only a slight impact on longevity, an individual can expect to live approximately 30 years after the onset of MS.

The aim of MS rehabilitation is to optimize independent functioning and quality of life for people with the disease and for their families. Rehabilitation has been associated with the diagnosis and treatment of functional limitations, with emphasis on the functional assessment of motor, sensory, and cognitive problems and treatment aimed at enhancing function and altering behavior (Halstead, L.S., Grabois, M., Medical Rehabilitation, 1985). Because there is no available cure, individuals with MS must have "a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social and personal needs of individuals with multiple sclerosis and their families" (National MS Society, Long-term Care Issues in Multiple Sclerosis, 1990).

Priority: An RRTC in the rehabilitation of individuals with multiple sclerosis shall—

- Develop and evaluate new clinical interventions and rehabilitation strategies to improve human functioning, which may include early intervention, as well as techniques to improve motor, sensory, cognitive, alimentary, urinary, and sexual functioning of individuals with MS;
- Develop and evaluate new rehabilitation strategies, including technology and assistive devices, to assist individuals with MS to attain or maintain employment, independence, and maximal quality of life;
- Develop and evaluate new rehabilitation strategies to promote the maintenance of effective psychosocial and family functioning; and
- Develop and evaluate new models for consumer participation, community integration, and long-term care in the community.

Priority 3—Functional Assessment and Evaluation of Rehabilitation Outcomes

Background

Improving rehabilitation practices and outcomes requires an ability to assess functional status and changes in status in many areas, including motor function, cognitive function, emotional and interpersonal function, and sensory function, among others. Both rehabilitation practitioners and researchers need better methods and protocols to measure and assess the various elements of impairment, disability, and handicap.

Functional assessment data are useful to the clinician in selecting and monitoring treatments and in determining whether or not treatment goals have been achieved (Fuhrer and Halpern, 1984). Accurate functional assessment data are important to researchers in studies of the incidence and prevalence of specific physical impairments and their associated limitations and disabilities (Kaufert, 1983) and in studies predicting post-rehabilitation functioning. Functional assessment is also a basic component of the evaluation of rehabilitation interventions and services.

A common classification scheme of impairment, disability, and handicap, comparable to the World Health Organization's (WHO's) International Classification of Diseases, 9th edition, is fundamental to the development of an assessment system. The WHO trial International Classification of Impairments, Disabilities, and Handicaps may be a useful starting point in developing a common language for describing rehabilitation outcomes. The Functional Independence Measure (FIM) (Granger and Hamilton, 1987), a descriptive, criterion-referenced scale, has gained some acceptance as a measurement system and is another useful starting point to be considered in the development of an assessment system.

There are numerous tools to measure specific components of human performance; e.g., strength, endurance, energy expenditure, range of motion, muscle activity, and sensory function. However, these assessments often are based on subjective observation or on locally unique applications of assessment technology, so that it is difficult to make comparisons of clinical data between rehabilitation settings. Furthermore, most assessment tools are based on single body systems and have not been incorporated into an integrated, multidimensional analysis that would provide meaningful measures of outcomes after rehabilitation. A common measurement system would permit meaningful comparisons of the effects of the same intervention administered in different amounts or levels of intensity, as well as comparisons across various types of interventions and rehabilitation settings.

There has been less research in developing measures of handicap. Handicap refers to limitations in social role performance and work productivity. While measures of remunerative activity are available, tools for assessing social role performance (e.g., parenting or spousal relationships) are lacking, as are tools to measure the individual's integration into the community. There is also a dearth of measures to examine the effect of environmental factors—such as physical barriers, communication barriers, and policy or attitudinal barriers—in creating handicaps. Because ultimate outcomes of rehabilitation should be holistic, researchers and clinicians need common measures of the extent of handicap and the effect of rehabilitation in ameliorating handicap.

Rehabilitation practice uses a diverse array of therapeutic techniques, devices, and modalities. While precise measurement of a specific intervention and its outcome is often difficult, it is a prerequisite to determining efficacy and cost benefit. Standardized measures of such interventions as physical, vocational, and psychosocial rehabilitation, family involvement, and community integration are also needed, as is a system to characterize and evaluate the different rehabilitation programs and service delivery settings in which interventions are applied.

Priority: An RRTC in functional assessment and evaluation of rehabilitation outcomes shall enhance the capacity of the rehabilitation field to apply appropriate rehabilitation interventions and assess their outcomes. To achieve these objectives, the Center shall—

- Develop and evaluate quantitative measurement systems for assessing functional abilities, clinical interventions, and rehabilitation outcomes resulting from changes in functional status;
- Develop and evaluate measures of handicap and well-being—including such areas as quality of life, employment, and community integration—and evaluate the utility of these measures for assessing the effect of various rehabilitation interventions on level of handicap; and
- Identify valid and reliable measures of social and environmental factors that affect rehabilitation success and test the usefulness of these measures.

In addition, the Center shall—

- Work with a broad spectrum of rehabilitation researchers and clinicians throughout the Nation to apprise them of the ongoing work, obtain their inputs, and provide professional education on the issues and methods of functional assessment and evaluation of rehabilitation outcomes;
- Work closely with other relevant RRTCs and Rehabilitation Engineering Centers to assure the broadest utility and acceptability for the assessment systems and the appropriate use of new measurement devices and technologies;
- Coordinate with any efforts in functional assessment and evaluation of rehabilitation outcomes by the new National Center for Medical Rehabilitation Research of the National Institutes of Health and other relevant research entities; and
- Involve individuals with disabilities in the selection and definition of outcome measures.

Priority 4—Arthritis Rehabilitation

Background

The term "arthritis" encompasses a large group of rheumatic diseases that affect the joints and connective tissues that support the skeleton and the body—such as muscles, tendons, and ligaments—and that protect and cover internal organs. Although the overall prevalence of rheumatic diseases increases with age, many young adults and children also are affected. About one in seven Americans, or as many as 37 million, suffer from some form of rheumatic disease, and the annual economic impact of arthritis alone is estimated at $9 billion (1990 Annual Report, Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee).

This priority focuses on three types of arthritis that account for the most disability:

(1) Degenerative joint disease or osteoarthritis (OA) is the most common form of arthritis and is most likely to cause disability through impairments in the knees, hips, and spine. Certain occupations that require frequent knee bending may lead to osteoarthritis.

(2) A chronic inflammatory disease of unknown cause, rheumatoid arthritis (RA) afflicts more than two million Americans, and it affects at least twice as many women as men. This disorder causes inflammation, pain, and swelling in the linings of the joints, and also can produce such general symptoms as weakness, fatigue, and loss of appetite. The disease tends to be both chronic and irregular and is frequently disabling.

(3) More than 200,000 American children are afflicted with some form of arthritis. One of these diseases, juvenile rheumatoid arthritis (JRA), accounts for about 5,000 new cases each year and resembles adult RA in that it is a chronic inflammatory disease of unknown cause that is characterized by joint pain and related symptoms and apparent defects in regulation of the immune system (1990 Annual Report, Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee).

Arthritis is a degenerative condition in that exacerbations lead to further impairments and limitations. Individuals who have arthritis often exhibit symptoms of fatigue, depression, sleeplessness, and intense chronic pain. Their lives may be marked by inactivity, unemployment, and psychosocial withdrawal.

Researchers and clinicians have begun to investigate rehabilitation solutions such as pain management techniques, exercise regimens, endurance training, job modifications, and new approaches to social and community participation. Service delivery methods, such as team care, care in the local community, family involvement, and the use of assistive technology, appear to lead to more favorable rehabilitation outcomes. However, major modifications in rehabilitation await conclusive evidence of the efficacy of these promising interventions.

Priority: An RRTC in rehabilitation of individuals with arthritis shall—

- Develop and evaluate improved rehabilitation treatment techniques that maintain and restore physical, psychological, and vocational functioning and reduce chronic pain;
- Develop and evaluate new rehabilitation strategies, including technology and assistive devices, that will aid individuals with arthritis to attain or maintain employment;
- Develop early interventions, including family strategies, that will prevent or ameliorate psychosocial and educational problems often associated with JRA; and
- Develop or adapt and evaluate acceptable measures to assess function, quantify rehabilitation interventions, and assess outcomes in human functioning, employment, and community integration.

Priority 5—Stroke Rehabilitation

Background

Stroke is a major cause of disability leading to institutionalization for elderly persons. In 1986 the American Heart Association estimated that approximately 350,000 Americans survived strokes, adding to the total of over two million stroke survivors, many of whom required chronic care (Wolf, 1989). About two thirds of stroke survivors have permanent disabilities. An estimated 40 percent of all medical rehabilitation patients are stroke survivors, presenting a major challenge to the rehabilitation field. The recommendations of a 1989 NIDRR-funded conference on Methodologic Issues in Stroke Outcome Research were published by the American Heart Association in the September, 1990 Supplement to Stroke: A Journal of Cerebral Circulation and are one foundation for this priority.

The impact of residual impairments of stroke is profound, requiring prolonged therapy and adjustment to the likelihood of long-term significant disability. Many stroke survivors are dependent on others for assistance with self-care and mobility, and survivors are often limited in their options for social interaction and community participation. The physical, social, and vocational functioning of stroke survivors in the community is significantly poorer than that of age-matched persons in control groups. While the incidence of stroke is lower in the working age population, strokes can have devastating consequences for return to work or other employment outcomes.

Approximately half of all individuals who survive a stroke are disabled by neurological impairments such as muscular weakness or paralysis, impaired cognition, communication disorders, visual field loss, perceptual deficits, incontinence, or depression. Yet, rehabilitation practitioners have demonstrated the potential to assist these individuals to function with a significant degree of independence.

Stroke rehabilitation research is specifically concerned with the large number of stroke survivors and their residual impairments and disabilities. Providers of rehabilitation services, payers, and individuals and their families need assurances that rehabilitation interventions are appropriate and cost-effective. This, in turn, requires validated knowledge of the basic determinants and parameters of disability and the efficacy of rehabilitation interventions (Gresham, 1986).

A key to both improved research and better care for individuals is a valid classification system based on clear descriptions of the variety of natural histories and prognoses (Basmajian, 1989). Stroke rehabilitation outcome research must be concerned with a range of issues, including prevention of recurrence and of secondary complications, restoration and maximization of remaining function, and psychosocial factors that facilitate living and working in the community.

Priority: An RRTC on stroke rehabilitation shall develop approaches that will improve the outcomes of rehabilitation for individuals who have had strokes, and shall—

- Assess the predictive accuracy of prognostic indicators (either existing or developed by the Center) and develop systems to apply predictive knowledge in clinical practice;
- Develop valid classification schemes to measure and describe stroke and the concomitant impairments and disabilities;
- Develop and evaluate rehabilitation interventions to improve communication, cognition, neuromotor functioning, and emotional, family, vocational, or community adjustment;
- Develop valid measures to assess rehabilitation outcomes after stroke, including long-term outcomes in the community and the workplace; and
- Develop and assess rehabilitation and health care service delivery models, including self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services.

Priorities 6–8—Rehabilitation in Traumatic Brain Injury

Background

Traumatic brain injury (TBI) is defined as brain damage from externally inflicted trauma to the head that results in significant impairment to an individual's physical, psychosocial, or cognitive functional abilities. It is characterized by altered consciousness (coma or post-trauma amnesia) during the acute phase after injury, the duration of which varies greatly among individuals, usually depending on the severity of the injury.

The peak incidence of TBI is between the ages of 15 and 24, and it is two to three times more common in males than females. Most persons with TBI are single and are likely to have limited education and employment experience. A significant number have histories of alcohol or drug use, or have undergone psychiatric care prior to their head injuries (Kraus et al., 1983).

The National Head Injury Foundation reports that every year 30,000 to 50,000 of the 400,000 to 600,000 people who sustain TBIs are left with noticeable physical, social, and cognitive deficits severe enough to prevent them from returning to their former levels of function. The number of survivors requiring comprehensive and extended periods of rehabilitation has also increased dramatically since the introduction of sophisticated emergency care and trauma centers.

The residual deficits that result from TBI may be grouped as follows:

(1) *Physical impairments*—impairments of gait, limb spasticity, labored speech, vision difficulties, poor balance, hearing loss, other sensory impairments, headaches, lack of coordination, paralysis, and potential for seizure disorders;

(2) *Cognitive impairments*—loss of alertness, attention, concentration, learning and memory, abstraction, conceptualization, and problem-solving;

(3) *Executive impairments*—loss of ability to plan, organize, and carry out goal-directed activity; inability to modulate, monitor, evaluate, regulate, and self-correct on-going behavior; and

(4) *Psychosocial impairments*—tendency toward social inappropriateness, inability to control emotions, fatigue, mood swings, sexual dysfunction, restlessness, lack of motivation, and inability to form and maintain relationships.

Prevention and treatment of the many secondary medical, psychological, and cognitive complications will enable many survivors of TBI to progress purposefully through acute rehabilitation and, after discharge, to remain in the home and community without frequent return to the hospital or rehabilitation facility to remediate the problems. Because brain injury research and service programs are relatively recent developments, there have been to date few definitive solutions to the complex rehabilitation problems of TBI. Frequently, service delivery methods from developmental disabilities, correctional rehabilitation, and mental health models have been transferred or modified for rehabilitation purposes.

Individuals with TBIs frequently need interventions in the areas of education, vocational education, and vocational rehabilitation to enable them to obtain and retain appropriate employment. Because TBI may involve a lasting combination of cognitive and neurobehavioral impairments, and sometimes motor and communications impairments as well, these individuals require individualized rehabilitation strategies, often long-term.

The scope and severity of the disabilities and the opportunity to improve outcomes indicate a need for a substantial body of programmatic research to provide information and understanding of the many diagnostic, evaluative, therapeutic, and community reintegration issues related to TBI. Thus, the Secretary is proposing priorities for three Centers in various aspects of head trauma research.

Each of the Centers to be funded under these priorities must coordinate with other NIDRR-sponsored RRTCs and model systems on brain injury, and with the RSA-funded regional centers on TBI.

Priority 6—Rehabilitation Interventions in TBI

An RRTC on the prevention of secondary complications and the development of interventions to improve functioning of individuals with TBI shall—

- Develop a valid methodology to measure and describe the course of brain injury recovery and clinical sequelae;
- Develop and test prognostic indicators of rehabilitation outcome including early predictors of functional outcomes for all age groups;
- Develop and evaluate new methods of prevention and treatment of the secondary medical, psychological, and neurobehavioral complications of TBI;
- Identify individual characteristics and environmental barriers that contribute to the development and exacerbation of secondary complications, and develop interventions to address them; and
- Develop and evaluate new rehabilitation interventions for community-based rehabilitation to improve the medical, neurobehavioral, psychological, and social functioning of persons with moderate to severe TBI.

Priority 7—Community Integration and TBI

An RRTC to advance the outcomes of independent living and community integration for individuals with TBI shall—

- Develop and evaluate valid measures of community integration for the TBI population;
- Develop and evaluate effective models of community integration;
- Develop and evaluate successful models for optimizing support to and from families during rehabilitation and community integration;
- Develop and evaluate treatment strategies to enhance neurobehavioral functioning and cognition, especially as related to employment and community integration;
- Develop strategies to enhance the accessibility of independent living and employment opportunities for individuals with TBI;
- Delineate the types of services needed in the community to meet the rehabilitation needs of persons with TBI and evaluate the appropriateness and efficacy of community services;
- Develop and evaluate models for the prevention and treatment of substance abuse, including the timeliness of intervention, among individuals with TBI; and
- Develop and evaluate innovative approaches to enhance neurobehavioral function and psychological adjustment.

Priority 8—Vocational Rehabilitation and Employment in TBI

An RRTC to improve vocational rehabilitation services for individuals with TBI and enhance their long-term employment outcomes shall—

- Develop and evaluate new strategies of vocational rehabilitation, job placement, and work adjustment services, including models for competitive employment;
- Identify and demonstrate effective transition models from school to work for school-age TBI survivors;
- Develop and evaluate improved programs of vocational education and vocational training for this population;
- Identify types of job accommodations that will enable TBI survivors to work productively; and
- Develop community-based support services to provide ongoing supports needed to maintain employment for the long term.

Priorities 9–12—Rehabilitation of Spinal Cord Injury

Background

Spinal Cord Injury (SCI) results from trauma to the lower central nervous system that has a catastrophic effect on physical functioning and major effects on psychosocial and vocational functioning as well. The primary effects are loss of motor function and loss of sensation below the level of injury. Because of the nature of the injury, the survivor is vulnerable to a myriad of debilitating and costly medical and social complications. While SCIs are relatively uncommon, they are always costly in terms of hospitalization and rehabilitation expenditures, loss of income and assets, and effects on the quality of life.

Kraus, *et al.* (1983) estimated the annual incidence of acute SCI in the United States to be approximately 50 per million population. Vehicular accidents are the primary cause of these injuries. SCI often occurs in a young population that will incur major lifetime medical costs if rehabilitation is not successful. The SCI typically occurs to males between the ages of 15 and 24. They are likely to be single, have limited educational levels, and not be established in careers or even long-term employment. The recent scientific literature indicates that many of these young men have learning disabilities or problems with alcohol and substance abuse which place them at high risk for trauma and interfere with rehabilitation success after injury.

The Secretary is proposing priorities for four RRTCs to develop solutions to problems in the rehabilitation of individuals with SCIs. Each of these RRTCs must coordinate with the Spinal Cord Injury Special Demonstration projects, also funded by NIDRR, to ensure the timely transfer of new rehabilitation knowledge to the demonstration projects.

Priority 9—Secondary Complications in SCI

Background

Preventing or treating costly secondary medical complications enhances the health status, employability, and potential for independent functioning of individuals with SCI. Many individuals with SCI remain in acute care hospitals or nursing facilities for extended lengths of stay because of decubitus ulcers, urinary tract infection, mass reflex spasticity, deep vein thromboses, and other secondary complications.

Significant progress has been made in the prevention and treatment of secondary complications of SCI such as urinary tract infections (Lloyd, 1989; Nanninga, 1980; Montgomery, 1985), deep vein thrombosis (Green, 1986, 1987, 1991; Merli, 1990), and other circulatory disorders and respiratory complications (Stover, *et al.*, 1984).

Priority: An RRTC on secondary complications shall focus on improving the functioning of individuals with SCI by developing new clinical methods and service delivery techniques that will prevent or ameliorate secondary complications. The Center shall—

- Define the clinical course of SCI and the development and exacerbation of debilitating complications;
- Develop and evaluate techniques to reduce the incidence of secondary complications and minimize the debilitating and costly consequences of both frequent hospitalization and lengthy medical treatment;
- Develop and evaluate interventions to optimize individual functioning in individuals with SCI; and
- Validate methods to involve family members in the rehabilitation process and to maximize consumer self-management of the rehabilitation process.

Priority 10—Community Integration for Individuals With Spinal Cord Injury

Background

The literature on spinal cord injury suggests that post-injury life expectancy is now as high as 30–40 years (REHAB BRIEF, Vol. IX, No. 12). These can be productive years of work, study, family life, independent living, leisure activities, and community participation. However, there are many obstacles that must be addressed if these objectives are to be realized. These include problems in maintaining health status; disincentives to work, marriage, and family life; high costs and unavailability of quality health care; and restrictions caused by mobility limitations and inaccessibility.

Priority: An RRTC in community integration for individuals with SCI shall develop and disseminate new knowledge and techniques to—

- Improve personal and psychosocial adjustment after SCI;
- Enhance family life, including involvement of family members in rehabilitation, and options for marriage, sexuality, reproduction, and parenting;
- Enhance participation in community life;
- Improve techniques for maintaining health status; and
- Improve systems for long-term care in the community.

Priority 11—Vocational Rehabilitation and Employment for Individuals With Spinal Cord Injury

Background

Data indicate that at least 70 percent of individuals with SCI are unemployed at five years post-injury, and more than 60 percent are unemployed at ten years post-injury (Menter, R.R., in Apple, D.F and L.M. Hudson, eds., Spinal Cord Injury: The Model, 1991). Individuals who have sustained SCI are capable of productive work in many fields and at many levels, but there appear to be a number of obstacles to realizing this employment potential.

While continuing health maintenance problems, limited functional capacities, and incomplete community integration may contribute to this problem, unacceptably high unemployment persists even among those in whom acute rehabilitation and physical restoration have been quite successful. Obstacles that have been identified include: financial disincentives in public policy, inadequate vocational rehabilitation services, disincentives in employee benefit plans, environmental and transportation barriers, barriers to personal assistance services at the job site, and concomitant disabilities such as learning disabilities or substance abuse.

Priority: An RRTC on vocational rehabilitation and employment for individuals with SCI shall develop techniques to—

- Increase the incidence and duration of employment and the level and quality of work life for individuals with SCIs;
- Improve the quantity and appropriateness of vocational rehabilitation services to individuals with SCI;
- Maximize the incentive to work at an optimum level with improved cost-benefit ratios to society;
- Improve educational and vocational training programs for individuals with SCI; and
- Reduce physical and attitudinal barriers to employment and provide work-related supports to enhance the likelihood of successful employment.

Priority 12—Aging With Spinal Cord Injury

Background

The increased post-injury life expectancy has resulted in a new phenomenon that is not well understood—a population aging with SCIs. Initial studies of this phenomenon indicate that significant changes in function, equipment needs, and costs of care occur as individuals get older (Menter, *op. cit.*).

Observers have noted that the patterns of problems related to aging differ along three major dimensions of injury: the type of neurological injury (e.g., high or low, complete or incomplete), age at onset of the injury, and the historical era in which the injury occurred. Most individuals experience declines in functional capacities as they age. However, normal declines in muscle strength, range of motion of the joints, or pulmonary or cardiovascular capacity may significantly interfere with the SCI individual's ability to function or to compensate for other limitations, may lead to increased disability and hospitalization, and may even be life-threatening.

These physiological changes are often accompanied by changes in the social support systems, such as changes in family composition; diminished resources brought on by loss or aging of parents or spouse, or retirement; and changes in housing or community programs. There is also a major increase in costs of care when the individual requires more frequent hospitalization, more personal assistance, and more assistive technological devices.

Priority: An RRTC to address the problems of aging with SCI shall—

- Develop a better understanding of the natural course of SCI as persons age;
- Develop techniques for individuals aging with SCI to maintain functional capabilities and to cope with additional functional losses;
- Develop regimens for nutrition, exercise, stress management, health maintenance, and self-care to minimize the impacts of aging with SCI; and
- Develop methods to maintain community integration, employment, family life, and independent living for individuals aging with SCI.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Dated: November 23, 1992.

Lamar Alexander,

Secretary of Education.

Appendix—Analysis of Comments and Changes

The Department received 616 comments in response to the proposed priorities. Many additional comments were received after the deadline date and could not be considered in this response. Most of the comments were generally supportive of the priorities, but many made suggestions for modifications. In addition, a number of individuals and organizations urged the addition of other specific priorities. This Appendix first presents and discusses the comments that were general and applicable to several or all of the priorities. Second, the comments received on each specific priority are discussed in the order in which the priorities were published. Finally, the comments calling for additional priorities are discussed at the conclusion of this Appendix.

General Comments

Comment: Several commenters recommended that RRTCs should involve not only individuals with disabilities but also representatives of insurance companies or others who represent the public, the ultimate payers for most rehabilitation services. The contention was that this would make RRTCs more responsible and provide an incentive to develop more cost-effective rehabilitative technology.

Discussion: Each Center must involve individuals with disabilities as part of a general policy of participatory research and because individuals with disabilities are the ultimate intended beneficiaries of the research. RRTCs are encouraged to involve others, including appropriate service providers, that they deem relevant to their missions. State VR agencies are major payers for rehabilitation services, and all RRTCs are required to involve representatives of the public vocational rehabilitation agency in the State. The VR agencies, as payers, are interested in cost containment. However, the Secretary believes it would be overly prescriptive to require that insurance companies be involved.

Changes: None.

Comment: One commenter asked that NIDRR clarify the required relationship to the public vocational rehabilitation program for each of the prospective Centers.

Discussion: The background description of RRTCs, which is part of the priorities, states that "[e]ach Center must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers—including vocational rehabilitation service providers—in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center." Each Center must involve the State agencies and other rehabilitation service providers in its activities. The Secretary further encourages all Centers to act as a resource and provide information, technical assistance, and training to the personnel of the public rehabilitation programs.

Changes: None.

Comment: Several commenters suggested that there should be some cross-cutting priorities as well as disability-specific ones. These commenters suggested that certain conditions such as spasticity, cognitive deficits, fatigue, or paralysis are common to a number of disability categories and that the conditions should be studied across disabilities. Some of these commenters used the specific example of cognitive deficits occasioned by stroke as comparable to those caused by traumatic brain injury (TBI). A few other commenters, however, argued that the disability-specific organization of the priorities should be maintained.

Discussion: The Secretary believes that this is an interesting issue that should be further explored. On the one hand, there are many functional limitations that are indeed common to several disability categories. Nevertheless, the position expressed by participants in NIDRR's long-range planning process was that research on the rehabilitation of these conditions should be organized around specific disabilities because etiology is extremely significant in determining the most effective rehabilitation approach. With regard to the cited example of cognitive deficits, NIDRR has previously combined research on various aspects of stroke and TBI in a single Center. However, because the characteristics of the two populations are quite disparate, and because rehabilitation interventions, prognoses, and objectives vary for these two populations, the research requirements are also different.

NIDRR will convene a state-of-the-art meeting in FY 94 to consider the value of organizing some future rehabilitation research activities around cross-cutting conditions rather than disability-specific categories.

Changes: None.

Comment: One commenter argued that RRTCs should contain a basic science component, since a strong basic science faculty tends to attract better clinical investigators and practitioners to an institution.

Discussion: The Secretary is concerned with building capacity in rehabilitation research and has considered this suggestion. The Rehabilitation Act does permit some basic research in RRTCs if it is necessary to achieve an applied rehabilitation outcome. However, the Secretary will not require basic research. It will be the responsibility of an applicant to demonstrate that any basic research it proposes is essential to the achievement of the objectives stated in the priority. NIDRR will explore means to collaborate with other Federal research agencies to achieve some capacity-building in rehabilitation research.

Changes: None.

Comment: Some commenters suggested that the priorities should be made more flexible by permitting Centers in one priority area to conduct research on one or more of the objectives (or "bullets") that have been published under another priority in a related area.

Discussion: The Secretary recognizes the lack of clear dividing lines among some potential areas of research in closely-related priority areas. The Department does not impose limitations on the scope of proposed research other than those prescribed by the statute, regulations, and the priorities. Applications for RRTC grants are reviewed to ensure they respond to the requirements of a priority. Applicants are free to propose research on an objective similar to an objective published under another priority in a related area. However, applicants are urged to review the selection criteria for the RRTC program at 34 CFR 352.31 and to assess the potential effect of research proposals in areas not directly related to the priority on the peer review of the application.

Changes: None.

Comment: Several commenters objected to the separation of medical rehabilitation and vocational rehabilitation research, specifically in the case of the traumatic brain injury (TBI) and spinal cord injury (SCI) centers. Their contention was that as rehabilitation is a holistic concept, rehabilitation research should be comprehensive.

Discussion: The Secretary agrees that the practice of rehabilitation should be concerned with all aspects of an individual's life. However, research must be organized around particular scientific disciplines and expertise, with well-delineated research hypotheses. Research is generally not as all-encompassing as practice. While it may be worthwhile to include comprehensive research for some rehabilitation issues, the Secretary believes that the delineation in these priorities will ensure that more attention is directed to new research areas.

Changes: None.

Comment: One commenter noted the importance of literacy to NIDRR's six goals and urged that NIDRR address literacy in some way. It was not clear whether the commenter was suggesting a separate priority for literacy or inclusion of literacy components in all priorities.

Discussion: The Secretary appreciates the importance of literacy in achieving many life goals. NIDRR has recently conducted a competition for projects to enhance braille literacy for individuals who are blind and is considering priorities related to other aspects of literacy and disability. The Secretary reminds interested parties that NIDRR accepts applications for its Field-Initiated Research (FIR) and Innovation Grants program (IGP) competitions without regard to subject area.

Changes: None.

Priority 1—Rehabilitation and Neuromuscular Diseases (NMDs)

Comment: Several commenters stated that cognitive dysfunction is extremely rare in individuals with NMDs and should be dropped from the priority as it serves only to divert resources from more important issues.

Discussion: While it is true that cognitive dysfunction is not characteristic of all NMDs, it is a significant issue in some NMDs. The commenters seemed to define cognitive function quite narrowly as intellect or "IQ", overlooking the components of attention, memory, spatial awareness, and coordination. The Secretary agrees that cognitive deficits are not key to all NMDs and does not expect the RRTC to use resources to study cognitive deficits in those NMDs for which they are not relevant.

Changes: None.

Comment: One commenter stated that RRTCs should not be responsible for techniques to assist individuals to maintain employment, but only to attain employment.

Discussion: The Secretary believes maintaining employment is an important goal of rehabilitation for individuals with disabilities. When rehabilitation programs assist previously unemployed individuals to attain employment, they must be concerned with the likelihood that the individual can maintain that employment. Maintaining employment for a specified period is a criterion for "successful rehabilitation" under the public vocational rehabilitation program. Thus, it is appropriate to expect RRTCs that are developing new rehabilitation approaches to be concerned with strategies that will promote the maintenance of employment.

Changes: None.

Comment: One commenter stated that the requirement that the RRTC include technological aids and devices among the rehabilitation interventions it develops and evaluates is too restrictive, since technological aids might not be an effective intervention.

Discussion: The Secretary believes that it is important to understand the potential of technology to assist in rehabilitation of any condition, and that the role of technology in NMDs has not been sufficiently explored. The priority does not dictate the amount of emphasis to be placed on technology. It is up to the applicant to present a response to the priority that justifies its own approach to developing and evaluating technology to assist individuals with NMDs to preserve functioning, independence, and employment.

Changes: None.

Comment: One commenter stated that the priority for NMDs should contain, as a requirement for funding, a strong emphasis on developing vocational rehabilitation that leads directly to employment.

Discussion: The Secretary believes that attaining and maintaining employment are important goals of vocational rehabilitation services and outcomes. The priority's requirement to develop and evaluate strategies to improve vocational rehabilitation services and vocational outcomes will address employment outcomes for persons with NMD.

Changes: None.

Priority 2—Rehabilitation and Multiple Sclerosis (MS)

Comment: One commenter suggested that the priority should make specific reference to new interventions for the improvement of urinary functioning in individuals with MS.

Discussion: The Secretary agrees that this is an important issue for this population.

Changes: The first activity has been reworded to read "develop and evaluate new clinical interventions and rehabilitation strategies to improve human functioning, which may include early intervention, as well as techniques to improve motor, sensory, cognitive, alimentary, urinary, and sexual functioning of individuals with MS."

Comment: One commenter stated that the development and exploration of assistive technology for vocational attainment should be broadened to address full community integration, independence, and quality of life.

Discussion: The Secretary agrees that the potential of technology to assist individuals with MS to maximize the quality of life in the community has not been sufficiently explored.

Changes: The second activity in the priority has been reworded to provide for strategies to assist individuals to "attain or maintain employment, independence, and maximal quality of life".

Comment: One commenter stated that opportunities for community integration and consumer participation are critical components of long-term care in the community.

Discussion: The Secretary agrees that these issues are important to long-term care in the community.

Changes: The fourth activity in the priority has been modified to read "Develop and evaluate new models for consumer participation, community integration, and long-term care in the community."

Priority 3—Functional Assessment and Evaluation of Rehabilitation Outcomes

Comment: One commenter suggested that the priority may be too comprehensive in addressing both medical rehabilitation and community integration, and that the emphasis on community integration should be increased, with a concomitant decrease in attention to issues of physical rehabilitation. A second commenter urged that independent living be included as one of the rehabilitation strategies to be addressed by the potential Center.

Discussion: The Secretary agrees that the scope of the priority is broad and comprehensive. At the same time, the Secretary believes that this type of work is extremely important to the field of rehabilitation—whether it be medical, psychosocial, or vocational—and believes it is the key to much of the other work supported by NIDRR. This area emerged as perhaps the most important priority in research on human functioning in the NIDRR long-range planning process. The Secretary believes that this Center should be concerned with the full range of rehabilitation. Although the Secretary believes that independent living includes a group of rehabilitation interventions that will surely need to be studied in any attempt to assess rehabilitation outcomes, the priority does not constrain the applicants to consider any specific rehabilitation interventions.

Changes: None.

Comment: Several commenters suggested the inclusion of a reference to the development of validated treatment guidelines and treatment objectives and an activity involving measurement and evaluation standards for medical rehabilitation. They argued that these standards are needed to improve the quality of clinical practice and to demonstrate that adherence to standards leads to better outcomes for the individuals who are served.

Discussion: The development of standards for medical rehabilitation practice is an important concept that deserves further elaboration by the field of medical rehabilitation. The Secretary believes, however, that the development of standards for clinical practice would be a massive undertaking that would require resources and activities well beyond the scope of this priority.

Changes: None.

Comment: One commenter recommended that the priority include a requirement to develop systems to measure client goals, the extent and impact of client involvement in rehabilitation practice, and the extent and impact of client empowerment.

Discussion: The Secretary believes the idea of developing measures to assess the extent and impact of client involvement on rehabilitation outcomes has potential merit, and that development of these measures would be an allowable activity under the proposed priority. However, the Secretary elects not to add more requirements to what is already a very comprehensive priority. The Secretary also reminds interested individuals that applications to study these topics could be submitted under the FIR and IGP programs.

Changes: None.

Comment: Several commenters stated that applications of functional assessment to quality assurance and quality improvement would be one of the most important contributions of this priority and should be mentioned.

Discussion: The Secretary agrees that a functional assessment or outcome measurement system will be an important part of the evaluation of rehabilitation interventions and services and of determining efficacy and cost benefit as stated in the Background section of the priority. The assessment and measurement system is justified in terms of its potential role in improving the accountability of rehabilitation as well. However, the Secretary does not believe it is necessary to change the background statement of the priority.

Changes: None.

Priority 4—Arthritis Rehabilitation

Comment: One commenter stated that the concentration on degenerative joint disease, rheumatoid arthritis, and juvenile arthritis was excellent, but that both fibromyalgia and osteoporosis are also conditions that may lead to major disability and should be included.

Discussion: The Secretary agrees that fibromyalgia is a condition that raises significant rehabilitation problems. However, the Secretary declines to require all applicants to propose studies on this population. Instead, applicants may elect to add studies of this population, while not neglecting the three populations described in the Background section of the priority. The Secretary reminds the public that NIDRR conducts FIR and IGP competitions in which interested parties may submit applications for research that is outside the scope of the priorities. The Secretary believes that there is currently considerable research attention, including both basic and applied research, to the problem of osteoporosis, particularly as it affects women. Thus, the limited resources available for arthritis rehabilitation research through NIDRR need not be diverted to this problem at this time.

Changes: None.

Comment: One commenter stated that there have been a number of promising functional assessment measures and that it may be more appropriate to focus on the adaptation and application of existing measurements, rather than to require the development of assessment measures.

Discussion: The Secretary agrees that researchers should capitalize on promising existing instruments.

Changes: The fourth activity in the priority has been amended to read "develop or adapt and evaluate acceptable measures * * *."

Priority 5—Stroke Rehabilitation

Comment: Several commenters stated that the proposed requirement to document the natural course of recovery from stroke and to develop prognostic indicators would be unproductively duplicative of other studies. They stated that the requirement should be focused on improving the accuracy of predicting stroke outcomes and applying predictive measures in rehabilitation practice.

Discussion: The Secretary agrees that is important to advance the goals of research in order to improve practice. As there has been considerable prior research to document the natural course of stroke recovery, the Secretary agrees to set more advanced goals for this priority and require that the researchers use the results of these previous studies to develop accurate measures to predict rehabilitation outcomes in practice.

Changes: The priority has been modified to delete "document the natural course of stroke recovery" and require the Center to assess the predictive accuracy of existing or newly developed prognostic indicators and develop systems to apply predictive knowledge in clinical and rehabilitation practice.

Comment: Several commenters stated that a major additional need in stroke research is a study of the relative effectiveness and cost-effectiveness of various rehabilitative treatment strategies.

Discussion: The Secretary agrees that this is an important issue. Consequently, the priority does require the evaluation of rehabilitation interventions and the assessment of rehabilitation and health care service delivery models. Both evaluation and assessment include studies of effectiveness and, to the extent feasible, cost-effectiveness.

Changes: None.

Comment: One commenter questioned the requirement to "develop and assess health care service delivery models, including self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services." The commenter questioned whether this implied that the funded RRTC must have all three of these components, whether all three components must be evaluated somewhere, or whether these were simply examples of models that could be studied. Other commenters suggested that the priority be expanded to include additional service models, such as day treatment, outpatient treatment, intermediate care, nursing home placement. and home care.

Discussion: The Secretary believes that it is important that the Center evaluate all three components—self-contained stroke rehabilitation units, coordinated team care, and vocational rehabilitation services—that are specified in the priority. The Center may develop and assess one or more of the models in collaboration with another institution. An applicant may also propose to evaluate additional service models or variations on these three components.

Changes: None.

Comment: One commenter stated that some functional deficits are common to all individuals with acquired brain injuries, regardless of etiology, and that populations with stroke or TBI could be grouped together for research purposes.

Discussion: In the beginning of this Appendix, the Secretary discussed the general issue of disease-specific priorities and also made it clear that applicants may propose related research as long as the applications are responsive to the entire research scope of the principal priority to which they are responding. There are indeed many commonalities in functional deficits of individuals with stroke and TBI, and NIDRR combined the two disease categories in a previous RRTC.

However, the Secretary has chosen to fund a separate Center for stroke research because of the different rehabilitation issues presented by these two populations. Average age at onset, family composition, prognoses, role expectations, sources of financial support, life expectancy, vocational potential, educational needs, prevention of secondary complications, likelihood of recidivism, and other health problems are different for these populations. Because rehabilitation research must address long-term outcomes, these factors would be likely to confound the research. As previously stated, NIDRR will convene a meeting of experts to discuss these suggestions and the possibilities of organizing some future research priorities along the lines of functional capacities and deficits.

Changes: None.

Priorities 6–8—Rehabilitation in Traumatic Brain Injury

Comment: Several commenters stated that there should be a requirement for the TBI Centers to coordinate with other NIDRR projects and RSA centers on TBI.

Discussion: The Secretary agrees that this should be a specific requirement for the TBI Centers.

Changes: The Background statement for priorities 6–8 has been amended to require coordination with other NIDRR Centers and projects and RSA centers on TBI.

Comment: One commenter suggested that the TBI RRTCs be required to coordinate materials development and dissemination with the National Head Injury Foundation and its State associations.

Discussion: Each Center must disseminate and encourage the use of new rehabilitation knowledge and must involve individuals with disabilities, rehabilitation service providers, and, if appropriate, family members, in dissemination activities. However, the Secretary does not believe it appropriate to specify that the RRTCs must involve any particular private organizations in any of their activities.

Changes: None.

Comment: Some commenters suggested that certain additional physical and psychosocial impairments should be listed in the background statement of the priorities.

Discussion: The Secretary agrees that the suggested problems are important impairments and has altered the background statement to include them.

Changes: The background statement of the priority has been changed to read "The residual deficits that result from TBI may be grouped as follows: (1) *Physical impairments*—impairments of gait, limb spasticity, labored speech, vision difficulties, poor balance, hearing loss, other sensory impairments, headaches, lack of coordination, paralysis, and potential for seizure disorders; * * * (4) *psychosocial impairments*—tendency toward social inappropriateness, inability to control emotions, fatigue, mood swings, sexual dysfunction, restlessness, lack of motivation, and inability to form and maintain relationships."

Comment: One commenter urged that the priorities require research on TBI survivors over age 45, who, while they have significant work potential, are often ignored because they do not fit the profile of the typical TBI survivor.

Discussion: The Secretary agrees that individuals over age 45 may have significant work experience and potential, as well as needs for continued independence and community integration. Applicants are free to propose research projects on TBI survivors over age 45, but the Secretary points out that selection criteria for the RRTC program at 34 CFR 352.32 emphasize that applicants must be responsive to the published priorities. The Secretary declines to require research on this population because applicants should be free to propose specific sample populations and research hypotheses and to justify their positions. Further, the relatively low incidence of older-age TBI survivors may make it difficult to study sufficiently large samples of this group. At the same time, the rehabilitation prospects of this age group may be sufficiently different that their inclusion in a sample with younger survivors could dilute the reliability of the study findings. The Secretary again reminds the public that special studies outside the scope of the priorities are welcome in NIDRR's FIR and IGP programs.

Changes: None.

Comment: One commenter argued that the inclusion of a requirement to study individuals with concomitant SCI and TBI will weaken the research effort. The commenter stated that the population of individuals with this dual disability is small, and the heterogeneity of the TBI population already makes it difficult to obtain study samples of sufficient size. The commenter argued that to require research on this low-incidence population would divert resources from more important studies, with questionable results.

Discussion: The Secretary agrees that, while this is an important problem for a relatively small population, the RRTC should not be required to investigate this issue.

Changes: The proposed requirement to "develop approaches to the special rehabilitative needs of individuals with concomitant brain and spinal cord injuries" has been deleted from the priority.

Comment: One commenter suggested that there be specific research on the problem of agitation, which occurs in approximately half of individuals admitted to acute rehabilitation and appears to have serious implications for rehabilitation outcomes.

Discussion: The Secretary agrees that this appears to be a serious problem that is deserving of study. However, the priority does not specify any of the symptoms or complications to be studied. The Secretary prefers to invite applicants to propose the details of their studies and to justify their approaches. If agitation is a significant complication for over half of TBI survivors, it likely will be identified as a study issue.

Changes: None.

Comment: One commenter stated that the research on substance abuse among individuals with TBI should address the timeliness of substance abuse rehabilitation.

Discussion: The Secretary agrees that the timeliness of substance abuse rehabilitation is an important factor in evaluating that intervention.

Changes: The seventh activity of Priority 7 has changed to address the issue of the timeliness of substance abuse rehabilitation.

Comment: One commenter recommended that Priority 7—Community Integration and TBI—address the additional program options of assisted living and specialized day programs.

Discussion: The Secretary agrees that these programs may be among those investigators choose to study but will not specify what strategies the RRTC must evaluate in its efforts to achieve the designated outcomes.

Changes: None.

Comment: One commenter suggested that the priorities on TBI include research into aggressive community education and intervention programs to promote community acceptance of individuals with head injury.

Discussion: The Secretary agrees that community acceptance is important for all individuals with disabilities. However, the NIDRR long-range planning process participants recommended that NIDRR research should emphasize accessibility and developing individual capabilities, since research on how to change attitudes has had a limited impact.

Changes: None.

Comment: Several commenters recommended that the priority on community integration be expanded to include issues of housing, transportation, re-entry into the secondary education system, adult education, postsecondary education, non-vocational productive activities, and recreation.

Discussion: Again, the Secretary acknowledges that these may be important components of "effective models of community integration" and "types of services needed in the community" provided for in the priority. The Secretary elects not to prescribe any of the elements of the models to be developed and evaluated, but rather to permit applicants to propose models consistent with their research hypotheses.

Changes: None.

Comment: One commenter objected to the inclusion of a requirement to "[d]evelop and evaluate treatment strategies to enhance neurobehavioral functioning and cognition, especially as related to employment and community integration" in Priority 7—Community Integration and TBI. The commenter stated that, based on its observations as an RRTC on community integration and TBI, this requirement should be included in Priority 6—Rehabilitation Interventions in TBI. The commenter suggested a substitute requirement to develop "strategies to enhance the accessibility of independent living and employment opportunities for individuals with TBI."

Discussion: The Secretary believes that the suggested addition would greatly improve the usefulness of the Center funded under Priority 7. However, the Secretary does not agree to eliminate from that priority the requirement to develop and evaluate treatment strategies that are focused on employment and community integration.

Changes: A requirement has been added to Priority 7 to "[d]evelop strategies to enhance the accessibility of independent living and employment opportunities for individuals with TBI".

Comment: One commenter suggested a change in the proposed requirement to "[d]elineate types of services needed in the community * * * and evaluate treatment programs" in Priority 7 because of a lack of clarity about the expectations in that requirement.

Discussion: The Secretary agrees that community services and treatment programs are not equivalent.

Changes: The priority has been changed to read "Delineate the types of services needed * * * and evaluate the appropriateness and efficacy of community services".

Comment: One commenter recommended that Priority 8—Vocational Rehabilitation and Employment in TBI should also address financial disincentives to work; model accommodations for professionals, executives, and skilled workers; and accommodations for those who have retained pre-injury vocational skills but require accommodations.

Discussion: The Secretary agrees that these are important issues. However, the Secretary believes that studies of financial disincentives to work require different types of rehabilitation expertise and significant resources that would dilute attention to the other issues in this priority, and, therefore, should not be included within the scope of this priority. Accommodations for skilled TBI survivors could be addressed under the priority as it stands, specifically under the requirement to "[i]dentify types of job accommodations that will enable TBI survivors to work productively." The Secretary does not specify the study populations for the research but leaves it to the applicant to propose and defend a research hypothesis and methodology.

Changes: None.

Priorities 9–12—Rehabilitation of Spinal Cord Injury

Comment: Several commenters argued that there is an incongruity in combining research into neural recovery with research on secondary complications, since the two subjects require quite different capabilities and approaches. One commenter stated that the study of neural recovery is more appropriately placed in the domain of pharmacology than in rehabilitation.

Discussion: The Secretary accepts the contention of the commenters that these two research subjects cannot be combined. Secondary complications are more clearly related to NIDRR's applied rehabilitation research mission.

Changes: The title of Priority 9 has been changed to read "Secondary Complications in SCI." References to neural recovery have been deleted.

Comment: Many commenters recommended that research on neural recovery be required in the priority on vocational rehabilitation because neural recovery is important to vocational rehabilitation.

Discussion: The Secretary does not agree. The research interests and capabilities required for research on neural recovery are quite different from those required for vocational rehabilitation research. Neural recovery is only one of several necessary precursors.

Changes: None.

Comment: Several commenters thought that the background section to Priority 9 implied that research on urinary tract infections and circulatory disorders was no longer needed and urged that emphasis on these problems be retained.

Discussion: The Secretary intended the reference in the background section to significant research progress in certain areas to indicate the value of research to rehabilitation and the fact that these areas were amenable to research and to progress in achieving solutions. The priority is open to research on all secondary complications.

Changes: None.

Comment: One commenter asked for clarification of the extent to which RRTCs will be required to invest resources in studying the use of adaptive technology by individuals with SCI, since adaptive technology research requires different capabilities than medical rehabilitation research.

Discussion: The priorities do not establish any specific requirement for research on adaptive technology to solve the problems delineated by the priorities. Each applicant must propose what it considers to be the most promising research to address these problems. An applicant may elect to devote up to 100 percent of its effort to studies of adaptive technology, or it may propose to ignore adaptive technology. The selection criteria for RRTCs allow for the consideration of the merit of various approaches.

Changes: None.

Comment: One commenter stated that research results must be translated into interdisciplinary clinical practice and into educational programs and practices for client use. The commenter argued that these programs should be client-developed and designed so that clients can evaluate their own self-care.

Discussion: The RRTC program contains several requirements for translation of research findings into practice, communication of research findings to clinicians and consumers, as well as to other researchers, and involvement of consumers in research and dissemination. These requirements could easily be met by the approach described by the commenter. However, the Secretary elects not to dictate the specific approaches that an applicant must use to disseminate, but rather to let applicants propose approaches.

Changes: None.

Suggestions for Additional Priorities

Comment: Two hundred and sixty commenters recommended that NIDRR include a priority for an RRTC on pediatric trauma, as it had done in the FY 1988 competition. Many commenters expressed concern that the NIDRR research agenda would no longer include research on the rehabilitation of children with disabilities in general, on injured children in particular, and on support to families of these injured children. These commenters emphasized that NIDRR should not abandon research on injured children.

Many of the commenters simply expressed support for the continuation of the current research in this area. However, many of the commenters also stressed the need for research in nine specific areas. The nine areas included prevention or primary prevention; epidemiological research; acute medical care practices; health policy research; transition to education; outcome research and evaluation models; transitional services to vocational and special education; case management and parent advocacy models; and information dissemination and training.

A number of commenters focused on the need for further research on children with traumatic brain injuries. One commenter noted that she had provided written testimony on the importance of research in pediatric trauma during the NIDRR long-range planning process and that her comments were not reflected in the decision not to announce a priority in this area.

Discussion: The Secretary has reviewed the extensive public comment on the pediatric trauma issue and wishes to emphasize that the Department is committed to the principles of secondary prevention, early intervention and service improvement for injured children.

The extensive public comment provided information on the incidence, prevalence and impact of pediatric trauma which, when considered together, highlights the importance of research in this area. Comments supporting this research were received also from providers of rehabilitation and other services to adults, supporting this research. In light of all these comments, the Secretary believes pediatric trauma should continue so injured children, their families, and service providers can continue to benefit from the creation of new knowledge.

Changes: The Department will publish a final priority for research in pediatric trauma.

Comment: One commenter urged that NIDRR announce a priority for an RRTC to assist independent living centers to better meet the needs of minority populations.

Discussion: On July 31, 1992, NIDRR published a notice of proposed priorities that includes a proposed priority for an RRTC on Independent Living for Underserved Populations (57 FR 34024). This priority responds to the issues raised by the commenter.

Changes: None.

[FR Doc. 93–1303 Filed 1–19–93; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133B]

Applications for Certain New Awards Under the Rehabilitation Research and Training Centers Program for FY 1993

AGENCY: National Institute on Disability and Rehabilitation Research, Education.

ACTION: Notice inviting applications for certain new awards under the Rehabilitation Research and Training Centers (RRTC) program for Fiscal Year (FY) 1993.

Note to Applicants: This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under these competitions. The final priorities for the Rehabilitation Research and Training Centers (RRTC) program are published in this issue of the **Federal Register**. This consolidated application package includes the closing dates, estimated funding, and application forms necessary to apply for awards under any of this program's competitions. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels.

APPLICATION NOTICES FOR FISCAL YEAR 1993 REHABILITATION RESEARCH AND TRAINING CENTERS CFDA NO. 84.133B

Funding priority	Date for transmittal of application	Estimated No. of awards	Estimated funds available	Estimated project period (months)
Rehabilitation in Neuromuscular Disease	3/24/93	1	650,000	60
Rehabilitation and Multiple Sclerosis (MS)	3/24/93	1	600,000	60
Functional Assessment and Evaluation of Rehabilitation Outcomes	3/24/93	1	600,000	48
Arthritis Rehabilitation	3/24/93	1	650,000	60
Stroke Rehabilitation	3/24/93	1	600,000	60
Rehabilitation Interventions in Traumatic Brain Injury (TBI)	3/24/93	1	650,000	60
Community Integration and Traumatic Brain Injury (TBI)	3/24/93	1	600,000	60
Vocational Rehabilitation and Employment in Traumatic Brain Injury (TBI)	3/24/93	1	600,000	36
Secondary Complications in Spinal Cord Injury	3/24/93	1	650,000	60
Community Integration for Individuals with Spinal Cord Injury (SCI)	3/24/93	1	650,000	60
Vocational Rehabilitation and Employment for Individuals with Spinal Cord Injury (SCI)	3/24/93	1	600,000	36
Aging with Spinal Cord Injury (SCI)	3/24/93	1	600,000	48

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 352; and (c) the Notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**.

Purpose of Program: Rehabilitation Research and Training Centers conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

This notice supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. This notice would address Goal 5 by helping individuals with disabilities to develop the skills necessary to live and work successfully in the world as it is today.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (20 points). The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the Research design* (35 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management* (20 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin,

gender, age, or handicapping conditions;

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Note: The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals with disabilities from minority backgrounds. Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

In addition, the 1992 Amendments also require that each grantee that provides services to individuals with disabilities must advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs may be obtained by calling (202) 205–9343.

If you need further information about these requirements, please contact David Esquith at (202) 205–8801.

Eligible Applicants: Those eligible for assistance under this program are as follows: (a) State and public agencies or organizations; (b) private agencies or organizations; (c) institutions of higher education, and (d) Indian tribes and tribal organizations.

Deadline for Transmittal of Applications: March 23, 1993.

Available Funds: $8,400,000.

Estimated Average Size of Awards: $700,000.

Estimated Number of Awards: 12.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # (Applicant must insert number and letter)), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions: The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials: Public Reporting Burden Estimate Assurances—Non-Construction Programs (Standard Form 424B).

Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED Form ED (80–0014) is intended for the use of grantees and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A)).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification form must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: William Whalen, The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., room 3417, Switzer Building, Washington, DC 20202–2704. Telephone: (202) 205–9141; deaf and hearing impaired individuals may call (202) 205–5474 for TDD services.

Program Authority: 29 U.S.C. 760–762.

Dated: January 13, 1993.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms and Certifications included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one program competition NIDRR or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

Applications that are for training activities, including all applications in the Research Training grants program, should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR). If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs may be required to share in the costs of the project.

7. Can individuals apply for grants?

No. Only State, public or private agencies or organizations, institutions of higher education and Indian tribes and tribal organizations are eligible to apply for grants under this program.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff cannot advise you of whether your subject area or proposed approach is likely to receive approval. However, NIDRR staff can advise you of the requirements of the program for which you propose to submit your application.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame, as well.

For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted each year of the project. Additionally, there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-U

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED

Applicant Identifier

1. TYPE OF SUBMISSION:

Application
☐ Construction
☐ Non-Construction

Preapplication
☐ Construction
☐ Non-Construction

3. DATE RECEIVED BY STATE

State Application Identifier

4. DATE RECEIVED BY FEDERAL AGENCY

Federal Identifier

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit

Address (*give city, county, state, and zip code*):

Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) ____________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es). ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (*specify*)

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT:

Start Date

Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE ______________________

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative

b. Title

c. Telephone number

d. Signature of Authorized Representative

e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1 Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10 Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11 Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. **Federal**	$	$	$	$	$
14. **NonFederal**					
15. **TOTAL** (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 - 19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. **Direct Charges:**	22. **Indirect Charges:**

23. **Remarks**

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

> **Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.
>
> **Column (b)** - Enter the contribution to be made by the applicant.
>
> **Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.
>
> **Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.
>
> **Column (e)** - Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

BILLING CODE 4000-01-C

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.
4. The Secretary strongly requests the applicant to limit the Application Narrative to no more than 100 double-spaced, typed pages (on one side only).

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instruction, searching existing data sources, gathering maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

(Information collection approved under OMB control number 1820–0027. Expiration date: July 31, 1995.)

BILLING CODE 4000-01-U

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 —

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion–Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

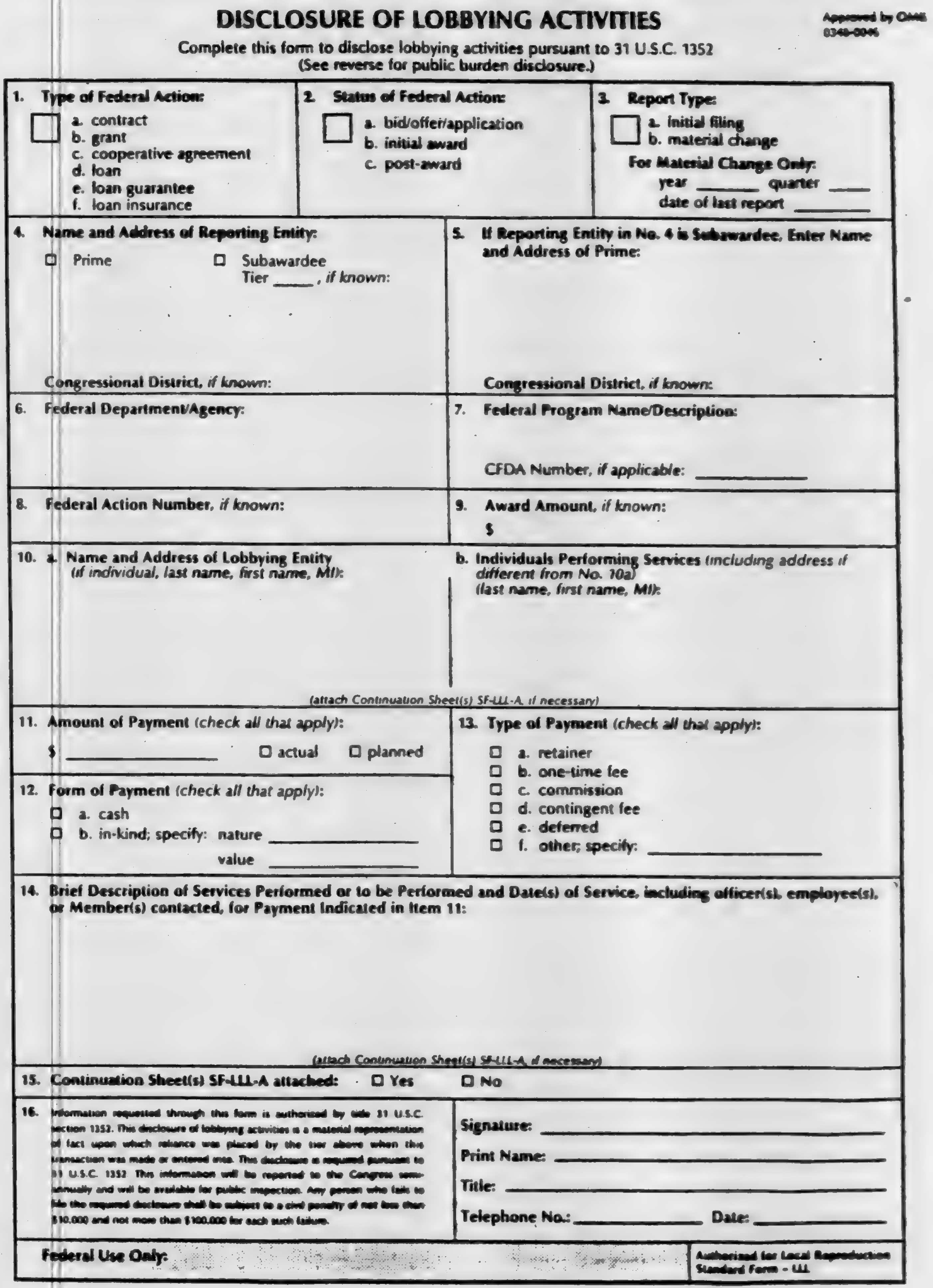
Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)



DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. **Type of Federal Action:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. **Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

3. **Report Type:**
☐ a. initial filing
b. material change
For Material Change Only:
year _______ quarter _____
date of last report _________

4. **Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. **If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

Congressional District, *if known:*

6. **Federal Department/Agency:**

7. **Federal Program Name/Description:**

CFDA Number, *if applicable:* _____________

8. **Federal Action Number,** *if known:*

9. **Award Amount,** *if known:*
$

10. a. **Name and Address of Lobbying Entity**
(if individual, last name, first name, MI):

b. **Individuals Performing Services** *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. **Amount of Payment** *(check all that apply):*
$ ________________ ☐ actual ☐ planned

12. **Form of Payment** *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _________________
value _________________

13. **Type of Payment** *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _________________

14. **Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. **Continuation Sheet(s) SF-LLL-A attached:** ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ______________________________
Print Name: ______________________________
Title: ______________________________
Telephone No.: _____________ **Date:** _____________

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

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January 21, 1993

Part IX

Department of Housing and Urban Development

Office of Assistant Secretary

Funding Availability; Disaster Relief Housing Counseling; Notice

VOL 58 ISS 12 JA 21 1993 MI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Funding Availability; Disaster Relief Housing Counseling

[Docket No. N-93-3538; FR 3370-N-01]

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA) for disaster relief housing counseling for Fiscal Year 1992 under the Dire Emergency Supplemental Appropriations Act of 1992.

SUMMARY: This Notice announces the availability of $500,000 of Fiscal Year (FY) 1992 funding under the Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102-368, approved September 23, 1992) for HUD-approved housing counseling agencies to provide emergency counseling regarding housing availability, maintenance and financing to homebuyers, homeowners, and renters living in areas adversely affected by Hurricane Andrew, Typhoon Omar, Hurricane Iniki, and other natural disasters as declared by the President of the United States.

Funding for housing counseling under this NOFA will be made available to eligible housing counseling agencies serving, or proposing to serve, the areas affected by Hurricane Andrew, Typhoon Omar, and Hurricane Iniki. (In this NOFA, Hurricane Andrew, Typhoon Omar and Hurricane Iniki are referred to as "federal disasters." The geographical areas adversely affected by these three federal disasters and designated as federal disaster areas, and identified in Section I.B.2 of this NOFA, are referred to as "federal disaster areas.") The balance of any funds remaining after awards are made under this NOFA will be made available in FY 1993, through publication of an additional NOFA (or NOFAs), for other disasters, which may be declared by the President during FY 1993.

An applicant must, as of the date of issuance of the Request for Grant Application (RFGA) based on this NOFA, be a HUD-approved housing counseling agency, and must be able and willing to provide comprehensive housing counseling to individuals and families (1) living in a federal disaster area within the applicable Region, or (2) residing outside the disaster area, but whose employment was adversely affected by one of the three federal disasters. (HUD Handbook No. 7610.1 REV-2, dated September 1990 (the Handbook) sets forth the requirements and procedures governing HUD's housing counseling program. Housing counseling services not covered by the Handbook do not quality for eligibility for funding under this NOFA.)

In the body of this document is information concerning: the purpose of this NOFA; elibility for funding; available funding; selection criteria; and the application process, including how to apply for funding, and how selections will be made.

DATES: The application due date is March 18, 1993. Application kits may be obtained from, and completed applications must be submitted to HUD's Office of Procurement and Contracts at HUD Headquarters. Please see Section II.A. of this NOFA for further information on obtaining and submitting applications, and for the address of the Office of Procurement and Contracts. Application kits will be made available by a date that affords applicants at least 30 days to respond to this NOFA.

Applications may be mailed, provided that they are postmarked no later than midnight, March 18, 1993. If an application is physically delivered to the Office of Procurement and Contracts at HUD Headquarters, the application must be delivered by the close of business for that office. Applicants should contact the Office of Procurement and Contracts ((202) 708-1585) regarding the time the office closes.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before, or postmarked by, the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Thomas Miles, Program Advisor, Single Family Servicing Division, Department of Housing and Urban Development, room 9178, 451 Seventh SW., Washington, DC 20410, telephone (202) 708-1672, or (202) 708-4594 (TDD number). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2535-0084.

I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Sec. 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x); secs. 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook 7610.1, REV-2, dated September 1990; Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102-368, approved September 23, 1992).

2. Background

Section 106 of the Housing and Urban Development Act of 1968 (section 106) authorizes HUD to provide a program of housing counseling services to designated homeowners and tenants. The program authorized by section 106 (Housing Counseling Program) is divided into two distinct components: The housing counseling services and requirements provided under section 106(a), and those services and requirements provided under section 106(c).

Section 106(a) authorizes HUD to provide counseling and advice to tenants and homeowners with respect to property maintenance, financial management and such other matters as may be appropriate to assist tenants and homeowners in improving their housing conditions and in meeting the responsibilities of tenancy and homeownership. With respect to homeowners, section 106(a) states that the above-described services shall be provided to homeowners with HUD-insured mortgages; first-time homebuyers with guaranteed loans under section 502(h) of the Housing Act of 1949 (home loans guaranteed by the Farmers Home Administration); and homeowners with loans guaranteed or insured under chapter 37 of title 38, United States Code (home loans insured or guaranteed by the Department of Veterans Affairs).

Section 106(c) authorizes homeownership counseling only (no tenant counseling) and defines a homeowner eligible for counseling under this section as a homeowner whose home loan is secured by property that is the principal residence of the homeowner, who is unable to correct a home loan delinquency within a reasonable time. Section 106(c) defines "home loan" as a loan secured by a mortgage or lien on residential property.

Under the Housing Counseling Program, HUD awards grants to public or private nonprofit organizations to provide the housing counseling services authorized by section 106(a) and section 106(c). When the Congress makes funds available to assist the Housing Counseling Program, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice published in the **Federal Register**. An agency that is approved by HUD as a housing counseling agency does not automatically receive funding. The agency must apply for such funding under a Request for Grant Application (RFGA) issued by HUD. The purpose of the housing counseling program is to promote and protect the interests of HUD, HUD-approved and other mortgages, and housing consumers participating in HUD-insured and other housing programs.

B. Allocation Amounts

1. Total Available Funding

A total amount of $500,000 was appropriated for housing counseling, as authorized by section 106, by the Dire Emergency Supplemental Appropriations Act, 1992 (Pub. L. 102–368, approved September 23, 1992). The purpose of this supplemental appropriations for housing counseling is to provide counseling concerning housing availability, maintenance and financing to homeowners, homebuyers, and tenants living in a federal disaster area.

2. Allocation of Funds

HUD will award grants up to $500,000 for disaster counseling under this NOFA to HUD-approved housing counseling agencies, which serve the areas affected by the three federal disasters.

The balance of funds remaining, if any, will be allocated during FY 1993 for other disasters that may occur during that fiscal year and which are declared federal disasters.

As of the date of the publication of this NOFA, the Federal Government, in accordance with the procedures for designating disasters set forth in Pub. L. 93–288, as amended by Pub. L. 100–707, has identified areas within three States and one U.S. territory as federal disasters areas. These areas are:

a. In the State of Hawaii (Hurricane Iniki), the Islands of Molokai, Oahu, Maui, Hawaii, Kauai, Niihau, Lanai, and Kahoolawe;

b. In the State of Florida (Hurricane Andrew), the Counties of Collier, Broward, Dade and Monroe;

c. In the State of Louisiana (Hurricane Andrew), the Parishes of Acadia, Avoyelles, Cameron, Jefferson Davis, Orleans, Plaquemines, St. James, St. Bernard, Vermilion, Allen, Calcasieu, Evangeline, Livingston, Rapides, St. Helena, St. Landry, Tangipahoa, Washington, East Baton Rouge, East Feliciana, Jefferson, Lafayette, Pointe Coupee, St. Charles, St. Tammany, West Baton Rouge, West Feliciana and Terrebonne; and

d. The territory of Guam (Typhoon Omar).

For detailed information about each area, contact the Federal Emergency Management Agency (FEMA) Field Office that serves the disaster-affected location.

HUD's award grants under this NOFA will be based on an estimate of the amount of funds needed to meet the disaster relief counseling within the federal disaster areas. Under this plan, HUD Headquarters will, in so far as possible, award grants in relation to the number of families and individuals adversely affected by a federal disaster, and funding requested by the respondents under the RFGA.

3. Grant Awards

HUD Headquarters will make an equitable awarding of allocated housing counseling funds to eligible HUD-approved housing counseling based upon documented need in relation to:

a. The number of individuals and families estimated to be adversely affected by the federal disaster; and

b. The number of eligible applicants. (A determination of "eligible" applicant is based on the applicant's ability to meet the criteria specified in Section I.C of this NOFA.)

4. Announcement of Awards

In accordance with the requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications. However, applicants that are declared ineligible or late will be notified. In accordance with section 102(a)(4)(c) of the HUD Reform Act, HUD will notify the public, by notice published in the **Federal Register**, of award decisions made by HUD under this funding. After the award process, HUD Headquarters will transfer the grants to the appropriate Regional Office for administration.

5. Grantee Reimbursement by HUD

HUD will reimburse grantees on the basis of not more than $35.00 per "counseling unit" which is defined as a documented face-to-face, written, or telephonic contact between:

a. The grantee's housing counselor and a client; or

b. The grantee's housing counselor and a mortgagee, landlord, service agency, creditor, credit reporting agency, governmental agency, realtor or employer, acting on behalf of a client, which results in an action or decision that:

(1) Identifies, clarifies, or assists in meeting or meets the client's housing need; or

(2) Assists in resolving or resolves the client's housing problem.

(See HUD Handbook 7610.1 REV–2, dated September 1990, paragraph 1–7 on page 1–6 for a definition of "client," "housing need," and "housing problem.")

C. Eligibility

1. Current HUD-approved Agency

Eligible applicants include public and private nonprofit entities with a current approval by HUD as housing counseling agencies, under the provisions of HUD Handbook No. 7610.1 REV–2 (dated September 1990, or its earlier versions), and which are located, or will be located within, or within reasonable proximity (as provided in paragraph 2 of this section C) to one of the federal disaster areas.

Current approval includes agencies that are on record at the applicable HUD Field Office as having been approved as a HUD counseling agency as of the date of issuance of the RFGA based on this NOFA. Agencies for which HUD has withdrawn this approval or have indicated in writing their withdrawal from the counseling program are NOT eligible. Agencies with "conditional" re-approvals are NOT eligible unless they satisfy HUD's requirements for removal of the "conditional" approval by the due date of applications for funding under this notice.

2. Location of Agency Counseling Facilities

For funds allocated to agencies serving Florida and Louisiana disaster areas as specified in paragraph I.B.2.b. and c. of this NOFA, eligible applicants may be located anywhere within the continental United States, but must locate an office within the disaster area or within reasonable proximity of the federal disaster area. In addition, all eligible applicants must:

a. Have counseling offices located in a federal disaster area; or

b. Have counseling offices located outside the federal disaster area, but within 60 minutes by ground transportation from the disaster area; or

c. Agree to locate to, or within reasonable proximity (as provided under paragraph (b) of this section C.2) to a federal disaster area within thirty days of the date of the grant agreement with HUD.

Note that requirements a, b, and c, may be waived for eligible applicant located in the State of Hawaii and serving the Hurricane Iniki and Typhoon Omar disaster areas (i.e., the only location requirement imposed is that the applicant be located in the State of Hawaii or the territory of Guam).

D. Selection Criteria

1. General Criteria

HUD, through its Headquarters Office of Procurement and Contracts, will award housing counseling grants made available under this NOFA to selected eligible agencies. An eligible agency is a HUD-approved housing counseling agency that:

a. Meets the location requirements set forth in Section I.C.2 of this NOFA; and

b. Provides, or proposes to provide, housing counseling to the federal disaster area.

2. Specific Criteria

Applications for funding under this NOFA will be reviewed, and grants will be awarded on the basis of an evaluation of all of the following criteria:

a. Amount requested by the grantee;

b. Applicant's estimated upcoming 12-month client workload* of families and individuals adversely affected by a federal disaster. (* "Workload" refers to the number of clients, as defined in HUD Handbook No. 7610.1 REV–2, dated September 1990, reported by the applicant on Form HUD–9902, Housing Counseling Agency Activity Report, for 1992);

c. Disaster client workload total;

d. Reimbursement of grantees by HUD on the basis of $35.00 per housing counseling unit;

e. Regional Offices' documented need for housing counseling services within the disaster areas to be served by the applicants;

f. HUD's assessment of the applicant's previous performance as a HUD-approved housing counseling agency (i.e. Biennial Performance Review), including the submission of the required reports.

h. In the case of previous grantees, the applicant's performance under such grants in accordance with the terms of the grant agreement, including the submission of the specific reports required under the grant agreement.

II. Application Process

A. Obtaining Application Kits

Applicants kits (Request for Grant Application (RFGA)) for grants to be awarded under this NOFA may be obtained from, and completed applications must be submitted to: Office of Procurement and Contracts, Program Support Division, 451 Seventh Street, SW., Room 5258, Washington, DC 20410.

The RFGA will be made available by a date that affords applicants at least 30 days to respond to this NOFA.

B. Application Deadline

The application due date is March 18, 1993. Applications may be mailed, provided that they are postmarked no later than midnight, March 18, 1993. If an application is physically delivered to the Office of Procurement and Contracts at HUD Headquarters, the application must be delivered by the close of business for that office. Applicants should contact the Office of Procurement and Contracts ((202) 708–1585) regarding the time the office closes.

A proper submission in response to the RFGA must conform to the specifications in the RFGA. HUD will not accept changes made by applicants to the forms, certifications and assurances, except for those specified in Section IV.A of this NOFA.

III. Checklist of Application Submission Requirements

An applicant must submit three different types of written submissions: Forms, certifications, and assurances. An applicant must submit three sets of each written submission, as specified below, with supporting documentation only as specified in the RFGA. Applicants must limit the submission of material to that required by the individual form, certification or assurance. HUD will not consider extraneous material and will discard it.

A. Forms

Each applicant will be required to submit the following completed and signed forms:

1. Standard Form 424, Application for Federal Assistance.
2. Standard Form 424B, Assurances—Non-construction Programs.
3. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

B. Certifications

Each applicant will be required to submit, at a minimum, the following certifications:

1. Certification of a Drug-Free Workplace, in accordance with the Drug-Free Workplace Act of 1988 and HUD's regulations at 24 CFR part 24, subpart F.
2. Anti-Lobbying certification in accordance with section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), and the regulations at 24 CFR part 87.

C. Assurances

Each applicant will be required to submit, at a minimum, assurances regarding the applicant's housing counseling program to the effect that:

1. The applicant agency received its approval by HUD prior to the date of issuance of the applicable RFGA, and currently has approval from HUD. If a Biennial Performance Review has not been made by the HUD Field Office, then a prior approval constitutes a current approval.
2. HUD has or has not conducted a performance review of the applicant agency's housing counseling program; whether, as a result of the review, HUD re-approved the agency unconditionally or conditionally; whether, if HUD granted a conditional approval because of certain agency performance deficiencies, the applicant agency corrected the deficiencies to HUD's satisfaction.
3. If the applicant agency received a counseling grant from HUD during HUD's fiscal year 1990, 1991, or 1992, the agency complied with all grant requirements.
4. The applicant agency submitted all reports required during the most recent report year under the Handbook, and the grant document, if any.
5. The number of clients listed as the applicant's estimated housing counseling "disaster area" client workload is reasonable.
6. The agency can and will commence counseling services, including Fair Housing counseling in accordance with HUD Handbook 7610.1 REV–2, dated September 1990, within thirty days of the receipt of the notice of the award of a counseling grant to the applicant agency.
7. The agency had an independent financial audit during the past twenty-four (24) months.
8. The applicant administers its housing counseling program in

accordance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

9. The applicant provides its service without any conflict of interest on the part of the applicant, including its staff, that might compromise the agency's ability to represent fully the best interests of the client in accordance with HUD Handbook No. 7610.1 REV–2, dated September 1990.

IV. Corrections to Deficient Applications

After the deadline for submission of applications, applications will be screened to determine whether all items were submitted. Applicants will be given an opportunity to cure nonsubstantive deficiencies in their applications. The applicant must submit corrections within 14 calendar days from the date of HUD's deficiency notification or the application will not be considered.

A. Curable Deficiencies

The kinds of deficiencies which can be cured after the submission date for applications has passed are limited to the following:

1. Lack of required signature(s) on the following documents or certifications:

a. Standard Form 424B, Assurances—Non-Construction Programs.

b. Certification of Drug-free Workplace.

c. Anti-Lobbying Certification.

2. Failure to submit any of the above documents or certifications.

B. Noncurable Deficiencies

Failure to submit: 1. A completed and signed Standard Form 424, Application for Federal assistance.

2. A signed Housing Counseling Program assurance and all of its required documentation.

Note: HUD will *not* notify applicants who fail to submit any of the above two required documents. *Failure to submit the documents will render an application unacceptable.*

V. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the Department's regulations at 24 CFR part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays at the Office of the Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism, Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government. Specifically, the purpose of the funding under this NOFA is to provide grants to HUD-approved counseling agencies so that they may make counseling services available to homeowners and tenants who live in areas adversely affected by recent federal disasters.

Family, Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this document may have potential for significant beneficial impact on family formation, maintenance, and general well-being to the extent that the activities of grantees will provide families and individuals who were adversely affected by recent federal disasters, with counseling concerning housing availability, maintenance and financing for new housing. Since the impact on the family is considered beneficial, no further review under the order is necessary.

Accountability in the Provision of HUD Assistance

(1) Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in a **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(2) Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4, and was recently amended by an interim rule published in the **Federal Register** on August 4, 1992 (57 FR 34246). In accordance with the requirements of section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics, (202) 708–381 (voice/TDD). (This is not a toll-free number.)

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program number is 14.169.

Authority: Secs. 106, Housing and Urban Development of 1968 as amended; secs. 235, 237 and 255 of the National Housing Act, as amended; and HUD Handbook No. 7610.1, REV-2, dated September 1990; Dire Emergency Supplemental Appropriations Act of 1992 (Pub. L. 102–368, approved September 23, 1992).

Dated: January 12, 1993.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–1332 Filed 1–19–93; 8:45 am]

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AF04

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to add a permissive temporary exception to the order of release from a competitive level in a reduction in force (RIF). Agency use of this exception would allow a covered employee to remain on the agency's rolls, past the effective date of the reduction in force, in an annual leave status if, in so doing, the employee would attain eligibility for an immediate annuity and/or would establish eligibility to carry health benefits coverage into retirement. OPM also is revising the RIF notice requirements to help assure that agencies notify employees about their eligibility to continue health benefits and life insurance after separation.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey on 202–606–0960 (FAX 202–606–0390).

SUPPLEMENTARY INFORMATION: On July 15, 1992, OPM published proposed revisions to the reduction in force regulations in the **Federal Register** (57 FR 31332). In rare instances, employees separated from Federal employment by reduction in force (RIF) may be very close to retirement eligibility on the effective date of the RIF. The purpose of OPM's proposed regulation was to provide a means for these employees to stay on an agency's rolls past the effective date of a RIF to reach their first retirement eligibility. To do this, OPM proposed a permissive temporary exception in § 351.608(a)(3) to the regular order of RIF release. OPM also proposed a revision to the RIF notice requirements to include information about continuation of health benefits and life insurance.

We received written comments from eight Federal agencies, two employee organizations, and two individuals. All but three commenters supported the proposed changes. The comments dealt primarily with either retirement or leave issues. In addition, OPM reviewed a similar issue—eligibility to carry health benefits into retirement. The major comments are summarized below. Additional information on reduction in force can be found in the Federal Personnel Manual Supplement 351–1 issued by OPM.

Eligibility for Health Benefits

During the comment period, OPM noted that some employees who retire as a result of a reduction in force are unable to continue health benefits coverage after retirement. This is because they do not satisfy 5 U.S.C. 8905, which requires enrollment in the Federal Employees Health Benefits Program for at least 5 years immediately prior to retirement. Because of the similarity between this and the situation where employees just miss meeting retirement eligibility, OPM has added a similar permissive temporary exception to § 351.608 to cover employees who would establish eligibility under 5 U.S.C. 8905 during their period of accrued annual leave.

Retirement Issues

Proposed § 351.608(a)(3)(ii) provided a permissive temporary exception for an agency to retain an employee on annual leave past the RIF effective date if the employee would attain "first eligibility" for an immediate retirement benefit under 5 U.S.C. 8336 or 8412.

One agency commented that section 8336, on the Civil Service Retirement System (CSRS), covers optional, discontinued service, and voluntary early retirement. Section 8412, on the Federal Employees Retirement System (FERS), covers only optional retirement. The agency suggested we add section 8414, which includes discontinued service and voluntary early retirement under FERS, to the proposed regulation. We have done so. However, the only types of retirement (under both CSRS and FERS) an employee could qualify for under this exception to the RIF order are optional retirement and discontinued service retirement. Any voluntary early retirement authority approved by OPM would have ended prior to a RIF effective date.

Another agency suggested we clarify whether "first eligibility" means discontinued service retirement (DSR) or optional retirement. This provision refers to either type of retirement. For example, if an employee would meet the DSR criteria after 1 week on annual leave, the agency would have to separate the employee on that eligibility date, even if the employee would meet the criteria for optional retirement after 2 weeks of annual leave. In most cases, the first eligibility would be DSR. In other cases, such as a 61-year old employee with 10 years of service, the first eligibility would be optional retirement. We have made no change in the regulation but will provide additional guidance through the Federal Personnel Manual.

Another agency asked whether an employee first has to make a commitment to retire upon reaching first eligibility and what procedures would apply. Because the separation from Federal service would be involuntary, an agency need not determine the employee's preference when approving the permissive temporary exception. The separation must occur on the date of first eligibility, as described above. A commitment to retire would be superfluous.

Leave Issues

One commenter suggested that the proposed regulation conflicts with Comptroller General opinion B–120074, dated August 10, 1954, and other related opinions. These opinions found that agencies are prohibited under the Lump Sum Leave Act of 1954 from granting terminal annual leave when it is known the employee will separate, unless the decision is based on the needs and interests of the Government. Two other commenters believed the proposal could significantly increase the Government's long-term costs.

The proposed permissive temporary exception is not in conflict with the Comptroller General opinions regarding "terminal" annual leave. This exception meets the needs and interests of the Government as well as the employee.

The Government seeks to avoid penalizing long-term employees who are close to retirement eligibility and will allow them the use of earned annual leave (including annual leave earned after the RIF separation date in some cases) to perfect that benefit. The earlier payment of annuities will not add a significant cost burden given the limited number of employees affected, the permissive nature of the exception, and the concomitant cost savings realized by staff reductions.

Approval of any permissive temporary exception under § 351.608 is at the discretion of an agency. An employee has no right to an exception. However, agencies are responsible under § 351.201(c) for applying part 351 uniformly and consistently in any one reduction in force.

One commenter suggested that the proposed regulation permit use only of "accumulated and accrued" annual leave to an employee's credit. The purpose is to exclude use of advanced annual leave under the exception provision. We agree and have changed the final regulation accordingly.

Three commenters suggested that other types of "leave" should be made available under the exception provision. These include restored annual leave, compensatory time accrued in lieu of overtime payments or for religious purposes, credit hours earned under a flexible work schedule, and leave without pay. We agree that restored annual leave should be available for use because, once approved, it is added to the employee's accumulated and accrued annual leave balance. We do not agree with inclusion of the other types of "leave" because of the resulting complexity, the lack of uniformity and equity in the systems, and the potential for abuse.

Several commenters asked whether an employee in an annual leave status would continue to earn annual and sick leave and whether the earned annual leave could be used to reach retirement eligibility. The answer to both questions is "yes." An employee retained in an annual or sick leave status under a temporary exception would continue to earn annual and sick leave. The annual leave earned after the RIF effective date is used to determine whether an employee would reach retirement or health benefits eligibility. This is a change from the proposed regulation, which limited use of this temporary exception to the amount of annual leave to an employee's credit as of the RIF effective date. Since ordinarily an employee may use leave earned while in a leave status, it was determined that leave earned on leave should be available for this purpose also. Thus, to be eligible for the temporary exception, an employee must be able to reach retirement or health benefits eligibility during the period represented by the amount of accumulated and accrued annual leave (including restored annual leave) to the employee's credit as of the effective date of the RIF, plus the amount of annual leave the employee would earn while in an annual leave status after the effective date of the RIF. (Similarly, an employee retained in a sick leave status could use sick leave earned after the RIF effective date, assuming that such use continued to be appropriate.)

A similar question was whether an employee on donated annual leave would be eligible for a temporary exception and, if so, whether the employee could continue to receive donated leave. An employee using donated annual leave under the Voluntary Leave Transfer Program (5 CFR part 630, subpart I) could be approved for a temporary exception only if he or she would reach retirement or health benefits eligibility during the period represented by the amount of donated leave to his or her credit as of the effective date of the RIF. If additional annual leave were to be donated after the RIF effective date, the employee could not use it. Also, these employees could not benefit from annual leave earned after the RIF effective date. Sections 6337 and 6371 of title 5, U.S. Code, provide that annual and sick leave earned as a result of using donated annual leave must go into a special annual and sick leave account not to exceed 40 hours, which is available only after the employee's medical emergency has ended. No leave is earned after annual and sick leave accounts reach 40 hours. The same is true under the Voluntary Leave Bank Program (5 CFR part 630, supart J).

The National Defense Authorization Act of Fiscal Year 1993 (Pub. L. 102–484 signed October 23, 1992) permits Department of Defense employees at installations scheduled to close during the period October 1, 1992, through December 31, 1997, to accumulate annual leave without restriction. Normally, an employee would carry no more than 240 hours of annual leave into a new leave year. Because the resulting accumulation of annual leave could become significant, we have added a provision to the final regulation permitting agencies to set a limit on the amount of leave that could be used under a temporary exception. For example, an organization undergoing a RIF might adopt a policy of retaining employees under a temporary exception for no more than 60 work days.

One agency noted that personnel offices should make clear to payroll offices how the use of terminal annual leave under the exception provision is treated for lump-sum payment purposes. The amount of annual leave used to retain the employee to the date of first retirement or health benefits eligibility is no longer to the employee's credit at separation and is not included in a lump-sum payment. However, the remaining accumulated and accrued annual leave (including restored leave), if any, plus any additional annual leave earned while in a leave status under a temporary exception, is included in the lump-sum payment.

A commenter asked whether an agency might grant sick leave to an employee when sickness occurs while an employee is in an annual leave status under a permissive temporary exception. A related question was whether an agency might grant annual leave after an employee retained on sick leave under a temporary exception has exhausted his or her sick leave. The answer to both questions is "no." The temporary exception provisions permit an agency to make an exception to the order of release in a RIF. Therefore, this determination, and the approval of either sick leave or annual leave for this purpose, must be made before the RIF effective date. An exception to the regular release order of a RIF cannot be made after the RIF actions have taken effect. We have revised the regulation to clarify this matter.

One commenter asked for clarification of an employee's reemployment rights while in annual leave status under a temporary exception. An employee carried in an annual leave status under a temporary exception has the same reemployment rights he or she otherwise would have. Employees who are involuntarily separated are eligible for the Reemployment Priority List (RPL) (5 CFR part 330, subpart B), even if they retire following separation. They are to be given notice of eligibility to apply for the RPL as part of the RIF notice, as required by 5 CFR 351.803. An employee who subsequently submits a timely application must be placed on the RPL, even if he or she is not yet separated. Also, employees are eligible for the Displaced Employee Program (5 CFR part 330, subpart C) after receiving a notice of involuntary separation, including when they retire in lieu of involuntary separation. For purposes of those programs, employees in an annual leave status under a temporary exception are treated no differently than other employees who receive a notice of

RIF separation. If while on annual leave an employee receives and accepts a job offer through the RPL, the agency processes the appropriate personnel action, in lieu of RIF separation, in accordance with FPM Supplement 296–33, The Guide to Processing Personnel Actions. Specific instructions relating to these regulations will be issued through that supplement.

Another commenter believed we should make clear that an employee retained under a permissive temporary exception may not be returned to duty status. As we pointed out in the Supplementary Information to the proposed rule, an employee temporarily retained under a permissive temporary exception is not entitled to any further RIF offer. The temporary exception simply extends the RIF separation date for the affected employee. The only circumstance in which an agency may return the employee to duty in the same competitive area, under either a permanent or temporary appointment, is when the employee receives and accepts a job offer through the RPL. In addition, an agency could offer the employee a job in a different competitive area, as long as the RPL is complied with. As suggested, we have revised § 351.608 accordingly.

One commenter suggested we add sick leave to this temporary exception. We have not done so. As explained in the Supplementary Information to the proposed regulation, an exception already exists to allow use of sick leave in appropriate circumstances. We have clarified use of sick leave in revised § 351.608(c).

Finally, one commenter suggested we reorganize paragraph (a) of § 351.608 for greater clarity. We have revised the entire § 351.608 for clarity and to address additional issues raised by commenters.

RIF Notice—Health Benefits and Life Insurance Coverage

OPM's proposed regulation also amended the RIF notice requirements to assure that employees are given timely notice of the right to continue coverage under the Federal Employees Health Benefits Program and the Federal Employees' Group Life Insurance Program. All commenters on this proposal supported it, and we have retained the language in § 351.803 as proposed but with minor editorial changes.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the benefits extended by the amended provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. § 351.608 is revised to read as follows:

§ 351.608 Permissive temporary exceptions.

(a) *General.* (1) In accordance with this section, an agency may make a temporary exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee after the effective date of a reduction in force.

(2) After the effective date of a reduction in force, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving and accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter (or equivalent program).

(3) An agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception authorized by paragraph (c)(1) or (c)(2) of this section.

(b) *Exception not to exceed 90 days.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption or to satisfy a Government obligation to the retained employee.

(c) *Other temporary exceptions.* An agency may make a temporary exception under the conditions in this paragraph to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days for which an exception may be approved. A temporary exception may be approved for the following purposes.

(1) *Sick leave.* An agency may make a temporary exception to retain on sick leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other leave system for Federal employees), who is on approved sick leave on the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees).

(2) *Annual leave.* An agency may make a temporary exception to retain on accrued annual leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other leave system for Federal employees), who will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414, and/or establish eligibility under 5 U.S.C. 8905 to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(i) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(ii) Accrued annual leave includes all accumulated and accrued annual leave, restored annual leave, and annual leave donated to the employee under part 630, subpart I, of this chapter, or made available to the employee under part 630, subpart J, of this chapter, as of the effective date of the reduction in force, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective date of the reduction in force other than annual leave earned while in an annual leave status.

(d) *Notice to employees.* When an agency approves an exception for more than 30 days, it must:

(1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

(2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

3. In § 351.803, the heading and paragraph (a) are revised to read as follows:

§ 351.803 Notice of eligibility for reemployment assistance and other benefits.

(a) An agency must give to each employee who receives a specific notice of separation under this part the following additional information, either in or with the specific reduction in force notice or as a separate supplemental notice to the employee:

(1) The right to reemployment consideration under subparts B and C of part 330 of this chapter;

(2) Guidance on how to apply for unemployment insurance through the appropriate State program; and

(3) Notice on how eligible employees may convert or continue health benefits enrollment or convert life insurance coverage, as required by § 870.501, § 871.501, § 872.501, § 873.501, § 890.401, and § 890.1104 of this chapter.

* * * * *

[FR Doc. 93–1427 Filed 1–21–93; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1940, 1944, 1951, 1956, and 2003

Rural Development Administration

7 CFR Part 4284

RIN 0570–AB00

Community Facility Loans and Grants

AGENCIES: Rural Development Administration and Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Development Administration (RDA) promulgates a new regulation for Community Facility Loans and Grants. The Farmers Home Administration (FmHA) amends its regulations that are utilized by RDA in administering Community Facility Loans and Grants. FmHA also amends its regulations to administer, on behalf of RDA, the direct grant program to individuals. This action is necessary to implement legislation that provides loans and grants for water and waste disposal facilities and services to rural communities whose residents face significant health risks. The health risks faced by these rural residents must be due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable water or waste disposal systems. This loan and grant program will provide financial assistance to water and waste disposal systems to assist them in providing services to these communities. Individuals can also receive financial assistance that will allow them to utilize the water and/or waste disposal system.

DATES: Interim rule effective January 22, 1993. Written comments must be received on or before March 23, 1993.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, South Agriculture Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

The program will be listed in the Catalog of Federal Domestic Assistance and will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

Cross References of Regulations

The Rural Development Administration is a result of a reorganization of programs administered by Farmers Home Administration as required by section 364 of the Consolidated Farm and Rural Development Act, as amended, (7 U.S.C. 2006f) and an order of the Secretary of Agriculture. Dual-references or cross-references to Farmers Home Administration regulations are provided for by section 364.

Discussion of the Interim Rule

Amendments to Public Law 101–624 contained in the "Farm Credit Banks and Associations Safety and Soundness Act of 1992" require that these amendments are being published as an interim final rule. Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) recognizes the emergency nature of the situation by designating that these loans and grants shall be available only to communities whose residents face significant health risks because of no access to adequate affordable water supply systems or waste disposal facilities. Little administrative discretion is involved in threshold determinations of qualifying communities because of a floor as to average per capita income, unemployment rate, and a designation as a colonia provided by the statutes themselves. Congress has expressed its desire for quick, specific action to alleviate what it feels is a serious health problem in a specific geographic area. Accordingly, the Agency is complying with Congress's directions by publishing this rule as an interim final with a sixty-day comment period.

Section 2327 of Public Law 101–624 authorizes the financing of water and waste disposal projects in rural areas that primarily provide services to residents of low-income counties with a high unemployment rate. Loans and grants can be made to water and/or waste disposal systems to provide services to residents, including costs of connecting those residents to the system. The water and waste disposal systems can also obtain funds from RDA to make loans and grants available to individuals to pay the costs of improvements needed to facilitate the use of the system. Individuals can receive loans and/or grants to pay the cost of making improvements needed to use or connecting their residences to a community water and/or waste disposal system. The improvements or connection of individual residents will facilitate the use of water supply and/or waste disposal systems. This action develops new regulations to implement the program authorized by Public Law 101–624. The "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993" authorizes $25,000,000 in grant funding for this program.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Allocations, Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1944

Aged, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 2003

Organization and functions (government agencies).

7 CFR Part 4284

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal, Water supply.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended and chapter XLII, title 7, Code of Federal Regulations is added as follows:

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for part 1901, subpart E, continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Civil Rights Compliance Requirements "C"

2. Section 1901.204 is amended by revising paragraph (a)(2) and by adding paragraphs (a)(24) and (a)(25) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(20) Rural Business Enterprise grants and Television Demonstration grants.

* * * * *

(24) Emergency Community Water Assistance grants.

(25) Section 306C WWD Loans and Grants in subpart E of part 4284 of this title.

* * * * *

PART 1940—GENERAL

3. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

4. Section 1940.590 is amended by adding paragraph (i) to read as follows:

§ 1940.590 Community and Business programs appropriations not allocated by State.

* * * * *

(i) *Section 306C WWD Loans and Grants in Subpart E of Part 4284 of this title.* Control of funds will be retained in the National Office and allocated on a project case basis. Requests for funds will be made to the Director, Water and Waste Disposal Division.

PART 1944—HOUSING

5. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart J—Section 504 Rural Housing Loans and Grants

6. § 1944.475 is added to read as follows:

§ 1944.475 Individual Section 306C WWD Loans and Grants.

Exhibit D sets forth the policies and procedures for making Water and Waste Disposal grants to individuals authorized by section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(c)), as amended.

7. Exhibit D is added to subpart J to read as follows:

Exhibit D to Subpart J—Section 306C WWD Grants to Individuals

I. *General.* This exhibit sets forth the policies and procedures and delegates authority for making initial and subsequent Water and Waste Disposal (WWD) grants to individuals authorized by section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(c)), as amended. The objective of the section 306C WWD individual grant program is to facilitate the use of community water and/or waste disposal systems by the residents of colonias along the U.S./Mexico border. All conditions of this subpart apply unless modified by this exhibit.

II. *Definitions.* The following definitions apply to this exhibit:

(a) *Colonia.* Any identifiable community *designated in writing* by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

(b) *Individual.* Resident of a colonia located in a rural area.

(c) *Rural areas.* Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States.

(d) *System.* A community or central water supply or waste disposal system.

III. *Grant Purposes.* Grant funds may be used to pay the reasonable costs for individuals to:

(a) Extend service lines from the system to residence.

(b) Connect service lines to residence's plumbing.

(c) Pay reasonable charges or fees for connecting to a system.

(d) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bath tub, sink, commode, kitchen sink, water heater, and outside spigot.

(e) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

IV. *Grant Restrictions.*

(a) *Maximum grant.* (1) Maximum grant to any individual for water service lines, connections, and/or construction of a bathroom is $3,500.

(2) Maximum grant to any individual for sewer service lines, connections, and/or construction of a bathroom is $4,000.

(3) Lifetime assistance to any individual for initial or subsequent section 306C WWD grants may not exceed a cumulative total of $5,000.

(5) Document the amount of assistance provided each grantee on a list of section 306C WWD recipients and retain it in the office operational file. Maintenance of the list will permit destruction of closed section 306C WWD assistance case folders as prescribed in § 2033.10(b)(4)(i) of FmHA Instruction 2033–A (available in any FmHA office). The list must include the following information recorded at the time a section 306C WWD grant is made.

(i) Grantee name, address, and case number.

(ii) Name of co-grantee(s), if any.

(iii) Amount of the grant.

(iv) Date grant was made.

(b) *Limitation on use of grant funds.* Section 306C WWD grant funds *may not* be used to:

(1) Pay any debt or obligation of the grantee other than obligations incurred for items listed in section III of this exhibit.

(2) Pay individuals for their own labor.

(3) Pay costs that are not considered reasonable by Farmers Home Administration.

V. *Eligibility Requirements.* Section 306C WWD applicants must meet the following requirements (applicants need not be age 62 or older):

(a) Own dwelling located in a colonia. Evidence of ownership will be presented as outlined in § 1944.461(a) of this subpart.

(b) Have a total taxable income based on the latest Federal income tax form from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services.

(c) Must not be delinquent on any Federal debt.

VI. *Processing Applications.* Applications for section 306C WWD grants will be handled in accordance with § 1944.467 of this subpart, except:

(a) An applicant need not be 62 years of age or older, and

(b) The applicant must furnish a copy of the most recent tax returns for all individuals residing in the household.

PART 1951—SERVICING AND COLLECTIONS

8. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

9. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Rural Business Enterprise/Television Demonstration grants; loans for grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; and section 306C WWD loans and grants in subpart E of part 4284 of this title. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

PART 1956—DEBT SETTLEMENT

10. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Debt Settlement—Community and Business Programs

11. Section 1956.101 is revised to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes polices and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; insured Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans; Indian Tribal Land Acquisition loans; and section 306C WWD loans in subpart E of part 4284 of this title. Settlement Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR parts 101–105 as described in § 1956.147 of this subpart.

PART 2003—ORGANIZATION

12. The authority citation for part 2003 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Public Law 100–82, 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

13. Exhibit A of subpart A paragraph 2 under the heading of 07 02 03 Assistant Administrator—Community and Business Programs is amended by adding the words "section 306C WWD loans and grants, emergency community water assistance grants," after the words "waste disposal loans and grants,".

14. Title 7 is amended by adding a new chapter XLII consisting only of a new part 4284, subpart E at this time.

CHAPTER XLII—RURAL DEVELOPMENT ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 4284—GRANTS

Subparts A–D—[Reserved]

Subpart E—Section 306C WWD Loans and Grants

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Exhibit A to Subpart E—Cooperative Agreement Between ____ and the Rural Development Administration (RDA)

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005, 5 U.S.C. 301; 7 CFR 2.70.

Subparts A–D—[Reserved]

Subpart E—Section 306C WWD Loans and Grants

§ 4284.401 General.

(a) This subpart outlines Rural Development Administration (RDA) policies and procedures for making Water and Waste Disposal (WWD) loans and grants authorized under section 306(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(c)), as amended.

(b) RDA officials will maintain liaison with officials of other Federal, State, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(c) RDA officials shall cooperate with appropriate State agencies in making loans and/or grants that support State strategies for rural area development.

(d) Funds allocated in accordance with this subpart will be considered for use by Indian Tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity to participate in this program.

(e) Federal statutes provide for extending RDA Financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 4284.402 [Reserved]

§ 4284.403 Objective.

The objective of the section 306(C) WWD Loans and Grants program is to provide water and waste disposal facilities and services to low-income rural communities whose residents face significant health risks.

§ 4284.404 Definitions.

Applicant. Entity that receives the RDA loan or grant under this subpart. The entities can be public bodies such as municipalities, counties, districts, authorities, or other political subdivisions of a State, and organizations operated on a not-for-profit basis such as associations, cooperatives, private corporations, or Indian tribes on Federal and State reservations, and other Federally recognized Indian tribes

Colonia. Any identifiable community *designated in writing* by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

Cooperative. A cooperative formed specifically for the purpose of the installation, expansion, improvement, or operation of water supply or waste disposal facilities or systems.

Individual—Recipient of a loan or grant through the applicant to facilitate use of the applicant's water and/or waste disposal system.

Rural areas. Include unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States. They can be located in any of the 50 States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§§ 4284.405–4284.410 [Reserved]

§ 4284.411 Making, processing, and servicing loans and grants.

Unless specifically modified by this subpart, loans and/or grants will be made, processed, and serviced in accordance with subparts A and H of part 1942 of this title, respectively.

§ 4284.412 Eligibility.

(a) The provisions of paragraphs (a)(1) and (2) of this section do not apply to a rural area recognized as a colonia. Otherwise, the facility financed under this subpart must provide water and/or waste disposal services to rural areas of a county where, on the date the preapplication is received by RDA, the:

(1) Per capita income of the residents is not more than 70 percent of the most recent national average per capita income, as determined by the Department of Commerce; and

(2) Unemployment rate of the residents is not less than 125 percent of the most recent national average unemployment rate, as determined by the Bureau of Labor Statistics.

(b) Residents of the rural area to be served must face significant health risks due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable, water and/or waste disposal systems. The file should contain documentation to support this determination.

§ 4284.413 Project priority.

The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, RDA officials must consider the priority items met by each preapplication and the degree to which those priorities are met.

(a) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine applicant eligibility and the proposed project's priority for available funds. Applicants determined ineligible will be advised of their appeal rights in accordance with subpart B of part 1900 of this title.

(b) *Regional Office review.* All preapplications will be reviewed and scored for funding priority at each Regional Office using Exhibit B of this subpart (available in any RDA office and FmHA State and District office). Funds will be requested from the National Office, Attention: Director, Water and Waste Disposal Division, using Exhibit C of this subpart (available in any RDA office and FmHA State and District office). Eligible applicants that cannot be funded should be advised that funds are not available and advised of their appeal rights as set forth in § 1900.55(a) of subpart B of part 1900 of this title.

(c) *National Office.* The National Office will allocate funds on a project-by-project basis as requests are received. If the amount of funds requested exceeds the amount of funds available, the total project score will be used to select projects for funding. The RDA Administrator may assign up to 35 additional points that will be considered in the total points for items such as geographic distribution of funds, severity of health risks, etc.

(d) *Selection priorities.* The priorities described below will be used to rate preapplications and in selecting projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(6) of this section and will be used in selecting projects for funding. A copy of Exhibit B of this subpart (available in any RDA office and FmHA State and District office), used to rate applications, should be placed in the case file for future reference.

(1) *Population.* The proposed project will serve an area with a rural population:

(i) Not in excess of 1,500—30 points.

(ii) More than 1,500 and not in excess of 3,000—20 points.

(iii) More than 3,000 and not in excess of 5,500—10 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the statewide nonmetropolitan median household income—30 points.

(ii) More than 50 percent and not in excess of 60 percent of the statewide nonmetropolitan median household income—20 points.

(iii) More than 60 percent and not in excess of 70 percent of the statewide nonmetropolitan median household income—10 points.

(3) *Joint financing.* The amount of joint financing committed to the proposed project is:

(i) Twenty percent or more private, local, or State funds except Federal funds channeled through a State agency—10 points.

(ii) Five to 19 percent private, local, or State funds except Federal funds channeled through a State agency—5 points.

(4) *Truly rural.* The proposed project is located in a truly rural area as defined in § 1942.17(c) of subpart A of part 1942 of this title—10 points.

(5) *Colonia.* (See definition in § 4284.404 of this subpart.) The proposed project will provide water and/or waste disposal services to the residents of a colonia—50 points.

(6) *Discretionary.* In certain cases, the RDA Regional Director may assign up to 15 points for items such as natural disaster, to improve compatibility/coordination between RDA's and other agencies' selection systems, to assist those projects that are the most cost effective, high unemployment rate, severity of health risks, etc. A written justification must be prepared and attached to Exhibit B of this subpart (available in any RDA office and FmHA State and District office) each time these points are assigned.

§§ 4284.414–4284.420 [Reserved]

§ 4284.421 Use of funds.

(a) *Applicant.* Funds may be used to:

(1) Construct, enlarge, extend, or otherwise improve community water and/or waste disposal systems. Otherwise improve would include extending service lines to and/or connecting residence's plumbing to the system.

(2) Make loans and grants to individuals for extending service lines to and/or connecting residences to the applicant's system. The approval official must determine that this is a practical and economical method of connecting individuals to the community water and/or waste disposal system. Loan funds can only be used for loans, and grant funds can only be used for grants.

(3) Make improvements to individual's residence when needed to allow use of the water and/or waste disposal system.

(4) Grants can be made up to 100 percent of eligible project costs.

(b) *Individuals.* Funds may be used to:

(1) Extend service lines to residence.

(2) Connect service lines to residence's plumbing.

(3) Pay reasonable charges or fees for connecting to a community water and/or waste disposal system.

(4) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

(5) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

§§ 4284.422–4284.430 [Reserved]

§ 4284.431 Rates.

(a) Applicant loans will bear interest at the rate of 5 percent per annum.

(b) Individual loans will bear interest at the rate of:

(1) Five percent per annum, or

(2) The Federal Financing Bank rate for loans of a similar term at the time of RDA loan approval, whichever is less.

§§ 4284.432–4284.440 [Reserved]

§ 4284.441 Individual loans and grants.

(a) The amount of loan and grant funds approved by RDA will be based on the need shown in the application and an implementation plan submitted by the applicant. The implementation plan will include such things as: purpose, how funds will be used, proposed application process, construction requirements, control and disbursement of funds, etc. The implementation plan will be attached to Exhibit A of this subpart.

(b) Exhibit A of this subpart is a Cooperative Agreement which sets forth the procedures and regulations for making and servicing loans and grants made by applicants to individuals. The RDA Regional Director is authorized to enter into a Cooperative Agreement with any applicant providing loans and/or grants to individuals. The Cooperative Agreement can be amended to comply with State law and recommendations by the Office of General Counsel. It may also be amended to eliminate references to loans and/or grants if no loan and/or grant is involved. The RDA Regional Director is responsible for:

(1) Ensuring that all provisions of the Agreement are understood.

(2) Determining that the applicant has the ability to make and service loans and/or grants in the manner outlined in the Agreement.

(c) RDA funds remaining after providing individual loans and/or grants will be returned to RDA. The funds should be disbursed to individuals within 1 year from the date water and/or waste disposal service is available to the individuals. The RDA Regional Director can make an exception to this 1 year requirement if written justification is provided by the applicant.

§ 4284.442 Delegation of authority.

The RDA Regional Director is responsible for the overall implementation of the authorities contained in this subpart and may redelegate any such authority to appropriate RDA employees.

§ 4284.443 Guides and attachments.

Exhibit C of subpart H of part 1942 of this title (published in the **Federal Register** only) and Exhibits A, B and C of this subpart (all available in any RDA office and FmHA State and District office) are for use in administering loans and/or grants made under this subpart.

§§ 4284.444–4284.499 [Reserved]

§ 4284.500 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0570–0001. Public reporting burden for this collection of information is estimated to vary from 5 to 30 hours per response with an average of 17.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Exhibit A to Subpart E—Cooperative Agreement Between ________and the Rural Development Administration (RDA)

This Cooperative Agreement establishes authorities and procedures whereby the

(Name of Organization), ________________
(Address), ________________
______, (Phone No.), a ________system, (enter type of system such as waste disposal, or

water) hereinafter referred to as the "system," will process and service water and waste disposal loans and grants authorized under Section 306C of the Consolidated Farm and Rural Development Act, as amended, to facilitate individual's use of the system. It is agreed that the system will receive applications, process, close, and service loans or grants as provided in this agreement and the attached implementation plan. The system's files should be adequately documented to show the basis for individual loans and grant eligibility.

Effective date of this agreement: This agreement shall be effective on the date of the last signatures and date hereto.

Duration of agreement: This agreement shall continue to be in effect until all loans made are collected or otherwise satisfied by the system and any loan made by RDA for such purpose is paid in full or otherwise satisfied.

Purpose: The system will inform individual residents that loans and/or grants will be made available to eligible users through the system. Loans and grants will only be made to users to extend service to, connect their residence to, or make improvements needed to facilitate use of the system. Regulations and guidance for loan/grant making and loan servicing are provided in this part of the agreement. The individuals must reside in a community whose residents face significant health risks due to the fact that a significant portion of the community's residents do not have access to, or are not served by, adequate, affordable, water supply systems or waste disposal facilities.

A. Loan Eligibility

Loans may be made to individuals who:

1. Are individuals who are neither eligible for, nor have received a grant under this agreement; and

2. Have an ownership interest in the dwelling to be connected to the system or improved and located in a rural area; and

3. Have a total taxable income, based on the latest Federal income tax form from individuals residing in the household, of not more than 125 percent of the most recent poverty income guidelines established by Department of Health and Human Services; and

4. Are unable to pay for the costs of improvements without a loan.

B. Grant Eligibility

Grants may be made to individuals who:

1. Have an ownership interest in the dwelling to be connected to the system or improved and located in a rural area; and

2. Have a total taxable income based on the latest Federal income tax form from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services; and

3. Are unable to repay a loan under paragraph A of this exhibit if funds are available.

C. Terms

1. The interest rate on loans made under this agreement will be ______percent per annum.

2. Loan repayment terms will not exceed the RDA loan repayment terms.

3. Loans will be evidenced by a promissory note developed in accordance with State law by the system.

4. The loan will be collected at the same time as the regular service bill is collected for such residence. Payments of the loan will be considered as part of the service rendered to users of the service until the loan is paid or otherwise satisfied.

D. Loan/Grant Purposes

Funds may be used to:

1. Extend service lines to, or connect the dwelling's plumbing to, the system to allow use of the system.

2. Pay reasonable costs of connection fees and other charges regularly charged by the system.

3. Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

4. Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

E. Restrictions on Use of Funds

Funds cannot be used to:

1. Make improvements to the residence, except for the improvements authorized by paragraph D of this exhibit.

2. Pay individuals for their own labor.

F. Loan/Grant Processing

1. The system will develop its own application for processing loans and grants.

2. The system will assist individuals in completing an application and promissory note.

3. The system will provide or arrange for technical assistance, as needed, to determine improvements to be made, their costs, and that the costs are reasonable.

4. The system may contract with the individuals to do the work or arrange for the improvements to be installed by a contractor satisfactory to the system and the individual. In either case, the individual will sign a contract agreement covering the planned improvements.

G. Payment for the Work

1. The system will pay the contractor after making such inspection of the work as it deems necessary and acceptance by the individual. The agreement between the contractor and the individual must require the contractor to warrant and guarantee, for a period of 12 months from the date of completion, that the work is free from all defects due to faulty materials or workmanship, and that the contractor shall promptly make such corrections as may be necessary by reason of such defects.

2. The system will advance funds, as needed, to individuals acting as his/her own contractor, to pay for materials and labor other than labor of the individual. The system will inspect the work as it deems necessary to assure that the improvements are being installed satisfactorily.

H. Account Servicing

1. The system will follow generally acceptable accounting practices in maintaining and servicing the borrower's account during the life of the loan. Scheduled note payments will be collected with the borrower's utility service billing and be deposited in the account used to make RDA's loan payment.

2. Interest on unpaid interest shall not be charged.

3. Late charges may be assessed at the option of the system on delinquent accounts.

I. Inspection of Records

The system will provide RDA (or other appropriate Federal agencies), at all reasonable times, access to all books and records relating to loans made under the provisions of this Agreement.

J. Personal Benefit Clause

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

K. Payment for Services

Individuals may be charged customary fees for technical services provided in determining the type and amount of improvements, obtaining cost estimates, and for inspections made to insure that the improvements have been properly completed. Loan funds may only be used for these purposes to the extent set forth in paragraph D of this exhibit. However, neither the RDA nor the system will pay a loan origination or packaging fee, nor will a fee be paid for servicing the account during the life of the loan.

L. Administrative Policy

1. RDA Regional Director will provide to the system the most recent poverty income guidelines.

2. RDA Regional Director will provide guidance needed by the system in carrying out this program.

3. When all funds covered by this Agreement have been disbursed by the system, the system will provide the RDA Regional Director a report on how the funds were used. The report will include the names of individuals that received assistance, the type of assistance (loan or grant), and the amount of assistance.

____

(Name)

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(Title of System Representative)

Date: ______________________

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(Name)

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(RDA Regional Director)

Date: ______________________

Dated: October 22, 1992.

Mary Ann Baron,

Administrator, Rural Development Administration.

Fred Medero,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–1408 Filed 1–21–93; 8:45 am]

BILLING CODE 3410-07-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending part 741 to require federally insured credit unions whose assets exceed $50,000,000, to file with NCUA a quarterly Financial and Statistical Report (the "call report"). All other credit unions will continue to be subject to the current requirement of filing a semiannual call report. The intended effect of this amendment is to provide NCUA with timely and complete financial data from large credit unions.

EFFECTIVE DATE: March 31, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, telephone (202) 682–9630, or Alonzo Swann, Office of Examination and Insurance, telephone (202) 682–9640, at the above address.

SUPPLEMENTARY INFORMATION: Currently, under § 741.13(a) of the NCUA Regulations, all federally insured credit unions must file with NCUA a semiannual Financial and Statistical Report ("call report"). Credit unions whose assets exceed $100,000,000 as of March 31, 1992, are already required to file quarterly call report in accordance with Letter to Credit Unions No. 1 dated January 1992. (Section 741.13(b) of NCUA's Regulations states that "insured credit unions shall, upon written notice from the Board or Regional Director, file such other reports in accordance with instructions contained in such notice.") On July 28, 1992, the NCUA issued a proposed amendment (see 57 FR 34091, 8/3/92) to require federally insured credit unions whose assets exceed $100,000,000 as of March 31, 1992, $50,000,000 as of March 31, 1993, and $20,000,000 as of March 31, 1994, to file a quarterly call report.

Quarterly reporting was proposed to provide NCUA with timely and complete financial data to improve the efficiency and effectiveness of off-site monitoring of the industry and individual credit unions. Recognizing the increasing complexity of credit union operations, the NCUA Board believes the twice-yearly submission of financial and statistical data is too infrequent, particularly for large credit unions. Credit union assets have shown significant increases in more complex areas, such as real estate lending, member business lending, and investments. These changes have significantly increased the risk of loss to the National Credit Union Share Insurance Fund (NCUSIF). NCUA needs more timely call report data to detect areas of concern to the industry, as well as individual credit unions. In large credit unions, where the potential losses to the share insurance fund are greater, more frequent reporting is clearly desirable. Quarterly reporting will enable NCUA to act quickly to prevent financial loss, both to credit union members and the NCUSIF.

Seventy-seven comment letters were received. Fifty-eight comments were received from federal credit unions, fourteen from state-chartered credit unions, two from state credit union leagues, and two from national trade associations. One comment was received from a state regulatory agency. Twenty-three commenters generally approved of the amendment as proposed. Eight commenters recommend extending the quarterly reporting requirement to all credit unions. Forty-six commenters disapprove of the proposed amendment. Six of these commenters recommend limiting the quarterly reporting requirements to credit unions with assets over $100,000,000. Four commenters recommend thresholds of $100,000,000, $75,000,000, and $50,000,000.

In response to the commenters' concerns, NCUA has decided to limit the quarterly call reports to credit unions with assets in excess of $50,000,000 as of March 31, 1993. This change will provide NCUA with timely and complete financial data from large credit unions but at the same time allow NCUA to evaluate the effectiveness of the program before attempting to extend it to other credit unions.

Thirteen commenters believe the proposed amendment is regulatory overkill and unnecessary. Twelve commenters believe the proposed amendment will increase credit union costs and paperwork requirements. The NCUA Board believes that the benefits of quarterly reporting outweigh the increase in costs and paperwork requirements; however, the increase in cost is minimized by limiting the requirement to credit unions with over $50,000,000 in assets.

Fourteen commenters believe that NCUA's estimate of eight hours to complete the call report is too low. These commenters state that it takes substantially more time to complete the call report with estimates ranging from ten hours to four days. Nine commenters request that NCUA issue a streamlined call report which would be shorter and less complex. These commenters also object to the constant revision of the call report. They believe the inclusion of new data with every revision is overly burdensome. On average, NCUA believes its estimate is correct but NCUA will survey credit unions to determine which sections of the report take the most time to complete. Furthermore, in response to the commenters' concern about the estimated time to complete the call report, as well as the comments on the frequent revision, NCUA will attempt to limit revisions of the call report to only essential matters in the future. Also, if revisions are deemed necessary, NCUA will inform credit unions of such changes in advance.

Two commenters question whether the marginal benefit to NCUA is worth the extra cost to credit unions. Four commenters question whether NCUA can readily assimilate and effectively utilize such data. By limiting the reporting requirement to credit unions with more than $50,000,000 in assets, NCUA will be better able to utilize and assimilate the additional information. The additional data will assess trends in specific credit unions and the industry at large and will pay for itself in proactive supervision.

Seven commenters question whether any past losses to the NCUSIF could have been averted simply because of quarterly reporting. Furthermore, some of these commenters ask whether NCUA has any conclusive statistical data that would support an affirmative answer to their question. NCUA's review of past losses determined that in some cases credit unions deteriorated quickly and quarterly reporting would have averted some loss.

Seven commenters suggest that instead of quarterly reporting, credit unions furnish their regular monthly financial statements as a supplement to the semiannual call report. Five commenters recommend that credit unions with substandard performance or questionable practices be required to provide financial and statistical data on a more frequent basis, allowing stable, sound credit unions to continue semiannual reporting. One commenter suggests requiring semiannual reporting for credit unions with a 1 or 2 CAMEL rating while requiring credit unions with a 3 or 4 CAMEL rating to file quarterly reports. Although NCUA has considered each of these alternatives, the NCUA Board believes its approach will provide a more accurate and reliable indicator of financial trends in large credit unions where the greatest risk is located.

In addition to the comments received on the proposed rule, NCUA issued a request for comment in July (see 57 FR 34090, 8/3/92) soliciting comment on regulatory burden imposed by NCUA regulations and the consumer compliance regulations. Although comments on NCUA regulations were generally favorable, eleven comments addressed the proposed quarterly reporting requirement. The same concerns with quarterly reporting were raised as have already been discussed.

The NCUA Board is issuing a final amendment to section 741.13 to require quarterly reporting for credit unions with over $50,000,000 in assets as of March 31, 1993. The current semiannual filing requirement would remain in effect for all other credit unions.

Paperwork Reduction Act

The final amendment contains a requirement for the collection and submission of additional information by federally insured credit unions with assets over $50,000,000 as of March 31, 1993. The paperwork requirements were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act. A notice will be published in the **Federal Register** once approval is received from OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Because the final amendment only affects credit unions whose assets exceed $50,000,000, a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The NCUA Board has determined that this final amendment may have an occasional direct effect on the states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government. However, it will enable NCUA and the NCUSIF to have sufficient information to ensure the safety and soundness of federally insured credit unions. The NCUA Board believes that the protection of the NCUSIF warrants this increased reporting by large credit unions and that the increased reporting required will not unduly burden federally insured state-chartered credit unions.

List of Subjects in 12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR chapter VII, subchapter A is amended as set forth below:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790; Pub. L. 101–73.

2. Section 741.13(a) is revised as follows:

§ 741.13 Financial and statistical and other reports.

(a) Each operating insured credit union, with assets in excess of $50,000,000, shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

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[FR Doc. 93–1409 Filed 1–21–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–74; Special Conditions No. 25–ANM–66]

Special Conditions: SAAB 2000 Airplane; Lightning and High Intensity Radiated Field (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the SAAB Model 2000 airplane. This airplane will utilize electrical and electronic systems which perform critical and essential functions These systems include electronic displays which present critical and essential flight and engine parameters to the flightcrew, and electronic propulsion and propeller controls. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Federal Aviation Administration (FAA), Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1989, SAAB SCANIA AB of Sweden applied for an FAA Type Certificate through the Swedish LFV to the FAA, AEU–100, for the SAAB 2000. (The application for FAA Type Certificate was dated June 9, 1989.)

The SAAB 2000 is a twin-engined, low-wing, pressurized turboprop aircraft for approximately 50 passengers, intended for short to medium haul (100 nm to 1,000 nm). The airplane will have two new Allison GMA–2100 engines rated at 3650 shp. The propeller is a new 6 bladed Dowty Rotol swept shaped propeller. A single lever controls each prop/engine combination. A new APU installation has been added in the tail. The fuselage cross-section will be the same as the SAAB 340. The fuselage skin will be thicker to handle greater pressures. The wing and empennage are new and larger in all dimensions and the fuselage is longer when compared to the SAAB SF–340B. The new cockpit will be a 5 or 6 screen CRT display with new Collins systems. There will be provisions for a Microwave Landing System, Global Positioning System, SELCAL, EICAS, and TCAS systems. The landing gear system will be new. The rudder system will be powered by two hydraulic systems (no manual reversion). The airplane will have provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There will be a forward and aft stowage compartment and an aft cargo compartment. The airplane will have a maximum operating altitude of 31,000 feet.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 12.16, 21.17, 21.19, 21.19, and 21.101 of the Federal Aviation Regulations (FAR).

The changes discussed above are so extensive that to comply with § 21.19, a new Type Certificate will be required for the SAAB 2000. Accordingly, based on the application date of June 9, 1989, the TC basis for this airplane, including rules the applicant volunteered to comply with, is as follows:

Part 25, Amendments 25–1 through 25–71.
Part 25, Amendment 25–72 for the following sections:
  § 25.361 Engine torque.
  § 25.365 Pressurized compartment loads.
  § 25.571 Damage tolerance and fatigue evaluation of structure.
  § 25.772 Pilot compartment doors.
  § 25.773 Pilot compartment view.
  § 25.783(g) Doors.
  § 25.905(d) Propellers.
  § 25.933 Reversing Systems.
Part 25, Amendments 25–73 through 25–76.
Part 34 (As replacement for SFAR 27).
Part 36, Latest amendment at TC.
Lightning and HIRF Protection special conditions.
Any equivalent safety findings.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions are issued for the SAAB 2000 which require that new technology electrical and electronic systems, such as the electronic flight and engine information displays, electronic propulsion controls, and electronic propeller controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak aptitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up to 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o\ (e^{-at}-e^{-bt})$

where:

t=time in seconds,

i=current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	= 218,810	109,405	54,703	10,572
a, sec^{-1}	= 11,354	22,708	22,708	187,191
b, sec^{-1}	= 647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
i_{peak}	= 200 KA	100 KA	50 KA	10 KA
and,				
$(di/dt)_{max}$ (amp/sec)	= 1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	= 1.0×10^{11} @t=.5µs	= 1.0×10^{11} @t=.25µs	= 0.5×10^{11} @t=.25µs	
Action Integral (amp^2 sec)	= 2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States.

Discussion of Comments

Notice of proposed special conditions No. SC–92–5–NM for the SAAB Model 2000 was published in the **Federal Register** on August 13, 1992 (57 FR 36375). Comments were received from two commenters. One of the commenters had no objection to the proposed special conditions as written.

Included in the comments from the remaining commenter are corrections to the certification basis for the airplane to include later amendments to part 25 that were voluntarily adopted by the applicant. These corrections were made as requested.

One of the comments objects to the definitions of "Critical Function" and "Essential Function" used in the Notice of proposed special conditions because they do not harmonize with those used by JAA, and because they are ambiguous in the way they are written. The comment proposed that they be changed to delete the words "contribute to or" from these definitions.

The FAA concurs that the words "contribute to or" may be deleted from the definitions of critical and essential functions as used in the Notice. Referring to the definition of "Failure Condition" as found in AC 25.1309–1A, the concept of considering contributory failures is included; therefore, referring to failures that contribute to a failure condition in the definition of critical and essential functions is redundant.

A comment is made proposing that the following be added to the definition of essential functions:

"* * * or contribute to a failure condition that in combination with other malfunctions or external events would prevent the continued safe flight and landing of the airplane."

The FAA concurs with the proposal to expand the definition of essential functions to include contributory functions that would prevent continued safe flight and landing of the airplane. However, referring to the above discussion of the previous comment, the word, "failure" was used rather than "failure condition" in the proposed addition which was added to the definition of essential functions.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the SAAB 2000 airplane:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions, or contribute to a failure that in combination with other malfunctions or external events would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 12, 1993.

Darrell M. Pedersen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–1445 Filed 1–21–93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92–NM–87–AD; Amendment 39–8468; AD 93–01–14]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspection of the main landing gear (MLG) door actuator attach fitting bolts, and replacement, if necessary. This amendment requires revised inspection procedures, and provides a revised optional terminating modification. This amendment is prompted by a recent reassessment of the corrective actions required by the existing AD, which revealed that additional actions are necessary in order to fully address the unsafe condition. The actions specified by this AD are intended to prevent landing with one MLG partially extended.

DATES: Effective February 23, 1993.

The incorporation by reference of Boeing Service Bulletin 727–32–0383, dated December 6, 1990, as listed in this regulation, was approved previously by the Director of the Federal Register as of September 26, 1991 (56 FR 46112, September 10, 1991).

The incorporation by reference of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992, as listed in this regulation, is approved by the Director of the Federal Register as of February 23, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stanton R. Wood, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2772; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–15–14, Amendment 39–7078 (56 FR 46112, September 10, 1991), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on July 10, 1992 (57 FR 30686). The action proposed to require revised inspection procedures of the main landing gear (MLG) door actuator attach fitting bolts, and replacement, if necessary; and provides a revised optional terminating modification.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One operator states that it used parts other than those specified in the service bulletin cited as the appropriate source of service information to accomplish the modification required by this AD. Since this operator has not experienced a failure due to this substitution in parts, it plans to request an alternative method of compliance. The FAA infers from this operator's comments that it requests that the final rule be revised to allow these substitute parts to be used when accomplishing the modification. The FAA does not concur. Since no substantiating data were submitted, the FAA cannot evaluate the integrity of these parts, nor can the long-term affect on other parts be determined. However, under the provisions of paragraph (g) of the final rule, the FAA may approve alternative methods of compliance with the requirements of this AD, if substantiating data are submitted to demonstrate that an acceptable level of safety can be maintained with the use of alternative parts.

One commenter questions whether an operator must comply with both proposed paragraphs (a) and (e), since proposed paragraph (e) does not state that it replaces proposed paragraph (a). The FAA notes that the applicability portion of proposed paragraph (e) states that it is applicable to those "airplanes that have not previously accomplished the actions required by paragraph (a)." Therefore, although proposed paragraph (e) does not state that it replaces proposed paragraph (a), it is clear that if the requirements of paragraph (a) have been accomplished, the requirements of paragraph (e) do not need to be repeated.

One commenter requests that the compliance time for those airplanes that have not accomplished previously the requirements of AD 91–15–14 be revised from the proposed 1,500 flight cycles or 18 months to include the next scheduled "C" check as an alternative. This commenter requests a revision in the compliance time so that it will fall during regularly scheduled maintenance periods and that the exposure due to unnecessary assembly and disassembly of this critical joint will be reduced. The FAA does not concur. The compliance time, as proposed, represents what the FAA has determined to be the maximum interval of time allowable wherein the inspections could be accomplished and an acceptable level of safety could be maintained. Since maintenance schedules may vary from operator to operator, there would be no assurance that the inspection would be accomplished during that maximum interval.

One commenter requests that "credit" be given to those operators that have accomplished the bolt replacement procedure in accordance with Boeing Service Bulletin 727–32–0383, dated December 6, 1990. This commenter notes that proposed paragraph (d) requires replacement of the bolt only in accordance with Revision 1 of that service bulletin. The FAA concurs. The FAA has determined that the bolt replacement procedures for bolts 1 and 2 in both the original issue and Revision 1 of the service bulletin are identical; therefore, safety would not be adversely affected if the bolt replacement procedure is accomplished in accordance with the original issue of the service bulletin. Paragraph (d) of the final rule has been revised to add Boeing Service Bulletin 727–32–0383, dated December 6, 1990, as an alternative source of service information for accomplishing the bolt replacement procedure for bolts 1 and 2.

One commenter requests that the requirement for bolt replacement, as specified in proposed paragraph (d)(2), be revised to be consistent with Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992, which permits a torque check of the third bolt in lieu of replacement of the third bolt. The FAA concurs. The FAA has reviewed and evaluated the torque check procedure described in Revision 1 of the service bulletin and has determined that an adequate level of safety can be maintained with this procedure. Paragraph (d)(2) of the final rule has been revised accordingly.

The final rule has been revised to clarify the compliance times for accomplishing the repair procedures for findings of loose bolts or serrations not fully mated. For findings of loose bolts, the repair procedures, included in paragraph (b) of the notice, are clearly required prior to further flight; however, paragraphs (d) and (f) have been clarified in the final rule to indicate that these repair procedures are also to be performed prior to further flight.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,585, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–7078 (56 FR 46112, September 10, 1991), and by adding a new airworthiness directive (AD), amendment 39–8468, to read as follows:

93–01–14. Boeing: Amendment 39–8468. Docket 92–NM–87–AD. Supersedes AD 91–15–14, Amendment 39–7078.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a landing with one main landing gear (MLG) partially extended, accomplish the following:

(a) Within the next 1,500 flight cycles after October 15, 1991 (the effective date of AD 91–15–14, Amendment 39–7078), inspect for loose MLG door actuator attach fitting bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, dated December 6, 1990.

(b) If loose bolts are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, accomplish Figure 1 or 2 of Boeing Service Bulletin 727–32–0383, dated December 6, 1990.

(c) For airplanes that have accomplished the actions required by paragraph (a) of this AD prior to the effective date of this AD: Prior to the accumulation of 3,700 flight cycles after accomplishing the inspection or replacement required by paragraphs (a) and (b) of this AD, or within 3 years after the effective date of this AD, whichever occurs first; and thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first; inspect the MLG door actuator attach fitting to ensure that serrations are fully mated, and to detect loose bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(d) If serrations are not fully mated, or if loose bolts are found, as a result of the inspections required by paragraph (c) of this AD, prior to further flight, accomplish Figure

1 or 2 of Boeing Service Bulletin 727–32–0383, dated December 6, 1990; or Revision 1, dated January 30, 1992.

(1) If Figure 1 of either service bulletin is accomplished, repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first.

(2) Accomplishment of Figure 2 of Revision 1 of the service bulletin (for all bolts); or accomplishment of Figure 2 of the service bulletin dated December 6, 1990 (for bolts 1 and 2) and accomplishment of a torque check of bolt 3 in accordance with Revision 1 of the service bulletin; constitutes terminating action for the inspection requirements of paragraph (c) of this AD.

(e) For airplanes that have not previously accomplished the actions required by paragraph (a) of this AD prior to the effective date of this AD: Prior to the accumulation of 1,500 flight cycles after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first; and thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first; inspect the MLG door actuator attach fitting to ensure that serrations are fully mated, and to detect loose bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(f) If serrations are not fully mated, or if loose bolts are found as a result of the inspections required by paragraph (e) of this AD, prior to further flight, accomplish Figure 1 or 2 of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(1) If Figure 1 of the service bulletin is accomplished, repeat the inspection required by paragraph (e) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first.

(2) Accomplishment of Figure 2 of the service constitutes terminating action for the inspection requirements of paragraph (e) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) Certain inspections and replacement shall be done in accordance with Boeing Service Bulletin 727–32–0383, dated December 6, 1990, as indicated. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of September 26, 1991 (56 FR 46112, September 10, 1991). Certain other inspections and replacement shall be done in accordance with Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992, as indicated. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on February 23, 1993.

Issued in Renton, Washington, on January 11, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1433 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–220–AD; Amendment 39–8469; AD 93–01–15]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–8 series airplanes, that currently requires structural inspections to detect fatigue cracking, reporting of the inspection results, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. This amendment requires modification of the existing sampling program to: (a) Require additional visual inspections of all Principal Structural Elements (PSE's) on certain airplanes, (b) include expanded/modified PSE's, (c) revise the reporting requirements, and (d) increase the sample size. This amendment is prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in PSE's. The actions specified by this AD are intended to prevent fatigue cracking, which could result in a compromise of the structural integrity of these airplanes.

DATES: Effective February 26, 1993.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of August 10, 1987 (54 FR 25591, July 8, 1987).

The incorporation by reference of certain other publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87–14–06, Amendment 39–5631 (54 FR 25591, July 8, 1987), which is applicable to McDonnell Douglas Model DC–8 series airplanes, was published in the **Federal Register** on January 15, 1992 (57 FR 1697). The action proposed to require structural inspections and necessary repair or replacement to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Several commenters request that the AD be issued as a revision to AD 87–14–06, which would retain this same AD number, rather than as a supersedure, which would be given a new AD number. The commenters note that a revision would lessen the chances for a bookkeeping error to occur. The FAA does not concur. The FAA's current policy (reference FAA Order 8040.1B, "Airworthiness Directives") is that, whenever a "substantive change" is made to an existing AD, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

With regard to bookkeeping changes required by affected operators, Federal Aviation Regulations (FAR) § 121.380(a)(2)(v), "Maintenance recording requirements," requires that persons holding an operating certificate and operating under FAR part 121 must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: A superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously."

One commenter requests a revision to the compliance time to accomplish the inspections of those Principal Structural Elements (PSE) that are near or past the end dates by extending it to one year. The commenter notes that the proposed compliance time of six months to incorporate the latest SID revision into an operator's maintenance program is inadequate to accomplish all overdue PSE's without imposing an undue burden on operators. The FAA does not concur with the commenter's request to extend the compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections without compromising safety. However, under the provisions of paragraph (d) of the final rule, the FAA may approve an alternative method of compliance or adjustment of the compliance time if operators submit sufficient justification to the FAA.

Several commenters note that the process for reporting inspection results needs improvement. These commenters audited the reports from one operator and found over 200 discrepancies in appendix C of volume III–91 of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated April 1991, which contains the record of inspection results submitted to McDonnell Douglas Corporation. The FAA does not concur that a change to the AD is necessary. McDonnell Douglas has advised the FAA that it has recognized the occurrence of these discrepancies and has taken steps to correct them and to ensure that they will not occur again. However, under the provisions of paragraph (d) of the final rule, the FAA may approve, on a case-by-case basis, an alternative method of reporting inspection results, if sufficient justification is presented to the FAA.

One commenter requests that proposed paragraph (b), which references only section 2 of volume I of the SID for those PSE's that need to be inspected, be revised to include section 3 of volume 1, since PSE's related to previous AD's are defined in section 3. The FAA concurs. Paragraph (b) of the final rule has been revised accordingly.

One operator requests that proposed paragraph (c) be revised to delegate approval of repairs to Designated Engineering Representatives (DER) of the McDonnell Douglas Corporation, since this operator has experienced delays and additional costs in obtaining approval of repair data by Aircraft Certification Office (ACO) managers. The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is. Further, it is crucial that the FAA, as well as McDonnell Douglas, be aware of all repairs made to PSE's or to their configuration, and that damage tolerance analysis be performed for each repair to establish its effect on the fatigue life of the affected structure.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 337 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry and 15 U.S. operators will be affected by this AD. The procedures required by this AD action will require approximately 544 work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 15 affected U.S. operators to incorporate the revisions of the SID program is estimated to be $448,800.

The recurring inspection cost will require approximately 298 work hours per airplane per year to accomplish. The average labor charge will be $55 per work hour. Based on these figures, the recurring inspection total cost impact of the AD on U.S. operators is estimated to be $16,390 per airplane, or $3,638,580 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $4,087,380 for the first year, and $3,638,580 for each year thereafter. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a significant "rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules

Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6330 (54 FR 25591, July 8, 1987), and by adding a new airworthiness directive (AD), amendment 39–8469, to read as follows:

93–01–15. McDonnell Douglas: Amendment 39–8469. Docket 91–NM–220–AD. Supersedes AD 87–14–06, Amendment 39–6330.

Applicability: Model DC–8 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within one year after August 10, 1987 (the effective date of AD 87–14–06, Amendment 39–5631), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE's) defined in section 2 of volume I of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated December 1985, in accordance with section 2 of volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of volume III of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(b) Within 6 months after the effective date of this AD replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides no less than the required inspection of the Principal Structural Elements (PSE's) defined in sections 2 and 3 of volume I of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated March 1991, in accordance with section 2 of volume III–91, dated April 1991, of that document. The non-destructive inspection techniques set forth in sections 2 and 3 of volume II, dated March 1991, of that SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of volume III–91 of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Cracked structure detected during the inspections required by paragraphs (a) and (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Certain inspections and reporting shall be done in accordance with McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated December 1985, as indicated. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1987 (54 FR 25591, July 8, 1987). Certain other inspections and reporting shall be done in accordance with McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," volume I, revision 3, dated March 1991; volume II, revision 5, dated March 1991; and volume III–91, dated April 1991. Volume I (revision 3, dated March 1991) and volume II (revision 5, dated March 1991) of McDonnell Douglas Report No. L26–011, "DC–8 SID," contain the following list of effective pages:

Volume	Shown on "list of effective pages"	Revision level shown on page	Date shown on page
Volume I	List of effective pages A, B, C	3	March 1991.
Volume II	List of effective pages A, B, C, D, E, F, G, H, I, J, K, L	5	March 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 26, 1993.

Issued in Renton, Washington, on January 11, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1432 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–42–AD; Amendment 39–8474; 93–01–20]

Airworthiness Directives; Beech Model 300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 89–22–12, which requires inspecting the upper aft cowling access door latches for proper

tension and total engagement of the adjusting bolts and striker plates on certain Beech Model 300 airplanes, adjusting or modifying the latches if tension or engagement requirements are not met, and modifying the cowling door to provide a more positive retention. A cowling door latch replacement kit has been developed that, if properly installed, provides a level of safety equivalent to the cowling door retention modification required by AD 89–22–12. This action retains the requirements of the previous AD and incorporates this new modification into the AD as a compliance option. The actions specified by this AD are intended to prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs.

DATES: Effective March 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech Model 300 airplanes was published in the **Federal Register** on September 9, 1992 (57 FR 41114). The action proposed to supersede AD 89–22–12, Amendment 39–6351 (54 FR 41438, October 10, 1989), with a new AD that would (1) retain the inspection and modifications of the aft cowling doors that are required by AD 89–22–12; and (2) allow a cowling door latch replacement kit to be installed in lieu of the cowling door retention modification required by AD 89–22–12. The proposed actions would be accomplished in accordance with Beech SB No. 2394, issued August 1989, revised February 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 152 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 17 workhours per airplane to accomplish the required action if the operator chose to install the cowling door latch replacement kit (latch replacement option) or approximately 3 workhours per airplane to accomplish the required action if the operator accomplished the modification to provide a more positive cowling door retention (cowling door retention option), and that the average labor rate is approximately $55 an hour. Parts for the cowling door latch replacement kit cost approximately $2,372 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $505,664 (latch replacement option) or $25,080 (cowling door retention option).

AD 89–22–12, which will be superseded by this AD, requires that the cowling door retention option be accomplished on the affected airplanes. The only difference between that AD and this action is the choice of accomplishing either the latch replacement option or the cowling door retention option. Since the latch replacement option is not mandatory, the required action poses no additional cost impact upon U.S. operators of the affected airplanes than that which is already required by AD 89–22–12.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 89–22–12, Amendment 39–6351 (54 FR 41438, October 10, 1989), and adding the following new AD:

93-01-20 Beech Aircraft Corporation: Amendment 39–8474; Docket No. 92–CE–42–AD. Supersedes AD 89–22–12, Amendment 39–6351.

Applicability: Model 300 airplanes (serial numbers FA–2 through FA–211 and FF–1 through FF–19), certificated in any category.

Compliance: Required as indicated, unless already accomplished (compliance with superseded AD 89–22–12).

To prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates in accordance with part I of the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2329, dated August 1989, revised February 1991.

(1) If improper tension is found, prior to further flight, adjust the cowling door latch in accordance with Beechcraft Super King Air 300 Maintenance Manual, chapter 71–10.

(2) If the adjusting bolts and striker plates do not totally engage, prior to further flight, modify the cowling door in accordance with Beechcraft Safety Communique No. 300–75.

(b) Within the next 50 hours TIS after the effective date of this AD, accomplish one of the following:

(1) Modify the cowlings to provide upper aft cowling access door retention in accordance with part II of the Accomplishment Instructions section of Beech SB No. 2329, dated August 1989, revised February 1991; or

(2) Install cowling door latch replacement Kit No. 101–9052–1 S in accordance with Part III of the Accomplishment Instructions section of Beech SB No. 2329, dated August 1989, revised February 1991.

(c) If the requirements of paragraphs (a), (a)(1), (a)(2), and (b)(1) were previously accomplished (compliance with superseded AD 89–22–12) in accordance with Beech SB No. 2329, dated August 1989, then no further action is required by this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) The inspection and modification or installation required by this AD shall be done in accordance with Beech Service Bulletin No. 2329, dated August 1989, revised February 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–8474) supersedes AD 89–22–12, Amendment 39–6351.

(h) This amendment (39–8474) becomes effective on March 10, 1993.

Issued in Kansas City, Missouri, on January 13, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1437 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 90–CE–58–AD; Amendment 39–8431; AD 92–26–04]

Airworthiness Directives; Cessna 210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: This document suspends the effectiveness for Airworthiness Directive (AD) 92–26–04, Amendment 39–8431, published in the **Federal Register** on Monday, December 7, 1992 (57 FR 57658). The Federal Aviation Administration (FAA) has received a petition for reconsideration of this action, and the FAA has concluded that the issues raised by the petition warrant further consideration.

EFFECTIVE DATE: Effective January 22, 1993, AD 92–26–04, Amendment 39–8431, is suspended.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; Telephone (316) 946–4143; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: AD 92–26–04, Amendment 39–8431, which applies to certain Cessna 210 series airplanes, was published in the **Federal Register** on Monday, December 7, 1992 (57 FR 57658), with an effective date of January 22, 1993. This AD requires accomplishing operational checks of the fuel gauges, modifying the fuel caps and adapters, and incorporating pilot operating procedures that relate to preflight fuel system quantity checks into the airplane flight manual or airplane records.

The FAA has received a petition for reconsideration of this action, and believes that the issues raised by that petition warrant further consideration before compliance is mandated.

This rule would become effective on January 22, 1993. Since a situation exists that requires immediate public notice that the effective date has been suspended, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by suspending until further notice AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), effective January 22, 1993.

Issued in Kansas City, Missouri, on January 15, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1618 Filed 1–19–93; 11:20 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting final regulations concerning certain "hybrid" instruments that combine equity or debt securities or depository interests with features of either commodity futures or option contracts, or both. The final rules establish an exemption from CFTC regulations under the Commodity Exchange Act ("CEA" or "Act") 7 U.S.C. 1 et seq., for these hybrid instruments, based on the limited nature of the instrument's exposure to price movements in the underlying commodity and in reliance on other applicable regulatory frameworks.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Gregory Kuserk, Industry Economist, or Barry Schachter, Financial Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581. Telephone: (202) 254–6990.

I. Introduction

A. The Proposed Rulemaking

On November 12, 1992, the Commission published for comment proposed regulations to amend its part 34 rules which exempt from regulation under the CEA certain hybrid instruments.[1] The Commission proposed to expand part 34, which previously applied only to hybrid instruments that combine characteristics of commodity option contracts with securities or depository interests, to include hybrid instruments which have a futures-like component as well. As proposed, amended part 34 would establish a new test to determine the predominant character of a hybrid instrument. Those hybrid instruments in which the commodity interest did not predominate, as measured by the new test, would be exempt from regulation under the CEA. These proposals were based, in part, on the direction provided by Congress that the Commission may move promptly to exercise the exemptive authority granted to the Commission contained in section 4(c)(5)(A) of the recently enacted Futures Trading Practices Act of 1992.[2] The Commission proposed to determine the predominant character of a hybrid instrument, by decomposing it into its constituent components and then comparing a measure of the commodity price exposure associated with the commodity-dependent component of the hybrid instrument to the value of its commodity-independent component. Under the proposed test, hybrid instruments would have been exempt from Commission regulation if the measured commodity price exposure is less than the present value of the instrument's commodity-independent payments.[3]

Nothing in the revised test, as proposed or adopted herein, however, would change the underlying requirement that to qualify for this exemption an instrument must be a hybrid instrument; that is, it must combine the characteristics of an equity or debt security or a depository instrument with a futures-like or option-like component. Accordingly, instruments having returns indexed to, or calculated on, the basis of the price of a commodity that are not *bona fide* equity or debt securities or depository instruments will not be viewed as hybrid instruments even though they may incorporate some features common to securities or depository instruments.

B. Comments Received

The comment period ended on December 28, 1992, after having been extended for an additional period of 14 days. The Commission received 26 comment letters on the proposal: Two from futures exchanges (one of which was a joint letter from three futures exchanges), one from a stock exchange, three from law firms, two from banks, one from an individual, four from trade associations, five from investment banks, two from bank holding companies, two from professional associations and four from federal regulatory agencies.

Most commenters generally supported the overall objectives of the rulemaking. They noted that the proposed rule would provide greater legal certainty as to the regulatory framework applicable to specific hybrid instruments, reduce duplicative regulation and enhance financial innovation in U.S. capital markets. Most commenters also expressed the belief that exempting such instruments would be in the public interest. Accordingly, they urged the Commission to act expeditiously in adopting final rules.

However, these commenters also tempered their support with suggestions to modify or clarify certain aspects of the rule. Most requested that the proposed definition of an eligible security be simplified and enhanced to include a wider range of securities. Several also requested that the exempt status of any severable component-hybrids be determined at the time of issuance. In addition to the recommended modifications, other commenters suggested various clarifications, including the use of alternative, but commercially acceptable ways, to value the option components of the instrument when applying the test.[4]

A few commenters, however, strongly disagreed with the proposed rules. Several expressed the view that the technique used to establish predominance is flawed because the test uses a volatility-sensitive measure of exposure for futures-like components. Several also raised a concern that the proposed rule would deprive purchasers of hybrid instruments of protection under the commodity futures laws for that portion of a hybrid instrument that is commodity-dependent. One comment letter argued that the Commission's proposed test is flawed because it treats "the return of the performance bond deposit as if it were part of the return on the customer's investment."[5]

II. Statutory Determinations

As stated above, section 4(c) requires that the Commission make a number of determinations in granting exemptions. If an exemption is granted pursuant to section 4(c) from the requirements of section 4(a), the determinations are that the requirement of section 4(a) should not be applied to the agreement, contract or transaction and that the exemption is: (1) Consistent with the public interest; (2) consistent with the purposes of the Act and (3) the agreement, contract or transaction "will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties" under the Act.[6] The Commission has considered each of these criteria in making its determination that this exemption of certain hybrid instruments is consistent with the public interest.[7]

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[1] 57 FR 53618 (November 12, 1992). The Notice of Proposed Rulemaking contains a fuller description of the statutory basis for the proposed rule and of the history regarding the Commission's regulation of hybrid instruments. It also contains a fuller description, and explanation, of the economic calculations necessary under the rule.

[2] By exempting eligible hybrids from all of the provisions of the Act (other than section 2(a)(1)(B)), the Commission does not intend to suggest that the Commission's jurisdiction and authority under these provisions will be affected, including its authority to determine compliance with the terms of the exemption. See section 4(d) of the Act. As suggested by the Securities and Exchange Commission ("SEC"), the Commission also reiterates that in enacting these final rules, the Commission intends to provide legal certainty to novel instruments without necessarily making a determination that such instruments are subject to the Act. In certain cases the determination as to jurisdiction regarding such novel instruments is not straightforward and as noted in the Commission's proposed rulemaking, the Commission is not required to make such a finding in order to exercise this exemptive authority. See, 57 FR 53618 footnote 2 (November 12, 1992). Moreover, the Commission also notes that participants may continue to rely on its Statutory Interpretation Concerning Certain Hybrid Instruments for existing and new hybrid instruments. 55 FR 13582 (April 11, 1990).

However, the Commission's intention to exempt a direct investment that contains an equity or debt security or depository instrument in combination with a commodity-dependent component, does not apply to a trading vehicle, such as a pooled account, formed for the purpose of trading commodity instruments. Although commodity pools issue securities, such as limited partnership interests, the issuance of such securities, however, does not alter the basic nature of the commodity pool as a vehicle for trading commodity instruments.

[3] By the term "payment" the Commission meant any interest, coupon or dividend payment as well as any return of principal or liquidation preference.

[4] A comment submitted by a stock exchange raised the issue of the Commission's ability, under the authority of the Act, to exempt instruments referred to as "index participations." That action is not being considered by the Commission as part of this rulemaking.

[5] In this regard, the Commission notes that the commenter incorrectly characterized the commodity-independent component of a hybrid instrument as a "performance deposit." The hybrid exemption clearly extends only to certain securities and depository instruments as defined by federal law and regulation, and as such, payment to the issuer is not in the nature of a "performance deposit."

[6] Section 4(c)(2), 7 U.S.C. 6(c)(2). This section also conditions an exemption upon the transaction being entered into solely between appropriate persons.

[7] Persons engaged in activity otherwise subject to the Act would not be exempt for such activity, even

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Public Interest and Purposes of the Act Determination

As is frequently the case when Congress grants a regulatory agency authority to act consistent with "the public interest and the purposes of" its enabling statute, little statutory elaboration is given to the full scope of the phrase. As commonly understood, however, an agency, such as the Commission, is to apply this standard against the template of its regulatory scheme. In this regard, the Conference Report states that the "public interest" under section 4(c) includes "the national public interests noted in the (Act), the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. The Conference Report goes on to state that "(t)he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78.

Hybrid instruments, in various forms, have been offered to the public under the Commission's Statutory Interpretation Concerning Certain Hybrid Instruments and part 34 of the Commission's regulations. The Commission's intent at the time was to provide regulatory certainty to hybrid instruments which are predominantly a debt, preferred equity or depository instrument but which also incorporate futures or commodity options in innovative formats.[8]

Hybrid instruments have widespread economic utility, offering a novel means of combining capital raising and risk shifting instruments in a single investment vehicle. Hybrid instruments can offer issuers means to raise capital through instruments that better fit the specific risk profile of the issuer. For example, the linking of debt repayment in a hybrid instrument issued by an oil company to the price of oil can allow the issuer to offer the possibility of a greater return in those instances when the issuer is better able to do so. This can allow issuers to obtain a lower cost of funds due to the willingness of the purchasers to pay a premium for the instruments. Purchasers of hybrid instruments may be willing to pay this premium to obtain instruments that fit specific risk management needs. Accordingly, the Commission is of the opinion that these innovative products offer economic utility and serve a *bona fide* capital raising function. In conclusion, the Commission believes that in consideration of the economic utility gained from these instruments, in combination with the protections afforded under the laws and regulations of other regulators, the exemption satisfies the statutory requirement that it be consistent with the public interest and the purposes of the Act.

Material Adverse Effect on Regulatory or Self-Regulatory Responsibilities

In making this determination, Congress indicated that the Commission is to consider such regulatory concerns as "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement."[9]

In adopting these final rules, the Commission has been careful to ensure that any instruments exempted hereunder from CFTC regulation will be covered by alternative regulatory regimes.[10] Hybrid instruments would be subject to the same general regulations, including applicable anti-fraud laws, as apply to the comparable non-hybrid interests and no further limitation on who may purchase, sell, offer or enter into hybrid instruments was therefore deemed necessary.

Moreover, the record before the Commission provides no basis to support a conclusion that the purposes of or regulating efforts under the Act have been adversely affected by the markets in hybrids or will be so affected by the issuance of these rules. In particular, the Commission is unaware that the issuance of these instruments has been a source of fraud or abuse or in any way had a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

In addition, the structure and size of these offerings has been such that, to date, they do not represent a relevant pricing mechanism for the general price discovery process of the underlying commodity. Nevertheless, the Commission has determined in the final rule to preclude the ability of hybrid instruments to settle by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This provision would prevent only settlement in delivery instruments specifically defined as such in exchange rules. It would not prevent settlement in the form of a commodity that is of deliverable grade or quality under exchange rules. The Commission believes that this requirement will not interfere with the ability of issuers to provide physical delivery alternatives to cash settlement but provides some protection against interference with deliverable supplies for settlement of designated futures or options contracts.[11] Thus, the Commission is amending the proposed rules to add § 34.3(a)(3)(iii) that will prohibit hybrid instruments from providing for settlement in the form of a delivery instrument such as an exchange-approved warehouse receipt or shipping certificate.

Finally, the Commission notes that under section 4(d) of the Act "the granting of an exemption under this section does not affect the authority of the Commission under any provision of this Act to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this Act or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements."

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if it were connected to their exempted hybrid activity. In this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act. Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any hybrid instruments in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment, recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act apply to the hybrid activities of their affiliated persons. As part of its ongoing review of its regulations, the Commission is considering revisions to Commission Rule 1.19. Suggestions by some commenters that Rule 1.19 should not be applicable to exempted hybrid instruments will be considered as part of this review.

[8] 54 FR 1128 (January 11, 1989) and 54 FR 1139 (January 11, 1989).

[9] H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[10] If a hybrid instrument which is otherwise subject to the Act fails to meet the conditions of this exemption, the Act and Commission regulations would continue to apply.

[11] An important regulatory concern of the Commission is to reduce the likelihood of pricing anomalies on designated contract markets. Such protection against interference with those deliverable supplies represented by delivery instruments facilitates this function. The Commission also specifically wishes to make clear that those provisions of sections 6(c) and 9(a)(2) of the Act concerning manipulation or attempted manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, would continue to apply to persons engaging in hybrid transactions.

Pursuant to its authority in new section 4(d) of the Act, the Commission intends routinely to consult with other regulators who have information concerning hybrid instruments, *e.g.*, the SEC and bank regulators, to seek to assure they include in their routine examination program these transactions. Under section 4(d) the Commission would exercise its authority to investigate, as appropriate.

Anticompetitive Considerations

Section 15 of the Act provides, in relevant part, that the Commission must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies and purposes of the Act in adopting any rule, regulation or exemption under section 4(c).[12] Thus, a formal analysis under the antitrust laws is not, by itself, dispositive of the issues raised by a rule.[13] As a result, the Commission is not compelled by section 15 to take the least anticompetitive course of action. Rather, where alternatives with varying degrees of regulatory benefit exist, the Commission may adopt the approach that appears to be most likely to achieve the objectives, policies and purposes of the Act, even if that approach is not the least anticompetitive.[14]

Accordingly, section 15 requires the Commission to balance the likely anticompetitive impact of adopting a rule against the objective, policy or purpose of the Act which the rule may further. And, although the Commission must consider the public interest in maintaining or promoting competition, it need not weigh this interest equally against an objective, policy or purpose of the Act being served by a rule in reaching its final determination concerning the adoption of the rule.

The Commission's consideration of the proposed rule, and its evaluation of the comments received in this regard, for the following reasons, has led it to conclude that any possible anticompetitive effects are clearly outweighed by the rule's furtherance of the policies, purposes and objectives of the Act. In terms of fair competition, the Commission believes that the exemption of hybrid instruments from Commission regulation does not place regulated exchange-traded instruments at a competitive disadvantage to the commodity components of hybrid instruments. First, hybrid instruments, assessed as a whole, are not economic substitutes for exchange traded futures or options contracts. Exchange traded futures and option contracts serve mainly as risk shifting and price discovery vehicles. Although the commodity-component of a hybrid instrument can also function in this way, hybrid instruments more generally serve as capital raising devices.[15]

Secondly, although certain hybrid instruments would be exempt from Commission regulation, they will remain subject to the rules and regulations governing the issuance and trading of comparable instruments that do not have a commodity-dependent component. Thus, by enacting the exemption, new and innovative products that are predominantly not futures or options contracts can be developed under regulations common to other similar products in their class, without unnecessary, duplicative regulation, thereby fostering healthy competition in those markets.

In conclusion, the part 34 rules as set forth below and adopted herein are supported by appropriate determinations made in accordance with the standards set forth in section 4c of the Act for the granting of exemptions.

III. Substantive Revisions

Based upon its consideration of the comments received, and its own analysis, the Commission, as discussed in greater detail below, is adopting the amendments to part 34, as proposed, with the following modifications.

A. Section 34.2 Definitions

1. Section 34.2(a)—Hybrid Instrument

As proposed, under the definition of "hybrid instrument," the predominance test would be reapplied at the time of severance, for those instruments that could be severed, to determine the exempt status of the individual components. Several commenters suggested, however, that reapplying the proposed test at the time of severance would cast uncertainty on the legality of the severance of the instrument, thereby making such instruments unmarketable. Additionally, determining the exempt status at the time of severance, they argued, would shift to the investor the burden of applying the test.

These commenters suggested that to ameliorate this problem, the test be applied at the time of the instrument's issuance to all of the instruments that would result from its severance. Thus, at issuance, the issuer of an instrument that contained potentially severable components would first test the instrument as a whole to determine whether it was predominantly a security, and secondly, the potential individual instruments resulting from its severance. A hybrid instrument would be exempt from Commission regulation only where the instrument as a whole and each of the resulting potential severable hybrid instruments were deemed to be predominantly a security or depository interest.[16]

The Commission agrees with this suggested treatment of instruments with severable components and is deleting the phrase "and is determined at the time of issuance or severance" from the definition of hybrid instrument. The determination as to whether a hybrid instrument that provides for severability is predominantly an equity or debt security or depository interest, therefore, is to be determined at the time of issuance.[17]

2. Section 34.2(f)—Option premium

The definition of "option premium," proposed as § 34.2(d), stated that the value of the premium must be calculated using the same method as that used to determine the issue price of the instrument. Several commenters noted that an option pricing model may not be used to determine the value of a commodity-dependent component, depending upon the component's nature. For example, it would be unnecessary to price the individual options that make up a synthetic futures position to determine its value. Instead, one could rely on the value of futures prices or some other pricing model which does not explicitly produce the value of the options.

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[12] Specifically section 15, as amended by section 502(b) of the 1992 Act, provides:

> The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under sections 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

[13] *See Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 690–691 (1975); *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963).

[14] *See, e.g., British American Commodity Options Corp.* v. *Bagley*, CCH Comm. Fut. L. Rep. ¶ 20,245 at 21,334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part*, 552 F.2d 482 (2d Cir. 1977), *cert. denied*, 98 S.Ct. 427 (1977).

[15] In this regard, it should be noted that the purchaser of a hybrid securities instrument, in addition to obtaining an exposure to commodity prices, also obtains an exposure to the risk-return profile associated with the security of the firm that is bundled in the hybrid instrument.

[16] For example, if after a year, a hybrid instrument could be split into two hybrid instruments—*i.e.* each containing a commodity-independent and commodity-dependent component—the predominance test would be applied at the time of issuance to the instrument as a whole and to each of the two potentially severable hybrid instruments. If the instrument as a whole and each of the potentially severable components met the criteria of the rule, the instrument would be exempted from CFTC regulation.

[17] A comment by the Department of the Treasury asked the Commission to clarify in the rule the timing of the application of the predominance test. In addition, they contended that the statement in proposed § 34.2(a) that a hybrid instrument is "determined at the time of issuance or severance" appears to refer to the determination as to whether an instrument is a hybrid instrument, not to whether or not the hybrid instrument meets the predominance test. The above changes address these points.

The Commission is clarifying the definition of option premium, now in § 34.2(f), to make explicit that users may rely on commercially reasonable valuation methods to price options when the option prices have not been calculated directly in pricing the instrument. Commercially reasonable valuation methods would be those that conform to generally accepted economic principles and are appropriate to the nature of the instrument being priced. An appropriate model to price the individual options of a commodity-dependent component should result in a value that reflects the value of the commodity-dependent component used to price the hybrid instrument.[18] Similarly, in cases of an index, a spread or a basket of commodities, where an option premium is not directly calculated, issuers could rely on an appropriate option pricing model to price the options for purposes of applying the test. *See*, 57 FR 53622, n. 13.

B. Section 34.3 Hybrid Instrument Exemption

1. Section 34.3(a)(1)—Eligible Security and Deposit Interests

In proposed § 34.3(a)(1), the Commission specified a list of various debt, preferred equity or depository interests that were eligible for exemption under the criteria of part 34. Most comments received by the Commission, including those of the SEC, expressed a view that the list of securities in this section unnecessarily restricts the type of hybrid instruments that could qualify for an exemption. Moreover, the rules, by enumeration, may unnecessarily prevent new securities, not yet in existence, from obtaining exemption without further positive action by the Commission. Most commenters viewed as irrelevant the type of security or depository interest included in a hybrid instrument. In their view, it is important only that the security or depository interest be the dominant component and that the instrument be subject to another regulatory regime.

The Commission finds that these comments have merit. As a consequence, the Commission is amending its proposal to recognize as a hybrid, any instrument which combines a debt or equity security within the meaning of section 2(1) of the Securities Act of 1933 with futures or option-like features.

Similarly, a commenter expressed the view that, the method of offering the instrument is not germane to its predominant character or nature. Rather, it is only important that a hybrid instrument which is predominantly a security or depository instrument be issued in accordance with applicable securities and/or banking laws and regulations. The Commission concurs with this view. Thus, decisions regarding the issuance of hybrids that are predominately depository instruments are properly determined by the applicable banking regulator. Accordingly, the Commission is deleting from the final rule the proposed restriction that a depository instrument be sold through a broker registered in accordance with section 15 of the Securities Exchange Act of 1934.

2. Section 34.3(a)(2)—The Predominance Test

One comment letter argued that the proposed test is flawed because, when applied to a hybrid with an embedded futures contract, "adding the put and call premiums * * * (measures) * * * the volatility of the underlying commodity, just as if one were writing a commodity straddle." Rather than this evidencing a flaw, the Commission believes that, because price volatility is the fundamental source of risk in the commodity, it is desirable that the measure of the commodity price exposure be related to the volatility of the underlying commodity.

The commenter further argued that in designing a test, "volatility cannot be confused with 'commodityness' " and that "the return of principal loaned cannot be treated as part of the return on an investment." The Commission is unpersuaded by both of these assertions. First, as stated above, price volatility is the fundamental source of risk in the commodity, and any measure of commodity price exposure that is not sensitive to this fact can result in an inequitable treatment of potential instruments. Second, the existence of counterparty risk and the fact that there is an opportunity cost of funds loaned for a period of time require that the principal be part of the determination of the commodity-independent value.[19]

The Commission has determined, nevertheless, that the rule could be further clarified. Accordingly, the Commission is adding definitions for commodity-independent value and commodity-dependent value to § 34.2 of the final rules and is making the changes noted below to § 34.3(a)(2). Section 34.2(c), added to the final rules, defines "commodity-independent value" to mean the present value of the payments attributable to the commodity-independent component of a hybrid instrument, the payments of which do not result from indexing to, or calculation by reference to, the price of a commodity.[20] New § 34.2(e) defines "commodity-dependent value" to mean, for purposes of application of Rule 34.3(a)(2), the value of a commodity dependent-component, which when decomposed into an option payout or payouts, is measured by the absolute net value of the put option premia with strike prices less than or equal to the reference price, as defined in § 34.2(g), plus the absolute net value of the call option premia with strike prices greater than or equal to the reference price, calculated as of the time of issuance of the hybrid instrument.

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[18] The phrase "value of the commodity-dependent component" used in this sense means the economic value of the commodity-dependent component, where, for example, in the case of a futures-like component, the long option premium is netted against the short option premium, as opposed to the sum of the absolute values of the long and short option premia. This differs from the definition in § 34.2(e) of the final rule which is intended to measure the commodity price exposure of the commodity-dependent component.

[19] The proposed test compares two values, the value of the commodity-independent component to the value of the commodity-dependent component. These values are, by necessity, measured differently, using those measures which are appropriate to ascertain the value of the particular component depending upon its nature. Accordingly, the exposure of the commodity-dependent component of the instrument is reflected by the value of individual option positions, and the value of the commodity-independent component is measured by its present value, a common means of valuation. Moreover, the proposed test achieves regulatory consistency because, under the test, instruments that produce an identical payout would qualify for exemption whether from a portfolio of hybrid instruments with simple commodity-dependent components or from a single instrument containing complex commodity-dependent components. In the simplest case the commodity-dependent component would be a single option combined with an equity or debt security or depository interest. The predominance test, as proposed, would then compare the value of that option to the value of the commodity-independent component. In order to treat a complex hybrid instrument in the same way as a portfolio of such simple hybrids that replicates the payout of the complex instrument, the relevant measure of the commodity-independent component of the complex instrument must be the value of the commodity-independent component. Such value is best reflected by the present value of all payments or considerations made by the issuer to the holder over the lifetime of the instrument.

[20] The term "commodity-dependent value," as defined in § 34.2(e), means the same as the term "commodity-price exposure" which was used in the proposed rule.

The remaining definitions are renumbered as a result of these additions. Finally, the predominance test of § 34.3(a)(2) is revised to conform to these revised definitions. It now states that for a hybrid instrument to be exempt, the sum of the commodity-dependent values of the commodity-dependent components must be less than the commodity-independent value of the commodity-independent component.[21]

3. Section 34.3(a)(3)—Maximum Loss Provisions of the Rules

Proposed § 34.3(a)(3) would have restricted the maximum loss to which a hybrid instrument holder could be subject. As proposed, the loss on any indexed coupon or interest payment could have been no greater than the commodity-independent coupon or interest payment and the loss on the indexed face value could not have exceeded the face value of the instrument. Several commenters indicated that this criterion could unnecessarily restrict an issuer's ability to allocate indexed returns between principal and interest in the design of the hybrid instrument.

The purpose of the maximum loss provision was not to place constraints on the structure of instruments that otherwise satisfy the criteria of part 34. Such restrictions on the overall structure are handled through the comparison of the commodity-dependent and commodity-independent components. Nevertheless, as stated in the Notice of Proposed Rulemaking, it is the Commission's view that instruments which allow commodity-dependent losses to accrue in excess of the face value of the instruments are more characteristic of a commodity interest than a debt, depository or equity interest. Accordingly, to restrict commodity-dependent losses while avoiding unnecessarily restricting the structure of hybrids deemed to be predominantly security or depository instruments, the Commission is revising § 34.3(a)(3). As revised, § 34.3(a)(3) provides that an issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity.[22]

4. Section 34.3(b)—Appropriate Persons

Under section 4(c)(2)(b)(i) of the Act, only transactions that are entered into between "appropriate persons" may be exempted from the requirements of section 4(a) of the Act. Proposed § 34.3(b) would have exempted instruments from regulation under the Act if, among other things, "the instrument is entered into solely between persons set forth in section 4(c)(3)(A)–(J) of the Act or otherwise permitted to enter into or purchase those instruments enumerated in paragraph (a)(1) of this section."

Many commenters requested the Commission to clarify that the exemption would be available to any participant who reasonably believes when entering into a hybrid instrument that the participant's counterparty qualifies as an "appropriate person." As revised, the final rule provides that, for purposes of this exemption, any person permitted by applicable securities or banking requirements to purchase or enter into the security or depository interest of the hybrid instrument would be an "appropriate person." Accordingly, to qualify for this exemption, the issuer or depository institution must have a reasonable basis to believe that its counterparty was permitted to purchase the instrument or to enter into the transaction under applicable federal or state securities or banking laws and regulations.[23]

IV. Other Comments

1. Instruments Beyond the Purview of the CEA and Commission Regulation

The Notice of Proposed Rulemaking noted that floating interest rate lending and depository instruments are not generally subject to the Act. See, 57 FR 53619 n. 8. Several commenters questioned whether this statement covers, in addition to depository or lending instruments, floating rate instruments that are securities. The Commission is clarifying that it did not intend to exclude floating interest rate securities from this list.

The Commission further stated that, regardless of the character of the formula or calculation used to determine the interest payment, floating rate instruments, the principal of which are returned upon maturity or redemption, are beyond the purview of the Act. The interest payment, however, in any period, must be determined solely by reference to interest rates (or indices thereof), or relationships between a constant and one or more interest rates (or indices thereof). See, 57 FR 53619 n. 8.

Several commenters asked whether this statement applies to instruments in which the principal is indexed to interest rates or indices thereof, and whether the term "formula" used in the statement includes multiples of interest rates, rate indices and spreads. In the view of the Commission, instruments in which the periodic payment is determined solely by reference to interest rates or indices, including multiples thereof, are beyond the purview of the Act. However, the Commission reiterates that instruments which are indexed to an interest rate in combination with indexation to a commodity, may fall under the purview of the Act. Of course, such an instrument nevertheless may be exempt from CFTC regulation under the terms of these part 34 rules.[24]

2. Reliance on Representations by Underwriters or Other Advisors

Several commenters noted that issuers typically rely on underwriters, selling agents or others to structure an offering in a manner which accomplishes the issuer's objectives and complies with applicable law. These commenters requested that the Commission clarify that an issuer should not be required to undertake its own analysis to assure compliance, but rather, that the issuer should be able to rely on the representation of the underwriter or other advisor as to compliance with these rules. In this regard, the

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[21] As a point of clarification, the Commission notes that a hybrid instrument may contain multiple commodity components—*e.g.*, an instrument that contains both indexed coupons and principal. For such instruments, a value for each of the commodity-dependent components would be calculated and summed to obtain an overall value of the commodity-dependent portion of the instrument. This measure would then be used in the application of § 34.3(a)(2). The Commission further notes that a commodity-dependent component is not necessarily limited to indexing on a single commodity, but may be referenced to an index, a spread or a basket of commodities.

[22] The Commission intends that the issuer must receive full payment of the instrument's purchase price, excluding commissions and other selling costs. However, this restriction is not intended to prevent the purchaser or holder from acquiring the instrument on margin in accordance with applicable federal securities margin requirements.

[23] The above changes eliminate commenter's concerns whether such a hybrid is an eligible security in secondary market transactions.

[24] The Commission also noted in footnote 6 that instruments which simply involve spot translations from one currency into another would not be deemed to be commodity-dependent. Reference made to several interpretative letters—*i.e.*, CFTC Advisory No. 39–88, June 23, 1988 (Interpretative Letter No. 88–10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,262) (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45–88, July 19, 1988 (Interpretative Letter No. 88–11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284) (notes indexed to dollar/Yen exchange rate); and CFTC Advisory No. 46–88, July 28, 1988 (Interpretative Letter No. 88–12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285) (notes indexed to dollar/foreign currency exchange rate)—was inadvertent.

Commission is of the opinion that although issuers may not necessarily themselves be required to perform all of the required calculations and analysis regarding whether an issue qualifies for exemption, and may rely on underwriters or other advisors for this analysis, they nevertheless must have a reasonable basis to believe that the instrument complies with these rules.

V. Other Matters

A. Paperwork Reduction Burden

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501, et seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. As the Commission noted in proposing these rules, it has determined that these rules do not impose any information collection requirements as defined by the PRA. No comments were received concerning the Commission's determination in this regard.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission notes that the final rules are not intended to introduce any new prohibition but, rather, to provide exemptive relief from existing regulatory requirements. The adoption of these rules would enable current and potential issuers of hybrid instruments to expand the line of instruments now offered and allow issuers who issue instruments that contain option-like and futures-like components to rely on a single rule to determine regulatory jurisdiction. The Commission anticipates that the rule amendments will dispel uncertainty and establish consistent regulatory requirements for various types of commodity-related hybrid instruments, and thereby facilitate novel forms of financial transactions while fulfilling the mandates of the CEA. The Commission continues to believe that these rules do not have a significant economic impact on a substantial number of small entities. No comments were received concerning the RFA implications of the proposed rules.

List of Subjects in 17 CFR Part 34

Commodity futures, Commodity options, Hybrid instruments.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4, 4c and 8a thereof, 7 U.S.C. 2, 6, 6c and 12a, the Commission hereby revises part 34 of title 17 of the Code of Federal Regulations as follows:

PART 34—REGULATION OF HYBRID INSTRUMENTS

Sec.
34.1 Scope
34.2 Definitions.
34.3 Hybrid instrument exemption.

Authority: 7 U.S.C. 2, 6, 6c and 12a.

§ 34.1 Scope.

The provisions of this part shall apply to any hybrid instrument which may be subject to the Act, and which has been entered into on or after October 23, 1974.

§ 34.2 Definitions.

(a) *Hybrid instruments.* Hybrid instrument means an equity or debt security or depository instrument as defined in § 34.3(a)(1) with one or more commodity-dependent components that have payment features similar to commodity futures or commodity option contracts or combinations thereof.

(b) *Commodity-independent component.* Commodity-independent component means the component of a hybrid instrument, the payments of which do not result from indexing to, or calculation by reference to, the price of a commodity.

(c) *Commodity-independent value.* Commodity-independent value means the present value of the payments attributable to the commodity-independent component calculated as of the time of issuance of the hybrid instrument.

(d) *Commodity-dependent component.* A commodity-dependent component means a component of a hybrid instrument, the payment of which results from indexing to, or calculation by reference to, the price of a commodity.

(e) *Commodity-dependent value.* For purposes of application of Rule 34.3(a)(2), a commodity-dependent value means the value of a commodity dependent-component, which when decomposed into an option payout or payouts, is measured by the absolute net value of the put option premia with strike prices less than or equal to the reference price plus the absolute net value of the call option premia with strike prices greater than or equal to the reference price, calculated as of the time of issuance of the hybrid instrument.

(f) *Option premium.* Option premium means the value of an option on the referenced commodity of the hybrid instrument, and calculated using the same method as that used to determine the issue price of the instrument, or where such premia are not explicitly calculated in determining the issue price of the instrument, the value of such options calculated using a commercially reasonable method appropriate to the instrument being priced.

(g) *Reference Price.* A reference price means a price nearest the current spot or forward price, whichever is used to price instrument, at which a commodity-dependent payment becomes non-zero, or, in the case where two potential reference prices exist, the price that results in the greatest commodity-dependent value.

§ 34.3 Hybrid instrument exemption.

(a) A hybrid instrument is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice or rendering other services with respect to such exempt hybrid instrument is exempt for such activity from all provisions of the Act (except in each case section 2(a)(1)(B)), provided the following terms and conditions are met:

(1) The instrument is:

(i) An equity or debt security within the meaning of section 2(1) of the Securities Act of 1933; or

(ii) A demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2 (b)(1), (c)(1) and (e), respectively, offered by an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act; an insured credit union as defined in section 101 of the Federal Credit Union Act; or a Federal or State branch or agency of a foreign bank as defined in section 1 of the International Banking Act;

(2) The sum of the commodity-dependent values of the commodity-dependent components is less than the commodity-independent value of the commodity-independent component;

(3) Provided that:

(i) An issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity; and

(ii) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(iii) The instrument does not provide for settlement in the form of a delivery instrument that is specified as such in the rules of a designed contract market;

(4) The instrument is initially issued or sold subject to applicable federal or state securities or banking laws to persons permitted thereunder to purchase or enter into the hybrid instrument.

Issued in Washington DC on January 14, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–1368 Filed 1–21–93; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 35

Exemption for Certain Swap Agreements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On November 12, 1992, the Commodity Futures Trading Commission ("Commission") published for comment proposed new part 35 (the "Proposal")[1] which would exempt swap agreements (as defined herein) meeting specified criteria from regulation under the Commodity Exchange Act (the "Act"). This rule was proposed pursuant to authority recently granted the Commission, a purpose of which is to give the Commission a means of improving the legal certainty of the market for swap agreements. The original 30 day comment period was extended 14 days and closed December 28, 1992.[2]

The Commission has carefully considered the comments received and, based upon its review of the comments and its own reconsideration of the proposed rule, has determined to adopt part 35 in modified form, as discussed herein.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel, Pat G. Nicolette, Deputy General Counsel, or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION:

I. Statutory and Other Background

Section 2(a)(1)(A) of the Commodity Exchange Act ("CEA" or "Act") grants the Commission exclusive jurisdiction over "accounts, agreements (including any transactions which is of the character of * * * an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any *other* board of trade, exchange, or market * * *." 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.[3]

On October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law.[4] This legislation added new subsections (c) and (d) to section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirement of section 4(a) or any other requirement of the Act other than section 2(a)(1)(B).[5] New section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract, or transaction will be entered into solely between appropriate persons listed in new section 4(c)(3), and the Commission determines that the agreement, contract, or transaction in question will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[6]

Finally, new section 4(c)(5)(B) of the Act authorizes the Commission to exercise "promptly" the exemptive authority granted in section 4(c)(1) and to exempt swap agreements that are not part of a fungible class of agreements that are standardized as to their material economic terms to the extent that these instruments may be considered as subject to regulation under the Act.[7]

Pursuant to this new authority, the Commission on November 5, 1992 proposed rules to be set forth in a new part 35 that generally would exempt certain swap agreements from the Act. 57 FR 53627 (Nov. 12, 1992). The comment period, which had been extended by the Commission, expired on December 28, 1992.

The Commission has received in excess of 30 comment letters on the Proposal. The commenters included four futures exchanges; commercial banks, investment banks and other swap market participants; bank, securities industry, futures industry, and other trade associations; bar associations and law firms; government departments and agencies and members of the U.S. House of Representatives. Comments received after December 28 have been considered to the extent the Commission has been able to do so. All commenters, except the four futures exchanges and one commodity trade association, supported the Proposal but suggested modifications or clarifications to certain aspects of its provisions. These commenters generally expressed the view that Part 35 would provide greater legal certainty to swap agreements, promote the development of certain financial safeguards in the swap market, and allow U.S. swap market participants to more effectively compete with foreign participants. Three of the four futures exchanges filed a joint comment letter (hereinafter the "Futures Exchanges Letter") which opposed the proposal on procedural and substantive grounds. Similar issues were raised in the other comment letter filed separately by a futures exchange.[8]

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[1] 57 FR 53627.

[2] 57 FR 58423.

[3] Sections 4(a), 4c(b) and 4c(c) of the Act; 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA specifically provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

[4] Pub. L. 102–546.

[5] Section 4(c)(1), 7 U.S.C. 6(c)(1), reads as follows:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[6] Section 4(c)(2), 7 U.S.C. 6(c)(2), reads as follows: The Commission shall not grant any exemption from any of the requirements of subsection (a) unless the Commission determines that—(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and (B) The agreement, contract, or transaction—(i) Will be entered into solely between appropriate persons; and (ii) Will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act. In this regard, the Conference Report on the 1992 Act states: The Conferees do not intend for this provision to allow an exchange or any other existing market to oppose the exemption of a new product solely on grounds that it may compete with or draw market share away from the existing market. H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[7] Specifically, new section 4(c)(5)(B) states the Commission may: (B) Promptly following the enactment of this subsection, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11, United States Code) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this Act.

As discussed below, the Commission believes that part 35, as adopted, is responsive to the concerns of the commenters and has determined that it meets the criteria for the issuance of exemptive rules set forth in the Act.

II. Discussion

A. Scope of Rule

Several comment letters, including the Futures Exchanges Letter, have noted the Commission's efforts, both legislative and regulatory, to provide legal certainty for swap agreements. The Commission's review of the regulatory issues raised by swap agreements resulted in the issuance in July 1989 of a Statement of Policy ("Policy Statement") concerning certain swap transactions which recognized a non-exclusive safe harbor for transactions satisfying the statement's criteria.[9] Although the Policy Statement provided much needed clarity at that time concerning the regulatory treatment of swaps, Congress, in enacting the 1992 Act, encouraged the Commission to act promptly to issue an exemption to promote legal certainty in this area.[10] New part 35 is intended to promote domestic and international market stability, reduce market and liquidity risks in financial markets, including those markets (such as futures exchanges) linked to the swap market, and eliminate a potential source of systemic risk. To the extent that swap agreements may be regarded as subject to the provisions of the Act, the rules provide that those swap agreements which meet the terms and conditions set forth therein are exempt from all provisions of the Act, except section 2(a)(1)(B).[11] Although the Commission proposed to reserve certain non-regulatory sections of the Act from the exemption, the Commission agrees with those commenters that this reservation is unnecessary.[12] Nevertheless, in response to suggestions made in the Futures Exchanges Letter and the letter from the fourth commodity exchange, and to the extent that swap agreements may be deemed to be subject to the Act, the Commission has determined specifically to reserve in these rules the antifraud authority applicable to futures contracts and option transactions set forth in Sections 4b and 4o of the Act and Commission Rule 32.9, 17 CFR 32.9 (1992).

The rule is retroactive and effective as of October 23, 1974, the date of enactment of the Commodity Futures Trading Commission Act of 1974. The exemption would thus implement Congressional intent that the exemption from the Act be available for all eligible swap agreements, regardless of when (subsequent to October 23, 1974) the agreements may have been entered into. The issuance of this rule should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has not made and is not obligated to make any such determination.[13]

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[8] The exchanges questioned the adequacy of the comment period for the rulemaking, noting that the Commission has employed a 60 day comment period in other instances. There is, of course, no legal impediment to the Commission's use of a 30 or 44 day comment period in this rulemaking, as the Administrative Procedure Act requires no fixed period for the submission of comments. *Phillips Petroleum Co. v. Environmental Protection Agency*, 803 F.2d 545 (10th Cir. 1986). The Commission notes, however, that its initial selection of 30 days was prompted by its desire to act "promptly" as Congress intended, and the fact that the swaps issue had already been subject to lengthy and careful consideration by both the Commission and the Congress over the past several years. See, e.g. Hearings on S. 207 before the Senate Committee on Agriculture, Nutrition, and Forestry, 102d Cong., 1st Sess. 452 (1991); Advanced Notice of Proposed Rulemaking, 52 FR 47022 (Dec 11, 1987).

[9] 54 FR 30694 (July 21, 1989). The Commission has also recognized, as have others, that certain swap transactions may fall within the Act's jurisdictional exclusions for forward contracts, or the so-called Treasury Amendment or within the Commission's regulatory trade option exemption. *Id.* at 30695, fn. 12–15. To the extent that swaps transactions do not meet the exemptive criteria of part 35, but nevertheless fall within the trade option exemption, they will continue to be covered by that provision.

[10] In granting exemptive authority to the Commission under new section 4(c), the Conferees on the 1992 Act: recognize[d] the need to create legal certainty for a number of existing categories of instruments which trade today outside the forum of a designated contract market. These instruments may contain some features similar to those of regulated exchange-traded products but are sufficiently different in their purpose, function, design, or other characteristics that, as a matter of policy, traditional futures regulation and the limitation of trading to the floor of an exchange may be unnecessary to protect the public interest and may create an inappropriate burden on commerce. H.R. Rep. No. 978, 102d Cong., 2d Sess. 80 (1992). The Futures Exchanges Letter questions whether the Commission was "directed" by Congress to act promptly in issuing this exemption. A fair reading of section 4(c)(5) and the Conference Report indicates a clear expectation by Congress that the Commission would act promptly. H.R. Rep. No. 978, 102d Cong., 2d Sess. 81 (1992). If the word "promptly" is to be given effect, as it must under rules of statutory construction, its plain meaning argues for agency action sooner rather than later. Indeed the Commission was urged "to act and act swiftly." *Id.* There is no requirement for the Commission to wait until the completion of the study requested by Congress. In fact, Congress expected the Commission to exercise its exemptive authority before the study was completed. *Id.* at 83. In addition, once an agency is granted rulemaking authority it may proceed on a timetable established in its discretion, absent statutory language to the contrary.

[11] Numerous commenters asked that the Commission clarify its views regarding the section 2(a)(1)(B) limitation, part of the Shad/Johnson Jurisdictional Accord. As stated in the Proposal, by enactment of this part 35 the Commission does not intend to affect transactions undertaken in accordance with the Policy Statement. Further, in enacting this limitation, Congress "did not intend to call into question the legality of securities-based swap or other transactions which occur in the private marketplace at the present time, that do not violate the Accord." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). Swap market participants may continue to rely on the Policy Statement for existing and new swap agreements, including securities-based swaps.

[12] These proposed reservations encompassed sections 1a and 2(b), definitions; section 4(c) and 4(d), the exemptive authority provisions; section 8 dealing with, among other things, the Commission's treatment of confidential information; and, section 12(e)(2)(A), regarding the non-applicability of certain state laws to agreements exempted under section 4(c). By eliminating the reservations as applied to swap agreements, the Commission does not intend to suggest that these sections or any other section of the Act do not continue to apply to the Commission or to its authority and obligations under these sections or to any person or transaction not eligible for the exemption. See section 4(d) of the Act. Pursuant to its authority in new section 4(d) of the Act, the Commission intends routinely to consult with other regulators who have information concerning swap transactions, *e.g.*, the Securities and Exchange Commission pursuant to its risk assessment authority under the Market Reform Act of 1990, the Federal Reserve Board and other bank regulators to seek to assure they include in their routine examination program these transactions. Under section 4(d), the Commission would exercise its authority to investigate, as appropriate. The Commission also specifically wishes to make clear that those provisions of sections 69(c) and 9(a)(2) of the Act concerning manipulation or attempted manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, would continue to apply to persons engaging in swap agreements but not to the swap agreements themselves. Part 35 does not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), including applicable securities laws or antifraud statutes of general applicability, to these swap agreements or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations. H.R. Rep. No. 978, 102d Cong., 2d Sess. 83 (1992).

[13] The contention expressed in the Futures Exchanges Letter that the Commission must make such a determination ignores the express language of 4(c)(5) and misstates Congressional intent as expressed in the Conference Report: The Conferees do not intend that the exercise of exemptive authority * * * would require any determination beforehand that the agreement * * * is subject to the Act * * *. Rather than making a finding as to

In enacting this exemptive rule, the Commission is also acting under its plenary authority under section 4c(b) of the Act with respect to swap agreements that may be regarded as commodity options.[14] The rule also exempts, as permitted by section 4(c)(1), all persons and entities for the activity of offering, entering into, rendering advice, or rendering other services with respect to swap agreements covered by the rule. Commenters indicated that the placement of this language in the rule was confusing. Accordingly, a clarifying modification has been made. Such persons, however, engaged in activity otherwise subject to the Act would not be exempt for such activity, even if it were connected to their exempted swaps activity. Also in this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting, or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act.[15] Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any swap agreement in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act apply to the swap agreement activities of their affiliated persons.

In adopting part 35, it is the intention of the Commission to exempt from regulation (to the full extent permissible by the Act) all swap agreements which satisfy the requirements of the rule and which may otherwise be subject to regulation under the Act.

B. Definition of Swap Agreement

Rule 35.1(b)(1) adopts the definition of "swap agreement" incorporated into new section 4(c)(5)(B) and specifically set forth in 11 U.S.C. 101(55). Although one commenter thought the definition was too restrictive and several encouraged broader application, the majority of those who commented on the use of this definition stated their support for its adoption. This definition reflects Congressional intent that the Commission endeavor to give legal certainty to swap agreements with differing economic and financial characteristics. In addition, as noted by one commenter, the use of the same definition that is used in the Bankruptcy Code will help to create greater certainty in the marketplace for swaps, given the extent to which market certainty has been enhanced by the exemption of "swap agreements" (as defined in the Bankruptcy Code) from the automatic stay and other provisions of the Bankruptcy Code. The definition reflects the diversity and evolving nature of swap transactions in the marketplace.[16] The Commission believes the terms and conditions of Rule 35.2 adequately limit the scope of activity permitted under the exemption.

C. Eligible Swap Participants

Most commenters suggested various modifications to the proposed definition of "appropriate person." The Commission has considered these comments and the final rule reflects the changes discussed below. In addition, in order to avoid confusion with the use in section 4(c)(3) of the Act of the phrase "appropriate person," the final rule substitutes the phrase "eligible swap participant." No substantive change is intended by this new phrase.

In the Proposal, the Commission generally used the list of "appropriate persons" set forth in new section 4(c)(3)(A) through (J) and utilized the authority granted by section 4(c)(3)(K) to determine other persons to be "appropriate persons" provided that a natural person would only qualify to the extent his or her net worth exceeds $5 million or total assets exceed $10 million. This approach is consistent with Congressional intent that the Commission may limit the terms of an exemption to some, but not all, of the listed categories of appropriate persons.[17]

In defining "eligible swap participant" in the final rule, the basic list is retained but is refined to clarify issues raised by the commenters. As the Act specifies that the swap agreement may only be "entered into" by appropriate persons, this determination is to be made at the inception of the transaction.[18] Further, it is sufficient that the parties have a reasonable basis to believe that the other party is an eligible swap participant at such time.[19]

Many commenters noted the international scope of the swaps market. While most of the categories of eligible swap participants are not limited to U.S. persons, subsections (iv), (v), (vii), (ix), and (x) of proposed Rule 35.1(b)(2) reference persons regulated under the United States law applicable to each. Thus, these references exclude regulated foreign persons performing similar roles in their home jurisdictions. Consistent with the policy reflected in section 4(c)(3)(K), the Commission believes that regulated foreign persons are "appropriate persons" and has modified these subsections of the final rule to include such persons as "eligible swap participants."[20]

The eligible swap participant must be acting on its own behalf or on behalf of another eligible swap participant as a counterparty in order to qualify under the Rule. A conforming change to Rule 35.1(b)(2)(i) has therefore been made. In most circumstances, the Commission will not "look through" eligible swap participants to their investors to apply the qualifications of Rule 35.1(b)(2) again. However, investment companies, commodity pools or entities which are collective investment vehicles formed solely for the specific purpose of constituting an eligible swap participant to enter into swap agreements will not be considered eligible swap participants

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whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption. H.R. Rep. No. 978, 102 Cong., 2d Sess. 82–83 (1992). The Futures Exchanges Letter advocates the view that to provide legal certainty to swap agreements the Commission need only exempt such agreements from the requirements of section 4(a) of the Act. The Commission does not read Congressional intent or its authority under section 4(c) so narrowly and has determined to exempt swap agreements which satisfy the requirements of the rule from regulation under the Act.

[14] See also footnote 12, *supra.*

[15] As part of its ongoing review of its regulations, the Commission is considering revisions to Commission Rule 1.19. Suggestions by some commenters that Rule 1.19 should not be applicable to exempted swap agreements will be considered as part of this review.

[16] The words "any similar agreement" in the definition includes any agreement with a similar structure to those transactions expressly included in the definition (e.g., a cap, collar, or floor) without regard to the nature of the underlying commodity interest involved.

[17] H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[18] There is no requirement that a swap agreement be terminated if an eligible swap participant no longer qualifies as such. However, in order to permit the orderly winding-down of the positions of counterparties undergoing financial or other distress, an eligible swap participant may enter into a "closing transaction" with a counterparty even if the counterparty no longer qualifies as an eligible swap participant, provided however, that such closing transaction terminates all obligations between the counterparties to the swap. Under this circumstance, the Commission will consider such non-qualifying counterparty an "eligible swap participant" solely for the purpose of terminating any outstanding swap agreements.

[19] An eligible swap participant that has a reasonable basis to believe its counterparty is also an eligible swap participant when it enters into a master agreement may rely on such representation continuing, absent information to the contrary.

[20] The Commission considered comments that all non-United States persons be included in the definition of "eligible swap participant." However, as most categories of eligible swap participants are not limited to U.S. persons, this change accomplishes much the same result without favoring foreign participants over United States participants.

under the exemption. Conforming changes to Rule 35.1(b)(2) have been made to make this clear.

In the Proposal the Commission requested specific comment regarding the net worth and asset tests for "appropriate persons." A number of commenters indicated that the financial thresholds should be lower, particularly for individuals (for example, that the "accredited investor" threshold of Rule 501 under the Securities Act of 1933 be used), and that no financial thresholds should be imposed on individuals who are otherwise registered and regulated under the Act or the Securities Exchange Act of 1934 (such as broker-dealers, futures commission merchants, commodity trading advisors, and investment advisers).[21] Others noted the lower thresholds applicable to partnerships, corporations, or proprietorships under proposed Rule 35.1(b)(2)(vi). At least one commenter indicated that the proposed list of appropriate persons went beyond the existing market.

These financial thresholds are applied as an indication of financial sophistication and background. No commenters suggested that the proposed financial thresholds would adversely affect the market as conducted today, and on further consideration the Commission has determined to alter the financial tests for corporations and other entities, employee benefit plans and natural persons and to require commodity pools to have assets of at least $5,000,000.

In the final rule the Commission has increased the financial threshold tests for entities specified in Rule 35.1(b)(2)(vi) and natural persons to $10 million in total assets, and eliminated the net worth threshold. The Commission has added an alternative test for entities specified in Rule 35.1(b)(2)(vi) having net worth of at least $1 million and which enter into the swap agreement in connection with their businesses or to manage the risk of an asset or liability owned or incurred in the conduct of their businesses or reasonably likely to be owned or incurred in the conduct of their businesses.[22] Finally, the Commission has increased the asset test for employee benefit plans to $5,000,000.

D. Other Conditions

In addition to the condition that the swap agreement be entered into solely between eligible swap participants as specified in Rule 35.2(a), the final rule imposes three further conditions.[23]

First, as specified by section 4(c)(5) of the Act, Rule 35.2(b) provides that swap agreements may not be part of a fungible class of agreements that are standardized as to their material economic terms.[24] This condition is designed to assure that the exemption does not encompass the establishment of a market in swap agreements, the terms of which are fixed and are not subject to negotiation, that functions essentially in the same manner as an exchange but for the bilateral execution of transactions.[25] Standardization of material economic terms is a necessary, but not sufficient, condition for fungibility, as other factors, such as individual negotiation of other material terms or counterparty credit risk also affect fungibility.[26] As a result of, for example, the existence of common conventions in related markets or the hedging of risks incident to common assets or liabilities, a swap agreement may have the same economic terms but yet not be one of a fungible class of standardized agreements. For example, parties hedging the same or similar asset, such as a five year bond with semi-annual interest coupons, may individually negotiate the same economic terms to match cash flows, yet negotiate other terms and conditions, including the consideration of the creditworthiness of the counterparty.

Standardization of terms that are not material economic terms, for example, definitions, representations and warranties, and default and remedies provisions, as found in certain forms and master agreements published by various associations, is not by itself violative of this requirement.[27] Moreover, a swap agreement would not be considered fungible or standardized simply because it is subject to a netting system or arrangement permitted under paragraph (d) of the rule provided the material economic terms of the swap agreement are subject to individual negotiation by the parties.

Second, Rule 35.2(c) requires that the creditworthiness of any party having an actual or potential obligation under the swap agreement be a material consideration in entering into or determining the terms of the swap agreement including pricing, cost, or credit enhancement terms.[28] The standard is intended to be objective, and does not require parties to actually negotiate (or demonstrate that they have negotiated) particular provisions. The clarifying phrase in the rule regarding "any party having an actual or potential future obligation" refers to obligations that create credit risk, not to ancillary obligations, such as obligations to deliver documents or perform (or refrain from performing) financial or business-related covenants. By this criterion, at this time, the exemption does not extend to transactions that are subject to a clearing system where the credit risk of individual members of the system to each other in a transaction to which each is a counterparty is effectively eliminated and replaced by a system of mutualized risk of loss that binds members generally whether or not they are counterparties to the original transaction.[29]

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[21] The Futures Exchanges Letter suggested that the financial threshold for natural person floor traders and floor brokers be eliminated if such person's activities are guaranteed by a clearing member. Although the Commission has declined to make this change, it has added an alternative test for proprietorships as described above.

[22] To avoid uncertainty in the application of Rule 35.1(b)(2)(vi), the Commission is deleting reference to "business" before "entities" in this subsection. In addition, based upon comments received, the Commission has added credit unions to 35.1(b)(2)(ii) and made minor clarifying changes to subsections (vi) and (vii). Some commenters requested that the Commission specifically list entities, such as 501(c)(3) organizations under the Internal Revenue Code, in subsection (viii). The Commission believes such entities are contained within this subsection, and such specificity is unnecessary.

[23] The Futures Exchanges Letter proposes that the Commission add as a condition to the exemption that a self-regulatory organization ("SRO") be established to govern the swap market. Although couched in terms of the benefits of self-regulation, the objective underlying this proposal is revealed by the exchanges' statement that "(b)y the time the exchanges are ready to compete effectively * * * the dealers should have made and effectuated their SRO selection." Futures Exchanges Letter at 102. While it may be appropriate in some circumstances or for other reasons to condition an exemption on the existence or establishment of an SRO, the Commission declines to so condition this exemption and thus delay its implementation.

[24] The phrase "material economic terms" is intended to encompass terms that define the rights and obligations of the parties under the swap agreement and that, as a result, may affect the value of the swap at origination or thereafter. Examples of such terms may include notional amount, amortization, maturity, payment dates, fixed and floating rates or prices (including the methods by which such rates or prices may be determined), payment computation methodologies, and any rights to adjust any of the foregoing.

[25] The Futures Exchanges Letter questions the use of this condition and, in particular, one of the Commission's explanations of its purpose. Futures Exchanges Letter at 76–78. Distilled to its essence, the exchanges argue that the Commission's explanation is ambiguous because some swap agreements are as standardized as exchange traded futures, and that a swaps market which functions essentially as an exchange may exist today. The Commission does not find the purposes of this condition to be ambiguous as the exchanges assert. As to the assertion that some swap agreements are as standardized as exchange-traded futures contracts, this ignores the fact that most terms of exchange-traded futures contracts are set by the contract market, while all terms of swap agreements are subject to negotiation. As to the exchanges' other contention, a swaps market that today functions as an exchange would not be entitled to a part 35 exemption since the rule precludes exchange trading. See also Rule 35.2(d). Of course, what constitutes the "essential functions" of an "exchange" is subject to reasonable dispute but is generally left to an expert agency to decide. *Cf. Board of Trade* versus *Securities and Exchange Commission*, 883 F.2d 525 (7th Cir. 1989).

[26] One commenter suggested that legal certainty would be increased if the Commission deleted 35.2(b) and stated that a swap agreement which is assignable and transferable only with counterparty consent and/or the obligations thereunder are terminable, absent default, only with counterparty consent, is not part of a fungible class of agreements that are standardized as to their material economic terms. While the Commission agrees that transferability is one indicia of fungibility, other facts or circumstances may also determine whether or not a swap agreement meets the requirements of Rule 35.2(b).

[27] Standardization of these terms in published forms is not dissimilar to the standardization of terms for other areas, such as letters of credit. The publication of such standard terms facilitates communications and negotiations, but does not mean the provisions themselves are not subject to substantial negotiation.

[28] The Futures Exchanges Letter asserted that the Commission's choice of certain conditions in the Proposal was an impermissible attempt to employ the criteria from the Senate version of the 1992 Act

Based upon comments from futures exchanges and others, the Commission has revised the proviso to Rule 35.2(b) and (d) to clarify its meaning and to distinguish bilateral arrangements or facilities from multiparty arrangements or facilities. Under the proviso, bilateral arrangements for the netting of obligations to make payments or transfers of property, including margin or collateral, would be permitted. Multiparty netting arrangements would also be permitted, provided that the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.

In addition, the "creditworthiness" condition is not intended to limit the ability of parties to undertake any bilateral collateral or margining arrangements to address credit issues. By expanding the ability of swap participants to utilize collateral and margin arrangements beyond that which is explicitly permitted under the Policy Statement, these rules should promote arrangements that will reduce risk within the financial system.[30]

Third, Rule 35.2(d) provides that the swap agreement may not be entered into and traded on or through a multilateral transaction execution facility. In this context, a multilateral transaction execution facility is a physical or electronic facility in which all market makers and other participants that are members simultaneously have the ability to execute transactions and bind both parties by accepting offers which are made by one member and open to all members of the facility. This limitation is not intended to preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as "broker screens," to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.[31] The Commission understands such facilities are in use today.

The Commission believes that transaction execution facilities could provide important benefits in terms of increased liquidity and price transparency. However, as is the case with clearing facilities, transaction execution facilities for swap agreements are not yet in existence, and present different regulatory issues than are raised by the exemption provided by the final rule. Thus, transaction execution facilities are beyond the scope of part 35 as adopted today. Consistent with the proviso in the final rule, however, the Commission invites applications for appropriate exemptive relief for such facilities as they are developed.

E. Statutory Determinations

As stated above, section 4(c) requires that the Commission make a number of determinations in granting exemptions.[32] If an exemption is granted pursuant to section 4(c) from the requirements of section 4(a), the determinations are that the requirement of section 4(a) should not be applied to the agreement, contract, or transaction and that the exemption is (1) consistent with the public interest; (2) consistent with the purposes of the Act; and (3) the agreement, contract, or transaction "will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties" under the Act.[33] With regard to the exchange trading requirement of section 4(a), the swaps market presently exists outside the forum of exchange trading

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which had mandated a swap exemption. However, as enacted, section 4(c)(1) expressly empowers the Commission to grant exemptions on "stated terms or conditions." As the Conferees recognized, the Commission may impose conditions on the swaps exemption "beyond those of lack of fungibility and standardization." H. Rep. 978, 102 Cong., 2d Sess. at 82 (1992).

[29] As recognized by the Futures Exchanges Letter, such a mutualized system would constitute a clearing system not unlike those employed by the exchanges. See also footnote 30, *infra*.

[30] The Commission shares the goal of financial system risk reduction as expressed in the comment letters from the Department of the Treasury, the Board of Governors of the Federal Reserve System ("Board"), and Office of the Comptroller of the Currency ("OCC"). The Commission understands these comment letters to generally support the promulgation of part 35 but to express concern that Commission rules should go further to promote the reduction of systemic risk. In this regard, while the OCC and the Board endorsed the development of appropriately structured multilateral payment netting for swaps, the Board also observed that the Commission should permit multilateral settlement (or clearing) so risk of loss could be mutualized. The Commission believes that a clearing house system for swap agreements could be beneficial to participants and the public generally. However, as such mechanisms are not yet in existence, and may take many forms and raise different regulatory concerns depending upon their structure or participants or whether another regulatory regime is applicable, the Commission will consider the terms and conditions of such an exemption for swap clearing houses in the context of specific proposals from exchanges, other regulators, or others. The Commission has added a proviso to the final rule to make clear that in this regard any party may apply for exemptions from the Act and that the Commission will consider the terms and conditions that may be appropriate, including other applicable regulatory regimes. While not limiting exemptions to those conditioned upon another regulatory scheme (and not otherwise limiting the imposition of conditions) the Commission is mindful of the costs of duplicative regulation. The Commission intends to give market participants maximum latitude in developing multilateral mechanisms to control credit and settlement risk which may reduce systemic risk. The new proviso reflects the Commission's determination to encourage innovation in developing the most efficient and effective types of systemic risk reduction. The Commission has previously recognized the virtues of clearing systems that mutualize risk and do not believe that this Rule should disadvantage the development of such systems. The Commission believes that the design of swap clearing facilities and the services that the facility will offer should be driven by the needs and desires of swap market participants.

[31] The Futures Exchanges Letter appears to confuse electronic and computer facilities which provide information to those having access to the facility, with physical or electronic facilities which allow participants to execute and trade instruments or contracts. A computer-based trading system for swap agreements is beyond the scope of these rules but may be the proper subject of the Commission's further exercise of its authority under section 4(c). See also footnote 30, *supra*.

[32] Contrary to the contention of the Futures Exchanges Letter, the plain meaning of the statute requires only that the determinations be made when the exemption is granted, but not when an exemption is merely proposed. *See* section 4(c)(2). The four exchanges also contend that the Proposal violates the Administrative Procedure Act ("APA") by failing to provide, among other things, an opportunity for "meaningful comment." The APA requires that a notice of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b). In this instance the Proposal met both tests: it not only provided a description of the subject issues involved, it set forth the full text of the proposed rule. Further, this APA provision has been interpreted by one court to mean that the notice should be of sufficient detail and rationale to permit parties to comment meaningfully. *See, Fertilizer Inst.* v. *EPA*, 935 F 2d 1302, 1310–11 (D.C. Cir. 1991). The numerous detailed comment letters received support the conclusion that an opportunity for meaningful comment was provided by the Proposal. Further, despite their protestations to the contrary, the four futures exchanges who filed in opposition (and, in particular, the 108-page Futures Exchanges Letter) appeared to be sufficiently informed of the Commission's rationale to comment "meaningfully" on the Proposal.

[33] Section 4(c)(2), 7 U.S.C. 6(c)(2). This section also places a condition on an exemption from section 4(a) of the Act that the transaction will be entered into solely between appropriate persons. As discussed above, the Commission has made this a prerequisite for the swap agreement to qualify for exemption under Part 35.

and the Commission has determined that the requirement should not be applied to swap agreements meeting the conditions of the exemption. Indeed, one of the prerequisites for the exemption is that the swaps agreement not be standardized like exchange products or entered into or traded on a multilateral execution transaction facility.[34]

Public Interest and Purposes of the Act Determination

As is frequently the case when Congress grants a regulatory agency authority to act consistent with "the public interest and the purposes of" its enabling statute, little statutory elaboration is given to the full scope of the phrase. As commonly understood, however, an agency, such as the Commission, is to apply this standard against the template of its regulatory scheme. In this regard, the Conference Report states that the "public interest" under section 4(c) includes "the national public interests noted in the (Act), the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992).[35] The Conference Report goes on to state that "(t)he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." *Id.*

Swap agreements are used by corporations, financial institutions, governments, governmental entities, and others, and are important tools that are used by these entities to hedge or manage financial risk and accomplish other financial objectives. In issuing this exemption, the legal risk (that the agreements would be unenforceable), and thus financial risk, is reduced within the financial markets and that legal certainty contributes to the preservation of the financial integrity of the markets.[36] By removing or reducing uncertainty, the final rule should promote innovation in the swaps market by allowing participants to negotiate and structure transactions that most effectively address their economic needs.[37]

Further, the exemption will assist United States financial institutions to compete with foreign rivals in the highly competitive market for swaps by removing a regulatory uncertainty with respect to the market in the United States that has not been present in most other major financial and industrial countries. In this regard, the exchanges' comment that "fair competition" under section 4(c) means that the rule as finalized must permit the exchanges to conduct a swaps market in their own manner is without merit. Exchanges and their members are not excluded from these rules, however, and may participate in swap agreements on the same terms and conditions that apply to all other eligible swaps participants.[38]

Material Adverse Effect on Regulatory or Self-Regulatory Responsibilities

In making this determination, Congress indicated that the Commission is to consider such regulatory concerns as "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement."[39]

The record before the Commission does not support a conclusion that the purposes of the Act or the Commission's regulatory efforts thereunder have been adversely affected by the swaps market or will be so affected by the issuance of this exemption. Swap transactions have been entered into by a variety of participants for more than a decade, and the number of defaults appears to be low.[40] Nor do allegations of fraud appear to be an issue in this market. The Commission has addressed concerns regarding financial integrity and customer protection through the requirement that swaps only be entered into between eligible swap participants and that, as provided in Rule 35.2(b), creditworthiness of the parties be a material consideration. This approach precludes anonymous transactions and ensures that swap agreements will be limited to those persons who are sophisticated or financially able to bear risks associated with the transactions.[41]

The Commission also notes that the existence of the swap market, which by any measurement (*e.g.*, total notional amount at year end 1991 of $4 trillion) has not to date affected the ability of the futures exchanges to fulfill their self-regulatory duties.[42] It is widely acknowledged that the futures market and the swap market are linked, with swap market participants using certain exchange traded futures as hedging vehicles.[43] By creating a more certain legal environment for swaps, the potential for systemic risk is reduced, and there is no reason to conclude that the exchanges' self-regulatory responsibilities will be adversely affected by permitting the swaps market to continue on this basis.[44]

Anticompetitive Considerations

Section 15 of the Act provides, in relevant part, that the Commission must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies, and purposes of the Act in adopting any rule, regulation, or exemption under section 4(c).[45] Thus, a formal analysis under the antitrust laws is not, by itself, dispositive of the issues raised by a rule.[46] As a result, the Commission is not compelled by section 15 to take the least anticompetitive course of action. Rather, where alternatives with varying degrees of regulatory benefit exist, the Commission may adopt the approach that appears to be most likely to achieve the objectives, policies, and purposes of the Act, even if that approach is not the least anticompetitive.[47]

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[34] See discussion above regarding Rule 35.2(c) and (d). See also H. Rep. No. 102–978, 102d Cong., 2d Sess. 80 (1992).

[35] The Futures Exchanges Letter notes that in addressing certain elements of the public interest for futures trading, Congress has indicated that contract market designation and regulation under the Act is necessary to avoid creating an undue burden on commerce. *See* section 3 of the Act. Seventy years after the enactment of section 3, however, Congress enacted section 4(c) authorizing exemptions from section 4(a) of the Act because "traditional futures regulation * * * may create an inappropriate burden on commerce." H.R. Rep. No. 978, 102d Cong., 2d Sess. 80 (1992).

[36] The Futures Exchanges Letter appears to say in several places that the Commission must find that the exemption provides legal certainty. While this is certainly a goal of the final rule, it is not a statutorily mandated finding which the Commission must make.

[37] As noted in several comment letters, including comments from federal regulators, permitting mark-to-market margin and collateral and multiparty payment netting systems reduces financial risk and encourages responsible economic innovation.

[38] In considering fair competition, Congress expected that "the Commission will apply consistent standards based on the underlying facts and circumstances of the transaction and markets being considered and may make distinctions between exchanges and other markets, taking into account the particular facts and circumstances involved * * * where such distinctions are not arbitrary and capricious." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992).

[39] H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[40] Azarchs, "Banks Face Manageable Risks in Derivative Businesses," Standard & Poors Credit Week, November 1992.

[41] In enacting the 1992 Act, Congress explicitly authorized exemptions from all provisions of the Act (except 2(a)(1)(B)) and simultaneously enacted a "conforming amendment" to 12(e)(2) explicitly acknowledging that state antifraud statutes of general applicability would continue to apply to exempted transactions. See also footnote 12, *supra*.

[42] Indeed, in their lengthy submissions, the futures exchanges do not claim that approval of the Proposal will adversely affect their self-regulatory responsibilities.

[43] See, *e.g.*, Thompson, "Oil Swaps, A Potential Source of New Business for NYMEX," Futures Industry, November–December 1992.

[44] The Commission is unaware of any swap agreements that provide for settlement by tendering a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. Swap agreements of this kind could have an effect upon deliverable supplies for settlement of designated futures or option contracts and, accordingly, the creation of such agreements should occur only after consultation with the Commission.

[45] Specifically section 15, as amended by section 502(b) of the 1992 Act, provides: The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving

Accordingly, section 15 requires the Commission to balance the likely anticompetitive impact of adopting a rule against the objective, policy, or purpose of the Act which the rule may further. And, although the Commission must consider the public interest in maintaining or promoting competition, it need not weigh this interest equally against an objective, policy, or purpose of the Act being served by a rule in reaching its final determination concerning the adoption of the rule.

The Commission's consideration of the proposed rule and its evaluation of the comments received in this regard has led it to conclude that any possible anticompetitive effects are clearly outweighed by the rule's furtherance of the policies, purposes, and objectives of the Act for the following reasons.

First, the proposal does not appear to raise any significant competitive issues. As several commenters noted, the exemption, by improving the legal certainty of the market for swap agreements, will increase growth, innovation, and competition in this market. Competition, in particular, will be promoted because of the flexibility provided by the exemption concerning persons who may appropriately enter swap transactions. In this regard, in addition to those now participating in swap transactions under the Commission's Policy Statement, the exemption would allow other persons, including futures exchanges or affiliates thereof, to engage in swap transactions on the same basis as all other participants.[48]

Second, the exemption furthers a fundamental objective of the Act, i.e., implementing new section 4(c)(5)(B) of the Act, which authorizes the Commission to exercise "promptly" its exemptive authority concerning swap agreements of the kind described therein. In this regard, the Conference Report on the 1992 Act notes that "the Conferees expect and strongly encourage the Commission to use its new exemptive powers promptly upon enactment in * * * areas where significant concerns of legal uncertainty have arisen (including) * * * swap * * *."[49] The Commission believes that the exemption adopted herein is responsive to these Congressional concerns and is properly circumscribed in accordance with the criteria set forth in the 1992 Act.

Finally, the Commission is unaware of any anticompetitive practices or other discernible adverse effects arising during the evolution and development of the swaps market, particularly as the market has developed in reliance on its Swaps Policy Statement. It is therefore reasonable to expect that the exemption will be similarly devoid of adverse effects on competition.

In conclusion, the part 35 rules as set forth below and adopted herein are supported by appropriate determinations made in accordance with the standards set forth in section 4(c) of the Act for the granting of exemptions.

F. Future Exemptive Relief

The Commission will, consistent with section 4(c), consider further exemptive relief on its own initiative or upon application by any person (including futures exchanges) for agreements, transactions, or contracts (including classes thereof) not addressed in this rule. To the extent that market participants wish to use or establish a multilateral transaction execution facility for swap transactions, or clearing systems involving mutualized risk or multiparty netting of payment obligations, the Commission will evaluate the terms and conditions, if any, that would be appropriate under section 4(c) of the Act in connection with any request for exemptive relief involving such a facility.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization." 5 U.S.C. 601(6).[50] The Commission previously has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets,[51] futures commission merchants,[52] registered commodity pool operators,[53] and large traders[54] should not be considered small entities for purposes of the RFA.

The Commission continues to believe that it is unlikely that firms defined as small businesses under section 3 of the Small Business Act could offer or be offered swap agreements and thus be affected by the proposed rule exempting such agreements. Further, the proposed rule would not add any legal, accounting, consulting, or expert costs but rather would broaden the categories of permissible products sold other than on designated exchanges. The determination of whether a swap agreement would qualify for the proposed exemption requires minimal analysis of data that will be readily accessible to the offeror.

No comments were received with respect to the RFA implications of new part 35.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. As the Commission noted in proposing part 35, it has determined that proposed part 35 does not impose any information

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the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under sections 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

[46] See *Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 690–691 (1975); *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963).

[47] See, *e.g.*, *British American Commodity Options Corp.* v. *Bagley*, Comm. Fut. L. Rep. (CCH) ¶20,245 at 21,334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part*, 552 F.2d 482 (2d Cir. 1977), *cert. denied*, 98 S.Ct. 427 (1977).

[48] The Futures Exchanges Letter argues that the exemption, because it does not permit exchange trading of the swap agreements being exempted, promotes unfair competition. As is noted above, however, the exchanges (or their affiliates) remain free to compete under the final rules on an equal footing with all other eligible swap participants.

[49] H.R. Rep. No. 978, 102d Cong., 2d Sess. 81 (1992).

[50] "Small organizations," as used in the RFA, means "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *" 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration ("SBA") for small organizations. Agencies are expressly authorized to establish their own definition of small organization. *Id.*

[51] 47 FR 18618 (April 30, 1982).

[52] *Id.* at 18619.

[53] *Id.*

[54] *Id.* at 18620.

collection requirements as defined by the PRA. No comments were received concerning the Commission's determination in this regard.

List of Subjects in 17 CFR Part 35

Commodity futures, Commodity options, Prohibited transactions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2, 4, 4c, and 8a, 7 U.S.C. 2, 6, 6c, and 12a, as amended, the Commission hereby adds part 35 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 35—EXEMPTION OF SWAP AGREEMENTS

Sec.
35.1 Definitions.
35.2 Exemption.

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 35.1 Definitions

(a) *Scope.* The provisions of this part shall apply to any swap agreement which may be subject to the Act, and which has been entered into on or after October 23, 1974.

(b) *Definitions.* As used in this part:

(1) *Swap agreement* means:

(i) An agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

(ii) Any combination of the foregoing; or

(iii) A master agreement for any of the foregoing together with all supplements thereto.

(2) *Eligible swap participant* means, and shall be limited to the following persons or classes of persons:

(i) A bank or trust company (acting on its own behalf or on behalf of another eligible swap participant);

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant and has total assets exceeding $5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible swap participant (A) which has total assets exceeding $10,000,000, or (B) the obligations of which under the swap agreement are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (b)(2)(vi)(A) of this section or by an entity referred to in paragraph (b)(2) (i), (ii), (iii), (iv), (v), (vi) or (viii) of this section; or (C) which has a net worth of $1,000,000 and enters into the swap agreement in connection with the conduct of its business; or which has a net worth of $1,000,000 and enters into the swap agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading adviser subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible swap participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either paragraph (b)(2) (vi) or (xi) of this section;

(x) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible swap participant: *Provided, however,* that if such futures commission merchant, floor broker, or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker, or floor trader must also meet the requirements of paragraph (b)(2) (vi) or (xi) of this section; or

(xi) Any natural person with total assets exceeding at least $10,000,000.

§ 35.2 Exemption.

A swap agreement is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such agreement, is exempt for such activity from all provisions of the Act (except in each case the provisions of sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter as adopted under section 4c(b) of the Act, and the provisions of sections 6(c) and 9(a)(2) of the Act to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market), provided the following terms and conditions are met:

(a) The swap agreement is entered into solely between eligible swap participants at the time such persons enter into the swap agreement;

(b) The swap agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(c) The creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms of the swap agreement; and

(d) The swap agreement is not entered into and traded on or through a multilateral transaction execution facility;

provided, however, that paragraphs (b) and (d) of Rule 35.2 shall not be deemed to preclude arrangements or facilities between parties to swap agreements, that provide for netting of payment obligations resulting from such swap agreements nor shall these subsections be deemed to preclude arrangements or facilities among parties to swap agreements, that provide for netting of payments resulting from such swap agreements; *provided further*, that any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited thereto, the applicability of other regulatory regimes.

Issued in Washington, DC on January 14, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–1365 Filed 1–21–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM90–7–003, CP93–111–000 and CP93–83–000]

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates; El Paso Natural Gas Company; Order No. 537–B

AGENCY: Federal Energy Regulatory Commission; Energy.

ACTION: Order clarifying final rule.

SUMMARY: Order No. 537–A, III FERC Statutes and Regulations ¶ 30,952 (September 21, 1992), 57 FR 46,496 (October 9, 1992), established a three-month time period, from September 21, 1992 to December 21, 1992, during which pipelines could seek authority under section 7 of the Natural Gas Act to operate facilities which has been constructed and were being operated under section 311 of the Natural Gas Policy Act of 1978. This order clarifies that if a pipeline applied, by December 21, 1992, for appropriate authorization but had not obtained the authorization by that date, it may continue to operate the facilities under the Natural Gas Act until the Commission has issued a final order on the pipeline's application, or the authorization automatically becomes effective under the provisions of section 157.205 of the Commission's regulations, if blanket authority is sought and no protest has been filed. On the other hand, if a pipeline has not applied for appropriate authorization to operate section 311 facilities under part 157 of the Commission's regulations within the three-month time period, its authority to operate said facilities pursuant to the exemption issued in the interim rule expired on December 21, 1992. In order to continue operating such facilities to provide section 7 services, a pipeline will have to apply to the Commission for authority to do so, and must demonstrate good cause for not having filed a timely application for permanent section 7 authority to operate such facilities.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Amy R. Heyman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 208–0115.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC, 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no party, 8 data bits and 1 stop bit. The full text of Order No. 541–A will be available on CIPS for 30 days from the date of issuance. The complete text on diskettes in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

El Paso Natural Gas Company

Issued January 14, 1993.

On December 17, 1992, El Paso Natural Gas Company (El Paso) filed a motion for an extension of the time provided in Order No. 537–A,[1] for pipelines to obtain certificate authority under section 7(c) of the Natural Gas Act (NGA) to operate facilities previously constructed and operated under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[2] Since El Paso raises an issue which other similarly situated pipelines may raise with regard to the time period provided for in Order No. 537–A, we will clarify that order so that other pipelines will not be required to file similar requests with the Commission.

Background

On September 20, 1991, the Commission issued Order No. 537,[3] a final rule revising the regulations governing transportation by interstate pipelines under section 311 of the NGPA. On September 21, 1992, the Commission issued an order on rehearing of the final rule, Order No. 537–A.[4] In Order No. 537–A, the Commission acknowledged that the final rule should have provided for a reasonable time period during which interstate pipelines could seek authorization under the NGA to operate facilities previously constructed and operated pursuant to authority under section 311 of the NGPA.

This issue arose because contemporaneously with the issuance of the Notice of Proposed Rulemaking in Docket No. RM90–7–000, which proceeding resulted in the issuance of Order Nos. 537 and 537–A, the Commission issued two interim rules. The first, in Docket No. RM90–13–000, provided a time period during which pipelines and shippers could convert non-qualifying section 311 transactions to transactions authorized under section 7 of the NGA.[5] The second, in Docket No. RM90–14–000, exempted from the requirements of section 7 of the NGA the operation of facilities constructed under section 311 of the NGPA, but utilized to provide services converted from section 311 to section 7 authorization.[6] This interim rule also stated that, if necessary, the Commission would prescribe in the final rule in Docket No. RM90–7–000 a reasonable time period within which pipelines could seek permanent authority under section 7 of the NGA to operate facilities constructed and operated under section 311, but utilized to provide transportation services under the NGA. However, as noted above, such a period was not prescribed until Order No. 537–A was issued.

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[1] Revisions to Regulations Governing Transportation Under section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Order 537–A, 57 FR 46496 (October 9, 1992), FERC Stats. & Regs. ¶ 30,952 (1992).

[2] 15 U.S.C. 3301–3432 (1988).

[3] Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, 56 FR 50235 (October 4, 1991), FERC Stats. & Regs., Regs. Preambles, ¶ 30,927 (1991).

[4] See *supra* note 1.

[5] Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates. FERC Stats. & Regs., Reg. Preamble (1986–1990), ¶ 30,894, *amended*, FERC Stats. & Regs. Preambles (1986–1990), ¶ 30,899, *reh'g denied*, 53 FERC ¶ 61,141 (1990).

[6] Interim Revisions to Regulations Governing Construction of Facilities pursuant to NGPA section 311 and Replacement of Facilities, 55 FR 33011 (August 13, 1990), FERC Stats. & Regs. ¶ 30,895 (1990) at note 2.

Although many pipelines had already applied for and obtained authority under section 7 of the NGA to operate facilities formerly operated under section 311 of the NGPA by the time Order No. 537 issued, others had not. Therefore, on rehearing of Order No. 537, certain parties requested clarification regarding the time period during which pipelines still requiring section 7 authorization could apply for it. Order No. 537–A provided that pipelines which had not yet sought section 7 authority to operate their facilities could do so within three months of the date Order No. 537–A issued. Order No. 537–A issued on September 21, 1992; therefore, the three-month period expired on December 21, 1992.

El Paso's Request for an Extension of Time

On November 27, 1992, in Docket No. CP93–83–000 and on December 15, 1992, in Docket No. CP93–111–000, El Paso filed prior notice requests in order to obtain permanent authority to operate certain facilities under its blanket facilities certificate pursuant to part 157, subpart F, of the Commission's regulations. The facilities in question had been constructed and were being operated pursuant to section 311 of the NGPA. El Paso states in its request for an extension of time that the authority it seeks may not be granted within three-month time period provided for in Order No. 537–A. Therefore, El Paso seeks an extension of time in which it may continue to operate the facilities in question pursuant to the exemption issued in the interim rule in Docket No. RM90–14–000.

Clarification

In Order No. 537–A, the Commission referred to a three-month time period during which pipelines could seek authority under the NGA to operate facilities which had been constructed and were being operated under section 311 of the NGPA. The Commission also stated that to the extent authority had not been obtained within the three-month time period, it would consider extensions of time on a case-by-case basis.

We clarify that if a pipeline has applied for appropriate authorization under the NGA to operate section 311 facilities within the three-month time period, *i.e.*, by December 21, 1992, but has not obtained the authorization within that time frame, the exemption issued in the interim rule in Docket No. RM90–14–000 will continue until the Commission has issued a final order on the pipeline's application, or the authorization automatically becomes effective under the provisions of section 157.205, if blanket authority is sought and no protest has been filed. In such situations, an extension of the three-month time period is unnecessary. Since El Paso applied for authorization within the three-month time period, its authority to operate the section 311 facilities, as provided in the interim rule, will continue until the automatic authorization sought becomes effective or the Commission rules on its application. Therefore, we will deny El Paso's request for an extension of time.

On the other hand, if a pipeline has not applied for appropriate authorization to operate section 311 facilities under Part 157 of the Commission's regulations within the three-month time period, its authority to operate said facilities pursuant to the exemption issued in the interim rule expired on December 21, 1992. In order to continue operating such facilities to provide section 7 services, a pipeline will have to apply to the Commission for authority to do so, and must demonstrate good cause for not having filed a timely application for permanent section 7 authority to operate such facilities.

The Commission Orders

(A) Order No. 537–A is clarified to the extent discussed herein.

(B) El Paso's request for an extension of time is denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1498 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 118, 151 and 178

RIN 1515–AB10

[T.D. 93–6]

Centralized Examination Stations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to set forth a regulatory framework for the establishment, operation and termination of Centralized Examination Stations (CESs). A CES is a privately operated facility at which imported merchandise is made available to Customs officers for physical examination. These regulatory amendments will allow Customs to better use its inspectional resources and clear higher volumes of cargo.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia Duffy, Office of Inspection and Control (202–927–1344).

SUPPLEMENTARY INFORMATION:

Background

In recent years there has been a significant increase in the number of Container Freight Stations (CFSs), bonded warehouses, truck and rail terminals, and other facilities which receive and hold imported cargo for purposes of examination and clearance by Customs. As a result of this increase, and due to the fact that these facilities often are not in close proximity to each other within a given port of entry, Customs inspectors have had to spend a greater proportion of their time traveling from one location to another in order to perform cargo examinations necessary to ensure compliance with the law. This increase in travel time has had a negative effect on Customs productivity, has complicated Customs efforts to properly allocate personnel to meet its workload, and has had a corresponding negative effect on Customs ability to render efficient clearance and related services to the importing community.

The Centralized Examination Station (CES) program was developed by Customs in order to address the problems outlined above. A CES is a privately operated facility at which imported merchandise identified by Customs for physical examination is made available to Customs inspectors for that purpose. Once Customs identifies merchandise for examination, the importer or the importer's agent is responsible for selecting the CES to be used (where there is more than one CES within the port and unless the District Director of Customs has reason to make the selection), for arranging the bonded transfer of the merchandise to the CES, and for paying the costs of the transfer as well as any fees charged by the CES facility for its services. The services which the CES operator renders are for the benefit of the importer (who is required under law to make the imported merchandise available to Customs for inspection) and involve storage of the merchandise under bond and with liability insurance, opening the container in which the merchandise is packed, presenting the merchandise to the Customs inspector for examination, and closing the container after examination. A CES may consist of a preexisting warehouse, freight station, terminal or similar facility or portion thereof or may be an entirely new facility developed specifically for operation as a CES. Each CES is designated as such by Customs through a specific application and selection process, and the operation of each CES is governed by a written agreement executed by the selected CES operator and Customs prior to commencement of the CES operation.

Experience with the CES program has shown that CESs provide benefits to both Customs and the trade community. By reducing the number of locations at which examinations are performed, Customs is able to more efficiently allocate inspectional resources while at the same time performing more intensive and effective examinations. In addition, a CES enables Customs to provide improved inspectional supervision and ensure more timely and predictable service to importers by Customs officers. By streamlining the cargo inspection process, CESs ultimately allow Customs to clear higher volumes of cargo and thus improve the overall importation/entry process.

In order to provide an appropriate regulatory framework for the CES program, on July 23, 1991, Customs published a notice in the **Federal Register** (56 FR 33734) proposing to amend the Customs Regulations (19 CFR Ch. I) by adding thereto a new part 118 entitled "Centralized Examination Stations". Proposed new part 118 incorporated four subparts: Subpart A contained general provisions regarding the establishment and operation of a CES; subpart B set forth the specific requirements and procedures for the establishment of a CES; subpart C set forth rules governing the movement of cargo to a CES; and subpart D covered the termination of a CES. The public comment period on the proposed regulations closed on September 23, 1991.

Analysis of Comments

A total of 39 commenters responded to the solicitation of comments during the public comment period. The comments received, and the Customs responses thereto, are set forth below.

Comment: Several commenters suggested that the regulations should prohibit a broker or CFS operator from being selected as a CES operator because of the potential for obtaining a competitive edge in selling its non-CES services. One commenter stated that if a CES operator is a broker or is broker-affiliated, the regulations should prohibit the giving of a preference to its brokerage clients and their entries. Motivated by similar competitive concerns, one commenter suggested adding specific language to § 118.4 to prohibit a CES operator from disclosing any of an importer's confidential business information except to Customs and to provide that any such improper disclosure could result in Federal prosecution and/or cancellation of the CES agreement.

Customs response: With regard to the general relationship between competitive advantage and the CES selection process, the most important consideration remains selection of the applicant best qualified to be a CES operator. Accordingly, Customs believes that the mere potential for obtaining a competitive advantage, so long as that advantage is consistent with normal business practices and does not violate the letter or spirit of applicable Customs laws and regulations, is not a proper basis for limiting the field of potential CES operator applicants as suggested by these commenters. As regards a broker or broker-affiliate CES operator giving preferences to its brokerage clients, Customs believes that the regulations as proposed already address this both by giving to Customs the initial role in determining whether a CES examination will take place and by providing for a basic "first come-first served" operating principle in § 118.4(b).

Customs does not agree with the suggestion to amend § 118.4 to prohibit disclosure of an importer's confidential business information. A CES operator does not have access to invoices, bills of lading, entry summaries and other documents in the entry package which may contain confidential business information. Moreover, since the CES operator is in effect operating for the benefit of the importer, any disclosure of information to the detriment of the importer should be dealt with as a private matter between those parties and thus is not an appropriate matter for these regulations.

Based on the above analysis, Customs no longer believes that it is necessary to require submission of information regarding possible conflicts of interest in the application process. Accordingly, § 118.11 as set forth below has been modified by removing proposed paragraph (h) and redesignating (i) as (h).

Comment: Several commenters suggested a different duration for the agreement to operate a CES. One commenter wanted a 5–7 year term rather than the proposed 3–5 year term, one commenter suggested no pre-set term, and one commenter requested a 1–3 year term. The commenters in favor of a longer term reasoned that this would permit a business to recover the expenses of starting a CES without having to charge high fees to do so.

Customs response: Customs agrees that a duration of more than 5 years will encourage some potential CES operators to make the economic commitment necessary to begin operations. However, Customs still believes a limitation on the duration of an operator's agreement is necessary to keep an operator responsive to those using the CES services and to importing trends. Accordingly, § 118.3 as set forth below has been modified to provide for agreements of from 3 to 6 years.

Comment: Six commenters suggested adding a requirement that there be at least two CESs in any port in order to promote competition so as to keep fees reasonable and allow for choice by the importer.

Customs response: Although Customs agrees in principle that competition is desirable, the number of CESs within a given port more properly should be a function of the volume of examinations to be performed, the availability of Customs resources to perform them, and the willingness of private parties to operate a CES. Accordingly, requiring a minimum of two CESs in a given port would not be appropriate.

Comment: Two commenters stated that § 118.3 was too restrictive in that it would not allow a CES agreement to be transferred under certain conditions such as inheritance by children of the operator or upon sale of stock in a company operating a CES.

Customs response: Customs does not agree that the transfer of an agreement should be permitted even under the special circumstances cited by these commenters. Customs performs background checks on applicants as part of the CES operator selection process, and any transfer of an agreement executed by the selected operator would undermine the purpose behind the background check and thus could ultimately compromise the ability of Customs to perform effective compliance examinations. In addition, Customs considers as material factors in the selection process the physical plant to be used as the CES and the applicant's experience in handling international cargo. Further, it would not be fair to potential users of the CES, or to operator applicants who were not selected, to permit transfer of an operator's agreement.

Comment: Two commenters stated that § 118.2 should be modified to provide for wider dissemination of notice that a CES is to be established or that the term of an existing CES is about to expire. In addition to the proposed posting of a written bulletin at the customhouse, these commenters suggested including publication in the **Federal Register**, in the Customs Bulletin, in local newspapers, in trade journals, and in regional and district pipelines.

Customs response: Customs agrees that it would be beneficial to have wider dissemination of the notice of intent to establish a CES or of expiration of an existing CES term, but Customs also believes that such wider dissemination should not include publications of national interest and circulation but rather should be limited to local distribution channels which are more likely to reach the potential applicants and other interested parties. Accordingly, § 118.2 as set forth below has been modified to provide the district director with more flexibility as regards the local channels to be used for disseminating the notice. In addition, the regulatory text has been changed to refer to a written "notice" rather than "bulletin" since more than posting at the customhouse could be involved under the section as so modified.

Comment: Nine commenters stated that there should be greater consultation with the importing community both when the district director is considering whether a new CES should be established and during the operation of any established CES. A number of these commenters stated that the CES committee (the permissive use of which was provided for in proposed § 118.12 in connection with the review of applications) should be used for these purposes as well, that use of the CES committee should be mandatory for all such purposes under the regulations, and that private sector representation on the CES committee should reflect a broad cross-section of the trade community. With regard to use of a CES committee in reviewing applications, one commenter suggested that a CES committee should not have non-Customs (that is, private sector) members because existing business relationships could improperly influence the selection process.

Customs response: The comments submitted suggest a basic problem with the CES committee concept: While recognizing that a membership consisting of only Customs personnel would not address the need for private sector input in the decision-making process, Customs also believes that it would be difficult to select members from the private sector in such a way as to avoid complaints from one party or another regarding the procedures or results of the member selection process or regarding potential conflicts of interest relating to the committee's intended functions. In addition, the legal requirements that would apply to a CES committee with non-governmental members under the Federal Advisory Committee Act, 5 U.S.C. App. 2, which include publication of a notice in the **Federal Register** both when an advisory committee is initially established and whenever such a committee is planning to meet, would be particularly cumbersome in a CES context because (1) the decision to create or convene a CES committee would normally be made at the local level whereas publication of notices in the **Federal Register** is always initiated at Customs Headquarters and (2) the additional time needed to prepare and approve a notice for publication in the **Federal Register** would only further delay the establishment of a needed CES, thus frustrating the purpose behind the CES program. For these reasons, Customs has concluded that CES committees should not be used for any purpose under the regulations.

Notwithstanding this decision to do away with the CES committee concept, Customs agrees that input from the private sector would be beneficial to the trade and to the CES program, not only in connection with the CES operator selection process as originally provided in proposed § 118.12 but also in connection with the basic determination to establish a CES (or to accept new applications if an existing CES term is about to expire and the district director believes that a CES operation is still needed) under § 118.2. Accordingly, in addition to the public notification procedure changes discussed above and in order to provide a clear context for public procedures, § 118.2 as set forth below has been modified (1) to refer both to the district director's preliminary determination to establish a new CES and to the district director's belief that a CES operation is still needed when the term of a CES is about to expire and (2) in either situation, to provide for submission of relevant comments from the general public within 30 days after publication of the notice that applications are being accepted. In addition, the following changes have been incorporated in § 118.12 as set forth below: (1) The sentence regarding use of a CES committee has been removed; (2) a new opening sentence has been added to provide for public notice and comment procedures (with a cross-reference to § 118.2 for this purpose) with the notice setting forth specific information relevant to each submitted application (the applicant's name, the location of the CES facility, the proposed fee schedule, an equipment list, and the number of employees); (3) the remainder of the section has been modified to refer to the review of public comments submitted under §§ 118.2 and 118.12 and to reflect the possibility that the district director may decide not to select a CES operator (either because it has been decided not to establish or retain a CES or because a suitable applicant has not come forward); and (4) the title of the section has been changed to read "action on application" because the section as modified covers more than merely the review of applications. Finally, in order to ensure trade community awareness of the existence of the CES, § 118.13 as set forth below has been modified to provide for local publication of a notice advising the public of the selection of the CES operator and of the date on which the CES operation will commence.

With regard to private sector input during the operation of a CES, Customs does not believe that it is necessary or appropriate to make formal provision for such input in these regulations. While information regarding the ongoing operation of a CES would be of interest to Customs (in particular as regards observance of CES operator responsibilities under § 118.4), Customs believes that existing informal procedures, whereby any importer or other private party may bring a complaint or other relevant information to the attention of the district director, are sufficient for this purpose. Moreover, in a case involving a CES operator who reapplies when his authority to operate the CES is about to expire, the notice and comment procedures described above will afford the public ample opportunity to comment on that CES operation.

Comment: One commenter stated that, in order to avoid unnecessary expenditures, a CES applicant should not be disqualified for failure to meet one or two specific selection criteria in § 118.11 so long as the applicant agrees to comply with such criteria within 30 days if selected.

Customs response: Customs believes that this commenter has a valid point as regards the avoidance of unnecessary expenditures in the event that a particular applicant is not selected as the CES operator. However, Customs believes that this principle should be limited to cases involving a significant capital expenditure to make an existing facility conform to security and other physical or equipment requirements necessary for the CES operation. Accordingly, § 118.11(b) as set forth below has been modified to give the district director the authority in such circumstances, and if an applicant so requests in the application, to permit the applicant to meet security and other physical or equipment requirements within up to 30 days after tentative selection but with the proviso that the agreement to operate the CES shall not be executed (and thus the selection does not become final and the CES operation may not commence) until the facility conforms to those requirements.

Comment: One commenter stated that the regulations should allow an unsuccessful applicant the opportunity to appeal the nonselection by providing any relevant supplementary information within 10 days, and this commenter further suggested that any selection should be subject to a 180-day probationary period in case a more qualified applicant appeared after the selection was made or in case the selected applicant is unable to operate properly.

Customs response: Customs does not agree with these proposals because they would unnecessarily lengthen, and add uncertainty to, the selection process. Moreover, the problem of a CES selectee operating improperly is adequately covered by the provisions regarding selection revocation and agreement cancellation.

Comment: Eight commenters expressed concern about the responsibility for cargo both while it is being moved to a CES and while it is at the CES. To address these concerns, these commenters suggested the following amendments to the proposed regulatory texts: Clarifying the definition of a CES as a place not in the charge of a Customs officer; requiring operators to carry a minimum of $1 million liability insurance; requiring that such liability insurance cover all damage to merchandise; holding the CES operator liable for any duties or taxes on lost or stolen merchandise; including the broker's importation and entry bond as one of the bonds under which merchandise is transferred; and specifically prohibiting any non-bonded transfer of merchandise. Another commenter stated that the reference to a "performance bond" in the first sentence of § 118.4(g) was unclear and suggested that the text be revised to state that the CES operator agrees that "the terms of its custodial bond will apply to the CES operation".

Customs response: Before responding to the above comments, an issue concerning the organization of the regulations must be addressed. It is noted in this regard that proposed subparts A, B, and D of new part 118 set forth general provisions and establishment and termination rules applicable to CESs, whereas proposed subpart C (consisting of §§ 118.21–118.24) sets forth specific procedures and requirements for the movement of merchandise to a CES for purposes of examination. It is further noted that part 151 of the Customs Regulations (19 CFR part 151) concerns the examination, sampling and testing of merchandise and, in subpart A thereof, sets forth certain basic requirements and procedures for the examination of merchandise which are equally applicable in a CES context. In order to ensure consistency of context and better proximity as between related provisions, proposed subpart C of part 118 has been transferred in this document to subpart A of part 151 as one new § 151.15 (with paragraphs (a)–(d) thereof corresponding to proposed §§ 118.21–118.24 respectively), and the following conforming changes to other regulatory provisions have been made as set forth below to reflect this transfer: (1) Adding a sentence to § 118.0 (Scope) to clarify that the procedures governing the transfer of merchandise to a CES are set forth in part 151; (2) renumbering proposed §§ 118.31–118.34 as §§ 118.21–118.24 and redesignating proposed subpart D as subpart C; (3) modifying the first sentence of § 151.6 to include a reference to examination required or authorized under § 151.15; and (4) modifying the first sentence of § 151.7 to include a reference to examination at a CES as provided in § 151.15. For ease of reference within this document, where submitted comments concern aspects of proposed §§ 118.21–118.24 and result in changes to the proposed texts, the agreed changes are described in the relevant discussion as changes appearing in new § 151.15 as set forth in this document.

Customs agrees with the comment regarding clarification of the definition of a CES as a place not in the charge of a Customs officer, and the first sentence of § 118.1 as set forth below has been modified accordingly. In addition, the introductory text of § 151.15(b) as set forth below has been modified to expressly prohibit non-bonded transfers as one commenter suggested and to also improve the clarity of the text. Customs also agrees that a broker, if acting as importer of record, should be allowed to obligate his importation and entry bond for the transfer of cargo to a CES, and § 151.15(b)(4) as set forth below has been modified to clarify that liability is under the bond of the importer of record who may be the actual importer or an agent of the importer.

Customs does not agree with the suggestion regarding the need to set a specific minimum of $1 million liability insurance. Customs is of the view that a specific regulatory minimum level would be inappropriate because the necessary level would depend on the overall number and type of examinations performed within the port and at the particular CES facility.

Customs also disagrees with the suggestion that the operator's liability insurance should cover all damage to merchandise stored in the CES. Such insurance is intended to compensate the owner of merchandise for loss, theft, or damage occurring while the merchandise is in the operator's control and resulting from actions or negligence on the part of the operator or his employees. On the other hand, the CES operator should not be required to carry liability insurance to cover damage occurring outside the operator's control as, for example, when Customs causes damage to merchandise in connection with an examination to determine whether contraband is concealed within that merchandise.

Customs does not agree that the CES operator should be made solely liable for any duties and taxes on lost or stolen merchandise. The CES operator's liability for duties and taxes exists only during the period when the merchandise is covered by the operator's custodial bond and not when the loss or theft occurs during coverage of the merchandise by another bond such as an importer's entry bond or a cartman's custodial bond.

Finally, Customs agrees that the "performance bond" reference in § 118.4(g) is confusing because it can only have reference to a Customs custodial bond covering the CES operation (which, under § 118.11(e), must be in existence when an applicant is selected as a CES operator). In order to address this point, § 118.4(g) as set forth below has been modified by removing from the first sentence the words "and further agrees to its application as a performance bond to the CES operation" which are redundant in this context. In this way a clear and proper relationship will exist between possession of a custodial bond for selection purposes as required by § 118.11 and continued maintenance of that bond during operation of the CES as required by § 118.4.

Comment: A large number of comments was received on subpart D (redesignated in this document as subpart C as discussed above) relating to the immediate or proposed revocation of selection and cancellation of the agreement to operate a CES. Several commenters raised a number of procedural issues, arguing in favor of longer appeal periods, more extensive appeal rights, and specific provision for a formal hearing and for judicial review as is done in the regulations applicable to Customs bonded warehouses and licensed cartmen. Two commenters suggested that these regulations should not cover existing CESs. One commenter wanted clarification that a CFS operator also operating a CES would have revocation procedures concerning the CFS operation covered by the appropriate regulations in part 19 of the Customs Regulations. One commenter believed it was unreasonable to propose revocation and cancellation for not following a single order of a Customs officer, and another commenter argued that immediate revocation and cancellation for commission of criminal acts should not be permitted in the absence of either an actual conviction or an admission by the alleged violator that the act occurred. One commenter suggested adding offering or giving a gratuity to a Customs officer as grounds for immediate revocation and cancellation. Another commenter suggested adding the following circumstances as grounds for proposed revocation and cancellation: (1) When a CES operator charges, or proposes to charge, excessive fees for services; and (2) when the CES committee requests the district director to take such action.

Customs response: Customs does not agree with the proposals to extend the appeal time limits and to provide for formal hearings and for appeal rights beyond the level of the Commissioner of Customs. The appeal time limits are restricted in each case to a 10-day period because a longer period would be extremely disruptive to the cargo operation of any district due to the relatively small number of CESs in operation there. A more extended appeal procedure would have a detrimental effect on the delivery of cargo to many importers and would have a negative impact on the efficient use of Customs personnel by increasing Customs costs and reducing Customs ability to detect contraband.

With regard to the comments in favor of formal hearings and more extended appeal rights, Customs notes that there is a fundamental operational distinction between CESs and the bonded warehouses and licensed cartmen mentioned by the commenters: Whereas use of a CES occurs only as a result of a case-by-case Customs determination to examine particular merchandise (and in some cases to use a particular CES), in the majority of cases use of a bonded warehouse or cartman occurs at the instigation of the importer or the importer's agent and without the initial involvement of Customs. Moreover, Customs is not required under the law to provide formal hearings or more extended appeal rights in connection with an administrative procedure such as a CES revocation and cancellation action. In light of these factors, and given the extensive due process protection reflected in the CES regulations, Customs does not believe that it is necessary to precisely track the procedures used for bonded warehouses and cartmen. Finally, it should be noted that the presence or absence of a specific reference to judicial appeal in the Customs Regulations has no legal effect on the right of a party to seek review of an administrative action in any court of competent jurisdiction.

Customs does not agree with the proposal to existing CESs from these regulations. It would be inappropriate to treat two CES operations in a different manner when the purpose behind the revocation and cancellation procedure (to ensure that CESs are operated properly) clearly applies to all CES operations. Accordingly, Customs cannot accede to the enforcement loophole which this comment appears to suggest. On the other hand, and assuming that an existing CES otherwise operates in conformity with the regulatory requirements, Customs will honor any existing agreement as regards the duration of the CES operation and the security and other physical requirements needed at the CES.

A CFS operator continues to be subject to the provisions in part 19 concerning suspension or revocation of the privilege to operate a CFS. The CES regulations do not supersede or otherwise affect the CFS regulations in this regard.

Customs believes that proposing revocation because a CES operator failed to follow a Customs order is reasonable because in the appeal process the operator will be given the opportunity to show, for example, that he did comply with the order, that the order was not correctly communicated by Customs, or that the order was, in fact, improper.

Customs does not agree with the suggestion that immediate revocation and cancellation for a criminal act be limited to cases involving an actual conviction or admission. The only criminal offenses which will result in an immediate revocation and cancellation are those which involve theft, smuggling, or a theft-connected crime. These specific offenses were included in the regulation in question because they are of overriding concern to Customs given the threat that a perpetrator of such offenses could pose to a CES operation and to the merchandise under the control thereof. In view of the fact that significant procedural and other delays often occur in the criminal justice system before conviction or acquittal results and since admissions of guilt are comparatively rare, these special concerns militate strongly against basing an immediate revocation and cancellation only on an actual conviction or admission.

Customs does not believe that it is necessary or appropriate to list the giving or offering of a gratuity as one of the offenses which will be grounds for immediate revocation and cancellation. While bribery is a serious offense, it is usually committed in conjunction with smuggling or theft which are already grounds for immediate revocation and cancellation. Moreover, since the giving of a gratuity does not intrinsically involve a threat to the revenue or to the merchandise stored at a CES, Customs believes that if the gratuity is offered or given by an employee of the CES rather than by the operator himself, the CES operator should first be given an opportunity to demonstrate that he had no prior knowledge of, and involvement in, the improper action of his employee.

Customs does not agree that charging or proposing to charge excessive fees should be grounds for revocation and cancellation because (1) all fee schedules and changes thereto must be approved by the district director and (2) a failure to abide by the fees as approved by the district director is already a ground for revocation and cancellation. Finally, in view of the decision not to employ the CES committee concept as discussed above, the suggested ground for proposed revocation and cancellation based on a request made by a CES committee has become moot.

Comment: A number of commenters made the following suggestions regarding the fees charged by a CES operator: That any proposed fee changes be reviewed by a CES committee; that Customs audit operator's records; that each CES applicant include a detailed operating budget, including profit margin, in the application; that a new user fee be assessed on all importers, or that the existing merchandise processing fee (MPF) be used, to cover examination costs in place of the CES operator fees; that the notice period for proposed fee changes in § 118.4(c) be shortened from 90 days to 30 days; that

§ 118.4(c) be amended to refer to "reasonable" service fees; and that the regulations be amended to define reasonable fees as fees which are "comparable to fees for similar services in the community", as was stated in regard to the selection process outlined in the Directive implementing the CES program.

Customs response: Before responding to the above comment, two issues regarding changes to approved fee schedules must be discussed and resolved.

The first issue is both organizational and procedural in nature, and in this regard Customs notes that whereas the first sentence of proposed § 118.4(c) requires that fees be assessed as outlined in the fee schedule included in the approved application, the remaining sentences thereof concern the procedures for subsequent changes to an approved fee schedule. On further reflection, Customs does not believe it is appropriate to include fee change procedures within § 118.4 which is only intended to outline the basic responsibilities of a CES operator and thus more properly in paragraph (c) should only cover the responsibility to abide by the approved fee schedule (including any subsequent changes thereto). Accordingly, this document incorporates the following changes: (1) A new § 118.5 has been added to cover procedures for changes to a fee schedule; and (2) paragraph (c) of § 118.4 has been modified to reflect only the first sentence of the paragraph as proposed and with the addition of a reference to fee changes approved under § 118.5. Consistent with the principle of allowing input from the public during the decision-making process without utilizing the CES committee concept as discussed above in connection with the CES operator application process, new § 118.5 as set forth below provides for (1) publication of a notice of the proposed fee schedule changes with the solicitation of comments from the general public, with a cross-reference to § 118.2 as regards the procedures for dissemination of the notice and for submission of the public comments, and (2) publication of a notice of the new fee schedule if the proposed changes are approved by the district director. In addition, new § 118.5 refers to the intention of a CES operator to "increase, add to or otherwise change" the service fees (in order to clarify that the section applies to any change to the fee schedule, including an increase of an existing fee amount, the addition of a new fee, or the reduction or elimination of an existing fee), requires written justification also for the addition of a new fee (which is akin to a fee increase for which written justification was specified in proposed § 118.4(c)), and provides for written notice to the CES operator of the district director's decision on the proposed fee change.

The second issue concerns the relationship between the obligation of a CES operator to abide by a changed fee schedule and the sanctions that may be imposed if the operator fails to do so. It is noted in this regard that whereas proposed § 118.31(b)(1) (renumbered in this document as § 118.21(b)(1) as discussed above) provided that the district director may propose revocation and cancellation if the CES operator "* * * fails to operate in accordance with the terms of his agreement", a changed fee schedule in effect replaces the fee schedule approved as part of the CES operator application process but does not become part of the agreement itself. Thus a potential anomaly could arise whereby sanctions could be taken for failure to follow the original fee schedule but not for failure to follow a changed one. In order to avoid such an unintended and inappropriate result, § 118.21(b)(1) as set forth below has been modified by adding at the end a general reference to § 118.4 so that the obligation to follow a changed fee schedule (as provided in modified § 118.4(c) discussed above) will be treated the same as the obligation to follow an original fee schedule for purposed of a proposed revocation and cancellation action.

Customs does not agree with those commenters who argued that Customs should audit an operator's records and that each applicant should provide a detailed operating budget including profit margin. Neither an applicant's operating budget nor a CES operator's general business records are matters over which Customs should exercise direct control or oversight by audit or otherwise. Although Customs is directly concerned with the nature of the fees charged (as further discussed below) and the manner in which the operator makes merchandise available for examination and thus may have occasion to look into complaints affecting those areas, Customs has no intention of routinely auditing or otherwise controlling each and every aspect of a CES operation.

Customs lacks the authority to impose a new user fee in this situation. As regards use of the present MPF in place of CES operator fees, Customs does not agree with this suggestion for two related reasons: (1) Contrary to the case of the MPF, CES fees are not paid to Customs for services provided by Customs to the importer (rather, they are paid to the CES operator for services provided by that operator to the importer); and (2) CES fees cover, among other things, the maintenance and operating costs of the CES and thus they do not relate to Customs costs for examining the merchandise (which, in terms of salary and expenses of the Customs inspector performing the examination, would normally be covered by the MPF). Customs further notes that under a longstanding principle established in an opinion of the Attorney General (35 O.A.G. 431 (1928)) and reflected in §§ 151.6 and 151.7 of the Customs Regulations, the expenses incurred in making merchandise available to Customs for purposes of examination are to be borne by the importer rather than by Customs (except when the examination takes place at the public stores); this principle was reaffirmed in T.D. 84–152 (49 FR 29372) which amended §§ 151.6 and 151.7 to limit the use of public stores as places for the examination of merchandise. The legal responsibility of importers to cover expenses in connection with the examination of merchandise is based on legal authority totally separate from the user fee statute (19 U.S.C. 58c), and the importer's payment of a fee to a CES operator for his services is nothing more than an alternative means for the importer to carry out that legal responsibility.

Customs does not agree with the suggestion that the notice period regarding a proposed fee schedule change be reduced from 90 to 30 days. In view of the changes to the regulatory texts to provide public notice and comment procedures on fee schedule changes (which will include a 30-day public comment period under new § 118.5 and modified § 118.2) as discussed above, the 90-day period must be retained in order to ensure sufficient time for all required procedures.

As regards the comment that § 118.4(c) should refer to "reasonable" service fees, Customs agrees that some type of standard should apply to fees charged by a CES operator because the limited number of CESs established in a given area could otherwise give rise to monopolistic fee levels. However, Customs does not believe that a mere reference to "reasonable" fees would be useful because this would impose a requirement without providing any meaningful definition or standard. The better approach, as suggested by one of the commenters, would be to refer to fees that are "comparable to fees for similar services" in the area in which the CES is located, and Customs believes that the appropriate place for such a standard would be § 118.11(c) (rather than § 118.4(c)) so that the standard is properly applied at the very beginning in connection with the application approval process. Accordingly, § 118.11(c) as set forth below has been modified to refer to service fees comparable to fees for similar services in the area to be served by the CES, but with the qualification that this comparability requirement may be affected by special costs borne by the applicant such as facility modifications to meet specific cargo handling or storage requirements or Customs security needs. However, it should be noted that since the fee schedule is one of the criteria used to judge an application, proposing a higher-than-normal fee schedule in order to recover such costs could have an adverse effect on an applicant's candidacy (particularly if another otherwise equal applicant does not have to modify his facility and thus proposes a lower fee schedule). Finally, a reference to this principle of comparability has been included in § 118.5 to ensure consistency in the context of fee schedule changes.

Comment: Several commenters stated that the regulatory criteria for selection were too general. In this regard, they recommended providing specific standards concerning location and physical and security requirements (for example, maximum distance from the unloading facility, minimum square footage, number of bay doors, alarm system, sprinkler system) and concerning required experience or training for CES employees, with these specific criteria to be supplemented as necessary by any special local criteria set forth in the notice to the public in connection with the application process.

Customs response: Customs does not agree that such detailed standards should be included in the regulations because operational and physical requirements too often vary from one CES to another even within the same district or port of entry. For example, the operation of an airport CES where much cargo is loose or on pallets (and thus more easily examined) is different from a seaport CES where most cargo is containerized. Moreover, as compared to CESs in large seaports, CESs at land border points and at inland ports often handle less varied types of cargo and have lower examination volumes and thus often have to meet less stringent requirements regarding floor space, bay doors, machinery or handling equipment and other physical factors. Accordingly, in order to retain sufficient flexibility to meet local needs, Customs believes that specific criteria are inappropriate for the regulations but rather should be applied on a case-by-case basis by setting them out in connection with the notice by the district director that applications to operate a CES are being accepted.

Comment: Two commenters recommended language prohibiting any CES operations at airports.

Customs response: The need for a CES is based on two principal factors: The cargo activity in a port of entry and the demands placed on the Customs resources needed to examine that cargo so as to ensure compliance with the law. Thus, the regulations neither mandate nor preclude CES operations based on the particular type of location because the central issue in establishing a CES is the workload level in the area to be serviced by the CES. If cargo activity increases significantly at an airport (particularly in terms of the number of cargo receivers) so as to put a strain on Customs examination resources, it would be in the interest of both Customs and importers to establish a CES. Accordingly, Customs believes it would be inconsistent with the purpose of the CES program to exclude airports as CES locations.

Comment: One commenter suggested requiring applicants to commit to participation in the Automated Manifest System (AMS).

Customs response: Customs does not believe it would be appropriate to impose such a requirement because at this time there is no provision for CES participation as a receiver or transmitter of information through AMS.

Comment: One commenter suggested listing types of cargo that cannot be sent to a CES.

Customs response: Customs notes that certain types of merchandise (for example, heavy machinery) probably could not be transported to or handled at a CES and that other types of merchandise (for example, explosives and other dangerous products) would rarely, if ever, be designated for examination at a CES. However, Customs does not believe that it would be appropriate to include such an exclusionary list in the regulations because there will also be cases in which a special cargo (for example, frozen fish) could be handled at one CES but not at another. Since Customs makes the determination as to whether merchandise is to be sent to a CES for examination, it would be preferable to deal with such issues on a case-by-case basis so that, when special types of merchandise require examination, arrangements can be made to perform the examination at the best suited location.

Comment: Several commenters argued that the cargo owner or broker, and not the district director, should designate the CES to which merchandise is to be sent.

Customs response: Although under § 151.15(a) as set forth below the entry filer normally designates the CES to be used, the district director has authority under § 151.15(d) to override the entry filer's designation, consistent with the authority of a Customs officer to designate the place of examination under 19 U.S.C. 1499. Customs believes that the authority reflected in § 151.15(d) should be retained because (1) as previously noted, Customs controls the entire process starting with the decision to examine the merchandise, (2) Customs must ensure that the CES is compatible with the type of merchandise to be examined, and (3) the availability of Customs officers at a particular CES at a particular time may affect the selection of the CES to be used.

Comment: One commenter said that § 118.22 (§ 151.15(b) as set forth below) should state exactly how the importer or broker selects the specific movement method among the four methods listed.

Customs response: Customs does not agree that § 151.15(b) should be modified as suggested, because the movement method and resulting custodial bond liability is more properly a private, nonregulatory matter that should be resolved among the affected parties (importing carrier, importer, broker, bonded carrier, CES operator).

Comment: One commenter suggested adding language stating that the CES operator will make every effort to reload a container and will notify the carrier if he cannot. Another commenter stated that the principle of an "appointed" examination time should be added to § 118.4(b) (which only refers to service provided on a "first come-first served" basis) to reflect the fact that Customs often sends a particular cargo specialist to a CES to examine specific merchandise at a prearranged time.

Customs response: Since under the basic CES operating principle the CES operator renders services on behalf of the importer rather than for the benefit of the carrier, Customs cannot require in the regulations that the CES operator provide notice of reloading problems to the carrier; however, there is nothing to prevent a CES operator and a carrier from making their own private arrangements in this regard. As regards an appointed time for an examination, this procedure is not generally used in the case of CESs and therefore § 118.4(b) should not be modified as suggested.

Comment: The Food and Drug Administration (FDA) recommended adding general references to "other government agencies" or "other government agency personnel" to various regulatory provisions regarding office space availability, making merchandise available for inspection, selection of a CES operator who will best meet examination needs, and authority to order merchandise to a CES and to designate the CES to be used.

Customs response: Customs agrees in principle that, as a general rule, it is desirable for other government agencies to examine merchandise at a CES because it will generally save time and money for the importer to have all interested agencies examine his goods at one place. However, Customs does not believe that the suggested regulatory changes should be made at this time because publication of specific proposals by Customs and the other interested agencies, with opportunity for public comment, would be necessary before such substantive changes could be implemented. Customs will, of course, continue to coordinate with other government agencies to the greatest extent possible in arranging examinations at CESs to ensure compliance with laws administered by those agencies.

Comment: One commenter questioned the propriety of these regulations based on the argument that the CES selection process is actually a contracting process subject to Federal procurement regulatory procedures.

Customs response: Customs does not agree. The CES selection process does not involve a procurement (that is, a purchase and sale) between Customs and the CES operator and thus there is no contract within the meaning of the Federal procurement regulations.

Comment: One commenter recommended (1) amending § 118.11(f) to require that a CES applicant identify in the employee list any employee known to have had a felony conviction and (2) amending § 118.4(f) to require that a CES operator provide the same information as part of keeping the list of employees current, similar to what is required of Customs brokers in § 111.53(e) of the Customs Regulations. This commenter also stated that providing an employee's social security number should be mandatory as is the case with Customs brokers.

Cutoms response: Customs does not agree that the regulations should require that an applicant identify, or that an operator update the employee list regarding, any employee known to have had a felony conviction. Customs notes in this regard that the commenter's reliance on § 111.53(e) of the broker regulations in the present context is misplaced for the following reasons: (1) The cited broker regulation is based directly on a statutory provision (19 U.S.C. 1641(d)(1)(E)); (2) the broker statutory/regulatory provision is a ground for disciplinary proceedings (for knowingly employing a felon) but is not a substantive reporting requirement; and (3) the sensitivity issue as regards employment of a felon is clearer in the case of brokers because not all aspects of a broker's business are covered by a Customs bond and liability insurance. As concerns the voluntary providing of social security numbers, Customs notes that § 118.11(f) conforms to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) in this regard.

Additional Changes to the Proposed Regulatory Texts

In addition to the changes discussed above in connection with the comment analysis, the regulatory texts as set forth below incorporate further editorial or other non-substantive changes to the proposed regulations in order to improve the clarity, readability or organization of the texts. The following principal changes are noted in this regard:

Section 118.3

The second sentence has been changed to state that failure to execute the agreement "may result in" tentative selection of another applicant "or republication of the notice soliciting applications", to clarify that certain circumstances (for example, the absence of another suitable applicant) may make another selection impracticable at that time.

Section 118.4

The introductory text has been changed by adding a reference to "commencing operation" of a CES, because certain requirements set forth in the section (for example, abiding by a fee schedule change adopted under § 118.5) may not be directly reflected in the agreement. In addition, paragraph (h) has been reworded and rearranged to clarify that record retention and availability to Customs both have reference to the basic provisions contained in part 162.

Section 118.11

Paragraph (e) has been modified to clarify that where Customs Form 301 is submitted for approval with the application, approval of the custodial bond is a prerequisite to selection.

Section 118.21

In paragraph (a), the introductory test has been changed to state that the district director "shall" immediately revoke the selection and cancel the agreement, to more clearly reflect the mandatory nature of the provision. In addition, in paragraph (a)(2) the second sentence has been redrafted for clarity.

Sections 118.22–118.24

These sections have been modified to more clearly distinguish between an immediate action and a proposed action, to refer to a "notice" of the action in each case, and to simplify the references to a written decision on an appeal. In addition, in § 118.23, the second sentence has been amplified to clarify that a proposed revocation and cancellation does not take effect until the administrative appeal process has been concluded with a decision adverse to the operator.

Section 151.15

Paragraph (a) has been modified by adding a qualification at the end to reflect the authority of the district director under paragraph (d) to designate the CES to be used, and a qualification has similarly been added at the end of the introductory text of paragraph (b) as regards the district director's authority under paragraph (d) to specify the bonded movement to be used; in addition, in order to ensure a proper record of either action by the district director, paragraph (d) has been modified to provide for notation of the action on the Customs Form 3461 or 3461 (ALT) or attachment thereto. Finally, paragraphs (b) (1)–(4) have been modified to refer to the specific bond and the nature of the bond obligation involved, paragraph (b)(2) has been further modified by removing the unnecessary qualifier "formally" before "receipted", and paragraph (b)(4) has been further modified to refer to an importer or agent who "transfers" the merchandise to the CES (to clarify that the bond liability relates to the party who performs the transfer) and to refer at the end to receipt by the CES operator as is done in paragraphs (b) (1) and (2).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that the proposed centralized examination station regulations should be adopted as a final rule with certain changes thereto as discussed above. In addition, part 178 of the Customs Regulations (19 CFR part 178) is being amended to indicate the OMB-assigned control number for the information collection contained in this final rule.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Importers are required under present law to bear the costs incurred in making imported merchandise available to Customs for examination, and the regulations, by streamlining examination procedures, should reduce those costs and improve the overall importation/entry process. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information in these final regulations, contained in § 118.11, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(h)) under control number 1515–0183. The estimated average annual burden associated with this collection is 2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 118

Customs duties and inspection, Imports, Centralized examination stations.

19 CFR Part 151

Customs duties and inspection, Imports, Examination, Sampling and testing.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

For the reasons set forth above, chapter I of title 19, Code of Federal Regulations (19 CFR ch. I), is amended by adding part 118 and amending parts 151 and 178 as set forth below.

PART 118—CENTRALIZED EXAMINATION STATIONS

Sec.
118.0 Scope.

Subpart A—General Provisions

118.1 Definition.
118.2 Establishment of a CES.
118.3 Written agreement.
118.4 Responsibilities of a CES operator.
118.5 Procedures for changes to a fee schedule.

Subpart B—Application to Establish a CES

118.11 Contents of application.
118.12 Action on application.
118.13 Notification of selection or nonselection.

Subpart C—Termination of a CES

118.21 Revocation of selection and cancellation of agreement to operate a CES.
118.22 Notice of revocation and cancellation.
118.23 Appeal procedure.
118.24 Appeal from the Regional Commissioner's decision.

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

§ 118.0 Scope.

This part sets forth regulations providing for the making of agreements between Customs and person desiring to operate a centralized examination station (CES). It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the CES operator's agreement, the grounds and procedures for revoking a selection and cancelling an agreement, and the procedures for challenging a revocation and cancellation action. Procedures and requirements for the transfer of merchandise to a CES are set forth in part 151 of this chapter.

Subpart A—General Provisions

§ 118.1 Definition.

A centralized examination station (CES) is a privately operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. A CES may be established in any port or any portion of a port, or any other area under the jurisdiction of a district director.

§ 118.2 Establishment of a CES.

When a district director makes a preliminary determination that a new CES should be established, or when the term of an existing CES is about to expire and the district director believes that the need for a CES still exists, he will announce, by written notice posted at the customhouse and by any other written methods he may consider appropriate (such as normal district information distribution channels, trade bulletins or local newspapers), that applications to operate a CES are being accepted. This notice will include the general criteria together with any local criteria that applicants must meet (see § 118.11 of this part), and will invite the public to submit any relevant written comments on whether a new CES should be established or on whether there is still a need for a CES. Applications will be accepted only in response to the district notice and must be received within 60 calendar days from the date of the notice. Public comments must be received within 30 calendar days from the date of the notice.

§ 118.3 Written agreement.

The applicant tentatively selected to operate a CES must sign a written agreement with Customs before commencing operations. Failure to execute a written agreement with Customs in a timely manner will result in the revocation of that applicant's tentative selection and may result in tentative selection of another applicant or republication of the notice soliciting applications. In addition to the provisions described elsewhere in this part, the agreement will specify the duration of the authority to operate the CES. That duration will be not less than three years nor more than six years. Such agreements cannot be transferred, sold, inherited, or conveyed in any manner. At the expiration of the agreement, an operator wishing to reapply may do so pursuant to this part and his application will be considered de novo.

§ 118.4 Responsibilities of a CES Operator.

By signing the agreement and commencing operation of a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in the approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs.

Such service must be provided on a "first come-first served" basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application or as changed under § 118.5 of this part and bill users directly for services rendered;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the district director pursuant to § 118.11(f) of this part. Additions to or deletions from the list must be submitted in writing to the district director within 10 calendar days of the commencement or termination of employement;

(g) Maintain a Customs custodial bond in an amount set by the district director. The operator also agrees to increase the amount of the bond if deemed appropriate by the district director;

(h) Maintain and make available for Customs examination all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examination conducted pursuant to the agreement to operate the CES;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation;

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of $1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the district director.

§ 118.5 Procedures for changes to a fee schedule.

Whenever a CES operator intends to increase, add to or otherwise change the service fees set forth in the fee schedule referred to in § 118.4(c) of this part, the operator shall provide 90 calendar days advance written notice to the district director of such proposed fee schedule change and shall include in the notice a justification for any increased or additional fee. Following receipt of this written notice, the district director will advise the public of the proposed fee schedule change and invite comments thereon under the public notice and comment procedures set forth in § 118.2 of this part. After a review of the proposed fee schedule change and any public comments thereon, and based on the principle of comparability set forth in § 118.11(c) of this part, the district director will decide whether to approve the change, will notify the CES operator in writing of his decision, and will notify the public of any approved fee schedule change by the same methods that were used to provide the public with notice of the proposed change. A CES operator shall remain bound by the existing fee schedule and shall not implement any fee schedule change prior to receipt of written approval of the change from the district director.

Subpart B—Application To Establish a CES

§ 118.11 Contents of application.

Each application to operate a CES shall consist of the following information, any application not providing all of the specified information will not be considered, and the responses to paragraphs (b), (c), (d), (g) and (h) of this section shall constitute the criteria used to judge the application:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space. Where a significant capital expenditure would be required in order for an existing facility to meet security or other physical or equipment requirements necessary for the CES operation, the applicant may request in the application, and the district director may allow, up to an additional 30 calendar days after tentative selection to conform the facility to such requirements, but in such a case the agreement referred to in § 118.3 of this part shall not be executed until those requirements are met;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service. Subject to any special costs incurred by the applicant such as facility modifications to meet specific cargo handling or storage requirements or to meet Customs security standards, the fees set forth in the schedule shall be comparable to fees charged for similar services in the area to be served by the CES;

(d) A detailed list of equipment showing that the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed Customs Form 301 must be included with the application for approval as a prerequisite to selection

(f) A list of all employees involved in the CES operation setting forth their names, dates of birth, and social security numbers. (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations and knowledge of Customs procedures and regulations, or a commitment to acquire that knowledge; and

(h) Any other information to address any local criteria that the district director considers essential to the selection process based on port conditions.

§ 118.12 Action on application.

Following submission of all applications in accordance with §§ 118.2 and 118.11 of this part, the district director will advise the public of the applications received and invite comments thereon under the public notice and comment procedures set forth in § 118.2; with regard to each application, the notice will set forth the name of the applicant, the address of the facility proposed to be operated as the CES, the proposed fee schedule, the list of equipment at the facility, and the number of employees to be involved in the CES operation. The district director, based on a review of all applications under the criteria set forth in § 118.11 and any public comments submitted under § 118.2 or this section, shall determine whether a CES operator should be selected and, if a CES operator is to be selected, shall select the applicant that will best meet the examination needs of Customs and facilitate the movement of imported merchandise.

§ 118.13 Notification of selection or nonselection.

The applicant selected to operate a CES will be notified in writing by the district director of his tentative selection. The selection shall become final upon execution of the written agreement between Customs and the applicant under § 118.3 of this part, and the district director will advise the public of the final selection and of the date on which the CES will commence operation under the agreement in accordance with the notice procedures set forth in § 118.2 of this part. Each applicant not selected to be a CES operator will be so notified in writing and with a statement of the reason of nonselection.

Subpart C—Terminations of a CES

§ 118.21 Revocation of selection and cancellation of agreement to operate a CES.

(a) *Immediate revocation and cancellation.* The district director shall immediately revoke a selection as operator and cancel an agreement to operate a CES if:

(1) The selection and agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which is a CES operator is convicted of, or has committed acts which would constitute, a felony or a misdemeanor involving theft, smuggling, or a theft-connected crime, and the conviction resulted from, or the subject acts were in fact committed as part of, his official duties or operator or corporate officer. Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to his conviction for a felony or misdemeanor involving theft, smuggling, or a theft-connected crime will not preclude application of this paragraph if the conviction resulted from an act or acts committed in his official capacity as corporate officer.

(b) *Proposed revocation and cancellation.* The district director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement or the provisions of § 118.4 of this part;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by § 118.4 of this part; or

(5) The custodial bond required by § 118.4 of this part is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

§ 118.22 Notice of revocation and cancellation.

The district director shall immediately revoke the selection as operator and cancel the agreement to operate a CES, or propose to revoke such selection and cancel such agreement, by serving notice in writing on the operator. The notice shall be in the form of a statement specifically setting forth the grounds for immediate revocation and cancellation or proposed revocation and cancellation and shall inform the operator of his right to appeal.

§ 118.23 Appeal procedure.

An operator wishing to appeal an immediate revocation and cancellation or to show cause why a proposed revocation and cancellation should not occur may, within 10 calendar days of receipt of the written notice of the immediate or proposed action, file a written appeal with the Regional Commissioner having jurisdiction over the district director who signed the notice. A revocation and cancellation pursuant to § 118.21(a) of this part shall remain in effect during any appeal, but a revocation and cancellation pursuant to § 118.21(b) of this part shall not take effect until the appeal process under this paragraph and under § 118.24 of this part has been concluded with a decision adverse to the operator. The appeal shall be filed in duplicate and shall set forth the response of the CES operator to the statements of the district director. The Regional Commissioner shall render a written decision to the operator, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal unless the period for decision is extended with due notification to the operator.

§ 118.24 Appeal from the Regional Commissioner's decision.

Upon a decision by the Regional Commissioner affirming the immediate revocation of selection and cancellation of an agreement to operate a CES or agreeing that a proposed revocation and cancellation should take effect, the operator may file with the Commissioner of Customs a written appeal requesting such additional review as the Commissioner or his delegate deems appropriate. This request must be received by the Commissioner within 10 calendar days of the operator's receipt of the Regional Commissioner's decision. The Commissioner or his delegate shall render a written decision to the operator, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal unless the period for decision is extended with due notification to the operator.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

* * * * *

2. Section 151.6 is amended by revising the first sentence to read as follows:

§ 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required or authorized by the district director in accordance with § 151.7 or § 151.15 of this part.* * *

3. Section 151.7, introductory text, is amended by revising the first sentence to read as follows:

§ 151.7 Examination elsewhere than at place of arrival or public stores.

The district director may require or authorize examination at a place other than the place of arrival or the public stores, such as at the importer's premises or at a centralized examination station under § 151.15 of this part. * * *

* * * * *

4. Section 151.15 is added to read as follows:

§ 151.15 Movement of merchandise to a centralized examination station.

(a) *Permission to transfer merchandise for examination.* When a shipment requires examination at a centralized examination station (CES), Customs Form 3461, or Customs Form 3461 (ALT) for land border cargo, or an attachment to either, may be used to request permission to transfer the merchandise to a CES. The entry filer must write, type or stamp the following lines on the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: _____All or,
Container #'s _____, _____, _____◆
To CES______________________◆
Approved by: U.S. Customs inspector_____◆
Date______________________◆

Unless the district director exercises his authority pursuant to paragraph (d) of this section, the reviewing inspector will initial and date the form or attachment being used, or stamp one copy of the Customs Form 3461 or 3461 (ALT) if required by the district director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES unless another CES is designated by the district director under paragraph (d) of this section.

(b) *Assumption of liability during transfer.* Merchandise designated for examination may be transferred from the importing carrier's point of unlading or from a bonded facility, to a CES, only if the transfer takes place under bond. The entry filer shall select one of the following bonded movements for the transfer to the CES unless the type of bonded movement to be used is specified by the district director under paragraph (d) of this section:

(1) If the merchandise is tranferred directly to a CES by an importing carrier, the importing carrier shall remain liable under the terms of its international carrier bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(2) If the merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its custodial bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(3) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the CES operator shall be liable under the terms of his custodial bond for the proper safekeeping and delivery of the merchandise to the CES facility.

(4) If the importer or his agent acting as importer of record transfers the merchandise to a CES, that importer or agent shall assume liability under his importation and entry bond (see § 151.7(d) of this part) for the proper transfer of the merchandise until it is receipted for by the CES operator.

(c) *Annual blanket transfer.* District directors may institute an annual blanket transfer application procedure to facilitate any of the bonded movements described in paragraph (b) of this section.

(d) *Designation of bonded movement and CES to be used.* In the event the district director deems it necessary, he may direct the type of bonded movement to be used to transfer merchandise to a CES and may designate the CES at which examination must take place. In either case the district director's action will be noted on the Customs Form 3461 or 3461 (ALT) or attachment thereto.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

19 CFR section	Description	OMB control No.
§ 118.11	Application to establish a centralized examination station.	1515–0183

Michael H. Lane,
Acting Commissioner of Customs.

Approved: December 8, 1992.

Peter K. Nunez,
Assistant Secretary of the Treasury.

[FR Doc. 93–1494 Filed 1–21–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Abbott Laboratories to Mid-Continent Agrimarketing, Inc.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, North Chicago, IL 60064, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 9–252 for Bicyclohexylammonium fumagillin to Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and in 21 CFR 520.182(b) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Mid-Continent Agrimarketing, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "059620" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Drug labeler code	Firm name and address
•	• • • •
059620	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214
•	• • • •

(2) * * *

Drug labeler code	Firm name and address
•	• • • •
059620	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214
•	• • • •

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.182 [Amended]

2. Section 520.182 *Bicyclohexylammonium fumagillin* is amended in paragraph (b) by removing "000074" and adding in its place "059620".

Dated: January 14, 1993.

Robert Furrow,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93-1441 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 520

Oral Dosage Form New Animal Drugs; Milbemycin Oxime

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp. The supplemental NADA provides for use of milbemycin oxime tablets in dogs for removal and control of adult roundworm and whipworm infections in addition to the existing approved use for prevention of heartworm disease and control of hookworm infections.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8614.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, filed supplemental NADA 140-915 which provides for use of 2.3-, 5.75-, 11.5-, and 23.0-milligram Interceptor® (milbemycin oxime) tablets for use as an anthelmintic in dogs. The supplemental NADA provides for use of the product for removal and control of adult *Toxocara canis* (roundworm) and *Trichuris vulpis* (whipworm) infections in dogs over 8 weeks of age. The product is currently approved for prevention of heartworm disease caused by *Dirofilaria immitis* and control of hookworm infections caused by *Ancylostoma caninum*. The supplemental NADA is approved as of December 29, 1992, and the regulations are amended by revising 21 CFR 520.1445(c)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental NADA approval qualifies for 3 years of marketing exclusivity for the new indications beginning December 29, 1992, because new clinical or field investigations (other than bioequivalence or residue studies) conducted by the sponsor were required for the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1445 is amended by revising paragraph (c)(2) to read as follows:

§ 520.1445 Milbemycin oxime tablets.

* * * * *

(c) * * *

(2) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis*, control of hookworm infections caused by *Ancylostoma caninum*, and removal and control of adult roundworm infections caused by *Toxocara canis* and whipworm infections caused by *Trichuris vulpis* in dogs.

* * * * *

Dated: January 8, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93-1440 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-335; Ref: Notice Nos. 739, 744]

RIN 1512-AB09

Labeling of Bulk Process Sparkling Wine (90F167P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations in 27 CFR part 4 to permit the use of the phrases "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented," as alternatives to "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. The Director may authorize the use of other or additional descriptive terms to further describe sparkling wine made by this process upon a determination by the Director that such term adequately informs the consumer about the method of production of the sparkling wine. The term "charmat method" or "charmat process" may be used as additional information. In addition, ATF is establishing guidelines with respect to legibility requirements applicable to the optional designation on sparkling wine labels.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20091 (202-927-8230).

SUPPLEMENTARY INFORMATION:

I. Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. The legislative history of the FAA Act shows that Congress intended to grant broad rulemaking authority to ensure that labels on alcoholic beverages provide consumers with adequate information about the product. In hearings before the House Ways and Means Committee on H.R. 8539, 74th Cong., 1st Sess., Joseph Choate, Director of the Federal Alcohol Control Administration, stated with respect to regulations to be promulgated.

> Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straightforward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle. (Record of hearing, June 19 and 20, 1935, p. 10.)

Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4. Subpart C of part 4 sets forth the standards of identity for wine for labeling and advertising purposes. The current labeling regulations, 27 CFR 4.21(b)(2), provide that "champagne" is a type of sparkling light wine which derives its effervescence solely from the secondary fermentation of the wine in bottles of not greater than 1 gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the Champagne District of France. Pursuant to § 4.34(a), the type designation "champagne" may appear on the label in lieu of the class designation "sparkling wine."

Section 4.21(b)(3) provides that a sparkling light wine which derives its effervescence from the secondary fermentation of the wine in containers larger than a 1 gallon bottle, and having the taste, aroma, and characteristics generally attributed to champagne may, in addition to but not in lieu of the required class designation "sparkling wine," be further designated as "champagne style" or "champagne type" or "American (or New York State, California, etc.) champagne-bulk process." As further specified in the regulation:

> * * * all the words in such further designation shall appear in lettering of substantially the same size and such lettering shall not be substantially larger than the words "sparkling wine."

II. Amendment of § 4.21(b)(3)

As indicated, sparkling wines are made naturally effervescent by secondary fermentation in closed containers. "Champagne" is a type of sparkling wine that begins as a table wine to which yeast and sugar are added. This induces a secondary fermentation. The wine is then placed in bottles which are closed securely to withstand the pressure that develops as a result of the fermentation. This secondary fermentation accounts for the bubbles in the wine. In producing bulk process sparkling wine having the characteristics generally attributed to champagne, the secondary fermentation occurs in large (sometimes as much as 35,000 gallons) glass-lined containers instead of in individual bottles.

Historically, it has been ATF's position that there is a difference in identity between champagne produced by secondary fermentation within a bottle and sparkling wine having the characteristics generally attributed to champagne which has been produced by secondary fermentation in a container larger than a 1 gallon bottle. As such, ATF has required that the labels of these products make a distinction between the two methods of secondary fermentation. The most commonly used designation that is currently allowed in the regulations to describe the method by which sparkling wine is produced by fermentation in a large closed container is "bulk process."

Recently, several domestic producers of bulk process sparkling wines requested greater flexibility in the labeling of sparkling wines. ATF agrees that greater flexibility in the labeling of sparking wine where secondary fermentation occurs outside the bottle is appropriate. As previously mentioned, the purpose of the labeling provisions of the FAA Act is to provide the consumer with adequate information as to the identity and quality of the product. ATF believes that there are other terms which accurately describe and explain the production process to the consumer in language which is simple and easy to understand.

In addition, after reviewing numerous certificates of label approval for bulk process sparkling wines having the characteristics generally attributed to champagne, ATF had observed that on a number of labels the word "champagne" appeared more prominently and conspicuously than the words "bulk process" and the mandatory designation "sparkling wine." While these labels are in compliance with current regulations, since the word "champagne" is not substantially larger than the words "sparkling wine," there was concern that such labels could result in consumer confusion regarding the true identity of the product. Accordingly, ATF considered amending § 4.21(b)(3) in order to provide specific guidelines for placement and type size requirements applicable to the optional designation on bulk process sparkling wine labels.

III. Notice No. 739

On May 5, 1992, the Bureau published a notice in the Federal Register (Notice No. 739, 57 FR 19267) proposing to amend the wine regulations to permit the use of other phrases as alternatives to the phrase "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. ATF also proposed to permit the use of the term "charmat method" as additional information to describe this process. The Bureau also proposed to establish specific standards with respect to placement and type size requirements applicable to the optional designation on sparkling wine labels. The specific proposals will be discussed below.

The comment period for Notice No. 739, initially scheduled to close on July 6, 1992, was extended until August 5, 1992, with the publication of Notice No. 744 (July 2, 1992, 57 FR 29456).

A. Wording and Placement

In Notice No. 739 ATF proposed to amend the regulations to permit bulk process sparkling wine having the characteristics generally attributed to champagne to be further designated as (1) "champagne style" or (2) "champagne type" or (3) "champagne," together with an appropriate appellation of origin disclosing the true place of origin of the wine, such as "American," "New York State," "Napa Valley," or "Chilean". Such further designation would be in addition to but not in lieu of the class designation "sparkling wine." The proposed regulations require that the appellation of origin immediately precede the word "champagne" on the same line or the immediately preceding line.

As it relates to the third further designation, (3) above, the proposed regulations required that one of the following terms appear together with the word "champagne:" "bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "not fermented in the bottle," or "not bottle fermented." The term must immediately follow the word "champagne" on the same line or the immediately following line.

In addition, in Notice No. 739 ATF proposed to allow the use of the term "charmat method" (named after the Frenchman who developed the bulk process technique in the early 1900s) as additional information to describe this process, provided it appears immediately before or after one of the previously mentioned phrases.

All the words in such further designation must appear together without any intervening graphics, words, etc. In the case of the third further designation, however, a mark of some sort (e.g., a dash) may appear between the word "champagne" and the remainder of the designation as, for example, "American champagne-fermented outside the bottle."

B. Size of Type

In reviewing approved labels for bulk process sparkling wines, ATF observed that the word "champagne" often appeared more prominently and conspicuously than the words "bulk process" and "sparkling wine." Initially, ATF was concerned that consumers may erroneously conclude that the product is bottle fermented "champagne," rather than sparkling wine having the characteristics generally attributed to champagne that has been fermented in a large closed container.

Section 4.21(b)(3) currently provides that all the words in the further designation must appear "in lettering of substantially the same size and such lettering shall not be substantially larger than the words 'sparkling wine.' " There seemed to be some confusion in the industry as to what is meant by the requirement that all of the words in the further designation must be of "substantially the same size." Similarly, the requirement that the further designation be in lettering not "substantially larger than the words 'sparkling wine' " appeared to be a less than adequate standard as to the differences in type sizes which are allowable. In order to address these problems, ATF proposed more specific guidelines for type size requirements.

Specifically, the Bureau proposed that on labels of bulk process sparkling wine, all the words in the further designation, including the appellation of origin, shall appear in lettering that is not smaller than the word "champagne" by more than 1 millimeter. In addition, the proposal provided that all the words in the further designation, including the word "champagne," as well as the optional term "charmat method," must appear in lettering that is not larger than the words "sparkling wine" by more than 1 millimeter.

C. Unqualified Use of the Word "Champagne"

In reviewing approved labels for bulk process sparkling wines, ATF also found that occasionally the unqualified word "champagne" appeared on the neck and back labels, while the entire optional designation set forth in the regulations appeared on the brand label. ATF saw the prominent display of the word "champagne," without any further qualification, as potentially misleading to the consumer as to the origin and method of production of the sparkling wine. On the other hand, the word "champagne" might be used as part of an explanatory text, usually on the back label, which is not misleading because of its context. For example, the explanatory text might not use the exact wording of the optional designation as set forth in the regulations, but it might set forth, in different language, the origin and method of production of the sparkling wine at issue.

Thus, ATF proposed that the word "champagne" could only appear on a label of bulk process sparkling wine where it was qualified by a further designation, in accordance with proposed § 4.21(b)(3) (i), (ii) and (iii), or where the word appeared as part of an explanatory text which the Director found was not misleading as to the origin or method of production of the sparkling wine. It was contemplated that this proposal would allow industry members to retain some flexibility in the use of the term "champagne" as part of an explanatory text given as additional information on the label, while ensuring that the consumer would not be misled as to the origin or method of production of the sparking wine.

D. Effective Date of Final Rule

Finally, in order to provide the industry with sufficient time to make label revisions, ATF proposed that any regulations issued pursuant to a final rule would become effective 1 year from the date of publication in the **Federal Register**.

IV. Analysis of Comments

In response to Notice Nos. 739 and 744, the Bureau received 60 comments. Most of the comments were submitted by industry members on behalf of producers of both bottle fermented and bulk fermented sparkling wines.

The majority of comments came from producers of bottle fermented sparkling wine. These comments were generally supportive of the four phrases proposed by the Bureau as alternatives to the phrase "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. One commenter noted ATF's longstanding position that bottle fermented sparkling wine and bulk process sparkling wine are different products and that "the mandatory information on their labels should enable consumers to readily distinguish between the two."

In general, these comments also favored the proposal to establish specific placement and type size requirements for the further designation on labels of bulk process sparkling wines. However, many of the commenters believed that the proposal did not go far enough, and that the regulations should also require that all the words in the further designation, including the word "champagne," appear in the same style of type, in the same color, and on the same background. In addition, many of these commenters believed that the proposed phrase "charmat method" was misleading, in that consumers did not understand the term. Some concern was also expressed that consumers seeing a product labeled as "charmat" might be confused as to the origin of the sparkling wine. Finally, several comments suggested that the final rule should take effect within 6 months of publication.

ATF also received several comments from producers of bulk process sparkling wine. In general, these comments tended to be critical of the proposal. The comments objected to the proposed alternative phrases, as well as to the existing term "bulk process." The commenters stated that it was their belief that these terms conveyed negative connotations to the consumer. One commenter suggested an alternative phrase, "naturally fermented before bottling."

Furthermore, these commenters argued that most consumers are not interested in knowing about the production method used to make the sparkling wine, and that consumers perceive bulk process champagne to be "champagne"; therefore, sparkling wine produced by secondary fermentation in a large closed container should be entitled to use the term "champagne" without further qualifications. Assuming that a distinction on the label was required, these commenters favored using the phrase "charmat method" by itself on the label. They believe this term conveys accurate information about the production process, without any of the negative connotations of the phrases proposed in the notice.

Regarding the Bureau's proposals concerning type size and placement requirements for the further designation, one commenter stated that producers of bulk process sparkling wine should not be subject to extraordinary lettering size requirements or word placement restrictions. According to the commenter, such restrictions are unnecessary and would result in label clutter.

V. Discussion—Final Rule

ATF and its predecessor agencies have historically held that "champagne" is a type of sparkling wine produced by secondary fermentation within a bottle. This interpretation is based on traditional usage of the term. Extensive research indicates that the word "bottle" has been used to refer to glass containers of not greater than 1 gallon capacity.

Prior to enactment of the FAA Act, other Federal agencies had occasion to rule on the meaning of the term "champagne." In Food Inspection Decision (F.I.D.) 212, dated July 19, 1934, the Department of Agriculture ruled on use of the term "champagne" under the Federal Food and Drugs Act. As stated in the ruling, the term "champagne" could not be used on labels of sparkling wine unless the product was made by the same process as champagne made in the Champagne district of France. The Department referred to F.I.D. 212 in responding to an industry inquiry regarding the labeling of sparkling wine produced by secondary fermentation in large closed containers (vats). By letter dated January 14, 1935, the Department stated that the term "'Champagne' * * * definitely implies that the secondary-fermentation has taken place in the bottle."

The same position was subsequently taken by the Federal Trade Commission (FTC) in a 1935 complaint filed against a domestic winery for misrepresenting their bulk process sparkling wines as "champagne." As stated in the FTC complaint,

> For a long period of time the term "champagne", when used in connection with wines has had and still has a definite significance and meaning * * * (wine) made sparkling by natural fermentation, which fermentation is completed in the bottle; * * *

On March 25, 1935, ATF's predecessor agency, the Federal Alcohol Control Administration (FACA), issued regulations providing that "champagne" was a type of sparkling wine produced by fermentation within a bottle (Misbranding Regulations, Series 6, Article II, Class 3(b)). The word "bottle," as defined in the regulations, referred to a container having a capacity not in excess of 1 gallon. Sparkling wine produced by secondary fermentation in a container larger than a bottle could be labeled as "champagne," provided the term was further qualified by the statement "Secondary Fermentation in Bulk."

After enactment of the FAA Act, the Federal Alcohol Administration (FAA) promulgated regulations containing standards of identity for wine. The issue of the labeling of champagne had been extensively discussed in the hearings held prior to the issuance of the regulations. In the press release announcing the promulgation of the regulations, the FAA stated that "(t)he testimony with respect to foreign and domestic champagne indicated that both from the point of view of the consumer and on the question of process a clear distinction was necessitated between sparkling wines produced by bottle fermentation and sparkling wines otherwise produced."

Consequently, the regulations issued in 1935 allowed the use of the term "champagne" on labels of sparkling wines produced by bottle fermentation, which had the taste, aroma, and other characteristics of champagne as produced in the champagne district of France. A sparkling wine not conforming to the prescribed standard for champagne, i.e., a wine produced by secondary fermentation in a large container, but having the taste, aroma, and characteristics generally attributed to champagne could be further designated as "Champagne style," "Champagne type," or "American (or New York State, California, etc.) Champagne—Bulk process." Such further designation would be in addition to but not in lieu of the class designation "Sparkling wine."

Thus, ATF and its predecessor agencies have consistently held that there is a difference in identity between champagne produced by secondary fermentation within the bottle and sparkling wine having the characteristics generally attributed to champagne which has been produced by secondary fermentation in a container larger than a 1 gallon bottle. This "difference" is not in reference to the taste, aroma, or other characteristics (e.g., stable foam, size of bubbles, etc.) of the finished product since, by regulation, both bottle and bulk fermented champagne must possess the taste, aroma, and other characteristics generally attributed to champagne as made in the champagne district of France. Rather, the "difference" is in regard to the standard of identity for "champagne," i.e., secondary fermentation must take place within a glass container of not greater than 1 gallon capacity. If the secondary fermentation is not within the bottle, the sparkling wine cannot be labeled as "champagne" without further qualification.

Thus, for more than 55 years ATF and its predecessor agencies have held that if the sparkling wine has the taste, aroma, and other characteristics generally attributed to champagne, but the secondary fermentation has taken place in a container larger than a 1 gallon bottle, the product may be labeled as "champagne," provided there appears along with it a qualifying statement which informs the consumer that the sparkling wine was not produced by secondary fermentation in a bottle.

A. Qualifying Statements

One comment submitted by several producers of bulk process sparkling wine challenged the basis for the longstanding distinction in the labeling of champagne, stating that technological advances since the 1930s had eliminated the need for distinguishing between bulk process and bottle fermented sparkling wines. As a result, "(c)hampagne makers using the charmat (bulk) process are today able to craft the characteristics they want in their champagne, including those commonly associated with bottle-fermented champagnes." The comment suggested that there was no chemical difference between the two products, and that consumers could not distinguish the products by taste. In support of that argument, a producer of bulk process sparkling wine submitted the results of a blind taste test in which consumers preferred a bulk process sparkling wine over two bottle fermented champagnes, and were unable to identify which sparkling wines were produced by which process.

The producers of bulk process sparkling wine also argued that consumers don't consider production process when buying champagne. In support of this argument, one commenter submitted the results of a consumer survey which indicated that very few consumers mentioned the method of production as an important factor in their purchase of champagne. More important factors were taste, price, and brand name. In regard to this last factor, when consumers were asked to name a brand of champagne, the brand most frequently named was one produced by the bulk process method. According to the commenter, this indicates that consumers perceive bulk process champagne as "champagne" and, therefore, the need for a distinction in labeling between the two production processes no longer exists.

However, one commenter representing importers of bottle fermented sparkling wines also included the results of a consumer survey. The results of that survey indicated that nearly half the sparkling wine consumers could detect a difference in "mouth feel" between a bulk process and a bottle fermented sparkling wine, and the majority could correctly identify a bottle fermented product as being different from a bulk process product.

ATF finds that the consumer survey data presented by the two different commenters is conflicting and inconclusive. In any event, the basis for the regulation does not depend upon the proposition that bulk process sparkling wine tastes differently from bottle fermented champagne; as noted, the regulation requires that both types of wine possess the "taste, aroma, and other characteristics attributed to champagne as made in the champagne district of France."

Furthermore, ATF believes that, pursuant to its responsibilities under the FAA Act, a further qualification on the label is necessary to provide the consumer with information as to the identity of the product. That is, the consumer should be informed as to whether the product is "champagne" or a sparkling wine having the characteristics generally attributed to champagne. The additional qualifying statement is not intended to communicate any value judgment about the quality of the wine.

B. Wording

The majority of comments received in response to Notice No. 739 supported the Bureau's position that there is a difference in identity between champagne produced by secondary fermentation within a bottle and that produced by secondary fermentation in a closed container larger than a 1 gallon bottle. These commenters also supported the Bureau's proposed alternative phrases to "bulk process," as well as the proposal with respect to placement requirements applicable to the optional designation on sparkling wine labels.

As indicated, the producers of bulk process sparkling wines objected to the wording of the proposed alternative phrases. They believe that the phrases proposed by the Bureau would create a negative connotation in the minds of consumers, thus implying that a bulk process product is inferior in some way. In addition, these commenters believe that the proposed phrases do not accurately describe the method of production. Rather, they describe just one aspect of the process. On the other hand, the commenters believe that the term "charmat method" more accurately describes the complete production process.

The purpose of the labeling provisions of the FAA Act is to provide the consumer with adequate information as to the identity of the product. ATF believes that the alternative phrases proposed in Notice No. 739 alert consumers to the fact that the sparkling wine was not produced by bottle fermentation. Since this is the principal difference between bottle and bulk fermented champagne, ATF believes that it is appropriate to require a statement that focuses on this aspect of the production process. In addition, as one commenter pointed out:

> The label for virtually every bottle-fermented champagne (other than those produced in France currently on the market in the United States contains a reference to the fact that the product was 'bottle-fermented,' or made by the 'methode champenoise,' or 'fermented in this bottle.'

As can be seen, two of the three statements mentioned above are in reference to the container used for secondary fermentation. The term "methode champenoise" ("champagne method") also refers to the fact that the sparkling wine was produced by bottle fermentation. Since the proposed alternative phrases also refer to the type of container used for producing the sparkling wine, ATF believes that consumers will be adequately informed as to the identity of the product.

Furthermore, ATF does not believe that the proposed alternative phrases, or the existing term "bulk process," will have an adverse effect on the industry. As one commenter pointed out, "(t)oday, Charmat champagnes, * * * account for three-quarters of U.S. sparkling wine production and more than 50 percent of the sparkling wine market (including imports) in the United States." In addition, the Bureau would note that a qualifying descriptor has been required on labels of bulk process sparkling wines labeled as "champagne" since 1935.

Although it was suggested that the phrase "naturally fermented before bottling" be permitted as an alternative to the phrases proposed by the Bureau, ATF believes that the term "secondary fermentation before bottling" would be more informative to the consumer since it describes the method of production.

Therefore, as it relates to the wording of the further designation, upon the effective date of this final rule, bulk process sparkling wine having the characteristics generally attributed to champagne may, in addition to but not in lieu of the class designation "sparkling wine," be further designated as (1) "champagne style" or (2) "champagne type" or (3) "American (or New York State, Napa Valley, etc.) champagne," along with one of the following terms: "Bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented."

ATF believes that there may be other terms which can be used as an appropriate description of sparkling wine produced by secondary fermentation outside the bottle. The purpose of the FAA Act is to ensure that the consumer is adequately informed about the identity of the product. Thus, this final rule also provides that the Director may authorize the use of additional terms on sparkling wine labels to further describe sparkling wine produced by fermentation in a large closed container, upon a determination by the Director that such terms adequately inform the consumer about the method of production of the sparkling wine. This issue will be discussed further in the section entitled *"Authorization of Alternative Terms."*

C. Placement and Size of Type

As it relates to the third further designation mentioned above, ATF proposed that the appellation of origin must immediately precede the word "champagne" on the same line or the immediately preceding line. In addition, the qualifying descriptor (e.g., "bulk process") must immediately follow the word "champagne" on the same line or the immediately following line. ATF also proposed that all the words in the further designation must appear together without any intervening graphics, words, etc.

Concerning type size requirements, the Bureau proposed that on labels of bulk process sparkling wine, all the words in the further designation, including the appellation of origin, shall appear in lettering that is not smaller than the word "champagne" by more than 1 millimeter. In addition, all the words in the further designation, as well as the optional term "charmat method," shall appear in lettering that is not larger than the words "sparkling wine" by more than 1 millimeter.

The proposals relative to type size and placement requirements for the optional designation were intended to provide industry members with specific guidelines concerning the labeling of bulk process sparkling wine. The proposals were also intended to ensure that consumers were informed as to the true identity of the product. However, another goal of Notice No. 739 was to provide the industry with additional flexibility in the labeling of bulk process sparkling wines.

In general, the commenters representing importers and producers of bottle fermented sparking wines favored ATF's proposal to establish specific placement and type size requirements for the further designation. However, several commenters believed that the proposal did not go far enough, and that the regulations should also require that all the words in the further designation, including the word "champagne," appear in the same style of type, in the same color, and on the same background. These commenters were concerned that the restrictions on placement and type size did not go far enough in preventing labels which were misleading as to the method of production and origin of the wine.

On the other hand, concern was expressed that the Bureau's proposals with respect to type size and placement requirements applicable to the optional designation are overly restrictive, unnecessary, and would place an undue burden on the industry. As one commenter stated:

> (Production method information) should not be subject to extraordinary lettering size requirements or word placement restrictions. There is no need to clutter labels. If the goal of the mandatory labeling requirement is truly to inform, it is enough that the information be provided in a readable way * * * Charmat producers should not be handicapped by having to comply with label design restrictions that are not necessary in order to communicate information.

ATF did not receive any comments from consumers or consumer groups on this issue.

The purpose of the labeling provisions of the FAA Act is to provide the consumer with adequate information as to the identity of the product. In prescribing regulations ATF has the responsibility to ensure that the statutory goals are met, and that the consumer is "told (about) what was in the bottle." However, ATF does not believe that the regulations should be more restrictive on matters such as type size and placement than is necessary to meet the statutory goal. On the contrary, ATF believes that it should regulate only where necessary and to the extent necessary.

In the matter at hand, ATF's proposed amendment of the regulations was intended, in part, to provide the industry with additional flexibility in the labeling of bulk process sparkling wine. In addition, ATF proposed to establish specific guidelines with respect to placement and type size requirements with regard to the optional designation on sparkling wine labels to ensure that consumers were informed as to the identity of the sparkling wine product.

However, based on the comments received in response to Notice No. 739, ATF now believes that the proposed guidelines relative to type size and placement for the optional designation are too restrictive, and would place an undue burden on the industry. ATF agrees with the commenter who stated that "(i)f the goal of the mandatory labeling requirement is truly to inform, it is enough that the information be provided in a readable way."

On the other hand, ATF recognizes the concerns expressed by many of the commenters regarding the use of the word "champagne" on labels of bulk process sparkling wines. As mentioned, these commenters suggested that all the words in the further designation, including the word "champagne," should be required to appear in the same style of type, in the same color, and on the same background. While ATF believes that these factors should be considered in determining the acceptability of a label, the Bureau believes that a same style type, same color, and same background requirement is overly restrictive and unnecessary.

ATF believes that, for the most part, existing bulk process sparkling wine labels present the information required by the regulations in a way that is informative and not misleading. Rather than implement regulations which would require extensive changes in the labels for all of these products, ATF believes that it would be preferable to fashion a regulation which would prevent misleading labels, while still affording the industry flexibility in the matter of label design.

Therefore, this final rule provides that labels of bulk process sparkling wine shall be so designed that all the words in such further designation are readily legible under ordinary conditions and are on a contrasting background. In the case of the third further designation, ATF will consider whether the label as a whole provides the consumer with adequate information about the method of production and origin of the wine. In order to ensure that labels fairly provide the consumer with such relevant information, ATF will evaluate each label for legibility and clarity, based on such factors as type size and style for all components of the further designation and the optional term "charmat method," as well as the contrast between the lettering and its background, and the placement of information on the label. ATF will not approve any labels which depart from this purpose.

ATF believes that this regulation will provide the Bureau with adequate authority to prevent misleading sparkling wine labels, without mandating extensive and unnecessary changes in sparkling wine labels which are in compliance with the goals of the FAA Act.

D. Use of "Charmat Method"

In Notice No. 739 the Bureau proposed that the term "charmat method" (named after the Frenchman who developed the bulk process technique in the early 1900s) may be used as additional information to describe the bulk process, provided it appears immediately before or after one of the previously mentioned phrases.

Many commenters opposed the Bureau's proposal to allow the term "charmat method" as additional information on labels of bulk process sparkling wines. These commenters stated that the word "charmat" was meaningless to the consumer, and it could be easily confused with the term "champenoise," a word used by producers of bottle fermented sparkling wines to describe the method of production. On the other hand, several producers of bulk process sparkling wine argued that the term "charmat method" should be permitted on labels of bulk process sparkling wines as the sole descriptive qualifier of the term "champagne." It was also brought out in the comments that the term is broadly recognized in the technical literature as being an appropriate description of the bulk process.

ATF recognizes the historic usage of the term "charmat method" within the industry and in technical literature as an accurate description of sparkling wine produced by secondary fermentation in large closed container. One commenter provided several examples of the use of the term "charmat method" in wine textbooks, and other popular, professional, and technical wine literature. Because the term is recognized by wine experts as referring to secondary fermentation in bulk, ATF and its predecessor agencies have allowed the use of this term on sparkling wine labels for well over 35 years. However, the term has only been authorized as additional information to describe the method of production.

After considering the information provided in the comments, ATF has concluded that the term "charmat method" should not be allowed as a sole descriptive qualifier of the word "champagne" on sparkling wine labels. While the comments provided evidence that the term was understood within the industry as referring to secondary fermentation in a tank, there was no evidence that the term had any widespread recognition among consumers. On the contrary, one commenter, representing the interests of importers of bottle fermented sparkling wines, submitted the results of a consumer survey which indicated that the opposite was true. Of the 482 consumers surveyed, 90 percent did not understand what the term "charmat method" meant. On the other hand, 77 percent of the consumers surveyed were able to correctly identify "bulk process" as a designation of sparkling wine fermented in a container and not in the bottle. Thus, the weight of the evidence supported the Bureau's conclusion that at this time, there is not enough consumer understanding of the term "charmat method" to justify allowing the term to appear on labels without qualification.

On the other hand, ATF does not agree that the use of the term "charmat method" as additional information on sparkling wine labels would be misleading as to the origin or identity of the wine. ATF believes that requiring one of the previously mentioned phrases to appear on the label, e.g., "fermented outside the bottle," will clarify the production process for consumers who might not be familiar with the meaning of the term "charmat method." Thus, the label will adequately inform the consumer that the sparkling wine was not produced by bottle fermentation. In addition, since an appellation of origin is required to appear on the label, ATF does not believe that there will be consumer confusion as to the origin of the wine. As such, ATF does not believe that it is necessary to require the term "charmat method" to appear immediately before or after one of the previously mentioned phrases. Such a requirement would be overly restrictive, and would place an undue hardship on the industry when designing their labels.

Thus, the final rule authorizes the use of the term "charmat method" as additional information on labels of bulk process sparkling wines. In addition, in re-examining certificates of label approval for these products, the Bureau has observed that the word "process" has been used as an alternative to the word "method," and the word "charmat" has often appeared together with the words "bulk process," as "charmat bulk process." Thus, in order to minimize the burden on the industry, this final rule also authorizes the use of the term "charmat process." In addition, the Bureau will continue to allow the word "charmat" to appear with the words "bulk process," as "charmat bulk process."

E. Authorization of Alternative Terms

When first requesting ATF approval for the use of alternative terms on sparkling wine labels, a major producer of sparkling wine made the argument that ATF should be able to issue an interpretive ruling authorizing the use of terms which were synonymous with the term "bulk process." The sparkling wine producer argued that such a result would be consistent with the intent of the regulations, and with ATF's statutory mandate to ensure that sparkling wine labels were informative to the consumer about the identity of the product. The existing regulations did not authorize ATF to allow the use of terms other than those specified in the regulations. Thus, rulemaking was initiated to authorize the use of certain alternate terms.

After considering the administrative record on this issue, ATF recognizes that, in addition to the five new terms authorized by this final rule, there may be other terms which can be used as an appropriate description of sparkling wine produced by secondary fermentation outside the bottle. Therefore, the final rule provides that the Director may authorize the use of additional terms on sparkling wine labels to further describe sparkling wine produced by fermentation in a large closed container, upon a determination by the Director that such terms adequately inform the consumer about the method of production of the sparkling wine. ATF believes that this provision will provide additional flexibility to sparkling wine producers, and will obviate the need for ATF to initiate rulemaking every time a winery wishes to use a new term to describe the method of production on a sparkling wine label.

Furthermore, after considering the comments submitted regarding the use of the term "charmat method," ATF has determined that while the current evidence does not support allowing this term as the sole descriptive qualifier of the word "champagne" on labels of bulk process sparkling wines, consumer understanding of winemaking terminology is not necessarily static. If it can be reasonably demonstrated that consumers recognize the term "charmat method," or any similar term, as referring to a sparkling wine produced by fermentation in a large closed container, and not in the bottle, then ATF shall open a rulemaking proceeding and consider such evidence as a primary factor in determining whether to specifically authorize the use of such terms as further designations on sparkling wine labels.

F. Unqualified Use of the Word "Champagne"

As stated previously, in reviewing approved labels for bulk process sparkling wines, ATF found that occasionally the unqualified word "champagne" appeared on the neck and back labels, while the entire optional designation set forth in the regulations appears on the brand label. ATF believed that the prominent display of the word "champagne," without any further qualification, could mislead the consumer as to the origin and method of production of the sparkling wine.

Thus, ATF proposed that the word "champagne" shall only appear on a label of bulk process sparkling wine where it is qualified by a further designation, or where the word appears as part of an explanatory text which the Director finds is not misleading as to the origin or method of production of the sparkling wine.

Many commenters supported the Bureau's proposal regarding the unqualified use of the word "champagne." However, in light of ATF's decision that the regulation does not need to prescribe the precise placement or type size of the further designation on the label, the Bureau believes that there is no longer a need to address this issue specifically in the regulation. The final rule gives ATF the authority to determine if the label as a whole is misleading, after considering factors such as the placement of information on the label. ATF would emphasize that if the word "champagne" is used on the label in such a manner that it tends to create a misleading or deceptive impression as to the actual identity of the product, the label will be rejected.

G. Effective Date of Final Rule

Several commenters suggested that the proposed year-long transition period for compliance with the final regulations was too long. ATF agrees with these comments, but wishes to ensure that the industry is provided with sufficient time to bring labels into compliance with this final rule. Therefore, the provisions of this Treasury decision will become effective 6 months from the date of publication in the **Federal Register**, and will apply to sparkling wines bottled on or after that date.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived by a small proprietor from the new options provided in this rule will be the result of the proprietor's own promotional efforts and consumer acceptance of the specific product. No new reporting or recordkeeping requirements are imposed by this rule. Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512–0482. The estimated average burden associated with the collection of information in this final rule is 1 hour per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimated should be directed to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 and to the Office of Management and Budget, Paperwork Reduction Project 1512–0482, Washington, DC 20503.

Disclosure

Copies of the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

27 CFR Part 4—Labeling and advertising of wine is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.21(b)(3) is revised to read as follows:

§ 4.21 The standards of identify.

* * * * *

(b) *Class 2; sparkling grape wine.*

* * *

(3)(i) A sparkling light wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for "champagne" may, in addition to but not in lieu of the class designation "sparkling wine," be further designated as:

(A) "Champagne style;" or

(B) "Champagne type;" or

(C) "American (or New York State, Napa Valley, etc.) champagne," along with one of the following terms: "Bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented." The term "charmat method" or "charmat process" may be used as additional information.

(ii) Labels shall be so designed that all the words in such further designation are readily legible under ordinary conditions and are on a contrasting background. In the case of paragraph (b)(3)(i)(C) of this section, ATF will consider whether the label as a whole provides the consumer with adequate information about the method of production and origin of the wine. ATF will evaluate each label for legibility and clarity, based on such factors as type size and style for all components of the further designation and the optional term "charmat method" or "charmat process," as well as the contrast between the lettering and its background, and the placement of information on the label.

(iii) Notwithstanding the provisions of paragraphs (b)(3)(i)(A), (B) and (C) of this section, the Director may authorize the use of a term on sparkling wine labels, as an alternative to those terms authorized in paragraph (b)(3)(i) of this section, but not in lieu of the required class designation "sparkling wine," upon a finding that such term adequately informs the consumer about the method of production of the sparkling wine.

* * * * *

Signed: December 17, 1992.

Stephen E. Higgins,

Director.

Approved: January 13, 1993.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–1386 Filed 1–21–93; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 251

Panama Canal Employment System; Personnel Policy

AGENCY: Department of the Army, Defense.

ACTION: Final rule.

SUMMARY: This final rule amends part 251 of title 35, Code of Federal Regulations, to reflect changes to the Panama Canal Employment System (PCES). These changes will permit employees of non-Department of Defense (DOD) agencies attached to DOD agencies in the Republic of Panama, who have previously been ineligible to receive the recruitment and retention differential contained in the Panama Canal Act of 1979, to be eligible to receive such differential, provided such eligibility is agreed to between the employee's agency and DOD.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Washington, DC 20036–4996 (Telephone: 202–634–6441); Colonel W.

L. Mayew, Executive Officer to the Assistant Secretary of the Army (Civil Works), room 2E-569 The Pentagon, Washington, DC (Telephone: 703-697-9809); or Mr. Robert H. Rupp, Executive Director, Panama Area Personnel Board, Unit 2300, APO AA 34011 (Telephone in Corozal, Republic of Panama: 011-507-52-7890).

SUPPLEMENTARY INFORMATION: The Panama Canal Employment System (PCES) was established in section 1212 of the Panama Canal Act of 1979, Public Law 96-70, 93 Stat 464, 22 U.S.C. 3652. The PCES covers employees of the Panama Canal Commission and Department of Defense member agencies. Pursuant to 22 U.S.C. 3652(c) and (d), the President may amend any provision of the PCES, may exclude any employee or position from PCES coverage and may extend to any employee the rights and privileges provided to employees in the competitive service. This authority has been delegated through the Secretary of Defense and the Secretary of the Army to the Chairman of the Panama Area Personnel Board. These regulations are promulgated pursuant to this authority. Issuance of a notice of proposed rulemaking under 5 U.S.C. 553 is not necessary because the final rule pertains only to personnel of agencies covered by these regulations.

The final rule addresses the applicability of the PCES to employees of non-Department of Defense (DOD) agencies attached to DOD agencies in the Republic of Panama for the limited purpose of obtaining eligibility for the recruitment and retention differential provided for in section 1217 of the Panama Canal Act (22 U.S.C. 3657), provided such eligibility is agreed to between the employee's agency and DOD. The provisions of 35 CFR 251.31 and 251.32 which fix the specific eligibility requirements of the differential may be also made applicable to these employees. Similarly, the provisions of section 1218 (22 U.S.C. 3658) and of 35 CFR 251.25, which define basic pay, may be also made applicable. Previously, employees serving in these positions were ineligible for the aforementioned differential. This amendment will now give the employee's agency and DOD the flexibility to make the differential applicable to these non DOD employees assigned to DOD agencies in Panama provided the two agencies agree to do so.

This provision of the final rule does not affect the limited quarters allowance provided in 22 U.S.C. 3657a. As provided in 22 U.S.C. 3657a(d), a qualifying employee is eligible for the quarters allowance regardless of participation in the PCES by the employer agency.

This final rule is not a major rule as defined in Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small business entities. I certify that these proposed changes in regulations meet the applicable standards provided in sections 2(a) and (b)(2) of Executive Order No. 12778.

List of Subjects in 35 CFR Part 251

Panama Canal Employment System, Army Secretary Regulations, Personnel Policy.

Accordingly, 35 CFR Part 251 is amended as follows:

PART 251—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—PERSONNEL POLICY

1. The authority citation for Part 251 continues to read as follows:

Authority: 22 U.S.C. 3541-3701, E.O. 12173, 12215.

2. Section 251.4(a) is amended by removing "(g)" after the word "through" and inserting "(i)" in its place.

3. Section 251.4 is amended by adding paragraph (i) as follows:

§ 251.4 Adoption of Panama Canal Employment System by Department of Defense.

* * * * *

(i) Officers and employees of non-Department of Defense (DOD) agencies attached to DOD agencies in Panama are excluded from all the provisions of subchapter II and the regulations contained in this part and part 253 of this chapter, except that such employees may be covered by the provisions of sections 1217, 1217a, and 1218 of subchapter II and the regulations in §§ 251.25, 251.31 and 251.32 of this chapter, if coverage by said provisions is agreed to by the employee's agency and DOD and such coverage does not result in a benefit greater than that provided to DOD employees.

Dated: January 10, 1993.

M.P.W. Stone,

Chairman, Panama Area Personnel Board.

[FR Doc. 93-1306 Filed 1-21-93; 8:45 am]

BILLING CODE 3710-08-P

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Chapter III

[Docket No. CRT 93-2-RM]

Modification of Rules of Agency Organization

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal is amending its rule addressing the Composition of the Tribunal. The amendment adopts the Senate's June 13, 1990 amendment of chapter 8 of title 17, United States Code, to reduce the number of Commissioners on the Copyright Royalty Tribunal, to provide for lapsed terms and for other purposes.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009. (202) 606-4400.

SUPPLEMENTARY INFORMATION: On June 13, 1990, the Senate proceeded to consider the bill (S. 1272) to amend chapter 8 of title 17, United States Code, to reduce the number of Commissioners on the Copyright Royalty Tribunal, to provide for lapsed terms of such Commissions, and for other purposes, which had been reported from the Committee on the Judiciary.

In lieu of the fact that the revision is undertaken to incorporate a 1990 amendment by the Senate, the revised rule will become effective immediately.

Accordingly, § 301.3 of the Tribunal's Rules is amended in the manner set forth below:

List of Subjects in 37 CFR Part 301

Administrative practice and procedure, Freedom of Information Act, Sunshine Act.

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for part 301 continues to read as follows:

Authority: Chapter 8 of title 17, United States Code.

2. Section 301.3 is revised as follows:

§ 301.3 Composition of the Tribunal.

The Tribunal is composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at the rate of pay in effect for Level V of the Executive Schedule under section 5316 of title 5.

Dated: January 14, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93-1354 Filed 1-21-93; 8:45 am]

BILLING CODE 1410-00-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001 and 1005

RIN 0991-AA75

Health Care Programs; Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100-93

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule and clarification.

SUMMARY: This final rule clarifies the scope and purpose of the exclusion authority provisions originally set forth in final rulemaking published in the **Federal Register** on January 29, 1992 (57 FR 3298). That final rule implemented the OIG sanction and civil money penalty (CMP) provisions established through section 2 and other conforming amendments in the Medicare and Medicaid Patient and Program Protection Act of 1987, and other statutory authorities. This clarifying document modifies the final rule to give greater clarity to the original scope of the authorities contained in 42 CFR part 1001. In addition, this rule is providing further clarification to the discovery provision set forth in part 1005 of the regulations.

EFFECTIVE DATE: This regulation is effective on January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Inspector General, (202) 619-3270.

SUPPLEMENTARY INFORMATION:

I. Background

On January 29, 1992, we published in the **Federal Register** a final rule to implement a variety of OIG sanction and civil money penalty provisions established through section 2 and other conforming amendments in the Medicare and Medicaid Patient and Program Protection Act of 1987, along with certain additional provisions contained in the Consolidated Budget Reconciliation Act of 1985, the Omnibus Budget Reconciliation Act (OBRA) of 1987, the Medicare Catastrophic Coverage Act of 1988, OBRA 1989, and OBRA 1990 (57 FR 3298). Those final regulations were designed to protect program beneficiaries from unfit health care practitioners, and otherwise to improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX and XX of the Social Security Act.

As a result of that final rule, 42 CFR part 1001 was amended to specifically set forth each type of exclusion, the basis or activity that would justify the exclusion, and the considerations that would be used in determining the period of exclusion. (In addition, through the revision and recodification of existing regulations, a new 42 CFR part 1005 was added to address various procedures that govern administrative hearings and subsequent appeals for all OIG sanction cases.)

Since publication of the final rule, we have become aware that an uncertainty exists with regard to the scope and applicability of the exclusion authorities set forth in part 1001 of the regulations. This final rule gives clarity to the original intent of the scope and applicability of existing exclusion authorities.

II. Revisions to 42 CFR 1001.1 and 1005.4

We are clarifying § 1001.1, Scope and purpose, to explicitly indicate that the exclusion provisions in 42 CFR part 1001 apply to and bind (1) the OIG in imposing and proposing program exclusions, and (2) the administrative law judges (ALJs), the Departmental Appeals Board (DAB) and federal courts in reviewing the imposition of exclusions by the OIG (or, where applicable, in imposing exclusions proposed by the OIG).

It has always been implicit that the circumstances for each program exclusion and the specified length for each exclusion (including the mitigating and aggravating circumstances) set forth in 42 CFR part 1001 would bind the OIG, ALJs and the DAB in all their decision making. Following the publication of the revised exclusion regulations on January 29, 1992, however, it has been brought to our attention that it could be possible to interpret part 1001 as applying only to the imposition of exclusions by the OIG, and not to the review of exclusions by ALJs, the DAB and federal courts. This is not the result intended by the Secretary or these regulations, and is inconsistent with the application of the prior regulations codified at 42 CFR part 1001 to program exclusions.

The regulatory provisions in 42 CFR part 1001 were promulgated in large part to add consistency and predictability to the overall process of imposing program exclusions. Were the Secretary to have so limited the applicability of these highly specific, substantive provisions set forth in part 1001, the effect of the regulations would be virtually nullified if interpreted as binding the OIG to their requirements while, at the same time, providing the ALJs with total discretion to disregard the regulatory requirements and review the OIG's imposition of exclusions as if there were no applicable regulatory standards.

In addition, we are also making a related change to the ALJs' authority in § 1005.4(c) to make clear that ALJs do not have the authority to find invalid or refuse to follow Federal statutes, regulations or Secretarial delegations of authority.

III. Technical Clarification to Section 1005.7

In addition, we are revising paragraph (e)(1) of § 1005.7, Discovery, to clarify that parties are not required to file a motion for a protective order as a condition precedent for withholding documents under a claim of privilege. The revised § 1005.7(e)(1) also specifically states that the parties are allowed to have the opportunity to file a motion for a protective order at any time during discovery.

As revised, § 1005.7(e)(1) deletes the unrealistic time frame for filing a motion for a protective order. The revised section gives the parties the option of filing a motion for a protective order at any time during the discovery process.

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order criteria for a "major rule." In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601-612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities.

As we indicated in the original final rule published on January 29, 1992, consistent with the intent of the statute, the amendments to 42 CFR chapter V, and this subsequent clarification, are designed to clarify departmental policy with respect to the imposition of exclusions, CMPs and assessments upon individuals and entities who violate the statute. We continue to believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent.

For this reason, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

V. Effective Date and Waiver of Proposed Rulemaking

Since this rulemaking is designed to clarify departmental policy already set forth in final regulations with respect to the imposition of exclusions, CMPs and assessments, we are waiving the proposed notice and public comment period in accordance with the exceptions to the Administrative Procedure Act (APA) set forth in 5 U.S.C. 553(b)(A). Specifically, 5 U.S.C. 553(b)(A) excepts "interpretative rules, general statements of policy or rules of agency organization, procedure or practice" from the notice and comment requirements under the APA. This regulation meets all three exceptions set forth in this section. It is an interpretative rule in that it interprets the application and scope of 42 CFR part 1001; it is a statement of Departmental policy with respect to the application of 42 CFR part 1001; and it is a rule of agency procedure in that it directs the ALJs and the DAB to apply 42 CFR part 1001 to their reviews of OIG exclusion decisions. Therefore, we believe that proposed notice and public comment for this rulemaking is unnecessary.

In addition, this document does not promulgate any substantive changes to the scope of the January 29, 1992 final rule, but rather seeks only to clarify the text of that rulemaking to better achieve our original intent. Since it is not substantive, we are issuing this clarifying regulation as a final rule to be effective immediately, rather than the usual 30-day delay required for substantive rules under 5 U.S.C. 553(d). This clarifying rule will apply to all pending and future cases under this authority.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR chapter V is amended as set forth below:

A. 42 CFR part 1001 is amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh, and section 14 of Public Law 100–93 (101 Stat. 697).

2. Section 1001.1 is amended by designating the existing paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 1001.1 Scope and purpose.

* * * * *

(b) The regulations in this part are applicable to and binding on the Office of Inspector General (OIG) in imposing and proposing exclusions, as well as to Administrative Law Judges (ALJs), the Departmental Appeals Board (DAB), and federal courts in reviewing the imposition of exclusions by the OIG (and, where applicable, in imposing exclusions proposed by the OIG).

B. 42 CFR part 1005 is amended as set forth below:

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.4 is amended by revising paragraph (c)(1) and republishing paragraph (c) introductory text to read as follows:

§ 1005.4 Authority of the ALJ.

* * * * *

(c) The ALJ does not have the authority to—

(1) Find invalid or refuse to follow Federal statutes or regulations or secretarial delegations of authority;

* * * * *

3. Section 1005.7 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e)(1) After a party has been served with a request for production of documents, that party may file a motion for a protective order.

* * * * *

Dated: November 23, 1992.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: December 18, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 93–1376 Filed 1–21–93; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580, 581 and 583

[Docket No. 92–37]

Financial Responsibility for Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is amending its regulations governing the financial responsibility requirements of Non-Vessel-Operating Common Carriers ("NVOCCs") in response to the Non-Vessel-Operating Common Carrier Act of 1991 ("1991 Act"). The 1991 Act amended section 23 of the Shipping Act of 1984 ("1984 Act"), to permit the Commission to accept—in addition to bonds—insurance or other surety as proof of an NVOCC's financial responsibility. The 1991 Act also deleted the $50,000 minimum amount for a bond previously prescribed by section 23. The final rule: (1) Specifies the conditions for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (2) provides forms and procedures for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (3) specifies standards for the acceptability of insurance companies and guarantors; and (4) specifies the amount and method of coverage.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5787.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by an Advance Notice of Proposed Rulemaking ("ANPR") published in the

Federal Register, 57 FR 27413 (June 19, 1992), requesting comment on implementing the 1991 Act. The ANPR requested comment on: (1) The appropriateness of accepting insurance and guaranties as evidence of an NVOCC's financial responsibility, as well as suggestions for other types of surety; (2) the development of forms and procedures for certain sureties; (3) guidelines for evaluating the acceptability of companies that issue sureties, other than bonds; and (4) the appropriate amount and possible methods of protection to cover an NVOCC's financial responsibilities under the 1991 Act.

Thirteen comments were received in response to the ANPR. Subsequently the Commission published a Notice of Proposed Rulemaking ("NPR") in the **Federal Register**, 57 FR 47589 (October 19, 1992). The proposed rule: (1) Specified the conditions for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (2) provided forms and procedures for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (3) specified guidelines for evaluating the acceptability of insurance companies and guarantors; and (4) specified the amount and method of coverage.

The Commission received eight comments in response to the NPR. Conference comments were submitted jointly by the Asia North America Eastbound Rate Agreement, "8900" Lines, South Europe/U.S.A. Freight Conference, and U.S. Atlantic & Gulf Western Mediterranean Rate Agreement ("ANERA *et al.*"). Shipping intermediary comments were received from the International Federation of Freight Forwarders Associations ("FIATA") and the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"). Insurance industry comments were received from the Underwriters at Lloyd's ("Lloyd's") and from two other insurers, Through Transport Mutual Insurance Association, Ltd., and the Norwich Union Fire Insurance Society, Ltd. ("Through Transport Mutual and Norwich Union Fire") filing jointly. Comments were also received from International Trade Tracking ("ITT"), a consulting and tariff publishing service for NVOCCs. The U.S. Department of Transportation ("DOT") and the U.S. Department of Defense ("DOD") also submitted comments.

Comments and Discussion

With the exception of ITT, all commenters generally support the proposed rule. NCBFAA comments that it fully supports the rule as proposed. DOT states that the rule is largely consistent with its suggestions set forth in its previous comments and urges its adoption. The remaining commenters, while generally supporting the proposed rule, raise specific issues of concern to their organizations. These are discussed below.

A. Suggested Rejection of Insurance as a Means to Meet NVOCC Financial Responsibility Requirements

ITT objects to insurance as a means for NVOCCs to meet their financial responsibility requirements. It claims that the shipping industry is not well served by the bonding of NVOCCs and that adding alternative methods of security will only add to the industry's confusion. According to ITT, the shipping industry appears to be confused as to what NVOCC activities are covered by the bond. It reports that claims against NVOCC bonds for services of all types including rent, drayage and office supplies are being placed against sureties.

The 1991 Act, among other things, specifically provides that the Commission may accept "proof of insurance" as an additional method for NVOCCs to evidence their financial responsibility. This legislation was enacted to allow flexibility to the NVOCC industry as long as the form of security obtained by an NVOCC provided no less protection for injured parties than surety bonds. ITT's objections to the extent they are directed to the statute itself are irrelevant here. The Commission also notes that an individual who is uncertain as to the extent of an NVOCC's financial coverage may directly contact the surety named in the NVOCC's tariff for verification.

B. Request for 30-Day Advance Notice of Impending Cancellation of NVOCC Surety Bond

ANERA *et al.* request that the final rule be clarified to require the Commission to notify the public by notice in the **Federal Register** of any impending cancellation of an NVOCC's bond, insurance or guaranty. ANERA *et al.* further request that the date of cancellation of an NVOCC's financial coverage be effective at least 30 days after publication in the **Federal Register**.

The Commission considered but did not adopt similar comments made in response to the ANPR. In addition to substantial publishing costs involved with each **Federal Register** submission, establishing a program to track the status of NVOCCs' coverage would result in significant administrative burdens without any benefits to the industry. For example, prior to the effective date of an impending cancellation, an NVOCC will frequently file replacement coverage with the Commission. Approximately ten percent of the bonds filed with the Commission since October 1991 have been replacement bonds. Thus, the accuracy and usefulness of a publication/notice program would be questionable. Moreover, the Commission sees no reason to extend the effective date of termination beyond the current requirement at 46 CFR 583.6, which states that termination shall become effective 30 days after receipt of written notice by the Commission.

The Commission believes that the information currently available, namely the bond number and the name and address of the surety providing coverage to an NVOCC published in the NVOCC's Tariff Rule 24, as well as the list maintained by the Commission of NVOCCs in substantial compliance with section 23 of the 1984 Act, is better suited to verify the status of an NVOCC's bond. The final rule provides that similar information for an NVOCC's insurer or guarantor also be published in its Tariff Rule 24. As already noted above, if there is reason to question the status of an NVOCC's financial coverage, individuals may directly contact the surety named in the NVOCC's tariff.

C. Section 583.3(c) Exemption for NVOCCs of Used Military Household Goods

DOD notes a change in the language of section 583.3(c) of the proposed rule concerning the transportation of used household goods and personal effects for the account of DOD, and requests that the Commission track the language used in Docket No. 91–1, Bonding of Non-Vessel-Operating Common Carriers, 56 FR 56322 (November 4, 1991) ("Docket No. 91–1").

Through an oversight, the NPR contained an incorrect version of proposed section 583.3(c). Section 583.3(c) presently provides that although persons that exclusively transport used household goods and personal effects for DOD are not subject to the requirements of 46 CFR part 583, they might nonetheless be subject to other requirements imposed by DOD, such as alternative surety bonds. It was not the intention of the Commission to alter its current regulations with respect to NVOCCs that provide transportation services for used military household goods for DOD and § 583.3(c) of the final rule is revised accordingly.

D. Uniform Insurance Policy

The NPR requested comment on whether the Commission should attempt to draft a uniform insurance policy to cover an NVOCC's financial responsibilities under the 1991 Act, and suggestions for developing such a policy. FIATA advises that there are many differences among insurance policies and asserts that the complex nature of these differences would make it difficult to draft a uniform policy.

The Commission believes that the regulations and forms contained in its NPR clearly detail the coverage to be provided by insurers to satisfy the requirements of the 1991 Act. Therefore, the Commission will not prescribe a uniform insurance policy at this time.

E. Insurance Form FMC–67

FIATA states that there is a potential problem with the Commission's proposed insurance form (FMC–67), in that it requires the insurer to remain legally liable for any damages, reparations or penalties against the insured after coverage has been terminated. In FIATA's opinion, insurance companies would not be willing to accept such open-ended responsibility for liability that may have been incurred during the effective period of coverage, but which may be claimed years later. Insurers would allegedly attempt to limit the time period for which claims could be made to coincide with the coverage period.

Section 23 of the 1984 Act requires that a bond, insurance or other surety shall be available to pay any: judgment for damages against an NVOCC arising from its transportation-related activities under the 1984 Act; reparations awarded by the Commission to a private complainant pursuant to section 11 of the 1984 Act; or any penalty assessed by the Commission pursuant to section 13 of the 1984 Act. Section 11(g) of the 1984 Act, 46 U.S.C. app. 1710(g), permits the filing of claims for reparations within three years after the cause of action accrued. Section 13(f)(2) of the 1984 Act, *id.* app. 1712(f)(2), permits the Commission to assess a civil penalty in a proceeding that is commenced within five years from the date the violation occurred. The effect of these provisions is that, even if coverage has been terminated, the surety remains responsible for claims made against an NVOCC, as long as the claims concern transportation-related activities under the 1984 Act occurring during the effective coverage period and the reparation or penalty proceeding is commenced within the statutory time period. However, the surety's potential liability is not open-ended, due to the existence of the statutory periods of limitation.

F. Request for Clarification of Section 583.4(d) and Proposed FMC Form 69

FIATA requests the Commission to confirm its intentions with respect to the types of coverage a group or association of NVOCCs may use to provide coverage, in whole or in part, to its individual NVOCC members. FIATA also requests confirmation as to a group or association's ability to use Form FMC–69 (Group Supplemental Coverage Bond) to establish its members' financial responsibility regardless of each individual member's existing coverage.

Section 583.4(d)(2) of the proposed rule requires each group or association of NVOCCs to provide the Commission with a certified list of those members for which it will provide financial coverage, in whole or in part, and the manner and amount of existing coverage each covered NVOCC may have. Proposed § 583.4(d)(6) specifies the types of coverage a group or association of NVOCCs may use to establish its members' financial responsibility, the guidelines for accepting the surety, insurer or guarantor and the use of required forms. To the extent a member NVOCC is not covered by its own individual financial coverage, a group or association of NVOCCs of which the NVOCC is a member may provide financial coverage, in whole or in part, by means of group bond, insurance or guaranty. Proposed Form FMD–69 specifies that the penalty amount of the bond shall be available to pay any judgment against the NVOCCs enumerated in appendix A of the bond for damages, reparations or penalties that are not covered by the identified NVOCCs' individual insurance policy(ies), guaranty(ies) or surety bond(s). Therefore, the use of the group bond is not restricted to just supplementing a member NVOCC's existing financial coverage but may be used to establish a member's entire financial responsibility for its transportation-related activities under the 1984 Act.

G. Standards for Acceptable Underwriters

Proposed paragraphs (b) and (c) of § 583.4 required that an acceptable insurer or guarantor have a financial rating of Class VIII or higher under the Financial Size Categories of A.M. Best & Company, or the equivalent from a comparable international rating organization. The A.M. Best categories measure an insurer's financial capacity to underwrite risks according to its reported adjusted policyholders' surplus. Class VIII requires a minimum surplus of $100 million.

Through Transport Mutual and Norwich Union Fire state that the availability of international ratings is limited, and that the proposed rule's exclusive reliance on such ratings might have the effect of disqualifying certain foreign insurers that otherwise might provide significant capacity for the risks that are the subject of this rulemaking. These commenters suggest that the Commission might find it helpful to examine how other federal agencies that administer financial responsibility regulations determine which foreign insurers are acceptable providers of financial responsibility. They cite DOT's regulations at 14 CFR 205.3(e), which sets forth DOT's standards for determining the acceptability of insurers offering air carrier liability insurance coverage for U.S. direct air carriers. That regulation provides, in part, that insurance coverage may be obtained from surplus lines insurers named on a current list of such insurers issued and approved by the insurance regulatory authority of any state, commonwealth, or territory of the United States or of the District of Columbia.

Through Transport Mutual and Norwich Union Fire state that, as a practical matter, many foreign insurers qualify to write aviation insurance under this DOT requirement. They explain that, although some states maintain lists of approved surplus lines insurers, the most commonly used list is one maintained by the Non-Admitted Insurers' Information Office ("NAIIO") of the National Association of Insurance Commissioners. They then advise:

> The NAIIO has primary responsibility for collecting and monitoring financial information on surplus lines insurers not licensed in any state. The NAIIO has established a comprehensive system for evaluating the financial stability and overall suitability of alien insurers that seek to write insurance on a non-admitted basis in the United States. Each quarter, the NAIIO publishes a list of insurers it deems to be of sufficient financial strength and integrity to write such insurance. This list is commonly known as the NAIIO "white list," and insurers who appear on it are permitted to write surplus lines coverage in a majority of states on a non-admitted basis.
>
> To be listed as an approved alien surplus lines carrier by the NAIIO, an insurer must meet more stringent requirements than they would to be licensed in most states. The NAIIO considers the [sic] three major factors in evaluating insurers for listing. First, listed insurers must possess and maintain minimum capital and/or surplus of $15 million and such additional amounts as the NAIIO may deem necessary. Second, the

insurer must maintain a trust fund in the United States for the exclusive benefit of the insurer's U.S. policyholders in the amount of at least $2.5 million, or a higher amount if the insurer's U.S. liabilities require greater security. Finally, the insurer must have established a reputation for financial integrity and satisfactory underwriting and claims practices, and must submit to annual review by the NAIIO to assure the [sic] each listed insurer continues to meet the applicable standards. The NAIIO's annual review process requires listed insurers to submit audited financial statements, actuarial certification as to the adequacy of loss reserves, extensive information about the insurer's reinsurance program, and updated biographical information as to officers and directors.

A listing on the NAIIO white list provides a firm basis upon which to conclude that the insurer will meet its obligations under the insurance policies it issues. The enviable record of NAIIO-approved alien insurers supports this conclusion. Since the NAIIO established its rigid standards for approval of alien surplus lines insurers in 1976, no insurer has become insolvent while on the NAIIO list.

The Commission sees considerable merit in the position taken by Through Transport Mutual and Norwich Union Fire. The financial responsibility requirements of section 23 of the 1984 Act, as amended by the 1991 Act, should be administered so as to allow NVOCCs a wide choice of competing underwriters, as long as underwriters participating in the program meet sufficient standards of financial soundness. We note that DOT's air carrier liability insurance regulations include bodily injury and death, as well as property damage, and impose minimum coverage limits that are far higher than those required for NVOCCs.[1] Insurers qualified under NAIIO "white list" standards to underwrite aircraft liability thus appear qualified to underwrite NVOCC financial risks. The Commission, therefore, will accept those surplus lines insurers named on a current NAIIO "white list" as participants in the Commission's NVOCC financial responsibility program. For the same reason, the Commission concludes that the qualifying standard under the A.M. Best Financial Size Categories should be lowered to Class V (minimum adjusted surplus of $10 million) to comport more closely with the most important part of the NAIIO standard, *i.e.*, that insurers must possess minimum capital and/or surplus of $15 million.

Lloyd's states that, because it is not an insurance company *per se* but a marketplace of approximately 20,000 underwriters who hold formal self-regulatory powers conferred by the British Parliament, it has not traditionally been the subject of a financial rating by A.M. Best & Company or any similar organization, and thus would not qualify under the Commission's proposed rule. Lloyd's points out, however, that it has been in operation for more than 300 years and is one of the world's leading markets for marine and aviation insurance. It states that its underwriters have never failed to pay a valid claim, maintain substantial assets in the United States in several trust funds, allow claims to be made in the United States, submit to annual audits and other extensive examination, and are licensed insurers in several states and territories of the United States.

Other federal agencies have recognized the unique structure and status of Lloyd's in administering financial responsibility programs. The Maritime Administration ("MARAD") of DOT has established rules for acceptance of hull insurance on vessels in which MARAD has a security interest. MARAD specifically designates Underwriters at Lloyd's as acceptable insurers "without further consideration." 46 CFR 249.5(b). The U.S. Department of Labor accepts Lloyd's in setting fidelity bond requirements for fiduciaries of plans under the Employee Retirement Income Security Act. 29 CFR 2580.412–25. Further, Lloyd's has submitted, as part of its comments in this proceeding, letters from the Military Traffic Management Command of the U.S. Department of Defense indicating that Lloyd's has been authorized to provide cargo insurance for shipments of household goods for military personnel. Given this wide acceptance of Lloyd's coverage by other federal agencies, which acknowledge the quality of Lloyd's security and claims-payment history, the Commission will similarly accept Lloyd's as a participant in the NVOCC financial responsibility program.

The Commission believes that these amendments to the proposed rule will permit a broader field of potential underwriters able to supply coverage for NVOCCs, while at the same time adequately ensure the acceptance of sufficiently qualified insurers and guarantors able to cover an NVOCC's financial responsibilities under the 1991 Act. Accordingly, the appropriate provisions of part 583 and the forms contained in the appendix thereto are amended to reflect these changes.

Appropriate provisions of part 583 and the forms contained in the appendix thereto also have been amended to reflect necessary technical modifications and clarifications with respect to the requirement that the insurer or guarantor certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered NVOCC(s) as specified under the 1984 Act.

Section 583.4(d)(6) has also been amended to clarify that the Commission is not a depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgement, or order for reparations.

After the June 19, 1992, publication of the ANPR in this proceeding, an interim rule was published on August 12,1992 (57 FR 36248), in Docket No. 90–23, *Tariffs and Service Contracts* (46 CFR part 514), which implements the Commission's Automated Tariff Filing and Information System ("ATFI"). Accordingly, the appropriate provisions of part 514 are also amended herein in a manner similar to the changes to parts 580 and 581.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in the Order because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions. The rule will be less burdensome to the industry by allowing more flexibility in the types of financial security available to satisfy NVOCC responsibilities under the Shipping Act of 1984.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0053. Public reporting burden for this collection of information is estimated to take 42.75 hours per response for group supplemental coverage (32.5 hours to set up program, 1.75 hours to maintain current membership list, and 8.5 hours to establish resident agent, file replacement group coverage, and file cancellation notices as necessary); 12.5 hours per response for insurance coverage; and 12.5 hours per response for a guaranty. This collection of information includes the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC, 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

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[1] For example, 14 CFR 205.5(b) states in part:

> Insurance meeting the requirements of this part for all U.S. or foreign direct air carriers shall be third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence. * * *

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 580

Cargo, Cargo vessels, Exports, Freight, Harbors, Imports, Maritime carriers, Rates, Reporting and recordkeeping requirements, Surety bonds, Water carriers, Water transportation.

46 CFR Part 581

Freight, Maritime carriers, Rates, Reporting and recordkeeping requirements.

46 CFR Part 583

Freight, Maritime carriers, Rates, Reporting and recordkeeping requirements; surety bonds.

Therefore, pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601, Parts 514, 580, 581 and 583 of Title 46, Code of Federal Regulations, are amended as follows.

PART 514—[AMENDED]

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Paragraph (d) of section 514.7 is revised to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(d) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under this part and part 583 of this chapter.

* * * * *

3. Paragraphs (b)(24), initial paragraph, (b)(24)(i) and (b)(24)(ii) of § 514.15 are revised to read as follows:

§ 514.15 Tariff Rules.

* * * * *

(b) * * *

(24) *Financial responsibility for NVOCCs in foreign commerce and legal agent for service of process.* (i) Every non-vessel-operating common carrier ("NVOCC") shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission proof of financial responsibility in the manner and amount required by 46 CFR 583.4 for the payment of any judgment for damages arising from its transportation-related activities under the Shipping Act of 1984, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state the manner of its financial responsibility; whether it is relying in whole or in part on coverage provided by a group or association of NVOCCs to which it is a member; the name(s) and address(es) of the surety company(ies), insurance company(ies) or guarantor(s) issuing the bond(s), insurance policy(ies) or guaranty(ies); the bond(s), insurance policy(ies) or guaranty(ies) number(s); and, where applicable, the name and address of the group or association of NVOCCs providing full or partial coverage.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpoenas. Every NVOCC using a group or association of NVOCCs not domiciled in the United States for financial coverage, in whole or in part, pursuant to § 583.4 shall state in its tariff the name and address of the group or association's resident agent for service of judicial and administrative process, including subpoenas. The NVOCC also shall state in Tariff Rule 24 that, in any instance in which the designated legal agent(s) cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

* * * * *

PART 580—[AMENDED]

4. The authority citation for part 580 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1721.

5. Paragraphs (d)(24) introductory text, (d)(24)(i), and (d)(24)(ii) of section 580.5 are revised to read as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(24) *Financial responsibility for non-vessel-operating common carriers and legal agent for service of process.* (i) Every non-vessel-operating common carrier ("NVOCC") shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission proof of financial responsibility in the manner and amount required by § 583.4 of this chapter for the payment of any judgment for damages arising from its transportation-related activities under the Shipping Act of 1984, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state the manner of its financial responsibility; whether it is relying in whole or in part on coverage provided by a group or

association of NVOCCs to which it is a member; the name(s) and address(es) of the surety company(ies), insurance company(ies) or guarantor(s) issuing the bond(s), insurance policy(ies) or guaranty(ies); the bond(s), insurance policy(ies) or guaranty(ies) number(s); and, where applicable, the name and address of the group or association of NVOCCs providing full or partial coverage.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall state in Tariff Rule 24 of its tariffs the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpoenas. Every NVOCC using a group or association of NVOCCs not domiciled in the United States for financial coverage, in whole or in part, pursuant to § 583.4 shall state in Tariff Rule 24 of its tariff the name and address of the group or association's resident agent for service of judicial and administrative process, including subpoenas. The NVOCC also shall state in Tariff Rule 24 that, in any instance in which the designated legal agent(s) cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

* * * * *

PART 581—[AMENDED]

6. The authority citation for part 581 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718, and 1721.

7. Paragraph (e) of section 581.3 is revised to read as follows:

§ 581.3 Filing and maintenance of service contract materials.

* * * * *

(e) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under parts 580 and 583 of this chapter.

* * * * *

Part 583—[AMENDED]

8. The authority citation for part 583 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716 and 1721.

9. Part 583 is amended by revising the part heading to read as follows:

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

10. Part 583 table of contents is amended by adding Appendices B, C and D to read as follows:

Appendix B to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Insurance Form (FMC–67)

Appendix C to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Guaranty Form (FMC–68)

Appendix D to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Group Bond Form (FMC–69)

11. Section 583.2 is revised to read as follows:

§ 583.2 Scope.

This part implements the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law No. 101–595, section 710, and the Non-Vessel-Operating Common Carrier Act of 1991, Public Law No. 102–251, section 201 and applies to all NVOCCs operating in the waterborne foreign commerce of the United States.

12. Section 583.3 is revised to read as follows:

§ 583.3 Proof of financial responsibility, when required.

(a) Except as provided in paragraph (c) of this section, no person may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC unless a surety bond, insurance form, or guaranty form which demonstrates that such NVOCC is covered for any transportation-related liability under the Shipping Act of 1984 has been furnished to and accepted by the Commission. Where a group or association of NVOCCs accepts liability for all or part of an NVOCC's financial responsibilities for such NVOCC's transportation-related activities under the Shipping Act of 1984, the group or association of NVOCCs must file either a group supplemental coverage bond form, insurance form or guaranty form, clearly identifying each NVOCC covered, before a covered NVOCC may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC. An individual NVOCC's bond, insurance or guaranty coverage shall be for $50,000 except in the case where an individual NVOCC's responsibility is covered, in whole or in part, by a group or association's bond, insurance or guaranty. In such cases the group or association's coverage must be for $50,000 per covered member NVOCC, or $1,000,000 in aggregate.

(b) Where more than one entity operates under a common trade name, separate proof of financial responsibility is required covering each corporation or person separately providing transportation as a non-vessel-operating common carrier.

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense.

13. Section 583.4 is revised to read as follows:

§ 583.4 Financial responsibility requirements.

Prior to the date it commences common carriage operation, every non-vessel-operating common carrier shall establish its financial responsibility for the purpose of this part by one of the following methods:

(a) Surety bond, by filing with the Commission, simultaneously with its tariff, a valid bond on Form FMC–48, in the amount of $50,000. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Insurance, by filing with the Commission, simultaneously with its tariff, evidence of insurance on Form FMC–67. The insurance must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the insured NVOCC and must be placed with:

(1) An Insurer having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Insurer's financial rating on the rating organization's letterhead or designated form; in the case of insurance provided by

Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of insurance provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners. The Insurer must certify that it has sufficient and acceptable assets located in the United States to cover all transaction-related liabilities of the Insured NVOCC as specified under the Shipping Act of 1984.

(c) Guaranty, by filing with the Commission, simultaneously with its tariff, evidence of guaranty on Form FMC–68. The guaranty must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the covered NVOCC and must be placed with:

(1) A Guarantor having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Guarantor's financial rating on the rating organization's letterhead or designated form; in the case of a guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of an guaranty provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissions. The guarantor must certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984.

(d) Evidence of financial responsibility of the type provided for in paragraphs (a), (b) and (c) of this section established through and filed with the Commission by a group or association of NVOCCs on behalf of its members, subject to the following conditions and procedures;

(1) Each group or association of NVOCCs shall notify the Commission of its intention to participate in such a program and furnish documentation as will demonstrate its authenticity and authority to represent its members, such as articles of incorporation, bylaws, etc.;

(2) Each group or association of NVOCCs shall provide the Commission with a list certified by its Chief Executive Officer containing the names of those NVOCCs to which it will provide coverage, in whole or in part; the manner and amount of existing coverage each covered NVOCC has; an indication that the existing coverage provided each NVOCC is provided by a surety bond issued by a surety company found acceptable to the Secretary of the Treasury, or by insurance or guaranty issued by a firm meeting the requirements of paragraphs (b) or (c) of this section with coverage limits of at least $50,000.00; and the name, address and facsimile number of each surety, insurer or guarantor providing coverage pursuant to this section. Each group or association of NVOCCs shall notify the Commission within thirty (30) days of any changes to its list.

(3) The group or association shall provide the Commission with a sample copy of each type of existing financial responsibility coverage used by member NVOCCs.

(4) Each group or association of NVOCCs shall be responsible for ensuring that each member's financial responsibility coverage allows for claims to be made in the United States against the Surety, Insurer or Guarantor for any judgment for damages against the NVOCC arising from its transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the NVOCC pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712. Each group or association of NVOCCs shall be responsible for requiring each member NVOCC to provide it with valid proof of financial responsibility annually.

(5) Where the group or association of NVOCCs determines to secure on behalf of its members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not covered by a member's individual financial responsibility coverage, such additional coverage must:

(i) Allow claims to be made in the United States directly against the group or associations's Surety, Insurer or Guarantor for damages against each covered member NVOCC arising from each covered member NVOCC's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against each covered member NVOCC pursuant to section 13 of the Shipping Act of 1984, 47 U.S.C. app. 1712; and

(ii) Be for an amount up $50,000.00 for each covered member NVOCC up to a maximum of $1,000,000.00 for each group or association of NVOCCs.

(6) The coverage provided by the group or association of NVOCCs on behalf of its members, in whole or in part, shall be provided by:

(i) In the case of a surety bond, a surety company found acceptable to the Secretary of the Treasury and issued by such a surety company on Form FMC–69; and

(ii) In the case of insurance and guaranty, a firm having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization, Underwriters at Lloyd's, or surplus line insurers named on a current "white list" issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners and issued by such firms on Form FMC–67 and Form FMC–68, respectively.

All forms and documents for establishing financial responsibility of NVOCCs prescribed in this section shall be submitted to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparations. Such forms and documents must clearly identify the name; trade name, if any; the address; and effective January 1, 1994, the organization number as provided in 46 CFR 514.11(a) of each NVOCC. Copies of all forms may be obtained from the Commission's Bureau of Tariffs, Certification and Licensing at the address listed above, or from any other Commission's district offices located in New York, NY; New Orleans, LA; San Francisco, CA; Hato Rey, PR; Los Angeles, CA; Miami, FL; and Houston, TX.

14. Paragraphs (a) and (b) of § 583.5 are revised and § 583.5(e) is added to read as follows:

§ 583.5 Resident agent.

(a) Every non-vessel-operating common carrier not domiciled in the United States and every group or association of NVOCCs which provide, in whole or in part, financial coverage for a member NVOCC's financial responsibilities pursuant to § 583.4 not domiciled in the United States shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the NVOCC, group or association of NVOCCs by registered mail, return receipt requested, at its address published in its tariff on file with the Commission, a copy of each document served upon the Secretary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) * * *

(d) * * *

(e) Every non-vessel-operating common carrier using a group of association of NVOCCs to cover all or part of its financial responsibility requirement under § 583.4 shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff in accordance with § 514.15(b)(24)(ii) and § 580.5(d)(24)(ii) of this chapter.

15. Paragraph (a) of § 583.6 is revised to read as follows:

§ 583.6 Termination of financial responsibility or designation of resident agent.

(a) Upon receipt of notice of termination by a surety bond, group supplemental coverage bond, insurance coverage or guaranty, the Commission shall notify the NVOCC or group or association of NVOCCs by certified or registered mail at its address published in its tariff or on the list required of a group or association on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC or NVOCCs as of the termination date of the bond, group supplemental coverage bond, insurance coverage or guaranty, unless the NVOCC, group or association of NVOCCs submits a valid replacement surety bond, group supplemental coverage bond, insurance coverage or guaranty before such termination date. Replacement surety bonds, group supplemental coverage bonds, insurance coverage or guaranties must bear an effective date no later than the termination date of the expiring bond, group supplemental coverage bond, insurance coverage or guaranty. The liability of the retiring surety, insurer or guarantor shall be considered as having terminated as of the effective date of the replacement surety bond, group supplemental coverage bond, insurance policy or guaranty.

* * * * *

16. Appendix B to Part 583 is added to read as follows:

Appendix B to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Insurance Form [FMC–67]

Form FMC–[67]

Federal Maritime Commission

Non-Vessel-Operating Common Carrier Insurance Form Furnished as Evidence of Financial Responsibility Under 46 U.S.C. app. 1721

This is to certify, that the

____

(Name of Insurance Company)
(hereinafter "Insurer") of

____

(Home Office Address of Company)
has issued to

____

(Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs)
(hereinafter called "Insured") of

____

(Address of Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs)

a policy or policies of insurance for purposes of complying with the provisions of 46 U.S.C. app. 1721 and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984.

Whereas, the Insured is or may become a Non-Vessel-Operating Common Carrier ("NVOCC") subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.,* and the rules and regulations of the Federal Maritime Commission ("Commission"), or is or may become a group or association of NVOCCs, and desires to establish financial responsibility in accordance with section 23 of the Shipping 23 of 1984, has elected to file with the Commission this Insurance Form as evidence of its financial responsibility and evidence of a financial rating for the Insurer of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such organization's letterhead or designated form, or, in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

Whereas, this Insurance is written to assure compliance by the Insured with section 23 of the Shipping Act of 1984, 46 U.S.C. app. 1721, and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for non-vessel-operating common carriers, this Insurance shall be available to pay any and all claimants to whom the Insured may be legally liable for any damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710; or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712; provided, however, that Insurer's obligation for a group or association of NVOCCs shall extend only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought and that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) in aggregate, for a group or association of NVOCCs.

**Whereas,* the Insurer certifies that it has sufficient and acceptable assets located in the United States to cover all liabilities of Insured herein described, this Insurance shall inure to the benefit of any and all persons who have a bona fide claim against the Insured arising from its transportation-related activities under the Shipping Act of 1984, or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Insured pursuant to section 13 of the Shipping Act of 1984.

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of 1984 of Insured in the event that such legal liability has not been discharged by the Insured within 30 days after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction, the Federal Maritime Commission, or where all parties and claimants mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured, whereby, upon payment of the agreed sum, the Insured is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000,00) for a group or association of NVOCCs.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance or Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) for a group or association of NVOCCs, whichever comes first, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Insured.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be ______day of ______, 19_____, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by filing a notice in writing with the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of 1984 of the Insured after the expiration of the thirty (30) day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

Insurer or Insured shall immediately give notice to the Federal Maritime Commission of all lawsuits filed, judgments rendered, and payments made under the insurance policy.

(Name of Agent) ______________ domiciled in the United States, with offices located in the United States, at ______________is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The Insurer will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against the Insurance.

Signed and sealed this ________day of _____, 19___.

____

Signature of Official signing on behalf of Insurer

____

Type Name and Title of signer

This Insurance Form has been filed with the Federal Maritime Commission.

17. Appendix C to Part 583 is added to read as follows:

Appendix C to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Guaranty Form [FMC-68]

Form FMC-[68]

Federal Maritime Commission

Guaranty in Respect of Non-Vessel-Operating Common Carrier Liability for Damages, Reparations or Penalties Arising From Transportation-Related Activities Under the Shipping Act of 1984

1. Whereas ______________(Name of applicant) (Hereinafter referred to as the "Applicant") is or may become a Non-Vessel-Operating Common Carrier ("NVOCC") subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, and the rules and regulations of the Federal Maritime Commission ("FMC"), or is or may become a group or association of NVOCCs, and desires to establish its financial responsibility in accordance with section 23 of the 1984 Act, then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the Untied States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984, the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify bona fide claimants for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act of 1984 in the event that such legal liability has not been discharged by the Applicant within 30 days after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, the FMC, or where all parties and claimants mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of NVOCCs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought.

2. The Guarantor's liability under this Guaranty is respect to any claimant shall not exceed the amount due to such claimant; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) in aggregate, for each group or association of NVOCCs.

3. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act of 1984, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date 30 days after the date of receipt by FMC of notice in writing that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

4. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

5. Guarantor shall pay, subject up to limit of Fifty Thousand Dollars ($50,000.00), directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the Shipping Act of 1984 and the rules and regulations of the Federal Maritime Commission, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

6. Applicant or Guarantor shall immediately give written notice to the FMC of all lawsuits filed, judgments rendered, and payments made under the Guaranty.

7. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor agrees to appoint an agent for service of process in the United States.

8. This Guaranty shall be governed by the laws in the State of ______________to the extent not inconsistent with the rules and regulations of the FMC.

9. This Guaranty is effective the ______ day of ________, 19___, 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

10. The Guarantor hereby designates as the Guarantor's legal agent for service of process domiciled in the United States, ______________, with offices located in the United States at ______________, for the purposes of enforcing the Guaranty described herein.

____

(Place and Date of Execution)

____

(Type Name of Guarantor)

____

(Type Address of Guarantor)

By ______________________________

(Signature and Title)

18. Appendix D to part 583 is added to read as follows:

Appendix D to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Group Bond Form [FMC-69]

Form FMC—[69]

Federal Maritime Commission

Federal Maritime Commission Non-Vessel-Operating Common Carrier (NVOCC) Group Supplemental Coverage Bond Form (Section 23, Shipping Act of 1984)

______________, as Principal (hereinafter called Principal), and ______________, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $__________for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, (Principal) ______________ operates as a group or association of non-vessel-operating common carriers in the waterborne foreign commerce of the United States and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Federal Maritime Commission ("Commission");

Now, Therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment against the NVOCCs enumerated in Appendix A of this bond for damages arising from any or all of the identified NVOCCs' transportation-related activities under the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712 that are not covered by the identified NVOCCs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against any or all of the NVOCCs identified in Appendix A not covered by said NVOCCs insurance policy(ies), guaranty(ies) or surety bond(s) arising from said NVOCCs transportation-related activities under the Shipping Act of 1984, or order for reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against said NVOCCs pursuant to section 13 of the Shipping Act of 1984. However, this bond shall not apply to shipments of used military household goods and personal effects.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed Fifty Thousand Dollars ($50,000.00) per NVOCC identified in appendix A, or One Million Dollars ($1,000,000.00) regardless of the number of NVOCCs, claims or claimants.

This bond is effective the _______day of ___________, 19___, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice to the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the NVOCCs identified in appendix A as covered by the Principal after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity occurring prior to the date when said termination becomes effective.

The Principal will promptly notify the underwriting Surety and the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any additions, deletions or changes to the NVOCCs enumerated in appendix A. In the event of additions to appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to appendix A, termination of coverage for such NVOCC(s) shall become effective thirty (30) days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the NVOCC(s) deleted from appendix A after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity of said NVOCC(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this _______day of, 19____ (Please type name of signer under each signature).

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, if Any

Corporate Principal

Place of Incorporation

Trade Name, If Any

Business Address (Affix Corporate Seal)

By

Title

Principal's Agent for Service of Process (Required if Principal is not a U.S. Corporation)

Agent's Address

Corporate Surety

Business Address (Affix Corporate Seal)

By

Title

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-1416 Filed 1-21-93; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Parts 560 and 572

[Docket No. 92-33]

Marine Terminal Facilities Agreements—Exemption

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: In order to relieve the industry of administrative burden and associated costs, the Federal Maritime Commission unconditionally exempts marine terminal facilities agreements among marine terminal operators and between marine terminal operators and common carriers by water from the agreement filing and notice requirements of the Shipping Act, 1916 ("1916 Act") and the Shipping Act of 1984 ("1984 Act") and the Commission's implementing regulations thereunder, and establishes a new public availability requirement.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC"), in its notice of proposed rulemaking ("NPR") published in the **Federal Register** on June 10, 1992 (57 FR 24569), proposed to exempt marine terminal facilities agreements (leases, subleases, licenses, assignments, permits, etc., that convey the right to operate marine terminal facilities or property) from the current filing requirements contained in 46 CFR parts 560 and 572 under two conditions. First, information concerning the parties involved, the facilities covered, and the effective date of the agreement would have to be published in the marine terminal tariffs filed with the Commission. Second, parties to the exempt agreements would be required to make copies of their active facilities agreements available to interested parties at a nominal copying cost.

In its further notice of proposed rulemaking ("FNPR"), published in the **Federal Register** on November 3, 1992 (57 FR 49666), the Commission proposed to revise its NPR to exempt unconditionally terminal facilities agreements from current filing and notice requirements, while requiring marine terminal operators ("MTOs") that are subject to Commission regulation to make copies of their currently effective terminal facilities agreements available to any and all interested parties for a reasonable copying and mailing fee.

Comments

The Commission received eight comments on the revised proposed rule from the American Association of Port Authorities ("AAPA"), Master Contracting Stevedore Association of the Pacific Coast, Inc., National Association of Stevedores ("NAS"), the Port Authority of New York and New Jersey ("PANYNJ"), Puerto Rico Maritime Shipping Authority ("PRMSA"), Stevedoring Services of America, Inc. ("SSA"), Port of Tacoma ("Tacoma"),[1] and Tampa Port Authority ("Tampa").

Most commenters were generally supportive of an exemption for marine terminal facilities agreements. Of the comments received, three advised that the antitrust treatment in the revised proposed rule was inconsistent with past Commission actions, six suggested alternatives to the revised proposed rule's public availability requirement, and one requested that the Commission narrow the scope of the proposed rule to exclude agreements that could have an anti-competitive effect.

Discussion

The Commission has considered all of the comments received in response to the FNPR, and has determined to adopt the revised proposed rule as the final rule. Comments not expressly discussed either have been found to be supportive of the Commission's proposed rule or have been found to be beyond the scope of this proceeding. The discussion below presents key comments on the FNPR and addresses their relevance to the final rule.

A. The Effect of the Exemption on Antitrust Immunity

In the FNPR, the Commission stated that marine terminal facilities agreements pertaining to facilities that handle only foreign cargo can receive antitrust immunity under section 7(a)(1) of the 1984 Act, 46 U.S.C. app. 1706(a)(1), whether they are filed and become effective or are exempt from filing. However, because section 35 of the 1916 Act, *id.* app. 833a, does not similarly provide that exempted agreements are immune from the antitrust laws, marine terminal facilities agreements subject to the 1916 Act may obtain immunity only if they are filed optionally as provided by 46 CFR 560.301(b).[2] There is no dispute that this applies to terminal facilities agreements that handle only domestic cargo. However, the FNPR stated that, under the proposed exemption, marine terminal facilities agreements covering "mixed" facilities used for the handling of both foreign and domestic cargo would not obtain antitrust immunity for the domestic commerce portion, unless such agreements were filed optionally and subsequently approved by the Commission under the standards of the 1916 Act. The foreign portion of such agreements would obtain immunity pursuant to section 7(a)(1) of the 1984 Act. Marine facilities agreements that previously were filed with and approved by the Commission under the 1916 Act would continue to retain antitrust immunity under the proposed filing exemption.

Several commenters point out that the FNPR's analysis with respect to "mixed" facilities agreements conflicts with the Commission's conclusion in Docket 84–26, *Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*, 49 FR 22296 (May 29, 1984) (Interim Rules), 49 FR 45320 (November 15, 1984) (Final Rules). There the Commission stated: The Commission has given careful consideration to formulating an interpretation of the relationship between the scopes of the two Shipping Acts in a practical manner insofar as marine terminal operator agreements which involve both streams of commerce are concerned. Certainly the legislative history of the 1984 Act does not support a conclusion that Congress intended that marine terminal operator agreements which involve both streams of commerce be simultaneously subjected to the regulatory regimes of both the 1916 and 1984 Acts. Consequently, the Commission * * * interprets the 1984 Act as extending to marine terminal operator agreements which relate to marine terminal facilities and/or services which, either wholly or in part, handle or are held out to handle foreign commerce, either directly or by transshipment, including (1) agreements involving both foreign and interstate commerce * * *. 49 FR 22298.

PANYNJ and Tacoma assert that the FNPR ignores the realities of the marine terminal business. PANYNJ states that the focus of this proceeding should not be on the origin and destination of the cargo, but rather on the nature of a marine terminal facilities agreement. PANYNJ predicts that, if the revised proposed rule is adopted as a final rule, the rulemaking will not meet its goal of relieving the terminal industry of the administrative burden and associated costs of filing facilities agreements with the Commission because, PANYNJ states, most marine terminal operators will continue to file their agreements if there is any uncertainty as to whether an exempted agreement holds antitrust immunity. PANYNJ and Tacoma urge the Commission to reaffirm its statement in Docket 84–26 that the 1984 Act will apply to agreements governing "mixed" terminal facilities, that such agreements will therefore be immune from the antitrust laws as well as exempted from filing, and that the 1916 Act's filing and approval requirements for immunity will apply only where a facility is dedicated solely to domestic cargo.

The Commission is unable to accommodate the commenters on this point. In Docket No. 84–26, we concluded that processing "mixed" marine terminal facilities agreements only under the 1984 Act would be the most efficient and least burdensome method of administering the filing of such agreements. The question of the antitrust immunity conferred by such a filing was not specifically addressed. Upon review now of the relevant statutory language, we conclude that a "mixed" agreement filed only under the 1984 Act receives immunity only for the agreement's foreign portion and is otherwise subject to the separate requirements of the 1916 Act. Section 4(b) of the 1984 Act states that the Act applies to agreements among marine terminal operators, and to agreements among one or more marine terminal operators and one or more ocean common carriers, "*to the extent that* the agreements involve ocean transportation in the foreign commerce of the United States * * *." 46 U.S.C. app. 1703(b) (emphasis supplied). Congress has determined, therefore, that the 1984 Act's grant of antitrust immunity for exempted agreements is available for marine terminal facilities agreements only "to the extent that" such agreements involve the foreign commerce of the United States. It follows that, "to the extent that" such agreements involve the domestic commerce of the United States, the 1916 Act governs rather than the 1984 Act, and Congress has not yet seen fit to grant antitrust immunity to agreements exempted from filing under the 1916 Act. The Commission is obliged to administer the antitrust immunity provisions of the 1984 Act within the statute's basic jurisdictional boundaries, considerations of administrative convenience notwithstanding. See, *e.g., Foreign-to-Foreign Agreements—Exemption*, 24 SRR 1448 (1988), *reconsideration denied*, 25 SRR 455 (1989), *aff'd sub nom. Transpacific Westbound Rate Agreement* v. *FMC*, 951 F.2d 950 (9th Cir. 1991).

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[1] Tacoma's submission has been considered by the Commission despite the fact it was received after the close of the comment period.

[2] The relevant subsection provides: that Notwithstanding any exemption from filing or approval or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

B. Public Availability Requirements

In the FNPR, the Commission removed the NPR's tariff publication requirement, replacing it with an unconditional exemption from filing and notice requirements. A new public availability requirement was added, which requires that all MTOs make copies of their marine terminal facilities agreements available to any and all requesting parties for a reasonable copying and mailing fee.

AAPA, PANYNJ, Tacoma, and Tampa endorse the elimination of the requirement to publish the agreement information in the marine terminal tariffs, but believe that the public availability requirement is inadequate. AAPA contends that the requirement that agreements be made available upon request will be meaningless without an appropriate notification process. AAPA again suggests an information filing[3] with the Commission in lieu of the tariff publication requirement. PANYNJ, Tacoma, and Tampa suggest similar filing processes.

PRMSA opposes the FNPR's removal of the tariff publication requirement, but would accept as an alternative the information filing suggested by AAPA. PRMSA argues that without some publication of the agreement information, the public will not know of the existence of agreements and, contrary to the FMC's assertion, the agreements would be removed from regulatory oversight.

AAPA and PANYNJ argue that such an information filing would aid the FMC in its enforcement responsibilities. AAPA states:

> The Commission is most likely to discover potential violations from parties at the receiving end of treatment alleged to be in violation of the Act, but only if they are aware of the existence of the agreement.

Comments at 3.

AAPA also states that public disclosure is essential to meeting the Commission's exemption standard, which requires a finding that an exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

Tampa contends that, while marine terminal facilities agreements may be subject to the disclosure requirements of public or quasi-public agencies (either local or state), such information is easily accessible to only those competitors in the local area. Tampa argues that, to be able to ensure access to agreements of interest, it will have to request all facilities agreements of competitive MTOs, and in doing so incur an undue burden.

NAS supports the revised rule but suggests that, rather than using the **Federal Register** for public notification, the Commission issue a press release or similar document, listing the marine terminal facilities agreements, by name of parties and the location, which have been filed each month. NAS advises that most marine terminal facilities agreements will continue to be filed with the FMC, especially those in which the parties contemplate handling any domestic cargo.

The Commission has determined to adopt the revised proposed rule's public availability requirement as a final rule. The FMC is sensitive to the concerns expressed by the commenters. However, we believe that the use of agency processes to gather and disseminate information—whether through **Federal Register** notices, tariff publication, or less formal mechanisms such as AAPA's information filing or NAS 's press release—and the imposition of those processes on the MTO industry should be limited as much as possible to information directly related to the FMC's regulatory oversight responsibilities under the Shipping Acts. The Commission's experience regulating the marine terminal industry persuades us that the facilities agreements exemption is unlikely to lead to attempts to violate the Shipping Acts. However, should such problems arise, the parties suffering injury due to actions alleged to be in violation of the Act most likely would be either private MTOs in the public port signatory to the agreement or competing ports in the same regional port range.[4] In such instances, the Commission believes that the local or state notice requirements should be fully adequate to maintain current levels of regulatory oversight. The Commission is also aware that, through participation in FMC-regulated regional port conferences, MTOs exchange information on leasing and other pricing/service activities. This exchange itself serves as an additional source of information for MTOs operating in the same coastal range.

Finally, in response to a concern expressed by AAPA, the public availability provision should not entail fees so high as to discourage the requesting party from obtaining the information. The rule contemplates only those costs directly related to the copying and mailing (*e.g.*, not inclusive of overhead costs) of the requested agreement.

C. Definition of Marine Terminal Facilities Agreement

In its comments on both the NPR and the FNPR, PRMSA notes that the scope of the proposed rule includes agreements that could have an anti-competitive effect in the domestic or foreign commerce of the United States. For example, PRMSA states that the proposed rule's definition of "marine terminal facilities agreement" would apply to an agreement whereby a terminal operator leases facilities to another competing terminal operator, and both operators agree within the context of that agreement to fix rates they charge their common carrier customers. PRMSA proposes that the rule be revised to apply only to "pure lease" marine terminal facilities agreements, and to exclude explicitly lease agreements that include price-fixing or other possibly anti-competitive provisions.

The exemption of such agreements from the filing and approval requirements of the 1916 Act and the filing and waiting period requirements of the 1984 Act does not mean that there is no way of controlling their economic consequences. A 1916 Act agreement will remain subject to that statute's approval standards or, if the parties have chosen to utilize the exemption, to the antitrust laws. A 1984 Act agreement will remain subject to the standards of section 6(g) of that statute, 46 U.S.C. app. 1705. That being the case, redefining the term "marine terminal facilities agreements" to exclude any agreement that could have an anti-competitive effect would serve no useful regulatory purpose.

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[3] In response to the NPR, AAPA suggested an information filing process which would require the parties to a marine terminal facilities agreement to submit the names and addresses of the parties to the agreement, the facilities covered by the agreement, and the effective date of the agreement to the Commission, which would in turn publish the information in the **Federal Register**.

[4] In the *Section 18 Report on the Shipping Act of 1984*, the Commission observed (at page 449) that competition in the MTO industry is primarily a rivalry between neighboring ports and/or ports within the same regional coastal range.

Exemption Criteria

The Commission has concluded that the filing and notice exemption for terminal facilities agreements meets the exemption criteria of section 16 of the 1984 Act and section 35 of the 1916 Act, i.e., it should not substantially impair effective regulation, be unjustly discriminatory, be detrimental to commerce, or result in a substantial reduction in competition.

The exemption should not substantially impair effective regulation since the Commission retains its authority to adjudicate formal complaints and to investigate and take appropriate action to address any statutory violations occurring under arrangements that have been exempted from filing and notice requirements. Section 12 of the 1984 Act, 46 U.S.C. app. 1711, and section 27 of the 1916 Act, *id.* app. 826, confer the Commission with subpoena powers to obtain the information it may need for investigations and adjudicatory proceedings involving exempt activities. That authority and those powers should, in conjunction with the final rule's new public availability requirement, be sufficient to ensure that there will be no dimunition of the Commission's present degree of regulatory oversight. Additionally, the exemption applies only to filing and notice requirements, and does not relieve the parties to marine terminal facilities agreements from other requirements of the 1916 and 1984 Acts.

The exemption would not be unjustly discriminatory since it is available to all parties to marine terminal facilities agreements. MTOs are being required to make all current marine terminal facilities agreements available to the public, which should ensure that competing parties have access to information to which they properly are entitled. Therefore, the exemption should not adversely affect competition in the marine terminal industry or be detrimental to commerce.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of the Order and has determined that this is not a "major rule" because it will not likely result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule concerns a filing and notice exemption that applies primarily to U.S. public port authorities and approximately twoscore private terminal operating companies. The minimal cost of the public availability requirement included in the final rule is expected, on average, to be offset by the savings that are anticipated from the filing and notice exemption. Therefore, the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

OMB CONTROL NUMBER: The collection of information requirements contained in this regulation were approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control numbers 3072–0040 for part 560 and 3072–0045 for Part 572. Public reporting burdens for the collection of information were originally estimated to average 45 minutes per response for Part 560 and 45 minutes per response for part 572, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. However, because of the subsequent removal of the proposed requirement to publish information concerning terminal facilities agreements in MTO tariffs, the new public availability burdens for collection of information are estimated to average approximately 25 minutes per response for part 560 and 25 minutes per response for part 572. Comments regarding this burden estimate, including suggestions for reducing this burden, should be sent to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 560

Administrative practice and procedure; Agreements; Antitrust; Freight; Maritime carriers; Penalties; Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure; Agreements; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, parts 560 and 572 of title 46, Code of Federal Regulations, are amended as follows:

PART 560—[AMENDED]

1. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Part 560 is amended by adding § 560.309 to subpart C to read as follows:

§ 560.309 Marine terminal facilities agreement-exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more common carriers by water, to the extent that the agreement involves ocean transportation in interstate commerce, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 560.309(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and this part 560.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

3. In section 560.601 the introductory text is amended by revising the first sentence to read as follows:

§ 560.601 Federal Register notice.

With the exception of marine terminal facilities agreements, as defined in § 560.309(a), requests for approval which are not rejected pursuant to

§ 560.401 shall be noticed in the **Federal Register**. * * *

* * * * *

PART 572—[AMENDED]

4. The authority citation for part 572 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

5. Part 572 is amended by adding § 572.311 to subpart C to read as follows:

§ 572.311 Marine terminal facilities agreement-exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 572.311(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and this part 572.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

6. Section 572.602(a) is revised to read as follows:

§ 572.602 Federal Register notice.

(a) With the exception of marine terminal facilities agreements, as defined in § 572.311(a), a notice of any filed agreement which is not rejected pursuant to § 572.601 will be transmitted to the **Federal Register** within seven days of the date of filing.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–1415 Filed 1–21–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1–255]

Organization and Delegation of Powers and Duties; Delegation to the Administrator, Research and Special Programs Administration

AGENCY: Office of the Secretary, (DOT).

ACTION: Final rule.

SUMMARY: This final rule delegates in part, and redelegates in part, to the Administrator of the Research and Special Programs Administration (RSPA), the authority of the Secretary of Transportation under the Federal Transit Act to issue and administer grants to institutions of higher learning for transportation research, education, and technology transfer. The redelegation is necessary because the functions and duties of the Secretary under section 11(b) of the Federal Transit Act, as amended (FTA), which had been delegated to the Assistant Secretary for Policy and International Affairs, have been carried out by the Administrator of RSPA (Administrator) since May 1991. The delegation is necessary to confer to the Administrator the authority contained in sections 6023 and 6024 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). ISTEA amends section 11(b), and adds a new section 11(c), to the FTA. However, this document does not delegate sections 11(b)(8)(B) and 11(b)(10).

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Angelo Collaku, Office of the Chief Counsel, Research and Special Programs Administration, (202) 366–4400, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590; or Mr. Steven Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, (202) 366–9306, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 11 of the Federal Transit Act, as amended, 49 U.S.C. 1607c, provides the Secretary of Transportation with the authority to make grants to public and private nonprofit institutions of higher learning for research and education in the problems of transportation and for technology transfer. The program originally included the establishment of ten university transportation centers. By amending section 11(b) and adding new section 11(c), sections 6023 and 6024 of ISTEA expanded the program to include additional university transportation centers and university research institutes for the purpose of conducting research on transportation-related issues.

Prior to the enactment of ISTEA, all the functions and duties of the Secretary under section 11(b) had been delegated to the Assistant Secretary of Policy and International Affairs (49 CFR 1.56(k)). Since May 19, 1991, these functions and duties have been carried out by the Administrator with the Office of the Assistant Secretary for Policy and International Affairs retaining representation on the four-person board which supplies policy direction to the program. The authority contained in section 11(b), which had been delegated to the Assistant Secretary for policy and International Affairs, is being redelegated to the Administrator. Further, with the exception of sections 11(b)(8)(B) and 11(b)(10), which relate to construction grants, the authority contained in section 6023 of ISTEA, amending section 11(b), is delegated to the Administrator. Finally, the authority contained in section 6024 of ISTEA, adding a new section 11(c), is being delegated by the Secretary to the Administrator.

This amendment formally delegates in part, and redelegates in part, the necessary authority to carry out the administration of this program from the Office of the Secretary to the Administrator.

Since this amendment relates to departmental management, organization, procedures, and practice, notice and public comment are unnecessary, and it may be made effective in fewer than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.53 is amended by adding a new paragraph (l) to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(l) University Grants Program. Sections 11(b) and 11(c) of the Federal Transit Act, as amended, 49 U.S.C. App. 6207c(b) and 1607c(c), except for the provisions in sections 11(b)(8)(b) and 11(b)(10).

§ 1.56 [Removed]

3. Section 1.56(k) is removed.

Issued in Washington, DC, on December 10, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 93–1508 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–22; Notice 5]

RIN 2127–AD13

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule delays for one year the effective date of a final rule amending Federal Motor Vehicle Safety Standard No. 216, *Roof Crush Resistance,* to extend its requirements to light trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. This delay will ease the economic burden of this regulation on the manufacturers of these vehicles, many of whom are small businesses, with minimal impact on occupant safety.

DATES: The amendments made in this rule are effective September 1, 1993.

Any petitions for reconsideration must be received by NHTSA no later than February 22, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Flanigan, NRM–01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4918.

SUPPLEMENTARY INFORMATION: On April 17, 1991, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 216, *Roof Crush Resistance,* to extend its requirements to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less (hereinafter referred to as light trucks) (56 FR 15510). NHTSA extended Standard No. 216 to light trucks because of their increased use as passenger vehicles and the need to ensure that those vehicles offer safety protection comparable to that offered passenger car occupants. This final rule adopted the same test requirement and procedure as those for passenger cars, except that there is no 5,000 pound ceiling on the test force. This test force is applied to either side of the forward edge of the roof of the vehicle. The notice specified an effective date of September 1, 1993.

On August 25, 1992, NHTSA published a notice proposing to delay the effective date of the April 1991 final rule to September 1, 1994 (57 FR 38462). This rulemaking was undertaken in response to a variety of factors. One was the President's expression of concern about the regulatory burdens on small businesses at the time he established a regulatory moratorium in early 1992. Another was information which the agency had obtained during the earlier rulemaking proceeding leading to the April 1991 final rule. During that proceeding, NHTSA learned that many of the approximately 5 percent of the affected vehicles which did not already voluntarily comply with Standard No. 216 were multi-stage vehicles manufactured primarily by small businesses. Finally, there was a November 14, 1991 letter from the Recreation Vehicle Industry Association (RVIA). The letter informed the agency of the compliance difficulties which RVIA foresaw for some of its members. Most of them are small businesses engaged either in the manufacture of multi-stage vehicles or in the alteration of completed vehicles. NHTSA proposed to allow an additional year of leadtime for compliance to accommodate RVIA's concerns and the special needs of small businesses which have lesser financial resources. The notice of proposed rulemaking (NPRM) stated that NHTSA believed that the effective date could be extended without compromising safety, since there is already widespread voluntary compliance among single stage light truck manufacturers, which constitute approximately 95 percent of the population.

The agency received five comments on the August NPRM. Three of the five commenters—Chrysler Corporation (Chrysler), Ford Motor Company (Ford), and RVIA—supported the agency's proposal. Two commenters, Advocates for Highway and Auto Safety (Advocates) and the American Automobile Association (AAA), opposed the proposal.

Neither of the opponents believed the delay was justified by economic need. NHTSA disagrees. RVIA's November letter described specific difficulties its members were experiencing when attempting to certify vehicles, some of which have irregular roof configurations. An additional year would give the manufacturers more time to determine the most efficient method of compliance with the standard.

Advocates also disagreed with the NPRM's assertion that this delay would not compromise safety. Advocates expressed its concern that large single stage manufacturers would also delay implementation. NHTSA does not believe that there is basis for concern. As stated in the NPRM, approximately 95 percent of the affected vehicles already comply with this standard. In addition, Chrysler and Ford both stated that this extension would not delay their plans to implement the new requirements by the original effective date for the minority of their vehicles that are noncompliant.

In their comments, Ford and RVIA repeated previously expressed concerns regarding the applicability of the test procedure to vehicles with irregular roof configurations. However, the purpose of this rulemaking is to afford final stage manufacturers more time to assess how they will comply with the amendment, not to devise a new test procedure.

Advocates stated that NHTSA should limit the leadtime extension to vehicles manufactured by small businesses, as defined by the Small Business Act (15 U.S.C. 632). The National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) does not authorize this agency to issue standards based on the type or size of the manufacturer. Also, as stated previously, Chrysler and Ford indicated that this final rule will not affect their compliance plans.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance unless it is identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not "major" within the meaning of E.O. 12291. However, it is "significant" within the meaning of the Department of Transportation regulatory policies and procedures. Based on the April 1991 Final Regulatory Evaluation, the agency estimates that a delay of the effective date could result in a cost savings of $3–$32 million and that $1–$30 million of this would be associated with vehicles produced by multi-stage manufacturers. The agency also believes that this delay will not have a significant adverse impact on safety.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the agency does not anticipate a significant economic impact as a result of this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), NHTSA notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.216 is amended by revising paragraphs S4(b) and S6.3(b) to read as follows:

§ 571.216 Standard No. 216; Roof crush resistance.

* * * * *

S4. *Requirements.*

* * * * *

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994, a test device as described in S5 shall not move more than 5 inches, measured in accordance with S6.4, when it is used to apply a force of 1½ times the unloaded vehicle weight of the vehicle to either side of the forward edge of a vehicle's roof in accordance with the procedures of S6.

* * * * *

S6.3 * * *

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994, apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than one-half inch per second until reaching a force of 1½ times the unloaded vehicle weight of the test vehicle.

* * * * *

Issued on January 14, 1993.

Marion C. Blakey,

Administrator.

[FR Doc. 93–1413 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 73–20; Notice 17]

RIN 2127–AD47

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Alcohol Fuels

AGENCY: National Highway Traffic Safety Administration, DOT. (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity,* to establish anti-siphoning requirements for vehicles manufactured to operate on alcohol fuels. This rulemaking will reduce deaths and injuries by preventing the accidental ingestion of highly toxic alcohol fuel, especially methanol.

DATES: Effective Date: The amendment becomes effective September 1, 1993.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than February 22, 1993.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4918).

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Standard

Federal Motor Vehicle Safety Standard No. 301 specifies requirements for the integrity of the entire motor vehicle fuel system which includes the fuel tanks, emission controls, lines and connections. The standard's purpose is to reduce the deaths and injuries from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The standard also applies to all school buses, including those with a GVWR over 10,000 pounds. The standard applies to these vehicle types only if they use fuel with a boiling point above 32° Fahrenheit. Such fuels include gasoline, diesel fuel, and alcohol fuels such as methanol and ethanol.

Standard No. 301 specifies front, rear moving, and lateral moving barrier crash tests. Under the standard, fuel spillage in a fixed or barrier crash test cannot exceed one ounce of weight from impact until the vehicle's motion has ceased. Nor can spillage exceed five ounces by weight in five minutes following cessation of motion. In rollover tests, fuel spillage from the onset of rotational motion cannot exceed five ounces by weight for the first five minutes of testing. For the remaining testing period, fuel spillage cannot exceed one ounce per weight during any one-minute interval. The standard also specifies a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds.

B. Use of Alcohol Fuels

The use of alcohol fuels in motor vehicles has received increasing attention in recent years. Under the Alternative Motor Fuels Act of 1988, the Department of Energy (DOE) has sponsored demonstration programs to encourage the use of vehicles fueled with natural gas, methanol and ethanol. In 1992, this program expanded significantly from the 65 vehicles acquired in 1991 to an anticipated total of 3,267 vehicles. In addition, DOT's Federal Transit Administration (FTA) is encouraging the use of alternative fuels by local transit authorities.

Fuel systems of vehicles that operate on alcohol fuels are similar to fuel systems of vehicles operating on conventional fuels (i.e., gasoline or diesel). Alcohol fuels, like conventional fuels, use the same method of onboard vehicle storage and are liquids at ambient temperature and pressure conditions.

Vehicles that are capable of using alcohol fuels include flexible fueled vehicles ("FFVs," which are also known as variable fueled-vehicles, "VFVs"), dual-fuel vehicles, and dedicated vehicles. FFVs or VFVs are capable of using methanol or ethanol, a conventional fuel, or any combination of a conventional and an alcohol fuel. Dual-fuel vehicles can operate on both alcohol or conventional fuel, but not various combinations of the two. Dedicated vehicles can operate on only one fuel or fuel blend. For example, a dedicated fuel vehicle may operate on solely neat methanol (100 percent methanol or M100), 85 percent methanol with 15 percent unleaded gasoline (M85), pure ethanol, or a particular ethanol and gasoline blend.

C. Advance Notice of Proposed Rulemaking

On October 12, 1990, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the fuel system integrity of vehicles using methanol or ethanol fuels. (55 FR 41556). The ANPRM requested comments about whether Standard No. 301 should be amended to establish special requirements for vehicles using methanol or ethanol. Vehicles using such fuels are covered by Standard No. 301. However, prior to this rulemaking, the standard did not address those properties of alcohol fuels which differ from properties of gasoline and diesel fuel.

In the ANPRM, NHTSA requested comment on whether specialized requirements should be developed for alcohol fuels based on differences between those fuels and conventional fuels. Alcohol fuels issues addressed in the ANPRM were (1) their acute toxicity when ingested or absorbed through the skin, (2) their different flammability and explosive characteristics, (3) their flame luminosity, (4) their energy potential, and (5) their corrosiveness. NHTSA received 19 comments on the ANPRM from a variety of groups.

D. Notice of Proposed Rulemaking

Based on the comments to the ANPRM, NHTSA proposed amending Standard No. 301 to establish anti-siphoning requirements for vehicles manufactured to operate on alcohol fuels or fuel blends. (57 FR 1710, January 15, 1992). The proposed requirements were intended to prevent deaths and injuries caused by the accidental ingestion of highly toxic alcohol fuels. The usual fatal dose by ingestion in an adult is between 50 and 100 milliliters (ml) for methanol, 240 to 300 ml for ethanol, and 115 to 470 ml for gasoline.

The NPRM proposed applying the amended requirements to those vehicles in the following categories if they operate on alcohol fuels or alcohol fuel blends containing at least 20 percent alcohol: Passenger cars; multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) under 10,000 pounds; and school buses regardless of weight. These include flexible fuel, variable fuel, dedicated, and dual fuel vehicles. The proposal specified that the amended requirements would not cover vehicles produced to operate on gasohol or oxygenated gasoline, which may contain less than 10 percent ethanol.

After describing the potential safety problems associated with the high toxicity of alcohol fuels, the NPRM proposed the following requirement to prevent the siphoning of fuel in an alcohol fueled vehicle: the vehicle shall have means that prevent a hose with a length of at least 120 centimeters (cm) (3.9 feet) and an outside diameter of 3.2 millimeters (mm) (0.125 inch) or more from contacting liquid fuel when the hose is inserted into the fuel tank filled to 90 to 95 percent of capacity. The agency anticipated that manufacturers could comply by installing a screen in the fuel tank filler neck to prevent a siphoning hose from being inserted in the fuel system.

In addition to setting forth the anti-siphoning proposal, the notice also explained the agency's decision not to proceed with rulemaking regarding other issues addressed in the ANPRM related to alcohol fueled vehicles.

II. Comments to the NPRM and the Agency's Response

A. General Considerations

In response to the NPRM, NHTSA received comments from five vehicle manufacturers, as well as from the Insurance Institute for Highway Safety (IIHS), and Atlantic Richfield (Arco). The agency has considered the points raised by the commenters in developing the final rule. The agency's discussion of the more significant comments and other relevant information is set forth below.

Of the seven commenters, six—Chrysler, Ford, General Motors (GM), IIHS, Arco, and Suzuki—supported the proposal to require anti-siphoning measures to protect against the ingestion of highly toxic alcohol fuels. Only Volkswagen opposed the proposal, claiming that an anti-siphoning device would have a limited safety benefit since methanol is expected to be used only in a small percentage of the vehicle fleet.

After considering the comments to the NPRM and other available information, NHTSA has decided to issue this rule adopting a requirement aimed at preventing the accidental ingestion of alcohol fuels. The agency disagrees with Volkswagen's comment about the lack of a safety need for the anti-siphoning requirement. NHTSA believes that the rulemaking is appropriate in view of the deaths and injuries that it will prevent. The agency anticipates the manufacture of alcohol fueled vehicles will increase, given the nation's and Congress's interest in developing alternatives to petroleum-based fuels. Accordingly, the amendment should facilitate the safe introduction of a vehicle type that will become increasingly available in the future.

Volkswagen further commented that the intentional consumption of methanol fuels is no more likely than that of gasoline because methanol fuels do not smell, taste, or look like drinkable alcohol. The agency notes that Volkswagen's comment is not on point since this rulemaking is intended to prevent the inadvertent ingestion of methanol during siphoning, not the intentional consumption of that fuel.

As discussed below, commenters addressed other matters in the proposed regulation, including the amount of alcohol content necessary for a vehicle to be subject to the regulation, the test hose's diameter and length, the test hose's rigidity, and specification of a test force.

B. Applicability to Vehicles Operated With Certain Fuels

The NPRM proposed that the rule would apply only to vehicles manufactured to operate on alcohol fuels or alcohol fuel blends with at least 20 percent alcohol fuel content. Thus, the requirements would not be applicable to vehicles produced to operate on gasohol, which may contain about 10 percent ethanol, or oxygenated gasoline, which may contain only small amounts of ethanol. The notice explained the agency's tentative conclusion that fuel blends with less than 20 percent methanol content would not result in fatalities to persons during siphoning. The notice requested comment on what fuel types and what level of alcohol content should be covered by the proposed anti-siphoning requirements.

GM, Ford, Chrysler, and Volkswagen addressed the question of which fuels and fuel blends should be covered by the proposed amendment. The four commenters agreed that the requirement should apply to vehicles designed to operate on fuel blends with 20 percent or more alcohol content. GM commented that although methanol is more toxic than ethanol, the proposed requirement should apply to vehicles fueled by either because some vehicles could use both fuels. Volkswagen believed that the requirement should apply only to vehicles that operate on methanol (but not to those that operate on ethanol) because ethanol is much less toxic than methanol.

After reviewing the comments and other available information, NHTSA has decided to apply the anti-siphoning requirements to fuel blends with at least 20 percent alcohol, including both methanol and ethanol. The agency believes that the requirements should apply to methanol given that fuel's extremely high toxicity. Applying the anti-siphoning requirements to ethanol also is appropriate, even though that fuel has a lower level of toxicity. The agency believes that if all vehicles produced to operate on ethanol did so exclusively, then there would be no need to apply the requirement to them. However, GM has informed the agency that vehicles designed to operate on one alcohol fuel can operate on either methanol or ethanol with little or no change to the vehicle. Accordingly, given that a vehicle initially intended to be fueled by less toxic ethanol can readily be fueled with highly toxic methanol, the agency has decided to apply the final rule to vehicles that operate with either type of alcohol fuel.

In response to the NPRM's question on whether the anti-siphoning requirement should apply to conventional fuels such as gasoline or diesel fuel, GM, Ford, Chrysler, and Volkswagen commented that the requirement should not apply to these fuels. Ford stated that the proposed requirements should not apply to vehicles using gasohol or oxygenated gasoline since these fuels have been in widespread use without causing toxicity concerns. NHTSA agrees with the commenters that the anti-siphoning requirements should not apply to vehicles fueled with gasoline, diesel, gasohol, or oxygenated gasoline because these fuels have a relatively low level of toxicity.

C. Test Conditions

1. Test Hose Diameter and Length

In the NPRM, the agency proposed that compliance be determined using a hose with a length of 120 cm based on the belief that this length was the maximum distance between the filler neck opening and the area where liquid fuel is stored in vehicles covered by the propose rule. The agency specified a diameter of 3.2 mm based on the belief that this diameter was the smallest commercially available hose that likely would be used for siphoning. The NPRM requested comments on whether the hose length and diameter were appropriate.

With respect to the test hose's length, GM and Ford commented that the proposed length of 120 cm (3.9 ft) was appropriate. Ford stated that a four foot test hose should be long enough to demonstrate the presence of an effective anti-siphoning guard wherever such a guard may be located in the filler tube. Based on these comments and other available information, the agency has decided to specify that the test hose be 120 cm, as proposed.

With respect to the test hose's outer diameter, Ford, GM, Chrysler, and Suzuki commented that the proposed diameter of 3.2 mm (1/8 inch) was too small. Chrysler and GM stated that the outside diameter should be 6.3 mm (1/4 inch), stating that this size represents the smallest commercially available hose on the market that would be usable as a siphon. Chrysler stated that it is unlikely that the proposed 3.2 mm test hose would be used to siphon because it would produce a very low flow rate and would not be readily available to purchase. Ford commented that the proposed outside hose diameter may be smaller than necessary, stating that the smallest commercially available siphoning hose of which it is aware has an outside diameter of 5.2 mm (13/64 inch). Accordingly, Ford believed that a 5.2 mm outside diameter test hose would be desirable and appropriate for use in demonstrating siphon guard effectiveness. Suzuki stated that a hose with an outside diameter of 7 mm (0.276 inch) would be best suited for anti-siphoning compliance purposes, claiming that the larger diameter test hose would permit the use of a larger screen mesh in the anti-siphoning device. Suzuki believed that a larger screen mesh would allow for increased fill rates, while not interfering with a "government proposed" minimum refueling rate requirement of ten gallons per minute.

After analyzing the comments and other available information, the agency has decided to specify that the test hose's outside diameter be 5.2 mm. In determining the appropriate outside diameter, the agency sought to specify a size that reflects the smallest commonly available hose produced for siphoning that produces an adequate flow rate. The agency agrees with the commenters that the proposed outside diameter of 3.2 mm would have produced an unrealistically low flow rate and is not commonly available. Nevertheless, the agency notes that the diameter sizes recommended by Suzuki, GM, and Chrysler did not represent siphoning hoses with smaller diameters than are available to the public. Such larger outside diameters would not have tested an anti-siphoning device as effectively. In discussions with the agency subsequent to their written comments, GM and Chrysler indicated that they could comply with a test requirement using a hose with an outside diameter of 5.2 mm.

As for Suzuki's comment that a larger screen mesh would allow for increased fill rates, while not interfering with a "government proposed" minimum refueling rate requirement of ten gallons per minute, NHTSA believes that Suzuki is referring to a requirement proposed by the Environmental Protection Agency (EPA) (55 FR 1914, January 19, 1990). However, the agency notes that the proposed EPA requirement is for a maximum fuel fill rate and not for a minimum one. Therefore, Suzuki's concern about the fuel fill rate is not relevant to the agency's assessment of whether it is necessary to require an anti-siphoning device. The environmental implications of this rulemaking are discussed in the section of this preamble titled "Environmental Impacts."

2. Test Hose Rigidity

The NPRM did not set forth a specific rigidity for the test hose. The proposal stated that agency's tentative belief that the wording of the proposed regulatory text made clear that the hose must be of adequate rigidity to be inserted into the fuel tank fill system. Nevertheless, the NPRM requested comment about specifying the hose's rigidity.

Chrysler, Ford, and GM addressed the issue of test hose rigidity. GM believed that a specification for hose rigidity was not appropriate, stating that someone planning to siphon fuel would select a flexible hose which would be easier to fit into a filler neck and then "snaked" into the fuel tank. GM also questioned how the "degree of rigidity" would be defined objectively. Ford commented that for the test hose, the properties of plastic vinyl tubing should be specified.

After reviewing the comments, NHTSA continues to believe that it is not necessary to specify the test hose's rigidity. The agency agrees with GM that a flexible hose will typically be used to "snake" down into the fuel tank. Therefore, specifying a particular rigidity would unnecessarily complicate the requirement without providing corresponding benefits.

3. Test Force

The NPRM did not set forth a specific degree of force with which the test hose would be inserted into the filler neck of the fuel system. Nevertheless, the notice requested comment about specifying the test force. Chrysler, Ford, and GM believed that specifying a test force was unnecessary.

After reviewing the comments and other available information, NHTSA has concluded that a test force should not be included in the requirement. The agency notes that the requirement's relevant consideration is to determine whether the hose contacts the fuel's surface in the fuel tank. Since this can be determined without referencing a test force, the agency has determined that a test force need not be specified.

4.Test Hose End Condition

Ford commented that the regulation should define the test hose's end condition because this could affect the anti-siphoning device's ability to demonstrate its effectiveness. Ford recommended that the test hose be cut perpendicular to its centerline and terminate in the square-end condition formed by such a cut. No other commenter addressed the test hose's end condition.

After reviewing Ford's comment, NHTSA has determined that it is unnecessary to specify the test hose's end condition. The agency notes that Ford's requested modification to the proposed requirement would not make the provision clearer or otherwise provide additional benefits. In addition, it would unnecessarily complicate a relatively straight-forward provision.

D. Effects of Anti-siphoning Device on Fill Rate

The NPRM explained that the agency was aware that an anti-siphoning device could slow the fuel fill rate of a vehicle and complicate the draining of the fuel tank prior to its removal. The agency requested comment on the consequences of a slower fill rate. Commenters were also requested to assess the fill rate's effect on repair and recycling motor vehicles, if these vehicles have fuel tanks that are more difficult to drain.

GM, Ford, Chrysler, and Suzuki addressed the issue of a slower fill rate. All four stated that when properly designed, an anti-siphoning device would not significantly slow the fill rate. Thus, this does not appear to be an issue.

Suzuki was concerned that the proposed test hose diameter of 3.2 mm would have necessitated adding a screen in the filler neck to prevent the hose from entering the fuel tank. As mentioned above, Suzuki was concerned that the mesh needed to accomplish this end would interfere with EPA's proposed minimum refueling flow rate of ten gallons per minute. As stated earlier, because EPA proposed a maximum and not a minimum fuel fill rate, the anti-siphoning requirement should not pose any compliance problems. More generally, the agency notes that the larger test hose diameter being adopted, 5.2 mm, allows for a mesh large enough not to significantly slow the fill rate.

GM, Ford, and Chrysler addressed whether a problem would exist with draining the fuel tank for servicing or recycling it. GM and Chrysler commented that the requirement would not hinder service procedures that involve draining the fuel tank because their vehicles are designed to be easily drained. Ford stated that it would have to redesign some of its vehicles, at a cost of $4.00 to $10.00 per tank to account for this type of procedure. Notwithstanding this cost, Ford supported the proposal. Based on the above comments, the agency believes that the regulation will only minimally affect draining fuel tanks for service and recycling procedures.

E. Vehicle Types

The NPRM requested comment on whether the proposed requirements should apply to all vehicle types that are currently subject to Standard No. 301 and that are produced to operate on fuel blends with at least 20 percent alcohol fuel content. The notice also asked whether some vehicles should be excluded from coverage entirely or be subject to different requirements.

Chrysler, Ford, and GM commented that it was appropriate to apply the proposed requirements to only those vehicle types that are currently subject to Standard No. 301 and that are designed to operate with at least 20 percent alcohol fuel content. Ford stated that it knew of no reason for excluding or applying different requirements to any of the vehicles included in the proposed coverage. Based on the available information, the agency has decided to apply the requirements to the proposed vehicle types.

F. Labeling and Owner's Manual Requirements

After explaining NHTSA's expectation that manufacturers of alternative fuel vehicles would include information about their vehicle's fuel in the owner's manual and possibly on labeling near the fuel tank filler neck, the NPRM requested comment about the need for the agency to require the disclosure of such information.

Chrysler, Ford, GM, and Volkswagen stated that requiring information in the owner's manual about a vehicle's alternative fuel capability is unnecessary. They each stated that the manufacturer will voluntarily provide this information. Chrysler, GM, and Ford commented that a labeling requirement was unnecessary. However, Volkswagen believed that the agency should require a label adjacent to the fuel filler opening on the fuel tank cap or on the fuel filler flap door. It claimed that such a requirement would standardize this information and provide appropriate information for compliance testing.

After reviewing the comments and other available information, NHTSA has decided not to require any labeling or other informational requirements. The agency agrees with Chrysler, GM, and Ford (the primary manufacturers of these vehicles) that such requirements are unnecessary and would not provide safety benefits. As these commenters stated, this information is being voluntarily provided by the manufacturers.

G. Multistage Manufacturers

The NPRM requested comment on whether manufacturers of multistage vehicles would encounter compliance problems with the proposed requirements. Chrysler and GM believed that manufacturers of multistage vehicles would not be affected by the proposed requirement. The agency received no comments from multistage manufacturers or trade associations representing multistage manufacturers. In view of this fact, NHTSA concludes that the effects on multistage manufacturers will be minimal.

H. Editorial Comments

Several commenters, including GM and Volkswagen, stated that the regulatory text would be improved by modifying certain provisions. GM recommended that the phrase "containing liquid fuel in vehicle's fuel tank" (see S6.6) be clarified because small amounts of liquid fuel could cling to the filler neck or anti-siphoning device surfaces even though the tank's fuel level is below these areas. Therefore, GM recommended that the regulatory text be modified to clarify that the relevant consideration is the level surface of the fuel in the tank. GM also recommended that section S6.6 be modified to indicate that the test be done with the filler neck attached to the tank. GM believed that this change would clarify that the siphoning hose be inserted into the normal fuel filler opening (filler neck) used for vehicle refueling. The agency agrees with these modifications, and has modified section S6.6 accordingly.

GM commented that a fluid such as water could be used in the demonstration test to show compliance with the requirement. This led GM to recommend that the following sentence be added to the end of S6.6: "Water or other suitable fluid may be used as a fuel substitute for this test." After reviewing GM's comment, NHTSA has decided not to amend section S6.6 to include this provision. The agency notes that under the framework established by Congress in the Vehicle Safety Act, a manufacturer is not necessarily compelled to follow the exact test procedure (e.g., the use of liquid fuel) in its attempt to establish a basis for certification.

Volkswagen requested that the word "alcohol" be replaced by the phrase "methanol or ethanol." The agency has decided not to adopt this requested change because the term "alcohol" best describes the types of fuels addressed in this rulemaking. The agency notes that although methanol and ethanol are the main alcohol fuels currently being used, new types of alcohol fuels to which these requirements should be applied could be formulated in the future. Volkswagen also recommended that the requirements not apply to ethanol. However, as explained above, the anti-siphoning requirements should apply to both fuels because a vehicle could be fueled by either ethanol or methanol.

Volkswagen commented that S6.6 would be clearer if it were changed to state "* * * with the fuel tank filled at any level up to 90 to 95 percent capacity" instead of "* * * with the fuel tank filled to any level from 90 to 95 percent of capacity." The agency has decided not to adopt Volkswagen's recommended change. The agency believes that notwithstanding this recommendation, Volkswagen's suggested wording would not make the provision clearer, especially given the second sentence in S7 stating that "Where the range is specified, the vehicle must be capable of meeting the requirements at all points within the range."

Volkswagen stated that the amended S7 does not include the proposed S6.6 in the list of requirements to which the general test conditions apply. Therefore, it commented that the test conditions specify S6.6, either directly or by reference. The agency has decided not to adopt Volkswagen's suggestion because specifying that the test condition be applicable to S6.6 would reduce the flexibility associated with testing.

After reviewing the proposed language, NHTSA has decided to clarify the regulatory text by adopting a few additional minor modifications. In the description in S6.6 of the test hose, the agency has decided to eliminate the word "minimum" used in reference to the outside diameter of the hose because use of this word could be misinterpreted to mean that a vehicle could be properly certified with a larger hose. The agency has also decided to add the phrase "or fuel system" immediately following "liquid in the vehicle's fuel tank" in S6.6 so that the requirement clearly prohibits the hose from contacting fuel in the filler neck in those vehicles in which fuel is present in the filler neck when the tank is filled to any level from 90 to 95 percent of capacity.

I. Miscellaneous Comments

As noted above, the ANPRM and NPRM addressed several other issues about the use of alcohol fuels. These include concerns about the explosiveness of alcohol fuels, their flame luminosity, their energy potential, and their corrosiveness. Commenters to the NPRM addressed issues such as the potential of alcohol fuels to cause blindness, their explosiveness and their flame luminosity.

Arco commented that the agency should have addressed the potential of methanol to cause blindness. The agency believes that the danger of blindness from fuel ingestion will be reduced because the requirement will prevent the ingestion of alcohol fuels by preventing siphoning.

IIHS felt the agency should regulate flame luminosity and the explosive potential of alcohol fuels. IIHS stated that it is necessary to regulate these factors to reduce the potential hazards associated with alcohol fuel vehicles. NHTSA notes that the NPRM explained at length the agency's decision not to regulate these characteristics of alcohol fuels and believes that discussion adequately presents the agency's rationale.

J. Effective Date

The NPRM proposed that the requirement become effective on September 1, 1993. The agency believed that it would be relatively simple for manufacturers to make the changes necessary to comply with the proposed requirements because the anti-siphoning devices were not complicated and were available.

Ford requested a September 1, 1995 effective date, stating that the proposed effective date of September 1, 1993 might not allow enough leadtime for changes in designs that manufacturers have already implemented to guard against siphoning. In a subsequent conversation with agency staff, Ford indicated that the suggested September 1, 1995 effective date was based on two factors: (1) Ford's concern that the agency might require a method of service draining of the fuel tanks; and (2) Ford's belief that it would need time to redesign the mesh on its already implemented anti-siphoning device to account for a small test hose diameter. As for the first concern, the agency has not proposed this type of requirement. The requirement being adopted should not pose a problem with respect to leadtime. As for the second concern, Ford indicated that its anti-siphoning devices are designed with a 6.3 mm mesh and that redesigning them to account for a smaller test hose diameter would take approximately six months. No other commenter addressed the issue of leadtime. After reviewing Ford's comment, the agency continues to believe that the September 1, 1993 effective date is appropriate. The agency notes that since there is no service draining requirement, Ford should have adequate time to comply with the requirement related to the mesh on its anti-siphoning device.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Impacts

A. Executive Order 12291

NHTSA has analyzed this rulemaking and determined that it is not "major" within the meaning of Executive Order 12291. However, NHTSA has determined that the rulemaking is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of this amendment to Standard No. 301 in a Final Regulatory Evaluation which is included in the docket for this rulemaking. The agency estimates that the requirements will cost approximately $0.65 per vehicle. The maximum cost, assuming for the sake of this analysis that the entire fleet is made up of alcohol fuel vehicles, would be about $9.75 million per year.

As for the rulemaking's benefits, NHTSA estimates that without anti-siphoning requirements, a complete replacement of gasoline with methanol in motor vehicles would result in an increase of about 23 to 35 fatalities annually due to siphoning methanol fuel from vehicles. NHTSA believes that an anti-siphoning requirement would prevent 90 percent of these fatalities (21–32 per year). The more likely scenario of only partial replacement of gasoline vehicles with methanol vehicles would result in a proportionally lesser increase in fatalities.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The effect of this rulemaking on small manufacturers of vehicles will be minor. As discussed above, NHTSA believes that manufacturers could comply with the requirements by installing a screen device that will cost approximately $0.65 per vehicle. Therefore, the amendment will not have any significant effect on the price of those vehicles. Since the purchase price would be negligibly affected, there will not be any significant effect on small organizations or jurisdictions that purchase vehicles. Accordingly, NHTSA has not prepared a regulatory flexibility analysis.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant impact on the quality of the human environment.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.301, S2 is revised to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes, and resulting from ingestion of fuels during siphoning.

3. In § 571.301, a new S5.7 is added to read as follows:

S5.7. *Alcohol fuel vehicles.* Each vehicle manufactured to operate on an alcohol fuel (e.g., methanol, ethanol) or a fuel blend containing at least 20 percent alcohol fuel shall meet the requirements of S6.6.

4. In § 571.301, a new S6.6 is added to read as follows:

S6.6 *Anti-siphoning test for alcohol fuel vehicles.* Each vehicle shall have means that prevent a hose made of vinyl plastic or rubber, with a length of not less than 120 centimeters (cm) (47.2 inches) and an outside diameter of not more than 5.2 millimeters (mm) (0.20 inches), from contacting the level surface of the liquid fuel in the vehicle's fuel tank or fuel system, when the hose is inserted into the filler neck attached to the fuel tank with the fuel tank filled to any level from 90 to 95 percent of capacity.

5. In § 571.301, S7 introductory text is revised to read as follows:

S7. *Test conditions.* The requirements of S5.1 through S5.6 and S6.1 through S6.5 shall be met under the following conditions. Where a range is specified, the vehicle must be capable of meeting the requirements at all points within the range.

* * * * *

Issued on January 14, 1993.

Marion C. Blakey,

Administrator.

[FR Doc. 93–1336 Filed 1–21–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Northern Riffleshell Mussel (Epioblasma torulosa rangiana) and the Clubshell Mussel (Pleurobema clava)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the mussels, the northern riffleshell (*Epioblasma torulosa rangiana*) and the clubshell (*Pleurobema clava*) to be endangered species. The northern riffleshell is known historically from the tributaries of the Ohio River, western Lake Erie, and the St. Clair and Detroit Rivers. It occurs today in relatively short reaches of six streams in Kentucky, Michigan, Ohio, and Pennsylvania. The clubshell historically was widespread in the Ohio River basin and tributaries of western Lake Erie in nine states; today it is known from relatively short reaches of 12 streams in Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia.

Both of these species have experienced greater than a 95 percent range reduction. In over half of the stream reaches where the mussels are presumed extant, biologists have located only a few dead shells in the last five years. Causes of the drastically reduced ranges of these two species include: channelization, streambank clearing, agriculture, and chemical and wastewater runoff. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Epioblasma torulosa rangiana* and *Pleurobema clava.*

EFFECTIVE DATE: February 22, 1993.

ADDRESSES: The complete files for these species are available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Post Office Box 1278, Elkins, West Virginia 26241.

FOR FURTHER INFORMATION CONTACT: William A. Tolin at the above address or by telephone (304/636–6586).

SUPPLEMENTARY INFORMATION:

Background

The northern riffleshell (*Epioblasma torulosa rangiana*) was described by Lea in 1839. This freshwater mussel occurs in a wide variety of streams, large and small, preferring runs with a bottom composed of firmly packed sand and fine to coarse gravel (Stansbery *et al.* 1982).

The northern riffleshell is a small to medium size mussel, up to three inches (7.6 cm) long. The species expresses sexual dimorphism. The male is irregular ovate in outline, with a wide shallow sulcus just anterior to the posterior ridge. The female is obovate in outline, greatly expanded postventrally. This post-ventral expansion is very broadly rounded. The shell exterior is brownish yellow to yellowish green with fine green rays. The inside of the shell is normally white, rarely pink (Stansbery *et al.* 1982).

The clubshell (*Pleurobema clava*) was described by Lamarck in 1819. The species occurs in clean swept sand and gravel in medium to small rivers and streams (Stansbery *et al.* 1982). Thomas Watters (Ecological Specialists Inc., pers. comm., 1991) has found the clubshell to bury in clean loose sand to a depth of two to four inches.

The clubshell is also small to medium size, up to three inches (7.6 cm) long. The outline of the shell is wedge-shaped and solid. The umbos are pointed and fairly high. The exterior of the shell is bright yellow to brown with bright green blotchy rays. The inside of the shell is white (Stansbery, *et al.* 1982).

Like other freshwater mussels, the northern riffleshell and the clubshell feed and respire by filtering macroscopic food particles and oxygen from the water column. Their complicated reproductive cycle includes one or more species of fish where a larval form of the mussel, known as a glochidium, attaches to the gills, fins, or skin of the fish and is nourished for a short time period. This relationship is generally species-specific. Many aspects of the life history of these mussels are not known.

The historic ranges of the northern riffleshell and the clubshell mussels overlapped, but the clubshell was more widely distributed. Both species were known from Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. The range of the clubshell extended farther south in Tennessee and Alabama in the Tennessee River Basin while the northern riffleshell extended north into western Ontario. Both were widespread in the Ohio River basin in rivers such as the Ohio, Allegheny, Scioto, Kanawha, Little Kanawha, Licking, Kentucky, Wabash, White, Vermillion, Mississinewa, Tippecanoe, Tennessee, Green, and Salt Rivers. They were also located in the Maumee River basin and tributaries of western Lake Erie such as the Huron River and the River Raison. The northern riffleshell also occurred in southern Michigan and western Ontario in streams such as the St. Clair, Black, Ausable, and Sydenham Rivers (Stansbery *et al.* 1982).

Presently, the two species co-occur in portions of four streams in two states. They are found in the Green River, Edmonson and Hart Counties, Kentucky. In Pennsylvania, they occur in French Creek, Crawford, Venango, and Mercer Counties; LeBoeuf Creek, Erie County, and the Allegheny River, Warren and Forest Counties.

The northern riffleshell is also found in the upper 2.0 miles of the Detroit River from Lake St. Clair to Belle Isle, Wayne County, Michigan and in Big Darby Creek, Pickaway County, Ohio. Of the six total locations for this species, only two, those in the Detroit River (Michigan) and French Creek (Pennsylvania) show evidence of recent reproduction.

The clubshell retains a wider distribution than the northern riffleshell. However, this species was also historically wider spread and locally very abundant. The clubshell presently occurs in 12 streams: the Tippecanoe River, Kosciusko, Fulton, Pulaskia, and Tippecanoe Counties, Indiana; Fish Creek of the St. Josephs River, Williams County, Ohio, and DeKalb County, Indiana; West Branch of the St. Josephs River, Williams County, Ohio, and Hillsdale County, Michigan; Walhonding River, Coshocton County, Ohio; East Fork of the West Branch of the St. Josephs River, Hillsdale County, Michigan; Little Darby Creek, Madison County, Ohio; Conneautee Creek of French Creek, Crawford County, Pennsylvania; and Elk River, Braxton and Clay Counties, West Virginia.

The clubshell was first recognized by the Service in the May 22, 1984 **Federal Register** (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included the clubshell as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989 (54 FR 554), the clubshell was retained as a Category 2 species and the northern riffleshell was added in the same category.

During 1989 and early 1990, the Service sent more than 80 requests for information about these two species to State and Federal resource agencies, private organizations, and knowledgeable individuals. On the basis of responses received, the Service moved both species to Category 1 in the Animal Notice of Review published in the November 21, 1991 **Federal Register** (56 FR 58804). Category 1 includes species for which the Service now possesses sufficient information to support a listing as threatened or endangered. In the June 18, 1992 **Federal Register**, the Service published a proposed rule to list *Epioblasma torulosa rangiana* and *Pleurobema clava* as endangered species.

Summary of Comments and Recommendations

In the June 18, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State resource agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Twenty-seven notices inviting public comment were published in newspapers of general circulation in each area where *Epioblasma torulosa rangiana* and *Pleurobema clava* are known to occur. Nine written comments were received; all supported the proposed listing and none recommended changes in the data presented in the proposed rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern riffleshell and the clubshell are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat Range

The northern riffleshell and the clubshell mussels were once widespread through the Ohio River watershed with the highest concentrations occurring in the northern portion of the basin and western Lake Erie drainages. Communication with knowledgeable experts (Ronald Cicerello, Kentucky Nature Preserves Commission, 1991; Steven Ahlstedt, Tennessee Valley Authority, 1991; Thomas Watters, Ecological Specialists, Inc., 1991; Charles Bier, Western Pennsylvania Chapter of The Nature Conservancy, 1990; Arthur Bogan, Philadelphia Academy of Natural Science, 1990; David Stansbery, Ohio State University, 1991; Arthur Clarke, Ecosearch, Inc., 1991; Kevin Cummings, Illinois Natural History Survey, 1990; Thomas Frietag, U.S. Army Corps of Engineers, 1991; Randy Hoeh, University of Michigan, 1990; Leni Wilsman, Michigan Natural Features Inventory, 1990; Richard Trdan, Saginaw Valley State College, 1991; Bill Kovalak, Detroit Edison, 1991; Mike Hoggarth, Ohio Department of Transportation, 1991; and Bob Anderson, Indiana Department of Natural Resources) and a review of the current literature (Cicerello and Hannan 1990, Watters 1986 and 1988, Cummings et al. 1987) reveal that both the northern riffleshell and the clubshell have undergone a greater than 95 percent range reduction.

Since mussels are sedentary, they are extremely susceptible to environmental degradation. The range reductions of both these mussels are attributed to physical loss of habitat and degraded water quality related primarily to water impoundments, channelization, streambank clearing, and agriculture. Impacts associated with run-off from human waste, chemical outfalls, and coal mining have also affected many tributaries. Increased turbidity and suspended sediments can result in increased water temperature, decreased oxygen levels, and siltation. Smothering from siltation, in turn, decreases or eliminates the mussels' ability to breathe, feed, and reproduce. Impacts to the fish species composition can also affect reproduction since a fish host is an integral component of the mussel's reproduction cycle. These factors continue to threaten the remaining habitats and populations of these species.

The northern riffleshell has been extirpated from Illinois, Indiana, West Virginia, and Ontario. Most recent population losses include the Black River, Sanilac County, Michigan, as a result of channelization and draining for agriculture, which occurred in 1989 (Kovalak, pers. comm., 1991). In 1991, the Service became aware that the Sydenham River northern riffleshell population had been extirpated because of siltation, most likely a result of intense farming (Clarke, pers. comm., 1991). Loss, probably due to siltation, of a riffleshell population in Fish Creek of the St. Josephs River was also documented in 1991 (Kovalak, pers. comm., 1991). Surveys conducted during 1991 failed to find the riffleshell in its former locations in the Elk River, West Virginia (J. Clayton, West Virginia Division of Natural Resources, pers. comm., 1991), and the Tippecanoe River, Indiana (Watters, pers. comm., 1991).

The clubshell has been extirpated from Alabama, Illinois, and Tennessee, and is no longer found in many streams elsewhere in its former range. Domestic and industrial waste and navigation developments have eliminated or reduced populations of the clubshell on the upper Ohio and Wabash River watersheds (Watters, pers. comm., 1991). The newly rediscovered Elk River population of the clubshell in West Virginia could be affected by plans for deep coal mining in the watershed, which might create sedimentation, heavy metal leaching, and acidification of the water.

B. Over-utilization for Commercial, Recreational, Scientific, or Educational Purposes

Neither of these species are commercially valuable. However, small size and number of remaining populations increase their vulnerability to over-zealous scientific collecting or educational programs. Federal protection would help control the take of individuals by requiring Federal endangered species collecting permits.

C. Disease or Predation

Predation on mussels is a natural occurrence. Predators, such as freshwater drum, river otter, and muskrats, are known to feed on mussels. In a time when these mussels were widespread and abundant, the impact of this predation was insignificant. However, at the present time, their greatly reduced distribution and populations have made them susceptible to predators, especially muskrats (Neves, pers. comm., 1991). Watters (pers. comm., 1991) stated that during a 1988 survey of the French Creek, Pennsylvania population, he observed at least 200 northern riffleshells that had been harvested by muskrats. Watters also noted that the clubshell is less susceptible to mammalian predators because of its burying behavior.

Although extensive, unexplained, die-offs have occurred in the past in the Mississippi River drainage, these were for the most part restricted to large rivers. The rivers and streams preferred by the clubshell are medium to small rivers and streams, and disease has not been documented as a factor affecting its population dynamics. A portion of the northern riffleshell's historic range included large rivers, and die-offs may have played a role in the species' decline.

D. The Inadequacy of Existing Regulatory Mechanisms

All States throughout the range of the northern riffleshell and the clubshell prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. Ohio, Michigan, and Indiana have endangered species legislation, which protects the clubshell and northern riffleshell from other types of unauthorized take. The Michigan Endangered Species Act of 1974 also regulates take that may occur as a result of development and construction projects; however, this State law did not avert the recent loss of the northern riffleshell population in the Black River. Ohio and Indiana endangered species laws do not provide protection to species from habitat loss or degradation, although the Indiana Flood Control law allows that State to "remove or eliminate any structure, obstruction, deposit, or excavation in any floodway which, * * * is unreasonably detrimental to fish, wildlife, or botanical resources (Indiana 13–2–22–13)." Except for requiring a permit for scientific collecting, Pennsylvania, West Virginia, and Kentucky provide no protection to these species or their habitats. Federal listing will provide additional protection under the Endangered Species Act by requiring Federal permits to take the clubshell and the northern riffleshell for any purpose throughout their range and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect these species.

E. Other Natural or Man-Made Factors Affecting its Continued Existence.

The exotic, prolific zebra mussel (*Dreissena polymorpha*), accidentally introduced to North America in the mid-1980's, poses a severe threat to all native mussel fauna through the competition for space, food, and survival of glochidia. Presently, the zebra mussel, which was conveyed to the area through ship ballast water from interior European ports, is abundant in the lower Great Lakes. During the fall of 1992, biologists determined that zebra mussel infestation posed such a severe threat to the northern riffleshell in the Detroit River that they initiated efforts to salvage as many of the native species as possible and move them to captivity. The zebra mussel also poses an immediate threat to the populations of the northern riffleshell in the St. Clair River and to populations of both these rare species in the Maumee and Black River drainages. As it continues its rapid range expansion, the zebra mussel may threaten the continued existence of all native freshwater mussels in the Mississippi and Great Lakes drainages.

The high potential of a toxic chemical spill from a ship or factory in the Detroit and St. Clair Rivers threaten the northern riffleshell populations in the these rivers. A number of toxic spills have occurred in the "Chemical Valley" near Sarnia, Ontario.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in adopting this final rule. Based on this evaluation, the preferred action is to list the northern riffleshell mussel and the clubshell mussel as endangered. Historically, these species were widely distributed throughout the Ohio River and western Lake Erie drainages. The radically reduced distribution of these species and their continued vulnerability to loss of habitat and water quality deterioration constitute severe threats to their continued existence, and therefore, endangered status appears to be the most appropriate classification.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed for listing as endangered or threatened. Section 3 of the Act defines critical habitat as, "(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." Designation of critical habitat is prudent unless: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Designation of critical habitat is determinable unless: (1) Information sufficient to perform the required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat for these two mussels is not prudent. Because of their sedentary nature and susceptibility to a wide variety of changes in water quality, mussels are highly vulnerable to vandalism. Due to the low number of reproducing populations of these species, even a single such incident could be catastrophic. The publication of critical habitat maps could increase this risk.

The Service also finds that designation of critical habitat for the northern riffleshell and the clubshell mussels is not presently determinable. Most existing populations of these mussles are located in widely scattered streams of declining suitability. The number and location of stream habitats required to provide for the long-term survival of existing populations have not been identified. In addition, information needed to analyze the impacts of critical habitat designation is unavailable at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service has notified Federal agencies having programs that may affect the northern riffleshell and the clubshell mussels. Federal activities that could occur and impact the species, either directly through funding and development, or through issuance of permits or licenses, include dredge and fill, flood protection, water impoundments and channelization, hydroelectric projects, powerline and highway construction, railroads, industrial and domestic wastewater discharge projects, commercial and recreational development, and mining. For example, the recently rediscovered populations of the clubshell in the Elk River in West Virginia is threatened by the acceleration of coal mining in the watershed; potential Federal involvement in such coal mining operations includes permitting by the Office of Surface Mining and the U.S. Army Corps of Engineers. In addition, reconstruction and operation of a railroad along the Elk River to carry coal will require approvals from the Interstate Commerce Commission.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cicerello, R.R., and R.R. Hannan. 1990. Survey of the freshwater unionids (mussels) (Bivalvia: Margaritiferidae, and unionidae) in the Green River in Mammoth Cave National Park, Kentucky. Unpublished. Prepared for Mammoth Cave National Park. 44 pp.

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Stansbery, D. H., K. G. Borror, and K. E. Newman. 1982. Biological abstracts of selected species of Unionid mollusks recovered from Ohio. Unpublished. Prepared for the Ohio Heritage Foundation. Ohio Department of Natural Resources.

Watters, G.T. 1986. The distribution and relative abundance of the Unionid mollusks of the Big Darby Creek system in Ohio. Unpublished. Prepared for the Ohio Chapter of the Natural Conservancy. 158 pp.

Watters, G.T. 1988. A survey of the freshwater mussels of the St. Josephs River system with emphasis on the federally endangered white cat's paw pearly mussel. Unpublished. Indiana Department of Natural Resources. 127 pp.

Author

The primary author of this rule is William A. Tolin, U.S. Fish and Wildlife Service, West Virginia Field Office, Post Office Box 1278, Elkins, West Virginia 26241 (304/636–6586).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§17.11 [Amended]

2. Amend 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife.

§17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Claims							
*	*	*	*	*	*	*	
Riffleshell, Northern	*Epioblasma torulosa rangiana*	U.S.A. (IL, IN, KY, MI, OH, PA, WV, Canada (Ont.)).	NA	E	488	NA	NA
Clubshell	*Pleurobema cava*	U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	NA	E	488	NA	NA
*	*	*	*	*	*	*	

Dated: December 31, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1372 Filed 1–21–93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920937–2237]

Threatened Fish and Wildlife; Steller Sea Lions; Exemption to Buffer Zones

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of exemption; extension of period of effectiveness.

SUMMARY: On October 15, 1992, NMFS published a notice authorizing, until February 1, 1993, the transit of vessels through the Steller sea lion rookery buffer zones at Cape Morgan, Akutan Island, and at Clubbing Rocks, in Alaska. On November 9, 1992, NMFS published a proposed rule to make this exemption to the restrictions, if promulgated, permanent. As it is unlikely that the final rule can be

published prior to the expiration of the period of effectiveness, NMFS hereby extends by 60 days the period of effectiveness of the October 15, 1992 notice.

EFFECTIVE DATE: The effective date of the notice of exemption published at 57 FR 47276 is extended from February 1, 1993, through April 2, 1993, unless superseded through notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Mello, NMFS Alaska Region, Protected Resources Management Division, (907) 586–7235.

SUPPLEMENTARY INFORMATION: Regulations promulgated at 50 CFR 227.12(b)(5) allow the Director, Alaska Region, NMFS, to grant exemptions for activities that will not have a significant adverse effect on Steller sea lions (*Eumetopias jubatus*), have been conducted historically or traditionally in the buffer zones, and for which there are no readily available or acceptable alternatives to, or site for, the activity.

On October 15, 1992 (57 FR 47276), NMFS published a notice authorizing, until February 1, 1993, the transit of vessels through the Steller sea lion rookery buffer zones at Cape Morgan, Akutan Island, and at Clubbing Rocks, in Alaska. On November 9, 1992 (57 FR 53312), NMFS published a proposed rule to make this exemption to the restrictions, if promulgated, permanent. The comment period on the proposed rule expired on December 24, 1992. Readers are encouraged to refer to those earlier documents for additional information on the proposal.

As it is unlikely that NMFS can complete its review of the comments and publish a final rule prior to the expiration of the period of effectiveness, NMFS hereby extends by 60 days the period of effectiveness of the October 15, 1992 notice.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: January 12, 1993.

Nancy Foster,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 93–1452 Filed 1–21–93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB74

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency Rule.

SUMMARY: This emergency rule, in conjunction with other required actions, establishes, for the second year, three additional manatee (*Trichechus manatus*) sanctuaries and expands an existing sanctuary in Kings Bay, Crystal River, Florida. This action prohibits all waterborne activities and prevents the "taking" of manatees by harassment resulting from such activities in the protected areas during the winter months. The number of sanctuaries in Kings Bay is expanded from three (10.7 acres) to six (39.0 acres) to accommodate an increasing number of manatees using the area each winter, and to offset the harassment from increasing public use. The emergency action provides protection for the manatees for 120 days. A proposed rule to provide permanent sanctuaries will be published and will provide an opportunity for public comment. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

In accordance with 50 CFR 17.106, the effective date for this action was established through a legal notice published in the "Citrus County Chronical" on November 14, 1992.

EFFECTIVE DATE: November 15, 1992 through March 15, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at above address (902/232–2580) or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., suite 206, St. Petersburg, Florida 33702, 813/893–3651.

SUPPLEMENTARY INFORMATION: Crystal River is a short tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74° F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay congregate in an area known as the main spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is especially heavy during the cold winter months when diving is impractical through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980, when the first permanent manatee sanctuaries were established, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

Manatee use of Kings Bay now exceeds 240 animals (FWS unpublished data). A majority of manatees currently using the spring do not tolerate close human contact, and leave the warmer spring waters when humans approach too closely. They disproportionately spend their time in the existing sanctuaries regardless of weather conditions, in direct relationship to the number of boats present (Buckingham 1990).

Efforts have been made to make divers, snorkelers, and boaters aware of the manatee harassment problem. Visitors have been instructed through posters, brochures, and dive shop personnel that they should not aggressively pursue manatees or drive them from the springs. As a group, most people have been very cooperative in this regard. Though most conscientiously try to avoid harassing manatees, they seek the animals out and approach them to observe them and a few consistently pet them. Although a few manatees tolerate and occasionally invite attention, most manatees appear to find the situation intolerable, and they alter their behavior accordingly. At times, the sheer number of humans concentrated in a relatively confined area forces all the manatees to seek less disturbing conditions.

The largest numbers of manatees are found at the main spring at night or during the early morning. After sunrise, when the divers begin arriving at the spring, those manatees least able to tolerate human crowding begin leaving the spring. As greater numbers of divers arrive, more manatees leave (FWS unpublished data). On days when the temperatures of the surrounding waters are not excessively cold, this may not be critical, although it still alters the manatee's natural behavior. On days when surrounding water temperatures are below 68 °F, manatees may begin to show some signs of cold water stress such as reduced metabolic rate and cessation of feeding. If cold stress continues long enough, manatees will die.

Research shows that the presence of waterborne users causes manatees to leave the spring heads in favor of the protected sanctuaries regardless of weather conditions. On days when there is low diver turnout, a greater proportion of manatees remain in the springs (Buckingham 1990). Observations of other wintering areas, such as Blue Spring State Park, show that, left to their own devices, most manatees will remain in warm water throughout the day during cold weather periods. Activities that cause manatees to leave can, therefore, be considered "harassment" which interferes with normal "sheltering" habits of the animal. Harassment is a violation of both the Endangered Species Act, as amended, and the Marine Mammal Protection Act.

Currently, manatees are able to escape divers, swimmers, and boaters by moving into three sanctuaries established in 1980—Banana Island, Sunset Shores, and Magnolia Springs. The Banana Island sanctuary is located near the main spring, Kings Spring, and is relatively warm in relation to surrounding waters. Sunset Shores sanctuary is still within the southern part of the bay and provides a feeding and resting area in fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. The number of manatees using Kings Bay has increased from 100 in 1980 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. Manatees are losing habitat elsewhere, and Kings Bay is becoming more and more essential as one of the last natural warm water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet most of their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay, and especially the main spring, to Crystal River and Citrus County centers around the sports or SCUBA diving, snorkeling, and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a place where one can, "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep.). Due in part to national publicity manatees have recently received, the number of divers visiting Kings Bay increased to about 60,000–80,000 in the winter of 1990–91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman et al. 1985, Buckingham 1990).

Therefore, the Service is creating additional sanctuaries in Kings Bay to provide manatees relatively undisturbed habitat during the cold weather months. These sanctuaries exclude all waterborne activities by humans from November 15 through March 31. The chosen sanctuary areas have been carefully selected to avoid excluding divers from their favorite sites. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

Reasons for Emergency Determination

In deciding to implement this rule, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to establish additional sanctuaries in Kings Bay, Crystal River, Florida on an emergency basis. Since the number of manatees using the area has more than doubled in the last 10 years, and since there has been a large increase in the number of visitors, the existing sanctuaries are insufficient to shelter the current manatee population. Without sufficient space, food, rest, and freedom from harassment, a significant proportion of the remaining population of Florida manatees could be at considerable risk if upcoming cold temperatures confine them to Kings Bay for any length of time. To protect manatees until the Proposed Rule and Final Rule are completed, the Service believes it is critical to establish additional manatee sanctuaries on an emergency basis.

The authority to establish emergency manatee protection areas is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act, and is codified at 50 CFR, Part 17, Subpart J. Under these regulations the Director may establish, manatee protection areas whenever there is substantial evidence of imminent danger of a taking (including harassment) of one or more manatees, and when such establishment is necessary to prevent such a taking.

The sanctuary addition at Magnolia Springs in Paradise Isle expands the current Magnolia Springs Sanctuary by 1.7 acres. This short, horseshoe-shaped section of canal joins Kings Bay and is fed by auxiliary springs. The sanctuary will provide good protection for a small number of manatees which currently use the area for giving birth, resting, and as a warm water refuge.

The sanctuary on the north and east sides of Buzzard Island creates an 18.0-acre sanctuary along the northwestern edge and down the length of the east side of Buzzard Island. This sanctuary is primarily used by manatees as a feeding area, since it has limited warm water input but contains abundant vegetation.

The sanctuary at Tarpon Springs creates a 4.6-acre sanctuary along the northwestern side of Banana Island. It contains a small spring and is used as a warm water, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key is used primarily as a feeding area.

A standard survey of the sanctuary areas has been performed. All of the sanctuary areas are delineated with buoys.

Public Comments Solicited

The service intends that any final action be as effective as possible. Therefore, the opportunity for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party to provide comments or suggestions concerning the rule will be solicited in conjunction with the proposed rule.

Final promulgation of the rule will take into consideration all comments and any additional information received by the Service.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Jacksonville Field Office, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216 and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

References Cited

Buckingham, C.A. 1990. Manatee response to boating activity in a thermal refuge. MS Thesis. University of Florida, Gainesville, Fla.

Kochman, H.I., G.B. Rathbun, and J.A. Powell. 1985. Temporal and spatial distribution of manatees in Kings Bay, Crystal River, Florida, J. Wildl. Manage. 49(4):921–924.

Hartman, D.S. 1979. Ecology and behavior of the manatee (*Trichechus manatus*) in Florida. Am. Soc. Mamm. Special Publ. No. 5. 153 pp.

Milton, W. In prep. Economic activity associated with recreational diving in Kings Bay, Crystal River, Florida.

Powell, J.A., and G.B. Rathbun, 1984. Distribution and abundance of manatees along the northern coast of the Gulf of Mexico. Northeast Gulf Sci. 7:1–28.

Author

The primary author of this emergency rule is Robert O. Turner, Manatee Coordinator (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Subpart J of part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation of part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.108 is amended by revising paragraph (a)(3), adding paragraphs (a)(4), (a)(5), and (a)(6), and revising the map at the end of this section to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision; Containing 3.4 acres, more or less.

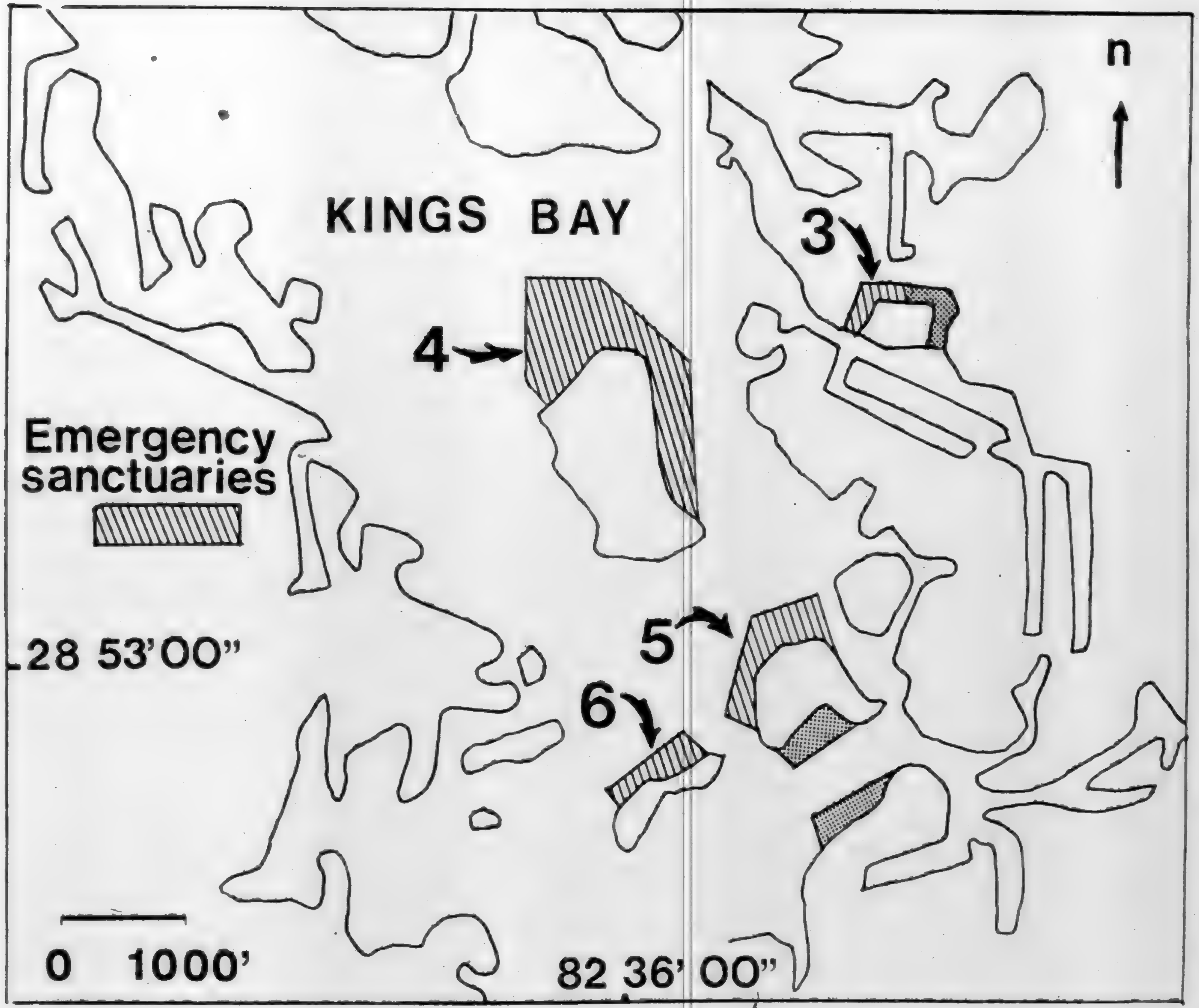
(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06° 01′ 23″ W for 4466.90 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 10° 05′ 38″ W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37° 34′ 41″ E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73° 26′ 46″ E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17° 50′ 16″ E for 1691.53 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 71° 48′ 58″ W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71° 48′ 58″ W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water line northerly and westerly to a point lying S 10° 05′ 38″ E of the point of the beginning; Then go N 10° 05′ 38″ W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28° 55′ 06″ E for 2546.59 feet to a 4-inch diameter iron pipe marking the POINT OF BEGINNING; Then go N 44° 23′ 41″ W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33° 53′ 16″ E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31° 51′ 55″ E for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31° 51′ 55″ E for 5 feet more or less to the mean high water line of Banana Island; Then go westerly along said mean high water line to a point lying S 44° 23′ 41″ E from the point of beginning; Then go N 44° 23′ 41″ W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06° 43′ 00″ E for 1477.54 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 06° 24′ 59″ W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65° 41′ 12″ E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55° 40′ 52″ E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65° 15′ 06″ W for 857.22 feet to the point of beginning; containing 4.0 acres, more or less.

* * * * *

BILLING CODE 4310-55-M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Dated: January 7, 1993.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–1371 Filed 1–21–93; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

RIN 1018–AB85

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Nonessential Population of Whooping Cranes in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that it will reintroduce whooping cranes (*Grus americana*) in central Florida in the Kissimmee Prairie area. The reintroduction will implement a primary recovery action for a federally listed endangered species, obtain data for further assessing the suitability of Kissimmee Prairie of south central Florida as whooping crane habitat, and evaluate the merit of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population.

The Service determines that this reintroduced population is designated a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. An experimental population is treated as a threatened species for the purposes of section 4(d) and 9 of the ESA, which prohibit certain activities involving listed species. Accordingly, a special rule for specifying circumstances under which "taking" of introduced whooping cranes will be allowed is being promulgated in conjunction with the nonessential, experimental population rule. No conflicts are envisioned between the whooping crane's reintroduction and any existing or anticipated Federal agency actions.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley at the above address (telephone 904/232–2580).

SUPPLEMENTARY INFORMATION

Effective Date

For this rule the Service waives for good cause the usual 30-day delay between publication of a final rule and its effective date, as provided by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). The prompt release of the currently available captive-produced birds is desirable because (1) facilities being used at the northern propagation sites were not designed for holding these birds over winter and (2) young birds become less adaptable to the wild if they are held in captivity too long. Therefore, good cause exists for this rule to be effective immediately upon publication.

Background

1. Legislative

The ESA Amendments of 1982, Public Law No. 97–304, created a new section 10(j), providing for the designation of specific introduced populations of listed species as "experimental populations." Under previous authorities in the ESA, the Service was permitted to reintroduce populations into unoccupied portions of the historic range of a listed species when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the ESA, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), past and future reintroduced populations established outside the current range, but within the species' historic range, may now be designated, at the discretion of the Service, as "experimental." Such designations will increase the Service's flexibility to manage these reintroduced populations because such experimental populations may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question are to be treated as if they were only proposed for listing for purposes of section 7 of the ESA, except as noted below.

A "nonessential" experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the ESA, except that the full protection of section 7 applies to individuals of the experimental population found on a National Wildlife Refuge or National Park. Section 7(a)(1) of the ESA, requiring Federal agencies to carry out programs to conserve listed species, applies to all experimental populations. Individuals to comprise a designated experimental population can be removed from an existing source or donor population only after determining that such removal is not likely to jeopardize the continued existence of the species and issuance of a permit in accordance with 50 CFR 17.22.

2. Biological

The species included in this rule is the whooping crane (*Grus americana*), listed as an endangered species on March 11, 1967 (32 FR 4001). The whooping crane is classified in the family Gruidae, Order Gruiformes. It is the tallest bird in North America; males approach 1.5 m. In captivity adult males average 7.3 kg and females 6.4 kg. Adult plumage is snowy white except for black primaries, black or grayish alulae, sparse black bristly feather on the carmine crown and malar region, and a dark gray-black wedge-shaped patch on the nape. The bill is dark olive-gray which becomes lighter during the breeding season. The iris of the eye is yellow; legs and feet are gray-black.

Adults are potentially long-lived. Current estimates suggest a maximum longevity in the wild of 22 to 24 years (Binkley and Miller 1980). Captive individuals are known to have survived 27 to 40 years (McNulty 1966, Moody 1931). Mating is characterized by monogamous life-long pair bonds. Individuals remate following death of their mate. Fertile eggs are occasionally produced at age 3 years but more typically at age 4 (pers. comm., Ernie Kuyt 1991). Experienced pairs may not breed every year, especially when habitat conditions are poor. Whooping cranes ordinarily lay two eggs. They will renest if their first clutch is destroyed or lost before mid-incubation (Erickson and Derrickson 1981, Kuyt 1981).

Although two eggs are laid, whooping cranes infrequently fledge two chicks. Only about one of every four hatched chicks survives to reach the wintering grounds (U.S. Fish and Wildlife Service 1986).

The whooping crane first appeared in fossil records from the early Pleistocene (Allen 1952) and probably was most abundant during that two-million-year epoch. They once occurred from the Arctic Sea to the high plateau of central Mexico, and from Utah east to New Jersey, South Carolina, and Florida

(Allen 1952, Nesbitt 1982). In the 19th century, the principal breeding range extended from central Illinois northwest through northern Iowa, western Minnesota, northeastern North Dakota, southern Manitoba, and Saskatchewan to the vicinity of Edmonton, Alberta. A nonmigratory breeding population still existed in southwestern Louisiana in the early 1940's (Allen 1952, Craft 1991).

Through the use of two independent techniques of population estimation, Banks (1978) derived estimates of 500 to 700 whooping cranes in 1870. By 1941, the migratory population contained only 16 individuals. The whooping crane population decline in the 19th and early 20th century was a consequence of hunting and specimen collection, human disturbance, and conversion of the primary nesting habitat to hay, pastureland, and grain production.

Allen (1952) described several historical migration routes. One of the most important led from the principal nesting grounds in Iowa, Illinois, Minnesota, North Dakota, and Manitoba to coastal Louisiana. Another went from Texas and the Rio Grande Delta region of Mexico northward to nesting grounds in North Dakota and the Canadian Provinces. A route through west Texas into Mexico probably followed the route still used by sandhill cranes. These whooping cranes wintered in the interior tablelands of western Texas and the high plateau of central Mexico.

Another migration route crossed the Appalachians to the Atlantic Coast. These birds apparently nested in the Hudson Bay area of Canada. Coastal areas of New Jersey, South Carolina, and river deltas farther south were the wintering grounds. The latest specimen records or sighting reports for some eastern locations are Alabama, 1899; Arkansas, 1889; Florida, 1927 or 1928; Georgia, 1885; Illinois, 1891; Indiana, 1881; Kentucky, 1886; Manitoba, 1948; Michigan, 1882; Minnesota, 1917; Mississippi, 1902; Missouri, 1884; New Jersey, 1857; Ohio, 1902; Ontario, 1895; South Carolina, 1850; and Wisconsin, 1878; (Allen 1952, Burleigh 1944, Hallman 1965, Sprunt and Chamberlain 1949).

Atlantic coast locations used by whooping cranes include the Cape May area and Beesley's Point at Great Egg Bay in New Jersey; the Waccamaw River in South Carolina; the deltas of the Savannah and Altamaha rivers, and St. Simon's Island in Georgia; and the St. Augustine area of Florida. Gulf coast locations include Mobile Bay, Alabama; Bay St. Louis in Mississippi; and numerous records from southwestern Louisiana, where the last bird was captured in 1949. Coastal Louisiana contained both a nonmigratory flock and wintering migrants (Allen 1952).

"There is evidence to suggest that whooping cranes occurred in Florida, perhaps well into the 20th century" (Nesbitt 1982). Nesbitt described various sighting reports including one by O. E. Baynard, a respected field naturalist, who stated that the last flock of whooping cranes (14 birds) he saw in Florida was in 1911 near Micanopy, southern Alachua County. Two whooping cranes were reported east of the Kissimmee River on January 1936 and a whooping crane was shot (and photographed) north of St. Augustine, St. Johns County, in 1927 or 1928 (Nesbitt 1982).

Records from more interior areas of the Southeast include the Montgomery, Alabama, area; Crocketts Bluff on the White River, and near Corning in Arkansas; in Missouri in Jackson County near Kansas City, near Corning, in Lawrence County southwest of Springfield, in Audrain County, and near St. Louis; and in Kentucky near Louisville and Hickman. It is unknown whether these records represent wintering locations, remnants of a nonmigratory population, or wandering birds.

Whooping cranes currently exist in two wild populations and at three captive locations. The one self-sustaining natural wild population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of Wood Buffalo National Park. These birds winter along the central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge and adjacent areas. Forty pairs nested in 1992 and the October 1992 population is estimated at 140. The flock recovered from a population low of 16 birds in 1941. This population is hereafter referred to as the Aransas/Wood Buffalo National Park population (AWP).

The second wild flock consists of 12 individuals reared by wild sandhill cranes (termed cross-fostered because they are foster-reared by another species) in an effort to establish a migratory, self-sustaining population in the Rocky Mountains. The project began in 1975 with the transfer of wild whooping crane eggs from nests in Wood Buffalo National Park to the nests of greater sandhill cranes (*Grus canadensis tabida*) at Grays Lake National Wildlife Refuge in southeastern Idaho. The sandhill cranes became the foster parents to the whooping crane chicks and taught them the migration route which the parents traditionally followed. These birds spend the summer in Idaho, western Wyoming, and southwestern Montana and winter in New Mexico and hereafter are referred to as the Rocky Mountain population (RMP). From 1975 through 1988, 289 eggs were transferred (including 73 eggs from the captive flock at the Patuxent Wildlife Research Center), 210 hatched, and 85 chicks fledged. The RMP population peaked at 33 birds in 1985 and has declined since then to 10 birds.

Dr. Edward O. Garton, biometrician at the University of Idaho, working with Dr. Rod Drewien the leader of the cross-fostering project (Garton et al. 1989), modelled the cross-fostered population to predict when it might become self-sustaining. In the model they assumed: (1) The cross-fostered females would be breeding at the same rate as the females in Canada; and (2) survival of birds in their first year would be similar to that of first year birds in Canada (Garton et al. 1989). Despite these optimistic and unrealized assumptions, with the future transfer of 30 eggs per year, the population would only reach 6 breeding pairs after 50 years. "It is obvious from all scenarios modelled that egg transplants of less than 30 eggs per year will not suffice to establish a self-sustaining population in a reasonable period of time. Natural breeding will be essential to establish a self-sustaining population" (Garton et al. 1989).

By 1989, biologists were beginning to suspect the absence of pairing might be due in part to improper sexual imprinting, particularly by the female whooping cranes. Sexual imprinting of a foster-reared species on the foster-parent species had already been confirmed in foster-reared raptors, waterfowl, gulls, finches, and gallinaceous birds (Bird et al. 1985, Immelmann 1972). One test of the imprinting problem occurred at International Crane Foundation where sandhill cranes were foster-reared by red-crowned cranes (sample n=1), white-naped cranes (n=2), and Siberian cranes (n=1). When given a choice the cross-fostered sandhill cranes socialized more with the foster species than with their own species. The two foster-reared females showed a stronger preference for the foster species than did the two foster-reared males (Mahan and Simmers 1992). By fall of 1992, cross-fostered adult female whooping cranes of ages 4 through 12 years passed through a nesting season on 34 occasions without pairing. Whooping cranes at Wood Buffalo National Park begin egg production at an average age of 4 years (E. Kuyt, pers. comm., 1991). In the summer of 1992, a male whooping crane paired with a female sandhill crane and produced a chick.

This provided further evidence that the cross-fostering was leading to improper sexual imprinting.

The Idaho cross-fostering project is being phased out because these birds have never paired (perhaps due to improper sexual imprinting) and the mortality rate in this population has become too high to justify continuing egg transfer. Fieldwork in the project ended in summer 1991, and project personnel are concentrating on finishing their final contract report. The Service and Canadian Wildlife Service are currently evaluating a proposal for future use and experimentation with these RMP birds.

The largest captive population of 38 birds greater than 1 year of age, including 8 productive pairs, is located at the Patuxent Wildlife Research Center (Patuxent) near Laurel, Maryland. Another 7 pairs at Patuxent should begin producing eggs in 1 to 5 years. This site is directly administered by the Service. A second captive flock containing 27 birds greater than 1 year of age is maintained at Service cost at International Crane Foundation (ICF), a private foundation, near Baraboo, Wisconsin. The Wisconsin flock contains three experienced breeding pairs and another seven pairs which should enter production over the next one to five years. A subadult pair is maintained at the San Antonio Zoo in San Antonio, Texas. These birds are maintained at the expense of the zoo under supervision of the Service. An additional captive site has been constructed in Calgary, Alberta, Canada at the Calgary Zoo. This flock is being developed under the oversight of the Canadian Wildlife Service. The Calgary Zoo staff received training at ICF and Patuxent in 1991 and 1992. They will receive two pairs of whooping cranes in November/December of 1992, additional birds from the U.S. captive flocks in 1993, and eggs from the wild flock in 1994. The goal for this flock is 10 breeding pairs.

Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds, leaving little possibility of pioneering into new regions. The only self-sustaining wild breeding population can be expected to continue utilizing its current nesting location with little likelihood of expansion except on a local geographic scale. This population remains vulnerable to destruction through a natural catastrophe (hurricane), a red tide outbreak, or contaminant spill, due primarily to its limited wintering distribution along the intracoastal waterway of the Texas coast. The Gulf Intracoastal Water Way (GIWW) experiences some of the heaviest barge traffic of any waterway in the world. Much of the shipping tonnage is petrochemical products. An accidental spill could destroy whooping cranes and/or their food resources. With the only breeding wild population so vulnerable, it is urgent that additional wild self-sustaining populations be established as soon as practical.

3. Recovery Efforts

The first recovery plan developed by the U.S. Whooping Crane Recovery Team (Team) was approved January 23, 1980. It was revised December 23, 1986. The short-term goal is to downlist the whooping crane from the endangered category to the threatened category. The criteria for attaining this downlisting goal is achieving a population level of 40 pairs in the AWP and establishing two additional, separate and self-sustaining, populations consisting of 25 nesting pairs each. The recovery plan recommends these goals should be attained for 10 consecutive years before the species is reclassified to threatened. These new populations may be migratory or nonmigratory. The recovery plan is being revised to reflect the recent progress towards creating the captive flock in Calgary, the Florida reintroduction, and plans for the RMP birds.

In 1985, the Director-General of the Canadian Wildlife Service and the Director of the U.S. Fish and Wildlife Service signed a memorandum of understanding (MOU) entitled "Conservation of the Whooping Crane Related to Coordinated Management Activities." The MOU was revised and signed in 1990. It discusses disposition of birds and eggs, postmortem analysis, population restoration and objectives, new population sites, international management, recovery plans, and consultation and coordination. All captive whooping cranes and their future progeny are jointly owned by the U.S. Fish and Wildlife Service and the Canadian Wildlife Service. Consequently, both nations are involved in recovery decisions.

4. Reintroduction Methodology and Site Selection Process

In early 1984, pursuant to the recovery plan goals and the recommendation of the recovery team, potential whooping crane release areas were selected in the eastern United States. At that time the prognosis was favorable for successfully establishing a western population by use of the cross-fostering technique. Consequently, key considerations in selecting areas to evaluate for the eastern release were (1) large areas of potentially suitable wetland habitat; (2) a healthy sandhill crane population sufficient to support recovery using the cross-fostering technique; (3) public and State agency support for such a recovery effort in the release locale; (4) low-to-moderate levels of avian disease pathogens, environmental contaminants, and power lines; and (5) the potential of the habitats to simultaneously support whooping cranes and sandhill cranes.

The areas selected were the upper peninsula of Michigan and adjacent areas of Ontario, the Okefenokee Swamp in southern Georgia, and three sites in Florida. The Michigan site would potentially support a migratory population. The Georgia and three Florida sites would each support a nonmigratory population. The Michigan/Ontario wetlands are occupied by greater sandhill cranes that winter in Florida and the Okefenokee Swamp of Georgia. The wetlands in Georgia and Florida are occupied by the nonmigratory Florida sandhill crane (*G. c. pratensis*) and in winter by greater sandhill cranes which primarily nest in southern Ontario, Michigan, eastern Minnesota, and Wisconsin. Three-year studies were initiated at each site in October 1984 to evaluate their respective suitabilities.

Results of the studies were presented in written final reports to the U.S. Whooping Crane Recovery Team in fall 1987 (Bennett and Bennett 1987, Bishop 1988, McMillan 1987, Nesbitt 1988) and in verbal reports in February 1988. By 1988, the Team recognized that cross-fostering was not working to establish a migratory population in the West. The possibility of inappropriate sexual imprinting associated with cross-fostering, and the lack of a proven technique for establishing a migratory flock, influenced the team to favor establishing a nonmigratory flock. A nonmigratory population has several features which make it easier to achieve success: (1) Released birds do not face the hazards of migration (over one half of the losses of fledged, cross-fostered birds occurs during migration); and (2) released birds inhabit a more geographically limited area year-round than do migratory cranes, which increases the opportunity for birds to find a compatible mate.

Studies of whooping cranes (Drewien and Bizeau 1977) and greater sandhill cranes (Nesbitt 1988) have shown that migration in these cranes is learned rather than innate behavior. Captive-reared whooping cranes released in Florida are expected to develop a sedentary population.

In summer 1988 the Team selected Kissimmee Prairie as the area most suitable for the next experiment to establish a self-sustaining population. A suitable technique for release of whooping cranes in Kissimmee Prairie is the gentle release of captive-reared birds conditioned for wild release. Cranes are conditioned for wild release by being reared in isolation from humans, by use of conspecific role models, puppets, and exercised by animal care personnel in bird costumes to avoid imprinting on humans. This technique has been successful in supplementing the population of endangered nonmigratory Mississippi sandhill cranes (*G. c. pulla*) (Zwank and Wilson 1987, Ellis et al. 1992). The term gentle release refers to retaining captive-reared birds in open-topped enclosures (conditioning pens) at the release site as they gradually adjust to their new surroundings. The enclosures contain some natural foods and water. Commercial foods are provided *ad libitum*. While in the conditioning pens, flight is restricted by the use of plastic brailes which preclude full wing extension. After several weeks the brailes are removed and the birds are allowed to fly from the pen. While the birds acclimate to their new freedom, commercial foods are continued in the pens for their use as needed.

The Service will gentle release 9 to 12 juvenile whooping cranes on Kissimmee Prairie, in early 1993. These birds have been captive-reared at Patuxent Wildlife Research Center in Laurel, Maryland, and the International Crane Foundation in Baraboo, Wisconsin. They were conditioned for wild release to increase post-release survival and their ability to adjust to wild foods. Birds will be double radio tagged and monitored for 2 years after release to discern movements, habitat use, other behavior, and survival. If results of this initial release are favorable, the releases will be resumed later in 1994 with the goal of releasing 20 birds annually for about 10 years.

The reintroduction will: (1) Implement a primary recovery action for a federally listed endangered species; (2) obtain data for further assessing the suitability of Kissimmee Prairie of south central Florida as whooping crane habitat; and (3) evaluate the suitability of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. Information on survival of released birds, movements, behavior, causes of losses, reproductive success, and other data will be gathered throughout the project. Project progress will be evaluated annually.

The likelihood of the releases resulting in a self-sustaining population is believed to be good (60 to 80 percent). Whooping cranes historically occurred in Florida and the release area habitat is similar to that which supported nesting whooping cranes in a nonmigratory population in Louisiana into the 1940's. The minimum goal for numbers of cranes to be released annually is based on the research of Griffith et al. (1989). As captive production increases, annual release numbers will be increased and, for a long-lived species like the whooping crane, continuing releases for a number of years increases the likelihood of reaching a population level which can sustain stochastic events.

The rearing and release techniques have proven successful in building the wild population of the endangered Mississippi sandhill cranes (*G. c. pulla*). If breeding and mortality rates at Kissimmee Prairie mirror those observed in the AWP flock, the suggested rate of release is adequate to assure establishment, with a minimal probability of failure to establish a population (Mirande et al. 1992). If breeding is delayed until 6 or 7 years of age, population growth would be slower, the population would be less stable, and there would be some probability of failure of the introduction. If a non-migratory flock in Florida experiences birth and death rates more similar to the sandhill cranes in Florida, establishment is still likely (Mirande et al. 1992).

Status of Reintroduced Population

The whooping crane population of Florida is designated a nonessential experimental population according to the provisions of section 10(j) of the ESA.

Being authorized for release as an "experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for population management that are less restrictive than the mandatory prohibitions. Such special regulations can provide management flexibility when needed to make a reintroduction compatible with current or planned human activities in the release area. Per section 4(d) of the ESA, these special regulations must be "necessary and advisable" to provide for the conservation of the whooping crane.

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of section 7 of ESA, they are treated as though they were only proposed for listing, except when occurring in an area of the National Wildlife Refuge System or the National Park System. This experimental population qualifies as being nonessential to the continued existence of the whooping crane because:

1. With approximately 90 whooping cranes in captivity at four discrete locations and about 150 whooping cranes in the wild it is evident the Florida population will not be essential to the continued existence of the species. If the definition of nonessential is further narrowed to consider only the existence of the species in the wild, the population is still nonessential. The two extant, discrete wild populations contain about 10 and 140 individuals. A catastrophic event is unlikely to simultaneously strike both populations nor is it likely to destroy all individuals in the larger population. With the existing captive flocks the Service also has the capability to introduce additional birds (by captive-produced eggs) back into the wild. Therefore, whooping cranes are not in imminent danger of becoming extinct in the wild nor will designation of the Florida population as nonessential be likely to "* * * appreciably reduce the likelihood of survival of that species in the wild."

2. For the time being, the AWP and the captive populations will be the primary species population. This species has been protected against the threat of extinction from a single catastrophic event by gradual recovery of the AWP and by increase and management of the cranes at three captive sites. Loss of the experimental population would not jeopardize species' survival.

3. For the time being, the primary repository of genetic diversity for the species will be the approximately 200 wild and captive whooping cranes in the locations mentioned in (1) above. The birds selected for reintroduction will be as genetically redundant as possible with the captive population, hence any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

4. Any birds lost during the reintroduction attempt can be replaced through captive breeding or by transfer of eggs from the AWP. Eggs have been transferred to captivity from the AWP population for recovery purposes (building the captive flocks and the experimental wild cross-fostered population) since 1967. The AWP has

continued to grow during this interval despite the egg transfers. Since 1985, biologists involved in the egg transfer have endeavored to ensure that one viable egg remains in each nest. Such egg switching within the Park provides infertile pairs the opportunity to raise a chick. These egg switches have increased flock growth and the potential for species recovery. In 1992 at least 40 wild pairs nested in Canada, an increase from 33 in 1991. Egg and chick production doubled in the captive flocks in 1992. Within the captive population there also are a number of young pairs (16) expected to enter the breeding component of the population over the next 5 years. Such wild and captive flock increases illustrate the potential of the species to replace individual birds released in the reintroduction effort in Florida.

The reintroduction will further the conservation of the species. There are uncertainties in the reintroduction experiment, but a decision not to attempt to establish a second wild self-sustaining population would be more hazardous to survival of the species in the wild. The present tenuous status of the AWP, which could be decimated by catastrophic events such as a Gulf coast hurricane or a contaminants spill on the wintering grounds, necessitate management efforts to establish an additional wild population. The Service believes three self-sustaining wild populations should be in existence before the whooping crane can be downlisted to threatened status. Such a downlisting requirement is identified in the U.S. Whooping Crane Recovery plan and in the newly drafted Canadian "National Recovery Plan For The Whooping Crane." The nonmigratory Florida population would potentially be the second such population. The site for the third population will be selected at a future date and, in part, will depend on the success of the Florida experiment. If the reintroduction effort at Kissimmee Prairie is successful, the conservation of the species will have been furthered considerably by not only establishing a second self-sustaining population, but by confirming that captive reared birds can be used to establish a nonmigratory wild population. A successful reintroduction into Florida will set the stage for the next major recovery action, establishing a second self-sustaining migratory population. It will provide the public support for the additional recovery efforts necessary for downlisting the species from Endangered to Threatened.

The area currently supports one of the largest and most consistently productive populations of Florida sandhill cranes in the State. The Florida sandhill crane is currently listed as threatened by the State (Florida Game and Fresh Water Fish Commission 1991). Additionally, the area supports populations of eastern indigo snake (*Drymarchon corais couperi*), bald eagle (*Haliaeetus leucocephalus*), snail kite (*Rostrhamus sociabilis*), red-cockaded woodpecker (*Picoides borealis*), American alligator (*Alligator mississippiensis*), Florida panther (*Felis concolor coryi*), and Florida grasshopper sparrow (*Ammodramus savannarum floridanus*), all of which are federally listed as endangered or threatened species. The whooping crane was designated as a Species Of Special Concern in Florida by action of the Florida Game and Fresh Water Fish Commission in September 1992.

Location Of Reintroduced Population

The Kissimmee Prairie consists of approximately 2,000 square kilometers of flat, open palmetto prairie interspersed with shallow wetlands and lakes. On private ranch lands much of the prairie has been converted to improved pasture. Land ownership includes eight large private ranches totaling 82,200 hectares (ha) and seven public ownerships totaling 104,953 ha. Large private holdings range from 2,700 ha to 42,500 ha. Public lands range from 2,955 ha to 43,300 ha and include the Three Lakes Wildlife Management Area (WMA) (22,400 ha), National Audubon Society Kissimmee Prairie Sanctuary (2,955 ha), Kicco WMA (3,100 ha), Bull Creek WMA (8,425 ha), Upper St. John's River WMA (24,800 ha), and Avon Park Bombing Range (43,300 ha).

Seventy percent of the primary release site, Three Lakes WMA, is suitable crane habitat. Twenty-seven percent of this habitat is shallow wetlands characterized by pickerel weed (*Pontederia* spp.), nuphar (*Nuphar luteum*), and maiden cane (*Panicum hemitomon*). Fifty-five percent of the area consists of dry prairie and flatwoods with saw palmetto (*Serenoa repens*), various grasses, and scattered slash pine (*Pinus elliottii*) the characteristic vegetation. Lakes Kissimmee, Marion, and Jackson bound the Three Lakes WMA and each has an extensive wetland edge. Scattered strands of cypress (*Taxodium* spp.) are associated with these and several smaller lakes in the area.

The principal private land use is livestock grazing and sod farming. Habitat is maintained in a subclimax state through controlled burning, primarily in winter and early spring. Areas are burned on a 2 to 3 year rotation. The public lands are managed for wildlife values, water conservation, and to maintain natural habitat conditions. Compared to other release areas in Florida, the Kissimmee Prairie has experienced the least pressures associated with human population growth over the past 30 years due to its distance from major population centers and the presence of large private and public land holdings.

Management

1. Monitoring

Whooping cranes will be intensively monitored by the Florida Game and Fresh Water Fish Commission (Commission) prior to and after release. The birds will be observed daily while they are in the conditioning pen and on-site security will be provided by a resident caretaker. During the pre-release conditioning period, at least nine 30-minute time budgets will be collected on each individual (three from dawn to 1000 hours, three from 1000 to 1500 hours, and three from 1600 hours to dusk). Facilities for captive maintenance of the birds are modeled after facilities at the Service's Patuxent Wildlife Research Center and the International Crane Foundation. They conform to standards set forth in the Animal Welfare Act and Florida Wildlife Code (Title 39.6 F.A.C.). To further ensure the well-being of birds in captivity and their suitability for release to the wild, facilities will incorporate features of their natural environment (e.g., feeding, loafing, and roosting habitat) to the extent possible. The conditioning pens are similar to those being used successfully to release Mississippi sandhill cranes.

To ensure contact with the released birds, each crane will be equipped with two legband-mounted radio telemetry transmitters. Subsequent to gentle-release, the birds will be monitored daily to assess movements and dispersal from the area of the release pen. The cranes will be checked daily for mortality or indications of disease (listlessness, social exclusion, flightlessness, or obvious weakness, etc.). Social behavior (e.g., pair formation, dominance, cohort loyalty) will also be evaluated.

A voucher blood serum sample will be taken for each bird before its shipment to Florida. A second sample will be taken just prior to release. Any time a bird is handled after release a blood sample will be taken to monitor disease exposure, physiological condition, etc. One year after release all surviving birds will be captured and an evaluation made of their exposure to disease/parasites through blood, fecal, and other sampling regimens. Monitoring will continue for a second year and exposure to disease/parasites reevaluated at the end of the second year. Healthy birds still in the wild at the end of the second year will remain in the area. Additional releases will begin late in 1994 or 1995, if conditions appear suitable for successful establishment. The releases would then be continued annually with the goal of releasing 20 birds per year for about 10 years and annually evaluating the progress of the recovery effort.

2. *Disease/Parasite Considerations*

Both sandhill and whooping cranes are known to be vulnerable, in part or all of their natural range, to avian herpes (inclusion body disease), avian cholera, acute and chronic mycotoxicosis, Eastern equine encephalitis (EEE), and avian tuberculosis. Additionally, *Eimeria* spp., *Haemoproteus* spp., *Leucocytozoon* spp., avian pox, lead poisoning, and *Hexamita* sp. have been identified as debilitating or lethal factors in wild or pre-release, captive populations.

A group of crane veterinarians and disease specialists developed protocols for pre-release and pre-transfer health screening for birds selected for release to prevent introduction of diseases and parasites into Florida. Exposure to disease and parasites will be evaluated through blood, serum, and fecal analysis of any individual crane handled post release or at the regular monitoring intervals. Remedial action will be taken to return to good health any sick individuals taken into captivity. Sick birds will be held in specially built facilities and their health and treatment monitored. Special attention will be given to EEE because an outbreak at Patuxent Wildlife Research Center (Center) in 1984 killed 7 of 39 whooping cranes present at the Center. After the outbreak a vaccine was developed for use on captive cranes. In 1989, EEE was documented in sentinel bobwhite quail and sandhill cranes at the Center. No whooping cranes became ill and it appears the vaccine may provide protection. EEE is present in Florida so the birds will be vaccinated in the initial release. Other strains of encephalitis (St. Louis, Everglades) also occur in Florida. The vaccine for EEE may also provide protection against these arboviruses.

When appropriate, chickens or other avian species may be used to assess the prevalence of certain disease factors. This could mean using sentinel species for ascertaining exposure probability to encephalitis or evaluating a species with similar food habits for susceptibility to chronic mycotoxicosis.

3. *Genetic Considerations*

The ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population. Early reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and reestablishing breeding whooping cranes that theoretically compensate for any genetic biases in earlier releases.

4. *Mortality*

Although efforts will be made to reduce mortality, some will inevitably occur as captive-reared birds adapt to the wild. Collision with power lines and fences are known hazards to wild whooping cranes. There are no major power lines crossing the release site. Three- and four-strand barbed wire fencing is used in conjunction with cattle ranching in the Kissimmee area and presents some collision hazard. If whooping cranes begin regular use of areas traversed by power lines or fences, the Service and Commission, in consultation with the corporation or individual owning the line or fence, will consider placing markers on the obstacles to reduce the probability of collisions.

Bobcats are known predators of adult sandhill cranes and, along with Florida panther and alligators, would be potential predators of adult whooping cranes. Bald eagles, gray fox, bobcats, alligators, panthers, owls, and raccoons are potential predators of young cranes. Natural mortality from predators, fluctuating food availability, disease, wild feeding inexperience, etc., will be reduced through predator management, vaccination, soft release, supplemental feeding for a post-release period, and pre-release conditioning. Human-caused mortality will be reduced by information and education efforts directed at landowners and landusers, and review and management of human activities in the area.

A low level of incidental take as a result of otherwise lawful human activities occurring in the area may occur, such as whooping cranes being flushed into fences by land use activities of farming, grazing, recreation, etc., collisions with vehicles, depredation and harassment from cats and dogs and other take from land use activities.

Injuries or mortalities will be required to be reported immediately to the Service. If it is determined that a whooping crane injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, then the Service will not seek prosecution. Knowing or willful take will be referred to the appropriate authorities for possible prosecution.

5. *Special Handling*

Under the special regulation, promulgated under authority of section 4(d) of the Act, that will accompany the experimental population designation, Service and Commission employees and agents would be authorized to relocate whooping cranes to avoid conflict with human activities; relocate whooping cranes that have moved outside the appropriate release area when removal is necessary or requested; relocate whooping cranes within the experimental population area to improve survival and recovery prospects; and aid animals which are sick, injured or otherwise in need of special care. If a whooping crane is determined to be unfit to remain in the wild, it would be returned to captivity. Service and Commission employees would be authorized to salvage or dispose of dead whooping cranes.

6. *Coordination With Landowners and Land Management Agencies*

The action is being coordinated with potentially affected State and Federal agencies, private landowners, and the general public. As previously noted, the Kissimmee Prairie includes 82,200 ha in private ownership and 104,953 ha in public lands. The primary release area is 22,400 ha of public land. Private land managers were contacted and concur with or do not oppose the action provided it does not interfere with existing lifestyles and current and potential income. The Commission manages wildlife management areas in the Prairie, has been actively involved as a cooperator in pre-release studies, and has actively endorsed the project. A Memorandum of Understanding on cooperative recovery actions to be undertaken in Florida has been signed by Regions 2 and 4 of the Service and the Commission. The Commission has stated whooping cranes will receive priority management decisions on Three Lakes WMA. Service and Commission personnel have developed a management plan which describes management activities after the cranes are released. The Director General of the Canadian Wildlife Service, a partner with the U.S. Fish and Wildlife Service as noted in the Memorandum of Understanding, has approved the project. Florida Department of Natural Resources (Division of State Parks), National Audubon Society (Kissimmee Prairie Sanctuary), the Department of Defense (Avon Park Bombing Range), St. Johns Water Management District, and other entities have been informed of the release and are aware of the possibility that whooping cranes may be introduced on or move to their project area.

7. *Potential Conflicts*

Conflicts have resulted when migratory birds have been hunted in areas utilized by whooping cranes. These have resulted from the hunting of sandhill cranes and snow geese (*Chen cerulescens*) which to novice hunters may appear similar to whooping cranes. At least two whooping cranes have been killed when they were mistaken for snow geese, and other whooping cranes have been wounded or shot at in areas where snow geese and sandhill cranes were being hunted. Sandhill cranes and snow geese are not hunted in this area of Florida. No conflicts with migratory bird hunting activities are anticipated.

Traditional hunting in the release area has been for deer (*Odocoileus virginianus*), turkey (*Meleagris gallopavo*), and small game. Conflict with traditional hunting in the release area is not anticipated. Access to some areas where whooping cranes might be particularly vulnerable to human disturbance (i.e., occupied nesting areas, conditioning pens, and critical feeding areas) will be prohibited at times, but such closures will be of short duration and they are not viewed as a source of conflict.

The principal activities on the private property adjacent to the release area are grazing and sod production. Use of these private properties by whooping cranes should not preclude such uses. Coordination with land managers may be necessary to accommodate certain land use activities (i.e., pesticide applications) and use by whooping cranes.

Requests by the public for an opportunity to view whooping cranes, a high profile endangered species, might create conflict on private land when whooping cranes are present. Commission personnel assigned to the Kissimmee Prairie area will be alert to activities of the public attempting to observe whooping cranes on private lands. If such activities begin to infringe on or become a nuisance to the rights of private property owners, the Commission and Service will take action to correct the situation. Commission plans to provide opportunity for the public to view whooping cranes on public property, away from sensitive areas, should reduce or eliminate this potential source of conflict.

Released whooping cranes might wander or migrate from the release site, moving into other states or other locations within Florida. The Service believes such movements are unlikely to occur outside Florida for the reasons mentioned below, but if they do, the bird(s) will be recaptured and returned to the release site or to captivity. Likewise, any whooping cranes that wander to locations not conducive to the bird's health or safety will also be captured and moved. Studies of whooping cranes and greater sandhill cranes have shown that migration in these cranes is learned rather than innate behavior.

The cross-fostered whooping cranes in Idaho learned the migration route and wintering site preferences from their foster parents. An experiment in Florida tested whether captive-reared cranes, with an innate tendency to migrate, would migrate or remain sedentary when released in association with cranes that migrate. Greater sandhill cranes that nest in the Great Lakes States migrate to Florida for the winter. Eggs removed from this wild population were hatched and reared in captivity. The birds were released in Florida where they associated with wild nonmigratory Florida sandhill cranes and with wintering, migratory, greater sandhill cranes. The released birds noticeably expanded their localized movements during subsequent migration periods but remained year-round in the Florida release area. Captive-reared whooping cranes released in Florida are expected to develop a sedentary population.

As noted previously, in 1992 a male cross-fostered whooping crane and female sandhill crane paired and produced an intercross chick in the Rocky Mountain population. This pairing is believed to be a consequence of improper sexual imprinting which resulted from the cross-fostering process. This is the first known instance of natural pairing of these species despite frequent association of the two in the wild. Whooping cranes being prepared for release in Florida are reared in association with conspecific role models and are expected to be sexually imprinted on their own species. Sandhill cranes and whooping cranes cross-breeding is not expected to occur as a consequence of the reintroductions in Florida.

8. *Protection*

Recently released whooping cranes will need protection from natural sources of mortality (predators, disease, inadequate foods, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, gentle release, vaccination, predator control, etc. Human-caused mortality will be minimized by placing whooping cranes in an area with low human population density and relatively low development; by working with and educating landowners, land managers, developers, and recreationists to develop means for conducting their existing and planned activities in a manner that is compatible with whooping crane recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to the cranes.

The whooping crane was designated a Species of Special Concern in Florida by action of the Florida Game and Fresh Water Fish Commission in September, 1992 (Rule 39–27.005 Florida Wildlife Code). With the protection provided by this State law no person may kill, capture, buy, sell, or possess a whooping crane without an appropriate permit.

A biological opinion on the reintroduction, and designation as experimental nonessential, concluded that the action will not jeopardize the species.

9. *Public Awareness and Cooperation*

An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction. The public will be encouraged to cooperate with the Service and the Commission in attempts to maintain whooping cranes in the release area.

Summary of Comments and Recommendations

In the September 29, 1992, proposed rule (57 FR 44721) the Service requested comments or recommendations concerning any aspect of the proposal that might contribute to the development of a final decision on the proposed rule. A 30-day comment period was provided. Large local ranch owners, county commissioners, water management districts, Department of Defense, Florida Power and Light Company, Edison Electric Institute, U.S. Corps of Engineers, neighboring states, National Audubon Society, Whooping Crane Conservation Association,

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National Wildlife Federation, Central Flyway Technical Committee, Florida Department of Transportation, and others were sent a copy of the rule and invited to provide comments. An announcement of the proposed rule was published in the legal advertisements of the Orlando Sentinel. Twelve hundred newspapers, other media, and environmental interest groups were sent a Service media release announcing publication of the rule and the invitation to comment. The Tampa Tribune and Orlando Sentinel printed articles on the proposed release of whooping cranes. Thirteen letters were received requesting copies of the rule. A total of 24 comment letters and one phone call were received including comments from groups with memberships totaling over 208,000 individuals. One letter opposed the release, 18 letters strongly supported the proposed rule, another letter stated they had no objection to the proposed reintroduction, one oral (telephone) comment expressed concern about wording in the rule, one letter posed questions about future management of the whooping cranes but expressed no opinion about the rule, one letter expressed neither support nor opposition but said if the Service plans to put whooping cranes in the Kissimmee Prairie then airboat traffic must be stopped, and one letter mentioned some historical events about whooping cranes but did not express an opinion about the proposed rule. Three letters supporting the reintroduction expressed concerns about wording of the original rule. Specific issues raised by those commenting and the Service's responses are presented below.

1. General Comments of Support

Eighteen letters of support were received from individuals or groups. Groups responding included The Nature Conservancy, Edison Electric Institute, South Florida Water Management District, the President of the Lake Region Audubon Society speaking for their 800 members, Sierra Club—The Florida Chapter, the Fund For Animals, Inc. with 200,000 members, Wildlife Conservation International, and Levy County Development Authority. Reasons given for the support included it will be beneficial for Florida's wildlife to include the whooping crane once again; the nonmigratory flock would not have to face the hazards of migration each year; the designation as an experimental nonessential population; the necessity of establishing other populations of whooping cranes is evident because of the vulnerability of the only self-sustaining wild population; the project is in harmony with the mission to preserve and enhance biological diversity through protection of natural communities and native plants and animals; ecotourism provides an opportunity to instill a conservation ethic in visitors who have a close encounter with natural Florida and applauded the plans to provide access and viewing on public property away from sensitive areas; controlled access provides an economically beneficial tourism lure which creates jobs for people; the project appears to be very well-researched and has the potential to benefit whooping cranes and other species; and the establishment of whooping cranes in south-central Florida would be added protection for the species in the event a disease or natural disaster overtook the Texas flock.

Response: The Service agrees with the reasons for supporting the reintroduction and addresses them in this final rule and the final environmental assessment and ESA Section 7 biological opinion. The efforts of individuals in support of the project are appreciated.

2. Opposition To The Reintroduction.

One respondent opposed the introduction. A 9-year-old girl requested that the whooping cranes not be released from captivity, stating "I do not want them to get killd" (sic).

Response: The Service understands the desire to protect the captive whooping cranes from the dangers they will face in the wild. However, for the betterment of the species as a whole, the Service believes it is appropriate to risk some individuals with the hope that chances for survival of the species will be increased by the reintroduction.

3. Intentional Take

A Federal law enforcement agent and the Fund For Animals, Inc. expressed concern about wording in the special rule specifying circumstances under which "taking" of introduced whooping cranes will be allowed. Item 3(h)(2) said "No person may intentionally take this species in the wild * * * except as provided * * *". The respondents believed the word "intentional" would make conviction of violators impossible because those in violation could claim the take was not intentional.

Response: The Service agrees that proving that certain takings were intentional is problematic and has deleted the word "intentional" in 3(h)(2) of the final rule. However, the Service has added a new paragraph (5) which allows incidental take of whooping cranes within the experimental population area. Incidental take is any take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A low level of incidental take may occur in the area, such as may occur as a result of collisions with power lines, being flushed into fences by land use activities of farming, grazing, or recreation. The Service will work with landowners and landusers to ensure that incidental take is minimized. All incidental take mortalities must be reported to the Service and will be investigated.

4. Control of Airboat Traffic

One respondent said if whooping cranes are released in the Kissimmee Prairie, airboat traffic must be stopped because it has driven away the cranes, snipes, ducks, and curlews.

Response: The writer was not specific about where in the Prairie this activity occurred and provided no factual documentation. The Service and Commission will be alert for the problems described by the writer.

5. Change To Essential Experimental Population in the Final Rule

The Fund For Animals, Inc. strongly supported the reintroduction but opposed the nonessential experimental designation. They noted that reintroduction is clearly essential for continued existence of the species. In order for a population to be designated as nonessential experimental, the population must not be "essential to the continued existence of an endangered species * * *" 16 U.S.C. 1539(j)(2)(B). They further referred to a House Conference Report which provides additional interpretation regarding the meaning of nonessential: "* * * the Secretary shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species in the wild. If the Secretary determines that it would, the populations will be considered essential to the continued existence of the species." (House Conf. Rep. No. 97–835, 1982 U.S. Code Cong. & Admin. News 2860, 2874–2875). The Notice (proposed rule) clearly recognizes the essential nature of this reintroduction effort to the continued existence of the species in the wild by noting the Aransas population "could be annihilated by catastrophic events such as a Gulf coast hurricane or a contaminants spill * * *".

Response: The principal basis for the nonessential finding is the definition stated in the Endangered Species Act which says "* * * the Secretary shall * * * determine * * * whether or not such population is essential to the continued existence of an endangered species * * *" (16 U.S.C. 1539(j)(2)(B)). With approximately 90 whooping cranes in captivity at four discrete locations and about 150 whooping cranes in the wild at two separate locations, it is evident the Florida population is not essential to the continued existence of whooping cranes as a species. If the definition is further narrowed to consider only the existence of the species in the wild, the Service still concludes that the population is nonessential. The Service believes the Florida population is essential to further recovery of the species and to reach the goal of downlisting, but being essential for recovery is not synonymous with being essential for existence in the wild. The two extant, discrete wild populations contain about 10 and 140 individuals. A catastrophic event is unlikely to simultaneously strike both populations nor is it likely to destroy all individuals in the larger population. With the existing captive flocks, the Service also has the capability to introduce additional birds back into the wild. Therefore, the Service does not believe whooping cranes are in imminent danger of becoming extinct in the wild nor will designation of the Florida population as nonessential be likely to "* * * appreciably reduce the likelihood of survival of that species in the wild".

6. Change of Nonessential Designation in the Future

One local rancher said "We have no problem with your experimental release of whooping cranes in Florida * * *". He then expressed a concern that, after the cranes were established, the birds might be designated "endangered" and that would cause problems for landowners. Sierra Club—The Florida Chapter strongly supported the reintroduction but reluctantly accepted the need for the nonessential designation while the project is getting started. The Sierra Club requested that after a period of time the designation should be reconsidered.

Response: The Service proposed the nonessential experimental designation for the reasons stated in this final rule. The designation alleviated local concerns about constraints on land management options of local landowners. The Service believes the whooping cranes will be adequately protected despite the absence of the usual section 7 requirements. Changing the experimental nonessential designation at a later date would most likely alienate some local landowners who now strongly support the reintroduction and provide research personnel access to their properties. Such an action would be counterproductive. In response to the rancher concerned that the experimental nonessential designation would be dropped when the birds became established, the Service states there are no plans to change the designation. As this nonmigratory population becomes self-sustaining, and other recovery goals for whooping cranes are met, there will be less justification, not more, for viewing the Florida population as essential to the survival of the species.

7. Unilateral Marking of Transmission Lines

Letters from Edison Electric Institute and Florida Power and Light Company expressed concern about the wording in the Mortality section of the proposed rule (page 44726). The statement of concern said "if whooping cranes begin regular use of areas traversed by power line or fences, the Service and Commission will consider placing markers on the obstacles to reduce the probability of collisions." The respondents interpreted this to mean the Service and the Commission would confer with the owners of such obstacles and consider the merits of marking the obstacles. However, the wording could be interpreted to mean the Service and Commission would unilaterally mark the obstacles and such action would not be acceptable to the utilities involved.

Response: The intended meaning of the wording was that the Service and Commission would consult together and evaluate whether the situation warranted marking of obstacles. The Service did not explain the next step, that if marking seemed warranted, the Service would work with the appropriate owner of the obstacle to encourage cooperative marking to protect the cranes. The Service hopes the wording in this final rule better reflects the original intent.

8. Concern About Inability To Reproduce

One woman supported the release and said she hoped these male birds know how to dance—apparently in reference to the absence of pairing and breeding in the cross-fostered whooping cranes of the Rocky Mountain population.

Response: Males in the captive populations do know how to dance and breed naturally. There is no basis for believing that the birds released in Florida will be any less capable of dancing and breeding.

9. Full Section 7 Protection on State and Federal Lands

Sierra Club—The Florida Chapter recommended that full protection under section 7 of the Endangered Species Act should apply to National Forests, other Federal lands, and State lands, just as it does for experimental populations on National Parks and National Wildlife Refuges.

Response: The designation of experimental nonessential provides full protection, under section 7 of The Endangered Species Act, only to National Wildlife Refuges and National Park lands. Extending full protection to State lands and other Federal lands would require an amendment to the Endangered Species Act and is not a prerogative of the Service.

10. Exceptions to the Take Prohibition Should Be More Narrowly Defined

The Fund For Animals, Inc. suggested that exceptions to take prohibitions are open ended and susceptible to virtually any interpretation. Take exceptions should be more narrowly restricted to instances where such removal is clearly related to advancing the conservation of the species. Otherwise, they fear, every time a crane happens to land on the property of a landowner who does not recognize the value of a whooping crane, a request will be made to relocate the crane.

Response: The Service agrees that a situation could arise of a crane landing on private property where it is not welcome, and the Service being requested to remove it. If the existence of a whooping crane on the property may require the individual to modify his activities in order to avoid taking the bird, and if the party were to request its removal, the Service would assess the particular circumstances and determine whether removal would be appropriate. If it appears the crane's existence on the property would truly conflict with the landowner's activities, the Service would work with the affected party in an attempt to reduce, minimize or delay impacts. If necessary, the Service may determine that it is in the best interest of the whooping crane and the reintroduction effort to remove the bird.

The obvious purpose of establishing the experimental population is to further the conservation of the species and advance its recovery to the point where downlisting or eventual delisting is appropriate. All Service decisions pertaining to this project will be directed at accomplishing that goal. The consent, support and cooperation of agencies and persons holding any interest in land which may be affected by the establishment of the population is a critical factor in accomplishing a successful reintroduction. In determining whether relocation of a whooping crane is appropriate, the nature of the circumstances will be weighed against the potential impacts to the species, and a decision made on a case-by-case basis. The Service believes this flexibility is critical to a successful reintroduction.

This experimental population has broad support in the release area. The Service does not expect that capricious requests to remove whooping cranes will be a significant problem.

11. General Questions About the Proposal

A letter from a Water Management District asked four questions about the proposal. These are listed below and the Service response follows each.

1. Will There Be Changes in the Burning Regime To Benefit Cranes?

Response: The Service and the Commission have developed a management plan identifying prescribed burning and other management practices. The current 2- or 3-year burn cycle is adequate. There may be an expansion of burning into some areas not currently "prescribe burned" but no decision has been made on such specifics.

2. Will There Be an Attempt To Increase Crane Habitat at Three Lakes Wildlife Management Area?

Response: There may be an effort to improve the quality of crane habitat at Three Lakes Wildlife Management Area. There presently are no plans to actively increase the crane habitat acreages. However, the Service does not anticipate that such will occur as a consequence of restoration of original drainage patterns and increased use of the prairie as a water conservation area. These changes are not a consequence of Service management actions.

3. How are Whooping Cranes Expected to Interact With Sandhill Cranes? Will There Be Competition for Food or Nest sites?

Response: The two cranes are members of the same genus. They associate together in the Great Plains and Rocky Mountains in feeding, roosting, and migrating flocks. The whooping crane, being larger, tends to dominate. Their foods are similar in the uplands but whooping cranes are more aquatic in their diet in wetlands. There do not appear to be food shortages so the Service does not anticipate competition for food. The whooping crane may displace sandhill cranes from some nest sites.

4. How Will the Water Management District be Informed of any Movement of Whooping Cranes into District-owned Lands?

Response: The Water Management District will be notified by phone, and if desirable, by letter.

National Environmental Policy Act

An Environmental Assessment prepared under the authority of the National Environmental Policy Act of 1969 is available to the public at the Service Office identified in the "**ADDRESSES**" section. It has been determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508).

Required Determinations

The Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The Service has also determined that this action would not involve any taking of constitutionally protected property rights that require preparation of a takings implication assessment under Executive Order 12630. The rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for "Crane, whooping" under BIRDS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
BIRDS							
*	*	*	*	*	*	*	
Crane, whooping ...	*Grus americana*	Canada, U.S.A. (Rocky Mountains east to Carolinas) Mexico.	Entire, except where listed as an experimental population.	E	1,3	17.95(b)	NA
Do	......do	......do	U.S.A. (FL)	XN	487	NA	17.84(h)
*	*	*	*	*	*	*	

3. 50 CFR 17.84 is amended by adding a new paragraph (h) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(h) Whooping crane (*Grus americana*). (1) The whooping crane population identified in paragraph (h)(8) of this section is a nonessential experimental population.

(2) No person may take this species in the wild in the experimental population area except when such take is accidental, unavoidable, and not the purpose of the carrying out of an otherwise lawful activity, or as provided in paragraphs (h) (3) and (4) of this section.

(3) Any person with a valid permit issued by the Fish and Wildlife Service (Service) under § 17.32 may take whooping cranes in the wild in the experimental population area.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a whooping crane in the wild in the experimental population area if such action is necessary to:

(i) Relocate a whooping crane to avoid conflict with human activities;

(ii) Relocate a whooping crane that has moved outside the Kissimmee Prairie when removal is necessary or requested;

(iii) Relocate whooping cranes within the experimental population area to improve survival and recovery prospects;

(iv) Relocate whooping cranes from the experimental population area into captivity;

(v) Aid a sick, injured, or orphaned specimen; or

(vi) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study.

(5) Any taking pursuant to paragraphs (h) (3) and (4) of this section must be immediately reported to the National Whooping Crane Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (Phone: 505/766–2904), who, in conjunction with his counterpart in the Canadian Wildlife Service, will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental population taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (h) (2) through (6) of this section.

(8) The geographic area that the nonessential experimental population may inhabit will include the entire State of Florida. The reintroduction site will be the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee counties. Current information indicates that the Kissimmee Prairie is within the historic range of the whooping crane in Florida. There are no other extant populations of whooping cranes that could come into contact with the experimental

population. The only two extant populations occur well west of the Mississippi River. The Aransas/Wood Buffalo National Park population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge. The other population, which was cross-fostered by wild sandhill cranes but has failed to reproduce, summers in Idaho, western Wyoming and southwestern Montana and winters in New Mexico. Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds leaving little possibility that individuals from the two extant populations will stray into Florida. Studies of whooping cranes have shown that migration is learned rather than innate behavior. The experimental population released at Kissimmee Prairie is expected to remain within the prairie region of central Florida.

(9) The reintroduced population will be closely monitored during the duration of the projects by the use of radio telemetry. Any animal which is determined to be sick, injured, or otherwise in need of special care would be immediately recaptured by Service or State wildlife personnel or their designated agent and given appropriate care. Such animals will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive breeding facility.

(10) The status of the experimental population will be reevaluated periodically to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released on the area.

Dated: December 28, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1373 Filed 1–21–93; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230–3020]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final specifications for the 1993 summer flounder fishery.

SUMMARY: NMFS issues this notification of final specifications to implement the 1993 catch quotas for the summer flounder fishery. Regulations governing this fishery require the Secretary of Commerce (Secretary) to publish specifications for the upcoming fishing year. This action is intended to fulfill this requirement and, thereby, prevent overfishing of the summer flounder resource.

EFFECTIVE DATE: January 1, 1993.

ADDRESSES: The environmental impact statement and analyses for Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the FMP are found at 50 CFR part 625 and were published on December 4, 1992 (57 FR 57358). The Amendment established several conservation and management measures including: A moratorium on new entrants into the commercial fishery, an annual commercial quota, minimum mesh and fish sizes, seasons, bag limits, etc. The process to set the annual commercial quota and, if necessary, adjust some of the fishing restrictions is described in § 625.20. The purpose of this notification is to specify the annual coastwide and individual commercial quotas and other fishing restrictions for the upcoming summer flounder fishing year.

Annual Review Process

The Summer Flounder Monitoring Committee (Committee), made up of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council (Council), the New England Fishery Management Council and NMFS, is required to review, on an annual basis, scientific and other relevant information and recommend catch quotas and other restrictions necessary to result in a fishing mortality rate of 0.53 for the years 1993–1995, and 0.23 in 1996 and thereafter. The schedule of fishing mortality rates is mandated by Amendment 2 to the FMP and is necessary to prevent overfishing of the summer flounder resource.

The scientific and statistical information that are to be reviewed annually by the Committee are listed in § 625.20(a). The measures that require consideration by the Committee and that may be adjusted are found in § 625.20(b).

The Committee's annual review for the 1993 fishing year resulted in a recommendation to set the 1993 coastwide commercial quota equal to 12.35 million pounds (5.6 million kg) and the recreational target quota at 4.36 million fish estimated to be 8.38 million pounds (3.8 million kg). No further recommendations for adjustments to existing fishing restrictions were made and, therefore, all other measures (e.g., commercial minimum fish size and net minimum mesh size; recreational minimum fish size, possession limit and season) remain as established by Amendment 2. The commercial quota represents the level of allowable coastwide commercial landings necessary to achieve a 0.53 fishing mortality rate in the commercial sector of the fishery. It is calculated based on a simulation of the effects of the existing minimum fish and mesh sizes on landings, utilizing the most currently available estimates of stock size and an assumption that recruitment will be at average levels.

The recreational sector of the fishery is also constrained to the schedule of fishing mortality rates, and for 1993, the rate is also 0.53. The FMP utilizes a different approach to achieve this rate in the recreational sector consisting of a combination of bag, season and size limits rather than state quotas and closures. The "target" level of recreational landings for the 1993 fishing year that will result in a fishing mortality rate of 0.53 is estimated to be 8.38 million pounds (3.8 million kg) or 4.36 million fish.

Based on an analysis of the factors listed in § 625.20(a), the Committee determined that the measures currently in place for the recreational fishery are sufficient to remain within the recreational target quota.

The Committee's recommendation was subsequently forwarded to the Council's Demersal Species Committee, which reviewed the basis for the recommendation and made the identical recommendation to the full Council. After conducting its own review, including consideration of any public comments, the Council voted to adopt this recommendation and forward it to the Regional Director, Northeast Region. This recommendation was approved by the Regional Director for publication in the **Federal Register** as a notification of proposed specifications. All of the steps above were conducted in accordance with the Annual Review Process described in § 625.20 of the regulations.

The Council also requested that final implementation of the annual quota be expedited so as to correspond with the beginning of the fishing year on January 1, 1993. This is because all sources of mortality that occur during 1993, including any landings, must be accounted for and applied to the quota to achieve the 0.53 fishing mortality rate prescribed by the FMP.

The notification of proposed specifications containing the annual coastwide commercial quota recommendation of 12.35 million pounds (5.6 million kg) and state quotas was filed for public inspection by the Office of the Federal Register on December 21, 1992 and published on December 24, 1992 (57 FR 61389). The public comment period ended on January 5, 1993. This notification of final specifications does not contain any changes from the proposed specifications.

Comments and Responses

Comments were received from: a law firm representing the Southern New England Fishermen's and Lobstermen's Association; the Commissioner of the Connecticut Dept. of Environmental Protection; Congressman Sam Gejdenson, Senator Christopher Dodd and Senator Joseph I. Leiberman, all from Connecticut.

Comment: A commenter objects to the short comment period, contending that it was unreasonably short and included two national holidays.

Response: The comment period was necessary as requested by the Council, to expedite the final quota specification due to the imminent start of the fishing year. NMFS points out, however, that throughout the annual review process beginning in August, 1992, the quota recommended by the ASMFC committee, the Council's Demersal Committee and, eventually, the full Council was well known to the public and opportunities for public input were provided during Council meetings.

Comment: The specifications are "major" under Executive Order (E.O.) 12291 because they significantly impact Connecticut fishermen.

Response: Because fishing mortality rates were well above the level necessary to prevent overfishing the summer flounder resource, Amendment 2 to the FMP implemented a 5-year schedule of reductions to begin to restore the resource. Amendment 2 was approved by the Secretary and published on December 4, 1992. A determination was made that the rule was not a "major rule" under E.O. 12291, based on the regulatory impact review which analyzes the impact across the entire fishery. However, it was also determined that Amendment 2 may have a significant effect on a substantial number of small entities and an analysis was prepared. The analysis concluded that the long-term benefit to the summer flounder stock and the fishery is expected to greatly outweigh the short-term costs to small entities. This final notification merely specifies the allowable quota that can be taken to achieve the 0.53 fishing mortality rate, mandated by the approved Amendment.

Comment: The quota violates national standard 2 because it is based on unsound, inappropriate and unrealistic data rather than the best scientific information available. Landings in Connecticut were inadequately recorded until 1987. The ten-year period upon which the quota is based (1980–1989) results in a Connecticut quota of approximately 118,000 lbs (52,679 kg). This represents a 71 percent reduction from Connecticut's 1991 landings and may result in a closure in February forcing Connecticut vessels to land in Rhode Island or New York. In addition, the ten-year average does not adequately reflect the recent increases in the size and productivity of the Stonington fleet which creates bias against Connecticut in favor of other States.

Response: NMFS is unaware of any additional landings data that may be used to calculate the quotas. The ASMFC Committee and Council Demersal Species Committee used all available landings data. Therefore, the quota is based on the best scientific information available. As a member of ASMFC, Connecticut was able to present its concerns throughout the development of Amendment 2.

Similar comments were made in conjunction with approval of Amendment 2 from fishermen of other states. They believed the quota was biased against them because of their states' earlier conservation actions, such as trawling prohibitions and minimum sizes, that affected landings during the period. The ASMFC recognized there were many circumstances that could result in claims of bias; however, in adopting the Amendment the states decided to put these concerns aside to achieve the long-term conservation benefits and potential increases in yield.

The percent of the quota allocated to each state is based on each state's historical landing levels over the 10-year period selected. All member states of the ASMFC, including Connecticut, agreed to this time period and the manner of distributing the annual quota on a state-by-state basis. Although Connecticut's fleet may have increased greatly in size and productivity in recent years, it may not have done so relative to the other states. Regardless, the quota is not based on the size of the fleet but rather, the size of the resource and the yield that can be produced on a sustainable basis.

Finally, these regulations do not preclude the option of Connecticut vessels to land in other states such as NY or RI, provided those states have quota remaining. This can occur even if Connecticut's fishery is closed. Connecticut dealers may also purchase summer flounder that was landed in any state that has quota remaining.

Comment: The 12.35 million pound quota (5.6 million kg) discriminates against Connecticut fishermen and dealers, contrary to national standard 4. Connecticut dealers are particularly discriminated against because they will not be able to purchase summer flounder after a closure occurs.

Response: Connecticut is not being discriminated against because all states must abide by their assigned quota and close their respective fisheries once a quota is achieved. All of the states agreed to the mortality reductions and the process to achieve them. The annual quota is simply a manifestation of the agreement. In addition, Connecticut dealers may purchase summer flounder landed in any state that has quota available.

Comment: The Regional Director is requested to use his authority to adjust Connecticut's share to roughly 280,000 lbs (125,000 kg) or take immediate action to stop implementation of the quota.

Response: The Regional Director does not have the authority to adjust Connecticut's quota or to stop implementation. The percent of the quota apportioned to each state is set by the regulations implementing the FMP and can only be changed by FMP amendment. Any amendment to the FMP would likely be initiated by the Council and the ASMFC, mirroring the same procedure required for original implementation.

Comment: A commenter supports efforts to prevent overfishing.

Response: NMFS believes that full implementation of the state quota system is necessary to prevent overfishing the summer flounder resource.

1993 State Quotas

This notification of final specifications sets forth the determination of Regional Director, Northeast Region, to implement a coastwide commercial quota equal to

12.35 million pounds (5.6 million kg). The following table presents the final 1993 coastwide commercial quota apportioned among each state according to the percent shares specified by Amendment 2 to the FMP.

State	Share (percent)	1993 Quota (pounds)
ME	0.0482	5,956
NH	0.0005	62
MA	6.9111	853,521
RI	15.8914	1,962,588
CT	0.9532	117,720
NY	7.7486	956,952
NJ	16.9473	2,092,992
DE	0.0180	2,223
MD	2.0662	255,176
VA	21.6001	2,667,612
NC	27.8155	3,435,214

Classification

This action is authorized by 50 CFR part 625 and complies with Executive Order 12291 and the National Environmental Policy Act.

The Regional Director has determined that this action is necessary for the conservation and management of the summer flounder fishery and is consistent with Amendment 2 to the FMP.

These final specifications do not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

A final environmental impact statement (FEIS) was prepared for Amendment 2 and subjected to public comment. The FEIS concluded that the preferred alternative which included the method for determination of annual commercial and recreational quotas based on a specified fishing mortality rate was environmentally preferable compared to the status quo. The measures contained in these final specifications are within the scope of analysis of the FEIS for Amendment 2; therefore no supplemental EIS or environmental assessment is necessary for this action.

These final specifications do not alter the impacts analyzed within the regulatory impact review (RIR) for Amendment 2. On the basis of the RIR, these final specifications are determined not to be a major rule under E.O. 12291.

Previously, a determination was made that Amendment 2 may have a significant effect on a substantial number of small entities and a RIR/final regulatory flexibility analysis was prepared. That analysis was in large part based on the commercial and recreational quotas for 1993 needing to attain a fishing mortality rate of 0.53, the same fishing mortality rate that these final specifications would obtain. The long-term benefit to the summer flounder stock and the fishery is expected to greatly outweigh short-term costs to small entities managed under quota restrictions.

These final specifications do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The most recent biological opinion on the impacts of the summer flounder fishery on threatened and endangered species concluded that the fishery may jeopardize the Kemp's ridley sea turtle, and certain reasonable and prudent alternatives were suggested. Management measures for Amendment 2 were determined to be consistent with those suggestions; therefore, these final specifications are also consistent with those suggestions.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: January 15, 1993.

William W. Fox, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–1479 Filed 1–15–93; 1:40 pm]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 921108–3008]

RIN 0648–AF24

Groundfish of the Gulf of Alaska, and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to establish two trawl test areas in the Gulf of Alaska (GOA) and one trawl test area in the Bering Sea and Aleutian Islands (BSAI) area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI otherwise would be closed to trawling. This rule is necessary to reduce lost fishing time from gear problems, thereby reducing economic costs. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

EFFECTIVE DATE: January 15, 1993.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fisheries Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI area. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Amendment 27 to the GOA FMP and Amendment 22 to the BSAI FMP were approved by the Secretary on December 14, 1992. These amendments provide NMFS with the authority to establish trawl test areas. Under this authority, a regulatory amendment (57 FR 59702, December 14, 1992) was proposed to establish two areas in the GOA and one area in the BSAI area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI otherwise is closed to trawling. A full description of the trawl test area program was published on December 14, 1992, in the preamble to the proposed rule. Additional information is contained in the preamble to the proposed rule as well as in the EA/RIR/FRFA, which is available (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has reviewed the reasons for this rule and the comments received. He has determined that this rule is necessary for conservation and management of the groundfish fisheries and, therefore, has approved it.

Changes in the Final Rule From the Proposed Rule

No changes from the proposed rule are contained in the final rule.

Response to Comments on the Proposed Rule

Two letters were received during the public comment period. Of these letters, one had no comment, and one was in favor of implementing the trawl test areas. The comment in favor is summarized as follows:

Comment: The final rule implementing trawl test areas should be made effective by January 14, 1993, so that vessels will be able to use the trawl test areas before the start of the 1993 fishing season. Trawl test areas are important, because if vessels do not test their trawl gear and associated electronic gear before the start of the season, they risk losing the whole fishing period if problems occur. Trawl testing minimizes the possibility of higher bycatch rates and maximizes the efficiency of the fishing operations. Trawl testing maximizes the value of the fishery because it lowers bycatch rates, which provides more harvesting days for the trawl fleet. Vessels that have wintered in Seattle are able to test their nets in Washington State's Puget Sound test area before travelling to Alaska, but vessels wintering in Alaska do not have that same opportunity.

Response: NMFS notes the comment. The rule will be effective as soon as possible.

Classification

The Assistant Administrator has determined that this final rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this final rule that discusses the impacts on the environment as a result of this rule. The Assistant Administrator concluded that no significant impact on the human environment will result from its implementation. The public may obtain a copy (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Based on the socio-economic impacts discussed in the EA/RIR/FRFA prepared by the Alaska Region, NMFS has concluded that none of the measures in this rule would cause impacts considered major for purposes of E.O. 12291.

The final regulatory flexibility analysis (FRFA) prepared as part of the ER/RIR/FRFA concludes that this rule would have significant effects on small entities. More than 2,000 vessels may fish for groundfish off Alaska in 1993 and future years. This rule is expected to have positive economic benefits by reducing lost fishing time due to inoperative fishing gear by allowing vessel operators to test their gear before the beginning of the trawl season. A copy of this document may be obtained (see **ADDRESSES**).

An informal consultation under the Endangered Species Act was concluded for this rule on June 11, 1992. As a result of the informal consultation, the Regional Director determined that the fisheries managed under 50 CFR parts 672 and 675 and as revised under this rule are not likely to adversely affect endangered or threatened species or critical habitat. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for adoption of this rule.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. Consistency is inferred because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The 30-day period of delayed effectiveness is waived under section 553(d)(1) of the Administrative Procedure Act. This determination was reached because a delay in the effectiveness of this rule is not necessary since it relieves a restriction on the trawl fleet. Immediate effectiveness of the rule would allow the trawl fleet to test their trawl gear prior to the opening of the trawl season on January 20, 1993. The inability to test trawl gear is a burden on the industry and results in a loss of fishing efficiency and increased costs.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: January 15, 1993.

William W. Fox, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.24, paragraph (f) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(f) *Trawl Gear Test Areas*—(1) *General.* For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at § 672.27.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Kodiak Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 63 as defined in § 672.2:

W. longitude	*N. latitude*
	57°37′
152°02′	57°37′
151°25′	57°23′
151°25′	57°23′
152°02′	57°37′
152°02′	

(5) *Sand Point Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 61 as defined in § 672.2:

W. longitude	*N. latitude*
	54°50′
161°00′	54°50′
160°30′	54°35′
160°30′	54°35′
161°00′	54°50′
161°00′	

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 675.24, paragraph (g) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(g) *Trawl Gear Test Areas*—(1) *General.* For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at Section 675.25 of this part.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Bering Sea Testing Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in the Bering Sea and Aleutian Islands Management Area as defined in § 675.2:

W. longitude	*N. latitude*
	55°00′
167°00′	55°00′
166°00′	54°40′
166°00′	54°40′
167°00′	55°00′
167°00′	

[FR Doc. 93–1497 Filed 1–15–93; 2:55 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 921185–2285]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closures to directed fishing.

SUMMARY: NMFS is closing directed fishing for the "other rockfish" species group in the Bering Sea subarea (BS), pollock in the Bogoslof subarea; and sablefish by vessels using trawl gear in the BS and the Aleutian Islands (AI) subarea. This action is necessary to prevent exceeding the interim harvest amounts for these species or species groups.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), January 20, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(i), the interim harvest amounts for these species or species groups were established by the notice of proposed specifications (57 FR 57718, December 7, 1992) as follows: 85 metric tons (mt) for the "other rockfish" species group in the BS, 340 mt for pollock in the Bogoslof subarea; 149 mt for sablefish by vessels using trawl gear in the BS and 159 mt in the AI.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the interim harvest amounts for these species or species groups will be necessary as bycatch to support other anticipated groundfish fisheries. Therefore, NMFS is prohibiting directed fishing for the "other rockfish" species group in the BS, for pollock in the Bogoslof subarea; and for sablefish by vessels using trawl gear in the BS and the AI, effective from 12 noon, A.l.t., January 20, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–1477 Filed 1–15–93; 1:40 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: An interagency task force has designed a uniform multi-agency criminal referral form in order to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database. This uniform criminal referral form will replace the various criminal referral forms that are currently being used by Federal bank, thrift and credit union regulatory agencies and by financial institutions. The purpose of the proposed amendment is to conform NCUA's regulations to the new procedures for completion and submission of the uniform criminal referral form. This action is intended to improve reporting of crimes relating to financial institutions and to establish a standardized form which can be entered into the new interagency computer data base.

DATES: Comments must be submitted within 30 days after publication in the **Federal Register**.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John Ianno or Jon Canerday, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

Discussion

The Federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). These agencies are responsible for safeguarding the safety and soundness of financial institutions with operations in the United States, including national banks, savings associations, state-chartered banks, bank and thrift holding companies and their nonbank subsidiaries, Edge and Agreement corporations, all U.S. offices of foreign banks and federally-insured credit unions.

Pursuant to their respective enabling statues, these agencies are responsible for ensuring that financial institutions apprise Federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted.

An Interagency Bank Fraud Working Group ("Working Group") was formed in 1984 to address problems and to promote cooperation toward the goal of improving the Federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve Federal agencies, including NCUA, the other Federal financial institution regulatory agencies, the Federal Bureau of Investigation, the Secret Service, the Department of Justice, and the Treasury Department.

A subcommittee of the Working Group studied the criminal referral process and developed a single, uniform criminal referral form. The new criminal referral form will standardize criminal referral data and facilitate its automation. The new form will replace the existing NCUA Form 2362, but, in substance, will require the same information.

The information contained in the criminal referral forms and in the regulatory agencies' existing computer systems will serve as the data base for a new computer system to be developed and maintained by the Financial Criminal Enforcement Network ("FinCEN") within the Department of the Treasury. It is anticipated that the resulting interagency criminal referral data base will provide information to, *inter alia*, the OCC, the Board, the FDIC, the OTS, the NCUA, the Department of Justice and the Department of the Treasury.

NCUA and the other Federal financial regulatory agencies have adopted uniform reporting and filing requirements for suspected criminal activity. The revised uniform criminal referral form will be used for making these reports. The revised form has been designed so that the information collected can be readily entered into the new FinCEN criminal referral data base. This system will enhance the regulatory and law enforcement agencies ability to track information pertaining to criminal referrals made to law enforcement agencies as well as administrative actions taken by the Federal financial regulatory agencies. Copies of the revised form will be distributed to all federally-insured credit unions.

The proposed rule lengthens the time federally-insured credit unions have to file a criminal referral from seven (7) business days under the present regulation to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed. This is necessary because the statute of limitations for banking related offenses has been increased to ten (10) years. In order to prosecute these offenses criminal investigatory agencies must have the documents supporting the offense available to them.

The regulation has been modified to expressly state that failure to comply with its requirements could result in an administrative action by the NCUA. This codifies the current state of the law.

Comments are sought on all provisions contained in the regulation.

Regulatory Flexibility Act

The NCUA Board certifies that this proposed rule will not have a significant financial impact on a substantial number of small credit unions or other small entities. The proposed regulation simply repeats, in slightly modified form, the pre-existing requirement of federally-insured credit unions to file criminal referrals pertaining to known and suspected crimes. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the proposed regulation does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collection of information contained in a criminal referral form is approximately .6 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be directed to the Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

Executive Order 12612

This proposed regulation applies to all federally-insured credit unions. However, it makes no substantive changes and imposes no significant additional burdens on federally-insured credit unions than those under the present rule. The proposed rule lengthens the time federally-insured credit unions have to file a criminal referral form from seven (7) business days under the present regulation to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government because federally-insured credit unions are currently required to report crimes or suspected crimes which occur at their office.

List of Subjects in 12 CFR Part 748

Security program, Filing of reports, Bank Secrecy Act compliance programs and procedure.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 748—[AMENDED]

1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a); 12 U.S.C. 1786(q); 31 U.S.C. § 5311.

2. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Criminal Referral Form.* (1) Each federally-insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Interagency Criminal Referral Form, within thirty calendar days after discovery. Each federally-insured credit union must follow the instructions and reporting requirements accompanying the Interagency Criminal Referral Form. Copies of the Interagency Criminal Referral Form may be obtained from the appropriate NCUA Regional Office.

(2) Each federally-insured credit union shall maintain a copy of any Interagency Criminal Referral Form that it files and the original of all attachments to the form for a period of ten years from the date of the report.

(3) Failure to file Interagency Criminal Referral Forms in accordance with the instructions accompanying the Form may subject the federally-insured credit union, its officer, directors, agents or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Interagency Criminal Referral Forms will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained in Interagency Criminal Referral Forms will be entered into an interagency database and will assist the Federal government in taking appropriate action.

[FR Doc. 93–1396 Filed 1–21–93; 8:45 am]

BILLING CODE 7535–01–M

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12 CFR Part 703

Investment and Deposit Authority

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise NCUA's high-risk test for Collateralized Mortgage Obligations (CMOs) and Real Estate Mortgage Investment Conduits (REMICs). Under the current rule, CMOs and REMICs are presently subject to an average life sensitivity test. Under the proposed rule, CMOs and REMICs would be subject to an average life test, an average life sensitivity test, and a price sensitivity test. The revised test would be consistent with the Federal Financial Institution Examination Council's (FFIEC's) High Risk Securities Test (HRST) for mortgage derivatives, which applies to other depository institutions.

DATES: Comments are due March 23, 1993.

ADDRESSES: Send comments to Becky Backer, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel (202–682–9630), or Charles Felker, Investment Officer, Office of Examination and Insurance (202–682–9640), at the above address.

SUPPLEMENTARY INFORMATION:

Request for Comments

The NCUA Board is seeking comments on the proposed change to part 703 of the NCUA Rules and Regulations. The NCUA Board is not seeking comments on those portions of the regulation which would not be affected by this proposal.

Background and Discussion

On December 3, 1991, the FFIEC, which has as its members the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and NCUA, approved a policy statement on securities activities entitled Supervisory Policy Statement on Securities Activities. The policy statement was issued to update and revise the FFIEC's Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices, which was approved by the FFIEC in April 1988 and subsequently adopted by the NCUA Board as NCUA Interpretive Ruling and Policy Statement No. 88–1 (53 FR 18268, May 23, 1988).

The revised policy statement is divided into three sections. Section I addresses the selection of securities dealers. Section II addresses securities portfolio policies and strategies and unsuitable investment practices. Section III addresses mortgage derivatives, other asset-backed products, and zero coupon bonds. Section III of the policy statement contains the FFIEC's High Risk Securities Test (HRST) for mortgage derivatives, which includes Stripped Mortgage-Backed Securities (SMBSs), CMOs and REMICs, and CMO residuals. Under the FFIEC's HRST, a mortgage derivative is considered "high risk" if it meets any one of the following tests at the time of purchase or on a subsequent testing date:

1. Average Life Test

The mortgage derivative has an expected weighted average life greater than 10 years.

2. Average Life Sensitivity Test

The expected weighted average life of the mortgage derivative would:

a. Extend by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of 300 basis points, or

b. Shorten by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of 300 basis points.

3. Price Sensitivity Test

The estimated change in price of the mortgage derivative is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of 300 basis points.

A floating or variable rate CMO/REMIC is not subject to the average life and average life sensitivity tests described above if it bears a rate of interest that, at the time of purchase or on a subsequent testing date, is below the contractual cap on the instrument. For purposes of the policy statement, a CMO/REMIC floating rate debt class is a debt class whose rate adjusts at least annually on a one-for-one basis with the related index. The index must be a conventional, widely-used market interest rate index such as the London Interbank Offered Rate (LIBOR). Inverse floating rate debt classes are not included in the definition of a floating rate debt class.

Generally, a mortgage derivative which meets any of the above tests may only be acquired to reduce interest rate risk, and must be reported as a trading asset at market value or as a held for sale asset at the lower of cost or market.

NCUA Interpretive Ruling and Policy Statement No. 92–1; Supervisory Policy Statement on Securities Activities, (57 FR 22157, May 27, 1992), implements the FFIEC's policy statement for Federal credit unions. Under Interpretive Ruling and Policy Statement No. 92–1, Federal credit unions, are required to comply with Sections I and II of the FFIEC's policy statement, but are not required to comply with Section III, on the rationale that mortgage derivatives, zero coupon bonds, and asset-backed securities are already comprehensively regulated by part 703 of this chapter. Federal credit union investments in mortgage derivatives and zero coupon bonds, therefore, continue to be subject to Part 703 rather than the FFIEC's policy statement.

Under part 703, SMBSs, CMO residuals, and certain CMOs and REMICs are considered to be "high risk" derivatives. CMOs and REMICs are subject to the average life sensitivity test contained in § 703.5(g). Pursuant to § 703.5(g), a CMO or REMIC is considered "high risk" if its average life would lengthen or shorten by more than 6 years assuming an immediate increase or decrease of 300 basis points in mortgage commitment rates. SMBSs, CMO residuals, and high risk CMOs and REMICs may only be acquired to reduce interest rate risk and must be reported as trading assets at market value or held for sale assets at the lower of cost or market.

Part 703 also differs from the FFIEC policy statement with respect to floating or variable rate CMOs and REMICs. Under § 703.5(j), a floating or variable rate CMO or REMIC is permanently exempt from NCUA's high risk test if at the time of purchase it meets all of the following conditions:

1. The interest rate resets at least annually.
2. The interest rate is at least 300 basis points below the contractual cap of the instrument.
3. The interest rate adjusts on a one for one basis with the related index.
4. The interest rate varies directly (not inversely) with the related instrument.

Because the FFIEC HRST is different from NCUA's high-risk test, it is possible for Federal credit unions to acquire CMOs and REMICs which pass NCUA's high-risk test (or are exempt from it) and yet fail the FFIEC's HRST, meaning that the security could only be acquired by other depository institutions to reduce interest rate risk. This inconsistency has caused confusion in the marketplace and could limit the marketability of the security if it suddenly needed to be sold. Under the proposed rule, Federal credit unions would be required to apply the same tests as other depository institutions when purchasing or re-testing fixed or floating rate CMOs and REMICs, thus eliminating the inconsistency between NCUA's high-risk test for CMOs and REMICs and the FFIEC's HRST.

It is to be emphasized that the proposed rule would not apply to investments in SMBSs or CMO residuals. As indicated above, SMBSs and CMO residuals are prohibited for Federal credit unions unless the security is acquired solely to reduce interest rate risk.

Federal credit unions would be permitted to use standard industry calculators (Bloomberg etc.) to perform the three tests contained in the proposed rule. In performing any of the three tests, all of the underlying assumptions, including prepayment assumptions for the underlying collateral, would need to be reasonable and supportable. The assumptions would also need to be documented in the credit union's records and be available for examiner review.

Federal credit unions should be aware that different securities dealers may provide different prepayment estimates for the same mortgage collateral; hence, not all prepayment assumptions will produce the same results. It is therefore advisable for Federal credit unions to obtain prepayment estimates from several major securities dealers when testing or re-testing a CMO or REMIC. A conservative approach would be to rely on the prepayment estimates which show the greatest degree of average life or price volatility if interest rates change.

Under the current rule, it has been NCUA's policy to seek the disposal of a CMO or REMIC which fails the average life sensitivity test on a subsequent review date. NCUA would continue to pursue this policy with respect to a CMO or REMIC which fails any of the three tests contained in the revised rule on a subsequent review date. As with the current rule, NCUA intends to address these situations on a case-by-case basis under existing supervisory policies and procedures. Generally, existing supervisory policies and procedures would permit NCUA and the affected credit union to develop a liquidation plan appropriate to the circumstances of the case, taking into account all relevant factors, including the dollar amount of the investment, the remaining time to maturity, the likelihood that the security may again pass the three tests on a future testing date, and the credit union's earnings and capital position where the sale of the security would result in a significant loss to the credit union. In accordance with generally accepted accounting principles (GAAP), a CMO or REMIC which fails any one of the three tests on a subsequent testing date must be reported at the lower of cost or market or market value until it matures, is sold in the secondary market, or passes all of the tests again on a subsequent testing date.

Preexisting Investments

CMOs and REMICs purchased in accordance with the current rule, but which would not comply with the proposed rule, would be "grandfathered" under the proposed rule. That is, Federal credit unions would not be required to liquidate such investments. Also, Federal credit unions would have the option of re-testing these investments in accordance with the requirements of the current rule rather than the standards contained in the proposed rule. The NCUA Board wishes to note, however, that NCUA examiners would continue to have the authority to seek the orderly disposal of any CMO or REMIC investment where, in their opinion, the investment constitutes a significant threat to the continued sound operation of a Federal credit union.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Based on the experience of NCUA examiners, few small credit unions are engaging in the investment practices that are the subject of the proposed rule. Furthermore, since existing investments will be grandfathered and the proposed high-risk security test is similar to the existing test, it is not expected that the proposed regulation will have a significant economic impact on any credit unions. Finally, it is hoped that the proposed regulation will benefit credit unions by making securities they have purchased more marketable. Accordingly, the NCUA Board determines and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The proposed rule does not impose any new paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Currently, part 703 directly applies only to federally chartered credit unions, and the proposed rule makes no change in its application. Although part 703 indirectly applies to federally insured state chartered credit unions through the insurance requirements at 12 CFR 741.9 (a)(3) and (b)(3), the Board has determined that the proposed rule will not have a substantial direct effect on the states, on the relationship of the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulation as follows:

PART 703—[AMENDED]

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15), 1766(a), 1789(11).

§ 703.5 Prohibited Activities.

2.a. Section 703.5 introductory text is revised to read as follows:

The prohibitions contained in paragraphs (f), (h), and (k) of this section shall not apply to securities purchased prior to December 2, 1991. The prohibition contained in paragraph (g) of this section shall not apply to securities purchased prior to the effective date of this rule.

* * * * *

b. Section 703.5(g) is revised to read as follows:

* * * * *

(g) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a CMO or REMIC which meets any of the following three tests:

(1) *Average Life Test.* The CMO or REMIC has an expected average life greater than 10 years.

(2) *Average Life Sensitivity Test.* The average life of the CMO or REMIC: (i) Extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

(ii) Shortens by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in the price of the CMO or REMIC is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

The three tests contained in this subsection shall apply at the time of purchase and on any subsequent testing date, assuming market interest rates and prepayment speeds at the time that the tests are applied.

* * * * *

c. Section 703.5(j) is revised to read as follows:

* * * * *

(j) The average life and average life sensitivity tests contained in paragraph (g) of this section shall not apply to a floating or adjustable rate CMO/REMIC that has all of the following characteristics at the time of purchase or on a subsequent testing date, irrespective of whether or not it has been purchased to reduce interest rate risk:

(1) The interest rate of the instrument is reset at least annually.

(2) The interest rate of the instrument, at the time of purchase or at a subsequent testing date, is below the contractual cap of the instrument.

(3) The index upon which the interest rate is based is a conventional widely-used market interest rate index such as the London Interbank Offered Rate (LIBOR).

(4) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

* * * * *

[FR Doc. 93–1488 Filed 1–21–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. 93–ASW–2; Notice No. SC–93–2–SW]

Special Conditions: Eurocopter Germany Model BO–108 (EC135) Helicopter, Engine Full Authority Digital Electronic Control

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Eurocopter Germany Model BO108 (EC135) helicopter. This helicopter will have a novel or unusual design feature associated with the Turbomeca TM 319B or United Technologies Pratt & Whitney PW 206B engines with a full authority digital electronic control system. The

applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 27 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ASW–2, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked Docket No. 91–ASW–2. Comments may be inspected in the Rules Docket weekdays, except Federal holiday between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Standards Staff, Regulations Group, Forth Worth, Texas 76193–0112; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The Special condition proposed in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ASW–2." The post card will be date/time stamped and returned to the commenter.

Background

On October 31, 1990, Eurocopter Munich, Germany, submitted an application for a Type Certificate for the Model BO–108 (EC135) helicopter to the FAA Brussels Certification Office through the German Luftfahrt-Bundesamt Authorities (LEA) authorities. The Model BO–108 (EC135) is a 6–8 passenger, two engine, 5512-pound maximum take-off, normal category helicopter. This Model helicopter may be equipped with either (1) the Turbomeca TM 319B or (2) the United Technologies Pratt & Whitney PW 206B engines. Both of these type engines utilize a full authority digital electronic control (FADEC) system.

Type Certificate Basis

The certification basis established for the Model BO–108 (EC135) includes FAR 21.29 and 27 effective February 1, 1965, including Amendments 21–68 and 27–1 through 27–27; any FAA compliance findings of equivalent safety; any LBA Special Conditions; FAR 36 Noise Standards amended by Amendments 36–1 through the latest amendment adopted and in effect when noise tests or analysis are completed; and International Civil Aviation Organization (ICAO) Annex 16.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model BO–108 (EC135) helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b) and became a part of the type certification basis, as provided by § 21.101(b)(2). In addition to the applicable airworthiness regulations and special conditions, the Model BO–108 (EC135) helicopter must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Discussion

The Eurocopter Germany Model BO–108 (EC135) helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems that will perform functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the critical functions of engine control. The control of the engines is critical to the continued safe flight and landing of the helicopter during visual flight rules (VFR) and instrument flight rules (IFR) operations in instrument meteorological conditions. After the design is finalized, Eurocopter Germany will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems.

Recent advances in technology have prompted the design of aircraft that include advanced electrical/electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These included transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; and the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following are primary factors that contributed to the current conditions:

(1) Increased use of sensitive electronics that perform critical functions,

(2) Reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials,

(3) Adverse service experience of military aircraft using these technologies, and

(4) Increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment. In 1986 it initiated a high priority program to:

(1) Determine and define electromagnetic energy levels;

(2) Develop guidance material for design, test, and analysis; and

(3) Prescribe and promulgate regulatory standards. The FAA participated with industry and foreign airworthiness authorities to develop internationally recognized standards for certification.

The FAA and foreign airworthiness authorities have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopter's electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this proposed special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under VFR routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional considerations must be given.

The applicant may also demonstrate, by a laboratory test, that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

Applicants for FAA approval under this special condition must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulation may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case by case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 kHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one series of helicopters. It is not a rule of general applicability and affects only applicants who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 27:

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Eurocopter Germany Model BO-108 (EC135) helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Forth Worth, Texas, on January 7, 1993.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 93-1447 Filed 1-21-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 29

[Docket No. 93-ASW-3; Notice No. SC-93-3-SW]

Special Condition: Bell Helicopter Textron Model 230 Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Bell Helicopter Textron Model 230 helicopter modified by King Radio Corporation. This helicopter will have a novel or unusual design feature associated with the electronic flight instrument system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards or part 29 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ASW-3, Forth Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Forth Worth, Texas. Comments must be marked Docket No. 93-ASW-3.

Comments may be inspected in the Rules docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Standards Staff, Regulations Group, Forth Worth, Texas 76193-0111; telephone (817) 624-5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special condition proposed in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-ASW-3." The postcard will be date/time stamped and returned to the commenter.

Background

On August 14, 1992, King Radio Corporation, Olathe, Kansas, applied for a Supplemental Type Certificate for installation of an electronic flight instrument system and flight management system in the Bell Helicopter Textron (BHTI) Model 230 helicopter. This model helicopter is a 10-passenger, two-engine, 8,400-pound transport category helicopter.

Type Certification Basis

The certification basis established for the BHTI Model 230 helicopter includes: FAR 21.29 and 29 effective February 1, 1965, Amendments 29-1 through 29-9; § 29.997, Amendment 29-10; § 29.1401, Amendment 29-11; §§ 29.25(c), 29.801, 29.865, 29.1555(c), 29.1557(c), Amendment 29-12; § 29.927(b)(2), Amendment 29-17; instrument flight rules (IFR) requirements dated December 15, 1978; FAA Exemption No. 2789, FAR 29.811(f)(1); FAA Exemption No. 4395, FAR 29.855(a); the selected sections of FAR 29 up to and including Amendment 29-26 as follows: §§ 29.1, 29.21 thru 29.175, 29.231 thru 29.235, 29.251 thru 29.361, 29.411, 29.471 thru 29.493, 29.501, 29.547 thru 29.549, 29.561 and 29.603, 29.607 thru 29.609, 29.611 thru 29.629, 29.683, 29.723 and 29.727, 29.731, 29.735, 29.771 thru 29.775, 29.785, 29.831, 29.855, 29.861 thru 29.863, 29.873 thru 29.917, 29.931, 29.939 thru 29.953, 29.955, 29.961, 29.933 thru 29.997, 29.1011 thru 29.1023, 29.1027 thru 29.1105, 29.1121 thru 29.1123, 29.1141, 29.1143 thru 29.1145, 29.1163 thru 29.1307, 29.1321 thru 29.1322, 29.1327, 29.1331 thru 29.1333, 29.1337, 29.1359 thru 29.1381, 29.1401, 29.1431, 29.1461 thru 29.1505, 29.1517 thru 29.1521, 29.1527, 29.1541 thru 29.1543, 29.1549 thru 29.1551, 29.1555 thru 29.1559, 29.1581 thru 29.1587, Appendix B; the noise standards of FAR 36 and International Civil Aviation Organization (ICAO) Annex 16; and Canadian Airworthiness Manual 529: 529.1301-1, 529.1557(c)(3), 529.581, 529.1093(b)(1)(ii).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the BHTI Model 230 helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2). In addition to the applicable airworthiness regulations and special conditions, the BHTI Model 230 helicopter must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Discussion

The BHTI Model 230 helicopter, at the time of the application for modification by King Radio Corporation, was identified as incorporating one and possibly more electrical/electronic systems that will perform functions critical to the continued safe flight and landing of the helicopter. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopter for IFR operations in instrument meteorological conditions. After the design is finalized, King Radio Corporation will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems.

Recent advances in technology have prompted the design of aircraft that include advanced electrical/electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; and the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following are primary factors that contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment. In 1986 it initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and foreign airworthiness authorities to develop internationally recognized standards for certification.

The FAA and foreign airworthiness authorities have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopter's electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this proposed special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional considerations must be given.

The applicant may also demonstrate, by a laboratory test, that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

Applicants for FAA approval under this special condition must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 kHz sine wave with 80 percent depth of modulation in the frequency range from 10 kHz to 400 MHz and 1 kHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case by case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 kHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one series of helicopters. It it not a rule of general applicability and affects only applicants who applied to the FAA for approval of those features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Bell Helicopter Textron Model 230 helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 7, 1993.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–1446 Filed 1–21–93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92–NM–232–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes. This proposal would require removing all aluminum washers that are installed at the connection of the DC feeder cable to the bus bar, and replacing them with steel washers. This proposal is prompted by reports that the DC feeder cables are loosening and corroding at the point where they connect to the bus bar. The actions specified by the proposed AD are intended to prevent loss of conductivity, which could lead to overheat damage to wiring or connectors.

DATES: Comments must be received by March 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 and –300 series airplanes. Transport Canada Aviation advises that reports indicate that DC feeder cables are loosening and corroding at the point where the feeder cables connect to the bus bar on certain de Havilland Model DHC–8 series airplanes. The cause is attributed to the use of aluminum washers where the feeder cables connect to the bus bar. Corrosion is caused by the use of dissimilar metals, such as aluminum and steel, at the bus bar connection. This condition, if not corrected, could cause loss of conductivity, which could lead to overheat damage to wiring or connectors.

De Havilland has issued Alert Service Bulletin S.B. A8–24–44, dated October 23, 1992, which describes procedures for removing aluminum washers that are installed at the point where the feeder cables are connected to the bus bar, and replacing them with steel washers. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–92–20, dated November 6, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of currently-installed aluminum washers with steel washers at the DC feeder cable-to-bus bar connection. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $285 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $60,480, or $560 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–232–AD.

Applicability: Model DHC–8–100 and –300 series airplanes on which Modification 8/1970 has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of conductivity, which could lead to overheat damage to wiring or connectors, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace aluminum washers installed at the bus bar connections with steel washers, in accordance with de Havilland Alert Service Bulletin S.B. A8–24–44, dated October 23, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1544 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

15 CFR Part 1200

[Docket No. 921243–2343]

RIN 0644–AA02

Financial Assistance to Cooperative Tourism Marketing Programs for International Tourism Trade Development

AGENCY: United States Travel and Tourism Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Travel and Tourism Administration (USTTA) intends to delete existing regulations and substitute in their place regulations to guide administration of the matching grant program outlined in the Tourism Policy and Export Promotion Act of 1992. In this regard, the USTTA is requesting public comments on proposed rules and guidelines to provide financial assistance to Cooperative Tourism Marketing Programs (CTMPs) for International Tourism Trade Development.

This financial assistance will support increased and more effective investment in international tourism trade

development and promotion by states, local governments, and cooperative tourism marketing programs. Projects funded under the program will increase international visitation and contribute to the economic well-being of the various regions of the United States.

DATES: Comments on proposed rules and guidelines must be submitted on or before February 15, 1993.

ADDRESSES: Comments should be forwarded in triplicate to: Mrs. Karen M. Cardran, Director, Marketing Programs, Office of Tourism Marketing, United States Travel and Tourism Administration, U.S. Department of Commerce, room 1860, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. Karen M. Cardran, Director, Marketing Programs, Office of Tourism Marketing, United States Travel and Tourism Administration, U.S. Department of Commerce, room 1860, Washington, DC 20230. (202) 482–1904.

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit written views or arguments as they may desire. Communications should be submitted in triplicate. All communications received on or before the closing date for comment will be considered before action is taken to finalize rules and regulations. The proposed rules and regulations contained in this notice may be changed in light of the comments.

Authority to Issue Regulations

Authority to issue regulations is contained in Section 203 (22 U.S.C. 2123a) of the International Travel Act of 1961, as amended by the Tourism Policy and Export Promotion Act, Public Law No. 102–372.

Background

The Tourism Policy and Export Promotion Act of 1992 amended section 203 of the International Travel Act and called for development of a program of matching grants to promote tourism from abroad. This is to be accomplished through increased and more effective investment in international tourism by states, local governments, and non-profit organizations established (for the purpose of this program) into cooperative tourism marketing programs. The 1992 Act further called for the publication of draft rules on administration of the program for public comment. When finalized, the rules will be published in the **Federal Register** and described in the Catalog of Domestic Financial Assistance under No. 11.952.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12991 and therefore subject to the requirements that a Regulatory Impact Analysis be performed. This regulation is not a major rule because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required and neither a preliminary nor final Analysis has been or will be prepared.

A Regulatory Analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601–611) will not be conducted because it has been determined that given the vast universe of small businesses involved in travel and tourism the annual authorized level of funding under this program will not allow significant impact to a substantial number of organizations in any of the three categories cited. Therefore, preparation of a Regulatory Flexibility Analysis is not required.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that this proposed rule will not sufficiently affect the quality of the human environment. Therefore, no draft of final Environmental Impact Statement has or will be prepared.

Office of Management and Budget review and approval may be necessary regarding the information collection requirements contained in this rule pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

List of Subjects in 15 CFR Part 1200

Administrative practice and procedure, Grants programs—travel, tourism, international tourism marketing, cooperative tourism marketing programs.

Dated: December 29, 1992.

Linda Mysliwy,

Assistant Secretary for Tourism Marketing.

For the reasons set out above, it is proposed to revise 15 CFR part 1200 to read as follows:

Part 1200—International Tourism Trade Development Assistance

Subpart A—General—Cooperative Tourism Marketing Programs

Sec.
1200.1 Background and purpose.
1200.2 Definitions.
1200.3 Secretarial selection of markets.
1200.4 Notice of availability of funds.
1200.5 Programs eligible for assistance.
1200.6 Eligibility of applicants.
1200.7 Application requirements.
1200.8 Criteria for selection.
1200.9 Limitations on assistance.
1200.10 Matching requirement.
1200.11 Subrecipient agreements.

Subpart B—Administrative Requirements

Sec.
1200.20 Coordination among joint recipients.
1200.21 Designation of primary recipients.
1200.22 Responsibility of joint recipients.
1200.23 Coordination/cooperation with other federal agencies.
1200.24 Recordkeeping and reporting requirements.
1200.25 Use of award funds for promotional purposes.
1200.26 Indirect costs.
1200.27 Unspent balances of federal funds.
1200.28 Use of funded project research models and promotional strategies as demonstration projects.
1200.29 Audit and examination of recipient records.

Subpart C—Development of National Programs

Sec.
1200.30 Establishment of national fund pool.
1200.31 Recipient committee.
1200.32 National program categories.
1200.33 Administration of national funds.

Authority: Sections 202 and 203 (22 U.S.C. 2123, 2123a) of the International Travel Act as amended by the Tourism Policy and Export Promotion Act, Pub. L. No. 102–372.

Subpart A—General-Cooperative Tourism Marketing Programs

§ 1200.1 Background and purpose.

(a) The regulations in this part are issued under the authority of the International Travel Act of 1961, as amended by the Tourism Policy and Export Promotion Act, Public Law No. 102–373. Public Law No. 102–372 established a new matching grant program entitled the International Tourism Trade Development Program, which replaced existing authority under 22 U.S.C. 2123a.

(b) The purpose of the International Tourism Trade Development Program is to promote international tourism through increased and more effective investment in international tourism by states, local governments, and non-profit organizations through provision of Financial Assistance to Cooperative Tourism Marketing Programs (hereinafter referred to as CTMP(s)).

(c) Financial assistance may be provided to applicants meeting the eligibility requirements set forth in Section 1200.6, if the applicant for assistance demonstrates to the satisfaction of the Under Secretary of Commerce for Travel and Tourism that the assistance will be used for programs that:

(1) Increase international visitation to the applicant's region;

(2) Include advertising, publication of promotional materials, or other promotional or market research activities designed to increase the number of international visitors to the region; and, further that—

(i) Said program will increase the travel of international visitors to the region for which the assistance is sought;

(ii) Such program will contribute to the economic well-being of the region;

(iii) Such region is developing or has developed a regional transportation system that will enhance travel to the facilities and attractions in such region; and

(iv) Such program will focus its efforts on the countries in the markets selected by the Secretary of Commerce as an appropriate focus of tourism development efforts.

(d) Financial assistance provided under this program may be used for the purpose of—

(1) Promoting or marketing to international visitors or potential international visitors the tourism and recreational opportunities in the region for which such financial assistance is sought;

(2) Targeting international visitors to develop or enhance their interest in tourism and recreational opportunities in such region;

(3) Encouraging the development by such cooperative tourism marketing programs of regional strategies for international tourism promotion and marketing; or

(4) Developing and implementing tourism trade development programs applicable to the market(s) identified by the Secretary of Commerce.

(e) These rules prescribe policies and procedures for the award of grants and cooperative agreements under the International Tourism Trade Development Assistance program, in order to assure the fair, equitable and uniform treatment of all proposals for assistance under this program. These rules address only the award of grants and cooperative agreements under the International Tourism Trade Development Program.

§ 1200.2 Definitions.

(a) The term "award" includes grants and cooperative agreements.

(b) The term "Cooperative Tourism Marketing Programs" (CTMP) refers to eligible applicants as defined in subpart A, section 1200.6 Eligibility of Applicants as well as to those selected for funding under the program.

(c) The terms "joint applicants" and "joint recipients" refer to those CTMP collective entities that apply for or are awarded funds. Upon award, each member of the CTMP will be considered a recipient (1200.7(g) and 1200.9(i)).

(d) The term "primary recipient" refers to that entity identified by the joint applicants/joint recipients under a CTMP as the party responsible for acting on their behalf to administer receipt, distribution and collection of funds and reporting.

(e) The term "national program" means tourism trade development programs designed to promote travel and tourism in the United States generally without promotion of a particular area of the United States. This, however, will not restrict development of programs featuring the regional concept of travel by international travelers.

(f) The term "private and public non-profit organizations or associations" means an institution, organization or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

(g) The terms "state," "states," and "United States" are defined to include the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. Virgin Islands, and the Trust Territories of the Pacific Islands.

(h) The term "subrecipients" includes individuals and private profit and nonprofit businesses and organizations with whom joint recipients enter into agreements.

(i) The term "indirect costs" means those costs that are incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Typical examples of indirect costs for many organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as salaries and expenses of executive officers, personnel administration, and accounting (1200.26).

(j) "Matching funds" are those funds provided by the recipient in an amount equal to not less than 25 percent of the total federal funds provided to the recipient under the award. These matching funds shall consist of actual dollar expenditures on the program and may not include in-kind contributions. Matching funds used for this purpose may come from sources other than the applicants excluding other Federal Government funds, but must be substantiated by confirming documentation indicating source, amount, and method for transfer of funds to recipient.

(k) The term "pooled funds" refer to those funds equal to 50 percent of the amount awarded to recipients which are set aside to finance tourism trade development programs designed to promote travel and tourism to the United States generally without promotion of a particular area of the United States.

(l) The term "Secretary" means Secretary of Commerce.

(m) The terms "Agency" or "USTTA" mean United States Travel and Tourism Administration.

(n) The term "Program" means the International Tourism Trade Development Assistance Program.

(o) The term "Act" refers to the International Travel Act as amended by the Tourism Policy and Export Promotion Act of 1992 (Pub. L. 102–372 (22 U.S.C. 2123).

(p) The term "Under Secretary" means the Under Secretary of Commerce for Travel and Tourism, who has delegated authority to act on behalf of the Secretary of Commerce.

§ 1200.3 Secretarial selection of markets.

(a) In accordance with section 202 of the Tourism Policy and Export Promotion Act (22 U.S.C. 2123), by October 1 of each year the Under Secretary shall publish a notice in the **Federal Register** soliciting comments from persons interested in tourism trade, concerning markets that would be an appropriate focus of tourism trade development efforts. These efforts would be carried out in the twelve-month period that begins twelve months after the notice is published.

(b) Within three months after the notice is published, the Under Secretary shall select the markets that are determined to be an appropriate focus of tourism trade development efforts to be carried out in the twelve-month period described above. The selection of markets shall be published in the **Federal Register**.

(c) At the same time the Under Secretary announces the selection of markets, he or she shall issue a request for proposals from CTMPs to develop and implement tourism trade development programs applicable to the market(s) selected. All financial assistance applications, shall be directed at the market(s) selected by the Under Secretary to be an appropriate focus of tourism trade development efforts.

§ 1200.4 Notice of availability of funds.

(a) The Program shall periodically, and not less than on an annual basis, publish a notice in the **Federal Register** inviting interested parties meeting the qualification criteria to submit proposals for funding under the Program. Applications will be considered for funding only when submitted in a timely manner in response to a specific notice in the **Federal Register** inviting applications for funding.

(b) All notices published in the **Federal Register** in accord with this section shall include basic information about the amount of funds available; the closing date for application; the market(s) selected by the Under Secretary pursuant to section 202 (22 U.S.C. 2123) as appropriate for international tourism trade development; the name, address and telephone number of the contact person; the specific forms to be completed and filed to apply for funds; and other appropriate guidance.

(c) Notices under this section shall also state that awards under the Program shall be administered in accordance with and subject to all Federal Government-wide and Department of Commerce regulations, policies, and procedures applicable to financial assistance awards and to the limitations and criteria set forth in this part.

§ 1200.5 Programs eligible for assistance.

(a) Product Development—projects designed to encourage the development by cooperative tourism marketing programs of regional strategies for international tourism promotion and marketing;

(b) Media Product Information—projects that encourage positive media coverage of the region, which may include the development of journalist familiarization tours and dissemination of product information on the destination;

(c) Market Development—projects designed to increase travel to the region from international markets of opportunity identified by the Secretary i.e., Receptive Operator/Wholesaler Inspection Tours, Tour Package Development, Consumer Travel Shows;

(d) Advertising;

(e) Trade Development—trade-oriented travel missions, on-site training workshops/seminars, international retail agent familiarization tours, in-country training workshops/seminars, and participation in international travel trade shows;

(f) Consumer and Trade Literature; and

(g) Market Research.

§ 1200.6 Eligibility of applicants.

(a) The program will provide funds to entities identified as Cooperative Tourism Marketing Programs. Financial assistance will be awarded only to Cooperative Tourism Marketing Programs which shall at a minimum—

(1) Involve the participation of

(i) Two or more States;

(ii) One or more States and one or more political subdivisions of States; or

(iii) One or more States and one or more nonprofit organizations;

(2) Be established for the purpose of increasing the number of international visitors to the region in which such States or local governments are located; and

(3) Have a written regional tourism marketing plan which includes advertising, publication of promotional materials, or other promotional or market research activities designed to increase the number of international visitors to such region, in accordance with the criteria outlined above.

§ 1200.7 Application requirements.

(a) Financial assistance will be awarded only to CTMPs meeting the eligibility criteria cited in § 1200.6.

(b) Each Application must target only one country, to be selected from the list of markets identified by the Secretary as appropriate for international tourism trade development purposes. However, applicants may submit multiple applications applying for funds to target additional countries from the list of selected markets, within the maximum funding limitations cited in paragraph (1) of this section.

(c) The application must include a marketing plan that contains clearly stated objectives covering an appropriate period of time. The marketing plan must be targeted and integrated (in terms of multiple activities) with a cohesive approach. The marketing plan must contain procedures for credible evaluation and tracking.

(d) The marketing plan cited above should cover only those expenditures that will focus on promoting the region, i.e. 50% of the Federal award and the region's 25% matching share. The remaining 50% of the Federal funds will be set aside for national programs.

(e) Application must disclose any agreements, in connection with financial assistance provided, that a cooperative tourism marketing program has entered into with individuals and private profit or nonprofit businesses and organizations who will assist in carrying out the purposes for which the financial assistance is provided. Such agreements are subject to approval by the Under Secretary and will be approved only if the Under Secretary finds that such agreement meets all applicable legal requirements and is consistent with the purposes of the International Travel Act of 1961, as amended.

(f) Any recipient of financial assistance under the program shall provide matching funds consisting of actual dollar expenditures (in-kind match is not authorized), on the program for which financial assistance is provided, equal to at least 25 percent of total financial assistance provided. The application must document evidence of availability of matching funds equal to at least 25 percent of the total financial assistance requested.

(g) Joint applicants must designate one of their members as the primary recipient and/or administrator for purposes of receiving Federal funds, collecting matching funds from all participants, distributing funds to the other eligible participants, managing the project, and submitting financial and program performance reports. However, all participants shall be jointly and severally liable to the Government under the terms and conditions of the financial assistance agreement, and each recipient is responsible for complying with other applicable financial assistance regulations and OMB Circulars.

(h) Applicant program strategy must be developed with the intent of achieving one or more of the objectives cited below, and the application must include the following productivity estimates and demonstrate method to account for these actions for the duration of the program:

(1) The number of written or telephone inquiries regarding the possibility of international travel to the United States expected to be generated by the requested financial assistance;

(2) The number of tour packages for international visitors to the United States expected to be sold in connection with this financial assistance;

(3) The number of tourists from the targeted market expected to visit the region being promoted in connection with this financial assistance; and

(4) The actions recommended to eliminate acts, policies, and practices of the targeted foreign country, or other markets identified by the Secretary as appropriate for tourism development, that constitute significant barriers to or distortions or United States travel and tourism exports.

(i) The application must include a detailed budget covering all elements of the program. The budget should reflect cost estimates under each budgetary line item reflected on the application form, with further breakdown by program category. Individual breakdown's for Federal and non-Federal fund expenditures must be shown. Matching funds must be actual dollar expenditures on the program for which financial assistance is provided. (No in-kind contributions are allowed.)

(j) Application must include components of two or more of the following international tourism trade development initiatives:

(1) Product Development;
(2) Media Product Information;
(3) Market Development;
(4) Cooperative Advertising;
(5) Trade Development;
(6) Consumer and Trade Literature; and,
(7) Market Research.

(k) Applications must target only one country, selected from the list of international market(s) identified by the Secretary of Commerce as appropriate for travel trade development. Further, using credible market research, the application must document the potential of the selected international market for generating tourism to the applicant's region.

(l) The maximum amount for which joint applicants within one state may apply is $100,000; entities within two states, $225,000; entities within three states, $350,000; entities within four states, $500,000; and entities with five or more states, $625,000. The maximum amount of any award will be $625,000. The minimum amount for which an applicant may apply is $50,000. Financial assistance provided to any State in a single fiscal year cannot exceed an aggregate of $337,500 for all recipients. For purposes of determining state maximums for annual award purposes, amount of awards will be prorated equally among collective recipients.

§ 1200.8 Criteria for selection.

(a) Each application for financial assistance, received by the deadline for application, will be reviewed for completeness upon receipt. At the agency's discretion, the applicant may be contacted for additional information if the application is deemed incomplete. If the required information is not received within 10 working days from the date of notification, the application will not be considered further.

(b) Each application will be reviewed and judged independently from all other applications by each of four qualified individuals acting without consultation between themselves. Selection for an award will be based on total final evaluation score. Only applications with a final evaluation score of 80 or greater shall be eligible for an award. Such applications will be awarded financial assistance, subject to the availability of funds, in descending order starting with the application with the highest final evaluation score above 80.

(c)(1) The final evaluation score for each application will be calculated by combining the scores from the two evaluation criteria:

(i) General evaluation criteria; and
(ii) Project evaluation criteria.

(2) General evaluation comprises 50 per cent of the total score; 50 per cent is allocated to project evaluation.

(d) Elements in each individual category are listed in descending order of importance from greater to lesser. Items of equal importance are listed sequentially in descending order.

(1) GENERAL EVALUATION CRITERIA (assigned weight—0.50). Paragraphs (d)(1)(i) and (d)(1)(ii) of this section are of greatest and equal importance, paragraph (d)(1)(iii) listed in descending order is of lesser value, while paragraphs (d)(1)(iv, v, and vi) are of less and equal value, paragraph (d)(1)(vii) is of least value and paragraph (d)(1)(viii) although not designated a numerical weight, is a requirement. Application demonstrates to the satisfaction of the Secretary that—

(i) Such cooperative tourism marketing program for which the financial assistance is requested has the potential to increase the travel of international visitors to the region for which the assistance is sought;

(ii) Clear, achievable and measurable objectives have been established to be carried out over an appropriate length of time, and that program will contribute to the economic well-being of the region;

(iii) The program focuses its efforts on an international market selected by the Under Secretary as an appropriate focus of tourism trade development efforts, and credible market research demonstrates that this market has the greatest potential for generating visitors to the region;

(iv) The project is fully integrated (in terms of multiple activities) with a cohesive approach;

(v) The CTMP's written plan reflects a cohesive effort by the joint applicants, and indicates cooperation and coordination with local tourism industry constituencies in the region;

(vi) The joint applicants have the organizational capacity and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: Name, address, phone number, background and other qualifying experience for the project; a list of other key personnel, consultants, or advisors engaged in the project, which includes names, training and background. Applications by non-profit organizations must include a copy of the articles of incorporation, charter, trust statement, or other similar document which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status;

(vii) The region is developing or has developed a regional transportation system that will enhance travel to the facilities and attractions in such region.

(vii) Those individuals and private profit and nonprofit businesses and organizations with whom the applicant proposes entering into an agreement to carry out the purposes for which financial assistance is requested, provide evidence of a strong commitment to compete and, if appropriate, provide support for the continuation of the program beyond the period of federal funding. The application must include a description of the organizational arrangements for fiscal and managerial control and other appropriate documentation as set forth in paragraph (d)(1)(vi) of this section; and

(2) PROJECT EVALUATION CRITERIA (assigned weight—0.50). Applications must include two or more of the following tourism trade development initiatives as defined below. The project evaluation component score will be determined by adding the score of each of the relevant project areas set forth below and dividing by the number of relevant project areas.

(i) PRODUCT DEVELOPMENT—Product Development relates to those projects designed to encourage the development by such cooperative tourism marketing programs of regional strategies for international tourism promotion and marketing.

(A) Regional International Marketing Training Forum. These are conferences and meetings held in region to guide development of strategies and encourage cooperation. Paragraph (d)(2)(i)(A)(*1*) of this section is of greatest importance; Paragraphs (d)(2)(i)(A)(*2*) and (*3*) of this section are of lesser and equal importance; Paragraph (d)(2)(i)(A)(*4*) of this section, is of the least importance.

(*1*) Follow-up activities designed to encourage development of cooperative strategies for international promotion.

(*2*). Preliminary identification of instructors and topics to be covered in training.

(*3*) Identification of audience for forum.

(*4*) Description of training materials to be provided to attendees.

(B) {Reserved}

(ii) MEDIA PRODUCT INFORMATION—Media product information projects are those that include the development of journalist familiarization tours and dissemination of product information on the destination. Paragraph (d)(2)(ii)(A) of this section is of the greatest importance; Paragraphs (d)(2)(ii)(B) and (C) of this section are of lesser and equal importance; Paragraph (d)(2)(ii)(D) of this section is of the lesser importance. The applicable criteria are:

(A) Correlation of media programs with applicant's overall international tourism marketing strategy.

(B) Program timing and content, and potential acceptance by the target media.

(C) Measurement plan to assess program effectiveness, i.e. methodology to track readership or viewer response.

(D) Project cost versus value of media space/time return (a minimum 10 to 1 return on investment is suggested).

(iii) MARKET DEVELOPMENT—Market development projects are designed to increase travel to the region from international markets of opportunity identified by the Under Secretary. Criteria are set forth for the following three types of such projects:

(A) Receptive Operator/Wholesaler Familiarization Tours—Paragraphs (d)(2)(iii)(A) (*1*), (*2*) (*2*) and (*3*) of this section are listed in descending order of importance.

(*1*) Plans for subsequent follow-up with familiarization tour program participants to ensure continuity of interest in and support for sale of product.

(*2*) Preliminary planning and arrangement of the familiarization tour(s) to cities, States or regions for tour operators/wholesalers to inspect or introduce the touristic product for marketing to the international retailers from other countries.

(*3*) Measurement plan to assess project return versus outlay. For familiarization tours in support of a tour package, the application must include an estimate of the number of tour packages expected to be sold as a result of this initiative.

(B) Tour Package Development—Paragraph (d)(2)(iii) (B) (*1*) of this section is of greatest importance; Paragraph (d)(2)(iii) (B) (*2*) and (*3*) of this section are of lesser and equal importance; Paragraph (d)(2)(iii)(B)(*4*) of this section is of lesser importance.

(*1*) Preliminary planning for and packaging of tour development program, *i.e.*, assessment and selection of target market and package components.

(*2*) Plans for subsequent placement/publication of the program in conjunction with tour wholesalers, etc.

(*3*) Measurement to assess program effectiveness. Application must include an estimate of the number of tour packages expected to be placed in catalogs and sold under this project.

(*4*) Identification of prospective receptive operator(s) and/or international wholesaler(s) to package tour.

(C) Consumer Travel Shows—Paragraph (d)(2)(iii)(C) (*1*), (*2*) and (*3*) of this section are listed in descending order of importance.

(*1*) Plans for subsequent follow-up with contacts and implementation of the project.

(*2*) Description of preliminary planning and packaging of product primarily in support of market development efforts in foreign markets.

(*3*) Measurement of project effectiveness, to include the estimated number of consumer contacts this activity will generate.

(iv) ADVERTISING—Applications for advertising projects should include a planned campaign outline, including the message to be conveyed, description of proposed layouts, copy and specific media plans. If a complete media schedule is not available at the time application is made, an outline of media plans will be accepted, provided that specific campaign details are forwarded to the USTTA prior to the actual placement of the advertising in the media. Paragraph (d)(2)(iv)(A), (B) and (C) of this section are of greatest and equal importance; Paragraph (d)(2)(iv)(D) and (E) of this section are of lesser and equal importance; Paragraph (d)(2)(iv)(F) of this section is of the least important. The applicable criteria are:

(A) Basic approach and objectives.

(B) Correlation with existing national (pooled fund) strategy in this marketplace. (not applicable in fiscal year 1994)

(C) Creative interpretation of this strategy.

(D) Expected reach of the advertising campaign in relation to its cost and short-term impact on the market.

(E) Measurement plan to assess program cost/return effectiveness. Application must include an estimate of the number of written or telephone inquiries expected to be generated by the project.

(F) Evidence that economic, marketing and statistical data necessary to develop marketing and advertising strategy was used.

(v) TRADE DEVELOPMENT—Trade development projects are those which complement ongoing VISIT USA marketing programs directed toward the members of the international travel trade in those foreign markets selected by the Secretary of Commerce as being appropriate for tourism trade development activities. For application purposes, trade development projects are not concerned with the development of tour packages (which is covered separately under Market Development).

(A) Such projects may include: Trade-oriented travel missions, on-site training workshops/seminars, in-country training workshops/seminars, familiarization tours for foreign retail travel agents, and participation in foreign travel trade shows. Paragraph (d)(2)(v)(A)(*1*) of this section is of greatest importance; Paragraphs (d)(2)(v)(A)(*2*) and (*3*) of this section are of lesser and equal importance; Paragraphs (d)(2)(v)(A)(*4*) and (*5*) of this section are listed in descending order of importance. The applicable criteria are:

(*1*) Relevance of established goals of project.

(*2*) Methods used to measure program results.

(*3*) Techniques used to create an awareness and encourage selling of the destination by the foreign travel trade.

(*4*) Appropriateness of timing in terms of both implementation date and preparation time.

(*5*) Anticipated project benefits derived after grant expiration.

(B) [Reserved]

(vi) CONSUMER AND TRADE LITERATURE—Consumer and trade literature must be designed specifically for use in foreign countries. Special attention should be devoted to designing literature to meet the needs of the target market. Paragraphs (d)(2)(vi)(A) and (B) of this section are of greatest and equal importance; Paragraph (d)(2)(vi)(C) of this section is of lesser importance; Paragraphs (d)(2)(vi)(D) and (E) of this section are of least and equal importance. The applicable criteria are:

(A) Correlation between literature program and overall marketing plan.

(B) Strategy for distribution of literature.

(C) Measurement plan to assess program effectiveness. The application must include an estimate of the number of written and telephone inquiries regarding the possibility of foreign travel to the United States expected to be generated by this project.

(D) Preliminary planning for design and content of brochures.

(E) Evidence that market planning research has been utilized to identify visitor preferences and information needs.

(vii) RESEARCH—Paragraphs (d)(2)(vii)(A), (B) and (C) of this section are of greatest and equal importance; Paragraph (d)(2)(vii)(D) of this section of lesser importance; Paragraphs (d)(2)(vii)(E), and (F) of this section of lesser and equal value; and Paragraphs (d)(2)(vii)(G) and (H) of this section of lesser and equal value. Applications for research grants will be evaluated according to the following:

(A) Definition of research objectives and demonstration of need for this type of research.

(B) Value of the project in terms of increasing the overall information base on international travelers to and within the region and/or the United States.

(C) Quality and validity of data-gathering techniques to be utilized.

(D) Compatibility with existing national and international tourism data bases.

(E) Potential for increasing tourism development intelligence in applicant's area.

(F) Involvement and coordination of the project with other organizations in the region.

(G) Compatibility of the project with the total economic development plan of the area.

(H) Value of the project in terms of its contribution and usefulness as a model for others to use in their research efforts.

§ 1200.9 Limitations on assistance.

(a) The total amount of financial assistance that may be provided under the program shall, in each of the fiscal years 1994, 1995, 1996, be not less than 25 percent of the amount appropriated to the USTTA under Section 304 (22 U.S.C. 2126).

(b) Not more than 50 percent of the financial assistance provided under the program in any fiscal year may be used for tourism trade development designed to promote travel and tourism in the United States generally, without promotion of a particular area of the United States. CTMPs receiving financial assistance under the program shall pool 50 percent of their financial assistance for such general tourism trade development in each market selected by the Secretary as appropriate for tourism trade development programs. National programs will fall under the broad categories of: Product Development, Market Research; Media Product Information; Market Development; Trade Development; Cooperative Advertising; and Consumer and Trade Literature. The USTTA, in concert with an ad hoc committee comprised of recipient representatives from up to two states, two cities, two regions, and two nonprofit organizations providing for broad geographic coverage, will coordinate the development and implementation of the national program. For purposes of administration, funds will be deposited into a USTTA trust account for disbursement for national programs. By signature acceptance of the award instrument, each recipient agrees to this transfer and management of funds.

(c) Financial assistance will be awarded on a one-year basis for programs to be carried out in the twelve-month period that begins twelve months after the Under Secretary publishes a notice in the **Federal Register** soliciting comment concerning appropriate tourism trade development markets.

(d) No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to Department of Commerce are made.

(e) All private profit or nonprofit applicants are subject to a name check review. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty and financial integrity.

(f) Where it is anticipated that the USTTA will be substantially involved in the implementation of the international tourism trade development project for which an award is to be made, the funding instrument will be a cooperative agreement.

§ 1200.10 Matching requirement.

Any recipient of financial assistance under the program shall provide matching funds consisting of actual dollar expenditures (in-kind contributions are not allowable), on the program for which financial assistance is provided, equal to at least 25 percent of total Federal funds provided under the award.

§ 1200.11 Subrecipient agreements.

(a) In connection with financial assistance programs, CTMPs may enter into agreements with individuals and private profit and nonprofit businesses and organizations who will assist in carrying out the purposes for which such financial assistance is provided. Any such agreements shall be disclosed in the application for financial assistance and will be approved by the Secretary only if the Secretary finds that the agreement meets all applicable legal requirements and is consistent with the purposes of the Tourism Policy and Export Promotion Act, Public Law No. 102–372.

(b) Upon approval of agreements, the individuals and private profit and nonprofit businesses and organizations will be deemed subrecipients, and will be held responsible for adhering to all Federal assistance rules and regulations pertaining to such organizations.

Subpart B—Administrative Requirements

§ 1200.20 Coordination among joint recipients.

Joint applicants, which submit proposals for funding as CTMPs, must join in this program for the purpose of increasing visitation to the region as a tourist destination. To ensure the orderly growth and development of tourism regionally and to encourage the development of the tourism industry in rural communities, the CTMP's written plan must reflect a cohesive effort by the joint applicants, and indicate cooperation and coordination with local tourism industry constituencies in the region.

§ 1200.21 Designation of primary recipient.

Joint applicants must designate one of the joint applicants as the primary recipient and/or administrator for purposes of receiving Federal funds, collecting matching funds from all participants, distributing funds to the other eligible participants, managing the project, and submitting financial and program progress reports.

§ 1200.22 Responsibility of joint recipients.

All joint recipients, including individuals and private profit or nonprofit businesses or organizations entering into agreements with CTMPs, shall be jointly and severally liable to the Government under the terms and conditions of the financial assistance agreement, and each recipient is responsible for complying with separate financial assistance regulations and OMB Circulars applying to their entity.

§ 1200.23 Coordination/cooperation with other federal agencies.

So as to avoid any unnecessary duplication of effort and to increase the possibility of joint funding of projects of common interest with other agencies, the Secretary intends to coordinate with other agencies as appropriate, but particularly where the Under Secretary determines that the subject is of substantial interest to another agency. Therefore, applicants are encouraged to consult with local representatives of interested Federal agencies to assure that their international tourism development interests are considered and/or incorporated into the plan. However, Federal funds from other Government agencies cannot be co-mingled with funds provided under this program, and may not be used as part of the required local matching share.

§ 1200.24 Recordkeeping and reporting requirements.

(a) Each award under the program shall contain procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in these regulations, and are in accordance with sound accounting practices.

(b) Recipients will be required to submit financial and performance (technical) reports on a quarterly basis in accordance with the schedule indicated in the financial assistance award.

(c) Interim (quarterly) reports should document progress as it relates to the original proposal, register any minor diversions from the original plan (significant changes must be approved in advance), relay any success stories, and record progress toward any established quantifiable objectives.

(d) Recipients will be required to maintain consistent records and include in their final report the following productivity results to measure success against estimates provided in application:

(1) The number of written or telephone inquiries regarding the possibility of international travel to the United States expected to be generated by the requested financial assistance;

(2) The number of tour packages for international visitors to the United States expected to be sold in connection with this financial assistance;

(3) The number of tourists from the targeted market expected to visit the region being promoted in connection with this financial assistance; and

(4) The actions recommended to eliminate acts, policies, and practices of the targeted or identified foreign country(ies), that constitute significant barriers to or distortions of United States travel and tourism exports.

§ 1200.25 Use of award funds for promotional purposes.

Use of Award funds for promotional purposes, to include items normally termed "entertainment," can only be authorized when such events include presentations, speeches, working seminars or business sessions to acquaint the travel trade or consumer with the product. In such instances, expenditures must be consistent with applicable Comptroller General opinions in that the costs must be justified as necessary to carry out the purposes of the approved program and, further, that these events must be identified in official documentation according to the business activity that will be taking place. Funds may not be expended for entertainment where the activity is solely for amusement, diversion, or social purposes.

§ 1200.26 Indirect costs.

(a) Indirect costs are those costs proposed for *common* or *joint* objectives and which cannot be readily identified with a particular cost objective (OMB Circulars A–21, A–87 and A–122). Organizations with established indirect cost rates must submit the indirect cost agreement negotiated with the cognizant Federal agency or department. Organizations with indirect costs that do not have an established indirect cost rate negotiated and approved by a cognizant Federal agency may still propose indirect costs. For the recipient to recover indirect costs, however, the proposed budget must include a line item for such costs. Also the recipient must prepare and submit a cost allocation plan and indirect cost rate proposal as required by applicable OMB circulars. The allocation plan and the rate proposal must be submitted to the applicant's cognizant agency for review and approval within 90 days from the effective date of the proposed award.

(b) Department of Commerce policy is that total indirect costs shall not exceed total direct costs. In cases where an applicant presents a negotiated and approved indirect cost rate by a cognizant agency which exceeds 100 percent of direct costs, the Departmental policy on indirect costs prevails.

§ 1200.27 Unspent balances of federal funds.

If a CTMP receiving funds under these procedures fails to expend all funds before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unobligated balance of the Federal funds shall revert to the Program.

§ 1200.28 Use of funded project research models and promotional Strategies as Demonstration Projects.

All awarded applications become the property of the Federal Government and, except for financial and confidential applicant information, may be utilized as research models or examples of marketing strategy demonstration projects by the United States in its programs to provide technical guidance and assistance in the development and positioning of U.S. tourism products in the international marketplace. Further, any statistical data that are developed as a result of Federal assistance may be used by USTTA, at no cost to the Government, in the formulation of reports relating to the measurement of travel or identification of travelers to and within the United States.

§ 1200.29 Audit and examination of recipient records.

Each joint recipient and subrecipient of the CTMP shall be subject to audit requirements specified in the applicable OMB Circulars and Departmental regulations. It is the responsibility of each recipient to ensure that the required audits are performed in a timely fashion. Audits of cost accounting systems, indirect cost rates, or other periodic reviews shall be conducted as deemed necessary by the Government. All joint recipients and all subrecipients receiving Federal funds directly or indirectly shall be responsible for the retention and custody of records supporting the expenditure of those funds.

Subpart C—Development of National Programs

§ 1200.30 Establishment of national fund pool.

(a) In accordance with Section 203 (22 U.S.C. 2123a) 50 percent of the Federal financial assistance awarded to recipients under the program will be set aside for tourism trade development designed to promote travel and tourism in the United States generally, without promotion of a particular area of the United States. CTMPs receiving financial assistance under the program shall be required to pool 50 percent of their financial assistance for such general tourism trade development in each market selected by the Secretary as appropriate for tourism trade development programs.

(b) By signature acceptance of the award instrument each joint recipient agrees to the transfer of these funds (50 percent of the award), to be set aside for national programs, to the USTTA separate account, and authorizes USTTA to select an ad hoc recipient committee, who will have the recipients' power of attorney and constitute a representative body of the recipients, for the purpose of developing and administering the national program.

(c) For purposes of financial administration, funds will be deposited into a USTTA separate account for disbursement for national programs.

§ 1200.31 Recipient committee.

To ensure that the desires of the recipients are considered in the development of national program strategies to be conducted with the International Tourism Trade Development pooled funds, the United States Travel and Tourism Administration will select from among the recipients of funds, a Recipient ad hoc committee (who will constitute a representative body of the recipients) comprised of recipient representatives from two states, two cities, two regions, and two nonprofit organizations providing for broad geographic coverage. The recipient body, with the guidance and under the coordination of USTTA, will guide development and implementation of the national program strategy.

§ 1200.32 National program categories.

National programs will fall under the broad categories of: Market Research; Media Product Information; Market Development; Trade Development; Cooperative Advertising; Visitor Services; and Consumer and Trade Literature.

§ 1200.33 Administration of national funds.

The United States Travel and Tourism Administration, in concert with an ad hoc recipient committee providing for broad geographic coverage (who will constitute a representative body of the recipients), will coordinate such efforts.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Automated Surety Interface

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to provide for an automated system, the Automated Surety Interface (ASI), through which participating sureties will electronically provide to Customs acknowledgment that they are liable for transactions identified under their bonds. Through ASI, Customs will be able to systemically establish and verify that a surety has recognized its bond liability under an identified bond and participating sureties will be provided certain capabilities to obtain timely information regarding the status of individual transactions for which they have a recognized liability. ASI will effectively increase the integrity of Customs bond liability recordkeeping and improve Customs ability to receive timely and immediate satisfaction of reported outstanding indebtedness. The creation of ASI reflects Customs significant advances in automation and its continuing commitment to increase the scope of electronic processing and to reduce reliance on paper documentation, thereby resulting in lowered costs, and increased efficiency.

DATES: Comments must be received on or before March 23, 1993.

ADDRESSES: Comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229 and inspected at Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hundertmark, Office of Automated Commercial Systems (202–927–0355).

SUPPLEMENTARY INFORMATION:

Background

Generally, most bonds are issued by brokers who are designated as agents of sureties. Therefore, many times a corporate surety is unaware that it is liable on a particular entry for a particular importer. In these situations, when Customs bills a corporate surety for payment on a bond, the surety, to verify its liability, frequently requests copies of the bond and entry documents from Customs. Also, in some instances, it is discovered that what was thought to be the obligation of one corporate surety is in fact the obligation of a different corporate surety. These situations cause significant delays in Customs receiving payment of the outstanding liabilities.

To resolve this critical problem, Customs is developing as part of its Automated Commercial System (ACS) a module, the Automated Surety Interface (ASI), which will allow Customs to systemically establish and verify that a participating surety has previously acknowledged liability under the identified bond and will provide the participating sureties with a method to regularly obtain timely information regarding the status of individual transactions for which they have a recognized liability. ASI will protect the revenue by securing recognition by sureties of their established bond liability.

Additionally, the establishment of this automated environment should place Customs in a position to eliminate the need for submission of paper documents once enabling legislation is passed.

How ASI Works

Single Entry Bonds

Brokers and importers who are participants in the Automated Broker Interface (ABI) will transmit entry and bond identifying information to Customs for single entry bonds prior to the release of cargo pursuant to procedures set forth in § 143.31 *et seq.*, Customs Regulations (19 CFR 143.31 *et seq.*) and Customs Publication # 552, "CATAIR". If the entry and bond identifying information is found to be error-free, a single entry bond record associated with a particular entry will be created in ACS. This record would contain all information including any changes and the responses from the ASI surety.

Customs will submit the transmitted entry and bond identifying information or, in the case of non-ABI transactions, that information input by Customs, electronically through the interface to the appropriate ASI surety for verification. An affirmative or negative response will be required from the ASI surety within a maximum of 15 minutes from the time the request for verification of the entry and bond identifying information was made available. If the entry and bond identifying information is not verified or no response is received from the ASI surety within the 15 minutes time frame, an appropriate message will be sent to the entry filer.

The verification of the single entry bond by the ASI surety will become the key for all ACS processing. If there is a negative response or no response from the ASI surety, the cargo will not be released until such time as a bond (single entry or continuous) can be produced to satisfy Customs bonding requirements.

The single entry bond information provided by either the ABI filer or Customs input at entry/cargo release will be compared to the bond information provided at entry summary. If the single entry bond information has changed, a new verification would be required from the ASI surety involved.

Continuous Bonds

Currently, continuous bonds are filed with Customs along with a letter of application pursuant to § 113.12(b). Under the procedure proposed in this document, this practice will continue; applications will be transmitted whenever continuous bonds are transmitted.

Brokers and importers who are participants in the Automated Broker Interface (ABI) and sureties who are participating in the Automated Surety Interface (ASI) will be able to transmit applications for continuous bonds and continuous bonds, make changes and updates and notify Customs of their request for termination of continuous bonds electronically through the interface pursuant to procedures set forth in the Customs Regulations and Customs Publication #552, "CATAIR".

When continuous bond and application information is transmitted to Customs by an ABI filer or, as in the case of non-ABI transactions, is input by Customs, Customs will transmit to the appropriate ASI surety certain information, as identified in Customs Publication #552, with a request for verification from the surety that the surety is accepting liability under that continuous bond. The ASI surety must electronically respond to Customs with an affirmative response before the continuous bond will be approved by Customs.

If the surety transmits an acceptance of liability, Customs will notify the ABI filer by electronic message of approval or rejection of the bond pursuant to § 113.92, Customs Regulations. If no response is received or a negative response is received from the surety, Customs shall provide an appropriate electronic message to the ABI filer.

If the continuous bond/application information is transmitted by the ASI surety, Customs automatically considers the bond verified. Customs would then provide an electronic message of approval or rejection of the bond based on Customs requirements as set forth in 19 CFR part 113.

Riders and changes to continuous bonds may be submitted electronically and are subject to the same verification process described above. All requirements as set forth in § 113.24 are applicable to electronically transmitted riders and changes.

Terminations also may be submitted electronically. However, electronically submitted terminations will only be accepted if the ABI filer transmitting the termination is the principal on the bond in question or the ASI surety transmitting the termination is the surety of record. All requirements as set forth in § 113.27, Customs Regulations, are applicable.

A continuous bond activity record associated with a particular entry will be created for each use of the continuous bond as identified by entry or entry summary input. Bond information provided by either the ABI filer, or Customs input at entry, will be compared to the bond information provided or input at entry summary. This will greatly increase the integrity of Customs bond files both for single entry and continuous bonds.

Filing of Corporate Powers of Attorney by Sureties

ASI participants may transmit corporate powers of attorney, as provided in § 113.37(g) and any updates or revocations electronically through the interface pursuant to procedures set forth in Customs Publication #552. Customs will return the acceptance or rejection message to the appropriate ASI filer.

Queries

ASI participants will have access to certain query capabilities through the interface as identified in Customs Publication #552. The queries will include access to information pertaining to their particular single entry bond(s) and continuous bond activity. Additionally, query capability would be available to participants for individual entry(s), fines and penalty case information and individual bill(s). These query capabilities would be limited to those transactions where the ASI surety is listed as the surety of record. The availability of information within these queries will be based on the determination of whether the data queried is confidential.

Data Transmitted

In order that an ASI surety can verify that it is responsible for a bond, Customs proposes to release certain data to the sureties regarding the transactions that the bonds are covering. Some data elements shall be released to the sureties prior to release of the cargo; some after release of the cargo; and some subsequent to the breach of the bond by the importer.

I. Data Elements Provided to Sureties Prior to Release of Cargo

A. Single Entry Verification Request

The following data elements will be provided to participating sureties prior to the release of cargo to obtain verification of the single entry bond by the ASI surety:

1. Surety Code
2. Entry Filer Code
3. Entry Number
4. Entry Type
5. District Port of Entry
6. Importer Number (Principal on Single Entry Bond)
7. Other Government Agency Indicator
8. Filer Reference Number
9. Surety Reference Number
10. Total Entered Value (Estimated)
11. Bond Liability Amount
12. Bond Effective Date
13. Bond Action Code (Indication of whether initial, replacement or additional bond is being used.)
14. Bond Activity Code
15. Verification Request Date and Time
16. All Tariff Numbers Available at Time of Request

B. Importer Bond Query

The following data elements will be provided to sureties prior to release of cargo only if the surety queries specific Internal Revenue Numbers where the code of the querying surety code matches the surety code on file. This is provided regardless of a claim by U.S. Customs.

1. Importer Number
2. Name of principal with Importer Number
3. Surety Code
4. Bond Type
5. Bond Activity Code
6. Bond Amount
7. District Port where Bond is Filed
8. Bond Effective Date
9. Bond Number

C. Continous Bond Application Verification

The following data elements will be provided to sureties to obtain a verification on a continuous bond application prior to approval by Customs.

1. Surety Reference Number
2. Surety Code.
3. Bond Type
4. Bond Activity Code

5. Execution Date
6. Effective Date
7. Bon Liability Amount
8. Number of Bond Users
9. Corporate Surety Power of Attorney
10. Principal's Importer Number
11. Principal's Name
12. Principal's Address
13. Co-Principal's Importer Number
14. Co-Principal's Name
15. Co-Principal's Address
16. Importer Number of each bond user
17. Name of each bond user
18. Merchandise Description
19. Actual or Estimated Amount Indicator
20. Value
21. Duty
22. Taxes and Fees
23. Type of Business (Sole Proprietorship, Partnership or Corporation)
24. Customs Bond Number

II. Data Elements Provided After Release of Cargo

The following data elements will be provided regardless of a claim by Customs, but after the release of cargo. They will be available via a query and/or a weekly batch reporting to the participating sureties.

A. Single Entry Bond Activity

1. Surety Code
2. Entry Filer Code
3. Entry Number
4. Importer Number of principal on bond
5. Entry Date
6. Entry Status
7. Bond Type
8. Bond Activity Code
9. Bond Action Code
10. Total Entered Value (Estimated)
11. Bond Liability
12. Bond Effective Date
13. Filer Reference Number
14. Surety Reference Number
15. Source Document (Indication of whether bond data was submitted to Customs or input by Customs)
16. Verification Sent (Date and Time)
17. Verification Response (Yes or No, Date and Time)
18. Customs Override Indicator
19. Estimated Duty
20. Estimated Taxes and Fees

B. Continuous Bond Activity

1. Surety Code
2. Bond Number
3. Importer Number of principal
4. Bond Type
5. Bond Activity Code
6. Bond Amount
7. Bond Effective Date
8. Filer Code
9. Entry Number
10. Date of Entry
11. Entry Status
12. Total Entered Value (Estimated)
13. Bond Action Code
14. Filer Reference Number
15. Surety Reference Number
16. Source Document
17. Estimated Duty
18. Estimated Taxes and Fees

C. Open Entry Data

(Data on entries that have not yet been liquidated).

1. Filer Code
2. Entry Number
3. Entry Type
4. Region/District Port of Entry
5. Entry Date
6. Entry Summary Date
7. Entry Release Date
8. Reason for Late Filing
9. Late Report Date
10. Cancel Reason
11. Cancel Date
12. Multiple Bond Indicator (If more than one bond covers this entry)
13. Surety Code
14. Bond Type
15. Bond Number
16. Surety Reference Number
17. Filer Reference Number
18. Bond Action Code
19. Bond Activity Code
20. Bond Effective Date
21. Bond Liability Amount
22. Bond Location
23. Bond Status (On Single Entry Bonds)
24. Source Document
25. Principal's Importer Number
26. Principal's Name
27. Extension/Suspension Code
28. Extension/Suspension Date
29. Number of Extension
30. Reject Date
31. Protest Status
32. Protest Date
33. Document filing Location
34. Payment Status
35. Delayed Antidumping Duties
36. Delayed Countervailing Duties
37. Collection Date
38. Estimated Duty
39. Estimated Taxes
40. Estimated Antidumping Duties
41. Estimated Countervailing Duties
42. Estimated Fee

D. Liquidated Entry Data

1. Filer Code
2. Entry Number
3. Surety Code
4. Number of Liquidation
5. Liquidation Date
6. Document Filing Location
7. Multiple Bonds (This Entry)
8. Multiple Sureties (This Entry)
9. Liquidation results (No change, Increase or Refund)

III. Date Elements Provided After a Bill Has Been Issued.

The following data elements will be provided to a surety after a bill has been issued.

1. Bill Number
2. Surety Code
3. Bill Type
4. Bill Date
5. Status Code
6. Bill Age
7. Filer Code
8. Entry Number
9. Importer Number
10. Importer's Name
11. Importer's Address
12. Protest Status
13. Protest Date
14. Protest Decision Date
15. Bill Amount
16. Principal Amount
17. Interest Amount
18. Payment Amount
19. Cancel Code
20. Estimated Duty
21. Estimated Taxes
22. Estimated Antidumping Duties
23. Estimated Countervailing Duties
24. Estimated Fees
25. Paid Duty
26. Paid Taxes
27. Paid Antidumping Duties
28. Paid Countervailing Duties
29. Paid Fees
30. Liquidated Duty
31. Liquidated Taxes
32. Liquidated Antidumping Duties
33. Liquidated Countervailing Duties
34. Liquidated Fees

IV. Fines, Penalties and Forfeiture Data Elements and Entry Line Item Detail Provided After Breach Has Occurred

The following data elements will be provided to sureties after a breech has occurred.

1. Case Number
2. Surety Code
3. Bond Number
4. Bond Type
5. Bold Effective Date
6. Violation Type
7. Violation Date
8. Status Sequence
9. Current Status
10. System Status Date
11. Effective Date
12. Filer Code
13. Entry Number
14. Penalty Amount
15. Mitigated Amount
16. Collection Amount
17. Violation Citation
18. Violation Description
19. Violator Identification
20. Violator Name
21. Violator Address
22. Number of Total Lines on an entry

23. Line Number
24. Tariff Number
25. Country of origin
26. Country of export
27. Quantity—Unit of measure
28. Value
29. Duty
30. Fees
31. Internal Revenue Tax
32. Antidumping Duty Case Number
33. Antidumping Duty
34. Countervailing Duty Case Number
35. Countervailing Duty
36. In Transit Date and Number

Customs recognizes that some of the information that it proposes to provide sureties may be considered to be confidential business information which is protected from disclosure under exemption (b)(4) of the Freedom of Information Act. Accordingly, Customs is particularly interested in receiving comments from brokers, importers, or other affected individuals on whether the disclosure of any of this information will cause competitive harm.

Participation in ASI

The only parties that are eligible to participate in ASI are sureties as defined in §§ 113.35, 113.36 and 113.37 of the Customs Regulations and ASI service bureaus. An ASI service bureau is an individual, partnership, association or corporation which is approved by Customs to provide communication facilities and data processing services for sureties, but which is not, itself, a surety.

A prospective applicant shall submit a letter of intent to the Assistant Commissioner, Information Management, or designee. The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ASI system and all applicable Customs Regulations in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent shall also contain statements that participation constitutes declaration by the surety that, to the best of his knowledge, all transactions filed electronically fully disclose Customs bond information which is true and correct; that transmission of an affirmative response accepting responsibility of a bond amount shall constitute an irrevocable acceptance of bond liability; that the surety will agree to accept the electronic information available through ACS/ASI as legally sufficient evidence of their obligation for their bonds filed through ASI; and that the surety will not regularly request paper copies of the entry package as the basis for evidence of such obligation on those ASI filed bonds.

The letter of intent shall also contain a brief description of the company's computer hardware and data communications to be used and the estimated completion date of the programming; the name and telephone number of the ABI filer selected to participate in the ASI testing; a list of all the offices that will communicate with ACS regarding the prospective ASI filer and the approximate start-up time for each office; and the names and telephone number of the principal management and technical contacts for operations, applications program development, and computer data communications and operations.

Each application/letter of intent shall be evaluated by the Assistant Commissioner, Information Management, or his designee. Evaluation may require an investigation. If permission to test ASI is denied to an applicant, written notice shall be sent to the applicant and there is an appeal procedure. All approved applicants shall demonstrate that their system can interface directly with Customs computer and ensure accurate and timely submission of required data. Inability to pass testing shall result in denial of operational status.

Once operational, participants shall be required to adhere to the performance requirements and operational standards of the ASI system and to maintain a high level of quality in the transmission of data or be subject to revocation or suspension of ASI privileges. The privilege of ASI participation may be revoked if it is determined that participation in the system was obtained through fraud or the misstatement of a material fact or that the participant's continued use of ASI would pose a potential risk of significant harm to the integrity and functioning of the ACS system. Other grounds for immediate revocation are if the participant, without just cause, is considered to be significantly delinquent either in the number of outstanding bills or dollar amounts or if the participant has improperly disclosed any data relative to the business of one importer to a third party unrelated to the transaction to which the ASI data pertains.

Proposal

This document proposes to amend the Customs Regulations to provide for ASI by creating a new subpart H in part 113.

Customs Publication 552

This document cites Customs Publication #552, "CATAIR" as the source document for many of the operational requirements and standards for ASI. Copies of the proposed sections of Publication # 552 relating to ASI may be obtained by contacting Diane Hundertmark at (202) 927–0355 or by writing to the Office of Automated Commercial Systems, 1301 Constitution Avenue, NW., Washington, DC 20229. Users of ASI will be notified at least 30 days in advance of any changes regarding ASI set forth in Customs Publication #552.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. As stated previously, Customs is particularly interested in receiving comments regarding the data elements that are proposed to be provided to sureties. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order

The document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3540(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified. The collection of information in this regulation is in § 113.83. The information is necessary to determine eligibility to participate in the Automated Surety Interface program. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 10,155 hours

Estimated average annual burden per respondent and/or recordkeeper: .0169 hours

Estimated number of respondents: 600,310

Estimated annual frequency of responses: 1

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB would be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 113

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds, Vessels.

Proposed Amendments

It is proposed to amend part 113, Customs Regulations (19 CFR part 113), as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 continues in part to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. It is proposed to revise § 113.0 to read as follows:

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for canceling the bond or charges against a bond. The part also sets forth the requirements and procedures for participation in the Automated Surety Interface (ASI) and for the electronic filing of both single entry and continuous bonds.

3. It is proposed to revise part 113 by adding a new subpart H, encompassing §§ 113.81 through 113.96, to read as follows:

Subpart H—Automated Surety Interface and Electronic Bond Filing

Sec.
113.81 General.
113.82 Eligibility for participation in ASI.
113.83 Application.
113.84 Action on application.
113.85 System performance and testing requirements.
113.86 Confidentiality of data released through ASI.
113.87 Failure to maintain performance standards.
113.88 Revocation of ASI participation.
113.89 Appeal of suspension or revocation.
113.90 Eligibility criteria for electronic bond filing.
113.91 Electronic single entry Customs bond application and approval process.
113.92 Electronic continuous Customs bond application and approval process.
113.93 Changes made on electronic bonds and electronic riders.
113.94 Terminations made on electronic bonds.
113.95 Electronic corporate powers of attorney.
113.96 Electronic queries.

Subpart H—Automated Surety Interface and Electronic Bond Filing

§ 113.81 General.

The Automated Surety Interface (ASI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to Customs through ASI and to receive transmissions through ACS. Through ASI, Customs is able to establish and verify recognized bond liability. ASI will provide the participating surety a method to regularly obtain timely information regarding the status of individual transactions on which he is listed as the surety of record. This subpart sets forth general requirements for the input of both single entry bonds and continuous bonds through ASI. Use of this system is voluntary and optional on behalf of the filer. Unless otherwise specified in this subpart, bonds processed electronically through ASI are subject to the same requirements set forth earlier in this part. Paper bonds still must be submitted for bonds filed electronically.

§ 113.82 Eligibility for participation in ASI.

The only parties that are eligible to participate in ASI are sureties as defined in §§ 113.35, 113.36 and 113.37 of this chapter and ASI service bureaus. An ASI service bureau is an individual, partnership, association or corporation which is approved by Customs to provide communications facilities and data processing services for sureties, but which is not, itself, a surety.

§ 113.83 Application.

(a) *Place submitted.* A prospective participant in ASI shall submit a letter of intent to the Assistant Commissioner, Information Management, or designee.

(b) *Contents.* The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ASI system as set forth by Customs in Customs Publication # 552 and all applicable Customs Regulations in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent shall also contain statements that participation constitutes declaration by the surety that, to the best of his knowledge, all transactions filed electronically fully disclose Customs bond information which is true and correct; that transmission of an affirmative response accepting responsibility of a bond amount shall constitute an irrevocable acceptance of bond liability; that the surety agrees to accept the electronic information available through ACS/ASI as legally sufficient evidence of their obligation for their bonds filed through ASI; and that the surety agrees to rely on the ACS/ASI systems data and electronic verification as evidence of liability and will not regularly request copies of supporting documentation except in circumstances found justifiable by Customs. In addition, the letter of intent shall contain the following:

(1) A brief description of the company's current or planned computer hardware and data communications to be used and the estimated completion date of the programming;

(2) The name and telephone number of the ABI filer selected to participate in the ASI testing (if known). The agent shall be an operational ABI filer for cargo selectivity and entry summary;

(3) A list of all the offices that will communicate with ACS regarding the prospective ASI filer and the approximate start-up time for each office. The locations and Customs District/Port numbers of these offices are to be included. The corporate headquarters shall be specified; and

(4) The names and telephone numbers of the principal management and technical contact for operations, applications program development, and computer data communications and operations. If the system is being developed or supported by a service center, and/or a software vendor,

include the name of the company and the contact person and the contact person's telephone number.

§ 113.84 Action on application.

(a) *Evaluation.* The Assistant Commissioner, Office of Information Management, or his designee shall evaluate each application to determine whether:

(1) The applicant currently has or plans to have the equipment and capability to be in compliance with the ASI system performance procedures and standards as described in Customs Publication #552 and § 113.85 of this chapter; and

(2) The applicant is delinquent or otherwise remiss in their transactions with Customs.

(b) *Investigation.* If there is any cause to question the qualifications or fitness of the applicant to participate in ASI, the Assistant Commissioner, Office of Information Management, or his designee shall investigate the applicant. The investigation may include, but need not be limited to:

(1) The accuracy of the information provided in the letter of intent;

(2) The business integrity of the applicant;

(3) The character and reputation of an individual applicant or a member of a partnership or an officer of an association or corporation; and

(4) The character and reputation of the software vendor.

(c) *Determination.* If the Assistant Commissioner, Office of Information Management, or his designee, determines, either without an investigation or after an investigation, that an applicant is approved to test for ASI, permission will be so granted in writing. If permission to test ASI is denied to an applicant, written notice, including the grounds for the denial, shall be sent to him. The applicant may appeal the denial in the manner prescribed in § 113.89 of this subpart and the procedures set forth in that section for handling an appeal shall apply.

§ 113.85 System performance and testing requirements.

(a) *General.* The testing and performance requirements and operational standards for electronic bonds are detailed in Customs Publication # 552, "CATAIR", which is updated periodically. The Office of Automated Commercial Systems, Customs Headquarters, upon request, shall provide each prospective participant with a copy of this publication.

(b) *Testing.* Each prospective participant shall demonstrate that his system can interface directly with the Customs computer and ensure accurate submission of required data. Such demonstration will include intensive testing of the participant's system and monitoring of its performance in accordance with Customs Publication # 552. Inability to pass testing shall result in denial of operational status.

§ 113.86 Confidentiality of data released through ASI.

(a) *Data released to sureties.* Customs shall provide ASI sureties electronically with certain data so that the sureties may make informed decisions on whether to accept liability for a particular transaction. Some data elements shall be released to the sureties prior to release of the cargo; some after release of the cargo; and some subsequent to the breach of the bond by the importer. The list of data elements and stages that they will be released are set forth in Customs Publication # 552.

(b) *Confidentiality of data.* All data released by Customs to ASI participants regarding a particular entry shall be considered confidential and shall not be released to any parties which do not have a nexus to the transaction. Improper disclosure of the data elements may subject the ASI participant to revocation of operational status.

§ 113.87 Failure to maintain performance standards.

(a) *General.* Once operational on ASI, participants shall adhere to the performance requirements and operational standards of the ASI system and maintain a high level of quality in the transmission of data, as defined in Customs Publication # 552 and Customs directives and policy statements, or be subject to revocation or suspension of ASI privileges.

(b) *Probational status.* Any ASI participant who does not adhere to the performance requirements and operational standards and maintain a high level of quality in the transmission of data may be placed on probational status.

(1) *Notification.* The participant will be notified, electronically and in writing, by the Director, ACS, of any action to place the participant on probation. The notice shall specifically set forth the grounds for the proposed probation, and advise the participant that he will have 15 days from the date of the notice to show cause why the probationary period should not take effect. If the participant fails to respond within the allotted time, or fails to show to the satisfaction of the Director, ACS, that the probationary period should not take effect, the Director shall notify the participant of the effective date of the probationary period.

(2) *Length of probationary period.* the minimum length of the probationary period is 30 days. The Director, Office of ACS, shall monitor the participant's performance, including working with the participant and providing necessary guidance, during the probationary period and may extend the period up to a maximum of 90 days if the participant's performance remains below standard.

(3) *Suspension following probationary period.* If deficiencies are not corrected within the probationary period, the participant shall be suspended from operational status. The participant shall be notified, electronically and in writing, by the Director, Office of ACS, of any action to suspend participation. The notice will specifically set forth the grounds and effective date for the suspension, and the right to appeal the suspension to the Assistant Commissioner, Office of Commercial Operations, within 10 days following the date of the written notice of suspension.

(4) *Reinstatement following suspension.* To obtain reinstatement to operational status, a suspended participant must submit a letter to the Director, Office of ACS, stating that the deficiencies for which the suspension was invoked have been corrected. If the Director is satisfied that the deficiencies have been corrected, the participant may be reinstated. The Director may require the participant to demonstrate compliance with the system performance requirements and operational standards specified in § 113.85 of this part before reinstating the participant to operational status.

§ 113.88 Revocation of ASI participation.

(a) *Reasons for revocation.* The privilege of ASI participation may be immediately revoked under the following circumstances:

(1) *Fraud or misstatement of material fact.* The Director, Office of Trade Operations, may revoke ASI participation if it is determined at any time tha tparticipation in the system was obtained through fraud or the misstatement of a material fact;

(2) *Risk of significant harm to the SCS system.* The Director, Office of ACS, may revoke ASI participation if the participant's continued use of ASI would pose a potential risk of significant harm to the integrity and functioning of the ACS system; or

(3) *Significant delinquency.* The Director, Office of ACS, may revoke ASI

participation if the participant, without just cause, is considered to be significantly delinquent either in the number of outstanding bills or dollar amounts; or

(4) *Release of confidential information.* The Director, Office of ACS, may revoke ASI participation if the participant has improperly disclosed any data relative to the business of one importer to a third party unrelated to the transaction to which the ASI data pertains.

(b) *Notification of revocation.* The participant shall be notified of the revocation, electronically and in writing, by the appropriate Director. The notice shall specifically set forth the grounds and effective date of revocation, and the right to appeal the revocation.

§ 113.89 Appeal of suspension or revocation.

(a) *Timeliness of appeal.* A written appeal of a notification of suspension or revocation of ASI privileges shall be filed with the Assistant Commissioner, Office of Commercial Operations, within 10 days following the date of the written notice of action to suspend or revoke participation.

(b) *Effect of appeal on revocation or suspension.* Except in cases of revocation, when an appeal is filed timely, participation in ASI may continue during the period from when the appeal is decided.

(c) *Customs response to appeal.* The Customs officer who receives the appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. The Assistant Commissioner, Office of Commercial Operations, shall inform the participant of the date of receipt and the date that a response is due. The Assistant Commissioner shall send his decision to the participant, stating his reasons therefore, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the participant.

§ 113.90 Eligibility criteria for electronic bond filing

To be eligible to file electronic Customs bonds, the filer must be an operational ABI participant (see § 143.1, Customs Regulations *et seq.*), and the surety must either be qualified to use ASI or use an eligible service center (see § 113.82).

§ 113.91 Electronic single entry Customs bond application and approval process.

(a) *Application.* An ABI filer will transmit bond information and the associated entry information to Customs pursuant to the operations and procedures set forth in § 143.31 *et seq.*, Customs Regulations, and Customs Publication #552. All bond information shall be associated with a particular entry. If the information is found error-free by Customs, Customs shall transmit to the ASI surety indicated by the filer certain information identifying the transaction and a request for verification for the surety to acknowledge acceptance of liability for the particular transaction.

(b) *Approval.* All bonds are subject to Customs approval in accordance with Customs bond requirements set forth in this part. The ASI surety shall indicate whether liability for the particular bond is accepted or rejected within the time frame specified in Customs Publication #552. If the surety transmits an acceptance of liability and Customs accepts the bond, Customs shall so notify the entry filer by electronic message. Transmission of an acceptance of liability by the surety is irrevocable admission of liability. If no response is received from the ASI surety within the specified time frame or Customs receives a transmitted rejection of liability from the ASI surety, Customs shall send an appropriate electronic message to the entry filer that the cargo cannot be released under that bond.

§ 113.92 Electronic continuous Customs bond application and approval process.

(a) *Application.* The ABI filer or ASI surety may transmit continuous bond/application information pursuant to the operations and procedures set forth in § 143.31 *et seq.*, Customs Regulations and Customs Publication #552, except for instances where the continuous bond is to be obligated by two or more sureties. If the information is transmitted by an ABI filer and found to be error-free by Customs, Customs shall transmit to the surety indicated by the filer certain information identifying the transaction and a request for verification for the surety to acknowledge acceptance of liability for the particular transaction.

(b) *Approval.* All bonds are subject to Customs approval in accordance with Customs bond requirements set forth in this part. If the information is transmitted by the ASI surety, Customs automatically considers the bond verified. If Customs requests the ASI surety to verify that it is liable for a particular transaction under a specified bond, the surety shall respond to Customs within the time frame specified in Customs Publication #552. If the surety transmits an acceptance of liability and Customs approves the bond, Customs shall so notify the ABI filer by electronic message. Transmission of acceptance of liability by the ASI surety is irrevocable admission of liability. If no response is received from the ASI surety within the specified time frame or Customs receives a transmitted rejection of liability from the ASI surety, Csutoms shall send an appropriate electronic message to the ABI filer.

§ 113.93 Changes made on electronic bonds and electronic riders.

Riders and changes, may be submitted electronically in accordance with the procedures set forth in Customs Publication #552 and are subject to the verification and approval process detailed in §§ 113.91 and 113.92.

§ 113.94 Terminations made on electronic bonds.

Terminations may be submitted electronically in accordance with the procedures set forth in Customs Publication #552 and are subject to the same requirements as set forth in § 113.27. An electronic termination can only be transmitted by the principal or the surety of record.

§ 113.95 Electronic corporate powers of attorney.

ASI participants may transmit corporate powers of attorney as provided for in § 113.37(g) and any updates or revocations electronically through ASI pursuant to the procedures set forth in Customs Publication #552. Customs shall return the acceptance or rejection message to the appropriate ASI filer.

§ 113.96 Electronic queries.

ASI participants shall be able to electronically inquire to Customs about the status of transactions where the ASI surety is listed as the surety of record. The availability of information within these queries shall be based on the determination of whether the data queried is confidential.

Carol Hallett,

Commissioner of Customs.

Approved: December 23, 1992.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–1431 Filed 1–21–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD05

Deemed Application Date Based on Misinformation: Amendment

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule; amendment.

SUMMARY: This document amends the notice of proposed rulemaking: Deemed Application Date Based on Misinformation, published in the **Federal Register** on October 16, 1992 (57 FR 47415).

In that document, we described the kinds of evidence we will consider in determining whether misinformation was provided. We explained what preferred evidence is and in the absence of preferred evidence, we described what other evidence we will consider to make a determination about the alleged misinformation.

When we described the other evidence in the proposed rules, we did not clearly reflect statements contained in the preamble which explained that we will evaluate the individual's allegations and seek corroboration; and that we will resolve reasonable doubt in the individual's favor if the allegation of misinformation seems credible, is supported by other evidence, and there is no contradictory evidence..

This amendment to the NPRM adds to the regulations the provision that we will not find that we gave the individual misinformation based solely on his or her statements. The other evidence which is provided by the individual or which we obtain must support his or her statements.

DATES: To be sure that your comments on the proposed rules as hereby amended are considered, we must receive them no later than March 23, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: Since this amendment is of a substantive nature, we are extending the comment period for the October 16, 1992, **Federal Register** notice of proposed rulemaking (57 FR 47415) by 60 days from the date of the publication of this notice. This will enable the public to comment on the proposed rules in light of the amendment. The amendment to page 47418 is made to conform to the amendments on pages 47420 and 47422. We are also amending page 47422 to correct a typographical error.

In the notice of proposed rulemaking appearing on pages 47415–47423 in the issue of Friday, October 16, 1992, make the following amendments:

1. On page 47418, in line 9 of the first column, the word "convincing" should be deleted.

§ 416.351 [Corrected]

2. In § 416.351, on page 47222, in line 12 of the third column, the designation "(b)" should be corrected to "(v)."

§§ 404.633 and 416.35 [Corrected]

3. On page 47420 in § 404.633 and on page 47422 in § 416.351, in the second column of each page, the introductory texts to paragraphs (d)(2) are revised to read as follows:

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation which caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

Dated: December 24, 1992.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: February 14, 1993.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 93–1285 Filed 1–21–93; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–74–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income from Corporate Sponsorship

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides guidance concerning whether sponsorship payments received by exempt organizations are unrelated business taxable income. The proposed regulations also clarify that the allocation rules governing the exploitation of exempt activities apply to sponsorship income. The proposed regulations apply to organizations subject to the unrelated business income tax imposed by section 511. They do not apply to qualified convention and trade show activity or to income derived from the sale of advertising in exempt organization periodicals.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for July 8, 1993, at 10 a.m., must be received by April 30, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–74–92), room 5228, Washington, DC 20044. The public hearing will be held in the Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Regina L. Oldak, at (202) 622–6080 (not a toll-free number). Concerning the hearing, Carol Savage of the Regulations Unit, at (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: .

Background

An organization described in section 501(a) of the Internal Revenue Code of 1986 generally must pay tax on its unrelated business taxable income as defined in section 512. Section 512(a)(1) defines unrelated business taxable income (UBTI) as the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions which are directly connected with the carrying on of the trade or business, both computed with the modifications provided in section 512(b).

Section 513(a) defines unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of an organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501. Section 513(c), which is captioned "Advertising, Etc., Activities," provides that the term trade or business includes any activity carried on for the production of income from the sale of goods or the performance of services.

The Service developed proposed examination guidelines regarding the circumstances under which payments received by exempt organizations from sponsorship arrangements might result in income from unrelated trade or business. The proposed guidelines were published as Announcement 92–15, 1992 5 I.R.B. 51 (Feb. 3, 1992). Interested parties were invited to comment on the guidelines.

Announcement 92–15 stated that payments to an exempt organization are nontaxable contributions if there is no expectation that the organization will provide a substantial return benefit. That is, the mere acknowledgement or recognition of a sponsor as a benefactor normally is incidental to the receipt of a contribution and is not in itself of sufficient benefit to the sponsor to give rise to unrelated trade or business income. However, Announcement 92–15 stated further that where an exempt organization performs valuable advertising, marketing and similar services on a *quid pro quo* basis for the sponsor, the payments are not contributions and questions of unrelated trade or business arise.

The Service received numerous oral and written comments on Announcement 92–15. A public hearing was held on July 21–23, 1992.

Many public comments suggested that the guidelines should be issued in the form of proposed regulations. Many comments also suggested that the substantial return benefit test was too vague or subjective and would not provide exempt organizations with the certainty they sought in this area. Some commentators requested that the audit guidelines expressly recognize that the use of written agreements or the participation of outside legal or other professionals would not necessarily indicate that payments received constituted advertising income. Some commentators requested that the guidelines clarify whether the allocation rule governing the exploitation of exempt activities applied to sponsorship income or raised other questions regarding allocation of expenses and deductions. Numerous other comments related to the specific concerns of individual organizations. One commentator expressed the view that the proposed guidelines did not go far enough but rather condoned the use of the nonprofit sector for private, commercial purposes.

Discussion of Proposed Amendments

The proposed regulations amend the regulations under section 513 to provide guidance in the area of sponsorship payments. The proposed regulations take into consideration both an exempt organization's need to attract private sector support and the statutory and regulatory requirement that the organization be organized and operated exclusively for exempt purposes. The proposed regulations apply to organizations subject to the unrelated business income tax imposed by section 511. They do not apply to qualified convention and trade show activities, nor do they apply to the sale of advertising in exempt organization periodicals.

The proposed regulations diverge from Announcement 92–15 in a number of significant respects. As suggested by numerous comments, the term advertising is defined in the proposed regulations. The proposed regulations distinguish between advertising, which is unrelated, and acknowledgements, which are the mere recognition of a sponsor' payment and, therefore, do not result in UBTI. The proposed regulations focus on the nature of the services provided by the exempt organization. However, whether an activity constitutes advertising or acknowledgements does not determine whether a sponsor may deduct its payment under section 162 or section 170.

The proposed regulations also respond to public comments by clarifying that the rules regarding sponsorship apply to broadcast as well as nonbroadcast activities. Thus, the proposed regulations apply uniformly to all sponsorship activities, unless otherwise expressly stated. The proposed regulations also apply uniformly to all sponsorship activities without regard to the local nature of the organization or activities or the amount of the sponsorship payment. To the extent possible, the proposed regulations are designed to parallel the statutory and regulatory framework of the Federal Communications Commission (FCC) currently in effect. See, In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Public Notice FCC 86–161, April 11, 1986. However, this should not be viewed as ceding, in any way, the Service's authority to interpret and administer the Internal Revenue Code. Similarly, this regulation does not affect a particular exempt organization's responsibility to comply with any other applicable statute, regulation, industry standard or ethical code.

The principle of administrative simplicity governs the rules defining advertising and acknowledgments in the proposed regulations. As a result, the lines drawn between activities constituting advertising and acknowledgments may not relate to the substance of the activities. For example, distribution of samples of a sponsor's product to the general public at a sponsored event is substantively an inducement to buy the sponsor's product and, therefore, advertising. However, the proposed regulations provide that distribution of samples of a sponsor's product constitutes acknowledgment rather than advertising.

The proposed regulations follow the rule in Rev. Rul. 67–246, 1967–2 C.B. 104. Thus, the proposed regulations permit an exempt organization to exclude the portion of a payment from a sponsor that can be shown to be in excess of the fair market value of the advertising benefit received by the sponsor. In addition, the proposed regulations do not preclude a showing, under section 512(b), that income received by an exempt organization is otherwise excludable from the computation of UBTI (*e.g.*, dividends, interest, royalties, etc.). On the other hand, the proposed regulations do not exclude income if the income constitutes unrelated business taxable income.

The proposed regulations amend the regulations under section 512(a) by adding examples that clarify that the allocation rule governing exploitation of exempt activities applies to sponsorship income.

However, the proposed regulations do not amend the requirements of § 1.512(a)-1(d)(2) that, for the allocation rule governing exploitation to apply, the unrelated trade or business activity must be of a kind carried on for profit by taxable organizations and the exempt activity exploited by the business must be a type of activity normally conducted by taxable organizations in pursuance of such business. The Service requests comments regarding the desirability of amending these rules in view of the rules adopted in the proposed regulations.

The proposed regulations also do not amend the rules in § 1.513–1(c) as to whether trade or business from which a particular amount of gross income derives is regularly carried on within the meaning of section 512. The Service requests comments regarding the desirability of amending these rules in view of the rules adopted in the proposed regulations with respect to advertising.

Proposed Effective Date

The amendments to the regulations are proposed to be effective with respect to amounts received after January 19, 1993.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests To Appear at a Public Hearing

Before adopting this proposed regulation, consideration will be given to any written comments that are submitted in a timely manner (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held beginning at 10 a.m. on July 8, 1993, in the Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Comments and requests to appear (with outlines of oral comments) at the public hearing must be received by April 30, 1993. See notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of this regulation is Regina L. Oldak, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in its development.

List of Subjects in 26 CFR 1.511–1 through 1.514(g)–1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.512(a)–1(e) is amended as follows:

1. By revising the heading and introductory text for paragraph (e).

2. By revising the heading for the current "*Example.*" to read "*Example 1.*"

3. By adding *Example 2* through *Example 4.*

4. The revisions and additions read as follows:

§ 1.512(a)–1 Definition.

* * * * *

(e) *Examples.* Paragraphs (a) through (d) of this section are illustrated by the following examples:

Example 1. * * *

Example 2. (i) X, a section 501(c)(3) organization, conducts an annual college football bowl game featuring the Conference champion and another prominent nationally-ranked college team. In addition, X sells to commercial broadcasters the right to broadcast the bowl game on television and radio for $3,000,000 and receives $1,500,000 in admission and other fees. A major corporation agrees to be the exclusive sponsor of the bowl game and pays X $2,500,000. X distributes $2,000,000 of that amount to the colleges participating in the bowl game. X acknowledges the sponsorship payment by adding the corporation's name to the title of the event. This does not constitute advertising within the meaning of § 1.513–4 because it does not promote the sponsor's service, facility or product. In an activity distinct from the sponsorship agreement, X earns gross income of $800,000 from its design, manufacture and marketing of various items of wearing apparel featuring the name and logo of the bowl game. This activity constitutes unrelated trade or business that exploits X's exempt function. Expenses associated with this activity total $250,000.

(ii) The computation of unrelated business income is as follows:

Revenue:	
Television and radio rights	$3,000,000
Admission and other fees	1,500,000
Sponsorship (acknowledgments)	2,500,000
Income from unrelated trade or business	800,000
Total revenue	7,800,000
Expenses:	
Directly connected with bowl game	4,750,000
Overhead costs allocated to bowl game	1,000,000
Payments to event participants	2,000,000
Directly connected with the unrelated trade or business	200,000
Overhead costs allocated to unrelated trade or business	50,000
Total expenses	8,000,000
Unrelated trade or business (wearing apparel activity):	
Revenue	800,000
Expenses	250,000
Total unrelated business taxable income	550,000
Exempt function (bowl game):	
Revenue	7,000,000
Expenses	7,750,000
Total exempt function income (loss)	(750,000)

(iii) Exempt function expenses exceed revenues by $750,000. Because the unrelated income exploits the bowl game and is an activity normally conducted by taxable organizations in pursuit of similar businesses, this excess is allowed as a deduction from unrelated business taxable income to the extent of the net gain from unrelated business taxable income. Accordingly, there is no unrelated business income tax because the excess exempt function expenses of $750,000 more than offset total unrelated business taxable income of $550,000

Example 3. Assume the facts as stated in *Example 2,* except that in addition to conducting the bowl game, X leases its stadium to a professional football team for an event unrelated to the bowl game and provides utilities and maintenance services. The lease of the stadium is not related to the accomplishment of X's exempt purposes and does not exploit the bowl game. Accordingly, expenses, depreciation and similar items paid or incurred in conducting the bowl game may not be taken into account in computing unrelated business taxable income attributable to the lease of the stadium to a professional team.

Example 4. P, a manufacturer of photographic equipment, sponsors a photography exhibition organized by M, an art museum. In return for a sponsorship payment of $500,000, M agrees that exhibition catalogs, brochures, posters and other printed material prepared by M in connection with the exhibition will promote

P's product. M has not shown that any portion of the sponsorship payment exceeds the fair market value of the advertising benefit provided to P. Accordingly, the $500,000 payment is unrelated business income to M. The expenses directly connected with generating the unrelated business income total $150,000. The net unrelated taxable income, therefore, is $350,000 ($500,000 less $150,000). M also has $100,000 in exempt function income from admissions. Expenses connected with the exhibition total $400,000. Because the exempt expenses exceed exempt income by $300,000 ($400,000 less than $100,000), $300,000 is allowable as a deduction against the net unrelated business income of $350,000.

Par. 3. Section 1.513–4 is added to read as follows:

§ 1.513–4 Certain sponsorship not unrelated trade or business.

(a) *In general.* This section describes circumstances when income from certain sponsorship payments received by organizations subject to the unrelated business income tax imposed by section 511 are derived from a trade or business. This section does not apply to qualified convention and trade show activity. For rules governing qualified convention and trade show activity, see § 1.513–3. This section also does not apply to income derived from the sale of advertising in exempt organization periodicals. The term periodical includes regularly scheduled and printed material that is not related to and primarily distributed in connection with a specific sponsored event. For rules governing the sale of advertising in exempt organization periodicals, see § 1.512(a)–1(f). For rules governing whether an activity is regularly carried on, see § 1.513–1(c).

(b) *Advertising.* With respect to sponsorship of the activities of exempt organizations, advertising means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed in exchange for any remuneration, and which promotes or markets any company, service, facility or product. Advertising includes any activity which promotes or markets any company, service, facility or product. Advertising does not include acknowledgments described in paragraph (c) of this section.

(c) *Acknowledgments*—(1) *Description.* Acknowledgments are mere recognition of sponsorship payments. Acknowledgments may include the following, provided that the effect is identification of the sponsor rather than promotion of the sponsor's products, services or facilities: sponsor logos and slogans that do not contain comparative or qualitative descriptions of the sponsor's products, services, facilities or company; sponsor locations and telephone numbers; value-neutral descriptions, including displays or visual depictions, of a sponsor's product-live or services; and sponsor brand or trade names and product or service listings. Logos or slogans that are an established part of a sponsor's identity are not considered to contain comparative or qualitative descriptions.

(2) *Limitations.* Messages or other programming material that include the following constitute advertising: qualitative or comparative language; price information or other indications of savings or value associated with a product or service; a call to action; an endorsement; or an inducement to buy, sell, rent, or lease the sponsor's product or service. Distribution of a sponsor's product by the sponsor or the exempt organization to the general public at the sponsored event, whether for free or for remuneration, is not considered an inducement to buy, sell, rent or lease the sponsor's product for purposes of this regulation. If any activities, messages or programming material constitute advertising with respect to sponsorship payment, then all related activities, messages or programming material that might otherwise be acknowledgments are considered advertising.

(d) *Contracts.* The mere existence of a sponsorship contract does not necessarily mean that a sponsorship payment is income from advertising. The terms of the agreement, not its existence or degree of detail, are relevant to the determination. Similarly, the terms of the agreement and not the status of those negotiating the agreement are relevant. Exclusivity arrangements do not, in themselves, mean that a sponsorship payment is advertising income.

(e) *Contingent payments.* Where the amount of the sponsorship payment is contingent, by contract or otherwise, upon factors such as attendance at an event or broadcast ratings, the sponsorship payment is considered advertising income. However, the fact that a sponsorship payment is contingent upon an event actually taking place or being broadcast does not, in itself, mean that the payment is advertising income.

(f) *Provison of facilities.* Provision of facilities, services or other privileges by an exempt organization to the sponsor or individuals designated by the sponsor (*e.g.*, complimentary tickets, pr-am playing spots in golf tournaments or receptions for major donors) in connection with the sponsorship payment does not affect the determination of whether a sponsorship payment is advertising income.

(g) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. M, an exempt organization, organizes a marathon and walkathon at which it serves to participants drinks and other refreshments provided by a national corporation. M recognizes the assistance of the corporation by listing the name of the corporation in promotional fliers, in newspaper advertisements of the event and on T shirts worn by participants. M acknowledges prizes provided by the corporation or any other sponsor in the same manner. M changes the name of its event to include the name of the sponsor. M's activities are acknowledgments of the sponsorship and not advertising.

Example 2. N, an art museum, organizes an exhibition and receives a large payment from a corporation to underwrite the production of the catalog for the exhibition. N acknowledges the corporation in materials publicizing the exhibition, including banners, posters, brochures and public service announcements. N also arranges a special tour of the exhibition for employees of the corporation and hosts a dinner for the corporation's executives. N's activities are acknowledgments of the payment and not advertising.

Example 3. O organizes sports tournaments for local charities across the country that are underwritten by an auto manufacturer. O acknowledges the sponsorship payment by including the manufacturer's name and logo in the title of the tournament and displaying the manufacturer's name and logo on signs, scoreboards and other printed material. The auto manufacturer receives complimentary admission passes and pro-am playing spots. Additionally, O displays the latest models of the sponsor's premier luxury cars in the tournament area. O's activities are acknowledgments of the payment and not advertising.

Example 4. P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The sponsorship payment includes amounts to be paid to the colleges participating in the bowl game. The detailed contract between P and the corporation provides that the name of the bowl game will include the name of the corporation. The contract further provides that the corporation's name and a special logo will appear on players' helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. The sponsorship agreement is contingent upon the game being broadcast on television and radio, but the amount of the sponsorship payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at certain intervals during the game. P's activities are acknowledgments of the payment and not advertising.

Example 5. Players on team Q wear uniforms provided by a major pizza chain which also underwrites the operational expenses of the team. The uniforms bear the name and logo of the chain. The sponsorship payments and uniforms are not advertising income to Q, because use of the name and logo is acknowledgment of the sponsorship and not advertising.

Example 6. R organizes an annual art festival. Restaurants sell food or provide samples at festival booths. Similarly, local artists and craft shops sell arts and crafts at the festival. The restaurants, artists and shops are recognized by R as sponsors of the event in the festival brochure. The recognition of these sponsors constitutes acknowledgment of the payments and not advertising.

Example 7. S is a noncommercial broadcast station that airs a program sponsored by a local record shop. In recognition of that sponsorship, S broadcasts the following message: "This program has been underwritten by the Record Shop, where you can find all of your great hit music. The Record Shop is located at 123 Main Street. Give them a call today at 555–1234. This station is proud to have the Record Shop as a sponsor." S's activities constitute advertising.

Example 8. T, an exempt symphony orchestra, performs a series of concerts. A program guide that contains notes on guest conductors and other information concerning the evening's program is distributed at each concert. Sponsors may underwrite a specific concert or may contribute to a single program guide. Sponsors are recognized in the program guide in either case and, therefore, their payments are sponsorship payments for purposes of this section. If T's recognition of a specific concert sponsor in the program guide promotes the sponsor's product, T's activities are advertising with respect to all amounts received from the sponsor for that concert even if other items in the program guide relating to the sponsor would otherwise be acknowledgments. T also mails to subscribers a monthly magazine that contains various articles on music but is not primarily related to and distributed in connection with a specific concert. This section does not apply to the magazine because it is a periodical.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–1402 Filed 1–19–93; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[EE–74–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations governing the definition of unrelated trade or business.

DATES: The public hearing will be held on Thursday, July 8, 1993, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Thursday, June 17, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (EE–74–42), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 512 and 513 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, June 17, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendee cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–1403 Filed 1–19–93; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE41

Schedule for Rating Disabilities; Endocrine System Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its Schedule for Rating Disabilities of the Endocrine System. This change is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect is to update the endocrine system portion of the rating schedule to ensure that it uses current medical terminology and criteria for evaluating disabilities of that system. This is one of the 16 categories of disability in the rating schedule which we plan to revise.

DATES: Comments must be received by VA on or before March 23, 1993. Comments will be available for public inspection until April 2, 1993. This change is proposed to be effective February 22, 1993.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Manchester, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. VA agreed to these recommendations.

In the **Federal Register** of February 26, 1990, VA published an advance notice of proposed rulemaking advising the public that we were preparing to revise and update the rating schedule for endocrine disabilities and soliciting suggestions as to how the review should be conducted. We received suggestions from the Disabled American Veterans, and we also contacted an outside consultant to suggest revisions to the endocrine portion of the rating schedule. The primary objective of this review is to update the medical terminology and criteria used to evaluate disabilities rather than to amend the percentage evaluations assigned to each level of severity, although some changes in evaluation are proposed.

Current provisions under diagnostic codes 7900, Hyperthyroidism, 7902, Thyroid gland, nontoxic adenoma of, and 7903, Hypothyroidism, contain no affirmative criteria for noncompensable evaluations, but require instead that the condition at issue be "nonsymptomatic" or "in remission." We propose to eliminate these provisions since they merely restate the general rule found in § 4.31 that a 0 percent evaluation will be assigned when the criteria for compensable evaluations are not met.

Evaluation criteria under diagnostic code 7900 and other diagnostic codes in the endocrine schedule occasionally refer to symptoms which qualify for a specific evaluation after corrective surgery. We propose to delete references to surgery because they are of no value in explaining the qualifying symptoms. Similarly, adjectives such as "pronounced," "severe," "moderately severe," "moderate," and "cured" which preface criteria in several diagnostic codes will be deleted since they serve no objective function in the evaluation of a disability.

Rating criteria under diagnostic codes 7900 and 7903 currently direct that thyroid dysfunction be evaluated by measurement of the hormones T3 and/or T4. Since a number of other tests are commonly performed in the assessment of the thyroid patient, we propose that thyroid dysfunction under diagnostic codes 7900 and 7903 be evaluated by measurement of total or free T4 or equivalent. NOTEs following diagnostic codes 7900, Hyperthyroidism, and 7903, Hypothyroidism, currently provide for a rating of 10 percent when medication is necessary for control of systems. We propose to remove that provision since medication for hyperthyroidism or hypothyroidism rarely results in disabling symptoms. Any permanent disability which is proximately due to a service-connected disease shall in any event be service-connected according to the provisions of § 3.310.

Since long-standing hyperthyroidism can lead to significant impairment affecting the eyes, we propose to include eye involvement as a criterion for evaluation at the 100 percent level under diagnostic code 7900, Hyperthyroidism. At the same percentage level, the word "nervous" which modifies "symptoms" will be amended to "sympathetic nervous system," since only this division of the autonomic nervous system is affected by hyperthyroidism.

Criteria under diagnostic code 7902, Thyroid gland, nontoxic adenoma of, currently require pressure symptoms and marked disfigurement for entitlement to a 20 percent evaluation. Since pressure symptoms are rarely encountered, we propose to eliminate this requirement. Marked disfigurement will be specified as limited to the head and neck, since these are the areas particularly affected.

Under diagnostic code 7903, Hypothyroidism, we propose to remove the requirement for slow return of reflexes and add severe cold intolerance, muscular weakness, and cardiovascular involvement to the criteria required for a 100 percent evaluation. The level of circulating hormones will be characterized as undetectable rather than decreased. These symptoms are typical of the disease when it is totally disabling. Under the 60 percent level, we propose to add criteria of muscular weakness, mental symptoms, and weight gain. Consideration of these symptoms will allow for a more objective assessment of severity than the current reference to "symptoms under 'pronounced' somewhat less marked" which will be removed. Sluggish mentality and other indications of myxedema are currently required for a 30 percent evaluation under diagnostic code 7903. We propose to add the more commonly encountered symptoms of fatigability, constipation, and mental sluggishness to the evaluation criteria for this level and remove the reference to myxedema, which is seldom encountered. Dementia, slowing of thought, and depression are the mental symptoms typical of hypothyroidism, and we propose to include them in the evaluation criteria under diagnostic code 7903.

We propose to remove the words osteitis fibrosa cystica from the heading of diagnostic code 7904, Hyperparathyroidism, since these words meaning cystic changes in bones are not synonymous with the disease itself. We propose to add kidney stones and gastrointestinal symptoms to the evaluation criteria for the 100 percent level since they are indicative of a totally disabling level. At the 60 percent level, we propose to replace the requirement for "muscle weakness" with "weakness." Since "weakness" is one of the criteria at the 100 percent level, this change will make the disability indicators consistent at both levels of severity. The evaluation criteria under this diagnostic code also contain the instruction that following surgery or treatment rate as residual of benign tumor considering especially bones and kidneys. We propose to delete mention of benign tumor and add references to digestive, cardiovascular, and endocrine dysfunctions as other possible disabling effects of hyperparathyroidism.

Criteria for the 100 percent evaluation under diagnostic code 7905, Hypoparathyroidism, currently include a reference to thyroidectomy because hypoparathyroidism is often the result of accidental removal of or damage to several parathyroid glands during thyriodectomy. We propose to delete this reference because it does not identify symptoms helpful in the evaluation process, and causes of hypoparathyroidism other than complications of surgery are now recognized. We propose to add "seizures or convulsions" and "ocular disturbances" to the 100 percent criteria since these symptoms are typical of this level of disability. A direction under this diagnostic code currently instructs the rater to evaluate less than totally disabling levels of hypoparathyroidism by analogy to diagnostic code 7900, Hyperthyroidism. The disabling symptoms of hypoparathyroidism and hyperthyroidism are not similar, and we propose to replace this instruction with a distinct 60 percent evaluation level with appropriate rating criteria.

We propose to amend the heading of diagnostic code 7907, Hyperpituitarism (pituitary basophilism, Cushing's syndrome), to read simply "Cushing's syndrome," since this is the medically accepted term for this condition. Criteria for the 100 percent evaluation under this diagnostic code include requirements of pathological fractures and enlargement of the sella turcica. These conditions are rarely encountered in Cushing's syndrome, and we propose to replace them with the more frequently experienced symptoms of hypertension and weakness. Criteria for the 60 percent evaluation currently require a symptom combination less than for the 100 percent rating with only partial control by treatment. We propose to replace this ambiguous requirement with a more specific description of loss of muscle strength and enlargement of pituitary or adrenal gland. In the NOTE following diagnostic code 7907, the rater is directed to evaluate residuals such as adrenal insufficiency, cardiac, skin and bony complications under the appropriate diagnostic code. We propose to enlarge this list of possible residuals by including psychiatric symptoms and changing the word cardiac to cardiovascular.

We propose to condense the heading of diagnostic code 7908, Hyperpituitarism (acromegaly or gigantism) to Acromegaly since this is the most commonly used term for this disability. Criteria for the 100 percent evaluation under this diagnostic code include mention of a hypofunctional stage of the disease following hyperfunction. We propose to delete this description since it does not assist in the evaluation of the condition. We propose to replace the symptoms described as intracranial pressure, genital decline and atrophy, hypotrichosis, hypoglycemia, obesity, and asthenia with increased intracranial pressure, arthropathy, glucose intolerance, cardiomegaly, and visual impairment since those sumptoms more accurately represent the 100 percent level of severity. We also propose to replace the criteria for the 60 percent evaluation, currently "bone and joint pains, hyperglycemia and glycosuria, symptoms of intracranial pressure in optic region" with "arthropathy, glucose intolerance, and hypertension," since these are more frequently encountered symptoms.

We propose to use simply Diabetes insipidus as the heading for diagnostic code 7909, Hypopituitarism (diabetes insipidus), since it alone is sufficient to identify this category of disease. In the criteria for the 100 percent evaluation, we propose to qualify the term "parenteral replacement therapy" with the word "hydration" for the sake of clarity. We also propose to replace the phrase "increase in urinary chlorides, etc." with "excessive thirst" and "dehydration" in the criteria for the 40 percent evaluation. The level of urinary chlorides is not necessarily indicative of the severity of disabetes insipidus, and excessive thirst and dehydration are more characteristic of this level of severity.

In the criteria for the 20 percent evaluation under diagnostic code 7911, Addison's disease (adrenal cortical hypofunction), we propose to delete the requirement for well-established Addison's disease with fewer than 3 crises or less than 5 episodes of lesser symptomatology during the past year. The fact that the disease is well-established has no bearing on the evaluation process and therefore serves no useful purpose in the criteria. The terms "fewer than 3" or "less than 5," in reference to the number of crises or episodes, are too imprecise to have any value in establishing objective impairment classifications. The current reference to §§ 4.88b and 4.89 regarding non-pulmonary tuberculosis will be deleted since the proper procedure for rating such conditions is adequately stated after diagnostic code 6353 under "systemic conditions" in the rating schedule.

We propose to determine the degree of impairment for diagnostic code 7913, Diabetes Mellitus, according to how well the disease is controlled. Evaluation criteria at the 100 percent level currently include provisions regarding diabetic episodes, regulation of diet and activities, weight or strength loss, and complications of the disease. The frequency of insulin injection and medical treatment are also valid measures of the disabling severity of diabetes. We therefore propose to stipulate under the 100 percent level that the veteran's condition require more than 1 daily injection of insulin and frequent hospital or physician treatment. The word "with" currently precedes "progressive loss of weight and strength, or severe complications" under the 100 percent criteria. We propose to substitute the word "either" for "with" since the word "either" will more clearly emphasize that only one of these criteria is required to establish the 100 percent level of severity. In order to clarify the meaning of "severe complications" currently mentioned at the 100 percent level, we propose to cite common examples of complications to include retinopathy, nephropathy, arteriosclerosis, and neuropathy.

The need for insulin, restricted diet, and regulation of activities are reliable indicators of the extent to which diabetes is controlled, and for the sake of consistency, we propose to make them part of the criteria necessary to establish any level of disability 40 percent or greater. For the 60 percent level, we propose to specify "occasional" episodes of ketoacidosis or hypoglycemic reactions to distinguish from the "repeated" episodes required under the 100 percent criteria. We propose to delete pruritus ani from the 60 percent evaluation criteria since it is of no practical value in determining the actual severity of diabetes. We also propose to delete "considerable loss of weight and strength" from the 60 percent level, since reference to weight loss is most appropriately reserved for consideration of total disablement in the 100 percent criteria.

We propose to delete the phrase "avoidance of strenuous occupational and recreational activities" from the 40 percent evaluation for diabetes since it does not substantially clarify the meaning of careful regulation of activities. Currently the evaluation criteria for the 40 and 20 percent levels require "large" or "moderate" insulin or oral hypoglycemic dosage. The severity of diabetes is properly determined by the degree of control achieved in response to medication, and not by the amount of medication taken in any one dosage to achieve such control. We therefore propose to delete the references to large or moderate dosage at the 40 and 20 percent levels. The words "without impairment of health or vigor or limitation of activity" which currently appear in the criteria for the 20 and 10 percent evaluations will be deleted since they do not affirmatively denote criteria whose presence is required for the designated levels of disability.

The first sentence of the NOTE following diagnostic code 7913, Diabetes mellitus, now states that definitely established complications of diabetes are to be separately rated. The regulation is currently applied by distinguishing between complications which are "mild," or noncompensable, and those which are compensable. Noncompensable complications are to be rated as part of diabetes under diagnostic code 7913, whereas compensable evaluations may be separately rated. An exception to separate evaluations for compensable complications is found in the 100 percent level under diagnostic code 7913, where complications which are severe may be an essential part of the total evaluation for diabetes and are reserved for that purpose. We propose to elevate this instruction to a regulatory requirement by amending the NOTE following diagnostic code 7913. We propose to separate the last sentence regarding glucose tolerance tests from the existing NOTE to create a separate NOTE "2" since it involves a different issue. The sentence will be retained with editorial changes, and no substantive change is intended.

We propose to replace the words new growths in the headings of diagnostic codes 7914 and 7915 with the word neoplasms since it better connotes a pathological abnormality. For malignancies of the endocrine system, diagnostic code 7914 currently provides a 100 percent evaluation for one year following surgery or the cessation of antineoplastic therapy. This provision is applied at the time of rating by assignment of a one year total evaluation with a prospective reduction consistent with the protected, known or minimum evaluation. Due to improvements in the administration of chemotherapy and radiation treatments, we believe that a one year convalescent evaluation is no longer warranted, but that it is reasonable to assess residual disability six months after treatment terminates. Not every patient will recover in a set period of time, however, so a decision to reduce an evaluation after six months should be based on medical findings rather than a regulatory assumption that there has been an improvement. We propose to change the period of convalescence under diagnostic code 7914 for malignancies from one year to six months. The total evaluation will continue until the veteran is examined and the results of this examination have been reviewed by a rating board. At that time, if a reduction in evaluation is warranted, it would be implemented under the provisions of 38 CFR 3.105(e). This instruction has been included in the Note following diagnostic code 7914.

We are proposing to delete one endocrine disorder, Hyperadrenia (adrenogenital syndrome), diagnostic code 7910, from the rating schedule. Adrenogenital syndrome, which causes precocious sexual development, is a condition that occurs during infancy and childhood. It is so rarely encountered among service persons that it does not warrant a separate category in the rating schedule. Two disorders, diagnostic code 7901, Thyroid gland, toxic adenoma of, and diagnostic code 7912, Pluriglandular syndromes, will remain unchanged.

We propose to add four diagnostic codes for disorders of the endocrine system which commonly occur: 7916, Hyperpituitarism (prolactin secreting pituitary dysfunction); 7917, Hyperaldosteronism (benign or malignant); 7918, Pheochromocytoma (benign or malignant); and 7919, C-cell hyperplasia of the thyroid.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Note: This document received by the Office of the Federal Register on January 15, 1993.

Approved: April 1, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Section 4.119 is revised to read as follows:

§ 4.119 Schedule of ratings—endocrine system.

	Rating
7900 Hyperthyroidism:	
Thyroid enlargement, severe tachycardia, eye involvement, elevated levels of circulating thyroid hormones (as measured by total or free T4 or equivalent), muscular weakness, loss of weight, and marked sympathetic nervous system, cardiovascular, or gastrointestinal symptoms	100
Marked emotional instability, tachycardia, elevated levels of circulating thyroid hormones (as measured by total or free T4 or equivalent), fatigability, and increased pulse pressure or blood pressure	60
Tachycardia, tremor, and increased pulse pressure or blood pressure	30
Tachycardia (which may be intermittent) and tremor	0
Note 1: If disease of the heart predominates, rate as hyperthyroid heart disease, diagnostic code 7008.	
Note 2: If only ophthalmopathy exists, rate as impairment of field vision, diagnostic code 6080, diplopia, diagnostic code 6090 or central visual acuity, diagnostic codes 6061–6079.	
7901 Thyroid gland, toxic adenoma of:	
Rate as hyperthyroidism, diagnostic code 7900	
7902 Thyroid gland, nontoxic adenoma of:	
Marked disfigurement of the head or neck	20
Note: If a higher evaluation is warranted, rate as impairment of affected organ.	
7903 Hypothyroidism:	
Severe cold intolerance, muscular weakness, cardiovascular involvement, mental symptoms (dementia, slowing of thought, depression), slow pulse, sleepiness, and undetectable levels of circulating thyroid hormones	100
Muscular weakness, mental symptoms, weight gain, and decreased levels of circulating thyroid hormones (as measured by total or free T4 or equivalent)	60
Fatigability, constipation, mental sluggishness, and decreased levels of circulating thyroid hormones (as measured by total or free T4 or equivalent)	30
Fatigabilty	10
7904 Hyperparathyroidism:	
Generalized decalcification of bones, kidney stones, gastrointestinal symptoms, elevated blood and urine calcium levels, marked weight loss, and weakness	100
Elected blood and urine calcium levels, marked weight loss, and weakness	60
Following surgery or treatment:	
Rate as digestive, skeletal, renal, or cardiovascular residuals or as endocrine dysfunction.	

	Rating
7905 Hypoparathyroidism:	
Seizures or convulsions, muscular spasms (tetany) or marked neuromuscular excitability, and ocular disturbances	100
Marked neuromuscular excitability, ocular disturbances, and constipation or tingling and numbness of extremities	60
Note: When continuous medication is required for control of hypoparathyroidism, a minimum rating of 10 percent will be assigned.	
7907 Cushing's syndrome:	
As active progressive disease including marked loss of muscle strength, areas of osteoporosis, hypertension, weakness, and enlargement of pituitary or adrenal gland	100
Loss of muscle strength and enlargement of pituitary or adrenal gland	60
Note: With recovery or control, rate as residuals of adrenal insufficiency or cardiovascular, psychiatric, skin, or skeletal complications under appropriate diagnostic code.	
7908 Acromegaly:	
Increased intracranial pressure, arthropathy, glucose intolerance, hypertension, cardiomegaly, and visual impairment	100
Arthropathy, glucose intolerance, and hypertension	60
Enlargement of acral parts or overgrowth of long bones, and enlarged sella turcia	30
7909 Diabetes insipidus:	
Excessive thirst and severe polyuria requiring parenteral hydration therapy, episodes of syncope, low systolic and diastolic blood pressure	100
Excessive thirst, polyuria, dehydration, serum osmolality greater than 295 mOsm/kg, and urine osmolality less than 38 mOsm/kg	60
Polyuria, excessive thirst, and dehydration	40
Polyuria and excessive thirst	20
7911 Addison's disease (adrenal cortical hypofunction):	
Four or more crises (increasingly severe hypotension, dehydration, pronounced weakness, with hyponatremia, hyperpotassemia, azotemia, hypoglycemia and cortisol deficiency) during the past year	60
Three crises during the past year; or 5 or more episodes (vomoting, diarrhea, hypotension, or marked weakness) during the past year	40
Weakness and fatigability; or corticosteroid therapy required for control	20
Note: Tuberculous Addison's disease will be rated as active or inactive tuberculosis. If inactive, these ratings are not to be combined with the graduated ratings of 50 percent or 30 percent for non-pulmonary tuberculosis as specified under §4.88b. Assign the higher rating..	
7912 Pluriglandular syndromes:	
Rate according to major manifestations.	
7913 Diabetes mellitus:	
Repeated episodes of ketoacidosis or repeated hypoglycemic reactions which require more than 1 daily injection of insulin, frequent hospital or physician treatment, restricted diet and regulation of activities, and either progressive loss of weight and strength, or severe complications such as retinopathy, nephropathy, arteriosclerosis, or neuropathy	100
Occasional episodes of ketoacidosis or hypoglycemic reactions requiring insulin, restricted diet and regulation of activities, with mild complications such as mild vascular deficiencies or beginning diabetic ocular disturbances	60
Restricted diet, regulation of activities, and insulin required for control	40
Restricted diet and either insulin or oral hypoglycemic agent required for control	20
Controlled by restricted diet only	10
Note 1: Rate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation. Noncompensable complications are considered part of the diabetic process under diagnostic code 7913..	
Note 2: When diabetes mellitus has been definitely diagnosed, do not request a glucose tolerance test solely for rating purposes..	
7914 Neoplasms, malignant, any specified part of the endocrine system	100
Note: Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals..	
7915 Neoplasms, benign, any specified part of the endocrine system:	
Rate as residual of endocrine dysfunction.	
7916 Hyperpituitarism (prolactin secreting pituitary dysfunction)	
7917 Hyperaldosteronism (benign or malignant)	
7918 Pheochromocytoma (benign or malignant)	
Note: Rate diagnostic codes 7916 through 7918 as malignant or benign peoplasm under diagnostic code 7914 or 7915, whichever is applicable..	
7919 C-cell hyperplasia of the thyroid:	
Rate as malignant neoplasm under diagnostic code 7914.	

(Authority: 38 U.S.C. 1155).

[FR Doc. 93–1543 Filed 1–21–93; 8:45 am]

BILLING CODE 8320-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH-6-2-5598; A-1-FRL-4554-3]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire—Capture Efficiency Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision corrects deficiencies in the State's volatile organic compound (VOC) regulations in response to EPA's May 25, 1988 Ozone SIP call and the Clean Air Act requirement that States "fix-up" their reasonably available control technology (RACT) rules. The intended effect of this action is to propose approval of this revision to New Hampshire's SIP which incorporates the current federal RACT requirements for VOC. These RACT corrections are a requirement of the Clean Air Act (CAA) as amended in 1990 (Section 182(a)(2)(A)). This action is being taken under section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before February 22, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: On May 15, 1992, the New Hampshire Air Resources Division (ARD) submitted a revision to its SIP. This revision corrects deficiencies in New Hampshire's VOC regulations.

Background

Based on monitored ozone exceedances in New Hampshire, EPA sent letters to the Governor of New Hampshire on May 25, 1988 and November 8, 1989, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, informing him that the New Hampshire SIP was substantially inadequate to achieve the national ambient air quality standard (NAAQS) for ozone in parts of New Hampshire. EPA requested that the State respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call was meant to consist of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to, but never adopted, and (3) updating the area's base year emission inventory.

On June 16, 1988, EPA sent a follow-up letter to the New Hampshire ARD identifying specific technical inadequacies and inconsistencies in New Hampshire's VOC regulations as compared to the requirements of the CAA as interpreted in EPA guidance. One of the noted deficiencies was the lack of a capture efficiency test method. On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Portions of New Hampshire are classified as marginal and serious.[2] Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

New Hampshire's Revision

In response to the first phase of EPA's SIP call and the section 182(a)(2)(A) requirement, and EPA's June 16, 1988 follow-up letter, on January 17, 1992, New Hampshire adopted a new regulation entitled "Capture Efficiency Test Procedures" (Part Env-A 805). Although EPA is only requiring this RACT fix-up requirement to be adopted in portions of the State classified as marginal and serious, New Hampshire has chosen to make this regulation applicable throughout the entire State. The "Capture Efficiency Test Procedures" regulation is briefly summarized below.

Part Env-A 805—Capture Efficiency Test Procedures

This regulation specifies the test procedures required to measure how much of the total VOC emissions from a regulated source is captured and delivered to a control system.

EPA has evaluated this revision and found that it corrects the deficiencies listed in EPA's SIP call follow-up letter and is consistent with EPA's guidance contained in EPA's April 16, 1990 memorandum from John S. Seitz, Director, Stationary Source Compliance Division entitled "Guidelines for Developing a State Protocol for the Measurement of Capture Efficiency" and August 3, 1990 memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch entitled "Model Regulatory Language for Capture Efficiency Testing." In addition, it should be noted that the August 3, 1990 model rule did not address certain issues which the State was given the responsibility to specify. Specifically, these issues are: 1) how often a source should perform a new capture efficiency test, 2) what parameters should be routinely monitored after a test has been conducted, and 3) what changes in the parameters would trigger a new test. Regional personnel worked with the State of New Hampshire in order to address these issues in its regulation.

New Hampshire's regulation and EPA's evaluation are detailed in a memorandum, dated October 6, 1992, entitled "Technical Support Document—New Hampshire SIP Revision Concerning Amendments to Chapter Env-A 800 of the New Hampshire Rules Governing the Control of Air Pollution (Capture Efficiency)." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA is proposing to approve the New Hampshire SIP revision for capture efficiency test procedures and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this notice.

Proposed Action

EPA is proposing to approve Part Env-A 805 "Capture Efficiency Test Procedures" because it corrects deficiencies listed in EPA's SIP call follow-up letter and is consistent with the above noted EPA guidance. Therefore, EPA believes that New Hampshire has met the RACT fix-up requirement that it correct its existing RACT rules to provide a capture efficiency testing procedure.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on

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[1] Among other things, the pre-amendment guidance consists of the portions of the Post-87 policy that concern RACT, 52 Fed. Reg. 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] These areas were designated as nonattainment prior to enactment of the amended Act. They retained their designation of nonattainment and were classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

January 19, 1989 (54 FR 2214). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2) (A)–(L) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 29, 1992.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 93–1503 Filed 1–21–93; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3400

[WO-650-4120-02]

RIN 1004-AC04

Coal Management—General

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would add to the regulations on coal management a section that allows decisions affecting actions in the Federal Coal Management Program to remain in full force and effect during the pendency of any appeals to the Interior Board of land Appeals (IBLA), unless the appellant shows sufficient justification to the IBLA that a stay is necessary. Such a provision would allow the IBLA to proceed with consideration of significant issues without hindering the expeditious completion of the coal leasing and lease management process. It will allow the IBLA to determine whether the issues involved in an appeal warrant a stay of leasing and lease management activity and the accompanying delays and economic consequences. This rule in no way reduces the right of aggrieved parties to file an administrative appeal or affects the rights to sue the Federal Government in court over disagreements with policies and decisions.

DATES: Comments should be received at the address below by March 23, 1993. Comments received after this date may not be considered in the promulgation of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C St., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul Politzer, (202) 208–7722, or Carole Smith, (202) 208–3258.

SUPPLEMENTARY INFORMATION: This proposed rule responds to a petition for rulemaking, filed by Entech, Inc., under the provisions of 43 CFR part 14.

I. Background

In early June 1992, the Department of the Interior received a petition for emergency rulemaking from Entech, Inc. Under 43 CFR part 14, such a petition is to be given prompt consideration, and the Secretary of the Interior may request public comment to aid in the consideration of the petition. The Department has decided, based on a review of the petition and the current situation in the Federal Coal Management Program, to request public review of and comment on the proposal and its rationale through a proposed rule.

The petitioner is one of four applicants for Federal coal lease tracts located in the Powder River Basin (the Basin) of northeastern Wyoming. Leasing activity in the Basin resumed in September 1991 after a hiatus of 9 years, during which an estimated 1 billion tons of coal were mined and shipped to markets in 22 different States. Although it has relatively low Btu values, Basin coal has a generally low sulfur content, making it useful in achieving the restrictive standards for emissions of oxides of sulfur required by the Clean Air Act Amendments. The September 1991 sale was appealed to the IBLA by environmental groups concerned about coal leasing procedures and alleged impacts on groundwater in the Basin. The appeal was filed despite longstanding efforts to resolve differences and to solicit and accommodate environmental concerns both within the environmental analysis process and under the public meeting process provided by the powder River Regional Coal Team. Several groups—other applicants for lease sales, the State of Wyoming and the City Commissioners of Gillette, Wyoming—were granted friend of the court status or intervened and filed briefs in support of the Bureau of Land Management (BLM) in this appeal. The IBLA ruled in favor of the BLM, Powder River Basin Resource Council, 124 IBLA 83 (1992), but during the year that the case was pending, the prospective lessee did not know whether the lease would issue and therefore could not depend on the Federal coal to meet its contract obligations, the State of Wyoming as denied mineral leasing revenues for public uses, and the allegations about adverse environmental impacts remained unresolved.

Although the primary area of focus of this proposed rule is the Basin, appeals of coal leasing decisions have public interest consequences nationally. Historically, disputes over the procedures by which coal leasing decisions are reached and over the amount of coal that is leased—principally in the Basin—have received Congressional oversight, resulting in studies and leasing moratoria. As of July 1, 1992, there were 24 applications, covering 44,710 acres and containing approximately 1.3 billion tons of Federal coal, for lands located in Alabama (3), Colorado (4), Kentucky (4), Montana (1), Utah (6), and Wyoming (6). The number represents a backlog of demand for unleased Federal coal, caused by 4 years of low coal leasing activity while mining continued on Federal leases.

Potential sales resulting from these applications are tentatively scheduled to occur within the next 3 years and to become significant sources of revenue for State and local governments and require significant expenditures of BLM administrative resources (an estimated average of 38.5 work months and $192,500 per application). The applications for the most part represent extensions of existing mines to meet contract obligations or to prevent the bypass of Federal coal, and will not be offered for lease sale until and unless all statutory, regulatory, and procedural requirements for environmental analysis, consultation with appropriate Federal and State entities, and economic evaluation have been met.

Growing numbers of appeals are expected. If appeals are taken for other coal leasing decisions both within the outside of the Powder River Basin, significant potential exists for the bypass of Federal coal, for delays in mining operations and royalty payments to the States, for decreases in revenues to the Treasury, for additional strain and uncertainty on the industry as to the reliability of the United States Government as a supplier of coal resources and for loss of employment opportunities. Supplier reliability is crucial, particularly in the western United States, where there are limited non-Federal coal reserves. Loss of revenue to the States, particularly the western States, may adversely affect citizens of the communities near mines, as the States may be less able to provide or maintain public services for them.

Although bonus payments from lease sales are significant, the major portion of mineral revenues accruing to the States derives from rentals and royalties from producing leases. In Fiscal Year 1991, for instance, production from Federal leases generated 268 million tons of coal and $284 million in royalties, at least half of which, depending upon the statutory leasing authority involved, was returned to the States or counties for their use in mitigating impacts to community infrastructures. Many States additionally impose severance taxes on all coal removed from the ground within State boundaries.

Appeals of leasing an lease management decisions delay or prevent the Bureau from meeting its responsibility to implement the Federal Coal Leasing Amendments Act and the Surface Mining Control and Reclamation Act of 1977, and its mission to provide for the multiple use and sustained yield of public lands pursuant to the Federal Land Policy and Management Act of 1976.

Under current appeals procedures, appeals that are brought by entities who disagree with agency procedures and decisions, and that are filed to prevent Federal coal leasing and development, may delay that activity indefinitely.

II. Appeals Language—Effect on Third Parties

The September 1991 appeal by environmental groups concerned the nature of the leasing process by which the Federal coal was offered for sale—the so-termed "lease-by-application" method—and the degree of analysis given potential environmental impacts from mining, particularly potential adverse impacts on regional groundwater supplies.

The merits of the lease-by-application method are beyond the scope of this rule and were not addressed in the IBLA decision in the Powder River Basin Resource Council case.

With respect to the degree of analysis given impacts from mining, the most effective time for public participation in the environmental analysis process is during scoping meetings and public hearings, when all matters of environmental concern may be raised by the public and specific examples of adverse impacts discussed. The concerns expressed by the public guide the Bureau in preparing and analyzing the environmental impacts of coal mining on specific tracts and are reflected in site-specific stipulations in the leases for those tracts being offered for sale. In deciding whether or not to offer a tract for lease sale, the Bureau balances those environmental impacts resulting from mining that can be mitigated or eliminated and those that cannot be against the value of the resource. The Bureau usually issues coal leases to high bidders offering at least the fair market value of the resource, if those bidders meet all other statutory and regulatory requirements.

Lease issuance then triggers the exploration and development requirements of the Surface Mining Control and Reclamation Act of 1977. Meeting these requirements represents a considerable financial investment on the part of the lessee. The requirements also subject proposed lease operations to further environmental analysis and public review. The environmental analysis process usually generates public hearings, at which mine-specific issues are raised and addressed, and an environmental impact statement. The end result of the process is the decision to issue a permit to mine or to reject the application for permit to mine.

This two-stage environmental analysis process gives the public many opportunities for involvement in the leasing and mining process while at the same time imposing a risk on potential lessees and lessees that the process will be delayed indefinitely by possible third-party appeals. Such delays in leasing or lease development may endanger contract obligations and may impose severe financial hardships on lessees and operators who are trying in good faith to meet their responsibilities for environmental protection while remaining competitive in private enterprise. It may also impose a risk to the public interest if the development of lease tracts is blocked by parties alleging unsubstantiated harm. This rule would not diminish the opportunity to appeal coal leasing decisions, but would require a substantiation of alleged harm in order to stay a leasing decision during an appeal.

Given the public involvement prior to a decision being made to lease a coal tract and the other steps the Bureau takes to comply with environmental requirements, the proposed changes to the coal leasing appeals rules are reasonable. The proposed rule change would place some reasonable responsibilities on appellants without taking away any substantive appeal rights. The new section 3400.7 would require that appellants to IBLA be adversely affected by the decision and that all coal leasing and coal lease management decisions are in full force and effect pending appeal unless the IBLA determines otherwise. The rule would place a burden on appellants to show clearly why a stay of the decision is warranted. Parties pursuing appeals may obtain a stay of the decision from the IBLA upon a showing of sufficient justification based on the following standards: (1) The relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of irreparable harm to the appellant or resources if the stay is not granted, and (4) whether granting the stay would be in the public interest.

III. Appeals Language—Effect on Lessees and Operators

The proposed rule change would also directly affect coal lessees and operators who appeal decisions regarding lease operations.

After a coal lease is issued, lessees must be producing coal in commercial quantities within 10 years in order to prevent the leases from terminating. This so-called "diligent development requirement" is of significant concern to lessees and operators. Since August 1976, when the Federal Coal Leasing Amendments Act was enacted, over 40 coal leases have terminated due to a failure to comply with the diligent development requirement. That number is expected to grow as more and more pre-1976 coal leases become subject to the Act's diligence provision.

Under this proposed rule change, in instances wherein a lessee or operator appeals a decision regarding noncompliance, the decision would remain in effect pending the resolution of the appeal. Decisions such as a denial of approval of applications for a logical mining unit (LMU) would remain in effect pending the resolution of any appeals. Unless a stay of the decision denying the formation of the LMU is granted by the IBLA, the time period of the appeal would diminish the diligence period of any older coal leases in the

LMU. Therefore, under this rule change, lessees and operators, as well as third-party appellants, would be required to make a proper showing in order to obtain a stay of a decision being appealed.

IV. Determinations

The principal author of this proposed rule is Carole Smith, Division of Solid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. Before offering coal tracts for lease sale, the Bureau prepares environmental documents (either an environmental assessment or an environmental impact statement), analyzing the impacts of potential leasing and development activities on the cultural, economic, physical, and social environments. Prior to lease development, additional environmental analysis is conducted. Therefore, by the time of the lodging of an appeal, under standard BLM procedures, an environmental review and analysis will have been performed as to the activity that is the subject matter of the appeal. The lodging of an appeal on the lease sale is essentially a disagreement with the procedures or analysis used in reaching the decision. Accordingly, no additional environmental analysis is needed because this rule would change the effect of the pendency of an appeal only.

The Department has determined that this document is not a major rule under Executive Order 12291. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete in domestic and foreign markets. This rule will not increase or decrease the bonus bids made at competitive lease sales, change the extent of investment of coal lessees and operators in leasing and lease development, increase the price that consumers pay for electricity, or necessitate increases in State or local budgets to offset extended financial and personnel requirements. In fact, third party appeals may increase all costs to all parties directly affected by leasing and development decisions so that the net effect of this rule is to lower costs overall.

The Department has determined that this rule has no significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Small entities will benefit from this rulemaking to the same extent that larger entities will in that their authority to act in making bids at lease sales and in making investment decisions on lease exploration and development will not be delayed pending the outcome of appeals by third parties not directly affected by agency decisions.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. It does not infringe upon any private property rights. Therefore, as required by Executive Order 12630, the Department of the interior has determined that the rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12278.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental contracts, Mines, Public lands-mineral resources.

For the reasons stated in the preamble, and under the authorities stated below, subpart 3400 of group 3400, subchapter C, chapter II, subtitle B, of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3400—COAL MANAGEMENT: GENERAL

1. The authority citation continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; 43 U.S.C. 1701 *et seq.*; 25 U.S.C. 396–399; 25 U.S.C. 2101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 43 U.S.C. 1457 *et seq.*; 40 U.S.C. 471 *et seq.*; 5 U.S.C. 552; and 30 U.S.C. 811 and 877.

2. Section 3400.7 is added to read as follows:

§ 3400.7 Appeals.

(a) A party adversely affected by a decision or approval of the authorized officer under group 3400 may appeal that decision to the Interior Board of Land Appeals as set forth in part 4 of this title.

(b) All decisions and approvals of the authorized officer under group 3400 shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision under this Group. A petition for stay of a decision of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Dated: December 31, 1992.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 93–1468 Filed 1–21–93; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 7]

RIN 2127–AE86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplementary notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM proposes that trailers which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds, except trailers manufactured exclusively for use as offices or dwellings, and which are equipped with a conspicuity treatment conforming to S5.7, need not be

equipped with the reflex reflectors required by Table I. Also, the notice proposes modifications to Figure 29's requirements for specific intensity per unit area values for retroreflective sheeting.

DATES: Comments are due on the notice March 8, 1993.

ADDRESSES: Comments should refer to Docket 80–9; Notice 7, and be submitted to: Administrator, Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION: On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. The rule (57 FR 58406) implemented a notice of proposed rulemaking (NPRM) published on December 4, 1991 (56 FR 63474). Under the rule, trailers manufactured on or after December 1, 1993, which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds (except trailers manufactured exclusively for use as offices or dwellings), must be equipped with a conspicuity treatment of either retroreflective sheeting or reflex reflectors.

The comments responding to the rule when it was proposed suggested two modifications that appeared merited, but could not be adopted in the rule because they were beyond the scope of the proposal. NHTSA announced that it would issue the SNPRM proposing a modification of the final rule to implement those comments.

Performance of Retroreflective Sheeting

Brightness of retroreflective material is expressed in "specific intensity per unit area" or "SIA". SIA is specified in Standard No. 108's Figure 29 at observation angles of 0.2 degree and 0.5 degree, and light entrance angles of -4 degrees and 30 degrees. Commenters such as 3M, TSIE, and Peterson Manufacturing voiced a need for values at an entrance angle of 45 degrees. NHTSA tentatively concurs. The value suggested was 60, as contained in SAE J1967. This appears to be based upon the characteristics of the retroreflective material used in the Vector study (see the NPRM for a discussion of the study). The SNPRM proposes that Figure 29 be amended to add a value of 60 at an entrance angle of 45 degrees and an observation angle of 0.2 degree for DOT–C2 white retroreflective material. An appropriate value is also proposed for 0.5 degree, as are values for red retroreflective materials. The proposal extends to DOT–C3 and DOT–C4 materials as well.

Stimsonite commented that the ratio of red to white brightness of retroreflective material is constant for changes in observation angle. This means that the value of 10 SIA adopted for DOT–C2 red material at 0.5 degree and entrance angles of –4 degrees and 30 degrees should be 15, and not 10 as adopted. NHTSA is proposing an appropriate amendment of Figure 29 to ensure consistency.

Redundancy of Reflex Reflectors

Some commenters stated that the requirements for conspicuity materials obviate the need for some existing lamps and reflectors. UPS asked that clearance lamps be eliminated, while TTMA requested the elimination of identification lamps and reflex reflectors for trailers equipped with conspicuity treatment. The American Petroleum Institute would add side marker lamps as well to the list of the items to be eliminated. On the other hand, Trucklite and Grote oppose elimination of any lamps and reflectors, believing that each has a safety function to perform.

The agency does not intend to propose removal of identification, clearance, or marker lamps for trailers equipped with conspicuity materials. The conspicuity treatment is intended to augment lighting devices, not substitute for them. Trucklite points out that, even granting the benefits of conspicuity treatment, safety depends on the light output of lamps in extreme weather conditions, when the trailer is dirtier than normal, or when the headlamps of an approaching vehicle are faulty.

However, the agency believes there may be some duplication of safety mission between the reflex reflectors required by the standard, and the conspicuity treatment required by paragraph S5.7. Table I of Standard No. 108 requires that large trailers be equipped with 2 amber reflex reflectors located at the side front, 2 red reflex reflectors located at the side rear, and 2 red reflex reflectors on the rear. If the overall length of the trailer is 30 feet or more, intermediate side reflex reflectors, amber in color, must be added. Under Table II, reflex reflectors may be mounted at any height between 15 and 60 inches. Thus, rear and side reflex reflectors could be considered redundant, even though amber reflex reflectors on the front and midpoint of large trailers would be replaced with red conspicuity treatment.

NHTSA is proposing that new trailers manufactured with a conspicuity treatment that meets S5.7 need not be equipped with reflex reflectors as required by Table I. It wishes to have comments on whether this permission should apply only to vehicles whose conspicuity treatment consists entirely of reflex reflectors.

This proposed rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Proposed Effective Date of Final Rule

The proposed effective date of the final rule is December 1, 1993. This is the general effective date for the conspicuity requirements of S5.7.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," nor is it significant under Department of Transportation regulatory policies and procedures. The rulemaking will not have an effect upon the economy in excess of $100 million a year. NHTSA estimates that the cost savings that would be realized by elimination of superfluous reflex reflectors would be a total of $1.7 million a year. A Regulatory Evaluation of the original rule has been prepared and is available for examination by the public in the docket.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Although trailer manufacturers are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that compliance cost savings to the trailer buyer who chooses to eliminate reflectors would average $10 to $13 per trailer. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new trailers equipped with conspicuity treatment would not be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The proposed rule will not have a significant effect upon the environment. Retroreflective material is non-toxic. There would be a materials saving from manufacturing fewer reflex reflectors. The proposed rule would not have an effect upon fuel consumption.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. S5.1.1.32 would be added to read as follows:

S5.1.1.32 A trailer equipped with a conspicuity treatment in conformance with paragraph S5.7 of this standard need not be equipped with the reflex reflectors required by Table I of this standard.

3. Figure 29 would be revised to read as follows:

FIGURE 29.—MINIMUM PHOTOMETRIC PERFORMANCE OF RETROREFLECTIVE SHEETING IN CANDELA/LUX SQUARE METER

Entrance angle	Observation angle				Grade
	0.2 Degree		0.5 Degree		
	White	Red	White	Red	
–4 degree	250	60	65	15	DOT–C2.
30 degree	250	60	65	15	DOT–C2.
45 degree	60	15	15	4	DOT–C2.
–4 degree	165	40	43	10	DOT–C3.
30 degree	165	40	43	10	DOT–C3.
45 degree	40	10	10	3	DOT–C3.
–4 degree	125	30	33	8	DOT–C4.
30 degree	125	30	33	8	DOT–C4.
45 degree	30	8	8	2	DOT–C4.

Issued on: January 14, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–1337 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petition to List Cagle's Map Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for the petition to add the Cagle's map turtle (*Graptemys caglei*) to the List of Endangered and Threatened Wildlife and Plants. The Cagle's map turtle is currently found only in the Guadalupe River system in southeast-central Texas in Kerr, Kendall, Comal, Guadalupe, Gonzales, Dewitt, and Victoria Counties. The Cagle's map turtle is threatened by habitat loss due to reservoir construction, water diversions, water quality degradation, and by human depredation (collecting for pet trade and intentional shootings). Information has been presented that the petition to list Cagle's map turtle is warranted but precluded by listing actions of higher priority. Because the threat to the species is not imminent, Cagle's map turtle is not proposed for listing at this time.

DATES: The finding announced in this notice was made on January 4, 1993.

ADDRESSES: Information, comments, or questions concerning this petition should be sent to the State Office Supervisor, Texas State Office, U.S. Fish and Wildlife Service, 611 East 6th Street, Room 407, Austin, Texas 78701. The petition, petition finding, and supporting data are available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish and Wildlife Biologist, at the above address (telephone 512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the Service should make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate action by other pending proposals.

Dr. Flavius Killebrew, Department of Biology and Geosciences, West Texas State University, Canyon, Texas, submitted a petition to the Service to list the Cagle's map turtle as a threatened species. The petition was dated April 16, 1991, and received by the Service on April 26, 1991. A 90-day determination that the action requested may be warranted was announced in the **Federal Register** on December 16, 1991 (56 FR 65209).

Distribution and Biology of Cagle's Map Turtle

Cagle's map turtle is a river turtle and is restricted to riverine habitat (Killebrew 1991a). This turtle is endemic to the Guadalupe River system. Cagle's map turtle is currently found only in segments of the Guadalupe and San Marcos Rivers in Kerr, Kendall, Comal, Guadalupe, Gonzales, Dewitt, and Victoria Counties in southeast central Texas (Killebrew 1992, Killebrew and Porter 1991, Porter 1992).

The current distribution of Cagle's map turtle is in three river segments: (a) The upper Guadalupe River from Kerrville to Seguin, (b), the middle Guadalupe River from Seguin to Cuero (including the San Marcos River from Ottine to its confluence with the Guadalupe River), and (c) the lower Guadalupe River from Cuero to Victoria. The distribution is based on surveys using time-constrained basking turtle frequency indices and mark-recapture studies (Killebrew 1991a, Killebrew 1991b, Porter 1992).

The populations in the upper Guadalupe River are small and disjunct (Killebrew 1991a). From Kerrville downstream to Canyon Lake, populations are described as minimal and unevenly distributed (Killebrew 1991a). Cagle's map turtle is absent from Canyon Lake proper and virtually absent in the segment from Canyon Dam downstream to New Braunfels (Killebrew 1991a). Five impoundments on the Guadalupe River (Lake Dunlap, Lake McQueeny, Lake Placid, Starcke Park Lake, and Meadow Lake) occur between New Braunfels and Seguin. In this segment, Cagle's map turtle occurs only in small populations in a 7.5 km (4.6 mile) section where riverine conditions exist (Killebrew 1991a).

The middle Guadalupe supports the main population of this species consisting of the Guadalupe River between the towns of Seguin and Cuero (about 233 river-km or 144 river-miles), (Killebrew 1991a). About 60 to 70% of the species is estimated to occur between Seguin and Cuero, constituting the largest continuous distribution of the species (Flavius Killebrew, West Texas State University, pers. comm., 1992). A smaller population has been noted on the San Marcos River in Gonzales County (Porter 1992).

The Guadalupe River from Cuero to Victoria marks the southern extent of the distribution of *G. caglei*. The number of Cagle's map turtles decrease going downstream from Cuero, and disappear in the vicinity of Victoria (Killebrew 1991a, Killebrew 1992).

Habitat requirements for Cagle's map turtle are exemplified by the Guadalupe River between Seguin and Cuero where the "river bed is mostly silt and gravel" and "gravel bars connecting long pool areas with a shallow average depth and a muddy, moderate flow" (Killebrew 1992). Basking habitat is provided by fallen trees and shrubs, logs, rocks and cypress knees (Haynes and McKown 1974, Killebrew 1992).

Cagle's map turtle has distinct size differences between the sexes. The adult male upper shell (carapace) length averages 7 to 12 cm (3 to 5 in.), while those of females are generally larger and may attain sizes up to 20 cm (8 in) (Conant and Collins 1991, Haynes 1976, Haynes and McKown 1974, Killebrew and Porter 1989, Killebrew and Porter 1990). Little is known regarding reproduction in this species. Haynes and McKown (1974) collected hatchling turtles from September through November and surmised that Cagle's map turtle nesting period occurs in late spring and early summer. Nesting habits in this species are not well known. One observed nesting took place on a sand bar (Killebrew, pers. comm., 1992). However, Haynes and McKown (1974) reported that sand bars are virtually nonexistent in many reaches of the Guadalupe River and concluded that nesting habits in Cagle's map turtle may differ from other species of *Graptemys* that often nest on sandbars.

Cagle's map turtle is highly aquatic, and optimal habitat appears to include both riffles and pools (Haynes and McKown 1974, Killebrew 1991a, Killebrew 1992). Riffles are a section of a stream/river where the water is usually shallower and the current is of greater velocity than in the connecting pools. Gravel bar riffles and transition areas between riffles and pools are considered to be important for Cagle's map turtles since these areas are considered to be highly productive of inset prey items of Cagle's map turtle (Killebrew 1991a, Killebrew 1991b). Recent radiotelemetry studies indicate males may spend most of their time in these areas (Killebrew 1991b).

Killebrew (1991b) described Cable's map turtle feeding ecology, including seasonal, size-specific, and sex-specific diet differences. This study took place near Cuero in the southern part of the range. Adult males fed primarily on insects (81% of gastrointestinal contents by weight were insects) while adult females fed primarily on mollusks (88% of gastrointestinal contents by weight were Asiatic clam, *Corbicula fluminea*) (Killebrew 1991b). The Asiatic clam, a non-native species, escaped into Texas rivers sometime between 1970 and 1973 (B. McMann, University of Texas at Arlington, pers. comm., 1992).

Male Cagle's map turtles feed extensively (45% gastrointestinal contents by weight) on trichopteran (caddisfly) larvae of the genus *Nectopsyche* (Killebrew 1991b). Killebrew (1991b) also described other insect prey for Cagle's map turtles of both sexes, including mayfly nymphs, damselfly nymphs and adults, dragonfly nymphs and adults, stonefly nymphs, and spongillafly larvae. Male juveniles fed on nearly equal quantities of snails and insects while female juveniles ate nearly equal quantities of Asiatic clams and insects (Killebrew 1991b).

Haynes and McKown (1974) examined food items in several juvenile and adult males and two subadult females collected in July. They reported a diet of insects for both sexes (mostly caddisflies). Juveniles had also eaten large number of small gnat-like dipterans. The females had eaten cadisflies and snails. Lehmann (1979) reported both sexes as insectivorous, primarily consuming caddisflies and odonates (Dragonflies and damselflies). The studies of Haynes and McKown (1974) and Lehmann (1979) involved small sample sizes and collections during a one or two month period.

Threats to Cagle's Map Turtle

Cagle's map turtle warrants protection under the Act for the following reasons: (1) Cagle's map turtle has an extremely limited distribution; (2) within its current range, suitable habitat for Cagle's amp turtle is fragmented and becoming more scarce. Cagle's map turtle faces further losses of suitable habitat from proposed impoundments and water diversions; (3) Cagle's map turtles diet of aquatic invertebrates (particularly insects) may be adversely affected by altered instream flow, pollution and increased sedimentation; and (4) human depredation is occurring in the from of intentional shootings and over-collecting for the pet trade, zoos, museums, and scientific studies (Killebrew 1991a, Killebrew 1992). These factors are discussed below.

Cagle's map turtle is a restricted endemic species, occurring only in segments of the Guadalupe River and a small contiguous reach of the San Marcos River. Mark-recapture studies on a 27 km (17 mi) segment of the Guadalupe River near Cuero indicates that the population in the study area is stable (Killebrew 1992). The populations in the upper Guadalupe River are vulnerable due to their limited size and disjunct distribution.

The validity of historic records from the San Antonio River system (Dixon 1987, Haynes 1976, Haynes and McKown 1974) is uncertain (Porter 1992). The holotype and paratype specimens were from the Guadalupe River (Haynes and Mckown 1974) and only a few sight records were reported from the San Antonio River system. A recent survey of the San Antonio did not find any Cagle's map turtles (Porter 1992).

Historic records of Cagle's map turtle from the Blanco River and San Marcos River above Ottine exist, but this species was not found in those reaches during recent field work (Killebrew, pers. comm., 1992, Porter 1992).

Cagle's map turtle faces further riverine habitat losses and degradation in the form of small and/or large impoundments and water diversions. Cagle's map turtle is absent from deep water/non-riverine habitat in its range (Killebrew 1991a).

Cagle's map turtles occur where the Guadalupe River empties into Canyon Lake (an 8,240 acre reservoir) and they occur above the reservoir but not in the lake proper (Killebrew 1991a). The water released from the deeper and cooler portion of Canyon Lake may decrease the suitability of riverine habitat for Cagle's map turtle below Canyon Dam. Cagle's may turtle has been observed in only one small, warm pool between Canyon Lake and New Braunfels (Killebrew 1991a).

One effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movement and could fragment a population. Construction of smaller impoundments and human activities on the river have likely eliminated or reduced foraging and basking habitats. Since Cagle's map turtle appears not to persist in lentic or lacustrine (lake-like) conditions (Killebrew 1992), impoundments reduce total habitat area and suitability, as well as fragment remaining habitat.

Proposed impoundments on the Guadalupe River and certain tributaries would adversely affect the Cagle's map turtle. The Texas Water Development Board (1990) recommended two reservoir sites (Lindenau and Cuero) in the Guadalupe River basin be developed to meet regional water supply needs. The proposed Cuero Reservoir would eliminate over half of the suitable habitat used by the main population (Killebrew 1991a). The Cuero Reservoir could be completed about 10 years from the time reservoir development begins in earnest. Other proposed reservoirs in the Guadalupe River system include: (a) Upper Guadalupe Reservoir; (b) Ingram Reservoir; (c) Lindenau Reservoir; (d) Clopton Crossing Reservoir; and (e) Lockhart Reservoir (Frye and Curtis 1990, Texas Water Development Board 1990). None of these reservoirs are on the Guadalupe River proper, but their construction would have effects on the Guadalupe River, its flow and physical habitat, existing Cagle's map turtle habitats, and the potential for species recovery in tributaries of the Guadalupe River. The City of San Antonio is currently examining alternate water supplies and is considering transfers from the Guadalupe River Basin and elsewhere to meet their needs. Water diversions from the Guadalupe River may affect Cagle's map turtle habitat in various ways depending upon how much water is diverted and how the diversion is accomplished. Although dams and reservoirs have high potential to impact Cagle's map turtle, construction of these impoundment projects is not occurring at this time and do not constitute an immediate or ongoing threat.

The distribution and abundance of Cagle's map turtles's prey base of aquatic insects may be affected by the proposed impoundments or diversions noted above. Male Cagle's map turtles feed extensively on caddisfly larvae of the genus *Nectopsyche* (Killebrew 1991b). This caddisfly genus has been identified as sensitive to and intolerant of organic/nutrient pollution (Hilsenhoff 1987). Other Cagle's map turtle insect prey items (described above) have been characterized as sensitive to organic pollution and other environmental changes (U.S. Environmental Protection Agency 1990). These insect groups (mayflies, stoneflies, and odonates) are likely to be adversely affected by increased organic waste/nutrient pollution or water quality degradation.

The availability of the Asiatic clam as a food item for female Cagle's map turtles is likely to be variable in time and space. The Asiatic clam is known for its explosive population growth and massive mortalities (die-offs) (Sinclair 1971) and is vulnerable to flooding (B. McMann, pers. comm., 1992). Dependence on this unreliable food source may further reduce population viability for Cagle's map turtle.

Currently, the cities of New Braunfels and Seguin are major point sources of treated municipal wastewater on the Guadalupe River, permitted for a combined discharge of 10.23 million gallons per day (MGD). Two more wastewater treatment plants in the area are planned with a combined permitted discharge of about 5 MGD. The capability of the Guadalupe River to assimilate this and other nutrient loading depends on the amount of steam flow.

Cagle's map turtles are threatened by human depredation in the form of over-collecting for the pet trade and intentional shootings (Killebrew, pers. comm., 1991, Killebrew 1991a, Killebrew 1992). Dealers in the pet trade are evidently selling Cagle's map turtles to wholesalers and have offered $50 per hatchling and $400 per breeding pair to map turtle collectors (Killebrew, pers. comm., 1991). Regulation of this commercial exploitation is minimal at the State level and there are no Federal regulations. State law requires only a hunting license to collect, shoot, sell, or trade Cagle's map turtle. Currently, exportation of Cagle's map turtles require only a declaration to the Fish and Wildlife Service at Ports of Entry. About 5% of individuals handled in the field have shell deformities indicative of shootings (Killebrew, pers. comm., 1992).

Section 4(b)(3)(B) of the Endangered Species Act requires that the Service make one of the following 12-month findings on any petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but is precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Section 4(b)(3)(B)(ii) requires that petitions for which the action requested is found to be warranted will be promptly published in the **Federal Register** along with a general notice and complete text of a proposed regulation to implement such action.

On the basis of the best available scientific and commercial information and the following assessment of Service listing priorities and progress, the Service finds that listing of Cagle's map turtle is warranted, but precluded by work on other species having higher priority for listing. Although the degree of threat to the species from impoundment projects is high, it is not an ongoing or imminent threat. Degrading water quality from pollution and human depredation is ongoing, but these threats by themselves would not cause the species to go extinct. The Service is expeditiously working on listing a backlog of species having higher priority for protection under the Endangered Species Act. The Service intends to list this species as soon as listing actions for species with a higher listing priority are completed. (With this petition finding of warranted but precluded, Cagle's map turtle will be assigned to Category 1 on the Service's Animal Notice of Review.)

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Author

The primary author of this notice is Patrick Connor (see **ADDRESSES** above).

Authority

The authority for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 4, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1385 Filed 1–21–93; 8:45 am]

BILLING CODE 4310-55-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board and Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board (UAB) and Joint Council on Food and Agricultural Sciences (JC).

Date: February 16–19, 1993.

Time: 8 a.m.—5 p.m., February 16, 1993; 8 a.m.—2:30 p.m., February 17, 1993; 2:45 p.m.—5:30 p.m., February 17, 1993 (UAB and JC meet separately in workgroups); 8 a.m.—5 p.m., February 18, 1993 (UAB only); 8 a.m.—1 p.m., February 19, 1993 (UAB only).

Place: U.S. Department of Agriculture, 107A Administration Building, 12th and Independence Ave. S.W. Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting and site visits as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The UAB and JC will be preparing separate reports on FY 1995 priorities for agricultural research, teaching, and extension. The UAB and JC will also review budget requests for FY 1994.

Contact person for agenda and more information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board and Joint Council on Food and Agricultural Sciences; room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 720–3684. Done in Washington, DC, this 12th day of January 1993.

John Patrick Jordan,

Administrator.

[FR Doc. 93–1482 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Designation of the Cairo (IL) Agency to provide Class X or Class Y Weighing Services

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of the Cairo Grain Inspection Agency, Inc. (Cairo), to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act), in the Cairo, Illinois, geographic area.

EFFECTIVE DATE: December 16, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1992, **Federal Register** (57 FR 45033), FGIS announced the designation of Cairo to provide official inspection services under the Act, effective November 1, 1992. Subsequently Cairo asked FGIS to amend their designation to include official weighing services.

Section 7A(c)(2) of the Act authorizes FGIS' administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Cairo is qualified to provide official weighing services in their currently assigned geographic area.

Effective December 17, 1992, and terminating upon the end of Cairo's designation to provide official inspection services (October 31, 1995), Cairo's present designation is amended to include Class X or Class Y weighing in their assigned geographic area, as specified in the May 1, 1992, **Federal Register** (57 FR 18863).

Interested persons may obtain official services in the Cairo area by contacting Cairo at 618–734–0689.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 12, 1993

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 93–1411 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–EN–F

Correction of the Name of the Applicant Designated in the Schaal (IA) Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice Correction.

SUMMARY: The notice published in the December 1, 1992, **Federal Register** incorrectly stated the name of applicant designated to provide official services in the Schaal geographic area. FGIS is correcting that notice by changing the name Lewis D. Schaal dba D. R. Schaal Agency to D. R. Schaal Agency, Inc.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

In the December 1, 1992, **Federal Register** (57 FR 56899), FGIS incorrectly stated the name of the applicant selected for designation in the Schaal area as Lewis D. Schaal dba D. R. Schaal Agency. This firm had incorporated, and the correct name is D. R. Schaal Agency, Inc.

FGIS is publishing this notice to correct the name of the applicant designated.

CORRECTION: In FR Doc. 92–28807, beginning on page 56899 (57 FR 56899) in the issue of Tuesday, December 1, 1992, make the following correction: on page 56899, in the second column, under "SUMMARY", in the first paragraph, change "Lewis D. Schaal dba D. R. Schaal Agency (Schaal)" to "D. R. Schaal Agency, Inc. (Schaal)."

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 12, 1993

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 93–1410 Filed 1–21–93; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Canyon Timber Sale, Clearwater National Forest, Idaho County, ID; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will analyze and disclose the environmental impacts of a proposal to harvest and reforest approximately 305 acres of timber and reconstruct approximately 2.5 miles of existing roads in the Canyon Creek and Glade Creek drainages on the Lochsa Ranger District. An EIS (Environmental Impact Statement) will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final EIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The purpose of the proposed action is to improve growth on timber producing ground, soften existing visual impacts, and lessen impacts to biodiversity.

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received by March 12, 1993 to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency by April 30, 1993. The Final EIS and Record of Decision are expected in July of 1993.

ADDRESSES: Send written comments to Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

FOR FURTHER INFORMATION CONTACT: George Harbaugh, Canyon Interdisciplinary Team Leader, or Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Clearwater National Forest, (208) 926–4275.

SUPPLEMENTARY INFORMATION: The Canyon study area is located in T33N and T34N, R7E of the Boise Principal Meridian. Clearcutting with reserve trees followed by reforestation (8 harvest units on 124 acres) is proposed to improve forest growth and lessen the impacts to biodiversity. Seedtree or shelterwood cutting followed by interplanting (7 harvest units on 124 acres) is proposed adjacent or between past harvest units to reduce stand fragmentation and soften visual impacts of past harvests. Salvage of dead and dying timber (3 harvest units on 57 acres) is proposed to maximize timber yield and improve stand conditions. Ten units are within the Canyon Creek drainage, and eight units are within the Glade Creek drainage.

The Clearwater National Forest Land and Resource Management Plan provides overall guidance for management activities in the potentially affected area through goals, objectives, standards, guidelines, and management area direction. Management areas found within the Canyon study area emphasize management for timber production, with big game winter range and timber on low elevation forested ground, and riparian resources along streamcourses.

Scoping for this timber sale began in 1990 with the Canyon Integrated Analysis. This analysis was completed in May of 1991, and a Scoping Letter was sent to Federal and State agencies, key interest groups, and individuals. After an Interdisciplinary Team refined the proposed action, identified issues, and formulated alternatives, a legal notice about the proposal appeared in three local newspapers during April 1992. Key issues identified by the Interdisciplinary Team are:

1. Potential impacts to biodiversity (stand fragmentation, snags, and old growth) of the area;
2. Potential reductions in timber growth and yield;
3. Proposed landscape units over 40 acres in size; and
4. Potential impacts to fisheries (chinook salmon).

In response to the issues identified, nine alternatives have been developed, five in detail, including the "no action" alternative.

Because of the time lapse since scoping began and the decision to prepare an EIS, the Forest Service is now looking for further information and comments from Federal, State, and local agencies, industry, and from people or groups who are interested in or affected by the proposed action. No meetings are planned, but letters, phone calls, or personal visits are invited for the purpose of providing information related to this proposal. This additional information will be used to prepare a draft EIS. This process will include:

1. Determination of significant issues;
2. Determination of potential cooperating agencies;
3. Identification and elimination from detailed study of nonsignificant issues, or issues that have been covered by previous environmental review;
4. Identification of additional, reasonable alternatives; and
5. Identification of potential environmental effects of the alternatives.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which is now through March 12, 1993; and
2. Review of the Draft EIS in May and June, 1993.

The Forest Service expects to file the Draft EIS with the Environmental Protection Agency by April 30, 1993. The Final EIS and Record of Decision are expected in July of 1993. The responsible official is the Forest Supervisor of the Clearwater National Forest, Forest Supervisor's Office, 12730 Highway 12, Orofino, ID 83544.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wiconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS.

Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: January 11, 1993.

Win Green,

Forest Supervisor.

[FR Doc. 93–1449 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Park Service

Reintroduction of Black-footed Ferrets Into the Conata Basin/Badlands Area in South Dakota

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior; National Park Service, Interior.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On Friday, February 14, 1992, a Notice of Intent (NOI) to conduct public meetings and prepare an Environmental Impact Statement (EIS) evaluating reintroduction of black-footed ferrets into the Conata Basin/Badlands Area was published in the **Federal Register** (Vol. 57, No. 31, pages 5415–5416). The Conata Basin/Badlands Area refers to the Buffalo Gap National Grassland and the Badlands National Park in southwestern South Dakota. The earlier NOI was published under the signatures of the regional directors, USDI Fish and Wildlife Service and National Park Service and Regional Forester, USDA Forest Service. The purpose of the earlier NOI was to solicit issues, concerns, and suggestions from the public to be used in the EIS to develop and evaluate alternatives to ferret reintroduction in the Conata Basin/Badlands Area.

The USDA Forest Service, Nebraska National Forest, which administers the Buffalo Gap National Grassland, intends to revise the scope of the action in the earlier NOI to include possible amendment of the Land and Resource Management Plan (Forest Plan) for the Nebraska National Forest. This revised NOI serves to correct a deficiency in the earlier notice.

DATES: Publication of Draft EIS: Early 1993; Public comment period on Draft EIS and any proposal to amend the Forest Plan for the Nebraska National Forest: Conducted concurrently for 45 days following the publication date of the DEIS.

ADDRESSES: Written correspondence about any proposed Forest Plan amendments would be sent during the 45-day comment period to: Mary Peterson, Forest Supervisor, Nebraska National Forest, 270 Pine Street, Chadron, NE 69337.

FOR FURTHER INFORMATION CONTACT: Greg Schenbeck, Fish and Wildlife Staff Officer, Nebraska National Forest (308) 432–0313, or Peter McDonald, Wildlife Biologist, Wall Ranger District, (605) 279–2125.

SUPPLEMENTARY INFORMATION: Under the earlier NOI, the Fish and Wildlife Service, Forest Service, and National Park Service jointly proposed the reintroduction of black-footed ferrets (*Mustela nigripes*) into the Conata Basin/Badlands Area—specifically the Buffalo Gap National Grassland and Badlands National Park—in South Dakota. The proposed Reintroduction Area of approximately 42,000 acres in southwestern South Dakota supports mixed grass prairie interspersed with barren lands. More than 99 percent of the area is public land administered by the U.S. Forest Service and National Park Service.

The Land and Resource Management Plan (Forest Plan) for the Nebraska National Forest guides all natural resource management activities through its goals, objectives, standards, guidelines, and designations of "Management Areas." The Forest Plan Final Environmental Impact Statement and Record of Decision (ROD) disclosed the environmental effects of implementing the Forest Plan goals, standards, and guidelines. Forest Service policy is that any proposed changes to the "* * * goals, objectives, Forest or management area direction, implementation schedules, or other Plan contents require an amendment to the Forest Plan" (FSH 1909.12–92–1). Therefore, any proposals presented in the Ferret Reintroduction EIS (draft due in early 1993) that would not be consistent with the Forest Plan for the Nebraska National Forest would require an amendment to the Plan. Depending on any decision made connected with the EIS, the Nebraska National Forest Plan may have to be amended to do one or more of the following:

- —Create a new management area designation for any designated Experimental Population Area;
- —Create a new management area designation for any designated Reintroduction Area on National Grassland;
- —Create new standards and guidelines for management of black-footed ferrets and their habitat;
- —Create new standards and guidelines for ferret surveys, ORV use, sport shooting of prairie dogs, furbearer trapping, public access and use, and for the location and timing of range improvements within any designated Reintroduction Area on the National Grassland;
- —Create new standards and guidelines for educational activities related to black-footed ferrets and their recovery; and
- —Append the Ferret Reintroduction EIS to the Forest Plan.

A Draft Environmental Impact Statement is scheduled to be completed and presented to the public in early 1993. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Scoping for any proposed amendments to the Nebraska National Forest Plan would occur concurrently with this EIS process, with a decision for any amendments to come concurrently with the signing of the Record of Decision for this Ferret Reintroduction EIS.

Dated: January 11, 1993.

Mary H. Peterson,

Forest Supervisor.

[FR Doc. 93–1384 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Building and Zoning Permit Systems.

Form Number(s): C–411

Agency Approval Number: 0607–0350

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 500 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts the Survey of Building and Zoning Permit Systems to gather data from State and local building permit officials on the existence of new permit issuing systems or changes to existing systems. The questionnaire asks for such items as geographic coverage and types of construction for which permits are issued. We use data gathered in this survey to update the universe of building permit–issuing places, the sampling frame for the Building Permits Survey (BPS). The BPS provides widely used measures of construction activity, including the economic indicator Housing Units Authorized by Building Permits.

Affected Public: State and local governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–1510 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Plant Capacity Utilization.

Form Number(s): MQ–C1.

Agency Approval Number: 0607–0175.

Type of Request: Revision of a currently approved collection.

Burden: 18,000 hours.

Number of Respondents: 9,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: This survey provides information on the use of industrial capacity by Standard Industrial Classification (SIC) for manufactured products and is the only statistical series that provides 4–digit SIC data for use in other Government economic series. Information is collected on the level of output in the fourth quarter of the year in terms of value of production. The survey will also be used to collect data on the level of output that could have been achieved under specified conditions representing "full production" capability and "National emergency production" capability. Data are used by Government agencies, business firms, trade associations, and research organizations to measure inflationary pressures and capital flows, to understand productivity determinants, and to analyze and forecast economic and industrial trends. In this clearance package, we request minor revisions to the definitions and criteria for determining emergency production and a check box item to be added on the length of time to achieve emergency production levels. These changes are intended to make the concept of emergency production more clear to respondents and to make the information more useful to emergency planners.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–1511 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–07–F

National Oceanic and Atmospheric Administration

[Docket No. 921068–2268]

Financial Assistance for Research and Development Projects to Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and off the U.S. South Atlantic Coastal States

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year (FY) 1993, Marine Fisheries Initiative (MARFIN) funds are expected to be available to assist persons in carrying out research and development projects that optimize the use of U.S. Gulf of Mexico and South Atlantic (North Carolina to Florida) fisheries involving the U.S. fishing industry (recreational and commercial), including, but not limited to, harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement, recovery and maintenance. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be selected for funding. Areas of MARFIN emphasis for FY 1993 were formulated from recommendations received from a MARFIN Steering Committee, NMFS research and operations officials and from input received in response to a **Federal Register** notice of July 13, 1992, that solicited public comments and recommendations on proposed FY 1993 MARFIN Areas of Emphasis.

DATES: Applications for funding under this program will be accepted between January 22, 1993, and 6 p.m. e.s.t. on March 23, 1993. Applications received after that time will not be considered for funding.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES**) from March 29, 1993, through March 31, 1993.

Successful applicants generally will be selected within 180 days from the date of publication of this notice and the earliest start dates of successful applicant project awards will normally be about 210 days after the date of publication of this notice.

ADDRESSES: Send applications to: David Pritchard, Chief, Cooperative Programs Division, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Questions of an administrative nature should be referred to: Grants Management Division, Attn: Jean West, Chief, Grants Operations Branch, NOAA, SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0926.

Send comments on the collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Pritchard, 813–893–3720.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fish and Wildlife Act of 1956, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary) to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriation Act of 1993 makes funds available to the Secretary for FY 1993. This solicitation makes available about $1.8 million (including approximately $0.5 million for continuing projects) for financial assistance under the MARFIN program to conserve, manage and enhance fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries[1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries. This program is described in the Catalog of Federal Domestic Assistance under program number 11.433 Marine Fisheries Initiative.

II. Areas of Special Emphasis

A. Proposals for FY 1993 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. While the areas for special emphasis are listed below, proposals in other areas will be considered on a funds available basis.

In addition to reference to the areas of special interest listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or a combination of both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS, and to participate with NMFS in various cooperative activities and protocols that will be determined by consultations between NMFS and successful applicants before project grants are awarded. In addition, recipients of financial assistance for multiple budget periods under this program shall include funding in their applications for travel expenses for the principal investigator to participate in one annual project review and evaluation meeting in St. Petersburg, Florida.

Research needs identified in fishery management plans and amendments prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included by reference. Areas of special emphasis for FY 1993 include:

1. Shrimp Trawler Bycatch

Studies are needed to contribute to the regional marine shrimp trawler bycatch program being conducted by NMFS in cooperation with state fishery management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, the Councils, and the Commissions. Applicants should refer to the Regional Bycatch Research Plan prepared by the Gulf and South Atlantic Fisheries Development Foundation when developing research proposals related to bycatch. In particular, the studies should address:

a. Data collections and analyses to expand and update current bycatch estimates temporally and spatially, including offshore, nearshore, and inshore waters. Emphasis should be on inshore and nearshore waters (less than 10 fathoms (18.3 m)).

b. Assessments of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overused species under the jurisdiction of the Councils.

c. Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

d. Social and economic assessments of the impact of bycatch and of bycatch reduction options on coastal communities and industries.

e. Economic studies of the dynamic effects of bycatch on the bycatch fisheries; e.g., mackerel and reef fish.

f. Improved methods for communicating with the improving technology and information transfer to the shrimp industry.

g. New regulations have been proposed for the conservation of sea turtles in the inshore waters of the Gulf and South Atlantic. These regulations depend mainly on the use of turtle excluder devices (TEDs). More information, however, is needed on:

(1) The seasonal and spatial distribution of sea turtles in inshore waters, including species and size information.

(2) New TED designs and approaches specifically for the smaller shrimp trawls characteristic of the inshore waters.

(3) Alternatives to TEDs such as tow-time monitoring devices.

(4) Information by area and season on the catch and mortality of sea turtles by shrimp trawlers.

2. Highly Migratory Pelagic Fisheries

a. Longline Fishery, Including Bycatch

A number of pelagic longline fisheries exist in the Gulf and South Atlantic. Most target highly migratory species, such as tunas, billfish, sharks, and swordfish. These fisheries have evolved rapidly over the last decade, with increases in fishing effort and changes in fishing gear and tactics. These changes need to be characterized and their effects quantified. High priority areas include:

(1) Characterization of specific longline fisheries, including targeted species, bycatch catch per unit effort, and biological parameters (e.g., sex, and reproductive state) by gear type, area, and season.

(2) Evaluation of vessel log data for monitoring the fisheries.

(3) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals

(4) Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

b. Sharks

Little is known about shark resources in the Gulf and South Atlantic. A Secretarial Fisheries Management Plan (FMP) for sharks has been developed that identifies a number of research needs. In general, these needs can be grouped as:

(1) Characterization of the directed and bycatch commercial and recreational fisheries from existing and new data. Emphasis should be on species, size, and sex composition and catch per unit effort by season, area, and gear type.

(2) Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age composition, and reproduction.

(3) Determination of baseline costs and returns for commercial fisheries that take and retain sharks, and estimations of demand curves for shark products and recreational shark fisheries.

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[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna and shellfish, that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Gulf of Mexico shrimp, groundfish, menhaden, South Atlantic snapper-grouper, etc.

(4) Development of species profiles and stock assessments for sharks taken in significant quantities by commercial and recreational directed and bycatch fisheries. Assessments can be species-specific or for species groups, as long as the latter do not differ substantially from the groups identified in the Secretarial Shark FMP.

(5) Identification of coastal sharks using laboratory (tissue analysis) methods, and preservation of tissue samples for mercury analysis.

3. Reef Fish

Many species within the reef fish complex are showing signs of being overutilized, either by directed or bycatch fisheries. The ecology of reef fish makes them especially vulnerable to overfishing because they tend to concentrate over specific types of habitats that are patchily distributed. The patchy distribution of the resource can make traditional fishery statistics misleading, because catch per unit effort can remain relatively high as fishermen move from one area to another, yet overall abundance of the resource can be declining sharply. Priority research areas include:

a. Collection of basic biological data for species in commercially and recreationally important fisheries, with emphasis on stock and species identification, age and growth, early life history, the source of recruits (especially amberjack and vermilion snapper in the Gulf of Mexico) and reproductive biology. The behavior of age-0 and age-1 red snapper is another important research need. Also important is the effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

b. Identification and quantification of natural and human-induced mortality (such as the loss of undersized fishes caught in deep water).

c. Mapping and quantification of reef fish habitat, primarily from existing biological and physical data. Special attention should be directed to determine the habitat and limiting factors for red snapper in the Gulf of Mexico.

d. Identification and characterization of spawning aggregations by species, areas, and seasons.

e. Stock assessments to establish the status of major recreational and commercial species. Especially needed are innovative methods for stock assessments on aggregate species, including the impact of fishing on genetic structure.

f. Research in direct support of management techniques, including catch-and-release mortality, marine fishery reserves, gear and fishing tactic modifications to minimize bycatch, balancing traditional fisheries use with alternate uses (e.g., eco-tourism and sport diving), and economic and social profiles and studies to evaluate impacts of management options. Also needed are studies to determine effects of fishing closures and quotas on alternative commercial and recreational fisheries.

g. Research to evaluate the use of reef fish marine reserves as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic.

h. Use of available data to describe the socioeconomic behavior of recreational fishermen (e.g., effects of switching species, use of navigational devices (e.g., Loran, GPS, etc.) to consistently target specific fish concentrations, and bag limits on recreational trips).

Additional explanation of research needs for Gulf reef fish is available from a MARFIN-supported plan for cooperative reef fish research in the Gulf of Mexico.

4. Coastal Herrings

Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and South Atlantic. Most of the available data come from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks, their importance as prey, and in some instances as predator species, their potential for development as commercial and recreational fisheries needs to be understood. General research needs include:

a. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, and environmental relationships. Emphasis should be given to controversial species, such as Spanish sardine.

b. Description and quantification of predator-prey relationships between coastal herring species and those such as the mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in high demand by commercial and recreational fisheries.

5. Coastal Migratory Pelagic Fisheries

The demand for many of the species in this complex by commercial and recreational fisheries has led to overfishing for some, such as Gulf king and Spanish mackerel, and Atlantic Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and ultimately will demand international management attention. Current high priorities include:

a. Development of recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-independent data sources, although indices of year-class success using occurrence in bycatch is also important.

b. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length frequency and life history information.

c. Information on population of coastal pelagics overwintering off North Carolina, South Carolina, and Georgia, especially population size, age, food, and movements.

d. Collection of basic biostatistics for coastal migratory pelagic species (e.g., cobia and dolphin) to develop age-length keys and maturation schedules for stock assessments, where significant gaps in the database exist.

e. Demand and supply functions for recreational and commercial fisheries for king macherel in the Gulf of Mexico and for Spanish mackerel in the South Atlantic. Emphasis can be on changes in marginal values of producer and consumer surplus, since the studies would be used in allocation frameworks where total values are not necessarily required.

6. Groundfish and Estuarine Fishes (Weakfish, Menhaden, Spot, Croaker, and Red Drum)

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and conservation is needed. General research needs include:

a. Measurement of general levels of sportfishing effort and associated economic and biological parameters (including other factors regarding retained and released catch) for red drum in both the Gulf of Mexico and the South Atlantic.

b. Definitions of the stocks of weakfish in the South Atlantic.

c. Information on the immigration and escapement of red drum from state waters into the exclusive economic zone in the Gulf of Mexico.

d. Stock identification, including determination of migratory patterns through tagging studies, monitoring long-term changes in abundance, growth rates and age structure, and determination of inshore versus offshore components of the fishery.

e. Monitoring of juvenile populations and population indices to determine year-class strength.

f. Catch and effort statistics from recreational and commercial fisheries, including size and age structure of the catch, to develop production models.

g. Biological and economic analyses of the optimum utilization of long-term fluctuating populations.

h. Quantification of the bycatch in the commercial menhaden purse seine fishery, and the coastal herring purse seine and beach seine fisheries.

7. General

There are many areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, and analysis, and for better conservation and management of resources. Examples of high priority research topics include:

a. Development and refinement of social and economic models of fisheries. Models should focus on effects of management alternatives, such as quotas, moratoria, fishery reserves, bag limits, size limits, gear restrictions, and limited area and seasonal closures.

b. Assessment of the changes in recreational and commercial values that have resulted from past management actions for red drum, shrimp, mackerels, and reef fish.

c. Development and evaluation of controlled-access approaches (e.g., limited entry) for species under Federal management. Of special interest are studies that would address fisheries where both state and Federal jurisdictions are involved, such as the Gulf shrimp fishery. Studies of systems for mackerel and reef fish will have the highest priority since the Councils are considering controlled-access approaches to the management of these species. Studies should consider existing management strategies and how these strategies might be benefited or adversely impacted by controlling access. Additionally, they should address how a controlled-access program should be introduced into affected fisheries.

d. Development of improved methods and procedures for technology transfer and education of constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introductions of conservation gear and fishing practice modifications.

e. Development of new modeling and analytical approaches to understanding basic processes in fishery productivity and energy transfer that can be applied to specific fishery resource problems.

f. Development of baseline socio-demographic information on federally managed South Atlantic and Gulf of Mexico fisheries.

B. MARFIN financial assistance started in FY 1986. For FYs 1986 through 1992, financial assistance awards totaled about $12.5 million.

C. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research projects, with consideration of the magnitude of the eventual economic benefit that may be realized. Both short-term projects that may yield more immediate benefits and projects yielding longer term benefits will receive equal consideration.

D. Further information on current Federal programs that address the above-listed priorities may be obtained from the NMFS Southeast Regional Office (see **ADDRESSES**).

III. How to Apply

A. Eligible Applicants

1. Applications for grants or cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

a. Any individual who is a citizen or national of the United States;

b. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 app. U.S.C. 802).[2]

2. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full, (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department of Commerce (DOC) are made. Any first-time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact NOAA organizations engaged in fisheries research in the Gulf of Mexico and off the U.S. South Atlantic, or David Pritchard at the NMFS Southeast Regional Office (see **ADDRESSES**) for information on NOAA programs. Documents available from this office that may be useful to the applicant include:

a. A Cooperative Reef Fish Research Program for the Gulf of Mexico.

b. A Cooperative Bycatch Research Plan for the Southeast Region.

c. Strategic Plan of the National Marine Fisheries Service.

d. National Status of Stocks Report.

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[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States. No more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI: (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (3) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

e. Various fishery management plans and plan amendments produced by the Councils and the Commissions.

B. Amount and Duration of Funds

Under this solicitation for FY 1993, NMFS estimates about $1.8 million will be available to fund fishery research and development projects (about $1.3 million for new projects and about $0.5 million for continuing projects). Projects planned for more than one year in duration will not compete for funding in subsequent years. Continued funding for such projects, however, is contingent upon the availability of funds from Congress, satisfactory performance, and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific grant or to obligate all or any part of the available funds. Awards generally will be made no later than 90 days after the funding selection is determined and negotiations are completed. Under no circumstances should an applicant proceed with the proposed project until such time that he or she has received a signed award from the Grant Officer. Notwithstanding any verbal assurance that the applicant may have received, there is no obligation on the part of the Department of Commerce to cover any costs. An applicant that incurs costs prior to an award being made proceeds solely at his or her own risk.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in OMB circulars. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

D. Format

1. Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown by category or expenditures with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

2. Applications must be submitted in the following format:

a. *Cover Sheet:* An application must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project. Applicants may obtain copies of the form from the NMFS Southeast Regional Office, or NOAA Grants Management Division (see ADDRESSES).

b. *Project Summary:* Each project must contain a summary of not more than one page that provides the following information:

(1) Project title.

(2) Project status (new or continuing). If continuing, show previous financial assistance award number and beginning/ending date.

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed. For continuing projects, the applicant must briefly describe progress to date, in addition to any changes to the statement of work previously submitted.

(8) Total Federal funds requested (for multi-year projects, identify each year's requested funding).

(9) Cost-sharing to be provided from non-Federal sources (for multi-year projects, identify each year's cost-sharing). Specify whether contributions are project related cash or in-kind.

(10) Total project cost.

c. *Project Description:* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of Problem(s):* Describe how existing conditions prevent the full use of Gulf of Mexico and/or South Atlantic fishery resources. In this description, identify:

(a) The fisheries involved;

(b) The specific problem(s) that the fishing industry, management agencies or environmental organizations have encountered;

(c) The sectors of the fisheries that are affected; and

(d) How the problem(s) prevent the fishing industry or management agencies from using or managing the fishery resources.

(2) *Project Goals and Objectives:* This is one of the most important parts of the Project Proposal. Use the following guidelines for stating the goal or objective of the project.

(a) Keep it simple and easily understandable.

(b) Be as specific and quantitative as possible.

(c) Specify the "what and when;" avoid the "how and why".

(d) Keep it attainable within the time, money and manpower available.

(e) Use action verbs that are accomplishment oriented.

(3) *Need for Government Financial Assistance:* Demonstrate the need for assistance. Any appropriate data base to substantiate or reinforce the need for the Project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(4) *Results or Benefits Expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Project Statement of Work:* The Statement of Work is a scientific or technical action plan of activities that are to be accomplished during each budget period of the project. A separate Statement of Work is to be submitted for each budget period of the project proposal. Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities. Cooperative agreement procedures should identify applicant activities and deliverables, NMFS activities and deliverables, and applicant/NMFS joint activities and deliverables.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item (d)) that are to be attained in each month covered by the statement of work.

(6) *Participation by Persons or Groups Other Than the Applicant:* Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the initial proposal.

(7) *Federal, State, and Local Government Activities:* List any programs (Federal, state, or local government or activities, including state Coastal Zone Management Programs, Sea Grant, Southeast Area Monitoring and Assessment Program, Public Law 99–659 and Cooperative Statistics) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project Management*: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(9) *Monitoring of Project Performance*: Identify who will participate in monitoring the project.

(10) *Project Impacts*: Describe the impact of the project in terms of anticipated increased production, sales, exports, product quality and safety, improved management, social values or any other that will be produced by this project. Describe how these products or services will be made available to the fishery and management communities.

(11) *Evaluation of Project*: The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical or economic feasibility, to evaluate user acceptability, or to quantify the results of the project in promoting increased production, sales, exports, product quality and safety, social values, management effectiveness or other measurable factors.

(12) *Total Project Cost*: Total project cost is the amount of funds required to accomplish the proposed statement of work, and includes contributions and donations. All costs must be shown in a detailed budget. Cost-sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (ED–357 NG; Rev. 3–80) is available from the offices listed (see ADDRESSES). A separate budget must be submitted for each project. An applicant submitting a multi-year project must submit budgets covering total project costs (including individual costs per year) and budgets covering each budget period. The initial funding request must cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(i) *Personnel.*

(a) *Salaries*: Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

(b) *Fringe Benefits*: Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent in the project. For example, if an employee spends 20 percent of his or her time on the project, 20 percent of his or her fringe benefits should be charged to the project.

(ii) *Consultants and Contract Services*: Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliverables expected, and timeframe. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB circulars.

(iii) *Travel and Transportation:* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. All applicants must include an estimated budget for the principal investigator to attend an annual meeting in the NMFS Southeast Region to review the progress being made on attaining the objectives of ongoing multiyear project activities

(iv) *Equipment, Space or Rental Costs:* Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

(v) *Other Costs.*

(a) *Supplies:* Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies must be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(b) *Postage and Shipping:* Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(c) *Printing Costs:* Include costs associated with producing materials in conjunction with the project.

(d) *Long Distance Telephone and Telegraph:* Identify estimated monthly bills.

(e) *Utilities:* These costs should be included under Indirect Costs unless purchased in a large quantity to be specifically identified to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(f) *Indirect Costs:* This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current, approved, negotiated Indirect Cost Agreement must be included. It is the policy of the Department of Commerce that indirect costs shall not exceed direct costs.

(g) *Additional Costs:* Indicate any additional costs associated with the project that are allowable under OMB Circulars A–21, A–87, and A–122.

(h) *Requested Start Date:* Normally, applications that are selected for funding will result in financial assistance awards by the NOAA Grants Division within about 210 days after publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

d. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

E. Application Submission and Deadline

1. *Deadline:* (see DATES).

2. *Submission of Applications to NMFS:* Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the NMFS Southeast Regional Office (see ADDRESSES). Questions of an administrative nature should be referred to the Grants Management Division, OA321 (see ADDRESSES).

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. Unless otherwise specified by statute, in reviewing applications for grants and cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

a. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from applicant's participation?

2. For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Adequacy of research/development/demonstration for managing or enhancing Southeast marine fishery resources, addressing especially the possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing or managing the use of Southeast marine fishery resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

3. Applications will be ranked by NMFS into three groups: (a) highly recommended, (b) recommended, and (c) not recommended. These rankings will be presented to a panel of fishery experts convened by NMFS. The panel members will also individually consider the significance of the problem addressed in the project, along with the technical evaluation and need for funding. The panel members' individual recommendations will aid NMFS in determining the appropriate level of funding for each project.

B. Consultation with Others

NMFS will make project descriptions available for review as follows:

1. *Public Review and Comment:* Applications may be inspected at the NMFS Southeast Regional Office (see ADDRESSES and DATES).

2. *Consultation with Members of the Fishing Industry, Management Agencies, Environmental Organizations, and Academic Institutions.* NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government Agencies:* Applications will be reviewed by the NMFS Southeast Regional Program Office in consultation with the NMFS Southeast Science and Research Director and appropriate laboratory personnel, NOAA Grants Officer and, as appropriate, Department of Commerce bureaus and other Federal agencies, for elimination of duplicate funding. The Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

C. Funding Decision

After projects have been evaluated, the Southeast Regional Director, in consultation with the NOAA Assistant Administrator for Fisheries, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded and specific NMFS cooperative involvement with the activities of each project will be determined in preaward negotiations between the applicant, the NOAA Grants Office and the NMFS program staff. The Department of Commerce will review all projects recommended for funding before an award is executed by the Grants Officer. The funding instrument will be determined by the Grants Officer. Projects must not be initiated by a recipient until a signed award is received from the Grants Officer. For multi-year projects, funds will be provided when specified tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent fiscal years.

V. Administrative Requirements

A. Applicant Responsibility

An applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is selected by NMFS for funding, the applicant must be willing and able to cooperate with NMFS in predetermined project-related activities and programs, and to provide project data and results to the NMFS on a schedule determined by negotiation between the applicant and NOAA.

4. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are awarded, and be responsible for the satisfactory completion of all administrative and managerial conditions required by the award. This includes adherence to procurement standards set forth in the award and referenced OMB Circulars and Department of Commerce regulations.

5. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

6. Fishery data collected during the course of a project that could be pertinent to fishery management needs must be available to NMFS on request, subject to pertinent confidentiality requirements.

7. If a project is awarded, project status reports on the use of funds and progress of the project must be submitted to NMFS within 30 days after the end of each reporting period. The content of these reports will include, at a minimum:

a. A summary of work conducted, which includes a description of specific accomplishments and milestones achieved;

b. The degree to which goals or objectives were achieved as originally projected;

c. Where necessary, the reasons why goals or objectives are not being met;

d. Any proposed changes in plans or redirection of resources or activities and the reason therefore; and

e. Expenses incurred during the reporting period.

8. If a project is funded, submit an original and two copies of a final report to NMFS within 90 days after completion of the project. The report must describe the accomplishments of the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments to managing or using fisheries, and be quantified to the extent possible. Potential uses of project results by private industry or fishery management agencies should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

9. Present completed project results at the annual MARFIN conference and submit an abstract 15 days prior to the conference. Travel funds for the Principal Investigator to attend this meeting will be provided by NMFS.

10. Recipients and subrecipients are subject to all applicable Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

11. For each project funded, three copies of all publications or reports printed with grant funds must be submitted to the Program Officer. Any publication printed with grant funds must identify the NOAA MARFIN program as the funding source, along with the grant award number. Grant recipients also must submit to the Program Officer three copies of all publications resulting wholly or in part from MARFIN funded projects, to indicate in such publications the role of the MARFIN program in accomplishing the research and, where another Federally funded program provides data sources used in the research, to so indicate.

B. NMFS Responsibility

NMFS Southeast Region will:

1. Provide programmatic information necessary for the proper submission of applications.

2. Provide advice to inform applicants of NMFS fishery management and development policies and goals.

3. As required by the terms of negotiated cooperative agreements under this NMFS financial assistance program, participate with the recipient in attaining cooperative activities, and monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Refer questions regarding grant management policy and administration from applicants/recipients to the Grants Officer.

C. NOAA Grants Management Officer Responsibility.

The NOAA Grant Management Officer is responsible for the execution of NOAA Federal Assistance Awards. The Grants Officer is responsible for the business management aspects of awards, and serves as the counterpart to the business officer of the recipient. The Grants Officer works closely with the Program Officer, who is responsible for the scientific, technical, and programmatic aspects of the project. The official grant file will be maintained by the Grant Officer.

VI. Legal Requirements.

The applicant will be required to satisfy the requirements of applicable local, state, and Federal laws.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form.

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form.

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Potential recipients may be required to submit an "Identification-Application for Funding Assistance" form (Form CD–346), which is used to ascertain background information on key individuals associated with the potential recipient. The CD–346 form requests information to reveal if any key individuals in the organization have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If an application for an award is selected for funding, the Department of Commerce has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Grants awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

NMFS reviewed this solicitation in accordance with E.O. 12291 and the Department of Commerce guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612.

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB Clearance No. 0648–0175) under the provisions of the Paperwork Reduction Act. The CD–346 form also referenced in the notice is approved by OMB Clearance Number 0605–0001. Public reporting burden for Agency-specific collection-of-information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see **ADDRESSES**).

This program is subject to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs."

Authority: 16 U.S.C. 753a.

Dated: January 15, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–1476 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–22–M

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of an application for an experimental fishing permit.

SUMMARY: NMFS announces receipt of an application from Terra Marine Research and Education, Incorporated, for an experimental fishing permit (EFP). If awarded, this permit would authorize an experiment in which salmon and Pacific halibut caught as bycatch in directed groundfish fisheries conducted in the Bering Sea and Aleutian Islands area (BSAI) would be processed, delivered, and distributed, via food banks without charge, to disadvantaged individuals. Issuance of experimental fishing permits is authorized by the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) and its implementing regulations.

ADDRESSES: Copies of the experimental fishing permit application are available by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS (907–586–7230).

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 675 specify that EFPs may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing permits are contained in the regulations at § 675.6,.

An EFP application has been accepted for review and copies have been forwarded to the North Pacific Fishery Management Council (Council). The Council intends to review the application at its January 18–21, 1993, meeting, which will be held at the Hilton Hotel, Anchorage, Alaska under Council agenda item D–4–e.

The applicant proposes to determine the feasibility of collecting salmon and Pacific halibut caught as bycatch in directed groundfish fisheries conducted in the BSAI. These bycatches would be processed, delivered, and distributed, via food banks without charge, to disadvantaged individuals. Other information regarding project design, deposition of fish harvested, and other information is contained in the application.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 14, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–1478 Filed 1–15–93; 1:57 pm]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit and Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

January 14, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated December 22, 1992, between the Governments of the United States and the Dominican Republic, establishes, among other things, a limit and guaranteed access level for wool textile products in Category 443 for the period February 1, 1993 through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992; and 58 FR 3539, published on January 11, 1993.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 14, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on February 1, 1993, you are directed to amend the November 6, 1992 directive to include a limit for wool textile products in Category 443 for the period beginning on February 1, 1993 and extending through December 31, 1993 at a level of 126,797 numbers[1].

Imports charged to the limit for Category 443 for the period beginning on September 30, 1992 and extending through January 31, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Dominican Republic.

Additionally, pursuant to the Memorandum of Understanding dated December 22, 1992; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on February 1, 1993, a guaranteed access level is being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in wool textile products in Category 443 for the period February 1, 1993 through December 31, 1993 at a level of 50,000 numbers.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1461 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of Export Visa Requirements for Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Indonesia

January 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and Indonesia is being amended, for goods exported on and after February 1, 1993, to require a new special commercial invoice. However, for goods exported during the period February 1, 1993 through February 28, 1993 either the old commercial invoice or the new commercial invoice may be used. For goods exported on and after March 1, 1993 the new commercial invoice must be used.

See 52 FR 20134, published on May 29, 1987.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia for which the Government of Indonesia has not issued an appropriate visa.

Effective on February 1, 1993, you are directed to amend further the May 19, 1987 directive to require a new commercial invoice for shipments of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia and exported from Indonesia on and after February 1, 1993. For merchandise exported during the period February 1, 1993 through February 28, 1993, either the old commercial invoice or the new commercial invoice may be used. For goods exported on and after March 1, 1993, only the new commercial invoice may be used.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1454 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Aging Aircraft Ad Hoc Committee will meet on February 5, 1993 from 8 a.m. to 5 p.m. at ANSER Corp, Arlington, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Air Force Aging Aircraft. This meeting will involve discussions of classified defense matters listed in section 552(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1492 Filed 1–21–93; 8:45 am]

BILLING CODE 3910–01–M

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[1] The limit has not been adjusted to account for any imports exported after January 31, 1993.

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Current State of the Air Forces Panel (Information Architecture) will meet on February 8–9, 1993 from 8 a.m. to 5 p.m. at Air Force Communication Command, Scott AFB, IL.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Information Architectures. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1493 Filed 1–21–93; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Mission Analysis Panel (Information Architecture) will meet on February 8–9, 1993 from 8 a.m. to 5 p.m. at the Air Combat Command, Langley AFB, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Information Architectures. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1491 Filed 1–21–93; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Current State of the Air Forces Panel (Information Architecture) will meet on February 25–26, 1993 from 8 a.m. to 5 p.m. at Tinker AFB, OK.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Air Force Logistics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1490 Filed 1–21–93; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

National Education Goals Panel, Meeting

AGENCY: National Education Goals Panel, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 19, 1993, time to be announced.

ADDRESSES: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Laura Lancaster, Public Information Officer, 1850 M Street NW., suite 270, Washington, DC 20036. Telephone (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals adopted by the President and Governors in 1989.

The meeting of the panel is open to the public. The agenda includes discussion of feedback to the 1992 National Education Goals Report and suggestions for improvement of format.

Records are kept of all panel proceedings, and are available for public inspection at the Office of the Goals Panel at 1850 M Street NW., suite 270, Washington, DC 20036, from the hours of 10 a.m. to 5 p.m.

Dated: January 13, 1993.

Lanny Griffith,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 93–1542 Filed 1–21–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85–311–002]

Acme POSDEF Partners, L.P.; Supplement to Filing

January 14, 1993.

On January 8, 1993, Acme POSDEF Partners, L.P. tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by January 29, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1535 Filed 1–21–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93–141–000, et al.]

Iroquois Gas Transmission System, Inc., et al.; Natural Gas Certificate Filings

January 13, 1993.

Take notice that the following filings have been made with the Commission:

1. Iroquois Gas Transmission System, Inc.

[Docket No. CP93–141–000]

Take notice that on December 31, 1992, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, suite 606, Shelton, Connecticut 06484, filed in Docket No. CP93–141–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a compressor station to be located in the town of Croghan, New York at a cost of $25,915,000. Iroquois states that the compressor station is necessary to provide natural gas transportation services for two shippers in the aggregate amount of 99.5 MMcf/d. Iroquois states that it has entered into precedent agreements with Selkirk Cogen Partners, L.P. for service for 55 MMcf/d and with Rotterdam Generating Company, L.P. for service for 44.5 MMcf/d. Iroquois will provide this firm gas transportation service under its blanket certificate.

Comment date: February 3, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation

[Docket No. CP93-149-000]

Take notice that on January 7, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93-149-000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon certificated contract storage service for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG requests a Commission order approving the abandonment of the Rate Schedule GSS storage service to Transco under and expired service agreement dated September 12, 1972, to provide 37,975,000 Mcf of storage capacity (approximately 39,038, 300 dt equivalent of natural gas) and a maximum daily demand of 603,500 Mcf (approximately 620,398 dt equivalent of natural gas), to be effective no later than October 7, 1994. CNG states that by letter dated October 7, 1992, it provided timely notice to Transco that it was terminating its existing service agreement, whose primary term expired April 1, 1992, to be effective on twenty-four months advance notice.

CNG states that upon approval of this abandonment, it will provide service under CNG's revised Docket No. RS92-14-000 Rate Schedule GSS directly to those Transco customers desiring such services under revised terms and conditions. CNG states that it proposes to make available to Transco's GSS customers on a pro rata basis up to 36,838,380 dt equivalent of natural gas of storage capacity and 585,437 dt equivalent of natural gas per day of storage demand. CNG requests waiver of the Commission's first-come, first-served regulations to permit CNG to commence storage service to Transco's Rate Schedule GSS customers under Part 284 of the Commission's Regulations.

Comment date: February 3, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1387 Filed 1-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF93-15-000]

Central Florida Power, L.P.; Amendment to Filing

January 13, 1993.

On January 12, 1993, Central Florida Power, L.P. (Applicant) tendered for filing supplemental information in this docket.

The supplemental information pertains to the ownership structure. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by February 1, 1993, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1391 Filed 1-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-552-002]

Granite State Gas Transmission, Inc.; Proposed Rates and Tariff Provisions

January 13, 1993.

Take notice that on December 30, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581-5039 tendered for filing with the Commission the original and revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing proposed rates and tariff provisions to provide open-access transportation services on its pipeline system pursuant to part 284, subpart G, of the Commission's Regulations, effective January 30, 1993:

Purpose and Content

Third Revised Sheet No. 1—Table of Contents
Third Revised Sheet No. 20—Indices
Original Sheet No. 27—Transportation Rates
Original Sheet No. 28—Reserved-Future Use
Second Revised Sheet No. 30—Indices
Original Sheet Nos. 91-91H—Rate Schedule FT-1
Original Sheet Nos. 92-92H—Rate Schedule IT-1
Original Sheet Nos. 93-99—Reserved-Future Use
Second Revised Sheet No. 100—Indices
First Revised Sheet No. 101—GT&C, Definition of Terms
First Revised Sheet No. 102—GT&C, Definition of Terms
Original Sheet Nos. 102A-102B—GT&C, Definition of Terms
Original Sheet Nos. 150-157—Qualifications for Trans. Service

Original Sheet Nos. 158–164—Scheduling & Allocation
Original Sheet Nos. 165–169—Scheduling & Balancing
Original Sheet Nos. 170–176—Trans. Request Form
Original Sheet Nos. 177–179—Determination: Receipt and Delivery Point
Original Sheet Nos. 180–197—Operating Balancing Agreements: Receipt and Delivery Points
Original Sheet Nos. 198–199—Reserved-Future Use
First Revised Sheet No. 200—Indices
Original Sheet Nos. 212–212I—Form of Contract-Firm Transportation
Original Sheet Nos. 213–213H—Form of Contract-Interim Transportation
Original Sheet Nos. 214–220—Reserved-Future Use

According to Granite State its filing is submitted in compliance with provisions in a certificate order issued November 2, 1992 in Docket No. CP92–552–000 granting Granite State a blanket transportation certificate under part 284, subpart G, of the Commission's Regulations and directing Granite State to file part 284 tariff provisions and rate schedules for firm and interruptible transportation services and storage, together with general terms and conditions applicable to such services.

Granite State further states that the Commission approved a settlement of its rate proceeding in Docket No. RP91–164–000 on June 29, 1992. According to Granite State, the settlement approved non-gas rates for sales and transportation services in two phases. Granite State states that the settlement rates were derived according to the Straight Fixed Variable methodology applied to the settlement cost of service. It is further stated that the Phase 1 settlement rates become effective July 1, 1992 and the Phase 2 rates were authorized to be effective on November 1, 1992 but in any event on January 1, 1993. Granite State further states that the rates for the open-access transportation services proposed in its filing are the Phase 2 transportation rates approved in the settlement in Docket No. RP91–164–000.

Since this filing is the first offering of open-access transportation services on its system, Granite State proposes a "window period" between January 11 and January 22, 1993 during which it will accept requests for transportation service. Granite State further states that all properly completed transportation requests received during the request period will be granted equal priority in the allocation of available capacity on its system.

Granite State states that copies of its filing were served on its affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc. and a direct customer, Pease Air Force Base. Granite State further states that copies of its filing have also been served on the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93–1390 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2069–003, et al.]

Hydroelectric Applications; Arizona Public Service Company, et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. Type of Application: New License for Major Project (Tendered Notice).

b. Project No.: 2069–003.

c. Date filed: December 18, 1992.

d. Applicant: Arizona Public Service Company.

e. Name of Project: Childs-Irving Hydroelectric Project.

f. Location: Entirely within the Coconino and Tonto National Forests, on Fossil Creek, in Yavapai and Gila Counties, Arizona. T11N, R6E; T11N, R7E; T12N, R6E; T12N, R7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Fearl M. Parker, Environmental Licensing, Arizona Public Service Company, P.O. Box 53999, Station 9364, Phoenix, Arizona 85072–3999.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The project as licensed includes two existing developments. The Irving development consists of: (1) A 5-foot-high concrete diversion structure on Fossil Creek; (2) a 16,578-foot-long flume; (3) a 3,278-foot-long penstock; (4) a powerhouse containing one generating unit with a total installed capacity of 1,600 kW; (5) a trailrace returning water to the flume of the Childs development; (6) a 6.31-mile-long transmission line leading to the powerhouse of the Childs development; and (7) appurtenant facilities.

The Childs development consists of: (1) A 5-foot-high diversion structure on Fossil Creek located 350 feet upstream of the Irving powerhouse; (2) a 23,190-foot-long conduit discharging into the licensee's Stehr Lake; (3) the 23-acre lake created by a 12-foot-high dam and a 20-foot-high dam; (4) a 6,281-foot-long pressure tunnel connecting the lake with a penstock; (5) the 4,800-foot-long penstock; (6) a powerhouse containing three generating units with a total installed capacity of 5,400 kW; (7) a tailrace discharging water into the Verde River; (8) two 200-foot-long transmission lines interconnecting with the Arizona Public Service Company transmission grid; and (9) appurtenant facilities.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the applicant is filed, (on or before February 16, 1993) and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is March 18, 1993.

2. a. Type of Application: Subsequent License.

b. Project No.: 2341–004.

c. Date filed: November 20, 1991.

d. Applicant: Georgia Power Company.

e. Name of Project: Langdale.

f. Location: On the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526–7140.

i. FERC Contact: James Hunter at (202) 219–2839.

j. *Deadline Date:* March 8, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.

l. Description of Project: The project consists of: (1) A 15-foot-high, 1,892-foot-long rubble masonry dam with a 1,362-foot-long overflow spillway at elevation 550.25 feet and a gated intake section containing two active and four retired water passageways connecting to the powerhouse, each 25 feet wide, 15 feet high, and 30 feet long; (2) a reservoir with a surface area of approximately 270 acres at the spillway elevation; (3) an integral, 35-foot-wide, 245-foot-high, concrete and brick powerhouse on the right bank containing two identical generating units with a total installed capacity of 1,040 kw; (4) a 250-foot-wide, 1,500-foot-long tailrace channel; and (5) a substation connecting directly to the applicant's distribution system. The average annual generation is 5.12 GWh. The applicant is not proposing any changes to the existing project works.

m. Purpose of Project: Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 333 Piedmont Avenue, Atlanta, Georgia, (404) 526–6526.

3. a. Type of Application: Subsequent License.

b. Project No.: 2350–005.

c. Date filed: November 20, 1991.

d. Applicant: Georgia Power Company.

e. Name of Project: Riverview.

f. Location: On the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526–7140.

i. FERC Contact: James Hunter at (202) 219–2839.

j. *Deadline Date:* March 8, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.

l. Description of Project: The project consists of: (1) A 15-foot-high, 994-foot-long stone masonry diversion dam with an overflow spillway at elevation 532.3 feet; (2) a back-channel headrace about 5,000 feet long; (3) a 200-foot-long lower stone masonry dam with an overflow crest at elevation 530.5 feet, raised to 532.5 feet with flashboards; (4) a 58-foot-long, 61-foot-wide, 25-foot-high, concrete and brick powerhouse at the western end of the lower dam with a gated intake section containing two 22-foot-wide, 18-foot-high, 30-foot-long water passageways connecting to the two generating units rated at 240 kW each; (5) a 100-foot-wide, 2,000-foot-long tailrace channel; and (6) a substation connecting directly to the applicant's distribution system. The average annual generation is 2.99 GWh. The applicant is not proposing any changes to the existing project works.

m. Purpose of Project: Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 33 Piedmont Avenue, Atlanta, Georgia, (404) 526–6526.

4. a. Type of Application: New License.

b. Project No.: 2389–012.

c. Date Filed: December 20, 1991.

d. Applicant: Edwards Manufacturing Company and the City of Augusta, Maine.

e. Name of Project: Edwards Dam Project.

f. Location: On the Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Fred Ayer, Northrop, Devine, & Tarbell, Inc., 500 Washington Avenue, Portland, Maine 04103, (207) 775–4495.

i. FERC Contact: Robert Bell (202) 219–2806.

j. *Comment Date:* March 5, 1993.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time, see attached standard paragraph E1.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

m. Description of Project: The project consists of the:

(1) An upgraded and reinforced, concrete-capped, timber crib dam, totaling about 917 feet long, consisting of (a) an east-side, masonry abutment, about 40 feet high, with a top elevation of 33.0 feet msl; (b) a west-side, masonry abutment, with a top evaluation of 34.7 feet msl; (c) an 850-foot-long primary spillway section, with a maximum height of 42 feet at a crest elevation of 19.5 feet msl, topped with a proposed 6-foot-high inflatable crest control, rubber dam; and (d) a 67-foot-long bulkhead spillway section, with a maximum height of 35 feet at a crest elevation of 29.0 feet msl;

(2) An expanded power canal, with an average width of 126 feet, consisting of new tied-back, 560-foot-long retaining walls with top elevations ranging from 35.0 to 50.0 feet msl;

(3) A new gatehouse, about 125 feet long by 25 feet wide by 28 feet high, having four vertical lift gates, each 27 feet wide by 22 feet high, at a sill evaluation of 9.0 feet msl;

(4) A masonry and steel powerhouse, known as Wheelhouse No. 4, which would remain the same, about 117 feet long by 85 feet wide by 65 feet high, equipped with (a) seven vertical generating units, with (b) a total rated capacity of 2,850 kilowatts (kW), (c) a hydraulic capacity ranging from 246 to 2,682 cfs, and (d) a net head of 17 feet;

(5) A new excavated powerhouse, about 140 feet long by 63 feet wide by 94 feet high, containing (a) one vertical Kaplan generating unit, with (b) a rated capacity of 8,000 kW, (c) a hydraulic capacity of 5,800 cfs, and (d) a net head of 18 feet;

(6) New upstream and downstream fish passage facilities, to be located along the east wall of the power canal, between the two powerhouses, in detail: (a) the upstream passage facility would consist of fish transport channels, a central fish attraction pool, a duplex fish lift, sorting and holding tanks, piping, an exit channel and weir leading to the power canal; (b) the downstream passage facility, would consist of a concrete gated entrance chamber, to be located near the intake of each

powerhouse, and sluice piping, exiting into the tailrace;

(7) The altered impoundment, at the plant's hydraulic capacity of 8,500 cfs or less, would measure about 79,400 feet long, with (a) a surface area of about 1,169 AC; (b) a gross storage capacity of 18,437 AF; (c) a usable storage capacity of 4,035 AF; and (d) a normal pool headwater elevation of 25.0 feet msl;

(8) A new project substation; and

(9) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $6,373,457.

o. Purpose of Project: Project power would be sold to Central Maine Power Corporation.

p. This notice also consists of the following standard paragraphs: B1 and E1.

q. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Edwards Manufacturing Company, 250 Minot Avenue, Auburn, ME 04210 or by calling (207) 353–4111.

5. a. Type of Filing: Major New License.

b. Project No.: 2425–001.

c. Date Filed: December 12, 1991.

d. Applicant: The Potomac Edison Company.

e. Name of Project: Luray/Newport Project.

f. Location: On the South Fork of the Shenandoah River in Page County, Virginia.

g. Filed pursuant: Federal Power Act, 16 U.S.C., section 791(a) - 825(r).

h. Applicant Contact: Mr. D.E. Gervenak, Executive Director, Operations, Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601, (412) 838–6835.

i. FERC Contact: Héctor M. Pérez (202) 219–2843.

j. *Comment Date:* March 1, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time see attached paragraph D10.

l. The existing project comprises the Luray and the Newport Developments described below.

The Luray Development consists of: (1) A 21.9-foot-high, 525-foot-long reinforced concrete dam impounding a small reservoir with a storage capacity of 880 acre-feet; (2) a powerhouse at the southeast end of the dam containing 3 units with a total capacity of 1,600 kW; (3) a 1.54-mile-long, 34.5 kV transmission line; and (4) other appurtenances.

The Newport Development consists of: (1) A 28.8-foot-high, 443-foot-long reinforced concrete dam impounding a small reservoir with storage capacity of 1,090 acre-feet; (2) a powerhouse at the northwest end of the dam containing 3 units with a total installed capacity of 1,400 kW; (3) a 70-foot-long, 34.5kV transmission line; and (4) other appurtenances.

m. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4

n. Purpose of this Project: The energy generated by the project is integrated into Potomac Edison's system.

o. This notice also consists standard paragraph D10.

p. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601 (412) 838–6835.

6. a. Type of Application: Request for Extension of Time to Commence Project Construction.

b. Project No.: 4656–010.

c. Date Filed: December 23, 1992.

d. Applicant: Boise-Kuna Irrigation District, *et al.*

e. Name of Project: Arrowhead Dam Hydroelectric Project.

f. Location: At the U.S. Bureau of Reclamation's existing Arrowrock Dam and Reservoir on the South Fork of the Boise River. The project would be located in Elmore, Boise, and Ada Counties, Idaho, approximately 12 miles east of Boise, Idaho.

g. Filed Pursuant to: Energy Policy Act of 1992, title XVII, 1701(c)(4) and section 13 of the Act, 16 U.S.C. 806.

h. Applicant Contacts: Don A. Olowinski and Richard B. Burleigh, Counsel for Boise-Kuna Irrigation District, *et al.* Hawley Troxell Ennis & Hawley First Interstate Center, suite 1000, P.O. Box 1617, Boise, Idaho 83701, (208) 344–6000.

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* March 1, 1993.

k. Description of the Request: Pursuant to the Energy Policy Act of 1992, Title XVII, section 1701(c)(4) and section 13 of the Act, 16 U.S.C. 806, the licensee requests that the deadline to commence project construction be extended to March 26, 1999. The licensee also requests that the deadlines to comply with articles 101–110, 112–115, 117 and 304 be extended to 90 days prior to the commencement of project construction. The licensee states that the extension will provide sufficient time to complete the ongoing power marketing efforts, prepare for and commence construction of the project and comply with all the license provisions. The licensee further contends that it has diligently pursued the development of the project and has invested over $500,000 in this effort.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. Type of Application: Approval of Plan for Construction of Recreation Facilities.

b. Project No: 10853–004.

c. Date Filed: December 7, 1992.

d. Applicant: Otter Tail Power Company.

e. Name of Project: Otter Tail River Project.

f. Location: Otter Tail River, in Otter Tail County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Verlin Menze, P.E., Manager, Environmental Engineering, Otter Tail Power Company, 215 S. Cascade Street, P.O. Box 496, Fergus Falls, MN 56538–0496, (218) 739–8409.

i. FERC Contact: Heather Campbell, (202) 219–3097.

j. *Comment Date*: February 13, 1993.

k. Description of Project: The Otter Tail Power Company, licensee for the Otter Tail River Project, requests Commission approval of a plan to construct recreation facilities at the Hoot Lake Diversion Dam bypass reach to ensure public access to the Otter Tail River. The plan will provide approximately thirteen miles of river reach for recreational canoeing, with multiple access points and varying degrees of difficulty and challenge. The licensee states that the plan has been developed with consideration to accommodating individuals with varying degrees of physical ability.

l. This note also consists of the following standard paragraphs: B, C, and D2.

8. a. Type of Application: Minor License.

b. Project No.: 10881–001.

c. Date Filed: April 24, 1992.

d. Applicant: Daniel Nelson Evans, Jr.

e. Name of Project: Whitney Mills.

f. Location: On the Lawson's Fork Creek, Spartanburg County, South Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Daniel Nelson Evans, Jr., 212 Range Road, Kings Mountain, NC 28086, (704) 739–9710.

i. FERC Contact: Charles T. Raabe (tag) (202) 219–2811.

j. *Deadline Date*: March 8, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.

l. Description of Project: The existing inoperative project would consist of: (1) A dam with a length of 296 feet and a maximum height of about 23 feet; (2) a reservoir with a surface area of about 2 to 4 acres, a maximum capacity of 30-acre feet, and a normal water surface elevation of 703 feet mean sea level (msl); (3) two buried steel penstocks, each with a length of 60 feet and a diameter of 4 feet; (4) a brick and concrete powerhouse with dimensions of 14.5 feet by 26.5 feet containing a single turbine-generator unit rated at 225 kilowats (kW) operating at 26 feet of head; (5) a tailrace protected by a 30-foot-long concrete tailrace wall; (6) a new 65-foot-long, 12.5-kilovolt (kV) transmission line; and (7) appurtenant facilities.

The dam contains two low-level 3- by 5-foot vertical slide gates and has a 231-foot-long uncontrolled overflow spillway with a crest elevation of 7000 feet msl surmounted by 3-foot-high flashboards. Applicant estimates that the average annual energy production would be 826,424 kWh. Energy produced would be sold to Duke Power Company. The existing facilities are owned by Ernest W. Miller. The application was filed during the term of Applicant's preliminary permit.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. Available Locations of Application: A copy of the application, as amended and supplemental, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE. Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 212 Range Road, Kings Mountain, NC 28086 and at the Spartanburg County Public Library, 333 South Pine Street, Spartanburg, SC.

9. a. Type of Application: Minor License.

b. Project No.: 11213–000.

c. Date filed: December 11, 1991.

d. Applicant: Thomas Hohman.

e. Name of Project: Barberville Hydroelectric Project.

f. Location: On the Poestenkill River, in Rensselaer County, New York.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Thomas Hohman, 4 Cloverdale Road; Wyantskill, NY, (518) 283–6326.

i. FERC Contact: Mary Golato (202) 219–2804.

j. *Deadline Date:* March 8, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.

l. Description of Project: The proposed project would consist of: (1) A natural forebay pool at the top of Barberville Falls; (2) a new intake structure in the forebay, including a trashrack oriented about 45 degrees to the direction of flow; (3) a new steel penstock 36 inches in diameter and about 90 feet long, connecting the intake to a new surge tank; (4) two new steel penstocks, each 24 inches in diameter and about 225 feet long, between the surge tank and the powerhouse; (5) a new reinforced concrete powerhouse containing two generator units each rated at 150 kW each, and one generator unit rated at 35 kW, for a total installed capacity of 335 kW; (6) a new overhead transmission line; and (7) appurtenant facilities.

m. Purpose of Project: All project energy generated would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Thomas Hohman, 4 Cloverdale Road, Wyantskill, NY 12198 (518) 283–6326.

Standard Paragraphs

A4. Development Application: Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene: Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents: The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (March 8, 1993 for Project Nos. 2341–004, 2350–005, 10881–001, and 11213–000; March 1, 1993 for Project No. 2425–005). All reply comments must be filed with the Commission within 105 days from the date of this notice. (April 21, 1993 for Project Nos. 2341–004 and 2350–005; April 22, 1993 for Project Nos. 10881–001 and 11213–000; April 15, 1993 for Project No. 2425–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: January 14, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1541 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–94–000]

Kern River Gas Transmission Co.; Request Under Blanket Authorization

January 13, 1993.

Take notice that on December 7, 1992, Kern River Gas Transmission Company ("Kern River") P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP93–94–000 a request for authorization under § 157.205 of the Commission's Regulations and its blanket certificate issued in Docket No. CP89–2048 to establish a delivery point for Kern River's firm and interruptible shippers at the existing metering and appurtenant facilities located at the point of interconnection in Lincoln County, Wyoming between the Kern River system and the intestate gas pipeline system owned Kern River system and the interstate gas pipeline system owned and operated by Overland Trail Transmission Company ("Overland Trail"), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River seeks authorization to utilize the Overland Trail Interconnect for deliveries by displacement into the Overland Trail system on behalf of Kern River's firm and interruptible shippers under Kern River's Part 284 transportation Rate Schedules KRF–1, MO–1, UP–1, CH–1, and KRI–1. Deliveries would be made in accordance with the 70,000 Mcf/day nominal design capacity of the existing metering facilities.

Availability of the Overland Trail Interconnect as a delivery point will provide Kern River's shippers with increased flexibility in arranging transportation services on the Kern River system. No additional construction or modification of the Overland Trail Interconnect would be necessary to enable Kern River to deliver gas to Overland Trail, as any such deliveries would be by displacement only and no physical deliveries would occur.

Any person or the Commission's Staff may, within 45 days after issuance of this notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1392 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA91–65–001]

Kentucky Utilities Co.; Order Establishing Hearing Procedures

January 14, 1993.

On November 12, 1992, the Chief Accountant issued a contested audit report under delegated authority noting that the Kentucky Utilities Company (Kentucky Utilities) disagreed with certain of the Division of Audit's recommendations. The Chief Accountant requested that Kentucky Utilities notify the Commission whether they would agree to the disposition of the issues under the shortened procedures provided for by part 41 of the Commission's Regulations. 18 CFR part 41.

The contested matters for Kentucky Utilities are related to accounting and tariff billing for depreciation expense related to coal cars.

On December 9, 1992, Kentucky Utilities responded that they do not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedures (18 CFR, chapter I), a public hearing shall be held concerning the appropriateness of Kentucky Utilities' practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 93-1540 Filed 1-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-78-004 and CP92-108-002]

Midwestern Gas Transmission Co.; Report of Refunds

January 14, 1993.

Take notice that on October 13, 1992, Midwestern Gas Transmission Company (Midwestern) tendered its Report of Refunds in compliance with the settlement filed October 17, 1991 and modified June 30, 1992, as approved by Commission orders dated June 25, 1992 and August 25, 1992, in the above-referenced dockets. The settlement provides for refunds to Midwestern's customers for the period August 1988 through October 9, 1992, reflecting the differences between the actual take-or-pay allocations which had occurred during the refund period, and what would have been collected based upon the customer liabilities determined by the settlement.

Midwestern states that on October 9, 1992, it commenced disbursement of the refunds totalling $9,693,228.00, inclusive of interest, to all of its customers, either by check or invoice credit. It further states that it will serve a copy of its refund report on all of its affected customers, as well as affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1538 Filed 1-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-111-008]

North Penn Gas Co.; Compliance Filing

January 14, 1993.

Take notice that North Penn Gas Company (North Penn) on January 12, 1993 tendered for filing Substitute Original Sheet No. 15H1b in compliance with the Federal Energy Regulatory Commission's (Commission) letter order dated December 28, 1992, in the above referenced dockets.

North Penn states the revised tariff sheet reflects language providing parties the option of selecting a lump sum payment of North Penn's final Account No. 191 disposition or a twelve-month amortization period for payment of the assigned costs, and reflects language providing for recovery of interest consistent with § 154.67(c)(2) of the Commission's regulations over the twelve-month amortization period.

While North Penn believes that no other waivers are necessary for this filing, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required for this filing.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1533 Filed 1-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-120-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

January 14, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, February 11, 1993, at 10 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of all issues raised in the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Carmen Gastilo at (202) 208-2182 or Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93-1537 Filed 1-21-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-64-000]

Texas Gas Transportation Corp.; Petition for Limited Waiver

January 14, 1993.

Take notice that on January 11, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a petition seeking a limited waiver of section 9 of its FT Rate Schedule, in order to allow the assignment on a permanent basis of firm capacity held by Transok Gas Company (Transok) to Dow Corning Corporation, Carrollton, Kentucky Plant (Dow Corning).

Texas Gas states that it received a request for Transok for 1,500 MMBtu per day of firm transportation capacity on the Texas Gas system commencing

January 1, 1991, from a receipt point on Texas Gas's system known as Sohio/Terrebonne, to the "City of Carrollton" Delivery Meter in Texas Gas's Rate Zone Four. Texas Gas notes that on January 15, 1991, Texas Gas sent Transok, for execution, a firm transportation agreement for 1,200 MMBtu per day. Transok executed such agreement on February 15, 1991, and initial delivery was made under the agreement on April 1, 1991.

Therefore, Texas Gas is filing the instant petition to request the waiver of section 9 of its FT Rate Schedule, as contained in First Revised Volume No. 2–A of its FERC Gas Tariff, which may be necessary to allow the permanent assignment by Transok to Dow Corning of the agreement. Both Transok and Dow Corning have requested Texas Gas to seek the necessary authorizations to permit such an assignment.

Texas Gas states as support for the requested waiver that Dow Corning has always and will continue to be the ultimate consumer of the gas transported under the agreement. Texas Gas states that there will be no change in delivery point, volumes, or term of the agreement. Texas Gas further states that the permanent assignment of this agreement will not displace service to any other existing firm customers since the same volume of gas will continue to be delivered to the same delivery point.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1536 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–5–29–001]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

January 14, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) on January 12, 1993 tendered for filing Substitute Fifth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1, proposed to be effective January 1, 1993.

TGPL states that the purpose of the instant filing is to comply with the Commission's order issued December 31, 1992 in Docket No. TM93–2–48–000, *et al.* Such order directed TGPL to file revised tariff language which provides that TGPL will remit to GRI any portion of the surcharge it collects on discounted volumes.

TGPL is serving copies of the instant filing to customers and State Commissions served with TGPL's filing in Docket No. TM93–5–29–000. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1539 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

Transwestern Pipeline Co.; Compliance Filing

[Docket Nos. RP89–48–023]

January 14, 1993.

Take notice that on January 8, 1993, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission (Commission) Substitute 1st Revised Sheet No. 94 in Transwestern's FERC Gas Tariff Second Revised Volume No. 1 to replace Original Sheet No. 94 Transwestern filed August 21, 1992, in compliance with the Commission's order dated August 6, 1992 (60 FERC ¶ 61,150).

Transwestern states it filed this substitute tariff sheet at the request of Mewbourne Oil Co. (Mewbourne). Transwestern states that Mewbourne has advised Transwestern that it does not object to approval of the language in this sheet which is the same language contained in Transwestern's "Answer in Opposition to Motion for Evidentiary Hearing and in Support of Motion for Clarification", filed with the Commission on September 18, 1992 in Docket No. RP89–48–020.

Transwestern further states that Mewbourne has advised it that approval of the language contained in the substitute tariff sheet will moot its request for rehearing of the Commission's August 6, 1992 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1534 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–136–NG]

Order Granting Authorization To Import Natural Gas From Canada; Canton-Potsdam Hospital

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canton-Potsdam Hospital authorization to import up to 34,310 Mcf of natural gas from Canada over a two-year period beginning on the date of first delivery of the imported gas.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independent Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and

4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 15, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–1529 Filed 1–21–93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92–148–NG]

Order Granting Long-Term Authorization To Import Natural Gas from Canada; Rotterdam Generating Co., L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Rotterdam Generating Company, L.P., a long-term authorization to import from Canada up to 44,527 Mcf per day of natural gas over a 15-year term beginning on October 1, 1995, and ending September 30, 2010. The gas would be used at a new 244-megawatt cogeneration facility to be built in Rotterdam, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 14, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–1530 Filed 1–21–93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4555–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 04, 1993 Through January 08, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–BLM–K65139–NV

Rating EO2, Stateline Resource Area, Land and Resource Management Plan, Implementation, Clark and Nye Counties, NV.

Summary: EPA expressed environmental objections with the preferred alternative due to potential impacts to water quality, riparian resources and other sensitive species and habitats. EPA urged the BLM to modify its preferred alternative or select another alternative that would provide greater protection for resources in the management area, including water quality, water quantity and biodiversity. EPA asked for more information in the FEIS on potential impacts to water quality and natural resources, mitigation measures to reduce or avoid adverse impacts, management of specially designated areas, and any contingency measures to meet the objectives of the preferred alternative.

ERP No. D–BLM–L65175–OR

Rating EO2, Coos Bay District Resource Management Plan, Implementation, Coos Bay District, Coos, Curry and Douglas Counties, OR.

Summary: EPA expressed environmental objections to the proposed project. EPA's objections included concerns about the lack of adequate safeguards to protect currently degraded watersheds; adequate riparian zone protection for first and second order streams which may cause violations of water quality standards and impacts to beneficial uses; direct health and safety effects to prescribed burning and firewood programs, and potential effects to non-attainment areas for particulates and Class I wilderness areas; potential for impacts to threatened species listed under the Endangered Species Act, including the northern spotted owl; and lack of direction regarding future environmental analysis for site-specific project proposals.

ERP No. D–BLM–L65176–OR

Rating EO2, Roseburg District Resource Management Plan, Implementation, Roseburg District, Coast Range, Benton, Curry, Douglas, Jackson, Josephine and Linn Counties, OR.

Summary: EPA expressed environmental objections to the proposed project. EPA's objections included concerns about the lack of adequate safeguards to protect currently degraded watersheds; adequate riparian zone protection for first and second order streams which may cause violations of water quality standards and impacts to beneficial uses; direct health and safety effects to prescribed burning and firewood programs, and potential effects to non-attainment areas for particulates and Class I wilderness areas; potential for impacts to threatened species listed under the Endangered Species Act, including the northern spotted owl; and lack of direction regarding future environmental analysis for site-specific project proposals.

ERP No. D–BLM–L65178–OR

Rating EO2, Eugene District Resource Management Plan, Implementation, Lane, Linn, Douglas and Benton Counties, OR.

Summary: EPA expressed environmental objections to the proposed project. EPA's objections included concerns about the lack of adequate safeguards to protect currently degraded watersheds; adequate riparian zone protection for first and second order streams which may cause violations of water quality standards and impacts to beneficial uses; direct health and safety effects to prescribed burning and firewood programs, and potential effects to non-attainment areas for particulates and Class I wilderness areas; potential for impacts to threatened species listed under the Endangered Species Act, including the northern spotted owl; and lack of direction regarding future environmental analysis for site-specific project proposals.

ERP No. D–BOP–E81034–SC

Rating EC2, Edgefield Low Security Federal Correctional Institution, Construction, Operation and Site Selection, Edgefield County, SC.

Summary: EPA expressed concern regarding potential impacts to water quality, wetlands and endangered species. EPA recommended the development of appropriate mitigation measures.

ERP No. D–BPA–L91009–WA

Rating EC2, Yakima River Basin Fisheries Project, Construction, Operation and Maintenance, Funding, COE Section 10/404 Permits and NPDES Permit, Yakima Indian Nation, WA.

Summary: EPA had environmental concerns based on the potential for adverse impacts to existing fisheries resources, water quality, wetlands and wildlife.

ERP No. D-FHW-E40330-TN

Rating EC2, I-40 Reconstruction, I-40/I-240 Directional (Midtown) Interchange to TN-300 Interchange, Funding and Possible COE 404 Permit, Shelby County, TN.

Summary: EPA had concerns regarding the air quality assessment performed on the proposed project. Potential noise impacts are also a concern.

ERP No. DS-BIA-L35003-WA

Rating EO2, Swinomish Marina and Support Facilities Development, New Information concerning Design Changes, Approval, COE Section 10/404 Permits and EPA National Pollution Discharge Elimination System Permit, Swinomish Indian Reservation, Skagit County, WA.

Summary: EPA expressed environmental objections regarding potential adverse resource impacts, both at the proposed site and to the larger Padilla Bay National Estuarine Research Reserve, which would result from the preferred alternative. Specific resources adversely impacted include aquatic habitat and fisheries, bird habitat (including threatened or endangered species), marine mammals, and water quality. EPA does not believe that the supplemental draft EIS sufficiently analyzed all potential project alternatives which may further avoid or minimize adverse environmental effects. The proposed mitigation would not fully compensate for the significant resource losses at the proposed project site.

ERP No. D1-AFS-J65105-CO

Rating EC2, Grand Mesa, Uncompahagre and Gunnison National Forests Land and Resource Management Plan Amendment, Availability of Lands for Oil and Gas Leasing, Garfield, Delta, Gunnison, Mesa, Montrose, Ouray and San Miguel Counties, CO.

Summary: EPA had environmental concerns with the proposed project due to potential impacts to water quality, air quality, wetlands and riparian areas, and terrestrial resources. Additionally, the DEIS did not provide sufficient information to fully assess environmental impacts that should be avoided and lacked information concerning monitoring requirements for protection of aquatic, terrestrial and air resources.

Final EISs

ERP No. F-FHW-E50288-AL

William S. Keller Bridge Replacement on US-31 across the Tennessee River, City of Decatur, Funding, Coast Guard Bridge Permit, COE Section 404 Permit and TVA Section 26a Permit, Morgan and Limestone Counties, AL.

Summary: EPA found that the wetland mitigation plan should have contained more detail and that the inclusion of structural toxic spill containment measures would have been desirable.

Dated: January 15, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-1512 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4554-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed January 11, 1993 Through January 15, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930008, DRAFT EIS, EPA, FL, Fort Pierce Harbor Offshore Ocean Dredged Material Disposal Site (ODMDs), Designation, Fort Pierce, FL, Due: March 08, 1993, Contact: Robert B. Howard (404) 347-1740.

EIS No. 930009, DRAFT EIS, BLM, CA, Hidden Valley Resources Residuals Repository, Construction and Operation, Right-of-Way Grants and Conditional Use Permit, San Bernardino County, CA, Due: March 19, 1993, Contact: Sharon Paris (619) 256-3591.

EIS No. 930010, DRAFT SUPPLEMENT, FHW, CA, Eastern Transportation Corridor (ETC), Construction, Updated Information, CA-231 between the Riverside (CA-91) and Santa Ana Freeways (I-5), Funding and Section 404 Permit, Orange County, CA, Due: March 08, 1993, Contact: James J. Bednar (916) 551-1310.

EIS No. 930011, FINAL EIS, AFS, UT, CO, Manti-La Sal National Forest, Land and Resource Management Plan, Implementation, Sanpete, Utah, Sevier, Juab, Emery, Carbon, Grand and San Juan Counties, UT and Mesa and Montrose Counties, CO, Due: February 28, 1993, Contact: Carter E. Reed (801) 637-2817.

EIS No. 930012, DRAFT EIS, COE, NJ, Atlantic Coast of New Jersey, Beach Erosion Control Project, Implementation, Sandy Hook to Barnegat Inlet within the Borough of Asbury Park to Manasquan, Monmouth County, NJ, Due: March 08, 1993, Contact: Mark H. Burlas (212) 264-4663.

EIS No. 930013, DRAFT SUPPLEMENT, APH, Nationwide Cooperative Animal Damage Control Program, Additional Information, Integrated Pest Management Approach, Implementation, Due: March 08, 1993, Contact: William H. Clay (301) 436-8281.

EIS No. 930014, DRAFT EIS, AFS, WA, ID, OR, CA, Pacific Yew (Taxus brevifolia) Harvesting Program, Implementation, WA, OR, ID and CA, Due: March 15, 1993, Contact: Sally Campbell (503) 326-7755.

EIS No. 930015, DRAFT EIS, AFS, ID, Steen Creek Salvage Timber Sale, Salvage Harvest Timber and Possible Road Construction, Payette National Forest, Adams County, ID, Due: March 09, 1993, Contact: Pete Johnson (208) 253-4215.

EIS No. 930016, DRAFT EIS, UAF, TX, Bergstrom Air Force Base (AFB) Disposal and Reuse, Implementation, Travis County, TX, Due: March 08, 1993, Contact: Ltc. Gary Baumgartel (512) 536-3869.

Amended Notices

EIS No. 920449, DRAFT EIS, FAA, NJ, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Implementation, NJ, Due: March 05, 1993, Contact: Charles R. Reavis (202) 267-9367.

Published FR 11-12-92—Review period extended.

EIS No. 920498, DRAFT SUPPLEMENT, NOA, Atlantic Sea Scallop, Placopecten Magellanicus, (Gmelin), Fishery Management Plan (FMP), Additional Information, Amendment No. 4 , Due: February 23, 1993, Contact: William W. Fox, Jr. (301) 713-2239.

Published FR 12-17-92—Review period extended.

EIS No. 930001, DRAFT EIS, COE, LA, MS, LA, West Pearl River Navigation Project, Operation and Maintenance, Portions of West Pearl River to the vicinity of Bagalusa, Implementation, Washington and St. Tammany Parishes, LA and Pearl River County, MS, Due: March 01, 1993, Contact: Marvin Cannon (601) 631-5437.

Published FR 01-15-93—Due Date Correction.

Dated: January 15, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-1513 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL–4554–2]

Calmet Site, Fountain, Colorado; Notice of Proposed Administrative Settlement

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed Administrative Settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Administrative Settlement under section 122(h) concerning the Calmet Site in Fountain Colorado. The proposed Administrative Settlement requires Cedar Lane Investments, Inc., David D. Jenkins, and Barry M. Martin, Potentially Responsible Parties at the site, to pay $7,500 in removal costs incurred by the U.S. EPA in cleaning up the site.

DATES: Comments must be submitted by February 22, 1993.

ADDRESSES: Comments should be addressed to Carol Pokorny (8 HWM–ER), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, and should refer to the Calmet Site, Fountain, Colorado.

FOR FURTHER INFORMATION CONTACT: Tomus Wilson, Office of Regional Counsel, at (303) 293–1458.

Jack McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 93–1504 Filed 1–21–93; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4554–1]

Public Water Supply Supervision Program; Program Revision for the States of Louisiana and New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Louisiana and New Mexico are revising their approved State Public Water Supply Supervision Primacy Program. Louisiana and New Mexico have adopted drinking water regulations for (1) filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, *Legionella*, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and E. coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions and EPA hereby approves any official determinations made by Louisiana or New Mexico with regard to filtration or ground water under the direct influence of surface water under the Federal Surface Water Treatment Rule.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by February 22, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 22, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on February 22, 1993.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., (c.s.t.) Monday through Friday, at the following offices:

Louisiana Department of Health and Hospitals, Office of Public Health—Engineering, 325 Loyola Avenue, New Orleans, Louisiana 70112

New Mexico Environmental Department, Health Program Manager—Drinking Water Section, 1190 St. Francis Drive, Santa Fe, New Mexico 87503

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733

FOR FURTHER INFORMATION CONTACT: O. Thomas Love, Jr., EPA, Region 6, Water Supply Branch, at the Dallas address given above; telephone (214) 655–7150.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93–1326 Filed 1–21–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 12, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0057

Title: Application for Equipment Authorization (Report and Order, PR Docket No. 90–315)

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: On occasion reporting

Estimated Annual Burden: 8,605 responses; 24 hours average burden per response; 206,520 hours total annual burden

Needs and Uses: This Report and Order amends part 87 of our Rules, to establish equipment technical standards and licensing procedures for aircraft earth stations (AES). Rules adopted in PR Docket No. 90–315 will require manufacturers of new aeronautical mobile-satellite equipment to complete FCC Form

731, Application for Equipment Authorization, provide descriptive information, and test data showing that the proposed equipment complies with technical standards established for the equipment operated under the applicable rule part. The information gathered will be used by the Commission to determine compliance of the proposed equipment. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and that the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to radio communications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-1395 Filed 1-21-93; 8:45 am]

BILLING CODE 6712-01-M

[DA 93-34]

Comments Invited on Arkansas Public Safety Plan

January 13, 1993.

The Commission has received the public safety radio communications plan for Arkansas (Region 4).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 4 consists of the state of Arkansas. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before February 22, 1993, and reply comments on or before March 9, 1993. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93-3 Arkansas-Public Safety Region 4.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-1394 Filed 1-21-93; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0023, Surplus Personal Property Mailing List Application. This information is provided by persons who wish to have their names placed on the Surplus Personal Property Bidders Mailing List maintained by GSA Regional Sales Activities.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 50,000; *annual responses:* 1; *average hours per response:* 0.07; *burden hours:* 3,350.

FOR FURTHER INFORMATION CONTACT: William L. Tesh, Jr., (703) 305-7814.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: January 7, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-1382 Filed 1-21-93; 8:45 am]

BILLING CODE 6820-34-M

[GSA Bulletins FTR 6, Supplement 3 and FTR 7, Supplement 2]

Federal Travel Regulation; Reimbursement for Actual Subsistence Expenses in Presidentially Declared Disaster Areas of Florida

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Bulletins.

SUMMARY: The attached bulletins inform agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling for official travel to certain Florida localities designated Presidentially declared disaster areas as a result of Hurricane Andrew.

EFFECTIVE DATES: The extended period applies to official travel performed during January 21, 1993 through April 20, 1993.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA) has extended for an additional 90 days the period during which agencies may approve actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster areas in Florida named in GSA Bulletins FTR 6 and 7. The attached GSA Bulletin FTR 6, Supplement 3 and GSA Bulletin FTR 7, Supplement 2 are issued to extend the effective dates for these four Florida counties.

Dated: January 14, 1993.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

2 Attachments

ATTACHMENT 1

[GSA Bulletin FTR 6, Supplement 3]

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida.

1. *Purpose.* This supplement informs agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 6 (57 FR 40466, Sept. 3, 1992), as extended by Supplement 1 (57 FR 44751, Sept. 29, 1992) and Supplement 2 (57 FR 54793, Nov. 20, 1992) for official travel to certain Florida localities designated Presidentially declared disaster areas as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 90 days the period during which agencies may approve, in accordance

with paragraph 3 of GSA Bulletin FTR 6, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster areas in Florida named in paragraph 4 of GSA Bulletin FTR 6. For Florida counties named in GSA Bulletin FTR 6 the extended period covers January 21, 1993 through April 20, 1993.

3. *Expiration date.* This supplement expires on August 31, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

Dated: January 14, 1993

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management

ATTACHMENT 2

[GSA Bulletin FTR 7, Supplement 2]

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared Florida disaster area.

1. *Purpose.* This supplement informs agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 7 (57 FR 44751, Sept. 29, 1992), as extended by Supplement 1 (57 FR 54793, Nov. 20, 1992) for official travel to Collier County, Florida, designated a Presidentially declared disaster area as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 90 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 7, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster area of Collier County, Florida named in paragraph 4 of GSA Bulletin FTR 7. For Collier County, Florida the extended period covers January 21, 1993 through April 20, 1993.

3. *Expiration date.* This supplement expires on August 31, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

Dated: January 14, 1993.

By delegation of the Commissioner, Federal Supply Service.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

[FR Doc. 93–1443 Filed 1–21–93; 8:45 am]

BILLING CODE 6820-34-F

Federal Supply Service; Paper Purchase and Delivery Orders Discontinuance; Notice of Intent

ACTION: Notice of Intent.

SUMMARY: The Federal Supply Service (FSS) intends to discontinue issuing paper purchase orders for small purchases made under Federal Acquisition Regulation (FAR) Part 13 and delivery orders placed under established contracts in favor of electronic distribution of these documents. The preferred and generally most cost-effective method of transmission shall be computer-to-computer electronic data interchange (EDI). Where direct computer-to-computer EDI is not practical, a method will be established to permit suppliers to receive facsimile transmission in lieu of either paper orders or computer-to-computer EDI.

DATES: Proposed implementation is planned by October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Questions concerning the FSS plan to discontinue issuing paper orders and to provide EDI or an EDI to FAX link may be directed to Mr. Stuart Goulden at (703) 305–7741. Any written comments should be received on or before February 26, 1993.

ADDRESSES: Interested persons are invited to submit written comments to: General Services Administration, Federal Supply Service (FCO), Attn: Nicholas Economou, Washington, DC 20406.

SUPPLEMENTARY INFORMATION: FSS has entered into agreements with many of its suppliers to exchange data via the use of EDI. This data includes, but is not limited to, orders placed against existing contracts. FSS has found the use of EDI to be an effective method of dealing with its suppliers. To secure the benefits inherent in exchanging information electronically, FSS will expand the use of electronic purchasing methods. FSS plans to discontinue issuing paper purchase and delivery orders by October 1, 1993. After this date, all suppliers doing business with FSS must either be EDI capable or be capable of receiving facsimile transmissions on a Group III facsimile machine.

To minimize any adverse impact on small suppliers which may not be EDI capable, FSS plans to provide a facility for delivery of EDI orders to the supplier's facsimile machine. Under this EDI to FAX facility, FSS will transmit all orders to an independently operated value-added network (VAN). The VAN in turn will transmit each electronic order to either the supplier's computer via normal EDI interchange procedures or, for those suppliers which are not EDI capable, to the supplier's Group III facsimile machine.

Dated: January 11, 1993.

Nicholas Economou,

Director, Federal Supply Service, Acquisition Management Center.

[FR Doc. 93–1383 Filed 1–21–93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 34147, August 3, 1992) is amended to reflect the following changes in the Office of the Director, National Institutes of Health (NIH) (HNA): (1) Retitle the Office of Science Policy and Legislation (OSPL) (HNA6) to the Office of Science Policy and Technology Transfer (OSPTT) (HNA6) and revise its functional statement, as well as the functional statement of the Office of the Director, OSPTT (HNA61); (2) establish the Science Policy Studies Center (SPSC) (HNA65) within the OSPTT; (3) transfer the functions of (a) the Science Policy Analysis and Development Branch (HNA632), Division of Science Policy (DSP) (HNA63), to the Science Policy Studies Center (HNA65); (b) the Office of Recombinant DNA Activities (HNA633); and the Office of Science Education Policy (HNA634) to the Division of Special Science Programs (HNA653), Science Policy Studies Center (HNA65); and (c) abolish the DSP (HNA63); (4) establish the Office for Alternative Medicine (HNA6532) and the Office of Rare Disease Research (HNA6533) within the Division of Special Science Programs (HNA653), Science Policy Studies Center (HNA65); (5) establish the Office of Strategic Planning and Evaluation (OSPE) (HNA66) within the OSPTT; (6) transfer the functions of the Division of Planning and Evaluation (DPE) (HNA62) to the Office of Strategic Planning and Evaluation (OSPE) (HNA66) and abolish the DPE; (7) establish the Office of Legislative Policy and Analysis (OSPA) (HNA67) within the OSPTT; (8) transfer the functions of the Division of Legislative Analysis (DLA) (HNA64) to the Office of Legislative Policy and Analysis (HNA67) and abolish the DLA; (9) retitle the Division of Technology Transfer (HNA68) to the Office of Technology Transfer (OTT) (HNA68); (10) establish the Office of Management (OM) (HNA9) and the Office of the Director, OM (OD/OM) (HNA91); (11) transfer the Office of Administration (HNA7) to the OM and change its Standard Administrative Code (SAC) to (HNA92); (12) transfer the Office of Research Services (HNAA) to the OM and change its SAC to (HNA93); (13) transfer the Office of Information Resources Management (HNA79) from the Office of Administration to the OM and change its SAC to (HNA94); (14) establish the Office of Management Assessment and Internal Control (HNA95) within the OM; and (15) transfer the functions of the Division of Management Survey and Review (DMSR) (HNA78) from the Office of Administration to the OM and abolish the DMSR. This reorganization will further strengthen the NIH management and science policy activities, and create new emphasis in the areas of information resources management (IRM), internal control, strategic planning, and technology transfer, as well as improve the organizational arrangement for carrying out both policy and operations functions.

Section HN–B, Organization and Functions, is amended as follows: (1) After the heading *Office of the Director, NIH (HNA), Office of Science Policy and Legislation (HNA6),* delete the title and functional statements in their entirety and substitute the following:

Office of Science Policy and Technology Transfer (HNA6). (1) Advises the NIH Director and immediate staff on science policy, strategic planning, program planning and evaluation, health economics, legislative analysis, technology transfer, and special programs, and represents NIH in these areas to the Department and Congress; (2) provides leadership and guidance to NIH programs on science policy and legislation; (3) engages in strategic planning for the NIH; (4) facilitates and coordinates program planning and program evaluation activities carried out in the Institutes and Divisions; (5) coordinates technology management and technology transfer activities of the NIH/CDC/FDA; and (6) provides staff direction and support to the Advisory Committee to the Director, NIH.

Office of the Director, OSPTT (HNA61). Provides leadership, direction, and coordination on all phases of science policy and technology transfer.

Science Policy Studies Center (HNA65). (1) Serves as the principal staff resource in the Office of the Director, NIH, to provide a central capability to address in an organized and systematic manner major cross-cutting science policy issues that bear upon the entire NIH research enterprise; (2) advises the NIH Director, senior Office of the Director, NIH, staff, and Institute, Center, and Division (ICD) Directors by identifying and providing insight into developments and emerging trends across the range of scientific, academic, public policy, economic, social, ethical, and international issues relevant to the further evolution of NIH, its programs and policies, and the form of its operations; (3) ensures that the policy studies of the Center represent the vanguard of thinking and ideas relative to biomedical research and science policy issues; (4) directs the interaction between the Federal staff of the Division of Science Policy Analysis and Development and outside scholars invited to pursue research on science policy issues identified by the Center; (5) complements, coordinates, and collaborates with the policy function of other discrete components within NIH; and (6) serves as the principal staff resource for special science programs at NIH.

Following a statement for the *Division of Special Science Programs (HNA653),* add the following:

Office for Alternative Medicine (HNA6532). (1) Advises the Office of the Director, NIH, on the study of alternative medicine; (2) guides and coordinates NIH-wide activities involving alternative medicine; (3) responds to requests for information on highly technical matters and matters of public policy relative to alternative medicine; (4) identifies specific research efforts receiving support that are related to the assessment or validation of alternative medicine; and (5) determines the appropriate studies needed to evaluate alternative medicine.

Office of Rare Disease Research (HNA6533). (1) Guides and coordinates NIH-wide activities involving research into combating and treating the broad array of rare diseases (orphan diseases); (2) manages the NIH Rare Diseases and Orphan Products Coordinating Committee; (3) develops and maintains a centralized database on rare diseases; (4) coordinates and provides liaison with Federal and non-Federal national and international organizations concerned with rare disease research and orphan products development; (5) advises the Office of the Director, NIH, on matters relating to rare diseases and orphan products; (6) prepares the Director's annual report to Congress on rare disease and condition research activities sponsored by NIH; and (7) responds to requests for information on highly technical matters and matters of public policy relative to rare diseases and orphan products.

Office of Strategic Planning and Evaluation (HNA66). (1) Advises the NIH Director on program planning issues and policies, and the evaluation of the programs of the operating organizations of NIH; (2) plans and directs a comprehensive program of strategic and program planning, policy research and evaluation, and economic and resource analyses; and (3) carries out staff functions relating to strategic planning, program development, economic and resource analysis, and program evaluation.

Office of Legislative Policy and Analysis (HNA67). (1) Advises the NIH Director and staff and provides leadership and direction for NIH legislative analysis, development, and liaison; (2) identifies, analyzes, and reports on legislative developments relevant to NIH programs and activities; (3) assesses the need for and proposes changes in the statutory base of NIH activities; (4) plans and develops new legislative proposals; (5) coordinates and controls NIH Congressional communications; (6) provides coordination on NIH legislative matters with the Office of the Assistant Secretary for Health, the Department, the Congress, Federal and non-Federal national and international organizations concerned with health, and other bodies; (7) coordinates the preparation of testimony or statements for the Office of the Director, NIH, before Congressional committees or other groups; and (8) develops special reports, staff documents, or other studies concerning NIH interests, activities, and relationships.

Office of Technology Transfer (HNA63). (1) Develops policy and procedures for NIH, CDC, and FDA to follow for the implementation of Cooperative Research and Development Agreements (CRADAs), patent licenses, and other technology transfers; (2)

implements Patent Policy Board decisions and policies; (3) drafts, negotiates, and periodically revises model forms and agreements; (4) provides advice to ICDs on problem licenses and agreements; (5) develops policy statements on various technology transfer issues such as conflicts of interest; (6) tracks the OTT budget and prepares an annual status report to the OD/NIH; (7) provides coordination and management of the goals, functions, and operations of the Division of Technology Licensing, Division of Technology Management, Division of Technology Transfer Coordination, and the Division of Technology Patenting; (8) coordinates and provides planning and liaison support for international CRADAs and technology transfers; (9) creates and implements special programs relating to technology transfer by State and local governments and universities; (10) drafts and presents Congressional testimony, and drafts technology transfer-related responses to other Congressional inquiries; (11) provides operational management activities; (12) assists the Office of the General Counsel (OGC) in evaluating patent-related litigation matters; (13) participates with OGC or independently negotiates settlements or contested matters with licensees or other parties involved with NIH/CDC/FDA in technology transfer or utilization matters; (14) represents the NIH/CDC/FDA in technology transfer or utilization matters; (15) represents the above agencies at a variety of professional conferences and other public fora; (16) investigates special issues; (17) evaluates the need for and develops new programs in technology management and technology transfer for the above agencies; (18) develops licensing strategies for NIH/CDC/FDA intramural and CRADA inventions; (19) negotiates licenses and other technology transfers; (20) works with scientist inventors, contract attorneys, and others in preparing patent applications and prosecuting these applications at the Patent Office level; (20) handles infringements in consultation with the OGC at the Patent Office level; and (21) makes recommendations to the OGC for referral or matters to the Department of Justice.

Office of the Director (HNA681). (1) Advises the NIH Director and staff on all aspects of technology transfer policy and development, technology management, technology licensing activities; and patent administration and prosecution activities; and (2) plans and directs the activities of the Office.

(1) Delete the titles and functional statements for the *Office of Administration (HNA7)* and the *Office of Research Services (HNAA)*, in their entirety.

(2) After the title *Office of Communications (HNA8), Division of Public Information (HNA82)*, insert the following:

Office of Management (HNA9). (1) Advises the NIH Director and staff on all phases of administration and management; (2) provides leadership focus and direction to all aspects of management; (3) oversees the management of functions in the areas of information resources management, budget and financial management, personnel management, management policy, management assessment and internal control, grant and contract management, procurement, logistics, engineering services, safety, space and facility management, support services, and security operations.

Office of the Director, OM (HNA91). Provides leadership, direction, and coordination on all phases of administration and management.

Office of Administration (HNA92). (1) Advises the Deputy Director for Management and staff on administration and management; (2) provides leadership and guidance on all aspects of administrative management; and (3) directs staff and service functions in the areas of budget and financial management, personnel management, management policy, grant and contract management, procurement, and logistics.

Office of Research Services (HNA93). (1) Advises the Deputy Director for Management and staff on the management and provision of technical and administrative services to all components of NIH in support of the research mission; and (2) plans and directs service programs for engineering services, safety, space and facility management, support services, and security operations.

Office of Information Resources Management (HNA94). The Office of Information Resources Management advises the Deputy Director for Management on the direction and management of NIH IRM program activities under the Paperwork Reduction Act; the Computer Security Act; and OMB Circular A–130 by serving as a focal point for: (1) Implementing, managing, and overseeing NIH IRM activities related to: IRM policy, planning and budgeting; Federal Information Processing (FIP) resources user requirements; IRM reviews; clearance of FIP resources and monitoring compliance with Delegated Procurement Authorities (DPAs); FIP and automated systems inventories; capacity management and planning; security; FIP standards; and FIP resources obsolescence and excess equipment; (2) collaborating with NIH components responsible for: acquisition of FIP resources; major information systems; telecommunications management; printing management; computer matching; FIP accommodations for the disabled; records and forms management including the Privacy Act; information collection; and information dissemination; (3) serving as the NIH liaison to the Public Health Service and the Department on all IRM matters; (4) participating with appropriate NIH components in assessing and enhancing the level of knowledge and skill of users of FIP resources; (5) coordinating with appropriate NIH components in developing an NIH-wide plan for standardizing networking, cabling, and electrical facilities for FIP resources; (6) ensuring that oversight measures are appropriate for the diversity, complexity, and size of the major providers and the individual Institutes, Centers, and Division (ICDs); (7) overseeing and initiating necessary improvements in the FIP clearance and acquisition process; and (8) assisting the major providers/individual ICDs in enhancing/strengthening their individual IRM program management to allow maximum delegation of FIP resources clearance authority.

Office of Management Assessment and Internal Control (HNA95). (1) Has overall responsibility for all matters related to internal controls to prevent fraud, waste, abuse, and conflict of interest or the appearance of these, and develops a planned management oversight activity that focuses on early identification and prevention of such occurrences; (2) provides broad management oversight and advice the Deputy Director for Management (DDM) on strategies for management reviews, preventive maintenance strategies, and corrective action; (3) keeps abreast of activities within the Institutes, Centers, and Divisions (ICDs), advising them on the implementation of necessary internal controls; (4) in consultation with the Director, NIH, and the Deputy Director for Management, develops internal control policy for the entire NIH and ensures that policy changes are implemented; (5) serves as NIH's central liaison on matters involving the DHHS Office of the Inspector General, the General Accounting Office, the DHHS Office of Audit, the Federal Bureau of Investigation, congressional staff members, etc., related to internal controls and audits; (6) develops and implements the Annual Internal Control Plan; and (7) advises NIH's top management staff on major management decisions in the field of current operations and long-range policy involving NIH management controls.

DELEGATIONS OF AUTHORITY STATEMENT: All relevant delegations and redelegations of authority of and to the affected components which were in effect immediately prior to the effective date of this reorganization and which are consistent with this reorganization, shall continue in effect until modified, rescinded or superseded.

Dated: January 5, 1993.

Louis W. Sullivan,

Secretary.

[FR Doc. 93-1286 Filed 1-21-93; 8:45 am]

BILLING CODE 4140-01-M

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of February 1993:

Name: Health Care Technology Study Section.

Date and Time: February 8-10, 1993, 8 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Montgomery II Room, Bethesda, Maryland 20814.

Open February 8, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the utilization and effects of health care technologies and procedures as well as applications in the area of information and decision sciences relating to health care delivery.

Agenda: The open session on February 8 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, Agency for Health Care Policy and Research (AHCPR). The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: February 10-12, 1993, 8 a.m.

Place: Ramada Inn, 8400 Wisconsin Avenue, Conference Room TBA; Bethesda, Maryland 20814.

Open February 11, 1 p.m. to 2 p.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on February 11 from 1 p.m. to 2 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Services Research Review Subcommittee.

Date and Time: February 18-19, 1993, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Calvert I and II, Bethesda, MD 20814.

Open February 18, 8:30 a.m. to 9:15 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on February 18 from 8:30 a.m. to 9:15 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C. Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Name: Health Services Research Dissemination Study Section.

Date and Time: February 25-26, 1993, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Montgomery I, Bethesda, Maryland 20814.

Open February 26, 8:30-9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on February 26 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227-8449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: January 14, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–1522 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention (CDC)

[CRADA 93–002]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop DNA detection-based diagnostic tests for fungal septicemia.

It is anticipated that all inventions which arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA. CDC may provide staff, facilities, equipment, and supplies to the project. A single restriction applies to this exchange: CDC may not provide funds to the other participants in the CRADA.

DATES: This opportunity is available until February 22, 1993. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Dr. Christine J. Morrison, Chief, Molecular Immunology Laboratories, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., mailstop G–11, Atlanta, GA 30333. Telephone (404) 639–3128.

Business: Greg Jones, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., mailstop C–19, Atlanta, GA 30333. Telephone (404) 639–2434.

SUPPLEMENTARY INFORMATION: The collaborator and CDC will jointly support research aimed at the development of DNA detection-based diagnostic tests for fungal septicemia. CDC has developed a method to disrupt *Candida albicans* and to isolate and purify its DNA from whole blood. Purified DNA has been found to be suitable for amplification and subsequent detection. CDC has developed primers and probes for amplification and detection of candidal DNA.

The collaborator will provide technology and staff to develop methods to increase the sensitivity and rapidity of DNA detection. The collaborator will provide any additional equipment and/or supplies currently unavailable in the CDC laboratory that may be necessary for the implementation of this work.

CDC will provide animal models of disseminated candidiasis to facilitate determination of the sensitivity of DNA detection-based diagnostic tests for *Candida* in whole blood.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the diagnostic test(s);
3. Adequacy of availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop DNA detection-based diagnostic tests for fungal septicemia.

This CRADA is proposed and implemented under the Federal Technology Transfer Act of 1986, Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., mailstop C–19, Atlanta, GA 30333.

Dated: January 13, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1438 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and Other Special Populations: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Times and Dates: 1 p.m.–5 p.m., February 9, 1993; 8 a.m.–4 p.m., February 10, 1993.

Place: Room 339A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Status: Open.

Purpose: The purpose of the subcommittee meeting is to review the collection of minority health data within the federal government, including the Social Security Administration, the Bureau of the Census, and CDC, in order to better understand data collection issues and to serve as a basis for future recommendations.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: January 13, 1993.

Robert L. Foster,

Assistant Director, Office of Program Support Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1435 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–4:30 p.m., February 16, 1993.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will hold discussions around potential future subcommittee activities including the collection and analysis of institutional and person-oriented longitudinal data on children and youth with mental disorders, and recent developments in the area of disability statistics.

Contact Person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Dated: January 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1436 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 82F–0228]

DeTer Co., Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 1A3549) proposing that the food additive regulations be amended to provide for the safe use of sodium lauryl sulfate as a surfactant on raw agricultural commodities to control respirable and explosive dust.

FOR FURTHER INFORMATION CONTACT: Wesley R. Long, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 27, 1982 (47 FR 37959), FDA announced that a food additive petition (FAP 1A3549) had been filed by DeTer Co., Inc., P.O. Box S, Burgin, KY 40310 (formerly Eight Great Meadow Lane, East Hanover, NJ 07936). This petition proposed that the food additive regulations be amended to provide for the safe use of sodium lauryl sulfate as a surfactant on raw agricultural commodities to control respirable and explosive dust. DeTer Co., Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: January 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–1375 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92G–0432]

Yandilla Mustard Oil Enterprise Pty. Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Yandilla Mustard Oil Enterprise Pty. Ltd., has filed a petition (GRASP 0G0359), proposing that low erucic acid mustard seed oil be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by March 23, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Yandilla Mustard Oil Enterprise Pty. Ltd., Wallendbeen, NSW 2588, Australia, has filed a petition (GRASP 0G0359), proposing that low erucic acid mustard seed oil be affirmed as GRAS as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 23, 1993, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–1439 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Final Funding Priorities and Special Consideration for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration (HRSA), announces the final funding priorities and special consideration for fiscal year (FY) 1993 for Grants for Faculty Development in Family Medicine authorized under the authority of section 747(a) (previously section 786(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Since this program was announced on August 7, 1992, the Health Professions Education Extension Amendments of 1992, Public Law 102–408, were passed by the Congress and signed by the President.

Purpose

Section 747(a)(3) of the PHS Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 747(a)(4) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

Section 791(a) of the Act, as amended, includes a general funding preference for selected grant programs under title VII, including section 747(a), Grants for Faculty Development in Family Medicine. Section 791(b) includes new information requirements for applicants under this program.

Statutory General Funding Preference

Under section 791(a) of the Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Preference may be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. The Secretary may not give an applicant preference if the proposal of the applicant is ranked in or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

Additional information concerning the implementation of this preference is under development and a separate notice was published in the **Federal Register** dated December 18, 1992, at 57 FR 60212, requesting comments on the methodology for implementation of this new statutory funding preference.

Information Requirements Provision

The following new information requirements will not apply in FY 1993 but will take effect in FY 1994. Under section 791(b) of the Act, the Secretary may make an award under the Grants for Faculty Development in Family Medicine Program only if the applicant for the award submits to the Secretary the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under title VII of the Act.

Approximately $5.8 million will be available in FY 1993 for this program. Total continuation support recommended is $3.8 million. It is anticipated that $2.0 million will be available to support eight competing awards averaging $250,000.

Special Consideration

In accordance with the statute in effect at the time applications for this program were due, special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Final Funding Priorities and Special Consideration for FY 1993

Proposed funding priorities and a special consideration were published in the **Federal Register** dated August 7, 1992, at 57 FR 34937, for public comment. No comments were received during the 30-day comment period.

Therefore, the proposed funding priorities and special consideration will be retained as follows:

In making awards for fiscal year 1993, a funding priority will be given to:

(1) Applications that currently have or propose to develop projects to provide instruction in clinical teaching skills (may also include other critical academic skills) to medical staff who are working in facilities in underserved areas and who hold academic appointments from a medical school.

(2) Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is required, contact: Ms. Joan Harrison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857, Telephone: (301) 443–3614. FAX: (301) 443–8890.

This program is listed at 93.895 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1516 Filed 1–21–93; 8:45 am]

BILLING CODE 4160-15-M

Final Funding Priorities and Special Consideration for Grants for Faculty Development in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration announces the final funding priorities and special consideration for Grants for Faculty Development in General Internal Medicine and General Pediatrics authorized under section 748(a), (previously section 784(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Section 748(a) of the PHS Act authorizes financial assistance to schools of medicine and osteopathic medicine, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine or general pediatrics training programs. These grants also provide financial assistance in meeting the cost of supporting physicians who are trainees in such programs.

Since this program was announced on August 7, 1992, the Health Professions Education Extension Amendments of 1992, Public Law 102–408, were passed by the Congress and signed by the President.

Section 791(a) of the Act, as amended, includes a general funding preference for selected grant programs under title VII, including section 748, Grants for Faculty Development in General Internal Medicine and General Pediatrics. Section 791(b) includes new information requirements for applicants under this program.

Statutory General Funding Preference

Under section 791(a) of the Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such meetings.

Preference may be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. The Secretary may not give an applicant preference if the proposal of the applicant is ranked in or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

Additional information concerning the implementation of this preference is under development and a separate notice was published in the **Federal Register** dated December 18, 1992, at 57 FR 60212, requesting comments on the methodology for implementation of this new statutory funding preference, for this program, in FY 1994.

Information Requirements Provision

The following new information requirements will not apply in FY 1993 but will also take effect in FY 1994. Under section 791(b) of the Act, the Secretary may make an award under the Grants for Faculty Development in General Internal Medicine and General Pediatrics program only if the applicant for the award submits to the Secretary the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorship for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under title VII of the Act.

Approximately $3.2 million will be available in FY 1993 for this program. Total continuation support recommended is $1.7 million. It is anticipated that $1.5 million will be available to support 10 competing awards averaging $150,000.

Final Funding Priorities and Special Consideration for FY 1993

Proposed funding priorities and a special consideration were published in the **Federal Register** dated August 7, 1992, at 57 FR 34939, for public comment. No comments were received during the 30-day comment period. Therefore, as proposed the final funding priorities and special consideration will be retained as follows:

In making awards for fiscal year 1993, funding priority will be given to:

(1) Applications that currently have or propose to develop projects to provide instruction in clinical teaching skills (may also include other critical academic skills) to medical staff who are working in facilities in underserved areas and who hold academic appointments from a medical school.

(2) Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is required, contract: Ms. Dianne Harbison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Parklawn Building, Rockville, Maryland 20857. Telephone: (301) 443–3614. FAX: (301) 443–8890.

This program is listed at 93.900 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1518 Filed 1–21–93; 8:45 am]

BILLING CODE 4160-50-M

Availability of Funds to Provide Technical and Non-Financial Assistance to Migrant Health Centers on Environmental and Occupational Health Services for Migrant and Seasonal Farmworkers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) anticipates that approximately $340,000 will be available in FY 1993 to support one cooperative agreement for the provision of technical and non-financial assistance to migrant health centers and to community health centers receiving funding under Section 329 of the Public Health Service (PHS) Act to provide environmental and occupational health services to migrant and seasonable farmworkers and their families. This cooperative agreement will be awarded under section 329(g)(1) of the PHS Act (42 U.S.C. 254b) with a budget period of one year and a project period of up to three years.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity. The migrant health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services and environmental health services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3228).

DATES: The deadline date for receipt of application is February 22, 1993. Competing applications will be considered to be "on time" if they are: (1) Received on or before the established deadline date; or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.) Late applications not accepted for processing will be returned to the applicant.

ADDRESSES: Alice Thomas, Grants Management Officer (GMO), Bureau of Primary Health Care, HRSA, 12100 Parklawn Drive, Rockville, Maryland 20857, is responsible for distributing application kits and guidance (Form PHS 5161–1 with Standard Form 424, as approved by the OMB under control numbers 0937–0189), and completed applications must be submitted to that office. The GMO can also provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information and information about these technical assistance funds, contact Jack Egan, Deputy Director, Migrant Health Program, 5600 Fishers Lane, room 7A–55, Rockville, MD 20857 (301) 443–1153.

SUPPLEMENTARY INFORMATION: Migrant farmworkers frequently live in areas with poor housing conditions and inadequate sanitation. These living conditions result in the high risk of accidents and illnesses and often lead to the transmission of communicable diseases. The purpose of the technical assistance is to increase the skill levels of migrant health centers in the development and initiation of activities that address the environmental health needs of migrant and seasonal farmworkers and their families in their catchment area through the assistance of a migrant farmworker environmental resource center. These efforts will focus on assisting migrant health centers identify, plan and complete projects to resolve problems of inadequate housing, water supply, wastewater disposal, solid waste management and pesticide protection.

There are 104 Migrant Health Centers which provide comprehensive primary health are to migrant and seasonal farmworkers and their families in their home base or as they work along one of the three migrant streams. Legislation governing this program can be found at section 329 of the PHS Act. Section 329(a)(1)(D) describes the environmental health services to be provided by migrant health centers as follows: "Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health."

The technical and nonfinancial assistance will be arranged for or provided within available resources by a national resource center in response to migrant health center requests for information and support in the following areas: (1) The promotion, development and implementation of environmental and occupational health services for migrant and seasonal farmworkers, such as, the detection and alleviation of unhealthful conditions, accident prevention, including pesticide exposures, and infection and parasitic disease screening and control; and (2) the development or migrant health center specific patent and provider educational and guidance materials and technical publications by migrant health centers for farmwokers and growers.

Technical assistance in alleviating and correcting conditions among migrant and seasonal farmworkers and their families should be provided in the following areas:

(1) Field sanitation;
(2) Safe drinking water;
(3) Housing;
(4) Rodent and parasitic infestation;
(5) Solid waste disposal;
(6) Sewage treatment; and
(7) Other environmental areas related to health. Examples of the technical and non-financial assistance to be provided in addressing these problems include: (a) Well water testing, and outreach to educate growers and farmworkers on the importance of safe drinking water and handwashing facilities to prevent environmentally induced illness and (b) assistance to migrant health centers by providing expert advice on local, State and federal laws and regulations and referral to private and public funding which may be available to improve housing and environmental health conditions for migrant farmworkers.

Eligible Applicants

Eligible applicants for section 329(g)(1) funds include public and private nonprofit entities. (See section on Criteria for Evaluating Applications.)

Federal Responsibilities

Federal responsibilities will include the following: (1) Coordination of cooperative agreement activities with other federally-funded primary care activities, (including State and Regional Primary Care Associations, migrant health centers and the State primary care agreements) with appropriate groups such as the National Governors Association, Association of State and Territorial Health Officers, U.S. Conferences of State and Local Health Organizations, and the National Association of County Health Officials; and (2) participation in the design, planning, setting target task completion dates and final approval of workplans for activities under the cooperative agreement, including the selection of migrant health centers which will receive technical and non-financial assistance.

Criteria for Evaluating Applications

Applications will be reviewed and rated on the applicant's ability to meet the following:

(1) The extent to which the applicant demonstrates an adequate understanding of the environmental health needs of migrant and seasonal farmworkers;

(2) The extent to which the applicant demonstrates a capability to serve as a resource to federally funded Migrant Health Center/Projects and local environmental agencies to maximize collaboration, identify and integrate resources in assisting migrant farmworkers;

(3) Experience of the proposed project personnel in working with migrant farmworker environmental health issues;

(4) The adequacy and appropriateness of the proposed plan, with project approaches that will support the initiation or completion of specific environmental health activities in local, State, and regional areas served by migrant health centers;

(5) An implementation plan which focuses on the outcomes as well as the methodology to be employed; and

(6) The capability of the applicant to conduct the proposed activities in a cost efficient manner.

Other Award Information

The cooperative agreement awarded under this notice is not subject to the provisions of Executive Order 12372 or the Public Health System Reporting Requirements.

In the OMB Catalog of Federal Domestic Assistance, the Migrant Health Center program is Number 93.246.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1520 Filed 1–21–93; 8:45 am]

BILLING CODE 4160-15-M

Final Funding Priorities and Special Consideration for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration (HRSA), announces the final funding priorities and special consideration for fiscal year (FY) 1993 for Grants for Predoctoral Training in Family Medicine authorized under the authority of section 747(a) (previously section 786(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Since this program was announced on August 28, 1992, the Health Professions Education Extension Amendments of 1992, Public Law 102–408, were passed by the Congress and signed by the President.

Purpose

Section 747(a)(1) of the PHS Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

Approximately $11.5 million will be available in FY 1993 for this program. Total continuation support recommended is $7.6 million. It is anticipated that $3.9 million will be available to support 35 competing awards averaging $110,000 each.

Section 791(a) of the Act, as amended, includes a general funding preference for selected grant programs under title VII, including section 747(a), Grants for Predoctoral Training in Family Medicine. Section 791(b) includes new information requirements for applicants under this program.

Statutory General Funding Preference

Under section 791(a) of the Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Preference may be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. The Secretary may not give an applicant preference if the proposal of the applicant is ranked in or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

Additional information concerning the implementation of this preference is under development and a separate notice was published in the **Federal Register** dated December 18, 1992, at 57 FR 60212, requesting comments on the methodology for implementation of this new statutory funding preference.

(Note: The preference will not be implemented in FY 1993 if sufficient funds are available to fund the top 80 percent of approved applications.)

Information Requirements Provision

The following new information requirements will not apply in FY 1993 but will take effect in FY 1994. Under section 791(b) of the Act, the Secretary may make an award under the Grants for Predoctoral Training in Family Medicine program only if the applicant for the award submits to the Secretary the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under title VII of the Act.

Established Funding Preference

The following funding preference was established in FY 1992 after public comment dated October 28, 1991 at 56 FR 55504 and is continued in FY 1993.

A funding preference will be given to applicants that have an established, required third year family medicine clerkship or preceptorship (at least 4 weeks in duration); or provide credible evidence that such a clerkship or preceptorship will be initiated no later than academic year 1994–95.

Special Consideration

In accordance with the statute in effect at the time applications for this program were due, special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Final Funding Priorities and Special Consideration for FY 1993

Proposed funding priorities and a special consideration were published in the **Federal Register** dated August 28, 1992, at 57 FR 39206, for public comment. No comments were received during the 30-day comment period.

Therefore, the proposed funding priorities and special consideration will be retained as follows:

In making awards for fiscal year 1993, a funding priority will be given to:

1. Applicants that provide substanial training experience in:

(1) Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332 or in a Medically Underserved Area (MUA) designated under provisons of PHS Act, section 330(b)(3);

(2) Health care facilities that have a substantial portion of their patient visits/hospital admissions that are uncompensated or are compensated under the State Medicaid program and/or other State and local health services assistance programs; or

(3) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, facilities operated by state or local health departments, and/or hospitals and other health care facilities of the Indian Health Service.

2. Applicants that have a required primary care preceptorship with community-based physicians (family physicians, general internists, or general pediatricians) in ambulatory care settings which (a) occurs in the 1st or 2nd year and is at least 4 weeks duration or (b) is a longitudinal experience of at least 5 days per semester in both the 1st and 2nd years, and have an active family medicine student interest group with active support from the predoctoral coordinator.

3. Applicants that document that 20 percent or more of the previous medical

school graduating class or of the combined last three graduating classes entered accredited family medicine residency training programs or internship training programs in osteopathic medicine which emphasize family medicine and are approved by the American Osteopathic Association.

4. Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in influencing graduates from those minority or low-income populations identified as at risk of poor health outcomes to enter family medicine residency training.

In making awards for fiscal year 1993, a special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is needed, please contact: Mrs. Betty Ball, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Parklawn Building, Rockville, Maryland 20857. Telephone: (301) 443–3614.

This program is listed at 93.896 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1517 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Amended Program Announcement and Final Funding Priority and Special Consideration for Grants for Interdisciplinary Training for Health Care for Rural Areas for FY 1993

The Health Resources and Services Administration (HRSA) announces the final funding priority and special consideration for fiscal year (FY) 1993, Grants for Interdisciplinary Training for Health Care for Rural Areas, under the authority of section 778, title VII, of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

This program was announced in the **Federal Register** at 57 FR 44191 on September 24, 1992. The announcement included a proposed funding priority and a proposed special consideration. A comment period of 30 days was established to allow public comment concerning the proposed funding priority and special consideration. No comments were received. This notice includes the final funding priority and final special consideration.

In addition, since this program was announced on September 24, 1992, the Health Professions Education Extension Amendments of 1992 were passed by the Congress and signed by the President. These amendments resulted in changes in terminology under eligibility, in the definition of rural and in the way funds may be used in this program. In addition, the section number has been changed from 799A to 778. This notice will describe these changes.

Approximately $3,763,000 will be available in FY 93 for grants for Interdisciplinary Training for Health Care for Rural Areas. Total continuation support recommended is $2,563,000. It is anticipated that $1,200,000 will be available to support 5 to 7 competing awards averaging $200,000.

Purposes

Section 778 of the Public Health Service Act, as amended by Public Law 102–408, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) Use new and innovative methods to train health care practitioners to provide services in rural areas;

(b) Demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) Deliver health care services to individuals residing in rural areas;

(d) Enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(e) Increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) The distribution of stipends to students of eligible applicants;

(b) The establishment of a postdoctoral fellowship program;

(c) The training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) The purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Eligibility

In the Health Professions Education Extension Amendments of 1992, the term mental health practice is substituted for clinical psychology, clinical social work, and marriage and family therapy in the list of disciplines eligible for training assistance under this program.

To be eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or
2. A nonprofit organization, or
3. A public or nonprofit college, university or school of, or program that specializes in nursing, mental health practice, optometry, public health, dentistry, osteopathic medicine, physicians assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

For-profit entities are not eligible to obtain funds under section 778 either directly or through subgrants or subcontracts.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization responsible and accountable for the conduct of the proposed project.

Definition

In the Health Professions Education Extension Amendments of 1992, the term rural is defined as follows:

"Rural" means geographic areas that are located outside of standard metropolitan statistical areas.

Statutory Project Requirements

Interdisciplinary training projects funded under section 778 must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health

care facilities and providers in rural areas, and;

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

Not more than 10 percent of the individuals receiving training with section 778 funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more than 10 percent of the grant funds for administrative costs. The Health Professions Education Extension Amendments of 1992 have added a limitation to the use of grant funds. Grant funds received under section 778 must be used to supplement, not supplant, amounts made available by applicant institutions for these activities in the preceding fiscal year.

Established Funding Preference

The following funding preference was established in FY 1990, after public comment (55 FR 24321, dated June 15, 1990), and the Administration is extending it in FY 1993.

A funding preference will be given to interdisciplinary training involving three or more disciplines. This funding preferenc will be given to applicants that propose and implement training for health care practitioners, faculty or students representing three or more disciplines.

Final Funding Priority

No comments regarding this funding priority were received. Therefore, the final funding priority for FY 1993 is as follows. A funding priority will be given to applicant institutions (academic) which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

Final Special Consideration

No comments regarding this special consideration were received. Therefore, the final special consideration for FY 1993 is as follows. Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas. This special consideration is intended to recognize applicants that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

If additional programmatic information is needed, please contact: Dr. Marcia Brand, Program Officer, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–443–6763. FAX: 301–443–1164.

This program, Grants for Interdisciplinary Training for Health Care for Rural Areas, is listed at 93.192 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1519 Filed 1–21–93; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1993:

Name: Council on Graduate Medical Education.

Time: February 10–11, 1993, 8:30 a.m.

Place: Conference Room G & H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857. Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: There will be presentations and discussions regarding the Third Report and Health Reform: A Public Policy Perspective; health professions activities and the Third Report: reauthorization of the Disadvantaged Minority Health Improvement Act; Health Professions Reform in the Public Eye; the increasing State involvement in physician supply and distribution; the changing environment for academic health centers; a discussion of future issues and activities for council deliberation. Also a period of public comment on the Third Report of the Council on Graduate Medical Evaluation.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: January 14, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–1374 Filed 1–21–93; 8:45 am]

BILLING CODE 4160-15-M

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1993:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 6–8, 1993.

Place: Cabot Lodge, 2375 North State Street, Jackson, Mississippi 39202–1196. The meeting is open to the public.

Purpose: The Council will advise and made appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 4 p.m. on Saturday, February 6, and adjourn at 6 p.m. On Sunday, February 7, the meeting will be from 8:30 a.m. to 6 p.m. On Monday, February 8, the Council will leave the hotel at 8 a.m. to make site visits to the Birthing Center and Jackson Hinds Community Health Center in Jackson; Centers in Vicksburg, Greenville, Mound Bayou, Clarksdale, Tutweiler, Belzoni, Brandon, Laurel, Seminary and Mendenhall, Mississippi. The Council will continue their business meeting on Tuesday, February 9, at 8:30 a.m. and adjourn around 12 noon. The agenda will include a Bureau and Division update, Scholarship and Loan Repayment Programs and NHSC placement activities.

The meeting is open to the public, however, no transaction will be provided to the sites.

Anyone requiring information regarding the subject Council should contact Ms. Anne Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda Items are subject to change as priorities dictate.

Dated: January 14, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–1521 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1993:

Name: National Advisory Council on Migrant Health.

Date and Time: March 3–5, 1993—8 a.m.

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda includes a overview of Council general business activities and priorities. Also, a review and discussion of 1993 National Advisory Council on Migrant Health Recommendations with federal representatives.

The Council meeting is being held in conjunction with the National Association of Community Health Centers, Policy and Issues Forum, March 5–9, 1993.

Anyone requiring information regarding the subject Council should contact Mr. Antonio E. Duran, Executive Secretary, National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: January 15, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–1523 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Biomedical Use of Stabilized Nitric Oxide Complexes

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company for the joint research, development, evaluation and possible commercialization of nucleophile/nitric oxide complexes. Any CRADA to use the controlled release of nitric oxide as a research tool or in drug design will be considered.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. Raphe Kantor, Office of Technology Development, National Cancer Institute—Frederick Cancer Research and Development Center, Building 427, rm. 35, Frederick, MD 21702–1201 (301–846–5465).

DATES: Proposals must be received by February 5, 1993.

SUPPLEMENTARY INFORMATION: Nitric oxide (NO) has been implicated as an important bioregulatory mediator in a variety of processes including the normal physiological control of blood pressure, inhibition of platelet aggregation/adhesion, bronchodilation, penile erection, immunologically induced cytostasis and neurotransmission. Scientists at the National Cancer Institute—Frederick Cancer Research and Development Center have discovered that complexes of nitric oxide with various nucleophiles can be used for the controlled biological release of NO and that this spontaneous, nonenzymatic release of NO can be used to mediate a number of biological responses. For example, selected members of this series have been shown to compare favorably as vasodilators and antiplatelet agents with pharmaceutical preparations used clinically for these purposes. Background information including reprints and issued patents is available from the above-referenced address. Patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement.

To speed the research, development and commercialization of this new class of drugs, the Government is seeking an agreement with a pharmaceutical or biotechnology company in accordance with the regulations governing the transfer of Government-developed agents (37 CFR 404.8). Proposals relating to any biomedical area will be considered.

CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner will enjoy rights of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the Division of Cancer Etiology, NCI-FCRDC, in this CRADA will be as follows:

1. Provide the Collaborator with samples of the subject compounds for pharmaceutical evaluation.
2. Synthesize structural variants of these subject compounds to optimize desired effects.
3. Continue the detailed physicocohemical characterization of the test compounds as well as reserach on their mechanism of biological action. Publish these results and provide all data to the Collaborator as soon as they become available.

The role of the Collaborator will be to perform an exhaustive evaluation of nucleophile/NO adducts and derivatives thereof with respect to the biological activities covered in the CRADA. The Collaborator will supply these data to the NCI in a timely fashion.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. Ability to complete the quality pharmacological evaluations required according to an appropriate timetable to be outlined in the Collaborator's proposal. The target commercial application as well as the strategy for evaluating the test agents' potential in

that capacity must be clearly delineated therein.

2. The level of financial support the Collaborator will supply for CRADA-related Government activities.

3. A willingness to cooperate with the National Cancer Institute in the publication of research results.

4. An agreement to be bound by the DHHS rules involving human subjects, patent rights and ethical treatment of animals.

5. Provisions of equitable distribution of patent rights to any inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

The following is a listing of Dr. Keefer's patent portfolio for the stabilized nitric oxide compound technology which is available for licensing or further development under a CRADA:

Anti-Hypertensive Compositions of Secondary Amine-Nitric Oxide Adducts and use Thereof
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Filed 12 Aug 91
Serial No. 07/743,892 (CIP of 07/409,552)
Therapeutic Inhibition of Platelet Aggregation by Nucleophile-Nitric Oxide Complexes and Derivatives Thereof
Diodati, J.G., Keefer, L.K. (NHLBI)
Filed 24 Sep 91
Serial No. 07/764,906
Prodrug Derivatives of Nucleophile-Nitric Oxide Adducts as Agents for the Treatment of Cardiovascular Disorders
Keefer, L.K., Dunams, T.M., Saavedra, J.E. (NCI)
Filed 22 Sep 92
DHHS Case No. E-048-91/1 (CIP of Serial No. 07/764,908)
Mixed Ligand Metal Complexes of Nitric Oxide Nucleophile Adducts Useful as Cardiovascular Agents
Christodoulou, D.D., Wink, D.A., Keefer, L.K. (NCI)
Filed 27 Mar 92
Serial No. 07/858,885
Method of Controlling Cell Proliferation and Pharmaceutical Composition Therefor
Maragos, C.M., Wang, J.M., Keefer, L.K., Oppenheim, J.J. (NCI)
Filed 13 Apr 92
Serial No. 07/867,759
Complexes of Nitric Oxide With Polyamines
Keefer, L.K., Hrabie, J.A. (NCI)
Issued 10/13/92
U.S. Patent No. 5,155,173
Complexes of Nitric Oxide With Polyamines
Keefer, L.K., Hrabie, J.A. (NCI)
Filed 30 June 92
Serial No. 07/906,479 (CIP of 07/585,793)
Antihypertensive Compositions and Use Thereof
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Filed 18 Oct 89
Serial No. 07/423,279
Anti-hypertensive Compositions of secondary Amine-Nitric Oxide Adducts and Use Thereof
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Serial No. 07/409,552
Patent Issued 13 August 91
U.S. Patent No. 5,039,705
Stabilized Nitric Oxide-Primary Amine Complexes Useful as Cardiovascular Agents
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Serial No. 07/316,958
Patent Issued 4 Sep 90
U.S. Patent No. 4,954,526
Polymer-Bound Nitric Oxide/Nucleophile Adduct Compositions, Pharmaceutical Compositions Incorporating Same and Methods of Treating Biological Disorders Using Same
Keefer, L.K. and Hrabie, J.A. (NCI)
Filed 24 Aug 92
Serial No. 07/935,565

Dated: January 12, 1993.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93-1426 Filed 1-21-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, room 16C-20, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443-4375. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Ronald Suddendoff, Ph.D.

Dates of Meeting: February 1-2, 1993.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 1, 9 a.m. to 9:30 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 1, 9:30 a.m. to recess; February 2, 9 a.m. to adjournment.

Name of Committee: Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Antonio Noronha, Ph.D.

Dates of Meeting: February 15-17, 1993.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 15, 9 a.m. to 11 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 15, 11 a.m. to recess; February 16, 9 a.m. to recess; February 17, 9 a.m. to adjournment.

Name of Committee: Clinical and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Thomas D. Sevy, M.S.W.

Dates of Meeting: February 22-24, 1993.

Place of Meeting: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Open: February 22, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 22, 10 a.m. to recess; February 23, 9 a.m. to recess; February 24, 9 a.m. to adjournment.

Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Lenore S. Radloff.

Dates of Meeting: February 22–24, 1993.

Place of Meeting: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 22, 8 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 22, 10 a.m. to recess; February 23, 9 a.m. to recess; February 24, 9 a.m. to adjournment.

Name of Committee: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Barbara Smothers, Ph.D.

Dates of Meeting: March 4–5, 1993.

Place of Meeting: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Open: March 4, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: March 4, 10 a.m. to recess; March 5, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93,272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health).

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1424 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

Communication Disorders Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Communication Disorders Review Committee on February 24–26, 1993. The Committee will meet at the Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. Notice of the meeting room will be posted in the hotel lobby.

The Committee meeting will be open to the public on February 24 from 8 a.m. until 8:30 a.m. to discuss administrative details relating to Committee business. Attendance by the public will be limited to space available.

The meeting of the Committee will be closed to the public on February 24 from 8:30 a.m. until recess, on February 25 from 8 a.m. until recess and on February 26 from 8 a.m. until adjournment at approximately 2 p.m. in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Committee meeting may be obtained from Dr. Craig Jordan, Scientific Review Administrator, National Institute on Deafness and Other Communication Disorders, room 400B Executive Plaza South, Bethesda, Maryland 20892, 301–496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders).

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1422 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Acting Director, NCRR; and an update on the GCRC Program by Dr. Bernard Talbot, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, NCRR, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Other information pertaining to the meeting may be obtained from the Scientific Review Administrator.

Name of Committee: General Clinical Research Centers Committee.

Scientific Review Administrator: Dr. Bela J. Gulays, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, MD 20892, Telephone: (301) 402–0627.

Dates of Meeting: February 23–24, 1993.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 23, 8 a.m.–9:30 a.m.

Agenda: Report and review of administrative details.

Closed: February 23, 9:30 a.m.–Adjournment.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health).

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1421 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on the Acquisition of an HIV Hyperimmune Intravenous Immunoglobulin (HIVIG IV).

Dates of Meeting: January 29, 1993.

Time of Meeting: 8:30 a.m.

Place of Meeting: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Agenda: To review contract proposals.

Contact Person: Dr. Kathryn W. Ballard, (301) 496–7361.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93: 838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1425 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Biomedical Research Technology Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Biomedical Research Technology Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, Room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Biomedical Research Technology Review Committee

Scientific Review Administrator: Dr. Chhanda L. Ganguly, Office of Review, National Center for Research Resources, National Institutes of Health, Westwood Building, Room 10A14, 5333 Westbard Avenue, Bethesda, Maryland 20892. Telephone: (301) 496–9971.

Date of Meeting: February 25–26, 1993.

Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20852.

Open: February 25, 8:30 a.m.–10 a.m.

Agenda: Report and review of administrative details.

Closed: February 25, 10 a.m.–Adjournment.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program Nos. 93.371, Biomedical Research Technology, National Institutes of Health.)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1420 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Comparative Medicine Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Comparative Medicine Review Committee, National Center for Research Resources, National Institutes of Health.

The meeting will be open to the public as listed below for a brief staff presentation on the current status of the Comparative Medicine Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, NCRR, National Institutes of Health, Westwood Building, Room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Comparative Medicine Review Committee

Scientific Review Administrator: Dr. Bernadette Tyree, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A16, Bethesda, MD 20892. Telephone: (301) 496–4390.

Date of Meeting: February 28–March 2, 1993.

Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: February 28—6:30 p.m.–7:30 p.m.

Agenda: Report and review of administrative details.

Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Closed: February 28—7:30 p.m. until adjournment.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1419 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date of Meeting: February 17–19, 1993.

Place of Meeting: Residence Inn, Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: February 17, 7 p.m. until recess, Strategic Planning Meeting-Orientation, Montgomery II Conference Room.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: February 18, 8 a.m. until recess, Conference Room 10, Building 31C.

Closed: February 19, 8 a.m. until 10 a.m., Conference Room 10, Building 31C.

Open: February 19, 10 a.m. until adjournment, Conference Room 10, Building 31C.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who need sign language interpretation or other assistance should contact the Committee Management Office, (301) 496–9567, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1423 Filed 1–21–93; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearances in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, December 11, 1992. (Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Request for Workers' Compensation/Public Disability Benefit Information—0960–0098. The information on form SSA–1709 is used by the Social Security Administration to request and/or verify the amount of workers' compensation or other disability benefit received by a claimant for Social Security Disability Benefits. The respondents are State and local governments and businesses which administer workers' compensation or other disability benefits.

Number of Respondents: 32,500
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 8,125 hours

2. Employee Work Activity Questionnaire—0960–0483. The information on form SSA–3033 is used by the Social Security Administration to determine if a claimant for disability benefits has engaged in substantial gainful activity or received a nonspecific subsidy. The respondents are current or former employers of disability claimants.

Number of Respondents: 12,500
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 3,125 hours

3. Record of SSI Inquiry—0960–0140. The information on form SSA–3462 is used by the Social Security Administration to determine potential eligibility to Supplemental Security Income (SSI) payments. The respondents are individuals who inquire about SSI eligibility for themselves or third parties.

Number of Respondents: 650,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 54,167 hours

4. Statement for Determining Continuing Eligibility for Supplemental Security Income Benefits—0960–0145. The information on form SSA–8202 is used by the Social Security Administration to reevaluate factors of eligibility and to determine correct payment amount for recipients of Supplemental Security Income (SSI). The affected public consists of SSI recipients whose eligibility is being redetermined.

Number of Respondents: 1,600,000
Frequency of Response: 1
Average Burden Per Response: 8 minutes
Estimated Annual Burden: 213,333 hours

5. Quarterly Statistical Report on Recipients and Payments Under State Administered State Assistance Programs for Aged, Blind and Disabled (Individuals and Couples) Recipients—0960–0130. The information on form SSA–9741 is used by the Social Security Administration to provide statistical data on recipients and payments under the State administered supplemental programs.

Number of Respondents: 23
Frequency of Response: 4
Average Burden per Response: 1 hour
Estimated Annual Burden: 92 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 14, 1993.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–1370 Filed 1–21–93; 8:45 am]

BILLING CODE 4190-29-M

Substance Abuse and Mental Health Services Administration

Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice provides the policy and procedures that the Substance Abuse and Mental Health Services Administration (SAMHSA) will use to implement the provisions of Public Law 102–321 for the peer and Advisory Council review of applications and proposals for substance abuse and mental health services prevention and treatment grants and contracts. SAMHSA was established by Public Law 102–321, the ADAMHA Reorganization Act of 1992.

ADDRESSES: The public is invited to provide written comments on this policy; these should be sent to Jane A. Taylor, Ph.D., Deputy Director for Review Policy and Extramural Operations, Office of Extramural Programs, Substance Abuse and Mental Health Services Administration, 12C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 301–443–4266.

SUPPLEMENTARY INFORMATION: Public Law 102–321, the ADAMHA Reorganization Act of 1992, enacted on July 10, 1992, amended the Public Health Service (PHS) Act to establish the Substance Abuse and Mental Health Services Administration (SAMHSA). Section 504 of the PHS Act, as amended, provides for the conduct of peer and Advisory Council review of grants, cooperative agreements, and prevention and treatment programs in SAMHSA.

The purpose of SAMHSA is to establish and implement a comprehensive program to improve the provision of treatment and related services to individuals with respect to substance abuse and mental illness and to improve substance abuse and mental health prevention services.

The Administrator is authorized to award grants to, and enter into cooperative agreements with, public and private nonprofit entities to support demonstration projects, evaluations, systems improvements, services delivery, and the dissemination of information on substance abuse and mental health services for the delivery of these services. The Administrator may also enter into contracts with public and private nonprofit entities.

This policy establishes SAMHSA's procedures for peer and Advisory Council review of applications for grants and cooperative agreements and proposals for contracts for treatment, prevention, and related programmatic activities. Proposals for administrative and program support activities, including, for example, purchase of supplies and equipment, logistical support services, or data processing, are not subject to peer and Advisory Council review.

The policy also provides criteria for the Administrator to make statutorily permitted, limited exceptions to the one-fourth Federal staff limit on peer review group membership and the requirement for Council review. Additionally, the policy provides the generic technical merit review criteria for grant and cooperative agreement applications and proposals for contracts. Specific criteria for individual programs are included in program announcements, requests for applications, or requests for proposals. However, these criteria will fall under the general criteria stated here.

Peer and Advisory Council Review of Substance Abuse and Mental Health Prevention and Treatment Grant Applications and Contract Projects

1. Applicability

The policy applies to competing applications for grants, cooperative agreements, and proposals for contracts received and/or reviewed since October 1, 1992, under mental health and substance abuse prevention and treatment programs administered by the Substance Abuse and Mental Health Services Administration or any of its components. The policy does not apply to applications for:

(1) Continuation funding for budget periods within an approved project period; or

(2) Supplemental funding within a project period.

2. Definitions

As used in this policy:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Administrator" means the Administrator of the Substance Abuse and Mental Health Services Administration.

(c) "Awarding official" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(d) "Budget period" means the interval of time (usually 12 months) into which the project Period is divided for budgetary and reporting purposes.

(e) "Contract project" means an identified, circumscribed activity, involving a single contract or two or more similar, related, or interdependent contracts, intended and designed to promote the mission of the agency. This includes (but is not limited to): Services systems development projects, surveys, demonstrations, and evaluation of services or services demonstration activity. "Contract project" does not include contracts for logistical management, technical assistance, and purchase of supplies.

(f) "Contract proposal" means a written offer to enter into a contract, solicited by and submitted to an awarding official by an individual or non-Federal organization, and including at a minimum, a description of the nature, purpose, duration, and cost of the project and the methods, personnel, and facilities to be utilized in carrying it out.

(g) "Department" means the U.S. Department of Health and Human Services.

(h) "Peer review group" means a group of experts qualified by training and experience in particular programmatic, technical, or scientific fields to give expert advice, in accordance with the provisions of this part, on the programmatic and technical merit of grant or cooperative agreement applications or contract projects in those fields.

(i) "Project approach" means the methodology to be followed.

(j) "Project concept" means the basic purpose, scope, and objectives of the project.

(k) "Project period" means the total time for which support of a project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions.

(l) "Request for proposals" means a Government solicitation to prospective offerors under procedures for negotiated contracts, to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the request for proposals. The request for proposals contains information sufficient to enable all offerors to prepare competitive proposals, and is as complete as possible with respect to: The nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements clauses, or other circumstances affecting the contract; format for cost proposals; and evaluation criteria by which the proposals will be evaluated.

(m) "Unsolicited contract proposal" has the same meaning as in 48 CFR 15.501.

3. Establishment and Operation of Peer Review Groups

(a) To the extent applicable, the Federal Advisory Committee Act (5 U.S.C. App. I), Department implementing regulations (45 CFR part 11), and Chapter 9 of the Department's General Administration Manual[1] will govern the establishment and operation of peer review groups, including that meetings shall be open to the public except as determined by the Secretary.

(b) Subject to section 5 and paragraph (a) of this section, the Administrator of the Substance Abuse and Mental Health Services Administration will adopt procedures for the conduct of reviews and the formulation of recommendations under Sections 6, 7, 8 and 9 within said agency.

4. Composition of Peer Review Groups

(a) To the extent applicable, the selection and appointment of members of peer review groups and their terms of service will be governed by Chapter 9 of the Department's General Administration Manual. (See Footnote 1).

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[1] The Department of Health and Human Services General Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(b) Subject to paragraph (a) of this section, members will be selected based upon their training and experience in relevant professional, technical, and/or scientific fields, taking into account, among other factors:

(1) The level of formal professional, technical, and/or scientific education completed or experience acquired by the individual;

(2) The extent to which the individual has engaged in relevant activities, the capacities (e.g., project director, administrator) in which the individual has done so, and the quality of such activities;

(3) Recognition as reflected by awards and other honors received from professional or scientific organizations outside the Department; and

(4) The need for the group to have included within its membership experts from various areas of specialization within relevant professional, technical, or scientific fields.

(c) Except as determined in accordance with section 12, not more than one-fourth of the members of any peer review group established pursuant to this part may be officers or employees of the United States. For purposes of the preceding sentence, membership on such groups does not make an individual an officer or employee of the United States.

5. *Conflict of Interest*

(a) Members of peer review groups established pursuant to this part are subject to relevant provisions in title 18 of the United States Code relating to criminal activity, the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 11222, as amended.

(b) In addition to any restrictions imposed under paragraph (a) of this section:

(1) No member of a peer review group established pursuant to this part may participate in or be present during any review by that group of a grant application, cooperative agreement application, contact project, or contract proposal in which, to the member's knowledge, any of the following has a financial interest: (i) The member or his or her spouse, parent, child, or partner; (ii) any organization in which the member or his or her spouse, parent, child, or partner is serving as an officer, director, trustee, partner, or employee, or is otherwise similarly associated; or (iii) any organization with which the member or his or her spouse, parent, child, or partner is negotiating or has any arrangement concerning prospective employment or other similar association.

(2) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the project director, evaluator, or member of the staff responsible for carrying out any activities contemplated as part of a grant application, contract project, or contract proposal, that group is disqualified and the review will be conducted by another group with the expertise to do so. If there is no other group with the requisite expertise, the review will be conducted by an ad hoc group no more than 50 percent of whose members may be from the disqualified group. The composition of any such ad hoc group will be determined in accordance with Sections 4(b) and 4(c) of this part and, to the extent feasible, Section 4(a) of this part.

(3) Where a member of a peer review group participates in or is present during: (i) Development or review of a project approach or request for proposals by that group; or (ii) review of a contract proposal by that group (under section 9(c), i.e., after the issuance of a request for proposals); no contract may thereafter be awarded as the result of such development or review to said member, his or her spouse, parent, child, or partner or any organization in which the member, his or her spouse, parent, child, or partner was serving as officer, director, trustee, partner, or employee at the time of such development or review or with which the member, his or her spouse, parent, child, or partner was negotiating or had any arrangement concerning prospective employment at said time.

(4) No member of a peer review group may participate in any review under this part of a specific grant application or contract project for which the member has had or is expected to have any other responsibility or involvement (whether preaward or postaward) as an officer or employee of the United States.

(c) Where permissible under the statutes, standards, and order cited in paragraph (a) of this section, the Administrator or his or her designee may waive the requirements in paragraph (b) of this section if he or she determines that the potential conflict is minimal and there is no other practical means for securing appropriate expert advice on a particular grant application, contract project, or contract proposal.

6. *Grants; Matters To Be Reviewed*

(a) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed by a peer review group in accordance with the provisions of this part and that group has made a recommendation for approval concerning the technical merit of such application.

(b) The peer review group to which an application has been submitted under this paragraph shall make a written report on each application which shall contain the following parts:

(1) The first part of the report shall consist of a factual summary of the proposed project, including a description of its purpose, approach, location, and total budget.

(2) The second part of the report shall address the technical merit of the proposed project and shall consist of a critique of the proposed project with regard to the factors described in section 7 and such other factors as specified in the program announcement. This portion of the report shall include a set of recommendations with respect to the disposition of the application based upon its technical merit.

(3) For applications recommended for consideration of funding, the peer review panel shall, at the end of its deliberations, provide both a priority score, based upon the technical merit of the proposed project, and its recommendation regarding the appropriate project period and level of support for the proposed project.

(c) Recommendations are advisory and shall not bind the awarding official or Advisory Council, except that recommendations of the peer review group for disapproval shall be binding on the awarding official or Advisory Council.

(d) All grant and cooperative agreement applications shall be reviewed by the cognizant Advisory Council, except where:

(1) Direct costs do not exceed $50,000, or other amount as provided by statute; or

(2) The Administrator approves an exception in accordance with Section 11.

(e) No application shall be reviewed by an Advisory Council until it has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

7. *Grants; Review Criteria*

In carrying out its review under Section 6, the peer review group will take into account, among other factors as specified in the program announcement:

(a) The potential significance of the proposed project;

(b) The appropriateness of the applicant's proposed objectives to the goals of the program announcement;

(c) The adequacy and appropriateness of the proposed approach and activities;

(d) The adequacy of available resources, such as facilities and equipment;

(e) The qualifications and experience of the applicant organization, the project director, and other key personnel; and

(f) The reasonableness of the proposed budget.

8. Unsolicited Contract Proposal; Matters To Be Reviewed

(a) No awarding official shall award a contract based upon an unsolicited contract proposal covered by this part unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part and the procedures set forth in 41 CFR subpart 3–4.52.

9. Solicited Contract Proposals; Matters To Be Reviewed

(a) Where the approach of a solicited contract proposed is defined in the agency's request for contract proposals, no awarding official shall issue such a request unless the project approach has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

(b) Where the approach of a solicited contract proposal is to be defined in the proposal, no awarding official shall award such a contract unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with this part.

(c) The awarding official may waive the requirements of paragraph (a) of this section for peer review before issuing a request for contract proposals if he or she determines that the accomplishments of essential program's objectives would be replaced in jeopardy by delay, or that such review is not in the best interest of the Government. The awarding official shall specify in wiring the grounds on which this determination is based. Under such circumstances, the awarding official will not award a contract based on the request for contract proposals unless a peer review group has made recommendations concerning the technical merit of the project approach as defined in the request for proposals, and the proposals received in response to the request have been reviewed by a peer review group. The request for proposals will indicate that the project approach has not been reviewed by a peer review group and that no award will be made until a peer review of the approach is conducted and recommendations made based on such review.

(d) Contract proposals shall be reviewed by the appropriate Advisory Council, except where:

(1) Direct costs do not exceed the amount specified in Section 6(d)(1); or

(2) The Administrator approves an exception in accordance with Section 11.

(e) Except to the extent otherwise provided for by law, Advisory Council recommendations are advisory and not binding on the awarding official.

10. Contract Projects and Proposals; Review Criteria

(a) In carrying out its review of a project approach under Section 9(a) or 9(b), the peer review group will take into account, among other factors, the following general review criteria:

(1) The merit from a technical standpoint of the goals of the proposed activity;

(2) The adequacy of the methodology to be utilized in carrying out the activity; and

(3) The availability and adequacy of the expertise, facilities, and other resources necessary to achieve these goals.

(b) In carrying out its review of unsolicited contract proposals under Section 8, the peer review group will take into account, among other factors, those criteria in Section 7 which are relevant to the particular proposals, as well as the extent to which there are identified, practical uses for the anticipated results of the activity.

(c) In carrying out its review of solicited contract proposals under Section 9(c) the peer review group will evaluate each proposal in accordance with the criteria set forth in the request for proposals.

11. Exceptions

The Administrator may make exceptions to the one-fourth Federal staff limit on peer review groups and the Advisory Council review requirement where:

(a) Awards are mandatory, or awarded on a formal or block grant basis;

(b) Awards are made to meet public health emergencies or other urgent health problems such as disaster assistance or significant increases in use of a particular abusable substance; and

(c) Other situations exist where such review is not appropriate.

Such exceptions may be made at the discretion of the Administrator who may also approve or impose alternate review procedures, as appropriate.

12. Applicability of Other Regulations

This policy is in addition to, and does not supersede regulations concerning any applications, contract projects, or contract proposals appearing elsewhere in title 41, title 42, or title 45 of the Code of Federal Regulations.

Joseph R. Leone,

Acting Deputy Administrator, SAMHSA.

[FR Doc. 93–1442 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless; (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free number information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: January 13, 1993.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 01/22/93

Suitable/Available Properties

Land (by State)

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409–
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously leased by non-profit for homeless assistance use
GSA Number 2–GR–FL–682A

Ohio

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Unutilized
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA Number: 2–GR–OH–433B

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured area.

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured area.

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured area.

Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured area.

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured area.

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured area.

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured area.

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured area.

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Land (by State)

Oregon

Reedsport Substation
North 22nd Street
Reedsport Co: Douglas OR 97467–
Landholding Agency: GSA
Property Number: 549310003
Status: Excess
Reason: Other
Comment: Inaccessible GSA Number: 9–B–OR–701

[FR Doc. 93–1222 Filed 1–21–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-011-03-4320-01-ADVB]

Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet on Tuesday, February 23, 1993 to discuss the expenditure of Grazing Advisory Board (7121) and Range Improvement (8100) funds for fiscal year 1993. The meeting is open to the public and a comment period will be held at 2 p.m.

DATES: The meeting will begin at 9 a.m. on Tuesday, February 23, 1993 in the District Office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM (208) 384–3300.

Dated: January 8, 1993.

Barry G. Cushing,

Acting District Manager.

[FR Doc. 93–1381 Filed 1–21–93; 8:45 am]

BILLING CODE 4310-GG-M

[CA-050-282-4210-04; CACA 31254FD]

Exchange of Public and Private Lands in Siskiyou, Shasta, Trinity, Tehama and Butte Counties, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Exchange of public and private lands in Siskiyou, Shasta, Trinity, Tehama and Butte Counties, CA.

SUMMARY: The public lands described below have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. These public lands have been identified for disposal in the Proposed Redding Resource Management Plan. These descriptions apply only to lands managed by the Bureau of Land Management.

Mount Diablo Meridian

T. 23 N., R. 2 W.,
  Foster Island
T. 23 N., R. 4 W.,
  Sec. 10: All
T. 23 N., R. 6 W.,
  Sec 3: All
T. 23 N., R. 7 W.,
  Sec. 2: All
  Sec. 10: All
  Sec. 12: All
  Sec. 14: All
T. 24 N., R. 6 W.,
  Sec. 15: All
T. 24 N., R. 7 W.,
  Sec. 2: All
  Sec. 4: All
  Sec. 10: All
  Sec. 12: All
  Sec. 14: All
  Sec. 22: All
  Sec. 26: All
  Sec. 34: All
T. 25 N., R. 6 W.,
  Sec. 30: All
T. 25 N., R. 7 W.,
  Sec. 2: All
  Sec. 4: All
  Sec. 10: All
  Sec. 14: All
  Sec. 22: All
  Sec. 28: All
  Sec. 34: All
T. 26 N., R. 2 W.,
  Todd Island
T. 26 N., R. 7 W.,
  Sec. 2: All
  Sec. 4: All except the N½NE¼
  Sec. 8: All
  Sec. 10: All
  Sec. 14: All
  Sec. 18: All
  Sec. 20: All
  Sec. 22: All
  Sec. 24: All
  Sec. 26: All
  Sec. 28: All
  Sec. 30: All
  Sec. 32: All
  Sec. 34: All
T. 26 N., R. 8 W.,
  Sec. 8: All except the SE¼
  Sec. 10: S½
  Sec. 14: All
  Sec. 20: S½
  Sec. 22: NE¼NE¼
  Sec. 24: All
T. 27 N., R. 1 W.,
  Sec. 6: All
T. 27 N., R. 2 W.,
  Sec. 4: All
  Sec. 8: All
T. 27 N., R. 3 W.,
  Sec. 2: All
  Sec. 6: All
T. 27 N., R. 5 W.,
  Sec. 10: All
T. 27 N., R. 7 W.,
  Sec. 18: All
  Sec. 32: All
T. 27 N., R. 8 W.,
  Sec. 4: All
  Sec. 6: All
  Sec. 8: All
  Sec. 10: All
  Sec. 14: All
  Sec. 18: All
  Sec. 20: All except the S½S½
  Sec. 22: All
  Sec. 24: All
  Sec. 26: All except the S½SW¼
T. 27 N., R. 9 W.,
  Sec. 12: All
T. 28 N., R. 2 W.,
  Sec. 4: All
  Sec. 8: SE¼SE¼
  Sec. 20: All except the NW¼NW¼
  Sec. 30: All
T. 28 N., R. 3 W.,
  Sec. 20: All
  Sec. 32: SW¼SW¼
T. 28 N., R. 5 W.,
  Sec. 10: All
T. 28 N., R. 8 W.,
  Sec. 32: All
T. 28 N., R. 9 W.,
  Sec. 2: All
  Sec. 22: All
  Sec. 26: All
  Sec. 27: All
  Sec. 28: NE¼
  Sec. 33: NW¼NE¼
  Sec. 34: All
T. 29 N., R. 1 W.,
  Sec. 4: SE¼SE¼
  Sec. 2: All
  Sec. 28: All
T. 29 N., R. 2 W.,
  Sec. 2: All
  Sec. 8: All
  Sec. 18: All
T. 29 N., R. 4 W.,
  Sec. 12: All
T. 29 N., R. 8 W.,
  Sec. 6: All
  Sec. 28: All
  Sec. 34: All
T. 29 N., R. 9 W.,
  Sec. 9: E½SE¼
  Sec. 10: All
  Sec. 14: All
  Sec. 15: All
T. 30 N., R. 1 W.,
  Sec. 2: All
  Sec. 4: All
  Sec. 6: All
  Sec. 10: All
  Sec. 12: All
  Sec. 26: All
T. 30 N., R. 2 W.,
  Sec. 28: All
  Sec. 34: All
T. 30 N., R. 3 W.,
  Sec. 5: All
  Sec. 9: All
  Sec. 12: All
  Sec. 26: All
T. 30 N., R. 6 W.,
  Sec. 4: All
T. 30 N., R. 7 W.,
  Sec. 6: E½
T. 30 N., R. 8 W.,
  Sec. 1: All
  Sec. 4: All
  Sec. 6: All
  Sec. 8: All
  Sec. 10: All
  Sec. 12: All
  Sec. 14: All
  Sec. 18: All
  Sec. 20: All
  Sec. 22: All
  Sec. 28: All
  Sec. 32: SW¼
T. 30 N., R. 9 W.,
  Sec. 10: All
  Sec. 12: All
  Sec. 22: All
  Sec. 24: All
  Sec. 26: All except the SE¼
  Sec. 28: All
  Sec. 32: All
T. 31 N., R. 1 W.,

Sec. 10: All
Sec. 14: All
Sec. 32: All
T. 31 N., R. 2 W.,
Sec. 8: All
Sec. 22: E½NW¼
T. 31 N., R. 5 W.,
Sec. 5: All
Sec. 6: All
Sec. 7: N½N½
Sec. 8: All
Sec. 14: All
Sec. 17: All
Sec. 21: All
Sec. 29: S½
Sec. 31: N½
Sec. 32: All
T. 31 N., R. 6 W.,
Sec. 1: All
Sec. 7: All
Sec. 16: All
Sec. 17: All
Sec. 18: All
Sec. 19: All
Sec. 20: All
Sec. 23: SE¼
Sec. 24: E½
Sec. 29: All
Sec. 34: All
Sec. 36: NE¼
T. 31 N., R. 7 W.,
Sec. 12: All
Sec. 20: All
T. 31 N., R. 8 W.,
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 9: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 22: All
Sec. 26: All
Sec. 28: All
Sec. 32: All
Sec. 35: All
T. 31 N., R. 9 W.,
Sec. 2: All
Sec. 6: All
Sec. 26: All
Sec. 30: All
Sec. 34: All
T. 31 N., R. 11 W.,
Sec. 2: All
Sec. 3: All
Sec. 6: All
Sec. 7: All
Sec. 18: All
T. 31 N., R. 12 W.,
Sec. 1: All
Sec. 13: All
Sec. 24: All
T. 32 N., R. 5 W.,
Sec. 3: All except the W½SW¼
Sec. 10: All except the W½NW¼
Sec. 11: All
Sec. 12: All
Sec. 14: All
Sec. 15: All
Sec. 18: S½SW¼
Sec. 19: All
Sec. 20: SW¼
Sec. 22: All
Sec. 29: All except the NE¼NE¼
Sec. 30: All
Sec. 31: All
Sec. 32: All
Sec. 33: All
T. 32 N., R. 6 W.,
Sec. 24: All
Sec. 25: All
T. 32 N., R. 7 W.,
Sec. 6: All
Sec. 8: All
T. 32 N., R. 8 W.,
Sec. 12: All
Sec. 28: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
T. 32 N., R. 9 W.,
Sec. 18: All except the N½NE¼
Sec. 20: All except the N½
Sec. 25: All
Sec. 27: S½
Sec. 28: All
Sec. 30: All
Sec. 31: All
Sec. 32: All
Sec. 33: All
Sec. 34: All
T. 32 N., R. 10 W.,
Sec. 10: All
Sec. 12: SE¼SE¼
Sec. 14: All
Sec. 19: All
Sec. 26: All
T. 32 N., R. 11 W.,
Sec. 26: All
Sec. 27: All
Sec. 31: All
Sec. 32: All
Sec. 33: All
Sec. 34: All
Sec. 35: All
Sec. 36: All
T. 33 N., R. 1 W.,
Sec. 8: All
T. 33 N., R. 2 W.,
Sec. 8: All
Sec. 10: All
Sec. 11: All
Sec. 12: All
Sec. 16: All
Sec. 18: All
Sec. 20: All
Sec. 22: All
Sec. 28: All
Sec. 32: All
T. 33 N., R. 3 W.,
Sec. 26: All
Sec. 32: All
T. 33 N., R. 4 W.,
Sec. 14: All
Sec. 18: All
Sec. 30: All
T. 33 N., R. 5 W.,
Sec. 22: SE¼
Sec. 24: All
Sec. 26: All
Sec. 27: All
Sec. 28: E½E½
Sec. 34: All
Sec. 35: All
T. 33 N., R. 7 W.,
Sec. 32: S½
T. 33 N., R. 8 W.,
Sec. 20: All
Sec. 30: W½NW¼
T. 33 N., R. 9 W.,
Sec. 5: All
Sec. 6: All
Sec. 7: All
Sec. 8: All
Sec. 12: All
Sec. 17: All
Sec. 18: All
Sec. 19: N½
Sec. 20: NW¼NW¼
Sec. 24: S½SW¼
Sec. 26: All
Sec. 30: NW¼
T. 33 N., R. 10 W.,
Sec. 3: SE¼SE¼
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: All except the S½SW¼
Sec. 24: All except the SW¼
Sec. 25: All
T. 34 N., R. 1 W.,
Sec. 2: All
Sec. 21: All
Sec. 30: All
T. 34 N., R. 7 W.,
Sec. 2: All
T. 35 N., R. 1 W.,
Sec. 4: All
Sec. 14: All
Sec. 34: All
T. 36 N., R. 1 W.,
Sec. 2: All
Sec. 10: All
Sec. 14: All
Sec. 28: All
T. 37 N., R. 4 W.,
Sec. 4: All
T. 39 N., R. 3 W.,
Sec. 6: All
T. 40 N., R. 8 W.,
Sec. 2: All
Sec. 6: All
Sec. 7: All
Sec. 8: All
Sec. 10: All
Sec. 17: All
Sec. 21: All
Sec. 22: All
T. 40 N., R. 9 W.,
Sec. 12: All
T. 41 N., R. 7 W.,
Sec. 4: All
Sec. 6: All
Sec. 7: All
Sec. 8: All
Sec. 10: All
T. 41 N., R. 8 W.,
Sec. 2: All
Sec. 10: All
Sec. 12: All
Sec. 13: All
Sec. 14: All
Sec. 20: All
Sec. 22: All
Sec. 28: All
Sec. 32: All
Sec. 34: All
T. 41 N., R. 9 W.,
Sec. 4: All
Sec. 10: All
Sec. 20: All
Sec. 27: All
Sec. 34: All
T. 42 N., R. 5 W.,
Sec. 18: All
Sec. 24: All
T. 42 N., R. 6 W.,

Sec. 6: All
Sec. 20: All
Sec. 22: All
Sec. 26: All
T. 42 N., R. 7 W.,
Sec. 6: All
Sec. 8: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 20: All
Sec. 22: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
Sec. 32: All
T. 42 N., R. 8 W.
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 20: All
Sec. 22: All
Sec. 24: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
Sec. 34: All
T. 42 N., R. 9 W.,
Sec. 12: All
T. 42 N., R. 10 W.,
Sec. 2: All
Sec. 22: All
Sec. 24: All
T. 43 N., R. 3 W.,
Sec. 6: All
Sec. 8: All
Sec. 18: All
T. 43 N., R. 4 W.,
Sec. 2: All
Sec. 4: All
Sec. 18: All
T. 43 N., R. 5 W.,
Sec. 12: All
T. 43 N., R. 6 W.,
Sec. 18: All
T. 43 N., R. 7 W.,
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 14: All
Sec. 18: All
Sec. 22: All
Sec. 34: All
T. 43 N., R. 8 W.,
Sec. 6: All
Sec. 10: All
Sec. 12: All
Sec. 26: All
Sec. 28: All
Sec. 34: All
T. 43 N., R. 9 W.,
Sec. 6: All
Sec. 7: All
Sec. 12: All
Sec. 18: All
Sec. 20: All
T. 43 N., R. 10 W.,
Sec. 1: All
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: All
Sec. 32: All
T. 44 N., R. 4 W.,
Sec. 2: All
Sec. 10: All
Sec. 22: All
Sec. 26: All
T. 44 N., R. 5 W.,
Sec. 18: All
Sec. 22: All
T. 44 N., R. 7 W.,
Sec. 32: All
T. 44 N., R. 8 W.,
Sec. 14: All
Sec. 18: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
T. 44 N., R. 9 W.,
Sec. 3: All
Sec. 11: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 22: All
Sec. 32: All
T. 44 N., R. 10 W.,
Sec. 8: All
Sec. 12: All
Sec. 24: All
Sec. 26: All
Sec. 30: All
Sec. 36: All
T. 45 N., R. 4 W.,
Sec. 8: All
Sec. 10: All
Sec. 28: All
Sec. 34: All
T. 45 N., R. 6 W.,
Sec. 4: All
T. 45 N., R. 7 W.,
Sec. 11: All
Sec. 12: All
Sec. 21: All
Sec. 30: All
T. 46 N., R. 5 W.,
Sec. 6: All
T. 46 N., R. 6 W.,
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 20: All
Sec. 32: All
T. 46 N., R. 7 W.,
Sec. 12: All
T. 47 N., R. 2 W.,
Sec. 10: All
Sec. 22: All
Sec. 28: All
Sec. 30: All
T. 47 N., R. 4 W.,
Sec. 2: All
Sec. 9: All
Sec. 10: All
T. 47 N., R. 5 W.,
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 20: All
Sec. 30: All
T. 47 N., R. 6 W.,
Sec. 8: All
Sec. 12: All
Sec. 18: All
Sec. 29: All
Sec. 30: All
Sec. 31: All
Sec. 32: All except the W½SE¼
T. 47 N., R. 7 W.,
Sec. 13: All
T. 47 N., R. 8 W.,
Sec. 1: All
Sec. 2: All
T. 48 N., R. 1 W.,
Sec. 14: All
Sec. 24: All
Sec. 28: All
Sec. 30: All
T. 48 N., R. 2 W.,
Sec. 24: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
T. 48 N., R. 3 W.,
Sec. 14: S¼
Sec. 23: All
Sec. 24: All
Sec. 34: All
T. 48 N., R. 4 W.,
Sec. 18: All
Sec. 22: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
Sec. 35: All
T. 48 N., R. 5 W.,
Sec. 22: All
Sec. 34: All
T. 48 N., R. 7 W.,
Sec. 34: All
T. 48 N., R. 8 W.,
Sec. 35: All
T. 19 N., R. 5 E.,
Sec. 3: All
Sec. 4: All
Sec. 10: All
Sec. 14: All
Sec. 22: All
Sec. 28: All
T. 19 N., R. 6 E.,
Sec. 6: All
Sec. 10: Lot 8
Sec. 17: All
Sec. 20: All
T. 20 N., R. 4 E.,
Sec. 2: All
Sec. 3: All
Sec. 4: All
Sec. 9: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 28: All
Sec. 32: All
Sec. 33: All
Sec. 34: All
T. 20 N., R. 5 E.,
Sec. 13: All
Sec. 20: All
Sec. 22: All
Sec. 23: All
Sec. 24: All
Sec. 27: All
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All
Sec. 35: All
T. 20 N., R. 6 E.,
Sec. 4: W½
Sec. 6: All

  Sec. 8: All
  Sec. 18: All
  Sec. 20: All
  Sec. 28: All
  Sec. 30: All
  Sec. 31: All
T. 21 N., R. 3 E.,
  Sec. 6: All
  Sec. 10: All
T 21 N., R. 4 E.,
  Sec. 4: All
  Sec. 6: All
  Sec. 12: All
  Sec. 14: All
  Sec. 22: All
  Sec. 23: All
  Sec. 26: All
  Sec. 28: All
  Sec. 29: All
  Sec. 32: All
  Sec. 33: All
T. 22 N., R. 2 E.,
  Sec. 10: All
  Sec. 26: All
  Sec. 36: All
T. 22 N., R. 3 E.,
  Sec. 2: All
  Sec. 3: All
  Sec. 4: All
  Sec. 8: All
T. 22 N., R. 4 E.,
  Sec. 4: All
  Sec. 6: All
  Sec. 8: All
  Sec. 18: All
  Sec. 20: All
  Sec. 28: All
  Sec. 30: All
  Sec. 32: All
T 23 N., R. 2 E.,
  Sec. 2: All
  Sec. 4: All
  Sec. 6: All
  Sec. 8: All
  Sec. 10: All
  Sec. 24: All
  Sec. 26: All
T. 23 N., R. 3 E.,
  Sec. 8: All
  Sec. 13: All
  Sec. 14: All
  Sec. 18: All
  Sec. 32: All except the NE¼NW¼
  Sec. 34: All except the NW¼NW¼
T. 23 N., R. 4 E.,
  Sec. 8: All
  Sec. 9: All
  Sec. 29: All
  Sec. 30: All
T. 23½ N., R. 2 E.,
  Sec. 2: All
T. 24 N., R. 1 E.,
  Sec. 22: All
T. 24 N., R. 2 E.,
  Sec. 2: All
  Sec. 4: All
  Sec. 10: All
  Sec. 18: All
  Sec. 22: All
T. 24 N., R. 3 E.,
  Sec. 4: All
  Sec. 12: All
  Sec. 24. All
  Sec. 32: All
  Sec. 36: All
T. 24 N., R. 4 E.,
  Sec. 12: All
  Sec. 34: All
T. 24 N., R. 5 E.,
  Sec. 17: All
T. 25 N., R. 2 E.,
  Sec. 14: All
T. 25 N., R. 4 E.,
  Sec. 4: All
  Sec. 29: All
T 27 N., R. 3 E.,
  Sec. 24: All
T. 29 N., R. 1 E.,
  Sec. 24: All
T. 29 N., R. 2 E.,
  Sec. 6: All
  Sec. 32: All
T. 29 N., R. 3 E.,
  Sec. 19: All
  Sec. 20: All
T. 30 N., R. 1 E.,
  Sec. 8: All
  Sec. 10: All
T. 30 N., R. 2 E.,
  Sec. 18: All
T. 31 N., R. 1 E.,
  Sec. 8: All
  Sec. 24: All
T. 32 N., R. 1 E.,
  Sec. 4: All
  Sec. 6: All
T. 33 N., R. 2 E.,
  Sec. 3: NE¼SW¼
  Sec. 8: S½
  Sec. 9: All
  Sec. 10: All
  Sec. 17: All
  Sec. 25: All
T. 34 N., R. 2 E.,
  Sec. 13: All
T. 34 N., R. 3 E.,
  Sec. 7: All
T. 35 N., R. 1 E.,
  Sec. 2: All
  Sec. 6: All
  Sec. 32: All
T. 35 N., R. 2 E.,
  Sec. 7: All
  Sec. 18: All
  Sec. 30: All
T. 36 N., R. 1 E.,
  Sec. 6: All
  Sec. 28: All
T. 48 N., R. 1 E.,
  Sec. 19: All
  Sec. 30: All

The purpose of the exchange of these public lands is to acquire non-Federal lands which have high public values for wildlife habitat, recreation, timber management, etc. The public interest will be served by completing the exchange.

Exchange of public lands contained within the descriptions above will not be undertaken without full National Environmental Policy Act (NEPA) compliance. Lands to be transferred from the United States will be subject to standard reservations, terms and conditions.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from settlement, location, and entry under the public land laws and the general mining laws, except for leasing under the mineral leasing laws.

DATE: Interested parties may submit comments regarding the proposed exchange on or before March 8, 1993 to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Michael Truden, Supervisory Realty Specialist, at the address listed above.

Kelly Williams,
Acting Area Manager.

[FR Doc. 93-1393 Filed 1-21-93; 8:45 am]

BILLING CODE 4310-40-M

[ID-010-03-4210-04; IDI-28152]

Realty Action, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—IDI-28152; exchange of public and private lands in Owyhee County, ID.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 4 S., R. 2 E.,
  Sec. 19, Lots 1–4, E½NE¼, W½E½NW¼, E½SW¼, SE¼,

Containing 502.68 acres, more or less. In exchange for the above described public lands, BLM will acquire the following described private lands from Envirosafe Services of Idaho, Inc. (ESII):

Boise Meridian, Idaho

T. 5 S., R. 3 E.,
  Sec. 14, Lot 8,
  Sec. 15, Lot 8, 9,
  Sec. 22, Lot 3,
  Sec. 23, Lot 2,

Containing 118.16 acres, more or less. Together with all water and mineral rights, and a 50-foot wide easement providing access across adjacent private lands to the said property.

The purpose of this exchange is to dispose of public lands that have very little public resource value, are uneconomic to manage, and would be better managed in private ownership, in exchange for a privately owned island in the Snake River that contains important big game, upland bird, waterfowl, and other nongame habitat, as well as a known bald eagle nesting site. The island also contains important recreation opportunities and potential, and riparian values. The public interest will be well served by the completion of this exchange, as the consummation thereof will fulfill the Secretary's Fish and Wildlife 2000, Recreation 2000, and riparian management initiatives.

The exchange will be consummated on an equal value basis. Full equalization of values will be accomplished through acreage adjustment and/or cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of public ownership. ESII may elect to waive value equalization if the private lands are appraised for more than the public lands.

DATES: Interested parties may submit comments to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705 on or before March 8, 1993. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Bruneau Resource Area Realty Specialist at (208) 384–3338. The Environmental Assessment is available for review at the above address.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws, except the exchange provisions of the Federal Land Policy and Management Act, and the mining laws, but not the mineral laws. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Subject To

2. Those rights for transmission line purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI–012877, under the Act of March 4, 1911 (43 U.S.C. 961).
3. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI–011478, under the Act of March 4, 1911 (43 U.S.C. 961).
4. Those rights for road purposes held by the Owyhee County Road and Bridge Department, its successors or assigns, under section 8 of the Act of July 26, 1866; Revised Statue 2477 (43 U.S.C. 932; 14 Stat. 253). Serial No. IDI–20724.
5. Those rights for buried telephone line purposes granted to Gem State Utilities Corporation, its successors or assigns, by Right-of-Way No. IDI–012260, under the Act of December 15, 1901 (43 U.S.C. 959).

Dated: January 8, 1993.

Roger E. Schmitt,

Associate District Manager.

[FR Doc. 93–1380 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–GG–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0095), Washington, DC 20503, telephone 202–395–7340.

Title: Initial Regulatory Program; 30 CFR part 710.

OMB Approval Number: 1029–0095.

Abstract: Information collected in part 710 is used to ensure States are conducting minesite inspections under the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected is also used to bring pre-existing, nonconforming structures into compliance during the phase-in of the initial regulatory program under SMCRA, and to grant small operators exemptions from some of the initial regulatory program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities and surface coal mining operators.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: October 16, 1992.

John Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–1369 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–317 (Remand)]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the Matter of Certain Internal Mixing Devices and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigator terminating the following respondents on the basis of a settlement agreement: Pomini S.p.A. and Pomini, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 14, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: January 14, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1495 Filed 1–21–93; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32225]

Chicago and North Western Transportation Co.; and Chicago & Illinois Midland Railway Co. Joint Relocation Project Exemption

On January 4, 1993, Chicago and North Western Transportation Company (CNW) and Chicago & Illinois Midland Railway Company (CIM) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain operations in Peoria and Tazewell Counties, IL. CNW and CIM presently interchange freight at Barr and Peoria, IL. Under the joint proposal, applicants will interchange freight at Crescent, IL, an intermediate point between the two existing interchange points.

The joint relocation project involves: (1) A grant of overhead trackage rights by CNW to CIM between milepost 9.0 plus 1,500 feet at Crescent, IL, and milepost 4.3 at Somer, IL, a distance of approximately 5 miles; (2) a grant of overhead trackage rights by CIM to CNW between CIM's milepost 12.18 and milepost 12.8 plus 1,504 feet in Tazewell County, IL, extending to the connecting track owned by CNW, a distance of approximately 0.3 miles; and (3) the joint construction of a connecting track at CNW's milepost 9.5. Parties anticipated consummating the transaction on the effective date.[1]

The joint relocation will provide direct routing of freight interchanged between the carriers. The direct route will improve service to shippers by eliminating circuitous routes. The joint relocation will also improve public safety, reduce fuel consumption, and enhance operating efficiencies.

Service to shippers will not be disrupted. There will be no expansion into new territory; nor will there be a change in the existing competitive situation.

The Commission will exercise jurisdiction over the construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the construction of track are not subject to the Commission's jurisdiction. The remainder of the joint relocation project involving the acquisition of overhead trackage rights qualifies for the class exemption at 49 CFR 1180.2(d)(5) and (7). The Commission has determined that joint relocations embrace trackage rights transactions such as the one proposed here. See D.T. & I.R.—Trackage Rights, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John C. Danielson, Chicago & Illinois Midland Railway Company, 2484 Rosa Lane, Punta Gorda, FL 33950; and Stuart F. Gassner, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

Decided: January 11, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1532 Filed 1–21–93; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32223]

State of Oklahoma, By and Through the Oklahoma Department of Transportation, and Farmrail Corp., Acquisition and Operation Exemption; Lines of Texas and Oklahoma R. R. Co.

The State of Oklahoma, by and through the Oklahoma Department of Transportation (ODOT), a noncarrier, and Farmrail Corporation (Farmrail) have filed a notice of exemption for ODOT to acquire and Farmrail to operate: (1) 88.955 miles of certain rail lines owned by Texas and Oklahoma R. R. Co. (TXOR); and (2) incidental trackage rights over 12.735 miles of track owned by Grainbelt Corporation. The proposed transaction was expected to be consummated on or after December 31, 1992.

ODOT will acquire from TXOR and Farmrail will operate rail lines: (1) Between milepost 378.00 (Engineering Profile Station (EPS) 2665+25) at or near Thomas, OK, and milepost 386.03 (also known as milepost 386+0159) at or near Custer City (Foley), OK, a distance of 8.03 route miles; and (2) between milepost 398.765 (also known as milepost 398+4047.1) at or near Clinton (Ewing), OK, and milepost 479.69 (EPS 4028+00) at or near Elmer, OK, a distance of 80.925 route miles. ODOT will also acquire and Farmville will operate incidental trackage rights, by assignment from TXOR, over Grainbelt Corporation's line between former Santa Fe milepost 386.03 (also known as milepost 386+0159) at or near Custer City (Foley), OK, and former Santa Fe milepost 398.765 (also known as 398+4047.1) at or near Clinton (Ewing), OK, a distance of 12.735 miles. ODOT will not conduct operations and will continue to be a noncarrier after its acquisition of the properties.

Any comments must be filed with the Commission and served on: Eric M. Hocky, Rubin Quinn Moss & Paterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 14, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1531 Filed 1–21–93; 8:45 am]

BILLING CODE 7035-01-M

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[1] Under 49 CFR 1180.4(g) a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until January 4, 1993, the effective date was to be January 11, 1993, rather than January 7, 1993, as indicated in the verified notice of exemption. The parties have confirmed the change in the consummation date.

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing and Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Advisory Committee on Appellate Rules, Judicial Conference of the United States.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Advisory Committee on Federal Rules of Appellate Procedure has proposed amendments to Appellate Rules 3, 5, 5.1, 9, 13, 21, 25, 26.1, 27, 28, 30, 31, 32, 33, 35, 38, 40, 41, and a new rule 49. The Judicial Conference Standing Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them shall be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1993.

A hearing on the proposed amendments will be held by the Advisory Committee on Appellate Rules at the United States Court of Appeals, room 2721, 219 South Dearborn Street, Chicago, Illinois, on February 17, 1993, at 3:30 p.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 10 days before the hearing. For additional information contact John Rabiej, Chief, Rules Committee Support Office at 202–273–1820.

Also, a two-day meeting of the Advisory Committee on Appellate Rules will be held at the Federal Judiciary Building, Agency Conference Room, 4th Floor, One Columbus Circle, NE., Washington, DC, on April 20–21, 1993. The meeting will be open to public observation but not participation and will begin each day at 9 a.m.

Dated: January 15, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–1528 Filed 1–21–93; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on December 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of six members to and the withdrawal of one member from the ALABC. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that written commitments to become members of the ALABC have been received from Acumuladores Mexicanos, S.A. de C.V., Nuevo Leon, Mexico; Digatron Industrie-Electronik GmbH, Aachen, Germany; Honda R&D, Torrance, CA; and Shin-Kobe Electric Mach. Co, Ltd., Tokyo, Japan. Verbal commitments to become members of the ALABC have been received from Hollingsworth & Vose, Co., West Groton, MA, and Whatman Ltd., Kent, England. Nuova Samim of Rome, Italy has withdrawn their verbal commitment to the ALABC.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of July 29, 1992, (57 FR 33522).

The last notification was filed with the Department on September 10, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 23, 1992, (57 FR 48398).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–1451 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Great Lakes Composites Consortium, Inc.

Notice is hereby given that, on December 23, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Great Lakes Composites Consortium, Inc. ("GLCC") filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GLCC advised that Anderson/Roethle, Inc., Milwaukee, WI; BF Goodrich Aerospace-Engineered Polymer Products, Jacksonville, FL; Carthage College, Kenosha, WI; Clemson University, Clemson, SC; Dow Corning Corporation, Midland, MI; Garrett Fluid Systems Division Allied-Signal Aerospace Corporation, Tempe, AZ; Gateway Technical College, Kenosha, WI; Hercules Aerospace Corporation, Magna, UT; Hi-Tech Engineering, Inc., Grand Rapids, MI; Kaiser Aerotech, San Leandro, CA; SP Systems, Inc., Los Angeles, CA; Sparta, Inc., Laguna Hills, CA; The Johns Hopkins University, Baltimore, MD; University of California, Los Angeles, Los Angeles, CA; Washington University, St. Louis, MO; and Wilson Composite Group, Folsom, CA have been added as members. Amalga Corporation, West Allis, WI has resigned as a member of GLCC. Cade Industries, San Diego, CA was erroneously cited as a member of GLCC in a prior filing. The name of The Sullivan Corporation, one of GLCC's members cited in a prior filing, has been changed to J&L Fiber Service, Waukesha, WI. The primary objectives of GLCC include the evaluation, demonstration and testing of advanced composites manufacturing technologies.

On February 25, 1991, GLCC filed its original notification pursuant of section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 15, 1991, (56 FR 11274). GLCC filed an additional notification on December 11, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 3, 1992, (57 FR 4062).

No other changes have been made in either the membership or planned activity of GLCC. Membership in GLCC remains open, and the members intend to file additional written notification disclosing all changes in membership and providing additional information regarding projects undertaken by GLCC and its members. GLCC will continue for an indefinite period of time.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–1450 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93-3]

Theodore T. Ambadgis, M.D.; Denial of Application

On September 11, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Theodore T. Ambadgis, M.D. (Respondent), 71 Menton Street, New Bedford, Massachusetts 02745. The Order to Show Cause sought to deny Respondent's application for a DEA Certificate of Registration executed on August 26, 1989. The proposed action was based on Respondent's lack of State authorization to handle controlled substances in the Commonwealth of Massachusetts as well as prescribing Schedule II controlled substances to five individuals without a legitimate medical purpose and outside the scope of professional practice.

The Order to Show Cause was sent to Respondent by registered mail. Within the thirty day period, Respondent sent a letter to the Office of the Administrative Law Judge which apparently waived his right to a hearing. The matter was docketed before Administrative Law Judge Paul A. Tenney, who sent a letter to Respondent asking Respondent to clarify his waiver and giving Respondent another opportunity to request a hearing. Respondent failed to respond to the administrative law judge's letter. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Theodore Ambadgis, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that Respondent's controlled substance license was suspended by the Commonwealth of Massachusetts, Department of Public Health, Division of Food and Drugs, effective June 27, 1989. This suspension was based upon allegations concerning the improper prescribing of Schedule II controlled substances which are the same allegations set forth in the Order to Show Cause.

Consequently, Respondent is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in the Commonwealth of Massachusetts. The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue a registration if the applicant is without State authority to handle controlled substances. 21 U.S.C. 802(21) and 823(f). The Administrator and his predecessors have consistently so held. See Ramon Pla, M.D., Docket No. 86-54, 51 FR 41168 (1986); George S. Heath, M.D., Docket No. 86-24, 51 FR 26610 (1986); Dale D. Shahan, D.D.S., Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein.

Although Respondent explained in a letter to the administrative law judge that he was not motivated by financial gain when he prescribed the controlled substances in question, Respondent offered no evidence of explanation concerning his lack of State authorization to handle controlled substances. Therefore, the Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application executed by Theodore T. Ambadgis, M.D., on August 26, 1989, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective January 22, 1993.

Dated: January 12, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-1472 Filed 1-21-93; 8:45 am]

BILLING CODE 4410-09-M

Importer of Controlled Substances; Registration

By notice dated July 23, 1992, and published in the **Federal Register** on August 6, 1992, (57 FR 34785), Red River Foods, Inc., 7400 Beaufont Springs Drive, suite 550, Richmond, Virginia 23225, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 14, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-1471 Filed 1-21-93; 8:45 am]

BILLING CODE 4410-09-M

Lloyd Watson, M.D.; Revocation of Registrations

On August 18, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lloyd Watson, M.D. of 4010 7th Street, Riverside, California, proposing to revoke his DEA Certificates of Registration, BW1960966 and BW2025307. The proposed action was predicated on Dr. Watson's lack of authorization to handle controlled substances in the State of California.

The Order to Show Cause was sent to Dr. Watson by registered mail, return receipt requested. The receipt indicates that the Order to Show Cause was received on September 9, 1992. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Watson has waived his opportunity for a hearing on the issue raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Administrator finds that on April 27, 1992, Dr. Watson's license to practice medicine in the State of California was revoked upon findings by the Medical Board that Dr. Watson had prescribed controlled substances for no legitimate medical purpose and had falsified medical records. As a result, Dr. Watson is not currently authorized to handle controlled substances in the State of California.

The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987); *Robert F.Witek, D.D.S.*, 52 FR 47770 (1987); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr.

Watson's DEA Certificates of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of California. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, BW1960966 and BW2025307, previously issued to Lloyd Watson, M.D., be, and they hereby are revoked. The Administrator further orders that all pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective February 22, 1993.

Dated: January 12, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93-1470 Filed 1-21-93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:	
FL91-17 (Feb. 22, 1991) ..	p.141, p.143.
New York:	
NY91-3 (Feb. 22, 1991) ...	p.797, p.799.
NY91-6 (Feb. 22, 1991) ...	p.827, p.830.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of January 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-1462 Filed 1-21-93; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Enlow Fork Mining Company

[Docket No. M-92-182-C]

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.380 (escapeways; bituminous and lignite mines) to its Enlow Fork Mine (I.D. No. 36-07416) located in Greene County, Pennsylvania. The petitioner proposes to maintain the isolated intake escapeway in portions of the B-2 section at 20 inches in width. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Old Ben Coal Company

[Docket No. M–92–183–C]

Old Ben Coal Company, 500 N. DuQuoin Street, Benton, Illinois 62812 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Mine No. 24 (I.D. No. 11–00589) located in Franklin County, Illinois. Due to deteriorating roof conditions, certain areas of the mine cannot be safely traveled. The petitioner proposes to establish evaluation points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Tanoma Mining Company

[Docket No. M–92–184–C]

Tanoma Mining Company, P.O. Box 176, Marion Center, Pennsylvania 15759 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies and cabs; self-propelled electric face equipment; installation requirements) to its Tanoma Mine (I.D. No. 36–06967) located in Indiana County, Pennsylvania. The petitoner proposes to operate electric face equipment without the use of canopies. The petitioner states that the use of canopies would result in a diminution of safety to the equipment operator.

4. Amax Coal Company

[Docket No. M–92–185–C]

Amax Coal Company, One Riverfront Place, 20 NW. First Street, Evansville, Indiana 47708–1258 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (i) and (ii) (escapeways; bituminous and lignite mines) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner proposes to continue using the 28 inches wide and 66 inches high escapeway door at the North Portal and 32 inches wide and 32 inches high escapeway door at the South Portal shaft bottom area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard. In addition, the petitioner states that the alternate method would not result in a diminution of safety to the miners.

5. Turris Coal Company

[Docket No. M–92–186–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.326 (mean entry air velocity) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner requests a modification to require a minimum of 9,000 cubic feet per minute (cfm) of intake air to the line of crosscuts to be augered, and a minimum of 5,000 (cfm) of intake air passing across the auger machine while it is auger mining. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Turris Coal Company

[Docket No. M–92–187–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.401 (abatement of dust; water or water with a wetting agent) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to use an auger machine with water sprays on the face conveyor and around the end trough where the auger drill steels enter the auger hole, to prevent dust from being suspended in the air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Turris Coal Company

[Docket No. M–92–188–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois has filed a petition to modify the application of 30 CFR 75.362(d) (on-shift examinations) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to have a qualified person test for methane before the auger machine is deenergized and to use the auger machine's continuous methane detection sensor to test the air in the auger hole before augering begins, and to continue testing for methane at the auger machine at intervals of 20 minutes. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Turris Coal Company

[Docket No. M–92–189–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.330 to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner requests a modification to require a minimum of 9,000 cubic feet per minute (cfm) of intake air in the line of crosscuts to be augered and a minimum of 5,000 (cfm) of intake air passing across the auger machine while augering and to continuously monitor the air from the cutting face for adequate ventilation through a ¾-inch pipe past the methane sensor on the auger machine at 100 feet per second. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Turris Coal Company

[Docket No. M–92–190–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to auger mine with drilling distances not to exceed 300 feet into a panel perimeter barrier pillar. Into each hole, the petitioner would insert isolation caps to prevent gases in a hole from purging into a panel return aircourse. Permanent seals would be constructed when the panel is completed. In addition, the petitioners proposal includes pre-shift examinations and a continuous remote methane detection station. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1993. Copies of these petitions are available for inspection at that address.

Dated: January 13, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–1481 Filed 1–21–93; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-003]

NASA Advisory Council; Space Science and Applications Advisory Committee; Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

DATES: February 11, 1993, 8 a.m. to 5 p.m.; and February 12, 1993, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–5, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Dr. George Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities

—Program Reports for Magnetospheres, Cosmic and Heliospheric Physics, Solar Physics, and Ionosphere-Thermosphere-Mesosphere

—Space Physics Research and Analysis Program

—Space Physics Mission Operations and Data Analysis

—Strategic Planning

—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–1434 Filed 1–21–93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COUNCIL ON THE HUMANITIES

Meeting

January 11, 1993.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 11–12, 1993.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 11–12, 1993, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated September 9, 1991.

The agenda for the sessions on February 11, 1993, will be as follows:

Committee meetings

8:30–9 a.m. Coffee for Council Members—Room 527

(Open to the Public)

9–10 a.m. Committee Meetings—Policy Discussion

Education Programs—Room M–14

Fellowships Programs—Room 315

Public Programs—Room 415

Research Programs/Preservation and Access—Room 507

State Programs and Office of Outreach—Room M–07

10 a.m. until Adjourned. (Closed to the Public for the reasons stated above)—Consideration of specific applications

(Closed to the Public)

3 p.m. until Adjourned. Jefferson Lecture Committee to review Jefferson Lecture nominees—Room 430

The morning session on February 12, 1993, will convene at 9 a.m., in the 1st Floor Council Room, M–09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Council Members from 8:30–9 a.m.)

Minutes of the Previous Meeting
Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Budget Report
E. Legislative Report/Reauthorization
F. Committee Reports on Policy and General Matters
  1. Overview
  2. Education Programs
  3. Fellowships Programs
  4. Research Programs
  5. Preservation and Access Programs
  6. Public Programs
  7. State Programs and Office of Outreach
  8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786–0322, TDD (202) 786–0282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93–1489 Filed 1–21–93; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the International Advisory Panel (U.S./Mexico Artist Residencies Section) to the National Council on the Arts will be held on February 9, 1993 from 1 p.m.–7 p.m. and February 10 from 9 a.m.–5 p.m. in Ballroom C at the Menger Hotel, 204 Alamo Plaza, San Antonio, TX.

Portions of this meeting will be open to the public on February 9 from 1 p.m.–1:30 p.m. and February 10 from 3 p.m.–5 p.m. for introductory remarks and policy discussion.

The remaining portions of this meeting on February 9 from 1:30 p.m.–7 p.m. and February 10 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 14, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1485 Filed 1–21–93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Presenting and Commissioning Advancement Section) to the National Council on the Arts will be held on February 10, 1993 from 9 a.m.—5:30 p.m. and February 11 from 9 a.m.—5 p.m. in room 714 at the Nancy Hanks Carter, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on Febuary 10 from 9 a.m.—10 a.m. and February 11 from 4 p.m.—5 p.m. The topics will be opening remarks and policy discussion.

The remaining portions of this meeting on February 10 from 10 a.m.—5:30 p.m. and February 11 from 9 a.m.—4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 14, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1486 Filed 1–21–93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Management of Food Wastes at McMurdo Station, Antarctica; Initial Environmental Evaluation

AGENCY: National Science Foundation.

ACTION: Notice of initial environmental evaluation of the U.S. Antarctic Program's management of food wastes at McMurdo Station, Antarctica for 1993–1995.

SUMMARY: The National Science Foundation (NSF) has prepared an Initial Environmental Evaluation (IEE) of the U.S. Antarctic Program's management of food wastes at McMurdo Station, Antarctica for 1993–1995. NSF prepared the IEE pursuant to Executive Order 12114 and NSF's environmental assessment procedures for proposed Foundation actions in Antarctica, 45 CFR part 641.

Based on the IEE, a decision was issued on December 30, 1992, to dispose of most food waste in a three-chambered, emissions controlled incineration system; dispose of limited amounts of ground food waste through the domestic wastewater system; and to retrograde a portion of accumulated food waste by ship to the U.S. This decision will be reevaluated after receipt of analysis of recently collected incinerator emissions monitoring data.

DATES: Public comments on the IEE, although not required by NSF's regulations, are invited up to February 22, 1993. NSF will consider public comments when it reevaluates the decision in light of the new emissions monitoring data.

ADDRESSES: You may obtain copies of the IEE from: Dr. Sidney Draggan, Environmental Officer, Division of Polar Programs, National Science Foundation, Washington, DC 20550. You may address comments to Dr. Draggan.

FOR FURTHER INFORMATION CONTACT: Dr. Sidney Draggan, 202–357–7766.

Lawrence Rudolph,

Deputy General Counsel.

[FR Doc. 93–1429 Filed 1–21–93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Earth Sciences, Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 8–9, 1993; 9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1243.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 602, National Science Foundation, 1880 G St., NW., Washington, DC 20550. Telephone: (202) 357–7721.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-1466 Filed 1-21-93; 8:45 am]

BILLING CODE 7555-01-M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE).

Date and Time: February 11, 1993; 1:30 p.m.—5:30 p.m. (Open). February 12, 1993; 8:30 a.m.—3 p.m. (Open).

Place: Rooms 1242 and 1243 (Tentative), National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 1800 G Street, NW., rm. 1225, Washington, DC 20550. Telephone: (202) 357-7461.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To review the Report to Congress and to review assessments of participation rates of all segments of society in science and engineering.

Agenda: February 11: 1:30 p.m. to 5:30 p.m.—Presentations/discussions of Report to Congress.

5:30 p.m.—Reception

February 12: 8:30 a.m. to 3 p.m.—Review of assessments of participation rates of all segments of society in science and engineering; discussion of CEOSE Report to Congress and NSF future directions.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-1465 Filed 1-21-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 8-9, 1993; 8:30 a.m.-5 p.m.

Place: Hotel Washington, 15th & Pennsylvania Ave., NW., Washington, DC 20004.

Type of Meeting: Closed.

Contact Person: Dr. William McHenry, Program Director, AMP, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-5054.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Alliances for Minority Participation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a priority or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-1464 Filed 1-21-93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 19, 1993; 8:30 a.m.-5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 1243.

Type of Meeting: Closed.

Contact Person: Jean Thiebaux, Program Director, Office of Special Projects, Division of Mathematical Sciences, room 339, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Telephone: (202) 357-3453.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Conferences, Workshops, and Special Years in the Mathematical Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93-1463 Filed 1-21-93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 483 Registration Certificate—In Vitro Testing With Byproduct Material Under General License.

3. *The form number if applicable:* NRC Form 483.

4. *How often the collection is required:* Once, when registering as a general licensee pursuant to 10 CFR 31.11.

5. *Who will be required or asked to report:* Physicians, clinical laboratories, hospitals, and veterinarians in the practice of veterinary medicine wishing to use byproduct material for *in vitro* clinical or laboratory testing under the general license in 10 CFR 31.11.

6. *An estimate of the number of responses:* 250.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately seven minutes per response. The total industry burden is 30 hours annually.

8. *An indication of whether section 3504(h), Public Law 96-511 applies:* Not applicable.

9. *Abstract:* Persons wishing to use byproduct material for *in vitro* clinical or laboratory testing under general license must register with NRC by submitting NRC Form 483. The certificate, when validated and returned by NRC, serves as evidence to suppliers of byproduct material that the registrant is entitled to receive the byproduct material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and

Regulatory Affairs (3150–0038), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 12th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1469 Filed 1–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of appendix J to 10 CFR part 50 to the Omaha Public Power District (OPPD/the licensee), for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Summary of Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of appendix J to 10 CFR part 50 in regard to performing Type C leakage tests on the containment isolation valve (check valve CH-198) associated with the charging pump discharge header (penetration M–3).

The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated May 1, 1992.

The Need for the Proposed Action

The proposed exemption is needed since testing is unnecessary because the pressure of the fluid in the charging pump discharge line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed exemption from appendix J to 10 CFR part 50 indicates that the granting of the exemption will not impair containment integrity for the following reason. The pressure of the fluid in the charging pump discharge line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents and there is no significant increase in occupational exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would result in not permitting OPPD to maintain operational flexibility.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 1, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland this 13th day of January 1993.

For the Nuclear Regulatory Commission.

George T. Hubbard,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1467 Filed 1–21–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Revision to OMB Circular No. A–129, Managing Federal Credit Programs and Renaming to Policies for Federal Credit Programs and Non-Tax Receivables

AGENCY: Office of Management and Budget.

ACTION: Final circular.

SUMMARY: This notice revises OMB Circular No. A–129, "Managing Federal Credit Programs," last revised November 25, 1988, by incorporating policies published in OMB Circular No. A–70, "Policies and Guidelines for Federal Credit Programs," dated August 24, 1984, and OMB Bulletin No. 91–05, "Guidance for the Management of Guaranteed Loan Programs," dated November 26, 1990. The revised Circular has been renamed "Policies for Federal Credit Programs and Non-Tax Receivables." Circular No. A–70 and Bulletin No. 91–05 are hereby rescinded.

A notice of proposed revision was published in the **Federal Register** on November 5, 1992. This final Circular incorporates suggestions received through public comment.

EFFECTIVE DATE: This Circular is effective immediately.

FOR FURTHER INFORMATION CONTACT: For inquiries concerning budget and legislative policy for credit programs (Appendix A, section II, and Appendices B and C), contact the Office of Management and Budget, Budget Analysis Branch, Room 6025, New Executive Office Building, Washington, DC 20503, 202/395–3930. For inquiries concerning credit management and debt collection policies (Appendix A, sections III–V), contact the Office of Management and Budget, Credit and Cash Management Branch, Room 10236, New Executive Office Building, Washington, DC 20503, 202/395–3066.

SUPPLEMENTARY INFORMATION: OMB Circular No. A–70 was originally issued on February 1, 1965, under the authority of the Budget and Accounting Act of 1921, as amended. A revised Circular was published on August 24, 1984. Circular No. A-70 required agencies to calculate and analyze credit program subsidies, and set forth requirements for preparation and review of legislation, testimony, and budget requests for credit programs.

OMB Circular No. A-129 was originally issued on May 9, 1985, under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and section 2653 of Public Law 98-369. Circular No. A-129 defined agencies' responsibilities for originating, servicing, and collecting loans. Although some sections of the Circular applied to defaulted guaranteed loans acquired by the Federal Government, its primary focus was on the management of direct loans. The Circular was last revised on November 25, 1988.

On November 26, 1990, OMB issued Bulletin No. 91-05, which contained guidance for the management of guaranteed loan programs.

Also in 1990, Congress passed two major laws pertinent to Federal credit programs and their administration and management: the Federal Credit Reform Act of 1990 and the Chief Financial Officers Act of 1990. In addition, the Federal Debt Collection Procedures Act of 1990 provided additional debt collection tools to Federal agencies.

This revision of Circular No. A-129 incorporates Circular No. A-70 and Bulletin No. 91-05 and is updated to include requirements of the 1990 laws which apply to Federal credit programs and non-tax receivables. Credit management procedures contained in the credit supplement to the Treasury Financial Manual have been removed from the Circular. Detailed guidance on the calculation and analysis of credit program subsidies are now contained in OMB Circular No. A-11, "Preparation and Submission of Annual Budget Estimates," and OMB Circular No. A-34, "Instructions on Budget Execution."

This final Circular reflects changes made as a result of comments received on the proposed revision published on November 5, 1992.

Analysis of Comments

Comments were received from seven Federal agencies and five private firms or industry associations.

Comments Accepted: Several suggestions were accepted to clarify technical or legal aspects of credit programs and debt collection activities. These changes include: (1) Standardization of the definition of administrative expenses for credit programs used throughout the Circular; (2) Identification of programs exempt from credit reform requirements for advance annual appropriations; (3) Clarification of the requirements for the screening of applicants for credit worthiness and delinquency on Federal debt; (4) Clarification that loan-to-value ratios apply to loans whose primary purpose is to acquire an asset rather than to any loan with collateral; (5) Clarification that the policy for lender liquidation of collateral for a guaranteed loan applies only to real property collateral, and that the policy is based on generally superior performance by the private sector in asset management and disposal; (6) Standardization of the definition of a direct loan delinquency with other documents, including the Treasury Financial Manual; and (7) wording changes to several debt collection techniques to reflect current practices.

Several comments were considered too detailed for inclusion in the Circular but will be reflected in the next revision of the Treasury Financial Manual.

Comments Not Accepted. Several commenters felt that Circular A-129 requirements were inappropriate for certain credit programs, such as guaranteed student loans. For example, four comments were received concerning the requirement that private lenders in guaranteed loan programs bear at least 20 percent of the loss from any default. The commenters suggested that lender risk-sharing is fundamentally at odds with achieving the goals of certain programs and that it would diminish lender participation. While OMB recognizes that there may be legitimate circumstances where this requirement should not be fully implemented, it continues to believe that risk sharing provides an incentive for prudent lending by private institutions and should be retained in the Circular.

Similar comments were received on the inapplicability to certain programs of the A-129 prohibitions against the financing of loan prepayments by tax-exempt borrowing, loan sales with recourse, and the guaranteeing of tax-exempt obligations. As with risk-sharing, OMB believes the Circular reflects prudent credit and financial management policy. Agencies not in conformance with these financial standards may include in their budget submissions to OMB an evaluation of their credit programs and a justification of any non-conformance. Such justifications will be considered on an individual basis.

Comments also were received concerning applicant screening to determine prior Federal delinquencies through the use of the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). The commenters were concerned that use of the system would create delays and administrative costs in processing loan applications and would diminish access to credit for all prospective borrowers. OMB disagrees with these comments because it is not in the best interest of the Government to provide additional Federal assistance to applicants delinquent on prior Federal debt. Further, the screening process is conducted through an automated data base and requires only a few minutes to complete. The applicant, not the lender, is responsible for resolving any delinquency identified.

Richard Darman,
Director.

OMB CIRCULAR NO. A-129 POLICIES FOR FEDERAL CREDIT PROGRAMS AND NON-TAX RECEIVABLES

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Circular No. A-129—Revised

To the Heads of Executive Departments and Establishments

Subject: Policies for Federal Credit Programs and Non-Tax Receivables.

Federal credit programs are created to accomplish a variety of social and economic goals. Agencies must implement budget policies and management practices that ensure that the goals of credit programs are met while properly identifying and controlling costs. In addition, Federal receivables, whether from credit programs or other non-tax sources, must be serviced and collected in an efficient and effective manner to protect the value of the Federal Government's assets.

General Information

1. *Purpose.* This Circular prescribes policies and procedures for justifying, designing, and managing Federal credit programs and for collecting non-tax receivables. It sets principles for designing credit programs, including the preparation and review of legislation and regulations, budgeting for the costs of credit programs and minimizing unintended costs to the Government; and improving the efficiency and effectiveness of Federal credit programs. It also sets standards for extending credit, managing lenders participating in the Government's guaranteed loan programs, servicing credit and non-tax receivables, and collecting delinquent debt.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended, the Debt Collection Act of 1982, as amended; Section 2653 of Public Law 98–369; the Federal Credit Reform Act of 1990; the Federal Debt Collection Procedures Act of 1990; the Chief Financial Officers Act of 1990; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and pre-existing common law authority to charge interest on debts and to offset debts administratively.

3. *Coverage*—a. *Applicability.* The provisions of this Circular apply to all credit programs of the Federal Government, including:

(1) Direct loan programs;

(2) Guaranteed loan programs and loan insurance programs in which the Federal Government bears a legal liability to pay for all or part of the principal or interest in the event of borrower default; and

(3) Loans or other financial assets acquired by a Federal agency (or a receiver or conservator acting for a Federal agency) as a result of a claim payment on a defaulted guaranteed or insured loan or in fulfillment of a Federal deposit insurance commitment.

Sections IV and V of Appendix A (Managing the Federal Government's Receivables and Delinquent Debt Collection) also apply to receivables due to the Government from the sale of goods and services; fines, duties, leases, rents, royalties, and penalties, and Federal employees; and similar debts.

b. *Exclusions Under the Debt Collection Act.* Certain debt collection techniques authorized by the Debt Collection Act of 1982, as amended, may not be applied to debts arising under the Internal Revenue Code, the Social Security Act, or the tariff laws of the United States, or to debts owed to the United States Government by State or local governments.

c. *Other Statutory Exclusions.* The policies and standards of this Circular do not apply when statutorily prohibited or inconsistent with statutory requirements. However, agencies are required to review periodically legislation affecting the form of assistance and/or financial standards for credit programs and justify continuance of any non-conformance (see section II.5.c).

4. *Rescissions.* This Circular rescinds and replaces OMB Circular No. A–70, dated August 24, 1984, OMB Circular No. A–129, dated November 25, 1988, and OMB Bulletin No. 91–05, dated November 26, 1990.

The Circular supplements, and does not supersede, the requirements applicable to budget submissions under Circular No. A–11 and to proposed legislation and testimony under Circular No. A–19.

5. *Effective Date.* This Circular is effective immediately.

6. *Inquiries.* Further information on estimating credit subsidies may be found in Appendix D to OMB Circular No. A–11. Further information on the implementation of credit management and debt collection policies may be found in the credit supplement to the Treasury Financial Manual (TFM) and in OMB's government-wide 5-year plan for financial management submitted annually to Congress.

For inquiries concerning budget and legislative policy for credit programs (Appendix A, section II), contact the Office of Management and Budget, Budget Analysis Branch, room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, 202/395–3930. For inquiries concerning credit management and debt collection policies (Appendix A, sections III–V), contact the Office of Management and Budget, Credit and Cash Management Branch, room 10236, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, 202/395–3066.

7. *Definitions.* Key terms used in this circular are defined in OMB Circulars No. A–11 and A–34.

Richard Darman,
Director.

Appendix A to Circular No. A–129

I. Responsibilities of Departments and Agencies

1. *Office of Management and Budget.* The Office of Management and Budget (OMB) is responsible for reviewing legislation to establish new credit programs or to expand or modify existing credit programs; reviewing and clearing testimony pertaining to credit programs and debt collection; reviewing agency budget submissions for credit programs and debt collection activities; formulating and reviewing credit management and debt collection policy; and approving agency credit management and debt collection plans.

2. *Department of the Treasury.* The Department of the Treasury, through its Financial Management Service (FMS), is responsible for monitoring and facilitating implementation of credit management and debt collection policy. FMS develops and disseminates as a supplement to the Treasury Financial Manual operational guidelines for agency compliance with government-wide credit management and debt collection policy. FMS assists agencies in improving credit management activities and evaluates innovative credit management practices.

3. *Federal Credit Policy Working Group.* The Federal Credit Policy Working Group is an inter-agency forum which provides advice and assistance to OMB and Treasury in the formulation and implementation of credit policy. Membership consists of representatives from the Executive Office of the President, the Council of Economic Advisers, the Office of Management and Budget, and the Department of the Treasury. The major credit and debt

collection agencies represented include the Departments of Agriculture, Commerce, Evaluation, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Veterans Affairs, the Agency for International Development, the Export-Import Bank, the Resolution Trust Corporation, and the Small Business Administration. Other departments and agencies may be invited to participate on the Working Group at the request of the Chairperson. The Director of OMB designates the Chairperson of the Group.

4. *Departments and Agencies.* Departments and agencies shall manage credit programs and all non-tax receivables in accordance with their statutory authorities and the provisions of this Circular to protect the Government's assets, and to minimize losses in relation to social benefits provided.

a. Agencies shall ensure that:

(1) Federal credit program legislation, regulations, and policies are designed and administered in compliance with the principles of this Circular;

(2) The costs of credit programs covered by the Federal Credit Reform Act of 1990 are budgeted for and controlled in accordance with the principles of the Act (the Act exempts deposit insurance agencies, Tennessee Valley Authority, Pension Benefit Guaranty Corporation, and certain other activities from credit reform requirements);

(3) Every effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determination of credit worthiness;

(4) Lenders participating in guaranteed loan programs meet all applicable financial and programmatic requirements;

(5) Informed and cost-effective decisions are made concerning portfolio management, including full consideration of contracting out for servicing or selling the portfolio and transferring servicing to the private sector;

(6) The full range of available techniques are used, as appropriate, to collect delinquent debts, including administrative offset, salary offset, tax refund offset, private collection agencies, and litigation;

(7) Delinquent debts are written off as soon as they are determined to be uncollectible; and

(8) Timely and accurate financial management and performance data are submitted to OMB and the Department of the Treasury so that the Government's credit management and debt collection programs and policies can be evaluated.

b. In achieving these objectives, agencies shall:

(1) Establish, as appropriate, boards to coordinate credit management and debt collection activities and to ensure full consideration of credit management and debt collection issues by all interested and affected organizations. Representation should include, but not be limited to, the agency Chief Financial Officer (CFO) and the senior official(s) for program offices with credit activities or non-tax receivables. The Board may seek from the agency's Inspector General input based on findings and conclusions from past audits and investigations;

(2) Ensure that the standards set forth in this Circular and supplementary guidance set forth in the Treasury Financial Manual are incorporated into agency regulations and procedures for credit programs and debt collection activities;

(3) Propose new or revised legislation, regulations, and forms as necessary to ensure consistency with the provisions of this Circular;

(4) Submit legislation and testimony affecting credit programs for review under the OMB Circular No. A–19 legislative clearance process, and budget proposals for review under the Circular No. A–11 budget justification process;

(5) Periodically evaluate Federal credit programs to assess their effectiveness in achieving program goals;

(6) Assign to the agency CFO, in accordance with the Chief Financial Officers Act of 1990, responsibility for directing, managing, and providing policy guidance and oversight of agency financial management personnel, activities, and operations, including the implementation of asset management systems for credit management and debt collection;

(7) Prepare, as part of the agency CFO Financial Management 5-Year Plan, a Credit Management and Debt Collection Plan for effectively managing credit extension, account servicing and portfolio management, and delinquent debt collection. The plan must ensure agency compliance with the standards in this Circular;

(8) Ensure that data in loan applications and documents for individuals are managed in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (the Privacy Act does not apply to loans and debts of commercial organizations); and the Right to Financial Privacy Act; and

(9) Include in personnel evaluation criteria for senior executives with major credit management and debt collection responsibilities performance standards in support of this Circular.

II. Budget and Legislative Policy for Credit Programs

Federal credit assistance should be provided only when it is necessary and the best means to achieve clearly specified Federal objectives. Use of private credit markets should be encouraged, and any impairment of such markets or misallocation of the Nation's resources through the operation of Federal credit programs should be minimized.

1. *Program Justification.* New programs and proposals for reauthorizing, expanding, or significantly increasing funding for credit programs should be accompanied by analysis which:

a. Clearly defines the Federal objectives to be achieved, and demonstrates why they cannot be achieved with private credit assistance, including:

(1) A description of existing and potential private sources of credit by type of institution and the availability and cost of credit to borrowers; and

(2) An explanation as to whether, and why, these private sources of financing and their terms and conditions must be supplemented and subsidized;

b. Specifies whether the credit program is intended to:

(1) Correct a capital market imperfection, which should be defined; and/or

(2) Subsidize borrowers or other beneficiaries, who should be identified, or encourage certain activities, which should be specified;

c. Explains why a credit subsidy is the most efficient way of providing assistance, including how it provides assistance in overcoming market imperfections, and/or would redress the specific inadequate financing cited;

d. Estimates or, when the program exists, measures the benefits expected from the program, including the amount by which the distribution of credit is expected to be altered and the favored activity is expected to increase. Information on conducting a cost-benefit analysis can be found in OMB Circular No. A–94;

e. Estimates the extent to which the program substitutes directly or indirectly for private lending, and analyzes any elements of program design that encourage and supplement private lending activity, with the objective that private lending is displaced to the smallest degree possible by agency programs; and

f. Provides an explicit estimate of the subsidy, as required by the Federal Credit Reform Act of 1990, and an estimate of the expected annual administrative costs (including extension, servicing, and collection) of the credit program. If loan assets are to be sold or are to be included in a prepayment program for programmatic or other reasons, the sale/prepayment is classified as a modification under the Federal Credit Reform Act. The cost of this modification requires budget authority, which must be appropriated or otherwise made available. Loan asset sales/prepayment programs must be conducted in accordance with policies in this Circular and procedures in the credit supplement to the Treasury Financial Manual, including the prohibitions against the financing of prepayments by tax-exempt borrowing and sales with recourse except where specifically authorized by statute. The cost of any guarantee placed on the asset sold requires budget authority.

2. *Form of Assistance.* When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee.

a. Loan guarantees, by removing part or all of the credit risk of a transaction, change the allocation of economic resources. Loan guarantees may make credit available when private financial sources would not otherwise do so, or they may allocate credit to borrowers under more favorable terms than would otherwise be granted. This reallocation of credit may impose a cost on the Government and/or the economy.

b. Direct loans usually offer borrowers lower interest rates and longer maturities than loans available from private financial sources, even those with a Federal guarantee. The use of direct loans, however, may displace private financial sources and increase the possibility that the terms and conditions on which Federal credit assistance is offered will not reflect changes in financial market conditions. The costs on the Government and the economy are therefore likely to be greater.

c. Direct or indirect guarantees of tax-exempt obligations are expressly prohibited under Section 149(b) of the Internal Revenue Code. Guarantees of tax-exempt obligations are an inefficient way of allocating Federal credit. Assistance to the borrower, through the tax exemption and the guarantee, provides interest savings to the borrower that are smaller than the tax revenue loss to the Government. Thus, the cost to the taxpayer is greater than the benefit to the borrower.

d. To preclude the possibility that Federal agencies will guarantee tax-exempt obligations, either directly or indirectly, agencies will: (1) Not guarantee federally tax-exempt obligations; (2) not subordinate direct loans to tax-exempt obligations; (3) provide that effective subordination of a guaranteed loan to tax-exempt obligations will render the guarantee void; (4) prohibit use of a Federal guarantee as collateral to secure a tax-exempt obligation; (5) prohibit Federal guarantees of loans funded by tax-exempt obligations; and (6) prohibit the linkage of Federal guarantees with tax-exempt obligations.

e. Where a large degree of subsidy is justified, comparable to that which would be provided by guaranteed tax-exempt obligations, agencies should consider the use of direct loans.

3. *Financial Standards.* In accordance with the Federal Credit Reform Act of 1990, agencies must analyze and control the risk and cost of their programs. Agencies must develop statistical models predictive of defaults and other deviations from loan contracts. Agencies are required to estimate subsidy costs and to obtain budget authority to cover such costs before obligating direct loans and committing loan guarantees. Specific instructions for budget justification under the Act are provided in OMB Circular No. A–11, and instructions for budget execution are provided in OMB Circular No. A–34.

Agencies shall follow sound financial practices in the design and administration of their credit programs. Where program objectives cannot be achieved while following sound financial practices, the cost of these deviations shall be justified in agency budget submissions in comparison with expected benefits. Unless a waiver is approved, agencies should follow the financial practices discussed below.

a. Lenders and borrowers who participate in Federal credit programs should have a substantial stake in full repayment in accordance with the loan contract.

(1) Private lenders who extend credit that is guaranteed by the Government should bear at least 20 percent of the loss from a default. Loan guarantees that cover 100 percent of the credit risk encourage private lenders to exercise less caution than they otherwise would in evaluating loan requests. The level of guarantee should be no more than necessary to achieve program purposes. Loans for borrowers who are deemed to pose less of a risk should receive a lower guarantee.

(2) Borrowers should have an equity interest in any asset being financed with the credit assistance, and business borrowers should have substantial capital or equity at risk in their business (see section III.A.3.(b) for additional discussion).

b. Interest and fees on direct loans and fees on loan guarantees should be set by reference to the cost to the Government of making the direct loan or loan guarantee and should be reviewed at least annually.

(1) These charges shall be at levels sufficiently high to cover the Government's total cost of making the loan or guarantee, including administrative costs (extension, servicing, and collection), and default and other subsidy costs.

(2) When charging interest and/or fees at such levels is statutorily prohibited or an agency considers it inconsistent with program objectives, the difference should be justified in relation to benefits. In addition, the agency must request an appropriation in accordance with the Federal Credit Reform Act of 1990 for default and other subsidy costs not covered by interest and fees.

(3) Riskier borrowers should be charged more than those who pose less risk in order to encourage such borrowers to take actions to reduce the risk they pose to the Government.

c. Contractual agreements should include all covenants and restrictions (e.g., liability insurance) necessary to protest the Federal Government's interest.

(1) Maturities on loans should be shorter than the estimated useful economic life of any assets financed.

(2) The Government's claims on assets should not be subordinated to the claims of other lenders in the case of a borrower's default on either a direct loan or a guaranteed loan. Subordination increases the risk of loss to the Government, since other creditors would have first claim on the borrower's assets.

d. In order to minimize inadvertent changes in the amount of subsidy, interest rates to be charged on direct loans and any interest supplements for guaranteed loans should be specified by reference to the market rate on a benchmark Treasury security rather than as an absolute level. A specific level of interest rate should not be cited in legislation or in regulation because such a rate could soon become outdated, unintentionally changing the extent of the subsidy.

(1) The benchmark financial market instrument should be a marketable Treasury security with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. When the rate on the Government loan is intended to be different than the benchmark rate, it should be stated as a percentage of that rate. The benchmark Treasury security must be cited specifically in agency budget justifications.

(2) Interest rates applicable to new loans should be reviewed at least quarterly and adjusted to reflect changes in the benchmark interest rate. Loan contracts may provide for either fixed or floating interest rates.

e. Maximum amounts of direct loan obligations and loan guarantee commitments must be specifically authorized in advance in annual appropriations acts, except for mandatory programs exempt from the appropriations requirements under section 504(c) of the Federal Credit Reform Act of 1990.

f. Financing for Federal credit programs should be provided by Treasury in accordance with the Federal Credit Reform Act of 1990. Guarantees of the timely payment of 100 percent of the loan principal and interest against all risk create a debt obligation that is the credit risk equivalent of a Treasury security. Accordingly, a Federal agency other than the Department of the Treasury may not issue, sell, or guarantee an obligation of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, unless the terms of the obligation provide that it may not be held by a person or entity other than the Federal Financing Bank (FFB) or another Federal agency. The Secretary of the Treasury may waive this requirement with respect to obligations that the Secretary determines: (1) are not suitable for investments for the FFB because of the risks entailed in such obligations; or (2) are or will be financed in a manner that is least disruptive of private financial markets and institutions. The benefits of using the FFB must not expand the degree of subsidy.

g. Loan contracts should be standardized where practicable. Private sector documents should be used whenever possible, especially for loan guarantees.

5. *Implementation.* The provisions of this section II will be implemented through the OMB Circular No. A–19 legislative review process and the OMB Circular No. A–11 budget justification and submission process.

a. Proposed legislation on credit programs, reviews of credit proposals made by others, and testimony on credit activities submitted by agencies under the OMB Circular No. A–19 legislative review process should conform to the provisions of this Circular.

Whenever agencies propose provisions or language not in conformity with the policies of this Circular, they will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s), or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time in order to allow for an evaluation by OMB.

b. OMB will, upon written request, provide technical advice on proposed credit program provisions that would be exceptions to the standards prescribed in this section II. This will avoid delays and help to ensure consistency with Federal credit policies.

A checklist for reviews of legislative and budgetary proposals is included as Appendix B to their Circular. Model bill language that agencies may use in developing and reviewing legislation is provided in Appendix C.

c. Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission (required by OMB Circular No. A–11, Section 15.2) should include:

(1) A plan for periodic, results-oriented evaluations of the effectiveness of the program, and the use of relevant program evaluations and/or other analyses of program effectiveness or causes of escalating program costs. A program evaluation is a formal assessment, through objective measurement and systematic analysis, addressing the manner and extent to which credit programs achieve intended objectives;

(2) A review of the changes in financial markets and the status of borrowers and beneficiaries to verify that continuation of the credit program is required to meet Federal objectives, to update its justification, and to recommend changes in its design and operation to improve efficiency and effectiveness; and

(3) Proposed changes to correct those cases where existing legislation, regulations, or program policies are not in conformity with the policies of this section II. When an agency does not deem a change in existing legislation, regulations, or program policies to be desirable, it will provide a justification for retaining the non-conformance.

III. Credit Management and Extension Policy

A. Credit Extension Policies

1. *Applicant Screening*—a. *Program Eligibility.* Agencies, including private lenders in guaranteed loan programs, shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance. If it is consistent with program objectives, borrowers should be required to certify and document that they have been unable to obtain credit from private sources. In addition, application forms must require the borrower to certify the accuracy of information being provided (false information is subject to penalties under 18 U.S.C. 1001).

b. *Delinquency on Federal Debt.* Agencies shall determine whether applicants are delinquent on any Federal debt, including tax debt. Agencies must include a question on loan application forms asking applicants if they have such delinquencies. In addition, agencies, including guaranteed loan lenders, shall use the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS) to identify delinquencies on Federal debt. CAIVRS offers direct on-line access for mortgage lenders to verify whether candidates for Federal Housing Administration (FHA) loans have any previous FHA loan defaults. The CAIVRS data base has been expanded to include delinquent debt from other major credit programs. Other delinquent receivables, including judgment liens against property for debt owed to the United States, tax debt, and corporate debt may also be added to the data base. All credit programs should use CAIVRS for loan screening to ensure applicants are not delinquent on Federal debt.

Processing of applications should be suspended when applicants are delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government. (This provision does not apply to entitlement awards.) Processing may continue only when the debtor satisfactorily resolves the debt (e.g., pays in full or negotiates a new repayment plan).

c. *Credit Worthiness.* Where credit worthiness is a criterion for loan approval, agencies/private lenders shall determine that applicants have the ability to repay the loan, as well as a satisfactory history of repaying debt. Credit reports and supplementary data sources, such as financial statements and tax returns, should be used to verify or determine employment, income, held assets, and credit history.

2. *Loan Documentation.* Loan origination files should contain loan applications, credit bureau reports, credit analyses, loan contracts, and other documents necessary to conform to private sector standards for that type of loan. Accurate and complete documentation is critical to providing proper servicing to the debtor, pursuing collection of delinquent debt, and, in the case of guaranteed loans, claims payment. Additional information on documentation requirements is available in the credit supplement to the Treasury Financial Manual.

3. *Collateral Requirements.* For many types of loans, the Government can reduce its default risk and potential losses through well-managed collateral requirements.

a. *Appraisals of Real Property.* Appraisals of real property serving as collateral for a direct or guaranteed loan must be conducted in accordance with the following guidelines:

(1) Agencies shall require that all appraisals be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Agencies shall prescribe additional appraisal standards as appropriate.

(2) Agencies shall ensure that all credit transactions over $100,000 have an appraisal prepared by a State licensed or certified appraiser (except refinancings with no cash out and those transactions where the collateral is not a major factor in the decision to extend credit). Agencies shall determine which of these transactions, because of size and/or complexity, must be performed by a State certified appraiser. Agencies may also designate direct or guaranteed loans transactions under $100,000 that require the services of a licensed or certified appraiser.

b. *Loan-to-Value Ratios.* In some credit programs, the primary purpose of the loan is to finance the acquisition of an asset, such as a single family home, which then serves as collateral for the loan. Agencies should ensure that borrowers assume an equity interest in such assets in order to reduce defaults and Government losses. Federal agencies should explicitly define the components of the loan-to-value (LTV) ratio for both direct and guaranteed loan programs. Financing should be limited by not offering terms (including the financing of closing costs) that result in a loan-to-value ratio equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral.

c. *Liquidation of Real Property Collateral for Guaranteed Loans.* In general, it is not in the Federal Government's financial interest to assume the responsibility for managing and disposing of real property serving as collateral on defaulted guaranteed loans. Private lenders should be required to liquidate, through litigation if necessary, any real property collateral for a defaulted guaranteed loan before filing a default claim with the guarantor.

d. *Asset Management Standards and Systems.* Agencies should establish asset management standards and systems for real property acquired as a result of direct or guaranteed loan defaults. Agencies should establish policies and procedures for the acquisition, management, and disposal of such property. Inventory management systems should be established to track all costs, including contractual costs, of maintaining and selling property. Inventory management systems should also generate management reports, provide controls and monitoring capabilities, and summarize information for the Office and Management and Budget and the Department of the Treasury.

B. Management of Guaranteed Loan Lenders and Servicers

1. *Lender Eligibility—a. Participation Criteria.* Agencies should establish and publish in the **Federal Register** specific eligibility criteria for lender participation in Federal guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;

(2) Qualification requirements for principal officers and staff of the lender;

(3) Where appropriate for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs, fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee; and

(4) For lenders not regulated by a Federal financial institutions regulatory agency, financial and capital requirements, including minimum net worth requirements based on business volume.

b. *Review of Eligibility.* Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

c. *Fees.* When authorization to do so, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

d. *Decertification.* Agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

(1) Significant and/or continuing non-conformance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility.

e. *Loan Servicers.* Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. *Lender Agreements.* Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards, and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender's eligibility for continued participation in the program.

a. *General Participation Requirements.* Lender agreements should include:

(1) Requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see section 1., above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see section II.3.a.(1)); and, where feasible,

(3) Maximum delinquency, default, and claim rates for lenders, taking into

account individual program characteristics.

b. *Performance Standards.* Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures, and litigation to enforce loan contracts. Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claims payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. *Reporting Requirements.* Credit agencies require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance, and satisfy OMB, Treasury, and other reporting requirements. Examples of these data include:

(1) *Activity Indicators*—Number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of the risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) *Status Indicators*—A schedule showing the number and amount of past due loans by "age" of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should identify needed information to be provided on a quarterly basis (or other reporting period based on the level of lending and payment activity).

d. *Loan Servicers.* Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

3. *Lender and Servicer Reviews.* To evaluate and enforce lender and servicer performance, agencies should conduct on-site reviews. Agencies should summarize review findings in written reports with recommended corrective actions and submit them to agency review boards (see section I.4.b.1).

Reviews should be conducted biennially where possible; however, agencies should conduct annual on-site reviews for all lenders and servicers with substantial loan volume or whose:

a. Financial performance measures indicate a deterioration in their guaranteed loan portfolios;

b. Portfolio has a high level of defaults for guaranteed loans less than one year old;

c. Overall default rates rise above acceptable levels; and/or

d. Poor performance results in monetary penalties or an abnormally high number of reduced or rejected claims.

Agencies are encouraged to develop a lender/servicer classification system which assigns a risk rating based on the above factors. This risk rating can be used to establish priorities for on-site reviews and monitor the effectiveness of corrective actions.

Reviews should be conducted by special agency program compliance staff, Inspector General staff, and/or independent auditors. Where possible, agencies with similar programs should coordinate their reviews to minimize the burden on lenders/servicers and maximize use of scarce resources. Agencies should also utilize the monitoring efforts of GSEs and similar organizations for guaranteed loans that have been "pooled."

4. *Corrective Actions.* If a review indicates that the lender/servicer is not in conformance with all program requirements, agencies should determine the seriousness of the problem. For minor non-compliances, agencies and the lender or servicer should agree on corrective actions. However, agencies should establish penalties for more serious and frequent offenses. Penalties may include loss of guarantees, reprimands, probation, suspension, and decertification.

IV. Managing the Federal Government's Receivables

The Government must service and collect debts, including defaulted guaranteed loans acquired by the Government, in a manner that best protects the value of the Government's assets. Mechanisms must be in place to collect and record payments and provide accounting and management information for effective stewardship. These servicing activities can be carried out by the agency, or obtained through a cross-servicing arrangement with another agency or a contract with a private sector firm. Under certain conditions, it may be advantageous to sell loans or other debts and transfer servicing and collection responsibilities to the private sector.

1. *Accounting and Financial Reporting*—a. *Accounting and Financial Reporting Systems.* Agencies shall establish accounting and financial reporting systems to meet the standards provided in this Circular, OMB Circular No. A–127, "Financial Management Systems," and other government-wide requirements. These systems shall be capable of accounting for obligations and outlays and of meeting the reporting requirements of OMB and Treasury, including those associated with the Federal Credit Reform Act and the Chief Financial Officers Act.

b. *Agency Reports.* Comprehensive reports on the status of loan portfolios and receivables shall be used to evaluate management effectiveness. Agencies shall prepare, in accordance with the CFOs Act and OMB guidance, annual financial statements which include loan programs and other receivables. The Office of Inspector General or an independent external auditor should audit agency financial statements annually.

Agency reports and financial statements shall be consistent or reconcilable with amounts reported in the agency's budget submission to OMB and in Treasury SF 220–8, "Report on Guaranteed Loans," and SF 220–9, "Report on Accounts and Loans Receivable Due from the Public."

2. *Loan Servicing Requirements.* Agency servicing requirements, whether performed in-house or obtained from another agency or private sector firm, must meet the standards described below.

a. *Documentation.* Approved loan files (or other systems of records) shall contain adequate and up-to-date information reflecting terms and conditions of the loan, payment history, including occurrences of delinquencies and defaults, and any subsequent loan actions which result in payment deferrals, refinancing, or rescheduling.

b. *Billing and Collections.* Agencies shall ensure that there is routine invoicing of payments, and that efficient mechanisms are in place to collect and record payments. Where appropriate, borrowers should be encouraged to use pre-authorized debits when making payments.

c. *Escrow Accounts.* Agency servicing systems must process tax and insurance deposits and payments for housing and other long-term real estate loans through an escrow account. These systems must also be capable of analyzing escrow balances to adjust required deposit amounts in order to prevent deficiencies.

d. *Referring Account Information to Credit Reporting Agencies.* Agency servicing systems must be able to identify and refer debts to credit bureaus in accordance with the Debt Collection Act of 1982, as amended. Agencies shall refer to credit bureaus:

(1) All non-tariff and non-tax consumer accounts with delinquent payments in excess of $100; and

(2) All commercial accounts (current and delinquent) in excess of $100.

3. *Loan Asset Sales and Prepayment Programs*—a. *Loan Asset Sales Programs.* Loan asset sales may be undertaken to:

(1) *Improve Credit Management.* Improvement in the management and performance of loan portfolios, including better loan origination, documentation, and servicing; and

(2) *Realize Administrative Savings.* Net reduction of agency resource needs by transferring servicing and collection functions to the private sector.

b. *Prepayment Programs.* Agencies shall initiate prepayment programs when statutorily mandated. Other prepayment programs may not be initiated without the approval of OMB and Treasury. Delinquent borrowers may participate in a prepayment program only if past due principal, interest, and charges are paid in full prior to their request to prepay the balance owed.

c. *Financial Advisor.* A financial advisor shall be engaged by the agency to conduct a portfolio valuation and compare pricing options for a prepayment program or loan asset sale. Based on the financial advisor's report, the agency shall develop a schedule and plan, which must include an analysis of the pricing option selected. The pricing option must be carefully selected to avoid undue cost to the Government or additional subsidy to the borrower. Any additional subsidy will require budget authority, which must be appropriated or otherwise made available. Prior to proceeding with the sale, agencies shall submit their plan and proposed pricing option to OMB and Treasury for review and approval.

d. *Loan Asset Sales Guidelines.* Guidelines for loan asset sales and prepayment programs have been established to ensure that agencies meet the policy requirements of this Circular (see the credit supplement to the Treasury Financial Manual). The agency shall consult with OMB and Treasury throughout the sales/prepayment process to ensure consistency with policy and guidelines.

V. Delinquent Debt Collection

Agencies shall have a fair but aggressive program to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each agency will establish a collection strategy consistent with its statutory authority that seeks to return the debtor to a current payment status or, failing that, maximize collections on the debt.

1. *Standards for Defining Delinquent and Defaulted Debt*—a. *Direct Loans.* Agencies shall consider a direct loan account to be delinquent when an agreed-upon payment is not paid by the due date, or by the end of any "grace period" established in the loan agreement.

b. *Guaranteed Loans.* Loans guaranteed or insured by the Federal Government are in default when the borrower breaches the loan agreement with the private sector lender. It becomes a default to the Federal Government when the guaranteeing Federal agency repurchases the loan or pays reinsurance on the loan. The repurchased default becomes a receivable and is subject to the debt collection provisions of this Circular.

c. *Other Debt.* Overpayments to contractors, grantees, employees, and beneficiaries; fines; penalties; and other debts are delinquent when the debtor does not pay or resolve the debt within 30 days of the due date or 30 days after the notification of the debt is mailed to the debtor, and has elected not to exercise any available appeals or has exhausted all agency appeal processes.

2. *Collection Strategy for Delinquent Debt.* Agencies shall establish an accurate and timely reporting system to notify collection staff when a receivable becomes delinquent. Each agency shall develop a systematic process for the collection of identified delinquent accounts. Collection strategies should take advantage of the full range of available techniques while recognizing programs needs and statutory authority.

3. *Collection Techniques*—a. *Dunning Procedures.* As soon as an account becomes delinquent, dunning notices or demand letters should be sent to the debtor. The number and frequency of such letters will vary by size, type, and age of debt. These letters should incorporate, as appropriate, due process notices for referring delinquent accounts to credit reporting agencies, initiating Federal salary offset, referring accounts to the Internal Revenue Service for tax refund offset, and referring debt to legal counsel for litigation.

Agencies are also encouraged to contact the debtor in person or by telephone where such action would facilitate determination of the cause of the delinquency and return of the account to a current status.

b. *Rescheduling Debt.* Rescheduling changes the original terms of the debt to provide a repayment plan that reflects the borrower's current financial position. Agencies shall permit rescheduling of payments only when it is in the best interest of the Government and the agency has determined that recovery of all or a portion of the amount owned is reasonably assured. Loan modifications with additional cost to the Government not included in the original subsidy estimate will require additional budget authority.

c. *Administrative Offset.* Agencies may collect delinquent debt by offsetting payments due to the debtor under other Federal loans, grants, contracts, or payments. Offsets can be applied by the agency owed the delinquent debt, or by other agencies upon request of the agency to which the delinquent debt is owed.

(1) Agencies shall implement administrative offset in accordance with the Federal Claims Collection Standards, 4 CFR 102.3–4, and Federal Acquisition Regulations (FAR), Subpart 32.6. Administrative offset against State and local governments is permitted under common law.

(2) Agencies may not attempt to offset a contract if the contract is being adjudicated under the Contract Disputes Act (CDA) or Federal Acquisition Regulations, Subpart 32.6. Once such a contract has been adjudicated, then offsets under the Debt Collection Act may be initiated for any balance of funds still owed the contractor. This does not preclude an agency from offsetting non-disputed contracts of the contractor involved.

(3) Grants, cooperative agreements, or contracts which are paid in advance (e.g., payment is made in advance of performance or before costs are incurred) generally are not subject to offset because:

(a) Such payments do not constitute a "Government debt"; and

(b) Offsets could have the effect of defeating or interfering with the purposes of the payment.

(4) Offsets may be attempted where funds are paid out to the recipient on a reimbursement basis and the recipient has already satisfied the program requirements. Reimbursable payments due may be offset because they clearly represent a Government debt, at least to the extent of the particular reimbursement. Agencies may consider converting a problem recipient with a history of poor performance to

reimbursable payments in anticipation of a future need to effect an offset.

d. *Collection Agencies.* (1) All accounts that are six months or more past due must be turned over to a collection contractor unless the accounts are eligible for the Federal salary or administrative offset programs, or are in litigation. However, agencies are encouraged to use collection agencies at any time after the account (including guaranteed loans acquired by the Federal Government) becomes delinquent.

(2) The cost of collection contractor fees will be added to the amount of the debt. Actual fees paid to a collection contractor will be based on the amount collected, if any.

e. *Federal Employee Salary Offset.* The salaries of Federal employees who are delinquent on debts to the Government (including individuals who are personally liable for the debts of partnerships and corporations, and who can be identified by SSN) may be offset to recover the amount owed. Agencies shall make arrangements for annual matching of their delinquent debtor files against the employment rosters maintained by the Office of Personnel Management, the Department of Defense, and other Federal employers, such as the legislative and judicial branches. Employees who do not repay in full, enter into repayment agreements, or otherwise resolve delinquent debts after notification, will have their salaries offset.

(1) Under the Debt Collection Act of 1982, as amended, up to 15 percent of an employee's disposable pay may be offset each pay period.

(2) Agencies have the option of referring delinquent accounts of Federal employees to the Department of Justice to effect offset on a default judgment in accordance with section 124 of P.L. 97-276. This provision allows collection of 25 percent of salary after a judgment is obtained.

f. *Tax Refund Offset.* Tax refund offset authority requires agencies to recover delinquent debt by offsetting tax refunds due the delinquent debtor (either individuals or corporations). Delinquent debtors will be notified of the planned referral of their accounts to the IRS and be given the opportunity to dispute or resolve the debt. All delinquent accounts not resolved must be referred annually to the IRS for tax refund offset in accordance with guidance provided by OMB and the Department of the Treasury.

g. *Referral for Litigation.* Agencies shall refer delinquent accounts to the Department of Justice, or use other litigation authority that may be available, as soon as there is sufficient reason to conclude that full or partial recovery of the debt can best be achieved through litigation. Referrals to Justice should be made in accordance with the Federal Claims Collections Standards. If the debtor does not come forward with a voluntary payment after the claim has been referred for litigation, a suit shall promptly be initiated.

(1) In consultation with the Department of Justice, agencies shall establish a system to account for:

(a) claims referred to Justice; and

(b) claims closed by Justice and returned to agencies.

(2) Agencies shall accelerate claim referrals to the Department of Justice in those districts where the Department contracts with private law firms for debt collection.

4. *Interest, Penalties, and Administrative Costs*—a. *Policy.* Except where applicable statutes, regulations, loan agreements, or contracts prohibit or explicitly set such charges (and certain other exemptions under 4 CFR 102), agencies shall:

(1) Assess interest, penalties, and administrative costs on outstanding delinquent debt in accordance with 4 CFR part 102, including a notification procedure to inform debtors of impending charges; and

(2) Calculate interest and penalty charges against the total liability to the Federal Government incurred through the delinquency. Agencies may apply interest to unpaid interest, penalties, and administrative charges, if any, when these costs have been added to the loan principal under a rescheduling agreement.

b. *Interest.* (1) Interest shall accrue from the date on which notice of the debt and interest charges is mailed or delivered to the debtor. The minimum annual rate of interest that agencies shall charge is the current cost of funds to the U.S. Treasury.

(2) Agencies must adjust the interest rate on delinquent debt to conform with the rate established by a U.S. Court when a judgment has been obtained.

c. *Penalties.* Agencies shall assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is delinquent.

d. *Administrative Costs.* (1) Administrative costs include both the direct and indirect costs incurred in collecting debts from the time they become delinquent until the time collections are made or agency collection efforts cease. There is no statutory authority to recover costs incurred prior to an account becoming delinquent. Calculation of administrative costs should be based on actual costs incurred or upon an analysis establishing an average of additional costs incurred by the agency.

(2) For those accounts that are successfully litigated, costs to litigate the case by the Department of Justice will be determined by the courts at the time of judgment and added to the judgment amount.

5. *Write-Off and Close-Out Procedures.* Effective write-off and close-out procedures ensure proper accounting for the costs of credit programs, and allow management to focus its efforts on delinquent accounts with the greatest potential for collection. Agencies shall develop a two-step process that:

(1) Identifies and removes uncollectible accounts from the active portfolio through write-off, although collection efforts may continue (individual write-offs greater than $100,000 require approval of the Department of Justice); and

(2) Establishes close-out procedures that result in the termination of all collection activity and elimination of the accounts from all further servicing. Agencies shall report closed out accounts over $600 to the IRS as taxable income (Form 1099-G). Amounts less than $600 may be reported at an agency's discretion.

Appendix B to Circular No. A-129

Checklist for Credit Program Legislation, Testimony, and Budget Submissions

The following checklist provides guidelines to be followed in reviewing credit program legislation, testimony, and budget submissions.

The checklist is to be used by agencies and OMB in proposing legislation, reviewing credit proposals, and preparing testimony on credit activities. If the proposed provisions or language are not in conformity with the policies of this circular as listed in these checklists, agencies will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time, in order to allow for continuing review by OMB.

Agencies are to use the checklist in the budget submission process for the evaluation of existing legislation, regulations, or program policies. The OMB budget examiner with primary responsibility for the credit account will determine the use of this checklist. Use of the list includes review of changes in financial markets and the status of borrowers and beneficiaries to ensure that Federal objectives require continuation of the credit program. If these policies are found to be not in conformity with the policies of this Circular, agencies will propose changes to correct the inconsistency in their annual budget submission and justification to OMB and the Congress. When an agency does not deem a change in existing legislation, regulations, or policies to be desirable, it will provide a justification for retaining the existing non-conforming legislation or policies in its budget submission to OMB at the request of the budget examiner.

Checklist—Federal credit program justification should include the following elements:

1. Program title: ________
2. Form of Assistance (direct or guarantee): ________
3. Reason this form of assistance was chosen:
4. Federal objectives of this program:
5. Reasons why Federal credit assistance is the best means to achieve these objectives:
6. Any draft bill establishing a credit program should contain the following:
   - Authorization to extend direct loans or make loan guarantees subject to the requirements of the Federal Credit Reform Act of 1990.
   - Authorization and requirement for a subsidy appropriation.
   - Cap on volume of obligations or commitments.
   - Terms and conditions defined sufficiently and precisely enough to estimate subsidy rate. (State estimated subsidy of this program (rate and dollar amount).)
   - Authorization of administrative expenses.
7. Describe briefly the existing and potential private sources of credit (and type of institution):
8. Explain reasons why private sources of financing and their terms and conditions must be supplemented and subsidized, including:
   - To correct a capital market imperfection,
   - To subsidize borrowers or other beneficiaries, and/or
   - To encourage certain activities.
9. State reasons why a federal credit subsidy is the most efficient way of providing assistance, how it provides assistance in overcoming market imperfections, and how it redresses inadequate private financing.
10. Summarize briefly the benefits expected from the program. Can the value of these benefits (or some of these benefits) be estimated in dollar terms? If so, state the estimate of their value. Further information on conducting cost-benefit analysis can be found in OMB Circular No. A–94.
11. Describe the methods used to evaluate the program and the results of evaluations that have been made.
12. Describe any elements of program design which encourage and supplement private lending activity, such that private lending is displaced to the smallest degree possible by agency programs.
13. Estimate the expected administrative (including origination, serving, and collection) costs of the credit program (dollar amounts over next 5 fiscal years).
14. Prohibitions:
   - Agencies will not guarantee federally tax-exempt obligations directly or indirectly.
   - Agencies will not subordinate direct loans to tax-exempt obligations
15. Financial standards:

Risk sharing:

- Lenders and borrowers share a substantial stake in full repayment according to the loan contract.
- Private lenders who extend Government guaranteed credit bear at least 20 percent of the loss from any default.
- Borrowers deemed to pose less of a risk receive a lower guarantee as a percentage of the total loan amount.
- Borrowers have an equity interest in any asset being financed by the credit assistance.

Fees and interest rates:

- Interest and fees cover, or at least are proportional to, default and other costs, including administrative expenses.
- Interest rates charged to borrowers (or interest supplements) not set at an absolute level, but instead set by reference to the rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed.

Protecting the Government's interest:

- Contractual agreements include all covenants and restrictions (e.g., liability insurance) necessary to protect the Federal Government's interest.
- Maturities on loans shorter than the estimated useful economic life of any assets financed.
- The Government's claims on assets not subordinated to the claim of other lenders in the case of a borrower's default.
- Loan contracts to be standardized and private sector documents used to the extent possible.

Appendix C to Circular No. A–129

Model Bill Language for Credit Programs

A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, this Act may be cited as "   ".

Authorization

Sec. 2. (1) The Administrator is authorized to make or guarantee loans to * * * (Define eligible applicants).

(2) There are authorized to be appropriated $________ for the cost of direct loan obligations or loan guarantee commitments authorized in subsection (1) for each of the fiscal years * * * (List fiscal years for which authorization applies).

Terms and Conditions

Sec. 3. Loans made or guaranteed under this Act will be on such terms and conditions as the Administrator may prescribe, except that:

(1) The Administrator will allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing a credit subsidy and a credit subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(2) Loans made or guaranteed will provide for complete amortization within a period not to exceed ________ years, or ________ percent of the useful life of any physical asset to be financed by the loan, whichever is less as determined by the Administrator.

(3) No loan made or guaranteed to any one borrower will exceed _____ percent of the cost of the activity to be financed, or $_____ whichever is less, as determined by the Administrator.

(4) No loan guaranteed to any one borrower will exceed 80% of the outstanding principal on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

(5) No loan made or guaranteed will be subordinated to another debt contracted by the borrower or to any other claims against the borrower.

(6) No loan will be guaranteed unless the Administrator determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(7) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code

of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

(8) Direct loans and interest supplements on guaranteed loans will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. The minimum interest rate of these loans will be (at) ____percent above) (no more than ____percent below) the interest rate of the benchmark financial instrument.

(9) The minimum interest rate of new loans will be adjusted every month(s) (weeks) (days) to take account of changes in the interest rate of the benchmark financial instrument.

(10) Any securities of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, and that are 100 percent guaranteed by the program shall be financed through the Department of the Treasury as direct loans, attributable to the agency.

(11) Fees or premiums for loan guarantee or insurance coverage will be assessed by reference to the cost to the Government of such coverage. The minimum guarantee fee or insurance premium will be (at) (no more than ____percent below) the level sufficient to cover the agency's costs to the Government of the expected default claims and other obligations. Loan guarantee fees will be reviewed every ____month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most recent estimates of its costs.

(12) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualifies for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

(13) The Administrator will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans. The Administrator must find that there is a reasonable assurance of repayment before extending credit assistance.

(14) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

(15) Within the resources and authority available, gross obligations for the principal amount of direct loans offered by the Administrator will not exceed $______, or the amount specified in appropriations acts in each of fiscal years, * * * (List fiscal years for which authorization applies). Commitments to guarantee loans may be made by the Administrator only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $______, or the amount specified in appropriations acts in each of the fiscal years, * * * (List fiscal years for which authorization applies).

Payment Of Losses

Sec. 4(a). If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Administrator may require, the Administrator determines that the holder has suffered a loss, the Administrator will pay to such holder ____percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Administrator will be subrogated to all the rights of the recipient of the payment. The Administrator will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this Act.

(b) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(c) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Administrator, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990 is available.

(d) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Administrator will have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by him pursuant to the provisions of this Act.

[FR Doc. 93-1507 Filed 1-21-93; 8:45 am]

BILLING CODE 3110-01-U

Financial Management Systems

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed Revision of OMB Circular No. A-127.

SUMMARY: The Office of Management and Budget is revising Circular No. A-127, Financial Management Systems. This notice proposes revisions to requirements for executive branch agency financial management systems.

DATES: Persons who wish to comment on the proposed revisions to Circular No. A-127 should submit their comments by February 22, 1993.

ADDRESSES: Comments should be addressed to: Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395-6903. Copies of the current Circular can be obtained from the address above.

SUPPLEMENTARY INFORMATION:

Background

Circular No. A-127 was issued on December 19, 1984, to provide policies and procedures for developing, operating, evaluating, and reporting on financial management systems. This Circular requires establishment of a single, integrated financial management system at each executive branch agency to provide complete, reliable, consistent, and timely financial information supporting Federal government operations. OMB's objectives in revising this Circular are to eliminate unnecessary overlap between Circular No. A-127 and Circulars A-123, "Internal Control Systems"/A-130, "Management of Federal Information Resources", clarify terminology and definitions, update the Circular for statutory and policy changes, clarify certain agency responsibilities and eliminate outdated guidance.

(1) Eliminate unnecessary overlap with Circular No. A-123 involving policies for management control and Federal Managers' Financial Integrity Act (FMFIA) reporting and Circular No. A-130 involving policies for information systems. The revised Circular focuses specifically on requirements for financial management systems. Policies and guidance pertaining to reviews of financial

management systems for FMFIA will be covered under a subsequent revision to Circular No. A–123. Circular No. A–130 focuses on information systems and information technology management policy for the management of information resources. The proposed revisions to Circular No. A–127 clarify that financial management systems are a subset of information systems and, therefore, subject to the policies established in Circular No. A–130. Some policy statements proposed in the revision to Circular No. A–127 duplicate existing policy in Circular No. A–130 in order to provide added emphasis to certain financial management system requirements. OMB also plans to provide periodic supplemental guidance for areas with more dynamic requirements, such as financial management plan preparation and FMFIA report guidance.

(2) Clarify terminology and definitions which caused confusion on the interpretation of data on financial management systems. These changes are consistent with definitions and terminology used in Circular No. A–11 involving preparation and submission of budget estimates and in OMB guidance for developing CFO Financial Management 5-Year Plans and for preparing FMFIA reports. This revision specifically clarifies what constitutes a single, integrated financial management system. This definition has not been clear in past publications.

(3) Update the Circular for statutory and policy changes. Since the Circular was first issued in 1984, there have been numerous statutory and policy changes substantially affecting financial management systems. The Circular provides for the impact of these changes by establishing sections on financial management system requirements and financial management system improvements.

The financial management system requirements section establishes specific financial management system requirements and identifies authoritative sources for standards covering information, reporting, functional, and accounting standards. Specifically, the proposed Circular recognizes the core financial system requirements published by the Joint Financial Management Improvement Program (JFMIP) and the U.S. Government Standard General Ledger (SGL) published by the Department of the Treasury as financial management system requirements. It also requires financial management systems to be able to provide the data required to prepare financial statements in accordance with the accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and reporting policies and requirements prescribed by OMB and the Department of the Treasury.

The financial management system improvements section was added to highlight requirements for the implementation of financial management systems. This section covers general financial management system development and operating requirements and includes guidance on cross-servicing, use of "off-the-shelf" software, and developing custom financial system software. This section also places a strong emphasis on the need for system designs to support improvement in agency work processes.

(4) Clarify agency responsibilities for financial management systems. The revised Circular makes reference to the Chief Financial Officers Act where responsibilities for financial management systems were clearly defined. The revised Circular also refers to responsibilities outlined in other OMB circulars.

(5) Eliminate outdated guidance. The revised Circular rescinds OMB Circular No. A–127 issued December 19, 1984 and OMB Publications M–85–10 "Financial Management and Accounting Objectives" and M–85–16 "Guidelines for Evaluating Financial Management/Accounting Systems."

Frank Hodsoll,

Deputy Director for Management.

Attachment

Circular No. A–127

Revised

To The Heads of Executive Departments and Establishments

Subject: Financial Management Systems

1. *Purpose:* OMB Circular No. A–127 (hereafter referred to as Circular A–127) prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems.

2. *Rescission:* This Circular replaces and rescinds Circular A–127 dated December 19, 1984. This Circular also rescinds OMB memorandum M–85–10, "Financial Management and Accounting Objectives" and M–85–16, "Guidelines for Evaluating Financial Management/Accounting Systems."

3. *Authorities:* This Circular is issued pursuant to the Chief Financial Officers Act of 1990, P.L. 101–576 and the Federal Managers Financial Integrity Act of 1982, P.L. 97–255 as incorporated in 31 U.S.C. 3512 et seq.; and the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11).

4. *Applicability and Scope.*

a. The policies in this Circular apply to the financial management systems of all agencies as defined in Section 5 of this Circular. Agencies not included in the CFOs Act are exempted from certain requirements as noted in Section 9 of this Circular.

b. The policies contained in OMB Circular No. A–130, "Management of Federal Information Resources" (hereafter referred to as Circular A–130) govern agency management of information systems. The policies contained in Circular A–130 apply to all agency information resources, including financial management systems as defined in this Circular.

c. The policies and procedures contained in OMB Circular No. A–123, "Internal Control Systems," (hereafter referred to as Circular A–123) govern executive departments and agencies in establishing, maintaining, evaluating, improving, and reporting on internal controls in their program and administrative activities. Policies and references pertaining to internal controls contained in this Circular serve to amplify policies contained in Circular A–123 or highlight requirements unique to financial management systems.

5. *Definitions.* For the purposes of this Circular, the following definitions apply:

The term "agency" means any executive department, military department, independent agency, government corporation, government controlled corporation, or other establishment in the executive branch of the government, excluding the U.S. Postal Service.

The term "information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual. Information systems include non-financial, financial, and mixed systems as defined in this Circular.

The term "financial system" means an information system, comprised of one or more applications, that is used for any of the following:

- —Collecting, processing, maintaining, transmitting, and reporting data about financial events;
- —Supporting financial planning or budgeting activities;
- —Accumulating and reporting cost information; or
- —Supporting the preparation of financial statements.

A financial system supports the financial functions required to track financial events, provide financial information significant to the financial management of the agency, and/or required for the preparation of financial statements.

A financial system encompasses automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions. A financial system may include multiple applications that are integrated through a common database or are electronically interfaced, as necessary, to meet defined data and processing requirements.

The term "non-financial system" means a system that supports non-financial functions of the Federal government or components thereof and any financial data included in the system are insignificant to agency financial management and/or not required for the preparation of financial statements.

The term "mixed system" means a system that supports both financial and non-financial functions of the Federal government or components thereof.

The term "financial management systems" means financial management systems consists of financial systems and the financial portions of mixed systems necessary to support financial management.

The term "single, integrated financial management system" means a unified set of financial systems and the financial portions of mixed systems encompassing the software, hardware, personnel, processes (manual and automated), procedures, controls and data necessary to carry out financial management functions, manage financial operations of the agency and report on the agency's financial status to central agencies, Congress and the public. Unified means that the systems are planned for and managed together, operated in an integrated fashion, and linked together electronically in an efficient and effective manner to provide agency-wide financial system support necessary to carry out the agency's mission and support the agency's financial management needs.

The term "application (financial or mixed system)" means a group of interrelated components of financial or mixed systems which supports one or more functions and has the following characteristics:

—A common data base
—Common data element definitions
—Standardized processing for similar types of transactions
—Common version control over software

The term "financial event" means financial event is any occurrence having financial consequences to the Federal government related to the receipt of appropriations or other financial resources; acquisition of goods or services; payments or collections; recognition of guarantees, benefits to be provided, or other potential liabilities; or other reportable financial activities.

The term "work process" means a series of activities operating together to achieve an end or desired result (mission, goal or objective). A work process is a workflow or series of steps necessary for the initiation, tracking and delivery of services or outputs. The process reflects how resources are managed to deliver the services or outputs and may cut across existing or future organizational boundaries.

6. *Policy*. Financial management in the Federal government requires accountability of financial and program managers for financial results of actions taken, control over the Federal government's financial resources and protection of Federal assets. To enable these requirements to be met, financial management systems must be in place to process and record financial events effectively and efficiently, and to provide complete, timely, reliable and consistent information for decision makers and the public.

The Federal government's financial management system policy is to establish government-wide financial systems and compatible agency systems, with standardized information and electronic data exchange between central management agency and individual operating agency systems, to meet the requirements of good financial management. These systems shall provide complete, reliable, consistent, timely and useful financial management information on Federal government operations to enable central management agencies, individual operating agencies, divisions, bureaus and other subunits to carry out their fiduciary responsibilities; deter fraud, waste, and abuse of Federal government resources; and facilitate efficient and effective delivery of programs through relating financial consequences to program performance.

In support of this objective, each agency shall establish and maintain a single, integrated financial management system that complies with:

—Applicable accounting principles, standards, and related requirements as defined by OMB and the Department of the Treasury;
—Internal control standards as defined in Circular A–123 (revised August 4, 1986) and/or successor documents; and
—Policies and requirements prescribed by OMB, the Department of the Treasury and the agency.

An agency's single, integrated financial management system shall comply with the characteristics outlined in Section 7 of this Circular.

7. *Financial Management System Requirements*. Agency financial management systems shall comply with the following requirements:

a. *Agency-wide Financial Information Classification Structure*. The design of the financial management systems shall reflect an agency-wide financial information classification structure that is consistent with the Standard General Ledger, provides for tracking of specific program expenditures, and covers financial and financially related information. This structure will minimize data redundancy, ensure that consistent information is collected for similar transactions throughout the agency, encourage consistent formats for entering data directly into the financial management systems, and ensure that consistent information is readily available and provided to internal managers at all levels within the organization. Financial management systems' designs shall support agency budget, accounting and financial management reporting processes by providing consistent information for budget formulation, budget execution, programmatic and financial management, performance measurement and financial statement preparation.

b. *Integrated Financial Management Systems*. Financial management systems shall be designed to provide for effective and efficient interrelationships between software, hardware, personnel, procedures, controls, and data contained within the systems. In doing so, they shall have the following characteristics:

Common Data Elements. Standard data classifications (definitions and formats) shall be established and used for recording financial events. Common data elements shall be used to meet reporting requirements and, to the extent possible, used throughout the agency for collection, storage and retrieval of financial information. Government-wide information standards (e.g., the Standard General Ledger) and other external reporting requirements shall be incorporated into the agency's standard data classification requirements.

Common Transaction Processing. Common processes shall be used for processing similar kinds of transactions throughout the system to enable these transactions to be reported in a consistent manner.

Consistent Internal Controls. Internal controls over data entry, transaction processing and reporting shall be applied consistently throughout the system to ensure the validity of information and protection of Federal government resources.

Efficient Transaction Entry. Financial system designs shall eliminate unnecessary duplication of transaction entry. Wherever appropriate, data needed by the systems to support financial functions shall be entered only once and transferred automatically to appropriate accounts or other parts of the system through electronic means consistent with the time requirements of normal business/transaction cycles.

c. *Application of the U. S. Government Standard General Ledger at the Transaction Level.* Financial events shall be recorded by agencies throughout the financial management system applying the requirements of the U.S. Government Standard General Ledger (SGL) at the transaction level. Application of the SGL at the transaction level means that the financial management systems will process transactions following the definitions and defined uses of the general ledger accounts as described in the SGL. Compliance with this standard requires:

Data in Financial Reports Consistent with the SGL. All reports produced by the systems, whether used internally or externally, shall provide financial data that can be traced directly to the SGL accounts.

Transactions Recorded Consistent with SGL Rules. The criteria (e.g., timing, processing rules/conditions) for recording financial events in all financial management systems shall be consistent with accounting transaction definitions and processing rules defined in the SGL.

Supporting Transaction Detail for SGL Accounts Readily Available. Transaction detail supporting SGL accounts shall be available in the financial management systems and directly traceable to specific SGL account codes.

d. *Federal Accounting Standards.* Agency financial management systems shall maintain accounting data to permit reporting in accordance with accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and issued by the Director of OMB, and reporting requirements issued by the Director of OMB and the Secretary of the Treasury. Where no accounting standards have been recommended by FASAB and issued by the Director of OMB, the systems shall maintain data in accordance with the applicable accounting standards used by the agency for preparation of its financial statements. Agency financial management systems shall be designed flexibly to adapt to changes in accounting standards.

e. *Financial Reporting.* The agency financial management system shall meet the following agency reporting requirements.

Agency Financial Management Reporting. The agency financial management system shall be able to provide financial information in a timely and useful fashion to (1) support management's fiduciary role; (2) support the legal, regulatory and other special management requirements of the agency; (3) support budget formulation and execution functions; (4) support fiscal management of program delivery and program decision making, (5) comply with internal and external reporting requirements, including, as necessary, the requirements for financial statements prepared in accordance with the form and content prescribed by OMB and reporting requirements prescribed by Treasury; and (6) monitor the financial management system to ensure the integrity of financial data.

Performance Measures. Agency financial management systems shall be able to capture and produce the financial information required for program performance, financial performance, and financial management performance measures needed for budgeting, program management and financial statement presentation. As new performance measures are established, agencies shall incorporate the necessary information and reporting requirements, as appropriate and feasible, into their financial management systems.

f. *Budget Reporting.* Agency financial management systems shall enable the agency to prepare, execute and report on the agency's budget in accordance with the requirements of OMB Circular No. A–11 (Preparation and Submission of Budget Estimates), OMB Circular No. A–34 (Instructions on Budget Execution) and other circulars and bulletins issued by the Office of Management and Budget.

g. *Functional Requirements.* Agency financial management systems shall conform to existing applicable functional requirements for the design, development, operation, and maintenance of financial management systems. Functional requirements are defined in a series of publications entitled Federal Financial Management Systems Requirements issued by the Joint Financial Management Improvement Program (JFMIP). Additional functional requirements may be established through OMB circulars and bulletins and the Treasury Financial Manual. Agencies are expected to implement expeditiously new functional requirements as they are established and/or made effective.

h. *Computer Security Act Requirements.* Agencies shall plan for and incorporate security controls in accordance with the Computer Security Act of 1987 and Circular A–130 for those financial management systems that contain "sensitive information" as defined by the Computer Security Act.

i. *Documentation.* Agency financial management systems and processing instructions shall be clearly documented in hard copy or electronically in accordance with (a) the requirements contained in the Federal Financial Management Systems Requirements documents published by JFMIP or (b) other applicable requirements. All documentation (software, system, operations, user manuals, operating procedures, etc.) shall be kept up-to-date and be readily available for examination. System user documentation shall be in sufficient detail to permit a person, knowledgeable of the agency's programs and of systems generally, to obtain a comprehensive understanding of the entire operation of each system. Technical systems documentation such as requirements documents, systems specifications and operating instructions shall be adequate for technical personnel to update and maintain the system.

j. *Internal Controls.* The financial management systems shall include a system of internal controls that ensure resource use is consistent with laws, regulations, and policies; resources are safeguarded against waste, loss, and misuse; and reliable data are obtained, maintained, and disclosed in reports. Appropriate internal controls shall be applied to all system inputs, processing, and outputs. Such system related controls form a portion of the internal control structure required by Circular A–123.

k. *Training and User Support.* Adequate training and appropriate user support shall be provided to the users of the financial management systems, based on the level, responsibility and roles of individual users, to enable the users of the systems at all levels to understand, operate and maintain the system.

l. *Maintenance.* On-going maintenance of the financial management systems shall be performed to enable the systems to continue to operate in an effective and efficient manner. The agency shall periodically evaluate how effectively and efficiently the financial management systems support the agency's changing business practices and make appropriate modifications.

[Note: Sections 7 i, k and l may be covered in Circular A–130 in a future revision. These sections will be adjusted as necessary to eliminate any overlap.]

8. *Financial Management System Improvements.* In improving financial management systems, agencies shall follow the information technology management policies presented in Circular A–130. In addition, agencies shall comply with the following policies in designing, developing, implementing, operating and maintaining financial management systems:

a. *Improvement in Agency Work Processes.* Designs for financial systems and mixed systems shall be based on the financial and programmatic information and processing needs of the agency. As part of any financial management system design effort, agencies are to analyze how system improvements, new technology supporting financial management systems, and modifications to work processes can together enhance agency operations and improve program and financial management. The reassessment of information and processing needs shall be an integral part of the determination of system's requirements. Process redesign shall be considered an essential step towards meeting user needs in program management, financial management, and budgeting. Concurrent with developing and implementing integrated financial management systems, agencies shall consider program operations, roles and responsibilities, and policies/practices to identify related changes necessary to facilitate financial management systems operational efficiency and effectiveness.

b. *Cost Effective and Efficient Development and Operation of Financial Management Systems.* Financial management system development and implementation efforts shall seek cost effective and efficient solutions as required by Circular A–130. A custom software development approach for financial management systems shall be used as a last resort and only after consideration of all appropriate software options, including the following:

—Use of the agency's existing system with enhancements/upgrades,
—Use of another system within the department/agency,
—Use of an existing system at another department/agency,
—Development of the system using a commercial "off-the-shelf" software package
—Use of a system under development at another department, or
—Use of a private vendor's service.

The cost effectiveness of developing custom software shall be clear and documented in a benefit/cost analysis that includes the justification of the unique nature of the systems functions that preclude the use of alternative approaches. This analysis shall be made available to OMB for review upon request.

c. *Cross or Private Servicing.* Cross or private servicing of financial system support, where one agency or a division within an agency provides financial management software and processing support to another agency or division within an agency, shall be used whenever feasible and cost effective, as a solution to meet Federal government financial management system needs. Agencies providing cross-servicing support shall ensure that systems are maintained appropriately; fees for service are reasonable; adequate conversion support is provided; procedures, training and documentation are available and periodic service reviews are conducted. Small agencies are particularly encouraged to use cross-servicing to meet fundamental core financial and payroll/personnel processing and reporting requirements.

d. *Use of "Off-the-Shelf" Software.* GSA shall maintain the Financial Management System Software (FMSS) Multiple Award Schedule for vendors providing acceptable software which meets the core financial system requirements as defined in the Core Federal Financial Management System Requirements document published by JFMIP. Such software packages will be "benchmarked," as appropriate, by an independent team approved by the OMB Office of Federal Financial Management (OFFM) or its designee to assure the software complies with such requirements.

Agencies replacing software to meet core financial system requirements must use "off-the-shelf" software from the GSA FMSS Multiple Award Schedule unless a waiver is granted under the Federal Information Resources Management Regulations (FIRMR). Agencies obtaining such a waiver must ensure the system, whether resulting from a custom software development approach or from software existing within or external to the agency, is "benchmarked" by an independent team approved by OFFM or its designee.

Financial management system software meeting requirements beyond the scope of the Core Federal Financial Management System Requirements document may also be made available under the GSA FMSS Multiple Award Schedule as agreed to by the OFFM or its designee.

e. *Joint Development of Software.* Agencies with similar financial management functions, after considering "off-the-shelf" software solutions, are encouraged to undertake joint development efforts by pooling resources and developing common approaches for meeting similar financial functions. The designs for jointly developed software shall contain the flexibility and other features needed for transportability of the system to other agencies and/or cross-servicing.

f. *Transfer of Agency Financial Management Software.* In cases where an agency determines it is more efficient and effective to use or adopt the software of another agency to meet its financial management system requirements, the agency shall ensure the following:

(1) The software meets the financial management system requirements in Section 7 of this Circular.

(2) A formal written agreement on the transfer of software is prepared and approved by all parties. The agreement shall cover the full scope of support services to be provided including system modifications, maintenance and related costs;

(3) Any necessary support requirements not covered in the agreement shall be provided by the agency and such support, including implementation support and training, shall be assessed and determined to be adequate.

(4) An ongoing relationship for determining future enhancements shall be established between the parties involved.

Any compensation arrangements for the transfer of the software shall conform to Circular A–130 policies.

9. *Assignment of Responsibilities.*

a. *Agency Responsibilities.* Agencies shall perform the financial management system responsibilities prescribed by legislation referenced in Section 3 "Authorities" of this Circular. In addition, each agency shall take the following actions:

(1) Develop and Maintain an Agency-wide Inventory of Financial Management Systems.

Agencies are required to maintain an inventory of existing and proposed financial management systems. Annually CFOs Act agencies will provide OMB with financial management system information in compliance with the financial system planning guidance issued by OMB for the Agency CFO 5-Year Financial Management Plan. Financial management systems shall be included in the agency information systems inventory following the information system inventory policies established in OMB Circular A–130.

(2) Develop and Maintain Agency-wide Financial Management System Plans.

Agencies are required to prepare annual financial management systems plans. These plans shall be developed in accordance with OMB guidance issued annually. Financial management system planning guidance for CFOs Act agencies shall be included in the guidance for developing CFO Financial Management 5-Year Plans.

The financial management systems strategies and tactical initiatives included in the CFO Financial Management 5-Year Plan shall be incorporated into the agency's five year information systems plan prepared in compliance with Circular A–130.

Agencies not covered by the CFOs Act shall prepare plans following the CFO Financial Management 5-Year Plan guidance but are not required to submit the plans to OMB. Financial management system plans shall be an integral part of the agency's overall planning process and updated for significant events that result in material changes to the plan as they occur.

(3) *Review of Agency Financial Management Systems.*

Each agency shall ensure appropriate reviews are conducted of its financial management systems. The results of these reviews shall be considered when developing financial management systems plans. OMB encourages agencies to coordinate and, where appropriate, combine required reviews. Reviews must comply with policies for (1) reviews of internal controls undertaken and reported on in accordance with the guidance issued by OMB for compliance with the requirements of the Federal Managers' Financial Integrity Act (FMFIA) and Circular A–123, (2) reviews of conformance of financial management systems with the principles, standards and related requirements in Section 7 of this Circular undertaken in accordance with the guidance issued by OMB for compliance with requirements of the FMFIA, and (3) reviews of systems and security as required under provisions of Circular A–130.

(4) *Develop and Maintain Agency Financial Management System Directives.*

Agencies shall issue, update, and maintain agency-wide financial management system directives to reflect policies defined in this Circular.

b. *GSA Responsibilities.* GSA is responsible for maintaining the FMSS Multiple Award Schedule for Federal financial management software and related services.

10. *Information Contact.* All questions or inquiries should be addressed to the Office of Federal Financial Management, Federal Financial Systems Branch, telephone number 202/395–6903.

11. *Termination Review Date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

12. *Effective Date:* This Circular is effective on January 22, 1993.

[FR Doc. 93–1480 Filed 1–21–93; 8:45 am]

BILLING CODE 3110-01-F

PENSION BENEFIT GUARANTY CORPORATION

Guarantee of Benefits Under Certain Plans Not Amended To Comply With Minimum Vesting Standards

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Board of Directors submission interpreting statutory provisions.

SUMMARY: In response to an order of the United States Court of Appeals for the District of Columbia Circuit to make a policy decision, the Board of Directors of the Pension Benefit Guaranty Corporation ("PBGC") has considered whether, with respect to pension plans that terminated prior to September 26, 1980, benefits vested under statutory vesting schedules are guaranteed in the absence of a plan amendment adopting one of those schedules. The Board has concluded that a decision to guarantee such benefits is not warranted on policy grounds and that the PBGC's previous decision not to guarantee those benefits, based on the statutory language, also represents an appropriate accommodation of the policies underlying Title IV of the Employee Retirement Income Security Act of 1974. The Board's decision is set forth in a submission to the United States District Court for the District of Columbia.

FOR FURTHER INFORMATION CONTACT: Israel Goldowitz, Assistant General Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22000), 2020 K Street, NW., Washington, DC 20006, 202–778–8886 (202–778–1958 for TTY and TTD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice informs the public of a decision by the Board of Directors of the Pension Benefit Guaranty Corporation ("PBGC") that has been submitted to the United States District Court for the District of Columbia in response to the July 10, 1992 decision of the United States Court of Appeals for the District of Columbia Circuit in *Page/Collins* v. *PBGC,* 968 F.2d 1310 (D.C. Cir. 1992), a case brought on behalf of a nationwide class of participants whose pension plans terminated between 1976 and 1980 without having been amended to comply with the minimum vesting standards set forth in section 203 of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. 1053). Consistent with its reading of ERISA section 4022(a) (29 U.S.C. 1322(a)), the PBGC guaranteed benefits under these plans only to the extent that the benefits were vested, or nonforfeitable, under express plan terms. The court of appeals concluded that ERISA section 4022(a), as it existed before the 1980 amendments to ERISA, "admits of more than one interpretation" and did not clearly preclude the PBGC from guaranteeing benefits that were vested under title I standards in the absence of an actual plan amendment. It remanded the case to the district court and invited a submission reflecting the Board's "first-instance decision" on the policy question. On December 7, 1992, the PBGC filed its submission with the district court entitled "Policy Submission of the Board of Directors of the Pension Benefit Guaranty Corporation Regarding Guarantee of Benefits Under Pension Plans Terminated Before September 26, 1980 Without Being Amended to Comply With the Minimum Vesting Standards Set Forth in section 203 of the Employee Retirement Income Security Act of 1974" ("submission").

As stated by the Board: "Our weighing of the competing considerations persuades us . . . that a decision to guarantee the disputed benefits is not warranted in the circumstances involved here" (submission, page 2). The Board also concluded that the decision of the PBGC in 1976 not to guarantee the disputed benefits, based on the statutory language, also represented an appropriate accommodation of the policies underlying title IV of ERISA and that this result is even more compelling today.

The PBGC is notifying the public of the Board's submission, which includes the agency's interpretation of statutory provisions and is set forth below.

Dated: January 14, 1993.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

December, 1992.

Policy Submission of the Board of Directors of the Pension Benefit Guaranty Corporation Regarding Guarantee of Benefits Under Pension Plans That Terminated Before September 26, 1980 Without Being Amended to Comply With the Minimum Vesting Standards Set Forth in Section 203 of the Employee Retirement Income Security Act of 1974

Introduction

This submission is provided in response to the July 10, 1992 decision of the United States Court of Appeals for the District of Columbia Circuit in *Page/Collins* v. *PBGC*, 968 F.2d 1310 (D.C. Cir. 1992). That case was brought on behalf of a nationwide class of participants whose pension plans terminated between 1976 and 1980 without having been amended to comply with the minimum vesting standards set forth in section 203 of ERISA. Consistent with its reading of section 4022(a), PBGC guaranteed benefits under these plans only to the extent that the benefits were vested, or nonforfeitable, under express plan terms.[1]

The court of appeals concluded that section 4022(a) did not clearly preclude PBGC from guaranteeing benefits that were vested under Title I standards in the absence of an actual plan amendment. The court further determined that, because this issue was not resolved by the statute, it is a policy matter that, in the court's view, is reserved to the Board of Directors under PBGC's bylaws. The court remanded the case to the district court and invited a submission reflecting the Board's "first-instance decision" on the question.

The court of appeals expressed "grave doubts" as to whether the PBGC staff's interpretation of section 4022(a) is consistent with the underlying statutory scheme. 968 F.2d at 1316. We have undertaken consideration of this policy question with due regard for those doubts. Our weighing of the competing considerations persuades us, however, that a decision to guarantee the disputed benefits is not warranted in the circumstances involved here.

I. The Language of the Statute

Before addressing the issue as a matter of policy, we note that we are persuaded that the language of section 4022(a) precluded the agency from guaranteeing benefits that were not vested under the express terms of a plan. Not only does this interpretation comport with a literal reading of the statute, but it was essentially ratified by Congress in 1980, when the statute was amended prospectively.

For purposes of this submission, however, we accept the court of appeals' conclusion that "the statutory phrase on which this case turns, in context, admits of more than one interpretation." 968 F.2d at 1317. Our task is thus to decide whether, as a matter of policy, PBGC should restrict its guarantee to benefits vested under express plan terms or should instead read Title I's vesting provisions into unamended plans.

II. PBGC'S Mandate

Any policy decision under Title IV of ERISA must begin with consideration of the three purposes set forth in section 4002(a). There, Congress stated that PBGC is to carry out the following objectives:

1. Encouraging the continuation and maintenance of voluntary private pension plans for the benefit of their participants,
2. Providing for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which Title IV applies, and
3. Maintaining premiums at the lowest level consistent with carrying out its obligations under Title IV.

These objectives may be in tension in particular circumstances. For example, additional efforts to assure the timely and uninterrupted payment of benefits to participants may require higher premiums. Any effort to encourage the continuation of plans by limiting insurable benefits may have an adverse impact on the flow of benefits to participants. In such circumstances, a policy decision by PBGC must balance these conflicting purposes.

The court of appeals indicated that such considerations as cost and inter-employer equity should be subordinated to "ERISA's core purpose," which it identified as protecting the "legitimate expectations" of employees. 968 F.2d at 1317. Section 2(a) of ERISA and the legislative history reflect concern that workers were not receiving promised benefits after years of service. The minimum vesting, funding, and fiduciary standards of Title I certainly work to alleviate that concern.

When Congress established the insurance program in title IV, however, it did not identify a single "core" purpose. Rather it explicitly articulated "[t]he purposes of this title, which are to be carried out by the corporation." ERISA section 4002(a). Protecting employee expectations is not among the three specific purposes of title IV, and none of those purposes is, in any event, identified as "overwhelming." See *Collins*, 968 F.2d at 1317. We believe, therefore, that careful consideration of the specific objectives that govern title IV is necessary.

The court of appeals also noted that PBGC's mandate to maintain low premiums is qualified by the language "consistent with carrying out its obligations" under title IV. 968 F.2d at 1316. The court construed this to mean that maintaining low premiums should be subordinated to ERISA's "core purpose." We read this language differently.

It is clear that PBGC could not, in the interest of reducing the burdens on premium payers, refuse to guarantee benefits that the statute clearly requires it to guarantee. Such guarantees are "obligations" within the meaning of section 4002(a)(3), and therefore they must be paid, even if premiums must be increased as a result.[2] But where the statute is ambiguous and PBGC must decide whether, as a matter of policy, to provide a guarantee, it would be circular to characterize the benefits as title IV "obligations." In such a case, PBGC must consider the potential imposition on its premium payers and the impact that its decision would have on the continuation and maintenance of covered plans. Ongoing plans are not only the primary source for payment of benefit entitlements, but premiums from these plans are the lifeblood of the insurance program that exists for participants whose plans fail. In making such a judgment, PBGC must strike a balance to promote a viable self-financing insurance program for the 40 million participants who potentially depend on it.

As the text of section 4002(a) indicates, Congress expects PBGC to weigh a number of policy objectives when it implements the title IV insurance program. While Congress obviously had high regard for participant interests, it did not direct PBGC to resolve all issues in favor of individual participants. The statute itself contains some rules that may conflict with individual participant expectations but that discourage abuses and reduce burdens on premium payers. For example, section 4022(b) contains several limitations on PBGC's guarantee. These include:

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[1] At the relevant time, section 4022(a) provided that PBGC "shall guarantee the payment of all nonforfeitable benefits * * * under the terms of a plan which terminates * * *."

[2] Thus, in 1977, PBGC obtained congressional approval of a premium increase from $1.00 to $2.60 per participant per year, based on projected guaranteed benefit obligations of $120 million over a 5-year period. Among the premises of PBGC's recommendation were that, with this increase, premiums would cover the claims and administrative expenses as incurred and that the single-employer program deficit incurred prior to the time of the premium increase would be amortized over 10 years. See Pension Benefit Guaranty Corp., Premium Requirements for the Single Employer Basic Benefit Insurance Program. Subsequent premium increases were imposed in 1986, 1988, and 1990.

- The phase-in of the guarantee of benefits of "substantial owners" over 30 years (section 4022(b)(5))
- The maximum guarantee level, which places some risk of loss on the participants (section 4022(b)(3))
- The limitation of guarantees of benefits accrued while a plan is not tax-qualified (section 4022(b)(6))
- The five-year phase-in rule for new benefits or new plans (section 4022(b)(1), (7))
- Elimination of the guarantee of benefits in effect for less than five years in plans terminated for the purpose of obtaining insurance (*ibid.*)

By limiting the scope of the PBGC guarantee in these situations, the statute discourages to some extent unfunded benefit increases and unnecessary terminations of underfunded plans.[3]

Balancing its multiple statutory objectives, PBGC has adopted policies that limit fulfillment of participant expectations where such policies are necessary to protect the insurance program. For example, in *PBGC* versus *LTV Corp.*, the Supreme Court upheld PBGC's policy against "follow-on" plans, even though it leaves some employee expectations unfulfilled, because the policy furthers the continuation of plans and the maintenance of low premiums. 496 U.S. at 651–52. As a result of the *LTV* decision, employers may not terminate their underfunded plans and then institute follow-on plans to replace the benefits lost through the operation of section 4022(b). Thus, the section 4022(b) limitations, backed by PBGC's anti-follow-on plan policy, provide an incentive for participants to ensure that their plans remain ongoing and funded so that they can receive full benefits. See 496 U.S. at 651–52.

These incentives to employers and employees alike to keep plans ongoing and funded in the normal course ultimately serve all three of the stated purposes in section 4002(a). The continuation of plans permits the accumulation of sufficient assets to pay promised benefits as they come due, which in turn keeps premiums low by reducing both the incidence of termination and PBGC's losses where plans do terminate. In this way, the complex guarantee limitations of title IV promote the maintenance of pension plans and a sound and equitable insurance program for the greater good of participants generally and over the long term.

The language and structure of this complex statute do not require PBGC to place paramount importance on the expectations of the particular group of participants affected. To do so would be to require PBGC to resolve every interpretive question with respect to insurance of benefits in their favor, which would threaten the viability of the termination insurance program. The ever increasing premiums would drive ever larger numbers of responsible employers out of the system to the ultimate detriment of participants as a whole.

III. Analysis

A. *Participant Expectations.* Although fulfilling the "legitimate expectations" of plan participants is not among the purposes of title IV listed in section 4002(a),[4] the legislative history indicates that it is a valid consideration. And, because the court of appeals indicated that this factor should be paramount in our deliberations, we give it careful attention.

We therefore seek to determine how employee expectations come to have legitimacy for purposes of the insurance program. Title IV of ERISA is instructive in this regard, because it does not treat all employee expectations alike. Rather, a fundamental principle built into the insurance program is that employees have stronger expectations with respect to some classes of benefits than others, largely because of a greater degree of reliance.

Thus, a key provision governing the termination process—section 4044—requires the assets of a terminated plan to be allocated in accordance with a strict scheme of priorities. Priority is given first to participants' accrued benefits derived from their voluntary contributions and second to those derived from participants' mandatory contributions. Remaining assets are then allocated to participants who had retired or become eligible to receive benefits at least three years prior to termination; then to guaranteed benefits, to vested but nonguaranteed benefits, and finally to all other benefits under the plan. ERISA section 4044(a). This hierarchical scheme for the allocation of a terminated plan's assets among competing employee claims reflects Congress's judgments as to those expectations that carry the most weight.

Vested benefits were assigned a high priority in this congressional scheme. ERISA not only imposed minimum vesting standards, but provided a guarantee of benefits that are "nonforfeitable," or vested, on the date of plan termination. By contrast, the only protection for accrued but non-vested benefits under these plans was full funding. See ERISA section 4044(a)(5); I.R.C. section 411(c)(3).[5] Thus, participants have always had a greater reliance interest in vested than in non-vested benefits, a distinction that was incorporated into title IV.

Nevertheless, even as to vested benefits, protecting participants' expectations sometimes gives way to competing considerations, as illustrated by the limitations on PBGC's guarantee in section 4022(b). One of the most important of those limitations, the "phase-in limitation" in subsections (b)(1) and (7), withholds any guarantee for new plans or new benefits unless they have been in effect for at least one year, and thereafter the guarantee is generally phased in at a rate of 20 percent per year for five years. Participants in a relatively new plan plainly do not have nearly the same reliance interest in their promised benefits as participants in a plan that has been in existence for many years. The same is true of relatively recent benefit increases.

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[3] For example, the preamble to the Limitation on Guaranteed Benefits Regulation states that "[t]he purpose of the phase-in rule is to protect against undue increases in unfunded plan liabilities in anticipation of plan termination." 41 FR 6194 (Feb. 11, 1976). PBGC has generally applied its phase-in regulation to benefit enhancements that result from ERISA-mandated plan improvements, such as more generous vesting schedules. See generally Rettig versus PBGC, 744 F.2d 133 (D.C. Cir. 1984). We have had no occasion to apply the phase-in regulation to vesting enhancements read into plans, because the agency previously found that any guarantee of such benefits was precluded by statute. Because we now conclude as a matter of policy that this guarantee should not be provided, we do not reach the phase-in issue here. Moreover, before we could reach a conclusion on this issue, we would need to undertake a thorough examination of all of the relevant factors bearing on that issue, including cost evidence, as indicated in *Rettig*.

[4] The closest analog to upholding participant expectations among the various stated purposes in section 4002(a) would appear to be providing for the timely and uninterrupted payment of benefits to participants. However, this objective does not focus on participant expectations, but rather on the assured delivery of benefits—presumably those to which the participants are entitled under other provisions of title IV. This objective could be jeopardized by decisions of the agency that expand its commitments beyond its capacity to perform them.

[5] Under current law, PBGC is responsible for paying a portion of participants' accrued but non-vested benefits upon plan termination where they cannot be paid from plan assets. See ERISA section 4022(c). Prior to 1986, however, participants' claims for such benefits, if any, ran against their employer.

On the other hand, section 4044 accords a relatively high priority to participants who have reached retirement age prior to plan termination. After payment of benefits derived from employee contributions, assets are allocated to benefits of participants who have been (or could have been) retired for at least three years before plan termination, even if these benefits are not eligible for PBGC's guarantee, and even before assets are allocated to benefits that would otherwise be guaranteed by PBGC. This scheme reflects the recognition that older participants are more likely to rely on their pensions than younger ones, perhaps because they have already withdrawn from the workforce or, if they have not retired, because they have fewer employment options and fewer years of earning potential than younger employees.

The statute also recognizes that participant expectations are created by the existence of the plan.[6] The minimum standards of ERISA authorize plan provisions that limit vesting to years of service performed while the plan (and any predecessor) was in effect. ERISA section 203(b)(1)(C). The plan need not recognize years of service with the employer prior to establishment of the plan.

The design and structure of title IV thus places greater or lesser weight on participant reliance interests depending on whether the benefit was vested before termination, the length of time the plan or benefit was in effect, and the likelihood that the participant will be dependent on the benefit as a significant part of his regular income. These principles assist in measuring the strength of the participants' expectations with respect to the benefits at issue here.

The plans involved in this decision were established before ERISA was enacted, at a time when participants had no legally protected expectation of receiving anything beyond what was promised in the plan itself. For many of these plans, there was no promise of vesting in an accrued benefit unless a participant worked with the sponsoring employer until a specified retirement age. ERISA was enacted in 1974, but the minimum vesting standards did not apply to existing plans until the 1976 plan year. Thus, the statute permitted employers to terminate their plans prior to 1976 in lieu of complying with title I's vesting standards. There was no statutory penalty for terminating prior to the effective date, and a substantial number of employers did so.[7] Given this unfettered discretion, until the beginning of the 1976 plan year, participants' reliance interests clearly were limited to whatever benefits were expressly promised under plan terms.

The years of 1976 and 1977 were a period of transition. Beginning in 1975, the Internal Revenue Service granted several extensions of the deadline for adopting remedial plan amendments for tax qualification purposes.[8] Once adopted, such amendments were to be retroactive to the date the ERISA standards took effect. In April 1976, DOL issued a regulation requiring plans to issue a notice advising participants that their plans were required to apply the new Title I standards beginning with the 1976 plan year and that amendments adopted later were to apply retroactively. 29 CFR 2520.104b-5(c), 41 FR 16,957 (Apr. 23, 1976).[9] The last of the IRS extensions of the remedial amendment period expired on December 31, 1977.[10]

It was during this period that the bulk of the plans at issue here terminated. The majority of the plans in question (approximately 7,000 of 11,000) terminated before the end of 1976, and an overwhelming majority (almost 10,000) terminated before the end of 1977. Title I's vesting rules thus applied to these plans for a maximum of two years. It was only during this period that participants may have worked in reliance on ERISA's minimum standards. Accordingly, any reliance interest the participants may have had in a vested benefit before normal retirement age was very short-lived.

In addition, many of the plans that terminated during this period had only recently been created. A 1977 study of plan terminations found that 64 percent of the plans that were terminated during the post-ERISA era were less than 10 years old. Pension Benefit Guaranty Corp., Analysis of Single Employer Defined Benefit Plan Terminations, 1977 at 6 (1978). As the Rettig court recognized, "an employee who has participated in * * * a pension plan for many years has a much stronger and more reasonable expectation of eventually receiving benefits under the plan * * * than does an employee whose employer only recently instituted a pension plan." 744 F.2d at 152–53.

We have also examined the benefits that would have been received by participants in the affected plans at termination had their plans been treated as amended by operation of law to comply with ERISA. Statistical samples show that roughly 80 percent of the participants in nontrusteed plans and nearly 90 percent of the participants in trusteed plans would have received no additional guaranteed benefit at all upon plan termination.[11] Of the participants in nontrusteed plans who would have received an additional guaranteed benefit, 25 percent would have received a lump sum of $114 or less.[12] In fact, 50 percent of those receiving additional benefits would have received a lump sum of $333 or less and fully 75 percent would have received $1,178 or less.[13]

In these circumstances, we have some difficulty concluding that the members of the plaintiff class were, on average, deprived of an important source of retirement income.[14] Of course, for some members of the class, the additional amount generated by a guarantee of ERISA-vested benefits would have been substantial. But a policy decision with respect to a class of over 100,000 participants requires that we view the problem in the aggregate, especially when we weigh the benefits to participants produced against the administrative costs of delivering them.

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[6] Section 402 provides that all plans must be established and maintained pursuant to a written instrument. Title I also includes elaborate reporting and disclosure requirements to keep participants informed about the provisions of their plan. ERISA sections 101–110.

[7] PBGC studies show that 4,300 plans terminated in 1975. Pension Benefit Guaranty Corp. Analysis of Single Employer Defined Benefit Plan Terminations, 1977 at 17 (1978).

[8] See Tentative Treas. Reg. § 1.401(b), 40 FR 46,314 (Oct. 7, 1975), *reprinted in* Pens. Rep. (BNA) No. 56, at R–4 (Oct. 13, 1975).

[9] The regulation cautioned that the notice could not be used if the plan administrator had "reason to know that the use of [the prescribed] language would be seriously misleading or incomplete as applied to the plan." *Id.*

[10] Information Release 1833 (Sept. 13, 1977), *reprinted in* Pens. Rep. (BNA) No. 155, at A–1 (Sept. 19, 1977).

[11] The Institute for Survey Research of Temple University designed probability samples of unamended trusteed and nontrusteed plans that terminated after their Title I effective date and prior to the end of 1981. This study was implemented with the assistance of PBGC and the firm of W.F. Corroon, Facciani Division. The methodology for this study is set forth in the ERISAfication Study Methodology Report dated November 19, 1992 and in the ERISAfication Study Methodology Report (Trusteed Plans), dated November 23, 1992.

[12] The numbers in text assume that the phase-in limitation was not applied to these additional benefits and that a relatively liberal vesting schedule was used. As noted above, *supra* note 3, we do not here decide whether the phase-in rules would be applied to the benefits at issue if the vesting provisions were to be read in. Similarly, we do not reach the questions of which of the three minimum vesting schedules permissible under section 203 would be applied or whether participants' service prior to the establishment of the plan would be recognized for vesting or accrual purposes. The numbers in text are based on 10-year cliff vesting, recognizing pre-establishment service. Of the two other permissible vesting schedules, one produces higher liabilities and the other lower.

[13] Recoveries for participants in the trusteed plans would have been on the same order of magnitude.

[14] We note also that at least 40 percent of the sponsors of the nontrusteed plans identified in the Temple study stated that they intended to replace their terminated defined benefit plans with some other form of retirement plan for their employees.

Based on all of the above considerations—but especially the fact that plan termination occurred shortly after Title I's vesting standards took effect—we conclude that, while some participant reliance on the benefits at issue was reasonable, participant expectations with regard to these benefits were limited.

B. *Continuation of plans—Equity among premium payers.* The first purpose listed in § 4002(a) is "to encourage the continuation and maintenance of voluntary private pension plans." A key concept that is evident here is that sponsoring pension plans is a voluntary undertaking; nothing in ERISA requires employers to provide such plans. But a healthy insurance program depends on a broad base of premium payers. As with any insurance program, it is particularly important that it retain financially strong members as well as those who are likely to draw on the insurance guarantee.

For this reason, it is important to ensure that the termination insurance program functions equitably to avoid creating an incentive for responsible employers to terminate their plans. If the system appears to be unfair, responsible premium payers might desert the system, leaving relatively more bad risks in the system, a classic case of adverse selection. This problem has been noted by economists who have studied the pension insurance system:

> [T]he prospect that overcharging the sponsors of well-funded plans in order to subsidize the underfunded plans of financially-distressed firms might cause financially healthy sponsors to terminate their defined-benefit plans. Ultimately, the United States could be left only with bankrupt defined-benefit plans with benefits financed directly by tax-payers.

Zvi Bodie & Robert C. Merton, Pension Benefit Guarantees in the United States: A Functional Analysis at 14 (Apr. 15, 1992) (for presentation at the Pension Research Council Annual Symposium, May 1992). Accordingly, we believe that we must consider fairness to premium payers whenever we are deciding whether to provide a discretionary guarantee.

Guaranteeing the benefits at issue raises serious questions of fairness to premium payers. Where a plan has not been amended to liberalize vesting requirements, the employer has not provided funding toward the enhanced benefits. Insuring benefits that are not backed by any funding defeats one of the purposes of ERISA's minimum funding standards by shifting the burden of financing those benefits to other employers:

> To create a plan termination insurance program without appropriate funding standards would permit those who present the greatest risk in terms of exposure to benefit at the expense of employers who have developed conscientious funding programs. The funding standards contained in the Act are designed to lessen that unnecessary exposure by requiring every plan to be funded in a manner which will fully amortize unfunded liabilities.

H.R. Rep. No. 553, 93d Cong., 1st Sess. 14, *reprinted in* II Leg. Hist. 2348, 2361; *accord* S. Rep. No. 383, 93d Cong., 1st Sess. 26, *reprinted in* I Leg. Hist. 1069, 1094.

The termination insurance program was, of course, created to protect participants from the consequences of inadequate funding. But it was not designed to relieve solvent employers of financial responsibility for their pension commitments. Thus, section 4062(b), as originally enacted, required employers to reimburse PBGC for the amount of the plan's unfunded guaranteed benefits up to 30 percent of the employer's net worth. This employer liability was intended to ensure that, where a plan sponsor has not properly funded its plan, it is nevertheless required to bear a substantial financial burden in connection with termination. As Senator Williams explained, employer liability counteracts the "possibility of abuse by solvent employers." 120 Cong. Rec. 29,931 (1974), *reprinted in* III Leg. Hist. 4741.

Available evidence indicates that the overwhelming majority of the employers who terminated their plans in the 1976–1977 period were solvent and continued in business for a number of years.[15] Here, however, no recovery will be possible due to the statute of limitations and, in some cases, the later dissolution of the employers. As a result, PBGC's current premium payers would be forced to bear the entire cost of insuring these additional benefits with no contribution whatever from the original employers.

A reluctance to see their premiums used to subsidize less responsible employers has always been a concern of important segments of the premium payer community. This concern has been expressed frequently by employer representatives in a variety of contexts.

For example, an executive of American Airlines and its parent AMR Corporation recently appeared before Congress. He noted that AMR's premiums have increased almost 40-fold in seven years and that "[c]ompanies like AMR are unfairly shouldering a burden that, ultimately, may become too costly to bear." *Hearings Before the Subcomm. on Oversight, House Comm. on Ways and Means*, 102d Cong., 2d Sess., Statement of Michael J. Durham at 3, 4 (Aug. 11, 1992). These concerns were recently echoed by a representative of the ERISA Industry Committee (an umbrella organization representing some of the nation's largest employers):

> ERIC believes that the [termination insurance] program's guarantees must not be extended irresponsibly. Employers that sponsor less than fully funded plans should not be given a free hand to increase the benefits for which the PBGC and the employers who pay PBGC premiums are financially responsible.

Hearings Before the Subcomm. on Private Retirement Plans and Oversight of the Internal Revenue Service of the Senate Comm. on Finance, 102d Cong., 2d Sess., Statement of the ERISA Industry Committee at 3 (Sept. 25, 1992).[16]

We think that these concerns are highly relevant to the issue before us. It is unfair to premium payers who have adopted "conscientious funding programs" for their own plans also to have to bear financial responsibility for the benefits in question where the employers terminated their plans shortly after the advent of the minimum vesting standards without ever funding for these increased benefits and without paying any employer liability. This is exactly the kind of imposition described by the Managing Director of the Million Dollar Round Table in 1987: "[T]he reality may very well be that the burden being passed on to those pension programs that are valid and sound will be so substantial that organizations will think twice about maintaining pension programs at all, or starting new ones."[17]

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[15] A PBGC survey of plans that terminated in 1976 indicates that only 5.5 percent of the nontrusteed plans were terminated in connection with a liquidation, dissolution or plant closing. Pension Benefit Guaranty Corp., Analysis of Single Employer Defined Benefit Plan Terminations, 1976 at 17, Table 5. In the sample of unamended nontrusteed plans used in the Temple University study, 83 percent of the sponsors continued in business past 1980. Only one in the sample of 51 sponsors appears to have declared bankruptcy at or before the time its plan terminated.

[16] See also *id.* at 2 ("we are gravely concerned that escalating termination insurance premiums are inflicting severe long-run damage on the pension system"); *id.*, Statement of the Association of Private Pension and Welfare Plans at 2 ("the threat or reality of higher premiums, especially when imposed on sponsors of well-funded plans, encourages employers to reevaluate the economic wisdom of continuing to sponsor plans"). Leading steel companies made a similar point in an amicus brief filed in the *LTV* case: "The liabilities transferred to the PBGC by LTV will place an unfair higher premium burden on other steel producers and other employers whose premiums fund the Title IV insurance fund." Brief of Amici Curiae ARMCO, Bethlehem Steel Corp., Inland Steel Indus., National Steel Corp., and USX Corp. at 13, *PBGC v. LTV Corp.*, 496 U.S. 633 (1990) (No. 89–390).

C. Maintenance of low premiums—Cost considerations. Congress also instructed PBGC to maintain premiums at the lowest possible level consistent with its obligations under title IV. This objective requires us to consider the costs that would be incurred to insure any benefits for which we have interpretive discretion. We must be especially attentive to costs that are not themselves benefit payments to participants. Unlike benefit payments, large administrative costs do not directly fulfill any statutory objective, but at the same time undermine the objective of maintaining low premiums and therefore the confidence of responsible premium payers.

A decision to guarantee these benefits in 1976 would have had serious fiscal consequences, because it would have expanded dramatically the scope of the program. When Congress designed the termination insurance program in 1973 and 1974, it had before it a study of 1972 plan terminations prepared by the Departments of Treasury and Labor pursuant to a Presidential directive. According to that study, 546 plans terminated in 1972 without sufficient assets to pay accrued benefits. Treasury/Labor Study at 18. The frequent references to this study in the legislative history of ERISA suggest that Congress expected that plan terminations after ERISA took effect would be comparable. *E.g.*, I Leg. Hist. at 596; II Leg. Hist. at 1599–1600; II Leg. Hist. at 1635; III Leg. Hist. at 4665. Congress designed the program and set the annual premium at $1 per participant based on this premise. See S. Rep. No. 383, 93d Cong., 1st Sess. 83–84 (1973), *reprinted in* I Leg. Hist. at 1161–62; 119 Cong. Rec. 30,062 (1973) (statement of Sen. Long), *reprinted in* II Leg. Hist. at 1668.

By 1976, however, terminations were running several times more than historical rates. Many plans that had not been amended to comply with ERISA continued through the grace period and terminated just after the new minimum standards became effective. Based on the Treasury/Labor study, one might have expected about 1,200 terminations per year. Instead, the agency encountered 7,200 terminations in fiscal 1976 and 6,500 in fiscal 1977. See Pension Benefit Guaranty Corp., Analysis of Single Employer Defined Benefit Plan Terminations, 1977 at 17 (1978).[18] Approximately 10,000 of them were the unamended plans involved here. At that time, PBGC was serving as trustee for 145 plans. For PBGC to have become trustee for even a portion of the unamended plans and guaranteed the contested benefits would have led to staggering costs and burdens in relation to the program as then constituted.[19]

PBGC is considerably larger now than it was in the late 1970s, but its obligations have correspondingly increased. Losses from plan terminations were higher in recent years than in any previous year. The unprecedented magnitude of PBGC's liability arising from these terminations is clearly illustrated by the seven Eastern Air Lines Plans, which were underfunded by nearly $700 million when they terminated in 1990. By the end of fiscal year 1991, the PBGC's losses from actual and probable plan terminations for the year totalled approximately $1 billion, increasing the single-employer program's liability to $8.2 billion and increasing its deficit from $1.9 billion to $2.5 billion in that year alone.[20]

In the context of this deficit, any decision to assume significant additional liability must be carefully weighed. Here, preliminary estimates indicate that the additional benefit costs (including interest) would likely be in the neighborhood of $80 million in 1992 dollars, without reduction for the five-year phase-in and using relatively liberal vesting schedules.[21]

More important in this case, however, are the additional administrative costs that would arise from any effort to provide benefits to participants in the unamended plans at this time. Today, the administrative costs would be so large in proportion to payments to participants as to create serious doubt as to the value achieved for premium payers and the American public.

The problem is not simply the passage of more than a decade and half since these plans were terminated. It derives as well from the administrative process under which these plans were terminated. The overwhelming majority of the 11,000 plans in question were closed out in the private sector by the purchase of annuities or the payment of lump sums, so that PBGC never obtained as much data as it would have in the event that it had been required to become trustee of these plans. For PBGC now to calculate and pay guaranteed benefits, plan records will need to be gathered, much of the participant data will have to be reconstructed, and extensive actuarial analysis will be required.

The characteristics of the plans in question contribute substantially to the administrative burden. They comprise a large number of small plans: 86.3 percent of the nontrusteed plans (9,712) have twenty or fewer participants. Less than two-tenths of 1 percent have more than 500 participants.[22] The agency's experience in paying benefits indicates that the cost of "opening a plan"—having an actuary analyze its provisions to establish appropriate formulae for payment of guaranteed benefits—far exceeds the incremental cost of calculating the benefits of additional participants. Because of the predominance of small plans in this population, the administrative cost of providing guaranteed benefits to the *Collins* class will be greatly disproportionate to the benefits to be delivered.[23]

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[17] Letter from John J. Prast, Managing Director, Million Dollar Round Table, to Senator Alan Dixon (Feb. 13, 1987). Other letters by or on behalf of plan sponsors that were forwarded to PBGC make the same point. *E.g.*, Letter from Howard C. Weizmann, Executive Director, Association of Private Pension and Welfare Plans, to Senator David Boren (Oct. 2, 1991); Letter from Gary L. Schecht, Corporate Counsel, Store Kraft Manufacturing Co., to Senator Robert Kerrey (Apr. 18, 1990); Letter from Richard H. Pennell, President and Chief Executive Officer, Metromont Materials Corp., to Congresswoman Elizabeth Patterson (July 29, 1991).

[18] Prior to 1986, employers were permitted to terminate their plans without proving that they were suffering severe financial distress. According to PBGC's studies, the reasons for the 1976–1977 terminations varied and in a significant percentage of cases ERISA was named as at least a contributing cause. 1976 PBGC Study at 8; 1977 PBGC Study at 9.

[19] As noted above, in 1977, after the initial experience had allowed some quantification of projected program costs, PBGC requested that Congress increase premiums—from $1.00 to $2.60 per participant per year. A recent extrapolation from the 1977 premium study indicates that to have insured the benefits in question would have required a further increase of 5.8 cents for every additional $10 million in benefits or administrative costs. We believe that such an effect on premium rates would have led the Board of Directors to decline to guarantee the disputed benefits had it been called upon to address this policy issue in 1977.

[20] By contrast, PBGC's separate multiemployer guaranty fund, see ERISA 4005(a), had a surplus of $133 million as of 1990, and in 1991 the PBGC recommended that Congress increase the maximum benefit guaranteed under that program by approximately 50 percent. See Pension Benefit Guaranty Corp., Financial Condition of the PBGC's Multiemployer Insurance Program at 1 (1991).

[21] This number combines an estimate of $8.9 million for trusteed plans and an estimate of $69.5 million for the nontrusteed plans. These estimates are from Temple University study. It is 95 percent likely that the additional benefit costs will fall within a 44 percent corridor on either side of the $69.5 million estimate and a 56 percent corridor on either side of the $8.9 million estimate. For convenience, we use the midpoint numbers in text, but our conclusions would not change if the liability were at the high end of each corridor.

[22] The trusteed plans tend to be larger, but roughly 71 percent have fewer than 75 participants.

The agency has sought to measure that administrative burden in more than one way. The agency's experience in implementing the settlement in *Rettig* v. *PBGC* is instructive in this regard. The class in that case consisted of participants in amended plans terminated between 1976 and 1981. The most recent projection is that $27 million in administrative costs will be incurred over 7 to 8 years to deliver $24 million in benefits, a ratio of 1.15:1. We do not view administrative cost at this level—which was unforeseen when the settlement was entered—as a prudent expenditure of PBGC insurance funds.

The administrative costs associated with benefit payments in this case will greatly exceed those in *Rettig*. In absolute terms, *Rettig* involved fewer than 1,000 plans covering 120,000 participants. *Collins* potentially involves in excess of 7,500 plans covering 134,000 participants.[24] The majority of the *Rettig* plans, moreover, were already trusteed by PBGC, so that documents were preserved and some of the analysis had already been completed. The overwhelming majority of the *Collins* plans were not trusteed and were closed out by their employers in the private sector well over a decade ago.[25]

Finally, the plan demographics for *Rettig* and *Collins* classes are different. The unamended nontrusteed plans were generally much smaller, with an average of 16.5 participants, while the *Rettig* plans were roughly 7.5 times larger, or an average of 126 participants per plan. Since the most expensive aspect of the process is the initial actuarial analysis of plan provisions, the administrative cost per participant is expected to be much larger for the class of unamended small plans.

For all of these reasons, the ratio of administrative costs to benefit payments in the *Collins* class could be expected to be considerably greater than the 1.15 to 1 ratio associated with the *Rettig* settlement. Preliminary cost estimates obtained from PBGC's staff and outside contractors confirm this observation. Combining these data, it is estimated that the total administrative costs would be between $174 million and $247 million. This would result in a ratio of more than 2 dollars for every dollar of benefits paid.

The magnitude of these administrative costs is especially troubling in light of the small amount per participant that would be paid in benefits. As noted above, 80 percent of the participants in the nontrusteed plans would receive no additional benefits. For those who would be paid an additional benefit, almost 3 out of 4 would receive lump sums of $3,500 or less. Providing so little benefit to so few participants at so great a cost cannot be justified.

Based on the above considerations, we believe that the substantial administrative cost that would attend guaranteeing these benefits supports a decision to deny such guarantee.

D. *Other Considerations—Enforcement of Title I.* We have also considered to what degree a guarantee of the benefits at issue would enhance enforcement of title I of ERISA. By enforcement of title I, we mean something more than fulfilling the monetary expectations of participants—a topic previously discussed. Rather, we examine here the need to develop regulatory policy that would deter employers from maintaining plans in violation of the statute. Thus, we have considered whether a denial of PBGC's guarantee with respect to these unamended plans would, by giving effect to "illegal" plan terms, undermine the enforcement of title I of ERISA. We conclude that, in the unusual circumstances of this case, a refusal to insure these benefits would not have that effect.

Initially, we note that it is not at all clear what role Congress envisioned that PBGC and its termination insurance program would play in the enforcement of title I of ERISA. The statute generally vests the Department of Labor and the Internal Revenue Service with primary responsibility for enforcing that title. See ERISA section 506, 3001(d), 3002(a). The Department of Labor receives annual reports from the plans summarizing their provisions and administration, see ERISA section 103, 504, and is given the right to sue plan fiduciaries for breach of Title I standards. ERISA section 502(a)(2), (5). In addition, the Internal Revenue Service assures conformity with most of those standards by denying tax qualification to plans that do not meet them. I.R.C. section 401. As noted above, PBGC was directed to carry out "the purposes of this title [i.e., title IV]," none of which addresses enforcement of the minimum standards of title I of ERISA. Thus, it is unclear to what degree Congress intended that PBGC, through the exercise of its insurance function, would assure conformity with the minimum standards of title I.

We have also considered the difficult factual question of whether a decision to insure these benefits between the passage of ERISA and early in 1976 might have promoted employer compliance with title I. It is not clear how a decision to insure the minimum benefits in these plans (regardless of whether they were actually amended to comply with ERISA) might have affected employer conduct. While such a policy might have permitted PBGC to provide significantly greater benefits to participants in plans that terminated shortly after passage of ERISA, that policy might also have caused greater numbers of employers to terminate their plans prior to the date on which the minimum standards became applicable, so as to avoid their substantially increased employer liability.

We need not resolve in this policy submission, however, the legal question of PBGC's role in enforcing title I or the hypothetical issue of what actions it might have taken to insure compliance in the period from 1976 to 1980. Our analysis takes place years after that period. There is no longer any reasonable prospect of inducing any change of conduct by the sponsors of the unamended plans.

We must deal with the facts as we now find them. The plans have terminated without amendment. In the overwhelming number of cases, plan assets were found sufficient to cover liabilities, and the plans were closed out in the private sector. In the smaller number of plans with insufficient assets, PBGC has already asserted whatever claim it may have had against the plan sponsors. Further suit for recovery of the additional employer liability is now precluded by insurmountable legal and practical barriers.

Thus, PBGC is no longer in a position to enforce the requirements of the statute by compelling employers to amend their plans or by demanding that they pay for the full amount of the liability created by application of the minimum vesting standards. For this reason, we do not think that the enforcement of title I—in the sense of influencing employer conduct—weighs in favor of granting benefits in this context.[26]

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[23] Another demographic factor contributing to a high ratio of administrative costs to benefit payments is the relatively low total value of the average payment per participant. Based on PBGC's preliminary samples, roughly 80 percent of the participants in these nontrusteed plans would receive no additional benefits at all. The average total benefit per participant (with interest to date) would be $619.14 under the most generous assumptions on phase-in and credited service for vesting and benefit accrual purposes.

[24] Study results indicate that there are 112,000 participants in nontrusteed plans and 22,000 in trusteed plans that terminated after their Title I effective date. Although some 11,000 unamended plans terminated during the period 1976–1981, the study shows that many of the plans that terminated in calendar year 1976 did so before the beginning of their 1976 plan year. Those plans are not within the scope of plans that are affected by this by this decision.

[25] Moreover, these plans were governed by pre-ERISA law for most of their lives. At that time, record-keeping requirements were quite limited. For example, before ERISA employers were not required to maintain detailed information for each employee, such as hours of service, necessary to determine benefits due. Compare ERISA § 209; see also *id.* §§ 103, 105.

IV. Conclusion

After carefully considering all of the above factors, we conclude that PBGC should not guarantee benefits vested under Title I vesting schedules in the absence of a plan amendment adopting one of those schedules.[27] We recognize that participants in unamended plans may have had some expectation that their benefits would be vested and protected under Title I even though not explicit in their plans. But the plans with which we are concerned here all terminated shortly after the statutory vesting provisions became effective and the vast majority terminated before the time for adopting conforming amendments had expired. The participants' reliance interest is therefore quite limited. On the other hand, the considerations of employer equity and the need to maintain low premiums are undiluted and perhaps stronger than in most situations that PBGC has faced.

In light of the various considerations discussed above, we conclude that the decision of PBGC in 1976 not to guarantee these benefits—though based on statutory language—also represented an appropriate accommodation of the policies underlying title IV.[28] We further conclude that this result is even more compelling today, in view of the disproportionate administrative cost and the inequity of requiring current premium payers to bear full financial responsibility for benefits paid to the employees of other plan sponsors.

[FR Doc. 93–1514 Filed 1–21–93; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31730; File No. SR–NASD–91–61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Close-out Procedures and Customer Account Transfers

January 14, 1993.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 20, 1991, a proposed rule change pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4[2] thereunder to amend Section 59 of the Uniform Practice Code ("UPC") to establish failure to deliver and liability notice procedures for foreign currency, index warrants and similar instruments.[3] Additionally, the proposed rule change amends Section 65 of the UPC to establish procedures to transfer customer accounts in a timely manner and institute close-out and sell-out procedures for fail contracts.[4]

Notice of the proposed rule change appeared in the **Federal Register** on October 7, 1992.[5] No comments were received with respect to the proposed rule change.

II. Description of the Proposal

A. Proposed Amendments to Section 59 of the UPC

The proposed rule change would amend Section 59 of the UPC to provide liability notice procedures for index warrants, foreign currency and similar instruments. Unlike other securities subject to UPC liability notice procedures (e.g., securities subject to a tender or exchange offer at a certain time), American style index warrants and similar instruments are unique because, while they have a stated expiration, they have the potential to be exercised at any time until expiration and the exercising holder can value before the expiration date.[6]

Under current UPC rules, a member who fails to receive an index warrant in accordance with the terms of the purchase contract, and is thereby unable to exercise such warrant, cannot hold anyone liable for the value of the exercise, because existing UPC Liability Notice Procedures hinge on the expiration of, not the exercise of, a warrant. Given this deficiency in existing UPC rules, the NASD in conjunction with other securities groups has developed a procedure to provide protection to buyers of foreign currency, index warrants and similar instruments.[7]

The NASD has proposed procedures that govern if a contract is for a deliverable instrument, with an exercise provision that may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date. Pursuant to these procedures, the broker/dealer executing the notice must deliver the notice no later than 11 a.m. on the day the exercise is to be effected. The proposed procedures would permit immediate retransmission of the liability notice to another member no later than noon the same day. Such notice would be required to be written or transmitted through an electronic device having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been canceled by mutual consent, the procedures would require the broker/dealer executing the notice to notify the defaulting member of the exact amount of the liability on the next business day.

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[26] Indeed, though it is not critical to our analysis, we see some risk that participants who benefitted from their employers' failure to amend would receive an additional windfall if ERISA-vested benefits were guaranteed at this time. Our review of the available evidence indicates most employers that terminated their plans were not in financial distress and continued in business thereafter. Rather than paying up to one third of their net worth for a guarantee of the minimum ERISA-vested benefits, they were able to retain those funds for their employees or owners, in the form of compensation or stock value. In fact, in the sample of nontrusteed plans identified in the Temple study, approximately 40 percent of the employers intended to institute new defined contribution or other plans for their employees to replace the terminated defined benefit plans.

[27] We recognize that Congress in 1980 directed a different result for subsequent terminations, but do not believe that we are bound by that resolution. The circumstances surrounding the 1980 congressional action were significantly different. Congress took prospective action at a time when the minimum vesting standards had been in effect for nearly five years and the affected plans were that much older. Accordingly, participant expectations were significantly stronger. In addition, prospective application ensured that PBGC would be in a position to assert claims for employer liability against the sponsors of unamended plans and had the potential of promoting voluntary compliance. Finally, it was apparent by 1980 that the number of terminations was rapidly diminishing and, in fact, the 1980 amendments resulted in a guarantee of additional benefits for a relative few plans. By contrast, our decision concerns terminations a decade earlier, applies to a much larger universe of plans, relates to a time period during which participant expectations were more limited, is made under circumstances that preclude the collection of employer liability, and has no potential for encouraging employer compliance.

[28] In this regard, we note that in 1980 Congress, though fully aware of PBGC's interpretation and its application in past cases, did not choose retroactively to overturn this accommodation of the policies of title IV, even as it adopted a new rule for the future. See 126 Cong. Rec. S11,665, S11,673 (daily ed. Aug. 26, 1980) (statement of Sen. Williams); see also 126 Cong. Rec. H7863, H7901 (daily ed. Aug. 25, 1980) (statement of Rep. Thompson).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] A liability notice delivered in accordance with the provisions of Section 59 of the UPC serves as notification to the receiving member of the existence of a claim for damages.

[4] The term "close-out" in this context refers to the procedures that one broker must follow when another broker (the defaulting broker) fails to deliver securities. The non-defaulting party must "buy-in" the securities to meet its own obligations, and liability for resulting losses may be imposed on the defaulting broker. The opposite of a buy-in is a "sell-out," where a broker may dispose of securities if another broker defaults by refusing to accept delivery. See M. Thompsett, Investment & Securities Dictionary, 38, 257 (1986); D. Scott, Wall Street Words, 42 (1988).

[5] Securities Exchange Act Release No. 31272 (October 1, 1992), 57 FR 46212.

[6] This is to be contrasted with European style warrants, which can only be exercised during a specified period before the warrant expires.

[7] The NASD proposal was developed in conjunction with the National Securities Clearing Corporation ("NSCC") and the Midwest Clearing Corporation ("MCC"). See Securities Exchange Act Release No. 28445 (February 1, 1991), 56 FR 5436 (February 11, 1991); and Securities Exchange Act Release No. 28855 (February 5, 1991), 56 FR 5716 (February 12, 1991), approving similar amendments for the NSCC and MCC, respectively.

B. Proposed Amendments to Section 65 of the UPC

1. Procedures Relating to the Transfer of Customer Accounts

The proposed rule change amends several provisions of Section 65 of the UPC to help ensure that customer accounts are transferred in a timely manner. Amendments have also been made to further define the responsibilities of NASD members when executing an account transfer pursuant to a customer's request.

Currently, Section 65(c)(1)(C) provides a list of securities that may be incapable of being transferred to another broker/dealer pursuant to a customer's request; and therefore deemed nontransferable assets. This list includes, among other things, assets that are the proprietary product of the carrying member (i.e., the firm from which the account is being transferred), and assets that may not be received due to regulatory limitations on the scope of the business of a receiving member (i.e., the firm to which the customer's account is to be transferred). The instant proposal would expand the list of nontransferable assets embodied in Section 65(c)(1)(C) to include foreign securities, baby bonds,[8] and limited partnership interests in retail accounts

The NASD believes it is appropriate to designate foreign securities and baby bonds as nontransferable assets because at the time of an account transfer, the proper denomination for these assets may not be obtainable pursuant to governmental regulation or the issuance terms of these assets. Limited partnership interests in retail accounts are included in this list of non-transferable assets as well, because broker/dealers maintaining customer accounts typically do not have physical custody of these securities. Rather, these assets are frequently held by the general partner or a trustee of the limited partnership.

Subsection 65(d) governs the validation of transfer instructions. Under current rules, the carrying member may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account. The existing provision strictly forbids such action, and provides a narrow list of circumstances which permit members to take exception to a transfer instruction. The instant proposal would amend Subsection 65(d) to permit members to take exception to a transfer instruction if: (1) The account is flat (i.e., it reflects no transferable assets), (2) the account number is incorrect, or (3) the instruction is a duplicate request. In addition, the amendments to Subsection 65(d) would provide for the resubmission of transfer instructions which were rejected because the account was deemed "flat".

Further, Subsection 65(d), as proposed, would be amended to provide an exception to the Rule's requirements that members "freeze" the account upon validation of a transfer instruction. That is, members must cancel all open orders and cease their acceptance of new orders upon receipt of a transfer instruction. The proposal would make a narrow exemption for option positions that expire within seven business days. As these positions expire by their terms in a brief period, the NASD did not believe it was necessary to require that they be subject to an account freeze.

Subsection 65(e) currently requires members to complete the transfer of an account within five business days following the validation of a transfer instruction. If the customer's securities have not been delivered as required, both the carrying and receiving firms must establish, as appropriate, fail to deliver or fail to receive contracts respecting the deliveries that have not occurred. The proposal would amend the subsection to eliminate the requirement that fail contracts be established for options positions.

The NASD believes it appropriate to delete the phrase 'including options" from Subsection 65(e) because it is no longer necessary. The NSCC's Automated Customer Account Transfer Service ("ACATS") now has an interface to the Options Clearing Corporation ("OCC") and all open options positions are reported to the OCC for settlement in memorandum form as open positions.[9] Accordingly, fails need not and should not be established for options positions under the UPC.[10]

Subsection 65(f) is proposed to be amended to require that any fail contracts resulting from an account transfer be included in a member's fail files and promptly resolved according to applicable UPC close-out and liability procedures.[11] An exemption will be provided, however, for fail contracts participating in a repricing and re-confirmation service such as RECAPS.[12]

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[8] The term "baby bond" refers to a bond issued in a small, non-standard denomination, typically a convertible or straight debt bond having a par value of less than $1000 usually $500 to $25. Such bonds are intended to bring the bond market within reach of small investors, and by the same token, open a source of funds to corporations that lack entree to the large institutional market. See J. Downes and J. Goodman, Barron's Dictionary of Finance and Investment Terms, 25, (1987).

[9] ACATS was designed by the NSCC to facilitate the prompt transfer of customer accounts, including option positions between broker/dealers. For the approval order authorizing the NSCC's adoption of ACATS, see Securities Exchange Act Release. No. 22481 (September 30, 1985), 50 FR 41274 (October 9, 1985). See also order approving the OCC's participation in ACATS, Securities Exchange Act Release No. 24133 (February 24, 1987), 52 FR 6417 (March 3, 1987).

[10] See letter to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation from Suzanne Rothwell, Associate General Counsel, NASD, dated December 7, 1992, providing the NASD's rationale for deleting options positions from the requirements of Subsection 65(e).

[11] As originally amended, this provision deleted the requirement that members execute the close-out procedures "promptly." Amendment No. 4 to the proposal reinstates "promptly" as the timeliness requirement for action relating to establish fails. See NASD letter dated December 7, 1992, supra note 10.

The Commission is concerned that the UPC provide greater certainly concerning a member's obligation to act "promptly" in delivering securities or closing out open fails. The NASD staff has agreed to bring this issue to the Operations Committee of the NASD Board of Governors for its consideration at the earliest opportunity. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated December 28, 1992.

The Commission understands that NASD members' expectations regarding "prompt" resolution of fails may very, among other things, with the ready availability and efficiency of transfers of record ownership. For example, securities that are processed by registered transfer agents and that are classified as "routine" items under Rule 17AD–1 of the Exchange Act, generally can be transferred quickly, usually within three business days. 17 CFR 240Ad–1. Rule 17Ad–2 requires registered transfer agents to turnaround 90% of the routine items presented for transfer within either three or five business days. 17 CFR 240.17AD–2. Other securities, such as limited partnership interests or transfers from fiduciary names, can be more time consuming.

[12] Currently, the NSCC is the only registered clearing agency that offers a reconfirmation and repricing service to its members. See Securities Exchange Act Release No. 28339 (August 13, 1990), 55 FR 34109 (Order approving NSCC's RECAPS). The service reconfirms and reprices securities transactions which were originally compared but failed to settle in a timely fashion. RECAP statistics for 1992 also support the proposed exemption for securities participating in RECAPS. During each of the quarterly RECAP cycles for 1992, there were

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Should securities fail to settle through RECAPS, the NASD interprets paragraph (f)(3) to provide that a fail contract submitted to RECAPS that remains outstanding after repricing continues to be a fail for purposes of paragraph (f)(1).[13] The amendments to this Subsection (f)(1) are intended to result in few postponements in the complete transfer of customer accounts. Members will have a means of closing-out or selling-out securities that have not been delivered or received, rather than delaying completion of the transfer.[14]

Finally, Section 65(g) now requires that members promptly resolve an discrepancies relating to positions or money balances that exist or occur after transfer of a customer's account. The proposed rule change would amend Subsection 65(g) to expand the member's responsibility to require the prompt transfer or distribution of assets which accrue to the customer's account after the initial transfer has been completed (i.e., dividends and bond interest).

2. The Establishment of Procedures for Close-out and Sell-out Fail Contracts

The proposal also would add Subsections 65 (h) and (i) to the UPC to create procedures to close-out and sell-out fail contracts resulting from an account transfer.[15] Although existing Sections 59 and 60 of the UPC provide close-out procedures with guidelines to buy-in and sell-out securities contracts under fairly specific circumstances, these rules give buyers and sellers close-out rights and implicitly turn on the existence of a purchase or sale contract, without expressly addressing a contract for delivery of securities arising from a transfer of securities.

The new "close-out" procedures are proposed for codification in Subsection 65(h). These procedures are based on existing UPC Section 59 Buy-In rules. As proposed, the procedures permit a receiving member to close a valued fail contract no sooner than the third business day following the due date pursuant to written notification. Under the proposed procedures, a broker/dealer intending to effect a close-out would be required to send notice to the carrying member of the following information concerning the contract to be closed: (1) The settlement date, (2) the quantity of units, and (3) the contract price of the securities covered.

The notice would be required to be delivered to the carrying member's office no later than 12 noon, his time, two business days preceding the execution of the proposed close-out. Further, the notice would have to advise the carrying member that unless delivery is effected at or before a certain specified time, which may not be prior to 3 p.m. local time in the community where the carrying member is located, the security may be closed-out on the date specified for the account of the carrying member. Finally, the party executing the close-out, immediately upon its execution but, in any case, no later than the close of business local time where the seller maintains his office, would be required to notify the carrying member for whose account the securities were bought as to the quantity purchased and the price paid.

New Subsection 65(i) proposes notification and sell-out procedures for fail contracts to permit a carrying member to sell any and all securities due or deliverable under a fail contract in the best available market, where the receiving member failed to accept delivery, or where a properly executed Uniform Reclamation Form, a depository generated rejection advice, or a valid Reversal Form is lacking. The party executing a sell-out would be required to notify, no later than the close of business on the day of execution, the member for whose account and liability the securities were sold, the quantity sold and the price received.

III. Discussion

The Commission believes that the proposal is consistent with the Act. Section 15A(b)(6) mandates that the rules of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities. To this end, the amendments to Section 59 which establish liability notice procedures for index warrants, foreign securities and similar instruments will serve to clarify the responsibilities of parties to transactions in these securities and thereby foster cooperation and coordination in the clearing and settling of these securities.

The proposed liability notice procedures establish that a defaulting party to transactions in index warrants and similar instruments shall be liable for damages arising from such default. Further, these amendments will establish a procedure for notification of a member failing to deliver securities of the existence of a claim for damages as a result of such failure.

The Commission believes that the proposed liability notice procedures also further the broad investor protection mandate of Section 15A(b)(6) which requires that the NASD rules be designed, in general, to protect investors and the public interest. Without a mechanism to provide for damages when a receiving member is unable to exercise instruments such as index warrants, because of the delivering member's failure to deliver the securities, the receiving member and its customers stand to sustain losses.[16]

The UPC currently affords the protection of liability notice procedures for other securities regulated by the UPC. The proposal amends the NASD's rules to address developing securities products, which heretofore have been subject to an unintended regulatory gap.[17]

In addition, the Commission finds that the proposed amendments to Section 65 of the UPC to establish additional procedures to transfer accounts promptly and create procedures to close-out and sell-out fail contracts established pursuant to an account transfer are consistent with the provisions of Section 15A(b)(6) of the Act. The proposed rule provides increased certainty to customers that most positions in most accounts will be deemed transferred, and that assets and funds will be available for their use at the receiving firm on a timely basis.

Further, the Commission recognizes that efficient customer account transfers are critical to street-name account management.[18] In an environment in

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approximately 350 participants. The RECAP statistics for each of the cycles were as follows: March 1992, 11,015 sides were accepted and 9,968 compared; June 1992 7,957 sides were accepted and 7,586 trades compared; September 1992, 8,249 sides were accepted and 7,408 compared; and December 1992, 8,286 sides were accepted and 7,628 compared.

[13] See letter from Suzanne Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated December 30, 1992.

[14] This amendment would confirm the NASD's rules with those of the New York Stock Exchange ("NYSE") to the extent that NYSE Rule 412 also subjects fail contracts established pursuant to an account transfer to close-out procedures. See New York Stock Exchange Guide, CCH 2412.

[15] While the proposed procedures are expected to be used primarily in the account transfer context, the procedures also stipulate they may be used when clearing agency rules do not otherwise apply to close-out and sell-out contracts in securities for which there are no established procedures, such as zero coupon bonds, mutual funds, and limited partnerships.

[16] See also Securities Exchange Act Release No. 28445 (February 1, 1991), *supra* note 7.

[17] As noted above, clearing agencies have adopted liability notice procedures that govern when members effect trades through those organizations. See *supra* note 7. The proposal also addresses those circumstances where clearing agency rules do not apply.

[18] As a matter of industry practice, securities are often held in street-name because they are thereby

which certificate immobilization is expanding, customers must be able to move street-name positions from firm to firm promptly and accurately. In a period of increased reliance on book-entry facilities,[19] prompt and efficient account transfer arrangements are increasingly important. Increased immobilization of securities certificates will be more difficult to the extent customers lack confidence that street-name positions will be transferred from one firm to another promptly, efficiently and accurately. In view of these concerns, the Commission believes that the proposal will assist in advancing the objectives of removing potential impediments to the increased immobilization of securities certificates.[20]

IV. Conclusion

For the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities association, in particular, the requirements of Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR-NASD-91-61 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-1484 Filed 1-21-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31729; File No. SR-NASD-92-12, Amt. No. 3]

Self-Regulatory Organizations; Notice of Amendment of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Proposed Short Sale Rule

January 13, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 3 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending the proposed short sale rule or "bid test" for Nasdaq National Market System ("Nasdaq/NMS") securities to include a provision regarding short sale by qualified options market makers and to add a provision identical to a section in Securities Exchange Act Rule 10a-1 exempting certain customer transactions. The NASD is also proposing amendments to the Rules of Practice and Procedures for the Automated Confirmation Transaction service ("ACT") to require members to append a short sale identifier to certain trade report data and an amendment to the Rules of Fair Practice, Article III, Section 21(b) to clarify the books and records requirements applicable to member sales. Below is the text of Amendment No. 3. Proposed new language is in italics; proposed deletions are in brackets.

Rules of Fair Practice

Article III, Section 21—Books and Records

* * * * *

Marking of Customer Order Tickets

(b)(1) A person associated with a member shall indicate on the memorandum for the sale of any security whether the order is "long" or "short," except that this requirement shall not apply to transactions in corporate debt securities. As order may be marked "long" if (1) the customer's account is long the security involved or (2) the customer *owns the security and* agrees to deliver the security as soon as possible without undue inconvenience or expense.

* * * * *

Article III, Section 46—Short Sales

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq system is below the preceding best (inside) bid in the security.

(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.

(c) The provisions of subsection (a) shall not apply to:

(1) Sales by a qualified market maker registered in the security in the Nasdaq system in connection with bona fide market making activity. For purposes of this subsection, risk arbitrage, index arbitrage, and other transactions unrelated to normal market making activity will not be considered bona fide market making activity.

(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.

(3) [(2)] Sales by a member, for an account in which the member has not interest, pursuant to an order to sell which is marked "long" in which the member does not know, or have reason to know, that the beneficial owners of the account have, *or would as a result of such sales have,* a short position in the security.

(4) [(3)] Sales by a member to offset odd-lot orders of customers.

(5) [(4)] Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(6) [(5)] Sales by a member of a security for a special arbitrage account if the member then owns another security by virtue of which the member is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the

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in the custody of the broker. Thus, transfer of the shares at the time of sale is easier than if the securities were registered in the customer's name and physical certificates had to be transferred.

[19] The securities industry has encouraged the strong and continuing trend over the last decade to settle corporate and municipal securities in book-entry form in a depository environment. For example, as of 1990, the Depository Trust Company ("DTC") alone had immobilized 63% of the total market value outstanding of publicly-held equity securities, while the number of registered certificates provided to investors and participants through DTC dropped from 16 million certificates annually in 1980 to 6 million certificates in 1990. See Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets ("Bachmann Report"), submitted to the Chairman of the U.S. Securities and Exchange Commission, May 1992. Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812 (June 22, 1992). See also [1991] SEC, Annual Report, Table 16.

[20] See 15 U.S.C. 78q-1-1(e).

[21] 17 CFR 200.30-3(a)(12).

[1] Amendment Nos. 1 and 2 were previously incorporated in the Notice of Proposed Rule Change issued by the Commission in Securities Exchange Act Release No. 31003 (August 6, 1992), 57 FR 36421 (August 13, 1992).

purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(7) [(6)] Sales by a member of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the member at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the member to cover such sale is then available to the member in such foreign securities market and intends to accept such offer immediately.

(8) [(7)] Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights pursuant to Securities Exchange Act Rule 10b–8 or a standby underwriting commitment.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party *to avoid* [for the purpose of avoiding] the application of this section.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account *to avoid* [for the purpose of avoiding] the application of this section.

(f) A member that is not currently registered as a Nasdaq market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) A member may execute a qualifying short sale for the account of an options market maker that would otherwise be in contravention of this section, if:

(1) the options market maker is registered with an organized options exchange and has met market maker qualification standards for the exemption as established;

(2) the options exchange on which the options market maker is registered has adopted rules requiring an options market maker employing this exemption to comply with the terms of the NASD's short sale rule;

(3) the options market maker is effecting a short sale in a Nasdaq/NMS security in order to create a bona fide hedge of overall exposure from an existing or reasonably and immediately expected position in all options overlying the Nasdaq/NMS security; and

(4) the options market maker has submitted a sell order in the Nasdaq/NMS security to the SelectNet service at a price which is in compliance with the rule and betters the inside offer price (as displayed in the Nasdaq system) by at least 1/8 point and such order has not been executed when another transaction is reported in that security ("reported transaction") at a price higher than the price of the SelectNet order submitted by the market maker. If the inside spread in the security equals 1/8 point or less, the options market maker will be deemed to be in compliance with the pricing requirements of this subparagraph if the sell order in SelectNet is a minimum increment of 1/16 point above the inside bid price as shown on Nasdaq.

A "qualifying short sale" shall mean a short sale at the bid by an options market maker: (1) In the amount of the lesser of the options market maker's order in SelectNet or the size of the reported transaction, and (2) if the sale transaction is effected within a ten minute period following the reported transaction.

(i) [(h)] Upon application or on its own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction *or class of transactions* from the provisions of this section.

(j) [(i)] From time to time, the Securities and Exchange Commission may amend Rule 10a–1, Rule 3b–3, or Rule 3b–8 under the Securities Exchange Act of 1934. The Board of Governors reserves the authority to alter, amend, modify, or supplement this section in accordance with amendments to Rule 10a–1, Rule 3b–3, or Rule 3b–8 or as otherwise deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

(k) [(j)] Definitions

* * * * *

ACT Rules

(d) Trade Report Input

* * * * *

4. Trade information to be input—Each ACT report shall contain the following information:

(A) Security identification symbol of the eligible security ("SECID");

(B) Number of shares;

(C) Unit price, excluding commissions, mark-ups, or mark-downs;

(D) Execution time for any transaction in Nasdaq or CQS securities not reported within 90 seconds of execution;

(E) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Other Entry side;

(F) A symbol indicating whether the transaction is a buy, sell, *sell short, sell short exempt*, or cross *(The "sell short" and "sell short exempt" indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Section 46 of Article III of the Rules of Fair Practice.)*;

(G) A symbol indicating whether the trade is as principal or agent;

(H) Reporting side clearing broker (if other than normal clearing broker);

(I) Reporting side executing broker as "give-up" (if any);

(J) Contra side executing broker;

(K) Contra side introducing broker in case of "give-up" trade;

(L) Contra side clearing broker (if other than normal clearing broker).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing an amendment to SR–NASD–92–12 to provide for access to the SelectNet service and a limited exemption to the short sale rule for certain registered options market makers in response to comments by options exchanges that relief from the short sale restrictions is necessary. The amendments also: (1) Add a requirement for members to indicate that certain transactions are short sales on their ACT reports; (2) add a section tracking Securities Exchange Act Rule 10a–1 regarding an exemption for customer sales when the customer owns the security sold and intends to deliver the security; and (3) amend language in the Rules of Fair Practice, Article III, Section 21 to clarify members' obligations regarding marking order tickets long or short.

1. OPTIONS MARKET MAKERS

After submitting the short sale rule proposal to the SEC in April 1993, the NASD met with representatives and market makers from the American Stock Exchange ("AMEX"), the Chicago Board Options Exchange ("CBOE"), the Pacific Stock Exchange ("PSE"), and the Philadelphia Stock Exchange ("Phlx"). The meeting was held to discuss a request for an exemption from the short sale rule for registered options market makers. The options markets requested an exemption similar to the exemption offered to qualified Nasdaq market makers because they believe that the NASD proposal will have an adverse effect on the liquidity and pricing of options overlying Nasdaq/NMS securities. In addition, the options market makers have expressed concerns about the ability to hedge their options transactions quickly and efficiently in the Nasdaq market. When an options market maker facilitates a customer trade, it may want to hedge its own risk, at times by selling the underlying equity security short. The options market makers believe that the NASD short sale proposal will unnecessarily interfere with the ability of a market maker to hedge by prohibiting short sales on down bids. They contend that hedging options positions overlying exchange-listed securities is more readily accomplished because of their ability to enter a limit order to sell on the specialist's book and be assured an execution at the next possible trading opportunity. The options market makers are concerned that because of the nature of a geographically dispersed competitive dealer market, they do not have the same assurance of an execution. Similarly, options market makers note that they provide liquidity to customers seeking to invest in options or to hedge their investments in Nasdaq/NMS securities and the options dealers believe that their rule in providing liquidity may be adversely affected by the NASD's short sale proposals.

These various arguments were also advanced through the comment process when the options markets and individual market makers responded to the SEC's request for comments on the NASD rule proposal.[2] The NASD has reviewed these arguments and believes that an outright exemption for options market makers from the short sale rule would eviscerate the effectiveness of the rule by permitting unfettered short sale pressure in the options market to spill over into the stock market. For example, customers that would be prevented from selling equity securities short on a down bid in the Nasdaq market could readily purchase puts in the overlying option, at a fraction of the cost necessary to effect executions in equities, with a reasonable anticipation that their purchases would cause the options market maker to sell the stock short in order to hedge that transaction. Accordingly, unfettered short sales by options market makers could be employed as part of a scheme to engage in manipulative or abusive short selling.

The NASD has, however, developed an alternative approach which addresses the concerns articulated by options market makers by providing them access to the SelectNet service. SelectNet was originally conceived as a response to the market break of 1987 as an alternative means of communication between NASD members when telephonic communication was impracticable or impossible. SelectNet provides the ability for members to enter priced orders in Nasdaq securities into the Nasdaq Workstation and direct those orders to a single destination or broadcast to all market makers in the security. The orders may be timed to expire after three minutes or may be day orders; SelectNet orders may be limited in their terms, such as "all or none" orders, or may be negotiable as to price or size or both; and broadcast orders may be identified or disseminated anonymously. Finally, SelectNet offers the possibility of price improvement as many of the orders are entered between the current best bid and offer as shown in the Nasdaq system and negotiation of orders "between the spread" is always possible.

The NASD is proposing an amendment to section 46 to allow certain registered options market makers the status of order entry firms for the purposes of using the SelectNet service. The facility to enter orders directly into SelectNet will permit options market makers to hedge their options transactions in the Nasdaq market without the necessity of using a dealer to enter an order. The NASD believes that access to SelectNet will address the options markets' primary concerns—assurance of access to the Nasdaq market so that they may continue to offer liquidity and accurate pricing to the options market while managing their risk effectively with the ability to hedge their executions.

In addition to the order entry functionality, the NASD is offering additional capabilities to ensure options market makers retain their ability to effectively hedge their positions. The proposed amendment gives options market makers certain limited exemptions from the Nasdaq short sale rule. For example, if an options market maker effects a transaction in an option overlying a Nasdaq/NMS security and wishes to hedge that transaction by selling the stock short, he may place an order to sell in SelectNet, priced at least ⅛ point above the inside bid and at least ⅛ point lower than the inside ask as displayed in the Nasdaq system. That order may be directed to a particular market maker or broadcast to all dealers in the security. If the options market maker's SelectNet order is not accepted by a Nasdaq market maker and another trade in the security is effected and trade reported at an inferior price, the options market maker may then contact a Nasdaq dealer directly and "hit" the bid using a limited exemption from the short sale rule. (This action is limited to the size of the order in SelectNet or the size of the trade printed, whichever is smaller, and must be undertaken within 10 minutes of the reported transaction.) Accordingly, in the unlikely event that the options market maker's order is not taken out prior to a trade being reported at an inferior price, the options market maker will be provided the opportunity to achieve an immediate execution at the bid. By employing SelectNet, the options market maker may effectively hedge its options position and manage its risk, while the underlying intent of the short sale rule in the Nasdaq market will not have been compromised. With this proposal, the NASD will for the first time be granting non-members access to the SelectNet service. The amendments also specify that the options markets that wish their market makers to qualify for the exemption will formulate market maker qualification standards for their dealers and rules requiring the dealers employing this exemption to comply with the terms of the NASD's bid test. In this regard, the NASD will be pleased to confer with the options exchanges to develop qualification standards for the market makers intending to take advantage of the proposals contained in this amendment.

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[2] The AMEX, Phlx, PSE and CBOE submitted comment letters requesting that the rule be disapproved, or in the alternative, that their market makers be granted an exemption equivalent to that proposed for Nasdaq market makers. Additionally, numerous options market makers submitted form letters requesting similar relief.

2. Short Sale Modifier

An important element of bid test surveillance relates to the submission to ACT of a designator identifying a transaction as a short sale. The designator would be collected for surveillance purposes only and would not be disseminated to the public. The designator would be required on all broker/dealer short sales (when the broker/dealer is not a qualified market maker pursuant to section 46 of Article III to the Rules of Fair Practice) and to all customer short sales, even when a qualified market maker facilitates a short sale for a customer, i.e., buys as principal from a customer selling short. Since a short sale is required to be designated on an order ticket (NASD Rules of Fair Practice, Article III, Section 21), the NASD believes that it is not burdensome to enter the trade into ACT as a "short sale." In addition, the NASD will also offer the "short sale exempt" indicator for customer or member short sales that are exempt from the rule.

3. Additional Amendments

In response to comments on the short sale proposal, the NASD is also adding a provision to section 46 that tracks a provision in Securities Exchange Act Rule 10a–1(e)(1), stating that a customer is exempt from the rule if the short sale in question is for a security that the person owns and intends to deliver as soon as possible without undue inconvenience or expense. This exemption would include instances when a member or customer has purchased or entered into an unconditional contract to purchase stock but has not yet received possession of the stock. Similarly, the exemption would apply in a merger or acquisition situation when a shareholder of one company tenders its shares in the company and is due to receive shares of the surviving entity, but has not yet taken possession of those shares. In instances like these, the SEC has granted an exemption from its short sale rule and the NASD is adding identical language.

The NASD is also amending the section regarding the ability to exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of the rule. The NASD believes that it is important to retain flexibility in determining which specific transactions or class of transactions may prove unsuitable for short sale regulation, and would therefore warrant an exemption from the rule.

Finally, the NASD is amending the Rules of Fair Practice, Article III, section 21 to clarify members' books and records requirements. This section requires members to annotate on their order tickets whether a customer sale is a short sale or long sale and the NASD is clarifying the language to emphasize that an order may be marked "long" if (1) The customer's account is long the security involved or (2) the customer owns the security and agrees to deliver the security as soon as possible without undue inconvenience or expense. This clarification brings the language of section 21 into line with the proposed short sale rule which tracks the SEC's definition of short sales. According, the NASD is clarifying the language so that members will be able to ascertain whether the customer's sale is short or long, annotate the order tickets accordingly, and comply more readily with all relevant NASD bid test requirements.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assures equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. The NASD believes that approval of the proposed short sale rule would result in equivalent short sale regulation in the exchange and Nasdaq markets and would work to prevent fraud and manipulation with respect to short sales in the Nasdaq market. These amendments are designed to give relief to options market makers in order to enable them to hedge their positions without eviscerating the effectiveness of the proposed short sale rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1417 Filed 1–21–93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Request for Approval of Joint Venture Agreement.
SBA Form No.: N/A.
Frequency: On occasion.
Description of Respondents: 8(a) firms entering into a joint venture agreement.
Annual Responses: 20.
Annual Burden: 100.

Title: Notice of Change of Ownership.
SBA Form No.: N/A.
Frequency: On occasion.
Description of Respondents: 8(a) firms proposing a change in their ownership.
Annual Responses: 50.
Annual Burden: 100

Title: Request for Eligibility.
SBA Form No.: N/A.
Frequency: On occasion.
Description of Respondents: 8(a) applicants seeking eligibility reconsideration.
Annual Responses: 600.
Annual Burden: 2,400.

Title: Submission of Business Financial Statement.
SBA Form No.: N/A.
Frequency: On occasion.
Description of Respondents: 8(a) participating firms.
Annual Responses: 3,100.
Annual Burden: 3,100.

Dated: January 14, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–1444 Filed 1–21–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held February 4, 1993, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II). notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held February 4, 1993, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting will include reports from the Airport Construction Guidelines Task Force and the Aircrew Access Task Force, and a report on FAA research and development programs. Attendance at the February 4, 1993, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7416.

Issued in Washington, DC on January 15, 1993.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 93–1496 Filed 1–21–93; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

[CGD 93–001]

The Boat Safety Account of the Aquatic Resources Trust Fund; Fiscal Year 1993 Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1993 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be received by April 2, 1993.

ADDRESSES: Application packages may be obtained from and proposals submitted to Commandant (G–NAB–5), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes, Office of Navigation Safety and Waterway Services, U.S. Coast Guard (G–NAB–5), 2100 Second Street SW., Washington, DC 20593–0001; (202) 267–0954.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,862,500 is available for the fiscal year ending September 30, 1993. Twenty-two awards totaling

$1,750,000 were made in fiscal year 1992; awards ranged from $5,000 to $245,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed under the head "**FOR FURTHER INFORMATION CONTACT.**"

Some general areas of particular interest include:

—Boating accident studies and analyses.
—Projects to research, design and develop training aids for boating education programs, including films, tapes, books, classroom materials and other items.
—Projects to design and develop boating safety education media and materials (films, tapes, books) for use by the boating public, including the boater, marine enforcement personnel, and the boating industry.
—Projects to support national boating safety media efforts (e.g., National Safe Boating Week, education seminars and public service announcements).
—Technical or engineering projects to research suspected safety problems on specific boat or associated equipment types.
—Evaluation studies of the effectiveness of selected boating education safety materials.
—Projects addressing multiple-use waterway conflict management.

This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome. Discussions of specific projects of interest to the Coast Guard will be included in the application package which may be obtained as stated in **ADDRESSES**, above. The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 15, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–1453 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 93–03; Notice 1]

Receipt of Petition for Determination That Nonconforming 1970 Mercedes Benz 250C Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1970 Mercedes-Benz 250C passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1970 Mercedes-Benz 250C that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 22, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) has petitioned NHTSA to determine whether 1970 Mercedes-Benz 250C (Model ID 114.021) passenger cars manufactured by Daimler Benz A.G. are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1970 Mercedes-Benz 250C (Model ID 114.023) that Daimler Benz A.G. offered for sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 250C to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1970 model 250C, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1970 model 250C is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the non-U.S. certified 250C is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 22, 1993.

Authority: 15 U.S.C. 1397(c)(3)A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 13, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–1339 Filed 1–21–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Order Number 107–02

Authority of the General Counsel To Receive Service of Process

January 12, 1993.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), I hereby authorize the General Counsel to receive service of any subpoena, summons or other judicial process directed to an officer or employee of the Department in that officer's or employee's official capacity in any litigation.

2. This authorization may be redelegated by the General Counsel or the General Counsel's designee to any attorney within the Legal Division of the Department. Any such redelegation shall be in writing.

3. The General Counsel is authorized to ratify and affirm the acceptance of any subpoena, summons or other judicial process directed to an officer or employee of the Department in his or her official capacity when such acceptance was performed by the Associate General Counsel, or by an attorney under the supervision of an Assistant General Counsel or the Associate General Counsel, prior to the date hereof.

4. This order does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure regarding service of summons and complaint.

5. *Cancellation*. This order supersedes Treasury Order 107–02, "The Authority to the General Counsel to Receive Service of Process," dated March 27, 1953.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 93–1418 Filed 1–21–93; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 26, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, January 28, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This Meeting will be open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-43—Senator Tim Erwin
Regulations: Request for a Public Hearing on the Ex Parte Communication Rules
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 93-1711 Filed 1-19-93; 3:05 pm]

BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 25, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93-1588 Filed 1-19-93; 11:27 am]

BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 2, 1993, in Washington, DC. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, February 1, 1993, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

February 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 4-5, 1993.
2. Remarks of the Postmaster General. (Marvin Runyon)
3. Appointment of Committee Members. (Bert H. Mackie, Chairman, Board of Governors)
4. Quarterly Report on Financial Performance. (M. Richard Porras, Acting Vice President, Finance and Planning)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Vice President, Consumer Advocate)
6. Annual Report on Diversity Development and Affirmative Action. (Veronica O. Collazo, Vice President, Diversity Development)
7. Annual Report on Equal Employment Opportunity (EEO). (Joseph J. Mahon, Jr., Vice President, Labor Relations)
8. Capital Investment. (Stephen E. Miller, Vice President Operations Support)
   a. Additional Delivery Bar Code Sorters.
9. Tentative Agenda for the March 1-2, 1993, meeting in Washington, DC.

David F. Harris,
Secretary.

[FR Doc. 93-1639 Filed 1-19-93; 11:28 am]

BILLING CODE 7710-12-M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 28, 1993, 9:00 a.m., at the Board's meeting room on the 8th floor of this headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) San Francisco Regional Director's Vacancy.
(2) Board Policy Concerning Travel and Budget Process.
(3) Special Service Awards.
(4) Fund-Raising/Sales Activity Policy.
(5) Employee Suggestions.
(6) Coverage Determination—General Railway Services.
(7) *Nancy Johnson* v. *Railroad Retirement Board.*
(8) Debt Collection.
(9) Pre-Recovery Waiver.
(10) Debt-Prevention.
(11) Regulations—Part 203, Employees Under the Act.
(12) Regulations—Part 228, Computation of Survivor Annuities.
(13) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(14) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment insurance Act.
(15) Regulations—Part 328, Voluntary Leaving of Work.
(16) Regulations—Part 336, Duration of Normal and Extended Benefits.
(17) Regulations—Part 345, Contribution and Contribution Reports.

Portion Closed to the Public

(A) 1993 Performance Appraisal Plans.
(B) Individual Development Plans.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: January 15, 1993

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93-1704 Filed 1-19-93; 3:04 pm]

BILLING CODE 7905-01-M

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federal register

Friday
January 22, 1993

Part II

National Indian Gaming Commission

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25 CFR Parts 501 et al.

Purpose and Scope; Service; Approval of Class II and Class III Gaming Ordinances; Background Investigations and Gaming Licenses Under the Indian Gaming Regulatory Act; Privacy Act Procedures; Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act; Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act; Final Rules

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 501, 519, 522, 523, 524, 556, 558

RIN 3141–AA01

Purpose and Scope; Service; Approval of Class II and Class III Gaming Ordinances; Background Investigations and Gaming Licenses Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is establishing this rule in chapter III in title 25 of the Code of Federal Regulations (Parts 500–599). This rule provides a purpose and scope, procedures for service of Commission determinations, requirements for submitting new and existing gaming ordinances to the Chairman for approval, requirements for background investigations on primary management officials and key employees, and requirements for licensing employees of an Indian gaming operation. Elsewhere in today's **Federal Register**, the Commission is establishing procedures under the Privacy Act. The Commission previously established an Indian Gaming Individuals Record System.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, National Indian Gaming Commission, suite 250, 1850 M Street, NW., Washington, DC 20036–5083; telephone: 202–632–7032.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (NIGC, or the Commission). Under the IGRA, the Commission is charged with regulating class II gaming and certain aspects of class III gaming. On Wednesday, July 8, 1992, the Commission proposed regulations for service, approval of class II and class III gaming ordinances, and Privacy Act procedures. 57 FR 30346–30357. The Commission requested comments on those proposed regulations. In addition, the Commission provided notice that it was establishing a system of records under the Privacy Act. 57 FR 30358–30359. Below is the Commission's analysis of the comments received and the texts of the final service and ordinance regulations. Additionally, the Commission has added a new part, part 501, Purpose and scope of this chapter.

General Comments

One commenter questioned the Commission's "piecemeal approach" to rulemaking. This commenter was concerned that commenters had to comment on "separate pieces of a big puzzle without knowing what the 'big picture' looks like." The Commission disagrees. During the comment period for the ordinance and Privacy Act regulations (July 8 through August 24, 1992), the Commission also proposed compliance and enforcement regulations (57 FR 30584, July 9, 1992) and management contract regulations (57 FR 37656, August 19, 1992). Additionally, the Commission had previously promulgated fee regulations (56 FR 40702, August 15, 1991) and definitions regulations (57 FR 12382, April 9, 1992). Those regulations form key pieces of the Commission's regulatory program and they were available during this rulemaking. The Commission plans to provide a set of its regulations along with preambles so that interested persons may have ready reference to the regulations and the Commission's explanations for them.

The same commenter also questioned the Commission's rejection of negotiated rulemaking, stating that use of that process would avoid litigation. In the view of the Commission, because Congress spelled out specific requirements that the Commission could not ignore, negotiated rulemaking was not suitable. Furthermore, commenters have had ample opportunity to review, comment on, and discuss with Commissioners and staff the Commission's thinking with respect to the ordinance regulations. Those regulations have been available since December 1991 in working draft form.

Another commenter asked whether tribes having ordinances that complied with Bureau of Indian Affairs' (BIA) useful guidance that was issued on March 5, 1992, would need to revise those ordinances and procedures to conform to the Commission's regulations. To the extent that there are additional requirements or conflicts tribes must change their ordinances. Tribes are free, however, to adopt procedures more stringent than those set out in parts 522, 523, 556, and 558. Under the ordinance regulations, the background investigation requirements for class II gaming and for class III gaming (where a compact allocates such responsibility to a tribe) are the responsibility of a tribe.

Part 501—Purpose and Scope of this Chapter

To clarify that the requirements under the IGRA and this chapter do not preempt tribal ordinances and regulations that do not conflict with the IGRA, this chapter, or a compact, the Commission has added a new part 501, Purpose and scope of this chapter. There, the Commission spells out the overlapping jurisdictions of a tribe, the regulations of the Commission with respect to gaming on Indian lands and the applicability of state law under a compact for class III gaming. Tribes are free to add their own requirements in regulating Indian gaming so long as those requirements are not in conflict with nor are less stringent than the requirements under the IGRA, the regulations of chapter III of the C.F.R., or a compact for class III gaming.

Jurisdiction, as spelled out in § 501.2(b) for class I gaming, implements section 2710(a)(1). Jurisdiction, as spelled out in § 501.2(c) for class II gaming, implements section 2710(a)(2). Jurisdiction, as spelled out in § 501.2(d) for class III gaming, implements section 2710(d)(5).

Part 519—Service

Fax failure

A commenter noted that appeal deadlines could be missed in the event of failure of a fax machine to receive a transmission under § 519.3(a)(5). In this commenter's view, that could happen because the service regulation provides that service by facsimile is complete upon transmission (as opposed to receipt). The commenter stated that a fax machine could be out of ink at the time a fax was sent and therefore not receive a fax. The Commission believes that it has adopted adequate safeguards in the event of fax failure. First, the Commission will send copies of its notices to three entities in addition to the entity being served: The tribal chairman, the designated tribal agent and the relevant tribal gaming authority. Second, after such transmission the Commission's fax machine tells it whether the transmission was successful. If the fax machine tells the Commission that a transmission was not successful, service would not be complete. In that case, the Commission would serve a document by other means. Third, the Commission plans to confirm service by telephoning the receiving office.

Syntax

The Commission modified slightly the language of § 519.3(a)(5) by inserting "Transmitting a" before "facsimile."

This modification makes (a)(5) parallel to the other items under subparagraph (a).

Service of entities

One commenter requested that the Commission define "person" in part 519 to include "entities." Apparently, the commenter was concerned that entities other than natural persons be served. Under § 519.1 a tribe must designate an agent for service. Similarly, under § 519.2, a tribal operator or management contractor must also designate such an agent. By designating agents, entities that are not natural persons may be served.

Clarification of § 519.4 with respect to timeliness and certainty

Several commenters were concerned that copies to tribal officials be timely and certain. In response to those commenters' concerns, the Commission clarified § 519.4. First, the Commission deleted "When practicable" from the beginning of the sentence. Second, the Commission deleted "send" and inserted in its place "transmit" to indicate copies could be delivered by a method other than the mail. Third, the Commission added a new sentence to read: "The Commission shall transmit each copy as expeditiously as possible." Finally, to clarify the separation of service from providing copies to tribal officials, the Commission added another sentence to read: "Service under § 519.3 shall not depend on a copy being sent to the appropriate tribal chairman, the designated tribal agent, or to the relevant tribal gaming authority." With these clarifications, the Commission believes it has answered the timeliness and certainty concerns expressed by several commenters.

Part 522—Submission of Gaming Ordinance or Resolutions

State law issues

One commenter suggested that part 522 require that each class II game be authorized by the laws of the state in which the gaming would be conducted. That same commenter suggested that with respect to the card games under section 2703(A)(ii), if a tribe conducted a card game inconsistent with State law or regulation, that such conduct should constitute grounds for disapproval of an ordinance or resolution. The Commission disagrees. In the view of the Commission, approval of an ordinance does not authorize the playing of certain games. Nor should disapproval of an ordinance be a vehicle for indicating disagreement with a tribe on a matter of interpretation of state law. In its approvals, the Commission plans to include a disclaimer concerning the legality of whether and how specific games may be conducted. The Commission views illegally played games as a matter for enforcement, both by the Commission and under 18 U.S.C. 1166.

Class III gaming under procedures prescribed by the Secretary

A commenter suggested amending § 522.2(e) to indicate that class III gaming may be authorized under procedures that are prescribed by the Secretary of the Interior under section 2710(d)(7)(B)(vii). The Commission agrees and has therefore added after "compact," "or procedures as prescribed by the Secretary."

Fingerprints

Some commenters suggested requiring fingerprints, stating that fingerprints are a basic tool for law enforcement authorities in identifying individuals who are using false identities and who may supply false information. The Commission agrees and therefore has added § 522.2(h) to provide for the orderly collection of fingerprints of key employees and primary management officials. The Commission has also added § 556.4(a)(14) to require that tribes obtain fingerprints from applicants for key employee and primary management official positions. The Commission plans to help any tribe that may need guidance in setting up procedures to ensure the integrity of the fingerprinting process. Tribes that have previously worked with the Bureau of Indian Affairs in obtaining criminal history checks may wish to continue doing so. Regarding the requirement in § 522.2(h) that a criminal history check must include a check through the FBI National Criminal Information Center, the Commission encourages additional criminal history checks through tribal, local and state systems, but does not require them.

Submission requirements issues

Some commenters questioned the authority of the Commission to require submission of various procedures under § 522.2, stating that the IGRA does not require such submissions. The Commission disagrees. Authority to request the various procedures is contained in the IGRA, contrary to assertions of the commenters. First, section 2710(b)(2) states that the Chairman shall approve an ordinance if it includes certain required provisions and if there is an "adequate system" that includes, among other things, background investigations and licensing. Hence the Commission's requirements for submission of such procedures. Second, concerning procedures for dispute resolution, Congress included among the IGRA's purposes to assure "that gaming is conducted fairly and honestly by both the operator and the players." Section 2702(2) The Commission's requirement to submit dispute resolution procedures implements that purpose. Third, section 2706(b)(10) grants the Commission power to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of (the IGRA)." Because the procedures in question implement specific purposes and requirements of the IGRA and because the IGRA grants the Commission power to promulgate necessary regulations, the Commission rejects the suggestions that such procedures are beyond its authority.

One commenter suggested adding to the existing submission requirements in § 522.2 "any other documents, papers, reports, or other information deemed relevant by the Chairman." In the commenter's view, that addition would afford the Commission the flexibility to require any other information needed to facilitate a complete review of an ordinance without having to amend the applicable regulation. The Commission believes that the information requirements as set out in the IGRA and the regulations are sufficient for the Chairman to make an informed decision in approving or disapproving an ordinance. Therefore the Commission rejects the suggestion.

The same commenter suggested requiring a form for submission of ordinances under part 522. The Commission rejects that suggestion for now because the requirements are explicit without a form. Additionally, supplying ordinances and descriptions of various procedures does not lend itself to forms.

Another commenter questioned the Commission's requiring submission of a copy of a tribal-state compact under § 522.2(e), stating that such a requirement was "an unnecessary expense and waste of paper." The Commission disagrees. In reviewing class III ordinances, the Chairman needs an up-to-date compact so he or she may ascertain how jurisdiction is allocated for background investigations and enforcement. Therefore the Commission rejects the suggestion that requiring a copy of a compact is wasteful.

Amendment issues

One commenter suggested amending § 522.3(b) by inserting "after adoption" following the word "days" to make the requirement consistent with subsection (a). The Commission agrees and therefore has inserted "after adoption" in the text of the regulation.

Another commenter suggested revising from 15 to 60 days the time limit for submission of an amendment that has been adopted by a tribe under § 522.3(b). The Commission disagrees. The present period of 15 days is sufficient to copy the amendment and mail it to the Commission.

Approval clarifications

The Commission corrected two cross references and clarified the applicability of the regulations to key employees and primary management officials in § 522.4. First, the Commission corrected the references in § 522.4(b)(1). The language of the regulation now reads: "The tribe shall have the sole proprietary interest in * * * gaming * * * unless it elects to allow individually owned gaming under either § 522.10 or § 522.11 of this part." Second, the language of § 522.4(b)(4) now reads: "All gaming related contracts * * * shall be specifically included within the scope of the audit conducted under § 522.4(b)(3) of this part." To clarify that the background investigations and licensing requirements of parts 556 and 558 apply only to key employees and primary management officials, the Commission inserted those terms in § 522.4(b)(5).

Sole proprietary interest

One commenter requested that the Commission define "sole proprietary interest" as it relates to gaming. The commenter wanted to know whether that term would exclude leases on equipment, collateral for loans, and tribal member stock ownership. In the view of the Commission, unless a tribe elects to license individual owners, the tribe must have "the sole proprietary interest and responsibility for the conduct of any gaming activity." Section 2710(b)(2)(A). An agreement whereby consideration is paid or payable to the gaming operation for the right to place gambling devices that are controlled by the vendor in such gaming operation is inconsistent with the requirement that a tribe have the sole proprietary interest. Regarding collateral for loans, a tribe may not grant a security interest in a gaming operation if such an interest would give a party other than the tribe the right to control gaming in the event of default by a tribe. Such a security interest would be inconsistent with the IGRA's requirement that a tribe have the "sole proprietary interest and responsibility for the conduct of any gaming activity." Similarly, because IGRA specifies that a tribe (not its members) must have the sole proprietary interest, stock ownership in a tribal gaming operation by individual tribal members would also be inconsistent with the IGRA. It is not possible for the Commission to further define the term in any meaningful way. The Commission will, however, provide guidance in specific circumstances.

Charitable organizations

Two commenters objected to a reference to the Internal Revenue Service with respect to charitable organizations under § 522.4(b)(2)(iv). Under section 2710(b)(2)(B)(iv), gaming revenues may be donated to charitable organizations. The Commission had stated that charitable organizations are generally understood to be those approved by the I.R.S. under I.R.C. section 501(c)(3). The commenters stated that I.R.S. approval would not be an appropriate test for two reasons. First, tribes are not subject to Federal income tax. Second, within tribes there are clans, societies and other traditional organizations that customarily conduct charitable activities. The Commission agrees with the reasoning of the commenters. The Commission did not intend to prevent groups within tribes from receiving charitable donations so long as those groups are charitable as that term is legally understood. Black's Law Dictionary defines "charitable" as follows: "Having the character or purpose of a charity. The word 'charitable', in a legal sense includes every gift for a general public use, to be applied consistent with existing laws, for benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint." In the view of the Commission, donations to groups that come within this definition meet the requirement of the IGRA.

Submission completeness

One commenter suggested amending § 522.4 so that the 90 day approval review period would begin only after a Chairman's determination that a submission was complete. The Commission rejects that suggestion. Although the Commission plans to notify tribes of incomplete submissions, an ordinance would be deemed approved under section 2710(e) unless the Chairman acts within 90 days. With respect to existing ordinances and resolutions, § 523.3(b) requires the Chairman to notify a tribe in writing of specific areas of noncompliance. The Commission notes that it will review most ordinances under part 523 rather than part 522 because most tribes already have gaming ordinances.

Duplication of IGRA's language

One commenter suggested deleting as unnecessary subparagraphs (b)(2), (3), (4), (6) and (7) of § 522.4, stating that those requirements duplicate the IGRA. The Commission rejects that suggestion. Those subparagraphs are included to provide a complete reference, without having to refer to the IGRA.

Disapproval clarification issues

A commenter suggested clarifying that disapproval of an ordinance may be for reasons other than failing to submit information required § 522.2. The Commission agrees and therefore has clarified § 522.5 by inserting "or § 522.4(b)." The Commission added an additional sentence to clarify that the Commission will notify a tribe of its right to appeal a disapproval. The additional sentence reads: "The Chairman shall notify a tribe of its right to appeal under part 524."

Stay

Another commenter requested that the Chairman's disapproval under § 522.5 or § 522.7 be stayed pending the Commission's action on an appeal. The Commission agrees. The Commission intends to stay the effect of a disapproval. Therefore the Commission added to § 522.5 and § 522.7 the following sentence: "A disapproval shall be effective immediately unless appealed under part 524." The Chairman will refrain from taking an enforcement action pending an appeal.

Cure period

A commenter requested a "cure period," to be in effect after the Commission upholds a disapproval by the Chairman. The Commission disagrees. During an appeal a tribe may request such a cure period as part of any relief sought. The Commission will consider requests for a cure period on a case-by-case basis.

Automatic approval

Another commenter requested amending § 522.5 by adding, "otherwise the submitted ordinance will be automatically approved upon expiration of 90 days after submission for approval under § 522.2." The Commission rejects this suggestion as unnecessary in view of § 522.9. That section provides for substitute approval if the Chairman fails to approve or disapprove an ordinance.

Class III ordinance clarifications

To clarify appeal rights of a tribe upon disapproval of a class III ordinance, the

Commission inserted under § 522.7 "and notify a tribe of its right to appeal under part 524" after "resolution."

To clarify that it is upon the Chairman's approval that there will be publication in the **Federal Register** of a class III tribal gaming ordinance, the Commission replaced "Commission" with "Chairman" and replaced "its" with "the Chairman's."

Undue influence issues

One commenter questioned whether the approval process was a proper forum for considering any undue influence over a tribe in adopting its class III gaming ordinance under § 522.7(a)(2). In this commenter's view, the Commission should be concerned only with the particular provisions of a gaming ordinance. The Commission disagrees. Section 2710(d)(2)(B) directs the Chairman to disapprove a class III ordinance "if the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution * * *." Because IGRA directs the Chairman's attention to issues of undue influence in reviewing a class III ordinance, the Commission is not free to ignore those issues.

Other commenters questioned whether the Commission interpreted too broadly the class of people whose influence should be scrutinized. In these commenters' view, scrutiny for undue influence should be limited to persons found to pose a threat of criminal influence. The Commission thinks not. An exercise of undue influence by any person having a financial or management interest under 25 CFR 502.17 or 502.18 would constitute a per se threat to the public interest and the effective regulation and control of gaming. Additionally, restricting scrutiny to persons found to pose a threat of criminal influence would require there to be such finding before an exercise of undue influence could be deemed improper. In the Commission's view, undue influence by any person having a financial or management interest is improper and hence grounds for disapproving an ordinance. Therefore, the Commission rejects the suggestion.

Individually owned class III operations

To clarify the language in § 522.10(f) that requires "denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding state," the Commission added a second sentence that clarifies the extent to which state law standards apply. Looking to the Committee Report for guidance, the Commission found it in a discussion of the requirements for individually owned gaming. There, the Report states: "While a tribe should license such enterprises as part of its governmental function, the Committee has determined that State law (such as purpose, entity, pot limits, hours o(f) operation, etc.) should apply to such enterprises. These games are not to be confused with units of a tribe or tribal social or charitable organizations that operate gaming to support their charitable purposes, such games are not covered by this paragraph but rather will come under tribal gaming." S. Rep. No. 446, 100th Cong., 2d Sess 12 (1988).

One commenter suggested limiting authority to engage in class III gaming to Indian tribes under § 522.10. In this commenter's view, the language of section 2710(d)(3)(A), which limits compacting authority to Indian tribes, also limits class III gaming operations to tribes. The Commission disagrees, noting that (d)(2)(A) clearly contemplates non-tribal entities being authorized to engage in class III gaming. That provision states: "If any Indian tribe proposes to engage in, *or to authorize any person or entity to engage in*, a class III gaming activity * * *" (emphasis added). Because the Commission is not free to ignore the clear language of the IGRA, the Commission rejects the suggestion.

Another commenter suggested including a provision for the transfer of grandfathered gaming licenses under § 522.11. The Commission rejects that suggestion, noting the IGRA specifically prohibits such transfers. Section 2710(b)(4)(B)(ii) states: "The exemption from the application of this subsection (concerning individually owned gaming operations) provided under this subparagraph may not be transferred to any person or entity * * *."

Part 523—Review and Approval of Existing Ordinances or Resolutions

Clarification of § 523.1

To clarify that part 523 applies to ordinances in existence before the promulgation of this rulemaking, not ordinances that may have been disapproved under part 522, the text of § 523.1 now reads: "* * * and that has not been submitted to the Chairman."

Status of gaming activity pending review

One commenter suggested that part 523 should address the provision in section 2712(a) that states, "(a)ny activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this Act, or any amendment made by this Act, unless disapproved under this section." The Commission agrees that an otherwise valid gaming activity remains valid until the ordinance is disapproved by the Chairman. Nothing in the Commission's regulations provides otherwise. Therefore the Commission rejects the suggestion as unnecessary.

Submission of financial information

To clarify that the Commission requires financial information for only the previous fiscal year under § 523.2(a)(2), the Commission changed the text of the regulation to indicate that it requires submission of financial statements for the previous fiscal year and the most recent audit report and management letter.

Deemed disapproval for failure to submit an ordinance

To clarify the status of an ordinance that a tribe failed to submit upon the request of the Chairman under § 523.2(a), the Commission added a new paragraph (b) providing that the Chairman will deem the ordinance or resolution disapproved and will notify such tribe of its appeal rights under part 524.

When a tribe disagrees with the Chairman's order to amend an ordinance

Two commenters suggested amending § 523.3 to include procedures that were mentioned in the preamble. There, the Commission had stated: "When a tribe and the Commission disagree about amending an ordinance, the Commission intends that a tribe and the Commission may jointly waive the 120-day period, in which case the Chairman would disapprove the ordinance or resolution, and the tribe could then proceed to appeal under part 524 * * *." 57 FR 30347. The Commission agrees and has therefore inserted in paragraph (d) after "section," "or earlier if the tribe notifies the Chairman that it intends not to comply(.)"

Part 524—Appeals

Appeals by a party other than a tribe

Some commenters stated that appeals should be limited to a tribe's appealing the Chairman's disapproval of an ordinance, resolution or amendment, stating that the validity of a tribal gaming ordinance or resolution is a matter of tribal sovereignty, subject only to the Chairman's review. In the view of these commenters, other interests have no standing to contest such proceeding. Under the Administrative Procedure Act, each agency may have its own rules regarding standing to participate in its administrative proceedings. An agency's standing rules may differ and may be narrower than a court's rules. However, a person who may not have standing under agency rules, but who would have standing under a court's rules, may challenge an agency action in Federal court. With the differing rules for standing in mind, the Commission revisited part 524. The regulation now provides that only a tribe may appeal a disapproval by the Chairman under § 524.1. Other persons may, however, request limited participation in such a proceeding under § 524.2. The Commission also notes that any person may contribute to the Chairman's deliberations in reviewing an ordinance by writing the Chairman.

Appeal deadlines

One commenter was concerned that an appeal deadline could run without a tribe's knowing that the Commission had taken an appealable action. The Commission notes that this could not happen under the language of the final regulation. The final regulation includes the following: "An appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination under part 519." In adding the preceding sentence, the Commission believes it has addressed the concern of the commenter.

Deletion of appeals for approvals

One commenter stated that appeals should be limited to disapprovals. The Commission agrees and has therefore revised the regulation to allow only for appeals in the case of disapprovals.

Part 556—Background Investigations for Primary Management Officials and Key Employees

Jurisdictional clarifications with respect to class III gaming

The Commission revisited the issue of jurisdiction with respect to class III gaming in response to commenters' and its own concerns. One commenter stated that it may be impossible for some tribes with compacts for class III gaming to comply with procedures that would have required disclosure to a tribe of the results of background investigations that were conducted by a state. The commenter was concerned that under the relevant compact, the state conducted the background investigation but did not disclose the reports to a tribe. Rather, under that compact, the state discussed the contents of a report with the tribal governing body. The Commission agrees that the proposed requirement would have presented jurisdictional problems and therefore changed the scopes of parts 556 and 558 as explained below. In the view of the Commission, if a tribe receives background investigation information under a compact that allocates responsibility to a state, such an arrangement is beyond the jurisdiction of the Commission.

Another commenter questioned whether procedures under a compact would have been considered as stringent as the procedures spelled out in parts 556 and 558. As discussed below, the Commission has changed the regulation so that certain requirements no longer apply where a tribal-state compact allocates responsibility to a state. Where a compact allocates responsibility to both a tribe and a state, however, the final regulation requires a tribe to forward an application and an investigative report to the Commission.

One commenter questioned whether requiring submission of investigative reports for class III employees was proper when, in the view of that commenter, class III gaming falls solely within a tribal-state compact. As explained below, the regulation requires investigative reports for class III gaming only where a compact allocates sole or joint jurisdiction to a tribe.

In revisiting the jurisdictional issues, the Commission reviewed the IGRA's provisions. The IGRA requires that class III gaming be authorized by an ordinance that meets the requirements for class II gaming and is approved by the Chairman. Section 2710(d)(1)(A). Additionally, class III gaming must be conducted under a tribal-state compact that is in effect. Section 2710(d)(1)(C). Under such a compact, however, a tribe may agree to state civil laws and regulations with respect to licensing, or to tribal laws, or to both state and tribal laws. Section 2710(d)(3)(C)(i).

To harmonize IGRA's apparently conflicting provisions, the Commission interprets the IGRA to grant jurisdiction to the Commission with respect to reviewing background investigations and licensing where a tribe has authority under a compact to license class III gaming. In the view of the Commission, Congress intended Commission oversight of class III licensing and background investigations where a compact allocates jurisdiction to a tribe for licensing. The Commission notes that licensing and background investigations (including Commission notification by a tribe of the results of a background investigation) are an integral part of the "adequate system" required under section 2710(b) for ordinance approval. Furthermore, nowhere does the IGRA exempt licensing for class III gaming from the requirements of section 2710(b), even where a compact may provide otherwise. As a practical matter, however, because the Commission lacks jurisdiction over states and therefore cannot oversee their activities with respect to background investigations and licensing for Indian gaming, the Commission has not included within the scope of either part 556 or 558 background investigations and licensing where a compact allocates those activities solely to a state. The Commission therefore conformed the texts of parts 556 and 558 to its views on jurisdiction, eliminating separate requirements for class III. The final regulations apply to all class II and to class III gaming where a tribe has sole or joint jurisdiction over background investigations and licensing.

Conditional or temporary employment and licenses pending background investigation

Some commenters requested provision for conditional or temporary employment and licenses due to the time it takes to complete criminal records checks or other delays. The Commission has addressed the need to hire an employee before being able to conduct a background investigation through the requirements of part 556 and § 558.3(b). Under those requirements, a tribe may employ a key employee or a primary management official for up to 90 days before either issuing a license or terminating employment as a key employee or primary management official. Therefore the Commission rejects this suggestion.

Effect of compact provisions on class II gaming

One commenter suggested that where a compact spelled out procedures for background investigations and licensing, that those procedures should be deemed sufficient for class II gaming. The Commission disagrees because the IGRA sets out requirements for class II gaming regardless of whether a compact is in effect for class III gaming. Furthermore, the IGRA requires that investigations and licensing for class III gaming comply with certain standards, as set out in the discussion under "Jurisdictional clarifications with respect to class III gaming." The Commission therefore rejects the suggestion.

Additional positions under "key employee" as that term is defined under 25 CFR 502.14

One commenter suggested amending the definition of key employee to include surveillance and investigative personnel. The Commission believes that background investigations and licensing of persons in positions listed in the existing definitions are adequate to protect the integrity of Indian gaming. Section 502.14 includes the Chief of Security, any person whose total cash compensation is in excess of $50,000 per year, or, if not otherwise included, the four most highly compensated persons in a gaming operation. Furthermore, the definition of a primary management official includes any person who has authority to hire and fire employees or to set up working policy for a gaming operation. As the Commission stated, however, in the preamble to its definitions regulations, "(a) tribe may add any other positions to its own definition." (57 FR 12388, April 9, 1992)

Confidentiality

One commenter questioned how it would be possible to maintain confidentiality under § 556.4(b) with respect to the identity of people interviewed in the course of background investigations. This commenter was concerned about disclosure to a tribe. The intent of requiring a promise of confidentiality is to maintain confidentiality with respect to the subject of the investigation and the public, not a tribal authority conducting such investigation. Disclosure to a tribal authority, the Commission, or its staff does not compromise with confidentiality.

Time limits with respect to gaming offenses

One commenter suggested deleting the time limit with respect to gaming offenses for misdemeanor convictions under § 556.4(a). The Commission rejected that suggestion as not necessary to protect the integrity of Indian gaming. The Commission notes, however, that a tribe may require any information beyond the time limits specified by the Commission in § 556.4(a). See § 556.4(a)(13).

Criminal charges and arrests

Some commenters suggested requiring information on arrests, or criminal charges in § 556.4(a), stating that as a result of plea bargains or use of an individual as an informant, that otherwise valid arrests are frequently not converted to convictions. The Commission agrees that where criminal charges are brought by a law enforcement authority such information should be available to a tribal gaming authority and has therefore added criminal charges to § 556.4(a)(10). With respect to arrests, however, unless an arrest results in a criminal charge, there may not be information that is sufficiently reliable to use in determining suitability for employment in Indian gaming. Therefore the Commission rejected the suggestion to require information concerning mere arrests.

Asset and liability disclosure

One commenter suggested requiring asset and liability disclosure under § 556.4(a), stating such information would allow the Commission to discover hidden ownership interests or the involvement of undesirable individuals who might influence the gaming operation. The Commission rejects that suggestion, noting that it already proposes to require such disclosure under its management contract regulations for persons having a direct or indirect financial interest in a management contract. (See proposed § 537.1(b)(1)(xi), 57 FR 37661, August 19, 1992.) In addition, § 556.4(a)(5) and (6) require disclosure of ownership interests in business relationships with Indian tribes and with the gaming industry. A tribe may, however, require such information for key employees or primary management officials under its tribal ordinance.

Catch all ("other information as required") requirement

One commenter suggested adding to § 556.4(a) a catch all requirement, stating that without such a requirement a tribe or the Commission may be precluded from obtaining information necessary to make a fair determination. The Commission rejects this suggestion, noting that it is a tribe, not the Commission, that determines suitability for employment in a gaming operation. Moreover, a tribe may require any other information that it deems relevant under § 556.4(a)(13).

Updating background investigations and investigative reports

One commenter suggested providing for the Commission to notify a tribe in those instances when the Commission already possesses an investigative report. This would signal that a tribe would only need to provide updated information. In the view of the Commission, it is important that a tribe have a complete record of a previous background investigation, not merely a summary investigative report. Therefore, although the Commission will provide a tribe an investigative report, a tribe may not rely solely on that report in making an eligibility determination under § 558.2. The Commission notes that in reviewing an application a tribe can determine if another tribe has previously employed the applicant. In such cases, a tribe may request investigative information from the other tribe. The Commission has clarified § 556.4(c) to provide that a tribe may request access to such material from the tribe that previously had conducted a background investigation.

Disposition of felony charges

One commenter suggested adding "if any" to § 556.4(a)(8) regarding the disposition of a felony charge, stating that there is no disposition in an on-going prosecution. The Commission agrees and therefore has inserted "if any" after "disposition".

Authority of the Commission to require an investigative report prior to a tribe's licensing a key employee or a primary management official

Some commenters questioned the authority of the Commission to require an investigative report prior to a tribe's licensing a key employee or a primary management official under § 556.5(b). The commenters read section 2710(c)(1) to give the Commission authority to review a licensing decision for 30 days after a tribe issues a license. The Commission disagrees, noting that § 2710(b)(2)(F)(ii)(III) requires, as a condition of approval of a tribal ordinance, that a tribe have "an adequate system which * * * includes * * * notification by the Indian tribe to the Commission of the results of such background check *before* the issuance of any * * * licenses." (emphasis added) Because the Commission is not free to ignore this requirement, it rejects the suggestion.

Part 558—Gaming Licenses for Key Employees and Primary Management Officials

Applicability to employees other than key employees and primary management officials

One commenter requested adding an explicit provision that would leave tribes to develop standards and procedures for employees other than key employees and primary management officials. The Commission rejects that suggestion because § 558.1(b) already makes it clear that the standards and procedures of part 558 apply only to key employees and primary management officials. However, because the Commission wished to alert tribes that a requirement for a certificate of self-regulation under section 2710(c)(3) is that a tribe "has * * * adopted and is implementing adequate systems for * * * investigation, licensing and monitoring of *all* employees of the gaming (operation)" (emphasis added), the Commission also stated that, "(a) tribe shall develop licensing procedures for all employees of a gaming operation * * *." Hence, the requirement in § 558.1(b) that a tribe develop licensing procedures for all employees.

Licensing persons other than key employees and primary management officials

The same commenter requested amending § 558.1 to state that a tribe may license persons having a direct or indirect financial interest in a management contract. A tribe is free to prescribe license requirements for whomever it wishes so long as it also licenses key employees and primary management officials. Thus a tribe may license persons having a direct or indirect financial interest in a management contract. Therefore the Commission rejects the suggestion as unnecessary.

Sixty-day time limit for submission of an investigative report under § 558.3(b)

Two commenters questioned whether 60 days is sufficient time for a tribe to conduct a background investigation and to submit a background investigation report. The Commission notes that with respect to existing employees, tribes have 120 days after being notified of any deficiencies in an ordinance under § 523.3(c) to bring the ordinance into compliance. During that time tribes may also conduct background investigations on existing key employees and primary management employees. In addition to the 120 days under § 523.3(c), under § 558.3(b) tribes have 60 days from the date of ordinance approval to conduct a background investigation and prepare an investigative report. For new operations, a tribe may begin background investigations before hiring and may complete background investigations before submitting an ordinance for approval. In light of the existing deadlines, the Commission did not change the 60-day requirement.

Clarification of when a hearing right vests under § 558.1(d)

To clarify that a hearing right vests only for an employee who has obtained a license after the Chairman has approved an ordinance under either part 522 or 523, the Commission inserted "granted" after "license".

Automatic disqualification for applicants who are convicted of felonies or misdemeanors that are crimes of moral turpitude

One commenter suggested that applicants who are convicted of felonies or misdemeanors that are crimes of moral turpitude should automatically be disqualified from holding a key employee or primary management official position in Indian gaming under § 558.2. The Commission notes that the IGRA leaves the actual standards for employment to tribes under section 2710(b)(2)(F)(ii)(II). That provision requires a tribe to have "an adequate system which * * * includes * * * a standard whereby any person whose prior activities * * * pose a threat to * * * the effective regulation of gaming * * * shall not be eligible for employment." Thus the IGRA dictates the result, leaving it to tribes to determine how best to achieve that result. Therefore a tribe could adopt a standard of automatic disqualification but is not required to do so. Even without automatic disqualifications, in the view of the Commission, there are safeguards adequate to protect the integrity of Indian gaming. Such safeguards include requiring the Commission to review the application and investigative report of each key employee and primary management official and consult with appropriate law enforcement officials. Furthermore, upon notification by the Commission of reliable information indicating unsuitability for employment in Indian gaming, a tribe is required to suspend the license of any key employee or primary management official pending a hearing. In light of the limiting language of the IGRA and the other safeguards, the Commission rejects the suggestion.

Threat to the public interest

One commenter requested clarification of the IGRA's language concerning ineligibility for employment where such employment would be a "threat to the public interest" under § 558.2. In the view of the commenter, such language is vague and therefore subject to litigation. Attempting to apply that language without specific facts, however, would be futile and the Commission therefore rejects the suggestion. The Commission will, however, provide guidance to a tribe in specific situations.

Clarification with respect to "prior activities, criminal record, if any, or reputation, habits and associations"

Two commenters pointed out that the Commission had omitted the above language from § 558.2. The Commission therefore amended the text of the regulation to include that language.

Denial of a license for a false statement or omission

Two commenters suggested amending § 558.2 to provide for license denials where an applicant provides a false statement or omits information from an application. The Commission considered but rejected requiring a tribe to deny a license in such circumstances. In the view of the Commission, however, lying on an application by itself may be grounds for disqualification. When a lie is also material, the person who lies should most likely not be hired, or if already hired, should be fired, absent very compelling reasons to the contrary. The Commission notes that it intends to notify tribes to suspend licenses under § 558.5 when it uncovers information that indicates a material lie, misstatement or omission on an application. In the Commission's view, materially false or misleading information is information that if correct, or supplied, is important in determining eligibility for employment as a key employee or primary management official in Indian gaming.

The Commission notes that a U.S. Attorney may prosecute an individual omitting material information or supplying false or misleading material information under 18 U.S.C. 1001. See § 556.3. Title 18 U.S.C. 1001 provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

The Commission also notes that under 25 U.S.C. 2716(b), it must notify appropriate law enforcement officials when it has information that indicates a violation of Federal, State or Tribal statutes, or resolutions.

Denial of a license for failure to meet any additional criteria imposed by a tribe

One commenter suggested amending § 558.2 to provide for license denials to meet any additional criteria imposed by a tribe. The Commission notes that a tribe may add criteria to its eligibility determination so long as those criteria are not less stringent than the criteria in the IGRA. Therefore the Commission rejects the suggestion as unnecessary.

Hiring a person deemed ineligible under § 558.2

One commenter suggested amending § 558.2 to provide that any person ineligible for employment as a key employee or primary management official be automatically disqualified for any position or function related to the gaming operation. The Commission notes that key employees and primary management officials are within the jurisdiction of the Commission under the IGRA; other positions are not. Therefore the Commission may not prohibit a tribe from hiring a person deemed ineligible in another position, providing that person does not perform any of the functions of a key employee or a primary management official. Hence the Commission rejects the suggestion.

Adequacy of Commission's 30-day review period

One commenter questioned whether the Commission is prepared to conduct adequate background investigations within the 30-day period under § 558.3(c). The Commission notes that it is not responsible for conducting background investigations, only reviewing them. Furthermore, the Commission is limited by the IGRA, which specifies a 30-day review period in section 2710(c)(1). The Commission is not, however, limited by any time period if it later receives reliable information indicating that an employee is not eligible for employment under § 558.2. In such case, the Commission may notify a tribe under § 558.5. Failure to suspend a license would constitute possible grounds for an enforcement action under section 2713. For the above reasons, the Commission rejects the suggestion.

Conducting background investigations before hiring employees

One commenter suggested that if § 558.3 required conducting a background investigation before hiring, a significant number of suspension hearings under § 558.5(c) could be avoided. However, the right to a suspension hearing attaches only after a tribe grants a license, not after a tribe hires an employee. Therefore conducting a background investigation before hiring an applicant would not reduce the number of suspension hearings. For this reason, the Commission rejects the suggestion.

Who may appeal an objection to a tribe's granting a license

One commenter suggested that both a tribe and an applicant should have standing to appeal a Commission's objection to a tribe's granting a license under § 558.4(b). The Commission clarified its role in objecting to a tribe's granting a license. The text of the regulation now reads that the Commission shall notify a tribe of its objection and the tribe shall reconsider the matter, taking into account the Commission's reasons. The tribe retains discretion to issue a license whether or not the Commission objects. Because it is the Commission that notifies a tribe of its objection, such a decision is a final decision and therefore may not be administratively appealed. Consequently, the Commission rejects the suggestion.

Another commenter suggested amending § 558.5(b) to allow continuation of employment as a key employee or primary management official pending an appeal. As pointed out in the preceding paragraph, there would be no Commission action to appeal. In the view of the Commission, it is not within a tribe's discretion to allow continuation of employment pending a revocation hearing. The IGRA states that a tribe "shall suspend such license," leaving no apparent room for continuing employment. Section 2710(c)(2). Furthermore, it is unlikely that a tribe would want to allow continuation of employment in such a situation because it is the tribe that makes the determination to suspend a license. For these reasons the Commission rejects the suggestion.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. Under the Executive Order, a rule is a major rule if: (1) Its annual effect on the economy will be $100 million or more; (2) it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) there will be significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. If a rule is major, the agency must conduct a regulatory impact analysis. The Commission believes that the rule will not have any significant effect on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market. No commenter supplied data that contradicted the Commission's tentative conclusion under E. O. 12291.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If so, an agency must prepare a regulatory flexibility analysis that explores less burdensome alternatives. If not, an agency must certify that the rule will not have such an impact. No commenter supplied data that contradicted the Commission's tentative conclusion under the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0003, with an expiration date of October 31, 1995.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12278

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,
Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 501, 519, 522, 523, 524, 556, 558

Gaming, Indian lands.

Title 25, Chapter III, of the Code of Federal Regulations is amended by adding parts 501, 519, 522, 523, 524, and 556 to read as follows:

PART 501—PURPOSE AND SCOPE OF THIS CHAPTER

Sec.
501.1 Purpose.
501.2 Scope.

Authority: 25 U.S.C. 2706, 2710.

§ 501.1 Purpose.

This chapter implements the Indian Gaming Regulatory Act (Pub. L. 100–497, 102 Stat. 2467).

§ 501.2 Scope.

(a) Tribes and other operators of class II and class III gaming operations on Indian lands shall conduct gaming operations according to the requirements of the Indian Gaming Regulatory Act, the regulations of this chapter, tribal law and, where applicable, the requirements of a compact or procedures prescribed by the Secretary under 25 U.S.C. 2710(d).

(b) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of the Indian Gaming Regulatory Act or this Chapter.

(c) Class II gaming on Indian lands shall continue to be within the jurisdiction of an Indian tribe, but shall be subject to the provisions of the Indian Gaming Regulatory Act and this Chapter.

(d) Nothing in the Indian Gaming Regulatory Act or this Chapter shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with a State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by a Tribal-State compact that is entered into by an Indian tribe under the Indian Gaming Regulatory Act and that is in effect.

PART 519—SERVICE

Sec.
519.1 Designation of an agent by a tribe.
519.2 Designation of an agent by a management contractor or a tribal operator.
519.3 Methods of service.
519.4 Copy of any official determination, order, or notice of violation.

Authority: 25 U.S.C. 2706(b)(10).

§ 519.1 Designation of an agent by a tribe.

By written notification to the Commission, a tribe shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.2 Designation of an agent by a management contractor or a tribal operator.

By written notification to the Commission, a management contractor or a tribal operator shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.3 Methods of service.

(a) The Chairman shall serve any official determination, order, or notice of violation by:

(1) Delivering a copy to a designated agent;

(2) Delivering a copy to the person who is the subject of the official determination, order, or notice of violation;

(3) Delivering a copy to the individual who, after reasonable inquiry, appears to be in charge of the gaming operation that is the subject of the official determination, order, or notice of violation;

(4) Mailing to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known address. Service by mail is complete upon mailing; or

(5) Transmitting a facsimile to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known facsimile number. Service by facsimile is complete upon transmission.

(b) Delivery of a copy means: Handing it to the person or designated agent (or attorney for either); leaving a copy at the person's, agent's or attorney's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service shall not be deemed incomplete because of refusal to accept.

§ 519.4 Copy of any official determination, order, or notice of violation.

The Commission shall transmit a copy of any official determination, order, or notice of violation to the tribal chairman, the designated tribal agent under § 519.1, and to the relevant tribal gaming authority. The Commission shall transmit such copy as expeditiously as possible. Service under § 519.3 shall not depend on a copy being sent to the appropriate tribal chairman, the designated tribal agent or to the relevant tribal gaming authority.

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.
522.1 Scope of this part 522.
522.2 Submission requirements.
522.3 Amendment.
522.4 Approval requirements for class II ordinances.
522.5 Disapproval of a class II ordinance.
522.6 Approval requirements for class III ordinances.
522.7 Disapproval of a class III ordinance.
522.8 Publication of class III ordinance and approval.
522.9 Substitute approval.
522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
522.11 Individually owned class II gaming operations operating on September 1, 1986.
522.12 Revocation of class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712

§ 522.1 Scope of this part 522.

This part applies to any gaming ordinance or resolution adopted by a tribe after February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

§ 522.2 Submission requirements.

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 8½″ x 11″ paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in § 522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact or procedures as prescribed by the Secretary;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) Designation of an agent for service under § 519.1 of this chapter; and

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check through the Federal Bureau of Investigation National Criminal Information Center.

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under §§ 522.2(b) through (h) of this part within 15 days after adoption of such amendment.

§ 522.4 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.10 or § 522.11 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

§ 522.5 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under § 522.2 of this part, the Chairman may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of § 522.2 or § 522.4(b) of this part. The Chairman shall notify a tribe of its right to appeal under part 524 of this chapter. A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§ 522.6 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class III ordinance or resolution if—

(a) A tribe follows the submission requirements contained in § 522.2 of this part;

(b) The ordinance or resolution meets the requirements contained in § 522.4(b) (2), (3), (4), (5), (6), and (7) of this part; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.10 of this part.

§ 522.7 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of § 522.6 of this part and no later than 90 days after a submission under § 522.2 of this part, the Chairman shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 524 of this chapter if the Chairman determines that—

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§ 522.8 Publication of class III ordinance and approval.

The Chairman shall publish a class III tribal gaming ordinance or resolution in the **Federal Register** along with the Chairman's approval thereof.

§ 522.9 Substitute approval.

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under § 522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

§ 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.11 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the Tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits and hours of operation.

§ 522.11 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in § 522.10(a)–(d) of this part.

§ 522.12 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8½″ x 11″ paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the **Federal Register** and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the **Federal Register** under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

PART 523—REVIEW AND APPROVAL OF EXISTING ORDINANCES OR RESOLUTIONS

Sec.
523.1 Scope of this part 523.
523.2 Submission requirements.
523.3 Review of an ordinance or resolution.
523.4 Review of an amendment.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 523.1 Scope of this part 523.

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to February 22, 1993 and that has not been submitted to the Chairman.

§ 523.2 Submission requirements.

(a) Within 60 days after a request by the Chairman, a tribe shall:

(1) Submit for review and approval all items required under § 522.2 of this chapter; and

(2) For each gaming operation submit the financial statements for the previous fiscal year and the most recent audit report and management letter.

(b) If a tribe fails to submit all items under § 522.2 of this chapter within 60 days, the Chairman shall deem the ordinance or resolution disapproved and shall notify the tribe of its right to appeal under part 524.

§ 523.3 Review of an ordinance or resolution.

Within 90 days after receipt of a submission under § 523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.

(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.

(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.

(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.

(d) At the end of the 120-day period provided under paragraph (c) of this section, or earlier if the tribe notifies the Chairman that it intends not to comply, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.

§ 523.4 Review of an amendment.

Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.

(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman will approve the amendment.

(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.

(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.

PART 524—APPEALS

Sec.
524.1 Appeals by a tribe.
524.2 Limited participation by an entity other than a tribe.
524.3 Decision on appeals.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 524.1 Appeal by a tribe.

A tribe may appeal disapproval of a gaming ordinance, resolution or amendment under part 522 or 523 of this chapter. An appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination under part 519 of this chapter. Such an appeal shall state succinctly why the tribe believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

§ 524.2 Limited participation by an entity other than a tribe.

(a) An entity other than a tribe may request to participate in an appeal of a disapproval under part 522 or part 523 of this chapter by filing a written submission. Such written submission shall:

(1) State the property, financial, or other interest of the party in the appeal; and

(2) The reasons why the action of the Chairman in disapproving an ordinance, resolution or amendment may be in error or the reasons why the Chairman's disapproval should be upheld by the Commission. The reasons shall address the approval requirements under §§ 522.4, 522.5, 522.6, 522.7, 523.2 of this chapter.

(b) The Commission shall forward a copy of a request under paragraph (a) of this section to the party of record under § 524.1 of this part.

(c) The Commission shall review a request under this section and timely notify the requester of its determination. Such notification shall supply the reasons for the determination. The Commission shall also notify the party of record on appeal under § 524.1 of its determination.

(d) The Commission shall limit the extent of participation by an entity other than a tribe to one written submission as described under paragraph (a) of this section, unless the Commission determines further participation would substantially contribute to the record.

§ 524.3 Decisions on appeals.

(a) Within 90 days after it receives the appeal, the Commission shall render its decision on the appeal.

(b) The Commission shall notify the party of record under § 524.1 of this part and any limited participant under § 524.2 of this part of its final decision and the reasons supporting it.

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.
556.1 Scope of this part 556.
556.2 Privacy notice.
556.3 Notice regarding false statements.
556.4 Background investigations.
556.5 Report to Commission.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 556.1 Scope of this part 556.

Unless a tribal-state compact allocates sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming.

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

> In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.
>
> The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

> A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001)

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

§ 556.4 Background investigations.

A tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(10) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (a)(8) or (a)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A photograph;

(13) Any other information a tribe deems relevant; and

(14) Fingerprints consistent with procedures adopted by a tribe according to § 522.2(h) of this chapter.

(b) A tribe shall conduct an investigation sufficient to make a determination under § 558.2 of this chapter. In conducting a background investigation, a tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) If the Commission has received an investigative report concerning an individual who another tribe wishes to employ as a key employee or primary management official and if the second tribe has access to the investigative materials held by the first tribe, the second tribe may update the investigation and update the investigative report under § 556.5(b) of this part.

§ 556.5 Report to Commission.

(a) When a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed application containing the information listed under § 556.4(a)(1)–(13) of this part.

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The bases for those conclusions.

(c) When a tribe forwards its report to the Commission, it shall include a copy of the eligibility determination made under § 558.2 of this chapter.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) May forward copies of its eligibility determination under § 558.2 and investigative report (if any) under § 556.5(b) to the Commission for inclusion in the Indian Gaming Individuals Record System.

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

Sec.

558.1 Scope of this part 558.
558.2 Eligibility determination for employment in a gaming operation.
558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.
558.4 Granting a gaming license.
558.5 License suspension.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 558.1 Scope of this part 558.

Unless a tribal-state compact allocates responsibility to an entity other than a tribe:

(a) The licensing authority for class II or class III gaming is a tribal authority.

(b) A tribe shall develop licensing procedures for all employees of a gaming operation. The procedures and standards of part 556 of this chapter and the procedures and standards of this part apply only to primary management officials and key employees.

(c) For primary management officials or key employees, a tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for no less than three (3) years from the date of termination of employment.

(d) A right to a hearing under § 558.5 of this part shall vest only upon receipt of a license granted under an ordinance approved by the Chairman.

§ 558.2 Eligibility determination for employment in a gaming operation.

(a) An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

(b) A gaming operation shall not employ in a key employee or primary management official position a person who has supplied materially false or misleading information or who has omitted material information with respedct to the required information under § 556.4(a) of this chapter.

§ 558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.

(a) When a key employee or a primary management official begins work at a gaming operation, a tribe shall:

(1) Forward to the Commission a completed application for employment that contains the notices and information listed in §§ 556.2, 556.3 and 556.4 of this chapter; and

(2) Conduct a background investigation under part 556 of this chapter to determine the eligibility of the key employee or primary management official for continued employment in a gaming operation.

(b) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under paragraph (a)(2) of this section, a tribe shall forward a report under § 556.5(b) of this chapter to the Commission within 60 days after an employee begins work or within 60 days of the Chairman's approval of an ordinance under part 523. A gaming operation shall not employ a key employee or primary management official who does not have a license after 90 days.

(c) During a 30-day period beginning when the Commission receives a report submitted under paragraph (b) of this section, the Chairman may request additional information from a tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.

§ 558.4 Granting a gaming license.

(a) If, within the 30-day period described in § 558.3(c) of this part, the Commission notifies a tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to § 558.3 (a) and (b) of this part, the tribe may go forward and issue a license to such applicant.

(b) If, within the 30-day period described in § 558.3(c) of this part, the Commission provides the tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to § 558.3 (a) and (b) of this part, the tribe shall reconsider the application, taking into account the objections itemized by the Commission. The tribe shall make the final decision whether to issue a license to such applicant.

§ 558.5 License suspension.

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under § 558.2 of this part, the Commission shall notify the tribe that issued a gaming license.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision.

[FR Doc. 93–1062 Filed 1–21–93; 8:45 am]
BILLING CODE 7565-01-M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 515

RIN 3141–AA01

Privacy Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC, or the Commission) is establishing this rule in chapter III of title 25 of the Code of Federal Regulations (parts 500–599). This rule describes the procedures and policies adopted by the Commission pursuant to the Privacy Act of 1974, 5 U.S.C. 552a. Under the Act, Federal agencies must publish, in the **Federal Register**, notice of any systems of records that they intend to establish. Agencies must also

publish procedures regarding the collection, maintenance, use, and dissemination of certain records within those systems. The Commission published notice of the creation of the Indian Gaming Individuals Records System in the **Federal Register**. The regulations established here provide procedures regarding the maintenance, use, and dissemination of records complied in that system and in any other records systems created by the Commission.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, (202) 632-7032 (not a toll free number).

SUPPLEMENTARY INFORMATION: Congress enacted the Privacy Act of 1974 as a means of regulating the collection, maintenance, use and dissemination of personal information gathered by Federal Government agencies. The purpose of the Act is to balance the need of agencies to maintain information about individuals for various purposes, against the individual right to be protected against unwarranted invasions of privacy. The Act restricts the disclosure of certain personal information, while allowing individuals, on whom records have been compiled, greater access to and the right to amend those records. In effect, the Act establishes a code of fair information practices with which agencies must comply.

Tribal Consultation

One commenter questioned whether a tribe would be consulted and its interests in confidential and privileged information protected under the Commission's Privacy Act rule. The Privacy Act protects records concerning individuals. Under the Act, the Federal Government may not disclose records concerning an individual to anyone except that individual, unless that individual has consented to a "routine use" disclosure. An individual consents to such disclosure pursuant to a Privacy Act Notice such as the one in 25 CFR 556.1.

The Freedom of Information Act directs the Federal Government to disclose all records except those falling under an exemption. Section 2716(a) of the IGRA specifically mentions the FOIA. Section 2716(a) directs the Commission to preserve confidential information under the FOIA. In the view of the Commission, section 2716(a) does not, however, direct the Commission with respect to the Privacy Act.

Although both acts govern how the government handles information, the purposes of the two acts are quite different. The Privacy Act seeks to protect information that concerns individuals, allowing disclosure by the Federal Government only for purposes listed in a Privacy Act Notice (see 25 CFR 556.1). The Privacy Act rule (25 CFR part 515) and Publication of System of Records Notice (57 FR 30358–30359) tell an individual how to request to see records concerning himself or herself and how to request amendments to those records, should the individual believe the records contain errors. The Privacy Act does not provide for consultation with third parties before allowing an individual to see records concerning himself or herself. The Commission does not contemplate its records containing investigative materials such as transcripts of interviews in connection with background investigations of key employees or primary management officials; such records would be retained by a tribe and would therefore be subject to tribal procedures for protecting such material.

Access To Records by Criminal Justice Agencies

Another commenter requested that the rule contain procedures for access by criminal justice agencies that may be conducting background checks on prospective primary management officials and key employees. Because the Privacy Act Notice (25 CFR 556.1) provides for such disclosure, the Commission may disclose records to a criminal justice agency that is conducting a background check on a prospective primary management official or key employee.

Access To Records by Tribes

The same commenter requested that the rule provide for access to records by tribes. The Privacy Act Notice (25 CFR 556.1) provides for disclosure of records to "appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies" in connection with the hiring of an employee. Thus the Commission may disclose records to a tribe in connection with the hiring or firing of a primary management official or key employee.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0002, with an expiration date of October 31, 1995.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the NIGC has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 515:

Gaming, Indian lands, Privacy Act.

Title 25, of chapter III of the Code of Federal Regulations is amended by adding part 515 to read as follows:

PART 515—PRIVACY ACT PROCEDURES

Sec.

515.1 Purpose and scope.
515.2 Definitions.
515.3 Identification of individuals making requests.
515.4 Procedures for requests and disclosures.
515.5 Request for amendment to record.
515.6 Review of request for amendment of record by the Records Manager.
515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.
515.8 Disclosure of record to a person other than the individual to whom it pertains

Sec.
515.9 Fees.
515.10 Penalties.
515.11 General exemptions. [reserved]
515.12 Specific exemptions.

Authority: 5 U.S.C. 552a.

§ 515.1 Purpose and scope.

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

§ 515.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

§ 515.3 Identification of individuals making requests.

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of § 515.4 of this part. The request may be made in person or in writing at the NIGC, suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

§ 515.4 Procedures for requests and disclosures.

(a) Requests for a determination under § 515.3(a) of this part shall be acknowledged by the Commission within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request, Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by § 515.3(b)(1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in § 515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 515.3 of this part.

§ 515.5 Request for amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record:

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 515.6 Review of request for amendment of record by the Records Manager.

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under § 515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in § 515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with § 515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 515.9 Fees.

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

§ 515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 515.11 General exemptions. [Reserved]

§ 515.12 Specific exemptions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

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25 CFR Parts 531, 533, 535, 537 and 539

RIN 3141–AA03

Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is establishing this rule in chapter III of title 25 of the Code of Federal Regulations (Parts 500–599). This rule implements the management contract provisions of the Indian Gaming Regulatory Act of 1988 by establishing the requirements and procedures for the approval of management contracts concerning Indian gaming operations and the conduct of related background investigations.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch, National Indian Gaming Commission, Suite 250, 1850 M Street, NW, Washington, DC 20036–5083; telephone: 202–632–7003; by facsimile: 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background.

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC, or the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992, the Commission published a final rule (57 FR 12382) that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated primarily under negotiated tribal-state compacts).

The Commission also has proposed rules regarding its review and approval of tribal gaming ordinances and resolutions under sections 2710 and 2712 of the Act (57 FR 30346, July 8, 1992), Privacy Act procedures under the Privacy Act of 1974 (57 FR 30353, July 8, 1992), compliance and enforcement procedures under sections 2705 and 2706 of the Act (57 FR 30584, July 9, 1992), and disclosure of information under the Freedom of Information Act (57 FR 55212, November 24, 1992). In the near future, the Commission will publish proposed rules regarding requirements under the National Environmental Policy Act and tribal self-regulation under section 2710(c) of the Act.

On Wednesday, August 19, 1992, the Commission proposed regulations covering management contract requirements and procedures (57 FR 37656–37662). Those rules are being published in final form today.

In the preamble to the proposed rules (57 FR 37656, August 19, 1992), the Commission provided a discussion of the rule's provisions and invited the public to comment generally on the form and content of the regulations and specifically on (1) its determination that management contracts concerning class III gaming are subject to the same background investigation requirements as class II under the IGRA, and (2) its preliminary determinations under Executive Order 12291 and the Regulatory Flexibility Act. Comments received and the Commission's responses to those comments are summarized below.

General Comments

BIA Guidelines

One commenter asked about the effect of the guidelines issued by the Bureau of Indian Affairs (BIA) in April 1992 once the final regulations are adopted.

Response: The management contract regulations, once they become final and effective, will supersede that portion of the guidelines that relate to the review and approval of management contracts. Those who are regulated under the Act must comply with the regulations.

Section 81

Another commenter, arguing that Section 81 remains in full force and effect, including the citizen suit provision, and that the Commission has been substituted for the Secretary in carrying out continuingly valid provisions of Section 81, urged the Commission to include a statement to that effect.

Response: The Commission agrees with the commenter that section 81 remains in full force and effect, including the citizen suit provision. The IGRA contains no express repeal of section 81.

Commission's Role in Class III Gaming

Several commenters took issue with the Commission's preliminary determination that the IGRA authorizes the Chairman to conduct background investigations and otherwise determine the suitability of persons having a financial interest in or management responsibility for a management contract concerning class III gaming (57 FR 37657–37658). Other commenters agreed with the Commission's initial position.

Response: The Commission now agrees with the commenters who argue that under the IGRA the responsibility for conducting background investigations and determining the suitability of persons or entities having a financial responsibility in a management contract for class III gaming falls to the tribe or state pursuant to a tribal-state compact and not to the Chairman. Section 2710(d)(9) of the IGRA provides that "(t)he Chairman's review and approval of such contracts (for class III gaming) shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 12." Excluded are subsections (a) (background information on persons or entities which must be provided to the Commission), (e) (grounds for disapproving a management contract), and (i) (requiring a potential contractor to pay a fee to cover the cost of a background investigation). When the excluded subsections are read together, it becomes evident that Congress did not intend for the Chairman to conduct background investigations on persons or entities involved in class III gaming, but to insure that a management contract complied with the other requirements of the IGRA, such as limits on the term of years, limits on the division of net revenues, and adequate accounting procedures.

Although the disparate, more limited review of class III management contracts is not explained in the IGRA's legislative history, it is consistent with the overall regulatory scheme of the IGRA which vests in the Commission the responsibility to oversee the regulation of class II gaming while leaving to the tribes and states the responsibility to regulate class III gaming. This bifurcation of responsibilities, which makes the Chairman responsible only for conducting background investigations on persons or entities having an interest in a management contract for class II gaming, may give rise to varying, and possibly, conflicting standards for conducting background investigations and determining the suitability of persons involved in Indian gaming. It could also result in a situation where no background investigation is conducted because the IGRA does not mandate that any particular subject be included in a tribal-state compact. The Commission is hopeful that these potential problems can be avoided.

While the Chairman may not have the responsibility for conducting background investigations on persons or entities with an interest in a management contract concerning class III gaming, the Commission believes that the IGRA does not preclude the Chairman from disapproving a management contract concerning class III gaming based on the ground contained in section 2711(e)(1)(D) of the IGRA. That provision provides that the Chairman shall not approve a management contract if the Chairman determines that a person or entity "poses a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements." It is the view of the Commission that Congress did not intend for the Chairman to disregard information in his or her possession that indicates that a person is unsuitable for Indian gaming. To do so would undermine one of the fundamental policies of the IGRA—"to shield (tribes) from organized crime and other corrupting influences." 25 U.S.C. 2702(2). Thus, while the Chairman will not conduct background investigations on class III contractors, the Chairman may disapprove a management contract concerning class III gaming based on information in the possession of the Commission that indicates that such person is unsuitable for Indian gaming under the standard contained in § 533.6(c).

Approval Requirements

One commenter urged that the Commission not attempt to approve management contracts that were approved by the Secretary after IGRA was enacted or attempt to modify or void such contracts without a hearing. The commenter argued that the regulations fail to distinguish between contracts approved by the Secretary prior to the enactment of IGRA, which require Commission approval, and contracts approved by the Secretary after the enactment of IGRA, which do not.

Response: The Commission disagrees. Sections 2710(d)(9) and 2711(a)(1) of the IGRA provide that the Chairman must approve all management contracts, whether or not the Secretary has approved them. The only distinction the Act makes for those contracts approved prior to the enactment of the IGRA is that the parties are given additional time to bring the contract into compliance (Section 2712(c)(3)). The Commission has, however, modified the content requirements for contracts that have been approved by the Secretary by eliminating those contained in § 531.1(a), (b), (k), (l), (m), and (n).

Business Judgments

One commenter suggested that the tribes, not the Chairman, should make judgments and decisions as to business details of contracts. In the view of this commenter the Commission's role should be limited to providing technical assistance in the negotiation process to ensure that tribal governments negotiate contracts in the best interest of the tribe and not "outside forces."

Response: The IGRA does give the Commission the authority to disapprove a contract if "a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract." 25 U.S.C. 2711(e)(4). The Commission dies not, however, intend to second-guess the business decisions of a tribe. Consequently, it is the responsibility of all tribal governments to negotiate contracts in the best interests of their tribes.

Another commenter contended that the proposed regulations are overreaching in the ability of the Chairman to reject the contractual terms and second-guess the business decisions of the tribes. The regulations should contain a presumption that the decisions of the tribe are reasonable unless there is clear and convincing evidence to the contrary.

Response: As indicated elsewhere, the Commission does not intend to micro-manage a tribe's business.

Self-Regulation

One commenter urged that self-regulation be addressed as soon as possible.

Response: The Commission agrees. The IGRA provides that a tribe which operates a class II gaming operation and has complied with the various provisions of the IGRA may apply for a certificate of self-regulation. Some of these provisions require regulations; the Commission must propose and finalize such regulations before a tribe may apply for a certificate of self-regulation.

Piecemeal Regulation

One commenter suggested the Commission should not take the piecemeal approach in the drafting of the regulations.

Response: The Commission disagrees. As stated elsewhere, the promulgation of all regulations in a single package would take so long and be such a sizeable undertaking that necessary guidance would be unduly delayed.

Negotiated Rulemaking

The same commenter urged that negotiated rulemaking be used.

Response: The Commission disagrees. Because Congress spelled out specific requirements that the Commission could not ignore, negotiated rulemaking was not suitable. Interested parties have been given ample opportunity to review, comment on, and discuss with Commissioners and staff the Commission's thinking with respect to management contract regulations.

Collateral Economic Activities

A commenter argued that the Commission must extend its regulatory authority over collateral economic activities such as gift shops, food and beverage services, custodial services and security services if the regulatory scheme is to have full effect and if the goal of Congress to encourage clean, profitable gaming is to be realized.

Response: The Commission does not disagree with the merits of the commenter's arguments but notes that there are statutory limitations to doing what the commenter suggests. The IGRA gives the Commission regulatory oversight over gaming operations, not other tribal businesses.

The FBI and State Gaming Authorities

A commenter suggested that the regulations should require that a copy of the management contract application, with all attachments, should be forwarded to the appropriate state gaming authority and to the FBI at the same time that these documents are forwarded to the Commission for approval.

Response: The Commission disagrees. The Act does not provide for such a requirement and it is doubtful that the FBI or state gaming authorities would want to routinely receive management contracts.

Definition of Management Contractor

One commenter asked whether the Commission considered a "bright line" definition of "management contractor" which focuses on the ultimate decision-making authority or basis of compensation to identify a management contractor rather than on functions performed.

Response: The Commission considered many alternative definitions of "management contractor" in connection with the promulgation of its definition regulations and believes that the definition of a management contract in the final rule is sufficiently clear.

Definition of a Management Contract

Another commenter argued that the proposed regulations, together with the overbroad definition of a management contract (because of the many contracts that could be included), is unworkable for both the Commission and the tribe because it subjects numerous contracts to the regulatory requirements. The commenter suggested that the regulations should specifically delineate what is and what is not a management contract.

Response: The Commission disagrees. The definition adopted by the Commission is not overly broad and covers those contracts where a management role is present.

Part 531—Content of Management Contracts

Contract-Compact Conflicts

One commenter suggested that § 531.1 should require that the contracts include an order of precedence provision to the effect that the compact controls where there is a conflict between provisions of the management contract and the governing compact.

The same commenter suggested that § 531.1(a), Governmental Authority, be revised by adding "and in conformance with the governing tribal/state gaming compact" before the semicolon.

Response: While the Commission is in general agreement that management contracts should not be inconsistent with the requirements contained in a tribal-state compact (unless those requirements are contrary to the statutory provisions of the IGRA relating to management contracts), the Commission does not agree that the regulations should be modified to require that a management contract must conform to a tribal-state compact. Enforcement of the requirements of the compact should be the responsibility of the tribe or the state; it is not the responsibility of the Commission.

Compliance With the Act

Another commenter pointed out that the preamble to the proposed regulations indicated that a management contract must provide that all gaming will be conducted in accordance with the governing tribal ordinance and suggested that consideration be given to indicating that all gaming will be conducted in accordance with the Act as well as the governing tribal ordinance.

Response: The Commission agrees and has revised § 531.1(a) accordingly. The Commission believes that any reader of such a contract should be made aware that it is subject to all the provisions of the Act.

Changes in Gaming Ordinances

One commenter suggested that § 531.1(a) should require the management contract to state how changes in gaming ordinances that affect contract terms will be handled.

Another commenter argued that neither the preamble nor the final rule should contain a statement or requirement such as that contained in the preamble to the proposed rule advising that "the management contract also should state how any changes to the ordinance that affect contract terms will be handled." Such a statement, the commenter argued, is unnecessary and confuses the tribes two roles as sovereign and party to the management contract.

Response: The Commission disagrees with both commenters. The parties to the contract should be aware of and deal with the inter-relationships between the contract and the governmental authority of the tribe that can be exercised through ordinances and resolutions.

Assignment of Responsibilities

One commenter suggested that § 531.1(b), Assignment of Responsibilities, is not required by IGRA and should be omitted from the final rule or limited to those items listed in the proposed rule.

Response: The Commission disagrees. It is in the best interest of Indian gaming to deal with as many contractual issues as possible in advance.

Another commenter felt that § 531.1(b) should be changed if it is the intent of the Commission that the items listed are the only functions for which responsibility is to be enumerated.

Response: Such is not the intent of the Commission as evidenced by the use of the word "including."

Responsibility for Auditors

One commenter argued that § 531.1(b)(7) should be deleted or reworded to provide that independent auditors will be directly engaged and scheduled by the tribe and shall report directly to the tribal government.

Another commenter urged that § 531.1(b)(7) be changed to require hiring and scheduling of auditors solely by the tribe.

Response: The Commission agrees in part and has revised the rule by limiting the assignment of responsibility concerning auditors to "paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter."

Police Protection

One commenter suggested that the regulations make clear that the tribe and contractor must make proper arrangements with local law enforcement for adequate police protection.

Response: The Commission believes that the provision of law enforcement and police protection are the responsibility of the tribe and need not be addressed in the management contract. However, the incremental cost of law enforcement and police protection resulting from the gaming operation should be dealt with in the contract. Accordingly, § 531.1(b) has been expanded by adding paragraph (15): "paying the cost of any increased public safety services."

NEPA Requirements

The Commission has added § 531.1(b)(16) to require the parties to the contract, when applicable, to assign responsibility for supplying the Commission with all information necessary for it to comply with the regulations of the Commission to be issued shortly pursuant to the requirements of the National Environmental Policy Act (NEPA).

Financial Reports

One commenter inquired whether § 531.1(d) should be changed to require that a management contractor provide certain financial reports "not less frequently than monthly" to facilitate the tribe receiving more frequent accountings of gaming revenues.

Response: The Commission agrees and has revised the rule accordingly.

Guaranteed Payments

Another commenter asked if the Commission intended that the guaranteed payments required in § 531.1(f) be a debt instrument.

Response: It is not intended that this payment obligation cover the entire contract period and be recorded at the outset or reflected in a debt instrument. This is a month-to-month obligation of the gaming operation which is to be recorded and paid as incurred.

One commenter said that § 531.1(f) provides virtually no protection to the tribe and that the Commission should develop a mechanism to ensure that a meaningful guaranteed monthly minimum payment is provided to a tribe either as a minimum dollar amount or a percentage of the anticipated net revenues.

Response: The Commission disagrees. It is not possible to develop a useful regulatory mechanism or formula that will ensure that a tribe receives an adequate guaranteed payment. The purpose of this provision is to assure that a payment be made regardless of the requirement for repayment of development and construction costs.

Term Limitations

This same commenter felt that § 531.1(h) should indicate what showing must be made to justify a longer term, including a description of the relationship between capital and income which is necessary to receive approval for a seven year contract.

Response: The Commission disagrees. Each situation is unique because in each, location of the gaming operation is the most important factor.

Two commenters urged that § 531.1(h) indicate when the term of a management contract begins for purposes of calculating the term limit. One commenter suggested that the time be counted from the opening of the gaming facility.

Response: The Commission agrees that the regulations should clarify when the term of a management contract begins and has revised the rule to add a requirement that "the time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin."

One commenter urged that § 531.1(h) be expanded to add this additional sentence: "However, the assumption by the Chairman will be that such term is economically reasonable when so requested by the tribe and will be approved by the Chairman."

Response: The Commission disagrees; such changes would be contrary to the statute.

Percentage Fee Limitations

This same commenter urged that § 531.1(i)(2) be expanded to add the same additional sentence.

Response: The Commission disagrees; these changes would be contrary to the statute.

Another commenter urged that § 531.1(i) should be expanded to include the standards that will be used to judge whether a higher percentage fee is justified.

Response: The Commission disagrees. Each situation is unique because in each, location of the gaming operation is the most important factor.

A commenter asked if a management contract provides for a fixed fee, must that fee not be in excess of the percentages provided for in § 531.1(i)?

Response: The answer is no. The use of a percentage fee to compensate the management contractor is optional and the percentage fee limitations would not apply to other methods of compensation.

Licensing Disputes

One commenter asked whether § 531.1(k) should be revised to specifically address licensing disputes between the tribe and the management contractor involving third parties.

Response: The Commission believes not. It is up to the tribe in its governmental capacity to make licensing determinations.

Dispute Resolution

Another commenter argued that the regulations should not impose the dispute resolution requirements contained in § 531.1(k) since IGRA contains no such requirement.

Response: The Commission disagrees. The Commission was given the authority to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act." (25 U.S.C. 2706(c)(10)) The Commission believes it is in the best interest of Indian gaming to anticipate the need for, and deal with, the resolution of disputes in advance.

Assignments and Subcontracting

A commenter urged that § 531.1(1) be changed to limit the assignment provisions to class II and previously approved class III contracts and subcontracting provisions relating only to gaming activities.

Response: The Commission disagrees. It believes that all management contracts not previously approved by the Secretary should indicate whether and to what extent contract assignments and subcontracting are permissible.

This same commenter questioned the Commission's authority to require approval of assignments and subcontracts.

Response: Any contract that requires the approval of the Chairman that is modified by assignment or subcontract, must have that modification approved.

Compact Requirements

A commenter urged that a new subsection, Terms and conditions required by compact, should be added to § 531.1 to require that the management contract shall include all provisions required to be included in such contracts by the governing tribal/state gaming compact.

Response: The Commission disagrees. The Commission was not given oversight over the tribal-state compacting process. That was left to the tribes and the states.

Effective Date

Another commenter suggested that the following language be added to § 531.1:

"(n) Effective Date. State that the contract shall not become effective unless and until the Chairman approves it, date of signature of the parties notwithstanding."

The commenter pointed out that without such a statement, a contract is normally understood to be effective upon execution (i.e., signature of the parties). Since the regulations require "after-the-fact" approval, this provision clarifies when the contractor may begin work.

Response: The Commission agrees and has added the suggested language to § 531.1 as subparagraph (n).

Long-Term Leases

One commenter asked if it is intended by § 531.2, Prohibited Provisions, that Tribes will be unable to enter into long term leases that exceed the 5–7 year time frame.

Response: The simple answer is no. However, the Commission wishes to point out that a lease cannot authorize or permit the management of a gaming operation; i.e., one cannot manage a gaming operation through a lease.

Prohibited Provisions

One commenter suggested that the Commission consider deleting § 531.2 because it merely reiterates what is already set forth in the statute.

Response: The Commission disagrees. This section is included to provide a complete reference, without having to refer to the IGRA.

Part 533—Approval of Management Contracts

General

One commenter urged that the regulations "include a provision identifying a clear and specific means of endowing a contract with approval, such as written endorsement by the Chairman * * *" and "recite that no other means or act by the Commission will constitute or be construed to constitute approval."

Response: The Commission agrees and has included a new provision in § 533.1(b) which provides "Contract approval will be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid."

The same commenter argued that the regulations should provide that contract approvals by the Chairman are prospective in application only.

Response: The Commission disagrees. The Supreme Court has recognized the authority of the government to retroactively approve agreements between Indians and non-Indians. *Lykins v. McGrath,* 184 U.S. 169 (1902). There is no reason for the Commission to restrict the Chairman's authority. In most, if not all cases, however, contract approvals will be prospective only.

Another commenter opined that the regulations should require that the contracts provide "that the contractor will not interfere with or attempt to unduly influence internal affairs or governmental decisions of the tribe."

Response: The Commission does not believe that such a regulatory provision is necessary. Unduly interfering with or influencing tribal governmental decisions relating to gaming is a basis for disapproving a management contract. 25 U.S.C. 2711(e)(2).

Contracts Approved by the Secretary

One commenter argued that § 533.1 should be modified to provide that contracts approved by the Secretary remain effective.

Response: The Commission has added § 533.1(c) which provides "Contracts approved by the Secretary remain effective until approved or disapproved by the Chairman."

Failure to Submit

The Commission has added language to § 533.2(a) which provides that the Chairman may deem a contract disapproved if a tribe or management contractor fail to submit a contract previously approved by the Secretary within sixty (60) days of the Chairman's request.

Evidence of Tribal Authority

One commenter suggested that the requirement in § 533.3(b) is unnecessary in light of § 533.3(c) and should be eliminated.

Response: The Commission disagrees. Section 533.3(b) requires the tribal chairman to set forth in writing the identity and authority of the tribal official who is acting for the tribe concerning the management contract; § 533.3(c) requires the submission of the tribal documents providing and delegating such authority.

Parties to the Contract

Another commenter suggested that § 533.3(d) be changed to limit its application to class II contracts and to class III contracts previously approved by BIA.

Response: The Commission disagrees. The Commission needs to know the identity of all parties to a contract.

Background Investigations for Class III

One commenter argued that the Commission's interpretation that management contracts concerning class III gaming are subject to the same background investigation requirements as class II is erroneous and will result in needless repetition of effort and expense for tribes. Therefore, the regulations should be changed to clarify that § 533.3(d) and § 533.6 do not apply to class III gaming.

Response: The Commission has modified the background investigation requirements but disagrees as to specific changes recommended. Section 533.3(d) has been revised to require only the information identified in § 537.1(b)(1)(i) for contracts covering class III gaming. Section 533.6 has been revised to require only that the requirements of § 533.6(c) be met for contracts covering class III gaming. See also discussion captioned "Commission's role in class III" above.

Business Plan or Financial Statements

One commenter argued that § 533.3(e), which requires the submission of a business plan or financial statements, should be eliminated because it is unauthorized by IGRA, unnecessary and overbroad.

Response: The Commission disagrees. The information is needed for the Chairman and the Commission to make the judgments required under the IGRA.

One commenter asked whether § 533.3(e)(1), which requires a three year business plan for new contracts, applies to operations that have been in existence for many years and are now engaging new contractors.

Response: The Commission has added § 533.3(e)(3) which requires both a business plan and financial statements for new contracts for existing operations.

Another commenter stated that § 533.3(e)(1) is vague and should be expanded to clarify the information the Commission wants included in the 3 year business plan regarding the gaming business.

Response: The Commission agrees and has revised the provision to include the requirements enumerated in the preamble to the proposed regulations.

One commenter said that the business plan submitted under § 533.3(e)(1) should be required to cover the same period of time as the term of the proposed contract.

Response: The Commission disagrees. Plans and projections covering a period beyond three years would not be sufficiently useful.

One commenter asked the Commission to consider removing from § 533.3(e)(2) the final proviso "to the extent that such data exists."

Response: The Commission agrees and has made the suggested revision.

Term Limit Justification

The same commenter asked that the Commission consider modifying § 533.3(f) to read "If applicable, a justification, consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years, *but not exceeding seven (7) years.*"

Response: The Commission agrees and has made the suggested revision.

Fee Percentage Justification

This same commenter also asked the Commission to consider modifying § 533.3(g) to read "If applicable, a justification, consistent with the provisions of § 531.1(i), for a fee in excess of thirty (30) percent, *but not exceeding forty (40) percent.*"

Response: The Commission agrees and has made the requested revision.

Temporary Approval

One commenter asked if § 533.4 should be changed to provide for temporary approvals.

Response: The Commission believes that temporary approvals would not be appropriate.

Approval Time Limits

The same commenter asked whether the time frames for the approval process in § 533.4 should be shortened and whether the approval process should distinguish between an ongoing and a proposed casino.

Response: The Commission notes that the time frames provided are statutory and that the IGRA does not provide different requirements for ongoing versus proposed casinos.

Right to Bring Action

This same commenter argues that the right to bring an action to compel the Chairman to act provided in § 533.4(b) is without a remedy.

Response: The Commission disagrees. Compelling the Chairman to approve or disapprove a contract is the remedy.

Another commenter argues that both the tribe and the management contractor should be allowed to bring legal action to compel action on a contract under § 533.4(b).

Response: The Commission disagrees. The IGRA only authorizes a tribe to file suit in federal district court to compel the Chairman to approve or disapprove a management contract.

Retroactive Application of the Regulations

One commenter suggested that the retroactive application of the regulations provided in § 533.5 is most unwise because it has a chilling effect on management companies interested in investing in Indian gaming.

Response: The Commission notes that this provision is required by the IGRA.

Approval of Previously Approved Contracts

One commenter asked whether § 533.5 should be changed because it permits a tribe to void a management contract simply by refusing to modify an existing management contract to bring it into compliance with the rules. The commenter suggested that if so, it should provide for an "automatic" modification of management contract terms to bring them into compliance with the regulations or by providing for mandatory arbitration to resolve contract disputes.

Another commenter urged that § 533.5 be revised to provide for an alternative dispute resolution mechanism allowing an unbiased third party to facilitate the negotiation of existing management contracts to permit them to be in compliance with current law.

Yet another commenter suggested that § 533.5(b) be revised to prevent a tribe from failing to respond to a request for modification and thereby letting the contract become void. This commenter urged that if so, previously approved pre 1988 contracts should require mandatory binding arbitration after the passage of the 180 day time period.

Still another commenter argued that § 533.5(b) should be changed to add:

> "provided, however, that in situations where the Chairman is reviewing a management contract which has been approved by the Secretary, he may waive any of the requirements if the Chairman determines that a Tribe is refusing to bargain in good faith in order to terminate or void an existing contract."

Response: The Commission agrees that § 533.5 should be revised to address the problem identified by the commenter but does not agree with the solutions proposed. Instead, § 533.5(b) has been revised and now reads as follows:

If a tribe and a management contractor fail to modify a management contract within the time provided, the Chairman may:

(1) Disapprove the management contract, or

(2) Approve the management contract subject to the required modifications if:

(i) The modifications all benefit the tribe,

(ii) The modifications are required to bring the contract into statutory compliance, and

(iii) The modifications are all agreed to by the management contractor.

The Commission has also added the management contractor to § 533.2 so that the tribe or the management contractor can submit the required information.

Approval Requirement

One commenter suggested that § 533.6 be changed from "may approve" to "shall approve." A second commenter said the language of § 533.6 should be changed to provide that the Chairman "shall approve the contract unless" he determines that it meets one of the conditions listed.

Response: The Commission has revised § 533.6 to track the statute.

Compact Provisions

One commenter suggested that § 533.6 be expanded to enable the Chairman to disapprove a contract for failure to comply with tribal-state compact requirements. Another commenter argued that § 533.6 should provide for disapproval of management contracts whose provisions are not consistent with, or are contrary to, the provisions of the tribe's class III gaming compact.

This same commenter also suggested that § 533.6 provide that where a compact specifically requires that certain provisions be included in a management contract, the Commission should not approve contracts which do not contain them.

Response: The Commission disagrees. The statute and the regulations govern the review and approval of management contracts, not the terms of the compacts. Furthermore, the Commission was not given the authority to enforce tribal-state compacts. That was left to the tribes and the states.

Another commenter suggested that § 533.6 be expanded to include "knowingly or willfully providing materially false statements to a state or agency of the state with responsibility for Indian gaming oversight."

Response: The Commission disagrees; as previously noted, the Commission was not given an oversight role over the tribal-state compacting process.

Gaming Offenses

One commenter suggested that it should be made clear that "gaming offense" under § 533.6(b)(2) includes misdemeanor convictions.

Response: The Commission agrees and has modified the provision, now in § 533.6(b)(1)(ii), accordingly. The regulation now reads "has been convicted of any felony or any misdemeanor gaming offense."

Void Agreements

A commenter suggested that § 533.7, which provides that management contracts not approved by the Chairman are void, is unreasonable with respect to contracts that have been approved by the Secretary.

Response: The Commission has revised § 533.7 to exclude contracts approved by the Secretary which remain valid until disapproved by the Chairman.

One commenter argued that § 533.7 should be limited to class II contracts because the Commission has no authority over class III investors.

Response: The Commission disagrees; the Commission is charged with reviewing and approving class III contracts and therefore has an interest in the parties to the contract.

Part 535—Post-Approval Procedures

General

One commenter suggested that part 535 be modified to distinguish between a simple modification and a new contract. This same commenter felt that part 535 should be modified to treat assignments as new contracts, not modifications of existing contracts.

Response: The Commission believes the suggested change is unnecessary. Both new contracts and modifications are subject to the same degree of scrutiny and review. Furthermore, it's up to the parties to decide whether and when to modify an existing contract or to enter into a new contract.

Background Investigations

One commenter suggested that § 535.1, to the extent that it applies to background investigations, be limited to class II contracts and to modifications to class III contracts previously approved by the Secretary.

Response: The Commission disagrees that its authority is limited in the manner suggested by the commenter. The Commission has, however, revised § 535.1(c)(4) to provide as follows:

> (4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:
>
> (i) The information required under § 537.1(b)(1) for class II gaming contracts and § 537.1(b)(1)(i) for class III gaming contracts; or
>
> (ii) The dates on which the information was previously submitted.

Evidence of Tribal Authority

One commenter suggested that the requirement in § 535.1(c)(2) is unnecessary given the requirement in § 535.1(c)(3).

Response: The Commission disagrees. Section 535.1(c)(2) requires the tribal chairman to set forth in writing the identity and authority of the tribal official who is acting for the tribe concerning the management contract; § 535.1(c)(3) requires the submission of the tribal documents providing and delegating such authority.

Term Limitation

Another commenter urged that § 535.1(c)(5) should be changed to include a maximum term limit of seven (7) years.

Response: The Commission agrees and has changed the provision to read as follows:

> (5) If applicable, a justification consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years, but not exceeding seven (7) years[.]

Correction

Several commenters pointed out that § 535.1(c)(6) should be changed to say "percent" rather than "days."

Response: The Commission agrees and has made the change.

Percentage Fee Limitation

One commenter suggested that § 535.1(c)(6) be changed to include a maximum management fee of forty percent (40%).

Response: The Commission agrees and has added the phrase, "but not exceeding forty (40) percent," to the language of this paragraph.

Background Information

One commenter suggested that §§ 535.1(c)(4), 535.1(d), and 535.1(e) should be rewritten to limit their application to class II contracts.

Response: The Commission has revised § 535.1(c)(4) to reflect the elimination of certain background investigation requirements for class III contracts. The other two sections have not been changed in the manner suggested.

Another commenter, noting that the proposed rule provided for a 30 day appeal period when a modification is disapproved, suggested that the proposed rule be clarified to remove any ambiguity as to when the 30 day appeal period begins.

Response: The Commission agrees and has revised § 535.1(d)(2) to include notification pursuant to the service provisions of part 519 of this chapter.

Approval

One commenter suggested that § 535.1(e) be changed from "may approve" to "shall approve."

Response: The Commission has considered the question raised and revised § 535.1(e).

Compact Requirements

One commenter argued that § 535.1(e)(2) should be expanded to enable the Chairman to disapprove a contract for failure to comply with tribal-state compacting requirements.

Response: The Commission disagrees for the reasons already discussed.

Assignment Approval

One commenter argued that § 535.2, to the extent that it applies to background investigations, should be limited to class II contracts and to modifications to class III contracts previously approved by the Secretary.

Response: The Commission disagrees. The Commission is interested in the identity of the parties to all contracts for gaming, whether or not a background investigation is required.

Post-Approval Noncompliance

One commenter agreed that § 535.3 is too broad in that it refers to "any action or condition that violates the standards contained in this chapter," where "this chapter" encompasses all the Commission's regulations. The section should be amended to refer only to violations of section 2711 or the specific sections of the regulations implementing section 2711.

Response: The Commission agrees and has revised § 535.3 by substituting parts 531, 533, 535, and 537 for "this chapter."

Hearings and Appeals

One commenter argued that both § 535.3 and § 539.2 should be changed to conform to IGRA and provide for a hearing (including oral and written presentations) prior to a determination to modify or void a contract. The same commenter also recommended that the Commission eliminate any administrative appeal from decisions on management contracts.

Response: The Commission disagrees. Under IGRA, notice and hearing are required only under section 2711(f), which deals with the Chairman's reconsideration of his/her prior approval of management contracts. This section applies only to the contracts that have been approved by the Chairman. In addition, under IGRA, decisions on management contracts are subject to administrative appeal. New contracts are covered under section 2705(a)(4) (referring to Commission appeals of Chairman's approval of management contracts in sections 2710(d)(9) and 2711 and existing contracts through section 2712(a)(2) (which incorporates the process of section 2711). Section 535.3, however, has been revised to provide a hearing prior to a determination to modify or void a contract.

Part 537—Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract

General

One commenter argued that "* * * some mechanism, such as an NCIC check, is needed to provide provisional approvals of management contractors within thirty days of submission."

Response: The Commission disagrees. IGRA clearly requires advance approvals of management contractors.

One commenter suggested that the "regulations create a mechanism under which the Commission could review the background investigation systems mandated by Tribal-State compacts, and—if in the Commission's view those systems adequately protect the Tribes and the public—the Commission could accept the results of the compact-required systems as sufficient for the Commission's purposes."

Response: The Chairman or the Commission has the responsibility to conduct background investigations and to make suitability determinations based on those background investigations for class II gaming only. Furthermore, it would be inconsistent with this responsibility to delegate this task to someone outside the Commission.

One commenter suggested that the rule regarding background investigations require the Commission to employ Indian preference, use the most cost-effective contractor available, and provide consultation with the tribe.

Response: The Commission agrees as to the desirability of these suggested actions but does not believe these are appropriate matters to be addressed by the regulations.

One commenter said that the Commission should bear the cost of the background investigation in light of the fees it receives.

Response: The Commission disagrees; this would be contrary to the IGRA.

One commenter questioned the Commission's decision with respect to class III gaming to "rely to the maximum extent possible on background investigations conducted by a tribe or state pursuant to a tribal-state compact." In the view of this commenter, independent government background investigations are essential to ensure that uniform and adequate standards are met.

Response: Although it will not be conducting background investigations for class III gaming, the Commission believes that it may rely on the work of others in conducting background investigations and intends to do so for class II gaming. The Commission believes that such an approach can save time and money. The Commission, however, remains responsible for the quality of the work performed and for all determinations based on such information.

Scope of Coverage

One commenter suggested that in light of the express provisions of section 2710 of the IGRA, part 537 should be revised to limit the requirements for background investigations of persons with a financial interest in, or having management responsibility for, a management contract to class II contracts and to existing class III contracts previously approved by the Secretary.

Another commenter argued that part 537 should be limited to class II background investigations because the IGRA does not authorize the Commission to perform background investigations of class III management contractors. According to this commenter, section 2710(d)(3)(C) and (9) give this authority to the tribes and states.

Yet another commenter felt that part 537 should be rewritten to exclude class III contracts from its application.

Conversely, one commenter said the Commission had reached an appropriate conclusion in determining that under part 537 the same standards that apply to class II background investigations apply to approval of class III management contracts.

Response: The Commission has considered these comments and revised the regulations to require background information and investigations for only class II contracts and the identifying information specified in § 537.1(b)(1)(i) for class III contracts. (See discussion above under "Commission's role in class III gaming.")

One commenter suggested that part 537 be revised to require background investigations of persons having an ownership interest of 5 percent.

Response: The Commission has revised the regulations to require background investigations on the ten (10) owners with the largest interests in an entity. In many if not most cases this should cover 5% owners.

Background Information

The same commenter argued that the Commission should require biographical, residence and employment history for affected persons since the age of 18.

Response: The Commission agrees that additional background information would be useful and has revised the regulations to require all the specified information for the previous ten (10) years; the city, state and country of residence from age eighteen (18) forward; and, personal references at each residence for the most recent five (5) years.

Conduct of Background Investigations

Another commenter suggested that in order to provide greater flexibility, proposed § 537.1 should be modified to indicate "The Chairman shall conduct or cause to be conducted a background investigation * * *."

Response: The Commission agrees and has made the suggested change.

Approval Time Limits

One commenter suggested that, for those contracts where background investigations under § 537.1 are completed by the tribes or the states, the Commission should provide a shorter approval deadline.

Response: The Commission disagrees. It is not possible for the Commission to commit to a time limitation without knowing the nature and extent of the information it may be receiving from the tribes or the states.

Coverage

One commenter observed that § 537.1 provides for background investigations of certain persons with indirect financial interests and persons with less than a 10 percent interest in a corporation. The commenter objects, arguing that this approach subjects to investigation more persons than IGRA intended.

Another commenter asked if § 537.1(a) is overly broad by requiring background investigations of the top ten (10) shareholders. This commenter recommended that the provision be revised to conform to the statutory requirements.

Response: The Commission agrees that the proposed regulation extends the requirements of section 2711(a)(1)(A) of the IGRA; this was intentional and within the authority of the Commission (25 U.S.C. 2706(b)(3)).

Overlapping coverage

Another commenter suggested that § 537.1(a)(1), which requires the Commission to perform a background investigation of each person with management responsibility for a management contract, be deleted because the tribe is already required to perform a background investigation.

Response: The Commission disagrees. The Commission is responsible for conducting the background investigations and making suitability determinations in connection with class II management contractors. As previously noted, the Commission will use the work of others to the extent it can but will not delegate the authority to make suitability determinations.

Coverage under definition regulations

One commenter asked whether § 537.1(a)(3) should be changed to clarify this requirement in light of the definition of "person having a direct or indirect financial interest" in § 502.17 of the definition regulations.

Another asked whether § 537.1(a)(3) should be deleted and § 537.1(a) should be rewritten to follow the language of the Act and to eliminate any inconsistencies with § 502.17 of the definition regulations.

Yet another commenter observed that § 537.1(a) requires the Chairman to conduct background investigations on a group of individuals which may be different than the group designated under the statutory language or the Commission's definition of "persons having a direct or indirect financial interest in a management contract."

Under the proposed regulation not all partners or trustees would be investigated but persons with less than 10 percent interests in a company could be investigated. The commenter suggests that both of these results are contrary to the IGRA.

Response: The Commission acknowledges that the set of persons for which background investigations are required and for which the Chairman must make suitability determinations under the regulations is different from the set of persons identified in the definition regulations under § 502.17. The Commission believes this is both appropriate and authorized under the IGRA.

The Commission does not believe that it would be appropriate to subject all partners of a partnership and all beneficiaries of a trust with interests in a management contract to background investigations and suitability determinations while at the same time ignoring persons with a 9 percent interest in a management contract. Therefore, the Commission has exercised its authority and judgement and used different criteria for selecting persons to be subjected to background investigations and suitability determinations.

The Commission is requiring management contractors to identify and provide information about all entities with an interest in the management contract and to identify the ten (10) natural persons who have the largest financial interest in those entities. While it is conceivable that this could result in identifying hundreds of individuals with an interest in the management contract, the Commission does not believe as a practical matter that this will occur frequently or that it will create an unreasonable burden.

Once all the individuals are identified, the management contractor is to identify the ten (10) persons with the largest financial interest in the management contract and furnish complete background information on these persons. It is these people who will be subjected to background investigations and for whom the Chairman must make suitability determinations.

Disclosure Requirements

One commenter suggested that § 537.1(b) require disclosure of ownership interests in businesses other than those involving Indian tribes and gaming.

Response: The Commission disagrees. The financial statements being submitted will provide the same information sought through the suggested change.

One commenter suggested that § 537.1(b)(1)(iii) should be changed to require only the applicant's current driver's license number.

Response: The Commission agrees and has revised § 537.1(b)(1)(ii) accordingly.

One commenter suggested that § 537.1(b)(1)(ix) and § 537.1(b)(1)(x) should be expanded to add "pleas of guilty or nolo contendere for which no conviction resulted under state law."

Response: The Commission agrees and has revised the regulations to add § 537.1(b)(1)(xii):

> (F)or each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to subparagraph (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

Privacy Notice

A commenter suggested that § 537.1(b)(4) should be modified replacing the term "Indian gaming" with the group of individuals from whom this information will be sought.

Response: The Commission agrees and "Indian gaming" has been replaced by the phrase "individuals with a financial interest in, or having management responsibility for, a management contract."

Notice Regarding False Statements

Another commenter suggested that § 537.1(b)(5) be revised to limit its application to those who "knowingly and willfully" provide false statements, and for greater consistency with 25 U.S.C. 2711(e)(1)(C).

Response: The Commission notes that the statute cited in § 537.1(b)(5) contains "knowingly and willfully." The Commission has added this phrase to the regulation as well.

A commenter suggested that § 537.1(c) should require entities and individuals to respond to questions put by the Chairman and should provide for penalties for false statements.

Response: The Commission agrees and has made the recommended change.

Clarification

One commenter suggested that § 537.1(c)(1) be modified by separating the list of persons from whom the information is required from the paragraph which identifies what the required information shall be.

Response: The Commission agrees and has revised both § 537.1(a) and § 537.1(c) to clarify the requirements.

Multiple Sites or Operations

One commenter asked whether the fee structure under § 537.3 will be applicable to multi-site licensing requiring the payment of a separate fee for each gaming location which a management contractor seeks to operate.

Another commenter asked whether § 537.3 should be changed to provide a single fee for an investigation of a management contractor regardless of the number of operations involved.

(Readers please note that both commenters erroneously interpreted this provision as providing for the amount of the fee rather than the amount of the deposit.)

Response: A separate deposit will be required for each location and operation that a management contractor seeks to operate. However, investigative work will not be duplicated and investigative costs will be reduced.

Guarantee Bonds

One commenter opined that the bonds required by § 537.3 appear excessive. This commenter asked the Commission to explain the rationale for the size of the bonds.

Response: The purpose of the bonds is to assure that the Commission gets reimbursed for costs incurred in investigating persons or entities with a financial interest in, or having management responsibility for, a management contract. The bonds must be large enough to ensure that the investigative work is not impeded and that the investigation can be completed as quickly as possible. It is the Commission's view that the amount of the bonds is not large considering the magnitude of the responsibility the management contractor is seeking to acquire.

Coverage

One commenter suggested that § 537.3 should be limited to class II because the IRGA does not authorize the Commission to charge fees to class III management contractors for Commission background investigations.

Response: The Commission has revised its requirements and will be conducting background investigations for class II only.

Fees for Background Investigations

The same commenter argues that the fee arrangement proposed in § 537.3 for background investigations fails to provide adequate justification for the fees proposed and fails to provide adequate procedures regarding the use of the fees and possible return of the bonds.

Response: Proposed § 537.3 dealt with the amount of the bonds to be posted by the parties being investigated. The amount of the fees to be charged will be determined by the cost of the required background investigations. Each investigation will cost a different amount and the range of costs and fees is likely to be very broad. The cost of each background investigation cannot be justified in advance; it can only be determined and explained when the investigation is done. The bonds will be returned when all fees and expenses have been paid.

One commenter suggested that the requirements of § 537.3 need to be rewritten to better explain who must pay the fee. This commenter further suggested that fees for background investigations should be limited to the individual fee.

Response: The fees for background investigations must be paid by the management contractor. Both the entity and the individuals must be investigated and consequently a separate fee is required for each.

Conduct of Background Investigations

One commenter stated that the regulations should be clarified to specify who is responsible for conducting the background investigations referenced in § 537.3.

Response: The regulations as proposed make clear that the Chairman and the Commission are responsible for conducting or causing to be conducted background investigations. They will use both staff and the services of others to discharge their responsibilities.

Failure to Pay Costs

One commenter suggested that § 537.3(c) should be modified by adding a proviso which specifies the period of time allowable before failure to pay unpaid costs will result in the termination of the investigation, and which clarifies the status of the application once the investigation is terminated.

Response: The Commission agrees and has revised and expanded § 537.3 as follows:

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the remaining amount of the available bond, letter of credit, or deposit.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of the management contract.

Part 539—Appeals

Appeal rights

One commenter argued that § 539.2 is too broad and would give appeal rights to management company competitors, states and local entities, none of which are proper parties to an appeal. According to this commenter, "(s)tanding to bring an appeal should be limited to the tribe and the management contractor."

Response: The Commission agrees and has revised the regulations to confer appeal rights only on the parties to the management contract.

One commenter argued that the appeal process under § 539.2 provides a right without a remedy because an appeal of a contract disapproval to the Commission is unlikely to have any effect in changing the ultimate decision. In the view of this commenter the proper forum for an appeal is the federal court system.

Response: The Commission disagrees. The appeals procedure adopted by the Commission is consistent with the provisions of IGRA. *See* 25 U.S.C. 2705 and 25 U.S.C. 2714 as they relate to 25 U.S.C. 2711.

Filing Requirement

Another commenter suggested that § 539.2 should be changed to omit the 45 day filing requirement if that period expires earlier than the 30 day filing period.

Response: The Commission agrees and has changed the provision to require filing within thirty (30) days of the Chairman's determination served pursuant to part 519 of this chapter.

Commission Decision

The same commenter suggested that to ensure a timely decision that may be appealed, the last sentence of § 539.2 should be omitted and replaced with the following:

Within thirty (30) days after receipt of the appeal, the Commission shall render a decision, unless the appellant agrees to allow the Commission additional time to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute the final decision of the Commission.

Response: The Commission generally agrees with this comment and has revised § 539.2 to ensure the right to a timely appeal.

Administrative Appeals

One commenter suggested that § 539.2 be changed to eliminate an administrative appeal from decisions of the Chairman on modifications to a management contract that the Chairman has already approved.

Response: The Commission disagrees. Actions under § 535.3 are actions of the Chairman. Due process and 25 U.S.C. 2705 require a review of this decision by the full Commission. Such a review would constitute a final agency action appealable to the appropriate federal district court under 25 U.S.C. 2714. Hence, an appeal of the Chairman's action to the full Commission is appropriate and necessary.

Right to Appeal

Another commenter suggested that § 539.2 be revised to provide a right of appeal only upon disapproval of a management contract. This commenter also suggested that the right to appeal should be limited to the parties to the management contract which has been disapproved.

Response: The Commission disagrees that the appeals should be limited to disapprovals of management contracts. The Commission agrees, however, that appeals should be limited to the parties to the contract and have revised the regulations accordingly.

Time for Filing an Appeal

This same commenter also argued that the time for filing an appeal under § 539.2 should be 30 days from receipt of the Chairman's decision pursuant to the service requirements stated in proposed § 519.3 of this chapter.

Response: The Commission agrees that the time for filing an appeal should run pursuant to the service requirements (not necessarily receipt) and has revised the regulation accordingly.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. Under the Executive Order, a rule is a major rule if: (1) Its annual effect on the economy will be $100 million or more; (2) it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) there will be significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. If a rule is major, the agency must conduct a regulatory impact analysis. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market. No commenter supplied data that contradicted the Commission's tentative conclusion under E.O. 12291.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If so, an agency must prepare a regulatory flexibility analysis that explores less burdensome alternatives. If not, an agency must certify that the rule will not have such an impact. No commenter supplied data that contradicted the Commission's tentative conclusion under the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0004. The approval expires on October 31, 1995, at which time the Commission will evaluate the collection requirements and seek further approval from OMB.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in §§ 2(a) and 2(b)(2) of Executive Order 12278, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,
Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 531, 533, 535, 537 and 539:

Gaming, Indian lands.

Title 25, Chapter III, of the Code of Federal Regulations is amended by adding parts 531, 533, 535, 537 and 539 to read as follows:

PART 531—CONTENT OF MANAGEMENT CONTRACTS

Sec.
531.1 Required provisions.
531.2 Prohibited provisions.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 531.1 Required provisions.

A management contract previously approved by the Secretary of the Interior shall conform to the requirements contained in paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section and a management contract not previously approved by the Secretary shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of any increased public safety services; and

(16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

§ 531.2 Prohibited provisions.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

Sec.
533.1 Requirement for review and approval.
533.2 Time for submitting management contracts.
533.3 Submission of management contract for approval.
533.4 Action by the Chairman.
533.5 Notice of noncompliance.
533.6 Approval.
533.7 Void agreements.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 533.1 Requirement for review and approval.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity.

(a) Such contract shall become effective upon approval by the Chairman.

(b) Contract approval shall be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid.

(c) Contracts approved by the Secretary remain effective until approved or disapproved by the Chairman.

§ 533.2 Time for submitting management contracts.

A tribe or a management contractor shall submit a management contract to the Chairman for review as follows:

(a) Contracts approved by the Secretary, within sixty (60) days after a request by the Chairman. If a tribe or a management contractor fail to submit all items under § 533.3 of this part within 60 days, the Chairman may deem the contract disapproved and shall notify the parties of their rights to appeal under part 539 of this chapter.

(b) All other contracts, upon execution.

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(3)(i) If the contract has been approved by the Secretary, terms that meet the requirements of §§ 531.1(c), (d), (e), (f), (g), (h), (i), and (j) and § 531.2 of this chapter; or

(ii) Terms that meet the requirements of part 531 of this chapter.

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§ 537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under § 537.1(b)(1) of this chapter for Class II gaming contracts and § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e) (1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For existing contracts, income statements and sources and uses of funds statements for the previous three (3) years; or

(3) For new contracts for existing operations, a three (3) year business plan which sets forth the parties goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

§ 533.4 Action by the Chairman.

(a) The Chairman shall provide notice of noncompliance under § 533.5 of this part, or shall approve or disapprove a management contract applying the standards contained in § 533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not provide notice of noncompliance or approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not provided notice of noncompliance or approved or disapproved the contract under this part.

§ 533.5 Notice of noncompliance.

(a) If a management contract previously approved by the Secretary fails to meet the requirements of this part, the Chairman shall notify the tribe and management contractor, in writing, of the specific areas of noncompliance.

(1) The Chairman shall allow the tribe and the management contractor 120 days from receipt of such notice to modify the contract.

(2) If the Secretary approved a management contract before October 17, 1988, the Chairman shall allow the tribe and the management contractor 180 days from receipt of such notification to modify the contract.

(b) If a tribe and a management contractor fail to modify a management contract within the time provided, the Chairman may:

(1) Disapprove the management contract, or

(2) Approve the management contract subject to the required modifications if:

(i) All modifications benefit the tribe;

(ii) The modifications are required to bring the contract into statutory compliance; and

(iii) The modifications are all agreed to by the management contractor.

§ 533.6 Approval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and § 533.3 of this part;

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman in accordance with the requirements of this part, are void.

PART 535—POST-APPROVAL PROCEDURES

Sec.
535.1 Modifications.
535.2 Assignments.
535.3 Post-approval noncompliance.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 535.1 Modifications.

(a) Subject to the Chairman's approval, a tribe may enter into a modification of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit a modification to the Chairman upon its execution.

(c) A tribe shall include in any request for approval of a modification under this part:

(1) A modification containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the modification;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(i) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts or § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(ii) The dates on which the information was previously submitted;

(5) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) if applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d) For modifications which do not require a background investigation under part 537 of this chapter, the Chairman shall have thirty (30) days from receipt to approve or disapprove a modification, or to notify the parties that an additional thirty (30) days is required to reach a decision.

(1) When a modification requires a background investigation under part 537 of this chapter, the Chairman shall approve or disapprove such modification as soon as practicable but in no event later than 180 days after the Chairman receives it;

(2) If the Chairman does not approve or disapprove, he shall respond in accordance with the service provisions of part 519 of this chapter noting that no action has been taken on the proposed modification. The request shall therefore be deemed disapproved and the parties shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e) (1) The Chairman may approve a modification to a management contract if the modification meets the submission requirements of paragraph (c) of this section.

(2) The Chairman shall disapprove a modification of a management contract for class II gaming if he or she determines that the conditions contained in § 533.6(b) of this chapter apply.

(3) The Chairman may disapprove a modification of a management contract for class III gaming if he or she

determines that the conditions contained in § 533.6(c) of this chapter apply.

(f) Modifications that have not been approved by the Chairman in accordance with the requirements of this part are void.

§ 535.2 Assignments.

Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. A tribe or a management contractor shall submit such assignment to the Chairman upon execution. The Chairman shall approve or disapprove an assignment applying the standards of, and within the time provided by §§ 535.1(d) and 535.1(e) of this part.

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, and 537 of this chapter, the Chairman may require modifications of, or may void, a management contract approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification proceedings by serving the parties, specifying the grounds for modification. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make his decision on the basis of the developed record and notify the parties of his/her decision and of their right to appeal.

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

Sec.

537.1 Applications for approval.
537.2 Submission of background information.
537.3 Fees for background investigations.
537.4 Determinations.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;

(4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) *Responses to Questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

> Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.
>
> The disclosure of a persons' Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result

in errors in processing the information provided.

(5) *Notice regarding false statements.* Each person required to submit information under this section shall sign and submit the following statement:

> A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) *List of individuals.* (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership; and

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation.

(2) *Required information.* (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;

(x) Complete financial statements for the previous three (3) fiscal years; and

(xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) *Responses to questions.* Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Notice regarding false statements.* Each entity required to submit information under this section shall sign and submit the following statement:

> A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

§ 537.2 Submission of background information.

A management contractor shall submit the background information required in § 537.1 of this part:

(a) in sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and

(b) within ten (10) days of any proposed change in financial interest.

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract)—$10,000

(2) Each individual and entity with a financial interest in the contract—$5,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

§ 537.4 Determinations.

The Chairman shall determine whether the results of a background investigation preclude the Chairman from approving a management contract because of the individual disqualifying factors contained in § 533.6(b)(1) of this chapter. The Chairman shall promptly notify the tribe and management contractor if any findings preclude the Chairman from approving a management contract or a change in financial interest.

PART 539—APPEALS

Sec.
539.1 Scope of this part.
539.2 Appeals.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under this chapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed elsewhere in this chapter.

§ 539.2 Appeals.

A party may appeal the Chairman's disapproval of a management contract or modification under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. An appeal under this section shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute the final decision of the Commission.

[FR Doc. 93–1064 Filed 1–21–93; 8:45 am]

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25 CFR Parts 571, 573, 575, 577

RIN 3141–AA02

Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is publishing regulations to implement the compliance and enforcement provisions of the Indian Gaming Regulatory Act of 1988. The rule establishes procedures for monitoring and investigations, enforcement, civil fines, and appeals to the Commission.

EFFECTIVE DATE: This rule becomes effective on February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Neil Stoloff at 202–632–7003 ext. 35, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC, or the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published a final rule (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts).

On July 9, 1992 (57 FR 30584), the Commission proposed regulations to implement the Commission's authority to enforce federal and tribal gaming requirements. Those rules are being published in final form today. The Commission is publishing final rules separately regarding its review and approval of tribal gaming ordinances and resolutions under sections 2710 and 2712 of the Act, and its review and approval of management contracts under sections 2710(d)(9), 2711, and 2712 of the Act and 25 U.S.C. 81. The Commission published proposed rules regarding the Freedom of Information Act on November 24, 1992 (57 FR 55212). In the near future, the Commission will publish proposed rules regarding the National Environmental Policy Act and tribal self-regulation under section 2710(c) of the Act.

In the preamble to the proposed rule (57 FR 30584, July 9, 1992), the Commission provided a detailed discussion of the rule's provisions and invited the public to comment on both the basic approach of the regulations and any specific issues that commenters identified. Comments received and the Commission's responses to those comments are summarized below.

General Comments

One commenter asked that the Commission clarify the regulatory roles of the Commission, the states, and the tribes.

The IGRA classifies Indian gaming into class I, class II, and class III. Regulatory definitions of these terms can be found in 25 CFR part 502 (57 FR 12392, April 9, 1992). The tribes have exclusive jurisdiction over class I gaming. Class II gaming is regulated by the tribes and the Commission. Class III gaming is regulated by individual tribes and states under negotiated tribal-state compacts, with the Commission exercising a role that is limited mostly to its review, approval, and monitoring of management contracts and tribal ordinances related to gaming.

The Commission has added a new part 501, Purpose and Scope, that spells out the overlapping jurisdictions of a tribe, the Commission, and a state (when a tribal-state compact is in effect). Tribes may add their own requirements to Indian gaming so long as those requirements are consistent with and no less stringent than the IGRA, the Commission's regulations, or a compact for class III gaming.

A state official noted that class III tribal-state compacts may require that Indian gaming operations meet certain conditions, yet state officials have little authority on Indian lands to ensure that those conditions are met. According to this commenter, the Commission should address this situation directly in its rules because the Commission "may offer the only practical means of determining compliance with these compacts."

The Commission disagrees. Section 2710(d)(3)(C) of the IGRA authorizes a state to negotiate with a tribe over the allocation of criminal and civil jurisdiction over class III gaming on Indian lands, and to provide remedies in the compact for breach of contract. Section 2710(d)(7)(A) of the Act vests jurisdiction over compact disputes with the U.S. district courts.

One commenter suggested that the Commission establish "a formal mechanism whereby the Commission receives all notices of violations and complaints filed by the state or tribal regulatory bodies against Class II and III gaming establishments."

The Commission agrees that information relating to tribal and state enforcement of gaming requirements would help the Commission meet its responsibilities under the Act. These responsibilities include evaluating petitions for self-regulation, formulating an effective inspection scheme, and evaluating a respondent's history of violations under 25 CFR 575.4(c), among other things. Accordingly, the Commission has added a new paragraph (d) to § 571.7, which requires a gaming operation to maintain copies of all enforcement actions that the tribe or a state has taken against the operation, noting the final disposition of each case.

The same commenter questioned whether the regulations require class II and class III operations to submit "internal and accounting controls" to the Commission.

The Commission has elected not to require gaming operations to submit detailed descriptions of internal procedures. Under the IGRA, the tribe is the primary regulator of gaming on Indian lands, with the Commission playing an oversight role. As such, the tribes will ensure that adequate controls are in place to meet their obligations under the Act.

Part 571—Monitoring and Investigations

One commenter questioned whether under part 571, the Commission's representative would be authorized to take sworn statements from witnesses in class II and class III establishments.

The Commission does not intend to take sworn statements when conducting routine inspections. When sworn testimony is needed as part of a Commission investigation or other proceeding, the Commission will follow the procedures contained in § 571.11.

The same commenter suggested that part 571 should include a requirement that all records "be complete, accurate and legible and stored in some type of order."

The Commission believes that such a requirement is already embodied in § 571.7(a), which requires a gaming operation to keep records "sufficient to establish" information to which the Commission requires access.

This commenter also questioned whether part 571 as proposed would permit a class II operation to microfilm or fiche records, than destroy the originals.

Although it may be prudent to archive original records rather than destroy them, the Commission has not imposed such a requirement in these rules. An information storage system that provides information in a form that is retrievable and susceptible to audit should meet the requirements of § 571.7(a).

Definitions

Authorized Representative

One commenter suggested that the defined term *authorized representative* in proposed § 571.2 should be revised to read "Commission's authorized representative" to conform to usage elsewhere in the regulations (for example, §§ 571.5(a) and 571.6(a)).

The Commission agrees and has made this change.

Party

One commenter suggested that the definition of *party* in § 571.2 should be revised "to require that the tribe be a party to all proceedings initiated under the Act or regulations with respect to the tribe's gaming operation."

The Commission does not agree that a tribe should be required to be a party in all cases, but rather, that a tribe should have the right to participate as a party in proceedings involving a gaming operation located on lands over which the tribe has jurisdiction if the tribe is not already a named party. Accordingly, the Commission has inserted a new § 577.12(b) (regarding intervention) to provide a tribe with the unqualified right to intervene in cases where it is not already a named party.

Presiding Official

One commenter suggested that the definition of *presiding official* in § 571.2 should be revised to ensure that the presiding official will be "both objective and experienced in Indian gaming." Specifically, this commenter argued that the definition should spell out the criteria for determining whether a person is "qualified" to serve as a presiding official and to clarify whether the presiding official may be a member or employee of the Commission.

Another commenter, arguing along the same lines, suggested that the presiding official should be selected "in a manner that maintains his total independence of the influence of the Chairman." This commenter offered the following language to be added to the definition of "presiding official" in § 571.2: "The presiding official is to be appointed by the Secretary of the Interior from a list of available candidates previously prepared by the Secretary of the Interior and deemed by him to be independent of any influence from the Commission."

The Commission agrees with these commenters that the presiding official must be both objective and qualified. The Commission believes, however, that the definition of "presiding official" is adequate as proposed. Under that definition, the presiding official must be "qualified to conduct an administrative hearing" and must have "had no previous role in the prosecution of a matter over which he or she will preside." Beyond that, the Commission does not believe it is necessary to detail specific qualifications in the regulations. Any party may question the impartiality or other qualifications of a presiding official during a proceeding or in a subsequent court challenge.

The Commission does not agree, however, that experience in Indian gaming is a necessary qualification for presiding over an administrative hearing, or that a Commissioner or other employee of the Commission who otherwise meets the rule's definition of presiding official should be ineligible to serve in that capacity. It is the Commission that will decide appeals at the administrative level; the presiding official will assist the Commission by rendering a recommended decision. The Commission will rely on the presiding official to conduct a hearing in a manner that will provide due process to the parties and that will yield an administrative record on which a reviewing court can rely. The Commission believes that no additional requirements of "independence" are necessary.

Respondent

The Commission has revised the definition of respondent in § 571.2 to refer to a "person" rather than the owner or operator of a gaming operation. As discussed below, the Commission also added a new paragraph (b) to § 575.9 that requires civil fines to be paid by the person assessed; they may not be treated as an operating expense of a gaming operation. These changes ensure that innocent parties will not be penalized. Note that "person" is defined in § 571.2 to mean "an individual, Indian tribe, corporation, partnership, or other organization or entity."

Subpart B, Inspection of Books and Records

One commenter suggested that proposed subpart B should be revised to require that inspections "shall not be conducted in a manner that disrupts normal business operations unless the NIGC has probable cause to believe that the disruption is necessary in order to uncover violations of the IGRA or tribal laws or regulations within the jurisdiction of the NIGC."

The Commission intends to conduct inspections in a manner that does not unduly disrupt gaming operations. In general, the Commission intends to implement the IGRA and these regulations in a reasonable manner. It would be neither feasible nor meaningful, however, to attempt to spell out a standard of reasonableness throughout the regulations.

Access to Records

One commenter argued that § 571.6 should be revised to require that offsite records be identified to the Commission and that the Commission has the authority to inspect such records.

The Commission disagrees. Section 571.6(b), as proposed and as promulgated today, provides the Commission with adequate access to off-site records.

One commenter stated that § 571.6(b) should be revised to permit the inspection of off-site records at an agreed-upon time and place, rather than as "unilaterally dictated by the Commission's representative."

The Commission disagrees. Section 2706(b)(4) of the Act authorizes the Commission to "demand access to and inspect" all papers, books, and records. The Commission intends to implement this authority in a reasonable manner, but the Commission's access to records simply is not negotiable under the Act.

The same commenter suggested that the undefined terms "manager" and "employee" used in § 571.6 should be replaced by "primary management official." According to this commenter, the latter term is defined and, "more importantly, requests for access to records should be directed to one with access to the records and the authority to make them available."

The Commission agrees but does not believe that the primary management official is the only person who will be authorized to provide the Commission with access to records. The Commission has revised the regulations here and elsewhere to make the "gaming operation" the entity responsible for meeting regulatory requirements. It will be up to responsible officials of the operation to see that the operation meets the requirements of the Act and these regulations.

Record-keeping

One commenter stated that the Commission should provide more guidance regarding the required level of record-keeping. The commenter argued that, as proposed, § 571.7(b) would require a gaming operation to keep records of all paperwork on all transactions.

Section 571.7(a) requires records "sufficient to establish" the required information. The Commission does not believe that the extreme level of record-keeping described by the commenter is necessary to meet this regulatory standard.

One commenter suggested that proposed § 571.7(b) should be revised (apparently to be consistent with proposed paragraph (a)) to read: "The Commission may require a gaming operation *subject to regulation by the Commission* to submit statements, reports, * * *"

The Commission may impose regulatory requirements only upon a gaming operation that is "subject to regulation by the Commission." Therefore, the Commission has deleted this reference altogether from § 571.7.

Several commenters stated that the requirement of § 571.7(c) that a gaming operation maintain records for at least seven years is excessive. They recommended a shorter period, such as three years. Another commenter questioned whether it is reasonable to require in § 571.7(c) that records be maintained "for as long as their contents become material * * *" This commenter argued that, because an operator cannot know what records may become material, the Commission would be imposing a requirement for "perpetual storage."

The Commission proposed a minimum period of seven years for record-keeping because that is the longest period that a management contract may run under section 2711(b)(5) of the IGRA (and corresponding 25 CFR 531.1(h)); the Commission wanted to ensure that records would be maintained at least during the life of a management contract. Under that section of the Act, however, a management contract may run longer than five years only in extraordinary circumstances. Section 571.7(c), on the other hand, applies to all gaming operations. Therefore, the Commission has reduced the record-keeping period of § 571.7(c) from seven years to five. In addition, the Commission has deleted the reference to materiality, noting that gaming operations remain responsible under § 571.7(a), for maintaining records "sufficient to establish" the information required under the Act and these regulations.

Subpart C. Subpoenas and Depositions

One commenter suggested that § 571.8 should be revised to require that, before a deposition is taken, "reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition * * *", in conformance with section 2715(d) of the IGRA.

Section 571.8 relates to subpoenas of witnesses, whereas the cited statutory language concerns depositions. The IGRA's notice requirement for depositions is implemented in § 571.11(b), which the Commission has revised to clarify that notice of a proposed deposition must be provided to all parties.

The same commenter asked that § 571.8 (again, meaning § 571.11) be revised to specify procedures for depositions requested by a party in proceedings before the Commission.

Section 571.11(a) has been revised to clarify that a party wishing to depose a witness must file a request with the Commission (or the presiding official if one has been designated), that such a request will only be granted "for good cause shown," and that Commission staff may not be deposed (but may be directed to respond to interrogatories). Beyond these revisions, the Commission (or the presiding official under § 577.7(b)(4)) will establish the parameters of depositions on a case-by-case basis.

One commenter suggested that the Commission's authority under § 571.10 to require "(t)he attendance of witnesses and the production of books, papers, and documents * * * from any place in the United States at any designated place of hearing" should be qualified by the phrase "under reasonable circumstances."

As previously stated, the Commission intends to act reasonably. The commenter's suggested revision, however, would not add an enforceable standard. Note that under the Act and these regulations, witnesses are entitled to the same fees (including mileage) as are paid to witnesses in the courts of the United States.

One commenter asked that the Commission revise § 571.11(b) to provide that notice of each deposition must "be provided pursuant to part 519 to the tribal chairman, the designated tribal agent under proposed 25 CFR 519.1 and to the relevant tribal gaming authority, who shall have a right to be present at the deposition and to question the deponent."

Section 571.11(b) provides that notice of a proposed deposition is provided to the parties to a proceeding. A tribe would receive such notice if it is a party, either named or through intervention under § 577.12(b). Whether or not a party may question a deponent is within the discretion of the Commission or the presiding official when establishing the parameters of a deposition under § 577.7(b)(4).

The same commenter stated that, under § 571.11, the Commission should be required to notify a deponent of his or her right to be represented by legal counsel during the deposition.

The Commission agrees and has revised § 571.11(c) accordingly.

Subpart D, Audits

One commenter asked whether the Commission will conduct independent audits of gaming operations or simply receive copies of audits performed by state or tribal regulatory authorities, the minimum required by subpart D.

Under section 2706(b) of the Act, the Commission has the authority to conduct audits of Indian gaming operations, and will exercise that authority when necessary to carry out its duties under the Act. Subpart D implements the Act's requirement that tribes provide independent audits of their gaming operations to the Commission.

One commenter contended that the audit provisions of subpart D place "an unnecessary and expensive burden on Tribes who may already be complying with other federal audit requirements by preparing annual single audits."

The Commission has revised § 571.12 to clarify that audits under the IGRA may be conducted in conjunction with already existing tribal audits, as long as the requirements of these regulations are otherwise met.

One commenter stated that § 571.13 should be revised to provide that the annual audit report must be submitted to the Commission within 180 days after the end of a gaming operation's fiscal year, instead of the 120 days proposed.

The commenter provided no information to support his contention that the 120-day period is unreasonable.

The Commission believes that 120 days after the end of a gaming operation's fiscal year is sufficient time to conduct an audit and submit an audit report.

One commenter suggested that § 571.13 should be revised to provide an opportunity to seek an extension for filing audit results when, due to business complications or delay in the audit process, the audit results are not available within 120 days after the end of the fiscal year.

The Commission acknowledges that extraordinary circumstances could result in an extension of the 120-day requirement, but will deal with such situations on a case-by-case basis.

The Commission has revised § 571.13 to require that management letters be included with a tribe's audit report. This revision ensures that the Commission will be informed of problems identified and solutions recommended.

Part 573—Enforcement

In the preamble to the proposed rule (57 FR 30584, 30585 (July 9, 1992)), the Commission provided a flow chart that summarized the enforcement process. One commenter stated that part 573 should be revised to incorporate the statement at the beginning of the flow chart, which indicated that the Chairman or his or her representative, before issuing a notice of violation, will attempt to work with the tribe to ensure compliance and will oversee "on-the-spot" compliance when a violation is minor and readily correctable.

The statement to which the commenter referred represents the policy of the Commission. To transform this policy into a regulatory requirement, however, would be inconsistent with section 2713 of the IGRA, because it would limit the Chairman's ability to act immediately when necessary to enforce the Act. Nonetheless, as stated in the preamble to the proposed rule, "as a matter of policy the Commission will, whenever practicable, afford tribes the opportunity to address compliance problems in the first instance" (57 FR 30584 (July 9, 1992)).

Notices of Violation

One commenter asked that the Commission revise § 573.3 to incorporate the IGRA's provision (in section 2713(a)(3)) that a notice of violation "may not consist merely of allegations stated in statutory or regulatory language."

The Commission disagrees. Section 573.3(b)(2) requires that a notice of violation include a "description of the circumstances surrounding the violation, set forth in common and concise language." This provision ensures that the Commission will meet the IGRA's standard.

The same commenter suggested revising § 573.3(a) by deleting "owner or" and adding: "A copy of any notice of violation issued under the authority of this section shall be served on the chief executive officer of the tribe which is the owner of the facility."

The Commission disagrees. Part 519, Service, already provides for proper service of notice of violation, including the designation of an agent for service on a tribe. When a tribe is not the respondent, § 519.4 requires the Commission to transmit a copy of the notice to the tribe "as expeditiously as possible." The Commission believes that part 519 adequately addresses the commenter's concern.

One commenter argued that § 573.3(a) should be reconciled with § 519.4, "under which the Commission is required to send a copy of 'any official determination, order, or notice of violation to the appropriate tribal chairman, the designated tribal agent under § 519.1 and to the relevant tribal gaming authority'."

The Commission disagrees. Section 573.3(a) addresses the circumstances under which the Chairman may issue a notice of violation; part 519 describes the process for service or transmittal of the notice. The commenter identified no inconsistency between these provisions.

One commenter suggested adding a new subsection (c) to § 573.3: "Notwithstanding the provisions of subsections (a) and (b) of this section, no enforcement action will be taken by the Commission (sic) on any notice of violation on which the tribal owner is proceeding to take appropriate enforcement action under tribal law."

The commenter's proposed addition does reflect the Commission's regulatory approach. To incorporate it into the regulations, however, would be inconsistent with section 2713 of the IGRA because it could limit the Chairman's ability to take immediate action when necessary to enforce the Act. Therefore, the Commission has not adopted the suggested revision.

The Commission has revised § 573.3(a) to provide that the Chairman may issue a notice of violation to "any person." This revision reconciles § 573.3(a) with the Commission's revised definition of "respondent" in § 571.2 (discussed above).

Orders of Temporary Closure

One commenter stated that service of a closure order under § 573.6 should be reconciled with service provisions of part 519.

The Commission disagrees. Section 573.6 addresses the circumstances under which the Chairman may issue a closure order; part 519 describes the process for service or transmittal of the order. The commenter identified no inconsistency between these provisions.

Several commenters argued that the proposed compliance and enforcement regulations provide the Chairman with too much discretion to issue closure orders and assess civil fines. One commenter stated that "(m)any Indian tribes and Nations depend greatly upon the continued operation of their gaming facilities to generate funding for basic governmental services and essential services to their constituencies. Unilateral and discretionary closure absent valid and proper reason could inflict damages to the Tribe with potential administrative or injunctive relief arriving weeks later." This commenter asked that the Commission either impose a requirement that the Chairman "validate" an alleged offense prior to closure or civil fine assessment, or provide a reasonable time for an operator to correct a violation before the Chairman may impose closure or assess a civil fine.

The Commission disagrees. The regulations as proposed and as promulgated today implement the authority that the IGRA grants to the Chairman. Rather than providing the Chairman with too much discretion, these regulations define and limit the Chairman's discretion. For example, the IGRA authorizes the Chairman to issue an order of temporary closure when he or she finds "substantial" violations. The Act does not define the term "substantial," however. Section 573.6, on the other hand, lists all of the violations that the Commission deems substantial and thus may warrant closure. Moreover, any abuse of discretion by the Chairman is reviewable by both the Commission and the courts.

Similarly, another commenter complained that the rule as proposed would allow temporary closure to be effective "for up to 90 days before there has been a hearing as to whether a 'substantial violation' exists. By contrast, civil fines, which are not (as) punitive as closure, will not be levied until the tribe has exhausted its administrative appeal rights." This commenter suggested that 573.6 should be modified to provide that a closure order may take effect only "following a hearing that clearly establishes a 'substantial violation' has occurred" and only "in situations where corrective actions are (not) more appropriate."

The Commission disagrees. Section 2713(b) of the IGRA provides for a hearing after the Chairman issues an order of temporary closure, not before. Section § 573.6(c) and part 577 implement that provision. If corrective action or some other action is more appropriate than closure in a given case, the Chairman will refrain from issuing an order of temporary closure.

The same commenter suggested that § 573.6 should be revised to provide that an order of temporary closure must be lifted automatically prior to the running of the appeal period "at any such earlier time that the tribe has voluntarily corrected the alleged substantial violation."

The Commission disagrees. The IGRA contains no such limitation on the Chairman's closure authority. Section 573.6(c)(3) does provide that the Chairman may rescind an order of temporary closure "for good cause." In addition, § 577.9(a) provides that the parties may negotiate a settlement "disposing of the whole or any part of (a) proceeding."

One commenter argued that the Chairman's authority under § 573.6(a) to order closure for violations of an approved tribal ordinance or resolution should be limited to cases where a tribe has requested such action of the Chairman.

The Commission disagrees. The Chairman's closure authority under section 2713(b) of the IGRA extends to violations of a tribal ordinance or resolution approved by the Chairman, whether or not a tribe has requested the Chairman's assistance.

Substantial Violations

This commenter and another contended that most of the "substantial" violations listed in § 573.6(a) (specifically, violations listed in subsections (2), (6), (8), (9), (10), (11), and (12)) should be subject to a requirement that a tribe first be given the opportunity to cure the alleged violation before the Chairman may order closure.

The Commission has revised § 573.6(a) to provide that an order of temporary closure must be issued "(s)imultaneously with or subsequently to" a notice of violation. Thus, notice and an opportuunity to correct a violation will have been provided in all but emergency situations. Note also that § 573.6(b) would permit the Chairman to issue an order of temporary closure that takes effect following an opportuntiy to correct.

One commenter suggested that § 573.6(a)(1) should be deleted because it would impermissibly transform insubstantial violations (that have not been corrected) into substantial violations that may result in closure.

The Commission disagrees. A violation that has been the subject of notice and an opportunity to correct, but remains uncorrected, is a substantial violation within the meaning of section 2713(b) of the IGRA.

One commenter asked that § 573.6(a)(2) be revised to require notice to a tribe before closure for failure to pay the annual fee, thus protecting against closures resulting from inadvertent failure to make payment.

The Commission does not agree that such a revision is necessary. An order of temporary closure is the last measure, not the first, that the Chairman will take in the face of nonpayment of fees. A tribe will always have ample notice of the violation and an opportunity to correct it before an order of temporary closure becomes a possibility.

One commenter stated that it would be "patently unfair for the Commission to issue an order for temporary closure under proposed § 573.6(a)(3) (regarding operating without an approved ordinance) and (7) (regarding operating without an approved management contract) until such time as the Commission commences its regulatory authority under the Act * * *." The commenter suggested that these sections should be revised to establish an effective date, until which the Secretary of the Interior would continue to exercise authority under section 2709 of the IGRA.

The Commission agrees that an otherwise valid gaming activity remains valid until the Chairman disapproves the relevant tribal ordinance or management contract. Section 573.6(a) (3) and (7) has been revised to cite parts 522, 523, and 533, the effect of which is that no violation occurs until after a tribe has had an opportunity to obtain the Chairman's approval of the tribe's ordinance or management contract.

The same commenter stated that background investigations often take more than 60 days to complete, necessitating "conditional employment and licensing pending completion of the background investigation." Therefore, this commenter suggested that § 573.6(a)(5) should be revised to provide that a gaming operation may operate for business "pending completion of the background investigation."

The Commission has revised § 573.6(a)(5) to provide that closure may occur if a gaming operation operates for business "without either background investigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in § 558.3(b) * * *." Section 558.3(b) provides 60 days for a tribe to complete a background investigation and 90 days to issue a license, during which time the tribe may employ key employees and primary management officials. The Commission believes that this time is sufficient.

One commenter stated that § 573.6(a)(8) (authorizing closure for submitting false or misleading information to the Commission or a tribe) should be deleted because removal of the person who submitted false or misleading information to the Commission or the tribe would be more appropriate than closure.

The Commission agrees that removal or prosecution of the guilty person often will be more appropriate than closure. In those cases, closure will not occur. Still, because this is a substantial violation that may warrant closure in some cases, the Commission has not deleted the provision as suggested. The Commission has revised § 573.6(a)(8) to refer to "any person" rather than the owner, operator, or other agent of a gaming operation. The Chairman (subject to review by the Commission) will determine, on a case-by-case basis, whether closure is warranted.

Refusal of Entry

One commenter argued that § 573.6(a)(9) (authorizing closure for refusal of entry) should be deleted because "the proper forum for an Indian gaming operation or an employee thereof to challenge the constitutionality of the Commission's authority to conduct warrantless searches of a gaming operation is in the federal distict courts in the first instance, rather than through the appeals procedure contemplated in part 577 * * *." The commenter cited *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816 (1978) for the proposition that the Fourth Amendment's prohibition against unreasonable searches may require the Commission to obtain a search warrant before it may lawfully enter to inspect Indian gaming operations under the IGRA.

The Commission disagrees. The Supreme Court did hold in *Barlow's* that the Fourth Amendment's prohibition against unreasonable searches applies to administrative inspections of private commercial property. In that case and others, however, the Court established a "pervasively regulated" standard under which no reasonable expectation of privacy exists for industries that have had a history of government oversight. Because gaming is a pervasively regulated industry, the Commission has the authority to conduct warrantless searches of Indian gaming operations (*see Donovan v. Dewey*, 452 U.S. 594 (1981); *United States v. Biswell*, 406 U.S. 311, 316 (1972); and *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 74, 77 (1970)). Although a gaming operation may challenge a warrantless search in court, denial of entry remains a substantial violation under the IGRA. Therefore, the Commission has not deleted this provision as requested.

One commenter suggested that § 573.6(a)(9) should be revised to read: "(i) The chief executive officer of a tribe or a primary management official of a gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter; or (ii) a primary management official of a gaming operation refuses to allow an authorized tribal representative to enter or inspect the gaming operation, in violation of (a) a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712."

The Commission has revised the language in this section and elsewhere to make the responsible entity "the gaming operation." It is up to the operation to see that responsible officials comply with the requirements of the Act and these regulations.

One commenter stated that the reference to the IGRA in § 573.6(a)(10) should be changed from 2711(e) to 2710(b)(2)(f)(ii)(II).

The Commission has revised this section to refer to the corresponding regulatory provisions, §§ 558.2 and 558.5.

One commenter argued that § 573.6(a)(11) (authorizing closure when a gaming operation operates class III games in the absence of a tribal-state compact) should be deleted because it reflects a criminal violation that is "more appropriately left to the U.S. Attorney in the District involved."

The Commission disagrees. Operating class III games in the absence of a compact may constitute a crime (for example, if gambling devices are involved). Nonetheless, such activity also would be a violation of section 2710(d) of the IGRA, which the Chairman is authorized to enforce. Nothing in the IGRA precludes parallel civil and criminal proceedings. Therefore, the Commission has retained this provision.

One commenter asked that § 573.6(a)(12) be revised to require that the Chairman give notice and an opportunity to correct or contest the allegation of a threat to the environment or the public health and safety before he or she issues a closure order.

The Commission disagrees. In such a situation immediate closure may be necessary to protect public health and safety or the environment.

One commenter suggested that § 573.6(b) should be revised to provide that a closure order will be effective immediately upon issuance only if "the Chairman finds that immediate closure is necessary to protect the tribe or the gaming public," and that an order of temporary closure will not take effect before a respondent has had an opportunity to seek expedited review under § 573.6(c). The commenter also stated that § 573.6(c) should be revised to grant respondents the right to seek a stay of a temporary closure order on an expedited basis.

The standard for immediate closure suggested by the commenter is implicit in section 2713(b) of the IGRA and in the rule itself; it need not be spelled out. The IGRA contemplates that immediate closure may occur in some cases. Accordingly, § 573.6(b) provides that an order of temporary closure may or may not take effect upon issuance (before an opportunity for expedited review), as the circumstances dictate. In addition, the expedited review provided under § 573.6(c) is informal. A respondent may ask the Chairman to lift a closure order in the course of that review.

One commenter suggested that the Commission define the term "working days" as used in proposed § 573.6(c) (regarding informal expedited review).

The Commission has changed the term "working days" in § 573.6(c) to "days," which is defined in § 571.2 to mean calendar days.

The same commenter suggested that § 573.6(c)(1) be revised to read, "The Chairman shall *complete* the expedited review * * *."

The Commission agrees and has made this revision. The Commission also has revised § 573.6 (b) and (c) to clarify that service of the closure order, rather than receipt of issuance, makes the order effective and triggers the right to informal expedited review under paragraph (c) and review by the Commission under part 577.

Part 575—Civil Fines

In the IGRA, the term "civil penalties" refers to both civil money penalties and orders of temporary closure. Part 575 addresses only civil fines. Therefore, the Commission has revised the term "penalties" to read "civil fines" in part 575.

One commenter stated that the Commission should revise part 575 to account for situations where a tribe has a "legitimate difference of opinion" regarding the requirements of the "complicated Indian Gaming Regulatory Act."

The Commission believes the regulations as proposed address the commenter's concerns. Respondents have numerous opportunities to lay out their differences with the Chairman regarding civil fine assessments (see, for example, §§ 575.5(a), 575.5(c), and 577.3(a)(2)).

Continuing Violations

One commenter stated that the Commission's treatment of "each daily illegal act or omission (as) a separate violation" is an "overly broad extension" of 25 U.S.C. 2713, which refers to a maximum $25,000 civil fine "per violation" (see §§ 575.3, 575.4(a)(2)).

The Commission disagrees. A "violation" may occur once or it may occur hundreds of times a day (for example, every time an illegal machine game is played). Rather than broadening the Chairman's authority, the rule limits the Chairman's civil fine assessment authority to a maximum daily amount.

Criteria for Civil Fine Assessment

One commenter stated that § 575.4 would improperly subject to civil fines a tribe that does not operate its gaming, contrary to section 2713(a) of the IGRA. This commenter suggested that this section be revised to read, "The Chairman may assess a penalty * * * *against the tribal operator of an Indian game or a management contractor engaged in gaming*, for each notice of violation * * *."

The Commission does not agree that section 2713(a) exempts from civil fines tribes that relay on management contractors. As used in section 2713(a), the term "tribal operator" means any tribe or individual that has a proprietary interest in gaming conducted on Indian lands. The Chairman intends to cite for a violation the person(s) who committed the violation, whether that person is a management contractor, a tribe, or an individual operator on Indian lands. The IGRA imposes numerous obligations on tribes (for example, to submit annual audit reports and obtain the Chairman's approval of tribal ordinances and management contracts), violations of which the Chairman is charged with enforcing. To interpret the IGRA as the commenter suggested would yield the absurd result that the Chairman would not be authorized to impose a civil fine for an uncorrected violation but would be authorized to close the operation under section 2713(b) (as implemented in § 573.6(a)(1)).

The Commission has revised § 575.4 to clarify that the Chairman may assess a civil fine "against a tribe, management contractor, or individual operating Indian gaming." In addition, a new paragraph (b) has been added to § 575.9, which provides that civil fines must be paid by the person assessed and may not be treated as an operating expense of the operation. This ensures that innocent parties will not be penalized.

One commenter stated that § 575.4(c)(1)–(3) should be simplified by providing that each violation that "becomes a final order of the Commission shall be considered whether or not it led to a civil penalty assessment."

The Commission has edited this language as suggested, but also to indicate that, to be considered in determining a respondent's history of violations, a final order of the Commission must not have been vacated. In addition, § 575.4(c)(1) has been modified to clarify that only violations cited by the Chairman must be the subject of a final order of the Commission. The Chairman also will consider other violations, such as those cited by a tribe (see the definition of "violation" in § 571.2).

One commenter suggested that § 575.4(e) (regarding good faith) should be revised to provide an exception "where the respondent exercises its appeal rights in good faith following a notice of violation." Otherwise, according to this commenter, "a tribe would be penalized whenever it disagrees with the Chairman's finding of a violation and decides to appeal a notice of a violation rather than to take the corrective action specified by the Chairman."

The Commission has deleted the word "adjust" in § 575.4(e) and replaced it with "reduce" to clarify that this criterion may only serve to reduce a civil fine. Bad faith actions by a respondent still would be addressed in § 575.4(d) (regarding willfulness). Note, however, that exercising one's right of appeal is not an indication of bad faith.

Civil Fine Assessment Procedures

One commenter stated that § 575.5(a) should be revised to provide an opportunity to request additional time to provide information about a violation to the Chairman.

The Commission agrees and has added after the word "violation" in the first sentence of § 575.5(a): "Or such longer period as the Chairman may grant for good cause".

The same commenter suggested that the phrase "when practicable" should be deleted from § 575.5(b) "to assure that all operators of games have an opportunity to comment on the proposed assessment."

The Commission disagrees. As used in § 575.5(b), the term "when practicable" refers to the time within which the Chairman will serve a proposed assessment, not whether the Chairman will serve the proposed assessment.

Settlement, Reduction, or Waiver of Civil Fine

One commenter suggested that § 575.6(a)(1) should be revised to provide that the Chairman may grant a request for a reduction or waiver of a proposed civil fine "within his or her discretion" (in line with language in proposed § 575.6(a)(3)).

The Commission has deleted this reference altogether as unnecessary. Section 2613(a) of the IGRA expressly provides that the Chairman's assessment of civil fines under the Act is discretionary.

Another commenter stated that § 575.6(a)(1) and 575.6(a)(3) should be reconciled so that the Chairman, whether granting or denying a request for a civil fine reduction or waiver, must "fully explain and document" the decision.

The Commission has deleted the cited language as unnecessary. The Chairman will fully document a decision on a request for a civil fine reduction or waiver. This need not be spelled out in the regulation. The Commission also has revised this section so that it follows a more logical sequence.

Part 577—Appeals Before the Commission

One commenter questioned whether the Administrative Procedure Act (APA) applies to proceedings under part 577.

The APA's adjudication provisions (5 U.S.C. 554, 556, and 557) only apply to administrative hearings that are conducted under a statute that specifically provides for hearings to be on the record (see 5 U.S.C.A. 554(a)). The IGRA does not; therefore, the APA's adjudication provisions do not apply to hearings provided under part 577.

One commenter suggested that part 577 should be revised to provide that, in an appeal from an order of temporary closure, "once an appeal has been filed, respondent may seek a stay from the presiding official, who shall grant the stay unless he specifically finds that the public interest requires immediate closure."

The Commission declines to delegate to the presiding official the authority to stay the Chairman's action before the Commission completes its review under part 577. A respondent may seek the equivalent of a stay from the Chairman under § 573.6(c) or § 577.9(a).

The same commenter suggested that part 577 should provide for "the negotiation of stays and their entry by consent order."

Section 577.9 provides for negotiation of an agreement "disposing of the whole or any part of the proceeding." The Commission believes that this provision would encompass a negotiated stay.

One commenter stated that part 577 should be revised to provide detailed hearing procedures, in particular to "set forth the role of the Chairman in post-closure hearings."

As noted above, hearings under part 577 are not subject to the adjudication provisions of the Administrative Procedure Act. Nevertheless, in today's final rule the Commission has provided additional hearing procedures in part 577. For example, under § 577.3, the respondent may ask to present oral testimony or witnesses, and may ask for a closed hearing. Under § 577.7, a respondent will always have the right, unless waived, to present an oral argument and to be represented by counsel in an appeal before the Commission. Unchanged from the proposed rule is the Commission's intention to vest discretion with the presiding official to conduct a hearing in a manner that will provide due process to the parties and that will yield an administrative record on which a reviewing court can rely. As for the Chairman's role in post-closure hearings, the IGRA provides that the Chairman is a member of the Commission and that the Commission hears an appeal from an order of temporary closure. In general, once an appeal is filed, the Chairman will be represented by Commission staff as a party to the proceeding.

Request for Hearing

One commenter stated that § 577.3(a) should be revised to provide that the 30-day appeal period commences with the "issuance" of a closure order (consistently with section 2713(b)(2) of IGRA), instead of upon service, as proposed.

The Commission disagrees. "Issuance" is not a defined term in the

IGRA; therefore, the suggested revision would not be meaningful. In any event, the Commission believes that issuance under the IGRA does not occur before an order is served. Note that part 519 provides for speedy service (for example, by facsimile).

The same commenter suggested that § 577.3(b) should be revised to require "only a notice of appeal sufficient to identify the order appealed from, followed at a later time by a prehearing brief detailing the reasons why the order appealed from is wrong."

The Commission agrees and has revised § 577.3(b) to provide that a notice of appeal need only reference the notice or order from which the appeal is taken. Under new paragraph (c) in § 577.3, within ten (10) days after filing a notice of appeal, the respondent will be required to file a supplemental statement. These revisions ensure that any potential for delay in meeting the IGRA's requirement (discussed below) for an expeditious hearing on an order of temporary closure will be within the control of the respondent.

Hearing Deadline

In the preamble to the proposed rule (57 FR 30584, 30587 (July 9, 1992)), the Commission discussed an apparent ambiguity in section 2713(b)(2) of the IGRA, which provides for a hearing before the Commission on an order of temporary closure. The issue was whether the right to request a hearing exists for 30 days from the date the order issues, or whether the hearing itself must be provided within that time. The Commission proposed a 30-day period for a tribe to request a hearing, and the Commission would be required to hold the hearing within 30 days after it receives a timely request.

Two commenters disputed the existence of any ambiguity. One of these commenters found "highly objectionable" the "unitary process" that the Commission proposed to use for appeals of all enforcement actions, "because it disregards the statutory time requirements for post-closure hearings."

The Commission disagrees. Section 577.4(b) distinguishes between hearings on orders of temporary closure and other hearings. Notwithstanding any other provision in part 577, and unless waived, the presiding official is required to provide a hearing on an order of temporary closure within 30 days after the Commission receives a timely notice of appeal. This provision ensures that the Commission will comply with the IGRA's requirements for post-closure hearings.

The ambiguity in section 2713(b)(2) of the IGRA is apparent from the fact that the provision does not impose any time by which a hearing must be requested. In contrast, 12 U.S.C. 1818(g)(3) entitles an official suspended by the Federal Deposit Insurance Corporation (FDIC) to request a hearing before the FDIC "(w)ithin thirty days from service of any notice of suspension * * *" and requires the FDIC to provide such a hearing "not more than thirty days after receipt of a request." The lack of similar specific language in section 2713(b)(2) of the IGRA leaves unanswered the question whether the right to request a hearing lasts 30 days or the hearing itself must be provided within that time. The Commission interprets the IGRA to mean that the right to a hearing lasts for 30 days. The result of accepting the commenters' interpretation of section 2713(b)(2) would be that a gaming operation that receives an order of temporary closure could request a hearing 30 days after the order issues, and the Commission would have to provide a hearing the same day.

Regarding the problem posed by this scenario, one commenter suggested that the Commission impose a short period (say, five days) within which a hearing must be requested, or include with the closure order itself a hearing date that meets the 30-day requirement of IGRA section 2713(b)(2).

As a practical matter, the Commission would not deny a request for a hearing filed within 30 days after a closure order issues. Furthermore, the Commission sees no value in scheduling a hearing that the respondent may decide not to request.

As discussed above, the Commission has revised § 577.3(b) to provide that a notice of appeal need only reference the notice or order from which the appeal is taken. Thus, a respondent could trigger the 30-day hearing deadline by filing a notice of appeal shortly after a closure order issues. Any potential for delay would be within the control of the respondent. Accordingly, the Commission has not revised § 577.4 as the commenters requested.

Service

One commenter suggested that § 577.6(a) be revised to provide that filings will be made with the presiding official only after the respondent receives notice that a presiding official has been designated.

The Commission agrees and has revised § 577.6(a) accordingly.

The same commenter stated that § 577.6(d) should be modified to read: "Whenever a representative (including an attorney) has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative."

The Commission agrees and has revised § 577.6(d) accordingly.

One commenter suggested that the Commission revise § 577.6(e) to clarify the term "other nonbusiness day."

The commission has deleted this term from § 577.6(e) as unnecessary.

One commenter stated that § 577.6(e) should be revised to track the language of Rule 6(a) of the Federal Rules of Civil Procedure (adding, "the day of the act, event or default from which the designated period of time begins to run shall not be included").

The Commission has revised § 577.6(e) to achieve the same result as the language that the commenter offered. The Commission also revised § 577.6(c) to provide that service is complete upon transmittal, making it consistent with part 519, Service.

Conduct of Hearing

One commenter argued that the word "genuine" should be deleted from the first sentence in proposed § 577.7(a) because it "raises more questions than it answers." Another commenter suggested that proposed § 577.10 be revised "to clarify that the presiding official may find that there is no genuine issue of material fact only upon motion by a party."

The Commission has deleted proposed § 577.10 altogether and has revised § 577.7 to provide the respondent, in all cases, with a right to present written evidence and to present oral argument. This approach is in line with the U.S. Supreme Court's holding in *FDIC v. Mallen*, 486 U.S. 230 (1988). In that case, the Supreme Court held that in post-suspension actions analogous to closure under the IGRA, due process requires, at a minimum, the opportunity to present oral argument. Other evidentiary procedures, such as the cross-examination of witnesses, are within the discretion of the regulatory agency. Beyond this revision, the Commission will rely on the presiding official to establish suitable hearing procedures.

The same commenter stated that § 577.7(b)(1) should be revised to make it mandatory that any person giving testimony do so under oath.

The Commission agrees and has accomplished this result by replacing the word "may" with "shall" in § 577.7(b).

Discovery

One commenter contended that the Commission should provide for "much broader discovery * * * in conformance with the minimum standards for discovery recommended by the Administrative Conference of the United States (ACUS). Administrative Conference Recommendation No. 21 (1970)."

The Commission disagrees. The ACUS Recommendation upon which the commenter relied is 22 years old and is based on an out-of-date version of the Federal Rules of Civil Procedure. More recently, in 1983 the Federal Rules were substantially amended to resolve problems arising from "duplicative, redundant, and excessive discovery." For example, rules 26(a)(1) and (b)(1) (General Provisions Governing Discovery) were amended to "encourage district judges to identify instances of needless discovery and to limit the use of the various discovery devices" (Fed. R. Civ. P. 26, annotation to 1983 Amendments). Moreover, the Administrative Procedure Act does not provide a right to discovery even for formal hearings conducted under its adjudication provisions.

The Commission believes that it has provided an appropriate standard for discovery in § 577.7(b)(4), which allows the presiding official to authorize exchanges of information among the parties when to do so would expedite the proceeding. The Commission has revised § 577.7(b)(4) to clarify that the taking of depositions and the submission of interrogatories are within the scope of prehearing exchanges of information that the presiding official may permit. Beyond that, the Commission will rely on the presiding official to provide for an appropriate level of discovery in each case. Any decision by a presiding official is subject to later review by the Commission or the courts.

Confidentiality

One commenter suggested that § 577.8 be revised by deleting or clarifying the limitation of its applicability to "proceedings involving more than two parties."

Section 577.8 is limited to proceedings involving more than two parties because, if only the Chairman and the respondent are parties, the Chairman is bound by the confidentiality provisions of § 571.3.

Regarding disclosure of confidential information, one commenter suggested that the Commission replace the language in § 577.8(b)(1), "within the context of the proceeding;" with "directly in connection with the hearing, before the presiding official."

The Commission has revised § 577.8(b)(1) to clarify that confidential information may only be used by a party "directly in connection with the hearing." The Commission does not agree, however, that such use must occur in the presence of the presiding official.

Intervention

One commenter stated that the presiding official should be given specific authority to proceed with a hearing "prior to the expiration of the time period specified in § 577.12 for the processing of the Petition for Intervention." The commenter expressed concern that, in the absence of such authority, "an independent third party might well cause the continuation of a Temporary Order of Closure for an extended period of time."

The Commission disagrees. Such authority already exists under § 577.4(b), which requires the presiding official to conclude a hearing on an order of temporary closure within 30 days, "(n)otwithstanding any other provision of this part."

One commenter argued that § 577.12(a) should be broader in providing for intervention by a tribe and narrower in providing for intervention by persons other than a tribe. The commenter suggested two additional criteria for § 577.12(a): "(4) Their claim or defense and respondent's appeal have a question of law or fact in common; and (5) Intervention would not unfairly prejudice existing parties or delay resolution of the proceedings."

The commenter did not explain why the first suggested addition would be helpful and the Commission saw no reason to adopt it. The Commission has adopted the commenter's second suggested addition in new paragraph (4) in § 577.12(a). The Commission also agrees that a tribe should have the right to intervene in any case that involves a gaming operation on lands over which the tribe has jurisdiction. Accordingly, the Commission has inserted a new paragraph (b) (and relettered the remaining paragraphs) in § 577.12 to read: "If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such tribe may intervene as a matter of right."

One commenter stated that § 577.12(a)(1) should be revised "to more closely follow the federal rule and to require that the proposed intervenor demonstrate that it claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest."

The Commission disagrees. The commenter offered no reason why the suggested language should be preferred, and the Commission found none.

The same commenter suggested that § 577.12(e) (now (f)) should be revised to track Rule 29 of the Federal Rules of Appellate Procedure, under which the decision whether to allow participation as amicus curiae would be left to the discretion of the presiding official.

The Commission agrees and has revised the last sentence in § 577.12(f) by replacing the second "shall" with "may."

Transcripts

Two commenters argued that § 577.13 should be revised to provide that the Commission will "employ a court reporter who will provide transcripts on a daily expedited basis, so that the transcript will be available on the day following conclusion of the hearing." Moreover, these commenters questioned whether there is any good reason why the presiding official's recommended decision must await receipt of the transcript.

Prompt procurement of transcripts will be handled administratively, and need not be addressed in the rule. The Commission agrees that the presiding official's recommended decision need not always await receipt of the transcript. A new paragraph (c) has been added to § 577.7 to provide that the hearing is concluded once the presiding official closes the record.

Recommended Decision

One commenter stated that § 577.14(a) should be revised to clarify that, in reaching a decision based on the "whole record" of a proceeding, the presiding official may consider matters determined to be confidential.

The Commission does not agree that any revision is necessary. Section 577.8(f) provides: "When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record." The Commission believes that this provision addresses the commenter's concern.

Review by Commission

One commenter argued that § 577.15 should be revised to address the apparent unfairness that results when the Chairman, as a member of the Commission, hears an appeal from an action of the Chairman.

The Commission disagrees. The IGRA vests the Chairman with dual authorities. The Commission has attempted to minimize the potential for conflict between these roles by providing for an objective trier of fact (the presiding official). Beyond that, the Chairman is obligated to perform the duties that the IGRA gives that person as Chairman and Commissioner. Note that it is not unusual for a Commission to initiate prosecutorial action, then hear an appeal from that action. This is not considered to be a violation of due process (see, for example, *Federal Trade Commission v. Standard Oil of Southern California*, 449 U.S. 232 (1980)).

In the proposed rule (57 FR 30584, 30593 (July 9, 1992)), the Commission provided that, in the absence of a majority vote by the Commission to affirm or reverse the recommended decision of the presiding official, the action of the Chairman that is the subject of the appeal would be deemed vacated. This approach stemmed from the IGRA's provision, in section 2713(b), requiring a vote of no fewer than two Commissioners to make an order of temporary closure permanent or to dissolve it. The Commission believes that an order of temporary closure should not be allowed to stand if at least two Commissioners fail to affirm it. In all other cases, however, the Commission believes that if the Commission fails to act on the recommended decision of the presiding official, the recommended decision should become the final decision of the Commission. Accordingly, the last sentence in § 577.15 has been revised to read: "In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed *except that*, if the subject of the appeal is an order of temporary closure issued under § 573.6 of this chapter, the order of temporary closure shall be dissolved."

The Commission also made numerous minor editorial changes intended to correct typographical and stylistic errors contained in the proposed rule.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* They have been assigned clearance number 3141–0001, and are approved through July 31, 1995.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,
Chairman, National Indian Gaming Commission.

List of Subjects

25 CFR Part 571

Gaming, Indian lands, Investigations, Reporting and recordkeeping requirements.

25 CFR Part 573

Administrative practice and procedure, Gaming, Indian lands.

25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

25 CFR Part 577

Administrative practice and procedure.

Title 25, Chapter III of the Code of Federal Regulations is amended by adding new parts 571, 573, 575, and 577 to read as follows:

PART 571—MONITORING AND INVESTIGATIONS

Subpart A—General

Sec.

571.1 Scope.
571.2 Definitions.
571.3 Confidentiality.

Subpart B—Inspection of Books and Records

571.5 Entry of premises.
571.6 Access to papers, books, and records.
571.7 Maintenance and preservation of papers and records.

Subpart C—Subpoenas and Depositions

571.8 Subpoena of witnesses.
571.9 Subpoena of documents and other items.
571.10 Geographical location.
571.11 Depositions.

Subpart D—Audits

571.12 Audit standards.
571.13 Copies of audit reports.
571.14 Relationship of audited financial statements to fee assessment reports.

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

Subpart A—General

§ 571.1 Scope.

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

§ 571.2 Definitions.

As used in this chapter, the following terms have the specified meanings:

Commission's authorized representative means any persons who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter.

Day means calendar day unless otherwise specified.

Hearing means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission.

Party means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding.

Person means an individual, Indian tribe, corporation, partnership, or other organization or entity.

Presiding official means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer oaths, and has had no previous role in the prosecution of a matter over which he or she will preside.

Resondent means a person against whom the Commission is seeking civil penalties under section 2713 of the Act.

Violation means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

§ 571.3 Confidentiality.

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act that falls within the exemptions of 5 U.S.C. 552(b) (4) and (7); *except* that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in a multiple-party proceeding under part 577 of this chapter is addressed in § 577.8 of this chapter.

Subpart B—Inspection of Books and Records

§ 571.5 Entry of premises.

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

§ 571.6 Access to papers, books, and records.

(a) Once the Commission's authorized representative presents proper identification, a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

(c) Upon the request of the Commission's authorized representative, the gaming operation shall photocopy, or allow the Commission's authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

§ 571.7 Maintenance and preservation of papers and records.

(a) A gaming operation shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for no less than five (5) years.

(d) A gaming operation shall maintain copies of all enforcement actions that a tribe or a state has taken against the operation, noting the final disposition of each case.

Subpart C—Subpoenas and Depositions

§ 571.8 Subpoena of witnesses.

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any matter under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

§ 571.9 Subpoena of documents and other items.

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

§ 571.10 Geographical location.

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

§ 571.11 Depositions.

(a) Any party wishing to depose a witness shall file a request with the Commission or, if a presiding official has been designated under part 577 of this chapter, to the presiding official. Such a request shall not be granted except for good cause shown. A Commissioner or a presiding official may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation, except that Commission personnel may not be questioned by deposition for the purposes of discovery, but may be questioned by written interrogatories as authorized by the Commission or a presiding official. Commission records are not subject to discovery under this chapter. The inspection of Commission records is governed by § 571.3 of this part and the Freedom of Information Act, 5 U.S.C. 552. Depositions under this section may be taken before any person designated by the Commission or a presiding official, and who has the power to administer oaths.

(b) A party or a Commissioner (or a person designated by a Commissioner under paragraph (a) of this section) proposing to take a deposition under this section shall give reasonable notice to the Commission and the parties, if any, of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be notified of his or her right to be represented by counsel during the deposition, and shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission or, if a presiding official has been designated, with the presiding official.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

Subpart D—Audits

§ 571.12 Audit standards.

A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

§ 571.13 Copies of audit reports.

A tribe shall submit to the Commission a copy of the report(s) and management letter(s) setting forth the results of each annual audit within 120 days after the end of each fiscal year of the gaming operation.

§ 571.14 Relationship of audited financial statements to fee assessment reports.

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

PART 573—ENFORCEMENT

Sec.
573.1 Scope.
573.3 Notice of violation.
573.6 Order of temporary closure.

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

§ 573.1 Scope.

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chairman under part 522 or 523 of this chapter. Civil fines in connection with notice of violation issued under this part are addressed in part 575 of this chapter.

§ 573.3 Notice of violation.

(a) The Chairman may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(d) A notice of violation shall contain:

(1) A citation to the federal or tribal requirement that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

§ 573.6 Order of temporary closure.

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under § 573.3 of this part, the Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

(1) The respondent fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after a tribe provides notice of a violation.

(2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(4) A gaming operation operates for business without a license from a tribe, in violation of part 558 of this chapter.

(5) A gaming operation operates for business without either background investigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in § 558.3(b) of this chapter.

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe or a customer.

(7) A management contractor operates for business without a contract that the Chairman has approved under part 533 of this chapter.

(8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in § 558.2 of this chapter, in violation of § 558.5 of this chapter.

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chairman.

(1) The Chairman shall complete the expedited review provided for by this paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chairman shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chairman serves an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chairman for good cause.

PART 575—CIVIL FINES

Sec.
575.1 Scope.
575.3 How assessments are made.
575.4 When civil fine will be assessed.
575.5 Procedures for assessment of civil fines.
575.6 Settlement, reduction, or waiver of civil fine.
575.9 Final assessment.

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715.

§ 575.1 Scope.

This part addresses the assessment of civil fines under section 2713(a) of the Act with respect to notices of violation issued under § 573.3 of this chapter.

§ 575.3 How assessments are made.

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil fine will be assessed, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.

§ 575.4 When civil fine will be assessed.

The Chairman may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under § 573.3 of this chapter after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that gave rise to a notice of violation, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.

(c) *History of violations.* The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years.

(1) A violation cited by the Chairman shall not be considered unless the associated notice of violation is the subject of a final order of the Commission and has not been vacated; and

(2) Each violation shall be considered whether or not it led to a civil fine.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may reduce the amount of a civil fine based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

§ 575.5 Procedures for assessment of civil fines.

(a) Within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice of violation was issued, when practicable.

(c) The Chairman may review and reassess any civil fine if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

§ 575.6 Settlement, reduction, or waiver of civil fine.

(a) *Reduction or waiver.* (1) Upon written request of a respondent received at any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman may reduce or waive a civil fine if he or she determines that, taking into account exceptional factors present in a particular case, the fine is demonstrably unjust.

(2) All petitions for reduction or waiver shall contain:

(i) A detailed description of the violation that is the subject of the fine;

(ii) A detailed recitation of the facts that support a finding that the fine is demonstrably unjust, accompanied by underlying documentation, if any; and

(iii) A declaration, signed and dated by the respondent and his or her counsel or representative, if any, as follows: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this petition are true and correct.

(3) The Chairman shall serve the respondent with written notice of his or her determination under paragraph (a) of this section, including a statement of the grounds for the Chairman's decision.

(b) *Settlement.* At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman and the respondent may agree to settle an enforcement action, including the amount of the associated civil fine. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chairman and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the violation or civil fine in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the assessed civil fine before the Commission in accordance with part 577 of this chapter.

§ 575.9 Final assessment.

(a) If the respondent fails to request a hearing as provided in part 577 of this chapter, the proposed civil fine assessment shall become a final order of the Commission.

(b) Civil fines assessed under this part shall be paid by the person assessed and shall not be treated as an operating expense of the operation.

(c) The Commission shall transfer civil fines paid under this chapter to the U.S. Treasury.

PART 577—APPEALS BEFORE THE COMMISSION

Sec.

577.1 Scope.
577.3 Request for hearing.
577.4 Hearing deadline.
577.6 Service.
577.7 Conduct of hearing.
577.8 Request to limit disclosure of confidential information.
577.9 Consent order or settlement.
577.12 Intervention.
577.13 Transcript of hearing.
577.14 Recommended decision of presiding official.
577.15 Review by Commission.

Authority: 25 U.S.C. 2706, 2713, 2715.

§ 577.1 Scope.

(a) This part provides procedures for appeals to the Commission regarding:

(1) A violation alleged in a notice of violation;

(2) Civil fines assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The Chairman's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval.

(b) Appeals from determinations of the Chairman under 25 U.S.C. 2710 and 2711 (regarding management contracts) and 2710 (regarding tribal gaming ordinances) are addressed in parts 539 and 524 of this chapter respectively.

§ 577.3 Request for hearing.

(a) A respondent may request a hearing to contest the matters listed in § 577.1(a)(1)–(4) by submitting a notice of appeal to the Commission within thirty (30) days after service of:

(1) A notice of violation;

(2) A proposed civil fine assessment or reassessment;

(3) An order of temporary closure; or

(4) An order voiding or modifying a management contract subsequent to initial approval.

(b) A notice of appeal shall reference the notice or order from which the appeal is taken.

(c) Within ten (10) days after filing a notice of appeal, the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits. If the respondent wishes to present oral testimony or witnesses at the hearing, the respondent shall include a request to do so with the supplemental statement. The request to present oral testimony or witnesses shall specify the names of proposed witnesses and the general nature of their expected testimony, and whether a closed hearing is requested and why. The respondent may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

§ 577.4 Hearing deadline.

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal from the respondent. At the request of the respondent, the presiding official may order the hearing to commence at a time more than 30 days after the respondent files a notice of appeal. The Commission shall transmit the administrative record of the case to the presiding official upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or be dissolved, the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the respondent waives this requirement. Notwithstanding any other provision of this part, the presiding official shall conduct such a hearing in a manner that will enable him or her to conclude the hearing within the period required by this paragraph, while ensuring due process to all parties.

§ 577.5 Service.

(a) A respondent who initiates an appeal under this part shall serve copies of the initiating documents on the Commission at the address indicated in the notice or order that is the subject of the appeal. All filings shall be made with the Commission until a presiding official is designated and the parties are so notified, after which all filings shall be made with the presiding official. Any party or other person who subsequently files any other document with the Commission or the presiding officer shall simultaneously serve copies of that document on any other parties to the proceeding, except to that extent § 577.8 of this part may govern the disclosure of confidential information contained in a filing.

(b) Copies of documents by which a proceeding is initiated shall be served on all known parties personally, by facsimile, or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, or by first class mail.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail or facsimile, upon transmittal.

(d) Whenever a representative (including an attorney) has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative.

(e) In computing any period of time prescribed for filing and serving a document, the first day of the period so computed shall not be included. The last day shall be included unless it is a Saturday, Sunday, or federal legal holiday, in which case the period shall run until the end of the next business day.

(f)(1) The presiding official may extend the time for filing or serving any document except a notice of appeal.

(2) A request for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the presiding official may grant an extension of time on his or her own initiative.

§ 577.7 Conduct of hearing.

(a) Once designated by the Commission, the presiding official shall set the case for hearing. The respondent may appear at the hearing personally, through counsel, or personally with counsel. The respondent shall have the right to introduce relevant written materials and to present an oral argument. At the discretion of the presiding official, a hearing under this section may include an opportunity to submit oral and documentary evidence and cross-examine witnesses.

(b) When holding a hearing under this part, the presiding official shall:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information (including depositions and interrogatories in accordance with 25 CFR part 571, subpart C) among the parties when to do so would expedite the proceeding;

(5) Regulate the course of the hearing;

(6) When appropriate, hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph (b)(6) of this section, require the attendance of at least one representative of each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 577.14 of this part; and

(10) Take other actions authorized by the Commission consistent with this part.

(c) The presiding official may order the record to be kept open for a reasonable period following the hearing (normally five days), during which time the parties may make additional submissions to the record. Thereafter, the record shall be closed and the hearing shall be deemed concluded. Within 30 days after the record closes, the presiding official shall issue a recommended decision in accordance with § 577.14 of this part.

§ 577.8 Request to limit disclosure of confidential information.

(a) If any person submitting a document in a proceeding that involves more than two parties claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905 (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person shall:

(1) Indicate that the document in its entirety is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(2) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chairman, whose actions regarding the disclosure of confidential information are governed by § 571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(i) A copy of the document, group of documents, or segregable portions of the documents marked "Confidential Treatment Requested"; and

(ii) A statement explaining why the information is confidential.

(b) A party to a proceeding may request that the presiding official direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding official shall so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known addresses. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§ 577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under § 577.7 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§ 577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings;

(3) Their interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such tribe may intervene as a matter of right.

(c) A person not named as a party and who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a part at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner wishes to present witnesses.

(d) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

(e) When petitions to participate as parties are made by individuals or groups with common interests, the presiding official may request all such petitioners to designate a single representative, or he or she may recognize one or more petitioners.

(f) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and may then treat the petition as a request for participation as amicus curiae (that is, "friend of the court").

§ 577.13 Transcript of hearing.

Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall be at the actual cost of duplication.

§ 577.14 Recommended decision of presiding official.

(a) *Recommended decision.* Within thirty (30) days after the record closes, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall be based upon the whole record and shall include findings of fact and conclusions of law upon each material issue of fact or law presented on the record.

(b) *Filing of objections.* Within ten (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

§ 577.15 Review by Commission.

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed except that, if the subject of the appeal is an order of temporary closure issued under § 573.6 of this chapter, the order of temporary closure shall be dissolved.

[FR Doc. 93–1065 Filed 1–21–93; 8:45 am]

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Friday
January 22, 1993

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172 and 177

Training for Safe Transportation of Hazardous Materials; Revisions and Response to Petitions for Reconsideration; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 177

[Docket No. HM-126F; Amdt. No. 172-126, 177-79]

RIN 2137-AB26

Training for Safe Transportation of Hazardous Materials; Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revisions and response to petitions for reconsideration.

SUMMARY: This rule revises a final rule published in the **Federal Register** on May 15, 1992 (57 FR 20944), which revised the Hazardous Materials Regulations to require training for hazardous materials (hazmat) employees. RSPA is delaying the compliance dates for training, primarily in response to petitions for reconsideration, and making editorial and technical corrections to the final rule.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1992, the Research and Special Programs Administration (RSPA) published a final rule under Docket HM-126F entitled, "Training for Safe Transportation of Hazardous Materials" (57 FR 20944) to enhance the training requirements for persons involved in the transportation of hazardous materials. This action was necessary to comply with the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandating that DOT regulate, under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180), the training of all hazardous materials (hazmat) employees. Based on information provided to RSPA through its hazardous materials incident reporting system, human error is the probable cause of most transportation incidents and associated consequences involving the release of hazardous materials. Training of hazmat employees is aimed at reducing the number and severity of hazardous materials incidents.

Subsequent to issuance of that final rule, RSPA received six petitions for reconsideration and two comments in support of petitions submitted by other parties. In this document, RSPA is revising the final rule based on the merits of these petitions. Also, RSPA is making other minor revisions to correct, clarify and simplify certain provisions of the final rule.

Petitions Granted

RSPA received petitions requesting an extension of the compliance dates. RSPA had specified an April 1, 1993 compliance date for current employees (employed on or before November 15, 1992), and a compliance date for new employees (hired after November 15, 1992) of within 90 days of employment for completion of training. Petitioners requested that the April 1, 1993 compliance date be extended to October 1, 1993, to coincide with a compliance date for new hazard communication and classification requirements implemented under Docket HM-181, "Performance-oriented Packaging Standards" (55 FR 52402, 56 FR 66124, *et al.*) Petitioners asserted that the April 1, 1993 compliance date would force hazmat employers to expend substantial resources training employees in both pre-HM-181 and post-HM-181 requirements. Petitioners stated that an extension of the training compliance date would allow hazmat employers to concentrate resources on educating hazmat employees on post-HM-181 requirements and relieve them of the administrative and financial burden of training employees on requirements which will soon be obsolete.

RSPA agrees with these petitions. Therefore, in this document RSPA is revising § 172.704(c)(1)(i) to require completion of training by October 1, 1993 for current employees and those hired on or before July 2, 1993 (i.e., 90 days or more prior to October 1, 1993) and is revising § 172.704(c)(1)(ii) to require completion of training within 90 days of employment for those hired after July 2, 1993. It should be noted that HMTUSA required each hazmat employee to begin training current employees within six months (i.e., by November 15, 1992) after issuance of the May 15, 1992 final rule. This revision to the final rule does not affect the HMTUSA requirement for commencement of training.

Petitions Denied

A railroad petitioned that the two-year recurrent training period be extended to a three-year cycle for consistency with Federal Railroad Administration (FRA) requirements in 49 CFR part 240 for certification of railroad engineers. RSPA denies this petition. Certification requirements for railroad engineers under 49 CFR part 240 are distinct from hazardous materials training requirements under 49 CFR part 172 and RSPA sees no pressing need for identical training cycles. RSPA has previously considered and rejected comments regarding alternative training periods in the May 15, 1992 final rule. This petitioner did not present any new information to warrant changing the requirement.

A maritime association requested an exception from the two-year recurrent training requirement for hazmat employees who handle hazardous materials as an incidental part of their employment (i.e., marine cargo handling and warehousing). In place of biannual training, training would be provided "* * * with such frequency necessary to provide employees with information on current regulation requirements." The petitioner stated that the definition of a "hazmat employee" remains ambiguous as to its application to longshoremen and believes that most longshoremen do not strictly fit into the definition since their employment does not "directly affect hazardous materials transportation safety." The petitioner stated that while necessary information and training should be provided to these employees, the frequency of the recurrent training requirement is considered to be excessive.

The maritime association also requested that they be allowed to maintain records of training for members of their union. The petitioner stated that labor is dispatched on a daily basis from a union hall. Individuals may work for multiple employers during the course of one week. Historically, the association stated that they have provided hazmat training to the union work force and petitions that the exact location where a hazmat employee's training record is kept should be determined by the employer.

RSPA denies this petition for the following reasons. First, a longshoreman or other employee who handles hazardous materials, regardless of frequency, affects transportation safety and is unquestionably a hazmat employee. An occasional employee who only handles hazardous materials occasionally needs recurrent training at least as often as an employee who regularly handles hazardous materials, to ensure the employee's continuing awareness of safety considerations and regulatory requirements. The information presented in the petition does not justify an exception to the two-year recurring training requirement for hazmat employees who handle hazardous materials as an incidental part of their employment. Second, § 172.704(d) of the final rule requires that a record certifying each hazmat employee's current training be created and retained by the hazmat employer. The location of the record of training is not specified. If agreed to by both the hazmat employer and the union, the union could maintain the required records on behalf of the hazmat employer. Under the HMR, both could be held responsible for recordkeeping requirements. According, RSPA believes that no change to the requirement is necessary.

One petitioner asked RSPA to delay, until the first round of recurrent training is completed, the testing and certification of current hazmat employees who have already been trained. The petitioner stated that testing undertaken merely to meet the testing requirements would not be as effective as an integrated program; and that such a delay would allow employers to consider the most effective means of testing currently trained employees based on their job function and the type of training necessary.

The purpose of testing and certification is to ascertain whether the employee has familiarity with the general provisions of the Hazardous Materials Regulations (HMR), is able to recognize and identify hazardous materials, has knowledge of specific requirements of the HMR applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures. By delaying the completion date for training current hazmat employees until October 1, 1993, RSPA is providing sufficient time for hazmat employers to train, test, and develop the recordkeeping documentation. Therefore, the petition is denied.

Except as adopted herein, all petitions for reconsideration received by RSPA regarding issues addressed by the final rule published on May 15, 1992, are denied. Any subsequent submission regarding issues relating to this rulemaking should be filed as a petition for rulemaking in conformance with 49 CFR 106.31.

Section-by-Section Review

Part 172; Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

Section 172.704. Paragraph (a)(1) is revised to correct punctuation. Paragraph (a)(2)(i) is amended to clarify that training is required for hazmat employees who perform functions subject to conditions specified by exemptions issued under the HMR. Paragraph (a)(2)(ii) is revised to clarify the acceptability of function-specific training under the ICAO Technical Instructions and the IMDG Code, to the extent that compliance with these regulations is authorized under the HMR (see §§ 171.11 and 171.12), as an alternative to function-specific training under corresponding provisions of the HMR.

As discussed above, the dates in paragraph (c)(1)(i) are revised to require completion of training by October 1, 1993, for hazmat employees employed on or before July 2, 1993. Also, the date in paragraph (c)(1)(ii) is revised to require training within 90 days of employment for employees employed after July 2, 1993.

Part 177—Carriage by Public Highway

Section 177.816. Editorial changes are made including deletion of carrier requirements that are not directly related to safety in a functional sense. In the final rule issued on May 15, 1992, RSPA inadvertently required that training in the Motor Carrier Safety Regulations, as required in paragraph (a), meet the frequency and recordkeeping requirements in § 172.704. Accordingly, paragraph (c) is revised and a new paragraph (d) is added to clarify that the frequency and recordkeeping requirements in § 172.704 apply only to the specialized requirements for cargo tanks and portable tanks in paragraph (b).

Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be non-significant because it clarifies and corrects provisions of the final rule and provides limited relief to the regulated industry. The regulatory evaluation for the final rule was reexamined, but was not modified because the changes made under this rule will result in a minimal economic benefit for the regulated industry.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612. This final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Regulatory Flexibility Act

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Under section 106(b)7 of the HMTA, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting, recordkeeping, and training requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172 and 177 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

2. In § 172.704, paragraphs (a)(1), (a)(2), (c)(1)(i) and (c)(1)(ii) are revised to read as follows:

§ 172.704 Training requirements.

(a) Hazmat employee training shall include the following:

(1) *General awareness/familiarization training.* Each hazmat employee shall be provided general awareness/familiarization training designed to

provide familiarity with the requirements of this subchapter, and to enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of this subchapter.

(2) *Function-specific training.* (i) Each hazmat employee shall be provided function-specific training concerning requirements of this subchapter, or exemptions issued under subchapter B of this chapter, which are specifically applicable to the functions the employee performs.

(ii) As an alternative to function-specific training on the requirements of this subchapter, training relating to the requirements of the ICAO Technical Instructions and the IMDG Code may be provided to the extent such training addresses functions authorized by §§ 171.11 and 171.12 of this subchapter.

* * * * *

(c) * * *

(1) * * *

(i) Training for a hazmat employee employed on or before July 2, 1993, shall be completed prior to October 1, 1993.

(ii) Training for a hazmat employee employed after July 2, 1993, shall be complete within 90 days after employment.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

4. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.816 [Amended]

5. In § 177.816, the following changes are made:

(a) In paragraph (a), the words "383, 387," are removed.

(b) In paragraph (a), the word "399" is removed and replaced with word "397".

(c) In paragraph (a)(4), the word "navigating" is removed and replaced with the word "maneuvering".

6. In § 177.816, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 177.816 Driver training.

* * * * *

(c) The training required by paragraphs (a) and (b) of this section may be satisfied by compliance with the current requirements for a Commercial Driver's License (CDL) with a tank vehicle or hazardous materials endorsement.

(d) Training required by paragraph (b) of this section must conform to the requirements of § 172.704 of this subchapter with respect to frequency and recordkeeping.

Issued in Washington, DC, on January 15, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Programs Administration.

[FR Doc. 93–1515 Filed 1–21–93; 8:45 am]

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federal register

Friday
January 22, 1993

Part IV

Environmental Protection Agency

Incentives for Development and Registration of Reduced-Risk Pesticides Program Update; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36184B;FRL-4184-7]

Incentives for Development and Registration of Reduced-Risk Pesticides Program Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is a follow-up to the Environmental Protection Agency's initiative to establish incentives for the development, registration, and use of reduced-risk pesticides (57 FR 32140; July 20, 1992). It serves as an interim report of EPA's progress, an overview of plans for the future and describes the Agency's short-term and long-term strategies. A Pesticide Regulation (PR) Notice is being prepared and will be sent to all parties holding Federal pesticide registrations. The PR Notice will provide guidance on the EPA's interim process for identifying new active ingredients which may be eligible for priority treatment as lower-risk pesticides. Applicants seeking a new active ingredient registration are invited to provide an explanation accompanied by any supporting information on why their application and any associated tolerance petitions may qualify for special consideration as a reduced-risk pesticide. EPA's long-term plans include (1) developing criteria for identifying lower risk pesticides to use as a factor in setting priorities and scheduling reviews of applications to register new pesticides, (2) streamlining the overall registration process, (3) improving the information content of pesticide labels and promoting other educational efforts to better inform the public and encourage more informed user choice, and (4) considering legislative approaches to encourage the registration of new reduced-risk pesticides by extending the periods of exclusive use under FIFRA or patent term protection, to qualifying pesticides.

FOR FURTHER INFORMATION CONTACT: Stephanie R. Irene, Registration Division [H7505C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305-5447.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

I. Background

A. Introduction

EPA has embarked on a reduced-risk pesticide initiative with the primary objective of encouraging the development, registration and use of lower risk pesticides and pest management practices in order to lessen risks to human health and the environment. Because of the significance and complexity of the topic, EPA announced its interest in developing new policies in this area and solicited public comment via a **Federal Register** notice published July 20, 1992 (57 FR 32140), and a public workshop held October 5 and 6, 1992.

B. Public Involvement

1. **Federal Register** *Notice*. EPA identified two basic objectives for a reduced-risk policy with several possible actions for implementing each. The first objective is to create incentives for the development, registration, and use of lower risk pesticides; the second is to encourage the replacement of higher risk pesticides on the market. EPA also invited discussion on how the EPA should identify lower-risk and higher-risk pesticides.

EPA listed several possible incentives to encourage lower risk pesticides, including early counseling of applicants for registration, giving priority status to potentially lower risk pesticides in the review process, waiving fees, reducing or deferring data requirements, and allowing safety claims in labeling and in advertising to foster competition in favor of reduced-risk products. EPA described possible approaches for encouraging the replacement of higher risk pesticides, such as those which may in the past have been retained only because there were no cost-effective, lower-risk alternatives. The Agency suggested several possible actions with respect to such pesticides, including publishing a list of higher risk uses, screening applications claiming to replace higher risk uses and giving qualifying applications priority for review and waiving fees. EPA also suggested the possibility of reevaluating the registration of higher risk pesticides for potential regulatory action, i.e., restriction or cancellation, when safer, effective alternatives are registered.

2. *Public workshop.* Due to the potential impacts and complexity of this topic, EPA conducted a public workshop on October 5 and 6, 1992 to further explore the issues. Over 200 participants attended. The Agency appreciates the interest and enthusiasm of all attendees who provided candid, albeit differing viewpoints on how the Office of Pesticide Programs could accomplish its intended goals.

The period for accepting written comments was extended to November 5 to incorporate additional ideas and responses generated from the workshop. EPA has received a total of 152 written comments. EPA would like to thank everyone who provided valuable input by participating in the workshop and/or responding to the **Federal Register** notice. Many of the comments provided imaginative ideas and suggestions and will greatly assist the Agency in policy formulation.

II. Strategy

A. Short Term Approach

EPA is implementing an interim strategy while policy is being developed. The Agency wishes to capture good ideas that can be implemented quickly. The Office of Pesticide Programs (OPP) will be issuing a Pesticide Regulation (PR) Notice to all pesticide registrants. This PR Notice will announce that, in scheduling the review of pesticide applications involving new active ingredients, one of the factors EPA will consider is the opportunity for reduced risk. The Notice will provide general guidance and describe the type of information that OPP will need to evaluate such requests. By adopting this voluntary pilot program, EPA can test its feasibility, obtain additional comments from outside sources, and improve the Agency's ability to devise a long term strategy.

Applicants who believe they have developed a qualifying new active ingredient will be invited to submit a rationale substantiating their case as part of their application for registration. The applicants will be asked to discuss why their product(s) presents a reduced risk and make a comparison between the risks posed by the new active ingredient under consideration and the other pesticides for that use. Registrants should consider human health, environmental fate and ecological effects, other hazards and pest resistance management. In addition, they may consider the cost of the product relative to substitutes. An application's review priority will depend on the Agency's determination that the new active ingredient may pose significantly lower risks. The PR Notice will give additional details on topics that should be addressed in any such request for special consideration.

B. Long Term Approach

To develop a more comprehensive reduced-risk policy, EPA will focus on four major issues. The plan is first to develop specific criteria for identifying lower risk pesticides for accelerated review and to work on streamlining the entire registration process for all products. Exploration of potential product label reform and the possible extension of exclusive use or patent terms, which could require more complex rulemaking or legislative changes, will follow. While EPA has decided not to publish a list of higher risk pesticides at this time, it may revisit the issue after the completion of the reregistration program, when a more complete data base should permit more reliable comparisons among pesticides. The four main elements of the longer term strategies are described below:

1. *Developing criteria.* EPA intends to establish a list of criteria for identifying a reduced-risk pesticide. These criteria should be science-based, and they should provide assurance of protection of public health and the environment. The application of each criterion should be sufficiently objective that incoming pesticide applications may be screened quickly to identify lower risk candidates before the detailed review begins. Therefore, the initial identification process should not significantly delay review of an incoming application regardless of whether it ultimately conforms to the reduced-risk standard. EPA intends to work with industry and academia to develop the criteria.

2. *Streamlining the registration process.* EPA currently has in place several teams or workgroups whose charge is to analyze the registration process to recommend efficiencies. The streamlining sought will affect all incoming actions and not be limited to those claiming lower risk. Areas where internal process improvements are being developed are new chemicals and tolerances, Fast Track registrations, and Special Local Needs (section 24(c)) registrations. Additionally, OPP is focusing on streamlining ecological effects and environmental fate data requirements, and revising pesticide tolerance crop groupings. Finally, we are considering the possibility of exempting from FIFRA registration requirements pesticidal materials recognized to be of low risk. Candidates may include some of the materials which EPA has recently found eligible for reregistration, such as dried blood and putrescent egg solids.

3. *Pesticide label reform and informational outreach.* In order to promote the goal of encouraging pesticide users to choose and utilize reduced-risk pesticides, EPA is considering revising its pesticide labeling policy, for example, by allowing registrants to make safety claims on their labels. Several workgroups within the Agency are addressing the complex and multifaceted issues which arise with labeling. These groups were established to seek improvements in the scope and utility of, policy for, and the process for developing pesticide labeling.

EPA will also consider other mechanisms to reach interested persons with improved information about pesticides that may affect them, others, or the environment in general. The Agency plans to improve the informational content of pesticide labels and develop other educational sources e.g., pesticide fact sheets and training programs to permit more informed choices by users and other affected parties. In addition, the Agency is considering allowing comparative-safety-and-efficacy claims in advertising materials to inform users of risks and benefits.

4. *Extending exclusive use or patent term extension incentives.* One of the strongest and more significant economic incentives, as expressed by representatives of the pesticide industry, would be the extension of the exclusive use period of a pesticide as established in FIFRA section 3(c)(1)(D) or the granting of an extension of the patent term for a lower risk pesticide. Currently, a portion of an applicant's period of patent protection is taken up by the Agency's review process, thus shortening the actual time the product is on the market under patent. If this period is extended, the registrants believe they would be able to recoup their research and development expenses more quickly, thereby encouraging the development of new pesticides. EPA will examine the options in this area for providing meaningful incentives for the development of lower risk pesticides.

EPA realizes that developing a comprehensive Reduced-Risk Policy incorporating the listed objectives will require significant time and resources. It believes, however, that the immediate actions being taken will result in progress toward the end of lessening risks from pesticides to human health and the environment.

Dated: January 13, 1993.

William K. Reilly,

Administrator, Environmental Protection Agency.

[FR Doc. 93-1499 Filed 1-21-93; 8:45 am]

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Part V

Environmental Protection Agency

Amitrole; Notice of Final Determination for Termination of the Amitrole Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/38B; FRL4181-4]

Amitrole; Notice of Final Determination for Termination of the Amitrole Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination and termination of Special Review.

SUMMARY: In a **Federal Register** Notice of October 8, 1992 (57 FR 46448), EPA proposed to terminate the Amitrole Special Review based on the determination that the benefits of use outweigh the risks. The Agency solicited public comments for a 30-day period and no comments were received. Therefore, with this Notice, EPA is announcing that it has terminated the Amitrole Special Review.

FOR FURTHER INFORMATION CONTACT: By mail Philip J. Poli, Review Manager, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Third floor, Westfield Bldg., 2800 Jefferson Davis Highway, Arlington, VA. (703) 308-8038.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document and the Preliminary Determination to Terminate the Amitrole Special Review are available as an electronic file on the *Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file and the Preliminary Determination are available in Postscript, Wordperfect 5.1 and ASCII. The Preliminary Determination was published in the **Federal Register** on October 8, 1992 at 57 FR 46448.

I. The EPA's Decision Regarding Special Review

This Notice concludes EPA's administrative Special Review of the risks and benefits of amitrole which was initiated in a **Federal Register** Notice of May 15, 1984 (49 FR 20546). In the October 8, 1992 **Federal Register** (57 FR 46448), EPA announced its intent to terminate the Amitrole Special Review. As stated in that document, based on its risk and benefits assessment, EPA has concluded that the benefits provided from the continued existing use of amitrole outweigh the risks. EPA has received no comments in response to the October 8, 1992 Notice. Accordingly, for the reasons set forth in the October 8, 1992 Notice (57 FR 46448), EPA is announcing that it has terminated the Amitrole Special Review.

II. Availability of Public Docket

EPA established a public docket for the Amitrole Special Review. This public docket includes this Notice; any other Notices pertinent to the Amitrole Special Review and to EPA's decision regarding the termination of the Amitrole Special Review; documents not considered Confidential Business Information; copies of written comments or other materials submitted to EPA at any time during the Special Review process by any person outside the government in response to the Amitrole Special Review; and a current index of materials in the public docket. The public docket is located in Rm. 1132, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. 22202 and can be viewed from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

Dated: December 31, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-1501 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-F

federal register

Friday
January 22, 1993

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Final Comprehensive Plan for Fiscal Year 1993; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Final Comprehensive Plan for Fiscal Year 1993

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final comprehensive plan for Fiscal Year 1993.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this Notice of its Final Comprehensive Plan for Fiscal Year 1993.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20513.

FOR FURTHER INFORMATION CONTACT: Marilyn Silver, Information Dissemination Unit, (202) 307–0751. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5614(b)(5)(A) (hereinafter called the JJDP Act), the Acting Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a Final Comprehensive Plan describing the program activities which OJJDP intends to carry out during Fiscal Year 1993. The Final Plan includes activities specified in part C and part D of title II of the JJDP Act. Taking into consideration comments during the 45-day period beginning with the publication of the proposed plan in the **Federal Register** on November 9, 1992, this publication sets forth final new and continuation programs for Fiscal Year 1993 and concludes with a summary of the substantive comments received and the responses of OJJDP to those comments.

The 1984 Amendments to the JJDP Act established in OJJDP a Missing and Exploited Children's Program (title IV of the JJDP Act, also called the Missing Children's Assistance Act). Programs and activities proposed for funding under the Missing and Exploited Children's Program are not included in this Proposed Comprehensive Plan for Fiscal Year 1993. The Fiscal Year 1993 Missing Children's proposed program priorities have been separately published in the **Federal Register** for public comment as required by section 406(a) of the JJDP Act, 42 U.S.C. 5776(a).

The actual solicitation of grant applications under the Final Comprehensive Plan will be published separately, at a later date, in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Introduction

The National Commission on Children final report, "Beyond Rhetoric: A New American Agenda for Children and Families," chronicles the need to strengthen opportunities for children to develop their potential. These needs include improved educational opportunity and achievement, strong and supportive families, improved value development, and child and family protection and services.

The Report points out in Chapter 8, "Supporting the Transition to Adulthood," "* * * that most young people emerge from adolescence healthy, hopeful, and able to meet the challenges of adult life." This is extremely encouraging; however, we continue to be concerned about those in our youth population who continue to engage in high-risk behaviors that victimize themselves and others and threaten their futures.

In the area of delinquency, crime and violence, there were an estimated 2.3 million arrests of persons younger than 18 in 1991 (*Arrests of Youth 1991*, National Center for Juvenile Justice, table 1). Over 100,000 of these arrests were for violent crimes and over 700,000 were for serious property crimes. The number of arrests of persons younger than 18 for violent crimes increased 41 percent from 1982–1991 (*Arrests of Youth 1991*, National Center for Juvenile Justice, table 3). The violent crimes with the greatest proportionate increase in under age 18 arrests were murder (93 percent) and aggravated assault (72 percent). Arrests of those under age 18 for forcible rape increased 24 percent and robbery increased 12 percent. In 1991 nearly two-thirds (64 percent) of juvenile offenders taken into custody were referred by police to juvenile court. Juvenile courts process nearly 1.2 million delinquency cases annually (*Juvenile Court Statistics 1989*, National Center for Juvenile Justice, table 1, p. 13).

These alarming statistics contributed to Attorney General William P. Barr's recommendations pertaining to effective deterrence and punishment of violent youthful offenders. (See Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice, U.S. Department of Justice, July 1992).

OJJDP's Fiscal Year 1993 Program Plan is designed to reduce levels of serious, violent, and chronic juvenile crime through a range of prevention, intervention, and secure confinement sanctions and treatment strategies. Several of the initiatives in the plan incorporate the goals and objectives of OJJDP's Juvenile Justice and Delinquency Prevention Component of the Weed and Seed strategy. (See Weed and Seed: Juvenile Justice and Delinquency Prevention Component, OJJDP, November 1, 1992). This document, prepared in cooperation with the Coordinating Council on Juvenile Justice and Delinquency Prevention, is available upon request from OJJDP.

The overall Weed and Seed strategy addresses serious and violent crime through effective law enforcement, tough but fair sanctions, community revitalization, and prevention, education, and treatment programs. The first phase, "Weeding," is accomplished by utilizing the resources of the criminal justice system to remove and incapacitate violent criminals and drug traffickers from targeted neighborhoods, including the violent juvenile offender. The second phase, "Seeding," revitalizes the community by providing a broad range of prevention, intervention and treatment services along with meaningful economic opportunities for community residents. Community oriented policing serves as a bridge between the "Weed" and the "Seed" activities (see "Operation Weed and Seed: Reclaiming America's Neighborhoods," U.S. Department of Justice, 1992).

The Juvenile Justice Delinquency Prevention Component of the Weed and Seed strategy encourages the establishment of a broad range of basic program services for at-risk youths in order to develop each youth's full potential. Through the Coordinating Council on Juvenile Justice and Delinquency Prevention and in conjunction with the Executive Office for Weed and Seed, the Attorney General and OJJDP have encouraged Federal agencies with program responsibilities for youths to redirect existing program resources to serve youths at the greatest risk of delinquency. OJJDP will focus its program resources on implementing a broad range of prevention, intervention and treatment programs for youths who have come into contact with the juvenile justice system by committing criminal acts. These programs will stress accountability, immediate and effective intervention and tough but fair sanctions for criminally involved youths. These programs also aim to protect the community from serious, violent and chronic juvenile offenders.

OJJDP's "graduated sanctions" program approach, when coordinated with the provision of basic services and primary (all youths) and secondary (youths at greatest risk) delinquency prevention programming, is designed to interrupt the cycle of at-risk behavior, escalating delinquent conduct and adult criminal careers. In conjunction with other Federal, State and local resources, the Weed and Seed Sites, as well as other jurisdictions who adopt this program approach, will provide a laboratory for OJJDP to test and demonstrate the extent to which this approach can contribute to the revitalization of our Nation's neighborhoods.

In implementing the Fiscal Year 1993 Program Plan, OJJDP will continue the process of developing, testing and demonstrating the graduated sanctions concept throughout its programs, while also maintaining an appropriate emphasis on Weed and Seed Sites.

- For both new competitive programs to be funded at the State or local level and new programs that provide funds to national organizations to provide services at the State and local level, a small competitive point preference may be given to applicants who propose to either provide services in Weed and Seed Sites or to Weed and Seed Sites eligible for such services, as appropriate.
- For continuation national project recipients, OJJDP has already focused a variety of program resources on Weed and Seed Sites and will continue an appropriate emphasis throughout Fiscal Year 1993. Many of these activities are noted under the various program descriptions and, where commitments are in place for Fiscal Year 1993, they are described.
- For other continuation awards OJJDP, will negotiate with grantees and task contractors to identify and ensure the provision of appropriate technical assistance, training, information, and direct program services to Weed and Seed Sites, other jurisdictions adopting the graduated sanctions program approach, and other eligible service recipients.

Through OJJDP's funding process, a broad spectrum of valuable program resources can be focused on a community's youths in a coordinated and effective manner. OJJDP will continue to serve a broad variety of critical program needs that assist State and local governments, private nonprofit agencies and practitioners to reduce delinquency and improve the operation of the juvenile justice system.

Fiscal Year 1993 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1993 is coordinated with the Assistant Attorney General and the four other Program Bureau components of the Office of Justice Programs (OJP). The program planning process involved the following steps:

- Internal review of existing programs by OJJDP staff;
- Internal review of proposed programs by other Department of Justice components;
- Review of information and data from OJJDP grantees and contractors;
- Review of information contained in State comprehensive plans;
- Review of comments made by youth services providers, juvenile justice practitioners, and researchers;
- Consideration of suggestions made by juvenile justice policy makers concerning State and local needs; and
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed in the following pages those projects currently funded in whole or in part with part C and part D funds and eligible for continuation funding in Fiscal Year 1993. Continuation funding consideration for an additional project period for previously funded discretionary grant programs will be based upon several factors, including:

- The extent to which the project responds to the applicable requirements of the JJDP Act;
- Responsiveness to OJJDP and Department of Justice Fiscal Year 1993 program priorities;
- Compliance with performance requirements of prior grant years;
- Compliance with fiscal and regulatory requirements;
- Compliance with any special conditions of award; and
- The availability of funds.

Continuation funding for an additional new budget period within an existing project period depends upon grantee compliance with established conditions of eligibility for additional budget period funding and achievement of the prior year's objectives.

New part C programs as well as those recommended for continuation funding for an additional project period must be awarded under a competitive process unless the Administrator waives this requirement in writing based on a Presidential declaration, under 42 U.S.C. 5121 et seq., that a major disaster or emergency exists or the Administrator finds that a particular program is uniquely qualified. An asterisk (*) indicates programs identified by Congress for funding.

Fiscal Year 1993 Program Listing

New Programs	
Accountability-Based Community (ABC) Intervention Program	$300,000
Serious, Violent, and Chronic Offender Program Development	300,000
Prevention of Delinquency through Child Centered Community-Based Policing	50,000
Training for Juvenile Detention Center Care Givers	50,000
Violence Study—Causes and Correlates	200,000
*Law-Related Education in the Juvenile Justice Setting	640,000
*Juvenile Gangs Prevention/Treatment Programs	1,200,000
*National Network of Children's Advocacy Centers	250,000
Hate Crime Study	100,000
Prevention of Hate Crimes	50,000
Due Process Advocacy Program Development	100,000
Continuation Programs	
Violent Crime and Gangs	
Serious Habitual Offender Comprehensive Action Program (SHOCAP)	150,000
National Youth Gang Clearinghouse	339,512
Targeted Outreach with a Gang Prevention and Intervention Component	400,000
Youth Gang Intervention Training	350,000
Victims	
*Advocacy for Abused and Neglected Children	2,000,000
*Improving the Juvenile and Family Courts' Handling of Child Abuse and Neglect Cases	500,000
*Permanent Families for Abused and Neglected Children	225,000
Research and Evaluation	
Independent Evaluations	640,000
Statistics, Information Systems, and Technology	
Children in Custody/Census	300,000
Juvenile Justice Clearinghouse	814,714
*Coalition for Juvenile Justice	600,000
Juvenile Justice Data Resources	55,000
Juvenile Justice Statistics and Systems Development	300,000
Juveniles Taken Into Custody (JTIC)/IAA	150,000
Juveniles Taken Into Custody (JTIC)/Assistance	450,000
National Juvenile Court Data Archive	615,000
Community Policing And Innovative Law Enforcement	
Juvenile Justice Training for Law Enforcement Personnel	288,000
Crime and Drug Abuse Prevention	
The Congress of National Black Churches: National Anti-Drug Abuse Program	200,000
Drug Abuse Prevention—Technical Assistance Voucher Project	200,000
Effective Strategies in the Extension Service Network, Phase III	75,000
Intensive Community-Based Aftercare Program	150,000
*Law-Related Education (LRE)	2,560 000

Native American Alternative Community-Based Program	400,000
Partnership Plan, Phase V (Cities in Schools)	300,000
Professional Development for Youth Workers	200,000
Reaching At-Risk Youth in Public Housing	300,000
Satellite Prep. School Programs and Early Elementary Schools for Privatized Public Housing	625,000
School Safety Center	200,000
Strategic Intervention for High Risk Youth	350,000
*Teens, Crime and Community: Teens in Action in the 90s	400,000
Intermediate Sanctions, Drug Testing, and Offender Accountability	
Boot Camp for Juvenile Offenders: Constructive Intervention and Early Support OJJDP	750,000
DPS	600,000
Delay in the Imposition of Sanctions	100,000
Training and TA Curriculum for Drug ID, Screening and Testing in the JJ System	100,000
Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse	75,000
Juvenile Restitution	100,000
Testing Juvenile Detainees for Illegal Drug Use	100,000
Enhanced Prosecution, Adjudication, and Corrections	
Training and Technical Assistance for Juvenile Detention and Corrections (The James E. Gould Memorial Program)	250,000
Improvement in Correctional Education for Juvenile Offenders	200,000
Improving Conditions of Confinement: Training for Juvenile Corrections Staff	525,000
Improving Literacy Skills of Institutionalized Juvenile Delinquents	250,000
Insular Area Support	405,000
Juvenile Corrections Industries Ventures Program	75,000
*Juvenile Court Training	1,100,270
OJJDP Technical Assistance Support Contract	754,679
*A Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities	100,000
*Technical Assistance to the Juvenile Courts	398,995
A Program to Reduce Minority Institutionalization (The Deborah Ann Wysinger Memorial Program)	1,200,000

Discussion and Comments

New and Continuation Programs

The following are brief summaries of each of the proposed new and continuation programs selected for Fiscal Year 1993. Although the continuation programs are listed under particular focus areas, many could also be listed in an additional focus area, particularly those that provide Weed and Seed program support in Weed and Seed Sites. New and continuation programs with a Weed and Seed focus or priority are denoted (W&S) after the program title. Specific programs remain subject to change with regard to their priority status, amount, sites for implementation, and other descriptive data and information based on grantee performance, application quality, fund availability, and other factors.

A number of programs contained in this document have been identified for funding by Congress. An asterisk (*) identifies those programs.

The Acting Administrator has selected programs reflecting the intent of Congress, the Administration, some public comments and the exercise of his programmatic discretion.

New Programs

Accountability-Based Community (ABC) Intervention Program (W&S)

$300,000

The Accountability-Based Community (ABC) Intervention Program is intended to be implemented in Weed and Seed Sites and other urban jurisdictions as a demonstration program. Its goal is to assist targeted youths in developing their full potential.

The ABC Intervention Program is a program strategy for community youths who have become involved in delinquency, particularly those likely to become chronic or serious offenders. It is not designed to provide residential services for serious and violent juvenile offenders.

This program is designed to provide different levels of accountability and responsibility contingent upon the behavior and prior delinquency of juveniles. In addition, intensive services will be provided to enhance life skills, treat chemical dependency, and provide educational services. Linkages to family and community social institutions are essential program elements.

Operated under public authority, the ABC Intervention Program will incorporate graduated sanctions, principles of accountability and responsibility, as well as treatment and rehabilitation services, in a comprehensive model. The program will provide a range of services so that each case plan is tailored to the individual needs of each participant.

Each ABC Intervention Program will consist of three program component levels and be administered by local judicial, probation and parole, or correctional agencies in cooperation with private nonprofit community-based organizations. Level A: Day treatment or other correctional service program(s) available through or housed at a Community Corrections Center, and providing intensive services for up to six months. Level B: Residential assignment to the Community Correctional Center, a group home, or other non-secure residential option for three to twelve months, followed by aftercare services under Level A. Level C: Residential assignment to a boot camp or secure community-based treatment facility for up to six months, again followed by aftercare services under Level A. Program components under Levels A and B might include restitution, victim mediation, and community service.

Aftercare will be a formal component for all residential placements, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

This program is open to all interested applicants on a competitive basis.

Serious, Violent and Chronic Offender Program Development

$300,000

The major objectives of this program development project are: To develop target group criteria for each of seven strategies to comprehensively address serious, violent and chronic juvenile offenders, to develop comprehensive program designs for implementation, and to develop a plan for testing and demonstrating the comprehensive program models in selected sites. A comprehensive model will be developed for each of the following strategies: (1) Support and assistance to families and core social institutions, including development of a Youth Leadership and Service Program design; (2) delinquency prevention programs and services for at-risk youths, including youths who have had contact with the juvenile justice system; (3) immediate intervention for first-time and minor offenders; (4) a broad range of intermediate sanctions for serious and repeat offenders; (5) small secure community-based facilities; (6) training schools, reformatories and other congregate care facilities; and (7) waiver or transfer to the criminal justice system, including the availability of juvenile records in criminal proceedings. Each of the seven strategies, to be targeted for future implementation in competitively determined sites, will include: target group selection criteria; program components or elements described in relation to their appropriateness for high-risk youths and serious, violent and chronic juvenile offenders; and risk-needs assessments, comprehensive case planning, and aftercare, as appropriate. An implementation manual will be produced for use in demonstration sites and by other interested jurisdictions.

This program is open to all interested applicants on a competitive basis.

Prevention of Delinquency Through Child-Centered Community-Based Policing (W&S)

$50,000

The purpose of this project is to prepare technical assistance and training materials that can be used to replicate, in a selected number of Weed and Seed and other competitively selected Sites, the child-centered community based policing model developed by the Yale Child Development Center and the New Haven Police Department. The model was developed in response to the increasing number of young children who were perpetrators, victims, or witnesses of aggression and violence. The program attempts to change the "atmosphere" of police departments in relation to children and to increase the competence of police officers in their varied interactions with children and families. Essentially, the program seeks to reorient police officers in their interactions with children in order to optimize the psychological roles which they can play as providers of a sense of security, positive authority, and models for identification.

The program has three major components: the training of all incoming police recruits in the principles of child and adolescent development; clinical fellowships for veteran officers who have field supervisory roles; and a 24-hour consultation service for officers responding to calls in which children are either the direct victims or witnesses of violence.

The program's goal is to prevent youths who witness violence or who are victims of violence from identification with violent role models and from adaptation of violence as appropriate and reasonable modes of functioning. The program will document and develop training and technical assistance materials to inform jurisdictions interested in adopting and implementing the New Haven Child Development and Community-Based Policing Model.

This program is open to all interested applicants on a competitive basis. Future OJJDP funds may also be provided to the New Haven Agencies to serve as a host site for purposes of providing technical assistance.

Training for Juvenile Detention Center Care Givers

$50,000

Enhanced training of detention center care givers is needed to improve the administration of juvenile detention. The forthcoming results of the OJJDP "Conditions of Confinement" study document this need, particularly in such areas as education, health care, overcrowding reduction, gangs and drugs. In addition, this award will establish an infrastructure for subsequent training of detention professionals using new curriculum material in the "Desktop Guide to Detention," currently being prepared. Funds will be made available to enable line detention staff to develop, deliver, and participate in regional training sessions providing basic, in-service training for detention center care givers.

This program will be implemented by the National Juvenile Detention Association. No additional applications will be solicited in Fiscal Year 1993.

Violence Study—Causes and Correlates (W&S)

$200.000

OJJDP will support additional analyses of data collected under its Program of Research on the Causes and Correlates of Delinquency, conducted at the State University of New York at Albany, the University of Pittsburgh, and the University of Colorado. The draft final report, "Urban Delinquency and Substance Abuse," is under review. To utilize the collected data more fully, additional analyses need to be performed. These analyses are intended to benefit directly the serious, violent and chronic offender program development OJJDP will fund under the "Chronic, Serious, and Violent Offender Program Development" project. Topics for analysis will be determined by program development requirements. For example, development of risk assessment instruments would benefit from more specific analyses regarding risk factors and pathways to chronic, serious, or violent offending.

This program will be implemented by the current grantees listed above. The grantees will also carry out a comprehensive planning effort, including an in-depth analysis of data bases, and critically assess the Causes and Correlates Program design, methods, survey instruments, and data collection procedures for adaptation to three new sites, viz. Washington, DC; Los Angeles, California; and Milwaukee, Wisconsin. No additional applications will be solicited in Fiscal Year 1993.

*Law-Related Education in Juvenile Justice**

$640,000

This new program for law-related education (LRE) is established in compliance with section 299(e) of the JJDP Act Amendments of 1992 which provide that 20 percent of the funds appropriated for the national law-related education program under section 261(a)(6) shall be reserved each fiscal year for not less than two programs that did not receive Special Emphasis funding prior to October 1, 1992.

In 1990, OJJDP began experimenting with LRE for at-risk youths in a variety of juvenile justice settings through its consortium of grantees implementing its national LRE program in schools. Interim assessments of this effort suggest positive effects on youths. Administrators and staff of facilities and programs using LRE with this target population have been extremely supportive of the effort.

To expand and enhance upon these initial activities, OJJDP will fund organizations to provide training and technical assistance in law-related education that are focused on youths in juvenile justice settings. The primary purpose of this program is to increase the capabilities of juvenile justice personnel (including but not limited to teachers, line staff, administration, and community resource people) to implement LRE programs in juvenile justice settings.

The major objectives are to provide LRE awareness to the juvenile justice community; develop or adapt and disseminate LRE curricula and lesson plans focused on youths under the supervision of the juvenile court; provide training and technical assistance to teachers and others in the juvenile justice system; increase public awareness of LRE in juvenile justice settings; and develop an implementation model adaptable for a future evaluation of this intervention with these targeted youths.

The five primary grantees currently awarded OJJDP funds for LRE will not be eligible to complete for these funds.

The following two new programs were identified by Congress under the Fiscal Year 1993 appropriation for OJJDP:

*Juvenile Gangs Prevention and Treatment Programs**

$1,200,000

Continuation programs, as well as several potential new grants, will support locally-based part D gang prevention programs in the areas of training and educational opportunities to reduce drug dependency and gang involvement. These programs are designed to: (1) Reduce participation of juveniles in drug-related activities, (2) reduce juvenile involvement in gang-related activities, and (3) promote the involvement of juveniles in lawful activities.

Programs address methods to: (1) Reduce delinquency and dropout rates, (2) provide educational opportunities for at-risk youths, (3) develop mentoring relationships between at-risk youths and responsible youths, (4) educate at-risk youths on mandatory penalties for drug crimes, and (5) address the problems of rural gangs.

Prospective applicants specifically identified by Congress for funding consideration under this program are: (a) New Community Corporation of Newark, New Jersey; (b) San Francisco State University and the San Francisco, California, Conservation Corps; (c) St. Louis, Missouri, Gang Program; (d) Ontario, Oregon, Gang Program; and (e) Sports Museum of New England, (Massachusetts). These entities have been invited to submit concept papers for consideration and will be eligible to receive a combined total of up to $500,000 of these funds. No additional applications, other than the five prospective applicants noted above, will be solicited in Fiscal Year 1993.

OJJDP is currently funding a number of part D programs that will be continued, in part, as identified by Congress. These projects, described under *Continuations*, are as follows: (1) Targeted Outreach with a Gang Prevention and Intervention Component, (2) Strategic Intervention for High Risk Youths, (3) Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing, and (4) Reaching At-Risk Youths in Public Housing.

*National Network of Children's Advocacy Centers**

$250,000

This program will support the National Network of Children's Advocacy Centers through the development and implementation of coordinated training, technical assistance, and information sharing programs. The network links together local Children's Advocacy Center programs whose purpose is to provide multidisciplinary coordination in the investigation and prosecution of child abuse cases. Leaders in this effort are the National Children's Advocacy Center in Huntsville, Alabama; the University of Oklahoma's Justice Center in Tulsa, Oklahoma; and the National Children's Advocacy Center in Honolulu, Hawaii. An application will be solicited from one of these centers. No other applications will be solicited in Fiscal Year 1993.

The following three new programs were identified by the Juvenile and Justice Delinquency Prevention Amendments of 1992 as new programs to be funded in Fiscal Year 1993:

Hate Crime Study

$100,000

In accordance with section 248(a)(7)(A) of the JJDP Act, as amended, the Administrator will conduct a Hate Crime Study and submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate detailing the results of the study addressing each objective specified.

The JJDP Act requires that this study assess the characteristics of juveniles who commit hate crimes, including a profile of such juveniles based on the motives for commitiing hate crimes; the age, sex, race, ethnicity, education level, locality, and family income of such juveniles; whether such juveniles are familiar with publications or organized groups that encourage the commission of hate crimes; the characteristics of hate crimes committed by juveniles, including: The types of hate crimes committed; the frequency with which institutions and natural persons, separately determined, were the targets of such crimes; the number of persons who participated with juveniles in committing such crimes; the types of law enforcement investigations conducted with respect to such crimes; the law enforcement proceedings commenced against juveniles for committing hate crimes; and the penalties imposed on such juveniles as a result of such proceedings; and the characteristics of the victims of hate crimes committed by juveniles, including: The age, sex, race, ethnicity, locality of the victims and their familiarity with the offender; and the motivation behind the attack.

Because data collection on hate crimes is still in its early stages, the program will assess the state-of-the-art for such data collection and make specific recommendations for future information collection. This information will inform and direct future OJJDP programmatic efforts to reduce and respond to hate crimes.

This program is open to all interested applicants on a competitive basis.

Prevention of Hate Crimes

$50,000

This project is in response to section 261(a)(9), which requires the Administrator to establish or support programs designed to prevent and to reduce the incidence of hate crimes by juveniles. These programs includes: model educational programs that are designed to reduce the incidence of hate crimes, (i.e., addressing the specific prejudicial attitude of each offender; developing an awareness in the offender of the effect of the hate crime on the victim; educating the offender about the importance of tolerance in our society); and sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration.

OJJDP will provide funds to assess existing curriculum materials and to develop a multi-purpose curriculum that is appropriate for general educational settings and for use in institutional or placement settings. Under future funding, with guidance from the study on hate crimes, OJJDP will consider support for the development and demonstration of programs for youths who commit hate crimes.

This program is open to all interested applicants on a competitive basis.

Due Process Advocacy Program Development

$100,000

Section 261(a)(3) of the JJDP Act, as amended, requires the Administrator to establish or support advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles.

In furtherance of this goal, OJJDP will support a development effort in Fiscal Year 1993 to examine approaches to improving due process and the quality of representation for juveniles in the juvenile justice system and to determine which are the most promising and cost-effective. From this survey effort, the recipient of this award will develop a strategy for a nationwide program to improve due process and the quality of representation for juveniles in the juvenile jsutice system.

This program is open to all interested applicants on a competitive basis.

Continuation Programs

Weed and Seed Initiative

Programs that contain a Weed and Seed focus or priority are listed under the applicable program area and denoted by (W&S) after the program title.

Violent Crime and Gangs

Serious Habitual Offender Comprehensive Action Program (SHOCAP) (W&S)

$150,000

SHOCAP is an information and case management program involving police, probation, prosecution, social services, school, and corrections authorities. Its focus is on juveniles who repeatedly commit serious crimes, with particular emphasis on sentencing dispositions. Public comments supporting this program were received from existing SHOCAP sites. The SHOCAP Program and sites have received funding support since 1983 in the total approximate amount of $5,587,795. The program has been demonstrated and replicated in 24 primary sites and over 300 affiliate and satellite sites. Because this program is an effective resources to identify, track, and prosecute the serious, violent and chronic offender, it is included in the Fiscal Year 1993 Program Plan as a new component of the Training and Technical Assistance Division's Gang and Drug Police Operations Leading to Improved Child and Youth Services (POLICY) Training Program.

The Gang and Drug POLICY Training Program provides training designed to improve law enforcement management practices and effectiveness in the juvenile justice area. It emphasizes law enforcement strategies for detecting and apprehending perpetrators of serious offenses and the habitual offender and addresses a coordinated community response to juvenile gang activities including recognition, deterrence and control issues. Gang and Drug POLICY Training Program focuses on drug abuse issues and strategies for coordinated community responses through prevention, education, intervention, model programs, and resource development.

The Gang and Drug POLICY Training Program assumed a leadership role in comprehensive community planning by working with Weed and Seed communities in Fiscal Year 1992 to assist steering committees, which are made up of community leaders, to develop a comprehensive Weed and Seed strategy for the community's juvenile population. The grant will further this comprehensive training effort by integrating the Gang and Drug SHOCAP Training Program into the Gang and Drug POLICY Training Program. This will effectively serve the goal of cooperation and coordination between law enforcement and other juvenile justice system components while increasing access to the SHOCAP model for a broad spectrum of interested jurisdictions.

OJJDP will supplement the Gang and Drug POLICY Training Program (see Youth Gang Intervention Training Program) in the amount of $150,000 to add this important new training component in Fiscal Year 1993. The current Special Emphasis grant to Public Administration Services (PAS) for the SHOCAP Program will continue with the existing grant fund balance through September 1993. No additional applications will be solicited in Fiscal Year 1993.

National Youth Gang Clearinghouse

$339,512

This contract provides funding for OJJDP's National Youth Gang Clearinghouse. The Clearinghouse (1) gathers and disseminates current information on model programs for combating violent juvenile gangs; (2) gathers and disseminates current statistical and descriptive information on violent juvenile gangs; and (3) assists in the coordination of Federal, State and local gang program development and training and technical assistance efforts by providing information to the field on relevant programs and activities. This program will continue to be administered by the current contractor, Digital Systems Research, Inc. No additional applications will be solicited in Fiscal Year 1993.

Targeted Outreach With a Gang Prevention and Intervention Component (W&S)

$400,000

This program is designed to enable local Boys and Girls Clubs to prevent youths from entering gangs and to intervene with gang members in the early stages of gang involvement to divert them away from gangs and toward more constructive programs. The National Office of Boys and Girls Clubs will provide training and technical assistance to the 57 existing sites and add 20 new gang prevention and 4 intervention sites. This program will give preference to Weed and Seed Sites that meet the Boys and Girls Clubs' selection criteria. The program will be implemented by the current grantee, Boys and Girls Clubs of America. No additional applications will be solicited in Fiscal Year 1993.

Youth Gang Intervention Training (W&S)

$350,000

The Gang and Drug POLICY (Police, Prosecution, Probation, Operations Leading to Improved Children and Youth Services) Training Program helps local jurisdictions develop a comprehensive strategy for combating gangs and drugs. The objectives of this training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing strategies to address the problems resulting from gang and drug activities; (2) to promote an awareness and recognition of (a) the problems of gangs and drugs, (b) justice system practices, (c) behavior patterns of gangs and gangs members, and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing with community gang and drug related problems; (4) to clarify and document the roles, responsibilities, and issues relating to an interagency approach to the prevention, intervention and suppression of these illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang and drug problems; and (6) to develop or improve the response capacity to gang and drug issues through an effective interagency model which matches resources to demands.

As noted under the Serious Habitual Offender Comprehensive Action Program (SHOCAP), this program will receive an additional $150,000 in Fiscal Year 1993 to add a SHOCAP training component. This program will be funded in Fiscal Year 1993 under a competitive contract solicitation for award to a nonprofit organization.

Victims

*Advocacy for Abused and Neglected Children**

$2,000,000

The National Court Appointed Special Advocate Association (NCASAA) provides training and technical assistance to local and statewide programs; assists in program development; advocates the best interest of abused and neglected children; publicizes the Court Appointed Special Advocate (CASA) concept which helps recruit volunteers; develops management systems and standards to support and improve local CASA operations; provides a resource library and resource services; develops cooperative relationships with other national and regional organizations; and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 520 CASA programs in 49 States, with 28,000 volunteers. There are 12 statewide programs mandated and State-funded, and 24 State associations and networks offering support services to their State's program. This program will be implemented by the current grantee (NCASAA) under separate assistance awards of $1 million each, one to provide technical assistance and training services and one to support the expansion of CASA programs in both new and existing jurisdictions. No additional applications will be solicited in Fiscal Year 1993.

*Improving the Juvenile and Family Courts' Handling of Child Abuse and Neglect Cases**

$500,000

The purpose of this project is to develop model approaches and programs to allow juvenile and family courts to improve handling of child abuse and neglect cases. The National Council of Juvenile and Family Court Judges has developed model programs to assist State courts in providing training and technical assistance to judicial personnel, attorneys and other key people in juvenile and family courts. Additional model programs will be designed to help state court systems develop more effective procedures for determining whether child service agencies have made "reasonable efforts" to prevent placement of children in foster care and for reuniting families thereafter. Procedures for sharing information among health professionals, social workers, law enforcement personnel, prosecutors, defense attorneys, and juvenile and family court personnel will also be strengthened. This project will continue to be implemented by the current grantee, The National Council of Family and Juvenile Court Judges. No additional applications will be solicited in Fiscal Year 1993.

*Permanent Families for Abused and Neglected Children**

$225,000

This is a national project to prevent unnecessary foster care placement of abused and neglected children; to reunify the families of children already in care; and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and a temporary solution for children. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers and others in the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected lead States; and development of model questions to guide risk assessment. This program will be implemented by the current grantee, The National Council of Family and Juvenile Court Judges. No additional applications will be solicited in Fiscal Year 1993.

Research and Evaluations

Independent Evaluations

$640,000

OJJDP awarded a contract in 1991 to conduct independent third party evaluations of selected OJJDP-funded programs. Projects to be examined in Fiscal Year 1993 include:

(1) Satellite Pre-School Program;
(2) Law Related Education Programs;
(3) Horizons Plus;
(4) Gang and Drug Training and Technical Assistance; and
(5) Intensive Community-Based Aftercare Program.

This contract focuses on the efficacy, cost-effectiveness, and impact of OJJDP's discretionary programs. Assessment data will be made available to all concerned. The following criteria are considered in selecting programs for evaluation: (1) Continuations in order of number of years of funding and total expenditures; (2) new action programs being tested to serve as possible models; and (3) programs being considered for continuation. This program will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in Fiscal Year 1993.

Statistics, Information Systems, and Technology

Children is Custody Census

$300,000

This is a collaborative interagency program between the U.S. Bureau of the Census and OJJDP. All, or a major portion, of the funding will be provided by OJJDP for the biennial census of public and private juvenile detention and correctional facilities conducted by the Census Bureau. The census describes the subject facilities in terms of their resident population as well as programs and physical characteristics. This program will be implemented under an interagency agreement with the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Clearinghouse

$814,714

The Clearinghouse provides support services to OJJDP in preparing the Office's publications; collecting, synthesizing, and disseminating information on all aspects of juvenile delinquency; and preparing specialized responses to information requests from the juvenile justice field. The clearinghouse maintains a toll-free number for information requests. This program will be implemented by the current contractor, Aspen Systems, Inc No additional applications will be solicited in Fiscal Year 1993.

*Coalition for Juvenile Justice**

$600,000

The Coalition for Juvenile Justice (Coalition) was established in 1983 as the National Coalition of State Juvenile Justice Advisory Groups. It was the renamed Coalition for Juvenile Justice effective January 1, 1993. The Coalition supports and facilitates the purposes and functions of State juvenile justice advisory groups. In 1984, Congress selected the Coalition to review Federal policies regarding juvenile justice and delinquency prevention, prepare and submit an Annual Report and recommendations to the President and Congress, and provide advice to the OJJDP Administrator. The Coalition is also authorized to develop an Information Center for Juvenile Justice and Delinquency Prevention Programs, to conduct an Annual Conference and to disseminate information, data, standards, advanced techniques, and program models. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Data Resources

$55,000

This is an interagency agreement between OJJDP and the University of Michigan. This program addresses the need to enhance the availability of juvenile justice data sets and technical assistance and training materials, continue the feasibility testing, analyze juvenile corrections data, and prepare reports. This program will be implemented under an interagency agreement with the University of Michigan. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Statistics and Systems Development

$300,000

The purpose of this program is to improve Federal, State and local statistics on juvenile justice as well as decision making and management information systems (MIS) within the juvenile justice system. The project is divided into two tracks, the National Statistics Track (NST) and Systems Development Track (SDT). The NST helps to formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offending and victimization and the justice system's response to the same. A major product will be a *Report to the Nation on Juvenile Crime and Victimization*. The SDT will assess juvenile justice agencies' decision making, needs, and capabilities to generate and use information; develop models for decision making and related MIS; and develop and provide training and technical assistance to promote the adoption of model systems in test sites. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Juveniles Taken Into Custody (JTIC): Interagency Agreement

$150,000

The U.S. Bureau of the Census is working with OJJDP to develop a national comprehensive statistical reporting system that is responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and to the needs of the juvenile justice field for data on juvenile custody populations in order to assist State legislatures and juvenile justice professionals in planning and policy-making decisions. The Census Bureau acts as the data collection agent for the JTIC program. This program will be implemented under an interagency agreement with the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1993.

Juveniles Taken Into Custody (JTIC): Assistance

$450,000

The purpose of this program is to develop a national comprehensive statistical reporting system that is responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and is also responsive to the needs of the juvenile justice field for relevant and timely data on juvenile custody populations and the requirements of State legislature and juvenile justice professionals for comprehensive planning and informed policy decisions. This is a continuation of the Juveniles Taken into Custody Research Program, currently funded under a cooperative agreement with the National Council on Crime and Delinquency. OJJDP plans to continue this award in Fiscal Year 1993. No additional applications will be solicited in Fiscal Year 1993.

*National Juvenile Court Data Archive**

$615,000

This program collects, processes, analyzes, and disseminates available data concerning the nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine referrals, offenses, intake, and dispositions, as well as specialized topics such as minorities in juvenile courts or specific offense categories. The Archive also provides assistance to jurisdictions in analyzing their juvenile court data. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Community Policing and Innovative Law Enforcement

Juvenile Justice Training for Law Enforcement Personnel

$288,000

This project provides technical assistance and training for Federal, State and local law enforcement agencies to promote a better understanding of the juvenile justice system. Three training programs are offered through this project. Police Operations Leading to Improved Children and Youth Services (POLICY) helps mid-level managers develop management strategies that integrate juvenile services into mainstream law enforcement operations and demonstrates step-by-step methods to improve police productivity in the juvenile justice area. The Child Abuse and Exploitation Investigative Techniques program provides law enforcement officers with state-of-the-art approaches for building a case against individuals charged with child abuse, sexual exploitation, or the abduction of children. The Managing Juvenile Operations program provides a series of training approaches for police executives which demonstrate simple, yet effective, methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity.

This program will be funded in Fiscal Year 1993 under a competitive contract solicitation for award to a nonprofit organization.

Crime and Drug Abuse Prevention

The Congress of National Black Churches: National Anti-Drug Abuse Program (W&S)

$200,000

The overall plan for this program calls for the development and implementation of a national public awareness and mobilization strategy to address the problem of drug abuse in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus, and coordinate leadership. The Department of Justice, other Federal agencies and organizations will support this effort and join forces to help mobilize groups of residents to combat community drug abuse and durg-related criminal activities. The program is currently operating in 20 cities. This award will provide funding to expand the program into 10 to 15 additional cities participating in the Weed and Seed initiative. This program will be implemented by the current grantee, The Congress of National Black Churches. No additional applications will be solicited in Fiscal Year 1993.

Drug Abuse Prevention—Technical Assistance Project (W&S)

$200,000

The major focus of this program is to provide support to community groups in their efforts to reclaim their communities, to drive out criminal activity, vandalism, and other anti-social behavior, and replace those undesirable activities with healthy, safe, and economically secure environments at the neighborhood and community levels. The project will provide technical assistance vouchers to neighborhood groups to establish or strengthen youth programs and activities which combat violence and reduce delinquency. This method of delivery allows these neighborhood groups to secure technical assistance inexpensively from sources which are familiar with their programs and their community characteristics. This program will be implemented by the National Center for Neighborhood

Enterprise. Qualified applicants serving Weed and Seed Sites will receive a preference in the award of vouchers. No additional applications will be solicited in Fiscal Year 1993.

Effective Strategies in the Extension Service Network, Phase III

$75,000

This is a collaborative interagency program between the OJJDP, the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation, and the Extension Service of the Department of Agriculture. OJJDP and NHTSA are providing the funding and the Extension Service is providing in-kind services. The purpose of this program is to establish community collaborations led by juvenile court judges and extension professionals with training and technical assistance provided by the Extension Service network. These collaborations will focus on youths' alcohol and other drug abuse, including impaired driving and other delinquent behavior. During Phase II, a national training and technical assistance center, a Center for Action, was established in partnership with the National Council of Juvenile and Family Court Judges. This program will be implemented by the current grantee, The National 4–H Council. No additional applications will be solicited in Fiscal Year 1993.

Intensive Community-Based Aftercare Program

$150,000

This initiative is designed to develop a Juvenile Aftercare Program Model which can be tested in the Juvenile Justice system. Under this initiative, an assessment of various aftercare programs was performed, prototype model with policies and procedures was developed, and a training and technical assistance package was developed for use in formal training and testing of the curriculum. This final stage of funding will complete training and technical assistance for seven States that were selected after a national competition, viz., North Carolina, New Jersey, Texas, Colorado, Nevada, Pennsylvania, and Michigan. This initiative will be implemented by the current grantee, Johns Hopkins University. No additional applications will be solicited in Fiscal Year 1993.

*Law-Related Education (LRE) (W&S)**

$2,560,000

The Law-Related Education (LRE) National Training and Dissemination Program currently involves five national LRE projects and programs which operate in 48 States and will support Weed and Seed Sites where appropriate. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of kindergarten through grade twelve and in juvenile justice settings. Grantees will be encouraged to place emphasis on drug abuse prevention programs in primary, middle, and secondary schools in minority urban communities. The major components of the program are: coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment. This program will be implemented by the current grantees, the American Bar Association, the Center for Civic Education, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, the Phi Alpha Delta Legal Fraternity and other qualified organizations. The originally proposed amount of $3,200,000 for this program has been reduced by 20 percent to expand the program to new grantees (see new program titled "Law-Related Education in Juvenile Justice") as required by section 299(e) of the JJDP Act, as amended in 1992. No additional applications will be solicited in Fiscal Year 1993.

Native American Alternative Community-Based Program

$400,000

This program is designed as a collaborative interagency effort between OJJDP and other public and private organizations having interests in Indian Affairs. The purpose of this program is to develop community-based alternative programs for Native American youths who have been adjudicated delinquent and to develop a re-entry program for Native American delinquents returning from institutional placement. The project sites are the Red Lake Band of Chippewa Indians, the Navajo Nation, the Gila River Indian Community and the Pueblo of Jemez. A multi-component design will be developed which will integrate the critical elements of the OJJDP Intensive Supervision and Community-Based Aftercare programs with cultural elements that have traditionally been utilized by Native Americans to control and rehabilitate offending youths. A training and technical assistance provider, The National Indian Justice Center, was selected to provide the sites with training and technical assistance. No additional applications will be solicited in Fiscal Year 1993.

Partnership Plan, Phase V (Cities in Schools) (W&S)

$300,000

This program is a continuation of a national school dropout prevention model that was developed and is implemented by Cities in Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities enabling them to adapt and implement the CIS model. The model focuses social, employment, mental health, drug prevention, entrepreneurship and other resources on high-risk youths and their families at the school level. Where CIS State organizations are established, they will assume primary responsibility for local program replication during "Partnership Plan, Phase V." This program is jointly funded by OJJDP and the U.S. Departments of Labor, Health and Human Services, and Commerce. Under this award, CIS is committed to establishing a traditional CIS program in at least one school within the target neighborhood in each of the ten Weed and Seed Sites where CIS has or is implementing an operational CIS program network. This project will be implemented by the current grantee, Cities in Schools, Inc. No additional applications will be solicited in Fiscal Year 1993.

Professional Development for Youth Workers

$200,000

The primary purpose of this program is to establish and promote professional development of youths and juvenile justice system providers through a formal training program. The program will be designed to include an inventory of existing training programs and their effectiveness, a needs assessment survey of training, the development of several curriculum areas, the design of a dissemination strategy, and an implementation plan for the second year of a two-year program. The overall goal of the program will be to enhance professionalism for youth workers who have responsibility for treating and caring for our nation's troubled youths. The Academy for Educational Development, Inc., initially funded in Fiscal Year 1992, will continue to implement this program in Fiscal Year 1993. No additional applications will be solicited in Fiscal Year 1993.

Reaching At-Risk Youths in Public Housing (W&S)

$300,000

This is a collaborative interagency program between OJJDP, the Bureau of Justice Assistance and the Department of Housing and Urban Development to establish Boys and Girls Clubs in public housing across the nation. HUD's Fiscal Year 1993 funding level commitment for this program is not determined. The dollar amount for this program represents OJJDP's contribution. These programs are designed to provide needed services to high-risk youths who live in public housing, thereby preventing their involvement in youth crime, drug abuse, and gangs. This program will support all official Weed and Seed Sites, provided there is a viable Boys and Girls Club structure and cooperation from the local Public Housing Authority. The program will be implemented by the current grantee, Boys and Girls Clubs of America. No additional applications will be solicited in Fiscal Year 1993.

Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing (W&S)

$625,000

This is a continuation demonstration program, in which OJJDP supported the establishment of an early elementary school program in the Ida B. Wells Public Housing Development in Chicago, Illinois. This program is a collaborative effort between OJJDP, the Chicago Housing Authority (CHA), and the Westside Preparatory School and Training Institute (WSP) to establish a Prep School on the premises of the Ida B. Wells Housing Development for kindergarten to fourth grade children living in this public housing development.

The Wells Prep School opened with kindergarten and first grade students on September 14, 1992. The Prep School has been established and operates as an early intervention educational model based upon the Marva Collins Westside Preparatory School educational philosophy, curriculum, and teaching techniques. The Westside Preparatory School, a private institution located in Chicago's inner city, has had dramatic success in raising the academic achievement level of low-income minority children. The Ida B. Wells Housing Development is the Weed and Seed location for the City of Chicago, Illinois. The Wells Prep School is one of the primary "Seeding" projects in this site. Fiscal Year 1993 funds will be used to continue the operation and management of the school. Awards will be made to existing grantees. No additional applications will be solicited in Fiscal Year 1993.

School Safety Center

$200,000

This is a collaborative interagency program between OJJDP and Department of Education. The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses, with special emphasis on gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information; provides research on school safety issues; and develops publications and training programs. These funds will focus on prevention of drug abuse and violence in schools and establish school safety trained personnel on the State level to provide technical assistance to localities. The Department of Education is supporting this transition to State level representatives with a transfer of $1,000,000 of Fiscal Year 1992 funds for expenditure in Fiscal Year 1993. This program will be implemented by the current grantee, the National School Safety Center at Pepperdine University. No additional applications will be solicited in Fiscal Year 1993.

Strategic Intervention for High Risk Youths (W&S)

$350,000

OJJDP, the Bureau of Justice Assistance (BJA) of the Office of Justice Programs and the Center on Addiction and Substance Abuse (Center) of Columbia University have undertaken a joint effort to help communities rescue their high risk pre-adolescents from the interrelated threats of crime and drugs. The program tests a specific intervention strategy for reducing and controlling illegal drugs and related crime in the target neighborhood and fosters healthy development among youths from drug and crime-ridden neighborhoods. Multi-service, multi-disciplinary neighborhood-based programs are being established which will provide a range of opportunities and diverse services for pre-adolescents and their families who are at high risk for involvement in illegal drugs and crime. Simultaneously, the criminal and juvenile justice systems are targeting resources to reduce illegal drug use and crime in the neighborhoods where these young people reside.

The Center has received funding from the Ford Foundation, the Pew Charitable Trusts, and the Rockefeller Foundation for this effort, which has been matched by OJJDP and BJA. Based on proposals submitted, five communities were selected to receive funds in Fiscal Year 1992 to implement programs over a three-year period: Seattle, Washington (Seattle is a Weed and Seed Site); Memphis, Tennessee; Bridgeport, Connecticut; Austin, Texas; and Savannah, Georgia. Foundation and government funding of between $500,000 and $1 million was allocated per community. This program will be implemented by the current grantee in the five communities. No additional applications will be solicited in Fiscal Year 1993.

Teens, Crime and Community: Teens in Action in the 90s (W&S)*

$400,000

This is a national scope continuation program between OJJDP, the National Crime Prevention Council (NCPC), and the National Institute for Citizen Education in the Law (NICEL). The Teens in Action in the 90s is a special application of the Teens, Crime and the Community program. The Teens, Crime, and Community program operates on two premises: 1) teens are disproportionately victims of crimes, and 2) teens can contribute substantially to making their schools and communities better, via a wide range of activities. With the Fiscal Year 1993 award, the national partners through the National Teens, Crime and the Community Program Center, will move to harness the energies of young people toward constructive activities, and reduce crime and violence. The partners will enlarge the Program Center to serve as a formal clearinghouse for information and materials dissemination and to provide technical assistance and training to communities in establishing the program, especially those in the Weed and Seed locations. This program will be implemented by the current grantees listed above. No additional applications will be solicited in Fiscal Year 1993.

Intermediate Sanctions, Drug Testing, and Offender Accountability

Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support (W&S)

$750,000–OJJDP; $600,000–BJA

This initiative, which is jointly supported by OJJDP and BJA, provides boot camps for adjudicated nonviolent, juvenile offenders who are under 18 years of age. Each juvenile admitted to the program proceeds through four phases: selection, intensive training, preparedness and accountability. The program relies heavily on studies that support rehabilitation and character development within an ordered, highly regimented environment. It incorporates design elements from the military as well as a strong "challenge" component. This initiative will be implemented by the current grantees, Boys and Girls Clubs of Greater Mobile, Mobile, Alabama; Cuyahuga County Juvenile Court, Cleveland, Ohio; and Colorado Division of Youth Services, Denver, Colorado. (Denver is a Weed and Seed Site.) No additional applications will be solicited in Fiscal Year 1993.

Delay in the Imposition of Sanctions

$100,000

This project is a continuation of the research undertaken to study the delays in the delivery of sanctions to juveniles in the juvenile court system. If there are delays in the processing of juvenile court cases, the study will address the problems created by these delays and make realistic recommendations on how to correct the problems.

This will be the second year of funding. Phase I was funded in Fiscal Year 1992, which entailed determining the extent to which processing delays occurred and their reasons. Phase I also identified points in juvenile court case processing most susceptible to delays.

This announcement implements Phase II as an intensive site study which will involve evaluating the effect which case processing delays have on a juvenile court's effectiveness and efficiency in handling delinquency cases, including the effect on the juveniles themselves. Phase II will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Training and Technical Assistance Curriculum for Drug Identification, Screening and Testing in the Juvenile Justice System

$100,000

The purpose of this project is to develop and present comprehensive training and technical assistance in drug identification, screening, and testing, which will assist juvenile justice system policy makers and program staff in on-site drug recognition and testing program implementation and will improve accountability of offenders using drugs. This program will be implemented by the current grantee, the American Probation and Parole Association. No additional applications will be solicited in Fiscal Year 1993.

Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse

$75,000

This is a collaborative interagency program between OJJDP and the National Highway Traffic Safety Administration (NHTSA). NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to combat the problem of youths involved in delinquent drinking and driving offenses by combining increased use of the arrest sanction and adopting uniform procedures for handling juvenile "driving under the influence" (DUI) arrestees. The result sought is an overall reduction in the incidence of drug- and alcohol-related accidents, injuries, and fatalities. During Phase I of the program, the project developed a system-wide enforcement model which unites key criminal justice agency components—police, prosecutors, judges, and probation officers—into one comprehensive DUI enforcement program. In this second phase of the project, the model will be demonstrated in up to five sites. These sites will receive a variety of technical assistance services. This program will be implemented by the current grantee, the Police Executive Research Forum. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Restitution

$100,000

OJJDP plans to continue to support a juvenile restitution training and technical assistance program. The project design is based on practitioner recommendations for current needs in the field. OJJDP initiated a survey on how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, a working group was convened to help map out the future course of OJJDP's support for optimum development of the various components of restitution. These components will include community service, victim reparation, victim-offender mediation, offender employment and supervision, employment development, and possible new program elements designed to establish restitution as a major aspect in our efforts to improve the juvenile justice system. This project will be guided by the need for community protection and offender competency development and accountability. The Division of Applied Research of Florida Atlantic University was competitively selected in Fiscal Year 1992 to implement this project. No additional applications will be solicited in Fiscal Year 1993.

Testing Juvenile Detainees for Illegal Drug Use

$100,000

The purpose of this program is to assess, develop, test, and disseminate information on new and innovative approaches to test for illegal drug use among juvenile detainees. An additional purpose is to improve resource allocation and treatment services for youths in detention facilities and offender accountability by developing more accurate and complete information on the use and control of illegal drugs. Drug testing is technical and complex. OJJDP has recognized this and embarked on an initiative to provide guidance, training, and technical assistance to the juvenile detention field in this area.

This program will be implemented by the current grantee, American Correctional Association. No additional applications will be solicited in Fiscal Year 1993.

Enhanced Prosecution, Adjudication, and Corrections

Training and Technical Assistance for Juvenile Detention and Corrections, (The James E. Gould Memorial Program)

$250,000

This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. The program will also provide a national forum on juvenile corrections and detention, hold workshops on selected key issues; provide on-site technical assistance, hold a National Juvenile Day Treatment Conference, and continue efforts on literacy education and general networking. The project will emphasize intermediate sanctions for non-violent juveniles involved in drug-related offenses and illegal activities. This program will be implemented by the current grantee, The American Correctional Association. No additional applications will be solicited in Fiscal Year 1993.

Improvement in Correctional Education for Juvenile Offenders

$200,000

The purpose of this program is to assist juvenile corrections administrators in planning and implementing educational services for detained and incarcerated juvenile offenders. An assessment of various correctional education programs has been performed and documented. This next stage will provide funds to analyze the correctional education programs at six to eight juvenile correctional institutions and to develop specialized training and technical assistance materials to assist each site. This program will be implemented by the current grantee, the National Office of Social Responsibility. No additional applications will be solicited in Fiscal Year 1993.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff

$525,000

This is a collaborative interagency program between OJJDP and the National Institute of Corrections (NIC). OJJDP will continue the development of a comprehensive training program for juvenile corrections and detention staff through an interagency agreement with NIC. The program is designed to offer a core curriculum for juvenile corrections and detention administrators and mid-level management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, gang activity, juvenile offenders, and overcrowding. The training will be conducted at the NIC Academy and issue-oriented training will be presented regionally. This program will be implemented in Fiscal Year 1993 under the existing interagency agreement with NIC. No additional applications will be solicited in Fiscal Year 1993.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

$250,000

This is a competitively awarded program funding two grants: Mississippi University for Women ($125,000), and The Nellie Thomas Institute of Learning (125,000). Many juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. The program will include training and follow-up technical assistance on methods, and a curriculum for use by the staff of detention and corrections facilities. This program will be implemented by the current grantees, The Mississippi University for Women, and The Nellie Thomas Institute of Learning. No additional applications will be solicited in Fiscal Year 1993.

*Insular Area Support**

$403,000

The purpose of this program is to provide supplemental financial support to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. These funds are to be available to address the special needs and problems of juvenile delinquency in the insular areas, as specified by Section 261(e) of the JJDP Act, 42 U.S.C. 5665(e).

Juvenile Corrections Industries Ventures Program

$75,000

The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for the vocational training of juvenile offenders. The grantee has performed an assessment of corrections industries ventures programs, developed a policy and procedures manual, and produced training and technical assistance materials. The grantee is currently providing training and technical assistance to eight juvenile corrections agencies to assist in implementing the corrections ventures models. This program will be implemented by the current grantee, The National Office for Social Responsibility (NOSR). No additional applications will be solicited in Fiscal Year 1993.

*Juvenile Court Training**

$1,100,270

The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue to refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law, and make available options for sentencing and treatment. Specifically, emphasis will be placed in the areas of drug testing, gangs and violence and intermediate sanctions. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been recently assigned to the juvenile or family court bench. This program will be implemented by the current grantee, The National Council of Juvenile and Family Court Judges. No additional applications will be solicited in Fiscal Year 1993.

OJJDP Technical Assistance Support Contract

$758,679

The purpose of this project is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention on all program development, evaluation, training, and research activities. This program will be implemented by the current contractor, Aspen Systems Inc. No additional applications will be solicited in Fiscal Year 1993.

A Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

$100,000

This project is a continuation of the research undertaken to study the conditions under which juveniles are held in juvenile detention and correctional facilities across the country. The study collected an extensive amount of valuable information from 1,000 juvenile facilities on such topics as life, health and safety issues, education and treatment programs, security and control measures, juvenile rights, physical plant, staffing ratios, etc. The first report presented the results of a primarily descriptive analysis of the facilities' conformance to nationally recognized standards and made recommendations for improvements. To utilize the collected data more fully, additional analysis needs to be performed.

This phrase of the project will support additional data analysis and dissemination of the study findings, including the production of special topical reports or bulletins; briefings to Congress and State legislatures and policy makers; and presentation of the findings at national, regional, and State forums of advocacy and service organizations. This program will be implemented by the current grantee, Abt Associates. No additional applications will be solicited in Fiscal Year 1993.

*Technical Assistance to the Juvenile Courts**

$392,993

The National Center for Juvenile Justice (NCJJ), the current grantee, is the research division of the National Council of Juvenile and Family Court Judges. The four types of technical assistance available under this grant are: (1) Information resources, (2) on-site consultation, (3) off-site consultation, and (4) cross-site consultation.

Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and for gang activities. In addition, the project will examine appropriate use of juvenile records in adult court proceedings, including an examination of State laws and practices. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.§

Program to Reduce Minority Institutionalization, (The Deborah Ann Wysinger Memorial Program)

$1,200,000

Section 223(a)(23) of the JJDP Act, 42 U.S.C. 5663(a)(23), requires that States "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population." Section 261(a)(7), 42 U.S.C. 5665(a)(7), authorizes the Administrator to award Special Emphasis discretionary funds for this purpose.

In Fiscal Year 1992 five demonstration grants were awarded to develop, test, and disseminate information on programs designated to reduce the disproportionate number of minority juveniles detained or confined in secure detention facilities, secure correctional facilities, or jails and lockups.

The purpose of the program is to help jurisdictions identify whether minorities are disproportionately confined in secure facilities, and if so, the extent and nature of that representation in the juvenile justice system (Phase I). This will then lead to the development of effective programs for responding to the problem from police arrest through disposition (Phase II). The five funded grantees eligible for Phase II awards in Fiscal Year 1993 are: Iowa Department of Human Rights; Arizona's Governor's Office for Children; North Carolina Department of Human Resources; Oregon Community Children and Youth Services; and Florida Department of Health and Rehabilitation. Portland State University will continue to provide technical assistance support to the five sites. No additional applications will be solicited in Fiscal Year 1993.

Discussion of Comments

OJJDP published its proposed Comprehensive Plan for Fiscal Year 1993 in the **Federal Register** on November 9, 1992, 57 FR 53339, for a 45-day period of public comment. The Office received 110 letters commenting on the proposed plan. All comments have been considered in the development of the Final Comprehensive Plan for Fiscal Year 1993.

The majority of the letters OJJDP received provided positive comments about the overall plan and its programs. Among the program areas that received the most interest and support was the program for Training for Juvenile Detention Center Care Givers.

The following is a summary of the substantive comments and the responses by OJJDP. Unless otherwise indicated, each comment was made by a single respondent.

1. *Comment*. A respondent expressed concern that the plan was not responsive to the JJDP Act, particularly as it was amended on November 4, 1992 (H.R. 5194, Pub. L. 102–586, 106 Stat. 4982). For example, there was no initiative to provide lawyer advocacy for delinquent youths. This commentor was also concerned that the Weed and Seed emphasis in the proposed plan could have a profound effect on overrepresentation of minorities in the juvenile justice system.

Response: OJJDP's Proposed Program Plan was being formulated during congressional consideration of the 1992 Amendments. Consequently, all the new program requirements, authorities and emphases were not incorporated in the proposed plan prior to publication. Those programs and activities mandated by the Amendments but not included in the proposed plan have been added to the Final Program Plan. They include: An NIJJDP study of hate crimes, including characteristics of juveniles who commit such crimes, and the nature of the crimes and their victims; development of a Special Emphasis program to prevent and reduce the incidence of hate crimes through model educational and sentencing programs that provide alternatives to incarceration; establishment of Special Emphasis advocacy programs and services that improve due process for juveniles in the juvenile justice system and the quality of legal representation for such juveniles; and a law-related education program focus on juveniles who have had contact with, or are likely to have contact with, the juvenile justice system.

In addition, most of OJJDP's new programs are clearly responsive to the 1992 Amendments. The Accountability-Based Community (ABC) Intervention program is responsive to the statutory emphasis on the development of graduated sanctions for juvenile offenders, including risk-needs assessments, comprehensive case planning and aftercare. The Serious, Violent and Chronic Offender Program Development program has a similar emphasis but will include family strengthening and involvement in treatment of delinquents (including overcoming language barriers), delinquency prevention and diversion to services, prevention and treatment in rural areas, coordination of services, gender specific services, and programs for juveniles in the criminal justice system. The program for Prevention of Delinquency Through Child-Centered Community-Based Policing is designed to have a delinquency prevention goal and to serve juveniles who are victims of crime. The Program of Training for Juvenile Detention Center Care Givers is responsive to the Amendment's emphasis on services for juveniles in custody and will include training in gender bias and gender specific services. In addition, planning for expansion of the "Violence Study—Causes and Correlates" will further inform future efforts to deal comprehensively and effectively with serious, violent and chronic offenders. Finally, the National Network of Children's Advocacy Centers is designed to provide multi-disciplinary coordination in the investigation and prosecution of child abuse cases.

OJJDP will incorporate many of the new statutory emphasis areas in funding continuation programs in Fiscal Year 1993, including coordination and cooperation in the delivery of services and program administration, prevention, diversion to services, prevention and treatment in rural areas, family strengthening and involvement in treatment programs. It will also incorporate health care, educational, recreational, and mental health services for juveniles in custody, due process and access to counsel for youths in the juvenile justice system, graduated sanctions and risk-needs assessments, and addressing issues related to juveniles in the criminal justice system, including waiver, certification and transfer. OJJDP believes that these efforts are responsive to the Amendments and, of course, that all OJJDP Programs further programs authorized by the JJDP Act.

With regard to Weed and Seed, OJJDP's emphasis, through its strategy to address serious, violent and chronic delinquency, is on Seed programs designed to serve the goals of prevention, intervention and treatment. The strategy is not designed to incarcerate more youths. Rather, it is designed to provide family and community support, prevention services focused on at-risk youths and timely and effective intervention services to interrupt the cycle of delinquency and escalating criminal conduct. A goal of the Weed and Seed strategy is to reduce incarceration of youths and not to exacerbate the potential of increased minority institutionalization.

2. *Comment:* One commentor pointed out that JJDP Act references to recreation and recreation service programs, as being effective services to prevent and treat delinquency, were not reflected in the Proposed Program Plan. It was suggested that the plan fully reflect the recognition of recreation as an important juvenile justice system element.

Response: Agreed. OJJDP, recognizing the emphasis on and importance of recreational services in a comprehensive prevention program, has included recreation programs in the Juvenile Justice and Delinquency Prevention component of Weed and Seed and will incorporate this emphasis in future prevention programs.

3. *Comment:* OJJDP received forty-two responses to the proposed program, "Training for Juvenile Detention Center Care Givers." Respondents represented a broad range of professionals, including detention care givers, probation and other court officials, judges, detention administrators, youth services administrators, community-based facility administrators, and detention association members. All comments were supportive. Most respondents viewed this activity as filling a significant gap in juvenile justice system training. Others cited problems associated with overcrowded detention centers or unique problems of detained juveniles, including drug and alcohol abuse, gang affiliation, and involvement in serious and violent crime that would benefit from such training.

Response: Based on the strong support for this program from the field, it has been included in the Final Program Plan.

4. *Comment:* Seven respondents noted that the proposed continuation of the "Program of Research on the Causes and Correlates of Delinquency" did not include funds for continued data collection, only analysis of data already collected. All of these respondents urged continued funding of longitudinal data collection, because the projects have made and continue to make, major contributions to our understandings of delinquency and violence.

Response: OJJDP agrees with the respondents regarding the value of this research which OJJDP has supported since Fiscal Year 1986 for a total of $9.2 million. However, limited resources preclude additional funding for data collection at this time.

5. *Comment:* Four responses were received supporting the proposed "Youth Leadership and Service Program." These respondents noted the potential value of this program approach in rural areas, which are generally neglected because funded programs target larger numbers of youths.

Response: OJJDP agrees with the comment and recognizes the importance of this program. The development of Youth Leadership and Service Program remains one of the seven areas of focus in the Serious, Violent and Chronic Offender Program Development initiative which will be funded.

6. *Comment:* Six responses were received in support of the "Accountability-Based Community (ABC) Intervention Program." It was viewed as an innovative program holding promise for rehabilitating juvenile offenders at risk of becoming chronic or serious juvenile offenders.

Response: The Office believes that juvenile offenders who are at risk of becoming chronic or serious juvenile offenders will benefit substantially from a three-level accountability-based community intervention program.

The ABC Intervention Program is designed to provide different levels of accountability and responsibility contingent upon the behavior and prior delinquency of juveniles. This program will be adopted in the Final Program Plan.

7. *Comment:* One OJJDP training grantee expressed concern that its program and relationship with OJJDP grant monitors would be compromised by participation in a National Consortium of OJJDP training grantees. Other commentators expressed concern that the program would add additional bureaucratic levels in accessing training services.

Response: While OJJDP appreciates that concerns expressed, the intent of the Training Consortium program is to strengthen OJJDP's current training programs. The Consortium concept is designed to enhance communication between OJJDP staff and grantees to maximize use of scarce resources, eliminate duplication and overlap, and promote interdisciplinary training. Due to limited funds, the Office will use existing resources for the purpose of coordinating its training programs.

8. *Comment:* One respondent was very positive about the proposed Delinquency Prevention Child Centered Community-Based Policing program, citing its community's efforts in this area and its use of the Yale Child Study Center in developing its program.

Response: OJJDP was pleased to hear of its positive contact with the Yale Child Study Center. The collaboration of the New Haven Police Department and the Yale Study Center is resulting in significant positive results for community residents, and the Police Department. It promises to offer an added innovation to the concept of community-based policing as a result of its focus upon mitigating the trauma of children exposed to violence. Funds will be included in the Final Program Plan to support documentation of the New Haven Child Centered Community-Based Policing program, for purposes of future replication.

9. *Comment:* Two respondents were pleased to see a program aimed at highlighting the impact upon youths of viewing violence on television. One respondent compared the need to that of the anti-smoking compaigns of recent years.

Response: This program has not been included in the Final Program Plan, but will be implemented during Fiscal Year 1993 with existing program resources.

10. *Comment:* A respondent recommended the use of the Constitution as a specific tool for enhancing the Law-Related Education Program.

Response: The Law Related Education Program makes extensive use of the Constitution in its curriculum, as it is the foundation of law in this country.

11. *Comment:* A respondent inquired about funds available to support local restitution programs from the OJJDP funded program in Fiscal Year 1993.

Response: The OJJDP funded Restitution program is a developmental program, and may support technical assistance and training once appropriate strategies have been identified. This program does not support operational costs of restitution programs.

12. *Comment:* One respondent felt that the proposed plan was comprehensive, but raised the question "Where is the family?"

Response: The Office is aware and desirous of the need to involve the family in programming for troubled and delinquent youths. Programs such as the Cities in Schools, the Ida B. Wells Satellite Prep School, and several of the new program initiatives for Fiscal Year 1993 include components that focus on the family. In addition, OJJDP recently sponsored a conference on strengthening families which identified approximately thirty promising programs to support and strengthen families. This conference was the culmination of a five-year study of promising family programs. Information from this study and the conference will be utilized by OJJDP to inform program development and build family components into future programs.

13. *Comment:* A respondent identified several successful models for court-ordered community service already in existence, including one in Dane County, Wisconsin. This respondent suggested there may be a need to disseminate information about these models, but was of the opinion that the Office should not spend money to create one. The respondent also suggested that a community should be required to apply for a package of programs rather than approaching program issues "piecemeal," citing a need for a "balanced approach."

Response: OJJDP has determined that it will not proceed with the Court-Ordered Community Service program in Fiscal Year 1993. OJJDP is aware of the models available, some of which began as a result of OJJDP's restitution initiative that was funded from 1978 to 1982. The newly funded Restitution Education, Specialized Training and Technical Assistance Program initiative may be in a position to disseminate information about these models.

OJJDP agrees that communities should take a comprehensive approach to planning for and implementing programs for youths. It is because of this commitment that the Office has made the Weed and Seed strategy a part of our overall approach, and also why the Office has rearranged some training programs to enhance this approach and reduce duplication.

14. *Comment:* A respondent pointed out the high statistical incidence of crimes committed by black males and that many of these youths have come from single-parent families without the benefit of male role models. This respondent encouraged the office to support secondary prevention approaches that include comprehensive social services, skills development and mentoring.

Response: The office has addressed secondary prevention through such programs as the Accountability-Based Community (ABC) Intervention Program and the Serious, Violent and Chronic Offender Program Development programs, which includes a youth leadership and service component. Continuation programs such as Partnership Plan Phase IV (Cities in Schools) and the Boys and Girls Clubs programs are additional examples of these types of programs. All of these programs include or will include comprehensive approaches, mentoring and competency development on the part of the youths.

15. *Comment:* One respondent supported continuation of the program Reaching "At Risk" Children in Public Housing.

Response: The office appreciates the support expressed in this comment.

16. *Comment:* OJJDP received twenty-four letters from existing sites supporting the Serious Habitual Offender Comprehensive Action Program (SHOCAP). These letters were from sheriffs, school administrators, police officials, prosecutors, a state commissioner of education and probation officials in SHOCAP sites. These comments support the comprehensive nature of the SHOCAP program and the SHOCAP process.

Response: The SHOCAP Special Emphasis Program has received $5,587,795 since 1983. The current Special Emphasis grant award to Public Administration Services, Inc., (PAS) is being continued with existing grant carryover. Because this program is an effective resource to identify, track, and prosecute the serious, violent and chronic offender, it will also be included in the Fiscal Year 1993 Program Plan as a new component of the Training and Technical Assistance Division's Gang and Drug POLICY Training Program (See SHOCAP Continuation Program Description).

17. *Comment:* A respondent asked whether language in the Program Plan referring to Weed and Seed Sites referred only to Weed and Seed demonstration/pilot sites or also included officially recognized Weed and Seed Sites.

Response: Both funded demonstration/pilot Weed and Seed Sites (19), and sites which have been officially recognized as a Weed and Seed Community by the Attorney General (8 to date), are eligible to apply for new program funds or to receive training, technical assistance, and other services from existing OJJDP grantees.

18. *Comment:* One respondent noted that its jurisdiction had adopted the Weed and Seed strategy without funding from the Federal government and felt that the jurisdiction ought to be eligible for priority funding.

Response: Only Weed and Seed demonstration/pilot and officially recognized sites will be eligible to receive a preference for funding and services. The respondent is encouraged to contact the Executive Office for Weed and Seed to request guidelines concerning the official recognition process.

19. *Comment:* A respondent praised OJJDP's three tiered program approach for delinquency prevention, intervention and treatment. However, several other commentors expressed concern that the focus of new competitive programs at Weed and Seed Sites is too exclusionary. One recommended that a specific percentage of funds be made available to Weed and Seed Sites while leaving the remaining percentage open to other communities.

Response: Jurisdictions that are not Weed and Seed Sites will be eligible to apply for and receive funding under all OJJDP competitive programs. Although Weed and Seed Sites may be given a small competitive point preference in the award of funds, or receive a priority in the receipt of program services provided by discretionary grantees, OJJDP encourages all eligible jurisdictions to compete for funding.

20. *Comment:* Two respondents strongly supported the array of proposed programs that are designed to strengthen the capacity of the Weed and Seed Sites to deal with juvenile crime and drug abuse.

Response: OJJDP appreciates the support for the programs and will work closely with sites in the Weed and Seed program to assure that juvenile justice components are strengthened or added to the "Seed" program mix.

21. *Comment:* A respondent expressed a concern about the substantial growth in crime by Asian youths which is affecting the Twin Cities of Minneapolis and St. Paul and raised the question that if one of the goals of OJJDP is prevention, how will the OJJDP Program Plan respond to the emerging need of communities where the rates of youth criminal activity are growing exponentially? This respondent encouraged the broadening of the geographic focus of the plan.

Response: The plan addresses these issues through the serious, violent and chronic offender program strategy and such programs as the Accountability-Based Community (ABC) Intervention program and the Gang Suppression and Intervention program. The Minneapolis-St. Paul area is encouraged to adopt the strategy approach and to apply for funding under OJJDP programs.

22. *Comment:* A respondent thought it important that OJJDP fund programs which take a united community approach to addressing gangs.

Response: The plan addresses this concern through the Juvenile Gangs Prevention and Treatment Program and Youth Gang Intervention Training. New or continuation projects selected under the Juvenile Gangs Prevention and Treatment Program will be required to work with a gang consortium or other groups co-operatively in their area. OJJDP also provides training to key decision-makers of communities involved in or who are interested in developing a united community approach to solving or preventing the gang problem.

23. *Comment:* A respondent, citing language in the 1992 JJDP Act reauthorization which specifies "the need for gender specific services," noted that the need for services for girls was not mentioned in the Proposed Program Plan. This respondent also raised another question: Is there any way to provide services before juveniles become involved with the juvenile justice system?

Response: OJJDP funded programs may not discriminate in the provision of program services. However, applicants for new OJJDP programs, who wish to develop services specifically designed to meet the needs of female participants, are encouraged. The plan addresses prevention issues through the comprehensive graduated sanctions program model development and the crime problem through programs like the Accountability-Based Community (ABC) Intervention program and the Gang Suppression and Intervention program.

24. *Comment:* Two respondents expressed concern that many immigrants arrive in the United States with very limited resources and start their new lives as ethnically and linguistically isolated persons who are easily susceptible to gangs and other criminal elements. The neighborhoods in which they live are frequently infested with violent crime, illicit drug trafficking and gang activity. One of these respondents encouraged the Office to consider designating a portion of available program funds under the "Juvenile Gangs Prevention and Treatment Program" initiative for immigrant youths and their families.

Response: The Office is aware of the unique problems faced by immigrant juveniles and their families and has funded programs that address the needs of this population. The Office will require applicants to identify the needs of this population under the Juvenile Gangs Prevention and Treatment Program initiative and other programs which have the potential to benefit immigrant juveniles and their families. However, as a policy consideration, OJJDP has determined that the establishment of minimum dollar requirements for specific activities is not an effective way of budgeting funds, developing programs, and addressing priority needs.

25. *Comment:* One respondent expressed concern that the OJJDP Proposed Comprehensive Plan for Fiscal Year 1993 does not address the problem of Fetal Alcohol Syndrome and Fetal Alcohol Effects.

Response: Other Federal agencies such as the Department of Health and Human Services currently direct a portion of their program resources to this important issue.

26. *Comment:* A respondent expressed concern that the number one growing health problem of American youths is binge drinking.

Response: OJJDP is funding several programs that could address youth binge drinking issues, from both the prevention and intervention perspectives, including "Effective Strategies in the Extension Service Network, Phase II" and "Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse." OJJDP will explore targeted educational and other programs activities related to this issue with these grantees. Other Federal agencies have primary responsibility for addressing this problem, including the National Institute for Alcohol Abuse and Alcoholism, and the Center for Substance Abuse Prevention.

OJJDP thanks all commentors for the time, effort, concern, and interest that was reflected in each of the 110 comments received. The information and insights expressed were carefully considered in arriving at OJJDP's Final Program Plan Priorities for Fiscal Year 1993. It is because of this careful consideration that OJJDP was unable to finalize the Program Plan by the statutory December 31, 1992, deadline. However, OJJDP believes the two-week delay was necessary to produce a quality Final Program Plan.

Gerald (Jerry) P. Regier,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 93–1525 Filed 1–21–93; 8:45 am]

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Friday
January 22, 1993

Part VII

Environmental Protection Agency

40 CFR Part 172

Microbial Pesticides; Experimental Use Permits and Notifications; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 172

[OPP–50668A; FRL–3887–9]

[RIN No. 2070–AB77]

Microbial Pesticides; Experimental Use Permits and Notifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend its experimental use permit regulations for pesticides to clarify the circumstances under which an experimental use permit is presumed not to be required. As part of that amendment, EPA proposes to implement a screening procedure that requires notification to the Agency before initiation of small-scale testing of certain microbial pesticides. Three options for defining which microbial pesticides would be subject to the notification requirement are discussed. The Agency will review notifications to assess the potential for adverse impacts on human health or the environment and will then determine whether to require an experimental use permit. This notification scheme would implement provisions of the Agency's policy statement of June 26, 1986, with modifications.

DATES: Comments identified by the docket control number [OPP–50668A] must be received on or before March 23, 1993.

ADDRESSES: Submit written comments by mail to: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Frederick Betz, Acting Chief, Science Analysis and Coordination Staff, Environmental Fate and Effects Division (H7507C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1016A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–305–6307).

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202–512–1387 or call 202–512–1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, and 40 CFR part 172 provide for issuance by the Agency of experimental use permits (EUPs) for the testing of new pesticides or new uses of existing pesticides. Such permits are generally issued for large-scale testing of pesticides.

Large-scale tests include any terrestrial application to more than 10 acres of land or any aquatic application to more than 1 surface acre of water. EPA has generally presumed that smaller tests would not require EUPs. However, the Agency believes that small-scale environmental studies with some microbial pesticides may pose sufficiently different risk considerations from conventional pesticides that a closer evaluation at the small-scale testing stage may be warranted. Therefore, the Agency proposes to amend 40 CFR part 172 to require notification before initiation of small-scale testing in the environment of certain microbial pesticides so that the EPA may determine whether these tests should be conducted under an EUP.

This proposal would codify the notification provisions of the Agency's policy statement of June 26, 1986 (51 FR 23302), with modifications. Three options for defining the scope of microbial pesticides that would be subject to the notification requirement are discussed. The approach that the Agency is proposing could limit the scope of the notification requirement to a smaller group of microbial pesticides than is currently subject to notification. Until this rulemaking process is complete, however, the Agency will continue to operate under the provisions of the June 26, 1986 policy statement.

I. Statutory Authority and Regulatory Background

Section 5 of FIFRA provides that any person wishing to test an unregistered pesticide or a registered pesticide for an unregistered use may apply for an EUP. As stated in the preamble proposing the issuance of regulations under section 5 (39 FR 11306, March 27, 1974), "The purpose behind section 5 is to facilitate the generation of data necessary to support an application for registration under section 3 and yet provide sufficient regulatory control to prevent adverse environmental effects."

EPA shall issue an EUP only if issuance of such a permit will not cause unreasonable adverse effects on the environment. Similarly, EPA may revoke an existing EUP if it is determined that the terms and conditions of the permit are inadequate to avoid unreasonable adverse effects, 7 U.S.C. 136c; 40 CFR 172.10. Section 2(bb) of FIFRA, 7 U.S.C. 136(bb), defines "unreasonable adverse effects on the environment" as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of use of [the] pesticide."

When the EUP regulations, 40 CFR part 172, were originally promulgated (40 FR 18782, April 30, 1975), the Agency recognized that the development of an effective pesticide, culminating in registration, is a multistage process that warrants a scaling in the level of oversight by EPA. Initial testing of a substance is for the purpose of evaluating its value for pesticidal purposes or for determining its toxicity or other properties. This initial testing may include laboratory screening for pesticidal activity, laboratory and greenhouse screening for spectrum of activity, and limited outdoor testing to evaluate pesticidal activity under actual use conditions. Later testing may involve use of larger test plots, often in multiple areas. Both the initial and later testing generate information necessary for registration under section 3 of FIFRA. An EUP issued pursuant to section 5 authorizes limited use of a pesticide on a limited number of acres, under specific and controlled conditions, to develop the necessary data.

In proposing the existing regulations governing the issuance of EUPs, EPA stated:

> The most important environmental consideration in the development of these proposed regulations is the necessity of striking a balance between facilitating — or, at a minimum, not unduly impeding — pesticide research and development and protecting against human and environmental injury. Experimental use of pesticides can, of course, pose both human and environmental hazards.... On the other hand, experimental use and testing are essential to the development of new, less hazardous, more effective pesticides, including both chemical and biological agents. In short, there are both risks and benefits associated with experimental use of pesticides (39 FR 11306, March 27, 1974).

Given these considerations, EPA set forth procedures that would "...place experimental programs under reasonable constraints without imposing burdens unrelated to needed protection of human health and the environment" (39 FR 11306, March 27, 1974). EPA believed that because small-scale tests generally are controlled by the researchers, involve small quantities of pesticides, and are conducted by highly trained personnel, they would pose minimal hazards. Thus, the final regulations included a presumption that EUPs would not be required for most small-scale tests (40 CFR 172.3). However, the regulations also explicitly recognized that a wide variety of testing situations may arise and that a flexible regulatory approach is needed to deal with these situations. EPA retains and exercises the authority to require an EUP for small-scale testing if it determines that such Agency oversight is warranted.

The Agency recognizes that there has been a long history of safe use of microbial pesticides. With respect to small-scale testing of most microbial pesticides, the Agency believes that the likelihood that such tests will result in significant adverse impacts on human health or the environment is sufficiently low that Agency oversight is unnecessary. Thus, the Agency believes that, in most instances, small-scale tests (e.g., tests on 10 acres or less of land or on 1 surface acre or less of water) with microbial pesticides should continue to be excluded from the requirement for an EUP.

However, since the issuance of the existing EUP regulations, new and different microbial pesticides have been developed that warrant a closer review before being excluded from the EUP requirements. Specifically, the Agency believes that certain microbial pesticides may pose sufficiently different risk considerations from conventional chemical pesticides and other microbial pesticides that screening by EPA through a notification process, before they are used in the environment, is warranted.

In amending the EUP regulations, the Agency's goal is to set forth a system that focuses on the characteristics and risks of the product, protects human health and the environment, establishes a screening mechanism that does not unduly impede potentially beneficial research, and is designed to accommodate rapid advances in biotechnology. To achieve this goal, particularly in terms of establishing a screening process that does not unduly impede research, the scope of coverage should clearly describe the kinds of microbial pesticides subject to notification in a way that is uniformly interpretable.

In the 1988 amendments to FIFRA, Congress specifically addressed the question of EPA oversight of the use of unregistered pesticides and clarified the enforcement mechanism for failure to comply. Section 3(a) of FIFRA, 7 U.S.C. 136a(a), provides that "[to] the extent necessary to prevent unreasonable adverse effects on the environment, [EPA] may by regulation limit the distribution, sale, or use ... of any pesticide that is not registered ... and is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18." Violations of such regulations are enforceable under sections 12(a)(2)(S) and 13 of FIFRA. In addition to section 5, these regulations are being proposed pursuant to sections 3(a) and 25 of FIFRA.

II. Historical Development

In 1984, EPA issued an interim policy statement entitled "Microbial Pesticides: Interim Policy on Small-Scale Field Testing" (49 FR 40659, October 17, 1984). This statement announced that the presumption in the 1975 EUP regulations (40 CFR 172.3) would not automatically apply to tests using genetically altered and nonindigenous microbial pesticide products and that the Agency should be notified before initiation of any such testing. Since 1984, the Agency has used this notification scheme to evaluate small-scale tests involving genetically altered and/or nonindigenous microbial pesticides for possible risk to human health or the environment and to determine whether EUPs would be required before the tests could be initiated.

Subsequent to publication of the Interim Policy, this same basic position was published for comment in EPA's section of the Office of Science and Technology Policy (OSTP) "Proposal for a Coordinated Framework for Regulation of Biotechnology" (49 FR 50856, December 31, 1984). The final OSTP statement of policy was published on June 26, 1986 (51 FR 23302, June 26, 1986). In the 1986 Policy Statement, the Agency stated its intention to codify the major elements of the notification procedure in the EUP regulations (40 CFR part 172). The development of this proposed rule began at that time.

In June 1988, as required by FIFRA section 25, the Agency made available copies of a draft proposal to the U.S. Congress and the U.S. Department of Agriculture (USDA). A subpanel of the FIFRA Scientific Advisory Panel (SAP) reviewed, in a public meeting held November 22, 1988, a draft similar to that reviewed by USDA and Congress, but modified to reflect USDA's comments. On February 15, 1989 (54 FR 7026, February 15, 1989), the Agency issued a **Federal Register** notice requesting comments on three issues, and announcing availability of a draft proposal (dated January 12, 1989) in the public docket to facilitate comment. Both of the draft rule proposals included for review and comment, a scope definition essentially equivalent to the scope identified as Option 1 in this proposal.

Public comments on the 1984 Interim Policy, the 1984 "Proposal for a Coordinated Framework for Regulation of Biotechnology," the 1986 statement of policy in the "Coordinated Framework for Regulation of Biotechnology," the EPA's January 1989 draft proposal, and in response to the February 15, 1989 **Federal Register** notice are available in the public docket. These comments have been taken into consideration in development of this proposal. The docket also contains the comments provided by the USDA and the FIFRA SAP subpanel in 1988, together with the Agency's responses.

In 1989, the Ecological Society of America (ESA) and the National Academy of Sciences (NAS) published reports on the assessment of potential impacts related to the use of genetically modified organisms in the environment. Respectively, these reports are titled "The Planned Introduction of Genetically Engineered Organisms: Ecological Considerations and Recommendations" (Tiedje, J. M. *et al.*, 1989, Ecology 70:297–315) and "Field Testing Genetically Modified Organisms: Framework for Decisions," (National Academy Press, 1989, Washington, DC). The Agency has considered both reports in the development of this proposed rule.

Also in October 1989, a subcommittee of the Federal government's interagency Biotechnology Science Coordinating Committee (BSCC) was charged with drafting principles for the scope of organisms subject to Federal oversight of planned introductions into the environment. The subcommittee developed a preliminary definition that was made available, along with three other approaches it had examined, for public meetings of the EPA's Biotechnology Science Advisory Committee (BSAC) and USDA's Agricultural Biotechnology Research Advisory Committee (ABRAC). Both committees commented on the preliminary definition.

Subsequently, the OSTP, in coordination with the Biotechnology Working Group of the President's Council on Competitiveness, developed a proposed policy, based on the preliminary definition reviewed by the BSAC and ABRAC, entitled "Principles of Scope of Oversight for the Planned Introduction into the Environment of Organisms with Modified Hereditary Traits" which was published for public comment in the **Federal Register** of July 31, 1990 (55 FR 31118).

In September 1990, the Agency made available copies of a draft proposed rule (dated September 4, 1990) which included a scope definition that used language adapted from the July 1990 proposed policy on scope of oversight. That definition was similar to Option 2 in this proposal. The September 1990 draft also included for comment the initial scope definition, set forth as Option 1 in this proposal, that was directly tailored to FIFRA and pesticides. At a public meeting held September 7, 1990, a subcommittee of the BSAC reviewed these two scope definitions. The subcommittee developed a third scope definition that attempted to merge the two options contained in the September 4, 1990 draft and provided recommendations in a final report dated November 14, 1990. The final report is available in the public docket and is summarized in Unit VII.A. of this preamble.

On September 26, 1990, a subpanel of the FIFRA SAP reviewed the September 4, 1990 draft proposal containing scope definitions essentially equivalent to Options 1 and 2 in this proposal, as well as the draft third definition developed by the BSAC subcommittee at its September 7, 1990 meeting. The recommendations of the FIFRA SAP subpanel are summarized together with the Agency's responses in Unit VII.B. of this preamble. The full report of the subpanel (dated October 9, 1990) is available in the public docket.

Subsequently, additional guidance by the United States Government concerning Federal oversight of biotechnology products was provided in the four principles of regulatory review recommended in the "Report on National Biotechnology Policy," issued in February 1991 by the President's Council on Competitiveness. The first principle indicates that agencies should focus on the characteristics and risks of the biotechnology product, and not on the process by which it is created. The second principle states that for biotechnology products that require review, regulatory review should be designed to minimize regulatory burden while assuring protection of public health and welfare. This includes developing expedited review procedures for products likely to pose lesser risk, and clarifying the jurisdictions of the regulatory agencies to avoid unnecessary confusion and delay. The third principle states that regulatory programs should be designed to accommodate the rapid advances in biotechnology, and performance-based standards are generally preferable to design-based standards. The fourth principle indicates that all regulation in environmental and health areas should use performance-based standards for compliance.

On February 27, 1992 (57 FR 6753), the OSTP published a policy announcement entitled "Exercise of Federal Oversight Within Scope of Statutory Authority: Planned Introductions of Biotechnology Products Into the Environment," which finalized the proposed policy that was published July 31, 1990. This notice set forth the basis for Federal agencies' exercise of oversight within the scope of discretion afforded by their statutes. It indicated that oversight should be exercised only where the risk posed by the introduction is unreasonable, that is, when the value of the reduction in risk obtained by oversight is greater than the cost thereby imposed.

The Agency notes that the final OSTP policy statement rejected an approach that relied upon exclusion categories that were substantially similar to the five exclusion categories provided for in Option 2. As discussed in that document, the proposed OSTP exclusion categories were rejected for several reasons, in part because an appropriate risk basis for these exclusions had not been provided. The Agency believes that exclusion categories can be used effectively to reduce the burden of regulations, but that such categories should only be used when they are supported by appropriate risk-based rationales.

Because Option 2 is substantially similar to the approach in the proposed policy on oversight, the Agency is no longer considering Option 2. EPA has retained Option 2 in the preamble only for illustrative and comparative purposes and will not consider Option 2 during development of the final rule. As indicated above, EPA currently prefers Option 1, but is also interested in comments on Option 3.

The principles espoused in the 1991 National Biotechnology Policy and the February 27, 1992 announcement are to encourage the use of innovative new biotechnology products, and EPA has used these concepts in developing this proposal. The rule now being proposed reflects changes in the September 1990 draft made in response to public comments, the recommendations of the 1990 FIFRA SAP subpanel and 1990 BSAC subcommittee, and the 1990, 1991 and 1992 Federal biotechnology policy statements. In addition to scope Options 1 and 2, which have been reviewed and commented on one or more times by the FIFRA SAP subpanel and the BSAC subcommittee, this proposal also contains a third option, Option 3, which was developed recently during interagency discussions. Option 3 has not been reviewed by EPA's SAP or BSAC, nor has it been a part of the public comment process prior to this proposal.

III. Proposed Regulatory Changes

A. Rationale for Notification

Pesticides by their very nature are designed to disrupt or alter the environment in which they are used. To achieve their intended beneficial purpose, they must have an adverse or otherwise limiting effect on some organism.

Microbial pesticides achieve their effect in a number of ways. They may, for example, produce a substance that exerts a toxic effect; they may be pathogens that cause disease in the organisms they infect; or by simply being present, they may outcompete and displace certain types of pests. As with other types of pesticides, a microbial pesticide may also affect nontarget organisms.

EPA, to date, has registered 24 different microbial pesticides in hundreds of different formulations. These microbial pesticides have, in general, enjoyed a history of safe use. They appear to be kept in check by various factors such as the actions of other organisms and the parameters of the physical environment that exist in the environment where the microbial pesticide is used. For example, microorganisms that are present in the environment of use may interact with the microbial pesticide in a number of ways. Indigenous microorganisms may compete with the microbial pesticide for space and nutrients; they may modify the environment to repel other microorganisms such as the microbial pesticide; or they may prey on the microorganisms comprising the microbial pesticide. Environmental conditions, such as temperature, humidity, pH, and available nutrients also limit the applied pesticide's survival and growth. These factors together are referred to in this preamble as "natural control mechanisms." The characteristics of the microbial pesticide play a role in the effectiveness of natural control mechanisms. If the microorganism is too weak to compete effectively against other microorganisms, or to withstand environmental conditions, it will be easily held in check by natural control mechanisms. Experience suggests natural control mechanisms exist in most environments where the microbial pesticides developed to date have been applied. Because of the likelihood that natural control mechanisms will limit microbial pesticides, the Agency has generally presumed that the relatively small amounts of microbial pesticides used in small-scale testing would not pose unreasonable adverse effects, i.e., the benefits of these types of tests would outweigh the risks.

However, as first indicated in the 1984 Interim Policy Statement, it is now possible to develop microbial pesticides expressing new pesticidal properties. Such properties may allow for significantly new or expanded host ranges, new or enhanced toxin production, and new fitness and survivability characteristics. In addition, the genetic components responsible for the added or altered pesticidal properties may be mobile and may allow for transfer of the pesticidal traits to other organisms that would otherwise be unable or unlikely to acquire these pesticidal properties.

Many of these kinds of microbial pesticides would have been unlikely to arise under natural conditions, and may not be subject to existing natural control mechanisms. Because these microbial pesticides may raise different risk concerns than the more traditional microbial pesticides in small-scale testing, the Agency believes that the presumption that they would not pose unreasonable adverse effects should not automatically apply.

In 1984, the Agency set forth a notification requirement that had a broad scope of coverage: specifically, all genetically altered and nonindigenous microbial pesticides would be subject to screening before application in the environment.

Since then, the Agency has had almost 8 years experience reviewing over 75 notifications for small-scale testing with genetically altered and nonindigenous microbial pesticides. Based on that experience, and a growing body of information from other sources such as the scientific literature, EPA has concluded that certain of these microbial pesticides need not be subject to the limited screening involved in the EPA notification process.

Accordingly, one goal in developing the scope of coverage for this proposed rule is to reduce regulatory burden by eliminating the notification requirement for those microbial pesticides that scientific knowledge, experience, or expertise indicate do not warrant review because they are unlikely to pose unreasonable adverse effects at this stage of development. In other words, the scope of coverage for this rule should be reduced, from that articulated in 1986, to focus only on those microbial pesticides for which the Agency has risk concerns or where the Agency lacks sufficient information or knowledge to conclude that their use at small-scale is unlikely to cause unreasonable adverse effects. Another EPA goal is to implement a scope that clearly identifies those microbial pesticides subject to the notification requirement in a way that could be easily understood and used. Such a scope would make sufficiently clear to the regulated community, the Agency and other interested parties, whether a specific microbial pesticide is subject to the notification requirement.

B. Description of Notification

A notification would contain sufficient data and information to allow EPA to review the proposed test, including the identity of the microbial pesticide, a characterization of its relevant biology and ecology, a description, if applicable, of how the microbial pesticide has been modified, and a description of the objectives, experimental design, and other relevant parameters of the proposed test. Proposed subpart C at § 172.48 includes a discussion of the kinds of data and information to be submitted in a notification.

The notification could be in the form of a letter. It may describe a range of testing, from a single specific test to a complete research program. A notification for a research program could address, for example, multiple year testing in multiple sites with multiple microbial pesticides. This approach has been employed with some of the notifications submitted under the 1984 and 1986 policy statements, and EPA finds it advantageous to both the Agency and submitters to treat a series of field tests that are variations on a theme under a single notification.

Data and information provided to the Agency in a notification may be claimed as confidential business information (CBI), and should be accompanied by comments substantiating the CBI claims. (See § 172.46(d)).

Agency review of a notification would be completed within 90 days. At the conclusion of the review, the Agency may make one of the following determinations: approve the test; approve the test without requiring an EUP as long as certain modifications in the proposed test plan are incorporated; require additional information; require an EUP for the test; or disapprove the test because of the potential for unreasonable adverse effects.

In the past, EPA has, in several instances, informed submitters on an individual basis when no further notification to EPA was required for certain specific microbial pesticides, even though these microbial pesticides were within the scope of the 1984 and 1986 policies. The Agency has taken this action in those instances where sufficient information was available to EPA to approve a range of future small-scale testing without specific prior notification for each test. EPA anticipates it will continue this approach, where warranted, under the current policy and when a final rule is in place.

C. Proposed Regulatory Scheme

The Agency proposes to revise 40 CFR 172.3 to clarify its rationale for presuming that an EUP is not required prior to small-scale testing with most pesticides. The Agency would modify the language of the rule to clarify that the determination of whether an EUP is required is based on risk considerations, rather than on a definitional presumption about whether the substance is a pesticide. Whether a substance is a pesticide, and therefore under the jurisdiction of FIFRA, is governed by the definition in section 2(u) of FIFRA; whether a pesticide should be regulated under FIFRA is governed by risk/benefit considerations and the availability of appropriate regulatory alternatives. EPA believes that EUPs are usually not warranted for small-scale testing because most applications of most pesticides are presumed not to involve unreasonable adverse effects to human health or the environment.

The Agency also proposes, by adding a subpart C to the existing EUP regulation (40 CFR part 172), to incorporate the requirement that the Agency be notified before initiation of small-scale testing with microbial pesticides whose pesticidal properties have been enhanced or imparted by the introduction of genetic material that has been deliberately modified. This is referred to in this preamble as Option 1. Two other scope definitions, designated Options 2 and 3, are also discussed in this preamble. Currently, the Agency requires notification for small-scale testing of all genetically altered and nonindigenous microbial pesticides. EPA now, in the proposed regulatory text, proposes to limit the focus of the notification requirement to a smaller group of microbial pesticides.

The proposed notification scheme would codify the Agency procedure of screening planned small-scale tests to evaluate the potential for adverse effects on human health or the environment and allow the Agency to take further action, if appropriate. Testing conducted in a facility with adequate containment and inactivation controls would not be subject to the notification requirement. Responsibility for selection and use of adequate containment and inactivation controls would lie with the researcher or institution conducting the test (See Unit V.A. of this preamble).

A mechanism for designating, in the future, exemptions from the requirement for notification prior to testing at the small-scale stage, as information and/or experience indicates this is warranted, is included at proposed § 172.52. Using this mechanism, certain subgroups of the microbial pesticides, otherwise subject to notification, could, on the basis of scientific knowledge and experience, be added to a list of exemptions from the notification requirement.

Proposed §§ 172.57 and 172.59 are included to enable the Agency to address situations where small-scale tests covered by subpart C result in unanticipated and untoward effects.

Proposed § 172.57 addresses situations where a person using a microbial pesticide in small-scale testing obtains information concerning the potential for unreasonable adverse effects, but there is no threat of immediate or serious harm to human health or the environment. This section would require that person to submit such information to EPA within 30 days so that the Agency can evaluate the information and take any necessary action to minimize the potential for adverse effects. In situations where threat of harm to human health or the environment is immediate and serious, proposed § 172.59(a) sets out the manner in which EPA would act immediately to prevent adverse impacts. For example, if necessary and appropriate to the specific situation, EPA may use its authority under FIFRA section 16(c) to prevent continuance of the experiment. Such actions would be taken only when there is a tangible threat of serious harm that must be attended to without delay. EPA does not intend to use the authority in proposed § 172.59(a) to respond to situations that could be addressed in other, less precipitous ways.

The provisions set forth in proposed Subpart C (§§ 172.43 through 172.59) for the review of small-scale tests of certain microbial pesticides would not affect the already established Agency procedures for the review of pesticides for EUPs or for registration purposes.

Together, the notification procedure and the existing EUP procedures would provide oversight of microbial pesticides that meets EPA's objectives under FIFRA, as well as those set forth in the 1986 "Coordinated Framework for Regulation of Biotechnology," the 1990 "Proposed Principles on Scope of Oversight," the 1991 "Report on National Biotechnology Policy," and the 1992 "Exercise of Federal Oversight Within Scope of Statutory Authority." EPA believes that this notification procedure is also consistent with the recommendations contained in the ESA and NAS reports, and the recommendations of the FIFRA SAP and BSAC concerning the assessment and screening of microbial pesticides.

IV. Options for Scope of Coverage

A. Identification of the Options

To provide a full opportunity for analysis and comment by the public, this preamble discusses three options for redefining the scope of microbial pesticides subject to screening before small-scale testing in the environment. The Agency's goal in setting forth these options is to discuss alternative approaches to identifying those microbial pesticides having the greatest potential to pose risks, or those where sufficient information and knowledge are lacking about the potential risk when the microbial pesticide is introduced into the environment. Each option is accompanied by definitions and/or footnotes that have been developed to provide the necessary specificity for use within the regulatory context of FIFRA.

The three options are presented below, followed by the Agency's analysis of the options in Unit IV.B. of this preamble, and a discussion of the implementation of these options within the FIFRA regulatory context in Unit IV.B.4. of this preamble. For a variety of reasons discussed in the analysis and in the summary in Unit VI. of this preamble, the Agency prefers Option 1, and it is embodied in the proposed regulatory text. EPA is also interested in comments on Option 3. As noted above, Option 2 is discussed for illustrative and historical reasons.

Option 1: Microbial pesticides whose pesticidal properties have been imparted or enhanced by the introduction of genetic material that has been deliberately modified.

Key terms used in Option 1 are defined as follows:

1. "Pesticidal property" means a characteristic exhibited by a microorganism that contributes to the intentional use of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant.

2. "Introduction of genetic material" means the movement of nucleotide sequence(s) into a microorganism, regardless of the technique used.

3. "Deliberately modified" means the directed addition, rearrangement, or removal of a nucleotide sequence(s) to or from genetic material.

Option 2: Microbial pesticides that have been deliberately modified in hereditary traits, with the exception of:

1. Microorganisms modified solely:

a. Through chemical or physical mutagenesis.

b. By the movement of nucleic acids using physiological processes including, but not limited to, transduction, transformation, or conjugation;[1] or

c. By plasmid loss or spontaneous deletion.

2. Organisms that have been modified by the introduction of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the parental organism.[2]

3. Organisms resulting from a deletion, rearrangement, or amplification,[3] within a single genome, including its extrachromosomal elements.[4]

This definition uses several key terms and phrases that require further clarification as follows:

a. "Deliberately modified in hereditary traits" means modified by alteration of the genome.

b. "Genome" means the sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendants derived under axenic culture conditions from that isolate.

c. "Organisms" means microorganisms.

d. "Movement of nucleic acids" means movement of nucleotide sequences into a microorganism.

e. "Physiological processes" means there has been no directed addition, rearrangement, or removal of a nucleotide sequence(s) to or from the nucleic acids that are moved. In addition, the recipient microorganism must not have lost the ability to recognize and cleave foreign genetic material and must not have been exposed to conditions to induce competence artificially by treatments that render the microorganism surface structure permeable to transforming genetic material.

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[1] Also excluded are microorganisms modified solely by anastomosis.

[2] Also excluded are microorganisms modified as in 1 or 3 above that have also been modified by the introduction of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes.

[3] Applies only to microorganisms where the amplification has not imparted, enhanced, or altered pesticidal properties.

[4] Also excluded are microorganisms resulting solely from a point mutation.

f. "Organisms resulting from rearrangements" means microorganisms resulting from translocations or inversions.

g. "Noncoding, nonexpressed nucleotide sequences" means the nucleotide sequences are not transcribed and are not involved in gene expression or replication. Examples of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the recipient include linkers, adaptors, homopolymers, and flanking sequences.

Option 3: Indigenous microbial pesticides for which specific pesticidal activities have been created or increased by deliberate processes or techniques.

Notification is not required for microbial pesticides whose pesticidal activities have been increased, but which are unlikely to pose a greater risk in the test site environment, in terms of increased host range, competitiveness, survivability, or genetic mobility, compared to the microorganism(s) from which they were derived.

Notification is not required for microorganisms whose phenotype has been changed only by the microorganism's introduction into a new environment, but which are unlikely to pose a greater risk in the test site environment resulting from an increase in host range, competitiveness, survivability, or genetic mobility.

Key terms used in Option 3 are defined as follows:

1. "Pesticidal activities," for the purpose of this option, means hazard characteristics expressed by the microorganism, which is the active ingredient, that prevent, repel, destroy or mitigate a pest or act as a plant growth regulator, defoliant, or desiccant through toxin production, infectivity, pathogenicity, or virulence. Pesticidal activities do not include noncytotoxic modes of action such as those brought about by niche exclusion, substrate competition, or nutrient sequestration.

2. "Created" means the microorganism has been given a pesticidal activity that is not part of the normal genetic complement of the species in nature.

3. "Increased pesticidal activity" means an augmentation of a pesticidal activity that can be shown to be part of the normal genetic complement of the species in nature.

4. "Deliberate processes or techniques" means the intentional movement of the microorganism to a new environment or a change in the genetic information of the microorganism resulting from natural breeding, selection for spontaneous mutations, chemical or physical mutagenesis, transduction, transformation, conjugation, cell fusion, recombinant DNA or other genetic manipulations.

5. "Test site environment" means the immediate test site and the area surrounding the test site to which the microorganism or its genetic material may reasonably be expected to be dispersed.

6. "Genetic mobility" means the horizontal movement (i.e., from the genome of one species to the genome of another) of genetic material.

Option 1 uses an "inclusionary" scope. This approach is termed "inclusionary" because it is based on an initial statement that describes which microbial pesticides are included in the scope and therefore subject to notification. Options 2 and 3 are termed "exclusionary" because they both begin by circumscribing a larger group of microbial pesticides and then delineate subsets to be excluded from the scope.

B. Analysis of Options

1. *Options 1 and 2*. Options 1 and 2 are discussed together because they share many of the same key terms and definitions. Options 1 and 2 are approaches in which the EPA has made the initial assessment of the potential risk presented by certain categories of small-scale testing with microbial pesticides. In these options, EPA directly indicates in the scope definitions the categories of microbial pesticides subject to notification. Options 1 and 2 are based on three major premises: (1) Notification should be limited to tests involving microbial pesticides with the potential for presenting new and different hazard traits and/or a potential that organisms which heretofore might not have been exposed to these traits could be exposed, particularly when this exposure occurs through new or additional routes; (2) that a site-specific analysis of risk potential for tests other than those in (1) above is not necessary, and these tests can be excluded from the notification requirement; and (3) the decision of which tests are subject to notification is made by EPA, and encoded in the scope definition. EPA's decision is based on its 40 years of experience in regulating microbial pesticides, including 8 years of experience evaluating genetically altered and nonindigenous microbial pesticides at all stages of product development and registration, as well as the knowledge and expertise of its personnel and other scientists in fields such as microbial ecology, plant and insect pathology, soil microbiology and molecular biology.

Options 1 and 2 create a structure (See Unit IV.B.3. of this preamble) wherein the assessment of whether a test is subject to notification to EPA is made on the basis of simple and directly addressable criteria that form the scope definitions. Under these approaches, all interested parties (e.g., industry, researchers, public interest groups, EPA) would, in most instances, deduce from a reading of the definitions alone whether a test involving a specific microbial pesticide is subject to the notification requirement. Both options significantly reduce the number of notifications that would be sent to EPA relative to existing EPA policy.

Option 1 focuses the scope of microbial pesticides subject to notification through a single statement that directly describes the types of tests that would be subject to notification. Option 2 defines the scope of microbial pesticides subject to notification through a somewhat broader initial statement, which is then narrowed by exclusions. Option 1 identifies and focuses attention on microbial pesticides with (1) new or different hazard trait(s); and (2) the potential to present new or different exposures, e.g., organisms which heretofore might not have been exposed to a particular substance might now be exposed to that substance through the microbial pesticide. EPA judges pesticides in these categories to present relatively greater potential for risk than those microbial pesticides EPA would no longer subject to the notification requirement.

The following discussion provides the rationale for EPA's determination of those microbial pesticides which would be subject to the notification requirement and those that would not under Options 1 and 2. Examples are provided in order to illustrate the types of issues presented by microbial pesticides covered by Options 1 and 2.

Useful and effective microbial pesticides can now be developed by introducing new pesticidal properties into a microorganism. This can be accomplished, for example, by giving a microorganism the ability to produce a toxin that heretofore, it could not produce. A gene encoding a toxin could be isolated, for example, from a parasitic wasp, introduced into a microorganism, and be functionally expressed by the microorganism (Example 1). Such a microbial pesticide might present new hazard and exposure considerations. The microorganism, which had no previous pesticidal properties, is now able to produce a potent toxin, which might present a new hazard consideration.

The microorganism's acquisition of the ability to produce the toxin also creates a potential for either increased exposures of nontargets, or exposure of a different range of nontarget organisms. For example, when the toxin is produced by the parasitic wasp, generally only those insects preyed upon by the wasp are exposed to and affected by the toxin. However, when the toxin is produced by the microorganism, a new range of organisms may be exposed to the toxin. If the microorganism colonizes leaves or roots, then any insects or other organisms feeding on, or living in close association with, a plant colonized by the microorganism could be exposed to the toxin and could be adversely affected by such exposure.

A newly acquired toxin production capability may also impart selective advantage and/or competitive characteristics such that the microbial pesticide could establish itself in the environment and continuously present these new exposures. It is possible that the newly acquired trait could assist in overcoming natural control mechanisms. For example, organisms killed by the toxin may serve as an additional source of nutrients for the microorganism. This may allow the pesticidal microorganism to exhibit superior multiplication and dissemination compared to other microorganisms whose populations are kept in check because they do not have access to additional nutrients.

There is also the possibility that the genetic material encoding the pesticidal trait could move, under natural environmental conditions, from the microorganism that was the original recipient, into other microorganisms that would have otherwise been unlikely to acquire it. These other microorganisms may occupy different environmental niches than the original recipient. Such unintended movement may allow for ever increasing environmental exposure as the gene is transferred from one type of microorganism to another. A wider variety and greater number of nontarget organisms could thereby be exposed to the toxin.

The ability of a microorganism to function as a microbial pesticide can also be increased by enhancing the pesticidal properties that the microorganism already possesses. For example, the efficacy of *Bacillus thuringiensis* could be enhanced by modifying its delta endotoxin gene so it encodes a more potent toxin. It may also be possible to broaden the target spectrum of the microbial pesticide through modification of the gene encoding the toxin. For example, in the case of *B. thuringiensis*, the microorganism produces a protein molecule which itself does not have insecticidal activity; i.e., the microorganism produces a protoxin. In order for toxic activity to occur, the protoxin must be broken down into fragments or subunits, one of which is toxic. It is believed that most insects are unaffected by *B. thuringiensis* because their gastrointestinal tract does not degrade the protoxin to produce the toxic subunit. If the gene producing the protoxin were modified so that the *B. thuringiensis* produced only the insecticidally active subunit, and the active subunit were coupled with another protein to enhance transport across membranes, additional insect species could be susceptible to this microbial pesticide (Example 2). Such microbial pesticides may be able to compete in the environment and could thus become a permanent part of the *B. thuringiensis* population. A microorganism's pesticidal activity could also be enhanced by changes to genes other than those that encode the toxin, but which nonetheless, affect pesticidal properties. For example, changes could be made in genes controlling host specificity. When this is done, the range of hosts the microorganism can affect could be decreased, or increased to encompass other types of organisms that were not previously affected by the microbial pesticide (Example 3).

Some modifications can be undertaken to increase the ability of the microorganism to survive. For example, modifications enhancing resistance to UV radiation could increase microorganisms' ability to survive solar radiation (Example 4). Such an ability would be important for microorganisms living on plant leaves, and could lead to microbial pesticides with increased pesticidal properties. For example, if a toxin producing microorganism persisted longer in the environment because of an ability to resist solar radiation, additional nontarget organisms might be adversely affected because these nontargets have greater opportunity to chance upon the toxin, and/or might be exposed to the toxin for a sufficiently long period of time for the adverse effects to occur.

The above are examples of the kinds of microbial pesticides that are the general focus of Options 1 and 2. They are directly the focus of Option 1 since it identifies microbial pesticides whose pesticidal properties have been imparted or enhanced with the term "enhanced" interpreted broadly. For example, "enhanced" would include circumstances involving an increase in the ability of a microbial pesticide to survive. It would also include any increase, improvement, extension, augmentation, intensification, or amplification of a pesticidal property, and would include situations where the mobility of the pesticidal property is increased. Option 2 indirectly focuses on these microbial pesticides through a broader initial scope and exclusions for categories of microbial pesticides which do not have these properties. Because of the potential for microbial pesticides covered by Options 1 and 2 to express new or enhanced pesticidal traits, and to disseminate and increase in numbers and biomass, the Agency believes that the risk issues associated with such microbial pesticides should be considered by EPA at the small-scale testing stage, rather than deferring EPA consideration to later stages of testing and development.

Both Options 1 and 2 exclude from notification all microbial pesticides comprised of microorganisms simply isolated from the environment (naturally occurring), and laboratory generated microbial pesticides similar to those that would be likely to occur in microbial populations in nature. As mentioned previously, EPA has a significant amount of experience with naturally occurring microbial pesticides. EPA's experience to date suggests that the populations of most microbial pesticides of this type are limited, often by natural control mechanisms, so that they generally die off or return to low numbers. Thus, these microbial pesticides are not likely to present new hazard or exposure issues when tested at small-scale, and do not necessitate a site-specific analysis of potential risk. (The exception to this statement may be certain nonindigenous microorganisms. See Unit IV.B.5. of this preamble for a discussion of EPA's position on such microorganisms.)

EPA believes that certain laboratory-generated microbial pesticides will behave like the population from which that microbial pesticide was derived. No population of microorganisms in the environment is homogenous in genetic composition, or in traits expressed. Members of a population change their characteristics through, for example, random loss of genetic material (i.e., random deletions, including plasmid and chromosome loss) and rearrangement of genetic material within a microorganism. Random loss and rearrangement of genetic material can result from exposure to UV radiation, starvation, and exposure to mutagenic chemicals, as well as from errors when the microorganism duplicates its genetic material. These types of conditions and events occur in nature, and some members of a population will, at any time, experience loss or rearrangement of genetic material. Therefore, microorganisms that have experienced these types of changes in the laboratory, are likely to exhibit characteristics within the range of characteristics exhibited by populations in the environment.

A microbial pesticide that results from the transfer of genetic information, under conditions simulating conditions in nature, would also be likely to be similar to members of the population in nature. Bacteria, for example, engage in such transfer through: (1) transduction, a process in which a virus can pick up the genetic information encoding for a heritable trait(s) of one bacterium and transfer it to the bacterium that it subsequently infects; (2) transformation, a process in which a bacterium takes up genetic material from the environment (perhaps released into the environment by the death of another microorganism); and (3) conjugation, a process in which genetic material is transferred from one bacterium to another through direct physical contact.

Successful transfer of genetic information depends, among other things, on the ability of the recipient microorganism to incorporate and express the genetic information. Transfer of genetic information is restricted generally to members of a single population, since the cellular machinery that expresses genetic information generally is highly organism specific. Occasionally, members of more distantly related populations of microorganisms may exchange genetic information, e.g., in conjugation, but these wider exchanges have limitations. In any event, these types of transfers of, and changes, in genetic information are likely to occur in nature. Therefore, some members of each population probably already possess genetic information that can be transferred into the population by natural transduction, transformation, and conjugation.

Thus, microorganisms produced in the laboratory under conditions simulating conditions in nature are likely to be the same as, or similar to, variants found in natural microbial populations. Thus, they, would not present new hazard or exposure issues and would be subject to the constraints imposed by the environment.

Although Options 1 and 2 are similar with respect to the kinds of microbial pesticides covered and not covered, the two options differ in two important respects. First, while Option 2 includes most modifications that enhance, impart, or alter pesticidal properties by the introduction of modified genetic material, it is not limited to this group of modifications. For example, Option 2 would also cover microbial pesticides modified by the introduction of marker genes that have been inserted only to improve the ability to identify and detect the microbial pesticide. Option 2, which is not as specifically targeted to pesticides as Option 1, includes these kinds of microbial pesticides since the exclusion categories on which it is based are not so precisely drawn as to exclude only marker genes. Therefore, Option 2 casts a somewhat broader net in order to capture for review, the few microbial pesticides that may fall in the same category as marker genes and that may pose risk concerns.

A second area where the options differ is that Option 1 would encompass within the scope, microbial pesticides in which pesticidal properties have been altered by the deletion or rearrangement of genetic material within the genome of the microorganism when the deletion or rearrangement has been brought about by isolating a segment of genetic material from a microorganism, deliberately modifying it, and subsequently returning that segment to the microorganism. Option 2 does not capture this category of microorganism within its scope.

The argument supporting the approach in Option 2 is that these kinds of deletions and rearrangements can only: (1) inhibit the expression of characteristics possessed by the parent organism or, (2) allow previously unexpressed characteristics to manifest themselves. Since no new genetic material is added, no characteristic can be expressed that could not potentially have been expressed by the parental microorganism, or that may not already be expressed by a variant in the natural population. The microorganism is not likely to possess characteristics outside the range of those that could occur in the environment. It would, thus, be subject to natural constraints.

However, for microbial pesticides, the intent underlying such modifications would usually be to cause the microorganism to exhibit specific pesticidal characteristics, such as enhanced toxin production, increased virulence or expanded host range. It is well documented that changes in these kinds of characteristics can result from deletion and rearrangement of genetic material. Deletions and rearrangements brought about by deliberately modifying a segment of genetic material from a microorganism and returning that segment to the microorganism (i.e., targeted changes) may present somewhat different considerations than microbial pesticides that have acquired such characteristics randomly as a result of insults such as UV radiation, exposure to toxic chemicals or starvation conditions.

Targeted modifications minimize the possibility of unintended changes occurring in other parts of the microorganism's genetic information that could render it less fit for survival, or that could trigger rounds of repair activity leading to changes in the desired modification. Moreover, targeted changes can be engineered to be more stable, and, on average, less likely to revert to the characteristic that existed prior to the change. Targeted changes in pesticidal properties may result in microbial pesticides with a relatively higher potential for maintaining and expressing the changed characteristic(s) than those microorganisms resulting from random changes. Thus, targeted deletions and rearrangements in microbial pesticides may present relatively higher levels of potential risk than random changes.

As a result, EPA has, consistent with the advice of the FIFRA SAP subpanel (see Unit VII.B. of this preamble), elected in Option 1 to propose that some microbial pesticides resulting from a targeted deletion or rearrangement would be subject to the notification requirement. However, EPA proposes in this rulemaking a mechanism that could be used to exempt categories of microbial pesticides (See Unit V.B. of this preamble). Should experience and/or public comment indicate it is warranted, EPA could exempt from notification those microbial pesticides that result from a targeted deletion or rearrangement. EPA requests comment at Unit VIII.G. on this issue.

2. Option 3. Option 3 is an approach in which the researcher (or research institution) makes the initial assessment of the potential for risk presented by the test. Option 3 is based on three major premises: (1) Notification should be limited to microbial pesticides that have the potential to pose greater risk because of increased hazard and/or exposure compared to their parental(s); (2) the researcher (or the research institution) is in the best position to make the initial determination of whether notification is required for a test; and (3) the researcher can choose to evaluate the potential risks of the specific small-scale experiment (including the test site environment) and determine if it satisfies premise (1) above.

Option 3 defines the scope of microbial pesticides potentially subject to notification through a broad initial statement that brings in many tests; it then proceeds to narrow the scope focus in two ways. First, certain key terms and definitions narrow the scope. Second, Option 3 narrows the scope through two exclusions based on exposure considerations. These terms and definitions were developed to give researchers addressable criteria from which to determine the need to notify EPA of a planned test.

The breadth of the initial statement of scope is determined by the words "by deliberate processes or techniques." For this option, "by deliberate processes or techniques" refers to changes in the genetic information possessed by the microorganism and/or the intentional movement of the microorganism to a new environment.

A change in the genetic information of the microorganism can be effected in a number of ways, and all of these are within the initial statement of scope. These include natural breeding, selection for spontaneous mutations, chemical or physical mutagenesis, transduction, transformation, conjugation, and recombinant DNA, or other genetic changes such as those arising from anastomosis, plasmid loss, site-directed mutagenesis, and cell fusion.

Selection for spontaneous mutation would include the deliberate use of selective pressure to affect the efficacy of the microbial pesticide. For example, viruses whose virulence has been enhanced by serial passage would be within the initial statement of scope. In serial passage, a host is successively inoculated with the virus; the progeny viruses are then screened and those progeny with the most pesticidal activity are selected. This process is repeated sequentially, if needed, to increase the virus' virulence. The term "natural breeding" would include microorganisms that have been cultured.

The initial statement of scope also includes microbial pesticides moved from one environment of testing to another, different or "new environment," whether they have experienced changes in genetic information or not. The "new environment" could be a significant change in geographic location, climatic condition, ecosystem or habitat.

The broad initial statement of scope is then narrowed by several other key terms and definitions. First, the definition of "pesticidal activities" narrows the scope to address only those microbial pesticides which exert their pesticidal effects through the specific modes of action of toxicity and/or host-pathogen interactions. Microbial pesticides that act through other mechanisms are outside of the scope and would not be subject to the notification requirement. "Pesticidal activities" do not include noncytotoxic modes of action such as those brought about by niche exclusion, substrate competition, or nutrient sequestration.

The terms "created" and "increased" further limit the scope. In Option 3, "created" means that the microbial pesticide has acquired the ability to perform as a pesticide via toxin production and/or host-pathogen interaction, as a result of the deliberate introduction of genetic material that is not part of the normal genetic complement of the species in nature. "Increased" means that the ability of the microorganism to act as a pesticide through toxin production and/or host-pathogen interaction has been augmented, and that the genetic material controlling these activities is part of the normal genetic complement found in the species in nature. Microorganisms whose genetic information has not been changed but whose pesticidal activity is increased by movement to a new environment would fall in this category. Microorganisms whose pesticidal activities have not been changed or have been decreased, through changes in genetic information or movement from one environment to another, would not be within the scope. For example, attempts are being made to reduce the host range of the plant pathogen, *Sclerotinia sclerotiorum*, and should this pathogen be field tested as a microbial pesticide, it would not trigger notification under Option 3 because its pesticidal activities have been decreased.

Having narrowed the scope through these key terms and definitions, Option 3 then utilizes two exclusions to remove certain other microbial pesticides from the notification requirement. These exclusions are based on an evaluation of several exposure considerations.

The first exclusion operates through a comparative analysis of the risk potential of the microbial pesticide whose pesticidal activities have been increased with the potential risk of the microorganism(s) from which it was derived. This comparison is conducted within the context of the area to which the microorganism or its genetic material may reasonably be expected to spread, and the likelihood of increased risks that may occur due to greater exposure potential because of increased host range, competitiveness, or survivability of the microbial pesticide, or because of increased genetic mobility. Consideration of these factors is intended to focus the evaluation on the potential for increased exposure of the microbial pesticide, its genetic material, or the products of the microorganism, to susceptible nontarget organisms.

Increased competitiveness means the microbial pesticide is able to survive, reproduce and spread in the environment in a way that is more effective than its parental(s). For example, it would be able to increase its numbers at the expense of other organisms, or it would become established in a new niche thereby increasing opportunities for exposure. Either of these mechanisms implies that the microbial pesticide would be better suited to survive and expand its population and thus pose a greater potential risk to the environment relative to the parental organism(s). Similarly, greater survivability means the microbial pesticide persists longer than its progenitor(s) and, thus, there may be greater opportunities for exposures to nontarget organisms. Mobility refers to the horizontal movement of genetic material from the genome of one organism to the genome of another organism(s). The significance of genetic mobility depends on what material is moved and the nature of the recipient species. For example, if the mobility of a toxin gene is increased, the gene may be transferred to organisms where it did not exist previously and would not be expected to exist naturally. The result of this transfer may be to confer greater competitiveness or survivability on the recipient organism, and/or to allow the recipient to become established in a new niche, thereby increasing exposure to the toxin.

The second exclusion considers similar exposure factors except that it specifically applies to microorganisms whose pesticidal activities are increased by movement to a new environment. It would apply to microbial pesticides arising from natural breeding and microorganisms selected from one environment for use in a new environment.

Under the exclusion mechanisms, the researcher would consider the host of factors that may affect hazard and exposure to determine whether a test, in which the microorganism's pesticidal activity is increased, is eligible for exclusion from the notification requirement, with "increased" referring to an augmentation of the ability of the microorganism to act as a pesticide and the genetic material controlling these activities being part of the normal genetic complement of the species in nature. When pesticidal activity has been created, rather than increased, the resulting microbial pesticide would not be eligible for consideration under the exclusions.

Under the exclusions of Option 3, the researcher would make an assessment of the potential risk of the test, considering variables such as environment, exposure, and toxicity or pathogenicity. If, for example, the test has confinement measures/features designed to control the movement of the microorganism, the effective "test site environment," may be diminished. With sufficient confinement controls, the microorganism and its genetic material may only be reasonably expected to occur in the immediate test site and not disperse to any surrounding area. In this case, the immediate test site is the "test site environment." As the effective test site environment is narrowed, the researcher's assessment of the interactions between the microorganism and the environment becomes simpler because opportunities for unintended exposures that may increase potential risks—resulting from an increased host range, competitiveness, survivability or genetic mobility—are reduced. Thus, the researcher's determination as to whether any particular test qualifies for an exclusion requires an assessment of the likelihood of an incremental increase in exposure in the test site environment taking into account the adequacy of the confinement measures.

In order to determine whether a test is eligible for exclusion, a researcher would first make a determination of whether there is an increase in pesticidal activity (e.g., increased toxin production) of the microorganism, and then if there is an increase in environmental exposure (e.g., an expanded host range). If the answer is "yes" to both parts of these questions, then notification would be required because the test poses a potentially greater risk.

When the answer to the question of whether the microbial pesticide has greater survivability is "yes," the test would require notification, assuming an increase in pesticidal activities. Here, the evaluation may focus on the characteristics that give the microorganism a greater chance to live and reproduce, such as increased reproductive rate, greater temperature or pH tolerance, or better defense mechanisms against predators, when compared with the progenitor(s). The researcher must then consider whether these enhanced characteristics will actually increase exposure to nontarget organisms inside the test plot or outside the test plot given the test's confinement measures. If the answer is "yes," notification to EPA is required.

Another exposure element that must be considered by the researcher to determine if notification is necessary is host range, specifically whether the host range of the microorganism has increased relative to that of the progenitor(s) in the test site environment. Such an evaluation would focus on whether different or additional types of nontarget organisms would potentially be exposed and whether any of these nontargets are likely to be in or around the test site environment, as well as the potential for actual exposure taking into account the test's confinement measures. When the answer is "yes," notification would be required for the test (again assuming an increase in pesticidal activities) because the relative risk of the microorganism in the test may have been increased.

EPA anticipates that many microbial pesticides included under the initial scope of Option 3 would, through the exclusion mechanisms, be removed from the requirement of notifying EPA. However, because of the experiment-specific nature of the analysis involved in the exclusion mechanisms, it is not possible to indicate a priori which microbial pesticides would qualify for exclusion.

3. Comparison of the Options. A primary objective in designing and selecting a scope of coverage is to provide a risk-based approach to identify those microbial pesticides subject to notification to EPA. The three options discussed in this proposal offer different conceptual approaches to meet this objective. These conceptual differences lead to differences in the type and number of microbial pesticides covered by each option, and necessitate differences in implementation.

EPA anticipates that the three options will require notification for many of the same microbial pesticides, although it may be that some of the microbial pesticides subject to notification under Options 1 and 2 will not require notification under Option 3. Conversely, some microbial pesticides covered by Option 3 may not be covered by Options 1 and 2. In order to illustrate the relative coverage of the options and the decision process for evaluating whether the tests are subject to notification, the examples discussed in Unit IV.B.1. of this preamble are analyzed below:

- It is anticipated that a microbial pesticide comprised of a microorganism functionally expressing the gene for a toxin from a parasitic wasp would be subject to notification under all three options (Example 1 in Unit IV.B.1. of this preamble).

- A microbial pesticide such as that discussed as Example 2 in Unit IV.B.1. of this preamble (wherein the active subunit of a toxic protein is coupled to another protein to enhance transport of the toxic moiety across membranes) would be covered under Option 1. It would be covered under Option 2 unless the sequence for the recognition subunit was from the same genome as the sequence for the toxic subunit. It would likely be covered under Option 3 if pesticidal activities were increased and there was a greater risk in the test site environment in terms of increased host range, competitiveness, survivability or genetic mobility compared to the microorganism from which it was derived.

- A microbial pesticide with changes in genes controlling host range specificity (Example 3 in Unit IV.B.1. of this preamble) would be covered under Option 1, if the change were to enhance pesticidal properties and involved the introduction of genetic material that had been deliberately modified. The pesticide in Example 3 probably would not, under Option 2, be subject to the notification requirement because most changes in host range currently result from deletions or rearrangements within a single genome. For Option 3, if the host range were increased, the microbial pesticide in Example 3 would likely be subject to the notification requirement. However, if the host range were decreased or shifted, the microbial pesticide would not be subject to the notification requirement, unless the shift resulted in an increase in infectivity, pathogenicity or virulence and there was a greater risk in the test site environment in terms of competitiveness, survivability, or genetic mobility.

- Example 4 in Unit IV.B.1 of this preamble discusses increases in the ability of the microorganism to survive. This example would be covered by Option 1 if the change were to enhance pesticidal properties through introduction of genetic material that had been deliberately modified. It might be subject to the notification requirement under Option 2 depending on whether the ability to better resist solar radiation was due to rearrangements or deletions in a single genome. It would be covered under Option 3 if the ability to better survive increased the ability of the microbial pesticide to act as a pathogen, and there was an increase in competitiveness, survivability, or genetic mobility.

Options 1 and 2 can be considered more centralized decision-making approaches than Option 3, which would, in contrast, be considered a decentralized approach. For Options 1 and 2, EPA made a generic determination, based on its experience and general knowledge, that for certain categories of microbial pesticides it has sufficient information to determine that the probability of unreasonable adverse effects during small-scale testing is low. The Option 1 and 2 scope definitions are structured so that these categories of microbial pesticides fall outside the scope (i.e., they are not covered by the notification requirement). Other categories are within the scope, and are described by EPA in the Options 1 and 2 scope definitions. A centralized approach leads to greater consistency in decision-making. There is one standard—that provided by EPA. The researcher determines whether a notification is required for a test based on that standard, which does not require interpretation to be implemented. The potential for differing interpretations is limited because of the nature of the scope criteria.

Option 3 shifts responsibility to the researcher for evaluating whether there is an increase in risk potential in a test, and whether there should be notification to EPA. This determination could be made without direct EPA involvement.

Under Option 3, essentially all tests of indigenous microbial pesticides would be evaluated by the researcher, taking into account site-specific factors, to determine whether the Option 3 criteria have been met (i.e., whether there is an increase in risk potential for the specific test). The initial range of microbial pesticides in Option 3 is broadly defined as those developed by deliberate processes or techniques, including those with changes in genotype and those with changes in phenotypic expression resulting from environmental factors. It, thus, includes both naturally occurring microorganisms and microorganisms that have experienced deliberate genetic modification. Hence, the initial range, or the starting point, for Option 3 is far broader than for Options 1 and 2.

The type and extent of evaluation or assessment researchers must make to determine whether notification to EPA is required for a microbial pesticide test also differs between Option 3 and the other two options. Options 1 and 2 present the researcher with a limited number of factors that must be evaluated to determine notification status. For example, under Option 1, the researcher would need to answer only the following questions: (1) Have pesticidal properties been affected; (2) has genetic material been introduced; and (3) has the introduced genetic material been modified? Under Option 1, notification to EPA is required if the answer is "yes" to all three questions. Option 2 uses an analogous approach.

Option 3 may require the researcher to consider more factors, including a consideration of the test site environment and an analysis to determine whether the Option 3 criteria regarding hazard and exposure have been met. For example, to determine whether a microbial pesticide will potentially "pose a greater risk, in the test site environment in terms of increased host range, competitiveness, survivability, or genetic mobility, compared to the microorganism(s) from which [it was] derived" the researcher would evaluate such factors as the test site, including confinement measures; the range of nontarget organisms likely to be exposed; the mechanism(s) by which organisms may be adversely affected by the microbial pesticide; and specific differences in the microbial pesticide compared to the microorganism(s) from which it was derived. For this option, as with the other two options, if the researcher finds during an analysis of notification status that a particular consideration would exclude the test from the notification requirement, then no further assessment of other factors would be necessary.

EPA, in devising Options 1 and 2, generically considered environmental risk issues in determining whether microbial pesticides should be subject to the notification requirement. Two issues that were given particular consideration are the probability that the microbial pesticides not subject to the notification requirement would be competitive enough to result in significant exposures beyond the test site environment, and whether nonsubject microbial pesticides would be likely to have greater survivability or genetic mobility compared to the organisms from which they were derived.

The decentralized approach of Option 3 shifts the responsibility for evaluation of these factors, and, thus, the determination of the notification status of a small-scale test from EPA to the researcher. Each pesticide to be tested or each change in environment or set of environmental conditions requires the researcher to evaluate the test to determine whether it is within the initial scope established by Option 3, and whether it is eligible for exclusion from the notification requirement. A consideration of the factors laid out as relevant to Option 3 would be made on site by the researcher rather than by EPA.

Another difference among the options is that the boundaries circumscribing the categories of microbial pesticides subject to notification are more dynamic and fluid in Option 3 than they are in Options 1 or 2. For example, Option 3 relies on the term "new environment." The determination of what constitutes a "new environment" must be made on a case-by-case basis. The decentralized approach of Option 3 places greater responsibility on the researcher and can result in variations in decisions regarding the notification status of a test, as well as the need for confinement or other measures.

There are also differences between the options in terms of which types of microbial behavior are considered to raise hazard concerns meriting evaluation, with Option 3 covering a subset of the hazard endpoints addressed by Options 1 and 2. Option 3 only addresses the hazard endpoints associated with the creation or increase of toxin production, pathogenicity, infectivity, or virulence. Thus, Option 3 does not address hazard endpoints resulting from other mechanisms by which risk potentially can be presented. For example, Option 3 does not address the potential risks presented by competitive displacement. The narrower hazard focus of Option 3 is premised on the argument that the likelihood of significant environmental harm from competitive displacement is low for small-scale tests and therefore, microbial pesticides that act through this mechanism should not be subject to the notification requirement. Other mechanisms by which microorganisms exert adverse effects, such as the immobilization of substances important to other organisms, production of substances (e.g., lactic acid) that inhibit or repel other organisms, predation and some forms of parasitism, would not be covered by Option 3.

One of the goals of this rulemaking is to create a system which could accommodate advances in the understanding of the hazards and exposures of microbial pesticides. All three options were crafted to achieve this goal. However, they differ in how they would achieve it. Options 1 and 2, which are centralized options, provide a means by which information would be transmitted to EPA, which would then use this information in evaluating notifications as discussed in Unit III.B. of this preamble, establishing exemptions (Unit V.B. of this preamble), or ultimately as a basis for changing scope of coverage. Option 3, the decentralized option, places on the researcher the responsibility of determining whether notification to

EPA is necessary for a particular experiment. As the researcher gains information on potential risks, this information will be reflected in the specific determinations performed by that researcher. To the extent the researcher shares information with other researchers (e.g., publication in scientific journals), information concerning the potential for risk associated with specific types of tests could be disseminated to a wider community.

4. Implementation. The first three sections of Unit IV.B. of this preamble describe three approaches, Options 1, 2 and 3, for defining the scope of microbial pesticides to be subject to notification. In order to function in a regulatory context, each option must be implemented with the appropriate procedures to create equitable, accountable, consistent oversight that fulfills the goals of the regulation. This section identifies and discusses the use of four separate implementation procedures, and their utility, cost, and relevance for each option. The four procedures are: (1) Guidance from EPA on the considerations used in making a determination of whether a microorganism is covered by the scope; (2) documentation of the determination; (3) review of the determination by a third party; and, (4) retention of the records of the determination.

"Guidance from the Agency" could consist of a "points to consider" document describing appropriate issues to consider before arriving at a determination.

"Documentation of the determination" is a written account of the considerations evaluated in making the determination of whether a microorganism is covered by the scope, the conclusions of the evaluation, and how the conclusions were reached.

"Retention of the documentation" addresses where, and for how long, documentation of the determination will be maintained.

"Third party review of the determination" involves a review of the determination by a party other than the individual or group conducting the research activity.

Both Options 1 and 2 are crafted such that the researcher would consider a limited number of simply addressable factors, answerable with a "yes" or "no," to determine whether the notification requirement applies. The answers to the questions posed are readily apparent and would normally be part of the researcher's test protocols and records. Therefore, to determine whether a test would be subject to notification, researchers would look to their laboratory notebooks. For most of the considerations, the answers are relatively straightforward. For example, in Option 1, one of the key considerations is whether genetic material has been introduced. The determination can be made relatively simply since the test protocol either involves introduction of genetic material or does not.

Option 3 may require the researcher to consider a broader range of factors than the other options, including a consideration of the specific environment in which the test would take place, and requires individual researchers to judge whether their tests are excluded from the notification requirement. Although Option 3 may, in some cases, increase the burden on the researcher by requiring the consideration of a broader range of factors, it may also allow a broader range of tests to be excluded from the notification requirement. As with Options 1 and 2, researchers may not need to evaluate every factor before determining that a test is excluded from the notification requirement. In some instances under all the options, the decision could be made early in the evaluation process without EPA's involvement.

An additional consideration has a bearing on the implementation of Option 3—exclusion/inclusion of a specific microbial pesticide is substantially influenced by the individual judgment of the researcher. Although the qualifications and experience of researchers may vary, Option 3 is based on the premise that the individual or institution conducting the research is in the best position to make the required judgments concerning the potential risks associated with a specific test. As in Options 1 and 2, researchers must ultimately answer a series of "yes" or "no" questions; however, Option 3 may require researchers to consider other factors—not just material within their laboratory notebooks—in order to support their conclusions. Although Option 2 may, in some cases, increase the burden on the researcher by requiring the consideration of a broader range of factors, by taking a broader range of factors (including site-specific factors) into account, it may provide the opportunity for a broader range of tests to be excluded.

Under FIFRA, the Agency must structure its regulatory program so that use of the microbial pesticides excluded from the notification requirement is unlikely to pose unreasonable adverse effects on human health and the environment. To meet this requirement, EPA, in determining what will be subject to the notification requirements and what will not, balances risks and benefits. When the potential benefits of the test outweigh the potential risks, the no-unreasonable-adverse-effects standard imposed by FIFRA has been attained.

Therefore, the Agency must structure its program so that the risk determinations for anything excluded from the notification requirement, whether made by the Agency or the researcher, will support a risk/benefit balancing where the benefits outweigh the risks. Within this risk/benefit framework, EPA must make an initial determination to identify the types of microbial pesticides it believes warrant exclusion from notification. Because Options 1 and 2 identify specific categories of microbial pesticides, EPA would be relying on its own assessment of risks and benefits to exclude those microbial pesticides not within the scope of Options 1 and 2 from the notification requirement. Option 3 lays out an experiment-specific framework that places more responsibility with the researcher for determining whether the experiment is eligible for exclusion based on an assessment of risk. For Option 3, EPA would be relying on several factors in order to conclude that those experiments eligible for exclusion do not pose unreasonable adverse effects. These factors include: (1) The nature of the experiments (limited field tests); (2) the availability of appropriate guidance for researchers, (3); the traditional care taken in research; and (4) the potential liability to researchers and institutions.

As discussed below, EPA believes that, in light of the discretion afforded the researcher under Option 2, Agency guidance will be an important part of the regulatory structure for this option. For the same reason, the Agency also believes that third party review of the determination is necessary under Option 2. EPA requests comment on this approach. EPA also requests comment on whether and how the following mechanisms could be used in Option 3: (1) Documentation of the determination; and (2) retention of the documentation for a specific period of time following review. EPA also requests comment on the need for any or all of the four implementation mechanisms for Options 1 and 2 (See Unit VIII.B. of this preamble).

The following paragraphs discuss EPA's current thinking on the applicability and utility of the four implementation procedures as they relate to the three options. With regard to guidance provided by the Agency, for

Options 1 and 2, EPA believes that the determination of notification status is relatively straightforward, and the selection criteria set forth in the scope definitions provide sufficient guidance from the Agency. No additional guidance is needed. Option 3 involves consideration of a larger number of factors in determining whether notification is required. As a result, EPA believes there is a greater potential for inconsistency among researchers in the interpretation of this option than for Options 1 and 2. To address this possibility, Agency guidance becomes a more important component of the regulatory approach. EPA anticipates such guidance would be based on the considerations identified in the "Exercise of Federal Oversight Within Scope of Statutory Authority" published in the February 27, 1992 **Federal Register**.

In regard to review by a third party, there may be two types of benefits associated with this implementation component. First, independent reviewers may have experience and perspectives that complement and extend the experience and perspectives of the researcher, thereby improving the evaluation. Second, the use of independent reviewers will help provide consistency to the whole program and help ensure that individual decisions fall within mainstream thinking in the scientific community. Third party review could be performed by a local review group, composed of individuals with expertise in, for example, microbial ecology, molecular biology, human health, community and systems ecology, and toxicology. The third party could be similar to, or could actually be, the Institutional Biosafety Committees (IBCs) described in the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or some other responsible group or individual(s) in the research organization. Alternatively, the researcher could request that EPA serve as the third party reviewer.

Some small scale experiments involving microbial pesticides are currently being reviewed, either voluntarily or through the specific requirements of mechanisms such as the NIH Guidelines, by a third party within the researcher's specific institutional setting. Because of the nature of Options 1 and 2, EPA does not believe that an EPA requirement for third party review is generally necessary. However, because of the breadth of factors to be weighed under Option 3, EPA currently believes that third party review of the researcher's determination that a microbial pesticide is not subject to the notification requirement may be appropriate, and is interested in comments on this issue.

In terms of documentation of the decision, notebooks and test protocols would contain the information to support a determination under Options 1 and 2. Thus, for these options the documentation already routinely part of the research is adequate. Option 3 presents a different situation, since some of the information used in the determination would not likely be maintained as a matter of course in researchers' notebooks and test protocols. Given the availability of appropriate Agency guidance and the conditions under which research is typically developed and performed, it is likely that the appropriate factors will be considered. The Agency requests comment, however, on whether researchers should write down the key points of their analyses, to show that the relevant considerations have been evaluated and appropriate choices made.

In terms of retention of records, many researchers would ordinarily maintain the necessary documentation as part of the records of the research activities. However, when the information important to the risk analysis is not a part of the research protocol, or ordinarily considered by the researcher, there may be a need to go to other sources to obtain the information. While researchers usually retain their laboratory notebooks for many years, this may not be true for the additional information gathered for the risk analysis required under Option 3. EPA requests comment on whether it would be appropriate to establish a period of time (perhaps 3 years) during which these records should be maintained. A related issue is who would retain the records once they are compiled and reviewed. The documentation could be maintained by the individual or group that made the initial determination, or reviewer(s) of that material.

5. Microbial Pesticides Covered by Current Notification Policy but not Covered by the Option. Since 1984, EPA has had in place policies that require notification to EPA for small-scale testing of all genetically altered and nonindigenous microbial pesticides. For the purposes of this rule EPA is using the definition of "nonindigenous" published in the 1986 "Coordinated Framework for the Regulation of Biotechnology" (51 FR 23302, June 26, 1986), which stated that a microorganism would be considered to be nonindigenous to "any one of the geographic areas listed below if it is isolated from outside that area: (1) The continental United States, including Alaska, and the immediately adjoining countries; (2) the Hawaiian Islands; (3) the Caribbean Islands including Puerto Rico and the U.S. Virgin Islands."

Some of the microbial pesticides covered by the 1984 and 1986 policy statement would no longer be subject to the notification requirement, should this proposal become a final rule. Under Options 1 and 2, two groups of microbial pesticides would no longer be subject to the notification requirement. These are: (1) Naturally occurring nonindigenous microbial pesticides; and (2) all microbial pesticides that have been genetically altered (whether they are indigenous or nonindigenous), but that do not fall within the scope of Options 1 or 2.

Naturally occurring nonindigenous microbial pesticides would also be excluded from Option 3. Because of the nature of Option 3, EPA cannot a priori determine which other microbial pesticides currently covered by the 1984 Interim Policy Statement would no longer be subject to the notification requirement, should Option 3 become the scope of a final rule. Moreover, because Option 3 has a broad initial scope, some microbial pesticides that were not included in the 1984 scope would be initially captured under this option (e.g., some naturally occurring), although many of these microbial pesticides might be eligible for the exclusions of Option 3. Some genetically altered microbial pesticides would also be captured within the initial scope, although many of these would also be eligible for exclusion.

Those pesticides EPA would exempt from the notification requirement, under the authority of FIFRA section 25(b), would be exempted because EPA has determined them to be adequately regulated by another Federal agency, or to be of a nature as to not require regulation.

For naturally occurring nonindigenous microbial pesticides used at small-scale, the Agency believes adverse effects are most likely to occur in the areas of animal or plant pathogenicity or human health. Nonindigenous microorganisms that may have plant pest or adverse animal health effects are regulated by the Animal and Plant Health Inspection Service (APHIS). Under its own authority, and pursuant to its responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, APHIS considers the human health and environmental impacts associated with nonindigenous microorganisms that are potential plant or animal pests. In recent years, the Agency has worked closely with APHIS in the review of nonindigenous microbial pesticides. The Agency believes that small-scale tests involving nonindigenous microbial pesticides, favorably acted upon by APHIS (i.e., granted a permit or determined that a permit is unnecessary), are unlikely to cause any significant impact on the environment. Another measure of oversight is provided by the U.S. Public Health Service, which regulates the importation and subsequent distribution of microorganisms that are of human health concern.

EPA believes that it should review, prior to environmental release, nonindigenous microbial pesticides that pose a potential for significant risk to human health or the environment when used in testing at small-scale, that are not otherwise reviewed by another Federal agency, provided that a category of such microorganisms can be identified. However, the Agency is not aware of the existence of such a category of nonindigenous microbial pesticides and believes that continued imposition of the notification requirement for all nonindigenous microbial pesticides would constitute unnecessary duplicative oversight of research and development of these products. Thus, the Agency believes that review by EPA is unnecessary at this stage and is, therefore, willing to presume that small-scale tests with such naturally occurring nonindigenous microbial pesticides would not present an unreasonable adverse effect and would not require an EUP under FIFRA. Hence, the Agency proposes not to require notifications for these microbial pesticides.

Indigenous microbial pesticides that do not otherwise fall within the scope of Options 1 and 2 would no longer be subject to the notification requirement. EPA judges these microbial pesticides to be less likely to pose significant risks to human health or the environment when applied in small-scale tests than those that would be covered under the options. In arriving at this conclusion, the Agency has taken into account its experience with naturally occurring microbial pesticides, and those altered by both classical and newer genetic techniques that would be similar to naturally occurring microbial pesticides. EPA particularly draws upon its experience since 1984 with the assessment of these types of microbial pesticide products at the small-scale testing stage. Therefore, under the conditions discussed for each option, the Agency is willing to presume that small-scale tests of microbial pesticides containing microorganisms other than those in the scope definitions do not need EUPs, and is proposing that these microbial pesticides not be subject to a notification requirement.

V. Other Provisions

A. Testing in Contained Facilities

For any scope option, it is important to clearly distinguish circumstances where testing of those microbial pesticides otherwise within the scope would not be subject to notification. One such circumstance is testing within a contained facility, such as a laboratory or greenhouse, where appropriate containment procedures and controls are employed. EPA does not propose to require notification for testing occurring in such facilities, because it does not believe such testing raises sufficient risk concerns that notification is warranted.

However, excluding testing in contained facilities raises the need to describe what constitutes a contained facility where appropriate containment procedures and controls are employed. One alternative would be to set a single standard with specific containment parameters for all microbial pesticides. Another approach would be to identify several increasingly stringent levels of containment and issue guidance on how the various microbial pesticides would be matched to the appropriate level of containment. Both of these approaches could be complex and unwieldy for EPA to develop and implement. Because of their prescriptive nature, such approaches would reduce the Agency's and the researcher's flexibility in defining appropriate containment for specific testing, and could result in EPA regulating based on a rigid standard rather than exempting the research. Each change in a prescriptive standard would have to be incorporated into the standard through rule amendments or variance procedures.

EPA has chosen, therefore, to propose a "performance standard" to establish the boundary between research conducted in a contained facility and other testing. Under this proposal, the individual or institution conducting the testing is given the discretion to select and use procedures and controls appropriate to achieve adequate containment and inactivation in light of the characteristics of the microorganism being tested. These methods and controls would take into account the microorganism's ability to survive in the environment, potential routes of release, procedures for transfer of materials, and plans for routine and emergency clean-up and test termination. Under this performance standard, EPA would not establish a rigid prescriptive approach on how containment and inactivation are to be achieved, but would reserve the right to judge whether the selected controls are adequate to prevent unreasonable adverse effects.

EPA's approach accepts, in this instance, the judgment of the individual or institution conducting the research, which EPA would not generally question. The approach recognizes that many different kinds of microorganisms displaying a wide range of characteristics could be used in research, and that a single containment standard may not be appropriate for all. For example, for certain microorganisms, emanation of small numbers of viable microorganisms could be of concern, while emanation of large quantities of other microorganisms would not. The approach also recognizes that the type of containment or inactivation controls (e.g., procedural, mechanical, and/or engineering) appropriate for one microorganism might have limited relevance to other microorganisms. EPA expects that the researcher will be cognizant of these factors when selecting controls appropriate to the microorganisms being studied. In addition, the researcher may choose to refer to existing standards such as the containment levels described in Appendix G of the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986).

This proposed approach would enable EPA to review and evaluate the control measures, although the Agency does not anticipate such reviews becoming routine. In the limited number of instances where EPA does request to review the control measures, and as a result of that review determines that further action is called for to prevent unreasonable adverse effects, the proposal provides a flexible range of options that the Agency can use depending upon the specific situation. For example, in instances where improvement in containment is advisable, but there is no immediate problem, the Agency could recommend modifications to controls for future tests. Where a problem needs to be addressed in the current test, the Agency could request that the modifications be made immediately. Failure to comply with EPA's request would result in revocation of the exemption from the requirement to submit a notification.

A performance standard approach such as that outlined above may be questioned as being somewhat "vague," and therefore not having much regulatory utility. EPA believes that the standard provided is sufficiently clear for its intended purpose, while providing flexibility and discretion to the researcher. EPA believes this less prescriptive, performance standard approach is less burdensome than other alternative approaches to defining what constitutes a contained facility, while still meeting the objective of ensuring adequate containment.

The Agency is also considering whether minimal recordkeeping to document the selection and use of the containment and inactivation controls should be required for eligibility for the exemption. Specifically, EPA is considering whether § 172.45(e)(2) should be modified and § 172.45(e)(3) should be added as follows:

(2) The selection of containment and inactivation controls shall be approved in writing by an authorized official of the organization that is conducting the test prior to commencement of the test.

(3) Records shall be maintained describing the selection and use of the containment and inactivation controls that will be used during the test. These records shall be made available, upon request, for inspection at the test facility. In addition, these records shall be submitted to EPA at the EPA's written request and within the timeframe specified in EPA's request.

Under such an option, the individual or institution would maintain records demonstrating that the choices made were appropriate for ensuring the testing is adequately contained. The type of information that would be in these records would include: An identification of the microorganism, a description of the containment and inactivation measures selected, and a brief statement of why these measures were selected. The controls selected could be indicated by a simple reference to existing standards, such as the containment levels described in the NIH Guidelines. Such a proposal would require the researcher to keep records showing adequate containment, but would allow the researcher flexibility to decide what specific records should be kept.

Those people who favor a recordkeeping provision believe it need not be overly burdensome nor require a significant change in the activities of researchers. Recordkeeping is currently an accepted standard practice among those conducting research in contained facilities under the NIH Guidelines. In most cases, laboratory notebooks normally kept in the course of research should contain the information that would be required by this provision. The level of recordkeeping to document the use of the controls selected for containment and inactivation would be at the discretion of the researcher. The extent of recordkeeping would be correlated with the characteristics of the microorganism and standard practices employed to address concerns. Thus, documentation could range from identification of routine standard operating procedures, to specific notations in laboratory notebooks, to daily log entries for microorganisms that present the greatest concerns.

Others believe that records showing adequate containment was selected and employed are unnecessary, because the probability that microbial pesticides released from laboratories or greenhouses would subsequently establish in the environment in a manner harmful to humans or the environment is so low that the additional burden of a recordkeeping requirement is not warranted. They believe recordkeeping may increase the costs of research, and place a requirement on those who are supposed to be exempt under this proposal. They also believe it to be inconsistent with the rest of EPA's proposal which reduces burden and provides regulatory relief. These opponents would argue that the recordkeeping requirement by its existence increases the Federal presence in the laboratory, even if EPA does not routinely inspect the records, and this may be a disincentive to researchers. Finally, they question whether EPA should spend its limited resources determining if records have been kept; rather, they assert higher priority risk considerations should be the focus of EPA's efforts.

EPA is requesting comment on these issues and the merits of its proposed approach on containment in Unit VIII.D. of this preamble. In addition, the Agency is requesting comment on whether minimal recordkeeping to document the selection and use of the containment and inactivation controls should be a required element for the exemption.

B. Exemptions from the Notification Requirement

The Agency has included in the proposal at § 172.52, a mechanism for exempting, as information warranting such action becomes available, certain subgroups of microbial pesticides from the notification requirement. This provision allows EPA, on its own or in response to a petition, to initiate rulemaking to exempt a specific individual microbial pesticide or a class of microbial pesticides from the notification requirement. The exemption, which could be used in conjunction with any of the three options, would be based on supporting information that would allow the Agency to conclude that the microbial pesticide would not pose unreasonable adverse effects to human health or the environment. This provision was part of the January 1989 draft; no adverse comments were received on this provision.

VI. Summary and Findings

EPA has reviewed various possibilities for addressing small-scale testing of microbial pesticides, and has concluded that the regulatory scheme included in this proposal is adequate to protect human health and the environment from unreasonable adverse effects. In arriving at this conclusion, EPA has taken into account its interactions with other Federal agencies, comments received from various sectors, and its own experiences with risk issues associated with microbial pesticides, particularly its experiences since 1984 with reviewing small-scale tests using microbial pesticides. The Agency has also been mindful of the potential in this area for the development of generally safer, more beneficial pesticides, and the need to strike "a balance between facilitating—or, at a minimum, not unduly impeding—pesticide research and development and protecting against human and environmental injury" (39 FR 11306, March 27, 1974).

Perhaps the most critical factor in the Agency's decisionmaking process is the selection of an appropriate scope of coverage. All three scope options address issues likely to be relevant to small-scale use of microbial pesticides; however, the options differ in the breadth of microbial pesticides covered with regard to the starting point for analysis, the kinds of risk issues addressed, the extent of site-specific analysis, who performs the analysis, and the extent to which additional measures may be necessary for consistent, effective implementation.

EPA believes that while Options 1 and 3 provide risk-based definitions for the scope of coverage, each accomplishes the goal of identifying subject microbial pesticides in a different way. Option 1 incorporates an inclusionary definition that is designed to minimize regulatory burden by directly identifying the specific microbial pesticides covered by the regulation. It has the highest degree of regulatory clarity, and thus, is more easily understood and used by the researcher (or research institution) and EPA. Moreover, because the majority of the analysis to determine whether notification is required has been made by EPA, Option 1 requires less analysis by the researcher and fewer measures to ensure effective implementation.

Options 2 and 3 are exclusionary definitions in that they provide broad general definitions that are subsequently narrowed by exclusions. These are in turn modified by explanatory footnotes to provide the necessary specificity for regulatory use. EPA is concerned that these options may introduce various degrees of complexity that could render the regulation more difficult to interpret, understand, and use than would be the case with Option 1. This complexity could ultimately result in both the Agency and the regulated community expending valuable resources to clarify whether a given microbial pesticide is within the scope. In particular, Option 3 involves site-specific analysis by the researcher to determine notification status and the Agency believes that procedure may be associated with relatively higher cost and effort relative to either Option 1 or 2. However, by taking a broader range of factors (including site-specific factors) into account, Option 2 may provide the opportunity for a broader range of tests to be excluded from the notification requirement.

EPA believes that satisfaction of the unreasonable adverse effects criterion for Options 1 and 2 can be achieved without requiring additional implementation procedures. However, for Option 3, the Agency currently believes that a determination of no-unreasonable-adverse-effects should be premised on inclusion of specific implementation procedures, specifically guidance to researchers and third party review, to assure the adequacy of the decision on the notification status of the microbial pesticide.

Considering all factors, including the four priniciples enunciated in the "Report on National Biotechnology Policy," the FIFRA SAP and BSAC recommendations and public comments, EPA prefers Option 1. The Agency believes Option 1 identifies the appropriate microbial pesticides for notification, most reduces the burden for the researcher, and has the highest degree of effective regulatory utility.

The proposed regulatory scheme includes specific procedures to be followed by EPA and submitters in order to facilitate an expeditious and effective screening process. Similarly, flexible data requirements are included to provide the information necessary for the Agency to review the proposed testing. EPA believes that, taken together, the proposed scope of coverage, procedures, and data requirements are sufficient to allow the Agency to screen small-scale testing of microbial pesticides in a manner that will adequately protect human health and the environment. Therefore, experimental use of microbial pesticides as described in this proposal will not pose unreasonable adverse effects.

Finally, in order to reduce the regulatory burden at this stage of pesticide development, the proposal contains several provisions for exempting certain microbial pesticides from review, including an exemption mechanism that would allow the Agency to further reduce the scope of coverage at a later date.

EPA continues to believe that small-scale tests of microbial pesticides adequately contained in research facilities are unlikely to pose unreasonable adverse effects to human health or the environment, and therefore do not warrant review. EPA also believes that it should not continue to review small-scale use of nonindigenous microbial pesticides, not otherwise captured within the scope, since at this time EPA has not been able to identify any pesticides in this category that raise risk concerns that are not already being reviewed by other Federal agencies. Therefore, EPA believes that the risk/benefit analysis for these pesticides results in a conclusion that use of them is unlikely to cause unreasonable adverse effects.

VII. Statutory and Other External Review

A. EPA Biotechnology Science Advisory Committee

The BSAC met on September 7, 1990, to review and comment on the issue of scope of coverage of microbial pesticides for notification before small-scale testing. The BSAC was provided with an issue paper that presented and described two scope definitions. After reviewing the two scope definitions, the BSAC developed, with annotation, the following definition for the Agency's consideration:

"Microbial pesticides[5] whose pesticidal properties have been imparted, enhanced, or modified by alteration of the genome would be subject to oversight before small-scale testing, with the exception of:

1. Microorganisms modified solely: (a) Through chemical and physical mutagenesis; (b) by movement of nucleic acids using the physiological processes[6] of transduction or conjugation; (c) by movement of nucleic acids by transformation between organisms that engage in natural exchange;[7] (d) by plasmid loss or spontaneous deletion; and (e) by anastomosis.

2. Microorganisms modified solely by point mutations, deletions, or rearrangements of sequences (i.e., translocation and inversions) within a single genome,[8] including its extrachromosomal elements.

3. Microorganisms modified as in 1 or 2 above that also have been modified by the introduction of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the recipient microorganism."[9]

The BSAC recommended this scope of coverage in their final report dated November 14, 1990.

EPA Response: The Agency has not provided this specific definition as an option for discussion in this preamble because it is encompassed by Options 1 and 2. Several of the BSAC's specific recommendations have been incorporated in drafting Options 1 and 2.

B. FIFRA Scientific Advisory Panel

Pursuant to section 25 of FIFRA, a Subpanel of the FIFRA SAP reviewed drafts of these proposed part 172 regulations in public meetings held November 22, 1988, and September 26, 1990. In 1988, the Subpanel agreed with the Agency's overall intent in revising 40 CFR part 172, but believed it was premature to codify, at that time, the scope of microbial pesticides to be subject to notification at the small-scale testing stage. The Subpanel believed that EPA oversight should continue under the existing 1984 and 1986 policy statements until after the Agency had the opportunity to consider the reports under development at that time by the NAS and the ESA.

The NAS and ESA reports were to address criteria for the assessment of potential impacts related to the release of genetically modified microorganisms. These reports have now been published, and the Agency has considered them in developing this proposed rule. In its final written report (November 1988), the Subpanel also made several specific recommendations on the 1988 draft proposed regulation. These recommendations, together with the Agency's response, are available in the public docket.

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[5] The Subcommittee suggests EPA should add a footnote referring to active ingredients. [Note: Specifically, the Subcommittee wished to ensure that consideration of microbial pesticides included both the active ingredients and any inerts.]

[6] "By physiological processes" means there has been no directed addition to, rearrangement of, or removal of nucleic acids from the nucleotide sequences that are introduced.

[7] The Agency should develop a definition specifically addressing physiological processes as applied to transformation such that only transformations between microorganisms that exchange genetic material in nature are excluded.

[8] A "single genome" means the genome of a single isolate or a single strain, or a single species with "species" defined as organisms sharing a certain (to be defined) percentage of DNA relatedness as demonstrated under supra-optimal conditions for DNA reassociation.

[9] "Noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the recipient microorganism" means sequences not involved in gene expression or replication.

Subsequently, the Subpanel reviewed and commented on a draft proposal (dated September 4, 1990) and an addendum which together outlined three approaches for defining the scope of coverage for microbial pesticides. The September 1990 draft proposal contained the same two definitions of scope reviewed by the BSAC and the addendum contained the scope language developed by the BSAC as presented above in section A of this Unit. In its final report (dated October 9, 1990), the Subpanel strongly supported the timely promulgation of part 172, and noted that EPA's leadership in this area is "important to bring focus to this topic for the benefit of industry, government and public-interest groups." The SAP Subpanel also made several specific recommendations which are discussed below, together with the Agency's response.

1. With regard to the three scope definitions, the Subpanel concluded that the proposals now embodied in Options 1 and 2, as well as the BSAC attempt to merge the two into a single approach, were all potentially acceptable. However, the majority of the Subpanel preferred the scope embodied by Option 1. The Subpanel explained their preference as follows: "(i) This is the clearest statement defining the group of microbial pesticides that require oversight, (ii) it defines a slightly more appropriate group for oversight than Option 2 or the BSAC approach by including organisms that contain certain deletions, (iii) it is risk-based and focuses on the qualities of the product, and (iv) it appears to allow less opportunity for unintended gaps in oversight." Finally, the Subpanel recommended that the notification requirement should include organisms containing any introduced nucleotide sequences produced by restriction enzymes.

EPA Response: Each of the scope alternatives reviewed by the SAP (Options 1 and 2) offers certain advantages and disadvantages. EPA agrees with the Subpanel's recommendation and believes that on balance, Option 1 comes the closest to meeting the Agency's requirements for regulatory clarity and scientific soundness.

2. The Subpanel stated that because some deletions may lead to large alterations in virulence and/or in host range, host-associated microbial pesticides obtained by deletion should not be exempted from notification before small-scale testing.

EPA Response: With respect to coverage of microbial pesticides obtained by deletion, the Agency agrees (See Unit IV.B.1. of this preamble) with the Subpanel that certain deletions or rearrangements of genetic material within a single genome could impart or enhance characteristics of potential concern (e.g., expanded host range or virulence). Option 1 has been developed to include these microbial pesticides for coverage. However, as noted by the Subpanel, the long-term survival and/or competitiveness of these kinds of organisms may be compromised by the modification. Therefore, one could argue that they may not warrant notification before small-scale testing. The Agency has requested comment (See Unit VIII.G. of this preamble) on excluding some or all of these microorganisms from coverage at the small-scale testing stage.

3. The Subpanel recommended that coverage should include those situations where there has been directed addition to, rearrangement of, or removal of nucleic acids from the nucleotide sequences that are introduced into a microbial pesticide regardless of how the genetic material is introduced into the recipient microorganism.

EPA Response: EPA agrees with the Subpanel's suggestion, and Options 1 and 2 have been developed to be consistent with this recommendation.

4. The Subpanel suggested that for a claim of natural genetic exchange to be acceptable, the exchange must occur under physical/chemical conditions typical of the organism's natural habitat and that the recipient organism and the organism that is the source of the DNA must coexist in the same habitat in nature. In addition, the Subpanel concluded that claims of natural genetic exchange and anastomosis made for the purpose of the scope definition must be evaluated within the context of the natural frequency of these events, so as not to include those that occur only very rarely, and when the microorganisms are kept under stringent selection conditions.

EPA Response: The Agency agrees with the Subpanel's recommendation concerning clarification of the term "natural exchange." To achieve the intent of this recommendation, the Agency has developed Option 2 such that the movement of nucleic acids by physiological processes is limited by three conditions: Recipient microorganisms must not have lost their ability to recognize and cleave foreign genetic material; must not have been exposed to conditions to induce competence artificially; and the nucleotide sequences that are moved must not have been altered.

5. With regard to the BSAC comments on the issue of scope (See Unit VII.A. of this preamble), the Subpanel recommended that the definition of a single genome be restricted to a single strain. They did not believe it should be broadened to encompass a species concept for the definition.

EPA Response: EPA agrees with the Subpanel's recommendation on the definition of a single genome. The Agency believes that a broader definition could possibly allow for the exclusion of microbial pesticides that warrant coverage before small-scale testing. In addition, a definition of genome based on "percentage of DNA relatedness as demonstrated under supraoptimal conditions for DNA reassociation" would be difficult and costly to implement. As a result, genome is defined in Option 2 as the "sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendants derived under axenic culture conditions from that isolate." This focus of attention on the strain, as defined above, recognizes the differences in risk potentials that may exist between strains of the same species, and is also consistent with the manner in which microbial pesticides are handled under FIFRA for the purpose of pesticide product registration.

6. The Subpanel noted that the "environmental release of microbial pesticides could be made more acceptable if the organisms were engineered with unique genetic markers that enable their detection to a high level of sensitivity in the environment and, where possible, selection from the population of ambient organisms." The Subpanel recommended that EPA consider requiring such markers for microbial pesticides to be used in small-scale field tests.

EPA Response: The Agency acknowledges the benefits that could accrue from requiring that certain microbial pesticides be engineered with unique genetic markers, and has carefully considered including such a requirement in this proposal. The Agency believes that there may be instances where compliance with such a requirement could pose technical difficulties that outweigh the benefits of having the microbial pesticide so marked.

The draft proposal reviewed by the Subpanel already contained the requirement for specific identification and detection of the microbial pesticide using sensitive detection methods. The Agency has added language in this proposal at § 172.48 to encourage researchers to mark their microbial pesticides with unique genetic markers that enable sensitive identification in the environment. The Agency may require such markers on a case-specific basis.

7. In response to an EPA question, the Subpanel indicated that the data and information EPA proposes to require to support an assessment (as specified in the September 1990 draft) were appropriate, and offered two additional suggestions. First, the Subpanel suggested it would be useful to have an explicit statement calling for a literature review of information available on relevant aspects of the ecology and biology of the parent organisms. Second, the Subpanel suggested that EPA review the USDA's Agricultural Biotechnology Research Advisory Committee (ABRAC) guidelines and establish as much consistency as possible.

EPA Response: With regard to the first suggestion, the Agency has included language at § 172.48 of this proposal concerning the need to provide information on relevant aspects of the ecology and biology of the parent organism(s). Concerning the second suggestion, the Agency agrees that consistency among Federal agencies is desirable and is working with other agencies to achieve the consistency attainable in light of the various statutes and guidelines used to oversee biotechnology products.

8. The Subpanel noted that responsibility for oversight of the introduction into the environment of potentially harmful microbiological agents is split among several Federal agencies, particularly EPA and USDA. Therefore, the Subpanel recommended that EPA, along with the other appropriate regulatory agencies, adopt a more formal mechanism to ensure close coordination of the agencies and to avoid gaps in regulatory coverage.

EPA Response: The Agency believes that coordination among Federal agencies for the review and approval of small-scale testing has been efficient and successful thus far. However, EPA agrees that a more formal mechanism for coordination may be appropriate and has initiated work with the appropriate groups to develop such a coordination.

C. U.S. Congress and U.S. Department of Agriculture

In accordance with FIFRA section 25, a draft of this proposed regulation was submitted in June 1988 to the U.S. Congress and USDA. USDA provided written comments on that draft in September 1988. These comments, together with the Agency's response, are available in the public docket.

In July 1991, a second draft of the proposed regulation (dated June 28, 1991) was submitted to the U.S. Congress and USDA. USDA provided written comments on that draft on November 1, 1991. USDA strongly supported "EPA's intent to eliminate any unnecessary burden on research activity which could impede the development of useful alternative pesticide products," commended the Agency for defining, in Options 1 and 2, a risk-based scope of organisms to be covered, and agreed with EPA that scope Option 1 is preferable for use under FIFRA. USDA also agreed that EPA should review, prior to small-scale testing, those nonindigenous microbial pesticides that may pose a potential for significant risk to human health or the environment that are not otherwise reviewed by another Federal agency, provided that a category of such microorganisms can be identified. In its comments, USDA indicated that it was not aware of any such category of microorganisms. USDA also provided several specific suggestions which are discussed below, together with the Agency's response.

1. USDA indicated that some of the discussion in the preamble could be interpreted to suggest that EPA believes that high risks are routinely associated with testing microbial pesticides. Understanding that this is not EPA's position, USDA suggested several editorial changes to reflect more accurately EPA's position. USDA also stated that it would be helpful to include in the preamble a more complete presentation of the potential risks to be addressed by the notification scheme as well as an indication of which risk concerns are addressed by other Federal authorities.

EPA Response: EPA believes that testing with microbial pesticides will not routinely pose high risks to human health or the environment and the preamble has been modified as recommended.

EPA agrees that it is important to provide a discussion of the kinds of concerns to be addressed by the notification scheme. The Agency has chosen to discuss this area in the context of the analysis of the options for scope of microorganisms to be subject to notification. Thus, in Unit IV.B. of the preamble, the Agency has developed an in-depth discussion of specific concerns, and the manner in which they are addressed.

2. USDA responded favorably to the discussion of rationales for scope Options 1 and 2, but felt that the discussion could be improved by replacing or modifying a reference to Dutch Elm disease in order to more accurately illustrate potential risk from the introduction of a microbial pesticide.

EPA Response: EPA has modified the discussion as recommended.

3. USDA stated its belief that the definition of pesticidal property as it appeared in the June 28, 1991 draft, "any characteristic exhibited by a microorganism that contributes to the ability of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant," was too broad and seemed "to go beyond the intent of FIFRA in defining pesticidal properties." USDA expressed concern that the definition might expand the definition of pesticide to cover microorganisms that have not in the past been regulated under FIFRA as pesticides. For example, USDA was concerned that the definition "might be applied to plant-associated microorganisms modified solely for the purpose of improving their ability to perform natural functions associated with plant growth protection."

EPA Response: EPA agrees with USDA that the term "pesticidal property" as used in Options 1 and 2 in this proposed regulation should be consistent with FIFRA and the Agency did not intend to suggest an enlargement of the scope of microorganisms subject to FIFRA. Whether a microorganism is subject to FIFRA authority depends on whether it falls within the statutory definition of a pesticide, which cannot be extended by promulgation within a regulation. To address the USDA's concern of a perception of an enlargement, however, the Agency has modified the definition of "pesticidal property" to focus on characteristics contributing to the intentional use of the microorganism to prevent, destroy, repel, or mitigate any pest or intended for use as a plant growth regulator, defoliant, or desiccant.

With regard to plant associated microorganisms, such microorganisms would only be subject to FIFRA if they met the statutory definition of pesticide. Once a plant-associated microorganism is determined to be a pesticide, it would only be subject to notification if it met the conditions specified in EPA's final scope. It is not, and has never been, EPA's intention to broaden the definition of pesticide by the terms used in this proposed regulation. EPA believes that the language modification discussed above will clarify the Agency's position.

4. USDA stated that a requirement to maintain records describing the selection and use of containment and inactivation controls is not justified, and is so vague as to not have much regulatory utility.

EPA Response: EPA has more fully developed the preamble discussion (See Unit V.A. of this preamble) to clarify the provision on the selection and use of containment and inactivation controls, and the advantages and disadvantages of the provision, and has modified the regulatory text.

In terms of the comment that the provision is vague, EPA reiterates its perception that this less prescriptive, performance standard approach is less burdensome than other alternative approaches to defining what constitutes a contained facility, while still meeting the objective of ensuring adequate containment.

5. USDA provided several comments concerning the requirements for a notification in § 172.48 of the proposal. USDA suggested that the request to provide "Means and limit of detection using the most sensitive and specific methods available" was not appropriate for "risk screening during notification." Additional comments focused on the need for unique genetic markers, use of data from the scientific literature, and the identification of habitat for endangered species.

EPA Response: EPA believes that the use of sensitive and specific detection methods is essential, but agrees that there will be instances where use of the "most sensitive and specific methods available" may not be warranted. Therefore, this provision has been modified to more clearly reflect the Agency's position. EPA also agrees with USDA's additional comments, and has modified § 172.48 accordingly.

6. In § 172.50(a), EPA states that the Agency will review each notification within 90 days. USDA noted that this section further states that "under no circumstances shall the proposed test proceed until the submitter has received notice from EPA of its approval...." USDA interpreted this latter statement as giving EPA unlimited review time, and suggested that it be deleted.

EPA Response: EPA is committed to reviewing Notifications in an expeditious manner. EPA believes that the regulation formalizes this commitment, rather than providing unlimited review time and has therefore not deleted the phrase.

VIII. Request for Comment

The Agency is requesting comment on this proposed rule only to the extent that it would amend or change the existing regulations. The Agency is not soliciting comments on provisions of the existing regulations that would not be changed by this proposal. Specifically, and notwithstanding the inclusion of some of the existing language from 40 CFR 172.3 in this proposal, the Agency will only entertain comments to the extent that they address the proposed changes in that section. 40 CFR 172.3 is reproduced in its entirety solely for clarity and to facilitate understanding of how the changes and amendments fit within the existing regulatory structure.

A. Scope of Coverage for the Notification Scheme

Under the 1984 and 1986 Policy Statements, notification to EPA prior to initiation of small-scale testing with any genetically modified or nonindigenous microbial pesticide is required. As described in Units III. and IV. of this preamble, the Agency now believes that a smaller subset of these microbial pesticides should be subject to notification prior to initiation of small-scale testing in the environment. The Agency recognizes there may be multiple approaches for identifying the scope of coverage and has discussed three options in Unit IV. of this preamble.

The Agency requests comment on the scientific merit of Options 1 and 3 and the extent to which they focus attention on risk issues that warrant consideration before small-scale testing. Specifically, the Agency requests comment on the regulatory clarity of these options, considered in light of the definition of terms for each option, the variability of the criteria for determining whether a microbial pesticide is covered, the level of analysis necessary to determine whether a microbial pesticide is covered, and any explanatory footnotes included for the option. The Agency is particularly interested in commenters' opinions regarding ambiguity or confusion in the meaning or interpretation of terms or footnotes for determining whether a microbial pesticide is subject to notification. Is the Option 3 scope definition with its footnotes sufficient for the researcher to make a determination on the need for notification, or is additional guidance needed? If additional guidance is needed, what criteria or standards should be established for evaluating the relevant risk concerns?

The Agency also requests comment on the following issues. Is the inclusion, within the initial scope of Option 3, of microbial pesticides arising from "natural breeding" appropriate? With regard to Option 1, does the somewhat higher risk probability associated with targeted changes resulting from deletions and rearrangements of genetic material directly contributing to the microorganism's ability to act as a pesticide justify a requirement for notification at the small-scale testing stage?

The definition of "pesticidal properties" in Option 1 addresses a broader set of potential risk endpoints than the definition of "pesticidal activities" in Option 3. "Pesticidal properties" addresses all mechanisms, including those that are indirect, by which microbial pesticides prevent, repel, destroy, or mitigate a pest, or act as plant regulators, defoliants, or desiccants. "Pesticidal activities" address a subset of mechanisms (toxin production, infectivity, pathogenicity, or virulence) through which a microorganism prevents, repels, destroys, or mitigates a pest or acts as a plant regulator, defoliant or desiccant. Specifically excluded from the definition of "pesticidal activities" in Option 3 are noncytotoxic modes of action such as those brought about by niche exclusion, substrate competition, or nutrient sequestration. Is the broader range of risk endpoints addressed by Option 1 appropriate, or is the Option 3 focus on toxicity and host-pathogen interactions sufficient?

Option 3 has a broader initial range or starting point than Option 1 and 2. However, it is probable that many of the microbial pesticides initially covered will ultimately be eligible for exclusion. Do the benefits associated with this approach outweigh the time and effort expended in evaluating, to determine eligibility for exclusion, the microbial pesticides captured by the broader initial starting point?

Are the Option 3 exclusions appropriately focused on survivability, competitiveness, and genetic mobility, or should other characteristics also be taken into consideration? Does the second exclusion of Option 3 provide sufficient guidance to researchers to allow them to make a determination of whether their test is eligible for exclusion? Is there sufficient guidance to allow researchers to determine that there is an increase in pesticidal activity when a microorganism is moved from one environment to another?

B. Implementation Procedures

Unit IV.B.4. of this preamble discusses four mechanisms of implementation: guidance, documentation, third-party review, and retention of records, and discusses the merits of the mechanisms for each scope option. It also indicates the relative need for, and burden associated with, each component for each option. The Agency requests comment on the relative burden posed by these implementation procedures for each option in light of the benefits derived from each approach.

EPA is considering a "points to consider" guidance document as a part of Option 3 to help guide researchers in arriving at a determination on whether to notify the Agency about a test. Are there appropriate models or criteria for this guidance? What are the benefits of issuing such guidance; and what burdens (if any) would such guidance impose on the research community? EPA also solicits comment on the need for (and, where needed, the nature of) several implementation mechanisms, including documentation, mandatory third-party review, and record retention. In commenting on these mechanisms, EPA is particularly interested in the likelihood that such tests could cause harm, the burden of carrying out these procedures, and their effect on research in this area.

EPA also solicits comments on the merits of relying on the scientific judgment of the researcher (and the associated institution) in assessing the broad range of hazard and exposure characteristics associated with small-scale field tests. Will the researcher be cognizant of the risks of the test? Will good experimental practices avoid any significant risk scenarios?

EPA also solicits comment on the existence of other mechanisms or incentives that would be effective in limiting the risks of these tests. Such mechanisms may include the use of enforcement measures and existing State liability law. Or, alternatively, does § 172.59 provide adequate enforcement powers to address tests that pose unreasonable adverse effects?

Are there mechanisms other than the four implementation procedures discussed in this preamble that could assure the Agency that an appropriate risk/benefit balance can be achieved for each test and the FIFRA standard of "no unreasonable adverse effects" can be attained?

EPA is specifically requesting comment on one procedure for implementing Option 3—third-party review of determinations of whether a microbial pesticide is within the scope. The Agency is proposing that the third party could be local peer review groups such as IBCs, or some other responsible group or individual(s) in the affected organization. The Agency also requests comments on whether this third-party review should be voluntary or mandatory.

In the February 15, 1989 Federal Register notice (54 FR 7026, February 15, 1989), EPA specifically asked for comment on the merit and feasibility of establishing specific, formal, EPA-approved type of local peer review groups, Environmental Biosafety Committees (EBCs). While there was some support for this concept in principle, a large number of issues were raised in the comments. These included: Liability of the individual members and the supporting institution/company; consistency and equality of reviews; allocation of costs and burdens of establishing and maintaining committees; availability of peer review groups to those who could not afford to establish them; delegation of Agency authority; public access to proceedings and records; conflict of interest; protection of CBI; timeliness of committee reviews; amount of discretion allowed peer review groups in decision-making; availability of experts to staff them; avoidance of duplicative reviews; need for procedures to govern nomination, selection and removal of members and consultants; and, need for a process that would allow an interested party to petition EPA to review the committee's decisions.

The third-party review procedure EPA would utilize to implement Option 3 differs in several important ways from the 1989 approach to EBCs, and thus avoids some of the concerns raised by the public with regard to that proposal. The primary function of the third-party review associated with Option 3 would be to ensure that a researcher's determination of whether a microbial pesticide test is subject to the notification process is appropriate. EPA is not proposing to place specific membership requirements, certification procedures, conflict-of-interest provisions, approval procedures or provisions for public participation on the third party that would evaluate the status of tests involving microbial pesticides potentially subject under Option 3. Some issues the public raised concerning EBCs can be resolved, others may be obviated, and others remain outstanding by the third-party review procedures of Option 3. However, EPA believes that some type of third-party review is essential to integrating the scope set out by Option 3 into the FIFRA regulatory structure. In this context, the advantages of third-party review outweigh the disadvantages.

EPA requests comment on the utility of third-party review, including the possible use of biosafety committees to implement Option 3. Finally, EPA requests comment on whether researchers, if given the choice, would prefer to have the biosafety committee or EPA perform the third-party review to ensure the determination of notification status is appropriate.

C. Nonindigenous Microbial Pesticides

In Unit IV.B.5. of this preamble, EPA stated its rationale for excluding from the notification requirement naturally occurring nonindigenous microbial pesticides. The Agency requests comment on whether a category can be identified at this time consisting of nonindigenous microbial pesticides that pose a potential for significant risk to human health or the environment when used in testing at small-scale that are not otherwise reviewed by another Federal agency.

D. Testing in Contained Facilities

The Agency does not propose to require notification for testing conducted in facilities for which there are adequate containment and inactivation controls. As discussed in Unit V.A. of this preamble, selection and use of specific containment and inactivation controls would be at the discretion of the individual or institution conducting the test. EPA requests comment on the scientific merit, regulatory utility and burden of this approach, particularly with regard to whether the regulatory text is sufficiently clear to allow researchers to comply. In addition, EPA is requesting comment on whether records describing the selection and use of the containment and inactivation controls should be required, and how this type of documentation might best be accomplished. For example, the Agency seeks comment on what level of documentation (e.g., protocols and operational records) would be appropriate to support a claim that adequate containment controls are in place during testing and whether there is a need for additional Agency guidance on containment. EPA also requests comment on how these provisions might be handled for Option 3, which has a broader initial scope of coverage.

E. Substantiation of Claims for Confidential Information

The Agency requests comment on the proposed requirement (§ 172.46(d)) that any claim of confidentiality must be substantiated at the time the claim is made. Specifically, the Agency seeks comment on how to achieve the best balance between the burden on industry to provide substantiation before public disclosure becomes an active issue (e.g., in preparation for SAP meetings) and industry's desire to receive timely responses on notifications. This balance must take into consideration the needs of pesticide developers to protect information they believe to be critical to maintaining their competitiveness and the public's need for access to information related to environmental releases and their potential environmental or human health effects. EPA believes that, given the Agency's procedural requirements for CBI determinations, without up front substantiation, a 90–day response time would be difficult or impossible when it becomes necessary to resolve the issue of CBI before a decision can be made.

F. Voluntary Submissions

Interested parties representing industry and public interest groups have suggested that, in addition to the notification requirement, the Agency offer industry the opportunity to obtain review from a Federal agency on a voluntary basis, (e.g., a "courtesy letter") before the initial introduction of any microorganism that the company believes could benefit by such a review, regardless of the scope of coverage for notification in the final rule. For example, certain microbial pesticides not covered by the scope, would be evaluated to confirm that they are indeed excluded from the scope of coverage, and that no further notification is necessary until large-scale testing. This approach, although more burdensome for the Agency, would provide additional assurance to non-Federal agencies and the public that the responsible Federal authorities are informed of the testing, and would assure that the researcher and the regulatory authority are in agreement on whether the microbial pesticide is excluded from the scope. The Agency requests comment on this suggestion.

G. Potential Exemptions from the Scope of Coverage

EPA requests comment on the scientific merit of adding one or more of the following categorical exemptions to Option 1, by adding these categories to § 172.45 (d)(1): (1) Microorganisms modified solely by rearrangement (i.e., translocation or inversion) or deletion of nucleotide sequences, within a single genome, including its extrachromosomal elements; or, (2) microorganisms that do not have a host dependent stage and that have been modified solely by rearrangement (i.e., translocation or inversion) or deletion of nucleotide sequences, within a single genome, including its extrachromosomal elements. ("Genome" would be defined as the sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendant derived under axenic culture conditions from that isolate.) Option 1, as set forth in § 172.45, already excludes all microbial pesticides modified by deletions or rearrangements that do not affect pesticidal properties. It also excludes deletions and rearrangements that may affect pesticidal properties but do not involve the introduction of modified genetic material. Similarly, Options 2 and 3 could be further modified by the addition of exclusion categories.

IX. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The Agency has evaluated this proposal against the requirements of E.O. 12291 and concludes that the proposal is not a major rule. This proposal has been submitted to the Office of Management and Budget (OMB) for review as required by section 3 of E.O. 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605 (b)), EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small businesses. This conclusion is based on the fact that this proposal is only the codification, with modification, of relevant operative provisions of the June 26, 1986 Policy Statement. As such, this proposal will not create any additional impacts on affected small businesses or other small entities beyond those currently in effect. In fact, this proposal would reduce the number and scope of microbial pesticides requiring EPA oversight from those covered under the current policy.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*.

Public reporting burden for this collection of information is estimated to vary from 45 to 181 hours per response when no EUP is required and to vary from 2,887 to 4,475 hours per response when an EUP is required. The average number of burden hours are estimated to be 113 and 3,681 hours per response, respectively. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 172

Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Recordkeeping and reporting requirements, Research.

Dated: January 14, 1993.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR part 172 be amended as follows:

PART 172—[AMENDED]

1. The authority citation for part 172 would be revised to read as follows:

Authority: 7 U.S.C. 136a, 136c, 136v, and 136w.

2. By revising § 172.3 to read as follows:

§ 172.3 Scope of requirement.

(a) An experimental use permit is generally required for testing of any unregistered pesticide or any registered pesticide for a use not previously approved by EPA in the pesticide's registration. However, as described below in paragraph (b) of this section, certain of such test using a pesticidal substance or mixture of substances are presumed not to involve unreasonable risks and, therefore, do not require an experimental use permit.

(b) Except as provided in subpart C of this part or as specifically determined by EPA, it may be presumed that experimental use permits are not required when:

(1) The experimental use of the substance or mixture of substances is limited to:

(i) Laboratory or greenhouse tests,

(ii) Limited replicated field trials as described in paragraph (c) of this section to confirm such tests, or

(iii) Other tests as described in paragraph (c) of this section whose purpose is only to assess the pesticide's potential efficacy, toxicity, or other properties; and

(2) The producer, applicator, or any other person conducting the test does not expect to receive any benefit in pest control from the pesticide's use.

(c) For purposes of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, the following types of experimental tests are presumed not to need an experimental use permit:

(1) A small-scale test involving use of a particular pesticidal substance or mixture of substances that is conducted on a cumulative total of no more than 10 acres of land, provided that:

(i) When more than one intended target pest occurs at the same time in the same locality, the 10 acre limitation shall encompass all of the intended target pests.

(ii) When more than one target pest is intended, and they do not occur at the same time or in the same locality (or application of the pesticide would not be at the same time), up to 10 acres may be treated for each target pest.

(iii) Any food or feed crops involved in, or affected by, such tests (including, but not limited to, crops subsequently grown on such land which may reasonably be expected to contain residues of the tested pesticidal substances) shall be destroyed or consumed only by experimental animals unless a tolerance or an exemption from a tolerance has been established under the Federal Food, Drug, and Cosmetic Act for residues of the pesticide in or on the crop.

(2) A small-scale test involving the use of a particular pesticidal substance or mixture of substances that is conducted on a cumulative total of no more than 1 surface acre of water, provided that:

(i) When more than one intended target pest occurs at the same time in the same locality, the 1 acre limitation shall encompass all of the intended target pests.

(ii) When more than one target pest is intended, and they do not occur at the same time or in the same locality (or application of the pesticide would not be at the same time), up to 1 acre may be treated for each target pest.

(iii) Waters which are involved in or affected by such tests are not used for irrigation purposes, drinking water supplies, or body contact recreational activities.

(iv) Testing shall not be conducted in any waters which contain or affect fish, shellfish, plants, or animals taken for recreational or commercial purposes and used for food or feed, unless a tolerance or exemption from a tolerance has been established under the Federal Food, Drug, and Cosmetic Act for residues of the test substance in or on the crop.

(3) Animal treatment tests involving the use of a particular pesticidal substance or mixture of substances that are conducted only on experimental animals which will not be used for food or feed, unless a tolerance or an exemption from a tolerance has been established for animal products and byproducts.

(d) The examples in paragraphs (c)(1) and (c)(2) of this section are all-inclusive and do not preclude testing in larger areas or larger numbers of units if the intended use meets the criteria of paragraph (b) of this section. However, tests which do not come within the examples in paragraphs (c)(1) and (c)(2) of this section, absent a specific determination by EPA to the contrary, require an experimental use permit. Subdivision I of the Pesticide Assessment Guidelines specifies, by way of further example, testing which requires an experimental use permit. Persons intending to conduct tests who are uncertain whether the testing may be conducted without a permit may submit a request for determination to the Registration Division, Office of Pesticide Programs. Such a request shall include the information listed in § 172.4(b)(1)(ii) and (b)(1)(iii), and in the case of an unregistered product, the information in § 172.4(b)(3)(i).

(e) Notwithstanding paragraphs (b) through (d) of this section, EPA may, on a case-by-case basis, require that certain testing of a particular pesticide or class of pesticides be carried out under an experimental use permit, if it is determined that such EPA oversight is warranted.

(f) No experimental use permit is required for a substance or mixture of substances being put through tests for the sole purpose of gathering data required for approval of such substances or mixture under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as:

(1) A "new drug" (21 U.S.C. sec. 321(p) and sec. 355),

(2) A "new animal drug" (21 U.S.C. sec. 321(w) and sec. 360(b)), or

(3) An "animal feed" (21 U.S.C. sec. 321 (x)) containing a "new animal drug" (21 U.S.C. sec. 360(b)).

(g) Paragraph (f) of this section shall not apply when a purpose of such test is to accumulate information necessary to register a pesticide under section 3 of the Act.

3. By establishing a new subpart C to read as follows:

Subpart C—Notification for Certain Genetically Modified Microbial Pesticides

Sec.
172.43 Definitions.
172.45 Requirement for a Notification.
172.46 Submission of a Notification.
172.48 Data requirements for a Notification.
172.50 Response to a Notification.
172.52 Notification exemption process.
172.57 Submission of information regarding potential unreasonable adverse effects.
172.59 Enforcement.

Subpart C—Notification for Certain Genetically Modified Microbial Pesticides

§ 172.43 Definitions.

Terms used in this subpart shall, with the exception of those defined below, have the meaning set forth in the Act and in § 172.1.

Containment and inactivation controls means any combination of mechanical, procedural, or biological controls designed and operated to restrict environmental release of viable microorganisms from a facility.

Deliberately modified means the directed addition, rearrangement, or removal of a nucleotide sequence(s) to or from genetic material.

Introduction of genetic material means the movement of a nucleotide sequence(s) into a microorganism, regardless of the technique used.

Microbial pesticide means any pesticide whose active ingredient is a bacterium, fungus, alga, virus, or protozoan intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.

Pesticidal property means a characteristic exhibited by a microorganism that contributes to the intentional use of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant.

Small-scale test means the experimental use of a microbial pesticide in a facility such as a laboratory or greenhouse, or use in limited replicated field trials or other tests as described in § 172.3(c).

Test or *testing* means any use of a microbial pesticide consistent with section 5 of the Act, including limited replicated field trials and associated activities.

§ 172.45 Requirement for a Notification.

(a) *Who must submit a Notification.* Notwithstanding § 172.3, any person who plans to conduct small-scale testing of a type of microbial pesticide identified in paragraph (c) of this section must submit a Notification to EPA and obtain prior approval for either of the following tests:

(1) Small-scale tests that involve an intentional environmental introduction of that microbial pesticide.

(2) Small-scale tests performed in a facility without adequate containment and inactivation controls as provided in paragraph (e) of this section.

(b) *Alternative to Notification.* In lieu of a Notification, any person required to submit a Notification under paragraph (a) of this section may submit an application for an experimental use permit (EUP) to EPA for approval.

(c) *Small-scale testing that requires a Notification.* As provided in paragraph (a) of this section, and notwithstanding any other approval, EPA review and approval are required prior to the initiation of any small-scale test involving microbial pesticides whose pesticidal properties have been imparted or enhanced by the introduction of genetic material that has been deliberately modified.

(d) *Small-scale testing that does not require a Notification.* (1) Testing conducted with microbial pesticides exempt pursuant to § 172.52 does not require a Notification. The following microbial pesticides (or classes of pesticides) identified in paragraph (c) of this section are exempt from the notification requirement in paragraph (a) of this section:

(i) [Reserved]

(ii) [Reserved]

(2) Testing conducted in a facility with adequate containment and inactivation controls, as provided in paragraph (e) of this section does not require a Notification.

(e) *Selection and use of containment and inactivation controls.* (1) Selection and use of containment and inactivation controls for a particular microorganism shall take into account the following:

(i) Factors relevant to the microorganism's ability to survive in the environment.

(ii) Potential routes of release in air, solids, and liquids; in or on waste materials and equipment; in or on people (including maintenance and custodial personnel); and in or on other organisms such as insects and rodents.

(iii) Procedures for transfer of materials between facilities.

(iv) Plans for routine or emergency clean-up and test termination.

(2) The selection of containment and inactivation controls shall be approved by an authorized official of the organization that is conducting the test prior to commencement of the test.

(3) [Reserved]

(4) Subsequent to any EPA review of the containment/ inactivation controls selected under paragraph (e)(1) of this section, changes to the controls necessary to prevent unreasonable adverse effects must be made upon EPA request. Failure to comply with EPA's request shall result in automatic revocation of the exemption from the requirement to submit a Notification.

§ 172.46 Submission of Notification.

(a) *When to submit a Notification.* A Notification shall be submitted for approval at least 90 days prior to the initiation of the proposed test.

(b) *Where to submit a Notification.* A Notification shall be submitted to the Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and clearly marked "ATTN: Biotechnology Notification Review."

(c) *How to format a Notification.* A Notification submitted under this section must comply with the following procedures, but is not required to comply with the format and other provisions governing submission of data in §§ 158.32 and 158.33 of this chapter. However, because data submitted with the Notification may subsequently be used to support other regulatory actions (e.g., used in EUP or registration applications), it is recommended that such data comply with EPA requirements.

(1) Each Notification must be accompanied by a transmittal document that clearly identifies the EPA action supported as a Biotechnology Notification Review.

(2) Five copies of each Notification must be submitted to EPA.

(3) Any claims of confidentiality for information submitted in the Notification must be made as described in paragraph (d) of this section.

(d) *How to make confidential business information (CBI) claims in a Notification.* Although it is strongly recommended that the submitter minimize the amount of data and other information claimed as CBI, a submitter may assert a claim of confidentiality for all or part of the information submitted to EPA in a Notification. (See part 2, subpart B of this chapter.) To assert such a claim, the submitter must comply with the following procedures:

(1) Any claim of confidentiality must accompany the information at the time the information is submitted to EPA. Failure to assert a claim at that time will be considered a waiver of confidentiality for the information submitted, and the information may be made available to the public, subject to section 10(g) of the Act, with no further notice to the submitter.

(2) Of the five copies of the Notification required by paragraph (c) of this section, four copies must be complete with the information that is claimed confidential clearly marked in the manner described in § 2.203(b) of this chapter. All information claimed as confidential must be deleted from the fifth copy, but it must be otherwise complete. The first page of the fifth copy must be marked "Contains no information claimed as confidential." EPA may include the fifth copy in a public file. EPA will consider incomplete a Notification containing information claimed as CBI that is not submitted in accordance with this paragraph and will suspend the review period on the Notification until such procedures are followed.

(3) Any claim of confidentiality must be accompanied, at the time the claim is made, by comments substantiating the claim and explaining why the submitter believes that the information should not be disclosed. The submitter should refer to § 2.204(e)(4) of this chapter for points to address in the substantiation. If such comments are marked confidential when submitted to EPA, they will be treated as such in accordance with § 2.205(c) of this chapter. EPA will consider incomplete all Notifications containing information claimed as CBI that are not accompanied by substantiation, and will suspend the review period on such Notifications until the required substantiation is provided.

(4) EPA will disclose information that is subject to a claim of confidentiality asserted under this section only to the extent and by means of the procedures set forth in section 10 of the Act, in this subpart, and in part 2 of this chapter.

§ 172.48 Data requirements for a Notification.

This section identifies the data and information to be included in each Notification. When specific information is not submitted, an explanation of why it is not practical or necessary to provide the information is to be provided.

(a) The identity of the microorganism which constitutes the microbial pesticide including:

(1) Summary of data supporting the taxonomic designation and its interpretation.

(2) Means and limit of detection using sensitive and specific methods (e.g., note the use of any markers that are used to distinguish the introduced population from native microorganisms). Introduction into the microorganism of a unique genetic marker is encouraged.

(b) Description of the natural habitat of the parental strain of the microorganism including information on:

(1) Physical and chemical features important to growth and survival of the microorganism.

(2) Biological features that would have an impact on the microorganism (e.g., presence of phages that infect the microorganism).

(3) Competitors.

(c) Information on the host range of the microorganism, if any, with an assessment of infectivity and pathogenicity to nontarget organisms.

(d) Information on survival and ability of the microorganism to increase in numbers (biomass) in the environment (e.g., in the environment into which the microbial pesticide will be introduced, and in substantially different environments that may be in the immediate vicinity). These data may be derived from the scientific literature or from tests conducted in a laboratory or other containment facility.

(e) The identity of possible transmission vectors (e.g., insects).

(f) Data on relative environmental competitiveness compared to the parental strain of the microorganism.

(g) Description of the methods used to genetically modify the microorganism.

(h) The identity and location of the gene segments that have been rearranged or inserted/deleted (host source, nature, and, for example, base sequence data, or restriction enzyme map of the gene(s)).

(i) Information on the control region of the gene(s), and a description of the new trait(s) or characteristic(s) that are expressed.

(j) Data on potential for genetic transfer and exchange with other organisms and on genetic stability of any inserted sequence.

(k) A description of the proposed testing program including:

(1) The purpose or objectives of the proposed testing.

(2) Designation of the pest organism(s) involved (common and scientific names).

(3) The State(s) in which the proposed program will be conducted.

(4) The exact location of the test site(s) (including proximity to residences and human activities, surface water, etc.).

(5) The crops, fauna, flora, geographical description of sites, modes, dosage rates, frequency, and situation of application on or in which the pesticide is to be used.

(6) The total amount of pesticide product proposed for use in the testing.

(7) The method of application.

(8) A comparison of the natural habitat of the microorganism with the proposed test site.

(9) The number of acres, structural sites, or animals/plants by State, to be treated or included in the area of experimental use.

(10) Procedures to be used to protect the test area from intrusion by unauthorized individuals.

(11) The proposed date(s) or period(s) during which the testing program is to be conducted, and the manner in which supervision of the program will be accomplished.

(12) Description of procedures for monitoring the microorganism within and adjacent to the test site during the test.

(13) The method of sanitation or disposal of plants, animals, soils, farm tools, machinery etc., that will be exposed to the microbial pesticide during or after the test.

(14) Means of evaluating potential adverse effects and methods of controlling the microorganism if detected beyond the test area.

(l) A statement of composition for the formulation to be tested, giving:

(1) The name and percentage by weight (or other suitable units) of each ingredient, active and inert.

(2) Production methods.

(3) Extraneous microorganisms present as contaminants.

(4) Amount and potency of any toxin present.

(5) Where applicable, the number of viable microorganisms per unit weight or volume of the product or other appropriate system for designating the quantity of active ingredient.

(m) Any additional factual information regarding the potential for unreasonable adverse effects on the environment.

§ 172.50 Response to a Notification.

(a) EPA will review and evaluate each Notification as expeditiously as possible and will make a determination no later than 90 days after receipt of the complete Notification; however, under no circumstances shall the proposed test proceed until the submitter has received notice from EPA of its approval of such test.

(b) For each Notification, EPA may make the following determinations:

(1) Require additional information from the submitter to assess the proposed test adequately.

(2) Approve the proposed test.

(3) Approve the proposed test provided that the submitter makes certain modifications to the test proposal.

(4) Require an experimental use permit for the test.

(5) Disapprove the proposed test because of the potential for unreasonable adverse effects. Such disapproval by EPA shall be considered the equivalent of denial of an experimental use permit and the remedies for such denial provided by § 172.10 are available to the submitter.

(c) If the proposed test is approved by EPA, then the submitter shall perform the test in the same manner described in the Notification, subject to any requirements imposed under paragraph (b)(3) of this section.

§ 172.52 Notification exemption process.

(a) *Initiation of the exemption process.* Pesticides may be added to the list of exemptions in § 172.45(d) by rule at EPA's initiative or in response to a petition submitted in accordance with paragraph (f) of this section.

(b) *Petitions for exemption from the requirement for a Notification*—(1) *Who may submit a petition.* Any person may submit a petition requesting an exemption from the notification requirements of this subpart for a specific microbial pesticide or class of microbial pesticides.

(2) *Where to submit a petition.* All petitions shall be submitted to the following location: Registration Division (H7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(3) *Content of petition.* Each petition shall contain the following:

(i) Name and address of petitioner and name, address, and telephone number of person who may be contacted for further information.

(ii) Description of the exemption requested, including the specific microorganisms or class of microorganisms to be tested.

(iii) Basis for the petitioner's contention that the specific microbial pesticide or class of microbial pesticides meets the criteria of § 172.3 for small-scale tests of pesticides that do not require an experimental use permit.

(iv) Discussion of the extent to which the microbial pesticide or class of microbial pesticides covered by the petition differ from microbial pesticides that are already registered or subject to an experimental use permit under the Act.

(4) *Administrative action on a petition.* EPA will review and evaluate petitions as expeditiously as possible and may request further information from the petitioner to assess the proposed exemption adequately. No later than 180 days after the submission of a petition, or 90 days after the last submission of additional information by the petitioner, whichever is later, EPA will take one of the following actions with respect to the petition:

(i) Grant the petition and publish a notice of proposed rulemaking in the Federal Register for a 30-day comment period proposing the exemption requested by the petitioner.

(ii) Grant the petition and publish a notice of proposed rulemaking in the Federal Register for a 30-day comment period proposing an exemption under such terms and conditions as EPA deems appropriate.

(iii) Deny the petition and provide the petitioner with a written explanation of EPA's decision.

(5) *Confidential business information (CBI) claims.* To assert a claim of confidentiality, the petitioner must comply with the applicable procedures in § 172.46(d).

(6) *Supplements, amendments, and withdrawals.* The petitioner may supplement, amend, or withdraw his or her petition in writing without EPA approval at any time prior to the granting or denial of the petition under paragraph (b)(4) of this section. The withdrawal of a petition shall be without prejudice to the resubmission of the petition at a later date.

§ 172.57 Submission of information regarding potential unreasonable adverse effects.

Any person using a microbial pesticide in small-scale testing covered by this subpart who obtains information regarding potential unreasonable adverse effects on health or the environment must within 30 days of receipt of such information submit the information to EPA, unless the person has actual knowledge that EPA has been adequately informed of such information. The requirement to submit information applies both to those microbial pesticides subject to the notification requirements under § 172.45(c) and those that are exempt under § 172.45(d).

§ 172.59 Enforcement.

(a) *Imminent threat of substantial harm to health or the environment.* The use of a microbial pesticide in small-scale testing covered by this subpart (whether subject to the notification requirements of § 172.45(c) or exempt under § 172.45(d)) in a manner that creates an imminent threat of substantial harm to health or the environment is prohibited, and is considered a violation of section 12(a)(2)(S) of the Act.

(b) *EPA response to violations.* Under sections 14 and 16(c) of the Act, EPA may at any time take appropriate action against violators to prevent or otherwise restrain use of a microbial pesticide in small-scale testing if it is determined that:

(1) Such use would create an imminent threat of substantial harm to health or the environment that is prohibited under paragraph (a) of this section; or

(2) The terms or conditions on which approval of the testing was granted under §§ 172.43 through 172.55 are violated.

[FR Doc. 93–1596 Filed 1–19–93; 9:57 am]

BILLING CODE 6560-50-F

federal register

Friday
January 22, 1993

Part VIII

The President

Executive Order 12832—Amendments Relating to the National Research Council

Executive Order 12833—Addition to Level V of the Executive Schedule: Transition Manager for the United States Enrichment Corporation

Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

Presidential Documents

Title 3—

The President

Executive Order 12832 of January 19, 1993

Amendments Relating to the National Research Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to update the National Research Council, it is hereby ordered that Executive Order No. 2859, as amended, is further amended to read as follows:

"National Research Council of the National Academy of Sciences

"WHEREAS (1) the congressional charter of the National Academy of Sciences ('Academy') charges it, upon call from any U.S. Government Department, to investigate, examine, experiment, and report upon any subject of science or art and (2) the actual expenses of the Academy for such investigations, examinations, experiments, and reports shall be paid to the Academy through one or more of the following: private gifts and bequests; appropriations for the benefit of the Academy; grants-in-aid, contracts, and other forms of financial agreement with executive departments and agencies, provided that the Academy shall receive no compensation whatever for any services to the Government of the United States; and

"WHEREAS the National Research Council ('Council') was organized in 1916 at the request of the President by the National Academy of Sciences, under its congressional charter, as a measure of national preparedness; and

"WHEREAS the Council is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering, the latter having been established in 1964 under the charter of the National Academy of Sciences; and

"WHEREAS the Institute of Medicine of the National Academy of Sciences, established in 1970 under the Academy's charter, conducts its programs and activities under the approval, operating, and review procedures of the Council; and

"WHEREAS in recognition of the work accomplished through the Council in organizing research, in furthering science, and in securing cooperation of government and nongovernment agencies in the solution of their problems, the Council has been perpetuated by the Academy as requested by the President in Executive Order No. 2859 of May 11, 1918; and

"WHEREAS the effective prosecution of the Council's work may require the close cooperation of the scientific and technical branches of the Government, both military and civil, and makes participation by officers and employees of the Government in the work of the Council desirable; and

"NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is ordered as follows:

"1. The functions of the Council shall be as follows:

"(a) To stimulate research in the mathematical, physical, biological, environmental, and social sciences, and in the application of these sciences to engineering, agriculture, medicine, and other useful arts, with the object of increasing knowledge, of strengthening the national security including the contribution of science and engineering to economic growth, of ensuring the health of the American people, of aiding in the attainment of environmental goals, and of contributing in other ways to the public welfare.

"(b) To survey the broad possibilities of science, to formulate comprehensive projects of research, and to develop effective means of utilizing the scientific and technical resources of the country for dealing with such projects.

"(c) To promote cooperation in research, at home and abroad, in order to secure concentration of effort, minimize duplication, and stimulate progress; but in all cooperative undertakings to give encouragement to individual initiative, as fundamentally important to the advancement of science.

"(d) To serve as a means of bringing American and foreign investigators into active cooperation with the scientific and technical services of the Federal Government.

"(e) To direct the attention of scientific and technical investigators to the importance of military and industrial problems in connection with national security, to the importance of environmental problems in connection with public health and the economy, and to aid in the solution of these problems by organizing specific research.

"(f) To gather and collate scientific and technical information, at home and abroad, in cooperation with governmental and other agencies, and to disseminate such information to duly accredited persons and the public.

"2. Scientists, engineers, and other technically qualified professionals who are officers or employees of departments and agencies of the executive branch of the Government are encouraged to participate in the work of the Council as requested by the Council to the extent authorized by the head of the officer's or employee's agency or department and permitted by law.

"3. To the extent permitted by law and regulation, and in accordance with the congressional charter of the Academy, the actual expense of investigations, examinations, experiments, and reports by the Academy for the executive branch of the Government shall be paid to the Academy through one or more of the following: private gifts and bequests; appropriations for the benefit of the Academy; grants-in-aid, contracts, and other forms of financial agreement with executive departments and agencies. The Academy shall receive no compensation whatever for any services to the Government of the United States. Further, the Academy shall be subject to all provisions of OMB Circular A–122, 'Cost Principles for Non-Profit Organizations,' and to such other requirements regarding or limiting the Academy's recovery of costs as the Director of the Office of Management and Budget may specify from time to time in writing to the Academy and to agencies and departments of the Government.

"4. When a department or agency of the executive branch of the Government determines that the Academy, because of its unique qualifications, is the only source that can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the department's or agency's program requirements, acquisition of services by the Academy may be obtained on a noncompetitive basis if otherwise in accordance with applicable law and regulations."

Bush

THE WHITE HOUSE,
January 19, 1993.

[FR Doc. 93–1853
Filed 1–21–93; 11:54 am]
Billing code 3195–01–M

Presidential Documents

Executive Order 12833 of January 19, 1993

Addition to Level V of the Executive Schedule: Transition Manager for the United States Enrichment Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5317 of title 5 of the United States Code, and in order to place additional positions in level V of the Executive Schedule, section 1–102 of Executive Order No. 12154, as amended, is hereby further amended by adding the following new subsection:

"(g) Transition Manager, United States Enrichment Corporation."

Bush

THE WHITE HOUSE,
January 19, 1993.

[FR Doc. 93–1857
Filed 1–21–93; 12:04 pm]
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Part IX

The President

Executive Order 12834—Ethics Commitments by Executive Branch Appointees

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Presidential Documents

Title 3—

The President

Executive Order 12834 of January 20, 1993

Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Ethics Pledges.* (a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

> "As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:
>
> "1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.
>
> "2. In the event that I serve as a senior appointee in the Executive Office of the President ('EOP'), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.
>
> "3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.
>
> "4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.
>
> "5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

> "As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position

invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. *Definitions*. As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, *et seq.*).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

(1) with respect to those senior appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the senior appointee ceased to serve in that department or agency; and

(2) a senior appointee who is detailed from one executive agency to another for more than sixty days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(g) "Personal and substantial responsibility" "with respect to" an executive agency, as used in paragraph 2 of the senior appointee pledge, means ongoing oversight of, or significant ongoing decision-making involvement in, the agency's budget, major programs or personnel actions, when acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code).

(h) "Personal and substantial participation" and "personally and substantially participates" mean acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code) as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

(i) "Trade negotiation" means a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination.

(j) "Foreign Agents Registration Act of 1938, as amended" means sections 611-621 of title 22, United States Code.

(k) "Foreign government" means "the government of a foreign country," as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(e)).

(l) "Foreign political party" has the same meaning as that term in section 1(f) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(f)).

(m) "Foreign business entity" means a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(n) Terms that are used herein and in the pledges, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

Sec. 3. *Waiver.* (a) The President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the President certifies in writing that it is in the public interest to grant the waiver.

(b) A waiver shall take effect when the certification is signed by the President.

(c) The waiver certification shall be published in the **Federal Register**, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it.

(d) A copy of the waiver certification shall be furnished to the person covered by the waiver and filed with the head of the agency in which that person is or was appointed to serve.

Sec. 4. *Administration.* (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every senior appointee in the agency signs the senior appointee pledge upon assuming the appointed office or otherwise becoming a senior appointee;

(2) to ensure that every trade negotiator in the agency who is not a senior appointee signs the trade negotiator pledge prior to personally and substantially participating in a trade negotiation;

(3) to ensure that no senior appointee or trade negotiator in the agency personally and substantially participates in a trade negotiation prior to signing the pledge; and

(4) generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a), above, shall be the responsibility of the White House Counsel or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) subject to the prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the pledges and a copy of this Executive order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges; and

(3) subject to the prior approval of the White House Counsel, adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate to carry out the foregoing responsibilities.

(d) In order to promote clarity and fairness in the application of paragraph 3 of the senior appointee pledge:

(1) the Attorney General shall, within six months after the issuance of this order, publish in the **Federal Register** a "Statement of Covered Activities," based on the statute, applicable regulations and published guidelines, and any other material reflecting the Attorney General's current interpretation of the law, describing in sufficient detail to provide adequate guidance the activities on behalf of a foreign government or foreign political party which, if undertaken as of January 20, 1993, would require a person to register as an agent for such foreign government or political party under the Foreign Agents Registration Act of 1938, as amended; and

(2) the Attorney General's "Statement of Covered Activities" shall be presumed to be the definitive statement of the activities in which the senior appointee agrees not to engage under paragraph 3 of the pledge.

(e) A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee.

(f) A trade negotiator who is not also a senior appointee and who has once signed the trade negotiator pledge is not required to sign the pledge again prior to personally and substantially participating in a subsequent trade negotiation, except that a person who has ceased employment in the executive branch shall, after returning to such employment, be obligated to sign a pledge as provided herein notwithstanding the signing of any previous pledge.

(g) All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. *Enforcement.* (a) The contractual, fiduciary and ethical commitments in the pledges provided for herein are enforceable by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief.

(b) Any former senior appointee or trade negotiator who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee of that agency for up to five years in addition to the five-year time period covered by the pledge.

(1) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement the foregoing subsection, which shall conform as nearly as practicable to the procedures for debarment of former employees found to have violated section 207 of title 18, United States Code (1988 ed.), set forth in section 2637.212 of title 5, Code of Federal Regulations (revised as of January 1, 1992).

(2) Any person who is debarred from lobbying following an agency proceeding pursuant to the foregoing subsection may seek judicial review of the administrative determination, which shall be subject to established standards for judicial review of comparable agency actions.

(c) The Attorney General is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. *General Provisions.* (a) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Except as expressly provided in section 5(b)(2) of this order, nothing in the pledges or in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

William J. Clinton

THE WHITE HOUSE,
January 20, 1993.

[FR Doc. 93-1871
Filed 1-21-93; 12:29 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6525 of January 20, 1993

National Day of Fellowship and Hope, 1993

By the President of the United States of America

A Proclamation

As I assume the office of President, I stand humbly before God and ask for His guidance and blessings for our great Nation. At the same time, I ask the citizens of America to join me in renewing our commitment to the American ideals of fellowship and hope.

The obligation of a President is more than the fulfillment of a set of constitutional duties. The President must carry the mantle of hope and optimism in the battle against fear and despair. I ask that every American help as we attempt, in the words of the Reverend Martin Luther King, Jr., "to hew out of the mountain of despair a stone of hope" and "transform the jangling discords of our nation into a beautiful symphony of brotherhood."

We must always remember that the essence of our democracy is the recognition that we are united in a common purpose, working toward a common good.

In renewing our commitment to fellowship throughout our great Nation, we recall the spirit of Thomas Jefferson, who said on the occasion of his first inaugural address, "Let us, then, fellow citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 22, 1993, a National Day of Fellowship and Hope and call upon the citizens of this great Nation to reflect on their obligations to their fellow Americans and look forward to the challenges of the new year with a spirit of hope.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-1842
Filed 1-21-93; 11:33 am]
Billing code 3195-01-M

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Federal Register

Vol. 58, No. 13

Friday, January 22, 1993

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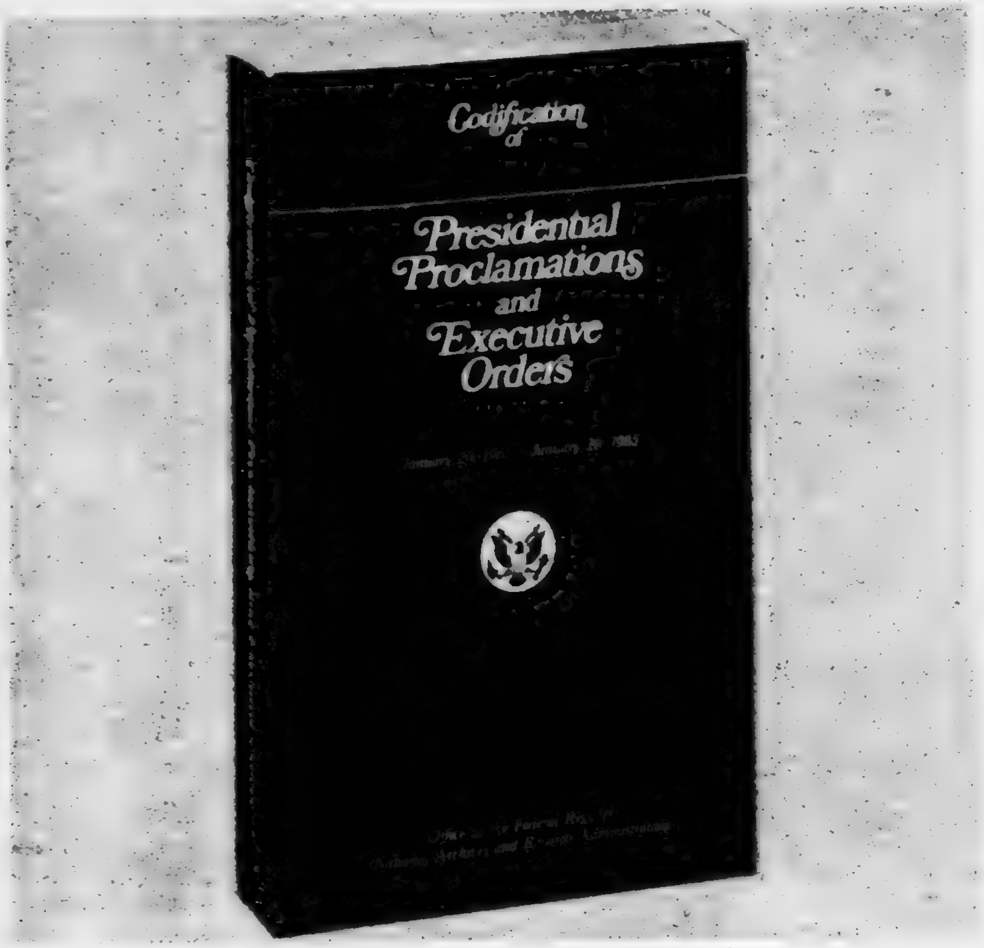

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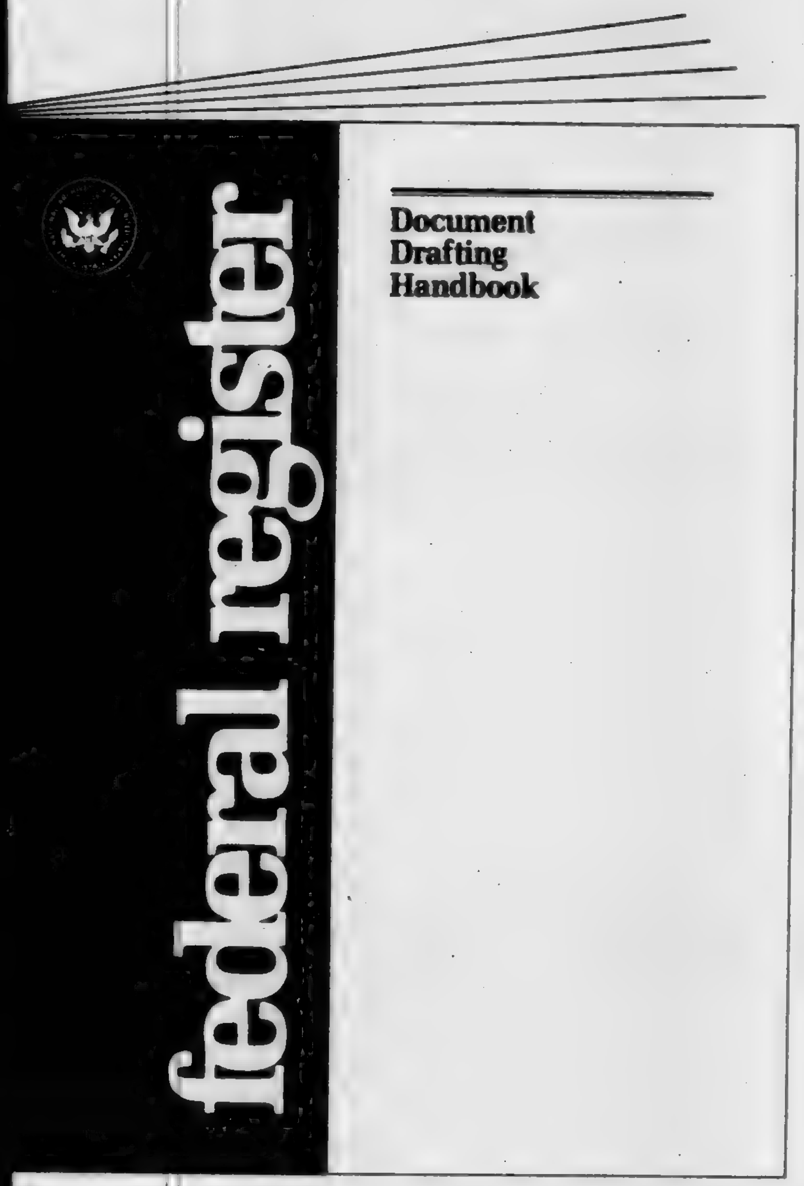

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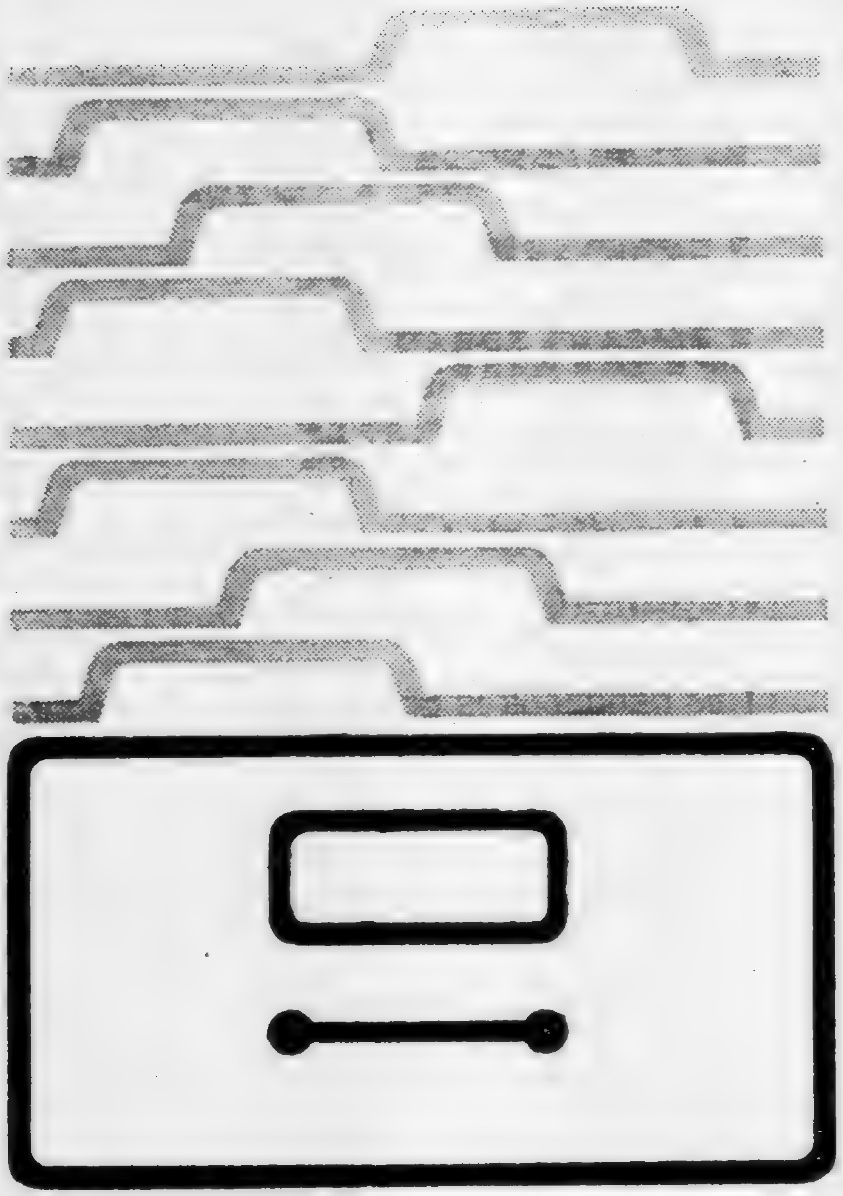

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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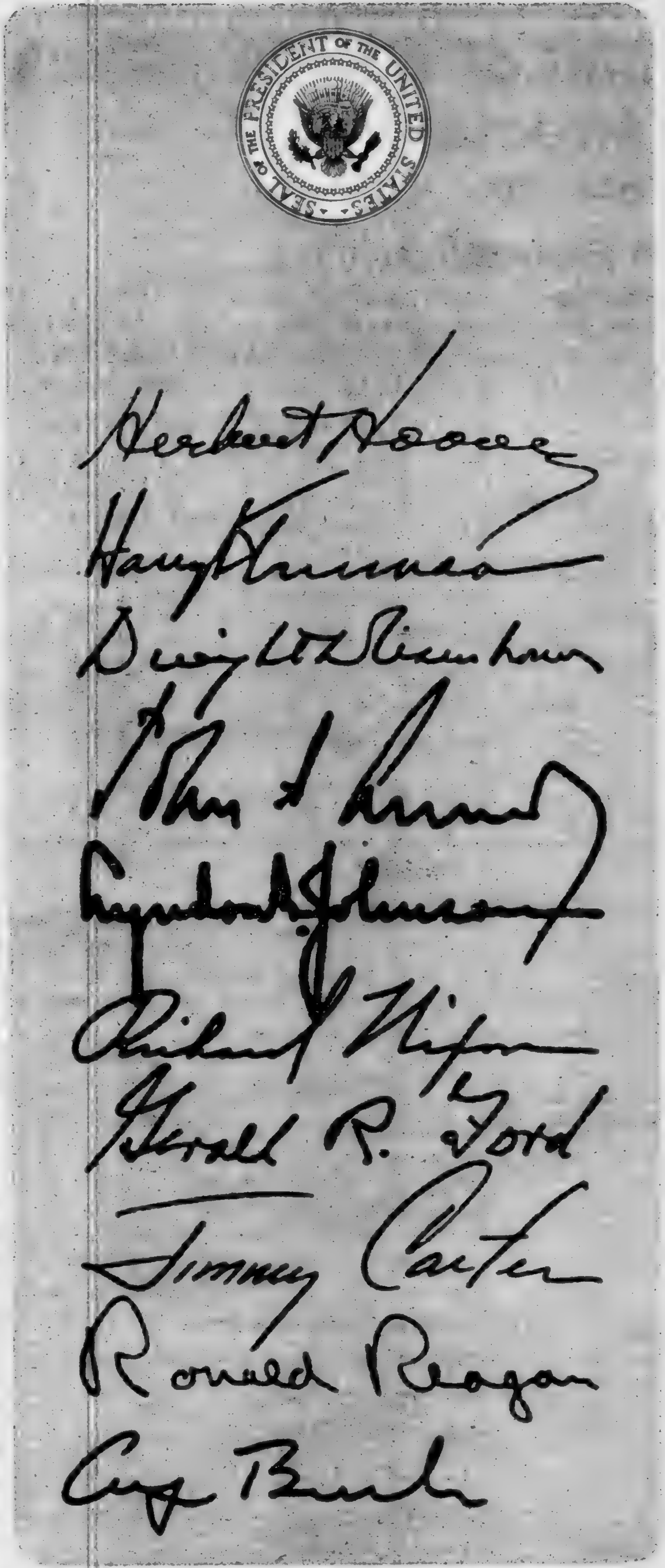
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Monday
January 25, 1993

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Free **Electronic Bulletin Board** service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 601

RIN 3052–AB38

Employee Responsibilities and Conduct

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA) by the Farm Credit Administration Board (Board) adopts a final rule amending 12 CFR part 601 (Employee Responsibilities and Conduct) that has been or will be superseded by Office of Personnel Management (OPM) and Office of Government Ethics (OGE) regulations on "Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees" and OGE "Standards of Ethical Conduct for Employees of the Executive Branch" to facilitate the issuance of uniform standards of ethical conduct for employees of the executive branch.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Eric Howard, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or Wendy R. Laguarda, Senior Attorney and Deputy Ethics Official, Administrative Law and Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4234.

SUPPLEMENTARY INFORMATION: On April 7, 1992, OGE and OPM published an interim rule that revises the public and confidential financial disclosure systems for executive branch employees, including rules on qualified trusts and certificates of divestiture (57 FR 11800). This interim regulation, to be codified at 5 CFR part 2634, became effective in its entirety on October 5, 1992, and supersedes individual agency regulations issued pursuant to earlier financial disclosure rules, including the FCA's financial disclosure rules in §§ 601.170–178. The Ethics in Government Act of 1978 (Pub. L. 95–521, as amended) requires agencies to promulgate internal written procedures and guidelines for both the public and confidential filings. Accordingly, the FCA is removing §§ 601.170–178 (pertaining to financial disclosures) from its rules on employee responsibilities and conduct at 12 CFR part 601. Instructions and guidelines for filing financial disclosure reports will be published in the FCA's Policies and Procedures Manual.

OGE published final standards of ethical conduct regulations for executive branch employees on August 7, 1992 (57 FR 35006). These new regulations, to be codified at 5 CFR part 2635, become effective 180 days after publication, or by February 3, 1993. On that date, the new conduct regulations will supersede most of subparts A, B and C of 5 CFR part 735 (the current standards of conduct regulations) and agency regulations thereunder, as well as 5 CFR 2635.101. Accordingly, the FCA will revise 12 CFR part 601 by removing all sections except §§ 601.110(c), 601.110(e), 601.127, and 601.141 and redesignating the preserved sections as new §§ 601.100(a), 601.100(b), 601.101, and 601.102, respectively. Pursuant to the OGE, the preserved sections of the FCA standards of conduct regulations at 12 CFR part 601 will be in effect until February 3, 1994. By that date, the FCA must have issued, concurrently with OGE, supplemental agency regulations pertaining to prohibited holdings and activities and prior approval for outside employment. The FCA's supplemental regulations will be codified within 5 CFR part 2635.

In acting on the regulations, the Board determined that this final rule conforms the regulations to statutory changes and relates to agency management and personnel, and therefore, does not involve rulemaking as defined in 5 U.S.C. 553 (a)(2) and (b)(A). The purpose of the rulemaking requirements of the Administrative Procedure Act (APA) is to allow public participation in the promulgation of rules that have a substantial impact on those regulated. Because this rule contains nondiscretionary implementations of statutory changes and relates to agency management and personnel, no public participation is required under the APA nor would such participation serve a useful purpose.

List of Subjects in 12 CFR Part 601

Conflict of interests.

For the reasons stated in the preamble, part 601 of chapter VI, title 12 of the Code of Federal Regulations is revised to read as follows:

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.
601.100 Prohibited holdings.
601.101 Administrative approval to engage in outside employment.
601.102 Prohibition against involvement in Farm Credit System elections of board members.

Authority: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252.

§ 601.100 Prohibited holdings.

Except as specifically authorized by law or these regulations, no officer or employee of the Farm Credit Administration:

(a) Shall, directly or indirectly, purchase security obligations of the Farm Credit banks for personal investment;

(b) Shall acquire, directly or indirectly (including acquisition by membership in syndicates), any lands, or any interest therein, including mineral interests and interests as mortgagee or lessee, which are owned by or mortgaged to any corporation regulated by the Farm Credit Administration or which were thus owned or mortgaged at any time within the preceding 12 months. However, such lands, or interests therein, may be acquired by will or inheritance or upon the written approval of the Chairman subject to such conditions as the Chairman may prescribe. As used in this paragraph, "mineral interests" means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed or royalty conveyance;

§ 601.101 Administrative approval to engage in outside employment.

(a) The provisions of this paragraph will be observed with respect to all outside employment or other outside activity. Each employee must be alert to identify and to avoid any situation that would involve him or her in prohibited activity. Each employee must also obtain administrative approval before engaging in outside paid employment of the following types:

(1) Writing or editing, except activities which pertain to the private interest of employees regarding hobbies, sports or cultural activities which do not conflict actually or apparently with officially assigned duties;

(2) Speaking engagements, except where the subject matter is unrelated to the subject matter of the employee's official duties;

(3) Teaching and lecturing;

(4) Regular self-employment;

(5) Consulting services;

(6) Holding state or local public office;

(7) Outside employment or other outside activity involving an institution of the Farm Credit System or an employee of such institution;

(8) Outside employment which will require annual leave or which is in excess of 20 hours per week;

(9) Any other outside work concerning the propriety of which an employee is uncertain.

(b) A request for administrative approval of outside employment or other outside activity shall be in writing and show:

(1) Employee's name, occupational title and Federal salary;

(2) Nature of the activity—a full description of specific duties or services to be performed;

(3) Name and business of person or organization for which the work will be done. (In the case of self-employment in a professional capacity serving a large number of individuals, instead of listing each client, the type of services to be rendered and estimate of the total number of clients anticipated during the next year will be indicated.);

(4) Estimated total time that will be devoted to the activity (if on a continuing basis, the estimated time per year; if not, the anticipated ending date);

(5) Whether service can be performed entirely outside of usual duty hours; if not, estimated number of hours of absence from work that will be required.

(c) The request for approval will be submitted to the supervisor who will make a written recommendation for approval or disapproval and forward the request through the director of the appropriate office to the Designated Agency Ethics Official (DAEO). The DAEO will notify employees in writing of the actions taken on their requests and the reasons for approval or disapproval. This notification will be coordinated and cleared with the employee's supervisor prior to issuance. All approved requests and a copy of the notification of the approval action will be maintained by the DAEO.

(d) If there is a change in the nature or scope of the duties or services performed or the nature of the employer's business, the employee will submit a revised request for approval promptly.

(e) Failure to request administrative approval for outside employment or other outside activity for which approval is required is grounds for disciplinary action.

(f) All requests for approval will be treated as confidential and made available only to specifically authorized persons. Copies of outside employment requests will be maintained by the DAEO.

§ 601.102 Prohibition against involvement in Farm Credit System elections of board members.

No officer or employee of the Farm Credit Administration, except as authorized in the discharge of his or her official duties, shall take any part, directly or indirectly, in the nomination or election of a member of a Farm Credit bank board or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such designations, nominations, or elections. Any such officer or employee who violates the provisions of this section shall be dismissed.

Dated: January 14, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–1745 Filed 1–22–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–123–AD; Amendment 39–8448; AD 92–27–13]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Boeing Model 747–400 series airplanes, that currently requires repetitive inspections to detect damage, chafing, and improper clearance between the electrical power feeder cables and engine fuel supply tube, and corrective action, if necessary. This amendment requires a modification of the electrical power feeder cable installation that, once accomplished, will constitute terminating action for the currently required inspections. This action is prompted by the development of a modification that positively addresses the damage, chafing, and clearance problems encountered in the subject area. The actions specified by this AD are intended to prevent a fire in the number two and number three engine struts.

DATES: Effective March 1, 1993.

The incorporation by reference of Boeing Alert Service Bulletin 747–24A2168, Revision 2, dated September 24, 1992, as listed in this regulation, is approved by the Director of the Federal Register as of March 1, 1993.

The incorporation by reference of Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1991, was approved previously by the Director of the Federal Register as of February 18, 1992 (57 FR 3928, February 3, 1992).

The incorporation by reference of Boeing Alert Service Bulletin 747–24A2168, Revision 1, dated December 5, 1991, was approved previously by the Director of the Federal Register as of March 13, 1992 (57 FR 6665, February 27, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Regimbal, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2687; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–05–01, Amendment 39–8180 (57 FR 6665, February 27, 1992), which is applicable to Boeing Model 747–400 series airplanes, was published in the **Federal Register** on July 10, 1992 (57 FR 30700). The action proposed to require a modification of the electrical power feeder cable installation that would constitute terminating action for the currently required inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that the FAA withdraw the proposed rule since it is unnecessary. This commenter states that the proposed terminating action was offered as an optional action in AD 92–05–01 and that the economic advantages provided by this modification should be sufficient to ensure that it is accomplished fleetwide. The FAA does not concur with the commenter's request to withdraw the proposed rule. As was explained in detail in the preamble to the notice, this AD action is based on the FAA's determination that long term continued operational safety will be better assured in this case by design changes to remove the source of the problem, rather than by repetitive inspections. By mandating this modification, the FAA's intent is to ensure that the unsafe condition is addressed in a timely manner by all affected operators.

This same commenter requests that the FAA revise AD 92–05–01 rather than supersede it. The commenter states that the issuance of more than one AD number addressing the same problem and related to the same service bulletin causes confusion and creates more administrative paperwork for affected operators. The FAA does not concur. The FAA's current policy (reference FAA Order 8040.1B) is that, whenever a "substantive change" is made to an existing AD, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

With regard to paperwork changes required by affected operators, Federal Aviation Regulations (FAR) § 121.380(a)(2)(v), "Maintenance recording requirements," requires that persons holding an operating certificate and operating under FAR part 121 must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number. A superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously."

Another commenter suggests that the proposed rule be revised to include a step to verify that sufficient clearance exists once the required modification is installed. This commenter previously installed the modification on an airplane in its fleet and, after doing so, noticed that insufficient clearance existed between the bridge bracket (installed as part of the modification) and an adjacent bleed duct. The commenter corrected the problem by adjusting the bleed duct to obtain the proper clearance. The FAA concurs with the commenter's suggestion. Since issuance of the notice, the FAA has examined the installation of the modification on an airplane in production and has verified that, in some circumstances, the modification installation may not provide the required clearance without some final adjustment. Since the intent of this AD action is to ensure that adequate clearance exists in the subject area in order to prevent chafing problems and other damage, and since the purpose of the required modification is to obtain that clearance, the FAA considers it necessary and warranted to clarify the final rule so that the achievement of that clearance is ensured. Accordingly, paragraph (c) of the final rule has been revised to include a stipulation that operators must ensure that a minimum clearance exists between the modification installation (bridge bracket) and the adjacent bleed duct.

(Note: Boeing Commercial Airplane Group has advised the FAA that it is considering including additional procedures for such a final clearance check in the next revision of the cited service bulletin.)

This same commenter requests that the proposed rule be revised to require the installation of a non-rotating bleed duct coupling to address a clearance problem between a bleed duct and certain adjacent wire bundles. This installation is described in Boeing Service Bulletin 747–36–2112. The FAA does not concur. The FAA has reviewed that service bulletin and the circumstances that prompted its issuance, and does not consider the issue it addresses to be a safety problem.

Since the issuance of the notice, the FAA has reviewed and approved Revision 2 to Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1992. The revised service bulletin is essentially identical to the previous issues, but includes procedures for the use of an optional bracket as part of the modification installation and clarifies usage of the support brackets and the wire support clamps. Paragraph (c) of the final rule has been revised to include a reference to this revised service bulletin as an additional appropriate source of service information.

The final rule has also been revised to include a note to indicate that any previously approved alternative method of compliance with AD 92–05–01 continues to be considered as an approved alternative method of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 184 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 22 airplanes of U.S. registry will be affected by this AD.

The inspections required by this AD (and previously required by AD 92–05–01) take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact associated with the inspection requirements of this AD on U.S. operators is $4,840, or $220 per airplane, per inspection cycle.

The modification required by this AD will require approximately 6 work hours to accomplish, at an average labor rate of $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the modification requirements of this AD on U.S. operators is estimated to be $7,260, or $330 per airplane.

Based on the figures discussed above, the total cost impact of this AD on U.S. operators is approximately $12,100, or $550 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8180 (57 FR 6665, February 27, 1992), and by adding a new airworthiness directive (AD), amendment 39–8448, to read as follows:

92-27-13. Boeing: Amendment 39–8448. Docket 92–NM–123–AD. Supersedes AD 92–05–01, Amendment 39–8180.

Applicability: Model 747–400 series airplanes; having line numbers 696 to 843, 845 to 850, 852 to 870, 872 to 875, 877, 880 to 884, and 887; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire within the engine strut, accomplish the following:

(a) For airplanes having line numbers 696 through 734, inclusive: Within 10 days after February 18, 1992 (the effective date of AD 91–20–51, amendment 39–8152), inspect the electrical power feeder cables and the engine fuel supply tube in engine struts two and three for damage or chafing and minimum clearance of 0.375 inch, in accordance with Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1991, or Revision 1, dated December 5, 1991. If damage is found or if clearance is not within the specified limits, prior to further flight, repair any damage in accordance with that service bulletin, and relocate the electrical power feeder cables so that the clearance is more than 0.375 inch. Repeat this inspection at the intervals specified in either paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) If the clearance is less than 0.75 inch, repeat the inspection at intervals not to exceed 500 flight hours.

(2) If the clearance is 0.75 inch or greater, repeat the inspection at intervals not to exceed 1,000 flight hours.

(b) For airplanes having line numbers 735 to 843, 845 to 850, 852 to 870, 872 to 875, 877, 880 to 884, and 887: Within 30 days after March 13, 1992 (the effective date of AD 92–05–01, amendment 39–8180), inspect the electrical power feeder cables and engine fuel supply tube in engine strut number three for damage or chafing and minimum clearance of 0.375 inch, in accordance with Boeing Alert Service Bulletin 747–24A2168, Revision 1, dated December 5, 1991. If damage is detected or if clearance is not greater than the specified limits, prior to further flight, repair any damage in accordance with that service bulletin, and relocate the electrical power feeder cables so that the clearance is more than 0.375 inch. Repeat this inspection at the intervals specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable:

(1) If the clearance is less than 0.75 inch, repeat the inspection at intervals not to exceed 500 flight hours.

(2) If the clearance is 0.75 inch or greater, repeat the inspection at intervals not to exceed 1,000 flight hours.

(c) Within 12 months after the effective date of this AD, modify the electrical power feeder cable installation in engine struts two and three, in accordance with Phase II of Boeing Alert Service Bulletin 747–24A2168, Revision 1, dated December 5, 1991, or Revision 2, dated September 24, 1992. Once this modification is accomplished, ensure that a minimum clearance of 0.75 inch exists between the bridge bracket (installed as part of the modification) and the adjacent bleed duct. Accomplishment of this modification constitutes terminating action for the inspections required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note: Any previously approved alternative method of compliance with AD 92–05–01 continues to be considered as an approved alternative method of compliance with this AD.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and modifications shall be done in accordance with Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1991; Boeing Alert Service Bulletin 747–24A2168, Revision 1, dated December 5, 1991; or Boeing Alert Service Bulletin 747–24A2168, Revision 2, dated September 24, 1992; as applicable. Boeing Alert Service Bulletin 747–24A2168, Revision 2, dated September 24, 1992, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3, 5, 10–12, 14–18.	1	Sept. 5, 1991.[1]
4, 6–7, 13, 19	2	Sept. 24, 1992.
8–9	([2])	Dec. 5, 1991.

[1] The dates shown on pages indicating "REV 1" do not match the date of issuence of Revision 1 of this service bulletin.

[2] None.

The incorporation by reference of Boeing Alert Service Bulletin 747–24A2168, Revision 2, dated September 24, 1992, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

The incorporation by reference of Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1991, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of February 18, 1992 (57 FR 3928, February 3, 1992). The incorporation by reference of Boeing Alert Service Bulletin 747–24A2168, Revision 1, dated December 5, 1991, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of March 13, 1992 (57 FR 6665, February 27, 1992). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 1, 1993.

Issued in Renton, Washington, on December 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1615 Filed 1-22-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92-CE-33-AD; Amendment 39-8444; 92-27-10]

Airworthiness Directives; Beech 90, 99, 100, 200, and 1900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech 90, 99, 100, 200, and 1900 series airplanes. This action requires a one-time inspection to ensure that the pilot and copilot chair locking pins will fully engage in the seat tracks, and modification of the subject chair if a locking pin fails to fully engage or is misaligned. The Federal Aviation Administration (FAA) has received reports of pilot and copilot chair locking pin malfunctions, which in one instance caused the pilot chair to slide back from the full forward position. The actions specified by this AD are intended to prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it happens during a critical flight maneuver.

DATES: Effective February 5, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 5, 1993.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4128; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 90, 99, 100, 200, and 1900 series airplanes was published in the **Federal Register** on August 17, 1992 (57 FR 36917). The action proposed a one-time inspection to ensure that the pilot and copilot chair locking pins will fully engage in the seat tracks, and modification of the subject chair if a locking pin fails to fully engage or is misaligned. The proposed actions would be accomplished in accordance with Beech Service Bulletin (SB) No. 2444, dated April 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter agrees with the intent of the proposed action, but feels that the FAA should have expedited the proposed action and eliminated the notice of proposed rulemaking (NPRM) stage. The FAA does not concur. The FAA examined all available information relating to this situation, and then determined that the condition did not present an urgent safety of flight concern that mandated the implementation of the rule prior to notice and opportunity for public comment under Executive Order 12291.

No comments were received on the FAA's determination of the cost to the public.

Since the FAA issued this proposal, Beech has revised SB No. 2444, and the FAA has determined that this revision should be incorporated into the proposed AD. This service information revision corrects an error in the airplane serial effectivity, which is already incorporated in the proposal.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections and the incorporation of the revised service information. The FAA has determined that these minor corrections and service bulletin revision will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 4,298 airplanes in the U.S. registry will be affected by this AD, that it will take approximately .5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $118,195.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-27-10 Beech: Amendment 39-8444; Docket No. 92-CE-33-AD.

Applicability: The following Model and serial number airplanes, certificated in any category:

Models	Serial numbers
65–90, 65–A90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, B90, C90, C90A, E90, F90, and H90.	LJ–1 through LJ–1311, LW–1 through LW–347, LA–2 through LA–236, LM–1 through LM–141, LS–1, LS–2, LS–3, LT–1, LT–2, LU–1 through LU–15, and LL–1 through LL–61.
99, 99A, A99A, B99, and C99	U–1 through U–239.
100, A100, and B100	B–1 through B–247 and BE–1 through BE–137.
200, 200C, 200CT, 200T, A200, A100–1, A200CT, B200, B200C, B200CT, and B200T	BB–2 through BB–1405, BC–1 through BC–75, BD–1 through BD–30, BJ–1 through BJ–66, BL–1 through BL–137, BN–1 through BN–4, BP–1 through BP–71, BT–1 through BT–33, BU–1 through BU–12, BV–1 through BV–12, FC–1, FC–2, FC–3, FE–1 through FE–9, FG–1, FG–2, and GR–1 through GR–19.
1900, 1900C, and 1900D	UA–1, UA–2, UA–3, UB–1 through UB–74, UC–1 through UC–174, UD–1 through UD–6, and UE–1 through UE–20.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver, accomplish the following:

(a) Inspect the pilot and copilot chairs in the full forward position to ensure that the chair locking pin on each chair is fully engaged and each locking pin is properly aligned with the seat tracks in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech Service Bulletin (SB) No. 2444, dated April 1992 revised September 1992.

(b) If either locking pin is not fully engaged or is misaligned with the seat tracks, prior to further flight, modify the subject chair in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech SB No. 2444, dated April 1992, revised September 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) The inspection and modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2444, revised September 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8444) becomes effective on February 5, 1993.

Issued in Kansas City, Missouri, on December 14, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1614 Filed 1–22–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–40–AD; Amendment 39–8477; AD 93–01–23]

Airworthiness Directives; Beech Aircraft Corporation Models 58 and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Models 58 and 58A airplanes. This action requires replacing the fuel crossfeed check valves. The Federal Aviation Administration (FAA) has received several reports of the operators of the affected airplanes using excessive force to operate the fuel selector valves because of pressure buildup in the crossfeed valves. The actions specified by this AD are intended to prevent fuel selector valve binding caused by such pressure buildup, which could result in the inability to control the fuel flow to the engines.

DATES: Effective March 12, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech Models 58 and 58A airplanes was published in the **Federal Register** on August 26, 1992 (57 FR 38631). The action proposed to require replacing the existing fuel crossfeed check valves with new valves that provide pressure relief in accordance with the Accomplishment Instructions section of Beech Service Bulletin No. 2454, dated May 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The sole commenter, Beech, requests that the word "inadvertently" in the second paragraph, second sentence, of the DISCUSSION section of the preamble of the proposed AD, be deleted and the word "inherent" be changed to internal. Beech states that the valve was not designed inherently without the pressure relief and the word internal is a more technically accurate description of the pressure relief function. The FAA concurs that, in the second paragraph, second sentence, of the DISCUSSION section of the preamble of the proposed AD, the word "inadvertently" could be deleted and the word inherent should be replaced with internal. However, since the FAA does not repeat this information in the final rule after a notice of proposed rulemaking, and this change does not add any additional burden upon the public than was already proposed, the change is so noted and not reprinted in its entirety.

Beech suggests a change to the last two sentences of this same paragraph of the proposed AD. These sentences currently have the following words:

> As the pressure increases, the valves could become locked or the crossfeed lines may rupture, which could cause fuel leaks in the area under the floorboards of the cabin.

Beech recommends a change to these sentences with the following words:

> As the fuel temperature increases, the fuel expands in the crossfeed lines increasing the pressure and causing the valve to bind.

The FAA partially concurs and believes that the phrase "could become locked" should be changed to "could bind". The FAA believes that the revision proposed by Beech, in its entirety, understates the potential for the unsafe condition. Since the FAA does not repeat this information in the final rule after a notice of proposed rulemaking, and this change does not add any additional burden upon the public than was already proposed, the change is so noted and not reprinted in its entirety.

Beech also requests that the last sentence of the SUMMARY of the proposed AD be changed from "The actions specified by the proposed AD are intended to prevent fuel selector valve failure caused by such pressure buildup, which could result in the inability to control the fuel flow to the engines." to "The actions specified by the proposed AD are intended to allow fuel selector valve operation under varying temperature conditions." Beech believes that the way this sentence currently reads implies that the valve will fail. Beech is not aware of any valve failure, and believes that the change will eliminate any incorrect implications. The FAA concurs that the current sentence could imply valve failure, but, for the sake of consistency with the previous comment, has determined that the sentence in the final rule should be changed to the following: "The actions specified by this AD are intended to prevent fuel selector valve binding caused by such pressure buildup, which could result in the inability to control the fuel flow to the engines." The actual AD has a similar revision.

No comments were received on the FAA's estimate of the cost impact upon the public.

The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 33 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $175 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,850.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93–01–23 Beech: Amendment 39–8477; Docket No. 92–CE–40–AD.

Applicability: Models 58 and 58A airplanes (serial numbers TH–1488, TH–1600, TH–1613 through TH–1635, and TH–1638 through TH–1662, certificated in any category.

Compliance: Required within the next 50 hours TIS after the effective date of this AD, unless already accomplished.

To prevent fuel selector valve binding caused by pressure buildup in the crossfeed lines, which could result in the inability to control the fuel flow to the engines, accomplish the following:

(a) Replace both existing crossfeed check valves with new valves, part number 50–380170–39, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2454, dated May 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The replacement required by this AD shall be done in accordance with Beech Service Bulletin No. 2454, dated May 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–8477) becomes effective on March 12, 1993.

Issued in Kansas City, Missouri, on January 14, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1741 Filed 1–22–93; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission's Appliance Labeling Rule requires that Table 1, in § 305.9, which sets forth the representative average unit energy costs for five residential energy sources, be revised periodically on the basis of updated information provided by the Department of Energy ("DOE").

This document revises the table to incorporate the latest figures for average unit energy costs as published by DOE in the **Federal Register** on January 5, 1993.[1]

DATES: The revisions to § 305.9(a) and Table 1 are effective January 25, 1993. The mandatory dates for using these revised DOE cost figures are detailed in the Supplementary Information Section, below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final Appliance Labeling Rule (44 FR 66466) in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.[2] The rule requires the disclosure of energy efficiency or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that these energy costs or energy efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the rule sets forth the representative average unit energy costs to be used for all requirements of the rule. As stated in § 305.9(b), the Table is intended to be revised periodically on the basis of updated information provided by DOE.

On January 5, 1993, DOE published the most recent figures for representative average unit energy costs. Accordingly, Table 1 is revised to reflect these latest cost figures as set forth below.

The dates when use of the figures in revised Table 1 becomes mandatory in calculating cost disclosures for use in reporting, labeling and advertising products covered by the Commission's rule and/or EPCA are as follows:

For 1993 Submissions of Data Under § 305.8 of the Commission's Rule

The new cost figures must be used in all 1993 cost submissions. For convenience, the annual dates for data submission are repeated here:

Clothes washers: March 1
Water heaters: May 1
Furnaces: May 1
Room air conditioners: May 1
Dishwashers: June 1
Central air conditioners: July 1
Heat pumps: July 1
Refrigerators: August 1
Refrigerator-freezers: August 1
Freezers: August 1

For Labeling and Advertising of Products Covered by the Commission's Rule

Using 1993 submissions of estimated annual costs of operation based on the 1993 DOE cost figures, the staff will determine whether to publish new ranges. Any products for which new ranges are published must be labeled with estimated annual cost figures calculated using the 1993 DOE cost figures. If such new ranges are published, the effective date for labeling new products will be ninety days after publication of the ranges in the **Federal Register**. Products that have been labeled prior to the effective date of any range modification need not be relabeled. Advertising for such products will also have to be based on the new costs and ranges beginning ninety days after publication of the new ranges in the **Federal Register**.

Energy Usage Representations Respecting Products Covered by EPCA But Not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers, pool heaters and space heaters) must use the 1993 representative average unit costs for energy in all representations beginning April 26, 1993.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR part 305 is amended as follows:

1. The authority citation for part 305 is revised to read as follows:

Authority: Section 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), and the Energy Policy Act of 1992 (Pub. L. 102–486) (October 24, 1992), 42 U.S.C. 6294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1, below, contains the representative unit energy costs to be utilized for all requirements of this part.

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[1] 58 FR 345.

[2] Since its promulgation, the rule has been amended twice to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987) and fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989). Under the Energy Policy Act of 1992, Pub. L. 102–486 (October 24, 1992), the Commission must amend the rule to include certain lamps and plumbing products.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (1993)

Type of energy	In common terms	As required by DOE test procedure	Dollers per million Btu[1]
Electricity	8.30¢/kWh[2,3]	$0.0830/kWh	$24.33
Natural Gas	59.46¢/therm[4] or $6.13/MCF[5,6]	$0.00000595/Btu	5.95
No. 2 heating oil	$1.00/gallon[7]	$0.00000721/Btu	7.21
Propane	$0.73/gallon[8]	$0.00000799/Btu	7.99
Kerosene	$0.82/gallon[9]	$0.00000607/Btu	6.07

[1] Btu stands for British thermal unit.
[2] kWh stands for kilowatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, 1 cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 136,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,
Secretary.

[FR Doc. 93-1736 Filed 1-22-93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8472]

RIN 1545-AL35

Certain Corporate Distributions to Foreign Corporations Under Section 367(e)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the distribution of stock and securities under section 355 and section 367(e)(1) of the Internal Revenue Code of 1986 by a domestic corporation to a person who is not a United States person. These regulations are necessary to implement section 367(e)(1) as added by the Tax Reform Act of 1986. The regulations affect the taxability of the corporation making the distribution.

DATES: These regulations are effective January 16, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie A. Cracraft or Willard W. Yates of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 ((202) 622-3850 (Yates) or (202) 622-3860 (Cracraft)) (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control number 1545-1124. The estimated annual burden per respondent varies from 2 hours to 10 hours, depending on individual circumstances, with an estimated average of 8 hours.

These estimates are an approximation of the average time expected to be necessary for collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On January 16, 1990, temporary regulations § 1.367(e)-1T were adopted (as part of T.D. 8280) [1990-1 C.B. 80] and published in the **Federal Register** at 55 FR 1406. A cross-referenced Notice of Proposed Rulemaking for § 1.367(e)-1 was published on that same date at 55 FR 1472. These amendments, in part, were proposed to implement section 367(e)(1) of the Internal Revenue Code of 1986, as revised by sections 631(d)(1) and 1810(g) of the Tax Reform Act of 1986 (100 Stat. 2085, 2272, Pub. L. 99-514). The regulations were issued under the authority contained in section 367(e)(1) and section 7805(a).

Written comments responding to the notice were received. There were no requests for a public hearing. After consideration of all written comments relating to 1.367(e)-1, this section of the proposed regulations is adopted as revised by this Treasury decision.

Need for Immediate Effective Date for Final Regulations

The regulations under section 367(e)(1) will apply to the subject outbound distributions occurring on or after January 16, 1993. These regulations will clarify and simplify the law and provide taxpayers with immediate guidance needed to effectuate outbound distributions and will resolve uncertainty as to the tax consequences and reporting obligations with respect to such transactions. This effective date is also necessary to prevent avoidance of tax and to provide regulatory relief in certain instances. Accordingly, these regulations are not subject to the effective date limitation of 5 U.S.C. 553(d).

Explanation of Provisions

In General

The final regulations provide rules concerning the recognition of gain by a domestic corporation on a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic or foreign corporation to a person who is not a United States person. The regulations provide, as a general rule, that gain recognition is required on such a distribution. However, the final regulations follow the proposed regulations, with certain modifications, in providing three exceptions to this rule in the case of distributions of stock or securities of domestic controlled corporations: The U.S. real property holding corporation exception, the publicly traded exception, and the 5-year gain recognition agreement exception.

In response to the proposed regulations, one commentator proposed that an exception to the general gain recognition rule be provided in cases where the foreign distributee agrees to subject to U.S. tax any gain realized on a disposition of the stock or securities of the distributing or controlled corporation within a 5 year period following the distribution. Such an exception was not included in the final regulations because of concerns about the administrative difficulties and complexities of collecting a shareholder-level tax, as well as concerns about the inconsistency of such an approach with the general principles of section 367. However, the Service intends to continue to study this alternative and solicits taxpayer comments on the proposal, including suggestions on how to administer such an election.

Some commentators suggested that the exceptions to the general gain recognition rule be made applicable to distributions of stock or securities of foreign corporations. This suggestion was not adopted in the final regulations because the distribution of stock of a foreign corporation in a section 355 transaction will generally result in a complete loss of U.S. corporate taxing jurisdiction over the stock of the foreign corporation and its assets.

Distributions to Partnerships, Trusts and Estates

Both foreign and domestic persons often hold interests in domestic corporations through pass-through entities. Accordingly, the final regulations apply aggregate principles to stock owned by a domestic or foreign partnership, trust or estate. The regulations generally apply the constructive ownership principles of section 318 in determining the ownership of stock or securities of the distributing or controlled corporation owned by a partnership, trust or estate (whether foreign or domestic). Thus, if under section 355 a domestic corporation distributes stock of a controlled corporation to a partnership that is owned by two equal partners, one domestic and one foreign, the distributing corporation must recognize gain under section 367(e)(1) with respect to one-half of the stock distributed to the partnership. The Service is studying the determination of a beneficiary's actuarial interest in a trust, and may issue further guidance on this subject at a future date.

The final regulations generally do not permit a distributing corporation to qualify for nonrecognition under the 5-year gain recognition agreement exception on a distribution to a pass-through entity with respect to foreign persons holding interests in the pass-through entity. The Service is concerned that allowing foreign persons holding interests in pass-through entities to qualify for the exception would excessively complicate the exception and impose an undue administrative burden on the Service. The Service, however, recognizes that the denial of the exception to foreign persons holding interests in pass-through entities may be unduly harsh in certain circumstances. Therefore, the regulations permit a distributing corporation to obtain a ruling from the Service applying the exception to foreign persons holding interests in pass-through entities, and intends to publish a revenue procedure describing the conditions for obtaining such a ruling.

Anti-Abuse Rule

The final regulations provide an anti-abuse rule to address situations in which a domestic corporation is formed or availed of by one or more foreign persons to hold the stock of a distributing corporation for a principal purpose of avoiding the requirements of section 367(e)(1) and these regulations. If the rule applies, the distribution will be treated as having been made to the foreign persons, who will then be treated as having transferred the distributed stock (and distributing stock, as the case may be) to the domestic corportion. If gain recognition on the distribution, as resequenced, can be avoided by filing a 5-year gain recognition agreement, gain recognition will not be required if the subsequent transfer to the domestic corporation qualifies under the successor-in-interest rules described below.

U.S. Real Property Holding Corporation Exception

The final regulations include the exception contained in the proposed regulations applicable to a distribution of the stock of a U.S. real property holding corporation by a corporation that continues to be a U.S. real property holding corporation after the distribution. Some commentators suggested that this exception be revised to provide for nonrecognition on any distribution of the stock of a U.S. real property holding corporation, even if the distributing corporation no longer qualifies as a U.S. real property holding corporation after the distribution. This approach was not adopted because the exception is premised on continuing U.S. taxing jurisdiction over shareholder-level gain on the stock of both the distributing and controlled corporation. Such a distribution could qualify for one of the other exceptions to the general gain recognition rule (assuming the requirements of the exception are satisfied).

Publicly Traded Exception

The final regulations revise the publicly traded exception contained in the proposed regulations. The final regulations retain the requirement for nonrecognition on a distribution of stock or securities of a domestic controlled corporation that more than 80 percent of the stock (measured by value) of the controlled corporation be distributed with respect to one or more publicly traded classes of stock of the distributing corporation. The final regulations, however, eliminate the requirement in the proposed regulations that 80 percent or more of the stock of the distributing corporation be publicly traded.

The final regulations also provide that a distributing corporation may obtain nonrecognition on the distribution of stock of a domestic controlled corporation to more-than-five-percent foreign shareholders of a publicly traded corporation under the U.S. real property holding corporation exception or the 5-year gain recognition agreement exception if all of the requirements of the relevant exception are satisfied. These exceptions may also apply to the distribution to non-publicly traded classes of stock of a publicly traded corporation.

5-Year Gain Recognition Agreement Exception

The final regulations liberalize and simplify the 5-year gain recognition agreement exception contained in the proposed regulations. In general, no gain is immediately recognized on the distribution of stock or securities of a domestic controlled corporation to a foreign distributee if the distributing corporation agrees to file an amended return and recognize such gain upon a disposition by the foreign distributee of the stock or securities of the distributing or controlled corporation within 60 months after the end of the taxable year of the distributing corporation in which the distribution was made. The foreign distributee must make annual certifications concerning its ownership of the stock during the 60-month period.

Under the proposed regulations, this exception applied only if the distributing corporation was wholly-owned by five or fewer individual or corporate shareholders. The final regulations permit this exception to be claimed for a distribution to 10 or fewer foreign distributees, regardless of the number of shareholders of the corporation. The requirement that the foreign distributees be individuals or corporations generally has been retained because of the administrative difficulties of applying this exception to other types of taxpayers. Thus, except where the distributing corporation obtains a ruling from the Service to the contrary, distributions to partnerships, trusts or estates with foreign interest holders do not qualify for nonrecognition under this exception.

Under the proposed regulations, this exception applied only if, immediately before the distribution, at least 90 percent of the stock of the distributing corporation had a holding period of at least two years in the hands of the shareholders. In light of the enactment of section 355(d), this requirement has not been included in the final regulations.

Under the proposed regulations, to qualify for the exception in the case of a distribution to a foreign corporation, the fair market value of the stock of the distributing corporation owned by the foreign corporation immediately before the distribution could not equal or exceed 50 percent of the fair market value of all of the foreign corporation's stock immediately before the distribution. This anti-holding company provision has been replaced in the final regulations with a requirement that the foreign corporate distributee be engaged in the active conduct of a trade or business (determined without regard to the trade or business conducted by the distributing or controlled corporation) until the end of the 60-month period following the taxable year of the distribution. The determination of whether the distributee is engaged in an active trade or business generally is made in accordance with the provisions of section 355(b)(2)(A).

In the case of a distribution of stock or securities of a controlled corporation that is not part of the distributing corporation's consolidated return group, the final regulations retain the rule in the proposed regulations that, immediately after the distribution, the stock of the distributing corporation must have a fair market value at least equal to the fair market value of the distributed stock and securities of the controlled corporation. The fair market value requirement ensures that the distributing corporation retains sufficient assets to meet potential tax liabilities if gain is subsequently recognized under the 5-year gain recognition agreement. However, the final regulations provide that, if a controlled corporation is part of the distributing corporation's consolidated return group for one or more taxable years in which all of the stock and securities of the controlled corporation are distributed, and thus is severally liable for any tax on gain recognized on the distribution, the fair market value requirement does not apply.

The proposed regulations provided that, if a foreign distributee disposed of any of the stock or securities of the distributing or controlled corporation within the 60-month period covered by the gain recognition agreement, the entire amount of gain realized by the distributing corporation on the distribution to the foreign distributee would be recognized. The final regulations provide that only a proportionate amount of gain is recognized, determined by reference to the portion of stock and securities of the distributing corporation and controlled corporation disposed of by the foreign distributee.

The final regulations permit the stock or securities of the distributing or controlled corporation to be disposed of by the foreign distributee in certain nonrecognition transactions without causing gain to be recognized under the gain recognition agreement. The rules have been designed to provide taxpayers with flexibility to restructure their operations, without imposing undue administrative burdens on the Service. The Service solicits taxpayer comments on the scope of these rules.

The final regulations follow the proposed regulations in providing that the distributing corporation must amend its income tax return for the year of the distribution in the event gain is required to be recognized. Interest must be paid on any additional tax incurred.

Regulations Under Section 367(e)(2)

The temporary regulations under section 367(e)(2) that were proposed with the regulations under section 367(e)(1) will be promulgated as final regulations in a separate Treasury decision. The final regulations under section 367(e)(2) will be effective with respect to distributions occurring on or after January 16, 1993. However, taxpayers will be given the option to apply the provisions of the current temporary regulations to distributions occurring on or after January 16, 1993 but prior to the date that is 30 days after the date on which the final section 367(e)(2) regulations are published in the **Federal Register.**

Effective Date

These regulations are effective with respect to distributions occurring on or after January 16, 1993. However, a corporation may elect to apply the regulations (subject to certain elective exceptions) to all distributions made by it after February 15, 1990 (the date the temporary regulations under section 367(e)(1) became effective), to which this section applies by timely filing an original or amended return for the year of distribution and otherwise complying with these regulations.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a final Regulatory Impact Analysis is not required. It has also been determined that a prior notice of proposed rulemaking was required by the Administrative Procedure Act. It is hereby certified that these rules will not have a significant impact on a substantial number of small entities. Few small entities would be affected by these regulations. A Regulatory Flexibility Analysis, therefore, is not required under section 604 of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the notice of proposed rulemaking was submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Drafting Information

Various personnel from the Office of the Associate Chief Counsel (International), Internal Revenue Service, other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.361–1 Through 1.367(e)–2T

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding a citation to read as follows:

Authority: 26 U.S.C. 7805 * * *
§ 1.367(e)–1 also issued under 26 U.S.C. 367 (e). * * *

Par. 2. Sections 1.367(e)–0T and 1.367(e)–1T are removed as of January 16, 1993.

Par. 3. Sections 1.367(e)–0 and 1.367(e)–1 are added to read as follows:

§ 1.367(e)–0 Treatment of distributions or liquidations under section 367(e); table of contents.

This section lists captioned paragraphs contained in § 1.367(e)–1.

§ 1.367(e)–1 Distributions described in section 367(e)(1)

(a) Purpose and scope.
(b) Recognition of gain required.
(1) In general.
(2) Computation of gain of the distributing corporation.
(3) Treatment of the distributee.
(4) Nonapplication of section 367(a) principles that provide for exceptions to gain recognition.
(5) Partnerships, trusts, and estates.
(i) In general.
(ii) Written statement.
(6) Anti-abuse rule.
(c) Nonrecognition of gain.
(1) Distribution by a U.S. real property holding corporation of stock in a second U.S. real property holding corporation.
(2) Distribution by a publicly traded corporation.
(3) Distribution of certain domestic stock to 10 or fewer foreign distributees.
(i) In general.
(ii) Conditions for nonrecognition.
(iii) Agreement to recognize gain.
(iv) Waiver of period of limitation.
(v) Annual certifications.
(vi) Special rule for nonrecognition transactions.
(vii) Recognition of gain.
(viii) Failure to comply.
(d) Other consequences.
(1) Distributee basis in stock.
(2) Dividend treatment under section 1248.
(3) Exchange under section 897(e)(1).
(4) Distribution of stock of a passive foreign investment company.
(5) No reporting under section 6038B.
(e) Examples.
(f) Effective date.

1.367(e)–1 Distributions described in section 367(e)(1).

(a) *Purpose and scope.* This section provides rules concerning the recognition of gain by a domestic corporation on a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic or foreign corporation to a person who is not a United States person. Paragraph (b) of this section states as a general rule that gain recognition is required on the distribution. Paragraph (c) of this section provides exceptions to the gain recognition rule of paragraph (b) of this section for certain distributions of stock or securities of a domestic corporation. Paragraph (d) of this section refers to other consequences of distributions described in this section. Paragraph (e) of this section provides examples of the rules of paragraphs (b), (c) and (d) of this section. Finally, paragraph (f) of this section specifies the effective date of this section.

(b) *Recognition of gain required*—(1) *In general.* If a domestic corporation (distributing corporation) makes a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic or foreign corporation (controlled corporation) to a person who is not a United States person, as defined in section 367(a) and the regulations thereunder (foreign distributee), then, except as provided in paragraph (c) of this section, the distributing corporation shall recognize gain (but not loss) on the distribution under section 367(e)(1).

(2) *Computation of gain of the distributing corporation.* The gain recognized by the distributing corporation under paragraph (b)(1) of this section shall be equal to the excess of the fair market value of the stock or securities distributed to the foreign distributee (determined as of the time of the distribution) over the distributing corporation's adjusted basis in the stock or securities distributed to the foreign distributee. For purposes of the preceding sentence, the distributing corporation's adjusted basis in each unit of each class of stock or securities distributed to a foreign distributee shall be equal to the distributing corporation's total adjusted basis in all of the units of the respective class of stock or securities owned immediately before the distribution, divided by the total number of units of the class of stock or securities owned immediately before the distribution.

(3) *Treatment of the distributee.* If the distribution otherwise qualifies for nonrecognition under section 355, each distributee shall be considered to have received stock or securities in a distribution qualifying for nonrecognition under section 355, even though the distributing corporation recognizes gain on the distribution. Thus, the distributee shall not be considered to have received a distribution described in section 301 or a distribution in an exchange described in section 302(b) upon the receipt of the stock or securities of the controlled corporation.

(4) *Nonapplication of section 367(a) principles that provide for exceptions to gain recognition.* Paragraph (b)(1) of this section requires recognition of gain notwithstanding the application of any principles contained in section 367(a) or the regulations thereunder. The only exceptions to paragraph (b)(1) of this section are contained in paragraph (c) of this section. None of these exceptions applies to a distribution of stock or securities of a foreign corporation.

(5) *Partnerships, trusts and estates*—(i) *In general.* For purposes of this section, stock or securities owned by or for a partnership (whether foreign or domestic) shall be considered to be owned proportionately by its partners. In applying this principle, the proportionate share of the stock or securities of the distributing corporation considered to be owned by a partner of a partnership at the time of the distribution shall equal the partner's distributive share of gain that would be realized by the partnership from a sale of the stock of the distributing corporation immediately before the distribution (without regard to whether, under the particular facts, any gain would actually be realized on the sale for U.S. tax purposes), determined under the rules and principles of sections 701 through 761 and the regulations thereunder. For purposes of this section, stock or securities owned by or for a trust or estate (whether foreign or domestic) shall be considered to be owned proportionately by the persons who would be treated as owning such stock or securities under sections 318(a)(2)(A) and 318(a)(2)(B). In applying section 318(a)(2)(B), if a trust includes interests that are not actuarially ascertainable and a principal purpose of the inclusion of the interests is the avoidance of section 367(e)(1), all such interests shall be considered to be owned by foreign persons. In a case where an interest holder in a partnership, trust or estate that owns stock of the distributing corporation is itself a partnership, trust or estate, the rules of this paragraph (b)(5) apply to individuals or corporations that own (direct or indirect) interests in the upper-tier partnership, trust or estate.

(ii) *Written statement.* If prior to the date on which the distributing corporation must file its income tax return for the year of the distribution, the corporation obtains a written statement, signed under penalties of perjury by an interest holder in a partnership, trust, or estate, that certifies that the interest holder is a United States person who is an individual or corporation, no liability shall be imposed under paragraph (b)(1) of this section with respect to the distribution to the interest holder, unless the distributing corporation knows or has reason to know that the statement is false. The written statement must set forth the amount of the interest holder's proportionate interest in the distributing corporation, as well as the interest holder's name, taxpayer identification number, home address (in the case of an individual) or office address and place of incorporation (in the case of a corporation). The written statement must be retained by the distributing corporation with its books and records for a period of three calendar years following the close of the last calendar year in which the corporation relied upon the statement. If the distributing corporation instead relies upon other evidence of the interest holder's status as a United States person or of the amount of the interest holder's proportionate interest, liability shall be imposed under paragraph (b)(1) of this section if the interest holder, in fact, is not a United States person or the amount of its proportionate interest is not established.

(6) *Anti-abuse rule.* If a domestic corporation is directly or indirectly formed or availed of by one or more foreign persons to hold the stock of a second domestic corporation for a principal purpose of avoiding the application of section 367(e)(1) and the requirements of this section, any distribution of stock or securities to which section 355 applies by such second domestic corporation shall be treated for federal income tax purposes as a distribution to such foreign person or persons, followed by a tranfer of the stock or securities to the domestic corporation. The qualification of the distribution to the foreign person for an exception to the general gain recognition rule of paragraph (b)(1) of this section, and the consequences of the transfer to the domestic corporation under this section, shall be determined in accordance with all of the facts and circumstances.

(c) *Nonrecognition of gain*—(1) *Distribution by a U.S. real property holding corporation of stock in a second U.S. real property holding corporation.* Gain shall not be recognized under paragraph (b) of this section by a domestic corporation making a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic controlled corporation to a foreign distributee if, immediately after the distribution, both the distributing and controlled corporations are U.S. real property holding corporations (as defined in section 897(c)(2)). For the treatment of the distribution under section 897, see section 897(e)(1) and the regulations thereunder.

(2) *Distribution by a publicly traded corporation*—(i) *Conditions for nonrecognition.* Gain shall not be recognized under paragraph (b) of this section by a domestic corporation making a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic controlled corporation to a foreign distributee if both of the following conditions are satisfied:

(A) Stock of the domestic controlled corporation with a value of more than 80 percent of the outstanding stock of the corporation is distributed with respect to one or more classes of the outstanding stock of the distributing corporation that are regularly traded on an established securities market, as defined in § 1.897-1(m) (1) and (3), located in the United States. Stock is considered to be regularly traded if it is regularly quoted by brokers or dealers making a market in such interests. A broker or dealer is considered to make a market only if the broker or dealer holds himself out to buy or sell interests in the stock at the quoted price.

(B) At the time of the distribution, the distributing corporation does not know or have reason to know that the subject foreign distributee owns, directly or constructively, more than 5 percent (by value) of a class of stock of the distributing corporation with respect to which the stock of the controlled corporation is distributed. For purposes of determining whether a foreign distributee owns, directly or constructively, more than 5 percent (by value) of a class of stock of the distributing corporation, the rules of section 897(c)(3) and the regulations thereunder shall apply, except as otherwise provided herein.

(ii) *Relation to other nonrecognition provisions.* If the distribution of the stock and securities of the controlled corporation also qualifies for nonrecognition under paragraph (c)(1) of this section, the distributing corporation shall be entitled to nonrecognition under paragraph (c)(1) of this section and not this paragraph (c)(2). The distributing corporation may obtain nonrecognition treatment under paragraph (c)(1) or (c)(3) of this section with respect to a foreign distributee that owns more than 5 percent of a class of stock of the distributing corporation, if all of the requirements of either of those paragraphs is satisfied.

(3) *Distribution of certain domestic stock to 10 or fewer foreign distributees*—(i) *In general.* Gain shall not be recognized under paragraph (b) of this section by a domestic corporation making a distribution that qualifies for nonrecognition under section 355 of stock or securities of a domestic controlled corporation to a foreign distributee if each of the conditions of this paragraph (c)(3) is satisfied.

(ii) *Conditions for nonrecognition.* A distribution of stock or securities described in paragraph (c)(3)(i) of this section to a foreign distributee shall not result in the recognition of gain if each of the following conditions is satisfied:

(A)(*1*) There are 10 or fewer foreign distributees for which nonrecognition is claimed under this paragraph (c)(3), each of whom is either an individual or a corporation as defined in section 7701(a)(3) of the Internal Revenue Code.

(*2*) Unless the distributing corporation obtains a ruling from the Internal Revenue Service to the contrary, no foreign distributee shall be entitled to claim nonrecognition under this paragraph (c)(3) if it holds its interest in the distributing corporation through a partnership, trust or estate (whether foreign or domestic).

(*3*) If the distribution is made to more than 10 foreign distributees, the distributing corporation shall designate the 10 or fewer foreign distributees for which nonrecognition is claimed under this paragraph (c)(3).

(B) If the distributee for which nonrecognition is claimed under this paragraph (c)(3) is a foreign corporation, immediately after the distribution and at all times until the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the foreign distributee is directly or indirectly engaged in the active conduct of a trade or business. To determine what constitutes an active conduct of a trade or business, see section 355(b)(2)(A) and the regulations thereunder. For purposes of this paragraph (c)(3)(ii)(B), a foreign distributee shall be considered to engage in the active conduct of a trade or business if it directly conducts the trade or business or if any corporation, 80% of the stock (measured by vote and value of which it directly or indirectly owns, conducts the trade, or business. However, for purposes of this paragraph (c)(3)(ii)(B), a foreign distributee will not be considered to engage in the active conduct of any trade or business engaged in, directly or indirectly, by the distributing corporation or controlled corporation. The requirements of this paragraph (c)(3)(ii)(B) will not be satisfied if, at any time until the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the foreign distributee directly or indirectly engages in the active conduct of one or more trades or businesses that have a fair market value that is not substantial in relation to the fair market value of the stock of the foreign distributee for a principal purpose of complying with the requirements of this paragraph (c)(3).

(C)(*1*) Immediately after the distribution, the stock of the distributing corporation has a fair market value that is at least equal to the fair market value of the distributed stock and securities of the controlled corporation immediately before the distribution.

(*2*) The requirements of paragraph (c)(3)(ii)(C)(*1*) of this section shall not apply if the distributing corporation distributes all of the stock and securities of the controlled corporation during one or more taxable years with respect to which the controlled corporation is severally liable under § 1.1502–6(a) for tax imposed on any gain required to be recognized by the distributing corporation pursuant to this paragraph (c)(3).

(D) Immediately after the distribution and at all times until the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the foreign distributee is a resident of (if the foreign distrubutee is an individual), or is incorporated in (if the foreign distributee is a corporation), a foreign country that maintains a comprehensive income tax treaty with the United States that contains an information exchange provision to which the foreign distributee is subject. This requirement is satisfied during any period in which an individual foreign distributee is a resident of the United States.

(E) At all times until the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the foreign distributee continues to own all of the stock and securities of the distributing and controlled corporations that the foreign distributee owned immediately after the distribution (including any stock and securities of the distributing or controlled corporation later acquired from the distributing or controlled corporation for which the distributee has a holding period determined under section 1223 by reference to such stock and securities).

(F) The distribution of stock or securities described in paragraph (c)(3)(i) of this section is not a distribution pursuant to which the distributing corporation goes out of existence.

(G) The distributing corporation files the agreement to recognize gain described in paragraph (c)(3)(iii) of this section with its income tax return for its taxable year in which the distribution is made. In addition, for each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the distributing corporation files with its income tax return the annual certifications described in paragraph (c)(3)(v) of this section.

(H) For each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the foreign distributees for which nonrecognition is claimed under this paragraph (c)(3) provide to the distributing corporation the annual certifications described in paragraph (c)(3)(v) of this section.

(iii) *Agreement to recognize gain.* The agreement to recognize gain required by this paragraph (c)(3)(iii) shall be prepared by or on behalf of the distributing corporation and signed under penalties of perjury by an authorized officer of the distributing corporation. The agreement provided by the distributing corporation shall set forth the following items, under the heading "GAIN RECOGNITION AGREEMENT UNDER § 1.367(e)–1(c)(3)(iii)", with paragraphs labeled to correspond with such items:

(A) A declaration that the distribution is one to which § 1.367(e)–1(c)(3) applies.

(B) A description of each foreign distributee of the distributing corporation for which nonrecognition is claimed under this paragraph (c)(3), which shall include the distributee's—

(*1*) Name;

(*2*) Address;

(*3*) Taxpayer identification number (if any); and

(*4*) Residence and citizenship (in the case of an individual) or place of incorporation (in the case of a corporation).

(C) A description of the stock and securities of the distributing and controlled corporations owned immediately before and after the distribution by each distributee for which nonrecognition is claimed under this paragraph (c)(3), including—

(*1*) The number or amount of shares;

(*2*) The type of stock or securities;

(*3*) The fair market values of the stock and securities of the controlled corporation distributed to the foreign distributee, determined as of the date of the distribution;

(*4*) The fair market values of the stock and securities of the distributing corporation owned by the foreign distributee, determined immediately after the distribution;

(*5*) The total fair market values of the outstanding stock and securities of the distributing corporation, determined immediately after the distribution;

(*6*) The total fair market values of the distributed stock and securities of the controlled corporation, determined immediately before the distribution;

(*7*) The distributing corporation's adjusted basis in the distributed stock and securities immediately before the distribution (computed according to the provisions of paragraph (b)(2) of this section); and

(*8*) For each applicable valuation, a summary of the method (including appraisals, if any) used for determining the values required by this paragraph (c)(3)(iii).

(D) The distributing corporation's agreement to recognize gain in accordance with paragraph (c)(3)(vii) of this section.

(E) A waiver of the period of limitations as described in paragraph (c)(3)(iv) of this section.

(F) An attached statement from each foreign distributee for which nonrecognition is claimed under this paragraph (c)(3) declaring that the foreign distributee shall provide to the distributing corporation the annual certifications described in paragraph (c)(3)(v)(A) of this section for each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 60-month period following the taxable year of the distributing corporation in which the distribution was made.

(G) An agreement by the distributing corporation to attach to its income tax return the annual certification described in paragraph (c)(3)(v)(A) of this section and the statement described in paragraph (c)(3)(v)(B) of this section, in accordance with paragraph (c)(3)(v) of this section.

(H) A statement that arrangements have been made to ensure that the distributing corporation will be informed of any subsequent disposition by the foreign distributee of any stock or securities of the distributing or controlled corporation that are subject to the gain recognition agreement described in this paragraph (c)(3)(iii).

(iv) *Waiver of period of limitation.* The distributing corporation must file, with the gain recognition agreement described in paragraph (c)(3)(iii) of this section, a waiver of the period of limitation on the assessment of tax upon the gain realized on the distribution to the foreign distributee for which nonrecognition is claimed under this paragraph (c)(3). The waiver shall be executed on such forms as are prescribed therefor by the Commissioner and shall extend the period for assessment of such tax to a date not earlier than the close of the eighth full taxable year following the taxable year that includes the distribution. If the requirements of paragraph (c)(3)(ii)(C)(*2*) of this section are satisfied, a waiver of the period of limitation on the assessment of tax upon the gain realized on the distribution must be filed in accordance with the requirements of this paragraph (c)(3)(iv) by or on behalf of the controlled corporation.

(v) *Annual certification*. For each of the taxable years of the distributing corporation, beginning with the taxable year of the distribution and ending with the taxable year that includes the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the distributing corporation must file with its income tax return the annual certification for that year described in this paragraph (c)(3)(v).

(A) Each foreign distributee for which nonrecognition is claimed under this paragraph (c)(3) must provide an annual certification, signed under penalties of perjury by an authorized officer of the foreign distributee corporation or by the individual foreign distributee (as the case may be). Each annual certification must identify the distribution with respect to which it is given by setting forth the date and a summary description of the distribution. In the annual certification, the foreign distributee must declare that—

(*1*) The foreign distributee continues to be, without interruption, a resident of (in the case of an individual foreign distributee) or incorporated in (in the case of a foreign distributee corporation) a country described in paragraph (c)(3)(ii)(D) of this section;

(*2*) The foreign distributee continues to own, without interruption, the stock and securities of the distributing and controlled corporations as described in paragraph (c)(3)(ii)(E) of this section (except to the extent the stock or securities have been disposed of in a transaction described in paragraph (c)(3)(vi) of this section); and

(*3*) If the foreign distributee is a corporation, the foreign distributee continues to meet the active trade or business requirement of paragraph (c)(3)(ii)(B) of this section.

(B) The distributing corporation must attach a statement to the annual certification described in paragraph (c)(3)(v)(A) of this section, signed under penalties of perjury by an authorized officer of the corporation, in which the corporation declares that, to the best of its knowledge, the annual certification is true.

(vi) *Special rule for nonrecognition transactions*. (A) Gain shall not be recognized under paragraph (c)(3)(vii) of this section upon a disposition of stock or securities of the distributing or controlled corporation (or a successor in interest, as defined in this paragraph (c)(3)(vi)) that are subject to a gain recognition agreement described in paragraph (c)(3)(iii) of this section if the requirements of this paragraph (c)(3)(vi) are satisfied and the disposition consists of a transfer described in section 332, 337, 351, 354, or 356, or sections 361 and 381(a)(2).

(B) For purposes of this section, the term successor in interest refers to—

(*1*) Any corporation that acquires the assets of the distributing or controlled corporation (or a successor in interest) in a transaction described in section 381(a) to which this paragraph (c)(3)(vi) applies;

(*2*) Any corporation that acquires the stock or securities of the distributing or controlled corporation (or a successor in interest) in a transaction to which this paragraph (c)(3)(vi) applies;

(*3*) Any corporation whose stock or securities are exchanged for the stock or securities of the distributing or controlled corporation (or a successor in interest) in a transaction described in section 351, 354 or 356 to which this paragraph (c)(3)(vi) applies.

(C) Gain shall not be recognized under paragraph (c)(3)(vii) of this section upon a disposition of stock or securities of the distributing or controlled corporation (or a successor in interest) pursuant to a transaction described in paragraph (c)(3)(vi)(A) of this section if the following requirements are satisfied.

(*1*) Immediately after the transaction and at all times until the end of the 60-month period described in paragraph (c)(3)(vii)(A) of this section, the foreign distributee (or a successor in interest that acquires the assets of the foreign distributee in a transaction described in section 381(a) to which this paragraph (c)(3)(vi) applies) must continue to own directly or indirectly at least 80 percent of the vote and value of the stock and securities of the distributing corporation, and at least 80 percent of the vote and value of the stock and securities of the controlled corporation (or of a successor in interest that acquires the assets of the distributing or controlled corporation, as the case may be, in a transaction described in section 381(a) to which this paragraph (c)(3)(vi) applies), that it owned immediately after the distribution. The requirements of this paragraph (c)(3)(vi)(C)(*1*), however, will not be violated if such ownership drops below the 80 percent threshold by reason of a disposition of the stock or securities of the distributing or controlled corporation (or of a successor in interest that acquires the assets of the distributing or controlled corporation, as the case may be, in a transaction described in section 381(a) to which this paragraph (c)(3)(vi) applies) in a transaction subject to the gain recognition provisions of paragraph (c)(3)(vii) of this section.

(*2*) In a transaction involving a transfer of the assets of the distributing or controlled corporation described in section 381(a), the acquiring corporation must be a domestic corporation.

(*3*) The following information and agreements must be included with the first annual certification filed under paragraph (c)(3)(v) of this section after the transaction—

(*i*) A description of the transaction (including a statement of applicable Code provisions, and a description of stock or securities transferred, exchanged or received in the transaction);

(*ii*) A description of each successor in interest (including the name, address, taxpayer identification number (if any), and place of incorporation of the successor in interest);

(*iii*) Except in the case of a transaction described in section 381(a) pursuant to which the distributing corporation goes out of existence, an agreement of the distributing corporation (amending the agreement described in paragraph (c)(3)(iii) of this section), signed under penalties of perjury by an authorized officer of the corporation, to recognize gain in accordance with the provisions of this paragraph (c)(3) upon the occurrence of any of the following events (to the extent applicable): A disposition by the foreign distributee (or a successor in interest) of any stock or securities of a successor in interest that are subject to the provisions of this paragraph (c)(3)(vi) (other than a disposition that itself satisfies the requirements of this paragraph (c)(3)(vi)); a disposition by a successor in interest of any of the stock or securities of the distributing or controlled corporation (or a successor in interest) that are subject to the provisions of this paragraph (c)(3)(vi) (other than a disposition that itself satisfies the requirements of this paragraph (c)(3)(vi)); or any material failure to satisfy the requirements of this paragraph (c)(3) (or the terms of an agreement submitted pursuant hereto) with respect to the stock or securities of a successor in interest or the transferred stock or securities of the distributing or controlled corporation;

(*iv*) In the case of a transaction described in section 381(a) pursuant to which the distributing corporation goes out of existence, an agreement of the successor in interest that acquires the assets of the distributing corporation in the transaction, signed under penalties of perjury by an authorized officer of the successor in interest corporation, to succeed to all of the responsibilities and duties of the distributing corporation under this paragraph (c)(3);

(*v*) To the extent applicable, an agreement of each successor in interest, signed under penalties of perjury by an authorized officer of the corporation, to succeed to all of the responsibilities and duties of a foreign distributee under this paragraph (c)(3), as applied to the transferred stock and securities of the distributing or controlled corporation (or stock and securities of a successor in interest). The successor in interest, however, is required to comply with the provisions of paragraph (c)(3)(ii)(B) of this section only if the corporation acquires the assets of the foreign distributee in a transaction described in section 381(a). In the case of a successor in interest that is a domestic corporation, the successor in interest is not required to comply with the requirements of paragraph (c)(3)(ii)(D) of this section;

(*vi*) To the extent applicable, an agreement of the foreign distributee, signed under penalties of perjury by the individual or an authorized officer of the corporation (as the case may be), to comply with all responsibilities and duties of this paragraph (c)(3), as applied with respect to stock or securities of a successor in interest received in the transaction.

(D) Any property received (or treated as received) in a transaction described in this paragraph (c)(3)(vi) for which gain is required to be recognized under United States income tax principles shall be treated as an amount received in a disposition subject to the provisions of paragraph (c)(3)(vii) of this section.

(vii) *Recognition of gain.* (A) If, prior to the close of the 60-month period following the end of the taxable year of the distributing corporation in which the distribution was made, the foreign distributee disposes of the stock or securities of either the distributing or controlled corporation that the foreign distributee owned immediately after the distribution, as described in paragraph (c)(3)(ii)(E) of this section (other than pursuant to a transfer described in paragraph (c)(3)(vi) of this section), then by the 90th day thereafter the distributing corporation must file an amended return for the year of the distribution and recognize the gain realized but not recognized upon such distribution. For purposes of this paragraph (c)(3)(vii)(A), a disposition includes, but is not limited to, any disposition treated as a sale or exchange under this title.

(B) The gain shall be computed as if there had been a sale of the distributed stock or securities at fair market value at the time of the distribution. If the foreign distributee disposes of only a portion of the stock and securities of the distributing or controlled corporation, the distributing corporation shall be required to recognize only a proportionate amount of the gain realized but not recognized upon the initial distribution of the stock and securities of the controlled corporation to the foreign distributee. The proportion of the gain required to be recognized shall be equal to the same proportion that the value (determined immediately after the distribution) of the stock and securities of the distributing corporation or controlled corporation (as the case may be) disposed of by the foreign distributee bears to the total value (determined immediately after the distribution) of the stock and securities in such corporation owned by the foreign distributee immediately after the distribution (taking account of stock and securities of the distributing or controlled corporation later acquired from the distributing or controlled corporation for which the distributee has a holding period determined under section 1223 by reference to such stock or securities). However, gain recognized pursuant to this paragraph (c)(3)(vii)(B) on the disposition by the foreign distributee of stock or securities of either the distributing corporation or the controlled corporation (as the case may be) shall not exceed the excess of the gain required to be recognized by the distributing corporation under the gain recognition agreement solely by reason of such disposition and all prior dispositions of the stock and securities of such corporation over the gain already recognized by the distributing corporation under the gain recognition agreement solely by reason of dispositions by the foreign distributee of the stock and securities of the other corporation.

(C) For purposes of computing gain under this paragraph (c)(3)(vii), the following rules shall govern dispositions of stock or securities of the distributing or controlled corporation by a successor in interest, or dispositions of stock or securities of a successor in interest.

(*1*) A disposition by a successor in interest of stock or securities of the distributing or controlled corporation that were acquired in a transaction described in paragraph (c)(3)(vi) of this section shall be treated as a disposition of such stock or securities by a foreign distributee.

(*2*) A disposition by a foreign distributee of a portion of stock and securities of a successor in interest that were received in exchange for stock and securities of the distributing or controlled corporation (as the case may be) in a transaction described in paragraph (c)(3)(vi) of this section shall be treated as a disposition of a proportionate share of such stock and securities of the distributing or controlled corporation owned by the successor in interest at the time of the disposition. The proportionate share shall equal the same proportion that the amount of stock and securities of the successor in interest disposed of bears to the total of stock and securities of the successor in interest originally received in exchange for the stock and securities of the distributing or controlled corporation.

(*3*) Other dispositions of stock or securities of a successor in interest to which paragraph (c)(3)(vi) of this section applies shall result in gain recognition in a manner consistent with the principles of this paragraph (c)(3)(vii)(C).

(D) If additional tax is required to be paid by the distributing corporation for the year of the distribution, interest must be paid by the distributing corporation on that amount at the rates determined under section 6621 with respect to the period between the date that was prescribed for filing the distributing corporation's original income tax return for the year of the distribution and the date on which the additional tax for that year is paid.

(E) Net operating losses, capital losses, or credits against tax that were available in the year of the distribution and that are unused (whether or not they have expired since the distribution) at the time of gain recognition described in this paragraph (c)(vii) may be applied (respectively) against any gain recognized or tax owed by reason of this provision, but no other adjustments shall be made with respect to any other items of income or deduction in the year of distribution or other years.

(viii) *Failure to comply.* (A) Except as otherwise provided in paragraph (c)(3)(viii)(B) of this section, if the distributing corporation fails to comply in any material respect with the requirements of this paragraph (c)(3) or with the terms of an agreement submitted pursuant hereto, or if the distributing corporation knows or has reason to know of any failure of another person to so comply, the distributing corporation shall treat the initial distribution of the stock or securities of the controlled corporation as a taxable exchange in the year of the distribution. In such event, the period for assessment of tax shall be extended until three years after the date on which the Internal Revenue Service receives actual notice of such failure to comply.

(B) If a person fails to comply in any material respect with the requirements of this paragraph (c)(3) or with the terms of an agreement submitted pursuant hereto, the provisions of paragraph (c)(3)(viii)(A) of this section shall not apply if the person is able to show that such failure was due to reasonable cause and not willful neglect, provided that the person achieves compliance as soon as he becomes aware of the failure. Whether a failure to materially comply was due to reasonable cause shall be determined by the district director under all the facts and circumstances.

(d) *Other consequences*—(1) *Distributee basis in stock*. Except where section 897(e)(1) and the regulations thereunder cause gain to be recognized by the distributee, the basis of the distributed domestic or foreign corporation stock in the hands of the foreign distributee shall be the basis of the distributed stock determined under section 358 without any increase for any gain recognized by the domestic corporation on the distribution.

(2) *Exchange under section 897(e)(1)*. With respect to the treatment under section 897(e)(1) of a foreign distributee on the receipt of stock or securities of a domestic or foreign corporation where the foreign distributee's interest in the distributing domestic corporation is a United States real property interest, see section 897(e)(1) and the regulations thereunder.

(3) *Dividend treatment under section 1248*. With respect to the treatment as a dividend of a portion of the gain recognized by the domestic corporation on the distribution of the stock of certain foreign corporations, see section 1248 (a) and (f) and the regulations thereunder.

(4) *Distribution of stock of a passive foreign investment company*. [Reserved]

(5) *No Reporting under section 6038B*. No notice shall be required under section 6038B with respect to a distribution described in this section.

(e) *Examples*. The rules of paragraphs (b), (c), and (d) of this section may be illustrated by the following examples:

Example 1. (i) FC, a Country X corporation, owns all of the outstanding stock of DC1, a domestic corporation. DC1 owns all of the outstanding stock of DC2, another domestic corporation. The fair market value of the DC1 stock is 300x, and FC has a 100x basis in the DC1 stock. The fair market value of the DC2 stock is 180x, and DC1 has a 40x basis in the DC2 stock. Neither DC1 nor DC2 is a U.S. real property holding corporation. Country X does not maintain an income tax treaty with the United States.

(ii) In a transaction qualifying for nonrecognition under section 355(a), DC1 distributes all of the stock of DC2 to FC. After the distribution, the DC1 stock has a fair market value of 120x.

(iii) Under paragraphs (b) (1) and (2) of this section, DC1 recognizes gain of 140x, which is the difference between the fair market value (180x) and the basis (40x) of the stock distributed. Under paragraph (d)(1) of this section and section 358, FC takes a basis of 40x in the DC1 stock, and a basis of 60x in the DC2 stock.

Example 2. (i) C, a citizen and resident of Country F, owns all of the stock of DC, a U.S. real property holding corporation. The fair market value of the DC stock is 500x, and C has a 100x basis in the DC stock.

(ii) In a transaction qualifying for nonrecognition under section 355(a), DC distributes to C all of the stock of DC2, a domestic corporation. DC and DC2 are U.S. real property holding corporations immediately after the distribution. The DC2 stock has a fair market value of 200x, and DC has a 180x basis in the DC2 stock. After the distribution, the DC stock has a fair market value of 300x.

(iii) Under paragraph (c)(1) of this section, DC does not recognize gain on the distribution of the DC2 stock because DC and DC2 are U.S. real property holding corporations immediately after the distribution.

(iv) Under section 897(e) and the regulations thereunder, C is considered to have exchanged DC stock with a fair market value of 200x and an adjusted basis of 40x for DC2 stock with a fair market value of 200x. Because DC2 is a U.S. real property holding corporation, and its stock is a U.S. real property interest, C does not recognize any gain under section 897(e) on the distribution. C takes a basis of 40x in the DC2 stock, and its basis in the DC stock is reduced to 60x pursuant to section 358.

Example 3. (i) All of the outstanding common stock of DC, a domestic corporation, is regularly traded on an established securities market located in the United States. None of the foreign shareholders of DC directly or indirectly owns more than five percent of the common stock of DC.

(ii) In a transaction qualifying for nonrecognition under section 355(a), DC distributes all of the stock of DS, a domestic corporation, to the common shareholders of DC. The stock of DS has appreciated in the hands of DC.

(iii) Under paragraph (c)(2) of this section, DC does not recognize gain on the distribution of the DS stock to any foreign distributee. Each shareholder's basis in the DC and DS stock is determined pursuant to section 358.

Example 4. (i) FC, a Country X corporation, owns all of the stock of DC1, a domestic corporation. The fair market value of the DC1 stock is 1,000x, and FC has a basis in the DC1 stock of 800x. Country X maintains an income tax treaty with the United States that includes an information exchange provision. In addition to owning stock in DC1, FC directly engages in an active trade or business in Country X.

(ii) In a transaction qualifying for nonrecognition under section 355(a), DC1 distributes to FC all of the stock of DC2, a domestic corporation. The DC2 stock has a fair market value of 500x at the time of the distribution, and DC1 has a 100x basis in the DC2 stock. Immediately after the distribution, the DC1 stock has a fair market value of 500x. Neither DC1 or DC2 is a U.S. real property holding corporation.

(iii) Under paragraph (c)(3) of this section, DC1 will not recognize gain on the distribution of the DC2 stock if DC1 enters into a gain recognition agreement, as described in paragraph (c)(3)(iii), and DC1 and FC otherwise comply with all of the provisions of paragraph (c)(3) of this section. Pursuant to section 358, FC will take a 400x basis in the DC2 stock and FC's basis in the DC1 stock will be reduced to 400x.

Example 5. (i) Assume the same facts as in *Example 4* and that DC1 enters into a gain recognition agreement pursuant to paragraph (c)(3) of this section. Two years after DC1's distribution of DC2 stock to FC, FC sells 25 percent of the DC2 stock to Y, an unrelated corporation. One year after the DC2 stock sale, FC sells 50 percent of its DC1 stock to Z, another unrelated corporation. In the next year, FC sells to Y an additional amount of DC2 stock representing 10% of the DC2 shares distributed to FC.

(ii) Under paragraph (c)(3)(vii) of this section, upon FC's sale of 25 percent of its DC2 stock, DC1 is required to file an amended return for the year in which the DC2 stock was distributed to FC, and recognize 100x of gain, which represents 25 percent of the gain realized but not recognized on the distribution.

(iii) Upon FC's subsequent sale of 50 percent of its DC1 stock, DC1 is required to file another amended return for the year of the distribution and recognize an additional 100x of gain. This represents the excess of the total amount of gain required to be recognized under the gain recognition agreement, determined solely by reference to FC's disposition of DC1 stock (200x), over the gain previously required to be recognized under the agreement, determined solely by reference to FC's disposition of DC2 stock (100x).

(iv) Upon FC's sale of additional DC2 stock representing 10 percent of the DC2 stock distributed to it, DC1 is not required to recognize additional gain. This is because the total amount of gain already recognized by DC1 under the gain recognition agreement solely by reason of FC's disposition of DC1 stock (200x) exceeds the amount gain that would be required to be recognized under the agreement solely by reason of FC's total dispositions of DC2 stock (40x plus 100x).

Example 6. (i) Assume the same facts as in *Example 4* and that DC1 enters into a gain recognition agreement pursuant to paragraph (c)(3) of this section. One year after DC1's distribution of DC2 stock to FC, FC transfers all of the DC2 stock to FS, a Country X corporation, in a transaction described in section 351. FC receives, in exchange for the DC2 stock, FS stock possessing 90 percent of the voting power and value of all of the outstanding stock of FS. The remaining 10 percent of the stock of FS is issued in the transaction to C, an unrelated corporation.

(ii) DC1 will not recognize gain under the gain recognition agreement upon FC's disposition of the stock of DC2 if DC1 enters into a new agreement to recognize gain on FC's disposition of the FS stock or FS's disposition of the DC2 stock, and DC1, FC and FS otherwise comply with the successor in interest provisions of paragraph (c)(3)(vi) of this section.

(iii) Assume that two years after DC1 enters into a new gain recognition agreement in accordance with paragraph (c)(3)(vi) of this section, FS sells one-half of its DC2 stock. One year later, FC sells one-half of its FS stock. Upon FS's sale of the DC2 stock, DC1 is required to file an amended return for the year in which the DC2 stock was distributed to FC, and recognize 200x (one-half of 400x) of the gain realized but not recognized on the distribution. Upon FC's subsequent sale of the FS stock, the entire remaining amount of gain realized on the distribution (200x) is required to be recognized pursuant to paragraph (c)(3)(vii) of this section because FC no longer complies with paragraph (c)(3)(vi)(C)(*1*) of this section. Therefore, paragraph (c)(3)(vii)(C)(*2*) of this section does not apply to determine the amount of gain required to be recognized upon FC's sale of the FS stock.

Example 7. (i) P1, a partnership organized under the laws of Country X, owns all of the outstanding stock of DC1, a domestic corporation. DC1 owns all of the outstanding stock of DC2, another domestic corporation. The fair market value of the DC1 stock is 800x and P1 has an 800x basis in the DC1 stock. The fair market value of the DC2 stock is 600x and DC1 has a 400x basis in the DC2 stock. Neither DC1 nor DC2 is a U.S. real property holding corporation.

(ii) Y, a Country X corporation, and P2, another partnership organized under the laws of Country X, are the sole partners of P1. Under the rules and principles of sections 701 through 761, Y and P2 are each entitled to a 50 percent distributive share of each item of P1 income and loss. V, a domestic corporation, and Z, a Country X corporation, are the sole partners of P2. Under the rules and principles of sections 701 through 761, V and Z are each entitled to a 50 percent distributive share of each item of P2 income and loss.

(iii) In a distribution qualifying for nonrecognition under section 355(a), DC1 distributes all of the stock of DC2 to P1. Because the distribution is to a partnership, DC1 may not avoid recognition of gain on the distribution by entering into a gain recognition agreement pursuant to paragraph (c)(3) of this section (unless DC1 obtains a ruling from the Internal Revenue Service to the contrary).

(iv) Under paragraph (b)(5) of this section, if DC1 establishes that V is a domestic corporation that owns a 50 percent interest in P2, which owns a 50 percent interest in P1, DC1 will be required to recognize only 75 percent (150x) of the gain realized on the distribution. This gain must be recognized even though P1 would not realize any gain on a sale of the DC2 stock following the distribution because its basis in the stock (600x) equals the stock's fair market value (600x).

Example 8. (i) DC1, a domestic corporation, owns all of the stock of DC2, also a domestic corporation. The stock of DC1 is owned equally by X, a domestic corporation, and FY, a Country Y corporation.

(ii) A short time before DC1 adopted a plan to distribute the stock of DC2 to its shareholders, but after the board of directors of DC1 began contemplating the distribution, FY formed Newco, a domestic corporation, and contributed its DC1 stock to Newco in a transaction qualifying for nonrecognition under section 351. A valid business purpose existed for FY's transfer of the DC1 stock to Newco, but this business purpose would have been fulfilled irrespective of whether FY transferred the stock to Newco before the distribution of DC2, or after the distribution of DC2 (in which case FY would have transferred the stock of DC1 and DC2 to Newco).

(iii) Pursuant to paragraph (b)(6) of this section, the District Director may determine that FY formed Newco for a principal purpose of avoiding section 367(e)(1). In such case, for federal income tax purposes, FY will be treated as having received the stock of DC2 in a section 355 distribution, and then as having transferred the stock to Newco in a section 351 transaction.

(f) *Effective date.* This section shall be effective with respect to distributions occurring on or after January 16, 1993. However, a corporation may elect to apply this section to all distributions made by it after February 15, 1990, and before January 16, 1993, to which section 367(e)(1) applies, by timely filing an original or amended return for the year of distribution, and otherwise complying with the provisions of this section. A corporation making such an election may choose to comply with § 1.367(e)–1T(c)(2)(i)(C) (as contained in the 26 CFR part 1 edition revised as of April 1, 1992) instead of paragraph (c)(3)(ii)(B) of this section, and any annual certification submitted in compliance with § 1.367(e)–1T(c)(2)(ii)(F) (as contained in the 26 CFR part 1 edition revised as of April 1, 1992), prior to January 16, 1993, will be considered as complying with the annual certification requirements of paragraph (c)(3)(v) of this section.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.10 [Amended]

Par. 5. Section 602.101(c) is amended by removing from the table "§ 1.367 (e)–1T * * * 1545–1124" and adding in its place "§ 1.367 (e)–1 * * * 1545–1124".

Approved: January 4, 1993.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: January 4, 1993.

Alan J. Wilensky,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–1398 Filed 1–15–93; 3:50 pm]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 64, 65, and 69

[CC Docket No. 91–141, FCC 92–552]

Expanded Interconnection With Local Telephone Company Facilities; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rules published Thursday, December 31, 1992. The rules related to the modification requiring Tier 1 LECs to file initial tariffs for only a subset of their central offices, and to establish new procedures for the tariffing of additional central offices thereafter.

EFFECTIVE DATE: February 16, 1993, except that the requirements that Southwestern Bell Telephone Co. (SW Bell) file a list of central offices by December 28, 1992 and that interconnectors be permitted to request additional offices on or before January 15, 1993 shall be operative upon the release of the Order.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, 202–653–6975, or Linda L. Haller, 202–632–1298, Common Carrier Bureau, Policy and Program Planning Division.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the Paperwork Reduction Act statement was inadvertently omitted from the materials included in the **Federal Register.**

Correction of Publication

Accordingly, the publication on Thursday, December 31, 1992, of the final rules, which were the subject of FR Doc. 92–31714, is corrected as follows:

On page 62482, column 2, the following should be inserted before the heading reading "Ordering Clauses":

Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Records Management Division, room 416, Paperwork Reduction Project, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1661 Filed 1–22–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[GC Docket No. 92–223; FCC 93–42]

Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. 1464

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Federal Communications Commission adopts regulations to establish the times of day during which indecent programming may not be broadcast on radio and television stations. The regulations, promulgated pursuant to section 16(a) of the Public Telecommunications Act of 1992, prohibit the broadcast of indecent material between the hours of 6 a.m. and 10 p.m. on public broadcast stations that go off the air at or before 12 midnight, prohibit the broadcast of indecent programming on all other broadcast stations between 6 a.m. and 12 midnight, and prohibit obscene broadcasts at all times.

EFFECTIVE DATE: February 24, 1993.

FOR FURTHER INFORMATION CONTACT: Peter Tenhula, Office of General Counsel, Federal Communications Commission, 202–254–6530.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Report and Order in GC Docket No. 92–223, adopted January 19, 1993. The full text of this document, including the Final Regulatory Flexibility Analysis, is available for public inspection and copying, Monday through Friday, 9 a.m. to 4:30 p.m. in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

2. This action is taken pursuant to section 16(a) of the Public Telecommunications Act of 1992, Public Law 102–356, section 16(a), 106 Stat. 949, 954 (1992), enacted August 26, 1992, which states that the Federal Communications Commission shall promulgate regulations to prohibit the broadcasting of indecent programming—

(1) between 6 a.m. and 10 p.m. on any day by any public radio station or public television station that goes off the air at or before 12 midnight; and

(2) between 6 a.m. and 12 midnight on any day for any radio or television broadcast station not described in paragraph (1).

3. On October 5, 1992, the Commission released a Notice of Proposed Rule Making, 7 FCC Rcd 6464 (1992), 57 FR 46132, October 7, 1992, which invited interested parties to comment on proposed rules drafted in accordance with section 16(a) and 18 U.S.C. 1464, the principal statute governing obscene and indecent broadcasts. The Commission also asked commenters to update the record in connection with the presence of children in the viewing and listening audience as it relates to the government's interest in restricting the broadcasting of indecent material. In this Report and Order, the Commission adopts rules tracking section 16(a) and prohibiting the Broadcast of obscene programming at all times pursuant to 18 U.S.C. 1464.

4. In addition to amending § 73.3999 of the Commission's Rules (47 CFR 73.3999), the Commission's Report and Order addresses issues raised by the commenters, and previously by the courts, that are relevant to this proceeding, including the scope of the government's interest in regulating broadcast indecency, the definition of "children" for purposes of channeling indecent broadcast materials, and harm to children. The Report and Order also discusses the channeling approach to regulating broadcast indecency, concluding that although there is a reasonable risk that a significant number of children (defined as those ages 17 and under) are in the radio and television audience during all hours of the day and night, the "safe harbor" time period established by the statute and FCC regulations is necessary to accommodate the interests of broadcasters and adult listeners and viewers.

5. In the Report and Order, the Commission tentatively concludes that in enforcing restrictions on indecent broadcasts it will continue to consider, on a case-by-case basis, evidence from a station charged with indecent broadcasting that there was no actual risk that children were in the broadcast audience in the station's market at the time of the broadcast in question. The submission of market-wide data demonstrating that there was no appreciable child audience during the relevant time period may raise a viable defense to a charge of indecency outside of the safe harbor time period.

6. Accordingly, *it is ordered that,* For the reasons discussed in the Report and Order and pursuant to section 16(a) of the Public Telecommunications Act of 1992, Public Law 102–356, section 16(a), 106 Stat. 949, 954 (1992), and sections 4 (i) and (j), 303 and 312 of the Communications Act of 1934, as amended (47 U.S.C. 154 (i) and (j), 303, 312), § 73.3999 of the Commission's Rules (47 CFR § 73.3999) is amended, as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Amendatory Text

Part 73, chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 73.3999 is revised to read as follows:

§ 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a public broadcast station, as defined in 47 U.S.C. 397(6), that goes off the air at or before 12 midnight shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

(c) No licensee of a radio or television broadcast station not described in paragraph (b) of this section shall broadcast on any day between 6 a.m. and 12 midnight any material which is indecent.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–1763 Filed 1–22–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AA98

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Bruneau Hot Springsnail in Southwestern Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Bruneau Hot Springsnail (*Pyrgulopsis bruneauensis*). This species occurs only in a complex of related thermal springs and their immediate outflows along the Bruneau River in Owyhee County, Idaho. The primary threat to this species is the reduction of thermal spring habitats from agricultural-related ground water withdrawal/pumping. This rule implements the protection and recovery provisions afforded by the Act for this aquatic snail.

DATES: The effective date of this rule is February 24, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Boise Field Office, U.S. Field and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Lobdell at the above address (telephone 208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

Borys Malkin first collected the Bruneau Hot Springsnail in springflows at the Indian Bathtub in upper Hot Creek along the Bruneau River in 1952. The following year, W.F. Barr collected additional specimens, which were sent to the U.S. National Museum in Washington, DC (now the National Museum of Natural History) (Taylor 1982). Morrison determined that it represented a previously unknown genus and species of springsnail of the family *Hydrobiidae*. Dwight Taylor (1982) pursued subsequent field and laboratory studies of this snail from 1959 through 1982. Based on these studies, Taylor prepared a brief physiological and biological description of the species and suggested the common name of the Bruneau Hot Spring Snail. In 1990, Robert Hershler formally described the species from type specimens collected from the Indian Bathtub in Hot Creek, naming it *Pyrgulopsis bruneauensis*, with a new common name of Bruneau Hot Springsnail (Hershler 1990).

Adult Bruneau Hot Springsnails have a small, globose to low-conic shell reaching a length of 5.5 millimeters (mm) (.22 inch) with 3.75 to 4.25 whorls. Fresh shells are thin, transparent, white-clear, appearing black due to pigmentation (Hershler 1990). In addition to its small size (<2.8 mm (.11 inch) shell height), distinguishing features include a verge (penis) with a small lobe bearing a single distal glandular ridge and elongate, muscular filament. They are dioecious and lay single round to oval eggs on hard surfaces such as rock substrates or other snail shells.

The Bruneau Hot Springsnail is found only in the springflows of Hot Creek and 128 small, flowing thermal springs and seeps along an approximately 8.5 kilometer (km) (5.28 mile) length of the Bruneau River in southwestern Idaho (Mladenka 1992). A majority (n=116) of occupied springsnail habitats are located along both shorelines of the Bruneau River up to 4.46 km (2.77 miles) above its confluence with Hot Creek while the remaining sites occur up to 4.30 km (2.67 miles) below the Hot Creek-Bruneau River confluence. Most of the springs and seeps containing springsnails are small, ranging from 0.15 square meters (m) (1.6 square feet (ft)) to 37 square m (398 square ft) in area, with a mean size of almost 1 square m (10.8 square ft). These spring sites are located primarily above the high-water mark of the Bruneau River and are separated by distances of less than 1 m (3.28 ft) to greater than 2,000 m (6,562 ft) (Mladenka 1992). The Indian Bathtub area (the type locality, now covered with sediment) and most of the springs along the Bruneau River upstream of Hot Creek are on lands administered by the Bureau of Land Management (Bureau), while most springsnail habitats downstream of the Indian Bathtub and Hot Creek are on private land.

There are no additional historic records for this species from the United states or elsewhere. Additional surveys of thermal springs in the Bruneau and Jarbridge River Basins in southwest Idaho and the Owyhee River in southeast Oregon conducted during January, 1987, and several springs along the West Fork Bruneau River in 1990, failed to locate additional populations (Pat Olmstead, Bureau of Land Management, pers. comm.).

The species has been found in flowing thermal springs and seeps with temperatures ranging from 15.7 °C to 35.7 °C, with highest densities (>1,000 per square m (10.8 square ft)) of snails noted at temperatures ranging from 24.8 °C to 35.7 °C (Mladenka 1992. No Bruneau Hot Springsnails have been collected outside thermal plumes of hot springs entering the Bruneau River. They are found in these habitats on the exposed surfaces of various substrates, including rocks, gravel, sand, mud and algal film. However, during the winter period of cold ambient temperatures and icing, the springsnails are most often located on the undersides of outflow substrates, habitats least exposed to cold temperatures. In madicolous habitats (thin sheets of water flowing over rock faces), the species has been found in water depths less than 1 centimeter (cm) (.39 inch). Current velocity is not considered a significant factor limiting the springsnails distribution, since they have been observed to inhabit nearly 100 percent of the available current regimes. In a September 1989 survey of 10 thermal springs containing the species in the vicinity of the Hot Creek-Bruneau River confluence, the total number of snails per spring ranged from 1 to 17,319 (Mladenka 1992). Springsnail abundance generally fluctuates seasonally; abundance is influenced primarily by water temperature, spring discharge and food availability.

Springsnails appear to be opportunistic grazers as food habit studies reveal algal genera are taken in proportions similar to those found in their habitat (Mladenka 1992). However, springsnail densities are lowest in areas of bright green algal mats, while higher snail densities occur where periphyton communities are dominated by diatoms. Based on laboratory studies, springsnail growth was retarded at cooler temperatures (<24 °C).

Sexual maturity can occur at two months, with a sex ratio of approximately 1:1. Reproduction occurs throughout the year except when inhibited by high or low temperatures (Mladenka 1992). Mladenka noted reproduction occurs at temperatures between 24° and 35 °C. At sites affected by high ambient temperatures during summer and early fall months, recruitment was seasonal, corresponding with cooler periods. Likewise, sites with cooler ambient temperatures would likely exhibit recruitment during the summer months. Springsnails use "hard" surfaces such as rock substrate to deposit their eggs. They may deposit eggs on other snails' shells when other hard surfaces are unavailable.

Common aquatic community associates of the springsnail include three molluscs: *Physella gyrina* (Say) (Physidae), *Fossaria exigua* Lea (Lymnaeidae) and *Gyraulus vermicularis* Lea (Planorbidae); the creeping water bug *Ambrysus mormon minor* La Rivers (Naucoridae), which is also endemic to the Hot Creek thermal spring complex; and the skiff beetle *Hydroscapha natans* (Hydroscaphidae). In addition, Hot Creek and several of the thermal springs support populations of guppies, *Poecillia reticulata* and a species of *Tilapia*, an exotic fish in the family Cichlidae. It is believed that guppies were originally released into upper Hot Creek at the Indian Bathtub, from which they spread downstream and into nearby thermal springs and seeps (Bowler and Olmstead 1991).

The major threat to the Bruneau Hot Springsnail is the reduction or reduced water levels in thermal spring habitats from groundwater withdrawal/mining of the regional geothermal aquifer system. Within the past 25 years, flows from the Indian Bathtub springs have decreased, thereby restricting the springnail's habitat area and reducing its numbers. Recent studies indicate that natural discharge (= recharge) prior to ground water development in the Bruneau-Grandview area equalled approximately 23,000 acre feet per year, while groundwater pumpage in the area during 1991 was approximately 34,700 acre feet (Charles Berenbrock, U.S. Geological Survey (USGS), written communication). These figures indicate that withdrawals exceeded the estimate rate of recharge by nearly 12,000 acre feet during 1991, and upwards of 26,000 acre feet in 1981, when ground water pumpage was nearly 49,900 acre feet. Mladenka (1992) noted that the springsnail population in Hot Creek may have declined generally by 50 percent from Taylor's (1982) earlier estimates of abundance, and the species has been totally eliminated in local areas such as the Indain Bathtub springs. For example, in 1964 spring discharge at the Indian Bathtub was an estimated 2,400 gallons per minute (gpm). Following increased ground water development and pumpage in the mid-1960's, springflows at the Indian Bathtub had declined to 458 gpm by 1972. During June to July 1978, flow was down to between 130 to 162 gpm and by 1985 the spring no longer flowed during the irrigation season between July and October. Ongoing drought conditions since the mid-1980's have resulted in increased reliance on ground water for irrigated agriculture in the Bruneau basin, causing the extent of seepage at several of the springnail's spring sources to be greatly reduced in recent years. Considerable springsnail habitat has also been lost in recent years due to sedimentation from flash flooding. This is especially true for the Indian Bathtub spring area where the species was first discovered. Heavy sedimentation of gravel, sand and silt from a July 1992 flood totally covered over and eliminated remaining springsnail habitat in the Indian Bathtub and upper Hot Creek (Robinson et al. 1992).

Previous Federal Action

On May 22, 1984, the Service included in Bruneau Hot Springsnail as a category 1 candidate species in the invertebrate notice of review (49 FR 21664), based primarily on the results of field surveys conducted by Dr. Dwight Taylor. Category 1 candidates are taxa for which the Service has on file enough substantial information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. The Service proposed the Bruneau Hot Springsnail for listing as endangered on August 21, 1985 (50 FR 33803). The comment period on this proposal, which originally closed on October 21, 1985, was extended to December 31, 1985 (50 FR 45443). To accommodate public hearings in Boise and Bruneau, Idaho, the comment period was reopened until February 1, 1986 (50 FR 51894). At the time of the hearings and subsequently, the Idaho Department of Water Resources (IDWR) and others questioned the Service's analysis of available scientific information. In particular, they believed that surveys of available habitat were incomplete and the analysis of human induced impacts was erroneous. In order to solicit additional information and adequately respond to these concerns, the Service on December 30, 1986 gave notice of a six month extension of the period of consideration and reopened the public comment period until February 6, 1987, to solicit additional information (51 FR 47033).

Following the six month extension period in which the IDWR proposed additional biological and hydrological studies in the Bruneau-Grandview area, a decision was agreed upon by Idaho's two U.S. Senators and the Service to develop a multi-agency cooperative conservation plan for the springsnail. Subsequently, the U.S. Congress allocated additional monies to the Service to fund these studies starting in 1987. Information gained from the studies was to be used to develop a cooperative conservation (management) plan to achieve the conservation and protection of the Bruneau Hot Springsnail, thus removing the threats facing the species and eliminating the need to list under the Act. The three entities involved in the studies for the cooperative conservation planning efforts included the IDWR, U.S. Geological Survey (USGS), and Idaho State University. The IDWR was to accomplish three primary tasks through the studies: (1) Prepare a Geographic Information System (GIS) for the study area, (2) prepare geological maps to define the bedrock geology and record the location, elevation, flow and temperature of area springflows, and (3) evaluate and analyze Federal and State laws applicable to a conservation plan for the springsnail and assess management alternatives open to IDWR to protect springsnail habitats. The Service also provided funds for the USGS to conduct a three-phase groundwater study of the Bruneau River valley and basin. This study focused on the hydrology of the regional geothermal system and surrounding hot springs, with an overall goal to determine the cause of declining springflows affecting the Bruneau Hot Springsnail. Finally, the Service provided funds to the Stream Ecology Center, Idaho State University, to study the biological, ecological, and physiological needs of the Bruneau Hot Springsnail. The Service also entered into a short-term conservation easement with Owen Ranches, Inc., owners of much of the snail's habitat in Hot Creek and the Indian Bathtub springs. Terms of the easement included fencing to regulate livestock use to improve stream flows. Expiration of this agreement would coincide with the completion of the hydrologic studies by USGS.

On July 6, 1992, the Idaho Conservation League and the Committee for Idaho's High Desert filed a lawsuit in Federal District Court in Boise, Idaho, over the Service's failure to make a final determination on the listing of the springsnail. In order to respond to the concerns raised in the lawsuit and to ensure the accuracy of any final decision concerning the appropriateness of listing, the Service reopened the public comment period on October 5, 1992 (57 FR 45762), for a period of 30 days, and on December 18, 1992 (57 FR 60160), for a period of 10 days.

The Service now determines the Bruneau Hot Springsnail to be an endangered species with publication of this rule.

Summary of Comments and Recommendations

In the August 21, 1985, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the Idaho Statesman and the Mountain Home News on November 18 and November 20, 1985, respectively. Two public hearings were held, the first on December 10, 1985, requested by the Idaho Department of Water Resources in Boise, and the second on January 15, 1986, in Grandview, Idaho, requested by Lieutenant Governor David Leroy and others. The comment period, which originally closed on October 21, 1985, was extended to December 31, 1985 (50 FR 45443), then again to February 1, 1986 (50 FR 51894), to accommodate these hearings. The public comment period was again reopened on December 30, 1986, until February 6, 1987 (52 FR 47033); on October 5, 1992 (57 FR 45762); and December 18, 1992 (57 FR 60160). These actions accommodated the receipt of additional information.

Comments in response to the proposed rule were received from 115 individuals and agencies. The Service considered all comments received, including oral testimony from two public hearings on the proposal to list the snail. Thirty-one of the commenters supported the proposal while 77 were opposed to the proposed action. The remaining commenters did not state an opinion on the listing; some provided new/substantive information, which has been incorporated into the final rule. The Bureau of Land Management and three conservation organizations: The Committee for Idaho's High Desert, Idaho Natural Resources Legal Foundation, Inc. and Defenders of Wildlife all supported the proposed listing. Comments opposed to the proposed listing were received from two U.S. Senators, former Idaho Governor John Evans, former Idaho Lieutenant Governor David Leroy, an Idaho State Senator and Idaho State Representative representing Elmore and Owyhee Counties, Idaho Water Resource Board, Idaho Department of Agriculture, Idaho Water Users Association, Idaho Cattle Association, National Cattlemen's Association, Idaho Water Resources Research Institute, and Idaho Farm Bureau. Opposition to the original proposed rule was based on several factors, including possible impacts to existing and further agricultural development in the affected area; assertions that surveys of available habitat and snail distribution used to prepare the proposed rule were inadequate; and that the analysis of ground water withdrawal impacts were erroneous. Comments of a similar nature or point of concern are grouped into a number of general issues. A summary of these issues and the Service's response to each are discussed below.

Issue 1. Several commenters requested that the Service delay or preclude listing the Bruneau Hot Springsnail because too little is known regarding its present status. They believed additional snail populations may exist in other locations. Some individuals provided locations of nearby springs where "small black snails" occur. Others believed the species may be more common or widespread than the Service stated in the proposed rule. In addition, several respondents suggested that the Service initiate a comprehensive studies program for the Bruneau Hot Springsnail to develop additional information on distribution and habitat requirements prior to any final listing decision. For example, in 1985 IDWR and Idaho's then Governor John V. Evans, supported a "two-year cooperative study" as the most sensible approach to this problem.

Service Response: The listing process includes an opportunity for the public to comment and provide information that is evaluated and considered by the Service before making a final decision. Aside from previously cited studies and reports in the 1985 proposed rule (50 FR 33803), the Service has reviewed and considered new information regarding distribution and general life history for the Bruneau Hot Springsnail from a recently completed 3-year study in the Bruneau River basin (Mladenka 1992). The study examined a larger geographical area than previous studies cited in the proposed rule and reported 128 additional thermal spring or seep sites along the Bruneau River over a distance of 8.5 km (5.28 miles) containing the species. However, given that all thermal springs along this reach of river arise from a single regional geothermal aquifer (Berenbrock, USGS, written communication), these newly discovered springsnail populations and their habitats are as threatened by continuing declines in Bruneau valley spring discharges as the remaining Hot Creek populations. Additionally, remaining populations are vulnerable to habitat alteration and loss from flash-flooding. Springsnail populations were drastically reduced in Hot Creek following a major flood (runoff) event in July 1992 (Robinson et al. 1992). In summary, the Bruneau Hot Springsnail remains endemic to a small geographic area in southwestern Idaho and is totally dependent upon thermal springflows originating from a common groundwater source for its survival.

Issue 2. Some commenters questioned whether the use of ground water for agricultural and aquacultural purposes is the primary cause of the reduced springflows in Hot Creek. They believe climatic and geologic factors may also be contributing to declining springflows and suggested that the Service conduct additional hydrology studies of the underlying aquifer and thermal springs in the Bruneau Valley prior to any listing decision on the springsnail.

Service Response: Despite the above claims, no new information was provided to contradict the Service's contention that the Bruneau Hot Springsnail is threatened by the reduction of its thermal spring habitats from agricultural-related ground water withdrawal/pumping and other threats present in the Bruneau area (see Factor A in "Summary of Factors Affecting the Species"). The USGS has developed a conceptual model of the geothermal aquifer system that characterizes the geohydrology of the aquifer system (Berenbrock, USGS, written communication). The conceptual model, using both direct and indirect evidence, also describes the hydraulic connection between the aquifer system and the series of thermal springflows along the Bruneau River containing Bruneau Hot Springsnails. Additional information in the USGS study describes how over the past 25 years, discharge from many of the springs along Hot Creek and Bruneau River have decreased, especially springflows at the Indian Bathtub (Berenbrock, USGS, written communication). Spring discharge in 1964 was approximately 2,400 gpm, had dropped to between 130 to 162 gpm in June to July 1978 (Young et al. 1979), and by the summer of 1990 discharge was zero. The USGS believes that prior to extensive ground water development, recharge to the geothermal aquifer was balanced by discharge. Ground water flows northward through volcanic rocks from areas of recharge along the

Jarbridge and Owyhee Mountains to the Bruneau area, where it is discharged as either springflow or leaves the area as underflow. Natural recharge to and discharge from the regional geothermal aquifer underlaying the 600-square mile Bruneau area was estimated to be approximately 22,800 acre-feet per year (Berenbrock, USGS, written communication). Of that amount, approximately 10,100 acre-feet was discharged from springflows and the remaining 12,700 acre-feet was underflow. Ground water discharge (=withdrawal) from wells for domestic and agricultural purposes began during the late 1890's (Berenbrock, USGS, written communication). From 1890 to 1978, well discharge increased from 0 to approximately 40,600 acre-feet per year. Annual well discharge has exceeded annual recharge since 1965, when the rate of increase in ground water pumpage accelerated. Pumping has caused hydraulic heads or water levels in the volcanic rock portion of the geothermal aquifer to decline more than 9.5 m (30 ft) in much of the Bruneau area and at least 23 m (70 ft) in one USGS observation well. For example, in another well, water levels declined almost 3 m (10 ft) from 1979 to 1992, or about 0.2 m (.66 ft) per year. Changes in discharge from thermal springs corresponds with changes in hydraulic head, which normally fluctuate seasonally and are substantially less during late summer than in the spring.

At this time, there is no information available on how much of the recent decline in water levels can be attributed to the effects of protracted drought conditions throughout southwestern Idaho. Total well discharge (=ground water withdrawal) has declined from a maximum of 49,900 acre-feet in 1981 to 34,700 acre-feet in 1991, in large part due to area farmer participation in the Conservation Reserve Program administered by the U.S. Soil Conservation Service. Some individuals believe that under 'normal' (non-drought) conditions, a reduction in ground water withdrawal might cause water levels to recover or possibly slow their rate of decline (Idaho Department of Water Resources (IDWR) 1992). While drought may be a contributing factor, springflows at the Indian Bathtub and water levels in USGS observation wells in the volcanic rock portion of the aquifer continued to show a steady decline during the early 1980's period of normal precipitation prior to the onset of drought conditions beginning in 1986. The USGS believes that there is very little to no recharge in the geothermal aquifer from direct precipitation in the Bruneau area (Berenbrock, USGS, written communication) since a stable isotopic analysis of thermal waters in the Bruneau area by Young and Lewis (1982) "* * * indicates that none of the hot water discharged from the geothermal system is derived from present-day, local precipitation." They go on to state that resident time calculated on the basis of reservoir (=aquifer) volume and discharge "* * * is probably at least 3,400–6,800 years, and in view of recent carbon-14 analysis, perhaps as long as 25,000 years." One additional side-effect of protracted drought conditions is the increased reliance (=pumpage) on ground water for irrigated agriculture to offset lack of surface water supplies. Regardless of cause, if water-levels in the geothermal aquifer continue to decline, the Service believes all thermal springflows containing Bruneau Hot Springsnails will eventually cease to flow and their habitat will be eliminated.

Issue 3. Some commenters stated that the Bruneau Hot Springsnail is prolific and has "* * * the ability to reproduce at a level that is remarkable with an increase in nine months of several hundred fold", therefore "* * * it does not appear that the snail is endangered, but that the hot springs in which it exists is endangered." They believe the Service should concentrate on "positive" (alternative) measures such as maintaining captive populations or transplanting snails to other springs, rather than listing.

Service Response. Under the Act, a species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). Factor A includes "The present or threatened destruction, modification, or curtailment of its habitat or range." Absolute population numbers, total number of extant populations, or the ability to rapidly reproduce are less important to a species' long-term survival if its remaining habitat is threatened and cannot be preserved. In addition, according to section 2(b) of the Act, "* * * the purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved". Once a species becomes listed as threatened or endangered, section 4(f) of the Act directs the Service to develop and implement recovery plans for that species. Recovery is the process by which the deadline of a listed species is arrested or reversed, and threats to its survival are eliminated or neutralized. Two goals of this process are: (1) The maintenance of secure, self-sustaining wild populations of species with the minimum necessary investment of resources, and (2) to restore listed species to a point where they are viable self-sustaining components of their ecosystems, so as to allow 'delisting' (U.S. Fish and Wildlife Service 1990). While the Service recognizes that captive propagation and transplantation can be valid conservation tools and assist in recovery, in the case of the Bruneau Hot Springsnail, these measures would not contribute to "maintenance of secure, self-sustaining" populations. Even if successful transplantion could be achieved, unless measures are taken to reverse the trend of declining thermal spring discharges throughout the Bruneau area, transplanted populations would eventually be subject to the same threats as existing springsnail populations and their habitats.

Issue 4. The Idaho Water Users Association, Inc. maintains that the conservation of the Bruneau Hot Springsnail should be addressed through other existing regulatory mechanisms and not through the listing process. Because "* * * none of the agencies have asked for any specific regulatory consideration for the (Bruneau) area" there may be opportunities to remedy any threats to the Bruneau Hot Springsnail outside of the Act. For example, they believe the Bureau of Land Management (Bureau) should manage the snail's habitat as an Area of Critical Environmental Concern (ACEC).

Service Response: The Service acknowledges that designating an ACEC for the species on Bureau lands would recognize the unique attributes of the springsnail and its habitats. Although this designation might result in increased protection for springsnail habitats from cattle grazing on public lands, such recognition would not and could not address the primary threat to the survival of the species, which is further habitat loss due to ground water withdrawal from adjacent private lands. In any event, ACEC designations are within the purview of the Bureau and not the Service. To date, the Bureau has not considered an ACEC designation for Bureau lands associated with the Bruneau Hot Springsnail (Fred Minckler, Bureau, Boise, pers. comm.). The Idaho Department of Water Resources (IDWR) regulates ground water development in the Bruneau area. In 1982, the IDWR established the Bruneau-Grandview Ground Water Management Area (GWMA), an administrative tool which allows the

IDWR to continue to receive and retain without action applications for water permits until it can be demonstrated that sufficient water is available and the withdrawal will not adversely impact other water rights within the Bruneau area (IDWR 1992). Due to declining water levels and pressures in the area, none of the 17 applications for withdrawal within the GWMA, except those for domestic purposes, have been approved since the area was designated. Therefore, while IDWR can limit the development of new wells from the regional geothermal aquifer system, impose water conservation measures, and require meters on existing wells, IDWR possesses no authority under existing Idaho State Law to shut down existing wells for the sole purpose of protection and recovery of the springsnail. See the discussion under Factor D in "Summary of Factors Affecting the Species" for a complete discussion on the inadequacy of existing regulatory mechanisms for the Bruneau Hot Springsnail.

Issue 5. One commenter requested that the Service prepare an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) for the proposed listing action. It was also requested that the assessment should include a determination of the geographic area which might be affected by any potential restrictions on future ground water development and withdrawal.

Service Response: As discussed in the NEPA section of this rule, it has been determined that such analyses are not required in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Issue 6. Several commenters were concerned with the impacts to agriculture that would result from listing and the potential designation of critical habitat for the Bruneau Hot Springsnail. They requested the Service to designate critical habitat during the final rulemaking process so that potential economic impacts could be evaluated.

Service Response: Under section 4(a)(3)(A) of the Act, the Secretary may designate critical habitat to the maximum extent prudent and determinable at the time a species is determined to be threatened or endangered. Critical habitat is not a management plan, but a legally described list of those areas considered essential for the conservation of the species. In the proposed rule, the Service found that determination of critical habitat was not prudent for the Bruneau Hot Springsnail. As discussed under the "Critical Habitat" section below, the Service continues to find that designation of critical habitat for the Bruneau Hot Springsnail is not prudent at this time. Because many of the remaining populations of this species are in accessible, localized springs on public land, such designation might increase the degree of vandalism, collecting, and other human activities. Protection of this species' habitat will be addressed through the recovery process. It should be noted that a designation of critical habitat does not create a wildlife refuge or wilderness area, nor does it close the area to human activity. It applies only to Federal agencies which propose to fund, authorize, or carry out activities that may destroy or adversely modify areas within designated critical habitat. Although critical habitat may be designated on private or State lands, activities on these lands would not be restricted by a designation unless a Federal permit or other Federal involvement is present.

Issue 7. Many comment letters were received expressing concerns with the potential economic impacts to existing and future agricultural development in the Bruneau River Basin. They suggested that the Service prepare an economic analysis prior to any listing decision.

Service Response: Under section 4(b)(1)(A) of the Act, the listing process is based solely on the best scientific and commercial information available and economic considerations are not applicable. The legislative history of the Act clearly states the intent of Congress to "ensure" that listing decisions are "based solely upon biological criteria and to prevent non-biological considerations from affecting such decisions." H.R. Rep. No. 97–835, 97th Congress 2nd Session 19 (1982). Because the Service is specifically precluded from considering economic impacts in the listing process, the Service has not addressed such impacts in this final rule. Economic factors are considered in a designation of critical habitat and during the development of a recovery plan.

Issue 8. Several commenters questioned whether the Bruneau Hot Springsnail is endemic or indigenous to the area. They stated that tropical fish have been introduced into several of the thermal springs in the Bruneau basin as far back as prior to the 1940's, therefore, the snail may also have been introduced along with the fish.

Service Response: The Service has considered available scientific evidence and concludes that the Bruneau Hot Springsnail is endemic to southwestern Idaho. Hershler, in his 1990 description of the species, stated that "* * * *Pyrgulopsis bruneauensis* appears closest morphologically to *P. amargosae* from the Death Valley System to the south * * *", although the species is also biogeographically similar to other regional *Pyrgulopsis*. Hershler also believes that local endemism of the springsnail appears likely. Additionally, there are no historic records for the springsnail from the U.S. or elsewhere, and a helicopter survey of several thermal springs in the Bruneau and Jarbridge River Basins in southwest Idaho and the Owyhee River in southeastern Oregon conducted during January, 1987, did not reveal additional populations. If at some future time the species is found to be more widespread than previously thought, and threats to its continued existence are removed, the Service would consider downlisting or delisting the species.

In summary, although recent studies have noted additional thermal springflows containing Bruneau Hot Springsnails, no substantive comments were received indicating that the species is found outside of the Bruneau River Basin near Hot Creek or under a lesser degree of threat than originally thought. Opposing comments were based primarily upon concerns that listing of the springsnail would affect the allocation of water and impact agricultural development in the Bruneau Valley, rather than information concerning the species' status. Some opposing comments questioned the adequacy of the Service's data. The Service has continued to gather information regarding the status of the species since publication of the proposed rule in 1985 and believes that this final rule is thorough and appropriate. As discussed in detail in the "Summary of Factors Affecting the Species" section, the Service concludes that nearly all of the remaining populations of the Bruneau Hot Springsnail are at risk.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Bruneau Hot Springsnail should be classified as an endangered species. Procedures found at section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. Under the Act, a species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Bruneau Hot Springsnail (*Pyrgulopsis bruneauensis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Activities that threaten the continued existence of the Bruneau Hot Springsnail include further agricultural-related ground water withdrawal and livestock grazing.

Ground water withdrawal and pumping threaten the springsnail through a reduction or loss of thermal spring habitats from depletion of the geothermal aquifer underlaying the Bruneau area. Within the past 25 years, discharge from many of the thermal springs along Hot Creek have decreased, thus restricting the springsnails' habitat area (Berenbrock, USGS, written communication; Young et al. 1979). This is specially true for the Indian Bathtub springs, where the species was first discovered, and where springflows have now ceased and the springsnail has been eliminated. Spring discharge in 1964 was almost 2,400 gpm and had declined by the summer of 1990 to zero discharge. Beginning in the late 1890's, when ground water development for domestic and agricultural purposes began in the Bruneau area, through 1991, an estimated 275,000 acre-feet of thermal water was discharged from Indian Bathtub springs (Berenbrock, USGS, written communication). Of this amount, only 1,400 acre-feet was discharged from the spring during 1981 to 1991. The decline in discharge from the Indian Bathtub springs was noted beginning in the mid-1960's and coincided with the accelerated increase in ground water withdrawal associated with a rapid increase in the amount of lands irrigated with ground water throughout the Bruneau area. As recently as 1991, the USGS estimated that ground water withdrawals exceeded the estimated historic rate of natural recharge by about 12,000 acre-feet (Berenbrock, USGS, written communication). It should be noted that ground water withdrawals have actually declined over the past 10 years, primarily due to cropland retired from production through participation in the Conservation Reserve Program (CRP). Yet water levels in the geothermal aquifer continue to decline. The Service is concerned that the number of withdrawals may again increase in the next few years as croplands will again enter production when the current 10 year CRP program expires and/or is not renewed. In any event, if present water management practices continue, water levels in the aquifer will either continue to decline or eventually stabilize at some lower level. The decline in spring flows has been documented at the Indian Bathtub in upper Hot Creek and at least two additional springs (Berenbrock, USGS, written communication); however, springflow data has not been collected in the remaining 125 springs containing springsnails, most of which are at elevations lower than the Indian Bathtub springs. If ground water levels in the geothermal aquifer continue to decline, the Service anticipates that all remaining thermal spring habitats containing Bruneau Hot Springsnails will eventually cease to flow, causing the extinction of the species.

Cattle grazing also impacts springsnail habitats, especially those along Hot Creek. Although approximately 160 acres along Hot Creek canyon was fenced in 1990 to protect it from livestock, trespassing cattle have been observed grazing within the enclosure on several occasions since 1990 (Mladenka 1992). The cattle have trampled instream substrates and habitats causing direct springsnail mortality and displacement. For example, Mladenka noted in his study the lowest abundance estimates of springsnails at one monitoring site occurred on the same date that several hundred cattle were observed in the vicinity of the stream site. Cattle also browse and remove riparian vegetation that shades Hot Creek, allowing temperatures to reach levels affecting reproduction or possibly lethal to the species. Additionally, livestock grazing in the adjacent watershed, combined with ongoing drought conditions, has basically denuded soils and vegetation to such an extent that periodic flash floods now dump sediment into Hot Creek that has covered over and totally eliminated springsnail seep/spring habitats for almost 150 m (492 ft).

Recreational access may also be impacting habitats of the Bruneau Hot Springsnail along the Bruneau River. Makeshift dams are sometimes constructed by bathers to form thermal pools and improve conditions for bathing. Construction of these pools impacts springsnails through habitat modification as rock substrates are moved, flow is altered and sediments are trapped. These pools also alter and possibly destroy the madicolous algal habitats preferred by the springsnail as pool water levels are raised.

In summary, the cumulative effects of these factors continue to threaten the increasingly fragmented populations of the Bruneau Hot Springsnail and their thermal habitats.

B. Overutilization for Commercial Recreational, Scientific, or Educational Purposes

There are no known commercial uses for this species. Recreational use of the thermal springs and outflows, except as described in Factor A above for bathing, is not considered a significant threat. However, since whitewater boating is increasing on the Bruneau River adjacent to these thermal outflows, recreational bathing activities may have to be more closely regulated in the future. Other mollusc species have become vulnerable to unauthorized collection for scientific purposes following listing. Because the distribution of the Bruneau Hot Springsnail is restricted and generally well known, overcollection is a potential threat to the species.

C. Disease or Predation

Juvenile springsnails appear vulnerable to a variety of predators (Mladenka 1992). Damselflies (Zygoptera) and dragonflies (Anisoptera) were observed feeding upon snails in the wild. The presence of a large population of introduced guppies in Hot Creek and several of the other small thermal springs downstream along the west bank of the Bruneau River has been suggested as potentially threatening the springsnail. Mladenka (1992) observed guppies feeding upon snails in the laboratory. In addition to guppies, a species of *Tilapia* has ascended into and reproduced in Hot Creek (Bowler 1992). The presence of this new exotic predator may also constitute a threat to the Bruneau Hot Springsnail. It should be noted that madicolous habitats support neither of these two exotic fishes or dragonflies, but do harbor numerous damselflies.

D. The Inadequacy of Existing Regulatory Mechanisms

At least three State agencies in Idaho have as part of their goals and objectives the identification and protection of rare taxa and their habitats. The Idaho Department of Parks and Recreation has authority under Idaho Code Section 18–3913, 1967, to protect only plants, with animals not given special protection on Idaho lands. The Department of Fish and Game, under Idaho Code Section 36–103, is mandated to preserve, protect, perpetuate, and manage all wildlife. However, these mandates do not extend protection to invertebrate species.

The Idaho Department of Water Resources (IDWR) regulates water development in the Bruneau area. It is the policy of IDWR to regulate and conserve ground water resources from depletion or 'mining'. In *Baker* v. *Ore-Ida Foods, Inc* 95 Idaho 575 (1973), it was established that "* * * where continued withdrawal of the aquifer results in mining, the withdrawal would violate the Ground Water Act." However, any conservation measures imposed by IDWR to manage ground water 'mining' are only for the purpose of fulfilling senior water rights and not for the protection of fish and wildlife. At present, there is no specific allocation of either surface or ground water in the Bruneau area for the protection and conservation of fish and wildlife. In 1982, the IDWR established the Bruneau-Grandview Ground Water Management Area (GWMA) pursuant to provisions of Idaho Code Section 42–233a "* * * to identify the area as approaching the conditions of a critical ground water area" (IDWR 1992). This GWMA designation has allowed the IDWR to continue to receive and hold without action applications for water permits until it can be demonstrated that the proposed withdrawal will not adversely impact other water rights in the GWMA. Due to the continued decline in water levels in the geothermal aquifer, none of the 17 applications for withdrawal within the GWMA submitted since 1982, except those for domestic purposes; have been approved. Without recovery of water levels, IDWR does not anticipate modification of the GWMA designation any time soon. In any event, GWMA designations are intended only to maintain sufficient ground water to fulfill existing water rights and supply the needs of irrigation, and not for the protection and conservation of fish and wildlife.

The Bruneau area is located entirely within the area of an ongoing water rights adjudication (Snake River Basin Adjudication). Through a Director's Report from IDWR due in 1994, the adjudication will clarify existing water rights and water uses and will permit IDWR to eliminate water rights that are of record but are no longer utilized. The IDWR also believes the adjudication process will need to be completed prior to the development and implementation of ground water conservation measures on behalf of the springsnail that may affect existing water rights and uses since "without completing this adjudication process there is no effective way to determine the existence or validity of water rights to serve as the basis for delivery".

Under the Idaho Ground Water Act, IDWR also regulates the construction and maintenance of geothermal (Idaho Code Section 42–238(4)) and artesian (Idaho Code Sections 42–1601 & 42–1603) wells so that they operate to conserve ground water resources and prevent unnecessary flow and waste. The IDWR in 1990 identified several artesian wells in the Bruneau area "* * * leaking water at land surface or potentially wasting water in the subsurface due to inappropriate well construction techniques" (IDWR 1992). To date no action has been taken to have these leaking wells rehabilitated so that the aquifer pressures can be preserved or increased.

In summary, the IDWR has authority to control ground water 'mining' and can limit the development of new wells in a critical ground water area, impose water conservation measures, and also require meters on existing wells. However, IDWR has stated that "* * * the Director has no authority under State law to shut down prior vested water rights in order to protect an endangered species" (IDWR 1992); or in this instance for the sole purpose of protection and recovery of habitats for the Bruneau Hot Springsnail.

The Bureau of Land Management (Bureau) manages all of the public lands containing springsnails and their habitats along Hot Creek and the Bruneau River. The Bureau issues permits for livestock grazing on these lands and grants authorizations that would lead to the drilling of new wells or increased ground water use on Bureau lands. In the past, the Bureau has shown an interest in conserving the species and has solicited input from the Service regarding impacts that may result from any proposed activities. However, the Service's comments regarding candidate species are advisory in nature. The Bureau has developed a Cooperative Agreement to fence and regulate livestock use along Hot Creek, but has not taken steps to impose additional conservation measures to protect remaining springsnail habitats on Bureau lands.

With this listing of the Bruneau Hot Springsnail, the Bureau is required to initiate consultation pursuant to section 7 of the Act on any Bureau activity or project that may affect the species. Formal consultation would result in a Biological Opinion on whether or not the activity proposed to be authorized is likely to jeopardize the continued existence of the species. With listing, the Bureau is required to insure that any activity or project they authorize would not be likely to jeopardize the continued existence of the springsnail. Conditions that would provide protection to the springsnail and their habitats could be incorporated into permits issued or authorizations granted. The provisions of section 7 of the Act are more fully discussed later in this rule.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Flash flood sedimentation of springsnail habitats is a threat to this speices. Recent summer floods and mudflows during 1991 and 1992 delivered significant amounts of sand, silt and gravel to upper Hot Creek, and as of July 1992, the Indian Bathtub was completely filled with sediment (Robinson et al. 1992). Based on comparisons made with historical photographs, a meter or more of the seep/rockface springsnail habitats in the Bathtub had been covered. Following sediment delivery from an even more recent flash flood event during late October 1992, additional springflows have been completely covered over and springsnail habitat eliminated from approximately 150m (492 ft) in upper Hot Creek below the Indian Bathtub (Committee for Idaho's High Desert 1992). While flash floods probably occurred historically, the effects of declining springflows coupled with drought conditions have resulted in the permanent elimination of springflows and filling in of spingsnail habitats at the Indian Bathtub and upper Hot Creek. Additionally, livestock grazing, compounded by protracted drought conditions in southwestern Idaho, has basically denuded soils and vegetation in the upper Hot Creek watershed to such an extent that periodic flash floods deliver sediment that cannot be flushed by the remaining weak and declining springflows. Measures to protect springsnail spring/seep habitats in the Indian Bathtub and Hot Creek from the effects of flash flooding were proposed by the Bureau of Land Management years ago but never implemented. These measures included the construction of small retention dams in the Hot Creek watershed to trap runoff sediment while still maintaining thermal seep habitats.

As mentioned in Factor A, cattle graze and trample the habitat along Hot Creek. Trampling also occurs instream, causing direct Bruneau Hot Springsnail mortality.

Determination

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Bruneau Hot Springsnail in determining to issue this rule. Based on this evaluation, the preferred action is to list the Bruneau Hot Springsnail as endangered. Today the species persists in a few isolated thermal springs and seeps in Hot Creek and along an 8.5 km (5,28 miles) reach of the Bruneau River characterized by temperatures ranging from 15 to 35° C. Most of these sites are no more than small seeps less than 1 square m in size separated by distances less than 1 m (3.28 ft) to greater than 2,000 m (6,562 ft). The free-flowing thermal spring and seep environments required by the Bruneau Hot Springsnail have been impacted by and are vulnerable to continued reduction from agricultural-related ground water withdrawal/pumping. The species and its habitat are also vulnerable to habitat modification from the effects of livestock grazing, recreational access and flash floods. The remaining complex of thermally related springs and their immediate outflows are not protected from the potential threats previously discussed. Existing regulations do not provide adequate protection to prevent further direct or indirect habitat losses.

Because the Bruneau Hot Springsnail is in danger of extinction throughout all or a significant portion of its range, the species fits the definition of endangered as defined in the Act. For reasons discussed below, critical habitat is not being designated at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service has determined that critical habitat designation for this species is not prudent at this time. Remaining populations are restricted to a small geographic area along the Bruneau River in southwestern Idaho and vandalism could occur if their whereabouts were widely known. Regulations implementing section 4 of the Act provide that a designation of critical habitat is not prudent when a species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat (50 CFR 424.12). Publication of critical habitat descriptions would make this species even more vulnerable to such acts and increase enforcement problems.

Protection of this species' habitat will be addressed through the recovery process and through the jeopardy standard of the section 7 consultation process. The Service believes that Federal involvement in the areas where Bruneau Hot Springsnails persist can be identified without the designation of critical habitat. In addition, all private land owners will be notified concerning this species' habitat and the importance of protecting it. Therefore, it would not now be prudent to determine critical habitat for the Bruneau Hot Springsnail.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions may be initiated following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed threatened or endangered species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Bureau of Land Management (Bureau) is the Federal agency that is most likely to be affected by this rule. Changes in management on Bureau lands containing springsnail habitats would be subject to consultation with the Service. Bureau actions that may be affected by this proposal include the issuance of livestock grazing permits and granting authorizations that would lead to drilling of new wells or increase ground water use. The Department of Agriculture (Department) may be required to consult with the Service on any of the following actions: An APHIS spraying program (for grasshopper and other insect control) proposed for the Bruneau-Grandview area; Department subsidized agricultural conservation or best management practices (BMP) program; and all agricultural crop subsidy programs. Other Federal or federally assisted programs affecting Federal direct loan and grant programs, loan guarantee programs, home and mortgage assistance and capital improvement loan programs, including annual operating loans of the Farmers Home Administration, would also be subject to the provisions of section 7.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect; or attempt any such conduct) import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, VA 22203–3507 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Berenbrock, C. 1992. Effects of well discharges on hydraulic heads in and spring discharges from the geothermal aquifer system in the Bruneau area, Owyhee County, Southwestern Idaho. Water Resources Investigations, U.S. Geological Survey. Preliminary Report (written communication).

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Bowler, P.A., and P. Olmstead. 1991. The current status of the Bruneau Hot Springs snail, an undescribed monotypic genus of freshwater hydrobiid snail, and its declining habitat. Proceedings of the Desert Fishes Council, Volumes XXI. pp. 195–207.

Committee for Idaho's High Desert. Letter dated November 3, 1992 to the Boise Field Office containing information and photographs concerning changing habitat conditions in the Indian Bathtub/Hot Creek area. 3 pp with photographs.

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Mladenka, G.C. 1992. The ecological life history of the Bruneau Hot Springs Snail (*Pyrgulopsis bruneauensis*). Stream Ecology Center, Department of Biological Sciences, Idaho State University, Pocatello, Idaho. Final Report to the U.S. Fish & Wildlife Service, Boise Field Office. 116 pp.

Robinson, C.T., G.W. Minshall, and K. Sant. 1992. Bruneau Hot Springs Snail. Annual Monitoring Report to Bureau of Land Management. 17 pp.

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U.S. Fish & Wildlife Service. 1990. Policy and guidelines for planning and coordinating recovery of endangered and threatened species. Service Document, May 1990.

Young, H.W. and R.E. Lewis. 1982. Hydrology and geochemistry of thermal ground water in southwestern Idaho and North-Central Nevada, U.S. Geological Survey Professional Paper 1044–J. 20 pp.

Young, H.W., R.E. Lewis, and R. L. Backsen. 1979. Thermal groundwater discharge and associated convective heat flux, Bruneau-Grandview area, southwest Idaho. U.S. Geological Survey Water-Resources Investigations 79–62, Open File Report.

Author

The primary author of this rule is Stephen D. Duke, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, room 576, Boise, Idaho (208/334/1931).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order, under SNAILS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
Snails							
*	*	*	*	*	*	*	
Springsnail, Bruneau Hot	*Pyrgulopsis bruneauensis*.	U.S.A. (ID)	NA	E	489	NA	NA
*	*	*	*	*	*	*	

Dated: January 13, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–1605 Filed 1–22–93; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 58, No. 14
Monday, January 25, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-93-1]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received March 26, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. ______, 800 Independence Avenue, SW., Washington, DC 20591

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: D. Michael Smith, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267-7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on January 15, 1993.

Donald P. Byrne,
Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No. 27044.

Petitioner: Mr. John E. Gillick,
Regulations Affected: 14 CFR 93.123(c). Description of Rulechange Sought: To authorize airlines to use commuter slots at LaGuardia International Airport and Washington National Airport to operate aircraft certificated with a maximum passenger seating capacity of up to 80 passengers. Petitioners Reason for the Request: The FAA has amended the High Density Traffic Airports Rule as it applies to operations at O'Hare International Airport, and this petition seeks similar treatment for LaGuardia and Washington National so aircraft with up to 80 seats would be permitted to use commuter air carrier slots to provide quiet, efficient jet service with new technology, State-3 aircraft.

[FR Doc. 93-1670 Filed 1-22-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-101-AD]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 series airplanes, that would have required conducting an integrity test to detect corrosion in the wing tip brake solenoids, and replacement of corroded solenoids, if necessary. That proposal was prompted by several incidents in which wing tip brake solenoids failed as a result of corrosion in the solenoid coils. This action revises the proposed rule by adding a requirement for repetitive integrity tests of the wing tip brake solenoids until all 8 solenoids have been replaced with modified ones. This action also revises the applicability of the proposed rule by including additional airplanes. The actions specified by this proposed AD are intended to prevent wing tip brake valve failure, which could lead to reduced controllability of the airplane.

DATES: Comments must be received by March 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-101-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, Airbus Support Division, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–101–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–101–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on June 18, 1992 (57 FR 27191). That NPRM would have required conducting an integrity test to detect corrosion in the wing tip brake solenoids, and replacement, if necessary. That NPRM was prompted by several incidents in which wing tip brake solenoids failed as a result of corrosion in the solenoid coils. That condition, if not corrected, could result in wing tip brake valve failure, which could lead to reduced controllability of the airplane.

Since the issuance of that NPRM, the FAA has received a comment requesting that the applicability statement of the AD be changed from the proposed "Model A310 series airplanes having manufacturer's serial numbers (MSN) 1 through 432, inclusive, 440, and 441; on which Modification 6725 has not been accomplished," to "all Model A310 series airplanes on which Modification 6725 has not been accomplished." The commenter feels that the applicability statement as proposed in the notice is not clear and could confuse operators. In addition, the commenter states that the suggested change in the applicability statement would make it consistent with that of the parallel French Airworthiness Directive 92–010–129(B), dated January 8, 1992. The FAA concurs with the commenter's suggestion. The FAA has determined that any Model A310 series airplane on which Modification 6725 has not been accomplished is subject to the same subject unsafe condition addressed by this proposed AD. The applicability statement of the proposed rule has been changed accordingly.

This same commenter notes that the replacement of one solenoid does not constitute, in itself, the terminating action for subsequent integrity tests of the wing tip brake solenoids. This commenter suggests that proposed paragraph (b) be revised to eliminate reference to such terminating action, and to include a requirement for repetitive integrity tests of the wing tip brake solenoids until all 8 solenoids have been replaced with modified ones. Further, this commenter notes that the integrity test procedure as described in Airbus Industrie Service Bulletin A310–27–2042, Revision 1, dated December 11, 1986, specifies continued repetitive tests of replaced solenoids at intervals not to exceed 350 flight hours. The FAA concurs. Upon further review, the FAA has determined that, in order to ensure the reliability of the wing tip brake solenoids, repetitive integrity tests must continue until all 8 solenoids have been replaced with modified ones. Paragraph (b) of this supplemental notice reflects this additional requirement.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,025, or $138 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–101–AD.

Applicability: Model A310 series airplanes on which Modification 6725 has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent wing tip brake valve failure, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Within 350 flight hours after the effective date of this AD, conduct an integrity test to detect corrosion of the wing tip brake solenoids, in accordance with Airbus Industrie Service Bulletin A310–27–2042, Revision 1, dated December 11, 1986. Thereafter, repeat the integrity test at intervals not to exceed 350 flight hours.

(b) If corrosion in any wing tip brake solenoid is detected as a result of any integrity test required by paragraph (a) of this AD, prior to further flight, replace the corroded solenoid with a modified one having part number 500A000–03. After such replacement, continue to perform integrity tests on all 8 solenoids at intervals not to exceed 350 flight hours until all 8 solenoids have been replaced with modified solenoids.

(c) Installation of Modification 6725 in accordance with Airbus Industrie Service

Bulletin A310–27–2046, Revision 1, dated November 24, 1989, which involves the installation of modified solenoids on all 8 solenoid valves in the wing tip brake, constitutes terminating action for the integrity testing required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1620 Filed 1–22–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–CE–60–AD]

Airworthiness Directives; Rockwell International/Collins Air Transport Division DME–700 Distance Measuring Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Rockwell International/Collins Air Transport Division (Collins) DME–700 distance measuring equipment (DME) installed on certain aircraft. The proposed action would require modifying these DME units to ensure that they are functioning properly. The Federal Aviation Administration (FAA) has received several reports of the affected DME units failing to process and update distance outputs, and establishing a continuous restart mode upon power application, which prevents distance information from being provided to the flight management computer system. The actions specified by the proposed AD are intended to prevent improper operation of this equipment, which could result in navigational errors.

DATES: Comments must be received on or before April 9, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–60–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is discussed in this proposed AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE.; Cedar Rapids, Iowa 52498. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4134; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–60–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of improper operation of Collins DME–700 distance measuring equipment (DME). These DME units are installed on, but not limited to, the following airplanes:

Manufacturer	Models
Boeing	B737, B747–400, B767.
McDonnell Douglas	MD 80, MD 11.
Airbus	A320.

This equipment measures the slant-range (line-of-sight) distance from aircraft to ground stations and provides continuous distance information to the flight management computer system for high-accuracy position fixing.

Reports indicate that the following conditions are occurring: (1) The DME unit fails to process and update Aeronautical Radio, Inc. (ARINC) 429 distance outputs (referred to as "sleeping DME"); and (2) The DME unit establishes a continuous restart mode upon power application (referred to as "deaf DME"), which prevents continuous distance information from being provided to the flight management computer system. If not detected and corrected, improper operation (sleeping or deaf DME's) of the DME–700 distance measuring units could result in navigational errors.

Collins has issued the following service bulletins (SB): (1) SB 20, revision 1, DME–700–34–20, dated August 30, 1991, which specifies procedures for incorporating a modification that prevents "sleeping DME's"; and (2) SB 24, DME–700–34–24, dated May 15, 1992; SB 25, DME–700–34–25, dated November 11, 1992; and SB 26, DME–700–34–26, dated October 21, 1992, which specify procedures for incorporating modifications that prevent "deaf DME's".

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to correct the unsafe condition.

Since the condition described is likely to exist or develop in other Collins DME–700 distance measuring equipment of the same type design installed in aircraft, the proposed AD would require modifying these DME units to ensure that they are functioning properly. The proposed actions would be accomplished in accordance with the service bulletins described above.

The condition specified by this proposed AD concerning the Collins DME–700 distance measuring equipment is not caused by actual hours time-in-service (TIS) of the airplane that the equipment is installed in. There is no correlation between improper operation of the equipment and the age or number of times the equipment is utilized. Based on this, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 651 airplanes (1,302 DME–700 units) in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per airplane (3.5 workhours per unit) to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $250,635.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Rockwell International/Collins Air Transport Division

Docket No. 92–CE–60–AD.

Applicability: DME–700 distance measuring equipment (serial numbers 1 through 4247) (part numbers 622–4540–020, 622–4540–021, 622–4540–120, and 622–4540–121), that are installed on, but not limited to, the following model airplanes (all serial numbers), certificated in any category:

Manufacturer	Models
Boeing	B737, B747–400, B767.
McDonnell Douglas	MD 80, MD 11.
Airbus	A320.

Note 1: The modifications required by this AD have been or will be incorporated during production beginning with serial number 4248.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent improper operation of these DME units, which could result in navigational errors, accomplish the following:

(a) Ensure that Aeronautical Radio, Inc. (ARINC) 429 distance outputs are processed and updated by modifying the distance measuring equipment in accordance with the Accomplishment Instructions section of Collins Service Bulletin (SB) 20, revision 1, DME–700–34–20, dated August 30, 1991.

(b) Ensure proper initialization by modifying the distance measuring equipment in accordance with the Accomplishment Instructions section of Collins SB 24, DME–700–34–24, dated May 15, 1992, or Collins SB 25, DME–700–34–25, dated November 11, 1992; and Collins SB 26, DME–700–34–26, dated October 21, 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Rockwell International/Collins Air Transport Division, 400 Collins Road, NE.; Cedar Rapids, Iowa 52498; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 14, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1621 Filed 1–22–93; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 76

[AD–FRL–4555–6]

Acid Rain Program; Nitrogen Oxides Emission Reduction Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is extending the comment period on its proposed rule on the Acid Rain Nitrogen Oxides Emission Reduction Program. The Extension was requested by the Class of '85 Regulatory Response Group.

DATES: The comment period on this proposed rule is extended until February 8, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (A–131), Attention, Docket No. A–92–15, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. *Docket.* Docket No. A–92–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying. Additional data and information pertaining to the proposed rule may be found in Docket No. A–90–39.

FOR FURTHER INFORMATION CONTACT: Doris Price, Chief, Technology and Information Systems Section, at (202) 233–9067, Source Assessment Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule on November 25, 1992 (57 FR 55632) that would implement the initial phase of section 407 of the Clean Air Act ("the Act") by establishing nitrogen oxides (NO_x) emission limitations for certain coal-fired utility units, as specified in section 407(b)(1), and other requirements and procedures for all coal-fired utility units subject to NO_x emission limitation requirements under Phase I or Phase II of the Acid Rain Program. The comment period of the proposed rule was scheduled to expire on January 25, 1993, however, EPA is extending the comment period for an additional 14 days until February 8, 1993. This extension is at the request of the Class of '85 Regulatory Response Group, which is an informal coalition of 27 electric utilities.

Dated: January 15, 1993.

Eileen B. Claussen,

Director, Office of Atmospheric Programs.

[FR Doc. 93–1672 Filed 1–22–93; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1023 and 1162

[Ex Parte No. MC–100 (Sub-No. 6)]

Single State Insurance Registration

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its regulations pertaining to registration by motor carriers with States. The Commission is acting pursuant to the requirements of the Intermodal Surface Transportation Efficiency Act of 1991. The proposed regulations will replace a multi-State motor vehicle and operating authority registration system with a simplified, single-State insurance-based registration system.

DATES: Comments must be submitted by February 24, 1993.

ADDRESSES: The original and 10 copies of comments identified as such and referring to Ex Parte No. MC–100 (Sub-No. 6) must be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Schwartz, (202) 927–5316 or Richard B. Felder, (202) 927–5610 (TDD for hearing impaired: (202 927–5721).

SUPPLEMENTARY INFORMATION: Section 4005 of Title IV of the Intermodal Surface Transportation Efficiency Act of 1991 significantly amended 49 U.S.C. 11506—Registration of Motor Carriers by a State. The new law, at 49 U.S.C. 11506(c)(1) requires that the Commission prescribe amendments to the regulations governing the existing registration system. The Commission must replace the existing multi-State motor vehicle and operating authority registration system with a simplified, single-State insurance-based registration system. The present regulations are codified at 49 CFR part 1023 and 49 CFR 1162.7 and 1162.8.

In a decision served May 8, 1992, and an Advance Notice of Proposed Rulemaking published at 57 FR 20072–20073 on May 11, 1992, the Commission examined the new law and requested the public to participate in the formulation of revised regulations. The Commission now is proposing regulations drafted in light of the comments received from the insurance and trucking industries, State regulatory agencies, and other interested parties.

The attached proposed regulatory text does not include proposed rules concerning the insurance receipts that the registration States will issue motor carriers. The Commission is considering alternate regulations in this area, as follows:

First Alternative

Section 1023.5 Insurance Receipts

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of § 1023.4 of this Part, the registration State must issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section.

(1) The receipt must be in the form appended to this Part and must contain information identifying the carrier and specifying the total amount of fees paid. Supplemental receipts need contain only information relating to their underlying supplemental registrations. Receipts may not contain information regarding numbers of vehicles declared and/or States of operation.

(2) [Reserved]

(b) Receipts issued pursuant to a filing made during the annual registration period specified in § 1023.4(b)(2) must be issued by the 10th day of December of the year preceding the registration year. All other receipts must be issued by the 20th day following the date of filing of a fully acceptable supplemental registration application. All receipts and authorized copies shall expire on the 31st day of December of the registration year for which they were issued.

(c) A carrier is permitted to operate its motor vehicles only in those participating States with respect to which it has paid appropriate fees.

(d) A motor carrier may make copies of receipts to the extent necessary to comply with the provision of paragraph (e) of this section. However, it may not alter a receipt or a copy of a receipt.

(e) A motor carrier must maintain in each of its motor vehicles a copy(ies) of its receipts(s), indicating that it has filed the required proof of insurance and paid the required fees.

(f) A motor carrier may transfer its copies of its receipts between its motor vehicles or from vehicles taken out of service to their replacement vehicles. However, it may not operate more motor vehicles in a participating State than the number with respect to which it has paid fees.

(g) The driver of a motor vehicle must present a copy(ies) of a receipt(s) for inspection by any authorized government personnel on reasonable demand.

(h) No registration State shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier.

Second Alternative

Section 1023.5 Insurance Receipts

(a) On compliance by a motor carrier with the annual or supplemental registration requirements of § 1023.4 of this part, the registration State must issue the carrier a receipt reflecting that the carrier has filed the required proof of insurance and paid fees in accordance with the requirements of that section. The registration State also must issue a number of official copies of the receipt equal to the number of motor vehicles for which fees have been paid.

(1) The receipt and official copies must be in the form appended to this part and must contain information identifying the carrier and specifying the number of vehicles declared and amounts of fees paid with respect to each participating State. Supplemental receipts and official copies need contain only information relating to their underlying supplemental registrations.

(i) On request, a registration State must issue without charge, in place of receipts and official copies representing multiple filings, unified receipts and official copies containing the information pertaining to all annual and/or supplemental registrations covering a particular registration year.

(ii) [Reserved]

(2) [Reserved]

(b) Receipts and official copies of receipts issued pursuant to a filing made during the annual registration period specified in § 1023.4(b)(2) of this part must be issued by the 10th day of December of the year preceding the registration year. All other receipts and official copies must be issued by the 20th day following the date of filing of a fully acceptable supplemental registration application. All receipts and official copies shall expire on the 31st day of December of the registration year for which they were issued.

(c) A motor carrier may not copy or alter a receipt or an official copy of a receipt.

(d) A carrier is permitted to operate its motor vehicles only in those participating States with respect to which it has paid appropriate fees, as indicated on the receipts and official copies of receipts.

(e) A motor carrier must maintain in each of its motor vehicles an official copy(ies) of its receipt(s) indicating that it has filed the required proof of insurance and paid appropriate fees for each State in which it operates.

(f) A motor carrier may transfer its official copies of its receipts between its motor vehicles or from vehicles taken out of service to their replacement vehicles. However, it may not operate more motor vehicles in a participating State than the number with respect to which it has paid fees.

(g) The driver of a motor vehicle must present an official copy(ies) of a receipt(s) for inspection by any authorized government personnel on reasonable demand.

(h) A motor carrier may apply to its registration State for the replacement of a lost or stolen receipt(s) or official copy(ies) of a receipt(s). An application for such replacement must be accompanied by an affidavit detailing the facts supporting it. Within 10 days following the receipt of such an application, the registration State must issue replacements without charge.

(i) No registration State shall require decals, stamps, cab cards, or any other means of registering or identifying specific vehicles operated by a motor carrier.

As seen, under one rule, a registration State would issue a single receipt that a carrier would copy to the extent necessary. Under the alternate rule, a registration State would issue a receipt and the necessary numbers of official copies, which a motor carrier would not be permitted to reproduce. The Commission specifically requests comments addressing the two alternatives.

In addition, the Commission still is considering proposals for the two new forms that the rules will require: one to be used for annual and supplemental registration applications, and the other to be used for receipts. The Commission requests commentors to submit suggested forms consistent with the proposed and contemplated rules.

The Commission invites interested parties to submit comments focusing on new issues raised as well as any matters left unresolved. The Commission encourages parties that are in agreement to submit joint filings.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that our proposed action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of our action is to reduce a regulatory burden. The economic impact on small entities, if any, will be to reduce administrative costs and is not likely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 1023

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1162

Administrative practice and procedure, Motor carriers.

Decided: January 13, 1993.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Walden. Vice Chairman McDonald commented with a separate expression. Commissioner Simmons dissented in part with a separate expression. Commissioner Walden did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Parts 1023 and 1162 of the Code of Federal Regulations are proposed to be amended as follows:

1. Part 1023 is proposed to be revised to read as follows:

PART 1023—STANDARDS FOR REGISTRATION WITH STATES

Sec.
1023.1 Definitions.
1023.2 Participation by States.
1023.3 Selection of registration State.
1023.4 Requirements for registration.
1023.5 Insurance receipts. [Reserved]
1023.6 Registration State accounting.
1023.7 Violations unlawful; criminal penalties and civil sanctions.

Authority: 49 U.S.C. 10321 and 11506; 5 U.S.C. 553.

§ 1023.1 Definitions.

(a) *The Commission.* The Interstate Commerce Commission.

(b) *Motor carrier* and *carrier.* A person authorized to engage in the transportation of passengers or property, as a common or contract carrier, in interstate or foreign commerce, under the provisions of 49 U.S.C. 10922, 10923, or 10928.

(c) *Motor vehicle.* A self-propelled or motor driven vehicle operated by a motor carrier in interstate or foreign commerce under authority issued by the Commission.

(d) *State.* A State of the United States or the District of Columbia.

§ 1023.2 Participation by States.

(a) A State is eligible to participate as a registration State and to receive fee revenue only if:

(1) As of January 1, 1991, it charged or collected a fee for a vehicle identification stamp or a number pursuant to the provisions of the predecessor to this Part; and

(2) It continuously participates in the registration program beginning (with the effective date of these regulations).

(b) An eligible State that intends to cease participating in the registration program must publish notice of its intention by the 1st day of July of the year preceding the registration year in which it will cease participating.

§ 1023.3 Selection of registration State.

(a) Each motor carrier required to register and pay filing fees must select a single participating State as its registration State. The carrier must select the State in which it maintains its principal place of business, if such State is a participating State. A carrier that maintains its principal place of business outside of a participating State must select the State, or one of the States, to which it will pay the largest amount of fees during the next registration year.

(b) A carrier may not change its registration State unless it changes it principal place of business or its registration State ceases participating in the program, in which case the carrier must select a registration State for the next registration year under the standards of paragraph (a) of this section.

(c) A carrier must give notice of its selection to the State commission of its selected registration State, and, if pertinent, the State commission of its prior registration State, as soon as practicable after it has made its selection. If it is not feasible to give notice by the 1st day of October of the year preceding the next registration year, the carrier may continue to use its prior registration State, if any, for the next registration year.

(d) A carrier must give notice of its selection to its insurer or insurers as soon as practicable after it has made its selection.

§ 1023.4 Requirements for registration.

(a) Except as provided in paragraph (e)(1) of this section with regard to a carrier operating under temporary authority, only a motor carrier holding a certificate or permit issued by the Commission under 49 U.S.C. 10922 or 10923 shall be required to register under these standards.

(b) A motor carrier operating in interstate or foreign commerce in one or more participating States under a certificate or permit issued by the Commission shall be required to register annually with a single registration State, and such registration shall be deemed to satisfy the registration requirements of all participating States.

(1) The registration year will be the calendar year.

(2) A carrier must file its annual registration application between the 1st day of October and the 20th day of November of the year preceding the registration year. A carrier that intends to commence operating during the current registration year may register at any time, but it must do so before it commences operating.

(3) The registration application must be in the form appended to this part and must contain the information and be accompanied by the fees specified in paragraph (c) of this section. There will be no prorating of fees to account for partial year operations.

(4) A carrier that has changed its registration State since its last filing must identify the registration State with which it previously filed.

(c) A motor carrier must file the following with its registration State:

(1) Copies of its certificates and/or permits. A carrier must supplement its filing by submitting copies of any new operating authorities as they are issued. Once a carrier has submitted copies of its authorities, it may thereafter satisfy the filing requirement by certifying that the copies are on file. A carrier may, with the permission of its registration State, submit a summary of its operating authorities in lieu of copies if submitting copies would be unduly burdensome. A carrier granted emergency temporary authority or temporary authority having a duration of 120 days or less is not required to file evidence of such authority, but it must otherwise comply with the requirements of this section;

(2) A copy of its proof of public liability security submitted to and accepted by the Commission under 49 CFR part 1043 or a copy of an order of the Commission approving a public liability self-insurance application or other public liability security or agreement under the provisions of that part. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted a copy of its proof or order of the Commission, it may thereafter satisfy the filing requirement by certifying that it has done so and that is security, self-insurance, or agreement remains in effect;

(3) A copy of its designation of an agent or agents for service of process submitted to and accepted by the Commission under 49 CFR part 1044. A carrier must supplement its filings as necessary to ensure that current information is on file. Once a carrier has submitted a copy of its designation, it may thereafter satisfy the filing requirement by certifying that its designation is on file; and

(4) A fee for the filing of proof of insurance. In support of such fee, the carrier must submit the following information:

(i) The number of motor vehicles it intends to operate in each participating State during the next registration year;

(ii) The per vehicle fee each pertinent participating State charges, which fee must equal the fee, not to exceed $10, that such State collected or charged as of November 15, 1991;

(iii) The total fee due each participating State; and

(iv) The total of all fees specified in paragraph (c)(4)(iii) of this section.

(d) A carrier must make such supplemental filings at any time during the registration year as may be necessary to specify additional vehicles and/or States of operation and to pay additional fees.

(e) The charging or collection of any fee that is not in accordance with the fee system established above is deemed a burden on interstate commerce.

(f) A motor carrier must submit to its insurer of insurers a copy of the supporting information, including any supplemental information, filed with its registration State under paragraph (c)(4) of this section.

(g) To the extent any State registration requirement imposes obligations in excess of those specified in this Part, the requirement is an unreasonable burden on transportation within the Commission's jurisdiction under 49 U.S.C. 10521(a).

§ 1023.5 Insurance receipts. [Reserved]

§ 1023.6 Registration State accounting.

(a) A participating State must, on or before the last day of each month, allocate and remit to each other participating State the appropriate portion of the fee revenue registrants submitted during the preceding month. Each remittance must be accompanied by a supporting statement identifying registrants and specifying the number of motor vehicles for which each registrant submitted fees. A participating State must submit a report of "no activity" to any other participating State for which it collected no fees during any month.

(b) A participating State must maintain records of fee revenue received from and remitted to each other participating State. Such records must specify the fees received from and remitted to each participating State with respect to each motor carrier registrant. A participating State must retain such records for a minimum of 4 years.

(c) A participating State must keep records pertaining to each of the motor carriers for which it acts as a registration State. The records must, at a minimum, include copies of annual and supplemental registration applications containing the information required by § 1023.4(c). A registration State must retain all such records for a minimum of 4 years.

§ 1023.7 Violations unlawful; criminal penalties and civil sanctions.

Any violation of the provisions of these standards is unlawful. Nothing in these standards shall be construed to prevent a State from imposing criminal penalties or civil sanctions upon any person or organization violating any provision of them.

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

2. The authority citation for part 1162 continues to read as follow;

Authority: 49 U.S.C. 10321; 10928; 5 U.S.C. 559.

§ 1162.7 and 1162.8. [Removed]

3. Sections 1162.7 and 1162.8 are removed.

[FR Doc. 93–1779 Filed 1–22–93; 8:45 am]

BILLING CODE 7035–01–M

Notices

Federal Register
Vol. 58, No. 14
Monday, January 25, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Attained Harvest Closure, Federal Subsistence Hunting Season, Alaska Game Management Unit 5(A)—Moose

AGENCY: Forest Service, USDA; and Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Federal subsistence hunting season for moose on Federal public lands in the portion of Game Management Unit (GMU) 5(A) west of the Dangerous River has been closed. Title VIII of the Alaska National Interest Lands Conservation Act requires the Secretary of the Interior and the Secretary of Agriculture to assure the continued viability of fish and wildlife populations in the implementation of title VIII mandates. Federal subsistence management regulations at 36 CFR 242.25(m)(5) and 50 CFR 100.25(m)(5)—Moose, provide for closure of this season after the harvest quota has been reached. The moose harvest quota has reached the maximum acceptable level.

EFFECTIVE DATE: October 26, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Subsistence Office, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 271–2326. National Forest System, Norman R. Howse, Assistant Director for Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION: Pursuant to Subsistence Management Regulations for Public Lands in Alaska at 50 CFR 100.25(m)(5) and 36 CFR 242.25(m)(5)—Moose, the Federal subsistence hunting season is closed on Federal public lands in that portion of GMU 5(A) west of the Dangerous River. The regulations state "The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area." The maximum acceptable number of 30 moose have been harvested from that area. Therefore, the Federal subsistence hunting season on Federal public lands in GMU 5(A) west of the Dangerous River is closed to moose hunting effective October 26, 1992.

Curtis V. McVee,
Chair, Federal Subsistence Board.

Michael A. Barton,
Regional Forester, USDA—Forest Service.

[FR Doc. 93–1597 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-55-M

Federal Subsistence Caribou Hunt Opening, Galena Area, Alaska Game Management Unit 21(D)

AGENCY: Forest Service, USDA; and Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Federal Subsistence Board has opened a temporary winter season for subsistence caribou hunting on Federal public land in that portion of Game Management Unit (GMU) 21(D) north of the Yukon River and east of the Koyukuk River. The temporary season opens on November 11, 1992, and will extend through March 31, 1993. Title VIII of the Alaska National Interest Lands Conservation Act requires the Secretary of the Interior and the Secretary of Agriculture to assure the continued viability of fish and wildlife populations in the implementation of title VIII mandates. Federal subsistence management regulations at 36 CFR 242.25 and 50 CFR 100.25, Subsistence Taking of Wildlife, call for a temporary winter season to be announced only when sufficient animals from the Western Arctic Caribou Herd are present.

EFFECTIVE DATE: November 11, 1992.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Subsistence Office, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 271–2326. Koyukuk/Nowitna National Wildlife Refuge, Galena, Alaska; telephone (907) 656–1231.

SUPPLEMENTARY INFORMATION: Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.25 and 36 CFR 242.25, Subsistence Taking of Wildlife, provide for a temporary winter caribou hunt in GMU 21(D) north of the Yukon River and east of the Koyukuk River, with the dates to be announced by the Federal Subsistence Board. Dates are not included in the regulations in order to afford managers the flexibility to open the season only when sufficient animals from the Western Arctic Caribou Herd are present. The intent is to provide harvest opportunities to harvest caribou from the expanding Western Arctic Caribou Herd without risking overharvest of caribou from the smaller Galena Mountains Caribou Herd which is resident to the same general area. Large numbers of Western Arctic caribou have now moved into GMU 21(D) from the northwest and outnumber the Galena Mountains caribou in sufficient numbers to provide adequate protection. Therefore, a temporary winter season will open on November 11, 1992 and extend no later than March 31, 1993. If the Western Arctic caribou leave the area, the season may be closed prior to March 31, 1993. The bag limit is two caribou in addition to any caribou harvested during the August 10–September 30 season. Only rural residents of GMU 21(D) west of the Koyukuk and Yukon rivers and rural residents of GMU's 22(A), 22(B), 23, 24, and 26(A) are eligible to participate in the Federal season.

Curtis V. McVee,
Chair, Federal Subsistence Board.

Michael A. Barton,
Regional Forester, USDA-Forest Service.

[FR Doc. 93–1603 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-55-M

COMMISSION ON CIVIL RIGHTS

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will be held from 12:30 p.m. until 3:30 p.m. on Friday, February 12, 1993, at the Sheraton Hotel, 27 North 27th Street, Billings, Montana 59101. The purpose of the meeting is to discuss current issues, review the Committee's current project and plan future activities.

Persons desiring additional information should contact Committee Chairperson, Donald Dupuis, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 12, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–1679 Filed 1–22–93; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Information Services Order Form.

Agency Form Number: ITA–4096P.

OMB Approval Number: 0625–0143.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,366 hours.

Number of Respondents: 7,659.

Avg Hours Per Response: Ranges between 5 minutes and 1 hour.

Needs and Uses: ITA's U.S. and Foreign Commercial Service District Offices offer their clients Department of Commerce programs, market research, and services to enable clients to begin exporting or to expand existing exporting efforts. Specific information is required in order to determine the client's interests and needs. This information collection is designed to elicit such data and allow the District Office trade specialists, serving as export counselors to the firms, to make knowledgeable recommendations on which services or programs would best help a variety of clients to meet individual goals.

Affected Public: State or local governments; businesses or other for-profit institutions; Federal agencies or employees; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Dealer Purchases and Trip Interview Family of Forms.

Agency Form Numbers: NOAA 88–30, NOAA 88–142.

OMB Approval Number: 0648–0229.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,756 hours.

Number of Respondents: 1,041 (Number of responses per respondent ranges between 14 and 52).

Avg Hours Per Response: Ranges between 2 and 30 minutes.

Needs and Uses: Information obtained through the use of these forms (catch, effort, area fished, value, etc.) is necessary for stock and economic assessments, monitoring the impact of fishing regulations, development of Fishery Management Plans for conservation and management of the nation's fisheries resources in the Atlantic.

Affected Public: Individuals; businesses or other for–profit institutions; small businesses or organizations.

Frequency: On occasion, weekly, by fishing trip.

Respondent's Obligation: Voluntary for some fisheries; mandatory for others.

OMB Desk Officer: Ron Minsk, (202) 395–3084, Room 3019, New Executive Office Building, Washington, D.C. 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the appropriate OMB Desk Officer listed above.

Dated: January 15, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–1646 Filed 1–22–93; 8:45 am]

BILLING CODE 3510-CW-F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Matchmaker Trade Delegations: Quality Assurance and End-of-Event Surveys.

Form Numbers: Agency—ITA 4106P and ITA 4120P OMB—0625–0203.

Type of Request: Revision of an Approved Collection of Information.

Burden: 480 respondents; 80 reporting hours.

Average Hours Per Response: 10 minutes.

Needs and Uses: The International Trade Administration's U.S. and Foreign Commercial Service (US&FCS), Export Promotion Services, Trade Events Division develops and operates 12 Matchmaker trade delegations annually with an average of 20 delegates. The Quality Assurance Survey is completed 10 months after the Matchmaker events has taken place. The End-of-Event Survey is completed immediately after the Matchmaker event has taken place at the US&FCS overseas posts. These surveys are used to evaluate the overall effectiveness of the Matchmaker program in meeting participants' overseas marketing objectives over the long-term. The information collected by US&FCS will be used for program evaluation and strategic planning.

Affected Public: Business or other for-profit and small business or organizations.

Frequency: On occasion.

Respondents Obligation: Voluntary.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: January 19, 1993.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 93–1713 Filed 1–22–93; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

Sensors; Technical Advisory Committee; Notice of Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held February 10, 1993, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 15, 1993.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 93–1647 Filed 1–22–93; 8:45 am]

BILLING CODE 3510–DT–M

Telecommunications Equipment; Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held February 11, 1993, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda: General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Other business.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, Room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: January 15, 1993.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–1648 Filed 1–22–93; 8:45 am]

BILLING CODE 3510–DT–M

Transportation and Related Equipment; Technical Advisory Committee; Notice of Open Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held February 18, 1993, 9:30 a.m. at the Herbert C. Hoover Building, Room 1617–M2, 14th Street & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda: General Session

1. Opening Remarks by the Chairman or Commerce Representative.
2. Introduction of Members and Visitors.
3. Election of Chairman.
4. Presentation of Papers or Comments by the Public.
5. Briefing by the Regulations and Procedures Technical Advisory committee (formerly the MCTL TAC).
6. Discussions of recent revisions to the Export Admin. Regulations.
7. Discussion of recent revisions to the ITAR.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: U.S. Department of Commerce/BXA, Office of Deputy Assistant Secretary for Export Administration, 14th & Constitution Avenue, NW., Room 1621, Washington, DC 20230.

For further information or copies of the minutes, please call (202) 482–2583.

Dated: January 15, 1993.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of the Deputy Assistant Secretary for Export Administration.

[FR Doc. 93–1649 Filed 1–22–93; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Henry Crosby From an Objection by the State of South Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On December 29, 1992, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Henry Crosby (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit under section 404 of the Clean Water Act to place fill material in a wetland for the purpose of constructing an impoundment and installing a water control structure in Colleton County, South Carolina. In conjunction with the Federal permit application, the Appellant submitted to the Corps a certification that the proposed activity is consistent with the State's federally approved Coastal Management Program (CMP). The South Carolina Coastal Council (State), the State of South Carolina's coastal management agency, reviewed the certification pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A).

On September 8, 1989, the State objected to the Appellant's consistency certification for the proposed project on the ground that the proposed project is not in accordance with the State's CMP policies and objectives of providing for the protection of wildlife and fisheries resources from significant negative impacts and productive freshwater wetlands from significant permanent alteration. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131, the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based his appeal on Ground I.

Upon consideration of the information submitted by the Appellant, the State and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121(b): The Appellant's proposed project would adversely affect the natural resources of the coastal zone by permanently altering wetlands, thus causing loss of normal functions and values. The proposed project would therefore cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its minimal contribution to the national interest. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy all of the requirements of Ground I, the Secretary did not override the State's objection to the Appellant's consistency certification. Consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Mary O'Donnell, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 14, 1993.

James W. Brennan,

Acting General Counsel.

[FR Doc. 93–1743 Filed 1–22–93; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management: Federal Consistency Appeal by the Municipality of Barceloneta From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On or about June 4, 1990, the Municipality of Barceloneta (Appellant) filed an appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to channelize a portion of the Rio Grande de Manati as part of a flood control project and to dredge 6,233,607 cubic meters of material to create a marina within the Hacienda La Esperanza Natural Reserve, Puerto Rico. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review by the Puerto Rico Planning Board (PRPB), the Commonwealth of Puerto Rico's coastal management agency, under section 307(c)(3)(A) of the CZMA, a certification that the proposed activity is consistent with Puerto Rico's Federally-approved Coastal Management Program (CMP). On April 30, 1990, the PRPB objected to the Appellant's consistency certification for the proposed project on the ground that it would have significant, negative impacts on the ecological systems within the Hacienda La Esperanza Natural Reserve.

The Appellant requested dismissal of its appeal, and the PRPB had no objection to the dismissal of the appeal. Accordingly, the Appellant's consistency appeal has been dismissed. The Appellant may not file another appeal from the PRPB's objection to its permit application.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

Dated: January 14, 1993.

James W. Brennan,

Acting General Counsel.

[FR Doc. 93–1744 Filed 1–22–93; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of Bangladesh; Correction

January 19, 1993.

On page 60175 of the **Federal Register** published on December 18, 1992 (57 FR 60175), second column, first paragraph, line 2, change "February 1, 1993 through January 31, 1994" to "February 1, 1992 through January 31, 1993."

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1712 Filed 1–22–93; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the procurement list commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 24, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agency listed:

Commodities

Cover, Protective, Life Preserver
4220-00-926-9463 thru -9470
Nonprofit Agency: BESB Industries, West Hartford, Connecticut
Insulation Tape, Electrical
5970-00-419-4290
Nonprofit Agency: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina
Compound, Corrosion Preventive
8030-00-524-9487
8030-00-251-5048
8030-00-251-5049
8030-00-213-3279
8030-00-262-7358
Nonprofit Agency: The Lighthouse for the Blind, Berkeley, Missouri

Services

Janitorial/Custodial, Department of Transportation, FAA, Air Traffic Control Tower, Murphy Terminal Building, Bradley International Airport, Windsor Locks, Connecticut. Nonprofit Agency: Human Resources Unlimited, Inc., Springfield, Virginia.

Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, 515 Murray Street, Alexandria, Louisiana. Nonprofit Agency: Louisiana Industries for the Disabled, Inc., Baton Rouge, Louisiana.

Janitorial/Custodial, Flight Service Station, Lewistown, Montana. Nonprofit Agency: Regional Services for South, Central and Eastern Montana, Inc., Billings, Montana.

Order Processing, GSA, Northeast Distribution Center, Burlington, New Jersey. Nonprofit Agency: Bestwork Industries for the Blind, Inc., Westmont, New Jersey.

Beverly L. Milkman,
Executive Director.

[FR Doc. 93-1725 Filed 1-22-93; 8:45 am]

BILLING CODE 6820-33-M

Procurement List Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from procurement list.

SUMMARY: This action adds to the procurement list a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the procurement list commodities previously furnished by such agencies.

EFFECTIVE DATE: February 24, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On November 30 and December 4, 1992, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (55 FR 56569 and 57425) of proposed additions to and deletions from Procurement List:

Addition

After consideration of the material presented to it concerning capability of qualified workshops to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to Procurement List: Janitorial/Grounds Maintenance, U.S. Army Reserve Center, 4722 McArdle Road, Corpus Christi, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Shirt, Women's
  8410–01–104–7948
  8410–01–224–6125

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–1726 Filed 1–22–93; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar and Cocoa Exchange Proposed Futures and Futures Options on Cheddar Cheese and Nonfat Dry Milk

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Coffee, Sugar and Cocoa Exchange (CSCE or Exchange) has applied for designation as a contract market in cheddar cheese futures and nonfat dry milk futures and options on those two futures. The Director of the Division of Economic Analysis (Division of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 24, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CSCE futures and options on cheddar cheese or nonfat dry milk.

FOR FURTHER INFORMATION CONTACT: Please contact Frederick Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CSCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CSCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 15, 1993.

Gerald D. Gay,

Director.

[FR Doc. 93–1562 Filed 1–22–93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 10–11 February 1993.

Time of Meeting: 0800–1700, each day.

Place: Ft. Belvoir, Virginia.

Agenda: The Army Science Board Ad Hoc Panel on "Space Systems and Future Army Operations" will meet for discussions focussed on current operational concepts, space simulations, integrated planning, and associated technologies. This meeting will be closed to the public in accordance with section 552b.(c) of title 5, U.S.C., specifically subparagraph (1) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The classified and non-classified information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–1680 Filed 1–22–93; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Municipal Water Supply Project, Central City, Colorado

AGENCIES: U.S. Army Corps of Engineers, U.S. Bureau of Land Management, U.S. Forest Service.

ACTION: Notice intent.

SUMMARY: The City of Central, Colorado proposes to construct a new water supply and storage project to supplement the water supply, transmission, and storage facilities currently serving the city. The Corps of Engineers has received a letter of intent from Central City stating that it intends to submit an application for a permit pursuant to section 404 of the Clean Water Act for construction of the proposed project. Construction of the pipeline would also require a Special Use Permit from the U.S. Forest Service for construction on Araapahoe National Forest lands and a Right-of-Way from the U.S. Bureau of Land Management for construction on public lands. Both the U.S. Forest Service and U.S. Bureau of Land Management actions would be pursuant to the Federal Land Policy and Management Act.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by: Candace M. Thomas, Planning Division, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978. Telephone: 402–221–4885.

SUPPLEMENTARY INFORMATION: Section 404 of the Clean Water Act (33 U.S.C. 1344) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. The Federal Land Policy and Management Act authorizes the U.S. Forest Service and Bureau of Land Management to approve certain uses of public lands in accordance with the resource management plans developed for management of those lands.

Although the City has not yet applied for a 404 permit, its tentatively preferred alternative consists of a 70-foot-high dam in chase Gulch, located in the northwest ¼ of Section 2., T.3S., R.73W., Gilpin County, Colorado. In addition, a pump station would be included immediately below the dam and a pipeline to the existing raw water supply pipeline owned by the city. The reservoir would be supplied with water from the city's existing raw water collection system during the peak runoff period and with water diverted from North Clear Creek. Storage capacity would be 600 acre-feet.

The City has recently experienced significant commercial growth since the introduction of limited stakes gaming in October 1991. This growth has brought corresponding increases in the demand for raw and treated water for all municipal purposes. Thus far, the City has constructed a new water treatment facility and water storage tank, has replaced or upgraded its entire water distribution system, has adopted several water conservation measures, and has pursued other water acquisition measures. In addition, the City has placed a moratorium on issuing new building permits in the city. Despite these measures, the existing water supply is insufficient to meet projected future demand.

Alternatives to the tentatively preferred project identified to date include:

1. Construction of a diversion in Clear Creek in the vicinity of Idaho Springs and construct a raw water transmission line along various possible routes. Included in each Clear Creek alternative is either new construction, expansion, or acquisition of existing storage rights in the Clear Creek Basin.
2. Construct one or more smaller reservoirs in Eureka Gulch and/or New York Gulch together with a raw water transmission line, diversion structure and pump station on either North Clear Creek or the main stem of Clear Creek.
3. Construct a raw water transmission line from the James Peak and Echo Lake storage facilities (owned by the City of Central) in the South Bolder Creek drainage basin to the City's existing treatment plant located in Eureka Gulch.
4. Construct with one or more public or private water suppliers in the Clear Creek drainage basin for a treated or raw water supply and construct a transmission line to the City's existing treatment plant located in Eureka Gulch.
5. Develop ground water resources in the North Clear Creek Basin with the necessary pipelines to the City's Eureka Gulch treatment plant.
6. Construct one or serveral configurations and capacities for the Chase Gulch Reservoir project.
7. No Federal action.

The proposed public involvement program involves a widely publicized public scoping meeting, as well as an agency scoping meeting, to solicit public input on issues, studies needed, alternatives to be evaluated, and other related matters. Written comments will also be requested. Due to the relatively short time period between scoping meetings and the anticipated public release of the Draft EIS, additional public involvement will focus on coordination with the cooperating agencies and other interested agencies, the applicant and other locals. Central City's monthly city council meetings will also serve as a forum for public involvement.

Significant issues identified thus far include indirect and secondary impacts of development associated with the water supply project, particularly on the Historic Landmark status of the area.

Other applicable and pertinent environmental review and consultation requirements will be undertaken simultaneously with the NEPA process, including requirements of the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, National Historic Preservation Act, Protection of Wetlands, Clean Air Act, and others.

The Draft Environmental Impact Statement is anticipated to be made available to the public in the late spring 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–1681 Filed 1–22–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Stealth and Stealth Countermeasures Task Force will meet February 11–12, 1993, from 9 a.m. to 4 p.m., at the Center for Naval Analyses, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to evaluate U.S. Navy requirements for stealth and stealth countermeasures systems. The entire agenda for the meeting will consist of discussions of key issues related to stealth, stealth countermeasures, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and, are in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302–0268, telephone (703) 756–1205.

Dated: January 13, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–1684 Filed 1–22–93; 8:45 am]

BILLING CODE 3810–AE–F

CNO Executive Panel; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet February 18–19, 1993, from 8:00 a.m. to 5:00 p.m., in Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda of the meeting will consist of discussions of key issues regarding task force deliberations, intelligence, military roles and missions, and future security environment. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, Alexandria 22302–0268, phone (703) 756–1205.

January 14, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

FR Doc. 93–1683 Filed 1–22–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061]

Clearance Request Regarding Transportation Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0061).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transportation Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. This information is required to ensure proper and timely shipment of Government supplies.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 65,000; responses per respondent, 5; total annual responses, 325,000; hours per response, .23; and total response burden hours, 74,750.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: January 13, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–1685 Filed 1–22–93; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000–0065]

Clearance Request for Overtime

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0065).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Overtime.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,270; responses per respondent, 1; total annual responses, 1,270; preparation hours per response, .5; and total response burden hours, 635.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: January 13, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–1686 Filed 1–22–93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 24, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5)

Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: January 15, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Policy and Planning

Type of Review: Revision.
Title: Evaluation of Upward Bound.
Frequency: One-time.
Affected Public: Individuals or households; Non-profit institutions.
Reporting Burden:
Responses: 5,140.
Burden Hours: 3,598.
Recordkeeping Burden:
Recordkeepers: 0. *Burden Hours:* 0.

Abstract: The evaluation of Upward Bound will include case studies of 20 Upward Bound grantees.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.
Title: Application for New and Continued Participation in the Bilingual Fellowship Program.
Frequency: Annually.
Affected Public: Individuals or households; Non-profit institutions.
Reporting Burden:
Responses: 45. *Burden Hours:* 900.
Recordkeeping Burden:
Recordkeepers: 40.
Burden Hours: 600.

Abstract: Form is used by institutions of higher education to request approval of their graduate programs of study so that they may nominate students for fellowship awards. The student nomination form becomes part of the award document and is used by institutions to report annually on the amount of funds spent per fellowship.

Office of Educational Research and Improvement

Type of Review: New.
Title: Survey of Employers—National Assessment of Vocational Education Data Collection and Analysis Project.
Frequency: One time.
Affected Public: Businesses or other for-profit.
Reporting Burden:
Responses: 2,409.
Burden Hours: 2,910.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This survey will be used to gather information from a nationally representative sample of employers concerning their familiarity with involvement in, and attitudes toward vocational education programs in their communities. The Department will use the information to report to Congress.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Innovative Projects for Community Service.
Frequency: Annually.
Affected Public: State or local governments; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 150.
Burden Hours: 2,400.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.

Abstract: This form will be used by State Educational Agencies to apply for funding under the Innovative Projects for Community Service Program. The Department will use the information to make grant awards.

[FR Doc. 93–1658 Filed 1–22–93; 8:45 am]

BILLING CODE 4000–1–M

[CFDA No. 84.183F]

Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects

In the matter of the notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1993.

Deadline for Transmittal of Applications: On September 21, 1992, a notice was published that established the closing date for transmittal of applications for the FY 1993 competition under the Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions: Analysis Projects (57 FR 43520, 43518, 43520–21). The purpose of this notice is to extend the closing date for transmitting applications. This action is taken as a result of an anticipated regulatory change affecting eligibility for this competition. Because of this, the closing date for applications is extended from January 19, 1993 until March 22, 1993.

Applications Available: January 29, 1993.

For Applications or Information Contact: The Fund for the Improvement of Postsecondary Education (FIPSE), FY 1993–F Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5175. Telephone: (202) 205–0082 to order applications; or (202) 708–5750 for information. Hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3211.

Dated: January 13, 1993

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–1659 Filed 1–22–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.235]

Transportation Services Demonstration Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide transportation services in geographic areas that do not have fixed route transportation or comparable paratransit services for individuals with disabilities who are employed or seeking employment or are receiving vocational rehabilitation services.
Eligible Applicants: States and public or nonprofit agencies and organizations.
Deadline for Transmittal of Applications: April 5, 1993.
Deadline for Intergovernmental Review: June 7, 1993.
Applications Available: January 29, 1993.
Available Funds: $2,000,000.
Estimated Range of Awards: $300,000–$500,000.
Estimated Average Size of Awards: $400,000.
Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.
Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85 and 86.

In accordance with section 802(a) of the Rehabilitation Act of 1973, as amended, the Secretary awards grants under this competition to States and public or nonprofit agencies and organizations to provide transportation services to individuals with disabilities who are employed or seeking employment or are receiving vocational rehabilitation services from public or private organizations and who reside in geographic areas in which fixed route public transportation or comparable paratransit service is not available.

Each application submitted under this priority must provide assurances that—

(1) The transportation services will be provided on a regular and continuing basis between the home of the

individual and the place of employment of the individual, the place where the individual is seeking employment, or the place where the individual is receiving vocational rehabilitation services; (2) A charge for the transportation will be imposed on each employed eligible individual who uses the transportation service, and the amount of the charge for an instance of use of the transportation for the distance involved will be a fair and reasonable amount that is consistent with fees for comparable services in comparable geographic areas; and (3) A report containing a description of the goals of the program carried out with the grant, a description of the activities and services provided under the program, a description of the number of eligible individuals served under the program, a description of methods used to ensure that the program serves eligible individuals most in need of the transportation services provided under the program, and any additional data specified by the Secretary will be submitted by December 31 of the fiscal year following the fiscal year for which the grant is made.

Each application submitted under this competition must also demonstrate how its project will address the needs of individuals with disabilities from minority backgrounds.

Each project grantee must advise the individuals with disabilities it provides services to or, as appropriate, the parents, guardians, family members, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

Selection Criteria

In evaluating applications for grants under this competition, the Secretary uses the EDGAR selection criteria in 34 CFR 75.210.

The regulations in 34 CFR 75.210 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the additional 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3)). Fifteen points are added to this criterion for a possible total of 30 points.

For Applications: Telephone (202) 205–9343. Deaf and hearing impaired individuals may call the Federal Dual Relay Service at 1–800–877–8339 (in the Washington, D.C. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

FOR FURTHER INFORMATION CONTACT: Pamela Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2740. Telephone: (202) 205–8494.

Program Authority: Section 802(a) of the Rehabilitation Act of 1973, as amended by section 801(a) of Public Law 102–569, 106 Stat. 4344.

Dated: January 13, 1993.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–1564 Filed 1–22–93; 8:45 am]

BILLING CODE 4000–01–U

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of hearings.

SUMMARY: The Council of Chief State School Officers, under contract to the National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing three public hearings. These hearings will be conducted as part of the Council's contract with NAGB for the purpose of developing an assessment framework and specifications for the 1996 National Assessment of Educational Progress (NAEP) Arts Education Consensus Project. Public and private parties and organizations with an interest in the arts education assessment are invited to present written and oral testimony to the Council.

Each hearing will focus on the issues in arts education which will be assessed in the examinations given to a national sample of students in grades 4, 8, and 12. The results of the hearings are particularly important because they will provide broad public input in developing the arts education assessment framework to be used in the planned national NAEP examination in 1996. This assessment will measure American students' progress in arts education. These hearings are being conducted pursuant to Public Law 100–297, Section 6(E), which states that "Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public."

DATES: The dates of the three public hearings have been set as follows:

- February 4, 1993 in San Francisco, California.
- February 9, 1993, in Orlando, Florida.
- February 24, 1993 in New York, New York.

A second series of public hearings will be held in September 1993 to gather recommendations on the draft assessment framework. No specific dates or locations have been set as yet.

The first hearing in February is scheduled 9:30 a.m. to 12:30 p.m., in coordination with the Getty Center for Education in the Arts Conference, in San Francisco. The second hearing will be held during the 1993 Conference on Elementary-Secondary Education Management Information Systems at the Orlando Florida Marriott from 4:30 p.m. to 8:00 p.m. The third hearing will be held from 1 p.m. to 4 p.m. at Metropolitan Life Foundation on 24th Street in New York, New York. Persons desiring to present oral statements at the hearing shall submit a notice of intent to appear, postmarked no fewer than ten (10) days prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received fewer than 10 days prior to the hearing.

Notices of intent to present oral statements shall be mailed to: Council of Chief State School Officers, One Massachusetts Avenue NW., suite 700, Washington DC, Attn: Bonnie Verrico—Public Hearings.

Individuals may also request a copy of a draft issues paper, prepared by the Arts Education Consensus project staff. This paper will serve as a starting point for deliberations by the consensus committees, and may provide useful background information to persons who plan to testify at the hearings. Requests for the issues paper may be made to the Council (address above), or by phone to the numbers listed below.

Locations: For detailed information on the exact locations of all public hearings, please contact Council offices at (202) 336–7021 or (202) 336–7046.

Written Statements: Written Statements may be submitted for the public record in lieu of oral testimony up to 30 days after each hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed

Testimony should respond to one or more issues identified and discussed in the paper prepared by the NAEP Arts Education Consensus project staff (available from CCSSO), and the following questions:

1. How can the 1996 Arts Education Assessment combine feasibility and vision?

2. What counts as arts education?
3. What counts as learning in the arts?
4. What form might an arts education assessment take?
5. What kinds of contextual information can and should be gathered?
6. How might the results be reported most effectively?
7. How could this assessment contribute to the creation of a resonant system of curriculum, instruction, and assessment?

II. Summary

Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion

The narrative should provide information, points of view and recommendations that will enable the Council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation. Written statements presented at each hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as possible.

Hearings Objectives and Procedures: The Council seeks participation in the hearings from a broad spectrum of individuals and organizations in the sharing of opinions and recommendations regarding arts education proficiencies, knowledge, and those skills and strategies to be assessed at grade levels 4, 8, and 12. The list of speakers, shall, on the one hand, provide a wide range of viewpoints and interests, but also be organized to respect the time constraints of the hearing schedule.

The goal of the hearings is to provide a medium for maximum input and guidance from teachers, curriculum specialists, local school administrators, parents and concerned members of the general public. Following a brief introduction to the project by the Council of Chief State School Officers, the majority of the session will be devoted to presentations by scheduled speakers.

As listed in the "Dates" section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information:

(1) Name, address and telephone number of each person to appear;

(2) affiliation (if any);

(3) a brief statement of the issues and/or concerns that will be addressed; and

(4) whether a written statement will be submitted for the record.

Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes. While it is anticipated that all persons will have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

All written statements presented at the hearings will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after each hearing in order to be included in the public record. However, while written statements received after this date will be accepted, inclusion in the public record cannot be guaranteed.

A staff member from the Council of Chief State School Officers will preside at each of the hearings. The proceedings will be audiotaped. The hearings can also be signed for the hearing-impaired, upon advance request.

Additional Information: Additional information is available from the Council offices. A brochure and informational paper have been developed by the Council and its subcontractors. A draft issues paper will be made available to interested parties prior to the hearings in February, and a draft framework will be provided prior to the September hearings. Individuals wanting additional information on a specific hearing should contact Council offices at (202) 336–7021 or (202) 336–7046.

Steps After Hearing: The Council will review and analyze all comments and opinions received in response to this announcement. A report of the outcomes of these hearings will be made available to the public upon request after December 1993.

The results of this public testimony, along with the Council's Arts Education Consensus committee work, will be used to formulate recommendations for the 1996 NAEP Arts Education Assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in the spring of 1994.

A record of all Council proceedings will be kept at the offices of the Council of Chief State School Officers until March 1994, at which time all records will be transferred to the National Assessment Governing Board, and will be available for public inspection.

Dated: January 15, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93–1553 Filed 1–22–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Unsolicited Financial Assistance Award; Pittsburgh Energy Technology Center

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with Stanford University.

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO), announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to award a grant through the Pittsburgh Energy Technology Center (PETC) to Stanford University for "Productivity and Injectivity of Horizontal Wells."

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Karen S. Olean, Contract Specialist, (412) 892–6202.

SUPPLEMENTARY INFORMATION:

Grant No.

DE–FG22–93BC14862

Title of Research Effort

"Productivity and Injectivity of Horizontal Wells".

Awardee

Stanford University.

Term of Assistance Effort

Sixty (60) months.

Cost of Assisted Effort

The total estimated value if $1,980,643.00.

Objective

The objective of this project is designed to develop and analyze means of predicting proudusibility in horizontal wells. This is a highly disciplined proposal to develop the complex understanding necessary to predict how horizontal wells will effect reservoir fluid movement and, therefore, producibility relative to vertical wells.

Work under this project will be carried out in eight phases. The overall thrust being to determine horizontal well performance sensitivity to reservoir heterogeneities, pressure drops upon well producing action, directional permeabilities and other key influences by establishing the modeling (methodology) capability to confidently predict horizontal well performance (oil producibility) under a range of common reservoir and fluid conditioins.

In accordance with 10 CFR 600.14, Stanford University has been selected as the grant recipient. DOE support of the activity would enhance the pbulic benefits to be derived by improvement of its technology transfer activities. This activity represents a unique idea and a method which would not be eligible for financial assistance under solicitation. The DOE has determined that a competitive solicitation would be inappropriate.

Dated: January 5, 1993.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 93–1719 Filed 1–22–93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2712–004, et al.]

Hydroelectric Applications [Bangor Hydro-Electric Co., et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* New Major License.

b. *Project No.:* 2712–004.

c. *Date Filed:* December 30, 1991.

d. *Applicant:* Bangor Hydro-Electric Company.

e. *Name of Project:* Stillwater Project.

f. *Location:* On the Stillwater Branch of the Penobscot River, Penobscot County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frederick S. Samp, Bangor Hydro-Electric Company, 13 State Street, Bangor, ME 04401, (207) 945–5621.

i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.

j. *Comment Date:* Initial Comments March 15, 1993, Reply Comments April 28, 1993.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The Stillwater Project's principal features consist of a very long, meandering dam, a powerhouse, an impoundment, and appurtenant facilities. The project has a total nameplate generator capacity of 1.95 megawatts (MW) and an average annual generation of about 13,120 megawatt-hours (MWH). In detail, the project is described as follows:

(1) A main concrete gravity dam, totaling about 1,720 feet long, with a maximum height of 22 feet at crest elevation 91.65 feet National Geodetic Vertical Datum (NGVD), consisting of thirteen sections: (a) A non-overflow section, totaling 63 feet long, which serves as an abutment and wingwall, containing a 6-foot-wide unused stoplog sluice gate; (b) a 381-foot-long primary spillway section, with a maximum height of 22 feet at a crest elevation of 91.65 feet (NGVD), topped with 2.0-foot-high pin-supported flashboards; (c) an 85-foot-long by 2-foot-wide by 2.5-foot-high leveling concrete course; (d) a 43-foot-long concrete sill section on top of a ledge island; (e) a 174-foot-long ogee section, with varying heights from 4 to 20 feet, topped with 2.0-foot-high pin-supported flashboards; (f) a 52-foot-long ogee section, with a maximum height of 9 feet, topped with a concrete curb, 15 inches wide by 25 inches high; (g) a 105-foot-long spillway section, with an average height of 6 feet; (h) a 42-foot-long spillway section, with a maximum height of 8 feet, topped with 1-foot-high pin-supported flashboards; (i) a 73.5-foot-long abutment section, with an average height of 4 feet; (j) a 187-foot-long non-overflow section, with varying heights from 3 to 12 feet, which abuts an abandoned powerhouse; (k) a 63-foot-long non-overflow section, which is part of the abandoned powerhouse's foundation; (l) a 197.5-foot-long section, with varying heights from 2 to 4 feet, abutting the old and existing powerhouses; and (m) a 162.5-foot-long non-overflow section, with a downstream-facing earth backfill, having a maximum height of 12 feet, topped with a 2-foot-high concrete curb and a driveway on top of the earth backfill;

(2) A concrete and wooden powerhouse, about 83.5 feet long by 32 feet wide by 45 feet high, equipped with four horizontal hydro-electrical generating units: (a) three of which are rated at 450-kW each, with a net head of 18 feet and a hydraulic capacity range from 380 to 1,140 cubic feet per second (cfs), (b) and one rated at 600-kW, with a net head of 18 feet and a hydraulic capacity of 560-cfs; and (c) all totaling a rated capacity of 1,950-kW, a hydraulic capacity range from 380 to 1,700-cfs, an average annual generation of about 13,120-MWh;

(3) An impoundment, about 3.1 miles long, having (a) a surface area of about 300 acres; (b) a gross storage capacity of 3,040 acre-feet; (c) a normal headwater surface elevation of about 93.65 feet NGVD; and (d) a normal tailwater surface elevation of about 73.65 feet NGVD; and

(4) Appurtenant facilities.

The Applicant is not proposing any changes to the existing project works as licensed. The Applicant owns all the existing project facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $850,880.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Bangor Hydro-Electric Company 33 State Street, Bangor, ME 04401, (207) 945–5621.

2.a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11353–000.

c. *Date filed:* October 23, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Salt Lake.

f. *Location:* In Box Elder County, Utah, near the town of Ogden. T.7N, R.5W, sections 8 and 9.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Rick S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0622.

i. *FERC Contact:* Mr. Michael Spencer on (202) 219–2846.

j. *Comment Date:* March 29, 1993.

k. *Description of Project:* The proposed project would consist of (1) A 200-foot-high, 1,900-foot-long earthen dam; creating (2) a 77-acre reservoir with a storage capacity of 2,200 acre-feet and a surface elevation of 5,290 feet msl, to be used as the upper reservoir; (3) a 1,350-foot-long, 14-foot diameter tunnel; (4) a 4,900-foot-long, 12-foot-diameter penstock; (5) a powerhouse containing two pump-turbines with a combined installed capacity of 200 MW, producing an estimated average annual energy output of 12,500 GWh; (6) a 5-foot high, 2,300-foot-long earthen dam surrounding an excavation, creating; (7) a 41-acre reservoir with a storage capacity of 2,200 acre-feet at elevation 4,200 feet msl, to be used as the lower reservoir; and (8) and 25-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

3.a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11354–000.

c. *Date filed:* October 23, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Pokes Point.

f. *Location:* In Box Elder County, Utah, near the town of Ogden. T.6N, R.5W, sections 2 through 5, 10, and 11.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Rick S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, Suite 410, San Francisco, CA 94111, (415) 362–0622.

i. *FERC Contact:* Mr. Michael Spencer on (202) 219–2846.

j. *Comment Date:* March 29, 1993.

k. *Description of Project:* The proposed project would consist of (1) A 120-foot-high, 1,500-foot-long earthen dam; creating (2) a 53-acre reservoir with a storage capacity of 2,510 acre-feet and a surface elevation of 5,400 feet msl, to be used as the upper reservoir; (3) a 4,020-foot-long, 14-foot-diameter tunnel; (4) a 7,265-foot-long, 12-foot diameter penstock; (5) a powerhouse containing two pump-turbines with a combined installed capacity of 200 MW, producing an estimated average annual energy output of 12,500 GWh; (6) a 5-foot-high, 2,000-foot-long earthen dam surrounding an excavation, creating; (7) a 47-acre reservoir with a storage capacity of 2,510 acre-feet at elevation 4,200 feet msl, to be used as the lower reservoir; and (8) a 24-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

4.a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11355–000.

c. *Date Filed:* October 23, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of project:* Hell's Kitchen.

f. *Location:* In Utah County, Utah, near the town of Provo. T.7S, R.1W, sections 10 through 12.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Rick S. Koebbe, Vice President, Peak Power Corporation, 10 Lombard Street, suite 410, San Francisco, CA 94111, (415) 362–0622.

i. *FERC Contact:* Mr. Michael Spencer on (202) 219–2846.

j. *Comment Date:* March 16, 1993.

k. *Description of Project:* The proposed project would consist of (1) A 40-foot-high, 300-foot-long earthen dam; creating (2) a 29-acre reservoir with a storage capacity of 2,000 acre-feet and a surface elevation of 6,600 feet msl, to be used as the upper reservoir; (3) a 2,520-foot-long, 14-foot-diameter tunnel; (4) a 6,300-foot-long, 12-foot-diameter penstock; (5) a powerhouse containing two pump-turbines with a combined installed capacity of 200 MW, producing an estimated average annual energy output of 12,500 GWh; (6) a 130-foot-high, 1,400-foot-long earthen dam, creating; (7) a 42-acre reservoir with a storage capacity of 2,000 acre-feet at elevation 5,190 feet msl, to be used as the lower reservoir; and (8) an intertie with Utah Power's transmission system at the lower reservoir.

No new access road will be needed to conduct the studies. The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $1,000,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B,C, D2.

5.a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11356–000.

c. *Date filed:* October 26, 1992.

d.. *Applicant:* Long Park Hydro Associates, dba Current Power Technologies, Inc.

e. *Name of Project:* Long Park Power Project.

f. *Location:* On Sheep Creek in Daggett County, Utah near the town of Manila. T.2N., R.18E; sections 2, 11, and 14. Salt Lake Base and Meridian; T.12N., R.11W; sections 10, 11, 12, 15, 16, 20, and 21, Principal Meridian.

The project would occupy land within the Ashley National Forest and Land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Gene Deveraux, 1190 North Spring Creek Place, P.O. Box 870, Springville, UT. 84663–0870, (801) 489–0089; Mr. Frank Haws, 719 North 400 East, Logan, UT 84321.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* March 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) The Sheep Creek Irrigation Company's existing 110-foot-high, 855-foot-long earthfill dam with a crest elevation at 8,652.5 feet msl; impounding (2) the 400-acre Long Park Reservoir with a storage capacity of 13,700 acre-feet and a water surface elevation of 8,645.5 feet msl; (3) a 42-inch-diameter, 9,600-foot-long steel penstock; (4) a powerhouse containing a single generating unit with an installed capacity of 10,000 kW, producing an estimated average annual energy output of 26 million kWh; (5) a pumping station and 16-inch-diameter pipeline near the powerhouse; (6) a tailrace; and (7) a 10.5 mile-long 64-kV transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $250,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility or a state municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6. a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11357–000.

c. *Date filed:* October 26, 1992.

d. *Applicant:* Moon Lake Hydro Associates, dba Current Power Technologies, Inc.

e. *Name of Project:* Moon Lake Power Project.

f. *Location:* On the West Fork of the Lake Fork River in Duchesne County, Utah near the town of Mountain Home. T.2N., R.5W, sections 7, 18 and 19.; T.2N. R.6W, sections 1, 12, and 13. Unitah Special Base and Meridian.

The project would occupy land within the Ashley National Forest, and lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gene Deverau, 1190 North Spring Creek Place, P.O. Box 870, Springville, UT 84663–0870, (801) 489–0089; Mr. Frank Haws, 719 North 400 East, Logan, UT 84321.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* March 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) The Bureau of Reclamation's existing 101-foot-high, 663-foot-long Moon Lake earthfill dam with a crest elevation at 8,145 feet msl; impounding (2) the 770-acre Moon Lake Reservoir with a storage capacity of 49,500 acre-feet and a water surface elevation of 8,137 feet msl; (3) a 62-inch-diameter, 7,610-foot-long steel penstock; (4) a powerhouse containing two generating units with a total installed capacity of 7,200 kW, producing an estimated average annual energy output of 23 million kWh; (5) a tailrace; and (6) a 350-foot-long 69–kV transmission line tying into the existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit at $250,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility or a state municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11358–000.

c. *Date filed:* October 26, 1992.

d. *Applicant:* Guardsman Way Hydro Associates, dba Current Power Technologies, Inc.

e. *Name of Project:* Guardsman Way Power Project.

f. *Location:* On the Salt Lake City Terminal and Park Reservoirs transmission line to Guardsman Way in Salt Lake County, near the town of Salt Lake City. The project will be constructed to become part of the City's water system.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Creek Place, P.O. Box 870, Springville, UT 84663–0870, (801) 489–0089; Mr. Frank Haws, 719 North 400 East, Logan, UT 84321.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* March 29, 1993.

k. *Description of Project:* The proposed project would consist of: (1) The existing 8 million gallon Park Reservoir; (2) the two existing Terminal Reservoirs, each 20 million gallons; (3) an existing 36-inch-diameter steel transmission pipeline; (4) a new underground powerhouse containing a single generating unit with an installed capacity of 553 kW, producing approximately 4 million kWh of energy annually; and (5) a substation.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $35,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility or a state municipality.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11361–000.

c. *Date filed:* November 18, 1992.

d. *Applicant:* May Creek, Inc.

e. *Name of Project:* May Creek.

f. *Location:* On Lake Isabel in the Mt. Baker—Snoqualmie National Forest near the town of Goldbar in Snohomish County, Washington. Township 28N, Range 9E sections 35 and 36.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gary P. Marcus, May Creek, Inc., 1580 Valley River Drive, Eugene, OR 97401–2148, (503) 683–5200.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* March 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) A submerged, screened pipe intake on the bottom of Lake Isabel; (2) a 12,100-foot-long, 36-inch-diameter steel penstock; (3) a powerhouse containing a generator with a capacity of 4,890 kW and an average annual generation of 20,406 MWh; and (4) a 0.7-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $350,000.

l. *Purpose of Project:* Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

9. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11367–000.

c. *Date filed:* December 16, 1992.

d. *Applicant:* Peak Power Corporation.

e. *Name of Project:* Sheep Mountain Modular Pumped Storage Project.

f. *Location:* Predominantly on lands administered by the Bureau of Land Management in the Sheep Mountains, approximately 19 miles south of Las Vegas, in Clark County, Nevada. R60E, T22S to T25S.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rick S. Koebbe, Peak Power Corporation, 10 Lombard Street, suite 410, San Francisco, CA 94111, (415) 362–0887.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* March 17, 1993.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) A 140-foot-high dam and 46-acre upper reservoir; (2) a 13.5-foot-diameter, 3,340-foot-long penstock connecting the upper reservoir with a lower reservoir; (3) a 50-foot-high dam and 65-acre lower reservoir; (4) a powerhouse with a total installed capacity of 200 MW; (5) a 17.5-mile-long transmission line interconnecting with an existing Nevada Power Company transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $1,000,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (March 15, 1993 for Project No. 2712–004). All reply comments must be filed with the Commission within 105 days from the date of this notice. (April 28, 1993 for Project No. 2712–004).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: January 14, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1572 Filed 1–22–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93–152–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

January 14, 1993.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP93–152–000]

Take notice that on January 7, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158 filed in Docket No. CP93–152–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate the new James River Meter Station in Clark County, Washington for the delivery of transportation gas from Northwest's Grant Pass Lateral to a non-jurisdictional pipeline to be constructed by James River Corporation (James River) to serve its existing paper mill facility at Camas, Washington under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it proposes to construct and operate the James River Meter Station to be used for the delivery of transportation gas directly to James River. Northwest also states that it proposes to construct a meter station consisting of two eight-inch turbine meter runs, two three-inch regulators, two six-inch hot taps and associated appurtenances. The estimated cost of the station is approximately $495,890.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corp.

[Docket No. CP93–155–000]

Take notice that on January 11, 1993, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93–155–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to establish an additional point of delivery for transportation service to Minard Run Oil Company 0 (MRO) in McKean County, Pennsylvania, under its blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia Gas states that it proposes to establish the new point of delivery to MRO at an existing 4-inch tap to provide interruptible transportation service. Columbia Gas further states that the interconnecting facilities would consist of a 4-inch meter, 8′ by 8′ building, filter separator and less than 20 feet of 8-inch pipeline. Columbia Gas says that the estimated cost to establish this point of delivery would be approximately $25,500 and would be reimbursed by MRO.

The estimated quantities of natural gas to be delivered at the new point of delivery would be 950 Dth per day and 346,750 Dth annually.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Co.

[Docket No. CP93–159–000]

Take notice that on January 12, 1993, Northern Natural Gas Company (Northern), P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP93–159–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate and maintain eight existing delivery points in order to accommodate unrestricted gas service for Peoples Natural Gas Company, Division of UtiliCorp United, Inc. (Peoples), under the blanket certificate issued in Docket No. CP82–401–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern proposes to operate eight existing town border stations located in Nebraska, Kansas, Iowa, and Minnesota originally authorized to be constructed and operated pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and § 284.3(c) of the Commission's Regulations. Northern states that it proposes to use the facilities to accommodate natural gas deliveries to Peoples not limited to those delivered under section 311 of the NGPA. Northern proposes no increase in capacity of those facilities. It is indicated that the end use of gas deliveries through these facilities would be residential, commercial and industrial.

It is stated that deliveries to Peoples through the delivery points would be made pursuant to Northern's currently effective rate schedules. It is also stated that delivery of volumes through the existing delivery points would not impact Northern's peak day and annual deliveries. In addition, Northern advises that the total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request. Also, it is indicated that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the changes proposed herein without detriment or disadvantage to Northern's other customers.

Comment date; March 1, 1993, in accordance with Standard Paragraph G at the end of this Notice.

4. K N Energy, INC.

[Docket No. CP93–156–000]

Take notice that on January 12, 1993, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP93–156–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 211) for authorization to construct and operate sales taps under K N's blanket certificate issued in Docket No. CP83–140–000, *et al.* pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N proposes to construct and operate 15 sales taps for sale of gas to end-users, located along its jurisdictional pipelines, in accordance with K Ns current rate schedules authorized by the applicable state and local regulatory bodies having jurisdiction over the sales. K N states that the customers would reimburse it for a portion of the construction costs through a connection charge which varies by state as follows: Kansas-$250, Nebraska-$400, Colorado-$400, and Wyoming-$400. K N describes the customers as resident/occupants and provides related information as shown in the attached Appendix.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this Notice.

Customer		Location	Approximate quantities, Mcf		End use	Estimated cost of facilities
			Peak day	Annual		
92–108	Kenneth Goeglein	Yuma Co., Colorado	89	5,340	Commercial	$1,150
92–109	Sheridan County Pork	Sheridan Co., Nebraska	50	3,000	Commercial	1,150
92–110	Danhauer Farms, Inc	Hamilton Co., Nebraska	6	360	Commercial	850
92–111	Midwest Energy, Inc	Rooks Co., Kansas	50	3,000	Commercial	1,150
92–112	CY Cattle, Inc	Gove Co., Kansas	5	30	Commercial	1,150
92–113	Clayton Nichols	Haskell Co., Kansas	36	1,190	Irrigation	1,150
92–114	Leonard Anderson	Franklin Co., Nebraska	28	980	Irrigation	1,150
92–115	James Oberlander	Fillmore Co., Nebraska	30	990	Irrigation	1,150
92–116	Melvin Johnson	Sheridan Co., Kansas	24	790	Irrigation	850
92–117	Chris Meyer	Nuckolls Co., Nebraska	2	120	Domestic	850
92–118	Everette Gardner	Buffalo Co., Nebraska	4	240	Domestic	850
92–119	Jack Adams	Kearny Co., Kansas	3	180	Domestic	850
92–120	Curtis E. Wolff	Hamilton Co., Nebraska	6	360	Domestic	850
92–121	Monte Trampe	Buffalo Co., Nebraska	4	240	Domestic	850
92–122	Larry Kliewer	Hamilton Co., Nebraska	100	917	Grain Dryer	2,500

5. El Paso Natural Gas Co.

[Docket No. CP93–154–000]

Take notice that on January 11, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP92–154–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain sales lateral facilities in Texas and Arizona, under El Paso's blanket certificate issued in Docket No. CP82–435–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to abandon in place approximately 8.5 miles of pipeline segments of various diameters, previously used for deliveries to Southwestern Public Service Company, the City of Mesa, Arizona and Phelps Dodge Corporation. El Paso proposes to abandon by sale to Southwest Gas Corporation (Southwest) approximately 1.6 miles of pipeline used for deliveries to Southwest. It is stated that the facilities proposed to be abandoned in place are no longer needed and that the facilities proposed to be abandoned by sale would be used by Southwest as distribution facilities. It is asserted that no customers would lose service as a result of the proposed abandonments and that the customers previously served by the facilities have consented to the proposed abandonments.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1571 Filed 1–22–93; 8:45 am]

BILLING CODE 6717–01–M

Morgantown Energy Technology Center

Financial Assistance Award; (Award of Cooperative Agreement/Renewal)

AGENCY: Morgantown Energy Technology Center, U.S. Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.7(b)(2)(i)(A) the DOE, Morgantown Energy Technology Center (METC), gives notice of its plans to award a cooperative agreement/renewal to Sun Refining and Marketing (SUN), Applied Research and Development, P.O. Box 1135, Marcus Hook, Pennsylvania 19061–0835, in the amount of approximately $12.2M, of which $4M will be funded by the DOE. DOE intends to provide funding in the amount of $1M for the first budget period of the renewal period. The project period will be extended by four years for a total project period of seven years, and will be increased by approximately $12.2M, for an estimated total project value of $14.4M.

FOR FURTHER INFORMATION CONTACT: D. Denise Riggi, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, telephone: (304) 291–4241, Procurement Request No. 21–93MC26029.501.

SUPPLEMENTARY INFORMATION: The purpose of the cooperative agreement/renewal is to provide continued financial assistance to SUN in support of its program entitled "Catalytic Conversion of Light Alkanes." The research is designed to develop a new family of catalysts for the conversion of light alkanes to liquid fuels through alcohols as intermediates. New catalysts have been discovered under the current agreement activity; the requested renewal will provide for the development of these catalysts to the proof of concept stage. One of DOE/METC's missions is to conduct research and development on the efficient exploitation of natural gas resources. This project fits well within the METC Natural Gas to Liquids Program. By providing financial support, METC expects to stimulate utilization of natural gas reserves by developing a relatively simple, cost effective, process suitable for installation at the well-head for conversion of methane to transportable liquid.

Issued in Washington, D.C. January 15,1993.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 93–1707 Filed 1–22–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4554–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before February 24, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) for Industrial-Commercial-Institutional Steam Generating Units, Subpart Db (ICR No. 1088.06; OMB No. 2060–0072).

Abstract: This ICR is a reinstatement of an expired information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8 and 60.13, and the specific NSPS Subpart Db for nitrogen oxide (NOx), particulate matter (PM), and sulfur dioxide (SO2) emissions from Industrial-Commercial-Institutional Steam Generating Units at 40 CFR 60.40. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Under this ICR, owners or operators of affected facilities must provide EPA, or the delegated authority, with one-time notifications, reports, and recordkeeping required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must provide EPA, or the delegated authority, with information that may include: (1) Semiannual reports of monitoring results and excess emissions; (2) performance test data and results; and (3) quarterly reports of monitoring results and excess emissions. Where applicable, facilities must maintain records related to NOx, SO2, or PM emissions that may include: (1) Amounts of fuels fired; (2) annual capacity factors; (3) opacity measurements; and/or (4) nitrogen content of fuels.

Presently, there are 464 facilities subject to this regulation with an estimated increase in the regulated universe at 58 sources per year, for an average of 551 facilities over the next three years. Facility records related to compliance must be maintained for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 129 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Annual recordkeeping burden is estimated to average 156 hours per respondent.

Respondents: Owners or operators of subject steam generating units that commenced construction, modification or reconstruction after June 19, 1984 and are operating with heat input capacities greater than 100 million British Thermal Units (BTU)/hour.

Estimated Number of Respondents: 551.

Estimated Number of Responses Per Respondent: 4.

Estimated Total Annual Burden on Respondents: 369,722 hours.

Frequency of Collection: One-time notifications and reports for new facilities; quarterly reporting for subject existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20503.

Dated: January 15, 1993.

Paul Lapsley,

Director, Regulatory Management Division

[FR Doc. 93–1732 Filed 1–22–93; 8:45am]

BILLING CODE 6560-50-F

[FRL 4555–8]

Open Meeting of the Policy Dialogue Committee on Mining Wastes

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee meeting—Policy Dialogue Committee on Mining Wastes.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), we are giving notice of the date and location of the next meeting of the Policy Dialogue Committee on Mining Waste. The purpose of the meeting is to obtain updates on current mine waste related activities, discuss EPA's proposed mine waste activities, and to discuss potential future roles for the Policy Dialogue committee. The meeting is open to the public without advance registration. An opportunity for public comment will be offered at the end of the day.

DATES: The meeting will be held on February 17, 1993 from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton City Centre, 1143 New Hampshire Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the mining waste program should call Steve Hoffman, Office of Solid Waste, U.S. EPA, (703) 308–8413; 401 M Street, SW., Washington, DC 20460. Persons needing further information on administrative matters such as committee arrangements or procedures should contact Deborah Dalton, EPA Consensus and Dispute Resolution Program, (202) 260–5495 or the Committee's facilitator, John Ehrman, The Keystone Center, (303) 468–5822.

Dated: January 15, 1993.

Deborah Dalton,

Designated Federal Official, Deputy Director, Consensus and Dispute Resolution Program, Office of Policy, Planning and Evaluation.

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[FRL–4555–3]

Superfund Response Action Contractor Indemnification

AGENCY: Environmental Protection Agency.

ACTION: Final guidelines.

SUMMARY: The Environmental Protection Agency (EPA) is issuing final guidelines to implement section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9619) and Public Law 101–584. Section 119 provides the President with discretionary authority to indemnify response action contractors (RACs) for releases of a hazardous substance or pollutant or contaminant arising out of negligence in conducting response action activities at sites on the National Priorities List (NPL) and removal action sites. As delegated by the President, EPA has authority to extend indemnification to RACs working at NPL or removal action sites for EPA, states, political subdivisions of states, federally recognized Indian tribes, and potentially responsible parties (PRPs).

EFFECTIVE DATE: January 25, 1993.

ADDRESSES: Rick Colbert, U.S. Environmental Protection Agency, 5502–G, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Rick Colbert, (703) 603–8932.

SUPPLEMENTARY INFORMATION: Detailed Summary of Final Guidelines:

- *Diligent Efforts:* To be eligible for indemnification by EPA, a RAC must have made diligent efforts to obtain insurance coverage from non-federal sources. Under a multisite contract, the RAC must agree to continue to make such diligent efforts each time it begins work at a new site.
- *Prime contracts:* For future contracts, EPA does not intend to offer any indemnification unless it did not receive a sufficient number of qualified bids or proposals, and the lack of response can be linked to the absence of indemnification. In such a situation, EPA may issue a new or amended solicitation and offer indemnification. RACs with EPA indemnification coverage under current contracts will be offered coverage under these guidelines. They may negotiate with EPA on the limit and deductible, but the upper limit that they may choose from is determined by the dollar amount of the contract. Coverage of $75 million is the top limit (with co-payments above $50 million), and it is available for RACs with contracts of long duration (greater than five years) only. The maximum top limit for other RACs is $50 million.
- A $15 million aggregate limit per cost-reimbursement contract of long duration (greater than five years) will be added to provide indemnification solely for specialty subcontractors with $5 million as the maximum amount available on any one subcontract.
- *Innovative technology RACs:* For current contracts and new contracts

where indemnification is offered, the RAC who provides innovative technologies during remedial action (RA) construction may select from a range of limits. However, the deductibles associated with a specific limit will be lower for these contractors than for other contractors. Eligible RACs may be prime contractors or subcontractors (receiving indemnification from the prime contractor) under fixed-price contracts or subcontractors under cost-reimbursement contracts.

- *PRP RAC contractors:* These RACs will not receive EPA indemnification.
- *SITE Participants and CERCLA 126(g) hazardous workers training grantees:* These RACs may be offered indemnification, but the upper limit available to them will be lower than for other RACs. In addition, the deductibles associated with those limits will be lower than for other RACs.
- *Term of coverage:* The term of coverage will be ten years.
- *Surety firms:* Firms that provide performance bonds inherit the indemnification agreement of the defaulting RAC if the bond is activated.
- *Renegotiating existing contracts:* EPA believes that given the temporary nature of indemnification under its interim guidance (OSWER Directive 9835.5), i.e., the statutory requirement for promulgation of final guidelines subject to public comment, RACs understood that this protection lacked any permanence and was offered on a "claims made" basis. EPA will terminate the contracts of RACs who do not agree to modify the indemnification terms under their existing contracts so that they are consistent with the final guidelines.

I. Introduction

These guidelines meet the statutory requirements of CERCLA section 119(c)(7), which requires the development of guidelines to implement CERCLA § 119 before promulgation of regulations. Since october 1987, EPA has offered indemnification to RACs under an interim guidance, OSWER Directive 9835.5, "EPA Interim Guidance on Indemnification of Superfund Response Action Contractors Under Section 119 of SARA." The interim guidance required a $100,000 deductible, but it did not state a limit in coverage for the indemnification as required by CERCLA section 119. The interim guidance did not attempt to assess whether indemnification is necessary to encourage RAC participation in the Superfund program, and it assumed that EPA's indemnification is an adequate substitute for insurance.

In the spring of 1989, EPA sent letters to the then-current RACs stating that it had determined that some insurance may be available. The letter instructed the RACs to make diligent efforts to seek insurance from the private sector and forward proof of their diligent efforts to the EPA contracting officer.

On October 31, 1989, EPA published proposed guidelines in the **Federal Register** (54 FR 46012) and requested public comment. EPA stated that during an information gathering process, it had not been able to gather adequate information to determine the amount of insurance (coverage) that any particular RAC should maintain. EPA further stated that it had not been able to determine the extent to which indemnification should be offered to meet the Agency's objectives, if at all. As stated in the proposal these objectives are:

- Provide RACs with a temporary comparable substitute for commercial pollution insurance, in the absence of affordable and adequate commercial insurance coverage or other viable private sector risk transfer mechanisms;
- Encourage the insurance industry to provide RACs with adequate and affordable pollution insurance products;
- Encourage the development of other private sector mechanisms that provide RACs with adequate and affordable prospective pollution risk transfer mechanisms;
- Maintain EPA's fiduciary responsibility to ensure that the Superfund monies are used to clean up sites to the maximum extent possible;
- Assure that an adequate pool of qualified RACs will be available to keep the Superfund program operative;
- Maintain strong RAC incentives to prevent and reduce RAC induced release incidents throughout a given Superfund response action contract;
- Maintain strong RAC incentive to continue to seek commercial insurance coverage and/or develop alternative risk transfer mechanisms.

EPA stated that the indemnification limit and deductible scheme should be based on the assumption that the RAC itself is best able to determine its required level of insurance or indemnification coverage. However, EPA believed that the RAC will overstate its required indemnification limit unless a disincentive to overstate is included. Therefore, EPA proposed tying the size of the deductible to the size of the limit.

EPA proposed a "sliding scale" for cost-reimbursement contracts; these are the contracts under which contractors work on EPA-directed tasks on an hourly basis and are reimbursed for costs incurred while performing the work. The contracts are multi-site, with the work at various locations determined after contract award through work assignments issued by EPA. Under the proposal, a RAC could choose a coverage limit it believed it needed up to $50 million. However, as the limit increased, the deductible would also slide upwards; the deductible paired with a $50 million limit was $3.5 million.

For RACs with fixed-price contracts, i.e., Army Corps of Engineer remedial action (RA) contracts, state-lead contracts, and removal site-specific contracts, EPA proposed market incentives to encourage RACs not to request EPA indemnification. That is, EPA would put a value on its indemnification, either as a price charged to the RAC or as an adjustment to a bid reflecting the amount of indemnification requested by a RAC.

The General Accounting Office (GAO) in a 1989 report to Congress, "SUPERFUND: Contractors Are Being Too Liberally Indemnified by the Government," recommended that EPA attempt to use the procurement system to see if RACs would work at EPA sites absent indemnification. EPA believed that the use of market incentives to encourage RACs not to ask for EPA indemnification paralleled GAO's recommendation to use the market place to help meet EPA's goals. EPA concurred with the GAO recommendation and believed that this approach would maintain EPA's responsibility to ensure that Superfund monies are used to the maximum extent possible to clean up sites, and at the same time maintain an adequate number of contractors willing to work at EPA sites.

EPA concluded in the proposal that "given the limited data which EPA has had available to it in shaping this scheme, the Agency is particularly interested in receiving further information that may support this or alternative schemes."

EPA received a variety of comments on the proposal; almost all comments were negative. In the summer of 1990, EPA retained a third-party facilitator, Endispute Incorporated, to meet and interview representatives of interested parties to attempt to gain insight into commenters' views. The facilitator met with representatives of EPA, including personnel from the Office of Emergency and Remedial Response, the Office of Waste Programs Enforcement, the Office of General Counsel, and the Office of Policy, Planning, and Evaluation. The facilitator met with representatives of the Army Corps of Engineers and the Office of Management and Budget. The facilitator also met with representatives of external groups such as trade organizations, RAC interest groups, and the insurance industry. On February 14, 1991, Endispute presented its report to EPA, "Report on the Results of the EPA-Sponsored Consultation Process on the Proposed Guidance for Section 119 of CERCLA, as Amended." A copy of the report is in the docket for this notice. The report further clarifies the commenters' positions, which are stated in the Response to Comment section of this notice.

In short, commenters asserted that the limits were too low and the deductibles were too high. Most commenters also linked the perceived low limits to a possible negative effect on subcontractors hired by EPA's prime contractors. Most commenters stated that if the prime contractor does not believe that it has adequate coverage, it will not be willing to share any of its indemnification with its subcontractors.

Despite the large number of comments, commenters did not provide additional factual information that would support any specific alternative indemnification scheme. Commenters reiterated the risks that are perceived to be associated with hazardous waste sites. In short, these risks are:

- Superfund sites present high risks to people and property.
- Remediation technology is new and continually changing. The statute encourages the use of innovative technologies.
- Underground work is inherently risky.
- EPA, which is subject to community and other socio-political pressures, does not always accept the RAC's recommendation for the best method to clean up the site.

A large majority of commenters recommended an upper indemnification limit of $200 or $250 million, but did not present a factual basis for their recommendation. These commenters stated that these higher limits are needed to protect the RAC from a possible catastrophic claim. However, all parties acknowledged that there has been no such claim in the history of the Superfund program. The few potential claims that EPA has received under section 119 or under the Federal Acquisition Regulation (FAR) indemnification (that preceded § 119 indemnification) have all been relatively small dollar amounts.

Some commenters stated that EPA should not offer indemnification, and that RACs should bear all responsibility for their negligent actions. Inquiries made by EPA have revealed that some RACs are willing to work for other federal agencies, states, and PRPs without indemnification or with very low coverage.

The Agency was, therefore, in the same situation that it was in before the proposal was published; if EPA offers indemnification it must set a limit and a deductible for the indemnification even though little factual data exists on which to base them, or even to determine whether indemnification is needed.

The approach that EPA has decided to take in the final guidelines draws from the first three alternatives outlined in the 1989 FR notice:

- Provide no indemnification;
- Provide indemnification subject to statutory requirements;
- Offer indemnification with market incentives to purchase commercial insurance.

The goal of these guidelines is to ensure that an adequate pool of qualified RACs is willing to work at Superfund sites. This goal must be balanced with EPA's responsibility to protect the financial exposure of the government so that Superfund monies may be used to clean up the maximum number of waste sites. EPA's authority to provide indemnification to RACs for negligent actions is discretionary and is a temporary vehicle. EPA's indemnification authority will only be used to the extent adequate commercial liability insurance is not available.

General Approach

Prime Contracts

For future contracts (or contracts with other agencies or local governments having an inter-agency agreement or cooperative agreement with EPA to clean up Superfund sites), EPA will offer indemnification only if there is a lack of adequate competition for a solicitation due to the absence of indemnification. If this is the case, EPA will offer a new or amended solicitation, and the selected RAC will be eligible for indemnification under these guidelines.

For RACs with fixed-price contracts, EPA proposed in 1989 to use market incentives to encourage RACs not to request indemnification. Under the proposal, RACs would be permitted to determine whether they wanted EPA indemnification and the amount, but their bid would be adjusted higher to reflect the indemnification request. After further consideration, EPA has concluded the proposed adjustment procedure would be unworkable and present considerable obstacles for EPA. EPA decided that, as with new cost-reimbursement RACs, the solicitation process will be used to determine if RACs will work without indemnification.

If EPA offers indemnification to RACs, it still maintains that the RAC is in the best position to know the coverage that it needs. However, to compensate for a RAC's tendency to overstate its needs, EPA will tie the size of the limit with the size of the deductible. These RACs will be able to choose from a range of limits (and associated deductibles) for the coverage that best meets their needs. The deductible associated with the limit increases as the coverage increases, similar to the scale presented in the 1989 proposal. For the highest level of coverage available for long duration (longer than five years) cost-reimbursement contracts, the RAC must make dollar-for-dollar co-payments for coverage above a certain level. Under this proposal, a RAC will not overstate its needed coverage, and the RAC will retain increasing financial responsibility for smaller claims in proportion to the coverage that it seeks from EPA. EPA believes that the guidelines will promote the development of a private insurance market and encourage RACs to seek alternative coverage from the private sector and permit the private sector to grow absent the need to compete with generous coverage from the federal government. As the RAC community turns to the private sector for coverage, its ability to provide desired products should increase.

EPA believes that it would be in the government's best interest to have the least disruption to the clean-up effort. EPA will negotiate with its RACs to replace their indemnification coverage under the interim guidance with coverage under these guidelines and thereby avoid the need to terminate current contracts. Therefore, EPA will offer modified indemnification agreements with limits and deductibles to RACs and their subcontractors that currently have contracts to perform Superfund work. Since a RAC operating under a current contract will not have to compete in the open market to receive indemnification, EPA cannot use a competitive test to determine if this RAC would work at particular sites without indemnification.

Subcontractors

EPA has tried to address the issue of subcontractor indemnification where the use of subcontractors meets special EPA objectives, such as the use of small and disadvantaged businesses or innovative technologies. In contracts of long duration (greater than five years), which currently are only the Alternative Remedial Contracting Strategy (ARCS) contracts (regional ten-year contracts for the planning and clean up of CERCLA sites), the prime contractor will have $15 million (above its own indemnification limit) available to flow down to subcontractors in the subcontracting pool. This pool is generally where small and small and disadvantaged businesses have an opportunity to be involved in Superfund contracting. EPA will also permit RACs, whether they are prime or subcontractors, who provide innovative technologies under a contract to provide remedial action (RA) construction services to obtain indemnification with smaller deductibles than are available to other contractors.

Subcontractors performing remediation work for a cost-reimbursement prime may be eligible to receive additional indemnification for that work. When EPA issues work assignments to prime cost-reimbursement contractors to implement remedial action (RA), the prime contractor is required to initiate the RA through a subcontract (rather than EPA issuing its own solicitation for the work). Under the guidelines, the subcontractor awarded the RA work may be eligible to receive, through the prime contractor, indemnification at the same level of indemnification as contractors hired directly by EPA. However, EPA will require its prime cost-reimbursement contractors to follow the same solicitation procedures as followed by EPA when hiring contractors directly. That is, the prime contractor's original solicitation must not offer indemnification. If there is not an adequate response to the solicitation because of the lack of indemnification, the subcontractors which respond to a new or amended solicitation will be eligible to receive indemnification through the prime contractor. To receive indemnification, the subcontractor must meet all the requirements of these guidelines, including the diligent efforts requirements.

Length of Coverage

The length of coverage was another area where EPA received a great deal of comment. EPA proposed that it was considering a period of coverage of ten years. Many commenters stated that ten years was too short a period and suggested that EPA adopt a thirty-year period. EPA did consider these requests, but concluded that commenters that argued for a greater length of coverage did not justify a longer term. EPA retained the ten-year period as balance between the need to provide coverage to retain a qualified pool of RACs to work at EPA sites and EPA's responsibility to limit the exposure of the Superfund.

A. Executive Order 12291

Under Executive Order No. 12291, EPA must determine whether a rule is "major" and thus subject to the requirement of a Regulatory Impact analysis. The notice published today is not major because the proposed guidelines will not result in an effect on the economy of $100 million or more, will not have significant adverse effects on competition, employment, investment, productivity and innovation and will not significantly disrupt domestic or export markets. Therefore, EPA has not prepared a Regulatory Impact Analysis under the Executive Order. The proposed guidelines were submitted to the Office of Management and Budget as required by Executive Order No. 12291.

B. Regulatory Flexibility Act

Whenever an agency is required by law to publish a general notice of proposed rulemaking, the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, generally requires that the agency prepare a Regulatory Flexibility Analysis (RFA) describing the impact of the proposed rule on small entities. Because EPA was not required to publish the guidelines as a notice of proposed rulemaking under § 553 of the Administrative Procedure Act (5 U.S.C. 553) or any other law, they are not subject to the RFA requirements of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The information collection requirements in these guidelines have been submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These requirements are not effective until OMB approves them, and a technical amendment to that effect is published in the **Federal Register**. An Information Collection Request document has been prepared by EPA (ICR No. 1595.01) and a copy may be obtained from, Chief, Information Policy Branch (PM–223); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460 or by calling (202) 382–2706.

Public reporting burden for this collection of information is estimated to be 132 hours per response, including time for review of the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to, Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 marked: "Attention Desk Officer for EPA."

II. Response to Major Public Comment

Indemnification Limits and Deductibles for Cost-Reimbursement Contracts

Comment: In its proposed guidelines, EPA presented a sliding scale of limits and deductibles that would allow the RACs to choose the indemnification coverage that they felt met their firms' needs. Under this scale, the higher the limit the RAC chose, the higher the associated deductible would be. At the top end of the scale, a RAC could select a maximum of $50 million of indemnification coverage with an associated deductible of $3.5 million. EPA received the most comments on this aspect of the proposal.

Many commenters stated that the $50 million limit was inadequate to cover what many commenters believe is the inherent risk of working at Superfund sites and the exposure of a catastrophic event which could bankrupt many companies. Commenters stated that if a RAC is forced into bankruptcy by a claim greater than its indemnification limit, the public may be left uncompensated for damages that may have occurred due to the clean-up action. Commenters suggested $100 million to $300 million in limits or full indemnification without limits, although there were some comments that no indemnification should be offered. No commenters gave a factual basis for their suggested limits, although many cited an EPA sponsored document that they claim recommended a limit of $200 million. In addition, some commenters noted that the limit was especially inadequate for multiple site contracts of long duration with numerous subcontractors seeking a share of the indemnification. They stated that if the limits were not raised prime contractors would choose not to share the limited indemnification with subcontractors and possibly choose not to work at Superfund sites.

Commenters also overwhelmingly spoke against the deductibles as being too high. Under the proposal, there would not be a contract aggregate limit to the RAC's deductible. That is, the RAC would be required to pay the deductible amount each time a claim is made, regardless of the number of claims. Most commenters believed that this represented too great a burden on RACs given the profit margins on contracts to perform response actions. Commenters stated that even if a firm chose to purchase insurance from the private sector to cover the deductible, it would be too costly and would provide limited coverage due to policy exclusions. Many commenters stated that EPA should reimburse RACs for the cost of insurance if a RAC did purchase a policy to cover the deductible. In addition, commenters stated that to have the indemnification limit on a contract aggregate basis but to have the deductible on an "occurrence basis" (no contract aggregate limit) would lead to unlimited liability for the RACs and would be inconsistent with insurance policies in the private sector. Commenters stated that the deductibles were especially high for small businesses, grantees training hazardous waste workers, and innovative technology RACs.

Commenters did agree with the concept of a sliding scale in that it would permit RACs to choose a deductible and limit that met their particular needs. Some commenters thought, however, that the deductibles should be reflective of the contract value, and, therefore, the profit margin of the contract. They suggested that the deductible should be limited to a percentage (1% to 3%) of the contract value.

Response: Based on the comments and EPA's current knowledge, it believes that its basic approach of paired limits and deductibles chosen by the RAC is still appropriate. EPA's indemnification agreements must have limits and deductibles because of the statutory requirements to do so.

EPA proposed the sliding scale of limits and deductibles based on the concept that the RAC could best determine its required indemnification coverage. EPA included higher limits to provide coverage to RACs that believed such coverage would be necessary. EPA believed that a RAC requesting a high limit should be responsible for small claims so that it assumes some financial responsibility for its negligent actions, and, therefore, paired a higher limit with a higher deductible. Also, EPA believed that the deductibles should stand as a disincentive to the RAC to prevent it from overstating its indemnification needs, and as an incentive to maintain proper performance.

As supported by the comments, EPA continues to believe that it may be appropriate to offer indemnification in some cases. However, as some commenters have noted, the fact that some RACs are willing to work for others, including other federal agencies, and at some EPA Superfund sites without indemnification is persuasive that offering indemnification may not be necessary in all cases. EPA has decided the best way to determine when indemnification is needed is to attempt to obtain contractors without offers of indemnification and to offer indemnification only when a solicitation has not attracted an adequate number of qualified offerors/bidders because of the absence of indemnification.

Therefore, for future contracts, EPA will offer indemnification only if there is a lack of adequate competition to a solicitation due to the absence of indemnification. If this is the case, EPA may issue a new or amended solicitation, and the RAC will be eligible for indemnification once it has met the criteria (including diligent efforts) outlined in the guidelines. EPA believes that this approach will use the market place to determine when it is necessary for EPA to use its discretionary authority to offer indemnification. In this manner, EPA will maintain its fiduciary responsibility to ensure that Superfund moneys are used to the maximum extent possible to clean up sites, and at the same time maintain an adequate number of contractors willing to work at EPA sites.

Many RACs have argued that other contractor situations are not analogous to performing response work at EPA sites. At many of the sites where EPA is funding work, there are no viable owners or operators with whom contractors can, by contract or otherwise, seek to share liability. At many, if not most, private or federal facilities, this possibility for risk transfer (or sharing) exists. EPA does not take a position on this distinction. Regardless of the distinction, EPA maintains that the Congressional intent of providing EPA with the discretionary authority to offer RACs indemnification against negligence was only to ensure that an adequate number of qualified RACs are willing to participate in the Superfund program. To follow a policy that tests the RAC community's willingness to participate without indemnification through future solicitations is the best method to determine the number of qualified RACs willing to participate in the Superfund program without indemnification.

Although the "market-test" approach is reasonable to use for future contracts, it is not appropriate for use for current contracts that will need to be modified to be consistent with the final guidelines. Since a RAC operating under a current contract will not have to compete in the open market to receive indemnification, EPA cannot use a competitive test to determine if this RAC would work at particular sites without indemnification. Further, EPA believes that it would be in the government's best interest to have the least disruption to the cleanup effort. Therefore, EPA will negotiate with its RACs to replace their indemnification coverage under the interim guidance with coverage under these guidelines and thereby avoid the need to terminate current contracts for Superfund work.

With respect to indemnification limits, EPA is persuaded by many commenters' concerns that a limit higher than the $50 million in the proposal is needed, in some cases, to attract or keep RACs at Superfund sites. That is, many RACs have indicated to EPA that RACs may desire greater coverage in exchange for greater deductibles. EPA believes that these higher limits would be needed primarily to cover a possible catastrophic event. EPA believes that without adequate limits, the number of qualified contractors willing to do work for EPA might be unacceptably reduced, and that those willing to perform the work would raise their prices for EPA work due to a lack of adequate competition. At the same time, EPA must be cognizant of its own ability to absorb claims.

Although commenters did not provide support for specific limits above the $50 million proposed by EPA, EPA is persuaded that RACs with current multiple-site contracts of long duration (longer than five years) with numerous subcontracts, which are generally ARCS contracts, may need limits higher than $50 million.

EPA believes that higher limits may be needed for these contracts of long duration because:

- ARCS contracts (regional contracts for the planning and cleanup of CERCLA sites) have a ten-year term, more than double the duration of other Superfund contracts. ARCS work assignments will be of a complex nature with assignments ranging from remedial investigation/feasibility study (RI/FS), the investigation and planning phase, to managing remedial construction.
- ARCS contracts have, on average, two or three team subcontractors, i.e., subcontractors named in the contract that remain as part of the cleanup effort

for the life of the contract. Therefore, under one ARCS contract there are subcontractors with whom RACs may need to share their indemnification. The ARCS contractors will need higher limits to be able to share the indemnification with these subcontractors.

- ARCS contractors cannot identify in advance the sites at which they will work over a ten-year period as a RAC with a site-specific contract who can adjust its bid to reflect the perceived risk. Under the ARCS contracts, sites are assigned by EPA. While it is true that Emergency Response Cleanup Services (ERCS) and Technical Assistance Team (TAT) contractors must also accept work as EPA assigns it, their assignments are generally less complex and shorter in duration, such as surface spill clean up.
- Much of the ARCS contractor's work is below ground activity which adds to the complexity of the work and to the unknown aspects of the job.
- ARCS contractors will need to subcontract with numerous specialty contractors, whose specific activities have a higher potential for increasing the risk of potential liability for releases. This is additional exposure that other RACs that have contracts of shorter duration, fewer sites, and more above ground work will not have.
- RACs doing the remedial action (construction) are performing a very complex portion of the Superfund program, and one which may be the most likely to cause releases of contaminants. EPA concludes that some underwriters in the private sector agree since some insurance policies presented to EPA will cover multiple sites and multiple activities but not the RA work. For RA work, some underwriters in the private sector have provided only site-specific policies.

Several comments urged adoption of a $200 million indemnification limit which was recommended by Tillinghast, Nelson, and Warrenby, a consulting firm engaged by EPA to research liability issues. The firm's recommendation, which was made in a letter dated August 7, 1987, was prefaced with a caveat that "there is no credible data available for use in setting deductibles and limit levels." In its final guidelines, EPA is providing a $75 million per occurrence/contract aggregate limit for existing cost-reimbursement contracts of long duration (longer than five years), such as ARCS contracts. EPA believes that this limit will provide adequate coverage to contractors. The associated deductible is $2 million, and the RAC must make dollar-for-dollar co-payments above $50 million for a maximum coverage up to $75 million. EPA believes that in return for increased coverage, the RAC must assume financial responsibility for some portion of the claim. That is, EPA will permit a RAC to choose a higher limit to protect itself from a catastrophic claim, but in so doing the RAC must assume the financial responsibility for smaller claims. In this manner, RACs will share the risk with EPA. EPA believes that the RACs are generally able to purchase adequate insurance coverage from the private sector to cover the deductible (not the co-payment portion), if they choose.

EPA has introduced a three-tiered system that will govern the upper limit of coverage that a RAC may choose based on the dollar value of the contract at the time of award. RACs will be permitted to choose the limit and associated deductibles based on their own needs, but the upper limit of that choice will be controlled by the dollar amount (size) of their contract. EPA believes that contracts with work assignments for few sites or with smaller dollar values hold less risk and potential exposure to liability than do larger contracts, therefore, these RACs will be limited in the choice that they may make. Conversely, RACs with larger contracts will be permitted to choose higher limits. (Small and large are defined in the three-tiered system.)

EPA did not add a contract aggregate to the deductible as some commenters suggested. An aggregate deductible would only benefit those RACs who are the subject of negligence lawsuits on multiple occasions. Further, by removing the financial incentive for a RAC to act non-negligently, use of an aggregate deductible might increase the probability that negligent behavior would occur. EPA disagrees with commenters who stated that per occurrence deductibles are inconsistent with insurance policies provided in the private sector. All policies that EPA has received from its RACs for review have stated that the self-retention or deductibles have been on a per claim basis (*e.g.*, per occurrence basis). The limits offered have always been stated as per occurrence/per aggregate.

The guidelines do not attempt to provide total indemnification to RACs. EPA has used the deductible and copayments as a mechanism by which RACs will accept the initial financial responsibility and higher range financial responsibility for catastrophic coverage for any negligent actions that result in a release of any hazardous substance or pollutant or contaminant. The following considerations were the basis for the final deductible and co-payment requirements:

- The deductibles are generally tied to the profit margin in the contracts. Sound business practices would prevent RACs from bidding on work at EPA sites where the RAC would be exposed to a deductible that is bigger than the profit it could make from the work.
- EPA's deductibles are not required to mirror commercial insurance practices. The federal government has broader goals, social and economic, from the private sector. EPA's primary goal is to have an adequate number of qualified RACs participating in the Superfund program.
- The RACs requested higher limits for catastrophic claims. However, by its very nature, a catastrophic event caused by a negligent action is quite serious. EPA believes that companies needing this coverage at a very high range are generally large firms with substantial resources to protect. Therefore, these companies should be able to bear the financial responsibility of their negligent actions at the higher range by matching payments with EPA at the $50 million to $75 million range.

Finally, in response to commenters' concerns that higher deductibles could lead, in cases where the RAC could not meet its financial responsibilities, to situations where successful third-party suits would not receive proper compensation, EPA has stated its goals and the rationale for the size of its deductibles. Victim compensation is not a goal of the § 119 indemnification program. EPA's primary responsibility is to protect the exposure of the Superfund so that it can be used to the maximum extent possible to clean up hazardous sites. EPA believes that the approach taken in the final guidelines will satisfy that goal and encourage non-negligent behavior by its contractors. Moreover, RACs may purchase insurance in the private sector to cover the deductible in their § 119 indemnification agreements.

Fixed-Price (Sealed Bid) Contracts

Comments: In 1989, EPA proposed to indemnify RACs with fixed-price (sealed bid) contracts by placing an explicit price on its indemnification and adding it to a RAC's bid for a fixed-price contract. Commenters responded that the proposal did not provide the methodology for EPA's determination of a fair price for indemnification, and questioned EPA's ability to use underwriting criteria to determine the value of its indemnification as stated in the proposal. Commenters also stated that the proposed scheme conflicts with federal procurement law.

Response: EPA has considered the obstacles to adjusting a sealed bid, and after further consideration, EPA believes that it should change its position. Instead, EPA will use the same approach for fixed-price contracts as stated for cost-reimbursement contracts. That is, EPA will not offer indemnification unless there is an inadequate response to a solicitation and the lack of response can be linked to the absence of indemnification.

The guidelines for fixed-price contracts, when indemnification is offered, are designed to permit the RAC to determine its indemnification requirements, and to provide strong incentives for a RAC not to overstate its indemnification needs. EPA has adopted in the final guidelines the same set of limits and associated deductibles as for cost-reimbursement contracts. This approach ties the amount of the indemnification to the contract value and, therefore, roughly to the scope of the work and the RAC's profit margin. EPA believes that this approach is consistent with sound business decisions RACs make in choosing whether to work at EPA sites.

Term

Comments: The majority of commenters responding to EPA's proposed period of coverage for the indemnification stated that ten years beyond the contract term was too short. Although there is no substantial claims history, they contended it might well take years before a release is known, and therefore, a claim is made. Commenters also noted that the regulations for the Resource Conservation and Recovery Act (RCRA) require owner/operators to monitor RCRA sites for thirty years after site closure. These commenters suggested a period of coverage from twenty years to perpetuity.

One commenter stated that ten years was too long a period for the indemnification coverage. The commenter cited the private sector insurance policies that require annual renewals and only provide a few years additional coverage for additional premiums.

Response: As with the limits and deductibles, EPA proposed a ten year period, requesting comments and supporting rationale with the comments. EPA acknowledges that the lack of historical data for the Superfund program can be cited to either support or oppose a proposal to extend the period of coverage beyond ten years. EPA does not believe that a comparison to the RCRA requirement to monitor sites for thirty years is valid. In the case of the RCRA requirement, the decision to require monitoring for thirty years was based on the economic burden of monitoring to the owner/operator.

Conversely, EPA is not convinced by the argument that since current insurance policies are of short duration, EPA's indemnification should also be of short duration. EPA believes that insurance companies are offering policies of short duration to limit their exposure. Part of EPA's statutory mandate is to attempt to encourage the insurance industry to increase its current insurance coverage so that EPA's indemnification will not be necessary. EPA's action to extend coverage to ten years may encourage the private sector to increase its period of coverage. EPA is also attempting to fill in the gaps in coverage that the insurance industry currently does not address.

Commenters argued that the length or term of EPA's indemnification should extend beyond ten years based on the RAC's perceived need for long-term coverage. In cases where EPA will offer indemnification, it will be done because EPA believes that absent indemnification RACs will not work at Superfund sites. When offering indemnification, EPA must be very mindful of the potential liability it assumes for the RAC's negligence. After careful consideration, EPA believes that any period beyond ten years would be an unreasonable burden to the Trust Fund and possibly to the U.S. Treasury. EPA is not willing to assume such liability without market-based data that RACs will not work at Superfund sites without an indemnification agreement with a term greater than ten years.

RAC Liability

Comments: Many commenters discussed the RAC's liability and stated that EPA's proposal would place an unfair burden on the RAC. Most of these comments focused on discussions of strict liability and stated that EPA's indemnification should be expanded to include coverage for strict liability. Commenters requested that the language of paragraph 8(c) in the 1989 proposal, which states that EPA indemnification will not apply if a RAC is found to be both negligent and strictly liable and the cause of action is not divisible, be changed. Commenters believed that EPA's indemnification should apply in this case. Commenters did not cite any language in the statute that they believed authorized indemnification against strict liability.

Other commenters questioned paragraph 8(a) of the proposal, which states EPA will indemnify RACs against third-party liability. The commenters asked whether this could mean that EPA's indemnification will not cover possible CERCLA liability. Other commenters pointed out that state statutes vary and asked that the final guidelines be written to pre-empt state statutes and indemnify RACs against state liabilities.

Response: CERCLA Section 119 gives EPA the discretionary authority to indemnify RACs against negligence only. Congress did not authorize EPA to indemnify RACs for any liability associated with gross negligence, intentional misconduct or standard of strict liability nor to pre-empt liability under state law.

EPA is indemnifying RACs under section 119 against third-party liability arising from releases caused by their negligence. Section 119 waives CERCLA liability unless the RAC was negligent, grossly negligent, or engaged in intentional misconduct.

Other Federal Agencies

Comments: EPA received comments to delete paragraph 16(a) of the proposal which states in part "* * * that if other federal agencies choose to indemnify their RACs under CERCLA authority, then that indemnification must not be inconsistent with these guidelines." Commenters stated that if these guidelines become regulations they would unnecessarily bind other federal agencies and create unintended rights for RACs. Some commenters stated that CERCLA section 120(a), which generally requires other federal agencies' actions to be consistent with CERCLA, was written to address the technical aspects of remediation only.

One commenter asked that EPA clarify whether section 119 indemnification authority could be used by other federal agencies at non-NPL sites.

Response: EPA has not deleted this language. CERCLA section 119(c)(7) directs the President to develop guidelines and regulations for carrying out the indemnification provisions of CERCLA section 119. The President delegated this authority to EPA in Executive Order 12580 (Jan. 23, 1987), sections 2(b) and 11(g), 52 FR 2923, 2924, and 2929 (Jan. 29, 1987). The President tasked EPA with promulgating CERCLA section 119 guidelines and regulations, and specified that this authority was "to be exercised in consultation with the NRT." The NRT (National Response Team) is an interagency organization, established by section 1 of the Executive Order, which consists of representatives from EPA and other federal agencies and departments.

The Executive Order contains limited delegations of CERCLA section 119 authority to other federal agencies and departments. Their delegated authority is limited "to releases or threatened releases * * * from any facility or vessel under the[ir] jurisdiction, custody, or control * * *." E.O. 12580, sections 2(d) and 2(e)(2). The CERCLA section 119 authority delegated to the other agencies and departments is "subject to," among others, the Executive Order provision delegating CERCLA section 119(c)(7) authority (to issue indemnification guidelines and regulations) to EPA. Read together, the exclusive delegation of CERCLA section 119(c)(7) authority to EPA and the limited delegations of section 119 authority to other agencies and departments indicate that the EPA indemnification guidelines are being issued on behalf of the President, and are to be followed by all federal agencies and departments when providing CERCLA section 119 indemnification.

EPA also believes that interpreting E.O. 12580 to require that federal agencies and departments follow the indemnification guidelines when providing CERCLA section 119 indemnification is consistent with CERCLA section 120.

EPA interprets the phrase "must not be inconsistent" to mean that other federal agencies and departments must comply with the general terms and conditions set forth in these guidelines when providing CERCLA section 119 indemnification. For example, an effort must be made to get contractors to work with-out indemnification before indemnification offers under CERCLA section 119 authority can be made. The indemnification agreements may contain numerical values which differ from those in these guidelines. Such numerical differences, if justified for a particular agency or response action contract, would not make the other agency's indemnification agreement inconsistent with these guidelines.

With regard to the use of section 119 authority by other federal agencies or departments at non-NPL sites, section 119(c)(1), as implemented by E.O. 12580, authorizes federal agencies and departments to agree to indemnify "any response action contractor" meeting certain specified requirements. Section 119(e)(2) generally defines a "response action contractor" as any person who enters into a response action contract and any person hired to perform response work under such a contract. A "response action contract" is defined, in pertinent part, as a written contract or agreement "to provide any remedial action under this chapter [i.e., under CERCLA] at a facility on the National Priorities List * * *". Section 119(e)(i). Thus, the statute provides no authority for the indemnification of contractors under CERCLA section 119 performing remedial action work at sites which are not on the National Priorities List.

Diligent Efforts

Comments: EPA received many comments addressing the diligent efforts requirements. In the proposal, EPA stated that a RAC must submit the names and addresses of at least three commercial insurers or alternative risk financiers to whom it has submitted applications. Also, RACS must submit copies of their applications, insurance policies offered, rejection letters, and other correspondence between the RAC and the underwriter. All commenters stressed the burden that this requirement places on the RACs and particularly small-business RACs. Commenters offered suggestions on how they believed this burden could be lessened. These included exempting RACs from the diligent efforts requirement, restricting the schedule for making diligent efforts, or having EPA survey the market and thus perform the diligent efforts. Some commenters focused on the requirement that RACs must prove that applications have been submitted to three insurance underwriters. Finally, other commenters asked for clarification of when and how EPA would review the RACs' diligent efforts.

Response: EPA recognizes that the diligent efforts requirement may be somewhat burdensome to RACs. However, CERCLA section 119 clearly requires RACs to make diligent efforts to obtain private insurance coverage in order to be eligible for indemnification. RACs with multiple-site contracts are specifically required to continue to make diligent efforts each time a RAC begins work at a new site. EPA has no authority to relieve RACs of these statutory requirements. EPA does not believe that surveying the market would alleviate the RACs' burden. RACs, through the conduct of normal business, certainly know which insurance underwriters are offering pollution liability insurance. Most RACs have insurance brokers that perform this service for them. EPA is unable to perform diligent efforts for RACs because the statute requires the RACs to make their own diligent efforts. In any event, for EPA to begin this activity would be contrary to the Congressional intent that EPA limit its involvement in the insurance industry. By entering this area, EPA might be seen as endorsing one underwriter over another, or stifling another firm's entrance into this market.

EPA has tried to lessen the burden by modifying the proposed requirement that RACs seeking indemnification make applications to three underwriters, since at times there have not been three underwriters able to provide a RAC with its desired coverage. EPA has also added the opportunity for a RAC to use the actions and experience of its broker to satisfy the diligent efforts requirement. EPA believes this is a logical approach because most RACs use the services of a broker, and it will be easier for the RAC to submit the broker's work than applications that may be unnecessary in some circumstances. Also, the RAC may submit a statement from the broker that insurance is unavailable and the rationale for its unavailability.

EPA will review the diligent efforts of its prime contractors. Based on this review and additional instructional material from EPA, the prime will be required to review the diligent efforts of its subcontractors. EPA lacks privity of contract with subcontractors and is not directly indemnifying the subcontractors. It is, therefore, the prime's responsibility to review in the first instance its subcontractors' diligent efforts.

Indemnifying Equipment Suppliers

Comment: EPA received a late comment from a supplier of incinerator equipment requesting clarification as to whether equipment providers who are not prime contractors to EPA are RACs and, if so, whether these suppliers would receive indemnification on the same basis as service providers. As to the first question, the commenter noted that the statutory definition of response action contract clearly covers contracts for the provision of equipment under prime contracts, that is, contracts entered into directly with the government (or a PRP). The statutory definition of a RAC does include subcontractors but only those "retained or hired * * * to provide services * * *," which may not include equipment providers. The commenter also noted that the definitions of "RAC" and "response action contract" in the proposed guidelines do not precisely follow the statutory definitions. Specifically, the definition of RAC in the proposal is "* * * any person who enters into a response action contract to provide services and any person hired or retained by such person." By restricting the modifier phrase "to provide services" to prime contractors, the commenter argued that equipment providers would be RACs if they are retained by prime contractors providing services.

Response: EPA did not intend to define RAC so as to indemnify equipment providers, as opposed to service providers. The definition of RAC in the proposed guidelines was intended to convey this. The interpretation provided by the commenter was not intended by EPA, and the definition in the final guidelines is being modified to clarify that only service providers, whether prime contractors or subcontractors, are to be eligible for indemnification.

The commenter argued that providers of equipment to a Superfund site are in danger of being involved in a toxic tort action of major financial proportions without any present hope of protection from insurance, which invariably excludes protection against pollution-related claims or that provides limited coverage at a high cost. EPA, however, has not found that it is necessary to offer indemnification to obtain equipment and does not anticipate the need to do so in the future. EPA will continue to monitor this issue, however.

In addition to the clarification to the definition of RAC noted above, EPA is also clarifying that service providers include persons performing construction. This clarification is being made because in some instances, such as in the FAR, service contracts do not include construction contracts. Construction is commonly considered to be a service, and EPA intended in the proposal to use "service" in this broader sense.

Legal Defense Costs

Comments: In the proposal, EPA stated that expenses of litigation would be subject to all the terms and conditions of EPA indemnification, including the negligence standard and the applicable deductible. Commenters addressed many aspects of legal defense and its costs. Several commenters stated that defense costs should be fully reimbursed (i.e., not subject to a deductible) if the RAC is found free of negligence. Other commenters asked if EPA would pay litigation expenses as the costs are incurred. A few comments suggested that EPA should assume a duty to defend RACs and include such a provision in the guidelines since private sector insurance policies contain this provision.

Response: EPA indemnification is not intended to offer total protection to RACs from their negligent acts at Superfund sites. The choice of limits and associated deductibles will permit a RAC to choose a lower deductible if it wishes to have more of its potential legal defense costs subject to indemnification coverage. EPA will not use the standard language of insurance policies which asserts that the insurance company maintains the right but not the duty to defend the insured in case of a claim. EPA's indemnification clause states: "The Government may direct, control, or assist the settlement or defense of any such claim or action." This language is consistent with the legislative history of CERCLA section 119, which makes clear that the government generally should not directly defend RACs against claims that are subject to indemnification.

Notification of Claims

Comments: Some commenters suggested changes to the language of paragraph 8(d)(i) of the proposal which defines "prompt" action as action within twenty days of the date when the RAC knew or should have known of the claim or event. Commenters stated that twenty days was too short a period for claim reports to pass from subcontractors to the prime contractor and through the prime's corporate offices to EPA. Commenters also stated that some of the language in the paragraph was ambiguous, such as the phrase "should have known," and sought clarification on use of the terms "claim" and "event." Most commenters recommended that EPA adopt the language found in private insurance policies.

Response: EPA is not persuaded by the commenters' argument that twenty days is too short a period for reporting a claim or that the provision contains ambiguous language. EPA does, however, believe that clarification is needed with regard to the notification period. EPA has defined the period as twenty working-days. This means that a prime would have twenty working-days to notify EPA after a subcontractor has notified it of a claim or action. The subcontractor in this example would have twenty working-days to notify the prime contractor.

Retroactivity

Comments: The proposal stated that the terms and conditions of the final guidelines "will be applicable retroactively to the date of enactment of SARA, or to the starting date of the contract, whichever is later." Commenters suggested that EPA reconsider the retroactive application of these guidelines. They argued that RACs indemnified under the interim guidance (OSWER Directive 9835.5) should be permitted to remain subject to that guidance. Commenters stated that there would be no incentive for RACs to agree to switch to coverage under the final guidelines.

Response: EPA has considered these comments but cannot agree to change its approach as suggested. EPA's intent all along, as indicated by the term "interim," has been to formulate final guidelines that would be the basis for modification of the indemnification provisions in current contracts. The Agency intended to do so in its capacity as steward of the Trust Fund since the interim guidance contains a small deductible and no specific limit on coverage.

RACs that have received EPA indemnification have in their agreements a clause that confers indemnification and states in part that, "This clause * * * will be modified by the mutual agreement of the parties hereto within 180 days of the EPA's promulgation of final guidelines for carrying out the provisions of § 119 * * *." In addition, EPA has corresponded with its RACs to affirm this position and has stated that RACs that refuse to agree to modify their agreements will not receive additional work under that contract.

Given the obvious temporary nature of EPA indemnification under the interim guidance, EPA believes that RACs understood that this protection lacked permanence and was on a "claims made" basis. Therefore, if RACs do not accept modification of their existing contracts to conform to the final guidelines, the contracts will be terminated, and EPA's potential liability under the interim guidance effectively will cease as of the date of contract termination.

Surety Issues

Comments: Many commenters stated that EPA indemnification must be extended to surety firms. Commenters stated that surety firms would not provide bonds for RACs without a clear sense of the potential risks to which the firm would be exposed. Commenters stated that if a surety did receive indemnification these uncertainties would be alleviated. Commenters stated that EPA indemnification would protect sureties from liability under a bond that it never intended to cover.

Response: In November 1990, the President signed into law an amendment to section 119 (Pub. L. 101–584) that is designed to give sureties whose bonds are activated the same protection from federal liability and access to indemnification that their RACs have under section 119. Consistent with the purpose of the amendment, EPA's final guidelines extend a RAC's indemnification coverage to its surety if the performance bond is activated. EPA is limiting its indemnification to firms that provide performance bonds because it believes that firms that provide bid or payment bonds are not at risk for a RAC's negligence. If a performance bond is activated, the surety will stand in the shoes of the defaulted RAC and inherit its indemnification coverage. EPA believes that since the surety, at most, is responsible for completing a RAC's work (as opposed to initiating a new job), it will not be exposed to any additional liability.

Indemnification of Subcontractors

Comments: The proposal stated that the prime contractor would pick the limit and deductible best suited for its needs. Commenters stated that even at the maximum limit offered of $50 million, the prime contractor would retain all of the coverage for itself due to greater perceived potential liability. Almost all of the commenters addressing indemnity of subcontractors said that the proposed guidelines would discourage prime contractors from extending indemnification to subcontractors with consequent impacts upon the small business contractor community. The commenters suggested that for subcontractors to receive indemnification, EPA should indemnify them directly.

Response: EPA agrees that some contractors may be reluctant to share their indemnification with their subcontractors. However, EPA does not believe that the solution is to indemnify subcontractors directly. EPA does not have a direct contractual relationship with subcontractors, and lacks privity of contract with them. Moreover, the subcontractor approval requirement in section 119(c)(5)(E) confirms that Congress did not intend for EPA to establish a contractual relationship with subcontractors through direct indemnification. Therefore, EPA believes it is inappropriate for EPA to directly indemnify subcontractors.

EPA has, however, addressed the concerns about impacts on small businesses in two ways in the final guidelines. First, it has raised the indemnification limit for existing cost-reimbursement contracts that prime contractors may choose for multiple-site contracts of long duration (longer than five years). With a higher limit, the prime contractor may be more willing to extend its indemnification to subcontractors. Also, EPA will permit those prime contractors to flowdown up to $15 million to some subcontractors in the subcontracting pool; this limit does not affect the primes' limit. This provision will help ensure that prime contractors offer indemnification to protect small businesses with relatively little resources. No one subcontractor may receive more than $5 million coverage. EPA will publish a list of subcontracting services for which it will permit prime contractors to extend this indemnification, but generally the activities eligible for indemnification will be confined to intrusive services performed at the site in the contaminated area.

Indemnification of Innovative Technology RACs and SITE Participants

Comments: In the proposal, EPA stated that technology vendors in the Superfund Innovative Technology Evaluation (SITE) program are considered RACs, and further stated if EPA did offer these RACs indemnification, it would be under the same terms and conditions as cost-reimbursement RACs. Commenters stated that EPA was overlooking the value that these RACs add to the Superfund program and pointed out that SARA states a preference for innovative technology in the remedy selection. Commenters felt that most aspects of the indemnification agreements available to RACs with cost-reimbursement contracts were inappropriate for these RACs and might prohibit their entrance into the Superfund program. They stated that the deductibles were too high since many of these RACs are small in size. Some commenters stated that the limits might be beyond their needs.

Response: EPA agrees that these RACs add value to the Superfund program, and that their needs may be different from RACs with cost-reimbursement prime contracts. For example, in addition to the difference in perceived risks posed by the activities of these companies, EPA believes that they are often smaller companies than those that are awarded cost-reimbursement contracts with EPA. As such, they may have difficulty meeting the deductibles set for RACs with cost-reimbursement prime contracts. EPA has tried to address this difference by providing different limits and associated deductibles for both SITE participants and for RACs with innovative technologies. In each case, these RACs will be permitted to choose a limit with an associated deductible based on their particular needs. Where these RACs require higher limits to protect their assets, EPA believes that these companies are in a better position to afford deductibles set for RACs with cost-reimbursement prime contracts. Therefore, the difference between the deductibles available to SITE participants and innovative technology RACs and prime cost-reimbursement RACs for the same limits narrows as the $25 million limit is reached. EPA has restricted the upper limit of coverage for RACs with innovative technologies that are subcontractors and SITE participants to $25 million because it believes their work is of a smaller scope than RACs with prime contracts. EPA will permit RACs with innovative technologies that are prime contractors to also choose limits with lower deductibles up to $25 million to encourage their participation in the Superfund program. These RACs may elect to choose higher coverage than $25 million, but they will not receive the benefits of deductibles that are lower than those available for other RACs. EPA believes that these RACs desiring higher coverage should assume the same financial responsibility as all other RACs.

EPA believes that the market-test approach to indemnification is not suitable for SITE program participants accordingly, they will be eligible for indemnification if they meet the other criteria of the guidelines (e.g., diligent efforts). EPA has also provided similar limits and deductibles for RACs with innovative technologies where they are subcontractors for remedial actions.

Indemnification of RACs Working for States

Comments: EPA stated in the proposal that it will indemnify RACs working for states, political subdivisions or federally-recognized Indian tribes that have entered into a cooperative agreement with EPA for work initiated at NPL or removal sites. Commenters agreed that RACs working for states under cooperative agreements should receive the same indemnification as those working for EPA. A few commenters questioned whether states without their own authority to offer indemnification could indemnify RACs or pay any cost-share towards indemnification claims.

Response: The proposal and final guidelines provide for indemnification of RACs working under EPA cooperative agreements pursuant to federal law, not state law. These indemnification agreements are offered by EPA and implemented through and governed by the terms and conditions of those cooperative agreements. The costs of any indemnification claim will not be a cost-share item that will require payments from states, political subdivisions or federally-recognized Indian tribes that have entered into a cooperative agreement with EPA for work initiated at NPL or removal sites.

States may indemnify RACs pursuant to state law, and some states do. Such state programs are subject to independent state authority (not CERCLA section 119 and these guidelines) and are financed solely with state funds.

Indemnification of RACs Working for Potentially Responsible Parties

Comments: In the proposal EPA stated that it would not exercise its authority to indemnify RACs employed by potentially responsible parties (PRPs). Commenters disagreed with EPA's decision. The rationale they offered to support indemnification of RACs working for PRPs was that these RACs need to be indemnified just as other RACs. One commenter said that it would reduce the number of RACs willing to work for PRPs.

Response: EPA disagrees and will not offer indemnification to RACs working for PRPs. Each time EPA indemnifies a RAC, it increases the exposure of the federal government to payment for indemnification claims. EPA believes that RACs and PRPs will be able to decide upon the terms of their contractual relationship, including those on private-party indemnification, if any, without the involvement of EPA.

EPA believes that its policy will not impede site cleanups by PRPs. In granting EPA discretionary authority for very limited indemnity of RACs working for PRPs, Congress imposed strict requirements that are quite difficult for these RACs to meet. In fact, few requests for such indemnification have been received.

Coverage of On-Site Work

Comments: Commenters disagreed with paragraph 19(a) of the proposal which states that EPA's indemnification will only cover work directly related to site cleanup. They argued that the statutory language does not place this restriction on indemnification.

Response: EPA does not agree. This provision reflects the general and specific limitations imposed by section 119(c) and the use of the term "facility" in the statutory definition of response action contract. In any event, EPA believes as a matter of policy that indemnification should be limited to RACs' activities directly related to site cleanup. EPA also believes that these are the contractors with the most potential to cause a release.

Requirement to Purchase Insurance

Comments: Commenters disagreed with the proposed requirement that RACs with cost-reimbursement contracts annually increase their insurance coverage. The proposal stated that RACs that receive EPA indemnification must increase the amount of pollution liability insurance they purchase by 25% each year unless EPA determines that the increased amount of insurance is not available. Commenters also questioned what criteria EPA would use to make this decision, and how EPA would determine what would be a reasonable price.

Response: This requirement was put in the proposal to decrease a RAC's need for EPA indemnification and to increase the role of the private sector. Insurance is available from the private sector, and some RACs have been directed to purchase insurance under the ARCS contracting program. EPA has reimbursed RACs for the cost of the insurance. EPA has and will continue to produce guidance on insurance prices as the insurance market situation warrants.

Perform Regulatory Flexibility Analysis

Comment: EPA should perform a regulatory flexibility analysis.

Response: Whenever an agency is required by law to publish a general notice of proposed rulemaking, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) generally requires that the agency prepare a Regulatory Flexibility Analysis (RFA) describing the impact of the proposed rule on small entities. Because the guidelines are not required to be published as a notice of proposed rulemaking under section 553 of the Administrative Procedure Act or any other law, they are not subject to the RFA requirements of the Regulatory Flexibility Act.

Section 126 Grantees

Comment: EPA should indemnify organizations that train hazardous waste cleanup workers under CERCLA section 126 grants.

Response: Section 126 grantees are eligible for indemnification under the final guidelines with similar limits and deductibles available to SITE participants.

Guidelines Document EPA Indemnification of Superfund Response Action Contractors

Introduction

These guidelines fulfill the requirement of CERCLA section 119(c)(7), as implemented by Executive Order 12580, that EPA develop guidelines to carry out CERCLA section 119(c).

1. Purpose

These guidelines provide policies and procedures by which the Environmental Protection Agency (EPA) may indemnify response action contractors (RACs) for third-party claims that result from a release of a hazardous substance, pollutant or contaminant due to RAC negligence arising out of response action activities at a National Priorities List (NPL) or removal action site.

2. Authority

These guidelines are required by section 119(c)(7) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99–499. In E.O. 12580, the President delegated to EPA the responsibility for issuing section 119 guidelines (52 FR 2923 (Jan. 29, 1987)).

3. Scope

These guidelines govern indemnification by EPA of all RACs that perform response work under contract at NPL or removal action sites for EPA, for states (or political subdivisions) under CERCLA cooperative agreements with EPA, and for potentially responsible parties (PRPs) under a CERCLA administrative order or consent decree. EPA interprets section 119 to permit the Agency to provide indemnification to RACs working for federally-recognized Indian tribes pursuant to a CERCLA section 104 cooperative agreement with EPA. These guidelines also apply to EPA indemnification of SITE program participants conducting field demonstrations pursuant to CERCLA section 311(b), recipients of training grants under SARA section 126(g), and RACs working for other federal agencies (such as the U.S. Army Corps of Engineers) at EPA-lead sites under a Memorandum of Understanding (MOU) or an Inter-Agency Agreement with EPA. Where other federal departments or agencies indemnify RACs under section 119 authority, the indemnification agreements must not be inconsistent with these guidelines.

4. Application

(a) These guidelines govern EPA's indemnification of RACs for response work initiated after October 17, 1986, the date of enactment of SARA. These guidelines supersede OSWER Directive 9835.5, "EPA Interim Guidance on Indemnification of Superfund Response Action Contractors Under Section 119 of SARA."

(b) These guidelines govern all RAC indemnification by EPA for future response action contracts.

(c) Contract indemnification terms under EPAAR 1552.228–70 rather than these guidelines will apply to work performed at a site after the date of enactment of SARA only if response work at the site was initiated under an EPA contract prior to SARA's date of enactment. Indemnification agreements granted under the terms of OSWER Directive 9835.5 (EPA's Interim Guidance) will be replaced, through a negotiated agreement, with terms and conditions that are consistent with the policies found in these guidelines.

(d) Subject to all the requirements of these guidelines, any indemnification agreement provided by EPA to a prime contractor may be provided by the prime contractor to its subcontractors if the agreement is approved by EPA at the time of the award of the subcontract. That is, the prime contractor can agree to indemnify a subcontractor, and EPA may indemnify the prime contractor with respect to the prime contractor's obligations that may arise as a consequence of its indemnification of the subcontractor (see section 9, below).

(e) Consistent with EPA policy that a fair portion of subcontracts be awarded to small, minority and women-owned businesses, prime contractors shall fully consider the needs of these RACs with regard to indemnification.

5. Abbreviations

CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended)
EPAAR—EPA Acquisition Regulations
FAR—Federal Acquisition Regulations
NPL—National Priorities List
OSWER—EPA's Office of Solid Waste and Emergency Response
PRP—Potentially Responsible Party
RAC—Response Action Contractor
SARA—Superfund Amendments and Reauthorization Act of 1986
SITE—Superfund Innovative Technology Evaluation

6. Definitions

Terms not defined in this section have the meaning given by CERCLA and § 300.5 of the "National Oil and Hazardous Substances Pollution Contingency Plan." (40 CFR 300.5 (1991)).

Claim means the receipt by the RAC of a written demand for money, naming the RAC and alleging a release of any hazardous substance or pollutant or contaminant caused by the RAC's response action activities.

Indemnification, for the purpose of these guidelines, means an agreement under which EPA will compensate certain losses suffered by a RAC, and the actual payment of that compensation.

Non-federal sources means commercial insurance, state indemnification, self-insurance, or other alternative risk transfer mechanisms.

Occurrence, means a release, including continuous or repeated, of any hazardous substance or pollutant or contaminant.

Response Action Contractor, as provided in CERCLA section 119(e)(2), means any person who enters into a response action contract to provide services (including construction) related to any release or threatened release of a hazardous substance or pollutant or contaminant from a facility, and any person, hired or retained by such a person, providing such services. It includes recipients of cooperative agreements under section 311(b) of CERCLA and recipients of grants pursuant to section 126(g) of SARA. It also includes any surety who, after October 16, 1990, and before January 1, 1993, provides a bid, performance or payment bond to a response action contractor, and begins activities to meet its obligations under such bond, but only in connection with such activities or obligations.

Response Action Contract, as provided in CERCLA section 119(e)(1), means any written contract or agreement entered into by a RAC with the President; any federal agency; a state, political subdivision, or a federally-recognized Indian tribe under a CERCLA section 104 cooperative agreement with EPA; or any PRP under an order or decree, to provide remedial action at an NPL site or removal action.

SITE, means the program developed under CERCLA section 311(b) which directs EPA to establish an "Alternative or Innovative Treatment Technology Research and Demonstration Program." This program accelerates the development of, and demonstrates, evaluates, and disseminates information about new and innovative treatment technologies.

Indemnification Requirements, Terms, and Conditions

7. Indemnification Request

(a) EPA will not indemnify RACs that fail to meet the requirements of CERCLA section 119 and of these guidelines. EPA will not enter into an indemnification agreement with a RAC until the RAC submits the documentation required by CERCLA section 119 and described in these guidelines.

(b) To be eligible for indemnification by EPA, the RAC shall submit evidence of the following:

(i) That its potential third-party liability is not covered by pollution liability insurance available at a fair and reasonable price at the time the contract to perform a response action is entered into, and that adequate pollution liability insurance is not generally available;

(ii) That it has made diligent efforts to obtain insurance coverage from non-federal sources (or, if it is a cost-reimbursement RAC, it has satisfied the minimum insurance requirements of section 10(c), below), and;

(iii) Under a multi-site contract, that the RAC also has made (or agrees to continue to make) such diligent efforts (or, if it is a cost reimbursement RAC, it will otherwise satisfy the requirements of section 10(c)) every time it begins work at a new facility.

(c) Due to the variability of market conditions, EPA will determine on a case-by-case basis whether adequate insurance is available at a fair and reasonable price at the time indemnification documentation is submitted. This determination will be based on the documentation submitted in fulfillment of the diligent efforts requirement, or on any other insurance market information available to EPA. In its determination of a fair and reasonable price for insurance, EPA will consider what a prudent business person in the private sector would purchase after weighing the following criteria and other relevant factors:

- The insurance rate applied to each $100 of receipts.
- The deductible or self-retention rate associated with the policy.
- The projected work load and nature of the risk associated with the work to be covered by the policy.
- The amount and type of pollution liability coverage and limit provided by the policy.
- Exclusions and limitations of the policy.
- The effective date of the policy.
- The period of coverage.
- The amount of coverage, if any, extended to subcontractors.
- The receipts used in determining the insurance rate.
- Other risk sharing mechanisms available.

(d) To demonstrate that diligent efforts have been made to obtain non-federal pollution liability insurance coverage, a RAC must submit in writing:

(i) The names and addresses of three commercial insurers or alternative risk financiers to whom the RAC or its broker has submitted applications. If the number of names and addresses is fewer than three, then a statement justifying the reduced number; and either,

(ii) A statement from a recognized professional insurance broker stating that the broker has attempted to secure pollution liability insurance coverage on behalf of the RAC, and summarizing premiums, terms and conditions; or stating that pollution liability insurance was unavailable and giving the reasons for its unavailability for the RAC.

(iii) A copy of each application submitted, insurance policies offered (including the declaration page), and any rejection letters received. If pollution liability insurance was offered by a commercial insurer, but not accepted by the RAC, an explanation of the reasons why such coverage was rejected must be included; or

(e) EPA will not enter into an indemnification agreement until the RAC has submitted the documentation required in subsection (b) and (d). EPA will not enter into an indemnification agreement if it determines that the documentation submitted is insufficient, or if it determines that the RAC's efforts to obtain insurance were not sufficiently diligent.

(f) If the RAC is working under a multi-site contract, the diligent efforts information must be updated and resubmitted before the RAC begins work at a new facility (as part of the indemnification agreement, the RAC will have agreed to continue to make such diligent efforts each time work is started at a new facility (see subsection (b)(iii), above)). However, if previously purchased insurance covers work at the new facility, then there is no need to submit additional documentation for that site.

(g) EPA reserves the right to change the frequency and content of documentation submittal requirements, and also to direct indemnified RACs to purchase insurance from insurers identified by EPA.

8. Indemnification Terms and Conditions

(a) Where EPA has agreed to indemnify a RAC, EPA will indemnify the RAC against third-party liability (including the expenses of litigation or settlement) for negligence arising from the RAC's performance in carrying out the response action activity. Such indemnification shall apply only to such liability not compensated by insurance or otherwise and shall apply only to liability which results from a release of a hazardous substance, pollutant, or contaminant if such release arises out of the response action activities of the contractor.

(b) EPA indemnification is subject to limits and deductibles. For the purpose of determining the amount of the indemnification limit and deductible, the expenses of litigation or settlement are considered part of the liability covered by the indemnification agreement.

(c) The amount of the indemnification limit and deductible depends on the type and dollar value of the contract entered into (see below).

(i) The indemnification limit is defined on a per occurrence/aggregate basis with a contract aggregate limit.

(ii) The indemnification deductible is on a per occurrence basis.

(d) EPA indemnification will not cover liabilities (including the expenses of litigation or settlement) that were caused by the conduct of the RAC (including any conduct of its directors, managers, staff, representatives or employees) which constituted gross negligence or intentional misconduct. Nor shall the RAC be indemnified for liability arising under strict tort liability, or any basis of liability other than negligence.

(i) EPA indemnification will cover the expenses of litigation or settlement subject to the terms and conditions of the indemnification agreement (such as limits and deductibles). In addition, EPA indemnification will apply if the RAC is found not to be liable for alleged negligence, or if a negligence suit is settled.

(ii) EPA indemnification will not apply if the RAC is found both strictly liable and negligent, and the cause of action is not divisible.

(e) If a RAC has a CERCLA section 119 indemnification agreement with EPA, the RAC must notify EPA of any claim or action against the RAC that may involve EPA indemnification, within twenty working days after receiving notice of any claim or action. The RAC must also notify its insurer(s) of any claim or action that may involve EPA indemnification, even if the RAC believes that its insurance is not applicable to the claim or action, within twenty working days upon receiving notice of any claim or action (or a shorter period if required by the terms of the insurance policy). Indemnification is conditional on EPA's receipt from the RAC of copies of the complaint (or other claim), and of the notice to the insurer within twenty working days of receiving notice of any claim or action. The insurer's response must be forwarded to EPA promptly after receipt by the RAC.

(f) Coverage Term: The coverage term is subject to the other terms and conditions listed in this document.

(i) An EPA indemnification agreement will cover claims arising (and reported to EPA) during the period of performance of the contract, plus claims submitted to EPA within ten years after the contract term.

(ii) For multi-site contracts, the ten-year coverage term, with respect to an individual site, begins with the completion of work (as specified in the Work Assignment or other relevant work order) at the site.

(g) Limits, Deductibles, and Purchased Insurance: Any pollution liability insurance (or self-insurance) acquired or maintained by the RAC to meet the requirements of sections 7 or 10 of these guidelines reduces the limit of EPA indemnification on a dollar-for-dollar basis. Further, the RAC must exhaust both the available insurance coverage and the EPA deductible (found in the indemnification agreement) before EPA will make an indemnification payment.

(h) See section 20 below for additional terms and conditions.

9. Subcontractors—General Provisions

(a) EPA will not agree to indemnify subcontractors directly. However, with the prior written permission of EPA, prime contractors may indemnify their subcontractors. Thus, EPA will provide no more than one indemnification agreement per contract, regardless of the number of sites where work will be performed under the contract, with that agreement affording coverage to the prime contractor, including any obligation the prime contractor may incur as a result of its indemnification agreements with its subcontractors. (See also the approval requirement in subsection (b), below.)

This section does not apply to a prime contractor that chooses to share its indemnification with a team subcontractor. In this situation the coverage received by the team subcontractor would subtract from the prime contractors coverage and not be an additional exposure to EPA.

(b) Under an EPA indemnification agreement, the prime contractor may confer indemnification on the subcontractor by including in the subcontract an indemnification clause by which the prime contractor agrees to indemnify the subcontractor. That indemnification clause must have terms and conditions (except for limits and deductibles, see below) identical to those found in the clause by which EPA agrees to indemnify the prime contractor. EPA will indemnify the prime contractor with respect to any liability incurred by the subcontractor(s) pursuant to an indemnification agreement between the prime contractor and any subcontractor (subject to the indemnification limits and deductibles specified in the prime contract). EPA, however, must give prior approval (in writing) of the subcontract which contains the indemnification agreement between the prime contractor and subcontractor.

(c) Subcontractors receiving indemnification through the prime contractor are subject to all indemnification requirements, terms, and conditions of these guidelines. These applicable requirements include the reporting requirements of section 7, above. That is, the subcontractor must demonstrate that it has made diligent efforts to obtain pollution liability insurance, and agrees to continue to make such efforts. The subcontractor shall forward all documentation to the prime contractor, and the prime contractor shall forward copies of the documentation to the contracting officer (or other appropriate EPA official). It will be the responsibility of the prime contractor to monitor the diligent efforts of its subcontractors based on the feedback from EPA during EPA's review of the prime contractor's diligent efforts. The contracting officer (or other appropriate EPA official) may consent to the subcontract including the indemnification clause (see section 9(b), above) only if the contracting officer (or other appropriate EPA official) has determined, based on the documentation supplied by the subcontractor to the prime contractor or information supplied by the prime contractor, that the subcontractor has satisfied the reporting requirements of section 7. A demonstration of diligent efforts by the prime contractor is not sufficient to demonstrate that, by implication, insurance is unavailable to the subcontractor.

Indemnification Terms and Conditions for Specific Contract Types

10. RACs Working for EPA Under Cost-Reimbursement Contracts

(a) For cost-reimbursement contracts entered into after the promulgation of these guidelines, EPA will not offer indemnification agreements in its solicitations. If there is a lack of adequate competition in response to the solicitation that can be linked to the absence of indemnification, then a new or amended solicitation may be issued that states that indemnification will be available to the successful offeror. If EPA does offer indemnification, the agreement will be subject to the paired limits and deductibles listed in subsection (g) and (h) below. EPA retains the right to incorporate other provisions of this policy (e.g., coverage for subcontractors) when appropriate.

(b) RACs working for EPA under cost-reimbursement contracts must procure and maintain all insurance required by law or regulation including:

(i) Insurance required by part 28 of the Federal Acquisition Regulations for cost-reimbursement contracts,

(ii) Commercial general liability insurance for bodily injury, death or loss of or damage to property of third persons in the minimum amount of $500,000 per occurrence, and,

(iii) Any additional insurance EPA may require.

(c) Indemnification and Insurance: Any RAC working for EPA under a cost-reimbursement contract who requests that EPA enter into an indemnification agreement must procure and maintain pollution liability insurance for bodily injury, death or loss of or damage to property of third persons in the minimum amount of $1,000,000 per occurrence (or self-insure for the same), *or* it must demonstrate that it has made diligent efforts to obtain such pollution liability insurance and, despite such diligent efforts, has failed to procure reasonably-priced insurance. RACs under a multi-site contract must agree to continue to make such diligent efforts each time work begins at a new site. EPA will not agree to indemnify a RAC who does not purchase the required insurance or demonstrate diligent efforts, nor will EPA make indemnification payments to a RAC who has entered into an indemnification agreement but has failed to demonstrate adequately that it has made diligent efforts each time work started at a new site (except as provided in section 7(f), above).

(i) The RAC must obtain and maintain pollution liability coverage for professional liability and/or general liability, as appropriate.

(ii) The minimum amount of pollution liability insurance to be purchased must increase by 25% per year unless EPA determines that the increased amount of insurance is not generally available at a fair and reasonable price. Thus, where "t" is defined as the number of years elapsed since promulgation of these guidelines, the minimum amount of pollution liability insurance required in year t is equal to:

$1 million * (times) 1.25^t

(iii) The demonstration of "diligent efforts" is defined in section 7(d), above. Those diligent efforts must be deemed satisfactory by EPA.

(d) Reimbursement: RACs working for EPA shall submit to the contracting officer for prior approval all insurance policies (or documentation of all self-insurance plans) for which reimbursement will be sought from EPA.

(e) Any loss incurred within the EPA indemnification deductible amount (see below) will not be reimbursed to the RAC as either a direct or an indirect cost. All deductibles, with the exception of co-payments above $50 million (see below), must be met by the RAC as the first financial obligations of the claim and must be paid by the RAC before any payments are made by EPA. The RAC may purchase insurance to cover the indemnification deductible amount, but the cost of that insurance is not reimbursable (nor is any loss within the deductible amount of that insurance reimbursable as either a direct or indirect cost).

(f) Self-Insurance: If a RAC proposes to self-insure against pollution liability, and seeks reimbursement for the cost of self-insurance or seeks to satisfy the minimum requirement of section 10(c) through self-insurance, it must demonstrate to EPA financial responsibility for the amount of self-insurance proposed. Financial responsibility may be demonstrated by letter of credit, surety bond, trust fund, escrow account, or other method approved by the EPA Contracting Officer.

(i) A demonstration of financial viability, by itself, does *not* constitute an adequate demonstration of financial responsibility.

(ii) To be eligible for reimbursement of the cost of self-insurance, a RAC must satisfy the applicable requirements of 48 CFR Parts 28 (*Bonds and Insurance*), 30 (*Cost Accounting Standards*), and 31 (*Contract Cost Principles and Procedures*), and 4 CFR Part 416 (*Accounting for Insurance Costs*).

(g) Limits and Deductibles for RACs with contracts entered into before the date of promulgation of these guidelines (with indemnification) with EPA, another federal agency working at EPA sites under an inter-agency agreement (IAG), or a state or political subdivision of a state, or a federally-recognized Indian tribe having a cooperative agreement with EPA to clean up Superfund sites: The limit and associated deductible included in the indemnification agreement shall be the subject of negotiation by EPA and the RAC at the time of contract modification in one of the following amounts as governed by the restrictions in subsection (h) below:

Limit (occurrence/aggregate)	Deductible (occurrence)
$2 million	$20,000.
5 million	50,000.
10 million	100,000.
25 million	250,000.
50 million	1.0 million.

(h) The RAC may select from the limits/deductibles as follows:

- A RAC with a single-site contract of less than $10 million may choose any pair of limits/deductibles that has a limit of $10 million or less.
- A RAC with a single-site contract of $10 million to $25 million or a multi-site contract of less than $25 million may choose any pair of limits/deductibles that has a limit of $25 million or less.
- A RAC with a contract of $25 million or more may choose any pair of limits/deductibles that has a limit of $50 million or less.

(i) For contracts of long duration (longer than five years), the RAC may choose a higher limit of $75 million, with a $2 million deductible and co-payments (dollar for dollar) by the RAC above $50 million.

(j) Subcontracts: (i) For subcontractors that perform services and are retained through the subcontracting pool of cost reimbursement contracts subject to subsection (i) above, the prime contractor may flowdown up to $15 million coverage in the aggregate to subcontractors. This coverage is separate from the prime's limit and cannot be used by the prime contractor for additional coverage above its limit as described in this section. The prime may not grant more than $5 million coverage to any single subcontractor under this paragraph, and the associated deductible shall be $50,000 per contract aggregate for each indemnification agreement with a subcontractor.

(ii) EPA may offer indemnification to innovative technology subcontractor RACs who provide innovative technologies under a contract to provide remedial action (RA) construction services and that fall within the definition of a RAC under CERCLA section 119(e)(2)(B) if EPA determines that the technology has special value to the Superfund program. These RACs must have made diligent efforts to obtain pollution liability insurance from non-federal sources which were unsuccessful. These RACs may choose from the following limit and deductible pairs:

Limit (occurrence/aggregate)	Deductible (occurrence)
$2 million	$10,000
5 million	25,000
10 million	50,000
25 million	200,000

(iii) Subcontractors under contracts subject to section 10(i) performing remedial action (RA) work will be subject to the same requirements as RACs under section 11 below. Prime contractors may not offer EPA indemnification in their solicitations for remedial action (RA) work unless there is a lack of adequate competition in response to the solicitation that can be linked to the absence of an indemnification. Then EPA may permit a new or amended solicitation to be offered that states that indemnification will be available to the successful bidder/offeror.

(iv) Subcontractors that meet the conditions of both paragraphs (ii) and (iii) above may choose from either the scale in section 10(j)(ii) or the coverage available under section 11, but not both.

11. Indemnification of RACs Working for EPA under Firm Fixed Price Contracts

(a) General: Although the Government is not ordinarily concerned with a contractor's insurance coverage if the contract is a fixed-price contract, EPA recognizes that a RAC cleaning up a Superfund site may require protection against third-party liability, and that, in some cases, adequate insurance may not be available. In such cases, and from a bidder's perspective, EPA indemnification may be a prerequisite to clean-up activities at the site. For future fixed-price contracts, EPA will not offer indemnification in its solicitations. If there is a lack of adequate competition in response to the solicitation that can be linked to the absence of indemnification, then a new or amended solicitation may be issued which states that indemnification will be available to the successful bidder. EPA retains the right to incorporate other provisions of this policy (e.g., coverage for subcontractors), when appropriate, into future contracts and solicitations. If indemnification is available under the solicitation , the RAC must meet all of the requirements specified in section 7 (above); and the indemnification agreement will contain a limit and a deductible as prescribed in section 10 (g) and (h) above.

(b) RACs working for EPA under fixed-price contracts will not be reimbursed for the cost of pollution liability insurance (except indirectly, *i.e.*, and to the extent that the cost of such insurance may be reflected in the fixed price).

(c) If EPA offered indemnification to RACs currently under contract with EPA or another federal agency working at EPA sites under an inter-agency agreement (IAG), the agreement will contain a limit and a deductible as prescribed in sections 10(g)(h) above.

(d) If EPA offers indemnification to a fixed price innovative technology RAC, the RAC must demonstrate that it has made diligent efforts to obtain pollution liability insurance from non-federal sources as specified in section 7 above. If adequate insurance is not available at a fair and reasonable price, the limit and deductible amounts of EPA indemnification available to the RAC are:

Limit (occurrence/aggregate)	Deductible (occurrence)
$2 million	$10,000
5 million	25,000
10 million	50,000
25 million	200,000

(e) If EPA offers indemnification, any RAC that is the successful bidder to a solicitation that requires innovative technology or uses innovative technology may select limits/deductibles as stated in section 11(d) or in section 10(g) and (h) above. If the RAC uses a subcontractor to provide and/or operate the innovative technologies, the subcontracted RAC may also choose from the limits and deductibles in section 11(d) above.

12. Indemnification of RACs Working for EPA under Negotiated Fixed-Price Contracts

(a) For the purpose of indemnification, RACs working for EPA under negotiated fixed-price contracts (including RACs under fixed-rate contracts with some cost elements reimbursable, such as Time-and-Materials Contracts) will be considered cost-reimbursement contractors. If a negotiated fixed-price RAC requests indemnification, it will be subject to the same insurance requirements and indemnification terms and conditions as cost-reimbursement contractors (see sections 7 and 10, above).

13. Indemnification of SITE Program RACs

(a) Technology vendors participating in the SITE program are defined as RACs in CERCLA section 119(e)(2)(A). Thus, those RACs participating in the SITE program, under cooperative agreement with EPA, are eligible for indemnification.

(b) SITE program RACs must make diligent efforts to purchase pollution liability insurance from non-Federal sources as specified in section 7.

(c) If adequate insurance is not available at a fair and reasonable price, EPA may offer indemnification to these RACs. The limit and deductible for EPA indemnification will be determined by the RAC from the following limit and deductible pairs:

Limit (occurrence/aggregate)	Deductible (occurrence)
$2 million	$10,000
5 million	25,000
10 million	50,000
25 million	200,000

(d) EPA will not indemnify SITE program RACs with respect to facilities which receive waste for disposal, treatment (except for small-scale demonstration testing), or storage independently of the SITE technology demonstration.

(e) EPA may indemnify SITE program RACs with respect to any work conducted at a federal facility (as described in CERCLA section 120 except as stated in subsection (f), below).

(f) If a SITE demonstration project is funded by a party other than EPA (including federal agencies), then the SITE RAC will be considered, for the purpose of indemnification, a RAC employed by that party. For example, if a SITE RAC is conducting a demonstration funded at least in part by a PRP, then EPA will not indemnify the RAC (see section 17, below).

14. Indemnification of RACs Receiving Grants Under SARA section 126(g)

EPA may indemnify RACs receiving grants under SARA section 126(g). They will be subject to the terms and conditions for SITE program RACs in section 13 above.

15. Indemnification of RACs Employed by States or Political Subdivisions of States, or Federally-Recognized Indian Tribes

(a) General: EPA has been granted discretionary authority to indemnify RACs employed by states, political subdivisions of states, or federally-recognized Indian tribes that have entered into a cooperative agreement with EPA for new work initiated at NPL or removal action sites after the date of enactment of SARA. EPA may indemnify such RACs upon the written request of the state, political subdivision of a state, or a federally-recognized Indian tribe. If EPA agrees to indemnify a RAC employed by such an entity, the indemnification will be embodied in the cooperative agreement through insertion of a special condition.

(b) Requirements for EPA Indemnification: The procedures for entering into indemnification agreements with RACs working for states (or political subdivisions) or federally-recognized Indian tribes under cooperative agreements are identical to those for RACs working directly for EPA as outlined in sections 10 and 11 above. That is, RACs under current contracts with indemnification may choose a limit and a deductible as outlined in section 10(g) and (h) above. For future contracts, EPA will not nor will states (or political subdivisions) or federally-recognized Indian tribes under cooperative agreements offer (EPA) indemnification in solicitations. If there is a lack of adequate competition in response to the solicitation that can be linked to the absence of indemnification, then a new or amended solicitation may be issued that states that an indemnification agreement will be available to the successful bidder/offeror. In addition, before EPA will enter into an indemnification agreement, proof of the following must be supplied to EPA:

(i) The RAC's contract concerns new site work initiated at an NPL or removal action site after the date of enactment of SARA; and

(ii) The RAC's contract is directly related to site cleanup.

(c) Terms and Conditions: The terms and conditions stated in section 8 above shall apply to any indemnification agreement offered under this section.

(d) EPA may agree to indemnify a RAC working for a state (or political subdivision) or federally-recognized Indian tribe even if that entity has also agreed to indemnify the RAC. In that case, responsibility for making indemnification payments will be held jointly by the EPA and the state (or political subdivision or federally-recognized Indian tribe) under a cooperative agreement with EPA. Unless otherwise stated in the cooperative agreement, responsibility for making indemnification payments will be divided equally between EPA and the state (or political subdivision or federally-recognized Indian tribe). Any indemnification payments made by EPA, however, are subject to the limits and deductibles specified in the indemnification agreement.

(e) EPA may agree to indemnify a RAC which is required under the terms of its contract with a state (or political subdivision) or federally-recognized Indian tribe to indemnify and hold harmless such contracting entity from claims, damages, losses and expenses, including litigation costs, that arise out of the RAC's performance of the contract. However, any costs or expenses payable to the state (or political subdivision) or federally-recognized Indian tribe under such indemnification are the sole responsibility of the RAC and are not covered under EPA's indemnification of the RAC or otherwise an eligible expense of the cooperative agreement.

16. Indemnification of RACs Employed by Federal Agencies Other Than EPA

(a) General Rule: Under CERCLA section 119 (as implemented by E.O. 12580), other federal agencies and departments are granted discretionary authority to indemnify RACs they employ at NPL or removal action sites from the date of enactment of SARA. Other federal agencies and departments that indemnify RACs under section 119 must use their own appropriations to pay all indemnification costs; in addition, the indemnification agreements must not be inconsistent with these guidelines.

(b) RACs employed by other federal departments and agencies (e.g., the Army Corps of Engineers) at EPA-lead NPL or removal action sites, managed pursuant to an interagency agreement with EPA, are subject to the same provisions of these guidelines as are RACs employed by EPA. Thus, the same indemnification terms and conditions offered to RACs employed by EPA may be offered to RACs employed by other agencies at EPA-lead NPL or removal sites under interagency agreements with EPA.

17. Indemnification of RACs Employed by PRPs

CERCLA section 119(c)(5)(C) gives EPA the discretionary authority to enter into an indemnification agreement with a RAC employed by any potentially responsible party (PRP) which has entered into a written agreement (such as a consent decree) with EPA. EPA will not exercise that discretionary authority, *i.e.*, EPA will not agree to indemnify a RAC under contract with a PRP.

18. Indemnification of Surety Firms

CERCLA section 119(e)(2)(C) defines RACs to include sureties that provide bid, performance or payment bonds to a RAC after October 16, 1990, and before January 1, 1993, and begin activities to meet their obligations under such bonds. EPA indemnification extends to sureties that provide performance bonds to RACs and begin activities to meet their obligations under such bonds. That is, the surety will be covered by the indemnification agreement of the defaulting RAC if the bond is activated, subject to all of the requirements of these guidelines.

Other Issues

19. Exclusion of Facilities That Receive Waste

(a) EPA is prohibited by CERCLA section 119(c)(5)(D) from providing indemnification to owners or operators of facilities regulated under the Solid Waste Disposal Act, as amended, with respect to response activities performed at, or potential liability related to, those facilities.

(b) Under section 119, EPA will not agree to indemnify any owner or operator of a facility that receives solid or hazardous waste (for disposal, treatment, or storage), including publicly owned treatment works (POTWs), with respect to that facility. This applies to a facility regardless of whether or not it is subject to the permit-by-rule provisions, or any other provision of the Solid Waste Disposal Act.

20. Other Terms and Conditions

(a) EPA will indemnify only RACs performing work directly related to site cleanup.

(b) At any time, EPA may cancel its indemnification of a RAC due to a material misrepresentation or a failure on the part of the RAC to provide necessary information, act in good faith, or satisfy any other term or condition of its indemnification agreement.

(c) EPA reserves the right to add such additional terms and conditions to its RAC indemnification agreements as it deems necessary. Such terms and conditions will be consistent with CERCLA section 119.

21. Claims Notifications and Processing

(a) The RAC shall provide written notification to the contracting officer (or other EPA official designated in the indemnification agreement) within twenty working days upon receiving notice of any claim or action that may involve EPA indemnification under section 119. EPA will not provide indemnification payments for costs incurred prior to its receipt of written notice from the RAC. Notice must include a copy of the complaint or other claim, or, if no written claim has been received, available information on the time, place, and circumstances involved and the names and addresses of the injured and of available witnesses.

(b) The RAC shall notify its insurers within twenty working days (or a shorter period if required by the terms of the insurance policy) of any claim or action that may involve EPA indemnification, even if the RAC believes that its insurance is not applicable to the claim or action. The RAC shall provide to the contracting officer (or other designated person) a copy of any correspondence from the insurance company, including any notice of denial of coverage.

(c) The RAC shall furnish evidence or proof related to any claim that may involve indemnification payments in the manner and form required by EPA.

(d) The RAC shall furnish to EPA complete photocopies of all of the RAC's insurance policies that were in force at the time of the response action, and all those in force at the time of the notice of claim.

(e) EPA reserves the right to direct, control, or assist in the settlement or defense of any claim or action against an indemnified RAC.

(f) The RAC shall not admit liability or settle any claim without EPA's written consent.

(g) If EPA recommends settlement of a claim for an amount within the RAC's deductible, and the RAC refuses such settlement, EPA shall not be obligated to indemnify for any loss or obligation of the RAC relating to the claim in excess of the deductible.

(h) If EPA recommends settlement of a claim for a total amount in excess of the RAC's indemnification limit (as specified in the contract) and the RAC refuses such settlement, EPA's obligation for any loss shall be limited to that portion of the recommended settlement and the costs, charges, and expenses (as of the RAC's refusal) that exceeds the deductible and falls within the limit of liability.

(i) EPA reserves the right to make any claim payment either to the RAC or the claimant at its discretion.

22. Cost Recovery

Under CERCLA section 119(c)(6), indemnification payments made by EPA to RACs are recoverable from PRPs as a government response cost under CERCLA section 107. EPA shall document any indemnification payments by following the same recordkeeping and reporting procedures as for all other response costs.

23. Limitation

Nothing in these guidelines shall be construed as a waiver of sovereign immunity by the United States. Nothing in these guidelines shall be construed to establish the United States as a liable party, within the meaning of section 107 of CERCLA, for any release that has occurred or may occur in the course of any response action the United States undertakes pursuant to section 104 of CERCLA. In addition, EPA's agreement to indemnify any RAC, or EPA's payment of any money under an indemnification agreement, shall not be construed as a waiver of sovereign immunity by the United States, within the meaning of section 107 of CERCLA.

Dated: January 13, 1993.

Don R. Clay,

Assistant Administrator Office of Solid Waste and Emergency Response.

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[OPPT–59316A; FRL–4183–9]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–93–4 and TME–93–5. The test marketing conditions are described below.

EFFECTIVE DATES: January 12, 1993.

FOR FURTHER INFORMATION CONTACT: Edna G. Pleasants, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics Environmental Protection Agency, Rm. E–611, 401 M St. SW., Washington, DC 20460, (202) 260–4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–93–4 and TME–93–5. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-93-4 and TME-93-5. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.
2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. Copies of the bill of lading that accompanies each shipment of the TME substance.

TME-93-4 and TME-93-5

Date of Receipt: November 25, 1992.

Notice of Receipt: December 15, 1992 (57 FR 59349).

Applicant: Confidential.

Chemical: (G) Alkanoate Ester of an Ammonium Salt.

Use: (G) Laundry Additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Twenty Four (24) months, commencing on the first day of nonexempt commercial manufacture.

Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: January 12, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-1675 Filed 1-22-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632-6934.

Federal Communications Commission

OMB Control No.: 3060-0519

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (CC Docket No. 92-90)

Expiration Date: 10/31/95

Description: The Commission issued a Report and Order in CC Docket No. 92-90 pursuant to the requirements of the Telephone Consumer Protection Act of 1991 (TCPA) (Pub. L. 102-243, Dec. 20, 1991). The Report and Order imposes a recordkeeping requirement on telemarketers to maintain lists of telephone subscribers who do not wish to be contacted by telephone. Telephone solicitors must record requests from residential telephone subscribers not to receive calls, and must place subscribers' names and telephone numbers on do-not-call lists at the time such requests are made. Telephone solicitors also are required to have a written policy for maintaining do-not-call lists, and are responsible for informing and training their personnel in the existence and use of such lists. Moreover, the rules require that those making telephone solicitations identify themselves to called parties, and that basic identifying information also be included in telephone facsimile transmissions.

OMB Control No.: 3060-0485

Title. Amendment of Part 22 of the Commission's Rules To Provide for Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules.

Expiration Date: 09/30/94

Description: In the Third Report and Order and Memorandum Opinion and Order on Reconsideration issued in CC Docket No. 90-6, the Commission revised 47 CFR part 22 to improve licensing procedures for cellular radio in general and also to clarify and modify rules concerning the filing and processing of applications for unserved areas in the cellular service. The revisions are necessary to provide a mathematical formula for calculating service areas in the Gulf of Mexico and to limit payments that an applicant or a party may receive for withdrawing a mutually exclusive cellular application or a pleading filed against a cellular application. Further, some of the revisions are needed to clarify applications for unserved areas. In revising these rules, the Commission intends to encourage further development of the cellular service while promoting efficiency in the licensing of cellular service.

OMB Control No.: 3060-0046

Title: Application for New or Modified Common Carrier Radio Station Authorization Under Part 22, FCC Form 401

Expiration Date: 10/31/95

Description: FCC Form 401 is used by Commission staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act, 47 U.S.C. 308 and 309, to determine the technical, legal and other qualifications of the applicant to operate stations in the Public Mobile Service. In addition to the requirements specified in the form, applicants must submit exhibits and other showings as required by 47 CFR part 22, which contains the technical and legal requirements for radio stations in the Public Mobile Service. FCC Form 401 will be updated to display the 10/31/95 expiration date. A Public Notice will be issued to announce the availability of the updated edition of the FCC Form 401 and the deadline for filing the current 1991 edition of the form.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-1738 Filed 1-22-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders,

Federal Maritime Commission,
Washington, DC 20573.

Aviation Import-Export Incorporated, 9102 Herlong Road, Jacksonville, FL 32210. Officers: Henry E. Charlton, President/Director, William C. Meadows, Director, Brian F. Smith, Director, William Ramirez, Registered Agent.

Harvey Yaffe Forwarding, Inc., 1937 Lynn Brook Place, Memphis, TN 38116. Officers: Uri Silver, President/Director/C.E.O., Anet Silver, Stockholder, Bede L. Yaffe, Secretary/Treasurer/Director/Stockh., Thomas P. Cline, Vice President.

Transit-Trade Inc., 1600 Center Ave., Ste. 14B, Fort Lee, NJ 07024. Officers: Fred N. Sucher, Exec. Vice President/Director, Paul M. Sucher, President/Director, Fay Davila Sucher, Secretary/Treasurer/Director.

Auto Driveaway Co., 310 South Michigan Ave., Chicago, IL 60604. Officers: John F. Sohl, Chairman, Brandon A. Sohl, President, Rose A. Sohl, Director, Roger J. Fillion, Asst. Vice President.

Ralex International Corp., 3307 S.W. 25th Terrace, Miami, FL 33133. Officer: Alexis Rosa, President.

USA Cargo Line, 975 66th Avenue, Oakland, CA 94621, Johnson Lee, Sole Proprietor.

Jetta Cargo Services, Inc., 8939 S. Sepulveda Blvd., Suite 526, Los Angeles, CA 90045. Officers: Danny BC Chan, President, Norman Wong, Stockholder.

Omega Shipping, Inc., 173 Essex Ave., Suite 7, Metuchen, NJ 08840. Officers: Rita Paul, President/Director/Treasurer/Stockholder, Alex Nacinovich, Vice President, Harold S. Paul, Secretary.

Global Logistics, Inc., 11767 Katy Freeway, Suite 390, Houston, TX 77079. Officers: Barry G. Scott, President, Jessica L. Dunlap, General Manager.

Dated: January 15, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-1567 Filed 1-22-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

ABC Employee Stock Ownership Plan, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 16, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ABC Employee Stock Ownership Plan*, Anchor, Illinois; to become a bank holding company by acquiring 41.94 percent of the voting shares of Anchor Bancorporation, Farmer City, Illinois, and thereby indirectly acquire Anchor State Bank, Anchor, Illinois.

2. *F.N.B.C. of La Grange, Inc.*, La Grange, Illinois; to acquire 100 percent of the voting shares of Mokena State Bank, Mokena, Illinois.

3. *Hawkeye Bancorporation*, Des Moines, Iowa; to merge with First Dubuque Corp., Dubuque, Iowa, and thereby indirectly acquire First National Bank of Dubuque, Dubuque, Iowa.

4. *ISB Bancshares, Inc.*, Ipava, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Ipava State Bank, Ipava, Illinois.

Board of Governors of the Federal Reserve System, January 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1666 Filed 1-22-93; 8:45 am]

BILLING CODE 6210-01-F

ABC Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 11, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ABC Employee Stock Ownership Plan*; Merle Coile; Chester Eyer Employees Profit Sharing Plan; Harris Hammer; Kay Hammer; Gayle Simpson; Jeffrey Coile; James Eckert; George Drake; and Heartland Bancorp, Inc.; to acquire 74.19 percent of the voting shares of Anchor Bancorporation, Farmers City, Illinois, and thereby indirectly acquire Anchor State Bank, Anchor, Illinois.

Board of Governors of the Federal Reserve System, January 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1667 Filed 1-22-93; 8:45 am]

BILLING CODE 6210-01-F

Caisse Nationale de Credit Agricole; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to engage de novo in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the applications have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Caisse Nationale de Credit Agricole*, Paris, France; to engage *de novo* through its subsidiary, Credit Agricole Securities, Inc., New York, New York in securities brokerage activities pursuant to § 225.25(b)(15); and investment advisory services pursuant to § 225.25(b)(4); and acting as agent in the private placement of all types of securities and providing related advisory services pursuant to Board Order, *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987); and acting as a riskless principal in buying and selling all types of securities on the order of investors pursuant to Board Order, *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 834 (1989).

2. *Caisse Nationale de Credit Agricole*, Paris, France, to engage *de novo* through its subsidiary, UI USA, Inc., New York, New York, in acting as agent in the private placement of all types of securities and providing related advisory services pursuant to Board Order, *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987).

Board of Governors of the Federal Reserve System, January 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1665 Filed 1–22–93; 8:45 am]

BILLING CODE 6210–01–F

MBNA Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not February 11, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *MBNA Corporation*, Newark, Delaware; to engage *de novo* through its subsidiary MBNA Consumer Services, Inc., Newark, Delaware, in making consumer loans that will be secured by second mortgages pursuant to § 225.25(b)(1)(iii); and offer credit insurance (life, disability and involuntary unemployment) pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1664 Filed 1–22–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. C–3409]

Medical Marketing Services, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Florida firm and its founder from misrepresenting in advertising or promotional materials—with respect to any chemical face peel procedure or any health care service—the degree of risk, level of pain, recovery period, or results associated with the procedure; any entity's approval or endorsement of the procedure; or any training the respondents provide for the procedure and services.

DATES: Complaint and Order issued January 12, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Richard Kelly, FTC/H–200, Washington, DC 20580. (202) 326–3304.

SUPPLEMENTARY INFORMATION: On Thursday, October 29, 1992, there was published in the **Federal Register**, 57 FR 49087, a proposed consent agreement with analysis In the Matter of Medical Marketing Services, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–1735 Filed 1–22–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3408]

United States Golf Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a New Jersey-based non-profit corporation

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

to clearly state in all future advertisements and product descriptions in mail order catalogs, and in all mail order promotional material, whether its clothing and other textile-fiber merchandise are manufactured or processed in the United States, or imported, or both. In addition, the respondent is required to use proper generic fiber names, consistent with the Textile Fiber Products Identification Act, and not to mention or imply fiber content of a fiber not present in the product.

DATES: Complaint and Order issued January 6, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Bob Easton, FTC/S-4631, Washington, DC 20580. (202) 326-3029.

SUPPLEMENTARY INFORMATION: On Tuesday, October 20, 1992, there was published in the **Federal Register**, 57 FR 47862, a proposed consent agreement with analysis In the Matter of United States Golf Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 72 Stat. 1717; 15 U.S.C. 45, 70.

Donald S. Clark,

Secretary.

[FR Doc. 93-1737 Filed 1-22-93; 8:45 am]

BILLING CODE 6750-01-M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, and following consultation with the Committee Management Secretariat of the General services Administration, notice is hereby given that the Federal Accounting Standards Advisory Board has been renewed for a two-year period ending January 19, 1995.

As a part of the ongoing efforts to improve Federal financial management, the FASAB considers and recommends accounting standards and principles for the Federal government. The Board follows a six-step process for considering accounting standards. The Board then recommends these standards for consideration for adoption by its three principals: The Secretary of the Treasury, the Director of OMB, and the Comptroller General. The recommended accounting standards, when implemented by Federal agencies, provide a reasonable assurance of adequate public disclosure of the financial condition, activities, and results of operations of the government and of its component units.

The Board is composed of nine members selected from a broad range of Federal entities as well as the non-Federal community. The composition of the Board is:

- One General Accounting Office (GAO) member,
- One Office of Management and Budget (OMB) member,
- One Treasury member,
- One Congressional Budget Office (CBO) member,
- One member from the defense and international agencies,
- One member from the civilian agencies, and
- Three members from non-Federal representatives of the general financial community, the accounting and auditing community, and academia.

As the Board continues to carry out its mission as described above, it will operate in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., suite 1001, Washington, DC 20002, or call (202) 512-7350.

Dated: January 19, 1993.

Ronald S. Young,

Committee Management Officer.

[FR Doc. 93-1715 Filed 1-22-93; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Final Record of Decision

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR part 1500-1508); and the General Services Administration (GSA) Handbook, PBS Preparation of Environmental Assessments and Environmental Impact Statements (PBS P 1095 4B), GSA announces its Record of Decision regarding the proposed construction of the eastern portion of the Southeast Federal Center (SEFC), located in the southeast quadrant of the District of Columbia. GSA will develop the eastern portion of the SEFC with approximately 3,605,000 gross square feet of office space, 147,300 gross square feet of retail space and 3,520 parking spaces for up to 14,725 employees.

Development of the approximate 43 acre eastern portion of the SEFC will include the construction of Headquarters Facilities for several Federal agencies, including GSA and the Corps of Engineers. While the Environmental Impact Statement (Draft and Final documents) included an individual analysis of the GSA Headquarters Building, GSA will not be publishing a separate Record of Decision for the GSA Headquarters Building. The GSA and Army Corps of Engineers Headquarters Buildings, as well as all other proposed development for the eastern portion of the SEFC, was included as part of the development being proposed for the eastern portion of the SEFC in the environmental analysis. The EIS considered all possible impacts and recommends appropriate mitigation measures.

Specific mitigation measures will be developed during the design phase of each project. These mitigation plans and programs will be developed from those recommended in the Final EIS or other state-of-the-art practices.

I. Purpose and Need for the Project

Since 1960, the General Services Administration (GSA) has gradually shifted from housing government agencies in government-owned facilities to housing them in space leased from the private sector to accommodate rapid government expansion. The increase in leased space in the last two decades and the smaller square footage generally available in leased spaces, have resulted in dispersion of Federal office space and therefore, fragmentation of agencies throughout the National Capital Region (NCR). This leasing of small spaces in turn has led to a host of interrelated problems, for both GSA and tenant agencies involved.

The development of the eastern portion of the SEFC will allow GSA to consolidate dispersed satellite offices of individual agencies, relocate government agencies from costly leased space, and reduce the number of small offices currently maintained. The benefits of owning space in a centralized location will include increasing client agency efficiency, savings in cost, reducing space acquisitions and lease renegotiations, reducing alterations for tenant uses in commercial buildings, reducing duplication of support functions, and making easier the implementation of special security and high technology requirements. Tenant agencies will achieve improvements in productivity and coordination.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

II. Alternatives Considered

GSA considered three development alternatives for the eastern portion of the SEFC.

Alternative I (the preferred alternative) proposes the development of 3,605,000 gross square feet (gsf) of office space and 147,300 gsf of retail space for 14,725 employees.

Alternative II proposes 4,955,800 gsf of office space and 174,000 gsf of retail space for 17,697 employees.

Alternative III (No Action) would leave the site as it is today.

III. Environmental Impact Statement

As part of GSA's environmental review process, and in accordance with NEPA, Section 102 (2) as amended, and GSA order PBS P 1095.4B, GSA conducted an investigation and prepared an Environmental Impact Statement (EIS) to address the impacts of each of the three alternatives. Thirty different environmental elements were analyzed. While the No Action Alternative (III) had the fewest minor negative impacts, Alternatives I and II were found to offer more positive impacts. Although Alternatives I and II were found to have fairly similar negative impacts, those for Alternative I (with a lower level of development) will be less pronounced. Therefore, Alternative I is the preferred alternative for development of the eastern portion of the SEFC.

Alternative I is based on the SEFC 1989 Master Development Plan, conditionally approved in January 1990 and subsequently approved in final in July 1992. This master plan proposed development on the entire SEFC (eastern and western portions) with 5,635,000 gross square feet (GSF) of office space, 189,000 gsf of retail space and 5,500 parking spaces for up to 23,000 employees.

IV. Affected Environment

The eastern portion of the SEFC is bounded by M Street, SE., to the north; New Jersey Avenue, SE., extended and the District of Columbia Pumping Station to the west; the Anacostia River to the south; and the Washington Navy Yard to the east. The division from the Navy Yard is defined by a line running north along Boyner Street from the river to Tingey Street and then following Tingey Street east to Isaac Hull Avenue where the line turns north to M Street, SE. These boundaries enclose a 43-acre site which is topographically flat and slopes slightly towards the river. Many of the structures on the site are warehouse or industrial-type buildings which have been converted to other uses, with office space being the predominant use. Unbuilt areas of the site are paved and used for parking.

V. Environmental Consequences and Mitigation Measures

Under the No Action Alternative (III), GSA would continue to use the site as it is currently used. There would be no significant new construction on the site, and it is unlikely that there would be any extensive renovation, since most of the buildings that are readily reusable as office space have already been converted. Instead, improvements to existing buildings would be restricted to repair and maintenance, which would not result in significant amounts of additional space for new employees. Thus, pursuing the No Action Alternative could potentially leave the site with fewer Federal employees and less unable space than Alternatives I and II.

Impacts of the proposed redevelopment actions (Alternatives I and II) and summarized recommended mitigation measures are treated together in this summary and are described below. (See SEFC-FEIS for full discussion and description.)

Geology and Soils: Building construction will require the removal of approximately 414,000 cubic yards of excavated material for Alternative I and 495,000 cubic yards for Alternative II. Soils shown to be contaminated will be treated on site, when possible. Otherwise, contaminated soils will be transferred off site for appropriate treatment. Groundwater will be above construction depth in some areas which will require dewatering during construction. Construction over trunk sewers and Metro tunnels will require the use of specialized engineering techniques to avoid subsidence or transfer of loads to tunnels and sewers. Design of this work shall be coordinated with appropriate agencies.

Topography/Orientation/Seawall: There will be little change to the existing topography. There will be minor changes in ground levels to accommodate future storm drainage systems and possibly landscape features. Construction grading will enhance flood protection where possible. The seawall design will address the provision of a built-in trap for collection and containment of floating debris that currently collects along the seawall. Orientation of the site towards the river will be enhanced by the development of the proposed New Jersey Avenue extension and the waterfront promenade. There will be positive impacts from a safer and more aesthetically pleasing seawall.

Hydrology/Water Quality and Biota/Climate: Minor increases in pollutants form automobiles may occur. This impact could be mitigated by the use of oil and grit separators from stormwater; landscaping areas to trap pollutants; and street cleaning. Implementation of erosion control measures will mitigate potential erosion during construction. Long term monitoring of ground water is planned to ascertain the effectiveness of the decontamination measures, and will serve to inform GSA of any migration of contaminants from off-site sources. There will be no impacts on climate.

Vegetation/Wetlands/Wildlife: The proposed development includes comprehensive landscape elements and there will be positive impacts from the introduction of plant materials within the site and along the waterfront.

Floodplains: Development on site will have positive impacts on flood elevations and the floodplain as the total floodplain area will decrease in size due to construction site grading. However, for those remaining floodplain areas, there could be potential flood impacts on development, including constraints on site planning, building design, functions housed and construction materials used in below-grade and first floor levels. Mitigation measures will be used, including floodproofing individual buildings, using watertight doors and bulkheads, and allowing flooding of below-grade parking areas to contravene hydrostatic ground water pressures on building plates during flood conditions.

Ambient Air Qualtiy: There will be no significant impacts resulting from stationary or mobile air pollution sources.

Ambient Sound Levels: The development will result in a slight increase in ambient sound levels for the areas adjacent to major access routes to the SEFC. Sound levels will be in excess of Federal noise abatement criteria with or without development of the SEFC facilities. No mitigation will be required. Reducing the potential impacts of aircraft noise and other obtrusive sound will addressed through appropriate building design and site orientation.

Toxic and Hazardous Waste: The proposed developments will have a net positive impact by accelerating the remediation of the contaminated areas at the SEFC. Disturbing the site could potentially increase the exposure to contaminants and release particulates into the air. Environmental cleanup will be an essential first step in site preparation; and will be done in conjunction with the first phases of infrastructure and the construction of buildings. The contaminated soils will be treated on site if possible, otherwise they will be removed, transported and treated off-site in accordance with applicable Federal and local regulations. Any contaminated waste will be subject to regulations promulgated under the Resource Conservation and Recovery Act (RCRA), as administered by the District of Columbia. All PCB's and PCB-contaminated materials will be removed, in conformance with the Environmental Protection Agency's Requirements for PCB Clean-Up (40 CFR part 761).

Site and Surrounding Area Land Use: Redevelopment will result in increased density through new construction and adaptive use of existing structures. The site's land use will change from primarily office, storage and light industrial functions to a predominantly administrative center with the addition of retail services and other amenities.

Plans, Policies and Controls: The proposed development will comply with Federal and local comprehensive plans and policies for the area.

Community Character: The development may induce related development in the surrounding blighted area, such as, retail shopper and service uses, office and housing development. Other positive impacts will include incorporation of cooperative uses, such as the possible use of conference and training center facilities for community meetings; public access to shops, services and waterfront amenities; and, improvement of the overall urban environmental quality.

Commercial Activity: There will be positive impacts from the proposed retail space. It will provide a much needed service for neighborhood residents and will also generate jobs, and tax revenue for the city. Leased commercial office space would ultimately be vacated in suburban Maryland, Northern Virginia and the District of Columbia when employees are relocated to the SEFC. GSA will backfill most of these spaces as interim office space for the many GSA offices undergoing extensive renovation and for those requiring expansion space. This measure will temporarily prevent a negative impact on the Maryland and Virginia commercial office space markets that are presently overbuilt with high vacancy rates.

Residential Activity: There could be a minor negative impact from an increase in the number of jobs in the area without a complimentary increase in affordable housing availability in the area. The effect of this impact could become positive if residential development or redevelopment takes place in the surrounding area or in other parts of the District of Columbia. This development would have to be carried out by non-GSA bodies as the agency's mission is restricted to providing office space for Federal agencies.

Fiscal/Socio-Economic Conditions: Although city services and operating costs may increase nominally, there will be a positive impact on the immediate surrounding area and the District of Columbia due to an increase in the number of both blue and white collar permanent jobs and short-term jobs during construction. There will be an increase in spending for meals and services by area residents and SEFC employees and consequently, annual sales tax revenues will increase with the introduction of more retail shops in the area. No significant increase in Federal jobs within the Metropolitan Statistical Area will occur as a direct result of this project, only a redistribution. However, growth in the Federal job sector has been steady during the last 10 years.

Education, Recreation and Institutional Facilities: No significant impact on education or institutional facilities will occur. There will be a net positive impact on passive recreation as well as an increase in the opportunities for biking and jogging due to the development of the riverside park and urban square.

Historic Resources: There will be positive impacts in the historic districts of the SEFC and neighboring Navy Yard areas including urban design improvements, and physical improvements to historic buildings and structures. Negative impacts include the loss of individual industrial features at the site. The negative impacts will be mitigated by new construction that respects the character and scale of adjacent historic structures, and by utilizing proper record-keeping procedures prior to the demolition of any historic structures.

Archeological Resources: Negative impacts include the possible ground disturbance of archeological resources. Such disturbance will be mitigated by selective site surveys, resource identification, and resource protection.

Visual/Aesthetic Resources: The potential visual impacts of integrating new structures with historic buildings and adjacent low density areas will be mitigated by designing new buildings to relate to neighboring structures, with variations in height, mass, materials, character and scale. The tallest buildings (up to 130 feet) will be located at the New Jersey Avenue/M Street, SE intersection. Building heights will step down (to around 35 feet) towards the river and towards the east, allowing views of the Capitol and Anacostia River from anywhere on the site. The vista along New Jersey Avenue between the Capitol and the waterfront will be established with the removal of Buildings 216 and 159E. There will be positive impacts from an aesthetically pleasing site, buildings and waterfront. Landscaping and new office construction will relieve the barrenness of the site; and the planting of trees will provide shade to pedestrians. GSA will prepare design guidelines for the site which will help to insure the integration of the new buildings with the existing structures and surrounding area.

Water Supply: The increase in the on-site water demand will cause no significant impact to the District of Columbia water supply system.

Wastewater Treatment/Collection: The development could initially have an impact on the Blue Plains Sewage Treatment Plant due to an increase in the amount of effluent from the site. However, the upgrade and expansion of the Blue Plains facility, which has been taking place over the past 10 years, will mitigate these impacts. Construction at Blue Plains to accommodate the increase in effluent from the SEFC is expected to be completed by 1994. Other mitigation measures will include the separation of storm and sanitary flows, and the use of water-conserving plumbing fixtures.

Stormwater Runoff: There will be no negative impacts on stormwater runoff due to the development. Separation of storm flows from sanitary and combined systems will help alleviate problems at the Blue Plains Treatment Plant during storms and floods. The addition of permeable ground in landscaped areas will reduce total stormwater runoff on the site. The need for stormwater detention facilities will depend on the specific design of the SEFC and on the result of future stormwater system studies. During the design phase, the District of Columbia Department of Consumer and Regulatory Affairs will determine if stormwater detention facilities will be required.

Electric Power and Telecommunications: The development will create an increase in electric power demand, but PEPCO will have no difficulty in meeting future demand. There will be positive impacts on telecommunications as the development will create an opportunity to upgrade and expand the telephone system on site. Coordination with PEPCO, the Navy and C&P will take place.

Energy Systems and Conservation: There will be an increase in the site energy (heating and cooling) load. This impact will be mitigated by the use of ASHRAE guidelines for energy conservation design, construction, and use of buildings. As a result of the use of more energy efficient systems, there will be a positive impact on energy conservation.

Solid Waste Service: There will be no significant impact resulting from increased solid waste from the SEFC. The gradual incremental growth at the center will not place sudden or acute impacts on collection and solid waste disposal systems of the District of Columbia government.

Transportation: The development will create minor negative impacts on the local roadway network in the vicinity of the site. Mitigation of these impacts will be based on the successful implementation of a Transportation Demand Management Program (TMP) for the SEFC, as well as the Anacostia Waterfront as a whole. In addition, the local roadway network will need to be reconfigured to allow easier access to the site, by means of instituting one-way streets and traffic restrictions. The National Capital Planning Commission requires GSA to submit a TMP for each building proposed for construction at the SEFC during the design approval process. During the design stage, GSA will work with each Agency relocating to the SEFC to develop a responsive TMP that addresses the respective impacts of new construction and relocation.

VI. Areas of Concern

There were no major areas of controversy concerning this EIS. Comments on significant issues included:

Emergent wetlands at the SEFC: The District of Columbia Department of Public Works and the United States Fish and Wildlife Service recommended the replacement of a patch of emergent wetlands at the SEFC. The United States Army Corps of Engineers determined that the emergent wetlands were not jurisdictional wetlands and this ruling was supported by the Environmental Protection Agency (EPA). The emergent wetlands were created when a building was demolished to allow the Washington Metropolitan Area Transit Authority (WMATA) to construct a segment of the underground rapid rail line. After completion of the construction activity, the site was not graded properly and water began ponding. EPA has requested that GSA consider constructing wetlands on the site in the form of a stormwater runoff basin or a tidal wetland. This recommendation will be considered during the development of design plans for the site.

Historic Preservation Issues: The National Trust for Historic Preservation was concerned that GSA did not evaluate the impact of the project on the Washington Navy Yard Annex Historic District or consider alternatives that would physically preserve and mitigate the impacts on the cultural resources within the district. GSA did evaluate the impact of the project on the Washington Navy Yard Annex Historic District, and did consider alternatives that could preserve and mitigate impacts on the cultural resources within the Historic District. Compliance with Section 106 of the National Historic Preservation Act (NHPA) ensures, at a minimum, the evaluation of Federal actions on historic sites, as well as consultation with the Advisory Council on Historic Places (ACHP). After lengthy consultation with the District of Columbia Historic Preservation Office (SHPO) and the ACHP, GSA requested ACHP's formal comments on January 27, 1992. The ACHP submitted formal comments to GSA in a letter dated February 7, 1992. GSA considered the comments, and on April 23, 1992, responded to the ACHP in accordance with the NHPA, thus concluding the Section 106 process.

Transportation Mode Share and Vehicle Occupancies: The Citizen's Committee to Stop It Again and the Capitol Hill Restoration Society took the position that the assumptions regarding mode share and vehicle occupancies used for the transportation analysis were overly optimistic, thereby underestimating vehicle traffic. The purpose of the EIS was to identify impacts and determine if they can be mitigated. The analysis found that they can be mitigated and indicated the types of actions that can be used to achieve mode shares and vehicle occupancies necessary to ensure satisfactory operation. Specific plans or programs to be used to achieve mode shares and vehicle occupancy rates will be identified during the design and approval process which precedes any construction activity. EPA has recommended that the SEFC be linked to the Metro station by a pedestrian tunnel; and that this be included as a component of a strong "Transportation Demand Management Program". GSA is considering this action as part of its overall site development design plan.

VII. Planning Process

GSA held a public scoping meeting on June 19, 1991, in Washington DC. GSA filed a Draft Environmental Impact Statement (DEIS) on March 20, 1992 with the United States Environmental Protection Agency (EPA); and held a public hearing in Washington DC, on April 23, 1992. GSA filed a Final EIS with EPA on September 25, 1992.

GSA believes that there are no outstanding environmental issues to be resolved with respect to the proposed construction on the eastern portion of the Southeast Federal Center with approximately 3,605,000 gsf of office space, 147,300 gsf of retail space and 3,520 parking spaces for up to 14,725 employees.

The mitigation program for the development of the eastern portion of the SEFC will be developed during the design phase. Mitigation measures will be developed from those recommended in the Final EIS or other state-of-the-art practices.

Questions regarding the EIS prepared for this action may be directed to Frank T. Thomas, NCR Planning Staff (WPL), GSA National Capital Region, room 7618, 7th and D Streets, Washington, DC 20407, telephone 202–708–5334.

Dated: December 29, 1992.

James C. Handley,

Regional Administrator, General Services Administration.

[FR Doc. 93–1677 Filed 1–22–93; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services, Division of Energy Assistance; Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for authorization to continue use of an information collection titled: "ACF Grantee Survey of the Low Income Home Energy Assistance Program". This request for OMB clearance is made by the Division of Energy Assistance within the Office of Community Services, of the

Administration on Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: ACF Grantee Survey of the Low Income Home Energy Assistance Program (LIHEAP).

OMB No.: 0970–0076.

Description: This information collection is authorized by the Low Income Home Energy Assistance Program (LIHEAP) block grant program established under the Low Income Home Energy Assistance Act of 1981 (Title XXVI of Pub. L. 97–35, Omnibus Budget Reconciliation Act of 1981, as amended). Section 2610 of Public Law 97–35, as amended, instructs the Secretary of the Department of Health and Human Services to provide for the compilation of data, including:

(1) Information concerning home energy consumption;

(2) The amount, cost, and type of fuels used for households eligible for assistance;

(3) The type of fuel used by various income groups;

(4) The number and income levels of households assisted;

(5) The number of households which received such assistance and include one or more individuals who are 60 years or older or handicapped: and

(6) Any other information which the Secretary determines to be reasonably necessary to carry out these provisions. This information collection is also authorized in Senate Report No. 99–154 by the Senate Committee on Appropriation.

The Division of Energy Assistance (DEA) of the Administration for Children and Families (ACF) will send to the States and the District of Columbia a summer telephone survey and a winter telephone survey to be completed by LIHEAP grantees. This information will be used by the DEA to compile information requested by the Senate Committee on Appropriations and to provide Congress with fiscal and caseload estimates in time for upcoming annual Congressional hearings. Without the collection of this data by the annual winter and the summer telephone surveys, the Secretary of the Department of Health and Human Services and the Administration for Children and Families can not report state-specific data to Congress while the program is operating.

	Winter	Summer
Annual Number of Respondents	51	51
Annual Frequency	1	1
Average Burden Hours Per Response	3.75	3.25
Total Burden Hours	191.25	165.75

Dated: January 6, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–1570 Filed 1–22–93; 8:45 am]

BILLING CODE 4130–01–M

Office of Child Support and Enforcement; Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request to approve a new information collection titled: "April 1993 Test of CPS Child Support Supplement". This information collection is a pre-test of two revised survey instruments which are sponsored by the Office of Support and Enforcement. The test will be conducted by the Bureau of the Census and the results used in the April 1994 Child Support Supplement to the Current Population Survey (CPS).

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, of the Office of Information Systems Management, ACF, by calling (202) 401–9235. Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: April 1993 Test of CPS Child Support Supplement.

OMB No.: 1220–0100.

Description: This collection of information is authorized by title IV–D of the Social Security Act. The regular collection of this information is authorized by title 13, U.S. Code, section 182 and title 29, U.S. Code, section 1–9. The Office of Management and Budget also directs the Office of Child Support and Enforcement to collect this information. OMB previously approved this data collection under Bureau of the Census approval number 1220–0100 to commence on July 29, 1991 and to continue through December 31, 1993.

The Child Support Supplement to the Current Population Survey used in conjunction with the April 1993 Computer-Assisted Telephone Interviewing and the Computer Assisted Personal Interviewing Overlap Sample is a historical data set that gathers information on the circumstances surrounding child support orders. This information collection which has been on-going since the 1970's, includes, among other things, presence of child support orders; the receipt of nonreceipt of child support payments; circumstances surrounding visitation rights of the non-custodial; accessibility to health insurance and the date of divorce or separation. In the past, the Child Support Supplement to the Current Population Survey has produced unreliable response rates. To improve the quality of the response rate, the Office of Child Support and Enforcement has sponsored research by the Bureau of the Census to determine the problems with the questions in the supplement and to otherwise improve the design and wording of the Child Support Supplement questions.

This request is for clearance of a pre-test of two alternative versions of the Child Support Supplement to the Current Population Survey. A small scale pretest of the revised instruments were conducted in April 1992 and October 1992 respectively by the Bureau of the Census. A comparison of the April 1992 instrument and the revised 1993 instrument will enable the Office of Child Support and Enforcement to obtain reliable information and decrease the nonresponse rate. This data collection will be used as resource information for budget purposes and trend analyses by the Department and ACF staff, researchers and demographers.

Annual Number of Respondents: 12,000.

Annual Frequency: 1.

Average Burden Hours Per Response: .021.

Total Burden Hours: 250.

Dated: January 6, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–1687 Filed 1–22–93; 8:45 am]

BILLING CODE 4130-01-M

Administration on Children, Youth and Families, Head Start Bureau; Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, HHS.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval for the reinstatement of a previously approved (OMB 0980–0017) information collection requirement for the Head Start Program.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, ACF, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Head Start Program Information Report (PIR).

OMB No.: 0980–0017.

Description: The Head Start program's FY 1992 appropriation is over $2 billion. There are over 1,900 grantees and delegate agencies that provide services to about 622,000 children. The Program Information Report (PIR) is used by Head Start grantees to collect information on the delivery of services for Head Start children and their families and assess the effectiveness of selective program operations.

Information gathered through the use of the PIR provide a descriptive profile of program operations used by Head Start programs as part of their year-to-year planning and monitoring cycle and as a supplement to their self-assessment process. The PIR is a major source of such public information efforts as the Project Head Start Statistical Fact Sheet, which is updated annually. The PIR is also a major source of information for the legislatively-mandated biennial report to the Congress on Head Start.

Annual Number of Response: 1,921.

Annual Frequency: 1.

Average Burden Hours Per Response: 3.5.

Total Burden Hours: 6,724.

Dated: January 6, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–1688 Filed 1–22–93; 8:45 am]

BILLING CODE 4130-01-M

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices.

Times and Dates: 1 p.m.–5:30 p.m., February 9, 1993. 8:30 a.m.–4 p.m., February 10, 1993.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Altanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents.

Matters to be Discussed: The committee will discuss general recommendations for immunization; immunization for health care workers; Hib vaccine and Hib conjugate-DTP; influenza; group C meningococcal meningitis; polio, and typhoid fever.

The agenda also includes a presentation on safety of simultaneous vaccination; an update on BCG meta-analyses; presentation on immunization of bone marrow transplant recipients; update on immunization levels of pre-school children; update on the National Vaccine Program; and an Injury Compensation Program update. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Staff Specialist, CDC (1–B72), 1600 Clifton Road, NE., Mailstop A20, Atlanta, Georgia 30333, telephone 404/639–3851.

Dated: January 15, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1619 Filed 1–22–93; 8:45 am]

BILLING CODE 4160-18-M

National Institutes of Health

National Cancer Institute, Division of Cancer Treatment Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, February 22–23, 1993, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 22 from 8:30 a.m. to approximately 6 p.m., and again on February 23 from approximately 11 a.m., until adjournment, to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 23 from 8 a.m. to approximately 10:45 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301/496–4291) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Bruce Chabner, 301/496–4921 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1622 Filed 1–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and Its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on February 8–9, 1993. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Except as noted below, the meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

A portion of the Board will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Room 10A06, Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Mrs. Barbara Bynum, Building 31, Room 10A03, Bethesda, MD 20892; (301) 496–5147.

Dates of Meeting: February 8–9, 1993.

Place of Meeting: Building 31C, Conference Room 10.

Open: February 8—8 a.m. to approximately 3 p.m.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; and Scientific Presentations.

Closed: February 8—3 p.m. to recess.

Agenda: For review and discussion of individual grant applications.

Open: February 9—8:30 a.m. to adjournment.

Agenda: Policy and Scientific Presentations, Subcommittee Reports, and New Business.

Name of Committee: Subcommittee on Minority Health, Research and Training.

Executive Secretary: Drs. Evans and Cairoli, Building 31, Room 10A04, Bethesda, MD 20892; (301) 496–7344.

Date of Meeting: February 8, 1993.

Place of Meeting: Building 31C, Conference Room 8.

Open: 12 p.m.—1 p.m.

Agenda: To discuss minority initiatives.

Name of Committee: Subcommittee on Aging and Cancer.

Executive Secretary: Dr. Marvin Kalt, Building 31, Room 10A03, Bethesda, MD 20892; (301) 496–4218.

Date of Meeting: February 8, 1993

Place of Meeting: Building 31C, Conference Room 7

Open: 1 p.m. to 2 p.m.

Agenda: To discuss NCI clinical cooperative group trails; cancer related activities of the National Institute of Aging and the approval of previous minutes.

Name of Committee: Subcommittee on Women's Health and Cancer.

Executive Secretary: Ms. Iris Schneider, Building 31, room 11A48, Bethesda, MD 20892; (301) 496–5535.

Date of Meeting: February 8, 1993.

Place of Meeting: Building 31C, Conference Room 8

Open: 2 p.m. to 3 p.m.

Agenda: To discuss future women's health and cancer issues.

Name of Committee: Program Projects Task Force.

Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03, Bethesda, MD 20892; (301) 496–5147.

Date of Meeting: February 8, 1993.

Place of Meeting: Building 31C, Conference Room 7.

Open: 2 p.m. to 3 p.m.

Agenda: To discuss the PO1 review format and process.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Cherie Nichols, Building 31, Room 11A19, Bethesda, MD 20892; (301) 496–5515

Date of Meeting: February 8, 1993.

Place of Meeting: Building 31C, Conference Room 7

Open: Immediately following the recess of the NCAB.

Agenda: Foreign Grant Awards for FY 1992

Name of Committee: Subcommittee on Cancer Centers

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, Room 300 Bethesda, MD 20892; (301) 496–8537.

Date of Meeting: February 8, 1993

Place of Meeting: Building 31C, Conference Room 8

Open: 6 p.m. to adjournment.

Agenda: To discuss future issues.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93,394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1625 Filed 1–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Notice of Meeting of National Institute of Dental Research (NIDR) Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the NIDR Special Grants Review Committee, National Institute of Dental Research, February 23–25, 1993, at the Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814. The meeting will be open to the public from 8:30 to 9 a.m. on February 23 for general discussions. Attendance by the public is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. William Gartland (301/496–7658) in advance of the meeting.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 23 and 24 from 9 a.m. to recess, and on February 25, from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, NIH, Westwood Building, room 519, Bethesda, MD 20892 (telephone 301/496–7658), will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health)

Dated: January 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1623 Filed 1–22–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of an advisory committee of the National Institute of Mental Health for February 1993.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact indicated.

Committee Name: Clinical Subcommittee, Mental Health Special Projects Review Committee

Contact: Gwen C. Artis, room 9C–08 Parklawn Building Telephone: 301–443–1340

Meeting Date: February 10–12, 1993

Place: Hyatt Palo Alto 4219 El Camino Real Palo Alto, CA 94306

Open: February 10, 1993, 7 p.m–8 p.m.

Closed: February 10, 1993, 8 p.m. to 10 p.m. February 11, 1993, 9 a.m. to 5 p.m. February 12, 1993, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: January 15, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1624 Filed 1–22–93; 8:45 am]

BILLING CODE 4140–01–M

Orphan Products Board; Public Meeting

AGENCY: Office of the Assistant Secretary for Health, DHHS.

ACTION: Notice of public meeting; Orphan Products Board.

SUMMARY: The Department of Health and Human Services and the Office of the Assistant Secretary for Health announce that a public meeting of the Orphan Products Board will be held on February 22, 1993 in Washington, DC. During the session there will be opportunity for interested persons to present information and views on the issue of orphan products development. The meeting will be chaired by the Assistant Secretary for Health and Chairman, Orphan Products Board. It will commence at 1 p.m., in room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

ADDRESSES: Written requests to participate should be sent to Dr. Richard J. Bertin, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF–35), room 8–73, 5600 Fishers Lane, Rockville, MD 20857, and should be received by February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Richard J. Bertin, Executive Secretary, Orphan Products Board, Food and Drug Administration (HF–35), 5600 Fishers Lane, Rockville, Maryland 20857. (301) 433–4903.

SUPPLEMENTARY INFORMATION: An orphan drug is a drug for the treatment of a rare disease or condition which either (1) has a prevalence in the United States of under 200,000 persons or (2) has a higher prevalence and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. The Orphan Drug Act, Public Law 97–414 enacted on January 4, 1983, as amended, established a number of incentives to encourage the development and marketing of orphan drugs.

The act also established an Orphan Products Board to promote the development of drugs and devices for rare diseases or conditions and to assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients with rare diseases.

The Orphan Products Board is chaired by the Assistant Secretary for Health. The Board is composed of representatives from the Department of Health and Human Services (DHHS), the Department of Veterans Affairs (DVA), the National Institute for Disability and Rehabilitation Research (NIDRR), and the Department of Defense (DoD). Within DHHS, representatives from the Agency for Health Care Policy and Research (AHCPR), the Centers for Disease Control (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), the National Institutes of Health (NIH), the Office of the Assistant Secretary for Health (OASH), and the Social Security Administration (SSA), serve on the Board. The publish meeting will have three purposes:

1. An update will be provided on the activities of the Orphan Products Board, and members of the Board will discuss their agencies' recent orphan product development activities, especially with respect to ongoing implementation of the recommendations of the National Commission on Orphan Diseases.

2. A ceremony will be held to honor the recipients of the Public Health Service Award for Exceptional Achievement in the Orphan Products Development. This award recognizes the efforts of individuals who have contributed to the development of drugs for rare diseases or conditions. The awards will be presented by the Assistant Secretary for Health.

3. In keeping with its mandate to foster actions within the Department to facilitate the research, development, and approval of orphan products and to coordinate government activities with the private sector in order to achieve these goals, the Board encourages presentations by members of the public on any issues involving the development and availability of orphan products. Those persons wishing to make a presentation at the meeting should submit a written request for a time slot to the Executive Secretary of the Orphan Products Board. The request for participation should be submitted before February 16, 1993, and should include:

a. Name, address, and telephone number of the person desiring to make a presentation;

b. Affiliation, if any;

c. A summary of the presentation; and

d. The approximate amount of time required for the presentation (no more than 10 minutes, unless more time can be justified.)

Individuals and organizations with common interests or proposals are urged to coordinate or consolidate their presentations. Joint presentations may be required of persons or organizations with a common interest. The time available will be allocated among the individuals who request an opportunity for a presentation. Formal written statements or extensions of remarks (five copies) may be presented to the Chairman on the day of the meeting for inclusion in the record of the meeting. At the discretion of the Chairman, and as time permits, any person in attendance may be heard. This time will, most likely, be at the end of the scheduled session. For those unable to attend the meeting, comments may be sent to the Executive Secretary of the Orphan Products Board at the address listed above.

Dated: January 13, 1993.

James O. Mason,

Assistant Secretary for Health.

Orphan Products Board

Public Forum—Hubert H. Humphrey Building—Room 800

February 22, 1993.

Chairperson: Assistant Secretary for Health (or Designee)

1 p.m.—Introductions and Welcome—Assistant Secretary for Health, Orphan Products Board

1:15 p.m.—PHS Awards for Exceptional Achievement in Orphan Products Development—Assistant Secretary for Health

1:40 p.m.—Implementation of the Recommendations of the National Commission on Orphan Diseases—Agency Representatives to the Orphan Products Board

2:45 p.m.—Break

3 p.m.—Open Public Forum

[FR Doc. 93–1739 Filed 1–22–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Donation and Solicitation Guidelines for the Take Pride in America Program

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed guidelines.

SUMMARY: This statement is to establish policy guidelines for soliciting and accepting donations for the Take Pride in America (TPIA) Program. It is intended also to give the TPIA office guidance in processing and accounting for donations.

DATES: Comments are due by February 27, 1993.

ADDRESSES: Take Pride in America Program, OCO, O/S, USDI, 1849 C St. NW., room 5123, Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Anne House Quinn, Director, Take Pride in America, 202–208–3726.

SUPPLEMENTARY INFORMATION: The TPIA Program, which consists of a broad-based partnership of volunteers, states, federal agencies, and the private sector, educates and motivates citizens to preserve and enhance our nation's natural, cultural and historic public resources. Statutory authority for the TPIA Program is found in Public Law 101–628 (104 Stat. 4502, Nov. 28, 1990). Section 1103 of Public Law 101–628 provides that the Secretary of the Interior may solicit and accept gifts or property to aid or facilitate the purposes of the TPIA Program. The following proposed policy and guidelines governing soliciting and accepting donations for the TPIA Program is intended to form a new chapter in the Departmental Manual, and will be made available to the public upon request addressed to the Department's TPIA Program Office.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the policy making process. Accordingly, interested persons may submit written comments, suggestions or objections regarding these proposed policy guidelines to the location identified in the Addresses section of the preamble. Comments must be received on or before 30 days following publication in the **Federal Register**.

Take Pride in America (TPIA) Donations and Solicitation (Fundraising) Policy and Guidelines

A. Introduction

This statement is to establish policy and guidelines for soliciting, accepting, and using donations for the Take Pride in America (TPIA) Program. It is intended also to give the TPIA office guidance in processing and accounting for donations.

B. Statutory Authority

The statutory authority for the TPIA program is found in Public Law 101–628, 16 U.S.C. 4601–4608. The purposes of the TPIA Program include:

(a) To establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals.

(1) To instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural, historic, and cultural resources;

(2) To encourage an attitude of stewardship and responsibility toward these lands, facilities, and natural, historic, and cultural resources; and

(3) To promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources.

(b) To conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary of the Interior * * * have distinguished themselves in the activities described in paragraph (1) of this subsection. 16 U.S.C. 4601(b).

Title 16 U.S.C. 4602(a) provides the Secretary not only gift acceptance authority for the TPIA Program, but also the authority to solicit gifts. In particular this section provides:

> The Secretary may solicit, accept, hold, administer, invest in government securities, and use gifts and bequests of money and other personal property to aid or facilitate the purposes of the TPIA Program.

In accordance with the above statutory authority TPIA may accept gifts and solicit gifts "to aid or facilitate the purposes of the TPIA Program." These purposes, succinctly stated, are to establish and maintain a public awareness campaign, and to conduct a national awards program. Gifts not falling within these purposes may not be accepted.

Congress' grant of solicitation authority to the Secretary carries with it the responsibility to assure that fundraising efforts, whether conducted by TPIA or outside groups are undertaken in an appropriate manner.

C. Conflicts of Interest

All TPIA activities regarding receipt of gifts and solicitation of gifts will be undertaken in conformance with government-wide and Department of the Interior standards of conduct, in particular those standards currently located in 43 CFR part 20 and successor regulations governing the conduct, of Interior Department employees. See 5 CFR part 2635 (effective February 3, 1993). TPIA's gift acceptance and solicitation authority relates only to gifts for those purposes set forth in 16 U.S.C.

4601(b). Restrictions concerning the acceptance of personal gifts remain fully applicable to TPIA employees. See 43 CFR 20.735–7.

D. Acceptance of Gifts

1. Policy

The Department of the Interior's TPIA Program gift acceptance policy is to accept gifts only for purposes consistent with the statutory authority of the TPIA Program. The acceptance of such gifts shall be consistent with applicable laws and regulations, in particular those dealing with conflicts of interest and standards of conduct.

TPIA Program acceptance of gifts for travel purposes is subject to special considerations. In addition to being subject to the general TPIA Program gift acceptance policy, acceptance of gifts of travel, subsistence and related expenses with respect to meetings and similar functions relating to the official duties of Departmental employees is governed by 41 CFR parts 301 and 304. Acceptance of gifts of travel expenses for other purposes is subject only to the general TPIA Program gift acceptance policy.

2. Who Can Accept a Donation

The authority to accept donations has been delegated by the Secretary of the Interior to the Director of Communications of the Department of the Interior. This delegation may be redelegated to the Director of Take Pride in America. The accepting official may deem it necessary that for any donation, the Director of Communications' or the Secretary's acknowledgment also be included.

3. Who May Make a Donation and What May be Donated

Anyone (individual, group, corporation, association, etc.) can make a contribution for the TPIA Program either by direct contribution or by bequest. The donations can be in the form of securities (common stocks, preferred stocks, bonds), personal property, or money. Money provided under purchase or exchange contracts or agreements is not a donation. Donations to the TPIA Program are donations to the United States Government in accordance with the Internal Revenue Code. Generally, a letter of tender will accompany a donation. This letter should contain the following:

- The amount of the donation.
- The purpose, if any, for which the donation is to be used for purposes of the Take Pride in America Act.
- What is to be done with any remaining funds when the purpose of the donation is completed (restricted purpose donations only).

4. Restricted Gifts

A "floor" has been established to distinguish restricted purpose donations from general donations. Donations in the amount of $100 or more may be accepted with binding conditions restricted purposes, as well as for general purposes. Donations of less than $100, however, may be accepted only for general purposes (either public awareness efforts or National Awards program activities).

5. Determining Whether a Gift Should be Accepted

Before any gift is accepted, the TPIA Program will ascertain that the gift, if restricted to a particular purpose, is for one of the two purposes of the TPIA Program set forth in 16 U.S.C. 4601. TPIA will then examine whether the identity of the donor raises any question as to whether the gift should be accepted. TPIA will not accept gifts from: (1) Bureau (National Park Service, Bureau of Land Management, Bureau of Reclamation et al.) concessioners or their principals or beneficial owners, and (2) any other business or institution (or their principals or beneficial owners) having or seeking a contractual relationship with the Department, nor permit others acting on its behalf to accept gifts from such entities, when such gifts may involve a conflict of interest or an appearance of conflict or when a gift is to be used for a service to or on behalf of a concessioner or other entity under contract. Gifts will not be accepted from entities listed in (1) or (2) above, unless the Director has first determined after consultation with the affected bureau, the Solicitor's office and the Department's Ethics office that there is neither a conflict of interest nor an appearance of conflict of interest or other impropriety.

E. Solicitations for Gifts (Fundraising)

1. Policy

Solicitation for gifts may be undertaken by TPIA staff or outside entities in accordance with the standards set forth below. In the event an outside entity is selected for fundraising, that entity is entitled to appropriate recognition, such as "sponsored with the cooperation of __________." However, no such recognition may rise to the level of a commercial advertisement or endorsement.

Entities from whom acceptance of a gift may create a conflict of interest may be solicited for donations only if the Director has first determined, after consultation with the affected bureau, the Solicitor's office, and the Department's Ethics office that there is neither a conflict of interest nor an appearance of conflict or other impropriety. Furthermore, such an entity may be used as a fundraiser only after these same determinations are made.

2. Fundraising by Outside Entities

In the event TPIA secures the services of an outside entity to engage in soliciting gifts (hereafter referred to as "fundraising"), TPIA will enter into a memorandum of understanding (MOU), in accordance with the Secretary's March 25, 1991 outreach determinations, with the entity. In particular, the MOU must, at a minimum, (1) identify projects or objects for which funds may be raised; (2) provide that the entity will operate under standards established by TPIA or the Secretary and that the fundraising efforts may occur only after the Director has given formal approval to a fundraising plan; (3) provide that all printed and other informational and fundraising materials to be distributed or communicated to the public will be subject to the advance approval of the Director; (4) describe internal controls providing accountability for all funds raised; (5) contain a termination for convenience clause; (6) provide that the fundraiser's records are subject to Departmental audit; (7) provide that the private entity must maintain accountability for all donations prior to transfer to TPIA and that it make an annual report of its TPIA fundraising efforts available to the public, and (8) prohibit even the implication that the TPIA Program or the Department endorses the products or services of the fundraiser.

Fundraising plans prepared under an MOU will set forth the purposes, goals, schedules, potential donors, geographic scope, costs, percentage of receipts collected that will be provided to TPIA, as well as the roles to be played by participants in the effort, and the sponsorship of all parties participating in the fundraising effort. Furthermore, all donation and fundraising MOUs must receive legal and Departmental-level policy review prior to commitment or execution.

The following are unacceptable means of solicitation and may not be included in any plan proposed by, or MOU with, an outside entity:

(a) Telemarketing.
(b) Lotteries, raffles, and sweepstakes.
(c) Use of the logo and/or slogan (hereinafter referred to as "Service

Marks") in connection with a commercial, "for profit" business in exchange for a fee, except as provided in section E.3.c).

The following are acceptable means of solicitation and may be included in any plan proposed by, or in an MOU with, an outside entity:

(a) Direct solicitation of contributions from individuals, foundations, and corporations except as prohibited by D.5. *supra*.

(b) Direct mail, with no "prize" or "reward" for a donation.

(c) Sale of products, containing the TPIA logo and/or slogan and no other commercial or non-profit sponsor subject to section 3.b), below.

(d) Public service announcements in the media.

(e) Benefit events—breakfasts, lunches, dinners, receptions, etc.

3. Use of TPIA Service Marks

Use of the TPIA service marks for fundraising must be consistent with the statutory purpose of the program, and may be used only as set forth below.

(a) The TPIA service marks may be used in direct fundraising by the Department of the Interior and by other organizations, as follows:

(1) Other Federal Government entities which have executed a partnership may be allowed to use the service marks subject to the terms of the agreement and these guidelines.

(2) State and local government entities which have executed a partnership may be allowed to use the service marks subject to the terms of the agreement and these guidelines.

(3) Private organizations which have executed a partnership may be allowed to use the service marks subject to the terms of the agreement and these guidelines.

(b) Sale of products with logo and/or slogan with no other commercial or non-profit message may be accomplished only as follows:

(1) A notice in the Commerce Business Daily must be published inviting bids on a particular product or line of products.

(2) Bids must be due no sooner than 30 days after the publication of the Notice.

(3) Any conditions on the award of the contract, such as originality of design, logo placement, or the like must be stated in the Notice, or the Notice must provide how a potential bidder may access the conditions.

(4) The projected price of the product must be a factor in the award.

(5) The percentage of the price to be returned to TPIA must be a factor in the award.

(6) Any such contracts must be of fixed duration and in no case more than two years.

(7) All such contracts must be reviewed by the Solicitor's office and the Departmental ethics office.

(c) Sale of commercial products or services using the TPIA logo and/or slogan and containing other commercial or non-profit message(s) may be accomplished only as follows:

(1) A notice in the Commerce Business Daily must be published inviting bids on a particular product or service or line of products or services.

(2) Bids must be due no sooner than 30 days after the publication of the Notice.

(3) Any conditions on the award of the contract, such as originality of design, logo placement, or the like must be stated in the Notice or the Notice must provide how a potential bidder may access the conditions.

(4) The projected price of the product or services must be a factor in the award.

(5) The percentage of the price to be returned to TPIA must be a factor in the award.

(6) Any such contracts must be of fixed duration and in no case more than two years.

(7) All such contracts must be reviewed by the Solicitor's office and the Departmental ethics office.

(8) Since such contracts will essentially be a license of the TPIA service marks, and since these contracts are to be for fundraising, the bidder with the highest projected return to TPIA must receive great weight in deliberations for award.

Contracts for use of the service marks in connection with fundraising must contain a clause by which TPIA may terminate the contract with reasonable notice, and without cause and without cost.

4. Fundraising by TPIA or Other Department of the Interior Employees

All fundraising efforts to be conducted by TPIA itself may be undertaken only after the preparation and approval by the Director of a fundraising plan that identifies the nature and size of the project or projects for which the effort is to be undertaken, and contains, to the extent applicable, the information contained in the fundraising plan required of outside fundraisers. All such fundraising efforts are subject to the "acceptable" and "unacceptable" means set forth above for outside organizations.

F. Administration

1. Processing Cash Donations

The following are steps in the processing of a cash donation. Most cash donations will follow this procedure, although there are exceptions:

(a) When a donation is received, the Director determines whether the donation is to be accepted or not.

(1) If the donation purpose is inconsistent with TPIA objectives, it will be returned to the donor.

(2) If the donation is consistent with TPIA objectives and is less than $100 and is restrictive in purpose, it will be returned to the donor with a letter explaining the "small dollar" donation policy, as previously stated. In this letter, the donor should be thanked and asked if he would resubmit his donation to be used for general purposes of the TPIA program. By their very nature, anonymous donations are exempt from this requirement.

(3) If the donation is consistent with TPIA objectives and is general, or restricted but in the amount of $100 or more, it will be accepted.

(b) If accepted, the donation must be forwarded as soon as possible to the Division of Fiscal Services, USDOI for deposit in the Treasury (Account #14X8369).

(c) A letter of acceptance must be prepared acknowledging the donation. This letter should include a general description of what will be done, how it will be accomplished (unless general), and a statement to advise that the donation is gratefully received and will be conscientiously administered.

(d) Contact should be maintained with any donor regarding the status of his/her donation if: (1) The significance of the project, (2) The dollar amount, or (3) The donor's position requires it. For restricted donations, if appropriate, the donor should be notified when the project is completed. Any unobligated balance will be used for general purposes, unless otherwise designated by the donor.

(e) Cash donations received through the mails or other means must be converted to a money order and transferred to the Division of Fiscal Services, USDOI, for deposit at the earliest opportunity.

2. Processing Donations Other Than Cash

For property donations, a cash value should be assigned to the donation by the Division of General Services, USDOI, for purposes of establishing DOI property records for the donated item in the Property Accountability Control

System; however, the DOI evaluation cannot be used by the donor for Federal income tax purposes. The fixing of a cash value for tax purposes must remain between the donor and the Internal Revenue Service. Property management officers will coordinate the receipt of donated property with appropriate TPIA staff members, consistent with all Federal and DOI Property Management Regulations. Property subject to physical or financial control, or both, will be duly recorded in the property ledgers and financial ledgers.

Securities are to be mailed by the donor or transferred by the TPIA staff directly to the Division of Fiscal Services for disposition. These securities will be converted to cash by sale through the Investment Banking Services of the Treasury Department. Net proceeds will be credited to the TPIA Donation Fund.

3. Audit of the Donation Fund

The Donation Fund is subject to periodic audits scheduled by the Office of Inspector General and the Office of the Secretary.

Dated: December 17, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 93–1710 Filed 1–22–93; 8:45 am]

BILLING CODE 4310–10–M

Guidelines for Transactions Between Nonprofit Organizations and the Department of the Interior

AGENCY: Office of the Secretary, Interior.

ACTION: Withdrawal of proposed departmental policy.

SUMMARY: The Secretary of the Interior hereby withdraws a series of directives regarding the use of nonprofit organizations to assist the Department of the Interior in certain land acquisition transactions. Those proposed directives would have affirmed the benefits of using nonprofit organizations to assist the Department of the Interior in land acquisition, immediately discontinued certain payments of interest to nonprofit organizations, prevented profit-taking on the part of nonprofit organizations as a result of their assistance, and established regular reports and audits regarding land acquisition involving nonprofit organizations.

EFFECTIVE DATE: January 25, 1993.

ADDRESSES: Director, Office of Program Analysis, Department of the Interior, MS 4412, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Director, Office of Program Analysis, 202–208–5978.

SUPPLEMENTARY INFORMATION: The proposed departmental policy, published in the **Federal Register** on November 20, 1992 (Vol. 57, No. 225, pp. 54852–54853), regarding the use of nonprofit organizations in land acquisition, is being withdrawn for further analysis after review of nearly 100 comments from the public and from other Federal agencies.

The Secretary of the Interior affirms the importance of nonprofit organizations in assisting the Department of the Interior to acquire high priority lands with important natural, historical and cultural values.

However, the Secretary continues to have fundamental concerns about whether Federal taxpayers are receiving full value for costs incurred to acquire lands through third party transactions involving nonprofit organizations.

The report of the Office of the Inspector General, published in May, 1992, concluded, on the basis of selected cases, that the Government's interests were not always adequately protected and that nonprofit organizations benefited unduly from some of the land acquisition transactions. However, the Assistant Secretary for Fish and Wildlife and Parks, on the basis of other information, claimed that the Department has actually saved over $32 million as a result of its relationship with the nonprofit organizations. There is presently no basis on which to determine that either of these conflicting claims represents the truth of the matter, or if neither of them does.

In order to develop a factual basis on which to assess the situation and to make any necessary corrections in policy or practice, the Secretary of the Interior requests the Inspector General to conduct additional investigations to determine whether Federal taxpayers are receiving full value in third party land acquisition transactions and whether the current public-private process is causing a distortion in Federal land acquisition priorities.

Specifically, the Inspector General is requested to determine:

1. The net benefit or cost to the Department of the Interior of the aggregate of third party land acquisitions over a period of years. The evaluation should be based on all land acquisition transactions involving nonprofit organizations, and annual calculations of net benefit or cost should be presented in the aggregate for each year. This approach differs from the previous approach used by the Inspector General in which a few selected transactions were targeted for study.

2. Whether land acquisition priorities of the Department of the Interior are being unduly influenced by the nonprofit organizations involved in third party land acquisitions. The Inspector General should evaluate, among other things, whether bureau land acquisition priorities changed significantly after signing of "Letters of Intent," the extent to which lands purchased in third party transactions ranked high in earlier bureau priorities, and whether lands eventually purchased in third party transactions were added to bureau priority lists before or after negotiations with nonprofit organizations.

The evaluation of the Inspector General applies to land acquisitions of the National Park Service, Fish and Wildlife Service, and Bureau of Land Management.

Dated: January 13, 1993.

Manuel Lugan, Jr.,

Secretary of the Interior.

[FR Doc. 93–1552 Filed 1–22–93; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[OR–020–03–4210–03; G3–062]

Closure of Public Lands

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The following described public lands are being closed to entry by all persons, except as noted below, under the provisions of 43 CFR 8364.1:

Willamette Meridian

T.23S., R.30E.,
  Sec. 21, N½NE¼ and N½S½NE¼.

The area above aggregates 120 acres in Harney County, Oregon.

The closure area is adjacent to and will provide a safety buffer for the Burns Butte Public Shooting Range. The closure will also reduce the potential for vandalism to improvements located on the shooting range and help limit impacts to wildlife and other resources in the area. This closure will not affect access to other public lands or resources except for those within the shooting range and closure area. These lands are currently designated as closed to ORV use by the Three Rivers Resource Management Plan.

A Notice of the Proposed Closure was published in the **Federal Register** on May 7, 1992 and in the *Burns-Times Herald* on May 27, June 3, and June 10, 1992.

The following entities are excepted from this closure:

1. The grazing permittee in BLM's Gouldin grazing allotment, No. 7025 and the holder of BLM right-of-way, OR-04138, along with their employees and contractors while conducting official business relating to these permits.
2. BLM employees, while conducting duties relating to the administration of the public lands.
3. Agencies and individuals while involved with fire control, law enforcement or other emergency operations in the area.
4. Other persons who have official business in the area with the written consent of the Authorized Officer, BLM.

Failure to comply with this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided for in 43 CFR 8360.0-7.

EFFECTIVE DATE: The closure will be effective on the date of this publication in the **Federal Register** and continue thereafter until further notice.

FOR FURTHER INFORMATION CONTACT: Detailed information including an environmental assessment prepared for this action is available from Skip Renchler or Craig M. Hansen, Three Rivers Resource Area, HC 74, 12533 Highway 20 West, Hines, Oregon, 97738, telephone (503) 573-5241.

Dated: January 6, 1993.

Craig M. Hansen,

Three Rivers Resource Area Manager.

[FR Doc. 93-1690 Filed 1-22-93; 8:45 am]

BILLING CODE 4310-33-M

[UT-050-4410-02]

Richfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council meeting.

SUMMARY: The Richfield District Advisory Council will hold a meeting on February 24, 1993. The meeting will start at 10 a.m. in the District Office, 150 East 900 North, Richfield, Utah.

1. Election of officers
2. Henry Mountain RMP
3. RS 2477
4. Wild Horse Program
5. Henry Mountain Buffalo
6. Landfills
7. County Planning
8. Monroe Elk Plan

Interested persons may make oral statements to the Council between 1:15 p.m. and 2:15 p.m. or file written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 (801-896-8221). For further information contact: Bert Hart, District Public Affairs Specialist at the above address.

January 14, 1993.

Sam Rowley,

Associate District Manager.

[FR Doc. 93-1691 Filed 1-22-93; 8:45 am]

BILLING CODE 4310-DQ-M

[NV020-4320-02]

Winnemucca, District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Winnemucca District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 94-579 and section 3. Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on March 3, 1993. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement.
2. District Manager's Update.
3. Update on Range Improvement Funds:
   FY93 Projects
   FY94 Projects
   FY95 Projects

Dated: January 13, 1993.

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by February 12, 1993. Depending on the number of persons wishing to make oral statements, a person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: January 13, 1993.

Robert J. Neary,

Acting District Manager.

[FR Doc. 93-1692 Filed 1-22-93; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-773972

Applicant: Duke University Primate Center, Durham, NC.

The applicant requests a permit to import two pairs of captive born lesser mouse lemurs (*Microcebus murinus*) from the Moscow Zoo, Moscow, Russia, for enhancement of propagation and survival of the species.

PRT-773970

Applicant: James Danbury, Grand Junction, CO.

The applicant requests a permit to import the sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from the captive-herd of R.M.P. Hockly, Bedford, Republic of South Africa, for enhancement of propagation of the species.

PRT-774851

Applicant: Jim Warf, Anaheim, CA.

The applicant requests a permit to import the sport-hunted trophy of a bonetbok (*Damaliscus dorcas dorcas*) culled from the captive-herd of A.G. Spaeth, Doornbom, Republic of South Africa, for enhancement of propagation of the species.

PRT-775075

Applicant: William Ficge, Orange, CA.

The applicant requests a permit to import the sport-hunted trophy of a bonetbok (*Damaliscus dorcas dorcas*) culled from the captive-herd of M.G. Wienand, Bedford, Republic of South Africa, for enhancement of propagation of the species.

PRT-775073

Applicant: Denver Nelson, Romulus, MI.

The applicant requests a permit to import two captive-bred white-eared pheasants (*Crossoptilon c. dolani*) from Mark Geltink of Ontario, Canada, for captive-breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281)

Dated: January 19, 1993.

Susan Jacobsen,

Acting Chief Branch of Permits, Office of Management Authority.

[FR Doc. 93–1716 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010–0073), Washington, DC, 20503; telephone 202–395–7340.

Title: Net Profit Share Payments for Outer Continental Shelf Oil and Gas Leases, 30 CFR part 220.

OMB approval number: 1010–0073.

Abstract: Companies involved in the exploration and development of Outer Continental Shelf oil and gas leases under the Net Profit Share Lease (NPSL) system make net profit share payments rather than royalty payments. To encourage exploration and development of a lease, the NPSL system provides for a sharing, by the lessee and the Government, of the risk involved. The lessee is permitted to deduct allowable costs to determine net profit, and profit share payments are not due until the lease becomes profitable. Lessees are required to maintain an NPSL capital account and to provide annual reports listing costs incurred, credits received, and the balance in the account. Beginning the first month in which production revenues are credited to the capital account lessees are required to prepare monthly reports showing volume and disposition of oil and gas production, production revenue, all costs and credits to the account, the balance in the account, and the net profit share payment due the Government.

Bureau Form Number: None.

Frequency: Annually or monthly.

Description of Respondents: Oil and gas companies.

Annual Responses: 211.

Annual Burden Hours: 3,411.

Bureau Clearance Officer: Dorothy Christopher 703–787–1238.

Dated: November 20, 1992.

Richard Roldan,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 93–1448 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf, Advisory Board Scientific Committee; Notice of Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A–63, Revised.

The Outer Continental Shelf (OCS) Advisory Board Scientific Committee (SC) will meet Wednesday, February 10, and Thursday, February 11, 1993, at the Clarion Hotel, 1500 Canal Street, New Orleans, Louisiana 70112, telephone (504) 522–4500.

The SC is an outside group of scientists which advises the Director, Minerals Management Service (MMS), on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program.

A Protected Species Workshop will be held from 8 a.m. to 5 p.m. on Tuesday, February 9, 1993. The agenda for the Workshop will cover the national perspective on protected species issues which potentially could affect the MMS's near- and long-term study plans. Specific topics addressed will be existing and emerging issues on:

- Seabirds
- Incidental take of marine animals
- Data management systems

The Scientific Committee will meet in physical oceanography and socioeconomics subcommittee sessions on Wednesday, February 10, from 8 a.m. to noon and will meet in plenary session from 1:30 p.m. to 5 p.m. On Thursday, February 11, the SC will meet in plenary session from 8 a.m. to 5 p.m.

The agenda for the plenary session will include the following subjects:

- Committee Business and Resolutions
- Environmental Studies Program (ESP) Status Review
- National Academy of Sciences ESP Reports Status
- MMS's University Initiatives Program

The workshop and the SC meeting are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Copies of the agenda may be requested from the MMS by writing Ms. Phyllis Treichel, Environmental Studies Branch, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070.

Other inquiries concerning the SC meeting should be addressed to Dr. Ken Turgeon, Executive Secretary to the Scientific Committee. He may be reached at the above address or by telephone at (703) 787–1717.

Dated: January 15, 1993.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 93–1693 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Bering Land Bridge National Preserve, AK; Mining Plan of Operations

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 *et seq.*, and in accordance with the provisions of § 9.17 of 36 CFR part 9, subpart A, Trinity Mining has filed a plan of operations in support of proposed mining operations on lands embracing the Humbolt Creek placer claims 2AB, 3AB, and 4AB which are located within Bering Land Bridge National Preserve.

ADDRESSES: This plan is available for inspection during normal business hours at the following location: Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892.

FOR FURTHER INFORMATION CONTACT: Floyd Sharrock of the National Park Service, Minerals Management Division at the address given above; telephone (907) 257–2626.

John M. Morehead,

Regional Director.

[FR Doc. 93–1717 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through March 1993. This notice is one of a variety of means being used to inform the public about proposed contractual actions for water service and repayment. Additional Reclamation announcements of individual repayment and water service contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. These public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe any contact proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Dick L. Porter, Chief, Contracts and Repayment Division, Bureau of Reclamation, 1849 C St. NW., Washington, DC 20240; telephone 202–208–3014.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and section 43 CFR 426.20 of the rules and regulations published in 48 FR 54785, December 6, 1983, Reclamation will publish notice of proposed or amendatory repayment contract actions for any contract for the delivery of water for irrigation or other uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided below of all proposed contractual actions in each of the five Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during January, February, or March of 1993. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated authority, the Commissioner or Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.
2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.
3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.
4. Written comments on a proposed contract or contract action must be submitted to the appropriate Reclamation officials at the locations and with the time limits set forth in the advance public notices.
5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.
6. Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they became available for review and comment.
7. In the event modifications are made in the form of a proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P-SMBP) Pick-Sloan Missouri Basin Program
(Pub. L.) Public Law
(R&B) Rehabilitation and Betterment
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, Box 043–550 West Fort Street, Boise, Idaho 83724–0043, telephone 208–334–1894.

1. Cascade Reservoir Water Users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 19,201 acre-feet of stored water in Cascade Reservoir.
2. Individual Irrigators, M&I, and Miscellaneous Water Users; Columbia Basin, Minidoka, Umatilla, and Crooked River Projects; Idaho, Montana, Oregon, and Washington: Temporary (interim) repayment and water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.
3. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $5 per acre-foot or $50 minimum per annum for terms up to 40 years.
4. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $1.75 per acre-foot or $50 minimum per annum for terms up to 40 years.
5. North Unit ID, Deschutes Project, Oregon; American Falls Reservoir District Number 2, Burgess Canal Company, Clark and Edwards Canal and Irrigation Company, Craig-Mattson Canal Company, Danksin Ditch Company, Enterprise Canal Company, Ltd., Farmers Friend Irrigation Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company,

Long Island Irrigation Company, Parks, and Lewisville Irrigation Company, Ltd., Parson Ditch Company, Peoples Canal and Irrigation Company, Poplar ID, Rigby Canal and Irrigating Company, Rudy Irrigation Canal Company, Ltd., Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat ID, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

6. Forty-four Palisades Reservoir Shareholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

7. City of Cle Elum, Yakima Project, Washington: Amendatory or replacement M&I water service contract: 2,200 acre-feet (1,350 gallons per minute) annually for a term of up to 40 years.

8. Baker Valley ID, Baker Project, Oregon: Irrigation water service contract on a surplus interruptible basis to serve up to 13,000 acres; sale of excess capacity in Mason Reservoir (Phillips Lake) for a term of up to 40 years.

9. Palisades Water Users Inc., Minidoka-Palisades Project, Idaho: Repayment contract for additional 500 acre-feet of storage space in Palisades Reservoir.

10. Willow Creek Water Users, Willow Creek Project, Oregon: Repayment or water service contracts for a total of up to 3,500 acre-feet of storage space in Willow Creek Reservoir.

11. Five Project Spaceholders, Minidoka-Palisades Project, Idaho-Wyoming: Contract amendments to provide for rental of water to third parties.

12. Bridgeport ID, Bridgeport, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

13. Hermiston ID, Umatilla Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Cold Springs Dam.

14. Ochoco ID and Various Individual Spaceholders, Crooked River Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Arthur R. Bowman and Ochoco Dams.

15. The Dalles ID, The Dalles Project, Oregon: SRPA loan repayment contract: proposed loan obligation of approximately $2,000,000.

16. Oroville-Tonasket ID, Chief Joseph Dam Project, Washington: SRPA loan repayment contract; $661,500 proposed loan obligation.

17. State of Idaho, Payette Division of the Boise Project, Idaho: Proposed repayment contracts with the State of Idaho for the sale of uncontracted space in Cascade and Deadwood Reservoirs.

18. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 2,300 acre-feet; $1.75 per acre-foot for a term of up to 40 years.

19. P.P.R.T. Water System, Inc., Idaho: Amendatory contract to defer the 1992 construction installment of a contract for a loan to construct facilities authorized pursuant to the Emergency Drought Act of 1977.

20. Douglas County, Milltown Hill Project, Oregon: SRPA loan repayment contract; proposed loan obligation of approximately $24.5 million and grant of approximately $5.6 million.

21. Mitigation, Inc., Palisades/Ririe Projects, Idaho: Contract for storage space in Palisades and Ririe Reservoirs (18,900 and 80,500 acre-feet, respectively) pursuant to section 5(a) of the Fort Hall Indian Water Rights Act of 1990.

22. U.S. Fish and Wildlife Service, Boise Project, Idaho: Irrigation water service contract for the purchase of approximately 200 acre-feet of storage space annually in Anderson Ranch Reservoir for a 40-year period; water to be used on crops for wildlife mitigation purposes.

23. City of Madras or North Unit ID, Deschutes Project, Oregon: Renewal or replacement of municipal water service contract for approximately 125 acre-feet per acre annually from the project water supply for a 40-year period; water to be used for lawn watering by a golf course and a park.

24. Willamette Basin water users, Willamette Basin Project, Oregon: Add language to form of water service contract to provide for periodic reviews, with adjustments made if necessary, to mitigate for impact to natural resources.

25. Bitter Root ID, Bitter Root Project, Montana: Repayment contract for reimbursable cost of dam safety repairs to Como Dam.

26. Gem ID, Owyhee Project, Oregon-Idaho: Repayment contract for emergency drought loan for the reconstruction of a pumping plant utilizing funds appropriated by Pub. L. 102–27.

27. Vale ID, Vale Project, Oregon: Repayment contract for emergency drought loan for construction of water saving measures, including the replacement of open ditches with buried pipe, utilizing funds appropriated by Pub. L. 102–27.

28. Willamette Basin water users, Willamette Basin Project, Oregon: Two exchange of water service contracts totaling up to 225 acre-feet of water for diversion above project reservoirs.

Mid-pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5030.

1. Tuolumne Utility District (formerly Tuolumne Regional WD), CVP, California: Water service contract for up to 9,000 acre-feet from new Melones Reservoir.

2. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, California, Oregon, and Nevada: Temporary (interim) water service contracts for available project water for fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet annually.

3. Irrigation water districts, individual irrigators, miscellaneous water users, California, Oregon, and Nevada: Temporary Warren Act contracts for use of project facilities for terms up to 1 year.

4. Friant Division Contractors, CVP, California: Renewal of existing long-term water service contracts with contractors on the Friant-Kern and Madera Canals or diverters from Millerton Reservoir; most contracts expire 1993–1997, two contracts expire later; water quantities in existing contracts range from 1,200 to 175,440 acre-feet. These contract actions will be accomplished through 3-year interim contracts with subsequent 2-year interim contracts until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

5. Contra Costa WD, CVP, California: Amendatory water service contract to add the operation of the Los Vaqueros Project, including an additional point of delivery; the amendment will also conform the contract to current Reclamation policies, including the water ratesetting policy.

6. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Pub. L. 100–516 or prepaying the loan at a discounted rate pursuant to Pub. L. 102–575.

7. Madera ID, Hidden Unit, CVP, California: Renewal of existing water service contract for 24,000 acre-feet of water which expires February 28, 1993. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

8. Chowchilla WD, Buchanan Unit, CVP, California: Renewal of existing

water service contract for 24,000 acre-feet of water which expires February 28, 1993. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

9. Truckee Carson ID, Newlands Project, Nevada: New repayment contract for the unpaid construction cost repayment obligation from the original contract which was terminated on August 17, 1983 by the U.S. District Court in Nevada.

10. San Luis WD, CVP, California: Amendatory water service contract to provide that the District pay full O&M rate for all deliveries resulting from the Azhderian Pumping Plant enlargement and the cost of service rate for such deliveries beginning in 1996 and each year thereafter.

11. Delta Mendota Canal Contractors, CVP, California: Renewal of existing long-term water service contracts with contractors on the Delta-Mendota Canal whose contracts expire in 1994–2003; water quantities in existing contracts range from 70 to 50,000 acre-feet. These contract actions will be accomplished through 3-year interim contracts with subsequent 2-year interim contracts until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

12. City of Redding, CVP, California: Amendment to Contract No. 14–06–200–5272A to add point of diversion on turnout, Spring Creek Power Conduit, to facilitate proposed water treatment plant for Buckeye service area.

13. U.S. Department of Veteran Affairs, CVP, California: Long-term contract for M&I water purposes in support of the new San Joaquin Valley National Cemetery near Santa Nella, California.

14. Century Ranch Water Company, Inc., CVP, California: Long-term exchange contract for M&I, less than 100 acre-feet; Stony Creek Watershed above Black Butte Dam.

15. State of California, Department of Forestry, CVP, California: Water right exchange agreement, less than 100 acre-feet, above Black Butte Dam.

16. San Luis WD, CVP, California: Amendment to Contract No. 14–06–200–7773A to include assigned lands and allocated share of CVP water supply to San Luis WD from Romero WD and comply with Pub. L. 102–575.

17. Romero WD, CVP, California: Amendment to Contract No. 14–06–200–7758 to assign lands and allocated share of CVP water supply to San Luis WD and comply with Pub. L. 102–575.

18. IDs and similar water user entities, CVP, California: Amendatory water service contracts; to change the definition of "year" to conform to the standard CVP water year of March 1 through the end of February.

19. Sacramento River water rights settlement contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

20. Sierra Pacific Power Company and Pyramid Lake Tribe, Washoe and Truckee-Storage Projects, Nevada and California: Interim contract, authorized under Pub. L. 101–618, to convey and/or store non-project water in project facilities.

21. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service Agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

22. Del Puerto WD, CVP, California: Amend water service Contract No. 14–06–200–922 to include M&I use.

23. El Dorado County Water Agency, San Juan Suburban WD, and Sacramento County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan Suburban WD, and 22,000 acre-feet for Sacramento County Water Agency.

24. Non-Federal entity, CVP, California: Cost-sharing agreement with a yet to be determined non-Federal entity for the Folsom Dam and Reservoir reoperation.

25. Central Coast Water Authority, Cachuma Project, California: Long-term 40 year Warren Act contract for use of Cachuma Project facilities when excess capacity exists. A total of 13,750 acre-feet of water per year from the California State Water Project will be made available under a Warren Act contract to users along the South Coast of California.

26. Pershing County Water Conservation District, Humboldt Project, Nevada: Safety of Dams repayment contract for modification of Rye Patch Dam; reimbursable obligation of the District approximately $750,000.

27. California Department of Fish and Game, CVP, California: Renewal of existing long-term agreement for furnishing water for fish hatchery purposes.

28. Widren WD, CVP, California: Amend water service Contract No. 14–06–200–8018 to include M&I use and conform to Pub. L. 102–575 and assign water supply to City of Tracy.

29. Sierra Pacific Power Company, Truckee-Storage Project, Nevada and California: Pursuant to Public Law 406 and 102–250, long-term Warren Act contract for use of Federal reservoirs.

30. Corning Canal, Tehama-Colusa Canal, and Cross Valley Canal; CVP; California: Renewal of existing long-term water service contracts with contractors on the Canals, whose contracts expire in 1995; water quantities in existing contracts range from 400 to 62,200 acre-feet. These contract actions will be accomplished through 3-year interim contracts with subsequent 2-year interim contracts until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

31. Bella Vista WD, CVP, California: Renewal of existing long-term water service contract which expires December 31, 1994; water quantity in existing contract is 24,000 acre-feet. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

32. Clear Creek Community Service District, CVP, California: Renewal of existing long-term water service contract which expires December 31, 1994; water quantity in existing contract is 15,300 acre-feet. This contract action will be accomplished through a 3-year interim contract with a subsequent 2-year interim contract until the CVP Environmental Impact Statement is completed pursuant to Pub. L. 102–575.

33. Gateway WD, CVP, California: Assign twelve Delta-Mendota Canal water service contracts into 1-entity to be renamed Gateway WD for administration and operation purposes.

34. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grassland WD; CVP; California: Water service contracts to provide Level II water supplies for refuges within the CVP pursuant to Pub. L. 102–575; exchange agreements and wheeling contracts to deliver some of the increased refuge water supplies; water to be contracted for is approximately 416,000 acre-feet.

35. Monterey County Water Resources Agency, Castroville Irrigation Water Supply Project, SRPA, California: Loan repayment contract in the amount of $32,600,000 to construct an irrigation distribution system to reduce sea water intrusion in the ground water aquifers.

36. Monterey Regional Water Pollution Control Agency, Water Reclamation Facility for Crop Irrigation Project, SRPA, California: Loan repayment contract in the amount of

$20,544,400 to reduce sea water intrusion in the ground water aquifers.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

2. Central Arizona Water Conservation District and The Metropolitan WD of Southern California, CAP/BCP, Arizona/California: Agreement for a demonstration project on underground storage of Colorado River Water in Arizona of up to 100,000 acre-feet.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the City of Tucson, Arizona.

4. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Stephen Sturges, Sunkist Growers, Inc., Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to an additional 20,424 acre-feet per year total.

5. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,292 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

6. Armon Curtis, Arlin Dulin, Jacy Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts; purpose is to amend their contracts to exempt them from the Reclamation Reform Act of 1982 (Pub. L. 97–273).

7. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

8. Imperial ID, Lower Colorado Water Supply Project, California: Contract providing for O&M of the project well field.

9. Lower Colorado Water Supply Project, California: Water service and repayment contracts with nonagricultural users in California adjacent to the Colorado River for an aggregate consumptive use of up to 10,000 acre-feet of Colorado River water per year in exchange for an equivalent amount of water to be pumped into the All-American Canal from a well field to be constructed adjacent to the canal.

10. County of San Bernardino, San Sevaine Creek Water Project, SRPA, California: Repayment contract for a $32.6 million loan.

11. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

12. Bullhead City, Consolidated Water Co., Lake Havasu City, Havasu Water Co., Quartzsite, McAllister Subdivision, City of Parker, Marble Canyon, and Arizona State Land Department, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 15,146 acre-fect per year as recommended by the Arizona Department of Water Resources.

13. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment present perfected right of 500 acre-feet of diversions annually, and the National Park Service's Federal Establishment perfected right pursuant to Executive Order No. 5125 (April 25, 1930).

14. Imperial ID and/or The Metropolitan WD of Southern California, BCP, California: Construction and funding contract to conserve water along a portion of the All-American Canal in accordance with title II of the All-American Canal Lining Act, dated January 25, 1988.

15. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Construction and funding contract to conserve water along a portion of the Coachella Branch of the All-American Canal in accordance with title II of the All-American Canal Lining Act, dated January 25, 1988.

16. Elsinore Valley Municipal WD, Temescal Valley Project, SRPA, California: Repayment contract for a $22.3 million loan.

17. Mohave Valley ID, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service areas, diversion points, and RRA exemption.

18. Miscellaneous present perfected rights entitlement holders, BCP, Arizona and California: Contracts for entitlements of Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the BCP. Miscellaneous present perfected rights holders are listed in the *Arizona* v. *California* settlement.

19. Federal Establishment present perfected rights entitlement holders: Individual contracts for administration of Colorado River water entitlements of the Colorado River, Fort Mojave, Quechan, and Cocopah Indian Tribes.

20. Yuma County Water Users' Association, Yuma Project, Arizona: Contract to enable the Association to administer non-irrigation water within its service area.

21. City of Yuma, BCP, Arizona: Amendment to Contract No. 14–067–W–106 to add additional points of diversion.

22. Imperial ID and The Metropolitan WD of Southern California, BCP, California: Temporary contract to store approximately 200,000 acre-feet of water that is expected to be saved over a 2-year period under a test water savings program that involves land fallowing and a modified irrigation plan for alfalfa.

23. Crystal Beach Water Conservation District, BCP, Arizona: Contract for delivery of 132 acre-feet per year of Colorado River water for domestic use, as recommended by the Arizona Department of Water Resources.

24. Southern Nevada Water Authority, BCP, Nevada: Assignment of a portion of the Colorado River Commission's entitlement to the Southern Nevada Water Authority. Revision of water delivery contracts concerning points of diversion and delivery with the Cities of Henderson and Boulder City, Big Bend WD, and the Colorado River Commission regarding the Robert B. Griffith Water Project.

25. HoHoKam ID; Central Arizona Water Conservation District; and the Cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe; CAP; Arizona: Principles of agreement to provide the cities with Cliff Dam replacement water and repayment of HoHoKam ID Federal indebtedness.

26. Marble Canyon, BCP, Arizona: Contract for delivery of 70 acre-feet per year of Colorado River water for M&I use, as recommended by the Arizona Department of Water Resources.

27. Gila River Farms, SRPA, Arizona: Amendatory contract to reschedule May 1, 1990 payment over the remaining repayment period.

28. Fort McDowell Indian Community, CAP, Arizona: Amendatory contract to extend the term of the Community's CAP water service contract and to allow the Community to lease its CAP water for off-reservation uses pursuant to the Fort McDowell Indian Community Water Rights Settlement Act of 1990.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568, (125 South State Street), Salt Lake City, Utah 84147, telephone 801–524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) The Benevolent and Protective Order of the Elks, Lodge No. 1747, Farmington, New Mexico: Navajo Reservoir water service contract; 20 acre-feet per year for municipal use; contract term for 40 years for execution.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost sharing agreement and water rights settlement agreement.

4. Navajo Indian Tribe, Animas-La Plata Project, New Mexico: Repayment contract for 76,600 acre-feet per year for M&I use.

5. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract for 9,900 acre-feet per year for irrigation use.

6. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550.

7. San Juan Pueblo, San Juan-Chama Project, New Mexico: Repayment contract for up to 2,000 acre-feet of project water for irrigation purposes.

8. City of El Paso, Rio Grande Project, Texas and New Mexico: Amendment to the 1941 and 1962 contracts to expand acreage owned by the City to 3,000 acres; extend terms of water rights assignments from 25 years to 75 years; and allow assignments outside City limits under authority of the Public Service Board.

9. Mancos Water Conservancy District, Mancos Project, Colorado: Amendatory contract to remove contract restrictions that prevent the Mancos Water Conservancy District from developing hydropower on the Mancos Project.

10. The National Park Service, Bureau of Land Management, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for between 180,000 to 740,000 acre-feet of project water to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

11. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Water service contract for 500 acre-feet for 1 year for municipal and domestic use.

12. Upper Gunnison River Water Conservancy District, Wayne N. Aspinal Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

13. Collbran Conservancy District, Collbran Project, Colorado: Amendatory contract defining priority of use of project water.

14. U.S. Fish and Wildlife Service, North Fork Water Conservancy District, Paonia Project, Colorado: Contract for releases to support endangered fish in the Gunnison and Colorado Rivers; water available for releases will come from reserve capacity held by Reclamation as a sediment pool, estimated to be 1,800 acre-feet annually; contract will define the terms and conditions associated with delivery of this water.

15. Rio Grande Water Conservation District, Closed Basin Division, San Luis Valley Project, Colorado: Water service contract for furnishing priority 4 water to third parties; contract will allow District to market priority water, when available, for agricultural, municipal and/or industrial use.

16. Bridger Valley Water Conservancy District, Lyman Project, Wyoming: Repayment contract under safety of dams program for the repair of Meeks Cabin Dam.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–657–6413.

1. Individual irrigators, M&I, and miscellaneous water users; Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, Nebraska, Oklahoma, and Texas; Temporary (Interim) water service contract for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5-years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to $1.5 million.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

4. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Water service contracts; proposed second round contract negotiations for sale of agricultural, municipal, domestic, and industrial water from the regulatory capacity of Ruedi Reservoir.

5. Cedar Bluff ID No. 6, Cedar Bluff Unit, P–SMBP, Kansas: In accordance with Section 901 of Pub. L. 102–575, 106 Stat. 4600, terminate the Cedar Bluff Irrigation District's repayment contract and transfer use of the District's portion of the reservoir storage capacity to the State of Kansas for fish, wildlife, recreation, and other purposes.

6. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District of conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

7. Corn Creek ID, Glendo Unit, P–SMBP, Wyoming: Repayment contract for 10,350 acre-feet of supplemental irrigation water from Glendo Reservoir.

8. East Bench ID, East Bench Unit, P–SMBP, Montana: D&MC contract for $300,000 for minor construction work over a 10-year period.

9. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.

10. Arbuckle Master Conservancy District, Arbuckle Project, Oklahoma: Contract for the repayment of costs of the construction of the Sulphur, Oklahoma, pipeline and pumping plant (if constructed).

11. Chinook Water Users Association, Milk River Project, Montana: SRPA contract for loan of up to $6,000,000 for improvements to the Association's water conveyance system.

12. Midvale ID, Riverton Unit, P–SMBP, Wyoming: Long-term contract for water service from Boysen Reservoir.

13. Tom Green-County Water Control and Improvement District No. 1, San Angelo Project, Texas: Contingent upon passage of authorizing legislation, negotiate amendatory contract to increase irrigable acreage within the project.

14. Palmetto Bend Project, Texas: Amendment of the tripartite contract among the United States, the Lavaca-Navidad River Authority and the Texas Water Development Board to transfer the Board's remaining repayment

obligation and interest in the Palmetto Bend Project to the Authority.

15. Canadian River Municipal Water Authority, Canadian River Project, Texas: Amendatory contract to reflect credit for project lands transferred to the National Park Service under Pub. L. 101–628 for the Lake Meredith National Recreation Area.

16. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir.

17. Hidalgo County ID No. 6, Texas: SRPA contract for a 20-year loan for up to $5,712,900 to rehabilitate the District's irrigation facilities.

18. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P-SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

19. City of Aurora, Fryingpan-Arkansas Project, Colorado: Long-term carriage contract for up to 1,000 acre-feet of M&I conveyance capacity in the Fryingpan-Arkansas Project facilities.

20. Thirty Mile Canal Company, Nebraska: SRPA contract for a loan of $2,264,000 to reline the main canal, replace open laterals with buried pipe, and replace bridges.

21. City of Estes Park, Colorado-Big Thompson Project, Colorado: Modification of water service contract to change point of diversion and other administrative revisions.

22. City of Loveland, Colorado-Big Thompson Project, Colorado: Long-term M&I conveyance contract for conveyance of up to 12,000 acre-feet of city-owned water annually through Federal project facilities.

23. Belle Fourche ID, Belle Fourche Unit, P-SMBP, South Dakota: Amendment to D&MC contract to extend work through 1995 and provide an additional $1 million to complete the work.

24. North Platte Project and Glendo Unit, P-SMBP, Wyoming and Nebraska contractors: Repayment contracts under safety of dams program for the modification of Pathfinder, Guernsey, and Glendo Dams.

25. State of Colorado, Armel Unit, P-SMBP, Colorado: Repayment contract under safety of dams program for the modification of Bonny Dam.

26. Bostwick ID and Kansas-Bostwick ID, P-SMBP, Kansas and Nebraska: Renewal of existing water service and repayment contracts for irrigation water supplies.

27. Mountain Park Master Conservancy District, Mountain Park Project, Oklahoma: In accordance with section 3102 of Pub. L. 102–575, 106 Stat. 4600, amend the District's contract to reflect a discounted prepayment of the City of Frederick's obligation for the reimbursable costs of its M&I water supply.

28. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the U.S. and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P-SMBP, in Montana. The Tribe will pay the U.S. both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

Dated: January 15, 1993.

J. Austin Burke,

Assistant Commissioner.

[FR Doc. 93–1742 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–338]

Twin Pak, Inc., Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the matter of: Certain Bulk Bags and Process For Making Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Twin Pak, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 15, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: January 15, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1609 Filed 1–22–93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation 337–TA–338]

Fib-Pak, Inc.; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the matter of: Certain Bulk Bags and Process for Making Same.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Fib-Pak, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 15, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

By order of the Commission.

Issued: January 15, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1608 Filed 1–22–93; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 11, 1993, a proposed consent decree in *United States* v. *Alcan Aluminum Corporation*, Civil Action No. C93–0003–O (CS), was lodged with the United States District Court for the Western District of Kentucky.

The Complaint, brought pursuant to section 113(b) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. 7413(b), alleges that Alcan's discharge of total fluorides at its primary aluminum reduction plant in Sebree, Kentucky into the air in July 1989 exceeded the emission standards for fluoride promulgated under 40 CFR 60.192. The Complaint seeks an order enjoining the defendant to comply with the New Source Performance Standards ("NSPS") for Primary Aluminum Reduction Plants, which were promulgated pursuant to section 111 of the Act, 42 USC 7411, and imposition of a civil penalty for the unauthorized discharge.

The proposed decree provides, among under requirements, that Alcan will (1) operate the Sebree plant in compliance with the Act and with all applicable subparts of 40 CFR part 60, including, but not limited to, the provisions of Subpart S; (2) submit to EPA region IV within 45 days of the lodging of the decree an internal audit workplan, which will include a schedule for the defendant to audit all three potlines at the Sebree plant qualitatively four times a week and quantitatively one time a week; (3) commence the audits within 30 days of EPA approval of the workplan, to continue such audits for a period of one year, and to implement remedial measures to correct all deficiencies as determined from the audits (to include the implementation of measures to maintain continue compliance); and (4) pursue the development of the "ore distribution dust control project" with the implementation of the capital items in all three potlines if the project is determined to be feasible and effective. The consent decree also requires defendant to pay a civil penalty of $7,000 for its violation of the CAA.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alcan Corporation*, DOJ Ref. # 90–5–2–1–1683.

The proposed consent decree may be examined at the Office of the United States Attorney, Bank of Louisville Building, 510 W. Broadway, 10th Floor, Louisville, KY 40202 and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–1656 Filed 1–22–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Consolidated Edison Co.*, Civil Action No. 88–0049 (E.D.N.Y.) has been lodged with the United States District Court for the Eastern District of New York. This Decree provides for Consolidated Edison to pay a civil penalty of $219,500 pursuant to the provision of Section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b). The civil penalty is for violations occurring during renovations at The Hudson Avenue Generating Station, in New York, New York, the Ravenswood Generating Station, in New York, New York, and the 74th Street Generating Station, in New York, New York of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to Sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Consolidated Edison Co.*, Civil Action No. 88–0049 (E.D.N.Y.), D.J. Ref. 90–5–2–1–1136.

The proposed consent decree may be examined at the office of the United States Attorney, One Pierrepont Plaza, 11th Floor, Brooklyn, N.Y. 11201 and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278. The proposed consent decree may also be examined at the Consent Decree Library, 601 Pennsylvania Avenue NW., Washington, DC 20004 (202–347–7829). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $1.75 (25 cents per page reproduction cost, payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–1655 Filed 1–22–93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmenal Response, Compensation, and Liability Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, and 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed consent decree in *United States* v. *Motorola et al.*, Civ. No. 92–2314 PHX SMM, was lodged with the United States District Court for the District of Arizona on December 11, 1992. That action was brought against defendants pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for cleanup of, and payment of past costs incurred by the United States at, the North Indian Bend Wash Superfund Site in Scottsdale and Tempe, Arizona. Pursuant to an earlier decree, a group of settlors is implmenting the Environmental Protection Agency's (EPA) remedy for the Middle and Lower Alluvial Units of the groundwater. Under this decree, these settlors are required to implement EPA's slected remedy for the Upper Alluvial Unit and the vadose zone, estimated to cost $11–15 million, to pay $5,066,048.44 toward the United States' past costs, and to pay future costs incurred by the United States in overseeing implmentation of the remedy.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20503. All comments should refer to *United States* v. *Motorola, et al.*, D.J. Ref. 90–11–2–413B.

The proposed consent decree may be examined at the office of the United States Attorney for the District of Arizona, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025, at the Region IX office of Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $22.75 for the decree alone or $159.25 for the IBW decree plus its attachments (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Motorola, et al.*, D.J. Ref. 90–11–2–413B.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–1568 Filed 1–22–93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Hospital Association of Greater Des Moines, Inc., et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), the United States publishes below the comment it received on the proposed Final Judgment in *United States* v. *Hospital Association of Greater Des Moines, Inc., et al.*, Civil Action No. 4–92–70648, filed in the United States District Court for the Southern District of Iowa, Central Division, together with the response of the United States to the comment.

Copies of the response and the public comment are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the Southern District of Iowa, Central Division, United States Courthouse, East 1st Walnut Streets, Des Moines, Iowa 50309.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[Civil Action No. 4–92–CV–70648]

Filed: January 14, 1993.

United States' Response to Public Comments

In the matter of United States of America, Plaintiff, v. Hospital Association of Greater Des Moines, Inc.; Broadlawns Medical Center; Des Moines General Hospital Company; Iowa Lutheran Hospital; Iowa Methodist Medical Center; Mercy Hospital Medical Center, Des Moines, Iowa, Defendants.

Pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d) (the "APPA"), the United States responds to public comments to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

This action began on September 22, 1992, when the United States filed a Complaint alleging that the defendants unreasonably restrained competition among the hospitals in Polk County, Iowa by agreeing to limit the types and amounts of advertising in which they would engage, in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The United States simultaneously filed a proposed Final Judgment, Competitive Impact Statement, and a stipulation signed by all the defendants for entry of the proposed Final Judgment. The proposed Final Judgment embodies the relief sought in the Complaint.

The 60-day period provided by 15 U.S.C. 16(d) for submission of public comments expired on January 13, 1993. The United States received one comment. As required by 15 U.S.C. 16(b) and 16(d), this comment is being filed with this response.

The United States responded individually to the person who commented on the proposed Final Judgment.[1] Dr. Mayank K. Kothari questioned the adequacy of the proposed Final Judgment. The United States answered Dr. Kothari's concern by reviewing the allegations in the Complaint and explaining that the proposed Final Judgment would preclude the defendants from continuing the agreement that was the basis of the suite and from entering into any similar agreement during the ten-year term of the judgment. Therefore, the anticompetitive effects noted in the Complaint are unlikely to continue. The United States' reply also noted that the antitrust compliance program required under the Final Judgment provided further assurance that the defendants will not engage in other violations of the Sherman Act as it requires the decision-making officials of the defendants to attend annual briefings on the meaning of the antitrust laws. Because of this program, the defendants are unlikely to engage in anticompetitive activities in the future. Thus, the proposed Final Judgment is more than adequate to remedy the antitrust violations contained in the Complaint.

Dated: January 13, 1993.

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[1] The comment and response are both attached as Exhibit 1.

Respectfully submitted,

Nancy M. Goodman,

Karen L. Gable,

John B. Arnett, Sr.,

Attorneys, U.S. Department of Justice, Antitrust Division, 555 4th Street, NW., Washington, DC 20001. Telephone: (202) 307–0798.

Exhibit 1

Wednesday, December 23, 1992.

The Honorable Harold Vietor,
Federal Judge, United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa.

Re: Civil Action No. 4–92–70648, U.S. V. 'Hospitals' Follow-up.

Dear Judge Vietor: As per the permission from your law clerk, the following is being submitted.

In wishing you a great New Year, I particularly wish to think you for your correspondence throughout this year that will soon pass. Citizenry whom I have shared the concerns of not having adequate knowledge of the health care options in the area continually remind all of us the importance of this case now before the Court. Surprisingly, the institutions involved are behaving as though nothing has happened and no case is pending.

Your wisdom applied should ameliorate this institutional apathy and instruct those of the importance of the Sherman Act. Promises that are kept are the only ones that court.

The Public Interests respect the Court's ability to look past a weak prosecutorial process that is ready, willing and able to settle for much less than what is due. Now the concerns are that the case will be heard, information of hospital pricing/performance/procedures will be properly disseminated and the history will not be repeated.

Sincerely yours,

Mayank K. Kothari, M.D.,

1221 Center St., #3, Des Moines, Iowa 50309.

cc. The Clerk of the Court

Exhibit 1

January 13, 1992.

REB:JBA
60–8062–0021

Mayank K. Kothari, M.D.,
1221 Center St., #3, Des Moines, Iowa 50390

Re: United States v. Hospital Association of Greater Des Moines, et al.

Dear Mr. Kothari: This letter responds to your December 23, 1992, letter to Judge Harold Vietor, which has been forwarded to the Antitrust Division by the Court. In that letter, you discuss the above-referenced case and state that the United States "is ready, willing and able to settle for much less than what is due." From this statement, it appears to be your position that the terms of the proposed final judgment are insufficient given the activities of the named defendants.

As you know, the defendants is this case were charged with entering into an agreement to restrain competition among themselves by agreeing to limit the types and amount of advertising that they would do. Under the proposed final judgment, they are precluded from continuing the challenged agreement or from undertaking any other action that would have a similar purpose or effect. In addition, the defendants are required to conduct an antitrust compliance program over the next 10 years to ensure that similar conduct is not undertaken in the future and that officials of the hospitals understand how the antitrust laws relate to their activities. Taking into consideration all of the circumstances, this relief is substantial and is likely to ensure that similar conduct is not undertaken in the future. To our knowledge, all of the defendants have ceased participating in the activities which led to the filing of this case.

I hope that the above information is useful to you in understanding our decision to enter into the proposed final judgment. Thank you for sharing your viewpoint, and for your interest in antitrust enforcement.

Sincerely yours,

Robert E. Bloch,

Chief, Professionals & Intellectual, Property Section.

Certificate of Service

I, John B. Arnett, Sr., hereby certify that a copy of the United States' Response to Public Comments in *United States* v. *Hospital Association of Greater Des Moines, Inc., et al.*, Civil Action No. 4–92–70648, was served on the 13th day of January 1993, first class mail, to counsel as follows:

Mark McCormick, Esq., Belin, Harris, McCormick, 2000 Financial Center, Des Moines, Iowa 50309

Gene Olson, Esq., Connolly Law Office, 820 Liberty Building, 418 6th Avenue, Des Moines, Iowa 50309

Norene Jacobs, Esq., Dorsey & Whitney, 801 Grand, Suite 3900, Des Moines, Iowa 50309

Thomas Burke, Esq., Whitfield, Musgrave, 1300 First Interstate Bank Building, Des Moines, Iowa 50309

John Shors, Esq., Davis Hockenberg, 2300 Financial Center, 666 Walnut Street, Des Moines, Iowa 50309

Edgar Hansell, Esq., Nyemaster, Goode, McLaughlin, Voigts, West & O'Brien, 1900 Hub Tower, 699 Walnut Street, Des Moines, Iowa 50309

John B. Arnett, Sr.

[FR Doc. 93–1652 Filed 1–22–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on May 21, 1992, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the changes are as follows: (1) CAD Framework Initiative, Inc. ("CFI"), Austin, TX, has entered into a Research and Development Service Agreement with MCC's Advanced Technology Laboratory for Acceleration of Standards ("ATLAS"). ATLAS is an independent MCC subsidiary which will prototype, demonstrate, and validate proposed enterprise integration standards. It will encompass a number of projects. ATLAS will provide services to CFI pursuant to this agreement; (2) Eden International Corporation, Austin, TX, has become an Associate Member of MCC and a participant in the CARNOT Project within MCC's Advanced Computing Technology Program; (3) Amoco Laser Company, Naperville, IL, has executed a Component Supplier Agreement for MCC's Holostore commercialization research; (4) MCC has established an Enterprise Integration Division with an information services project, EINet Services. MCC's EINet Services Project is composed of three principal elements: (1) Interconnection of participants on a single enterprise integration network, called EINet; (2) monitoring and analysis of EI technologies, methodologies and standards worldwide; and (3) information exchange forums to help accelerate the national development of a common high-speed, standards-based EI network.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCC intends to file additional written notifications disclosing all changes in membership.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on September 25, 1992. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 27, 1992 (57 FR 48635).

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93–1651 Filed 1–22–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Gas-Fueled Railway Research Program

Notice is hereby given that, on January 4, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Morrison Knudsen Corporation, Boise, ID; Southern California Gas Company, Los Angeles, CA; Columbia Gas of Ohio, Inc., Columbus, OH; Norfolk Southern Corporation, Roanoke, VA; California Department of Transportation, Division of Rail, Sacramento, CA; CSX Transportation, Jacksonville, FL; and Atchison, Topeka and Santa Fe Railway Company, Topeka, KS. The general area of planned activities is the identification of technical requirements and quantifications of economic and environmental incentives for using natural gas instead of diesel as a railroad fuel, addressing refueling, emissions benefits, costs, market size, route characteristics, safety and regulatory issues. The major areas of research are (1) the identification of the infrastructure and supporting technologies needed for the widespread use of natural gas as a railway fuel in the United States; (2) the identification and quantification of the most cost effective refueling strategies; (3) the development of a selection criteria for choosing CNG and LNG fuel storage systems as the medium for specific rail applications; and (4) the quantification of the effect of using natural gas as a railroad fuel on capital costs, operating costs, and maintenance requirements. Membership in the venture remains open, and the parties intend to file additional written notification disclosing all changes in membership to the venture.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93–1650 Filed 1–22–93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 "Ultra Low Emission Engine Program"

Notice is hereby given that, on December 14, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Siemens Corporation, Auburn Hills, MT (November 11, 1992) has become a party to the group research project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the members intend to file additional written notification disclosing all changes in membership.

On November 13, 1991 SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 9, 1991, 56 FR 64276. The last substantive change notification was filed with the Department on October 16, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 19, 1992, 57 FR 54610. The last correction notification was filed with the Department on August 13, 1992. A notice was filed in the **Federal Register** pursuant to section 6(b) of the Act on September 10, 1992, 57 FR 41549.

Joseph H. Widmar,

Director of Operations; Antitrust Division.

[FR Doc. 93–1569 Filed 1–22–93; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

[Order No. 1658–93]

Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12778

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice promulgates a memorandum providing guidance to Federal agencies regarding the implementation of those provisions of Executive Order No. 12778 (Order) that concern the conduct of civil litigation with the United States Government, including the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation.

EFFECTIVE DATE: This action is effective on January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, Department of Justice, 601 "D" Street NW., Washington, DC 20004–2904 (mailing address: Benjamin Franklin Station, P.O. Box 888, Washington, DC 20044), (202) 501–7075.

SUPPLEMENTARY INFORMATION: Executive Order No. 12778 (56 FR 55195, October 25, 1991), which President Bush signed on October 23, 1991, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." 56 FR 55195. The Order, *inter alia*, mandates reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. These reforms apply to litigation begun on or after January 21, 1992.

The Order requires agencies to implement civil justice reforms applicable to each agency's civil litigation. It provides, in sections 4(a), 4(b) and 7(d), that the Attorney General has both the duty to coordinate efforts by Federal agencies to implement the litigation process reforms and the authority to issue further guidelines implementing the Order, and to provide guidance as to the scope of the Order.

Preliminary guidelines were issued as interim direction for applying the Order. A Memorandum of Preliminary Guidance on Implementation of the Litigation Reforms of Executive Order No. 12778 (Memorandum of Preliminary Guidance) was signed on January 24, 1992 and has been published in the **Federal Register**. 57 FR 3640 (January 30, 1992). Agencies were requested to provide comments concerning their experience in carrying out the Order and their recommendations for revising the preliminary guidance. Numerous helpful comments have been received from agencies, United States Attorneys and other persons and organizations.

The present Memorandum has been prepared after consideration of comments and in the light of experience to date under the Order. This Memorandum incorporates much of the prior Memorandum of Preliminary

Guidance. In addition, the present Memorandum also includes elaboration on matters included in the Memorandum of Preliminary Guidance and additional guidance and direction. In particular, additional commentary has been included in the discussion of sections 1(a), 1(b), 1(c), 1(d)(1), 1(e) and 3 of the Order, and in the text pertaining to exclusions from the Order. Thus, the present Memorandum supersedes the prior Memorandum of Preliminary Guidance and should be utilized in lieu of that earlier Memorandum.

During the relatively brief period since the January 21, 1992 effective date of the Order, it has not been possible to assess fully the impact of reforms the Order has initiated. Therefore, further guidance may be developed in the light of experience. Comments on implementation of the Order continue to be welcomed.

By virtue of the authority vested in me by law, including Executive Order No. 12778, I hereby issue the following Memorandum:

Department of Justice Memorandum of Guidance on Implementation of the Litigation Reforms of Executive Order No. 12778

Introduction

Executive Order No. 12778, which President Bush signed on October 23, 1991, is intended to "facilitate the just and efficient resolution of civil claims involving the United States Government." 56 FR 55195, October 25, 1991. The Order, *inter alia,* mandates reforms in the methods by which attorneys for the government conduct discovery, seek sanctions, present witnesses at trial, and attempt to settle cases. These reforms apply to litigation begun on or after January 21, 1992.

The Order authorizes the Attorney General to issue guidelines carrying out the Order's provisions on civil and administrative litigation.

The present Memorandum provides guidance for applying the Order's provisions concerning the conduct of civil litigation involving the United States Government.

Pre-filing Notice of a Complaint

[Section 1(a)]

The objective of section 1(a) of the Order is to ensure that a reasonable effort is made to notify prospective disputants of the government's intent to sue, and to provide disputants with an opportunity to settle the dispute without litigation. "Disputants" means persons from whom relief is to be sought in a contemplated civil action.

Section 1(a) requires either the agency or litigation counsel to notify each disputant of the government's contemplated action unless an exception to the notice requirement (set forth in section 7(b) of the Order) applies. The notifying person shall offer to attempt to resolve the dispute without litigation. However, it is not appropriate to compromise litigation by providing pre-filing notice if the notice would defeat the purpose of the litigation.

Under section 1(a), a reasonable effort to notify disputants and to attempt to achieve a settlement may be provided either by the referring agency in administrative or conciliation processes or by litigation counsel. For example, many debt collection cases and tax cases are the subject of extensive agency efforts to notify the debtor and resolve the dispute prior to litigation. If the referring agency has provided notice, it should supply the documentation of the notice to litigation counsel. Such efforts by the agency may well satisfy the requirements of section 1(a). In those cases, litigation counsel need not repeat the notice although litigation counsel should consider whether additional notice may be productive, for example if a substantial period has elapsed since the prior notice.

The section requires a "reasonable" effort to provide notification and to attempt to achieve a settlement. Both the timing and the content of a reasonable effort depend upon the particular circumstances. However, unless an exception set forth in section 7 of the Order (or otherwise provided for by the Attorney General) is applicable, complete failure to make an effort can not be deemed "reasonable."

If pre-complaint settlement efforts by government counsel require information in the possession of prospective defendants, litigating counsel or client agency counsel may request such information from such defendants as a condition of settlement efforts. If prospective defendants refuse, or fail, to provide such information upon request within a reasonable time, government counsel shall have no further obligation to attempt to settle the case prior to filing.

The Department of Justice retains authority to approve or disapprove any settlements proposed by the client agency or litigation counsel, consistent with existing law, guidelines, and delegations. The Order confers no litigating or settlement authority on agencies beyond any existing authority under law or explicit agreement with the Department.

Settlement Conferences

[Section 1(b)]

Section 1(b) of the Order requires litigation counsel to evaluate the possibilities of settlement as soon as adequate information is available to permit an accurate evaluation of the government's litigation position. Thereafter, litigation counsel has a continuous obligation to evaluate settlement possibilities. Litigation counsel is to offer to participate in a settlement conference or, when it is reasonable to do so, move the court for such a conference.

Under section 1(b), settlement possibilities shall be evaluated by litigation counsel at the outset of the litigation. Litigation counsel shall thereafter, and throughout the course of the litigation, use reasonable efforts to settle the litigation, including the use of settlement conferences by offering or moving to do so. However, the most appropriate timing of a settlement conference should be determined by litigation counsel consistent with the goal of promoting just and efficient resolution of civil claims by avoiding unnecessary delay and cost. To that end, in keeping with section 1(g) of the Order ("Improved Use of Litigation Resources"), early filing of motions that potentially will resolve the litigation is encouraged. In those cases, litigation counsel should initiate settlement conference efforts after resolution of dispositive motions, thereby avoiding the cost and delay associated with an unnecessary settlement conference.

Prior to any such conference, litigation counsel should consult with the affected agency and with litigation counsel's supervisor. At the conference, litigation counsel should clearly state the terms upon which litigation counsel is prepared to recommend that the government conclude the litigation, but should not be expected to obtain authority to bind the government finally at settlement conferences. Final settlement authority is the subject of applicable regulations and may be exercised only by the officials designated in those regulations. The Order does not change those regulations regarding final settlement authority.

The Order does not constrain the government's full discretion to determine which government counsel represents the government at settlement conferences. Normally, a trial attorney assigned to the case will attend on behalf of the United States.

Section 1(b) does not permit settlement of litigation on terms that are not in the interest of the government; while "reasonable efforts" to settle are required, no unreasonable concession or offer should be extended. The section also does not countenance evasion of established agency procedures for development of litigation positions.

Alternative Methods of Resolving the Dispute in Litigation

[Section 1(c)]

Section 1(c) of the Order encourages prompt and proper settlement of disputes. The section states: "Whenever feasible, claims should be resolved through informal discussions, negotiations, and settlements rather than through utilization of any formal or structured Alternative Dispute Resolution (ADR) process or court proceeding."

The Order does not permit litigation counsel to agree that ADR will result in a binding determination as to the government, without exercise of an agency's discretion. Further, the Order's authorization of the use of ADR does not authorize litigation counsel to agree to resolve a dispute in any manner or on any terms not in the interest of the United States.

Each agency should seek to use the skills of litigation counsel, including skills gained through training, to bring about a reasonable resolution of disputes. Attorneys should bring the same high level of expertise to ADR proceedings that they bring to formal judicial proceedings. Disputes will be resolved reasonably if an ADR technique is used when the technique holds out a likelihood of success. Litigation counsel should consult with the affected agency as to the desirability of using ADR if resort to ADR offers a reasonable prospect of success.

When evaluating whether proceeding with ADR is likely to lead to a prompt, fair, and efficient resolution of the action and thus be in the best interest of the government, government counsel should consider the amount and allocation of the cost of employing ADR.

Normally, the costs associated with ADR, such as the neutral's fee and related expenses, will be payable as an ordinary cost of litigation. Litigation counsel can voluntarily agree to share the payment of ADR costs, even when the court mandates ADR. Litigation counsel should assert sovereign immunity when costs are involuntarily imposed on the United States.

Disclosure Of Core Information

[Section 1(d)(1)]

Section 1(d)(1) of the Order requires litigation counsel, to the extent practicable, to make the offer to participate at an early stage of the litigation in a mutual exchange of "core information" (as defined in section 1(d)(1) of the Order). Reasonable efforts shall be made to obtain the agreement of other parties to such an exchange. When making the offer, litigation counsel should emphasize that the government is willing to be bound to disclose core information as defined in the section if, and only if, other parties agree to disclose the same core information and the court adopts the agreement as a stipulated order.

A mutually agreed-upon exchange of core information should occur reasonably early in the litigation, so as to serve the Order's purpose of expediting and streamlining discovery. However, when the government is plaintiff, disclosure of core information need not be requested prior to receipt of opposing parties' answers to the complaint. Litigation counsel should not permit the core information disclosure offer requirement to delay the initiation of necessary discovery on behalf of the government when the parties to whom the offer is directed have not accepted it within a reasonable period of time.

Offers to exchange core information are not mandated if a dispositive motion is pending or if the exceptions to the ADR and core disclosure provisions set forth in section 7(c) of the Order (involving asset forfeiture proceedings and debt collection cases involving less than $100,000) apply. Nothing in section 1(d)(1) requires disclosure of information that litigation counsel does not consider reasonably relevant to the claims for relief set forth in the complaint.

In cases involving multiple opposing parties, the government may agree to exchange disclosures of core information with one or more opposing parties. The government need not delay disclosure pending agreement by all of the parties unless individual exchange of core information would unfairly undermine the government's case.

Except when local practice warrants another means of memorializing the agreement, an agreement to provide core information ordinarily should be in the form of a consent order to ensure enforcement by the court. The consent order should also provide for use of the core information in the same manner as material discovered pursuant to Rules 26 through 36 of the Federal Rules of Civil Procedure.

All referrals from agencies requesting litigation counsel to file suit should include the core information described in section 1(d)(1) of the Order. The identification of the location of documents most relevant to the case should be specific enough to enable litigation counsel to locate and, if necessary, retrieve the documents, and should specify the name, business address, and telephone number of the custodians of the documents. The identification of individuals having information relevant to the claims and defenses should include, where possible, current or last-known telephone numbers at which such persons can be reached.

In determining the extent to which compliance with the requirements of section 1(d)(1) of the Order is "practicable" in a given case, litigation counsel shall consider, *inter alia*, the utility of early issue-narrowing motions and devices, and scope and complexity of the disclosure that will be required, the time available to comply with the provisions of the section, the extent to which disclosure of core information will expedite or limit the scope of subsequent discovery, and the cost to the government of compliance.

In cases where the government takes the position that the scope of judicial review of one or more issues involved in the litigation is limited to an agency's administrative record, identifying and affording access to the administrative record shall satisfy the requirements of section 1(d)(1) with respect to such issues.

Litigation counsel is entitled to rely in good faith on the representations of agency counsel as to the existence, extent, and location of core information.

Nothing in section 1(d)(1) prevents government counsel from seeking other discovery pursuant to the Federal Rules of Civil Procedure simultaneously with providing, or seeking, disclosure of core information pursuant to the section.

Review of Proposed Document Requests

[Section 1(d)(2)]

Under section 1(d)(2) of the Order, government counsel shall pursue document discovery only after complying with review procedures designed to ensure that the proposed document discovery is reasonable under the circumstances of the litigation.

When an agency's attorneys act as litigation counsel, that agency must establish a coordinated procedure, including review by a senior lawyer, before service or filing of any request for document discovery. The senior lawyer is to determine whether the proposed discovery meets the substantive criteria of section 1(d)(2). Senior lawyers must be designated within each agency to perform this review function. While no particular title, level, or grade of senior lawyer is mandated, the persons designated should have substantial experience with regard to document discovery and should have supervisory authority. This designation should be made forthwith. If the designated senior lawyer is personally preparing the document discovery, further oversight is not necessary.

The designated senior lawyer reviewing document discovery proposals should determine whether the requests are cumulative or duplicative, unreasonable, oppressive, or unduly burdensome or expensive, and in doing so shall consider the requirements of the litigation, the amount in controversy, the importance of the issues at stake in the litigation, and whether the documents can be obtained in a manner that is more convenient, less burdensome, or less expensive than pursuit of the documentary discovery as proposed. Consideration of whether documents can be obtained in a more convenient, less burdensome, or less expensive manner shall include consideration of the convenience, burden, and expense to both the government and the opposing parties.

In conducting this review of document requests, the senior lawyer is entitled to rely in good faith upon factual representations of agency counsel and the trial attorney. The review system should not be permitted to deter the pursuit of reasonable document discovery in accord with the procedures established in the Order.

Discovery Motions

[Section 1(d)(3)]

Section 1(d)(3) of the Order provides that litigation counsel shall not ask the court to resolve a discovery dispute, including imposition of sanctions as well as the underlying discovery dispute, unless litigation counsel first attempts to resolve the dispute with opposing counsel or *pro se* parties. If pre-motion efforts at resolution are unsuccessful or impractical, a description of those efforts shall be set forth in the government's motion papers.

Litigation counsel, however, should not compromise a discovery dispute unless the terms of the compromise are reasonable.

Expert Witnesses

[Section 1(e)]

The function of section 1(e) of the Order is to ensure that litigation counsel proffer only reliable expert testimony in judicial proceedings. This practice, already widely used by the government, will enhance the credibility of the government's position in litigation and improve the prospects for a reasonable outcome of disputes warranting utilization of expert witnesses.

Litigation counsel shall use experts who have knowledge, background, research, or other expertise in the particular field of the subject of their testimony, and who base conclusions on widely accepted explanatory theories, *i.e.*, those that are propounded by at least a substantial minority of experts in the relevant field.

In cases requiring expert testimony on newly emerging issues, litigation counsel shall ensure that the proffered expert and his or her testimony are reliable and meet the requirements of Rule 702 of the Federal Rules of Evidence. In evaluating the reliability of an expert's conclusions in new areas where there are no established majority or minority views, it is important for the trial attorney to keep in mind that, under section 1(e), only the theory, not the conclusion based on the theory, need be "widely accepted." Litigation counsel may offer expert testimony that uses a widely accepted explanatory theory to support a conclusion in a novel area, based on the qualifications of the expert to testify on that issue, the extent of peer acceptance or recognition of the expert's past work in the field, particularly of any work that is related to the issue on which the testimony is to be offered, and any other available indicia of the reliability of the proffered testimony. However, if an expert is unable to support the conclusion with any "widely accepted" theories, the expert's testimony shall not be offered.

Litigation counsel shall offer to engage in mutual disclosure of expert witness information pertaining to experts a party expects to call at trial. "Expert witness information" within the meaning of section 1(e) of the Order should ordinarily include the information specified in Rule 26(4)(A)(i) of the Federal Rules of Civil Procedure, the expert's résumé or curriculum vitae, a list of the expert's relevant publications, data, test results, or other information on which the expert is expected to rely in the case at issue, the fee arrangements between the party and the expert and any written reports or other materials prepared by the expert that the party expects to offer into evidence.

An agreement to provide expert witness information should be memorialized in a consent order, except when local practice warrants another means of memorializing the agreement, with the same general provisions concerning enforceability and use at trial as are provided in consent orders for disclosures of core information. The requirement to offer mutual disclosure of expert witness information can be satisfied by an agreement to take depositions of experts that the parties plan to call to testify.

Litigation counsel shall not offer to pay an expert witness based on the success of the litigation. Section 1(e)(4). Similarly, litigation counsel should ordinarily object to testimony on the part of an expert whose compensation is linked to a successful outcome in the litigation and should bring out on cross-examination of the expert such compensation arrangements or agreements.

Sanctions Motions

[Section 1(f)]

Litigation counsel shall take steps to seek sanctions against opposing counsel and parties where appropriate, subject to the procedures set forth in section 1(f) of the Order regarding agency review of proposed sanction filings. Before filing a motion for sanctions, litigation counsel should normally attempt to resolve disputes with opposing counsel. Sanctions motions should not be used as a vehicle to intimidate or coerce government counsel or counsel adverse to the government when the dispute can be resolved on a reasonable basis.

Section 1(f)(2) of the Order mandates that each agency which has attorneys acting as litigation counsel designate a "sanctions officer" to review proposed sanctions motions and motions for sanctions that are filed against litigation counsel, the United States, its agencies, or its officers. The section also requires that the sanctions officer or designee "shall be a senior supervising attorney within the agency, and shall be licensed to practice law before a State court, courts of the District of Columbia, or courts of any territory or Commonwealth of the United States." The sanctions officer or his or her designee should be a senior lawyer with substantial litigation experience and supervisory authority. By way of illustration, rather than limitation, a Senior Executive Service level attorney should meet these criteria.

The persons acting as sanctions officers within each agency should be designated specifically by title or name. Action shall be taken forthwith to designate sanctions officers within each agency. Cabinet or subcabinet officers, such as Assistant Attorneys General or Assistant Secretaries, officials of equivalent rank, and United States Attorneys are authorized pursuant to this Memorandum to designate sanctions officers meeting the criteria of this Memorandum.

Improved Use of Litigation Resources

[Section 1(g)]

Litigation counsel are to use efficient case management techniques and make reasonable efforts to expedite civil litigation as set forth in section 1(g) of the Order.

In appropriate cases, litigation counsel should move for summary judgment to resolve litigation or narrow the issues to be tried. This rule is not intended to suggest that summary judgment practice should be used prematurely in a manner which will permit opposing counsel to defeat summary judgment.

Litigation counsel should seek to stipulate to facts that are not in dispute and move for early trial dates where practicable. Referring agencies should identify facts not in dispute and inform litigation counsel of the lack of dispute and the basis for concluding that there is no factual dispute, as soon as it is feasible to do so. Litigation counsel should seek agreement to fact stipulations as early as practicable, taking into account the progress of discovery and after exercising sound judgment to determine the most appropriate and efficient timing for such stipulations.

At reasonable intervals, litigation counsel should review and revise submissions to the court and should apprise the court and all counsel of any narrowing of issues, resulting from discovery or otherwise.

These requirements are not intended to suggest that litigation counsel should concede facts or issues as to which there is reasonable dispute, uncertainty, or inability to corroborate.

Fees And Expenses

[Section 1(h)]

Section 1(h) of the Order provides that litigation counsel shall offer to enter into a two-way fee shifting agreement with opposing parties in cases involving disputes over certain federal contracts or in any civil litigation initiated by the United States. Under such an agreement, the losing party would pay the prevailing party's fees and costs, subject to reasonable terms and conditions. This section is to be implemented only "[t]o the extent permissible by law." The section also requires the Attorney General to review the legal authority for entering into such agreements. Because no legislation currently provides specific authority for these agreements, litigation counsel shall not offer to enter into a two-way fee shifting agreement until legislation is enacted or other authority is provided by the Attorney General.

Principles to Promote Just and Efficient Administrative Adjudications

[Section 3]

Section 3 of the Order encourages agencies to implement the recommendations of the Administrative Conference of the United States, entitled "Case Management as a Tool for Improving Agency Adjudication," to the extent it is reasonable and practicable to do so (and to the extent it does not conflict with any provision of the Order). The agency proceedings within the ambit of section 3 are adjudications before a presiding officer, such as an administrative law judge.

The Order does not require the application of section 1 to such agency proceedings. However, it has become apparent that application of the relevant provisions of section 1 would have a salutary effect and would be in concert with the reforms required by the Order. Agencies are therefore encouraged to extend the application of section 1 to agency counsel in administrative adjudications where appropriate, for example where an evidentiary hearing is required by law, and where, in agency counsel's best judgment, such extension is reasonable and practicable.

Exceptions to the Executive Order

The Order does not apply to criminal matters or proceedings in foreign courts, and shall not be construed to require or authorize litigation counsel or any agency to act contrary to applicable law. Sections 7(a) and 8.

Attorneys for the Federal government are obligated to follow the requirements of the Order unless compliance would be contrary to law. In the event of an overlap between the requirements of the Order and any local rules or court orders, attorneys for the Federal government are obligated to comply with both the provisions of the Order and the provisions of applicable local rules or court orders.

In section 5(a), the Order defines "agency" to include each establishment within the definition of "agency" in 28 U.S.C. 451; establishments in the legislative or judicial branches are excluded. Thus, litigation counsel, including private attorneys representing the government, and the agency are subject to the provisions of the Order even where the agency is considered "independent" for other purposes. The President clearly has the authority to supervise and guide the exercise of core executive functions such as litigation by government agencies.

The Order does not compel or authorize disclosure of privileged information or any other information the disclosure of which is prohibited by law. Section 9.

Dated: January 15, 1993.

William P. Barr,

Attorney General.

[FR Doc. 93-1654 Filed 1-22-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,859]

Revised Determination on Reconsideration; Armor Elevator Co., Louisville, KY

On December 23, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Armor Elevator Company in Louisville, Kentucky. This notice was published in the **Federal Register** on December 30, 1992 (57 FR 62388).

Local #369 of the International Brotherhood of Electrical Workers claims that company is importing elevator controls and has closed the Louisville plant.

Findings on reconsideration confirm the union's allegation of company imports of elevator controls. New findings on reconsideration show that on November 15, 1992 the company received its first shipment of elevator controls from Finland. Additional shipments from Finland have also arrived in the U.S. It is the company's plan to continue importing elevator controls from its parent company in Finland.

Other findings on reconsideration show that all production of elevator controls ceased at the Louisville plant in November 1992 when all production workers were laid off.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with elevator controls produced at the Louisville, Kentucky plant of Armor Elevator Company contributed importantly to the decline in sales or production and to the total or partial separation of workers at the Armor Elevator Company. In accordance with the provisions of the Trade Act of 1974, I made the following revised determination:

> All workers of Armor Elevator Company, Louisville, Kentucky who became totally or

partially separated from employment on or after October 1, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of January 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services Unemployment Insurance Service.

[FR Doc. 93-1729 Filed 1-22-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,971]

Termination of Investigation; Bethenergy Mines, Inc. Eighty-Four, PA

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 9, 1992 in response to a worker petition which was filed on November 9, 1992 on behalf of workers at Bethenergy Mines, Incorporated, Eighty-four, Pennsylvania.

A negative determination applicable to the petitioning group of workers was issued on December 15, 1992 (TA-W-28,037). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of January, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-1728 Filed 1-22-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-28, 056]

Termination of Investigation; Dale Electronics Inc., El Paso, TX

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 30, 1992 in response to a worker petition which was filed on November 30, 1992 on behalf of workers at Dale Electronics, Incorporated, El Paso, Texas.

An active certification covering the petitioning group of workers remains in effect through February 25, 1993 (TA-W-25,246). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of January, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-1730 Filed 1-22-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-004]

Establishment of the National Aeronautics and Space Administration (NASA)—National Institutes of Health (NIH) Advisory Committee on Biomedical and Behavioral Research

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of establishment.

SUMMARY: Pursuant to sections 9 (a) and (c) of the Federal Advisory Committee Act, Pub. L. 92-462, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration (NASA) has determined that establishment of the Advisory Committee on Biomedical and Behavioral Research is in the public interest in connection with the performance of duties imposed upon NASA by law.

ADDRESSES: National Aeronautics and Space Administration, Code S, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546 (202/358-1430).

SUPPLEMENTARY INFORMATION: The NASA Administrator, in consultation with the National Institutes of Health, has determined that it is appropriate for NASA to establish the Advisory Committee on Biomedical and Behavioral Research to serve as principal source of oversight and advice regarding the progress and program strategies for joint activities conducted by NASA and NIH in the fields of biomedical and behavioral research. The Committee will advise the NASA Administrator and the Director of NIH on these joint activities. The Committee is chaired by Charles A. LeMaistre, M.D., and is composed of 10 members selected from a cross-section of qualified individuals with an extensive knowledge of biomedical and behavioral research.

Dated: January 15, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-1637 Filed 1-22-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-005]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATES: February 3, 1993, 8:30 a.m. to 5:30 p.m.; February 4, 1993, 8:30 a.m. to 5:30 p.m.; and February 5, 1993, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC-5, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1430.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—OSSA Program Status and Outlook
—Strategic Planning Discussion
—Mission Operations and Data Analysis
—Presentation of Technology
—FY 1994 Budget Issues
—Subcommittee Reports
—Committee Writing Assignments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 15, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-1638 Filed 1-22-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Audience Development Section) to the National Council on the Arts will be held on February 17-19, 1993 from 9 a.m.- 5 p.m. in room M-07 at the Nancy Hanks Center, 1100

Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 19 from 1 p.m. – 3:30 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on February 17–18 from 9 a.m. – 5 p.m. and February 19 from 9 a.m. – 1 p.m. and 3:30 p.m. – 5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)((4), (6), and (9) (B) of section 552b to title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 13, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1698 Filed 1–22–93; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection:

Submittal, in computer readable format, of the following forms in accordance with listed instructions:

—DOE/NRC Forms 741 & 741A, "Nuclear Material Transaction Report,"

NUREG/BR–0006, "Instructions for completing forms 741, 741A, and 740M," and

NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"

—DOE/NRC Form 740M, "Concise Note"

—DOE/NRC Form 742, "Material Balance Report," and NUREG/BR–0007, Instructions for Completing Forms 742, 742C, and 740M

—DOE/NRC Form 742C, "Physical Inventory Listing"

3. The form number if applicable: Same as item 2 above.
4. How often the collection is required:
   —DOE/NRC Forms 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria.
   —DOE/NRC Form 740M: When specified in Facility Attachments or Transitional Facility Attachments, or as necessary to inform the U.S. or IAEA of any qualifying statement or exception to data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.
   —DOE/NRC Forms 742 and 742C: Semiannually for affected special nuclear material licensees. Annually for affected source material licensees. As specified in Facility Attachments for licensees reporting under 10 CFR part 75.
5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material.
6. An estimate of the number of responses annually:
   —DOE/NRC Forms 741/741A: 20,000
   —DOE/NRC Form 740M: 1,140
   —DOE/NRC Form 742: 600
   —DOE/NRC Form 742C: 240
7. An estimate of the total number of hours needed annually to complete the requirement or request:
   —DOE/NRC Forms 741/741A: 15,000 (0.75 hours per response)
   —DOE/NRC Form 740M: 855 (0.75 hours per response)
   —DOE/NRC Form 742: 450 (0.75 hours per response)
   —DOE/NRC Form 742C: 1,440 (6 hours per response)
8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Applicable.
9. Abstract: NRC is proposing a regulatory change to make it mandatory that licensee submittals of DOE/NRC Forms 741, 741A, 740M, 742, and 742C be in computer readable format. The change will streamline the collection of nuclear material transaction data, increase accuracy of reported information, and decrease burden on respondents by eliminating preparation of paper copies.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0003, –0057, –0004, and –0058), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 15th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1642 Filed 1–22–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Pressurized Water Reactors; Notice of Meeting

The ACRS Subcommittee on Advanced Pressurized Water Reactors will hold a meeting on February 10, 1993, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss proprietary information (5 U.S.C. 552(b)(c)(4)).

The agenda for the subject meeting shall be as follows:

Wednesday, February 10, 1993—8:30 a.m. until the conclusion of business.

The Subcommittee will begin its review of the NRC staff's Draft Safety Evaluation Report (NUREG–1462) for certification of the ABB–CE System 80+ Design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, its consultants, ABB–CE representatives, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–1554 Filed 1–22–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on February 10, 1993, room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information, the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6). The purpose of this meeting will be to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

The agenda for the subject meeting shall be as follows:

Wednesday, February 10, 1993—3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conduct of Committee business, and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Dr. John T. Larkins (telephone 301/492–8158) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, ect., that may have occurred.

Dated: January 14, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–1555 Filed 1–22–93; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide: Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified as DG–3008, "Nuclear Criticality Safety Training," and is intended for Division 3, "Fuels and Materials Facilities." This regulatory guide is being developed to provide guidance on an appropriate nuclear criticality safety training program for the use of special nuclear material, especially the prevention of criticality accidents.

This draft and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on the guide and the draft value/impact statement. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by March 19, 1993.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of December 1992.

For the Nuclear Regulatory Commission.

Bill M. Morris, Director,

Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 93–1641 Filed 1–22–93; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

[Docket No. 50–245]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–21 issued to Northeast Nuclear Energy Company (the licensee/NNECO) for operation of Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

The proposed amendment to the Technical Specifications would allow for temporarily bypassing the Main Steam Line Radiation Monitor (MSLRM) trip function in order to allow condensate demineralizers to be returned to service, thereby eliminating the possibility of an inadvertent initiation of the MSLRM trip function. A time limit of 2 hours per occurrence has been set to minimize the overall time that the MSLRM trip function may be bypassed.

The licensee requested expeditious review of this request because continued plant operation dictates that the current typical ultrasonic resin cleaning cycle of two condensate demineralizers per week be resumed promptly. A clean demineralizer has not been rotated into service since December 29, 1992, because the licensee believes the evolution may result in a spurious and unnecessary main steam line high radiation monitor trip setpoint being exceeded.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> In accordance with 10 CFR 50.92, NNECO has reviewed the attached proposed change and has concluded that the change does not involve an SHC [Significant Hazards Consideration]. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve an SHC because the change would not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously analyzed.
>
> The trip function of the MSLRMs is a postaccident function and hence changes to this function can not increase the probability of occurrence of previously evaluated accidents. The Millstone Unit No. 1 design basis accident analysis does not take credit for this trip function and hence there are no effects on the consequences of previously evaluated accidents. In the control rod drop accident, all activity from failed fuel rods is assumed to be immediately transported to the turbine/condenser and is available for leakage from the condenser.
>
> Additionally, the main steam activity detected by the MSLRMs will be removed by the steam jet air ejectors, be monitored by the redundant off-gas monitors and be directed to the off-gas treatment system. The sensitivity of the off-gas monitors is much greater than the MSLRMs. The noble gas activity required to cause the MSLRMs to exceed their alarm setpoint will be well above the trip setpoint for the off-gas monitors. The off-gas monitors will automatically initiate closure of the off-gas system discharge valve after a 15 minute time delay and hence, trap all activity within the off-gas system. No significant activity is expected to be released to the public, since it would be contained within the off-gas system.
>
> Furthermore, not closing the MSIVs will reduce the potential dose, as the steam jet air ejector will remain available to direct activity to the off-gas system. If the MSIVs were closed, the activity would remain in the condenser. More activity would be expected to leak out of the condenser than the off-gas system.
>
> 2. Create the possibility of a new or different kind of accident from any previously evaluated.
>
> The proposed changes allow the MSLRM trip function to be bypassed for a short period of time (conservatively selected as two hours per occurrence) while condensate demineralizers are placed into service. The direct impact on the plant is that this particular trip function (i.e., MSIV closure and reactor scram) will not actuate while it is bypassed. Since the design basis accident analysis does not credit this trip function to demonstrate acceptable radiological consequences, the proposed changes have effectively been evaluated previously and are enveloped by the existing analysis. As stated above, in the control rod drop accident, all activity from failed fuel rods is assumed to be immediately transported to the turbine/condenser and is available for leakage from the condenser.
>
> 3. Involve a significant reduction in a margin of safety.
>
> The proposed changes do not impact the physical protective boundaries, nor do they affect the calculated off-site dose consequences. Therefore, there is no impact on the margin of safety. Furthermore, the changes will improve the overall reliability of the plant when compared to the as-found system, since the proposed changes will reduce the chances of an unnecessary plant transient occurring as a result of an inadvertent MSIV closure at 100 percent power.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By February 24, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment requests involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 12, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 15th day of January 1993.

For the Nuclear Regulatory Commission.

James W. Andersen,

Acting Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-1643 Filed 1-22-93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Computer Matching Programs—OPM/Department of Labor, Office of Workers' Compensation Programs

AGENCY: Office of Personnel Management (OPM).

ACTION: Publication of notice of computer matching to comply with Public Law 100-503, the Computer Matching and Privacy Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Department of Labor, Office of Workers' Compensation Programs (OWCP) to meet the reporting and publication requirements of Pub. L. 100-503. The match will identify individuals receiving prohibited concurrent benefits under the Civil Service Retirement Act (CSRA) or the Federal Employees' Retirement System Act (FERSA) and the Federal Employees' Compensation Act (FECA). Both the CSRA and FERSA, on one hand, and the FECA, on the other, prohibit the receipt of certain concurrent payments covering the same period of time. The match will involve the OPM system of records published as OPM CENTRAL-1, Civil Service Retirement and Insurance Records (OPM/CENTRAL-1) (57 FR 35698, August 10, 1992) and the Department of Labor system of records published as DOL/ESA-13, 55 FR 7121-7123, February 28, 1990. The purpose of the match is to identify and/or prevent erroneous payments under both the CSRA, FERSA, and FECA.

DATES: The matching program will begin in January 1993 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreeable between OPM and OWCP after January 2, 1993, unless comments are received which will result in a contrary determination. Subsequent matches will take place semi-annually on a recurring basis until one of the parties advises the other in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to Andrea S. Minniear, Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, Room 4351, 2900 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joy Anderson, (202) 606-0299..

SUPPLEMENTARY INFORMATION: The computer matching program between OWCP and OPM will involve comparison of beneficiaries under the FECA and the CSRA and FERSA. The match will identify beneficiaries receiving payment of compensation for wage loss or death under the FECA and those receiving retirement or death benefits under the CSRA and FERSA covering the same period of time.

The concurrent receipt of benefits under the FECA based on wage loss and under the CSRA and FERSA for retirement, or under the FECA, CSRA or FERSA based on the death of the Federal employee is prohibited. It is the responsibility of OPM to monitor retirement annuity and survivor benefits paid under the CSRA or FERSA to ensure that its beneficiaries are not receiving benefits under the FECA which are prohibited during receipt of benefits under the CSRA or FERSA. Similarly, it is the responsibility of the OWCP to ensure that Federal employees or dependents of deceased Federal employees receiving benefits under the FECA are not also receiving benefits under the CSRA which are prohibited.

By comparing the information received through this computer matching program on a recurring basis, the agencies will be able to make a timely and more accurate adjustment in the benefits payable. The match will prevent overpayments, fraud and abuse, thus assuring that benefits payments are proper under the appropriate Act.

Additional information, regarding the matching program, including the authority for the program, a description of the matches, the personal records to be matched, the dates of the program, security safeguards, and plans for disposition following completion of the matches are provided in the text below.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Matching of Records Between Office of Workers' Compensation Programs and Office of Personnel Management

A. *Authority:* The Civil Service Retirement Act (CSRA), 5 U.S.C. 8331, et seq.; the Federal Employees' Retirement System Act (FERSA), 5 U.S.C., 8401, et seq.; and the Federal Employees' Compensation Act (FECA), 5 U.S.C., 8101, et seq.

B. *Description of Computer Matching Program:* OPM pays annuities or survivor benefits to individuals who may also receive benefits under the FECA. It is the responsibility of OPM as the administrator of the CSRA and FERSA to assure that such benefit payments are proper and to prevent fraud and abuse. The computer matching program is an efficient and nonobtrusive method of determining whether these individuals are receiving benefits from OWCP and OPM prohibited by the FECA and CSRA and FERSA. The OWCP will provide OPM with extracts of its payment files containing data (names, social security numbers, dates of birth, claim numbers, payee relationship codes, addresses, zip codes, and payment data) needed to identify the individual and determine if he or she is receiving benefits from both organizations at the same time. OPM will match OWCP's extract of its payment files against its payment records for the same dates to determine if benefits were being paid on the same date by both agencies. OPM will provide OWCP with a listing of valid matches. Both organizations will detect, identify, and follow-up on payment of prohibited dual benefits. An individual identified as receiving prohibited dual benefits will be afforded an opportunity to contest the findings and proposed actions and the opportunity to elect the benefits he or she wishes to receive. The organization responsible for initiating recovery of the overpayment of benefits will afford the individual due process before any payment modifications are made.

C. *Personal Records to be Matched:* The OPM system of records published as OPM CENTRAL-1, Civil Service Retirement and Insurance Records, 57 FR 35698, August 10, 1992, which contains payment data on recipients of CSRA and FERSA benefits disbursed by OPM will be matched to OWCP records published as DOL/ESA-13, 55 FR 7121-7123, February 28, 1990, which contains data pertinent to the payment of Federal employees and their dependents under the FECA.

D. *Dates:* Data exchanges will begin during calendar year 1993 at a mutually agreeable time and will be repeated every six months, until one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

E. *Privacy Safeguards and Security:* The personal privacy of the individuals whose names are included in the tapes is protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 (54 FR 25818). Security safeguards include limiting access only to the files agreed to and only to agency personnel having a "need to know." All automated records will be password protected and the data listing will be locked in file areas after normal duty hours. Records matched or created by the match will be stored in an area that is physically safe from access by unauthorized persons during duty hours and nonduty hours or when not in use.

F. *Disposal of Records:* The files will remain the property of the respective source agencies and all records including those not containing matches will be returned to the source agency for destruction. "Hits," the records relating to matched individuals, will be disposed of in accordance with the provisions of the Privacy Act and the Federal Record Schedules after serving their purposes. The data obtained from confirmed hits will be entered in the claims file, subject to release only in accordance with the provisions of the Privacy Act.

[FR Doc. 93–1576 Filed 1–22–93; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Implementation of Decisions Amending the List of Articles Eligible for Duty-Free Treatment Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Implementation of certain decisions regarding the Generalized System of Preferences.

SUMMARY: This notice serves to announce the implementation of decisions amending the list of articles eligible for duty-free treatment under the GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: On June 15, 1992, the President, by way of proclamation, modified the Generalized System of Preferences (GSP). 57 FR 26981 (June 17, 1992). Annex VI, paragraphs 1 and 2 of the proclamation modified the GSP by adding lime peel (HTS subheading 0814.00.40) and bonito (HTS subheading 1604.19.25) to the list of articles eligible for duty-free treatment under the GSP. The proclamation deferred implementation of this modification until a date announced in the **Federal Register** by the United States Trade Representative.

The United States Trade Representative, upon the advice of the Trade Policy Staff Committee (TPSC), has decided to implement the decisions to add lime peel and bonito to the list of articles eligible for duty-free treatment under the GSP. Accordingly, the Harmonized Tariff Schedule is modified as provided in Annex VI, paragraphs 1 and 2 of Presidential Proclamation 6447 of June 15, 1992. This modification is effective with respect to articles both (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after publication of this notice in the **Federal Register**.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 93–1566 Filed 1–22–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

January 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Citizens First Bancorp, Inc.
  Common Stock, No Par Value (File No. 7–10012)
CompUSA, Inc.
  Common Stock, No Par Value (File No. 7–10013)
Davstar Industries, Inc.
  Warrants, No Par Value (File No. 7–10014)
MGM Grand, Inc.
  Common Stock, $.01 Par Value (File No. 7–10015)
Student Loan Corp.
  Common Stock, $.01 Par Value (File No. 7–10016)
Swift Energy Co.
  Common Stock, $.01 Par Value (File No. 7–10017)
Taubman Centers, Inc.
  Common Stock, $.01 Par Value (File No. 7–10018)
Vintage Petroleum, Inc.
  Common Stock, $.005 Par Value (File No. 7–10019)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–1577 Filed 1–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31736; File No. SR–BSE–93–01]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Examination Specifications for Its Floor Member Examination

January 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991)

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed the Examination Specifications for its Floor Member Examination.

The Exchange is requesting temporary accelerated effectiveness of the proposed rule change. The Exchange believes that such accelerated effectiveness is necessary and appropriate in view of the administrative nature of the exam and its importance in determining the level of training, competence and experience of members employed on the trading floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Floor Member Examination was created as an Exchange regulatory initiative designed to codify, clarify and give specificity to compliance obligations of Exchange members and member organizations. The BSE's Floor Member Examination is a qualifications examination intended to ensure that the individual floor members have the knowledge, skills and abilities necessary to carry out their job responsibilities. The Examination Specifications detail the areas covered by the exam and break down the proportion of examination questions culled from each area.

Independent floor brokers and specialists who are employed by member firms on the trading floor must take and pass the examination before the commencement of employment on the trading floor in order to be in compliance with the requirements of the Constitution and Rules of the Board of Governors.[3] Floor clerks, with the consent of the Exchange, however have three months from commencement of employment to pass the exam.[4]

The Exchange is requesting temporary accelerated approval of this exam for a ninety day period in order to replace the current exam which has become obsolete. At this time, it is anticipated that the exam will be administered on or about January 18, 1993 to a new member.

2. Statutory Basis

The statutory basis for the Floor Member Examination lies in section 6(c)(3)(B) of the Act in that it is the responsibility of the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Floor Member Examination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the Floor Member Examination.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–01 and should be submitted by February 16, 1993.

IV. Commission's Findings and Order Granting Temporary Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of sections 6 and 15 of the Act.[5] In particular, the Commission believes that the proposal is consistent with the section 6(b)(5)[6] requirement that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest. The Commission believes preliminarily that the revised Floor Member Examination should help to ensure that only those individuals with a comprehensive knowledge of the specific rules of the Exchange, as well as an understanding of the relevant provisions of the Act, will be eligible to act in a variety of capacities on the BSE floor, such as floor broker, floor clerk or specialist.

The Commission also believes that the proposal is consistent with sections 6(c)(3) (A) and (B)[7] of the Act, which set forth the basis upon which a national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer, or may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member of an exchange. The Commission believes preliminarily that the BSE has tailored its exam toward evaluating a floor member's knowledge of specific Exchange rules and policies. The revised exam should ensure that the Exchange grants members access to its floor based on a demonstration of training, experience and competence as prescribed by the rules of the Exchange.

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[3] The BSE requires that independent floor brokers, specialists and floor clerks pass the Exchange's Floor Member Examination. Independent floor brokers and specialists must first pass the Floor Broker Examination before acting in their respective capacity. See BSE Constitution art. IX, sec. 3(d) and Rules of Board of Governors, chapter XIV, section 2152(b)(2), Independent Floor Brokers; chapter XV, section 2155.01 Dealer-Specialists.

[4] The BSE's rules permit a floor clerk to perform limited clerical duties, with the consent of the Exchange, for three months without having passed the Floor Member Examination. See chapter XIV, section 2153 (iii).02, Floor Clerks.

[5] 15 U.S.C. 78f and 78o (1989).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(c)(3)(A), (B) (1989).

In addition, the Commission believes that the proposed rule change is consistent with section 15(b)(7)[8] which requires that prior to effecting any transaction in, or inducing the purchase or sale of, any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer (and all natural persons associated such broker or dealer) must meet certain standards of training, experience, competence and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission believes preliminarily that the BSE exam should satisfy the requirements of section 15(b)(7) by requiring that floor members demonstrate requisite knowledge, training and competence to satisfactorily discharge their individual duties on the BSE floor.

For these reasons, the Commission believes that it is reasonable to grant temporary approval of the BSE's revised Floor Member Examination for a ninety day period. Temporary approval will enable the BSE to administer its revised exam while allowing the Commission time to fully review the exam questions.

As noted above, the BSE has represented that the revised exam would replace an exam whose questions have become obsolete, and that the Exchange will need to administer its Floor Member Examination on or about January 18, 1993 to a new member. The Commission recognizes that, under these circumstances, temporary approval of the proposed rule change should prevent BSE floor members from taking an exam which has become outdated due to market development on the BSE floor. During the ninety day temporary approval period, however, the Commission will continue its review of the exam to determine whether the proposed rule change warrants permanent approval. In this regard, the Commission will review the proposal to determine if the BSE's revised exam sufficiently reflects the requisite minimum knowledge a floor member must possess to comply with the BSE's rules as well as with the pertinent rules and regulations of the Act.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that temporary accelerated approval of the proposed rule change should benefit investors and the public interest because it will allow the Exchange to administer the revised Floor Broker Examination on or about January 18, 1993 to ensure that BSE floor members have the knowledge, skills and abilities necessary to carry out their job responsibilities.

It is therefore ordered, Pursuant to section 19(b)(2)[9] that the proposed rule change (SR–BSE–93–01) is hereby approved for a ninety day period expiring on April 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

- Public Service Electric & Gas Co.
  - 5.28% Cum. Pfd. E, $100.00 Par Value (File No. 7–10021)
- Public Service Electric & Gas Co.
  - 6.80% Cum. Pfd. G, $100.00 Par Value (File No. 7–10022)
- Public Service Electric & Gas Co.
  - 7.52% Cum. Pfd. J, $100.00 Par Value (File No. 7–10023)
- Public Service Electric & Gas Co.
  - 7.40% Cum. Pfd. I, $100.00 Par Value (File No. 7–10024)
- Public Service Electric & Gas Co.
  - 8.08% Cum. Pfd. K, $100.00 Par Value (File No. 7–10025)
- Public Service Electric & Gas Co.
  - 7.80% Cum. Pfd. L, $100.00 Par Value (File No. 7–10026)
- Public Service Electric & Gas Co.
  - 7.80% Cum. Pfd. M, $100.00 Par Value (File No. 7–10027)
- Public Service Electric & Gas Co.
  - 8.16% Cum. Pfd. $100.00 Par Value (File No. 7–10028)
- Puerto Rican Cement Co., Inc.
  - Common Stock, $1.00 Par Value (File No. 7–10029)
- Putnam Dividend Income Fund
  - Common Stock, No Par Value (File No. 7–10030)
- Putnam Investment Grade Municipal Trust
  - Shares of Beneficial Interest, No Par Value (File No. 7–10031)
- Putnam Managed Municipal Income Trust
  - Common Stock, No Par Value (File No. 7–10032)
- RAC Income Fund, Inc.
  - Common Stock, $0.1 Par Value (File No. 7–10033)
- RAC Mortgage Investment Corp.
  - Common Stock, $.01 Par Value (File No. 7–10034)
- Raytech Corp.
  - Common Stock, $1.00 Par Value (File No. 7–10035)
- Reader's Digest Association, Inc.
  - Class A Common Stock, No Par Value (File No. 7–10036)
- Real Estate Investment Trust of California
  - Common Stock, No Par Value (File No. 7–10037)
- Repsol, S.A.
  - American Depositary Receipts, No Par Value (File No. 7–10038)
- Republic New York Corp.
  - Cum. Pfd. Fltg. Rte. Ser. B, No Par Value, (File No. 7–10039)
- RMI Titanium Co.
  - Common Stock, $.01 Par Value (File No. 7–10040)
- Robert Half International, Inc.
  - Common Stock, $1.00 Par Value (File No. 7–10041)
- Rockwell International Corp.
  - $4.75 Conv. Pfd. Ser. A, No Par Value (File No. 7–10042)
- Rockwell International Corp.
  - $1.35 Conv. Pfd. Ser. B, No Par Value (File No. 7–10043)
- Rollins Truck Leasing Corp.
  - Common Stock, $1.00 Par Value (File No. 7–10044)
- Royal Bank of Scotland Group Plc
  - American Depositary Shares Ser. A, No Par Value (File No. 7–10045)
- Royce Value Trust, Inc.
  - Common Stock, No Par Value (File No. 7–10046)
- Rymer Foods, Inc.
  - Common Stock, $1.00 Par Value (File No. 7–10047)
- Rymer Foods, Inc.
  - $1.175 Cum. Conv. Exch. Pfd., $10.00 Par Value (File No. 7–10048)
- Schwitzer, Inc.
  - Common Stock, $.10 Par Value (File No. 7–10049)
- Scotsman Industries, Inc.
  - Common Stock, $.10 Par Value (File No. 7–10050)
- Scudder New Europe Fund, Inc.
  - Common Stock, $.01 Par Value (File No. 7–10051)
- Sea Containers
  - $4.125 Conv. Cum. Pfd. Shs., $.01 Par Value (File No. 7–10052)
- Shelby Williams Industries, Inc.
  - Common Stock, $.05 Par Value (File No. 7–10053)
- Smith Corona Corp.
  - Common Stock, $.01 Par Value (File No. 7–10054)
- Sterling Bancorp
  - Common Stock, $1.00 Par Value (File No. 7–10055)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

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[8] 15 U.S.C. 78o(b)(7) (1989).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1991).

Interested persons are invited to submit on or before February 9, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-1580 Filed 1-22-93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 15, 1993.

The above named securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Advanced Photonix, Inc.
  Class A Common Stock, $.001 Par Value (File No. 7-10056)
Chesapeake Utilities Corporation
  Common Stock, $.4867 Par Value (File No. 7-10057)
Sunshine-Jr. Stores, Inc.
  Common Stock, $.10 Par Value (File No. 7-10058)
Acceptance Insurance Companies, Inc.
  Common Stock, $.40 Par Value (File No. 7-10059)
Coles Myer Ltd.
  American Depositary Receipts (each representing 8 Ordinary Shares), No Par Value (File No. 7-10060)
National Semiconductor Corporation
  Depositary Shares (each representing 1/10 share Convertible Preferred Stock, $32.50 Par Value) (File No. 7-10061)
Painewebber Premier Tax-Free Income Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7-10062)
TCW/DW Term Trust 2002
  Common Stock, $.01 Par Value (File No. 7-10063)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-1581 Filed 1-22-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31728; File No. SR-NASD-92-55]

January 13, 1993.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Market Maker Location

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of the proposed rule change to Part VI, Section 1 of Schedule D to the NASD By-Laws. Additions are in italics.

Schedule D

* * * * *

Part VI—Requirements Applicable to NASDAQ Market Makers

* * * * *

Sec. 1 Registration as a NASDAQ Market Maker

* * * * *

(g) In cases where a market making member has more than one trading location, a fifth character geographic indicator shall be appended to the market maker's identifier for that security to identify the branch location where the security is traded. The fifth-character branch indicators are established by the Association and published from time to time in the Nasdaq/COS symbol directory.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing an amendment to Part VI of Schedule D to the By-Laws to require members to append a fifth-character indicator to their market making symbol ("MMID") when a trading desk is located somewhere other than the firm's primary trading location. The NASD currently requests that members attach such a fifth-character indicator to the MMIDs that are carried on the NASDAQ Workstation screen to alert market participants to the fact that the trading desk of a member in a particular stock may not be located at the main trading office. This fifth MMID character has been available for many years, but its use is currently voluntary. The NASD believes that the use of this character should be mandatory to eliminate confusion and delay in contacting the appropriate market maker in a particular security. Use of the fifth-character with the MMID will ensure that when traders call to transact an order, they will direct the call to the appropriate location and avoid instances where multiple phone calls are needed to access a market maker's quote.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The NASD believes that use of the location identifier will foster cooperation between market makers in transacting business in securities that are traded at branch offices. Moreover, use of the location identifier should eliminate unnecessary confusion and delay in the trading of securities, which is in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-1583 Filed 1-22-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31731; International Series Release No. 518; File No. SR-NASD-92-54]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Market Maker Participation in the Nasdaq International Service

January 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1992, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby submits, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, a proposed rule change that would modify the operational rules ("International Rules") governing the Nasdaq International Service ("Service" or "NIS"). The Service supports an early trading session that runs from 3:30 a.m. to 9 a.m. ET on each U.S. business day ("European Session"). This time period overlaps the business hours of the London financial markets. Participation in the Service is open to NASD member firms, as well as approved affiliates of members that maintain market making operations in the United Kingdom ("UK"). The Service and the International Rules have been implemented on a pilot basis, for a term of two years, pursuant to an order issued by the Commission in October, 1991.[1] The instant proposal primarily modifies provisions of the International Rules applicable to market maker participants. The text of the amendatory language is set forth below. (New language is italicized while deleted language is bracketed.)

NASDAQ International Service Rules

Definitions

Section 2. Unless the context otherwise requires, or unless defined in the International Rules, the terms used herein shall retain their present meanings as defined in the By-Laws, Schedules to the NASD By-Laws or Rules of Fair Practice, respectively.

h. "European-only market maker" means a broker-dealer that is registered with the NASD to make markets in one or more qualified securities in the SERVICE, but is not registered in the same security(ies) for purposes of making a market during the Domestic Session.

i. "International market maker" means a broker-dealer that is registered with the NASD to make markets in one or more qualified securities in the SERVICE and is also registered with the NASD to make markets in the same security(ies) during the Domestic Session.

Requirements Applicable to Market Makers

Section 6. NASD members and approved affiliates can function as SERVICE market makers by registering with the NASD in one or more qualified securities. Two classifications of SERVICE market-makers are authorized: (i) European-only and (ii) International. [An] NASD members can register in either capacity in any qualified security; approved affiliates [is] *are* limited to European-only registration. *At the time of registration, a SERVICE market maker must select one of the following time periods to define its daily market making commitment, on a security-by-security basis: 3:30 a.m. to 9 a.m.; 5:30 a.m. to 9 a.m., and 7:30 a.m. to 9 a.m.* Every [European-only registrant] SERVICE market maker must fulfill the market making obligations specified below in each of its registered securities

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[1] Release No. 34-29812 (October 11, 1991).

[during] *while participating in* the European Session. [Every International registrant assumes identical responsibilities in its registered securities during the European Session as well as the responsibilities of a Nasdaq market maker and/or a market maker in exchange-listed securities traded off-board during the Domestic Session.] *Based on experience gained with SERVICE market makers' use of the multiple openings, the NASD may determine to alter the specified times by up to one hour or to eliminate an opening altogether.*

(b) Normal Business Hours

SERVICE market makers must be open for business, [from 3:30 a.m. to 9 a.m. E.T.] on each U.S. business day, *during the time periods established by their registration in one or more qualified securities. By virtue of the multiple openings feature, a SERVICE market maker would have the flexibility, for example, to register and quote markets in some securities during the 5:30 a.m. to 9 a.m. segment and others during the 7:30 a.m. to 9 a.m. segment. This flexibility is equally available to NASD members and approved affiliates that participate as SERVICE market makers.* (Appropriate adjustments will be made in the event that the U.S. and U.K. move to (or from) daylight saving time on different dates.) [Additionally, SERVICE market makers that are International market makers in one or more qualified securities must be open for business during the hours of the Domestic Session.]

(e) Voluntary Termination of Registration

A SERVICE market maker may voluntarily terminate its registration in a qualified security by withdrawing its quotations in that security from the SERVICE. A market maker that voluntarily terminates its registration in a qualified security may re-register to quote that security in the SERVICE in accord with procedures contained in subsection (a)(*v*) above.

Reports

Section 8. Every NASD member and approved affiliate that functions as a SERVICE market maker shall submit the following reports to the NASD at the frequency specified.

[(a) As to each non-NMS security that a SERVICE market maker is registered to quote in the SERVICE, it shall report daily, no later than 9:17 a.m. E.T., its total volume (purchases and sales) transacted during that day's European Session. If a SERVICE market makers in a non-NMS security transacts no volume during the European Session, it shall report "zero volume" in that security for the Session. Every SERVICE market maker shall report the foregoing volume information via a Nasdaq Workstation™ unit authorized for market maker participation in the SERVICE or though a computer-to-computer interface ("CTCI"). In the event of equipment malfunction or failure, volume information shall be telephoned to Market Operations.]

(*a*) A SERVICE market maker shall report each business day [all other] *any* data relating to qualified securities quoted in the SERVICE as the NASD shall require.

(*b*) A SERVICE market maker shall report monthly such data on qualified securities that are quoted in the SERVICE as the NASD shall require.

(*c*) A SERVICE market maker shall make such other reports as the NASD may prescribe from time-to-time.

Transaction Reporting Requirements

Section 12. During the European Session, broker-dealers registered as International or European-only market makers shall observe the following requirements for reporting transaction information to the NASD on [certain] *qualified* securities quoted in NASDAQ INTERNATIONAL.

(a) Definitions.

(i) "International Participant" includes any NASD member registered as an International or European-only market maker in at least one qualified security, [including a non-NMS security] and any approved affiliate registered as a European-only market maker in at least one qualified security, [including a non-NMS security].

(ii) "SERVICE security" means any *qualified* [Nasdaq/NMS or exchange-listed] security that is quoted in NASDAQ INTERNATIONAL by at least one registered market maker.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The instant proposal consists of a series of largely technical changes to the International Rules that would (1) allow two additional openings that broker-dealers may elect to participate as Service market makers and (2) eliminate distinctions between Nasdaq/NMS and Nasdaq Small-Cap securities for purposes of the trade reporting requirements applicable to the Service.

Currently, broker-dealers that participate in the NIS as market makers assume the obligation to maintain continuous, two-sided quotes in their registered securities during the entire European Session (*i.e.*, from 3:30 a.m. to 9 a.m. ET on each U.S. business day). Thus, a participating firm must be willing to staff its trading facility during this time period that overlaps the business hours of the London markets. From the outset of the Service's operation, a small number of NASD member firms have participated as market makers through an approved affiliate based in London.[3] Although NASD members can also participate directly in the NIS by using their U.S. trading facilities and personnel, no firm has done so since April of this year. Accordingly, the NASD proposes to allow two additional openings—one at 5:30 a.m. and a second at 7:30 a.m. ET—to encourage participation by U.S. based firms during a portion of the European Session. Such participation would offer additional liquidity and provide expanded opportunities for order execution before the domestic market session commences at 9:30 a.m. ET. More importantly, the proposed openings would permit U.S. based firms to participate without a significant additional commitment of staff resources.

Under this proposal, Service market makers could elect to participate starting from 5:30 a.m. or 7:30 a.m. ET. This election would be made on a security-by-security basis at the time a firm registers with the NASD as a

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[3] Section 2(g) of the International Rules defines an "approved affiliate" to be a broker-dealer that meets all of the following requirements: (i) It is not admitted to membership in the NASD or any registered national securities exchange; (ii) it is authorized to conduct securities business in the United Kingdom in accord with all applicable provisions of the Financial Services Act 1986; (iii) it controls, is controlled by, or is under common control with an NASD member (hereinafter referred to as a "control relationship"); and (iv) it has been approved by the NASD to participate as a SERVICE market maker, in an agency capacity, on behalf of the NASD member with whom it has a control relationship.

Service market maker. Regardless of the opening chosen, the subject firm would be required to fulfill all the obligations of a Service market maker from that time (*i.e.*, either 5:30 a.m. or 7:30 a.m. ET) until the European session closes at 9 a.m. ET. Although mainly intended to foster market maker participation from the U.S., the multiple opening feature would be equally available to approved affiliates operating from the U.K. For example, an approved affiliate might elect to participate in 10 securities during the entire European Session and 5 additional securities from 7:30 a.m. onward. Similarly, a U.S. based firm might elect to participate in 10 securities beginning at 5:30 a.m. and 10 more starting from 7:30 a.m. By providing greater flexibility to current and prospective participants, the NASD believes that the multiple opening feature will stimulate an expansion of market maker participation and an increase in the number of securities quoted in the NIS.

The introduction of multiple openings does not involve the creation of a new market maker classification within the NIS or the International Rules. As is the case today, a European-only market maker will be one that maintains a market in a particular qualified security solely during the European Session, while an International Market Maker is one that maintains a market in the same security during the Domestic and European Sessions. The instant proposal simply provides flexibility in terms of the starting times for daily participation in the European Session. Finally, it should be noted that the same market making requirements will apply regardless of the opening selected for participation in the NIS.

The NASD also proposes certain changes in sections 8 and 12 of the International Rules. Section 8 is being modified to remove the requirement for end-of-European Session volume reporting by Service market makers in certain Nasdaq Small-Cap securities that qualify for inclusion in the NIS. A parallel change in the section 12(a)(ii) definition of "Service security" would expand that definition to include this subset of Nasdaq securities. As a result, a Service market maker would have the same trade reporting obligations in all categories of securities that qualify for inclusion in the Service.[3]

Assuming Commission approval, the proposed amendments to the International Rules would be implemented in the second half of 1993 when the corresponding system changes have been completed.

The NASD believes that the proposed rule change is consistent with sections 11A(a)(1)(B)–(C) and 15A(b)(6) of the Act. Subsections (B) and (C) of Section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Among other things, section 15A(b)(6) provides that the NASD rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market. The NASD believes that its proposed modifications to the Service and the International Rules are fully consistent with these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 C.F.R. 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1584 Filed 1–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31735; File No. SR–NASD–92–56]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Trade Reporting Requirements

January 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of substance of the Proposed Rule Change

The NASD is proposing amendments to Parts XII and XIII of Schedule D and section 2 of Schedule G to the By-Laws and to the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules") to require members to input the time of execution on late trade reports, to require trade reporting for transactions in Nasdaq securities between the hours of 9 and 9:30 a.m. Eastern Time, and to add a section regarding audit trail data.

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[3] It should be noted that the Commission's approval of the International Rules predated the extension of trade-by-trade reporting to Nasdaq Small-Cap securities during U.S. market hours. Currently, the Service has no market making positions in qualified Nasdaq Small-Cap securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing amendments to Schedules D and G of the NASD By-Laws to require members to append the time of execution on any trade report that is reported more than 90 seconds after execution and to require trade reporting for transactions in Nasdaq securities between the hours of 9 and 9:30 a.m. Eastern Time. The Association is also modifying the ACT Rules to reflect the same time-of-execution requirements and to adopt an "audit trail" provision. The proposals are designed to enable the NASD to capture accurate audit trail information for surveillance purposes and will also facilitate market surveillance of member compliance with the proposed Nasdaq short sale rule or "bid test" should that proposal be approved by the Commission.

1. Audit Trail Provision

The NASD has a statutory responsibility to surveil trading in its marketplace for potential violations of the securities laws and the NASD's own rules. To discharge this responsibility, the NASD relies upon computerized analyses of trade details reported by member firms through the trade reporting and trade clearance processes. This transactional data is processed to form the NASD's transaction audit trail, a critical function supporting the NASD's market surveillance and enforcement programs. Hence, members' submission of accurate and complete audit trail information is essential. Currently, the NASD has no specific rule memorializing the obligation of members to submit accurate and complete information for audit trail purposes.

Over the past two years, the NASD's ACT service has evolved to permit the capture of trade-by-trade information for virtually all segments of the NASD's marketplace. Although originally designed as the mechanism to compare and lock-in the terms of telephonically-negotiated trades in Nasdaq securities, the ACT service now processes transactions in exchange-listed ("CQS") securities traded over-the-counter, and non-Nasdaq securities that are cleared through NSCC. In addition, the trade reporting systems that were stand alone systems prior to ACT's development have now been integrated into ACT service, so that internalized transactions and trades executed and compared in members' internal systems are required to be reported into the ACT service. Because ACT facilitates the collection and dissemination of all reportable real-time trade reports for Nasdaq/NMS securities, Nasdaq Small-Cap securities and exchange-listed securities, it offers the capability to gather complete audit trail information for every trade in a single input process. Accordingly, the NASD is amending the ACT rules to provide an audit trail provision.

2. Time of Execution

Ensuring that trade reports are properly sequenced on the basis of time is critical to constructing an accurate audit trail for surveillance purposes. At present, however, there is no effective manner to place transactions reported as ".SLD" (i.e., not reported within 90 seconds after execution) in their proper sequence. The NASD performs many surveillance functions, both on-line and off-line, that require accurate sequencing of trade report data and knowledge of the time of execution for investigations of questionable trading activity. With regard to exchange-listed securities, time of execution appended to late trade reports will also enable the Association to respond more expeditiously and completely to inquiries from exchanges dealing with late trade reports and trade-through allegations. It will also be imperative to ascertain the time of trade executions to initiate on-line monitoring for compliance with the proposed Nasdaq bid test. The NASD believes that comprehensive monitoring of member compliance with the bid test is necessary to ensure the credibility of the bid test itself while providing for the capability to respond immediately to situations requiring further investigation and analysis. Accordingly, the NASD has determined that members should be required to report through ACT the time of execution of a transaction not reported within 90 seconds.

Although "time of execution" is already an existing field in the ACT system, it is voluntary in nature. Due to the importance of developing and maintaining an accurate audit trail, the NASD believes that a rule amendment is necessary to require members to make use of the time of execution field in ACT when trade reports are submitted to the NASD after 90 seconds following execution.

3. Hours of Trade Reporting

The final amendment is a proposal that deals with transaction reporting requirements in Nasdaq/NMS and Nasdaq Small-Cap securities. More specifically, the new language recognizes that the after hours automated trade reporting facility (the ".T" system) for Nasdaq securities has been extended to the one-half hour period preceding the opening of the Nasdaq market. This has occurred in conjunction with the NASD's expansion of the SelectNet service to the 9 a.m. to 9:30 a.m. Eastern Time period that commenced on November 23, 1992.

The details of trades executed from 9 a.m.–9:30 a.m. through SelectNet are captured automatically and forwarded to ACT to facilitate trade reporting, comparison and vendor dissemination. Because ACT will be open to process trade reports from SelectNet during the 9 a.m.–9:30 a.m. period, it is appropriate to use this same facility to capture reports of trades executed by telephone during that time period. The changes proposed would mandate the reporting of such trades through ACT within 90 seconds of execution. This requirement will also reduce the use of paper Form T for reporting transactional data to the NASD and ensure that all trades in Nasdaq securities occurring between 9 and 9:30 a.m. are fully integrated into the Nasdaq audit trail file.

The NASD believes the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. The new requirements would improve the quality of the NASD's audit trail by making the information more timely, complete, and accurate in order to facilitate surveillance of market activity, including compliance with the proposed short sale rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1720 Filed 1–22–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31733; File No. SR–NYSE–92–40]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of the Use of Quarterly Auxiliary Opening Procedures to Monthly Expirations

January 14, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On January 7, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change to clarify certain language in Exchange's Information Memo which describes the NYSE auxiliary opening procedures.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the use of quarterly auxiliary opening procedures for assisting in handling the order flow associated with the concurrent expiration of stock index futures, stocks index options and options on stock index futures (collectively, "index contracts") to monthly expiration Fridays.[4]

The Exchange requests that the proposed rule change be put into effect on an accelerated basis by the Commission since the Exchange wishes to utilize the procedures on the expiration Friday of January 15, 1993. The auxiliary opening procedures provide mechanisms to address increased order flow and potential excess volatility associated with opening price settlement of derivative products. The Exchange believes that the use of the auxiliary opening procedures on monthly expiration Fridays, prompted by the change in settlement of the Standard & Poor's ("S&P") 500 Stock Price Index based on opening rathar than closing procedures, will provide important customer protection benefits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organizations has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the auxiliary opening procedures currently used on quarterly expiration Fridays to monthly expiration Fridays. These procedures augment the Exchange's regular opening procedures. The auxiliary procedures have been utilized since June 1987 on quarterly expiration Fridays.[5] The reason for this proposed rule change is the change in settlement pricing for the Chicago Board Option Exchange's ("CBOE") S&P 500 Stock Index option from closing to opening prices on expiration Fridays. The S&P 500 Stock Index option has monthly settlements.[6]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Donald Seimer, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated January 7, 1993, amending the text of the NYSE Information Memo furnished to members regarding expiration Friday procedures. Specifically, the Information Memo, as amended, clarifies that the NYSE auxiliary opening procedures will apply to all monthly expiration Fridays, and that certain Standard & Poor's MidCap 400 stocks will be added to the Exchange's expiration Friday opening imbalance dissemination procedures. The NYSE has filed a proposed rule change, which the Commission also approved today, which extends the auxiliary opening imbalance dissemination procedures to the ten highest weighted component stocks of the ("S&P") 500 Stock Price Index based on opening rather than Standard & Poor's MidCap 400 Index. See Securities Exchange Act Release No. 31732 (order approving File No. SR–NYSE–92–38).

[4] Expiration Friday is the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. Currently, the NYSE expiration Friday auxiliary opening procedures are used only for quarterly expiration Fridays. *See* Securities Exchange Act Release Nos. 24596 (June 16, 1987), 52 FR 23618 (order approving File No. SR–NYSE–87–17) and 25804 (June 15, 1988) 53 FR 23474 (order approving File No. SR–NYSE–88–04).

[5] See Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618 (order approving File No. SR–NYSE–87–17).

The Exchange believes that settling index contracts based upon the opening prices of the constituent stocks, and thereby permitting use of the Exchange's time-tested opening procedures, provides the best mechanism for handling the accompanying stock volume. The Commission echoed this in approving opening settlement of the S&P 500 Index option by stating its belief that "settling these index products based on opening prices, coupled with the auxiliary opening procedures developed by the NYSE, have significantly improved the ability of the market to alleviate and accommodate large and potentially destabilizing order imbalances associated with the unwinding of index-related positions."[7]

The auxiliary procedures provide that stock orders relating to opening-price settling contracts must be appropriately identified orders and be received by the Exchange by 9 a.m. The Exchange disseminates market order imbalances of 50,000 shares or more as soon as practicable after 9 a.m. in the expiration Friday "pilot" stocks and the ten highest weighted MidCap 400 Index stocks.[8] The Exchange makes SuperDot available to accept orders at 7:30 a.m.

The auxiliary opening procedures are an important part of the Exchange's approach to minimize excess volatility that is associated with expiration Fridays. The procedures provide off-floor participants with a picture of the unique impact of the index-related orders, and allow an opportunity for them to react to it. Because the regular opening procedures will continue to operate, an off-Floor participant will, as always, be able to obtain a minute-to-minute Floor picture through a Floor broker. Similarly, the pre-opening application of the Intermarket Trading System Plan will be in effect.[9] Moreover, if it becomes evident that a significant change from the previous closing price is likely, the specialist can, with the approval of a Floor Official, disseminate regular price indications over the tape as needed.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–40 and should be submitted by February 16, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to extend the auxiliary opening procedures currently used on quarterly expiration Fridays to monthly expiration Fridays is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of section 6(b)(5) of the Act.[10] In particular, section 6(b)(5) requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE proposal to extend the use of its quarterly auxiliary opening procedures to month expiration Fridays may aid in ameliorating or reducing volatility associated with the monthly expiration of index products and, therefore, further the objectives of section 6(b)(5).

The Commission believes that one of the principal reasons that opening-price settlement has helped to quell expiration Friday volatility is that the NYSE's auxiliary opening procedures permit the Exchange to handle relatively smoothly the increased volume diverted to the opening as the result of opening-price settlement of certain options and futures contracts. In particular, the early collection and dissemination of opening order imbalances provide market participants with sufficient opportunity to react accordingly and generally lessen the potential impact of such imbalances on specialists and other market participants.

As noted above, the NYSE's current proposal is intended to accommodate the recent change in settlement pricing for the CBOE's S&P 500 Index option. Indeed, the Commission approved the CBOE's proposal to change the S&P 500 Index option settlement price to the opening, in part, because the NYSE's auxiliary opening procedures provide for the orderly entry and dissemination of orders.[11] Although the S&P 500 Stock Index settles monthly and on the open, the Exchange currently employs its auxiliary opening procedures on each quarterly expiration Friday.[12] The present proposal would extend the same opening order-entry and order imbalance dissemination procedures currently in place for quarterly expiration Friday openings to monthly expiration Friday openings.

The Commission believes that the NYSE's auxiliary opening procedures should work to reduce order imbalances at the open, and thus dampen potential volatility associated with monthly expiration Friday openings. In this regard, the Commission believes that the early entry of orders related to expiring indexes should enable the Exchange to identify promptly those stocks in which a large opening imbalance is likely to occur, and where order imbalance dissemination is necessary, thereby assisting the Exchange in ensuring orderly openings in those stocks. Further, the auxiliary opening procedures related to imbalance dissemination are intended to increase information available to investors on expiration Fridays and can help facilitate the development of contra-side interest to alleviate order imbalances in stocks that are related to the unwinding of index-related positions. In summary, the Commission believes that the NYSE's proposal will permit the market to benefit from the Exchange's opening procedures on monthly expiration Fridays. Accordingly, the Commission finds that the extension of the NYSE's auxiliary opening procedures to monthly expiration Fridays is consistent with the Act and the protection of investors and the public interest.

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[6] See Securities Exchange Act Release No. 30944 (July 21, 1992) 57 FR 33376 (order approving File No. SR–CBOE–92–09).

[7] *Id.*

[8] The term "pilot" stocks refers to the 50 highest weighted S&P 500 Index stocks and the 20 Major Market Index stocks. The Commission also has approved the Exchange's extension of its auxiliary opening imbalance dissemination procedures to the ten highest weighted S&P MidCap 400 Index stocks. See *supra* note 3.

[9] See NYSE Rule 15.

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] See Securities Exchange Act Release No. 30944, *supra* note 6.

[12] For a description of the NYSE's auxiliary opening procedures, see the NYSE's Information Memo to members and member organizations, as amended, attached as Exhibit A to the proposed rule change, File No. SR–NYSE–92–40.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposed rule change should enable the Exchange to quickly implement and notify market participants about procedures that it believes appropriately address any stock volatility that may be associated with index-related strategies on expiration Friday January 15, 1993, and expiration Fridays thereafter. Moreover, the proposal contains no substantive changes to the NYSE's auxiliary opening procedures which have been in place for more than five years, on which there has been ample opportunity to comment, and which have appeared to work well for market participants and investors.

It is therefore ordered, Pursuant to section 19(b)(2)[13] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1585 Filed 1–22–93; 8:45 am]

BILLING CODE 8010-01-M

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[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–31732; File No. SR–NYSE–92–38]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Dissemination of Opening Order Imbalances in Certain Stocks in the S&P MidCap 400 Index

January 14, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On January 7, 1993, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change to clarify certain language in the Exchange's Information Memo which describes the NYSE auxiliary opening procedures.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the use of auxiliary opening procedures for disseminating market-at-the-opening order imbalances of 50,000 shares or more on monthly expiration Fridays[4] in certain stocks which are part of the Standard & Poor's MidCap 400 Index ("MidCap 400 Index").[5]

The Exchange requests that the proposed rule change be put into effect on an accelerated basis by the Commission since the Exchange wishes to utilize the procedures on the expiration Friday of January 15, 1993. The Exchange believes that the dissemination of opening market order imbalances of 50,000 shares or more in certain highly capitalized stocks which are part of the MidCap 400 Index will provide important benefits by enhancing information available to investors and facilitating the offsetting of imbalances.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow the Exchange to disseminate, as soon as practicable after 9 a.m. on expiration Fridays, imbalances of 50,000 shares or more in market orders for the ten most highly capitalized component stocks of the MidCap 400 Index.[6] All of the remaining auxiliary opening procedures will remain the same.[7]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Donald Seimer, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated January 7, 1993, amending the text of the NYSE Information Memo furnished to members regarding expiration Friday Procedures. Specifically, the Information Memo, as amended, clarifies that the ten highest weighted Standard & Poor's MidCap 400 stocks will be added to the Exchange's expiration Friday opening imbalance dissemination procedures.

[4] Expiration Friday is the trading day, usually the third Friday of the month, when some stock index futures, stock index options and options on stock index futures expire or settle concurrently. Currently, the NYSE expiration Friday auxiliary opening procedures are used only for quarterly expiration Fridays. See Securities Exchange Act Release Nos. 24596 (June 16, 1987), 52 FR 23618 (order approving File No. SR–NYSE–87–17) and 25804 (June 15, 1988) 53 FR 23474 (order approving File No. SR–NYSE–88–04). The NYSE has filed a proposed rule change, which the Commission has also approved concurrently with this filing on an accelerated basis, which extends the use of quarterly expiration Friday auxiliary opening procedures to monthly expiration Fridays. See Securities Exchange Act Release No. 31733 (order approving File No. SR–NYSE–92–40).

[5] The Standard & Poor's MidCap 400 Index is a market-weighted index composed of 400 domestic stocks from four broad-market sectors: Industrials, utilities, financials and transportation. The MidCap 400 is designed to track the performance of domestic stocks that fall in the middle-capitalization range of securities. The MidCap 400 is an index developed by Standard & Poor's, and options are traded on the index on the American Stock Exchange, Inc. The MidCap 400 is calculated continuously, and options on the index settle monthly based on opening prices in the component securities (a.m. settlement). See Securities Exchange Act Release No. 30290 (January 27, 1992), 57 FR 4072 (order approving File No. SR–Amex–91–27). Each month the NYSE will determine the ten most highly capitalized MidCap 400 Index component stocks and will apply the auxiliary opening procedures to those stocks.

[6] As discussed, *supra* note 5, the MidCap 400 Index settlement price is based on a.m. settlement.

The auxiliary opening procedures are an important aspect of the Exchange's approach to minimize excess volatility that is associated with expiration Fridays. The procedures provide off-Floor participants with a picture of the unique impact of the index-related orders, and allow an opportunity for them to react to it. The addition of imbalance information for certain highly capitalized MidCap stocks will enhance the information available to investors, and facilitate the entry of orders to offset imbalances, thereby minimizing the market impact of strategies related to the expiration of this index product.

2. Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–38 and should be submitted by February 16, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to include certain highly capitalized MidCap 400 Index stocks in its expiration Friday opening order imbalance dissemination procedures is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of section 6(b)(5) of the Act.[8] In particular, section 6(b)(5) requires, among other things, that the rules of an Exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market, and to protect investors and the public interest. For the reasons set forth below, the Commission believes that the NYSE proposal to disseminate, as soon as practicable after 9 a.m., imbalances of 50,000 shares or more in market orders for the ten most highly capitalized component stocks of the MidCap 400 Index, in accordance with the Exchange's expiration Friday auxiliary opening procedures furthers the objectives of section 6(b)(5).

Currently, the expiration Friday auxiliary opening procedures require that all stock orders relating to expiring index contracts, whose settlement value is based on opening prices on expiration Fridays, must be received by the Exchange by 9 a.m. After 9 a.m., the Exchange promptly disseminates any opening order imbalances of 50,000 shares or more in any of the "pilot" stocks.[9] As noted above, the Midcap 400 Index settlement price is based upon the opening, so all stock orders related to the MidCap 400 Index settlement must be entered on the Exchange before 9 a.m. However, the NYSE currently does not require the dissemination of opening order imbalances for MidCap 400 Index stocks. The present proposal would extend the same opening order imbalance dissemination procedures in place for pilot stocks to the ten highest weighted MidCap 400 Index stocks.

The Commission believes that the NYSE's auxiliary opening procedures should work to reduce order imbalances at the open, and thus dampen potential volatility associated with the unwinding of index-related strategies on expiration Friday openings. The proposed addition of MidCap 400 Index stocks for opening order imbalance dissemination is intended to ensure that the Exchange may efficiently process sizeable order flow at the open. In this regard, the proposal should complement the NYSE's existing auxiliary opening procedures which require that orders related to the opening settlement of the MidCap 400 Index be entered on the Exchange before 9 a.m. on expiration Fridays. The Commission believes that, by requiring early submission of orders related to the opening settlement of the MidCap 400 Index and disseminating imbalances, the NYSE may be able to attract contra-side interest to help alleviate the imbalances. Moreover, the Commission believes that the inclusion of the MidCap 400 Index stocks in the existing auxiliary opening imbalance dissemination procedures should enhance information available to investors and, as a result, may reduce excess volatility on expiration Friday openings.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposed rule change should enable the Exchange to quickly implement and notify market participants about procedures that it believes appropriately address any stock volatility that may be associated with index-related strategies on expiration Friday, January 15, 1993, and expiration Fridays thereafter. Moreover, the proposal contains no substantive changes to the NYSE's auxiliary opening procedures which have been in place for more than five years, on which there has been ample opportunity to comment, and which have appeared to work well for market participants and investors.

It is therefore ordered, Pursuant to section 19(b)(2)[10] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1586 Filed 1–22–93; 8:45 am]

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[7] For a description of the NYSE's auxiliary opening procedures, see the NYSE's Information Memo to members and member organizations, as amended, attached as Exhibit A to the proposed rule change, File No. SR–NYSE–92–38.

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] The term "pilot" stocks refers to the 50 highest weighted Standard & Poor's 500 Index stocks and the 20 Major Market Index stocks.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1991).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following security:

Superior Industries International, Inc.
  Common Stock, $.50 Par Value (File No. 7–10020)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–1579 Filed 1–22–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 15, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Nuveen Texas Premium Income Municipal Fund, Inc.
  Shares of Beneficial Interest, $.01 Par Value (File No. 7–10004)
Nuveen Michigan Premium Income Municipal Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7–10005)
Nuveen Ohio Premium Income Municipal Fund, Inc.
  Common Stock, $.01 Par Value (File No. 7–10006)
Nuveen Insured Florida Premium Income Municipal Fund, Inc.
  Shares of Beneficial Interest, $.01 Par Value (File No. 7–10007)
Chesapeake Utilities Corporation
  Common Stock, $0.4867 Par Value (File No. 7–10008)
Giant Industries, Inc.
  Common Stock, $0.01 Par Value (File No. 7–10009)
Giant Group Ltd.
  Common Stock, $0.01 Par Value (File No. 7–10010)
Graco, Inc.
  Common Stock, $1 Par Value (File No. 7–10011)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–1578 Filed 1–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19213; File No. 812–8090]

New England Mutual Life Insurance Company, et al.

January 13, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: New England Mutual Life Insurance Company ("The New England"), New England Variable Life Insurance Company ("NEVLICO"), New England Variable Life Separate Account ("Variable Account"), and New England Securities Corporation ("New England Securities") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS AND RULES: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(a)(3), 27(c)(1), 27(c)(2), 27(d) and 27(e) of the 1940 Act and Rules 6e–2(b)(1), (b)(12), (b)(13)(i), (b)(13)(ii), (b)(13)(iii), (b)(13)(iv), (b)(13)(v), (b)(13)(vii), (c)(1) and (c)(4) and 22c–1 and 27e–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to issue variable life insurance policies (the "Policies"), in reliance on 1940 Act Rules 6c–3 and 6e–2, that provide for: (i) A death benefit that will not always vary based on investment experience; (ii) both a contingent deferred sales charge and a sales charge deducted from premiums; (iii) a contingent deferred administrative charge; (iv) deduction from the policy's account value for cost of insurance charges, charges for substandard mortality risks and incidental insurance benefits, and a minimum death benefit guarantee charge; (v) values and charges based on the 1980 Commissioners' Standard Ordinary Mortality Tables (the "1980 CSO Tables"); (vi) the holding of mutual fund shares funding the Variable Account without the use of a trustee, in an open account arrangement and without a trust indenture; and (vii) a waiver of notice of refund and withdrawal rights.

FILING DATE: September 16, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 8, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicants, 501 Boylston Street, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272–2058 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. NEVLICO is a wholly owned subsidiary of The New England, a mutual life insurance company organized in Massachusetts in 1835. The Variable Account is a separate investment account of NEVLICO, and is registered under the 1940 Act as a unit investment trust. The Variable Account funds scheduled premium variable life insurance policies, single premium variable life insurance policies and variable ordinary life insurance policies. It currently consists of five investment sub-accounts: a Money Market Sub-Account, a Bond Income Sub-Account, a Capital Growth Sub-Account, a Stock Index Sub-Account, and a Managed Sub-Account. Each sub-account invests its assets in a different portfolio of the New England Zenith Fund.

2. The existing variable life insurance policies are, and it is intended that the Policies will be, sold through agents who are licensed by state authorities to sell NEVLICO's insurance policies and who are also registered representatives of New England Securities, the principal underwriter of the Variable Account. New England Securities in an indirect wholly-owned subsidiary of The New England.

3. Policy owners have a choice between two forms of death benefit under a Policy. The Option 1 death benefit is the greater of (a) the face amount of the Policy or (b) the Policy's cash value divided by the net single premium per $1 of death benefit at the insured's attained age. The Option 2 death benefit is the greater of (a) the face amount of the Policy plus any excess of the Policy's cash value over the Policy's "tabular cash value" or (b) the Policy's cash value divided by the net single premium per $1 of the death benefit at the insured's attained age. The net single premium factor is that necessary to qualify the Policy as life insurance for federal income tax purposes. The death benefit under the Policy will vary based on investment experience when the net single premium factor computation of death benefit is applicable. Death benefit Option 2 also varies with investment experience whenever the Policy's cash value exceeds its "tabular cash value."

4. Policy owners have considerable flexibility under the terms of the Policy. Within limits, for example, premiums in excess of the required premiums may be paid, and, if the Policy's cash value exceeds its "tabular cash value," no required premium need be paid (if nonpayment would not result in any Policy loan exceeding the Policy loan value.) NEVLICO intends, in the near future, to permit face amount reductions. Partial surrenders, partial withdrawals and policy loans are also available.

5. The premium and other flexible options under the Policy are a potential benefit to Policy owners. For example, they may be able to make premium payments in accordance with their own personal financial cycle, or at times during the year when they perceive the securities markets to present favorable investment opportunities.

6. NEVLICO deducts the following amounts from each scheduled premium to arrive at a basic scheduled premium: (i) Charges for any supplementary benefits provided by rider; (ii) any extra premiums paid for a Policy in a substandard risk or automatic issue class; and (iii) an annual Policy administrative charge. The annual Policy administrative charge is $55 for Polcies under which scheduled premiums are paid annually. This charge will be higher if premiums are paid more frequently than annually, but will not exceed $57.75. All of the administrative charges under the Policies cover the cost of administering the Policies as well as legal, actuarial, systems, mailing and other overhead costs connected with NEVLICO's variable life operations. NEVLICO does not deduct any of these from unscheduled payments.

7. NEVLICO will deduct a premium expense charge of 9% of each premium paid. This deduction is for sales expenses (5.5%), for a portion of its Federal income tax liability determined solely by the amount of life insurance premiums NEVLICO receives (1%) and for state premium taxes (2.5%). NEVLICO will also deduct a contingent deferred sales charge upon surrender, partial surrender, face amount reduction or lapse of a Policy during the first fifteen Policy years. The contingent deferred sales charge is based on the lesser of (a) the sum of the basic scheduled premiums payable up to the date of surrender, face amount reduction or lapse, whether or not each such premium has been paid or (b) the sum of the actual premiums paid to date, including the charges for supplementary benefits provided by rider, extra premiums for substandard risk classification and the Policy administrative charge.

For Policies under which scheduled premiums are payable annually and which cover insureds with an issue age of 53 or less, the maximum contingent deferred sales charge is an amount equal to 43.5% of the basic scheduled premium for the first Policy year plus 23.5% of the basic scheduled premiums for Policy years two and three plus 14.5% of the fourth year's basic scheduled premiums. The maximum percentage of the contingent deferred sales charge which will apply upon surrender, partial surrender, face amount reduction or lapse in the years indicated under the Policies which cover insureds with an issue age of 53 or less and under which scheduled premiums are paid annually are as follows:

For policies which are surrendered, reduce face amount or lapse during policy year	The maximum deferred sales charge is the following percentage of one annual basic scheduled premium	Which is equal to the following percentage of the total annual basic scheduled premiums due to date of surrender, face amount reduction or lapse
Entire year 1	43.5%	43.5%
Entire year 2	67.0	33.5
Entire year 3	90.5	30.17
Entire year 4	105.0	26.25
Entire year 5	105.0	21.0
Entire year 6	105.0	17.5

For policies which are surrendered, reduce face amount or lapse during policy year	The maximum deferred sales charge is the following percentage of one annual basic scheduled premium	Which is equal to the following percentage of the total annual basic scheduled premiums due to date of surrender, face amount reduction or lapse
Entire year 7	105.0	15.0
Entire year 8	105.0	13.125
Last month of year 9	90.0	10.0
Last month of year 10	75.0	7.5
Last month of year 11	60.0	5.46
Last month of year 12	45.0	3.75
Last month of year 13	30.0	2.31
Last month of year 14	15.0	1.08
Last month of year 15 and thereafter	0	0

For insureds with an issue age above 53, a different contingent deferred sales charge will apply in which the percentages will be less than or equal to those shown in the table above.

With respect to a surrender, a partial surrender, face amount reduction or lapse during either of the first two Policy years under a Policy with scheduled premiums that are paid annually, the applicable contingent deferred sales charge will not exceed (i) 23.5% of the total annual basic scheduled premiums due in the first Policy year or (ii) 13.5% of the total annual basic scheduled premiums due in the first two Policy years.

8. All of the administrative charges under the Policies, including the deferred administrative charge, cover the cost of administering the Policies (such as the cost of processing Policy transactions, issuing Policy owner statements and reports and record keeping) as well as legal, actuarial, systems, mailing and other overhead costs connected with NEVLICO's variable life operations. The deferred administrative charge is assessed in the following amounts:

For policies which are surrendered, reduce face amount or lapse during	The deferred administrative charge will be the following amount per $1,000 of face amount
Entire Year 1	$2.50
Last Month of Year 2	2.25
Last Month of Year 3	2.00
Last Month of Year 4	1.75
Last Month of Year 5	1.50
Last Month of Year 6	1.25
Last Month of Year 7	1.00
Last Month of Year 8	.75
Last Month of Year 9	.50
Last Month of Year 10	.25
Last Month of Year 11 and thereafter	0

9. NEVLICO deducts from a Policy's cash value, on the Policy date and on the first day of each Policy month, a monthly deduction, consisting of the following charges: (i) An administrative charge of $0.05 per $1,000 of the Policy's face amount to cover annual administrative costs of the type also covered by the annual Policy administrative charge; and (ii) a minimum death benefit guarantee charge of $0.01 per $1,000 of the Policy's face amount. This charge is designed to compensate NEVLICO for the risk it assumes by guaranteeing that, regardless of the investment experience of the Policy's sub-accounts, the Option 1 or Option 2 death benefit will not be less than the face amount if all required scheduled premiums have been paid when due.

NEVLICO also deducts from a Policy's cash value, on the Policy date and on the first day of each Policy month, a charge for the cost of providing insurance protection for the Policy month equal to the amount at risk multiplied by the cost of insurance rate for that month. The amount at risk is the amount by which the death benefit on the first day of the Policy month, discounted at the monthly equivalent of 4.5% per year, exceeds the cash value on the same day after the monthly deduction has been processed. NEVLICO guarantees the monthly cost of insurance rates to be no greater than those based on the 1980 CSO Tables with smoker/non-smoker modifications.

10. NEVLICO charges the subaccounts of the Variable Account for the mortality and expense risks it assumes, at an effective annual rate of .60% of the value of each sub-account's assets attributable to the Policies. The mortality risk NEVLICO assumes is that insureds may live for shorter periods of time than NEVLICO estimated. The expense risk NEVLICO assumes is that NEVLICO's costs of issuing and administering Policies may be more then NEVLICO estimated.

11. The scheduled premiums under a Policy include an additional amount if the insured is in a substandard risk or automatic issue category or if optional fixed insurance benefits have been added to the Policy by rider. If a scheduled Premium is not paid pursuant to the flexibility features of the Policy, 91% of this additional amount will be deducted from the Policy's cash value. The remaining 9% will be collected by NEVLICO out of any unscheduled payments which are made, pursuant to the premium expense charge referred to above.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the 1940 Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Rule 6c–3 of the 1940 Act grants exemptions from numerous provisions of the 1940 Act to separate accounts of life insurance companies that support variable life insurance policies. The exemptions provided by Rule 6c–3 are available only to registered separate accounts whose assets are derived solely from the sale of "variable life insurance contracts" that meet the definition set forth in Rule 6e–2(c)(1) of the 1940 Act and certain advances made by the insurer. The term "variable life insurance contract" is defined by Rule 6e–2(c)(1) of the 1940 Act to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an

initial dollar amount stated in the policy.

A Policy under the Option 1 death benefit, however, will fail to satisfy this requirement if the death benefit has not been otherwise increased to satisfy Federal tax law requirements. In this connection, Applicants note that the proposed amendments to Rule 6e–2 of the 1940 Act would amend Rule 6e–2(c)(1) to require only that the death benefit may vary based on investment experience. The Policy also contains other provisions that are not specifically contemplated by Rule 6e–2. (These provisions relate primarily to flexibility of premium payments.)

Applicants therefore request exemptions from Rule 6e–2(c)(1) and from all sections of the 1940 Act and rules thereunder specified in Rule 6e–2(b) (other than sections 7 and 8(a)), under the same terms and conditions (except as otherwise set forth herein and in the Application) applicable to a separate account that satisfies the conditions set forth in Rule 6e–2(a), to the extent necessary to permit the offer and sale of certain variable life insurance Policies ("Policies") in reliance on Rule 6e–2.

3. Applicants submit that the definition of "variable life insurance contract" in Rule 6e–2(c)(1) of the 1940 Act was drafted at a time when all the variable life insurance policies then contemplated clearly met this definition and that the considerations that led the Commission to grant the exemptions in Rule 6e–2 did not depend in any material way upon the fact that the death benefit, as well as the cash values, varied with investment experience.

4. Section 2(a)(35) of the 1940 Act and Rules 6e–2(b)(1) and (c)(4) thereunder, in pertinent part and in effect, may be read to contemplated that the sales charge for a variable life insurance policy will be deducted from premiums. NEVLICO's deduction of the deferred sales charge may be deemed inconsistent with these provisions. NEVLICO's deferred sales charge may also be deemed to be inconsistent with Rule 6e–2(c)(4) because, in order to facilitate the premium and other flexibility features under a Policy, the deferred sales charge is computed based on the lesser of actual payments made or basic scheduled premiums payable.

5. Section 27(a)(1) of the 1940 Act and Rule 6e–2(b)(13)(i) thereunder could be read to contemplate, in pertinent part and in effect, that the sales charge under the Policy will be deducted from premiums. NEVLICO's deduction of part of its sales charge on a contingent deferred basis may be deemed to be inconsistent with the foregoing provisions.

6. Sections 26(a)(2) and 27(c)(2) of the 1940 Act may be read to require, in pertinent part and in effect, that proceeds of all payments under a Policy be deposited in the Variable Account and that no payment be made from the Variable Account to any Applicant, or any affiliated person thereof, except for bookkeeping and other administrative services. NEVLICO's imposition of the deferred sales charge may be deemed to be inconsistent with the foregoing provisions, to the extent that the deduction could constitute payment for an expense not specifically permitted.

7. Sections 2(a)(32), 27(c)(1) and 27(d) of the 1940 Act, in pertinent part and in effect, prohibit Applicants from selling the Policy unless it is a "redeemable security," defined as entitling an owner of a Policy, upon surrender, to receive approximately his or her proportionate share of the Variable Account's current net assets. Rules 6e–2(b)(12), (b)(13)(iv) and (b)(13)(v) afford exemptions from Section 27(c)(1) of the 1940 Act, and Rules 6e–2(b)(13)(iv) and (b)(13)(v) afford exemptions from Section 27(d) of the 1940 Act, to the extent necessary for cash value to be regarded as satisfying the redemption and sales charge refund requirements of the 1940 Act. However, the exemptions afforded by Rules 6e–2(b)(12), 6e–2(b)(13)(iv) and (b)(13)(v) may not contemplate the deduction of contingent deferred sales and administrative charges. NEVLICO's deduction of the contingent deferred sales charge can be viewed as reducing the proceeds that the owner of a Policy would receive on surrender below the Policy owner's proportionate share of the Variable Account's current net assets.

Although section 2(a)(32) of the 1940 Act does not specifically contemplate the imposition of a sales charge and an administrative charge at the time of redemption, such charges are not necessarily inconsistent with the definition of "redeemable security." Applicants submit that the Policy will be a "redeemable security." The Policy provides for full surrender of the Policy for its net cash value and is expected to provide for partial surrenders of the Policy and partial withdrawals of excess cash value. The prospectus for the Policy will disclose the contingent deferred nature of part of the sales charge and the administrative charge. Accordingly, there will be no restrictions on, or impediment to, surrender that should cause the Policy to be considered other than a redeemable security within the meaning of the 1940 Act and the rules thereunder.

8. Rule 22c–1 adopted pursuant to section 22(c) of the 1940 Act prohibits Applicants from redeeming a Policy except at a price based on the current net asset value of the Policy that is next computed after receipt of the request for full or partial surrender of the Policy. Rule 6e–2(b)(12) of the 1940 Act affords exemptions from Rule 22c–1. However, the rule may not contemplate the deduction of contingent deferred sales charge and administrative charges. NEVLICO's contingent deferred sales charge may be deemed to be inconsistent with the foregoing provisions, to the extent that the sales and administrative charges can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy.

Applicants point out that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interest of the other security holders and (ii) speculative trading practices that are unfair to such holders. The contingent deferred sales charge would in no way have the dilutive effect Rule 22c–1 is designed to prohibit, because a surrendering Policy owner would "receive" no more than an amount equal to the net cash value determined pursuant to the formula set out in his or her Policy and after receipt of his or her request. Furthermore, variable life insurance policies, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, even if they could be so used, the contingent deferred sales charge would discourage, rather than encourage, any such trading.

9. Applicants request exemptions from sections 2(a)(35), 26(a)(2), 27(a) (1) and (3), 27(c)(2) of the 1940 Act and Rules 6e–2(b)(1), (b)(13)(i), (b)(13)(ii) and (c)(4) thereunder, to the extent necessary to permit a contingent deferred sales charge to be deducted, as described herein and in the application, upon surrender, partial surrender, face amount reduction or lapse of a Policy. Applicants also request exemptions from Sections 2(a)(32), 22(c), 27(c)(1) and 27(d) of the 1940 Act and Rules 6e–2(b)(12), (b)(13)(iv), (b)(13)(v) and 22c–1 thereunder to the extent necessary to permit a contingent deferred sales load and a contingent deferred administrative charge to be deducted, as described herein and in the application, upon surrender, partial surrender, face amount reduction or lapse of Policy.

10. Applicants assert that the deduction of part of the sales charge and

the administrative charge as a deferred charge on surrender, partial surrender, face amount reduction or lapse will be advantageous to Policy owners, for several reasons. First, the deferred charge structure has been accepted as an appropriate feature of life insurance products, provides investors a valuable choice and reinforces the intention that the product be held as a long-term investment. Second, the amount of the Policy owner's premium payment that will be allocated to the Variable Account, and be available to earn a return for the Policy owner, will be greater than it would be if the sales and administrative charges were deducted from premiums. Third, Applicants represent that the total dollar amount of sales load under a Policy is no higher than would be permitted, by Rule 6e–2(b)(13), if taken entirely as front-end deductions from premiums under a Policy for which all scheduled premiums have been paid, as well as any additional payments actually made by the Policy owner; and for a Policy owner who does not lapse or surrender in the early Policy years, the dollar amount of sales load is lower than would be permitted if taken entirely as front-end deductions. Similarly, Applicants represent that the total dollar amount of deferred administrative charge under a Policy is no higher than if the charge were taken in full for the first Policy year and is less for Policy owners who do not lapse or surrender prior to the fifteenth Policy year. Fourth, the allocation of a greater amount of the Policy owner's premium to the Variable Account initially reduces the amount at risk upon which the cost of insurance charge is based. If NEVLICO is not permitted to charge a sales and administrative charges in the form of contingent deferred charges and deducts these charges entirely from the premiums, it could be charging persisting Policy owners more than may otherwise be necessary to recover the distribution and issuance costs attributable to such Policy owners. Applicants contend that their charge structure, by contrast, provides greater equity among Policy owners.

11. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 6e–2(b)(13)(iii) thereunder, to the extent necessary to permit deduction from cash value of charges for cost of insurance, substandard risks, automatic issue and incidental insurance benefits, and a minimum death benefit guarantee charge. Applicants represent that their method of deducting these charges is not designed to yield more revenues than if these charges were assessed solely against premiums.

12. Cost of insurance charges will be deducted from cash value on the first day of each Policy month at rates that do not exceed those prescribed in the 1980 CSO Tables. Applicants state that deduction of these charges from cash value is reasonable and in accordance with the practice of most other variable life insurance policies.

13. Applicants represent that the deduction of a portion of the charges for substandard risks, automatic issue and incidental insurance benefits from cash value is also reasonable and appropriate. If all such charges were required to be deducted solely from premiums, it would be necessary for NEVLICO (a) to reduce the premium flexibility under the Policy and/or (b) further limit the classes of insureds for whom the Policy will be available and limit or eliminate the kinds of rider benefits which NEVLICO intends to make available. Applicants argue that these results would be undesirable from the standpoint of purchasers and prospective purchasers of Policies.

14. The minimum death benefit guarantee charge compensates NEVLICO for the risk that NEVLICO assumes in guaranteeing death benefits under the Policies, including the risk that the cash value will not be sufficient to support the guarantees.

15. Applicants submit that Rule 6e–3(T) authorizes deductions from cash value for a minimum death benefit guarantee charge in connection with policies qualified to rely on that rule, conditioned on the life insurer's making certain representations. The proposed amendments to Rule 6e–2 would similarly authorize such deductions from cash value. NEVLICO makes the following representations and undertakings: (a) The level of the minimum death benefit guarantee charge is reasonable in relation to the risks assumed by NEVLICO under the Policy. The methodology used to support this representation is based on an analysis of the pricing structure of the Policies, including all charges, and an analysis of the various risks, including special risks arising out of Policy provisions that allow unscheduled premium payments and, in certain circumstances, skipping premium payments. NEVLICO undertakes to keep and make available to the Commission on request the documents or memoranda used to support this representation; (b) NEVLICO has concluded that: the proceeds from the sales charges may not cover the expected costs of distribution; surplus arising from the minimum death benefit guarantee charge (among other sources) may be used to cover the distribution costs; and there is a reasonable likelihood that the distribution financing arrangement of the Variable Account will benefit the Variable Account and Policy owners. NEVLICO undertakes to keep and make available to the Commission on request a memorandum setting forth the basis of this representation; and (c) the Variable Account will invest only in management investment companies that have undertaken, in the event they should adopt any plan under Rule 12b–1 to finance distribution expenses, to have a board of directors (or trustees, as appropriate), a majority of whom are not interested persons of NEVLICO, formulate and approve such plan.

16. Rule 6e–2(b)(1) of the 1940 Act makes the definition of "sales load" in Rule 6e–2(c)(4) applicable to the Policy. Section 27(a)(1) of the 1940 Act prohibits an issuer of periodic payment plan certificates from imposing a sales load exceeding 9% of the payments to be made on such certificates. Rule 6e–2(b)(13)(i) provides an exemption from section 27(a)(1) to the extent that sales load, as defined in Rule 6e–2(c)(4), does not exceed 9% of the payments to be made on the variable life insurance policy during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured based on the 1958 CSO Table. Rule 6e–2(c)(4), in defining sales load, contemplates the deduction of an amount for the cost of insurance based on the 1958 CSO Table and an assumed investment rate specified in the policy.

17. Applicants request exemptions from section 27(a)(1) of the 1940 Act and Rules 6e–2 (b)(1), (b)(13)(i) and (c)(4) thereunder, to the extent necessary to permit cost of insurance to be calculated, for purposes of testing compliance with Rule 6e–2, based on the 1980 CSO Tables.

18. In establishing Premium rates and determining reserve liabilities for the Policies, NEVLICO also uses the 1980 CSO Tables. Furthermore, the mortality rates reflected in the 1980 CSO Tables more nearly approach the mortality experience which NEVLICO believes will pertain to the Policy.

19. Section 26(a)(1) and section 26(a)(2) of the 1940 Act prohibit Applicants from selling the Policy, unless the Policy is issued pursuant to a trust indenture or other such instrument that designate one or more trustees or custodians, qualified as specified, to have possession of all securities in which NEVLICO and the Variable Account invest.

Section 27(c)(2) of the 1940 Act could be read to prohibit Applicants from selling the Policy unless the proceeds of all purchase payments are deposited with a trustee or custodian as specified. Rule 6e–2(b)(13)(iii) affords an exemption from sections 26(a)(1), 26(a)(2) and 27(c)(2), provided that NEVLICO complies, to the extent applicable, with all other provisions of Section 26 of the 1940 Act as though it were a trustee or custodian for the Variable Account and assuming it meets the other requirements set forth in the rule.

The holding of Fund shares by NEVLICO and the Variable Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument, may be deemed to be inconsistent with the foregoing provisions.

20. Applicants request exemptions from sections 26(a)(1), 26(a)(2) and 27(c)(2) of the 1940 Act and Rule 6e–2(b)(13)(iii) thereunder to the extent necessary to permit the holding of fund shares by NEVLICO and the Variable Account under an open account arrangement, without having possession of share certificates and without a trust indenture or other such instrument.

21. Current industry practice calls for unit investment trust separate accounts, such as the Variable Account, to hold shares of underlying management investment companies in uncertificated form. This practice is thought to contribute to efficiency in the purchase and sale of such shares by separate accounts and to bring about cost savings generally.

22. NEVLICO represents that it will comply with all other applicable provisions of section 26 of the 1940 Act as if it were a trustee or custodian for the Variable Account; will file with the insurance regulatory authority of Delaware an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus of not less than $1,000,000; is examined from time to time by the insurance regulatory authority of Delaware as to its financial condition and other affairs; and is subject to supervision and inspection with respect to its separate account operations.

23. Section 27(e) of the 1940 Act and Rules 27e–1 and 6e–2(b)(13)(vii) thereunder, require a notice of right of withdrawal and refund, on Form N–27I–1 to be provided to Policy owners entitled to a refund of sales load in excess of the limits permitted by Rule 6e–2(b)(13)(v).

24. Applicants request exemptions from section 27(e) of the 1940 Act and Rules 27e–1 and 6e–2(b)(13)(vii) thereunder to the extent necessary to waive the requirements to provide notice to Policy owners of any withdrawal and refund rights contemplated by those provisions.

25. In the context of a declining contingent deferred charge policy where no excess sales load is deducted from premiums, Policy owners have no right to a refund of any excess sales load and requiring delivery of a Form N–27I–1 could confuse Policy owners and, at worse, could encourage a Policy Owner to surrender during the first two Policy years when it may not be in the owner's best interest to do so. An owner of a Policy with a declining deferred sales charge, unlike a front-end loaded policy, does not foreclose his or her opportunity, at the end of the first two policy years, to receive a refund of monies spent. Not only has such an owner not paid any excess load, but also as the deferred charge declines over the life of the Policy he or she may never have to pay it. Encouraging a surrender during the first two Policy years could, in the end, cost such an owner more in total sales load (relative to total premium) than he or she would otherwise pay if the policy, which is designed as a long-term investment vehicle, were held for the period originally intended.

26. Section 27(a)(3) of the 1940 Act generally provides, with respect to periodic payment plan certificates, that the amount of sales load deducted from any one of the first 12 monthly payments, or their equivalent, cannot exceed proportionately the amount deducted from any such payment, and that the amount deducted from any subsequent payment cannot exceed proportionately the amount deducted from any subsequent payment. Rule 6e–2(b)(13)(ii) grants an exemption from section 27(a)(3) of the 1940 Act, provided that the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment, unless the increase is caused by the grading of cash value into reserves or reductions in the annual cost of insurance.

27. Section 27(a)(3) of the 1940 Act and Rule 6e–2(b)(13)(ii) thereunder could be interpreted to be inconsistent with any contingent deferred sales charge. Also, Rule 6e–2 was adopted at a time when less flexibility regarding premium payments and other policy features was offered than subsequently has been permitted. Because of this, Applicants request an exemption from those provisions, to the extent necessary to permit deduction of the front-end sales charge and deduction of the contingent deferred sales charge on surrender, partial surrender, face amount reduction or lapse of a Policy.

28. The amount of sales charge deducted from premium payments under the Policy is 5.5%. NEVLICO intends to waive the portion of the sales charge otherwise deducted from each scheduled premium on a Policy after the fifteenth Policy year, but not on unscheduled payments. The continuation of this waiver, however, is not contractually guaranteed, and NEVLICO may withdraw or modify the waiver at any time. Thus, it is possible that the waiver could apply at some times with respect to a given Policy and not a subsequent time with respect to the same Policy. It is also possible after the fifteenth Policy year for an unscheduled payment to be made, subject to the 5.5% front-end sales load, subsequent to a scheduled premium not subject to the 5.5% front-end sales load, with respect to the same Policy. Because section 27(a)(3) of the 1940 Act and rule 6e–2(b)(13)(iii) thereunder appear to prohibit both of those scenarios, Applicants also request an exemption from those provisions to the extent necessary to permit them to waive the sales charge deducted from scheduled premiums under the circumstances described herein.

29. Applicants represent that they do not believe the sales charge structure violates the "stair-step" provisions of the 1940 Act and rules thereunder. The deferred sales charge, if calculated as a percentage of scheduled premiums due each year, decreases from year to year. The sales charge imposed against unscheduled payments, when analyzed separately from the sales charge imposed against scheduled premiums, complies with the "stair-step" requirements. Moreover, if NEVLICO does not waive the 5.5% charge on scheduled premiums after the fifteenth Policy year (and thereafter reinstate the charge), the sales charge imposed against schedule premiums, when analyzed separately from the sales charge imposed against unscheduled payments, would also comply with the "stair-step" requirements. The continuation of the sales charge against unscheduled payments reflects the fact the NEVLICO may incur greater distribution costs in connection with unscheduled payments than scheduled Premiums after the fifteenth Policy year Applicants submit that the sales charge

design of the Policy is not unduly complicated and will clearly be of benefit to those for whom it applies. Full disclosure of the sales charge waiver will be contained in the prospectus pertaining to the Policy. Moreover, the sales charges are not designed to generate more revenues from later payments than from earlier payments.

Applicants' Conclusion

Applicants submit, for all of the reasons stated herein, and in the Application, that their requests for exemptions meet the standards set out in section 6(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-1582 Filed 1-22-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25736]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 15, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 8, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric System, et al. (70-7765)

Granite State Electric Company ("Granite"), Massachusetts Electric Company, Narragansett Energy Resources Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Energy Incorporated, New England Hydro Finance Company, Inc., New England Hydro-Transmission Electric Company, Inc., New England Hydro-Transmission Corporation, New England Power Company and New England Power Service Company ("NEPSCO"), subsidiaries of New England Electric System ("NEES"), a registered holding company, all of Westborough, Massachusetts, and NEES, Westborough, Massachusetts, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 42, 43, 45 and 50(a)(5) thereunder.

By orders dated September 21, 1990, January 7, 1991 and March 3, 1992 (HCAR Nos. 25156, 25238 and 25483, respectively), the Commission, among other things, authorized the Applicants, through October 31, 1993, to make short-term borrowings from the NEES Money Pool ("Money Pool") and/or banks, including authority for NEPSCO to make such borrowings in amounts not exceeding $10 million outstanding at any one time. In order to fund certain obligations in connection with providing post-retirement health care and life insurance ("PBOP") to its retired employees, NEPSCO now proposes to increase its short-term borrowing authority in outstanding amounts not exceeding $20 million.

NEPSCO currently provides PBOP to its retired employees. Under the Statement of Financial Accounting Standards No. 106 issued by the Financial Accounting Standards Board in 1990, beginning in 1993, NEPSCO is required to account for its PBOP expense on an accrual basis rather than the cash basis currently used by NEPSCO. In conjunction with its compliance with this requirement, NEPSCO will participate in and make contributions to: (1) Voluntary employee benefit association trusts to be established by Granite and (2) subaccounts to be established under the existing pension plans, to externally fund its PBOP obligation as permitted under the tax code. NEPSCO expects to make the initial PBOP contribution prior to the end of 1992 and will make periodic contributions thereafter.

The timing and amount of these PBOP contributions will differ from the timing and amount of NEPSCO's related charges under its service agreements. Consequently, NEPSCO's current $10 million short-term borrowing authority is expected to be inadequate to provide for these periodic contributions to PBOP trusts and subaccounts and its regular short-term borrowing needs. NEPSCO, therefore, requests authorization to increase its short-term borrowing authority to an amount not to exceed $20 million outstanding at any one time through October 31, 1993, under the same terms and conditions as previously authorized.

New Orleans Public Service Inc. (70-8089)

New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana, a public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a declaration under sections 9(a), 10 and 12(c) of the Act and rule 42 thereunder.

NOPSI intends to issue and sell under the exemptive provisions of rule 52, from time to time through December 31, 1994, one or more new series of its preferred stock having an aggregate par value not to exceed $20 million ("New Preferred Stock").

The terms of one or more series of the New Preferred Stock may include provisions for mandatory or optional redemption at various redemption prices and may include various restrictions on optional redemption for a given number of years. NOPSI may include provisions for a sinking fund for any series of New Preferred Stock designed to redeem annually, commencing a specified number of years after the first day of the calendar month in which such series is issued, at the par value per share of such series plus accumulated dividends, a number of shares equal to a given percentage of the total number of shares of such series, and may further provide for NOPSI having a noncumulative option to redeem annually at such price an additional number of shares up to a given percentage of the total number of shares of such series. The terms of the sinking fund may also permit NOPSI to purchase shares and credit these shares against the sinking fund requirement. In addition, NOPSI may "sink" New Preferred Stock in amounts equal to the sinking fund option by purchasing amounts equal to such annual option at prices equal to or less than the optional sinking fund redemption price.

NOPSI requests authorization for the period during which any shares of the New Preferred Stock are outstanding: (i) To redeem shares of the New Preferred

Stock in accordance with any mandatory or optional redemption provisions established at the time of initial issuance thereof; and (ii) to redeem (or purchase in lieu of redemption) shares of New Preferred Stock in accordance with the sinking fund provisions established at the time of initial issuance thereof.

NOPSI further proposes to acquire, from time to time prior to December 31, 1994, certain of its outstanding securities, in whole or in part, prior to their respective maturities: (i) Not to exceed $135 million aggregate principal amount of one or more series of its outstanding first mortgage bonds and/or general and refunding mortgage bonds ("G&R Bonds"); and (ii) not to exceed $6.5 million aggregate par value of one or more series of its outstanding preferred stock (such first mortgage bonds, G&R Bonds and preferred stock, collectively, the "Outstanding Securities").

NOPSI may choose to acquire Outstanding Securities by means of tender offer, negotiated, open market or other forms of purchase or otherwise (subject to any limitations or conditions on acquisition of particular series) if such means of acquisition are more beneficial to NOPSI than redemption at the applicable redemption price. If any Outstanding Securities are acquired by means of tender offer, NOPSI may offer to acquire specified amounts of a particular series or an entire series of such Outstanding Securities.

NOPSI states that it may use the proceeds from the sale of New Preferred Stock, or the sale of up to $145 million of G&R Bonds (contemplated to be issued and sold through December 31, 1994 under rule 52), together with or as an alternative to, other available funds, to acquire Outstanding Securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1721 Filed 1–22–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1755]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Tuesday and Wednesday, February 16–17 1993 at 8:30 a.m. at the Hyatt Regency, Coral Gables, Florida. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c) (1) and (4), it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Patricia Richards, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 703/204–6210.

Dated: January 11, 1993.

Clark Dittmer,

Director of the Diplomatic Security Service.

[FR Doc. 93–1700 Filed 1–22–93; 8:45 am]

BILLING CODE 4710–24–M

Bureau of International Communications and Information Policy

[Public Notice 1757]

Preparatory Meeting for U.S. Participation in International Telecommunication Union Regional Development Conference for Asia and the Pacific (AS–RDC); Notice of Meeting

The Department of State/CIP and the Department of Commerce/NTIA announce that the initial meeting of the Working Group to prepare for U.S. participation in the International Telecommunication Union (ITU) Development Conference for Asia and the Pacific (AS–RDC) will be held on Tuesday, February 2, 1993 from 1:30 p.m. to 3 p.m. in room 3519, Department of State, 2201 "C" Street, NW., Washington, DC 20520.

The ITU AS–RDC is scheduled for May 10–15, 1993 in Singapore. The U.S. will be preparing proposals addressing the principal topics for consideration in the following Conference structure:

Committee A—Role of telecommunications, policy and development strategies. Investment considerations, financial strategies, and international cooperation.

Committee B—Networks and services, development of telecommunications in rural areas.

Committee C—Organization and management, human resources management and development. International and regional cooperation.

The purpose of this initial meeting will be to review the Conference agenda and to establish a process for preparing U.S. positions.

Mr. Richard C. Beaird, Senior Deputy Coordinator, Bureau of International Communications and Information Policy, U.S. Department of State, and Ms. Jean Prewitt, Associate Administrator, National Telecommunications and Information Administration, U.S. Department of Commerce, will chair the meeting.

Members of the general public may attend the meeting and participate in the Working Group, subject to the instructions of the Chairpersons. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled, and individual passes are required for each attendee. Entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should so advise the office of Mr. D. Clark Norton, CIP, room 5310, Department of State, Washington, DC 20520; telephone (202) 647–5220, FAX (202) 647–0158. They must provide their name, title, company name, social security number, and date of birth. All attendees must use the "C" Street entrance to the building.

Dated: January 15, 1993.

D. Clark Norton,

Senior Counselor, Bureau of International Communications and Information Policy.

[FR Doc. 93–1558 Filed 1–22–93; 8:45 am]

BILLING CODE 4710–45–M

Office of the Historian

[Public Notice 1756]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet February 18–19, 1993, at 9:30 a.m. in the Department of State.

The Committee will meet in open session from 9:30 a.m. on the morning of Thursday, February 18, 1993, until noon of that day, in room 1207, Main State. The remainder of the Committee's sessions, until the end of this session on Friday, February 19, at 4 p.m., will be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). It has been determined that discussions during these portions of the meeting will involve consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities will be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC, 20520, telephone (202) 663-1123.

Dated: January 15, 1993.

William Z. Slany,

Executive Secretary.

[FR Doc. 93-1563 Filed 1-22-93; 8:45 am]

BILLING CODE 4710-11-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Certification of Relinquishment of Rights
(2) *Form(s) submitted:* G-88
(3) *OMB Number:* 3220-0016
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* On occasion
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 3,600
(9) *Total annual responses:* 3,600
(10) *Average time per response:* .1 hour
(11) *Total annual reporting hours:* 360
(12) *Collection description:* Under section 2(e)(2) of the Railroad Retirement Act, the Railroad Retirement Board must have evidence that an applicant for an age and service, spouse, or divorced spouse annuity has relinquished rights to return to the service of a railroad employer. The collection provides the means for obtaining this evidence.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93-1699 Filed 1-22-93; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Miles City, MT; Notice of Closing

Notice is hereby given that on or about March 3, 1993, the flight service station at Miles City, Montana, will be closed. Services to the aviation public formerly provided by this facility will be provided by the automated flight service station in Great Falls, Montana. This information will be reflected in the FAA Organization Statement the next time it is issued. Sec. 313(a) of Federal Aviation Act of 1958, as amended, 72 Stat. 752; 49 U.S.C. App. 1354(a).

Issued in Seattle, Washington, on January 26, 1993.

Frederick M. Isaac,

Regional Administrator, Northwest Mountain Region.

[FR Doc. 93-1669 Filed 1-22-93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Schenectady County, New York

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge/highway project in Schenectady County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616 or Richard A. Maitino, Regional Director, New York State Department of Transportation, Region One, 84 Holland Avenue, Albany, New York 12208, Telephone: (518) 474-6178.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an Environmental Impact Statement (EIS) on a proposal to provide a Mohawk River crossing immediately west of the City of Schenectady in Schenectady County. The proposed project involves the construction of a new bridge that will span the Mohawk River to connect NY Route 5 in the Town of Glenville will the New York State Thruway/Interstate Route 890/NY Route 5S Interchange in the Town of Rotterdam. This project is considered necessary to alleviate existing traffic capacity deficiencies and to facilitate economic growth.

In addition to the do-nothing alternative, alternatives under consideration address the following options: (1) Bridge orientation; (2) number of lanes; (3) at grade or grade separated intersection with Route 5.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Also planned are early coordination and exchanges of information with public and private agencies through public information meetings, direct requests to other agencies to become cooperating agencies, and early notification and solicitation with entities affected by the proposed action through the clearinghouse process. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comments. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal program and activities apply to this program.)

Issued on: January 12, 1993.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 93–1701 Filed 1–22–93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Westmoreland County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Change from Environmental Impact Statement to Environmental Assessment.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental assessment will be prepared instead of an environmental impact statement for a proposed project in Westmoreland County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone (717) 782–3411, or William L. Beaumariage, P.E., District Engineer, Pennsylvania Department of Transportation, P.O. Box 459, North Gallatin Avenue Extension, Uniontown, Pennsylvania 15401, Telephone (412) 439–7315.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PADOT), will prepare an Environmental Assessment (EA) instead of an Environmental Impact Statement (EIS) on a proposal to improve traffic safety on Traffic Route 981, State Route 1040, and State Route 1069 in Bell Township. A Notice of Intent to prepare an EIS for the project was published in the **Federal Register** on September 16, 1985. Preliminary environmental and engineering studies have shown that the proposed project will have no significant impacts, and an EA will be prepared accordingly. The proposed project is approximately 1.7 to 2.5 miles in length and consists of a 2-lane relocation of Traffic Route 981, State Route 1040, and State Route 1069 around the communities of Salina and Tinsmill. The project begins just west of Salina near the intersection of Traffic Route 819 and State Route 1040 and extends to the east, ending at the intersection of Traffic Route 981 and Traffic Route 156.

Three build alternatives will be evaluated in the EA for the project. Two build alternatives would be south of Salina and north of Tinsmill. The third build alternative would be south of Tinsmill. All three build alternatives would involve relocation of the existing highways (Traffic Route 981, State Route 1040, and State Route 1069). A Do-Nothing alternative will also be considered. For each alternative under study, the following areas will be investigated: traffic, preliminary design and cost, air, noise, socioeconomics and land use, historic and archaeological resources, water resources, floodplains, stream modifications, wetlands, vegetation and wildlife, prime or unique agricultural lands, energy, visual impacts, construction impacts, and mineral resources. A Plan of Study (POS) and the opportunity for a Scoping Field View was sent to the appropriate federal, state, and local agencies in September 1985. Public meetings for the project were held in October 1985, February 1989, and December 1992. The EA for the project will be made available for agency and public review and comment prior to a public hearing. EA availability will be advertised in 3 local newspapers, and the EA will be available at the Bell Township Municipal Building in the project area. The EA will be circulated in the winter of 1993. Based on the impacts of the alternatives under study, this project is likely to result in a Finding of No Significant Impact.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA or PADOT at the addresses noted above.

(Catalog of Federal Document Assistance Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Manuel Marks,

Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 93–1703 Filed 1–22–93; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 92–53; Notice 2]

Determination That Nonconforming 1991 BMW 730i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 BMW 730i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 BMW 730i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 BMW 735i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1991 BMW 730i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 7, 1992 (57 FR 46237) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #24 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1991 BMW 730i is substantially similar to a 1991 BMW 735i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1991 BMW 730i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 15, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-1610 Filed 1-22-93, 8:45 am]

BILLING CODE 4910-59-M

Uniform Emergency Medical Services (EMS) Pre-Hospital Data Conference

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of Uniform EMS Pre-Hospital Data Conference.

SUMMARY: This notice announces a forthcoming conference to promote development of a national consensus regarding EMS pre-hospital data, including core and supplemental elements, and their definitions and related issues. This notice is to advise interested organizations and individuals of the procedure to be followed to attend the conference.

DATES: Uniform EMS Prehospital Data Conference, August 16-18, 1993, Ritz Carlton, Pentagon City, Arlington, Virginia. Further details on Conference arrangements and agenda to be provided by letter.

FOR FURTHER INFORMATION CONTACT: Monica Gray; Project Manager, NHTSA Contract DTNH22-92-C-05314; Bright Associates, Inc.; 4600 Duke Street, suite 420; Alexandria, Virginia 22304; Phone (703) 823-6522.

SUPPLEMENTARY INFORMATION: The National Highway Traffic Safety Administration (NHTSA), in consultation with other interested Federal agencies and non-governmental interest groups, will convene a Uniform EMS Pre-hospital Data Conference on August 16-18, 1993 at the Ritz Carlton Hotel in Arlington, Virginia.

The primary objective of the Conference is to reach consensus on the identification and definition of core and supplemental data elements obtained during pre-hospital EMS operations. In addition, the Conference will develop consensus on several other issues related to the collection, management, and use of pre-hospital EMS data.

EMS pre-hospital data is necessary for the effective management of EMS ambulance services. This data is also used for patient assessment and for determining the need for and short term effects of treatments applied to restore vital functions and to arrest the progress of trauma preparatory to transportation to definitive medical care. In addition, the data has applications for initial hospital assessment and treatment of all types of emergency medical patients. When linked with other prehospital data on the incidence of medical emergencies, and with clinical data on medical treatment, and outcome, such data is also valuable for research, epidemiological studies, and development of prevention programs for trauma and other medical emergencies from all causes. Effective utilization of data obtained during pre-hospital EMS operations requires consensus on the definition of the data.

The Conference will focus on developing consensus on the identification of a set of core and supplemental data elements and criteria for addition of new data elements to the data set.

To facilitate the above objective, the Conference will be administered in accordance with "*Guidelines for the Selection and Management of Consensus Development Conferences*" developed by the Office of Medical Applications of Research of the National Institutes of Health.

The purpose of this notice is to invite all organizations, agencies, interest groups, and individuals who wish to participate in the Conference to send a letter request or to telephone for further information and Conference Registration material to: Monica Gray: EMS-MIS Project Manager, Bright Associates, Inc.; 4600 Duke Street, suite 420; Alexandria, Virginia 22304; Telephone Number (703) 823-6522.

Participants in the Conference must be pre-registered in order to allow time for forwarding, and review of issue papers, and preparation for the Conference. Participants are expected to pay for their own travel and lodging and to make their own reservations at the Conference hotel. Provisions have been made and special hotel rates have been negotiated to accommodate all participants at the Conference hotel. There will be a prepaid registration fee of $150.00 for the Conference. The fee includes continental breakfast on all three days of the conference, working lunches on two days of the Conference and other Conference amenities.

More information on the Conference and registration material will be supplied by the end of February 1993 to all interested parties by Bright Associates Inc. with whom NHTSA has contracted for assistance on this Conference.

The number of Conference participants will be limited to the first 250 paid Conference Registrants.

Following receipt of completed registration forms and fee payment, an invitation will be sent to each registered participant together with detailed information on the Conference Agenda and issue papers for review and evaluation from Conference participation.

Issued on: January 19, 1993.

Michael B. Brownlee,

Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

[FR Doc. 93-1673 Filed 1-22-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 15, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0987.
Regulation ID Number: LR–168–86 NPRM, LR–129–86 TEMP, Notice 88–92, 1988–2 C.C. 414.
Type of Review: Extension.
Title: Capitalization and Inclusion in Inventory Costs of Certain Expenses.
Description: This reporting requirement is necessary to determine whether taxpayers comply with the cost allocation rules of section 263A and with the requirements for changing their methods of accounting. The information will be used to verify taxpayer's changes in methods of accounting.
Respondents: Farms, Businesses or other-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 10,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 11 hours.
Frequency of Response: Other (In the year of change).
Estimated Total Reporting Burden: 110,000 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–1591 Filed 1–22–93; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 14, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: On January 14, 1993, the Department of the Treasury requested a less than 60-day review of the information collection listed below in order to meet a January 19, 1993 deadline. All public comments must be received by close of business January 18, 1993.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Knowledge and Attitudes Survey for the Gang Resistance Education and Training G.R.E.A.T. Program
Description: Student survey to assist in the assessment of a program designed to educate middle school students on the dangers of joining street gangs. The program is in the Phoenix, Arizona and Albuquerque, New Mexico areas. The survey will also be conducted in Austin, Texas.
Respondents: Individuals or households
Estimated Number of Respondents: 2,205
Estimated Burden Hours Per Respondent: 1 hour, 45 minutes
Frequency of Response. Other: Arizona and New Mexico, 2 times; Austin, 1 time
Estimated Total Reporting Burden: 7,009 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–1593 Filed 1–22–93; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

January 15, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0190
Form Number: IRS Form 4876–A
Type of Review: Extension
Title: Election to be Treated as an Interest Charge DISC
Description: A domestic corporation and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A is used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hours, 4 minutes
Learning about the law or the form—1 hour, 5 minutes
Preparing and sending the form to the IRS—1 hour, 13 minutes
Frequency of Response: Other (one-time selection)
Estimated Total Reporting Burden: 6,360 hours

OMB Number: 1545–0814
Regulation ID Number: EE–44–78 Final
Type of Review: Extension
Title: Cooperative Hospital Service Organizations
Description: This regulation establishes the rules for cooperative hospital service organizations which seek tax-exempt status under section 501(e) of the Internal Revenue Code. Such an organization must keep records in order to show its cooperative nature and to establish compliance with other requirements in section 501(c).
Respondents: Non-profit institutions
Estimated Number of Recordkeepers: 1
Estimated Burden Hours Per Recordkeeper: 1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 1 hour
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer. Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer

[FR Doc 93–1733 Filed 1–22–93; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 15, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0141
Form Number: ATF F 2635 (5620.8)
Type of Review: Extension
Title: Claim—Alcohol, Tobacco and Firearms Taxes
Description: ATF F 2635 (5620.8)
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 10,000
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion, Monthly, Quarterly
Estimated Total Reporting Burden: 10,000 hours

OMB Number: 1512–0195
Form Number: ATF F 5110.25
Type of Review: Extension
Title: Application for Operating Permit Under 26 U.S.C. 5171(d)
Description: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF regional officer personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 80
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 20 hours

OMB Number: 1512–0386
Form Number: ATF REC 7570/1
Type of Review: Extension
Title: Records of Acquisition and Disposition—Registered Importers of Arms, Ammunition and Implements of War on the U.S. Munitions Import List
Description: These records of items that are listed on the U.S. Munitions List are used to account for the items by the Registered Import and this Bureau in investigation to insure compliance with the Federal Law.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 50
Estimated Burden Hours Per Recordkeeper: 5 hours
Frequency of Response: Other
Estimated Total Reporting Burden: 250 hours
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 93–1734 Filed 1–22–93; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

January 14, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0007.
Form Number: SF 1199A.
Type of Review: Extension.
Title: Direct Deposit Form.
Description: The Direct Deposit Sign-Up Form is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. This information is used to route the Direct Deposit payment to the correct account at the correct financial institution. It identifies persons who have processed the form.
Respondents: Individuals or households, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions
Estimated Number of Respondents: 3,850,000
Estimated Burden Hours Per Response: 10 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 654,500 hours
Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 93–1595 Filed 1–22–93; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

January 15, 1993

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Leadership Effectiveness Analysis
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal agencies or employees
Estimated Number of Respondents: 2,100
Estimated Burden Hours Per Respondent: 45 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,575 hours.

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Self-Assessment—SES Candidate Development Program
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal agencies or employees
Estimated Number of Respondents: 300
Estimated Burden Hours Per Respondent: 4 hours
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,200 hours.

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Supervisor Assessment—SES Candidate Development Program
Description: The data collected from this form is used by the executive panels responsible for screening internal and external applicants for the SES Candidate Development Program.
Respondents: Individuals or households, Federal agencies or employees
Estimated Number of Respondents: 300
Estimated Burden Hours Per Respondent: 5 hours
Frequency of Response: Annually
Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–1592 Filed 1–22–93; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

January 14, 1993

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1141
Notice Number: Notice 89–102
Type of Review: Extension
Title: Treatment of Acquisition of Certain Financial Institutions; Tax Consequences of Federal Financial Assistance.
Description: Section 597 of the Internal Revenue Code provides that the Secretary shall provide guidance concerning the tax of Federal financial assistance received by qualifying institutions. These institutions may defer payment of Federal income tax attributable to the assistance. Required information identifies deferred tax liabilities.
Respondents: Businesses or other-profit
Estimated Number of Respondents: 250
Estimated Burden Hours Per Respondent: 30 minutes
Frequence of Response: Annually
Estimated Total Reporting Burden: 125 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–1594 Filed 1–22–93; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 14
Monday, January 25, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, January 26, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Final amendments to Parts 303 and 325 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices of Acquisition of Control," and "Capital Maintenance," respectively, which further implement the prompt corrective action provisions in section 38 of the Federal Deposit Insurance Act, as added by section 131 of the Federal Deposit Insurance Corporation Improvement Act of 1991, and the prompt corrective action provisions of the Corporation's capital maintenance regulations, as well as make certain other technical amendments to those regulations.

Memorandums and resolutions re: Solicitation of public comment on (1) the conducting of a Pilot Reinsurance Program, and (2) the cost, feasibility, and privacy implications of tracking deposits.

Memorandum re: Corporation's Strategic Plan.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should contact Llauger Valentin, Equal Employment Opportunity Manager, at (202) 898-6745 (Voice); (202) 898-3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: January 19, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-1753 Filed 1-21-93; 9:08 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, January 26, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate activities.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-6757.

Dated: January 19, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-1754 Filed 1-21-93; 9:08 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, January 19, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the Corporation's corporate activities.

Recommendation concerning an administrative enforcement proceeding.

Matters relating to the Corporation's assistance agreements with insured banks.

Matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift

Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: January 19, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-1811 Filed 1-21-93; 10:27 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), U.S.C. 552B:

DATE AND TIME: January 27, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 972nd Meeting—January 27, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
  Project No. 10550–002, North Side Canal Company
CAH–2.
  Project Nos. 1962–015 and 1988–020, Pacific Gas and Electric Company, Sacramento Municipal Utility District, the Northern California Power Agency, and the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California
CAH–3.
  Omitted
CAH–4.
  Docket No. EL87–5–001, Island Power Company
  Project No. 11161–001, Hanalei Hydropower, Inc.
CAH–5.
  Project No. 9401–008, Halecrest Company
  Project No. 8595–002, Energy Storage Corporation
  Project No. 9105–002, Esperanza Power Limited Partnership
CAH–6.
  Project No. 1473–006, Granite County, Montana
CAH–7.
  Docket No. UL87–26–006, Mid-State Service Company

Consent Agenda—Electric

CAE–1.
  Docket No. ER93–130–000, New England Power Company
CAE–2.
  Docket No. ER93–251–000, Wisconsin Electric Power Company
CAE–3.
  Docket Nos. ER93–59–000, ER93–65–000 and EL91–29–000, Southern Companies
CAE–4.
  Docket No. EG93–5–000, Nevada Sun-Peak Limited Partnership
CAE–5.
  Docket No. EL93–1–001, Kramer Junction Company, Harper Lake Company VIII, and HLC IX Company
CAE–6.
  Docket No. ER92–809–001, Illinois Power Company
CAE–7.
  Omitted
CAE–8.
  Docket No. QF88–85–004, LG&E-Westmoreland Hopewell
CAE–9.
  Docket Nos. EL84–15–000, Kentucky Utilities Company
CAE–10.
  Docket Nos. ER86–562–006, ER87–122–004 and ER91–149–004, Boston Edison Company

Consent Agenda—Oil and Gas

CAG–1.
  Docket No. RP93–53–000, Carnegie Natural Gas Company
CAG–2.
  Docket No. TA93–1–18–000, Texas Gas Transmission Corporation
CAG–3.
  Docket No. TM93–3–18–000, Texas Gas Transmission Corporation
CAG–4.
  Docket Nos. TQ93–3–21–000 and TM93–8–21–000, Columbia Gas Transmission Corporation
CAG–5.
  Docket Nos. RP92–214–002 and RS92–60–005, El Paso Natural Gas Company
CAG–6.
  Docket No. RP93–59–000, High Island Offshore System
CAG–7.
  Docket No. RP93–61–000, U–T Offshore System
CAG–8.
  Docket No. RP93–18–000, Questar Pipeline Company
CAG–9.
  Docket Nos. RP93–62–000 and RS92–15–000, Equitrans, Inc.
CAG–10.
  Docket No. RP93–55–000, Trailblazer Pipeline Company
CAG–11.
  Docket No. RP93–48–000, Northwest Pipeline Corporation
CAG–12.
  Docket No. RP85–39–009, Wyoming Interstate Company, Ltd.
CAG–13.
  Docket No. RP93–51–000, Northwest Pipeline Corporation
CAG–14.
  Omitted
CAG–15.
  Docket Nos. RP92–166–004, 005 and 007, Panhandle Eastern Pipe Line Company
CAG–16.
  Omitted
CAG–17.
  Docket No. RM87–5–012, Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines
  Docket No. CP87–238–003, Ozark Gas Transmission System
CAG–18.
  Docket Nos. RP93–20–003 and RP91–166–020, Northwest Pipeline Corporation
CAG–19.
  Docket No. RP93–15–001, Southern Natural Gas Company
CAG–20.
  Docket No. RP92–185–004, El Paso Natural Gas Company
CAG–21.
  Docket No. RP92–166–008, Panhandle Eastern Pipe Line Company
CAG–22.
  Docket No. GT93–6–001, Texas Eastern Transmission Corporation
CAG–23.
  Docket No. RP92–235–001, United Gas Pipe Line Company
CAG–24.
  Docket No. RP92–166–006, Panhandle Eastern Pipe Line Company
CAG–25.
  Docket Nos. RP91–214–001 and RS92–60–005, El Paso Natural Gas Company
CAG–26.
  Docket No. RP91–143–000, Great Lakes Gas Transmission Limited Partnership
CAG–27.
  Docket Nos. TQ89–1–46–040, 025, 026, 005, RP86–165–000, *et al.*, RP86–166–000, *et al.*, and CP92–639–000, Kentucky West Virginia Gas Company
  Docket No. CP92–640–000, Columbia Gas Transmission Corporation
  Docket No. CP92–641–000, Inland Gas Company
CAG–28.
  Docket Nos. RP90–109–000, 006, RP87–62–014 and RP86–148–009 (Phase I), Pacific Gas Transmission Company
CAG–29.
  Docket Nos. IS87–36–000 and OR92–4–000, Endicott Pipeline Company
CAG–30.

Docket Nos. IS92–25–000 and 001, Amoco Pipeline Company

CAG–31.

Docket No. RM93–9–000, Annual Charge Adjustment Mechanism

CAG–32.

Docket No. RS93–87–004, Transwestern Pipeline Company

CAG–33.

Docket Nos. RP93–6–001 and RS92–75–001, Paiute Pipeline Company

CAG–34.

Docket Nos. RP93–14–002, RS92–28–004, and CP93–77–000, Algonquin Gas Transmission Company

CAG–35.

Docket Nos. RP84–82–012, RP92–164–005 and RP92–97–000, Tarpon Transmission Company

CAG–36.

Docket No. RM92–9–001, Regulations Governing Blanket Marketer Sales Certificates

CAG–37.

Docket No. CP90–687–008, Transcontinental Gas Pipe Line Corporation

CAG–38.

Docket No. CP91–2704–003, Blue Lake Gas Storage Company

Docket No. CP91–2705–002, ANR Pipeline Company

Docket No. CP91–2730–002, ANR Storage Company

CAG–39.

Omitted

CAG–40.

Docket Nos. CP89–460–001, 003, 006, 007, 008, 009, CP90–1–000, 002 and 003, Pacific Gas Transmission Company

CAG–41.

Docket Nos. CP93–57–000, RS92–82–000 and CP92–189–001, Superior Offshore Pipeline Company

Docket No. CP93–47–000, United Gas Pipe Line Company

Docket No. CP76–304, Transcontinental Gas Pipe Line Corporation

CAG–42.

Docket No. CP92–504–001, Arkla Energy Resources, a division of Arkla, Inc. and Arkla Energy Resources Company

CAG–43.

Docket No. CP88–570–007, Mobile Bay Pipeline Projects

Docket No. CP87–415–005, Florida Gas Transmission Company and Southern Natural Gas Company

Docket No. CP88–437–003, Tennessee Gas Pipeline Company

Docket No. CP89–464–004, Florida Gas Transmission Company, Southern Natural Gas Company, and Tennessee Gas Pipeline Company

Docket No. CP89–511–003, Texas Eastern Transmission Corporation and ANR Pipeline Company

Docket No. CP89–512–003, Texas Eastern Transmission Corporation

Docket No. CP89–513–003, Southern Natural Gas Company

Docket No. CP89–523–003, Transcontinental Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, and ANR Pipeline Company

Docket No. CP89–517–003, Southern Natural Gas Company

Docket No. CP89–522–004, Transcontinental Gas Pipe Line Corporation, Florida Gas Transmission Company, Tennessee Gas Pipeline Company, and Texas Eastern Transmission Corporation

Docket No. CP88–474–003, Texas Eastern Transmission Corporation

Docket No. CI91–16–002, Shell Gas Pipeline Company

CAG–44.

Docket No. CP92–233–003, El Paso Natural Gas Company

CAG–45.

Omitted

CAG–46.

Docket No. CP92–242–000, Northern Natural Gas Company

CAG–47.

Docket No. CP92–563–000, Williams Natural Gas Company

CAG–48.

Docket No. CP92–598–000, Transcontinental Gas Pipe Line Corporation

CAG–49.

Docket No. CP93–43–000, Colorado Interstate Gas Company

CAG–50.

Docket No. CP88–319–001, CNG Transmission Corporation

CAG–51.

Docket No. CP92–448–000, ANR Pipeline Company

CAG–52.

Omitted

CAG–53.

Docket No. TM91–6–37–001, Northwest Pipeline Corporation

CAG–54.

Docket No. RP93–57–000, El Paso Natural Gas Company

Hydro Agenda

H–1.

Reserved

Electric Agenda

E–1.

Docket Nos. EC92–21–000 and ER92–806–000, Entergy Services, Inc. and Gulf States Utilities Company. Order on proposed merger and proposed rates.

E–2.

Docket Nos. ER92–365–001, Entergy Services, Inc. Order on rehearing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.

Reserved

II. Restructuring Matters

RS–1.

Docket No. RS92–87–003, Transwestern Pipeline Company. Order on Order No. 636 compliance filing.

RS–2.

Docket No. RS92–3–000, Arkla Energy Resources, a division of Arkla, Inc. Order on Order No. 636 compliance filing.

RS–3.

Docket No. RS92–58–000, Caprock Pipeline Company. Order on Order No. 636 compliance filing.

RS–4.

Docket No. RS92–8–000, Northern Natural Gas Company. Order on Order No. 636 compliance filing.

RS–5.

Docket No. RS92–1–000, ANR Pipeline Company. Order on Order No. 636 compliance filing.

III. Producer Matters

PF–1.

Reserved

IV. Pipeline Certificate Matters

PC–1.

Omitted

PC–2.

Docket No. CP91–1925–001, Southwestern Glass Company, Inc. v. Arkla Energy Resources, a Division of Arkla, Inc. Order on complaint alleging undue discrimination.

P–3.

Docket No. CP93–75–000, Sunrise Energy Company v. Transwestern Pipeline Company. Order on complaint alleging undue discrimination.

Dated: January 19, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1888 Filed 1–21–93; 3:03 pm]

BILLING CODE 6717–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, January 27, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1774 Filed 1–21–93; 9:09 am]

BILLING CODE 6210–01–M

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday January 28, 1993; 9:00 a.m. to 5:30 p.m.

LOCATION: 1550 M Street, NW. (Conference Room, First Floor), Washington, DC.

STATUS: (Open Session)—portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub Law. 98–525.

AGENDA: Approval of minutes of the Fifty-Sixth Meeting of the Board of Directors; Chairmans Report; Presidents Report; Program Reports;

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: 202/457–1700.

Dated: January 19, 1993.

Bernice J. Carney,

Director, Office of Administration, United States Institute of Peace.

[FR Doc. 93–1775 Filed 1–21–93; 9:10 am]

BILLING CODE 3155-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT3-5448; FRL-4543-6]

Approval and Promulgation of State Implementation Plans; Montana; Open Burning Regulation Revision

Correction

In rule document 92–30005 beginning on page 60485 in the issue of Monday, December 21, 1992, make the following correction:

1. On page 60486, in the second column, under **Final Action**, in the fourth paragraph, beginning in the fifth line, "February 19, 1992" should read "February 19, 1993".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[FRL-4153-7]

Administrative Reporting Exemptions for Certain Radionuclide Releases

Correction

In proposed rule document 92–28513 beginning on page 56726 in the issue of Monday, November 30, 1992, make the following correction:

§ 302.6 [Corrected]

On page 56729, in the third column, in § 302.6(c)(1), in the third line, "tracks" should read "tracts".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 235

[INS No. 1512-92
RIN 1115-AD17

Inspection of Persons Applying for Admission

Correction

In proposed rule document 92–30964 beginning on page 60741 in the issue of Tuesday, December 22, 1992, make the following correction:

§ 235.13 [Corrected]

On page 60742, in the first column, in § 235.13(b), in the fifth line, "25 percent" should read "15 percent".

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

RIN 3206-AE76

Performance Management and Recognition System

Correction

In rule document 92–30908 beginning on page 60715 in the issue of Tuesday, December 22, 1992, make the following correction:

§ 430.405 [Corrected]

1. On page 60717, in the first column, in § 430.405(g), in the third line from the end, "than to critical" should read "than to non-critical".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ASW-13]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 212 Helicopters

Correction

In proposed rule document 92–19762 beginning on page 37485 in the issue of Wednesday, August 19, 1992, make the following correction:

§ 39.13 [Corrected]

1. On page 37486, in the second column, under § 39.13(a)(2), in the first line, "If no cracks" should read "If cracks".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

[Number 16-41]

Execution of Tax Withholding Agreements

Correction

In notice document 92–30209 appearing on page 59201 in the issue of Monday, December 14, 1992, in the second column, the Number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustments for Testing, Evaluation, and Approval of Mining Products

Correction

In notice document 92–30641 beginning on page 60538 in the issue of Monday, December 21, 1992, make the following corrections:

1. On page 60539, in the table, under 30 CFR part no. 7, in the next to last entry, after "14 Approval Extension—Electric Cables and Splice Kits" insert an asterisk.

2. On the same page, in the same table, under 30 CFR part no. 15, in the last entry, under Hourly rate insert "45" and under Flat rate remove "45" and insert leaders.

3. On page 60541, in the table, the entries under 30 CFR part no. 29 were printed incorrectly. It should read as follows:

FEE SCHEDULE EFFECTIVE 01–01–93

[Based on FY 1992 data]

30 CFR part No.	Part and action title	Hourly rate	Flat rate	Application fee
	* * * * *			
29	Portable dust analyzers and methane monitors:			
	12 Approval (testing included)	41	....	100
	14 Approval Extension (testing included)	41	....	100
	40 Stamped Notification Acceptance Program (SNAP)	....	314	....
	* * * * *			

4. On page 60542, in the first column, under **NOTE**, in the fifth line, "incidence" should read "incidental".

BILLING CODE 1505–01–D

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federal register

Monday
January 25, 1993

Part II

Department of the Interior

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Ohlone/Costanoan—Esselen Nation, P.O. Box 464, Palo Alto, California 94302 has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on December 3, 1992, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly § 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street NW., Washington, DC 20240, phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Michael Lawson, (202) 208–3592.

Dated: January 7, 1993.

Ron Eden,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–1689 Filed 1–22–93; 8:45 am]

BILLING CODE 4310-02-M

federal register

Monday
January 25, 1993

Part III

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Notice of proposed revisions.

SUMMARY: The Department of Health and Human Services (HHS) adopts scientific and technical guidelines for Federal drug testing programs and establishes standards for certification of laboratories engaged in urine drug testing for Federal agencies under authority of Public Law 100–71 and Executive Order No. 12564.

The current notice provides proposed amendments revising the Mandatory Guidelines for Federal Workplace Drug Testing Programs published in the **Federal Register** on April 11, 1988 (53 FR 11979). It incorporates changes based on the Agency's first four years of experience in implementing and administering these Guidelines, the experiences of those regulatory agencies citing these Guidelines in their Rules, and many of the recommendations developed by an Agency sponsored conference held in December 1989. There were over 250 attendees at that conference and they included representatives of employee unions, private companies, academia, government agencies, and laboratories. Seven working groups were formed to discuss the following topics: Analytical methods, specimen collection and reporting results, additional drug and cutoff levels, role of the medical review officer, performance testing, laboratory inspections, and monitoring laboratory performance. Additionally, in August 1990 the Agency chartered a Drug Testing Advisory Board, that meets quarterly, consisting of eminent scientists and laboratory directors to advise the Agency on all technical issues affecting the quality of forensic urine drug testing, to evaluate the standards used for laboratory certification for Federal workplace drug testing programs, and to make recommendations pertaining to all aspects of drug testing programs. During the past 2 years, the Board has been very active in addressing many of the topics discussed at the December 1989 conference and other issues associated with the National Laboratory Certification Program. This proposed notice incorporates many of the recommendations made by both the conference working groups and the Drug Testing Advisory Board. These changes are also necessary to ensure that Federal Workplace Drug Testing Program policies are consistent with those being proposed by other regulatory agencies for their regulated industries.

Copies of the above-cited April 11, 1988, **Federal Register** Notice may be obtained from the National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, Maryland 20852; tel. (301) 468–2600, toll-free tel. (800) 729–6686.

DATES: Comments on these proposed revisions to the Mandatory Guidelines are invited and must be submitted by March 26, 1993.

ADDRESSES: Written comments should be addressed to Joseph H. Autry III, M.D., Director, Division of Workplace Programs, SAMHSA, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Workplace Programs, SAMHSA, room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 652-8840 or 652-8964.

SUPPLEMENTARY INFORMATION: These Guidelines, entitled "Mandatory Guidelines for Federal Workplace Drug Testing Programs," were developed in accordance with Executive Order No. 12564 dated September 15, 1986, and section 503 of Public Law 100–71, 5 U.S.C. 7301 note, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. These Guidelines were published in final form on April 11, 1988.

Explanations of the proposed changes to the Mandatory Guidelines for Federal Workplace Drug Testing Programs are presented below according to the section of the Guidelines which they affect.

Subpart A—General

In section 1.2, the Secretary proposes that a definition for certifying scientists be added to ensure that all results are reviewed by an individual having the appropriate training and experience regarding laboratory practice applicable to test results he or she reviews. Sections 2.3(b) and 2.4(g) are amended to incorporate this definition. These amendments also provide that in certain laboratory situations a certifying scientist may be used who is only certified to review initial drug tests which are negative. Allowing laboratories to have appropriately trained individuals review negative initial test results could assist in decreasing the cost of testing without compromising the reliability of drug testing. The individual who certifies negative results would be expected, for example, to understand all aspects of immunoassay tests and quality assurance and examine negative test results in light of that knowledge. Individuals who certify positive test results are expected to understand all aspects of laboratory procedures and must examine the positive results in light of the immunoassay test, GC/MS results, quality assurance, chain of custody, and all other relevant factors. The Department believes that these requirements will ensure that quality testing is maintained.

The Secretary proposes that definitions for specimen chain of custody form and laboratory chain of custody form be added to section 1.2 to clarify the difference between an external form initiated at the collection site and internal forms used for maintaining chain of custody on specimens and aliquots in the laboratory. It is proposed that the definition for a permanent record book be deleted since all required information is indicated on each specimen chain of custody form.

Finally, the Secretary proposes that the definitions for calibrators, controls, and standards be added to define more clearly the requirements of laboratory testing.

Subpart B—Scientific and Technical Requirements

The Secretary proposes to amend section 2.1(c) to clarify that laboratories may test for possible adulteration or contamination to determine the validity of the specimen.

The Secretary proposes that sections 2.2 and 2.4 be amended by replacing each reference to "record book" or "permanent record book" with "specimen chain of custody form." The permanent record book is unnecessary since the "batch" chain of custody concept is no longer used and Federal agencies are now using a several part specimen chain of custody form, one copy of which is retained by the collection site and contains the same information that would normally be found in the permanent record book.

The Secretary proposes that the requirement to collect 60 mL of urine at the collection site be changed to 30 mL in section 2.2(f)(10). The Secretary proposes this change because the collection of a minimum of 60 mL of urine has led to difficulties in a substantial number of cases in which the donor is required to wait and provide additional urine, so that the final specimen is the accumulation of intermittent collections. Accordingly, the Secretary proposes to decrease the urine volume to 30 mL. The Secretary believes this amount is adequate for the laboratory to complete the required testing and satisfy other program requirements.

The Secretary proposes that the temperature range specified in section 2.2(f)(13) be changed to read whole numbers from 32°–38°C/90°–100°F. This proposed change is based on practical reasons related to the normal divisions indicated on various types of temperature measuring devices. The Secretary believes that the slightly increased acceptable temperature range will have no significant impact on the opportunity for an individual to defeat the temperature measurement requirement of the collection procedure.

The Secretary proposes to amend sections 2.2(f)(13) and 2.2(f)(16) allowing Federal agencies, in contracting with collection sites, to have an individual, other than a collection site employee, observe the collection of a specimen whenever there is reason to believe the individual may have altered or substituted the specimen. The requirement that the individual be of the same gender as the employee still exists, however. This proposed change is based on the Department's belief that it is not always possible, under all contracts, to have a collection site employee of the same gender observe the collection. The Department believes this determination is best left to the individual Federal agencies.

The Secretary proposes that a new section 2.2(h), as redesignated, be added to describe the procedure to collect "split specimens." Allowing Federal agencies to collect "split specimens" is based on the Secretary's belief that this practice would not compromise the drug testing program, provided that both samples are handled with identical security, confidentiality, and chain of custody safeguards. The procedures proposed are intended to provide for these safeguards.

Among other things, all requirements for collection are to be followed with respect to both specimens (hereinafter referred to as Bottle A and Bottle B), including the requirement that a copy of the chain of custody form accompany each bottle processed under "split specimen" procedures. If the test of Bottle A is verified by the Medical Review Officer (MRO) as positive, the employee may request that the MRO direct that Bottle B be tested in a different HHS-certified laboratory for the presence of the drug(s) for which a positive result was obtained in the test of Bottle A. The test of Bottle B is treated as a retest and the result is transmitted to the MRO without regard to the confirmatory test levels of section 2.4(f)(1). The MRO is to honor such a request if it is made within 72 hours of the employee having actual notice that he or she tested positive. Personnel action required by the agency such as removal from a safety-sensitive position may proceed pending the results of the Bottle B analysis. If the result of the Bottle B analysis is negative, the MRO shall void the results of Bottle A. The Department believes that these proposed procedures provide for timely testing of Bottle B and provide for public safety.

The Secretary proposes to amend section 2.3(a) by simply changing the term "qualified individual" to read "responsible person" to reflect current program terminology. It does not change any educational (or other) requirement involving this individual.

A proposed amendment to the second sentence of section 2.4(b)(2) clarifies that aliquots and laboratory chain of custody forms are to be used by laboratory personnel for conducting initial and confirmatory tests while the original specimen and specimen chain of custody form remain in secure storage. This proposed amendment simply clarifies what is already expected of laboratories.

The Secretary proposes to amend section 2.4(e)(1) by changing the initial test level for marijuana metabolites from 100 ng/mL to 50 ng/mL. This proposed change reflects the advances in technology of immunoassay tests for marijuana metabolites that have occurred since the original Guidelines were adopted in 1988.

Sections 2.4(e)(2) and 2.4(f)(2) are proposed to be amended to require Federal agencies covered by Executive Order 12564 to submit in writing a proposed performance test program when seeking approval of the Secretary for testing of other drugs.

Sections 2.4(e)(3) and 2.4(f)(3) are added to clarify that specimens which test negative on initial immunoassay may be pooled for use in the laboratory's internal quality control program rather than discarded.

The Secretary proposes that section 2.4(e)(4) be amended to permit multiple immunoassay tests for the same drug or drug class to be performed. This would allow laboratories to use, for example, an initial test and then forward all presumptive positives for a second test by a different immunoassay technique to minimize possible presumptive positives due to the presence of structural analogues in the specimen. This procedure may decrease the cost of drug testing while maintaining the full reliability of drug testing since all test performed must meet all Guideline cutoffs and quality control requirements.

The Secretary proposes to amend section 2.4(f)(1) by requiring that a specimen reported as positive for only methamphetamine in the amphetamine class of drugs also contains the metabolite amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmatory test. If this criterion is not met, the specimen must be reported as negative for methamphetamine. This additional requirement for reporting a specimen positive for methamphetamine ensures that high concentrations of sympathomimetic amines (including, but not limited to, ephedrine, pseudoephedrine and phenylpropanolamine) available in over-the-counter and prescription medications will not be misidentified as methamphetamine by the confirmatory test. This reporting criterion has been in effect as a temporary policy since December 22, 1990, and the Department is seeking comment on whether to make this a permanent requirement.

The Secretary proposes that the last sentence in section 2.4(g)(1), "The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time," be deleted. This requirement is no longer necessary or practical since individual specimen chain of custody forms, rather than a batch chain of custody form containing information on more than one urine specimen, are used for all Federal employee urine specimens.

The Secretary proposes that section 2.4(1) be amended to allow, but not require, an agency to carry out pre-award inspections and evaluation of the procedural aspects of the laboratory's drug testing operation. This change allows an agency to determine whether a pre-award inspection is necessary.

The Secretary proposes adding a new section 2.4(n)(6) and amending section 2.6(b), as redesignated, by restricting the types of arrangements that can exist between the MRO and the laboratory. The Department proposes to require that the agency's MRO not be an employee, an agent of, or have any financial interest in the laboratory for which the MRO is reviewing drug testing results. Similarly, the laboratory shall not have any relationship with the MRO that may be construed as a conflict of interest. The Secretary believes that these restrictions will assist in eliminating any conflict of interest between the MRO and the laboratory that may affect the impartiality and objectivity of the MRO in reporting testing deficiencies or errors to appropriate agency officials.

The Secretary proposes that a new Section 2.5(d)(1) be added which requires agencies to purchase only blind quality control materials that have been (a) certified by immunoassay and GC/MS, and (b) have stability data which verifies their performance over time. This proposed requirement is included because there is no current uniform criteria for the preparation, certification, and stability of urine samples provided by numerous vendors for use in agencies' blind performance testing programs. Requiring the certification data will assist in preventing the use of materials that may be unacceptable as blind quality control specimens.

In section 2.5(d)(2), the requirement to maintain a minimum of 10 percent blind samples is proposed to be reduced to 3 percent (with a maximum of 100 samples) submitted per quarter. This change could significantly reduce the costs associated with maintaining a blind sample program without affecting the ability to monitor a laboratory's performance. In addition, the 3 percent requirement coincides with that adopted by the Department of Transportation for their regulated industry programs.

The Secretary proposes to add a new section 2.6(h), as redesignated, to clarify that the Medical Review Officer must report the final results of drug tests to the agency in writing and in a manner designed to ensure confidentiality of the information. This provision is simply a clarification of existing practice. Requiring final results to be in writing assists in preventing reporting errors. The Department also believes that the Medical Review Officer must transmit drug test results in a manner designed to ensure confidentiality of the information, since this is sensitive information.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

It is proposed that the last sentence of section 3.4 be amended to clarify that a certified laboratory must inform all clients when procedures followed for those clients do not conform to the standards specified in these Guidelines or when any action is taken which suspends or revokes the laboratory's certification. Most certified laboratories promote themselves as "NIDA certified" and many clients rely on this certification. Thus, it is essential that clients are aware of any departure from the Guidelines or problems with the laboratory's certification.

It is proposed that section 3.12(c) be added to clarify the existing authority of the Secretary to take whatever action is necessary to ensure that certified laboratories continue to satisfy all provisions of these Guidelines and to ensure the full reliability of drug testing. This includes issuing directives to any laboratory suspending the use of certain analytical procedures when necessary to protect the integrity of the testing process; ordering any laboratory to undertake corrective actions to respond to material deficiencies identified in inspections or proficiency testing; ordering any laboratory to send aliquots of urine specimens to be tested at another laboratory when necessary to ensure the accuracy of testing under these Guidelines; reviewing private sector drug testing data to the extent necessary to ensure the full reliability of drug testing for Federal agencies; and taking any other action necessary to address deficiencies in drug testing, analysis, sample collection, chain of custody, reporting of results, or any other aspect of the certification program.

The Secretary proposes that section 3.17(c) be amended to change the PT challenges for certified laboratories from 6 cycles per year to 4 cycles per year. Experience in this and other performance testing programs indicates that 4 cycles per year is sufficient to assess a laboratory's ability to forensically test and report results for PT specimens.

The Secretary proposes that section 3.19(b)(4) be amended to allow a certified laboratory to report one quantitative result differing by more than 50 percent from the target value within any 3 consecutive cycles of performance testing. This change would allow a certified laboratory to make one administrative or technical error on a performance testing sample and be given an opportunity to take corrective action to ensure that this kind of error will not reoccur.

The Secretary proposes that new sections 3.15(e) and 3.22 be added to provide that the Secretary will announce in the **Federal Register** when laboratories are certified, those whose certifications have been suspended, or those whose certifications have been revoked. These provisions coincide with existing HHS policy. The Secretary does not propose to publish in the **Federal Register** notices of proposed revocation of laboratories whose certifications have not been suspended. Unlike suspended laboratories, these laboratories do not pose an immediate threat to the public health and welfare and may continue Federal employee drug testing until such time that the revocation becomes effective. These laboratories would also have an opportunity to request internal review of the decision to revoke.

Section 3.15(e) also provides that the written notice of the suspension which is sent to the laboratory will be made available to the public upon request, as well as the reviewing official's written decision which upholds or denies the suspension or proposed revocation under the procedures of subpart D.

The Secretary proposes to revise section 3.16 to clarify how a laboratory who has had its certification revoked may seek recertification. The Department proposes to revise that section to provide that, unless otherwise provided by the Secretary in the notice of suspension or proposed revocation under section 3.13(a) or the reviewing official's decision under section 4.9(e) or 4.14(a), a laboratory which has had its certification revoked and seeks to be recertified must meet the criteria of section 3.12(b), as well as all other requirements of the Guidelines, including the successful participation in three cycles of performance testing (sections 3.17(b) and 3.19(a)) and a laboratory inspection (sections 3.2(b) and 3.20). Once recertified, the laboratory must undergo a second inspection within three months, after which biannual inspections will be required to maintain certification (section 3.2(b)), as well as participation in the quarterly performance testing program (sections 3.2(b) and 3.17(c)).

The Secretary proposes to revise section 3.20 to clarify that inspectors are to perform inspections consistent with the guidance provided by the Secretary. This revision also clarifies that laboratories are required to follow good forensic laboratory practice in all aspects of their drug testing operations and are required to be in compliance with these Guidelines. It is the laboratory's responsibility to correct all deficiencies identified during the inspection and to have the knowledge, skill, and expertise to correct deficiencies consistent with good forensic laboratory practice.

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

The Secretary proposes to add a new subpart F which sets forth more detailed procedures for the review of an immediate suspension or proposed revocation of a certified laboratory that is provided for in section 3.15(b). In general, these procedures describe how laboratories may request an informal review of the immediate suspension and the proposed revocation and how the review will generally be conducted. The presiding official will review documents and briefs that are submitted and may provide for a hearing at which time each party may present witnesses as agreed upon in a prehearing conference and may question the opposing party's witnesses.

More specifically, the procedures provide that a laboratory has 30 days from the written notice of suspension or proposed revocation or 3 days from notification for an expedited review of the suspension to request a review. The National Laboratory Certification Program (currently located in the Division of Applied Research at the National Institute on Drug Abuse) bears the burden of proving by a preponderance of the evidence that its decision to suspend or propose revocation is appropriate. If the reviewing official upholds the suspension and proposed revocation, the revocation will become effective immediately and, if the suspension and proposed revocation are denied, the suspension will be lifted immediately.

The procedures also provide for an abeyance agreement. That is, the parties may agree, upon mutually acceptable conditions, to hold the informal review procedures in abeyance for a reasonable time while the laboratory attempts to regain compliance with the Mandatory Guidelines. For example, if a laboratory receives notice of an immediate suspension and a proposed revocation and prefers to remedy the deficiencies rather than proceed immediately with an informal review, the parties involved may agree, upon mutually acceptable conditions, to extend the time periods for requesting review of the suspension or proposed revocation. If the dispute has been resolved, the request for review will be dismissed.

It is the Department's view that these procedures will provide a timely and fair review of suspensions or proposed revocations.

Several sections have been redesignated and other minor proposed changes have been made for grammatical and procedural clarification. All changes are presented below in a section-by-section format.

Information Collection Requirements

Any comments related to the Paperwork Reduction Act of 1980 may be sent to Allison Eydt: HHS Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Information collection and recordkeeping requirements which would be imposed on laboratories engaged in urine drug testing for Federal agencies concern quality assurance and quality control; security and chain of custody; documentation; reports; performance testing; and inspections as set out in sections 3.7, 3.8, 3.10, 3.11, 3.17, and 3.20. To facilitate ease of use and uniform reporting, a chain of custody form has been developed as referenced in sections 2.2(c) and 2.2(f).

The information collection and recordkeeping requirements contained in these Guidelines have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980.

Dated: July 7, 1992.

James O. Mason,

Assistant Secretary for Health.

Dated: August 25, 1992.

Louis W. Sullivan,

Secretary.

Accordingly, the following amendments are proposed to the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on April 11, 1988 (53 FR 11979):

PROPOSED AMENDMENTS TO THE MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

The Table of Contents with all proposed changes included will be revised to read as follows:

Subpart A—General

1.1 Applicability.
1.2 Definitions.
1.3 Future Revisions.

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.
2.2 Specimen Collection Procedures.
2.3 Laboratory Personnel.
2.4 Laboratory Analysis Procedures.
2.5 Quality Assurance and Quality Control.
2.6 Reporting and Review of Results.
2.7 Protection of Employee Records.
2.8 Individual Access to Test and Laboratory Certification Results.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 Introduction.
3.2 Goals and Objectives of Certification.
3.3 General Certification Requirements.
3.4 Capability to Test for Five Classes of Drugs.
3.5 Initial and Confirmatory Capability at Same Site.
3.6 Personnel.
3.7 Quality Assurance and Quality Control.
3.8 Security and Chain of Custody.
3.9 One-Year Storage for Confirmed Positives.
3.10 Documentation.
3.11 Reports.
3.12 Certification.
3.13 Revocation.
3.14 Suspension.
3.15 Notice.
3.16 Recertification.
3.17 Performance Test Requirement for Certification.
3.18 Performance Test Specimen Composition.
3.19 Evaluation of Performance Testing.
3.20 Inspections.
3.21 Results of Inadequate Performance.
3.22 Listing of Certified Laboratories.

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

4.1 Applicability.
4.2 Definitions.
4.3 Limitations on Issues Subject to Review.
4.4 Specifying Who Represents the Parties.
4.5 The Request for Informal Review and the Reviewing Official's Response.
4.6 Abeyance Agreement.
4.7 Preparation of the Review File and Written Argument.
4.8 Opportunity for Oral Presentation.
4.9 Expedited Procedures for Review of Immediate Suspension.
4.10 Ex Parte Communications.
4.11 Transmission of Written Communications by Reviewing Official and Calculation of Deadlines.
4.12 Authority and Responsibilities of Reviewing Official.
4.13 Administrative Record.
4.14 Written Decision.
4.15 Court Review of Final Administrative Action; Exhaustion of Administrative Remedies.

Subpart A

1. Section 1.1(b) is deleted; sections 1.1(c–f) are redesignated sections 1.1(b–e), respectively.

2. Section 1.1(b) as redesignated is amended by deleting "Except as provided in 2.6."

3. Section 1.2 is amended by adding the following new definitions in alphabetical sequence:

Calibrator A sample used to prepare a calibration curve or cutoff of the assay.

Certifying Scientist An individual with at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent who reviews all pertinent data and quality control results. The individual shall have training and experience in the theory and practice of all methods and procedures used in the laboratory, including a thorough understanding of quality control practices and procedures relevant to the results that the individual certifies. Relevant training and experience shall also include the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial action to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

Control A sample used to check the accuracy of a calibration.

Laboratory Chain of Custody Form The form(s) used by the testing laboratory to document the security of the specimen and all aliquots of the specimens during testing and storage by the laboratory. The form, which may account for an entire laboratory test batch, shall include the names and signatures of all individuals who accessed the specimens or aliquots and the date and purpose of the access.

Specimen Chain of Custody Form A form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

Standard A reference material or solution used to prepare a calibrator or control.

4. Section 1.2, definition of Chain of Custody, second sentence, is amended to read as follows:

These procedures shall require that an OMB approved specimen chain of custody form be used from the time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory.

5. Section 1.2, definition of Initial Test, is amended to read as follows:

An immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the class of drugs that requires confirmation.

6. Section 1.2 is amended by deleting the definition of Permanent Record Book.

Subpart B

1. In all sections where the term ml is used for milliliters), it is replaced with the term mL.

2. Section 2.1(c) is amended as follows:

Urine specimens collected pursuant to Executive Order 12564, Public Law 100–71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law except if additional testing is required to determine the validity of the specimen. Urine that tests negative by initial or confirmatory testing may, however, be pooled for use in the laboratory's internal quality control program.

3. Sections 2.2 and 2.4 are amended by substituting the terms "in the record book" or "in the permanent record book," wherever they appear, with "on the specimen chain of custody form."

4. Section 2.2(f)(9) is amended by deleting "collection site" in the second sentence.

5. Section 2.2(f)(10) is amended by replacing 60 milliliters with 30 milliliters (mL), deleting the second and the third sentence, and changing "(a glass of water)" in the fourth sentence to read "(e.g., an 8 oz glass of water every 30 min)."

6. Section 2.2(f)(13) is amended by changing "32.5°–37.7°C/90.5–99.8°F" to read "32°C/90°–100°F."

7. Section 2.2(f)(13) is amended by changing the phrase "direct observation of a same gender collection site person" to read "direct observation by a person of the same gender."

8. Section 2.2(f)(16) is amended in its entirety to read as follows:

When there is any reason to believe that a particular individual may have altered or substituted the specimen to be provided, another specimen shall be obtained as soon as possible under the direct observation of a person of the same gender and both specimens shall be forwarded to the laboratory for testing.

9. Section 2.2(f)(17) is amended by revising the second sentence to read as follows:

If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamper-evident seal/tape on the bottle. The tamper-evident seal may be in the form of evidence tape, a self-sealing bottle cap with both a tamper-evident seal and unique coding, cap and bottle systems that can only be sealed one time, or any other system that ensures any tampering with the specimen will be evident to laboratory personnel during the accessioning process.

10. Section 2.2(f)(21) is amended by deleting the second sentence.

11. Section 2.2(f)(23) is amended in its entirety to read as follows:

Based on a reason to believe that the individual may alter or substitute the specimen to be provided, a higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under direct observation. The person directly observing the specimen collection shall be of the same gender.

12. Section 2.2(h), Transportation to Laboratory, is redesignated as § 2.2(i) and is amended by substituting the term "chain of custody documentation" with the term "specimen chain of custody form."

13. A new section 2.2(h) is added as follows:

Split Specimens. The employer may, but is not required to, use a split sample method of collection. If the urine specimen is split into two containers (hereinafter referred to as Bottle A and Bottle B), the following procedure shall be used:

(1) The individual shall urinate into a collection container. The collection site person, in the presence of the individual, after determining specimen temperature, pours the urine into two specimen containers labelled Bottle A and Bottle B.

(2) The first specimen bottle (Bottle A) is to be used for the drug test, and 30 mL of urine shall be poured into it. If there is no additional urine available for the second specimen bottle (Bottle B), the first specimen bottle (Bottle A) shall nevertheless be processed for testing.

(3) Up to 30 mL of the remainder of the urine shall be poured into the second specimen bottle (Bottle B).

(4) All requirements of this part shall be followed with respect to Bottle A and Bottle B, including the requirements that a copy of the chain of custody form accompany each bottle processed under split sample procedures.

(5) Any specimen collected under split sample procedures must be stored in a secured, refrigerated environment and an appropriate entry made on the specimen chain of custody form.

(6) If the test of the first specimen bottle (Bottle A) is positive, the individual may request that the MRO direct that the second specimen bottle (Bottle B) be tested in a different HHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first specimen bottle (Bottle A). The MRO shall honor such a request if it is made within 72 hours of the individual's having received notice that he or she tested positive. The result of this test is transmitted to the MRO without regard to the cutoff levels used to test the first specimen bottle (Bottle A).

(7) Any action taken by a Federal agency as a result of a positive drug test (e.g., removal from performing a safety-sensitive function) may proceed pending the result of the test on the second specimen bottle (Bottle B).

(8) If the result of the test on the second specimen bottle (Bottle B) is negative, the MRO shall void the test result for Bottle A. Any action taken under paragraph (7) shall be reversed and the individual shall re-enter the group subject to random testing as if the test had not been conducted.

14. Section 2.3(a) is amended by substituting the term "responsible person" for the term "qualified individual."

15. Sections 2.3(b) and 2.4(g) are amended by substituting the term "certifying scientist(s)" for the terms "qualified individual(s)" and "responsible individual" and by deleting the last sentence in § 2.3(b).

16. Section 2.4(a)(1), last sentence, is amended to read as follows:

The laboratory shall maintain a record that documents the dates, time of entry and exit, and purpose of entry of authorized visitors, maintenance, and service personnel accessing secured areas.

17. Section 2.4(b)(2), second sentence, is amended to read:

Aliquots and laboratory chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests while the original specimen and specimen chain of custody form remain in secure storage.

18. Section 2.4(d), third sentence, is amended to read as follows:

When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards and controls (see section 2.5 (b) and (c)).

19. Section 2.4(e)(1), the initial test level for marijuana metabolites appearing in the table, is amended by changing the value of "100" to "50."

20. Section 2.4(e)(2), second sentence, is amended to read:

The agency requesting the authorization to include other drugs shall submit to the Secretary in writing the agency's proposed initial test methods, testing levels, and performance test program.

21. Section 2.4(e)(3) is added to read as follows:

Specimens that test negative on all initial immunoassay tests will be reported negative. No further testing of these negative specimens is permitted and the samples shall either be discarded or pooled for use in the laboratory's internal quality control program.

22. Section 2.4(e)(4) is added to read as follows:

Multiple screening tests (also known as rescreening) for the same drug or drug class may be performed provided that all tests meet all Guideline cutoffs and quality control requirements (see section 2.5(b)). For example, a test is performed by immunoassay technique "A" for all drugs using the HHS cutoff levels, but presumptive positive amphetamines are forwarded for immunoassay technique "B" to eliminate any possible presumptive positives due to structural analogues. All tests must include all the appropriate quality control samples and use the HHS cutoffs.

23. Section 2.4(f)(1), first sentence, is amended by deleting the word "techniques" and the phrase "for each drug" and by adding after the word "confirmed" the phrase "for the class(es) of drugs screened positive on the initial screen." The third sentence is amended by replacing the phrase "greater than highest standard curve value" with "exceeds the linear range of the test." The table is amended by deleting the two asterisks on the morphine and codeine lines. A new superscript 3 is added to the methamphetamine line of the table with a new footnote to read "Specimen must also contain amphetamine at a concentration ≥200 ng/mL."

24. Section 2.4(f)(2), the second sentence, is amended to read as follows:

The agency requesting the authorization to include other drugs shall submit to the Secretary in writing the agency's proposed confirmatory test methods, testing levels, and proposed performance test program.

25. Section 2.4(f)(3) is added as follows:

Specimens that test negative on confirmatory tests shall be reported negative. No further testing of these specimens is permitted and the samples shall either be discarded or pooled for use in the laboratory's internal quality control program.

26. In section 2.4(g)(1), the last sentence is deleted.

27. In section 2.4(g)(2), two new sentences are added to read:

For amphetamines, to report a specimen positive for methamphetamine only, the specimen must also contain amphetamine at a concentration equal to or greater than 200 ng/mL by the confirmatory test. If this criterion is not met, the specimen must be reported as negative for methamphetamine.

28. Section 2.4(g)(5) is amended by replacing the phrase "individual responsible for day to day management of the drug testing laboratory or the individual responsible for testing to the validity of the test reports" with "certifying scientist."

29. Section 2.4(i) is amended by revising the title to read as follows:

Retesting of a Specimen (i.e., the reanalysis by gas chromatography/mass spectrometry of a specimen previously reported positive or the testing of Bottle B of a split specimen collection).

30. Section 2.4(l) is amended by replacing the word "shall" in the last sentence with the word "may."

31. In section 2.4(n)(2), the title and first sentence are amended as follows:

Calibrators and Controls. Laboratory calibrators and controls shall be prepared with pure drug standards which are properly labeled as to content and concentration.

32. A new section 2.4(n)(6) is added to read as follows:

(6) Restrictions. The laboratory shall not enter into any relationship with an agency's Medical Review Officer that may be construed as a potential conflict of interest or derive any financial benefit by having an agency use a specific Medical Review Officer.

33. Section 2.5(a) is amended by revising the first sentence as follows:

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, certification of calibrators and controls, and validation of analytical procedures.

34. Section 2.5(b) is amended to read as follows:

Each analytical run of specimens to be screened shall include:

(1) Negative specimens certified to contain no drug;

(2) Positive controls fortified with known reference materials;

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff);

(4) A sufficient number of calibrators to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known calibrators, those values will be used to calculate sample data;

(5) A minimum of 20 percent of all test samples shall be quality control specimens; and

(6) One percent of each run, with a minimum of at least one sample, shall be the laboratory's blind quality control samples to appear as normal samples to the laboratory analysts.

Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented.

35. Section 2.5(d)(1), first sentence, is redesignated as section 1.1(f).

36. Section 2.5(d)(1), second sentence, is redesignated a new section 3.19(e) and the title "Other Performance Testing" is added prior to that sentence.

37. A new section 2.5(d)(1) is added to read as follows:

(1) Agencies shall only purchase blind quality control materials that have been certified by immunoassay and GC/MS and have stability data which verifies their performance over time.

38. Section 2.5(d)(2) is amended to read as follows:

During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 3 percent of all samples (to a maximum of 100) submitted per quarter.

39. Section 2.5(d)(4), the second sentence, is revised to read as follows:

A record shall be made of the Secretary's investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the drug testing laboratory.

40. Section 2.5(d)(6), third sentence, is amended as follows:

This retesting shall be documented by a statement signed by the Responsible Person.

41. Section 2.6 on Interim Certification is deleted and sections 2.7 through 2.9 are redesignated as sections 2.6 through 2.8.

42. A new section 2.6(h) as redesignated is added to read as follows:

Reporting Final Results. The Medical Review Officer shall report the final results of the drug tests in writing and in a manner designed to ensure confidentiality of the information.

43. Section 2.6(b) as redesignated is amended by replacing the first sentence with the following sentences:

The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders. The Medical Review Officer may be an employee of the agency or a contractor for the agency; however, the Medical Review Officer shall not be an employee or agent of or have any financial interest in the laboratory for which the Medical Review Officer is reviewing drug testing results. Additionally, the Medical Review Officer shall not derive any financial benefit by having an agency use a specific drug testing laboratory or have any relationship with the laboratory that may be construed as a potential conflict of interest.

44. The last sentence of section 2.6(d) as redesignated is amended to read as follows:

This requirement does not apply if the agency's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine since the presence of this metabolite is proof of heroin use.

45. Section 2.6(e) as redesignated is amended to read as follows:

Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample or the analysis of Bottle B from a split specimen collection. Such retests are authorized only at laboratories certified under these Guidelines.

46. Section 2.6(f) as redesignated is amended to read as follows:

If the Medical Review Officer determines that there is a legitimate medical explanation for the positive test result, he or she shall take no further action and report the test result as negative.

Subpart C

1. In section 3.2(b), the fifth sentence is amended to read as follows:

Maintenance of certification requires participation in a quarterly performance testing program plus periodic, on-site inspections.

2. In section 3.4, the last sentence is corrected to read as follows:

Certified laboratories must clearly inform all clients when procedures followed for those clients do not conform to the standards specified in these Guidelines or when the laboratory undergoes a full or partial suspension or revocation.

3. A new section 3.12(c) is added to read as follows:

(c) Corrective Action by Certified Laboratories. A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for and maintain certification. The Secretary has broad discretion to take appropriate action to ensure the full reliability and accuracy of drug testing and reporting and to resolve problems related to drug testing and to enforce all standards set forth in these Guidelines. The Secretary shall have the authority to issue directives to any laboratory suspending the use of certain analytical procedures when necessary to protect the integrity of the testing process; order any laboratory to undertake corrective actions to respond to material deficiencies identified in inspections or proficiency testing; order any laboratory to send aliquots of urine specimens to be tested at another laboratory when necessary to ensure the accuracy of testing under these Guidelines; review private sector drug testing data to the extent necessary to ensure the full reliability of drug testing for Federal agencies; and take any other action necessary to address deficiencies in drug testing, analysis, sample collection, chain of custody, reporting of results, or any other aspect of the certification program.

4. Section 3.15, the title is changed from "Notice; Opportunity for Review" to read "Notice."

5. Section 3.15(a) is revised as follows:

(a) Written Notice. When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by facsimile mail, personal service, or registered or certified mail, return receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

6. In section 3.15(b), the second, third, and fourth sentences are deleted and the following added after the first sentence:

Subpart D contains detailed procedures to be followed for an informal review of the suspension or proposed revocation.

7. Section 3.15(e) is added to read as follows:

Public Notice. The Secretary shall publish in the Federal Register the name, address, and telephone number of any laboratory that has its certification suspended or revoked under section 3.13 or section 3.14, respectively, and the name of any laboratory which has its suspension lifted. The Secretary shall provide to any member of the public upon request the written notice provided to a laboratory that has its certification suspended or revoked, as well as the reviewing official's written decision which upholds or denies the suspension or proposed revocation under the procedures of subpart D.

8. Section 3.16, second sentence, is changed to read as follows:

Unless otherwise provided by the Secretary in the notice of suspension or proposed revocation under section 3.13(a) or the reviewing official's decision under section 4.9(e) or 4.14(a), a laboratory which has had its certification revoked and seeks to be recertified shall apply for recertification in accordance with this section. In order to be recertified, the laboratory shall meet the criteria of section 3.12(b), as well as all other requirements of these Guidelines, including the successful participation in three cycles of performance testing (sections 3.17(b) and 3.19(a)) and a laboratory inspection (sections 3.2(b) and 3.20). Once recertified, the laboratory must undergo a second inspection within three months, after which biannual inspections will be required to maintain certification (section 3.2(b)), as well as participation in the quarterly performance testing program (sections 3.1(b) and 3.17(c)).

9. Sections 3.17 and 3.19 are amended by substituting "PT" as an abbreviation for performance testing, wherever that term appears.

10. Section 3.17(b) is amended by deleting the last sentence.

11. Section 3.17(c) is revised to read as follows:

(c) Four Challenges Per Year. After certification, laboratories shall be challenged with at least 10 PT specimens on a quarterly cycle.

12. The first sentence in § 3.18(b) is amended to read as follows:

PT specimens (as differentiated from blind quality control samples) shall be spiked with the drug classes and their metabolites that are required for certification (marijuana, cocaine, opiates, amphetamines, and phencyclidine) with concentration levels set by, but not limited to, one of the following schema: (1) At least 20 percent above the cutoff limit for the initial test; (2) near the cutoff limit as a directed specimen for confirmatory testing; and, (3) below the cutoff limit to assess the performance of analytical procedures at low concentrations.

13. The second sentence of section 3.18(b) is amended by adding "(directed specimens)" to the end of the sentence.

14. Section 3.18(b) is amended by including the following additional sentence at the end of the section:

Finally, PT specimens may be constituted with interfering substances.

15. Section 3.19(a)(2) is amended by deleting the phrase "for each shipment" in the first sentence. The second sentence of section 3.19(a)(2) is amended by changing the phrase "over the three cycles" to read "over the three consecutive PT cycles."

16. The first sentence of section 3.19(a)(3) is amended to read as follows:

An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ±20 percent or ±2 standard deviations (whichever range is larger) of the calculated reference group mean.

17. In section 3.19(b)(2) is amended to read as follows:

In order to remain certified, laboratories must successfully complete four cycles of performance testing per year. Failure of a certified laboratory to maintain a grade of 90 percent over the span of three consecutive PT cycles, i.e., to identify 90 percent of the total drug challenges and to confirm correctly 90 percent of the total drug challenges, may result in suspension or revocation of certification.

18. Section 3.19(b)(3) is amended to read as follows:

Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations (whichever range is larger) of the appropriate reference or peer group mean as measured over three consecutive PT cycles.

19. Section 3.19(b)(4) is amended to read as follows:

After achieving certification a laboratory is permitted one quantitative result differing by more than 50 percent from the target value within three consecutive cycles of PT. More than one error of this type within three consecutive PT cycles may result in a suspension or proposed revocation.

20. Section 3.19(b)(6), the first sentence, is amended to read as follows:

If a certified laboratory fails to maintain a grade of 90 percent over the span of three consecutive PT cycles after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3), (b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to quantitate successfully test results and how it failed to quantitate successfully.

21. Section 3.20 is amended by adding the title "(a) Frequency" before the first sentence.

22. Section 3.20, the second and third sentences are replaced with the following:

(b) Inspectors. The Secretary shall establish criteria for the selection of inspectors to ensure high quality, unbiased, and thorough inspections. The inspectors shall perform inspections consistent with the guidance provided by the Secretary. Inspectors shall document the overall quality of the laboratory's drug testing operation.

(c) Inspection Performance. The laboratory's operation shall be consistent with good forensic laboratory practice and shall be in compliance with these Guidelines. It is the laboratory's responsibility to correct all deficiencies identified during the inspection and to have the knowledge, skill, and expertise to correct deficiencies consistent with good forensic laboratory practice. Consistent with sections 3.13 and 3.14, deficiencies identified at inspections may be the basis for suspending or revoking a laboratory's certification.

23. Section 3.22 is added to read as follows:

Listing of Certified Laboratories

A **Federal Register** listing of laboratories certified by HHS will be updated and published periodically. Laboratories which are in the applicant stage of HHS certification are *not* to be considered as meeting the minimum requirements in these Guidelines. A laboratory is not certified until HHS has sent the laboratory an HHS letter of certification.

Subpart D

1. A new subpart D describing procedures for review of suspension or proposed revocation is added to read as follows:

Subpart D—Procedures for Review of Suspension or Proposed Revocation of a Certified Laboratory

Section 4.1 Applicability.

These procedures apply when:

(a) The Secretary has notified a laboratory in writing that its certification to perform urine drug testing under these Mandatory Guidelines for Federal Workplace Drug Testing Programs has been suspended or that the Secretary proposes to revoke such certification.

(b) The laboratory has, within 30 days of the date of such notification or within 3 days of the date of such notification when seeking an expedited review of a suspension, requested in writing an opportunity for an informal review of the suspension or proposed revocation.

Section 4.2 Definitions.

Appellant Means the laboratory which has been notified of its suspension or proposed revocation of its certification to perform urine drug testing and has requested an informal review thereof.

Respondent Means the person or persons designated by the Secretary in implementing these Guidelines (currently the National Laboratory Certification Program is located in the Division of Workplace Programs, Substance Abuse and Mental Health Services Administration).

Reviewing Official Means the person or persons designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

Section 4.3 Limitation of Issues Subject to Review.

The scope of review shall be limited to the facts relevant to any suspension or proposed revocation, the necessary interpretations of those facts, the Mandatory Guidelines for Federal Workplace Drug Testing Programs, and other relevant law. The legal validity of the Mandatory Guidelines shall not be subject to review under these procedures.

Section 4.4 Specifying Who Represents the Parties.

The appellant's request for review shall specify the name, address, and phone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and phone number of the respondent's representative.

Section 4.5 The Request for Informal Review and the Reviewing Official's Response.

(a) Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension or proposed revocation, a brief statement of why the decision to suspend or propose revocation is wrong, and the appellant's request for an oral presentation, if desired.

(b) Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

Section 4.6 Abeyance Agreement.

Upon mutual agreement of the parties to hold these procedures in abeyance, the reviewing official will stay these procedures for a reasonable time while the laboratory attempts to regain compliance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs or the parties otherwise attempt to settle the dispute. As part of an abeyance agreement, the parties can agree to extend the time period for requesting review of the suspension or proposed revocation. If abeyance begins after a request for review has been filed, the appellant shall notify the reviewing official at the end of the abeyance period advising whether the dispute has been resolved. If the dispute has been resolved, the request for review will be dismissed. If the dispute has not been resolved, the review procedures will begin at the point at which they were interrupted by the abeyance agreement with such modifications to the procedures as the reviewing official deems appropriate.

Section 4.7 Preparation of the Review File and Written Argument.

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's Documents and Brief.* Within 15 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement not to exceed 20 double-spaced pages, explaining why respondent's decision to suspend or propose revocation of appellant's certification is wrong (appellant's brief).

(b) *Respondent's Documents and Brief.* Within 15 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification to perform urine drug testing, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension or proposed revocation (respondent's brief).

(c) *Reply Briefs.* Within 5 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-spaced pages.

(d) *Cooperative Efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive Documentation.* The reviewing official may take any appropriate step to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

Section 4.8 Opportunity for Oral Presentation.

(a) *Electing Oral Presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the decision-making process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own initiative or at the request of the respondent.

(b) *Presiding Official.* The reviewing official or designee will be the presiding official responsible for conducting the oral presentation.

(c) *Preliminary Conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: Simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at his or her discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and Place of Oral Presentation.* The presiding official will attempt to schedule the oral presentation within 30 days of the date appellant's request for review is received or within 10 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the Oral Presentation.*

(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of Proof/Standard of Proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to

suspend or propose revocation is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is wrong.

(3) *Admission of Evidence.* The rules of evidence do not apply and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the prehearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for insufficient evidence or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party opposing the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of Justice or Making of False Statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1505 or 1001.

(g) *Post-hearing Procedures.* At his or her discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

Section 4.9 Expedited Procedures for Review of Immediate Suspension.

(a) *Applicability.* When the Secretary notifies a laboratory in writing that its certification to perform urine drug testing has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 3 days of the date the laboratory received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision to suspend and propose revocation is wrong, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing Official's Response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review File and Briefs.* Within 7 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following: (1) A review file containing essential documents relevant to the review, tabbed, indexed, and organized chronologically, and (2) a written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral Presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official, the presiding official will attempt to schedule the oral presentation within 7–10 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a pre-hearing conference in accordance with section 4.8(c) and will conduct the oral presentation in accordance with the procedures of section 4.8 (e), (f), and (g).

(e) *Written Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7–10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in section 4.14 will apply.

(f) *Transmission of Written Communications.* Because of the importance of timeliness for these expedited procedures, all written communications between the parties and between either party and the reviewing official shall be by facsimile or overnight mail.

Section 4.10 Ex parte Communications.

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

Section 4.11 Transmission of Written Communications by Reviewing Official and Calculation of Deadlines.

(a) Because of the importance of a timely review, the reviewing official should normally transmit written communications to either party by facsimile or overnight mail in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

Section 4.12 Authority and Responsibilities of Reviewing Official.

In addition to any other authority specified in these procedures, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify these procedures in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

Section 4.13 Administrative Record.

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

Section 4.14 Written Decision.

(a) *Issuance of Decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation. The decision will set forth the reasons for the decision and describe the basis therefor in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of Decision.* The reviewing official will attempt to issue his or her decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public Notice.* If the suspension and proposed revocation are upheld, the revocation will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. If the suspension and proposed revocation are denied, the revocation will not take effect and the suspension will be lifted immediately. Public notice will be given by publication in the **Federal Register**.

Section 4.15 Court Review of Final Administrative Action; Exhaustion of Administrative Remedies.

Before any legal action is filed in court challenging the suspension or proposed revocation, respondent shall exhaust administrative remedies provided under this subpart, unless otherwise provided by Federal law. The reviewing official's decision, under section 4.9(e) or 4.14(a), constitutes final agency action and is ripe for judicial review as of the date of the decision.

[FR Doc. 93-1575 Filed 1-22-93; 8:45 am]

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federal register

Monday
January 25, 1993

Part IV

Office of Management and Budget

Regulatory Review: Notice

OFFICE OF MANAGEMENT AND BUDGET

Regulatory Review

AGENCY: Office of Management and Budget.

ACTION: Request to Agencies.

SUMMARY: On January 22, 1993, the Office of Management and Budget issued a memorandum to regulatory agencies requesting that President Clinton's appointees have an opportunity to review and approve new regulations.

FOR FURTHER INFORMATION CONTACT: James B. MacRae, Jr., Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs, (202) 395-5897.

SUPPLEMENTARY INFORMATION: The Director of the Office of Management and Budget issued the following memorandum, requesting the agencies to take certain actions with respect to regulatory activities. This memorandum is printed below in its entirety.

John B. Arthur,

Assistant Director for Administration.

Memorandum For the Heads and Acting Heads of Agencies Described in Section 1(d) of Executive Order 12291

From: Leon E. Panetta, Director.

Subject: Regulatory Review.

It is important that President Clinton's appointees have an opportunity to review and approve new regulations. Therefore, at the direction of the President, I am requesting that you please implement the following, effective immediately:

1. Subject to such exceptions as the Director of the Office of Management and Budget (the "Director") may determine for emergency situations or otherwise, no proposed or final regulation should be sent to the **Federal Register** for publication until it has been approved by an agency head or the delegee of an agency head who, in either case, is a person appointed by President Clinton and confirmed by the Senate.

2. You are requested to withdraw from the **Federal Register** for approval in accordance with paragraph 1, all regulations that have not yet been published in the **Federal Register** and that may be withdrawn under existing procedures of the Office of the **Federal Register**.

3. The requirements set out above do not apply to regulations that must be issued immediately because of a statutory or judicial deadline. Please notify the Director promptly of any such regulations.

4. If there are other regulations that you believe should not be subject to these requirements, please notify the Director immediately in the case of any regulations that have been submitted to the **Federal Register** and in a timely manner for any other regulations so that the Director may consider whether an exception to the requirements set out above may be appropriate.

5. Pending completion of a review, existing Executive Orders on regulatory management will continue to apply.

6. The term "regulation" in this memorandum has the meaning set forth in section 1(a) of Executive Order 12291, except that it includes regulations related to agency organization, management, or personnel.

This memorandum shall be published in the **Federal Register**.

[FR Doc. 93-1969 Filed 1-22-93; 12:05 pm]

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S.J. Res. 1/P.L. 103-2
To ensure that the compensation and other emoluments attached to the office of Secretary of the Treasury are those which were in effect on January 1, 1989. (Jan. 19, 1993; 107 Stat. 4; 2 pages)

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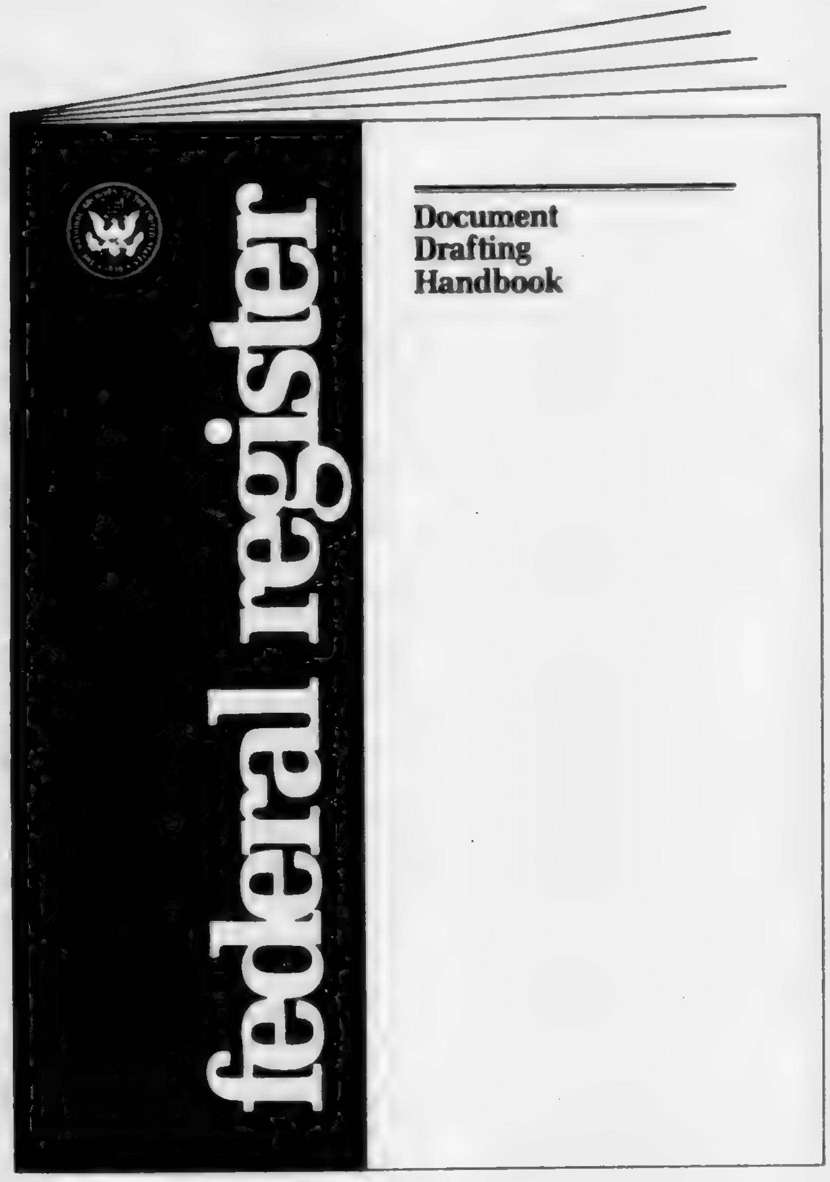

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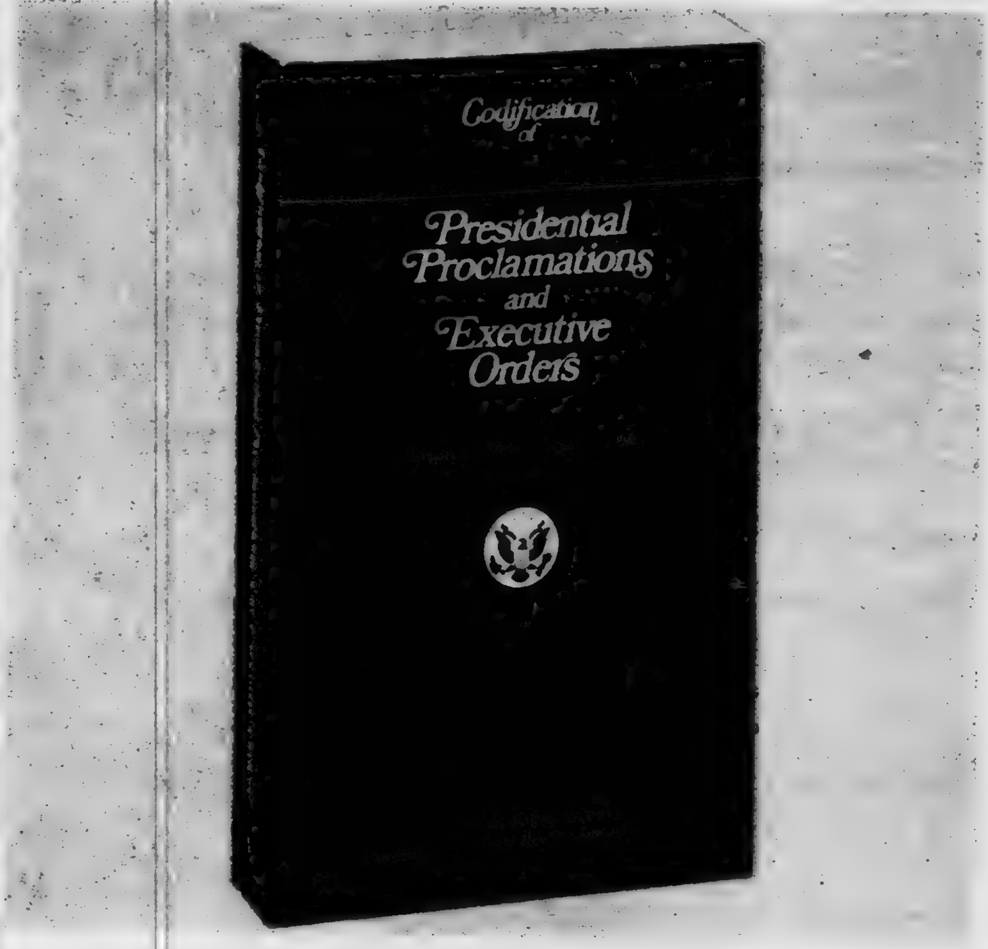

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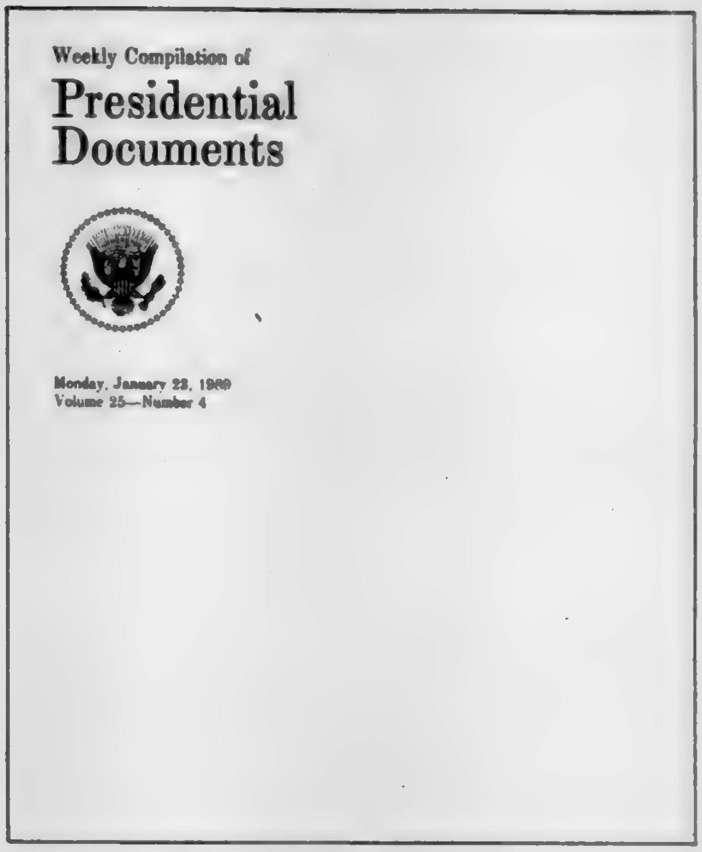

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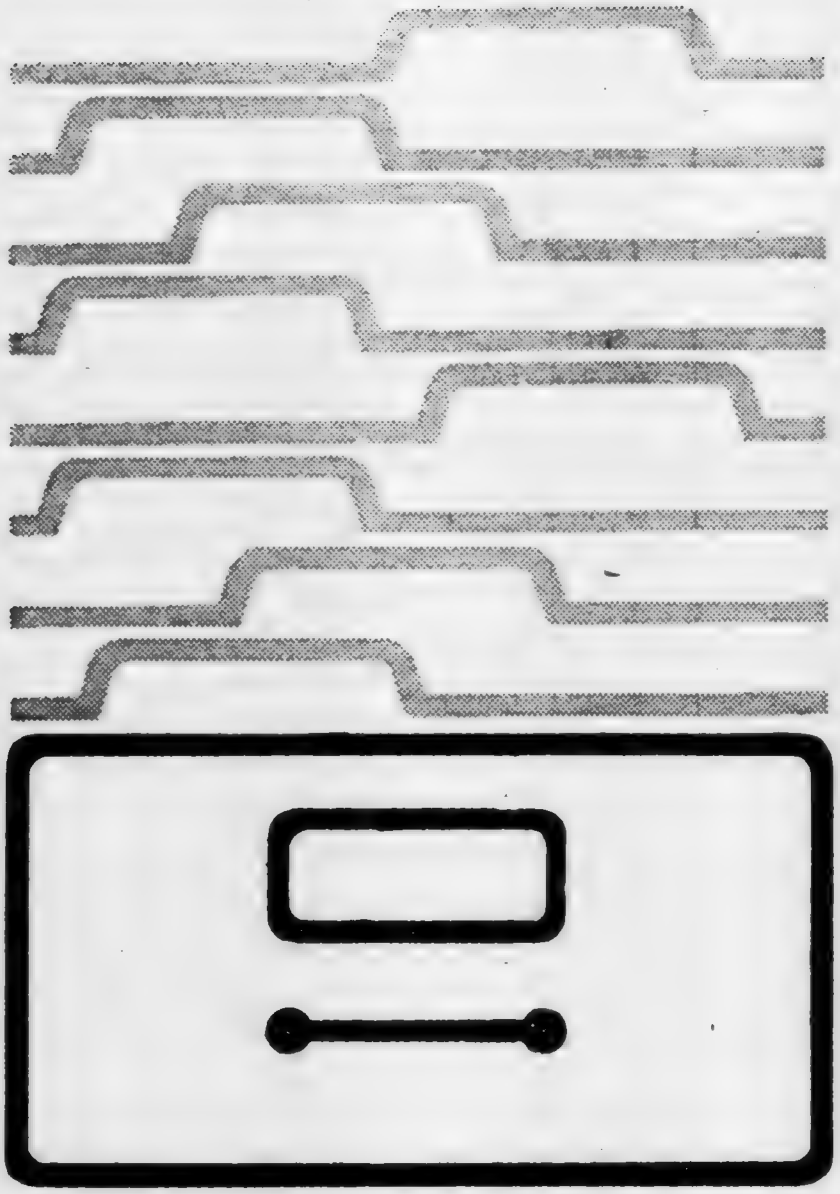

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Electronic Bulletin Board

Free Electronic Bulletin Board service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 15
Tuesday, January 26, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union loan rate ceiling is scheduled to revert to 15 percent on March 9, 1993, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period from March 8, 1993 through September 8, 1994. Loans and line of credit balances existing prior to May 15, 1987, may continue to bear their contractual rate of interest, not to exceed 21 percent. Further, the Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: March 9, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Lindsay L. Neunlist, at the above address. Telephone number: (202) 682–9640.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) Money market interest rates have risen over the preceding 6 months; and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980s, the Board extended the 21 percent ceiling four times. On March 11, 1987, the Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present.

The Board felt, and continues to feel that the 18 percent ceiling would fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions could react to any adverse economic developments, and would ensure that any increase in the cost of funds would not impinge on earnings of federal credit unions.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. In the final analysis, the market sets the rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish loan rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent if the Board can justify it. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Justification for a Ceiling No Higher Than 18 Percent

Money Market Interest Rates

While money market rates are low right now, both long and short rates have increased in the last few months. Table 1 gives information on past interest rates. There is a general consensus among economists that money market rates will continue to rise as economic growth accelerates. Implied forward rates, the money market's best guess about where interest rates are going, are significantly higher over the next year. By the time this rule becomes effective, money markets will have experienced 6 months of rising rates. The Board is ready to revisit this issue should this expectation not be confirmed.

Liquidity, Capital, Earnings, and Growth of Individual Credit Unions

For at least 2,631 credit unions, market conditions call for rates on unsecured loans to be above 15 percent. For some of these credit unions, three factors combine to require interest rate charges above 15 percent in order to maintain liquidity, capital, earnings, and growth. First, loan balance. For these 2,631 credit unions, the average unsecured balance is $876. There are fixed costs of granting and processing a loan. Many of these costs are incurred regardless of the size of the loan. Expressed as a percentage of the loan balance on which interest will be collected, these costs can be very high on small loans. As one credit union states, "The total interest earned on a $200 loan at 17 percent for 12 months is $34. Even at 17 percent it costs us more to make the loan than we recover in interest income, assuming it does pay to maturity and is not charged off." The Functional Cost and Profit Analysis by the Federal Reserve System calculates the average cost to a credit union for making an installment loan to be $95.66, plus $5.49 per payment. The $34 does not even cover the cost of accepting the twelve payments.

TABLE 1.—MONEY MARKET INTEREST RATES

		3 mo. treasuries	6 mo. treasuries	1 yr. treasuries
October	1st week	2.69	2.82	3.02
	2nd week	2.76	2.88	3.09
	3rd week	2.90	3.01	3.26
	4th week	2.95	3.17	3.48
	5th week	2.94	3.19	3.50
November	1st week	3.03	3.23	3.58
	2nd week	3.08	3.30	3.64
	3rd week	3.16	3.37	3.73
	4th week	3.24	3.43	3.76
December	1st week	3.30	3.45	3.82
	2nd week	3.24	3.36	3.72
Increase, in basis pts., since trough		0.55	0.54	0.70

Many banks will not even consider loan applications for less than $1,000. Lowering the interest rate ceiling for credit unions will discourage them, too, from making these loans. Credit seekers' options will be reduced, with most of those affected having no choice but to turn to neighborhood lenders.

Second, credit risk. Loans to young members who have not yet established a credit history, and loans to those who have built weak credit histories carry high credit risk. Credit unions must charge rates high enough to cover higher-than-usual losses for such loans. There are undoubtedly more than 2,631 credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have "Credit Builder" or "Credit Rebuilder" loans, but choose to report a lower rate loan product on the single line in the call report for unsecured loans.

Third, credit union size. Small credit unions have fewer loans over which to distribute their overhead costs.

Thus, small credit unions making small loans to borrowers with poor or no credit histories are struggling with far higher costs than the typical credit union. Both young people and lower income households have limited access to credit and, absent a credit union, often pay rates of 24 to 30 percent to small loan companies. Or they may be forced to resort to the check-cashing outlet where a post-dated check will be cashed at effective rates of 200, or even 300, percent. Therefore, rates between 15 and 18 percent are attractive to such members and help cover the credit unions' costs of providing this kind of credit.

NCUA staff is not aware of any complaints from members of those credit unions offering high-risk, high-interest rate loans.

Among the 2,631 credit unions charging more than 15 percent for unsecured loans, there are 704 credit unions who are charging 18 percent for their unsecured loans other than credit cards. Among the 704 are 179 credit unions with 20 percent or more of their assets in this kind of loan. For these credit unions, lowering their rates would damage their liquidity, capital, earnings, and growth. Table 2 shows tabulations on credit unions charging 18 percent, and how the percent of assets in unsecured loans goes down as credit union size goes up.

TABLE 2.—CREDIT UNIONS CHARGING 18 PERCENT ON UNSECURED LOANS, JUNE 1992

Asset size group	Total count of CUs of this asset size	Charging 18% on unsecured loans		More than 20% of assets in unsecured loans	
		Number	Percent	Number	Percent
Less than $500,000	1,840	121	6.6	60	49.6
$500,000 to $2 min	2,886	191	6.6	67	35.1
$2 min to $10 min	4,351	248	5.7	48	19.4
$10 min to $50 min	2,707	108	4.0	4	3.7
$50 min to $100 min	493	15	3.0		
$100 min and up	490	21	4.3		

At the same time, lowering the ceiling would not change the rates the vast majority of credit unions are charging, since they are already at or below market. In fact, in this circumstance, a ceiling can cause rates to be higher than they would have been without the ceiling. The closer a loan rate is to actual market rates, the more likely it is that the ceiling will act as a floor for rates. There are two reasons why this happens. First, setting a ceiling close to market rates creates the impression that the ceiling rate is the "federally approved" rate. Second, if credit unions feel they may not have the flexibility to raise rates in the near future should market rates rise unexpectedly, they are more likely to keep current rates higher than they otherwise would have as insurance against market rate increases.

In conclusion, the Board has continued the federal credit union loan interest rate ceiling of 18 percent per year for the period from March 9, 1993 through September 8, 1994. Loans and line of credit balances existing on May 15, 1987 may continue to bear their contractual rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant it.

Regulatory Procedures

Administrative Procedures Act

The Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period prior to the March 9, 1993 expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the Board has considered the need for this rule, and the alternatives, as set forth above.

Paperwork Reduction Act

There has been no change in the paperwork requirements.

Executive Order 12612

This final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions, Loan interest rates.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR chapter VII, subchapter A is amended as set forth below:

PART 701—[AMENDED]

1. The authority citation for part 701 is amended to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798, and Public Law 101–73. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601, et seq., 42 U.S.C. 1981 and 42 U.S.C. 3601–3610.

2. Section 701.21(c)(7)(ii)(C) is amended to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After September 9, 1994, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before September 9, 1994.

* * * * *

[FR Doc. 93–1487 Filed 1–25–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–244–AD; Amdt. 39–8475; AD 93–01–21]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This action requires a close visual inspection to detect damage or blockage of the flexible hoses that connect the smoke detector to the air extraction duct in each lavatory and to detect contamination of the hoses, lavatory air extraction ducting, hose/duct connection, or inlet grid; and repair or replacement of discrepant parts. This amendment is prompted by a recent report of holes found in the flexible hoses connecting the smoke detector to the lavatory compartment air extraction duct, blockages of the flexible hoses and the hose/duct connection, and contamination of the air extraction ducting and inlet grid by dust and fibers. The actions specified in this AD are intended to prevent failure of the smoke detection system to provide warning of a fire in the lavatory.

DATES: Effective February 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–244–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that an operator of these airplanes reported that during landing approach, a fire occurred in a lavatory waste bin. The fire was extinguished by a flight attendant before the automatic waste bin fire extinguisher was triggered. During this incident, the smoke detection system provided no warning indication of smoke in the lavatory. During a subsequent examination of the airplane, holes were found in the flexible hoses connecting the smoke detector to the lavatory compartment air extraction duct. Results of further inspections of other lavatory installations revealed blockages of the flexible hoses and the hose/duct connection, as well as contamination of the air extraction ducting and the inlet grid by dust and fibers. These conditions, if not corrected, could result in failure of the smoke detection system to provide warning of a fire in the lavatory.

Airbus Industrie has issued All Operator Telex (AOT) 26–07, dated October 6, 1992, that describes procedures for a close visual inspection to detect damage or blockage of the flexible hoses that connect the smoke detector to the air extraction duct in each lavatory, and to detect contamination of the hoses, lavatory air extraction ducting, hose/duct connection, or inlet grid; and repair or replacement of discrepant parts. The DGAC classified this AOT as mandatory and issued French Airworthiness Directive 92–236–038(B), dated November 10, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of the smoke detection system to provide warning of a fire in the lavatory. This AD requires a close visual inspection to detect damage or blockage of the flexible hoses that connect the smoke detector to the air extraction duct in each lavatory, and to detect contamination of the hoses, lavatory air extraction ducting, hose/duct connection, or inlet grid; and repair or replacement of discrepant parts. The actions are required to be accomplished in accordance with the AOT described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–244–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–21. Airbus Industrie: Amendment 39–8475. Docket 92–NM–244–AD.

Applicability: Model A320 series airplanes on which Modification 22561 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the smoke detection system to provide warning of a fire in the lavatory, accomplish the following:

(a) Within 450 hours time-in-service after the effective date of this AD, perform a close visual inspection to detect damage or blockage of the flexible hoses that connect the smoke detector to the air extraction duct in each lavatory, and to detect contamination of the hoses, air extraction ducting, hose/duct connection, or inlet grid, in accordance with Airbus Industrie All Operator Telex (AOT) 26–07, dated October 6, 1992.

(1) If any damaged hose is found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, repair or replace the damaged hose, in accordance with the AOT. If any damaged hose is repaired, that hose must then be replaced with a new hose within 400 hours time-in-service following the repair.

(2) If any blocked hose or contaminated hose, air extraction ducting, hose/duct connection, or inlet grid is found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, clean the blocked or contaminated part, in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection, repair, and replacement shall be done in accordance with Airbus Industrie All Operator Telex (AOT) 26–07, dated October 6, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 10, 1993.

Issued in Renton, Washington, on January 14, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1819 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–243–AD; Amendment 39–8479; AD 93–01–25]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A320 series airplanes. This action requires a one-time check to verify proper torque values and alignment of the corresponding witness mark on the connection on the fuel return line in the pylon, and retorquing and remarking, if necessary. This action also requires the performance of a leak check and replacement of the sealant, if necessary. This amendment is prompted by a report of an engine fire caused by a loose connection on the fuel return line in the pylon and the resultant failure of the pylon drain system to drain the leaking fuel. The actions specified in this AD are intended to prevent fuel leakage onto the engine and subsequent engine fire.

DATES: Effective February 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1993.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320 series airplanes. The French DGAC advises that an operator of Model A320 series airplanes reported an engine fire during the final phase of landing. Investigation revealed that the fire was caused by a loose connection on the fuel return line in the engine pylon, which allowed fuel to leak into the pylon. Normally, both parts of the connection are marked with a red witness mark when tightened to a proper torque value. However, in this incident, although the red witness marks remained in alignment, the connection, which was only hand-tightened, remained loose.

Subsequent investigation revealed that the sealant was deteriorated in zone "A" of the pylon. This deteriorated sealant caused fuel to leak onto the engine and caused the engine fire.

These conditions, if not corrected, could result in fuel leakage onto the engine, and subsequently lead to an engine fire.

Airbus Industrie has issued All Operator Telex (AOT) 28–04, Revision 1, dated September 9, 1992, that describes procedures for a one-time check to verify proper torque values and alignment of the corresponding witness mark on the connection on the fuel return line in the pylon, and retorquing and remarking, if necessary. This AOT also describes procedures for the performance of a leak check and replacement of the sealant, if necessary. The French DGAC classified this AOT as mandatory and issued Airworthiness Directive 92–228–037(B) in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fuel leakage onto the engine and subsequent engine fire. This AD requires a one-time check to verify proper torque values and alignment of the corresponding witness mark on the connection on the fuel return line in the pylon, and retorquing and remarking, if necessary. This action also requires the performance of a leak check and replacement of the sealant, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–243–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–25. Airbus Industrie: Amendment 39–8479. Docket 92–NM–243–AD.

Applicability: Model A320 series airplanes, manufacturer's serial numbers 002 through 180, inclusive; 183 through 194, inclusive; 196 through 315, inclusive; 317 through 321, inclusive; 323 through 325, inclusive; and 328 through 334, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage onto the engine and the potential for an engine fire, accomplish the following:

(a) Within 500 hours time-in-service after the effective date of this AD, perform a torque check of the connection on the fuel return line at rib 9 in accordance with Airbus Industrie All Operator Telex (AOT) 28–04, Revision 1, dated September 9, 1992.

(1) If the red witness marks are incorrectly aligned, prior to further flight, accomplish paragraphs (a)(1)(i) and (a)(1)(ii) of this AD in accordance with the AOT.

(i) Tighten the connection to torque values between 478 and 522 inch-pounds.

(ii) Remove the existing witness marks and remark with an indelible marker pen.

(2) If the red witness marks are correctly aligned, this AD does not require retorquing or remarking.

(b) Within 500 hours time-in-service after the effective date of this AD, perform a leak check of the sealant in pylon zone "A", in accordance with All Operator Telex (AOT) 28–04, Revision 1, dated September 9, 1992.

(1) If any leak is found or if the water level drops while conducting the leak check, prior to further flight, replace the sealant in accordance with the AOT.

(2) If no leak is found and if the water level does not drop while conducting the leak check, this AD does not require replacement of the sealant.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The checks, torquing, marking, and replacement shall be done in accordance with Airbus Industrie All Operator Telex 28–04, Revision 1, dated September 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 10, 1993.

Issued in Renton, Washington, on January 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1818 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–164–AD; Amendment 39–8461; AD 93–01–07]

Airworthiness Directives; Beech Model 400A and 400T Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T series airplanes, that requires replacing the existing link assembly of the uplink mechanism of the main landing gear door with an improved link assembly. This amendment is prompted by an investigation, conducted by the manufacturer, which revealed that uplock links installed on certain airplanes were undersized. The actions specified by this AD are intended to prevent snagging of the end clevis fitting and kinking (and subsequent failure) of the emergency release cable of the main landing gear, which may prevent extension of the main landing gear.

DATES: Effective March 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, Propulsion Branch, ACE–140W, FAA, Small Airplane Directorate, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T series airplanes was published in the **Federal Register** on October 15, 1992 (57 FR 47299). That action proposed to require replacing the existing link assembly of the uplink mechanism of the main landing gear door with an improved link assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 38 Beech Model 400A and 400T series airplanes of the affected design in the worldwide fleet. The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $700 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,810, or $1,030 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–07. Beech Aircraft Corporation: Amendment 39–8461. Docket 92–NM–164–AD.

Applicability: Model 400A series airplanes having serial numbers RK–1 through RK–32, inclusive; and Model 400T series airplanes having serial numbers TT–1 through TT–6, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent snagging of the end clevis fitting and kinking (and subsequent failure) of the emergency release cable of the main landing gear, which may prevent extension of the main landing gear, accomplish the following:

(a) Within 100 flight hours after the effective date of this AD, replace the existing link assembly from the uplink mechanism of the main landing gear door with an improved link assembly, in accordance with Beechcraft Service Bulletin 2447, dated June 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Beechcraft Service Bulletin 2447, dated June 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 2, 1993.

Issued in Renton, Washington, on December 29, 1992.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1815 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–56–AD; Amendment 39–8465; AD 93–01–11]

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that requires repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers, and repair of any cracks found. This amendment is prompted by results of wing fatigue tests, which indicate the possibility of cracking in both the left and right wing upper skin panels beneath the upper center line butt strap. Fatigue cracking in these areas, if not detected and corrected, could result in reduced structural integrity of the wings.

DATES: Effective March 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes was published in the **Federal Register** on June 5, 1992 (57 FR 23971). That action proposed to require repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers, and repair of any cracks found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

A second commenter agrees that the inspections proposed in the AD are necessary. However, the commenter suggests that the appropriate method for requiring such inspections is through the use of Certification Maintenance Requirements (CMR) items that are contained in the existing "FAA-approved" Maintenance Review Board (MRB) Report. The commenter notes that since CMR items are contained in the MRB Report, that Report cannot be used for its intended purpose, which is to allow an operator to develop a maintenance program and administer that program in conjunction with an approved reliability program. The commenter considers that since the placement of CMR items in the MRB Report ties the operator to the MRB Report for as long as the operator uses that aircraft type, accountability for CMR items could be established through existing program management procedures. In addition, the commenter remarks that since the FAA accepts the use of CMR items, it has set a precedent for continued use of these items. The commenter implies that since the inspections required by British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991, which is the subject of this AD, will become part of the MRB Report, issuance of an AD would be redundant and would necessitate increased tracking and documentation requirements for the operator.

The FAA does not concur. CMR items are intended to be repetitive inspections or component replacements for equipment, systems, and installations. Accomplishment of these CMR items would ensure that the statistical probability of certain failures that could occur during operation of the airplane does not exceed the limitations specified in § 25.1309 of the Federal Aviation Regulations (FAR), which is applicable to the design and approval of transport category airplanes.

These CMR items are based on statistical safety analyses of airplane electrical, electronic, hydraulic, pressurization, and propulsion systems. These analyses must be completed and approved by the FAA prior to its issuance of an airplane Type Certificate (TC). Following issuance of the TC, those inspections, component replacements, or overhaul interval requirements for airplane systems that are based on in-service experience with the airplane, but that do not result in re-evaluation of the basic statistical analysis on which approval of the system is based, do not qualify as CMR items.

The inspection proposed in this notice is not related to compliance of the airplane design with the statistical evaluation requirements of Section 25.1309 for equipment, systems, and installations. For this reason, the proposed inspection does not qualify as a CMR item. Therefore, the FAA considers issuance of an AD necessary in this instance, since AD's are the means by which accomplishment of procedures and adherence to specific compliance times are made mandatory.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane (excluding access and reinstallation time) to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,280 for each inspection cycle. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–11. British Aerospace: Amendment 39–8465. Docket 92–NM–56–AD.

Applicability: All Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 24,000 landings, or within 60 days after the effective date of this AD, whichever occurs later: Perform an X-ray inspection to detect fatigue cracks in the left and right wing upper skins, joint straps, and stringers in the vicinity of rib "O," in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991.

(1) If cracks are found, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 9,000 landings, in accordance with the service bulletin.

(2) If no cracks are found, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 9,000 landings, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 2, 1993.

Issued in Renton, Washington, on January 8, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1812 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–159–AD; Amendment 39–8466; AD 93–01–12]

Airworthiness Directives; Short Brothers, PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–60 series airplanes, that requires modification of the power supply to the emergency lighting system and a subsequent functional test of the system. This amendment is prompted by reports indicating that the emergency lighting system will not illuminate automatically if normal airplane power is interrupted or lost. The actions specified by this AD are intended to prevent failure of the emergency lights to illuminate during an emergency.

DATES: Effective March 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes was published in the **Federal Register** on August 27, 1992 (57 FR 38796). That action proposed to require modification of the power supply to the emergency lighting system and a subsequent functional test of the system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule, but requests that the FAA determine if the applicability of the proposal should be extended to include Model SD3–30 series airplanes, since these airplanes are similar in design to Model SD3–60 series airplanes. In response to this request, the FAA has investigated the emergency lighting systems on Model SD3–30 series airplanes. The FAA has determined that the emergency lighting system on those airplanes is in compliance with Section 25.812 of the Federal Aviation Regulations (FAR), which specifies the requirements for emergency lighting systems on transport-category airplanes. The configuration of the system on the Model SD3–30 is not subject to the unsafe condition identified in the system of the Model SD3–60.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 86 airplanes of U.S. registry will be affected by this AD, that it will take approximately 28 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $132,440, or $1,540 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–12. Short Brothers, PLC: Amendment 39–8466. Docket 92–NM–159–AD.

Applicability: Model SD3–60 series airplanes; as listed in Short Brothers Service Bulletin SD360–33–23, dated June 1, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the emergency lights to illuminate during an emergency, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the power supply to the emergency lighting system and perform a functional test of the system, in accordance with paragraph 2.A., Part A, B, C, or D, as applicable, of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–33–23, dated June 1, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification and functional test shall be done in accordance with Short Brothers Service Bulletin SD360–33–23, dated June 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 2, 1993.

Issued in Renton, Washington, on January 8, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1817 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–90–AD; Amendment 39–8464; AD 93–01–10]

Airworthiness Directives; British Aerospace Model DH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model DH/HS/BAe 125 series airplanes, that requires modification of the Generator Control Unit (GCU) circuitry. This amendment is prompted by a report of damaged, loose, or disconnected GCU ground (earth) wires, resulting in excessive voltage output, and subsequent overheating of the battery and/or damage to voltage-sensitive avionics equipment. The actions specified by this AD are intended to prevent uncontrolled excessive voltage, which could result in overheating of the battery and/or damage to voltage-sensitive avionics equipment.

DATES: Effective March 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bud Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model DH/HS/BAe 125 series airplanes was published in the **Federal Register** on September 24, 1992 (57 FR 44141). That action proposed to require modification of the Generator Control Unit (GCU) circuitry.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 360 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the modification on 351 airplanes, and 30 work hours per airplane to accomplish the modification on the other 9 airplanes. The average labor rate is $55 per work hour. Required parts will cost approximately $1,250 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $850,950, or between $2,350 and $2,900 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-01-10. British Aerospace: Amendment 39-8464. Docket 92-NM-90-AD.

Applicability: Model DH/HS/BAe 125 series airplanes equipped with Garrett engines, as listed in British Aerospace Service Bulletin SB.24-289-3267A, B, C, D, E, F & G, Revision 1, dated April 10, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent battery overheating and/or damage of voltage sensitive avionics equipment, accomplish the following:

(a) Within 180 days after the effective date of this AD, modify the Generator Control Circuit (GCU) circuitry in accordance with British Aerospace Service Bulletin SB.24-289-3267 A, B, C, D, E, F & G, Revision 1, dated April 10, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.24-289-3267 A, B, C, D, E, F & G, Revision 1, dated April 10, 1992. (NOTE: The issue date of this British Aerospace Service Bulletin SB.24-289-3267 A, B, C, D, E, F & G is indicated only on "page 1 of 57"; no other page of this document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 2, 1993.

Issued in Renton, Washington, on January 8, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1813 Filed 1-25-93; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 92-NM-170-AD; Amendment 39-8460; AD 93-01-06]

Airworthiness Directives; Short Brothers Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Short Brothers Model SD3-60 series airplanes, that currently requires repetitive inspections of the horizontal stabilizer rear spar web fuselage attachment fitting area for defective rivets, and repair, if necessary. This amendment clarifies that the aft face of the front spar web need not be inspected. This amendment is prompted by a report that a requirement to inspect the aft face of the front spar web was inadvertently included in the existing AD. The actions specified by this AD are intended to ensure that only the appropriate area of the horizontal stabilizer is inspected.

DATES: Effective March 2, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bud Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-07-14, Amendment 39-6176 (54 FR 12588, March 28, 1989), which is applicable to certain Short Brothers Model SD3-60 series airplanes, was published in the **Federal Register** on October 15, 1992 (57 FR 47302). The action proposed to clarify that the aft face of the front spar web need not be inspected.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $22,440, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6176 (54 FR 12588, March 28, 1989), and by adding a new airworthiness directive (AD), amendment 39–8460, to read as follows:

93–01–06. Short Brothers, PLC: Amendment 39–8460. Docket 92–NM–170–AD. Supersedes AD 89–07–14, Amendment 39–6176.

Applicability: Model SD3–60 series airplanes, serial numbers SH3601 through SH3691, inclusive, and SH3694; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

(a) Visually inspect, in accordance with the schedule listed below, the forward face of the rear spar web for defective rivets between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Shorts Service Bulletin SD360–55–16, dated April 1988.

(1) For airplane serial numbers SH3680 through SH3691, inclusive, and SH3694, and for airplanes affected by this AD that have used only a 15 degree takeoff flap setting since before or upon reaching 5,000 flights, inspection is required within the next 100 flights after April 28, 1989 (the effective date of AD 89–07–14, Amendment 39–6176), or prior to the total accumulation of 12,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,500 flights.

(2) For all other airplanes affected by this AD, inspection is required within the next 100 flights after April 28, 1989, or prior to the accumulation of 8,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,000 flights.

(b) If defective rivets are found, prior to further flight, repair in accordance with Part II of Shorts Service Bulletin SD360–55–16, dated April 1988. After repair, continue inspections in accordance with paragraph (a) of this AD.

(c) The repetitive inspections required by paragraph (a) of this AD may be terminated following completion of the modification of the horizontal stabilizer spar webs (Modification 7998), in accordance with Shorts Service Bulletin SD360–55–12, Revision 2, dated November 1986.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, repair, and modification shall be done in accordance with the following Shorts service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
SD360–55–16, April 1988	1–7	Original	Apr. 1988.
SD360–55–12, Revision 2, November 1986	1, 4–5, 7–44	2	Nov. 1986.
	2–3, 6	Original	Apr. 1986.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202–3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 2, 1993.

Issued in Renton, Washington, on December 29, 1992.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1816 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 87P–0422/CP]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Addition to List of Essential Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: This document codifies the Food and Drug Administration's (FDA's) decision to grant the petition of Fisons Corp. to add metered-dose nedocromil sodium for oral inhalation to the list of products containing a chlorofluorocarbon (CFC) propellant for an essential use. Essential use products, which are listed in 21 CFR Part 2—General Administrative Rulings and Decisions, at § 2.125(e) (21 CFR 2.125(e)), are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products. In the agency's decision that is now being codified, FDA concluded that the product provides a unique health benefit that would be unavailable without the use of a chlorofluorocarbon.

DATES: Effective January 26, 1993; written comments by March 29, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Center for Drug Evaluation and Research (HFD–362), Food and Drug Administration, 7500

Standish Pl., Rockville, MD 20855, 301–295–8046.

SUPPLEMENTARY INFORMATION:

I. Background

Under § 2.125 *Use of chlorofluorocarbon propellants in self-pressurized containers* (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a chlorofluorocarbon propellant for a nonessential use is adulterated or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act (the act). This prohibition is based on scientific research indicating that chlorofluorocarbons may reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation may increase the incidence of skin cancer, change the climate, and produce other adverse effects of unknown magnitude on humans, animals, and plants.

Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing chlorofluorocarbon propellants that FDA determines provide a unique health benefit that would not be available without the use of a chlorofluorocarbon. These products are referred to in the regulation as essential uses of chlorofluorocarbon and are listed in § 2.125(e).

Under § 2.125(f), any person may petition the agency to request additions to the list of uses considered essential. To demonstrate that the use of a chlorofluorocarbon is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of a chlorofluorocarbon in the product; (2) the product provides a substantial health, environmental, or other public benefit unobtainable without the use of the chlorofluorocarbon; and (3) the use does not involve a significant release of chlorofluorocarbons into the atmosphere or, if it does, the release is warranted by the benefit conveyed.

II. Petition Received by FDA

Fisons Corp. submitted a petition under § 2.125(f) and part 10 (21 CFR part 10) requesting an addition to the list of chlorofluorocarbon uses considered essential. The petition is on file under the docket number appearing in the heading of this document and may be seen in the Dockets Management Branch (address above). The petition requested that metered-dose nedocromil sodium for oral inhalation be included in § 2.125(e) as an essential use of chlorofluorocarbon. The petition contained a discussion supporting the position that there are no technically feasible alternatives to the use of chlorofluorocarbon in the product. It included information showing that no alternative delivery systems (e.g., the hand-operated pump) or other substitute propellants (e.g., compressed gases) can dispense the drug for effective inhalation therapy as safely and uniformly as chlorofluorocarbon propellants. Also, the petition stated that the product provided a substantial health benefit that would not be obtainable without the use of chlorofluorocarbon. In this regard, the petition contained information to support the use of this product as a bronchodilator. Further, the petition stated that, unlike a bulb nebulizer, the vial and the mouthpiece for the product are portable and can be easily carried in a purse or a pocket. The petition asserted that metered-dose nedocromil sodium would not result in a significant release of chlorofluorocarbon propellants into the atmosphere because the total daily amount released per product is estimated to be approximately 1.088 grams.

III. FDA's Review of the Petition

Because the agency agreed that, for some asthmatic patients, the use of metered-dose nedocromil sodium provides a special benefit that would be unavailable without the use of chlorofluorocarbons, FDA has granted the petition. FDA also agrees that the use of a metered-dose delivery system for this product does not involve a significant release of chlorofluorocarbons into the atmosphere. Therefore, FDA is including metered-dose nedocromil sodium administered by oral inhalation in the list of essential uses of chlorofluorocarbon propellants. The purpose of this document is to add the product to the list in § 2.125(e), for public information purposes.

IV. Effective Date

The petition was granted on December 12, 1992. This codification is effective January 26, 1993. FDA had previously allowed a period for public comment prior to exempting a product from the agency's ban on the use of CFC propellants. Upon further consideration, however, FDA has concluded that a comment period prior to granting an essential use exemption is not necessary. A decision to grant an essential use petition for a CFC propellant is not a rule but an informal decision. Therefore, additions to the list of essential use products (21 CFR 2.125(e)) differ from most material published in the *Code of Federal Regulations* in that the items listed in § 2.125(e) are not rules, but are listings in the *Code of Federal Regulations* to facilitate public availability of important information. Furthermore, because these products are considered essential, providing for a comment period prior to granting an exemption would be contrary to the public interest, particularly for those patients who gain important therapeutic benefits from these products, and would be adversely affected from any delay in their availability. Therefore, FDA will no longer provide for a comment period before granting an essential use exemption. However, FDA is providing a 60–day period for public comment for views on whether the exemption should be modified or revoked.

V. Request for Comments

Interested persons may, on or before March 29, 1993, submit to the Dockets Management Branch (address above) written comments regarding this rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action under 21 CFR part 25 and has concluded that this action will not have a significant effect on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 2 is amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 continues to read as follows:

Authority: Secs. 201, 301, 305, 402, 408, 409, 501, 502, 505, 507, 512, 601, 701, 702, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 335, 342, 346a, 348, 351, 352, 355, 357, 360b, 361, 371, 372, 374); 15 U.S.C. 402, 409.

2. Section 2.125 is amended by adding new paragraph (e)(13) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

* * * * *

(e) * * *

(13) Metered-dose nedocromil sodium human drugs administered by oral inhalation.

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Dated: January 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–1792 Filed 1–25–93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 172

[Docket No. 90F–0446]

Food Additives Permitted for Direct Addition to Food for Human Consumption: Dimethyl Dicarbonate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethyl dicarbonate as a yeast inhibitor in dealcoholized and low alcohol wines. This action is in response to a petition filed by Miles, Inc. (formerly Mobay Corp.).

DATES: Effective January 26, 1993; written objections and requests for a hearing by February 25, 1993.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9515.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 20, 1990 (55 FR 48292), FDA announced that a food additive petition (FAP 0A4213) had been filed by Mobay Corp., 1575 I St. NW., Washington, DC 20005, proposing that § 172.133 *Dimethyl dicarbonate* (21 CFR 172.133) be amended to provide for the safe use of dimethyl dicarbonate as a yeast inhibitor in dealcoholized and low alcohol wine. The petitioner currently operates under the name of Miles, Inc.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of dimethyl dicarbonate in dealcoholized wine and low alcohol wine is safe. Dealcoholized wine and low alcohol wine will generally be consumed as substitutes for, rather than in addition to, wine. Thus, these uses will not increase consumer exposure to dimethyl dicarbonate or its decomposition products compared to that already deemed safe at the time § 172.133 was promulgated (53 FR 41325, October 21, 1988).

Dimethyl dicarbonate is unstable in aqueous solution and breaks down almost immediately after addition to beverages. In wine and other aqueous liquids, the principal breakdown products are methanol and carbon dioxide. Methyl ethyl carbonate, as well as carbomethoxy amino- and hydroxy-adducts of amines, sugars, and fruit acids, are also formed in minor amounts. Dimethyl carbonate is present as an impurity in dimethyl dicarbonate. Dimethyl dicarbonate also may react with traces of ammonia or ammonium ions in wines to form trace quantities of methyl carbamate, a compound that has been shown to cause cancer in laboratory animals (Ref. 1). In dealcoholized wine and low alcohol wine, the level of methyl carbamate formation is expected to be similar to that formed in standard wine because the critical parameters governing methyl carbamate formation, Ph and ammonium ion concentration, are not expected to be altered by the dealcoholization process (reverse osmosis) employed in the manufacture of dealcoholized wine and low alcohol wine (Ref. 2).

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. Under section 409(c)(5)(A) of the act (21 U.S.C. 348(c)(5)(A)), among the relevant factors to be considered in determining whether a proposed use of a food additive is safe is the probable consumption of the additive and of any substance formed in or on food because of the use of the additive. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not--and cannot--require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contained a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer but that contains a carcinogenic impurity, or whose use will lead to the formation of trace amounts of a carcinogenic substance in or on food, may be properly evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d. 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

In evaluating the safety of the food additive, dimethyl dicarbonate, FDA reviewed the byproducts formed during hydrolysis and the reaction of the food additive with other constituents found in wines. The results of that evaluation were discussed in the preamble to the final rule establishing § 172.133 and are included in the discussion below.

FDA finds that the petitioned use level of 100 to 200 parts per million (ppm) of dimethyl dicarbonate will result in virtually no exposure of consumers to the additive itself. Dimethyl dicarbonate is unstable in aqueous solution and breaks down almost immediately after addition to the food (beverages) to form primarily carbon dioxide and methanol. The instability of dimethyl dicarbonate is confirmed by data submitted by the petitioner showing that dimethyl dicarbonate cannot be detected by analysis of food to which it has been added (Ref. 2).

To establish that dimethyl dicarbonate is safe for use as an inhibitor of yeast in wine, dealcoholized wine, and low alcohol wine, the petitioner submitted data from acute, subchronic, and chronic toxicity studies. In the subchronic and chronic toxicity studies, rats received either water, orange juice, or wine treated with 4,000 ppm of dimethyl dicarbonate (20 times the proposed use level in wine or wine substitutes) as the drinking fluid while the controls received water, orange juice, or wine. These studies showed no adverse effects from water, orange juice, or wine treated with dimethyl dicarbonate.

In another chronic toxicity study, dogs received either water or orange juice treated with 4,000 ppm of dimethyl dicarbonate as the drinking fluid. This study also revealed no adverse effects from the water or orange juice treated with dimethyl dicarbonate.

The petitioner also submitted a two-generation reproduction study in which rats received drinking fluids that were treated with dimethyl dicarbonate (4,000 ppm). This study revealed no treatment-related adverse effects. These chronic and other multigeneration (lifetime) studies of dimethyl dicarbonate also did not produce any evidence that dimethyl dicarbonate is a carcinogen.

III. Safety of Substances That May Be Present in Wine or Wine Substitutes Due to the Use of the Additive

Because dimethyl dicarbonate may contain impurities and decomposes into other chemical species when added to aqueous solutions, such as wine, dealcoholized wine, and low alcohol wine, FDA has also evaluated the safety of the chemicals found in wine, dealcoholized wine, and low alcohol wine as a result of the use of dimethyl dicarbonate.

A. Minor Impurities and Reaction Products

The minor reaction products formed in wine, dealcoholized wine, and low alcohol wine from the use of dimethyl dicarbonate include methylethyl carbonate and carbomethoxy amino- and hydroxy-adducts of amines, sugars, and naturally occurring fruit acids such as lactic acid, citric acid, and ascorbic acid (vitamin C). Dimethyl carbonate, an impurity in dimethyl dicarbonate, is also present in minor amounts in wine, dealcoholized wine, and low alcohol wine, as a result of the use of the additive.

The petitioner presented data to show that the addition of 100 to 200 ppm of dimethyl dicarbonate to wine, dealcoholized wine, or low alcohol wine is effective in inhibiting the growth of most species of yeast found in such products. According to the U.S. Department of Agriculture Food Consumption Survey, 1977 1978, the 90th percentile consumption level for "drinkers only" of these products is 232 grams per person per day (g/person/day). Based upon a level of addition of dimethyl dicarbonate of 100–200 ppm, on consumption of 232 g of wine or wine substitutes, and on data submitted by the petitioner, the agency estimates that the maximum daily consumption of the minor reaction products resulting from the addition of dimethyl dicarbonate to wine or wine substitutes is from 2 to 5 milligrams per person per day (mg/person/day). Because these reaction products were formed in the dimethyl dicarbonate-treated fluids (water and wine) used in the subchronic and chronic rat and dog studies submitted by the petitioner, the safety of the reaction products is evidenced by the findings of no treatment-related adverse effects in these studies.

The safety of methylethyl carbonate was further evaluated in a subchronic toxicity study in rats in which the substance was added to the drinking water at levels of 0, 1,000, 3,000, and 10,000 ppm for 3 months. The average daily consumption of methylethyl carbonate ranged from approximately 0.1 mg/kilogram (kg) to 1 g/kg body weight/day. No adverse effects in rats from drinking the water treated with methylethyl carbonate were seen in this study.

A teratogenicity study was conducted with pregnant female rats of the Long-Evans FB30 strain. The animals were fed diets containing methylethyl carbonate at levels of 0, 100, 1,000, and 10,000 ppm. No signs of toxicity were noted. However, there was a dose-related reduction in fluid intake and a slight decrease in body weight gain in pregnant females receiving methylethyl carbonate throughout the gestational period. The reduced fluid intake appears to be attributable to the bad taste and smell of the water containing the methylethyl carbonate. All test and control females were sacrificed at day 20, Cesarean sections were performed, and the fetuses were examined. No embryotoxic or teratogenic effects were found in this examination.

To establish the safety of dimethyl carbonate, the petitioner submitted a subchronic study in rats in which dimethyl carbonate was incorporated into the drinking water at levels of 0, 1,000, 3,000 and 10,000 ppm. An increase in body weight gain was observed in male rats at all treatment levels. No adverse effects were found in this study at any level.

B. Carbon Dioxide

Carbon dioxide, one of the principal hydrolysis products of dimethyl dicarbonate, is a natural product of animal metabolism. Carbon dioxide is present in solution as the carbonate and bicarbonate anions, however, and is routinely used to carbonate beverages (Ref. 3). The levels of carbon dioxide present in wine or wine substitutes as a result of the use of dimethyl dicarbonate are well below the levels found in carbonated beverages. Thus, the agency has no evidence that carbon dioxide would be harmful under the intended conditions of use.

C. Methanol

Methanol is the principal reaction product of concern resulting from the addition of dimethyl dicarbonate to wine. Theoretically, complete hydrolysis of dimethyl dicarbonate would yield 2 moles of methanol and 2 moles of carbon dioxide from each mole of dimethyl dicarbonate added to wine or wine substitute. On a weight basis, this yield corresponds to approximately 48 mg of methanol for each 100 mg of the additive added to a liter (L) of wine or wine substitute. To estimate a worst-case exposure of consumers to methanol from the proposed use of the additive, the agency assumed complete hydrolysis of dimethyl dicarbonate to methanol and carbon dioxide. Based on the addition of 100 to 200 mg dimethyl dicarbonate to 1 L of wine or wine substitute and on a beverage intake of 232 g/person/day (90th percentile consumption level), the agency estimates that the daily intake of methanol from this use of dimethyl dicarbonate would range from 11 to 22 mg/day (0.18 to 0.36 mg/kg body weight for a 60-kg person) (Ref. 4).

The agency considers the daily intake of methanol from the addition of dimethyl dicarbonate to wine or wine substitutes, even when added to the amount of methanol naturally present in other foods such as fresh fruits and vegetables and grain alcohol, to be safe. The no observed adverse effect level (NOAEL) in humans for methanol is 71 to 84 mg/kg body weight (Ref. 5). Because the NOAEL is derived from studies in humans, an acceptable daily intake (ADI) of 7.1 to 8.4 mg/kg body weight (426 to 500 mg/person for a 60-kg adult) is derived from the NOAEL by using a 10-fold safety factor (Ref. 5). The levels of methanol that occur naturally in fruit juices average 140 mg/L (140 ppm) and an additional 50 to 100 mg/L (50 to 100 ppm) may result from the use of dimethyl dicarbonate in wine (Ref. 4). Based upon consumption data from the U.S. Department of Agriculture Food Consumption Survey, 1977–1978, the total methanol exposure from these sources would be up to 50 to 60 mg/person/day (or one-tenth of ADI). There is, therefore, a large margin of safety between the methanol intake from the subject uses and the amount which can be safely ingested.

D. Methyl Carbamate

1. *Carcinogenicity.* Reaction of dimethyl dicarbonate with naturally occurring ammonia or ammonium ions in wine or wine substitutes may result in the formation of trace amounts of methyl carbamate, which has been shown to be carcinogenic in rats (Ref. 1). FDA has evaluated the safety of this reaction byproduct using risk assessment procedures to estimate the upper-bound limit of risk presented by the presence of this chemical as an impurity in wine treated with dimethyl dicarbonate. Based on this evaluation, the agency has concluded that under the proposed conditions of use, dimethyl dicarbonate is safe.

2. *Basis for evaluation.* The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various food and color additives (see e.g., 49 FR 13018, April 2, 1984). This evaluation of the risk from the use of dimethyl dicarbonate has two aspects: (1) Assessment of the probable exposure to methyl carbamate produced in food from the use of dimethyl dicarbonate; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

Based on an estimate of the level of methyl carbamate that may be produced from the addition of dimethyl dicarbonate to wine or wine substitutes as a yeast inhibitor, as well as the estimated average daily intake of wine over a lifetime, FDA estimated the worst-case exposure to methyl carbamate to be 2.4 micrograms per person per day (μg/person/day) (Refs. 4, 6, and 7).

The agency used data in a carcinogenesis bioassay report on methyl carbamate conducted by the National Toxicology Program (NTP) (Ref. 6) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of dimethyl dicarbonate. The bioassay report consisted of results from studies of methyl carbamate in both rats and mice. The bioassay in B6C3F1 mice was reported by NTP to be negative. The bioassay of methyl carbamate in F344/N rats consisted of a 2-year chronic study and a parallel study with sacrifices at 6, 12, and 18 months. The 2-year study employed a high dosage level of 200 mg/kg body weight. The parallel study employed one dosage level of 400 mg/kg body weight. In the 2-year chronic study, an increase in hepatocellular neoplasms was found at the high dose in female F344/N rats. In the parallel study, hepatocellular neoplasms were found at 6 months in both sexes, and the sacrifices at the later times revealed a classic progression from benign to highly malignant neoplasms dependent upon the length of time of exposure. The NTP concluded that "there was clear evidence of carcinogenic activity for male and female F344/N rats given methyl carbamate as indicated by incidences of hepatocellular neoplastic nodules and hepatocellular carcinoma" (Ref. 1).

3. *Results of evaluation.* Using the NTP bioassay report, the Center for Food Safety and Applied Nutrition's Quantitative Risk Assessment Committee (QRAC) estimated the human cancer risk from the potential exposure to methyl carbamate stemming from the proposed use of dimethyl dicarbonate as a yeast inhibitor in wine (Ref. 7).

The QRAC used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment through zero to cover the very low doses expected to be encountered under the proposed conditions of use of the additive. This procedure is not likely to underestimate the actual risk from the very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and a maximum 200 ppm level of use of the food additive.

Based on a worst-case exposure to methyl carbamate (2.4 μg/person/day), FDA estimated, using the linear proportional model, that the upper-bound limit of individual lifetime risk from potential exposure to methyl carbamate is 2.4×10^{-8} or less than 1 in 42 million. Because of numerous conservatisms in the exposure estimate, lifetime averaged individual daily exposure to methyl carbamate is expected to be substantially less than the estimated daily intake, and, therefore, the calculated upper-bound risk would be less than 1 in 42 million. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to methyl carbamate that may result from the use of up to 200 ppm of dimethyl dicarbonate in wine, dealcoholized wine, or low alcohol wine.

4. *Need for specifications.* The agency also has considered whether a specification is necessary to control the amount of methyl carbamate that may be formed in wine or wine substitutes treated with the additive. The agency finds that the amount of methyl carbamate formed in wine or wine substitutes may be controlled by limiting the amount of dimethyl dicarbonate that may be added to the wine or wine substitute to 200 ppm or less rather than setting a specification for the level of methyl carbamate impurity in the wine product. The petitioner submitted data to show that the maximum level of methyl carbamate impurity formed in commercial wine is less than 10 parts per billion for each 100 ppm of dimethyl dicarbonate added to wine. A 200 ppm level of dimethyl dicarbonate is sufficient to control the growth of all significant genera and species of yeast in wine and in wine substitutes that have been adequately pasteurized or ultra-filtered according to current good manufacturing practices to reduce the microbial count to 500 per milliliter or less.

E. Ethyl Carbamate

The agency is aware that ethyl carbamate, an animal carcinogen, occurs as a "natural" contaminant in wine. The agency is in the process of obtaining as much information as possible about the levels of such ethyl carbamate contamination. In addition, in cooperation with the wine industry, a program has been instituted to find and control the formation of ethyl carbamate so as to reduce its concentration to the lowest levels possible (Ref. 8).

The petitioner submitted studies in which gas chromatography/mass spectroscopy was used to measure the formation of ethyl carbamate (urethane) in dimethyl dicarbonate treated-wine and model wine solutions, in the presence of high concentrations of ammonium ions. These studies, conducted over a 12-month period, did not show formation of ethyl carbamate in excess of endogenous levels found in wine. These studies also did not show evidence of formation of ethyl carbamate by transesterification of methyl carbamate. Thus, there is no evidence that the use of dimethyl dicarbonate affects the level of ethyl carbamate in wine.

IV. Conclusion on Safety

FDA has evaluated all of the data in the petition pertaining to the use of dimethyl dicarbonate in dealcoholized wine and low alcohol wine and has determined that the additive is safe for its proposed use.

To ensure the safe use of the additive, FDA, under 21 U.S.C. 348(c)(1)(A) and in accordance with section 403 of the act (21 U.S.C. 343), finds that it is necessary to require that the label of the package containing the additive include, in addition to other information required by the act: (1) The name of the additive, "dimethyl dicarbonate," and (2) directions to provide that not more than 200 ppm of dimethyl dicarbonate will be added to the dealcoholized wine or low alcohol wine.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. NTP Technical Report on the Toxicology and Carcinogenesis Studies of Methyl Carbamate in F344/N Rats and B6C3F1 Mice, NTP, U.S. Department of Health and Human Services, Report No. 328, 1986.

2. Memorandum from the Food and Color Additives Review Section to the Direct Additives Branch, "Dimethyl Dicarbonate (DMDC) in Dealcoholized and Low-alcohol Wines," dated October 4, 1990.

3. Mones, Martha, "Carbonated Beverages," in "Encyclopedia of Chemical Technology," 4:710–725, 1978.

4. Memorandum from the Regulatory Food Chemistry Branch to the GRAS Review Branch, "Dimethyl Dicarbonate in Wine. Submission of September 5, 1986; Exposure Estimate for Methyl Carbamate and Methanol in Wine," dated January 14, 1987.

5. Memorandum from the Standards and Monitoring Branch to the Division of Regulatory Guidance, "Methanol in Brandy," dated December 18, 1989.

6. Memorandum from QRAC to the Office of Toxicological Sciences, "Methyl Carbamate in Wine," dated October 28, 1986.

7. Memorandum from QRAC to the Office of Toxicological Sciences, "Methyl Carbamate in Wine," dated November 20, 1987.

8. "Ethyl Carbamate Voluntary Program," Final Agreement Between the Wine Institute, the Association of American Vintners, and FDA, January 7, 1988.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before February 25, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. Section 172.133 is amended by revising the introductory text and paragraphs (b) and (c)(2) to read as follows:

§ 172.133 Dimethyl dicarbonate.

Dimethyl dicarbonate (CAS Reg. No. 4525–33–1) may be safely used in wine, dealcoholized wine, and low alcohol wine, in accordance with the following prescribed conditions:

* * * * *

(b) The additive is used or intended for use as an inhibitor of yeast in wine, dealcoholized wine, and low alcohol wine under normal circumstances of bottling where the viable yeast count has been reduced to 500 per milliliter or less by current good manufacturing practices such as flash pasteurization or filtration. The additive may be added to wine, dealcoholized wine, or low alcohol wine in an amount not to exceed 200 parts per million (ppm).

(c) * * *

(2) Directions to provide that not more than 200 ppm of dimethyl dicarbonate will be added to the wine, dealcoholized wine, or low alcohol wine.

* * * * *

Dated: January 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–1795 Filed 1–25–93; 8:45 am]

BILLING CODE 4160–01–F

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21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfadimethoxine Oral Solution and Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The ANADA provides for the use of a generic sulfadimethoxine oral solution as an antibacterial in drinking water for the treatment of broiler and replacement chickens for coccidiosis, fowl cholera, and infectious coryza; meat-producing turkeys for coccidiosis and fowl cholera; and in drinking water and as a drench for the treatment of dairy calves, dairy heifers, and beef cattle for shipping fever complex, bacterial pneumonia, calf diphtheria, and foot rot.

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8648.

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, is the sponsor of ANADA 200–030, which provides for the use of a generic sulfadimethoxine oral solution as an antibacterial in drinking water for the treatment of broiler and replacement chickens for coccidiosis, fowl cholera, and infectious coryza; meat-producing turkeys for coccidiosis and fowl cholera; and in drinking water and as a drench for the treatment of dairy calves, dairy heifers, and beef cattle for shipping fever complex, bacterial pneumonia, calf diphtheria, and foot rot.

Approval of ANADA 200–030 for Agri Laboratories, Ltd.'s sulfadimethoxine 12.5 percent oral solution is as a generic copy of Hoffmann-La Roche's NADA 031–205 for Albon® 12.5 percent drinking water solution (sulfadimethoxine). The ANADA is approved as of December 31, 1992, and 21 CFR 520.2220a is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2220a is amended by revising the section heading and paragraphs (a), (b), and the introductory text of paragraph (e) to read as follows:

§ 520.2220a Sulfadimethoxine oral solution and soluble powder.

(a) *Specifications.* (1) The oral solution contains 12.5 percent (3.75 grams per ounce) sulfadimethoxine.

(2) Each packet of powder contains the equivalent of 94.6 grams of sulfadimethoxine (as the sodium salt).

(b) *Sponsors.* See Nos. 000004 and 057561 in § 510.600(c) of this chapter.

* * * * *

(e) *Conditions of use.* The oral solution is administered as a cattle drench or diluted as directed to prepare drinking water. The powder is used to prepare a drench or drinking water. The concentrations and uses of the various solutions are as follows:

* * * * *

Dated: January 14, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93–1794 Filed 1–25–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 906

[Docket No. R–93–1529; FR–2810–N–04]

RIN 2577–AA90

Extension of Section 5(h) Homeownership Program for Public and Indian Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice extends the period that the interim rule for the Section 5(h) Homeownership Program will be in effect, from January 20, 1993 until the effective date of final rule.

EFFECTIVE DATE: January 20, 1993.

FOR FURTHER INFORMATION CONTACT: C. Wayne Hunter, Senior Homeownership Programs Advisor, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street SW., room 4118, Washington, DC 20410. Telephone number (202) 708–4233, TDD (202) 708–0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A regulatory codification of the requirements of the Section 5(h) Homeownership Program for public (24 CFR part 906) and Indian (24 CFR part 905) housing was published as an interim rule in the **Federal Register** on September 20, 1991 (56 FR 47852). The primary statutory mandate for this program is section 5(h) of the United States Housing Act of 1937 (Act). Secondary authority is found in section 6(c)(4)(D) of the Act.

As the primary statutory mandate, section 5(h) authorizes PHAs to sell public housing to residents "on such terms and conditions as the [PHA] may determine." That emphasis on local initiative and discretion is reinforced by section 6(c)(4)(D), which speaks of "the development by local housing authority managements of viable homeownership opportunity programs." These two complementary portions of the Act constitute what is essentially one provision that established the statutory basis for local homeownership activities under the section 5(h) Homeownership Program.

The preamble to the interim rule stated that the rule would cease to be effective after July 20, 1992, unless before that date the Department published it as a final rule. Because the Department determined that some additional time and experience in working with the interim rule would be appropriate before issuing a final rule, a notice extending the time period during which the interim rule would be in effect for an additional six months (to January 20, 1993) was published on July 20, 1992 (57 FR 31962).

Although the Department expects to publish the final rule in the very near future, the final rule cannot be effective until 30 days following **Federal Register** publication. To prevent a transition period during which there is no rule in effect, this notice extends the effective date of the interim rule for the Section 5(h) Homeownership Program at 24 CFR part 905, subpart O, and 24 CFR part 906, from January 20, 1993 until the effective date a final rule for the Section 5(h) Homeownership Program.

Dated: January 15, 1993.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–1766 Filed 1–25–93; 8:45 am]

BILLING CODE 4210–33–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–7–1–5652; FRL–4552–2]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On November 29, 1991 (56 FR 60924), EPA approved with a few exceptions Chapter V, Air Pollution, of the Polk County, Iowa, Board of Health Rules and Regulations, as part of the Iowa State Implementation Plan (SIP). Portions of Chapter V, Article VI, Section 5–16, Specific emission standards, were inadvertently omitted from the codification portion of the rulemaking, which identifies the regulations approved by EPA. This action will correct that error and approve paragraphs (a)–(m) of Section 5–16. The intended effect of this notice is to correct the earlier rulemaking and to approve the aforementioned paragraphs of the Polk County, Iowa, air rules.

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: As noted in the summary section above, this action corrects an omission in the earlier rulemaking. Article VI of Chapter V of the county rules, Section 5–16, Specific emission standards, paragraphs (a)–(m), contain particulate emission standards for specific source categories such as asphalt batch plants, cement plants, lime kilns, etc. In the November 29, 1991, rulemaking, EPA stated that it was approving Article VI, except for the portions relating to EPA standards promulgated under sections 111 and 112 of the Clean Air Act. Section 5–16 (a) through (m) does not relate to the sections 111 and 112 standards, and they were intended to be approved. However, they were inadvertently omitted from the incorporation by reference in the codified portion of the rulemaking. EPA, therefore, approves these paragraphs of Section 5–16.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: December 9, 1992.

Morris Kay,

Regional Administrator.

40 CFR part 52, subpart Q, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart Q—Iowa

2. Section 52.820 is amended by revising paragraph (c)(55) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(55) * * *

(i) Incorporation by reference.

(A) Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution, Ordinances 28, 72 and 85, effective May 1, 1991, except for the following: Article I, definition of variance; Article VI, Section 5–16 (n), (o), and (p); Article VI, Section 5–17(d), variance provision; Article VIII; Article IX, Sections 5–27(3) and 5–27(4); and Article X, Division 5—Variance.

* * * * *

[FR Doc. 93–1797 Filed 1–25–93; 10:17 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[GA–020–3–5417; FRL–4537–6]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Stack Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 15, 1986, the State of Georgia through the Georgia Department of Natural Resources submitted revised regulations which limit stack height credit and dispersion techniques in accordance with EPA's requirements. EPA proposed approval of the Georgia Stack Height regulations, but noted that Georgia had not yet adopted the definitions of "stack" and "stack in existence." On January 3, 1991, the State of Georgia submitted a revision incorporating these definitions into the stack height regulations. However, it was not until April 3, 1991, that all the required elements were submitted, making the package a complete submittal. The revisions meet the requirements of title 40, part 51, subpart I of the Code of Federal Regulations. The revisions define "stack in existence" and also define "stack" to include any point designed to emit solids, liquid or gases into the air. EPA is approving the revisions to the Georgia State Implementation Plan (SIP) which were submitted to EPA by the State of Georgia on December 15, 1986, January 3, 1991, and April 3, 1991.

EFFECTIVE DATE: This action will become final February 25, 1993.

ADDRESSES: Copies of the material submitted by the Georgia Department of Natural Resources may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 205 Butler Street,

Southeast, room 1162, East Tower,
Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Diane Altsman of the EPA, Region IV, Air Programs Branch at (404) 347-2864 and at the above address.

SUPPLEMENTARY INFORMATION: On July 8, 1985 (50 FR 27892), EPA published a final rule for the Stack Height Regulations. It required states to: (1) Review and revise as necessary, their State Implementation Plans (SIP) to include provisions that limit stack height credits and dispersion techniques in accordance with this regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above "Good Engineering Practice" (GEP), or by any other dispersion techniques. On June 15, 1989 (54 FR 25451), and September 29, 1989 (54 FR 40001), EPA published final rules approving Georgia's declaration that the stack height revisions did not necessitate source specific revisions to the SIP.

On February 15, 1989 (54 FR 6937), EPA published a proposed rule to approve revisions to the Georgia Stack Height regulations. At that time Georgia did not have a definition for stack or existing stack, and did not have grandfathering provisions. The proposal was made on the condition that the State of Georgia would adopt the definition of "stack" and "stack in existence" and incorporate into their rules the grandfathering provisions before final rulemaking. On December 5, 1990, the Georgia Department of Natural Resources adopted the revisions to the Georgia SIP, which define "stack" and "stack in existence." They have not adopted the grandfathering provisions. The Georgia Department of Natural Resources submitted the revisions to EPA on January 3, 1991, which were State effective January 9, 1991. Georgia requested that the revisions be adopted as part of the federally approved SIP. EPA is approving the Georgia Stack Height regulations even though the grandfathering provisions have not been adopted, not been adopted, because the **Federal Register** of June 15, 1989 (54 FR 25451), approved Georgia's grandfathered sources. EPA is today approving revisions to the stack height regulations proposed in the **Federal Register** of February 15, 1989 (54 FR 6936), and the following additions:

391-3-1-.01 Definitions

Add the following definitions:

(bbbb) "stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares;

(cccc) "stack in existence" means that the owner or operator had: (1) Begun, or caused to begin, a continuous program of physical on-site construction of the stack, or (2) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed within a reasonable time.

FINAL ACTION: EPA is today approving the revision to the Georgia air quality regulations listed above. All of the revisions being approved are consistent with agency policy.

Today's action makes final the action proposed at 54 FR 6936, February 15, 1989. EPA has received no adverse public comments relevant to this action. As a direct result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established at 54 FR 2214, January 19, 1989.

On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver until such time as it rules on EPA's request.

The Agency has reviewed this request for revision of the federally approved State Implementation Plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Although the EPA generally approves Georgia's stack height rules on the grounds that they satisfy 40 CFR part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* v. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985 regulations, the EPA will notify the State of Georgia that its rules must be changed to comport with the EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Georgia and source owners or operators.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals of the appropriate circuit by March 29, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to the State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to technical statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not for profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirement, Sulfur oxides.

Dated: October 22, 1992.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.570 is amended by adding paragraph (c)(42) to read as follows:

§ 52.570 Identification of plan.

* * * * *

(c) * * *

(42) Revisions to the Georgia stack height regulations; Chapter 391–3–1 of the Georgia Department of Natural Resources Administrative Code which were submitted on December 15, 1986, and January 3, 1991.

(i) Incorporation by reference.

(A) Rule 391–3–1–.02 (2)(g), which was adopted by the Georgia Dept. of Natural Resources on December 3, 1986.

(B) Rule 391–3–1–.01 (Definitions) to include definitions (bbbb) and (cccc) for "stack" and "stack in existence"; and Rule 391–3–1–.02 (2)(a)4., which were adopted on December 5, 1990 by the Georgia Department of Natural Resources, and became State law effective January 9, 1991.

[FR Doc. 93–1798 Filed 1–25–93; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 433 and 447

[MB–062–CN]

RIN 0938–AF42

Medicaid Program; Limitations on Provider-Related Donations and Health Care-Related Taxes; Limitations on Payments to Disproportionate Share Hospitals; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction notice.

SUMMARY: **Federal Register** document 92–28621, published on November 24, 1992, beginning on page 55118, amended 42 CFR parts 433 and 447 to revise Medicaid rules applicable to limitations on Federal financial participation (FFP) in State medical assistance expenditures when States receive funds from provider-related donations and revenues generated by certain health care-related taxes. The document also revised Medicaid rules applicable to limitations on the aggregate amount of payments a State may make to disproportionate share hospitals for which FFP is available. This notice:

- Corrects an editing error that resulted in duplicated regulatory text;
- Corrects in 42 CFR 447.297(d)(1) the method of notifying States of updated national and State DSH allotments to make it consistent with the description of the method in the preamble (see description beginning on page 55132, third column, third line from the bottom of the page); and
- Corrects editorial and typographical errors in the interim final rule.

FOR FURTHER INFORMATION CONTACT: Valerie Krauss (410) 966–4670.

Corrections

1. On page 55123, in the second column, in the third full paragraph, in line 12 "regulatory" should read "regularly".

2. On page 55124, in the first column:

(a) In line 6 "outstanding" should read "outstationing".

(b) In line 27 "§ 433.58k(e)" should read "§ 433.58(e)".

3. On page 55125, in the second column, in the first paragraph, in the third line "denied" should read "denies".

4. On page 55127, in the second column, in line 8 "1903(a)(w)(3)(A)(i)" should read "1903(w)(3)(A)(i)".

5. On page 55128:

(a) In the second column, in the first bullet in the first full paragraph, in the second line "is" should read "in".

(b) In the third column, in lines 5 and 6 from the bottom of the page, the phrase "+ Physicians in primarily medically underserved areas" should be deleted.

6. On page 55130, in the second column, in line 11 the word "or" should be inserted between the comma and "any".

7. On page 55131, in the first column, in the third full paragraph, in line 10 "1991" should read "1992".

8. On page 55132, in the third column, in the third line from the bottom of the page "are" should read "as".

9. On page 55133:

(a) In the first column, in the first full paragraph, beginning in line 19 "Those allotments DSH expenditures that are in excess of the final State DSH will be disallowed." should read "Those DSH expenditures that are in excess of the final State DSH allotments will be disallowed.".

(b) In the second column, in the third full paragraph, in the third line "§ 447.297(c)" should read "§ 447.272(c)".

(c) In the third column, in the second full paragraph, in the first line "§ 447.299(a)(3)" should read "§ 447.298(a)(3)".

10. On page 55138:

(a) In the first column, in subpart A, two additional amendatory language instructions should be inserted after instruction 3., and instruction 4. should be renumbered as 6., to read as follows:

§ 433.33 [Redesignated and Amended]

4. Section 433.33 is redesignated as § 433.53 of subpart B and the title is revised to read *"State plan requirements."*

§ 433.45 [Redesignated]

5. Section 433.45 is redesignated as § 433.51 under subpart B.

(b) In the second column, in § 433.50(b)(2), in the first line "Defense" should read "Defines".

11. On page 55140, in the third column, in the third line "§" should be inserted before "433.60(a)".

12. On page 55141, in the first column, in the second line "paragraph (b)(1)(i)" should read "paragraph (b)(1)".

13. On page 55143:

(a) In the first column, line 15 "requirement by April 1, 1993 the tax is" should read "requirement by April 1, 1993. If, by April 1, 1993, the tax is".

(b) In the third column, in part 447, two additional amendatory language instructions should be inserted after instruction 2., and instruction 3. should be renumbered as 5., to read as follows:

"Subpart D—[Redesignated as Subpart F]

3. Subpart D is redesignated as subpart F.

Subpart D—[Reserved]

4. Subpart D is reserved."

14. On page 55144, in the second column, in § 447.297(d)(1), the first sentence "HCFA will advise the State Medicaid Directors by April 1 of each year of updated national limits and updated State DSH allotments." should read "HCFA will publish in the **Federal Register** by April 1 of each year updated national limits and updated State DSH allotments.".

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance)

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58
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Dated: January 15, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 93–1740 Filed 1–25–93; 10:15 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7562]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Federal Insurance Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Suspensions				
Region IV				
North Carolina: Mecklenburg County, unincorporated areas.	370158	May 17, 1973, Emerg.; June 1, 1981, Reg.; Feb. 3, 1993, Susp.	Feb. 3, 1993	Feb. 3, 1993.
Region V				
Illinois:				
Aroma Park, village of Kankakee County	170740	Aug. 25, 1975, Emerg.; Nov. 2, 1977, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Kankakee County, unincorporated areas	170336	Apr. 28, 1972, Emerg.; July 2, 1979, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Kankakee, city of Kankakee County	170339	May 29, 1973, Emerg.; Apr. 17, 1978, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Momence, city of Kankakee County	170340	Aug. 8, 1975, Emerg.; Nov. 2, 1977, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Sun River Terrace, village of Kankakee County.	171015	Oct. 26, 1984, Emerg.; June 19, 1985, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Indiana: Warrick County, unincorporated areas	180418	Apr. 11, 1975, Emerg.; May 17, 1982, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Michigan:				
Greenbush, township of Alconia County	260001	Aug. 26, 1975, Emerg.; Sept. 30, 1988, Reg.; Feb. 3, 1993; Susp.	......do	Do.
Pinconning, township of Bay County	260025	Mar. 30, 1973, Emerg.; Sept. 1, 1978, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Sims, township of Arenac County	260015	May 7, 1973, Emerg.; June 1, 1978, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Region VI				
Texas: San Diego, city of Duval and Jim Wells Counties.	481199	Dec. 26, 1975, Emerg.; Mar. 1, 1987, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Region VII				
Kansas: St. George, city of Pottawatomi County	200274	Apr. 8, 1988, Emerg.; Feb. 3, 1993, Reg.; Feb. 3, 1993, Susp.	......do	Do.
Region IV				
Georgia: Chattooga County, unincorporated areas.	130036	Apr. 13, 1989, Emerg.; Feb. 17, 1993, Reg.; Feb. 17, 1993, Susp.	Feb. 17, 1993	Feb. 17, 1993.
Region V				
Michigan: Alpena, township of Alpena County	260011	Oct. 2, 1975, Emerg.; Jan. 21, 1983, Reg.; Feb. 17, 1993, Susp.	Feb. 3, 1993	Do.
Wisconsin:				
Biron, village of Wood County	555545	Apr. 2, 1971, Emerg.; Mar. 25, 1973, Reg.; Feb. 17, 1993, Susp.	Feb. 17, 1993	Do.
Nekoosa, city of Wood County	550516	May 16, 1975, Emerg.; July 16, 1987, Reg.; Feb. 17, 1993, Susp.	......do	Do.
Port Edwards, village of Wood County	555572	July 2, 1971, Emerg.; Apr. 13, 1973, Reg.; Feb. 17, 1993, Susp.	......do	Do.
Wisconsin Rapids, city of Wood County	555587	Apr. 30, 1971, Emerg.; Sept. 14, 1973, Reg.; Feb. 17, 1993, Susp.	......do	Do.
Wood County, unincorporated areas	550513	Mar. 5, 1971, Emerg.; Mar. 15, 1978, Reg.; Feb. 17, 1993, Susp.	......	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: January 19, 1993.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 93–1882 Filed 1–25–93; 8:45 am]

BILLING CODE 6718-21-M

Proposed Rules

Federal Register
Vol. 58, No. 15
Tuesday, January 26, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 40, 72, 74, 75, 150

RIN 3150–AE35

Licensee Submittal of Data in Computer Readable Form

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing an amendment to its regulations that would require certain licensees to submit data to the NRC in computer readable form. The proposed rule is intended to streamline the collection of nuclear material transaction data and increase the accuracy of the reported information. The proposed rule would result in an annual cost savings of approximately $100,000 in the data collection effort.

DATES: Comments must be received on or before April 26, 1993. Comments received after this date will be considered if it is practical to do so, but only those comments received on or before this date can be assured of consideration.

ADDRESSES: Comments or suggestions regarding the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received will be available in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Richard H. Gramann, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2456.

SUPPLEMENTARY INFORMATION: The NRC has a major interest in the potential use for computer readable submittal. This innovation not only can result in monetary savings but also can increase efficiency and accuracy of data collection efforts. In April 1989 the NRC notified licensees reporting special nuclear material transactions on hard copy forms that they could instead submit their reports in machine readable form. Specific submittal procedures, as detailed in the "Personal Computer Data Input for NRC Licensees" (Nuclear Materials Management and Safeguards System (NMMSS) Report D–24) was to be followed.

The NRC is proposing to amend its regulations to require licensees satisfying reporting requirements using DOE/NRC Form 741, "Nuclear Material Transaction Report," DOE/NRC Form 741A, "Nuclear Material Transaction Report (Continuation Page)," DOE/NRC Form 740M, "Concise Note," DOE/NRC Form 742, "Material Balance Report," and DOE/NRC Form 742C, "Physical Inventory Listing," to submit the reports in computer readable form. This proposed regulatory change makes mandatory the reporting in computer readable form in the format prescribed by that document. This proposed change would streamline the collection of nuclear material transaction data and result in greater accuracy. It would eliminate the need for paper forms, thus providing a cost savings for the NRC in satisfying its statutory and treaty obligations.

The proposed amendments would affect each specific licensee who transfers, receives, or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material of foreign origin or who imports or exports 1 kilogram or more of uranium or thorium source material of any origin. Each specific licensee who transfers or receives 1 gram or more of contained uranium-235, uranium-233, or plutonium would also be affected.

These proposed amendments are intended only to take advantage of current computer technology to make more efficient and less costly the data collection process. The Commission believes there will be minimal costs associated with implementation of these proposed amendments but nonetheless encourages licensees to comment on the cost impact of complying with the rule, if such impact is considered significant.

Most licensees already have their material accounting automated and can easily generate computer readable reports. For those licensees who have not yet automated their reporting, a diskette with the appropriate formats and user prompts may be obtained from the NRC to facilitate this process. Licensees may obtain a copy of the NMMSS report or the diskette by writing the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555.

Submission of Comments in Electronic Format

Commenters are encouraged to submit, in addition to the original paper copy, a copy of the letter in electronic format on 5.25 or 3.5 inch computer diskette; IBM PC/DOS or MS/DOS format. Text files should be provided in WordPerfect format or unformatted ASCII code. The format and version should be identified on the diskette's external label.

Environment Impact: Categorical Exclusion

The NRC has determined that this proposed change is the type of action described in the categorical exclusion 10 CFR 51.33(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Since the rule would eliminate the need for certain paper forms, the public reporting burden for the collection of information is expected to be reduced. The resulting burden reduction for DOE/NRC Forms 741, 741A, 742, and 740M is estimated to average .25 hours per response. The resulting burden reduction for DOE/NRC Form 742C is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the estimated burden reduction or any other aspect of this collection of information, including suggestions for further reducing reporting burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0003, –0004, –00057, and –0058), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

These proposed amendments would have no significant impact on State and local governments and geographical regions. They would have a significant positive impact on the efficiency and accuracy of the data collection process. The proposed amendments would not have a significant impact on health, safety, and the environment. This rule would make all licensees submit computer readable reports regarding special nuclear material transactions. The NRC would realize a cost savings of approximately $100,000. Licensees have already demonstrated their computer expertise by generating near perfect copies of the current forms on Laser Jet printers. Generating computer readable data in accordance with a prescribed format offers less burden than producing these forms. The rule would facilitate the collection of data by the NRC to satisfy its statutory and treaty obligations. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this change will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would affect all licensees required to report special nuclear material transactions using DOE/NRC Forms 741, 741A, 742, 742C, and 740M. The companies that own nuclear power plants or nuclear fuel fabrication plants have already automated their material accounting program and can easily generate computer readable reports. Other companies that have not yet automated their reporting may obtain a diskette from the NRC to assist them in satisfying their reporting requirements. These companies may fall within the scope of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed change because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials-transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 74

Accounting, Criminal penalties, Hazardous materials-transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Special nuclear material.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 150

Criminal penalties, Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 40, 72, 74, 75, and 150.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); 40.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201 (b); (42 U.S.C. 2201(i)); and 40.5, 40.9, 40.25 (c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.60, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 40.64, paragraph (a) is revised to read as follows:

§ 40.64 Reports.

(a) Except as specified in paragraphs (d) and (e) of this section, each specific licensee who transfers, receives, or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material of foreign origin or who imports or exports 1 kilogram of uranium or thorium source material of any origin shall complete a Nuclear Material Transaction Report in computer readable form in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. Each licensee who transfers the material shall submit a Nuclear Material Transaction Report in computer readable form in accordance with instructions no later than the close of business the next working day. Each licensee who receives the material shall submit a Nuclear Material Transaction Report in computer readable form in accordance with instructions within ten (10) days after the material is received. The Commission's copy of the report must be submitted to the address specified in the instructions. These prescribed computer readable forms replace the DOE/NRC Form 741 which has been submitted in paper form.

* * * * *

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

3. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); Secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.12, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.12, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48 (a), 72.50(a), 72.52(b), 72.90(a)-(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234 (e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 72.76, paragraph (a) is revised to read as follows:

§ 72.76 Material status reports.

(a) Except as provided in paragraph (b) of this section, each licensee shall complete in computer readable form and submit to the Commission a material status report in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. These reports provide information concerning the special nuclear material contained in the spent fuel possessed, received, transferred, disposed of, or lost by the licensee. Material status reports must be made as of March 31 and September 30 of each year and filed within 30 days after the end of the period covered by the report. The Commission may, when good cause is shown, permit a licensee to submit material status reports at other times. The Commission's copy of this report must be submitted to the address specified in the instructions. These prescribed computer readable forms replace the DOE/NRC Form 742 which has been submitted in paper form.

* * * * *

5. Section 72.78 is revised to read as follows:

§ 72.78 Nuclear material transfer reports.

(a) Except as provided in paragraph (b) of this section, whenever the licensee transfers or receives spent fuel, the licensee shall complete in computer readable form a Nuclear Material Transaction Report in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24, "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. Each ISFSI licensee who receives spent fuel from a foreign source shall complete both the supplier's and receiver's portion of the Nuclear Material Transaction Report, verify the identity of the spent fuel, and indicate the results on the receiver's portion of the form. These prescribed computer readable forms replace the DOE/NRC Form 741 which has been submitted in paper form.

(b) Any licensee who is required to submit Nuclear Material Transactions Reports pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit the reports only as provided in that section instead of as provided in paragraph (a) of this section.

PART 74—MATERIAL CONTROL AND ACCOUNTING OF SPECIAL NUCLEAR MATERIAL

6. The authority citation for part 74 continues to read as follows:

Authority: Secs. 53, 57, 161, 182, 183, 68 Stat. 930, 932, 948,953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2201, 2232, 2233, 2282); secs. 201, as amended 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 74.17, 74.31, 74.33, 74.51, 74.53, 74.55, 74.57, 74.59, 74.81, and 74.82 are issued under secs. 161b and 161i, 68 Stat. 948, 949, as amended (42 U.S.C. 2201(b) and 2201(i)); and §§ 74.11, 74.13, 74.15, and 74.17 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 74.13, paragraph (a)(1) is revised to read as follows:

§ 74.13 Material status reports.

(a)(1) Each licensee authorized to possess at any one time and location special nuclear material in a quantity totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, shall complete and submit in computer readable form material balance reports concerning special nuclear material received, produced, possessed, transferred, consumed, disposed of, or lost by it. These prescribed computer readable reports replace the DOE/NRC Form 742 which has been submitted in paper form. Each nuclear reactor licensee, as defined in §§ 50.21 and 50.22 of this chapter, also shall prepare in computer readable form a statement of the composition of the ending inventory. The inventory composition report must be submitted with each material balance report. This prescribed computer readable report replaces the DOE/NRC Form 742C which has been submitted in paper form. Each licensee shall prepare and submit the reports described in this paragraph in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. Each licensee shall compile a report as of March 31 and September 30 of each year and file it within 30 days after the end of the period covered by the report. The Commission may permit a licensee to submit the reports at other times when good cause is shown.

* * * * *

8. Section 74.15 is revised to read as follows:

§ 74.15 Nuclear material transfer reports.

(a) Each licensee who transfers and each licensee who receives special nuclear material shall complete in computer readable form a Nuclear Material Transaction Report. This should be done in accordance with instructions whenever the licensee transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. Copies of these instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees") may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. This prescribed computer readable form replaces the DOE/NRC Form 741 which has been submitted in paper form.

(b) Each licensee who receives 1 gram or more of contained uranium-235, uranium-233, or plutonium from a foreign source shall:

(1) Complete in computer readable form both the supplier's and receiver's portion of the Nuclear Material Transaction Report;

(2) Perform independent tests to assure the accurate identification and measurement of the material received, including its weight and enrichment; and

(3) Indicate the results of these tests on the receiver's portion of the form.

(c) Any licensee who is required to submit inventory change reports pursuant to § 75.34 of this chapter (pertaining to implementation of the US/IAEA Safeguards Agreement) shall prepare and submit these reports only as provided in that section (instead of as provided in paragraphs (a) and (b) of this section).

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

9. The authority citation for Part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); the provisions of this part are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. Section 75.31 is revised to read as follows:

§ 75.31 General requirements.

Each licensee who has been given notice by the Commission in writing that its installation has been identified under the Agreement shall make an initial inventory report in computer readable form, and thereafter shall make accounting reports, with respect to such installation and, in addition, licensees who have been given notice, pursuant to § 75.41, that their installations are subject to the application of IAEA safeguards, shall make the special reports described in § 75.36. These reports must be based on the records kept in accordance with § 75.21. At the request of the Commission, the licensee shall amplify or clarify any report with respect to any matter relevant to implementation of the Agreement. Any amplification or clarification must be in writing and must be submitted, to the address specified in the request, within twenty (20) days or other time as may be specified by the Commission.

11. In § 75.32, paragraph (b) is revised to read as follows:

§ 75.32 Initial inventory report.

* * * * *

(b) The initial inventory report, to be submitted to the Commission in computer readable form, in accordance with instructions (NUREG/BR–0007 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"), must show the quantities of nuclear material contained in or at an installation as of the initial inventory reporting date. The information is the initial inventory report may be based upon the licensee's book record.

* * * * *

12. In § 75.33, paragraph (a) is revised to read as follows:

§ 75.33 Accounting reports.

(a) (1) The accounting reports for each IAEA material balance area consists of

(i) Computer readable Nuclear Material Transaction Reports (Inventory Change Reports) and

(ii) Computer readable Material Balance Reports showing the material balance based on a physical inventory of nuclear material actually present.

(2) These prescribed computer readable forms replace the following forms which have been submitted in paper form:

(i) The DOE/NRC Form 741; and

(ii) The DOE/NRC Form 742.

* * * * *

13. Section 75.34 is revised to read as follows:

§ 75.34 Inventory change reports.

(a) Nuclear Material Transaction Reports (Inventory Change Reports) in computer readable form to be completed in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"), must specify identification and batch data for each batch of nuclear material, the date of the inventory change, and, as appropriate,

(1) The originating IAEA material balance area or the shipper; and

(2) The receiving IAEA material balance area or the recipient.

Each licensee who receives special nuclear material from a foreign source shall complete both the supplier's and receiver's portion of the form.

(b) Nuclear Material Transactions Reports (Inventory Change Reports), when appropriate, must be accompanied by computer readable Concise Notes, completed in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. This prescribed computer readable form replaces the DOE/NRC Form 740M which has been submitted in paper form. This Concise Note is used in:

(1) Explaining the inventory changes on the basis of the operating records provided for under § 75.23; and

(2) Describing, to the extent specified in the license conditions, the anticipated operational program for the installation, including particularly, but not exclusively, the schedule for taking physical inventory.

14. In § 75.35, paragraph (a) is revised to read as follows:

§ 75.35 Material status reports.

(a) A material status report must be submitted for each physical inventory which is taken as part of the material accounting and control procedures required by § 75.21. The material status report must include a computer readable Material Balance Report and a computer readable Physical Inventory Listing which lists all batches separately and specifies material identification and batch data for each batch. When appropriate, the material status report must be accompanied by a computer readable Concise Note. The reports described in this section must be prepared and submitted in accordance with instructions (NUREG/BR–0007, NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of these instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. These prescribed computer readable forms replace the DOE/NRC Form 742, 742C, and 740M which have been submitted in paper form.

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

15. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b)(2)–(5) and 150.21 are issued under sec.161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 and 150.20(b)(5) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

16. In § 150.16, paragraph (a) is revised to read as follows:

§ 150.16 Submission to Commission of nuclear material transfer reports.

(a) Each person who transfers and each person who receives special nuclear material pursuant to an Agreement State license shall complete and submit in computer readable form Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees") whenever he transfers or receives a quantity of special nuclear material of 1 gram or more of contained uranium-235, uranium-233, or plutonium. Each person who transfers this material shall submit in accordance with instructions the computer readable form promptly after the transfer takes place. Each person who receives special nuclear material shall submit in accordance with instructions the computer readable form within ten (10) days after the special nuclear material is received. Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. These prescribed computer readable forms replace the DOE/NRC Form 741 which have been submitted in paper form.

* * * * *

17. In § 150.17, paragraph (a) is revised to read as follows:

§ 150.17 Submission to Commission of source material reports.

(a) Except as specified in paragraph (d) of this section and § 150.17a, each person who, pursuant to an Agreement State specific license, transfers or receives or adjusts the inventory in any manner by 1 kilogram or more of uranium or thorium source material of foreign origin or who imports 1 kilogram or more of uranium or thorium source material of any origin shall complete and submit in computer readable form Nuclear Material Transaction Reports in accordance with instructions (NUREG/BR–0006 and NMMSS Report D–24 "Personal Computer Data Input for NRC Licensees"). Copies of the instructions may be obtained from the U.S. Nuclear Regulatory Commission, Division of Safeguards and Transportation, Washington, DC 20555. Each person who receives the material shall submit in accordance with instructions the computer readable form within ten (10) days after the material is received.

* * * * *

Dated at Rockville, MD this 19th day of January 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–1809 Filed 1–25–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 355

[Docket No. 80N–0042]

RIN 0905–AA06

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Reopening of Administrative Record; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to March 26, 1993, the comment period for the reopening of the administrative record for the proposed rulemaking for over-the-counter (OTC) anticaries drug products to obtain public comment on whether the labeling of OTC fluoride-containing drug products should include the quantity of fluoride, i.e., the specific amount of fluoride present in the product (57 FR 55199, November 24, 1992). This action is being taken because the agency recognizes the possible relevance to this issue of data and information presented at a National Institute of Dental Research (NIDR) workshop entitled "Methods for Assessing Fluoride Accumulation and Effects in the Body," held on January 13 to 15, 1993. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by March 26, 1993.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 24, 1992 (57 FR 55199), FDA published a notice of proposed rulemaking reopening the administrative record for the rulemaking for OTC anticaries drug products. Interested persons were given until January 25, 1993 to respond.

In that document, the agency discussed recommendations made by the Public Health Service Ad Hoc Subcommittee on Fluoride of the

Committee to Coordinate Environmental Health and Related Programs (the Subcommittee) that the U.S. Public Health Service sponsor a scientific conference(s) to recommend both the optimal level of flouride exposure from all sources combined (including drinking water) and the appropriate usage of flouride-containing dental products. In considering the Subcommittee's recommendations, FDA requested input from three professional associations on the possibility of having OTC fluoride-containing drug products labeled to identify their fluoride levels. One association (dental group) submitted information in support of having fluoride levels listed in product labeling as percent weight/volume. The other two associations (trade groups) responded in opposition to changing the labeling of OTC fluoride-containing drug products to identify fluoride levels.

FDA has received a request from the latter two associations to extend the comment period for an additional 60 days to permit industry and other interested parties to prepare and submit additional information that may be developed for or in response to a NIDR workshop to be held on January 13 to 15, 1993. The request included a copy of the preliminary agenda for the workshop entitled "Methods for Assessing Fluoride Accumulation and Effects in the Body" (Ref. 1). The request stated its belief that important information may be forthcoming from the workshop.

FDA has carefully considered the request and believes that additional time for comment is in the public interest. The agency concurs with the request that important information may be forthcoming from the workshop. In fact, agency staff attended the workshop. Thus, the agency considers the limited extension of the comment period requested to be appropriate. Accordingly, the comment period is extended to March 26, 1993.

Interested persons may, on or before March 26, 1993, submit to the Dockets Management Branch (address above) written comments on whether the labeling of OTC fluoride-containing drug products should include the quantity of fluoride present in the product and how that information should be presented. Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Reference

(1) Comment No. EXT 8, Docket No. 80N–0042, Docket Management Branch.

Dated: January 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–1826 Filed 1–25–93; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–62–92]

RIN 1545–AR09

Nondiscrimination Requirements for Qualified Plans; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations requiring contributions or benefits provided under a tax-qualified retirement plan not discriminate in favor of highly compensated employees.

DATES: The public hearing will begin on Friday, April 23, 1993, and continue if necessary, on Monday, April 26, 1993, beginning each day at 10 a.m. Requests to speak and outlines of oral comments must be received by Friday, April 2, 1993.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [EE–62–92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the final regulations under section 401(a)(4) of the Internal Revenue Code of 1986. These proposed regulations were published in the **Federal Register** on Tuesday, January 12, 1993 (58 FR 3876).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, April 2, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–1404 Filed 1–25–93; 8:45 am]

BILLING CODE 4830–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Cost Accounting Standards for Composition, Measurement, Adjustment, and Allocation of Pension Costs

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), proposes to revise the Cost Accounting Standards relating to accounting for pension costs under negotiated government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, publish a report and an ANPRM. This ANPRM addresses certain problems that

have emerged since the original promulgation (in the 1970's) of the pension Standards; CAS 412—"Cost Accounting Standard for composition and measurement of pension cost." and 413, "Adjustment and allocation of pension cost." Proposed changes address the issue of pension cost recognition under qualified pension plans subject to the "full funding limits" of the Federal Tax Code, and problems associated with pension plans that are not qualified plans under the Federal Tax Code.

DATES: Requests for a copy of the Board's ANPRM must be in writing and must be received by March 29, 1993. Comments on the ANPRM must be in writing and must be received by April 12, 1993.

ADDRESSES: Comments should be addressed to Robert Lynch, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street NW., room 9001, Washington, DC 20503. Attn: CASB Docket Nos. 91–03 and 91–05.

FOR FURTHER INFORMATION CONTACT: Robert Lynch, Project Director, Cost Accounting Standards Board (telephone: 202–395–3254).

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accouting Standards Board.

[FR Doc. 93–1627 Filed: 1–25–93; 8:45 am]

BILLING CODE 3110-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 27A)]

Rail General Exemption Authority: Used Motor Vehicles

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is seeking public comment on whether to exempt the rail transportation of used motor vehicles (STCC 41–118)[1] from our regulations. In order to exempt this transportation, the Commission must find that regulation of the rail transportation of used motor vehicles is not necessary to carry out the rail transportation policy, and that such regulation is not needed to protect shippers from an abuse of market power. If the Commission issues the exemption, used motor vehicles would be added to the list of exempt commodities in our regulations, as set forth below.

DATES: Comments must be submitted by February 25, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 27A) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant impact on a substantial number of small entities. We invite comment on the issue of the economic impact of our proposal on small entities.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: January 14, 1993.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Walden. Commissioner Walden did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1039—EXEMPTIONS

1. The authority citation for part 1039 would continue to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10708, 10761, 10762, 11105, 11902, 11903, and 11904; and 5 U.S.C. 553.

2. In § 1039.11, paragraph (a) is proposed to be amended by adding to the chart, after STCC No. 39, STCC No. 41–118 (Used motor vehicles):

§ 1039.11 Miscellaneous commodities exemptions.

(a) * * *

STCC No.	STCC tariff	Commodity
	* * * * *	
41 118	6001–T, eff. 1–1–92.	Used motor vehicles.

* * * * *

[FR Doc. 93–1856 Filed 1–25–93; 8:45 am]

BILLING CODE 7035-01-M

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[1] STCC is the acronyn for the Standard Transportation Commodity Code.

Notices

Federal Register

Vol. 58, No. 15

Tuesday, January 26, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Privacy Act; Systems of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act Systems of Records, USDA/FmHA–1, "Applicant/Borrower or Grantee File," and is deleting the Privacy Act System of Records, USDA/FmHA–3, "Credit Report Filed."

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on March 29, 1993, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before February 25, 1993.

FOR FURTHER INFORMATION CONTACT: Dorothy Hinden, Freedom of Information Officer, General Services Staff, Farmers Home Administration (FmHA), USDA, Room 6847, South Building, Washington, DC 20250; Telephone: (202) 720–9638.

SUPPLEMENTARY INFORMATION: The purpose of this revision is to amend the USDA/FmHA–1 "Applicant/Borrower, or Grantee File." "System name" and "System location" are modified to include tenants. The locations of the following three State Offices have changed: Colorado, Delaware/Maryland, and Maine. "Categories of individuals covered by the system" and "Categories of records in the system" are modified to add tenants and members of applicant, borrower, grantee, tenant households. "Categories of records in the system" has been further modified to clarify that the system contains "credit reports and personal references from credit agencies, lenders, businesses and individuals."

This system notice also modifies the "Routine uses of records maintained in the system, including categories of users and the purposes of such uses" to clarify that routine use allows referral of information, without an individual borrower's name or other identifying information, when grouped by geographic or other statistical categories, to provide the basis for statistical reports, and for news releases citing borrowers' progress. It also clarifies that a routine use allows referral of information to management and resident agents, contractor agents, local, State, Federal, and foreign agencies, and others, to determine repayment ability and eligibility for Federal benefits.

This notice includes a new routine use which allows referral to business firms in a trade area that buy chattel or crops or sell them for commission. The purpose of this use is to ensure that proceeds from the sale of crops or other goods in which FmHA has rights are available to satisfy FmHA interests. Release of debtor names to dealers is necessary to protect FmHA interests, in accordance with the notification provisions of section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631(e)). Another new routine use allows disclosure to a tribe, tribemember, or the Indian Housing Authority to encourage selected borrowers to transfer or assign their loan to prevent liquidation, as required by the Cranston-Gonzalez National Affordable Housing Act.

A third new routine use allows referral to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FmHA determines such referral is appropriate to encourage contacting selected borrowers to facilitate the refinancing of their FmHA indebtedness as required by Title V of the Housing Act of 1949, as amended.

A fourth new routine use allows the release of information to the Department of Housing and Urban Development (HUD) as a record of location utilized by Federal agencies for an automatic credit prescreening system. A fifth new routine use allows referral to the Department of Labor, State Wage Information Collection Agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits. A sixth new routine use allows referral to lending institutions for the servicing of FmHA guaranteed loans, when FmHA determines that such referral is appropriate.

The notice has been amended to include three routine uses, originally published in the **Federal Register**, Vol. 53, No. 34, page 5206, dated February 22, 1988, that were inadvertently omitted from the **Federal Register**, Vol. 54, No. 170, page 36833, dated September 5, 1989. These uses regard:

a. Referral of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS) to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made.

b. Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments who are delinquent in their repayment of debts owed to the U.S. Government under certain FmHA programs.

c. Referral to lending institutions, when appropriate for allowing potential commercial creditors to determine if they would consider financing loans guaranteed by the FmHA.

"Retention and disposal" under the heading "Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system" is modified to bring it up to date with the most recent revision of the FmHA Federal Records Retention Schedule.

USDA/FmHA–3, "Credit Report File" is hereby deleted because these records are now maintained in USDA/FmHA–1, "Applicant/Borrower or Grantee File." Credit reports and personal references are included in information regulated by "Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system." Credit reports and personal references in "Record Source categories" are primarily from credit agencies and creditors. Two footnotes have been added.

Accordingly, USDA amends the FmHA Systems of Records, USDA/

FmHA–1 "Applicant/Borrower or Grantee File, USDA/FmHA," originally published in 50 FR 25727, June 21, 1985.

Signed at Washington, DC, on January 15, 1993.

Edward Madigan,

Secretary of Agriculture.

USDA/FmHA–1

SYSTEM NAME:

Applicant, Borrower, Grantee or Tenant File, USDA/FmHA

SYSTEM LOCATION:

Each Farmers Home Administration applicant's borrower's, grantee's, or tenant's file is located in the County, District, or State Office through which the financial assistance is sought or was obtained, and in the Finance Office in St. Louis, Missouri. A State Office version of the County or District Office file may be located in or accessible by the State Office which is responsible for that County or District Office. Correspondence regarding borrowers is located in the State and National Office files.

A list of all State Offices and any additional states for which an office is responsible follows: Montgomery, AL; Palmer, AK; Little Rock, AR; Phoenix, AZ; Woodland, CA—NV; Lakewood, CO; Camden, DE—MD, DC; Gainesville, FL; Athens, GA; Hilo, HI—Western Pacific Terr.; Boise, ID; Champaign, IL; Indianapolis, IN; Des Moines, IA; Topeka, KS; Lexington; KY; Alexandria, LA; Bangor, ME; Amherst, MA—CT, RI; East Lansing, MI; St. Paul, MN; Jackson, MS; Columbia, MO; Bozeman, MT; Lincoln, NE; Mt. Holly, NJ; Albuquerque, NM; Syracuse, NY; Raleigh, NC; Bismarck, ND; Columbus, OH; Stillwater, OK; Portland, OR; Harrisburg, PA; Hato Rey, PR; Columbia, SC; Huron, SD; Nashville, TN; Temple, TX; Salt Lake City, UT; Montpelier, VT—NH, VI; Richmond, VA; Wenatchee, WA; Morgantown, WV; Stevens Point, WI; Casper, WY.

The addresses of County, District, and State Offices are listed in the telephone directory of the appropriate city or town under the heading "United States Government, Department of Agriculture, Farmers Home Administration." The Finance Office is located at 1520 Market Street, St. Louis, Missouri 63103.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former FmHA applicants, borrowers, grantees, tenants, and their respective household members, including members of associations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes files containing applicant's, borrower's, grantee's, tenant's, and their respective household members' characteristics, such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, observed race, number of dependents, marital status, reference material, and operating plans. The system also includes credit reports and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits in and withdrawals from an individual's supervised bank account is also contained in those files where appropriate. In some County Offices, this record is maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items of information are extracted from the individual's file and placed in a card file for quick reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 1921 et seq., 42 U.S.C. 1471 et. seq., 42 U.S.C. 2706.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting an violation of law, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system, when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.[*]

Referral of information, without an individual borrower's name or other identifying information, when grouped by geographic or other statistical categories, to provide the basis for statistical reports and news releases citing borrowers' progress.

Referral to employers, businesses, landlords, management and resident agents, contractor agents, creditors, local, State, Federal, and foreign agencies, and others, to determine repayment ability and eligibility for FmHA programs and benefits.[**]

Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.[*]

Disclosure may be made of borrowers' names, and addresses to business firms in a trade area that buy chattel or crops or sell them for commission in order that FmHA may benefit from the purchaser notification provisions of Section 1324 of the Food Security Act of 1985 (7 U.S.C. 163(e)).

Disclosure may be made to a tribe, tribemember, or the Indian Housing Authority when FmHA determines such referral is appropriate to encourage selected borrowers to transfer or assign their loan to prevent liquidation as required by the Cranston-Gonzalez National Affordable Housing Act.

Referral to a collection or servicing contractor, or a local, State, or Federal agency, when FmHA determines such referral is appropriate for servicing or collecting the borrower's account or as provided for in contracts with servicing or collection agencies.[*]

Referral to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of the discovery, to the extent that the information disclosed is relevant and necessary to the proceeding.[*]

Referral of commercial credit information, which is filed in a system of records, to a commercial credit reporting agency for it to make the information publicly available.

Referral to financial consultants, advisors, or underwriters, when FmHA determines such referral is appropriate for developing packaging and marketing strategies involving the sale of FmHA loan assets as required by the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.

Referral to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FmHA determines such referral is appropriate to encourage contacting selected borrowers to facilitate the refinancing of their FmHA indebtedness as required by Title V of the Housing Act of 1949, as amended.

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[*] The credit reports and personal references from credit agencies, lenders, and individuals may be disclosed under the conditions of the six asterisked routine uses only.

[**] These referrals are made to determine if the information the borrower has provided is accurate, evaluate the applicant's credit history, and allow the FmHA to determine if the applicant's income is sufficient to repay the loan in accordance with the loan agreement. In addition, the FmHA must establish the applicant's income and inability to obtain credit elsewhere to determine eligibility for credit and other benefits such as interest credit.

Referral of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

Referral of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the FmHA in order to collect debts under the provisions of the Debt Collection Act of 1982 (Pub. L. No. 97–365), by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

Referral to lending institutions, when FmHA determines such referral is appropriate for allowing potential commercial creditors to determine if they would consider financing a loan guaranteed by the FmHA.

Referral to lending institutions to allow the servicing of FmHA guaranteed loans, when FmHA determines that such referral is appropriate.

Referral to private attorneys under contract with either FmHA or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with FmHA loans.

Referral to the Department of Justice for the purpose of litigation arising under statutes administered by FmHA.*

Referral to the Department of Housing and Urban Development (HUD) as a record of location utilized by Federal agencies for an automatic credit prescreening system.

Referral to the Department of Labor, State Wage Information Collection Agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE

Records are maintained in file folders at the County, District, State, and National Offices. A limited subset of personal, financial, and characteristics data required for effective management of the programs and borrower repayment status is maintained on disc or magnetic tape at the Finance Office. This subset of data may be accessed by the authorized personnel from each office.

RETRIEVABILITY:

Records are indexed by name, identification number and type of loan or grant. Data may be retrieved from the paper records or the magnetic tapes. A limited subset of data is available through telecommunication capability, ranging from telephones to intelligent terminals. All FmHA offices have the telecommunications capability available to access this subset of data.

SAFEGUARDS:

Records are kept in locked offices at the County, District, State, and National Offices. A limited subset of data is also maintained in a tape and disc library and an on-line retrieval system at the Finance Office. Access is restricted to authorized FmHA personnel. A system of operator and terminal passwords and code numbers is used to restrict access to the on-line system. Passwords and code numbers are changed as necessary.

RETENTION AND DISPOSAL:

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 366–380), and in accordance with FmHA's disposal schedules. The County, District, State, and National offices dispose of records by shredding, burning, or other suitable disposal methods after established retention periods have been fulfilled. Finance Office records are disposed of by overprinting. (Destruction methods never may compromise the confidentiality of information contained in the records.)

Applications, including credit reports and personal references, which are rejected, withdrawn, or otherwise terminated are kept in the County, District, or State Office for two full fiscal years and one month after the end of the fiscal year in which the application was rejected, withdrawn, cancelled, or expired. If final action was taken on the application, including an appeal, investigation, or litigation, the application is kept for one full fiscal year after the end of the fiscal year in which final action was taken.

The records, including credit reports, of borrowers who have paid or otherwise satisfied their obligation are retained in the County, District, or State Office for one full fiscal year after the fiscal year in which the loan was paid in full. Correspondence records at the National Office which concern borrowers and applicants are retained for three full fiscal years after the last year in which there was correspondence.

SYSTEM MANAGER(S) AND ADDRESS:

The County Supervisor at the County Office, the District Director at the District Office, and the State Director at the State Office, the Director of the Finance Office at the Finance Office, and the FmHA Administrator at the National Office.

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or determine whether the system contains records pertaining to him or her, from the appropriate system manager. If the specific location of the record is not known, the individual should address his or her request to:

Administrator, FmHA, Attention: Freedom of Information Officer, United States Department of Agriculture, 14th and Independence Avenue SW., Washington, DC 20250.

A request for information pertaining to an individual must include: A name; an address; the FmHA office where the loan or grant was applied for, approved, and/or denied; the type of FmHA program; and the date of the request or approval.

RECORD ACCESS PROCEDURES:

Any individual may obtain information regarding the procedures for gaining access to a record in the system which pertains to him or her by submitting a written request to one of the system managers referred to above.

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*The credit reports and personal references from credit agencies, lenders, and individuals may be disclosed under the conditions of the six asterisked routine uses only.

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from the applicant, borrower, grantee, or tenant. Credit reports and personal references come primarily from credit agencies and creditors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–1890 Filed 1–25–93; 8:45 am]

BILLING CODE 3410–07

Agricultural Marketing Service

[Docket No. TB–93–03]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: February 11, 1993.

Time: 10 a.m.

Place: Campbell House Inn, North Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40405.

Purpose: Elect new officers, review the past marketing season, consider changes to the policies and procedures, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: January 19, 1993.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 93–1892 Filed 1–25–93; 8:45 am]

BILLING CODE 3410–02–M

Forest Service

Mt. Baldy Village Land Exchange; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement for a Land for Land Exchange in the Mt. Baldy Village and San Antonio Canyon area. This is in response to the Mt. Baldy Homeowners Associations proposal to acquire National Forest System lands within Mt. Baldy Village. Mt. Baldy Village is located on the Mt. Baldy Ranger District, on the Angeles National Forest, in the Counties of Los Angeles and San Bernardino, California. The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by March 22, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Susan Swinson, Deputy Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006–2799.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and Environmental Impact Statement to Ms. Swinson at the above address or phone (818) 574–5220.

SUPPLEMENTARY INFORMATION: The Angeles National Forest Land and Resources Management Plan, Final Environmental Impact Statement and Record of Decision have been issued. These documents permit, under certain conditions, the exchange of National Forest System lands.

In preparing the Environmental Impact Statement, the Forest Service will identify and consider a range of alternatives. One of these alternatives will be a no exchange alternative.

The Regional Lands Director, Region 5, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public Participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest will be seeking information, comments and assistance from Federal, State and local agencies, the proponent and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (ie., direct, indirect and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task agreements.

The Forest Service will hold the following public scoping meetings:

February 11, 1993, 2–8 pm at the Glendora Library, 140 S. Glendora Ave. Glendora, CA.

February 12, 1993, 2–8 pm and February 20, 1993, 10 am–5 pm at the Mt. Baldy School House Forest Service facility, on Mt. Baldy Road, Mt. Baldy Village, CA.

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The DEIS is expected to be available for public review by June, 1993. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions.

Vermont Yankee, Nuclear Power Corp. v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th CIR. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. WIS. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 13, 1993.

Michael J. Rogers,

Forest Supervisor.

[FR Doc. 93-1613 Filed 1-25-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Decision for Marks Creek Salvage Sale From Appeal, Ochoco National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Marks Creek Salvage Sale on the Big Summit Ranger District of the Ochoco National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754; or Bruce Wilson, District Ranger, Big Summit Ranger District, Ochoco National Forest, Prineville, Oregon 97754, Phone (503) 447-9641.

SUPPLEMENTARY INFORMATION: During the last decade the defoliation and mortality caused by the western spruce budworm and associated pests of Douglas-fir and white fir stands of the Ochoco National Forest has become epidemic and forest-wide. In some stands the mortality was nearly total, and no stand with fir was left unaffected. One of the hardest hit areas is in and around the Marks Creek Planning Area on the Big Summit Ranger District.

In the Marks Creek Planning Area the outbreak of the western spruce budworm occurred in 1983, and spread throughout the area by 1985. The infestation increased in severity with each year. Though some death was always associated with the outbreak, widespread mortality has occurred only during the last three years, 1990-1992, taking as much as 80 percent the Douglas-fir and white fir within some stands.

Recognizing the infestation had not run its anticipated course, and that unexpectedly high mortality would occur, the area was examined to determine an appropriate course of action. An environmental analysis was completed in December 1992, and discloses effects of alternatives to rehabilitate the resources within the project area.

An interdisciplinary team (IDT) identified the following needs: To balance market and non-market outputs; improve forest health; reduce fuels loading and risk of catastrophic fire; and improve riparian and stream conditions. The proposed project is timber harvest with the related activities of reforestation, road construction and reconstruction, and fuel treatment. Mitigation measures include log and boulder placement and riparian plantings in three miles of creeks, road closures, soil tilling, and water and spring development.

The IDT began scoping in February 1992, with a scoping letter mailed to individuals, groups, and other Federal agencies. Scoping continued throughout the process via open house meetings, newsletters, tours, coordination meetings with other agencies, and written and verbal communications.

From the meetings, press releases, and contacts with individuals and State and other Federal agencies, the following seven issues were identified:

1. Potential effects of timber harvest, road management, and insects on the quality and quantity of wildlife habitat and biodiversity.
2. Potential effects of timber harvest and connected actions on water quality, riparian, and fisheries habitat.
3. Effects of the current insect outbreak and associated tree mortality on the ability of the forest to meet management objectives identified for the area.
4. Potential timber harvest effects of adding slash to already heavy fuel loadings from mortality and of increasing the risk of catastrophic fire.
5. Potential effects, from both timber harvest and connected actions, to recreation opportunities and the forest scenery viewed from U.S. Highway 26 and camping areas.
6. There is potential for below cost timber sales due to the dead trees losing value and volume from decay and checking, low value species, and small size material.
7. Potential effects of harvesting and road construction on sensitive plant species and levels of noxious weeds populations.

The IDT developed three alternatives to analyze, including the No-Action Alternative. The effects of these alternatives are disclosed in the Marks Creek Planning Area environmental assessment which was prepared for the proposal. Alternative 3 would harvest about 1509 acres of area: 1012 acres of shelterwood and seed tree cut and 497 acres of partial cut. Alternative 3 would harvest about 4.5 million board feet: Approximately 30 percent of Douglas-fir; 65 percent of white fir; and 5 percent of ponderosa pine and western larch. Approximately 2.2 miles of roads would be constructed and 1.6 miles of roads reconstructed. This alternative is the most effective in meeting the purpose and need and responding to the issues.

The Marks Creek Salvage Sale and accompanying work is designed to accomplish the forest health objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite Marks Creek Salvage Sale and the accompanying work, this project is exempted from appeal (36 CFR part 217). Under this Regulation, the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of notice in the **Federal Register**, the Decision Notice for the Marks Creek Salvage Sale may be signed by the Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 14, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93-1851 Filed 1-25-93; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Decision for Black Olive Salvage Sale From Appeal, Umatilla National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Black Olive Salvage Sale, located on the North Fork John Day Ranger District, Umatilla National Forest, is exempted from appeal. This is in conformance with provisions of 36 CFR part 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 3342).

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Craig Smith-Dixon, District Ranger, North Fork John Day Ranger District; P.O. Box 158; Ukiah, Oregon 97880, Phone (503) 427-3231.

SUPPLEMENTARY INFORMATION: In 1986 a large wildfire burned approximately 3,200 acres in the Black Olive Planning Area. In 1989 the Rusty Salvage Timber Sale harvested approximately 550 acres of fire-damaged trees. In the Summer of 1991, a district interdisciplinary team (IDT) surveyed much of the remaining burn to assess what could be salvaged and the effects on wildlife, raparian, and in-stream habitat.

The IDT identified the need to salvage dead trees while they were still merchantable and the desirability to complete the salvage quickly so that establishment of new forest stands could take place promptly.

The analysis of the proposed action for the Black Olive area began in early 1992. Scoping included individuals, groups, State and other federal agencies, and the Confederated Tribes of the Umatilla Indian Reservation.

The proposed action will salvage harvest 900,000 board feet on approximately 110 acres. Only dead trees will be harvested. No road construction or reconstruction will be required. The harvest method would be ground based. Reforestation with serial species will occur where post harvest surveys indicate that natural regeneration will not be adequate. All main skid trails and landings will be subsoiled to relieve soil compaction and grass seeded to minimize sedimentation.

This action fits within category 4 of section 31.2 of Forest Service Handbook 1509.15. Therefore, this action may be categorically excluded from documentation in an environmental impact statement or an environmental assessment.

Biological evaluations have been completed for all plant, wildlife, and fish Proposed, Endangered, Threatened and Sensitive (PETS) species within the project area. There will be no effect on any PETS species or the critical habitat. Cultural resource surveys indicate that this project will have no effect on native American religious sites, archeological sites, or historic properties or areas.

The Black Olive Salvage Sale and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost and resource damage. To expedite this salvage sale and the accompanying work, this project is exempted from appeal (36 CFR part 217). Under this Regulation, the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, this Decision Memo for the Black Olive Salvage Sale may be signed by the North Fork John Day District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 14, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–1848 Filed 1–25–93; 8:45 am]

BILLING CODE 3410-11-M

Forest Service

Exemption of Decision For Touchet Salvage Timber Sale From Appeal, Umatilla National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Touchet Salvage Timber Sale, located on the Walla Walla Ranger District, Umatilla National Forest, is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Reilly, District Ranger, Walla Walla Ranger District; 1415 West Rose Street; Walla Walla, Washington 99362, Phone (509) 522–6290.

SUPPLEMENTARY INFORMATION: From early 1991 to the present, there has been a need to remove insect-infested, diseased and wind-damaged trees along the heavily travelled roads on the Umatilla National Forest. Much of the heaviest damage has been on the Walla Walla Ranger District. The decline in Forest Health has dramatically increased in the Touchet Salvage area in the last two years. In the Fall of 1990, a district interdisciplinary team (IDT) surveyed much of salvage area to assess the damage to the resources that had occurred. The wind-damage includes: Windthrow; mortality in diseased stands of Englemann spruce, subalpine fir, and white fir; and mortality in spruce beetle and western spruce budworm infested stands of Englemann spruce, subalpine fir, white fir, and Douglas fir. Other resource areas identified were: Loss of riparian and in-stream habitat; increased risk to public safety; and increased risk of catastrophic fire.

The IDT has identified the need to salvage the diseased, wind-damaged, and insect-killed trees in as short a time as possible while the logs are still merchantable. Rapid deterioration of diseased, wind-damage, and insect-infested trees, especially those of the smaller diameter, will quickly reduce their merchantable and economic value. The IDT also identified the need and desirability to complete the logging quickly so that establishment of new forest stands, and other restoration measures can take place promptly.

An environmental analysis of these actions for the Touchet area began in February 1991. After public meetings and contracts with individuals, groups, State, and other federal agencies, the following major issues were identified: Stand health; public safety; soil resources; snag habitat; long-term site productivity; and riparian rehabilitation.

The proposed action will salvage harvest approximately 130 acres of diseased, wind-damaged, and insect-damaged stands. Stands selected for harvest exhibited high to extreme levels of damage from disease, the wind and mortality by spruce beetle and western spruce budworm. Within the stands, only dead and down or dying host species (Englemann spruce, subalpine fir, Douglas-fir, and white fir) will be selected for harvest. The proposed action would produce about 165,000 board feet of timber. No road construction or reconstruction is planned. Logging systems will include skyline yarding on 130 acres.

This action fits within category 4, (salvage less than 1 million board feet and assures regeneration) of section 31.2 of Forest Service Handbook 1909.15. Therefore, this action may be categorically excluded from documentation in an environmental impact statement or an environmental assessment.

Biological evaluations have been completed for all plant, wildlife, and fish. Proposed Endangered, Threatened and Sensitive species habitat within the project area is present. The biological evaluations concluded that this project would not contribute to the loss of viability of the species or cause the species to move toward federal listing. All biological evaluations indicated that projects could proceed as planned.

The Touchet Salvage Timber Sale and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage sale and the accompanying work, this project is exempted from appeal (36 CFR part 217). Under this

Regulation, the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Touchet Salvage Timber Sale may be signed by the Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 14, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–1849 Filed 1–25–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Decision For Ninemile Salvage Timber Sale From Appeal, Umatilla National Forest, OR

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Ninemile Salvage Timber Sale, located on the Walla Walla Ranger District, Umatilla National Forest, is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Reilly, District Ranger, Walla Walla Ranger District; 1415 West Rose Street; Walla Walla, Washington 99362, Phone (509) 522–6290.

SUPPLEMENTARY INFORMATION: From January 1990 to the present, several catastrophic windstorms have damaged major forested portions of the Umatilla National Forest. Much of the heaviest damage has been on the Walla Walla Ranger District. The amount of wind-damage has dramatically increased in the Ninemile Salvage Area in the last two years. In the Fall of 1991, a district interdisciplinary team (IDT) surveyed much of he wind-damaged area to assess the damage to the resources. The wind damage included: Windthrow; mortality in diseased stands of Engelmann spruce, subalpine fir. and white fir; and mortality in spruce beetle infested stands of Engelmann spruce and subalpine fir. Other resources areas identified were loss of riparian and instream habitat and increased risk of catastrophic fire.

The IDT has identified the need to salvage the wind-damaged and insect-killed trees in as short a time as possible while the logs are still merchantable. Rapid deterioration of wind-damaged and insect-infested trees, especially those of the smaller diameter, will quickly reduce their merchantable and economic value. The IDT also identified the need and desirability to complete the logging quickly so that establishment of new forest stands and other restoration measures can take place promptly.

An environmental analysis of these actions for the Ninemile area began in December 1991. After public meetings and contacts with individuals, groups, State and other Federal agencies, the following major issues were identified: Stand health; timber salvage; snag habitat; long-term site productivity; and riparian rehabilitation.

The proposed action will salvage harvest approximately 120 acres of wind-damaged and insect-damaged stands. Stands selected for harvest exhibited high to extreme levels of damage from the wind and mortality by spruce beetle. Within the stands, only dead and down or dying host species (Engelmann spruce, subalpine fir and white fir) will be selected for harvest. The proposed action would produce about 800 thousand board feet of timber. No road construction or reconstruction is planned. Logging system will include tractor yarding on 120 acres. Reforestation with seral species will occur on 10 acres.

This action fits within category 4 (salvage less than 1 million board feet and assures regeneration) of section 31.2 of Forest Service Handbook 1909.15. Therefore, this action may be categorically excluded from documentation in an environmental impact statement or an environmental assessment.

Biological evaluations have been completed for all plant, wildlife, and fish. Proposed Endangered, Threatened and Sensitive species habitat within the project area is present. The biological evaluations concluded that this project would not contribute to the loss of viability of the species or cause the species to move toward federal listing. All biological evaluations indicated that this project could proceed as planned.

The Ninemile Salvage Timber Sale and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this salvage sale and the accompanying work, this project is exempted from appeal (36 CFR part 217). Under this Regulation, the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for the Ninemile Salvage Timber Sale may be signed by the Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 14, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–1850 Filed 1–25–93; 8:45 am]

BILLING CODE 3410–11–M

Santiam Pass Demo Project, Willamette National Forest, Linn County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest trees, regenerate stands, construct roads, and use prescribed fire in Santiam Pass. The need for the demonstration project is to change forest stand structure and composition to address forest health problems in Santiam Pass. Three of the four proposed units would be in Roadless Areas. Project is proposed for fiscal year 1993. The Willamette National Forest invites written comments on the scope of the analysis. The agency will give full notice of the full environmental analysis and decision making process for the proposal so interested and affected people may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by February 15, 1993.

ADDRESSES: Send written comments to Joe Zook, District Planner, McKenzie Ranger District, McKenzie Bridge, Oregon 97413.

FOR FURTHER INFORMATION CONTACT: Joe Zook, District Planner, McKenzie Ranger District, McKenzie Bridge, Oregon 97413, Phone (503) 822–3381.

SUPPLEMENTARY INFORMATION: The USDA, Forest Service proposal includes: the harvest of trees through commercial thinning, understory removal, and regeneration harvest on about 257 acres, for an estimated volume of 2.4 MMBF (million board feet); to construct spur roads as necessary to access units; to prescribe burn some understory layers in selected stands before thinning; to regenerate new stands after harvest; and to educate the public on forest health options. Of the four proposed units, unit 2 would be in Mt. Jefferson South Roadless Area, and units 3 and 4 would be in Mt. Washington West Roadless Area.

Preliminary issues have been identified and include: roadless areas; forest health, long-term productivity, and biodiversity; spotted owls; recreation experience; fire hazard and air quality; old growth and fragmentation; socio-economic; Pacific yew trees; threatened, endangered, and sensitive species (plants and animals); and cultural resources. A range of alternatives will be developed including a no action alternative.

This draft EIS will tier to the 1990 Final EIS for the Willamette National Forest Land and Resource Management Plan and will be consistent with the Forest Plan. The Forest Service is the lead agency.

Initial scoping began in May 1992. Extensive scoping has already been done on the project proposal through field trips, newsletters, and public meetings. The public is invited to offer suggestions and comments in writing.

The draft EIS is expected to be completed in February 1993. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in May 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the Santiam Pass Demo Project. Darrel L. Kenops, Forest Supervisor, is the Responsible Official. As the Responsible Official, he will decide whether to implement the project. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 217).

Dated: January 1993.

Darrel L. Kenops,

Forest Supervisor.

[FR Doc. 93–1820 Filed 1–25–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Alabama Advisory Committee to the U.S. Commission on Civil Rights will meet on February 23, 1993, from 7 p.m. until 8:30 p.m. at the Sheraton Riverfront Hotel, 200 Coosa Street, Montgomery, Alabama 36104. The purpose of the meeting is to discuss follow up activities to the report, From the Dream of the Sixties to the Vision of the Nineties—The Case For An Alabama Human Relations Commission.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426–5253; (TTY 816—426–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 15, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–1845 Filed 1–25–93, 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 631]

Expansion of Foreign-Trade Zone 17, Kansas City, KS

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the FTZ Board Regulations (15 CFR part 400), the FTZ Board (the Board) adopts the following Resolution and Order:

Whereas, an application from the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 17, Kansas City, Kansas for authority to expand its general-purpose zone to include a site in Leavenworth, Kansas, adjacent to the Kansas City Customs port of entry, was filed by the Board on November 6, 1991, and notice inviting public comment was given in the **Federal Register** on January 2, 1992 (Docket 81–91, 57 FR 41);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Kansas City area; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

That the grantee is authorized to expand its zone in accordance with the application filed on November 6, 1991, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 15th day of January, 1993.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration; Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–1899 Filed 1–25–93; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of this merchandise to the United States during the period April 12, 1990, through July 31, 1991. Based on our review of these exports, we preliminarily find existence of dumping margins.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Marina McCelland or Melissa Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230; telephone (202) 482–4852.

SUPPLEMENTARY INFORMATION:

Background

The final determination of the investigation in this case was published in the **Federal Register** on July 18, 1990 (55 FR 29244), and the antidumping duty order was published on August 29, 1990 (55 FR 35371). On August 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on gray portland cement and clinker from Mexico (56 FR 41506).

In accordance with 19 CFR 353.22(a)(1), the Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement and the National Cement company of California (the petitioner) requested an administrative review for CEMEX, S.A. (CEMEX) and Apasco S.A. de C.V. (Apasco). CEMEX also requested a review of its shipments. Thus, the Department is now conducting a review of these respondents pursuant to section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

On December 23, 1991, CEMEX responded to the Department's questionnaire. Thereafter, the Department accepted petitioner's allegations of sales below the cost of production (COP) and, on March 13, 1992, we issued a COP questionnaire to CEMEX. CEMEX responded to the COP questionnaire on April 30, 1992. Petitioner also filed fictitious market allegations against CEMEX. The Department issued a fictitious market questionnaire on May 11, 1992. CEMEX responded to the fictitious market questionnaire on May 19, 1992. From May 18, 1992, through May 29, 1992, the Department conducted verification of CEMEX's questionnaire responses and COP response and investigated petitioner's fictitious market allegations.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement.

Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29, and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. The written description remains dispositive as to the scope of the product coverage.

The period of review (POR) is April 12, 1990, through July 31, 1991.

United States Price

We based United States price on purchase price, where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Tariff Act, and on exporter's sales price (ESP), where sales to the first unrelated purchaser took place after importation into the United States, in accordance with section 772(c) of the Tariff Act. For purchase price sales, we made adjustments for ocean freight, inland freight, foreign brokerage, foreign inland freight, marine insurance, import duties, U.S. brokerage, early payment discount, customer trade discount, trade discount, credit and debit memos, and uncollected taxes. In calculating ESP, we made adjustments for ocean freight, inland freight, foreign brokerage, foreign inland freight, import duties, U.S. brokerage, inland freight to terminal, freight to the further manufacturing site, marine insurance, early payment discount, customer trade discount, trade discount, inventory carrying costs, credit and debit memos, special charges, indirect selling expenses incurred in the U.S. and Mexico, credit, handling revenue, billing adjustments, and uncollected taxes. In addition, we adjusted the U.S. price of the further-manufactured merchandise by deducting the U.S. cost of further manufacturing, the selling, general and administrative expenses applicable to the further-manufactured goods, and the profit realized from the further manufacturing.

Foreign Market Value

Petitioner alleged, as noted, that CEMEX created a fictitious market in the home market. Petitioner claims that CEMEX altered its pricing practice for Type I and Type II cement sales in the home market to eliminate or reduce CEMEX's financial burden resulting from the assessed large antidumping duty.

After examining the pricing trends of Type I and Type II cement in the home market during the POR, we have found no indication that CEMEX created a fictitious market.

Petitioner, as noted above, also alleged that CEMEX sold Type I and Type II cement in the home market at prices below their COP. We considered the allegation sufficient to warrant an investigation of possible home market sales below the COP. As a result of the investigation, we found less than 10 percent of the sales of Type I cement below cost and these sales have not been eliminated from the home market data base. We found substantial quantities of Type II sales made at prices below the COP over an extended period of time. Therefore, we disregarded those sales of Type II cement sold at below COP. Subsequently, where we were not able to find contemporaneous sales of Type II cement in the home market to compare with sales of Type II cement in the United States, either within the same month or 90 days before or 60 days after that month, the Department based FMV on a constructed value, as described in § 353.50 of our regulations.

In accordance with section 773(a)(1)(A) of the Tariff Act, we calculated FMV based on home market sales, including sales to related customers. We conducted an arms-length test and determined CEMEX's sales to related parties were at prices comparable with those to unrelated customers. We excluded one home market sale made for "goodwill" purposes. We calculated FMV based on packed, f.o.b. ex-factory prices and c.i.f. prices.

Pursuant to section 773(a)(4)(B) of the Tariff Act and 19 CFR 353.56(a), we made circumstance of sales adjustments, where appropriate, for differences in credit expenses. We also made circumstance of sales adjustments to eliminate any differences in taxation between the two markets. For comparisons of bagged cement, we deducted home market packing costs from FMV and added to FMV U.S. packing costs incurred in Mexico. Where appropriate, we also made deductions from home market prices for discounts, rebates, and inland freight and added packing revenue, handling revenue, and credit revenue.

For comparisons to ESP sales, we made additional deductions from the FMV for home market indirect selling expenses, which consist of general indirect selling expenses and inventory carrying costs. We limited the amount deducted for indirect selling expenses incurred in the home market by the amount of indirect selling expenses incurred on sales in the U.S. market in accordance with 19 CFR 353.56(b)(2).

Monetary Correction

During the POR, CEMEX experienced both foreign exchange gains and losses on its monetary assets and liabilities denominated in foreign currencies. The monetary gains and losses represent the effect of inflation on the company's net monetary assets and liabilities.

Petitioner argues that in calculating CEMEX's financing expenses for COP purposes, the Department should not include an adjustment for monetary position gain. According to petitioner, the Department's application of a monetary correction to assets, liabilities and, consequently, CEMEX's income would cause distortion in this case.

Respondent CEMEX argues that because debt principal is not indexed or restated in Mexico, the financial position of the company would deteriorate without monetary correction.

The Department has long held the position that financing expenses are vulnerable to inflation. Monetary correction is used only for the holding of monetary assets and liabilities, which have fixed nominal values such as debt, therefore affecting the financial position of the company. Mexico's GAAP recognizes that inflation is at such a level that without monetary correction a misrepresentation of a company's financial expenses would result. Therefore, based on Mexican GAAP, the Department has used monetary correction when calculating financial expenses.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margins for the period April 12, 1990, through July 31, 1991, to be:

Company	Margin percentage
CEMEX, S.A	30.74
Apasco, S.A. de C.V	[1] 53.26

[1] For the period April 12, 1990–July 31, 1991, Apasco, S.A. de C.V. made no shipments. In the final determination of sales at less than fair value, the Department determined a margin percentage of 53.26% for Apasco, S.A. de C.V.

On December 2, 1991, Apasco informed the Department that it made no shipments of the merchandise covered by the order during the POR. The Department has contacted U.S. Customs to verify the lack of imports of the covered merchandise produced by Apasco.

Case briefs and/or written comments from interested parties may be submitted no later than 30 days of the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 37 days of the date of publication of this notice.

Within 10 days of the date of publication of this notice, interested parties to this proceeding may request a disclosure and/or a hearing. The hearing, if requested, will take place no later than 44 days of publication of this notice. Persons interested in attending the hearing should ascertain with the Department the date and time of the hearing.

The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to Customs Service upon completion of this review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm with shipments in this review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1900 Filed 1–25–93; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-819, A-427-811, and A-533-806]

Initiation of Antidumping Duty Investigations: Certain Stainless Steel Wire Rods from Brazil, France and India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-2778.

INITIATION OF INVESTIGATIONS:

The Petitions

On December 30, 1992, we received three petitions filed in proper form by the Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., and United Steelworkers of America, AFL-CIO/CLC (petitioners). On January 12, 1993, we received a supplement to the petitions, at the Department's request. In accordance with 19 CFR 353.12, the petitioners allege that certain stainless steel wire rods (SSWR) from Brazil, France and India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

For purposes of these investigations, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils, for subsequent cold-drawing or cold-rolling. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-sectional shape, annealed and pickled, and later cold-drawn into stainless steel wire. The most common size is 5.5 millimeters in diameter.

The SSWR subject to these investigations are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Brazil

Petitioners based United States Price (USP) on information obtained by a U.S. industry consultant. The consultant provided price quotes for two different grades (304 and 316) of the subject merchandise. Petitioners calculated USP by subtracting the duty rate, harbor maintenance fee, merchandise processing fee, ocean freight and marine insurance.

Foreign Market Value (FMV) is based on home market prices obtained by an industry consultant for two grades (304 and 316) of SSWR. The prices were converted to a per pound basis. No conversion into dollars was necessary since the prices were quoted in U.S. dollars.

France

Petitioners based USP on information obtained through their own business activity. This information included C.I.F. prices for one grade of SSWR from the two known French producers. Petitioners calculated a net price by making deductions for the duty rate, ocean freight, marine insurance, harbor maintenance fee, merchandise processing fee, U.S. inland freight and foreign inland freight. Petitioners used U.S. import statistics to estimate ocean freight and marine insurance charges, while figures for foreign inland freight and insurance charges were supplied by a European steel consultant. No adjustments to USP were made for brokerage and handling charges or for any selling expenses.

The European steel consultant obtained information on prices for FMV. Petitioners provided C.I.F. prices in French Francs for the same grade from the two known French producers. Petitioners converted the prices to dollars using the contemporaneous exchange rate found in the Federal Reserve Statistical Release. In addition, the units of weight were converted from dollars per metric ton to dollars per pound. Based on information received from the European steel consultant, petitioners deducted amounts for foreign inland freight and insurance charges and made an adjustment for the lower carbon content of the SSWR sold in French as compared to that sold in the United States.

Finally, the home market prices used by petitioners are exclusive of value-added taxes. In accordance with current Department policy, petitioners calculated the amount of such taxes which would be applicable to sales to the United States and added the resulting amount to both USP and FMV.

India

A consultant was used to obtain information on USP for two grades of SSWR from two producers. These prices were quoted as FOB U.S. dock. Net USP was calculated by subtracting the duty rate, ocean freight, marine insurance, harbor maintenance fee, merchandise processing fee and foreign inland freight.

For FMV, an industry consultant obtained a range of prices for two grades of SSWR from two producers. These prices were exfactory prices. The petitioners averaged the high and low price for each grade. These average prices were used in the margin calculation after some adjustments were made. The prices were converted from rupees to dollars using an exchange rate from the monthly Federal Reserve Statistical Release. Also, adjustments for differences in credit expenses between U.S. and Indian sales were made.

The range of dumping margins of SSWR from Brazil based on a comparison of USP to FMV alleged by petitioners is 23.5% to 26.5%. The range of dumping margins of SSWR from France is 17.8% to 25.5%, and the range for India is 41.1% to 48.8%.

Critical Circumstances

Petitioners also allege that "critical circumstances" exist, within the meaning of Section 733(e) of the Act, with respect to imports of the subject merchandise form Brazil and France.

Initiation of Investigations

We have examined, the petitions for SSWR from Brazil, France and India, as amended, and have found that the petitions meet the requirements of section 732(b) of the Act. We have studied the information provided in the petitions and for purposes of the initiation we accept petitioners' calculations. Therefore, we are initiating antidumping duty investigations to determine whether imports of SSWR from Brazil, France and India are being, or are likely to be, sold in the United States at less than fair value. If investigations proceed normally, we will make our preliminary determinations by June 8, 1993.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by February 16, 1993, whether there is a reasonable indication that imports of SSWR from Brazil, France and India are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in these investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1905 Filed 1–25–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of permit modification (P135C).

Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the regulations governing the taking and importing of marine mammals (50 CFR part 216) and § 222.25 of the regulations governing endangered species permits (50 CFR part 222), Scientific Research Permit No. 789 issued to Dr. James H.W. Hain, Associated Scientists at Woods Hole, Inc., Box 721, Woods Hole, MA 02543, on August 24, 1992 (57 FR 39672), has been modified to allow the Holder to descend to a minimum altitude of 200 ft with a minimum slant range of 350 ft for right whales during aerial surveys, photo-identification and behavioral observations from an airship. This modification becomes effective upon signature.

Issuance of this permit, as modified, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This permit was also issued in accordance with and is subject to the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 220–222).

Documents submitted in connection with this Permit and modification are available, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289);

Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200); and

Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: January 14, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1823 Filed 1–25–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P504B).

Notice is hereby given that the U.S. Army Corps of Engineers (Corps), Walla Walla District has applied in due form for a permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to collect and transport juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) and juvenile Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) around mainstem dams and associated downstream reservoirs on the Snake and Columbia rivers for the purpose of increasing their chances of survival over the alternative of in-river passage, given current in-river conditions. Collection and transportation of juvenile salmon is projected to occur March 25 through October 31 at Lower Granite, Little Goose, and Lower Monumental dams, and March 25 through December 31 at McNary Dam. The requested duration of the permit is March 25 through December 31, 1993.

The Corps proposes to route the fish to raceways and then load them into trucks or barges for transportation to the Columbia River, below Bonneville Dam, without further handling except for those salmon subsampled for research conducted by agents acting on behalf of the Corps. Subsets of salmon collected for transportation and additional listed salmon will be used for smolt monitoring and research purposes. This research involves a number of institutions for a variety of different projects, including the following: (1) Handling; (2) PIT tagging; (3) Freeze branding; (4) Scale sampling; (5) Sacrifice for Fish Guidance Efficiency (FGE) tests; (6) Sacrifice for blood chemistry work; (7) Sacrifice for bacterial kidney disease studies and smoltification analysis; (8) Stunning or killing by underwater video studies; and (9) Illumination by lasers. Adults of any of the three species that are collected incidental to the transportation or the research would be returned to the river without further handling.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713-2322); and
Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230-5400).

Dated: January 14, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93-1824 Filed 1-25-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Bangladesh

January 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: January 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/339 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 1146, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on January 21, 1993, you are directed to amend further the directive dated January 7, 1992 to increase the limit for Categories 338/339 to 977,085 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-1831 Filed 1-25-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of The Secretary

Notice of Cancellation

AGENCY: Office of The Under Secretary of Defense (Acquisition), Defense.

SUMMARY: Pursuant to section 807 of Public Law 102-120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee was formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee meetings scheduled for February 9 and 10, 1993, (**Federal Register** Notice, December 28, 1992, page 61597) are hereby cancelled. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693-5639.

Dated: January 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-1832 Filed 1-25-93; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2362-002 Minnesota]

Blandin Paper Company; Notice of Availability of Environmental Assessment

January 19, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Blandin Hydroelectric Project, located on the Mississippi River in Itasca County, Minnesota, in the city of Grand Rapids, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1868 Filed 1-25-93; 8:45 am]

BILLING CODE 6717-01-M

Additional Environmental Compliance Training Courses

January 19, 1993.

The Office of Pipeline and Producer Regulation (OPPR) will present two environmental compliance training courses in addition to the four announced on September 17, 1992. These courses are being held so that the regulated pipeline industry and interested individuals and/or organizations can gain a better understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations. Interested organizations are urged to take advantage of these courses.

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[1] The limit has not been adjusted to account for any imports exported after January 31, 1992.

Course discussion will include the following topics:

- Objectives and requirements of FERC construction orders;
- Preconstruction clearance filings and obtaining Notices to Proceed; and
- Environmental Inspection as it relates to:
  - Right-of-way preparation;
  - General erosion control;
  - Right-of-way restoration;
  - Topsoil segregation;
  - Stream and river crossing;
  - Wetland construction;
  - Residential area construction;
  - Construction and restoration in arid climates;
  - Cultural resources/Paleontology; and
  - Right-of-way maintenance.

The training courses will be given in the locations identified below. Details on location and time may be obtained from Mr. George Willant at the number listed below.

Houston, TX—May 4, 5, and 6, 1993
Washington, DC—June 8, 9, and 10, 1993

The course is designed for individuals directly involved in environmental performance such as environmental and right-of-way inspectors, and construction contractor personnel. Training will be conducted by Ebasco Environmental (Ebasco), the Commission's environmental support contractor, under the direction of the staff of OPPR. There will be no registration fee.

Any organization or individual interested in participating in this course should preregister by sending in a written request to George Willant at: Ebasco Environmental, 211 Congress Street, Boston, MA 02110–2410.

The request should include names, addresses and telephone numbers. Session attendance will be limited to 200 and only one set of course materials will be available per preregistered attendee.

Additional information may be obtained from Mr. John Leiss at (202) 208–1106 or Mr. George Willant of Ebasco at (617) 451–1201.

Previous sessions have been very popular so we urge those interested in attending to send in their written request early. Preregistration must be received at least 30 days prior to the date of the session.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1786 Filed 1–25–93, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–18–000]

Staten Island Cogeneration Corp.; Amendment to Filing

January 15, 1993

On January 11, 1993, Staten Island Cogeneration Corporation (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 4, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1787 Filed 1–25–93; 8:45 am]

BILLING CODE 6717–01–M

Magic Water Co., Inc.; Application Accepted for Filing with the Commission

January 15, 1993.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Original License for Minor Project (Tendered Notice).

b. Project No.: 7923–004.

c. Date Filed: January 4, 1993.

d. Applicant: Magic Water Company, Inc.

e. Name of Project: Magic Water Company Hydroelectric Project.

f. Location: Partially on lands administered by the Bureau of Land Management, on Salmon Falls Creek, near the town of Buhl, in Twin Falls County, Idaho. Section 2 in T10S, R13E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: John J. Straubhar, P.E., P.O. Box 820, Twin Falls, ID 83303, (208) 736–8255.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The project would consist of: (1) The applicant's existing 12-foot-high, 150-foot-long dam; (2) a 2,584-foot-long, 36-inch-diameter steel penstock; (3) a powerhouse containing one generating unit with an installed capacity of 113 kW; (4) a tailrace; (5) a 50-foot-long underground transmission line interconnecting with an existing Idaho Power Company transmission line; and (6) appurtenant facilities.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission no later than 60 days after the application is filed, (March 5, 1993) and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is April 4, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1788 Filed 1–25–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–02898T New Mexico–36]

Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 15, 1993.

Take notice that on January 11, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation in San Juan County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described on the attached appendix.

The notice of determination also contains BLM and the New Mexico Department of Energy, Minerals and Natural Resources' findings that the referenced portion of the Dakota Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

Township 26 North, Range 11 West
Township 27 North, Range 11 West
Township 29 North, Range 11 West
Township 30 North, Range 11 West
Township 29 North, Range 12 West
Township 30 North, Range 12 West
Township 31 North, Range 12 West
Township 30 North, Range 13 West
  Sections 1–36: All
Township 28 North, Range 11 West
Township 28 North, Range 12 West
  Sections 7–36: All
Township 31 North, Range 11 West
  Sections 2–11: All
  Sections 14–21: All
  Sections 28–33: All
Township 32 North, Range 11 West
  Sections 28–33: All
Township 27 North, Range 12 West
  Sections 1–7: All
  Sections 8–9: N/2
  Sections 10–15: All
Township 32 North, Range 12 West
  Sections 25–27: All
  Sections 32–36: All
Township 27 North, Range 13 West
  Sections 1–2: All
  Sections 3 and 10: E/2
  Sections 11–13: All
Township 28 North, Range 13 West
  Sections 10–15: All
  Sections 22–27: All
  Section 34: E/2
  Sections 35 and 36: All
Township 29 North, Range 13 West
  Sections 1–3: All
  Sections 10–15: All
  Section 20: E/2
  Sections 21–28: All
  Sections 29 and 32: E/2
  Sections 33–36: All
Township 31 North, Range 13 West
  Section 13: All
  Sections 22–27: All
  Sections 33–36: All
Township 30 North, Range 14 West
  Sections 13 and 14: All
  Sections 24 and 25: All
  Sections 35 and 36: All

The area of application contains 287,243 acres, more or less, of Federal (66.9%), State (6.8%), Fee (22.1%) and Indian (4.2%) lands.

[FR Doc. 93–1789 Filed 1–25–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93–02315T California-3]

State of California; NGPA Notice of Determination By Jurisdictional Agency Designating Tight Formations

January 19, 1993.

Take notice that on December 28, 1992, the California Division of Oil and Gas (California) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the N-Point Chert Zone, Paloma Field, Kern County, California, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is more fully described on the attached appendix.

The notice of determination also contains California's findings that the referenced portion of the N-Point Chert Zone meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix

The proposed area is the N-Point Chert Zone between the MM marker and the top of the Paloma or Stevens Sands, Paloma Field, Kern County, California underlying the following lands:

Paloma Unit—indicated by the unit boundary on Exhibit B:

Township 31 South, Range 26 East
  Section 28: Partly
  Section 29: Partly
  Section 30: Partly
  Section 32: Partly
  Section 33: All
  Section 34: Partly
Township 32 South, Range 26 East
  Section 1: Partly
  Section 2: All
  Section 3: Partly
  Section 4: Partly
  Section 5: Partly
  Section 11: Partly
  Section 12: Partly
Anderson Lease
Township 31 South, Range 26 East
  Section 35: S/2
KCL "L" Lease
Township 32 South, Range 26 East
  Section 10: S/2 of NE/4, N/2 of NE/4 of SW/4, SE/4 of NW/4,
  Section 11: N/2 of NW/4 of SW/4 of NW/4, SW/4 of NE/4.

[FR Doc. 93–1867 Filed 1–25–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93–02318T Texas–94]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 15, 1993.

Take notice that on December 28, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Sands (L–14 and L–15) in the Bob West Field underlying a portion of Zapata and Starr Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is within Railroad Commission District 4 and is described as the Southwestern portion of Porcion 55, East of Falcon Reservoir in Starr County, Texas; the northwest most portion of shares No. 28–A and No. 46; the western portion of share No. 29–A; the eastern portion of share No. 11 and all of share No. 36, all in Porcion 14, Zapata County, Texas. These areas are further defined as being within the fault lines as shown on the revised field area map.

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Sands meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–1790 Filed 1–25–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM93-2-33-001 and RP93-38-001]

El Paso Natural Gas Company; Notice of Compliance Filing

January 19, 1993.

Take notice that on January 12, 1993, El Paso Natural Gas Company ("El Paso") gave notice pursuant to part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, and in compliance with the Commission's order issued December 31, 1992 at Docket Nos. TM93-2-33-000 and RP93-38-000, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, to become effective January 1, 1993.

El Paso states that by order issued December 31, 1992 at Docket Nos. TM93-2-33-000 and RP93-38-000, the Commission accepted certain reserved tariff sheets, subject to El Paso filing, within fifteen (15) days of the date of said order, revised tariff sheets which identify in the text of each sheet, what tariff sheets are superseded by each sheet in lieu of designating what sheets El Paso wants reserved for future use. El Paso states that it has tendered the appropriately revised tariff sheets.

El Paso requested that the Commission grant such waivers of its applicable rules and regulations as may be necessary to permit the tendered tariff sheets to become effective on January 1, 1993, the date on which the Commission accepted such tariff sheets in its December 31, 1992 order.

El Paso states that copies of the filing were served upon all of El Paso's interstate pipeline system sales customers and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1874 Filed 1-25-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-41-001, RP92-179-002]

Florida Gas Transmission Company; Notice of Compliance Filing

January 19, 1993.

Take notice that on January 13, 1993 Florida Gas Transmission Company (FGT) tendered for filing the information required by the Commission in its "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions" issued on December 31, 1992.

FGT states that in compliance with ordering paragraph (B) of the December 31 Order, FGT has submitted herein working papers related to the debiting of FGT's TCR Account. In particular, the working papers show that FGT has not included carrying charges prior to the date that costs were debited to the TCR Account. Additionally, because there is no change in the 3.5¢ surcharge, FGT has not submitted a revised tariff sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1873 Filed 1-25-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-50-002 and CP90-406-007]

High Island Offshore System; Notice of Compliance Tariff Filing

January 19, 1993.

Take notice that High Island Offshore System ("HIOS") on January 12, 1993, tenered to the Federal Energy Regulatory Commission ("Commission") for filing as part of its FERC Gas Tariff, First Revised Volumes No. 1, the following tariff sheets:

Second Revised Sheet No. 9
Third Revised Sheet No. 74

The tariff sheets are proposed to be effective January 1, 1993.

HIOS states that the tariff sheets are being filed to comply with the Commission's letter order issued December 28, 1992, in *High Island Offshore System*, Docket Nos. RP92-50-001 and CP90-406-000 ("Order") wherein HIOS was required to file tariff sheets reflecting the termination of its capacity brokering program effective January 1, 1993.

HIOS further states that since its Fourth Revised Sheet No. 8A had been included in the tarifff solely for purposes of capacity brokering, and will no longer be used in the future, a new tariff Sheet 8A has not been included in this filing, and HIOS's Fourth Revised Sheet No. 8A should therefore be removed from the tariff to reflect the termination of the capacity brokering program.

HIOS also states that copies of this filing were posted and served on all of its shippers, and upon all parties listed on the service list maintained by the Commission's Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1872 Filed 1-25-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-715-000 et al.]

Liberty Pipeline Co.; et al.; Site Visit

In the matter of Texas Eastern Transmission Corporation, Docket Nos. CP92-716-000, CP92-719-000, CP92-720-000, and CP93-108-000; Texas Eastern Transmission Corporation, Docket No. CP92-717-000, and Trunkline Gas Company, Docket No. CP92-718-000; Transcontinental Gas Pipe Line Corporation, Docket No. CP92-721-000; Texas Gas Transmission Corporation, Docket Nos. CP92-730-000 and CP92-734-000.

January 15, 1993.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission will conduct a site visit with the applicants for the facilities proposed in the Liberty Project. The proposed facilities are located in Kentucky, Indiana, Ohio, Pennsylvania, New Jersey, and New York. This site visit will take place February 1 through

4, 1993. Those planning to attend must provide their own transportation. For further information, call Jeff Gerber, (202) 208–0282.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1791 Filed 1–25–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92–73–000]

National Fuel Gas Supply Corporation; Notice of Informal Settlement Conference

January 19, 1993.

Take notice that an informal settlement conference will be convened in this proceeding at 10 p.m. on Friday, January 29, 1993. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-captioned proceeding, including the Staff's settlement offer of January 15, 1993 and any counter-offer that National Fuel Gas Supply Company may submit by the time of the meeting.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joanne Leveque at (202) 208–5705 or Warren Wood at (202) 208–2091.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1870 Filed 1–25–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88–28–010]

Valero Interstate Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 19, 1993.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 12, 1993, tendered for filing the following tariff sheets:

FERC Gas Tariff, First Revised Volume No. 1

3rd Revised Sheet No. 71
2nd Revised Sheet No. 71.01

Vitco states that the purpose of this filing is to revise the list of operating personnel shared by Vitco and its marketing affiliates.

The proposed effective date of the above filing is February 12, 1993. Vitco requests a waiver of any Commission order or regulations which would prohibit such filing or implementation by February 12, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–1869 Filed 1–25–93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92–75–NG]

MCV Gas Acquisition General Partnership; Order Granting Blanket Authorization to Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting MCV Gas Acquisition General Partnership blanket authorization to import up to 20 Bcf of natural gas from Canada over a two-year period beginning on the first date of delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 15, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–1885 Filed 1–25–93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92–115–NG]

Selkirk Cogen Partners, L.P.; Blanket Authorization to Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Selkirk Cogen Partners, L.P. to import and export up to 57 Bcf of natural gas over a two-year period beginning on the date of first import or export delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 15, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–1886 Filed 1–25–93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4556-3]

Notice of a Public Meeting on the Hazardous Waste Identification System

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: We are giving notice of a February 4–5 meeting to discuss issues specifically related to contaminated media. We will also discuss how best to address the issues relating to other waste streams. The meeting is open to the public without advance registration.

DATES: The February 4 meeting will run from 8:30 a.m. to 5 p.m. The February 5th meeting will run from 8:30 a.m. to 12 p.m.

LOCATION: The meeting will be held at the Quality Hotel, 415 New Jersey Avenue NW., Washington, DC (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact William A. Collins, Jr., Office of Solid Waste, OS–333, Environmental Protection Agency, Washington, DC 20460; phone (202)

260–4791. Persons needing further information on procedural matters should call the meeting Co-facilitator, Denise Madigan, of Endispute, Washington, DC (202) 429–8782.

Dated: January 21, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–1877 Filed 1–25–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in July 2, 1992 edition of the **Federal Register**. The following is a list of financial institutions which have been placed in liquidation since the December 14, 1992 publication.

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION ALPHA LISTING (NAME)

Institution name, city/state	Date closed, region	Ref No.
Burritt Interfinancial Bancorporation, New Britain, CT.	12/04/92, New York ...	4551
Eastland Bank, Woonsocket, RI.	12/11/92, New York ...	4557
Eastland Savings Bank, Woonsocket, RI.	12/11/92, New York ...	4558
Heritage Bank for Savings, Holyoke, MA.	12/04/92, New York ...	4553
Huntington Pacific Thrift & Loan, Huntington Beach, CA.	12/04/92, San Francisco.	4552
Meritor Savings Bank, Philadelphia, PA.	12/11/92, New York ...	4556
Sailors and Merchants B&T Co., Vienna, VA.	12/11/92, Chicago	4554
The Bremen State Bank, Bremen, KS.	12/18/92, Chicago	4559
The Rushville National Bank, Rushville, IN.	12/18/92, Chicago	4560

Dated: January 19, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–1758 Filed 1–25–93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before March 29, 1993.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0188.

Title: Disaster Response Questionnaire.

Abstract: The Disaster Response Questionnaire, FEMA Form 90–2, is used to assess the effectiveness of State and/or local response to actual disasters and to also evaluate FEMA programs that support and enhance local capabilities as directed by the Federal Civil Defense Act of 1950, as amended.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 540 hours.

Number of Respondents: 360.

Estimated Average Burden Time per Response: 1.5 hours.

Frequency of Response: On occasion.

Dated: January 7, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–1881 Filed 1–25–93; 8:45 am]

BILLING CODE 6718-01-M

[FEMA–976–DR]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–976–DR), dated January 15, 1993, and related determinations.

EFFECTIVE DATE: January 15, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Delaware, resulting from a severe coastal storm and flooding on December 11–14, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Delaware.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for

Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alfred A. Hahn of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Delaware to have been affected adversely by this declared major disaster:

Sussex County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 93-1883 Filed 1-25-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-975-DR]

Massachusetts; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA-975-DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Massachusetts, dated December 21, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 21, 1992:

The county of Middlesex for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 93-1884 Filed 1-25-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Allied Irish Banks Limited plc; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Allied Irish Banks Limited plc*, Dublin, Ireland, and First Maryland Bancorp, Baltimore, Maryland; to acquire Internet, Inc., Reston, Virginia, and thereby engage in providing data processing switching services for automatic teller machines and point of sale networks pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1852 Filed 1-25-93; 8:45 am]

BILLING CODE 6210-01-F

City Bancshares, Inc. Employee Stock Ownership Plan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *City Bancshares, Inc. Employee Stock Ownership Plan*, Oklahoma City, Oklahoma; to acquire an additional 4.46 percent of the voting shares of City Bancshares, Inc., Oklahoma City, Oklahoma, for a total of 19.66 percent, and thereby indirectly acquire City Bank and Trust, Oklahoma City, Oklahoma.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Therman Coy Noe*, Henderson, Texas; to acquire an additional 2.06 percent of the voting shares of Rusk County Bancshares, Inc., Henderson, Texas, for a total of 12.06 percent, and thereby indirectly acquire Peoples State Bank of Henderson, Henderson, Texas.

Board of Governors of the Federal Reserve System, January 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-1854 Filed 1-25-93; 8:45 am]

BILLING CODE 6210-01-F

Mainline Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 19, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Mainline Bancorp, Inc.*, Portage, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Portage National Bank, Portage, Pennsylvania.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Amarillo Bancorporation, Inc.*, Amarillo, Texas; to acquire 13.2 percent of the voting shares of The Bank of New Mexico Holding Company, Albuquerque, New Mexico, and thereby indirectly acquire The Bank of New Mexico, Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, January 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–1855 Filed 1–25–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Report on New System of Records Under the Privacy Act of 1974

AGENCY: General Services Administration.

ACTION: Notification of establishment of a system of records.

SUMMARY: The purpose of this document is to give notice, under the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, of intent by the General Services Administration to establish and maintain a system of records.

The system of records, Citizens' Commission on Public Service and Compensation (CCPSC) Candidate and Alternate Member Files, will be established to assemble in one system information on potential candidates for appointment by the Administrator of General Services as members on the CCPSC. The information assembled will be that necessary to establish the eligibility of potential candidates and alternates for membership and to determine whether or not the candidate or alternate is restricted by law or regulation from serving as a member of the CCPSC. A system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget.

DATES: Any interested party may submit written comments about this new system. Comments must be received on or before the 30th day following publication of this notice (February 25, 1993). The system will become effective without further notice on the 30th day following publication of this notice unless comments are received that would result in a contrary decision.

ADDRESS: Address comments to the General Services Administration (CAIR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Cunningham, GSA Privacy Act Officer, telephone (202) 501–2691.

Background

The system of records, Citizens' Commission on Public Service and Compensation (CCPSC) Candidate and Alternate Member Files (HRO–38), is being established by the Administrator of the General Services Administration to determine the eligibility of potential candidates for appointment as one of the five members of the CCPSC to be designated by the Administrator of General Services. The CCPSC was established by Title VII of the Ethics Reform Act of 1989, Pub. L. 101–194, which requires that five of its eleven members be appointed by the Administrator of General Services from voter registration lists, subject to qualification requirements established by law. The other members are to be appointed by the President, the Chief Justice of the United States, the Speaker of the House of Representatives, and the President pro tempore of the Senate. The revised system of records is as follows:

HRO–38

SYSTEM NAME:

Citizens' Commission on Public Service and Compensation (CCPSC) Candidate and Alternate Member Files.

SYSTEM LOCATION:

This system of records is located in the Committee Management Secretariat, General Services Administration, Suite 816, 1730 K St. NW., Washington, DC 20006.

PURPOSE:

This system is established to enable GSA to screen candidates and select the five GSA-designated members and ten alternates therefrom, according to law and GSA regulation to serve on the CCPSC. If one or several of the GSA-designated members chosen cannot continue as members of the CCPSC for any reason, further review of the records will be conducted only as necessary to replace these former members from predesignated alternates and only during the one-year period of their term.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are those randomly selected by GSA to be potential members of the CCPSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the following information on each individual in the system: (1) Information from state precinct voter registration lists, which may include name, address, Social Security Number, and date of birth; (2) information collected from individuals via questionnaires, which may include the above information, plus home and work telephone numbers, whether or not said individual is an officer or employee of the Federal Government, or is a relative or dependent relative of any officer or employee of the Federal Government, whether or not said individual is registered as a lobbyist or required to register as a lobbyist, or is a relative or a dependent relative of any registered lobbyist or any individual required to register as a lobbyist, and whether or not said individual is currently under indictment for a felony offense, or has ever been convicted of a felony offense; (3) information required to validate the information from the questionnaires as to registered lobbyist status; (4) information extracted from various sources and maintained on databases; and (5) correspondence with, or relating to individual potential candidates or alternates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The collection of this information is authorized by section 701(b) of the Ethics Reform Act of 1989 (2 U.S.C. 352), which provides that the individuals appointed as members of the Citizens' Commission on Public Service and Compensation by the Administrator of General Services must be selected from voter registration lists and must meet stated qualification requirements; and by 5 CFR part 731 pertaining to suitability determinations for persons appointed to a Federal Government position. The collection of Social Security Numbers (SSN) is authorized by Executive Order 9397.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

a. To disclose information to the Office of Personnel Management under the agency's responsibility for conducting those evaluations and suitability checks necessary to qualify candidates for membership on the CCPSC.

b. To disclose information to another Federal agency or a court when the Government is a party to a proceeding before that court.

c. To disclose information to a Member of Congress or a congressional staff member in response to an inquiry from that congressional office made in behalf of a constituent.

d. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

e. To disclose information to the Clerk of the U.S. House of Representatives and to the Secretary of the Senate, to verify compliance with restrictions on committee service by registered lobbyists.

f. To disclose to the CCPSC information regarding selected members for personnel management purposes and to determine continued eligibility to serve on the committee.

g. To disclose to the press and to the public information regarding selected members and alternates.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and cabinets; electronic media copies of records are stored on CD-ROM disks and in electronic databases.

RETRIEVABILITY:

Filed at system location by name and geographic region.

SAFEGUARDS:

Paper records and CD-ROM disks are stored in lockable containers or secured rooms; the electronic database is password protected.

RETENTION AND DISPOSAL:

Disposal of records is described in the HB, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER AND ADDRESS:

Director, Committee Management Secretariat, General Services Administration, 1730 K St., NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Inquiries from individuals should be addressed to the system manager.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to the system manager. Individuals must furnish their full name, Social Security Number, address, and telephone number. For identification requirements, refer to the agency regulations outlined in 41 CFR part 105-64 of the Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

General Services Administration rules for contesting the contents and appealing initial decisions are issued in 41 CFR part 105-64.

RECORD SOURCE CATEGORIES:

Individuals, in voluntarily-completed questionnaires; state precinct voter registration files; the Office of Personnel Management; and lists of registered lobbyists maintained by the Clerk of the House of Representatives and the Secretary of the Senate.

Dated: January 15, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-1846 Filed 1-25-93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Field Methods for the Analysis of Airborne Particulate Lead; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Field Methods for the Analysis of Airborne Particulate Lead.

Time and Date: 1 p.m.–5p.m., February 17, 1993.

Place: Alice Hamilton Laboratory, Conference Room B-227, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Purpose: To conduct an open review of a NIOSH research project in the Division of Physical Sciences and Engineering entitled "Field Methods for the Analysis of Airborne Particulate Lead." This project concerns the investigation of proposed sampling and analytical methodology for monitoring exposure to airborne lead particles, using field-readable instrumentation.

Contact Person for Additional Information: Kevin E. Ashley, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop R7, Cincinnati, Ohio 45226, telephone 513/841-4402.

Dated: January 19, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-1821 Filed 1-25-93; 8:45 am]

BILLING CODE 4160-19-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on State and Community Health Statistics; Meeting

Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting (working session).

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., February 18, 1993.

Place: Room 303A-305A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee's report on State and Community Health Status will be reviewed for further consideration before submission to the full committee.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph. D., Executive Secretary, NCVHS, NCHS, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: January 19, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1822 Filed 1–25–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92G–0451]

Scienco/FAST; Withdrawal of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a petition (GRASP 4G0037) proposing that sodium hypochlorite in an aqueous solution (up to 200 parts per million (ppm) available chlorine) for intermittent spraying of beef, lamb, and hog carcasses during the cooler-chilling process be affirmed as generally recognized as safe (GRAS). The petition was withdrawn by Scienco/FAST (previously Scienco Inc.), which purchased the petition rights.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 26, 1974 (39 FR 11215), FDA published a notice that a petition (GRASP 4G0037) had been filed by Morton Salt Co., 110 North Wacker Dr., Chicago, IL 60606. The petition proposed that sodium hypochlorite in an aqueous solution (up to 200 ppm available chlorine) for intermittent spraying of beef, lamb, and hog carcasses during the cooler-chilling process be affirmed as GRAS. Scienco/FAST, 3240 North Broadway, St. Louis, MO 63147–3515, which purchased the petition rights, has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: January 12, 1993.

Frank R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–1793 Filed 1–25–92; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92N–0434]

Draft Policy Statement on Industry-Supported Scientific and Educational Activities; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 25, 1993, the comment period for the notice, which appeared in the **Federal Register** of November 27, 1992 (57 FR 56412). The document asked for public comment on FDA's current draft policy statement on industry-supported scientific and educational activities. FDA is taking this action in response to a request for an extension of the comment period.

DATES: Comments by February 25, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs (HF–24), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3390.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 27, 1992 (57 FR 56412), FDA published a notice for public comment on its current draft policy statement on industry-supported scientific and educational activities on therapeutic and diagnostic products (human and animal drugs, biological products, and medical devices) for health care professionals. Interested persons were given until January 26, 1993, to respond to the notice.

In response to the notice, FDA has received a request for an extension of the comment period for an additional 90 days because the original 60–day comment period does not allow sufficient time to prepare a comprehensive response. After careful consideration, the agency is granting an extension of the comment period. However, the agency is granting a 30–day extension, rather than the requested 90 days. Accordingly, the comment period is extended to February 25, 1993.

Interested persons may, on or before February 25, 1993, submit to the Dockets Management Branch (address above) written comments regarding the draft policy statement. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–1910 Filed 1–21–93; 3:22 pm]

BILLING CODE 4160–01–F

[Docket No. 93N–0005]

Public Hearing: Regulatory Approach to Positron Emission Tomographic (PET) Radiopharmaceuticals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the location for a March 5, 1993, public hearing that will be held to discuss FDA intentions regarding the regulation of positron emission tomographic (PET) radiopharmaceuticals. Representatives of the nuclear medicine physician, pharmacy, and industry communities have expressed interest in a number of different regulatory alternatives. FDA will present its proposal regarding regulation of PET radiopharmaceuticals after which an opportunity will be given for comments from the various groups. A draft policy proposal, entitled "Regulatory Approach to PET Radiopharmaceuticals," has been developed and is available prior to the hearing.

DATES: The public hearing will be held on Friday, March 5, 1993, 9 a.m. to 4 p.m. Persons interested in making oral presentations at this hearing should notify the contact person (address below) by February 19, 1993. Written comments will be accepted until March 20, 1993.

ADDRESSES: The public hearing will be held at the Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD 20857. Written comments, in lieu of an oral presentation, may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Submit written requests for copies of the draft policy proposal to the Center for Drug Evaluation and Research, Executive Secretariat Staff (HFD–8), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leander B. Madoo, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 29857, 301–443–5455, facsimile 301–443–0699.

SUPPLEMENTARY INFORMATION: Under the procedures governing the hearing found at 21 CFR part 15, FDA is announcing that a public hearing will be held on March 5, 1993, to discuss FDA intentions regarding the regulation of PET radiopharmaceuticals. The purpose of the public hearing is to permit FDA to take into consideration the regulatory issues that may be raised in a public forum. Persons interested in making oral presentations at this hearing should notify the contact person (address above) by February 19, 1993. Written comments, in lieu of an oral presentation, may be submitted to the Dockets Management Branch (address above). Written comments will be accepted until March 20, 1993. Submit written requests for copies of the draft policy proposal entitled "Regulatory Approach to PET Radiopharmaceuticals" to the Center for Drug Evaluation and Research, Executive Secretariat Staff (address above). Send a self-addressed adhesive label to assist that office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

Dated: January 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–1810 Filed 1–25–93; 8:45 am]

BILLING CODE 4160-01-F

Office of the Assistant Secretary for Health

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Thursday, March 4, 1993.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: March 4, 1993, 9 a.m. to 5 p.m. Stonehenge, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Open, except for working breakfast and lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

Agenda: This will be the twelfth meeting of the Secretary's Council. The topic of this meeting is Prevention Research.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Deborah R. Maiese, Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 205–8583.

Agenda items are subject to change as priorities dictate.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 93–1835 Filed 1–25–93; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3481; FR–3306–N–02]

Housing Opportunities for Persons with AIDS Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1992 Housing Opportunities for Persons with AIDS (HOPWA) program. The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4300. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grants to be used for housing assistance and supportive services by two types of projects: projects of national significance that, due to their unique or innovative nature, are likely to serve as effective models in addressing the housing and related needs of low-income persons living with acquired immunodeficiency syndrome or related diseases; and other projects that will address housing and related needs of low-income persons living with acquired immunodeficiency syndrome or related diseases.

The assistance made available in this announcement is authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901), and was appropriated by the Department's appropriation act for fiscal year 1992 (Pub. L. 102–139, approved October 29, 1991). The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on August 25, 1992 (57 FR 38552). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $4,771,000 was awarded to ten applicants under two categories of assistance: $2,385,000 in five grants for projects of national significance; and $2,386,000 in five grants for other projects. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the grantees and amounts of the awards as follows:

Chart 1. FY 1992 HOPWA national significance projects:

The State of New York, Department of Health	$425,834
The City of Boston, MA, Public Facilities Department	500,000
The City of Philadelphia, PA, Office of Housing and Community Development	485,000
The City of Sacramento, CA, Housing and Redevelopment Agency	500,000
The City of Dallas, TX, Department of Housing and Neighborhood Services	474,166
Chart 2. FY 1992 HOPWA other projects:	
The State of Indiana, Department of Health	438,111
The City of Savannah, GA, Bureau of Public Development	500,000
The City of Milwaukee, WI, Department of City Development	500,000
The City of El Paso, TX, Department of Community and Human Development	500,000
The City of Key West, FL, Community Development Office	447,889

Total grants for FY 1992 in charts 1 and 2 4,771,000

Dated: January 14, 1993.

Don I. Patch,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 93–1767 Filed 1–25–93; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3566; FR–3433–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning January 1, 1993, is 6⅞ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning January 1, 1993, is 7¾ percent.

FOR FURTHER INFORMATION CONTACT: Fred E. McLaughlin, Financial Policy Division, room 9132, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–4325 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e) (6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 1993, is 7¾ percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7¾ percent for the six-month period beginning January 1, 1993. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1993.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993.	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning January 1, 1993, is 6⅞ percent.

HUD expects to publish its next notice of change in debenture interest rates in July 1993.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(1). For that reason, no environmental finding has been prepared for this notice.

Authority: Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 17151, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: January 14, 1993.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–1765 Filed 1–25–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

The Sport Fishing and Boating Partnership Council; Notice of Establishment

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior is announcing establishment of the Sport Fishing and Boating Partnership Council. The purpose of the Council is to provide advice to the Secretary of the Interior through the Director of the Fish and Wildlife Service (Service) to help the Department of the Interior (Department) and the Service achieve their goal of increasing the public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating.

DATES: The Charter will be filed under the Federal Advisory Committee Act on February 10, 1993.

FOR FURTHER INFORMATION CONTACT: Further information regarding the Board may be obtained from Mr. Timothy Rupli, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240, telephone (202) 208–6182.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Sport Fishing and Boating Partnership Council.

The Council will represent the interests of the sport fishing and boating constituencies and industries and will consist of no more than 18 voting members appointed by the Secretary to assure a balanced cross-sectional representation of public and private sector organizations. The Council shall consist of representatives from the following organizations: Director, Service, Ex-officio; President, International Association of Fish and Wildlife Agencies (IAFWA); Director of a state agency responsible for the management of recreational fishery and wildlife resources, selected from a coastal state if the President of IAFWA is from an inland state, or selected from an inland state if the President of IAFWA is from a coastal state; two individuals who are representatives from national saltwater and freshwater angler organizations; two individuals who are representatives from national boating consumer organizations; four individuals who are national representatives from recreational fishing tackle and boating industries; one individual who is a representative of a national aquatic resource education organization; one individual who is a representative of a national organization for boating access; one individual who is a representative of a national organization for tourism; one individual who is a representative of a national organization for boating law administrators; and four individuals at large.

The Council will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act.

Certification

I hereby certify that the establishment of Sport Fishing and Boating Partnership Council is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by those statutory authorities as defined in Federal laws including, but not restricted to, the Federal Aid in Sport Fish Restoration Act, Fish and Wildlife Coordination Act, and the Land and Water Conservation Fund and in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the U.S. Fish and Wildlife Service's mission to conserve, protect, and enhance fish, wildlife, and habitats for the continuing benefit of the American people (Fish and Wildlife Act of 1956). The Council will assist the Secretary and the Department of the Interior by providing advice on activities to enhance fishery and aquatic resources education and outreach projects.

Dated: January 19, 1993.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 93–1907 Filed 1–25–93; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CO–920–93–4120–03; COC 54360]

Colorado; Invitation for Coal Exploration License Application, Mountain Coal Co.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to title 43, Code of Federal Regulations, subpart 3410, members of the public are hereby invited to participate with Mountain Coal Company in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Gunnison County, Colorado:

T. 13 S., R. 89 W., 6th p.m.,
  Sec. 16, SW¼;
  Sec. 17, all;
  Sec. 18, lots 1 to 4, inclusive, E½W½, and E½;
  Sec. 19, lots 1 to 4, inclusive, E½W½, and E½;
  Sec. 20, all;
  Sec. 21, W½;
  Sec. 28, W½;
  Sec. 29, all;
  Sec. 30, lots 1 to 4, inclusive, E½W½, and E½;
  Sec. 31, lots 3 to 6, inclusive, E½W½, and E½;
  Sec. 32, all;
  Sec. 33, W½.
T. 14 S., R. 89 W., 6th p.m.,
  Sec. 4, lots 7, 8, S½NW¼, and SW¼;
  Sec. 5, lots 3 to 6, inclusive, S½N½ and S½;
  Sec. 6, lots 4 to 10, inclusive, S½NE¼, SE¼NW¼, W½SW¼, and SE¼.
T. 13 S., R. 90 W., 6th p.m.,
  Sec. 13, lots 1 to 16, inclusive;
  Sec. 14, lots 1, 2, 7 to 10, inclusive, 15 and 16;
  Sec. 22, lots 1 to 16, inclusive;
  Sec. 23, lots 1 to 16, inclusive;
  Sec. 24, lots 1 to 16, inclusive;
  Sec. 25, all;
  Sec. 26, lots 1 to 16, inclusive;
  Sec. 35, lots 1 to 16, inclusive;
  Sec. 36, all.
T. 14 S., R. 90 W., 6th p.m.,
  Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
  Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
  Sec. 11, N½N½;
  Sec. 12, N½N½.

The area described contains approximately 14, 448.33 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 54360 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the BLM Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401.

Written notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after the publication of this Notice of Invitation in the **Federal Register**:

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215,

and

Mark W. Scanlon, Sr. Geologist, Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: January 12, 1993.

Alexa L. Watson,

Acting Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 93–1840 Filed 1–25–93; 8:45 am]

BILLING CODE 4310-JB-M

[AK–070–03–4230–23; F–167]

Lease of Public Land, Salmon Lake, Alaska; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves a proposal to renew an airport lease issued to the State of Alaska. The lease is intended to authorize improvement, maintenance and

operation of an aircraft landing strip for 20 years.

DATES: Comments must be received by March 12, 1993.

ADDRESSES: Comments must be submitted to the Kobuk District Manager, 1150 University Avenue, Fairbanks, Alaska 99709–3844 and include a reference to this notice.

FOR FURTHER INFORMATION CONTACT: Betsy Bonnel, Realty Specialist, (907) 474–2336.

SUPPLEMENTARY INFORMATION: The site examined and found suitable for leasing under the provisions of the Act of May 24, 1928, as amended, 49 U.S.C. Appendix 211–213, and 43 CFR Part 2911, is described as near Salmon Lake within:

Secs. 5 & 6, T. 7 S., R. 31 W., Kateel River Meridian. Annual rental shall be $100.00 or one-half the fair market value as determined by appraisal, whichever is greater.

Dated: January 8, 1993.

Larry Knapman,

Acting Kobuk District Manager.

[FR Doc. 93–1751 Filed 1–25–93; 8:45 am]

BILLING CODE 4310–JA–M

[WY–030–4210–05; WYW 127563]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Amendment; Proposed Direct Sale of Public Land Parcel in Fremont County, Wyoming.

SUMMARY: The Bureau of Land Management received a proposal to sell the following described public lands to the Fremont County Solid Waste Disposal District pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719:

Sixth Principal Meridian

T. 34 N., R. 96 W.,
Sec. 26, W½W½NE¼, NW¼, NE¼SW¼, NW¼SE¼.

The above lands aggregate 280 acres.

This same proposal was originally described in a Notice of Realty Action (NORA) published in the **Federal Register** on April 17, 1992, and the proposal was redescribed when the NORA was reissued and republished in the **Federal Register** on December 30, 1992. This notice amends both the original NORA published on April 17, 1992, and the reissued NORA published on December 30, 1992.

Both the original and the reissued NORA state that the existing 80 acre lease, WYW 79452, would be cancelled simultaneously with the issuance of the patent for the proposed sale of the 280 acres. In addition to the lease being cancelled, the existing classification for lease for public purposes under the provisions of the Recreation and Public Purposes Act of June 14, 1926 (43 USC 869 et seq.) as amended and the related segregation on the 80 acres of leased land will also be cancelled simultaneously with the issuance of the patent. Everything else contained in the original April 17, 1992 NORA and in the reissued December 30, 1992, NORA remain unchanged.

Dated: January 15, 1993.

Jack Kelly,

Area Manager.

[FR Doc. 93–1750 Filed 1–25–93; 8:45 am]

BILLING CODE 4310–22–M

[ID–942–03–4730–02]

Idaho: Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., December 15, 1992.

The supplemental plat prepared to correct the acreage in original section 37 and to change section 37 to Tract 38, T. 39 N., R. 1 W., Boise Meridian, Idaho, was accepted December 14, 1992.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 15, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–1841 Filed 1–25–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–12]

Idaho: Filing of Plats of Survey

The plat of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 25, 1993.

The plat representing the dependent resurvey of portions of Homestead Entry Survey No. 537 and the adjusted meanders of the 1920 left bank of the Salmon River, the survey of Tract 37, and the meanders of the 1992 left bank of the Salmon River in unsurveyed T. 24 N., R. 8 E., Boise Meridian, Idaho, Group No. 850, was accepted, January 14, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region 1, Nez Perce National Forest.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: January 14, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–1843 Filed 1–25–93; 8:45 am]

BILLING CODE 4310–GG–M

[ID–942–03–4730–02]

Filing of Plats of Survey; Idaho

The plat of the following described land will be officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., February 25, 1993.

The plat representing the retracement of the International Boundary between the United States and Canada, the dependent resurvey of portions of Homestead Entry Survey No. 520 and Tract 38, and the survey of Tract 39, T. 65 N., R. 2 E., Boise Meridian, Idaho, Group No. 851, was accepted January 14, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service, Region I, Idaho Panhandle National Forest.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: January 14, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–1844 Filed 1–25–93; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 16, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park

Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 10, 1993.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Alamosa County

Denver and Rio Grande Railroad Depot, 610 State St., Alamosa, 93000034

El Paso County

Evergreen Cemetery, 1005 S. Hancock Ave., Colorado Springs, 93000035

Mesa County

Margery Building, 519—527 Main St., Grand Junction, 93000033

KENTUCKY

Barren County

Glasgow Central Business District, 207 W. Main—117 E. Main, 100–114 S. Green and 104 and 109 N. Race Sts., Glasgow, 93000051

Bourbon County

Aker, Jacob, Farm, 795 Bethlehem Rd., Paris vicinity, 93000050

Bullitt County

Barnes, Henry J., House, 144 N. Bardstown Rd., Mt. Washington, 93000049

Lloyd, James M., House, Jct. of US 31 E and East St., NE corner, Mt. Washington, 93000048

Stansbury, Zack, House, 1430 Bardstown Rd., Mt. Washington vicinity, 93000047

Crittenden County

Frances School Gymnasium, 100 Elementary Cir., Marion, 93000046

Harrison County

Coleman—Desha Plantation, US 62 E, Oddville Pike, 1 mi. NE of Cynthiana, Cynthiana vicinity, 93000045

Henderson County

Delano—Alves House, 536 Chestnut St., Henderson, 93000044

Jefferson County

Dogwood Hill (Louisville and Jefferson County MPS), 7001 US 42, Lyndon vicinity, 93000043

Webster County

Providence Commercial Historic District, 100—200 blks. on E. and W. Main and N. and S. Broadway, Providence, 93000042

LOUISIANA

Rapides Parish

Crowell Sawmill Historic District, 11789 US 165 S., Long Leaf, 93000036

MONTANA

Cascade County

Great Falls Railroad Historic District, Park and River Drs., 100—400 blks, 2nd St. S., 100—200 blks. 1st and 2nd Aves. S. and 100—300 blks. 3rd St. S., Great Falls, 93000038

OREGON

Clackamas County

Francis, Clarence E., House, 9717 SE. Cambridge Ln., Milwaukie, 93000015

Robbins—Melcher—Schatz Farmstead, 4875 SW. Schatz Rd., Tualatin, 93000017

Klamath County

Mills, Warren, House, 123 High St., Klamath Falls, 93000016

Lane County

Southern Pacific Railroad Passenger Station and Freight House, 101 S. A St., Springfield, 93000012

Multnomah County

Hamilton, Alexander B. and Anna Balch Hamilton, House., 2723—2729 NW. Savier St., Portland, 93000021

Hancock Street Fourplex, 1414 NE. Hancock St., Portland, 93000023

Lindquist Apartment House, 711 NE. Randall St., Portland, 93000022

Olsen and Weygandt Building, 1421—1441 NE. Broadway, Portland, 93000024

Portland Cordage Company Building, 1313 NW. Marshall St., Portland, 93000018

Smith, Walter V., House, 1943 SW. Montgomery Dr., Portland, 93000020

Wilcox, Theodore B., Country Estate, 3787 SW. 52nd Pl., Porland, 93000019

Washington County

Feldman, Adam and Johanna, House, 8808 SW. Rambler Ln., Porland, 93000013

Shaver—Bilveu House, 16445 SW. 92nd Ave., Tigard, 93000014

TENNESSEE

Macon County

Galen Elementary School (Education Related Properties of Macon County MPS), Jct. of Galen and Tucker Rds., Galen, 93000030

Keystone School (Education Related Properties of Macon County MPS), TN 52 W of Lafayette, just E of Gap of the Ridge, Lafayette vicinity, 93000031

Long Creek School (Education Related Properties of Macon County MPS), Long Creek Rd. NW of Lafayette, Lafayette vicinity, 93000032

VIRGINIA

Botetourt County

Annendale, VA 606, 1.5 mi. E of jct. with VA 609, Gilmore Mills vicinity, 93000039

Buckingham County

Woodside, VA 631 N side, 0.5 mi. SW of jct. with US 60, Buckingham vicinity, 93000040

Giles County

Johnston, Andrew, House, 208 N. Main St., Pearisburg, 93000041

WISCONSIN

Dane County

Crosse, Dr. Charles G., House, 133 W. Main St., Sun Prairie, 93000029

Kewaunee County

Haloda, George, Farmstead, E-1113 Co. Trunk Hwy. F, Montpelier Township, Ellisville vicinity, 93000026

La Crosse County

Nichols, Frank Eugene, House, 421 N. Second St., Onalaska, 93000027

Rock County

Merrill Avenue Historic District, 103, 107, 111, 115 Merrill Ave., Beloit, 93000028

Winnebago County

Read School, 1120 Algoma Blvd., Oshkosh, 93000025

WYOMING

Natrona County

Rialto Theater, 102 E. Second St., Casper, 93000037

[FR Doc. 93–1640 Filed 1–25–93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Fourteenth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on February 18, 1993 from 8 a.m. to 3 p.m.

The purposes of the meeting are: (1) To hear status reports on the University Center activities; (2) to discuss a draft paper on higher education policy for A.I.D.; (3) to review the current evaluation agenda of A.I.D.; and (4) to learn more on the status of pending or proposed legislation concerning A.I.D.

This meeting will be held in the Pan American Health Organization Building located at 525 23rd Street (between 23rd and Virginia Avenue), Washington, DC 20037. At this address it will be held in Conference Room C. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

C. Stuart Callison, Deputy Executive Director, Agency Center for University Cooperation in Development, Bureau for Research and Development, Agency for International Development, will be the A.I.D. Advisory Committee Representative at this meeting. Those desiring further information may write to Dr. Callison, in care of the Agency for International Development, room 900, SA–38, Washington, DC 20523–3801 or telephone him on (703) 816–0258.

Dated: January 14, 1993.

Ralph H. Smuckler,

Executive Director, Agency Center for University Cooperation in Development.

[FR Doc. 93–1847 Filed 1–25–93, 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 8, 1993, a proposed Consent Decree in *United States* v. *B&B Wrecking & Excavating, Inc., et al.*, Civil No. 1:89CV1591, was lodged with the United States District Court for the Northern District of Ohio. The Complaint in this case alleged violations of certain notification and work practice standards of the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs") for asbestos, promulgated under sections 112 and 123 of the Clean Air Act, 42 U.S.C. 7412 and 7413, codified at 40 CFR part 61, subpart M, which relate to the renovation of buildings containing asbestos materials.

The proposed Consent Decree requires that defendants B&B Wrecking & Excavating, Inc. ("B&B"), Hannan-110 Limited Partnership, Kenneth Young, Jeffrey Young, Kevin Young, James N. Rubin and the City of Massillon, Ohio comply with the NESHAPs. Also, B&B is subject to specific inspection, training and reporting requirements. Under the proposed Decree, B&B will be subject to stipulated penalties for specified failures to comply with the consent decree. The proposed Decree also provides that B&B, on behalf of all defendants, will pay the United States a civil penalty of $50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *B&B Wrecking & Excavating, Inc., et al.*, DOJ Ref. No. 90–5–2–1–1388.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, United States Courthouse, room 208, 2 South Main Street, Akron, Ohio 44308, at the Region V Office of the United States Environmental Protection Agency, 111 West Jackson Street, 3rd Floor, Chicago, Illinois 60604, and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–1836 Filed 1–25–93; 8:45 am]

BILLING CODE 4410–01–M

Reliable Equipment Corp.; Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Reliable Equipment Corporation*, Civil Action No. 1:90CV209, was lodged on January 11, 1993 with the United States District Court for the Western District of Michigan. The decree pertains to Reliable Equipment Corporation's electroplating facility in Grand Rapids, Michigan.

The proposed Consent Decree requires Reliable to comply with the Resource Conservation and Recovery Act (RCRA) and prohibits Reliable from treating, storing or disposing of hazardous wastes at its facility. The Consent Decree also grants access to the United States Environmental Protection Agency (U.S. EPA), the Michigan Department of Natural Resources (MDNR), and their contractors and representatives, for activities undertaken pursuant to RCRA or the Comprehensive Environmental Response, Compensation, and Liability Act. Finally, the Decree requires payment of a $15,000.00 civil penalty and includes provisions for stipulated penalties for any future violations of any requirement of the Consent Decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Reliable Equipment Corporation* (W.D. Mich.) and DOJ Ref. No. 90–7–1–544.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 99 Ford Federal Building, Grand Rapids, Michigan, 49503; the Region V office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois, 60604–3590; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy please enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–1837 Filed 1–25–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pilot Business Review Program

AGENCY: Antitrust Division, Department of Justice.

ACTION: Notice.

SUMMARY: This notice announces the release by the Department of a pilot program to expedite its consideration of certain requests for business reviews. Under the Department's long-standing business review procedure, see 28 CFR 50.6, persons concerned about the legality under the antitrust laws of proposed business conduct can request the Department's Antitrust Division to state its current enforcement intentions with respect to that conduct. Under the pilot program, if persons seeking business review determinations voluntarily provide certain specified information and documents to the Department when the initial request is submitted, the Department will use its best efforts to respond to those requests within sixty to ninety days. At this time, the pilot program extends only to business review requests involving proposals to form joint ventures and to exchange business information.

DATES: Issued December 1, 1992.

ADDRESSES: Department of Justice, 10th & Constitution Avenue, NW., Washington, DC 20530.

Dated: January 12, 1993.

J. Mark Gidley,

Acting Assistant Attorney General, Antitrust Division, Department of Justice.

Business Reviews

Persons concerned about the legality under the antitrust laws of proposed business conduct may ask the Department of Justice for a statement of its current enforcement intentions with respect to that conduct pursuant to the

Department's Business Review Procedure. See 28 CFR § 50.6.

The Department believes that the business review process provides the business community an important opportunity to receive guidance from the Department with respect to the scope, interpretation, and application of the antitrust laws to particular proposed conduct. The Department realizes, however, that if the business review process is not timely, the value of the process, and therefore its utilization, may be diminished.

Two of the most frequent types of business review requests the Department has received have involved proposals to form joint ventures or to collect and disseminate business information. Because of the nature of these requests, the Department often finds it difficult to opine on such matters based solely on the information typically provided with the initial requests. Consequently, the Department must subsequently seek additional information. This inevitably adds time and expense to the business review procedure.

In an effort to expedite the business review process with respect to these two types of requests, the Department will offer parties seeking a business review determination the option of providing certain specified information and documents contemporaneously with their initial business review submissions. Where the specified information and documents are provided, and where such submissions provide an adequate basis upon which to determine the Department's enforcement intentions, the Department will make its best effort to resolve the business review request within sixty to ninety days.

This program is subject to the following conditions:

1. The request must comply with the procedures for business reviews specified in 28 CFR 50.6.

2. Parties invoking this expedited procedure must represent in writing that they have undertaken a good faith search for the documents and information specified herein and, where applicable, have provided all responsive material.

3. The expedited procedure should not be interpreted as a representation by the Department that it will not request additional documents and information where necessary to assess the conduct under review.

4. The Department is unable to commit to a rigid deadline for processing business review requests. The time frames specified herein are targets, not deadlines.

5. This program is being implemented on a pilot basis. The Department reserves the right to alter the expedited review procedure at any time.

Parties seeking review determinations are welcome to submit such additional information as they deem appropriate to assist the Department in understanding the proposed conduct.

Information and Documents to be Submitted

A. Joint Ventures

Information sufficient to show:

1. The name of the venture, the address of its principal place of business, and its legal form and ownership structure;

2. The persons or firms expected to participate in the venture and the nature of their contribution;

3. The purposes and objectives of the venture, together with any limitations on the nature or scope of its activities or operations;

4. The products or services the venture will develop, produce, market or distribute;

5. The extent to which participants in the venture currently develop, produce, market or distribute products or services that will be developed, produced, marketed or distributed by the venture;

6. The identity and competitive significance (described in terms of market shares, capacities, etc.) of all persons or firms that participate in the relevant product and geographic markets in which the venture will operate;

7. Any restrictions on the ability of participants in the venture to compete with the venture, individually or through other entities;

8. Any restrictions on the flow of information from the venture to its owners;

9. The ten largest customers (actual or projected) for any products or services that will be offered by the venture in the relevant geographic market and an estimate of their annual purchases;

10. The requirements for entry into any relevant product or geographic market in which the venture will operate, together with the identity of other persons or firms believed to be positioned to enter within one or two years; and

11. Any business synergies, efficiencies or other benefits likely to flow from the venture.

All documents:

1. Reflecting or effectuating formation of the venture, including charters, by-laws, articles of incorporation, and partnership, joint venture or asset purchase agreements, or the most recent drafts of such documents;

2. Discussing, reflecting or representing the business plans or strategies for the venture;

3. Prepared within two years prior to formation of the venture, discussing, reflecting or representing the business plans or strategies of any venture participant with respect to any product or service that will be offered by the venture; and

4. Discussing or relating to the legality or illegality under the antitrust laws of the venture, or the impact of the venture on competition or the price of any product or service.

B. Information Exchanges

Information sufficient to show:

1. The persons or firms expected to participate in the information exchange;

2. The purposes and objectives of the information exchange;

3. The nature, type, timeliness, and specificity of the information to be exchanged (a sample of all information to be exchanged should be provided);

4. The method by which the information will be exchanged;

5. The characteristics of the market(s) in which the information will be exchanged, including the product(s) or services(s) related to the information to be exchanged, the homogeneity of the product(s) or service(s), the pricing and marketing practices typically employed by firms in the market(s), and the availability of information concerning market conditions, individual transactions and individual competitors;

6. The identity and competitive significance (described in terms of market shares, capacities, etc.) of persons or firms that participate in the relevant product and geographic markets, but will not participate in the information exchange;

7. The ten largest customers in the relevant geographic market for any product(s) or service(s) involved in the information exchange and an estimate of their annual purchases;

8. Any safeguards that are planned to prevent disclosure of firm-specific information to competitors; and

9. Any business synergies, efficiencies or other benefits likely to flow from the venture.

All documents:

1. Reflecting or representing the agreement(s) among the parties to exchange information or the most recent drafts of such documents; and

2. Discussing or relating to the legality or illegality under the antitrust laws of the information exchange or the impact of the information exchange on

competition or the price of any product or service.

[FR Doc. 93–1838 Filed 1–25–93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.
The title of the recordkeeping/reporting requirement.
The OMB and/or Agency identification numbers, if applicable.
How often the recordkeeping/reporting requirement is needed.
Whether small businesses or organizations are affected.
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
The number of forms in the request for approval, if applicable.
An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395–6880).

Any member of the public who wants to comments on recordkeeping/reporting requirement which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment Standards Administration

Comparability of Current Work to Coal Mine Employment; Coal Mine Employment Affidavit; Affidavit of Deceased Miner's Condition
1215–0056; CM 913; CM 918; CM 1093
On occasion
Individuals or households
3,800 respondents; 30/10/20 minutes per form; 1,850 total hours;
3 forms

The CM 913 is completed by claimants and compares non-coal mine work to coal mine work; the CM 918 is completed by persons knowing the miner's coal mine employment; the CM 1093 is completed by persons or relatives knowing of the deceased miner's medical condition and is used only if other medical evidence is insufficient.

Employment and Training Administration

Benefits Rights and Experience 1205–0177; ETA 218.

Form	Affected public	Respondents	Frequency	Average time per response
53	Regular States	53	Quarterly	30 minutes.
2	EB States	2	Quarterly	30 minutes.

107 total hours.

Provides information for solvency studies, in budgeting projections and for evaluation of adequacy of benefit formulas to analyze effects of proposed changes in State law.

Signed at Washington, DC, this 19th of January, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–1858 Filed 1–25–93; 8:45 am]

BILLING CODE 4510-27-M; 4510-30-M

Secretary of Labor and the Deputy Secretary of Labor; National Advisory Commission on Work-Based Learning; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that the renewal of the National Advisory Commission on Work-Based Learning (the Advisory Commission) is in the public interest.

The Advisory Commission will have broad responsibility for advising the Secretary on ways to improve productivity through increasing the skills levels of the American workforce and promoting "quality systems" that fully utilize the skills of that workforce.

This will include involvement in efforts to:

- Developing a national framework of industry-based skill standards and certification;
- Integrating human resource development and the introduction of new technology, focusing on supplier networks and State delivery mechanisms;
- Managing cultural diversity as a corporate strategic asset;
- Exploring the range of incentives for employers to adopt new production methods and modern forms of work organization;
- Developing a national award for quality human resource management systems; and
- Promoting labor-management cooperative efforts.

Identifying and addressing key issues such as these is a dynamic process. As such, this list may require modification in order to reflect findings during the discovery phase of the work.

Specific duties of the Advisory Commission and its members might include, but are not limited to, the following:

- Solicit input from expert researchers and practitioners regarding strategic action steps for the Department of Labor (DOL) to undertake;
- Provide objective, independent feedback to the DOL regarding the progress and direction of key initiatives, including identifying roadblocks and suggesting ways to overcome them.

These duties may be fulfilled through several possible mechanisms, including:

- Reporting periodically to the Secretary and other interested parties on emerging issues, actions, findings, and advice;
- Developing guidelines that influence policy decisions;
- Commissioning research;
- Serving as a vehicle for customer feedback;
- Providing guidance on and supporting pilot and demonstration projects;
- Convening meetings of national experts for roundtable discussions;
- Translating ideas into policy recommendations for action by DOL; and
- Functioning as catalyst among organizations with common interests.

The Advisory Commission shall consist of members who represent business, labor, education, and community-based organizations.

This notice announces renewal of the Advisory Commission for a period of two years, at which time it will be considered for further extension. The full Advisory Commission will hold approximately eight meetings, convening quarterly. Subcommittees of the Advisory Commission will likely meet more frequently. The Office of the Secretary will provide the necessary support for the Advisory Commission.

The Advisory Commission will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding the renewal of the National Advisory Commission on Work-Based Learning. Such comments should be addressed to: Mr. Delbert L. Spurlock, Jr., Deputy Secretary of Labor, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2018, Washington, DC 20210.

Signed at Washington, DC, this 6th day of January, 1993.

Lynn Martin,

Secretary of Labor.

[FR Doc. 93–1828 Filed 1–25–93; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to section 604(c) of the Motor Vehicle Information and Cost Savings Act, which was added to the Motor Vehicle Theft Law Enforcement Act of 1984, and the delegation of the Secretary of Transportation's responsibilities under that Act to the Administrator of the National Highway Traffic Safety Administration (49 CFR 501.2(f)), the Secretary of Labor has certified to the Administrator and published this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 35.1 percent from its 1984 base period annual average of 311.1 to its 1992 annual average of 420.3.

Signed at Washington, DC, on the 15th day of January 1993.

Lynn Martin,

Secretary of Labor.

[FR Doc. 93–1861 Filed 1–25–93; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

On January 13, 1992, a revised Federal Schedule of Remuneration based on the January 1, 1992, military pay increase was transmitted to all State employment security agencies (SESAs) in Unemployment Insurance Program Letter (UIPL) 12–92. Recently, the Department of Defense (DOD) provided this Department with an additional pay grade (W–5) reflecting the monthly rate. This Department computed the weekly and daily rates based on the monthly rate provided by the DOD.

Therefore, the Department of Labor amended the notice published in the **Federal Register** at 57 FR 933, (January 9, 1992), by issuing UIPL 12–92, Change 1 dated December 24, 1992, which contains the additional new pay grade. Unemployment Insurance Program No. 12–92, Change 1 is published below.

Signed at Washington, DC, on January 15, 1993.

Roberts T. Jones,

Assistant Secretary of Labor.

Classification:
UI.

Correspondence Symbol; TEUMI.

Date: December 24, 1992.

Directive: Unemployment Insurance Program Letter No. 12–92, Change 1.

To: All State Employment Security Agencies.

From: Barbara Ann Farmer, Administrator for Regional Management.

Subject: Revised Federal Schedule of Remuneration for Use in Determining Benefit Eligibility Under the Unemployment Compensation for Ex-Service-members (UCX) Program.

1. *Purpose.* To provide SESAs with an additional pay grade reflecting the monthly, weekly and daily rates to include on the Federal Schedule of Remuneration that was transmitted to all SESAs on January 13, 1992, based on the January 1, 1992 military pay increase.

2. *References.* Chapter XIV, ET Handbook No. 384, 20 CFR 614.12 and 5 U.S.C. 8521(a)(2).

3. *Instruction.* SESAs should include on the attachment to UIPL 12–92 under the captioned heading *Warrant Officer* the following:

Pay grade	Monthly rate	Weekly (7/30ths)	Daily (1/30th)
W-5	$4,573	$1,067.03	$152.43

SESAs will continue to use the existing schedule for UCX "first claims" including the additional information provided in this directive. The additional information provided in this directive will be published in the **Federal Register** as an amendment to the notice published in the **Federal Register** on January 9, 1992.

4. *Action Required.* The above instructions should be provided to appropriate staff.

5. *Inquiries.* Direct inquiries to the appropriate Regional Office.

6. *Attachment.* For SESA convenience, a revised Federal Schedule incorporating this change is provided.

Expiration Date: January 31, 1994.

FEDERAL SCHEDULE OF REMUNERATION

[20 CFR 614.12]

Pay grade	Monthly rate	Weekly (7/30ths)	Daily (1/30th)
1. Commissioned Officers:			
O–10	$10,157	$2,369.97	$338.57
O–9	9,189	2,144.10	306.30
O–8	8,437	1,968.63	281.23
O–7	7,597	1,772.63	253.23
O–6	6,435	1,501.50	214.50
O–5	5,432	1,267.47	181.07
O–4	4,462	1,041.13	148.73
O–3	3,593	838.37	119.77
O–2	2,875	670.83	95.83
O–1	2,144	500.27	71.47
2. Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:			
O–3E	4,103	957.37	136.77
O–2E	3,432	800.80	114.40
O–1E	2,827	659.63	94.23

FEDERAL SCHEDULE OF REMUNERATION Continued

[20 CFR 614.12]

Pay grade	Monthly rate	Weekly (7/30ths)	Daily (1/30th)
3. Warrant Officers:			
W-5	4,573	1,067.03	152.43
W-4	4,056	946.40	135.20
W-3	3,429	800.10	114.30
W-2	2,953	689.03	98.43
W-1	2,461	574.23	82.03
4. Enlisted Personnel:			
E-9	3,707	864.97	123.57
E-8	3,150	735.00	105.00
E-7	2,731	637.23	91.03
E-6	2,355	549.50	78.50
E-5	2,007	468.30	66.90
E-4	1,679	391.77	55.97
E-3	1,478	344.87	49.27
E-2	1,354	315.93	45.13
E-1	1,191	277.90	39.70

For convenience, the Federal Schedule has been expanded to include columns reflecting derived weekly and daily rates.

This revised Federal Schedule of Remuneration is effective for UCX "first claims" filed beginning with the first day of the first week which begins after April 4, 1992, pursuant to 20 CFR 614.12(c).

[FR Doc. 93-1859 Filed 1-25-93; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 1993.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to "First Claims" for UCX which are effective beginning with the first day of the first week which begins after April 3, 1993.

Pay grade	Monthly rate
(1) Commissioned Officers:	
O-10	$10,493
O-9	9,530
O-8	8,752
O-7	7,878
O-6	6,702
O-5	5,615
O-4	4,829
O-3	3,727
O-2	2,976
O-1	2,227
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
O-3E	4,258
O-2E	3,556
O-1E	2,929
(3) Warrant Officers:	
W-5	4,747
W-4	4,233
W-3	3,560
W-2	3,064
W-1	2,555
(4) Enlisted Personnel:	
E-9	3,866
E-8	3,262
E-7	2,836
E-6	2,450
E-5	2,086
E-4	1,743
E-3	1,529
E-2	1,405
E-1	1,237

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 15, 1993.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 93-1860 Filed 1-25-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 25, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue NW., Washington, DC, 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94 Visual Arts Program Application Guidelines for Organizations

Frequency of Collection: One-time

Respondents: Non-profit institutions, state and local governments

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations and state and local arts agencies that apply for funding under the Visual Arts Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the application review process.

Estimated Number of Respondents: 360

Average Burden Hours Per Response: 29.2

Total Estimated Burden: 10,500.

Marianne Klink,

Acting Director, Congressional Liaison, National Endowment for the Arts.

[FR Doc. 93-1770 Filed 1-25-93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening #3 Section) to the National Council on the Arts will be held on February 10-11, 1993 from 9 a.m.-6:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on February 10 from 9 a.m.-9:15 a.m. for opening remarks.

The remaining portions of this meeting on February 10 from 9:15 a.m.-6:30 p.m. and February 11 from 9 a.m.-6:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 21, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1829 Filed 1–25–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection: 10 CFR Part 75—Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Installation information is submitted upon written notification from the Commission. Changes are submitted as occurring. Nuclear material accounting and control information is submitted in accordance with specified instructions.
5. Who will be required or asked to report: All persons licensed by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U.S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.
6. An estimate of the number of responses annually: 43
7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 4.7 hours per response plus 800 hours per recordkeeper. The total annual industry burden is 5,004 hours.
8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.
9. Abstract: 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0055), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 12th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1807 Filed 1–25–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

Texas Utilities Electric Co., Comanche Peak Steam Electric Station, Unit 1; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 referred to the staff by the Nuclear Regulatory Commission (NRC) by Memorandum and Order dated January 17, 1992 (CLI–92–01). The Petition concerns allegations contained in a Motion to Reopen the Record (Motion) filed by Sandra Long Dow and Richard E. Dow (Petitioners) concerning the pipe support design process at the Comanche Peak Steam Electric Station Unit 1. Petitioners asserted as a basis for their Motion that Texas Utilities Electric Company's (TUEC or Licensee) witnesses repeatedly made false and misleading statements to the Atomic Safety and Licensing Board between 1982 and 1985.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–93–02), which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publication/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 15th day of January 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1808 Filed 1–25–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–445 AND 50–446]

Texas Utilities Electric Company, Comanche Peak Steam Electric Station, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Mr. Michael D. Kohn, dated July 30, 1991, on behalf of the National Whistleblowers Center and certain confidential allegers regarding the Comanche Peak Steam Electric Station.

Petitioners requested that the U.S. Nuclear Regulatory Commission (NRC) take action regarding the TU Electric Company's (TUEC or the Licensee) Comanche Peak Steam Electric Station, Units 1 and 2. Petitioners requested that the NRC provide the following relief: (1) Hold licensing hearings to determine, in view of TUEC's having made material false statements to the NRC, whether the Licensee has the requisite character and competence to operate a nuclear power facility; (2) fine and otherwise penalize TUEC for making material false statements to the NRC; (3) investigate whether the NRC staff knew of TUEC's alleged material false statements and failed to act on such knowledge;[1] and (4) determine which high-level managers were responsible for TUEC's making false material statements, and ban such persons from all licensed nuclear facilities.

Briefly summarized, the bases set forth for the Petition were that (1) TUEC made material false statements before the Atomic Safety and Licensing Board (ASLB) during hearings on TUEC's application for an operating license[2] in order to conceal significant safety flaws in the design of CPSES pipe support systems, namely that in violation of 10 CFR part 50, appendix B, TUEC transferred pipe support packages for review and certification between pipe support design groups that used different, multiple design criteria; (2) TUEC's material false statements delayed construction of CPSES Unit 1 and thus were germane to a contention in a related proceeding[3] that TUEC had intentionally delayed construction of CPSES Unit 1; (3) TUEC, Citizens Association for Sound Energy (CASE), and the NRC staff deliberately withheld information from the ASLB about the transfer of pipe support reviews between pipe support design groups; and (4) TUEC employees responsible for making material false statements to the NRC continue to perform critical engineering and quality assurance tasks at CPSES.

The Director of the Office of Nuclear Reactor Regulation has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision Under 10 CFR 2.206," (DD–93–01) which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Comanche Peak Steam Electric Station, at the University of Texas at Arlington Library, Government Publication/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 15th day of January 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1806 Filed 1–25–93; 8:45 am]

BILLING CODE 7590–01–M

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[1] As noted in my letter of August 28, 1991, to Petitioners, a copy of Petition was forwarded to the NRC Office of Inspector General. This Director's Decision does not address allegations of NRC staff misconduct.

[2] NRC Docket Nos. 50–445 and 50–446. Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2).

[3] The January 20, 1986, application of TUEC to extend its construction permit was the subject of a related NRC licensing proceeding, NRC Docket No. 50–445–CPA. See Texas Utilities Electric Company, 25 NRC 912 (1987).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31743; File No. SR–AMEX–93–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Addition of New Strike Prices for Index Options

January 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On January 13, the Amex submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, Amex Rule 903C(b) provides that "the exercise price of each series of stock index options opened for trading on the Exchange shall be an integer which is reasonably close to the numerical index value of the underlying stock index group to which such options relate at or about the time such series of options is first opened for trading on the exchange."[2] The Amex proposes to amend Exchange Rule 903C(b) by adding Commentary .03, which provides:

> *In connection with paragraph (b) above, the Exchange may list additional series for its European-style stock indexes which are greater than 15% or 50 points of the current index value (whichever is less) but do not exceed 30% or 100 points of the current index value (whichever is less) provided that demonstrated customer interest exists prior to the listing of such series.*

The proposed rule change and Amendment No. 1 to the proposed rule change are available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

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[1] See letter from Howard A. Baker, Senior Vice President, Derivative Securities, Amex, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated January 13, 1992.

[2] See note 3, *infra*, and accompanying text for a discussion of the Commission's recent interpretation of the Amex's "reasonably close" standard.

The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Amex Rule 903C(b) provides that "the exercise price of each series of stock index options opened for trading on the Exchange shall be an integer which is reasonably close to the numerical index value of the underlying stock index group to which such options relate at or about the time such series of options is first opened for trading on the Exchange." While there has been no formal interpretation of the range of strike prices which would fall within the "reasonably close" standard set forth in Rule 903C(b) since it was adopted in 1983, the Commission recently defined this standard in its order approving a Chicago Board Options Exchange, Inc. ("CBOE") filing[3] which, in effect, made the CBOE's index option strike price rules uniform with the Amex's rules. The CBOE Approval Order stated that for stock index options other than long-term options, a series is "reasonably related" to the current index value of the underlying index if it is within no more than the lesser of: (a) 50 points of the current index value; or (b) 15% of the current index value. For long-term stock index options (other than reduced value long-term options) an exercise price of an options series is "reasonably related" to the current index value if it is within 25% of the current index value.[4]

The Amex believes that although the standard established in the CBOE Approval Order provides some flexibility in the listing of stock index option strike prices in response to market movement, substantial interest sometimes arises on the part of large institutional investors seeking to engage in options strategies requiring strike prices which may be further in and/or out of the money than exist at the time. Accordingly, the Amex proposes to amend Exchange Rule 903C by adding Commentary .03, which will allow the Exchange to list additional options series for European-style[5] stock indexes which are greater than 15% or 50 points of the current index value (whichever is less) but do not exceed 30% or 100 points of the current index value (whichever is less) (the "expanded range"), provided that demonstrated customer interest exists prior to the listing of such series. The Amex believes that the proposed rule change will enable the Exchange to respond to the needs of an important segment of the investing public by permitting such customers to take advantage of economic opportunities through the trading of standardized index options.

The Amex notes that the proposal applies solely to European-style stock index options, and that, for purposes of the proposal, a "customer" is an off-floor person or entity (such as an institution, corporation or individual) whose trades are designated as customer trades under the rules of the Options Clearing Corporation ("OCC"). The proposal allows the Amex to introduce new strike prices in the expanded range only in response to documented customer requests, and not in response to the requests of market makers or specialists acting on their own behalf. However, after a new strike has been listed in response to a customer request, market makers and specialists may engage in transactions in the strikes.[6]

The Amex has represented that when a new strike has been listed pursuant to the proposal, the Exchange will not automatically fill in strike prices between the newly added strikes and the highest and lowest existing strikes on the index.[7]

In addition, the Amex represents that its systems have the capacity to accommodate any series that may be added under the proposal.[8] In addition, the Options Price Reporting Authority ("OPRA") has represented that the addition of options series pursuant to the proposal should have no material impact on OPRA's capacity.[9]

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[10] Specifically, the Commission believes that the proposal will provide investors with more flexibility in the trading of European-style index options, thereby protecting investors and furthering the public interest by allowing investors to establish options positions that are better tailored to meet their investment objectives.

The Commission also believes that the Amex's proposal strikes a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. In this regard, the Commission notes that the proposal allows the Amex to list additional strike prices for European-style stock index options only if there is documented customer interest in the additional strikes.[11]

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[3] See Securities Exchange Act Release No. 31683 (December 31, 1992), 58 FR 3307 (order approving File No. SR–CBOE–92–36) ("CBOE Approval Order").

[4] *Id.*

[5] A European-style option can be exercised only during a specified period before the option expires.

[6] See Amendment No. 1, *supra* note 1.

[7] For example, if a European-style index is at 400 with the highest and lowest outstanding strikes extending from 350 to 450, and the Amex receives a customer request to list strikes at 300 and 500, the Amex will not automatically add (or "fill in") strikes between 300 and 350 (and 450—500) after it lists the 300 (and 500) strike(s). The Exchange may, however, list additional "fill-in" strikes in response to documented customer requests or after a market movement that raises or lowers the index level and permits the introduction of additional strikes under the "reasonably related" standard. See Amendment No. 1, *supra* note 1.

[8] See Amendment No. 1, *supra* note 1.

[9] See memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Charles Henry, President and Chief Operating Officer, CBOE, and Ivers Riley, Senior Executive Vice President, Amex, dated January 13, 1993 ("OPRA Memorandum").

[10] 15 U.S.C. 78f(b)(5) (1982).

[11] The Commission notes that although market makers and specialists may engage in transactions in the new series after they have been listed due to customer interest, the Commission does not expect that the additional strikes will be used primarily for transactions among market makers and specialists. Moreover, the Exchange's surveillance procedures will enable the Exchange and the Commission to determine whether the strikes being added pursuant to the proposal are being used primarily by market makers. In such a case, the Commission may determine that the use of such strikes are inconsistent with the maintenance of fair and orderly markets and Section 6(b)(5) of the Act.

Further, the Commission notes that the Exchange has represented that it will not automatically "fill in" strike prices between the strikes added under the proposal and the highest and lowest existing strikes on an index,[12] and, in addition, that the Amex has developed surveillance procedures designed to monitor the addition of new strikes pursuant to the proposal. The Commission believes that these requirements provide the Exchange with the flexibility to open additional index options series in response to genuine customer interest and, at the same time, appropriately limit the number of index options series that may be outstanding at any one time. Finally, based on representations from OPRA,[13] the Commission is satisfied that Amex and OPRA will have adequate computer processing capacity to accommodate trading and quote dissemination demands of the additional strike prices that may be listed under the proposal.

In summary, the Commission believes that the benefits to be derived from the proposal in accommodating the needs and objectives of investors outweigh the possible adverse effects on market liquidity due to the dispersion of trading interest in more options series.

The Commission has, nevertheless, requested that the Amex monitor the addition of strikes under the rule. The Amex has agreed to provide a six-month status report to the Commission which will be due on July 15, 1993. The report should include, at the least, the total number of requests for additional strikes pursuant to this proposal; what type of market participants have requested the additional strikes; whether, and how many of, the requests were granted or denied; the total percentage of transactions which were completed between customers and market makers versus market makers and other market makers; any surveillance inquiries or studies opened for potential abuses or non-compliance with the rule's requirements and the action taken by the Exchange as a result of these inquiries; any effect the additional strikes are having on the liquidy of the existing outstanding strikes; and the effect of the additional series on the capacity of the Amex's, OPRA's and vendors' automated systems.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposal will help the Amex to accommodate the needs of investors and will clarify the Exchange's policy regarding the listing of additional series of index options. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–Amex–93–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1780 Filed 1–25–93; 8:45 am]

BILLING CODE 8010–01–M

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[12] When listing additional strikes pursuant to the proposal, the Commission expects the Exchange to consider whether the listing of such strikes will be consistent with the maintenance of a fair and orderly market.

[13] See OPRA Memorandum, *supra* note 9.

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–31744; File No. SR–CBOE–93–01]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Addition of New Strike Prices for Index Options

January 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 8, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Currently, CBOE Rule 24.9, "Terms of Index Option Contracts," Interpretation .05 provides, in part, that "the exercise price of each series of stock index options opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options first opened for trading on the Exchange."[2] The CBOE proposes to amend Interpretation .05 to add the following provisions:

> The term "reasonably related to the current index value of the underlying index" means: (a) except in the case of long-term options, if the exercise price is within no more than the lesser of (i) 50 points of the current value of the index, or (ii) 15% of the current index value; and (b) in the case of long-term options (other than reduced value long-term options), if the exercise price is within 25% of the current index value. As an exception to the foregoing, the Exchange may open for trading additional series of the same European-style index options (other than options based on the S&P 100 index) provided that demonstrated customer interest exists (such as institutional, corporate, or individual interest, expressed directly or through the customer's broker, but not interest expressed by a market maker with respect to trading for the market maker's own

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[1] On January 14, 1993, the CBOE amended its proposal. See File No. SR–CBOE–93–01, Amendment No. 1.

[2] See Securities Exchange Act Release No. 31683 (December 31, 1992), 58 FR 3307 (order approving File No. SR–CBOE–92–36) ("Strike Price Approval Order"). See note 3, *infra*, and accompanying text for a discussion of the "reasonably related" standard.

account) and further provided that the new strike prices are no more than the lesser of approximately (i) 100 points away from the current index value; or (ii) 30% away from the current index value.

The proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CBOE Rule 24.9, Interpretation .05 provides, in part, that, for options other than options on the Standard & Poor's 100 Index, "the exercise price of each series of stock index options opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options first opened for trading on the Exchange." This language is substantially similar to the existing rules of the American Stock Exchange, Inc. ("Amex"). While there has been no formal interpretation of the range of strike prices which would fall within the "reasonably related" standard set forth in CBOE Rule 24.9, the Commission recently defined this standard in its order approving Interpretation .05 to Rule 24.9.[3] Specifically, the Strike Price Approval Order stated that for stock index options other than long-term options, a series is "reasonably related" to the current index value of the underlying index if it is within no more than the lesser of: (a) 50 points of the current index value; or (b) 50% of the current index value. For long-term stock index options (other than reduced value long-term options) an exercise price of an options series is "reasonably related" to the current index value if it is within 25% of the current index value.[4]

The CBOE believes that although the standard articulated in the Strike Price Approval Order provides some flexibility in the listing of stock index option strike prices in response to market movement, substantial interest sometimes arises on the part of large institutional investors seeking to engage in options strategies requiring strike prices which may be further in and/or out of the money than exist at the time. Accordingly, the CBOE proposes to amend Interpretation .05 to include the "reasonably related" standard approved in the Strike Price Approval Order, and to adopt an exception to that standard which will permit the listing of such additional strike prices in European-style index options, provided that demonstrated customer interests exists (such as institutional, corporate, or individual interest, expressed directly or through the customer's broker, but not interest expressed by a market maker with respect to trading for the market maker's own account) and provided, further, that the new strike prices are no more than the lesser of approximately (a) 100 points away from the current index value; or (b) 30% away from the current index value. The CBOE believes that the new standard will enable the CBOE to respond to the needs of an important segment of the investing public by permitting such customers to take advantage of economic opportunities through the trading of standardized index options.

The CBOE notes that the proposal applies solely to European-style stock index options, and that new strike prices will be added pursuant to the proposed exception to the "reasonably related" standard solely in response to demonstrated customer interest, as defined under the proposal.[5] In addition, the CBOE represents that (i) the CBOE does not intend or expect to "fill in" or automatically authorize trading in each strike price between any strike price newly added pursuant to the proposed exception and the highest or lowest existing strike price;[6] (ii) each new strike price introduced beyond the highest and lowest available strike prices contemplated by the generally applicable "reasonably related" standard approved in the Strike Price Approval Order will have to satisfy the criteria set forth in the proposed exception; and (iii) the CBOE does not expect that additional strike prices introduced pursuant to the proposed exception will be availed of primarily for transactions between or among market makers trading for their own accounts.[7]

The CBOE represents that it has the necessary systems capacity to support additional strikes that may be added pursuant to the proposal.[8] In addition, the Options Price Reporting Authority ("OPRA") has represented that the addition of options series pursuant to the proposal should have no material impact on OPRA's capacity.[9]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[10]

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[3] See Strike Price Approval Order, *supra* note 2.

[4] *Id.*

[5] See letter from Andrew M. Klein, Schiff Hardin & Waite, to Sharon M. Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated January 14, 1993 ("January 14 Letter").

[6] For example, if a European-style index is at 400 with the highest and lowest outstanding strikes extending from 350 to 450, and the CBOE receives a customer request to list strikes at 300 and 500, the CBOE will not automatically add (or "fill in") strikes between 300 and 350 (and 450–500) after it lists the 300 (and 500) strike(s). The Exchange may, however, list additional "fill-in" strikes in response to documented customer requests or after a market movement that raises or lowers the index level and permits the introduction of additional strikes under the "reasonably related" standard.

[7] See January 14 Letter, *supra* note 5.

[8] See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, Commission, dated January 13, 1993 ("CBOE Capacity Letter").

[9] See memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Charles Henry, President and Chief Operating Officer, CBOE, and Ivers Riley, Senior Executive Vice President, Amex, dated January 13, 1993 ("OPRA Memorandum").

[10] 15 U.S.C. 78f(b)(5) (1982).

Specifically, the Commission believes that the proposal will provide investors with more flexibility in the trading of European-style index options, thereby protecting investors and furthering the public interest by allowing investors to establish options positions that are better tailored to meet their investment objectives.

The Commission also believes that the CBOE's proposal strikes a reasonable balance between the Exchange's need to accommodate the needs of investors and the need to avoid the excessive proliferation of options series. In this regard, the Commission notes that the proposed exception to the "reasonably related" standard allows the CBOE to list additional strike prices for European-style stock index options only if there is documented customer interest in the additional strikes.[11]

Further, the Commission notes that the Exchange has represented that it will not automatically "fill in" strike prices between the strikes added under the proposal and the highest and lowest existing strikes on an index,[12] and, in addition, that the CBOE has developed surveillance procedures designed to monitor the addition of new strikes pursuant to the proposal. The Commission believes that these requirements should provide the Exchange with flexibility to open additional index options series in response to genuine customer interest and, at the same time, appropriately limit the number of index options series that may be outstanding at any one time. Finally, based on representations from OPRA,[13] the Commission believes that OPRA will have adequate computer processing capacity to accommodate the additional strike prices that may be listed under the proposal.

In summary, the Commission believes that the benefits to be derived from the proposal in accommodating the needs and objectives of investors outweigh the possible adverse effects on market liquidity due to the dispersion of trading interest in more options series.

The Commission has, nevertheless, requested that the CBOE monitor the addition of strikes under the rule. The CBOE has agreed to provide a six month status report to the Commission which will be due on July 15, 1993. The report should include, at the least, the total number of requests for additional strikes pursuant to this proposal; what type of market participants have requested the additional strikes; whether, and how many of, the requests were granted or denied; the total percentage of transactions which were completed between customers and market makers versus market makers and other market makers; any surveillance inquiries or studies opened for potential abuses or non-compliance with the rule's requirements and the action taken by the Exchange as a result of these inquiries; any effect the additional strikes are having on the liquidity of the existing outstanding strikes; and the effect of the additional series on the capacity of the CBOE's, OPRA's and vendors' automated systems.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** because the proposal will help the CBOE to accommodate the needs of investors and will clarify the Exchange's policy regarding the listing of additional series of index options. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CBOE–93–01) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1781 Filed 1–25–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issue

January 15, 1993.

On January 12, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, i.e., security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–10003	AQQ/ASKI	Ask Computers Systems, Common Stock, No Par Value.

The above-referenced issue is being applied for as an expansion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

Comments

Interested persons are invited to submit, on or before February 5, 1993 written comments, data, views and arguments concerning this application. Persons desiring to make written comment should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

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[11] The Commission notes that although market makers and specialists may engage in transactions in the new series listed pursuant to the proposed exception to the "reasonably related" standard after the series have been listed due to customer interest, the Commission does not except that the additional strikes will be used primarily for transactions among market makers and specialists. Moreover, the Exchange's surveillance procedures will enable the Exchange and the Commission to determine whether the strikes being added pursuant to the proposal are being used primarily by market makers. In such a case, the Commission may at a future time determine that the use of such strikes are inconsistent with the maintenance of fair and orderly markets and Section 6(b)(5) of the Act.

[12] When listing additional strikes pursuant to the proposal, the Commission expects the Exchange to consider whether the listing of such strikes will be consistent with the maintenance of a fair and orderly market.

[13] *See* OPRA Memorandum, *supra* note 8.

[14] 15 U.S.C. 78s(b)(2) (1982).

[15] 17 CFR 200.30–3(a)(12) (1992).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-1782 Filed 1-25-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19220; File No. 812-8202]

Security First Life Insurance Co. et al

January 19, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

APPLICANTS: Security First Life Insurance Company ("Security First Life"), Security First Life Separate Account A ("Separate Account A"), and Security First Life Separate Account B ("Separate Account B") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 17(b) of the 1940 Act for exemption from section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order of exemption to the extent necessary to permit the proposed merger of Separate Account B into Separate Account A.

FILING DATE: The application was filed on December 4, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Security First Life Insurance Company, 11365 West Olympic Boulevard, Los Angeles, California 90064.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272-2058 or Michael Wible, Special counsel, at (202) 272-2026, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security First Life is a stock life insurance company organized under the laws of the State of Delaware. For the purposes of the 1940 Act, Security First is the depositor of Separate Account A and Separate Account B.

2. On February 18, 1992, Security First Life entered into an agreement ("Reinsurance Agreement") with The Capitol Life Insurance Company ("Capitol Life"). Under the Reinsurance Agreement, Security First Life acquired on an assumption reinsurance basis certain variable annuity contracts of Capitol Life funded by Capitol Life Separate Account A. Security First Life assumed all the liabilities and obligations under the reinsured Capitol Life Contracts. Reinsured contract owners have the same contract rights and the same contract values as they did before the reinsurance transaction. However, reinsured contract owners now look to Security First Life instead of Capitol Life to fulfill the terms of their contracts.

3. Capitol Life Separate Account A was originally established by Capitol Life pursuant to Colorado insurance law on September 20, 1973. In fulfillment of the Reinsurance Agreement, Capitol Life Separate account A with all of its assets was transferred to Security First Life on February 18, 1992 and reestablished under Delaware insurance law as Separate Account B of Security First Life. Separate Account B is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account B is divided into five series, with the assets of each series invested in the shares of one of the three series of the Security First Series Trust ("Trust") or in the shares of two open-end management investment companies advised and managed by T. Rowe Price Associates, Inc. ("T. Rowe Price funds").

4. On December 31, 1991 a registration statement was filed to register the reinsured Capitol Life contracts funded in Separate Account B. The reinsured Capitol Life contracts are identical in all material respects to the original Capitol Life contracts except for the change in depositor from Capitol Life to Security First Life. That registration statement was filed pursuant to a staff "no-action" letter (Reference No. IP-1-92), that Security First Life had requested in connection with the Reinsurance Agreement, and in connection with which Security First Life undertook not to sell any new contracts funded in Separate Account B until a registration statement, describing the new depositor, was declared effective. The registration statement was declared effective on February 18, 1992.

5. Separate Account A was established by Security First Life pursuant to Delaware insurance law on May 29, 1980. Separate Account A is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account A is divided into six series, with the assets of each series invested in the shares of one of the three series of the trust or in the shares of three T. Rowe Price funds.

6. In 1989, Security First Life assumptively reinsured certain variable annuity contracts offered by Capital Life. Presently, Separate Account A funds those contracts. Also, in 1989, Security First Life began offering certain variable annuity contracts funded in Separate Account A Which were cloned from those original Capitol Life contracts (the "Cloned Capitol Contracts").

7. The Cloned Capitol Contracts and the reinsured Capitol Life Contracts are similar to one another in all material respects. They have the same contract charges and invest in the same underlying funds. Security First Life does not intend to offer any new contracts in connection with Separate Account B.

8. The management and Board of Directors of Security First Life have determined that the efficiency of the operations of Security First Life Could be improved by merging Separate Account B with and into Separate Account A. Accordingly, Security First Life's Board, acting through its Executive Committee, has approved a merger under which Separate Account B will, subject to necessary regulatory approval (including approval of the Delaware insurance commissioner), be merged with and into Separate Account A (the "Proposed Merger"). The Proposed Merger would be effected at the relative net asset values of the securities to be exchanged thereby assuring no change in the contract values of persons having an interest in either separate account.

9. A post-effective amendment under the Securities Act of 1933 for the reinsured Capitol Contracts and an amendment to the 1940 Act registration statement of Separate Account A will be filed reflecting the merger transaction. A copy of the revised prospectus, together with a letter explaining the merger transaction and its implications, and an endorsement reflecting the fact that the reinsured Capitol Contracts would thereafter be funded in Separate Account A, will be sent to each owner of a reinsured Capitol Contract upon consummation of the Proposed Merger. Consistent with the provisions of the 1940 Act and applicable state law, the Proposed Merger will not be submitted to contract owners for approval.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act provides generally that it unlawful for any affiliated person of a registered investment company acting as principal knowingly to purchase or sell any security or other property to such registered company. Section 17(b) of the 1940 Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by section 17(a) of the 1940 Act if the Commission finds that (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, (2) the proposed transaction is consistent with the policy of each registered investment company concerned and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. Because the separate accounts are affiliated persons of each other, the transfer of assets from Separate Account B to Separate Account A, by reason of the Proposed Merger, may involve these entities, acting as principals, in buying and selling securities or other property from or to one another in contravention of section 17(a) of the 1940 Act.

3. Although exemption under Rule 17a–8 under the 1940 Act is not available in this case since Rule 17a–8 is limited to mergers of management investment companies, Applicants contend that the Proposed Merger falls within the spirit and intent of the Rule since it would be effected at the relative net asset values of the securities to be exchanged. No charges, costs, fees, or other expenses would be incurred by contract owners of either separate account as a result of, or in connection with, the Proposed Merger nor would there be any imposition of tax liability on contract owners as a result of the Proposed Merger. Thus, the proposed Merger would not result in dilution of the economic interests of contract owners of either separate account.

4. The Applicants represent that with respect to Separate Account B and its contract owners, the only practical result of the Proposed Merger would be the change in the identity of the separate account funding the reinsured Capitol Contracts.

5. Separate Account B is a smaller mirror image of Separate Account A. Both separate accounts were established and registered with the Commission as unit investment trusts to fund materially identical variable annuity contracts. Both separate accounts invest exclusively in the same underlying investment companies. The Applicants represent that the only significant difference is in the identity of the separate account funding the respective contracts.

6. The Proposed Merger would avoid the need for duplicative filings with governmental agencies and would otherwise avoid the costs associated with maintaining two separate accounts.

Applicants' Conclusion

Applicants submit that the Proposed Merger is consistent with the policies of the separate accounts and the general purposes of the 1940 Act. Applicants further submit that the terms of the Proposed Merger are reasonable and air to Separate Account A and Separate Account B contract owners and do not involve overreaching on the part of any person concerned. For these reasons, it is submitted that the statutory standards of section 17(b) of the 1940 Act have been met.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1878 Filed 1–25–93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 1–A (Revision 18)]

Delegation of Authority

Delegation of Authority No. 1–A (Revision 17) is hereby revised to read as follows:

(a) Pursuant to authority vested in me by the Small Business Act, of 1958, 72 Stat. 384, as amended is hereby delegated to the following officials in the following order:

(1) Counselor to the Administrator
(2) General Counsel
(3) Chief Financial Officer and Associate Deputy Administrator for Management and Administration
(4) Associate Deputy Administrator for Business Development
(5) Associate Deputy Administrator for Finance, Investment, and Procurement
(6) Chief of Staff

to perform, in event of the absence or incapacity of the Administrator and the Deputy Administrator any and all acts which the Administrator is authorized to perform, including but not limited to authority to issue, modify, or revoke delegations of authority and regulations, except exercising authority under sections 9(d) and 11 of the Small Business Act, as amended.

(b) An individual acting in any of the positions in paragraph

(a) remains in the line of succession only if he or she has been designated acting by the Administrator or Acting Administrator due to a vacancy in the position.

(c) This delegation is not in derogation of any authority residing in the above-listed officials relating to the operations of their respective programs, nor does it affect the validity of any delegations currently in force and effect and not revoked or revised herein.

Effective Date: January 21, 1993.

Date: January 20, 1993.

John D. Whitmore,

Acting Administrator.

[FR Doc. 93–1880 Filed 1–25–93; 8:45 am]

BILLING CODE 8025-01-M

Small Business Innovation Research Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Publication of policy directive.

SUMMARY: This document revises the Small Business Innovation Research (SBIR) Program Policy Directive, which was published on June 24, 1988 (53 FR 23829). This revised policy directive reflects new statutory requirements and comments received from members of Congress, the public, participating agencies, associations and small business concerns. It is intended to provide guidance to participating Federal agencies for the general conduct of their SBIR programs.

DATES: Public comment on this policy directive should be received prior to February 25, 1993. This policy directive is effective January 26, 1993.

ADDRESSES: Written comments should be submitted to Richard J. Shane, Assistant Administrator, Office of Innovation, Research and Technology, suite 8500, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Richard J. Shane, Assistant Administrator, Office of Innovation, Research and Technology, (202) 205–6450.

SUPPLEMENTARY INFORMATION: In 1982, Pub. L. 97–219, 96 Stat. 221, amended section 9(j) of the Small Business Act, 15 U.S.C. 631, *et seq.*, to establish a five year government-wide Small Business Innovation Program. This program was later extended until September 30, 1993 by Pub. L. 99–443, 100 Stat. 1120 (enacted October 6, 1986). Pub. L. 102–564 now extends the program to October 1, 2000.

Public Law 97–219 directed the Small Business Administration (SBA) by November 19, 1982, to develop, issue and maintain a Small Business Innovation Research (SBIR) Program Policy Directive to guide the participating agencies in their conduct of the SBIR program. This publication represents the fourth major revision to the original policy directive and is intended to provide guidance to the participating agencies as of its effective date.

This amended policy directive has modified SBIR Policy Directive, published June 24, 1988, 53 FR 23829 to reflect recent statutory requirements and oral and written comments and clarifications received from members of Congress, the public, participating agencies, associations and small business concerns.

SBA is issuing this amended policy directive in final form with a 30 day comment period. SBA will consider all comments carefully in revising the Policy Directive in the future as may be necessary to improve the general conduct of the Small Business Innovation Research Program.

The SBIR Policy Directive has been revised in the following respects: The "Purpose" section has been amended to refer to Pub. L. 102–564 as well as Pub. L. 97–219 and Pub. L. 99–443.

The section "Summary of Legislative Provisions" has been amended to refer to Pub. L. 102–564 and includes changes to reflect those in Pub. L. 102–564. This section also extends the program authorization to October 1, 2000.

Under "Definitions", Section 4.b is changed to indicate that the Department of Energy shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.

Subsection 5a changes the percentage of a participant's extramural R & D budget that must be expended with small business concerns, to reflect the schedule in Pub. L. 102–564, raising this percentage from not less that 1.5% in fiscal years 1993 and 1994; to not less that 2.0% in fiscal years 1995 and 1996; and not less that 2.5% thereafter.

Subsection 7d(2) new reflects the mandated changes to the award decision process that considers a proposals commercial potential as evidence by factors to be included in the proposal.

Section 8, "Unilateral Actions of Participating Agencies and Departments", includes several additional considerations to be undertaken by participating agencies as directed by this legislation. This section discusses considerations using topics from the National Critical Technologies panel or its successor. It also includes direction requiring the setting forth of the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow on research. This section also directs participating agencies to make payment to recipients under such agreements in full, subject to adult, on or before the last day of the 12 month period beginning on the date of completion of such requirements. Under subsection 8b there are instructions on the implementation of that part of the Act that allows discretionary technical assistance to SBIR awardees.

Section 9 of the Policy Directive concerns itself with the purchase of American made equipment and products under SBIR funding agreements.

Subsection 15c includes the legislative mandate that small business concerns receiving more that 15 second phase SBIR awards during the preceding 5 years must provide certain information on the commercialization results of those awards.

Subsection 15f(2) extends from 2 years to 4 years the period of time that participating agencies must protect the technical data generated unless the agencies receive permission to disclose such data.

Subsection 15j(2) is expanded to instruct agencies that they must notify each awardee, to the extent possible, of the expenses that will be allowable under the funding agreement.

Subsection 15k(2) includes the decision of the Comptroller General of the United States (B–254 032), supporting the SBIR Policy Directive providing for the payment of a profit or fee to grant recipients.

Section 19 of the Policy directive reflects the legislative requirement that efforts be increased to include the participation of socially and economically disadvantaged concerns. Subsection 19a, 19b and 19c are amended to include women-owned firms in this increased outreach effort.

The Policy Directive is also amended to include certain previously issued Policy Directive changes.

Other changes in this Policy Directive are minor, technical changes.

Richard J. Shane,

Assistant Administrator, SBA Office of Innovation, Research and Technology.

Small Business Innovation Research Program Policy Directive

To the Heads of Executive Departments and Establishments

Subject: Small Business Research and Development Enhancement Act of 1992 Small Business Innovation Research (SBIR) Programs

1. *Purpose.* Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) (as amended by Public Law 102–564) requires the SBA Administrator to modify the SBIR Program Policy Directive issued pursuant to Public Law 97–219 and Public Law 99–443 for the general conduct of the Small Business Innovation Research (SBIR) Program within the federal government.

2. *Authority.* This policy directive is issued pursuant to the authority contained in 15 U.S.C. 638(j)—Small Business Research and Development Enhancement Act of 1992 (Pub. L. 102–564), previously the Small Business Innovation Development Act of 1982—Pub. L. 97–219 and Pub. L. 99–443).

3. *Procurement Regulations.* It is recognized that Federal Acquisition Regulations (FAR) may need to be modified to conform to the requirements of The Small Business Innovation Research and Development Enhancement Act of 1992 and this policy directive. Agencies responsible for these procurement regulations are encouraged to initiate such changes. Regulatory provisions pertaining to areas of SBA responsibility, as established by Pub. L. 102–564, will require approval of the SBA Administrator or designee. The SBA Office of Innovation, Research and Technology is the appropriate office for coordinating such regulatory provisions.

4. *Personnel Concerned.* All federal government personnel who are involved in the administration, funding agreements and technical process of the Small Business Innovation Research (SBIR) Program and the establishment of goals for small business concerns in research of research and development (R/R&D) acquisition or grants.

5. *Distribution.* Federal government agencies and departments with Small

Business Innovation Research (SBIR) Programs and those required to establish small business research and development goals as directed by Pub. L. 102–564, previously Pub. L. 97–219 and Pub. L. 99–443.

6. *Originator.* U.S. Small Business Administration, Office of Innovation, Research and Technology.

Authorized by:

Richard J. Shane,

Assistant Administrator, SBA Office of Innovation, Research and Technology.

Paul H. Cooksey,

Deputy Administrator, U.S. Small Business Administration.

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Appendix

Instructions for SBIR Program Solicitation Preparation.

1. Purpose

a. Section 9(j) of the Small Business Act (as amended by Pub. L. 102–564) requires that the Small Business Administration modify the SBIR Program Policy Directive issued pursuant to Pub. L. 97–219 and Pub. L. 99–443 for the general conduct of the Small Business Innovation Research (SBIR) Program within the federal government.

b. This policy directive fulfills this statutory obligation and provides guidance to the participating federal agencies for the general conduct of the SBIR Program, including research or research and development (R/R&D) goaling requirements. Additional instructions may be issued by the Small Business Administration (SBA) as a result of public comment or experience. These instructions will be issued as additional or replacement pages for this directive.

2. Summary of Legislative Provisions

a. The Small Business Research and Development Enhancement Act of 1992, Pub. L. 102–564, that became law on October 28, 1992, amends the Small Business Act (15 U.S.C. 638).

(1) The purposes of the Act are to:

(a) Expand and improve the Small Business Innovation Research (SBIR) Program;

(b) Emphasize increased private sector commercialization of technology developed through federal SBIR research and development;

(c) Increase small business participation in federal research and development; and

(d) Improve the federal government's dissemination of information concerning the Small Business Innovation Research (SBIR) Program, particularly with regard to program participation by women-owned small business concerns and by socially and economically disadvantaged small business concerns.

(2) The Act mandates the federal agencies establish SBIR Programs if their FY 1992, or any fiscal year thereafter, extramural budgets for research or R&D exceed stated threshold figures ($100 million). The Act also requires agencies whose R/R&D budgets exceed a lower threshold figure ($20 million), to establish a goaling program for the participation of small business in contracts, grants, or cooperative agreements for research or R&D.

(a) No goal may be less than the percentage of the agency's R/R&D budget expended with small business under grants, contracts, and cooperative agreements in the immediately preceding fiscal year.

(b) Agencies with budgets over $100 million shall have both programs.

(3) The statutory requirements are aimed at assisting small business concerns by establishing a uniform, simplified process for the operation of the SBIR Programs while allowing the participating agencies flexibility in the content and operation of their individual SBIR Programs.

(4) The Act states that each participating agency will establish an SBIR Program by reserving a statutory percentage of its extramural budget to be awarded to small business concerns for research or R&D through a uniform, three-phase process.

(a) The first two phases will help agencies meet research or R&D and commercialization objectives.

(b) The third phase, where appropriate, is (1) to pursue commercial applications from the government-funded research or R&D in order to stimulate technological innovation and provide for the national return on investment from research or R&D and/or (2) for further contracting or grant activities with federal agencies through non-SBIR funding agreements.

(5) The Act mandates that each agency required to have an SBIR Program or to establish research or research and development goals must report annually to SBA. The Act further requires SBA to acquire annual reports and monitor each agency's SBIR Program and to report its findings annually to the House and Senate Committees on Small Business.

b. On October 28, 1992, the President signed legislation which authorizes the SBIR Program to October 1, 2000.

(1) Effective March 31, 1985, section 2732(a) of Title VII of the Competition in Contracting Act of 1984, Pub. L. 98–369, must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). Therefore, the notice publication requirements of the law apply to agencies participating in the SBIR Program which use contracts as their SBIR funding agreements.

(a) Any federal executive agency intending to solicit a proposal for contract for property or services valued above $25,000 is required to submit a notice of the impending solicitation for publication in the Commerce Business Daily. No agency shall issue its solicitation for at least 15 days from the date of the publication of the notice. The agency may not establish a deadline for submission of proposals in response to such solicitation that is earlier than 30 days after the date on which the solicitation was issued.

(b) The Competition in Contracting Act also requires that any executive agency awarding a contract for property or services valued at more than $25,000 submit a notice for publication to the Secretary of Commerce announcing such an award for publication if a subcontract is likely to result from such contract.

(2) The following are exemptions from the notice publication requirements:

(a) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if he/she makes a written determination, with the consultation of the Administrator of the Office of Federal Procurement Policy and the Administrator of the Small Business Administration, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(b) The SBIR Phase II awards process is exempted.

3. Minimizing Regulatory Burden

a. Important objectives in establishing uniform SBIR Program implementation are to:

(1) Minimize the creation of new or complex regulations.

(2) Ensure that the program's requirements are met.

(3) Simplify and standardize application of existing regulations related to the program. The explicit nature of the SBIR legislation concerning certain recognized acquisition procedures provides a strong base of authority for streamlining the process for obtaining research or R&D from small highly innovative business concerns.

(a) The above includes funding allocations, centralized SBIR technology management, and routine operational implementation.

(b) Where not contrary to existing statutory requirements, each agency is authorized to establish financial procedures and financing mechanisms that it deems necessary to properly implement the SBIR Program, including, but not limited to, obligating funds solely on the basis of proposal merit without regard to the purpose for which funds were originally appropriated, and transferring assessed funds to a single account to facilitate financial management, reporting, and oversight.

(c) The participating agencies are encouraged to initiate or continue their development of simplified procedures that may be used on SBIR actions and to submit information concerning simplified procedures to the SBA for possible general program improvements.

b. No participating agency may promulgate a rule or regulation that is contrary to or inconsistent with the SBIR legislation or this policy directive.

4. Definitions

a. *Research or Research and Development (R/R&D).* Any activity that is:

(1) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied.

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need.

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

b. *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of the agency in or through government-owned, government-operated facilities, except that for the Agency for International Development, it shall not include amounts obligated solely for general institutional support for international research centers or for grants to foreign countries. For the Department of Energy, it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.

c *Federal Agency.* An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102 except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, Section 3.4(f), or its successor orders.

d. *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any federal agency and any small business concern for the performance of experimental, developmental, or research work funded in whole or in part by the federal government.

e. *Subcontract.* Any agreement, other than one involving an employer-employee relationship, entered into by a federal government funding agreement awardee calling for supplies or services required solely for the performance of the original funding agreement.

f. *Socially and Economically Disadvantaged Small Business Concern.* A socially and economically disadvantaged small business concern is one that is:

(1) At least 51 percent owned by (i) an Indian tribe or a native Hawaiian organization, or (ii) one or more socially and economically disadvantaged individuals, and

(2) Whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals.

g. *Socially and Economically Disadvantaged Individual.* A member of any of the following groups:

(1) Black Americans

(2) Hispanic Americans

(3) Native Americans

(4) Asian-Pacific Americans

(5) Subcontinent Asian Americans

(6) Other groups designated from time to time by SBA to be socially disadvantaged; or

(7) Any other individual found to be socially and economically disadvantaged by SBA pursuant to section 8(a) of the Small Business Act, 15 U.S.C. 637(a).

h. *Small Business Concern.* A small business concern is one that, at the time of award of Phase I and Phase II funding agreements, meets the following criteria:

(1) Is independently owned and operated, is not dominant in the field of operation in which it is proposing, has its principal place of business located in the United States and is organized for profit;

(2) Is at least 51 percent owned, or in the case of a publicly owned business, at least 51 percent of its voting stock is owned by United States citizens or lawfully admitted permanent resident aliens;

(3) Has, including its affiliates, a number of employees not exceeding 500, and meets the other regulatory requirements found in 13 CFR part 121. Business concerns, other than investment companies licensed, or state development companies qualifying under the Small Business Investment Act of 1958, 15 U.S.C. 661, *et seq.*, are affiliates of one another when either directly or indirectly;

(a) One concern controls or has the power to control the other; or

(b) A third party or parties controls or has the power to control both.

Control can be exercised through common ownership, common management, and contractual relationships. The term "affiliates" is defined in greater detail in 13 CFR part 121. The term "number of employees" is also defined in 13 CFR part 121. Business concerns include, but are not limited to, any individual, partnership, corporation, joint venture, association or cooperative.

i. *Women-Owned Small Business Concern.* A small business concern that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

j. *Program Solicitation.* A formal solicitation of proposals whereby a federal agency notifies the small business community of its research or R&D needs and interests in selected areas and requests proposals in response to these needs from small business concerns. Announcements in the

Federal Register or the Commerce Business Daily are not to be considered substitutes for an SBIR Program solicitation.

k. *United States* means the 50 states, the territories and possessions of the U.S., the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

l. *Commercialization.* The process of developing markets and producing and delivering products for sale (whether by the originating party or by others); as used here, commercialization includes both government and commercial markets.

5. Participating Federal Agency Expenditures for the SBIR and R/R&D Goaling Programs

a. Each federal agency which has an extramural budget for research or R&D in excess of $100,000,000 for FY 1992 or any fiscal year thereafter, shall expend with small business concerns not less than 1.5% of such budget in each of fiscal year 1993 and 1994; not less than 2.0% of such budget in each of fiscal years 1995 and 1996; and not less than 2.5% of such budget thereafter, specifically in connection with SBIR Programs which meet the requirements of the Small Business Research and Development Enhancement Act of 1992, this policy directive, and regulations issued thereunder.

b. Each federal agency which has a budget for research or R&D in excess of $20 million for any fiscal year beginning with FY 1993 or subsequent year shall establish goals specifically for funding agreements for research or R&D to small business concerns, and no goal established shall be less than the percentage of the agency's research and R&D budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

c. Funding agreements with small business concerns for research or research and development which result from competitive or sole source selections other than an SBIR Program shall not be considered to meet any portion of the percentage required under 5a.

6. Limitations of Participation

a. A Federal agency shall not use any of its SBIR budget for the purpose of funding administrative costs of the program including costs associated with budgetary salaries and expenses.

b. SBIR awards may not be counted toward no-SBIR goal achievement and non-SBIR awards to small business concerns may not be counted toward meeting SBIR Program funding levels or achievement.

c. No agency, at its own discretion, may unilaterally cease participation in the SBIR Program. R/R&D agency budgets may cause fluctuations and trends which must be reviewed in light of program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the SBIR Program over a period of time sufficient in duration to minimize any adverse impact on small business concerns.

However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D three year forecasts as found in the annual Budget of the United States Government and National Science Foundation breakdowns of total R/R&D obligations which are published in the Federal Funds for Research and Development.

Therefore, any withdrawal of a federal participating agency from the SBIR Program will be accomplished in a standardized and orderly manner as stated above.

Voluntary participation in the SBIR Programs by federal agencies not otherwise qualified for such participation may be permitted under this policy directive.

Federal agencies seeking to participate in SBIR need to submit their requests to SBA. Voluntary participation requires the written approval of the SBA Assistant Administrator for Innovation, Research and Technology subsequent to review of the request.

7. Small Business Innovation Research Program

a. The SBIR Program is a phased process uniform throughout the federal government of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions.

b. Each agency shall at least annually issue an SBIR solicitation that sets forth a substantial number of R/R&D topic and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics shall be sufficiently comprehensive to provide a wide range of opportunity for small business concerns to participate in the agency research or R&D programs. Topics and subtopics shall emphasize the need for proposals with advanced concepts to meet specific agency research or R&D needs. Each topic and subtopic shall describe the needs in sufficient detail so as to assist small firms in providing on-target responses, but shall not involve detailed specifications to prescribed solutions of the problems.

Unsolicited proposals or proposals not responding to stated topics or subtopics are not eligible for SBIR awards.

c. Because the program is intended to increase the use of small business concerns in federal R&D, for Phase I—a minimum of two-thirds of the research and/or analytical effort must be performed by the proposing small business concern. For Phase II—a minimum of one-half of the research and/or analytical effort must be performed by the proposing small business concern. Deviations from these requirements must be approved in writing by the funding agreement officer. For both Phase I and II, the primary employment of the principal investigator must be with the small business concern at the time of award and during the conduct of the proposed effort. *Primary employment* means that more than one-half of the principal investigator's time is spent in the employ of the small business concern. Primary employment with a small business concern precludes full time employment at another organization. The federal agencies participating in the SBIR Program may further restrict their definition based on their respective needs for specific cases as long as they meet the requirements of this policy directive. Also, for both Phase I and Phase II, the research or R&D work must be performed by the small business concern in the United States, as defined in paragraph 4.k. of this policy directive.

d. To stimulate and foster scientific and technological innovation, including increasing commercialization of federal R/R&D, the program must follow a uniform competitive process of three phases:

(1) *Phase I.* Phase I involves a solicitation of proposals to conduct feasibility related experimental or theoretical research or R&D related to described agency requirements. The object of this phase is to determine the technical feasibility of the proposed effort and the quality of performance of the small business concern with a relatively small agency investment before consideration of further federal support in Phase II.

(a) Several different proposed solutions to a given problem may be funded.

(b) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate SBIR proposals shall give primary consideration to the scientific and technical merit of the proposal along with its potential for commercialization. Secondary considerations may include program balance or critical agency requirements.

(c) Agencies may include a provision requiring submission of a Phase II proposal as a deliverable item under Phase I.

(d) Efforts shall be taken by agencies to reduce the procurement time frame for Phase II awards. Agencies are encourage to develop gap-funding methods and to address the duration of Phase II award cycles.

(2) *Phase II.* The object of Phase II is to continue the R/R&D effort from Phase I. Only awardees in Phase I are eligible to participate in Phase II. Phase I awardees are eligible for consideration of Phase II SBIR funding agreements only at the federal participating agency which awarded Phase I of the project. Funding shall be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or federal needs beyond the SBIR Program. Completion of the research and development may be through Phase III. The government is not obligated to fund any specific Phase II proposal. The SBIR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential as evidenced by:

(a) The small business concern's record of commercializing SBIR or other research,

(b) The existence of second phase funding commitments from private sector or non-SBIR funding sources,

(c) The existence of third phase follow-on commitments for the subject of the research, and

(d) The presence of other indicators of commercial potential of the idea.

(3) *Phase III.* The term *third phase agreement* means to follow-on, non-SBIR funded award as described in 1, 2 and 3 below. A federal agency may enter into a third phase agreement with a small business concern for additional work to be performed during or after the second phase period. The second phase funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to third phase agreements. The competition for Phase I and Phase II awards satisfies any competition requirement of the Competition in Contracting Act.

(a) Where appropriate, there will be a third phase which is funded by:

1. Non-federal sources of capital for commercial applications of SBIR funded research or research and development,

2. The federal government by follow-on non-SBIR awards for SBIR derived products and processes for use by the federal government,

3. Non-SBIR federal sources for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria.

(b) Agencies which intend to pursue research, research and development or production developed under the SBIR Program will give special acquisition preference including sole source awards to the SBIR company which developed the technology. The Phase III funding agreement will be with non-SBIR funds.

8. Unilateral Actions of Participating Agencies and Departments

a. The Act requires each participating agency to:

(1) Unilaterally determine the categories of projects to be included in its SBIR Program.

(2) Release SBIR solicitations in accordance with the SBA master schedule.

(3) Subject to paragraph 13, unilaterally determine research topics within its SBIR solicitations giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(a) The National Critical Technologies panel (or its successor) in the 1991 report required under section 603 of the National Science and Technology Policy Organization and Priorities Act of 1976, and in subsequent reports issued under that authority, or

(b) The Secretary of Defense in the 1992 report issued in accordance with section 2522 of title 10, United States Code, and in subsequent reports issued under that authority.

(4) Unilaterally receive and evaluate proposals resulting from SBIR solicitations and make awards.

(5) Administer its own SBIR funding agreements or delegate such administration to another agency; and inform each awardee under such agreement, to the extent possible, of the costs of the awardee that will be allowable under the funding agreement.

(6) Each funding agreement under the SBIR Program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(7) Make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(8) Make an annual report on the SBIR Program to SBA.

b. The Act allows discretionary technical assistance to SBIR awardees:.

(1) Agencies may enter into funding agreements to provide technical assistance to SBIR awardees. The assistance may comprise:

(a) Assistance in technical decisions

(b) Assistance with technical problems

(c) Assistance with all facets of commercialization.

(2) Under Phase I, each agency may provide up to $4,000 of SBIR funds for such technical assistance, per Phase I award. The amount will be in addition to the award and will count as part of the agency's SBIR funding set aside.

(3) In Phase II, agencies may allow awardees to expend up to $4,000 of SBIR funds per year of the funding agreement for such services.

9. American Made Equipment and Products

a. It is the sense of the Congress that an entity that is awarded a funding agreement under the SBIR Program of a federal agency under section 9 of the Small Business Act should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of that program.

b. Each federal agency that awards funding agreements under the SBIR Program shall provide to each recipient of such an award a notice describing the sense of the Congress, as set forth in subsection 9.a.

10. SBA Source File

a. *SBA Small Business Innovation Research (SBIR) Program Source File.* The SBA has developed and maintains an SBIR mailing list of interested small business concerns. In maintaining this list, SBA adheres to the provisions of The Freedom of Information Act, The Privacy Act of 1974, 13 CFR 102.20 and 13 CFR 102.3(j). This list is available to the federal participating agencies for SBIR solicitation purposes. Written requests containing justification for the need of labels from this mailing list should be submitted to the Office of Innovation, Research & Technology, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. A two-week period is required to fill these requests.

b. *SBA Procurement Automated Source System (PASS).* SBA's Office of Procurement Assistance has a Procurement Automated Source System (PASS) that maintains capability profiles of small businesses interested in federal government procurement opportunities. This system is used by federal agencies and major prime contractors to identify small business concerns with capabilities needed by the agencies or prime contractors. Agencies interested in accessing PASS should contact their nearest SBA Procurement Assistance Office.

c. *Federal Procurement Data System (FPDS).* Participating agencies should review FPDS data that identify small business awardees of research or R&D contracts as a potential supplement to their existing source data base.

d. *Other Sources.* Agencies may maintain their own mailing lists or use other sources.

11. SBA Coordination of National Critical Technologies

a. SBA will annually obtain information on the current critical technologies from both the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to both the participating federal agencies and potential SBIR participants.

b. The SBA Office of Innovation, Research and Technology will contact the panel and the Department of Defense and request this data in June of each year. The data received will then be submitted by letter to each of the participating federal agencies and will also be published in the September issue of the SBIR Pre-Solicitation Announcement for the potential SBIR participants.

12. SBA Coordination of SBIR Solicitation Schedules

a. The Act requires issuance of SBIR (Phase I) Program solicitations in accordance with a master schedule coordinated between SBA and the federal participating agency. The SBA organization responsible for coordination is: Office of Innovation, Research and Technology, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

b. For maximum participation by interested small business concerns, it is important that the planning, scheduling and coordination of agency SBIR solicitation release dates be completed as early as practicable in order to accommodate the commencement of the fiscal year on October 1. Bunching of agency SBIR solicitation release and closing dates may prohibit small business concerns from the preparation and timely submission of proposals for more than one SBIR project. SBA's coordination of agency schedules will minimize the bunching of proposed release and closing dates. Participating agencies may elect to publish multiple solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

c. To accomplish the Master Schedule coordination process, the following procedure will be followed:

(1) The SBA may publish four SBIR Pre-Solicitation Announcements annually, in each quarter of the fiscal year. It is intended that the dates of publication will be December 20, March 20, June 20, and September 20. The SBIR solicitation release date shall not be prior to 10 days after publication of the Pre-Solicitation Announcement (PSA) which contains notice of that specific SBIR solicitation.

(2) Each agency representative will notify SBA in writing of its proposed solicitation release and proposal due dates for the next fiscal year on or before August 1. The SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, final decisions will be made by SBA's Office of Innovation, Research and Technology.

13. SBA (Phase I) Program Pre-Solicitation Announcements

a. *SBA Publication.* The SBA, as required by public law, shall prepare and publish Phase I SBIR Pre-Solicitation Announcements (PSA) covering all participating federal agencies. Any agency solicitation announcement changes that occur prior to or after the release of the PSA must immediately be reported in writing to the SBA by the agency SBIR representative. If possible, announcement amendments will be released reflecting such changes. Each issue of the PSA will be based upon data received from the participating agencies. However, the agencies are advised that:

(1) The publication of the PSA is not intended to restrict or prohibit application of customary or other internal agency procedures designed to obtain publicity for its research or R&D programs.

(2) The PSA publications by SBA shall not be interpreted as a substitute or relief vehicle for existing statutory and regulatory publication requirements related to individual or specific procurement/grant actions.

b. *Pre-Solicitation Announcement (PSA) Content.* The SBIR PSA will include sufficient data to effectively apprise interested small business concerns throughout the Nation of forthcoming SBIR Program solicitations—thereby assisting the participating agencies in identifying prospective responsible sources. The agencies shall provide the required information to SBA no later than 30 days prior to the PSA release date in accordance with the master schedule. The following information is required:

(1) The list to topics upon which research or R&D proposals will be sought. Each research or R&D topic shall have up to 10 words in its title.

(2) Agency address and/or phone number from which SBIR Program solicitations can be obtained.

(3) Names, addresses, and phone numbers of agency contact points where SBIR-related inquiries may be directed.

(4) Release date(s) of program solicitation(s).

(5) Closing date(s) for receipt of proposals.

(6) Estimated number and average dollar amounts or level of effort of Phase I awards to be made under the solicitation.

c. For those agencies which use both general topic and more specific subtopic designations in their SBIR solicitations, the topic data to be submitted for purposes of PSA publication should accurately describe the research solicited. Rather than just announcing topic information characterized as "Chemistry" or "Aerodynamics," summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

d. The PSA will also include notices of SBIR conferences and seminars. Only SBIR conferences/seminars sponsored by the SBIR federal participating agencies or SBIR conferences/seminars sponsored or co-sponsored by the U.S. Small Business Administration will be considered for publication in the SBIR Pre-Solicitation Announcement (PSA).

14. Simplified, Standardized and Timely SBIR Program Solicitations

a. *Instructions for SBIR Program Solicitation Preparation.* The Small Business Act requires "* * * simplified, standardized and timely SBIR solicitations" (section 4(j)(1)). Further, the Act requires the SBIR Programs or participating agencies to use a "uniform process" and that the regulatory burden of participating in the SBIR Programs be minimized.

b. Therefore, the instructions in the Appendix to this policy directive purposely depart from normal government solicitation format and requirements. SBIR Program solicitations shall be prepared according to the attached Appendix.

c. Agencies shall provide the SBA Office of Innovation, Research and Technology 5 copies of each solicitation and any modifications thereto no later than the date of release of the solicitation or modification to the public.

d. *Non-SBIR R/R&D-Related Actions.* It is not intended that the SBIR Program solicitation replace or be used as a substitute for unsolicited proposals or R/R&D awards to small business concerns authorized by existing regulations; or, are the SBIR Program solicitation procedures intended to prohibit other agency R/R&D actions with small business concerns that are carried on in accordance with applicable statutory/regulatory authorizations.

15. Simplified and Standardized SBIR Funding Process

In its requirement for the establishment of a "simplified, standardized funding process," the SBIR legislation requires that specific attention be given to the following areas of SBIR Program administration:

a. *Timely Receipt and Review of Proposals.* (1) Participating agencies shall establish firm schedules and reviews formats for appropriate distribution of the proposals for reviewing recommendations and submission to the SBIR program manager for award determinations.

(a) All activities related to Phase I proposal reviews shall normally be completed and awards made within 6 months from the closing date of the SBIR solicitation.

(b) The SBIR Program solicitations for Phase I will establish proposal submission dates. Related to Phase II activity, an agency may establish set proposal submission dates. However, it is anticipated that each agency will negotiate mutually acceptable proposal submission dates with individual Phase I performers, accomplish proposal reviews expeditiously, and proceed with awards. While it is recognized that Phase II arrangements between the agency and proposer may require more detailed negotiation to establish terms acceptable to both parties, the agencies must not sacrifice the research or R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(c) It can be anticipated that SBIR participants will submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar topics or requirements which are within the expertise and capability levels of the small business proposer. To the extent reasonably feasible, interagency funding duplications related to acquiring similar technology under the SBIR or other federal programs should not occur. For this purpose, the standardized SBIR Program solicitation will require the proposers to indicate the name and address of the agencies to which duplicate or similar proposals were made and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous federal government awards. To assist in avoiding duplicate funding, each agency shall provide SBA and each participating SBIR agency with a listing of Phase I and Phase II awardees including the complete address and title of the project. This information should be distributed no later than release of contract award information to the public.

b. *Review of SBIR Proposals.* Agencies are encouraged to use their normal review process for SBIR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, "peer" reviews, that are external to the agency, are authorized by the SBIR legislation. Participating agencies are cautioned that all review procedures shall be formulated to minimize any possible conflict of interest as it pertains to proposer proprietary data. The standardized SBIR solicitation will advise potential proposers that proposals may be subject to an established external review process, but that the proposer may include company designated proprietary information in its proposal.

c. *Documentation of Multiple Phase II Awards.* (1) A small business concern that submits a proposal for a funding agreement for Phase I of an SBIR Program and that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years must document the extent to which it was able to secure third phase funding to develop concepts resulting from previous second phase SBIR awards; and

(2) Agencies shall collect and retain the information submitted under subparagraph c.(1) at least until the General Accounting Office submits the report required under section 106 of the Small Business Research and Development Enhancement Act of 1992

d. *Proprietary Information Contained in Proposals.* In preparation of the standardized SBIR Program solicitation as described in the Appendix of this policy directive, provisions will be included requiring confidential treatment of proprietary information to the extent permitted by law. Offerors will be discouraged from submitting information considered proprietary unless it is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be clearly identified and marked with a prescribed legend. Agencies may elect to require proposers to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text.

e. *Selection of Awardees.* Participating agencies shall establish a proposal review cycle wherein successful and unsuccessful proposers shall be notified of final award decisions within 6 months of the agency's Phase I proposal closing date.

(1) The standardized SBIR Program solicitation shall: (a) Advise Phase I proposers that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.

(b) Contain information advising potential offerors of basic proposal evaluation criteria for Phase I and Phase II.

(2) Phase II proposal submissions, review, and selections shall be managed by arrangements between the agency and each Phase I performer considered for Phase II award.

Within 30 days of the date of award of funding agreements—three copies of the Technical Abstract (containing all information described in the Appendix Paragraph III, C 1–6) for Phase I and Phase II awards shall be submitted to the SBA.

f. *Rights in Data Developed Under SBIR Funding Agreement.* The SBIR legislation provides for "retention of rights in data generated in the performance of the contract by the small business concern."

(1) The legislative history clarifies that the intent of the statute is to provide authority for the participating agency to protect technical data generated under the funding agreement, and to refrain from disclosing such data to competitors of the small business concern or from using the information to produce future technical procurement specifications that could harm the small business concern that discovered and

developed the innovation until the small business concern has a reasonable chance to seek patent protection, if appropriate.

(2) Therefore, except for program evaluation, participating agencies shall protect such technical data for a period of not less than 4 years from the completion of the project from which the data were generated unless the agencies obtain permission to disclose such data from the contractor or grantee. The government shall retain a royalty-free license for government use of any technical data delivered under an SBIR funding agreeent whether patented or not.

g. *Title Transfer of Agency Provided Property.* Under SBIR legislation, title to equipment purchased in relation to project performance with funds provided under SBIR funding agreements may be transferred to the awardee where such transfer would be more cost effective than recovery of the property by the government.

h. *Continued Use of Government Equipment.* SBIR legislation directs that a small business concern participating in the third phase of the SBIR Program be given continued use, as a directed bailment, of any property transferred by a federal agency to the small business concern in the second phase of an SBIR Program for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of such program.

i. *Cost Sharing.* (1) Cost participation could serve the mutual interest of the participating agencies and certain SBIR performers by helping to assure the efficient use of available resources. Cost-sharing, however, shall not normally be encouraged except where required by other statutes.

(2) Except where required by other statutes, participating agencies shall not, as a general policy, request or require cost sharing on Phase I projects. The standardized SBIR Program solicitation (Appendix) will, however, provide information to prospective SBIR performers concerning cost-sharing. Cost participation will not be consideration factor in evaluation of Phase I proposals except where required by other statutes.

j. *Payment Schedules and Cost Principles.* (1) Consistent with section 4 of the SBIR legislation (section 9(j)(2)(H)) of the Small Business Act (as amended by Pub. L. 97–219 and Pub. L. 102–564), SBIR performers may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitized price and payment schedule. Advance payments are optional and may be made under appropriate public law In all cases, agencies must make payment to recipients under SBIR agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(2) All SBIR funding agreements shall use, as appropriate, current cost principles and procedures authorized for use by the participating agencies. At the time of award, agencies shall inform each SBIR awardee, to the extent possible, of the applicable regulations and procedures which refer to the costs that generally will be allowed under funding agreements.

k. *Funding Agreement Types and Fee or Profit.* The legislative requirements for uniformity and standardization require that there be consistency in application of SBIR Program provisions among participating agencies. This consistency must consider, however, the need for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to SBIR Programs in the agencies. The following guidelines are for the purpose of meeting these requirements:

(1) *Funding Agreement.* The choice of type of funding agreement (contract, grant, or cooperative agreement) rests with the awarding agency but must be consistent with the guidelines in Pub. L. 95–224 (41 U.S.C. 501), as amended by Pub. L. 97–258 (31 U.S.C. 6301–6308).

(2) *Fee or Profit.* Unless expressly excluded by statute, awarding agencies are to provide for a reasonable fee or profit on SBIR funding agreements, including grants, consistent with normal profit margins provided to profit-making firms for R/R&D work.

On March 9, 1992, the Comptroller General of the United States rendered GAO Decision B–245 032 which required an agency to follow this provision for payment of a profit or fee to SBIR awardees despite other agency policies or regulations.

l. *Periods of Performance and Extensions.* (1) In keeping with the legislative intent to make a large number of relatively small awards, modification of funding agreements to extend periods of performance, increase the scope of work, or to increase the dollar amount should be minimized, except for options in the original Phase I or II awards.

(2) *Phase I.* Period of performance should normally not exceed 6 months except where agency needs or research plans require otherwise. Exceptions should be minimized.

(3) *Phase II.* Period of performance under Phase II is the subject of negotiations between the selected Phase I recipient and the awarding agency. However, the duration of Phase II should normally not exceed 2 years. Exceptions should be minimized.

m. *Dollar Value of Awards.* (1) The SBIR legislation establishes $100,000 as the amount of funds which an agency may award in the first phase of an SBIR Program, and $750,000 in the second phase of an SBIR program, and an adjustment of such amounts once every five years to reflect economic adjustments and programmatic considerations.

(2) After award of any funding agreement exceeding $100,000 for Phase I or $750,000 for Phase II, the agency SBIR representative shall provide SBA with written justification of such action. This justification shall be submitted with the SBIR Annual Report data. Similar justification is required for any dollar increase of a funding agreement which would bring the cumulative dollar amount to a total in excess of the aforestated amounts.

n. *Grant Authority.* The SBIR legislation does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

o. *Conflicts of Interest.* Participating agencies are cautioned that awards made to firms owned by or employing current or previous federal government employees could create conflicts of interest for those employees in violation of the Ethics in Government Act of 1978 (Pub. Law 95–521, as amended by Pub. L. 96–19 and Pub. L. 96–28). Each participating agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

16. Annual Report to SBA

The SBIR legislation requires a "simplified, standardized and timely annual report" from the participating agencies in the SBIR Program and those agencies required to establish small business R/R&D goals to the SBA. The following paragraphs cite the dates such reports are due, the kinds of information to be included, and the number of copies to be submitted to SBA.

a. *Reporting Dates to SBA.* Reporting shall be on an annual basis and will be for the period ending September 30 of each fiscal year The report is due to SBA by March 15 of each year. Example: The report for FY 1992 (October 1, 1991–September 30, 1992) should be submitted to SBA by March 15, 1993.

b. *Small Business Innovation Research (SBIR) Program.* (1) Agency total fiscal year, for FY 1983 and each year thereafter, extramural research and research and development total obligations as reported to the National Science Foundation pursuant to the annual Budget of the United States Government.

(2) SBIR Program total fiscal year dollars derived by applying the statute per centum to the agencies extramural research and research and development total obligations.

(3) SBIR Program fiscal year dollars obligated through SBIR Program funding agreements for Phase I and Phase II.

(4) Number of SBIR individual solicitations released during the fiscal year and the number of topics and subtopics contained in each solicitation.

(5) Number of copies of each SBIR solicitation distributed by the participating agency.

(6) Number of proposals received by the agency for each topic and subtopic in each SBIR solicitation.

(7) For both Phase I and Phase II, the SBIR awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify minority small business, women-owned small business and Phase II awardees with a follow-on funding commitment.

(8) A written justification for the award of any SBIR funding agreement exceeding $100,000 for Phase I or $750,000 for Phase II as stated in Section 15m(2) of this policy directive.

(9) The names and addresses of small business concerns for whom the Phase I process exceeded the 6-month period from the closing date of the SBIR solicitation to award of the funding agreement. (See 15a(1)(a) of this policy directive.)

(10) For an agency Phase III award using non-SBIR federal funds, to continue a Phase II project, the agency shall provide the name, address, project title and dollar amount obligated.

(11) Awards made under a topic or subtopic wherein only one proposal was received shall be reported and justified. Agencies to provide name, address, topic or subtopic and dollar amount of award. Information to be collected quarterly but updated in agencies' annual reports.

(12) An accounting of Phase I awards made to small business concerns that have received more than 15 Phase II awards from all agencies in the preceding five fiscal years. Agencies to report as a minimum—name of awarding agency, date of award, funding agreement number, topic or subtopic title, amount and date of Phase II funding and commercialization status for each Phase II award.

(13) Report the number of National Critical Technology topic or subtopic funding agreements, the percentage by number and dollar amount of total SBIR awards to such National Critical Technologies.

c. *Small Business Research and Research and Development Goaling Program (Non-SBIR Awards Over $10,000).*

(1) Agency previous fiscal year's total R/R&D budget authority.

(2) Agency previous fiscal year's total R/R&D obligated dollars to small business concerns, socially and economically disadvantaged small business concerns and women-owned small business concerns under funding agreements and the percentage to the agency's total R/R&D obligations.

(3) Agency current fiscal year total R/R&D budget.

(4) Agency current fiscal year total R/R&D small business goal based on the percentage of obligations to small business concerns made the previous fiscal year.

(5) Current fiscal year achievement of the singular small business R/R&D goal and the dollars obligated through prime funding agreements by categories of small business, i.e., socially and economically disadvantaged small business and women-owned small business.

d. *Agency Research and Research and Development Funding Agreements (SBIR and Goaling Program Awards Over $10,000).*

Report the total number and dollar value of R/R&D awards under subparagraph 16.b. and c. above made pursuant to the categories of contracts, cooperative agreements or grants. Identify SBIR awards of a participating agency, and compare the number and amount of such awards with awards to other then small business concerns.

e. Submit five copies of each report to the SBA Office of Innovation, Research and Technology, 409 Third Street, SW., Washington, DC 20416.

17. SBA Program to Monitor and Survey SBIR Activity

a. *Examples of SBIR Areas to be Monitored by SBA.* (1) *SBIR Funding Allocations.* Of major significance to the success of the SBIR Program is the magnitude and nature of the agencies' funding allocations identified for fiscal year SBIR applications. The SBIR legislation explicitly relates to both the definition of the SBIR effort, research or R&D (as defined in the Act and OMB Circular A–11), and the mathematical methodology for determining fiscal year participation levels for all work categorized within the statutory definitions. SBA will monitor these allocations.

(2) *SBIR Program Solicitation and Award Status.* The accomplishment of scheduled SBIR events, such as SBIR Program solicitation release and contract, grant, or cooperative agreement award, is critical to meeting statutory mandates and to operating an effective, useful program. SBA plans to monitor these and other operational features of SBIR Program implementation including the status of awards taking longer than the 6-month period set forth in 15a(1)(a) of this policy directive. Except in instances where SBA assistance is requested related to a specific SBIR project, contract, etc., SBA does not intend to monitor administration of the awards.

(3) *Follow-on Funding Commitments.* SBA may monitor whether follow-on non-federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Agency Rules and Regulations.* It is essential that no implementing regulation be promulgated by the participating agencies that is inconsistent with or contradicts either the letter or intent of the legislation and this directive. SBA's monitoring activity will include review of rules and regulations and procedures generated to facilitate intra-agency SBIR Program implementation.

18. SBIR Program Information System

SBA will prepare and distribute information materials (pamphlets, fact sheets and news release as appropriate) that describe the basic elements of the SBIR Program.

a. The legislative requirement for an SBA-maintained information system is not interpreted as prohibiting participating agencies from publicizing SBIR activities relating to individual agency programs to identify organizational structures actually responsible for carrying out SBIR operational functions.

(1) In view of certain joint SBA/agency activities required by the SBIR legislation, publication of information may often be most effectively accomplished in concert.

(2) The participating agencies are invited to advance suggestions to SBA concerning existing information systems that may be tailored to serve specific SBIR publication needs.

b. SBA identifies in its SBIR publications points of contact for obtaining SBIR-related information. All participating agencies will establish and maintain contact points to process inquiries related to specific agency SBIR activities.

c. In December of 1986, the SBA Office of Innovation, Research and Technology initiated a system of sharing SBIR Program and policy information known as SBIR Program Information Notices (SPIN). This system is not intended to replace the SBIR Program Policy Directive but rather to convey significant items of mutual interest as they occur. Amendments to the policy directive will be designated as such and may be by letter. These amendments will be incorporated directly into the policy directive at a later date.

19. Socially and Economically Disadvantaged Small Business Concerns and Women-Owned Small Business Concerns

To foster and encourage participation by socially and economically disadvantaged small business concerns in scientific and technological innovation, the legislation establishes as a purpose to improve the federal government's dissemination of information concerning the Small Business Innovation Research Program, particularly with regard to program participation by women-owned small business concerns and by socially and economically disadvantaged small business concerns.

a. To carry out this purpose of the statute, SBA and the federal participating agencies will make outreach efforts to find and place innovative women-owned small business concerns and socially and economically disadvantaged small business concerns in the SBIR Program information system.

b. The SBA will develop, participate in, and, when appropriate and feasible, sponsor seminars for innovative women-owned small business concerns and socially and economically disadvantaged small business concerns to inform them of the SBIR Program.

c. The SBA will inform women-owned small business concerns and socially and economically disadvantaged small business concerns of federal and commercial assistance and services available for SBIR Program participants.

d. While these small business concerns will be required to compete for SBIR awards on the same basis as all other small business concerns, participating agencies are encouraged to work independently and cooperatively with SBA to develop methods to encourage qualified women-owned small business concerns and socially and economically disadvantaged small business concerns to participate in their SBIR Programs.

20. Exemption for National Security or Intelligence Functions

a. The SBIR legislation provides for exemptions related to the simplified, standardized funding process "* * * if national security or intelligence functions clearly would be jeopardized." This "exemption" should not be interpreted as a blanket exemption or prohibition of SBIR participation concerning acquisition of effort related to these subjects and functions except as specifically defined under section 9(e)(2) of the Small Business Act of the SBIR public law. Agency technology managers in directing R/R&D projects under the SBIR Program, where the project subject matter may be particularly sensitive to national security must make a determination on which, if any, of the standardized proceedings clearly place national security and intelligence functions in jeopardy, then proceed with an acceptable modified process to complete the SBIR action.

b. It is anticipated that SBA's SBIR Program monitoring activities, except where prohibited by security considerations, shall include a review of nonconforming SBIR actions justified under this public law provision.

Appendix

Instructions for SBIR Program Solicitation Preparation

Section 9(j) of the Small Business Act (15 U.S.C. 638(j)) as amended by Pub. L. 102–564 requires "* * *simplified, standardized and timely SBIR solicitations" (section 9(j)(1)). Further, the Act requires the SBIR Programs of participating agencies to utilize a "uniform process" (section 9(e)(4)) and that the regulatory burden of participating in the SBIR Programs be minimized. Therefore, the following instructions purposely depart from normal government solicitation formats and requirements. SBIR solicitations will be prepared and issued as program solicitations in accordance with the following instructions.

Limitation in Size of Solicitation

In the interest to meeting the legislative requirement for simplified and standardized solicitations, the entire SBIR solicitation with the exception of Section VIII "Research Topics," described below, shall be limited to 23 pages. There is no page limit on Section VIII, "Research Topics."

Format

SBIR Program solicitations will be prepared in a simplified, standardized, easily read, easy to understand format including a cover sheet, a table of contents and the following sections in the order listed (content of each section is discussed below):

I. Program Description
II. Definitions
III. Proposal Preparation Instructions and Requirements
IV. Method of Selection and Evaluation Criteria
V. Considerations
VI. Submission of Proposals
VII. Scientific and Technical Information Sources
VIII. Research Topics
IX. Submission Forms and Certifications

Cover Sheet

The cover sheet or title page of an SBIR Program Solicitation shall clearly identify the solicitation as a Small Business Innovation Research (SBIR) Program Solicitation, identify the agency releasing the solicitation, specify date (or dates) on which proposals are due under the solicitation, and state the solicitation number.

Instructions for Preparation of SBIR Program Solicitation—Sections I Through IX

I. Program Description

A. Summarize in narrative form the invitation to submit proposals and the objectives of the SBIR Program.

B. Describe in narrative form the agency's SBIR Program including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.

C. Describe program eligibility, as follows:

Eligibility. Each concern submitting a proposal must qualify as a small business concern for research or R&D purposes at the time of award. In addition, the primary employment of the principal investigator must be with the small business concern at the time of award and during the conduct of the proposed research. Also, for both Phase I and Phase II, the research or R&D work must be performed in the United States.

D. List name, address and telephone number of agency contacts for general information on the SBIR Program solicitation.

II. Definitions

Whenever terms are used that are unique to either the SBIR Program, a specific SBIR solicitation or a portion of a solicitation, they will be defined in a separate section entitled "Definitions." As a minimum, the definitions of "small business concern," "socially and economically disadvantaged small business concern," "women-owned small business concern," and "subcontract" as stated in Paragraph 4 of this policy directive shall be included.

III. Proposal Preparation Instructions and Requirements

The purpose of this section is to inform the proposer on what to include in his or her proposal and to set forth limits on what may be included. It should also provide guidance to assist proposers in improving the quality and acceptance of proposals particularly to firms that may not have previous government experience.

A. *Limitations on Length of Proposal.* Include at least the following information:

1. SBIR Phase I proposals shall not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments. Pages should be of standard size (8½" X 11"; 21.6 cm X 27.9 cm) and should conform to the standard formatting instructions; in particular, 2.5 cm margins and type no smaller than 10 point font size.

2. A notice that no additional attachments, appendices or references beyond the 25-page limitation shall be considered in proposal evaluation and that proposals in excess of the 25-page limitation shall not be considered for review or award.

B. *Proposal Cover Sheet.* Every proposer will be required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

1. Agency and solicitation number.
2. Topic Number.
3. Subtopic Number.
4. Topic Area.
5. Project Title.
6. Name and Complete Address of Firm.
7. Small Business Certification as follows:

> "The above concern certifies it is a small business concern and meets the definition as stated in this solicitation."

8. Socially and Economically Disadvantaged Small Business Concern Certification as follows:

> "The above concern certifies that it ______ does ______ does not qualify as a socially and economically disadvantaged small business concern and meets the definition as stated in this solicitation."

9. Women-owned Small Business Concern Certification as follows:

"The above concern certifies that it ______ does ______ does not qualify as a women-owned business concern and meets the definition as stated in this solicitation."

10. A disclosure permission statement such as follows may be included at the discretion of the funding agency:

> "Will you permit the government to disclose the title and technical abstract page of your proposed project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information?" Yes____No____

11. Signature of a company official of the proposing small business concern and that individual's typed name, title, address, telephone number, and date of signature.

12. Signature of Principal Investigator or Project Manager within the proposing small business concern and that individual's typed name, title, address, telephone number, and date of signature.

13. Legend for proprietary information as described in the "Considerations" section of this program solicitation if appropriate.

C. *Abstract or Summary.* Proposers will be required to include a one-page project summary of the proposed research or R&D including at least the following:

1. Name and address of small business concern.
2. Name and title of principal investigator or project manager.
3. Agency name, solicitation number, solicitation topic and subtopic.
4. Title of project.
5. Technical abstract, limited to two hundred words.
6. Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

D. *Technical Content.* SBIR Program solicitations shall require as a minimum the following to be included in proposals submitted thereunder:

1. *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

2. *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the proposed approach.

3. *Phase I Work Plan.* A detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in D.2. above. The methods planned to achieve each objective or task should be discussed in detail.

4. *Related Research or R&D.* Describe significant research or R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing small business concern. Describe how it relates to the proposed effort, and any planned coordination with outside sources. The proposer must persuade reviewers of his or her awareness of key recent research or R&D conducted by others in the specific topic area.

5. *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

6. *Relationship with Future Research or Research and Development.*

a. State the anticipated results of the proposed approach if the project is successful (Phase I and II).

b. Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

7. *Facilities.* A detailed description, availability and location of instrumentation and physical facilities proposed for Phase I should be provided.

8. *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted.

a. If such involvement is intended, it should be described in detail.

9. *Potential Post Applications.* Briefly describe:

a. Whether and by what means the proposed project appears to have potential commercial application.

b. Whether and by what means the proposed project appears to have potential use by the federal government.

10. *Similar Proposals or Awards.* A firm may elect to submit proposals for essentially equivalent work under other federal program solicitations, or may have received other federal awards for essentially equivalent work. In these cases, a statement must be included in each such proposal indicating:

a. The name and address of the agencies to which proposals were submitted or from which awards were received.

b. Date of proposal submission or date of award.

c. Title, number, and date of solicitations under which proposals were submitted or awards received.

d. The specific applicable research topics for each proposal submitted or award received.

e. Titles of research projects.

f. Name and title of project manager or principal investigator for each proposal submitted or award received.

11. *Prior SBIR Phase II Awards.* If the small business concern has received more than 15 Phase II awards in the prior 5 fiscal years, submit name of awarding agency, date of award, funding agreement number, amount, topic or subtopic title, follow-on agreement amount, source and date of commitment and current commercialization status for each Phase II. (This required proposal information shall not be counted toward proposal pages count limitation.)

E. *Cost Breakdown/Proposed Budget.* The solicitation will require the submission of simplified cost or budget data.

IV. Method of Selection and Evaluation Criteria

A. *Standard Statement.* Essentially the following statement shall be included in all SBIR Program solicitations:

All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or non of the proposed approaches to the same topic or subtopic.

B. *Evaluation Criteria.*

1. The agency in its evaluation process shall develop a standardized method that will consider as a minimum the following factors:

a. The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

b. The adequacy of the proposed effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

c. The soundness and technical merit of the proposed approach and its incremental progress toward topic or subtopic solution.

d. Qualifications of the proposed principal/key investigators supporting staff and consultants.

e. In Phase II, evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(1) The small business concern's record of commercializing SBIR or other research,

(2) The existence of second phase funding commitments from private sector or non-SBIR funding sources,

(3) The existence of third phase follow-on commitments for the subject of the research, and

(4) The presence of other indicators of commercial potential of the idea.

Phase II proposals may only be submitted by Phase I award winners within the same agency.

2. The factors in subparagraph B.1. and other appropriate evaluation criteria, if any, shall be specified in the "Method of Selection" section of SBIR Program solicitations.

C. *Peer Review.* If it is contemplated that as a part of SBIR proposal evaluation external peer review will be used, the program solicitation must so indicate.

D. *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the proposer's proposal may be provided to the proposer. The identity of the reviewer shall not be disclosed.

V. Considerations

This section shall include, as a minimum, the following information:

A. *Awards.* Indicate the estimated number and type of awards anticipated under the particular SBIR Program solicitation in question including:

1. Approximate number of Phase I awards expected to be made.

2. Type of funding agreement, i.e., contract, grant or cooperative agreement.

3. Whether fee or profit will be allowed.

4. Cost basis of funding agreement, e.g., grant, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

5. Information on the approximate average dollar value of awards for Phase I and Phase II.

B. *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

C. *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

D. *Innovations, Inventions and Patents.*

1. *Limited Rights Information and Data.*

a. *Propietary Information.* Essentially the following statement shall be included in all SBIR solicitations:

Information contained in unsuccessful proposals will remain the property of the proposer. The government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements.

If proprietary information is provided by a proposer in a proposal which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law, provided this information is clearly marked by the proposer with the term "confidential proprietary information" and provided the following legend appears on the title page of the proposal.

> "For any purpose other than to evaluate the proposal, this data shall not be disclosed outside the government and shall not be duplicated, used, or disclosed in whole or in part, provided that if a funding agreement is awarded to this proposer as a result of or in connection with the submission of this data, the government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement. This restriction does not limit the government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages ______ of this proposal."

Any other legend may be unacceptable to the government and may constitute grounds for removing the proposal from further consideration and without assuming any liability for inadvertent disclosure. The government will limit dissemination of such information to within official channels.

b. *Alternative To Minimize Proprietary Information.* Agencies may elect to instruct proposers to:

(1) Limit proprietary information to only that absolutely essential to their proposal.

(2) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

c. *Rights in Data Developed Under SBIR Funding Agreements.* To notify the small business concern of the policy stated in Para. 15.f. of this policy directive, essentially the following statement will be included in all SBIR Program solicitations:

> "These SBIR data are furnished with SBIR rights under Contract No. ______ (and subcontract ______ if appropriate). For a period of 4 years after acceptance of all items to be delivered under this contract, the government agrees to use these data for government purposes only, and they shall not be disclosed outside the government

> (including disclosure for procurement purposes) during such period without permission of the contractor, except that, subject to the foregoing use and disclosure prohibitions, such data may be disclosed for use by support contractors. After the aforesaid 4-year period the government has a royalty-fee license to use, and to authorize others to use on its behalf, these data for government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This Notice shall be affixed to any reproductions of these data, in whole or in part."

d. *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example:

> "With prior written permission of the contracting officer, the awarded normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receive a royalty-free license for the federal government and requires that each publication contain an appropriate acknowledgement and disclaimer statement."

e. *Patents.* Include an appropriate statement concerning patents; for example:

> "Small business concerns normally may retain the principal worldwide patent rights to any invention developed with government support. The government receives a royalty-free license for federal government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the government will not make public any information disclosing a government-supported invention for a four year period to allow the awarded a reasonable time to pursue a patent."

E. *Cost-Sharing.* Unless in conflict with another statute, include a statement essentially as follows:

> "Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal."

Where cost-sharing is required by statute, include an appropriate statement.

F. *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the SBIR Program solicitation.

G. *Joint Ventures or Limited Partnerships.* Include essentially the following language:

> "Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business as defined in this program solicitation."

H. *Research and Analytical Work.* Include essentially the following statement:

> 1. "For Phase I a minimum of two-thirds of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer.
>
> 2. For Phase II a minimum of one-half of the research and/or analytical effort must be performed by the proposing small business concern unless otherwise approved in writing by the funding agreement officer."

I. *Contractor Commitments.* To meet the legislative requirement that SBIR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in SBIR funding agreements shall not be included in full or by reference in SBIR Program solicitations. Rather, proposers shall be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from SBIR Program solicitations. Essentially, the following statement shall be included in the "Consideration" section of SBIR Program solicitations:

> "Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list should not be understood to represent a complete list of clauses to be included in Phase I funding agreement, or to be specific wording of such clauses. Copies of complete terms and conditions are available upon request."

J. *Summary Statements.* The following are illustrative of the type of summary statements to be included immediately following the statement in the subparagraph I. These statements are examples only and may vary depending upon type of funding agreement.

1. *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

2. *Inspection.* Work performed under the funding agreement is subject to government inspection and evaluation at all times.

3. *Examination of Records.* The Comptroller General (or a duly authorized representative) shall have the right to examine any directly pertinent records of the awardee involving transactions related to this funding agreement.

4. *Default.* The government may terminate the funding agreement if the contractor fails to perform the work contracted.

5. *Termination for Convenience.* The funding agreement may be terminated at any time by the government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

6. *Disputes.* Any dispute concerning the funding agreement which cannot be resolved by agreement shall be decided by the contracting officer with right of appeal.

7. *Contract Work Hours.* The awardee may not require an employee to work more than eight hours a day or forty hours a week unless the employee is compensated accordingly (e.g., overtime pay).

8. *Equal Opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

9. *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or application for employment because he or she is a disabled veteran or veteran of the Vietnam era.

10. *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

11. *Officials Not To Benefit.* No government official shall benefit personally from the SBIR funding agreement.

12. *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bonafide employees or commercial agencies maintained by the awardee for the purpose of securing business.

13. *Gratuities.* The funding agreement may be terminated by the government if any gratuities have been offered to any representative of the government to secure the contract.

14. *Patent Infringement.* The awardee shall report each notice or claim of patent infringement based on the performance of the funding agreement.

15. *American Made Equipment and Products.* When purchasing equipment or a product under the SBIR funding agreement, purchase only American-made items whenever possible.

K. *Additional Information.* Information pertinent to an understanding of the administration requirements of SBIR proposals and funding agreements not included elsewhere shall be included in this section. As a minimum, statements essentially as follows shall be included under "Additional Information" in SBIR Program solicitations:

1. This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting SBIR funding agreement, the terms of the funding agreement are controlling.

2. Before award of an SBIR funding agreement, the government may request the proposer to submit certain organizational, management, personnel, and financial information to assure responsibility of the proposer.

3. The government is not responsible for any monies expended by the proposer before award of any funding agreement.

4. This program solicitation is not an offer by the government and does not obligate the government to make any specific number of awards. Also, awards under the SBIR Program are contingent upon the availability of funds.

5. The SBIR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals shall not be accepted under the SBIR Program in either Phase I or Phase II.

6. If an award is made pursuant to a proposal submitted under this SBIR Program solicitation, the contractor or grantee or party to a cooperative agreement will be required to certify that he or she has not previously been, nor is currently being, paid for essentially equivalent work by any agency of the federal government.

VI. Submission of Proposals

A. This section shall clearly specify the closing date on which all proposals are due to be received.

B. This section shall specify the number of copies of the proposal that are to be submitted.

C. This section shall clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

D. This section may include other instructions such as the following:

1. *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

2. *Packaging.* All copies of a proposal should be sent in the same package.

VII. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled "Scientific and Technical Information Sources."

VIII. Research Topics

Describe the research or R&D topics and subtopics for which proposals are being solicited sufficiently to inform the proposer of technical details of what is desired while leaving sufficient flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the SBIR Programs.

IX. Submission Forms and Certifications

Up to three copies each of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

This section may also include certifying forms required by legislation, regulation or standard operating procedures, to be submitted by the proposer to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

[FR Doc. 93–1761 Filed 1–25–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 15, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48600
Date filed: January 13, 1993
Parties: Members of the International Air Transport Association
Subject: Telex Comp Mail Vote 610 Charge for PTA Services—Minimum Charge for Iceland
Proposed Effective Date: April 1, 1993

Docket Number: 48601
Date filed: January 13, 1993
Parties: Members of the International Air Transport Association
Subject: Telex Comp Mail Vote 611 Passenger Fares from Cuba
Proposed Effective Date: February 1, 1993

Docket Number: 48604
Date filed: January 15, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Mail Vote 612 Iceland-Jordan fares
Proposed Effective Date: February 1, 1993

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 93–1771 Filed 1–25–93; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Allegheny County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project affecting parts of Allegheny County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411. Henry Nutbrown, P.E., District Engineer, Pennsylvania Department of Transportation, Four Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–4500, James B. Wilson, P.E., Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 8531, Harrisburg, Pennsylvania 17105, Telephone (717) 939–9551.

SUPPLEMENTARY INFORMATION: A previous Notice of Intent for this project identified southern terminus for this section as Interstate 70 and the northern terminus as Interstate 376 in Pittsburgh (April 1989). The studies to date for this project have identified different needs for four sections of the proposed Mon-Fayette transportation project from I–68 in West Virginia to Interstate 376 in Pittsburgh. These studies include the proposed evaluation of a Southern Beltway (which will be advertised in a pending notice of intent) which will intersect the Mon-Fayette corridor in the vicinity of Jefferson, and a wider range of transportation options. As a result of this redefinition, the study limits have been modified. The project termini for the section described in this Notice of Intent are PA Route 51 to Interstate 376 in Pittsburgh. The FHWA, in cooperation with the Pennsylvania Turnpike Commission (PTC) and the Pennsylvania Department of Transportation (PennDOT), will prepare an environmental impact statement (EIS) for transportation improvement alternatives between the above noted termini. The approximate length of the study area is 10 miles.

Alternatives under consideration include: (1) Taking no action; (2) transportation system management including high occupancy vehicle alternatives; (3) improvements to existing roadways; (4) mass transit options with intermodal transfer points; (5) new highway facility options. This highway may be constructed as a toll facility. Incorporated into and studied with the various build alterantives will be combination of alternatives and design variations.

The following environmental areas will be investigated for EIS preparation; traffic; air quality; noise and vibration; surface water resources; aquatic environments; floodplains, groundwater; soils and geology; wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities; historic structures and archeological sites; section 4(f) evaluation; and wild and scenic rivers.

Public meetings will be held in the area. Public notices of the time and place of these meetings and any required public hearings will be given in a timely fashion. Public involvement and interagency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 93–1702 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Allegheny and Washington Counties, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Revised Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project affecting parts of Allegheny and Washington Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411. Henry Nutbrown, P.E., District Engineer, Pennsylvania Department of Transportation, Four Parkway Center, 875 Greentree Road, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–4500, William L. Beaumariage, P.E., District Engineer, Pennsylvania Department of Transportation, P.O. Box 459, North Gallatin Avenue Extension, Uniontown, Pennsylvania 15401, Telephone: (412) 439–7259, James B. Wilson, P.E., Chief Engineer, Pennsylvania Turnpike Commission, P.O. Box 8531, Harrisburg, Pennsylvania 17105, Telephone (717) 939–9551.

SUPPLEMENTARY INFORMATION: A previous Notices of Intent for this project identified southern terminus for this section as Interstate 70 and the northern terminus as Interstate 376 in Pittsburgh (April 1989). The studies to date for this project have identified different needs for four sections of the proposed Mon-Fayette transportation project from I–68 in West Virginia to Interstate 376 in Pittsburgh. These studies include the proposed evaluation of a Southern Beltway (which will be advertised in a pending notice of intent) which will intersect the Mon-Fayette corridor in the vicinity of Jefferson, and a wider range of transportation options. As a result of this redefinition, the study limits have been modified. The project termini for the section described in this Notice of Intent are Interstate 70 to PA Route 51 in Washington and Allegheny Counties. The FHWA, in cooperation with the Pennsylvania Turnpike Commission (PTC) and the Pennsylvania Department of Transportation (PennDOT), will prepare an environmental impact statement (EIS) for transportation improvement alternatives between the above noted termini. The approximate length of the study area is 25 miles.

Alternatives under consideration include: (1) Taking no action; (2) transportation system management; (3) upgrading the existing SR 837 and/or other existing routes; (4) constructing a multi-lane, controlled access highway on a new location. This highway may be constructed as a toll facility. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

The following environmental areas will be investigated for EIS preparation; traffic; air quality; noise and vibration; surface water resources; aquatic environments; floodplains, groundwater; soils and geology; wetlands; vegetation and wildlife; biodiversity; terrestrial ecosystems; endangered species; agricultural lands assessment; visual; socioeconomic and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities; historic structures and archeological sites; section 4(f) evaluation; and wild and scenic rivers.

Public meetings will be held in the area. Public notices of the time and place of these meetings and any required public hearings will be given in a timely fashion. Public involvement and interagency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 93–1936 Filed 1–25–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 67 (Rev. 21)]

Delegation of Authority

AGENCY: Internal Revenue Service.

ACTION: Delegation of Authority.

SUMMARY: The authority to sign on behalf of the Commissioner, Internal Revenue Service, is given to Michael P. Dolan, Acting Commissioner, Internal Revenue Service.

EFFECTIVE DATE: January 20, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen E. Ebner, Acting Chief, Directives Management Section, PR:P:D, room 3139, 1111 Constitution Avenue, NW, Washington, DC. 20224, telephone (202) 622–6890 (not a toll-free call).

Order No. 87 (Rev. 21)

Effective date: January 20, 1993.

Signing the Commissioner's Name or on His Behalf

Effective 12:01 am., January 20, 1993, all outstanding authorizations to sign the name of, or on behalf of Shirley D. Peterson, Commissioner of Internal Revenue, are hereby amended to authorize the signing of the name of, or on behalf of, Michael P. Dolan, Acting Commissioner of Internal Revenue.

Delegation Order No. 87 (Rev. 20), effective February 3, 1992, is superseded.

Dated: January 15, 1993.

Shirley D. Peterson,

Commissioner.

[FR Doc. 93–1748 Filed 1–25–93; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted OMB for expedited review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; (7) an estimated number of respondents; and (8) a copy of the proposed form. It is important to note that the proposed form has not yet been approved by OMB.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 15, 1993.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

New Collection

1. Study of Vocational Flight Training, VA Form 22–0197
2. The purpose of this survey is to collect data required to prepare a legislatively mandated report to Congress evaluating VA's Vocational Flight Training Program
3. Individuals or households
4. 272 hours
5. 20 minutes
6. On occasion
7. 817 respondents
8. Copy of proposed VA Form 22–0197, Vocational Flight Training Survey, as of January 12, 1993.

BILLING CODE 8320-01-M

OMB Approved No. 2900-[illegible]
Respondent Burden: 30 minutes

Department of Veterans Affairs

VOCATIONAL FLIGHT TRAINING SURVEY

General Instructions:
Please complete all applicable questions on this form. When selecting responses, please check the response that most closely applies to your experience. Space is provided at the end of this questionnaire for any additional comments you may have about the survey or VA's flight training programs.

1. During your military service, did you work on any assignments related to aviation? (Check one)

☐ Yes ☐ No

IF YES...

1a. What was your assignment(s)? (Check all that apply)

☐ Pilot
☐ Navigator
☐ Copilot
☐ Crew Member
☐ Flight Instructor
☐ Mechanic/maintenance
☐ Other ____________

1b. What type(s) of aircraft were you trained on while in the service? (Check all that apply)

☐ Single Engine Land
☐ Single Engine Sea
☐ Multi Engine Land
☐ Multi Engine Sea
☐ Helicopter
☐ Turboprop
☐ Jet
☐ Other ____________

1c. What was your FAA equivalent certification(s) when you left the service? (Check all that apply)

☐ Private Pilot
☐ Commercial Pilot
☐ Airline Transport Pilot
☐ Multi Engine
☐ Turboprop - Type
☐ Jet - Type
☐ Flight Instructor
☐ Flight Instructor, Multi Engine
☐ Flight Instructor, Instrument
☐ Flight Instructor, Helicopter
☐ Other ____________

2. What was your primary objective in using your VA flight training benefits? (Check one)

☐ Obtain a job as a commercial pilot
☐ Obtain a job as a flight instructor
☐ Obtain a job as an aircraft mechanic
☐ Obtain commercial certification to assist in a job outside of the field of aviation
☐ Enhance flying skills
☐ Recreational flying
☐ Convert flying skills (e.g. from helicopter to fixed wing)
☐ Other ____________

3. Which certification(s) did you obtain while receiving VA flight training benefits? (Check all that apply)

☐ Commercial Pilot
☐ Airline Transport Pilot
☐ Multi Engine
☐ Turboprop - Type
☐ Jet - Type
☐ Flight Instructor
☐ Flight Instructor, Multi Engine
☐ Flight Instructor, Instrument
☐ Flight Instructor, Helicopter
☐ Other ____________

Proposed as of January 12, 1993

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Department of Veterans Affairs

Proposed as of January 12, 1993

4. Have you received VA flight training benefits for any course in which you did not receive a certification? (Check one)

☐ Yes ☐ No

IF YES...

4a. Which courses? (Check all that apply)

☐ Commercial Pilot
☐ Airline Transport Pilot
☐ Multi Engine
☐ Turboprop - Type
☐ Jet - Type
☐ Flight Instructor
☐ Flight Instructor, Multi Engine
☐ Flight Instructor, Instrument
☐ Flight Instructor, Helicopter
☐ Other ____________

4b. Why did you not receive a certification? (Check all that apply)

☐ Training in progress
☐ VA benefits were exhausted
☐ Insufficient funds for copayment
☐ Terminated training due to change in career plans
☐ Other ____________

5 Approximately how much of your total flight training costs were not covered by your VA flight training benefits? (Check one)

☐ Under $1,000
☐ $1,000 - $2,499
☐ $2,500 - $4,999
☐ $5,000 - $9,999
☐ $10,000 - $15,000
☐ Over $15,000

6. Have you exhausted your VA flight training benefits to date? (Check one)

☐ Yes ☐ No

IF YES...

6a. After you exhausted your VA flight training benefits, did you receive certification in any additional flight courses? (Check one)

☐ Yes ☐ No

IF YES...

- In which courses? (Check all that apply)

☐ Commercial Pilot
☐ Airline Transport Pilot
☐ Multi Engine
☐ Turboprop - Type
☐ Jet - Type
☐ Flight Instructor
☐ Flight Instructor, Multi Engine
☐ Flight Instructor, Instrument
☐ Flight Instructor, Helicopter
☐ Other ____________

VA FORM
JANUARY 1993 22-0197

Department of Veterans Affairs

7. Are you currently employed in the field of aviation? (Check one)

☐ Yes ☐ No

IF YES...

7a. Which category best describes your employment status? (Check one)

☐ Full-time ☐ Part-time

7b. What is your current job title? (Please specify)

____

7c. Did your flight training assist you in obtaining this job? (Check one)

☐ Yes ☐ No

7d. How long did it take you to obtain this job after completing your VA flight training? (Check one)

☐ Under 1 month
☐ 1 - 6 months
☐ 7 - 12 months
☐ Over 12 months
☐ Not applicable, had job prior to taking VA flight training

IF NO...

7e. Which category best describes your employment status? (Check one)

☐ Full-time
☐ Part-time
☐ Retired
☐ Unemployed
☐ Full-time student

7f. Which of the following reasons best describes why you are not currently working in the field of aviation? (Check one)

☐ Laid-off from aviation job
☐ Actively seeking, but have not yet obtained a job
☐ Never intended to work in the field
☐ Training still in progress
☐ Do not have proper qualifications
☐ Other ________________

7g. Do you have the opportunity to use the skills acquired through your VA flight training? (Check one)

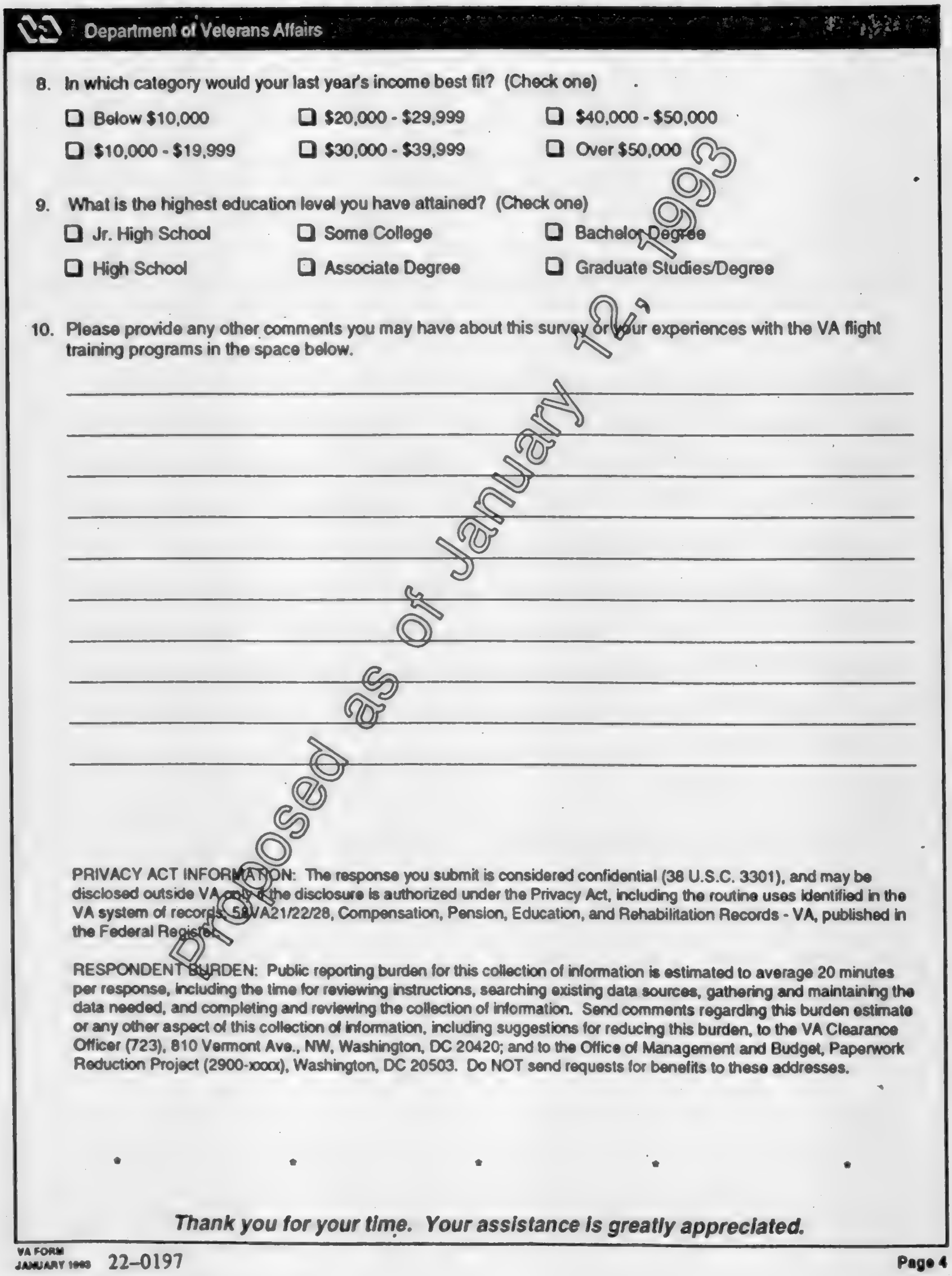
☐ Yes ☐ No

IF YES...

- In what capacity do you use these skills? (Please specify)

____

Proposed as of January 12, 1993



Department of Veterans Affairs

8. In which category would your last year's income best fit? (Check one)

☐ Below $10,000
☐ $10,000 - $19,999
☐ $20,000 - $29,999
☐ $30,000 - $39,999
☐ $40,000 - $50,000
☐ Over $50,000

9. What is the highest education level you have attained? (Check one)

☐ Jr. High School
☐ High School
☐ Some College
☐ Associate Degree
☐ Bachelor Degree
☐ Graduate Studies/Degree

10. Please provide any other comments you may have about this survey or your experiences with the VA flight training programs in the space below.

Proposed as of January 12, 1993

PRIVACY ACT INFORMATION: The response you submit is considered confidential (38 U.S.C. 3301), and may be disclosed outside VA only if the disclosure is authorized under the Privacy Act, including the routine uses identified in the VA system of records, 58VA21/22/28, Compensation, Pension, Education, and Rehabilitation Records - VA, published in the Federal Register.

RESPONDENT BURDEN: Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the VA Clearance Officer (723), 810 Vermont Ave., NW, Washington, DC 20420; and to the Office of Management and Budget, Paperwork Reduction Project (2900-xxxx), Washington, DC 20503. Do NOT send requests for benefits to these addresses.

Thank you for your time. Your assistance is greatly appreciated.

VA FORM
JANUARY 1993 22-0197

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[FR Doc. 93-1865 Filed 1-25-93; 8:45 am]

BILLING CODE 8320-01-C

Sunshine Act Meetings

Federal Register
Vol. 58, No. 15
Tuesday, January 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF JUSTICE

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 5–93

Notice of Meetings

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Wed., February 3, 1993 at 10:30 a.m.—Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC, on January 22, 1993.

Judith H. Lock,

Administrative Officer.

[FR Doc. 93–1991 Filed 1–22–93; 3:24 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Tuesday, January 26, 1993, 9:30 a.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matters will be considered during the closed portion of the Commission's Business Meeting:

(1) Appeals to the Commission involving nine cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

(2) Review of internal management team report with respect to the Commission's internal organization, personnel and policy practices.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: January 14, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–2017 Filed 1–22–93; 3:26 pm]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant to the Government in the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 1:00 p.m., Tuesday, January 26, 1993.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Case Operations, Program Coordinator, and Administrative Sections.
3. Discussion of Modification of Supervised Release Conditions For Treaty Prisoners.
4. Adoption of Modified Search and Seizure Guidelines.
5. Discussion of Adverse Witnesses in Federal and State Custody.
6. Discussion of Commission Policy With Respect To Using An Offender's Own Admission to Criminal Conduct.
7. Discussion of Modification of 28 C.F.R. 2.47, Warrant Placed As A Detainer And Dispositional Review.
8. Habitual Offender Task Force Report.
9. Enhanced Supervision Task Force Report.
10. Discussion of Management Control and Quality Assurance Review.
11. Discussion of Audio And Video Tape Submissions At Hearings.
12. Discussion of Increasing Case Processing Efficiency.
13. Discussion of Processing Institutional Revocation Hearings that have been Transferred From the Originating Region.
14. Discussion of the Commission's Policy With Regard To Parolees Working in the Legal Business.
15. Presentation regarding the Bureau of Prison's Victim/Witness Program.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: January 22, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–2018 Filed 1–22–93; 3:26 pm]

BILLING CODE 4410-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, February 2, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5776A—Aviation Accident Report: Scenic Air Tours Flight 22, Beech E18S, Maui, Hawaii, April 22, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: January 22, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–1992 Filed 1–22–93; 3:25 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 25, February 1, 8, and 15, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO CONSIDERED:

Week of January 25

Friday, January 29

10:00 a.m.

Briefing on Implementing Guidance for the Maintenance Rule and Industry Verification and Validation Effort (Public Meeting)

(Contact: William Russell, 301–504–1274)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Briefing by Agreement States on Their Activities in Medical Use Area (Public Meeting)

(Contact: Carlton Kammerer, 301–504–2321)

Week of February 1—Tentative

Wednesday, February 3

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Monday, February 8

10:00 a.m.

Briefing by IIT on Loss of Iridium–192 Source and Therapy Misadministration at Indiana Regional Cancer Center, Indiana, PA., November 16, 1992 (Public Meeting)

(Contact: Carl Paperiello, 708–790–5517)

2:00 p.m.

Periodic Briefing on EEO Program (Public Meeting)

(Contact: Jim McDermott, 301–492–4661)

Tuesday, February 9

2:30 p.m.

Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

(Contact: William Bateman, 301–504–1711)

4:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 15—Tentative

Friday, February 19

10:00 a.m.

Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)

(Contact: John Glenn, 301–504–3415)

2:00 p.m.

Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51 (Public Meeting)

(Contact: Donald Cleary, 301–492–3936)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 21, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–2020 Filed 1–22–93; 3:27 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 24, 1993.

A closed meeting will be held on Monday, January 25, 1993, at 2:30. p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Monday, January 25, 1993, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Litigation matter.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272–2300.

Dated: January 21, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2024 Filed 1–22–93; 3:59 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 15
Tuesday, January 26, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES93–17–000, et al.]

Electric Rate, Small Power Production, and Interlocking Directorate Filings; Glen Park Associates Limited Partnership, et al.

Correction

In notice document 93–700 beginning on page 4157 in the issue of Wednesday, January 13, 1993, make the following corrections:

1. On page 4157, in the third column, under the heading **2. Consolidated Edison Company of New York, Inc.**, the Docket No. should read "ER93–305–000".

2. On page 4159, in the second column, under the heading **15. Midwest Power Systems Inc.**, the Docket No. should read "ES93–10–003".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP93–129–000, et al.]

Texas Eastern Transmission Corp. et al.; Natural Gas Certificate Filings

Correction

In notice document 93–703 beginning on page 4160 in the issue of Wednesday, January 13, 1993, make the following correction: On page 4161, in the first column, under the heading **2. Southern Natural Gas Co.**, the Docket No. should read "CP93–134–000".

BILLING CODE 1505–01–D

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 93–01]

Electronic Filing of Military Rates

Correction

In proposed rule document 93–695 beginning on page 4137 in the issue of Wednesday, January 13, 1993, make the following correction: On page 4138, in the first column, in the fourth full paragraph, in the fifth line, "staff" should read "tariff".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 316

[Docket No. 85N–0483]

RIN 0905–AB55

Orphan Drug Regulations

Correction

In rule document 92–31192 beginning on page 62076 in the issue of Tuesday, December 29, 1992, make the following corrections:

§ 316.10 [Corrected]

1. On page 62087, in § 316.10(b)(10), in the seventh line, "lift-threatening" should read "life-threatening".

§ 316.27 [Corrected]

2. On page 62090, in § 316.27(a)(2)(ii), in the second line, "compete" should read "complete".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Correction

In notice document 93–616 appearing on page 3963 in the issue of Tuesday, January 12, 1993, in the second column, in the third full paragraph, in the sixth line, "Assistant" should read "Associate".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–03–4210–04; IDI–27201]

Notice of Exchange and Order Providing for Opening of Public Lands; Idaho

Correction

In notice document 92–31358 beginning on page 61603 in the issue of Monday, December 28, 1992, make the following corrections:

1. On page 61603, in the third column, land descriptions T. 16 N., R. 5 W. and T 16 N., R. 6 W. should be moved to the second column before land description T. 17 N., R. 4 W.

2. On the same page, in the third column, under land description T. 13 N., R. 5 W., in the second line, "Sec. 3, SE¼NW¼ and W½SE¼;" should read "Sec. 3, SE¼NE¼ and E½SE¼;".

BILLING CODE 1505–01–D

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federal register

Tuesday
January 26, 1993

Part II

Department of Transportation

Research and Special Programs Administration

Notice of Application for a Preemption Determination as to Hazardous Materials Marking Requirements Imposed by Michigan

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-8(R); Notice No. 93-4]

Chemical Waste Transportation Institute; Application for a Preemption Determination as to Hazardous Materials Marking Requirements Imposed by the Michigan Department of Natural Resources

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation.

ACTION: Public notice and invitation to comment.

SUMMARY: The Chemical Waste Transportation Institute (CWTI) has applied for an administrative determination as to whether the hazardous materials marking requirements imposed by the Michigan Department of Natural Resources on vehicles used to transport hazardous waste are preempted by the Hazardous Materials Transportation Act (HMTA).

DATES: Comments received on or before March 31, 1993, and rebuttal comments received on or before June 4, 1993, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, 400 Seventh Street, SW., Washington, DC 20590-0001 (Tel. No. (202) 366-4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA-8(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to: (a) Mr. Stephen Hansen, Chairman, Chemical Waste Transportation Institute, 1730 Rhode Island Avenue, NW., suite 1000, Washington, DC 20036; and (b) Mr. James Sygo, Chief, Waste Management Division, Michigan Department of Natural Resources, P.O. Box 30241, Lansing, MI 48933. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Hansen and Sygo at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: James E. Messon, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001 (Tel. No. (202) 366-4400).

I. CWTI's Application for a Preemption Determination

With its January 4, 1993 letter, CWTI applied for a determination that Michigan's hazardous materials marking laws and regulations for vehicles used to transport hazardous waste are preempted by the HMTA. The text of CWTI's application follows (the appendices to CWTI's application are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit at the address and telephone number set forth in "**ADDRESSES**" above).

Application of the Chemical Waste Transportation Institute To Initiate a Proceeding To Determine That the Various Hazardous Materials Marking Requirements Imposed by the Michigan Department of Natural Resources on Vehicles Used To Transport Hazardous Waste Are Preempted by the Hazardous Materials Transportation Act

Interest of the Petitioner

The Chemical Waste Transportation Institute (CWTI) is part of the National Solid Wastes Management Association, a not-for-profit association that represents approximately 2,000 waste services companies throughout the United States and Canada. Members of the Institute are commercial firms specializing in the transportation of hazardous waste, by truck and rail, from its point of generation to its management destination. Our members are both private and for hire carriers that operate in interstate and intrastate commerce, including points to and from and through Michigan. To the extent that member companies are motor carriers and operate in Michigan, these members must mark the portion of each motor vehicle that will be used to transport hazardous waste in contravention of the Hazardous Materials, Transportation Act (HMTA) and the Hazardous Materials Regulations (HMRs).

Background

Prior to the 1975 enactment of the HMTA, legislation was enacted in Michigan—Act 136—to regulate the management of "liquid industrial waste."[1] In 1979, Michigan enacted its version of legislation—Act 64)—intended to implement the hazardous waste aspects of the 1976 amendments to the federal Solid Waste Disposal Act or the so-called Resource Conservation and Recovery Act (RCRA).[2] While neither the definition of "liquid industrial waste" from Act 136 nor the definition of "hazardous waste" pursuant to RCRA or "hazardous materials" pursuant to the HMTA, most of the materials regulated by these state statutes are regulated at the federal level in transportation under the HMTA, though not all may be RCRA-regulated hazardous wastes—for example waste combustible liquids with flash points above 140 °F.[3]

Part of the regulatory scheme set forth in both Act 136 and Act 64 are requirements to "license" vehicles used to transport either "liquid industrial waste" or "hazardous waste." Act 136 specifically requires that "there shall be painted on both sides of the vehicle in letters not less than 2 inches high the words 'licensed industrial waste hauling vehicle' * * *."[4] In setting forth the requirements applicable to vehicles licensed under Act 64, regulations of the Michigan Department of Natural Resources (DNR) require that the words "Hazardous Waste-Hauling Vehicle" be placed on the "waste-hauling portion of the vehicle in letters not less than 5 centimeters high."[5] Again, the lettering is permanent and must be placed on each side of the vehicle.[6]

Basis for the Application

The DNR marking requirements described above cannot be reconciled with the authority of the HMTA to find preempted non-federal requirements that are not "substantively the same as" federal requirements in certain covered subject areas including the "marking" of hazardous materials.[7] When the 101st Congress was contemplating amendments to the scope of the preemptive authority under the HMTA, DOT urged that there should be "federal primacy in certain critical areas of hazardous materials transportation regulation * * * (and that) non-federal entities would be prohibited from enacting their own laws or regulations with respect to specifically enumerated subjects unless their requirements are identical to the Federal requirements. Taken together (these) proposals * * * are intended to greatly reduce the potential for a multiplicity of conflicting State and local requirements, with the result being an enhancement of national uniformity."[8] In draft legislation submitted to Congress by DOT, "marking" of hazardous materials was identified as one of the "critical areas of hazardous materials transportation regulation." Congress concurred with the Department's view. The 1990 amendments to the HMTA provide express authority for DOT to preempt non-federal hazardous materials marking requirements unless the non-federal requirements are "substantively the same as" the federal requirements.[9]

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[1] See Michigan Public Acts of 1969.

[2] See P.L. 94-580.

[3] See Michigan Act 136, Section 1(b) for a definition of "liquid industrial waste" (copy attached); Michigan Act 64, Section 4(3) for a definition of "hazardous waste" (copy attached); P.L. 93-633, Section 103(2) for a definition of "hazardous material"; P.L. 94-580, Section 1004(5) for a definition of "hazardous waste"; and P.L. 99-499, Section 306(a), referencing Section 101(14) for DOT authority to regulate RCRA-regulated hazardous wastes as hazardous materials in transportation. Also see, 49 CFR 171.8 definition of hazardous material as amended by 57 FR 52935 (Nov. 5, 1992) and 49 CFR 171.3(a).

[4] See attached Act 136, Section 7(l).

[5] See attached Michigan Administrative Code Section R 299.9406(6)(a).

[6] Provision is made in the DNR regulations for a transporter to remove this lettering for uses other than hazardous waste "treatment." (According to the DNR the regulation incorrectly states "treatment" when "transportation" was intended.) However, this option is only available if the alternate use(s) of the vehicle have been identified in the transporter's business or vehicle license. The permanent nature of the lettering and the prior approval requirement negate any practical application of this "option."

[7] See P.L. 101-615, Section 4(a)(4)(B).

"Otherwise Authorized by Federal Law"

Despite the greatly enhanced preemptive authority contained in the 1990 amendments, Congress recognized that DOT's preemptive authority of state and local requirements is limited to the extent that such non-federal requirements are "otherwise authorized by Federal law." [10] Since the enactment of the 1990 amendments, the courts have acted to circumscribe the reach of the "otherwise authorized by federal law" provisions. The Tenth Circuit Court of Appeals concluded that state requirements which are not specifically authorized pursuant to other federal statutes are not "otherwise authorized" simply because such federal statutes do not preempt such requirements.[11]

In this instant case, RCRA specifies that standards be established for "labeling practices for any containers used for the * * * transport * * * of such hazardous waste" and that no hazardous waste may be transported unless "properly labeled." [12] EPA defines the word "container" to mean "any portable device in which a material is * * * transported * * *" and has interpreted the statutory labeling requirement to be, with one exception, DOT's standards for labeling, marking, and placarding as provided in 49 CFR 172.[13] The one exception provides that each container of 110 gallons or less used in the transportation of hazardous waste must be marked, in accordance with the requirements of 49 CFR 172.304, with the following: [14]

Hazardous Waste—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address __________
Manifest Document Number __________

Neither RCRA nor its implementing regulations specifically authorize any non-federal "marking" requirements, let alone the bulk package marking requirements enforced by the DNR. In fact, RCRA bars EPA from promulgating regulations applicable to transporters of hazardous waste that are inconsistent with the requirements of the HMTA and the HMRs.[15] When EPA delegates its authority to issue regulations to a state, the state's hazardous waste program must be equivalent to the federal program and consistent with other state authorized programs.[16]

While RCRA does not have a mechanism to prohibit states from imposing requirements on the transportation of hazardous waste which are more stringent or broader in scope than those imposed by EPA, states may not rely on RCRA to shield such requirements from review under the HMTA. The legislative history underpinning RCRA's grant of "more stringent than" authority to states shows that Congress intended to allow states to create rules "more stringent than" the federal standards only for the selection of hazardous waste disposal sites.[17] Additionally, requirements which are broader in scope than EPA's are not part of the federally-approved program.[18] EPA clarified, in a letter to CWTI concerning its grant of final authorization to California's hazardous waste program, that "State hazardous waste transportation requirements that are inconsistent with the HMTA should be dealt with through the (DOT) under the special procedures established under the HMTA for that purpose; * * * in (EPA's) view the RCRA process does not preempt DOT authority in the area of transportation." [19]

The DNR Marking Requirements Are the Type Congress Intended To Preempt

The Michigan requirements at issue here are exactly the type of divergent state hazardous materials marking requirements which Congress intended to be preempted by the HMTA and the HMRs. Hazardous materials that happen to be "liquid" and meet the "waste" definitions of Act 136 and Act 64 are not only subject to duplicative, inconsistent DNR marking requirements, but other more serious outcomes result from the DNR requirements that should factor in DOT's evaluation of this application.[20]

First and foremost, the DNR markings have nothing to do with evidence that a motor carrier has obtained state issued licenses, and everything to do with hazard identification. Act 136 and the Michigan Administrative Code (MAC) implementing Act 64 require the DNR to supply as proof of vehicle licensure indicia—"seals"—that must be affixed to the waste-hauling portion of the vehicles separate and apart from the hazardous materials markings at issue.[21] The size of the lettering and the fact that both markings must be on all licensed vehicles regardless of whether the vehicles are destined to, from or through the state clearly show that the intent of the markings is to alert the public and enforcement personnel of risk presented in transportation by certain hazardous materials. As noted above, the HMTA reserves to the federal government the entire field of hazardous identification unless the non-federal requirements are "substantively the same as" federal requirements.

Second, hazardous wastes are found in every DOT hazard class except Hazard Class 7, Radioactive. To the extent that the DNR marking requirements apply only to hazardous waste and apply differently from or in addition to the HMRs concerning marking requirements, they are inconsistent with and preempted by the HMTA.[22]

Third, vehicles transporting hazardous waste are not fixed facilities. They operate through numerous jurisdictions. To the extent that the public and local emergency responders in other jurisdictions are unfamiliar with these non-federal marking requirements confusion will result and safety will be undermined.

Fourth, because of the permanent nature of the Act 136 and MAC markings, they cannot be physically removed without great hardship to the carrier when non-waste loads are being transported. As mentioned above, the ability to remove MAC markings in order to transport non-waste materials, even if such transport is permissible under the HMTA, is further restricted pending DNR prior authorization of the transporter's business or vehicle license that such alternate transportation is approved. Thus a secondary effect of the marking requirements is de facto dedication of hazardous waste hauling equipment. For example, vehicles marked as prescribed by the DNR have been denied entry to waste management facilities that receive industrial, non-hazardous waste, although the transportation of these wastes in vehicles that have been used to transport hazardous waste is consistent with the HMRs.[23] This trend is likely to be

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[8] See DOT Section-by-Section Analysis accompanying draft legislation to amend the HMTA sent to Congress July 11, 1989.

[9] See P.L. 101–615, Section 4(a)(4)(B)(ii), as implemented by 49 CFR 107.202. (See 56 FR 8616 (February 28, 1991) and 57 FR 20424 (May 13, 1992).)

[10] See P.L. 101–615, Section 13(a).

[11] See *Colo. Pub. Utilities Comm'n v. Harmon*, 951 F.2d 1571 at 1581 n.10 (10th Cir. 1991).

[12] See P.L. 94–580, Sections 3002(a)(2) and 3003(a)(2).

[13] See 40 CFR 262.31, 262.32, and 262.33.

[14] See 40 CFR 262.32(b).

[15] See P.L. 94–580, Section 3003(b).

[16] See P.L. 94–580, Section 3006(b).

[17] See 125 Cong. Rec. S6824–6, Daily Ed., June 4, 1979. The courts have upheld this view. See *Ensco Inc. v. Dumas*, 807 F.2d 743 (8th Cir. 1986) (Section 3009 "acknowledges only the authority of state and local government entities to make good-faith adaptations of federal policy to local conditions"; provision applies only to certain limited state requirements pertaining to land disposal or treatment facilities); *Ogden Environmental Servcs. v. City of San Diego*, 687 F. Supp. 1436 (S.D. Cal. 1988) (Citing *Ensco*).

[18] See 40 CFR 271.1(f).

[19] See attached letter to Cynthia Hilton, CWTI, from Devereaux Barnes, EPA, dated October 20, 1992.

[20] The CWTI has been involved in discussions with the DNR in an attempt to resolve this matter without recourse to DOT. During those discussions the DNR indicated a willingness to take steps to minimize the burden of vehicle marking on motor carriers of hazardous waste. Specially, the DNR proposed to eliminate the duplicative marking between Act 136 and the Michigan Administrative Code (MAC) as well as to recognize similar vehicle marking requirements of other states in lieu of the MAC marking. Despite this willingness to minimize burdens, the DNR is insistent on retaining some non-federal, hazard identification vehicle marking requirement. Inasmuch as this issue does have ramifications for jurisdictions outside of Michigan, the DNR and the CWTI mutually agreed to submit this matter to DOT for a determination of preemption.

[21] See Act 136, Section 7(l) and MAC R 299.9406(6)(b).

[22] See 49 CFR 171.3(c)(1).

[23] CWTI members have been advised to "cover up" DNR markings as an alternative to "removing" the markings when transporting "approved" materials not subject to the markings. However, members are uncomfortable with the public

Continued

exacerbated as sanitary non-hazardous waste landfills implement EPA requirements to conduct random inspections of incoming loads to ensure that such loads do not contain regulated hazardous wastes or PCBs.[24] Sanitary landfills are not equipped with sampling laboratories. Vehicles with DNR markings are more likely to be turned away because sanitary landfills cannot verify the non-hazardous status of the transported material. The inevitable result is "additional trips with additional mileage * * * (and) the potential for more accidents (thereby) creat(ing) greater danger to the public."[25]

Fifth, the permanent nature of the Act 136 and MAC markings violates the prohibitions in the HMTA and the HMR against labelling or placarding a packaging which does not contain hazardous materials. Congress felt so strongly about hazard communication and marking requirements that it not only provided in the 1990 amendments that non-federal requirements would be preempted unless substantively the same as the federal requirements, but also provided that "no person shall, by marking or otherwise, represent that a hazardous material is present in a * * * motor vehicle * * * if the hazardous material is not present."[26] Again, the DNR requirements frustrate hazard communication by placing motor carriers in the untenable position of choosing compliance with DNR or federal standards.

Lastly, the final rule implementing the "substantively the same as" authority, DOT stated that "in the covered subject areas, national uniformity is critical * * *. Any additional requirements, in excess of the Federal requirements, would not be 'substantively the same,' and would be preempted."[27] Only "editorial and other similar de minimis changes are permitted."[28] DNR marking requirements are neither "editorial" nor otherwise similarly "de minimis."

Conclusion

The DNR marking requirements as they apply to hazardous materials, including hazardous wastes, (1) are not substantively the same as the federal standard; (2) impermissibly discriminate against a subset of hazardous materials; (3) are unreasonably burdensome; and (4) lack any technical or safety justification. As a result, the DNR marking requirements are an obstacle to the accomplishment of the HMTA and the HMRs. The CWTI requests that a binding determination of preemption be issued invalidating the DNR vehicle marking requirements to the extent that hazard-specific lettering is required to be imprinted on both sides of motor vehicles transporting hazardous materials, including hazardous wastes.

Certification

Pursuant to 49 CFR 107.205(a), I hereby certify that a copy of this application has been forwarded with an invitation to submit comments within 45 days to: James Sygo, Chief, Waste Management Division, Michigan Department of Natural Resources, P.O. Box 30241, Lansing, MI 48933.

Respectfully submitted,

Stephen Hansen,

Chairman.

Enclosures

II. Background

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "* * * to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of State and local laws.

"* * * [U]niformity was the linchpin in the design of [the HMTA]." *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA explicitly preempts "* * *any requirement of a State or political subdivision thereof or Indian tribe * * *" if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of (the HMTA) or of any regulation issued under (the HMTA) is not possible;

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of (the HMTA) or the regulations issued under (the HMTA); or

(3) It is preempted under section 105(a)(4) (49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas) or section 105(b) (49 App. U.S.C. 1804(b), dealing with highway routing requirements). 49 App. U.S.C. 1811(a).

With two exceptions, section 1804(a)(4) preempts "* * * any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe * * *" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations promulgated pursuant to the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in section 1804(a)(4) are the:

(i) Designation, description, and classification of hazardous materials;

(ii) Packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) Preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) Written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(v) Design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. Any person aggrieved by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

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relations message conveyed by motor carriers that resort to this remedy to the effect that they are attempting to conceal something and therefore must be engaged in illegal activities.

[24] See 40 CFR 258.20(a)(1).

[25] See 57 FR 23291 (June 2, 1992).

[26] See P.L. 101–615, Section 5(e)(2).

[27] See 57 FR 20425 (May 13, 1992).

[28] See 49 CFR 107.202(d).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for preemption determinations, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685 (Oct. 30, 1987)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

III. Further Comments

All comments should be limited to the issue of whether Michigan's hazardous materials marking laws and regulations for vehicles used to transport hazardous waste are preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance," and "obstacle" tests described in Part II above. Comments should also address the issue of whether Michigan's hazardous materials regulations are "otherwise authorized by Federal law."

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC, on January 17, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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Part III

Department of Transportation

Research and Special Programs Administration

Hazardous Materials: HASA, Inc.; Application for a Preemption Determination; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA–7(R); Notice No. 93–3]

Application by HASA, Inc. for a Preemption Determination as to Hazardous Materials-Related Codes Applied by the County of Los Angeles, California, to the Transportation of Hazardous Materials on Private Property

AGENCIES: Research and Special Programs Administration (RSPA) and Federal Railroad Administration (FRA), U.S. Department of Transportation.

ACTION: Public notice and invitation to comment.

SUMMARY: HASA, Inc. (HASA) has applied for an administrative determination as to whether various hazardous materials-related codes of Los Angeles County imposed upon the transportation of hazardous materials on private property owned, leased, or under the control of the consignor, consignee, or transporter of hazardous materials are preempted by the Hazardous Materials Transportation Act (HMTA).

DATES: Comments received on or before March 31, 1993 and rebuttal comments received on or before June 4, 1993 will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, 400 Seventh Street SW., Washington, DC 20590–0001 (Tel. No. [202] 366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–7(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to: (a) Ms. Mary Flynn, Director, Government Relations and Public Affairs, HASA, Inc., 23119 Drayton St., Saugus, CA 91350; and Mr. Larry J. Monteilh, Executive Officer, Board of Supervisors for the County of Los Angeles, 500 West Temple Street, room 383, Los Angeles, CA 90012. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Ms. Flynn and Mr. Monteilh at the addresses specified in the **Federal Register**.")

FOR FURTHER INFORMATION CONTACT: James E. Meason, Attorney, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. [202] 366–4400).

I. HASA's Application for a Preemption Determination

With its December 22, 1992 letter, HASA applied for a determination that various Los Angeles County codes relating to the transportation of hazardous materials on private property owned, leased, or under the control of the consignor, consignee, or transporter of hazardous materials are preempted by the HMTA. The text of HASA's application follows (the appendices to HASA's application are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit at the address and telephone number set forth in **ADDRESSES** above).

Ms. Mary Flynn, Director, Government
Affairs and Public Relations, HASA, Inc.,
23119 Drayton Street, Santa Clarita,
California 91350, 805/259–5848; FAX
805/259–1538

Before the Associate Administrator for Hazardous Materials Safety Research and Special Programs Administration, United States Department of Transportation

HASA, Inc., Applicant; Application for an Administrative Determination Pursuant to 49 U.S.C. 1811(c) and 49 CFR 107.203 et seq. Docket No. ____________

I

This is an application by HASA, Inc., a California corporation, to the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, United States Department of Transportation for an administrative determination pursuant to 49 U.S.C. App. 1811(c)(1) and regulations thereunder promulgated in 49 CFR 107.203 et seq. at to whether sections 2.20.140 through 2.20.170 of part 2, title 2 of the Los Angeles County Code (Los Angeles County Ordinance, "LACoO," No. 90–0109), "LACoC," attached herewith and identified as "Exhibit 1;" Sections 4.108 c. 6.; 80.101, EXCEPTION 1; 80.103 (a), (c), (d), and (e); 80.104 (a), (f) and (g); 80.201; 80.202 (a); 80.202 (b); 80.203; 80.301 (b) (1) and 80.402 (c) (8) (A) of the County of Los Angeles 1990 Fire Code (Title 32 of the LACoC, LACoO No. 90–0110), "Exhibit 2" attached herewith, are pre-empted by Sections 112 (a) (1), (2), and (3) of the Federal Hazardous Materials Transportation Act, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990," "HMTA," and/or regulation promulgated pursuant thereto at 49 CFR 107.202.

II

The issue presented to the Assistant Administrator is as to whether Federal statute and regulation thereunder are applicable to transportation of hazardous materials, including loading, unloading, and storage incidental thereto, on private property owned, leased and/or under the control of the consignor, consignee, and/or transporter of the hazardous materials shipment.

The Consolidated Fire Protection District of Los Angeles County through its authorized representative, the Los Angeles County Fire Department, alleges and believes that local regulations, i.e., the LACoC, pre-empt the HMTA and regulation thereunder when transportation of hazardous materials, including loading, unloading, and storage incidental thereto, occurs on the private property owned, leased, and/or otherwise under the control of the consignor, consignee, and/or the transporter.

If the LACoC rather than the HMTA and regulation thereunder is applicable to the transportation of hazardous materials, including loading, unloading, and storage incidental thereto, on private property owned, leased, and/or otherwise under the control of the consignor, consignee, and/or transporter, dozens of local and state regulations become applicable, many of which are incompatible with or an obstacle to the accomplishment of the Federal scheme.

The applicant, HASA, Inc., alleges and believes that the HMTA and regulation thereunder is applicable to the transportation of hazardous materials, including loading, unloading, and storage incidental thereto, irrespective of the locale, i.e., public property, public right-of-way, railroad property, other private property, private siding, etc.

This application for an administrative determination of pre-emption is specific to the transportation, including loading, unloading, and storage incidental thereto, of liquefied chlorine in rail road tank cars at the Santa Clarita, California manufacturing facility of HASA, Inc.

HASA, Inc. requests that the Associate Administrator consider, when evaluating this administrative application for pre-emption, transportation, including loading, unloading, and storage incidental thereto of all hazardous materials. We allege and believe that consideration of the larger issue, i.e., transportation of all hazardous materials, is in the public interest. There are several thousand shipments of hazardous materials each and every day within the County of Los Angeles which may be subjected to the regulatory scheme contained in the LACoC. Nationwide, there are 500,000 shipments of hazardous materials each and every day in both inter- and intra-state commerce.

III

The applicant, HASA, Inc., is a California corporation with manufacturing and distribution facilities located in California and in Arizona. We distribute products through the western United States and, additionally, both in Alaska and in Hawaii. Our California manufacturing facility is located at 23119 Drayton Street; Santa Clarita, California 91350. The city of Santa Clarita is located within the County of Los Angeles and within the Consolidated Fire Protection District of Los Angeles County.

HASA, Inc. manufactures, packages, warehouses, and transports chemical compounds for use in potable and waste water treatment, swimming pool and spa disinfection. etc. Many of these chemicals are classified as hazardous materials in the "Hazardous Materials Table," 49 CFR 172.101 and are, therefore, subject to regulation—with respect to transportation including loading, unloading, and storage incidental thereto—under the HMTA and regulations thereunder promulgated.

IV

HASA, Inc. receives railroad tank cars containing liquefied chlorine from manufacturers engaged in interstate commerce. We unload liquefied chlorine from these railroad tank cars on our private siding adjacent to our facility in Santa Clarita, California. Transportation of liquefied chlorine, including loading, unloading, and storage incidental thereto, at our facility is in accordance with the HMTA, regulations thereunder promulgated at 49 CFR part 174, in accordance with the Chlorine Manual and related pamphlets published by the Chlorine Institute, and in accordance with a specific exemption issued by the Research and Special Programs Administration, "RSPA," E–10552.

V

Santa Clarita is an incorporated city within the County of Los Angeles. Our city does not maintain a "city fire department." Fire protection is provided by the Consolidated Fire Protection District of Los Angeles County, "CFPD/LACo," under contract with the city. Santa Clarita is one of many cities which have contracted with the CFPD/LACo for fire protection services. All contract cities are located within the CFPD/LACo. The CFPD/LACo adopted title 32 of the LACoC (LACoO No. 90–0111) as the fire code for the CFPD/LACo, i.e., the fire code for the County of Los Angeles and the CFPD/LACo are identical.

Title 32 of the Los Angeles County Code was amended by Los Angeles County Ordinance 90–0110, discussed *ante*, and includes adoption by reference with additional amendments of the 1988 edition of the Uniform Fire Code, published jointly by the International Conference of Building Officials and the Western Fire Chiefs Association. Fire protection services for the CFPD/LACo are provided by the Los Angeles County Fire Department.

VI

Over the past year, HASA, Inc. has been inspected numerous times by the county fire department, and as a result of these inspections, subsequently ordered to comply with the regulation contained in the county fire code with respect to "on-site transportation" of hazardous materials. In each and every case—having been inspected and ordered to comply with the county fire code requirements—HASA, Inc. has filed an appeal in a timely manner in accordance with the requirements for filing an administrative appeal as set forth in the applicable county fire code. As of the date of this application for an administrative determination for pre-emption with the Associate Administrator, none of these administrative appeals filed in accordance with our county fire code has been scheduled for hearing, i.e., neither the Board of Appeals of the City Council of the City of Santa Clarita nor the Board of Appeals of the CFPD/LACo has set these matters for hearing.

HASA, Inc. has paid annual fees to the County of Los Angeles since 1990 for "handling" liquefied chlorine in rail road tank cars. These fees are used by the County for enforcement of Chapter 6.95 of the California H&SC, not for purposes related to the transportation of hazardous materials.

VII

HASA, Inc. requests that the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, United States Department of Transportation, make an administrative determination in accordance with the HMTA and regulations thereunder that sections 2.20.140 through 2.20.170 of title 2 of the LACoC, sections 4.108 c. 6.; 80.101, EXCEPTION 1; 80.103 (a), (c), (d), and (e); 80.104 (a), (f), and (g); 80.201; 80.202 (a); 80.202 (b); 80.203; 80.301(b)(1) and 80.402(c)(8)(A) in title 32 of the LACoC (LACoO No. 90–0110, as adopted by LACoO 90–0111 as the Fire Code for the CFPD/LACo are pre-empted by sections 112(a) (1), (2), and/or (3) of the HMTA, and/or 49 CFR 107.202.

VIII

The text of the LACoC for which a Pre-emption Determination is sought is set our *post.*

2.20.140 Annual Fees to be Paid by Handlers of Hazardous Materials. The annual fee required to be paid to the county by every handler of hazardous materials for the administration and enforcement of the provisions of the Act shall be as follows: . . . . (Note: balance of text appears in "Exhibit 1" attached herewith.)

. . . . and . . . .

2.20.150 Additional Fees—Acutely Hazardous Substances. Every handler of an acutely hazardous material, shall in addition to the fee specified in Section 2.10.140, be required to pay an annual fee to the county for administration and enforcement of acutely hazardous materials registration, risk assessment, and risk mitigation in accordance with compliance under the Act. The fee shall be calculated as follows: . . . . (Note: balance of text appears in "Exhibit 2" attached herewith.)

. . . . and . . . .

2.20.160 Late Submission Fee. A late submission fee shall apply to the filing requirements of both the business plan and inventory and to the AHM registration requirements as follows: . . . . (Note: balance of text appears in "Exhibit 1" attached herewith.)

. . . . and . . . .

2.20.170 Fee Schedule—Annual Adjustment Procedure. Beginning with the 1991–1992 fiscal year, the schedule of fees contained in Section 2.20.140 through 2.20.160 inclusive shall be adjusted annually by the following procedure: . . . . (Note: balance of text appears in "Exhibit 1" attached herewith.)

. . . . and . . . .

Note: The following Sections reference sections in the County of Los Angeles 1990 Fire Code, which consists of the 1988 edition of the Uniform Fire Code as amended by LACoO 90.0110—Title 32 of the LACoC. The numbering system deviates from the system incorporated in the LACoC and is based on the numbering system in the *Uniform Fire Code.*

Section 4.108 c. 6. Compressed Gases. To store, transport on site, dispense, use, or handle at normal temperatures and pressures compressed gases in excess of the following amounts:

Type of gas	Amount
Flammable (except cryogenic fluids and liquefied petroleum gases).	200 cubic feet.
Oxidizing (including oxygen).	500 cubic feet.
Corrosive	Any Amount.
Highly Toxic	Any Amount.
Radioactive	Any Amount.
Reactive (Unstable)	Any Amount.
Inert	6,000 cubic feet.

See Article 74, Article 80, and Article 82.

. . . . and . . . .

Scope

Section 80.101 . . . . The classification system referenced in Division II shall apply to all hazardous materials, including those materials regulated elsewhere in this code.

EXCEPTIONS: 1. The off-site transportation of hazardous materials when in conformance with the Department of Transportation (DOT) regulations.

. . . . and . . . .

Permits

Section 80.103(a) General. No person, firm or corporation shall store, dispense, use, or handle hazardous material in excess of the quantities specified in Section 4.108 unless and until a valid permit has been issued pursuant to this article.

A permit shall be obtained when a material is classified as having more than one hazard category of the quantity limits are exceeded in any category. . . .

(c) Hazardous Materials Business Plan. Each application for a permit required by this article shall include a Hazardous Materials Business Plan (HMBP) in accordance with chapter 2.20 of part 2 of the Los Angeles County Code. Note: Chapter 2.20, Part 2, LACoC is attached herewith as "Exhibit 1."

(d) Hazardous Materials Inventory Statement. Each application for a permit required by this article shall include a Hazardous Materials Inventory Statement (HMIS) in accordance with chapter 2.20 of part 2 of title 2 of the Los Angeles County Code.

(e) Emergency Information. Hazardous Materials Business Plans, Risk Management Prevention Program and Hazardous Materials Inventory Statements shall be posted in an approved location and immediately available to emergency responders. The chief may require that the information be posted at the entrance to the occupancy or property.

. . . . and . . . .

General Requirements

Section 80.104 (a) General. The storage, use, dispensing, and handling of hazardous materials shall be in compliance with the provisions of this article. . . .

(f) Hazardous Materials Business Plan. Every business shall comply with the reporting requirements as set forth in chapter 2.202 of part 2 of title 2 of the Los Angeles County Code.

(g) Risk Management and Prevention Program. Every business shall comply with the requirements as set forth in chapter 2.20 of part 2 of title 2 of the Los Angeles County Code.

. . . . and . . . .

Scope

Section 80.201. For the purposes of this code, hazardous materials shall be divided into hazard categories. The categories include materials regulated under this article and materials regulated elsewhere in this code.

. . . . and . . . .

Hazardous Categories

Section 80.202 (a) Physical Hazards. The materials listed in this section are classified as physical hazards. A material with a primary classification as a physical hazard may also present a health hazard.

1. Explosives and blasting agents, regulated elsewhere in this code.
2. Compressed Gases, regulated in this article and elsewhere in this code.
3. Flammable and combustible liquids regulated elsewhere in this code.
4. Flammable solids.
5. Organic peroxides.
6. Oxidizers.
7. Pyrophoric materials.
8. Unstable (reactive) materials.
9. Water-reactive materials.
10. Cryogenic fluids, regulated under this article and elsewhere in this code.

(b) Health Hazards. The materials listed in this section are classified as health hazards. A material with a primary classification as a health hazard may also present a physical hazard.

1. Highly toxic or toxic materials, including highly toxic or toxic compressed gases.
2. Radioactive materials.
3. Corrosives.
4. Other Health hazards.

and . . . .

Appendix

Section 80.203. Descriptions and examples of materials included in hazard categories are contained in Appendix VI–A.

and

Section 80.301 (b) Containers and Tanks 1 Design and Construction. Containers and tanks shall be designed and constructed in accordance with nationally recognized standards. See Section 2.304 (b). Tank vehicles and railroad tank cars shall not be used as storage tanks. Unloading operations shall be in accordance with Section 79.808.

. . . . and . . . .

80.402(c) (8) Special Requirements for Highly Toxic or Toxic Compressed Gases. A. Gas Cabinets or Local Exhaust. When . . . railroad tank cars regulated by DOT are used out-of-doors, gas cabinets or a locally exhausted enclosure shall be provided. When gas cabinets are provided, the installation shall be in accordance with the provisions of Section 80.303 (a) (6) (B). The required treatment system shall be designed in accordance with the provisions of Section 80.303 (a)(6)(D).

. . . . and . . . .

Appendix VI–A, "Hazardous Materials Classifications." Note: Due to length, Appendix VI–A is incorporated by reference as though it appears in its entirety herein. A copy of the Appendix is attached herewith in the Appendix to this application.

IX

Exception 1, Section 80.101 exempts "off-site transportation of hazardous materials" from regulation in the LACoC. Section 80.103, "Permits," references section 4.108 c. 6. for permit requirements. Section 4.108 c. 6. requires that a permit be obtained for "on-site transportation" of compressed gases in excess of 200—6,000 cubic feet, depending on the gas classification. It is clear that it is the intent of the county fire code that "on-site transportation" is subject to regulation.

When "on-site transportation" is subject to regulation in the county fire code, all of the requirements contained in Article 80, "Hazardous Materials" are applicable to compressed gases. Sections 80.103 (c), (d), and (e) and sections 80.104 (f) and (g) require compliance with chapter 2.20 of title 2 of the LACoC.

Chapter 2.20 of title 2 implements Chapter 6.95 of the California H&SC. The requirements contained in titles 2 and 32 of the LACoC are in addition to and different from requirements contained in the HMTA and regulation thereunder and stand as an obstacle to the accomplishment of the Act. In H.R. Report No. 444, Pt. 1, 101st Congress, 2d Session 34 (1990):

> (C)onflicting Federal, State, and local requirements pose potentially serious threats to the safe transportation of hazardous materials. Requiring State and local governments to conform their laws to the HMTA and regulations thereunder with the specific subjects listed in 105 (a) (4) (B) will enhance the safe and efficient transportation of hazardous materials, while better defining the appropriate roles of Federal, State, and local jurisdictions.

HASA, Inc. requests the Associate Administrator compare the requirements set forth in part 2 of title 2 of the LACoC and title 32 of the LACoC, the "fire code" of the CFPD/LACo, as set out *ante*, with the following Federal Statute, regulations promulgated thereunder, previously issued Inconsistency Rulings, Rulings of the Courts, and Exemptions issued by the Administration.

Sections 80.103 (c), (d), and (e) require compliance with Part 2 of title 2 of the LACoC as a condition of obtaining a permit for "on-site" transportation of hazardous materials in excess of the permit quantities listed in section 4.108 of title 32 of the LACoC. Sections 2.20.140 through 2.20.170 of the LACoC provide for establishment and collection of fees for "handlers" of hazardous materials which are paid to the County of Los Angeles for administration and enforcement of chapter 6.95 of the California H&SC. Chapter 6.95 provides *inter alia* regulations for hazardous materials business plans, hazardous materials inventories, and risk management and prevention plans. None of these activities are related to the transportation of hazardous materials.

Article 1 of chapter 6.95 provides requirements for "Business and Area Plans." It is attached herewith and identified as "Exhibit 3." Article 2 of chapter 6.95 provides requirements for "Hazardous Materials Management." It is attached herewith and identified as "Exhibit 4." Regulations and reporting forms to carry out the requirements of chapter 6.95 have been promulgated at 19 California Code of Regulations, "CCR," 2720 *et seq.* These regulations and reporting forms are attached herewith and identified as "Exhibit 5."

The term "handler" is defined at section 2.20.100 of title 2 of the LACoC as follows.

> "Handler" means any business which handles a hazardous material or acutely hazardous material, except where all acutely hazardous materials present at the business are handled in accordance with a removal or remedial action taken pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of the Health and Safety Code).

HASA, Inc. alleges and believes that (1) Non-Federal regulation of the "handling" of hazardous materials during transportation, including loading, unloading, and storage incidental thereto is pre-empted by the HMTA and regulation thereunder; and that (2) irrespective of pre-emption issues, the assessment and collection of fees in connection with the transportation of hazardous materials is pre-empted unless and until such fees collected are used for purposes relating to the transportation of hazardous materials.

At 49 CFR 107.202 (a)(2) and (c), "Standards for Determining Pre-emption" we find the following.

> (a)(2) * * * (A)ny law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof * * * which concerns the following subjects and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is pre-empted: The packing, repacking, *handling*, labeling, marking, and placarding of hazardous materials (Emphasis added).
>
> (c) A State or political subdivision thereof * * * may not levy any fee in connection with the transportation of hazardous materials that is not equitable and not used for purposes related to the transportation of

hazardous materials, including enforcement and the planning, development, and maintenance of a capability for emergency response.

Requirements contained in Chapter 6.95 provide for written notification, recording, and reporting of the unintentional release of hazardous materials. These requirements are pre-empted by 49 CFR 107.202(a)(4).

> (a)(4) * * * (A)ny law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof * * * which concerns the following subjects and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is pre-empted: * * *. The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

The requirement to comply with chapter 2.20 of title 2 of the LACoC is reiterated in title 32 of the LACoC under "General Requirements" at sections 80.104 (a), (f), and (g). It is our understanding that the intent of section 80.103 is to require that businesses produce a HMBP, HMIS, and RMPP in accordance with part 2 of title 2 of the LACoC prior to commencing operations. The intent of section 80.104 is to require existing businesses, which already are operating under a permit from the fire department, to comply with part 2 of title 2 of the LACoC.

We allege and believe that compliance with sections 4.108 c. 6., 80.103 (c), (d), and (e), and 80.104 (a), (f), and (g) with respect to "on-site" transportation of hazardous materials is also pre-empted by 49 CFR 107.202(b)(2).

> (b)(2) * * * (A)ny requirement of a State or political subdivision * * * is pre-empted if (t)he State or political subdivision * * * requirement as applied or enforced creates an obstacle to the accomplishment and execution of the Act or regulations issued under the Act * * *.

Similar permit requirements are found in section 17.68.150 of the San Jose Municipal Code. In Inconsistency Ruling IR–28, City of San Jose, California; Restrictions on Storage of Hazardous Materials (55 FR 8884, March 8, 1990), the Director opined at 8890:

> The type of unfettered discretion asserted by the City in this language with respect to approval or disapproval of storage of hazardous materials incidental to the transportation thereof is inconsistent with the HMTA and the HMR * * *.
>
> (A) State or local permitting system which prohibits or requires certain hazardous materials transportation activities depending upon whether a permit has been issued (regardless of whether the activity is in compliance with the HMR), applies to selected hazardous materials * * * and contains considerable discretion as to permit issuance is
>
> "Cumulatively, these factors constitute unauthorized prior restraints on shipments of * * * hazardous materials that are presumptively safe based on their compliance with Federal Regulations.

In *Southern Pacific Transportation Company* v. *Public Service Commission of Nevada* C.A. 9 (Nev) 1990, 909 F 2d. 352, State of Nevada regulations requiring rail carriers to obtain an annual permit prior to loading, unloading, and transferring or storing hazardous material on railroad property within the state were found to be pre-empted by the HMTA and regulations thereunder promulgated.

As a condition for obtaining a permit for "on-site transportation" of hazardous materials, the applicant must submit a Hazardous Materials Business Plan, a Hazardous Materials Inventory Statement, Emergency Information, comply with all of the additional requirements contained in Article 80, "Hazardous Materials," title 32, LACoC, section 79.808 of title 32, LACoC, and with chapter 2.20, part 2, LACoC which mandates compliance with Chapter 6.95 of the California H&SC.

The HMBP requires *inter alia* specific information about the facility's operation, including land uses on adjacent property, a detailed schematic of the facility, specific information about each hazardous material located on the premises, submission of a HMIS, employee training and information, emergency response information. See 19 CCR 2720, "Proposed Area Plans," in "Exhibit 5." The HMIS required as part of the HMBP, requires a list of all hazardous materials located, stored, and/or handled at the facility, quantity ranges, classification of hazard, days on-site, etc. See 19 CCR 2730, "Optional Model Inventory Reporting Form," in Exhibit 5.

In IR–28 at 8891, the Administrator opined:

> Information and documentation requirements as prerequisites to hazardous materials transportation have been considered on many prior occasions. Where such requirements exceeded Federal requirements, they have been found to create potential delay or diversion of hazardous materials transportation, to constitute an obstacle to execution of the HMTA and the HMR, and thus to be inconsistent * * *.
>
> The issue was succinctly addressed in IR–19 * * *. In summary, the HMTA and HMR provide sufficient information and documentation requirements for the safe transportation of hazardous materials; state and local requirements in excess of them constitute obstacles to implementation of the HMTA and the HMR and are thus inconsistent with them.

The Administrator opined in IR–28 at 8890:

> * * * the City's information requirements are inconsistent with the HMR insofar as they require emergency response information as a prerequisite to the loading, unloading and storage of hazardous materials incidental to their transportation * * *.

RSPA's emergency response information requirements (Note: Emergency Response Communication Standard, 49 CFR 172.201(d)) for hazardous materials transportation, including the loading, unloading, or storage incidental to such transportation exclusively occupy the field.

Sections 80.101, 80.201, 80.202, 80.203, and Appendix VI–A address classification of hazardous materials. The classification system is different from and in addition to the classification system promulgated by RSPA pursuant to the HMTA.

Presumptively, this classification system applies to "on-site transportation" of hazardous materials, and is not applicable to "off-site transportation" of hazardous materials. At 49 CFR 107.202(a)(1), in pertinent part:

> (a)(1) (A)ny law, regulation, order ruling, provision, or other requirement of a State or political subdivision thereof * * * which concerns the following subjects and which is not substantively the same as any provision of this Act or any regulation under such provision which concerns such subject, is pre-empted: (t)he designation, description, and classification of hazardous materials.

Examples of consistency problems between the county fire code and 49 CFR 172.101, "Hazardous Materials Table," include chlorine and anhydrous ammonia. Under the DOT classification system chlorine is "2.3 Poisonous Gas." Anhydrous ammonia (domestic transportation) is "Nonflammable Gas." Under the county fire code classification system chlorine is "Oxidizer, Toxic, and Corrosive Gas." Anhydrous ammonia is "Corrosive Gas."

Section 80.301(b) *inter alia* provides as follows.

> Tank vehicles and railroad tank cars shall not be used as storage tanks. Unloading operations shall be accordance with Section 79.808.

There is no provision in either the HMTA or regulations thereunder (Part 174, "Carriage by Rail," and part 177, "Carriage by Public Highway") which prohibits storage—incidental to transportation or otherwise—of hazardous materials in either tank vehicle or in tank cars. The county fire code clearly prohibits storage in cargo tanks and tank cars at places where and at times when such storage is permitted by the HMTA and regulations thereunder. Section 174.204(a)(2) specifically permits storage of specified gases on both private and carrier track. In pertinent part:

> * * * such cars may be stored on a private track (see 171.8 of this subchapter) or on carrier tracks designated by the carrier for such storage.

Prohibition of storage in cargo tanks and tank trucks is an obstacle to the transportation of hazardous materials. At 49 CFR 107.202(b) in pertinent part:

> (b)(2) * * * and requirement of a State or political subdivision * * * is pre-empted if— * * *, (t)he State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of the Act or a regulation issued under the Act.

The issue is further complicated by the requirement that unloading operations be in accordance with Section 79.808 of the county fire code. Section 79.808 is attached herewith and identified as "Exhibit 6." Section 79.808 addresses unloading operations for flammable and combustible liquids. Many of the requirements in section 79.808 are not only inappropriate but unsafe for unloading compressed and liquefied gases, including chlorine. Examples include the requirement to transfer only to an approved atmospheric tank or approved portable tank (Section 79.808 (b)), prohibition against remaining on a siding for more than 24 hours while connected (Section 79.808(c)), and the attendance requirement (Section 79.808(c)).

Compressed gases cannot be unloaded into a tank "open to the atmosphere," i.e., they will no longer be "contained" or "compressed." Liquefied gases, including chlorine, are unloaded as liquefied gases at a finite rate to prevent the liquefied gas remaining in the tank car from freezing as heat is withdrawn from the liquid by expanding gas. With Respect to chlorine, the normal unloading rate is 3,600—7,200 pounds per hour. This rate translates into 25—50 hours uninterrupted, i.e., continuous unloading, or 3⅛–6¼ days for single shifts of 8 hours per day.

Section 79.808 (c) requires the physical presence of a person while cargo is discharged. The requirement is similar to but not identical with the requirement set out at 49 CFR 174.67 (i). Section (j) requires that all connections to the tank car must be disconnected if unloading is halted for any reason. Ostensible, the car will be "stored incidental to transportation" until the unloading process is continued, an activity prohibited by the county fire code. There are no time limitations for tank car unloading of compressed gases at either 49 CFR 174.67 or 49 CFR Subpart F. We request that the Associate Administrator compare these requirements in section 79.808 of the county fire code with the regulations at 49 CFR 174.67 and with the requirements in E–10552.

E–10552 provides an exemption from certain of the requirements at 49 CFR 174.67 (i) and (j) under specified conditions. The "unloader" need not be physically present where the unloading process is monitored. Section 79.808 of the county fire code is in direct conflict with this exception, i.e., the "unloader" must be present at all times during the unloading process. The fire department opines that E–10552 is not applicable where unloading is "on-site." Section 174.204, "Tank Car Delivery of Gases, Including Cryogenic Liquids," requires that tank cars be "unloaded on a private track" where private track is available. Any recipient of a rail road tank car containing compressed gases, which has private track available "on-site," must unload on private track. Under the county fire code scheme, such unloading constitutes "on-site" transportation and is subject to regulation thereunder. HASA, Inc. has a private siding on our property where chlorine is "unloaded." Therefore, all unloading of chlorine at our facility constitutes "on-site" transportation. The fire department alleges and believes that the county fire code pre-empts the HMTA and regulation thereunder, i.e., unloading at the HASA, Inc. siding constitutes "on-site transportation" of compressed gasses.

Section 80.402(c)(8) provides that "railroad tank cars regulated by DOT are used out-of-doors, gas cabinets or a locally exhausted enclosure shall be provided." "Use" is synonymous with "loading" and "unloading," and is defined at section 80.102(b) as follows:

USE (material) is the placing in action or making available for service by opening or connecting anything utilized for confinement of material whether a solid, liquid, or gas.

Section 80.402(c)(8) also references construction requirements for gas cabinets and provides that a treatment system be provided for gas discharged from the gas cabinet.

Under section 80.402(c)(8) requirements, railroad tank cars are enclosed within a sealed chamber connected to a treatment system designed to process the entire contents of the railroad tank car to ½ the established IDLH prior to discharge to the environment. We ask the Assistant Administrator to compare these requirements with the general unloading requirements for tank cars set out at 49 CFR 174.67 and the specific unloading requirements for compressed gases in Subpart F, "Detailed Requirements for Gases."

X

HASA, Inc. alleges and believes that the fire code is pre-empted with respect to the transportation of hazardous materials, specifically liquefied chlorine, including both loading and unloading and storage incidental thereto, by the HMTA and regulations thereunder.

The county fire code differentiates between "off-site" and "on-site" transportation of compressed gases. Section 80.101, EXCEPTION 1 exempts "off-site" transportation of compressed gases from county fire code regulation. However, "on-site" transportation not only is subject to county fire code regulation, but requires that the "on-site" transportation facility obtain a permit from the fire department prior to conducting "on-site transportation" activities, including both loading and unloading and storage incidental thereto. To obtain a permit from the fire department for "on-site" transportation, the facility must comply with the applicable requirements contained in the county fire code, title 32 of the LACoC; part 2 of title 2 of the LACoC, and by reference therein, chapter 6.95 of the California H&SC.

If Federal statute and regulation thereunder apply to both "off-site" and "on-site" transportation, as HASA, Inc. alleges and believes, none of the requirements in the county fire code is applicable to unloading of and storage incidental to such unloading of liquefied chlorine from rail road tank cars at our Santa Clarita facility.

With respect to our operations in Santa Clarita, California, aside from the requirement to obtain a fire department permit for "on-site transportation," compliance includes construction of a gas-tight structure in accordance with Section 80.303(a)(6)(B) of the county fire code, completely enclosing railroad tank cars while they are unloaded, construction of a treatment system in accordance with section 80.303(a)(6)(D) with the capacity to process 90 tons of chlorine gas, and dozens of additional requirements in Articles 79 and 80 of title 32 ad chapter 2.20 of part 2 of title 2 of the LACoC.

Construction requirements for the containment structure include operation at negative pressure in relation to the surrounding area, self-closing, limited-access ports or noncombustible windows to give access to equipment and controls, connection to a treatment system, self-closing doors, and fabrication from 12 gauge steel.

The treatment system construction requirements include the requirement to provide "treatment" for the "largest * * * tank utilized," or in our case for 90 tons of chlorine gas. "Treatment" reduces the concentration of toxic gases to one-half the IDLH at the point of discharge to the atmosphere. See section 80.303(a)(6)(D)(iii) in the county fire code. The IDLH for chlorine is 30 ppm. A discharge at 15 ppm (one-half the IDLH) is impractical. Chlorine can be detected by its physiological warning properties (odor and color) at 0.6–1.5 ppm in air. A discharge at 15 ppm would cause panic in any populated area.

There are only two practical ways to treat chlorine gas: incineration or reaction with dilute sodium hydroxide solution to form household bleach. There is virtually no chance that an incinerator of this capacity could be permitted within the Southern California Air Quality Management District, which includes Los Angeles County. Chemical treatment requires 1½ pounds of caustic soda, 1 gallon of water, and approximately 10 pounds of ice (or equivalent) for each pound of chlorine processed. For each 90 ton tank car in "use" we would have to maintain on site 125 tons of sodium hydroxide, 90,000 gallons of water, and 900 tons of ice (or equivalent).

Cost estimates for construction of the structure and the treatment system range from $1MM–2.5MM, just for our site for unloading a single tank car of liquefied chlorine. The county fire code regulation is applicable to all toxic and highly toxic compressed gases at every use site in the county. Implemented county-wide, the transportation of compressed gases in railroad tank cars will come to an immediate halt.

Railroad tank cars containing liquefied chlorine range in size from 45 to 90 tons capacity. Liquefied chlorine is always unloaded for repackaging into cylinders, portable tanks, or cargo tanks or to process. Liquefied chlorine contained in railroad tank cars is never unloaded to stationary storage facilities. It follows that if "on-site transportation" is regulated under the county fire code, all unloading operations of liquefied chlorine from rail road tank cars are subject to regulation under the county fire code.

The fire code system for classification of hazardous materials is in addition to and different from the Federal system. As the situation presents itself, hazardous materials are classified in accordance with Federal requirements for "off-site transportation" and in accordance with the county fire code for "on-site transportation."

XI

HASA, Inc. requests an administrative determination (1) that regulation of the transportation of chlorine in rail road tank cars, including loading, unloading, and storage incidental thereto at our facility in Santa Clarita, California, is exclusive to the Federal government pursuant to the *HMTA* and regulation thereunder; (2) that the term "transportation" as defined in the *HMTA* includes both "on-site" and "off-site" transportation of hazardous materials in commerce including loading, unloading, and storage incidental thereto; and (3) that Sections 2.20.140 through 2.20.170 of Part 2, Title 2; Sections 4.108 c. 6., 80.101, EXCEPTION 1; 80.103 (a), (c), (d), (e); 80.103 (a), (f), (g); 80.201, 80.202 (a) and (b); 80.303 (b) (l), 80.402 (c) (8) (A); and Appendix VI–A of Title 32 of the *LACoC* are pre-empted by the *HMTA* and regulation promulgated thereunder with respect to both "off-site" and "on-site" transportation of chlorine in rail road tank cars, including loading, unloading, and storage incidental thereto.

Executed on December 22, 1992 at Santa Clarita, California.

HASA, Inc. by Ms. Mary Flynn, Director, Government Affairs and Public Relations

II. Background

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "* * * to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It replaced a patchwork of State and local laws.

"* * * [U]niformity was the linchpin in the design of [the HMTA]." *Colorado Public Utilities Comm.* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA explicitly preempts "* * * any requirement of a State or political subdivision thereof or Indian tribe * * *" if:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of (the HMTA) or of any regulation issued under (the HMTA) is not possible;

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of (the HMTA) or the regulations issued under (the HMTA); or

(3) It is preempted under section 105(a)(4) (49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas) or section 105(b) (49 App. U.S.C. 1804(b), dealing with highway routing requirements). 49 App. U.S.C. 1811(a).

With two exceptions, section 1804(a)(4) preempts "* * * any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe * * *" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations promulgated pursuant to the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 App. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in section 1804(a)(4) are the:

(i) Designation, description, and classification of hazardous materials;

(ii) Packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) Preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) Written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(v) Design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA provides that any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. 49 App. U.S.C. 1811(c)(1). A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 App. U.S.C. 1811(e).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing, which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201–107.211 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. Any person aggrieved by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

In making decisions on applications for preemption determinations, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685 (Oct. 30, 1987)). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

III. Further Comments

All comments should be limited to the issue of whether the Los Angeles County codes relating to the transportation of hazardous materials on private property owned, leased, or under the control of the consignor, consignee, or transporter of hazardous materials are preempted by the HMTA. Comments should specifically address the "substantively the same," "dual compliance," and "obstacle" tests described in Part II above. Comments should also address the issue of whether Los Angeles County's hazardous materials-related ordinances and codes are "otherwise authorized by Federal law."

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on January 17, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–1777 Filed 1–25–93, 8:45 am]

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federal register

Tuesday
January 26, 1993

Part IV

Environmental Protection Agency

40 CFR Part 761

Storage of Polychlorinated Biphenyls (PCBs) for Purposes of Disposal; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS-62122; FRL 4174-9]

Rin 2070-AC01

Polychlorinated Biphenyls (PCBs); Storage for Disposal of PCBs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend one of the criteria which serves as a basis for EPA granting written, final approval to engage in the commercial storage of PCB waste. Specifically, EPA is proposing this amendment to clarify that the existence of two or more related civil violations or a single environmental criminal conviction in an applicant's environmental compliance history will not automatically lead to denial of an application for a PCB commercial storage approval.

DATES: Written comments must be submitted on or before [insert date 45 days after date of publication in the **Federal Register**]. Any comment received after the close of the comment period will be marked "late" and may not receive full consideration.

ADDRESSES: Three copies of comments identified with the docket number (OPPTS-62122) must be submitted to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Rm. NE-G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A public record has been established and is available in the TSCA Public Docket Office at the above address from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Rm. E-543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551, FAX: (202) 554-5603 (document requests only).

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

This proposed rule is issued pursuant to section 6(e)(1)(A) of the Toxic Substances Control Act, which authorizes the Environmental Protection Agency to promulgate rules to prescribe methods for the disposal of PCBs.

I. Background

On December 21, 1989, EPA published in the **Federal Register** a final rule amending its regulations for the disposal and storage of PCBs (Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities (54 FR 52716)). Among other things, the rule required commercial storers of PCB waste to obtain approval from EPA to operate a commercial storage facility. On March 5, 1990, the National Solid Wastes Management Association and Chemical Waste Management, Inc. (petitioners) filed a joint petition for review of the PCB Notification and Manifesting Rule in the United States Court of Appeals for the District of Columbia Circuit (Docket No. 90-1127). Petitioners raised a number of interpretive issues with respect to the 1989 rule, all of which have now been resolved. On , EPA and the petitioners filed a Settlement Agreement with the court whereby petitioners agreed to dismiss with prejudice their petition if EPA adopts a final rule in substantial conformity with the proposal described in this notice. EPA invites all interested parties to comment in writing on the proposal contained herein.

II. Proposed Amendment to the PCB Notification and Manifesting Rule

Section 761.65(d)(2) establishes seven criteria which an applicant must meet before EPA grants it a commercial storage approval for PCB waste. The final criteria (environmental compliance history) provides that there is sufficient basis to deny an application "whenever in the judgment of the Regional Administrator (or Director, Chemical Management Division (CMD)) two or more related civil violations or a single environmental criminal conviction evidence a pattern or practice of noncompliance that demonstrate the applicant's unwillingness or inability to achieve and maintain its operations in a compliance status."

In the context of their joint petition for review of the PCB Notification and Manifesting Rule, petitioners raised the concern that § 761.65(d)(2)(vii) might be interpreted to mean that a compliance history containing two civil violations or one criminal conviction would automatically result in a determination that an applicant for a commercial storage approval was unwilling or unable to maintain its operations in a compliance status. The petitioners believed that the language in the regulation regarding specific numbers of past civil (two) and criminal (one) violations might be understood by EPA, citizens' groups or reviewing courts as establishing absolute, numerical approval criteria applicable to any commercial storage applicant, regardless of the nature of the violations, the size of its business or the length of time it has been engaged in waste handling activities.

In promulgating the PCB Notification and Manifesting Rule, EPA did not intend that the mere existence in an applicant's compliance history of two civil violations or one criminal conviction would automatically demonstrate the existence of a pattern or practice of noncompliance sufficient to justify denial of a PCB commercial storage approval. In the Agency's view, the critical determination to be made is not merely the number of violations an applicant may have incurred, but what the violations and the circumstances surrounding them indicate about the character and fitness of the applicant to engage in commercial storage activities. The existence of multiple past violations might very well indicate that an applicant is incapable of complying with the PCB regulations. Indeed, the existence of just one or two civil or criminal violations may (depending on their nature and circumstances) also indicate an unwillingness or inability to comply with the law; however, it need not always do so.

Having considered the matter further, the Agency has decided that inclusion in § 761.65(d)(2)(vii) of references to specific numbers of past violations is not necessary to achieve its goal of ensuring that PCB storage approval applications not be granted when an applicant's compliance history indicates an unwillingness or inability to achieve and maintain compliance. EPA has also decided to change the phrase "shall be deemed to constitute" to "may be deemed to constitute." Accordingly, EPA is proposing to amend § 761.65(d)(2)(vii) to read as follows:

> The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, CMD) that history evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain its operations in compliance with the regulations.

Each approval decision will entail a case-by-case evaluation of all the circumstances of an applicant's environmental compliance history. EPA will consider a number of factors in determining whether the existence of a certain number of prior violations evidences a pattern or practice of noncompliance sufficient to warrant denial of a commercial storage approval application. Those factors will include, but are not necessarily limited to: the size of the applicant; the extent of the applicant's services; the length of time the applicant has been in business; the nature and details of the acts attributed to the applicant; the degree of culpability of the applicant; the applicant's cooperation with State or Federal agencies involved in an investigation of the underlying incidents; and self-policing or internal education programs established by the applicant to prevent such incidents.

III. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as the term is defined in section 1(b) of the Executive Order.

EPA has concluded that the proposed rule is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any section of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (15 U.S.C. 8091 et seq. Pub. L. 96–534. September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required. This proposed rule is clarifying in nature, i.e., it neither imposes nor removes a burden on small business. Therefore, EPA has determined that the proposed amendment will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information collection requests by Federal Agencies. EPA has determined that nothing in this rule constitutes a "collection of information" as defined at 44 U.S.C. 3502(4).

IV. Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal. The official records of previous PCB rulemaking are incorporated by reference as they exist in the TSCA Public Docket. A full list of these materials is available for inspection and copying in the TSCA Public Docket Office. However, any Confidential Business Information (CBI) that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection.

A. Previous Rulemaking Records

1. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Rule," Docket No. OPTS– 68005, 43 FR 7150, February 17, 1978.
2. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule, "44 FR 31514, May 31, 1979.
3. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Process, Distribution in Commerce, and Use Prohibitions: Use in Electrical Equipment," Docket No. OPTS–62015, 47 FR 37342, August 25, 1982.
4. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Exclusions, Exemptions and Use Authorizations," Docket No. OPTS–62032A, 49 FR 28172, July 10, 1984.
5. Official Rulemaking Record from "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities," Docket No. OPTS–62059B, 54 FR 52176, December 21, 1989.

B. Reference Documents

1. In the United States Court of Appeals for the District of Columbia Circuit. National Solid Wastes Management Association and Chemical Waste Management, Inc., Petitioners, v. United States Environmental Protection Agency, Respondent: Joint Petition for Review-Case No. 90–1127, (March 5, 1990):3pp. Submitted by J.B. Molloy, et al of Piper Marbury, counsel.
2. In the United States Court of Appeals for the District of Columbia Circuit. National Solid Wastes Management Association and Chemical Waste Management, Inc., Petitioners, v. U. S. Environmental Protection Agency, Respondent. Settlement Agreement-Case No. 90–1127, (November 20, 1992): 4pp.
3. Chemical Waste Management, Inc. Letter from G.R. Siedor to C. Elkins, USEPA. Subject: New PCB Rules, promulgated in 54 FR 52716, (Feb. 23, 1990):4pp.
4. USEPA, OTS. Letter from J.J. Merenda to G.R. Siedor of Chemical Waste Management, Inc. Subject: Response to Feb. 23, 1990 Letter, (June 8, 1990):3pp.

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: January 17, 1993.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed to amend 40 CFR Chapter I, part 761 as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. In § 761.65, by revising paragraph (d)(2)(vii) to read as follows:

§ 761.65 Storage for Disposal.

* * * * *

(d) * * *

(2) * * *

(vii) The environmental compliance history of the applicant, its principals, and its key employees may be deemed to constitute a sufficient basis for denial of approval whenever in the judgment of the Regional Administrator (or Director, CMD) that history evidences a pattern or practice of noncompliance that demonstrates the applicant's unwillingness or inability to achieve and maintain compliance with the regulations.

* * * * *

[FR Doc. 93–1876 Filed 1–25–93; 8:45 am]

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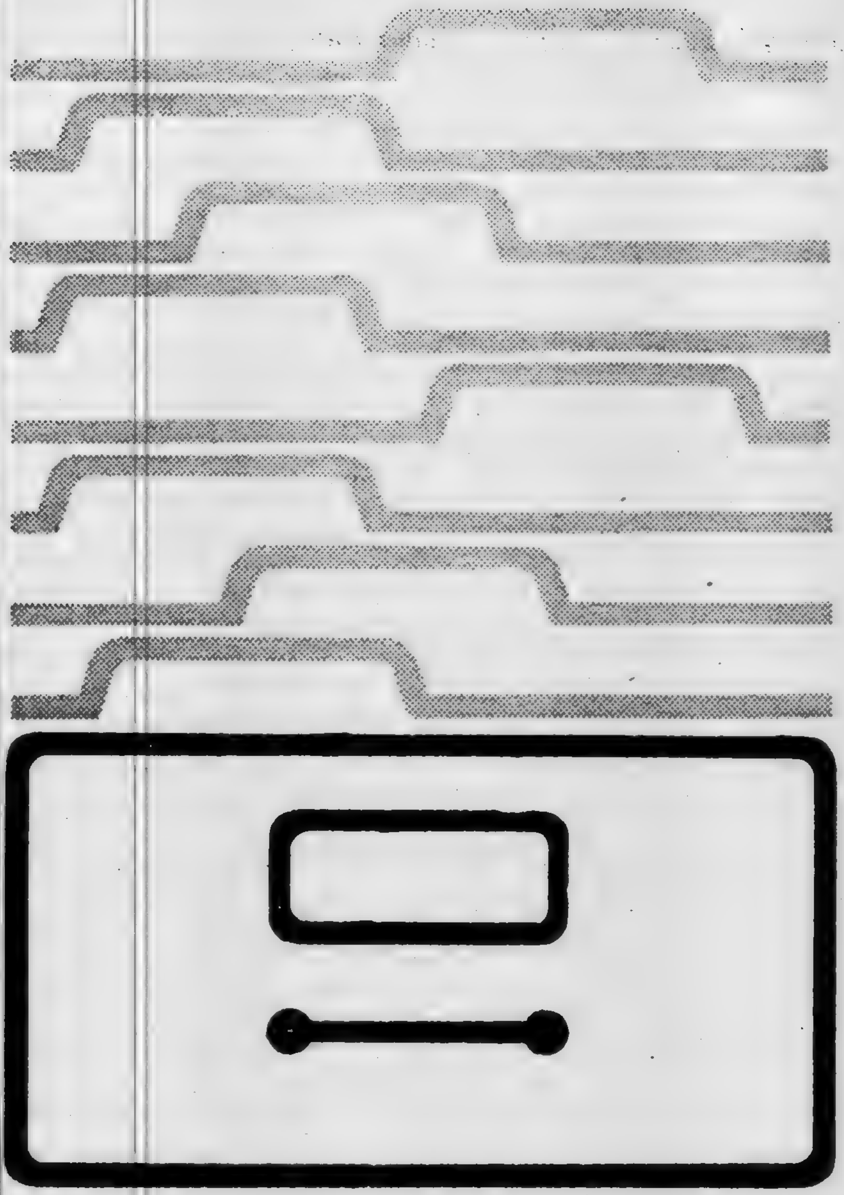

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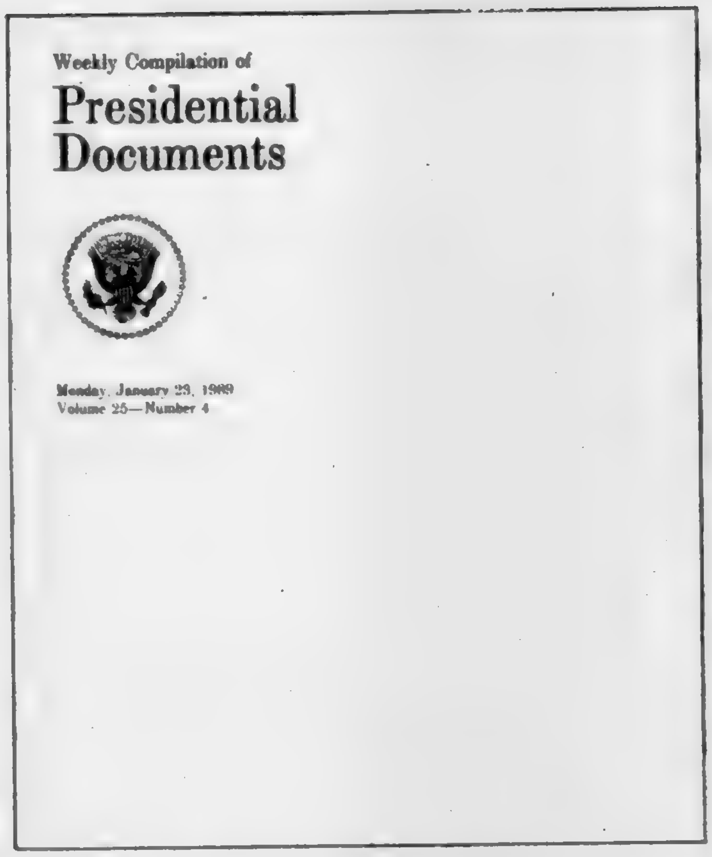

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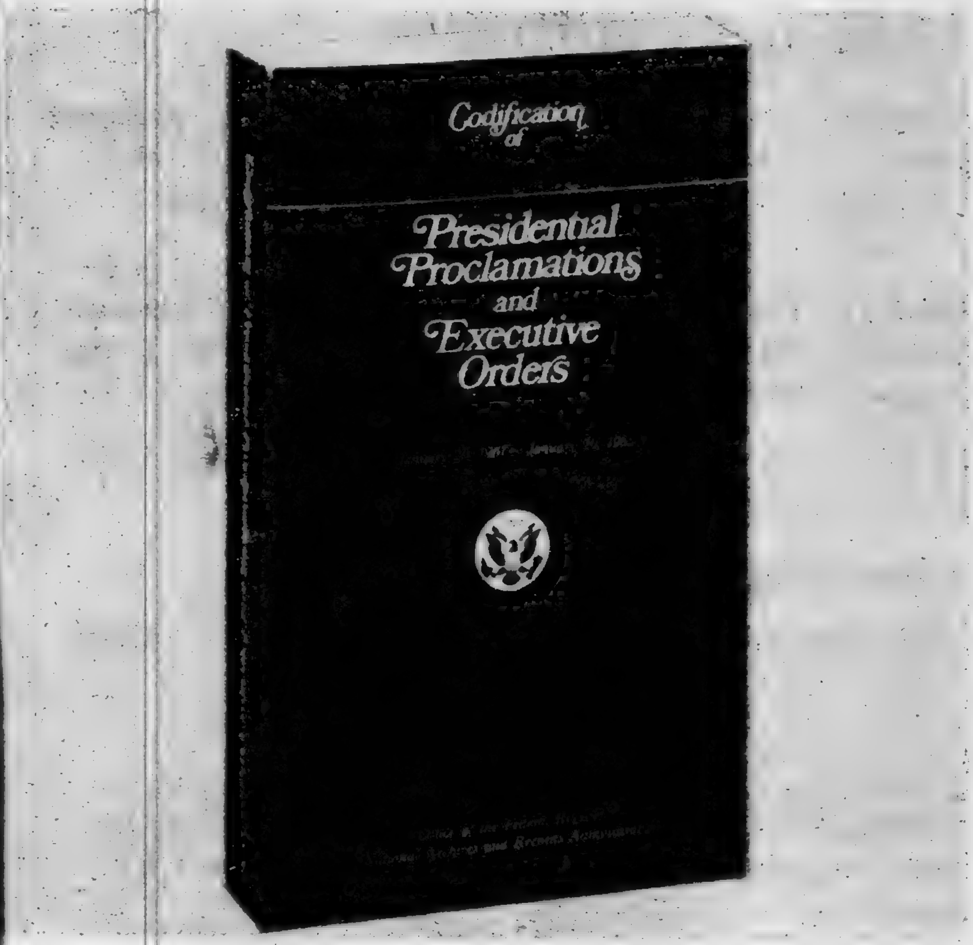

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federal register

Wednesday
January 27, 1993

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law Numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Federal Register
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Wednesday, January 27, 1993

Presidential Documents

Title 3—
The President

Proclamation 6525 of January 24, 1993

Death of Thurgood Marshall

By the President of the United States of America

A Proclamation

Thurgood Marshall, an African-American born and reared in segregated America, was a fundamental force of change in this Nation. Perhaps no other American lawyer has had more impact on the current meaning and content of the U.S. Constitution. As the leading attorney for the N.A.A.C.P. Legal Defense and Education Fund, Justice Marshall's twenty-nine victories before the U.S. Supreme Court breathed life into the text of the Fourteenth Amendment and guaranteed all Americans equality and liberty in their individual choices concerning voting, housing, education, and travel. As an appeals court judge, the Solicitor General of the United States and, finally, Supreme Court Justice, he worked tirelessly to expand and protect his vision of justice for America. As our Nation begins to chart its course for the next century, it is fitting that we pause to honor and remember the courageous, purposeful life of Thurgood Marshall.

As a mark of respect for the memory of Thurgood Marshall, former Associate Justice of the Supreme Court of the United States, I hereby order by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and Possessions until his interment. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of January, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-2095
Filed 1-25-93; 1:45 pm]
Billing code 3195-01-M

Editorial note: For the President's statement on the death of Thurgood Marshall, see issue 4 of the *Weekly Compilation of Presidential Documents*.

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Presidential Documents

Executive Order 12835 of January 25, 1993

Establishment of the National Economic Council

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 105, 107, and 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the National Economic Council ("the Council").

Sec. 2. *Membership.* The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;
(b) Vice President;
(c) Secretary of State;
(d) Secretary of the Treasury;
(e) Secretary of Agriculture;
(f) Secretary of Commerce;
(g) Secretary of Labor;
(h) Secretary of Housing and Urban Development;
(i) Secretary of Transportation;
(j) Secretary of Energy;
(k) Administrator of the Environmental Protection Agency;
(l) Chair of the Council of Economic Advisers;
(m) Director of the Office of Management and Budget;
(n) United States Trade Representative;
(o) Assistant to the President for Economic Policy;
(p) Assistant to the President for Domestic Policy;
(q) National Security Adviser;
(r) Assistant to the President for Science and Technology Policy; and
(s) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Sec. 3. *Meetings of the Council.* The President, or upon his direction, the Assistant to the President for Economic Policy ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

Sec. 4. *Functions.* (a) The principal functions of the Council are: (1) to coordinate the economic policy-making process with respect to domestic and international economic issues; (2) to coordinate economic policy advice to the President; (3) to ensure that economic policy decisions and programs are consistent with the President's stated goals, and to ensure that those goals are being effectively pursued; and (4) to monitor implementation of the President's economic policy agenda. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate economic policy through the Council.

(c) In performing the foregoing functions, the Assistant will, when appropriate, work in conjunction with the Assistant to the President for Domestic Policy and the Assistant to the President for National Security.

(d) The Secretary of the Treasury will continue to be the senior economic official in the executive branch and the President's chief economic spokesperson. The Director of the Office of Management and Budget, as the President's principal budget spokesperson, will continue to be the senior budget official in the executive branch. The Council of Economic Advisers will continue its traditional analytic, forecasting and advisory functions.

Sec. 5. *Administration.* (a) The Council may function through established or ad hoc committees, task forces or interagency groups.

(b) The Council shall have a staff to be headed by the Assistant to the President for Economic Policy. The Council shall have such staff and other assistance as may be necessary to carry out the provisions of this order.

(c) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

William J Clinton

THE WHITE HOUSE,
January 25, 1993.

[FR Doc. 93-2102
Filed 1-25-93; 2:07 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks on the establishment of this economic council see issue 4 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

Federal Register
Vol. 58, No. 16
Wednesday, January 27, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–41; Amendment 39–8387; AD 92–22–01]

Airworthiness Directives; Pratt & Whitney Canada PW100 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PW118A, PW123, PW124B, PW125B, and PW126A turboprop engines, that requires rework of the existing intercompressor case (ICC) and replacement of the low pressure rotor speed (NL) sensor port sealing tube and the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. This amendment is prompted by reports of internal oil fires in the ICC. The actions specified by this AD are intended to prevent fire in the engine nacelle cavity, inflight engine shutdown, and aircraft damage.

DATES: Effective February 26, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, (617) 272–5047; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) that is applicable to Pratt & Whitney Canada (PWC) PW118A, PW123, PW124B, PW125B, and PW126A turboprop engines was published in the **Federal Register** on December 16, 1991 (56 FR 65196). That action proposed to require rework of the existing 2-hole internal air passage intercompressor case (ICC) configuration to a 19-hole design, and replacement of the low pressure rotor speed (NL) sensor port sealing tube and the external air tube connecting the P2.5/P3 switching valve to the rear inlet case in accordance with PWC Service Bulletin (SB) No. 20914, Revision 2, dated June 3, 1991, and PWC SB No. 20957, Revision 2, dated June 10, 1991, respectively.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed, however, recommends that some form of crew notification be included as part of the final rule so that each of the aircraft manufacturers specified in the AD will alert operators and their respective crews. The FAA agrees that crew notification should be addressed and is considering further rulemaking in which this may be addressed. However, the FAA does not agree that crew notification should be included in this rule. This rule pertains only to the engine modifications that are intended to prevent an ICC fire and subsequent progression into the engine nacelle cavity.

One commenter states that Part B of PWC SB No. 20914, Revision 2, dated June 3, 1991, has been superseded by PWC SB No. 21097, dated November 8, 1991, for the PW126A engine, and that the AD should be updated accordingly to reflect this new service bulletin. The FAA agrees in part. The updated service bulletin, PWC SB No. 21097, dated November 8, 1991, introduces an integral fire detector which was not required by the proposed AD. All other aspects of the updated service bulletin, however, afford an equivalent level of safety, and, therefore, the FAA has included PWC SB No. 21097, dated November 8, 1991, in the AD as an additional compliance option for the PW126A engine.

One commenter states that Part B of PWC SB No. 20914, Revision 2, dated June 3, 1991, will be superseded by a service bulletin not yet released for the PW123 engine, and that the AD should be updated accordingly to reflect this new service bulletin. The FAA agrees in part. The updated service bulletin, PWC SB No. 21113 dated February 21, 1992, introduces an integral fire detector which was not required by the proposed AD. All other aspects of the updated service bulletin, however, afford an equivalent level of safety, and, therefore, the FAA has included PWC SB No. 21113 dated February 21, 1992, in the AD as an additional compliance option for the PW123 engine.

Similar PWC service bulletins that introduce external air tube designs with an integral fire detector are also being included as additional compliance options for the other engine models affected by this AD.

One commenter expresses concern about meeting the proposed compliance times due to hardware availability. The FAA agrees and the compliance time has been changed.

One commenter states that the definition of engine shop visit should be changed to encompass only engine shop visits where a major engine flange is disturbed. Making that change to the definition of engine shop visit would have the effect of relaxing the compliance times for the AD. The FAA disagrees with the commenter regarding any relaxation of the compliance time for paragraph (a) of the AD. Paragraph (a) requires the replacement of the NL sensor port sealing tube and the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. Compliance with paragraph (a) of this AD is intended to contain an ICC fire internally in the engine. This is required to be accomplished as soon as possible to preclude the possibility of an internal ICC fire progressing into the engine nacelle cavity. Therefore, the definition for an engine shop visit in paragraph (a) of this AD remains as stated in the NPRM.

However, the FAA does agree with the commenter that once the risk of an uncontained fire has been reduced, there is less urgency in the rework or replacement of the existing 2-hole internal air passage ICC to the 19-hole design required in paragraph (b). Thus, the requirements for compliance in paragraph (b) of this AD will be relaxed. The definition of an engine shop visit for paragraph (b) will be changed to require rework at the next engine shop visit involving the separation of any major module.

Since publication of the NPRM, the manufacturer has issued revised service bulletins that have miscellaneous editorial changes, they are as follows: PWC SB No. 20914, Revision 3, dated October 15, 1991, and PWC SB 20957, Revision 4, dated December 9, 1991.

Also, since publication of the NPRM, the FAA has determined that additional service bulletins should be included in this AD to provide additional compliance options. Therefore, the following service bulletins are included in this AD: PWC SB No. 21112, dated February 13, 1992, for PW118A engines; PWC SB No. 21113, Revision 1, dated May 4, 1992, for PW123 engines; PWC SB No. 21111, dated December 16, 1991, for PW124B engines; PWC SB No. 21088, Revision 1, dated November 12, 1991, for PW125B engines; PWC SB No. 21097, dated November 8, 1991, for PW126A engines; and PWC SB No. 20962, Revision 3, dated May 11, 1992, applicable for all PW100 models.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 683 PW100 series turboprop engines of the affected design in the worldwide fleet. It is estimated that approximately 85 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. The FAA had been advised that the manufacturer will supply the required parts under a warranty program. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-22-01—Pratt & Whitney Canada: Amendment 39-8387. Docket No. 91-ANE-41.

Applicability: Pratt & Whitney Canada (PWC) PW118A, PW123, PW124B, PW125B, and PW126A series turboprop engines installed on but not limited to Embraer EMB-120, DeHavilland Dash 8 Series 300, Aerospatiale ATR 72, Fokker 50, and British Aerospace ATP aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire in the engine nacelle cavity, inflight engine shutdown, and aircraft damage, accomplish the following:

(a) Replace the low pressure rotor speed (NL) sensor port sealing tube and the external air-tube connecting the P2.5/P3 switching-valve to the rear inlet case at the next engine shop visit, when the engine is inducted into the shop for the conduct of maintenance, but not later than April 27, 1993, as follows:

(1) For PW118A engines, in accordance with PWC Service Bulletin (SB) No. 20914, Revision 3, dated October 15, 1991, or PWC SB No. 21112, dated February 13, 1992.

(2) For PW123 engines, in accordance with PWC SB No. 20914, Revision 3, dated October 15, 1991, or PWC SB No. 21113, Revision 1, dated May 4, 1992.

(3) For PW124B engines, in accordance with PWC SB No. 20914, Revision 3, dated October 15, 1991, or PWC SB No. 21111, dated December 16, 1991.

(4) For PW125B engines, in accordance with PWC SB No. 20914, Revision 3, dated October 15, 1991, or PWC SB No. 21088, Revision 1, dated November 12, 1991.

(5) For PW126A engines, in accordance with PWC SB No. 20194, Revision 3, dated October 15, 1991, or PWC SB No. 21097, dated November 8, 1991.

(b) Rework the existing 2-hole internal air passage ICC to a 19-hole design or replace the existing ICC, in accordance with the Accomplishment Instructions of PWC SB 20957, Revision 4, dated December 9, 1991, or PWC SB No. 20962, Revision 3, dated May 11, 1992, at the next engine shop visit when the engine is inducted into the shop and any major module is separated, but not later than June 30, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request shall be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement and rework procedures shall be done in accordance with the following service documents:

Document No.	Pages	Issue/revision	Date
PWC SB 20914. Total Pages: 13.	1–13	Revision 3	10–15–91
PWC SB 21112. Total Pages: 6.	1–6	Original	2–13–92
PWC SB 21113. Total Pages: 14.	1–14	Revision 1	5–4–92
PWC SB 21111. Total Pages: 12.	1–12	Original	12–16–91
PWC SB 21088.	1–18	Revision 1	11–12–91

Document No.	Pages	Issue/revision	Date
Total Pages: 18.			
PWC SB 21097.	1–11	Original	11–8–91
Total Pages: 11.			
PWC SB 20957.	1–8	Revision 4	12–9–91
Total Pages: 8.			
PWC SB 20962.	1–3	Revision 3	5–11–92
Total Pages: 3			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

(f) This amendment becomes effective on February 26, 1993.

Issued in Burlington, Massachusetts, on December 14, 1992.

Jay J. Pardee,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–1930 Filed 1–26–93; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–123; RM–7992]

Radio Broadcasting Services; Mexico, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Renard Communications Corp., allots Channel 280A to Mexico, New York, as the community's first local FM service. See 57 FR 27416, June 19, 1992. Channel 280A can be allotted to Mexico in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 43–27–34 and West Longitude 76–13–45. This allotment is short-spaced to Station CHXL–FM, Channel 279B, Brockville, Ontario, and Station CBBP–FM, Channel 280B, Peterboro, Ontario, Canada. However, the Commission has determined that a station can limit its power in the direction of the Canadian stations and thus avoid any prohibited interference. Canadian concurrence in the allotment as a specially negotiated allotment has been received since Mexico is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective March 8, 1993. The window period for filing applications will open on March 9, 1993, and close on April 8, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and order, MM Docket No. 92–123, adopted December 21, 1992, and released January 21, 1993.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Mexico, Channel 280A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1955 Filed 1–26–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–212; RM–8064]

Radio Broadcasting Services; Rudolph, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 260C3 for Channel 260A at Rudolph, Wisconsin, and modifies the license for Station WIZD to specify operation on Channel 260C3 in response to a petition filed by Wizard Communications, Inc. See 57 FR 44548, September 28, 1992. The coordinates for Channel 260C3 at Rudolph are 44–21–31 and 89–39–23. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 8, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–212, adopted December 21, 1992, and released January 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 260A and adding Channel 260C3 at Rudolph.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–1956 Filed 1–26–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1: Amdt. 1–257]

Organization and Delegation of Powers and Duties; Redelegation of Authority to Commandant, United States Coast Guard; Federal Highway Administrator; Federal Railroad Administrator; and the Administrator of the Research and Special Programs Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation has redelegated to the Commandant, United States Coast Guard, certain authority vested in the President by the Oil Pollution Act of 1990 (OPA 90) and delegated to the Secretary by Executive Order (E.O.) 12777. Specifically this rule modifies the redelegations of authority published in the **Federal Register** on March 11, 1992, and December 31, 1992. It provides authority to the Commandant, U.S. Coast Guard to regulate motor carriers and railroads for operations incident to the transfer of oil or hazardous materials to or from vessels.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, U.S. Department of Transportation, room 10424, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–9306.

SUPPLEMENTARY INFORMATION: In response to several major oil spills, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380, 104 Stat. 484, August 18, 1990) in order to prevent, respond to, and pay for oil and hazardous substance spills. The President delegated to the Secretary, by Executive Order (E.O.) 12777, authority under OPA 90 to promulgate regulations to protect the environment from oil and hazardous substance spills during transportation by vessel, motor vehicle, railroad, or pipeline. In delegations published March 11, 1992 (57 FR 8581) and December 31, 1992 (57 FR 62483), the Secretary redelegated portions of this authority to the Commandant, United States Coast Guard (Commandant); Administrator, Maritime Administration; Administrator, Federal Highway Administration (FHWA); Administrator, Federal Railroad Administration (FRA); and Administrator, Research and Special Programs Administration (RSPA). In part, these redelegations gave authority to review and approve response plans concerning discharges from pipelines, motor carriers, and railways to, respectively, the Administrators of RSPA, FHWA, and FRA. The redelegation to the Commandant concerning response plans excepted authority concerning discharges from pipelines, motor carriers, and railways. This rule modifies the previous delegations by providing authority to the Commandant to issue regulations requiring the preparation of response plans and to review and approve response plans concerning operations incident to the transfer of oil or hazardous materials from motor carriers or railroads to vessels or from vessels to motor carriers or vessels. This rule also makes editorial changes to the previous delegations, such as changing "railways," which appeared in the March 11 delegation, to "railroads."

Because this rulemaking, which makes changes that are necessary to reflect the delegations under OPA 90 and E.O. 12777, relates to Departmental management, organization, procedure, and practice, notice and comment on it are unnecessary, and it may be made effective fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.46 is amended by revising paragraph (m) to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(m) Carry out the functions assigned to the Secretary by Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) in sections 1(b), 2(a), 2(b)(2), 2(c), 2(d)(2), 2(e)(2), 2(f), 2(g)(2), 3, 5(a)(2), 5(b)(1) and (3), 6, 7(a) (1) and (3), 7(b), 7(c), 7(d), 8(d), 8(f), 8(g), 8(h), 9, and 10(c), excepting that portion of section 2(b)(2) relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent and to contain discharges of oil and hazardous substances from pipelines, motor carriers, and railroads; and further excepting the exercise of the authority in section 2(d)(2) over motor carriers and railroads, other than for operations incident to the transfer of oil or hazardous substances to or from vessels, and the exercise of the authority in section 2(d)(2) over pipelines.

* * * * *

3. Section 1.48 is amended by revising paragraph (jj) to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(jj) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757), with respect to highway transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of motor carriers, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), to operate without approved response plans, except as delegated in § 1.46(m).

4. Section 1.49 is amended by revising paragraph (ii) to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(ii) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757), with respect to rail transportation, relating to the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of railroads, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), to operate without approved response plans, except as delegated in § 1.46(m).

5. Section 1.53, paragraph (k) is revised to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(k)(1) Carry out the functions and exercise the authority delegated to the Secretary in Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) in section 2(b)(2) relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in, pipelines, motor carriers, and railroads. (See 49 CFR 1.46 and 1.66.)

(2) Carry out the functions and exercise the authority delegated to the Secretary in section 2(d)(2) of Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) relating to the issuance of regulations requiring the owners or operators of pipelines, motor carriers, and railroads, subject to the Federal Water Pollution Control Act (33 U.S.C. 1321), to prepare and submit response plans, except as delegated in section 1.46(m). For pipelines subject to the

Federal Water Pollution Control Act (33 U.S.C. 1321), this authority includes the approval of means to ensure the availability of private personnel and equipment to remove, to the maximum extent practicable, a worst case discharge, the review and approval of response plans, and the authorization of pipelines to operate without approved response plans.

Issued on: January 15, 1993.

Andrew H. Card, Jr.,

Secretary, Department of Transportation.

[FR Doc. 93-1827 Filed 1-26-93; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

NRC Program for Elimination of Requirements Marginal to Safety; Public Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of rescheduled dates and publication of advanced material for Public Workshop.

SUMMARY: On November 24, 1992 (57 FR 55156), the NRC published a notice to announce its continuing program to eliminate requirements marginal to safety and a public workshop for the program. Subsequently, the NRC published a notice (57 FR 58727) deferring the workshop to expand the scope and include other aspects of the staff plants to improve the efficiency of the regulatory process. The workshop has been rescheduled and will now be held on April 27 and 28, 1993. This notice provides the agenda and advance material for the Public Workshop.

DATES: Public Workshop has been rescheduled for April 27 and 28, 1993.

ADDRESSES: Public Workshop will be held at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland. Phone (301) 652–2000, (800) 638–5954.

Hotel reservations may be obtained at a special rate by calling the Holiday Inn Bethesda. A block of rooms has been reserved for this workshop until April 5, 1993. Mention Group No. 3520 when making the reservation.

Pre-registrations, requests to serve on a panel or speak on a topic should be sent by mail or facsimile to Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, FAX (301) 443–7836. Copies of the NRC reports to the President may be examined at: The NRC Public Document Room, 2120 L Street, NW. [Lower Level], Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Moni Dey, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Phone (301) 492–3730, FAX (301) 443–7836.

SUPPLEMENTARY INFORMATION: Preliminary Agenda for Public Workshop on NRC Program for Elimination of Requirements Marginal to Safety.

April 27, 1993

7:30 a.m.—Registration

Morning Session

8:30 a.m.—Introductory Remarks/Workshop Objectives (NRC)

9 a.m.—Program Overview (Scope, Schedules, and Status) and Integration into Regulatory Process (NRC)

Q&A

10 a.m.—Coffee Break

10:15 a.m.—Framework for a Performance-Based Regulatory Approach (Panel/General Discussion)

11:45 p.m.—Lunch

Afternoon Session

12:45 p.m.—Containment Leakage Testing Requirements—Leakage Rate and 10 CFR 50 Appendix J (Panel/General Discussion)

2:45 p.m.—Coffee Break

3 p.m.—Fire Protection Requirements (Panel/General Discussion)

5 p.m.—Adjourn

April 28, 1993

7:30 a.m.—Registration

Morning Session

8:30 a.m.—Requirements for Combustible Gas Control Systems (Panel/General Discussion)

10:30 a.m.—Coffee Break

11:45 a.m.—Requests for Information Under 10 CFR 50.54(f) (Speakers)

12:30 p.m.—Lunch

Afternoon Session

1:30 p.m.—Quality Assurance Requirements (Speakers)

2:15 p.m.—Requirements for Environmental Qualification of Electrical Equipment (Speakers)

3 p.m.—Coffee Break

3:15 p.m.—Requirements for Physical Protection for Power Reactors (Speakers)

4 p.m.—Procedures for Continuing Focus and Interactions for Ongoing Program (NRC/Speakers)

5 p.m.—Adjourn

The Workshop will commence with the NRC providing introductory remarks, statements on the objectives of the Workshop, and a review of the program including scope, schedules, and status of specific items. The NRC will then lead an initial discussion on ways to permanently integrate this program into the regulatory process. The Workshop will conclude with a continuation of this discussion, given the needs identified in the discussions of specific topics, for determining procedures for continuing focus and interaction for the ongoing program.

As indicated in the agenda there will be four topics for which there will be a panel and general discussion. Panels, with approximately six members for each of the four topics, will be formed based on those that indicate an interest to serve on a specific panel and on obtaining a spectrum of comments and views that the NRC determines will be most beneficial towards its objectives. Each panelist will be expected to provide a presentation, of about 10 minutes, on his or her views, experiences, and comments on that specific topic. This will be followed by a discussion among the panelists and opportunity for members of the general public attending the panel discussion session to provide their views. In their presentations, panelists will be expected to provide comments on the NRC proposals and also their general views and experiences related to the topic.

The sessions on April 28, 1993, includes five topics for which NRC solicits speakers to provide a 5 to 10 minute presentation on their views and experiences on the specific topic. The NRC does not intend to publish any additional material, other than what is contained in this notice, on these topics prior to the Workshop. If time permits, other attendees at the sessions will be provided any opportunity to speak on the topic.

Pre-Registration

In order to allow for appropriate arrangements for participants, pre-registration for the meeting by April 12, 1993, is encouraged. Prospective participants can pre-register by sending the following information to the contact by mail or facsimile: (1) Name; (2) Title; (3) Organization; (4) Address; and (5) Telephone number. Requests to serve as a member of any of the 4 panels, or speak on any of the 5 topics in the sessions on April 28, 1993, can be made by sending the above information, requested for pre-registrants, plus the specific panel on topic, by mail or facsimile to the contact by April 5, 1993. Requests to be on a panel or speak will be processed on a first come basis.

Performance-Based Regulatory Approach

The following are preliminary criteria and specific, potential applications to three regulations that will be used as a starting point for discussions at the public workshop. However, participants need not limit their comments to the published material and are encouraged to provide new and innovative ideas and approaches. Comments and approaches proposed at the public workshop will be reviewed and evaluated by the staff towards finalizing the general framework for developing performance-based regulations and specific approaches for three proposed rulemakings.

Preliminary Criteria for Developing Performance-Based Regulations

A. Revised rules will focus on establishing the regulatory/safety objective in as an objective manner as possible. The main aim of a performance-based regulatory approach is to allow licensees flexibility to use cost-effective methods for implementation of the objectives.

B. The regulatory objective will be derived, to the extent feasible, from risk considerations and relationship to safety goals.

C. Detailed technical methods for measuring or judging the acceptability of licensee's performance relative to the regulatory objectives will be provided in Regulatory Guides. To the extent possible, approved industry standards and guidance will be endorsed in this regard.

D. Collective industry effort (NUMARC, EPRI, Owner's Groups) are encouraged to maintain standardized industry practices.

E. The new rules will be optional for current licensees and thus licensees can decide to remain in compliance with current regulations.

F. Scope of this effort will not be limited to regulations, but will address the body of regulatory practice e.g. Standard Review Plan, inspection procedures, technical specifications, and other regulatory documents.

G. Performance-based regulatory approach should provide incentives for innovation and improvements in safety.

H. The following issues with regard to the three proposed rulemaking activities need to be addressed in the process:

(1) Can the new rule and its implementation yield an equivalent level of, or only have a marginal impact on, safety.

(2) Can the regulatory/safety objective (qualitative or quantitative) be established in an objective manner to allow a common understanding between licensees and the NRC on how the performance or results will be measured or judged.

(3) Can the regulation and implementation documents be developed in such a manner that they can be objectively and consistently inspected and enforced against.

Specific Potential Applications of a Performance-Based Regulatory Approach

I. Containment Leakage and Testing Requirements

Present Regulatory Objectives

A. *Containment Leakage:* GDC 16—Provide essentially leak-tight barrier against uncontrolled release of radioactivity to environment for postulated accidents (leak-tightness is specified with a allowable leakage rate in the plant technical specifications).

B. *Containment Testing:* Test the overall containment, pressure-containing or leakage-limiting boundaries, and containment isolation valves at specific intervals (identified in rule) to confirm and provide confidence the allowable leakage rate will not be exceeded for postulated accidents.

Background

- Present information of risk from postulated accidents indicate that the allowable leakage rate from containments can be increased.
- Risk studies have shown that control of containment leakage at low rates is not as risk significant as previously assumed.
- Containment leakage tests are conducted to confirm the availability of the containment, and they indirectly reduce risk based on these assumptions.

Potential Modifications

- Two separate initiatives:

A. Increase allowable containment leakage rate based on safety goals and PRA technology (define new performance standard). Rulemaking may not be necessary since leakage rate is specified in Technical Specifications.

B. Modify Appendix J to a performance-based regulation:

—Limit revised rule to a new regulatory objective: In order to ensure the availability of the containment during postulated accidents, licensees should either: (a) test overall containment leakage no longer than every 10 years, and test pressure-containing or leakage-limiting boundaries and containment isolation valves on an interval based on the performance history of the equipment; or (b) provide an on-line monitoring capability of containment isolation status.

—Move details of the tests and reporting in Appendix J to a Regulatory Guide as guidance.

—Endorse approved industry standards on: (1) Guidance for calculating plant-specific allowable leakage rates based on new NRC performance standard; (2) Guidance on the conduct of containment tests; and (3) Guidance for on-line monitoring of containment isolation status.

—Current detailed requirements in Appendix J will continue to be acceptable for compliance with the modified rule (licensees presently in compliance with Appendix J will not need to do anything if they do not wish to change their practice).

II. Fire Protection Requirements (Appendix R to 10 CFR 50)

Present Regulatory Objective

SSC important to safety shall be designed and located to minimize, consistent with other safety requirements, the probability and effects of fires and explosions—GDC 3.

Background

- Appendix R expands on the above regulatory objective by: (1) specifying fire damage limits to trains of systems associated with achieving and maintaining safe shutdown conditions, or (2) requiring an alternative or dedicated shutdown capability if fire damage limits cannot be achieved.
- Appendix R contains further specific requirements for separation criteria to achieve fire damage limits, water supplies for fire suppression systems, valves, manual fire suppression, tests, automatic fire detection, fire brigade, emergency lighting, administrative controls, design of alternative and dedicated shutdown capability, fire barrier cable penetrating seal qualification, and fire doors.
- PRA technology is now available to determine the risk significance of fire sequences in various areas of a plant, and may provide a basis for the design of fire protection features.

Potential Modification

Modify Appendix R to a performance-based regulation:

- Replace deterministic criteria in Appendix R that specify limits to fire damage to trains of systems with criteria that allows the use of PRA technology and risk significance of fire sequences to determine fire protection features (establish quantitative criterion related to safety goals if feasible).
- Move various means for achieving the regulatory objective of Appendix R, including fire damage limits to trains of systems and necessary separation criteria, to a Regulatory Guide.
- Endorse approved industry standard on the use of PRA technology in determining fire protection features in a Regulatory Guide.
- Current detailed requirements in Appendix R will continue to be acceptable for compliance with the modified rule (licensees presently in compliance with Appendix R will not need to do anything if they do not wish to change their practice).
- The following areas of fire protection requirements in Appendix R have potential for reduction in burden with marginal impact on safety (these areas were previously identified in NUREG/CR–4330,[1] Vol. 1, "Review of Light Water Reactor Regulatory Requirements," April 1986): (1) Disabling of automatic features; (2) Transient combustible load assumptions; (3) Loss of offsite power; (4) Three-hour fire barriers; (5) Allowance for operator actions and (6) Emergency lighting.

III. Standard for Combustible Gas Control System in Light-Water Cooled Power Reactors (10 CFR 50.44)

Present Regulatory Objective

Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical metal cladding shall include means for control of hydrogen gas, generated following risk-significant postulated accidents, that is necessary to ensure that containment structural integrity is maintained and its leakage does not exceed the rate specified in Criterion 16 of appendix A of 10 CFR part 50 following combustion or detonation of hydrogen during the postulated accidents. Postulated accidents shall include those that lead to: (1) Degraded core conditions without reactor pressure vessel (RPV) failure for light-water reactors whose application for a construction permit or manufacturing license was granted before February 16, 1982; or (2) full core melt with RPV failure for light-water reactors whose application for a construction permit or manufacturing license was pending as of, or submitted after, February 16, 1982.

Background

- 10 CFR 50.44 presently requires the following for operating reactors:

—Recombiners for all types of containments to control hydrogen generated in a postulated LOCA involving about 5% of the cladding (Later Mark I and II containments were exempted from this requirement).

—Mark I and II containments were required to be inerted, considering postulated severe accidents.

—BWR Mark III and Ice Condenser pressure-suppression containments must have a control system for hydrogen generated from reactions involving 75% of the fuel cladding, based on a limiting case of degraded core accidents without RPV failure.

—Large dry containments were excluded from above requirement to control hydrogen from reactions involving 75% of fuel cladding, because of its capability to withstand pressures resulting from combustion/denotation of large amounts of hydrogen generated during postulated severe accidents.

—Large dry containments have not been exempted from requirement for recombiners which are not effective for controlling hydrogen generated from risk-significant severe accident sequences (this issue has been under consideration as a marginal-to-safety requirement).

- 10 CFR 50.34(f) addresses hydrogen control for future plants and requires systems that can control hydrogen generated from reaction of 100% of the fuel cladding.
- 10 CFR 50.44 and 50.34 are rules that evolved through the years and have become prescriptive. They specify the design capacity of hydrogen control systems and thus may not encourage the design of, or allow credit for, systems/features that could decrease the amount of hydrogen generated.

Potential Modification

Modify 10 CFR 50.44 and 10 CFR 50.34(f)(ix) to a performance-based regulation:

- The above present regulatory objective could be the revised rule.
- Eliminate amounts of hydrogen to be controlled from the rules.
- Transfer staff positions on methods to meet the performance standards to a Regulatory Guide (e.g., operating Mark I and II containments should be inerted, and operating BWR Mark III and PWR Ice Condenser containments should control hydrogen generated involving 75% of the fuel cladding).
- Establish regulatory position that recombiners can be eliminated from large dry and subatmospheric containments.
- Transfer staff position, that future reactors address hydrogen generated involving 100% of cladding, from 10 CFR 50.34(f)(ix) to a Regulatory Guide.
- Licensees currently in compliance with 10 CFR 50.44 will continue to be in compliance with modified rule.
- A need for industry effort in this area for operating reactors is not anticipated, unless industry has any new and alternative proposals for meeting the regulatory objectives.

As stated earlier, the above material will be used as a starting point for discussions at the public workshop. Participants need not limit their comments to this material and are encouraged to provide new and innovative ideas and approaches.

Subject: NRC Program for Elimination of Requirements Marginal to Safety.

Dated at Rockville, Maryland, this 21st day of January 1993.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 93–1947 Filed 1–26–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–230–AD]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that currently requires repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary.

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[1] Copies of NUREG series reports may be purchased through the U.S. Government Printing Office by calling (202) 512–2249 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level). Washington, DC.

This action would continue to require repetitive inspections of the fittings, and replacement, if necessary, and would add a requirement for replacement of the fittings with improved fittings, which, when installed, would constitute terminating action for the repetitive inspections. This proposal is prompted by the development of improved fittings that would correct the fatigue cracking problem addressed in the existing AD. The actions specified by the proposed AD are intended to prevent separation of an inboard engine from an airplane.

DATES: Comments must be received by March 22, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-230-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-230-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-230-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On August 27, 1992, the FAA issued AD 92-19-15, Amendment 39-8373 (57 FR 43890, September 23, 1992), to require repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary. That action was prompted by two reports of engine and pylon separations on Model 707 series airplanes and numerous reports of cracks found in the midspar fittings. The requirements of that AD are intended to prevent separation of an inboard engine from an airplane.

The FAA indicated in the preamble to AD 92-19-15 that Boeing had designed an improved midspar fitting, which, if installed, would positively correct the unsafe condition of fatigue cracking addressed in that AD. The FAA also indicated in the existing AD that it planned further rulemaking to require replacement of the midspar fittings with the improved fitting in order to eliminate the need for the required repetitive inspections.

The improved midspar fitting and procedures for its installation are described in Boeing Service Bulletin 3183, Revision 1, dated May 17, 1977, and Revision 2, dated January 28, 1988. This improved fitting provides greater fatigue resistance. Its installation involves engine removal, strut rotation about the overwing fitting, and dismantling of the strut torque bulkhead for access. The FAA has reviewed and approved previously both revisions of that service bulletin.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 92-19-15 to continue to require repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary. It would also require the eventual installation of the improved midspar fitting, which, when installed, would constitute terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 187 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 260 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $7,800 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,171,300, or $22,100 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8373 (57 FR 43890, September 23, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–230–AD. Supersedes AD 92–19–15, Amendment 39–8373.

Applicability: Model 707 and 720 series airplanes; line numbers 1 through 906, inclusive; including Model 707 and 720 series airplanes that have been modified in accordance with Supplemental Type Certificates (STC's) SA2699NM, SA3595NM, or SA4015NM; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of an inboard engine from an airplane, accomplish the following:

(a) Perform a close visual inspection of the midspar fittings to detect cracks in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992, unless accomplished previously in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4), of this AD, as applicable.

(1) For Model 707–300B/C series airplanes modified by installation of a "hush kit" in accordance with Supplemental Type Certificate (STC) SA2699NM, at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 650 flight hours or 250 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(2) For Model 707–100B and 720B series airplanes modified by installation of a "hush kit" in accordance with STC SA3595NM or SA4015NM, at the later of the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 650 flight hours or 325 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(3) For Model 707–300, 707–400, and 707–300B/C series airplanes, at the later of the times specified in paragraph (a)(3)(i) or (a)(3)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 1,100 flight hours or 400 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(4) For Model 707–100, 707–100B, 707–200, 720 and 720B series airplanes, at the later of the times specified in paragraph (a)(4)(i) or (a)(4)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 1,100 flight hours or 550 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(b) Repeat the inspection required by paragraph (a) of this AD thereafter at the intervals specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable, in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992.

(1) For Model 707–300B/C series airplanes modified by installation of a "hush kit" in accordance with STC SA2699NM: At intervals not to exceed 750 flight hours or 300 flight cycles, whichever occurs first.

(2) For Model 707–100B and 720B series airplanes modified by installation of a "hush kit" in accordance with STC SA3595NM or SA4015NM: At intervals not to exceed 750 flight hours or 375 flight cycles, whichever occurs first.

(3) For Model 707–300, –400, and –300B/C series airplanes: At intervals not to exceed 1,200 flight hours or 450 flight cycles, whichever occurs first.

(4) For Model 707–100, 707–100B, 707–200, 720, and 720B series airplanes: At intervals not to exceed 1,200 flight hours or 600 flight cycles, whichever occurs first.

(c) If any cracks are found in the midspar support fittings as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight: Conduct an eddy current inspection, replace both midspar support fittings, and modify or repair all other structure specified in the service bulletin, in accordance with Boeing Service Bulletin 3183, Revision 1, dated May 13, 1977, or Revision 2, dated January 28, 1988. If a currently-installed fitting is replaced by a new fitting of the same part number, that new fitting must be inspected in accordance with the compliance times and procedures required by paragraphs (a) and (b) of this AD.

(d) Replace the midspar fittings with new, improved fittings, in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, at the later of the times specified in paragraph (d)(1) or (d)(2) of this AD. Such replacement constitutes terminating action for the repetitive inspections required by this AD.

(1) Prior to the accumulation of 12,000 flight hours; or

(2) Within 4 years or 4,800 flight cycles after the effective date of this AD, whichever occurs first.

(e) Replacement of the midspar fittings with new, improved fittings, in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, constitutes terminating action for the inspections required by this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 20, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1933 Filed 1–26–93; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4556–4]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Newport Beach, California on February 11–12 to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on February 11–12 in Newport Beach, California. The February 11th meeting will start at 9 a.m. and run until 6 p.m. On February 12th, it will start at 8 a.m., and end by 3 p.m.

ADDRESSES: The meeting will be held at the Balboa Bay Club, 1221 West Coast Highway, Newport Beach, Cal., 92663, (714–645–5000).

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards at 919–541–5408. Persons needing further information on meeting logistics should call Barbara Stinson, the Committee Co-chair, at 303–468–5822.

Dated: January 21, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–1876 Filed 1–26–93; 9:43 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-230; RM-8090]

Radio Broadcasting Services; Snow Hill, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal of.

SUMMARY: The Commission dismisses a petition for rule making filed by Snow Hill Community Broadcasting requesting the allotment of Channel 223A at Snow Hill, Maryland, for lack of interest in the allotment. See 57 FR 49057 (October 29, 1992). With this action, this proceeding is terminated.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-230, adopted December 30, 1992, and released January 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1957 Filed 1-26-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-315, RM-8141]

Radio Broadcasting Services; Starbuck, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Starbuck Broadcasters proposing the allotment of Channel 247C2 to Starbuck, Minnesota, as that community's first local broadcast service. The coordinates for Channel 247C2 and 45-33-44 and 95-34-15. There is a site restriction 6.7 kilometers (4.2 miles) southwest of the community.

DATES: Comments must be filed on or before March 15, 1993, and reply comments on or before March 30, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Gregg P. Skall, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-315, adopted December 21, 1992, and released January 21, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-1954 Filed 1-26-93; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 58, No. 16
Wednesday, January 27, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

Feed Grain Donations; Blackfeet Indian Reservation of Browning, MT

AGENCY: Agricultural Stabilization and Conservation Service, USDA, and Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Executive Vice-President, Commodity Credit Corporation (CCC) and the Administrator, Agricultural Stabilization and Conservation Service, is announcing that the reservation and grazing land of the Blackfeet Tribe of the Blackfeet Indian Reservation, Browning, Montana, is an acute distress area and that CCC-owned feed grain will be donated to needy livestock owners on the reservation.

FOR FURTHER INFORMATION CONTACT: Margie L. Hartman, Livestock Programs Branch, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, DC 20013, 202–720–6235.

SUPPLEMENTARY INFORMATION: Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), Executive Order 11336, and the delegation of authority in 7 CFR 2.65(21), notice is being given that I have determined that:

1. The chronic economic distress of the needy members of the Blackfeet Tribe (the Tribe) of the Blackfeet Indian Reservation of Browning, Montana, has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation (CCC) for livestock feed for such needy members of the Tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing land of the Tribe to be acute distress areas and authorize the donation of feed gain owned by the CCC to livestock owners who are determined by the Bureau of Indian Affairs, United States Department of the Interior, to be needy members of the Tribe utilizing such lands. These donations by the CCC may commence upon January 15, 1993, and shall be made available through May 29, 1993, or such other date as may be stated in a notice issued by the Administrator, Agricultural Stabilization and Conservation Service.

Signed at Washington, DC, on January 21, 1993.

Keith D. Bjerk,

Administrator, Agricultural Stabilization and Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–1968 Filed 1–26–93; 8:45 am]

BILLING CODE 3410-05-M

Food and Nutrition Service

National Advisory Council on Commodity Distribution; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Council on Commodity Distribution is scheduled for March 16-17, 1993. The council, established by the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237) meets biannually to advise the Secretary of Agriculture regarding the development of commodity specifications and other program improvements.

DATES: The meeting will take place on March 16 and 17 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Ramada Renaissance Hotel, 950 North Stafford Street, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly King, Acting Chief, Commodity Processing Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305–2680.

SUPPLEMENTARY INFORMATION: This is the eighth meeting of the National Advisory Council on Commodity Distribution, as established by section 3(a)(3) of Public Law 100–237. The purpose of the council is to provide guidance to the Secretary of Agriculture on regulations and policy development for the Food Distribution Programs with primary emphasis on specifications for commodities. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. Vernon R. Morgan, Executive Secretary, National Advisory Council on Commodity Distribution, USDA, Food and Nutrition Service, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302. Comments may be filed with Vernon R. Morgan before or after the meeting.

Dated: January 19, 1993.

Phyllis Gault,

Acting Administrator.

[FR Doc. 93–1926 Filed 1–26–93; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–811]

Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy M. Decker or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

Final Determination

We determine that imports of certain hot-rolled lead and bismuth carbon steel products from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Because Mannesmann did not provide requested information and refused to cooperate with the Department in its investigation, we have based our determination on the best information available (BIA), in accordance with section 776 of the Act. In this instance, because Mannesmann refused to cooperate, we have determined the BIA to be the petitioners' highest adjusted margin. (The price-to-price margins found in the petition are the only information available.) The BIA margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on November 9, 1992 (57 FR 54219, November 17, 1992), no events have occurred.

Scope of Investigation

The products subject to this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 7213.31.60.00; 7213.39.00.30, 7213.39.00.60, 7213.39.00.90; 7214.40.00.10, 7214.40.00.30, 7214.40.00.50; 7214.50.00.10, 7214.50.00.30, 7214.50.00.50; 7214.60.00.10, 7214.60.00.30, 7214.60.00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991 through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Best Information Available

As mentioned above, we used BIA as required by section 776(c) of the Act because Mannesmann did not provide requested information and did not cooperate with the Department in its investigation. We determined that BIA was information submitted in the petition. Because Mannesmann refused to cooperate, we have determined the BIA to be the petitioners' highest adjusted margin.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Brazil that are entered, or withdrawn from warehouse, for consumption on or after November 17, 1992, the date of publication of our preliminary determination notice in the **Federal Register**, as originally ordered in accordance with section 733(d)(1) of the Act.

The product under investigation is also subject to a countervailing duty investigation. The Department has determined that there was an export subsidy program, but this program was terminated on December 31, 1991. In the final countervailing duty determination, we have taken into account that program wide change and have set the cash deposit rate at zero for that program. Accordingly, no adjustment to the dumping margin is required.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
Mannesmann	148.12
All others	148.12

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1901 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–427–804]

Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777, or (202) 482–5288, respectively.

Final Determination

We determine that imports of certain hot-rolled lead and bismuth carbon steel products from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). Because Usinor Sacilor (Usinor), the sole respondent in this case, failed to provide adequate information in a timely manner, we have based our determination on the best information otherwise available (BIA). In this instance, because Usinor has requested the return or destruction of all of its submissions during the course of the investigation and was subject to a cost of production (COP) investigation as well, we have determined BIA to be the highest of the margins that resulted from the fair value comparisons using constructed values for each of the transactions provided in the petition, as it was amended on April 27, 1992. The BIA margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on September 21, 1992 (57 FR 44556, September 28, 1992), the following events have occurred.

On September 21, 1992, Usinor submitted additional sales and COP supplemental responses. However, because both the COP information and the constructed value information contained in these responses were calculated using incorrect methodologies, the Department decided to not verify Usinor's submissions. (*See* the October 20, 1992, Memorandum from Marie E. Parker, Director, Office of Accounting, to Francis J. Sailer, Deputy Assistant Secretary for Investigations.) Accordingly, the verification of Usinor's submissions was cancelled.

On October 22, 1992, Usinor requested that the Department postpone the final determination for 60 days, in accordance with section 735(a)(2) of the Act. On November 6, 1992, the Department granted Usinor's request, in part, and postponed the date of its final determination from December 18, 1992, until January 11, 1993 (57 FR 53691, November 12, 1992). On December 17, 1992, Usinor requested a 25-day extension of the final determination. On January 11, 1993, the Department postponed the final determination until January 19, 1993 (58 FR 4981, January 19, 1993).

On November 12, 1992, Usinor requested that the Department return its submissions responding to the Department's antidumping questionnaire. On November 23, 1992, Usinor amended its request to provide for the destruction of these submissions in lieu of returning them to the company.

On November 13, 1992, petitioners filed their case brief and on November 19, 1992, both petitioners and Usinor filed their rebuttal briefs.

On November 19, 1992, petitioners and respondent withdrew their requests for a public hearing.

Following its receipt of the parties' briefs, the Department made a telephone inquiry of Usinor's counsel as to whether Usinor still wanted the Department to act on its request for the destruction of its submissions. The Department informed counsel of the adverse effect that the granting of Usinor's request would have on the BIA rate assigned to the company. Counsel informed the Department that Usinor still wanted the Department to proceed with the destruction of its submissions.

Scope of Investigation

The products subject to this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of the subject merchandise from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. As mentioned above, we used BIA as required by section 776(c) of the Act because Usinor did not provide adequate information in a timely manner for purposes of the final determination. We determined that BIA was information submitted in the amended petition. Because Usinor requested the destruction of its submissions and the Department has no choice but to treat the company as an uncooperative respondent, we have determined the BIA to be the highest of the margins in the amended petition.

United States Price

We based USP on information provided in the petition. Petitioners provided a U.S. price based on a quoted transaction price for cut-to-length products sold to a U.S. customer on a delivered price basis. Petitioners adjusted the price by deducting estimated costs for foreign inland freight, foreign port and loading fees, ocean freight and insurance, customs duties, U.S. terminal and unloading fees, and estimated costs for U.S. inland freight.

Foreign Market Value

We based FMV on constructed value information provided in the petition and the April 27, 1992, amendment to the petition. Petitioners alleged that the home market prices as well as the third-country sales or offers of sales are at prices below the cost of production and, therefore, should be discarded in favor of constructed value. Accordingly, petitioners calculated an FMV on the basis of the constructed value for the transaction listed in the petition, as amended.

Interested Party Comments

Although numerous comments were submitted by petitioners, they are not being addressed here because of our decision to reject Usinor's submissions and base this determination on BIA. Only the comments concerning the application of BIA are addressed below.

Comment 1

In their case brief, petitioners supported the Department's use of BIA. In their rebuttal brief, where they were able to address Usinor's request to withdraw its submissions responding to the Department's antidumping questionnaire, petitioners specifically argue that the Department should treat Usinor as an uncooperative respondent and use as BIA the highest margin in the April 27, 1992, amendment to the petition. The highest margin in the amended petition is 75.08 percent.

In its rebuttal brief, Usinor contended that the margins alleged against French merchandise in the petition are "* * * unduly high and are not, in any event, reasonable proxies for Usinor Sacilor's antidumping margin." Usinor proposed that the Department fashion a BIA margin for Usinor from the margins for the respondents in the companion German and United Kingdom investigations of the subject merchandise.

DOC Position

In determining what rate to use as BIA, the Department follows a two-tiered methodology. The Department normally assigns lower rates for those respondents who cooperated in an investigation and higher rates for respondents who did not. See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Brazil, 57 FR 42940 (September 17, 1992).

In this investigation, Usinor responded to the Department's requests for information; however, as noted above, the errors and deficiencies in its submissions were so pervasive as to make its responses unusable, and verification was cancelled. Usinor subsequently requested the return or destruction of all of its submissions during the course of the investigation, as discussed above.

In light of Usinor's continued request for the destruction of its submissions responding to the Department's antidumping questionnaire, a request that we are granting, the Department no longer has any choice but to treat Usinor as an uncooperative respondent and assign it the highest BIA rate. The destruction of Usinor's submissions has the consequence of removing from the administrative record any basis for showing, either now or on appeal, that Usinor had been cooperative during the investigation. See, *e.g., Smith Corona Corp.* v. *United States*, 796 F. Supp. 1532 (CIT 1992); Final Determination of Sales at Less than Fair Value; Steel Wire Rope from India, 56 FR 46285 (September 11, 1991); Final Determination of Sales at Less than Fair Value; Certain Small Business Telephone Systems from Japan, 54 FR 42541 (October 17, 1989); Final Determination of Sales at Less than Fair Value; Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, 54 FR 18992 (May 3, 1992).

Even absent Usinor's request that the Department return or destroy its submissions, we would have rejected Usinor's suggestions to calculate a BIA margin based upon those calculated for other European producers. It is entirely speculative for Usinor to conclude that the average of the margins contained in the April 27, 1992, amendment to the petition is "unduly high." Usinor ensured that an accurate margin calculation would not be possible when it failed to submit the information necessary to calculate one. Moreover, the purpose of a BIA margin is not to find a "reasonable proxy" for an accurate antidumping margin. Rather, the principal purposes of a BIA margin are to avoid rewarding a noncompliant respondent in the current proceeding and to persuade the respondent to furnish timely, complete, and accurate data in the administrative review, should there be one.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from France that are entered, or withdrawn from warehouse, for consumption on or after September 28, 1992, the date of publication of our preliminary determination notice in the **Federal Register**.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The dumping margins are as follows:

Producer/manufacturer/exporter	Margin percentage
Usinor Sacilor	75.08
All others	75.08

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1902 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-DS-M

[(A-428-811)]

Final Determination of Sales at Less Then Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4087, or (202) 482–5288, respectively.

Final Determination

We determine that imports of certain hot-rolled lead and bismuth carbon steel products from Germany are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have used the best information available (BIA) in making our final determination (*see* section on Best Information Available). The BIA margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our notice of postponement of the final determination in this investigation (57 FR 53691, November 12, 1992), the following events have occurred.

Petitioners and respondent in this proceeding submitted case briefs and rebuttal briefs on November 16 and 20, 1992, respectively. On November 24, 1992, a public hearing was held. Respondent submitted additional comments on December 4, 1992, to which petitioners objected on December 8, 1992. On December 11, 1992, the Department informed respondent that its December 4, 1992, submission was untimely filed and, as a result, was rejected and returned.

On December 17, 1992, Saarstahl requested a 25-day extension of the final determination in this investigation. On January 11, 1993, the Department postponed the final determination until January 19, 1993 (58 FR 4981, January 19, 1993).

Scope of Investigation

The products subject to this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings

7213.20.00.00 and 7214.30.00.00 of the HTSUS.

Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Best Information Available

Because the results of our verification of the information provided by Saarstahl AG (Saarstahl), the sole respondent in this case, showed the information to be unusable for purposes of calculating a final estimated dumping margin, we have based our determination on BIA (see Memorandum from D. Binder and M. Parker to R. Moreland, December 14, 1992). In spite of its failed verification, we believe Saarstahl's level of participation warrants that it be considered a cooperative respondent. Accordingly, given that Saarstahl was subject to a cost of production (COP) investigation, we have assigned to Saarstahl a BIA margin equal to the average of the margins that resulted from the fair value comparisons using constructed value (CV) for each of the transactions provided in the petition, as amended on April 27 and 28, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of the subject merchandise from Germany to the United States were made at less than fair value, we compared the United States price (USP) to foreign market value (FMV) as specified in the "United States Price" and "Foreign Market Value" sections of this notice. As mentioned above, we used BIA as required by section 776(c) of the Act because Saarstahl's submitted information was found to be unusable for purposes of calculating a final estimated dumping margin.

United States Price

We based USP on information provided in the petition. Petitioners provided U.S. prices based on quoted transaction prices and offers for sale for both coil and cut-to-length products. The prices and offers were on a F.O.B., port-of-entry basis and, for some customers, on a delivered basis. Petitioners adjusted the F.O.B. prices by deducting amounts for foreign inland freight, foreign truck loading fees, ocean freight and insurance, U.S. vessel unloading, U.S. wharfage, and U.S. customs duties. For prices quoted on a delivered basis, petitioners also deducted amounts for U.S. inland freight and U.S. truck unloading expenses. We recalculated some amounts for foreign truck unloading, foreign inland freight, U.S. vessel unloading and U.S. wharfage expenses because petitioners did not properly convert these amounts to a per-short ton basis. In addition, we recalculated U.S. duties in all cases to correct for a methodological error.

Foreign Market Value

We based FMV on CV information that was provided in the petition and the April 27 and 28, 1992, amendments to the petition. (See our notice of initiation (57 FR 19881, May 8, 1992) for a description of the CV calculation.)

Verification

As provided in section 776(b) of the Act, we attempted to verify the information provided by Saarstahl by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Petitioners argue that the Department should reject Saarstahl's responses in their entirety and base the final determination on BIA for the following reasons: (1) Saarstahl did not provide the Department with complete sales reporting as seen by its failure to report significant quantities of home market sales and some U.S. sales; (2) the information provided by Saarstahl was replete with errors and discrepancies; and (3) Saarstahl impeded the investigation by not submitting information in a timely manner in the form requested, and by being unprepared and unresponsive at verification—thus, preventing the Department from adequately confirming the accuracy and completeness of its responses.

According to petitioners, while Saarstahl's failure to report all home market and U.S. sales, in and of itself, warrants the use of BIA, when this omission is combined with the numerous discrepancies, errors in methodology, and miscalculations found at verification regarding both sales and COP information, the Department is left with no other option than to resort to the use of BIA in making its final determination. While the extent of Saarstahl's lack of preparation at verification amounted to uncooperative behavior, petitioners concede that Saarstahl has "substantially cooperated with the agency's requests for information." Accordingly, petitioners recommend that the Department assign, as BIA, the higher of the estimated margin from the preliminary determination, or the average margin from the petition.

Saarstahl argues that the use of BIA is reserved for instances in which a respondent has been uncooperative or has failed to provide usable information to the Department. According to Saarstahl, when a respondent has generally supported its methodology, the discovery of minor errors does not merit rejection of the response and the use of BIA (see Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof from Japan: Final Results of Antidumping Duty Administrative Review) (55 FR 38720, 38723, September 20, 1990). Saarstahl states that it has cooperated fully in this investigation. In addition, Saarstahl contends that the errors and discrepancies found at verification were minor in nature or would have no impact on the calculation of the final dumping margin.

Saarstahl argues that its failure to report home market sales of products that were of different German DIN grade designations than those which would have been assigned to products sold in the United States, had they been sold in Germany, resulted in harmless error. Since the Department prefers the use of identical merchandise over similar merchandise for purposes of comparison (see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France (57 FR 28360, June 24, 1992), Saarstahl argues that the Department should limit its analysis to comparisons of identical merchandise in calculating the final estimated dumping margin. Saarstahl cites the Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand (Kiwifruit) (57 FR 13695, 13698, April 27, 1992), in which the Department found that:

> [T]he percentage of U.S. sales matched to identical merchandise in Japan was

sufficiently high (over 60 percent) so that comparisons with non-identical merchandise or with CV were unnecessary.

Accordingly, Saarstahl contends that limiting the analysis to identical home market merchandise is justified in this instance since sales of identical merchandise constituted over 90 percent—well above the requisite 60 percent.

Should the Department decide not to limit its analysis to sales of identical merchandise, Saarstahl argues that the best information available for the missing sales that were of the same chemical composition as U.S. sales would be the weighted-average of the reported sales.

DOC Position

We agree with petitioners that the use of BIA is warranted in this instance. In and of itself, Saarstahl's incomplete reporting of home market sales requires the use of BIA. When this is combined with Saarstahl's incorrect reporting of the date of sale for a substantial number of home market sales, numerous errors in its U.S. sales listing, large number of inconsistencies in reported charges and adjustments for both U.S. and home market sales, and unsubstantiated and unusable cost data, we find that any calculation of a final estimated dumping margin based on information submitted by Saarstahl would be meaningless.

In addition, we do not agree with Saarstahl's contention that its reporting of products it deemed to be identical was sufficient. Saarstahl's reference to Kiwifruit on this issue is misplaced since the respondent in that investigation did report sales of similar merchandise which the Department later decided to exclude from its analysis. We also disagree with Saarstahl's proposal to assign, as BIA, the weighted-average price of reported sales to the unreported sales of products that had the same chemical composition as U.S. products. Acceptance of this proposal would hinder the Department's ability to obtain complete sales information by encouraging future respondents to report only certain home market sales in the hope that reported sales would be used as surrogates for unreported sales.

We agree with both Saarstahl and petitioners that Saarstahl did substantially comply with the Department's requests for information and that it was not uncooperative at verification. Accordingly, we have assigned Saarstahl the BIA rate for a cooperative respondent, *i.e.*, either the margin calculated for the preliminary determination, or the average of the margins in the petition, whichever is higher (see e.g., Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Taiwan (57 FR 17892, April 28, 1992). In this case, we have used the average margin pertaining to Saarstahl in the petition.

Other Comments

Petitioners and Saarstahl made additional comments on various charges and adjustments contained in sales listing, and the allocation of certain items in the COP calculation. Since we are basing our final determination on BIA, these comments are now moot. Accordingly, no response on behalf of the Department is required.

Continuation of Suspension of Liquidation

In accordance with section 735 of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Producer/manufacturer/exporter	Average margin percentage
Saarstahl AG	85.05
All others	85.05

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1903 Filed 1–26–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–412–810]

Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2613.

Final Determination

We determine that certain hot-rolled lead and bismuth carbon steel products from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination on September 28, 1992 (57 FR 44554), the following events have occurred.

Verification of responses to the Department of Commerce's (the Department's) questionnaire regarding sales information took place in the United Kingdom on October 8 through 12, 1992.

Verification of respondent's responses to the Department's questionnaire regarding cost of production (COP) information took place in the United Kingdom on October 12 through 15, 1992.

We received requests for a public hearing from Inland Steel Industries, including the Inland Steel Bar Company, and the Bar, Rod & Wire Division of Bethlehem Steel Corporation, petitioners in the investigation, and from UES Holdings Limited and United Engineering Steels Limited (UES), respondent in the investigation, on September 23, 1992. At the request of UES, on November 6, 1992, the Department postponed the final determination in this case until January 11, 1993 (57 FR 53691, November 12, 1992).

Case briefs were filed by petitioners and respondent on November 16, 1992. Reply briefs were filed on November 20, 1992. A public hearing was held on November 24, 1992.

On December 17, 1992, UES requested a 25-day extension of the final determination in this investigation. On January 11, 1993, the Department postponed the final determination until January 19, 1993.

Scope of the Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of the following products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1992, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made comparisons on the basis of the following criteria listed in order of importance: (1) Chemical composition; (2) shape; (3) cut (coil or cut length); (4) size; and (5) grade. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Related Party Issue

UES disclosed in a footnote to its response to Section A of the questionnaire that it "understands that a company called Allied Steel and Wire (ASW), which is a 20 percent subsidiary of British Steel plc, may have made sales of the subject merchandise in the POI." British Steel and GKN plc, each own 50 percent of the common stock in UES. ASW was not served a questionnaire at the outset of the investigation because (1) we were able to capture more than 60 percent of the exports of the subject merchandise, (*see* 19 CFR 353.42(b)) by serving UES only, and (2) we were unaware of the possible relationship between UES and ASW.

The Department preliminarily determined, based on the information available at the time, that a sufficiently intertwined relationship between UES and ASW did not exist to warrant the reporting of ASW sales information by the respondent. We examined the issue further at verification. When sales between UES and ASW were reviewed, the net price charged to ASW was slightly higher than that charged to other unrelated customers. Additionally, the issue of British Steel control of the ASW board of directors was examined, along with the coordination of production issued discussed in the Department's preliminary determination were examined. (See FR 57 44554, 44555.) We found no information which would lead us to change our preliminary determination. Thus ASW sales are not included in the analysis for the final determination.

United States Price

We calculated USP using the methodology described in the preliminary determination except as follows.

For all sales, we deducted the amount for ocean freight reported by UES rather than an amount based on the best information available.

Foreign Market Value

We calculated FMV using the methodology described in the preliminary determination except for the changes noted in the "Price-to-Price" and "Constructed Value" sections of this notice below.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, we investigated whether UES had home market sales that were made at less than their COP.

If over 90 percent of respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of respondent's sales of a given model were at prices above the COP, we disregarded only the below-cost sales, if they were found to be made over an extended period of time. Where we found that more than 90 percent of respondent's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In such cases, we determined that the respondent's below-cost sales were made in substantial quantities over an extended period of time and at prices that would not permit recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing.

We compared home market selling prices, net of movement charges, rebates, and invoice corrections, to each product's COP. We found that for some products, more than 90 percent of the sales were at prices above the COP. For other products, there were fewer than 10 percent of sales at prices above the COP. For the remainder of the products, between 10 and 90 percent of the sales were at prices above the COP.

Price-To-Price Comparisons

We made price-to-price comparisons using the methodology described in the preliminary determination, with the following exceptions.

We made a circumstances of sale adjustment for differences in credit insurance expense. Verification revealed that for U.S. sales, credit insurance charges are assessed on a sale-by-sale basis, while in the home market, a single global amount is assessed, regardless of the level of sales. We therefore determined that credit insurance is a direct expense in the U.S. market, and an indirect expense in the home market. Accordingly, we made this adjustment by adding the amount of credit insurance assessed on each U.S. sale to the FMV.

In cases where the only difference between products is the grade code, we based the adjustment for differences in physical characteristics on differences in material costs only. *See* discussion at Comment 2 below.

We made comparisons between U.S. sales with a total order quantity of 25 metric tons or more with home market sales with a total order quantity of 25 metric tons or more, and between U.S. sales with a total order quantity of less than 25 metric tons with home market sales with a total order quantity of less than 25 metric tons. See discussion at Comment 10 below.

We recalculated U.S. credit expense by adding 15 days, not 30 days, to the payment period for each U.S. sale. See discussion at Comment 11 below.

We did not exclude from our analysis home market sales to related end-users. See discussion at Comment 12 below.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated the CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of cost of manufacture (COM). For profit, we used the actual profit earned by UES because the actual figure was higher than the statutory minimum of eight percent of the sum of COM and general expenses, in accordance with section 773(e)(1)(B)(ii) of the Act. We made circumstance of sale adjustments, where appropriate, for differences in direct selling expenses including credit, credit insurance, warranty, and presale warehousing.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Petitioners argue that we should match as identical all products which could be sold under the same national standard grade. In other words, petitioner would have us match two products if they both satisfied the specifications for American Iron and Steel Institute grade C12L14, for example, regardless of any differences in the chemical compositions of the two products. Petitioners base their argument in part, on their belief, based on their analysis of several verification exhibits, that in three cases, the product actually delivered did not meet the chemical specifications of the grade identified in the response to the questionnaire.

Respondent argues that the national grade codes do not adequately define the products and that there are commercially significant differences in the chemical compositions of the products they produce which fall under the same national grade code. Furthermore, respondent has pointed out that petitioners' analysis of the verification reports with respect to the three cases discussed above is faulty—that in fact, the delivered products did meet the specifications of the grade codes listed in the response to the questionnaire. At the public hearing, petitioners conceded that their analysis on this point was indeed faulty.

DOC Position

We agree with respondent. We have used the same model matching criteria we used for the preliminary determination. Verification established that UES's customers order, and UES produces, products in which the chemical composition specified by the relevant national grade code is modified. In other words, the product differences claimed by UES are commercially significant and are not incidental—they are designed into the product. Furthermore, as stated above, petitioners' allegation that delivered products do not always meet the stated specifications is incorrect. Finally, it should be noted that in Appendix V of the questionnaire, we stated that "In order for merchandise to be considered identical, all physical characteristics, not jut those which we have identified, must be the same". If respondent had initially matched using the "national grade code" criterion advocated by petitioners, and ignored any other physical differences, the questionnaire response would have been deficient.

Comment 2

Petitioners argue that in cases where the only difference between products is in the grade code, the Department should allow an adjustment for differences in physical characteristics, pursuant to 19 CFR 353.57, only with respect to differences in material costs. Petitioners allege that UES claims substantial adjustments for costs that are unrelated to any physical differences in the merchandise.

Respondent argues that its verified adjustments were calculated in accordance with the Department's instructions which require that for each difference in merchandise claimed, the respondent is to separately identify differences in material costs, labor, and variable overhead expenses.

DOC Position

We agree with petitioners. A substantial portion of the differences in the labor and overhead components of the variable cost of manufacturing resulted from timing differences and plant efficiency differences. Based upon respondent's methodology, two products which had different material inputs, but went through the exact same fabrication processes, had varying amounts for labor and overhead. These differences arose from the fact that the two products were not necessarily manufactured at the same time or in the same plant. If one product was manufactured at the beginning of the POI and another was manufactured at the end of the POI, the respondent's methodology for calculating manufacturing costs for a very specific product resulted in labor cost differences. Additionally, if the two products were manufactured in different plants, with one of those plants being less efficient, then the variable overhead would also differ between the two products.

The Department acknowledges that not all of UES's products undergo the exact same fabrication processes. Indeed, based upon information gathered at verification, we know that some of the products do undergo additional fabrication. However, we have determined that the overwhelming majority of the differences in merchandise adjustments result from timing and efficiency differences, not from physical differences in the merchandise. Therefore, for purposes of this final determination, we have disregarded the labor and overhead portion of the differences in merchandise adjustment in our analysis for products that are identical except for grade code.

Comment 3

Petitioners argue that the adjustment for U.S. credit expense should be based on the home market interest rate rather than the U.S. interest rate, because "UES did not verify that it had any actual dollar borrowing during the period of investigation." Specifically, petitioners claim that verification exhibit 103 only contains information pertaining to interest rates, not borrowings.

Respondent argues that the verification did confirm that there were dollar borrowings and that consequently, the Department should use the U.S. interest rate.

DOC Position

We agree with respondent. In its submission of August 31, 1992, at Exhibit c.11, respondent listed its dollar borrowings and the applicable interest rates. Verification exhibit 103 includes a letter from UES's U.S. bank in which it is stated that "[t]he borrowing rates for UES Sales Inc. are correct as stated." The letter then goes on to list the same interest rates that UES reported in its August 31 submission.

Comment 4

Petitioners argue that we should treat the home market warehousing expense claimed by UES as an indirect, rather than direct, selling expense, because the verification established that these warehousing expenses were pre-sale expenses.

UES argues that these expenses are directly related to the sales under consideration, and therefore qualify for a circumstances of sale adjustment pursuant to 19 CFR 353.56.

DOC Position

We agree with respondent. In its response to our questionnaire, respondent explained this adjustment as follows:

> * * * UES accepts requests from some home market customers to maintain in inventory a certain amount of product manufactured to that customer's specifications. Then, when the customer needs the steel, it issues a specific purchase order for delivery out of this customer-specific stock. Customers can thereby obtain immediate delivery, rather than wait for the normal monthly rolling cycle. (The customers' requests to produce and warehouse specific steel take the form of a purchase order, but price and quantity are not determined until shipment. Accordingly, UES has reported the individual shipments from stock, and not the initial production request, as the sale for reporting on the sales file.)

The verification confirmed the facts concerning this adjustment as stated above.

Inasmuch as the date of sale is the date of the subsequent order and not the date of the original request for production and warehousing, this warehousing expense occurs "pre-sale." UES has calculated this expense separately for each customer to which it applies. UES has not claimed a circumstances of sale adjustment for warehousing expenses for ordinary inventory not produced to a customer's specifications.

The facts in this case are essentially the same that existed in the case of Polyethylene Terephthalate Film, Sheet, and Strip from Japan, wherein an adjustment for pre-sale warehousing expense was allowed. In the final determination for that case (56 FR 16300, 16303, April 22, 1991) we stated:

> * * * we verified that the expenses were incurred and reported on the basis of specific products sold to specific customers during the POI. Furthermore, the stock in question was only available to those specific customers. On that basis, we have accepted Teijin's contention that its pre-sale warehousing expenses were directly related to its home market sales of PET film and have allowed the adjustment.

We therefore consider these pre-sale warehousing expenses as directly related to the sales under consideration and accordingly have made a circumstances of sale adjustment.

Comment 5

Petitioners also argue that we should disallow (or alternatively reduce the amount of) the warehouse expense adjustment because the verification showed that the reported amount should be adjusted downward by a significant percentage.

DOC Position

We disagree. Petitioners have misread the verification report. The reported amount claimed for warehouse expense, as stated in the questionnaire response, is net of the adjustment noted by petitioners.

Comment 6

Petitioners argue that UES should not be allowed to use an estimated annualized average for electricity costs. Petitioners assert that the Department's long standing practice is to annualize only general and administrative (G&A) expense and interest, never variable manufacturing cost.

Respondent argues that the use of an average annual rate provides a more accurate indication of the actual cost normally incurred by UES. UES's annual electricity contract is completed each March, at which time the electric utility reconciles the year's costs to the contract and refunds overcharges or charges amounts owed. The Department, respondent argues, requires that annualized rates be used for administrative expenses specifically to avoid the distortions that would otherwise occur from periodic or seasonal expenses.

DOC Position

The Department agrees with respondent. In cases such as this, where it was demonstrated that significant seasonal fluctuations occur, the Department does allow the use of annualized costs. The Department always uses annualized G&A and interest amounts because of the seasonal or periodic nature of these types of cost.

Comment 7

Petitioners argue that the Department should reject UES's reclassification of G&A expense out of COM to a separate category because it may have included some fixed overhead costs. Petitioners state that the list or recategorized expenses, provided by UES in Exhibit D–13 of its July 28, 1992, submission, shows several indirect cost centers, related to manufacturing, which were included in UES's reclassification of G&A.

Petitioners state that for the final determination the Department should continue to use BIA because UES failed to verify that its recategorized expenses actually are G&A expenses, rather than factory overhead expenses.

Respondent argues that its reclassification did not include factory overhead costs. UES identified and transferred from COM to G&A those cost centers exclusively or predominantly involved in activities not directly related to manufacturing activities of the company. Additionally, respondent points out that the adjustment was done to meet the Department's requirements. Concerning the cost centers referred to by petitioners, respondent states that the cost questionnaire defines G&A as those expenses that relate to activities of the company as a whole, rather than to the production process. To comply with this definition, UES reclassified 27 cost centers including: training centers, typing and reprographics, passenger cars, general supplies, and accounting and administrative centers. The specific cost centers referred to by petitioners have little or no involvement in manufacturing activities.

DOC Position

The Department agrees with respondent. The cost centers identified by petitioners were reviewed at verification and found to be almost exclusively related to G&A. No evidence was found during the verification to indicate that the respondent reclassified factory overhead cost to G&A.

Comment 8

Petitioners argue that the Department should continue to adjust for the difference between the reported costs and the costs recorded in the books of UES. Petitioners state that in the one case where UES provided costs from its normal accounting systems, inventory value, the costs from the accounting system were significantly greater than the reported costs. Petitioners state that they can find no evidence that UES verified that its methodology led to full absorption and that there appears to be no systematic reconciliation between inventory values and reported costs. Petitioners question verification exhibit 9, stating that it indicates that costs from UES's normal accounting system exceeded reported costs.

Respondent argues that it used its existing cost accounting system to develop its actual product costs. UES states that it provided the Department with a detailed description of its cost accounting system, and that this fact is supported by over 600 pages of company financial and cost accounting statements, exhibits and worksheets collected by the Department. Respondent argues that petitioners' reference to the inventory value and the difference between it and the reported costs ignores the fact that UES's inventory amounts include G&A and interest. Any use of UES's normal inventory costs without regard to the G&A and interest included therein would result in significant overstatement of production costs through double accounting.

Respondent also argues that petitioners' concerns about the lack of verifying ability of UES's response are unfounded and that at verification UES provided detailed reconciliations of materials, processing, selling, and G&A costs to the company financial records. In addition, the reconciliation referred to by petitioners was a simple reconciliation of total reported costs of manufacturing for lead bar products compared to the standard cost of these same products, adjusted by the financial variances and that it demonstrates that reported costs are consistent with the costs that would have resulted from a simpler method of applying total company manufacturing variances to the total standard costs of those products. The difference results because leaded bar is not processed through all of UES's facilities and therefore it is to be expected that there will be a difference between the subject merchandise's specific product costs reported by UES and the less detailed costs computed by applying company-wide variances. The fact that the reported difference is so small provides additional comfort in the accuracy of the reported figures.

DOC Position

The Department agrees with respondent. Respondent provided significant evidence that it reported fully absorbed costs to the Department. The verification report explains in detail that UES used its normal cost accounting system to calculate the reported costs. UES departed from its normal cost accounting system when required to do so by the Department. The exhibit referred to by petitioners provides evidence that the reported costs are virtually the same costs that would have been reported if respondent had adopted petitioners' methodology.

Comment 9

Respondent argues that in calculating the net United States price, the Department should make a deduction for ocean freight expense based on the amounts charged UES by a related company rather than on the best information available (BIA). The related company is British Steel Shipping Service (BSSS), a division of British Steel plc, that specializes in shipping bulk cargoes (e.g., grain, ore, coal) into the United Kingdom, and steel products out of the United Kingdom. Because UES failed to provide evidence that BSSS charged UES arm's length rates, for the preliminary determination, the Department based the deduction for ocean freight on BIA for the BSSS shipments.

Since the preliminary determination, UES has provided cost data from BSSS which show the profit or loss of BSSS for the 1991 and 1992 shipping seasons on a voyage-by-voyage basis. These data were verified.

UES has also provided information from another, unrelated carrier, Baltic Line, which indicates that the unrelated carrier charges lower rates than BSSS for the transport of steel, including the products under investigation, from the United Kingdom to U.S. Great Lakes ports. This information includes tariffs filed by Baltic Line with the U.S. Federal Maritime Commission, a letter from Baltic Line's agent, and sample invoices.

Respondent argues that the fact that BSSS enjoyed an overall profit on the transatlantic trade and the fact that a second, unrelated, carrier provides the same service at lower rates, establishes that the rates BSSS charges UES are at arm's length.

Petitioners argue that because BSSS was not profitable on the U.S.-bound charters, the rates were not at arm's length. Petitioner further argues that we should ignore the evidence concerning the Baltic Line's rates, because they pertain to liner service. Liners, according to petitioners, "are common carriers serving specific routes along predetermined schedules, and therefore liner service is limited by space availability." Petitioners allege that because "UES must regularly ship large quantities of steel, it cannot depend on liner services for other than occasional small shipments."

DOC Position

We agree with respondent. BSSS's transatlantic business is profitable on a round trip basis. Furthermore, an unrelated carrier charges comparable or lower rates. The fact that the unrelated carrier provides "liner service" is not relevant. What is required is an indication that the rates UES actually pays are at arm's length. The fact that an unrelated carrier makes the service available at an equal or lower cost to that actually paid is conclusive.

Comment 10

Respondent argues that in comparing United States price to foreign market value, we should compare U.S. sales with an order quantity of 25 metric tons (MT) or greater with home market sales of 25 MT or greater, and U.S. sales of less than 25 MT with home market sales of less than 25 MT. To support its argument, UES cites 19 CFR 353.55 which states that "[i]n comparing the United States price with foreign market value, the Secretary normally will use sales of comparable quantities of merchandise."

Petitioners argue that we should not allow respondent's request, in part, because most orders in the U.S. market are for quantities of less than 25 MT.

DOC Position

We agree with respondent. At verification, we determined that pursuant to the home market price list, quantity extras apply to home market sales wherein the ordered quantity is less than 25 MT. In the U.S. market, quantity extras do not apply. Therefore, in this instance, to avoid distorting our analysis, it is appropriate to compare sales of similar quantities with a 25 MT break-point.

Comment 11

Respondent argues that the Department should add two weeks to the payment period for each shipment to the United States for the purposes of calculating credit expense.

Petitioner argues that the Department should add 30 days to the payment period as was done for the preliminary determination.

DOC Position

We agree with respondent. We have increased the payment period by 15 days for each U.S. shipment for the purpose of calculating credit expense.

In its questionnaire response, UES calculated U.S. credit expense based on the number of days from date of shipment from the port, not from the factory, because it does not keep records for the date of shipment from the factory on an invoice-by-invoice basis. UES advised that it has a 30 day rolling cycle and a sailing to the United States every month (or more often). Therefore, UES estimated that the U.S.-bound merchandise, on average, leaves the factory two weeks prior to the reported date of sailing. For the preliminary determination, as an adverse inference, we recalculated the US credit expense by increasing the days outstanding by 30 days.

At verification, for one sailing date selected by us, we determined there was a 40 day rolling day cycle and that the weighted-average time between shipment from the factory and the vessel's sailing was 21 days. We also verified that in one instance the U.S.-bound goods were rolled over a period of two weeks, and that for all other pertinent shipments, the rolling cycle was about four weeks. Therefore, 15 days is a reasonable estimate of the average number of days between shipment from the factory to the port and shipment from the port.

Comment 12

Both petitioners and respondent argue that we should include sales to related end-users in the calculation of foreign market value.

DOC Position

We agree with both parties.

Many of UES' home market sales are to a related end-user. In its response to the questionnaire, UES claimed that these sales were at arm's-length and should be used in our analysis. Prior to the preliminary determination, UES did not perform any quantitative analysis to show that home market sales to related parties are at arm's length. Therefore, for the preliminary determination, we did not use the home market sales to related parties in the calculation of foreign market value.

Since the preliminary determination, both respondent and petitioners have done computer analyses of the home market data base in which they compared the sales prices to related and unrelated end-users. Both parties now argue that the related home market sales are at arm's length prices and therefore should be included in the calculation of foreign market value. We have accepted their conclusions.

Continuation of Suspension of Liquidation

We are directing the Customs Service to continue to suspend liquidation of all entries of lead and bismuth carbon steel from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after September 28, 1992, the date of publication of our preliminary determination in the **Federal Register**.

The product under investigation is also subject to a countervailing duty investigation. Article VI.5 of the General Agreement on Tariffs and Trade (GATT) provides that "[n]o * * * product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, however, because the subsidy has been determined to be a domestic subsidy rather than an export subsidy, no adjustment to the estimated dumping margin is required.

The Customs Service shall require a cash deposit or bond equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
United Engineering Steels, Limited	25.82
All others	25.82

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–1904 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–533–805]

Notice of Postponement of Final Antidumping Duty Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

Postponement: On December 23, 1992, Atul Products Limited, respondent in the antidumping duty investigation of sulfur dyes, including sulfur vat dyes, from India, requested that the Department postpone the final determination in this investigation until February 19, 1993, in order to allow the Department sufficient time to fully consider all of the issues in this case as well as the information obtained during the sales and cost of production verification proceedings, in accordance with 19 CFR 353.20(b).

We find no compelling reasons to deny the request and are, accordingly, postponing the date of the final determination until February 19, 1993. 19 CFR 353.20(b)(1).

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than 11 a.m., January 25, 1993, and rebuttal briefs no later than 11 a.m., January 27, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on January 28, 1993, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice in the **Federal Register.** Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentation will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-1998 Filed 1-26-93; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-603]

Acetylsalicylic Acid (Aspirin) From Turkey; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on acetylsalicylic acid (aspirin) from Turkey because it is no longer of interest to interested parties.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-0983 or 482-0395.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 36634) its intent to revoke the countervailing duty order on certain acetylsalicylic acid (aspirin) from Turkey (52 FR 32156; August 26, 1987). Additionally, as required by 19 CFR 355.25(d)(4)(ii), the Department served written notice of its intent to revoke this countervailing duty order on each party listed on the most current service list. Thus, interested parties who might object to the revocation were provided the opportunity to submit their comments no later than thirty days from the date of publication of the notice of intent to revoke the countervailing duty order.

Scope of the Order

Imports covered by this order are shipments of acetylsalicylic acid (aspirin), containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than specified for particular non-prescription drug combinations of aspirin and active substances as published in the Handbook of Non-Prescription Drugs, eighth edition, American Pharmaceutical Association, and not in tablet, capsule or similar forms for direct human consumption, from Turkey. This product is currently classified under 2918.22 of the Harmonized Tariff Schedule of the United States.

Determination to Revoke

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party has requested an administrative review for five consecutive review periods (19 CFR 355.25(d)(4)(i)) (1989) and when no interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

The Department received a request for an administrative review from CoKEM Associates, on behalf of the Atabay Group, producers and exporters of the subject merchandise. As CoKEM Associates was not previously a party to this proceeding, and, consequently, did not appear on our service list, we had not served them with written notice of our intent to revoke the order. Upon receipt of the request for review, we notified CoKEM Associates of our action and afforded an opportunity for comment. CoKEM subsequently withdrew its request for an administrative review of the countervailing duty order on acetylsalicylic acid (aspirin) from Turkey.

Accordingly, as we received no objections to our notice of intent to revoke the countervailing duty order, and as the one request for administrative review was withdrawn before the review was initiated, we have concluded that the countervailing duty order covering acetylsalicylic acid (aspirin) from Turkey is no longer of interest to interested parties. Accordingly, we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Turkey on or after January 1, 1992.

This notice is published in accordance with 19 CFR 355.25(d)(4)(iii).

Dated: January 14, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-1999 Filed 1-26-93; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-812]

Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Laurel Lynn, Office of Countervailing Compliance, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-2786.

Final Determination

The Department of Commerce (the Department) determines that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Brazil of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products").

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination (57 FR 42980, September 17, 1992), the following events have occurred.

Verification was conducted from September 21 through October 2, 1992.

On October 16, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned the final determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of the same merchandise (57 FR 48020, October 21, 1992). On November 6, 1992, we postponed the final countervailing duty (CVD) and AD determinations until no later than January 25, 1993 (57 FR 53691, November 12, 1992).

The parties submitted case and rebuttal briefs on December 16 and December 23, 1992, respectively. A public hearing was held on January 5, 1993.

Scope of Investigation

The products covered by this investigation are hot rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Respondents

The Government of Brazil (GOB), Companhia Acos Especiais Itabira (ACESITA), and Mannesmann, S.A. (Mannesmann) are respondents to this investigation.

Corporate History

During the period of investigation (POI), ACESITA was a state-owned company. In accordance with GOB's national privatization plan, ACESITA's stock was auctioned to the public on October 22, 1992. Because this auction occurred after the preliminary determination in this case, we are not considering the auction, or its possible effect on any of the programs described below, in this investigation. We will address these issues during the first administrative review of the countervailing duty order in this case, as is contemplated by section 355.39 of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations)), if a countervailing duty order is issued and an administrative review is requested.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991 which corresponds to the fiscal year of ACESITA and Mannesmann.

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the country-wide rate for Brazil. This rate comprise the sum of the *ad valorem* rates received by each firm weighted by each firm's share of exports to the United States of the subject merchandise. Because this rate was above *de minimus*, pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* rate received by each firm to the country-wide rate for all programs. The rate for ACESITA was significantly different from the weighted-average country-wide rate. Therefore, ACESITA received its own rate. Because ACESITA is significantly different from the country-wide rate, its rate is removed from the calculation of the country-wide rate applied to all remaining companies. Because Mannesmann is the only remaining firm, its rate constitutes the country-wide rate which will be assigned to all imports of the subject merchandise from Brazil from all producers and exporters, except ACESITA.

Equityworthiness

Petitioners have alleged that ACESITA unequityworthy for certain years and that equity infusions received during those years were inconsistent with commercial considerations. However, we have determined that the assistance alleged by petitioners to constitute equity infusions should not be treated as equity. Therefore, there is no need to make an equityworthiness determination.

Creditworthiness

We have examined ACESITA's financial statements and, through the use of ratio analysis, its performance covering the years 1979 through 1991, in order to determine the firm's creditworthiness. The data in those statements demonstrate extremely low levels of liquidity and a questionable ability to service its maturing long-term debt. In fact, ACESITA was in default on some of its long-term debt during the period 1986 through 1989, and reports made by Banco do Brasil auditors confirm that the survival of the firm was in question throughout most of the 1980s. The record is clear that a reasonable creditor would have concerns about the long-term solvency of the firm during this period. We determine that ACESITA was uncreditworthy during this period, and have added a risk premium to the benchmark discount rates used in our examination of ACESITA's issuance of *partes beneficiarias* and its debt-for-debt swap. *See* the Department's *Equityworthy and Creditworthy Analysis Memorandum*, (September 10, 1992).

Grant Methodology

Our policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. See *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991) (Salmon from Norway).

We have considered the debt-for-debt swap undertaken by ACESITA in 1990 and the "partes beneficiarias" (PBs), as of 1989, to constitute non-recurring grants, because the benefits are exceptional, and the recipient cannot expect to receive benefits on an ongoing basis from review period to review period. See, Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (March 24, 1986) (Groundfish from Canada). Therefore, we have allocated the benefits over 15 years, which the Department considers to be reflective of the average useful life of assets in the steel industry (See section 355.49(b)(3) of the Proposed Regulations).

The benefits from the debt-for-debt swap and the BPs were calculated using the declining balance methodology described in the Department's Proposed Regulations (See section 355.49(b)(3)) and used in prior investigations (see *e.g.*, Salmon from Norway). For the BPs, we have used as a discount rate the cost of dollar-denominated, long-term, fixed-rate debt of ACESITA in 1989. For the debt-for-debt swap, we have constructed a long-term, fixed-rate, dollar-denominated benchmark for 1990 based on offers made to ACESITA by private commercial banks in 1990. Because ACESITA was uncreditworthy in both years, we have added a risk premium to these benchmarks as required by the Proposed Regulations.

We consider the benefits under the Law 7554/86 IPI rebate program to be recurring because (1) the program is not exceptional; (2) the program is longstanding—it has been in place for over fifteen years and although the disbursement method and our treatment of the benefit changed in 1990, the program is scheduled to continue in its present form until 1996; and (3) the benefits are consistently distributed. This determination is consistent with the Department's standard on recurring versus non-recurring grants, as enunciated in the Proposed Regulations and recently in the Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products From the United Kingdom, 57 FR 57734, December 7, 1992. (Certain Steel Products From the United Kingdom.)

Based on this analysis, we expensed the IPI rebates provided under this program in 1991, dividing the total amount of each company's IPI rebates received during the POI by their respective total sales in 1991.

Specificity

When receipt of benefits under a program is not contingent upon exportation, the Department must determine whether the program is specific to an enterprise or industry, or group of enterprises or industries. Under the specificity analysis, the Department examines both whether a government program is limited by law to a specific enterprise or industry, or group thereof (*i.e., de jure* specificity) and whether the government program is in fact limited to a specific enterprise or industry, or group thereof (*i.e., de facto* specificity). See section 771(5)(B) of the Act. In section 355.43(b)(2) of the Department's Proposed Regulations, the Department has set forth the factors that may be considered in determining whether there is specificity:

(i) The extent to which a government acts to limit the availability of a program;

(ii) The number of enterprises, industries, or groups thereof that actually use a program;

(iii) Whether there are dominant users of a program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits under a program; and

(iv) The extent to which a government exercises discretion in conferring benefits under a program.

See also Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992).

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Brazil of certain additive steel products as follows:

A. Partes Beneficiarias

In the early 1980s, ACESITA experienced serious financial difficulties, including low liquidity levels. The Banco do Brasil, ACESITA's major shareholder, undertook a study of the company's financial and operating positions, and outlined options for the Banco do Brasil to follow in assisting the company. The study recommended that ACESITA issue PBs, which were hybrid instruments with qualities of both debt and equity. PBs are similar to liabilities because they carry an obligation for the issuer to repay the bearer the nominal purchase value in equal yearly installments following a grace period (in ACESITA's case, the repayments were scheduled to start in 1989). PBs are similar to equity in that the purchaser has the right to share in the company's annual profits.

PBs were chosen over equity infusions for several reasons. First, the Banco do Brasil was prohibited by law from increasing its equity share in the company. Second, it was unlikely that other shareholders would continue to participate in stock offerings. Third, the Banco do Brasil was under pressure from the International Monetary Fund to limit any new industrial investment to only absolutely necessary infrastructure projects.

In 1989, ACESITA's PB-holders held a meeting in which they voted to authorize the conversion of PBs to common stock at an indeterminate date in the future. This vote did not change PBs into stock; it merely laid a legal basis for eventual conversion into common stock.

Repayment of the PB investments had originally been scheduled to begin in 1989. However, at that time, no payments were requested by the PB-holders, and no payments were made by ACESITA. Further, the PBs were not converted into stock at the point the repayment obligations ceased nor was there any schedule or timetable put into place for the conversion. At that point, in 1989, the PBs were neither debt nor equity, and in addition, the basic terms of the instrument were not met. The failure to meet basic terms of the instrument, coupled with the lack of an actual conversion of the PBs into stock, or a concrete plan and timetable for conversion, in effect, rendered the PBs grants as of 1989.

We have used our grant methodology to value PBs, as described in the Grant Methodology section above. We indexed the original nominal values of the PBs to account for Brazilian hyperinflation by dollarizing them. On this basis, we find the estimated net subsidy to be 10.68 percent *ad valorem* for ACESITA and 0.00 percent *ad valorem* for all other manufacturers, exporters, and producers of the subject merchandise.

B. ACESITA Debt-for-Debt Swap

In 1990, ACESITA engaged in a debt-for-debt swap transaction which reduced its loan obligations substantially. We find that this transaction provides a countervailable subsidy to ACESITA.

Normally, Brazilian companies with foreign-denominated debt governed by Resolution 4131 are required to service such debt through local currency payments processed through the Central Bank. Following the suspension of convertibility, the Central Bank issued negotiable notes known as Multi-Year Deposit Facility Agreement Certificates, or MYDFAs, in lieu of the foreign currency due the creditor. MYDFAs entitled the bearer to immediate redemption in cruzeiros only—redemption of the note in U.S. dollars was suspended for an unspecified period. Because of these restrictions and because MYDFAs are negotiable, they began selling at less than their par value in secondary markets.

ACESITA utilized this discounting to substantially reduce its indebtedness. ACESITA had a loan with the Banco do Brasil which was paid, through the Central Bank, in MYDFAs. ACESITA used an intermediary to borrow sufficient funds to purchase, on the secondary market at a substantial discount, enough MYDFAs to satisfy ACESITA's obligation to the Banco do Brasil. ACESITA's original loan was paid in full with the discounted MYDFAs. ACESITA essentially replaced its original foreign-currency denominated loan with a new, much smaller loan. ACESITA's benefit derives from the difference between the amounts of the two loans. ACESITA assumed the second loan after the intermediary had paid off the original debt with the MYDFAs.

We find that there is insufficient evidence on the record to determine that debt buy-back transactions such as ACESITA's, are not *de facto* specific. See the Specificity section above. In the original questionnaire, the Department requested information from the GOB and the company on the ACESITA transaction, and also requested the GOB to provide information on the availability of such transactions. Specifically, the questionnaire asked the GOB to provide information regarding eligibility criteria, types of records kept by the administering authority, numbers, types, and locations of industries which have applied for and received benefits, and whether there are any limitations on eligibility based on export performance, industry groups, or geographical location. Although the GOB provided information regarding the transaction in question, it did not respond to the Department's specificity questions, stating that such questions were not applicable because the loan was not provided as part of a government program.

In a supplemental questionnaire, the Department requested a breakdown, by industry, of similar transactions from the Banco do Brasil. The GOB responded that due to strict bank secrecy laws, such information could not be provided. However, confidentiality of information does not relieve a respondent from its obligation to provide the Department information. Although the GOB provided articles and other published material about MYDFAs and debt swap arrangements, the GOB provided no further information on the actual number and types of industries that had participated in MYDFA-based debt swaps, all of which had to have been processed through the Central Bank. Moreover, the GOB did not provide any information that would allow the Department to determine whether the ACESITA transaction was similar in its terms and conditions to other transactions involving MYDFAs.

Absent such factual, verified information from the GOB, it is not possible for the Department to conclude that ACESITA's debt-for-debt swap, which, on its face, benefitted ACESITA by relieving it of a large debt in exchange for a smaller debt, is non-specific and therefore non-countervailable.

Because there is inadequate information on the record to determine that debt-for-debt swaps are not specific, we have, as best information available, found that this transaction was specific to an enterprise or industry, or group of enterprises or industries.

We determine that such a transaction is essentially debt forgiveness by the GOB, and as such bestowed a countervailable benefit to ACESITA. ACESITA was relieved from a debt that it otherwise would have to had to pay absent government intervention. Therefore, we have treated the difference between the first loan and the second loan as a nonrecurring grant and used the methodology described in the Grant Methodology section above. We have allocated that amount of debt forgiven in 1990 over 15 years, the average useful life of assets in the steel industry. We divided the result by ACESITA's total sales in 1991. The rate for ACESITA is 5.40 percent *ad valorem* and 0.00 percent *ad valorem* for all other manufacturers, exporters, and producers.

Although we determine that ACESITA was uncreditworthy at the time the transaction was made, the interest rate charged by the Banco do Brasil for the swap loan is higher than the Department's benchmark rate including the risk premium for uncreditworthy companies. Therefore, we determine that the new loan was made on terms consistent with commercial considerations.

C. IPI Rebate Program Under Law 7554/86

Under this program, Brazilian steel producers are eligible to receive a rebate of the IPI tax (Imposto sobre Produtos Industrializados), which is a value-added sales tax paid on domestic sales of industrial products. The steel producers must meet the following conditions in order to receive IPI rebates under this program:

(a) The company must produce liquid steel;

(b) The IPI rebate must be used to increase the production of certain steel products;

(c) The company must have an ongoing capital investment project, originally approved by the Conselho do Desenvolvimento Industrial (CDI (the Industrial Development Council));

(d) The company must receive quarterly approval from the Department for Industry and Commerce to ensure that capital investment in the approved project is continuing; and

(e) The company must have a net IPI tax obligation in each quarter.

The IPI rebate program was originally established in 1977 (Decree-Law 1547). Although the program was suspended in April 1990 (Law 8034), steel companies with projects approved before April 12, 1990 are eligible to continue to receive IPI rebates until 1996 pursuant to the old legislation (Law 7554).

Because only steel producers are eligible to receive IPI rebates, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries. We have found that ACESITA and Mannesmann received benefits under this program.

We consider the IPI rebate program to constitute a recurring benefit, consistent with our treatment of it in the Final Negative Countervailing Duty Determination: Circular Welded Non-Alloy Steel Pipe From Brazil, 57 FR 42968, (September 17, 1992), (Pipe and Tube From Brazil). This determination is consistent with our standards for recurring versus non-recurring grants. See the Grant Methodology section above. The IPI rebate program is not exceptional and the benefits are consistently distributed. Once approved, the benefits are continuously received. No further application or approval is required. Companies need only meet eligibility requirements in order to automatically receive the benefits. While the program is scheduled to terminate in 1996, the rebates will continue to be available until that time. Recipients can expect to receive benefits on an ongoing basis from year to year, as long as the minimum eligibility requirements set forth in the original program are met.

Based on this analysis, we expensed the rebates provided under this program in 1991, in accordance with our policy regarding recurring grants (See Grant Methodology section above). We divided the total amount of each company's IPI rebates received during the POI by their respective total sales in 1991. On this basis, we determine the net subsidy under this program to be 2.90 percent *ad valorem* for ACESITA and 0.67 percent *ad valorem* for all other manufacturers, exporters, and producers of the subject merchandise.

D. Exemption of IPI and Import Duties on Imports Under Decree/Law 2324

Decree/Law 2324 of March 30, 1987, provided exporters of manufactured products exemptions from IPI and duties on imported spare parts and machinery. One respondent, Mannesmann, was provided exemptions under this law during the POI. Because this exemption is limited to exporters, and because the imported goods were not physically incorporated into the subject merchandise, we determine that it is countervailable.

To calculate the benefit, we divided the amount of IPI and import duties exempted in 1991 by Mannesmann's total exports in 1991. The rate for ACESITA is 0.00 percent *ad valorem* and 0.15 percent *ad valorem* for all other manufacturers, producers, and exporters in Brazil of the subject merchandise. However, this program was terminated by the expiration of the law on December 31, 1991, and we verified that no residual benefits were received after that date. Therefore, for this program we have reduced the cash deposit rate to zero in accordance with section 355.50(a)(2) of the Department's Proposed Regulations.

E. Exemptions of IPI and Duties on Imports Under Law 2894

Law 2894 of October 1, 1956, specifically exempts ACESITA from import duties and IPI on imports of all goods which are destined for the improvement, expansion, and maintenance of steel and hydro-electric plants owned by ACESITA. This law provides different benefits from the IPI Rebate Program under Law 7554/86 described above, because this law applies to IPI and duties due only on imports. The law is effective as long as the Banco do Brasil remains the majority shareholder of ACESITA.

Respondents have argued that due to the national privatization plan in place in Brazil since 1990, and the privatization auction held on October 22, 1992, the Banco do Brasil is no longer the majority shareholder of ACESITA, and that the Department should, therefore, adjust the deposit rate to zero. As stated in the Corporate History section above, we do not consider the GOB's privatization plan in and of itself to constitute privatization. Because the auction of ACESITA's stock was held after the preliminary determination in this case, we have not considered the impact of that auction on this program.

Because this exemption was limited to one company, we determine that it is countervailable. To calculate the benefit, we divided the amount of IPI and import duties exempted in 1991 by ACESITA's total sales in 1991. The rate for ACESITA is 0.21 percent *ad valorem* and 0.00 percent *ad valorem* for all other manufacturers, exporters, and producers of the subject merchandise.

II. Program Determined Not To Be Countervailable

We determine that the following program does not provide subsidies to manufacturers, producers, or exporters in Brazil of certain additive steel products:

A. Long-Term Loans Through FINEP

The Fund of Studies and Projects (FINEP; Financiadora de Estudos e Projectos) is a government agency that provides and administers loans in connection with technological development projects. ACESITA had two loans outstanding during the POI from FINEP. We verified that the following sectors received financing from FINEP in the years in which ACESITA received financing: Livestock, fisheries and agriculture; mining, metallurgy and mechanics; electric, electronic and communications equipment; infrastructure, transportation and communication equipment; wood, paper and paperboard; chemicals, plastics, and alcohol; textiles, apparel, footwear, and artifacts; food products; civil construction, engineering and consulting; electrical energy, gas, and sanitation; and others. Steel is classified as part of the metallurgy sector. We also verified that FINEP loans were not limited to geographical regions of Brazil. We found no new evidence that ACESITA or the steel industry, as a whole, received a disproportionate share of FINEP funds. We also found no evidence at verification that FINEP applied different criteria or standards in approving ACESITA's loan application than for other applicants.

Given that a wide array of industries received FINEP loans, and there is no evidence that steel received a disproportionate share or that FINEP exercised discretion in awarding ACESITA its loans, we determine that FINEP is not *de facto* limited to a specific enterprise or industry or group of enterprises or industries. Therefore, we determine that FINEP loans do not bestow a countervailable benefit to producers or exporters of the subject merchandise.

III. Programs Determined Not To Be Used

We verified that the following programs were not used by manufacturers, producers, or exporters in Brazil of certain additive steel products:

A. BNDES Preferential Financing
B. FINEX Preferential Export Financing
C. PROEX Preferential Export Financing
D. Tax Incentives and Funds Through Project CONSERVE
E. IPI and Import Duty Exemptions Through the BEFIEX Program

IV. Program Determined Not To Exist

We verified that the following program does not exist:

Import-Export Reform Plan Preferential Financing

Comments

Comment 1—Petitioners contend that the Department should abandon the standard for recurring versus non-recurring grants, because there is no basis for it in the statute. If the Department continues to apply this standard, petitioners argue that the IPI rebate program is non-recurring according to the standards in the Department's Proposed Regulations and recent steel cases because the rebates are based on a one-time authorization of a capital improvement project. See, *e.g.*, Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products From the United Kingdom, 57 FR 57734, (December 7, 1992). (Certain Steel Products From the United Kingdom).

They argue that until Pipe and Tube from Brazil, IPI rebates under Law 1547, as amended by Law 7554/86, were treated as non-recurring grants by the Department. See, *e.g.*, Certain Carbon Steel Products From Brazil; Final Results of Countervailing Duty Administrative Review, 52 FR 829, (January 9, 1987) (Certain Steel From Brazil).

Petitioners argue that because the benefits are non-recurring, they should be allocated over fifteen years, rather than expensed in the year of receipt. Petitioners also argue that the cancellation of the IPI rebate program in 1990 provides further evidence that the program is non-recurring, because respondents could not expect to receive benefits on an ongoing basis in the future.

Respondents contend that if the Department continues to consider IPI rebates to be a subsidy, the Department should continue to consider them to be recurring benefits, and should continue to expense the rebates in the year of receipt.

Respondents contend that this determination is consistent with the standard in the Proposed Regulations: (1) The IPI rebate program is not exceptional, as the program has operated regularly over a long period of time; (2) the program should be considered long-standing because it has been in existence for over fifteen years; and (3) there is great certainty that the program will continue to operate as usual in the future, until its effective termination date in 1996. Respondents also contend that IPI rebates were treated as recurring benefits in the Pipe and Tube From Brazil case and the recent Certain Steel From Brazil preliminary determination.

DOC Position—We determine the IPI rebate program to be a recurring benefit, consistent with our treatment of it in Pipe and Tube From Brazil. This determination is consistent with our criteria for recurring versus non-recurring grants, as enunciated recently in Certain Steel Products From the United Kingdom. The IPI rebate program is not exceptional. Further, it is longstanding—it has been in place over fifteen years, and although its method of disbursement and our treatment of the program changed in 1990, it will continue to operate as it does currently until its termination in 1996. Recipients can expect to receive benefits on an ongoing basis from year to year, as long as the minimum eligibility requirements set forth in the original program are met.

We have expensed IPI rebates in the year of receipt, consistent with our treatment of recurring benefits. This determination is not inconsistent with previous Department determinations, as argued by petitioners.

There has been an important change in the method of disbursement of the IPI rebates. Prior to 1990, companies would remit the full IPI tax to the government, which then rebated 95 percent to SIDERBRAS (the government-owned steel holding company), and SIDERBRAS returned the funds to the companies in the form of equity infusions. Accordingly, we countervailed those pre-1990 IPI rebates according to our methodology for valuing equity infusions. SIDERBRAS entered liquidation in 1990, and is no longer involved in the IPI rebate procedure. At present, companies remit the full amount of IPI owed to the government, and receive the rebates directly from the government on a regular basis. Due to the fact that the rebated funds are no longer provided to the companies in the form of equity infusions, the equity infusion allocation methodology is no longer appropriate. Based on the factors cited above, we determine that IPI rebates, as presently disbursed, constitute recurring benefits, and we have valued them in accordance with our recurring grant methodology as described in the Grant Methodology section above.

Comment 2—Petitioners contend that the 1989 decision by the Banco do Brasil to convert its PBs into equity constitutes a countervailable equity infusion. Prior to 1989, PBs cannot be considered equity because they had a fixed redemption obligation. PBs should only be considered to be equity after the 1989 shareholders' meeting in which the PBs were converted into equity.

Respondents argue that, to the extent the Department finds the PB investments to be countervailable, it should consider the original investment dates (1983, 1984, and 1985) to be the dates of the equity infusions because the PBs functioned in many ways similar to stock from the time of purchase.

Respondents argue that the Department's preliminary determination that the PBs were converted to equity in 1989 was incorrect. Respondents contend that no such conversion occurred. The holders of the PBs voted only to authorize the conversion of PBs to equity in the future, prior to the privatization of the company. Respondents argue that the 1989 vote did not change the status of the PBs; it merely provided a legal basis for an eventual conversion to equity. Respondents argue that the actual conversion to equity occurred in October 1992, a few days prior to the auction of the company. Therefore, respondents argue that if the Department does not consider 1983, 1984, and 1985 to be the dates of the equity infusions, the only other date which could be considered would be 1992, when the PBs were actually converted into stock.

Respondents argue that because the equity infusions occurred in 1983, 1984, and 1985, the Department should revise its grant cap calculation accordingly.

DOC Position—At the time of the initial investment, PBs were hybrid instruments having the qualities of both debt and equity. From their initiation, the PBs carried a repayment obligation, with the first payments due in 1989. No repayment of PBs was ever made in accordance with the prescribed schedule. ACESITA did not begin the repayment process, nor did the PB-holders request any payment. In 1989, the PB-holders voted to authorize the eventual conversion of PBs into common stock. However, there were no fixed terms or timetables for this conversion. Because the obligation to repay was not met, and there was no concrete plan for the conversion into stock, we consider that, in 1989, the PBs effectively became grants.

Comment 3—Petitioners argue that the Department's rate of return shortfall methodology (RORS) does not adequately capture benefits from government equity infusions. Petitioners contend that because ACESITA was unequityworthy at the time of the 1989 PB equity infusion, the infusion should be treated as a grant, and calculated using the Department's grant methodology.

Respondents argue that the Department should continue to value the PB equity infusions using RORS. Respondents claim that using the grant methodology to value equity infusions is contrary to the law and Departmental practice. Respondents argue that use of the grant methodology to value equity infusions is inconsistent with the Department's equityworthiness methodology, and produces inconsistent results.

Respondents also contend that the Department should revise its calculation of the benchmark rate of return in using the RORS methodology to value the benefit from the PB equity infusions. The Department should use the national average rate of return in the RORS methodology, rather than the steel industry's rate of return, as was used in the preliminary determination. This change would be consistent with the Department's past use of the RORS methodology.

DOC Position—We have determined that PBs should be characterized as grants after 1989, not equity. We do not consider any program in this investigation to constitute an equity infusion during the POI. Therefore, arguments regarding the appropriate valuation methodology for equity infusions are moot.

Comment 4—Petitioners argue that the Department correctly characterized ACESITA's debt swap arrangement as debt forgiveness by the Banco do Brasil. Respondents failed to provide sufficient evidence that such an arrangement was not specific to ACESITA, either in submissions or at verification. Although the Department requested information regarding debt swaps from the Banco do Brasil during verification, the Banco do Brasil refused to supply any information regarding debt swaps arranged for other clients because of Brazilian regulations regarding confidentiality of such information. Petitioners argue that claims of confidentiality cannot be used as a reason for not supplying the Department with information. Petitioners cite *Allied Tube and Conduit Corp.* v. *United States,* 898 F2d 780,785 (Fed. Cir. 1990) Accordingly, petitioners argue that the Department should use the information submitted in the petition as best information available (BIA) regarding the specificity of the debt swap arrangement.

Respondents argue that ACESITA's debt restructuring did not confer a countervailable benefit to the company. First, respondents argue that the debt swap was not specific to ACESITA, but rather such debt swaps are commonly used by Brazilian companies. Respondents argue that the Department should reject petitioners' request for the use of best information available. Second, respondents argue that ACESITA's debt restructuring cannot be characterized as debt forgiveness because ACESITA has fully satisfied all of its loan obligations to its creditor, Banco do Brasil.

Respondents argue that they have provided sufficient information on the record to demonstrate that debt restructuring such as ACESITA's arrangement are the result of Brazil's economic situation and market forces. Debt buy-back transactions similar to ACESITA's transaction are commonplace. Respondents argue that petitioners' characterization of the Banco do Brasil's "refusal" to provide information regarding similar transactions is misleading. The Banco do Brasil informed the Department that it could not provide additional detailed information regarding other transactions, due to strict Brazilian laws governing the disclosure of details of banking transactions to third parties. Respondents argue that the restrictions placed on Brazilian banks are very similar to those placed on U.S. banks.

Respondents contend that the Department's characterization, in the preliminary determination, of the debt buy-back as debt forgiveness is incorrect. Respondents argue that no forgiveness was involved in either of the two loan transactions involved in the debt swap. The first, underlying loan from the Banco do Brasil was paid in full. There can be no forgiveness when a loan is paid in full. ACESITA continues to service its obligations on the second loan. The Department properly evaluated the second loan on its own terms, and determined that it did not confer a benefit.

DOC Position—We consider that the debt buy-back transaction undertaken by ACESITA does confer a countervailable subsidy, as described above. In the preliminary determination, we characterized this transaction as debt forgiveness based on the information provided in the questionnaire response. It was only from information submitted after the preliminary determination and at verification, that we learned the exact nature of this debt-for-debt swap.

There is insufficient information on the record to determine that debt buy-back transactions such as ACESITA's, are not *de facto* specific. See the Specificity section above and Section Two, Appendix One of the Department's questionnaire. The Department requested detailed information from respondents regarding actual industry use of such transactions, and the actual terms and conditions of similar transactions, but respondents failed to provide this information. Confidentiality of information does not relieve a respondent from its obligation to provide the Department with information.

Comment 5—Petitoners argue that the Department erred in calculating a nominal, rather than an effective, benchmark rate for evaluating the second loan provided to ACESITA in its debt swap arrangement. Petitioners contend that the loan was provided free of certain fees and charges which ACESITA would normally have to pay, including a financial tax (IOF) and a withholding tax on interest payments, making its true cost of money cheaper than alternative commercially-available financing. Petitioners contend that the Department should use information on the record to construct a company-specific benchmark rate for ACESITA.

Respondents argue that the benchmark interest rate used by the Department in the preliminary determination was correct and should be used for this final determination. Respondents argue that petitioners are incorrect in their assertion that other charges should be included in a benchmark rate.

DOC Position—We disagree with petitioners. First, information on the record demonstrates that the IOF tax is applicable to short-term debt only; it is not charged on loans with periods over 90 days.

Second, the withholding tax, for which petitioners seek an adjustment, is applicable to interest remitted abroad. Petitioners have argued that because the only likely source for dollar-denominated financing is outside Brazil, the benchmark interest rate must incorporate this withholding tax. Petitioners assertions to the contrary, information on the record indicates that ACESITA has previously secured long-term dollar-denominated financing in Brazil. This debt was not subject to the withholding tax. It cannot be assumed, therefore that all potential alternative financing for the debt swap would have been subject to this withholding tax.

Finally, ACESITA's debt swap loan package did include "fees or commissions" imposed upon it by the intermediary involved in the debt swap. These fees were incorporated into the loan that ACESITA assumed, a loan which was greater than the amount necessary to purchase the MYDFAs necessary to retire ACESITA's loan with the Banco do Brasil.

We determine, therefore, that the LIBOR plus spread and risk premium benchmark used by the Department in its preliminary determination is correct, and that petitioners suggested adjustments to the benchmark are not warranted.

Comment 6—Respondents contend that the privatization of ACESITA constitutes a program-wide change. Respondents state that, according to the Proposed Regulations, (54 FR 23378, 23385), a program-wide change is defined as a change which is not limited to a specific company or companies, and is implemented by an official act, such as a statute, regulation, or decree. Respondents argue that the privatization of ACESITA meets all these criteria. Respondents argue that this program-wide change occurred prior to the preliminary determination in this investigation, and that the Department should, therefore, set the deposit rate associated with the PB equity infusions at zero.

Respondents argue that ACESITA's privatization was initiated by Law 8031 on April 4, 1991, which, along with subsequent legislation and regulations, established the procedures to be used in the privatization process. Because these laws governed the privatization not just of ACESITA but also of various other companies, it meets the requirement that a program-wide change not be limited to a specific enterprise.

Respondents argue that, as the privatization program was initiated in 1990, it occurred and was verifiable prior to the preliminary determination in this investigation. Respondents argue that the controlling events of the privatization, including the establishment of procedures, consultants' studies, and development of conditions of sale and minimum price, were completed prior to the preliminary determination.

Respondents argue that the Department's approach to privatization published in the preliminary determination in Preliminary Affirmative Countervailing Duty Determination: Certain Steel Products From Brazil, 57 FR 57806 (December 7, 1991), is contrary to law and should not be applied to ACESITA in this investigation. That determination stated the Department's position that equity benefits provided to an unequityworthy company prior to privatization are not extinguished by the privatization unless the benefits were repaid prior to privatization.

Petitioners argue that the privatization of ACESITA does not constitute a program-wide change. Petitioners argue that the privatization of ACESITA did not take place until October 22, 1992, the date of the auction of the company. The fact that the plans for privatization were in place does not mean that privatization took place. Privatization is only accomplished by the successful sale of the company.

DOC Position—We do not consider that privatization, in and of itself constitutes a program-wide change, or that a privatization program is the type of program contemplated for consideration under the program-wide change section of the Proposed Regulations. Even assuming *arguendo*, however, that privatization could be construed as a program-wide change, we do not consider that privatization occurs prior to the actual sale of the company. It would not be possible to assess such a program-wide change until after the conclusion of the actual sale of the company so that all the effects of the privatization program could be analyzed.

In this case, while plans for the auction of ACESITA were in place prior to the preliminary determination, the auction did not take place until after the preliminary determination. Therefore, we do not consider Brazil's national privatization plan to constitute a program-wide change in this investigation. As such, there is no basis for considering any impact such a change would have on any program in this investigation, nor for making any adjustment to the cash deposit rates.

Comment 7—Petitioners contend that the GOB exercised considerable discretion in providing ACESITA with loans from FINEP and that, therefore, the financing confers a countervailable benefit because it fails the Department's specificity test. Petitioners contend that the ACESITA's loans from FINEP were not provided in accordance with the agency's guidelines. One of the criteria used to evaluate potential recipients of FINEP loans is the creditworthiness of the borrower. Petitioners argue that because ACESITA was uncreditworthy at the time it received loans from FINEP in 1987 and 1990, it did not meet the program criteria, and would not have received the loans absent the exercise of discretion by the GOB. Petitioners contend that because of the discretion used by the GOB to grant these loans, the program fails the specificity test, and the benefit should be countervailed.

Respondents argue that petitioners are incorrect that FINEP loans were provided to ACESITA in violation of FINEP's lending policies. Respondents argue that ACESITA guaranteed its loans from FINEP with its fixed assets, and that therefore FINEP was protected in the transaction. The Department confirmed at verification that ACESITA has made every payment under the FINEP loans. All information on the record confirms that the FINEP loans to ACESITA were in no way different from its loans to other companies and industries. Respondents argue that the loans cannot be considered specific to ACESITA.

DOC Position—There is no evidence on the record to indicate that the GOB used discretion in granting FINEP loans to ACESITA. We have no reason to believe the consideration accorded ACESITA's loan applications was inconsistent with that accorded to any other company's application. Our review at verification of the actual number of sectors using FINEP, the amount of FINEP funding to the steel industry, and the criteria used by FINEP officials to approve loans leads us to conclude that FINEP financing is not specific to an enterprise or industry, or group of enterprises or industries.

Comment 8—Respondents argue that Law 2324 terminated prior to the preliminary determination in this case, and that the Department should adjust the deposit rate accordingly. Respondents claim that, while the GOB holds the position that the law terminated in 1990, there is no question that the law self-terminated by its own decree on December 31, 1991. Because this constitutes a program-wide change, the Department should follow its practice of adjusting the cash deposit rate for a program-wide change which occurs before the preliminary determination.

Petitioners argue that the Department correctly determined that Law 2324 provided a countervailable subsidy to ACESITA. Petitioners claim that the Department based its determination in part on the fact that respondents did not provide a copy of the law to the Department. Petitioners claim that because respondents still have not provided a copy of the law to the Department, the Department should, in this final determination, consider Law 2324 to provide a countervailable benefit.

DOC Position—During verification, we examined Law 2324 and discussed its operation with GOB and company officials. A copy of the law was included in the verification exhibits. There is sufficient information on the record to determine that Law 2324 provides a countervailable benefit, and also that it terminated prior to the preliminary determination in this investigation. We verified that no residual benefits were provided after the termination of the program. We have, therefore, adjusted the cash deposit rate to zero, in accordance with our practice regarding program-wide changes.

Comment 9—Respondents argue that the Department should adjust the deposit rate to zero for the exemption of IPI and import duties under Law 2894. Respondents argue that benefits under Law 2894 were only provided to ACESITA as long as the Banco do Brasil was the majority shareholder. Respondents contend that the privatization of ACESITA, which resulted in the Banco do Brasil becoming a minority shareholder, constitutes a program-wide change occurring prior to the preliminary determination. Therefore, they argue that an adjustment of the deposit rate would be consistent with the Department's treatment of program-wide changes.

DOC Position—As discussed in the Corporate History section and Comment 6 above, we do not consider that the national privatization plan, in and of itself, constitutes a program-wide change.

Additionally, the Banco do Brasil remained the majority shareholder until the auction of the company on October 22, 1992, which is after the preliminary determination in this investigation. Therefore, we have not adjusted the deposit rate for this program.

Comment 10—Petitioners argue that the Department was incorrect in determining not to initiate an equityworthiness investigation of ACESITA in 1982, 1983, and 1984. Petitioners argue that their petition contained all reasonably available information to the Department regarding their unequityworthiness allegation, and that the Department is therefore obligated to initiate an investigation and compel the production of evidence from the respondents.

DOC Position—As stated in the Department's May 1, 1992, Equitworthy and Creditworthy Analysis Memorandum; May 4, 1992, Initiation Memorandum; and Notice of Initiation of Countervailing Duty Investigations: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Brazil, France, Germany, and the United Kingdom, FR 19884 (May 8, 1992); and as reiterated in the Department's September 10, 1992, Equitworthy and Creditworthy Analysis Memorandum, we determined that information provided by petitioner at the time of initiation was insufficient to demonstrate that equity infusions into ACESITA during 1982, 1983 and 1984 were made on terms inconsistent with commercial considerations. Petitioner has not provided any additional information that would cause us to reconsider our previous determination.

Comment 11—Petitioners argue that the Department was incorrect in excluding the Villares Group, a producer of the subject merchandise, from this investigation. Petitioners argue that the company's request for exclusion was untimely and did not meet the documentation requirements for justifying and exclusion.

DOC Position—The Villares Group did not request exclusion from this investigation, and it is not excluded from this determination. The Villares Group requested that the Department not require that it respond the questionnaire. We decided that the Villares Group would not be required to respond to the questionnaire because its share of exports of the subject merchandise to the United States is extremely small. We verified the Villares Group's volume and value of exports of the subject merchandise to the United States during the POI.

Even without a response from the Villares Group, we verified responses from companies accounting for almost 100 percent of exports to the United States. While the Department usually attempts to examine those companies in countervailing duty cases which account for 100 percent of imports subject to investigation, nothing in either the statute or the regulations requires the Department to examine any particular percentage of imports or companies in a countervailing duty investigation. Not requiring the Villares Group to respond is consistent with the Department's practice in prior investigations. *See, e.g., Fresh Cut Flowers from Costa Rica*, 52 FR 32030 (August 25, 1987); *Certain Textile Mill Products and Apparel from Malaysia*, 50 FR 9852 (March 12, 1985); *Circular Welded Non-Alloy Steel Pipe from Brazil*, 57 FR 24466 (June 9, 1992).

Exports of subject merchandise from the Villares Group are subject to the country-wide rate calculated in this investigation.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with section 705(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of entries of certain additive steel products from Brazil which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the Federal Register, and to require a cash deposit or bond of estimated countervailing duties at the following rate:

	Net subsidy rate (percent)	Cash deposit rate (percent)
ACESITA	19.19	19.19
Country-wide Rate	0.82	0.67

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain additive steel products from Brazil.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-2001 Filed 1-26-93; 8:45 am]

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[C-427-805]

Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Susan Strumbel, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482-0167 or 482-1442, respectively.

Final Determination

The Department of Commerce (the Department) determines that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in France of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products").

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination (57 FR 42977, September 17, 1992), the following events have occurred.

Verification was conducted from September 22 through September 30, 1992.

On October 16, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned the final determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of the same merchandise (57 FR 48020, October 21, 1992). On November 6, 1992, we postponed the final countervailing duty (CVD) and AD determinations until January 11, 1993 (57 FR 53691, November 12, 1992). On January 11, 1993, we postponed for a second time the final CVD and AD determinations until January 19, 1993 (Not Yet Published).

The parties submitted case and rebuttal briefs on November 23 and December 2, 1992, respectively. A public hearing was held on December 7, 1992.

Scope of Investigation

The products covered by this investigation are hot rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of these investigations are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) chapter 72, note 1(f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10. 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Respondents

The Government of France (GOF), Usinor Sacilor, and the European Community (EC) are respondents for merchandise subject to this investigation.

Corporate History

At the end of 1986, Usinor and Sacilor, which were separate companies owned by the GOF, were merged to become one holding company called Usinor Sacilor.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991 which corresponds to the fiscal year of Usinor Sacilor.

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated the *ad valorem* benefit for each program received by Usinor Sacilor. The benefits for all programs were then summed to arrive at Usinor Sacilor's total subsidy rate, which, because Usinor Sacilor is the only respondent company in this investigation, equals the country-wide rate.

As a result of the ongoing Countervailing Duty Investigations of Certain Carbon Steel Products from France, we have been made aware of certain programs, not originally investigated in this case, which appear to provide subsidies, *e.g.*, investment subsidies. Nevertheless, we did not have sufficient time to obtain and verify information with respect to these programs. Accordingly, we will address them during the first administrative review of the countervailing duty order in this case, as is contemplated by section 355.39 of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations)), assuming a countervailing duty order is issued and an administrative review is requested.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from the interested parties, we determine the following:

Equityworthiness

Petitioners have alleged that Usinor, Sacilor and Usinor Sacilor were unequityworthy for certain years during the period 1979 through 1991, and, therefore, that equity infusions received during those years were inconsistent with commercial considerations. The Department previously determined that Usinor and Sacilor were unequityworthy for the years 1978 and 1981 in Final Affirmative Countervailing Determinations: Certain Steel Products from France, 47 FR 39332 (September 7, 1982) (Certain Steel). Respondents have presented no new evidence in this investigation that contradicts the Department's findings.

Based on the following analysis, we have determined that Usinor, Sacilor, and Usinor Sacilor were unequityworthy during the years 1982 through 1988 and that Usinor Sacilor was equityworthy during 1991. Although petitioners' allegation includes 1989 and 1990, there were no infusions in those years.

Throughout the period 1982 to 1987, Usinor, Sacilor, and Usinor Sacilor reported substantial losses. Stockholders' equity was negative in every year except 1986. Accordingly, certain financial indicators, such as rate of return on assets and equity and profit margin on sales, were negative. Therefore, we determine Usinor, Sacilor, and Usinor Sacilor to be unequityworthy in those years.

However, respondents argue that the Department should place its emphasis on indicators of future financial health as would a private investor, not on past indicators. Respondents argue that the 1986 restructuring, which was undertaken in accordance with a study prepared by McKinsey & Co., had a dramatic effect upon Usinor Sacilor's profitability, making it a firm in which it would be reasonable for investors to invest.

We have analyzed the information on the record with respect to the study prepared by McKinsey & Co. We disagree with respondents that, as a result of this study and its projections, we should ignore all past financial indicators when making our equityworthy determination. In our view, a prudent investor would not assess the reasonableness of investing in the newly restructured company without taking into consideration the tremendous financial difficulties of both companies prior to the restructurings or the reasons for those difficulties. For this reason, and absent any positive financial indicators prior to the restructuring, we have continued to find Usinor Sacilor unequityworthy in 1986 and in 1987 and 1988.

Furthermore, Usinor Sacilor argues that the Department should calculate return on equity using earnings before interest, taxes and depreciation (EBITD) for the numerator. On this basis, Usinor Sacilor has calculated a positive return on equity for the years 1984, and 1987 through 1991. During verification, GOF officials maintained that EBITD is the primary measure in France use to evaluate a company's ability to meet its obligations. (*See* the public version of the Report on the Verification of the Government of France, on file in Room B–099 of the Department of Commerce.) Usinor Sacilor argues that a reasonable investor in France, using Usinor Sacilor's EBITD ratios, would have found Usinor Sacilor to be an excellent investment.

With respect to EBITD, we are not persuaded that it is the best means of measuring the rate of return on equity. While potential investors may consider EBITD, it is not as accurate a reflection of the potential return on an investment as a measure which is net of interest, taxes, and depreciation, *i.e.*, net income. Therefore, we have continued to rely upon the companies' return on assets and return on equity calculated on the basis of net income divided by the average shareholder's equity.

We preliminarily determined that Usinor Sacilor was unequityworthy in 1991 based upon a review of the financial data and a summary of an analysis of Usinor Sacilor performed by an independent Swiss consulting firm. We stated that beginning in 1988, the company reported positive rates of return on both assets and equity for the preceding years, although the financial position of the firm weakened yearly. However, since the preliminary determination, the complete Swiss consulting report has been submitted for the record and we have been able to evaluate it. Based on our review of the complete report, we have reevaluated Usinor Sacilor's potential for generating a reasonable rate of return within a reasonable period of time and concluded that Usinor Sacilor was equityworthy during 1991.

Creditworthiness

We have analyzed whether Usinor, Sacilor and Usinor Sacilor were uncreditworthy from 1978 through 1991.

Based on our analysis of Usinor's and Sacilor's financial statements, their debt-to-equity ratios indicate that the companies were highly leveraged during 1979 through 1981. In addition, the current and quick ratios indicate low levels of liquidity available to pay debts. Moreover, Usinor Sacilor reported net losses for each of these years. Therefore, although we cannot analyze the companies' actual experience in meeting their debt obligations because no information was provided on this point, the above indicators lead us to conclude that the companies would have had difficulty making interest and principal payments. Given this, we continue to determine that Usinor and Sacilor were uncreditworthy during the years 1978 through 1981.

To determine the creditworthiness of Usinor, Sacilor, and Usinor Sacilor during the period 1982 through 1991, we have evaluated certain liquidity and debt ratios, *i.e.*, current and quick, times interest earned, long-term debt, and debt-to-equity on a consolidated basis. For the period, 1979 through 1987, the company consistently incurred substantial losses. The interest coverage ratios were negative and the liquidity ratios indicated that the company may have had difficulty in meeting its short-term obligations. Although Usinor Sacilor reported a profit in 1988, as a result of our analysis, we determine that Usinor, Sacilor, and Usinor Sacilor were uncreditworthy for the years 1982 through 1989.

Respondents have argued that when determining the creditworthiness of a company, the Department must consider the extent to which the company was able to obtain loans from private sources without government assistance or guarantees. Respondents argue that Usinor and Sacilor, in fact, had obtained such loans since 1978. However, respondents have provided no information with respect to the nature of the loans from private sources nor whether Usinor, Sacilor, or Usinor Sacilor were able to obtain this private debt without government assistance and/or guarantees. Therefore, we have not considered the extent of Usinor Sacilor's private borrowings in determining whether Usinor Sacilor was creditworthy.

Respondents have further argued that the 1986 restructuring greatly improved Usinor Sacilor's outlook, making it a better risk for lenders as well as for investors. In contrast, petitioners maintain that Usinor Sacilor's return to profitability should be ignored because it was primarily the result of subsidies provided in 1986 and 1988.

With respect to respondent's arguments, we disagree that a lender would rely solely on future profitability resulting from restructuring. With respect to petitioner's arguments regarding the past subsidies received by Usinor Sacilor, past practice and our regulations do no allow us to consider the effect of past subsidies when making a determination as to whether a firm is creditworthy, as is set forth in § 355.44(b)(6)(iii) of the Department's Proposed Regulations.

Our review of the financial statements and certain ratios for the years 1990 through 1991, as well as the prior three years, indicates that Usinor Sacilor was able to generate sufficient cash flow to meet its current and long-term obligations. Therefore, we continue to determine that Usinor Sacilor was creditworthy during these years.

Equity Methodology

According to section 355.49(e) of the Department's Proposed Regulations the Department measures the benefit of equity investments in "unequitworthy" firms by comparing the national average rate of return on equity with the company's rate of return on equity during each year of the allocation period. The difference in these amounts, the so-called rate of return shortfall (RORS), is then multiplied by the amount of the equity investment to determine the countervailable benefit in the given year.

The Department has concluded that the RORS methodology does not provide an accurate measure of the benefits arising from government equity investments in unequityworthy companies. When the Department finds that a company is unequityworthy and, hence, that the government's equity investment is inconsistent with commercial considerations, we are effectively finding that the company could not attract share capital from a reasonable investor. When a company is in such poor financial condition that it cannot attract capital, any capital it receives benefits the company as if it were a grant and no earnings of the company in subsequent years should be used to offset the benefit.

Moreover, in calculating the company's rate of return, no adjustment is made to eliminate the effect of past or current subsidies. Therefore, those subsidies that increase the company's rate of return serve to reduce the amount of the subsidy arising from government equity investments in subsequent years. In addition, this method does not compensate for the effect of prior year results on equity in subsequent years, thus measuring the rate of return against an equity other than that invested in the transaction in question.

For these reasons, we have determined that equity investments in unequityworthy companies will be treated as grants given in the year of the equity investment. Accordingly, we will value the benefit using the grants methodology described below.

Where a market-determined benchmark price for equity exists, we will continue to use that benchmark to determine whether the government's purchase of equity confers a subsidy and to measure the amount of the subsidy.

Grant Methodology

Our policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. See, e.g., Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, 56 FR 7678 (February 25, 1991) (Salmon from Norway).

We have considered the grants provided under the programs described below to be non-recurring, unless otherwise noted, because the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from review period to review period, and/or the provision of funds by the government must be approved every year. See, Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (March 24, 1986) (Groundfish from Canada). Therefore, we have allocated the benefits over 15 years, which the Department considers to be reflective of the average useful life of assets in the steel industry (see section 355.49(b)(3) of the Proposed Regulations).

The benefit from each of the grant programs discussed below was calculated using the declining balance methodology described in the Department's Proposed Regulations (see section 355.49(b)(3)) and used in prior investigations (see e.g., Salmon from Norway). For the discount rate used in these calculations, we used the lending rates published in the International Monetary Fund's International Financial Statistics because Usinor Sacilor did not report its actual cost for long-term, fixed-rate debt. Since Usinor Sacilor was uncreditworthy in the years in which all grants were approved we have used the highest annual interest rate reported in the IMF publication and have added a risk premium to the benchmark interest rate in accordance with section 355.44(b)(6)(iv) of the Proposed Regulations.

Specificity

When receipt of benefits under a program is not contingent upon exportation, the Department must determine whether the program is specific to an enterprise or industry, or group of enterprises or industries. Under the specificity analysis, the Department examines both whether a government program is limited by law to a specific enterprise or industry, or group thereof (*i.e., de jure* specificity) and whether the government program is in fact limited to a specific enterprise or industry, or group thereof (*i.e., de facto* specificity). See section 771(5)(B) of the Act. In section 355.43(b)(2) of the Department's Proposed Regulations, the Department has set forth the factors that may be considered in determining whether there is specificity:

(i) The extent to which a government acts to limit the availability of a program;

(ii) The number of enterprises, industries, or groups thereof that actually use a program;

(iii) Whether there are dominant users of a program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits under a program; and

(iv) The extent to which a government exercises discretion in conferring benefits under a program.

See also Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570 (May 28, 1992).

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in France of certain additive steel products as follows:

A. Equity Infusions and Grants

Loans with Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA) for the purpose of assuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

According to the responses, PACS were an instrument akin to redeemable subordinated nonvoting preferred stock. Respondents state that PACS would be included in the shareholders' equity on the balance sheet, and had the following characteristics: (1) a 0.10 percent remuneration for the first five years and 1.0 percent thereafter, (2) no schedule of reimbursement but in the event the steel companies became profitable, the PACS holders could elect to redeem their PACS or share in profits according to a predetermined formula, and (3) PACS were subordinated to all but the common stock.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986 and 1991, respectively.

Fonds d'Intervention Siderurgique (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. The FIS, or steel intervention fund, was created by a decree of May 18, 1983, in order to implement that authority. According to the responses, Usinor and Sacilor issued convertible bonds to the FIS, which, in turn, with the GOF guarantee, floated bonds to the public and to institutional investors.

In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS. These FIS bonds were converted to common stock in 1986 and 1988.

Shareholders' Advances

According to the responses, the GOF financed the revenue shortfall needs of Usinor and Sacilor through shareholders' advances beginning in 1982. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. The responses indicated that, consistent with the GOF's policy of full adherence to the EC State Aids Code, and with the GOF's private investor policy articulated by President Mitterrand in 1984, the GOF, in 1986, paid out the last of the advances it had made under this program.

All of these advances were converted to common stock in 1986.

In 1981, 1986, 1988, and 1991, virtually all the common stock purchased through conversions of PACS, FIS bonds and shareholder's advances was offset against company losses, with the result of reducing paid-in capital. In the preliminary determination, we concluded that the benefit was realized at the time of the reduction in paid-in-capital and we treated each reduction in paid-in-capital as a grant.

We have reconsidered the approach taken in the preliminary determination and, consistent with the equity methodology adopted in these investigations, we have concluded that any benefits to Usinor Sacilor occurred at the point when these instruments were converted to common stock. Because the equity methodology does not recognize the subsequent performance of the company receiving the equity investment and treats the equity investment as a grant, the later write-off of the equity is irrelevant.

As discussed above, we have determined that Usinor Sacilor was unequityworthy from 1981 through 1988 and equityworthy in 1991. As a result, we consider the conversion of PACS to common stock in 1981 and 1986 to constitute equity infusions on terms inconsistent with commercial considerations. Similarly, we consider the conversion of FIS bonds to common stock in 1986 and 1988 to constitute equity infusions on terms inconsistent with commercial considerations. However, the PACS to equity conversion in 1991 was consistent with commercial considerations.

Petitioners argue that Usinor Sacilor received benefits from the PACS converted in 1991, for the portion of the POI they were outstanding. We disagree.

Benefits from equity infusions are not prorated to correspond to the number of months the firm benefitted from the equity in the year of the infusion. Therefore, it is appropriate to consider that the only benefit that could arise during the POI was that potentially conveyed by the 1991 PACS-to-equity conversion. To assign loan and potential equity benefits during the same year would lead to excess countervailing duties.

Consistent with the equity methodology adopted in this investigation, we followed the grant methodology outlined above for allocating the benefits from the equity infusions stemming from conversion of PACS and FIS bonds.

With respect to shareholders' advances, we have determined that shareholders' advances constitute countervailable grants at the time they were received as no shares were distributed in return for these advances when they were made to Usinor and Sacilor.

We calculated the benefit from shareholders' advances for the POI using the grant methodology discussed above. We then added the benefits accruing from PACS, FIS bonds and shareholders' advances. We divided this total benefit by Usinor Sacilor's total sales, excluding sales of non-French produced merchandise and shipment expenses on domestic sales. On this basis, we calculated an estimated net subsidy of 22.28 percent *ad valorem.*

Equity Infusion in 1978

Based on information provided in the Changes in Capital exhibits in the responses, it is evident that the GOF provided an infusion of capital to Usinor and Sacilor in 1978. Given that we have determined that Usinor and Sacilor were unequityworthy in 1978, this equity infusion was provided on terms inconsistent with commercial considerations.

Consistent with the decision concerning equity methodology adopted in this investigation, we followed the grant methodology outlined above for allocating the benefits from this equity infusion in 1978. We divided this benefit by Usinor Sacilor's total sales, excluding sales of non-French produced merchandise and shipment expenses on domestic sales. On this basis, we calculated an estimated net subsidy of 0.04 percent *ad valorem.*

B. Long-Term Loans From FDES and CFDI

The Law of July 13, 1978, created participative loans (prets participatifs) which were by law available to all French companies. Under these loans, which were issued by the FDES and the Caisse Francaise de Developpement Industriel (CFDI), the borrower paid a lower-than-market interest rate plus a share of future profits according to an agreed upon formula. These loans were obtained by either Usinor, Sacilor, or their subsidiaries.

Loans From FDES

On July 1, 1990, the outstanding principal on the FDES loans to Usinor and Sacilor was consolidated into multiple long-term loans. We consider these consolidated loans to be new loans.

In these investigations, the GOF has provided the total distribution of participative FDES loans for 1981 through 1990. It does not appear that the new 1990, consolidated loans for Usinor Sacilor are included in this information. The information provided only seems to relate to participative loans rather than the types of loans obtained by Usinor Sacilor in 1990. Indeed, the information provided indicates that the consolidated amounts exceeded the total amount of FDES loans distributed to all sectors of the economy for the years 1987, 1988, and 1989 combined.

Therefore, lacking information on whether the FDES consolidated loans are limited to a specific enterprise or industry or group of enterprises or industries, we have determined that the 1990 consolidated loans are *de facto* limited. Accordingly, Usinor Sacilor's FDES loans are countervailable to the extent that they were provided on terms more favorable than the benchmark financing.

We have used as the benchmark and the discount rate the private bond interest rate reported in the OECD Financial Statistics publication for 1990. Because we have determined that Usinor Sacilor was creditworthy during 1990, we did not add a risk premium to the benchmark interest rate. We then compared this benchmark financing to the financing provided by FDES and found that the FDES loans were provided on more favorable terms than the benchmark financing. Therefore, we determine that Usinor Sacilor's loans are countervailable.

To calculate the benefit from these loans, we employed our normal long-term loan methodology as described in section 355.49(c)(1) of the Department's Proposed Regulations. (See also Final Affirmative Countervailing Duty Determination: Certain Granite Products from Spain, 53 FR 24340 (June 28, 1988).) We divided the benefit attributable to the POI by Usinor Sacilor's total sales, excluding sales of non-French produced merchandise and shipment expenses on domestic sales. On this basis, we calculated an estimated net subsidy of 0.02 percent *ad valorem.*

Loans from CFDI

In 1991, outstanding loans to Usinor Sacilor from CFDI were consolidated. These consolidated loans carried new terms and conditions. Therefore, we are treating these consolidations as new loans in 1991.

Because we are treating these as new loans taken out in 1991, no interest would be due until 1992. Hence, there would be no cash flow effect until 1992. Only at that time would any potential subsidy from these loans be realized. However, the old loans which were consolidated in 1991 were outstanding during a portion of the POI and potentially give rise to a benefit.

Although the GOF has claimed that loans from CFDI are not limited to a specific enterprise or industry or group of enterprises or industries, no supporting evidence has been provided other than a short letter from CFDI. This letter does not provide any showing that the loans are non-specific. Therefore, we determine that CFDI loans are *de facto* limited to a specific enterprise or industry or group of enterprises or industries and that they are countervailable to the extent that they were provided on terms inconsistent with commercial considerations.

For those years in which Usinor, Sacilor, and Usinor Sacilor were uncreditworthy, we have used as the benchmark and the discount rate the same interest rate as described in the Grant Methodology section above. For those years in which Usinor, Sacilor, and Usinor Sacilor were creditworthy, we have used as the benchmark the interest rate described in the "Long-Term Loans from FDES" section above.

Comparing the appropriate benchmark financing with the CFDI financing received by Usinor, Sacilor, and Usinor Sacilor, we found that CFDI loans did provide a benefit during the POI. Therefore, we determine that Usinor and Sacilor's loans are counteravailable.

To calculate the benefit from these loans, we employed our normal long-term loan methodology as described above under the FDES Program. We divided the benefit attributable to the POI by Usinor Sacilor's total sales, excluding sales of non-French produced merchandise and shipment expenses on domestic sales. On this basis, we calculated an estimated net subsidy rate of 0.48 percent *ad valorem.*

C. Repaid PACS

In the 1978 restructuring, part of the loans made by the private majority shareholders were converted to PACS. In Certain Steel, the Department considered these PACS to be debt and stated that because they were created under the government-directed Rescue Plan of 1978 and were specific to the steel companies, the PACS conferred counteravailable benefits.

Sacilor's former majority shareholder redeemed its PACS in 1989. Although Sacilor paid no interest on the PACS, the full value was repaid. Therefore, we are treating this as a zero interest loan where benefits expired prior to the POI.

PACS issued by Usinor to its former majority shareholder were essentially written off in 1981 at a redemption value of FF100. Accordingly, we are treating the difference between the original shareholder's advance and the amount repaid as a nonrecurring grant. We have applied the grant methodology discussed above to calculate the benefit. We divided this benefit by Usinor Sacilor's total sales, excluding sales of non-French produced merchandise and shipment expenses on domestic sales. On this basis, we calculated an estimated net subsidy of 0.01 percent *ad valorem*.

D. European Coal and Steel Community (ECSC) Article 54 Loans

Article 54 industrial investment loans are provided for the purpose of purchasing new equipment or financing modernization. These loans are direct loans from the European Commission and are made at interest rates slightly higher than those paid by the Commission in obtaining funds. The purpose of this program is to facilitate the borrowing process for companies in the ECSC, some of which may not otherwise be able to obtain these loans. These loans are only available to the iron and steel industries.

Based on information provided in the responses, we preliminarily determined that this program was not used. However, at verification we learned that Unimetal, the actual producer of the subject merchandise, had loans outstanding under this program during the POI.

Because Article 54 loans are limited to the iron and steel industries, we determine that this program is limited to a specific enterprise or industry or group of enterprises or industries. Therefore, these loans are counteravailable to the extent that they are provided on terms inconsistent with commercial considerations.

We have used as the benchmark the interest rate described in the Grant Methodology section above. We then compared the appropriate benchmark financing to the financing Unimetal received through the EC and found that these loans were provided on terms inconsistent with commercial considerations. Therefore, we determine that Unimetal's Article 54 loans are counteravailable.

To calculate the benefit from these loans, we employed the long-term loan methodology described above in our discussion of "Long-Term Loans from FDES." We divided this total benefit by Unimetal's total sales. On this basis, we calculated an estimated net subsidy of 0.03 percent *ad valorem*.

E. ECSC Redeployment Aid (Article 56(2)(b))

Under Article 56(2)(b) of the ECSC Treaty, individuals employed in the coal and steel industries who lose their jobs may receive assistance for social adjustment. This assistance is provided for workers affected by restructuring measures, particularly as workers withdraw from the labor market into early retirement or are forced into unemployment. The ECSC disburses assistance under this program on the condition that the affected country makes an equivalent contribution. Funds for the ECSC portion of these payments are from the ECSC operational budget, made up entirely of levies on ECSC companies.

Since the ECSC portion of payments under this program comes from its operational budget, we determine the portion of payments provided by the ECSC to be not countervailable. However, we are countervailing the matching contributions by member state governments to the extent that their payments relieve companies of obligations they would otherwise incur.

In Usinor Sacilor's response, it stated that the ECSC disbursed funds under this program to the GOF during the POI. At verification, company officials stated that Usinor Sacilor did not receive any funds under this program during 1991. However, officials did not provide any documentation supporting this claim. Given the lack of documentation establishing that Usinor Sacilor did not receive funds under this program, we have applied best information available and concluded that the ESCS funds were in fact disbursed to the GOF during the POI and that the GOF would have disbursed an equal amount of funds to Usinor Sacilor during the POI. See, *e.g.*, Portland Hydraulic Cement and Cement Clinker from Mexico; Final Results of Countervailing Duty Administrative Review, 53 FR 18325 (May 23, 1988); Final Affirmative Countervailing Duty Determination; Standard Carnations from Chile, 52 FR 3313 (Feb. 3, 1987); Certain Steel Products from South Africa; Final Results of Countervailing Duty Administrative Review, 51 FR 33648 (Sept. 27, 1986).

Due to the lack of information provided at verification, we are further assuming that these payments relieved the company of obligations it would otherwise incur. On this basis, we have determined that the GOF's matching contributions have provided a countervailable benefit to Usinor Sacilor. See *e.g.*, Wool From Argentina; Final Results of Countervailing Duty Administrative Review, 52 FR 23196 (June 18, 1987); Final Affirmative Countervailing Duty Determination; Fresh Cut Flowers from Ecuador, 52 FR 1361 (Jan. 13, 1987); Certain Steel Products from South Africa; Final Results of Countervailing Duty Administrative Review, 51 FR 33648 (Sept. 22, 1986).

Finally, we consider this program to provide recurring benefits because it is one under which recipients can expect to receive benefits on an ongoing basis year after year. Therefore, we expensed the payments provided under this program by the GOF in 1991. We divided the total benefit by Usinor Sacilor's total sales, excluding sales of non-French produced merchandise and shipment expenses on domestic sales. On this basis, we calculated an estimated net subsidy of 0.28 percent *ad valorem*.

II. Programs Determined Not To Be Countervailable

We determine that the following programs do not provide subsidies to manufacturers, producers, or exporters in France of certain additive steel products under the following programs:

A. Loans From Credit National

Credit National is a financial institution with a structure based on four core-businesses, corporate lending, capital markets, equity financing and real estate activities.

In 1991, outstanding loans to Usinor Sacilor from Credit National were consolidated. Consistent with our treatment of the FDES loans, we are treating these consolidations as new loans in 1991 because they carried new terms and conditions.

To determine whether the consolidated loans were provided to a specific enterprise or industry or group of enterprises or industries, we have examined the factors discussed in the Specificity section above. With respect to *de jure* availability, the law creating

Credit National does not in any way limit the industries to which loans can be made. With respect to *de facto* availability, Credit National's Annual Report (1991) demonstrates that loans in the year in which these consolidations were completed were in fact provided to numerous sectors and were not disproportionately provided to the steel industry. Industries which received Credit National loans included hotel, leisure and tourism, retailing and health care, chemicals, energy and metals, agribusiness, and mechanical engineering, automotive, aerospace, and transportation, and several others. The chemicals, energy and metals sector, of which steel is a part, received 10.51 percent of all Credit National loans approved in 1991. Finally, we verified that an independent committee, composed of experts from various industries, evaluates loan applications and makes recommendations to Credit National with respect to their viability. The committee assesses this viability based on neutral criteria. Recommendations made by the committee are then accepted by Credit National.

Based on this, we determine that the consolidated 1991 loans from Credit National were not provided to a specific enterprise or industry or group of enterprises or industries, and, therefore, are not countervailable.

B. Assistance for Research and Development

The Institute de Recherches de la Siderurgie Francaise (IRSID) is a non-profit organization that is funded by contributions from each subsidiary of Usinor Sacilor. At verification, we established that the GOF provides a very small amount of funds for fundamental research as well as some basic research and that the results of this research are published. Therefore, because the results of the research projects are made publicly available, we find this program to be not countervailable.

III. Program Determined Not To Be Used

We determine that the following programs were not used by manufacturers, producers, or exporters in France of certain additive steel products:

A. *ECSC Article 54 Interest Rebates and Loan Guarantees*

B. *ECSC Article 56 Conversion Loans (Article (56)(2)(a))*

C. *ECSC Article 56 Interest Rebates*

D. *European Investment Bank (EIB) Loans*

E. *New Community Investment (NCI) Loans*

Comments

Comment 1

Petitioners contend that the Department correctly treated as grants to the company, the reductions of Usinor Sacilor's paid-in-capital occurring after PACS, FIS bonds, and shareholders' advances were converted to common stock. Petitioners further contend that all of these subsidies are "non-recurring" and must be allocated over a period of years. Petitioners argue specifically that each reductions in paid-in-capital was a separate, *ad hoc* decision made pursuant to a series of national steel plans enacted by the GOF from 1978 to 1983. Petitioners contend that far from undertaking a continuing program, the GOF was simply forced, by a series of annual crises caused by bad planning and over-optimistic projections to provide the money necessary to keep Usinor Sacilor in business. Petitioners further contend that although the GOF was forced into covering Usinor Sacilor's accumulated losses past the EC deadline for the termination of state aids, the company could not have anticipated the continuing receipt of these benefits. Therefore, petitioners argue that Usinor Sacilor's reductions in paid-in-capital were exceptional non-recurring grants.

Respondents argue that the reduction in paid-in capital on Usinor Sacilor's books were not countervailable events because these reductions did not involve the injections of any *new* funds into the companies. Consistent with the Department's cash flow methodology, respondents argue that the cash flow effect occurred when PACS were issued, either directly for cash or by relieving Usinor Sacilor of obligations to pay creditors, and when FIS instruments and shareholders' advances were issued and provided, respectively. Respondents argue that countervailing the reductions in paid-in capital would result in the attribution of benefits in excess of those conceivably involved.

DOC Position

We disagree with petitioners that the reductions in paid-in-capital constitute subsidies. Rather, the countervailable events occurred when PACS and FIS bonds were converted to common stock. As our new equity methodology recognizes, any potential benefits from these equity investments into an unequityworthy company, arose at the time the equity was purchased and what happened to that equity subsequently is irrelevant. Moreover, because our new methodology treats equity investments in unequityworthy companies like grants, constructing a new benefit at the time of the reduction of paid-in-capital would result in over-countervailing. As to shareholders' advances, we are treating them as grants when made, and have not countervailed separately the subsequent stock conversion or reduction in paid-in-capital.

We need not address petitioners' argument that the reductions in paid-in-capital are non-recurring (as opposed to recurring) grants. As we explained above, we do not consider the reductions in paid-in-capital to be countervailable events.

Finally, contrary to respondents' argument, to the extent that it still may be applicable in light of our above determinations, we are not over-countervailing. As to the conversion of PACS and FIS bonds into common stock, respondents' argument is premised on the assumption that PACS and FIS bonds were equity when created. As we explain in Comments 2 and 4 below, we have concluded that they were debt. As to shareholders' advances, we are countervailing them only when made and, therefore, there is no possibility of over-countervailing.

Comment 2

Respondents argue that PACS should be recognized as involving capital infusions upon issuance, the only time when there was a cash flow effect on the company. The PACS were considered to be a form of non-voting equity for funding the steel industry. Respondents assert that PACS were initially treated as "quasi-equity" on the companies' balance sheets, and they were the functional equivalent of equity. Respondents contend that PACS were not subject to repayment obligations and, because they were subordinated to all but common stock, PACS entitled their holder, the GOF, to dividends only if the companies showed a net profit. Respondents also argue that the PACS were characterized as equity in the companies' financial reports.

Respondents disagree with petitioners' assertion that the Department should treat PACS as debt because they were called "loans with special characteristics" and because they were sometimes characterized as loans on Usinor Sacilor's balance sheets. Respondents contend that such an approach ignores the salient fact that the PACS did not have any characteristics of debt. Specifically, respondents state that the GOF could choose to deem its share of profits as supplemental remuneration on the PACS or it could allot a share of profits to repayment. Respondents contend that this sort of participative right is not characteristic of debt but rather the essential characteristic of equity. Finally, respondents argue the fact that the GOF never took repayment on these PACS (either as supplemental remuneration or repayment) demonstrates that they lack characteristics of a debt instrument which would require payments regardless of the obligor's profitability.

Petitioners argue that PACS as originally issued constituted debt and not equity, as the Department held in *Certain Steel*. Petitioners assert that PACS carried a fixed rate of interest while outstanding and that although there was no fixed repayment schedule, the companies made lump sum interest payments on the debt obligations in 1986 and in 1991. Petitioners contend that Usinor and Sacilor elected to classify the instruments as long-term financial debt on the companies' balance sheets pursuant to French generally accepted accounting principles.

Petitioners further argue that the right to participate in future profits was actually a contingent right to demand repayment of the face value of the obligations should the company become profitable. Petitioners contend that unlike preferred stock, which confers an unlimited right to share in profits, PACS merely stated a preference in the allocation of future earnings to pay off the debt and contemplated only a reimbursement of the face value of the PACS plus interest. Therefore, petitioners contend that because PACS have the characteristics of debt, the Department should treat it as such.

DOC Position

We have continued to treat PACS as debt, not equity. While we agree with respondents that the PACS shared certain characteristics with equity, they differed from equity in one crucial respect—they carried with them an obligation for repayment. This obligation only expired at the time the PACS were converted to common stock. The obligation to repay, whether met or not, is sufficient to warrant treating these instruments as debt.

With respect to respondents' cash flow argument, we agree that the PACS had an effect on the companies' cash flow. However, while the PACS were outstanding, the cash flow effect was the interest savings the companies received by virtue of paying reduced interest rates for the use of the funds. Upon conversion of the PACS to common stock, the cash flow effect was that of a grant.

Comment 3

Respondents argue that the 1986 reclassification of PACS to equity was approved by the EC Commission on the condition that Usinor Sacilor continue to be responsible for the remuneration due under the terms of the PACS. In addition, Usinor Sacilor paid an amount to the GOF, which represented the present value of the one percent remuneration of the FF2.8 billion PACS reclassified in 1991. Accordingly, respondents maintain that these payments must offset any subsidy calculation made.

DOC Position

The remuneration described by respondents amounts to prepayment of interest on the PACS and would be accounted for in subsidies calculations on the PACS as loans. However, as these loans expired prior to the POI by virtue of their conversions to equity, no subsidies arising from the PACS are included in our calculations.

Comment 4

Respondents maintain that FIS instruments were convertible securities that should be recognized as involving capital infusions upon issuance. Respondents contend that although the face amount which the FIS paid for the instruments was nominally subject to a repayment schedule, the FIS instruments, like the PACS, were essentially equity instruments and effectively represented a permanent commitment of funds by the GOF (through the FIS) to Usinor Sacilor.

Respondents further argue that the remuneration rate obviously was not a mechanism by which the FIS recouped its financing costs. Rather, respondents contend that the essential compensatory element of the instrument was a profit-sharing component akin to that on common stock. Respondents argue that these instruments, like the PACS, had the essential characteristics of equity rather than debt.

Petitioners contend that FIS bonds had the defining characteristics of debt: an obligation to repay funds that had been advanced pursuant to a fixed amortization schedule and with a fixed rate of interest. Petitioners argue that the profit-sharing component, in addition to the fixed interest provision on FIS bonds, are not unique to equity instruments.

Petitioners further maintain that Usinor Sacilor classified the instruments as financial debt on their balance sheets, and this treatment fully conformed to French generally accepted accounting principles. Thus, petitioners contend that from the perspective of Usinor Sacilor at the time the instruments were issued, FIS bonds were debt securities and not shareholders' equity.

DOC Position

We disagree with respondents that these instruments were essentially equity at issuance. Like the PACS, the FIS instruments carried repayment obligations. Therefore, for the reasons discussed in our response to Comment 2, we have continued to treat the FIS instruments as debt prior to their conversion to common stock.

Comment 5

Respondents argue that shareholders' advances were recurring grants that should be expensed in the year they were received. Respondents contend that shareholders' advances provided by the GOF plainly satisfy the Department's three-part test for distinguishing a recurring benefit from a non-recurring benefit. First, respondents argue that the shareholders' advances provided by the GOF do not fall within the Department's definition of an "exceptional program," as described in Live Swine and Fresh, Chilled and Frozen Pork Products from Canada, 50 FR 25097 (June 17, 1985) (Live Swine), but were routinely provided. Second, respondents argue that these advances, provided on a routine basis for five consecutive years, were more "longstanding" than the grants provided in Live Swine, which the Department treated as recurring grants. Finally, respondents argue that it is evident that Usinor and Sacilor had to, and in fact did, anticipate receiving the benefits year after year. These payments were curtailed only at the time of the adoption of the EC State Aids Code in 1986.

Petitioners refute respondents' argument that shareholders' advances were recurring benefits and should be expensed in the year of receipt. Petitioners contend that in Live Swine the government used a pre-set formula to determine whether payments were authorized in any given year and to set the level of the payments. Petitioners argue that unlike Live Swine, the funds provided by the GOF were not mandated by legislation or by specific agreement. Petitioners contend as a result that there was no contract or legally enforceable obligation. Usinor and Sacilor could not have anticipated the continuing receipt of these benefits because the GOF could have terminated the program at any time. Petitioners argue that each advance was a separate, *ad hoc* decision by the government and the amounts varied from month-to-month. Thus, petitioners contend that shareholder advances constitute non-recurring benefits under the Department's methodology and should be evaluated accordingly.

DOC Position

We have determined that shareholders' advances should be treated as non-recurring grants. Although Usinor and Sacilor received shareholders' advances on a regular basis during the years 1982 through 1986, each advance required specific shareholders' approval. Moreover, these shareholders' advances were made to cover operating losses. Repeated shareholders' advances made to keep a company from dissolving are "exceptional" events, within the meaning of Live Swine. Therefore, under the Department's methodology, we are treating the shareholders' advances as non-recurring.

Comment 6

Petitioners contend that on numerous occasions, the GOF wrote-off portions of Usinor's and Sacilor's debt by converting debt into equity, and then simultaneously cancelling this new equity by using it to offset accrued losses. Petitioners maintain that most of these funds were in the form of debt—PACS, FIS bonds, and shareholders' advances. Petitioners argue that these transactions were ostensibly structured as debt-to-equity conversions; however, no new shares were ever issued or other obligations incurred. In essence, petitioners argue that these transactions were simply debt cancellations intended to relieve Usinor and Sacilor of their enormous debt burdens.

DOC Position

Given our decision to treat equity infusions in unequityworthy companies like grants and our finding that Usinor Sacilor was unequityworthy in 1986, the conversions of PACS and FIS bonds to common stock have been countervailed using the same methodology that would be used if the conversion were treated as debt forgiveness. With respect to shareholders' advances, we treated them as grants to the time of receipt. We have no evidence showing that the parties contemplated that the shareholders' advances carried a repayment obligation. Therefore, we do not view them as loans that were subsequently converted to equity or loans that were cancelled.

Comment 7

Petitioners maintain that in the case of a wholly government-owned company such as Usinor Sacilor, there is no economic difference whatsoever between funds provided as grants, loans, or equity. In such a company, the government owns the entire right to all future earnings, and has a total claim on all the company's assets both before and after it provides funds. Therefore, petitioners argue that the Department should apply the standard non-recurring grant amortization methodology to measure the benefits from these forms of subsidies.

Moreover, the RORS methodology yields absurd results in this case because Usinor Sacilor canceled enormous amounts of paid-in-capital from 1978 to 1988 as part of the company's balance sheet restructurings. As a result, a rate of return calculated on such a reduced base of stockholders' equity would be meaningless. This calculated rate of return on equity would ignore most of the equity actually invested in Usinor Sacilor, and RORS would badly overestimate the actual return on the equity contributed by the GOF.

According to respondents, petitioners' arguments for rejecting the RORS methodology are based on two faulty assumptions. First, petitioners assume that a determination by the Department that a company is unequityworthy implies that the company can raise no additional capital in private equity markets. According to respondents, a company can attract equity capital by varying its price or its return, such that its return will be sufficient to attract private investment. This suggests that if a company is able to obtain any private capital through sale of equity, it should *per se* be considered equityworthy. Under this standard, Usinor Sacilor would be *per se* equityworthy in 1986 when it sold stock to private investors.

In response to petitioners' argument that RORS does not measure the benefit to the firm on the grounds that the issuance of new equity is supposedly costless to a wholly government-owned firm, respondents argue that there is a cost associated with raising new equity capital. Respondents argue that according to the Court of International Trade, "[u]nder Commerce's methodology, the measure of what a firm 'pays' for equity is its rate of return on equity * * *. The rate of return on equity reflects the price the firm must offer to attract equity, any dividends paid, and changes in the company's retained earnings and net worth." In addition, respondents argue that because it is not possible to measure accurately the aggregate benefit at the time the equity purchase is made, the RORS methodology calculates the benefit to the firm each year to ensure that the proper amount is countervailed.

Finally, respondents points out that the courts have confirmed the Department's use of the RORS methodology as consistent with the countervailing duty law.

DOC Position

As explained above, we have determined that the RORS methodology does not adequately measure the benefit arising from an equity investment in an unequityworthy company. If we find a company to be unequityworthy, that finding is tantamount to saying that a reasonable investor would not invest in that company. Therefore, from the company's point of view, in this circumstance, any equity capital it receives from the government is equivalent to a grant.

As for respondents' argument that the effect of the Department's decision is to render a company equityworthy whenever private investment occurs, we note that where meaningful private investment (*i.e.*, more than a token amount that is not undertaken at government direction) exists, we would not be making an equityworthy analysis. The private investor's action would serve as a benchmark for determining whether the government's investment was made on terms inconsistent with commercial considerations.

With respect to respondents' argument that RORS measures what a firm would have paid for equity, we disagree. To determine whether an equity investment is inconsistent with commercial considerations and to measure the benefit properly, it would be necessary to determine the expected rate of return the company would have to generate to attract a private investor and compare that to the company's actual expected rate of return at the time of the government equity investment. Because of the difficulty in calculating expected rates of return, the Department in the past used the RORS methodology as a proxy. However, we have now determined that this proxy is inadequate because it necessarily reflects the subsequent performance of the company. As explained above in connection with our decision not to view equity cancellations as new subsidies, potential subsidies arise from the equity investment and not what happens to that equity subsequently.

Finally, we also disagree with petitioners that equity, loans and grants in wholly-owned government firms should be treated identically. Equity investments, unlike grants, do represent a claim on the company and even in a wholly government-owned company, equity investments are normally based upon some expectation of return.

Therefore, we continue to recognize a difference between grants and equity investments in wholly government-owned companies.

Comment 8

Respondents argue that a 10-year period for allocating subsidies over time would provide greater relief to U.S. industry by heightening the impact of any subsidy determination, while assuring that foreign producers are not penalized for subsidies received so far in the past that they no longer confer any tangible benefit. Respondents also argue that the application of a 10-year period would be particularly appropriate in this case, given that the U.S. steel industry negotiated for and received 10 years of extraordinary import relief in exchange for withdrawing countervailing duty petitions addressing some of the very same programs at issue here. Respondents argue that countervailing subsidies granted prior to the signing of the voluntary restraint agreement is inconsistent with the principle recognized in the Subsidies Code that only one form of relief should be permitted to remedy the effects of a particular subsidy in the domestic market of the importing country.

In addition, respondents argue that even if the Department continues to allocate benefits based upon the average useful life of assets as a reasonable measure of the duration of the benefit to a firm's overall activity, its use of a 15-year period based on 1977 depreciation tables of the Internal Revenue Service (IRS) covering renewal of physical assets (*i.e.*, equipment) does not reflect the facts of this case. Moreover, it would perpetuate a dated guideline and ignore the reality of any possible commercial and competitive benefit involved. Rather, respondents argue, the most accurate estimate of the average useful life is the most recent estimate available, *i.e.*, the 1991 Usinor Sacilor figures verified by the Department.

Petitioners disagree with respondents' proposal to use the average useful life of Usinor Sacilor's assets because it is based in the year of review only and bears no relation to the company's experience in the years in which the grants were actually received or other years in which the subsidies benefited the firm. In addition, petitioners dispute respondents' claim that the IRS tables are superseded and outdated. Petitioners contend that the IRS tables continue to provide a consistent and predictable standard for allocating grants to steelmaking operations.

DOC Position

While the Department has indicated its willingness to consider a ten-year allocation period generally (see the Preamble to the Proposed Regulations), nothing that the parties have argued leads us to conclude that we should depart from the 15-year standard for this investigation. Therefore, we have continued to use the 15-year allocation period based on the 1977 IRS depreciation table, as amended in 1985, covering renewable assets for steel.

Comment 9

Petitioners argue that based on the "transnational subsidies rule" of the Proposed Regulations the Department must not allocate GOF subsidies to any non-French activity. Moreover, petitioners maintain that because the Department's CVD order applies only to subject imports from the country under investigation, the Department must assume that no activity outside France benefits from GOF subsidies, and that subsidies are instead used by the GOF to increase economic activity in France. Therefore, all value-added outside France must be excluded from the Usinor Sacilor sales denominator.

Respondents argue that the statute requires that any duty be limited to the net subsidy determined to exist. Respondents maintain that the Department routinely allocates subsidies to sales of products not under investigation if those products benefit from the alleged subsidy, even though they are not subject to the countervailing duty order.

According to respondents, in arguing that non-French production should be excluded from the denominator, petitioners improperly invoke the transnational subsidies rule. According to respondents, on its face this rule relates solely to countervailability, *i.e.*, whether an actionable benefit exists from a GOF program, and has no relevance to measuring a subsidy in the home market. The provisions on allocating countervailable benefits to a product or market and calculating an *ad valorem* subsidy are in an entirely separate regulation.

Respondents claim that the subsidies at issue in this investigation are not tied to any particular product or products and, therefore, must be allocated over total sales. The statute, the regulations, and longstanding practice require the Department to measure the benefits from untied subsidies by determining the *proportion* of the benefit attributable to the production of the product under investigation in the country to which the countervailing duty order will apply. Therefore, respondents contend that the Department is simply not permitted to eliminate non-French sales from the denominator without a *pro rata* deduction of the benefit from the numerator. Without such a reduction, the countervailing duty will exceed the net subsidy to the subject merchandise.

DOC Position

We have not previously addressed the question whether, in calculating subsidy rates for a holding company with both domestic and foreign subsidiaries engaged in the production of products, where the subsidies are domestic subsidies and are not tied to a particular product or market, we should include in the sales denominator total world-wide sales, including sales attributable to foreign production, or only sales attributable to domestic production. In some cases, we have used total worldwide sales, as respondents point out, but we did so without addressing this question. On the other hand, in at least one case, we have excluded sales attributable to foreign production from the sales denominator. See Final Affirmative Countervailing Duty Determination: Stainless Steel Hollow Products from Sweden, 52 FR 5794 Feb. 26, 1987). In addition, the Department's Proposed Regulations do not squarely address this question. Section 355.47(c)(1) of the Proposed Regulations provides that, for "untied" domestic subsidies, we will "allocate the benefit to all products produced by a firm" and, therefore, use "a firm's total sales" in the sales denominator. From this language and the discussion of § 355.47(c)(1) in the Background section of the Proposed Regulations, there is no indication that § 355.47(c)(1) contemplated a situation where the firm was a holding company with not only domestic subsidiaries but also foreign subsidiaries engaged in the production of products.

At this time, we are not prepared to conclude automatically, as respondents seeks, that otherwise untied domestic subsidies to a holding company with both domestic and foreign subsidiaries engaged in the production of products benefits not only domestic production but also foreign production, with the result that we would include sales attributable to both domestic production and foreign production in the sales denominator. We also are not prepared to conclude, solely on the basis of petitioners' legal arguments, that the subsidies benefit only domestic production.

Rather, as our starting point, we considered whether the subsidies at issue here were tied to domestic production, and we determined that they were. In making this determination, consistent with our existing methodology, we examined whether the subsidies were bestowed specifically to benefit domestic production. See Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Belgium, 47 FR 39304 (Sept. 7, 1982) (Appendix 2). On the record before us, after reviewing the programs from which the subsidies at issue arose, and after considering the GOF's contemporaneous controlling ownership position in Usinor Sacilor, we concluded that the GOF was seeking to promote domestic social policy and domestic economic activities and therefore to encourage domestic production.

Next, we attempted to allocate, in a reasonable manner, the subsidies at issue to the products that they benefited, *i.e.*, the products as to which those subsidies provided incentives to produce and sell. Consistent with our approach to subsidies tied to a product or market, we believe that it is reasonable to allocate the benefits of the subsidies at issue, which we have determined are tied to domestic production, fully to domestic production. We also believe that it is reasonable not to allocate those benefits to foreign production. See Proposed Regulations, *supra;* Appendix 2, *supra.* See generally Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review, 52 FR 833 (Jan. 9, 1987) (Industrial Nitrocellulose). Accordingly, we determined that we would allocate the benefits of the subsidies at issue fully to domestic production and that we would not allocate those benefits also to foreign production, unless we had "a clear reason to believe" that the benefits encouraged foreign production. See Industrial Nitrocellulose, *supra.*

In this case, we do not have adequate evidence to give us a clear reason to believe that the benefits of the subsidies at issue encourage foreign production. We therefore allocated the benefits fully to domestic production, and we accordingly included in the sales denominator only sales attributable to domestic production.

We note that we cannot apply respondents' alternative methodology in this case. If we were to adjust the numerator in our subsidy rate calculation, as respondents request, we would need evidence showing, for each subsidy, the amount of the subsidy benefiting the subsidiaries engaged in foreign production. The record does not contain evidence that would allow us to determine those amounts.

Therefore, to calculate the denominator, we have referenced petitioners' submission in the ongoing Countervailing Duty Investigations of Certain Carbon Steel Products from France. This calculation reasonably measures French production by excluding from Usinor Sacilor's consolidated net sales, not only sales attributable to foreign production, but also value-added outside France with respect to domestic production and transportation charges on domestic sales.

Comment 10

Petitioners argue that in the absence of documented F.O.B. port data for purposes of measuring the value of the steel shipments benefitting from the subsidies under investigation, the Department should use best information available. Petitioners contend that respondents' methodology for estimating its aggregate F.O.B. port value, starting with customer billings and then subtracting only the overseas freight costs of three of its subsidiaries, would overstate the sales denominator because other shipping expenses, *e.g.*, insurance, warehousing, brokerage and handling, etc., are not deducted, and moreover, the ocean freight for only three subsidiaries was deducted. Finally, it is overstated because value-added through processing by Usinor Sacilor's non-French subsidiaries of merchandise shipped within Europe and costs incurred in connection with domestic shipments after the product leaves the factory gate are included.

Respondents argue that they have been responsive to the Department's request for data on export and domestic sales, and that they supplied an estimate of Usinor Sacilor's F.O.B. port value. Therefore, respondents contend that the Department should reject petitioners' call for best information available. Respondents assert that Usinor Sacilor's cost of sales account contains an aggregate figure that does not itemize specific expenses, so it is impossible to identify and quantify specific transportation or other incidental expenses necessary to "back out" from a total sales figure to an ex-factory price. Respondents argue that under these circumstances, in the absence of evidence of an attempt to impede the investigation, the Department may not resort to BIA simply because the requested data is not available.

Moreover, according to respondents, petitioners' complaint that the estimates fail to take into account ocean freight costs of other subsidiaries is specious. The other subsidiaries primarily sell in Europe and do not incur any such expenses in connection with export. Also, petitioners' list of miscellaneous incidental expenses for the three export subsidiaries and the other subsidiaries that are not subtracted are *de minimis* and do not detract from the reasonableness of Usinor Sacilor's estimate. Finally, respondents argue that many of these incidental expenses are related to petitioners' flawed claim concerning value-added or incidental expenses outside of France.

DOC Position

As discussed above, we have calculated the sales denominator by referencing petitioners' submission in the ongoing Countervailing Duty Investigations of Certain Carbon Steel Products from France.

Comment 11

Petitioners agree with the Department's selection of the highest long-term annual interest rate in France as reported in the International Monetary Fund's (IMF) International Financial Statistics for the years 1982 through 1989, when the Department found Usinor, Sacilor, and Usinor Sacilor uncreditworthy. However, petitioners disagree with the Department's use of the private bond rate in determining the discount rate for the years 1978 and 1981, years in which the Department also found Usinor and Sacilor to be uncreditworthy.

Petitioners contend that the chart supplied by the GOF providing the TMO private bond rates described as "Average and highest long-term fixed interest rates" fails to reference the OECD publications from which the rates were taken, or provide information on their terms and conditions. Petitioners further contend that the Department determined at verification that INSEE calculates the TMO rates based on "medium-term and long-term issues" in France. These rates are used by banks as the basis for medium-to-long-term lending and the banks will typically "add a few percentage points to the TMO rate to determine the final lending rate." Petitioners maintain that no information was provided on how this spread is calculated, or what the spread would be for uncreditworthy companies. Therefore, petitioners argue that these rates are not the highest interest rates available in France. Petitioners argue that the Department should use, as best information available, the highest long-term interest rate as reported by the IMF in 1978 and 1981, plus a risk premium.

Respondents argue that in addition to assessing a risk premium based on the Department's uncreditworthiness determination, the Department's use of the short-term consumer overdraft rate reported in the IMF's International Financial Statistics was in error. Respondents maintain that this rate is inappropriate in two ways. First, the use of a short-term overdraft rate was inappropriate given the Department's stated preference for using a long-term rate. Second, OECD rates are used in France not the IMF rates. Respondents also state that the Department's comments in the GOF verification report regarding the TMO–OECD rates were not accurate. According to respondents, the banking official quoted in the report actually testified that the TMO was at least a week old, if not a month old, and was used as a benchmark. The actual rate of lending would depend on the credit market's conditions on that day and on the particular borrower, and thus, the rate could be higher or lower than the average TMO for the preceding week.

DOC Position

We agree with petitioners that we used an incorrect discount rate for the years 1978 and 1981 in our preliminary determination. For purposes of this final determination, we have used the lending rate provided in the IMF's International Financial Statistics to construct the discount rate for all years in which we have found Usinor Sacilor to be uncreditworthy.

We disagree with respondents that this is a short-term rate. In most cases, it applies to loans with maturity greater than one year and, hence, is consistent with the Department's methodology because we consider loans with a maturity in excess of one-year to be long-term loans.

We note that, as discussed above in the "Long-Term Loans from FDES" section, when we have determined that Usinor Sacilor was creditworthy during a particular year, we have used for the discount rate the rate indicated in the OECD publication provided by respondents for that year.

Comment 12

Respondents argue that the Department's preliminary conclusion that Credit Lyonnais' equity investment in Usinor Sacilor was not commercially reasonable is contradicted by the record. Respondents assert that Usinor Sacilor was equityworthy in 1991 and represented an excellent investment opportunity. Respondents argue that the Credit Lyonnais' purchase of stock in Usinor Sacilor was subject to exhaustive studies by Credit Lyonnais itself and by an independent Swiss consulting firm on behalf of the EC Commission.

Petitioners dispute respondents' claim that the two studies demonstrate that the investment was commercially plausible. Petitioners assert that the EC Commission's approval of the transaction does not mean that it is not countervailable under U.S. law. The Commission's standard for determining whether a government subsidy constitutes state aid is considerably less strict than that of the U.S. law.

Petitioners also argue that Usinor Sacilor's short-term improvement in financial performance was hardly an indication of the company's permanent rehabilitation or a sustainable recovery in the steel industry. Moreover, the profit projections are not credible in light of the obvious declines in worldwide and EC demand for steel at the time of the investment. Therefore, petitioners argue that a reasonable private investor would never have proceeded with such a sizable investment under such adverse market conditions.

DOC Position: While we agree with petitioners that the EC approval of the investment is not relevant, the information provided in the studies is relevant to our analysis. Credit Lyonnais used many different criteria to evaluate Usinor Sacilor as a potential investment, some of which are discussed in a letter to the EC which is on file in this investigation. In addition, as discussed at verification, Credit Lyonnais evaluated its potential return from the investment by considering its overall return in the form of profits, dividends, additional leverage, and increased banking fees. Based on this information, Credit Lyonnais concluded that Usinor Sacilor was a commercially reasonable investment. With respect to the Swiss consulting report, based on our review of this study, we have concluded that Usinor Sacilor was capable of generating a reasonable rate of return within a reasonable period of time and, hence, was equityworthy at the time.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with section 705(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of entries of certain additive steel products from France which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond of estimated countervailing duties at the following rate:

	Ad valorem rate (percent)
Usinor Sacilor	23.14
Country-Wide Rate	23.14

ITC Notification

In accordance with section 705(d) of the Act we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to assess countervailing duties on entries of certain additive steel products from France.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-2002 Filed 1-26-93; 8:45 am]

BILLING CODE 3510-DS-M

[C-428-812]

Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3530 or 482-4162, respectively.

Final Determination

The Department of Commerce (the Department) determines that benefits which constitute subsidies within the meaning of the countervailing duty (CVD) law are being provided to manufacturers, producers, or exporters in Germany of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products").

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination (57 FR 42971, September 17, 1992), the following events have occurred.

We verified the information used in making this final determination from October 12 through October 22, 1992.

On October 16, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned the final determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of the same merchandise (57 FR 48020, October 21, 1992). On November 6, 1992, at the request of the respondents, we postponed the final CVD and AD determinations until January 11, 1993 (57 FR 53691, November 12, 1992). On January 11, 1993, we postponed for a second time the final CVD and AD determinations until January 19, 1993 (Not Yet Published).

The parties submitted case and rebuttal briefs on November 25, and December 2, 1992, respectively. A public hearing was held on December 4, 1992. Supplemental post-hearing briefs were filed on December 10, 1992.

Scope of Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reasons of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991.

Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs. On the basis of this comparison, the rate for Thyssen AG was significantly different from the country-wide rate. Therefore, this firm received an individual company rate. The calculated rate for Saarstahl AG will be used for all other manufacturers, producers, and exporters of certain additive steel products in Germany.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from the interested parties, we determine the following:

Grant Methodology

Our policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. See *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, (Salmon from Norway), 56 FR 7678 (February 25, 1991). We have considered the grants provided under the programs described below to be non-recurring, unless otherwise noted, because the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from review period to review period, and/or the provision of funds by the government must be approved every year. See, Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada (Groundfish from Canada), 51 FR 10041 (March 24, 1986). Therefore, we have allocated the benefits over 15 years, which the Department considers to be reflective of the average useful life of assets in the steel industry (see, § 355.49(b)(3) of the Department's proposed regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (Proposed Regulations)).

The benefit from each of the grant programs discussed below was calculated using the declining balance methodology described in the Department's Proposed Regulations (see, section 355.49(b)(3)) and used in prior investigations (see, *e.g.*, Salmon from Norway). For the discount rate in these calculations, we used, whenever possible, each company's actual cost for long-term, fixed-rate debt. If a company did not report this cost, or when a company had no long-term borrowing in the year in which the grant was approved, we used the national average long-term interest rate.

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Germany of certain additive steel products as follows:

1. Government Debt Forgiveness in 1989

In the years 1971 through 1989, the companies which were eventually to become Saarstahl AG, went through various mergers, restructurings, and name changes. For the sake of simplicity, we are using the name "Saarstahl" when referring to assistance provided to Saarstahl AG or to assistance provided to any of its predecessor companies.

In response to the poor economic condition of the steel industry in the Saarland in the 1970's, the Governments of Germany and Saarland, and the steel companies which were to become Saarstahl, adopted their first restructuring plan in an attempt to create a viable steel industry in Saarland. In order to facilitate the implementation of the restructuring plan, the Federal Government authorized the provision of DM 244 million in funds to Saarstahl in 1978. Repayment of these funds was contingent upon Saarstahl returning to profitability. This contingent repayment obligation was called a Rueckzahlungsverpflichtung (RZV).

In addition, the Governments of Germany and Saarland guaranteed loans in the amount of DM 1.18 billion made to Saarstahl by a group of private banks. Due to the company's poor financial condition, the banks would not have made the loans to Saarstahl without the government guarantees. These loans were also used to finance the restructuring plan. Saarstahl made payments on the guaranteed loans until April 1983. At that time, the Governments of Germany and Saarland assumed the payment of interest and principal. Again, these government payments of principal and interest were to be repaid by Saarstahl under RZVs.

The initial provision of DM 244 million by the Government of Germany and the payments of interest and principal by the two governments were the first in a long line of assistance provided by both governments to Saarstahl. Assistance provided to the company from 1981 through 1985 was used to modernize the company, make capital investments, cover operating expenses, and cover employee expenses pursuant to a number of Saarstahl restructuring plans. In addition, the government payments of the interest and principal of the guaranteed loans continued until 1989. All of this assistance was tied to RZVs which obligated Saarstahl to repay the assistance provided the company earned a profit in the future. By 1989, Saarstahl had accumulated DM 3.948 billion in repayment obligations to both governments.

During the period when most of the government assistance was being provided to Saarstahl, the company was wholly-owned by a Luxembourg company, Arbed Luxembourg (Arbed). By 1985, Arbed was no longer able or willing to function as the owner of Saarstahl. Because of the importance of Saarstahl to the economy of Saarland, the Government of Saarland decided to look for a new owner to replace Arbed. Another steel company in Saarland, the French-owned AG der Dillinger Huttenwerke (Dillinger), expressed interest in Saarstahl. At that time, Dillinger and Saarstahl were already joint venture partners in a company which produced pig iron.

In order to facilitate finding a new investor for Saarstahl, Arbed transferred 76 percent of the ownership of Saarstahl to the Governments of Germany and Saarland for one deutsche mark in 1986. A trustee was appointed to hold the shares for both governments while a new investor was sought. The Federal Government was not interested in keeping any shares in Saarstahl. At the same time, an agreement was signed under which Dillinger would manage Saarstahl in order to diagnose the company's problems and, thereafter, delineate Usinor Sacilor's, Dillinger's parent company, conditions for a potential merger. In April 1989, an agreement was reached between the Government of Saarland and Usinor Sacilor regarding the merger of Saarstahl and Dillinger.

Based on the terms of this merger agreement, Saarstahl and Dillinger became subsidiaries of a newly-created holding company, DHS-Dillinger Huette Saarstahl AG (DHS). The Government of Saarland contributed the assets of Saarstahl and DM 145.1 million in cash in return for 27.5 percent ownership of Saarstahl's new parent company, DHS. Usinor Sacilor conditioned this agreement upon the Federal and Saarland governments' forgiveness of all of Saarstahl's RZVs.

Pursuant to the merger agreement, the Governments of Germany and Saarland, and Saarstahl entered into an agreement concerning the previous assistance received by Saarstahl. Under the latter agreement, the Entschuldungsvertrag (the EV), all outstanding RZV repayment obligations for all the funds provided to Saarstahl by the Governments of Germany and Saarstahl, as well as additional rights held by both governments for repayment of principal on the guaranteed loans, were forgiven and relinquished. The EV was signed in June 1989.

Because the debt forgiveness under the EV was only provided to one company, we determine it to be countervailable because it was limited to a specific enterprise or industry or group of enterprises or industries.

To determine the benefit arising from the debt forgiveness, we are treating the amount of the forgiveness, DM 3.948 billion, as a nonrecurring grant and calculating the benefit according to the methodology described in the "Grant Methodology" section above. At verification, Ministry of Economics officials stated that there are no official statistics on long-term interest rates published by the federal government. Therefore, we reviewed the interest rates published in the International Monetary Fund's International Financial Statistics and used the average annual long-term interest rate reported in that publication for 1989, which was 9.94 percent, as our discount rate.

The portion of the benefit allocated to the period of investigation was adjusted pursuant to section 771(6) of the Act. Under this section of the Act, the Department may subtract any application fee, deposit, or similar payment from the benefit if that payment was made in order to qualify for, or to receive, benefits under the program. According to the EV agreement, Saarstahl is required to pay a yearly fee of DM 300,000 to the Government of Germany. Therefore, we deducted DM 300,000 from the portion of the benefit attributable to the period of investigation and divided the resultant sum by DHS's total sales (which includes the total sales of both Saarstahl and Dillinger). We used the sales of DHS because the forgiveness of Saarstahl's debt resulted in a benefit to DHS. On this basis, we calculated an estimated net of 16.02 percent *ad valorem*. The estimated net subsidy for Thyssen under this program is 0.00 percent *ad valorem*.

2. Debt Forgiveness by Private Banks

Commercial banks also participated in the restructuring of Saarstahl during the period from 1978 through the final restructuring of the company in 1989. During part of this time period they provided both short- and long-term loans to Saarstahl which were not guaranteed by the Governments of Germany or Saarland. In the years 1983 through 1985, the banks forgave Saarstahl DM 106.8 million in interest on these loans. This forgiveness was in response to the company's poor financial condition and was not made at the request of, or related to any assistance provided by, the Governments of Germany and Saarland.

Toward the end of 1985, the Government of Saarland presented a long-term restructuring plan for Saarstahl to Saarstahl's creditors and requested that they forgive an additional amount of DM 350 million in loans. Based on this request, the banks agreed to forgive DM 217.33 million of debt owed to them by Saarstahl, if the Governments of Germany and Saarland would forgive all debt owed to them by Saarstahl and if the Government of Saarland would assure the future liquidity of Saarstahl. With the signing of the EV, the governments forgave Saarstahl's debt owed to them, as discussed above, and the commercial banks forgave a portion their unguaranteed loans to Saarstahl.

The talks on the forgiveness of Saarstahl's debt were based on the common notion that all of the participants, including the private and public creditors, would have to contribute to the restructuring of Saarstahl if this restructuring was to be successful. The Governments of Germany and Saarland made their forgiveness dependent on private creditors also forgiving a portion of their claims against Saarstahl. The private creditors laid down the same condition with regard to the claims of the Governments of Germany and Saarland.

We determine the forgiveness of interest payments in the years 1983 through 1985 did not confer a countervailable subsidy on Saarstahl because the banks were acting independently, without any direction or participation by the Governments of Germany and Saarland. However, we determine that the subsequent forgiveness of principal was countervailable because it was required by the governments as part of a government-led debt reduction package for Saarstahl and because the two governments guaranteed the future liquidity of Saarstahl, thereby, implicitly assuring the private banks that the remaining portion of Saarstahl's outstanding loans would be repaid.

At verification, we established that the loans were forgiven by private banks in 1989, the same year the EV was signed, and in 1987. One private bank forgave DM 541,000 in debts in 1987. The remaining portion of the debt. DM 216.819 million was forgiven in 1989.

Using the same methodology used to calculate the subsidy for the government forgiveness of Saarstahl's debt in 1989, we calculated an estimated net subsidy of 0.88 percent *ad valorem* for the 1989 debt forgiveness of DM 216.819 million. The debt forgiveness which occurred in 1987 was expensed in the year of receipt because the amount forgiven was less than 0.5 percent of total sales. The estimated net subsidy for Thyssen under this program is 0.00 percent *ad valorem.*

3. Worker Assistance Program

Under Article 56 of the European Coal and Steel Community (ECSC) Treaty, persons employed in the coal and steel industry who lose their jobs may receive assistance for "social adjustment." This assistance is provided for workers affected by restructuring measures, particularly as workers withdraw from the labor market into early retirement or are forced into unemployment. The ECSC disburses assistance on the condition that the affected country makes an equivalent contribution.

German companies seeking assistance under Article 56 of the ECSC Treaty must apply to both the Federal Minister of Labor and Social Affairs and to the Federal Minister of Economics. Notification of approval is provided by the Federal Minister of Labor and Social Affairs which is also in charge of distributing such funds on its own account and on behalf of the ECSC.

During the period of investigation, Saarstahl and Thyssen received payments for their workers under Article 56(2)(b) of the ECSC Treaty. The payments were made to provide for prematurely retired employees. In Germany, a company's obligations with respect to prematurely retired employees are delineated in the social plans these companies have with their employees. We verified that anticipated Article 56 payments were taken into account during the negotiations of Saarstahl's and Thyssen's social plans.

At verification, we also established that the ECSC share of the payments is provided from its budget, which is financed through levies and fines from coal and steel producers and the interest earned on the investment of these proceeds. Deficits in the budget are made up by Member State contributions. However, no contributions have been made by the Member States since 1984. Since the ECSC payments in 1991 were financed solely from producer contributions, they do not confer a countervailable benefit.

With respect to the German contributions under this program, however, we determine that the funds are limited to a specific industry or group of industries and, because the funds relieve the companies of obligations they normally would have incurred, that they confer a countervailable subsidy. We further determine that the assistance provided under this program is recurring since the recipients can expect to receive benefits on an ongoing basis. Therefore, we limited our analysis to funds received during the period of investigation, 1991.

To calculate the benefit, we took half of the funds received by the companies under this program in 1991, which is that portion attributable to the Government of Germany, and divided it by each company's total sales during the period of investigation. Using this methodoloy, we calculated, for Saarstahl, an estimated net subsidy of 0.38 percent *ad valorem.* The estimated net subsidy for Thyssen was 0.16 percent *ad valorem* under this program.

II. Program Determined Not To Be Countervailable

1. The Government of Saarland's Equity Investment in DHS

We determined that the Saarland's capital contribution of DM 145.1 million described in the "Government Debt Forgiveness in 1989" above to be consistent with commercial considerations. At the same time that the Saarland government was investing these funds, two private investors were also investing in DHS. Using these private investors as a benchmark, we find that the Government of Saarland made its investment on the same terms. Therefore, we determine that the Government of Saarland's equity contribution of DM 145.1 million does not confer a countervailable benefit. For additional information regarding this issue, please see Comment 4, below.

Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1

Respondent maintains that the private banks' forgiveness of Saarstahl's debts was a rational commercial decision because, if Saarstahl had filed for bankruptcy, the banks would have lost more money than the forgiven portion of the debt. Respondent further asserts that private banks were not, in any way, coerced by the federal or Saarland governments to forgiven the debt.

Petitioners, on the other hand, argue that private creditors released Saarstahl from its debts as part of a package deal in which the governments agreed that they would continue to assume payments on the guaranteed debt. Without government intervention, the private banks' forgiveness would not have occurred. Therefore, petitioners maintain that the private banks forgiveness in countervailable, especially since Saarstahl failed to produce documents during verification that, Saarstahl claimed, would have proved otherwise.

DOC Position

The private debt forgiveness was part of a debt reduction package negotiated by the Governments of Germany and Saarland. The governments made the initial approach to private creditors

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requesting that they forgive Saarstahl's debt. In exchange for the private debt forgiveness, the governments agreed to forgive all of the debt due to them by the company. In addition, the Government of Saarland assured the private banks of Saarstahl's liquidity. Given the governments' extensive role in bringing about the private banks' debt forgiveness and the absence of any documentation to support respondent's claim that the banks' actions were commercially sound, we find the forgiveness to be countervailable.

We also note that we requested additional documents relating to the debt forgiveness which were referred to in Saarstahl's response. These documents were not provided to the Department by the company.

Comment 2

Petitioners argue that the Department should treat the portion of Article 56 assistance provided by the ECSC like any national subsidization of employee severance costs, since there is no difference between producer contributions set by the EC and other taxes collected by governments through other funding mechanisms. Petitioners further maintain that if the Department decides that the benefits funded by the ECSC are *per se* non-countervailable, then this should only apply to what Saarstahl paid in levies in that year. In other words, the Department should countervail the money received by the companies in excess of what the companies paid in levies to the EC during the period of investigation.

DOC Position

We disagree with petitioners. Premiums paid to the ECSC are not similar to taxes paid to a national or state government. These premiums are more analogous to premiums paid for insurance or to dues paid by members of an association or union which are used to support the activities of the organization. Premiums paid by steel producers to the ECSC are used for a variety of activities to support ECSC members, including the funding of research and development and the provision of assistance to laid-off steel workers.

Government-administered unemployment programs funded solely through employee and employer contributions are not countervailable. Such programs, like the workers assistance program under Article 56(2)(b) of the ECSC Treaty, operate like an insurance program. The fact that a company or individual may receive more in any given year than the amount it paid into the program is not a basis for concluding that the program provides a countervailable benefit. Such an occurrence is natural with any insurance program. As long as the program operates without government funds, there is no countervailable benefit.

Comment 3

Petitioners maintain that Saarstahl failed to provide translated versions of its social plans, passed after the Stahlstiftung was created, which could have revealed whether the company was obligated to provide assistance for retraining its former employees. Therefore, the Department should determine, as best information available, that Saarstahl's social plan requires the company to provide assistance for retraining purposes. Moreover, petitioners argue that the Department should countervail the government's funding of the Stahlstiftung, since it is specific to Saarstahl and it relieves the company of its financial obligations.

DOC Position

Although we are not assuming any obligation to translate documents, our review of Saarstahl's social plans, both the translated and the untranslated versions, shows that the company is not required to provide assistance to its former (or present) employees for retraining purposes. Therefore, we view the assistance provided by the Stahlstiftung, for retraining former Saarstahl's employees, as distinct from Saarstahl's assistance as delineated in its social plans. Since Saarstahl, according to German law, is only obligated to provide assistance pursuant to the terms delineated in its Social Plan, the Stahlstiftung did not relieve the company of any obligations. Therefore, no countervailable benefit was provided to Saarstahl from the government's funding of the Stahlstiftung.

Comment 4

Petitioners maintain that the financial performance of Saarstahl and Dillinger shows that neither company, nor the two combined, were equityworthy in 1989. Consequently, petitioners argue that the Department should consider the Saarland government's DM 145 million equity infusion into DHS as inconsistent with commercial considerations.

Respondent asserts that the Land's payment of DM 145 million cannot be construed as a subsidy because it represented a fair price for its investment in DHS that was valued by an independent accounting firm (KPMG).

DOC Position

We believe that the equity infusion made by the Government of Saarland into DHS was on terms consistent with commercial considerations. Because there were other investors besides the Government of Saarland, the terms of the other investors, rather than the financial performance of the recipient company, determine whether the government investment was made on terms consistent with commercial considerations. Moreover, the fact that there were private parties willing to invest in DHS supports the conclusion that the company is equityworthy. Therefore, because the two other investors, ARBED and Usinor Sacilor, made equity infusions at the same time and on the same terms as the Government of Saarland, we determine that the equity infusion made by the Government of Saarland into DHS was made on terms consistent with commercial considerations. This analysis is consistent with Department practice when there are other parties making equity investments at the same time as the government. (See, e.g., Groundfish from Canada and Offshore Platform Jackets and Piles from the Republic of Korea, 51 FR 11779, April 7, 1986.)

Comment 5

Respondent contends that Saarstahl Voelkingen GmbH (SVK) was privatized in 1989 by the Government of Saarstahl in an arm's length transaction which involved a change of majority ownership and control to a major unaffiliated corporation. Therefore, respondent argues that the Department should not consider any benefits bestowed upon Saarstahl's predecessor company to pass through to the new entity, DHS.

Petitioners maintain that the 1989 reorganization of Saarstahl merely shifted the existing public and private interests in Saarstahl and did not privatize the company. This is because the government's partial sale of its interest in Saarstahl in 1989 was negotiated with only one bidder (Usinor Sacilor), a situation where market discipline was not applied, and because the government continued to maintain ownership and control over DHS. Consequently, the change in Saarstahl's ownership does not affect pass-through of benefits.

DOC Position

Because the debt forgiveness was part of the deal negotiated to effect the merger, we consider the forgiveness to benefit the newly-formed company, not the predecessor to DHS. Therefore, pass through of subsidies received by the predecessor company is not at issue here.

Comment 6

Respondent contends that the Department should characterize the loans guaranteed by federal and Land governments as grants provided to Saarstahl in 1978 in the amount of the loans. This is because both governments guaranteed these loans to a financially-troubled company, with the knowledge that Saarstahl could never repay the bank creditors, and that they ultimately would have to repay the entire principal and interest on the loan. Therefore, respondent argues that the Department should allocate the guaranteed loan amount, as a grant, over time commencing in 1978.

Furthermore, respondent maintains that the funds provided pursuant to administrative orders and government contracts were recurring benefits during the period 1978–1985. Due to limitations imposed on assistance to the European steel companies, under the European Communities State Aids Code, these funds were terminated in 1985. Therefore, respondent argues that the Department should expense rather than allocate these benefits.

DOC Position

There is no evidence on the record to suggest that the Governments of Germany and Saarland provided the loan guarantees to Saarstahl with the knowledge that the company would be unable to repay its bank creditors. Indeed, at the time the loan guarantees were given, Saarstahl received loans from private banks without guarantees from either government. Payments made on the guaranteed loans as well as other subsidies provided to Saarstahl were all subject to repayment obligations (RZVs) upon the company's realization of profit in the future. Prior to the debt forgiveness in 1989, if Saarstahl had been able to realize profits the company would have been obligated to resume its payments to its creditor banks, and, according to the company's contractual agreement with the two governments, would also have been obligated to repay all of its RZVs.

Similarly, with respect to funds provided pursuant to administrative orders and government contracts, these funds were not grants because they were tied to repayment obligations. Therefore, we have treated them as loans which were forgiven in 1989.

Comment 7

Petitioners and Saarstahl argue that we should allocate the benefit from the debt forgiveness only over Saarstahl's sales, and not the sales of DHS. Petitioners argue that the benefits from the forgiveness are tied only to Saarstahl's products.

DOC Position

Although the original debt was incurred by Saarstahl, the forgiveness of the debt was tied specifically to the creation of DHS. Without the forgiveness of the debt, there would have been no DHS. Therefore, we believe that since the debt forgiveness was a condition for the creation of DHS, the benefit from the forgiveness is properly allocated to DHS's sales.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with section 705(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of entries of certain additive steel products from Germany, which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the Federal Register, and to require a cash deposit or bond of estimated countervailing duties equal to the following rate:

Company	Ad valorem rate
Country-wide rate	17.28 percent.

Because the estimated net subsidy for Thyssen is 0.16 percent *ad valorem*, which is *de minimis*, Thyssen is exempt from the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing Customs officers to access countervailing duties on entries of certain additive steel products from Germany entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)) and 19 CFR 355.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–2003 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-DS-M

[C–412–811]

Final Affirmative Countervailing Duty Determination: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 27, 1993.

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Final Determination

The Department of Commerce (the Department) determines that benefits which constitute subsidies within the meaning of the countervailing duty (CVD) law are being provided to manufacturers, producers, or exporters in the United Kingdom of certain hot rolled lead and bismuth carbon steel products (hereinafter: "certain additive steel products").

For information on the estimated net subsidy, please see the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the preliminary determination (57 FR 42974, September 17, 1992), the following events have occurred.

We verified the information used in making our preliminary determination from September 28 through October 9, 1992.

On October 16, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned the final determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of the same merchandise (57 FR 48020, October 21, 1992). On November 6, 1992, at the request of respondents, we postponed the final CVD and AD determinations until January 11, 1993 (57 FR 53691, November 12, 1992).

The parties submitted case and rebuttal briefs on November 18 and 24, 1992, respectively. A public hearing was held on December 2, 1992. Supplemental briefs were filed on December 7, 1992.

On January 11, 1993, we postponed for a second time the final CVD and AD determinations until January 19, 1993 (Not Yet Published).

Scope of Investigation

The products covered by this investigation are hot rolled bars and rods of non-alloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products.

Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of the subject merchandise may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214,60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring subsidies (the period of investigation (POI)) is calendar year 1991, which corresponds to the fiscal years of the UK producers of the subject merchandise, United Engineering Steels Limited (UES), Allied Steel and Wire Limited (ASW), and Glynwed International plc (Glynwed).

Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* subsidy received by each firm to the country-wide rate for all programs. On the basis of this comparison, the rates for ASW and Glynwed were significantly different from the country-wide rate. Therefore, these firms received individual company rates. The calculated rate for UES will be used for all other manufacturers, producers, and exporters of certain additive steel products in the United Kingdom.

As a result of the ongoing Countervailing Duty Investigation of Certain Steel Products from the United Kingdom (Certain Steel), we have been made aware of certain programs, not originally investigated in this case, which appear to provide subsidies, *e.g.*, European Investment Bank loans. Nevertheless, we did not have sufficient time to obtain and verify information with respect to these programs. Accordingly, we will address them during the first administrative review of the CVD order in this case, as is contemplated by section 355.39 of the Department's Proposed Regulations (Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (Proposed Regulations), 54 FR 23366 (May 31, 1989)), assuming a CVD order is issued an administrative review is requested.

Based upon our analysis of the petition, responses to our questionnaires, verification, and written comments from the interested parties, we determine the following:

I. Pass-Through of Benefits From BSC to UES

1. Background

UES is a joint venture company which was formed in 1986 by the government-owned British Steel Corporation (BSC) and a privately owned company, Guest, Keen & Nettlefolds (GKN). Both BSC and GKN contributed "productive units" (*e.g.*, steel works, re-rolling mills), accounts receivable, cash, and inventories to the joint venture in return for shares in UES. More specifically, BSC contributed a major portion of its Special Steels Business which produced engineering steels, while GKN contributed its Brymbo Steel Works (Brymbo) and its forgings business. At the time of the formation of UES, BSC was wholly owned by the UK government. However, in 1988, BSC was privatized and now bears the name British Steel plc (BS plc).

For purposes of our preliminary determination, in order to determine whether UES received a countervailable benefit during the POI, the Department examined the transaction forming the UES joint venture to ascertain whether the terms obtained by BSC were consistent with commercial considerations. In that determination, we found that UES was subsidized to the extent that BSC paid a premium for its shares in UES.

The Department has received numerous comments on the issue of whether subsidies provided to BSC prior to the formation of UES were passed through the UES. These comments are summarized as follows.

2. Petitioners' Position

Petitioners argue that, under the circumstances of this investigation, section 701(a) of the Act requires that the entire net subsidy provided to the recipient be countervailed. Petitioners note that the Court of International Trade (CIT) has found BSC to be the recipient of countervailable subsidies. *British Steel Corp.* v. *United States*, 605 F. Supp. 286, 289, 294–295 (CIT 1985). Petitioners claim that, whatever part of the benefit stream flowing from the net subsidy remains, there is no provision in the law which allows this benefit stream to be terminated and as a result of mere changes in corporate form and ownership.

Indeed, petitioners state that countervailable benefits "survive" most types of corporate restructuring because subsidies are fungible, *i.e.*, they are normally attributed to all operations of the recipient company because they benefit, directly or indirectly, all operations of the company. Thus, the conveyance of a major portion of the Special Steels Business to UES, which petitioners characterize as a restructuring of BSC, did not affect the countervailability of the benefits bestowed on BSC. A *pro rata* share of BSC's benefits is, therefore, allocable to the production of the Special Steels Business.

Citing *Armco, Inc.* v. *United States,* 733 F. Supp. 1514, 1523 (CIT 1990), petitioners argue that it is the Department's obligation to countervail subsidies granted *directly or indirectly* to companies. Petitioners emphasize that the Special Steels Business was conveyed to UES as a complete operating business in a related party transaction. In support of their position, petitioners state that the "purchaser" of the Special Steels Business, UES, is not independent of BSC, because BSC owns half of the voting stock and over 60 percent of the total stock in UES, and contributed the vast majority of its assets. Essentially everything the Special Steels Business had as a part of BSC, including the benefit of its allocable share of BSC's subsidies, it continued to have after the transfer.

Petitioners claim that the Department's finding in Certain Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review, (Swedish Steel), 56 FR 47185 (September 18, 1991) is relevant to the situation in the current investigation. In Swedish Steel, the Department determined that a corresponding decrease in the countervailable benefit did not occur with the sale of one-third of a company's stock to a private party. In Swedish Steel, as in the instant case, it was merely the ownership that was conveyed. Petitioners contend that it has long been held by the Department that a purchase of stock from the public, at whatever price, is not a subsidy because the proceeds go to the purchaser, not to the company. Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Spain, 47 FR 51438 (November 15, 1982) and Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, (Subsidies Appendix), 49 FR 18006 (April 26, 1984). Conversely, according to petitioners, the privatization of a company through the sale of its stock does not extinguish subsidies because the transfer of wealth is from the new owners to the government. Thus, the creation of UES in 1986, as well as the privatization of BSC in 1988, had no effect on the countervailability of any subsidies provided to BSC.

Petitioners argue that Congress and the courts have carefully circumscribed the Department's authority to countervail less than the net amount of the subsidy by setting out a short list of narrowly defined offsets. Petitioners state that none of these offsets relates to the sale of a subsidized company. Section 771(6) of the Act. S. Rep. No. 249 at 86, 1979 U.S.C.C.A.N. at 472, *Hercules, Inc.* v. *United States,* 673 F. Supp 454 (CIT 1987). Petitioners argue that under the circumstances of the current investigation, the Department has no authority to adjust or modify the net subsidy that has already been established, except to the extent of statutory offsets.

Petitioners note that two years after the formation of UES, BSC was privatized. Petitioners emphasize that both before and after BSC's privatization, BSC owned 60 percent of UES and had the ability to control the joint venture. Petitioners claim that the sale of BSC stock did not affect the previous conveyance of BSC's Special Steels Business to UES and that none of the prior subsidies provided to BSC were purged as a result of its privatization. According to petitioners, this is because (1) the financial position of BSC remained unchanged after the privatization, (2) the CVD law is concerned with determining whether the subject merchandise, not the owner of the company, benefits from a subsidy, and (3) subsidies distort the economy because they provide resources that would have gone to different uses if they had not been employed to create steel-producing assets to the detriment of the U.S. steel industry.

According to petitioners, respondents' argument concerning upstream subsidies totally misinterprets the meaning of the statute. Petitioners argue that it is obvious that the upstream subsidy provisions were meant to deal with "input products * * * used in the manufacture of the products under investigation," and that a business is not an input product. Section 771A(a) of the Act.

3. Respondents' Position

According to respondents, when the ownership and control of an asset is transferred from a state-owned enterprise to a private company in an arm's length transaction or otherwise at market value, merchandise produced with that asset by the new owner does not derive a benefit from any past subsidies that the state-owned enterprise may have received. Respondents contend that any prior subsidies to BSC should continue to be apportioned over the production of the company that received and supposedly benefitted from those subsidies, *i.e.,* BSC. Respondents argue that the assets transferred to UES, like assets that might be sold to totally unrelated third parties, did not "receive" the subsidies—BSC did.

Furthermore, respondents state that there is no necessary or logical connection between the Department's methodology of apportioning the subsidy received by a firm over all of the products produced by the firm and petitioners' contention that every asset of a subsidized firm bears a subsidy taint that stays with the asset no matter who subsequently acquires it. The Department imposed countervailing duties in the prior BSC cases because of the benefits received by BSC as a company, not because of the benefits received by individual assets.

According to respondents, under Department and judicial precedent, the attribution of subsidies to a company that did not receive the subsidies would only be appropriate where the company that received the subsidies either controlled or was controlled by the first company. *Armco Inc.* v. *United States,* 733 F. Supp. 1514, 1521 (CIT 1990) and Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden, 52 FR 5794 (February 26, 1987). According to respondents, the creation of UES was in no way an "intra-corporate machination" by BSC. Instead, UES was a *bona fide* joint venture between BSC and GKN, resulting in a new commercial enterprise that was not under the control of BSC.

Respondents support the Department's preliminary determination not to attribute to UES any subsidies received by BSC in 1978–1986. In rejecting petitioners' contention that pre-1986 subsidies given to BSC should be applied to UES, respondents assert that the Department could only find UES to have been subsidized to the extent that UES securities transferred to BSC might be worth less than the value of the assets transferred to UES by BSC. Respondents maintain that this is logical because when ownership and control of an asset is transferred from a state-owned enterprise to a private company in an arm's length transaction or otherwise at market value, products from that company should not be subject to countervailing duties as a consequence of any past subsidies that the state-owned enterprise received.

According to respondents, the Department's preliminary decision is consistent with its established practice that purchasers of assets at fair market value from subsidized companies should not be countervailed. Final Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada, (OCTG from Canada), 51 FR 15037 (April 22, 1986) and Lime from Mexico; Preliminary Results of Changed Circumstances, Countervailing Duty Administrative Review, 54 FR 1753 (January 17, 1989).

In addition, respondents argue that the CIT has implicitly endorsed the approach taken by the Department in its preliminary determination in *SSAB Svenskt Stoal AB* v. *U.S.*, 764 F. Supp. 650 (CIT 1991), in which the court upheld the Department's determination that SSAB had received countervailable subsidies because it had purchased assets from a state-owned company at below their market value. Finally, respondents assert that the statutory provision regarding upstream subsidies provides further compelling support for the Department's approach in the preliminary determination. Section 771A of the Act provides that a subsidy on inputs used in the production of subject merchandise should be countervailed only if it "bestows a competitive benefit on the merchandise."

Respondents explain that petitioners incorrectly claim that the "offset provision" is relevant in this case. According to respondents, section 771(6) of the Act concerns the subtraction from the gross subsidy amount of any charges that reduce the value of the subsidy to the recipient. According to respondents, the offset provision does not set guidelines for the identification of a subsidy. *Alberta Park Producers' Marketing Board* v. *U.S.*, 669 F. Supp. 445, 452 (CIT 1987).

Respondents maintain that this case is distinguishable from the ongoing investigation of Certain Steel. According to respondents, the key issue in the present investigation is whether and when subsidy benefits received by one entity should be attributed to a second entity because the second entity owns some assets that were once owned by the subsidy recipient, *i.e.*, whether some portion of the subsidies provided to BSC "traveled" with those assets to their "new home" at UES. On the other hand, the Certain Steel investigation deals with the "extinguishment" of subsidies where the effect of the privatization of the subsidy recipient is the critical factor. Respondents state that, in the formation of UES, there was no sale by the UK government of its ownership in a state-owned company that had received past subsidies. Rather, there was merely a sale by BSC of a small portion of its assets to UES, an autonomous company formed through arm's length negotiations between BSC and GKN. Whether subsidies become an inherent part of the assets of a subsidized state-owned enterprise and, therefore, should be deemed to "travel" with those assets when they become owned by another party, is a key issue that the Department must resolve, according to respondents.

4. DOC Determination

Based upon a reconsideration of the preliminary determination and upon reviewing the comments submitted by the interested parties, the Department determines that a company's sale of a "business" or "productive unit" does not alter the effect of previously bestowed subsidies. The Department does not examine the impact of subsidies on particular assets or tie the benefit level of subsidies to changes in the company under investigation. Therefore, it follows that when a company sells a productive unit, the sale does nothing to alter the subsidies enjoyed by that productive unit.

The subsidies provided to a company presumably are utilized to finance operations and investments in the entire company, including productive units that are subsequently sold or spun off into joint ventures. Therefore, as the company disposes of its productive entities, these entities take a portion of the benefits with them when they "travel to their new home."

The Department has applied this analysis only to a subsidized company's "businesses" or "productive units," which are sold off. An analysis which would require the Department to examine each individual asset that a company sells would be administratively unfeasible. A subsidized company's sale of a productive unit is a more reasonable basis on which to allocate the pass-through of subsidies.

This approach avoids creating an opportunity for circumvention of the CVD law. Should be determine that the original recipient of subsidies continues receiving the entire benefit of those subsidies, we would not only leave companies like BSC "holding the bag," we would also invite subsidy recipients to sell off units that produce or export countervailed merchandise to the United States. In the end, a "bubble" of subsidies would remain with a virtually empty corporate shell which would not be affected by any countervailing duties because it did not produce or export the countervailed merchandise to the United States.

Based on this methodology, the Department considers the portion of BSC's Special Steels Business that was sold to UES a "productive unit" or business. Accordingly, the Department finds that a portion of the pre-1986 subsidies provided to BSC passed through to the Special Steels Business at its new "home," UES.

Based on the verification reports and other information submitted on the record of this investigation, we have found that the formation of UES was not simply a corporate restructuring, as alleged by petitioners. Therefore, subsidies provided to BSC after the formation of UES did not automatically pass through to UES. With respect to UES, the Department has found that this is an independent joint venture company, managed as a separate corporate entity from its parent companies BSC (from 1988: BS plc) and GKN. There is no information on the record to support petitioners' allegation that UES is a mere continuation of BSC's Special Steels Business.

UES was created after several years of difficult, arm's length negotiations between BSC and GKN and became a "limited" (*i.e.*, incorporated) company immediately upon its inception. We found nothing during verification which indicates that the negotiations for UES were not held at arm's length.

Because UES' two owners, BSC/BS plc and GKN, each hold 50 percent of the voting shares, there must be consensus between them for any proposal to pass. At verification, we reviewed the minutes of UES' board meetings for the first two years after the joint venture's formation. The minutes did not indicate that the board meetings were dominated by BSC. In addition, we studied documents which listed the members of UES' board and executive committee in 1986 and 1992. We noted that BSC/BS plc had fewer representatives on UES' board and committee than did GKN and other private sector companies. At verification, we also found that in 1988, BSC did not exercise its right to appoint the chairman of the board. Instead, BSC and GKN agreed to reappoint the then chairman, who was an ex-GKN official.

We also believe that UES is an independent corporate entity based on our examination of the business relationship between UES and BS plc, which continues for historical and practical reasons. We verified that the prices paid by UES to BS plc for raw materials are market, not transfer, prices. Other exchanges between the two companies are also made on normal commercial terms.

Based on this information, we find that UES is a separate corporate entity and not controlled by BSC. At verification, we found no evidence of any mechanisms for passing through subsidies from BS plc to UES (*e.g.*, cash infusions) after the formation of the joint venture. Therefore, we determine that any benefits received by BSC after formation of the joint venture do not pass through to UES.

5. Allocation of Subsidies to UES

Because it is the Department's long-standing practice to allocate subsidies over the sales of the subject merchandise, it is reasonable to use the ratio between the sales of BSC's Special Steels Business and the sales of the entire BSC at the time of the formation of UES, *i.e.*, at the end of fiscal year 1985/86, as the basis on which we would apportion the subsidies to UES. However, consistent with our determination that subsidies follow productive units, we must also take into account subsidies allocated to the joint ventures and productive units that BSC formed or sold off prior to the formation of UES.

6. Prior Pass-Throughs

The Department's determination that a portion of the subsidies provided to BSC passed through to UES means that subsidies also passed through from BSC to other joint ventures which were formed and productive units which were sold off prior to the creation of UES. BSC's annual report for fiscal year 1984/85, which was provided with BS plc's questionnaire response, indicates that between fiscal years 1980/81 and 1984/85, BSC entered into 11 joint ventures and disposed of 41 productive units. In order to follow the same allocation methodology we applied to UES, we would need information concerning the value of the sales of each productive unit that went into a joint venture or was sold off at the time each unit was split off from BSC. However, we do not have such sales data on the record. Therefore, we have used information provided in BSC's 1983/84 and 1984/85 annual reports regarding the total book value of the assets split off from BSC in joint ventures and disposals between fiscal years 1980/81 and 1984/85 as a surrogate for the sales values.

7. Pass-Through Calculation

In order to calculate the amount of the benefit allocable to UES as a result of the pass-through of benefits from BSC, we first calculated the benefit attributable to BS plc in 1991 for all the countervailable subsidies the company received between fiscal years 1977/78 and 1983/84 (*i.e.*, equity infusions, regional development grants, and loan cancellation, as discussed below). We added a risk premium to the discount rates for the years 1977/78 through 1983/84, based on our determination that BSC was uncreditworthy in those years (see discussion, below).

We then calculated the "adjusted benefit stream" for BS plc reflective of the amount of subsidies which followed the productive units sold off by BSC through 1983/84. We did this by deducting a *pro rata* portion from BS plc's 1991 benefit amount based on the sold-off units' percentage of assets of BSC in fiscal year 1983/84. We repeated the same methodology for productive units sold in 1984/85, arriving at an adjusted benefit attributable to BS plc in 1991 reflective of productive units sold off prior to the formation of UES. Although the Department has determined that pass-through benefits should be measured on the basis of sales values, we have used the 1984/85 asset values as a surrogate because we lack the requisite sales information, as discussed in the "Prior Pass-Throughs" section above.

We then added to the adjusted benefit attributable to BS plc in 1991, the benefit attributable to BS plc in 1991 for subsidies BSC received in 1985/86. From this total benefit attributable to BS plc in 1991, we deducted a *pro rata* portion reflective of the Special Steels Business which was a split off from BSC to form UES. This *pro rata* portion was based on the Special Steels Business' 1984/85 sales as a percentage of total BSC sales in the same year. (Because 1984/85 was the last fiscal year for which such data was available for the Special Steels Business, we used the 1984/85 data as a surrogate for the sales values in 1985/86 when the Special Steels Business was transferred to UES.) We then divided the UES pass-through benefit by UES' total 1991 sales to arrive at an *ad valorem* subsidy of 12.69 percent.

II. Equityworthiness of BSC

The Department has previously determined that BSC was unequityworthy between 1977/78 and 1983/84 (see Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet, Strip and Plate from the United Kingdom (Stainless Steel), 48 FR 19048 (April 27, 1983) and Final Results of Countervailing Duty Administrative Review, Stainless Steel Plate from the United Kingdom (Stainless Steel Review), 51 FR 34112 (September 25, 1986)). Petitioners have alleged that BSC remained unequityworthy through 1985/86. For fiscal years 1981/82 through 1985/86, BSC yielded negative returns on assets and equity. Times interest earned and BSC's profit margin were negative for fiscal years 1982/83 through 1984/85. Although BSC reported a profit in 1986, the profit margin on sales was only one percent. Furthermore, no dividends were distributed by BSC between 1977 and 1986.

Based on this information, we find that BSC was unequityworthy from 1977/78 through 1985/86.

III. Equity Methodology

According to section 355.49(e) of the Department's Proposed Regulations, we measure the benefit of equity investments in "unequityworthy" firms by comparing the national average rate of return on equity with the company's rate of return on equity during each year of the allocation period. The difference in these amounts, the so-called rate of return shortfall (RORS), is then multiplied by the amount of the equity investment to determine the countervailable benefit in the given year.

The Department has concluded that the RORS methodology does not provide an accurate measure of the benefits arising from government equity investments in unequityworthy companies. When the Department finds that a company is unequityworthy and, hence, that the government's equity investment is inconsistent with commercial considerations, we are effectively finding that the company could not attract capital from a reasonable investor. When a company is in such poor financial condition that it cannot attract capital, any capital it receives benefits the company as if it were a grant and no earnings of the company in subsequent years should be used to offset the benefit.

Moreover, in calculating the company's rate of return, no adjustment is made to eliminate the effect of past or current subsidies. Therefore, those subsidies that increase the company's rate of return serve to reduce the amount of the subsidy arising from government equity investments in subsequent years. In addition, this method does not compensate for the effect of prior year results on equity in subsequent years, thus measuring the rate of return against an equity other than that invested in the transaction in question.

For these reasons, we have determined that equity investments in unequityworthy companies will be treated as grants given in the year of the equity investment. Accordingly, we will value the benefits using the grant methodology described below.

Where a market-determined benchmark price for equity exists, we

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will continue to use that benchmark to determine whether the government's purchase of equity confers a subsidy and to measure the amount of the subsidy.

IV. Creditworthiness

The petition did not specifically allege that BSC was uncreditworthy in the years that the company received subsidies. Thus, the Department did not examine BSC's creditworthiness in the instant case. However, in Stainless Steel and Stainless Steel Review, the Department determined that BSC was uncreditworthy from fiscal year 1977/78 through fiscal year 1983/84. Therefore, for purposes of this final determination, we have decided to treat BSC as uncreditworthy in those years.

V. Grant Methodology

Our policy with respect to grants is (1) to expense recurring grants in the year of receipt, and (2) to allocate non-recurring grants over the average useful life of assets in the industry, unless the sum of grants provided under a particular program is less than 0.5 percent of a firm's total or export sales (depending on whether the program is a domestic or export subsidy) in the year in which the grant was received. See, *e.g.*, Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway, (Salmon from Norway), 56 FR 7678 (February 25, 1991). We have considered the grants provided under the programs described below to be non-recurring, unless otherwise noted, because the benefits are exceptional, the recipient cannot expect to receive benefits on an ongoing basis from review period to review period, and/or the provision of funds by the government must be approved every year. See Final Affirmative Countervailing Duty Determination; Certain Fresh Atlantic Groundfish from Canada, 51 FR 10041 (March 24, 1986). Therefore, we have allocated the benefits over 15 years, which the Department considers to be reflective of the average useful life of assets in the steel industry (see section 355.49(b)(3) of the Proposed Regulations).

The benefit from each of the grant programs discussed below was calculated using the declining balance methodology described in the Department's Proposed Regulations (see section 355.49(b)(3)) and used in prior investigations (See, *e.g.*, salmon from Norway). For the discount rate, we used, whenever possible, each company's actual cost for long-term, fixed-rate debt. If a company did not report this cost, or when a company had no long-term borrowing in the year in which the grant was approved, we used the national average long-term interest rate. If a company was uncreditworthy in the year in which the grant was approved, we added a risk premium to the benchmark interest rate in accordance with § 355.44(b)(6)(iv) the Proposed Regulations.

VI. Programs Determined To Confer Subsidies

We determined that subsidies are being provided to manufacturers, producers, or exporters in the United Kingdom of certain additive steel products as follows. UES' subsidy rate calculated for these programs appears in the "Pass-Through Calculation" section of this notice.

1. Equity Infusions

BSC received equity capital from the Secretary of State for Trade and Industry pursuant to section 18(1) of the Iron and Steel Acts 1975, 1981, and 1982 (section 18(1)). According to section 18(1), the Secretary of State for the Department of Trade and Industry may "pay to the Corporation (BSC) such funds as he sees fit." We verified that this equity capital was received every fiscal year from 1977/78 through 1985/86. The UK government's equity investments in BSC were made pursuant to an agreed external financing limit which was based upon medium-term financial projections. BSC's performance was monitored by the UK government on an ongoing basis and requests for capital were examined on a case-by-case basis. The UK government did not receive any additional shares of equity of additional rights in return for the capital provided to BSC under section 18(1) since it already owned 100 percent of the company.

Because we have found BSC to be unequityworthy, we determine that the UK government's equity infusions are inconsistent with commercial considerations.

Prior to the formation of UES, BSC's equity was written off in two stages under the Iron and Steel Acts 1981 and 1982 as part of a capital reconstruction of BSC during that time period. These write-offs of capital were in recognition that trading losses could not be recovered out of existing assets. First, the 1981 Act reduced by £3,000 million the sums invested in BSC by the UK government under section 18(1). Second, a further reduction of £1,000 million was taken in 1982 pursuant to a statutory instrument (the British Steel Corporation Reduction of Capital Order) under the Iron and Steel Act 1982.

We have further determined that BSC benefitted by virtue of equity infusions inconsistent with commercial considerations, and not through the subsequent write-off of the equity. Therefore, we are countervailing the equity investments as grants given in the years the equity capital was received.

We calculated the benefit for the POI using our standard methodology for non-recurring grants (see "Grant Methodology" section above). Because we have determined that BSC was uncreditworthy from 1977/78 through 1983/84, we used a risk premium in deriving the discount rate for these years.

2. Loan Cancellation

In conjunction with the 1981/1982 capital reconstruction of BSC, section 3(1) of the Iron and Steel Act 1981 extinguished £9,308,569 of National Loans Fund (NLF) loans, together with accrued interest thereon, at the end of BSC's 1980/81 fiscal year.

Because this loan cancellation was provided specifically to BSC, we determine that it is a countervailable benefit.

We calculated the benefit for the POI using our standard methodology for non-recurring grants (see "Grant Methodology" section above). Because we have determined that BSC was uncreditworthy in 1981, we used a risk premium in deriving the discount rate for that year.

3. Regional Development Grants

Regional development grants were paid to BSC and Glynwed under the Industry Act 1972 and the Industrial Development Act 1982. In order to quality for assistance under these two Acts, an applicant had to be engaged in manufacturing and located in an assisted area. Assisted areas were older, industrial areas identified as having deep-seated, long-term problems such as high levels of unemployment, migration, slow economic growth, derelict land, and obsolete factory buildings.

Regional development grants were paid for the purchase of specific assets. According to the UK government, they involved one-time grants, the disbursement of which was sometimes spaced over several years.

BSC received regional development grants between fiscal years 1977/78 and 1985/86. Glynwed received regional development grants in 1981 and 1986.

Since this program is limited to specific regions, we find it countervailable within the meaning of section 771(5) of the Act. Because the receipt of these grants was based on separate applications, which have to meet the required criteria, we have determined these grants to be non-recurring.

We calculated the benefit for the POI using our standard methodology for non-recurring grants (see "Grant Methodology" section above.) For Glywed, we divided the benefit by Glywed's total sales to calculate the *ad valorem* subsidy. On this basis, we determine the net subsidies for this program to be *de minimis* for Glynwed.

VII. Programs Determined Not To Be Countervaillable

1. £55 Million Loan to UES

During our verification of the UK government's questionnaire response, we learned that the government had agreed to make section 18(1) funds available to BSC for purposes of the UES joint venture. According to government officials, £30 million of the £55 million loanded by BSC to UES were part of the last section 18(1) payment made to BSC in January 1986. At verification, the UK government stated that BSC was able to provide the remaining £25 million out of its own funds.

Once these funds were used by UES for construction of a bloom caster at one of its facilities, the loan was to be converted into a combination of preference shares at a total value of £35 million and loan stock at a total value of £20 million. By September 30, 1988, the entire loan amount had been converted accordingly. The £20 million loan stock was repaid by UES on January 2, 1990.

We determine that the £55 million in funding was tied to the UES joint venture and, thus, did not become part of the "pool" of benefits enjoyed by BSC and partially passed through to UES. Therefore, we have excluded the verified loan amount received from the government from BSC's "pool" of benefits.

Because the loan stock was repaid prior to the POI, we determine that it did not provide countervailable benefits to UES during the POI. Therefore, we are only concerned with the £35 million converted to equity. Our analysis shows that UES received this funding on terms consistent with commercial considerations. Based on our review of UES' financial statements, we have found UES to be equityworthy in the years when the conversions took place, *i.e.*, from 1986 through 1988. Therefore, we determine the £35 million to be an equity investment consistent with commercial considerations.

2. Formation of UES

At the formation of UES, GKN received a premium for its higher historic profitability. At the time of our preliminary determination, we did not believe that the record supported respondents' contention that GKN was entitled to such a premium. Based on our rejection of respondents' arguments regarding the premium paid to GKN, we preliminarily determined that BSC had overpaid for its shares in UES and that the amount of the overpayment constituted a countervailable subsidy. Therefore, we adjusted the price per share paid by GKN and then used the adjusted price to measure the amount by which BSC had overpaid for its shares in UES.

Based on our review of documentation received at verification (most of which is proprietary), we have accepted that GKN was entitled to a premium due to its better profit record. At verification, we learned that the profits discussed in the joint venture negotiations were based on the subtotal profit line. The definition of subpart profit was agreed to by the negotiating parties and was verified by, Coopers & Lybrand. It is normal practice for the parties to a negotiation of this type to define the terms used in the negotiation. Our review of the parties' subtotal profits revealed that GKN's Brymbo Steel Works and forging operations were consistently more profitable than BSC's Special Steels Business. Accordingly, we find that BSC and GKN paid the same amount per share for UES and, as a result, BSC's investment in UES was on terms consistent with commercial consideration.

3. Energy Efficiency Best Practice Program

The objective of this program is to disseminate information on new energy savings techniques which are economically viable and show a net savings potential of at least £500,000. In 1991, UES was awarded a grant under this program of £10,000, of which £5,000 was disbursed in the POI.

At verification, we verified that there were no limitations on the type of industries which could use this program. Furthermore, we verified that the program is actually used by a broad range and a large number of industries. Therefore, we have determined this program to be both *de jure* and *de facto* non-specific. On this basis, we determine that the Energy Efficiency Best Practice Program is not countervailable.

VIII. Best Information Available (BIA) for ASW

ASW, which is a joint venture company formed in 1981 between BSC and GKN, withdrew from participation in this investigation prior to vertification. Because ASW refused verification of its questionnaire response, as BIA we are assuming that ASW received the same benefits as BSC in 1981 (the year ASW was formed). Therefore, we are assigning ASW a rate of 20.33 percent, the rate calculated for BSC in our Final Affirmative Countervailing Duty Determinations: Carbon Steel Structural Shapes, Hot-Rolled Carbon Steel Plate, and Hot-Rolled Carbon Steel Bar from the United Kingdom; and Final Negative Countervailing Duty Determination: Cold-Formed Carbon Steel Bar from the United Kingdom, 47 FR 39384 (September 7, 1982). This rate was the highest rate calculated for a company in that investigation and, therefore, an appropriate rate as BIA.

Comments

Comment 1: 1988 Privatization of BSC

According to respondents, if the Department were to determine that BSC did control UES, it might then allocate pre-1986 subsidies received by BSC to UES. While respondents believe that this finding would be incorrect, if the Department were to allocate pre-1986 subsidies to UES, it would have to consider the affects of the 1988 privatization of BSC upon the pre-1986 subsidies allocated to UES. This is because the 1989 privatization of BSC resulted in a shift in control of UES, according to respondents.

DOC Position: Because of our determination that BSC did not control UES (see discussion in the "Pass-Through" section above), we recognize that although there may have been a change in control of BSC after its 1988 privatization, there was not a change on the control of UES. In other words, the corporate structure of UES remained the same after the 1988 extinguishment of subsidies requires both payment of fair market value in an arm's length transaction and transfer of control. Because there was no change in UES' control in 1988, there was no change it is subsidies, even under respondents' methodology.

Comment 2: Measurement of Pass-Through

Petitioners argue that the Department should measure any pass-through of benefits from BSC to UES on the basis of 1986 sales attributable to the assets contributed by BSC to the joint venture as a percentage of total BSC sales for

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1986. According to petitioners, because the rate of duty is calculated by dividing the subsidy by the company's sales during the POI, it is logical that the subsidies should be also allocated between BSC and UES on the basis of sales. However, other counsel for petitioners, with permission to appear on their behalf in this investigation (hereinafter: Petitioners' other counsel), argue that the pass-through of benefits from BSC to UES should be measured on the basis of the relative net sales of the two companies in the POI.

Respondents argue that the essence of petitioners' subsidy pass-through argument is that a subsidy benefits the assets of the recipient firm. According to respondents' if the Department agrees with petitioners' analysis, it must calculate subsidies to UES on the same theoretical basis that petitioners argue should be the basis for attribution in the first place, *i.e.*, the percentage of assets contributed by BSC to UES as a percentage of BSC's total assets, taking into account previous joint ventures, disposals, and shut-downs.

DOC Position: We disagree with petitioners' other counsel. Pass-through should not be measured by 1991 sales because of our determination that UES agree with petitioners. Because it is the Department's long-standing practice to allocate subsidies over the sales of the subject merchandise, it is reasonable to use the ratio between the sales of BSC's Special Steels Business and the sales of the entire BSC at the end of fiscal year 1985/86 (BSC's fiscal year 1985/86 ended in March 1986, *i.e.*, the same month as UES was formed) as the basis on which we would apportion the subsidies to UES. See discussion 1986, *i.e.*, the same month as UES was formed) as the basis on which we would apportion the subsidies to UES. See discussion under the "Measurement of Pass-Through" section above.

Comment 3: The Formation of the UES Joint Venture

According to petitioners, UES are subsidized directly because BSC and the UK government allowed GKN credit for far more than the actual value of the assets GKN contributed. While petitioners agree with the Department's preliminary determination that BSC overpaid for the shares it received in UES, petitioners state that the Department's calculations of the benefit to UES for such overpayment are understated.

Petitioners argue that BSC's contribution to the joint venture was far greater than GKN's if one takes into account the overvaluations of Brymbo and GKN's past profits, the various accounting differences between BSC and GKN, and BSC's payment of the costs for closing one of its production facilities (Tinsley Park).

Respondents claim that the Department erred in its conclusion that UES' securities received by BSC did not reflect the value of the assets transferred to UES by BSC. Coopers & Lybrand did an analysis upon the formation of UES called "The Completion Accounts." As a result of this analysis, it was concluded that the financial results of the assets contributed by GKN were better than the results of the assets contributed by BSC.

Respondents also point out that the differences in accounting treatments of GKN and BSC referenced by petitioners were taken into account in determining the relative number of UES shares that the parties were to receive.

DOC Position: As stated above, based on our review of documentation received at verification (most of which is proprietary) we agree that GKN was entitled to a premium due to its better profit record. With respect to the closure of Tinsley Park, we found that GKN's premium was reduced in order to reflect GKN's "share" of the costs incurred by BSC for closing Tinsley Park. Based on our review of proprietary information, we also found at verification that the closure of Brymbo and the accounting differences between the parties should not be considered benefits. Therefore, we determine that BSC's investment in UES was consistent with commercial considerations.

Comment 4: Control Premium

Citing *Honigman* v. *Green Giant Co.*, 309 F.2d 667, 668–70 (8th Cir. 1962), *cert. den.*, 472 U.S. 941 (1963), petitioners state that it is accepted that "control" of a company is an economic asset and the property of a stockholder who owns sufficient stock, not of the corporation controlled. Because BSC accepted an even split in control of UES when it contributed more than GKN to the joint venture, petitioners argue that the additional amount of BSC's contribution should be considered a "control premium." This control premium should be considered a subsidy to UES.

Respondents argue that there is no reason for BSC to receive additional compensation for allowing joint control of UES. According to respondents, a control premium may occur when shareholders are selling their shares to a buyer who wants to bring in new management, but it is not relevant to the creation of a new company where all participants will receive the benefits of improved management, as was the case with UES. The concept of a control premium is inapplicable to the formation of UES, since BSC was not an existing shareholder, but rather was participating in a joint venture which BSC specifically intended as an independent company.

DOC Position: Based on the arguments submitted by petitioners, we are not persuaded that a control premium is relevant to this transaction. The examples cited by petitioners did not involve the formation of a joint venture.

In the case of UES, it appears that the government placed relatively less importance on control than did GKN. The government, in fact, sought private sector management of the new company, while GKN would not have participated in the joint venture if the government's voting shares were commensurate with its contribution. Nevertheless, we do not believe that this single element of the negotiations should be carved out of the larger context. There were many elements of the negotiations and we have concluded that the package viewed in its entirety represented an arm's length transaction in which BSC acted consistently with commercial considerations.

Comment 5: Equity v. Grants

In *Certain Steel*, the Department preliminarily determined that equity infusions should be treated as grants (57 FR 57734, December 7, 1992). Petitioners argue that the same methodology should be adopted here.

Respondents argue that the Department's RORS methodology accurately reflects the amount of the subsidy associated with equity infusions in an unequityworthy business enterprise. According to respondents, the essence of the subsidy is the fact that the unequityworthy enterprise is not expected to meet a performance standard (*i.e.*, yield a commercial return). The difference between the actual rate of return and an appropriate national average benchmark rate of return is a fair measure of that benefit.

Respondents state that there is a basic fallacy in the argument that (1) there is no difference between an investment in an unequityworthy company and an outright grant, and (2) that the subsidies associated with equity investments should not be calculated under the RORS methodology. Respondents point out that a *grant* is a donation with no expectation of return by the donor. An investment, however, is made with the expectation of financial return. In some cases, an investment will be made in order to enhance the value of an enterprise that will soon be up for sale. Viewed in this way, section 18(1) monies paid by the UK government of BSC were clearly investments, not grants, according to respondents. At the same time, respondents note, if the Department treats section 18(1) monies as previously forgiven "debt," as suggested by petitioners, the Department must agree that the government got back a portion of the "debt" in 1988 when BSC was privatized. This privatization reduced by a like amount any unamortized portion of alleged subsidy benefits to BSC.

DOC Position: As explained above, we have determined that the RORS methodology does not adequately measure the benefit arising from an equity investment in an unequityworthy company. If we find a company to be unequityworthy, that finding is tantamount to saying that a reasonable investor would not invest in that company. Therefore, from the company's point of view, any equity capital it receives form the government is equivalent to a grant. Consequently, we have measured the benefit to the recipient company using the grant methodology. However, this does not mean that grants and equity are the same. Normally, equity investments are made with some expectation of return. Grants are not. As respondents have pointed out, this is what distinguishes grants from equity infusions.

Comment 6: Equity—Commercial Considerations Standard

Respondents argue that, in interpreting the commercial considerations standard for purposes of analyzing equity investments, the Department improperly focuses on the company's prospects from the standpoint of an outside investor. According to respondents, it may be commercially justifiable for an inside investor to make continued investments in a loss-making company even if a reasonable outside investor would not have invested in that company. Respondents argue that the statute does not compel the Department to use the outside investor test. Furthermore, from an economic standpoint, respondents argue that an outside investor's decisions are not influenced by the recovery of an existing investment as with an inside investor. Finally, respondents argue that investors and creditors of economically distressed companies routinely decide, on grounds that are economically and financially sound, to invest money or to forbear from taking funds out of the enterprise.

DOC Position: We do not believe that we should have a separate standard for an "inside investor." We believe that, in general, both inside and outside investors make investment decisions at the margin. As we stated in the Final Affirmative Countervailing Duty Determination; Steel Wheels from Brazil, 54 FR 15523 (April 18, 1989) "a rational investor does not let the value of past investments affect present or future investment decisions. The decision to invest is only dependent on the marginal return expected from each additional equity infusion."

Comment 7: Recurring vs. Nonrecurring Benefits

Respondents argue that the ten consecutive years of section 18(1) funds provided by the UK government to BSC meet all three criteria of the Department's standards for finding subsidies to be recurring.

First, respondents argue that the funds, provided pursuant to parliamentary enactment, were not "exceptional." Citing *Algoma Steel Corporation* v. *United States*, (Algoma Steel), USA–89–1904–07, ("by any common meaning of the word, ten years out of ten years is long-standing"), respondents argue that the program, which lasted ten consecutive years, was clearly long-standing. Finally, at the time the program was first established, there was no reason to believe that the program would not continue in the future.

Petitioners state that, when evaluated in the context of the Department's three-part test, the subsidies provided to BSC in the form of section 18(1) funds should be considered non-recurring.

Petitioners dispute respondents' use of *Algoma Steel* to show that the equity infusions were recurring. Petitioners note that *Algoma Steel* was a case in which there was an explicit agreement to service debt by the Province of Nova Scotia, while BSC's equity infusions existed and were given without the benefit of a stated agreement. Furthermore, the CIT rejected respondents' contention and approved the Department's decision to treat these subsidies as non-recurring. Thus, *Algoma Steel* throws no new light on this subject.

DOC Position: At verification, we learned that the equity infusions provided by the UK government to BSC were intended to aid BSC until it became viable. Therefore, BSC had reason to believe that the program would not continue once the company had reached viability. At verification, company officials informed the Department that it was clear that BSC would become viable in the future, as evidenced by the White Paper "The Road to Viability." Furthermore, government officials informed the Department during verification that there was no automatic payment of funds by the government. Because the equity infusions do not meet the criteria for finding subsidies to be recurring, we are treating these infusions as non-recurring. See also Stainless Steel Review.

Comment 8: Amortization Period

According to respondents, the CIT has twice rejected the Department's use of average service life of industry assets as a measure of the duration of subsidy benefits. Respondents argue that, consistent with practice in other areas, the Department should determine the duration of benefits by reference to the weighted average maturity of the respondent company's total indebtedness or, alternatively, to an appropriate industry average.

Petitioners argue that because the period over which a subsidy confers benefits may be equally long whether used for capital investment or other purposes, the Department's longstanding policy of using a 15-year amortization period for all non-recurring subsidies in steel cases is appropriate and should be continued.

With respect to subsidies that support capital investment, Congress explicitly intended that countervailing duties be imposed over a period that would coincide with the period during which the subsidy benefits the recipient. S. Rep. No. 249 at 86, 1979 U.S.C.C.A.N. at 471–72, see also H. Rep. 317 at 74–75. Petitioners note that the Department, the CIT, and the Court of Appeals for the Federal Circuit have agreed that subsidies for general corporate purposes may provide as important a benefit, over as long a period, as a subsidy for capital investment. *IPSCO, Inc.* v. *United States*, 710 F. Supp. 1581, 1583 (CIT 1989), *aff'd* 899 F. 2d 1192, 1198 (Fed. Cir. 1990). Therefore petitioners state that the Department's long-held policy of amortizing all non-recurring subsidies over a 15-year period in steel cases should be continued.

DOC Position: While the Department has indicated its willingness to consider a ten-year allocation period generally (see the Preamble to the Proposed Regulations), nothing that the parties have argued leads us to conclude that we should depart the 15-year standard. Therefore, we have continued to use the 15-year allocation period based on the 1977 IRS depreciation table, as amended in 1985, covering renewable assets for steel.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination or original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B-099 of the Main Commerce Building).

Suspension of Liquidation

In accordance with section 705(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of entries of certain additive steel products from the United Kingdom, which are entered or withdrawn from warehouse for consumption on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond of estimated countervailing duties at the following rates:

Company	Ad valorem rate (percent)
ASW	20.33
UES	12.69
All others	12.69

Because the estimated net subsidy for Glynwed is *de minimis,* Glynwed is exempt from the suspension of liquidation.

ITC Notification

In accordance with section 705(d) of the Act we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a CVD order, directing Customs officers to assess countervailing duties on entries of certain additive steel products from the United Kingdom.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d) and 19 CFR 355.20(a)(4).

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93-1906 Filed 1-26-93; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-062]

Pig Iron From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on pig iron from Brazil. We preliminarily determine the net subsidy to be zero for all firms for the period January 1, 1991 through December 31, 1991. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 27, 1993.

FOR FURTHER INFORMATION CONTACT: Anne S. D'Alauro, Dana S. Mermelstein, or Maria P. MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On April 8, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 11934) of the countervailing duty order on pig iron from Brazil (45 FR 23045; April 4, 1980). We received requests for review from Associated Metals and Minerals Corporation, Sumitomo Corporation of America, and Caterpillar World Trading Corporation, interested parties within the meaning of section 355.2(i) of the Department's regulations. We initiated the review covering the period January 1, 1991 through December 31, 1991, on May 22, 1992 (57 FR 21769). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). The final results of the last administrative review of this order were published on March 26, 1992 (57 FR 10460).

Scope of Review

Imports covered by this review are shipments of pig iron of basic, malleable, and low phosphorous grades, from Brazil. During the review period, such merchandise was classifiable under item numbers 7201.10.00, 7201.30.00, and 7206.10.00 of the Harmonized Tariff Schedule (HTS). The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, twenty-two companies, and seven programs.

Analysis of Programs

(1) Programs Terminated

We examined the following programs and preliminarily determine that they have been terminated by the Government of Brazil:

A. Income Tax Reduction for Export Earnings.

Decree Law 8034 of April 12, 1990 eliminated this tax reduction and established a prevailing income tax rate for all industries of 30 percent for domestic and export earnings for tax year 1990 (the 1990 tax returns are filed in 1991). See, Final Negative Countervailing Duty Determination: Silicon Metal From Brazil (56 FR 26988; June 12, 1991).

B. CACEX Preferential Working Capital Financing for Exports. This program was terminated effective August 30, 1990, by Central Bank Resolution 1744. *Id.* There were no residual benefits to pig iron producers provided under this program during the review period.

(2) Programs Not Used

A. FINEX preferential financing under Resolutions 68 and 509. This program was terminated on October 5, 1990 by constitutional provision. Law Number 8.187 dated June 1, 1991 reestablished the program under the name of PROEX, but according to the questionnaire response, pig iron producers are not eligible to apply for or receive benefits under PROEX.

B. SUDENE Corporate Income Tax Reduction for Companies Located in the Northeast of Brazil.

None of the pig iron exporters are located in the areas eligible for benefits under this program.

C. Other Program

- BEFIEX Reduction of Taxes and Import Duties.
- Accelerated Depreciation on Brazilian-made Capital Equipment.
- FINEP preferential financing program.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be zero for all firms for the period January 1, 1991 through December 31, 1991.

Upon completion of this review, the Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of pig iron from Brazil exported on or after January 1, 1991 and on or before December 31, 1991.

The Department also intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Act, on any shipments of pig iron from Brazil entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under section 355.38(c), are due.

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 4, 1993.

Rolf Th. Lundberg, Jr.,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 93–2000 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by the Virginia Electric and Power Company From an Objection by State of North Carolina Department of Environment, Health and Natural Resources

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of dismissal.

On December 3, 1992, the Secretary of Commerce (Secretary) terminated the consistency appeal of the Virginia Electric and Power Company (Appellant) filed on October 3, 1991, with the Secretary pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations at 15 CFR part 930, subpart H. The appeal was taken from an objection by the State of North Carolina Department of Environment, Health and Natural Resources (State) to the Appellant's consistency certification that its proposal for a Federal Energy Regulatory Commission license amendment involving the permanent, consumptive withdrawal of approximately 60,000,000 gallons of water each day from Lake Gaston (located just north of the Virginia-North Carolina border), is consistent with the State's federally-approved Coastal Management Program (CMP).

The State objected to the Appellant's consistency certification for the proposed project on the ground that downstream effects on important fisheries, wetlands, and the hydrology of the Roanoke River and Albemarle-Pamlico Sound were not consistent with the State's CMP policies.

During the course of the appeal, the Appellant filed a motion for the expeditious termination of the consistency review process for lack of jurisdiction. The motion was based on legal interpretations propounded by the Department of Justice concerning the scope of a State's review authority under the Federal consistency provisions of the CZMA. The Secretary found that the proposed activity occurs wholly in another state. In addition, she deferred, in this case, to the legal opinion of the Department of Justice (Justice) that the CZMA does not authorize one state to object to a project located wholly within another state, regardless of the effects of that project on the coastal zone. The Secretary terminated the appeal in favor of the Appellant by finding that the State's objection was improperly lodged.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 19, 1993.

James W. Brennan,

Acting General Counsel.

[FR Doc. 93–1927 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Scientific Research Permit No. 809.

SUMMARY: On November 30, 1992, notice was published in the Federal Register (57 FR 56564) that a request for a scientific research permit to take marine mammals (p771#64) had been submitted by the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, to conduct scientific research on Steller sea lions (*Eumetopias jubatus*) over a five-period.

Notice is hereby given that on January 19, 1993, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), the National Marine Fisheries Service issued the requested Permit for the above activities subject to the Special Conditions set forth therein.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd. suite 6, Juneau, AK 99802 (907/586–7221); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Bldg. 1 Seattle, WA 98115 (206/526–6150).

Dated: January 19, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1931 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of Marine Mammal Permit (P522).

On November 16, 1992, notice was published in the **Federal Register** (57 FR 54051) that an application had been filed by Joseph A. Cook, Ph.D., curator of Mammals, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775–1200, to obtain, import and export samples obtained from all species of the Orders Cetacea and Pinnipedia (except walrus) which were either found stranded dead or were caught incidentally in a commercial fishery.

Notice is hereby given that on January 19, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above activity, subject to certain Conditions set forth therein.

The application and accompanying documentation satisfy the issuance criteria for scientific research permits. The requested activities are consistent with the purposes and policies of the MMPA. The research will further a *bona fide* scientific purpose that does not involve unnecessary duplication of other research.

Issuance of this Permit for the importation of endangered species as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in support of this Permit are available for review, by appointment, in the:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., suite 7324, Silver Spring MD 20910 (301/713–2289);

Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6, Juneau, AK 99802 (907/586–7221);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141);

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200);

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

Dated: January 19, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1932 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modification to Permit No. 738 (P77#51).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Conditions hereinafter set out, Scientific Research Permit No. 729, issued to the Southeast Fisheries Science Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, FL 33149, on May 16, 1991 (56 FR 23684), has been modified to authorize descent from 750 ft to 300–500 ft to enable researchers to distinguish between Balaenopterid whales (excluding *Megaptera novaeangliae*) during aerial surveys to be conducted over the remaining three-year period that the Permit is valid.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Modification became effective upon signature.

The Permit and Modification documentation are available for review in the following offices by appointment.

Permit Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: January 19, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–1934 Filed 1–26–93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in the Federative Republic of Brazil

January 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated January 13, 1993 between the Governments of the United States and the Federative Republic of Brazil, agreement was reached to amend the current limits for Categories 350 and 363 for the period beginning on April 1, 1992 and extending through March 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 21971, published on May 26, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 22, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1992 and extends through March 31, 1993.

Effective on January 29, 1993, you are directed to amend the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted twelve-month limit[1]
Sublevels in the aggregate	
350	134,949 dozen.
363	16,322,127 numbers.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1996 Filed 1–26–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in El Salvador

January 22, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit for the new agreement year.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the Republic of El Salvador have agreed to establish a new Bilateral Textile Agreement, effected by exchange of notes dated October 29, 1992 and December 17, 1992 for cotton textile products in Categories 300/301, produced or manufactured in El Salvador and exported during the period beginning on January 1, 1993 and extending through December 31, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 22, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated October 29, 1992 and December 17, 1992 between the Governments of the United States and the Republic of El Salvador; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 29, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 300/301, produced or manufactured in El Salvador and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of 4,086,867 kilograms.

Imports charged to this category limit for the period January 1, 1992 through December 31, 1992 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Republic of El Salvador.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

COMMODITY FUTURES TRADING COMMISSION

Exemption for Certain Contracts Involving Energy Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed order.

SUMMARY: In response to an application for exemptive relief, the Commodity Futures Trading Commission ("Commission") is proposing to issue an order to exempt from regulation under the Commodity Exchange Act, 7 U.S.C. 1 et seq. ("Act"), certain contracts for the deferred purchase or sale of energy products (as defined herein) that meet specified criteria. This exemptive order is being proposed pursuant to exemptive authority recently granted to the Commission in response to the recent enactment of the Futures Trading Practices Act of 1992 and is intended to provide greater legal certainty regarding trading in these products.

DATES: Written comments must be received by the Commission by the close of business on February 26, 1993.

ADDRESSES: Interested persons should submit their written views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to rules to exempt certain energy contracts.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Telephone: (202) 254–9880 or Joseph B. Storer, Economist, Division of Economic Analysis, Telephone: (202) 254–7303, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION

I. Statutory Background

Section 2(a)(1)(A) of the Act grants the Commission exclusive jurisdiction over accounts, agreements (including any transaction which is of the character of * * * an "option"), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market or any other board of trade, exchange, or market, 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.[1]

On October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law.[2] This legislation added new subsections (c) and (d) to Section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirements of section 4(a) or any other requirement of the Act other than section 2(a)(1)(B).[3] New section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract or transaction will be entered into solely between "appropriate persons", a term defined in new section 4(c)(3).[4]

In granting exemptions, the Commission must also determine specifically that the exchange trading requirements of section 4(a) should not be applied, that the agreement, contract or transaction in question will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act and that the exemption would be consistent with the public interest and the purposes of the Act.[5]

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[1] Sections 4(a), 4c(b) and 4c(c) of the Act; 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA specifically provides, inter alia, that it is unlawful to enter into a commodity futures contract that is not made on or subject to the rules of a board of trade which has been designated by the Commission as a "contract market" for such commodity. 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

[2] Public Law 102–564.

[3] Specifically, section 4(c)(1) (to be codified at 7 U.S.C. 6(c)(1)) provides:

> In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[4] Section 4(c) to be codified at 7 U.S.C. 6(c)(3) provides that: the term "appropriate person" shall be limited to the following persons or classes thereof:

(A) A bank or trust company (acting in an individual or fiduciary capacity).

(B) A savings association.

(C) An insurance company.

(D) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.).

(E) A commodity pool formed or operated by a person subject to regulation under this Act.

(F) A corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000 or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell support, or other agreement by any such entity or by an entity referred to in subparagraph (A), (B), (C), (H), (I), or (K) of this paragraph.

(G) An employee benefit plan with assets exceeding $1,000,000 or whose investment decisions are made by a bank, trust company, insurance company, investment adviser registered under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 et seq.), or a commodity trading advisor subject to regulation under this Act.

(H) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing.

(I) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person.

(J) A futures commission merchant, floor broker, or floor trader subject to regulation under this Act acting on its own behalf or on behalf of another appropriate person.

[5] Specifically, section 4(c)(2) (to be codified at 7 U.S.C. 6(c)(2)) states:

> The Commission shall not grant any exemption * * * from any of the requirements of subsection (a) unless the Commission determines that (A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and (B) the agreement, contract, or transaction—
>
> (i) will be entered into solely between appropriate persons; and
>
> (ii) will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act.

As is frequently the case when Congress grants a regulatory agency authority to act consistent with "the public interest and the purposes of" its enabling statute, little statutory elaboration is given to the full scope of the phrase. As commonly understood, however, an agency, such as the Commission, is to apply this standard against the template of its regulatory scheme. In this regard, the Conference Report states that the "public interest" under section 4(c) includes "the national public interests noted in the [Act], the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. The Conference Report goes on to state that "[t]he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. However, the Conference Report on the 1992 Act also states that:

> The Conferees do not intend for this provision to allow an exchange or any other existing market to oppose the exemption of a new product solely on

II. The Application For Exemptive Relief

On November 16, 1992, the Commission received an application for exemptive relief ("application"), submitted pursuant to section 4(c) of the Act, on behalf of entities engaged in commercial businesses related to crude oil, natural gas and other energy-related commodities derived therefrom with respect to the purchase and sale of these commodities through contracts that satisfy certain, specified criteria.[6] The particular entities filing the application (collectively referred to herein as, the "Energy Group") represent that each is a producer, processor and/or merchandiser of crude oil, natural gas and/or other crude oil or natural gas products, or is otherwise engaged in a commercial business in such commodities.[7]

The application states that the requested exemption, described therein, would:

> Preclude participation * * * by members of the general public and * * * limit the * * * [relief] to those appropriate persons who, in the context of their business activities, incur risks related to the underlying physical commodities. In addition, the exemption will require that each * * * Contract [covered by the relief would] impose binding delivery obligations on the parties (with the exception of those covered by the proviso, as discussed below) and that it not provide either party with the unilateral right to require its counterparty to offset the contract by cash settlement. The Contracts will therefore expose the parties to substantial economic risk of a commercial nature. Further, the Contracts will be entered into between two parties each of which acts as principal, and the material economic terms, including credit terms of the transaction will be subject to individual negotiation between the parties.

November 16 application, p.4.

It further noted that the requested exemption would:

> Make it clear that [the] * * * Contracts which satisfy the criteria * * * [of the exemption], regardless of the energy-related commodity market in which they are entered into, are excluded from the Act. This will allow commercial entities to conduct their necessary business activities in the domestic and foreign oil and gas markets, as well as the markets for other energy-related commodities (including products and by products of oil and gas), with the requisite degree of legal certainty and comfort.
>
> Second, the exemption focuses on the commercial nature of the parties and the fact that the * * * Contracts impose binding delivery obligations, thereby establishing a "bright line" test. The exemption recognizes that, regardless of the purposes for which the parties enter into a * * * Contract, they may be required by their counterparty to make or receive delivery pursuant to the terms of the Contract. This will permit commercial entities to enter into * * * Contracts for hedging, risk management, pricing or other commercial purposes, provided that the terms of the agreements impose binding delivery obligations, the parties are legally permitted to make and receive delivery and are capable of doing so. In this respect as well, the exemption will facilitate the use of * * * Contracts for legitimate and necessary business purposes.
>
> Third, the exemption recognizes the ability of commercial entities to settle * * * Contracts through the full range of commercially available forms of settlement, either in accordance with the terms of the Contracts, or, if another form of settlement is desired, with counterparty consent.

Id. at 5.

The application also discussed the public interest to be served by the Commission's issuance of an order granting this request for an exemption. In this regard, the application reasons that:

> The exemption proposed herein is in the public interest, is consistent with the purpose of the Act and satisfies the criteria established under section 4(c) * * * In the present instance, the proposed exemption will have no adverse effect on "the prevention of fraud" or the protection of the public. Those entities which satisfy * * * the proposed exemption are sufficiently sophisticated and knowledgeable to protect their own interest in connection with * * * Contracts, regardless of whether the regulatory protections afforded under the Act are available * * *
>
> [T]he exemptive relief requested herein is necessary in order to permit commercial commodity markets to function effectively and to accomplish these objectives. Such relief will provide commercial entities with the level of certainty and clarity required in order to enable them to conduct their business activities, which will clearly advance the public interest * * *
>
> In addition, the financial integrity of the markets for such * * * Contracts will be adequately addressed by the limitation of appropriate persons and the measures adopted by each market participant to limit its credit exposure.
>
> Moreover, due to the individualization of * * * Contracts, and the customization of their terms to meet the specific needs of the counterparties, such Contracts lack the degree of standardization and fungibility required in order to permit them to be traded on an exchange. The application of the exchange trading requirement to such contracts, therefore, is not only unnecessary for the protection of the public and the advancement of the purposes of the Act, but would in fact be detrimental to the functioning of commercial markets and the realization of the public interests identified by Congress.

application, pp. 12–13.

Based on representations contained in the November 16 letter as to the matters for which relief is requested, the Commission is considering granting an Order of Exemptive Relief as set forth below.

III. The Proposed Order

The proposed exemption would apply to contracts for the purchase and sale of crude oil, natural gas, natural gas liquids or other energy products, including products derived from crude oil, natural gas or natural gas liquids, and used primarily as an energy source (an "Energy Contract"),[8] which are executory on, or which are entered into, on or after the date of publication in the **Federal Register** of a final exemptive order with respect to the application, and which:

(1) Are entered into by and between commercial participants who, in connection with their business activities, incur risks related to the underlying physical commodities, have the capacity to make or take delivery under the terms of the contracts, and are also eligible "appropriate persons";

(2) Are bilateral contracts between two parties acting as principals, the material economic terms of which are subject to individual negotiation by the parties; and

(3) Impose binding obligations on the parties to make and receive delivery of the underlying commodity or commodities, with no right of either party to effect a cash settlement of their obligations without the consent of the other party, *provided, however*, that the parties may enter into a subsequent book out contract which provides for settlement of the obligation in a manner

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grounds that it may compete with or draw market share away from the existing market.

H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[6] A copy of the application is available from the Secretary of the Commission.

[7] The submission represents that each of the members of the Energy Group is an active participant in the principal domestic and international markets for crude oil and/or natural gas and the products and by-products thereof, which regularly engages in the purchase of such commodities for use in its business operations, the sale of such commodities for use by end-users and the transport of such commodities through pipeline, vessel or truck deliveries.

[8] The Commission has described the operation of one such market in a particular energy commodity, the Brent crude oil market, in greater detail in its Statutory Interpretation Concerning Forward Contracts, 55 FR 39188 (Sept. 25, 1990). In addition, the Commission, in connection with contract market designations for light sweet crude oil, sour crude oil, residual fuel oil, heating oil, gasoline and natural gas, has described in detail the cash markets for these energy commodities. (See memoranda from the Division of Economic Analysis to the Commission dated June 19 and August 12, 1981, for heating oil and gasoline, August 14, 1989, for residual fuel oil, February 13, 1990, for natural gas and December 6, 1991, for sour crude oil). The cash markets for these energy commodities share a number of common characteristics with the Brent cash and forward markets.

other than by physical delivery of the commodity specified in the contract.[9]

The exemption proposed to be granted would limit participation in Energy Contracts to those commercial participants who are eligible appropriate persons.[10] The Commission is proposing to limit the class of appropriate persons eligible to enter into Energy Contracts pursuant to the proposed exemption to the following entities: (1) A bank or trust company (acting in an individual or fiduciary capacity) which is legally permitted and otherwise authorized to engage in such transactions; (2) a corporation, partnership, proprietorship, organization, trust, or other business entity with a net worth exceeding $1,000,000 or total assets exceeding $5,000,000, or the obligations of which under the agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keepwell support, or other agreement by any such entity or by an entity referred to in subsections (H), (I) or (J) of section 4(c)(3); (3) any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing; (4) a broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) acting on its own behalf or on behalf of another appropriate person (as set forth herein); and (5) a futures commission merchant subject to regulation under the Act acting on its own behalf or on behalf of another appropriate person (as set forth herein). Furthermore, the proposed exemption would limit participation in the Energy Contracts to those eligible persons who, in connection with their business activities, incur risks, in addition to price risk, related to the underlying physical commodities and have the capacity to make or take delivery under the terms of the contracts. Such capacity entails the ability to produce, refine, store, transport or otherwise tangibly control the physical commodity. In entering into an Energy Contract, a person would need to have a reasonable basis to believe that its counterparty is an appropriate person at the time of entering into the Energy Contract.

In addition, the exemption would require that each Energy Contract, by its terms, impose binding delivery obligations on the parties and that it not provide either party with the unilateral right to require its counterparty to offset the contract or to discharge its obligation under the contract by a cash payment. Thus, the exemption proposed to be granted would provide relief for transactions which expose the counterparties to the substantial economic risk of any commercial cash market transaction in which delivery of the product is required pursuant to the terms of the contract. Further, the relief would be limited to contracts entered into between two parties, each of which acts as principal,[11] and the material economic terms of which (including, without limitation, price, quantity, quality, location and credit terms) would be subject to individual negotiation between the parties.[12]

The proposed relief would recognize the ability of commercial entities to satisfy or otherwise settle their obligations under an Energy Contract through several types of commercially acceptable arrangements, including the seller's passage of title and the purchaser's payment and acceptance of the commodity underlying the contract.[13] Passage of title and acceptance of the commodity would constitute performance regardless of whether the buyer lifts or otherwise takes delivery of the cargo or receives pipeline delivery, or as part of a subsequent separate contract, passes title to another intermediate purchaser in a "chain", "string" or "circle" within a "chain".

The physical delivery obligation specified in an Energy Contract entered into between two parties could also be satisfied through various other arrangements between the parties. For example, in the case of crude oil and crude oil products, the physical delivery obligation could be satisfied by exchanging one quality, grade or product type for another quality, grade or product type. Such transactions are referred to in the industry as "grade and/or quality swaps" or "exchanges". In addition, the obligation could be satisfied by location swaps.

In addition, two parties to an Energy Contract would be permitted to enter into a bilateral "netting" or other similar agreement, subsequent to the execution of an Energy Contract. Under such an agreement, the two parties agree to "net" or "book out" the obligations imposed under two or more Energy Contracts which provide for delivery of the same commodity at the same delivery location and during the same delivery period and thus cancel each other. Such a netting agreement can be entered into at the time that the canceling Energy Contract is originated, or subsequently, through a different agreement, at a time prior to when performance on the contracts otherwise would be due.[14]

The proposed exemption would allow such netting agreements whereby the parties to the original contract could enter into a subsequent agreement ("second contract") which provides for settlement in a manner other than by physical delivery. The second contract could not, under the exemption, stand alone as an independent transaction; it would be required to be incidental to a pre-existing, *bona fide* Energy Contract. Moreover, the establishment of the second contract could not be made a pre-condition of the initial Energy Contract; *e.g.*, one party could not require its counterparty to agree in advance to the establishment of the second contract as a condition of acceptance of the initial Energy Contract. Accordingly, the second contract would be required to be a separately negotiated agreement and, if the counterparty subsequently did not agree to the second contract, the parties would remain obligated in accordance with the binding delivery requirements imposed under the initial Energy Contract.

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[9] The terms "book out" (crude oil) and "book transfer" (petroleum products) are cash market terms that generally refer to the cancellation or netting of physical delivery obligations between parties, the primary purposes of which is to prevent or minimize the uneconomic movement of the physical commodity.

[10] As was more fully discussed above, section 4(c)(2) of the Act provides that agreements, contracts, or transactions exempted from the Act must be entered into solely between "appropriate persons," and section 4(c)(3) enumerates those persons or classes thereof that are deemed to constitute such "appropriate persons."

[11] The Commission does not intend that the proposed condition that an Energy Contract be a principal-to-principal transaction preclude the use of brokers or other agents in connection with the negotiation of, or the performance or settlement of the obligations under, a contract, as is discussed more fully below.

[12] The Commission does not intend to preclude the parties to an Energy Contract from establishing bilateral collateral or other credit protection arrangements, such as a letter of credit or other documentation of funds availability, to address credit issues.

[13] Cash market transactions of crude oil, petroleum products, natural gas and natural gas liquids, as well as other energy related commodities in which physical delivery is made, are effected through payment by the buyer and transfer of title of ownership by the seller to the buyer.

[14] Rather than agreeing to net particular canceling Energy Contracts, two frequent counterparties, for purposes of ease of administration, may use a "master," or other form of bilateral agreement to achieve the same result. This master agreement, established prior to entry into the Energy Contracts, provides that the two counterparties agree to net Energy Contracts of the same commodity at the same location and during the same delivery period. This agreement replaces the practice that counterparties agree to net particular canceling Energy Contracts, either at the time the second contract is entered into, or by a separate, subsequent agreement, with the understanding that all contracts between them which cancel each other will be netted, unless they have agreed not to apply the prior netting agreement at the time of entry into an Energy Contract.

Commercial entities also may satisfy their obligations under an Energy Contract through a subsequent, separate agreement, with counterparty consent, when three or more parties, upon finding that they formed a "chain", or a "string" or "circle" within a "chain", agree prior to delivery to "book out" and satisfy their obligations through separately negotiated cash payments or other mutually acceptable terms. This type of arrangement would be covered under the exemption even if the title does not, or is not deemed to, pass.[15]

Such arrangements are common in the energy cash market.[16] They are standard commercial practice to avoid and/or minimize transaction costs, non-economic payments and product movements, and for reducing the number of transactions necessary to perform all obligations between parties pursuant to the contracts which are "booked out."

In order to provide clarity and legal certainty concerning contracts involving energy products,[17] the Commission is hereby proposing to issue an order pursuant to section 4(c) of the Act generally to exempt from most provisions of the Act those activities between eligible parties involving Energy Contracts, as described above.[18] As is noted above, section 4(c) does not permit the Commission to grant exemptions from section 2(a)(1)(B) of the Act.[19] Finally the submitters of the application do not seek, nor is the Commission proposing, an exemption from sections 6(c), 6(d), and 9(a)(2) of the Act to the extent these sections apply to a manipulation or attempted manipulation of the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market.

IV. Particular Issues for Comment

As is also noted above, the Commission, pursuant to section 4(c) of the Act, is authorized to "exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (section 4(a) of the Act) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction)" from the prohibition on off-exchange futures trading set forth in section 4(a) or from any other provision of the Act, "if the Commission determines that the exemption would be consistent with the public interest." In addition, in granting any exemption under section 4(c) from any of the requirements of section 4(a), the Commission must determine that certain exchange trading requirements under section 4(a) of the Act should not be applied to the agreement, contract or transaction, that the exemption would be consistent with the public interest and the purposes of the Act, that the agreement, contract or transaction will be entered into solely between "appropriate persons" (as defined in section 4(c)(3)) and that the exemption "will not have a material adverse effect on the ability of the Commission or any contract market or discharge in regulatory or self-regulatory duties under this Act."[20] While the application for exemption identifies certain potential bases for making these determinations, the Commission is specifically interested in receiving written comments addressing these issues.

In addition to seeking comment on the above, the Commission is also seeking other written comments relevant to the application for exemptive relief, its proposed order, and the following specific issues:

(1) The list of eligible "appropriate persons" that would be permitted, if other qualifications are met, to engage in Energy Contracts is set forth above. In light of the fact that the proposed exemption is applicable only to commercial participants who, in connection with their business activities, incur risks related to the underlying physical commodities, is this list, which does not include all categories of "appropriate persons" set forth in section 4(c)(2) of the Act, properly delineated or should it be supplemented or reduced? In particular, should floor brokers or floor traders as described in section 4(c)(2)(J) of the Act be included? To what extent do broker-dealers and futures commission merchants participate in these markets, either acting on their own behalf or on behalf of other appropriate persons? Should commodity pools be includes as "appropriate person" category and if so, should minimum net worth or other criteria be applied? Are the net worth and total asset criteria applicable to corporations, partnerships, proprietorships, organizations, trust, and other business entities as described above set at appropriate levels?

(2) Energy Contracts as described above involve the purchase or sale of crude oil, natural gas, natural gas liquids, or other energy products, including products derived from crude oil, natural gas or natural gas liquids, used primarily as an energy source. Does this adequately describe the energy-related products to which the cash market practices described in this release apply?

(3) Describe the multilateral and/or bilateral payments and obligation netting arrangements currently in use in the energy cash market. What limitations, if any, should the Commission impose on their use?

(4) Does the use of brokers by and between parties to Energy Contracts, as set forth above, accurately reflect current cash market practice?

(5) Is there additional information about the cash markets in crude oil, natural gas and other energy products that may be relevant to the Commission's consideration of the application?

(6) In light of these current cash market practices, what effect on contract markets could be anticipated by granting the exemption, in particular with regard to the

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[15] The requirement that Energy Contracts be bilateral and subject to individual negotiation is intended to assure that the transactions would not be subject to a clearing system where the credit risk of individual participants of the system to each other, with respect to a transaction to which each is a counterparty, would effectively be eliminated and replaced by a universal or substituted counterparty or other system of mutualized risk of loss that binds members generally whether or not they are counterparties to the original transaction.

[16] *See* n. 8, *supra*. The use of brokers, agents or a third-party to identify the existence of a "chain" or to facilitate the "book out" of transactions forming a "chain" would not be deemed to constitute a clearing system. The Commission has been advised that there are a number of third-party brokers and agents who provide this service in the energy cash market.

[17] In granting exemptive authority to the Commission under new section 4(c), the Conferees on the 1992 Act

> recognize[d] the need to create legal certainty for a number of existing categories of instruments which trade today outside the forum of a designated contract market.
>
> These instruments may contain some features similar to those of regulated exchange-traded products but are sufficiently different in their purpose, function, design, or other characteristics that, as a matter of policy, traditional futures regulation and the limitation of trading to the floor of an exchange may be unnecessary to protect the public interest and may create an inappropriate burden on commerce.

H.R. Rep. No. 978, 102 Cong., 2d Sess. 80 (1992).

[18] In proposing this order, the Commission does not intend to determine whether Energy Contracts are subject to the Act. Moreover, the exemption does not affect the applicability to Energy Contracts of exemptions or interpretations previously issued by the Commission or its staff, including the Statutory Interpretation Concerning Forward Transactions, 55 FR 39188 (Sept. 25, 1990) or the forward contract exclusion set forth in Section 2(a)(1) of the Act (the Act does not apply to "any sale of any cash commodity for deferred shipment or delivery").

[19] The Commission's proposal, if adopted, would not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), or antifraud statutes of general applicability, to the exempted Energy Contracts or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations. H.R. Rep. No. 978, 102d Cong., 2d Sess. 83 (1992).

[20] The Conference Report on the 1992 Act provides the Commission with additional guidance in making its determinations in this regard. H. Rep. No. 978, 102d Cong., 2d. Sess. 78–81 (1992).

maintenance of the integrity and soundness of the markets?

(7) Should Energy Contracts as described in the release be exempt from section 4b of the Act?

Issued in Washington, DC, on January 21, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–1879 Filed 1–26–93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of revised rates.

SUMMARY: This notice provides the updated adjusted standardized amounts, DRG relative weights, outlier thresholds, and beneficiary cost-share per diem rates to be used for FY 1993 under the CHAMPUS DRG-based payment system. It also describes the non-regulatory changes made to the CHAMPUS DRG-based payment system in order to conform to changes made to the Medicare Prospective Payment System (PPS).

EFFECTIVE DATE: The rates and weights contained in this notice are effective for admissions occurring on or after October 1, 1992.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Program Development Branch, Aurora, CO 80045–6900.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238. The charge for the **Federal Register** is $4.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson Program Development Branch, OCHAMPUS, telephone (303) 361–1172.

To obtain copies of this document, see the "**ADDRESSES**" section above. Questions regarding payment of specific claims under the CHAMPUS DRG-based payment system should be addressed to the appropriate CHAMPUS contractor.

SUPPLEMENTARY INFORMATION: The final rule published on September 1, 1987, (52 FR 32992) set forth the basic procedures used under the CHAMPUS DRG-based payment system. This was subsequently amended by final rules published on August 31, 1988 (53 FR 33461), October 21, 1988 (53 FR 41331), December 16, 1988 (53 FR 50515), May 30, 1990 (55 FR 21863), and October 22, 1990 (55 FR 42560).

An explicit tenet of these final rules, and one based on the statute authorizing use of DRGs by CHAMPUS, is that the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, and that, whenever practicable, the CHAMPUS system will follow the same rules that apply to the Medicare PPS.

We are not initiating any changes to the CHAMPUS DRG-based payment system, but this notice describes certain changes effective for the sixth year of its operation which are necessary in order to conform to changes to the Medicare PPS. These changes were published as a proposed rule on June 4, 1992 (57 FR 23618), and the final rule was published on September 1, 1992 (57 FR 39746). We refer the reader to these rules for detailed discussions of the changes. In addition, this notice updates the rates and weights in accordance with our previous final rules. The actual changes we are making, along with a description of their relationship to the Medicare PPS, are detailed below.

I. Medicare PPS Changes Which Affect the CHAMPUS DRG-Based Payment System

Following is a discussion of the changes the Health Care Financing Administration (HCFA) has made to the Medicare PPS which affect the CHAMPUS-DRG-based payment system.

A. DRG Classification

Under both the Medicare PPS and the CHAMPUS DRG-based payment system, cases are classified into the appropriate DRG by a Grouper program. The Grouper classifies each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). The Grouper used for the CHAMPUS DRG-based payment system is the same as the current Medicare Grouper with two modifications. The CHAMPUS system has replaced Medicare DRG 435 with two age-based DRGs (900 and 901), and we have implemented thirty-four (34) neonatal DRGs in place of Medicare DRGs 385 through 390. Grouping for all other DRGs under the CHAMPUS system is identical to the Medicare PPS.

For FY 1993 HCFA will implement a number of classification changes, including surgical hierarchy changes, refinements to the complications and comorbidities list, and coding changes in the Grouper. The CHAMPUS Grouper will duplicate all changes made to the Medicare Grouper.

B. Wage Index

The CHAMPUS DRG-based payment system will continue to use the same wage index amounts used for the Medicare PPS. This includes all updates to the wage indexes which are effective on or after October 1, 1992, as well as any delays in implementing those updates. Since we use the wage index amounts calculated by HCFA, any changes which are phased in over several years for the Medicare PPS also will be phased in for CHAMPUS. In addition, we duplicate all changes with regard to the wage index for specific hospitals which are redesignated by the Medicare Geographic Classification Review Board.

C. Hospital Market Basket

We will update the adjusted standardized amounts according to the final updated hospital market basket used for the Medicare PPS. According to HCFA's September 1 final rule, the projected market basket is 4.1 percent: To be reduced by 1.55 percentage points for urban areas and 0.55 percentage points for rural areas.

D. Payment for Blood Clotting Factor

The Health Care Financing Administration agreed with the Prospective Payment Commission's recommendation that the special add-on payments for hemophilia blood clotting factor not be reinstated. Accordingly, for admissions occurring on or after October 1, 1992, CHAMPUS will no longer make additional payments for these factors.

E. Percentage Reduction for Capital Payments

In the past we have reduced payments for capital expenses based on the percentage reduction used for the Medicare PPS. This percentage has not been as straightforward since Medicare began their transition to DRG-based capital payments. However, we believe the budget neutrality target of a ten percent reduction which is being used under the Medicare PPS for FY 1993 provides a reasonable amount for CHAMPUS to use. Therefore, although we are not adopting the Medicare PPS methodology for payment of capital expenses at this time, we will reduce capital payments by ten percent effective for inpatient days occurring on or after October 1, 1992.

II. Medicare Changes Which Are Not Being Adopted by CHAMPUS

The Health Care Financing Administration is implementing a number of changes related to outlier payments. In addition to the routine changes to the outlier thresholds, the arithmetic mean length-of-stay rather than the geometric mean is to be used to calculate the day outlier per diem, and the marginal payment factor for day outliers is reduced from 60 percent to 55 percent.

Our regulation specifically provides that the geometric mean length-of-stay will be used to calculate both long-stay and short-stay outlier per diems. President Bush imposed a moratorium on regulation changes in his January 28, 1992, memorandum on reducing the burden of government regulations. Therefore, until that moratorium expires we cannot change our regulation to allow use of the arithmetic mean instead of the geometric mean. Since all the outlier changes implemented by HCFA are interrelated, we have elected not to make any outlier changes at this time. It is our intention to change our regulation at the earliest possible opportunity to permit these changes, and at that time we will adopt all the Medicare PPS outlier changes.

III. Other Related Information

For FY 1993 there is no change to the cost-to-charge ratio used for the CHAMPUS DRG-based payment system. Except for determining cost outlier payments for children's hospitals, the current ratio used is 0.63 which is increased to 0.64 to account for bad debts. For children's hospital cost outliers, the cost-to-charge ratio used is 0.70.

IV. Updated Rates and Weights

The tables provide the rates and weights to be used under the CHAMPUS DRG-based payment system during FY 1993 and which are a result of the changes described above. The implementing regulations for the CHAMPUS DRG-based payment system are in 32 CFR part 199.

Dated: January 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

Editorial Note—This table will not appear in the Code of Federal Regulations.

Table 1—National Urban and Rural Adjusted Standardized Amounts, Labor/Nonlabor, and Cost-Share Per Diem

The following summary provides the adjusted standardized amount and the cost-share per diem for beneficiaries other than dependents of active-duty members.

The adjusted standardized amounts are effective for admissions occurring on or after October 1, 1992.

National Large Urban Adjusted Standardized Amount	$3,324.87
Labor portion	2,354.87
Nonlabor portion	970.20
National Other Urban Adjusted Standardized Amount	3,220.31
Labor portion	2,280.62
Nonlabor portion	939.69
National Rural Adjusted Standardized Amount	3,208.31
Labor portion	2,426.45
Nonlabor portion	781.86

The cost-share per diem is effective for inpatient days of care occurring on or after October 1, 1992.

Cost-share per diem for beneficiaries other than dependents of active-duty members	$265.00

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CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
1	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.9996	11.8	8.5	1	40	25
2	CRANIOTOMY FOR TRAUMA AGE >17	4.1498	12.7	8.3	1	40	25
3	CRANIOTOMY AGE 0-17	2.7901	8.7	5.4	1	37	22
4	SPINAL PROCEDURES	2.1195	7.7	5.7	1	37	22
5	EXTRACRANIAL VASCULAR PROCEDURES	1.7182	4.9	4.0	1	23	12
6	CARPAL TUNNEL RELEASE	0.6620	2.8	1.9	1	23	9
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.6858	11.0	6.4	1	38	23
8	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.0364	3.3	2.5	1	22	10
9	SPINAL DISORDERS & INJURIES	1.7521	9.5	6.6	1	38	23
10	NERVOUS SYSTEM NEOPLASMS W CC	1.7034	9.9	6.4	1	38	23
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.9906	6.4	3.6	1	35	20
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	2.0919	12.2	6.9	1	38	23
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.8963	6.6	5.3	1	37	20
14	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.4548	7.9	5.5	1	37	22
15	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	0.7996	4.0	3.1	1	27	12
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.6417	7.2	4.9	1	36	21
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.9793	5.3	3.9	1	35	19
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.9987	6.0	4.4	1	36	19
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.7346	4.8	3.3	1	35	17
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.2381	10.1	7.2	1	39	24
21	VIRAL MENINGITIS	0.5973	3.9	3.3	1	20	10
22	HYPERTENSIVE ENCEPHALOPATHY	0.7770	3.9	3.1	1	22	11
23	NONTRAUMATIC STUPOR & COMA	0.7266	4.3	2.3	1	34	13
24	SEIZURE & HEADACHE AGE >17 W CC	0.9070	5.0	3.7	1	35	16
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.5678	3.6	2.7	1	23	11
26	SEIZURE & HEADACHE AGE 0-17	0.5310	3.1	2.4	1	18	8
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	2.2393	7.2	3.8	1	35	20
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3970	6.8	3.5	1	35	20
29	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	0.9198	4.9	3.1	1	35	18
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.6576	3.2	2.1	1	24	10
31	CONCUSSION AGE >17 W CC	0.6923	3.7	2.6	1	34	13
32	CONCUSSION AGE >17 W/O CC	0.4658	2.3	1.6	1	13	6
33	CONCUSSION AGE 0-17	0.3132	1.5	1.3	1	4	2
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.4664	7.4	4.4	1	36	21
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.8846	5.4	2.9	1	34	19
36	RETINAL PROCEDURES	0.7563	1.9	1.6	1	7	4
37	ORBITAL PROCEDURES	0.9878	3.7	2.7	1	29	12
38	PRIMARY IRIS PROCEDURES	0.3584*	2.8	2.1	1	16	16
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6371	1.7	1.4	1	7	4
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.7758	3.9	2.3	1	34	14
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4442	1.5	1.3	1	5	3
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.8228	2.6	1.9	1	15	7
43	HYPHEMA	0.2782	3.6	3.1	1	16	9
44	ACUTE MAJOR EYE INFECTIONS	0.5096	4.0	3.4	1	19	10
45	NEUROLOGICAL EYE DISORDERS	0.6023	3.2	2.5	1	19	9
46	OTHER DISORDERS OF THE EYE AGE >17 W CC	1.0115	5.0	3.9	1	35	17
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4947	3.0	2.3	1	21	9
48	OTHER DISORDERS OF THE EYE AGE 0-17	0.5759	4.0	2.9	1	28	12
49	MAJOR HEAD & NECK PROCEDURES	2.4159	4.7	3.4	1	35	16
50	SIALOADENECTOMY	0.7252	1.7	1.5	1	5	3

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.6278*	2.9	2.1	1	19	19
52	CLEFT LIP & PALATE REPAIR	0.7215	2.0	1.7	1	9	5
53	SINUS & MASTOID PROCEDURES AGE >17	0.8555	2.3	1.7	1	13	6
54	SINUS & MASTOID PROCEDURES AGE 0-17	0.8426	2.4	1.7	1	16	7
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.6944	1.9	1.5	1	9	5
56	RHINOPLASTY	0.7195	1.6	1.3	1	6	3
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.5300	2.4	2.1	1	11	6
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.5280	1.9	1.5	1	9	4
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.4023	1.4	1.3	1	4	2
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.3633	1.4	1.2	1	4	2
61	MYRINGOTOMY W TUBE INSERTION AGE >17	0.8658	2.3	1.6	1	16	7
62	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.7610	3.0	2.2	1	21	9
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.1811	2.9	2.3	1	15	7
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.3267	9.6	6.0	1	38	23
65	DYSEQUILIBRIUM	0.4927	2.9	2.3	1	14	7
66	EPISTAXIS	0.4783	3.3	2.9	1	15	8
67	EPIGLOTTITIS	0.6072	3.5	3.1	1	13	7
68	OTITIS MEDIA & URI AGE >17 W CC	0.7437	4.3	3.6	1	22	11
69	OTITIS MEDIA & URI AGE >17 W/O CC	0.4888	3.2	2.6	1	17	8
70	OTITIS MEDIA & URI AGE 0-17	0.4180	3.0	2.6	1	14	7
71	LARYNGOTRACHEITIS	0.3227	2.3	1.9	1	10	5
72	NASAL TRAUMA & DEFORMITY	0.3927	1.6	1.4	1	5	3
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.7044	3.6	2.6	1	24	11
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.4204	2.7	2.1	1	15	7
75	MAJOR CHEST PROCEDURES	3.2508	10.6	8.6	1	40	25
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.5487	10.1	7.3	1	39	24
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.3651	5.7	3.7	1	35	20
78	PULMONARY EMBOLISM	1.5664	8.1	6.9	1	38	22
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	2.3047	10.5	8.1	1	40	25
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	1.2299	6.1	4.9	1	35	17
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.0586	5.5	4.4	1	36	17
82	RESPIRATORY NEOPLASMS	1.5175	7.2	4.8	1	36	21
83	MAJOR CHEST TRAUMA W CC	1.1856	7.3	4.8	1	36	21
84	MAJOR CHEST TRAUMA W/O CC	0.5670	2.6	2.1	1	13	6
85	PLEURAL EFFUSION W CC	1.5155	7.6	5.4	1	37	22
86	PLEURAL EFFUSION W/O CC	0.9053	4.8	3.3	1	35	18
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.9496	7.8	5.8	1	37	22
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	1.0977	6.1	4.9	1	34	17
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.2264	6.4	5.3	1	34	17
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7465	4.6	4.1	1	18	10
91	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.6091	3.9	3.3	1	17	9
92	INTERSTITIAL LUNG DISEASE W CC	1.4810	7.2	5.1	1	37	22
93	INTERSTITIAL LUNG DISEASE W/O CC	0.8664	5.3	4.4	1	31	15
94	PNEUMOTHORAX W CC	1.1622	5.9	4.9	1	32	16
95	PNEUMOTHORAX W/O CC	0.6237	4.7	3.7	1	30	14
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.9687	5.3	4.4	1	28	14
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6381	3.8	3.2	1	18	10
98	BRONCHITIS & ASTHMA AGE 0-17	0.5231	3.1	2.7	1	14	7
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.8240	3.6	2.8	1	22	10
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5638	2.6	2.0	1	14	7

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	1.0399	5.1	3.9	1	35	17
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.7252	5.1	2.7	1	34	15
103	HEART TRANSPLANT	-	-	-	-	-	
104	CARDIAC VALVE PROCEDURES W CARDIAC CATH	8.7602	17.0	14.4	2	46	31
105	CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	6.0086	10.7	9.4	1	41	25
106	CORONARY BYPASS W CARDIAC CATH	6.2730	11.5	10.6	3	34	22
107	CORONARY BYPASS W/O CARDIAC CATH	4.9402	9.1	8.4	2	26	17
108	OTHER CARDIOTHORACIC PROCEDURES	5.2889	10.0	8.5	1	40	24
109	NO LONGER VALID	-	-	-	-	-	
110	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.4202	10.6	8.5	1	40	25
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.5163	6.8	5.9	1	31	17
112	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	2.2493	4.5	3.5	1	30	14
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	3.3146	15.8	11.9	1	43	28
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6565	10.3	7.7	1	39	24
115	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	4.6156	12.8	10.6	1	42	27
116	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GENERATOR PRO	2.9665	5.5	4.1	1	36	18
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.6573	4.3	3.1	1	35	15
118	CARDIAC PACEMAKER DEVICE REPLACEMENT	2.4908	5.1	3.2	1	35	20
119	VEIN LIGATION & STRIPPING	0.7029	2.8	1.9	1	19	8
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.9672	11.4	7.1	1	39	24
121	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	2.2099	7.9	6.8	1	36	20
122	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.6507	5.9	5.2	1	28	15
123	CIRCULATORY DISORDERS W AMI, EXPIRED	2.0296	4.2	2.3	1	34	15
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.3642	4.3	3.3	1	31	14
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	0.9101	2.6	2.0	1	15	7
126	ACUTE & SUBACUTE ENDOCARDITIS	3.4824	14.5	10.9	1	42	27
127	HEART FAILURE & SHOCK	1.2162	6.4	5.0	1	36	19
128	DEEP VEIN THROMBOPHLEBITIS	0.8187	6.6	5.7	1	34	18
129	CARDIAC ARREST, UNEXPLAINED	2.0920	4.4	2.4	1	34	17
130	PERIPHERAL VASCULAR DISORDERS W CC	1.1271	7.5	5.7	1	37	22
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6835	5.1	4.0	1	36	18
132	ATHEROSCLEROSIS W CC	1.2630	3.4	2.7	1	21	10
133	ATHEROSCLEROSIS W/O CC	0.8941	2.7	2.1	1	16	8
134	HYPERTENSION	0.5972	3.3	2.7	1	17	9
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.7510	3.4	2.6	1	22	10
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7166	2.7	2.2	1	14	7
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	1.1408	3.6	2.2	1	31	12
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8230	3.9	3.0	1	24	11
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.5606	2.8	2.2	1	15	7
140	ANGINA PECTORIS	0.7611	3.3	2.7	1	18	9
141	SYNCOPE & COLLAPSE W CC	0.6775	3.5	2.8	1	21	10
142	SYNCOPE & COLLAPSE W/O CC	0.5050	2.5	2.1	1	13	6
143	CHEST PAIN	0.5367	2.3	2.0	1	11	5
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.5809	6.5	4.7	1	36	21
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.8887	3.7	2.9	1	24	11
146	RECTAL RESECTION W CC	2.6225	10.2	9.6	3	27	19
147	RECTAL RESECTION W/O CC	1.8807	8.1	7.8	3	16	12
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4569	12.5	10.7	2	42	27
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.6752	7.4	6.6	1	29	17
150	PERITONEAL ADHESIOLYSIS W CC	2.2508	9.4	7.6	1	39	24

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
151	PERITONEAL ADHESIOLYSIS W/O CC	1.2200	5.6	4.6	1	36	17
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	2.0346	9.2	8.2	1	35	21
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0805	5.5	5.0	1	24	13
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	3.6725	11.7	9.4	1	41	26
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.8999	7.2	6.2	1	31	17
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.4738	7.6	4.9	1	36	21
157	ANAL & STOMAL PROCEDURES W CC	0.9577	4.5	3.4	1	31	14
158	ANAL & STOMAL PROCEDURES W/O CC	0.5887	2.5	2.0	1	13	6
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.1102	5.2	3.9	1	33	15
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.8486	3.2	2.6	1	17	8
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	0.7976	3.3	2.6	1	20	9
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.6162	1.7	1.5	1	6	3
163	HERNIA PROCEDURES AGE 0-17	0.4674	1.7	1.4	1	6	3
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	1.9032	8.4	7.5	1	30	18
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.1216	4.9	4.1	1	25	13
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.0159	4.0	3.4	1	17	9
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.6897	2.8	2.5	1	9	6
168	MOUTH PROCEDURES W CC	2.2548	5.4	4.0	1	36	17
169	MOUTH PROCEDURES W/O CC	0.7113	2.3	1.8	1	13	6
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8123	10.9	7.8	1	39	24
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1481	5.0	3.7	1	35	17
172	DIGESTIVE MALIGNANCY W CC	1.7578	8.1	5.4	1	37	22
173	DIGESTIVE MALIGNANCY W/O CC	1.1897	5.1	3.9	1	35	16
174	G.I. HEMORRHAGE W CC	1.0341	4.8	3.9	1	25	13
175	G.I. HEMORRHAGE W/O CC	0.6230	3.4	2.8	1	17	9
176	COMPLICATED PEPTIC ULCER	0.9397	4.8	3.8	1	29	14
177	UNCOMPLICATED PEPTIC ULCER W CC	0.7969	4.1	3.6	1	17	10
178	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6795	3.7	3.0	1	20	10
179	INFLAMMATORY BOWEL DISEASE	0.9951	6.1	5.0	1	35	17
180	G.I. OBSTRUCTION W CC	1.0091	6.0	4.4	1	36	18
181	G.I. OBSTRUCTION W/O CC	0.4882	3.4	2.8	1	17	9
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.7386	4.2	3.3	1	26	12
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.5437	3.1	2.5	1	17	8
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.3391	2.7	2.3	1	13	7
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7029	3.4	2.6	1	24	11
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.4628	2.6	2.2	1	14	7
187	DENTAL EXTRACTIONS & RESTORATIONS	0.6036	2.7	2.1	1	17	8
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0766	5.8	4.1	1	36	20
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.4834	3.0	2.4	1	18	9
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.3461	2.0	1.6	1	9	5
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.4240	14.3	11.0	1	42	27
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8892	8.7	7.0	1	39	24
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	3.4112	13.1	10.0	1	41	26
194	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	1.5375	6.6	4.9	1	36	21
195	CHOLECYSTECTOMY W C.D.E. W CC	2.1657	8.9	7.4	1	39	22
196	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6010	7.6	7.1	2	22	14
197	CHOLECYSTECTOMY W/O C.D.E. W CC	1.6080	5.2	3.9	1	35	18
198	CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0063	2.6	2.0	1	17	8
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.1707	9.5	7.0	1	39	24
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	1.4518	5.0	3.2	1	35	19

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	1.9343	8.5	6.8	1	38	23
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.4833	7.7	5.6	1	37	22
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3370	7.2	5.2	1	37	22
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.4038	7.4	5.4	1	37	22
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.6233	7.4	5.0	1	37	22
206	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.5650	3.2	2.3	1	25	10
207	DISORDERS OF THE BILIARY TRACT W CC	0.8410	4.4	3.5	1	27	13
208	DISORDERS OF THE BILIARY TRACT W/O CC	0.5295	2.7	2.1	1	15	7
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY	2.8706	8.3	7.7	2	23	16
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	2.3574	10.2	8.8	1	40	25
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8173	7.3	6.1	1	37	19
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.3523	6.0	4.2	1	36	20
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	2.0638	8.5	6.2	1	38	23
214	BACK & NECK PROCEDURES W CC	2.1092	7.0	5.6	1	37	19
215	BACK & NECK PROCEDURES W/O CC	1.1971	4.0	3.4	1	19	10
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.5103	6.5	4.1	1	36	21
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS	2.5493	10.3	6.3	1	38	23
218	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC	1.6012	7.0	5.2	1	37	21
219	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC	1.0015	3.5	2.9	1	17	9
220	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.8563	2.9	2.2	1	17	8
221	KNEE PROCEDURES W CC	1.9691	7.3	4.7	1	36	21
222	KNEE PROCEDURES W/O CC	1.0788	2.8	2.4	1	12	7
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	0.8249	2.7	2.1	1	11	6
224	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.7905	2.2	1.9	1	8	5
225	FOOT PROCEDURES	0.8137	2.5	2.1	1	12	6
226	SOFT TISSUE PROCEDURES W CC	1.2649	4.6	3.6	1	31	14
227	SOFT TISSUE PROCEDURES W/O CC	0.7843	2.6	2.0	1	13	7
228	MAJOR THUMB OR JOINT PROC.OR OTH HAND OR WRIST PROC W CC	0.8297	2.4	1.8	1	12	6
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.6327	2.0	1.7	1	8	4
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	0.7669	2.7	1.9	1	16	7
231	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.0130	3.4	2.3	1	25	10
232	ARTHROSCOPY	1.0714	3.7	2.1	1	28	11
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.1687	8.0	5.5	1	37	22
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.1826	3.6	2.9	1	21	10
235	FRACTURES OF FEMUR	1.0627	11.3	6.3	1	38	23
236	FRACTURES OF HIP & PELVIS	0.9854	8.6	5.4	1	37	22
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5602	4.6	2.7	1	34	17
238	OSTEOMYELITIS	1.2013	8.7	6.2	1	38	23
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.4004	8.4	5.7	1	37	22
240	CONNECTIVE TISSUE DISORDERS W CC	1.6354	7.9	5.5	1	37	22
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.5836	3.6	2.7	1	26	11
242	SEPTIC ARTHRITIS	1.1639	8.3	6.7	1	38	23
243	MEDICAL BACK PROBLEMS	0.6156	4.3	3.1	1	34	14
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	1.6384	7.5	5.6	1	37	22
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	1.1948	4.2	3.2	1	34	14
246	NON-SPECIFIC ARTHROPATHIES	0.6269	5.3	4.3	1	29	14
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.6141	4.3	3.0	1	34	14
248	TENDONITIS, MYOSITIS & BURSITIS	0.5464	3.6	2.8	1	24	11
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.8577	5.6	4.0	1	35	20
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.7541	3.6	2.9	1	23	11

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.5060	2.2	1.8	1	10	5
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.3586	1.5	1.3	1	5	3
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.7536	4.7	3.2	1	35	17
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.4361	3.0	2.4	1	17	8
255	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.3849	2.2	1.7	1	11	5
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.7319	4.0	2.6	1	33	13
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.0222	3.6	3.1	1	15	8
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.8570	2.7	2.4	1	9	6
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9832	2.9	2.1	1	19	8
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.6956	1.9	1.7	1	6	4
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	1.0035	2.1	1.9	1	8	4
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.7421	2.8	2.0	1	24	10
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.8933	14.5	11.0	1	43	28
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2699	5.8	4.5	1	36	17
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	2.0708	6.9	4.8	1	36	21
266	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O C	1.0657	4.1	2.9	1	31	13
267	PERIANAL & PILONIDAL PROCEDURES	0.5360	1.9	1.5	1	9	5
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	0.7317	2.8	2.1	1	17	8
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.8584	8.1	5.5	1	37	22
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7500	2.9	2.1	1	19	8
271	SKIN ULCERS	1.3483	9.6	7.6	1	39	24
272	MAJOR SKIN DISORDERS W CC	1.2843	6.2	4.6	1	36	21
273	MAJOR SKIN DISORDERS W/O CC	0.5371	4.4	3.5	1	28	13
274	MALIGNANT BREAST DISORDERS W CC	1.2843	6.2	4.5	1	36	20
275	MALIGNANT BREAST DISORDERS W/O CC	0.8629	4.8	3.9	1	23	12
276	NON-MALIGANT BREAST DISORDERS	0.5639	3.4	2.6	1	20	9
277	CELLULITIS AGE >17 W CC	0.9949	6.6	5.4	1	37	18
278	CELLULITIS AGE >17 W/O CC	0.5617	4.2	3.6	1	18	10
279	CELLULITIS AGE 0-17	0.4766	3.8	3.2	1	20	10
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.6858	3.5	2.5	1	27	11
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4799	2.2	1.7	1	11	5
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.4100	2.3	1.6	1	12	5
283	MINOR SKIN DISORDERS W CC	0.7056	4.6	3.7	1	27	13
284	MINOR SKIN DISORDERS W/O CC	0.3603	3.1	2.4	1	18	8
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	3.2635	15.8	10.9	1	42	27
286	ADRENAL & PITUITARY PROCEDURES	2.3602	9.0	6.7	1	38	23
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	1.8654	10.5	8.3	1	40	25
288	O.R. PROCEDURES FOR OBESITY	1.6862	4.6	4.3	1	13	8
289	PARATHYROID PROCEDURES	0.9366	3.0	2.3	1	15	8
290	THYROID PROCEDURES	0.8000	2.3	2.0	1	9	5
291	THYROGLOSSAL PROCEDURES	0.5342	1.6	1.5	1	4	3
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	3.1379	13.1	9.2	1	41	26
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1321	5.4	4.4	1	34	16
294	DIABETES AGE >35	0.7653	5.4	4.5	1	27	14
295	DIABETES AGE 0-35	0.5727	4.0	3.4	1	20	10
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	1.0160	6.0	4.4	1	36	19
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5408	3.5	2.7	1	21	10
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.3679	2.9	2.4	1	14	7
299	INBORN ERRORS OF METABOLISM	1.0113	5.1	2.9	1	34	19
300	ENDOCRINE DISORDERS W CC	0.9919	6.4	4.3	1	36	21

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
301	ENDOCRINE DISORDERS W/O CC	0.5039	3.0	2.4	1	17	8
302	KIDNEY TRANSPLANT	5.5621	11.4	10.6	3	33	22
303	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.3613	9.1	8.0	1	36	21
304	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.2136	9.0	6.9	1	38	23
305	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1020	4.7	3.9	1	27	13
306	PROSTATECTOMY W CC	1.4804	7.6	4.9	1	36	21
307	PROSTATECTOMY W/O CC	0.7447	3.0	2.8	1	9	6
308	MINOR BLADDER PROCEDURES W CC	1.4281	6.8	4.9	1	36	21
309	MINOR BLADDER PROCEDURES W/O CC	0.9502	4.0	2.7	1	34	14
310	TRANSURETHRAL PROCEDURES W CC	1.0220	3.9	2.8	1	28	12
311	TRANSURETHRAL PROCEDURES W/O CC	0.7827	2.4	2.0	1	11	6
312	URETHRAL PROCEDURES, AGE >17 W CC	0.7369	3.3	2.5	1	28	12
313	URETHRAL PROCEDURES, AGE >17 W/O CC	0.4881	2.1	1.6	1	13	6
314	URETHRAL PROCEDURES, AGE 0-17	1.0452	6.7	2.7	1	34	19
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0861	8.0	5.0	1	37	22
316	RENAL FAILURE	1.5303	7.3	5.2	1	37	22
317	ADMIT FOR RENAL DIALYSIS	0.5075*	3.9	2.8	1	26	26
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1716	5.1	3.3	1	35	18
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.6069	3.0	2.1	1	24	10
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8733	5.5	4.3	1	29	15
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5497	3.7	3.2	1	16	9
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4789	3.7	3.2	1	15	9
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7308	3.0	2.3	1	19	9
324	URINARY STONES W/O CC	0.3739	1.9	1.6	1	8	4
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6427	4.0	3.0	1	29	13
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4041	2.2	1.8	1	11	6
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.2750	1.5	1.4	1	4	2
328	URETHRAL STRICTURE AGE >17 W CC	0.6363*	4.8	3.6	1	27	27
329	URETHRAL STRICTURE AGE >17 W/O CC	0.4113*	2.9	2.1	1	18	18
330	URETHRAL STRICTURE AGE 0-17	0.2830*	1.6	1.6	1	9	9
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0426	5.5	4.1	1	36	18
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.4781	2.7	2.1	1	16	8
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.6420	4.4	3.1	1	35	16
334	MAJOR MALE PELVIC PROCEDURES W CC	2.0181	7.4	7.0	2	21	14
335	MAJOR MALE PELVIC PROCEDURES W/O CC	1.6106	6.5	6.2	2	14	10
336	TRANSURETHRAL PROSTATECTOMY W CC	0.9212	4.0	3.6	1	15	9
337	TRANSURETHRAL PROSTATECTOMY W/O CC	0.7105	3.1	2.8	1	8	5
338	TESTES PROCEDURES, FOR MALIGNANCY	1.4955	6.3	4.0	1	36	21
339	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.9790	3.9	2.4	1	34	13
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4883	1.3	1.2	1	3	2
341	PENIS PROCEDURES	1.1654	2.6	2.1	1	14	7
342	CIRCUMCISION AGE >17	0.5766*	3.7	2.5	1	25	25
343	CIRCUMCISION AGE 0-17	0.3845*	1.7	1.7	1	6	6
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.4694	4.7	4.0	1	27	13
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	0.7482	3.1	2.3	1	25	10
346	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0085	5.7	3.6	1	35	20
347	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.5654	4.0	2.6	1	34	17
348	BENIGN PROSTATIC HYPERTROPHY W CC	0.7201	3.4	3.0	1	14	8
349	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.5030	3.2	2.8	1	14	8
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.6048	4.1	3.5	1	18	10

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
351	STERILIZATION, MALE	0.3384*	1.3	1.3	1	5	5
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.5094	3.0	2.1	1	23	10
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.8147	7.5	7.1	2	19	13
354	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.4154	5.8	5.2	1	19	12
355	UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	0.8918	3.8	3.6	1	10	7
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	0.8619	3.6	3.3	1	12	7
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.9573	7.7	6.7	1	31	18
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1721	4.4	4.0	1	14	9
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.9192	3.5	3.3	1	9	6
360	VAGINA, CERVIX & VULVA PROCEDURES	0.8451	3.6	3.1	1	18	9
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.9160	3.4	2.7	1	20	10
362	ENDOSCOPIC TUBAL INTERRUPTION	0.4625	1.1	1.1	1	2	1
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.6051	2.6	2.3	1	9	5
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.5347	2.2	1.7	1	12	6
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.1435	4.9	3.8	1	29	14
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.3641	7.6	4.8	1	36	21
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.6156	3.0	2.4	1	17	8
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.5816	3.8	3.4	1	15	9
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.3781	2.3	1.9	1	11	6
370	CESAREAN SECTION W CC	0.9992	4.8	4.3	1	14	9
371	CESAREAN SECTION W/O CC	0.7821	3.7	3.6	1	8	6
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5737	3.0	2.6	1	12	7
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4003	2.1	1.9	1	6	4
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.6660	2.3	2.2	1	6	4
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.6473	2.6	2.3	1	10	6
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4557	3.1	2.6	1	15	8
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	1.0080	4.3	2.6	1	34	14
378	ECTOPIC PREGNANCY	0.8222	2.8	2.5	1	11	6
379	THREATENED ABORTION	0.4125	3.0	2.2	1	19	8
380	ABORTION W/O D&C	0.3151	1.6	1.4	1	6	3
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4429	1.4	1.2	1	4	2
382	FALSE LABOR	0.2050	1.5	1.2	1	5	3
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.3687	3.1	2.5	1	17	8
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.3624	2.7	1.9	1	17	8
385	NO LONGER VALID	-	-	-	-	-	
386	NO LONGER VALID	-	-	-	-	-	
387	NO LONGER VALID	-	-	-	-	-	
388	NO LONGER VALID	-	-	-	-	-	
389	NO LONGER VALID	-	-	-	-	-	
390	NO LONGER VALID	-	-	-	-	-	
391	NORMAL NEWBORN	0.1163	2.2	2.0	1	7	4
392	SPLENECTOMY AGE >17	3.1066	10.0	7.8	1	39	24
393	SPLENECTOMY AGE 0-17	1.7073	6.4	5.9	1	18	12
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.0016	4.4	3.0	1	34	16
395	RED BLOOD CELL DISORDERS AGE >17	1.0172	5.6	4.2	1	36	19
396	RED BLOOD CELL DISORDERS AGE 0-17	0.6376	4.4	3.3	1	32	14
397	COAGULATION DISORDERS	0.9734	3.9	2.8	1	29	12
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.4548	6.7	5.2	1	37	19
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.6341	4.3	3.6	1	21	11
400	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.3620	7.7	5.4	1	37	22

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.3208	10.6	6.8	1	38	23
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	1.4402	5.8	3.4	1	35	20
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	2.5105	10.1	6.6	1	38	23
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.9398	5.0	3.7	1	35	15
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	3.8673	12.0	6.5	1	38	23
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.8729	10.4	8.5	1	40	25
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	2.0642	6.8	5.2	1	37	19
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.2607	5.9	3.3	1	35	20
409	RADIOTHERAPY	1.0563	4.7	3.4	1	33	14
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.8423	3.4	2.8	1	18	9
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4256*	3.3	2.4	1	23	23
412	HISTORY OF MALIGNANCY W ENDOSCOPY	0.4257*	2.9	2.0	1	20	20
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.5520	7.8	5.7	1	37	22
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.7172	3.8	2.7	1	27	12
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6533	13.0	8.8	1	40	25
416	SEPTICEMIA AGE >17	2.0537	8.9	6.7	1	38	23
417	SEPTICEMIA AGE 0-17	1.0384	5.8	4.3	1	36	18
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.9839	6.5	5.2	1	37	19
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	1.1438	5.8	4.7	1	30	15
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.6407	4.0	3.4	1	21	11
421	VIRAL ILLNESS AGE >17	0.5987	3.6	2.9	1	21	10
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.4109	3.1	2.6	1	13	7
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.0887	6.0	4.3	1	36	18
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.9836	19.2	9.0	1	41	26
425	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	0.7712	6.3	4.1	1	36	21
426	DEPRESSIVE NEUROSES	1.1356	9.9	6.9	1	38	23
427	NEUROSES EXCEPT DEPRESSIVE	1.0336	8.9	5.7	1	37	22
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	1.2824	12.7	7.5	1	39	24
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	1.2165	18.6	12.2	1	44	29
430	PSYCHOSES	1.1668	10.2	7.5	1	39	24
431	CHILDHOOD MENTAL DISORDERS	1.6928	16.0	10.8	1	42	27
432	OTHER MENTAL DISORDER DIAGNOSES	1.2273	12.0	8.8	1	40	25
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.5010	5.0	2.8	1	34	19
434	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC	0.9332	8.3	5.3	1	37	22
435	NO LONGER VALID	-	-	-	-	-	
436	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	1.3581	26.5	22.7	3	54	39
437	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.3816	19.4	16.6	2	48	33
438	NO LONGER VALID	-	-	-	-	-	
439	SKIN GRAFTS FOR INJURIES	1.3374	6.4	3.9	1	35	20
440	WOUND DEBRIDEMENTS FOR INJURIES	1.4242	6.4	4.0	1	36	21
441	HAND PROCEDURES FOR INJURIES	0.7911	2.6	2.1	1	14	7
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.9980	7.1	4.6	1	36	21
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	0.9822	3.5	2.4	1	28	11
444	TRAUMATIC INJURY AGE >17 W CC	0.8431	5.1	4.3	1	25	13
445	TRAUMATIC INJURY AGE >17 W/O CC	0.6414	2.8	2.1	1	19	8
446	TRAUMATIC INJURY AGE 0-17	0.4302	2.1	1.7	1	10	5
447	ALLERGIC REACTIONS AGE >17	0.4540	2.2	1.7	1	11	5
448	ALLERGIC REACTIONS AGE 0-17	0.3290	2.5	2.0	1	15	7
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8311	3.7	2.6	1	28	12
450	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4651	2.4	1.7	1	13	6

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.4097	2.3	1.6	1	12	5
452	COMPLICATIONS OF TREATMENT W CC	0.9826	5.2	3.6	1	35	17
453	COMPLICATIONS OF TREATMENT W/O CC	0.4236	2.9	2.1	1	18	8
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	1.4065	6.2	3.4	1	35	20
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.3710	1.7	1.4	1	6	3
456	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.7285*	8.8	4.6	1	28	28
457	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.0147*	8.8	3.6	1	27	27
458	NON-EXTENSIVE BURNS W SKIN GRAFT	3.7097	16.5	11.7	1	43	28
459	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.7520	7.9	5.7	1	37	22
460	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	0.9889	6.0	4.2	1	36	21
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.5195	8.4	3.1	1	35	20
462	REHABILITATION	2.0024	14.8	10.5	1	42	27
463	SIGNS & SYMPTOMS W CC	0.8596	6.1	4.1	1	36	20
464	SIGNS & SYMPTOMS W/O CC	0.4968	2.5	2.1	1	13	6
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.3531*	2.8	1.9	1	20	20
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.6074	4.3	2.2	1	34	15
467	OTHER FACTORS INFLUENCING HEALTH STATUS	0.5435	3.2	1.9	1	23	9
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.4969	8.8	5.1	1	37	22
469	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	-	-	-	-	-	
470	UNGROUPABLE	-	-	-	-	-	
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	4.5015	11.8	10.5	2	42	26
472	EXTENSIVE BURNS W O.R. PROCEDURE	16.8383	31.0	24.2	1	56	41
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	7.1399	18.6	9.5	1	41	26
474	NO LONGER VALID	-	-	-	-	-	
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	4.6432	12.1	8.1	1	40	25
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.8482	8.0	6.4	1	38	23
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.3366	5.8	3.7	1	35	20
478	OTHER VASCULAR PROCEDURES W CC	2.8725	8.3	6.0	1	38	23
479	OTHER VASCULAR PROCEDURES W/O CC	1.8682	4.9	3.7	1	35	16
480	LIVER TRANSPLANT	-	-	-	-	-	
481	BONE MARROW TRANSPLANT	14.4932	31.7	29.3	8	61	46
482	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	4.4124	14.2	10.7	1	42	27
483	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	19.0946	37.2	26.6	1	58	43
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.5706*	23.3	14.9	1	38	38
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT T	4.8937	15.2	12.2	1	44	29
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	5.5523	14.8	11.0	1	42	27
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.1971	8.8	6.3	1	38	23
488	HIV W EXTENSIVE O.R. PROCEDURE	4.1539*	23.1	16.5	1	39	39
489	HIV W MAJOR RELATED CONDITION	2.7018	9.9	7.7	1	39	24
490	HIV W OR W/O OTHER RELATED CONDITION	1.2182	5.3	3.5	1	35	20
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.6733	4.9	3.6	1	23	12
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.9314	3.8	3.4	1	15	9
600	NEONATE, DIED W/IN ONE DAY OF BIRTH	0.5883	1.0	1.0	1	1	1
601	NEONATE, TRANSFERRED <5 DAYS OLD	0.5210	1.7	1.4	1	3	3
602	NEONATE, BIRTHWT <750G, DISCHARGED ALIVE	16.6604	34.5	11.4	1	28	28
603	NEONATE, BIRTHWT <750G, DIED	14.9248	26.7	7.2	1	24	24
604	NEONATE, BIRTHWT 750-999G, DISCHARGED ALIVE	17.3914	54.6	34.0	1	50	50
605	NEONATE, BIRTHWT 750-999G, DIED	20.3015	34.0	14.4	1	31	31
606	NEONATE, BIRTHWT 1000-1499G, W SIGNIF OR PROC, DISCHARGED ALIVE	17.7205	45.8	42.7	12	59	59
607	NEONATE, BIRTHWT 1000-1499G, W/O SIGNIF OR PROC, DISCHARGED ALIV	6.9324	31.6	22.7	1	39	39

CHAMPUS WEIGHT AND THRESHOLD SUMMARY

DRG NUMBER	DESCRIPTION	CHAMPUS WEIGHT	ARITHMETIC MEAN LOS	GEOMETRIC MEAN LOS	SHORT STAY THRESHOLD	LONG STAY THRESHOLD	
608	NEONATE, BIRTHWT 1000-1499G, DIED	8.5271	12.0	11.1	3	25	25
609	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W MULT MAJOR PROB	7.8006	19.8	15.4	1	32	32
610	NEONATE, BIRTHWT 1500-1999G, W SIGNIF OR PROC, W/O MULT MAJOR PR	0.0000	0.0	0.0	0	0	0
611	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MULT MAJOR PR	5.5769	22.3	16.8	1	33	33
612	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MAJOR PROB	3.8567	21.5	17.0	1	33	33
613	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W MINOR PROB	2.8699	17.8	15.1	2	32	32
614	NEONATE, BIRTHWT 1500-1999G, W/O SIGNIF OR PROC, W OTHER PROB	1.2985	11.4	8.9	1	25	25
615	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	12.1155	45.0	38.6	6	55	55
616	NEONATE, BIRTHWT 2000-2499G, W SIGNIF OR PROC, W/O MULT MAJOR PR	6.3613	26.0	23.8	5	40	40
617	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MULT MAJOR PR	4.5729	15.6	11.1	1	28	28
618	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MAJOR PROB	1.9889	9.7	7.1	1	24	24
619	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W MINOR PROB	1.4246	9.3	7.6	1	24	24
620	NO LONGER VALID	-	-	-	-	-	
621	NEONATE, BIRTHWT 2000-2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.4074	4.1	3.2	1	12	12
622	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W MULT MAJOR PROB	8.6354	19.7	14.1	1	31	31
623	NEONATE, BIRTHWT >2499G, W SIGNIF OR PROC, W/O MULT MAJOR PROB	3.1651	10.4	6.8	1	23	23
624	NEONATE, BIRTHWT >2499G, W MINOR ABDOM PROCEDURE	0.6489	3.0	2.7	1	7	7
625	NO LONGER VALID	-	-	-	-	-	
626	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MULT MAJOR PROB	3.7576	11.3	7.3	1	24	24
627	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MAJOR PROB	0.9799	5.1	3.7	1	16	16
628	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W MINOR PROB	0.5454	4.2	3.4	1	11	11
629	NO LONGER VALID	-	-	-	-	-	
630	NEONATE, BIRTHWT >2499G, W/O SIGNIF OR PROC, W OTHER PROB	0.1746	2.5	2.3	1	5	5
631	BPD AND OTH CHRONIC RESPIRATORY DISEASES ARISING IN PERINATAL PE	3.8302	22.8	12.5	1	29	29
632	OTHER RESPIRATORY PROBLEMS AFTER BIRTH	0.6250	4.5	2.8	1	17	17
633	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W CC	0.0000	0.0	0.0	0	0	0
634	MULTIPLE, OTHER AND UNSPECIFIED CONGENITAL ANOMALIES, W/O CC	5.5957	11.7	6.1	1	23	23
635	NEONATAL AFTERCARE FOR WEIGHT GAIN	0.9095	16.0	16.0	15	16	16
636	NEONATAL DIAGNOSIS, AGE > 28 DAYS	4.0557	14.9	8.2	1	25	25
900	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE <= 21 W/O	1.1975	16.4	9.1	1	41	26
901	ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT AGE > 21 W/O	0.8259	9.4	6.1	1	38	23

Notes: (1) Long stay threshold "B" is used for children's hospitals.
(2) * = low volume DRG with fewer than 10 cases. The Medicare weights, LOS, and thresholds are used for these DRGs.

[FR Doc. 93-1833 Filed 1-26-93; 8:45 am]

BILLING CODE 3810-01-C

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement (OERI)

Solicitation of Written Public Comments

AGENCY: Department of Education.

ACTION: Notice to solicit written public comments on problems and issues related to educationally at-risk student.

Purpose: The Secretary invites written comments on research needed to improve the education of students who are at risk of educational failure or substantially below average academic achievement. The Secretary is particularly interested in comments from education researchers, practitioners, policymakers and others interested in educational reform. The Secretary is seeking comments that will inform the Department about high-priority problems and issues whose solutions might be aided by new research findings, and about new research and evaluation methods and strategies that are likely to advance our knowledge about the problems and solutions. Comments that propose an agenda that builds on past or on-going programs and research in the U.S. Department of Education—notably Chapter 1, State departments of education, other national organizations and foundations, or elsewhere will be most helpful. The Department will consider these written comments in planning various competitions, which might include competitions to support national research and development center(s) on educationally at-risk students.

Deadline for transmittal of comments: Comments should be received on or before March 1, 1993. All comments should be addressed to Planning Group, Center on Educationally At-Risk Students, U.S. Department of Education, OERI, Office of Research, room 617, 555 New Jersey Avenue, NW., Washington, DC 20208–5646.

Applicable regulations: The regulations for the Regional Educational Laboratories and Research Development Centers Programs, 34 CFR parts 706, 707, and 708.

FOR FURTHER INFORMATION CONTACT: For additional information write to Dr. Harold S. Himmelfarb at the address above or call (202) 219–2223. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1221e.

Dated: January 15, 1993.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–1916 Filed 1–26–93; 8:45 am]

BILLING CODE 4000-01-M

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES AND TIME: March 11, 1993, 9 a.m.–4 p.m. and March 12, 1993, 9 a.m.–Noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Suellen Mauchamer, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400E, Washington, DC 20208–7575, telephone (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Statistical data release policy on economic and social statistics
- NCES reauthorization
- ACES review of advisory committee activities
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400E, Washington, DC 20208–7575.

Dated: January 19, 1993.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–1914 Filed 1–26–93; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.215A]

Fund for Innovation in Education: Innovation in Education Program; Notice Inviting Applications for New Awards for Fiscal Year 1993

Purpose of Program: To provide grants for projects that show promise of identifying and disseminating innovative educational approaches at the elementary and secondary levels.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, private schools, and other public and private agencies, organizations and institutions, or consortia of those agencies.

Deadline for Transmittal of Applications: April 30, 1993.

Deadline for Intergovernmental Review: June 29, 1993.

Applications Available: February 12, 1993.

Estimated Available Funds: $1,500,000.

Estimated Range of Awards: $100,000–300,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Priorities: Under 34 CFR 75.105(c)(1), the Secretary is interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects that design, develop, and implement innovative approaches for helping all students reach high standards of academic achievement in mathematics, science, history, the arts, civics, geography, foreign languages, and English.

Selection Criteria: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in 34 CFR 75.210(b). Under 34 CFR 75.210(c), the Secretary is authorized to distribute an additional 15 points among the criteria to bring the total to a maximum of 100 points. For this competition, the Secretary distributes the additional points as follows:

Plan of Operation. (34 CFR 75.210(b)(3)). Fifteen additional points are added to this criterion for a possible total of 30 points.

Limitation on Length of Applications: The applicant must limit the application narrative to no more than 25 double-spaced, 8½x11" pages (on one side only) with one-inch margins. If using a proportional computer font, use no smaller than a 12-point font. If using a nonproportional computer font or a typewriter, do not use more than 10 characters to the inch. Proposal narratives that exceed this page limit, or narratives using a smaller print size or spacing that makes the narrative exceed the equivalent of this limit, will not be considered for funding.

For Applications or Information Contact: Shirley Steele, U.S. Department of Education, 555 New Jersey Avenue NW., room 522, Washington, DC 20208–5524. Telephone (202) 219–1496. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3151.

Dated: January 19, 1993.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–1984 Filed 1–26–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Record of Decision; Continued Operation of the Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories, Livermore (SNL, Livermore), Livermore, CA

AGENCY: Department of Energy.

ACTION: Record of Decision; Continued Operation of the Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories, Livermore (SNL, Livermore), Livermore, California.

SUMMARY: The Department of Energy (DOE) has considered the environmental impacts, benefits and costs, and institutional and programmatic needs associated with the continued operation of the Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories, Livermore (SNL, Livermore). DOE has decided that it will continue operation of LLNL and SNL, Livermore, including near-term (within 5 to 10 years) proposed projects. This action includes current operations plus programmatic enhancements and facility modifications required to support the research and development missions established for the Laboratories by Congress and the President.

As provided and encouraged by the regulations implementing the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), DOE and the University of California (UC) have prepared a joint Environmental Impact Statement (DOE/EIS–0157) and Environmental Impact Report (EIR) to analyze the impacts of the proposed action. UC was required to prepare an EIR prior to the renewal of its contract with DOE to manage and operate LLNL. In addition to the proposed action, the document discusses a no action alternative for continuing operations at FY 1992 funding levels without further expansion of Laboratory facilities; a modification of operations alternative focused on modifying specific adverse environmental impacts of operations or facilities; and a shutdown and decommissioning alternative. Additionally, in order to meet CEQA requirements, the EIR portion of the document also examines the alternative of UC discontinuing its management of LLNL upon expiration of the then-current contract on September 30, 1992. On November 20, 1992, the UC Board of Regents voted to continue management of LLNL until 1998.

FOR FURTHER INFORMATION CONTACT: For further information on the EIS/EIR, contact Anthony J. Adduci; DOE/EIS; 1333 Broadway; Oakland, CA 94612 (510/273–7315). For further information on the DOE NEPA process, contact C.M. Borgstrom, Director, Office of NEPA Oversight [EH–25], Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 202/586–4600 or 800/472–2756.

SUPPLEMENTAL INFORMATION

DOE prepared this Record of Decision pursuant to Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508, December 15, 1987) and DOE regulations 57 FR 15122 (April 24, 1992), to be codified at 10 CFR part 1021. This Record of Decision is based on the DOE Final Environmental Impact Statement for Continued Operation of the Lawrence, Livermore National Laboratory (LLNL) and Sandia National Laboratories, Livermore (SNL, Livermore) [DOE/EIS–0157].

LLNL was established in 1952 as a scientific laboratory dedicated to national defense research, but its mission has been broadened to include energy, the environment, biomedicine, the economy, and education. LLNL supports science education through precollege, university, and postgraduate programs. SNL, Livermore was established in 1956 to support LLNL in ordnance engineering; its mission has been broadened to include treaty verification and control, research and development in support of national energy programs.

The DOE sites exist at three separate locations: the LLNL Livermore Site, LLNL Site 300, and Sandia National Laboratories, Livermore.

LLNL Livermore Site occupies a total area of approximately 1.2 square miles (821 acres), located about 40 miles east of San Francisco at the southeast end of the Livermore Valley in southern Alameda County, California. The City of Livermore's central business district is located about 3 miles to the west. The site is operated for DOE by the University of California.

LLNL Site 300, located about 15 miles southeast of Livermore in the sparsely populated hills of the Diablo Range, is a non-nuclear high explosives test facility. The site covers approximately 11 square miles (7000 acres), with about one-sixth of the site in Alameda County, and the remainder in San Joaquin County, California. The site is operated for DOE by the University of California.

SNL, Livermore is located on 413 acres next to and south of the LLNL Livermore site. The site is currently operated for DOE by AT&T. (DOE and AT&T have announced that AT&T will not seek to renew its contract to operate Sandia National Laboratories, which includes SNL, Livermore. The current contract does not end until September 30, 1993, until which time AT&T will continue to operate SNL, Livermore. DOE will select another contractor to manage and operate Sandia National Laboratories, including SNL, Livermore.)

Analysis of the existing environment and the environmental impacts of continued operations of the three sites is presented in the Environmental Impact Statement and Environmental Impact Report for Continued Operation of Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore (DOE/EIS–0157).

Alternatives Considered: Four alternatives were considered:

1. *Proposed Action.* The proposed action is the continued operation of LLNL and SNL, Livermore, including

near-term (within 5 to 10 years) proposed projects. The proposed action, therefore, necessarily includes the current operations listed below under the No Action alternative, plus programmatic enhancements and facility modifications pursuant to research and development missions established for the Laboratories by Congress and the President.

More specifically, the proposed action includes the construction of facilities at the LLNL Livermore Site, at LLNL Site 300, and at SNL, Livermore. Proposed new facilities at the LLNL Livermore Site would add approximately 530,000 gross square feet, increasing current developed space by approximately 9 percent. Consistent with existing space use, the new facilities would be mostly light laboratory and office space. Examples of the largest proposed new facilities at the LLNL Livermore Site include a Decontamination/Waste Treatment Facility, an Inertial Confinement Fusion Users Support Facility, an Earth Sciences Building, and a Verification, Intelligence, and Special Technology Analysis Center. Proposed new facilities at LLNL Site 300 would add approximately 32,000 square feet to the existing total of 350,000 square feet, resulting in a net increase in facility space of approximately 9 percent. This increase results mainly from the proposed construction of the Contained Firing Facility and the Fire Station No. 2 Replacement. Proposed new facilities at SNL, Livermore are expected to add approximately 50,000 square feet to the existing 830,000 square feet, resulting in an increase in developed space of about 6 percent. The tritium limit at SNL, Livermore's Tritium Research Laboratory would be reduced to zero and the building decontaminated and decommissioned under this alternative.

The proposed action also includes upgrade, operational or maintenance projects, and operation modifications at the three sites. In addition to the activities discussed above, the proposed action at both LLNL and SNL, Livermore, includes such routine activities as infrastructure and building maintenance, minor modifications to buildings, general landscaping, road maintenance, and similar support activities.

2. *No Action*. This alternative provides for continued operation, including those LLNL and SNL, Livermore projects already authorized and funded through FY 1992. LLNL and SNL, Livermore programs and projects would continue at their present (FY 1992) levels, but no proposed or tentative projects would be added except those required to maintain the existing infrastructure or those required to comply with statutes and regulations for completion of environmental remediation activities at the sites. LLNL environmental restoration activities are being done pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) agreements. SNL, Livermore environmental restoration activities are being implemented in accordance with CERCLA, pursuant to orders of the California Regional Water Quality Control Board.

The No Action alternative at both LLNL and SNL, Livermore, includes routine activities such as infrastructure and building maintenance, minor modification to buildings, general landscaping, road maintenance, and similar support activities. As in the proposed action, the tritium limit at SNL, Livermore's Tritium Research Laboratory would be reduced to zero and the building decontaminated and decommissioned under this alternative.

A range of physical plant maintenance activities are part of this alternative. These include roof replacements for over 100 buildings, rehabilitation of over 6.5 miles of roads and more than 2.51 million square feet of parking lots at the LLNL Livermore site and SNL, Livermore, and upgrading low-voltage electrical systems in 565 buildings. Employment and funding levels, adjusted for inflation, would remain at FY 1992 levels.

3. *Modification of Operations*. Under this alternative, operations at LLNL and SNL, Livermore, including near-term (within 5 to 10 years) proposed projects, would be modified to even further reduce environmental impacts. Modification of operations is broadly defined as the scaledown of operations and/or the application of alternative technologies and management strategies (formerly two alternatives as described in the Notice of Intent, 55 FR 41048). Selection of this alternative would require study to ensure that LLNL and SNL, Livermore missions would continue to be accomplished. To identify potential modifications to be discussed, existing operations at LLNL and SNL, Livermore, were evaluated for their environmental impact. The criteria for selecting such potential modifications were:

—Operations with a potential for, or a history of, greatest worker exposure.
—Operations with the greatest potential impact on the public, based on accident analyses.
—Operations historically generating the greatest quantities of transuranic waste, low-level waste, mixed waste, or waste restricted from land disposal.

Possible modifications include combination of waste management operations at the two Laboratories; modification of operations in the plating shop so as to prevent the mixing of incompatible chemicals in the event of a severe earthquake; and acquisition of buffer zones to reduce fenceline exposures and to preclude the development of residential and/or industrial areas immediately downwind of the two Laboratories. These examples of possible modifications are illustrative of various options being considered. If any of these examples were selected, more detailed engineering and environmental evaluations would be prepared.

4. *Shutdown and Decommissioning*. This alternative involves the phase out of all research and development operations at LLNL and SNL, Livermore, and eventual shutdown and decommissioning of all facilities. Under this alternative, shutdown would be an orderly phaseout of programmatic research and development efforts. A phased shutdown is estimated to take 5 years. This estimate is based on periods for planning, environmental documentation of the impact of closing facilities, and phaseout of programs and shutdown of facilities. The Laboratories would require a caretaker staff during and after shutdown to maintain the decommissioning, environmental restoration and compliance infrastructure. The caretaker staff would continue operation and maintenance of LLNL and SNL, Livermore, support functions including security; utilities; shipping and receiving; environmental, safety and health protection; and other services.

Decommissioning would involve the restoration, decontamination or destruction and disposal of contaminated facilities. Decommissioning and environmental compliance activities would start during shutdown and continue for an estimated 5 years beyond shutdown. Radioactive and other potentially hazardous sources would be removed and transported to other DOE or commercial facilities. LLNL and SNL, Livermore, would be restored so that facilities could be conveyed unrestricted to new owners or operators in a phased transfer, and in accordance with applicable regulatory requirements. however, the subsequent fate of the various programs was considered to be beyond the scope of this EIS/EIR.

The projects to be eliminated and the facilities to be shutdown would be those in existence as of FY 1992. Those projects and facilities that are required in order to comply with statutes and regulations (e.g., remediation activities) would continue.

Environmentally Preferable Alternative. The long-term environmentally preferable alternative would be the shutdown and decommissioning of the Laboratories because it would result in the cessation of waste production. Such a decision does not, however, take into consideration the vital long-term requirements of future defense needs and other Federally sponsored research and development efforts. Initially, because of clean-up activities, shutdown and decommissioning could have greater impacts than the continued operation at FY 1992 funding levels (No Action alternative). These environmental impacts, however, would gradually be reduced to near zero. This alternative would require a legislative redirection of the DOE mission, an initiative to significantly restructure and consolidate the National Laboratories, or both.

Decision

DOE will continue operation of both Lawrence Livermore National Laboratory and Sandia National Laboratories, Livermore including near-term (within 5 to 10 years) proposed projects. This includes current operations plus programmatic enhancements and facility modifications required to support the research and development missions established for the Laboratories by Congress and the President. DOE will continue to comply with all applicable Federal, State, and local environmental regulations.

Pursuant to the Atomic Energy Act of 1954, as amended, DOE is responsible for nuclear weapons research and design, as well as other energy research and development. LLNL and SNL, Livermore, undertake research and development missions, including weapons research and design, established by the Congress and the President. To implement these research and development missions, continued and enhanced LLNL and SNL, Livermore operations are necessary.

The LLNL mission is to serve as national resource of scientific, technical, and engineering capability with a special focus on national security. This mission includes research and development, strategic defense, arms control and treaty verification technology, energy, the environment, biomedicine, the economy, and education.

Although the primary mission of SNL, Livermore is national security, with principal emphasis on development and engineering of non-nuclear systems and components associated with nuclear weapons, SNL, Livermore has evolved into a multi-program laboratory undertaking a wide variety of research and development activities. These activities range from national security issues to support of the national energy program.

DOE recognizes that in recent years there has been a significant change in the world's political environment. In scoping the EIS, DOE considered whether or not to include in the proposed action or the alternatives a change in the basic mission of the Laboratories as currently established by Congress and the President. Indeed, in late 1991, Secretary of Energy, James Watkins chartered an Advisory Board Task Force to begin to examine the future activities of the National Laboratories, including LLNL and SNL, Livermore. Comprised of non-DOE personnel with extensive knowledge of energy and defense issues, the task force recommended that in addition to the Laboratories' continued activities in energy and defense, capacities in science and technology also be brought to bear on the environmental cleanup of DOE facilities. While the Secretary can encourage the evolution of the agency toward a new set of missions—in part developed by independent task forces and other citizen recommendations—any change in the DOE missions must come from the President and Congress.

The goals of an agency, as defined by its enabling legislation, determine the universe of the proposed action and the reasonable alternatives. Although, as described below, DOE has initiated an effort to determine in the long term how the National Laboratories capabilities can best be employed to serve the nation's research needs, that effort has not yet reached the point of formulating any specific proposals for consideration by Congress and the President. Furthermore, currently there are no specific proposals by Congress or the President for any changes in the DOE missions. Thus, at the present time, the alternative of excluding all nuclear weapons research and design activities and replacing them with other non-nuclear weapons activities, as suggested by many commentors, is too speculative to be evaluated meaningfully. The scope of the Draft and Final EISs, therefore, was tied to the evaluation of alternative ways of achieving the DOE currently mandated missions.

DOE has considered the effect of the recently enacted limitations on underground nuclear testing contained in section 507 of the Energy and Water Development Appropriations Act of 1993, Public Law 102–377, and has determined that it does not change the overall missions of the respective National Laboratories. One of the primary missions for the National Laboratories, as mandated by the Atomic Energy Act of 1954, continues to be the research and design work necessary to ensure the safety and effectiveness of the Nation's nuclear weapons stockpile.

Section 507 does not significantly modify the activities conducted at LLNL and SNLL in support of this mission. In fact, as the limitations of section 507 on nuclear testing take effect, the essential scientific and engineering work of the Laboratories, including computer simulations and other means of system testing, will be of paramount importance in ensuring the safety and effectiveness of the stockpile. This is particularly the case for the next 5 to 10 years, the period covered by the EIS.

Nevertheless, DOE is considering what activities necessary to support the DOE nuclear weapons mission should be carried out at LLNL and SNL, Livermore. Secretary of Energy, James Watkins has proposed to reconfigure the nuclear weapons complex to be smaller, less diverse, and more economical to operate. As part of this proposal DOE is examining whether certain weapons research, development, and testing activities now taking place at the National Laboratories should be consolidated. DOE is preparing a programmatic (PEIS) on its reconfiguration proposal. The Reconfiguration PEIS will address the long-term mission of LLNL and SNL, Livermore; in contrast, this EIS addresses the near-term continued operation of LLNL and SNL, Livermore.

The focus of possible new long-term missions cannot be addressed until after completion of the Reconfiguration PEIS. Therefore, identification and description of new missions for LLNL and SNL, Livermore and analysis of associated environmental effects would be highly speculative and beyond the scope of the EIS. However, this document is expected to facilitate the environmental assessment of future changes in missions or activities. Such changes would be reviewed against the Final EIS and further NEPA and/or CEQA review efforts would be undertaken if appropriate. This could include the preparation of a supplemental EIS, or other NEPA/CEQA documentation to support specific projects.

The Secretary has initiated a Waste Minimization Cross Cut Plan and a Waste Minimization and Pollution Prevention Executive Board. Any future impact on either LLNL and SNL, Livermore, resulting from the Cross Cut Plan or from Board directives will be reviewed against the FEIS and further NEPA and/or CEQA review would be undertaken at that time, if deemed appropriate.

Selection of the no action alternative could cause schedule delays, changes in funding priorities, less flexibility in responding to new program initiatives, and other potential program impacts. This could result in only the partial fulfillment of the research and development missions established by Congress and the President.

Selection of the shutdown and decommissioning alternative without transferring important research and development work elsewhere is also not possible. As has been pointed out, such action would require a legislative redirection of the DOE mission, an initiative to significantly restructure and consolidate the National Laboratories, or both. It is therefore not likely to be implemented within the time frame that was the focus of the Final EIS. Specific actions that might be proposed to implement this alternative would have to be addressed, as appropriate, in subsequent NEPA documents.

Selection of the modification of operations alternative would require more detailed engineering and environmental evaluations to select facilities and operations for modification; this could include a study to ensure there would be no impacts to LLNL and SNL, Livermore missions resulting from the adoption of this alternative. This would cause schedule modifications and delays and possible changes in funding priorities. The implementation of any of the suggested modifications is not precluded, however, if the proposed action is adopted.

Major Environmental Impacts and Mitigation Measures. The environmental impacts analyzed for the proposed action are based on assumptions that are designed to be a reasonable projection of the upper bound for consequences. These assumptions are not intended to be predictions of actual future consequences. For example, the number of personnel at the Laboratories is assumed to increase at the historical rate of 2 percent per year, while projections provided in the Laboratories' institutional 5-year plans show almost no growth in personnel. That is, the historical average is used as an upper bound for determining environmental impacts. Waste streams are similarly assumed to increase to provide an upper bound for the impacts. These projections were made without accounting for current waste minimization programs at the Laboratories. These assumptions also do not consider any future waste minimization plans implemented during the course of the proposed action resulting from the Waste Minimization Cross Cut Plan or from Waste Minimization and Pollution Prevention Executive Board directives.

The majority of the impacts identified in the Final EIS require no specific additional mitigation measures except the continuation of current control procedures to protect workers and the public. These measures are discussed together with their associated impacts in Section 5 of Volume I of the Final EIS.

In some cases, however, mitigation measures are proposed to reduce or eliminate impacts. Programs to monitor implementation of these mitigation measures will be conducted as appropriate. In addition, DOE is committed to continued compliance with applicable Federal, State and local environmental regulations and requirements in the operation of the Laboratories.

Those impacts which can only be partially mitigated or are beyond the control of DOE to mitigate include the following:

(1) Any increase in housing demand in the region created by the proposed action in the near term (5 to 10 years) could not be accommodated by the existing Livermore housing market and other markets in the region. This impact is made more severe by increased demand due to cumulative regional growth in addition to the Laboratories' growth. Mitigation measures impacting housing availability are beyond the authority of DOE.

(2) Any increase in employees under the proposed action could impact school services provided by the Livermore Valley Joint Unified School District and other districts in the region. The addition of an estimated 800 students to the existing facilities would result in a potential impact due to an existing shortage of school capacity at the Livermore Valley Joint Unified School District and some other school districts in the region. To partially mitigate this impact, DOE will continue to participate in the Federal Government's Impact Aid Program, which provides funds to the school district.

(3) The increase in nitrogen dioxide, volatile organic compounds, and fugitive dust emissions from Laboratory facilities and vehicles under the proposed action contribute to an existing non-attainment condition for ozone and particulate standards. The Laboratories' emissions of these pollutants are in addition to those from other area sources. Although the individual contributions are low, because the area is in non-attainment for ozone and particulate standards, these emissions constitute a significant impact.

(4) As a result of future development at LLNL and SNL, Livermore, and its surrounding area, cumulative roadway noise will increase substantially along a number of roads near the Livermore sites. Mitigation measures in the surrounding area that might reduce this impact are beyond the control of DOE.

(5) The proposed action, along with planned and proposed development near the LLNL Livermore site and SNL, Livermore, would result in a cumulative increase in traffic congestion at certain intersections. This increase would be primarily due to the proposed development of surrounding land. Mitigation measures would be needed in the surrounding area to reduce this impact, and such measures are beyond the control of DOE.

(6) Water usage by the Laboratories can be mitigated; however, cumulative development would increase demand for and consumption of water at a time of continuing drought in the State. Mitigation measures, beyond those proposed by DOE in the FEIS, could reduce this cumulative impact.

(7) Both LLNL and SNL, Livermore, generate mixed waste, almost all of which is prohibited from land disposal under RCRA without first being treated to meet defined standards. Currently, no treatment or disposal options are available for most of these wastes. Even though adequate storage facilities presently exist and no adverse health impacts will result from extended storage, extended storage of these wastes may violate RCRA storage requirements (42 U.S.C. section 3004 U). The EPA recognizes that "generators and storers of these wastes may find it impossible to comply with the . . . storage prohibition if there are no available options for treatment or disposal of the wastes." The EPA suggests that "responsible management practices should minimize the environmental risks from these section 3004 storage violations" (56 Fed. Reg. 42731, May 23, 1990).

(8) Assumed growth at LLNL and SNL, Livermore, may contribute to cumulative impacts resulting from increased waste generation and waste shipments in the region. Measures to

fully mitigate these impacts are beyond the control of DOE, but LLNL and SNL, Livermore, will take measures to partially mitigate these impacts, such as treating the waste to reduce total volumes.

(9) The proposed action, along with planned and proposed development in the vicinity of LLNL Site 300, would result in a cumulative increase in traffic congestion at the Corral Hollow Road/I–580 interchange. Measures that would reduce this impact are beyond the control of DOE.

(10) Currently, solid waste from LLNL Site 300 is sent to the Corral Hollow Sanitary Landfill for disposal. This landfill is scheduled to close in 1995, but the county has not yet identified an alternative landfill location. Under the proposed action, the anticipated increase in solid waste generation from LLNL Site 300 is approximately 500 cubic yards per year. This increase, plus the cumulative contributions from other sources in the region, would constitute an impact until another landfill location is identified.

(11) The proposed action in conjunction with anticipated cumulative regional development could result in an impact to wetlands in the vicinity of LLNL Site 300. The full extent of wetlands within the study area (defined as the portion of the Diablo Range within the San Joaquin County in the vicinity of LLNL Site 300) is not known. It is known, however, that at least four developments, totaling approximately 10,000 acres, could be constructed in the wetlands study area beyond the boundaries of LLNL Site 300. The impacts to wetlands by other projects within the study area beyond LLNL Site 300 cannot be mitigated by DOE.

(12) Increases in criteria pollutant emissions associated with stationary and mobile sources at LLNL Site 300 in addition to other regional sources of emissions would contribute to a cumulative impact on regional air quality. Although LLNL Site 300 contribution to area emissions is small, these emissions constitute a significant impact because the area is in non-attainment for ozone and particulate standards.

(13) The demand for and consumption of water at LLNL Site 300 together with cumulative demand from other users in the vicinity could contribute to a potential impact on available water supplies. Population in San Joaquin County is projected to increase by 47.7 percent by the year 2010. Added to the assumed 9 percent increase in water usage at LLNL Site 300, this could constitute an impact if drought and other limiting factors continue, despite LLNL conservation measures. DOE does not have the ability to control water use beyond the boundaries of its facilities.

(14) The projected increase in waste generation at the Laboratories under the proposed action implies an increased need for treatment and disposal facilities for these wastes. A similar need may exist for waste generators elsewhere in the country. In order to evaluate the cumulative impact of this widespread waste generation, the problem must be addressed on a national scale. DOE is evaluating the national capacity for and cumulative impact on waste treatment and disposal facilities as part of the Programmatic Environmental Impact Statement for Environmental Restoration and Waste Management. The Laboratories can and will minimize their rate of waste generation and treat what wastes they can to reduce waste quantities requiring offsite treatment and disposal; however, the general problem is beyond the scope of this EIS.

As part of the EIR process the University of California outlined the following monitoring and mitigation measures, which are described in its Mitigation Monitoring and Reporting Program and which are also described in Section 5 of Volume I of the FEIS. It is the Department's intention to pursue the following mitigation measures to avoid or minimize impacts associated with the proposed action, subject to the availability of funding by the Congress:

(1) The Laboratories will require employees and contractors to report any evidence of cultural resources unearthed during development excavation at the Laboratories' sites. An archaeologist will assess any unearthed resources at the construction site. If necessary, construction will be stopped to preclude disturbance of any cultural resources, conduct testing, and recommend mitigation measures in accordance with DOE and CEQA guidelines.

Following completion of the section 106 review process (i.e., compliance with the National Historic Preservation Act), the cultural resource management plan outlining the methodology for managing identified historic resources at the LLNL Livemore site will be made available to the public. In addition, management and mitigation activities implemented at the LLNL Livermore site will be reported annually.

(2) All buildings and facilities under the proposed action at the Laboratories, including retrofits, will be built or modified (or retrofitted) according to established seismic design criteria based on their hazard ranking and location as stated in DOE Order 5481.1B.

Engineering and administrative measures will be taken to anticipate and prevent releases of hazardous substances resulting from strong ground shaking at any given facility.

Site-specific geotechnical investigations by a California Certified Engineering Geologist, a California Registered Geologist or a California Registered Civil Engineer specializing in geotechnical studies, will be performed for proposed structures at LLNL and SNL, Livermore. The recommendations of the geotechnical investigation regarding foundations and subterranean drainage will be included in project design.

(3) At LLNL Site 300, consistent with U.S. Fish and Wildlife Service (1989) recommendations, protective exclusion zones will be established around kit fox dens observed in the 300-foot and 50-foot buffer zones established for purposes of construction (300-foot) and right of way (50-foot).

Any known and pupping kit fox dens found will be posted with a sign near the den entrance stating the presence of a sensitive resource. To ensure protection of these dens, fencing will be installed around each den following the exclusion distances specified above. The exclusion fencing will consist of large stakes (4- to 5-foot metal or 1 × 1-inch wooden stakes) connected with a heavy rope or cord, and will be maintained for the duration of the construction project. Potential kit fox dens found within a proposed construction site buffer zone will have 2-foot wooden stakes with flagging placed at the dens entrance and will be maintained for the duration of the construction project.

Monthly checks of known and pupping dens will be conducted to ensure that the signs, stages, and fencing are still intact. Monitoring will be done as unobtrusively as possible, staying outside the exclusion zones.

If known kit fox dens occur within the areas of proposed disturbance or development, and impact to these resources is unavoidable, the following procedures will be implemented. Prior to the onset of construction and den destruction, the U.S. Fish and Wildlife Service and the California Department of Fish and Game will be provided the opportunity to review and comment on the proposed action. These agencies may recommend alternative courses of action to avoid den destruction or reduce impacts.

If given permission by these agencies, excavation of known kit fox dens may then proceed. When the den is thought to be unoccupied, the entrance can then be progressively plugged with loose dirt for several days to discourage the use of the den while still allowing resident animals to escape easily. When sign of activity at the den ceases and it is deemed safe to do so by a trained kit fox biologist, the den can be dug out with hand tools to a point where it is certain no kit fox is using the den. The den will be fully excavated and then filled with dirt and compacted to ensure that a kit fox cannot reenter the den during the construction period. If at any point a kit fox is thought to be using the den, the plugging or excavation activity will stop, and the U.S. Fish and Wildlife Service and the California Department of Fish and Game will be contacted. All plugging and excavation efforts will be conducted by a trained kit fox biologist.

(4) The 0.5 acre of wetlands that would likely be lost because of the shutdown of leaking cooling towers (see page 5–80) in EIS) will be replaced pursuant to consultation with the California Department of Fish and Game. One potential measure would be to use the artificial wetland vegetation that would likely be created in Corral Hollow Creek as a result of the ground water restoration project at LLNL Site 300 as mitigation for these lost wetlands. The ground water restoration project is an ongoing project at LLNL Site 300 that is part of continuing operations.

(5) LLNL and SNL, Livermore will continue to enhance waste minimization policies and practices to reduce generation of mixed wastes at the source. When treatment, storage, and/or disposal options become available for these mixed wastes, the Laboratories would pursue those alternatives.

Mitigation Action Plan

Section 1021.331(a) of the DOE regulations implementing NEPA (57FR 15144, April 4, 1992, to be codified at 10CFR Part 1021) states that DOE shall prepare a Mitigation Action Plan that addresses mitigation commitments expressed in the ROD. The Mitigation Action Plan will be prepared before DOE takes any action directed by the ROD that its the subject of a mitigation commitment.

Conclusion

The defense and other Federally-sponsored research and development work performed at LLNL and SNL, Livermore continues to play a vital role in national defense, energy, security, environment, biomedicine, economy and education. Until Congress and the President modify the missions of the Laboratories, their continued operation in the near term is necessary. At the same time, DOE will continue to evaluate the benefits of measures to avoid or minimize environmental impacts associated with this decision.

Issued at Washington, D.C. this 21st day of January, 1993.

Linda G. Stuntz,

Acting Secretary of Energy.

[FR Doc. 93–2010 Filed 1–26–93; 8:45 am]

BILLING CODE 6450-01-M

Floodplain/Wetland Involvement Notification for Environmental Restoration Activities at the Department of Energy's Rocky Flats Plant Near Golden, Colorado

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain/wetland involvement.

SUMMARY: Regulations at 10 CFR part 1022 require DOE to evaluate actions it may take in a floodplain or wetland, in order to ensure consideration of protection of the floodplain/wetland in decision making. As soon as practicable after it is determined that an action may be undertaken in a floodplain or wetland, 10 CFR 1022.14 requires that a public notice be published in the **Federal Register** including a description of the proposed action and its location.

DOE is engaged in environmental monitoring and is in the early stages of a multiyear Environmental Restoration Program at its Rocky Flats Plant (RFP) north of Golden, Colorado. Small areas of the 6,550-acre plant site are within floodplains or include wetlands, and some environmental monitoring and Environmental Restoration activities will take place in floodplains or wetlands.

The proposed actions include: 1. Collection of samples for (a) environmental monitoring to identify and monitor the current status of, and changes to, the natural environment; (b) site characterization to identify the nature and extent of contamination; and (c) treatability studies to test the effectiveness of specific treatment technologies on contaminated media;

2. Drilling and abandonment of boreholes and monitoring wells; and

3. Interim and final remedial actions to remove or treat contaminants that have been released to the environment.

Site characterization and the remedial actions would be undertaken pursuant to applicable provisions of the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Some of the proposed actions could be located in the floodplains of Walnut, South Walnut, or Woman Creek or could affect wetlands.

Floodplain/wetland assessments for these actions would be prepared to be included in the National Environmental Policy Act (NEPA) documentation for the respective projects. For projects involving floodplains, a statement of findings would be issued separately or incorporated into the NEPA decision document. The statement would be published in the **Federal Register** when no Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required.

DATES: Comments on the proposed action must be received by February 11, 1993.

ADDRESSES: All comments on this notice should be addressed to: Floodplain/Wetland Comments, c/o Beth Brainard, Office of Public Affairs, U.S. Department of Energy, Rocky Flats Office, Post Office Box 928, Golden, California 80402–0928, Telephone: (303) 966–5993; FAX comments to: (303) 966–6633.

FOR FURTHER INFORMATION CONTACT: Information on general DOE floodplain/wetland environmental review requirements is available from: Carol M. Borgstrom, Director, Office of NEPA Oversight, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: DOE proposes to carry out site characterization as well as remedial/corrective actions, some of which would be located within floodplain or wetlands, at the RFP. The proposed actions include:

1. Collection of samples for environmental monitoring, site characterization, and treatability studies to better understand the nature of the environment around the RFP and to identify possible releases of contaminants or movement of contaminants already released to the environment. Environmental monitoring would occur throughout the site and would continue for the foreseeable future. Site characterization is tied chiefly to Remedial Investigations/RCRA Facility Investigations (RI/RFIs) under CERCLA and RCRA and would be performed for each of the 16 operable units (OUs).

The following types of activities could occur in a floodplain or wetland: (a) Sampling air, surface water, ground water, sediments, surface and deeper soils, and terrestrial and aquatic biota, and measuring meteorological characteristics; (b) drilling boreholes to obtain soil/geological samples with some of the boreholes completed as ground water monitoring wells; (c) digging soil test pits by hand or backhoe, (d) taking a variety of noninvasive surveys, such as radiological surveys; (e) taking invasive surveys (such as with soil penetrometers and similar devices); and (f) conducting underground tests (such as aquifer pump, tracer geophysical log, vertical seismic profile and seismic tests). Because the remaining RI/RFI field work to be done at the RFP is in OUs that consist mostly of upland areas, only a few sampling locations, other than for surface water and sediment and a very small proportion of the boreholes/wells and soil test pits, are expected to be in floodplains or wetlands.

2. Drilling or abandonment of boreholes and monitoring wells. Drilling new boreholes and monitoring wells involves driving a drilling rig to the designated site and drilling a hole, usually within a day. Wells are typically 4 to 6 inches in diameter. It is possible, but unlikely, that some of those could be in wetlands. Where a drilling site can be relocated outside of a wetland area while still maintaining the integrity of the sampling program, the drill site will be relocated. Travel within floodplains will be restricted to established roads and tracks where they are available.

Abandoning a well typically involves removal of all foreign material from the well. This includes the existing bentonite grout, the bentonite seal, a silica-sand filter, and well casing. Casing can be removed by pulling it out of the well, destroying the casing in the hole and removing the pieces, or overdrilling or over-coring. Each of these methods involves driving a drilling rig to the well site. Once in the field, it may be discovered that some casings are not removable due to well depth, casing condition, or other factors. In these situations, the well casing and possibly the protective surface casing (a larger diameter pipe surrounding the upper portion of the well casing) will be left in place. Abandonment will be accomplished in this manner only when absolutely necessary.

If the casing is removed, regardless of the removal method used, the resulting hole is reamed to the original construction depth and diameter to remove any remaining annular material and debris. The borehole is then filled with bentonite grout. Wells whose casing is not removed would be abandoned by filling the casing with bentonite grout. The well casing and protective casing would be cut off below the ground surface.

A concrete pad would be poured at all well abandonment locations to provide a surface seal. A metal cap showing the well identification number and the date of abandonment would be anchored to the concrete slab. Abandonment of a well would take 1 to 2 days, depending on the method used and the depth of the well.

3. Construction and operation of interim and final remedial/corrective actions based on the results of the RI/RFIs now being conducted or planned. These proposed actions may consist of in-situ treatment, bioremediation, ground water treatment, surface water treatment, soil treatments, or soil excavation. While remedial actions are expected to be constructed outside floodplains or wetlands, parts of such projects (particularly water collection devices) could be located within floodplains or could affect wetlands.

Maps showing all floodplain or wetland areas potentially disturbed by the proposed activities are available from the RFO (see ADDRESSES above). Floodplain/wetland assessments for each individual action will be prepared as part of the integrated NEPA/CERCLA/RCRA documentation for the respective actions. For projects involving floodplains, a Statement of Findings, required by 10 CFR part 1022, would be issued separately or included in the NEPA decision document when the floodplain assessments have been completed and prior to taking the action. The statement would be published in the **Federal Register** when no EA or EIS is required.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93-2012 Filed 1-26-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL93-15-000, et al.]

Massachusetts REFUSETECH, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 19, 1993.

Take notice that the following filings have been made with the Commission:

1. Massachusetts REFUSETECH, Inc.

[Docket Nos. EL93-15-000 and ES93-19-000]

Take notice that on January 15, 1993, Massachusetts Refusetech, Inc. ("MRI") submitted for filing an application requesting disclaimer of jurisdiction under section 203 of the Federal Power Act, and grant of blanket approval under section 203 of the Federal Power Act and part 34 of the Commission's regulations for the issuances of securities or assumptions of liability by MRI, or authorization under section 204 and part 34 for issuances or assumptions with respect to the proposed refinancing of the trash-to-energy facility owned and operated by MRI in North Andover, Massachusetts. The refinancing will involve issuance of refunding bonds which will be secured by, among other items, a pledge of revenues from the facility and a mortgage and security interest in the facility.

Comment date: January 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. EL93-12-000]

Take notice that on January 5, 1993, Northern States Power Company (Minnesota) (NSP(M)) and Northern States Power Company (Wisconsin) (NSP(W) tendered for filing a request of the Commission's fuel clause regulations. The waiver is sought to obtain Commission approval of recovery through NSP(M)'s and NSP(W)'s fuel adjustment clauses of certain anticipated nuclear fuel fabrication contract termination expenses.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Georgia Power Co.

[Docket No. EL93-13-000]

Take notice that on December 31, 1992, Georgia Power Company (Georgia Power) tendered for filing a revised tariff sheet to its FERC Electric Tariff, Original Volume No. 1 (full requirements service) and a petition for waiver of the Commission's fuel adjustment clause regulations.

Georgia Power states that its filing is necessary to permit it to recover from its full requirements wholesale customers an appropriate share of the cost of terminating a long-term coal supply agreement. Georgia Power states that its purchase of replacement coal at more favorable prices will produce cumulative savings to its customers in excess of the cumulative amortization of buyout costs which the Company proposes to recover as fuel costs through the fuel cost recovery mechanisms of its tariff.

Georgia Power seeks waiver of the Commission's notice requirement to permit an effective date of January 1, 1993 for the revised tariff sheet.

Georgia Power states that it has served copies of its filing on its two full requirements customers.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Montaup Electric Co.

[Docket No. ER93-56-001]

Take notice that on January 4, 1993, Montaup Electric Company (Montaup) tendered for filing a compliance filing reflecting the settlement rate reduction in its forecast billing rate under the PCAC for 1993. The compliance filing is made in accordance with the Commission's order issued on December 28, 1992 in the captioned docket. Montaup requests that the Commission issue an order accepting the compliance filing by February 10, 1993 when Montaup's next M-rate bills will be issued.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Co.

[Docket No. ER93-121-000]

Take notice that on December 18, 1992, Puget Sound Power & Light Company (Puget) tendered for filing additional information on the filed service agreements under Electric Tariff Original Volume Number 3.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Niagara Mohawk Power Corp.

[Docket No. ER93-313-000]

Take notice that on January 11, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing a Power Sales Tariff which provides for sales of system capacity and/or energy or resource capacity and/or energy. The proposed Tariff requires interested purchasers to enter into a service agreement with Niagara Mohawk before transactions may commence under the Tariff.

Niagara Mohawk requests that its Tariff be accepted for filing and allowed to become effective in accordance with its terms as specified. Information filed in support of the Tariff includes cost support for Niagara Mohawk's tariff ceiling rates, and pricing terms that allow for the capacity and energy changes to be pro-rated for the duration of each sale. A copy of this filing was served upon the New York State Public Service Commission.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Co.

[Docket Nos. ER93-219-000 ER93-222-000]

Take notice that on January 11, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing supplemental information regarding various interconnection agreements of The Connecticut Light and Power Company and Western Massachusetts Electric Company.

NUSCO states that the information was filed in response to a request from the Commission.

NUSCO states that copies of this information have been mailed or delivered to each of the affected parties.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corp.

[Docket No. ER93-139-000]

Take notice that on January 6, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an amendment to its filing dated November 10, 1992 regarding a proposed change to Niagara Mohawk Rate Schedule No. 171, an agreement between Niagara Mohawk and Selkirk Cogen Partners, L.P. (Selkirk).

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corp.

[Docket No. ER93-314-000]

Take notice that Florida Power Corporation (Florida Power), on January 11, 1993, filed a request for approval of a revised effective date of the service agreement with Sebring Utilities (SUC). The service agreement was accepted for filing in Commission Docket No. ER93-136-000 on December 7, 1992, to become effective January 1, 1992. Florida Power requests that the service agreement be allowed to become effective as of September 1, 1991.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power Corp.

[Docket No. ER93-310-000]

Take notice that on January 6, 1993 Florida Power Corporation (Florida Power) filed a contract for the provision of interchange service between itself and the City of Vero Beach. Florida Power requests that the contract become effective on March 8, 1993, which is 60 days after the contract was tendered for filing.

Florida Power states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to the customer affected by the filing and to the Florida Public Service Corporation.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corp.

[Docket No. ER93-315-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on January 11, 1993, tendered for filing an agreement between Niagara Mohawk and Northeast Utility Services Company (NUSCO) dated January 6, 1993, providing for certain transmission services to NUSCO.

An effective date of March 12, 1993 (for the commencement of transmission and delivery) is proposed.

Copies of this filing were served upon NUSCO and the New York State Public Service Commission.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Co.

[Docket No. ER92-343-003]

Take notice that on January 5, 1993, Northern States Power Company submitted supplemental information to its Compliance Filing in the above-referenced docket.

Comment date: February 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Portland General Electric Co.

[Docket No. ER93-312-000]

Take notice that on January 11, 1993, Portland General Electric Company (PGE) tendered for filing an interim interconnection agreement between PGE, the Western Area Power Administration (WAPA), the Transmission Agency of Northern California (TANC), Pacificorp Electric Operations, an assumed name of Pacificorp (Pacificorp), and the Bonneville Power Administration (BPA).

Copies of this agreement have been served on the distribution list, as included in the filing.

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Joe T. Ford

[Docket No. ID-2757-000]

Take notice that on January 6, 1993, Joe T. Ford (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

Chairman of the Board, President and Chief Executive Officer, ALLTEL Corporation

Director, Duke Power Company

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Richard G. Reiten

[Docket No. ID-2756-000]

Take notice that on January 6, 1993, Richard G. Reiten (Applicant) tendered for filing a supplemental application under section 305(b) of the Federal Power Act to hold the following positions:

Director, West One Bank, Oregon
Director, West One Bank, Oregon, S.B.[1]
Director and President, Portland General Electric Company

Comment date: February 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Lockport Energy Associates, L.P.

[Docket No. QF88-378-005]

On January 12, 1993, Lockport Energy Associates, L.P. (Applicant), filed an application with the Federal Energy Regulatory Commission for a temporary waiver of the operating and efficiency standards pursuant to § 292.205(c) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The 167 MW topping-cycle cogeneration facility which is located in Lockport, New York consists of three combustion turbine generators, three separately-fired heat recovery boilers (HRBs) and a steam turbine generator. Thermal energy recovered from the facility is used for space heating and industrial processes by the Harrison Division of General Motors Corporation's assembly plant. The facility uses natural gas as its primary energy source. The Commission previously certified the facility as a qualifying cogeneration facility, Empire Energy-Niagara Cogeneration, Inc., 45 FERC ¶61,241 (1988). Applicant filed notices of self-recertification in Dockets QF88-378-001, QF88-378-002, QF88-378-003, and QF88-378-004.

Applicant states that the temporary waiver of operating and efficiency standards for calendar year 1992 is requested due to the limited generation of power without concurrent use of thermal output during the start-up and testing period.

Comment date: February 26, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93-1945 Filed 1-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-153-000, et al.]

Arkla Energy Resources, et al., Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP93-153-000]

January 15, 1993.

Take notice that on January 7, 1993, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Main Street, Shreveport, Louisiana 71151, filed an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a field sales service provided to Texas Gas Transmission Corporation under Rate Schedule XFS-31, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER states that there is no longer a need for this sales arrangement because the agreement between the parties has expired by its own terms, has been terminated by mutual agreement between the parties, and has not been utilized by the parties for several years.

Comment date: January 5, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Co.

[Docket No. CP93-160-000]

January 15, 1993.

Take notice that on January 12, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93-160-000 a request pursuant to §§ 157.205 and 157.211 of the Regulations under the Natural Gas Act for authorization to construct a new meter station, under the certificate issued in Docket No. CP83-21-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct and operate the GRIMM II meter station located in Adams County, Colorado. CIG indicates that the meter station would be constructed pursuant to a request by Public Service Company of Colorado and would provide for deliverability of up to 45,000 Mcf of natural gas per day. CIG states that gas transported to the GRIMM II meter station would be used for the new Denver International Airport and local residential use. CIG estimates that the new meter station would cost $225,000.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Co.

[Docket No. CP93-158-000]

January 15, 1993.

Take notice that on January 12, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-158-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain pipeline facilities in Kansas, under WNG's blanket certificate issued in Docket No. CP82-479-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon by sale to Western Resources, Inc. (Western Resources) approximately 1.6 miles of the Beloit 4-inch lateral located in Mitchell County, Kansas, and approximately 0.5 miles of the Tonganoxie 4-inch lateral located in Leavenworth County, Kansas. It is stated that the facilities proposed to be abandoned are located downstream of WNG's measuring facilities for deliveries to Western Resources and that WNG would benefit by no longer having responsibility for their maintenance. WNG states that the sale price for the two laterals would be $1,976. It is stated that the transfer of ownership would not cause any interruption or termination of service to any customers. It is asserted that Western Resources has agreed to the sale.

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[1] West One Bank, Oregon and West One Bank, Oregon S.B. are subsidiaries of West One Bancorp, a bank holding company, Boise, Idaho.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. ANR Pipeline Co.

[Docket No. CP93–151–000]

January 15, 1993.

Take notice that on January 7, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP93–151–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the National Gas Act for authorization to enhance an existing site, ANR's West Marinette Meter Station (West Marinette) for delivery to an existing customer, Wisconsin Public Service Corporation (WPS), under the certificate issued in Docket No. CP82–480–000, pursuant to section 7 of the National Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to a request from WPS for additional deliverability to serve a peaking turbine used for power generation, ANR proposes to expand West Marinette. ANR indicates that the proposed expansion would include a hot tap and associated measurement and flow control facilities. ANR estimates that the proposed expansion of West Marinette would cost $354,000.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Co.

[Docket No. CP93–157–000]

January 19, 1993.

Take notice that on January 12, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–157–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim and in place approximately 5.9 miles of 8-inch lateral pipeline and appurtenant facilities located in Bourbon County, Kansas and Vernon County, Missouri, and the transportation of gas through said facilities under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that the pipeline presently serves the Missouri Public Service Company (MoPub) Nevada town border. WNG further states that the condition of the pipeline would not allow WNG to provide the increased delivery pressure requested by MoPub. WNG asserts that it would construct a new pipeline, pursuant to its blanket construction authorization, to replace the abandoned pipeline and to enable it to meet MoPub's requirements.

The reclaim cost is estimated to be $105,093, with a salvage value of $10,834, it is stated.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. Arkla Energy Resources

[Docket No. CP93–161–000]

January 19, 1993.

Take notice that on January 14, 1993, Arkla Energy Resources (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93–161–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities in Arkansas, under the authorization issued in Docket No. CP82–384–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER requests authority to abandon and remove two 217 horsepower (hp) rental compressor units installed temporarily on its Line JM–21, section 2, T4N, R2E to serve customers in St. Francis County, Arkansas. AER states that during the 1989/90 winter peak period, several communities, as well as several industrial customers served by Arkansas Louisiana Gas Company (ALG) experienced low pressure problems. It is stated that the low pressure problems experienced were due to extremely cold weather conditions and increased ALG demand in Arkansas. In order to alleviate the low pressure problems experienced like those in 1989/90, AER states that it installed a rental compressor unit during the 1990/91 peak winter period on its Line JM–21 in St. Francis County, Arkansas.[1] For the 1991/92 peak winter period, AER states that it installed two 217 hp compressor units. It is stated that these compressor units were also installed under AER's blanket certificate in Docket No. CP82–384–000 and will be reported in the 1992 Annual Report. AER states that the proposed abandonment and removal of these facilities will not result in the abandonment of any existing customers.

Comment date: March 1, 1993, in accordance with Standard Paragraph G at the end of this notice.

7. CNG Transmission Corp.

[Docket No. CP93–147–000]

January 19, 1993.

Take notice that on January 7, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–147–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of certain pipeline facilities in Pennsylvania and New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CNG proposes to construct and operate approximately 15.1 miles of 24-inch pipeline extending from the Harrison Storage Pool in Potter County, Pennsylvania to the Woodhull Station in Steuben County, New York. CNG asserts that the proposed pipeline would interconnect the eastern and western branches of its system thereby increasing the flexibility of its system.

CNG further asserts that the proposed pipeline would enable it to more effectively manage storage inventories in its northern storage pools, preserving peaking capabilities and ultimately providing more reliable and efficient service out of storage.

CNG states that this increased system flexibility and efficiency would enable CNG to provide its unbundled services as contemplated by Order No. 636 while minimizing Operational Flow Order as they relate to storage operations.

CNG estimates the cost of the facilities to be $12,605,300, which would be financed from funds on hand or obtained from its parent company, Consolidated Natural Gas Company.

Comment date: February 9, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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[1] It is stated that AER installed this compressor unit pursuant to its blanket certificate issued in Docket No. CP82–384–000 as reported in its 1991 Annual Report filed under Section 157.207 of the Regulations. AER states that this compressor unit was subsequently abandoned in Docket No. CP91–2278–000.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1940 Filed 1-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-02320T Texas-96]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 21, 1993.

Take notice that on December 28, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the L Sand member of the Vicksburg Formation underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, lying within Railroad Commission District 4, covers approximately 1170 acres in portions of the following areas of the Texas Gardens Subdivision:

Dionisio Ramirez .	A-563	Porcion 78.
Yldifonso Ramirez	A-584	Porcion 79.
Francisco Cantu ...	A-570	Porcion 80.

The notice of determination also contains Texas' findings that the referenced portion of the L Sand Member of the Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1942 Filed 1-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-02859T Wyoming-38]

Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 21, 1993.

Take notice that on January 8, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Baxter Formation underlying a portion of Sublette County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 160 acres described as the SE/4 of Section 20, Township 27 North, Range 113 West.

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Baxter Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-1943 Filed 1-26-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PL93-2-000]

Prior Notice and Filing Requirements Under Part II of the Federal Power Act; Notice of Procedures for Technical Conference

January 19, 1993.

On December 9, 1992, the Commission issued a Notice of Technical Conference and Request for Comments.[1] Due to the number of requests for participation in the Technical Conference, the Commission has established the following procedural schedule.

The Conference will commence at 10 a.m. on January 28, 1993 in the Commission's meeting room, 9th Floor, 825 North Capitol Street, NE., Washington, DC 20426. The Conference will consist of four panels which will last approximately one hour each.[2] Each speaker will be given three minutes to make a presentation at the beginning of each panel. After all of the panelists have spoken, a question and answer period will follow. In cases where a group is represented by more than one speaker, the speakers together are limited to three minutes. A speaker representing more than one entity likewise will be limited to three minutes as well.

Linwood A. Watson, Jr.,

Acting Secretary.

Attachment A

10 a.m. Panel

Central Maine Power Company
  Arthur W. Adelberg
  John W. Gulliver
Boston Edison Company
Central Vermont Public Service Corp.
Eastern Utilities Associates
Northern States Power Company
El Paso Electric Company
Wisconsin Public Service Corporation

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[1] 61 FERC ¶ 61,171 (1992).

[2] Attachment A designates which participants are in each panel and the time each panel is to begin.

Wisconsin Electric Power Company
  George F. Bruder
Potomac Electric Power Company
  Allen C. Barringer
Energy Services, Inc.
  J.A. Bouknight, Jr.
  Douglas L. Berresford
Edison Electric Institute
  Edward H. Comer

11 a.m. Panel

New England Power Company
  Paige Graening
Northeast Utilities Service Company
  Frederic Lee Klein
  John C. Ash
Barton Village, Inc.
The Village of Enosburg Falls Water & Light Department
The Village of Orleans, Vermont
The Village of Swanton, Vermont
  Frances E. Francis
  Ben Finkelstein
Consolidated Edison Company of New York, Inc.
  Peter Garam

1 p.m. Panel

Jersey Central Power and Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
  James B. Liberman
  Douglas E. Davidson
Long Island Lighting Company
  Robert G. Grassi
Entergy Services, Inc.
  Floyd L. Norton, IV
  William M. Dudley
Portland General Electric Company
  Leonard A. Girard
  Randall W. Childress
  Arlene Pianko Groner
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
  Mathew J. Piccardi
  Kenneth M. Jasinski
  Stuart A. Caplan

2 p.m. Panel

Washington Water Power Company
  Steven V. Fisher
  Thomas A. Johns
Southwestern Public Service Company
  Alan J. Statman
  Ronald N. Carroll
Montana Power Company
  W. Wayne Harper
PacifiCorp Electric Operations
  Gerald D. Miller
  Marcus Wood

[FR Doc. 93–1924 Filed 1–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–16–000]

El Paso Natural Gas Co.; Technical Conference

January 21, 1993.

In the Commission's order issued on November 30, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, January 28, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–1941 Filed 1–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–229–000, RP89–137–000, et al.]

Northwest Pipeline Corp.; Settlement Conference

January 21, 1993.

Pursuant to the Commission's order issued October 29, 1992 (61 FERC ¶ 61,126), an informal conference will be held to explore settlement of issues raised in Docket No. RP92–229–000. This is a continuation of the conference held January 14, 1993. The conference may also involve discussion of issues in Northwest Pipeline Corporation Docket No. RP89–137–000, *et al.* (*See,* order issued September 24, 1992, 60 FERC ¶ 61,286). All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Thursday, January 28, 1993, beginning at 10 a.m. in room 9306 of the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–1944 Filed 1–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES93–18–000]

Odgen Haverhill Associates; Notice of Application

January 15, 1993.

Take notice that on January 7, 1993, Odgen Haverhill Associates (Odgen Haverhill) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting the Commission to issue a blanket approval of all future issuances of securities and assumptions of obligations or liabilities.

Odgen Haverhill, a general partnership comprised of two general partners, Odgen Martin Systems of Haverhill, Inc. and Haverhill Power Inc., owns and operates a 43 MW facility in Haverhill, Massachusetts. The Commission previously certified the facility as a qualifying small power production facility. Because the facility has a power production capacity greater than 30 MW, it is subject to the provisions of the Federal Power Act as a public utility.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 93–1925 Filed 1–26–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–146–NG]

AGE Marketing Company; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing AGE Marketing Company to export up to 100 Bcf of natural gas to Mexico over

a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 21, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-2011 Filed 1-26-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT-51813; FRL-4181-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 36 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 93-181, February 21, 1993.

P 93-182, 93-183, 93-184, 93-185, 93-186, 93-187, 93-188, 93-189, 93-190, February 22, 1993.

P 93-191, 93-192, 93-193, 93-194, 93-195, 93-196, 93-197, 93-198, 93-199, 93-200, 93-201, 93-202, February 24, 1993.

P 93-203, 93-204, 93-205, February 27, 1993.

P 93-206, 93-207, 93-208, 93-209, 93-210, 93-211, February 28, 1993.

P 93-212, 93-213, 93-214, March 1, 1993.

P 93-215, 93-216, March 2, 1993.

Written comments by:

P 93-181, January 22, 1993.

P 93-182, 93-183, 93-184, 93-185, 93-186, 93-187, 93-188, 93-189, 93-190, January 23, 1993.

P 93-191, 93-192, 93-193, 93-194, 93-195, 93-196, 93-197, 93-198, 93-199, 93-200, 93-201, 93-202, January 25, 1993.

P 93-203, 93-204, 93-205, January 28, 1993.

P 93-206, 93-207, 93-208, 93-209, 93-210, 93-211, January 29, 1993.

P 93-212, 93-213, 93-214, January 30, 1993.

P 93-215, 93-216, January 31, 1993.

ADDRESSES: Written comments, identified by the document control number "(OPPT-51813)" and the specific number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460 (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 93-181

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Blocked polyisocyanate.

Use/Production. (G) Adhesion promoter. Prod. range: Confidential.

P 93-182

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) Formaldehyde, polymer with (chloromethyl)oxirane and methylphenol, reaction products with acrylic acid and an anhydride.

Use/Production. (S) Resin component of solder mask for printed wiring board production. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 1,800 mg/kg species (rat). Acute dermal toxicity: LD50 > species (rabbit). Eye irritation: slight species (rabbit). Mutagenicity: positive. Skin irritation: slight species (rabbit).

P 93-183

Manufacturer. Confidential.

Chemical. (G) Polyester adipate.

Use/Production. (S) PVC and rubber (Plasticizer). Prod. range: Confidential.

P 93-184

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-185

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersiv use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-186

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersiv use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat) acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-187

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Eye irritation: none species (rabbit). Mutagenicity: negative. Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Skin irritation: negligible species (rabbit).

P 93-188

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-189

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-190

Manufacturer. Confidential.

Chemical. (G) Alkylamino.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (rat). Acute dermal toxicity: LD50 > 2 g/kg species (rabbit). Static acute toxicity: time LC50 96H > 220 mg/l species (rainbow trout). Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-191

Importer. Confidential.

Chemical. (G) 2-Propenoic acid, reaction product with tetrakisol.

Use/Production. (G) Polymer component for speciality industrial coating, inks and adhesive. Prod. range Confidential.

P 93-192

Manufacturer. PCR, Inc.

Chemical. (S) Poly(ethylene-1,3-dimethyldisiloxane)copolymer-ethoxy endblocked.

Use/Production. (S) Component in masonary water repellents (solvent and water based) applied by roller or by spraying. Prod. range: 25,000 kg/yr.

P 93-193

Manufacturer. Arco Chemical Company.

Chemical. (S) Propanol,(2-(1,1-dimethylethoxy)methylethoxy).

Use/Production. (S) Solvent for coating and cleaning. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2.6 g/kg species (rat). Acute dermal toxicity: LD50 2.0 g/kg. Eye irritation: none species (rabbit). Skin irritation: negligible species (rabbit).

P 93-194

Manufacturer. Confidential.

Chemical. (G) Amine modified prepolymer.

Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-195

Manufacturer. Confidential.

Chemical. (G) Amine modified prepolymer.

Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-196

Manufacturer. Confidential.

Chemical. (G) Amine modified prepolymer.

Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-197

Manufacturer. Confidential.

Chemical. (G) Amine modified prepolymer.

Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-198

Manufacturer. Confidential.

Chemical. (G) Amine modified prepolymer.

Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-199

Manufacturer. Confidential.

Chemical. (G) Amine modified prepolymer.

Use/Production. (G) Industrial sealant. Prod. range: Confidential.

P 93-200

Manufacturer. Confidential.

Chemical. (G) Sodium zirconium phosphate derivate.

Use/Production. (G) Additive for resin. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (rat). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93-201

Importer. Mitsui & Co. (USA), Inc.

Chemical. (S) Magnesium aluminum zinc hydroxy arbonate(hydrotalcite-like compound).

Use/Import. (S) Heat stabilizer for PVC and neutralizer for acids in many polymers. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 15.0 mg/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: slight species (rabbit).

P 93-202

Importer. Mitsui & Co. (USA), Inc.

Chemical. (S) Magnesium aluminum zinc hydroxy perchloric carbonate.

Use/Import. (S) Heat stabilizer for PVC and neutralizer for halogen and acids in many polymers. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 15.0 mg/kg species (rat). Mutagenicity: negative.

P 93-203

Manufacturer. The C. P. Hall Company.

Chemical. (S) Hexanedioic acid; 2,2-Dimethyl,1,3-propanediol; benzencarboxylic acid; dodecanoic acid.

Use/Production. (G) Plasticizer. Prod. range: Confidential.

P 93-204

Manufacturer. FMC Corporation.

Chemical. (G) Nitrophenyl-substituted triazolinone.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 500 mg/kg species (rat). Acute dermal toxicity: LD50 > 200 mg/kg species (rabbit). Mutagenicity: positive.

P 93-205

Importer. Confidential.

Chemical. (G) Organotin compound.

Use/Import. (G) Dispersive use as catalyst for polymerization of olefins catalyst remains in the polymer. Import range: Confidential.

P 93-206

Manufacturer. Minnesota Mining & Manufacturing Company.

Chemical. (G) Methyl methacrylate/ethyl acrylate based polymer.

Use/Import. (G) Dispersive use as catalyst for polymerization of

P 93-207

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyl polyether with alkenedioic anhydride.

Use/Production. (S) Captive intermediate. Prod. range: Confidential.

P 93-208

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Carboxylated styrene-butadiene copolymer latex.

Use/Production. (G) Thickener compound. Prod. range: Confidential.

P 93-209

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Substituted phenol ester.

Use/Production. (S) Captive intermediate. Prod. range: Confidential.

P 93-210

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Carboxylated styrene-butadiene copolymer latex.

Use/Production. (G) Thickener compound. Prod. range: Confidential.

P 93-211

Manufacturer. Uniroyal Chemical Company.

Chemical. (G) PPDI polyester prepolymer.

Use/Production. (G) Dispersive use industrrial products open nondispersive use machine components. Prod. range: Confidential.

P 93–212

Importer. Confidential.

Chemical. (G) Aromatic amino polyol.

Use/Import. (S) Component of polyurethane foam insulation. Import range: Confidential.

P 93–213

Importer. Confidential.

Chemical. (G) Aromatic amino polyol.

Use/Import. (S) Component of polyurethane foam insulation. Import range: Confidential.

P 93–214

Importer. Wacker Chemicals (USA), Inc.

Chemical. (S) Calcium, bis(2,4-pentanedionato)-.

Use/Import. (G) Plastic additive. Import range: Confidential.

Toxicity Data. Static acute toxicity: time LC50 48H > 128.0 mg/l species (golden orfe). Skin irritation: negligible species (rabbit). Mutagenicity: negative.

P 93–215

Manufacturer. Confidential.

Chemical. (G) Organic acid ester, alcohol alkoxylated.

Use/Production. (G) Textile fiber processing lubricant component. Prod. range: Confidential.

P 93–216

Importer. Confidential.

Chemical. (G) A-Hydro-w-hydroxy poly (oxy-1,4-butanediyl),polymer with 2-propenoic acid 2-hydroxylethyl ester and diisocyanate.

Use/Production. (G) Polymer additive for industrial inks, and coatings. Prod. range Confidential.

Dated: January 19, 1993.

Frank V. Caesar,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc 93–1987 Filed 1–26–93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 632–6934.

OMB Control No.: 3060–0529.

Title: Implementation of the Cable Television Consumer Protection and Competition Act of 1992: Cable TV System Operators Rate Structure Questionnaire.

Expiration Date: 03/15/93.

Description: Pursuant to Commission Order, FCC 92–545, certain cable system operators must complete and file a rate structure questionnaire by January 22, 1993 concerning the rates they charge, competition in their franchise areas, and other system characteristics. The information will be used by the Commission to consider the rates of cable systems subject to effective competition. It will also be used to evaluate the feasibility with using a benchmark approach to regulatory basic tier cable rate and cable programming services rates and to determine the appropriate level of benchmark rates. These data will aid us in developing reporting requirements concerning rates of cable systems as prescribed by the Cable Act of 1992.

OMB Control No.: 3060–0150.

Title: Public Mobile Service—Part 22.

Expiration Date: 11/30/94.

Description: Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services (PMS). General requirements under part 22 are contained in subparts B, C and D. Miscellaneous requirements are found in subpart E. Special requirements for each service are provided in subparts G, H, K, L, and M. Special requirements for developmental authorizations are provided in subpart F. The information requested under part 22 is used by the Commission staff in carrying out its duties as set forth in sections 308 and 309 of the Communications Act of 1934, as amended, to determine the technical, legal and other qualifications of applicants to operate a station in the public mobile service. The information is also used to determine whether grant of an application will serve the public interest, convenience and necessity. The staff also uses this information to ensure that applicants and licensees comply with the ownership and transfer restrictions imposed by section 310 of the Act.

OMB Control No.: 3060–0515.

Title: Miscellaneous and Specialized Common Carrier Annual Letter (Section 43.21(d)).

Expiration Date: 09/30/95.

Description: Each miscellaneous common carrier with operating revenues over $100 million for the calendar year must file a letter showing the company's operating revenues for that year and the value of its total communications plant at the end of the year. The information is used by staff members to regulate and monitor the telephone industry and by the public to analyze the industry.

OMB Control No.: 3060–0298.

Title: Tariffs (Other Than Tariff Review Plan).

Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Policy and Rules Concerning Rates for Dominant Carriers, Memorandum Opinion and Order on Second Further Reconsideration, CC Docket Nos. 89–79 and 87–313.

Expiration Date: 10/31/94.

Description: The Commission clarified and modified the cost support required to tariff new services offered by price cap local exchange carriers. First, in cases where a LEC develops a lower-cost version of an existing service, the Commission clarified that the LEC may price that new service at any level below the price of the existing service. Second, the Commission modified its rules so that they no longer require LECs to satisfy the net revenue test as part of the cost showing for new services. The information collected through a carrier's tariff is used by the Commission to determine whether the services offered are just and reasonable as the Communications Act of 1934, as amended, requires. The tariffs and any supporting documentation are examined in order to determine if the supporting documentation are examined in order to determine if the services are offered in a just and reasonable and nondiscriminatory manner.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–1964 Filed 1–26–93; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 90–337, Phase II; FCC 92–496]

International Accounting Rates

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 5, 1992, the Commission adopted a Second Report and Order establishing benchmark settlement rates for Europe, Asia, and other regions, and requiring U.S. carriers to file reports by January 1, 1993, and January 1, 1994, describing

their success in negotiating settlement rates within our benchmarks with the European and Asian countries. The Commission also requests carriers to provide additional information in their reports concerning their progress in negotiating lower accounting rates with countries outside the European and Asian regions. Further, the Commission continues to require proportionate return traffic and equal division of tolls, and declines, at this time, to condition section 214 authorizations as a means of placing downward pressure on accounting rates.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Teresa Marrero, Attorney, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted November 5, 1992, and released November 27, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, room 239, 1919 M Street NW., Washington, DC 20036. The complete text of this decision also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Paperwork Reduction Act

The required filings will not create any undue burden on the public.

Summary of Second Report and Order

The Report and Order adopts benchmark settlement rates for Europe at $0.23–$0.39 per minute, and for Asia and other regions at $0.39–$0.60 per minute. The benchmark figures represent conservative estimates of an appropriate range for settlement rates, based on the underlying costs to terminate international calls. The order also requires that the five U.S. international facilities-based carriers that generated over $25 million in international message telephone service revenues in 1991 file progress reports by January 1, 1993, and January 1, 1994. These reports should indicate the carriers' success in bringing their settlement rates within the Commission's targeted ranges for Europe and Asia. The Commission also requests that these reports include any information U.S. carriers may have on accounting rate reductions for countries outside of the European and Asian regions. In addition, the Report and Order requests that carriers provide additional information in their reports concerning their progress in negotiating lower settlement rates with countries outside the European and Asian regions. In the order, the Commission also determines that U.S. carriers should continue to comply with the traditional International Settlements Policy principles of proportionate allocation of return traffic and equal division of tolls, and that no additional conditions to Section 214 authorizations should be imposed, at this time, as a means of facilitating lower accounting rates.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to 47 U.S.C. 1, 4, 201–205, 211, 215, 218–220, and 303, AT&T, MCI, US Sprint, TRT/FTC Communications, and GTE Hawaiian shall file with the Common Carrier Bureau, Chief, International Policy Division, progress reports by January 1, 1993, and by January 1, 1994, containing the information detailed in paragraph 25 of the order.

It is further ordered that, pursuant to sections 201–205, we adopt benchmark settlement rates for Europe at $0.23–$0.39 per minute and $0.39–$0.60 for Asia and all other regions.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-1660 Filed 1-26-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonville Port Authority, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200555-001.

Title: Jacksonville Port Authority/ Trailer Bridge Company, Inc.

Parties: The Jacksonville Port Authority Trailer Bridge Company, Inc.

Synopisis: The modification amends the basic Agreement to reflect the new name of Trailer Bridge Company, Inc., to Allen Freight Trailer Bridge, Inc., and makes certain adjustments to the rates and charges for rental, throughput and dockage.

Dated: January 21, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-1912 Filed 1-26-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Alpha-Omega Holding Company; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than February 19, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Alpha-Omega Holding Company*, Victor, Montana; to become a bank holding company by acquiring 84.20 percent of the voting shares of Farmers State Bank of Victor, Victor, Montana.

Board of Governors of the Federal Reserve System, January 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2004 Filed 1-26-93; 8:45 am]

BILLING CODE 6210-01-F

BB&T Financial Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *BB&T Financial Corporation*, Wilson, North Carolina; to acquire Carolina Savings Bank, Wilmington, North Carolina, and Edenton Savings and Loan Association, Edenton, North Carolina, and thereby engage in the traditional deposit taking and lending activities performed by a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2005 Filed 1-26-93; 8:45 am]

BILLING CODE 6210-01-F

Dudley K. Montgomery; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 16, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Dudley K. Montgomery*, Pecos, Texas; to acquire an additional 0.77 percent of the voting shares of The Security State Bank of Pecos, Pecos, Texas, for a total of 10.0 percent.

Board of Governors of the Federal Reserve System, January 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2006 Filed 1-26-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Clinical Laboratory Improvement Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee.

Times and Dates: 8 a.m.–4:30 p.m., February 17, 1993; 8 a.m.–4 p.m., February 18, 1993.

Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Agenda: The agenda will include issues associated with the Clinical Laboratory Improvement Amendments personnel standards. Topics will focus on comments received in response to the February 28, 1992, Final Rule.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Henry M. Colvin, Assistant Director for Program Policy, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 1600 Clifton Road, NE, Mailstop G-25, Atlanta, Georgia 30333, telephone 404/639-1706.

Anyone wishing to make an oral presentation should submit their request, in writing, to Mr. Colvin by close of business, February 3, 1993. The request should include the name, address, and telephone number of the participant; the approximate time needed; and a brief summary of the topic to be presented. Up to 10 minutes, depending on the number of requests, will be allowed for each oral presentation.

Dated: January 22, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination. Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-2074 Filed 1-26-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 93N-0020]

Animal Drug Export; Interceptor® (Milbemycin Oxime) Dye-Free Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Animal Health, Ciba-Geigy Corp., has filed an application

requesting approval for export to Italy of the animal drug Interceptor® (milbemycin oxime) dye-free tablets for dogs.

ADDRESSES: Relevent information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of non-food animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, has filed an application requesting approval for export to Italy of the animal drug Interceptor® (milbemycin oxime) dye-free tablets. The product is intended for use in dogs for prevention of heartworm disease and control of certain intestinal worm infections. The application was received and filed in the Center for Veterinary Medicine on January 12, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 8, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: January 19, 1993.

Robert Furrow,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–1965 Filed 1–26–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91E–0492 et al.]

Determination of Regulatory Review Period for Purposes of Patent Extension for Certain Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting several notices of determination of the regulatory review period for purposes of patent extension, for certain products. The previous **Federal Register** notices contained mathematical errors caused by an inadvertent error in a computer program to calculate the regulatory review period. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The table below lists the product name, the docket number, and the **Federal Register** citation corresponding to the notice of determination of regulatory review period for the product, and the corrections to the notices.

Recalculation of Regulatory Review Period

Product name	Docket number	Federal Register citation	Correction
Accupril®	91E–0492	57 FR 4212, February 4, 1992.	In FR Doc. 92–2633, on page 4212, in the 3d column in the 2d complete paragraph, in line 3, "3,441" is corrected to read "3,443"; in line 4, "2,414" is corrected to read "2,415"; and in line 6, "1,027" is corrected to read "1,028".
Biaxin®	92E–0063	57 FR 10907, March 31, 1992.	In FR Doc. 92–7319, on page 10907, in the 2d column, in the 2d complete paragraph, in line 3, "2,246" is corrected to read "2,248" and "1,566" is corrected to read "1,567"; and in line 6, "680" is corrected to read "681".
Zithromax®	92E–0027	57 FR 10907, March 31, 1992.	In FR Doc. 92–7262, on page 10908, in the 2d column, in the 1st complete paragraph, in line 3, "2,560" is corrected to read "2,562"; in line 4 "1,991" is corrected to read "1,992"; and in line 6, "569" is corrected to read "570".
Foscavir®	92E–0026	57 FR 12832, April 13, 1992.	In FR Doc. 92–8398, on page 12832, in the 3d column, in the 3d complete paragraph, in line 3, "1,709" is corrected to read "1,711"; in line 4, "1,337" is corrected to read "1,338"; and in line 6, "372" is corrected to read "373".
ZOCOR®	92E–0060	57 FR 12935, April 14, 1992.	In FR Doc. 92–8553, on page 12936, in the 1st column, in the 2d complete paragraph, in line 3, "2,493" is corrected to read "2,492" and "964" is corrected to read "962"; and in line 6, "1,529" is corrected to read "1,530".

Recalculation of Regulatory Review Period—Continued

Product name	Docket number	Federal Register citation	Correction
Dermatop®	91E–0476	57 FR 13746, April 17, 1992.	In FR Doc. 92–8872, on page 13747, in the 1st column, in the 1st complete paragraph, in line 3, "3,532" is corrected to read "3,534"; in line 4, "1,450" is corrected to read "1,451"; and in line 6, "2,082" is corrected to read "2,083".
Penetrex®	92E–0083	57 FR 14418, April 20, 1992.	In FR Doc. 92–8995, on page 14418, in the 3d column, in the 1st complete paragraph, in line 3, "3,352" is corrected to read "3,354"; in line 4, "1,458" is corrected to read "1,459"; and in line 6, "1,894" is corrected to read "1,895".
RELAFEN®	92E–0084	57 FR 14728, April 22, 1992.	In FR Doc. 92–9265, on page 14729, in the 1st column, in the 2d complete paragraph, in line 3, "4,220" is corrected to read "4,222"; in line 4, "2,077" is corrected to read "2,078"; and in line 6, "2,143" is corrected to read "2,144".
Mazicon®	92E–0082	57 FR 14729, April 22, 1992.	In FR Doc. 92–9270, on page 14730, in the 1st column, in the 1st complete paragraph, in line 3, "2,557" is corrected to read "2,559"; in line 4, "2,182" is corrected to read "2,183"; and in line 6, "375" is corrected to read "376".
Palmaz Balloon-Expandable Stent®	92E–0012	57 FR 15319, April 27, 1992.	In FR Doc. 92–9738, on page 15319, in the 3d column, in the 2d complete paragraph, in line 4, "1,575" is corrected to read "1,577" and "823" is corrected to read "824"; and in line 6, "752" is corrected to read "753".
Acel-Imune®	92E–0115	57 FR 18887, May 1, 1992.	In FR Doc. 92–10141, on page 18888, in the 1st column, in the 2d complete paragraph, in line 3, "2,002" is corrected to read "2,004".
Acel-Imune®	92E–0115	57 FR 22773, May 29, 1992.	In FR Doc. 92–12547, on page 22773, in the 3d column, in line 1, "434" is corrected to read "435"; and in line 2, "1,568" is corrected to read "1,569".
Maxaquin®	92E–0131	57 FR 18888, May 1, 1992.	In FR Doc. 92–10142, on page 18889, in the 1st column, in the 1st complete paragraph, in line 3, "1,486" is corrected to read "1,488"; in line 4, "916" is corrected to read "917"; and in line 6, "570" is corrected to read "571".
Lorabid®	92E–0081	57 FR 18889, May 1, 1992.	In FR Doc. 92–10190, on page 18889, in the 3d column, in the 2d complete paragraph, in line 3, "1,697" is corrected to read "1,699"; in line 4, "1,206" is corrected to read "1,207"; and in line 6, "491" is corrected to read "492".
Meta II, Model 1204 Cardiac Pacing System®	92E–0004	57 FR 20495, May 13, 1992.	In FR Doc. 92–11127, on page 20496, in the 2d column, in the 1st complete paragraph, in line 4, "448" is corrected to read "449" and "zero" is corrected to read "0"; in line 7, "448" is corrected to read "449".
Aredia®	92E–0025	57 FR 20693, May 14, 1992.	In FR Doc. 92–11271, on page 20694, in the 2d column in the 1st complete paragraph, in line 3, "1,583" is corrected to read "1,585" and "904" is corrected to read "905"; and in line 6, "679" is corrected to read "680".
Zoloft®	92E–0107	57 FR 20694, May 14, 1992.	In FR Doc. 92–11371, on page 20695, in the 1st column, in the 2d complete paragraph, in line 3, "3,997" is corrected to read "3,999" and "2,641" is corrected to read "2,642"; in line 6, "1,356" is corrected to read "1,357".
Mivacron®	92E–0156	57 FR 23235, June 2, 1992.	In FR Doc. 92–12845, on page 23236, in the 2d column, in the 1st complete paragraph, in line 3, "2,755" is corrected to read "2,757"; in line 4, "2,245" is corrected to read "2,246"; and in line 6, "510" is corrected to read "511".
Ticlid® (Patent No. 4,051,141)	92E–0023	57 FR 23238, June 2, 1992.	In FR Doc. 92–12847, on page 23238, in the 2d column, in the 2d complete paragraph, in line 3, "5,487" is corrected to read "5,489" and "4,772" is corrected to read "4,773"; and in line 6, "715" is corrected to read "716".
Ticlid® (Patent No. 4,591,592)	92E–0024	57 FR 23238, June 2, 1992.	In FR Doc. 92–12848, on page 23239, in the 2d column, in the 2d complete paragraph, in line 3, "5,487" is corrected to read "5,489" and "4,772" is corrected to read "4,773"; and in line 6, "715" is corrected to read "716".
Omniflox®	92E–0169	57 FR 23414, June 3, 1992.	In FR Doc. 92–12941, on page 23414, in the 2d column, in the 3d complete paragraph, in line 3, "1,449" is corrected to read "1,451"; in line 4, "658" is corrected to read "659"; and in line 6, "791" is corrected to read "792".
Ismo®	92E–0144	57 FR 25040, June 12, 1992.	In FR Doc. 92–13844, on page 25041, in the 1st column, in the 3d complete paragraph, in line 3, "2,878" is corrected to read "2,880" and "1,157" is corrected to read "1,158"; and in line 6, "1,721" is corrected to read "1,722".

Recalculation of Regulatory Review Period—Continued

Product name	Docket number	Federal Register citation	Correction
ADSOL® Red Cell Preservation Solution System	92E-0154	57 FR 32227, July 21, 1992.	In FR Doc. 92-17063, on page 32228, in the 1st column, in the 1st complete paragraph, in line 4, "1,192" is corrected to read "1,194"; in line 5, "496" is corrected to read "497"; and in line 7, "696" is corrected to read "697".
CPD Blood-Pack®	92E-0151	57 FR 32228, July 21, 1992.	In FR Doc. 92-17064, on page 32228, in the 3d column, in the 2d complete paragraph, in line 3, "1,192" is corrected to read "1,194"; in line 4, "496" is corrected to read "497"; and in line 6, "696" is corrected to read "697".
Cefzil®	92E-0080	57 FR 33965, July 31, 1992.	In FR Doc. 92-18110, on page 33966, in the 1st column, in the 1st complete paragraph, in line 3, "2,249" is corrected to read "2,250", and "1,615" is corrected to read "1,616"; and in line 6, "633" is corrected to read "634".

Dated: January 6, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93-1966 Filed 1-26-93; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Meeting (President's Cancer Panel Special Commission on Breast Cancer)

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, February 23, 1993, at the Hotel Washington, Washington Room, 515 15th Street, NW., Washington, DC 20004-1006.

This meeting will be open to the public from 8:30 a.m. to approximately 5 p.m. Attendance will be limited to space available. Agenda items will include presentations by invited speakers on the topic of "New Product Development and the Role of the Biotechnology Industry."

Iris J. Schneider, Acting Executive Secretary, President's Cancer Panel Special Commission on Breast Cancer, National Cancer Institute, Building 31, room 4A34, National Institutes of Health, Bethesda, Maryland 20892, 301/496-1148, will provide a roster of the Commission members and substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Iris J. Schneider, 301/496-1148 in advance of the meeting.

Dated: January 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-1917 Filed 1-26-93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Mental Health; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Extramural Science Advisory Board of the National Institute of Mental Health in February 1993.

This meeting will be open to the public as indicated below for discussion of the NIMH grant portfolio.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443-4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meeting may be obtained from the contact person indicated.

Committee Name: Extramural Science Advisory Board, NIMH.

Contact: Andrea Baruchin, Ph.D., 17C-26, Parklawn Building. Telephone: 301, 443-3657.

Meeting Date: February 22-23, 1993

Place: Building 31, Conference Room 8, National Institutes of Health, 9000 Wisconsin Avenue, Bethesda, MD 20892.

Open:

February 22, 1993, 8:30 a.m.-5 p.m
February 23, 1993, 8:30 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: January 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-1918 Filed 1-26-93; 8:45 am]

BILLING CODE 4140-01-M

Prospective Grant of Exclusive License: Type Alpha Platelet-Derived Growth Factor (PDGF) Receptor Gene

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/308,282, entitled "Type Alpha Platelet-Derived Growth Factor Receptor Gene" to COR Therapeutics, Inc., of South San Francisco, California. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to all therapeutic and diagnostic fields of use of the receptor. These fields of use are expected to include: Cardiovascular medicine; central nervous system conditions; wound healing; inflammatory and proliferative conditions; and cancer. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. If the prospective exclusive license is granted to COR Therapeutics, licenses for the use of the PDGF receptor for internal research purposes of its sale as a research reagent would still be available from the NIH.

The patent application describes novel DNA segments that encode platelet-derived growth factor (PDGF)

receptors that may be useful in therapies for conditions involving abnormal processes involving PDGF and its receptors. In particular, bioassay methods for detecting the expression of genes related to these DNA segments are effective in the identification of various classes of tumor cells, genetic defects in connective tissue growth, or in the healing response.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: January 3, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–1919 Filed 1–26–93; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 54243, November 17, 1992), is amended to reflect a reorganization within the Office of the Director, National Institute of Environmental Health Sciences (OD/NIEHS) (HNV1), National Institutes of Health (NIH). This reorganization will: (1) Establish the Office of Management (HNV12), the Office of Occupational Health and Technical Services (HNV13), the Office of Communications (HNV14), the Office of Program Planning and Evaluation (HNV15), the Office of Computer Technology and Services (HNV16), and the Office of Institutional Development (HNV17), at the third-echelon level within the OD/NIEHS.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Institute of Environmental Health Sciences (HNV), Office of the Director (HNV1),* insert the following:

Office of Management (HNV12). Plans, develops, directs, and evaluates administrative and staff support for Institute programs, including:

(1) Facilities engineering activities;

(2) Personnel management and staff assistance;

(3) Financial management and staff assistance;

(4) Supply and property management;

(5) Office services support;

(6) Space management;

(7) Contracts and procurement management;

(8) Management analysis; and

(9) Other administrative management services.

Office of Occupational Health and Technical Services (HNV13).

(1) Plans and provides services for the Institute in the areas of employee health and assistance programs, occupational health and safety, environmental protection, and campus security;

(2) Provides research activity exposure assessment advance to the Institute Director, other agencies and private organizations;

(3) Plans the program of library services and technical information systems in support of NIEHS; and

(4) Provides advice on worker/safety training and related programs through the outside grants program.

Office of Communications (HNV14).

(1) Advises the Director and other senior Institute staff members on the effective interpretation and utilization of Institute-conducted and supported research findings in a board program of scientific and health reports for targeted audiences;

(2) Plans and directs a program of interpretation, presentation, and dissemination of scientific and technical information for the biomedical community and other special audiences through publications, audio and video tapes, and closed circuit radio and television;

(3) Answers Congressional, White House, and other inquiries concerning ongoing research and treatment in environmental diseases;

(4) Collaborates with voluntary agencies and professional societies in the exchange of scientific and health materials, and in the planning and production of educational health materials for the scientific community and various special audiences; and

(5) Maintains liaison with the NIH Associate Director for Communications and serves, on request, as the information source for public affairs matters relating to the Institute's programs.

Office of Program Planning and Evaluation (HNV15). Plans, develops, and directs Institute program planning analysis and evaluation activities, including:

(1) Long- and short-term analyses to provide a basis for priority setting and budgetary and operational reports;

(2) Special studies, such as analysis of availability and projected needs for specialized environmental health personnel;

(3) Assessment of the nation's ongoing environmental health activities as a means of insuring that the Institute selects areas of greatest need and opportunity; and

(4) Maintaining an awareness of legislative developments and preparing analyses of potential Institute impact of pending legislation.

Office of Computer Technology and Services (HNV16).

(1) Operates and maintains the Institute's computer systems and the network of terminals connected to the various computers at DCRT/NIH;

(2) Provides programming consultation services, including software systems development, to Institute personnel;

(3) Maintains an active computer engineering group that provides computing support to laboratory research activities in various branches; and

(4) Provides systems analysis and project management support to both Institute and National Toxicology Program systems development projects.

Office of Institutional Development (HNV17).

(1) Serves as the central focal point for establishing goals to assure diverse populations' participation in Institute research and training programs;

(2) Serves as principal liaison to minority institutions;

(3) Develops specific research and/or training programs to increase minority institutions' and populations' participation in environmental health research, and oversees implementation of programs;

(4) Serves as Institute representative to other government agencies to develop and implement plans to insure equity of impact on diverse populations of agency activities; and

(5) Coordinates overall policies related to minority health and education issues, both external and internal to the Institute.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: January 13, 1993.

Bernadine Healy,

Director, NIH.

[FR Doc. 93–1920 Filed 1–26–93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3561; FR–3401–N–01]

Notice of Formula Allocations for the HOME Investment Partnerships Program for FY 1993 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of HOME Program formula allocations for FY 1993 and Deadlines for Submission of Notices of Intent to Participate, Comprehensive Housing Affordability Strategies, and Program Descriptions.

SUMMARY: This notice announces formula allocations of HOME Program funds for metropolitan cities, urban counties, consortia of units of general local government and States for FY 1993. It also announces the initial allocations for Guam, the Northern Mariana Islands, the Virgin Islands and American Samoa—the four insular areas. Further, this notice advises all jurisdictions eligible to receive allocations, except for the insular areas, of the deadlines for submitting their program description, and, for jurisdictions not previously designated as participating jurisdictions, of the deadlines for submitting their (1) written notification of intent to participate in the HOME Program and (2) comprehensive housing affordability strategy (housing strategy). Each insular area will be notified by the appropriate HUD Field Office of the submission requirements applicable for insular areas. Except for announcing the allocations to the insular areas, this notice applies to jurisdictions other than the insular areas.

DATES:

For Jurisdictions That Have Previously Been Designated as Participating Jurisdictions

Not later than March 15, 1993, a participating jurisdiction must submit a program description to the CPD Division Director in the appropriate HUD Field Office.

For Jurisdictions That Have Not Yet Been Designated as Participating Jurisdictions

Notification of intent to participate. Not later than March 15, 1993, a jurisdiction that has not previously been designated as a participating jurisdiction must notify the Community Planning and Development (CPD) Division Director in the appropriate HUD Field Office in writing, of its intention to become a participating jurisdiction, and, if applicable, must submit evidence that it has met the threshold allocation requirements.

Submission of housing strategy. Not later than 90 days after providing notification of its intention to become a participating jurisdiction, a new consortium that has not yet submitted a housing strategy to HUD must submit a housing strategy to the CPD Division Director in the appropriate HUD Field Office.

Note: Metropolitan cities and urban counties first eligible to become participating jurisdictions in FY 1993 must still submit their FY 1993 housing strategy by December 31, 1992, regardless of when they submit their notification of intent.

Submission of program description and certifications. Not later than 45 days after its designation as a participating jurisdiction, a new participating jurisdiction must submit a program description to the CPD Division Director in the appropriate HUD Field Office.

FOR FURTHER INFORMATION CONTACT: David M. Cohen, Director, Office of Affordable Housing Programs, room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–7000; telephone (202) 708–2685. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2501–0013.

I. Purpose and Substantive Description

(A) Authority

The HOME Investment Partnerships Program is authorized by the HOME Investment Partnerships Act, as amended (42 U.S.C. 12701 et seq.) (the Act). The program regulations are codified at 24 CFR part 92. Section 92.50 of 24 CFR contains the basic formula for allocating HOME funds.

Regulations concerning the housing strategy are codified at 24 CFR part 91 and were published September 1, 1992 as a final rule at 57 FR 40038.

The Housing and Community Development Act of 1992 (Pub. L. 102–550) (the HCD Act of 1992) made several changes to the Act. A number of these changes were effective upon enactment and the Department issued a November 9, 1992 memorandum to participating jurisdictions notifying them of these changes which became effective October 28, 1992, the date the HCD Act of 1992 was signed into law. A notice which discusses these amendments will also be published in the **Federal Register**. This notice briefly describes only the amendments which affect the allocation of HOME funds.

Section 202 of the HCD Act of 1992 amended section 216(3) of the Act and changed the dollar thresholds for units of local government if the amount appropriated pursuant to section 205 of the Act for the HOME Program for any fiscal year is less than $1,500,000,000. For any such fiscal year, the threshold would be $335,000 (instead of $500,000) for a jurisdiction to receive a formula allocation. Further, in any such year, any jurisdiction that has not been designed as a participating jurisdiction would have to meet a participation threshold of $500,000 (instead of $750,000) to become a participating jurisdiction pursuant to 24 CFR 92.102(b) and as indicated below in Section III of this NOFA. Since the amount of funds appropriated for Fiscal Year 1993 is $1 billion, these lower thresholds apply this fiscal year.

Another change that relates to the allocation of HOME funds is that section 203 of the HCD Act of 1992 has eliminated the rental production set-aside and the restrictions on new construction, including the new construction list. Therefore, this notice neither identifies which jurisdictions may undertake new construction without limit, nor sets aside a portion of their allocation for rental housing production.

Section 211 of the HCD Act of 1992 amends the provision of the Act concerning insular areas and requires the Department to reserve from each fiscal year's appropriation of HOME funds the greater of $750,000 or 0.2 percent of the amounts appropriated for grants to the insular areas.

(B) Formula Allocation Amounts

A total of $1 billion has been appropriated for the HOME Program for FY 1993. The Department has set aside $10 million (one percent of the total HOME Program appropriation) for grants to Indian tribes and $2 million (0.2 percent of the total HOME Program appropriation) for insular areas. The $10 million for the Indian tribe will be made available through a separate notice in the **Federal Register**. Further guidelines for the $2 million, allocated by formula to the insular areas, will be sent to each insular area by a letter from the appropriate HUD Field Office. This notice allocates by formula the remaining $988,000,000. Sixty percent, or $592,800,000, is being allocated to metropolitan cities, urban counties and consortia of units of local government and 40 percent, or $395,200,000, is being allocated to States.

Appendix A to this notice contains the formula allocations for metropolitan cities, urban counties, and consortia that receive allocations of $335,000 or more. The jurisdictions that have an asterisk by their allocation have not yet been designated as participating jurisdictions. Appendix B to this notice contains the formula allocations for States, and also indicates the initial allocations for Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa—the four insular areas.

(C) Eligibility

In the HOME Program funds are allocated by formula to units of general local government (that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under 24 CFR 92.101) and to States. The minimum formula allocation is $335,000 for a unit of general local government and $3,000,000 for a State. To be eligible to receive its formula allocation from HUD, a jurisdiction must be designated by HUD as a participating jurisdiction. However, once designated as a participating jurisdiction, a jurisdiction remains a participating jurisdiction and does not have to be designated again unless HUD revokes its designation in accordance with 24 CFR 92.107.

To be designated a participating jurisdiction, a jurisdiction that has not previously been designated a participating jurisdiction, or one that has had its designation as a participating jurisdiction revoked, must:

(1) Have an allocation under the formula. If its formula allocation is between $335,000 and $500,000, it must provide the difference between its formula allocation and $500,000, or the State may provide the shortfall from its allocation or from other sources. (24 CFR 92.102)

(**Note:** Previously designated participating jurisdictions with allocations between $335,000 and $500,000 do *not* have to make up this shortfall);

(2) Submit its notice of intent to participate (24 CFR 92.103); and

(3) Have a HUD-approved housing strategy (24 CFR 92.104).

When a jurisdiction has complied with the requirements of 24 CFR 92.102 through 92.104 and HUD Field Office has approved the jurisdiction's housing strategy in accordance with 24 CFR part 91, the HUD Field Office will designate the jurisdiction as a participating jurisdiction. Once a State or unit of general local government is designated a participating jurisdiction, it remains a participating jurisdiction for subsequent fiscal years according to 24 CFR 92.106, and the requirements of 24 CFR 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with 92.107. Thus, while those jurisdictions that have previously been designated as participating jurisdictions must have a HUD-approved housing strategy, they do not have to meet the requirements of (1) and (2) above of this section.

II. Program Description Submission Requirements

Under 24 CFR 92.150(a), a previously designated participating jurisdiction must submit a program description each fiscal year within 45 days of the date of publication of the formula allocations, and a jurisdiction that has not yet been designated as a participating jurisdiction must submit a program description within 45 days of designation. Thus, any jurisdiction receiving an allocation for the first time, including newly formed consortia of units of general local government, must meet the requirements for designation as a participating jurisdiction before submitting its program description.

III. Checklist of Participation Threshold Submission Requirements and of Program Description Submission Requirements

(A) Evidence of Meeting Participation Threshold Allocation Requirement (Applies to New Participating Jurisdictions Only)

A unit of general local government listed in appendix A that has a formula allocation of $335,000 or more, but less than $500,000, and which has not previously been designated as a participating jurisdiction, must submit, with its notice of intent to participate, as evidence that it has met the participation threshold requirements in 24 CFR 92.102(b), the following:

(1) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government; or

(2) Authorization from the State to transfer a portion of its allocation to the unit of general local government; or

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

(B) Content of Program Description (Applies to All Participating Jurisdictions)

In accordance with 24 CFR 92.150(b), the program description must provide the following information:

(1) An executed Standard Form 424;

(2) For a local participating jurisdiction, the estimated use of HOME funds and of matching contributions, if applicable, (consistent with needs identified in its current approved housing strategy) for each of the following categories of eligible activities: program administration; community housing development organization operating expenses; new construction; substantial rehabilitation; other rehabilitation; acquisition (not involving new construction or rehabilitation); tenant-based rental assistance; and an estimate of whether units assisted will be rental or owner-occupied;

(3) For a State, a description of how the State will distribute funds (consistent with priorities identified in its current approved housing strategy) i.e., transferring funds to other participating jurisdictions that do not meet the participation threshold allocation level in 24 CFR 92.102, administering a competitive process, or directly administering HOME funds. To the extent known, States should identify the areas in which HOME funds will be used. In addition, States should specify the activities to be undertaken (including program administration and community housing development organization operating expenses) and the tenure groups to be assisted based on their current approved housing strategy, regardless of the manner of distribution. For those program description items in paragraphs (b)(5), (b)(7), and (b)(8) of 24 CFR 92.150 that must be approved by HUD, a State may either describe the requirements it plans to follow or, if distributing funds to State recipients, will require its recipients to follow. Alternatively, States may wish to submit to HUD the proposed requirements of its State recipients after they have submitted their applications to the State.

(4) The amount of HOME funds that the participating jurisdiction is reserving for investment in affordable housing owned, developed or sponsored by community housing development organizations. An explanation of how the jurisdiction will work with

community housing development organizations and a description of the activities (type of activity and level of funds) that community housing development organizations will be undertaking for the jurisdiction;

(5) If the participating jurisdiction intends to use HOME funds for first-time homebuyers, the guidelines for resale should be described as required in 24 CFR 92.254(a)(4);

(6) If the participating jurisdiction intends to use HOME funds for tenant-based rental assistance, a description of how the program will be administered consistent with the minimum guidelines described in 24 CFR 92.211;

(7) If a participating jurisdiction intends to use other forms of investment not described in 24 CFR 92.205(b), a description of the other forms of investment; and

(8) A statement of the policy and procedures to be followed by the participating jurisdiction to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women's business outreach program under 24 CFR 92.350 and 92.351, respectively.

(C) The Following Certifications Must Accompany the Program Description (Applies to All Participating Jurisdictions)

(1) A certification that, before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

(2) If the participating jurisdiction intends to provide tenant-based assistance, the certification required by 24 CFR 92.211;

(3) A certification that the submission of the program description is authorized under State and local law (as applicable), and the participating jurisdiction possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 92.353;

(5) A certification that the participating jurisdiction and, if applicable, State recipients, will use HOME funds pursuant to the participating jurisdiction's current approved housing strategy and in compliance with all requirements of 24 CFR part 92;

(6) The certification with regard to the drug-free workplace required by 26 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by 24 CFR part 87.

If a jurisdiction needs a copy of the regulations, the Standard Form 424, or language for any required certification, it may obtain them from the Community Planning and Development Division of any HUD Field Office.

IV. Corrections to Deficient Program Descriptions

If the program description is not consistent with a participating jurisdiction's current approved housing strategy or if the participating jurisdiction has failed to submit information sufficient to allow HUD to make the necessary determinations required by 24 CFR 92.150(b)(5), (b)(7) and (b)(8), if applicable, HUD may require the participating jurisdiction to furnish such further information or assurances as HUD considers necessary to find the program description and certifications satisfactory. HUD will notify the participating jurisdiction in writing of any deficiencies in the program description within 30 days of receipt. The participating jurisdiction must submit corrections or additional information within a reasonable period of time, agreed upon by HUD and the participating jurisdiction.

As stated at 24 CFR 92.151(c), if the participating jurisdiction does not submit supporting information under 24 CFR 92.150 (b)(5) or (b)(7) that is sufficient to show consistency with its current approved housing strategy or to allow the required HUD determinations, or if HUD disapproves the guidelines under 24 CFR 92.150(b)(5) or the form of investment under 24 CFR 92.150(b)(7), the Field Office may approve the program description conditionally excepting those activities covered by those sections until such time as the necessary information is submitted.

V. Match Requirement for FY 1993 HOME Funds

Section 210 of the HCD Act of 1992 revised the matching requirements for participating jurisdictions in the HOME Program. Starting with Fiscal Year 1993 funds, participating jurisdictions must provide a 25 percent matching contribution for rental assistance, housing rehabilitation (including substantial rehabilitation) and acquisition of standard housing, and a 30 percent matching contribution for new construction. Further instructions concerning the match requirement will be included in an upcoming **Federal Register** notice which will discuss the amendments to the HOME Program. A matching contribution is not required for Fiscal Year 1992 funds, and no match credit is given, regardless of the fiscal year in which Fiscal Year 1992 funds are expended. The Department proposes to have the Cash and Management Information System calculate match liability. Match liability will be calculated based on the draw down of Fiscal Year 1993 HOME funds. Conversely, match credit will not be calculated until a participating jurisdiction begins to draw down its Fiscal Year 1993 HOME funds.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this notice does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government, but rather, only makes funds available for participating jurisdictions to promote affordable housing.

Executive Order 12602, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this notice has only an indirect impact on family, formation, maintenance, and general well-being, and is, therefore, not subject to the executive order.

Dated: January 19, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

Appendix A

HOME ALLOCATION AMOUNTS FOR FISCAL YEAR 1993

[In thousands of dollars]

Name	FY 93 amount
Birmingham, AL	1,954
Huntsville, AL	492
Mobile, AL	1,051
Montgomery, AL	899
Tuscaloosa, AL	453
Jefferson County, AL	863
Anchorage, AK	567
Phoenix, AZ	2,935
Maricopa County Consortium, AZ	2,134
Tucson Consortium, AZ	1,984
Little Rock, AR	747
Pine Bluff, AR	351
Alhambra, CA	398
Anaheim, CA	950
Bakersfield, CA	534
Berkeley, CA	936
Burbank, CA	443
Chula Vista, CA	493
Compton, CA	668
Costa Mesa, CA	429
El Cajon, CA*	427
El Monte, CA	630
Fresno, CA	1,427
Fullerton, CA	405
Garden Grove, CA	457
Glendale, CA	930
Hawthorne, CA	353
Huntington Beach, CA	584
Huntington Park, CA	554
Inglewood, CA	785
Long Beach, CA	2,601
Los Angeles, CA	23,574
Lynwood, CA	376
Modesto, CA	470
National City, CA	378
Oakland, CA	2,830
Oceanside, CA	405
Ontario, CA	371
Oxnard, CA	543
Pasadena, CA	793
Pomona, CA	516
Richmond, CA	485
Riverside, CA	776
Sacramento, CA	1,468
Salinas, CA	440
San Bernardino, CA	723
San Diego, CA	4,709
San Francisco, CA	5,419
San Jose, CA	2,386
Santa Ana, CA	1,074
Santa Barbara, CA	506
Santa Clara, CA	360
Santa Monica, CA	723
Santa Rosa, CA	418
South Gate, CA	508
Stockton, CA	881
Sunnyvale, CA	385
Torrance, CA*	430
Vallejo, CA	364
Contra Costa County, CA	1,054
Fresno County, CA	1,025
Kern County, CA	1,178
Los Angeles County, CA	8,695
Marin County, CA	839
Orange County, CA	1,694
Riverside County, CA	1,537
Sacramento County, CA	1,758
San Diego County, CA	1,258
San Joaquin County, CA	781
Santa Clara County, CA	927
Sonoma County, CA	829
Alameda County Consortium, CA	2,207
San Bernardino County Consortium, CA*	1,931
San Mateo County Consortium, CA	2,048
Ventura County Consortium, CA*	955
Aurora, CO	408
Boulder, CO	385
Colorado Springs, CO	801
Denver, CO	2,763
Adams County, CO	439
Pueblo Consortium, CO	534
Bridgeport, CT	1,428
Hartford, CT	1,649
New Britain, CT	430
New Haven, CT	1,316
Stamford, CT	434
Waterbury, CT	673
Wilmington, DE	541
New Castle County, DE	811
Daytona Beach, FL	394
Ft. Lauderdale, FL	742
Gainesville, FL	516
Hialeah, FL	841
Hollywood, FL*	401
Jacksonville, FL	2,551
Miami, FL	3,493
Miami Beach, FL	1,209
Orlando, FL	735
St. Petersburg, FL	1,080
Tallahassee, FL	543
Tampa, FL	1,532
West Palm Beach, FL	377
Broward County, FL	1,524
Dade County, FL	3,543
Hillsborough County, FL	1,089
Lee County, FL	350
Orange County, FL	1,139
Pasco County, FL	515
Polk County, FL	818
Brevard County Consortium, FL	773
Escambia County Consortium, FL*	973
Palm Beach County Consortium, FL*	1,320
Pinellas County Consortium, FL	1,284
Sarasota County Consortium, FL	534
Volusia County Consortium, FL	1,111
Albany, GA	545
Athens, GA	431
Atlanta, GA	3,320
Augusta, GA	481
Columbus, GA	897
Macon, GA	765
Savannah, GA	1,029
De Kalb County, GA	1,259
Greater North Atlanta Consortium, GA	1,745
Honolulu, HI	3,186
Boise, ID	353
Chicago, IL	26,673
Decatur, IL	423
East St. Louis, IL	652
Peoria, IL	592
Rockford, IL	598
Springfield, IL	435
Madison County, IL	841
St. Clair County, IL	724
Will County, IL	388
Cook County Consortium, IL*	4,689
Du Page County Consortium, IL*	1,301
Lake County Consortium, IL	847
Bloomington, IN	356
Evansville, IN	621
Fort Wayne, IN	714
Gary, IN	965
Hammond, IN	362
Indianapolis, IN	2,847
Muncie, IN	421
Lake County, IN	413
South Bend Consortium, IN	706
Davenport, IA	423
Des Moines, IA	795
Kansas City, KS	732
Topeka, KS	399
Wichita, KS	1,108
Covington, KY	377
Lexington-Fayette, KY	928
Louisville, KY	1,976
Jefferson County, KY	773
Alexandria, LA	372
Baton Rouge, LA	1,461
Lafayette, LA	382
Monroe, LA	408
New Orleans, LA	5,201
Shreveport, LA	1,005
Jefferson Parish Consortium, LA*	1,537
Portland, ME	437
Baltimore, MD	6,849
Anne Arundel County, MD	625
Baltimore County, MD	1,633
Montgomery County, MD	1,210
Prince Georges County, MD	1,819
Boston, MA	5,188
Brockton, MA	594
Cambridge, MA	754
Fall River, MA	772
Lawrence, MA	628
Lowell, MA	643
New Bedford, MA	873
Somerville, MA	612
Springfield, MA	1,228
Worcester, MA	1,074
Fitchburg Consortium, MA*	412
Holyoke Consortium, MA	682
Malden Consortium, MA	1,715
Newton Consortium, MA	986
Peabody Consortium, MA*	2,042
Quincy Consortium, MA	657
Ann Arbor, MI	578
Detroit, MI	9,710
Flint, MI	916
Grand Rapids, MI	900
Kalamazoo, MI	497
Lansing, MI	667
Pontiac, MI	424
Saginaw, MI	556
Genesee County, MI	640
Macomb County, MI	423
Oakland County, MI	934
Wayne County, MI	983
Duluth, MN	408
Minneapolis, MN	2,274
St. Paul, MN	1,241
Dakota County Consortium, MN	1,272
Hennepin County Consortium, MN	1,106
St. Louis County Consortium, MN	509
Jackson, MS	1,034
Kansas City, MO	1,967
Springfield, MO	585
St. Louis, MO	3,653
St. Louis County, MO	1,696
Lincoln, NE	594
Omaha, NE	1,311
Las Vegas, NV	732
Reno, NV	499
Clark County Consortium, NV	991
Manchester, NH	499
Atlantic City, NJ	418
Camden, NJ	987
East Orange, NJ	809
Elizabeth, NJ	942
Irvington, NJ	600
Jersey City, NJ	2,448
Newark, NJ	4,769
Passaic, NJ	742
Paterson, NJ	1,779
Perth Amboy, NJ	399
Trenton, NJ	811

HOME ALLOCATION AMOUNTS FOR FISCAL YEAR 1993—Continued

[In thousands of dollars]

Name	FY 93 amount
Bergen County, NJ	2,339
Burlington County, NJ	687
Essex County, NJ	1,035
Gloucester County, NJ	547
Middlesex County, NJ	604
Monmouth County, NJ	1,058
Morris County, NJ	480
Somerset County, NJ	375
Camden County Consortium, NJ*	795
Hudson County Consortium, NJ	2,957
Mercer County Consortium, NJ*	411
Ocean County Consortium, NJ	894
Union County Consortium, NJ	1,118
Vineland Consortium, NJ*	545
Albuquerque, NM	1,336
Albany, NY	696
Babylon Town, NY	535
Binghamton, NY	381
Buffalo, NY	3,360
Islip Town, NY	756
Mount Vernon, NY	680
New Rochelle, NY	467
New York, NY	85,151
Niagara Falls, NY	466
Rochester, NY	1,922
Syracuse, NY	1,266
Utica, NY	532
Yonkers, NY	1,387
Dutchess County, NY	441
Nassau County, NY	2,813
Orange County, NY	532
Rockland County, NY	632
Suffolk County, NY	1,384
Westchester County, NY	1,233
Amherst Consortium, NY*	716
Erie County Consortium, NY	808
Monroe County Consortium, NY	887
Onondaga County Consortium, NY	552
Schenectady Consortium, NY	968
Charlotte, NC	1,398
Durham, NC	690
Fayetteville, NC	447
Greensboro, NC	652
Raleigh, NC	634
Wilmington, NC	368
Asheville Consortium, NC*	837
Gastonia Consortium, NC*	400
Surry County Consortium, NC*	446
Winston-Salem Consortium, NC*	868
Akron, OH	1,279
Canton, OH	511
Cincinnati, OH	3,128
Cleveland, OH	5,226
Columbus, OH	3,203
Dayton, OH	1,436
East Cleveland, OH	386
Hamilton City, OH	373
Springfield, OH	511
Toledo, OH	1,842
Youngstown, OH	732
Franklin County, OH	604
Hamilton County, OH	948
Lake County, OH	362
Cuyahoga County Consortium, OH*	1,463
Montgomery County Consortium, OH	851
Stark County Consortium, OH*	624
Summit County Consortium, OH	520
Warren Consortium, OH	667
Lawton, OK	371
Oklahoma City, OK	1,644
Tulsa, OK	1,321
Salem, OR	393
Clackamas County, OR	567
Washington County, OR	676
Eugene Consortium, OR	794
Portland Consortium, OR	2,831
Allentown, PA	520
Erie, PA	667
Harrisburg, PA	435
Lancaster, PA	381
Philadelphia, PA	12,033
Pittsburgh, PA	2,891
Reading, PA	576
Scranton, PA	443
Allegheny County, PA	2,801
Beaver County, PA	613
Berks County, PA	424
Chester County, PA	756
Lancaster County, PA	709
Washington County, PA	709
Bucks County Consortium, PA	1,020
Delaware County Consortium, PA	1,653
Luzerne County Consortium, PA*	1,206
Montgomery County Consortium, PA*	1,268
Westmoreland County Consortium, PA*	1,036
York County Consortium, PA	890
Pawtucket, RI	451
Providence, RI	1,417
Charleston, SC	562
Columbia, SC	546
Greenville, SC	371
North Charleston, SC	371
Greenville County, SC	686
Sumter County Consortium, SC*	910
Chattanooga, TN	929
Knoxville, TN	1,028
Memphis, TN	3,829
Nashville-Davidson, TN	1,979
Abilene, TX	371
Amarillo, TX	476
Arlington, TX	469
Austin, TX	1,865
Beaumont, TX	553
Brownsville, TX	703
Corpus Christi, TX	1,177
Dallas, TX	4,338
El Paso, TX	2,501
Fort Worth, TX	1,647
Galveston, TX	364
Houston, TX	7,094
Laredo, TX	820
Lubbock, TX	701
McAllen, TX	390
San Antonio, TX	4,418
Waco, TX	590
Wichita Falls, TX	369
Bexar County, TX	394
Harris County, TX	1,205
Hidalgo County, TX	1,266
Tarrant County, TX	612
Salt Lake City, UT	926
Salt Lake County Consortium, UT	1,020
Utah Valley Consortium, UT	783
Alexandria, VA	510
Chesapeake, VA	399
Hampton, VA	463
Newport News, VA	716
Norfolk, VA	1,759
Portsmouth, VA	671
Richmond, VA	1,417
Roanoke, VA	496
Virginia Beach, VA	763
Arlington County, VA	723
Fairfax County, VA	1,170
Henrico County, VA*	450
Prince William County, VA*	352
Charlottesville Consortium, VA*	569
Seattle, WA	2,588
Spokane, WA	927
Tacoma, WA	891
Clark County, WA	640
Pierce County, WA	1,059
Spokane County, WA	461
King County Consortium, WA*	1,766
Snohomish County Consortium, WA*	968
Green Bay, WI	369
Madison, WI	837
Milwaukee, WI	4,144
Racine, WI	368
Milwaukee County Consortium, WI*	709
Aguadilla Municipio, PR	368
Arecibo Municipio, PR	373
Bayamon Municipio, PR	740
Caguas Municipio, PR	529
Carolina Municipio, PR	696
Guaynabo Municipio, PR	357
Mayaguez Municipio, PR	756
Ponce Municipio, PR	975
San Juan Municipio, PR	4,078

*An asterisk indicates a jurisdiction that has not yet been designated as a participating jurisdiction.

Appendix B

HOME ALLOCATION AMOUNTS FOR FISCAL YEAR 1993

[$ in thousands]

Name	FY 93 amount	Name	FY 93 amount
Alabama	9,916	Montana	3,335
Alaska	3,000	Nebraska	3,000
Arizona	3,000	Nevada	3,000
Arkansas	7,520	New Hampshire	3,000
California	28,390	New Jersey	6,389
Colorado	4,602	New Mexico	3,369
Connecticut	6,044	New York	21,367
Delaware	3,000	North Carolina	13,952
District of Columbia.	4,745	North Dakota	3,336
Florida	9,906	Ohio	15,486
Georgia	12,262	Oklahoma	6,715
Hawaii	3,000	Oregon	4,658
Idaho	3,000	Pennsylvania	14,483
Illinois	12,865	Rhode Island	3,000
Indiana	8,625	South Carolina	7,623
Iowa	6,516	South Dakota	3,336
Kansas	4,414	Tennessee	9,869
Kentucky	10,409	Texas	22,869
Louisiana	8,854	Utah	3,000
Maine	3,481	Vermont	3,335
Maryland	4,146	Virginia	8,307
Massachusetts.	8,951	Washington	5,681
Michigan	14,461	West Virginia	7,191
Minnesota	4,622	Wisconsin	7,931
Mississippi	9,338	Wyoming	3,336
Missouri	8,477	Puerto Rico	6,547

FY 1993 HOME ALLOCATION AMOUNTS FOR THE INSULAR AREAS

[$ in thousands]

American Samoa	$180
Guam	817
Northern Mariana Islands	171
United States Virgin Islands	832
Total	$2,000

[FR Doc. 93-1908 Filed 1-26-93; 8:45am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California Desert District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Law 94–579, title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Wednesday, February 24, 1993 from 10 a.m. to 4:45 p.m. in the Council Chambers of the Needles Civic Center—City Hall, 1111 Bailey Street, Needles, California.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—Incentive-Based Grazing Fee
—U.S. Fish and Wildlife Service Section 7 Consultations
—Rangeland Management and Improvements
—Rangeland Monitoring

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available there for public inspection during regular business hours 7:45 a.m. to 4:30 p.m. (P.S.T.) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507, (909) 697–5370.

Dated: January 20, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–2016 Filed 1–26–93; 8:45 am]

BILLING CODE 4310–40–M

[ID–943–03–4210–04; IDI–28137]

Exchange and Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange and opening order.

SUMMARY: The United States has issued an exchange conveyance document to Walter J. and Wanda R. Weeks, of Irwin, Idaho, under Section 206 of the Federal Land Policy and Management Act. In addition to providing official public notice of the exchange, this document contains an order which opens land received by the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: February 26, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In an exchange made under the provisions of Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described land has been conveyed from the United States:

Boise Meridian

T. 1 N., R. 44 E.,
  Sec. 22, SW¼NW¼NW¼SE¼NW¼,
    SW¼NW¼SE¼NW¼,
    S½SE¼NW¼SE¼NW¼,
    SW¼SE¼NW¼,
    W½NW¼SE¼SE¼NW¼, and
    SW¼SE¼SE¼NW¼.
Comprising 18.125 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 1 N., R. 44 E.,
  From the south quarter corner of sec. 22, run N. 00°02′32″ E., 1,315.65 ft. and N. 89°54′44″ E., 436.77 ft. to the true point of beginning;
  Thence N. 89°54′44″ E., 830 ft.;
  Thence N. 04°58′02″ W., 1,324.70 ft.;
  Thence S. 89°54′ W., 1,350 ft.;
  Thence S. 30°18′33″ E., 365 ft.;
  Thence S. 24°10′34″ E., 1,100 ft. to the true point of beginning.
Comprising 32.50 acres of private land.

The purpose of the exchange was to acquire non-Federal land which has high public values for winter range for mule deer. The public interest was well served through completion of the exchange. The values of both the Federal and non-Federal land in the exchange were appraised at $8,000.

3. At 9 a.m. on February 26, 1993, the reconveyed private lands described in paragraph 2 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 26, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. At 9 a.m. on February 26, 1993, the reconveyed private lands described in paragraph 2 will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in paragraph 2 under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 14, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–1962 Filed 1–26–93; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Cuyahoga Valley National Recreation Area, Ohio; Sale of Real Property

AGENCY: Cuyahoga Valley National Recreation Area, National Park Service, Interior.

ACTION: Sale of real property.

SUMMARY: This notice publishes the interest of the National Park Service to solicit bids for the sale of lands within the boundary of Cuyahoga Valley National Recreation Area, Brecksville, Ohio.

DATES: The sale solicitation for sealed bids will be accepted until 2 p.m., April 30, 1993. The sealed bids are to be delivered to Superintendent, Cuyahoga Valley National Recreational Area, 15610 Vaughn Road, Brecksville, Ohio 44141.

FOR FURTHER INFORMATION CONTACT: Einar L. Johnson, Assistant Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141. Telephone 216–526–5256.

SUPPLEMENTARY INFORMATION: The following additional information is provided regarding the proposed sale of real property:

Justification

The National Park Service is soliciting sealed bids for the sale of Tract 109–38 (formerly 109–108) consisting of 1.13

acres with a residence within Cuyahoga Valley National Recreation Area. Selling of real property is authorized under section 5(a) of The Act of July 15, 1968, 82 Stat. 354, 16 U.S.C. 460*l*–22(a), 36 CFR part 17. Selling this historic property with deed restrictions will ensure the property is maintained in conformance with the Boston Historic District Themes and provide for private ownership at minimal expense to the Federal Government.

Legal Description

Cuyahoga Valley Tract 109–38, aka 1509 Boston Mills Road, Boston Township, Summit County, Ohio, containing 1.13 acres, more or less, including all improvements subject to protective covenants and restrictions available for inspection at the park Superintendent's office, 15610 Vaughn Road, Brecksville, Ohio 44141. Open House dates for showing the property are 2 p.m. to 4 p.m. April 4, April 11, and April 18, 1993.

Interest To Be Conveyed

The property will be sold to successful bidder in fee title with deed restrictions.

Fair Market Value

The Fair Market Value of the property as determined by an independent appraiser licensed in the State of Ohio is $66,000. The appraisal may be inspected at the Headquarters of Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141.

Former Owner's Preferential Rights

The former owner has the right to acquire interest in the real property upon matching the highest bid.

Conveyance Procedures, Requirements and Time Schedule

Conveyance of the property will be by a Restrictive Covenant Quit Claim Deed. The minimum acceptable bid is $66,000, plus a separate non-refundable payment of $100 to cover the cost of publication and processing of bids. Bids must be in writing, clearly identify the bidder, signed by the bidder or his assigned agent, state amount of bid, and refer to the notice. Bids must be accompanied by certified check, post office money order, bank draft, or cashier check and made payable to the United States of America for the full amount of the bid. This payment will be refundable to unsuccessful bidders.

The property will be available for public inspection on the site from 2 p.m. to 4 p.m. April 4, April 11, and April 18, 1993. Bids will be accepted until 2 p.m. April 30, 1993.

Dated: January 13, 1993.

Don H. Castleberry,

Regional Director, Midwest Region, National Park Service.

[FR Doc. 93–1993 Filed 1–26–93; 8:45 am]

BILLING CODE 4310-70-M

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

The Agenda for the meeting is the initial Commission review and discussion of the draft comprehensive management plan/environmental impact statement for the Mississippi National River and Recreation Area. Public comments will be taken from 2:30 p.m. to 5 p.m. on Saturday, February 6.

DATE & TIME: February 5, 1993, 9 a.m. to 5 p.m., February 6, 1993, 9 a.m. to 5 p.m.

ADDRESSES: Spring Hill Conference Center, 725 County Road 6, Wayzata, Minnesota.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, MN 55101. (612–290–4160).

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–969, November 18, 1988.

Dated: January 21, 1993.

Don H. Castleberry,

Regional Director, Midwest Region.

[FR Doc. 93–1994 Filed 1–26–93; 8:45 am]

BILLING CODE 4310-70-M

Completion of Inventory of Native American Human Remains From Gunther Island, CA, in the Possession of the California Department of Parks and Recreation

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains from Gunther Island, California, in the possession of the California Department of Parks and Recreation. Representatives of culturally affiliated Indian tribes are advised that these human remains will be retained by the Department at its headquarters facility until February 26, 1993, after which they may be repatriated to the culturally affiliated group.

The detailed inventory and assessment of these human remains has been made by the California Department of Parks and Recreation curatorial and archeological staff, contract specialists in physical anthropology and prehistoric archeology, and representatives of the Blue Lake Rancheria, Rohnerville Rancheria (also called the Bear River Mattole Wiyot Tribe), and the Table Bluff Reservation of the Wiyot Indians.

The human remains consist of a skull and mandible recovered from CA–HUM–67, a village site on Humboldt Bay about two miles north of Eureka, California. The antiquity of these remains has not been determined. These remains were possibly excavated by H.H. Stuart, a Eureka dentist who excavated 382 graves during the 1920s, 1930s, and 1940s, and sold, traded, or gave away the recovered bones and artifacts. These remains were acquired by the State Indian Museum between 1927–1950.

The village site from which the remains were recovered was known historically as Tolowat. Archeological and historical evidence indicates that the Tolowat village site was occupied between approximately 900 A.D. and 1860 when its Wiyot inhabitants were massacred by American settlers. There are no indications of occupation of the site by any other group.

This notice has been sent to officials of the Blue Lake Rancheria, Rohnerville Rancheria, and the Table Bluff Reservation of the Wiyot Indians. Representatives of any other Indian Tribe which believes itself to be culturally affiliated with these human remains should contact Pauline Grenbeaux Spear, Committee on Repatriation, P.O. 942896, Sacramento CA 94296–0001, (916) 324–6800 before February 26, 1993.

Dated: January 22, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–1995 Filed 1–26–93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–643 (Preliminary)]

Defrost Timers From Japan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–643 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of defrost timers for residential refrigerators, provided for in subheading 9107.00.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by March 5, 1993.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on January 19, 1993, by Paragon Electric Co., Inc., Two Rivers, WI.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on February 9, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–205–3181) not later than February 5, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before February 12, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: January 11, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1985 Filed 1–26–93; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–341]

Certain Static Random Access Memories, Components Thereof, and Products Containing Same; Notice of Commission Determination Not to Review an Initial Determination Designating the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by six months, *i.e.*, from October 1, 1993, to April 1, 1994.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108.

SUPPLEMENTARY INFORMATION: On December 9, 1992, respondent United Microelectronics Corp. filed a motion to designate the subject investigation "more complicated." Complainant SGS-Thomson Microelectronics, Inc. opposed the motion and the Commission investigative attorney suggested postponing the decision until after depositions in Taiwan are completed and the accused products are identified.

On December 22, 1992, the ALJ issued an ID (Order No. 4) granting the motion to designate the investigation "more complicated" because the technology is extremely complex and in the interests of fairness to the parties because discovery has not been going well.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: January 15, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1983 Filed 1–26–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principle office: SUPERVALU INC., P.O. Box 990, Minneapolis, MN 55440.

2. *Wholly-owned subsidiaries which will participate in the operations, and state(s) of corporation:*

		State of incorporation
Preferred Products, Inc	Chaska, MN	Minnesota.
SUPERVALU Holdings, Inc	Eden Prairie, MN	Minnesota.
SUPERVALU Transportation, Inc	Eden Prairie, MN	Minnesota.
Twin Valu Stores, Inc	Eden Prairie, MN	Minnesota.
Wetterau, Inc	Hazelwood, MO	Missouri.
Hazelwood Farms Bakeries, Inc	Hazelwood, MO	Missouri.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1976 Filed 1–26–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–17 (Sub-No. 1X)]

Visalia Electric Railroad Co.; Abandonment Exemption; In Tulare County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, Visalia Electric Railroad Company's abandonment of 18.02 miles of track in Tulare County, CA, subject to certain environmental and standard labor protective conditions.

DATES: Unless a formal expression of intent to file an offer of financial assistance is received, this exemption will be effective on February 26, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 8, 1993, petitions to stay must be filed by February 11, 1993, and petitions for reopening must be filed by February 22, 1993. Requests for a public use condition must be filed by February 16, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–17 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representatives:

John MacDonald Smith, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105, and

Karl Morell, Louis E. Gitomer, Taylor, Morell & Gitomer, 919 18th Street, NW., Suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT:

Richard B. Felder, (202) 927–5610.

[TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services, (202) 927–5721.)

Decided: December 31, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, and Phillips. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1975 Filed 1–26–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Cooper Industries, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 7, 1992, a consent decree in *United States* v. *Cooper Industries, Inc., et al.*, Civil Action No. 92–2365, was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint filed by the United States at the time of lodging the consent decree, alleges, under section 107 of CERCLA, 42 U.S.C. 9607, that the defendants, Cooper Industries, Inc., and General Electric Company (the "Settlors") are liable for response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Osborne Landfill Superfund Site, in Mercer County, Pennsylvania (the "State"). In the complaint, the United States requests a judgment against the defendants jointly and severally for recovery of over $1,700,000 in past response costs under section 107(a) of CERCLA, 42 U.S.C. 9607(a); and a determination under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any finding of liability would be binding in any subsequent action for further response costs or damages.

In the consent decree, the Settlors have agreed, *inter alia*, to pay

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[1] *See Exemp. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

$1,813,687.16 in past costs to the Hazardous Substances Trust Fund, and to reimburse the United States for response costs to be incurred in the future.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Cooper Industries, Inc., et al.*, DOJ Ref. No. 90–11–2–659. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 (202–347–2072). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $6.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Creech,

Chief, Environmental Enforcement Section.

[FR Doc. 93–1960 Filed 1–26–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); United States v. Marathon Battery Co. et al.

In accordance with 42 U.S.C. 9622 and 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Marathon Battery Co. et al.*, Civil Action No. 91–6544, was lodged with the United States District Court for the Southern District of New York on January 6, 1993. Under the terms of the proposed consent decree, Gould, Inc. (Gould) will implement the remedies selected by the Environmental Protection Agency (EPA) for the Marathon Battery Company Superfund Site in the Records of Decision (ROD) I, II and III. The Site is located in Cold Spring, Putnam County, New York. Gould will also perform the long term monitoring and maintenance at the Site. The consent decree further requires the two other settling parties, Marathon Battery Company (Marathon) and the U.S. Army (Army), to pay funds into a trust fund which will be used to finance the remedies at the Site. In accordance with the terms of the consent decree, the settling parties will also pay to EPA past response costs and interest, future costs for work currently in progress, and oversight costs. This consent decree will further modify a previous consent decree with Marathon and the Army under which Marathon and the Army settled their liability for the future costs associated with Area II and EPA's implementation of ROD II. This consent decree will modify the previous consent decree to the extent that funds contributed to Marathon and the Army under the previous consent decree will be used by Gould to perform the remedial action in Area II. The previous consent decree was styled *United States* v. *Marathon Battery Company*, 91.CIV 6544, and was entered by the District Court for the Southern District of New York on January 17, 1992.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Marathon Battery Company, et al.*, DOJ Ref. #90–11–2–314.

The proposed consent decree may be examined at the Office of the United States Attorney, for the Southern District of New York, 100 Church Street, New York, New York 10007; Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Consent Decree Library, 601 Avenue, NW., Washington, DC 20044, 202–347–7829. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $24.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–1959 Filed 1–26–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging Under Clean Water Act in United States v. City of Seattle, WA

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *City of Seattle*, No. C–92–1933 was lodged with the United States District Court for the Western District of Washington on December 18, 1992.

The United States brought this action pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), in response to sewage discharges by the City of Seattle and Constructors-Pacific Company (doing business as Pamco) into Union Bay on Lake Washington. The Consent Decree requires the defendants to pay a $25,000 civil penalty, $12,500 from each defendant. The Consent Decree also requires the City of Seattle to conduct a water pollution source control program to reduce the amount of contamination reaching storm sewers. As part of the source control program, the City of Seattle will label storm drains discharging to Lake Washington, review the waste disposal practices of certain businesses, and carry out other public awareness measures.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree with the City of Seattle and Constructors-Pacific Company. Comments should be addressed to Assistant Attorney General Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Seattle* (Union Bay), DOJ Ref. No. 90–5–1–1–3616.

The Consent Decree may be examined at the Region X Offices of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101 and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, Tel. (202) 347–2072. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting copies, please tender a check in the amount of $4.00 (25 cents per page reproduction charge) payable to the Consent Decree Library.

Roger Clegg,

Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–1958 Filed 1–26–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Cookson Group, PLC, et al.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) through (h), the United States publishes below the comments received on the proposed Final Judgment in *United States* v. *Cookson Group, plc, et al.*, Civil Action No. 92 2206, filed in the United States District Court of the District of Columbia, together with the

United States' responses to the comments.

Copies of the comments and responses are available for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC, and for inspection and copying at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, 333 Constitution Avenue, NW., Washington, DC.

Constance K. Robinson,
Deputy Director of Operations, Antitrust Division.

Exhibit A, the Final Judgment as originally proposed, the Competitive Impact Statement, and the Stipulation previously were published in the **Federal Register** (57 FR 46869, October 13, 1992) and are not republished herein. Exhibit B, copies of affidavits of publication of newspaper notices of the proposed Final Judgment and Competitive Impact Statement, also are omitted from publication herein. Exhibit C, are copies of the public comments relating to the proposed Final Judgment. These may be requested for inspection and copying at room 3233, Antitrust Division, Department of Justice, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, 3rd Street and Constitution Avenue, NW., Washington, DC 20001.

Comments on the Proposed Final Judgment and the United States Responses to the Comments

In the United States District Court for the District of Columbia: United States of America, Plaintiff, v. Cookson Group PLC, Electrovert Ltd., and Electrovert U.S.A. Corp., Defendants. Civil Action No. 92 2206, Hon. Thomas F. Hogan.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States hereby files the attached comments on the proposed Final Judgment in the above-captioned civil antitrust proceeding, together with the United States responses to those comments.

This action was commenced on September 29, 1992, when the United States filed a Complaint alleging that the acquisition by Cookson Group plc; Electrovert Ltd.; and Electrovert U.S.A. Corp. ("Electrovert") of the assets of Hollis Automation Company (Hollis") violated section 7 of the Clayton Act because the effects of the acquisition may be substantially to lessen competition in interstate trade and commence for high performance and mid-range wave soldering machines in North America.

At the same time the United States also filed a proposed Final Judgment, a Stipulation signed by the parties stipulating to entry of the Final Judgment, and a Competitive Impact Statement. The proposed Final Judgment requires Electrovert to license in perpetuity all North American rights to Hollis' wave soldering technology to two of four current industry participants. The Stipulation provides that the proposed Final Judgment may be entered by the Court after completion of the procedures required by the APPA.

The APPA requires a sixty-day period for the submission of public comments on the proposed Final Judgment, 15 U.S.C. 16(b). In this case, the sixty-day comment period commenced on October 13, 1992, and terminated on December 14, 1992. During this period, the United States received eight comments on the proposed Final Judgment. The United States considered the comments and sent written responses to the commenting parties.[1]

Pursuant to 15 U.S.C. 16(e), the proposed Final Judgment can be entered only after the Court determines that the Judgment is in the public interest. The focus of this determination is whether the relief provided by the proposed Final Judgment is adequate to remedy the antitrust violations alleged in the Complaint.[2]

The eight comments expressed concern over the increased domination of the United States wave soldering machine industry by foreign owned firms, the capability of the proposed licensees to redesign their machines in a timely manner to incorporate Hollis' "hot air knife" technology, the continued availability of spare parts from Electrovert for United States customers, the fact some competitively sensitive information might have been exchanged between Electrovert and Hollis prior to the United States commencing its investigation, and the fact that aqueous cleaner products were not addressed in the proposed Final Judgment.

The United States explained in its responses that the antitrust laws are designed to protect against the possibility that a merger could enable the resulting firm to exercise market power and harm United States consumers through higher prices or reduced output. The antitrust laws do not distinguish between foreign and domestic companies since it is the likelihood of harm to competition—rather than its possible source—with which the antitrust laws are concerned.

Although three of the four proposed licensees are owned by foreign companies, each has made a substantial investment in the United States wave soldering machine market and appear well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets. The proposed licensees have made and likely will continue to make important technological contributions to wave soldering; therefore, the United States does not believe that the proposed Final Judgment will impede technological innovations in this industry.

Incorporating the "hot air knife" will require design changes to all the proposed licensees' wave soldering machines and some machines might require more extensive changes than others. However, the proposed licensees are all manufacturers of either high performance or mid-range wave soldering machines, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than de novo entry. The proposed Final Judgment requires Electrovert to demonstrate to the United States satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these machines in North America within one year from the date of the license.

The United States does not believe the proposed Final Judgment jeopardizes the availability of spare parts from Electrovert in the United States. Spare parts availability is crucial to success for any wave soldering machine manufacturer and is a profitable part of its business. If Electrovert were to cut back on available spare parts in North America, it would seriously impact on its future sales.

As to the concern that some information exchange took place shortly after the acquisition that may have affected some Hollis representatives' sales activities and negotiations, the United States explained that this transaction was not subject to the Hart-Scott-Rodino Antitrust Improvements Act of 1976[3] and was brought to our attention by a complainant. The transaction had been consummated when the investigation began and some steps had already been taken to merge the two companies. The United States entered into a voluntary agreement with Electrovert to maintain the status quo pending the completion of its investigation. The agreement was put in place to prevent any more serious commingling of the companies until the investigation was completed.

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[1] The Comments and Responses are attached as Exhibit A.

[2] *United States* v. *Bechtel Corp.*, 1979–1 Trade Cases (CCH) ¶ 62,430 (N.D. Cal. 1979), *aff'd*, 648 F.2d 660, 665 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1982).

[3] 15 U.S.C. 18a (1976).

Finally, concern was expressed that the proposed Final Judgment and Competitive Impact Statement did not address aqueous cleaner products. This was not an oversight. After its investigation, the United States concluded that the aqueous cleaners produced by Hollis and Electrovert were not in the same relevant product market. Because of these facts, the allegations set forth in the Complaint did not include the aqueous cleaner product market. Therefore, the relief provided by this proposed Final Judgment is adequate to remedy the violations alleged in the Complaint.

The comments also raise several other concerns over the use of the Herfindahl-Hirschman Index as a tool for determining market concentration, how the industry sources interviewed by the United States were selected, and whether Electrovert's motive in making the acquisition was properly considered. These concerns are all addressed in the attached responses.

After careful consideration of the comments, the United States continues to believe that for the reasons stated in the responses to the comments and in the Competitive Impact Statement, the proposed Final Judgment would be adequate to remedy the risks to competition presented by the proposed acquisition and, therefore, the proposed Final Judgment is in the public interest.

After the comments and responses have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d), of the APPA, the Untied States will move this Court for entry of the proposed Final Judgment.

Dated: January 14, 1993.

Respectfully submitted,

Erin L. Carter,

Attorney, Antitrust Division, U.S. Department of Justice, 555 4th Street, NW., Room 10–437, Washington, DC 20001 (202) 307–0931.

Exhibit C

November 2, 1992.

Mr. P. Terry Lubeck, Chief, Litigation II Section, U.S. DEPARTMENT OF JUSTICE, Antitrust Division, 555 Fourth Street, NW., room 10–437, Washington, DC 20001

Re: Civil Action No. 92 2206
United States of America v. Cookson Group PLC, Electrovert, LTD., and Electrovert USA Corp.

Dear Mr. Lubeck: Our company is a manufacturer's representative who has represented Hollis Automation in Florida for five years. We have been in this business for eleven years during which we previously represented The John Treiber Company. I have been in the electronics manufacturing sector for twenty-three years. I believe that I have the experience and the insight into this industry and this case in particular to offer the following comments and observations of how this acquisition will adversely impact the electronics industry, the US economy and possibly our national security.

1. The main objective in the acquisition of Hollis Automation/Esterline by Cookson/Electrovert was to eliminate competition as demonstrated by the presale agreement by Cookson and Esterline to replace Hi-Tech Automation (a successful Hollis representative in New England) with Equipment Sales Co. (owned by Esterline). This would allow Equipment Sales/Esterline to profit from Electrovert's control of the marketplace.

2. The two largest wave soldering manufacturers (Hollis and Electrovert) are now owned by foreign corporations, i.e. Cookson (British) and Electrovert (Canadian). Impact: (a.) Historically the competition between Hollis and Electrovert has pushed the technological aspects of mass soldering forward. This has been a great benefit to our electronics and defense industries as witnessed by the increase in soldering reliability and throughput. Now that Electrovert will control more than 50% of the marketplace, there will be no need to invest in R&D to maintain their market position. The other competitors (Technical Devices, John Treiber, et al) are considerably smaller and have yet to demonstrate significant technological impact in the industry. (Technical Devices recently lost a patent suit to Electrovert for copying the design of Electovert's wave.) (b.) Cookson, for whatever reason, could decide to cease manufacturing altogether or move out of the US, seriously jeopardizing companies dependent upon them for spare parts. In fact many Hollis customers are already experiencing a shortage of spare parts and lack of customer support.

3. Three of the four proposed licensees of the AirKnife technology are foreign corporations, one of which (Seitz & Hohnerlein) has strong connections to the Fodor family (one time owners of Electrovert). We want to keep American industry strong, especially high tech industry, and keep it in the USA! The Department of Justice investigation concludes that wave soldering is the only viable method of mass production soldering of PCB's using pin-in-hole technology. Having foreign corporations controlling this market does not seem to be in the best interest of the US.

4. Licensing of the AirKnife technology is not as simple as it sounds. An AirKnife cannot be just "bolted on" to an existing machine. Technical changes to incorporate the AirKnife into existing machine designs would require substantial design changes (almost from the ground up). Ventilation controlling the tin/lead solder is critical to successful operations. Are the licensees going to be able to accomplish it to meet the requirements of the judgement? Or will they spend time and money to find out how difficult a task it is and be bogged down and worse off one year after the judgement? Whereas, Electrovert will manufacture and market the Hollis AirKnife model already designed and proven. Even the Justice complaint acknowledges the fact that entering the market would be nearly impossible.

5. Why would Esterline sell a $16KK company (1991 sales—page 5 of complaint) for approximately $10KK (page 3 impact statement)?

6. The glaring oversight to us in the industry was the omission of the issue of the aqueous cleaning equipment in the competitive impact statement. Both Hollis and Electrovert are dominant figures in this marketplace. There are only three other aqueous cleaning manufacturers in the industry (Westek, John Treiber, and Technical Devices). This could have any even greater competitive market impact than wave soldering.

7. As demonstrated by Electrovert's first assimilation of Hollis equipment (they moved the cleaner production to their Camdenton, MO facility almost immediately), it was the cleaner line that they were more interested in acquiring. Right away Electrovert began advertising and selling the Hollis aqueous cleaners under the Electrovert name, same price but less warranty. This was in competition with the Hollis representatives who were promised that the two lines would be maintained as separate entities. (See enclosure #1 dated March 18, 1992.) However, as noted in our termination letter (enclosure #2 dated October 28, 1992), the antitrust litigation is being blamed for part of our woes.

8. As soon as the sale took place, Electrovert representatives began to receive Hollis sales leads and other competitive sales information (quotations and sales activity and forecasts). This "inside information" gave them the advantage in knowing where our sales activities were and our negotiations. The Electrovert reps would then call on the same customers and try to undermine the Hollis reps.

9. This action by Cookson is a repeat of the Fry-Alpha acquisitions, two competitors in the solder and chemical markets. Since the acquisition Alpha has focused only on electronics, and Fry has focused on non-electronic accounts. In effect it eliminated a competitor in each of these markets.

10. Customers and interested parties who were interviewed by the Department of Justice were not informed of the proposed final judgement. Almost without exception, they are amazed that the sale is going to be allowed to take place knowing the adverse effect it will have on our industry.

11. The only solution that is in the best interest of the US is the divestiture of Hollis by Cookson to a viable US company and the restoration of Hollis and its technology to the condition before acquisition. Somewhere along the way we must stop the drain of our high tech industries by foreign acquisition. The place must be here and now!

I urge you to withdraw your support of the proposed final judgement and pursue divestiture thus sending a clear message to multinational corporations that they simply may not eliminate competition with their checkbooks. I offer my assistance to my government in whatever is necessary to achieve this goal.

Sincerely,

Edwin J. Booth, III,

Century Automation.

EJB:eb

Enclosures

cc: President George Bush, Senator Connie Mack, Senator Bob Graham, Representative Bill McCollum.

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Mr. Edwin J. Booth, III, Century Automation,
108 Bay Hammock Lane, Longwood,
Florida 32779.

Re: *United States* v. *Cookson Group, plc, Electrovert Ltd., and Electrovert U.S.A. Corp.* Civil Action 92-2206

Dear Mr. Booth:

This letter responds to your letters dated November 2, 1992, to the Antitrust Division, and November 5, 1992, to President Bush, commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The Complaint alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two of four current industry participants. The licenses are designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling these firms to reposition their products to replace competition that would otherwise be lost by this acquisition and to effectively meet the full variety of customer needs for high performance and mid-range wave soldering machines.

You expressed concern that the two largest wave soldering manufacturers in the United States are now owned by a single foreign corporation and that three of the four possible licensees of the "hot air knife" and other Hollis technology are also foreign corporations. The impact of this, you state, could affect the strength of American industry, impede technological innovations in wave soldering, and impact spare parts availability in the United States.

The mandate of the Antitrust Division ("Division") when reviewing any acquisition is to determine whether the effect of the acquisition may be substantially to lessen competition for a particular relevant market within a defined geographic area. The antitrust laws that govern this review process are nationality neutral. Those laws protect against the possibility that a merger could enable the resulting firm to exercise market power and harm U.S. consumers through higher prices or reduced output. In assessing the likelihood of these potential effects, the antitrust laws do not distinguish between foreign and domestic companies that wish to purchase domestic companies since it is the likelihood of harm—rather than its possible source—with which the antitrust laws are concerned.

It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

After an extensive investigation, we determined that the proposed Final Judgment likely would be procompetitive and would encourage technological innovation in wave soldering. About 75 percent of Hollis' wave soldering machine sales included the "hot air knife." Licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source. Licensing the air knife also is attractive because the air knife likely will gain importance over the next several years as component density on printed circuit boards increases. Although Electrovert and Hollis have been the technological leaders in wave soldering, the proposed licensees have made and likely will continue to make important technological contributions to this industry. Sensbey introduced the first high performance wave soldering machine to North America, while Soltec and Seho were the first to manufacture and market nitrogen-inert atmosphere wave soldering machines.

We understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the hot air knife, Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

During our investigation, we concluded that de novo entry into the North American high performance or mid-range wave soldering machine market would not be timely, likely, or sufficient to ameliorate the lessening of competition that would result from this transaction. However, the proposed licensees are all manufacturers of either high performance or mid-range wave soldering machines, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than de novo entry.

You expressed concern that Electrovert may jeopardize spare parts availability in the United States. Spare parts availability is crucial to success for any wave soldering manufacturer and is a profitable part of its business. If Electrovert were to cut back on available spare parts in North America, it would seriously impact on its future sales. Even if Electrovert moved its manufacturing facilities out of the United States, parts required by customers could be inventoried here or could likely be obtained within 24 hours by using overnight mail services. Because of the critical nature of spare parts availability to reputation and future success for the manufacturer, Electrovert is unlikely to jeopardize spare parts availability in the United States and North America.

You also expressed concern that the Competitive Impact Statement did not address aqueous cleaners. This was not an oversight. Hollis manufactures only a plastic aqueous cleaner, while Electrovert manufactures only a stainless steel cleaner, which is more durable and expensive than plastic cleaners. Although both products will clean a printed circuit board, our analysis determined that these two types of aqueous cleaners are not in the same relevant product market because consumers generally do not view stainless steel cleaners as good substitutes for plastic aqueous cleaners even if prices for the latter were increased by 5 to 10 percent for a significant period of time.

You stated that the main objective of this acquisition was to eliminate competition in the wave soldering market and to allow Esterline Corporation ("Esterline"), Hollis' parent corporation, to benefit by replacing a Hollis representative with one owned by Esterline. You also expressed surprise that Esterline would sell Hollis for only about $10 million. Generally, mergers are motivated by financial gain. Although there are many sources of gain, the Division analysis, as explained above, focuses on the gain of market power by the acquiring party, in this case, Electrovert.

You stated that individuals we interviewed during our investigation were "amazed" that the sale would be allowed to stand and that they were not informed by Division attorneys of the proposed Final Judgment. During our investigation, we interviewed customers, sales representatives, and other individuals in the industry in order to evaluate the competitive effects of the acquisition. At that time, we did not know what the results of the investigation would be nor whether an appropriate resolution short of a complete divestiture existed. In this case, the procompetitive solution was outlined in the proposed Final Judgment. Since a proposed Final Judgment is confidential until it is filed with the appropriate Court, we are not allowed to discuss it outside the Department of Justice.

You stated that shortly after Electrovert acquired Hollis' wave soldering assets, Electrovert representatives received Hollis leads and other sales information. This impacted directly on your sales activities and negotiations. As you noted in your letter, Hollis was sold for approximately $10 million. The parties were not required to report this transaction under the Hart-Scott-Rodino Act because the assets were valued below the minimum threshold outlined in the Act. A complainant brought this transaction to our attention. When we began our investigation, the transaction had been consummated and some steps had already been taken to merge the two companies. We entered into a voluntary agreement with Electrovert to maintain the status quo, preventing Electrovert from taking further action to terminate or move functions, activities, or equipment at Hollis' Nashua, New Hampshire plant. However, because of the timing of our investigation, some information exchanges, such as sales lead information, had already taken place between the parties. The voluntary agreement was put in place to prevent any more serious commingling of the companies.

Finally, you expressed concern that this transaction is similar to the Fry-Alpha acquisition, in which, you state, an aggressive competitor in the solder market was eliminated. We cannot comment on the similarities or differences between these two transactions. Each investigation is fact specific, and we have no information concerning the Fry-Alpha acquisition available other than the limited information provided in your letter.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

P. Terry Lubeck,

Chief, Litigation II Section.

November 19, 1992.

Mr. P. Terry Lubeck, Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 10–437, Washington, DC 20001.

Re: Civil Action No. 92 2206
United States of America v. *Cookson Group PLC,*
Electrovert, LTD., and Electrovert USA Corp.

Dear Mr. Lubeck:

WE HAVE HAD IT!! By that I mean the citizens of the United States of America are not being protected by the laws which are on the books to look after the future well being of this country. The case which I am writing about is one where our Justice Department failed to thoroughly analyze what the end result will be and why it has happened. This country is being eaten alive by foreign investors in the technology in which we were once the world leaders. We have a case here where our antitrust laws would prevent, without any question in my mind, this occurrance of a British company buying up the number two competitor and then having well over 50%, close to 70%, of all the U.S. market in a small, but very technological field, the manufacture of electronic systems. We must do something immediately, and I implore you to help me, as well as yourself. The details are as follows.

One point that must be made in the proposal is the fact that we have lost the technology of pick and place in this country. The manufacturers have all diminished and even Universal Engineering who was the major supplier of this type of equipment no longer builds it and is predominantly selling Japanese equipment. The wave soldering machines and related equipment such as cleaners, will now be controlled by foreign investments. The technology is a basic part of the electronic manufacturing process and we are not using the laws we have on the books with the Antitrust measures to even attempt to protect our industries. The surface mount industry was basically demolished by better technology overseas. Here we are taking better technology which was developed in this country and putting it in the hands of overseas companies.

There must be a total divestiture of all the holdings, information, patents and everything involved in Hollis Automation that Electrovert has virtually assimilated in their company. Hollis Automation must be reestablished as an independent company owned by American dollars and/or investors.

Investigation alone, by your personnel in the Justice Department, could divulge all the aspects that represent some 30 years experience that I have, and possibly similar experience that others have in the field of electronic assembly.

I have a degree in Mechanical Engineering from Georgia Tech and have owned and operated my own successful business since 1952. My expertise has given me a complete insight into the machine tool and electronics industry. We have already allowed our basic machine tool industry to be destroyed by foreign owned companies. Our electronics industry on the component level has been virtually demolished. We still have a slight edge in the particular area of soldering and cleaning machines.

Our company is a manufacturer's representative who has been involved with Hollis Automation in North Carolina, South Carolina, Georgia, Alabama, Mississippi and Tennessee for twenty-five years. My experience with this industry and this case in particular equip me to precisely comment on how this acquisition will adversely impact the electronics industry, the US economy and possibly our national security.

The United States of America is unique in that it is based on the free enterprise system. Competition is healthy, and we are astounded that a mere formula (HHI), Page 3, Paragraph 9 of "COMPLAINT", can jeopardize that competition. What could the reason be for this acquisition other than Hollis Automation has developed a technology not available to Electrovert? Is that a reason to put so many people out of work, and possibly put some small businesses out of business. The action is thoughtless, and we are hard put to justify the reason the Department of Justice sees fit to allow this.

1. The main objective in the acquisition of Hollis Automation/Esterline by Cookson/Electrovert was to eliminate competition as demonstrated by the presale agreement by Cookson and Esterline to replace Hi-Tech Automation (a successful Hollis representative in New England) with Equipment Sales Co. (owned by Esterline). This would allow Equipment Sales/Esterline to profit from Electrovert's control of the marketplace.

2. The two largest wave soldering manufacturers (Hollis and Electrovert) are now owned by foreign corporations, i.e. Cookson (British) and Electrovert (Canadian). Impact: (a.) Historically the competition between Hollis and Electrovert has pushed the technological aspects of mass soldering forward. This has been a great benefit to our electronics and defense industries as witnessed by the increase in soldering reliability and throughput. Now that Electrovert will control more than 50% of the marketplace, there will be no need to invest in R&D to maintain their market position. The other competitors (Technical Devices, John Treiber, et al) are considerably smaller and have yet to demonstrate significant technological impact in the industry. (Technical Devices recently lost a patent suit to Electrovert for copying the design of Electrovert's wave.) (b.) Cookson, for whatever reason, could decide to cease manufacturing altogether or move out of the US, seriously jeopardizing companies dependent upon them for spare parts. In fact, many Hollis customers are already experiencing a shortage of spare parts and lack of customer support.

3. Three of the four proposed licensees of the AirKnife technology are foreign corporations, one of which (Seitz & Hohnerlein) has strong connections to the Fodor family (one time owners of

Electrovert). We want to keep American industry strong, especially high tech industry, and keep it in the USA! The Department of Justice investigation concludes that wave soldering is the only viable method of mass production soldering of PCB's using pin-in-hole technology. Having foreign corporations controlling this market does not seem to be in the best interest of the US.

4. Licensing of the AirKnife technology is not as simple as it sounds. An AirKnife cannot be just "bolted on" to an existing machine. Technical changes to incorporate the AirKnive into existing machine designs would require substantial design changes (almost from the ground up). Ventilation controlling the tin/lead solder is critical to successful operations. Are the licensees going to be able to accomplish it to meet the requirements of the judgment? Or will they spend time and money to find out how difficult a task it is and be bogged down and worse off one year after the judgment? Whereas, Electrovert will manufacture and market the Hollis AirKnife model already designed and proven. Even the Justice complaint acknowledges the fact that entering the market would be nearly impossible.

5. Why would Esterline sell a $16KK company (1991 sales—page 5 of complaint) for approximately $10KK (page 3 impact statement)?

6. The glaring oversight to us in the industry was the omission of the issue of the aqueous cleaning equipment in the competitive impact statement. Both Hollis and Electrovert are dominant figures in this marketplace. There are only three other aqueous cleaning manufacturers in the industry (Westek, John Treiber, and Technical Devices). This could have an even greater competitive market impact than wave soldering.

7. As demonstrated by Electrovert's first assimilation of Hollis equipment (they moved the cleaner production to their Camdenton, MO facility almost immediately). It was the cleaner line that they were more interested in acquiring. Right away Electrovert began advertising and selling the Hollis Aqueous cleaners under the Electrovert name, same price be less warranty. This was in competition with the Hollis representatives who were promised that the two lines would be maintained as separate entities. However, the antitrust litigation is being blamed for part of our woes.

8. As soon as the sale took place, Electrovert representatives began to receive Hollis sales leads and other competitive sales information (quotations and sales activity and forecasts). This "inside information" gave them the advantage in knowing where our sales activities were and our negotiations. The Electrovert reps would then call on the same customers and try to undermine the Hollis reps.

9. This action by Cookson is a repeat of the Fry-Alpha acquisitions, two competitors in the solder and chemical markets. Both were aggressive in the electronic and industrial markets. Since the acquisition Alpha has focused only on electronics, and Fry has focused on non-electronic accounts. In effect it eliminated a competitor in each of these markets.

10. Customers and interested parties who were interviewed by the Department of Justice were not informed of the proposed final judgment. Almost without exception, they are amazed that the sale is going to be allowed to take place knowing the adverse effect it will have on our industry.

11. The only solution that is in the best interest of the US is the divestiture of Hollis by Cookson to a viable US company and the restoration of Hollis and its technology to the condition before acquisition. Somewhere along the way we must stop the drain of our high tech industries by foreign acquisition. The place must be here and now!

I urge you to withdraw your support of the proposed final judgment and pursue divestiture that they simply may not eliminate competition with their checkbooks. I offer my assistance to my government in whatever is necessary to achieve this goal.

The fact is, gentlemen, our company has salesmen whose livelihood depend on the salary and commissions provided by us. Hollis Automation has been one of our primary principals, providing a major portion of commissions to these hard working men. I am sure we are not alone in the endeavor to help others maintain a good living. Shouldn't you do the same by allowing Hollis Automation to continue with what they do best?

Very truly yours,

Arnold I. Goldberg,

Protech Systems.

AIG: nng,

cc: President George Bush, Congressman Newt Gingrich, Congressman Ed Jenkins, Senator Sam Nunn, Senator Wyche Fowler.

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Mr. Arnold I. Goldberg,
Protech System, 679 Arnold Mill Road,
Woodstock, GA 30188.

Re: *United States* v *Cookson Group, plc, Electrovert Ltd., and Electrovert U.S.A. Corp. Civil Action No. 92-2206*

Dear Mr. Goldberg:

This letter responds to your letter dated November 19, 1992, commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovet"). The Compliant alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two of four current industry participants. The licenses are designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling these firms to reposition their products to replace competition that would otherwise be lost by the acquisition and effectively meet the full variety of customer needs for high performance and mid-range wave soldering machines.

You expressed concern that the two largest wave soldering manufacturers in the United States are now owner by a single foreign corporation and that three of the four possible licensees of the "hot air knife" and other Hollis technology are also foreign corporations. The impact of this, you state, could affect the strength of American industry, impede technological innovations in wave soldering, and impact spare parts availability in the United States.

The mandate of the Antitrust Division ("Division") when reviewing any acquisition is to determine whether the effect of the acquisition may be substantially to lessen competition for a particular relevant market within a defined geographic area. The antitrust laws that govern this review process are nationality neutral. Those laws protect against the possibility that a merger could enable the resulting firm to exercise market power and harm U.S. consumers through higher prices or reduced output. In assessing the likelihood of these potential effects, the antitrust laws do not distinguish between foreign and domestic companies that wish to purchase domestic companies since it is the likelihood of harm—rather than its possible source—with which the antitrust laws are concerned.

It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating bundling wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

After an extensive investigation, we determined that the proposed Final Judgment likely would be procompetitive and would encourage technological innovation in wave soldering. About 75 percent of Hollis' wave soldering machine sales included the "hot air knife." Licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source. Licensing the air knife also is attractive because the air knife likely will gain importance over the next several years as component density on printed circuit boards increases. Although Electrovert and Hollis have been the technological leaders in wave soldering, the proposed licensees have made and likely will continue to make important technological contributions to this industry. Sensbey introduced the first high performance wave soldering machine to North America, while Soltec and Sebo were the first to manufacture and market nitrogen-inert atmosphere wave soldering machines.

We understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the hot air knife, Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

During our investigation, we concluded that de novo entry into the North American high performance or mid-range wave soldering machine market would not be timely, likely, or sufficient to ameliorate the lessening of competition that would result from this transaction. However, the proposed licensees are all manufacturers of either high performance or mid-range wave soldering machines, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than de novo entry.

You expressed concern that Electrovert may jeopardize spare parts availability in the United States. Spare parts availability is crucial to success for any wave soldering manufacturer and is a profitable part of its business. If Electrovert were to cut back on available spare parts in the United States, it would seriously impact on its future sales. Even if Electrovert moved its manufacturing facilities out of the United States, parts required by customers could be inventoried or likely could be obtained within 24 hours by using overnight mail services. Because of the critical nature of spare parts availability to reputation and future success for the manufacturer, Electrovert is unlikely to jeopardize spare parts availability in the United States and North America.

You also expressed concern that the Competitive Impact Statement did not address aqueous cleaners. This was not an oversight. Hollis manufactures only a plastic aqueous cleaner, while Electrovert manufactures only a stainless steel cleaner, which is more durable and expensive than plastic cleaners. Although both products will clean a printed circuit board, our analysis determined that these two types of aqueous cleaners are not in the same relevant product market because consumers generally do not view stainless steel cleaners as good substitutes for plastic aqueous cleaners even if prices for the latter were increased by 5 to 10 percent for a significant period of time.

You stated that individuals we interviewed during our investigation were "amazed" that the sale would be allowed to stand and that they were not informed by Division attorneys of the proposed Final Judgment. During our investigation, we interviewed customers, sales representatives, and other individuals in the industry in order to evaluate the competitive effects of the acquisition. At that time, we did not know what the results of the investigation would be nor whether an appropriate resolution short of a complete divestiture existed. In this case, the procompetitive solution was outlined in the proposed Final Judgment. Since a proposed Final Judgment is confidential until it is filed with the appropriate Court, we are not allowed to discuss it with third parties.

You stated that shortly after Electrovert acquired Hollis' wave soldering assets, Electrovert representatives received Hollis leads and other sales information. This impacted directly on your sales activities and negotiations. As you noted in your letter, Hollis was sold for approximately $10 million. The parties were not required to report this transaction under the Hart-Scott-Rodino Act because the assets were valued below the minimum threshold outlined in the Act. A complainant brought this transaction to our attention. When we began our investigation, the transaction had been consummated and some steps had already been taken to merge the two companies. We entered into a voluntary agreement with Electrovert to maintain the status quo, preventing Electrovert from taking further action to terminate or move functions, activities, or equipment at Hollis' Nashua, New Hampshire plant. However, because of the timing of our investigation, some information exchanges, such as sales lead information, had already taken place between the parties. The voluntary agreement was put in place to prevent any more serious commingling of the companies.

You also expressed concern that this transaction is similar to the Fry-Alpha acquisition, in which, you state, an aggressive competitor in the solder market was eliminated. We cannot comment on the similarities or differences between these two transactions. Each investigation is fact specific, and we have no information concerning the Fry-Alpha acquisition available other than the limited information provided in your letter.

Finally, you expressed concern that the Herfindahl-Hirschman Index ("HHI") was an inadequate method to determine the effects of an acquisition on competition. The HHI is a formula used to determine market concentration and interpret market data. While market concentration data is a useful indicator of the likely competitive effects of a merger, it provides only a starting point for analyzing the competitive impact of a merger. After a full investigation, we concluded as you do, that Electrovert's acquisition of the Hollis assets likely was anticompetitive.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

Sincerely,

P. Terry Lubeck,

Chief, Litigation II Section.

Dated: November 2, 1992.

Mr. P. Terry Lubeck,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, Room 10–437, 555 Fourth Street, NW., Washington, DC 20001.

Reference: Civil Action No. 92 2206, *United States of America* v. *Cookson Group PLC, Electrovert Ltd., & Electrovert U.S.A. Corporation.*

Dear Sir:

I am and have been a manufacturers representative in the Midwest for twenty one years. During that time, I have sold only equipment used in the manufacture of electronic assemblies. I believe I am very familiar with the processes and equipment used to assemble these commodities.

The sale of Hollis Automation to the Cookson Group represents a major threat to the world wide electronics industry. During the twenty year period I have observed the marketplace, there have always been two major soldering machine suppliers. Hollis Automation and Electrovert. Most functional improvements in the technology during this time have come from Hollis Automation.

To combine the two companies invites lack of development and runaway pricing.

The other manufacturers of soldering equipment have either "come and gone" or never made a significant impact in the domestic market.

Please reconsider the sale of Hollis Automation to the Cookson Group companies.

If I can add further information to this subject, please feel free to contact me.

Best regards,

Richard L. Turner.

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Mr. Richard L. Turner,
Productive Manufacturing Ideas, Route 5, Box 168, Mt. Home, Arkansas 72653.

Re: *United States* v. *Cookson Group, plc; Electrovert Ltd.; and Electrovert U.S.A. Corp. Civil Action No. 92–2206.*

Dear Mr. Turner:

This letter responds to your letter dated November 2, 1992, commenting on the proposed Final Judgment in the above-reference civil antitrust case, which challenges the proposed acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The complaint alleges that the proposed acquisition, as originally structured, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because the effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert is required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife" to two of four current industry participants. The licenses are designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling these firms to reposition their products to replace competition that would otherwise be lost by the acquisition and to effectively meet the full variety of customer needs for high performance and mid-range wave soldering machines.

You expressed concern that the combination of Hollis and Electrovert will lead to a lack of technological innovation in the wave soldering industry and higher prices. You also expressed concern that the proposed licensees have not contributed significantly to innovation in the United States wave soldering markets and are unlikely to make such contributions in the future. We would like to address each of these concerns.

It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

Although Electrovert and Hollis have been the technological leaders in wave soldering, the proposed licensees have made and likely will continue to make important technological contributions to this industry. Sensbey introduced the first high performance wave soldering machine to North America, while Soltec and Seho were the first to manufacture and market a nitrogen-inert atmosphere wave soldering machines.

During our investigation, we learned that approximately 75 percent of Hollis' wave soldering machine sales included the "hot air knife." further investigation revealed that Hollis' high performance and mid-range wave soldering machines were considered by many customers to be close substitutes for electrovert machines, mainly due to the "hot air knife." Because many customers considered Electrovert and Hollis' high performance and mid-range wave soldering machines close substitutes, post acquisition, Electrovert could impose a small but significant increase in price. Without technology such as Hollis' hot air knife, other firms would be unlikely to reposition themselves to replace Hollis as the primary competitive alternative to Electrovet. However, under the proposed Final Judgment, licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source, thus making a small but significant price increase by Electrovert unprofitable.

Finally, we understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating enable these firms to reposition their products to replace competition that would otherwise be lost by the acquisition and to effectively meet the full variety of customer needs for high performance or mid-range wave soldering machines.

Finally, we understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more expensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year form the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the hot air knife, Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and files with the Court.

Sincerely,
P. Terry Lubeck,
Chief, Litigation II Section.

Precision Sales

Dated: November 9, 1992.

Mr. P. Terry Lubeck,
Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 10–437, Washington, DC 20001.

Reference: Civil Action No. 92 2206, *United States of America* v. *Cookson Group PLC, Electrovert. Ltd., and Electrovert USA Corp.*

Dear Mr. Lubeck:

The referenced civil action pertained to the acquisition of Hollis Automation Company by Cookson/Electrovert.

I have been either a direct Hollis employee, or a manufacturers representative for Hollis, for the past 19 years. This background permits me to have the necessary experience to ask you to withdraw your support of the proposed final judgment to this suit for the following reasons:

1. The judgement will result in leaving only one viable U.S. manufacturer of wave solder systems (Technical Devices Company). This is a relatively small company and it does not have the technical or monetary assets to compete adequately.

2. The judgement will result in the vast majority of wave solder systems now in use being supported in parts and service by foreign corporations.

3. The judgement stipulates that the patented airknife technology, developed in the United States by Hollis, be licensed to two of four designated companies. Only one of these companies is a U.S. company. One of the major issues of the recent past election was the shipping of U.S. technologies to foreign corporations. By supporting this final judgement you are allowing this to occur again. In addition, if technical devices is not one of the licensees (I doubt that they can afford to purchase the license and then invest in the significant costs that would be required to modifying their existing equipment to incorporate it), this American developed patented technology would be totally foreign owned.

4. The wavesolder process is a critical technology in electronic assembly. It is used not only by commercial companies, but it is also a vital process used by our military contractors. The monopolized control of the availability of machines, spare parts, and technical support by foreign corporations could seriously jeopardize our national security.

5. Keeping jobs in America and equal taxation of foreign corporations were other major issues in the recent elections. If our Government decides to change its' foreign corporation taxation policies Cookson/Electrovert could very well decide to move its' production out of the United States, resulting in more lost American jobs.

In summary, the proposed final judgement to the referenced suit is not favorable to the citizens of the United States of America, and I ask that you withdraw your support.

The only viable solution is the divestiture of Hollis by Cookson/Electrovert to a viable

U.S. corporation, and the return of Hollis to its' fiscal and technical position prior to acquisition.

Sincerely,

Ronald Herbert.

CC: President George Bush, President-Elect Bill Clinton, Mr. Ross Perot.

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Mr. Ronald Herbert,
Precision Sales, 5 Vista Del Ponto, San Clemente, CA 92672.

Re: *United States* v. *Cookson Group, plc, Electrovert Ltd., and Electrovert U.S.A. Corp,. Civil Action 93–2206.*

Dear Mr. Herbert:

This letter responds to your letter dated November 9, 1992, commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquistion of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The Complaint alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two of four current industry participants. The Licenses are designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling these firms to reposition their products to replace competition that would otherwise be lost by the acquisition and allow these firms to effectively meet the full variety of customer needs for high performance and mid-range wave soldering machines.

You expressed concern that the two largest wave soldering manufacturers in the United States are now owned by a single foreign corporation and that three of the four possible licensees of the "hot air knife" and other Hollis technology are also foreign corporations. The impact of this, you state, could affect the strength of American industry, impede technological innovations in wave soldering, and impact spare parts availability in the United States.

The mandate of the Antitrust Division ("Division") when reviewing any acquisition is to determine whether the effect of the acquisition may be substantially to lessen competition for a particular relevant market within a defined geographic area. The antitrust laws that govern this review process are nationality neutral. Those laws protect against the possibility that a merger could enable the resulting firm to exercise market power and harm U.S. consumers through higher prices or reduced output. In assessing the likelihood of these potential effects, the antitrust laws do not distinguish between foreign and domestic companies that wish to purchase domestic companies since it is the likelihood of harm—rather than its possible source—with which the antitrust laws are concerned.

It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

After an extensive investigation, we determined that the proposed Final Judgment likely would be procompetitive and would encourage technological innovation in wave soldering. About 75 percent of Hollis' wave soldering machine sales included the "hot air knife." Licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source. Licensing the air knife also is attractive because the air knife likely will gain importance over the next several years as component density on printed circuit boards increases. Although Electrovert and Hollis have been the technological leaders in wave soldering, the proposed licensees have made and likely will continue to make important technological contributions to this industry. Sensbey introduced the first high performance wave soldering machine to North America, while Soltec and Seho were the first to manufacture and market nitrogen-inert atmosphere wave soldering machines.

We understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the hot air knife, Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

During our investigation, we concluded that de novo entry into the North American high performance or mid-range wave soldering machine market would not be timely, likely, or sufficient to ameliorate the lessening of competition that would result from this transaction. However, the proposed licensees are all manufacturers of either high performance or mid-range wave soldering machines, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than de novo entry.

Finally, you expressed concern that Electrovert may jeopardize spare parts availability in the United States. Spare parts availability is crucial to success for any wave soldering manufacturer and is a profitable part of its business. If Electrovert were to cut back on available spare parts in the United States, it would seriously impact on its future sales. Even if Electrovert moved its manufacturing facilities out of the United States, parts required by customers could be inventoried here or could likely be obtained within 24 hours by using overnight mail services. Because of the critical nature of spare parts availability to reputation and future success for the manufacturer, Electrovert is unlikely to jeopardize spare parts availability in the United States and North America.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

Sincerely,

P. Terry Lubeck,
Chief, Litigation II Section.

Sudouest Import Sales Corp.

Dated: November 16, 1992.

Mr. Terry Lubek,
Chief Litigation II Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street N.W., Room 10–437, Washington, D.C. 20001.

Re: Civil Action #93–2206, *U.S. of America* VS. *Cookson Group P.L.C., Electrovert, Ltd., and Electrovert, U.S.A., Corp.*

Dear Mr. Lubek:

Our company is an industrial electronic manufacturer's representative firm which has represented Hollis Automation in the Caribbean area for the past 22 years. I personally have been involved with the electronic industry, specifically pertaining to automatic soldering for the past 26 years. As such I have a few observations and objections to the above mentioned acquisition of Hollis Automation by the Cookson Group.

I specifically deem this move to have a negative impact on the U.S. economy, the U.S. Electronic Industry and the Security of the United States.

The primary purpose of this purchase of Hollis Automation by the Cookson Group was to eliminate their primary competition. This is clearly demonstrated by the almost immediate elimination of much of the Hollis product line and the transfer of the Hollis Aqueous Cleaners products to the Electrovert plant in Missouri.

As a result of this purchase the two largest wave soldering equipment manufacturers are now foreign owned. It has been precisely the competition between Hollis and Electrovert which has advanced the technology in the wave soldering industry. The U.S. has been the world leaders in the industry since mass soldering was invented, now we are relegated to a secondary stature.

Since Hollis and Electrovert are now one, Electrovert controls well over 50% of the total market. All other soldering companies combined and specifically the only two remaining U.S. companies, "Technical Devices and John Treiber", do not have the resources necessary to supplant either Hollis or Electrovert in terms of product development in order to maintain the U.S. position of technological leadership in the electronics industry.

One of Hollis' most important technological advances is the hot air knife solder debridging system known as the "Accuknife". Although not a system which is a requirement for all companies doing wave soldering, it is nevertheless one of the most sophisticated processes in our industry. It is capable of producing soldering results unachievable by any other means. This process has long been a serious competitive factor against Electrovert's sales efforts. Now Electrovert owns the process. Since for years they have down played the attributes of the "Accuknife" in order to preserve their credibility in the market, they will have to continue this marketing tactic to the detriment of the industry in general.

The "Accuknife" is not a system which can be readily adapted to existing machines. This is born out by several attempts by secondary market manufacturers to develope a bolt-on accessory airknife to be added to existing equipment. All these attempts failed. An "Accuknife" system must be designed starting with a clean sheet of paper. Much experimentation and adjustment must take place before a viable, reliable and effective system is developed.

Although there have been several companies proposed as licensees of the Accuknife process, it is doubtful any of them will be able to afford the asking price for the license, develope a viable system and market the same, while keeping the cost of the equipment competitive with existing equipment.

The obvious outcome of all this is the loss of the United States technical leadership particularly with respect to the "Accuknife" process, and the loss of this process to the electronic industry in general.

Furthermore numerous companies throughout the country are equipped with and rely upon their "Accuknife" machines. The loss of the Hollis support for this pool of functioning system will undoubtedly compromise these companies' competitive abilities in the global market.

The complaint filed left an entire family of equipment unaddressed. The "Aqueous Cleaners" made by Hollis and Electrovert also dominate this segment of the market. Yet no mention is made of the fact that Electrovert for many years tried unsuccessfully to break into the polypropalene or plastic cleaner market. Almost immediately after the acquisition, Electrovert moved the entire production line of Hollis plastic cleaners to their Missouri plant. Once again this leaves only a handful of smaller companies to compete with the Electrovert giant.

The entire electronics industry, be it commercial, industrial, consumer, or military depends extensively on the wave soldering process. With the loss of Hollis, the U.S. is losing the largest and only real competitor to the other large wave soldering equipment manufacturer in the industry and losing it to a foreign country.

Some years ago the United States dominated the shoe manufacturing industry. United Shoe Machinery (U.S.M.) in Massachussets was the world's leader in shoe manufacturing equipment production. A suit brought by the U.S. Department of Commerce compelled U.S.M. to divest itself of many corporation divisions and activities. Within a few years the company was crippled beyond repair. Today the U.S. shoe manufacturing industry is almost non-existent.

How many more industries must we decimate before we learn that many of our country's laws favor foreign companies at the expense of our own?

It is my opinion that the only fair and just action is to require Electrovert/Cookson to divest itself of Hollis in its entirety to a U.S. company. We *must stop* shooting ourselves in the foot!

Sincerely,

Sudouest Import Sales Co. Inc.

Carlos R. Hinojosa.

xc: Mr. Bill Clinton,

President elect.

Mr. Carols Romero Barcelo,

Resident Commissioner.

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Mr. Carlos Hinojosa,
Sudouest Import Sales Corporation, 555 Calle Rosales, Santurce, Puerto Rico 00909–2099.

Re: *United States* v. *Cookson Group, plc, Electrovert Ltd., and Electrovert U.S.A. Corp., Civil Action 92–2206.*

Dear Mr. Hinojosa:

This letter responds to your letter dated November 16, 1992, commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The Complaint alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18 ("Clayton Act"), because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two of four current industry participants. The licenses are designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling these firms to reposition their products to replace competition that would otherwise be lost by the acquisition and to effectively meet the full variety of customer needs for high performance and mid-range wave soldering machines.

You expressed concern that the two largest wave soldering manufacturers in the United States are now owned by a single foreign corporation and that three of the four possible licensees of the "hot air knife" and other Hollis technology are also foreign corporations. The impact of this, you state, could affect the strength of American industry and impede technological innovations in wave soldering, and, you suggest, even impact spare parts availability in the United States.

The mandate of the Antitrust Division ("Division") when reviewing any acquisition is to determine whether the effect of the acquisition may be substantially to lessen competition for a particular relevant market within a defined geographic area. The antitrust laws that govern this review process are nationality neutral. Those laws protect against the possibility that a merger could enable the resulting firm to exercise market power and harm U.S. consumers through higher prices or reduce output. In assessing the likelihood of these potential effects, the antitrust laws do not distinguish between foreign and domestic companies that wish to purchase domestic companies since it is the likelihood of harm—rather than its possible source—with which the antitrust laws are concerned.

It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

After an extensive investigation, we determined that the proposed Final Judgment likely would be procompetitive and would encourage technological innovation in wave soldering. About 75 percent of Hollis' wave soldering machine sales included the "hot air knife." Licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source. Licensing the air knife also is attractive because the air knife likely will gain importance over the next several years as component density on printed circuit boards increases. Although Electrovert and Hollis have been the technological leaders in wave soldering, the proposed licensees have made and likely will continue to make important technological contributions to this industry. Sensbey introduced the first high performance wave soldering machine to North America, while Soltec and Seho were the first to manufacture and market nitrogen-inert atmosphere wave soldering machines.

We understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the hot air knife, Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

During our investigation, we concluded that de novo entry into the North American high performance or mid-range wave soldering machine market would not be timely, likely, or sufficient to ameliorate the lessening of competition that would result from this transaction. However, the proposed licensees are all manufacturers of either high performance or mid-range wave soldering machines, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than de novo entry.

You expressed concern that Electrovert may jeopardize spare parts availability in the United States. Spare parts availability is crucial to success for any wave soldering manufacturer and is a profitable part of its business. If Electrovert were to cut back on available spare parts in the United States, it would seriously impact on its future sales. Even if Electrovert moved its manufacturing facilities out of the United States, parts required by customers could be inventoried here or could likely be obtained within 24 hours by using overnight mail services. Because of the critical nature of spare parts availability to reputation and future success for the manufacturer, Electrovert is unlikely to jeopardize spare parts availability in the United States and North America.

Finally, you also expressed concern that the Competitive Impact Statement did not address aqueous cleaners. This was not an oversight. Hollis manufactures only a plastic aqueous cleaner, while Electrovert manufactures only a stainless steel cleaner, which is more durable and expensive than plastic cleaners. Although both products will clean a printed circuit board, our analysis determined that these two types of aqueous cleaners are not in the same relevant product market because consumers generally do not view stainless steel cleaners as good substitutes for plastic aqueous cleaners even if prices for the latter were increased by 5 to 10 percent for a significant period of time.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

Sincerely,

P. Terry Lubeck,

Chief, Litigation II Section.

Christopher Hill

Dated: November 20, 1992.

Mr. P. Terry Lubeck,
Department of Justice, 555 Fourth Street, NW., room 10–437, Washington, DC 20001.

Dear Mr. Lubeck:

The judgement rendered in the 9/29/92 Civil Action Number 92–2206 is the very reason Bill Clinton will occupy the White House for the next four years. This decision has left only one semi-viable manufacturer of wave soldering equipment in the United States. (Technical Devices) The fact that Electrovert was able to acquire and eliminate Hollis Automation is appalling.

I have enclosed a summary page from the 1991 Ceeris Report, which summarized the 1990 wave soldering sales in North America. The acquisition allowed Electrovert to move from 45% market share of wave soldering systems to 66% share. Obviously, I do not understand what constitutes a monopoly but as a recently laid off sales manager for Hollis Automation, I certainly recognize restraint of trade.

Electrovert has already virtually eliminated most of the Hollis wave soldering equipment from their 1993 product line. Licensing air knife technology to the competition is like giving a slide ruler to a four year old. They barely understand what it does, much less how to use it. I expect air knife technology will all but disappear within several years.

With higher tariffs coming on imports, the net result will be higher prices and fewer choices for U.S. customers. In addition, Electrovert has changed directions and virtually laid off everyone at Hollis. More unemployment.

While I can appreciate the lawyer's ability to circumvent the law, or its intent, it is a real American tragedy to see this thirty year old company eliminated.

Newly unemployed,

Chris Hill,

Former Western Sales Manager, Hollis Automation.

1990 NORTH AMERICAN MARKET

[In millions of dollars]

Company	Wave Solder	Aqueous cleaning	Semi aqueous
Corpane			0.600
Detrax			0.200
Electrovert (1)	10.300	9.000	
Hollis	4.900	2.150	
Seho	2.000		
Sensbey	<1.000		
Soltec (Dover)	1.000		
Stoelting		>1.000	
Technical devices	3.000	0.300	
Treiber	<0.500	2.500	
UNIT design	1.000		
Vitronics		0.100	1.000
Westek		3.500	
Total	23	19	1.8

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Mr. Christopher Hill,
4000 Medina,
Plano, Texas 75074.

Re: *United States* v. *Cookson Group, plc, Electrovert Ltd., and Electrovert U.S.A. Corp. Civil Action 92–2206.*

Dear Mr. Hill:

This letter responds to your letter dated November 20, 1992, commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The Complaint alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two of four current industry participants. The license is designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling these firms to reposition their products to replace competition that would otherwise be lost by this acquisition and to meet the full variety of customer needs for high performance and mid-range wave soldering machines.

In your letter, you expressed concern about the size of Electrovert's post-acquisition market share and its impact on the wave soldering market. You also expressed concern that post-acquisition, Technical Devices Company ("Technical Devices") is the only viable wave soldering machine manufacturer in the United States and that the proposed licensees do not have the capability effectively to utilize Hollis' "hot air knife" technology to compete against Electrovert.

The mandate of the Antitrust Division ("Division") when reviewing an acquisition is to determine whether the effect of the acquisition may be substantially to lessen competition for a particular relevant market within a defined geographic area. Market shares and market concentration are used as indicators of whether the acquisition raises potential adverse competitive concerns. If the acquisition does raise such concerns, we evaluate the competitive effects and determine whether other factors are likely to ameliorate the competitive concerns of the acquisition. In this case, we determined that the acquisition, as originally structured, may substantially lessen competition in high performance and mid-range wave soldering machines but that the proposed Final Judgment would ameliorate these competitive concerns.

During our investigation, we determined that Electrovert's post-acquisition market shares were about 69 percent of high performance wave soldering machines market and about 67 percent of mid-range wave soldering machines market. Further investigation revealed that Electrovert and Hollis high performance and mid-range wave soldering machines were considered by many customers to be close substitutes for each other, mainly because of Hollis' "hot air knife." About 75 percent of Hollis' wave soldering machines sold include the hot air knife. Because many customers considered these machines to be close substitutes, post-acquisition, Electrovert likely could impose an anticompetitive price increase on these machines. We determined that de novo entry would not be timely, likely, to sufficient to ameliorate the likely anticompetitive effects of this acquisition.

We concluded, however, that the proposed Final Judgment likely would be procompetitive. Licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source. Each proposed licensee offers either a high performance or mid-range wave soldering machine, or both. Therefore, redesigning their machines to accommodate the "hot air knife" would not be de novo entry. The proposed Final Judgment is structured to enable the licensees to meet the full variety of customer needs and reposition their product offerings to replace competition that would have otherwise been lost because of this acquisition. Because of these factors, licensing Hollis' technology will assure the continuation of a competitive marketplace despite what the market shares might indicate.

You also expressed concern that after Electrovert's acquisition of Hollis' wave soldering assets, Technical Devices will be the only United States company to manufacture high performance and mid-range wave soldering machines. It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

You expressed concern that the proposed licensees do not have the capability effectively to utilize the "hot air knife" to compete against Electrovert. The benefits of Hollis' "hot air knife" are well known within the industry. The "hot air knife" is believed to minimize soldering defects on the printed circuit board, and evidence suggests the air knife likely will gain importance over the next several years as component density on printed circuit boards increases. We understand incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the "hot air knife," Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

Sincerely,

P. Terry Lubeck,

Chief, Litigation II Section.

Page & Addison

Dated: November 23, 1992.

Certified Mail P–772–297–537.

Mr. P. Terry Lubeck,
Chief, Litigation II Section, Antitrust Division, U.S. Dept. of Justice, Room 10–437, 555 Fourth Street, NW., Washington, D.C. 20001.

Re: *U.S.A. v. Cookson Group PLC, Electrovert Ltd. and Electrovert U.S.A. Corp.—No. 92–2206 (Antitrust) Our File Reference: A2040.5.100.2.*

Dear Mr. Lubeck:

Enclosed please find RoMox, Inc.'s Objection to Consent Judgment relative to the above-referenced acquisition. Please return the extra file-marked copy to us in the envelope provided in order to confirm timely receipt.

Thank you very much.

Very truly yours,

Page & Addison, P.C.

Jan Browning,

CLA, Certified Legal Assistant.

Enclosure.

cc: Mr. Bob Moxham.

Objection to Consent Judgment

In the United States District Court For The District of Columbia: *United States of America*, Plaintiff, v. *Cookson Group PLC, Electrovert Ltd., and Electrovert U.S.A. Corp.*, Defendants. Civil Action No. 92–2206.

Objection to Consent Judgment

State of Texas, County Of Dallas

Before me, the undersigned authority, personally appeared Robert G. Moxham, President of RoMox, Inc. d/b/a Teamco, who, after being by me duly sworn, upon his oath stated:

"My name is Robert G. Moxham. I am President of RoMox, Inc. d/b/a Teamco and I am duly authorized to make this Affidavit. I am at least eighteen (18) years of age, of sound mind, capable of making this affidavit, and fully competent to testify to the matters stated herein, and I have personal knowledge of each of the matters stated herein, and they are true and correct.

"I am filing this affidavit because Teamco will be directly affected by the acquisition of Hollis Automation Co. ("Hollis") by Electrovert U.S.A. Corp. ("Electrovert"), and the anticompetitive effects of said acquisition, and also because my position and experience in the industry make me personally aware of the anticompetitive impact which this acquisition will have on the industry.

"Since 1988, I have been President of RoMox, Inc., d/b/a Teamco, which has operated in Texas, Oklahoma, Arkansas and Louisiana and in the maquilla industry in Mexico as the exclusive distributor for Hollis in the sales of wave soldering machines, aqueous cleaners and related products for the printed circuit assembly industry. During this period of time, sales volume for Hollis products were $745,321.10 in 1988, $1,132,986.36 in 1989, and $1,491,175,59 in 1990. As such, the Hollis products were only a significant factor in Teamco's sales and profits, but also in meeting the equipment requirements of industries mass producing printed circuit assemblies. Hollis was the leading producer, or one of the two leading producers of high performance wave soldering machines. Additionally, Hollis' reputation for quality products and for superior service to its customers after the sale made it the leading manufacturer of high performance wave soldering machines.

"There are other manufacturers of high performance wave soldering machines, but they are not truly competitive with Hollis as to volume, type and quality of products made. The only direct competition with Hollis is Electrovert. On information and belief, Hollis and Electrovert share about three-fourths of the market for high performance wave soldering machines.

"A direct and immediate consequence of the acquisition of Hollis by Electrovert is the dismantling of Hollis distribution network and the termination of all but one of Hollis' distributors. Teamco, as a Hollis distributor, has received notice of termination. The immediate impact on Teamco is the loss of a product line which in recent years has accounted for up to 29% of the dollar volume of sales for Teamco. The impact on the industry is to eliminate an independent line of products with the sales and service network associated with that line. As a result, a leading United States manufacturer will disappear, leaving the remaining manufacturers in a greatly weakened competitive position vis-a-vis Electrovert, the foreign-owned, acquiring company. It will also make the market more vulnerable to anticompetitive measures, if any are taken by Electrovert which will control some three-fourths of the production facilities for high performance wave soldering in the North American market.

"The harm to the consumers, that is the various industries which mass produce printed circuit assemblies, is already being manifested. Based on the information which I have received from present customers of Hollis, as well as employees of Hollis, the newly acquired corporation takes a different position with regard to customer service. There is a great back-log in the delivery of replacement and maintenance parts; the showrooms have been downgraded or dismantled; clients are now being charged for site testing machines (Hollis viewed this as part of the sales promotion and never charged the potential client). In brief, the Electrovert/Hollis merger has resulted in a dominance of the market which allows the joint/giant manufacturers to disregard customer service and exert undue influence on the market since there are no true competitors.

Based on years of experience in the field of supplying equipment for electronics assembly, and the acquaintance with the industry not only in the States where it is a sales representative, but throughout the United States, Teamco is in a position to assert that the four companies listed as competitors do not have the volume or resources to be truly competitive to the Electrovert/Hollis merged entity. The licensing of the Hollis technology will not be sufficient to offset the loss of competition resulting from the acquisition of Hollis. Even with Hollis' technology, no two of the proposed licensees would be able to compete with the size and volume of sales, that is the market power, which Electrovert/Hollis has in this highly concentrated market. It is very doubtful that any other competitor could reposition itself within a reasonable time period in reaction to small but significant increases in pricing, or cost-cutting measures which result in a lowering of standards of quality or service to the customers in the market place.

The proposed Final Judgment would not resolve this problem due to the time which would be required for another manufacturer to incorporate Hollis technology. Equipment of the type manufactured by Electrovert and Hollis are capitalized, expensive acquisitions which are purchased by the consumers on an infrequent basis. Additionally, the recognition of Electrovert and Hollis as the principal manufacturers in this field would establish significant hurdles to other competitors to expand their market share.

A significant consideration of the harmful impact on the United States electronics industry, although it may not be among the consideration normally raised in considering the anticompetitive impact of an acquisition such as this, is the fact that the loss of Hollis as a principal competitor decreases the United States role in the electronics industry and increases the foreign domination of the various levels of this industry. The manufacture of assembly equipment impacts directly on the market for components and on the assembly industry, all of which will be damaged with regard to international competition.

Further, Affiant saith not.

Robert G. Moxham.

Subscribed and sworn to before be on this 23rd day of November, 1992, to certify which witness my hand and seal.

Earl H. Pugsley,

Notary Public, State of Texas.

U.S. Department of Justice

Antitrust Division

Dated: January 8, 1993.

Ms. Jan Browning,
Certified Legal Assistant, Page & Addison, P.C., 14651 Dallas Parkway, 7th Floor, Dallas, TX 75246.

Re: *United States* v. *Cookson Group, plc, Electrovert Ltd., and Electrovert U.S.A. Corp. Civil Action 92–2206.*

Dear Ms. Browning:

This letter responds to your letter dated November 23, 1992, and attached affidavit of Mr. Robert Moxham, President of RoMox, Inc. d/b/a Teamco, commenting on the proposed Final Judgment in the above-referenced civil antitrust case, which challenges the acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The Complaint alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two or four current industry participants. The licenses are designed to eliminate the anticompetitive effects arising from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling the licensees to reposition their products to replace competition that would otherwise be lost by this acquisition and to effectively meet the full variety of customer needs for high performance and mid-range wave soldering machines.

Mr. Moxham expressed concern that the acquisition of Hollis' high performance and mid-range wave soldering machines would increase foreign domination of the domestic wave soldering machine market. He also expressed concern that the acquisition has affected domestic spare parts availability and other components of customer service. Finally, he expressed concern that the proposed licensees will be unable to reposition their products by incorporating Hollis' technology in a timely fashion in order to defeat an anticompetitive price increase by Electrovert.

The mandate of the Antitrust Division ("Division") when reviewing any acquisition is to determine whether the effect of the acquisition may be substantially to lessen competition for a particular relevant market within a defined geographic area. The antitrust laws that govern this review process are nationality neutral. Those laws protect against the possibility that a merger could enable the resulting firm to exercise market power and harm U.S. consumers through higher prices or reduced output. In assessing the likelihood of these potential effects, the antitrust laws do not distinguish between foreign and domestic companies that wish to purchase domestic companies since it is the likelihood of harm—rather than its possible source—with which the antitrust laws are concerned.

It is true that since Electrovert acquired Hollis' wave soldering assets, Technical Devices is the only United States company to manufacture high performance and mid-range wave soldering machines. Although three of the four possible licensees, Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec"), and Seitz and Hohnerlein ("Seho"), are owned by foreign parents, each company has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in both foreign and domestic markets. In addition, two of these companies are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high performance and mid-range wave soldering machine markets.

Mr. Moxham expressed concern that customers have had difficulty obtaining spare parts since the acquisition and that Electrovert may jeopardize spare parts availability in the future. Spare parts availability is crucial to success for any wave soldering manufacturer and is a profitable part of its business. If Electrovert were to cut back on available spare parts, it would seriously impact on its future sales. Even if Electrovert moved its manufacturing facilities out of the United States, parts required by customers could be inventoried here or could likely be obtained within 24 hours by using overnight mail services. Because of the critical nature of spare parts availability to reputation and future success for the manufacturer, Electrovert is unlikely to jeopardize spare parts availability in the United States and North America.

Based on our extensive investigation, we believe that Mr. Moxham's concern that the proposed licensees would not be able to reposition their product offering to defeat an anticompetitive price increase by Electrovert is unfounded. The investigation revealed that Electrovert and Hollis high performance and mid-range wave soldering machines were considered by many customers to be close substitutes for each other, mainly because of Hollis' "hot air knife." Approximately 75 percent of Hollis' wave soldering machines sales included the "hot air knife." Because many customers considered these machines to be close substitutes, post acquisition, Electrovert could impose an anticompetitive price increase on these machines.

We concluded, however, that licensing the "hot air knife" likely would expand the competitive choices currently available to air knife customers that previously had only one source. Licensing the air knife is attractive because the air knife likely will gain importance over the next several years as component density increases on the printed circuit boards. Each proposed licensee has either a high performance and mid-range wave soldering machine product offering, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than de novo entry. The proposed Final Judgment is structured to enable the licensees to meet the full variety of customer needs and reposition their product offerings to replace competition that would have otherwise been lost because of this acquisition.

We understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. To satisfy us that the proposed licensees have the economic incentive to redesign their machines to accept the hot air knife, Electrovert may have to offer worldwide licenses, rather than the North American licenses that would be required by the proposed Final Judgment. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

We appreciate your bringing your concerns to our attention, and hope that this information will help to alleviate them. While we understand your concerns, we believe that the proposed Final Judgment would adequately safeguard competition for high performance and mid-range wave soldering machines in North America and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and files with the Court.

Sincerely,

P. Terry Lubeck,
Chief, Litigation II Section.

JSK Associates, Manufacturers' Representatives

Dated: November 14, 1992.

Mr. P. Terry Lubeck,
Chief, Litigation II Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, N.W., Room 10–437, Washington, D.C. 20001.

Re: Civil Action #92 2206, *United States of America* v. *Cookson Group PLC, Electrovert, Ltd., & Electrovert USA Corp.*

Mr. Lubeck:

Writing this letter to you, regarding the above captioned civil action, was a necessity due to the fact that it is detrimental not only to the electronics industry & economy but, also to our country.

As a working member of the electronics industry for more than twenty years I feel that I am qualified to speak with a voice of experience. I have been actively involved with this particular facet of our industry as either a direct employee of Electrovert, then as a representative for Electrovert, a representative for the John Treiber Company, and now as a representative for Hollis.

I have been the president of my own representative organization since 1979. My firm represents several of the major supplies of equipment & supplies for this industry & I have been actively involved with several trade/industry organizations both locally & on a national level.

Please consider the following.

(A) The purpose of this acquisition was a definite maneuver by the defendant to eliminate the competition. This sale results in leaving only *one* viable manufacturer of wave solder & cleaning equipment owned by a USA organization.

Technical Devices is, by comparison to the newly created "giant", an organization lacking in the technical expertise, capital & the general "where-with-all" to compete in this marketplace. Although the settlement discusses the licensing of "hot air-knife technology" to them, they will not be able to compete for several years, *if ever*! It is relevant to note that Technical Devices was a recent defendant, & loser, in a patent infringement suit with Electrovert.

The John Treiber Company is not, in my opinion as well as that of many others, capable of competing in this market. They have not made any technical advancements with their equipment in several years & they are not financially capable to take on this challenge.

(B) The historical competition between Electrovert & Hollis has been the driving force behind the development of new technologies for our industry. The "Air-Knife" is a direct result of that competition. Hollis spent many years & invested a great deal of capital to develop this tool so as to effectively compete with Electrovert. Now this technology is owned by that competitor!

The licensing arrangement grants this technology to four companies. Three of them are foreign owned organizations. Are companies interested? In my opinion they are not! The time, effort & costs involved to incorporate this technology into their equipment will prohibit its occurrence. By the time any of these licensees has the opportunity to enter this market, should they even try, the Electrovert/Hollis conglomerate will have moved on to some "new" technology due to the fact that they have an extensive technological edge!

The Justice Department, in its comments in this suit, indicates & acknowledges the reality that "entering this market would be nearly impossible!

(C) The issue of the aqueous cleaner division is not addressed. This is a *glaring oversight*. This is the true heart of this acquisition! Electrovert did not purchase Hollis for its wave solder division but did so for its "plastic cleaner" technology.

As a competitor of Electrovert for many years I have been faced many times with their sales technique which was to completely degrade the value of the hot air-knife. Their method of attack was to portray it as a technically valueless device. I quote, "it's an expensive toy", a "gadget that doesn't work", a "scam" & "a great way to sell spare parts"!

Why would a company that has such little regard for this technology & one who insists it is the "industry leader" with "market control" want to buy its "weaker" competition? The logic behind spending $10,000,000 to acquire the "loser" alludes me.

The motive is clear, *Aqueous cleaners*! Hollis had developed a "state-of-the-art" aqueous product line along with the most modern assembly facility in the world located at their Nashua facility. Electrovert had previously attempted, & failed, to enter this market. Their expertise lay in another area, stainless steel systems. Hollis was becoming the industry leader in this field & Electrovert could not compete. They consistently lost business to Hollis, Treiber & Westek.

The Electrovert philosophy of technical advancement is, "When all else fails—*Buy the competition*". That is exactly what they did!

(D) This has happened before! In the mid-70's Electrovert bought a company that had an expertise they wanted—*stainless steel aqueous cleaners*. Dee Electric Company was a smaller competitor in the wave solder market. What they excelled at was building a technically superior aqueous cleaner. Electrovert wanted their technology so they bought them. The results. Dee Electric no longer exists.

Now it's the early 90's and Electrovert wants plastic cleaners. Hollis has them. Electrovert buys Hollis. The results will be the same, *Hollis disappears*. It is happening! The first thing Electrovert did upon this acquisition was to dismantle the entire plastic production line & move it to Missouri.

(E) It is my understanding that the companies interviewed by the Justice Department were those whose names were furnished by both the buyer & the seller. I see something wrong with that picture. I know that my clients, & I am in one of the largest markets in the U.S., are as amazed as I am that this acquisition is going to be allowed.

(F) In a time when our economy needs to be enhanced & improved, the Justice Department is allowing an acquisition that will result in the loss of hundreds of jobs! An entire viable, productive & economically thriving factory in New Hampshire will be closed!

This closedown will have a trickle-down effect on those who were suppliers to Hollis. No factory, no sales, no jobs! Will this create additional jobs in Missouri? Possibly, but not enough to compensate for all those lost due to this merger.

(G) Our President-elect has indicated that he intends to introduce legislation enabling the taxation of foreign corporations. What will prevent this foreign-owned corporation from moving its production out of the country? Nothing! The results of such a scenario? More job loss, more American technology leaving the country, more trickle-down loss to our economy.

(H) This "hot air-knife" technology is a development of American expertise & ingenuity. Its sale to a foreign organization is another example of the very things that are hurting our nation. We are constantly & rapidly selling off our future. This development could be vital to our national defense & we will not have the right to control it. This is wrong, tragically wrong.

I truly believe that this acquisition should not be allowed to occur. It is detrimental to our industry, our economy & to the people of our country.

I strongly urge you to review the foregoing & recommend that the Justice Department withdraw its approval of this detrimental acquisition.

Very truly yours,

Jerry S. Karp,
President, JSK Associates.

Copy; Pres. G. Bush; Pres. Elect B. Clinton; Sen. D. Feinstein; Sen. Elect B. Boxer; Rep. N. Minetta; Tyler Wilson, Council on Antitrust, U.S. Chamber of Commerce.

Antitrust Division

Dated: January 7, 1993.

Mr. Jerry S. Karp,
President, JSK Associates, 3080 Olcott Street, Suite 120B, P.O. Box 2057, Mission Station, Santa Clara, CA 95054.

Dear Mr. Karp:

Your letter dated November 14, 1992, to President Bush concerning the proposed Final Judgment in *United States* v. *Cookson Group, plc; Electrovert Ltd.; and Electrovert U.S.A. Corp.*, Civil Action No. 92–2206, has been referred to the Department of Justice for response. This matter involves a civil antitrust challenge to the acquisition of the assets of Hollis Automation Company ("Hollis") by Cookson Group, plc's wholly-owned subsidiary, Electrovert U.S.A. Corp. ("Electrovert"). The complaint alleges that the acquisition, as originally structured, violated section 7 of the Clayton Act, as amended, 15 U.S.C. 18, because its effects may be substantially to lessen competition in the North American high performance and mid-range wave soldering machine markets. Under the proposed Final Judgment, Electrovert would be required to license Hollis' wave soldering technology, including Hollis' patented "hot air knife," to two of four current industry participants. The licenses are designed to eliminate the anticompetitive effects that would result from Electrovert's acquisition of Hollis' wave soldering machine assets by enabling the licensees to reposition their products to replace competition that would otherwise be lost by this acquisition and effectively to meet the full variety of customer needs for high performance and mid-range wave soldering machines.

Enclosed with your letter was a letter of the same date you sent to P. Terry Lubeck of the Antitrust Division in which you expressed several concerns. You stated that the two largest wave soldering manufacturers in the United States are now owned by a single foreign corporation, and that three of the four possible licensees of the "hot air knife" and other Hollis technology are also foreign corporations. You stated that this situation could affect the strength of American industry and impede technological innovations in wave soldering.

The antitrust laws are designed to prevent acquisitions that may substantially lessen competition so as to protect against the possibility that a merger could enable the resulting firm to exercise market power and harm U.S. consumers through higher prices or reduced output. The antitrust laws do not distinguish between foreign and domestic companies since it is the likelihood of harm to competition—rather than its possible source—with which the antitrust laws are concerned.

Nevertheless, of the four possible licensees, one, Technical Devices, is a United States company and each of the remaining three—Sensbey Incorporated ("Sensbey"), Soltec International B.V. ("Soltec") and Seitz and Hohnerlein ("Seho")—has made a substantial investment in the United States wave soldering market. Each company has offices, trained sales staff and service technicians, spare parts inventory, demonstration facilities, and proven track records for reliability in the domestic market. In addition, two of the three foreign firms are contemplating building wave soldering machine manufacturing facilities in the United States. Each firm, including Technical Devices, appears well positioned to compete effectively in the North American high-performance and mid-range wave soldering machine markets.

The proposed licensees have made, and likely will continue to make, important technological contributions to this industry. Sensbey introduced the first high-performance wave soldering machine to North America, while Soltec and Seho were the first to manufacture and market nitrogen-inert atmosphere wave soldering machines. Consequently, we do not believe that the proposed Final Judgment will impede technological innovations.

After an extensive investigation, we determined that the proposed Final Judgment likely would solve the competitive concerns associated with the acquisition. Approximately 75 percent of Hollis' wave soldering machine sales included the "hot air knife." Licensing the "hot air knife" would expand the competitive choices currently available to air knife customers that previously had only one source. Licensing the air knife also is attractive because the air knife likely will gain importance over the next several years as component density on printed circuit boards increases.

We understand that incorporating the "hot air knife" will require design changes to all of the proposed licensees' wave soldering machines and that some machines will require more extensive changes than others. However, the proposed Final Judgment requires Electrovert to demonstrate to our satisfaction that each proposed licensee has the capability and incentive to produce wave soldering machines incorporating the "hot air knife" and to compete effectively in the sale of these wave soldering machines in North America within one year from the date of the license. If Electrovert does not secure two acceptable licenses within the timetable outlined in the proposed Final Judgment, a trustee will be appointed to satisfy the requirement.

During our investigation, we concluded that de novo entry into the North American high-performance or mid-range wave soldering machine market would not be timely, likely, or sufficient to ameliorate the lessening of competition that would have otherwise resulted from this transaction. However, the proposed licensees are all manufacturers of either high-performance or mid-range wave soldering machines, or both. Redesigning their machines to accommodate the "hot air knife" would take much less time and money than would de novo entry.

You also expressed concern that the Competitive Impact Statement did not address aqueous cleaners. This was not an oversight. Hollis manufactures only a plastic aqueous cleaner, while Electrovert manufactures only a stainless steel cleaner, which is more durable and expensive than plastic cleaners. Although both products will clean a printed circuit board, our analysis determined that these two types of aqueous cleaners are not in the same relevant product market because consumers generally do not view stainless steel cleaners as good substitutes for plastic aqueous cleaners even if prices for the latter were to increase by 5 to 10 percent for a significant period to time.

You also expressed concern that this transaction is similar to Electrovert's acquisition of Dee Electric Company ("Dee"), which, you stated, was purchased by Electrovert because of its technologically superior aqueous cleaner. We cannot comment on the similarities or differences between these acquisitions. Each investigation is fact specific, and we have no information concerning the Dee acquisition other than the limited information provided in your letter.

Finally, you stated your understanding that during our investigation, we only interviewed those individuals whose names were provided to us by Electrovert or Hollis. During our extensive investigation, we interviewed numerous customers, sales representatives, competitors, potential entrants, and other individuals in the industry in order to evaluate the likely competitive effects of the acquisition. Contrary to your understanding, the vast majority of the persons we interviewed were selected by us and not by Electovert or Hollis.

We appreciate your effort in bringing these concerns to our attention and hope that this information will help to alleviate them. We believe that the proposed Final Judgment would adequately safeguard competition for high-performance and mid-range wave soldering machines in North America, and that entry of the proposed Final Judgment is in the public interest. Pursuant to the Antitrust Procedures and Penalties Act, a copy of your letter and this response will be published in the **Federal Register** and filed with the Court.

On behalf of the President, I thank you for writing.

Sincerely,

J. Mark Gidley,

Acting Assistant Attorney General.

[FR Doc. 93-1653 Filed 1-26-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 7, 1992, Minn-Dak Growers Limited, Highway 81 North, P.O. Box 1276, Grand Forks, North Dakota 58206-1276, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360) a basic class of controlled substance in Schedule I. This application is exclusively for the importation of marihuana seed which will be rendered non-viable and used as bird seed.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 26, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 19, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-1978 Filed 1-26-93; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice: [93-006]

Intent To Grant a Patent License

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA intends to grant Shinko Boeki Co., Ltd. of Japan, an exclusive, royalty-bearing, revocable license to practice (1) Japan Patent No. 1,134,819, entitled Power Factor Control System for A.C. Induction Motors; (2) Japan Patent No. 1,267,978 and Taiwan Patent No. NI-15705, entitled Three-Phase Power Factor Controller; (3) Japan Patent No. 1,267,996, entitled Motor Power Factor Controller with a Reduced Voltage Starter; and (4) South Korea Patent No. 36,576 and Taiwan Patent No. NI-17849, entitled Pulsed Thyristor Trigger Control Circuit Continued. These patents, in general, pertain to the reduction of energy consumption for electric motors. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the NASA Patent Licensing Regulations, 14 CFR 1245.200 *set seq.* NASA will grant the patent license in accordance with its licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Written objections to this proposed license grant must be received by March 29, 1993.

ADDRESSES: Written objections should be sent to: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff at (202) 358-2041.

Dated: January 13, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–1935 Filed 1–26–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES: February 11, 1993, 9 a.m.–5 p.m.; February 12, 1993, 9 a.m.–5 p.m.

ADDRESS: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Carmelita R. Pratt, Administrative Officer, The National Commission on Manufactured Housing, (GSA) 7th & D Street, SW., 7109, Washington, DC 20407 (202) 708–5702.

TYPE OF MEETING: Open.

This notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–2015 Filed 1–26–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanity Panel; Meeting

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* February 19, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Library and Archival Preservation and Access Projects applications, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1993.

2. *Date:* February 26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review Library and Archival Preservation and Access Projects applications, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1993.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93–2021 Filed 1–26–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission, (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 15, No. 3).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event that the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the third calendar quarter of 1992. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

Four abnormal occurrences are discussed in this report. Two involved medical misadministrations (both therapeutic) and one involved an extremity overexposure of a radiographer at NRC-licensed facilities. An abnormal occurrence was reported by an NRC Agreement State. The report also contains information updating a previously reported abnormal occurrence.

A copy of the report is available for inspection or copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 15, No. 3 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285, Port Royal Road, Springfield, VA 22161.

Dated at Rockville, MD this 21st day of January 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–1949 Filed 1–26–93; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* New (Expedited OMB review requested within 30 days).

2. *The title of the information collection:* NRC Survey: "Assessment of the NRC Operator Licensing Program," and follow-up interview.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* One time for the initial survey and one time for a follow-up interview with a small percentage of the survey respondents.

5. *Who will be asked to report:* A sample of nuclear industry personnel; including members of the Professional Reactor Operator Society (PROS), the Nuclear Management Resource Council (NUMARC), and the Institute for Nuclear Power Operations (INPO); as well as a cross-section of plant facility personnel.

6. *An estimate of the number of responses annually:* 144 (120 survey responses and 24 interviews).

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 84 hours (30 minutes per survey and one hour per interview).

8. *An indication of whether section 3504(h), Pub. L 96-511 applies:* Not applicable.

9. *Abstract:* NRC plans to conduct a voluntary survey and follow-up interviews with a sample of nuclear industry personnel as part of an evaluation of the NRC operator licensing program. The primary objectives of the survey are to:

(1) Identify problems with examination consistency, quality, efficiency, and management of the operator licensing program and determine whether these problems are the result of decentralization.

(2) Identify the advantages and disadvantages of a centralized versus a decentralized approach to operator licensing.

(3) Identify other recentralization issues; such as, transfer of responsibility, and relocation of employees.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, (3150—), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93-1946 Filed 1-26-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The 50th meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled to be held Wednesday and Thursday, January 27 and 28, 1993, 8:30 a.m. until 6 p.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD has been revised as follows:

Portions of this meeting may be closed to public attendance if deemed necessary to protect information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4); 10 CFR 2.790(d)(2)), information that relates solely to the internal personnel rules and practices of the ACNW (5 U.S.C. 552b(c)(2)), and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). These sessions will be devoted to meeting with the National Radiological Protection Board of the United Kingdom to discuss information provided by the Board regarding standards for a high-level radioactive waste repository and ACNW office structure and personnel.

Notice of this meeting was published in the **Federal Register** on Wednesday, January 12, 1993 (58 FR 3982). All other items pertaining to this meeting remain the same as previously published.

Dated: January 21, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93-1948 Filed 1-26-93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 11-13, 1993, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on December 23, 1992.

Thursday, February 11, 1993

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. The Committee will discuss priorities for preparation of reports during this session.

8:45 a.m.-11 a.m.: Key Policy Issues for Preapplication Designs (Open)—The Committee will review and comment on key policy issues identified by the NRC staff for resolution with respect to advanced reactor designs such as the MHTGR, PIUS, PRISM, and CANDU-3. Representatives of the NRC staff, the Department of Energy, and the industry will participate, as appropriate.

11 a.m.-11:45 a.m.: Schedules of NRC Review of Proposed Advanced Reactor Designs (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the current schedules for the NRC staff's review of proposed advanced reactor designs.

12:45 p.m.-2:15 p.m.: FitzPatrick Nuclear Power Plant (Open)—The Committee will hear a briefing and hold discussions regarding restart of the Fitzpatrick nuclear plant following an extended shutdown for plant and organizational changes. Representatives of the licensee and of the NRC staff will participate, as appropriate.

2:15 p.m.-4:30 p.m.: NRC Regulatory Review Group (Open)—The Committee will discuss the proposed charter for and activities of the NRC Regulatory Review Group. The purpose of this group will be to conduct a comprehensive and disciplined review of power reactor regulations and related NRC process, programs, and implementation practices. Representatives of the NRC staff and of the industry will participate, as appropriate.

4:30 p.m.-5 p.m.: Appointment of New Members (Open/Closed)—The Committee will discuss the qualifications of candidates proposed for appointment to the Committee.

Portions of this session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5 p.m.-5:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports regarding items considered during this meeting.

Friday, February 12, 1993

8:30 a.m.–10 a.m.: Multiple System Responses Program (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the status of the staff's work for dealing with the potential generic safety issues identified in the Multiple System Responses Program.

10:15 a.m.–11:45 a.m.: Atomic Safety and Licensing Board Panel Activities (Open)—The Committee and representatives of the Atomic Safety and Licensing Board Panel (ASLBP) will discuss matters of mutual interest, including the current and anticipated activities of the Atomic Safety and Licensing Board Panel.

11:45 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports regarding items considered during this meeting.

1:30 p.m.–3 p.m.: Briefing on Recent Changes to the Regulations on the Conduct of Government Employees (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC Office of the General Counsel on the impact on ACRS members regarding the implementation of the recent Office of Government Ethics government-wide changes to the regulation on the conduct of government employees.

3:15 p.m.–5:15 p.m.: Research on Organizational Factors (Open)—The Committee will hear a briefing and hold discussions regarding NRC-sponsored research on organizational factors. Representatives of the NRC staff and of the industry will participate, as appropriate.

5:15 p.m.–6 p.m.: Future ACRS Activities (Open)—The Committee will discuss the report of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee.

Saturday, February 13, 1993

8:30 a.m.–11 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed Committee reports regarding items considered during this meeting.

11 a.m.–12 Noon: Activities of ACRS Subcommittees (Open)—The Committee will hear reports on and hold discussions of the status of ACRS subcommittee assignments, including the conduct of Committee activities by the Planning and Procedures Subcommittee, use of digital instrumentation and control systems in nuclear power plants, the ABB–CE System 80+ design, and procedures for conduct of ACRS business. Representatives of the NRC staff will participate, as appropriate.

12 Noon–12:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses received from the NRC staff on recommendations made in ACRS reports. Representatives of the NRC staff will participate, as appropriate.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters considered but not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Acting ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Acting ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Acting ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the Acting ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 8 a.m. and 4:30 p.m. EST.

Dated: January 21, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–1950 Filed 1–26–93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Establishment of Dispute Settlement Panel Concerning U.S. Import Restrictions on UHT Milk

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Canada-United States Trade Commission (Commission) has established a dispute settlement panel under the United States-Canada Free-Trade Agreement to review a complaint by Canada against regulations governing the importation of ultra-high temperature (UHT) milk into Puerto Rico.

DATES: The panel is currently scheduled to issue its report by April 7, 1993.

FOR FURTHER INFORMATION CONTACT: Jeanne Davidson, Associate General Counsel, or Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel, USTR, 600 17th Street NW. Washington, DC 20506, (202) 395–3432 or (202) 394–7305, respectively.

SUPPLEMENTARY INFORMATION: As a result of recently adopted regulations by the Commonwealth of Puerto Rico, UHT milk from Canada is no longer permitted to be imported into Puerto Rico.

The Government of Canada has requested the establishment of a dispute settlement panel under the terms of the United States-Canada Free-Trade Agreement to determine whether the Commonwealth of Puerto Rico's measure is inconsistent with the obligations of the United States under the United States-Canada Free-Trade Agreement.

The panel will conduct its proceedings in accordance with article 1807 of the United States-Canada Free-Trade Agreement and is currently scheduled to issue its final report by April 7, 1993.

Gary R. Edson,

General Counsel.

[FR Doc. 93–2013 Filed 1–26–93; 8:45 am]

BILLING CODE 3190-01-M

Presidential Decision Under Section 330(D) of the Tariff Act of 1930 on Imports of Extruded Rubber Thread

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Presidential action under section 330(d) of the Tariff Act of 1930, as amended, on imports of extruded rubber thread.

On January 15, 1993, President Bush selected as the determination of the United States International Trade Commission (ITC) the views of those Commissioners who found that increased imports of extruded rubber thread are not a substantial cause of serious injury, or a threat of serious injury, to the U.S. domestic industry producing like or directly competitive products. Accordingly, no import relief measures will be taken under the provisions (section 203) of the Trade Act of 1974 in this case.

On October 15, 1992, the ITC, by an evenly divided 3–3 vote of its six members, reported to the President both an affirmative and a negative finding on the question of import injury to the rubber thread industry, based on its investigation pursuant to a petition filed by two U.S. manufacturers of rubber thread. Under section 330(d) of the Tariff Act of 1930, as amended, 19 U.S.C. 1330(d), the President has the authority to select the views of either group of Commissioners as the determination of the Commission.

Section 201 of the Trade Act of 1974 requires that certain conditions be met for an industry to be eligible for import relief. Having reviewed all of the pertinent data and submissions by interested parties, the President has selected the views of those Commissioners who determined that the statutory criteria were not satisfied; specifically, that imports were not a substantial cause of the decline experienced by the U.S. industry. The decline stemmed from the closure of the major U.S. manufacturer of rubber thread in 1990; that closure resulted from a corporate decision by the manufacturer's ultimate shareholders to consolidate manufacturing operations in Malaysia.

Consistent with this decision, therefore, no import relief measures will be applied.

FOR FURTHER INFORMATION CONTACT: David Strother, Director, Chemical Industry Trade Policy, (202) 395–5656.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–2007 Filed 1–26–93; 8:45 am]

BILLING CODE 3190-01-M

Extension of Tariff Rate Quotas for Non-Wool Fabrics and Made-Up Goods Under the United States-Canada Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of and request for comments on the extension of tariff rate quotas for Canada for non-wool fabric and made-up goods for one year.

SUMMARY: Section 202(d)(2) of the United States-Canada Free-Trade Agreement Implementation Act of 1988 ("FTA Implementation Act") grants the President, subject to consultation and layover requirements of section 103 of that Act, the authority to proclaim such modification to the rules of origin as may from time-to-time be agreed upon by the United States and Canada. This notice is intended to inform the public of a modification to Rule 18 of the rules of origin of the United States-Canada Free Trade Agreement (FTA). The modification may be proclaimed on or after March 22, 1993 and will cover the period January 1, 1993 to December 31, 1993.

DATES: Public comments are due February 26, 1993.

ADDITIONAL INFORMATION: Inquiries regarding this notice or relating to the implementation of the tariff rate quotas described in this notice should be directed to Ms. Caroyl Miller, Deputy Chief Textile Negotiator, Office of the United States Trade Representative, room 301, 600 17th Street NW., Washington, DC 20506, Telephone (202) 395–3026.

Description of the Modification

In the FTA, a tariff rate quota was established to allow Canadian exports to the United States of non-wool fabric and made-up products that did not meet FTA rules of origin access to FTA tariff preferences up to an annual level of 25,083,821 square meters equivalent. This tariff rate quota expired on December 31, 1992. The CFTA provides that "the Parties agree to revisit the quantitative element of this agreement two years after its entry into force together with representatives of the industries in order to work out a mutually satisfactory solution, taking into account the availability of yarns in both countries."

During negotiations on the North American Free Trade Agreement (NAFTA), the United States and Canada agreed on new rules of origin for the textile and apparel sector, which require a more rigorous standard for preferences than does the FTA. In addition, the United States and Canada agreed on new levels of access for non-conforming exports of non-wool fabric and made-up products. If approved, however, the NAFTA provisions will not take effect until at least January 1, 1994. To avoid trade disruption during the interim period, the United States and Canada provisionally agreed to extend the tariff rate quota under the FTA of 25,083,821 square meters equivalent for the period January 1, 1993 through December 31, 1993.

Section 103 of the FTA Implementation Act provides that the President may proclaim modifications to rules of origin 60 days after a report on the proposed modification is submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate, and advice on the modification is obtained from the U.S. International Trade Commission (USITC) and appropriate private sector advisory committees. On January 21, 1993, a report was submitted to the above-named Committees of Congress; advice had been previously obtained from the USITC and advisory committees.

Requests for Comments

Comments supporting or opposing extension of the existing tariff rate quotas for non-wool and made-up goods from Canada specified in Rule 18 of Chapter 3 on Rules of Origin of the FTA will be accepted until February 26, 1993. Comments should be typewritten and submitted in ten copies to Ms. Caroyl Miller, Deputy Chief Textile Negotiator, room 301, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506. All submissions must specify: (1) The name, address, and telephone number of the person, firm, or organization making the comments and (2) an indication as to whether the writer represents a:

—Producer in the United States
—Importer in the United States
—Exporter in the United States
—Consumer in the United States
—Other, in the United States (please specify)
—Producer in Canada
—Importer in Canada
—Exporter in Canada
—Consumer in Canada
—Other, in Canada (please specify)

Charles E. Roh, Jr.,

Assistant U.S. Trade Representative for North American Affairs.

[FR Doc. 93–2008 Filed 1–26–93; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31748; File No. SR–MSTC–92–10]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modification of Fee Schedule To Provide Discounts to Primary Users

January 19, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 4, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MSTC–92–10) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change revises MSTC's fee schedule to provide discounts (see Exhibit A) to participants who are primary users[2] of available MSTC services. Eligibility for the discount would be based on a commitment in writing by the participant to continue to use MSTC as the primary provider of safekeeping services for a minimum period of two to three years.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to provide discounts, in the form of a two tiered fee revision, to participants who use MSTC as their primary securities depository. Under the proposal, participants who make a commitment in writing to continue to use MSTC as their primary custodian for a period of two to three years would receive discounted service charges.

The first tier of the proposed discount would be available only to those participants who have been participants for the previous year, as the discount would be calculated based on the participant's actual annualized revenue level paid to MSTC for the previous twelve month period. A participant who produces a minimum average revenue of $20,000 per month for MSTC would receive a discount of 50% off of each dollar spent in excess of their actual average annualized revenue level. Each year, the participant's actual average would be revised and would remain constant for the next twelve month period.

The second tier of the proposed discount would be based on the total amount of monthly revenues MSTC receives from a participant. In order to qualify for this discount, MSTC must receive monthly revenues at a level equal to or in excess of $20,000 from a participant. At this level, a participant with a two year commitment to use MSTC as its primary custodian would receive a discount of 6% off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at this level would receive a discount of 8% off the total amount of fees the participant must pay to MSTC that month. Similarly, participants who produce monthly revenues for MSTC in excess of $50,000 and sign a two year commitment would receive a 12% discount off the total amount of fees the participant must pay to MSTC that month. A participant who makes a three year commitment at this level would receive a discount of 16% off the total amount of fees the participant must pay to MSTC that month.

MSTC believes that the proposed rule change is consistent with the requirements of Sections 17A(b)(3) (A) and (F) of the Act, and the rules and regulations thereunder, in that it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

MSTC has not solicited written comments with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder, because the proposed rule change establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MSTC. All submissions should refer to the File No. SR–MSTC–92–10 and should be submitted by February 17, 1993.

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[1] 15 U.S.C. 78s(b)(1).

[2] A "primary user" means either (1) a participant who uses MSTC solely as its depository and clearing agent or (2) a participant who is a member of more than one securities depository but who safekeeps the majority of its eligible inventory with MSTC. To document the latter, MSTC may request that participants verify the amount of business conducted at another depository.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

EXHIBIT A.—DISCOUNT FEE SCHEDULE[1]

[First Tier[2]]

Minimum average revenue (per month)	Percent discount
$20,000 and above	50% off each dollar spent in excess of actual average annualized revenue level.

[1] A commitment in writing to continue to use MSTC as their primary custodian for two to three years is required from a participant in order to become eligible to receive discounted service charges under the proposal.

[2] The first tier discount is based on the participant's actual annualized revenue level for the previous twelve month period.

SECOND TIER[3]

Total MSTC revenues (per month)	Percent discount	Length of commitment
$20,000–$50,000	6	2 years.
	8	3 years.
$50,001 and above.	12	2 years.
	16	3 years.

[3] The second tier discount is based on the total amount of monthly revenues MSTC receives from a participant.

[FR Doc. 93–1921 Filed 1–26–93; 8:45 am]

BILLING CODE 8010-01-M

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[3] 17 CFR 200.30–3(a)(12).

[Release No. 34–31747; File No. SR–NSCC–92–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Change in the Fees for Networking and Fund/Serv

January 19, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby give that on December 24, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change changes the fees for Networking and Fund/Serv.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's fees for the Fund/Serv service and the Networking service. The revised Networking fee became effective January 1, 1993 for billing in February, 1993. The revised Fund/Serv fee will become effective concurrent with the approval of SR–NSCC–92–14[2] for those participants that utilize the new Fund/Serv service.[3]

The proposed rule change is consistent with section 17A(b)(3)(D) of the Act[4] in that it provides for the equitable allocation of reasonable fees and other charges among participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by NSCC and therefore has become effective on filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to file number SR–NSCC–92–15 and should be submitted by February 17, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1922 Filed 1–26–93; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] SR–NSCC–92–14 will permit NSCC to modify its Mutual Fund Services to provide system flexibility in order to process any type of mutual fund product.

[3] During the transition period, those members utilizing old Fund/Serv formats will continue to be charged the old rates.

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[Release No. 34–31746; File No. SR–PTC–92–15]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Payment of Dividends to PTC Shareholders

January 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 24, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–PTC–92–15) as described in Items I and II below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice and order to solicit comments on the proposed rule change and to grant approval of the proposed rule change on an accelerated basis.

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[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PTC is changing its practices to reflect relief from applicable regulatory constraints on the payment of dividends to its shareholders and to approve the practice of paying such dividends as authorized by its Board of Directors ("Board").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to change PTC's practices to reflect relief from applicable regulatory constraints on the payment of dividends to its shareholders and to approve the practice of paying such dividends when and as authorized by its Board. In addition, PTC's Board has declared a dividend of $.52 per share of capital stock, with a par value of $5.00 each, payable on January 18, 1993 to stockholders of record as of the close of business on December 31, 1992.

By letter dated March 27, 1989 from the Board of Governors of the Federal Reserve System ("Board of Governors"), PTC was prohibited from paying dividends to its stockholders.[2] By letter dated June 9, 1992, the Board of Governors relieved PTC from the restriction on the payment of dividends on the understanding that dividends, if declared, must be declared periodically by PTC's Board and paid at a rate not to exceed the 90-day United States Treasury bill rate in effect at the time the dividend is declared.[3] Thus, PTC's Board has adopted a policy that would allow it to pay dividends to shareholders from the net profits of PTC.[4]

Although the Board's policy on the payment of dividends will allow PTC to pay a dividend from excess income from invested principal and interest ("P&I"), PTC's Board has determined not to use any excess income from invested P&I to pay this dividend.[5] Prior to using any excess income from invested P&I to pay a dividend, PTC's Board will be advised of any amount related to the investment of P&I which has not been rebated that is part of the net profits used to declare a dividend and must affirmatively vote to use such excess income from P&I for a dividend.

Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions, PTC believes it is consistent with section 17A of the Act[6] and the rules and regulations thereunder applicable to PTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule filing will impose any burden on Competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, any written comments on this proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PTC has requested that the Commission approve the proposed rule change on an accelerated basis. PTC expects to issue a 1992 dividend on January 18, 1993. The Commission believes that it is desirable for PTC to go forward with its dividend on January 18, 1993. Thus, the Commission finds that "good cause" exists under section 19(b)(2) of the Act for approving PTC's proposed rule change prior to the thirtieth day after publication of notice.[7]

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure that fair representation of its shareholders and participants in the selection of its directors and administration of its affairs.[8] In addition, section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[9] As discussed below, the Commission believes that PTC's proposal is consistent with the Act, in particular with Section 17A of the Act.

PTC was formed to operate the then MBS Clearing Corporation's depository subsidiary, and doing so required major capital investment in infrastructure. This in turn created a real need for capital investment in PTC, which need was met by PTC's shareholders. The Commission recognizes that PTC could reduce or rebate fees instead of issuing a dividend and that PTC's rule change represents the first time that a clearing agency has declared a dividend.[10] Given PTC's early and acute need for capital investment, the Commission recognizes the need to give shareholders some limited return on the capital they have invested in PTC. Moreover, PTC participants have the opportunity to become shareholders under PTC's annual reallocation of stock, which is open to all PTC participants.[11] The Commission therefore believes that the issuance of the dividend by PTC on January 18, 1993 is consistent with section 17A(b)(3)(D) of the Act[12] in that it provides for the equitable allocation of reasonable fees and other charges among participants. Nevertheless, because this is the first time a registered clearing agency is declaring a dividend, the Commission is concerned about the equitable distribution of net profits and thus believes it is appropriate for PTC to file a proposed rule change under section 19(b)(3)(A) of the Act[13] each time it declares a dividend.[14]

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[2] See letter from William W. Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, to Thomas A. Williams, Milbank, Tweed, Hadley & McCloy, dated March 27, 1989 (approving PTC's application for stock in the Federal Reserve Bank of New York).

[3] See letter from Jennifer J. Johnson, Associate Secretary to the Board, Board of Governors of the Federal Reserve System, to Leopold S. Rassnick, Vice President and General Counsel, PTC, dated June 9,1992. Subsequently, the State of New York Banking Department removed its restriction on the payment of dividends. See letter from Carmine M. Tenga, Deputy Superintendent of Banks, State of New York Banking Department, to Leopold S. Rassnick, Vice President and General Counsel, PTC, dated December 21, 1992.

[4] Under New York Banking Law, PTC may pay a dividend as frequently as once per quarter as PTC deems judicious to be paid from net profits. Net profits are defined as the remainder of all current earnings after deducting current operating expenses, actual losses, and all federal and state taxes. See N.Y. Banking Law § 112 (McKinney 1990).

[5] Securities Exchange Act Release No. 31593 (December 18, 1992), 57 FR 60262. Under PTC's current rebate policy, PTC's Board may decide from time to time to distribute net profits calculated on the basis of (i) service fees, pro rata, based on the total amount of service fees paid by each participant and (ii) excess income related to the collection and investment of P&I funds, pro rata, based on the amount of P&I disbursements to each participant. PTC's Board will base its decision to rebate on a number of considerations, including projected earnings of PTC, the projected financial needs of PTC, and the desirability of paying dividends on PTC's outstanding stock.

[6] 15 U.S.C. 78q–1.

[7] Pursuant to section 19(b)(4)(A) of the Act, 15 U.S.C. 78s(b)(4)(A), the Commission contacted the Board of Governors of the Federal Reserve System ("Federal Reserve"), PTC's appropriate regulatory agency, regarding the proposed rule change. Staff of the Federal Reserve believes that the proposed rule change is consistent with PTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible, and did not object to the proposed accelerated approval. Telephone conversation between Don R. Vinnedge, Manager, Trust Activities Program, Federal Reserve, and Francois-Ihor Mazur, Staff Attorney, Division of Market Regulation, Commission (December 30, 1992).

[8] 15 U.S.C. 78q–1(b)(3)(C).

[9] 15 U.S.C. 78q–1(b)(3)(D).

Under PTC's current system, it is possible to be a PTC participant without being a PTC shareholder. In the past, the distribution of excess income from fees and invested P&I has been made on the basis of a participant's level of participation. A participant's status as a shareholder did not enter into this determination. Consequently, there has been little incentive for participants to acquire shares in PTC and many new and small participants do not have a stake in PTC.

The proposed rule change is not intended to replace PTC's policy regarding distributions to participants, but is rather a way to give shareholders some limited return on the capital they invest in PTC. In addition, PTC can only issue a dividend from net profits and only at a rate not to exceed the 90-day United States Treasury bill rate in effect at the time the dividend is declared. The Commission believes that ownership is an important aspect of participation in PTC. The issuance of dividends will allow PTC to increase the incentive for participants to invest in PTC shares, and thereby advance the requirement of fair representation of shareholders and participants under Section 17A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–92–15 and should be submitted by February 17, 1993.

V. Conclusion

On the basis of the foregoing, the Commission finds that PTC's proposed rule change is consistent with the Act and in particular with section 17A of the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–92–15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–1923 Filed 1–26–93; 8:45 am]

BILLING CODE 8010-01-M

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[10] When establishing fees for its users, a clearing agency tends to be conservative in estimating the level of activity for a coming year. Consequently, revenues typically exceed expenses due to higher than projected participant activity. For example, in 1991, The Depository Trust Company ("DTC") reported income of approximately $345 million and expenses of approximately $266 million. Approximately $79 million in net income was therefore distributed to participants. See DTC 1991 Annual Report. Similarly, in 1991, The Options Clearing Corporation ("OCC") had revenue exceeding expenses by about $4.5 million which was distributed to clearing members. See OCC 1991 annual report.

[11] See Securities Exchange Act Release No. 26671 (March 31, 1989), 54 FR 13266 (discussing PTC's reallocation process).

[12] 15 U.S.C. 78q–1(b)(3)(D).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] See letter from Leopold S. Rassnick, Vice President and General Counsel, PTC, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated January 15, 1993, in which PTC agreed to file a proposed rule change with the Commission under section 19(b)(3)(A) of the Act each time it declares a dividend.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–4]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of disposition of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 16, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. ________, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

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Issued in Washington, DC, on January 15, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25716

Petitioner: Flamenco Airways, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought: To renew Exemption No. 5106, which expired October 31, 1991, and which allowed pilots employed by Flamenco Airways, Inc., to remove and install passenger seats and approved stretchers in Britten Norman aircraft model BN2A.

Docket No.: 26503

Petitioner: Airborne Express

Sections of the FAR Affected: 14 CFR 121.623 (a) and (d), 121.643, and 121.645(e)

Description of Relief Sought: To extend the termination date of Exemption No. 5307, which expires May 31, 1993, and which allows ABX Air, Inc., d.b.a. Airborne Express, to conduct operations in accordance with the requirements applicable to domestic air carriers contained in part 121 and listed in Condition 1 of the exemption.

Docket No.: 26732

Petitioner: Air Transport Association of America

Sections of the FAR Affected: 14 CFR 121.652 (a) and (c)

Description of Relief Sought: To revise Exemption No. 5549, which expires November 30, 1994, to combine crosswind and breaking restrictions, to make other technical corrections, and to extend the termination date accordingly.

Dispositions of Petitions

Docket No.: 25617

Petitioner: Japan Airlines, Ltd.

Sections of the FAR Affected: 14 CFR 91.203(c), 91.417(c) and (d), 45.11, and part 43 appendix B, paragraphs (a) and (d)

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5006, which expires December 31, 1992, and which allows Japan Airlines, Ltd. (JAL) to operate its U.S.-registered aircraft that have been modified by installation of fuel tanks in the passenger or baggage compartment without keeping an FAA Form 337 on board the aircraft. The exemption also allows JAL to continue to operate its U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to JAL's U.S.-registered aircraft manufactured before March 7, 1988, this exemption allows operation without displaying the aircraft model designation and manufacturer's serial number on the aircraft exterior.

Grant, December 31, 1992, Exemption No. 5006B

Docket No.: 25653

Petitioner: Singapore Airlines, Ltd.

Sections of the FAR Affected: 14 CFR 91.203(c), 91.417(c) and (d), 45.11, and part 43 appendix B, paragraphs (a) and (d)

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5008, which expires December 31, 1992, and which allows Singapore Airlines, Ltd. (SIA) to operate its U.S.-registered aircraft that have been modified by installation of fuel tanks in the passenger or baggage compartment without keeping an FAA Form 337 on board the aircraft. The exemption also allows SIA to continue to operate its U.S.-registered aircraft without having an identification plate secured to the fuselage exterior and, with respect to SIA's U.S.-registered aircraft manufactured before March 7, 1988, this exemption allows operation without displaying the aircraft model designation and manufacturer's serial number on the aircraft exterior.

Grant, December 31, 1992, Exemption No. 5008B

Docket No.: 26845

Petitioner: University of North Dakota

Sections of the FAR Affected: 14 CFR 141.65

Description of Relief Sought/ Disposition: To allow the University of North Dakota to recommend graduates of its flight instructor certification courses for flight instructor certificates (with the associated ratings) without having to take the Federal Aviation Administration flight test.

Grant, November 5, 1992, Exemption No. 5546

Docket No: 26991

Petitioner: Mr. Rube Goldberg

Sections of the FAR Affected: 14 CFR 121.574(a)

Description of Relief Sought/ Disposition: To allow Mr. Rube Goldberg to carry and use his own source of oxygen aboard commercial airplanes in lieu of that supplied by the air carrier.

Denial, January 5, 1993, Exemption No. 5583

Docket No: 27109

Petitioner: Scandinavian Airlines System and ABX, Inc.

Sections of the FAR Affected: 14 CFR 91.805

Description of Relief South/Disposition: To allow the operation of four noncomplying Stage 1 DC-9-41 aircraft from Oslo, Norway, to Dayton, Ohio, for customs clearance, and then to Wilmington, Ohio, to obtain modification to bring the subject aircraft into compliance with Stage 2 noise levels under part 36 of the FAR.

Grant, January 11, 1993, Exemption No. 5584

Docket No: 27908

Petitioner: Hartzell Propeller, Inc.

Sections of the FAR Affected: 14 CFR 21.231(a)

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5266, which expires December 31, 1992, and which allows Hartzell Propeller, Inc., to apply for a delegation option authorization for the type, production, and airworthiness certification of propellers manufactured for use on turbopropeller and reciprocating engines of not more than 1,500 brake horsepower.

Grant, December 18, 1992, Exemption No. 5266A

[FR Doc. 93-1951 Filed 1-26-93; 8:45 am]

BILLING CODE 4910-13-M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 10, 1993, at 9 a.m. Arrange for oral presentations by February 3, 1993.

ADDRESSES: The meeting will be held at the Air Line Pilots Association, 1625 Massachusetts Avenue NW., room 804-805, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-9683; fax number (202) 267-5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on February 10, 1993, at the Air Line Pilots Association, 1625 Massachusetts Avenue NW., room 804–805, Washington, DC. The agenda will include:

- A discussion of revisions to the committee charter.
- A discussion of revisions to the committee operating procedures.
- Status reports from the chairs of the subcommittees.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by February 3, 1993, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 19, 1993.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–1953 Filed 1–26–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Medford-Jackson County Airport, Medford, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Medford-Jackson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 26, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Gunther E. Katzmar, Airport Director, Jackson County, Oregon at the following address: 3650 Biddle Road, Medford, Oregon 97504.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Jackson County, Oregon under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, Civil Engineer, (206) 227–2654, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Medford-Jackson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 14, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jackson County, Oregon was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 1993.

The following is a brief overview of the application. Level of the proposed PFC: $3.00 Proposed charge effective date: June 1, 1993 Proposed charge expiration date: August 31, 1995 Total estimated PFC revenue: $1,079,405.00

Brief description of proposed projects: The impose only projects are environmental assessment for runway extension (runway 14), pave perimeter road, pavement management plan, land acquisition, and relocate runway 9/27 lights. The impose and use projects include taxiway overlay, master plan update, signage installation, access control system installation, safety improvements (cover drainage ditches, establish obstacle free area), reconstruct taxilane, replace porous friction course, and install centerline lights on runway 14/32, land acquisition, and apron construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators who enplane revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport, and other similar limited, irregular, special service operations by such air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Medford-Jackson County Airport.

Issued in Renton, Washington on January 14, 1993.

Edward G. Tatum,

Manager, Airports Division Northwest Mountain Region.

[FR Doc. 93–1952 Filed 1–26–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Flathead County, MT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Flathead County, Montana.

FOR FURTHER INFORMATION CONTACT: Dale Paulson, Environmental Coordinator, Federal Highway Administration, 301 South Park, Drawer 10056, Helena, MT 59626–0056; Telephone: (406) 449–5310.

SUPPLEMENTARY INFORMATION: The FHWA is preparing an Environmental Impact Statement for a proposal to improve the U.S. 93 Highway transportation corridor from Somers, Montana through Whitefish, Montana. This proposed project was originally being developed by the Montana Department of Transportation as two separate projects; one from Somers to Kalispell, and one from Kalispell to Whitefish. Environmental assessments were developed for these projects, however it has been determined that a single EIS should be prepared from Kalispell through Whitefish.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Comments are being solicited from appropriate Federal, State, and local agencies and from private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held in the project area and in addition a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of all issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, at the addresses listed previously.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action)

Issued on: January 13, 1993.

Duane C. Lewis,

Assistant Division Administrator, Montana Division, Helena.

[FR Doc. 93–1915 Filed 1–26–93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

[Order Number: 105–10]

Temporary Arrangements for Functions Relating to Enforcement

January 15, 1993.

Pursuant to the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and notwithstanding Treasury Order (TO) 101–05 (dated July 2, 1992), it is ordered that the following arrangements shall be temporarily in effect with respect to enforcement functions:

1. All duties and power formerly carried out by the Assistant Secretary (Enforcement) shall be carried out by the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement);

2. Those officials subject to the supervision of the Assistant Secretary (Enforcement) pursuant to TO 101–05 (dated July 2, 1992) shall report to the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement), and

3. The Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) shall report to the Deputy Secretary.

4. *Redelegation.* The duties and powers assigned by this Order may be redelegated. Any such redelegation shall be in writing.

5. *Effective Date:* The foregoing arrangements shall be effective at the close of business, January 19, 1993.

6. *Cancellation.* This temporary Order shall terminate without any further action when a new Assistant Secretary (Enforcement) executes the oath of office.

John E. Robson,

Acting Secretary of the Treasury.

[FR Doc. 93–1977 Filed 1–26–93; 8:45 am]

BILLING CODE 4810-25-M

[Directive Number: 27–03]

Organization and Functions of the Office of the Assistant Secretary (Enforcement)

January 19, 1993.

1. *Purpose.* This directive describes the organization and functions of the Office of the Assistant Secretary (Enforcement).

2. *The Assistant Secretary (Enforcement)* reports to the Secretary through the Deputy Secretary and is responsible for the following functions.

a. Coordinates all Treasury law enforcement matters, including the formulation of policies for all Treasury enforcement activities.

b. Ensures cooperation and proper levels of Treasury participation in law enforcement matters with other Federal departments and agencies.

c. Provides Departmental oversight and supervision of the U.S. Customs Service (USCS), U.S. Secret Service (USSS), Bureau of Alcohol, Tobacco and Firearms (BATF), the Federal Law Enforcement Training Center (FLETC), and the Financial Crimes Enforcement Network (FinCEN).

d. Negotiates international agreements on behalf of the Secretary to engage in joint law enforcement operations and for the exchange of financial information and records useful to law enforcement.

3. *Organization Structure.* The Assistant Secretary supervises the Deputy Assistant Secretary (Law Enforcement), the Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement) and the Director of the Financial Crimes Enforcement Network.

4. *The Deputy Assistant Secretary (Law Enforcement)* acts, as assigned, for the Assistant Secretary in the Assistant Secretary's absence and is responsible for the following functions.

a. Represents the Assistant Secretary (Enforcement) on major law enforcement matters that require top level attention in the Department of the Treasury, including currency violations, smuggling, forgery, counterfeiting, international and domestic money laundering, and other violations of laws over which the Department of the Treasury bureaus have jurisdiction.

b. Provides leadership for Treasury's participation in national law enforcement programs and efforts, relating to the suppression of narcotics and dangerous drug smuggling and other interdepartmental law enforcement programs that may arise.

c. Coordinates and develops Treasury's law enforcement policy.

d. Supervises the Office of Financial Enforcement, the Office of Law Enforcement and the Executive Office for Asset Forfeiture, and provides staff assistance and advice on day-to-day matters and policy issues relating to FinCEN.

(1) *The Office of Financial Enforcement* is responsible for the following functions.

(a) Assists in implementing the Bank Secrecy Act (Public Law 91–508), promulgating, interpreting, administering, and enforcing related Treasury regulations, 31 CFR part 103, and internal guidelines, and combatting domestic and international financial criminal activity, including money laundering.

(b) Coordinates and monitors analysis and dissemination of Bank Secrecy Act data and compliance activities and other functions of agencies delegated responsibilities by the Secretary under the Bank Secrecy Act, including the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the U.S. Postal Service, USCS, FinCEN, and the Internal Revenue Service (IRS).

(c) Evaluates and recommends to the Deputy Assistant Secretary (Law Enforcement) requests for dissemination of Bank Secrecy Act report information, and recommends dissemination guidelines and policies for USCS, IRS and FinCEN.

(d) Serves as principal staff for the Assistant Secretary (Enforcement) on matters relating to those State and Federal agencies that have compliance responsibilities for the Bank Secrecy Act, other Federal, State, local and foreign governmental agencies, the financial community, and the public on related matters, and communicates such policy to the Congress through the Office of the Assistant Secretary (Legislative Affairs).

(e) Coordinates initiatives regarding domestic and international cooperation on money laundering and currency reporting and serves as principal staff for the Assistant Secretary (Enforcement) on matters relating to other Federal, State, and local and foreign governmental agencies on these issues.

(f) Reviews or initiates recommendations relating to assessment or mitigation of civil penalties under the Bank Secrecy Act or seizures in excess of $500,000 based on violations of the Bank Secrecy Act.

(g) Advises and makes recommendations on matters relating to domestic and international money laundering, and on issues affecting the enforcement of the Bank Secrecy Act. Evaluates FinCEN recommendations on these matters as well as possible uses of special currency reporting requirements under 31 U.S.C. 5326.

(2) *The Office of Law Enforcement* is responsible for the following functions.

(a) Serves as the principal policy office for the Assistant Secretary (Enforcement) on all matters concerning general law enforcement policy for the Treasury enforcement bureaus.

(b) Coordinates and monitors a wide variety of special emphasis and high priority law enforcement issues that relate to the activities of the BATF, USCS, FLETC, USSS, and IRS.

(c) Ensures Department of the Treasury coordination with the Office of National Drug Control Policy, Department of Justice, Department of Defense, Department of State, Department of Transportation, and the Federal Intelligence Community on matters pertaining to drug law enforcement policy, and communicates such policy to the Congress through the Office of the Assistant Secretary (Legislative Affairs).

(d) Serves as the principal liaison for the Office of the Assistant Secretary (Enforcement) with State, local, and other federal law enforcement agencies concerning law enforcement policy matters.

(e) Coordinates, develops and monitors the implementation of law enforcement policy directives pertaining to the enforcement activities of Treasury law enforcement bureaus.

(3) *The Executive Office for Asset Forfeiture* is responsible for the following functions.

(a) Establishing a Treasury Forfeiture Fund Program ("Program"), by: (1) Developing and implementing an overall plan with respect to seizure and forfeiture policy as established by the Assistant Secretary (Enforcement) and the Deputy Assistant Secretary (Law Enforcement) for the Treasury Department and its law enforcement organizations; (2) issuing guidelines and procedures to be followed by the Treasury Department and its law enforcement organizations in the implementation of the Program's seizure and forfeiture policy; (3) entering into agreements and undertaking program initiatives to implement seizure and forfeiture policy; and (4) coordinating seizure and forfeiture programs with the Department of Justice.

(b) Making all determinations regarding distributions from the Fund, including: (1) the amounts to be distributed and the purposes for which distributed amounts may be used by any Treasury law enforcement organization, the Coast Guard, the Departmental Offices, the Department of Justice, State and local organizations, and any other entity; and (2) authorizing obligations and expenditures within the budgetary resources available to the Fund.

(c) Implementing all policy decisions established by the Assistant Secretary (Enforcement) and Deputy Assistant Secretary (Law Enforcement) in connection with the detention, inventory, security, maintenance, advertisement, disposal or other management-related tasks relating to assets seized or forfeited, including: (1) developing and implementing automated systems to track assets from seizure to disposition; (2) operating and managing programs designed to handle seized and forfeited assets for disposition, including, but not limited to, the transportation, custody, and sale or disposition of such assets; and (3) entering into and administering any contract entered into by the Executive Office for Asset Forfeiture or its agent for the management of seized and forfeited assets.

(d) Planning and developing budgets, including the identification and projection of those expenses to be paid from the Fund.

(e) Maintaining a system of internal controls for the Fund.

(f) Formulating, developing and implementing programs for the internal controls concerning the assets, proceeds and accounts of the Program and the Fund, including, without limitation, determining and reviewing the obligations incurred and the expenditures made from the Fund, evaluating the performance of the Program and the Fund, overseeing inventories and audits, accounting for assets of the Fund and developing systems for the management of such assets, preparing management reports, tracking reconciliation of sales and receipts, and monitoring financial management reports.

(g) Monitoring funds distributed to the Treasury law enforcement agencies and others to ensure that funds are being used for their intended purposes.

(h) Providing information requested by the Assistant Secretary (Management)/Chief Financial Officer (CFO) with respect to: (1) estimates for appropriations or other budget authority, requests for apportionments, and any other submissions on budgetary matters to the Office of Management and Budget (OMB) or Congress; and (2) preparing and submitting to the Assistant Secretary (Management)/CFO for concurrence, an annual financial management plan for the Fund.

(i) Submitting to the Assistant Secretary (Management)/CFO for concurrence the procedures developed for operation of the Fund that constitute controls of funds or directly affect financial management; provided, however, that the decision with respect to the amounts and the purposes for which such amounts are to be disbursed from the Fund remain within the sole discretion of the Executive Office for Asset Forfeiture.

5. *The Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement)* acts, as assigned, for the Assistant Secretary in the Assistant Secretary's absence and is responsible for the following functions.

a. Provides policy guidance and review in establishing regulatory policies with respect to the USCS and BATF.

b. Serves as principal support to the Assistant Secretary (Enforcement) in all tariff and trade enforcement matters, including proposed legislation, regulatory changes or other policy proposals on tariff and trade matters.

c. Advises the Assistant Secretary (Enforcement) on matters involving the Departmental level oversight and supervision of the USCS, USSS, BATF, and FLETC.

d. Supervises the following organizations: Office of Trade and Tariff Affairs, Office of Foreign Assets Control and Office of Operations.

(1) *The Office of Trade and Tariff Affairs* is responsible for the following functions.

(a) Reviews and recommends actions on non-criminal cases and regulatory proposals from the USCS and BATF.

(b) Develops customs and tariff policy in areas including but not limited to Customs classification and valuation, quota programs, and imposition of penalties.

(c) Advises and assists in developing regulatory policy with respect to alcoholic beverages and the industries that produce those products.

(2) *The Office of Foreign Assets Control (FAC)* is responsible for

implementing and administering the Department's responsibilities under United States economic sanctions programs with respect to foreign nations. These sanctions programs arise primarily under the Trading with the Enemy Act and the International Emergency Economic Powers Act. Specifically, the office is responsible for the following functions.

(a) Prepares executive orders and other documents concerning the imposition and administration of economic sanctions for the signature of the President.

(b) Conducts negotiations with foreign governments regarding the administration and enforcement of U.S. sanctions.

(c) Issues regulations, subject to the approval of the Assistant Secretary and often in consultation with other Federal agencies, which reflect commercial and financial transactions of persons subject to U.S. jurisdiction with respect to tangible or intangible property in which foreign governments or their nationals have an interest.

(d) Monitors the holding of assets blocked under economic sanctions programs.

(e) Conducts appropriate licensing required to implement policy concerning transactions with respect to blocked assets and transactions otherwise prohibited by economic sanctions regulations.

(f) Coordinates civil and criminal enforcement matters, monitors key investigations and as necessary conducts investigations of FAC violations.

(3) *The Office of Operations* is responsible for the following functions.

(a) Serves as principal support in providing departmental oversight and supervision of the enforcement bureaus and provides advice on a broad range of operational matters.

(b) Operates a management information system which monitors key operations and activities in the enforcement bureaus, identifies problem areas, and tracks corrective actions.

(c) Provides assistance and support to the enforcement bureaus and to the program offices of the Assistant Secretary (Enforcement) to ensure achievement of the goals/objectives of the Assistant Secretary (Enforcement).

6. *The Director, Financial Crimes Enforcement Network (FinCEN)* reports directly to the Assistant Secretary (Enforcement) and operates under guidelines and policies established by the Assistant Secretary (Enforcement). Staff assistance and advice on day-to-day matters and policy issues shall be provided to FinCEN by the Deputy Assistant Secretary (Law Enforcement) and staff. Close coordination between the FinCEN staff and the Deputy Assistant Secretary (Law Enforcement) and staff is required. The Director of FinCEN is responsible for the following functions.

a. Directs a core staff composed of Departmental Offices employees and other personnel detailed to FinCEN, including experts from USCS, IRS, other Federal law enforcement bureaus, financial institution regulatory agencies, and private industry to centralize and combine expertise on both the national and international financial systems and the detection and prevention of money laundering and other financial crimes.

b. Advises and makes recommendations on matters relating to financial intelligence and other financial criminal activity to the Assistant Secretary (Enforcement).

c. Maintains a governmentwide data access service, with access, in accordance with applicable legal requirements, to:

(1) Information collected by Treasury, including report information filed under the Bank Secrecy Act and section 6050I of the Internal Revenue Code;

(2) Information regarding national and international currency flows;

(3) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases; and

(4) Other privately and publicly available information.

d. Analyzes and disseminates the available data in accordance with applicable legal requirements, policies and guidelines and policies established by the Assistant Secretary (Enforcement) to:

(1) Identify possible criminal targets to appropriate Federal, State, local, and foreign law enforcement agencies;

(2) Support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;

(3) Identify possible instances of noncompliance with the Bank Secrecy Act to Federal agencies with delegated responsibility for Bank Secrecy Act compliance;

(4) Evaluate and recommend possible uses of special currency reporting under 31 U.S.C. 5326; and

(5) Determine emerging trends and methods in money laundering and other financial crimes.

e. Establishes a financial crimes communications center to furnish law enforcement authorities with intelligence information related to ongoing investigations and undercover operations.

f. Furnishes research, analytical, and informational services to financial institutions, financial institution regulators, and Federal, State, local, and foreign law enforcement authorities in accordance with policies and guidelines established by the Assistant Secretary (Enforcement) in the interest of detection, prevention, and prosecution of money laundering and other financial crimes.

7. *Cancellation*. Treasury Directive 27-03, "Organization and Functions of the Office of the Assistant Secretary (Enforcement)," dated May 30, 1990, is superseded."

8. *Authority*. Treasury Order 102-14, "Delegation of Authority With Respect to the Treasury Forfeiture Fund Act of 1992," dated January 19, 1993.

9. *Office of Primary Interest*. Office of the Assistant Secretary (Enforcement).

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 93-1979 Filed 1-26-93; 8:45 am]

BILLING CODE 4810-25-M

[Order Number: 102-13]

Delegation of Authority Concerning Budget Matters

January 19, 1993.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b) and 1514(a), I hereby delegate my functions, powers, and duties relating to preparation of the budget of the Department and control of funds in the Department as follows.

1. *Budget Formulation*. a. Except as provided in paragraph 1.e., the Assistant Secretary (Management)/Chief Financial Officer (CFO) shall:

(1) Develop and transmit each year budget policy guidance to the bureaus; and

(2) Make all determinations regarding estimates for operating appropriations or other budget authority, requests for apportionments, and any other submissions on budgetary matters to the Office of Management and Budget (OMB). Appeals related to these determinations within the Department shall be addressed to the Deputy Secretary.

b. No budget-related submission shall be transmitted to OMB without clearance from the Assistant Secretary (Management)/CFO: provided that, when action has been taken by the Secretary or Deputy Secretary, such clearance shall not be withheld. The Deputy Secretary shall transmit the Department's annual budget request to

OMB, and the Assistant Secretary (Management)/CFO shall have the authority to sign all other transmittals.

c. Submissions to Congress regarding budgetary matters shall be processed in the same manner as described in paragraphs 1.a. and 1.b., and shall be coordinated by the Assistant Secretary (Management)/CFO with the Assistant Secretary (Legislative Affairs).

d. With respect to those bureaus which are supervised by the Fiscal Assistant Secretary, Treasurer, or Assistant Secretary (Enforcement) under Treasury Order (TO) 101–05, these officers shall provide such guidance as they determine to be necessary for formulation of the annual budgets of the bureaus which they supervise. This authority extends to the review and approval of budget submissions and resource tradeoffs among the bureaus under that officer's purview prior to the submission by the bureau to the Assistant Secretary (Management)/CFO. The Assistant Secretary (Management)/CFO shall consult with these officers concerning the budgets recommended to the Deputy Secretary.

e. With respect to the Internal Revenue Service, the Deputy Secretary shall make any final decisions on budgetary matters for submission to OMB or Congress. For the Office of Inspector General, budgetary estimates and staffing levels shall be determined in accordance with TO 114–01 or any successor order. The Assistant Secretary (Management)/CFO may provide guidance and advise on such budgetary matters determined under this paragraph 1.e., and shall be responsible for referring to the Deputy Secretary any matter on which action would be appropriately taken by the Secretary or Deputy Secretary.

2. *Allocation of Personnel Positions.* Except for the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and as provided in paragraph 1.e. with respect to the Office of Inspector General, the Assistant Secretary (Management)/CFO shall make final determinations on all matters pertaining to the allocation of full-time equivalent positions in the bureaus and offices of the Department.

3. *Budget Execution/Control of Funds.* a. Heads of bureaus (except the Comptroller of the Currency and the Director, Office of Thrift Supervision) and the Inspector General are delegated the authority to:

(1) incur obligations and make expenditures within the budgetary resources available to the bureau or office consistent with applicable OMB apportionments and reapportionments and other authority to make funds available for obligation; and

(2) issue sub-allotments or allocations of funds to components of that bureau or office.

b. The Comptroller of the Currency and Director, Office of Thrift Supervision, shall continue to exercise their statutory authorities to incur obligations and make expenditures.

c. Heads of bureaus and the Inspector General shall maintain a system of administrative control of funds for the bureau or office. Each such system shall be reviewed and approved as outlined in Treasury Directive 32–02 or any successor directive.

d. For purposes of paragraphs 3.a. and 3.c., the Assistant Secretary (Management)/CFO shall be considered the bureau head for the Departmental Offices. With regard to the Treasury Asset Forfeiture Fund maintained pursuant to 31 U.S.C. 9703, the Assistant Secretary (Enforcement) shall be the sub-allottee.

4. *Policies, Procedures and Standards.* The Assistant Secretary (Management) has been designated to serve as the Department's Chief Financial Officer pursuant to the Chief Financial Officers Act of 1990, Public Law 101–576. The Assistant Secretary (Management)/Chief Financial Officer is delegated such additional authority as may be necessary to prescribe policies, procedures, and standards for budgetary matters and funds control. Such policies, procedures, and standards shall assure administrative control of funds and allow flexibility sufficient to conduct operations.

5. *Redelegation.* The Assistant Secretary (Management)/Chief Financial Officer, heads of bureaus, and the Inspector General may redelegate any authority conferred under this Order, to the extent such redelegation is consistent with any policies, procedures, standards, and limitations established pursuant to paragraph 4.

John E. Robson,

Acting Secretary of the Treasury.

[FR Doc. 93–1980 Filed 1–26–93; 8:45 am]

BILLING CODE 4810-25-M

[Number 102–14]

Delegation of Authority With Respect To The Treasury Forfeiture Fund Act of 1992

January 19, 1993.

By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), it is ordered that:

1. The purpose of this Order is to delegate the functions, powers and duties of the Secretary in connection with the operation and administration of the Department of the Treasury Forfeiture Fund (hereinafter, the "Fund"), as established by the Treasury Forfeiture Fund Act of 1992, section 636 of Public Law 102–393 (1992), codified in relevant part at 31 U.S.C. 9703.

2. All functions, powers and duties of the Secretary with respect to the Fund, except as specifically delegated herein to the Assistant Secretary (Management)/Chief Financial Officer (CFO), are hereby delegated to the Assistant Secretary (Enforcement).

3. The functions performed by the Assistant Secretary (Enforcement) with respect to the Fund shall include, but not be limited to:

(a) Making all determinations regarding distributions from the Fund, including the amounts to be distributed and the purposes for which distributed amounts may be used by any Treasury law enforcement organization, the Coast Guard, the Departmental Offices, the Department of Justice, State and local organizations, and any other entity; and

(b) Incurring obligations and making expenditures within the budgetary resources available from the Fund.

4. The Assistant Secretary (Management)/CFO shall:

(a) Perform the functions that are assigned to the Assistant Secretary (Management)/CFO by any Treasury Order pertaining to the budget formulation or execution process;

(b) Support the financial management of the Fund; and

(c) Perform any other functions which are delegated by the Secretary to, or vested in, the Assistant Secretary (Management)/CFO pursuant to the Chief Financial Officers Act of 1990, the Federal Managers' Financial Integrity Act, or any other law or regulation pursuant to which authority has been delegated by the Secretary to the Assistant Secretary (Management)/CFO.

5. The specific functions of the Assistant Secretary (Management)/CFO include:

(a) Executing an advice of allotment to the Assistant Secretary (Enforcement) with respect to the budgetary resources available from the Fund;

(b) Accounting for the assets of the Fund;

(c) Recording, reconciling and reporting all transactions of the Fund; and

(d) Maintaining oversight of financial management controls and preparing financial statements.

6. The Assistant Secretary (Enforcement) and Assistant Secretary (Management)/CFO may each establish offices within the Department to

perform their respective functions in connection with the Fund.

7. The delegation, dated October 2, 1992, from the Secretary of the Treasury to the Commissioner of Customs concerning the Fund is hereby revoked.

8. The Assistant Secretary (Enforcement) and Assistant Secretary (Management)/CFO may redelegate or assign any authority delegated to them by this Order.

9. This Order shall become effective on the date of its issuance.

John E. Robson,

Acting Secretary of the Treasury.

[FR Doc. 93–1982 Filed 1–26–93; 8:45 am]

BILLING CODE 4810-25-M

Office of the Secretary

[Department Circular—Public Debt Series—No. 4–93]

Treasury Notes of January 31, 1998, Series J–1998 (CUSIP No. 912827 J4 5)

Washington, January 21, 1993.

1. Invitation of Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in Section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a 1/8 of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in order funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2 The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries—*

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches—*

A parent bank (includes the percent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches—*

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries—*

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families—*

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) *Partnerships—*

Each partnership (includes a partnership or individual partner(s) acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries—*

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts—*

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions—*

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds—*

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds—*

A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers—*

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds—*

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations."Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $26,750 Million

The Treasury will auction $15,250 million of 2-year notes and $11,500 million of 5-year notes to refund $13,238 million of securities maturing January 31, 1993, and to raise about $13,500 million new cash. The $13,238 million of maturing securities are those held by the public, including $1,212 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The 5-year notes announced today include an amount sufficient to hedge the call, announced on January 13, 1993, of $462 million held by private investors of 7% bonds of 1993–98.

The $26,750 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $882 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Both the 2-year and 5-year note auctions will be conducted in the single-price auction format. All competitive and non-competitive awards will be at the highest yield of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED FEBRUARY 1, 1993

Amount Offered to the Public	$15,250 million	$11,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series S–1995 (CUSIP No. 912827 J5 2)	Series J–1998 (CUSIP No. 912827 J4 5).
Maturity date	January 31, 1995	January 31, 1998.
Interest rate	To be determined based on the highest accepted bid	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	July 31 and January 31	July 31 and January 31.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, January 26, 1993	Wednesday, January 27, 1993.
(a) Noncompetitive	Prior to 12:00 noon, EST	Prior to 12:00 noon, EST.
(b) Competitive	Prior to 1:00 p.m., EST	Prior to 1:00 p.m., EST.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED FEBRUARY 1, 1993—Continued

Settlement (final payment due from institutions):		
(a) Funds immediately available to the Treasury	Monday, February 1, 1993	Monday, February 1, 1993.
(b) Readily-collectible check	Thursday, January 28, 1993	Thursday, January 28, 1993.

[FR Doc. 93–1929 Filed 1–22–93; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 3–93]

Treasury Notes of January 31, 1995, Series S–1995 (CUSIP No. 912827 J5 2)

Washington, January 21, 1993.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent to the highest yield bid at which bids were accepted. The interest rate on the Notes and the price equivalent to the highest yield at which bids were accepted will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amounts of bids received and accepted, the highest yield accepted, and the interest rate on the notes. Subject to the reservations expressed in section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest yield at which bids were accepted will be prorated if necessary. All successful competitive bidders, regardless of the yields they each bid, will be awarded securities at the highest yield at which bids were accepted. After the determination is made as to which bids are accepted, an interest rate will generally be established, at a ⅛ of one percent increment, which produces a price equivalent to the highest yield at which bids were accepted and is closest to, but not above, par. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price equivalent to the highest yield at which bids were accepted will be determined, and each noncompetitive bidder and each successful competitive bidder will be required to pay such price for their securities. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb most or all of the public offering, competitive bids would be accepted in an amount determined by the Department to be sufficient to provide a fair determination of the highest yield for the securities being auctioned. Bids received from Federal Reserve Banks for their own account or for foreign and international monetary authorities will be accepted at the price equivalent to the highest yield at which bids were accepted.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the highest yield at which bids were accepted is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the

Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) Bank Holding Companies and Subsidiaries—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) Banks and Branches—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) Thrift Institutions and Branches—

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) Corporations and Subsidiaries—

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) Families—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) Partnerships—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) Guardians, Custodians, or Other Fiduciaries—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) Trusts—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) Political Subdivisions—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) Mutual Funds—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) Money Market Funds—

A money market fund (includes all funds that have a common management).

(12) Investment Agents/Money Managers—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) Pension Funds—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Auction of 2-Year and 5-Year Notes Totaling $26,750 Million

The Treasury will auction $15,250 million of 2-year notes and $11,500 million of 5-year notes to refund $13,238 million of securities maturing January 31, 1993, and to raise about $13,500 million new cash. The $13,238 million of maturing securities are those held by the public, including $1,212 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The 5-year notes announced today include an amount sufficient to hedge the call, announced on January 13, 1993, of $462 million held by private investors of 7% bonds of 1993–98.

The $26,750 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $882 million of the maturing securities that may be refunded by issuing additional amounts of the new securities.

Both the 2-year and 5-year note auctions will be conducted in the single-price auction format. All competitive and non-competitive awards will be at the highest yield of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment.

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED FEBRUARY 1, 1993

[January 21, 1993]

Amount Offered to the Public	$15,250 million	$11,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series S–1995 (CUSIP No. 912827 J5 2)	Series J–1998 (CUSIP No. 912827 J4 5).
Maturity date	January 31, 1995	January 31, 1998.
Interest rate	To be determined based on the highest accepted bid	To be determined based on the highest accepted bid.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	July 31 and January 31	July 31 and January 31.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full up to $5,000,000	Accepted in full up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, January 26, 1993	Wednesday, January 27, 1993.
(a) noncompetitive	Prior to 12:00 noon, EST	Prior to 12:00 noon, EST.
(b) competitive	Prior to 1:00 p.m., EST	Prior to 1:00 p.m., EST.
Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury	Monday, February 1, 1993	Monday, February 1, 1993.
(b) readily-collectible check	Thursday, January 28, 1993	Thursday, January 28, 1993.

[FR Doc. 93–1928 Filed 1–22–93; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 16
Wednesday, January 27, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 10 a.m. February 8, 1993.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Public health and safety issues pertaining to Building 707 at the Rocky Flats Plant near Boulder, Colorado.
2. DOE's responses to Board recommendations and whether or not those responses adequately protect public health and safety relative to Building 707.

CONTACT PERSONS FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004, (202) 208-6400. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The Board will discuss and deliberate upon public health and safety issues related to Building 707 at the Rocky Flats Plant, near Boulder, Colorado. The meeting will include consideration of testimony and documents received at or after the public meeting and hearing conducted in Boulder, Colorado, on February 2, 1993, regarding DOE's operational readiness review for Building 707.

The Board will also discuss, pursuant to the requirements of section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, whether or not DOE's responses to Board recommendations adequately protect public health and safety relative to Building 707.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers as provided by law.

Dated: January 25, 1993.

Robert M. Andersen,

General Counsel.

[FR Doc. 93–2103 Filed 1–25–93; 2:30 pm]

BILLING CODE 6820-KD-M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 29, 1993, from 1:30 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). The matter to be considered at the meeting is:

OPEN SESSION

A. New Business

1. Policy Statement Concerning Operational Responsibilities.

Date: January 25, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–2101 Filed 1–25–93; 2:29 pm]

BILLING CODE 6705-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 noon, Monday, February 1, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and holding company applications scheduled for the meeting.

Date: January 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2034 Filed 1–25–93; 9:19 am]

BILLING CODE 6210-01-M

Corrections

Federal Register
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Wednesday, January 27, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4212-13; GP2-463; OR-46267]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

Correction

In notice document 92-25691 beginning on page 48393 in the issue of Friday, October 23, 1992, make the following corrections:

1. On page 48393, in the third column, in the land description, under T. 10 S., R. 22 E., under Sec. 9, in the first line, "S½SW¼" should read "S½NW¼".

2. On the same page, in the same column, under T. 11 S., R. 22 E., under Sec. 8, in the 14th line, "61°41′" should read "61°43′".

3. On page 48394, in the second column, under T. 10 S., R. 22 E., under Sec. 32, in the second line, insert "SE¼SW¼" after "W½SW¼".

4. On the same page, in the same column, under T. 11 S., R. 22 E., under Sec. 8, in the second line, "NW¼SW¼" where it first appears should read "NE¼SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4210-04;GP3-046; OR-39641]

Conveyance of Public Lands; Order Providing for Opening of Lands; Oregon

Correction

In notice document 92-28876 beginning on page 56589 in the issue of Monday, November 30, 1992, make the following correction:

On page 56590, in the second column, in the land description, in the tenth line from the top "Sec. 16, lots 2, 3, and 5," should read "Sec. 16, lots 2, 3, 4, and 5,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-4212-13; GP2-468; OR-45733 (WASH)]

Conveyance for Public Lands; Order Providing for Opening of Lands; Washington

Correction

In notice document 92-26059 beginning on page 48804 in the issue of Wednesday, October 28, 1992, make the following corrections:

1. On page 48804, in the second column, in land description T. 22 N., R. 33 E., in the ninth line from the bottom, "SE¼SE¼" should read "SW¼SE¼".

2. On the same page, in the third column, in land description T. 22 N., R. 34 E., in the third line, "N½NW½NE¼" should read "N½NW¼NE¼".

3. On the same page, in the same column, land description T. 22 N., R. 35. should read T. 22 N., R. 35 E., and in that land description, in Sec. 24, in the second line, the first time "N½SW¼" appears should read "N½NW¼", and in Sec. 29, in the fourth line, "right-of-away" should read "right-of-way".

BILLING CODE 1505-01-D

federal register

Wednesday
January 27, 1993

Part II

The President

Memorandum of January 15—Delegation of Responsibilities Under Public Law 87-297

Presidential Determination No. 93-14—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

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Federal Register
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Presidential Documents

Title 3—

The President

Memorandum of January 15, 1993

Delegation of Responsibilities Under Public Law 87–297

Memorandum for the Secretary of State, the Secretary of Defense [and] the Director of the Arms Control and Disarmament Agency

By virtue of the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, and section 50 of the Arms Control and Disarmament Act, Public Law 87–297 (the Act), I hereby delegate to the Director of the Arms Control and Disarmament Agency the authorities and duties vested in me by section 50 of the Act for the report concerning activities of the agency for 1992, provided that the Director may exercise such authorities and duties only in consultation with the Secretary of State and the Secretary of Defense. This delegation will expire with the issuance of the agency's 1992 Annual Report.

The Director is directed to publish this memorandum in the **Federal Register**.

Bush

THE WHITE HOUSE,
Washington, January 15, 1993.

[FR Doc. 93–2157
Filed 1–26–93; 10:47 am]
Billing code 3195–01–M

Presidential Documents

Presidential Determination No. 93-14 of January 19, 1993

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $5,000,000 be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of refugees, displaced persons, and victims of conflict from Tajikistan. These funds may be contributed on a multilateral or bilateral basis as appropriate to international organizations, private voluntary organizations, and other governmental and nongovernmental organizations engaged in this relief effort.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this memorandum in the **Federal Register.**

Bush

THE WHITE HOUSE,
Washington, January 19, 1993.

[FR Doc. 93-2162
Filed 1-26-93; 10:59 am]
Billing code 3195-01-M

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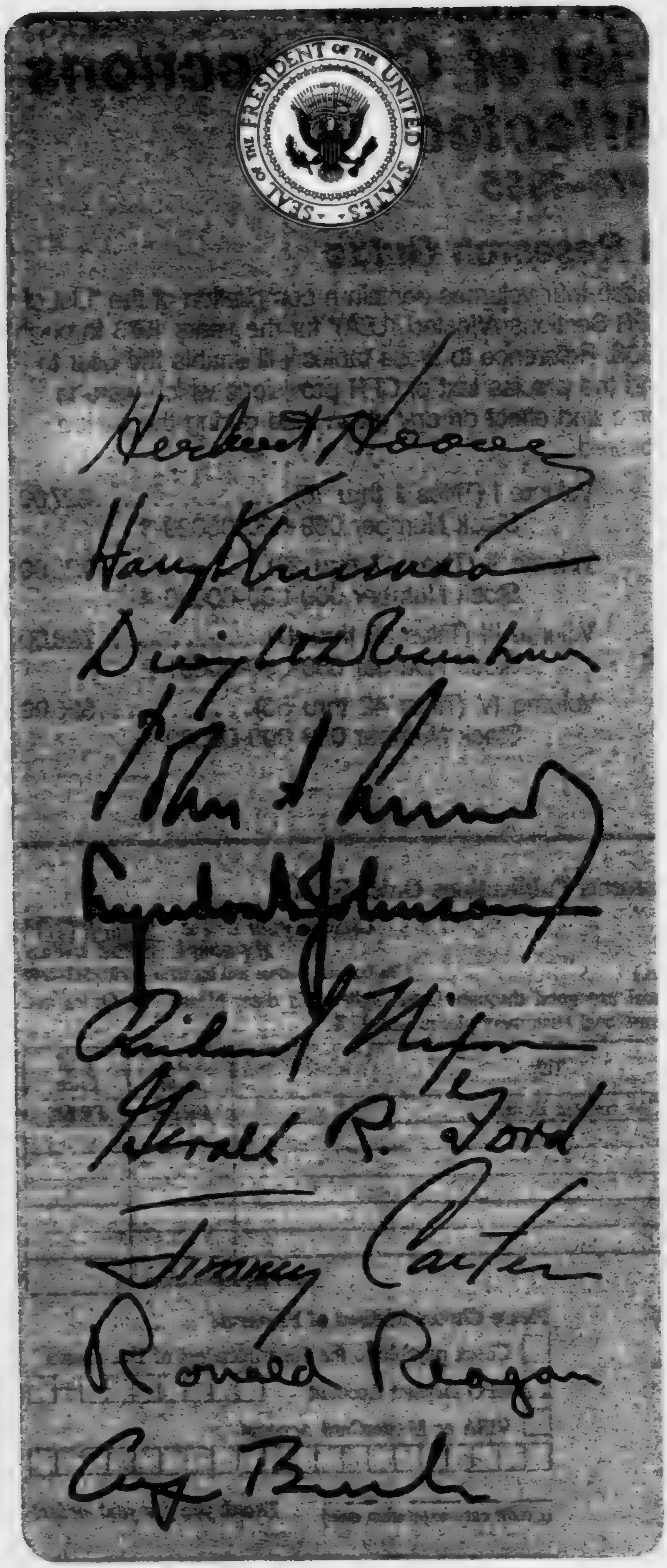
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Rules and Regulations

Federal Register
Vol. 58, No. 17
Thursday, January 28, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91–155–4]

Mediterranean Fruit Fly; Addition to the Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the previously quarantined area in Los Angeles County and also including a portion of Orange County, and by adding a portion of San Diego County, CA, to the list of quarantined areas. Immediate action is necessary to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interm rule effective January 19, 1993. Consideration will be given only to comments received on or before March 29, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–4. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The regulations in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations) imposed restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. In an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155), we quarantined the Hancock Park area of Los Angeles County, CA. In an interim rule effective on September 10, 1992, and published in the **Federal Register** on September 15, 1992 (57 FR 42485–42486, Docket No. 91–155–2), we amended the regulations by adding a portion of Santa Clara County, CA, to the list of quarantined areas. Also, in an interim rule effective on November 12, 1992, and published in the **Federal Register** on November 17, 1992 (57 FR 54166–54169, Docket No. 91–155–3), we amended the regulations by expanding the quarantined area in Los Angeles County, CA, to include other portions of Los Angeles County, including Duarte, Griffith Park, Inglewood, and Pasadena.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed new Mediterranean fruit fly detections in portions of the Covina area of Los Angeles County and the Artesia, Pico-Rivera and Walnut Park areas of Los Angeles and Orange Counties, and in the Oceanside area of San Diego County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found.

In accordance with these criteria and recent Mediterranean fruit fly findings described above, we are amending § 301.78–3 by expanding the quarantined area in Los Angeles County by approximately 241-square miles, including a section of Orange County, and by designating as quarantined an area comprised of approximately 30-square miles in San Diego County, CA. The new quarantined areas are as follows:

Los Angeles County, Expansion of Current Area

That portion of the county in the Covina area beginning at the intersection of Interstate Highway 10 and Francisquito Avenue; then southeast along Francisquito Avenue to its intersection with Hacienda Boulevard; then southwest along Hacienda Boulevard to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City limits; then north and northeast along the Walnut City Limits to its intersection with the Forest Lawn Memorial Park, Covina Hills boundary; then northeast along the boundary to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue.

Orange County and Los Angeles County

That portion of Orange County and Los Angeles County in the Artesia, Pico-Rivera, Walnut Park areas beginning at the intersection of Rosecrans Avenue and Interstate Highway 110; then east on Rosecrans Avenue to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with the Whittier City Limits; then northwest along the Whittier City Limits to its intersection with Turnbull Canyon Road; then north from this intersection along an imaginary line to the intersection of Interstate Highway 605 and State Highway 60; then west on State Highway 60 to its intersection with Interstate Highway 10; then west on Interstate Highway 10 to its intersection with Broadway.

San Diego County

That portion of the county in the Oceanside area beginning at the southern intersection of Carlsbad State Beach boundary and the Pacific Ocean coastline; then northeast along this boundary to its intersection with Carlsbad Boulevard; then northwest along Carlsbad Boulevard to its intersection with Tamarack Avenue; then east and north along Tamarack Avenue to its intersection with Elm Avenue; then east along Elm Avenue to its intersection with Glasgow Drive; then north from this intersection along an imaginary line to the intersection of College Boulevard and Lake Boulevard; then north along College Boulevard to its intersection with Mesa Drive; then southwest along Mesa Drive to its intersection with Rancho Del Oro Drive; then north along Rancho Del Oro Drive to its intersection with Mission Avenue; then southwest along Mission Avenue to its intersection with El Camino Real; then north along El Camino Real to its intersection with Los Arbolitos Boulevard; then west along Los Arbolitos Boulevard to its intersection with Apricot Tree Way; then west along Apricot Tree Way to its end; then west from the end of Apricot Tree Way along an imaginary line to the intersection of Rivertree Drive and Crystalwood Drive; then west along Crystalwood Drive to its intersection with Valley Crest Drive; then due west from this intersection along an imaginary line to its intersection with Oceanside City Limits; then southwest along the Oceanside City Limits to its intersection with the Pacific Ocean coastline; then southeast along the Pacific Ocean coastline to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the interim rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this interim rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this interim rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This interim rule affects the interstate movement of regulated articles from the Covina area of Los Angeles County, and the Artesia, Pico-Rivera, and Walnut Park areas of Los Angeles and Orange Counties, and the Oceanside area of San Diego County, in California. There are approximately 985 small entities that could be affected, including 647 retail/wholesale fruit stands, 133 nurseries, 112 yard maintenance companies, 12 swapmeets, 4 growers, 4 packers, 1 community garden, 1 processor, 5 farmers' markets, 47 vendors, 7 caterers, and 12 distributors.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

The effect on those few small entities that do move regulated articles interstate from parts of the quarantined area will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this interim regulation on these entities would be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim rule: (1) Preempts all State and local laws and regulations that are inconsistent with this interim rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this interim rule.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined area is amended by revising the entry for Los Angeles County and by adding an area in San Diego County immediately after the description for Santa Clara County, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California.

Los Angeles and Orange Counties. That portion of the county in the Covina, Griffith Park, Jefferson Park, Hancock Park, Inglewood, Alhambra, Pasadena and Duarte areas beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then easterly along Rosecrans Avenue to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east of Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with the Whittier City Limits; then northwest along the Whittier City Limits to its intersection with Turnbull Canyon Road; then north from this intersection along an imaginary line to the intersection of Interstate Highway 605 and State Highway 60; then west on State Highway 60 its intersection with Interstate Highway 10; then west on Interstate Highway 10 to its intersection with Broadway; then northeast along Broadway to its intersection with Olympic Boulevard; then northwest along Olympic Boulevard to its intersection with State Highway 110; then northeast along State Highway 110 to its intersection with Bishops Road; then southeast along Bishops Road to its intersection with North Broadway; then east along North Broadway to its intersection with Interstate Highway 5; then south along Interstate Highway 5 to its intersection with Interstate Highway 10; then east along interstate Highway 10 to its intersection with Francisquito Avenue; then southeast along Francisquito Avenue to its intersection with Hacienda Boulevard; then southwest along Hacienda Boulevard to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to its intersection with the Forest Lawn Memorial Park, Covina Hills boundary; then northeast along the boundary to its intersection with Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning.

* * * * *

San Diego County. That portion of the county in the Oceanside area beginning at the southern intersection of Carlsbad State Beach boundary and the Pacific Ocean coastline; then northeast along this boundary to its intersection with Carlsbad Boulevard; then northwest along Carlsbad Boulevard to its intersection with Tamarack Avenue; then east and north along Tamarack Avenue to its intersection with Elm Avenue; then east along Elm Avenue to its intersection with Glasgow Drive; then north from this intersection along an imaginary line to the intersection of College Boulevard and Lake Boulevard; then north along College Boulevard to its intersection with Mesa Drive; then southwest along Mesa Drive to its intersection with Rancho Del Oro Drive; then north along Rancho Del Oro Drive to its intersection with Mission Avenue; then southwest along Mission Avenue to its intersection with El Camino Real; then north along El Camino Real to its intersection with Los Arbolitos Boulevard; then west along Los Arbolitos Boulevard to its intersection with Apricot Tree Way; then west along Apricot Tree Way to its end; then west from the end of Apricot Tree Way along an imaginary line to the intersection of Rivertree Drive and Crystalwood Drive; then west along Crystalwood Drive to its intersection with Valley Crest Drive; then due west from this intersection along an imaginary line to its intersection with Oceanside City Limits; then southwest along the Oceanside City Limits to its intersection with the

Pacific Ocean coastline; then southeast along the Pacific Ocean coastline to the point of beginning.

Done in Washington, DC, this 19th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–1893 Filed 1–27–93; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 301

[Docket No. 92–139–2]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by allowing all pine nursery stock to be certified for interstate movement. In addition, we are allowing cut pine Christmas trees and pine nursery stock to be moved interstate after cold treatment. Immediate action is necessary to relieve unnecessarily burdensome restrictions on nurseries.

We are also adding Will County, Illinois, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

DATES: Interim rule effective January 19, 1993. Consideration will be given only to comments received on or before March 29, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–139–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Milton C. Holmes, Senior Operations Officer, PPQ, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 301.50 (referred to below as the regulations) quarantine portions of six States because of the pine shoot beetle. They also restrict the interstate movement of regulated articles from the quarantined areas.

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in felled logs and weak and dying trees, where reproduction and immature stages of pine shoot beetle occur. The "maturation feeding" of young beetles takes the form of boring up the center of pine shoots (usually of the current year's growth), and causes stunted and distorted growth in host trees. In addition to causing serious damage to the new growth of healthy trees, as well as the weak and dying trees, the pine shoot beetle is an important vector of several diseases of pine, spruce, larch, and fir trees. Once established in an area, the pine shoot beetle has a great potential to spread. Adults can fly at least one kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances.

This pest damages urban trees, and can cause economic losses to the timber, Christmas tree, and nursery industries.

Regulated articles, listed in § 301.50–2, present a significant risk of spreading the pine shoot beetle, and may not be moved interstate from quarantined areas except in accordance with conditions specified in §§ 301.50–4 through 301.50–10.

Certificates are issued for the interstate movement of certain regulated articles upon a finding by an inspector that, because of certain conditions (e.g., the article is free of the pine shoot beetle), there is an absence of a pest risk prior to movement. Regulated articles accompanied by a certificate may be moved interstate without further restrictions being imposed.

Specifically, § 301.50–5(a) provides that an inspector will issue a certificate for the movement of certain regulated articles if, among other things, the inspector finds that the articles are free of the pine shoot beetle, have been treated under direction of an inspector in accordance with § 301.50–10, or are greenhouse-grown and come from a premises of origin free from the pine shoot beetle. We are removing the unnecessary specification that such greenhouse-grown pine be "ornamental."

Until now, mature, field-grown pine nursery stock was prohibited, under § 301.50(a), from being moved interstate from a quarantined area. We have determined that it is possible to certify, on the basis of inspections of branch tips, that pine nursery stock is free of the pine shoot beetle. Therefore, we are amending the regulations to provide for issuance of a certificate by an inspector upon determining, after a branch tip-by-branch tip inspection of each pine nursery stock specimen intended for interstate movement, that the regulated article is free of the pine shoot beetle. Any pine specimen found to be infested will be rejected from the shipment.

Cut pine Christmas trees are currently eligible for interstate movement under a limited permit, based upon inspection of randomly selected trees. Since, as a practical matter, the number of cut pine Christmas trees per shipment makes 100-percent inspections physically impossible, we cannot certify that these regulated articles are free of the pine shoot beetle. Therefore, the limited permit inspection procedures specified in § 301.50–5(b) remain in effect.

We are also amending the regulations to allow pine nursery stock and cut pine Christmas trees to be moved interstate under a certificate, following cold treatment.

The Otis Methods Development Center of the Animal and Plant Health Inspection Service (APHIS) has developed a cold treatment for cut pine trees and pine nursery stock that is 100 percent efficacious against the pine shoot beetle. However, experimental data on the thermal toxic effects of this treatment on cut pine trees and pine nursery stock are not yet available. Preliminary data are expected in late spring or early summer 1993, with final results expected in fall 1993.

In response to urgent requests by the Christmas tree and nursery industries, we are making this experimental treatment available immediately. Tree producers and nursery owners, willing to risk the potentially toxic effects of this treatment on cut pine Christmas trees and pine nursery stock, will be allowed to ship those products interstate, in accordance with the regulations, during the 1992–93 season.

Section 301.50–10(b) provides that cut pine Christmas trees and pine nursery stock may be cold-treated as follows: After being loaded into a refrigeration unit, they are held at −23 °C (−5 °F) for one hour; the period before the refrigeration unit reaches this temperature is not part of the treatment period.

We are, therefore, revising § 301.50 to remove the unconditional prohibition on the interstate movement of mature, field-grown pine nursery stock. We are correspondingly revising the definition of pine nursery stock to include the example of dug (balled and burlaped) Christmas trees. Dug Christmas trees are representative of the previously excluded category of mature, field-grown pine nursery stock.

Further, a survey recently conducted by State and county inspectors revealed that Will County, Illinois, is infested with the pine shoot beetle. The regulations in § 301.50–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. In accordance with these criteria, we are designating Will County, Illinois, as a quarantined area, and adding it to the list of quarantined areas provided in § 301.50–3(c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States, and to remove unnecessary restrictions on nursery owners.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Including 18 small landscape nurseries in Will County, approximately 491 small landscape nurseries with pine nursery stock are located within the quarantined areas affected by this rule. Of those, approximately 98 ship some pine nursery stock interstate, and could be affected by the provision that infested pine nursery stock be treated before certification for interstate movement. APHIS estimates that cold treatments for cut pine Christmas trees and pine nursery stock will cost producers between $3.10 and $12.50 per specimen. (Per-unit treatment costs vary due to tree size and treatment facility capacity.) APHIS estimates that the affected entities ship between 11,500 and 16,400 pine nursery stock specimens, including dug Christmas trees, interstate each year, and could incur costs ranging between $364 and $2,092 per small entity per year (between $35,650 and $205,000 cumulatively) as a result of cold treatment. Approximately 32,810 cut pine Christmas trees are shipped interstate from the quarantined areas annually; the 27 Christmas tree producers likely to be affected by this rule could incur costs ranging between $3,767 and $15,189 per entity per year (between $101,711 and $410,250 cumulatively) as a result of cold treatment. However, the quarantined counties currently produce no cut pine Christmas tree or pine nursery stock surpluses. We, therefore, expect that any potential economic impact on small entities would be mitigated by diverting shipments to markets within the quarantined areas.

This rule's restriction on the interstate movement of regulated articles from Will County, Illinois, will have a negligible effect on small entities in the quarantined area. The Christmas tree farms in Will County are choose-and-cut operations that sell their trees exclusively within the local market. Commercial timber production does not occur on a large scale in the county; any pine, spruce, fir, and larch logs produced could readily be processed at local saw and pulp mills, mitigating any negative impact of this rule. Landscape nurseries in the county produce several varieties of pine nursery stock. However, species-specific production statistics and wholesale prices are not available.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for approval to the Office of Management and Budget.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

§ 301.50 [Amended]

2. In § 301.50, paragraph (a) is removed and remove the paragraph (b) designation.

§ 301.50–1 [Amended]

3. In § 301.50–1, the definition of "pine nursery stock" is revised by adding the term "dug (balled and burlaped) Christmas trees and" after the word "including".

4. In § 301.50–3, paragraph (c), under Illinois, a new county is added, in alphabetical order, to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Illinois.

* * * * *

Will County. The entire county.

* * * * *

5. Section 301.50–5 is revised by removing the word "ornamental" from paragraph (a)(1)(ii), by removing the word "and" after paragraph (a)(1)(iii) and replacing it with the word "or", and by adding new paragraph (a)(1)(iv) to read as follows:

§ 301.50–5 Issuance and cancellation of certificates and limited permits.

(a) * * *

(1) * * *

(iv) Based on inspection by an inspector (branch tip-by-branch tip) of pine nursery stock, that it is free from the pine shoot beetle; and

* * * * *

6. In § 301.50–10, the introductory text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 301.50–10 Treatments.

* * * * *

(b) Cold treatment is authorized for cut pine Christmas trees and pine nursery stock, as follows: The regulated articles must be loaded into a refrigeration unit and held at −23 °C (−5 °F) for one hour; the period before the refrigeration unit reaches the specified temperature is not part of the treatment period.

Done in Washington, DC, this 19th day of January 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–1894 Filed 1–27–93; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL RESERVE SYSTEM

12 CFR Parts 211, 225, 263, 265

[Docket No. R-0754]

Regulation K—International Banking Operations and Regulation Y—Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and request for comment.

SUMMARY: This final rule implements portions of the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), Subtitle A of Title II of the Federal Deposit Insurance Corporation Improvement Act of 1991, which made changes to the authority of the Board of Governors of the Federal Reserve System (Board) under the International Banking Act of 1978 (IBA). These changes generally provided the Board with new authority to approve the establishment of U.S. offices by foreign banks and to regulate and supervise the U.S. operations of foreign banks. The final rule replaces the previous interim rule and reflects the Board's authority with respect to the supervision and regulation of foreign banks that conduct or seek to conduct a banking business in the United States. The Board has also requested additional comment on aspects of the final rule concerning representative offices of foreign banks. Lastly, the final rule amends Regulation Y to reflect the requirement that a foreign banking organization must file an application with the Board under the Bank Holding Company Act (BHC Act) in order to acquire more than 5 percent of the shares of a U.S. bank or bank holding company.

DATES: *Effective Date.* Effective January 28, 1993. *Comment Date.* Comments are requested and must be submitted by March 15, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0754, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary. Comments addressed to the attention of Mr. Wiles may be delivered to the Board's mailroom between 8:45 am and 5:15 pm, and to the security control room outside of those hours. Both the mailroom and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 am and 5 pm, except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information. 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Kathleen M. O'Day, Associate General Counsel (202/452-3786), Ann E. Misback, Senior Attorney (202/452-3788), Margaret E. Miniter, Attorney (202/452-3900), or John W. Rogers, Attorney (202/452-2798), Legal Division; Michael G. Martinson, Assistant Director (202/452-3640), or Betsy Cross, Manager (202/452-2574), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The FBSEA (Pub. L 102-242, 105 Stat. 2236, 2286-2305) provided the Board with new authority to supervise and regulate foreign banks that operate or seek to operate in the United States. As the FBSEA became effective upon enactment, the Board issued an interim rule on April 15, 1992, with a request for public comments. 57 FR 12992 (April 15, 1992). In taking this action, the Board stated that it would consider revisions to the interim rule as appropriate and on the basis of the comments received. The comment period ended on June 15, 1992.

The Board received 19 public comments on the regulation. Comments were submitted by 7 foreign banking organizations, 3 law firms, 6 trade associations, a state banking supervisor, an association of state banking supervisors, and a foreign banking supervisor. The Board has considered the comments and, as a result of this further review, has adopted several provisions in this final rule that differ from the provisions contained in the interim rule.

The final rule amends Regulation K in a number of areas, including definitions, requirements for the establishment of a branch, agency, commercial lending company, or representative office of a foreign bank in the United States (collectively, "offices"), examination of offices and affiliates of foreign banks, termination of activities of foreign banks, and limits on lending by a state branch or state agency to a single borrower. The final rule also amends both Regulation K and Regulation Y to reflect the requirement in the FBSEA that a foreign banking organization must apply under section 3 of the BHC Act to acquire more than 5 percent of a U.S. bank or bank holding company. Lastly, the final rule reserves a section for the future implementation of the provision of the FBSEA that governs the activities of state branches and agencies. Comments were received on each of these, and other, areas and are discussed below.

Establishment of Foreign Bank Offices

Standards for Approval of Applications to Establish an Office

The interim rule revised Regulation K to implement the mandatory and discretionary standards in the FBSEA for Board approval of an application by a foreign bank to establish a branch, agency, or commercial lending company. These standards are all discretionary for approval of an application to establish a representative office. The comments generally supported the formulation of these standards, and focused on the means for proving that the standards are met.

Mandatory Standard of Comprehensive Supervision on a Consolidated Basis

The final rule adopts the standard provided in the interim rule for determining whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. This standard is met if the bank is regulated in such a manner as to allow its home country supervisor to receive sufficient information on the worldwide operations of the foreign bank (including its dealings with affiliates) to assess the bank's overall financial condition and compliance with law. The final rule also adopts five factors that, among other things, the Board will consider when evaluating this standard.

Eight comments supported the standard as providing the flexibility to accommodate different regulatory systems, with one comment opposing the standard as vague. The commenters also recommended alternatives to the Board's case-by-case determinations under this standard, which they opposed as burdensome. Finally, certain commenters requested two substantive additions, one to permit entry by foreign banks from countries that are developing, but do not yet have, systems for supervising a bank on a consolidated basis, and the other to acknowledge that many countries do not regulate bank holding companies or their nonbank subsidiaries.

Alternatives to case-by-case determinations. The commenters opposing case-by-case determinations under the comprehensive supervision standard proposed alternatives to requesting information from each foreign bank applicant. Five commenters suggested exclusive use of internal resources or consultations with the home country supervisor as more reliable, less burdensome, and, according to one commenter, consistent with the Basle Committee Minimum Standards for the Supervision of International Banking Groups and Their Cross-Border Establishments (June 1992) (Basle Minimum Standards). Four other commenters recommended granting country-wide approval through the first application from each country or publishing a list of countries presumed to exercise comprehensive supervision in all cases.

The comprehensive supervision standard is a bank-specific determination that, in general, does not permit blanket approval based on categories of countries or general information on bank supervision. Some countries supervise all banks in the same manner, and a decision on a bank from such a country could be applicable to applications by other banks from the same country; such subsequent applications would focus on the actual supervision of the bank and any material changes or differences in such supervision since the approval of the first application. Other countries may tailor their supervision of banks according to the type or organizational structure of the bank. For this reason, the FBSEA requires evaluation of the supervision of a particular bank, not simply the general supervisory system of the bank's home country. Thus, while general country materials are useful, the Board cannot determine if a specific bank is subject to comprehensive supervision without considering the particular supervisory and regulatory provisions that apply to that foreign bank applicant. Accordingly, information from the foreign bank on its particular supervisory process forms an integral part of the record. Exclusive use of consultations with the home country supervisors or internal Board resources also poses problems. Formal consultations take time, and setting up procedures for relying solely on government-to-government communications would exacerbate delays and further prolong processing.

In making its assessments, the Board will continue to use each of the methods suggested by the commenters. In addition, the Board expects that, as it acts on applications, the information already reviewed regarding comprehensive supervision in particular countries may be used to make judgments without requiring significant additional input from similar applicants chartered in the same country. Once a determination is made for an applicant from one country, a subsequent applicant bank may specify the extent to which it is supervised in the same manner as an applicant previously considered by the Board, and identify any material differences or changes in the supervision of the applicant. The Board believes that this approach addresses many of the concerns regarding case-by-case determinations while remaining within the prescribed statutory framework.

Countries developing comprehensive supervision; supervision of affiliates. Three comments recommended permitting banks chartered in countries that are developing systems for exercising comprehensive supervision to enter the U.S. market through branches, agencies, or commercial lending companies. In support of this approach, some comments cited the Basle Minimum Standards which contemplate permitting a bank from a country that is seeking to implement a system for consolidated supervision to establish branches or banks in a host country. Suggestions included allowing approval of an application by a foreign bank chartered in a country that is taking significant steps to provide comprehensive supervision or giving such a country three years to meet the comprehensive standard. Another commenter viewed the FBSEA as permitting a foreign bank from a country developing comprehensive supervision to enter through a banking office if the foreign bank voluntarily provides to home country regulators the information the supervisor would need in order to exercise comprehensive supervision over the applicant.

The Board strongly supports efforts to implement systems for exercising comprehensive, consolidated supervision of banks. The FBSEA, however, does not permit foreign banks to enter the United States if such banks are not supervised by a home country authority on a consolidated basis, even if the authority is in the process of developing such a system. A foreign bank from such a country, however, could be authorized to open a representative office, if the Board finds all other applicable factors to be satisfactory.

Although the United States subscribes to the Basle Minimum Standards, these are only minimum standards, and the FBSEA imposes a higher threshold. With regard to self-imposed reporting practices, the Board believes that comprehensive supervision necessarily entails active regulation by a home country supervisor, whether legally compelled or otherwise. Such a standard is not met solely through receipt of unsolicited information from a bank that self-imposes reporting to its supervisors.

Certain commenters asked the Board to recognize that some countries do not regulate holding companies, other owners of banks, or nonbanking subsidiaries of banks. The Board notes that the general standard is established in the context of consolidated supervision of the bank itself. With regard to sister or parent companies of the bank, the comprehensive supervision standard focuses on how the supervisor reviews transactions between a foreign bank and its affiliates, rather than on direct supervision of these companies.

Factors indicating comprehensive supervision. The comments on the illustrative factors that the Board reviews in making comprehensive supervision determinations generally supported an objective review without unduly favoring banks of a certain size or from certain countries. The Board reaffirms its support for this position. The Board also wishes to emphasize that the factors are simply *indicia* of comprehensive, consolidated supervision. They are not mandatory standards unto themselves.

With respect to comments on the specific factors, one commenter requested that the Board acknowledge that there are different standards for the evaluation of capital among countries. The Board notes that it provided guidelines for evaluating different capital standards in the Capital Equivalency Report, issued jointly with the Department of the Treasury (Treasury) on June 19, 1992, and that the Board intends to apply these guidelines to assure capital equivalency between foreign banks and domestic banking organizations. The Board also will consider the principles of consolidation that are applied in the home country of the foreign bank in the context of reviewing comprehensive supervision. Finally, the Board notes that comprehensive supervision by home country authorities contemplates an ability of the home country supervisor to conduct a broad review of a foreign bank's compliance with law.

Discretionary Standards

The FBSEA provides several other standards that the Board may consider in acting on an application, which are further elaborated in the final rule. These standards permit the Board to take into account: whether home country authorities have consented to the establishment of the office; the financial and managerial resources of the applicant bank; whether the bank has made adequate assurances on the provision of information; and the bank's record of compliance with U.S. law. The comments briefly discussed managerial resources, and focused primarily on the assurances standard.

Managerial resources. Four comments suggested that, in order to avoid processing delays, the Board should limit review under the managerial resources standard to an evaluation of only those principals of the foreign bank that participate in its management or operations. The Board reiterates that it will assess the competence and experience of all such individuals and any other persons that participate in management or otherwise significantly influence the foreign bank's operations.

Adequate assurances. The Board received four comments on the standard that considers whether the foreign bank applicant has provided the Board with adequate assurances of access to information on its operations and activities, and on those of its affiliates, that is deemed necessary to review compliance with federal banking laws ("necessary information"). The Board's procedures used in processing applications under the interim rule required applicants to describe any laws that would restrict the bank and any parent of the bank in their ability to provide information to the Board. The interim rule permitted the Board to terminate an office in the future if a bank is unable to provide necessary information due to these laws. The Preamble to the interim rule also stated that the Board may approve an application even where there may be legal impediments to providing privileged information, if there are no suspected violations of law, and subject to a condition that permits termination of the U.S. activities of the foreign bank should material impediments to monitoring the foreign bank's U.S. operations arise.

The comments generally supported this approach as appropriate and flexible but, as with the comprehensive supervision standard, recommended alternative means for obtaining such assurances in lieu of case-by-case review. All of the comments recommended consultation with the home country supervisor as the primary or, according to one commenter, exclusive means of evaluating the standard. Two of these comments described the interim rule as inconsistent with the Revised Basle Concordat (April 1990), which contemplates such consultation. Several comments also recommended that the Board develop a list of countries whose laws do not materially impede access to information. Other comments said the Board should limit its consideration to the laws of the home country. Finally, the commenters were concerned that banks cannot commit to provide customer information.

The Board will continue to consult with other bank supervisors on disclosure of information to promote coordination and to reduce burdens on foreign banks. The Board has also narrowed the information requested under the adequate assurances standard to require descriptions of impediments that arise only in the jurisdictions in which a foreign bank or its parents have material operations. Operations in any particular jurisdiction generally will be considered material if the direct and indirect activities in that country, in the aggregate, account for 5 percent or more of the consolidated, worldwide assets of the foreign bank or its ultimate parent. The Board expects this change to reduce informational burdens for those applicants with complex organizational structures and worldwide operations.

With respect to comments on the scope of assurances and the laws reviewed, the Board confirms that this standard primarily addresses assurances of access to supervisory information. The Board generally is not concerned with access to specific customer account information; such information would be relevant only as it may relate to the bank's compliance with U.S. banking laws or specific supervisory matters. The Board disagrees, however, with one request to state that a foreign bank need only commit to provide information that is not subject to bank secrecy laws. Secrecy laws differ in scope and the Board will consider their content in each case.

The commenters that questioned the need for *any* description of secrecy laws, other than those of the home country, argued that secrecy laws generally apply only to customer account information and that such information is usually not necessary to determine compliance with U.S. law. The FBSEA provides for review of whether a bank has provided "adequate assurances" that it will provide necessary information. As necessary information may be subject to disclosure under laws other than those of the home country, a review of the adequacy of any assurances is better informed by information on the secrecy laws of jurisdictions in which an institution operates. For example, the Board may consider there to be a material difference in the adequacy of assurances if a bank has only a relatively small portion of its operations in "secrecy" jurisdictions, as opposed to having substantial operations in such jurisdictions. Moreover, the Board's determination could also take into account whether the authorities of particular jurisdictions cooperate in supervisory matters or have mechanisms in place to assist in the provision of information.

The Board recognizes that its approach may require review of multiple jurisdictions for banks with extensive international operations. Publishing a list of countries found not to impede access to information is not feasible at this time. However, the Board will continue to encourage applicants to refer to information previously submitted in connection with other applications, and generally to limit their submissions to the applicability of, and material changes in or differences with, this information. The Board will inform applicants if additional information is necessary.

Three comments questioned the Board's ability to condition its approval of an application so as to permit termination of the activities of an office if material impediments to obtaining necessary information arise in the future. Other comments urged the Board to provide notice and an opportunity for a hearing prior to any such termination.

The FBSEA specifically permits the Board to condition its approval of any office application in a manner that is not inconsistent with the comprehensive, consolidated supervision standard. If the Board finds that a foreign bank has failed to comply with any such condition, including a condition relating to adequate assurances, the bank may be subject to enforcement action, which may include the Board requiring termination of any U.S. activities of the bank or, in the case of a federal branch or a federal agency, recommending such termination.

Evaluation of Standards in Representative Office Applications

The interim rule reflected that all of the standards for approving a representative office application, including the comprehensive supervision standard, are discretionary. Three comments urged the Board to use flexibility in reviewing the standards for approval of an application to establish a representative office. One comment also recommended that such an application consist only of a copy of the state application and information regarding the reputation, management, and financial condition of the bank.

A representative office conducts more limited activities than, for example, a branch or an agency. Thus, approving the establishment of a representative office does not necessarily require as rigorous an application of the standards as are applied to an office that engages in banking activities. As discussed below, this fact also will be reflected by requesting less information in a representative office application than in a branch or an agency application.

Procedures for Applications

Methods of processing. A number of comments generally described the internal guidelines and procedures for processing applications as unduly burdensome, time consuming, and unnecessary. These comments focused on information requested, coordination with the licensing authority, and timing for processing.

Several commenters supported streamlining the information requested in an office application and relying on more coordination with the licensing authority. Measures suggested included prompt development of a standard application form and coordination of background checks with the licensing authorities.

The Board reaffirms its intent to develop a standard application form. In the interim, Board staff will issue revised lists of information requested in office applications that modify the prior requests for information contained in Board letter SR 92-6. Letter from Director of Division of Banking Supervision and Regulation to Reserve Banks SR 92-6 (March 5, 1992).

The revised requests for information in branch, agency, or commercial lending company applications will continue generally to parallel the information requirements for acquiring a bank under Regulation Y. As discussed above, these requests will seek discussion of confidentiality laws in jurisdictions where the foreign bank has material operations. For similar reasons, the lists also will request summary financial information from a subsidiary of the foreign bank or its ultimate parent only where the subsidiary is deemed material. A material subsidiary is any subsidiary that accounts for more than 1 percent of the total, worldwide assets of the foreign bank or its ultimate parent. This measure is intended to identify significant subsidiaries and reduce the amount of information requested from foreign banks with complex organizational structures. Information on particular subsidiaries or jurisdictions that fall below these thresholds may be requested in specific cases. The revised requests for information in representative office applications will seek less information to further reflect the less rigorous approval requirements. In responding to these requests, the Board encourages applicants to refer to any information previously provided to the Federal Reserve System or contained in any application submitted to the licensing authority.

One commenter opposed the conduct of background checks as unnecessary and demeaning, and as preventing action on foreign bank applications within the prescribed regulatory time periods. This commenter also questioned the Board's authority to conduct background checks. Several other comments recommended streamlining or eliminating these checks.

Background checks can be an important source of information in evaluating applications for supervisory and regulatory purposes. The Board conducts these checks pursuant to its general authority to regulate and supervise foreign banks seeking to operate in the United States, and to its specific authority to evaluate the standards for such entry provided in the FBSEA. The Board recognizes that these checks may delay the processing of an application, and has taken measures to reduce delays, including early initiation of checks, frequent contact with agencies conducting checks, and, where possible, coordination with the licensing authority. The Board also has reduced the background checks on individuals to cover only those persons who hold significant interests in the foreign bank or its ultimate parent, or who are at the highest levels of bank management. The Board will continue to pursue all steps that may reduce any delay.

Several comments suggested that the Board establish and adhere to deadlines for processing applications, regardless of whether all information has been provided. Three comments specifically recommended providing additional and mandatory processing deadlines.

The Board cannot act on an application without a complete record that permits evaluation of the statutory standards. Additional time periods and arbitrary limits on presentation of applications to the Board would prevent action on a complete record. Regulation K currently provides that applications should be processed within 60 days of acceptance, unless the applicant is notified of the reasons for the delay. The final regulation maintains this timing requirement. The Board recognizes that this time period has not been met with respect to applications to establish offices submitted thus far. Moreover, in light of the time necessary to complete background checks, it is likely that action on future applications also will be delayed beyond the 60-day period, perhaps significantly. However, every effort will be made to minimize delays. The Board remains committed to collecting information and acting upon all applications as promptly as possible. In the meantime, the 60-day schedule will be maintained as a goal.

Approval procedures. The interim rule provided that, at least initially, the Board would act on all applications to establish offices. The Board, however, indicated that it would consider more streamlined or delegated approval procedures after obtaining sufficient experience. Eight commenters made various proposals for abbreviated approval procedures, particularly for applications from a foreign bank with an existing U.S. office.

Some comments recommended delegated approval procedures for foreign banks with existing U.S. offices that seek to establish an additional office, for any applications without supervisory or policy issues, or for any applications to change the status of an existing office. One comment recommended permitting the Reserve Banks to review only the applications that they may approve under such delegated authority. Prior notification procedures also were recommended for certain foreign banks that seek to establish an additional office in a state where the bank has previously established a Board-approved office, that were previously reviewed by the Board through examination or otherwise, that seek to change the status of a Board-approved office, or that apply to establish a representative office.

After considering these recommendations, the Board has determined to delegate authority to the Reserve Banks to approve a subsequent application by a foreign bank that previously received Board approval under the FBSEA to establish an office that has equal or greater powers than this subsequent office, if the subsequent application does not present significant supervisory issues. This delegation procedure permits the Board to review the particular circumstances of a foreign bank on an initial basis and provide a ruling and factual record that serve as precedent for the foreign bank's subsequent office applications. The Board has also adopted general consent and prior notice procedures for certain categories of representative offices, as discussed below. Delegated or streamlined approval procedures for more general categories of applications would not at this time address the fact-specific determinations required for each foreign bank by the FBSEA. The Board will consider further delegation or streamlining measures as may become feasible in the future.

Other procedures. These delegated approval procedures supplement the abbreviated procedure under which a foreign bank that establishes an office through certain mergers or acquisitions may obtain after-the-fact approval from the Board. In order to permit prompt action, if necessary, the Board has also delegated to its General Counsel and Director of Division of Banking Supervision and Regulation the authority to approve the use of these after-the-fact procedures.

Certain acquisitions that result in a change in control of a foreign bank with U.S. offices may not, as discussed above, require Board approval if the acquired foreign bank continues to operate in the same corporate form following the acquisition and does not control or own more than 5 percent of the shares of a U.S. bank. In order to monitor other regulatory requirements, the final rule continues to require written notice to the Board within 10 days of this change in ownership or control. For the same reasons, the final rule requires notification of the conversion of a branch to an agency or a representative office, an agency to a representative office, and, as discussed below, a state license to a federal license.

Representative Office Definition and Activities

The interim rule modified the definition of a *representative office* that a U.S. bank may establish overseas, and provided a new definition of a *representative office* that a foreign bank may establish in the United States. The two definitions were similar, but not identical. The Board received twelve comments on the definition of representative office and, while some did not distinguish between the two definitions, all focused on the new definition of a representative office of a foreign bank.

Representative office of a U.S. bank. The comments that addressed the definition of a representative office of a U.S. bank stated that prohibiting the making of business decisions improperly prevented basic operational decisions. The Board has revised the definition in the final rule to reflect that a representative office of a U.S. bank may make such internal operational decisions.

Representative office of a foreign bank. The comments regarding a representative office of foreign bank broadly focused on, first, the treatment of a representative office under the FBSEA as a residual category of office and, second, the Board's authority to prescribe the activities that a representative office may conduct. Generally, these commenters took the view that the Board's definition was overly narrow, and that the Board should defer to state law to determine the permissible activities of a representative office.

Five commenters recommended repeating in the final rule the definition of representative office contained in the FBSEA in order to avoid conflict with state law. The FBSEA defines a representative office of a foreign bank as any office of a foreign bank which is located in a state and is *not* a branch, agency, or subsidiary of the foreign bank. Under this definition, a representative office is the category of office through which all direct activities of a foreign bank that are not branch or agency activities must be conducted.

The interim rule reflected the traditional view that a representative office is confined to limited functions related to banking, such as soliciting new business or acting as liaison between U.S. customers and the home office, and may not engage in business activities except in this limited capacity. Commenters criticized this definition as overly restrictive in light of the broader definitions found in the FBSEA and state law. They supported this argument by noting that the FBSEA defines a representative office in terms of what it is not—*i.e.*, it is not a branch, agency, or subsidiary—and does not define what a representative office is. The commenters stated that a representative office should not be prohibited from engaging in activities that do not require a branch or agency license.

The legislative history of the FBSEA does not address this issue directly. However, both the FBSEA and its legislative history evidence a general intent to require foreign banks to conduct all of their direct U.S. activities through a regulated office. Therefore, the Board has amended the final rule to define a representative office of a foreign bank as any place of business of a foreign bank that is not a branch, agency, or subsidiary of a foreign bank. This definition makes clear that any activity conducted through a direct office of a foreign bank in the United States must be conducted through *either* a branch, agency, or representative office, each of which is subject to regulation and examination by the Board.

One commenter regarded the exclusion of a subsidiary from the definition of representative office as inappropriate. In its view, a foreign bank seeking to conduct representative office activities may simply form a subsidiary to perform such activities and thereby avoid Board regulation. The Board wishes to make clear that a subsidiary, whether formed to conduct representative functions or otherwise, may not be used to evade the banking laws. If the Board becomes aware of any abuses or evasions of the banking laws through such means, it will take further action to regulate these subsidiaries as banking offices.

As a result of the adoption of this new definition of a representative office of a foreign bank, certain additional direct offices of a foreign bank may fall within the representative office definition for the first time. In June 1992, the Board provided a notice of a representative office registration form to all known representative offices. Form F.R. 3072, 57 FR 31374 (July 15, 1992). The purpose of the form was to update existing records. Any offices of foreign banks that meet the revised definition of representative office and that have not previously filed the information contained in this form to the Board are requested to do so by February 26, 1993.

Permissible activities. Twelve commenters discussed the Board's authority to define the activities that a representative office may conduct. Ten of these commenters recommended permitting a representative office to conduct activities deemed permissible under state law. Seven commenters criticized the specific activities permitted or prohibited by the interim rule as overly restrictive or inconsistent with the FBSEA.

All of the commenters that urged the Board to allow a representative office to conduct any activities permitted by state law cited the FBSEA definition in support of their position. They argued that the Board's authority to limit the activities of a representative office should be confined to prohibiting the conduct of either branch or agency activities or any other activities that are prohibited by state law. Seven of these commenters viewed this approach as implicitly required by the FBSEA definition. The commenters that criticized the narrowness of the interim rule similarly referred to the definition of representative office in the FBSEA as more expansive. While most commenters recommended expanding the permissible activities, six commenters recommended more narrow functions.

In implementing the provisions of the FBSEA concerning a representative office, the Board has determined to adopt rules that set forth the permissible representative functions that may be performed on behalf of the foreign bank; the rules also provide that other activities that are not prohibited by state law or rulings or orders of the Board may be conducted by a representative office. Thus, the final rule expressly prohibits a representative office from directly conducting banking activities, such as contracting for deposits, that may only be performed by a branch or an agency. It also allows a representative office to conduct activities that are not linked to banking. This approach implements the FBSEA's intent to treat a representative office as any office of a foreign bank that is not a branch or an agency.

Preventing a representative office from conducting any activities prohibited by Board rule or order gives the Board the flexibility that may be necessary to address prudential or supervisory concerns. An issue is presented as to whether there may be certain types of activities that a foreign bank should not be permitted to conduct through a representative office, either because the activity is the functional substitute of a banking business, or because it may not be administratively feasible for the Board to monitor the activity to determine compliance with law. In the Board's view, this is an issue primarily for foreign banks that are not subject to the nonbanking restrictions of the BHC Act because they operate in the United States only through one or more representative offices. *See* 12 U.S.C. 3106(a). However, given the scope and impact of provisions dealing with a representative office, the Board seeks additional comment on this issue, as well as on the definition of and standards for the activities of representative offices.

General consent and prior notification. The Board is of the opinion that there are certain activities conducted by representative offices that require reduced regulatory scrutiny. A foreign bank may conduct direct activities through a representative office that are so minimal that their conduct does not raise any significant supervisory or prudential concerns. For example, a foreign bank may set up a separate office for back office support or to provide temporary facilities in the event that the foreign bank's banking premises become inaccessible or damaged. Opening such an office constitutes the establishment of a representative office and requires Board approval. However, the Board has determined to grant its general consent to the establishment of such offices. These offices may perform only limited support functions in connection with the banking activities of the foreign bank that are both clearly defined and the exclusive focus of the office. In addition, these offices may not have contact with customers. The Board must receive notice that such an office is being established, and retains full regulatory and supervisory authority with respect to its operations.

The Board also recognizes that a foreign bank with banking operations in multiple locations in the United States may wish to establish a *regional administrative office*, separate from its existing offices, to coordinate and supervise the foreign bank's operations and those of its affiliates in a region. Such an office is a representative office, the establishment of which requires Board approval. The Board wishes to encourage the establishment of such offices as a sound prudential practice and has provided a prior notification procedure for obtaining Board approval. This procedure permits a foreign bank to establish a regional administrative office in the same city in which the foreign bank operates a branch, agency, commercial lending company, or subsidiary bank by providing the Board with 45 days' prior written notice.

Establishment of a Commercial Lending Company

One comment raised an issue regarding overlapping regulations governing the establishment of a commercial lending company by a foreign banking organization. The FBSEA and the interim rule require a foreign bank to obtain prior Board approval to establish a commercial lending company. In addition, the lending activities of a commercial lending company are considered nonbanking activities that, under section 4(c)(8) of the BHC Act and Regulation Y, a foreign banking organization must obtain Board approval to conduct. The commenter sought clarification that obtaining approval only under Regulation Y suffices for a foreign banking organization to establish a commercial lending company.

The FBSEA imposes mandatory standards for Board approval to establish a commercial lending company. Obtaining approval to engage in nonbanking activities under the BHC Act does not meet these standards. Therefore, a foreign banking organization that seeks to establish a commercial lending company must comply with the standards for establishing the company and for conducting the nonbanking activities. One application may be filed in connection with both processes. It should be noted that this overlap does not extend to an existing commercial lending company that itself seeks to establish an office. Only approval under the BHC Act is required for this latter office.

Transactions Subject to Approval under Regulation Y

The interim rule implemented the provision of the FBSEA that extended section 3 of the BHC Act to require a foreign banking organization to obtain Board approval to acquire more than 5 percent of the voting shares of U.S. bank or bank holding company. The interim rule also clarified that Board approval is not required for the acquisition of a foreign banking organization that does not directly or indirectly control a U.S. bank, unless the acquiror is also a foreign banking organization and acquires control of a bank or bank holding company, acquires all or substantially all of the assets of a bank, or merges with a bank holding company.

The Board received two comments on these provisions. One commenter described these provisions as consistent with national treatment of foreign banks, but sought streamlined or notification procedures for a foreign banking organization to obtain Board approval under section 3 to acquire a minority interest in another foreign banking organization that controls a U.S. bank. This commenter noted that foreign banks frequently take minority positions in other foreign banks to establish cross-border relationships. Because acquiring an interest in a U.S. bank is incidental to these largely foreign transactions, the commenter described a full-scope section 3 application as unwarranted and unduly burdensome.

Although the Board seeks to minimize the effect of U.S. regulation on foreign transactions, the Board has little flexibility to provide a general exemption from this requirement. Accordingly, the Board has not provided the requested procedures in the final rule.

The other commenter recommended revising this provision in the final rule to reflect that a foreign bank that does not have a U.S. banking presence may acquire more than 5 percent of a U.S. bank (but presumably less than 25 percent) without requiring approval under section 3 of the BHC Act. The Board has revised the final rule to reflect this change, but notes that any foreign company, including a foreign bank, must comply with the requirements of Regulation Y before acquiring control of a U.S. bank or bank holding company, whether control is gained through acquisition of voting shares or otherwise.

Definitions

The interim rule amended Regulation K to include additional definitions of terms necessary to implement the FBSEA. The rule also repeated or made complementary amendments to definitions previously contained in Subparts A and B of Regulation K. The comments received generally sought clarification of and, in some cases, modifications to certain of these definitions.

Agency

The interim rule incorporates the long-standing definition of an *agency* as a place of business that may maintain credit balances, pay checks, or lend money, but may not accept deposits from a citizen or resident of the United States. The definition also provides six minimum criteria under which a balance is presumed to be a credit balance and not a deposit.

The Board received five comments on this definition. Each of the five commenters sought clarification of the deposit-taking ability of an agency in order to remove the implication that an agency may *only* maintain credit balances. Some states permit agencies to accept deposits from non-residents of the United States. Accordingly, the Board has revised the definition of an agency to confirm that, to the extent not prohibited by state or federal law, an agency may maintain certain deposits, such as deposits of non-resident persons and entities, as well as interbank and international banking facility deposits, without being considered a branch. Regulation K does not place additional restrictions on the operations of these types of deposit accounts.

The five commenters also described the criteria for identifying credit balances as vague and burdensome. These commenters suggested replacing the criteria either with numerical limits on transactions in an account or with restrictions permitting maintenance of accounts that are incidental to the exercise of banking powers and that, for U.S. residents or citizens, relate to specific bank transactions.

The criteria for defining a credit balance were adopted after careful examination of existing practices and are designed to ensure than an agency does not engage in domestic deposit-taking, an activity prohibited for an agency. Domestic deposits include transaction accounts maintained by a U.S. citizen or resident. Acceptance of the commenters' suggestions would permit the solicitation and acceptance of deposits from any U.S. resident or citizen for use upon demand and would violate the IBA. Accordingly, the final rule retains the previously established criteria for identifying a credit balance.

Branch

The interim rule defined a *branch* as any place of business of a foreign bank at which deposits are received. Four commenters stated that this definition improperly classified state agencies that may take deposits from non-residents as branches. To address this matter, the Board has revised the definition of *branch* to exclude a place of business that functions as an agency. The Board reaffirms, however, that any office that may receive domestic deposits under state law will continue to be considered a *branch* for purposes of this rule and the IBA.

Domestic branch

Four comments recommended that the Board omit the definition of *domestic branch* from the final rule as unnecessary. These commenters also suggested adding a definition of the term "limited branch" because the term appears in the IBA and a foreign bank may wish to establish a "limited branch" as a first entry office.

The IBA does not use the term "limited branch." The Board defined the term "domestic branch" in 1980 to implement the interstate banking provisions of the IBA, which were not affected by the enactment of the FBSEA. These provisions permit a foreign bank to take domestic deposits only in offices located in its home state. Under section 5 of the IBA, however, a foreign bank may also establish a branch outside of its home state if the branch agrees to limit its deposit-taking activities to those permitted for an Edge corporation; it is to this concept that the commenters apparently referred. Because the IBA limits the interstate locations at which a foreign bank may accept domestic deposits, the Board believes that it is appropriate to retain the term "domestic branch." Contrary to the implication of the comments, a foreign bank may establish a branch that limits its deposits to Edge-type deposits as its first entry into the U.S. market. Regardless of the particular nomenclature for that type of branch, the approval process under the FBSEA for such an office remains the same as for a full-service branch.

Establish and change the status

The interim rule reflected the new requirement under the FBSEA that a foreign bank must obtain the approval of the Board to establish an office. It defined *establish* to mean open and operate an office, change the status of an office, relocate an office to another state, assume the operations of an existing office through merger, or acquire an office through the acquisition of a subsidiary that changes its corporate form following the acquisition. The interim rule also defined the term to *change the status* to mean to convert a representative office into a branch or an agency, or to convert an agency into a branch. Comments on the definitions of both terms generally sought clarification of events that do not establish an office.

With respect to the establishment of an office through merger or acquisition, one commenter noted that a foreign bank may assume the operations of an office through a transaction that is not labelled a merger. Thus, the definition of establish has been amended to clarify that such assumption of operations may occur through merger, consolidation, or any similar transaction. It is not intended to cover the acquisition of a foreign bank with a U.S. office where the acquired foreign bank continues to operate as a separate entity and has not merged or otherwise consolidated its operations with another entity. Another commenter noted that a corporate reorganization of a foreign bank may technically result in the establishment of an office as an incident to the reorganization. In such a case, the foreign bank may seek a determination from the Board as to whether approval is necessary. Finally, several commenters asked the Board to specify the transactions that do not establish an office. These are the acquisition of a foreign bank with a U.S. office in which the acquired foreign bank continues to operate in the same corporate form, *i.e.*, where the acquired foreign bank is not merged into another bank or does not otherwise lose its charter identity, and the acquisition of, or merger or consolidation with, a foreign bank with no U.S. banking presence where the bank with the U.S. office is the surviving entity. The first transaction requires written notification to the Board within 10 days of this change in control.

Several commenters also questioned the scope of the definition of *change the status* of an existing office. As stated in the interim rule, effecting a material difference in the activities of an existing office through a change in its status establishes that office. Thus, the Board has determined, in response to comments, that routine renewals of the license of an existing office do not change the status of that office because such renewals make no change in the activities that the office may conduct.

Several commenters also argued that a license conversion (*e.g.*, from state license to federal license, from state agency to a state branch, or from one state to another) does not change the status of an office. After reviewing these comments, the Board has concluded that converting from a state license to a federal license does not effect a material difference in the activities of the office because a federal license is generally more restrictive than a state license. The Board has determined at this time that conversion from a federal license to a state license continues to require an application for Board approval. In its separate rulemaking regarding the provision of the FBSEA that permits state branches and agencies to conduct only the activities that are permissible for a federal branch, the Board has sought comment as to whether an application should continue to be required to convert an office from a federal to a state license.

Another commenter recommended adopting a functional test for identifying a change in the status of an office. This test would require a comparison of the functions of the existing office to those of the new office and require an application when a material difference results. The Board believes that the current definition implicitly takes this approach. Exclusive use of this approach would create uncertainty by requiring case-by-case determinations instead of a clear standard.

The Board also has required a foreign bank to submit notification within 10 days of any downgrade or conversion of an existing office into another type of office in instances in which no application to the Board is required. This notice will permit the Board to monitor these offices for supervisory purposes.

Foreign bank

The IBA contains a definition of *foreign bank* that differs slightly from the corresponding definition in the interim rule. Five commenters criticized the interim rule for improperly restricting the IBA definition by requiring a foreign bank to engage *directly* in banking outside of the United States and by excluding foreign central banks. They believe that the IBA definition of foreign bank legally preempts—and should replace—the regulatory definition.

The Board adopted the definition of foreign bank in order to implement the provision in the FBSEA that permits the Board to approve an application by a foreign bank to establish a U.S. office only if the foreign bank engages *directly* in the business of banking outside of the United States. The interim rule definition, which is adopted in the final rule, reflects this statutory limitation.

Three comments suggest that the exclusion of central banks with no U.S. commercial banking business from the definition of a foreign bank exempts central banks that wish to establish a first commercial banking office in the United States from the FBSEA. The Board is of the view that a foreign central bank that wishes to establish an office to engage in a commercial banking business must apply for approval and has revised the final rule to clarify this requirement.

Other definitions

The Board received brief comments on certain other definitions.

Five comments recommended including in the definition of *home country* the country in which the foreign bank locates its head office as an alternative home country. In the interim rule, a foreign bank's only home country is its chartering country. The proposal suggested by the comments would permit a foreign bank to change its home country by designating its headquarters as being in another country. The designation of a head office is in many respects an arbitrary decision, and may have little to do with a bank's supervision. Since the laws related to the consolidated operations of a bank are those of its chartering country, it appears clear that, to meet the standards set forth in the FBSEA, the chartering country must exercise supervision. Therefore, the definition of home country has not been changed.

Several comments recommended including a state authority that licenses representative offices in the definitions of *licensing authority* and *relevant state supervisor*. The Board has incorporated this recommendation in order to ensure consistent consultation with the appropriate state banking authority regarding either the establishment or termination of a state-licensed representative office.

Several comments suggested that the definition of *subsidiary* be clarified by setting forth the standards for determining when a foreign organization is considered capable of controlling another company. The Board notes that such determinations are governed by the facts of individual cases. The Board has also amended the definition of *subsidiary* to apply to companies owned or controlled by a foreign bank, as well as by a foreign banking organization. This amendment ensures that companies controlled by a foreign bank that has only a representative office in the United States will be considered subsidiaries of that foreign bank.

Examination of Offices and Affiliates of Foreign Banks

The interim rule implemented the provisions of the FBSEA that granted authority to the Board to examine the offices and affiliates of a foreign bank with U.S. banking operations, and the representative offices of any other foreign banks. The final rule incorporates these provisions and continues to provide for annual on-site examination of branches, agencies, and commercial lending companies by a U.S. banking supervisor as well as coordination of such examinations.

Nine comments supported coordination with other bank supervisors to ensure that a foreign bank office ordinarily undergoes only one examination each year. Measures recommended to achieve this objective included prompt development of joint, uniform examination procedures and supervision guidelines on an interagency basis, application of uniform guidelines to foreign banking organizations and domestic member banks, formal agreements for joint examinations with the other bank supervisors, allocating responsibilities among joint examiners, and issuing a single, joint examination report.

In implementing a coordinated examination program for foreign banks, the Board is applying a flexible approach designed to use resources efficiently and to minimize the burdens on the office examined, while obtaining the information needed for the examination. Under the FBSEA, an on-site examination of a branch or an agency by its primary supervisor will satisfy the statutory requirement that such offices be examined annually. In addition, the Board may conduct its own examination of foreign bank offices, rely on the examination of the primary supervisor, alternate its examination with the primary supervisor every other year, or participate in a joint examination. The final rule also reflects that the Board must coordinate such examinations, to the extent possible, with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation. The Reserve Banks will seek to avoid duplicating the work of other federal or state examiners. Where possible, a joint report will be issued on a joint examination.

With respect to future coordination efforts, the Board is in the process of developing, jointly with state and other federal supervisors, a report form and manual for examinations of branches and agencies. In the interim, the Board has developed an examination report form for branches and agencies that will be available for use by other banking supervisors.

Two comments also recommended ensuring that each Reserve Bank uniformly implements Board policy, asserting that Reserve Banks have inconsistently applied the Board's policy regarding general loan loss reserves. There is no general policy requiring the maintenance of such reserves by all U.S. branches and agencies. For branches and agencies with serious asset quality problems, state or federal regulators would require that the foreign bank take corrective measures. The establishment of an adequate allowance for loan losses is one of the options designed to remedy asset quality deficiencies. The Board, in conjunction with other federal and state regulators, is currently developing a uniform policy on the treatment of branches and agencies with asset quality problems.

A few comments focused on examinations relating to representative offices. Two comments sought clarification that the FBSEA does not generally authorize the Board to examine the U.S. affiliates of a foreign bank whose only U.S. presence is through one or more representative offices. The regulation has been amended to reflect this comment. In response to another commenter's concern for less rigorous examinations of representative offices, the Board generally expects to examine representative offices in a manner appropriate to their limited functions.

Termination of an Office of a Foreign Bank in the United States

Grounds for Termination

The interim rule included the statutory standards and procedures for termination of the activities of a representative office, state branch, state agency, or commercial lending company of a foreign bank and for recommending termination of a federal branch or agency to the Office of the Comptroller of the Currency (Comptroller). The comments on this provision distinguished between mandatory and voluntary termination and generally sought clarification of the grounds for each type of action.

Required termination. The comments on the provision allowing the Board to require termination sought modification of both the grounds and procedures for taking such actions. The Board may require termination of state branches, state agencies, or commercial lending companies if there is reason to believe a foreign bank or its affiliates has committed a violation of law or is engaged in unsafe and unsound banking practices in the United States, or if the foreign bank is not subject to comprehensive home country supervision. The Board may consider other factors in such terminations, including the needs of the community and the history and size of the bank. These terminations require consultation with the state supervisor and notice and an opportunity for a hearing for the foreign bank, unless expeditious action is necessary to protect the public interest.

Several comments suggested restricting the first ground for termination to material violations of applicable *U.S. banking* laws. They described this as necessary to cure an overbroad statute that permits termination for minor violations of *any* laws. The FBSEA does not limit the Board's termination authority in this fashion. Rather, it requires the Board to find both that a violation of law is reasonably likely to have occurred and that the continued operation of the office would be inconsistent with the public interest, the FBSEA, the BHC Act, or the Federal Deposit Insurance Act. This grant of termination authority is intended to provide the Board with the flexibility to address a variety of situations and is retained in the final rule. In making its determinations, the Board will consider all relevant matters, including mitigating factors. The Board also notes that termination is not the sole enforcement measure available, and that it expects to utilize the full range of enforcement tools as circumstances warrant.

Several comments suggested either excluding the ground permitting termination solely for lack of comprehensive supervision or requiring application of the guidelines to be developed by the Board and the Treasury under the FBSEA for permitting continued operation by a foreign bank that lacks comprehensive supervision. Eliminating this ground is contrary to the express language of the FBSEA. However, as noted above, the Board will take other factors into account in making its termination decisions. Furthermore, once issued, the guidelines referenced above will inform any termination on this ground. In addition, the Board will address this issue more fully in its separate request for comment regarding these guidelines.

The commenters on the termination procedures sought guidance on the policy for termination, including the use of lesser enforcement measures, consultation with state licensing authorities, termination of a single office of a foreign bank with multiple U.S. offices, and procedures for expedited termination.

The commenters that recommended the use of lesser enforcement measures, such as cease and desist orders, sought to assure that foreign banks receive treatment similar to U.S. banks. The Board will exercise its termination authority in conformance with this policy. In addition, the Board would intend to use early and extensive consultation with state licensing authorities for any terminations, as contemplated by the final rule.

One commenter recommended providing a hearing before the Board exercises its power to terminate an office on an expedited basis when necessary to protect the public interest. A termination order generally will be issued only after notice and an opportunity for a hearing. Expedited termination is an extreme measure that the Board expects would be used in exigent circumstances. When expedited termination procedures are necessary, the Board may, to the extent possible, take other actions designed to give the foreign bank notice and an opportunity to present its views. The Board also notes that a foreign bank may obtain review of any Board order in the U.S. Court of Appeals for the circuit where the office is located or in the U.S. Court of Appeals for the District of Columbia Circuit.

Voluntary termination. The interim rule required 30 days' advance notice of the voluntary termination of an office. Four comments contended that this procedure exceeds the Board's authority, and that only the licensing authority should notify the Board of such closures. The Board believes that the notice of voluntary termination permits the Board to track the offices it supervises, and is consistent with the Board's statutory authority to supervise the U.S. activities of a foreign bank.

Disclosure of Information to Foreign Supervisors

The final rule incorporates the provision of the FBSEA that permits the Board to share supervisory information with its foreign counterparts after, among other things, obtaining an agreement to maintain the confidentiality of the information to the extent possible.

Limitation on Loans to One Borrower

The Board has adopted measures provided in the interim rule that require a foreign bank to aggregate all loans to the same borrower by all of its federal and state licensed offices for purposes of determining compliance with the new limitations on loans to one borrower contained in the FBSEA. This provision puts the operations of a foreign bank in the United States on a comparable footing with domestic banks for lending purposes in accordance with principles of national treatment.

It has come to the Board's attention that there may be loans outstanding from a foreign bank to a single borrower that exceed the new lending limits because of the aggregation requirements. The Board has determined that it will not consider a foreign bank to be in violation of this provision if the foreign bank originated the non-conforming loans prior to December 19, 1991, provided that such loans are not renewed or their maturities extended. Any new credits granted after December 19, 1991, must be in compliance with the new lending limits.

Deposit Insurance Requirement for Retail Deposit-Taking

Under section 6(c) of the IBA, as amended by the FBSEA, a foreign bank was required to establish an insured banking subsidiary if it wished to accept or maintain deposit accounts with balances under $100,000. In legislation enacted on October 28, 1992, section 6(c) of the IBA was further amended to clarify that this provision applies only to the acceptance of domestic retail deposits in amounts under $100,000 requiring deposit insurance protection. Housing and Community Development Act of 1992, section 1604, Pub. L. 102-550, 106 Stat. 3672. Consequently, foreign banks may continue to conduct their deposit-taking activities in conformance with regulations of the Comptroller and the FDIC, issued in connection with sections 6(a) and 6(b) of the IBA. *See* 12 CFR 28.8, 346.6 (1992). The Board will review the need for implementing regulations.

One commenter seeks clarification that a territorial or protectorate bank that is classified as a bank under the BHC Act, is insured by the FDIC, and is supervised by the FDIC and, in some cases, the Federal Reserve, may continue to take domestic retail deposits through new, insured branches despite the FBSEA provision that requires foreign banks to conduct such activities only in an insured bank subsidiary. The definition of foreign bank in the IBA and the interim rule also included banks chartered in Puerto Rico, Guam, American Samoa, the Virgin Islands, or a U.S. territory, in order to implement the interstate banking provisions of the IBA. The Board is of the view that section 6 of the IBA, as amended, does not preclude insured banks from the jurisdictions listed above from establishing additional branches because such institutions are insured banks, fully subject to the Federal Deposit Insurance Act.

Limitation on Activities of State Branches and Agencies

The FBSEA provides that after December 19, 1992 a state licensed branch or agency may not engage in any activity that is not permissible for a federal branch unless the Board has determined that the activity is consistent with sound banking practices, and, in the case of insured branches, the FDIC determines that the activity poses no significant risks to the deposit insurance fund.

Three commenters suggested approaches to this future implementation. Two commenters recommended close coordination with the states, and supported an interpretation that applies the provision to the same types of activities only, even if state law imposes different conditions or limitations on the conduct of those activities. Another comment suggested issuing a list of pre-approved activities for branches and agencies, and urged adoption of prior notification procedures for obtaining approval to conduct any impermissible activities. This provision is the subject of the separate rulemaking that is being conducted in consultation with the FDIC and the Comptroller.

Delegation

The Board has determined to delegate certain authority in response to comments discussed above. This includes delegating the authority to the Reserve Banks to approve a subsequent office application by a foreign bank that has previously received approval under the standards in the FBSEA, if the application does not present significant supervisory issues. The Board also delegated authority to the General Counsel to permit the use of the after-the-fact approval procedures to establish an office (with the concurrence of the Director of the Division of Banking Supervision and Regulation), to modify the requirement for publication of notice of an office application, and to disclose information to a foreign bank supervisory authority. Lastly, the Board adopted in the final rule the delegation of authority to coordinate examinations to the Director of the Division of Banking Supervision and Regulation.

Miscellaneous

Advisory Committee

Three comments recommended forming an advisory committee of bankers, lawyers, academics, and state and federal regulators to assist in and coordinate the implementation of the FBSEA. The Board welcomes views of any interested parties on all matters within its purview, including the FBSEA. Such input is an important and ongoing source of information. As there are already many avenues for providing views to or holding discussion with the Federal Reserve System, which any party is encouraged to use, such a committee is not essential at this time.

Hearings

The Board also adopted, without modification, the changes to the Board's Rules of Practice for Hearings, as set forth in the interim rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that this final rule will not have a significant economic impact on a substantial number of small entities that are subject to the regulation.

Paperwork Reduction

The Board, acting pursuant to authority delegated to it by the Director of the Office of Management and Budget under 44 U.S.C. 3507(e), has approved the collection of information called for by §§ 211.25 and 211.27 of the Board's Rules and sections 7 and 10 of the IBA.

List of Subjects

12 CFR part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities

12 CFR part 263

Administrative practice and procedure, Federal Reserve System.

12 CFR part 265

Authority delegations (Government agencies), Federal Reserve System.

For the reasons outlined above, the Board of Governors is adopting as final the interim rule, published at 57 FR 12992 (April 15, 1992), that amends 12 CFR parts 211, 225, 263, and 265 with the following changes:

PART 211—INTERNATIONAL BANKING OPERATIONS

1. The authority citation for 12 CFR part 211 continues to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95-369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (title II, Pub. L. 97-290, 96 Stat. 1235); the International Lending Supervision Act (title IX, Pub. L. 98-181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*); and the Export Trading Company Act Amendments of 1988 (title III, Pub. L. 100-418, 102 Stat. 1384 (1988)).

2. Section 211.2 is amended by revising paragraph (t) to read as follows:

§ 211.2 Definitions.

* * * * *

(t) *Representative office* means an office that:

(1) Engages solely in representational and administrative functions, such as soliciting new business or acting as liaison between the organization's head office and customers in the United States; and

(2) Does not have authority to make any business decision (other than decisions relating to the premises or personnel of the representative office) for the account of the organization it represents, including contracting for any deposit or deposit-like liability on behalf of the organization.

* * * * *

3. Section 211.21 is redesignated as § 211.20. Newly designated § 211.20 is amended by revising paragraphs (b)(3) through (b)(8) and by adding new paragraphs (b)(9) and (c) to read as follows:

§ 211.20 Authority, purpose, and scope.

* * * * *

(b) * * *

(3) Board approval of the establishment of an office of a foreign bank in the United States under sections 7(d) and 10(a) of the IBA (12 U.S.C. 3105(d), 3107(a));

(4) The termination by the Board of a foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)) and the transmission of a recommendation to the Office of the Comptroller of the Currency to terminate a federal branch or federal agency under section 7(e)(5) of the IBA (12 U.S.C. 3105(e)(5));

(5) The examination of an office or affiliate of a foreign bank in the United States as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c));

(6) The disclosure of supervisory information to a foreign supervisor under section 15 of the IBA (12 U.S.C. 3109);

(7) The limitations on loans to one borrower by state branches and state agencies of a foreign bank under section 7(h)(2) of the IBA (12 U.S.C. 3105(h)(2));

(8) The limitation of a state branch and a state agency to conducting only activities that are permissible for a federal branch under section (7)(h)(1) of the IBA (12 U.S.C. 3105(h)(1)); and

(9) The deposit insurance requirement for retail deposit taking by a foreign bank under section 6 of the IBA (12 U.S.C. 3104).

(c) *Additional requirements.* Compliance by a foreign bank with the requirements of this subpart and the laws administered and enforced by the Board does not relieve the foreign bank of responsibility to comply with the laws and regulations administered by the licensing authority.

4. Section 211.22 is redesignated as § 211.21 and is revised to read as follows:

§ 211.21 Definitions.

The definitions contained in § 211.2 in subpart A of this part apply to this subpart except as a term is otherwise defined in this section:

(a) *Affiliate*, of a foreign bank or of a parent of a foreign bank, means any company that controls, is controlled by, or is under common control with, the foreign bank or the parent of the foreign bank.

(b) *Agency* means any place of business of a foreign bank, located in any state, at which credit balances are maintained, checks are paid, money is lent, or, to the extent not prohibited by state or federal law, deposits are accepted from a person or entity that is not a citizen or resident of the United States. Obligations shall not be considered credit balances unless they are:

(1) Incidental to, or arise out of the exercise of, other lawful banking powers;

(2) To serve a specific purpose;

(3) Not solicited from the general public;

(4) Not used to pay routine operating expenses in the United States such as salaries, rent, or taxes;

(5) Withdrawn within a reasonable period of time after the specific purpose for which they were placed has been accomplished; and

(6) Drawn upon in a manner reasonable in relation to the size and nature of the account.

(c) *Banking subsidiary*, with respect to a specified foreign bank, means a bank that is a subsidiary as the terms *bank* and *subsidiary* are defined in section 2 of the BHC Act (12 U.S.C. 1841).

(d) *Branch* means any place of business of a foreign bank, located in any state, at which deposits are received and that is not an agency, as that term is defined in paragraph (b) of this section.

(e) *Change the status* of an office means convert a representative office into a branch or an agency, an agency into a branch, a federal branch into a state branch, or a federal agency into a state agency, but does not include renewal of the license of an existing office.

(f) *Commercial lending company* means any organization, other than a bank or an organization operating under section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601-604a), organized under the laws of any state, that maintains credit balances permissible for an agency and engages in the business of making commercial loans. *Commercial lending company* includes any company chartered under Article XII of the banking law of the State of New York.

(g) *Comptroller* means the Office of the Comptroller of the Currency.

(h) *Control* has the same meaning assigned to it in section 2 of the BHC Act (12 U.S.C. 1841), and the terms *controlled* and *controlling* shall be construed consistently with the term *control*.

(i) *Domestic branch* means any place of business of a foreign bank, located in any state, that may accept domestic deposits and deposits that are incidental to or for the purpose of carrying out transactions in foreign countries.

(j) A foreign bank *engages directly in the business of banking outside of the United States* if the foreign bank engages directly in banking activities usual in connection with the business of banking in the countries where the foreign bank is organized or operating.

(k) To *establish* means to:

(1) Open and conduct business through an office;

(2) Acquire directly, through merger, consolidation, or similar transaction with another foreign bank, the operations of an office that is open and conducting business;

(3) Acquire an office through the acquisition of a foreign bank subsidiary that will cease to operate in the same corporate form following the acquisition;

(4) Change the status of an office; or

(5) Relocate an office from one state to another.

(l) *Federal agency, federal branch, state agency, and state branch* have the same meanings as in section 1 of the IBA (12 U.S.C. 3101).

(m) *Foreign bank* means an organization that is organized under the laws of a foreign country and that engages directly in the business of banking outside of the United States. The term *foreign bank* does not include a central bank of a foreign country that does not engage or seek to engage in a commercial banking business in the United States through an office.

(n) *Foreign banking organization* means a foreign bank, as defined in section 1(b)(7) of the IBA (12 U.S.C. 3101(7)), that operates a branch, agency, or commercial lending company subsidiary in the United States, or that controls a bank in the United States, and any company of which the foreign bank is a subsidiary.

(o) *Home country*, with respect to a foreign bank, means the country in which the foreign bank is chartered or incorporated.

(p) *Home country supervisor*, with respect to a foreign bank, means the governmental entity or entities in the foreign bank's home country with responsibility for the supervision and regulation of the foreign bank.

(q) *Licensing authority* means:

(1) The relevant state supervisor, with respect to an application to establish a state branch, state agency, commercial lending company, or representative office of a foreign bank; or

(2) The Comptroller, with respect to an application to establish a federal branch or federal agency.

(r) *Office* or *office of a foreign bank* means any branch, agency, representative office, or commercial lending company subsidiary of a foreign bank in the United States.

(s) The *parent* of a foreign bank means any company of which the foreign bank is a subsidiary; the *immediate parent* of a foreign bank is the company of which the foreign bank is a direct subsidiary; and the *ultimate parent* of a foreign bank is the parent of the foreign bank that is not the subsidiary of any other company.

(t) *Regional administrative office* means a representative office that:

(1) Is established by a foreign bank that operates one or more branches, agencies, commercial lending companies, or banks in the United States;

(2) Is located in the same city as one or more of the foreign bank's branches, agencies, commercial lending companies, or banks in the United States; and

(3) Manages, supervises, or coordinates the operations of the foreign bank or its affiliates, if any, in a particular geographic region.

(u) *Relevant state supervisor* means the state entity that is authorized to supervise and regulate a state branch, state agency, commercial lending company, or representative office.

(v) *Representative office* means any place of business of a foreign bank, located in any state, that is not a branch, agency, or subsidiary of the foreign bank.

(w) *State* means any state of the United States or the District of Columbia.

(x) *Subsidiary* means any organization 25 percent or more of whose voting shares is directly or indirectly owned, controlled, or held with the power to vote by a company, including a foreign bank or foreign banking organization, or any organization that is otherwise controlled or capable of being controlled by a foreign bank or foreign banking organization.

§ 211.23 [Redesignated]

5. Section 211.23 is redesignated as § 211.22.

§ 211.24 [Redesignated]

6. Section 211.24 is redesignated as § 211.23, paragraphs (a) through (h) of newly designated § 211.23 are redesignated as paragraphs (b) through (i) respectively, and a new paragraph (a) is added and reserved.

7. Sections 211.25 through 211.29 are redesignated as §§ 211.24 through 211.28, respectively, and are revised to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative office activities and standards for approval; preservation of existing authority.

(a) *Board approval of offices of foreign banks*—(1) *Prior Board approval of branches, agencies, or commercial lending companies of foreign banks.* (i) Except as otherwise provided in paragraph (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it:

(A) Establishes a branch, agency, or commercial lending company subsidiary in the United States; or

(B) Acquires ownership or control of a commercial lending company subsidiary.

(2) *Prior Board approval of representative offices of foreign banks.* Except as otherwise provided in paragraphs (a)(2) or (a)(3) of this section, a foreign bank shall obtain the approval of the Board before it establishes a representative office in the United States.

(i) *Prior notice for regional administrative offices.* After providing 45 days' prior written notice to the Board, a foreign bank may establish a regional administrative office. The Board may waive the 45-day period if it finds that immediate action is required by the circumstances presented. The notice period shall commence at the time the notice is accepted. The Board may suspend the period or require Board approval prior to the establishment of such an office if the notification raises significant policy, prudential, or supervisory concerns.

(ii) *General consent for representative offices.* The Board grants its general consent for a foreign bank to establish a representative office that solely engages in limited administrative functions that are clearly defined, are performed in connection with the banking activities of the foreign bank, and that do not involve contact or liaison with customers or potential customers (such as separately maintaining back office support systems), provided that the foreign bank notifies the Board in writing within 30 days of the establishment of the representative office.

(3) *After-the-fact Board approval.* Where a foreign bank proposes to establish a branch, agency, representative office, or commercial lending company in the United States through the acquisition of, or merger or consolidation with, a foreign bank with an office in the United States, the Board may, in its discretion, allow the acquisition, merger, or consolidation to proceed before an application to establish the office has been filed or acted upon under this section if:

(i) The foreign bank or banks resulting from the acquisition, merger, or consolidation, will not directly or indirectly own or control more than 5 percent of any class of the voting securities of, or control, a U.S. bank;

(ii) The Board is given reasonable advance notice of the proposed acquisition, merger, or consolidation;

(iii) Prior to consummation of the acquisition, merger, or consolidation, each of the relevant foreign banks commits in writing to comply with the procedures for an application under this section within a reasonable period of time or has already filed an application; and

(iv) Each of the relevant foreign banks commits in writing to abide by the Board's decision on the application, including, if necessary, a decision to terminate the activities of any such U.S. office, as the Board or the Comptroller may require.

(4) *Notice of change in ownership or control or conversion of existing office.* A foreign bank with a U.S. office shall notify the Board in writing within 10 days of either:

(i) A change in the foreign bank's ownership or control where the foreign bank is acquired or controlled by another foreign bank or company and the acquired foreign bank with a U.S. office continues to operate in the same corporate form as prior to the change in ownership or control; or

(ii) The conversion of a branch to an agency or representative office, an agency to a representative office, a state branch to a federal branch, or a state agency to a federal agency.

(5) *Transactions subject to approval under Regulation Y.* Subpart B of the Board's Regulation Y (12 CFR 225.11-225.14) governs the acquisition by a foreign banking organization of direct or indirect ownership or control of any voting securities of a bank or bank holding company in the United States if the acquisition results in the foreign banking organization's ownership or control of more than 5 percent of any class of voting securities of a U.S. bank or bank holding company, including through acquisition of a foreign bank or foreign banking organization that owns or controls more than 5 percent of any class of the voting securities of a U.S. bank or bank holding company.

(b) *Procedures for application*—(1) *Filing application.* An application for the Board's approval pursuant to this section shall be filed in the manner prescribed by the Board.

(2) *Publication requirement*—(i) *General.* Except with respect to a proposed transaction where more extensive notice is required by statute or as otherwise provided in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, the applicant shall publish a notice in a newspaper of general circulation in the community in which the applicant proposes to engage in business. The notice shall state that an application is being filed as of the date of the notice and provide the name of the applicant, the subject matter of the application, the place where comments should be sent, and the date by which comments are due pursuant to paragraph (b)(3) of this section. The applicant shall furnish with its application to the Board a copy of the notice, the date of its publication, and the name and address of the newspaper in which it was published.

(ii) *Exception.* The Board may modify the publication requirement of paragraph (b)(2)(i) of this section in appropriate circumstances.

(iii) *Federal branch or federal agency.* In the case of an application to establish a federal branch or federal agency, compliance with the publication procedures of the Comptroller shall satisfy the publication requirement of this section. Comments regarding the application should be sent to the Board and the Comptroller.

(3) *Written comments.* Within 30 days after publication as required in paragraph (b)(2) of this section, any person may submit to the Board written comments and data on an application. The Board may extend the 30-day comment period if the Board determines that additional relevant information is likely to be provided by interested persons or if other extenuating circumstances exist.

(4) *Board action on application*—(i) *Time limits.* The Board shall act on an application from a foreign bank within 60 calendar days after the foreign bank has been notified that its application has been accepted, unless the Board determines that the public interest will be served by providing additional time to review the application and notifies the applicant that the 60-day period is being extended.

(ii) *Additional information.* The Board may request any information in addition to that supplied in the application when the Board believes that additional information is necessary for its decision.

(5) *Coordination with other regulators.* Upon receipt of an application by a foreign bank under this section, the Board shall promptly notify, consult with, and consider the views of the licensing authority.

(c) *Standards for approval*—(1) *Mandatory standards*—(i) *General.* As specified in section 7(d) of the IBA (12 U.S.C. 3105(d)), the Board may not approve an application to establish a branch or an agency, or to establish or acquire ownership or control of a commercial lending company, unless it determines that:

(A) Each of the foreign bank and any parent foreign bank engages directly in the business of banking outside the United States and is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor; and

(B) The foreign bank has furnished to the Board the information that the Board requires in order to assess the application adequately.

(ii) *Basis for determining comprehensive supervision or regulation on a consolidated basis.* In determining whether a foreign bank and any parent foreign bank is subject to comprehensive supervision or regulation on a consolidated basis, the Board shall determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation. In making such a determination, the Board shall assess, among other factors, the extent to which the home country supervisor:

(A) Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide;

(B) Obtains information on the condition of the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise;

(C) Obtains information on the dealings and relationships between the foreign bank and its affiliates, both foreign and domestic;

(D) Receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information that permits analysis of the foreign bank's financial condition on a worldwide, consolidated basis;

(E) Evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

(2) *Discretionary standards.* In acting on any application under this subpart, the Board may take into account:

(i) *Consent of home country supervisor.* Whether the home country supervisor of the foreign bank has consented to the proposed establishment of a branch, agency, or commercial lending company subsidiary;

(ii) *Financial resources.* The financial resources of the foreign bank (including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects) and the condition of any U.S. office of the foreign bank;

(iii) *Managerial resources.* The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; management's experience and capacity to engage in international banking; and the record of the foreign bank and its management of complying with laws and regulations, and of fulfilling any commitments to, and any conditions imposed by, the Board in connection with any prior application;

(iv) *Sharing information with supervisors.* Whether the foreign bank's home country supervisor and the home country supervisor of any parent of the foreign bank share material information regarding the operations of the foreign bank with other supervisory authorities;

(v) *Assurances to Board.* Whether the foreign bank has provided the Board with adequate assurances that information will be made available to the Board on the operations or activities of the foreign bank and any of its affiliates that the Board deems necessary to determine and enforce compliance with the IBA, the BHC Act, and other applicable federal banking statutes; these assurances shall include a statement from the foreign bank describing the laws that would restrict the foreign bank or any of its parents from providing information to the Board;

(vi) *Compliance with U.S. law.* Whether the foreign bank and its U.S. affiliates are in compliance with applicable U.S. law, and whether the applicant has established adequate controls and procedures in each of its offices to ensure continuing compliance with U.S. law, including controls directed to detection of money laundering and other unsafe or unsound banking practices.

(3) *Additional factor.* In acting on an application, the Board may consider the needs of the community and the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole factor in determining whether an office of a foreign bank should be approved.

(4) *Board conditions on approval.* The Board may impose such conditions on its approval as it deems necessary, including a condition which may permit future termination of any activities by the Board or, in the case of a federal branch or a federal agency, by the Comptroller, based on the inability of the foreign bank to provide information on its activities or those of its affiliates that the Board deems necessary to determine and enforce compliance with U.S. banking laws.

(d) *Representative offices*—(1) *Activities.* A representative office may engage in:

(i) Representational and administrative functions in connection with the banking activities of the foreign bank which may include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing any of the activities described in 12 CFR 250.141(h), or performing back office functions, but shall not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank; and

(ii) Other functions for or on behalf of the foreign bank or its affiliates, such as operating as a regional administrative office of the foreign bank, but only to the extent that such other functions are not banking activities and are not prohibited by applicable federal or state law or by ruling or order of the Board.

(2) *Standards for approval of representative offices.* As specified in section 10(a)(2) of the IBA (12 U.S.C. 3107(a)(2)), in acting on the application of a foreign bank to establish a representative office, the Board shall take into account to the extent it deems appropriate the standards for approval set out in paragraph (c) of this section.

(3) *Additional requirements.* The Board may impose any additional requirements that it determines to be necessary to carry out the purposes of the IBA.

(e) *Preservation of existing authority.* Nothing in this subpart shall be construed to relieve any foreign bank or foreign banking organization from any otherwise applicable requirement of federal or state law, including any applicable licensing requirement.

§ 211.25 Termination of offices of foreign banks.

(a) *Grounds for termination*—*(1) General.* Under sections 7(e) and 10(b) of the IBA (12 U.S.C. 3105(e), 3107(b)), the Board may order a foreign bank to terminate the activities of its representative office, state branch, state agency, or commercial lending company subsidiary if the Board finds that:

(i) The foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor in accordance with § 211.24(c)(1) of this subpart; or

(ii)(A) There is reasonable cause to believe that the foreign bank or any of its affiliates has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(B) As a result of such violation or practice, the continued operation of the foreign bank's representative office, state branch, state agency, or commercial lending company subsidiary would not be consistent with the public interest or with the purposes of the IBA, the BHC Act, or the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1811 *et seq.*).

(2) *Additional ground.* The Board may also enforce any condition imposed in connection with an order issued under § 211.24 of this subpart.

(b) *Factor.* In making its findings under this section, the Board may take into account the needs of the community as well as the history of operation of the foreign bank and its relative size in its home country, provided, however, that the size of the foreign bank shall not be the sole determining factor in a decision to terminate an office.

(c) *Consultation with relevant state supervisor.* Except in the case of termination pursuant to paragraph (d)(3) of this section, before issuing an order terminating the activities of a state branch, state agency, representative office, or commercial lending company subsidiary under this section, the Board shall request and consider the views of the relevant state supervisor.

(d) *Termination procedures—(1) Notice and hearing.* Except as otherwise provided in paragraph (d)(3) of this section, an order issued under paragraph (a)(1) of this section shall be issued only after notice to the relevant state supervisor and the foreign bank and after an opportunity for a hearing.

(2) *Procedures for hearing.* Hearings under this section shall be conducted pursuant to the Board's Rules of Practice for Hearings (12 CFR part 263).

(3) *Expedited procedure.* The Board may act without providing an opportunity for a hearing if it determines that expeditious action is necessary in order to protect the public interest. When the Board finds that it is necessary to act without providing an opportunity for a hearing, the Board, solely in its discretion, may provide the foreign bank that is the subject of the termination order with notice of the intended termination order, grant the foreign bank an opportunity to present a written submission opposing issuance of the order, or take any other action designed to provide the foreign bank with notice and an opportunity to present its views concerning the order.

(e) *Termination of federal branch or federal agency.* The Board may transmit to the Comptroller a recommendation that the license of a federal branch or federal agency be terminated if the Board has reasonable cause to believe that the foreign bank or any affiliate of the foreign bank has engaged in conduct for which the activities of a state branch or state agency may be terminated pursuant to this section.

(f) *Voluntary termination.* A foreign bank shall notify the Board at least 30 days prior to terminating the activities of any office. Notice pursuant to this paragraph is in addition to, and does not satisfy, any other federal or state requirements relating to the termination of an office or the requirement for prior notice of the closing of a branch pursuant to section 39 of the FDI Act (12 U.S.C. 1831p).

§ 211.26 Examination of offices and affiliates of foreign banks.

(a) *Conduct of examinations—(1) Examination of branches, agencies, commercial lending companies, and affiliates.* The Board may examine any branch or agency of a foreign bank, any commercial lending company or bank controlled by one or more foreign banks or one or more foreign companies that control a foreign bank, and any other office or affiliate of a foreign bank conducting business in any state.

(2) *Examination of representative offices.* The Board may examine any representative office in the manner and with the frequency it deems appropriate.

(b) *Coordination of examinations.* To the extent possible, the Board shall coordinate its examinations of the U.S. offices and U.S. affiliates of a foreign bank with the licensing authority and, in the case of an insured branch, the Federal Deposit Insurance Corporation (FDIC), including through simultaneous examinations of the U.S. offices and U.S. affiliates of a foreign bank.

(c) *Annual on-site examinations.* Each branch, agency, or commercial lending company subsidiary of a foreign bank shall be examined on-site at least once during each 12-month period (beginning on the date the most recent examination of the office ended) by:

(1) The Board;

(2) The FDIC, if the branch of the foreign bank accepts or maintains insured deposits;

(3) The Comptroller, if the branch or agency of the foreign bank is licensed by the Comptroller; or

(4) The state supervisor, if the office of the foreign bank is licensed or chartered by the state.

§ 211.27 Disclosure of supervisory information to foreign supervisors.

(a) *Disclosure by Board.* The Board may disclose information obtained in the course of exercising its supervisory or examination authority to a foreign bank regulatory or supervisory authority if the Board determines that disclosure is appropriate for bank supervisory or regulatory purposes and will not prejudice the interests of the United States.

(b) *Confidentiality.* Before making any disclosure of information pursuant to paragraph (a) of this section, the Board shall obtain, to the extent necessary, the agreement of the foreign bank regulatory or supervisory authority to maintain the confidentiality of such information to the extent possible under applicable law.

§ 211.28 Limitation on loans to one borrower.

(a) *Limitation.* Except as otherwise provided in paragraph (b) of this section, the total loans and extensions of credit by all the state branches and agencies of a foreign bank outstanding to a single borrower at one time shall be aggregated with the total loans and extensions of credit by all federal branches and federal agencies of the same foreign bank outstanding to such borrower at the time and shall be subject to the limitations and other provisions of section 5200 of the Revised Statutes (12 U.S.C. 84), and the regulations promulgated thereunder, in the same manner that extensions of credit by a federal branch or federal agency are subject to section 4(b) of the IBA (12 U.S.C. 3102(b)) as if such state branches and agencies were federal branches and agencies.

(b) *Preexisting loans and extensions of credit.* Any loans or extensions of credit to a single borrower that were originated prior to December 19, 1991 by a state branch or state agency of the same foreign bank and that, when aggregated with loans and extensions of credit by all other branches and agencies of the foreign bank, exceed the limits set forth in paragraph (a) of this section, may be brought into compliance with such limitations through routine repayment, provided that any new loans or extensions of credit, including renewals of existing unfunded credit lines or extensions of the dates of maturity of existing loans, to the same borrower shall comply with the limits set forth in paragraph (a) of this section.

8. A new § 211.29 is added and reserved to read as follows:

§ 211.29 Applications by state-licensed branches and agencies to conduct activities not permissible for federal branches—[Reserved]

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

2. Section 225.11 is amended by revising paragraph (f) to read as follows:

§ 225.11 Transactions requiring Board approval.

* * * * *

(f) *Transactions by foreign banking organization.* Any transaction described in paragraphs (a) through (e) of this section by a foreign banking organization (as defined in 12 CFR 211.21(n)) that involves the acquisition of an interest in a U.S. bank or in a bank holding company for which application would be required if the foreign banking organization were a bank holding company.

3. Section 225.12 is amended by revising paragraph (f) to read as follows:

§ 225.12 Transactions not requiring Board approval.

* * * * *

(f) *Acquisition of foreign banking organization.* The acquisition of a foreign banking organization (as defined in 12 CFR 211.21(n)) where the foreign banking organization does not directly or indirectly own or control a bank in the United States, unless the acquisition is also by a foreign banking organization and otherwise subject to § 225.11(f) of this subpart.

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o-4, 78o-5, and 78u-2.

2. Section 263.51 is amended by revising paragraph (c) to read as follows:

§ 263.51 Definitions.

* * * * *

(c) *Institution* has the same meaning as that assigned to it in § 263.3(f) of subpart A, and includes any foreign bank with a representative office in the United States.

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for 12 CFR part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.6 is amended by revising paragraph (b)(2) and by adding a new paragraph (f) to read as follows:

§ 265.6 Functions delegated to General Counsel.

* * * * *

(b) * * *

(2) *Disclosure to foreign authorities.* To make the determinations required for disclosure of information to a foreign bank regulatory or supervisory authority, and to obtain, to the extent necessary, the agreement of such authority to maintain the confidentiality of such information to the extent possible under applicable law (12 CFR 211.27).

* * * * *

(f) *International banking.* (1) With the concurrence of the Board's Director of the Division of Banking Supervision and Regulation, to grant a request by a foreign bank to establish a branch, agency, commercial lending company, or representative office through certain acquisitions, mergers, consolidations, or similar transactions, and to file an after-the-fact application for the Board's approval to establish that office pursuant to § 211.24(a)(3) of Regulation K (12 CFR 211.24(a)(3)); and

(2) To modify the requirement that a foreign bank that has applied to establish a branch, agency, commercial lending company, or representative office pursuant to § 211.24(a) of Regulation K (12 CFR 211.24(a)) shall publish notice of the application in a newspaper of general circulation in the community in which the applicant proposes to engage in business as provided in § 211.24(b)(2)(ii) of Regulation K (12 CFR 211.24(b)(2)(ii)).

3. Section 265.7 is amended by revising paragraph (d)(8) to read as follows:

§ 265.7 Functions delegated to Director of Division of Banking Supervision and Regulation.

* * * * *

(d) * * *

(8) *Conduct and coordination of examinations.* To authorize the conduct of examinations of the U.S. offices and affiliates of foreign banks as provided in sections 7(c) and 10(c) of the IBA (12 U.S.C. 3105(c), 3107(c)), and, where appropriate, to coordinate those examinations with examinations of the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the state entity that is authorized to supervise or regulate a state branch, state agency, commercial lending company, or representative office.

* * * * *

4. Section 265.11 is amended by adding paragraph (d)(11) to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(d) * * *

(11) *Establishment of additional office by foreign bank*—(i) *Additional branch, agency, or commercial lending company.* To approve an application by a foreign bank to establish an additional branch, agency, or commercial lending company in the United States pursuant to § 211.24 of Regulation K (12 CFR 211.24), provided that:

(A) The foreign bank previously received approval from the Board to establish a branch, agency, or commercial lending company in the United States pursuant to § 211.24 of Regulation K (12 CFR 211.24); and

(B) The application raises no significant policy or supervisory issues.

(ii) *Representative office.* To approve an application by a foreign bank to establish a representative office in the United States pursuant to § 211.24 of Regulation K (12 CFR 211.24), provided that:

(A) The foreign bank previously received approval from the Board to establish a branch, agency, commercial lending company, or representative office in the United States pursuant to 211.24 of Regulation K (12 CFR 211.24); and

(B) The application raises no significant policy or supervisory issues.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 12, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–1864 Filed 1–27–93; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AA82

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule amends the provisions concerning the treatment of intangible assets under the FDIC's capital maintenance regulation. With these amendments, limited amounts of purchase mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs) may be recognized for purposes of calculating Tier 1 capital under the FDIC's leverage capital and risk-based capital standards. However, all other intangible assets, including goodwill and core deposit intangibles, will continue to be deducted in determining the amount of Tier 1 capital. Under this final rule, the aggregate amount of PMSRs and PCCRs that may be recognized for regulatory capital purposes will be limited to no more than 50 percent of Tier 1 capital. In addition, the amount of PCCRs will be subject to a sublimit of no more than 25 percent of Tier 1 capital. Certain other conditions, limitations and restrictions pertaining to these intangibles will also apply and are set forth in the final rule. This initiative to revise the FDIC's regulatory capital treatment of intangible assets was coordinated with the staffs of the other federal banking agencies in an effort to eliminate interagency differences and achieve convergence in the way

intangibles are treated by the agencies for regulatory capital purposes.

EFFECTIVE DATE: This final rule will become effective on March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Stephen G. Pfeifer, Examination Specialist, Accounting Section (202/898–8904), or Claude A. Rollin, Counsel, Legal Division (202/898–3985).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

II. Background on Intangible Assets

This section provides background information regarding the regulatory capital treatment of intangible assets. Section III provides a discussion and analysis of the letters received by the FDIC in response to its request for comment, and section IV sets forth the revised capital treatment of intangible assets.

In 1985, the FDIC adopted a capital maintenance regulation (12 CFR part 325) that set forth minimum supervisory ratios of capital to total assets (leverage capital). In defining capital for the purposes of that regulation, all intangible assets, other than PMSRs, were required to be deducted from equity capital. Intangible assets were handled in a similar fashion in the Statement of Policy on Risk-Based Capital (Appendix A to part 325) that was adopted by the FDIC in 1989. The FDIC subsequently modified its treatment of intangible assets in December 1990, when it placed an explicit limit on the amount of PMSRs that can be recognized for regulatory capital purposes (55 FR 53137, December 27, 1990). In addition to other limitations, the rule restricted the amount of PMSRs that could be recognized by a state nonmember bank for regulatory capital purposes to no more than 50 percent of Tier 1 capital.

To date, PMSRs generally have been the only type of intangible asset that the FDIC has recognized under its capital rules. The recognition of PMSRs is due in part to certain characteristics of PMSRs that are viewed more favorably than those of many other intangible assets. These characteristics include:

(1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets;

(2) The certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank; and

(3) The existence of a market of sufficient depth to provide liquidity for the intangible asset.

A detailed discussion of PMSRs and the risks and characteristics associated with these intangible assets was included in the February 9, 1990 **Federal Register** (55 FR 4616). Notwithstanding certain favorable characteristics associated with PMSRs, the risks inherent in this type of intangible asset led the FDIC to impose a number of limitations on the amount of PMSRs that could be recognized for purposes of calculating Tier 1 capital.

Subsequent to the FDIC's adoption of its rule on PMSRs, which became effective on January 28, 1991, additional consideration was given to assessing whether other forms of intangibles also warrant more favorable regulatory capital treatment. This initiative was coordinated with the staffs of the other federal banking agencies in an effort to eliminate interagency differences and achieve convergence in the way intangibles are treated by the agencies for regulatory capital purposes.

In the past, the FDIC's capital treatment of intangible assets held by state nonmember banks has differed in some respects from the way the other federal banking agencies handled similar intangible assets held by the depository institutions that they supervise, both as to the type of intangible assets that were recognized for regulatory capital purposes and the allowable amount of such qualifying intangibles. This inconsistent treatment of intangibles among the agencies creates confusion regarding the capital standards and unnecessarily adds to the regulatory burden imposed on banking organizations.

It also may have led to unintended competitive inequities among banks that are supervised by different federal regulators.

In an effort to provide more flexibility to state nonmember banks on the recognition of intangible assets for purposes of calculating Tier 1 capital, but at the same time maintain prudent capital standards and promote consistent and uniform regulatory capital treatment of intangible assets among the federal banking regulators, the FDIC, in consultation with the other agencies, proposed amendments to its capital rules (57 FR 11005, April 1, 1992).

Under the proposed revisions, limited amounts of both PMSRs and PCCRs would be recognized in calculating Tier 1 capital under the FDIC's leverage and risk-based capital rules. However, the amounts of PMSRs and PCCRs in excess of these limits, as well as other intangibles such as goodwill and core deposit intangibles, would continue to be deducted from equity capital and assets in determining Tier 1 capital. Under the proposal, the aggregate amount of PMSRs and PCCRs that could be recognized for leverage and risk-based capital purposes would be limited to no more than 50 percent of Tier 1 capital and the amount of PCCRs recognized for Tier 1 capital purposes also would be subject to a sublimit of no more than 25 percent of Tier 1 capital. Certain other conditions, limitations, and restrictions described in the proposal would also apply.

The treatment of PMSRs under the proposed rule would be generally consistent with the FDIC's current rule. However, the proposed recognition of PCCRs for regulatory capital purposes would represent a change from the FDIC's existing rule, which favorably recognizes only intangible assets in the form of PMSRs.

III. Analysis of Comment Letters Received in Response to Proposal

Eighteen comment letters were received by the FDIC in response to the proposal. The commenters included five financial institution trade associations, five banks, three bank holding companies, two savings associations, and one home builders trade association. The remaining two responses were joint letters, one from a group of 14 bank holding companies and the other from a group of 15 mortgage banking subsidiaries of these same holding companies.

Only two of the comment letters expressed general opposition to the proposed intangible rule as a whole. One holding company considered it to be a serious and unnecessary mistake to continue to deduct all core deposit intangibles when calculating Tier 1 capital, as if such intangible assets were totally worthless. This respondent contended that timely and efficient consolidation within the banking industry may be disrupted, with detrimental implications for system safety and soundness, if the regulatory capital treatment of intangible assets is too restrictive. In addition, one financial institution trade association believed the proposal failed to reflect the true value of assets and operations purchased by banking organizations, particularly in view of the limitations on PMSRs and PCCRs, the costs imposed by the valuation procedures, the failure to recognize core deposit intangibles, and the narrow scope of the proposal's exemption for certain mortgage banking subsidiaries. Of the remaining sixteen comment letters, eight provided specific comments but no general opinion on the proposal as a whole, and the other eight respondents supported the general nature of the proposed changes.

Following is a more detailed discussion of the specific issues raised in the comment letters. These issues include: (a) Types of qualifying intangible assets, (b) Tier 1 capital limitations, (c) market value limitations, (d) the discounted book value approach, (e) treatment of excess servicing, and (f) other issues.

A. Types of Qualifying Intangible Assets

The FDIC proposed to continue to favorably recognize limited amounts of PMSRs in the calculation of Tier 1 capital and to add PCCRs as another type of intangible that could be recognized for regulatory capital calculations. The respondents generally supported the recognition of these two types of intangible assets in regulatory capital calculations.

However, thirteen respondents specifically commented on the treatment of core deposit intangibles, contending that core deposit intangibles should also be recognized rather than deducted in the calculation of Tier 1 capital. Many of the letters discussed the positive characteristics of core deposit intangibles that should permit their favorable recognition for capital purposes. These commenters generally considered it inappropriate to deduct the full amount of core deposit intangibles as though the intangible assets were entirely worthless.

A discussion of the general characteristics of several different types of intangible assets has been included in proposals previously issued by the FDIC. PMSRs were discussed in a 1990 proposal (55 FR 4616, February 9, 1990) and PCCRs and core deposit intangibles were discussed in the 1992 proposal (57 FR 11005, April 1, 1992).

After considering the letters received in response to the FDIC's request for comment and reviewing the general characteristics associated with these different types of intangible assets, the FDIC has decided to continue to recognize PMSRs and to begin recognizing PCCRs for purposes of calculating Tier 1 capital, subject to certain limitations. At the same time, the FDIC believes that other intangible assets, including goodwill and core deposit intangibles, should continue to be deducted. This treatment in the final rule is consistent with that set forth in the FDIC's proposal. Much of the opposition from commenters to this aspect of the proposal focused on the FDIC's failure to favorably recognize deposit-based intangibles in the calculation of Tier 1 capital.

Core deposit intangible assets represent the unamortized amount of premiums that are paid when a deposit base is acquired. Such premiums are generally paid due to the estimated value inherent in the acquisition of a customer base of stable, low-cost, core deposits as opposed to more volatile and expensive alternative sources of funding that a bank might otherwise need to obtain.

Core deposit intangibles, however, cannot be sold without selling the underlying deposits, and such a sale of deposits generally entails the transfer of a comparable amount of assets to offset the deposit liabilities assumed by the acquirer. In addition, many regulatory restrictions exist which limit the number and type of potential purchasers for a core deposit base and the accompanying core deposit intangible. These include regulatory restrictions that limit branching, interstate banking, asset growth, and the type of companies that can own banking organizations. Adverse economic conditions may also result in a large number of core deposits being offered for sale in a particular market, which may therefore significantly lower the amount of any potential premium that can be realized in selling a deposit base.

All of these factors may restrict the number of potential bidders and limit a bank's ability to realize the estimated intangible value of its core deposit base. These factors tend to limit the separability and liquidity of the core deposit intangibles, as well as the ability for these intangibles to hold their value when the depository institution's financial condition deteriorates.

After considering the comment letters received in response to the proposed rule, the FDIC believes that the general characteristics of core deposit intangibles continue to warrant their deduction in calculating Tier 1 capital under the FDIC's leverage and risk-based capital standards.

B. Tier 1 Capital Limitations

Under the FDIC proposal, the combined amount of PMSRs and PCCRs that could be recognized for regulatory capital purposes would be limited to no more than 50 percent of Tier 1 capital. This aggregate limitation on qualifying intangibles is consistent with the 50 percent limitation that presently exists for PMSRs. However, the proposal also would institute a sublimit of 25 percent of Tier 1 capital on the amount of PCCRs that may be recognized for regulatory capital purposes.

A number of commenters supported the recognition of PMSRs and PCCRs, but were opposed to the limitations on the amount of these intangibles that would be recognized for Tier 1 capital purposes. Some respondents were against the 50 percent aggregate limitation on the combined amount of PMSRs and PCCRs. However, the FDIC continues to believe that the 50 percent aggregate limitation is a prudent supervisory safeguard that minimizes the potential for an institution to place undue reliance on excessive amounts of intangibles in determining its compliance with regulatory capital standards.

With respect to the 25 percent sublimit on PCCRs, nine commenters expressed specific opposition to this restriction with only one respondent in support of the limitation. Many commenters believed that this separate sublimit was unnecessary, given the other restrictions included in the proposed rule.

In view of the characteristics generally associated with PCCRs that were discussed in the preamble to the FDIC's proposal, and after reviewing the comments that objected to the sublimit on PCCRs, the FDIC remains concerned about permitting this intangible asset, by itself, to count for more than 25 percent of an institution's Tier 1 capital.

Although this sublimit on the amount of PCCRs that may be recognized for regulatory capital purposes would be more restrictive than that set forth for PMSRs, it should be noted that this treatment of PCCRs would be more favorable than what is provided for under the FDIC's existing rule, which deducts all PCCRs.

After considering the foregoing issues, and in an effort to achieve interagency convergence on the capital treatment of intangible assets, the FDIC has decided to permit regulatory capital recognition of PCCRs, subject to a 25 percent of Tier 1 capital sublimit.

As more experience is gained with this newly-recognized type of qualifying intangible asset and as the market for PCCRs matures, the FDIC may consider whether further adjustments should be made to the amount of PCCRs that may be recognized for regulatory capital purposes.

C. Market Value Limitations

The FDIC proposal also would restrict the amount of PMSRs and PCCRs that may be recognized for regulatory capital purposes to no more than 90 percent of the fair market value of the intangible assets and would require the institutions to calculate an estimated fair market value for these intangibles at least quarterly. In addition, an independent market valuation would need be performed at least annually.

Section 475 of Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242) provides that the federal banking agencies shall determine the amount of PMSRs that may be included in calculating an institution's regulatory capital provided that: (1) Such servicing rights are valued at not more than 90 percent of fair market value and (2) the fair market value of such servicing rights is determined not less often than quarterly. Thus, consistent with the statute and the FDIC's existing rule, the FDIC has decided to retain these restrictions on PMSRs.

With regard to applying similar constraints on PCCRs, nine of the ten respondents who specifically commented on this issue objected to the FDIC's proposal to impose these restrictions on PCCRs. In addition, one commenter suggested that any market valuation requirements be delayed for several years and be inconsistent with certain delayed implementation dates for fair market value calculations that are permitted under Statement of Financial Accounting Standards No. 107, "Disclosures About Fair Value of Financial Instruments" (FASB 107).

Given the intent already expressed by Congress with regard to limitations they deemed appropriate for PMSRs, which is the only type of qualifying intangible currently recognized under the FDIC's existing capital rule, the FDIC believes it would be inconsistent and inequitable if the final rule permitting PCCRs to be recognized for regulatory capital purposes did not establish market value limitations and quarterly valuation requirements for PCCRs similar to those already required for PMSRs. As a result, the FDIC's revised rule will include these provisions as conditions that must be met if a state nonmember bank wishes to recognize PCCRs for Tier 1 capital purposes.

However, the FDIC has decided not to retain its existing requirement for an independent market valuation of PMSRs that are recognized for Tier 1 capital purposes. Similarly, the FDIC has also decided not to apply this annual independent market valuation requirement to PCCRs that are recognized in calculating regulatory capital.

Of the nine respondents that specifically addressed the independent market valuation, all were against this requirement. Essentially, the commenters believed that the other restrictions included in the proposal, such as the quarterly internal market valuations and the limitations on the amount of qualifying intangibles as a percent of Tier 1 capital, did away with the need for an annual independent valuation, which they viewed as a redundant and unnecessary cost that banks could otherwise avoid.

The FDIC acknowledges that certain additional costs may be incurred as a result of the independent annual market valuation requirement. In view of this potential regulatory burden and after considering the other prudential safeguards included in this final rule for limiting excessive concentrations in these qualifying intangible assets, the FDIC has decided not to include the annual independent market valuation requirement in its final rule.

Eliminating this annual independent market valuation requirement will also help achieve convergence with the capital rules of the other federal banking agencies. However, the FDIC reserves the right to require such independent valuations on a case-by-case basis in those situations where it is deemed appropriate for safety and soundness purposes.

D. Discounted Book Value Approach

Under the FDIC proposal, the book value of any qualifying intangible assets that are recognized for purposes of calculating an institutions's regulatory capital would need to be reviewed at least quarterly and adjusted as necessary. A writedown of the intangible asset would be required to the extent that the discounted amount of future net cash flows is less than the intangible asset's carrying amount. The discount rate used for this book value calculation could not be less than the original discount rate applied to the intangible asset at the time of its acquisition, based upon the estimated net cash flows and the price paid at the time of purchase.

Some commenters objected to this discounted book value approach that would need to be applied if the institution wanted to recognize the qualifying intangible assets for regulatory capital purposes, particularly since generally accepted accounting principles (GAAP) appear to permit either a discounted or an undiscounted book value approach to be used for intangible assets. In addition, one respondent considered this to be a potential difference between GAAP and regulatory reporting requirements that might be contrary to the intent of section 121 of FDICIA. Others objected to the use of the original discount rate for this discounted book value calculation.

The preamble to the FDIC's 1990 rule that first placed limits on the amount of PMSRs that may be recognized for regulatory capital purposes (55 FR 53137, December 27, 1990) discussed the benefits of a discounted book value approach and indicated that use of an undiscounted approach may be unsafe or unsound practice because such an accounting technique does not promptly recognize losses inherent in the value of PMSRs that arise as a result of unanticipated prepayments or other factors that may cause projected future cash flows to be lower than originally anticipated.

The FDIC has reviewed the comment letters that raised objections to the use of a discounted book value approach, but nonetheless continues to believe that a discounted book value approach should be used for any qualifying intangible assets that are recognized for regulatory capital purposes. However, the FDIC acknowledges that there are concerns with trying to impose an accounting requirement in a capital rule.

As a result, the FDIC, in consultation with the other federal banking agencies, has agreed to support a revision to the instructions for the Consolidated Reports of Condition and Income (Call Reports) that are issued by the Federal Financial Institutions Examination Council (FFIEC). Under the revised FFIEC Call Report instructions, the book values reported in the Call Reports for all PMSRs and PCCRs will need to be determined on a discounted basis. Similar instructions are being developed by the Office of Thrift Supervision (OTS) for the Thrift Financial Reports that are filed by savings associations.

Specifically, the Call Report instructions will require these two types of qualifying intangible assets to be carried at a book value that does not exceed the discounted amount of estimated future net cash flows. Management of the institution will need to review the carrying value at least quarterly, adequately document this review, and adjust the book value as necessary. If unanticipated prepayments, defaults, account attrition, or other events occur that reduce the amount of expected future net cash flows, a writedown of the book value of the PMSRs or PCCRs shall be made to the extent that the discounted amount of future net cash flows is less than the asset's carrying amount. The discount rate used for this book value calculation shall not be less than the original discount rate inherent in the intangible asset at the time of its acquisition, based upon the estimated net cash flows and the price paid at the time of purchase.

Given that the foregoing guidance will be reflected in the Call Report instructions, a separate recitation of these accounting requirements in the final capital rule will not be necessary. As a result, the FDIC has decided to eliminate the detailed discussion of the discounted book value approach from its capital rule and, in its place, provide a general reference indicating that the book value of these intangibles should be determined in accordance with the Call Report instructions.

The FDIC also believes that the discounted book value treatment described is consistent with section 121 of FDICIA, which provides that the accounting principles applicable to reports filed with the federal banking agencies by insured depository institutions should: (a) Result in financial statements and reports of condition that accurately reflect the capital of such institutions; (b) facilitate effective supervision of the institutions; and (c) facilitate prompt corrective action to resolve the institutions at the least cost to the insurance funds. The FDIC believes that the use of a discounted book value approach for PMSRs and PCCRs will help to achieve these objectives.

E. Treatment of Excess Servicing

The FDIC requested and received specific comments on whether excess servicing fees receivable arising from the sale of residential mortgages (excess servicing), which the Call Report instructions permit to be treated as a tangible asset, should be subject to the limitations placed on intangible assets such as PMSRs. The respondents generally objected to the imposition of limitations on the amount of excess servicing assets that an institution can recognize for regulatory capital purposes.

The scope of this final rule only addresses intangible assets; therefore, no explicit limits have been placed on excess servicing. Nonetheless, the FDIC notes that the interest rate and prepayment risks associated with excess servicing are similar to those inherent in PMSRs, for which limitations as a percent of Tier 1 capital already have been deemed appropriate.

Further, the interest rate and prepayment risks of excess servicing are also similar to those associated with mortgage-backed, interest-only strips. In this regard, an interagency supervisory policy statement on securities activities that was adopted by the FDIC on December 30, 1991, and which became effective on February 10, 1992,[1] generally views mortgage-backed, interest-only strips as high-risk securities that are not suitable investments for insured depository institutions and that institutions holding such securities should do so only to reduce interest rate risk in accordance with safe and sound practices. The policy statement also provides that levels of activity involving high-risk securities should be reasonably related to an institution's capital, capacity to absorb losses, and level of in-house management sophistication and expertise.

The policy statement encourages institutions to ensure that appropriate managerial and financial controls are in place to analyze, monitor, and prudently adjust their holdings of high-risk mortgage securities in an environment of changing price and maturity expectations. As a result, such securities are unsuitable for the investment portfolio and thus need to be carried at market or the lower of cost or market.

In view of the supervisory constraints that already exist for high risk mortgage-backed securities, such as interest-only strips, and given the limitations already in place on the amount of PMSRs that can be recognized for regulatory capital purposes, legitimate supervisory concern may also arise if a bank has a significant concentration of tangible assets in the form of excess servicing. While no regulatory requirements on excess servicing are being imposed in this final rule, the FDIC will carefully scrutinize state nonmember banks with concentrations of excess servicing and, on a case-by-case basis, may deduct part or all of the book value of these assets for purposes of calculating Tier 1 capital if the carrying amounts of these assets are excessive in relation to their fair value or the capital accounts of the institution.

F. Other Issues

Other issues that were also considered in adopting this final rule on the capital treatment of intangibles, include: (1) Grandfathering provisions; (2) exemptions for separately capitalized subsidiaries; and (3) limitations on intangibles as a percent of original purchase price.

1. Grandfathering Provisions

The FDIC requested comment on whether the existing provision in the FDIC's current rule that provides certain grandfathering treatment to PMSRs acquired on or before August 9, 1990 should be retained. One thrift institution trade association requested that this grandfather provision be retained. However, the FDIC notes that this provision was initially incorporated into the FDIC's capital rule in 1990, at a time when the existing statutory requirements mandated that the FDIC establish limits on the amount of PMSRs that savings associations could count in their regulatory capital calculations.

In view of the significant, pre-existing PMSR concentrations that certain savings associations already possessed, the FDIC decided to permit certain exceptions from the 50 percent of Tier 1 capital limitation if the PMSRs had been acquired on or before February 9, 1990. Except for the application of the FDIC rule to savings associations, the need for including such a grandfathering provision in the FDIC's initial PMSR rule would have been rendered moot, since state nonmember banks generally did not have PMSRs that exceeded this 50 percent threshold. Since section 475 of FDICIA now designates the OTS as the agency for determining the amount of PMSRs that savings associations may recognize for capital purposes, the need to retain this grandfather provision in the FDIC rule no longer exists. Therefore, as proposed, the FDIC has decided to eliminate the "Grandfathering" provision by deleting paragraph (f)(5) from section 325.5 in the FDIC's existing capital regulation.

2. Exemptions for Separately Capitalized Subsidiaries

The FDIC also requested comment on whether the separately capitalized mortgage banking subsidiary exemption should be retained. Although one respondent, a thrift institution trade association, favored the retention of the exemption, other commenters believed that the restrictions on meeting the terms of this exemption were so onerous that the exemptions had no practical application. The intent of the separately capitalized subsidiary rule, when it was initially adopted in 1990, was to permit institutions that wished to acquire significant concentrations in PMSRs above the 50 percent of Tier 1 capital limitation to be able to do so, provided that these intangible assets were placed in a separately capitalized subsidiary and funded with noninsured sources of funds provided by outside third party investors and lenders.

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[1] See FDIC Financial Institution Letter FIL–7–92, dated January 17, 1992, which can be obtained from the FDIC Office of Coporate Communications by calling 202/898–6996.

Under this exemption, PMSRs held by the subsidiary are not deducted in determining Tier 1 capital. Rather, only the amount of the parent bank's investments in, and loans to, the separately capitalized subsidiary would be deducted for regulatory capital purposes. Based on the comments received, the perceived unattractiveness of the separately capitalized mortgage banking subsidiary exemption given the nature of the restrictions and conditions, and in order to achieve convergence with the rules of the other federal banking agencies, the FDIC has decided to eliminate the "Exemption for certain mortgage banking subsidiaries" provision by deleting paragraph (f)(6) from section 325.5 of the existing capital regulation.

In this regard, the FDIC notes that the only favorable response to maintaining this provision came from a trade association that has many savings associations as members. However, pursuant to section 475 of FDICIA, the OTS, rather than the FDIC, is now responsible for establishing the appropriate restrictions on the amount of PMSRs that a savings association may recognize under the OTS capital rules.

3. Limitations on Intangibles as a Percent of Original Purchase Price

Among other limitations, and consistent with the purchase price limitation on PMSRs in the existing rule, the FDIC proposed to limit the allowable amount of qualifying intangible assets to no more than 90 percent of their original purchase price. This constraint was incorporated in section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and applied directly to savings associations. In accordance with FIRREA, the FDIC had the responsibility to establish limits on the amount of PMSRs that a savings association could recognize for regulatory capital purposes. The 90 percent of original purchase price limitation was incorporated into the FDIC's regulations when the FDIC established its initial PMSR rule in 1990. However, consistent with section 475 of FDICIA, this restriction no longer needs to be applied.

Therefore, in an effort to eliminate an unneeded regulatory burden that is no longer required by statute, and in view of the other restrictions that will apply to qualifying intangibles, including the 90 percent of fair market value limitation and the limitations on qualifying intangibles as a percent of Tier 1 capital, the FDIC, in consultation with the other federal banking agencies, has decided to eliminate the 90 percent of original purchase price limitation.

IV. Revised FDIC Capital Treatment of Intangible Assets

Under the revisions being adopted by the FDIC, all intangible assets, other than limited amounts of PMSRs and PCCRs, will be deducted in determining Tier 1 capital. With respect to the amount of PMSRs and PCCRs that will be recognized for regulatory capital purposes, the following conditions, limitations and restrictions will apply:

(1) Market Valuations

A valuation of the estimated fair market value of the intangible assets shall be performed at least quarterly. The quarterly market valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall be based on an analysis of the current fair market value of the intangible, determined by applying an appropriate market discount rate to the net cash flows expected to be generated from the intangible assets. The FDIC in its discretion may require independent market valuations on a case-by-case basis where it is deemed appropriate for safety and soundness purposes.

(2) Market Value Limitation

For purposes of calculating Tier 1 capital under the final rule (but not for financial statement purposes), the balance sheet assets for PMSRs and PCCRs will be reduced to an amount equal to the lesser of:

(a) 90 percent of fair market value of the intangible assests, determined in accordance with (1) above; or

(b) 100 percent of the remaining unamortized book value of the intangible assets, determined in accordance with the instructions for the preparation of Consolidated Reports of Condition and Income (Call Reports).

(3) Tier 1 Capital Limitation

The maximum allowable amount of PMSRs and PCCRs, in the aggregate, will be limited to the lesser of:

(a) 50 percent of the amount of Tier 1 capital [2] that exists before the deduction of any disallowed PMSRs and any disallowed PCCRs; or

(b) The amount of PMSRs and PCCRs determined in accordance with (20) above.

(4) Purchased Credit Card Relationships Limitation

In addition to the aggregate limitation on PMSRs and PCCRs set forth in (3) above, a sublimit will apply to PCCRs. The maximum allowable amount of PCCRs will be limited to the lesser of:

(a) 25 percent of the amount of Tier 1 capital [2] that exists before the deduction of any disallowed PMSRs and any disallowed PCCRs; or

(b) The amount of PCCRs determined in accordance with (20) above.

V. Regulatory Flexibility Act Statement

The Board of Directors of the FDIC has concluded, after reviewing the final regulations, that they will not impose a significant economic hardship on small institutions. The final rules do not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers or managers to comply with the regulation. The Board of Directors of the FDIC hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that these amendments to part 325 will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). In light of this certification, the Regulatory Flexibility Act requirements (at 5 U.S.C. 603, 604) to prepare initial and final regulatory flexibility analyses do not apply.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, State nonmember banks, Savings associations.

For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 325 of title 12 of the Code of Federal Regulations as follows:

PART 325—[AMENDED]

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819 (Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L. 102–233, 105 Stat. 1761, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

§ 325.2 [Amended]

2. Section 325.2(t) is amended by adding the words "and purchased credit card relationships" immediately after the words "mortgage servicing rights"

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[2] This percentage of capital limitation is calculated based on the amount of Tier 1 capital that exists before the deduction of any disallowed PMSRs and disallowed PCCRs but after the deduction of nonqualifying intangible assets, such as goodwill and core deposit intangibles.

and by removing the phrase "and investments in mortgage banking subsidiaries subject to § 325.5(f)(7) of this part".

§ 325.2 [Amended]

3. Section 325.2(v) is amended by removing the phrase "325.5(c), 325.5(d) and 325.5(f)(7)" and replacing it with the phrase "325.5(c) and 325.5(d)" and by adding the words "and purchased credit card relationships" immediately after the words "mortgage servicing rights".

4. Section 325.5(f) is revised to read as follows:

§ 325.5 Miscellaneous.

* * * * *

(f) *Treatment of purchased mortgage servicing rights and purchased credit card relationships.* For purposes of determining Tier 1 capital under this part, purchased mortgage servicing rights and purchased credit card relationships will be deducted from assets and from equity capital to the extent that the purchased mortgage servicing rights and purchased credit card relationships do not meet the conditions, limitations, and restrictions described in this section.

(1) *Market valuations.* A valuation of the estimated fair market value of purchased mortgage servicing rights and purchased credit card relationships shall be performed at least quarterly. The quarterly market valuation shall include adjustments for any significant changes in the original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall be based on an analysis of the current fair market value of the purchased mortgage servicing rights and purchased credit card relationships, determined by applying an appropriate market discount rate to the net cash flows expected to be generated from the intangible assets. The FDIC in its discretion may require independent market valuations on a case-by-case basis where it is deemed appropriate for safety and soundness purposes.

(2) *Market value limitation.* For purposes of calculating Tier 1 capital under this part (but not for financial statement purposes), the balance sheet assets for purchased mortgage servicing rights and purchased credit card relationships will be reduced to an amount equal to the lesser of:

(i) 90 percent of the fair market value of the intangible assets, determined in accordance with paragraph (f)(1) of this section; or

(ii) 100 percent of the remaining unamortized book value of the intangible assets, determined in accordance with the instructions for the preparation of Consolidated Reports of Condition and Income (Call Reports).

(3) *Tier 1 capital limitation.* The maximum allowable amount of purchased mortgage servicing rights and purchased credit care relationships, in the aggregate, will be limited to the lesser of:

(i) Fifty percent of the amount of Tier 1 capital that exists before the deduction of any disallowed purchased mortgage servicing rights and any disallowed purchased credit card relationships; or

(ii) The amount of purchased mortgage servicing rights and purchased credit card relationships determined in accordance with paragraph (f)(2) of this section.

(4) *Purchased credit card relationships limitation.* In addition to the aggregate limitation on purchased mortgage servicing rights and purchased credit card relationships set forth in paragraph (f)(3) of this section, a sublimit will apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships will be limited to the lesser of:

(i) Twenty-five percent of the amount of Tier 1 capital that exists before the deduction of any disallowed purchased mortgage servicing rights and any disallowed purchased credit card relationships; or

(ii) The amount of purchased credit card relationships determined in accordance with paragraph (f)(2) of this section.

* * * * *

Appendix A to Part 325 [Amended]

5. Section I.A.1. of appendix A to part 325 is amended by adding the words "and purchased credit card relationships" immediately following the words "mortgage servicing rights" each time they appear.

Appendix A to Part 325 [Amended]

6. Section I.B.(1) of appendix A to part 325 is amended by adding the words "and purchased credit card relationships" immediately following the words "mortgage servicing rights" each time they appear in section I.B.(1) and footnote 8 thereto.

Appendix A to Part 325 [Amended]

7. Table I in appendix A to part 325 is amended by adding the words "and purchased credit card relationships" immediately following the words "mortgage servicing rights".

Appendix A to Part 325 [Amended]

8. Footnote 1 to Table I in appendix A to part 325 is amended by removing the phrase "preferred stock, minority interests, and mortgage servicing rights" and replacing it with the phrase "preferred stock and minority interests".

Appendix A to Part 325 [Amended]

9. Footnote 2 to Table I in appendix A to part 325 is amended by revising the first sentence to read as follows:

> The amounts of purchased mortgage servicing rights and purchased credit card relationships that can be recognized for purposes of calculating Tier 1 capital are subject to the limitations set forth in § 325.5(f) of the FDIC's regulations.

Appendix B to Part 325 [Amended]

10. Section IV.A. of appendix B to part 325 is amended by adding the words "and purchased credit card relationships" immediately following the words "mortgage servicing rights" each time they appear in section IV.A. and footnote 1 thereto.

Appendix B to Part 325 [Amended]

11. Section V. of appendix B to part 325 is amended by: removing the phrase "three exceptions" in the first paragraph and replacing it with the phrase "two exceptions"; removing the sixth sentence in the second paragraph; removing the phrase "and mortgage banking subsidiaries" in the last sentence of the second paragraph; and removing the phrase "third exception" in the first sentence in the third paragraph and replacing it with the phrase "second exception".

By order of the Board of Directors.

Dated at Washington, DC this 12th day of January, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–2009 Filed 1–27–93; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–134–AD; Amendment 39–8462; AD 93–01–08]

Airworthiness Directives; Beech Model 400 and Mitsubishi Model MU–300–10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

VOL 58 ISS 17 JA 28 1993 UMI

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Beech Model 400 and Mitsubishi Model MU–300–10 airplanes, that requires a revision to the Airplane Flight Manual (AFM) to include certain performance limitations. This amendment is prompted by results of recent tests that have revealed that climb performance with one engine inoperative was less than that shown in the AFM for these airplanes. In addition, N_1 thrust settings made by the pilot during takeoff roll have been observed to decrease as takeoff progresses, resulting in a decrease in thrust that is currently not accounted for in the AFM. The actions specified by this AD are intended to ensure that the required minimum takeoff and climb performance can be achieved for each approved combination of takeoff or landing configuration, weight, pressure altitude, and temperature.

DATES: Effective March 4, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Carlos Blacklock, Aerospace Engineer, Flight Test Branch, ACE–160W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Beech Model 400 and Mitsubishi Model MU–300–10 airplanes was published in the **Federal Register** on October 15, 1992 (57 FR 47300). That action proposed to require a revision to the Airplane Flight Manual (AFM) to include certain performance limitations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 64 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,520, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–08. Beech Aircraft Corporation: Amendment 39–8462. Docket 92–NM–134–AD.

Applicability: All Beech Model 400 airplanes and Mitsubishi Model MU–300–10 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the required minimum takeoff and climb performance can be achieved for each approved combination of takeoff or landing configuration, weight, pressure altitude, and temperature, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved BEECHJET 400 Airplane Flight Manual by inserting the new pages contained in the BEECHJET 400 Airplane Flight Manual, A9 Revision, part number 128–590001–13A9, dated August 14, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), ACE–115W, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The revision of the AFM shall be done in accordance with BEECHJET 400 Airplane Flight Manual, A9 Revision, part number 128–590001–13A9, dated August 14, 1992, which contains the list of effective pages specified on pages 1 through 3 of the "Instruction Sheet" (A9 Revision, dated August 14, 1992). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 4, 1993.

Issued in Renton, Washington, on December 30, 1992.

David G. Hmiel,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-1814 Filed 1-27-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-ASW-18]

Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of Jet Routes J-29, J-101, J-180 located in the State of Texas. The realignment of these jet routes will resolve traffic congestion at a crossing point north of Dallas, TX. This action will relocate the crossing point northeast of Lufkin, TX, thereby permitting departures from Dallas/Fort Worth, TX, to reach cruising altitude before crossing the intersection.

EFFECTIVE DATE: 0901 u.t.c., April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On June 25, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign three jet routes located in the State of Texas (57 FR 28469). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations realigns J-29, J-101, and J-180 located in the State of Texas. The realignment of these jet routes will resolve traffic congestion at a crossing point north of Dallas, TX. This amendment will relocate the intersection east thereby allowing the Dallas/Fort Worth departures to reach cruising altitude before crossing that intersection. This action will reduce controller workload.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet Routes.

* * * * *

J-29 [Revised]

From the INT of the United States/Mexican Border and the Corpus Christi, TX, 229° radial via Corpus Christi; Palacios, TX; Humble, TX; Lufkin, TX; Elm Grove, LA; El Dorado, AR; Memphis, TN; Pocket City, IN; INT Pocket City 051° and Rosewood, OH, 230° radials; Rosewood; Dryer, OH; Jamestown, NY; Syracuse, NY; Plattsburgh, NY; Bangor, ME; to Presque Isle, ME. The airspace within Mexico is excluded.

* * * * *

J-101 [Revised]

From Humble, TX, via Lufkin, TX; Elm Grove, LA; Little Rock, AR; St. Louis, MO; Capital, IL; Pontiac, IL; Joliet, IL; Northbrook, IL; Badger, WI; Green Bay, WI; to Sault Ste Marie, MI.

* * * * *

J-180 [Revised]

From Humble, TX; Daisetta, TX; INT Daisetta 030° and El Dorado, AR, 208° radials; El Dorado; to Little Rock, AR.

* * * * *

Issued in Washington, DC, on January 15, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-2049 Filed 1-27-93; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

Commodity Pool Operators; Exclusion for Certain Otherwise Regulated Persons From the Definition of the Term "Commodity Pool Operator"

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On October 20, 1992, the Commodity Futures Trading Commission ("Commission" or "CFTC") published for comment proposed amendments to Regulation 4.5 ("the proposal"), [1] which excludes certain otherwise regulated persons from the definition of the term "commodity pool operator" ("CPO"). The rule currently permits such persons to maintain this exclusion to the extent that, *inter alia*, (1) the commodity futures or option positions which they assume are either bona fide hedging positions or long positions (accompanied by a cash set-aside) which are "incidental to a qualifying entity's activities in the underlying cash market" and (2) the aggregate initial margins and premiums for all such positions do not exceed five percent of the fair market value of the entity's assets. The proposal would have expanded the exclusion to include entities which use commodity futures and option positions for purposes that are neither hedging nor "incidental" to their activities in the underlying

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[1] 57 FR 47821 (October 20, 1992).

markets to the extent that the market exposure attained through such positions did not predominate the qualifying entity's overall market exposure. The Commission also proposed to (1) remove the current restriction that permits assumption of only long non-hedging positions and (2) modify the five percent margin/premium limitation to exclude margins and premiums on bona fide hedging positions from computation of the five percent.

The comment period ended December 4, 1992. The Commission has carefully considered the comments received and, based upon its review of the comments and its own reconsideration of the proposal, has determined to adopt the proposed amendments to Regulation 4.5 in modified form, as discussed herein. Most notably, the revisions to the proposed amendments simplify the rule's operating criteria by eliminating the proposed exposure and the existing cash set-aside tests. Under the final rule, an otherwise qualifying entity could use commodity futures and option positions (1) for bona fide hedging purposes or (2) for other purposes to the extent that the aggregate initial margins and premiums required to establish such non-hedging positions do not exceed five percent of the liquidation value of such qualifying entity's portfolio. In addition, the scope of the rule is broadened to include a wider range of qualifying entities.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT:
Ronald Hobson, Supervisory Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581, (202) 254–6990.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4m(1) of the Commodity Exchange Act ("Act") makes it unlawful for any person to engage in business as a CPO without being registered as such.[2] Part 4 of the Commission's regulations governs the operations and activities of CPOs through certain operational, disclosure, reporting and recordkeeping requirements set forth in subpart B thereof.[3]

Regulation 4.5 (50 FR 15868–84, April 23, 1985), which became effective on April 23, 1985, provides for the exclusion, under specified conditions, of certain otherwise regulated persons (registered investment companies, state or federally regulated financial depository institutions, state regulated insurance companies, and certain federally regulated pension plans) from the CPO definition.[4] One of the requirements for exclusion is the filing of a notice of eligibility with the Commission. Among other things, this notice requires a representation that the qualifying entity intends to operate pursuant to the exclusion, and will use commodity futures or commodity option contracts solely for bona fide hedging purposes as bona fide hedging is defined in § 1.3(z)(1) or as otherwise permitted in the rule. As an alternative to this hedging requirement, the rule permits a qualifying entity to use long futures or options positions which are not bona fide hedging positions when the person seeking the exclusion represents that the value of the commodities underlying such positions is covered by cash or cash equivalents (the "cash set-aside" requirement) and that the positions are "incidental to a qualifying entity's activities in the underlying cash market."

The proposed amendments to Regulation 4.5 were developed as part of the Commission's ongoing program for review of its rules and in furtherance of its objectives of reducing unnecessary regulatory burdens and coordinating its rules with those of other regulators while maintaining effective customer protection. The Commission received 16 comment letters on the proposed rulemaking.

The commenters included banks, trade associations and law firms representing Commission registrants and § 4.5 entities, a commodity exchange and a bar association. All commenters strongly supported this rulemaking but in general advocated changes to the proposed amendments such that the relief provided would be based on simplified operating criteria and would have broader availability.

The Commission believes that the amendments to Regulation 4.5 as adopted are not only responsive to the concerns of the commenters but also meet the regulatory objectives of this rulemaking. As adopted and subject to the terms and conditions stated therein, the amendments to Regulation 4.5 would permit a person operating a qualifying entity to maintain exclusion from the CPO definition to the extent that commodity futures and option positions assumed by the entity are bona fide hedging or do not require initial margins and premiums exceeding five percent of the liquidation value of such entity's portfolio. The revisions therefore remove from the proposal the predominant exposure constraint on non-hedge positions and the current requirement that the underlying contract value of non-hedge positions does not exceed cash or cash equivalents set aside in an identifiable manner. Finally, non-hedge positions are not distinguished according to whether they are incidental to an entity's activities in the underlying cash market or not.

Concerning several commenters' suggestions that § 4.5 relief be extended to a wider range of otherwise regulated entities, the Commission has decided to broaden the scope of the rule to include employee welfare benefit plans subject to the fiduciary responsibility provisions of the Employment Retirement Income Security Act of 1974 (ERISA) as qualifying entities.

The following discussion focuses principally on the changes or clarifications to the proposal made in the final rule. Additional background on these final rules may be found in the **Federal Register** release setting forth the proposal.

II. Discussion

Most of those commenting on the proposed amendments recommended either eliminating the operating criteria altogether or reducing the number of quantitative constraints contained therein. The thrust of the comments of the former group was that such criteria are not necessary in view of existing sections of Regulation 4.5 that extend relief only to otherwise regulated entities and that require the operators of qualifying entities to represent that (1) the entities are not being marketed as commodity pools or commodity trading vehicles and (2) they will disclose to prospective participants the specific nature of their entity's commodity futures and option activities. Those commenters recommending a reduction in the number of quantitative constraints argued that the three constraints included in the proposal—the predominant exposure limitation, the cash set-aside requirement and the five percent margin/premium limitation—are redundant and that the precise way in which they would be applied was not clear.

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[2] The term commodity pool operator is defined in Section 1a(4) of the Commodity Exchange Act, as amended, to mean any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order.

[3] Sections 4.20–4.23. Commission rules referred to herein are found at 17 CFR Ch. I (1992).

[4] In addition, the rule excludes from the definition of the term commodity "pool" set forth in § 4.10(d) certain other pension plans that do not have to meet these specified conditions. See § 4.5(a)(4) (i)–(iii).

The Commission continues to believe that some overall restriction on the extent of commodity futures and option involvement by § 4.5 qualifying entities provides an important additional factor to be considered in distinguishing CPOs from the operators of other types of funds. In this regard, however, upon further consideration, the Commission has determined that the three operating criteria contained in the proposal are indeed redundant (though not identically so) in that all three constrain both the extent of commodity futures and option market participation by qualifying entities and the leverage associated with such participation. Moreover, of the three, the five percent margin limitation appears to involve fewer computational problems than the predominant exposure constraint and fewer restrictions on a fund's non-futures or -option activities than the cash set-aside requirement. The five percent margin/premium constraint also removes most leverage from commodity futures or option positions assumed by a qualifying entity since in the final rule it will be calculated in relation to the liquidation value of an entity's portfolio (sometimes also referred to as the net asset value). The five percent calculation thus cannot be based on the full value of stocks or bonds purchased for the qualifying entity on margin, for example—the liquidation value of the entity's portfolio is net of the amount borrowed.

Since a principal purpose of the Commission in proposing amendments to Regulation 4.5 was to provide qualifying entities with greater flexibility in utilizing commodity futures and options in their portfolio management activities, it has determined to eliminate the distinction between non-hedging positions that are incidental to underlying cash market activities and those that are not. Operationally the distinction is rendered moot by virtue of elimination of the predominant exposure constraint, which applied only to the "non-incidental" category of non-hedge positions under the proposal, and retention of only the five percent margin/premium constraint which applied to both types of non-hedge positions in the proposal. As adopted, the rule would permit the use of commodity futures and options by qualifying entities subject to the exclusion: (1) For hedging without regard to the percentage of assets committed to margin and option premiums, and (2) for other strategies permitted by such entities' principal regulator, provided that the total amount of initial margin and option premiums did not exceed five percent of the portfolio's liquidating value.

In addition to suggestions concerning the Regulation 4.5 operating criteria, several commenters advocated expanding the scope of the rule to include a wider range of qualifying entities, especially employee welfare benefit plans which are subject to ERISA but not currently covered by the rule.[5] The Commission has considered these comments in light of the fiduciary requirements of ERISA applicable to such plans and has decided to include as qualifying entities all employment welfare benefit plans subject to the fiduciary responsibility provisions of ERISA. The Commission has also clarified that an employer who is considered to be the operator of an otherwise qualified ERISA plan would be eligible for exclusion from the CPO definition pursuant to Regulation 4.5.

As the Commission stated in proposing revisions to Regulation 4.5, it does not intend to require a refiling of notices of eligibility by persons who have previously filed such notices under the rule but rather would deem those notices to include any commodity futures or option strategies that the revised rule permits. Of course, to take advantage of this position, any such trading strategy that is undertaken pursuant to the revised rule also must be permitted by a qualifying entity's other regulators.[6] Further, to take advantage of this position, disclosure of the fact that the qualifying entity may engage in any such trading strategy must be made to participants in the qualifying entity pursuant to the requirements of the amended Regulation 4.5(c)(2)(iii).[7]

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, ("PRA") imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on April 23, 1992 and assigned OMB Control number 3038–0005 to the rule. While this rule has no burden the group of rules of which this is a part has the following burden:

Average Burden Hours Per Respondent: 29.10.

Number of Respondents: 9,884.50.

Frequency of Response: Monthly, Quarterly, Semi-Annually, On Occasion.

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3220, NEOB Washington DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The definitions of small entities that the Commission has established for this purpose do not address the persons and qualifying entities set forth in § 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by Federal and State authorities other than the Commission. Assuming, arguendo, that such persons and entities would be small entities for purposes of the RFA, the Commission believes that § 4.5 as amended would not have a significant economic impact on them because it would not require the refiling of a notice with the Commission. Moreover, the Commission notes that the amended rule potentially would relieve a greater number of those persons (and entities) from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs.

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed rules will not have a significant economic impact on a substantial number of small entities.

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[5] Some commenters also advocated that certain qualifying entities as set out in the original rule should be excluded from the definition of the term commodity "pool" in the same manner that certain pension plans have been so excluded pursuant to § 4.5(a)(4) (i)–(iii). See footnote 4 above. In view of the revised operating criteria that are being promulgated herein, however, the Commission has determined not to expand this "commodity pool exclusion" provision.

[6] See the proviso to Regulation 4.5(c), which states that the making of certain representations concerning operating criteria thereunder—

> shall not be deemed to be a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which such person or qualifying entity is subject.

See also 50 FR 15868 at 15876 (April 23, 1985), where the Commission stated that its intent in adopting the Regulation 4.5 operating criteria was—

> to distinguish when certain entities should be treated as commodity pools and their operators as CPOs—and not to establish what should be regarded as prudent trading strategies.

[7] See 50 FR 15868 at 15879 for a discussion of the disclosure representation of Regulation 4.5(c)(2)(iv).

List of Subjects in 17 CFR Part 4

Commodity pool operators, Commodity trading advisors, Commodity futures, Commodity options.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a, 4k, 4l, 4m, 4n, 4o, 8a and 14 thereof, 7 U.S.C. 2, 6k, 6l, 6m, 6n, 6o, and 12a and 18, the Commission is amending part 4 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: Section 2(a)(1), 4b, 4c, 4l, 4m, 4n, 4o, 8a, and 19 of the Act, 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.5 is amended by revising paragraphs (a)(4) introductory text, (b)(4), (c)(2)(i), by deleting paragraph (c)(2)(ii) and by redesignating (c)(2) (iii)–(v) as (c)(2) (ii)–(iv) to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) * * *

(4) A trustee of, a named fiduciary of or an employer maintaining a pension plan that is subject to title I of the Employee Retirement Income and Security Act of 1974 or any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income and Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following pension plans shall not be construed to be pools:

* * * * *

(b) * * *

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to title I of the Employee Retirement Income and Security Act of 1974 or any employee Retirement Income and Security Act of 1974 or any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income and Security Act of 1974; *Provided, however,* That such entity will be operated in the manner specified in paragraph (c)(2) of this section.

(c) * * *

(2) * * *

(i) Will use commodity futures or commodity options contracts solely for bona fide hedging purposes within the meaning and intent of § 1.3(z)(1); *Provided, however,* That in addition, with respect to positions in commodity futures or commodity option contracts which do not come within the meaning and intent of § 1.3(z)(1), a qualifying entity may represent that the aggregate initial margin and premiums required to establish such positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; And, *Provided further,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) may be excluded in computing such 5 percent;

* * * * *

Issued in Washington DC, on January 21, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-2044 Filed 1-27-93; 8:45 am]

BILLING CODE 6351-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–AGL–15]

Proposed Alteration of Jet Routes J–73 and J–84

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Jet Routes J–73 and J–84. This proposal would realign J–73 from Northbrook, IL, via Pocket City, IN, to Nashville, TN, and extend J–84 from the Northbrook Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Danville, IL, VORTAC. This proposal would provide a third departure route south for the Chicago O'Hare International Airport terminal area in accordance with the tenets of the Chicago O'Hare safety and efficiency plan and the Chicago delay task force report. This proposal would expedite the flow of air traffic and reduce the required coordination between en route facilities.

DATES: Comments must be received on or before March 11, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 92–AGL–15, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AGL–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter J–73 and extend J–84. This proposal would realign J–73 from Northbrook, IL, via Pocket City, IN, to Nashville, TN. J–84 would be extended from the Northbrook, IL, VORTAC to the Danville, IL, VORTAC. This proposal would provide a third departure route south for traffic departing the Chicago O'Hare terminal area and preserve the existing route structure from Chicago to the Indianapolis area. This proposal is in accordance with the tenets of the Chicago O'Hare safety and efficiency plan and the Chicago delay task force report. This proposal would expedite the flow of air traffic and reduce the required coordination between en route facilities. Jet routes are published in section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607. Jet Routes.

* * * * *

J–73 [Revised]

From Miami, FL, via La Belle, FL; Lakeland, FL; Tallahassee, FL; La Grange, GA; Nashville, TN; Pocket City, IN, to Northbrook, IL.

* * * * *

J–84 [Revised]

From Oakland, CA, via Linden, CA; Mina, NV; Delta, UT; Meeker, CO; Sidney, NE; Wolbach, NE; Dubuque, IA; Northbrook, IL; to Danville, IL.

* * * * *

Issued in Washington, DC, on January 15, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–2054 Filed 1–27–93; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 21

[CC Docket No. 92–297, FCC 92–538]

Rulemaking To Redesignate the 27.5–29.5 GHz Frequency Band; Establishing Rules and Policies for "Local Multipoint Distribution Service"

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to redesignate a portion of the Common Carrier Point-to-Point Microwave Radio Service spectrum, 27.5–29.5 GHz, to a point-to-multipoint service (Local Multipoint Distribution Service) which would be available for video distribution, video telecommunications, and other telecommunications services. This proposal is based upon Petitions for Rulemaking filed by parties interested in using the 28 GHz band for these purposes. In addition, the document proposes new filing and operating rules for the proposed service. If adopted, the redesignation and new rules could allow development of effective competition in the video distribution market and could result in new telecommunications services being available to the public.

DATES: Comments due March 16, 1993; reply comments due April 15, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Common Carrier Bureau, Domestic Facilities Division, (202) 634–1773.

SUPPLEMENTARY INFORMATION: The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., Suite 640, Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt (202) 395–4814, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 416, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, (202) 632–7513.

OMB Control Number: None.
Title: Petition for Rulemaking for Amendment of part 1 and part 21 of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, and to Establish Rules and Policies for "Local Multipoint Distribution Service."
Action: Proposed New Collection
Respondents: Business or other for profit, including small businesses
Frequency of Response: On occasion
Estimated Annual Burden: 80,000
Number of Respondents: 10,000
Hours per Response: 8
Needs and Uses: The Notice of Proposed Rulemaking solicits public comment to amend 47 CFR parts 1 and 21 to redesignate the 27.5–29.5 GHz frequency band, and to establish rules and policies for the Local Multipoint Distribution Service. Proposed subpart L of part 21 contains the rules and requirements to govern the Local Multipoint Distribution Service. The information will be used by the Commission to determine the technical, legal and financial qualifications of the applicants.

This is a synopsis of the Commission's Notice of Proposed Rulemaking in CC Docket No. 92–297, adopted December 10, 1992, and released January 8, 1993.

The complete text of the Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street NW., room 246, Washington DC 20554.

Synopsis of Notice of Proposed Rulemaking

1. This Notice of Proposed Rulemaking (NPRM) proposes a redesignation of use of the 28 GHz band (27.5–29.5 GHz) from point-to-point microwave common carrier service to a proposed new "Local Multipoint Distribution Service" (LMDS). We initiated the NPRM in response to petitions filed by Suite 12 Group, Video/Phone Systems, Inc., and Harris Corporation (Farinon Division).

2. LMDS is proposed to make available 2 licenses of one gigahertz of spectrum each in a given geographic area. The licensing areas are proposed to be the Basic Trading Areas identified in the Rand McNally 1992 Commercial Atlas and Marketing Guide. We propose licensing and regulatory policies that, in our experience, should serve these objectives. We seek comment on proposals to adopt minimal technical rules to accommodate multipoint video programming distribution, wideband video, data, and other telecommunications services; require that service be available to 90% of the residents within a service area within 3 years; adopt one-day-filing; use lotteries or auctions to select licensees; and employ minority and diversity of ownership preferences. Among the primary regulatory objectives of this proceeding are providing applicants in this band sufficient flexibility to satisfy consumer demand, expediting service to the public, making more efficient use of essentially fallow spectrum and streamlining the licensing process while deterring speculative applications.

3. We also propose that applicants and licensees would be able to elect common carrier or non-common carrier status on a cell-by-cell and channel-by-channel basis. We tentatively conclude that for licensees choosing non-common carrier status and providing video

entertainment service, state entry and rate regulation should be preempted. For licensees choosing common carrier status, the Commission can preempt state regulation of video service since it is inherently interstate in nature. However, for licensees providing telecommunications services, we can preempt only those portions of such services which are interstate in nature, unless the intrastate portions are not severable and the state policies thwart or impede federal law and policies. We therefore ask for factual information on whether intrastate telecommunications services in LMDS can be severed from interstate services.

4. We solicit parties comments on the interpretation of the cross-ownership prohibition on multichannel multipoint distribution service in the Cable TV Consumer Protection and Competition Act of 1992, Public Law 102-385, section 11, as it applies to LMDS.

5. We propose to require that applicants be required to provide a proposal of service for 90% of the population within the service area within 3 years, a detailed business plan for meeting their plan of system construction and operation, and a showing of a firm financial commitment to construct the three year plan and to operate for one year after complete construction without additional revenue.

6. Because this service is a type of multipoint distribution service, the Multipoint Distribution Service (MDS) fee structure applies. Each LMDS applicant would pay $155 per station in its single application for the blanket license for fifty channels in either the A-Bank or the B-Band. In addition, upon completion of construction of one or more initial cells, a fee of $455 for each of the fifty 20 MHz channels, or $22,750, would be payable. No further fee would be due for constructing the remainder of the proposed LMDS system.

Initial Regulatory Flexibility Analysis

7. Reason for action. The purpose of this NPRM is to obtain comment on the change in the fixed service usage for the 28 GHz frequency band.

8. Objectives. The objective of this proposal is to consider licensing and service rules for the development and implementation of a new technology to provide video distribution and other telecommunications services to the public.

9. Legal basis. The authority for this action is the Administrative Procedure Act, 5 U.S.C. 553; and sections 4(1), 4(j), 301, 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. 145, 301, and 303(r).

10. Reporting, recordkeeping and other compliance requirements. Reporting requirements are proposed to ensure that the spectrum, if redesignated for these new uses, is used to serve the public's need for communications services.

11. Federal rules which overlap, duplicate or conflict with these rules. None.

12. Description, potential impact and number of small entities involved. Any rule changes in this proceeding could affect MMDS licensees, the majority of which are small businesses. These entities may have some additional competition from video programming service which could be provided by Suite 12's multicell technology. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

13. Significant alternatives. There are no presently available alternatives to the technology proposed by Suite 12.

Ordering Clauses

14. Accordingly, it is ordered That the Notice of Proposed Rulemaking is hereby adopted with the proposed rules listed below.

15. *It is Further Ordered* That the Secretary shall mail a copy of this document to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects

47 CFR Part 1

Communications common carriers, Reporting and recordkeeping requirements.

47 CFR Part 21

Radio, Reporting and recordkeeping requirements.

Proposed Amendatory Text

Parts 1 and 21/of chapter I of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552 and 21 U.S.C. 853a unless otherwise noted.

§ 1.821 Scope.

2. Section 1.821 is amended by adding paragraph (e) to read as follows:

* * * * *

(e) Local Multipoint distribution Service.

3. A new § 1.826 is proposed to be added to read as follows:

§ 1.826 Random selection procedures for Local Multipoint Distribution Service.

(a) If there are mutually exclusive applications for an initial conditional license for a Local Multipoint Distribution Service license, the Commission may use the random selection process to select the conditional licensee. Each such random selection shall be conducted under the direction of the Chief of the Common Carrier Bureau. The designated Lottery Official shall select the winning applicant from among mutually exclusive applicants. Only one applicant shall be selected in each frequency block in a given market area. Following the random selection, the Commission shall announce the tentative selectee and determine whether the applicant is qualified to receive the conditional license. If the Commission determines that the tentative selectee is qualified to receive the conditional license, it shall grant the application. In the event that the tentative selectee's application is denied, another random selection procedure will be conducted.

(b) Competing applications for permits and licenses shall be designated for random selection in accordance with the procedures set forth at §§ 1.1621, 1.1622(a), (b), (c) and (d), and 1.1623. No preferences pursuant to §§ 1.1622(b)(2) or (b)(3) shall be granted to any LMDS applicant whose owners, when aggregated, have an ownership interest of more than fifty percent in a media of mass communications whose service areas, as set forth at § 1.1622(e)(1) through (7), overlaps to any degree or is overlapped to any degree by the market area for which the conditional license is sought.

(c) Petitions to Deny may be filed only against the tentative selectee. These petitions must be filed within 45 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 30 days of the due date for Petitions to Deny.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602;

48 Stat. as amended; 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552.

§21.701 [Amended]

2. Section 21.701 is amended by removing the entry for 27,500–29,500 MHz from the table in paragraph (a) and removing footnote 5.

§21.703 [Amended]

3. Section 21.703 is amended by removing the entry for 27,500–29,500 MHz from the table in paragraph (a).

4. A new subpart L is proposed to be added to part 21 to read as follows:

Subpart L—Local Multipoint Distribution Services

Sec.
21.1000 Scope of subpart.
21.1001 Eligibility.
21.1002 Frequencies.
21.1003 Status election.
21.1004 Content and Form of Applications.
21.1005 Areas available for licensing.
21.1006 Application filing period.
21.1007 Geographic Service Areas.
21.1008 Settlements.
21.1009 Mutually-exclusive LMDS applications.
21.1010 Interests in LMDS applications.
21.1011 Demonstration of financial qualifications.
21.1012 Spectrum utilization.
21.1013 Repeaters.
21.1014 Conditions of licenses.
21.1015 Assignment, transfer, or alienation of interest in LMDS authorizations.
21.1016 License modification.
21.1017 License renewal.

Subpart L—Local Multipoint Distribution Services

§21.1000 Scope of subpart.

The rules in this subpart govern the licensing and operation of stations and systems in the Local Multipoint Distribution Service (LMDS). The licensing and operation of these stations and systems are also subject to rules elsewhere in this part that apply generally to Domestic Public Fixed Radio Services. However, in case of conflict, the rules in this subpart govern.

§21.1001 Eligibility.

(a) Local Multipoint Distribution Service authorizations will be issued on either a common carrier or a non-common carrier basis, as requested by the applicant. Applications will be granted only where the applicant establishes:

(1) It is legally, financially, technically, and otherwise qualified to render the services proposed;

(2) The public interest, convenience and necessity would be served by such a grant; and

(3) There are frequencies available to render the full range of services proposed in the application.

(b) Any applicant in the LMDS proposing to provide a medium of mass communication and desiring a preference in the random selection process, shall so indicate as part of its application.

§21.1002 Frequencies.

(a) Frequencies in the band 27.5–29.5 GHz are available for LMDS. Within each service area (see §21.1007) there are two frequency allocations which the Commission may license: A-Band (27.5–28.5 GHz) and B-Band (28.5–29.5 GHz). Although the spectrum allocated to each licensee is initially divided into 20 MHz channels, licensees may subdivide their assignments into channels of any bandwidth within either band subject to obtaining coordinations as described in paragraph (b) of this section. In the event harmful interference occurs or appears likely to occur between two or more LMDS systems and such interference cannot be resolved between the parties, the Commission may require the licensees to make such changes in operations or techniques or equipment as it may deem necessary to avoid such interference.

(b) Frequency coordination. (1) All licensees in the Local Multipoint Distribution Service shall coordinate proposed frequency usage with existing users in service areas within 75 miles of all base stations affected, and with tentative selectees and other non-mutually exclusive pending applicants whose facilities could affect or be affected by the new proposal in terms of intersystem frequency interference or restricted ultimate system capacity, including shared satellite services operating on the 28.5–29.5 GHz band. This coordination requirement shall also apply to permissive changes (i.e. changes in frequency assignment not requiring prior Commission approval) within an authorized service area.

(2) All licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum; however, the party being coordinated with is not obligated to suggest changes or reengineer a proposal in cases involving conflicts. All licensees shall make every reasonable effort to avoid blocking the growth of other systems that are likely to need additional capacity in the foreseeable future.

(3) Where technical problems are resolved by an agreement or operating arrangement between the parties that would require special procedures to be taken to reduce the likelihood of intersystem interference or would result in a reduction of quality or capacity of either system, the new licensee shall notify the Commission. Upon making a permissive change, a licensee shall notify the Commission of its frequency usage and report on its coordination as required under this paragraph.

§21.1003 Status election.

(a) Applicants and licensees may choose to elect either common carrier or non-common carrier status on a channel-by-channel basis and on an individual cell basis.

(b) Applicants and licensees must notify the Commission of their status elections and must identify the channels and/or individual cells which are operated on a non-common carrier basis. Areas and channels not on record as being in a non-common carrier status will be presumed to be in common carrier status. Licensees must maintain an accurate record of their status elections with the Commission. Changes in status must be reported within 10 days of the effective date of the change.

(c) Applicants shall provide a statement in their applications indicating their choices with regard to status.

(d) Licensees in the LMDS shall follow the procedures set out in §21.910 for change of status election.

§21.1004 Content and form of applications.

(a) Applications for new LMDS systems, and applications for modification of an LMDS conditional license, must comply with the specifications in this section. Failure by an applicant to comply with any requirement of this section will result in the application being dismissed as defective.

(b) *Forms, pages, and exhibits.* Forms, pages and exhibits must be prepared exactly as described and assembled in the order listed in this section.

(1) *Application cover.* The paper original of each application (other than the full-size map) must be enclosed in a stiff cover fastened securely along the left edge. The fastening assembly may not have exposed sharp edges.

(2) *Transmittal sheet.* The first page after the front cover of the application must be the transmittal sheet.

(i) Copies of the transmittal sheet may be obtained by contacting the Consumer Assistance Office. Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

(ii) On the transmittal sheet, the following information is required: The full name of the applicant, the frequency band, and the service area identification name for which the applicant is applying. This information on the transmittal sheet must match exactly the information on the cover of the application.

(iii) The transmittal sheet also contains a certification. The certification must be notarized and signed with the applicant's full name. Applicants must certify to the following:

"I hereby certify that this application for an authorization in the Local Multipoint Distribution Service is complete in every respect and contains all of the information required by FCC Form 494 and the Federal Communications Commission's rules governing this service.

"I acknowledge that, if the Commission finds this application to be incomplete and/or not in compliance with its Rules, or finds the certification is incorrect, the Commission will dismiss this application without further consideration.

"I certify that I am the real-party-in-interest in this application and there are no agreements or understandings other than those, if any, disclosed in this application, which provide that someone other than the applicant has a direct, indirect, future, or financial interest in the application and/or the requested conditional license. I also certify that the applicant intends to construct and operate the station as proposed and that there are no agreements or understandings inconsistent with this intent.

"I declare, under penalty of perjury, that I am the authorized representative of the above-named applicant in the matter of this application, that I have read and understood the foregoing certification, and that the matter and things therein stated are true and correct."

(iv) The certification must be signed and dated in accordance with the requirements of § 1.743 of this chapter. The certification must be signed in reproducible blue or black ink. Mechanical reproductions of the signature must not be used. The name of and position held by the person signing must be typed or clearly and legibly printed beneath the signature.

(3) *Table of contents.* A table of contents must be provided. The table of contents must list all of the exhibits to the application.

(4) *FCC Form 494.* All information required for LMDS applications on form 494 must be provided.

(5) *Exhibits.* The following exhibits must be set off by tabs and numbered as follows:

(i) Exhibit I: Full-size Map. The scale of the full-size map must be 1:250,000. The map must show clearly on its face a legend, a distance scale and correctly labelled latitude and longitude lines. The entire map must be clear and legible. The map show the entire Geographic Service Area and the boundaries of the Basic Trading Area. The map must be folded into a 8½" x 11" plastic pocket that opens at the top or right side, and the pocket must be bound along the left side with the other pages of the application.

(ii) Exhibit II: Reduced Map. This map must be a proportional reduction to 8½x11 inches, of the full-size maps required for Exhibit I.

(iii) Exhibit III: Ownership Information. Disclose plans for any arrangements for another entity to manage and/or operate the proposed system and provide the written agreements, if any.

(iv) Exhibit IV: Service Proposal. Provide information on how the applicant intends to ascertain and provide service to the public.

(v) Exhibit V: System Design. Engineering and methodology to construct system to carry out service proposal.

(vi) Exhibit VI: Public Interest Statement.

(vii) Exhibit VII: Environmental Impact Statement.

(viii) Exhibit VIII: Business Plan and Start-up Expenses. This exhibit must disclose in detail the projected cost of construction, and other initial expenses of the proposed system, how the applicant intends to go forward with its service proposal and system construction, and how the applicant intends to meet these expenses and cost of operations for the first year after the entire system is constructed.

(ix) Exhibit IX: Demonstration of Firm Financial Commitment.

§ 21.1005 Areas available for licensing.

LMDS applications will be accepted for each of the 487 Basic Trading Areas (BTAs) identified in the Rand McNally 1992 Commercial Atlas and Marketing Guide, pp. 38–39, plus Alaska and Puerto Rico, for a total 489 Basic Trading Areas (BTAs).

§ 21.1006 Application filing period.

Applications for an LMDS authorization will not be accepted for any area except upon day(s) specifically identified for acceptance of such applications, as may be announced from time to time by the Commission.

§ 21.1007 Geographic service areas.

(a) The Geographic Service Area (GSA) of the LMDS system shall be defined by the applicant as the area the applicant intends to serve.

(b) No GSA may extend beyond the boundaries of the Basic Trading Area for which the applicant is applying. Any application which shows a GSA extending past the BTA boundary will be dismissed as defective.

(c)(1) The boundaries of the GSA must include 90% of the population of the BTA.

(2) The GSA must be drawn on one or more U.S. Geological survey map(s) with a scale of 1:250,000. The full-size map and a copy of the map reduced to an 8½"x11" sheet of paper must be included with the application.

(3) The applicant must provide the population of the BTA and provide the calculations showing the percentage of the population it proposes to serve.

§ 21.1008 Settlements.

(a) Applicants in the LMDS must file independent, individual applications.

(b) Notwithstanding §§ 21.11, 21.23, 21.29, 21.31, 21.38, 21.39, or any other section of this Part, the sale, transfer, assignment or other alienation of any interest in any pending LMDS application is prohibited. This restriction on transfers of interests in LMDS applications includes any form of alienation including option arrangements and agreements, as well as equity and debt placement plans, with the execution of the following:

(1) Involuntary transfers if Sections 21.38 (d) and (e) are complied with; and

(2) *Pro forma* transfers not involving a change in ownership interest.

§ 21.1009 Mutually-exclusive LMDS applications.

Notwithstanding the provisions of paragraphs 21.31(b)(2) (i) and (ii), to be entitled to be included in a random selection process with one or more conflicting applications, an application for a LMDS authorization must be received by the Commission in a condition acceptable for filing on the calendar day established by the Commission as the day LMDS applications may be filed for the particular BTA for which the application is filed.

§ 21.1010 Interests in LMDS applications.

(a) *Interests in applications filed by other than publicly-traded corporations.* Except as otherwise provided herein, no party shall have any interest, direct or indirect, in more than one application for any LMDS authorization.

(b) *Interests in publicly-traded corporate applications.* No applicant for an LMDS authorization may have an interest, direct or indirect, in any LMDS applications filed by publicly-traded corporations, except that ownership interests of less than one percent will not be considered.

§ 21.1011 Demonstration of financial qualifications.

(a) Applicants for an LMDS authorization shall demonstrate a firm financial commitment for the financing necessary to construct its entire proposed system over a period of three years and to operate the system for one year without revenue.

(b) Applicants must provide a business plan and the realistic and prudent estimated costs of proposed construction and other initial expenses; estimated operating expenses for a period of one year after completion of all construction; and for applicants not subject to paragraph (d) of this section, a balance sheet current within 30 days of the date of the filing of the application.

(c) The firm financial commitment shall be from a recognized bank or other financial institution and shall evidence the lender's determination that it has assessed the creditworthiness of the loan applicant and that it is committed to providing the necessary financing. The commitment shall state any actions required of the applicant to continue the commitment in force. Applicants obtaining financing from other than a recognized lending institution must submit proof that the financing entity has such funds available and uncommitted to another LMDS application.

(d) Applicants relying on internal financing must provide the following information, current within 90 days of the date of application, in accordance with generally accepted accounting principles:

(1) A balance sheet current within 90 days of the date of the application and copies of any financial commitments (for example, loan agreements and service contracts) in support of the proposed facilities; and

(2) Whenever internal financing does not show adequate funds available and committed to meet the reasonable and prudent estimated costs of proposed construction and estimated operating expenses for one year, the applicant shall submit such additional information as is necessary to demonstrate financial ability, such as a current income statement and (from sources other than the proposed LMDS license) a statement of projected revenues and expenses.

(3) The details of any loan or other form of credit arrangement intended to be utilized to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor(s), letters of commitment, terms of the transaction, and a statement that paragraph (e) of this section is complied with, and the details of any sale or placement of any equity or other form of ownership interest.

(e) Notice upon default. In addition to the disclosures required by paragraph (d) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in proposed LMDS facility must include a provision for a minimum of ten (10) days prior written notification to the licensee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

§ 21.1012 Spectrum utilization.

All applicants for LMDS must submit as part of the application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the cellular configuration with polarization diversity, the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughout capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

§ 21.1013 Repeaters.

The licensee of an LMDS system may install repeaters within its GSA, provided that the power flux density of the signal at any given point along the boundary of the BTA emanating from the repeater is no greater than the predicted power flux density from any LMDS transmitter in the BTA at such point.

§ 21.1014 Conditions of licenses.

(a) Each licensee initially will receive a five-year license conditioned upon constructing its authorized system within three years of the date of grant. (Other conditions may also apply to individual licensees as determined by the Commission on a case-by-case basis.) The conditional license will authorize exclusive use of either the A-Band or the B-Band within the borders of one BTA, notwithstanding the area covered by the licensee's proposed Geographic Service Area. The following notifications are required:

(1) When all or part of the proposed LMDS system is ready to be placed into operation, the conditional licensee must file a Form 494A, Notification of Completion of Construction, and the relevant fee.

(2) Licensees must file a letter notification on or before the three-year anniversary date of the grant of the conditional license certifying that the facilities as authorized have been completed and that the entire system as approved is now operational and ready to provide service to the public, and will remain operational during the license period, unless the license is submitted for cancellation.

(b) No extensions of time to construct will be authorized for any reason, including but not limited to:

(1) Loss of site availability; and

(2) Any pending application for modification of the authorization.

(c) The provisions of § 21.44 apply in cases of forfeiture and termination of LMDS station authorizations.

§ 21.1015 Assignment, transfer, or alienation of interest in LMDS authorizations.

Notwithstanding any other section of this part, the sale, transfer, assignment or other alienation of any interest in any LMDS conditional license is prohibited prior to completion of all construction authorized by the conditional grant. This restriction on transfers of interests in LMDS conditional licenses includes any form of alienation including option arrangements and agreements, as well as equity and debt placement plans, with the exception of the following:

(a) Involuntary transfers if § 21.38 (d) and (e) are complied with;

(b) *Pro forma* transfers involving no change in ownership interest or control of the license.

§ 21.1016 License modification.

Licensees finding it necessary to change any aspect of their proposal as authorized in the conditional license must file an application to modify their authorization, but this will not relieve the licensee from its obligation to proceed with its construction schedule under the terms of its conditional license.

§ 21.1017 License renewal.

LMDS licensees must apply for renewal of their licenses no more than 90 (ninety) and no fewer than 30 (thirty) days before the expiration date of the license. Licensees should comply with the provisions of § 21.11(c) to renew their licenses.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1939 Filed 1–27–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2, 63, 80 and 90

[PR Docket No. 92–257, DA 93–35]

Amendment of the Commission's Rules Concerning Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Order extends the Comment and Reply Comment period to June 1, 1993, and July 15, 1993, respectively, in PR Docket No. 92–257; FCC 92–497. This action is taken in response to a request by the United States Coast Guard and the Radio Technical Commission for Maritime Services, among others. It will allow commenters to prepare more meaningful comments.

DATES: Comments to be filed on or before June 1, 1993 and replies to be filed on or before July 15, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: George R. Dillon or Marc S. Martin, Federal Communications Commission, Washington, DC 20554 (202) 632–7175.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 11, 1993; *Released:* January 15, 1993.

By the Chief, Special Services Division

1. On November 5, 1992, the Commission adopted a Notice of Proposed Rule Making and Notice of Inquiry, 57 FR 57717, December 7, 1992, hereafter Notice, in the above captioned matter. The specified filing deadlines for comments and reply comments are January 21, 1993, and February 5, 1993, respectively.

2. On December 10, 1992, the United States Coast Guard (Coast Guard) filed a motion requesting an extension of time in which to file comments. Additionally, on January 4, 1993, the Radio Technical Commission for Maritime Services (RTCM) filed a motion asking for an extension of time in this proceeding. The Coast Guard states that the issues raised in the Notice are substantial and will require a significant amount of research. It requests an extension of time to coincide with the annual RTCM assembly meeting to permit the issues raised in the Notice to be discussed fully by members of the maritime community. The RTCM notes that its annual assembly meeting will take place during the week of May 2, 1993, and that the affected marine community will be substantially represented at the meeting. RTCM states that it has over 150 members and that virtually all of them will be affected by the issues raised in the Notice. The RTCM contends that an extension of time will permit it to coordinate responses more effectively with members of the maritime community and will result in meaningful comments. Both the Coast Guard and the RTCM emphasize that extending the comment date will permit members of the maritime community outside of Washington, DC to be represented on the issues raised in the Notice.

3. The RTCM is a non-profit organization whose objectives include studying and preparing reports on maritime telecommunications practices, needs and technologies to, among other things, improve the efficiency and capability of marine communications. The Coast Guard is responsible for search and rescue operations including many ships voluntarily equipped with radio equipment. We find good cause to grant the extension of time requested by the Coast Guard and RTCM. Such an extension of time will permit the full participation in this proceeding by a broad segment of the affected marine community.

4. Accordingly, it is ordered, pursuant to the authority set forth in §§ 0.331 and 1.46 of the Commission's Rules, 47 CFR 0.331, 1.46, that the Coast Guard's and the RTCM's motions for extensions of time is granted. The filing deadlines for comments and reply comments are extended to June 1, 1993, and July 15, 1993, respectively.

Federal Communications Commission.

Robert H. McNamara,

Chief, Special Services Division, Private Radio Bureau.

[FR Doc. 93–1913 Filed 1–27–93; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 58, No. 17
Thursday, January 28, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Request for Public Comments

AGENCY: Administrative Conference of the United States.

SUMMARY: The Administrative Conference's Model Rules Working Group has developed a set of model procedure and practice regulations for agency adjudications. Interested persons are invited to comment on the proposal.

DATES: Please submit comments by March 15, 1993.

ADDRESSES: Send comments to Gary J. Edles, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037.

TO OBTAIN COPIES OF THE PROPOSAL CONTACT: Susan Mack, Administrative Conference of the United States, 2120 L Street NW., Washington, DC 20037, or (202) 254–7020.

FOR FURTHER INFORMATION CONTACT: Gary J. Edles or Jeffrey S. Lubbers, (202) 254–7020.

SUPPLEMENTARY INFORMATION: A Working Group of the Office of the Chairman of the Administrative Conference of the United States has developed a set of model procedure and practice regulations, with related commentary, suitable for use in those agency proceedings that offer an opportunity for an oral, fact-finding hearing before an agency adjudicator, whether conducted pursuant to the Administrative Procedure Act, other statutes, or agency regulations or practice. The Working Group seeks public comments on these model rules.

Hearing are currently held before presiding officers at scores of federal departments and agencies. Each agency has its own set of procedure and practice rules that cover essentially the same procedural areas. To the extent that the conduct of hearings at these agencies presents similar problems, it appears useful to formulate a set of model procedure and practice rules that addresses common procedural problems. Such model rules can be used by those agencies that are either required to establish formal procedures for new adjudicatory programs or interested in amending their existing rules in selected areas.

Because each agency has its own, unique procedural needs, the model rules are not intended as a set of uniform procedures. Rather, they are designed to provide a set of recommendations that can be considered by agencies in light of their special procedural requirements.

Dated: January 25, 1993.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 93–2046 Filed 1–27–93; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 22, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

- Agricultural Research Service
  Biological Shipment Record—Beneficial Organisms AD–941, AD–942, AD–943
  On occasion
  State or local governments; businesses or other for-profit; Federal agencies or employees; 560 responses; 47 hours
  Jack R. Coulson (301) 504–6350

New Collection

- Foreign Agricultural Service
  7 CFR 1493—Subpart C—Amended Regulations Covering CCC's New Emerging Democracies Facilities Guarantees
  Recordkeeping; On occasion
  Businesses or other for-profit; 318 responses; 1,809 hours
  L. T. McElvain (202) 720–6225
- Foreign Agricultural Service
  Emergency Relief from Duty-Free Imports of Perishable Products From Andean Countries
  On occasion
  Farms; businesses or other for-profit; 7 responses; 161 hours
  Diana Wanamaker (202) 720–1330

Donald E. Hulcher,
Deputy Department Clearance Officer.

[FR Doc. 93–2089 Filed 1–27–93; 8:45 am]
BILLING CODE 3410-01-M

Federal Grain Inspection Service

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Schneider (IN) Agency and the State of Georgia

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Schneider Inspection Service, Inc. (Schneider), and the Georgia Department of Agriculture (Georgia), will end July 31, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before March 1, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send their application to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Schneider, main office located in Lake Village, Indiana, and Georgia, main office located in Atlanta, Georgia, to provide official grain inspection services under the Act on August 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Schneider and Georgia end on July 31, 1993.

The geographic area presently assigned to Schneider, in the States of Illinois, Indiana, and Michigan, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

In Illinois and Indiana:

Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines;

Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line;

Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; U.S. Route 41 north to U.S. Route 24; U.S. Route 24 west to the Indiana-Illinois State line; and

Bounded on the West by Indiana-Illinois State line north to Kankakee County; the southern Kankakee County line west to U.S. Route 52; U.S. Route 52 north to Interstate 57; Interstate 57 north to the northern Will County line.

Berrien, Cass, St. Joseph, Branch, and Hillsdale Counties, Michigan.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Central Soya, and Farmers Grain, both in Winamac, Pulaski County, Indiana (located inside Titus Grain Inspection, Inc.'s, area).

An exception to Schneider's assigned geographic area is the following export port location inside Schneider's area which has been and will continue to be serviced by FGIS: Cargill Burns Harbor Elevator, Portage, Indiana.

The geographic area presently assigned to Georgia, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Georgia, except those export port locations within the State which are serviced by FGIS.

Interested persons, including Schneider and Georgia, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning August 1, 1993, and ending July 31, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 15, 1993.

Neil E. Porter,

Acting Director.

[FR Doc. 93–1970 Filed 1–27–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Central Illinois (IL) and Plainview (TX) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Central Illinois Grain Inspection, Inc. (Central Illinois), and Plainview Grain Inspection and Weighing Service, Inc. (Plainview).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by March 1, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 30, 1992, **Federal Register** (57 FR 49166), FGIS asked persons interested in providing official services in the geographic areas assigned to Central Illinois and Plainview to submit an application for designation. Applications were due by November 30, 1992. Central Illinois and Plainview, the only applicants, each applied for designation in the entire area currently assigned to them.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation in the Central Illinois and Plainview areas. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these agencies. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 15, 1993.

Neil E. Porter,

Acting Director.

[FR Doc. 93–1972 Filed 1–27–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Columbus (OH) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Columbus Grain Inspection, Inc. (Columbus), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: March 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 2, 1992, **Federal Register** (57 FR 40170), FGIS announced that the designation of Columbus ends on February 28, 1993, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were due by September 30, 1992.

Columbus, the only applicant, applied for designation in the entire area currently assigned to them. FGIS named and requested comments on the applicant in the October 30, 1992, **Federal Register** (57 FR 49167). Comments were due by November 30, 1992. FGIS received no comments by that date. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Columbus is able to provide official services in the geographic area for which they applied.

Effective March 1, 1993, and ending February 29, 1996, Columbus is designated to provide official inspection services in the geographic area specified in the September 2, 1992, **Federal Register**. Interested persons may obtain official services by contacting Columbus at 614–474–3519.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 15, 1993.

Neil E. Porter,

Acting Director.

[FR Doc. 93–1973 Filed 1–27–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Amarillo (TX) and Enid (OK) Agencies to Provide Official Services in the former Alva Geographic Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Amarillo Grain Exchange, Inc. (Amarillo), and Enid Grain Inspection Company, Inc. (Enid), to provide official grain inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: March 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

On July 30, 1992, FGIS published a notice in the **Federal Register** (FR 57 33717) announcing the cancellation of Alva's designation due to a decline in requests for official inspection services. FGIS also requested comments on the need for official services in the geographic area formerly assigned to Alva, and asked that persons interested in providing official services in this geographic area submit an application for designation. The deadline for applications and comments on the need for official services was August 31, 1992. FGIS received one comment from a grain firm requesting that official services be provided in the Alva area.

There were two applicants, both currently designated official agencies: Amarillo Grain Exchange, Inc. (Amarillo), and Enid Grain Inspection Company, Inc. (Enid). Amarillo applied for Beckham, Ellis, Harper, and Roger Mills Counties, in addition to the area they are already designated to serve. These Counties are adjacent to their currently assigned geographic area. Enid applied for the entire Alva area in addition to the area they are already designated to serve, but indicated they would accept a portion of the area. Enid also is adjacent to the Alva geographic area.

FGIS named and requested comments on the applicants in the October 30, 1992, **Federal Register** (57 FR 49167). Comments were due by November 30, 1992. FGIS received one comment by the due date from a grain firm favoring designation of Enid. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Amarillo is better able than any other applicant to provide official inspection services in the geographic area for which they applied, and that Enid is able to provide official inspection services in the remainder of the former Alva geographic area.

Effective March 1, 1993, and ending upon the end of their current designation (November 30, 1995), Amarillo is designated to provide official grain inspection in Beckham, Ellis, Harper, and Roger Mills Counties in Oklahoma, in addition to the area they are already designated to serve. Amarillo's designation is amended by adding these Counties. Effective March 1, 1993, and ending upon the end of their current designation (June 30, 1995), Enid is designated to provide official grain inspection in Alfalfa, Caddo, Custer, Dewey, Greer, Kiowa, Major, Washita, Woods, and Woodward Counties in Oklahoma, in addition to the area they are already designated to serve. Enid's designation is amended by adding these Counties. Interested persons may obtain official services by contacting Amarillo at 806–372–8511, and Enid at 405–233–1121.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 15, 1993.

Neil E. Porter,

Acting Director.

[FR Doc. 93–1971 Filed 1–27–93; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Chugach Winter Recreation Facilities; Kenai Area Plan; Russian River Angler Trail Reconstruction; Amendment of the Chugach Forest Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Cancellation of four notices of intent to prepare an Environmental Impact Statement.

SUMMARY: The Notices of Intent, as shown below, are hereby cancelled:

1. Chugach Winter Recreation Facilities, April 19, 1985, FR, Vol. 50, Number 76, page 15595.
2. Kenai Management Area Analysis, July 22, 1988, FR, Vol. 53, Number 141, page 27737.
3. Amendment of the Chugach Land and Resource Management Plan, May 31, 1991, FR, Vol. 56, Number 105, page 24786–87.
4. Russian River Angler Trail Reconstruction, June 26, 1991, FR, Vol. 56, Number 123, page 29213.

FOR FURTHER INFORMATION CONTACT: Charles R. Frey, Planning Staff Officer, Chugach National Forest, 201 E. 9th Avenue, Suite 206, Anchorage, Alaska 99501; 907–271–2557.

Dated: January 20, 1993.

Frederick L. Norbury,

Director, Planning, Programming, and Budgeting.

[FR Doc. 93–2057 Filed 1–27–93; 8:45 am]

BILLING CODE 3410-11-M

Tepee Area Salvage and Recovery; Kootenai National Forest, Lincoln and Flathead Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for the Tepee Timber Sale. The Forest Service proposes to harvest approximately 892 thousand board feet of dead and dying lodgepole pine timber through application of a variety of harvest methods on approximately 191 acres. The proposal includes site-preparation and regeneration on 115 acres. The salvage and regeneration harvest is intended to increase health, vigor, stocking and species diversity of stands for long term vegetative growth; reduce fuel accumulations to minimize fire danger and protect existing regeneration stands; salvage lodgepole pine before it loses its value; and clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material. The EIS will tier to the final EIS and Forest Plan for the Kootenai National Forest (September 1987).

The proposed activities are located in the Little Wolf drainage. The project analysis area is located approximately 30 miles east of Libby, Montana. The proposed project is scheduled to sell in the summer of 1994. There will be no new road construction as part of this proposal.

The Kootenai National Forest invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by February 22, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Lawrence A. Froberg, District Ranger, Fisher River Ranger District, 12557 Hwy. 37, Libby Montana, 59923.

FOR FURTHER INFORMATION: Direct questions about the proposed actions and environmental impact statement to Leanee Marten, Interdisciplinary Team Leader, Fisher River Ranger District, 12557 Hwy. 37, Libby, Montana, 59923. (Phone: (406) 293–7773).

SUPPLEMENTARY INFORMATION: The decision area contains approximately 4300 acres within the Kootenai National Forest in Lincoln and Flathead Counties, Montana. All of the project area is within the Little Wolf drainage. The legal description of the decision area is as follows: Sections 7, 8, 17, 18, and 19 of Township 29 North, Range 25 West, Flathead County, Montana; Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, and 24 of Township 29 North, Range 26 West, Lincoln County, Montana; and Sections 26, 27, 28, 29, 32, 33, 34, 35 and 36 of Township 30 North, Range 26 West, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposal.

Mountain pine beetle infestations have killed the majority of merchantable lodgepole pine in the analysis area. In lodgepole pine stands mortality ranges from 50–100%. However, in most of the stands mortality is 90–100%. In mixed conifer stands where lodgepole pine comprises 10–40% of the stand, merchantable lodgepole pine mortality ranges from 80–100%.

These concentrations of dead lodgepole pine create areas of high fuel loadings which increase the potential of wildfire. In addition, deer and elk movement within and through these dense lodgepole stands is difficult. Thus, summer/fall range effectiveness is in a steady rate of decline.

The proposed action includes salvage harvest of dead lodgepole pine resulting from mountain pine beetle attack. A small amount of green lodgepole pine would be removed in understocked areas to facilitate the silvicultural system for regeneration. Approximately 115 acres will resemble a clearcut with reserve trees or patch seedtree. Eight units would be placed adjacent to existing clearcuts which will create three openings greater than 40 acres in size (43, 49 and 95 acre openings). Approximately 61 acres will be salvaged. A fully stocked stand will remain on these acres. Of the 61 acres, 49 are road-side salvage in which all dead lodgepole will be removed from areas 40–80 feet of specified roadside. Additionally, 15 acres will be a post and pole area. The harvest will resemble a pre-commercial thinning, leaving a fully stocked stand on these acres. The total harvest volume of this proposal would be 892 thousand board feet of timber.

Issues

Tentatively, several issues have been identified through the scoping process. These issues are briefly described below:

1. Concern was expressed over how the proposed action may impact water quality of the streams in the area.

2. Wildlife: Concern was expressed that the proposed action may have an adverse effect on the cover/forage ratio in the area and thus would represent an impact on wildlife.

3. Forest Health: Concern was expressed that no action would result in stands with a very low level of health, vigor and productivity due to poor regeneration and growth.

Public Participation and Scoping

Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft EIS.

The scoping process includes:

—Identifying potential issues.
—Identifying major issues to be analyzed in depth.
—Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
—Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
—Determining potential cooperating agencies and task assignments.

The analysis will consider a range of alternatives. Along with the proposed actions and all reasonable action alternatives, the analysis will consider a "No Action" alternative.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1993. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by September 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Lawrence A. Froberg, District Ranger, Fisher River Ranger District, Kootenai National Forest, 12557 Highway 37, Libby, Montana, 59923, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 12, 1993.

Lawrence A. Froberg,

District Ranger, Fisher River Ranger District, Kootenai National Forest.

[FR Doc. 93–2058 Filed 1–27–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 930105–3005]

Annual Surveys in Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In conformity with title 13, United States Code (sections 131, 182, 224, and 225), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: John Berry on (301) 763–5850.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code. These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for 1997. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Annual Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys.

These surveys have been approved by the Office of Management and Budget (OMB Control Numbers 0607–0392, 0607–0395, 0607–0476, 0607–0560, 0607–0625, and 0607–0650) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

MA20D—Confectionery
MA22F—Yarn production
MA22K—Knit fabric production
MA22Q—Carpets and rugs
MA23D—Gloves and mittens
MA24T—Lumber production and mill stocks
MA25H—Office furniture
MA28A—Inorganic chemicals
MA28B—Inorganic fertilizer materials and related products
MA28C—Industrial gases
MA28F—Paint and allied products
MA28G—Pharmaceutical preparations, except biologicals
MA31A—Footwear
MA32C—Refractories
MA32E—Consumer, scientific, technical, and industrial glassware
MA33A—Ferrous castings
MA33B—Steel mill products
MA33E—Nonferrous castings
MA33L—Insulated wire and cable
MA35A—Farm machinery and lawn and garden equipment
MA35D—Construction machinery
MA35F—Mining machinery and mineral processing equipment
MA35J—Selected industrial air pollution control equipment
MA35L—Internal combustion engines
MA35M—Air-conditioning and refrigeration equipment
MA35N—Fluid power products
MA35P—Pumps and compressors
MA35Q—Antifriction bearings
MA35R—Computers and office and accounting machines
MA35U—Coin-operated vending machines

MA36A—Switchgear, switchboard apparatus, relays, and industrial controls
MA36E—Electric housewares and fans
MA36F—Major household appliances
MA36H—Motors and generators
MA36K—Wiring devices and supplies
MA36M—Radios, televisions, and phonographs
MA36L—Electric lighting fixtures
MA36P—Communication equipment
MA36Q—Semiconductors and printed circuit boards
MA37D—Aerospace orders
MA38B—Selected instruments and related products
MA38R—Electromedical equipment

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

M20A—Flour milling products
MQ22D—Consumption on the woolen system and worsted combing
MQ23A—Apparel (short form)
MQ23X—Sheets, pillowcases, and towels
MQ32A—Flat glass
MQ32D—Clay construction products
M32G—Glass containers
M33D—Aluminum producers and importers
M33J—Inventories of steel producing mills
MQ34E—Plumbing fixtures
MQ34K—Steel shipping drums and pails
MQ36B—Electric lamps
MQ36C—Fluorescent lamp ballasts
M37G—New complete aircraft and aircraft engines, except military
M37L—Truck trailers

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D and, for comparative purposes, the total net sales and receipts and the total employment of the company.

This survey has been approved by the Office of Management and Budget (OMB Control Number 3145–0027) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Pollution Abatement Costs and Expenditures

The Annual Survey of Pollution Abatement Costs and Expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities.

This survey has been approved by the Office of Management and Budget (OMB Control Number 0607–0176) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Capital Expenditures Survey

The Annual Capital Expenditures Survey is designed to collect capital expenditures data for private nonfarm industries. The survey collects detailed information on investment by types of structures and types of equipment.

This survey has been approved by the Office of Management and Budget (OMB Control Number 0607–0737) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

This survey has been submitted to the Office of Management and Budget for approval (OMB Control Number 0607–0175) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

Annual Survey of Plant and Equipment Expenditures

The Annual Survey of Plant and Equipment Expenditures is designed to collect total actual and planned expenditures by industry for new plant and equipment. This survey covers the part of total nonfarm business not surveyed each quarter by the quarterly survey of plant and equipment expenditures.

The annual counterpart of the quarterly survey of plant and equipment expenditures will cover only those companies that do not report in the quarterly survey. Accordingly, there will be no duplication in reporting. Annual and quarterly expenditures and planned annual expenditures on new plant and equipment will be collected.

Renewal of approval for these surveys has been requested from the Office of Management and Budget (OMB Control Number 0607–0641) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, DC 20233.

CONCLUSION: I have, therefore, directed that these annual surveys be conducted for the purpose of collecting the data as described.

Dated: January 14, 1993.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 93–2047 Filed 1–27–93; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification of Scientific Research Permit (P250A)

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

Notice is hereby given that as authorized by the marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), Scientific Research Permit No. 473, issued to Mr. Steven Jeffries, Washington Department of Wildlife, Marine Mammal Investigations, 7801 Phillips Road SW., Tacoma, WA 98498, (49 FR 25892), has been modified to extend the effective date through March 31, 1993. This modification became effective upon signature.

Documents pertaining to this Modification and Permit are available for review, by appointment, in the Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910; and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: January 22, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2073 Filed 1–27–93; 8:45 am]

BILLING CODE 3510–22–M

National Telecommunications and Information Administration

Notice of Meeting, Spectrum Planning Advisory Committee

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, notice is hereby given that the Spectrum Planning Advisory Committee (SPAC) will meet on March 4, 1993 from 9 a.m. to 4 p.m. in room 1605 at the United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. Public entrance to the building is on 14th Street between Pennsylvania Avenue and Constitution Avenue.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Discussion of the implementation of actions resulting from the NTIA spectrum study U.S. Spectrum Management: Agenda for the Future;

(2) Report of upcoming CITEL Conferences;

(3) Report on the NTIA Openness Program Policy Changes;

(4) Discussion of Simplification of the International Radio Regulations;

(5) Report on the NTIA Notice of Inquiry and Comprehensive Data Base.

The meeting will be open to public observations. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before February 15, 1993. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Executive Secretary, SPAC, Mr. Richard Lancaster, National Telecommunications and Information Administration, room 4090, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4487.

Dated: January 21, 1993.

Richard Lancaster,

Executive Secretary, Spectrum Planning Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 93–2033 Filed 1–27–93; 8:45 am]

BILLING CODE 3510–60–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 18 February at 10 a.m. in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 21 January 1993.

Charles H. Atherton,

Secretary.

[FR Doc. 93–2059 Filed 1–27–93; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposal To Register Certain Non-Member Officials of Member Firms and To Require Membership of Certain Non-Member Parent Firms

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On October 7, 1992, the Commission published in the **Federal Register** a notice of a proposed new Chicago Board of Trade ("CBT") Regulation 230.03 which would establish procedures requiring registration of certain non-member officials of member firms and application for membership by certain non-member parent firms. 57 FR 46151 The comment period on the proposed new regulation originally was scheduled to expire on November 6, 1992, however, by two subsequent Commission actions, the comment period was extended until January 21, 1993. 57 FR 53887 (November 13, 1992) and 58 FR 91 (January 4, 1993).

The Futures Industry Association and the CBT have both requested that the public comment period for CBT Regulation 230.03 be extended so that they could fully address the issues raised by the proposal.

In order to ensure that all interested parties have an opportunity to submit meaningful comments, the Commission has determined to grant a 32-day extension of the comment period for the CBT's proposal.

DATES: Comments must be submitted by February 22, 1993.

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

Issued in Washington, DC on January 21, 1993 by the Commission.

Alan L. Seifert,

Deputy Director.

[FR Doc. 93–2043 Filed 1–27–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Environmental Advisory Board

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of open meeting.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L 92–463), this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is open to the public.

DATES: The meeting will be held from 8 a.m., Wednesday, March 1993, to 10:30 a.m., Friday, March 12, 1993.

ADDRESSES: The meeting will be at the Benson Hotel, 309 Southwest Broadway, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Dr. William L. Klesch, Chief, Office of Environmental Policy, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 272–0166.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the subject meeting on "Partnering and Endangered Species Management" follows:

Wednesday, March 10, 1993

8 a.m.—Meeting Opens

8:15 to 9:30 a.m.—Chief of Engineers Opening statement Environmental Advisory Board Opening Statement, Old Business

9:45 to 11:45 a.m.—Panel Discussion: Endangered Species—Their Linkage to Holistic Ecosystem Planning and Management

1 to 3 p.m.—Panel Discussion: Socio-economic and Cultural Implications of Endangered Species—How to Value These Resources Within Water Resources Development

3:20 to 5 p.m.—Panel Discussion: Institutional Problems with the Endangered Species Act—Difficulties of Compliance and Implementation

Thursday, March 11, 1993

8 to 9:40 a.m.—Panel Discussion: Potential for Partnerships When Dealing with Endangered Species—What Works and What Doesn't

Special Note: Question and answer and public comment periods are scheduled to follow each panel discussion.

10:30 a.m.—Environmental Advisory Board Adjourns to Prepare a Report to the Chief of Engineers

Friday, March 12, 1993

8 to 9 a.m.—Report of the Environmental Advisory Board to the Chief of Engineers

9:15 to 10 a.m.—Response of the Chief of Engineers

10 to 10:30 a.m.—Public Comment and Meeting Adjournment.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–2060 Filed 1–27–93; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0089]

Clearance Request for Standard Form 1444, Request for Authorization of Additional Classification and Rate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0089).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 1444, Request for Authorization of Additional Classification and Rate.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This regulation prescribes labor standards for federally financed and assisted construction contracts subject to the Davis-Bacon and Related Acts (DBRA), as well as labor standards for nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA).

The recordkeeping requirements in this regulation, 48 CFR ch. 1, § 22.406, are a restatement of requirements cleared under OMB control numbers 1215–0140, 1215–0149, and 1215–0017 for 29 CFR 5.5(a)(1)(i), 5.5(c), and 5.15 (records to be kept by employers under the Fair Labor Standards Act (FLSA), 29 CFR part 516, which is the basic recordkeeping regulation for all the laws administered by the Wage and Hour Division of the Employment Standards Administration).

48 CFR ch. 1, § 22.406–3, implements the recordkeeping and information collection requirements prescribed in 29 CFR 5.5(a)(1)(iii) cleared under OMB control number 1215–0140 (also prescribed at 48 CFR 22.406 under OMB control number 9000–0089), by providing SF 1444, Request for Authorization of Additional Classification and Rate, for the contractor and the Government to enter the recordkeeping and information collection data required by 29 CFR 5.5(a)(1)(ii) prior to transmitting the data to the Department of Labor.

This SF 1444 places no further burden on the contractor or the Government other than the information collection burdens already cleared by OMB for 29 CFR part 5.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Total annual responses, 1; and total response burden hours, 630.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0089, Standard Form 1444, Request for Authorization of Additional Classification and Rate, in all correspondence.

Dated: January 21, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93–2061 Filed 1–27–93; 8:45 am]

BILLING CODE 6820–34–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 93–1]

Standards Utilization in Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Standards Utilization in Defense Nuclear Facilities. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before March 1, 1993.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: January 25, 1993.

John T. Conway,

Chairman.

Dated: January 21, 1993

Several of the Board's recommendations have emphasized the importance of an effective program of standards utilization in defense nuclear facilities. By so doing, the Board has shown that it considers the detailed review of ongoing operations for compliance with DOE Orders (and applicable consensus standards) as an essential measure in assuring that defense nuclear facilities are being operated in a safe manner.

The Board has noted significant progress by DOE in the issuance of new and revised nuclear safety orders that more explicitly delineate requirements in such areas as: unreviewed safety question determinations, technical safety requirements, nuclear safety analysis reports, design requirements and nuclear criticality safety. However, the Board's ongoing review of the use of standards in defense nuclear facilities has disclosed a number of potential inconsistencies in the manner in which DOE Orders related to nuclear safety are applied at facilities that produce and process fissile materials, relative to those facilities that assemble, disassemble, and test nuclear weapons. The Board notes that DOE orders differentiate between nuclear safety and "nuclear explosive safety," (the latter is defined by DOE Order 5610.11, Nuclear Explosive Safety); however, the Board considers that certain basic safety principles apply to the handling of fissile materials, regardless of the form that the material is in.

For example, a number of orders related to nuclear safety are explicitly excluded from applicability to facilities that assemble, disassemble and test nuclear weapons, while others are applicable only to "nuclear facilities," (as defined by DOE Order 5480.5, Safety of Nuclear Facilities). Those that apply to "nuclear facilities do not necessarily apply to facilities that assembly, disassemble and test nuclear weapons. In other technical areas, such as quality assurance, essentially different programs have been put in place (ie., DOE–AL directives QC–1 and QC–2, as opposed to DOE Order 5700.6C).

The Board is committed to ensuring the level of safety assurance at those facilities that assemble, disassemble and test nuclear weapons is at least as rigorous as that required at other defense nuclear facilities and that it can be measured to compare with the level of safety assurance provided to the public and site workers by commercial nuclear material processing facilities.

The above being recognized, the Board recommends that:

1. DOE review its list of orders and directives related to nuclear safety and determine those that apply to facilities and operations that assemble, disassemble and test nuclear weapons.
2. DOE evaluate the level of nuclear safety assurance provided by the orders and directives applicable to facilities that assemble, disassemble and test nuclear weapons and compare it to the level of safety assurance provided by DOE Orders and directives applicable to other DOE defense nuclear facilities.
3. DOE develop a plan for addressing any deficiencies found by the above two reviews.
4. Priority be given by DOE to completing site-wide order compliance reviews at facilities that assemble, disassemble and test nuclear weapons; with special emphasis placed on the Pantex Plant.

John T. Conway,

Chairman.

Appendix—Letter to Acting Secretary of Energy

January 21, 1993.

Ms. Linda G. Stuntz, Acting Secretary of Energy, Washington, DC 20585.

Dear Ms. Stuntz: On January 21, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–1 which is enclosed for your consideration. Recommendation 93–1 deals with Standards Utilization in Defense Nuclear Facilities.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms. The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 93–2084 Filed 1–27–93; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF ENERGY

DOE Response to Recommendation 92–7 of the Defense Nuclear Facilities Safety Board Concerning Training and Qualification Throughout the Defense Nuclear Facilities Complex

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 92–7 of the Defense Nuclear Facilities Safety Board, published in the **Federal Register** on September 28, 1992, (57 FR 44561) concerning training and qualification of operations, maintenance, and support personnel and supervisors at defense nuclear facilities.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before March 1, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on January 19, 1993.

Mario P. Fiori,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

January 19, 1993.

The Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, suite 700, Washington, DC 20004.

Dear Mr. Conway: On September 22, 1992, you issued Recommendation 92–7, dealing with training and qualification throughout the defense nuclear complex.

A very important element of the Recommendation is that the Department of Energy (DOE) "expand senior management's involvement" in the implementation and effectiveness of training programs. Senior DOE line management must be responsible for the performance of its staff and contractors; to this end, senior DOE line management must be fully aware and involved in the development and implementation of technical training programs at their assigned facilities and sites. I have emphasized this underlying principal of senior management involvement in realigning the Department's functions and organizations through Secretary of Energy Notice 6.

I also believe a dedicated office reporting to the Under Secretary is essential to focus all of the Department's technical (nuclear and non-nuclear) education and training efforts. Such a major organizational change is needed to encompass all of these efforts for DOE and contractors' staff and managers involved in either nuclear or non-nuclear activities. However, it is not appropriate for me to take such action so close to a change in Administration. I will strongly recommend to the new Secretary that such action should take place early in the new Administration. In the meantime, I am directing the Program Secretarial Officers to use the established process for enhancing the five-year plan for technical training to identify all of the DOE's technical training efforts, to assess how to effectively integrate them, and prepare the implementation plan for Recommendation 92–7.

I am particularly pleased to read your favorable comments concerning the sufficiency of DOE Orders 5480.18A "Accreditation of Performance-Based Training for Category A Reactors and Nuclear Facilities" and DOE Order 5480.20 "Personnel Selection, Qualification, Training, and Staffing Requirements at DOE Reactor and Non—Reactor Nuclear Facilities" which address training and qualification. DOE has expended considerable effort and resources to develop directives for reactor and non-reactor nuclear facilities which parallel and in many cases exceed the requirements for commercial Nuclear Regulatory Commission (NRC) licensed non-reactor facilities.

The Department, in response to prior recommendations of the Board, will conduct several evaluations which directly address the concerns expressed by the Board. In addition, I am establishing a Departmental level Technical Training Executive Committee made up of senior executive level personnel from the Secretarial Program Offices to set strategy, foster coordinated planning and oversee DOE and contractor technical training. The Technical Training Executive Committee is directed as its first priority to conduct a 6-month study to provide the Secretary of Energy with the necessary information and options to enable a decision on the establishment of a centralized technical education and training organization within DOE in order to support line management in the development of technical training policy and requirements and planning and delivery of DOE and contractor technical training program. This committee will determine with personnel, funding, organizational or managerial strengthening actions may be needed.

Like many of our new policies, training and qualification programs are not yet implemented to the degree we expect, and these programs require high-level attention. We must seek continuous improvement in this efforts for our training and qualification programs at the defense nuclear facilities. As has been noted in the past by internal DOE studies, as well as reviews by the National Academy of Sciences (NAS) and the Defense Nuclear Facilities Safety Board, the Department of Energy must acquire, train and develop the technical resources and talent necessary to ensure the safe operation of DOE facilities. It is unacceptable for us to allow a return to those days when there existed as described by NAS, "a marked imbalance in technical capabilities and experience between the contractors and the DOE staff." DOE senior managers must foster the recruitment, training and development of technical staff so as to promote line management and accountability, to develop technical inquisitiveness, and to improve DOE standards of performance continuously. I believe that successful models for education and training of managers, staff and technicians within the commercial industry, demonstrate the need for a dedicated organizational unit.

Your recommendations in 92–7 are fully consistent with our ongoing initiatives, and consequently, I accept all elements of Recommendation 92–7. The enclosed directive describes the process that will be used to prepare, within 90 days, the implementation plan for Recommendation 92–7. This approach should provide the springboard for integrating all of the Department's technical training activities and also provide a specific plan of action for defense nuclear activities in regard to training and qualifications.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 93–2088 Filed 1–27–93; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award a Cooperative Agreement Research Triangle Institute—Center for Economic Research

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(B), it is making a financial assistance award under Cooperative Agreement Number DE–FC01–93EP10029 to the Research Triangle Institute (RTI), to conduct a 5-year, research program entitled "Economic Analysis of Environmental Benefits and Cost."

SCOPE: This cooperative agreement will aid in research activities that will assist decision makers in evaluating the environmental benefits and costs of energy policies. This proposed research activity will improve methods for conducting economic analyses of the benefits and costs of policy alternatives and increase the quantity and quality of data available for policy analyses. RTI proposes to design and carry out an experiment ("Contingent Nonuse Values for Non-Environmental Commodities") involving tradeoffs between natural resources and human cultural resources. Results could provide insights into the relevance of such values for policy-making generally and help in evaluating the benefits and costs of a particular energy project or policy. The DOE and RTI are cost-sharing this cooperative agreement. The DOE will provide estimated funding in the amount of $2,149,957 and RTI will provide an estimated $107,498.

The purpose of this project is to conduct research that is intended to more fully value the components of a benefit/cost analyses that involves both traditional market-determined costs and benefits and non-market (non-use) costs and benefits to society.

The overall objectives of the project are to:

(1) Estimate non-use values for both environmental and non-environmental services affected by an energy policy;

(2) Test whether expressed values differ for different types of services and for different levels of a given service; and

(3) Test whether responses are consistent with restrictions imposed by economic theory, including reasonable values for income elasticities, appropriate effects of taste variables, and consistency with utility-theoretic functional forms.

The eligibility of RTI was in accordance with DOE Financial Assistance Regulations, 10 CFR 600.7(b)(2)(i) (B), (H); 600.7(b)(2)(ii), and 600.14(d). The RTI's application was submitted on an unsolicited basis and has been determined to be meritorious based on a general evaluation of the factors set forth at 10 CFR 600.14(d).

The anticipated term of the proposed cooperative agreement is 60 months from the date of the award.

FOR FURTHER INFORMATION CONTACT:
U.S. Department of Energy, Office of Placement and Administration, ATTN: Juanita Ellis, PR–322.4, 1000 Independence Ave., SW., Washington, DC 20585.

Dated: January 19, 1993.

Scott Sheffield,

Acting Director, Division "B", Office of Placement and Administration.

[FR Doc. 93–2085 Filed 1–27–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER92–575–000, et al.]

Wisconsin Electric Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 21, 1993.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Co.

[Docket No. FR 92–575–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on January 11, 1993, tendered for filing an amendment in the above-referenced proceeding regarding an Interchange Agreement between itself and Minnesota Power and Light Company. The amendment addresses the concerns of the staff in its December 11, 1992 deficiency letter.

Wisconsin Electric and Minnesota Power and Light Company requests an effective date coincident with the Commission's acceptance of the Agreement.

Copies of the filing have been served on the Minnesota Public Utilities Commission and the Public Service Commission of Wisconsin.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Co.

[Docket No. ER93–317–000]

Take notice that on January 11, 1993, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) and Public Service Company of New Hampshire (PSNH) tendered for filing a Short Term Power Agreement for the purchase by Rochester Gas and Electric Corporation of system capacity and energy from CL&P and PSNH.

NUSCO requests that the Commission waive its filing regulations to the extent necessary to permit the rate schedule change to become effective March 12, 1993.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulations.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER93–318–000]

Take notice that on January 12, 1993, Florida Power Corporation filed a notice of cancellation of Rate Schedule FERC No. 140, an inadvertent energy agreement with the City of St. Cloud, which expired by its terms on May 1, 1990.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corp.

[Docket No. ER93–324–000]

Take notice that Florida Power Corporation (Florida Power), on January 14, 1993, filed a request for approval of a supplement to the service agreement between itself and Tampa Electric Company (TECO) under Florida Power's T–1 Transmission Tariff. The supplement describes transmission service to be provided for TECO's service to the City of Ft. Meade beginning on or about March 15, 1993. Florida Power requests that service be allowed to become effective March 15, 1993.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Boston Edison Co.

[Docket No. ER93–316–000]

Take notice that on January 11, 1993, Boston Edison Company filed notices of cancellation for the following Rate Schedule Numbers:

Rate No.	Other party	Effective date
0071 ...	Fitchburg	12/09/73
0106 ...	Bangor Hydro	06/14/75
0107 ...	Bangor Hydro	06/14/75
0128 ...	Braintree	11/01/80
0134 ...	Reading	08/14/81
0136 ...	MMWEC	10/19/82
0138 ...	MMWEC	07/01/82
0139 ...	Northeast Utilities	11/01/82
0140 ...	Green Mountain Power	11/01/82
0141 ...	Taunton Municipal	11/01/82
0143 ...	New England Power	09/14/83
0156 ...	New England Power	11/01/87
0157 ...	Central Maine Power	11/01/87
0158 ...	Northeast Utilities	03/01/88

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Co.

[Docket No. ER88–83–009]

Take notice that on January 7, 1993, Southern California Edison Company tendered for filing its report in the above-referenced docket.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Tampa Electric Co.

[Docket No. ER93–320–000]

Take notice that on January 12, 1993, Tampa Electric Company (Tampa Electric) tendered for filing revised tariff sheets for the purpose of converting its existing FERC Electric Tariff, Original Volume No. 1, from a full requirements to an all requirements tariff. Tampa Electric states that the proposed revisions do not affect the rates under the tariff.

Tampa Electric also tendered for filing a Service Agreement with the City of Fort Meade, Florida (Fort Meade) under the revised tariff.

Tampa Electric proposes an effective date of March 15, 1993, for the revised tariff sheets and Service Agreement.

Copies of the filing have been served on Fort Meade, the Sebring Utilities Commission, and the Florida Public Service Commission.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Co.

[Docket No. ER93–148–000]

Take notice that on January 6, 1993, Idaho Power Company (IPC) tendered for filing, an amendment to its filing in the above-referenced docket.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric Gas Co.

[Docket No. ER92–781–001]

Take notice that on January 4, 1993, Public Service Electric and Gas Company (PSE&G) in response to discussions with Commission Staff, tendered for filing the First Supplemental Agreement by and between Public Service Electric and Gas Company and New York Power Authority which reduces the maximum reservation rate.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Northeast Utilities Service Co.

[Docket No. ER93–294–000]

Take notice that Northeast Utilities Service Company (NUSCO) on December 23, 1992, tendered for filing an agreement to provide non-firm transmission service to Niagara Mohawk Power Corporation (Niagara) under the NU System Companies FERC Electric Service Tariff No. 2.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Power Co., Ohio Power Co.

[Docket No. ER93–295–000]

Take notice that on December 23, 1992, American Electric Power Service Corporation, on behalf of Kentucky Power Company (KPCO) and Ohio Power Company (OPCO), tendered for filing information supporting a change in the loss percentage used in the Agreement among the City of Hamilton, Ohio (Hamilton), KPCO, OPCO, and American Municipal Power-Ohio, Inc.

(AMP–Ohio), dated May 1, 1988 (1988 Agreement). The 1988 Agreement has been previously designated as OPCO's Rate Schedule FERC No. 96.

The 1988 Agreement provides, within certain limits, that the loss percentage be updated based on load flow studies when appropriate.

A copy of the filing was served upon the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, Hamilton, and AMP–Ohio.

An effective date of January 1, 1993 is being requested.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Project Orange Associates, L.P.

[Docket No. QF88–296–003]

On January 14, 1993, Project Orange Associates, L.P., 520 East Taylor Street, Syracuse, New York 13202, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. The instant request for recertification is due to changes in the ownership of the facility. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in the City of Syracuse, New York. The Commission previously certified the facility as a qualifying cogeneration facility, G.A.S. Orange Development, Inc., 43 FERC ¶ 62,370 (1988). A notice of self-recertification was filed on September 25, 1989 and on November 18, 1991 the facility was recertified as a qualifying cogeneration facility, Project Orange, L.P., 57 FERC ¶ 62,123 (1991).

Comment date: March 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Georgia Power Co.

[Docket No. ER93–325–000]

Take notice that on January 14, 1993, Georgia Power Company (Georgia Power) tendered for proposed FERC Electric Tariff, First Revised Volume No. 2 (partial requirement service). Based on the twelve month period ended July 31, 1992, the proposed changes would be equivalent to a rate increase to jurisdictional partial requirements customers of approximately $2.785 million. The filing represents a negotiated increase between Georgia Power and both of its jurisdictional customers. The parties intend for the revised tariff to become effective January 1, 1993, and Georgia Power requests waiver of the Commission's notice requirements.

Georgia Power asserts that its costs have escalated steadily since the filing of its last partial requirements rate case in 1985, resulting in an increase in the revenue required from wholesale service. The data submitted with Georgia Power's filing allegedly demonstrate that current rates do not provide a fair return on Georgia Power's partial requirements service. In addition, the revised tariff contains further negotiated refinements to the Company's partial requirements tariff.

Georgia Power states that it has served copies of the filing on its partial requirements customers.

Comment date: February 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Jackson Valley Energy Partners, L.P.

[Docket Nos. QF82–208–006 and QF82–208–007]

On January 15, 1993, Jackson Valley Energy Partners, L.P. (Applicant) tendered for filing supplemental information in this docket.

The supplemental information pertains to the distribution of stream of benefits between the utility and non-utility partners. No determination has been made that the submittal constitutes a complete filing.

Comment date: February 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. United Illuminating Co.

[Docket No. ER93–3–000]

Take notice that on January 14, 1993, the United Illuminating Company (UI) tendered for filing amendments to its Wholesale Electric Sales Tariff (Wholesale Tariff) and its Transmission Service Tariff (Transmission Tariff). The Wholesale Tariff and the Transmission Tariff were originally filed on October 1, 1992 in this docket.

The Wholesale Tariff will provide preapproval for UI to engage in firm and non-firm sales of electric capacity and associated energy at market-based rates. The present amendment modifies the billing procedures thereunder.

The Transmission Tariff is an open access transmission tariff designed to mitigate any market power that UI might have through the ownership and control of transmission facilities. The present amendment clarifies the pricing provisions of the Transmission Tariff and clarifies the scope of UI's obligation to provide service under the Transmission Tariff.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Commonwealth Edison Co.

[Docket No. ER92–409–000]

By order, dated October 23, 1992, the Commission accepted Amendment No. 2, dated October 21, 1991, to the Electric Coordination Agreement between Commonwealth Edison Company (Edison) and the Village of Winnetka, Illinois (Village). Amendment No. 2 was made effective June 1, 1992. Take notice that on January 12, 1993, Edison filed a letter agreement, dated October 26, 1992, whereby Edison and Village agreed to commence service under Service Schedules G and H on November 1, 1992.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Power & Light Co.

[Docket No. FA92–16–001]

Take notice that on January 8, 1993, Wisconsin Power & Light Company (WP&L) tendered for filings its refund report in the above-referenced docket.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. Louis Dreyfys Electric Power Co.

[Docket No. ER92–850–001]

Take notice that Louis Dreyfus Electric Power Inc. (LDEP) on January 4, 1993, tendered for filing pursuant to a letter-order issued December 2, 1992, a revision to its Rate Schedule No. 1, to be effective on December 1, 1992. The revision requires a purchaser to certify that the rate it is paying is at or below the purchaser's avoided cost.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. PacifiCorp

[Docket No. ER93–247–000]

Take notice that PacifiCorp on January 12, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, an amendment to its filing under this Docket.

Copies of this filing were supplied to Bonneville and the Public Utility Commission of Oregon.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Edison Co.

[Docket No. ER93–321–000]

Take notice that on January 12, 1993, Commonwealth Edison Company (Edison) tendered for filing Notices of Cancellation with respect to Rate Schedule FERC No. 31 (a letter agreement with Iowa Electric Light and

Power Company (Iowa) and Rate Schedule FERC No. 32 (sale of Firm Power to Wisconsin Public Power Inc. SYSTEM (WPPI).

Copies of this filing were served upon Iowa, WPPI and the Illinois Commerce Commission.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Midwest Power

[Docket No. ER93–322–000]

Take notice that on January 7, 1993, Midwest Power tendered for filing the third amendment to the original filing for this docket dated January 27, 1992.

Midwest Power states that the third amendment to the filing provides for a fully executed Exhibit F of the General Facilities Agreement between Midwest Power and Central Iowa Power Cooperative (CIPCO).

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Co.

[Docket No. ER93–225–000]

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated January 11, 1993, tendered for filing an amendment to its Interchange Agreement with Oglethorpe Power Corporation, filed in the above-referenced docket.

In the filing, Service Schedule A was amended to: (1) Include language which would limit the duration of a transaction under this schedule to one year or less; (2) require LG&E to file with the Commission any charges made to compensate for taxes and other expenses incurred that would not have been incurred if the transaction had not been made and are not specifically stated in the service schedule; and (3) limit the daily demand charge such that it does not result in a greater charge than would have been made under the weekly rate.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Co.

[Docket No. ER93–319–000]

Take notice that on January 12, 1993, Tampa Electric Company (Tampa Electric) tendered for filing a Contract for Interchange Service between Tampa Electric and the City of Fort Meade, Florida (Fort Meade).

Tampa Electric also tendered for filing, as a supplement to the Contract for Interchange Service, Service Schedule D, providing for long-term interchange service.

Finally, Tampa Electric tendered for filing, as a supplement to Service Schedule D, a Letter of Commitment providing for the sale to Fort Meade of capacity and energy from Tampa Electric's Big Bend Station coal-fired generating resources.

Tampa Electric proposes an effective date of March 15, 1993, for the Contract for Interchange Service, Service Schedule D, and Letter of Commitment.

Copies of the filing have been served on Fort Meade and the Florida Public Service Commission.

Comment date: February 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Co.

[Docket No. ER92–853–000]

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated January 11, 1993, tendered for filing an amendment to its Interconnection Agreement with Southern Indiana Gas & Electric Company (Southern Indiana) filed in the above-referenced docket.

In the filing, several service schedules were amended to: (1) Include language which would limit the duration of certain transactions to one year or less; (2) require LG&E and Southern Indiana to file with the Commission any charges made to compensate for taxes and other expenses incurred that would not have been incurred if the transaction had not been made and are not specifically stated in the service schedule; (3) limit the daily demand charge such that it does not result in a greater charge than would have been made under the weekly rate; and (4) limit the capacity sold by Southern Indiana under the prices contained in the agreement.

A copy of the filing was served upon the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: Febraury 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

25. Pepperell Power Associates Limited Partnership

[Docket No. ER93–323–000]

Take notice that on January 13, 1993, Pepperell Power Associates Limited Partnership (Pepperell) tendered for filing, pursuant to 18 CFR 35.1, 35.12, proposed Rate Schedule FERC No. 1 applicable to the sale of energy and capacity to Commonwealth Electric Company (Commonwealth) from a cogeneration facility located in Pepperell, Massachusetts. Pepperell requests that the Commission accept its rates for filing, waiver the 60-day notice requirement, and waiver any regulations that are not inappropriately applicable to qualifying facilities or independent power producers.

A copy of the Application was served on Commonwealth.

Comment date: February 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2029 Filed 1–27–93; 8:45 am]

BILLING CODE 6717–01–M

[Liberty Pipeline Co., Docket No. CP92–715–000, et. al.]

Liberty Pipeline Project: Public Scoping Meeting; Intent to Prepare an EIS Request for Comments on Scope of Review

In the matter of Liberty Pipeline Co., Docket No. CP92–715–000; Texas Eastern Transmission Corp., Docket Nos. CP92–716–000, CP92–719–000, CP92–720–000, and CP93–108–100; Texas Eastern Transmission Corp., Docket No. CP 92–717–000 and Trunkline Gas Co., Docket No. CP92–718–000; Transcontinental Gas Pipe Line Corp., Docket No. CP92–721–000; Texas Gas Transmission Corp., Docket Nos. CP92–730–000 and CP92–734–000.

January 22, 1993.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) on the facilities proposed in the above-referenced dockets for the Liberty Project. The

Liberty Project is a natural gas pipeline proposal involving construction of natural gas pipeline facilities in Kentucky, Indiana, Ohio, Pennsylvania, New Jersey, and across Lower New York Harbor to a point near JFK International Airport in New York.

Pursuant to section 7(c) of the Natural Gas Act and 18 CFR 157.7(a) of the Commission's regulations, Liberty Pipeline Company (Liberty), Texas Eastern Transmission Corporation (Texas Eastern), Trunkline Gas Company (Trunkline), Transcontinental Gas Pipe Line Corporation (Transco), and Texas Gas Transmission Corporation (Texas Gas), have filed applications seeking certificates of public convenience and necessity for authorization of construct and operate approximately 268.3 miles of loop, replacement, and new pipeline; 61,650 horsepower (hp) of compression at 2 new and 8 existing compressor stations; 3 taps; 4 new meter stations; and 1 regulator station expansion. Minor modifications are proposed at four compressor stations and one meter station. Additionally, Transco proposes hydrostatic testing of 29.4 miles of existing pipeline in order to upgrade its system.

The purpose of the proposed project is to provide the following customers with firm transportation service of natural gas:

Customer	Maximum volume dekatherms/day
Consolidated Edison Company of New York, Inc	166,667
Long Island Lighting Company	149,166
Brooklyn Union Gas Company	133,667
New York Power Authority	35,000
Elizabethtown Gas Company	29,000
KIAC Partners	16,000
Staten Island Cogeneration Corporation	11,600
Nissequoque Cogen Partners	9,500
Eastern Shore Natural Gas Company	1,000

The applicants intend to complete construction and place the proposed facilities in service by November 1, 1994. The total estimated cost of the proposed facilities is approximately $775,692,367.

By this notice, the FERC staff is requesting written comments on the scope of the analysis that should be conducted for this draft EIS (DEIS). All comments will be reviewed prior to the preparation of the DEIS, and significant environmental issues will be addressed. Comments should focus on potential environmental effects, alternatives to the proposal (including alternative routes), and measures to mitigate adverse impact. Written comments must be submitted by March 15, 1993 in accordance with the scoping and comment procedures providing at the end of this notice.

Proposed Facilities

Table 1 lists the proposed pipelines facilities. The general location of these facilities is shown on figure 1.[1] Table 2 lists the proposed aboveground facilities.

In Docket No. CP92–715–000, Liberty proposes to construct 38.2 miles of 30-inch-diameter pipeline from the New Jersey shore in Middlesex County, across Lower New York Bay, to queens County, New York on Long Island. Additionally, it proposes to construct a new meter station and two delivery taps.

In Docket No. CP92–716–000, Texas Eastern Proposes to construct 10.9 miles of 30-, 36-, and 42-inch-diameter loop and 9.7 miles of 36-inch-diameter replacement pipeline. This includes 6.3 miles in Ohio, 13.7 miles in Pennsylvania, and 0.6 mile in New Jersey. Additionally, it proposes to install three new impellers at one compressor station and to modify one meter station.

In Docket No. CP92–719–000, Texas Eastern proposes to construct 53.6 miles of 30- and 36-inch-diameter loop and 5.1 miles of 24-inch-diameter replacement pipeline. This includes 32.9 miles in Ohio and 25.8 miles in Pennsylvania. Additionally, it proposes to construct 4,600 hp of compression at 1 new compressor station and 7,000 hp of additional compression at 2 existing compressor stations, make minor modifications at 2 other existing compressor stations, and construct 1 new meter station.

In Docket No. CP92–720–000, Texas Eastern proposes to construct 24.9 miles of 30-, 36-, and 42-inch-diameter loop; 35.5 miles of 36-inch-diameter replacement; and 11.7 miles of 24-inch-diameter new lateral pipeline. This includes 23.5 miles in Ohio, 34.8 miles in Pennsylvania, and 13.8 miles in New Jersey. Additionally, it proposes to construct 29,300 hp of additional construction at 4 existing compressor stations, install two new impellers at 1 other existing compressor station, and to construct 1 new meter station.

In Docket Nos. CP92–717–000 and CP92–718–000, Texas Eastern and Trunkline propose to construct 5,350 hp of compression at 1 new compressor station and 3,400 hp of compression at 1 existing compressor station.

In Docket No. CP92–721–000, Transco proposes to construct 17.2 miles of 36-inch-diameter loop and 1.1 mile of 26-inch-diameter new lateral pipeline in Pennsylvania (17.2 miles) and New Jersey (1.1 miles). It also proposes to hydrostatically test and upgrade 29.4 miles of 42-inch-diameter existing pipeline. Additionally, it proposes to construct a 16-inch tap, 12,000 hp of additional compression at 1 existing compressor station, 1 new meter station, and 1 regulator station expansion.

In Docket No. CP92–730–000, Texas Gas proposes to construct 41.0 miles of 36-inch-diameter loop pipeline in Kentucky (30.0 miles) and Ohio (11.0 miles).

In Docket No. CP92–734–000, Texas Gas proposes to construct 10.8 miles of 36-inch-diameter loop pipeline in Kentucky (8.0 miles) and Indiana (2.8 miles).

In Docket No. CP92–108–000, Texas Eastern proposes to construct 5.4 miles of 30- and 36-inch-diameter loop pipeline and 3.3 miles of 36-inch-diameter replacement pipeline in Ohio (4.4 miles) and Pennsylvania (4.3 miles).

Construction Procedures

The majority of the proposed pipeline would be constructed within a 75-foot-wide construction right-of-way.

Loop pipelines would be built adjacent and connected at both ends to existing pipelines. Approximately 25 feet of right-of-way would overlap the existing right-of-way, 25 feet of the required construction right-of-way would be new permanent right-of-way, and 25 feet would be temporary construction right-of-way. The proposed right-of-way cross-section could vary somewhat to allow for site-specific characteristics. However, the amount of overlap with existing rights-of-way is limited by construction constraints inherent in working adjacent to existing pipelines.

Replacement pipelines would be placed in the same ditch after removal of existing pipelines. The existing permanent rights-of-way normally would not be expanded. However, new permanent right-of-way up to 25 feet wide may be required where the new pipeline is not placed in the same ditch as the original pipeline due to site-specific construction constraints.

Construction of the pipelines would normally follow standard pipeline construction methods: Right-of-way clearing and grading; trenching; pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. The applicants propose to implement erosion control and revegetation measures and to use special construction techniques for wetland and water crossings and for construction in residential areas. These construction procedures and mitigation plans will be discussed further in the DEIS.

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[1] Tables and figures referenced in this notice are not being printed in the **Federal Register**, but have been included in the mailing to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371.

Pipeline segments would be hydrostatically tested according to U.S. Department of Transportation minimum safety standards and specifications (49 CFR part 192) before being placed in service. No chemicals would be used during testing, and the applicants would be required to obtain appropriate Federal and state discharge permits prior to testing.

Current Environmental Issues

The DEIS will address the environmental concerns identified by the FERC staff, intervenors, concerned resource agencies, and individuals. At a minimum, the following issues will be considered in the DEIS:

Geology and Soils
- —Erosion control
- —Geological hazards
- —Impact on exploitable mineral resources such as sand, gravel, and coal
- —Effect on cropland
- —Right-of-way restoration, revegetation, and maintenance

Water Resources
- —Effect on potable water supplies
- —Effect on surface water quality
- —Effect on wetland hydrology
- —Impact of stream and river crossings on sediment load
- —Effect on crossing Wolf Run Lake, Aquetong Lake, Loyalhanna Lake, Burt Creek Lake, and other significant waterbodies

Biological Resources
- —Impact on wetlands
- —Impact on forestlands
- —Impact of habitat alteration
- —Short- and long-term effects of right-of-way clearing and maintenance
- —Impact on threatened and endangered species
- —Impact on fisheries
- —Indirect effect on Jamaica Bay Wildlife Refuge

Marine Resources
- —Impact on shellfish beds
- —Impact on coastal wetlands
- —Impact on commercial fisheries
- —Impact on marine transportation
- —Effects of dredging contaminated sediments
- —Effects on Jamaica Bay, including Motts Basin, Head of Bay, and Bergen Basin

Cultural Resources
- —Effect on properties listed on or eligible for the National Register of Historic Places

Land Use
- —Impact on residences
- —Impact on Inwood Country Club Golf Course;
- —Impact on Wildwood Country Club Golf Course
- —Impact on Woodhaven Country Club Golf Course
- —Impact on public lands including State Game Lands, Buchanan and Tiadaghton State Forests, and Laurel Ridge State Park
- —Impact on Delaware/Raritan Canal and Towpath
- —Impact on Laurel Highlands Hiking Trail
- —Impact on Ohio wild and scenic rivers, including Scioto River and Big Darby Creek
- —Effect of construction on Kin-Buc Landfill Superfund Site
- —Indirect effect on Jamaica Bay Wildlife Refuge and Gateway National Recreation Area
- —Impact on JFK International Airport

Air Quality
- —Effect of compressor station operation on air quality

Noise
- —Effect of compressor station operation on nearby noise-sensitive receptors

Reliability and Safety
- —Risk assessment of hazards associated with natural gas pipelines

Alternatives
- —Route variations to avoid sensitive areas

Comments are solicited on any additional topics of environmental concern from residents and others in the project area. After comments in response to this notice are received and analyzed, and the various issues investigated, the FERC staff will prepare a DEIS for the Liberty Project. The subsequent final EIS will be based on the FERC staff's independent analysis of the proposed project and, together with the comments received, will constitute part of the record to be considered by the Commission in this proceeding.

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the production of the DEIS:

Advisory Council on Historic Preservation
Department of Agriculture:
  Soil Conservation Service
  Forest Service
Department of Commerce
  National Marine Fisheries Service
  National Oceanic and Atmospheric Administration
Department of Defense:
  Army Corps of Engineers
Department of Energy
Department of the Interior:
  Bureau of Indian Affairs
  Fish and Wildlife Service
  Geological Survey
  National Park Service
Department of Transportation
  Federal Aviation Administration
Environmental Protection Agency

These, or any other Federal, state, or local agencies desiring cooperating agency status should send a request describing how they would like to be involved to: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC. 20426.

The request should reference Docket No. CP92–715–000, and should be received by March 15, 1993. An additional copy of the request should be sent to the FERC project manager identified at the end of this notice.

Cooperating agencies are encouraged to participate in the scoping process and to provide written information to the FERC. Cooperating agencies are also welcome to suggest format and content specifications to facilitate ultimate adoption of the DEIS. However, the FERC will decide what modifications will be adopted in light of production constraints.

Scoping and Comment Procedures

Public scoping meetings will be conducted in the following cities:

Date	Time	Cities
February 23, 1993	7 p.m	Queens, NY
February 24, 1993	7 p.m	Edison, NJ.

The location of the meeting in Queens is Lawrence Middle School Auditorium, 195 Broadway, Lawrence, NY 11559. The Edison meeting will be held at Middlesex County College, Lhommedieu Hall Amphitheater, Woodbridge Avenue, Edison, NJ 08817.

The purpose of the scoping meetings is to obtain input from state and local governments and from the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to transmit their comments directly to the FERC and not use the scoping meetings for this purpose.

The applicants will present a description of the proposed project. Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental impacts which they believe should be addressed in the DEIS. Anyone who would like to make an oral presentation at the meeting should contact the project manager identified at the end of this notice to have his or her name placed on the list of speakers. Priority will be given to those persons representing groups. A list will be available at the public meeting to allow for non-preregistered speakers to sign-up. A transcript will be made of the meetings and comments will be used to help determine the scope of the DEIS.

Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues, and to identify and eliminate from detailed study the issues that are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before March 15, 1993; reference the appropriate Docket No(s). for those facilities; and should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington DC 20426. A copy of these comments should also be sent to the project manager identified below.

The DEIS will be available for public comment. A 45-day comment period will be provided for review of the DEIS.

Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 380.10(a) and 385.214). After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a final EIS (FEIS) will be published by the staff and distributed. The FEIS will contain the FERC Staff's responses to comments received on the DEIS.

Copies of this notice have been distributed to Federal, state, and local agencies, public interest groups, libraries, newspapers, and other interested individuals. Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information published regarding the Liberty Project will be sent automatically to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the DEIS and subsequent information will only be distributed to those other organizations, local agencies, and individuals who return the DEIS Request Form attached as an appendix to this notice by March 15, 1993.

Additional information about the proposal is available from: Mr. Jeffrey L. Gerber, Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426. Telephone (202) 208–0282.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2031 Filed 1–27–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG93–12–000]

Malacha Hydro Limited Partnership, Notice of Application for Determination of Status as an Exempt Wholesale Generator Status

January 21, 1993

On January 8, 1993, Malacha Hydro Limited Partnershp (Applicant) submitted a request under section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992, seeking a determination by the Commission that Applicant is an "exempt wholesale generator" (EWG). Applicant is a Maryland limited partnership that is directly and exclusively engaged in owning and operating a hydroelectric small power production facility on the Pit River near Fall River Mills in Lassen County, California and selling electric power at wholesale. Applicant intends to retain the qualifying facility status of its facility under the Public Utility Regulatory Policies Act of 1978, while also qualifying itself as an EWG.

Any person desiring to be heard or objecting to the application for exempt wholesale generator status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such petitions or protests must be filed on or before February 11, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2030 Filed 1–27–93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92–162–NG]

Cielo Gas Marketing Co.; Application for Long-Term Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 24, 1992, of an application filed by Cielo Gas Marketing Company (Cielo Gas) to export up to 500,000 Mcf of natural gas per day from the United States to Mexico over a fifteen-year period commencing on the date of first delivery. The proposed exports would be sold to Petroleos Mexicanos (PEMEX), the Mexican national oil and gas company, and directly to industrial end-users in Mexico, as allowed by Mexican law. The requested volumes would be exported primarily through the proposed new Cielo Gas Pipeline, or through existing facilities.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Peter Lagiovane, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116.

Lot Cooke, Office of Assistant General Counsel, for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503.

SUPPLEMENTARY INFORMATION: Cielo Gas is a Texas corporation with its principal place of business in Houston, Texas. It is currently owned by Tejas Gas Corp. (Tejas), a Nevada corporation. However, upon completion of the pending sales negotiations with PEMEX, and prior to construction of the Cielo gas pipeline, Cielo Gas will be jointly owned by Tejas and Ensa-Bradford Natural Gas Pipeline Corporation. The jointly owned Cielo Gas will invest in Cielo Gas Pipeline. This new pipeline company will construct nine miles of 16-inch pipeline connecting Laredo Station in Webb County, Texas, with a proposed border crossing near Laredo, Texas. It will also construct the new border crossing facilities and, if negotiations with PEMEX are successful, will build approximately sixty-three miles of pipeline in Mexico interconnecting with and looping the PEMEX system. Cielo Gas Pipeline Company has applied to the Federal Energy Regulatory Commission for a Presidential Permit and authorization under section 3 of the Natural Gas Act (NGA) to construct new pipeline facilities at the border. Cielo Gas states in its application that it will advise DOE promptly of any changes in its corporate ownership.

The exported gas would come from production areas in South Texas and will be sold to PEMEX and industrial users in Northern Mexico and the border industrial zone. Cielo Gas has advised DOE that all sales of exported gas would result from arms-length negotiations and the prices would be determined by market conditions. Sales are expected to be on both a firm and interruptible basis under 15 or 20-year term contracts. Cielo Gas states that it has not executed any contracts for the sale and purchase of gas at the time the application was filed.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export of natural gas is in the public interest, domestic need for the gas to be exported will be considered and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose the application, should comment on these issues as they relate to the requested export authority.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, and oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Cielo Gas's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 21, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2086 Filed 1–27–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No 90–74–NG]

Goetz Energy Corporation; Order Granting Long-Term Authorization To Export and Import Natural Gas to and From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it issued an order granting Goetz Energy Corporation authorization to export to Canada at St. Clair, Michigan, up to 25,000 Mcf per day of domestic natural gas and to import from Canada at Grand Island, New York, up to 25,000 Mcf per day of natural gas for a 15-year term commencing the date Empire State Pipeline System is placed in service.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 21, 1993

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2087 Filed 1–27–93; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 22, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0004

Title: Sections 1.1307, 1.1308, and 1.1311, Environmental Information Collection Requirements

Action: Extension of a currently approved collection

Respondents: Individuals or households, State or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting

Estimated Annual Burden: 1,156 responses; 2.1 hours average burden per response; 2,428 hours total annual burden

Needs and Uses: Under the terms of the National Environmental Policy Act (NEPA) of 1969, the FCC is required to determine whether the transmitters it licenses or authorizes, significantly affect the "quality" of the human environment. Since the emission of potentially hazardous radiofrequency (RF) radiation is one of several possible environmental effects, the Commission has established rules for evaluating human exposure to RF radiation from FCC-regulated transmitters. The environmental information required by section 1.1307(b) of the Rules is reviewed by attorneys, engineers, and paraprofessionals to determine whether the environmental evaluation is sufficiently complete and in compliance with the Commission's Rules to be acceptable for filing. If collection of this information were not made, the FCC could not ensure compliance with the National Environmental Policy Act (NEPA), specifically, to minimize the potential for significant environmental impact from radiofrequency (RF) radiation from FCC-regulated facilities.

OMB Number: 3060–0170

Title: Section 73.1030, Notifications concerning interference to radio astronomy, research and receiving installations

Action: Extension of a currently approved collection

Respondents: Businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting

Estimated Annual Burden: 30 responses; 1 hour average burden per response; 30 hours total annual burden

Needs and Uses: Section 73.1740 requires licensees to provide simultaneous written notification to the Interference Office at Green Bank, West Virginia, when an application is filed with the FCC proposing to operate a short-term broadcast auxiliary station; or an applicant seeks authority to construct a new broadcast station; or authority to make changes in the frequency, power, antenna height, or antenna directivity of an exiting station within the geographical coordinates of the National Radio Astronomy Observatory site a Green Bank, West Virginia; or the Naval Radio Research Observatory site at Sugar Grove, West Virginia. The data are used by the Interference Office to enable them to file comments or objections with the FCC in response to the notification in order to minimize potential harmful interference to the National Radio Astronomy Observatory site located at Green Bank, West Virginia and the Naval Radio Research Observatory at Sugar Grove, West Virginia.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2100 Filed 1–27–93; 8:45 am]

BILLING CODE 6712–01–M

[CC Docket No. 92–297; FCC 92–538]

Local Multipoint Distribution Service

AGENCY: Federal Communications Commission.

ACTION: Tentative decision.

SUMMARY: This Tentative Decision sought comment on the Commission's award of a tentative pioneer's preference to Suite 12 Group (Suite 12). The action responded to a petition for pioneer's preference filed by Suite 12. The result of this decision, if finalized, is that Suite 12 will receive a license in the new local multipoint distribution service (LMDS) in either the New York or Los Angeles areas.

DATES: Comments are due by March 16, 1993. Reply comments are due by April 15, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Tentative Decision in CC Docket No. 92–297, adopted on December 10, 1992, and released on January 8, 1993. The complete text of this Tentative Decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 329), 1919 M Street, NW., Washington, DC. The complete text of this Tentative Decision also may be purchased from the Commission's duplication contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street NW., Washington DC 20036.

Summary of Tentative Decision

1. The Commission deemed Suite 12 to be the innovator and developer of LMDS technology, which makes feasible provision of multi-channel one-way and two-way video, voice, and data services on 28 GHz frequencies that previously have not been used intensively. The record demonstrated that Suite 12 is the innovator of LMDS technology and that other companies are seeking licenses to provide LMDS based on Suite 12's pioneering work. No party challenged Suite 12's claims regarding its developmental efforts. Further, the rules proposed for LMDS in the companion Notice of Proposed Rule Making (NPRM) are based substantially on Suite 12's proposals.

2. Suite 12 requested a preference for the Los Angeles area; however, in 1991 its wholly-owned affiliate, Hye Crest Management (Hye Crest), was granted a waiver of the Commission's Rules to operate an LMDS system in the New York area. Suite 12 later was issued a temporary experimental license for Los Angeles. The Commission stated that a pioneer's preference for a permanent LMDS will not be awarded for more than one service area. Accordingly, the Commission proposed that if a tentative preference to Suite 12 is confirmed, Hye Crest's New York authorization be modified to meet the rules adopted to govern LMDS. Alternatively, the Commission proposed that if Suite 12

informs the Commission that it prefers a preference in the Los Angeles area, Hye Crest be required to surrender its New York authorization at the time Suite 12 is issued in LMDS license for the Los Angeles service area.

3. For the above reasons, the Commission tentatively concluded that Suite 12 should be awarded a pioneer's preference, and that it should be exercisable in either New York or Los Angeles, but not both. If the tentative preference is confirmed and Suite 12 is otherwise qualified, it would be the only eligible applicant for one of the frequency blocks for its preferred service area.

4. This is a restricted proceeding. No *ex parte* presentations are permitted until a final Commission decision regarding Suite 12's pioneer's preference request is made and no longer subject to reconsideration by the Commission or review by any court. In addition, no presentation, *ex parte* or otherwise, is permitted during the Sunshine period. *See generally* 47 CFR 1.1202, 1.1203, and 1.1208.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-1938 Filed 1-27-93; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 92-297, FCC 92-538]

Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is denying 971 applications for waiver of its rules governing the 27.5 GHz point-to-point microwave radio service. The action is necessary because the Commission will not grant a wholesale waiver of its rules, but rather will address the underlying cause for the rule waiver requests in a rulemaking proceeding. For a document concerning this rulemaking proceeding, CC Docket No. 29-297, see the proposed rules published elsewhere in this issue. This action ensures Commission compliance with standards established by the courts for addressing waiver requests.

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Magnotti, Common Carrier Bureau, Domestic Facilities Division, (202) 634-1773.

SUPPLEMENTARY INFORMATION: This action was made in a Notice of Proposed Rulemaking, Order Tentative Decision and Order on Reconsideration in CC Docket No. 92-297, adopted December 10, 1992 and released January 8, 1993. Following is a portion of the text addressing the Commission's denial of waiver applications failed to make use of the 27.5-29.5 GHz point-to-point microwave radio frequency band for video distribution services in a point-to-multipoint service. A list of 971 applications identified to date is included. Should any further waiver applications be identified in the future, we hereby delegate authority to the Common Carrier Bureau to dismiss them in accordance with the holding in the order.

Text Pertaining to Denial of Waiver Applications

1. We are also hereby denying the 971 waiver applications pending before us. All are based on existing point-to-point rules which are not structured to address the large amount of spectrum being allocated to individual licensees, nor the service area concept proposed herein, nor the technical parameters, yet to be developed, of the new service. Instead, they seek waivers similar to those granted in Hye Crest Management, Inc., para. 6, *supra*.

2. In Hye Crest Management, the Commission found that a formal rulemaking proceeding permanently reallocating the 28 GHz band for point-to-multipoint services would be premature. The Commission stated that grant of the waiver would not lead to a *de facto* reallocation of the band, and, based on similar waivers in the past, that it did not anticipate "an onslaught of waiver requests." *Id.* at 334. Applying the waiver standard established in Big Bend Telephone, 2 FCC Rcd 2413 (1986), the Commission found the waiver standard had been satisfied because "(3) the proposed use of the frequencies will not be determintal to their assigned users;" 6 FCC Rcd at 334, para. 20.

3. Granting the several hundred waivers before us would amount to a *de facto* reallocation of the 28 GHz band, would be inconsistent with the Commission's suggestion that it would not grant a flood of such requests, and would be determinal to the assigned users (potential common carrier point-to-point applications) because spectrum awarded to waiver applicants would not be available to those assigned users. Large scale waivers also would run afoul of the guidance provided by the courts to the Commission in considering waivers, e.g., that they not undermine the purpose of the rule being waived. WAIT Radio, 418 F.2d 1153 DC Cir. 1969). We also see no basis for distinguishing among any of the individual requests in an equitable fashion.

4. Authority for this action is 47 USC 154(i), 303, 307(b), and 308(b0.

5. List of applications identified to date:

27 GHz MICROWAVE INVENTORY

File No.	Applicant	File date	PN date	Fee No.	Service area
9318609	Cellularvision	10/02/1993		8680009001	
9210970	Edelson, Harry	01/24/1992	03/25/1992	8155255003	Birmingham, AL.
9211077	GHZ Broadcasting Inc	02/20/1992	05/06/1992	8155456015	Birmingham, AL.
9211717	Krzettowski, Andrew	05/26/1992		8155019	Birmingham, AL.
9215934	Robert Rosenkranz	02/13/1992	05/20/1992	8155405003	Birmingham MSA, AL.
9218184	Centennial Broadcasters	07/20/1992		8155172006	Columbus MSA, AL.
9211450	Foresight Communications	04/20/1992	06/24/1992	8155901010	Huntsville, AL.
9218224	Tompkins, W. Woodruff	08/24/1992		8155284006	Huntsville, AL.
9218194	Kingswood Associates	08/05/1992		8155224002	Mobile, AL.
9218176	Frederick M. Peyser, Jr	07/06/1992		8155142008	Mobile MSA, AL.
9218116	Charles D. Snelling	07/06/1992		8155142003	Montgomery, AL.
9318631	BSV Partnership	10/06/1992		8680020009	Pensacola PMSA, AL.
9211453	Foresight Communications	04/20/1992	06/24/1992	8155901007	Little, AR.
9216670	Servista General	04/08/1992	06/05/1992	8155856003	Little Rock, AR.
9218100	Sanford R. Robertson	06/12/1992		8155075011	Little Rock, AR.
9218223	McKissock, William J	08/24/1992		8155284008	Little Rock, AR.
9318601	BSV Partnership	10/07/1992		8680027002	Pine Bluff, AR.
9111272	LDH International Inc	02/08/1991	05/15/1991	8155674010	Phoenix, AZ.

27 GHz MICROWAVE INVENTORY—Continued

File No.	Applicant	File date	PN date	Fee No.	Service area
9112772	Cellularvision	07/15/1991	08/21/1991	8155260008	Phoenix, AZ.
9218163	Alda Multichannels, Ltd	06/17/1992		8155089007	Phoenix, AZ.
9218003	Steven P. Selter	03/30/1992		8155755002	Phoenix, AZ.
9200483	Alda Multichannels	04/13/1992		8155881014	Tucson, AZ.
9200592	BSV Partnership	04/13/1992		8155878001	Tucson, AZ.
9200601	Paul S. Bachow	04/14/1992		8155888002	Tucson, AZ.
9200650	Associated MDS	04/14/1992	07/29/1992	8155886002	Tucson, AZ.
9210708	Steven A. Birnbaum	12/30/1991	02/12/1992	8155037002	Tucson, AZ.
9211426	Associated MDS	04/13/1992		8155588200	Tucson, AZ.
9216590	Servista General	03/06/1992	08/05/1992	8155757006	Tucson, AZ.
9216659	Orange Wireless	04/13/1992	08/05/1992	8155881004	Tucson, AZ.
9216662	M.M. & C.O. Vick Partner	04/14/1992	08/05/1992	8155887001	Tucson, AZ.
9215624	Robert E. La Blanc	01/24/1992	03/18/1992	8155255005	Tucson MSA, AZ.
9215624	Robert E. La Blanc	01/24/1992	03/18/1992	8155255005	Tucson MSA, AZ.
9211476	Perry W. Haddon	04/23/1992	07/08/1992	8155912001	Yavapai Co, AZ.
9215894	Servista General	02/26/1992	05/13/1992	8155481003	Yuma, AZ.
9218159	BSV Partnership	06/16/1992		8155080008	Yuma, AZ.
9110802	LDH International Inc	02/19/1991	05/15/1991	8155588003	CA.
9211073	Kingswood Associates	02/20/1992	05/08/1992	8155458001	Anaheim, CA.
9215868	Dr. Kim Sloan	02/11/1992	05/13/1992	8155386007	Anaheim, CA.
9215868	Dr. Kim Sloan	02/11/1992	05/13/1992	8155386008	Anaheim, CA.
9210764	Stevan A. Birnbaum	01/02/1992	02/12/1992	8155116010	Bakersfield, CA.
9215866	Smith, Kathleen	02/11/1992	05/13/1992	8155386009	Bakersfield, CA.
9215866	Smith, Kathleen	02/11/1992	05/13/1992	8155386009	Bakersfield, CA.
9211344	Friend, Johnathen E	04/06/1992	06/17/1992	8155808005	Chico, CA.
9211355	John C. Caniglia	04/06/1992	06/24/1992	8155816002	Chico, CA.
9215432	Wireless Cable Ltd	12/09/1991	02/05/1992		Chico, CA.
9218021	Pacific Comm. Assoc., Inc	04/28/1992		8155927006	Chico, CA.
9218013	Cable Systems, Ltd	04/28/1992		8155927003	Contra Costa Cty., CA.
9218019	Ponderosa Cable Systems	04/28/1992		8155927002	Contra Costa Cty., CA.
9218020	Ponderosa Cable Systems	04/28/1992		8155927001	Contra Costa Cty., CA.
9118155	Evanston Transmission Co	08/22/1991	10/09/1991	8155456003	Corona, CA.
9218060	Tanis Wireless Enterprise	05/18/1992		8155993001	Fairfield/Napa MSA, CA.
9210699	Bay Broadcasting Assoc	12/24/1991	02/12/1992	8155998004	Fremont, CA.
9210969	Jorgensen, David G	01/24/1992	03/25/1992	8155255001	Fresno, CA.
9215540	Leila L. Mahurin	01/15/1992	02/05/1992		Fresno, CA.
9218234	Mahurin, Leila L	08/28/1992			Fresno, CA.
9200215	Birnbaum A Stevan	01/24/1992	04/08/1992	8155307006	Fresno, CA. MSA, CA.
9210734	City of Gustine	12/31/1991	02/12/1992	8155068007	Gustine, CA.
9210733	City of Gustine	12/31/1991	02/12/1992	8155068005	Hatch, CA.
9210733	City of Gustine	01/03/1992	02/12/1992	8155068005	Hatch, CA.
9112775	Cellularvision	07/15/1991	08/21/1991	8155260009	Los Angeles, CA.
9218191	Preferred Wireless Comm.	08/03/1992		8155219002	Los Angeles, CA.
9218279	CT Comm. Corp.	09/29/1992		8155403005	Modesto MSA, CA.
9218059	Tanis Wireless Enterprise	05/18/1992		8155993007	Monterey MSA, CA.
9210276	Hovnanian, Nina C.	11/04/1991	11/27/1991	8155778003	Oakland, CA.
9216617	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703002	Oakland, CA.
9216627	Telecom Investment Corp	03/24/1992	08/05/1992	8155704013	Oakland, CA.
9216589	Patricia B. Mellani	03/06/1992	08/05/1992	8155564010	Oakland PMSA, CA.
9216597	P.M.J. Securities Inc.	03/16/1992	08/05/1992	8155705013	Oakland PMSA, CA.
9318617	Celularvision	10/16/1992		8680052005	Oakland PMSA, CA.
9210916	Stevan A. Birnbaum	01/21/1992	02/19/1992	8155233002	Oxnard-Ventura, CA.
9210968	Jorgensen, David G.	01/24/1992	03/25/1992	8155254008	Oxnard-Ventura, CA.
9211072	Kingswood Associates	02/20/1992	05/08/1992	8155458002	Oxnard/Ventura, CA.
9218011	Suite 12 Group	04/17/1992		8155898003	Oxnard/Ventura, CA.
9218063	Tanis Wireless Enterprise	05/18/1992		8155993004	Redding MSA, CA.
9215348	Suite 12 Group	11/25/1991	01/15/1992		Riverside, CA.
9216620	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703014	Riverside, CA.
9216638	Telecom Investment Corp.	03/16/1992	08/05/1992	8155704007	Riverside, CA.
9215631	Lewis W. Siegel	01/24/1992	03/18/1992	8155254009	Riverside PMSA, CA.
9118119	Krikorian, Michael	08/16/1992	10/09/1991	8155430009	Sacramento, CA.
9210596	Acor, Everett T.	12/09/1991	01/15/1992	8155940014	Sacramento, CA.
9200211	Cambridge Management	01/24/1992	04/08/1992	8155254911	Sacramento MSA, CA.
9218088	Meeker, Herbert S.	06/08/1992		8155058001	Sacramento, CA.
9218272	Ivan L. Wolff	09/30/1992		868001009	Salinas Seaside MSA, CA.
9218186	Linda Chester	07/06/1992		8155141007	Salinas-Seaside, CA.
9218080	Orange Wireless Partn.	05/19/1992		8155996011	San Diego, CA.
9218129	S.E. Cone, Jr.	05/18/1992		8155997004	San Diego, CA.
9218133	John E. Brennan	05/14/1992		8155983005	San Diego, CA.
9218168	Alda Multichannels, Ltd.	06/17/1992		818808002	San Diego, CA.
9218235	RPC Ventures Ltd.	09/05/1991			San Diego, CA.
9215621	R&R Telecommunication	01/24/1992	03/18/1992	8155255013	San Diego MSA, CA.
9215621	R&R Telecommunication	01/24/1992	03/18/1992	8155255013	San Diego MSA, CA.
9215635	Princeton Scientific	01/24/1992	03/18/1992	8155255007	San Diego MSA, CA.
9215997	Steven P. Selter	02/24/1992	06/10/1992	8155464001	San Diego MSA, CA.
9318616	Cellularvision	10/16/1992		8680052006	San Diego PMSA, CA.
9112774	Cellularvision	07/15/1991	08/21/1991	8155260010	San Francisco, CA.
9218022	Pacific Comm. Assoc. Inc.	04/28/1992		8155927005	San Francisco, CA.
9318523	Metrocom Telecasting	10/01/1992		8680008002	San Francisco, CA.
9211128	Hornby, Harold	03/06/1992	05/13/1992	8155564009	San Jose, CA.
9211188	Lindemann, Frayda B.	03/16/1992	05/13/1992	8155611002	San Jose, CA.

27 GHz MICROWAVE INVENTORY—Continued

File No.	Applicant	File date	PN date	Fee No.	Service area
9215322	Wireless Cable Ltd.	11/21/1992	01/15/1992		San Jose, CA.
9215349	Suite 12 Group	11/25/1991	01/15/1992		San Jose, CA.
9218109	PMB Partnership	06/16/1992		8155082007	San Jose, CA.
9215620	R&R Telecommunication	01/24/1992	03/18/1992	8155306004	San Jose PMSA, CA.
9215620	R&R Telecommunication	01/24/1992	03/18/1992	8155306004	San Jose PMSA, CA.
9215849	James L. Melcher	12/31/1992	05/06/1992	8155067006	San Jose PMSA, CA.
9318507	Jacobs, Michael	10/26/1992		8680079004	San Luis Obispo, CA.
9218070	Maurice & Charlotte Vick	05/18/1992		8155997010	San Diego, CA.
9218192	Preferred Wireless Comm	08/03/1992		8155219003	Santa Ana, CA.
9211071	Kingswood Associates	02/20/1992	05/06/1992	8155456004	Santa Barbara, CA.
9218062	Tanis Wireless Enterprise	05/18/1992		8155993003	Santa Barbara, CA.
9218083	Suite 12 Group	06/08/1992		8155055001	Santa Barbara, CA.
9218154	Alternative Broadcast	05/27/1992		8155025006	Santa Barbara, CA.
9218229	Dunne/Santell/Singer	08/26/1992		8155292003	Santa Barbara, CA.
9218255	CT Communications Corp	09/29/1992		8155398006	Santa Barbara, CA.
9218066	Tanis Wireless Enterprise	05/18/1992		8155992	Santa Cruz, CA.
9218061	Tanis Wireless Enterprise	05/18/1992		8155993002	Santa Maria, CA.
9211343	Gillo, Robin V	04/06/1992	06/17/1992	8155808006	Santa Rosa, CA.
9215438	MSGC	12/09/1991	02/05/1992		Santa Rosa, CA.
9216678	Priscilla Marston	04/06/1992	08/05/1992	8155815001	Santa Rosa, CA.
9218085	Suite 12 Group	06/08/1992		8155055003	Santa Rosa, CA.
9216637	Total TV of California	04/13/1992	08/05/1992	8155872001	Seven Springs Valley, CA.
9218023	Pacific Communications	04/28/1992		8155927004	Shasta County, CA.
9218058	Tanis Wireless Enterprise	05/18/1992		8155993006	Solano County MSA, CA.
9210595	Kim Partnership	12/09/1991	01/15/1992	8155940015	Stockton, CA.
9210960	Jorgensen, David G	01/13/1992	03/04/1992	8155178005	Stockton, CA.
9210963	Buchwald, Joseph B	01/15/1992	03/04/1992	8155178007	Stockton, CA.
9211416	Hornby, Harold	04/13/1992	06/24/1992	8155880002	Stockton, CA.
9211417	Gillo, Robin V	04/13/1992	06/24/1992	8155880001	Stockton, CA.
9218064	Tanis Wireless Enterprise	05/18/1992		8155992001	Sutter/Yuba MSA, CA.
9218057	Tanis Wireless Enterprise	05/18/1992		8155993005	Tulare MSA, CA
9218095	Jeanne P. Robertson	06/12/1992		8155075006	Valejo-Napa, CA.
9210701	Carissimi Group	12/23/1991	02/12/1992	8155998006	Vallejo, CA.
9211129	Hornby, Harold	03/06/1992	05/13/1992	8155564009	Vallejo/Napa, CA.
9218106	Franklin B. Pierce	06/16/1992		8155082003	Vallejo/Napa, CA.
9216636	Total TV	04/13/1992	08/05/1992	8155872002	Victorville-Barstow, CA.
9218274	Ivan L. Wolff	10/02/1992		8680001008	Vila. Tul.Porvle. MSA, CA.
9212000	Haseltine, Michael	08/10/1992	09/09/1992	8155236003	Boulder, CO.
9218518	Likins, Paul	10/21/1992		8680064003	Boulder-Longmont, CO.
9218273	Ivan L. Wolff	10/02/1992		868001010	Colorado Springs. MSA, CO.
9216668	Senvista General	04/08/1992	08/05/1992	8155856001	Colorado Springs, CO.
9218174	Charles D. Snelling	06/06/1992		8155142005	Colorado Springs, CO.
9318511	Roy, Ernest	10/15/1992		8680048004	Colorado Springs, CO.
9117539	Jerard F. Maher	07/15/1991	09/25/1991		Denver, CO.
9218188	Bruns, Robert W	08/10/1992		8155237005	Pueblo, CO.
9216023	Western Sierra	02/18/1992	06/10/1992	8155441017	Pueblo MSA, CO.
9218259	CT Communications Corp	09/29/1992		8155404001	Bridgeport-Milford, CT.
9218270	Ivan L. Wolff	10/02/1992		868001006	Bridgeport/Milford PMSA, CT.
9318503	Mathes, Philip H	10/02/1992		8680011007	Danbury, CT.
9318516	Likins, Paul	10/21/1992		8680064001	Danbury, CT.
9215153	Bruce G. McNeill	11/01/1991	12/11/1991		Hartford, CT.
9218046	Orange Wireless Partners	05/11/1992		8155962001	Hartford, CT.
9218149	S.E. Cone, Jr	05/11/1992		8155964004	Hartford, CT.
9200214	Clark, Thomas Francis	01/24/1992	04/08/1992	8155306008	Hartford MSA, CT.
9218300	Jos. D. Carney & Asc	09/30/1992		8680003003	Hartford MSA, CT.
9210589	G/H Garfinkle Trust	12/03/1992	01/15/1992	8155916009	New Haven, CT.
9218119	Peyser, Frederick M	07/06/1992		8155143003	New Haven, CT.
9218298	Jos. D. Carney & Asc	10/02/1992		8680003001	New Haven MSA, CT.
9215139	Beverly Marston	10/30/1991	12/11/1991		Stamford, CT.
9218241	Chester, Linda	09/16/1992		8155359002	Stamford, CT.
9218256	CT Communications Corp	09/29/1992		8155398007	Stamford, CT.
9218233	Smith, William L	08/24/1992		8155287001	Waterbury, CT.
9112776	B Squared Inc	07/17/1991	06/21/1991	8155263004	Washington, DC.
9218303	Jos. D. Carney & Asc	09/301992		8680003006	Washington DC, MSA, DC.
9215504	M3 Illinois Telecom Corp	01/13/1992	02/05/1992		Wilmington, DE.
9200452	Associated MDS Corporation	04/06/1992	07/08/1992		Wilmington, DE.
9200529	Associated MDS Corp	04/06/1992	07/15/1992	8155808002	Wilmington, DE.
9200555	Bachow, Paul S	04/06/1992	07/15/1992	8155817001	Wilmington, DE.
9200586	Cone, S.E., Jr	04/06/1992	07/05/1992	8155811003	Wilmington, DE.
9211350	Goldbert, Rosalie Y	04/06/1992	06/17/1992	8155818006	Wilmington, DE.
9211418	Kingswood Associates	04/13/1992	06/24/1992	8155880006	Wilmington, DE.
9215499	Richard C. Woodbridge	01/07/1992	02/05/1992		Wilmington, DE.
9218006	Orange Wireless Partners	04/06/1992		8155811008	Wilmington, DE.
9211921	Richard C. Woodbridge	07/06/1992	08/05/1992	8155141006	Wilmington PMSA, DE.
9318632	BSV Partnership	10/06/1992		8680020010	Wilmington PMSA, DE.
9216594	Seaview Telesystems	03/16/1992	08/05/1992	8155705016	FL.
9211830	High Bank Broadcasting	06/18/1992	07/29/1992	8155091005	Bradenton, FL.
9218155	Alternative Broadcast	05/07/1992		8155025007	Bradenton MSA, FL.
9218220	Peyser, Frederick M	08/19/1992		8155278001	Daytona Beach, FL.
9318001	CT Communications Corp	10/27/1992		8155441001	Daytona Beach, FL.
9200261	Acor, Everett T. Jr	02/18/1992	04/15/1992	8155441009	Daytona MSA, FL.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9218001	WJB–TV Ft. Pierce Limited	03/06/1992		8155565007	Fort Pierce, FL.
9216607	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705009	Ft. Lauderdale, FL.
9216611	Seaview Telesystems	03/16/1992	08/05/1992	8155705017	Ft. Lauderdale, FL.
9216638	Telecom Investment Corp	03/16/1992	08/05/1992	8155704004	Ft. Lauderdale, FL.
9216648	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703006	Ft. Lauderdale, FL.
9215440	Ocean Partnership	12/09/1991	02/051992		Ft. Myers MSA, FL.
9211309	Friend, Johnathan E	04/07/1992	08/05/1992	8155810002	Ft. Myers, FL.
9215498	S & W Productive	01/07/1992	02/05/1992	8155146002	Ft. Myers, FL.
9216603	Safecom Partnership	03/16/1992	08/05/1992	8155705003	Ft. Myers, FL.
9216616	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703003	Ft. Myers, FL.
9216632	Telecom Investment Corp	03/16/1992	08/05/1992	8155704008	Ft. Myers, FL.
9218169	BMW Associates	06/12/1992		8155076005	Ft. Myers MSA, FL.
9215506	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177005	Ft. Pierce, FL.
9218025	MAH, Inc	05/01/1992		8155939006	Ft. Pierce, FL.
9216683	Mitchell & Co	04/06/1992	08/05/1992	8155813006	Ft. Pierce MSA, FL.
9215320	Wireless Cable Ltd	11/25/1991	01/15/1992		Ft. Lauderdale, FL.
9215347	Suite 12 Group	11/25/1991	01/15/1992	8155874003	Ft. Lauderdale, FL.
9318600	BSV Partnership	10/07/1992		8680027001	Ft. Lauderdale, FL.
9218033	Smith, William L	08/24/1992		8155287002	Gainesville MSA, FL.
9200530	Associated MDS Corp	04/06/1992	07/15/1992	8155811015	Jacksonville, FL.
9200546	John E. Brennan	04/06/1992	07/15/1992	8155818003	Jacksonville, FL.
9200553	Paul S. Bachow	04/06/1992	07/15/1992	8155817003	Jacksonville, FL.
9200588	S.E. Conte, Jr	04/06/1992	07/15/1992	8155811001	Jacksonville, FL.
9210962	Crowley, Jeffrey B	01/14/1992	03/04/1992	8155182001	Jacksonville, FL.
9210973	Feinberg, Judy	01/24/1992	03/25/1992	8155305007	Jacksonville, FL.
9211311	Levin, Michael H	04/06/1992	06/03/1992	8155810003	Jacksonville, FL.
9211348	Lindemann, Frayda B	04/06/1992	06/17/1992	8155818002	Jacksonville, FL.
9215442	New South Associates	12/05/1992	02/05/1992		Jacksonville, FL.
9218006	Orange Wireless Partners	04/06/1992		8155811010	Jacksonville, FL.
9215811	Smith, Kathleen	02/10/1992	04/29/1992	8155370005	Jacksonville MSA, FL.
9216584	Patricia B. Mallani	03/06/1992	08/05/1992	8155564015	Jacksonville MSA, FL.
9215998	Subscriber TV Partners	02/20/1992	06/10/1992	8155464001	Lakeland MSA, FL.
9218208	Marx, Robert O	08/10/1992		8155237004	Lakeland/Winter Haven, FL.
9218282	CT Comm. Corp	09/29/1992		8155403008	Lakelnd/Wint Hvn MSA, FL.
9215437	Melbourne Associates	12/09/1991	02/05/1992	8155940008	Melbourne, FL.
9216609	Safecom Partnership	03/16/1992	08/05/1992	8155705007	Melbourne, FL.
9216639	Telecom Investment Corp	03/16/1992	08/05/1992	8155704003	Melbourne, FL.
9216647	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703007	Melbourne, FL.
9216680	Robert A. Pahneuf	04/06/1992	08/05/1992	8155815005	Melbourne, FL.
9218000	Limited Partnership	03/06/1992		8155565006	Melbourne, FL.
9218171	BMW Associates	06/12/1992		8155076003	Melbourne MSA, FL.
9117535	Mitchell & Co. Ltd	07/15/1991	09/25/1991	8155263001	Miami, FL.
9200733	Bachow, Paul S	05/12/1992	08/05/1992	8155968002	Miami, FL.
9211604	Four M MLDS Group	05/11/1992	07/08/1992	8155963002	Miami, FL.
9215319	Wireless Cable Ltd	11/25/1992	01/15/1992		Miami, FL.
9218050	Orange Wireless Partners	05/11/1992		8155962005	Miami, FL.
9218146	Cone, S.E., Jr	05/11/1992		8155964007	Miami, FL.
9218199	Vick, Maurice M. & Charl	08/07/1992		8155234007	Miami, FL.
9218289	Jos. D. Carey Assc	09/30/1992		8680002002	Miami MSA, FL.
9200461	Cactus TV Interests	04/13/1992	07/15/1992	8155880008	Naples MSA, FL.
9218204	Mathes, Philip H	08/10/1992		8155237006	Ocala, FL.
9216020	Subscriber TV Partners	02/20/1992	06/10/1992	8155456006	Ocala MSA, FL.
9218209	Montgomery, Robert L	08/10/1992		8155237003	Orange County, FL.
9200466	Cone, S.E., Jr	04/13/1992	07/15/1992	8155882010	Orlando, FL.
9200603	Paul S. Bachow	04/14/1992	07/15/1992	8155888004	Orlando, FL.
9200633	Acor, Everett T. Jr	03/30/1992	07/22/1992	8155755003	Orlando, FL.
9210763	Feinberg, Judy	01/02/1992	02/12/1992	8155116011	Orlando, FL.
9210901	Edelson, Harry	01/21/1992	02/19/1992	8155234007	Orlando, FL.
9211429	Four M MLDS Group	04/13/1992	06/24/1992	8155882005	Orlando, FL.
9216661	Orange Wireless	04/13/1992	08/05/1992	8155881002	Orlando, FL.
9216667	M.M. & C.O. Vick partner	04/14/1992	08/05/1992	8155887002	Orlando, FL.
9218010	Suite 12 Group	04/17/1992		8155896004	Orlando, FL.
9218287	Assc. MDS Corp	04/14/1992			Orlando, FL.
9200459	Crowley, Jeffery B	04/13/1992	07/08/1992	8155877004	Orlando MSA, FL.
9215367	Shenandoah Group	12/05/1991	01/29/1992	8155923002	Pensacola, FL.
9216595	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705015	Pensacola, FL.
9216612	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703009	Pensacola, FL.
9216641	Telecom Investment Corp	03/16/1992	08/05/1992	8155704001	Pensacola, FL.
9218281	CT Comm. Corp	09/29/1992		8155403007	Pensacola, FL.
9215509	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177014	Sarasota, FL.
9216608	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705008	Sarasota, Fl
9216615	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703004	Sarasota, FL.
9216630	Telecom Investment Corp	03/16/1992	08/05/1992	8155704010	Sarasota, FL.
9218038	MAH Inc	05/01/1992		8155939007	Sarasota, FL.
9218170	BMW Associates	06/12/1992		8155076004	Sarasota, FL.
9216682	Mitchell & Co	04/06/1992	08/05/1992	8155813007	Sarasota MSA, FL.
9211373	Landers, Harold S. III	04/06/1992	06/24/1992	8155815004	Tallahassee, FL.
9215443	New South Associates	12/05/1991	02/05/1992	8155923007	Tallahassee, FL.
9118156	Evanston Transmission Co	08/23/1991	10/09/1991	8155456002	Tampa, FL.
9200739	Bachow, Paul S	05/15/1992	08/05/1992	8155991001	Tampa, FL.
9211691	Four M MLDS Group	05/18/1992	07/15/1992	8155996001	Tampa, FL.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9218071	M.M. & C.O. Vick Partner	05/18/1992		8155997011	Tampa, FL.
9218081	Orange Wireless Partners	05/18/1992		8155996009	Tampa, FL.
9218125	Cone, S.E., Jr	05/18/1992		8155997008	Tampa, FL.
9218305	Jos. D. Carney & Assc	09/30/1992		8680003008	Tampa MSA, FL.
9215630	Myers, Frederick M	01/24/1992	03/18/1992	8155254005	Tampa-St. Pete MSA, FL.
9215630	Myers, Frederick M	01/24/1992	03/18/1992	8155254006	Tampa-St. Pete MSA, FL.
9211620	Ilolica Corp	05/14/1992	07/08/1992	8155982006	Tampa/St. Petersburg, FL.
9211831	High Band Broadcasting	06/18/1992	07/29/1992	8155091004	Tampa/St. Petersburg, FL.
9216672	Patricia B. Mallard	04/06/1992	08/05/1992	8155810006	Truckers Corner, FL.
9210735	Cornblatt, Arnold	01/06/1992	02/12/1992	8155123006	W. Palm Beach, FL.
9216606	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705010	W. Palm Beach, FL.
9216619	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703015	W. Palm Beach, FL.
9216629	Telecom Investment Corp	03/16/1992	08/05/1992	8155704011	W. Palm Beach, FL.
9215324	Wireless Cble Ltd	11/21/1991	01/15/1992	8155660005	W. Palm Beach, FL.
9218140	Cone, S.E., Jr	05/11/1992		8155964013	West Palm Beach, FL.
9200662	BSV Partnership	06/16/1992	07/29/1992	8155082001	West Palm Beach, FL.
9210429	Derrin, Drake	11/04/1991	12/26/1991	8155776004	West Palm Beach, FL.
9211131	Hornby, Harold	03/06/1992	05/13/1992	8155564006	West Palm Beach, FL.
9211559	Four M MLDS Group	05/11/1992	07/08/1992	8155963007	West Palm Beach, FL.
9218040	Orange Wireless Partners	05/11/1992		8155962015	West Palm Beach, FL.
9218201	M.M. & C.O. Vic Partners	08/07/1992		8155232001	West Palm Beach, FL.
9218185	Classic Broadcasting	07/20/1992		8155172004	Athens MSA, GA.
9218310	Jos. D. Carney & Assoc	09/30/1992		8680004006	Atlanta MSA, GA.
9218177	Peyser, Frederick M. Jr	07/06/1992		8155142007	Augusta, GA.
9218218	Global Telecommunication	08/10/1992		8155237002	Augusta, GA.
9318514	Butler, Eliot	10/15/1992		8680046006	Augusta, GA.
9112779	Glenaire Inc	07/17/1991	10/02/1991	8155265010	Cumming, GA.
9218213	Jacobs, Michael	08/10/1992		8155236001	Savannah, GA.
9218017	UMDA Telecom	04/28/1992		8155926004	Agana, GU.
9218018	UMDA Telecom	04/28/1992		8155926008	Garapan, GU.
9218015	UMDA Telecom	04/28/1992		8155926006	Lupog, GU.
9218236	Western Systems Inc	08/31/1992		8155301005	Marianas Islands, GU.
9218237	Western Systems Inc	08/31/1992		8155301004	Marianas Islands, GU.
9218238	Tropic Isles Cable TV	08/31/1992		8155301007	Marianas Islands, GU.
9218239	Tropic Isles Cable TV	08/31/1992		8155301006	Marianas Islands, GU.
9218014	UMDA Telecom	04/28/1992		8155926007	Tamuning, GU.
9218016	UMDA Telecom	04/29/1992		8155926005	Tinian, GU.
9218215	Hughes, Leonard	08/10/1992		8155236005	Hilo, HI.
9200368	Faith C. Amby	03/08/1992	05/06/1992	8155564003	Honolulu, HI.
9200745	Paul S. Bachow	01/01/1993	08/05/1992		Honolulu, HI.
9210458	Hovnanian, Paris H	11/27/1991	12/26/1991	8155686002	Honolulu, HI.
9211678	Frayda B. Lindemann	05/14/1992	07/15/1992	8155984003	Honolulu, HI.
9211685	Four M MLDS Group	05/18/1992	07/15/1992	8155996007	Honolulu, HI.
9215439	Ocean Partnership	12/09/1991	02/05/1992		Honolulu, HI.
9218069	Orange Wireless Partners	05/18/1992		8155996013	Honolulu, HI.
9218072	Maurice & Charlotte Vick	05/18/1992		8155997012	Honolulu, HI.
9218128	Cone, S.E., Jr	05/18/1992		8155997005	Honolulu, HI.
9218132	Brennan, John E	05/14/1992		8155983006	Honolulu, HI.
9318625	Cellularvision	10/06/1992		8680020003	Honolulu PMSA, HI.
9215510	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177013	Des Moines, IA.
9216622	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703012	Des Moines, IA.
9216635	Telecom Investment Corp	03/16/1992	08/05/1992	8155704005	Des Moines, IA.
9216681	Priscilla Marston	04/06/1992	08/05/1992	8155815007	Des Moines, IA.
9218260	CT Communications Corp	09/29/1992		815504002	Des Moines, IA.
9216604	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705002	Des Moines MSA, IA.
9218034	MAH Inc	05/01/1992		8155939011	Des Moines MSA, IA.
9318520	Skyline Entrtnmnt Ntwork	10/23/1992		8680075015	Coeur D'Alene, ID.
9218267	Paul Likins	09/30/1992		868001003	Aurora-Elgin, IL PMS.
9216676	Rochelle Silvia	04/06/1992	08/05/1992	8155816007	Aurora/Elgin, IL.
9215503	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177008	Aurora/Elgin PMSA, IL.
9218037	MAH Inc	05/04/1992		8155939010	Aurora/Elgin PMSA, IL.
9318521	Specchio Developers	10/27/1992		8680087005	Champaign, IL.
9318522	Evans Microwave, Inc	10/27/1992		8680087006	Champaign, IL.
9112773	Cellularvision	07/15/1991	08/21/1991	8155260007	Chicago, IL.
9218093	Palisades Broadcasting	06/12/1992		8155075001	Chicago, IL.
9218230	ALDA Multichannels Ltd	08/20/1992		8155281004	Chicago, IL.
9218240	Evans Microwave, Inc	09/10/1992		8155339001	Chicago, IL.
9110797	LDH International Inc	02/19/1991	05/15/1991	8155585003	Chicago MSA, IL.
9218297	Jos. D. Carney & Assc	09/30/1992		8680002010	Chicago MSA, IL.
9218179	Specchio Developers, Ltd	07/16/1992		8155168002	Chicago PMSA, IL.
9215507	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177004	Davenport-Moline Isl, IL.
9211376	Damadian, Aram	04/06/1992	06/24/1992	8155813004	Davenport-Moline, IL.
9218030	MAH Inc	05/01/1992		8155939015	Davenport/Rock Island, IL.
9112268	Evanston Transmission Co	06/07/1991	06/26/1991	8155092006	Dupage/Cook Cty PMSA, IL.
9200664	BSV Partnership	06/16/1992	07/29/1992	8155082009	Joliet PMSA, IL.
9211182	GHZ Broadcasting Inc	03/16/1992	05/13/1992	8155609006	Joliet PMSA, IL.
9218265	Paul Likins	09/30/1992		868001001	Joliet PMSA, IL.
9200549	BSV Partnership	04/06/1992	07/15/1992	8155813001	Lake County PMSA, IL.
9215506	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177006	Lake County PMSA, IL.
9218026	MAH Inc	05/04/1992		8155939005	Lake County PMSA, IL.
9218101	Sanford R. Robertson	06/12/1992		8155075009	Lake County PMSA, IL.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9211713	Ilohca Corp	05/21/1992	07/15/1992	8155013006	Peoria, IL.
9211833	High Band Broadcasting	06/18/1992	07/29/1992	8155091001	Peoria, IL.
9216674	Ronald E. Saneac	04/06/1992	06/05/1992	8155816001	Rockford, IL.
9215513	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177010	Rockford, MSA, IL.
9218029	MAH Inc	05/04/1992	....	8155839014	Rockford, MSA, IL.
9218228	Smith, William L	08/24/1992	....	8155287003	Evansville, IN.
9218157	Alternative Broadcast	05/27/1992	....	8155025009	Ft. Wayne MSA, IN.
9318269	Paul Likins	10/02/1992	....	868001005	Gary/Hammond PMSA, IN.
9318276	CT Comm. Corp	10/02/1992	....	8155403002	Gary/Hammond PMSA, IN.
9118339	JMJ Associates	09/11/1991	10/30/1991	8155522001	Indianapolis, IN.
9200468	Associated MDS Corp	04/13/1992	07/15/1992	8155888006	Indianapolis, IN.
9200596	BMB Partnership	04/13/1992	07/15/1992	8155878004	Indianapolis, IN.
9200602	Bachow, Paul S	04/13/1992	07/15/1992	8155888001	Indianapolis, IN.
9210709	Comblatt, Arnold	12/26/1991	02/12/1992	8155032001	Indianapolis, IN.
9210716	Hornby, Harold	12/30/1991	02/12/1992	8155043004	Indianapolis, IN.
9210717	Amby, Faith C	12/30/1991	02/12/1992	8155043003	Indianapolis, IN.
9210718	Levin, Michael H	12/30/1991	02/12/1992	8155043002	Indianapolis, IN.
9215419	Patricia Milana	12/30/1991	02/05/1992	....	Indianapolis, IN.
9216623	Telecom/Haddock Investor	03/16/1992	08/05/1992	8155703011	Indianapolis, IN.
9216660	Orange Wireless	04/13/1992	08/05/1992	8155881003	Indianapolis, IN.
9216664	M.M. & C.O. Vick Partner	04/15/1992	06/05/1992	8155887004	Indianapolis, IN.
9216599	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705001	Indianapolis MSA, IN.
9318311	Jos. D. Carney & Assoc	10/02/1992	....	8680004007	Indianapolis MSA, IN.
9200724	Bachow, Paul S	05/12/1992	08/05/1992	8155970002	Wichita, KS.
9211552	Four M Mlds Group	05/11/1992	07/08/1992	8155963014	Wichita, KS.
9215444	New South Associates	12/05/1991	02/05/1992	....	Wichita, KS.
9216679	Priscilla Marston	04/06/1992	06/05/1992	8155815003	Wichita, KS.
9218052	Orange Wireless Partners	05/12/1992	....	8155962007	Wichita, KS.
9218089	Herbert S. Meeker	06/09/1992	....	8155065002	Wichita, KS.
9218138	S.E. Cone, Jr	05/14/1992	....	8155964015	Wichita, KS.
9218178	Frederick M. Peyser	06/06/1992	....	8155142006	Lexington-Fayette, KY.
9118157	Evanston Transmission Co	08/23/1991	10/09/1991	8155456001	Louisville, KY.
9215430	Wireless Cable Ltd	12/09/1991	02/05/1992	....	Louisville, KY.
9216583	Servista General	03/13/1992	08/05/1992	8155601018	Louisville, KY.
9215850	Diane Wechsler	12/31/1991	05/06/1992	8155067005	Louisville MSA, KY.
9218098	Jeanne P. Robertson	06/12/1992	....	8155075003	Baton Rouge, LA.
9200731	Bachow, Paul S	05/12/1992	06/05/1992	8155968006	Baton Rouge, LA.
9211550	Four M MLDS Group	05/11/1992	07/08/1992	8155963016	Baton Rouge, LA.
9218054	Orange Wireless Partners	05/11/1992	....	8155962009	Baton Rouge, LA.
9218086	Herbert S. Meeker	06/09/1992	....	8155065001	Baton Rouge, LA.
9218139	S.E. Cone, Jr	05/14/1992	....	8155964014	Baton Rouge, LA.
9218207	Vick, Maurice M & Charlo	08/07/1992	....	8155234006	Baton Rouge, LA.
9118154	Evanston Transmission Co	08/22/1991	10/09/1991	8155456004	New Orleans, LA.
9215434	Wireless Cable Ltd	12/09/1991	02/05/1992	8155940016	New Orleans, LA.
9216598	P.M.J. Securities Inc	03/16/1992	06/05/1992	8155705012	New Orleans, LA.
9216624	Telecom/Haddock Investor	03/24/1992	06/05/1992	8155703010	New Orleans, LA.
9216626	Telecom Investment Corp	03/16/1992	08/05/1992	8155704014	New Orleans, LA.
9111269	LDH International Inc	02/08/1991	05/15/1991	8155674007	MA.
9215321	Wireless Cable Ltd	11/25/1991	01/15/1992	8155875008	Boston, MA.
9216610	Seaview Telesystems	03/16/1992	06/05/1992	8155705018	Boston, MA.
9218166	ALDA Multichannels, Ltd	06/17/1992	....	8155088004	Boston, MA.
9318306	Jos. D. Carney & Assc	09/30/1992	....	8680003009	Boston MSA, MA.
9117538	Priscilla Marston	07/15/1991	09/25/1991	8155265008	Greater Boston, MA.
9215942	Western Sierra	02/18/1992	05/20/1992	8155441011	Lawrence PMSA, MA.
9211922	Lawrence Fraiberg	07/07/1992	06/05/1992	8155414100	Lawrence-Haverhill, MA.
9318283	Ct Comm. Corp	09/29/1992	....	8155403009	Lawrence/Havrhil MSA, MA.
9218253	Ct Communications Corp	09/29/1992	....	8155398005	Lowell, MA.
9218266	Paul Likins	09/30/1992	....	868001002	Lowell, MA-NH PMSA, MA.
9200737	Bachow, Paul S	05/12/1992	08/05/1992	8155971004	New Bedford, MA.
9211548	Four M MLDS Group	05/11/1992	07/08/1992	8155963018	New Bedford, MA.
9218056	Orange Wireless Partners	05/11/1992	....	8155962011	New Bedford, MA.
9318612	Calularvision	10/02/1992	....	8680011005	New Bedford PMSA, MA.
9218250	Ct Communiations Corp	09/29/1992	....	8155398002	Salem-Gloucester, MA.
9318500	Connecticut Home Theater	10/01/1992	....	8680013001	Springfield, MA.
9318271	Ivan L. Wolff	09/30/1992	....	868001007	Springfield, MA.
9215516	Garth Moss	01/14/1992	02/05/1992	....	Springfield PMSA, MA.
9200732	Bachow, Paul S	05/12/1992	08/05/1992	8155968001	Worcester, MA.
9211554	Four M. Mlds Group	05/11/1992	07/08/1992	8155963012	Worcester, MA.
9215517	Gene C. Saborin	01/14/1992	02/05/1992	....	Worcester, MA.
9218143	S.E. Cone, Jr	05/11/1992	....	8155964010	Worcester, MA.
9218257	Ct Communications Corp	09/29/1992	....	8155398008	Worcester, MA.
9318307	Jos. D. Carney & Assoc	09/30/1992	....	8680003010	Worcester, MA.
9200429	Acor, Everett T. Jr	02/20/1992	04/24/1992	8155456010	Worcester MSA, MA.
9218047	Orng. Wire Part	05/12/1991	....	8155962014	Worcester PMSA, MA.
9318620	Celularvision	10/16/1992	....	8680052002	Worchester PMSA, MA.
9218299	Jos. D. Carney & Assc	09/30/1992	....	8680003002	MD.
9210585	Bruce Bossard	12/03/1991	01/15/1992	8155916003	Baltimore, MD.
9211191	Lindemann, Frayda B	03/16/1992	05/13/1992	8155611004	Baltimore, MD.
9215815	Diane Wechsler	01/24/1992	03/18/1992	8155254001	Baltimore, MD.
9200262	Acor, Everett T. Jr.	02/18/1992	04/15/1992	8155441008	Baltimore MSA, MD.
9215888	Video Communications	02/26/1992	05/13/1992	8155482006	Baltimore MSA, MD.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9216480	Northeast Wireless	03/16/1992	08/05/1992	8155609010	Portland MSA, ME.
9218278	CT Comm. Corp	09/29/1992		8155403004	MI.
9218251	CT Communications Corp	09/29/1992		8155398003	Ann Arbor, MI.
9215512	M3 Illinois Telecom Corp	01/13/1992	02/05/1992		Ann Arbor PMSA, MI.
9216684	Sallie Difedio	04/06/1992	08/05/1992	8155813005	Ann Arbor PMSA, MI.
9218024	MAH Inc	05/04/1992		8155939004	Ann Arbor PMSA, MI.
9111266	LDH International Inc	02/11/1991	05/15/1991	8155682006	Detroit, MI.
9112778	E 82 Ltd	07/17/1991	08/21/1991	8155284005	Detroit, MI.
9318266	Mark Silberman	10/02/1992			Detroit, MI.
9318294	Jos. D. Carey & Assc	10/02/1992		8680002007	Detroit MSA, MI.
9211860	High Band Brdcst. Corp	06/23/1992	07/09/1992	8155098004	Flint MSA, MI.
9218158	Am. Brodcst. Network	05/27/1992		8155025010	Flint MSA, MI.
9211080	GHZ Broadcasting Inc	02/24/1992	05/06/1992	8155456012	Grand Rapids, MI.
9218090	Herbert S. Meeker	06/09/1992		8155085004	Grand Rapids, MI.
9318614	Celularvision	10/02/1992		8680011008	Grand Rapids PMSA, MI.
9218206	Mettler Communications	06/07/1992		8155232006	Jackson, MI.
9318613	Celularvision	10/02/1992		8680011006	Lansing PMSA, MI.
9215514	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177016	Sag. Bay City.MDLD.MSA, MI.
9211374	Marilyn Donnelly	04/08/1992	06/24/1992	8155815008	Saginaw-Bay City, MI.
9218262	Ct Communications Corp	09/29/1992		8155404004	Saginaw-Bay City, MI.
9218027	MAH Inc	05/04/1992		8155939012	Saginaw/Bay City MSA, MI.
9216850	Paul D. Rice	04/14/1992	08/05/1992	8155880011	Minn/St. Paul, MN.
9215550	R&R Telecommunication	01/21/1992	02/12/1992	8155234008	Minn/St. Paul MSA, MN.
9215867	Dr. Kim Sloan	02/11/1992	05/13/1992	8155386008	Minn/St. Paul MSA, MN.
9215867	Dr. Kim Sloan	02/11/1992	05/13/1992	8155386008	Minn/St. Paul MSA, MN.
9200419	Paul S. Bachow	03/16/1992		8155610004	Minneapolis, MN.
9200425	John E. Brennan	03/18/1992	06/24/1992	8155612003	Minneapolis, MN.
9211187	Lindemann, Frayda B	03/18/1992	05/13/1992	8155612005	Minneapolis, MN.
9210590	Bryannet	12/05/1991	1/15/1992	8155938001	Minneapolis, MN.
9210590	Bryannet	12/09/1991	01/15/1992	8155938001	Minneapolis-St. Paul, MN.
9210577	Western Sierra	03/16/1992	08/05/1992	8155609001	Minneapolis-St. Paul, MN.
9211915	Farrow & Stinski	07/05/1992	08/05/1992	8155138002	Minneapolis-St. Paul, MN.
9111271	LDH International Inc	02/08/1991	05/15/1991	8155674009	Kansas City, MO.
9117536	Andrew Wahl	07/15/1991	09/25/1991		Kansas City, MO.
9218164	Alda Multichannels Ltd	06/17/1992		8155088006	Kansas City, MO.
9118177	Hovnanian, Armen	08/26/1991	10/09/1991	8155469001	St. Louis, MO.
9200564	Alda Multichannels Ltd	04/06/1992	07/15/1992	8155814004	St. Louis, MO.
9200744	Bachow, Paul S	05/14/1992	08/05/1992	8155983003	St. Louis, MO.
9211684	Four M MLDS Group	05/18/1992	07/15/1992	8155886006	St. Louis, MO.
9215435	Wireless Cable Ltd	12/09/1991	02/05/1992	8155940017	St. Louis, MO.
9216673	Patricia B. Mallani	04/06/1992	08/05/1992	8155810007	St. Louis, MO.
9218068	Orange Wireless Partners	05/19/1992		8155998014	St. Louis, MO.
9218078	M&C Vick Partners	05/18/1992		8155977014	St. Louis, MO.
9218127	S.E. Cone, Jr	05/18/1992		8155997006	St. Louis, MO.
9318624	Celularvision	10/06/1992		8680020002	St. Louis PMSA, MO.
9215616	R&R Telecommunication	01/24/1992	03/18/1992	8155254002	St. Louis, MSA, MO.
9215616	R&R Telecommunication	01/24/1992	03/18/1992	8155254002	St. Louis, MSA, Mo..
9318502	Mathes, Philip H	10/02/1992		8680009003	Jackson, MS.
9318512	Butler, Hillary	10/15/1992		8680048005	Jackson, MS.
9200730	Bachow, Paul S	05/12/1992	08/05/1992	8155989001	Charlotte, NC.
9118118	Bossard, Thomas H	08/19/1991	10/09/1991	8155430008	Charlotte, NC.
9210971	Edelson, Harry	01/27/1992	03/25/1992	8155255002	Charlotte, NC.
9211716	Krzettowski, Andrew	05/26/1992	07/15/1992	8155019004	Charlotte, NC.
9218042	Orange Wireless Partners	05/12/1992		8155962017	Charlotte, NC.
9218135	Cone Enterprises, Inc	05/11/1992		8155964018	Charlotte, NC.
9218291	Jos. D. Carey & Assoc	09/30/1992		8680002004	Charlotte, NC.
9215890	Video Communications	02/26/1992	05/13/1992	8155481007	Charlotte MSA, NC.
9211557	Four M MLDS Group	05/11/1992	07/08/1992	8155963009	Charlotte, NC.
9211609	FM Video Broadcasters	05/12/1992	07/08/1992	8155969005	Fayetteville, NC.
9210868	Hayes, Thomas	01/17/1992	02/19/1992	8155191002	Greensboro, NC.
9215366	Shenandoah Group	12/05/1991	01/29/1992		Greensboro, NC.
9216600	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705006	Greensboro, NC.
9216613	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703008	Greensboro, NC.
9216634	Telecom Investment Corp	03/16/1992	08/05/1992	8155704006	Greensboro, NC.
9218293	Jos. D. Carney & Assc	09/30/1992		8680002006	Greensboro, NC.
9215636	Princeton Scientific	01/24/1992	03/18/1992	8155255006	Greensboro MSA, NC.
9216586	Patricia B. Mallani	03/06/1992	08/05/1992	8155564013	Greensboro MSA, Inc.
9318629	BSV Partnership	10/06/1992		8680020007	Greensboro PMSA, NC.
9200423	Bachow, Paul S	03/13/1992			Raleigh, NC.
9200427	John E. Brennan	03/16/1992	06/24/1992	8155612001	Raleigh, NC.
9211186	Lindemann, Frayda B	03/18/1992	05/13/1992	8155612008	Raleigh, NC.
9210584	Cambridge Research Labs	12/05/1991	01/15/1992	8155916004	Raleigh-Durham, NC.
9200594	BSV Parnership	04/15/1992		8155896005	Raleigh-Durham, NC.
9210861	Cornblatt, Arnold	01/15/1992	02/19/1992	8155178006	Raleigh-Durham, NC.
9211459	Ilohca Corp	04/21/1992	07/08/1992	8155901012	Raleigh-Durham, NC.
9218120	Ronald Stinski	07/08/1992		8155138001	Bismark, ND.
9216581	Northwest Communications	03/16/1992	08/05/1992	8155617006	Williston, ND.
9200542	Faith C. Amby	04/08/1992		8155808009	Omaha, NE.
9200548	BSV Partnership	04/08/1992		8155815006	Omaha, NE.
9211313	Hornby, Harold	04/07/1992	06/03/1992	8155810005	Omaha, NE.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9215431	Wireless Cable Ltd	12/09/1991	02/05/1992		Omaha, NE.
9215459	Diane Wechsler	12/26/1991	02/05/1992		Omaha, NE.
9218092	Sanford R. Robertson	06/12/1992		8155075007	Omaha, NE.
9218036	MAH Inc	05/04/1992		8155939009	NJ.
9210862	Cellularvision	01/15/1992	02/19/1992	8155183006	Atlantic City, NJ.
9215508	M3 Illinois Telecom Corp	01/13/1992	02/05/1992		Atlantic City, NJ.
9216685	Orion Broadcasting	04/03/1992	08/05/1992	8155796007	Atlantic City, NJ.
9218280	CT Comm. Corp	09/29/1992		8155403006	Atlantic City, NJ.
9218062	MAH Inc	05/04/1992		8155939003	Atlantic City MSA, NJ.
9210296	Cellular Vision, Inc	03/02/1992			Bergen-Passiac, NJ.
9211683	Krzeltowski, Andrew J	05/18/1992		8155995008	Bergen-Passiac, NJ.
9211924	Fraiberg, Lawrence	07/06/1992		8155141003	Bergen-Passiac, NJ.
9215628	Robert E. La Blanc	01/24/1992	03/18/1992	8155306007	Bergen-Passiac PMSA, NJ.
9215628	Robert E. La Blanc	01/24/1992	03/18/1992	8155306007	Bergen-Passiac PMSA, NJ.
9211075	GHZ Broadcasting Inc	02/24/1992	05/06/1992	8155456017	Bergen-Passiac, NJ.
9200295	Cellularvision	03/02/1992		8155513004	Jersey City, NJ.
9211681	Krzeltowski, Andrew J	05/18/1992		8155995010	Jersey City, NJ.
9211925	Fraiberg, Lawrence	07/06/1992		8155141002	Jersey City, NJ.
9215627	Robert E. La Blanc	01/24/1992	03/18/1992	8155306005	Jersey City PMSA, NJ.
9215627	Robert E. La Blanc	01/24/1992	03/18/1992	8155306005	Jersey City PMSA, NJ.
9215938	Western Sierra	02/18/1992	05/20/1992	8155441013	Jersey City PMSA, NJ.
9218041	Orange Wireless Partners	05/12/1992		8155982016	Long Beach, NJ.
9218134	Cone, S.E., Jr	05/14/1992		8155984019	Long Beach, NJ.
9210725	Bachow, Paul S	05/12/1992		8155970001	Long Branch, NJ.
9211558	Four M Mids Group	05/11/1992		8155963008	Long Branch, NJ.
9200298	Cellular Vision, Inc	03/02/1992			Middlesex-Somerset, NJ.
9211918	Hescoe, Norman	07/06/1992		8155141010	Middlesex-Somerset, NJ.
9218118	Freedom Technologies	07/06/1992		8155143002	Middlesex-Somerset, NJ.
9211066	GH2 Broadcasting Inc	02/20/1992	05/06/1992	8155456018	Middlesex/Somerset, NJ.
9200297	Cellular Vision, Inc	03/02/1992			Monmouth-Ocean, NJ.
9211923	Fraiberg, Lawrence	07/06/1992		8155141004	Monmouth-Ocean, NJ.
9215814	Smith, Kathleen	02/10/1992	04/29/1992	8155370002	Monmouth-Ocean PMSA, NJ.
9318602	BSV Partnership	10/07/1992		8680027003	Monmouth/Ocean, NJ.
9215939	Western Sierra	02/18/1992	05/20/1992	8155441013	Monmouth/Ocean PMSA, NJ.
9210586	Nicholas Garfinkle	12/02/1991	01/15/1992	8155916002	Newark, NJ.
9210713	Feinberg, Judy	12/30/1991	02/12/1992	8155037001	Newark, NJ.
9211443	Hornby, Henri R	04/21/1992	06/24/1992	8155902001	Newark, NJ.
9200563	Cellular Vision, Inc	04/06/1992		8155813002	Trenton, NJ.
9215511	M3 Illinois Telecom Corp	01/13/1992	02/05/1992		Trenton, NJ.
9218275	CT Comm. Corp	09/29/1992		8155403003	Trenton PMSA, NJ.
9218028	MAH Inc	05/04/1992		8155939013	Wilmington PMSA, NJ.
9210762	Buchwald, Joseph B	01/02/1992	02/12/1992	8155116012	Albuquerque, NM.
9200458	Jeffrey B. Crowley	04/13/1992	07/08/1992	8155877003	Albuquerque, NM.
9200597	BMB Partnership	04/13/1992	07/15/1992	8155876005	Albuquerque, NM.
9210700	AKZ Investors	12/24/1991	02/12/1992	8155998003	Albuquerque, NM.
9216591	Servista General	03/06/1992	08/05/1992	8155757005	Albuquerque, NM.
9215813	Smith, Kathleen	02/10/1992	04/29/1992	8155370003	Albuquerque MSA, NM.
9216585	Patricia B. Meilani	03/06/1992	08/05/1992	8155564014	Albuquerque MSA, NM.
9218212	Haddon, Perry W	08/10/1992		8155236007	Clovis, NM.
9218216	Haddon, Perry W	08/10/1992		8155236008	Hobbs, NM.
9211941	Haddon, Perry W	07/20/1992	10/15/1992	8155172003	Las Cruces, NM.
9218219	Haddon, Perry W	08/10/1992		8155236009	Roswell, NM.
9218180	Haddon, Perry W	06/20/1992		8155172001	Santa Fe, NM.
9218217	Jacobs, Michael	08/10/1992		8155236002	Carson City, NV.
9200428	John E. Brennan	03/16/1992	06/24/1992	8155612002	Las Vegas, NV.
9211189	Lindemann, Frayda B	03/18/1992	05/13/1992	8155611001	Las Vegas, NV.
9211190	Bachow, Paul S	03/18/1992	05/13/1992	8155611005	Las Vegas NV.
9215350	Suite 12 Group	11/25/1991	01/15/1992		Las Vegas, NV.
9218167	ALDA Multichannels Ltd	06/17/1992		8155088003	Las Vegas, NV.
9218187	ALDA Multichannels Ltd	07/10/1992		8155154003	Las Vegas, NV.
9215625	Robert E. La Blanc	01/24/1992	03/18/1992	8155255004	Las Vegas MSA, NV.
9215625	Robert E. La Blanc	01/24/1992	03/18/1992	8155255004	Las Vegas MSA, NV.
9216022	Virginia Communications	02/20/1992	06/10/1992	8155456011	Las Vegas MSA, NV.
9200547	BSV Partnership	04/06/1992	07/15/1992	8155815002	Reno, NV.
9210657	Cyrus Partnership	12/10/1991	02/05/1992	8155940007	Reno, NV.
9211132	Hornby, Harold	03/09/1992	05/13/1992	8155564005	Reno, NV.
9211132	Hornby, Harold	03/09/1992	05/13/1992	8155564005	Reno, NV.
9211345	Friend, Jonathan E	04/07/1992	06/17/1992	8155808004	Reno, NV.
9200528	Associated MDS Corp	04/06/1992	07/15/1992	8155808001	Albany, NY.
9200550	Bachow, Paul S	04/06/1992	07/15/1992	8155817006	Albany, NY.
9200584	Cone, S.E., Jr	04/06/1992	07/15/1992	8155811005	Albany, NY.
9211175	Kingswood Associates	03/17/1992	05/13/1992	8155609009	Albany, NY.
9211346	Hornby, Henri R	04/07/1992	06/17/1992	8155808009	Albany, NY.
9211375	Russell Hedden	04/08/1992	06/24/1992	8155813003	Albany, NY.
9218005	Orange Wireless Partners	04/07/1992		8155811006	Albany, NY.
9215485	R&R Telecommunication	01/03/1992	02/05/1992		Albany, Schen, Troy, NY.
9215881	Michael S. Siegel	02/26/1992	05/13/1992	8155482002	Albany, Schen, Troy, NY
9211260	Eastern Microwave, Inc	04/03/1992	06/03/1992	8155771002	Albany, Schen, Troy, NY
9200663	BSV Partnership	06/16/1992	07/29/1992	8155082010	Albany/Troy, NY.
9211802	Eastern Microwave, Inc	06/04/1992	07/29/1992	8155048005	Binghamton-Johnson, NY
9211619	Ilohca Corp	05/14/1992	07/08/1992	8155982007	Buffalo PMSA, NY.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9200727	Bachow, Paul S	05/12/1992	08/05/1992	8155969004	Buffalo, NY.
9210448	Bossard, Mark	11/26/1991	04/15/1992	8155874004	Buffalo, NY.
9211181	Kingswood Associates	03/17/1992	05/13/1992	8155609007	Buffalo, NY.
9211539	Eastern Microwave, Inc	05/08/1992	07/08/1992	8155954004	Buffalo, NY.
9211605	Four M MLDS Group	05/11/1992	07/08/1992	8155963001	Buffalo, NY.
9211673	Associated MDS Corp	05/18/1992	07/15/1992	8155990010	Buffalo, NY.
9218147	S.E. Cone, Jr	05/11/1992		8155964006	Buffalo, NY.
9218314	Jos. D. Carney & Assoc	09/30/1992		8680004010	Buffalo MSA, NY.
9215880	Video Communications	02/26/1992	05/13/1992	8155482003	Buffalo, NY, PMSA, NY.
9200213	Cambridge Management	01/24/1992	04/08/1992	8155308003	Buffalo, NY, PMSA, NY.
9211804	Eastern Microwave, Inc	06/04/1992		8155048003	Elmira-Corning, NY.
9211803	Eastern Microwave, Inc	06/04/1992	07/29/1992	8155048004	Ithaca MSA, NY.
9211347	Hornby, Henri R	04/07/1992	06/17/1992	8155808007	Nassau-Suffolk, NY.
9215626	Robert E. La Blanc	01/24/1992	03/18/1992	8155306006	Nassau-Suffolk PMSA, NY.
9215626	Robert E. La Blanc	01/24/1992	03/18/1992	8155306006	Nassau-Suffolk PMSA, NY.
9200791	Celtel Communications	07/31/1992	09/02/1992	8155212009	New York, NY.
9210656	Hye Crest Management	12/17/1991	01/29/1992	8155966003	New York, NY.
9218302	Jos. D. Carney & Assoc	09/30/1992		8680003005	New York MSA, NY.
9218182	Niagra Partners	06/20/1992		8155172005	Niagara Falls PMSA, NY.
9218182	Niagra Partners	06/20/1992		8155172005	Niagara Falls PMSA, NY.
9218182	Niagra Partners	06/20/1992		8155172005	Niagara Falls PMSA, NY.
9218182	Niagra Partners	06/20/1992		8155172005	Niagara Falls PMSA, NY.
9218182	Niagra Partners	06/20/1992		8155172005	Niagara Falls PMSA, NY.
9215441	Norton Garfinkle	12/04/1992	02/05/1992		Oceanside, NY.
9218252	CT Communications Corp	09/29/1992		8155398004	Orange County, NY.
9216024	Western Sierra	02/18/1992	06/10/1992	8155441016	Orange County PMSA, NY.
9211805	Eastern Microwave, Inc	06/04/1992		8155048002	Poughkeepsie-Kingston, NY
9200714	Associated MDS Corp	05/15/1992	08/05/1992	8155990004	Rochester, NY.
9200723	Bachow, Paul S	05/12/1992	08/05/1992	8155970003	Rochester, NY.
9211180	Kingswood Associates	03/17/1992	05/13/1992	8155609008	Rochester, NY.
9211180	Kingswood Associates	03/17/1992	05/13/1992	8155609008	Rochester, NY.
9211601	Four M MLDS Group	05/11/1992		8155963005	Rochester, NY.
9211712	Eastern Microwave, Inc	05/20/1992	07/15/1992	8155008001	Rochester, NY.
9211826	Hascoe, Norman	06/17/1992		8155087003	Rochester, NY.
9216642	SCNY Communications Inc	03/16/1992		8155703016	Rochester, NY.
9218043	Orange Wireless Partners	05/12/1992		8155962003	Rochester, NY.
9218105	Alexander N. Mitchell	06/16/1992		8155082005	Rochester, NY.
9218145	S.E. Cone, Jr	05/11/1992		8155964008	Rochester, NY.
9218153	Alternative Broadcast Nt	05/27/1992		8155025005	Rochester, NY.
9218313	Jos. D. Carney & Assoc	09/30/1992		8680004009	Rochester, NY.
9318621	Celularvision	10/16/1992		8680052007	Rochester, NY.
9211079	GHZ Broadcasting Inc	02/24/1992	05/06/1992	8155456013	Syracuse, NY.
9211540	Eastern Microwave, Inc	05/08/1992	07/08/1992	8155954003	Syracuse, NY.
9211812	King Broadcasting Assoc	06/08/1992		8155058004	Syracuse, NY.
9211832	High Band Broadcasting	06/18/1992		8155091002	Syracuse, NY.
9216644	SCNY Communications Inc	03/16/1992		8155703019	Syracuse, NY.
9218097	Jeanne P. Robertson	06/12/1992		8155075004	Syracuse, NY.
9218242	Richard Carl Levy Part	09/16/1992		8155357001	Syracuse, NY.
9211806	Eastern Microwave, Inc	06/04/1992		8155048001	Utica-Rome, NY.
9218007	Orange Wireless Partners	04/07/1992		8155811009	OH.
9211616	Ilohca Corp	05/14/1992	07/08/1992	8155982010	Akron, OH.
9218243	Richard Carl Levy Part	09/16/1992		8155357003	Akron, OH.
9318288	Jos. D. Carney & Assoc	10/02/1992		8680002001	Akron, OH.
9318513	Roy, Shiela Ann	10/15/1992		8680048003	Akron, OH.
9215622	R&R Telecommunication	01/24/1992	03/18/1992	8155255010	Akron PMSA, OH.
9215622	R&R Telecommunication	01/24/1992	03/18/1992	8155255010	Akron PMSA, OH.
9218172	Charles D. Snelling	06/12/1992		8155142002	Akron PMSA, OH.
9211859	High Band Broadcasting	06/22/1992	07/29/1992	8155098005	Akron, OH.
9218113	Mark Silberman	06/30/1992		8155121003	Canton, OH.
9218261	CT Communications Corp	09/29/1992		8155404003	Canton, OH.
9216579	Northeast Wireless	03/16/1992	08/05/1992	8155609003	Canton MSA, OH.
9318312	Jos. D. Carney & Assoc	10/02/1992		8680004008	Canton MSA, OH.
9211617	Ilohca Corp	05/14/1992	07/07/1908	8155982009	Cincinatti, OH.
9117818	Stuart M. Perlow	09/11/1991	10/16/1991		Cincinatti, OH.
9211687	Four M MLDS Group	05/18/1992	07/15/1992	8155996005	Cincinatti, OH.
9215633	Princeton Scientific	01/24/1992	03/18/1992	8155255012	Cincinatti, OH.
9218067	Orange Wireless Partners	05/19/1992		8155996015	Cincinatti, OH.
9218077	Maurice & Charlotte Vick	05/18/1992		8155997015	Cincinatti, OH.
9218126	S.E. Cone, Jr	05/18/1992		8155997007	Cincinatti, OH.
9318292	Jos. D. Carney & Assoc	10/02/1992		8680002005	Cincinatti MSA, OH.
9318623	Celularvision	10/06/1992		8680020001	Cincinatti PMSA, OH.
9112913	Evanston Transmission Co	07/30/1991	09/25/1991	8155346003	Cleveland, OH.
9211682	Andrew J. Krzettowski	05/19/1992	07/15/1992	8155995009	Cleveland, OH.
9211690	Four M MLDS Group	05/18/1992	07/15/1992	8155996002	Cleveland, OH.
9215632	Princeton Scientific	01/24/1992	03/18/1992	8155306002	Cleveland, OH.
9218073	Mark K. Shah	05/19/1992		8155995011	Cleveland, OH.
9218074	Maurice & Charlotte Vick	05/19/1992		8155997013	Cleveland, OH.
9218079	Orange Wireless Partners	05/18/1992		8155996010	Cleveland, OH.
9218124	S.E. Cone, Jr	05/18/1992		8155997009	Cleveland, OH.
9318290	Jos. D. Carney & Assoc	10/02/1992		8680002002	Cleveland MSA OH.
9200526	Associated MDS Corp	04/06/1992		8155811013	Columbus, OH

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File No.	Applicant	File date	PN date	Fee No.	Service area
9200552	Bachow, Paul S	04/06/1992		8155817004	Columbus, OH.
9200589	Paul Likins	04/06/1992		8155811011	Columbus, OH.
9200595	BMB Partnership	04/13/1992	07/15/1992	8155878002	Columbus, OH.
9211340	Hornby, Henri R	04/02/1992	06/17/1992	8155810008	Columbus, OH.
9211421	Kelly, Paul N	04/14/1992	06/24/1992	8155880010	Columbus, OH.
9215522	Savphill Group	01/14/1992	02/05/1992		Columbus, OH.
9215546	Diane Wechsler	01/21/1992	02/12/1992		Columbus, OH.
9215879	Video Communications	02/26/1992	02/13/1992	8155482004	Columbus MSA, OH.
9210598	Dayton Wireless	12/10/1991	01/15/1992	8155940003	Dayton, OH.
9216605	P.M.J. Securities Inc.	03/16/1992	08/05/1992	8155705011	Dayton, OH.
9216614	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703005	Dayton, OH.
9216631	Telecom Investment Corp	03/16/1992	08/05/1992	8155704009	Dayton, OH.
9215617	R&R Telecommunication	01/24/1992	03/18/1992	8155254004	Dayton MSA, OH.
9215617	R&R Telecommunications	01/24/1992	03/18/1992	8155254004	Dayton MSA, OH.
9318295	Jos. D. Carney & Assc	10/02/1992		8680002008	Dayton, MSA, OH.
9318611	Cellularvision	10/02/1992		8680011002	Dayton PMSA, OH.
9211861	High Band Broadcasting	06/23/1992	07/29/1992	8155096003	Hamilton, OH.
9218156	Alternative Broadcast NT	05/27/1992		8155025008	Hamilton, OH.
9215893	Servista General	02/26/1992	05/13/1992	8155481004	Lima, OH.
9218103	PMB Partnership	06/16/1992		8155082008	Lima, OH.
9211947	Mark J. Konrad	07/20/1992	08/05/1992	8155177001	Toledo, OH.
9215892	Servista General	02/26/1992	05/13/1992	8155481005	Toledo, OH.
9218110	PMB Partnership	06/17/1992		8155082013	Toledo, OH.
9318301	Jos. D. Carey & Assc	10/02/1992		8680003004	Toledo, OH.
9215935	Robert Rosenkranz	02/13/1992	05/20/1992	8155405004	Toledo MSA, OH.
9218175	Charles D. Snelling	06/06/1992		8155142004	Toledo MSA, OH.
9211184	Fm Video Broadcasters	03/17/1992	05/13/1992	8155609005	Youngstown, OH.
9218112	Mark Silberman	07/01/1992		8155121006	Youngstown, OH.
9218304	Jos. D. Carney & Assoc	10/02/1992		8680003007	Youngstown MSA, OH.
9218049	Orange Wireless Partners	05/12/1992		8155962019	OK.
9200209	Cambridge Management	01/24/1992	04/08/1992	8155254013	Oklahoma City, OK.
9200726	Bachow, Paul S	05/12/1992		8155970007	Oklahoma City, OK.
9211553	Four M MLDS Group	05/11/1992		8155963013	Oklahoma City, OK.
9211811	Krzettowski, Andrew	06/08/1992		8155058002	Oklahoma City, OK.
9216669	Servista General	04/06/1992	08/05/1992	8155856004	Oklahoma City, OK.
9218048	Orange Wireless Partners	05/12/1992		8155962013	Oklahoma City, OK.
9218102	Robertson, Sanford R	06/12/1992		8155075010	Oklahoma City, OK.
9218141	Cone, S.E., Jr	05/11/1992		8155964012	Oklahoma City, OK.
9218244	Richard Carl Levy Part	09/16/1992		8155357002	Oklahoma City, OK.
9218615	Cellularvision	10/02/1992		8680011009	Oklahoma PMSA, OK.
9200734	Bachow, Paul S	05/12/1992		8155968003	Tulsa, OK.
9211078	GHZ Broadcasting Inc	02/24/1992	06/06/1992	8155456014	Tulsa, OK.
9211555	Four M MLDS Group	05/11/1992		8155963011	Tulsa, OK.
9216671	Servista General	04/06/1992	08/05/1992	8155856002	Tulsa, OK.
9218084	Suite 12 Group	06/08/1992		8155055002	Tulsa, OK.
9218087	Meeker, Herbert S	06/09/1992		8155065005	Tulsa, OK.
9218107	Robertson, Sanford R	06/12/1992		8155075008	Tulsa, OK.
9218142	Cone, S.E., Jr	05/11/1992		8155964011	Tulsa, OK.
9218246	Richard Carl Levy Part	09/22/1992		8155379003	Tulsa, OK.
9318619	Cellularvision	10/16/1992		8680052003	Tulsa PMSA, OK.
9218203	Taggart, Robert B	08/10/1992		8155237008	Eugene, OR.
9216021	Subscriber TV Partners	02/20/1992	06/10/1992	8155456005	Eugene MSA, OR.
9200210	Cambridge Management	01/24/1992	04/08/1992	8155254012	Portland, OR.
9210865	Cellularvision	01/16/1992	02/19/1992	8155187004	Portland, OR.
9215515	Northwest Telecommunication	01/13/1992	02/05/1992		Portland, OR.
9218031	Willamette Valley Broad	05/04/1992		8155939002	Portland PMSA, OR.
9215629	Myers, Frederick M	01/24/1992	03/18/1992	8155254006	Portland PMSA, OR.
9215629	Myers, Frederick M	01/24/1992	03/18/1992	8155254006	Portland PMSA, OR.
9211185	FM Video Broadcasters	03/17/1992	05/13/1992	8155609002	Salem, OR.
9218114	Silberman, Mark	06/30/1992		8155121004	Salem, OR.
9200735	Bachow, Paul S	05/12/1992		8155968004	Allentown, PA.
9210279	Hummel, Delores	11/04/1992	11/27/1991	8155778007	Allentown, PA.
9211556	Four M MLDS Group	05/11/1992		8155963010	Allentown, PA.
9218044	Orange Wireless Partners	05/12/1992		8155962018	Allentown, PA.
9218136	Cone, S.E., Jr	05/14/1992		8155964017	Allentown, PA.
9218196	Mettler Communications	08/05/1992		8155224005	Allentown PA.
9318630	BSV Partnership	10/06/1992		8680020008	Allentown PMSA, PA.
9218091	Meeker, Herbert S	06/09/1992		8155065003	Allentown-Bethlhm, PA.
9200736	Bachow, Paul S	05/12/1992		8155968005	Harrisburg, PA.
9211551	Four M Mlds Group	05/11/1992		8155963015	Harrisburg, PA.
9215502	M3 Illinois Telecom Corp	01/13/1992	02/05/1992	8155177009	Harrisburg, PA.
9218053	Orange Wireless Partners	05/12/1992		8155962008	Harrisburg, PA.
9218151	Cone, S.E., Jr	05/11/1992		8155964001	Harrisburg, PA.
9216677	Ronald E. Sansac	04/06/1992	08/05/1992	8155816006	Harrisburg MSA, PA.
9318628	BSV Partnership	10/06/1992		8680020006	Harrisburg PSMA, PA.
9218035	MAH Inc	05/04/1992		8155939008	Harrisburg/Lebanon, PA.
9318504	Mathes, Philip H	10/02/1992		8680009007	Lancaster, PA.
9318517	Likins, Paul	10/21/1992		8680064002	Lancaster, PA.
9111270	LDH International Inc	02/08/1991	05/15/1991	8155674008	Philadelphia, PA.
9112780	Hovpro Investment Group	07/15/1991	08/21/1991	8155265009	Philadelphia, PA.
9318309	Jos. D. Carney & Assoc	10/02/1992		8680004005	Philadelphia MSA, PA.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9200742	Bachow, Paul S	05/14/1992		8155983004	Pittsburgh, PA.
9118120	Haratunian, Michael	08/19/1991	10/09/1991	8155435002	Pittsburgh, PA.
9218066	Orange Wireless Partners	05/18/1992		8155998012	Pittsburgh, PA.
9210597	Acor, Everett T	12/09/1991	01/15/1992	8115940013	Pittsburgh, PA.
9211618	Ilohca Corp	05/14/1992		8155982008	Pittsburgh, PA.
9211677	Lindemann, Frayda B	05/14/1992		8155984004	Pittsburgh, PA.
9211686	Four M Mlds Group	05/18/1992		8155996006	Pittsburgh, PA.
9218123	Associated MDS Corp	05/15/1992		8155990005	Pittsburgh, PA.
9218131	Brennan, John E	05/14/1992		8155985002	Pittsburgh, PA.
9218137	Cone, S.E., Jr	05/18/1992		8155997002	Pittsburgh, PA.
9318000	Associated MDS Corp	10/23/1992			Pittsburgh, PA.
9318296	Jos. D. Carney & Asoc	10/02/1992		8680002009	Pittsburgh MSA, PA.
9215618	R&R Telecommunication	01/24/1992	03/18/1992	8155255011	Pittsburgh PMSA, PA.
9215618	R&R Telecommunication	01/24/1992	03/18/1992	8155255011	Pittsburgh PMSA, PA.
9215889	Video Communications	02/26/1992	05/13/1992	8155482005	Pittsburgh PMSA, PA.
9318626	Celularvision	10/06/1992		8680020004	Pittsburgh PMSA, PA.
9318627	BSV Partnership	10/06/1992		8680020005	Ransom PMSA, PA.
9218205	Mottler Communications	08/07/1992		8155232005	Reading, PA.
9318506	Missirian, Raphael A	10/02/1992		8680011004	Reading, PA.
9200541	Amby, Faith C	04/06/1992		8155808010	Scranton, PA.
9211357	Russell Hedden	04/08/1992	06/24/1992	8155816007	Scranton, PA.
9215466	Wireless Cable Ltd	12/23/1991	02/05/1992	8155998001	Scranton, PA.
9216587	Patricia B. Mallent	03/06/1992	08/05/1992	8155564012	Scranton MSA, PA
9218173	Snelling, Charles D	07/07/1992		8155142001	Scranton-Wilkes Barr, PA.
9200728	Bachow, Paul S	05/12/1992		8155969003	York, PA.
9211547	Four M Mlds Group	05/11/1992		8155963019	York, PA.
9216582	Servista General	03/13/1992	08/05/1992	8155604001	York, PA.
9218051	Orange Wireless Partners	05/12/1992		8155962006	York, PA.
9218150	Cone, S.E., Jr	05/11/1992		8155964003	York, PA.
9318505	Tompkins, W. Woodruff	10/02/1992		8680011003	York, PA.
9218117	Freedom Technologies	07/06/1992		8155143001	San Juan, PR.
9318510	SMC Associates	10/09/1992		8680036002	San Juan, PR.
9218263	CT Communications Corp	09/29/1992		8155404005	Pawtucket-Woonsocket, RI.
9118121	Alliance Associates	08/16/1991	10/09/1991	8155430010	Providence, RI.
9200743	Bachow, Paul S	05/14/1992		8155983002	Providence, RI.
9211312	Hornby, Harold	04/07/1992	06/03/1992	8155810004	Providence, RI.
9211689	Four M MLDS Group	05/18/1992		8155996003	Providence, RI.
9215436	Wireless Cable Ltd	12/09/1991	02/05/1992		Providence, RI.
9216601	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705005	Providence, RI.
9216621	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703013	Providence, RI.
9216640	Telecom Investment Corp	03/16/1992	08/05/1992	8155704002	Providence, RI.
9218076	Orange Wireless Partners	05/18/1992		8155997001	Providence, RI.
9218130	Cone, S.E. Jr	05/18/1992		8155997003	Providence, RI.
9215619	R&R Telecommunication	01/24/1992	03/18/1992	8155255014	Providence PMSA, RI.
9215619	R&R Telecommunication	01/24/1992	03/18/1992	8155255014	Providence PMSA, RI.
9215999	Subscriber TV Partners	02/24/1992	06/10/1992	8155464001	Augusta MSA, SC.
9211420	Kingswood Associates	04/14/1992	06/24/1992	8155880004	Charleston, SC.
9211942	Foresight Communications	07/20/1992		8155172008	Charleston, SC.
9216645	SCNY Communications	03/16/1992		8155703018	Charleston, SC.
9218231	Suite 12 Group	08/24/1992		8155284002	Charleston, SC.
9215936	Robert Rosenkranz	02/13/1992	05/20/1992	8155405005	Charleston MSA, SC.
9216643	SCNY Communications	03/16/1992		8155703020	Columbia, SC.
9218096	Robertson, Jeanne P	06/12/1992		8155075005	Columbia, SC.
9218189	BSV Partnership	08/10/1992		8155237007	Columbia, SC.
9216019	Subscriber TV Partners	02/20/1992	06/10/1992	8155456007	Columbia MSA, SC.
9318622	Celularvision	10/16/1992		8680052001	Columbia PMSA, SC.
9210967	Edelson, Harry	01/24/1992	03/25/1992	8155254007	Greenville, SC.
9211718	Krzettowski, Andrew J	05/26/1992		8155019005	Greenville, SC.
9215891	Servista General	02/26/1992	05/13/1992	8155481006	Greenville, SC.
9216646	SCNY Communications	03/16/1992		8155703017	Greenville, SC.
9218104	Mitchell, David Jan	06/16/1992		8155082004	Greenville, SC.
9318618	Celularvision	10/16/1992		8680052004	Greenville PMSA, SC.
9318508	Butler, Lawrence	10/15/1992		8680048008	Buffalo Mountain, TN.
9218195	Kingswood Associates	08/05/1992		8155224001	Chattanooga, TN.
9318515	Butler, Michael	10/15/1992		8680048007	Chattanooga, TN.
9318610	Celularvision	10/02/1992		8680009002	Chattanooga PMSA, TN.
9318607	Celularvision	10/02/1992		8680009006	Kingsport PMSA, TN.
9200729	Bachow, Paul S	05/12/1992		8155969002	Knoxville, TN.
9211076	GHZ Broadcasting Inc	02/24/1992	05/06/1992	8155458016	Knoxville, TN.
9211549	Four M MLDS Group	05/11/1992		8155963017	Knoxville, TN.
9218055	Orange Wireless Partners	05/12/1992		8155962010	Knoxville, TN.
9218099	Robertson, Jeanne P	06/12/1992		8155075002	Knoxville, TN.
9218121	Peyser, Frederick M	07/06/1992		8155141001	Knoxville, TN.
9218152	Cone, S.E., Jr	05/11/1992		8155964002	Knoxville, TN.
9218165	ALDA Multichannels, Ltd	06/17/1992		8155088005	Knoxville, TN.
9218245	Richard Carl Levy Part	09/22/1992		8155379004	Knoxville, TN.
9318608	Celularvision	10/02/1992		8680009004	Knoxville PMSA, TN.
9200721	Bachow, Paul S	05/12/1992		8155971002	Memphis, TN.
9210267	Brown, David	11/01/1992	11/27/1991	8155772004	Memphis, TN.
9210732	Cornblatt, Arnold	01/03/1992	02/12/1992	8155068008	Memphis, TN.
9211600	Four M MLDS Group	05/11/1992		8155963006	Memphis, TN.

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File No.	Applicant	File date	PN date	Fee No.	Service area
9211829	High Band Broadcasting	06/18/1992		8155091003	Memphis, TN.
9218075	Orange Wireless Partners	05/11/1992		8155962012	Memphis, TN.
9218144	Cone, S.E., Jr	05/11/1992		8155964009	Memphis, TN.
9218200	Vick, Maurice M. & Charl	08/07/1992		8155234005	Memphis, TN.
9215832	Robert Rosenkranz	02/13/1992	04/29/1992	8155405002	Memphis MSA, TN.
9200367	Amby, Faith C	03/06/1992		8155564002	Nashville, TN.
9200527	Associated MDS Corp	04/06/1992		8155808003	Nashville, TN.
9200551	Bachow, Paul S	04/06/1992		8155817005	Nashville, TN.
9200585	Cone, S.E., Jr	04/06/1992		8155811004	Nashville, TN.
9210576	Electronic Retailing Sys	12/05/1992	01/15/1992	8155919007	Nashville, TN.
9211310	Levin, Michael H	04/07/1992	06/03/1992	8155810001	Nashville, TN.
9215413	R&R Telecommunication	12/30/1991	02/05/1992		Nashville, TN.
9215445	New South Associates	12/05/1991	02/05/1992		Nashville, TN.
9218004	Orange Wireless Partners	04/07/1992		8155811007	Nashville, TN.
9218082	Suite 12 Group	06/08/1992		8155065004	Nashville, TN.
9211074	King Broadcasting Assoc	02/24/1992	05/06/1992	8155456003	Abilene, TX.
9218248	Richard Carl Levy Part	09/22/1992		8155379005	Abilene, TX.
9211943	King Broadcasting Assoc	07/20/1992		8155173003	Amarillo, TX.
9318501	Megerdichian, Jack	10/02/1992		8680009005	Amarillo, TX.
9200455	BMB Partnership	04/13/1992	07/08/1992	8155878006	Austin, TX.
9200469	Associated MDS Corp	04/14/1992	07/15/1992	8155886005	Austin, TX.
9200598	Bachow, Paul S	04/14/1992		8155888006	Austin, TX.
9210730	Lonergan, William R	01/02/1992	02/12/1992	8155101001	Austin, TX.
9210731	Jorgensen, David G	01/03/1992	02/12/1992	8155068006	Austin, TX.
9211419	Kingswood Associates	04/14/1992	06/24/1992	8155880005	Austin, TX.
9211423	Mark B. Fisher	04/14/1992	06/24/1992	8155878003	Austin, TX.
9211427	Four M Mids Group	04/13/1992		8155882007	Austin, TX.
9216656	Orange Wireless	04/13/1992		8155881007	Austin, TX.
9216666	M.M. & C.O. Vick Partner	04/14/1992		8155887003	Austin, TX.
9318285	Assoc. Mds Corp	10/02/1992		8155886004	Austin, TX.
9218193	Kingswood Associates	08/05/1992		8155224003	Beaumont, TX.
9318603	William H. Williams	10/02/1992		8680009010	Beaumont PMSA, TX.
9216654	University of Texas	04/10/1992		8155868003	Brownsville, TX.
9215180	Riovision of Texas	11/15/1991	12/26/1991		Brownsville, TX.
9318604	William H. Williams	10/02/1992		8680009009	Corpus Christi PMSA, TX.
9117537	Peter Rinfret	07/15/1991	09/25/1991		Dallas, TX.
9318509	Metrocom Telecasting	10/01/1992		8680006001	Dallas, TX.
9110799	LDH International Inc	12/24/1990	05/15/1991	8155586002	Dallas-Ft. Worth, TX.
9200600	Bachow, Paul S	04/14/1992		8155888003	El Paso, TX.
9210706	Buchwald, Joseph B	12/30/1991	02/12/1992	8155037003	El Paso, TX.
9211422	Tom Elliott	04/14/1992	06/24/1992	8155877005	El Paso, TX.
9211431	Four M MLDS Group	04/13/1992		8155882003	El Paso, TX.
9216593	Senvista General	03/06/1992	08/05/1992	8155757001	El Paso, TX.
9216658	Orange Wireless	04/13/1992	08/05/1992	8155881005	El Paso, TX.
9215623	Robert E. La Blanc	01/24/1992	03/18/1992	8155254003	El Paso MSA, TX.
9215623	Robert E. La Blanc	01/24/1992	03/18/1992	8155254003	El Paso MSA, TX.
9215943	Western Sierra	02/18/1992	05/20/1992	8155441010	El Paso MSA, TX.
9200525	Associated MDS Corp	04/06/1992		8155811014	Ft. Worth, TX.
9200545	Brennan, John E	04/06/1992		8155818004	Ft. Worth, TX.
9200554	Bachow, Paul S	04/06/1992		8155817002	Ft. Worth, TX.
9200587	Cone, S.E., Jr	04/06/1992		8155811002	Ft. Worth, TX.
9211349	Lindemann, Frayda B	04/08/1992	06/17/1992	8155818001	Ft. Worth, TX.
9215458	James L. Melcher	12/26/1991	02/05/1992		Ft. Worth, TX.
9218009	Orange Wireless Partners	04/07/1992		8155811012	Ft. Worth, TX.
9211090	Kelly, Paul N	02/10/1992	04/29/1992	8155369009	Ft. Worth, TX.
9215150	Roy Tartaglia	11/04/1991	12/11/1991		Ft. Worth, TX.
9215941	Western Sierra	02/18/1992	05/20/1992	8155441012	Galveston MSA, TX.
9111273	LDH International Inc	02/08/1991	05/15/1991	8155674011	Houston, TX.
9112777	Kavid Koffman	07/15/1991	10/02/1991	8155264006	Houston, TX.
9218161	ALDA Multichannels, Ltd	06/17/1992		8155088009	Houston, TX.
9211452	Foresight Communications	04/21/1992	06/24/1992	8155901008	Laredo, TX.
9218094	Summit Advisory, Ltd, The	06/15/1992		8155077001	Laredo, TX.
9218227	Montgomery, Robert L	08/24/1992		8155284004	Laredo, TX.
9200462	Cactus Television Inter	04/13/1992		8155880007	Lubbock, TX.
9318277	CT Comm. Corp	10/02/1992		8155403001.	Mcal. Edin. Missn. MSA, TX.
9215179	Riovision of Texas	11/15/1991	12/26/1991		McAllen, TX.
9216655	University of Texas	04/10/1992		8155869002	McAllen, TX.
9211944	King Broadcasting Assoc	07/20/1992		8155173002	Midland, TX.
9218181	King Broadcasting Assoc	06/20/1992		8155172002	Odessa MSA, TX.
9218202	King Broadcasting Assoc	08/10/1992		8155236010	San Angelo, TX.
9200720	Bachow, Paul S	05/12/1992		8155971003	San Antonio, TX.
9210278	Levine, D. Christopher	11/04/1991	11/27/1991	8155778006	San Antonio, TX.
9211130	Hornby, Harold	03/09/1992	05/13/1992	8155564009	San Antonio, TX.
9211602	Four M MLDS Group	05/11/1992		8155963004	San Antonio, TX.
9215433	Wireless Cable Ltd	12/09/1991	02/05/1992		San Antonio, TX.
9218045	Orange Wireless Partners	05/12/1992		8155962002	San Antonio, TX.
9218108	PMB Partnership	06/16/1992		8155082012	San Antonio, TX.
9218148	Cone, S.E., Jr	05/11/1992		8155964005	San Antonio, TX.
9200212	Cambridge Management	01/24/1992	04/08/1992	2155254010	San Antonio, MSA, TX.
9211451	Foresight Communications	04/21/1992	06/24/1992	8155901009	Tyler, TX.
9218190	Chorekchyan, Gayk	08/24/1992		8155284007	Tyler, TX.

27 GHz MICROWAVE INVENTORY—Continued

File No.	Applicant	File date	PN date	Fee No.	Service area
9218197	Mettler Communications	08/05/1992		8155224006	Waco, TX.
9318605	William H. Williams	10/02/1992		8680009008	Waco, PMSA, TX.
9218210	Smith, William L	08/10/1992		8155241001	Provo, UT.
9200593	BSV Partnership	04/17/1992		8155896002	Salt Lake City, UT.
9210915	Clark, Thomas Francis	01/23/1992	02/19/1992	8155233003	Salt Lake City, UT.
9211460	Hornby, Henri R	04/20/1992		8155901014	Salt Lake City, UT.
9215812	Smith, Kathleen	02/10/1992	04/29/1992	8155370004	Salt Lake City, UT.
9216592	Servista General	03/06/1992	08/05/1992	8155757004	Salt Lake City, UT.
9218160	Krzettowski, Andrew	06/17/1992		8155088010	Salt Lake City, UT.
9218012	William L. Smith	04/20/1992		8155901013	Salt Lake City, UT.
9210972	Edelson, Harry	01/27/1992	03/25/1992	8155255009	Norfolk, VA.
9215151	William P. Tavoulareas	11/04/1992	12/11/1991		Norfolk, VA.
9215368	Shenandoah Group	12/05/1991	01/29/1992		Norfolk, VA.
9216588	Patricia B. Mailani	03/06/1992	08/05/1992	8155564011	Norfolk MSA, VA.
9318308	Jos. D. Carney & Assoc	10/02/1992		8680004004	Norfolk MSA, VA.
9200456	BMB Partnership	04/13/1992		8155878007	Richmond, VA.
9200467	Cone, S.E., Jr	04/13/1992		8155882009	Richmond, VA.
9200599	Bachow, Paul S	04/14/1992		8155888005	Richmond, VA.
9200649	Associated MFS Corp	04/14/1992		8155888003	Richmond, VA.
9210698	Bay Broadcasting Assoc	12/24/1991	02/12/1992	8155898005	Richmond, VA.
9210736	Clark, Thomas Francis	01/08/1992	02/12/1992	8155123007	Richmond, VA.
9211428	Four M MLDS Group	04/13/1992		8155882008	Richmond, VA.
9216596	P.M.J. Securities Inc	03/16/1992	08/05/1992	8155705014	Richmond, VA.
9216618	Telecom/Haddock Investor	03/24/1992	08/05/1992	8155703001	Richmond, VA.
9216625	Telecom Investment Corp	03/16/1992	08/05/1992	8155704015	Richmond, VA.
9216653	William Mckissouck	04/13/1992		8155877006	Richmond, VA.
9216657	Orange Wireless	04/13/1992		8155881006	Richmond, VA.
9216663	M.M. & C.O. Vick Partner	04/14/1992		8155887005	Richmond, VA.
9318606	Celularvision	10/02/1992		8680011010	Roanoke PMSA, VA.
9218249	CT Communications Corp	09/29/1992		8155398001	Bremerton, WA.
9211454	Foresight Communications	04/20/1992	06/24/1992	8155901006	Olympia, WA.
9218226	McKissock, William J	08/24/1992		8155284003	Olympia, WA.
9218264	CT Communications Corp	09/29/1992		8155404006	Olympia, WA.
9111303	LDH International Inc	02/20/1991	05/15/1991	8155709005	Seattle-Everett, WA.
9112781	Hovnanian, Ara K	07/15/1991	08/21/1991	8155264001	Seattle-Tacoma, WA.
9200665	BSV Partnership	06/16/1992		8155082014	Spokane, WA.
9211133	Hornby, Harold	03/06/1992	05/13/1992	8155564004	Spokane, WA.
9211356	Sarkis Krikorian	04/06/1992	06/24/1992	8155816005	Spokane, WA.
9215446	New South Associates	12/05/1991	02/05/1992		Spokane, WA.
9318519	Skyline Entrtnmnt Ntwork	10/23/1992		8680075014	Spokane, WA.
9200457	BMB Partnership	04/13/1992		8155877007	Spokane, WA.
9210710	Jorgensen, David G	12/26/1992	02/12/1992	8155032003	Tacoma, WA.
9211442	Hornby, Henri R	04/20/1992	06/24/1992	8155902002	Tacoma, WA.
9211823	Hascone, Norman	06/17/1992		8155087002	Tacoma, WA.
9218225	Tompkins, W. Woodruff	08/24/1992		8155284005	Tacoma, WA.
9218183	Title Town TV	07/20/1992		8155172007	Green Bay, WI.
9218115	Silberman, Mark	06/30/1992		8155121005	Madison, WI.
9218258	CT Communications Corp	09/29/1992		8155398009	Madison, WI.
9216578	Madison Wireless	03/16/1992	08/05/1992	8155609004	Madison MSA, WI.
9318268	Paul Likine	10/02/1992		868001004	Madison, WI, MSA, WI.
9200604	Bachow, Paul S	04/30/1992		8155934002	Milwaukee, WI.
9200670	BSV Partnership	05/04/1992		8155943002	Milwaukee, WI.
9210961	Feinberg, Judy	01/13/1992	03/04/1992	8155178004	Milwaukee, WI.
9211526	Four M MLDS Group	05/04/1992		8155944002	Milwaukee, WI.
9211530	Ilohca Corp	05/04/1992		8155943003	Milwaukee, WI.
9215152	Clay Marston	11/01/1991	12/11/1991		Milwaukee, WI.
9218039	Orange Wireless Partners	05/05/1992		8155944004	Milwaukee, WI.
9218122	Cone, S.E., Jr	05/04/1992		8155944003	Milwaukee, WI,
9218162	ALDA Multichannels, Ltd	06/17/1992		8155088008	Milwaukee, WI.
9215937	Robert Rosenkranz	02/13/1992	05/20/1992	8155405006	Milwaukee PMSA, WI.
9218198	Virginia Communications	08/05/1992		8155224004	Huntington, WV.
9218211	Hughes, Leonard	08/10/1992		8155236004	Casper, WY.
9218214	Hughes, Leonard	08/10/1992		8155236006	Cheyenne, WY.

There are 971 applications listed.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–1937 Filed 1–27–93; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Advanced Television Service Special Panel Meeting

A meeting of a Special Panel of the Advisory Committee on Advanced Television Service will be held from Monday, February 8, 1993, through Friday, February 12, 1993 at: Sheraton Premiere Hotel Tyson's Corner, 8661 Leesburg Pike, Vienna, Virginia 22182, Tel. (703) 448–1234.

The Special Panel will first convene at 10 a.m. on Monday. Daily schedules, which may include evening sessions, will be set by the Chairman of the Special Panel. The meeting may be extended to February 13 and 14 if additional time is needed for the Special Panel to complete its work.

The purpose of this meeting is to conduct a thorough technical analysis and comparison of the various systems which have been developed and proposed for an advanced television standard, and to assist the parent Advisory Committee in preparing a report and recommendation to be made to the Federal Communications Commission regarding that standard. The agenda is informal and will include presentations by the proponents of the various advanced television systems, technical discussion and debate regarding the results of the tests of the systems conducted under the auspices of the Advisory Committee, and development of a draft recommendation to be forwarded to the Advisory Committee.

The Special Panel was established by the Advisory Committee in March, 1992, and is composed of 25 knowledgeable and experienced persons who have participated in the work of the Advisory Committee. Its Chairman is Robert Hopkins. Also joining in the work of the Special Panel will be 18 ex officio (non-voting) representatives of federal agencies, other governments, test laboratories and the developers of the proposed advanced television systems.

The public is welcome to attend. However, there will not be any opportunity for public participation in the discussions unless specifically requested by the Chairman of the Special Panel.

Any questions regarding this meeting should be directed to Robert Hopkins at (202) 828–3130 or William Hassinger at (202) 632–6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2099 Filed 1–27–93; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1926]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

January 25, 1993.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed on February 12, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of section 73.202(b), Table of Allotments, FM Broadcast Stations. (Big Bear Lake and Yucaipa, California). Number of Petition Filed: 1.

Subject: Transport Rate Structure and Pricing. (CC Docket No. 91–213). Number of Petitions Filed: 21.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2098 Filed 1–27–93; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Proceeding

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/state	File No.	MM docket No.
A. Kay Sadler-Gill	Idyllwild, CA	BPH-910611IF	92–310
B. Robert M. Richmond	Beaumont, CA	BPH-910703MD	
C. Barbara Brindisi	Beaumont, CA	BPH-910703MI	
D. Lauryn Broadcasting Corporation	Beaumont, CA	BPH-910703MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Environmental Impact—A
2. Comparative—All
3. Ultimate—All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036 (Telephone No. (202) 452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–2096 Filed 1–27–93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of November 17, 1992.

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on November 17, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity has been expanding at a moderate pace. Total nonfarm payroll employment was up slightly in October after declining in the previous two months, and the civilian unemployment rate edged down to 7.4 percent. Industrial production rose somewhat in October. Retail sales increased considerably in September and October. There was some strengthening in residential construction activity over the summer months. Outlays for business equipment have continued to increase, and recent data on orders for nondefense capital goods point to further growth in the near term; expenditures for nonresidential construction have remained weak. The nominal U.S. merchandise trade deficit widened somewhat in July-August from its average rate in the second quarter. Recent data on wages and prices have been mixed but suggest on balance a continuing trend toward lower inflation.

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[1] Copies of the Record of Policy Actions of the Committee for the meeting of November 17, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Most interest rates have increased appreciably since the Committee meeting on October 6. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies rose very substantially over the intermeeting period.

M2 has expanded at a moderate pace since mid-summer, with all of its growth stemming from its M1 component, while M3 grew slowly. Through October, both aggregates were estimated to have grown at rates a little below the lower ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting on June 30-July 1 reaffirmed the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The Committee anticipated that developments contributing to unusual velocity increases could persist in the second half of the year. The monitoring range for growth of total domestic non-financial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1993, the Committee on a tentative basis set the same ranges as in 1992 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from September through December at annual rates of about 3-1/2 and 1 percent, respectively.

By order of the Federal Open Market Committee, January 22, 1993.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 93-2045 Filed 1-27-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-4352-10]

Closure Order of Public Lands

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Seasonal closure order of public lands.

SUMMARY: Notice is hereby given related to the seasonal closure of certain Bureau of Land Management (BLM) administered lands to all public use from February 1 through July 31 of each year in accordance with regulations contained in 43 CFR subpart 8364.1(a) and known as Buckingham Bluffs, located in T. 13N., R. 8W., Section 8, SE¼NE¼ and Lot 4, all in Lake County containing 68.54 acres more or less. This seasonal closure shall not apply to official administrative uses, peace officers, firefighters, or any other emergency service personnel while in the performance of their duties.

DATES: This Closure Order is effective January 28, 1993.

SUPPLEMENTARY INFORMATION: The Buckingham Bluffs area provides an active nesting site for a federally-endangered falcon species. Federal protection of this species is mandated by the Endangered Species Act of 1973 (as amended). The Buckingham Bluffs area has recently become a popular site for local rock climbers to practice their sport. When climbing activity has occurred during the critical nesting, rearing, and fledging stages (February 1 through July 31), this has resulted in disturbance to the nesting falcons, and at least one documented case in which the impacts from human disturbance during this time were significant enough to cause a nesting failure. This seasonal closure will protect the endangered falcons during this critical time, while also allowing public use including rock climbing during the open period (August 1 through January 31).

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, Clear Lake Resource Area Office at (707) 462-3873.

Nancy Tarshis,

Clear Lake Resource Area Manager.

[FR Doc. 93-2063 Filed 1-27-93; 8:45 am]

BILLING CODE 4310-40-M

[CA-060-5101-10-B034; CA-30406]

Intent To Prepare an Environmental Impact Statement (EIS) on a Proposed 500 kV Transmission Line in Arizona and California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on a proposed 500 kV transmission line in Arizona and California; notice of public scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM) will be directing the preparation of an Environmental Impact Statement (EIS) on a 500 kV transmission line proposed to be constructed, operated and maintained by the Imperial Irrigation District (IID). The public is provided an opportunity to comment on the proposed project and to identify issues or concerns which they believe should be addressed in the EIS. Public scoping meetings have been scheduled to allow the public to review the proposed alignment, obtain more detailed information on the proposed line, and to offer comments and suggestions on the proposed project.

DATES: Written comments will be accepted until March 1, 1993. Four public scoping meetings have been scheduled to identify issues and concerns and to facilitate public participation in the review of the proposed line. Meetings have been scheduled as follows:

February 16, 1992, 7 p.m.
Imperial Irrigation District, 81-600 Avenue 58, La Quinta, California.
February 17, 1993, 7 p.m.
Imperial Irrigation District, 1285 Broadway, El Centro, California.
February 22, 1993, 7 p.m.
Bureau of Reclamation, 7301 Calle Agua Salada, Yuma, Arizona.
February 23, 1992, 7 p.m.
Holiday Inn (at I-17), 2532 West Peoria Avenue, Phoenix, Arizona.

ADDRESSES: Comments should be sent to the District Manager, ATTN: Southern Arizona Transmission Project, California Desert District, Bureau of Land Management, 6221 Box Springs Blvd., Riverside, CA 92507-0714.

FOR FURTHER INFORMATION CONTACT: Stephen Johnson, Project Manager, Southern Arizona Transmission Project, California Desert District, BLM, 6221 Box Springs Blvd., Riverside, California 92507; phone (909)697-5234.

SUPPLEMENTARY INFORMATION: The Imperial Irrigation District (IID) has requested a Right-of-Way Grant from the BLM under the authority of the Federal Land Policy and Management Action of 1976 (FLPMA, Pub. L. 94–579) to construct, operate and maintain a 500 kilovolt (kV) electric transmission line between Arizona and California. This proposed transmission line, which is known as the Southern Arizona Transmission Project (SATP), will begin at the Palo Verde switchyard, west of Phoenix, Arizona. The transmission line's proposed route is to run southwest from Palo Verde, linking with the North Gila Substation, northeast of Yuma, Arizona. From North Gila, the proposed SATP route will proceed west, interconnecting with the Highline Substation, near Holtville, California. This portion of the proposed route will parallel the existing San Diego Gas and Electric/Arizona Public Services' "Southwest Powerlink" 500 kV transmission line. However, from the Highline Substation the proposed SATP will head northward, following the IID's existing 230 kV collector system, paralleling the East Highline Canal and linking with the Midway, Coachella Valley and Mirage Substations. From the Mirage Substation, the proposed route will head northwestward, ultimately terminating at Southern California Edison's Devers Substation, near Desert Hot Springs, California. The purpose of this project is to satisfy increased customer electrical energy demands and anticipated customer increases.

The EIS on the proposed transmission line must comply with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., and related requirements, including the Council on Environmental Quality (CEQ) Regulations, 40 CFR Parts 1500–1508 and BLM NEPA Handbook H–1790–1.

The IID has determined that an Environmental Report (EIR) is required for this proposed project, in compliance with the California Environmental Quality Act (CEQA), Division 13 of the California Public Resources Code, and all other applicable laws and regulations. The BLM and the IID have entered into an agreement to prepare a joint EIS/EIR to satisfy both Federal and State requirements.

The scoping process for this EIS/EIR will include; (1) identification of issues to be addressed, (2) identification of viable alternatives, and (3) notifying interested groups, individuals and agencies so that additional information concerning these issues can be obtained. The scoping process will consist of a news release announcing the start of this EIS/EIR process and letters of invitation to participate in the scoping process. Potential issues include, but are not limited to, land use, biological resources, visual resources, cultural resources and electrical effects.

Dated: January 20, 1993.

Jean Rivers-Council,

Acting District Manager.

[FR Doc. 93–2019 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-40-M

[CA–010–03–4333–11]

Meeting of the Bakersfield District Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Meeting of the Bakersfield District Advisory Council.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Federal Land Policy and Management Act of 1976 (sec. 309), the Bureau of Land Management Bakersfield District Advisory Council will meet in Hollister, California.

DATES: March 4 and 5, 1993.

ADDRESSES: Meeting on Thursday, March 4, in the Hollister City Council Chambers, 375 5th Street, Hollister, from 8 a.m. to 4 p.m. Field trip on Friday, March 5, to the Clear Management Area in southern San Benito County. Field trip leaves from the Bureau of Land Management Hollister Resource Area Office, 20 Hamilton Court in Hollister, at 8 a.m.

SUPPLEMENTARY INFORMATION: The Bakersfield District Advisory Council is a 10 member council appointed by the Secretary of the Interior to give counsel and advice regarding planning and management of public lands resources to the District Manager of the Bureau of Land Management Bakersfield District. The Council will meet to discuss the management plan for the Clear Creek Management Area, a popular recreation site that is characterized by serpentine (naturally occurring asbestos) soils. There has been significant disturbance to the soil over the years because of extensive mining activity. The Environmental Protection Agency (EPA) has ordered a cleanup at one abandoned mine that is an EPA Superfund site, and his directed BLM to take precautions for the public health and welfare throughout the Clear Creek Management Area. The Hollister Resource Area is currently working on an amendment to the Resource Management Plan that would address EPA's concerns. The Advisory Council will hear testimony and make recommendations to the District Manager on how to proceed. The meeting is open to the public, and anyone wishing to address the Council about any public land issue may do so during the public comment period beginning at 1 p.m., March 4, 1993 or at any time during the meeting at the discretion of the Chairwoman. Written comments may be submitted to the address below. A field trip to the Clear Creek Management Area will take place on Friday, March 5, 1993. The public is welcome on the field trip. Be prepared to provide your own transportation, lunch and water.

FOR FURTHER INFORMATION CONTACT: Larry Mercer, Public Affairs Officer, Bureau of Land Management, Bakersfield District, 800 Truxtun Avenue, room 300, Bakersfield, CA 93301, telephone 805–861–4229.

Dated: January 20, 1993.

Ron Fellows,

District Manager.

[FR Doc. 93–2065 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-40-M

[NM–940–4110–03; NMNM 86023]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 86023, Quay County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from August 1, 1992, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective August 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT:

Martha A. Rivera, BLM, New Mexico State Office, 505–438–7584.

Dolores L. Vigil,

Chief, Adjudication Section.

[FR Doc. 93–2066 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-FB-M

[AK-041-93-4230-05; AA-59055]

Realty Action; Direct Sale of Public Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, sale of public lands located in the city of Nondalton, Alaska.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719:

Seward Meridian, Alaska

T. 2 S., R. 32 W., lot 5, USS 3876.

The above lands aggregate 6.06 acres.

FOR FURTHER INFORMATION CONTACT: Richard J. Vernimen, District Manager, Bureau of Land Management, Anchorage District Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, (907) 267–1248.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate to the city of Nondalton pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719. This sale would serve important public objectives for the city of Nondalton which cannot be accomplished prudently or feasibly elsewhere in the community. The city of Nondalton wishes to acquire these lands for the development of a local manufacturing site in conjunction with the Nondalton Tribal Council.

The proposal is a direct sale pursuant to 43 CFR 2711.3–3. The sale to the city of Nondalton will be made at fair market value. The environmental assessment is available for review at the Bureau of Land Management, Anchorage District Office, Anchorage, Alaska.

Conveyance of the subject land will be subject to a right-of-way thereon for ditches and canals constructed under the authority of the United States. Act of August 30, 1980 (43 U.S.C. 945).

The proposed sale is not within an area which has an approved management plan therefore the determination that the lands are suitable for sale has been arrived at pursuant to the regulations found in 43 CFR 1610.5–5 and 1610.8(a).

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 93–2075 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-JA-M

[CO-050-4210-05, COP-054309]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COP–054309, Conveyance of Public Land according to Airport and Airway Improvement Act of September 3, 1982, in Saquache County, Colorado.

SUMMARY: The following described land has been examined and identified as suitable for conveyance under Section 516, Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215). Applicant pays all costs of conveyance of the land.

New Mexico Principal Meridian, Colorado

T. 44 N., R. 7 E.,
  Sec. 2: Lots 7, 8, 9, 10
  Sec. 3: Lots 1, 2
T. 45 N., R. 7 E.,
  Sec. 34: Lots 1, 2.

Containing approximately 181.40 acres.

The lands described above are hereby segregated from appropriation under the public land laws including the mining laws. The segregative effect of the Notice of Realty Action shall terminate either upon the issuance of a conveyance document or 1 year after the date of publication, whichever occurs first.

DATES: On or before March 10, 1993, interested parties may submit comments to the District Manager, Cañon City District, at the above address. In the absence of any objections, this proposal will become final.

ADDRESSES: Bureau of Land Management, Cañon City District, P.O. Box 2200, Cañon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Bill Miller, San Luis Resource Area Realty specialist, at (719) 589–4975.

Dated: January 15, 1993.

Donnie R. Sparks,

District Manager, Cañon City.

[FR Doc. 93–2067 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-5440-10-C007, COC-54584]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Segregation of Public Lands proposed for conveyance to the Federal Aviation Administration (FAA) for construction of the Four County Regional Airport near Fairplay, Colorado. Notice of a 45-day comment period.

SUMMARY: The Counties of Chaffee, Lake, Park, and Summit plan to construct a regional airport with joint funding from the FAA. The following described Public Land administered by the Bureau of Land Management would be conveyed to the counties under the Airport and Airway Improvement Act of September 3, 1982 (43 CFR part 2640):

Sixth Principal Meridian.

T. 10 S., R. 77 W.,
  Sec. 26, SW¼NE¼, S½NW¼, S½
  Sec. 27, E½SE¼
  Sec. 35, all
T. 11 S., R. 76 W.,
  Sec. 6, lots 3, 4, 5, 6, & 7, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼, SW¼NE¼SE¼
  Sec. 7, NE¼, E½NW¼, NE¼SE¼
  Sec. 8, W½, SE¼
  Sec. 17, NE¼, NE¼NW¼, NE¼SE¼
T. 11 S., R. 77 W.,
  Sec. 1, lots 1, 2, 3 & 4, S½N½
  Sec. 2, lots 1, 2, 3 & 4, S½N½

The lands described above comprise 3295.87 acres, more or less, in Park County, Colorado. These lands are hereby segregated from the public land laws except the Airport and Airway Improvement Act; including the mining law, except the mineral leasing act, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of the patent, or one year from the date of this publication, whichever comes first.

DATES: Interested parties may submit comments to the District Manager, Cañon City District, P.O. Box 2200, Cañon City, Colorado 81215, until March 17, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Hallock, Royal Gorge Resource Area, (719) 275–0631.

Dated: January 19, 1993.

Stuart L. Freer,

Associate District Manager, Cañon City.

[FR Doc. 93–2062 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-JB-M

[AZ-942-03-4730-02]

Arizona; Notice of Filing of Plats of Survey

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated·

A plat representing a survey of the Eighth Standard Parallel North, along the south boundary of Township 33 North, Range 24 East, Gila and Salt River Meridian, Arizona, was accepted October 14, 1992, and was officially filed October 21, 1992.

A plat representing a survey of the Eighth Standard Parallel North, along the south boundary of Township 33 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted October 14, 1992, and was officially filed October 21, 1992.

A plat representing a survey of the Eighth Standard Parallel North, along the south boundary of Township 33 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted October 14, 1992, and was officially filed October 21, 1992.

A plat representing a survey of the Seventh Standard Parallel North (south boundary), the east and north boundaries and the subdivisional lines of Township 29 North, Range 26 East, Gila and Salt River Meridian, Arizona, was accepted December 8, 1992, and was officially filed December 10, 1992.

These plats were prepared at the request of the Navajo Area Office, Bureau of Indian Affairs.

A plat, in two sheets, representing a dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections; and metes-and-bounds surveys of certain lots, in Township 11 North, Range 18 East, Gila and Salt River Meridian, Arizona, was accepted December 21, 1992, and was officially filed January 7, 1993.

A plat representing a dependent resurvey of portions of the east boundary and subdivisional lines; and the subdivision of section 24 and a metes-and-bounds survey of lot 1, in section 24, Township 11 North, Range 19 East, Gila and Salt River Meridian, Arizona, was accepted December 21, 1992, and was officially filed January 7, 1993.

A supplemental plat, showing amended lottings in section 27, Township 8 North, Range 27 East, Gila and Salt River Meridian, Arizona, was accepted November 24, 1992, and was officially filed December 2, 1992.

These plats were prepared at the request of the U.S. Forest Service, Apache-Sitgreaves National Forest.

A plat representing a dependent resurvey of a portion of the subdivisional lines and the subdivision of section 24, Township 18 South, Range 20 East, Gila and Salt River Meridian, Arizona, was accepted December 21, 1992, and was officially filed January 7, 1993.

A plat, in two sheets, representing a dependent resurvey of a portion of the San Rafael del Valle Land Grant, the east boundary and a portion of the subdivisional lines; and the subdivision of certain sections and an informative traverse in Township 21 South, Range 21 East, Gila and Salt River Meridian, Arizona, was accepted December 21, 1992, and was official filed January 7, 1993.

These plats were prepared at the request of the Bureau of Land Management, Safford District Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, Public Services Section, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief, Branch of Cadastral Survey.

[FR Doc. 93–2068 Filed 1–27–93; 8:45 am]

BILLING CODE 4310–32–M

[AK–932–4210–06; F–88329]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 100 acres of public lands to protect an administrative site, visitor center and public campground at Coldfoot, Alaska. This notice closes the lands for up to 2 years from surface entry, mining, and mineral leasing.

DATES: Comments and requests for a public meeting must be received by April 28, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 907–271–5477.

SUPPLEMENTARY INFORMATION: On January 13, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

Fairbanks Meridian (Unsurveyed)

Parcel 1 (Visitor Center)

A parcel of land lying within the W½ of Sec. 15, and the E½ of Sec. 16, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail; Thence, N. 75° W., approximately 180 feet to corner No. 1; Thence, N. 40° E., approximately 570 feet to corner No. 2; Thence, N. 18°30′ W., approximately 480 feet to corner No. 3; Thence, S. 49°30′ W., approximately 1,020 feet to corner No. 4; Thence, S. 60° E., approximately 330 feet to corner No. 5; Thence, S. 75° E., approximately 300 feet to close at corner No. 1.

This parcel contains approximately 8.80 acres.

Parcel 2 (Visitor Center)

A parcel of land lying within the W½ of Sec. 15, and the E½ of Sec. 16, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail; Thence, S. 89° W., approximately 210 feet to corner No. 1; Thence, N. 75° W., approximately 270 feet to corner No. 2; Thence, N. 60° E., approximately 360 feet to corner No. 3; Thence, S. 49°30′ W., approximately 840 feet to corner No. 4; Thence, S. 60° E., approximately 810 feet to corner No. 5; Thence, N. 40° E., approximately 900 feet to corner No. 1.

This parcel contains approximately 15 acres.

Parcel 3 (Visitor Center)

A parcel of land lying within Sec. 15, T. 28 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the centerline of the Venetie Trail; Thence, 77° E., approximately 100 feet to corner No. 1; Thence, continuing S. 77° E., approximately 750 feet to corner No. 2; Thence, N. 40° E., approximately 360 feet to corner No. 3; Thence, N. 77° W., approximately 750 feet to corner No. 4; Thence, S. 40° W., approximately 360 feet to close at corner No. 1.

This parcel contains approximately 4.60 acres.

Parcel 4 (Administrative Site)

A parcel of land lying within the E½ of Sec. 23, and the W½ of Sec. 24, T. 29 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within Sec. 23; Thence, N. 61°30′ E., approximately 875 feet to corner No. 1; Thence, S. 69°06′ E., approximately 344 feet to corner No. 2; Thence, S. 23°50′ E., approximately 429 feet to corner No. 3; Thence, S. 62°07′ E., approximately 306 feet to corner No. 4; Thence, S. 75°27′ E., approximately 704 feet to corner No. 5; Thence, S. 66°11′ E., approximately 795 feet to corner No. 6; Thence, N. 23°48′ E., approximately 480 feet to corner No. 7; Thence, N. 66°11′ W., approximately 465 feet to corner No. 8; Thence, N. 54°31′ W , approximately 1,880 feet to corner No. 9; Thence, S. 36°21′ W., approximately 696 feet to close at corner No. 1.

This parcel contains approximately 35 acres.

Parcel 5 (Campground)

A parcel of land lying within the S½ of Sec. 23, and the N½ of Sec. 26, T. 29 N., R. 12 W., the Point of Beginning being the intersection of the centerline of the Dalton Highway and the middle of the channel of Marion Creek within Sec. 23; Thence, S. 13°30′ W., approximately 1,020 feet to corner No. 1; Thence, S. 40°30′ E., approximately 600 feet to corner No. 2; Thence, S. 23° E., approximately 200 feet to corner No. 3; Thence, S. 70° E., approximately 900 feet to corner No. 4; Thence, N. 20°30′ E., approximately 1,150 feet to corner No. 5; Thence, N. 70° W., approximately 1,580 feet to corner No. 6; Thence, S. 19° W., approximately 720 feet to close at corner No. 1.

This parcel contains approximately 36.60 acres. The areas described aggregate approximately 100 acres.

The purpose of the proposed withdrawal is to protect a joint use/interagency administrative site, a visitor center and a public campground.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Alaska State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The segregation made by this order shall overlap but not otherwise affect the segregation pursuant to Public Land Order No. 5150 and Public Land Order No. 5180.

No temporary land use will be permitted during this segregative period.

Dated: January 15, 1993.

Sandra C. Thomas,

Acting Chief, Branch of Land Resources.

[FR Doc. 93-2069 Filed 1-27-93; 8:45 am]

BILLING CODE 4310-JA-M

[OR-943-4210-06; GP3-086; OR-48432 (WASH)]

Partial Termination of Proposed Withdrawal; WA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, has canceled its application in part as to the segregative effort of the lands for the Yakima Firing Center expansion in Kittitas County. This action will relieve the lands of the temporary segregative effect insofar as it affects the mineral leasing laws. The lands will remain closed to surface entry and mining.

EFFECTIVE DATE: March 1, 1993.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of the Army, Corps of Engineers, application OR-48432 (WASH) for withdrawal was published as FR Doc. 92-14309 of the issue of June 18, 1992, as amended by FR Doc. 92-31079 of the issue of December 23, 1992. The purpose of the proposed withdrawal is to expand the Yakima Firing Center. The applicant agency has canceled their application insofar as it affects the mineral leasing laws in the following described lands:

Willamette Meridian

Surface and Mineral Estates

T. 17 N., R. 20 E.,
  Sec. 22, S½;
  Sec. 24, S½SW¼ and that portion of the E½ lying south of the Interstate Highway 90 right-of-way;
  Sec. 26.
T. 16 N., R. 21 E.,
  Sec. 4, SW¼SW¼;
  Sec. 12, SE¼;
  Sec. 18, lots 1, 2, 3, and 4, E½, and E½W½.
T. 17 N., R. 21 E.,
  Sec. 30, lots 3 and 4;
  Sec. 32, NE¼SE¼.
T. 16 N., R. 22 E.,
  Sec. 2, lots 1, 2, 3, and 4, S½N½ and S½;
  Sec. 4, lots 1, 2, 3, and 4, S½N½ and S½;
  Secs.10 and 14;
  Sec. 20, SE¼SW¼;
  Sec. 22;
  Sec. 26, N½;
  Sec. 28, N½.
T. 16 N., R. 23 E.,
  Sec. 18, lots 3 and 4, E½SW¼, W½SE¼, and that portion of the E½SE¼ lying westerly of the westerly right-of-way line of Huntzinger Road;
  Sec. 20, that portion of the SW¼ lying westerly of the easterly right-of-way line of the railroad;
  Sec. 30, lots 1 and 2, NE¼ and E½NW¼.

Mineral Estate

T. 16 N., R. 20 E.,
  Sec. 12;
  Sec. 18, lot 4 and SE¼;
  Sec. 20, S½.
T. 16 N., R. 21 E.,
  Sec. 4, lots 1, 2, 3, and 4, and S½NE¼;
  Sec. 8.
T. 16 N., R. 22 E.,
  Sec. 12.
T. 17 N., R. 21 E.,
  Sec. 32, S½SE¼;
  Sec. 34, W½.

The areas described aggregate approximately 9,730.82 acres in Kittitas County.

Pursuant to the regulation 43 CFR 2310.2-1(c), at 8:30 a.m., on March 1, 1993 the above described lands will be relieved of the segregative effect of the mineral leasing laws. The lands will remain closed to settlement, sale, location, and entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2).

Dated: January 13, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-2070 Filed 1-27-93; 8:45 am]

BILLING CODE 4310-33-M

[WY-930-4210-06; WYW 47613]

Termination of Segregative Effect of Withdrawal Application; Wyoming; Correction

In notice document 91-25383 beginning on page 54583 in the issue of Tuesday, October 22, 1991, the following corrections need to be made to the original notice and the **Federal Register** correction documents of November 26, 1991, and January 27, 1992:

1. On page 54583, in the third column under T. 48 N., R. 93 W., sec. should read, "sec. 25, lots 1-2, N½, SW¼, N½SE¼;"

2. On page 54584, in the first column, T. 50 N., R. 83 W., should read, "T. 50 N., R. 93 W.,"

Dated: January 19, 1993.

F. William Eikenberry,

Associate State Director, Wyoming.

[FR Doc. 93–2071 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

Public Informational and Scoping Meetings on White-Tailed Deer Management Program

AGENCY: Gettysburg National Military Park, National Park Service (NPS), Department of the Interior.

ACTION: Notice of public informational and scoping meetings on white-tailed deer management program; request for written suggestions/input.

SUMMARY: NPS will be holding two meetings—an informational meeting and a public scoping meeting in order to present information on the deer population issue and to discuss issues and/or concerns that will need to be addressed by the environmental impact statement (EIS). These meetings will be the first step in the scoping process. An information packet will be available that presents initial study material.

At the initial informational meeting a formal presentation will preclude a question and answer period; NPS representatives will be available at this meeting to respond to questions. Written comments and/or suggestions are welcome. Individuals wishing to participate in the subsequent scoping meeting will be asked to sign up at the information meeting, or contact the Superintendent.

The subsequent scoping meeting will be used to solicit input from the public to help the NPS scope problems, options and possible solutions to address the management of the deer population impacts on resource management objectives. To provide as much opportunity as possible for discussions between NPS and its constituency, associations and groups are urged to limit their participation to one or two representatives.

Agencies and the general public are invited and encouraged to provide written comments in addition to, or in lieu of, comments at the scoping meeting. Scoping comments should clearly address specific issues or concerns which the commentator believes the EIS should address.

DATES: To be given adequate consideration written comments should be received no later than April 26, 1993. The public informational meeting will be scheduled as follows: Saturday, February 27, 1993, 1;30–4:30 p.m., Gettysburg Junior High School, Lefever St., Gettysburg, PA. (The building will be open at 12:30 p.m. for reviewing of informational displays.)

The scoping meeting is scheduled as follows: Saturday, March 27, 1993, 1:30–4:30 p.m., Gettysburg Junior High School, Lefever St., Gettysburg, PA. (The building will be open at 1 p.m.)

FOR FURTHER INFORMATION CONTACT: Please address comments and requests for additional information on the meetings to José Cisneros, Superintendent, Gettysburg National Military Park, P.O. Box 1080, Gettysburg, PA 17325, (717) 334–1124.

John J. Reynolds,

Regional Director, Mid-Atlantic Region.

[FR Doc. 93–2094 Filed 1–27–93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32208]

H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Albany Bridge Company, Inc.; Notice of Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343 the continuance in control by H. Peter Claussen and Linda C. Claussen of Albany Bridge Company, Inc. (ABC), upon ABC's becoming a carrier through its acquisition from South Carolina Central Railroad Company, Inc., d/b/a/ Georgia Great Southern Division, and operation of a rail bridge and related track in Albany, GA. The Claussens currently control through stock ownership three class III rail common carriers: Gulf and Ohio Railways, Inc.; Wiregrass Central Railroad Company, Inc.; and H & S Railroad Company, Inc. This proceeding is related to Finance Docket No. 32207, wherein ABC seeks to exempt its acquisition and operation of the rail properties, and Finance Docket No. 32222, wherein ABC affiliate Gulf and Ohio Railways, Inc., d/b/a/ Atlantic & Gulf Railroad, seeks to exempt its operation of those rail properties. The exemption is subject to standard labor protective conditions.

DATES: This exemption is effective on February 27, 1993. Petitions to stay must be filed by February 8, 1993 and petitions to reopen must be filed by February 17, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32208 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: January 21, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden. Vice Chairman Simmons did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2090 Filed 1–27–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Amended Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

This amended notice is being given to correct a prior notice concerning the lodging of a proposed Consent Decree in *United States* v. *Charles George Trucking Co. Inc.*, Civil Action Nos. 85–2463–WD and 85–2714–WD with the United States District Court for the District of Massachusetts. The prior notice appeared in the **Federal Register** on December 29, 1992 in volume 57, number 250, at page 61923. The list that appeared in the first paragraph of that notice of the defendants with whom the United States and the Commonwealth are resolving their claims should have read as follows: Analog Devices, Inc., Borden, Inc., Browning-Ferris Industries of Massachusetts, Inc., Clean Harbors of Braintree, Inc., Courier-Citizen Company, Dennison Manufacturing Company, Domino Sugar Corporation, DYMEC, Inc., Eckel Industries, Inc., Federal Metal Finishing, Inc., General Electric Company, The Gillettee

Company, Hussey Plastics Co., Inc., Jenike & Johanson, Inc., Lam Lighting Systems, Inc., Millipore Corporation, National Aluminum Corporation, Polaroid Corporation, PPG Industries, Inc., Pride Printers, Inc., Standex International Corporation, Stepan Company, and W.R. Grace & Company—Conn. The list of third party defendants taking part in the settlement should have read as follows: Analogic Corporation, Barry Wright Corporation, Bellofram Corporation, Boston Edison Company, Brewer Petroleum Service, Inc., Bull HN Information systems Inc., Chevron USA, Inc., Cooper Industries, Inc., Jet-Line Services, Inc., Jet-Line Services of Rhode Island, Inc., P & T Container Service Co., Inc., Pierce Brothers Oil Service, Inc., Reichhold Chemicals, Inc., Roche Brothers Barrell & Drum Co., Inc., Rochester Midland Corporation, Sherwin-Williams Co., Inc., Tech/Ops, Inc., Town of Bedford (Massachusetts), Town of Bridgewater (Massachusetts), Town of Burlington (Massachusetts), Town of Chemsford (Massachusetts), Town of Groveland (Massachusetts), Town of Hanson (Massachusetts), Town of Milford (New Hampshire), Town of North Reading (Massachusetts), Town of Tyngsboro (Massachusetts), Town of Winchester (Massachusetts), City of Malden (Massachusetts), City of Revere (Massachusetts), Refuse Energy Systems Company (RESCO), and Turner Trucking and Salvage Company, Inc.

There has been no change in the consent decree addressed by the original **Federal Register** Notice; the purpose of this Amended Notice is merely to conform the list of the settling parties in the **Federal Register** Notice to the parties who are resolving their claims in the proposed consent decree.

The Department of Justice will extend the comment period for an additional thirty days from the date of this publication for comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Charles George Trucking Company, et al.*, D.J. Ref. 90–11–3–91.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, McCormick Federal Building, Post Office Square, Boston Massachusetts 02109, and at the Region I Office of the Environmental Protection Agency, Office of Regional Counsel, 10th Floor, One Congress Street, Boston, Massachusetts 02203. The proposed Consent Decree may also be examined at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $33.25 (25 cents per page reproduction cost), payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2023 Filed 1–27–93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on November 6, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Kaleida Labs, Inc., Mountain View, CA; and COMSAT Video Enterprises, Clarksburg, MD, have become participants in MCC's "First Cities".

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 76(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursunt to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on September 25, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 27, 1992 (57 FR 48635).

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93–2072 Filed 1–27–93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94–283, 2 U.S.C. 441a), the Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the **Federal Register** that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 184.6 percent from its 1974 annual average of 147.7 to its 1992 annual average of 420.3. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 184.6 percent from its 1974 annual average of 100 to its 1992 annual average of 284.6.

Signed at Washington, DC, on the 15th day of January 1993.

Lynn Martin,

Secretary of Labor.

[FR Doc. 93–2080 Filed 1–27–93; 8:45 am]

BILLING CODE 4610-34-M

Employment and Training Administration

[TA–W–27,008]

BP Exploration, Inc. a/k/a BP Exploration & Oil, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Headquartered in Houston, Texas and operating at various other locations in the following states; TA–W–27,008A, Alabama; TA–W–27,008B, California; TA–W–27,008C, Louisiana; TA–W–27,008D, Mississippi; TA–W–27,008E, Ohio; TA–W–27,008F, Oklahoma; TA–W–27–008G, Texas.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 5, 1992, applicable to the workers at the subject firm. The certification notice was published in the **Federal Register** on June 30, 1992 (57 FR 29101).

At the request of the Louisiana State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that the claimants' wages for BP Exploration, Inc., are being reported under BP Exploration & Oil, Inc. Houston, Texas. This new name is the result of a merger of BP Exploration, Inc., and BP Oil, Inc.

Accordingly, the Department is amending the certification to properly reflect the correct worker group.

The amended notice applicable to TA-W-27,008A-G is hereby issued as follows:

> All workers of BP Exploration, Inc., a/k/a BP Exploration & Oil, Inc., headquartered in Houston, Texas and operating at various other locations in Alabama, California, Louisiana, Mississippi, Ohio, Oklahoma and Texas who became totally or partially separated from employment on or after February 1, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 15th day of January 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-2079 Filed 1-27-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 8, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 8, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of January 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Midessa Drilling Co (Wkrs)	Midland, TX	01/11/93	12/28/92	28,183	Oil well drilling.
Takata Fisher/Takata Fabrication (Wkrs)	Auburn Hills, MI	01/11/93	12/28/92	28,184	Auto seat belts.
Variety International (ILGWU)	Newark, NJ	01/11/93	12/30/92	28,185	Ladies' jackets.
Hawks Industries, Inc (Co)	Casper, WY	01/11/93	12/31/92	28,186	Oil and gas.
Coastal Oils, Inc (Co)	Oklahoma City, OK	01/11/93	12/31/92	28,187	Crude oil and natural gas.
William Korn & Co (Co)	Buffalo, NY	01/11/93	12/28/92	28,188	Jewelry displays.
Unisys Corp (Wkrs)	Eagan, MN	01/11/93	12/30/92	28,189	Computer hardware, software.
Middle Atlantic Warehouse Dist, Inc (Wkrs)	Tonawanda, NY	01/11/93	12/30/92	28,190	Sell automotive parts.
Digital Equipment Corp (Wkrs)	Springfield, MA	01/11/93	12/22/92	28,191	Personal computers, tape drives.
United States Data Corp (Wkrs)	Richardson, TX	01/11/93	12/24/92	28,192	Market computer hardware, software.
Sequoyah Fuels Corp (Wkrs)	Gore, OK	01/11/93	12/28/92	28,193	Uranium hexafluoride conversion.

[FR Doc. 93-2081 Filed 1-27-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,602]

Nokia-Maillefer, South Hadley, MA; Revised Determination on Reconsideration

On December 4, 1992, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Nokia-Maillefer, South Hadley, Massachusetts. This notice was published in the **Federal Register** on December 11, 1992 (57 FR 58828).

A former worker states that all of Nokia-Maillefer's production will be transferred from South Hadley to Finland and that Nokia's domestic customers will be supplied with wire and cable extrusion machinery from Finland.

Findings on reconsideration show that company imports of wire and cable extrusion machinery arrived in the U.S. in December, 1992. Company officials indicated that all future shipments of wire and cable extrusion machinery will be sourced from foreign countries.

Production of wire and cable extrusion machinery at South Hadley ceased in December, 1992. All production previously performed by the South Hadley workers is now being performed in Finland. All production workers were laid off in December, 1992.

All engineering and administrative support workers are scheduled to be laid off by May, 1993.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with wire and cable extrusion machinery produced at Nokia-Maillefer in South Hadley, Massachusetts contributed importantly to the decline in sales or production and to the total or partial separation of workers at Nokia-Maillefer. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

> All workers of Nokia-Maillefer in South Hadley, Massachusetts who became totally or partially separated from employment on or after January 1, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of January 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93-2082 Filed 1-27-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by March 1, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Marianne Klink, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently-approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94/95 Advancement Program Application Guidelines
Frequency of Collection: One time
Respondents: Non-profit organizations
Use: Guideline instructions and applications elicit relevant information from non-profit organizations that apply for funding under the Advancement Program category guidelines.
Estimated Number of Respondents: 150
Average Burden Hours Per Response: 32
Total Estimated Burden: 4,800

Marianne Klink,
Congressional Liaison, National Endowment for the Arts.
[FR Doc. 93–2038 Filed 1–27–93; 8:45 am]
BILLING CODE 7537-01-M

Media Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (The Arts on Radio Section) to the National Council on the Arts will be held on February 18, 1993 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–9:30 a.m. and 5 p.m.–5:30 p.m. The topics will be introductory remarks and guidelines review.

The remaining portion of this meeting from 9:30 a.m.–5 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 22, 1993.

Yvonne M. Sabine,
Director Panel Operations, National Endowment for the Arts.
[FR Doc. 93–2040 Filed 1–27–93; 8:45 am]
BILLING CODE 7537-01-M

Music Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training/Career Development Section) to the National Council on the Arts will be held on February 17, 1993 from 9 a.m.–5:30 p.m. and February 18 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of this meeting will be open to the public on February 17 from 9 a.m.–9:45 a.m. and February 18 from 4 p.m.–5 p.m. for introductory remarks, policy discussion and guidelines review.

The remaining portions of this meeting on February 17 from 9:45 a.m.–5:30 p.m. and February 18 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussion at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 22, 1993.

Yvonne M. Sabine,

Director Panel Operations National Endowment for the Arts.

[FR Doc. 93-2039 Filed 1-27-93; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR part 50.65—Monitoring the Effectiveness of Maintenance in Nuclear Power Plants.
3. The form number if applicable: Not applicable.
4. How often the collection is required: Collection is required on a continuing basis as the information becomes available.
5. Who will be required or asked to report: No reporting to the NRC is required. Holders of an operating license under 10 CFR 50.21(b) or § 50.22 must maintain certain records or data relating to maintenance.
6. An estimate of the total number of responses: No responses to the NRC are required or expected. 110 nuclear power plants will be required to maintain certain records or data.
7. An estimate of the number of hours needed annually to complete the requirement or request: 397,000 hours per year (3,609 hours average per plant per year to maintain records or data) plus a one-time implementation burden of 1,080,000 hours (9,818 hours average per plant) for establishing procedures.
8. An indication of whether section 3504(h), Public Law 96-511 applies: Applicable.
9. Abstract: The Commission amended its regulations in 10 CFR 50.65 to require commercial nuclear power plant licensees to monitor the effectiveness of maintenance activities for safety significant plant equipment in order to minimize the likelihood of failure and events caused by the lack of effective maintenance. Licensees are to establish goals for structures, systems, and components (SSCs) covered by 10 CFR 50.65. Thereafter, licensees are to monitor the performance, condition and availability of SSCs to determine the effectiveness of maintenance. Licensees will be required to periodically evaluate the effectiveness of maintenance activities against established goals, and maintain records or data of their maintenance, goal setting, monitoring efforts, and periodic assessments. No reports to NRC headquarters or regional offices are required.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, (Lower Level) NW., Washington, DC 20555.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150-0011), NEOB-3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 19th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93-2042 Filed 1-27-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-327 and 50-328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Units 1 and 2; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-77 and DPR-79, issued to the Tennessee Valley Authority (the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Soddy-Daisy, Hamilton County, Tennessee.

Summary of Environmental Assessment

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase in the spent fuel storage capacity from the present 1386 assemblies to a total of 2316 assemblies.

The amendment to the TS is responsive to the licensee's application dated March 27, 1992, as supplemented by letters dated May 11 and 28, September 8, and October 8, 1992. The NRC staff has prepared an Environmental Assessment of the Proposed Action.

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

Radiological Impact

For SQN, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80 kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

Non-Radiological Impact

The only non-radiological impact affected by the spent fuel pool expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small in comparison to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Commission's Final Environmental Statement dated February 13, 1974, in connection with Sequoyah.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request. No other agencies or persons were consulted.

Finding of No Significant Impact

The NRC staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the licenses will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see:

(1) The application for amendment to the Technical Specifications dated March 27, 1992, as supplemented by letters dated May 11 and 28, September 8, and October 8, 1992;

(2) The FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575);

(3) The Final Environmental Statement for the Sequoyah Nuclear Plant, Units 1 and 2, dated February 13, 1974; and

(4) The Environmental Assessment dated January 21, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 21st day of January 1993.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2037 Filed 1–27–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company, Surry Power Station, Units 1 and 2

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Virginia Electric and Power Company (the licensee), for the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise Technical Specification (TS) Section 4.4.B to require that Type A, B, and C testing be performed at 45 psig (containment design pressure) rather than 39.2 psig (previous calculated peak pressure).

The Need for the Proposed Action

The proposed change to TS 4.4.B is necessary to ensure that the containment is tested at a pressure equal to or greater than calculated peak accident pressure.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS and finds that increasing the containment test pressure for Type A, B, and C testing from 39.2 psig to 45.0 psig is acceptable. This change ensures that the containment is tested at a pressure equal to or greater than the calculated peak accident pressure of 44.98 psig. The increased calculated peak accident pressure and associated containment test pressure would not increase the probability or consequences of accidents since the reanalysis results remain within the design basis. No changes are being made in the type of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this action would result in no significant environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the Technical Specifications involve systems located within the restricted area as defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing was published in the **Federal Register** on February 12, 1991 (56 FR 5712). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impacts of plant operation and would result in no benefits to the public.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated November 14, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated: at Rockville, Maryland, this 13th day of January 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2041 Filed 1–27–93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31750; File Nos. 600–19 and 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Application for Extension of Temporary Registration as a Clearing Agency

January 21, 1993.

Notice is hereby given that on January 8, 1993, MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(a) of the

Securities Exchange Act of 1934 ("Act"), a request for extension of its registration as a clearing agency under section 17A of the Act for a period of 15 months.[1] The Commission is publishing this notice to solicit comments on the request for extension of registration from interested persons and to grant accelerated approval of the application.

On February 2, 1987, the Commission granted the application of MBS for registration as a clearing agency, pursuant to sections 17A(b) and 19(a)(1) of the Act[2] and Rule 17Ab2–1(c)[3] thereunder, on a temporary basis for a period of 18 months.[4] Subsequently, the Commission issued orders that extended MBS' temporary registration as a clearing agency, the last of which orders extended MBS' registration through September 30, 1992.[5] Due to an inadvertent administrative error by MBS, request was not made to extend MBS' registration after the September 30, 1992 expiration date. On January 8, 1993, therefore, MBS requested the Commission to approve, on an accelerated basis, the extension of its registration from October 1, 1992 until December 31, 1993.[6]

As discussed in detail in the original order granting MBS' registration, one of the primary reasons for MBS' registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities.[7] MBS continues to work towards this end and has implemented several ongoing improvements to its operating and financial standards to enhance the safety and efficiency of its operations. For example, over the past 12 months, MBS has implemented rule changes effecting major operational enhancements to its data processing operations and has revised its liquidation procedures.[8] In addition, MBS is in the process of testing and implementing an off-site backup system which MBS expects to be fully operational by the end of 1993.

MBS has functioned effectively as a registered clearing agency for over five years. Accordingly, in light of the past performance of MBS and the need for MBS to provide continuity of service to its participants, the Commission believes that, pursuant to section 17A(b)(2) of the Act, it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to approve MBS' request to extend its registration for an additional 15 months and that "good cause" exists to do so on an immediate basis and prior to the end of the comment period. Any comments received concerning MBS' amended application will be considered in conjunction with the Commission's consideration of whether to grant MBS permanent registration as a clearing agency under section 17A(b) of the Act.[9]

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of all written comments will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. All submissions should refer to the File Nos. 600–19 and 600–22 and should be submitted by February 18, 1993.

It is therefore ordered, that MBS' registration as a clearing agency be, and hereby is, approved on a temporary basis until December 31, 1993.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2028 Filed 1–27–93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Medchem Products, Inc., Common Stock, $0.01 Par Value) File No. 1–9699

January 22, 1993.

Medchem Products, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 16, 1992 and concurrently therewith such stock was suspended from trading on the Amex.

According to the Company, in making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2025 Filed 1–27–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–19223; File No. 812–8144]

Ohio National Life Assurance Corporation, et al.

January 21, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of application for approval under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Ohio National Life Assurance Corporation (the

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[1] Letter from J. Craig Long, General Counsel, MBS, to Ester Saverson, Branch Chief, Division of Market Regulation, Commission, dated January 8, 1993.

[2] 15 U.S.C. 78q–1(b) and 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.17Ab2–1(c).

[4] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218 (Order granting MBS registration as a clearing agency for a period not to exceed 18 months).

[5] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 32412; 28492 (September 28, 1990), 55 FR 41148; and 29751 (September 27, 1991), 56 FR 50602.

[6] See, *supra*, note 1.

[7] See, *supra*, note 4.

[8] Securities Exchange Act Releas Nos. 31352 (October 23, 1992), 57 FR 49720; 31680 (December 31, 1992), 58 FR 3312; and 31681 (December 31, 1992), 58 FR 3310.

[9] 15 U.S.C. 78q-1(b).

[10] 17 CFR 200.30–3(a)(50).

"Company"), Ohio National Variable Account R ("Account R") and the O.N. Equity Sales Company ("ONESCO").

RELEVANT 1940 ACT SECTION: Order requested pursuant to Section 11(a) of the 1940 Act approving the terms of an offer of exchange.

SUMMARY OF APPLICATION: Applicants seek an order under section 11(a) of the 1940 Act approving the terms of a proposed offer to permit owners of certain flexible premium variable life insurance contracts to exchange their contracts for a modified version of the same contract.

FILING DATE: The application was filed on November 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Ronald L. Benedict, Esq., 237 William Howard Taft Road, Cincinnati, Ohio 45219.

FOR FURTHER INFORMATION CONTACT: Wendy Finck Friedlander, Senior Attorney, at (202) 272–3045, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company established under the laws of Ohio and licensed to sell life insurance in 44 states and the District of Columbia.

2. Account R was established by the Company under Ohio law and is registered under the 1940 Act as a unit investment trust. Accountant R has four investment subaccounts, each of which invests exclusively in shares of a corresponding portfolio of Ohio National Fund, Inc. Account R may in the future add or delete subaccounts.

3. ONESCO is the principal underwriter of variable life insurance contracts issued by the Company, Account R, and certain other issuers. ONESCO is registered under the Securities Exchange Act of 1934 as a broker-dealer. ONESCO and the Company are wholly-owned subsidiaries of the Ohio National Life Insurance Company, a mutual life insurance company.

4. The Company and Account R offer certain flexible premium variable life insurance contracts ("Contracts") to the public. The Contracts include Old Contracts, that have been offered to the public since February 10, 1987, and New Contracts, that have been offered since December 30, 1992. New Contracts consist of the Old Contracts as modified by an endorsement ("Endorsement"). The effects of the Endorsement are to:

(a) Add a "wash-loan" provision, that permits a Contractowner over age 65 who has held his or her Contract for ten or more years to borrow Contract values at effectively no interest (the interest charged on the loan and the interest credited to the loan collateral account would each be at an effective annual rate of 8%); and

(b) Reduce the assumed interest rate used in certain calculations under the Contract from 5% to 4% per year. The effect of reducing the assumed interest rate is to: (i) Lessen the guaranteed minimum interest rate on Contract values allocated to the general account funding option; (ii) reduce the cash surrender value amounts used in demonstrating compliance with state non-forfeiture laws; (iii) shorten the period for which the Contract would continue as paid-up life insurance in the event of cessation of payments under the Contract; and (iv) increase the net amount at risk (which would increase the cost of insurance).

5. Both Contracts have a 4% front-end sales load and a contingent deferred sales load ("CDSL") that varies with the age of the purchaser at issue of the Contract (or, at the time of an increase in stated amount). The CDSL applies only to payments (up to two guideline annual premiums or, for increases, two incremental guideline annual premiums) made within the first two years after purchase of the Contract or an increase in the Contract's stated amount of death benefit and declines to zero after ten years. For persons under age 56 (at issue or at the time of increase) the maximum CDSL is 46%; for ages 56–60 it is 38%; for ages 61–65 it is 30%; for ages 66–68 it is 26%; for ages 69–73 it is 20%; and for ages 74 and older it is 13%.

6. Applicants propose to offer owners of Old Contracts the opportunity for a period of at least one year to exchange their Old Contracts for New Contracts. For Contractowners who expect to make use of the wash-loan provision, the exchange of an Old Contract for a New Contract may be favorable; for others the exchange would not be favorable. Disclosure of the terms of the exchange offer will make clear that only persons interested in the wash-loan provision should accept the offer.

7. The stated amount of each New Contract acquired through an exchange will be identical to that of the Old Contract exchanged. No new evidence of insurability will be required in order to exchange Contracts. All contractual rights and obligations of a Contractowner will be identical before and after an exchange, except ones that will be affected by the terms of the Endorsement and described in the exchange offer. No charge will be made for any of the costs associated with the administration of an exchange offer; all such charges will be borne solely by the Company.

8. No additional sales charges will be imposed as a result of accepting the exchange offer. Any CDSL applicable to an Old Contract will continue to apply under the New Contract, with all payments that were made under the Old Contract treated as if they had been made under the New Contract in the amount, and on the dates, actually made.

9. The exchange offer initially will be made by means of letters to owners of Old Contracts. The prospectus for the New Contract will contain disclosure of the terms of the exchange offer for so long as the offer continues to be made. No compensation will be paid to registered representatives of ONESCO or any other broker-dealer in connection with the exchange offer. No efforts will be made to induce Contractowners to accept the exchange offer other than the written description of the offer in letters and in the prospectus for the New Contracts.

10. Applicants represent that the proposed exchanges will constitute tax-free exchanges pursuant to section 1035 of the Internal Revenue Code. Applicants represent that no adverse tax consequences will be incurred by a Contractowner as a result of accepting the exchange offer if his or her Old Contract was issued on or after June 21, 1988. The vast majority of Old Contracts were issued on or after June 21, 1988.

11. If an Old Contract were issued prior to June 21, 1988, adverse tax

consequences might be incurred as a result of accepting the exchange offer because the Contract might become classified as a modified endowment contract ("MEC"). Such a possibility will be disclosed in the letter communicating the offer to owners of Old Contracts.

12. When an owner of an Old Contract communicates a desire to accept the exchange offer, Applicants will determine whether the Old Contract is, or would become, an MEC. If so, Applicants will so notify the Contractowner and explain the consequences of the exchange to the Contractowner.

Applicants' Legal Analysis and Conditions

1. Section 11(a) of the 1940 Act makes it unlawful for any registered open-end company or principal underwriter to make an exchange offer on any basis other than the relative net asset values of the securities, unless the terms of the offer first have been submitted to and approved by the Commission or are in accordance with Commission rules adopted under section 11.

2. Section 11(c) of the 1940 Act requires that any offer of exchange of the securities of a registered unit investment trust for the securities of any other registered investment company be approved by the Commission or satisfy applicable rules adopted under section 11, regardless of the basis of the exchange.

3. Account R is registered under the 1940 Act as a unit investment trust. Accordingly, unless the terms of the exchange offer are consistent with those permitted by Commission rule, Applicants may make the proposed exchange offer only after the Commission has approved the terms of the offer pursuant to section 11(a) of the 1940 Act.

4. Section 11 was enacted to prevent the abuse of "switching," which is the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges.

5. Rule 11a–2 permits offers of exchange of one variable life insurance contract for another if certain conditions regarding charges and sales loads are met. However, subsection (f) of Rule 11a–2 prohibits an offer of exchange to be made under that rule if both a front-end sales load and a deferred sales load are to be imposed on the acquired security or if both such sales loads are imposed on the exchanged security. Because the Old and New Contracts each have both front-end and contingent deferred sales loads, Applicants may not rely on Rule 11a–2 for the proposed exchanges.

6. Rule 11a–3 permits offers of exchange if certain conditions regarding charges and sales loads are met. Generally, these conditions permit exchanges if no additional sales loads or administrative charges will be incurred as a result of the exchange. Applicants meet the conditions in Rule 11a–3, but may nor rely on that rule because the investment companies involved are separate accounts organized as unit investment trusts rather than management investment companies.

7. Applicants represent that the terms of the proposed exchange offer do not present the abuses against which section 11 was intended to protect. No additional sales load or administrative fee will be imposed as a result of the exchange either at the time of the exchange or subsequently.

8. Applicants represent that the case value, cash surrender value and the death benefit of a New Contract acquired in the proposed exchange will be precisely the same immediately after the exchange as that of the Old Contract exchanged immediately before the exchange. Accordingly, the exchanges will be at relative net asset values and would be permitted under section 11(a) if Account R were registered as a management investment company rather than as a unit investment trust.

9. Applicants agree to the following conditions if the terms of the exchange offer are approved:

(a) The description of the proposed exchange offer in letters to Contractowners and in the New Contract prospectus will provide full disclosure of the differences in the two Contracts and will alert Contractowners that persons who are not interested in the availability of the new wash-loan provision should not accept the exchange offer;

(b) The letters will alert owners of Old Contracts that the desirability of accepting the offer could depend upon whether the Old Contract exchanged is an MEC or the New Contract acquired because an MEC as a result of the exchange; and

(c) Those owners of Old Contracts that are MECs, or whose New Contracts acquired would be MECs, will be contacted and personally apprised of the possibility and nature of possible adverse tax consequences.

Conclusion

Applicants submit that the terms of the proposed exchange offer satisfy the standards of section 11 of the 1940 Act and request that the Commission approve the exchange offer as requested.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2032 Filed 1–27–93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (PEC Israel Economic Corporation, Common Stock, $1.00 Par Value) File No. 1–8707

January 22, 1993.

PEC Israel Economic Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on January 19, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

According to the Company, in making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 93-2028 Filed 1-27-93; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Waterhouse Investor Services, Inc., Common Stock, $0.01 Par Value) File No. 1-10963

January 22, 1993.

Waterhouse Investor Services, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 1, 1992 and concurrently therewith such stock was suspended from trading on the Amex.

According to the Company, the Board of Directors authorized the withdrawal of its Common Stock from listing on the Amex by setting forth in detail to such exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Company did not consider the direct and indirect expense of maintaining a dual listing on both the Amex and NYSE to be warranted, and felt that the dual listing would fragment the market for its Common Stock.

Any interested person may, on or before February 12, 1993 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 93-2027 Filed 1-27-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-5]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulation (14 chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 17, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _______, 800 Independence Avenue, SW., Washington, DC 20591

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGS-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM-1) Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 22, 1993.

Michael E. Chase,
Acting Assistance Chief Counsel.

Petitions for Exemption

Docket No.: 27032.
Petitioner: Horizon Air.
Sections of the FAR Affected: 14 CFR 121.358(c).
Description of Relief Sought: To allow Horizon Air to operate three Fokker, F-28 Mark 1000 aircraft without installation of windshear detection equipment.

[FR Doc. 93-2052 Filed 1-27-93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-93-6]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 17, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _______, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOG 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 22, 1993.

Michael E. Chase,
Acting Assistant Chief Counsel.

Petitions for Exemption

Docket No.: 26915.
Petitioner: Pan Am International Flight Academy.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57(c) and (d), 61.58(c)(1) and (d), 61.63(d)(2) and (3), 61.67(d)(2), 61.157(d)(1) and (2) and (e)(1) and (2), and Appendix A of part 61.
Descriptions of Relief Sought: To amend Exemption No. 5495 to allow Pan Am International Flight Academy simulator instructor to perform 4 hours of line-oriented flight training in the simulator instead of 2 hours of line-observation flight training in the aircraft.

Docket No.: 27089.
Petitioner: Florida Institute of Technology.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought: To allow Florida Institute of Technology's Part 141 Pilot School to have examining authority for students completing its Certified Flight Instructor course.

Docket No.: 27109.
Petitioner: Saab Aircraft AB.
Sections of the FAR Affected: 14 CFR 25.562(b)(2) and (c)(5).
Description of Relief Sought: To allow, for the Saab 2000 airplane, relief from the HIC requirements for front row passenger seats, and from the floor deformation requirements for cockpit seats.

Docket No.: 27119.
Petitioner: USAir.
Sections of the FAR Affected: 14 CFR 121.314.
Descriptions of Relief Sought: To extend by 90 days the termination date of Exemption No. 5288B, which extends the compliance time for the retrofit of cargo compartments in B757 aircraft operated by USAir.

Dispositions of Petitions

Docket No.: 23290.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.391(d) and 121.311(f).
Description of Relief Sought/ Disposition: To allow Air Transport Association member airlines and other similarly situated part 121 certificate holders to locate required flight attendants at the mid-cabin flight attendant station during takeoff and landing on B–767 aircraft. *Grant, January 8, 1993, Exemption No. 4298E.*

Docket No.: 23647.
Petitioner: Embry-Riddle Aeronautical University.
Sections of the FAR Affected: 14 CFR 141.65.
Description of Relief Sought/ Disposition: To extend the termination date and amend Exemption No. 3859, which allows Embry-Riddle Aeronautical University (ERAU) to recommend graduates of its Certificated Flight Instructor Courses for certification without taking the Federal Aviation Administration (FAA) flight tests. The currently sought amendment would also allow ERAU to recommend graduates of these same courses for certification without taking the FAA written test. *Grant, November 25, 1992, Exemption No. 3859G.*

Docket No.: 26376.
Petitioner: Bolivar Aviation.
Sections of the FAR Affected: 14 CFR 61.187(b).
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5304, which allows Bolivar aviation to utilize flight instructors in their flight instructor course who have held a flight instructor certificate for less than 24 months preceding the date the instruction is given. *Grant, January 12, 1993, Exemption No. 5304A.*

Docket No.: 26780.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.337.
Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5407, which expires February 18, 1993, and which grants relief from the requirement to install portable protective breathing equipment in each class A, B, and E cargo compartments in all cargo airplanes operated by member air carriers of the Air Transport Association of America and similarly situated all-cargo operators. *Grant, December 18, 1992, Exemption No. 5407A.*

Docket No.: 27043.
Petitioner: Mr. Patrick Johnston.
Sections of the FAR Affected: 14 CFR 65.91(c)(1) and (2).
Description of Relief Sought/ Disposition: To allow Mr. Patrick Johnston to obtain an Inspector Authorization Rating based on schooling and experience, but without having been actively engaged in aircraft maintenance over the last two years, and without having a currently effective mechanic certificate that has been in effect for the last three years. *Denial, January 14, 1993, Exemption No. 5588.*

[FR Doc. 93–2053 Filed 1–27–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

[Number: 27–01]

Treasury Directive

January 19, 1993.

Subject: Organization and Functions—Office of the Assistant Secretary (Management)/Chief Financial Officer.

1. *Purpose.* This directive describes the organization of the Office of the Assistant Secretary (Management)/Chief Financial Officer (CFO).

2. *The Assistant Secretary (Management)/CFO.* The following are the functions of the Assistant Secretary (Management)/CFO.

a. Serves as the CFO of the Department of the Treasury, with authorities and functions pursuant to the Chief Financial Officers Act of 1990, Public Law 101–576 ("the Act"), and, as CFO, is responsible for carrying out the following functions for the Department and all bureaus (described as Departmentwide in this directive):

(1) Overseeing Departmentwide financial management, accounting policy, internal controls, cash management, credit management, debt management, coordination of responses to General Accounting Office (GAO) activities relating to financial management, and corrective actions related to audit recommendations;

(2) Specifying the format, content and frequency of financial reports and statements, including overseeing the development of performance measurement indicators prepared by

bureau program and financial components;

(3) Reviewing and approving the development, implementation, and maintenance of an integrated agency, as well as bureau financial management system(s), as defined by Office of Management and Budget (OMB) Circular No. A–127, paragraph 4.d., dated December 19, 1984, in compliance with generally accepted accounting principles, standards, and requirements for all Departmentwide administrative and program areas;

(4) Reviewing and approving financial statements and reports prepared at the bureau or Departmental level prior to submission to external parties after approval by the Secretary;

(5) Preparing and transmitting to the Secretary and OMB an annual report which includes items specified in 31 U.S.C. 902(a)(6) and cited below:

(a) A description and analysis of the status of financial management, Departmentwide;

(b) The annual financial statements prepared and audited reports pursuant to the Act;

(c) A summary of the Federal Managers' Financial Integrity Act (FMFIA) Report; and

(d) Any other information that warrants communication to the President and Congress concerning Departmentwide financial management;

(6) Developing and managing the Department of the Treasury budget for the Secretary and Deputy Secretary, monitoring financial execution of the budget, and ensuring the issuance of timely performance reports to management officials;

(7) Directing the biennial review of fees, royalties, rents and other charges imposed by the Department or a bureau, and making recommendations for changes;

(8) Reviewing, in accordance with the procedures established in Treasury Directive (TD) 28–02, "Legislative Procedures," all legislative items related to or concerning financial management matters subject to review and coordination pursuant to TD 28–02, to provide advice and comments on financial management issues, including costs and benefits;

(9) Providing direction and policy guidance to program managers on financial management matters;

(10) Developing Departmentwide policies and providing oversight related to qualifications, recruitment, training, selection and retention of financial management personnel; and

(11) Assuming any other function conferred upon the CFO by statute, Governmentwide regulation, or Treasury Orders or Directives.

b. Serves as the principal policy adviser to the Secretary and Deputy Secretary on matters involving the internal management of the Department and its bureaus. The Assistant Secretary oversees the Department's management programs, which include: Personnel and training; affirmative action and equal employment opportunity; security; property management, procurement and contracting; planning and management analysis; and program reviews of legislative proposals in accordance with TD 28–02, to provide advice to the Secretary on cost and benefit estimates.

c. Oversees bureau proposals related to the development of budgetary resources for information systems.

d. Provides comprehensive administrative services to Departmental Offices and other components of the Department, as appropriate.

3. *Organization Structure.* The Assistant Secretary (Management)/CFO is assisted in carrying out Departmentwide functions by three Deputy Assistant Secretaries: (a) Departmental Finance and Management; (b) Information Systems; and (c) Administration. In addition, assistance is provided in performing these functions by the Director, Office of Security; the Director, Office of Asset Forfeiture Financial Management; and the Deputy CFO. An organization chart is attached.

4. *The Deputy Assistant Secretary (Departmental Finance and Management)* has Departmentwide responsibility for personnel policies; the Treasury Executive Institute; equal opportunity programs; Treasury integrated management information systems, including automated payroll/personnel systems; procurement program management; management support systems; budget formulation; planning policy and management analysis; program evaluation; and productivity and management improvement. The Deputy Assistant Secretary supports the Assistant Secretary (Management)/CFO on legislative matters, and supervises the Financial Services Directorate, the Human Resources Directorate, and the Management Programs Directorate, with the exception of CFO-related responsibilities.

a. Financial Services Directorate. The Director serves as the Deputy CFO and reports directly to the Assistant Secretary (Management)/CFO on financial management matters. The Directorate is composed of the Office of Budget, the Office of Accounting and Internal Control, the Office of Financial Systems and Reports, and the Office of Planning and Management Analysis.

(1) The Office of Budget analyzes bureau resource requests and completes financial analyses related to resource allocations; monitors financial execution of the budget and administers Departmentwide budget controls; and represents the Department on budget matters in contacts with OMB, congressional committees and other Government agencies.

(2) The Office of Accounting and Internal Control develops, implements and evaluates Departmentwide accounting policy; oversees Departmentwide compliance with the FMFIA and Prompt Payment Act and the application of internal controls by bureau staffs; reviews and evaluates Departmentwide administrative and program accounting systems; coordinates cash and credit management/debt collection programs for Treasury bureaus; monitors the resolution and implementation of audit findings and recommendations; and provides centralized coordination and monitoring of all Treasury related GAO audit activities.

(3) The Office of Financial Systems and Reports recommends Departmentwide financial management and revenue systems policies and standards; reviews Departmentwide financial reports and financial statements; provides technical advice to bureaus on financial and revenue systems design and implementation; reviews and provides advice related to financial system proposals made by bureaus under TD 32–02, "Approval of Financial Management/Accounting Systems;" ensures that the Inventory, Tracking and Closure System is operational and supports needs of Departmental Offices and policy officials; and codifies the process for financial systems review and documentation at the Department level.

(4) The Office of Planning and Management Analysis supports Departmental management through the application of planning and management analysis techniques and maintains the Departmental planning process; develops management and productivity improvement plans and oversees the development of performance indicators used in financial statements; conducts studies of issues with long-term or strategic impact on Treasury operations and conducts analyses to improve Departmentwide operations and the allocation of resources by the Departmentwide budget process; and supports the Assistant Secretary (Management)/CFO on matters relating to legislation, as

provided in paragraphs 2.a.(8). and 2.b., and the President's Council on Management Improvement.

b. Human Resources Directorate. The Directorate is composed of the Office of Personnel Policy, the Treasury Executive Institute, the Office of the Treasury Integrated Management Information Systems, and the Office of Equal Opportunity Program.

(1) The Office of Personnel Policy provides leadership in developing Departmentwide personnel policies and procedures; develops, recommends and implements functional personnel programs such as: employment and staffing, including the Senior Executive Service (SES) and the disabled; classification and compensation; employee development, appraisal, recognition and benefits; employee and labor relations; drug-free workplace, including drug testing; occupational safety and health; and controls and evaluates personnel management activities, Departmentwide.

(2) The Treasury Executive Institute provides developmental services to SES executives and candidates to support achievement of their organizational and individual goals; presents programs, seminars and workshops with broad applicability to executive level personnel; sponsors and carries out, at the request of the Treasury Career Advisory Panel, several special activities each year, such as an Awards Ceremony to recognize the Department's Presidential Rank Award recipients.

(3) The Office of Treasury Integrated Management Information Systems (TIMIS) converts all Treasury bureaus from existing payroll/personnel systems to the U.S. Department of Agriculture system while simultaneously managing, operating and maintaining the system for converted bureaus; develops, conducts and maintains a full curriculum of technical training for Treasury bureau payroll/personnel staff; provides continuing user support, including user assistance in problem resolution and Departmentwide reporting; and ensures that the system meets the technical requirements of the Treasury community through the identification and development of system requirements and the negotiation of system modifications.

(4) The Office of Equal Opportunity Program provides for the consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, national origin, age and handicap; oversees, evaluates, and sets standards for the operation of the Regional Complaints Centers through which all Treasury bureaus process their complaints of discrimination; directs and administers Departmentwide affirmative employment and special emphasis programs, such as the Hispanic Employment Program, the Federal Women's Program, and the Historically Black Colleges and Universities Program.

c. Management Programs Directorate. The Directorate is composed of the Office of Procurement, the Office of Management Support Systems, and the Office of Automated Payroll/Personnel Systems.

(1) The Office of Procurement provides policy and technical guidance for the Departmentwide procurement and contracting programs and reviews and evaluates bureau procurement operations; oversees the activities of the Assistant Director (Small and Disadvantaged Business Utilization), in support of the Assistant Secretary (Management)/CFO, (who is the statutory director of the Office of Small and Disadvantaged Business Utilization under Public Law 95–507); oversees the activities of the Departmental Advocate for Competition appointed under Public Law 98–369; and administers a Departmentwide career management program for all procurement personnel in accordance with requirements of Public Law 98–191.

(2) The Office of Management Support Systems provides policy and technical guidance for Departmentwide space management, real and personal property, fleet management, transportation management, energy conservation, environmental quality and pollution abatement, historic preservation, metrication, and recycling programs; publishes Treasury Orders and Directives; provides policy direction and oversight of the Treasury travel management, advisory committee management, and audiovisual management programs; and reviews and evaluates bureau operations within these program areas.

(3) The Office of Automated Payroll/Personnel Systems has responsibility for complete administrative management and oversight of records, contracts, facility, personnel, and equipment closeout of the former Treasury Payroll Information System (TPIS) and Personnel Management Information Telecommunications System (PERMITS) payroll and personnel systems and staff.

5. The Deputy Assistant Secretary (Information Systems) serves as the Department's Senior Official for Information Resources Management and has Departmentwide responsibility for policy, oversight and improvement of information systems, including computer hardware and software, telecommunications (voice, data and radio), office automation, and storage and imaging technologies. The Deputy Assistant Secretary supervises the Office of Information Resources Management and the Office of Telecommunications Management.

a. The Office of Information Resources Management manages a broad range of information resources management functions specified in the Brooks Act and the Paperwork Reduction Act, except for management issues related to telecommunications; coordinates and makes recommendations for information systems planning and budgeting; develops and coordinates policy and standards; approves and coordinates acquisitions and systems management; conducts information management reviews; administers provisions of the Computer Security Act; conducts inventories of bureau sensitive systems and reviews security plans; develops and reviews computer security awareness training guidelines; and reviews and approves public reporting requirements; and coordinates Treasury external directories, forms, reports, records, and mail management program activities.

b. The Office of Telecommunications Management develops and manages the Departmentwide telecommunications program for local and wide area communications systems and services; develops policies for cost-effective utilization of telecommunications resources by Treasury bureaus; reviews and coordinates the acquisition of communications systems and services throughout the Department; establishes and oversees program offices for voice, data, video, and radio communications to meet Departmentwide requirements.

6. The Deputy Assistant Secretary (Administration) has responsibility for the Departmental Offices' administrative and management operating programs which include: administrative services; automated systems; facilities; budget formulation and execution; accounting and internal controls; personnel, payroll, and equal employment opportunity; printing and graphics; and procurement. The Deputy Assistant Secretary (Administration) is responsible for managing the Department's disclosure services program, Working Capital Fund, printing program and reimbursable agreement operations which cross bureau lines. The Deputy Assistant Secretary (Administration) also serves as the Departmental Offices' liaison for activities required to comply with the CFO Act. Unless another Treasury Order, Directive, or delegation specifically states otherwise with

respect to a function, the Deputy Assistant Secretary (Administration) is the head of the Departmental Offices for all administrative and management functions. The Deputy Assistant Secretary supervises the Administrative Operations, Automated Systems, Facilities Management, Financial Management, Personnel Resources, Printing and Graphics, and Procurement Services Divisions.

a. The Administrative Operations Division provides a range of administrative support services to the Departmental Offices to include library, mail, messenger and motor pool, telephone and switchboard, travel and special events support, personal property and representation funds accounting and building security, safety and parking. The Division manages the Department's disclosure services program.

b. The Automated Systems Division provides office automation, data processing, user support, applications development and telecommunications services to the Departmental Offices and users outside the Departmental Offices, as appropriate.

c. The Facilities Management Division directs and coordinates the management of the Main Treasury Building, Treasury Annex, and related grounds, including space management, construction, maintenance, and custodial care.

d. The Financial Management Division formulates, presents, executes and manages the Departmental Offices' budget; maintains a comprehensive integrated financial management and accounting system in support of the financial resources under the jurisdiction of the Departmental Offices; develops and directs the internal controls activities of the Departmental offices; and supports the Deputy Assistant Secretary (Administration) in providing information to comply with the CFO Act. In addition, the Division provides financial management for the Department's Working Capital Fund and reimbursable programs which cross bureau lines.

e. The Personnel Resources Division formulates and administers the operating personnel management and training programs for the Departmental Offices, including the Equal Employment Opportunity Discrimination Complaint Program and the Multi-Year Affirmative Action Plan Program, and provides payroll liaison services for Departmental Office employees.

f. The Printing and Graphics Division provides Departmentwide printing, graphics and printing procurement services; develops the Department's publications policy; and represents the Department before and on inter- and intragovernmental printing committees and boards.

g. The Procurement Services Division provides operational procurement support for the Departmental Offices and manages certain Departmentwide procurements.

7. *The Office of Security* develops and administers Departmentwide policies and programs for personnel security and physical security, including industrial security and information security, emergency preparedness, Departmental Offices personnel security, and systems security programs. The latter program encompasses computer security programs, telecommunications security, operations security (threat/vulnerability assessments), emissions security (TEMPEST), and electronic authentication; and contacts and performs liaison with other Government agencies to fulfill program responsibilities.

8. *The Office of Asset Forfeiture Financial Management* provides financial management and budgetary oversight related to the Department of the Treasury Asset Forfeiture Fund. The office provides the Treasury law enforcement bureaus, the Assistant Secretary (Enforcement), and the Assistant Secretary (Management) with appropriate financial direction, advice, and technical assistance related to the administration of the fund. The office is responsible for accounting for assets of the Fund, recording and reporting financial transactions, financial management controls, and financial execution of the budget with respect to the Fund.

9. *Cancellation*. TD 27–01, "Organization and Functions—Office of the Assistant Secretary (Management)/ Chief Financial Officer," dated July 9, 1992, is superseded.

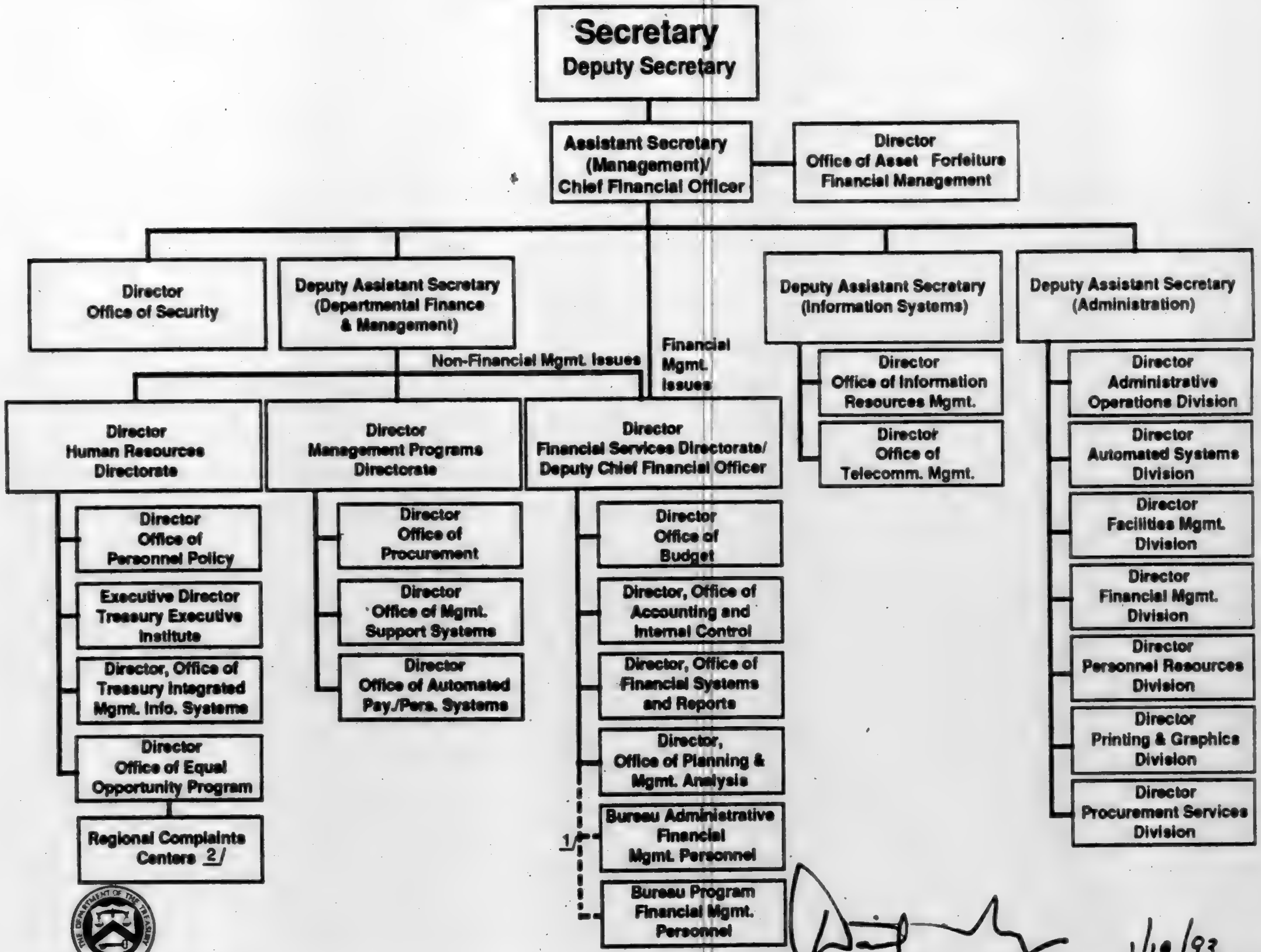
10. *Office of Primary Interest*. Office of the Assistant Secretary (Management)/CFO.

David M. Nummy,

Assistant Secretary (Management)/Chief Financial Officer

BILLING CODE 4810-25-M

Office of Management


Secretary
Deputy Secretary
Assistant Secretary (Management)/ Chief Financial Officer
Director Office of Asset Forfeiture Financial Management
Director Office of Security
Deputy Assistant Secretary (Departmental Finance & Management)
Non-Financial Mgmt. Issues
Financial Mgmt. Issues
Deputy Assistant Secretary (Information Systems)
Deputy Assistant Secretary (Administration)
Director Human Resources Directorate
Director Management Programs Directorate
Director Financial Services Directorate/ Deputy Chief Financial Officer
Director Office of Information Resources Mgmt.
Director Office of Telecomm. Mgmt.
Director Administrative Operations Division
Director Automated Systems Division
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Director Personnel Resources Division
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Director Office of Personnel Policy
Executive Director Treasury Executive Institute
Director, Office of Treasury Integrated Mgmt. Info. Systems
Director Office of Equal Opportunity Program
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Director Office of Procurement
Director Office of Mgmt. Support Systems
Director Office of Automated Pay./Pers. Systems
Director Office of Budget
Director, Office of Accounting and Internal Control
Director, Office of Financial Systems and Reports
Director, Office of Planning & Mgmt. Analysis
1/
Bureau Administrative Financial Mgmt. Personnel
Bureau Program Financial Mgmt. Personnel

Department of the Treasury

1/19/93
Assistant Secretary (Management)/CFO
Date

1/ The dotted line delineates the Assistant Secretary (Management)/CFO role in financial management and the development of Departmentwide policies related to qualifications, recruitment, training, selection, and retention of bureau financial management personnel.

2/ Regional Complaints Centers are located in Washington, DC, Dallas, Chicago, and San Francisco.

[FR Doc. 93-1981 Filed 1-27-93; 8:45 am]

BILLING CODE 4810-25-C

DEPARTMENT OF THE TREASURY

Fiscal Service

Survey Companies Acceptable on Federal Bonds; American Manufacturers Mutual Insurance Company; Fraudulent Bonding

Federal bond-approving officers are advised that American Manufacturers Mutual Insurance Company, Long Grove, Illinois, has informed the Treasury Department that fraudulent bonds have been issued under their name.

All bonds received in the name of American Manufacturers Mutual Insurance Company should be verified as to their authenticity with Mr. Donald O. Neilson, Bond Underwriting Officers, of American Manufacturers Mutual Insurance Company at (708) 540–2108, facsimile (708) 540–2494. In addition, the authenticity of bonds currently in force, that were written during the past year, should also be verified.

Dated: January 15, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–2091 Filed 1–27–93; 8:45 am]

BILLING CODE 4810-35-M

Surety Company Application and Renewal Fees; Increase in Fees Imposed

The Department of the Treasury, Financial Management Service, will be increasing the fees imposed and collected as referred to in 31 CFR 223.22. This increase is to cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business.

The new fees are effective December 31, 1992, and are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The increase in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$3,400.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$2,000.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$1,200.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$850.

Questions concerning this notice should be directed to the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, Telephone (202) 874–7116.

Dated: January 15, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–2092 Filed 1–27–93; 8:45 am]

BILLING CODE 4810-35-M

Surety Companies Acceptable on Federal Bonds; Liquidation; Regency Insurance Company

Regency Insurance Company, a Florida corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 56 FR 30159, July 1, 1991. The Company's authority was suspended by the Department of the Treasury effective March 11, 1992. Notice of the suspension was published in the **Federal Register** of March 26, 1992, on page 10520. The Company's authority was subsequently terminated by the Department of the Treasury effective October 5, 1992. Notice of the termination was published in the **Federal Register** of October 14, 1992, on page 47160.

On October 23, 1992, upon a petition by the Insurance Commissioner of the State of Florida, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, issued an Order of Liquidation with respect to Regency Insurance Company. Mr. Tom Gallagher, the Insurance Commissioner of the State of Florida, was appointed as the Liquidator of the company. All persons having claims against Regency Insurance Company must file their claim by April 23, 1993, or be barred from sharing in the distribution of assets.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 U.S.C. 3713, who have not yet filed their claim, do so, in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044–0875. Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against Regency Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 724–7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874–6905.

Dated: January 15, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Services.

[FR Doc. 93–2093 Filed 1–27–93; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 17
Thursday, January 28, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:07 a.m. on Tuesday, January 26, 1993, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's Strategic Plan.

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, DC.

Dated: January 26, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–2210 Filed 1–26–93; 3:47 pm]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, February 2, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, February 4, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1993–1: Congressman Dan Burton
Report from the FEC Clearinghouse
Routine Administrative Matters

DATE AND TIME: Tuesday, February 9, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–2209 Filed 1–26–93; 8:45 am]

BILLING CODE 6715-01-M

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:15 a.m., February 19, 1993.

PLACE: The Capital Hilton, 16th & K Streets, NW., Washington, DC 20036.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) and (9)(B) and 22 CFR 1302.4(a) and (h).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Executive Director.

[FR Doc. 93–2149 Filed 1–26–93; 10:37 am]

BILLING CODE 8155-01-M

Corrections

Federal Register
Vol. 58, No. 17
Thursday, January 28, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Proclamation 6526 of January 24, 1993

Death of Thurgood Marshall

Correction

The number of this proclamation was misprinted on page 6187 in the issue of Wednesday, January 27, 1993. Its correct number is 6526.

BILLING CODE 1505-01-D

federal register

Thursday
January 28, 1993

Part II

The President

Memorandum of January 22, 1993—Privately Funded Abortions at Military Hospitals

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Presidential Documents

Title 3—

The President

Memorandum of January 22, 1993

Privately Funded Abortions at Military Hospitals

Memorandum for the Secretary of Defense

Section 1093 of title 10 of the United States Code prohibits the use of Department of Defense ("DOD") funds to perform abortions except where the life of a woman would be endangered if the fetus were carried to term. By memoranda of December 21, 1987, and June 21, 1988, DOD has gone beyond what I am informed are the requirements of the statute and has banned all abortions at U.S. military facilities, even where the procedure is privately funded. This ban is unwarranted. Accordingly, I hereby direct that you reverse the ban immediately and permit abortion services to be provided, if paid for entirely with non-DOD funds and in accordance with other relevant DOD policies and procedures.

You are hereby authorized and directed to publish this memorandum in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93–2284
Filed 1–27–93; 11:50 am]
Billing code 3195–01–M

Editorial note: For the President's remarks on lifting the ban on privately funded abortions at military hospitals, see p. 85 of the *Weekly Compilation of Presidential Documents.*

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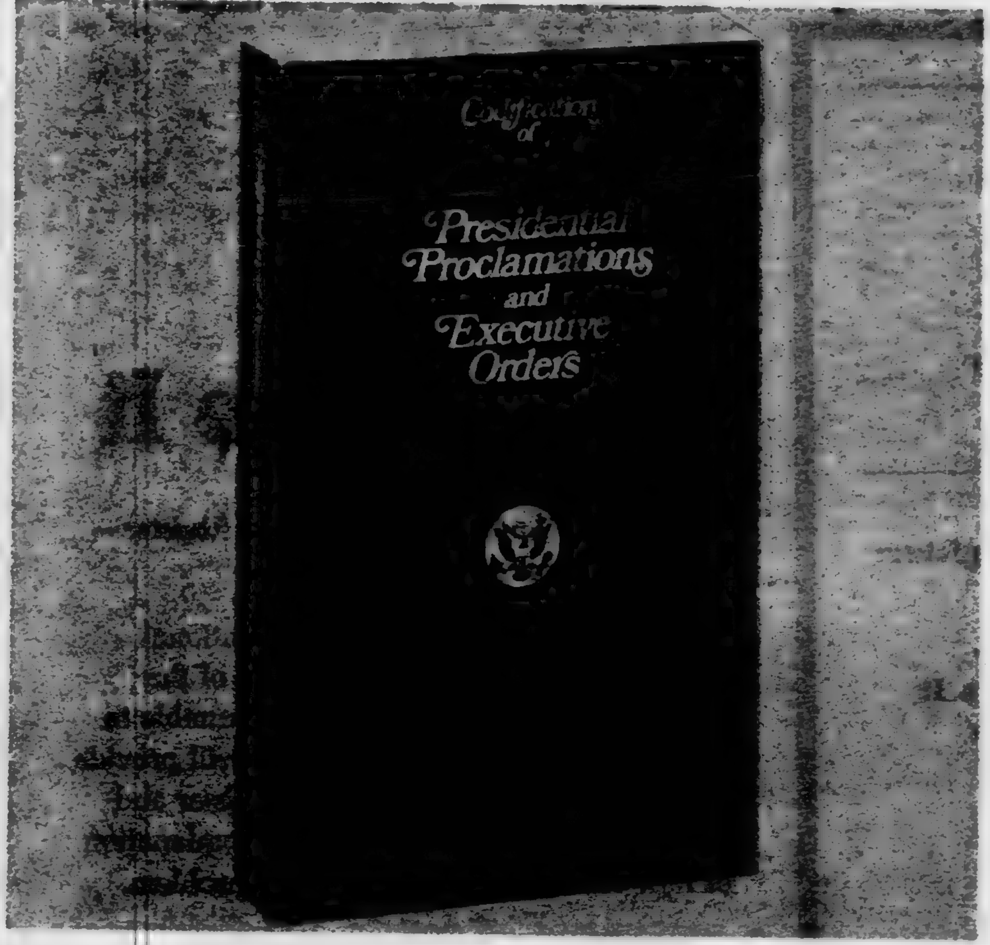

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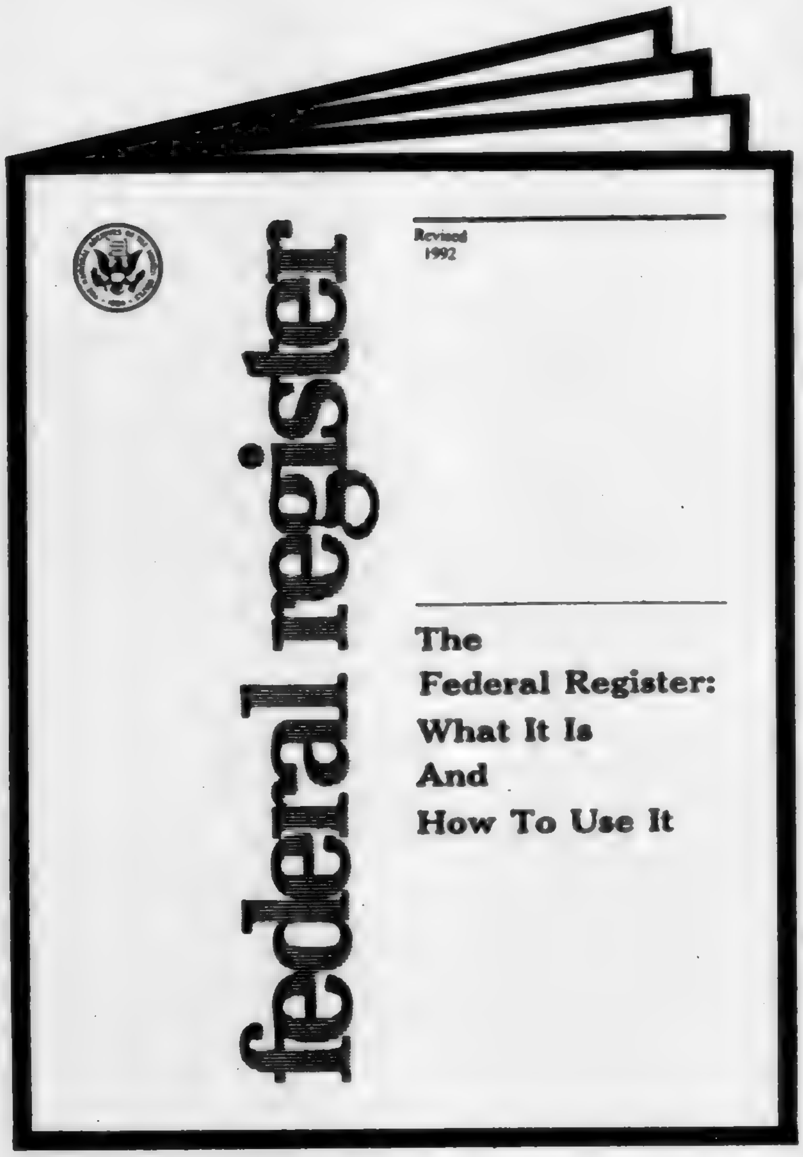

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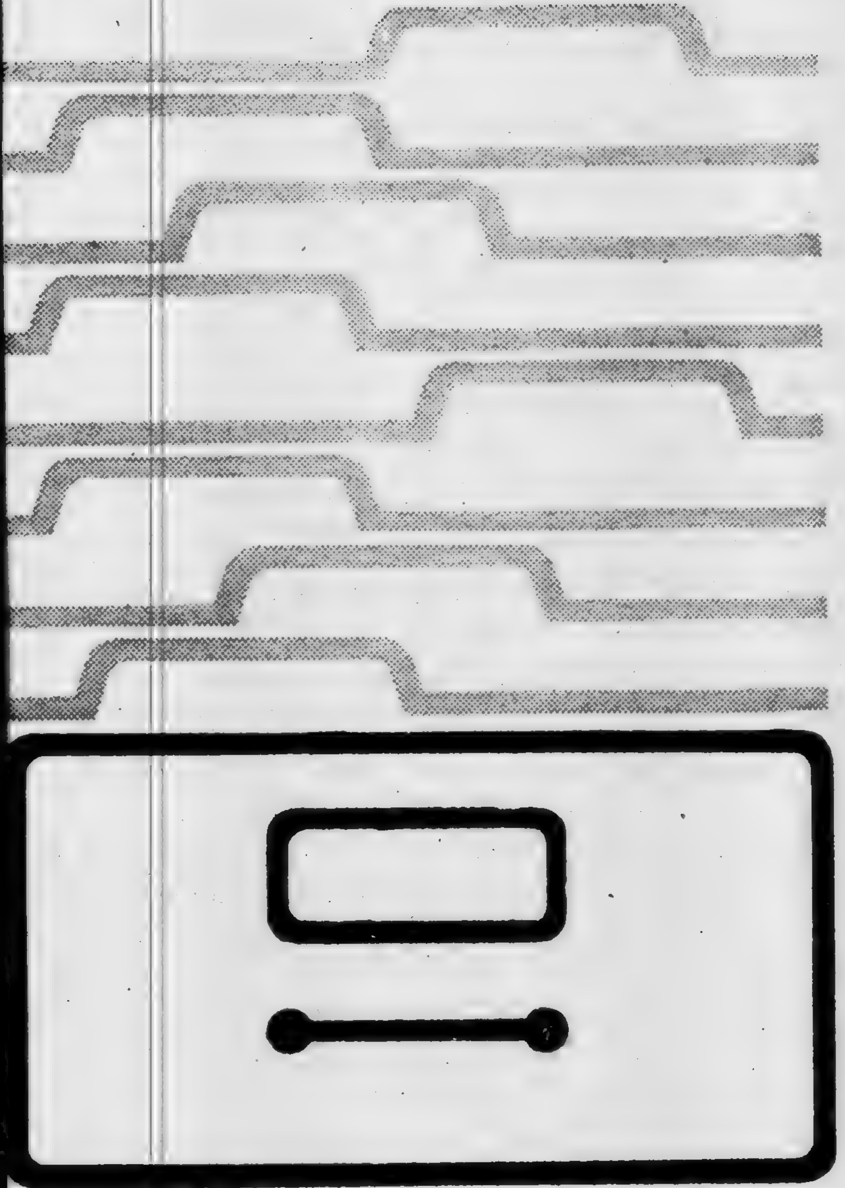

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Friday
January 29, 1993

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

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Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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12 CFR

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Rules and Regulations

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 92-23]

RIN 1557-AB22

Rules, Policies and Procedures for Corporate Activities: Merger, Consolidation, Purchase and Assumption

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comment; extension of comment period.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is extending until March 4, 1993, the comment period for its interim rule with request for comment regarding its Rules, Policies and Procedures for Corporate Activities; Mergers and Consolidations, Purchase and Assumption. This action will provide interested persons additional time to prepare and submit comments.

DATES: Comments must be received by March 4, 1993.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, Independence Square, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 92-23. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Jerome Edelstein, Senior Counsel, Corporate Organization and Resolutions Division, (202) 874-5300, or Nancy Cody, National Bank Examiner/Senior Analyst, Bank Organization and Structure, (202) 874-5060.

SUPPLEMENTARY INFORMATION: On November 3, 1992, (57 FR 49639), the OCC published an interim rule with request for comment regarding 12 CFR 5.33 Merger, consolidation, purchase and assumption. The interim rule establishes procedures for national banks to follow in undertaking mergers or consolidations with Federal savings associations. This action is necessitated by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) which authorized such transactions but did not establish procedures. The original comment period closed January 4, 1993. The OCC is extending the comment period until March 4, 1993, in order to give interested parties additional time to comment.

Dated: January 29, 1993.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

[FR Doc. 93-2141 Filed 1-28-93; 8:45 am]

BILLING CODE 4810-33-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 311

[Docket No. 92-3-DART]

Digital Audio Recording Technology Act; Implementation

AGENCY: Copyright Royalty Tribunal.

ACTION: Interim regulation.

SUMMARY: This notice is issued to advise the public that the Copyright Royalty Tribunal is adopting interim regulations, to implement section 1007 of the Audio Home Recording Act of 1992 (ACT). These interim regulations prescribe the manner for filing claims, with the Tribunal, for royalties from the sale of each digital recording device and blank disc or tape. The interim regulations prescribe the content and filing time of such claims and the procedure for distribution of the royalties.

The regulations are issued on an interim basis in order to allow interested copyright owners to file claims during January and February of 1993, as required by the Act, while permitting full public comment before the issuance of final regulations.

DATES: This interim regulations are effective on January 29, 1993. Public comments concerning the content of the interim regulations are due on or before March 1, 1993. A report concerning the resolution of the issue whether performing rights societies need separate, specific and written authorization to represent members and affiliates is due on or before June 1, 1993.

ADDRESSES: An original and five copies of all comments and reports shall be addressed to Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: On October 28, 1992, the Audio Home Recording Act of 1992 (Act), Public Law 102-563, 106 Stat. 4237 (1992), became effective. The Act provides that the manufacture, importation, and distribution of digital audio recording devices and media is not an infringement of copyright, so long as the first person to manufacture and distribute or import and distribute such device or media: (i) Files an initial notice of distribution; (ii) files quarterly and annual statements of account; and (iii) pays royalties upon distribution of such devices and media in the United States. 17 U.S.C. 1003.

The Act further specifies that any interested copyright owner whose musical work or sound recording has been: (i) Lawfully reproduced in a digital or analog musical recording, and (ii) distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions, during the period when the royalty fees were paid, is entitled to a portion of these fees. 17 U.S.C. 1006. However, qualifying copyright owners must file claims for the fees, with the Copyright Royalty Tribunal, during January and February of each calendar year. 17 U.S.C. 1007(a)(1). The Act authorizes the Tribunal to prescribe the "form and manner" for filing claims. *Id.* The Tribunal, in an Advance Notice of Rule Making, invited comments concerning the filing of claims to royalties. 57 FR 54542 (1992).

The Parties

Comments were filed by: American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc. (SESAC), American Federation of Musicians of the United States and Canada (AFM), American Federation of Television and Radio Artists (AFTRA), Copyright Management, Inc. (CMI), Electronic Industries Association (EIA), National Music Publishers Association (NMPA), Harry Fox Agency (HFA), Recording Industry Association of America (RIAA), Songwriters Guild of America (SGA), and Gospel Music Coalition (Coalition). Reply comments were filed by all of the foregoing parties except EIA. BMI filed additional reply comments. Nashville Songwriters Association International (NSAI) submitted late-filed comments. ASCAP, BMI and SESAC filed additional reply comments to NSAI's late-filed comments.

The Comments

AFM, AFTRA, ASCAP, BMI, CMI, EIA, NMPA, HFA, RIAA, SESAC, and SGA (Joint Parties) filed comments supporting the Tribunal's "first step" in implementation of the Act. The foregoing parties also suggest that at an appropriate time, the Tribunal may wish to adopt regulations governing the following proceedings: arbitration of the question whether a digital audio recording or interface device is subject to the Act (17 U.S.C. 1010), and maximum royalty rate adjustment (17 U.S.C. 1004(a)(3)).

The Joint Parties filed an additional set of comments proposing regulations for royalty claim filing, and fee distributions, under the Act. In their comments, the Joint Parties compare the language in the Act (17 U.S.C. 1007(a)(1)) which authorizes the Tribunal to "prescribe by regulation", the "form and manner" in which claimants must file their claims for royalties, with the language of the cable compulsory license (17 U.S.C. 111(d)(4)(A)), and the satellite carrier compulsory license (17 U.S.C. 119(b)(4)(A)). They conclude that the language of the Act parallels that of the other two compulsory licenses, and therefore, the Tribunal's regulations for filing claims under the Act should roughly parallel the regulations for filing cable and satellite carrier claims, 37 CFR parts 302 and 309. The Joint Parties attach a proposed Part 311, which parallels parts 302 and 309. The Joint Parties also submit proposed amendments to certain of the Tribunal's existing regulations to account for its distribution duties under the Act and to update its general purpose authority.

ASCAP, BMI, and SESAC (Societies) filed a third set of joint comments addressing the issue as to which form of authorization should be required by regulation to permit them to represent their writer and publisher members and affiliates, and those of affiliated foreign societies under the Act. The Societies claim that they are "in a unique position among the potential claimants to digital audio royalty payments, with particular reference to the Musical Works Fund." This unique position, they claim, is based upon three factors: (a) Their combined vast representation of domestic and foreign writers and publishers of copyrighted musical compositions, (b) their affiliation agreements with foreign societies, which require them to represent the foreign societies' legitimate interests in the Musical Works Fund, and (c) the legislative history of the Act which specifically identifies them as being entitled to make claims on behalf of their members and affiliates.

The Societies argue that their "existing arrangements with writers and publishers, and those of affiliated foreign societies with their writers and publishers, are more than sufficient to allow (them) to represent those writers and publishers before the Tribunal." They claim that these existing arrangements, coupled with contacts which they are making with their members and affiliates concerning their representation, and the efforts they are asserting to ensure that writers and publishers may be represented by any other common agent or themselves, if they desire, provide sufficient authorization for member or affiliate representation.

The Societies also maintain that the Tribunal should treat the filing of claims under the Act in the same manner that it treats the filing of satellite and cable claims. Specifically, they cite to the following provision in the Tribunal's rules:

> A performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard agreements, for purposes of this filing and fee distribution.

37 CFR 302.7(a) (cable), 309.2 (satellite). Finally, they assert that it would be extremely burdensome for them to obtain separate, specific and written authorization for representation, from each and every one of their domestic and foreign members and affiliates.

AFM, AFTRA, CMI, HFA (a licensing subsidiary of NMPA), RIAA, and SGA also filed additional comments addressing the issue of whether performing rights societies need additional authorization to file royalty claims for their members and affiliates under the Act. AFM, AFTRA, CMI, HFA, RIAA, and SGA maintain that "interested copyright parties filing joint claims on behalf of individuals must obtain separate, specific written authorization to represent such individuals for the purpose of claiming and distributing royalty payments under the Act." Accordingly, they propose that the Tribunal promulgate a rule which specifies that joint claims may only be filed on behalf of individual claimants who have provided separate, specific and written authorization to the joint claimant, and that a list of the individual claimants be included in the joint claim.

They reason that not only are tens of thousands of interested copyright parties potentially entitled to claim royalty payments under the Act, but many of them have overlapping memberships in organizations in the music industry. Consequently, AFM, AFTRA, CMI, HFA, RIAA, and SGA argue that if these organizations are not required to obtain separate, specific and written authorization to represent each claimant, it is feasible that "duplicate, triplicate and quadruplicate claims would wind up being filed on behalf of many of the same individuals."

They explain that "(n)ot only do music industry organizations feature overlapping memberships, but their members also have multiple roles in the music industry." Therefore, they assert, it is necessary to clarify which organization is representing each individual with respect to claims against each particular subfund. They suggest "that the written authorization executed by the individual claimant identify the subfunds against which an organizational claimant is designated to claim on that individual's behalf."

Furthermore, they reject the argument that requiring written authorizations will be unduly burdensome. Rather, they assert that the administrative apparatus needed for obtaining the requested authorizations "would appear a necessary complement to the ability to claim and distribute royalties under the Act on behalf of such members."

They equally reject the contention that the Act relieves any organizational claimant from the obligation to obtain proper authorization to represent an individual claimant. Specifically, they cite the House Judiciary Committee Report, which states that performing rights societies such as ASCAP and BMI are not themselves directly entitled to receive royalties, but may be designated as common agents to negotiate and receive digital royalties on behalf of others.

Finally, they distinguish the filing of claims under the Act from the filing of claims under the cable and satellite provisions of the 1976 Copyright Act. They reason that under the cable and satellite provisions, performing rights societies are not required to obtain separate and specific authorization because those provisions provide for statutory licenses of the copyright owner's public performance right. The Act, they argue, was intended to compensate for the impact of home taping on the copyright owner's reproduction and distribution rights, not to compensate for public performances.

The Coalition filed comments which express its concern regarding the possibility that when the royalties from both the Sound Recordings and Musical Works Funds are distributed, Gospel music will be systematically undervalued because of its unique distribution and dissemination characteristics. Therefore, the Coalition argues that a need may arise to evaluate the extent of undervaluation of Gospel music. It maintains that a determination of which music category each claim falls into will be essential to this evaluation, and, therefore, the Tribunal should "require each claimant to state which category, or categories, of music for which claims are being made."

The Coalition also supports a requirement that associations and organizations representing individual claimants before the Tribunal, pursuant to the Act, certify that they have received the affirmative written authorization to represent those individual claimants. According to the Coalition, the appropriate time to require such a certification is at the time the claim is filed.

The Reply Comments

In their reply comments, the Societies reiterate the position that they should not be required to obtain separate, specific and written authorizations to represent individual claimants under the Act. They reason that "given the hundreds of thousands of domestic and foreign writers and publishers involved, any more stringent requirement that they go beyond those normal arrangements to obtain separate, specific, written authorizations for that representation would inevitably disenfranchise a large number of those writers and publishers." They deny that their proposal would result in overlapping claims and an administrative nightmare. The Societies maintain that in the event the parties could not reach a global settlement regarding the allocation of the Musical Works Fund, each representative organization would prove the entitlement of those individual claimants they represent, and the individual claimants each organization represents would be mutually exclusive.

The Societies oppose the Coalition's request for a requirement that claimants identify the category of music for which they are filing claims. They assert that "[m]usic frequently defies such 'characterization.'" Moreover, they question whether this identification will provide any assistance to the parties or the Tribunal.

AFM, AFTRA, CMI, HFA, RIAA, and SGA, in their reply comments, deny that the Act or its legislative history, specifically grants the performing rights societies any special treatment. They contend that the Act merely permits performing rights societies to be designated joint claimants by the individual claimants. They restate their belief that adoption of the Societies' joint proposal would be "administratively burdensome" in that it would result in "duplicate, triplicate and quadruplicate claims."

AFM, AFTRA, CMI, HFA, RIAA, and SGA deny that the existing agreements between the Societies, and their members and affiliates are sufficient to authorize representation for purposes of filing claims under the Act. Additionally, they argue that ASCAP does not presently have the requisite legal authority to expand its operations to include the filing of claims under the Act.

They argue, in the alternative, that if the Societies are entitled to a presumption of authorization to represent their members and affiliates for the purpose of filing claims under the Act, all organizations and associations referenced in the legislative history are equally entitled to such a presumption. They question the Societies' position that the presumption of representation should be applicable only to the Musical Works Fund, and argue that the Societies are attempting to fashion regulations which suit them not the claimants.

Finally, AFM, AFTRA, CMI, HFA, RIAA, and SGA oppose the Coalition's proposal that the Tribunal require claimants to identify the "musical category" for which they are filing claims. They assert that it is neither "necessary" nor "desirable" to require the claimants to provide such information, since frequently musical works fall into more than one category.

The Coalition's reply comments reiterate its support for the proposal that organizations alleging to represent individual claimants before the Tribunal, for the purpose of collecting royalties under the Act, be required to obtain specific, written authorization from the individual claimants. It also supports the proposal of AFM, AFTRA, CMI, HFA, RIAA, and SGA that a joint claim include a list of the represented individual claimants. The Coalition denies that anything in the Act or its legislative history entitles or endorses the participation of any specific representative organization in the filing of claims. The Coalition also renewed its request that claimants be required to identify the music categories for which claims are being made in each subfund.

Additional Comments

BMI requested leave to file additional comments "to clarify one aspect of the factual record." BMI noted for the record that the terms of its consent decree are not the same as those of the ASCAP consent decree. BMI states that unlike the ASCAP consent decree, its consent decree does not limit BMI to representing its affiliates solely for purposes of licensing performing rights.

On December 23, 1992, NSAI filed a letter with the Tribunal stating that it was interested in filing comments in this proceeding. NSAI noted, however, that it needed board approval to issue an official policy on the Act and the next board meeting was scheduled for January 5, 1993. It hoped that the Tribunal would accept its comments.

The Tribunal's General Counsel contacted NSAI to ensure that all the parties had been served with the letter. She was informed that NSAI had not served all the parties, but would promptly do so.

On January 15, 1993, the NSAI filed its comments. The comments consist of suggestions regarding the manner in which the performing rights organizations should formulate their individual distribution methods.

In their additional reply comments, the Societies assert that NSAI's concerns regarding the Societies' formulation of a method for distributing digital royalties to their members affiliates, involves purely private arrangements of claimants and their common agents. These private arrangements, they note, are not within the scope of the Tribunal's authority under the Act. The Societies further assert that if NSAI's position is that the Tribunal should consider NSAI's suggestions for determining a formula, "if and when the Tribunal is called upon to decide any controversy, then the suggestion is premature, for no such controversy now exists." Finally, the Societies again argue that specific and written authorizations beyond existing arrangements are not required for their claims on behalf of their members and affiliates.

Discussion

The Tribunal has reviewed the proposed part 311 submitted by the Joint Parties and agrees with them that the regulations for the filing of claims under the Act should roughly parallel the Tribunal's regulations in the cable and satellite areas. The proposed regulations both parallel the existing regulations and effectively implement the Act. However, the Tribunal will make certain modifications to the jointly proposed regulations.

Specifically, the Tribunal notes that pursuant to the Act, 4% of the Sound Recording Fund is to be placed into an escrow account managed by an independent administrator. 17 U.S.C. 1006. These royalties are to be distributed to nonfeatured musicians and vocalists (nonfeatured performers), who have performed on sound recordings distributed in the United States. *Id.* These nonfeatured performers, however, are not included in the Act's definition of interested copyright party. 17 U.S.C. 1001(7). Since, under the Act, the Tribunal's authority over the distribution of royalties extends only to interested copyright parties, the nonfeatured performer royalties do not fall within the scope of the Tribunal's authority. 17 U.S.C. 1007. Consequently, the Tribunal will propose no rules concerning the nonfeatured performers' royalty fund.

Additionally, the Tribunal believes that claimants should be required to state in their claims how they conform with the definition of interested copyright party specified in section 1001(7) of the Act. 17 U.S.C. 1001(7). The Tribunal also feels that claims should include a claimant's telephone and facsimile numbers to assure that the Tribunal can promptly contact the claimant, if any questions arise regarding the claim.

Accordingly, with the foregoing modifications, the Tribunal proposes the adoption of the jointly proposed part 311.

The Joint Parties, however, differ on the issue of whether performing rights societies need separate, specific and written authorization to file royalty claims for their members and affiliates under the Act. Having carefully considered all the arguments presented by the parties, the Tribunal concludes that this issue, in fact, involves a private contractual dispute.

The Tribunal rejects the Societies' assertion that the Act grants them special entitlement to make claims on behalf of their members and affiliates. The legislative history of the Act is clear on the fact that performing rights societies such as ASCAP and BMI are not themselves directly entitled to receive royalties, but may be designated as common agents to negotiate and receive royalties on behalf of others under the Act. H.R. Rep. No. 873, 102nd Cong., 2d Sess., pt. 1, at 18 (1992).

Moreover, the Tribunal is not persuaded by the Societies' position that, since the requested language exempting them from obtaining separate, specific and written authorization is in the rules governing the filing of jukebox, cable, and satellite claims, it should be included in the rules regulating the filing of claims under the Act. The subject language addressing separate, specific and written authorization was included in the jukebox, cable, and satellite rules with the consensus of all the parties. The fact that no objections to the language were filed by any of the parties, and, consequently, no issue arose regarding the language, distinguishes those situations from the present one.

In the instant case, resolution of the issue that has arisen requires an interpretation of the agreements between the performing rights societies and their members and affiliates. The Tribunal is reluctant to engage in the interpretation of private contracts, and, therefore, recommends that the parties revolve this matter among themselves. Nonetheless, if the parties have not notified the Tribunal by June 1, 1993, that the issue has been resolved, the Tribunal will initiate a formal rule making proceeding to permit the compiling of written and oral evidence on this issue.

The Tribunal notes that ASCAP and BMI have notified their members that, "unless they heard from them to the contrary", they would represent their interest in claiming royalty fees in the Musical Works Fund. Additionally, the Tribunal notes that fewer than six weeks remain between the date of this action and the deadline for filing claims for the 1992 digital royalties. In view of the foregoing, if the Tribunal were to require separate, specific, and written authorization for ASCAP and BMI representation, thousands of writers and publishers would be forced to scramble to submit authorizations in the brief time remaining before the deadline for filing claims. Inevitably, a significant number of claimants—who previously believed their interests would be represented without affirmative responses—would become disenfranchised due to no fault of their own.

Accordingly, in an attempt to expedite matters and provide the parties with rules for filing claims for the 1992 digital royalties, the Tribunal will infer an agency relationship between the performing rights societies and their members and affiliates. This rebuttable inference will be utilized solely for purposes of filing claims for and distribution of 1992 digital royalties. If, however, a member or affiliate files an individual claim or grants express authority to another agent, such action will rebut the implied agency relationship. This rebuttable inference, drawn more for the purpose of administrative necessity and the temporary benefit of a substantial number of claimants than on the basis of the facts or the law, shall be within precedential value or prejudice to the Tribunal's determination of this issue in the future.

The Tribunal has also reviewed the proposed amendments to existing regulations regarding royalty distribution proceedings and the general purposes of the Tribunal submitted by the Joint Parties. It is determined that the proposed amendments properly update the relevant regulations.

Furthermore, the Tribunal rejects the Coalition's proposal that each claimant be required to state for which category, or categories, of music the claim is being made. The Coalition's comments primarily a critique of different methods for valuing music types and its arguments are more properly advocated in a distribution proceeding, rather than in this rule making proceeding. Therefore, at this time, the Tribunal expresses no opinion as to the value of any specific method for resolving disputes concerning the distribution of digital royalties. The Tribunal also agrees with the view of the majority of the commenting parties that music often defies such categorization. The Tribunal concludes that such categorization might cause confusion and would provide no significant assistance. Accordingly, the Tribunal will not propose such a requirement.

Finally, it appears to the Tribunal that the sole purpose of NSAI's comments was to suggest royalty distribution formulas to be used by the performing rights organizations in their individual distributions. These organizations' methods of distributing royalties to the parties they represent, however, is a private matter, which is not within the scope of the Tribunal's authority. Accordingly, the Tribunal will not propose any regulations governing these formulas.

Public Comment

The Public is invited to submit comments on the interim regulations on or before March 1, 1993.

List of Subjects in 37 CFR Parts 301 and 311

Copyright, Digital Audio Home Recording Act.

Interim Regulations

In lieu of the foregoing, the Tribunal is amending 37 CFR Chapter III in the manner set forth below:

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. §§ 803.(a).

1a. Section 301.1 is amended by adding paragraph (g) and (h) to read as follows:

§ 301.1 Purpose.

* * * * *

(g) To distribute digital audio recording devices and media royalty payments under 17 U.S.C. chapter 10 deposited with the Register of Copyrights.

(h) To consider petitions to adjust the royalty maximum for digital audio recording devices pursuant to 17 U.S.C. 1004(a)(3).

2. Section 301.70 is revised to read as follows:

§ 301.70 Scope.

This subpart governs only those proceedings dealing with the distribution of compulsory cable television, coin-operated phono-record player (jukebox) (and), satellite carrier and digital audio recording devices and media royalty payments (royalties) deposited with the Register of Copyrights, according to the terms of 17 U.S.C. 111(d)(4), 116(c) and, 119(b), and 1005, respectively. It does not govern unrelated rule making proceedings. Those provisions of subpart E generally regulating the conduct of proceedings shall apply to royalty fee distribution proceedings, unless they are inconsistent with the specific provisions of this subpart.

3. Section 301.71 is amended by adding paragraph (d) to read as follows:

§ 301.71 Commencement proceedings.

* * * * *

(d) *Digital audio recording devices and media.* In the case of royalty payments for the importation and distribution in the United States, or the manufacture and distribution in the United States, of any digital recording device or medium, any person claiming to be entitled to such payments must file a claim with the Tribunal during the month of January or February of each year in accordance with Tribunal regulations.

4. Section 301.72 is amended by adding paragraph (d) to read as follows:

§ 301.72 Determination of controversy.

* * * * *

(d) *Digital audio recording devices and media.* Within 30 days after the last day of February each year, the Tribunal shall determine whether a controversy exists among the claimants of digital audio recording devices and media royalty payments as to any Subfund of the Sound Recording Fund or the Musical Works Fund as set forth in 17 U.S.C. 1006(b) (1) and (2). In order to determine whether a controversy exists, the Tribunal may conduct whatever proceedings it feels necessary, subject to the procedures and regulations of Subpart E. The results of this determination shall be announced in the **Federal Register**. If the Tribunal decides that a controversy exists, the **Federal Register** notice shall also announce the commencement of the royalty distribution proceeding, and shall, to the extent feasible, describe the general structure and schedule of the proceeding.

5. Part 311 is added to read as follows:

PART 311—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

Sec.
311.1 General.
311.2 Time of filing.
311.3 Content of claim.
311.4 Compliance with statutory dates.
311.5 Forms.

Authority: 17 U.S.C. §§ 803(a), 1007(a)(1).

§ 311.1 General.

This part prescribes procedures pursuant to 17 U.S.C. 1007(a)(1), whereby interested copyright parties, as defined in 17 U.S.C. 1001(7), claiming to be entitled to royalty payments made for the importation and distribution in the United States, or the manufacture and distribution in the United States, of digital audio recording devices and media pursuant to 17 U.S.C. 1006, shall file claims with the Copyright Royalty Tribunal.

§ 311.2 Time of filing.

Commencing with January and February, 1993, and during January and February of each succeeding year, every interested copyright party claiming to be entitled to digital audio recording devices and media royalty payments made for quarterly periods ending during the previous calendar year shall file a claim with the Copyright Royalty Tribunal. No royalty payments shall be distributed to any interested copyright party for the specified period unless such interested copyright party has filed a claim to such royalty payments during January or February of the following calendar year. Claimants may file claims jointly or as a single claim. In the absence of an express written authorization to the contrary, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations to file claims to the Musical Works Fund, apart from their standard arrangements, for purposes of this 1992 royalties filing and fee distribution. In the event a member or affiliate of a performing rights society either files individually, or grants express authority to another agent, that action shall supersede the agency inferred by membership in or affiliation with a performing rights society.

§ 311.3 Content of claims.

(a) Claims filed by interested copyright parties for digital audio recording devices and media royalty payments shall include the following information:

(1) The full legal name of the person or entity claiming royalty payments.

(2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.

(3) A statement as to how the claimant fits within the definition of interested copyright party specified in 17 U.S.C. 1001(7).

(4) A statement as to whether the claim is being made against the Sound Recordings Fund or the Musical Works Fund, as set forth in 17 U.S.C. 1006(b) and as to which Subfund of the Sound Recordings Fund (i.e., the copyright owners or featured recording artists Subfund) or the Musical Works Fund (i.e., the music publishers or writers Subfund) the claim is being made against as set forth in 17 U.S.C. 1006(b) (1) and (2).

(5) Identification, establishing a basis for the claim, of at least one musical work or sound recording embodied in a digital musical recording or an analog musical recording lawfully made under title 17 U.S.C. that has been distributed (as that term is defined in 17 U.S.C. 1001(6)), and that, during the period to which the royalty payments claimed pertain, has been

(i) Distributed (as that term is defined in 17 U.S.C. 1001(6)) in the form of digital musical recordings or analog musical recordings, or

(ii) Disseminated to the public in transmissions.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or full address of the claimant changes after the filing of the claim, the claimant shall notify the Tribunal of such change within thirty days of the change, or the claim may be subject to dismissal.

(d) If an interested copyright party intends to file claims against more than one Subfund, each such claim must be filed separately with the Copyright Royalty Tribunal. Any claim that purports to file against more than one subfund will be rejected.

§311.4 Compliance with statutory dates.

Claims filed with the Copyright Royalty Tribunal shall be considered timely filed only if:

(a) They are received in the offices of the Copyright Royalty Tribunal during normal business hours during the months of January or February, or

(b) They are properly addressed to the Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 and they are deposited with sufficient postage with the United States Postal Service and bear a January or February U.S. postmark. Claims dated only with a business meter that are received after the last day of February will not be accepted as having been timely filed. No claim may be filed by facsimile transmission.

§311.5 Forms.

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

Dated January 27, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93-2303 Filed 1-28-93; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Chapter VI

Policy Statement on Eligibility for Funding of Warranties on Heavy-Duty Buses; Clarification

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of policy statement.

SUMMARY: Today's document clarifies the Federal Transit Administration's (FTA) policy on eligibility for capital funding of warranties on heavy-duty buses with a minimum service life of 12 years or 500,000 miles. This notice will assist grantees in interpreting capital grant eligibility for vehicle subsystems and components, by clarifying the definition of a standard warranty.

DATES: This clarification is effective for bus procurements made with funds obligated by FTA after January 1, 1993.

FOR FURTHER INFORMATION CONTACT: George Izumi, Office of Grants Management, 202-366-6475, TDD 202-366-4567.

SUPPLEMENTARY INFORMATION:

Policy Statement Clarification: Funding Eligibility of Warranties on Heavy-Duty Buses

Background and Purpose

The FTA policy concerning eligibility for capital funding of warranties on heavy-duty buses with a minimum service life of 12 years or 500,000 miles previously has been that "standard" warranties are eligible capital costs as part of the purchase of buses, while "extended" warranties are operating costs. Due to difficulties in interpreting this warranty policy, the FTA is issuing this notice to clarify the warranty provisions that are eligible for capital funding.

Scope and Effective Date

This policy applies to all bus procurements made with funds obligated after January 1, 1993.

Summary of Provisions

Complete Bus

The complete bus is warranted and guaranteed to be free from defects due to design or workmanship for one year or 50,000 miles, whichever comes first; beginning on the in-service date or date of acceptance, whichever comes first, for each bus. During this warranty period, the bus shall maintain its structural integrity. The warranty is based on normal operation of the bus under the operating conditions prevailing in the operator's locale.

Subsystems and Components

Specific subsystems and components are warranted and guaranteed to be free from defects and related defects for the following times or mileages:

Item	(Whichever comes first)	
	Years	Mileage
Engine	2	200,000
Transmission	2	100,000
Drive axle	2	100,000
Brake system (excluding friction material)	2	50,000
Air conditioning system	2	([1])
Basic body structure	3	150,000
Structural integrity corrosion	7	350,000

[1] Unlimited.

These warranty levels are recommended, but are not required. However, warranties that exceed the recommended periods are not eligible for capital funds, but may be eligible for operating assistance. The provisions listed above (other than the structural integrity corrosion item) are the same as those listed in the current edition of an April 1977 report issued by the American Public Transit Association, entitled Baseline Advanced Design Transit Coach Specifications, otherwise known as the "White Book".

Issued on: January 19, 1993.

Brian W. Clymer,

Administrator.

[FR Doc. 93-1776 Filed 1-28-93; 8:45 am]

BILLING CODE 4910-57-M

Proposed Rules

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1040

[Docket No. AO-225-A45; DA-92-10]

Milk in the Southern Michigan Marketing Area; Supplemental Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplemental notice of public hearing on proposed rulemaking.

SUMMARY: This notice changes the location of a hearing on proposals to amend the pricing provisions of the Southern Michigan Federal milk marketing order and adds an additional proposal to be considered at the hearing. The additional proposal would amend the pool plant definition to include shipments of producer milk to a partially regulated distributing plant when determining the qualifications of pool supply plants.

DATES: The hearing will convene at 9 a.m. on February 17, 1993.

ADDRESSES: The hearing will be held at the Novi Hilton Hotel, 21111 Haggerty Road (I-275 at 8-mile exit), Novi, Michigan 48375, Telephone (313) 349-4000.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Hearing: Issued December 3, 1992, published December 10, 1992 (57 FR 58418).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

This notice is supplemental to the notice of hearing which was issued on December 3, 1992, and published in the **Federal Register** on December 10, 1992 (57 FR 58418). Notice is hereby given that the location of the aforesaid hearing has been changed to the Novi Hilton Hotel, 21111 Haggerty Road (I-275 at 8-mile exit), Novi, Michigan 48375, beginning at 9 a.m. local time, on February 17, 1993, with respect to proposed amendments previously announced and to an additional proposed amendment to the tentative marketing agreement and to the order regulating the handling of milk in the Southern Michigan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the previously announced proposed amendments, and to the additional proposed amendment hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

In this regard, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposals to be considered at the hearing.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1040

Milk marketing orders.

The authority citation for 7 CFR part 1040 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposed amendment, as set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by Michigan Milk Producers Association: Proposal No. 5:

Revise § 1040.7 by adding paragraph (b)(5)(iii) to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) * * *

(5) * * *

(iii) A partially regulated distributing plant that is neither an other order plant, a producer-handler plant, nor an exempt plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

* * * * *

Copies of this supplemental notice of hearing, the original notice and the order may be procured from the Market Administrator, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel, Dairy Division, Agricultural Marketing Service (Washington Office only)
Office of the Market Administrator, Southern Michigan Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: January 19, 1993.

Daniel Haley,

Administrator.

[FR Doc. 93–1963 Filed 1–28–93; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 332

RIN 3064–AA01

Powers Inconsistent With Purposes of Federal Deposit Insurance Law

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to remove its regulations which, subject to certain exceptions, prohibits an state nonmember insured bank from doing a surety business; insuring the fidelity of others; engaging in the insuring, guaranteeing or certifying of titles to real estate; and guaranteeing the obligations of others. This action is being proposed as, in the FDIC's opinion, new section 24 of the Federal Deposit Insurance Act (FDI Act) effectively covers this area. That section of the FDI Act limits the "as principal" activities of insured state banks to the activities permissible for national banks unless a state bank obtains the FDIC's consent.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–400, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F–402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.]

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC, 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20492; or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Part 332 of the FDIC's regulations (12 CFR part 332), "Powers Inconsistent with Purposes of Federal Deposit Insurance Law", prohibits any state nonmember insured bank (except a District bank) from exercising or assuming the power to (1) do a surety business, (2) insure the fidelity of others, (3) engage in the insuring, guaranteeing or certifying of titles to real estate, or (4) guarantee or become surety upon the obligations of others except as provided in § 347.3(c)(1) of the FDIC's regulations (12 CFR 347.3(c)(1)).

Section 347.3(c)(1) provides that a bank's foreign branches may guarantee customer's debts or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies the branch's maximum monetary liability. The guarantee or agreement shall be combined with all standby letters of credit and loans for purposes of applying any limitation on loans that the bank may make.

The general prohibition found in part 332 does not apply to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business. Nor does the prohibition apply in the case of check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers provided that the bank establishes the creditworthiness of the individual before undertaking to guarantee his/her obligations. Additionally, any such arrangements to which any of the bank's principal shareholders, directors, or executive officers are a party must be in compliance with applicable provisions of Federal Reserve Board Regulation O (12 CFR part 215) which pertains to loans to insiders.

Over the years the FDIC has recognized two interpretive exceptions to the general prohibition on a bank acting as a surety or guaranteeing the obligations of others: (1) If the bank has a segregated deposit sufficient in amount to cover the bank's potential liability, or (2) if the bank has a substantial interest in the performance of the transaction.

Part 332 was adopted by the FDIC in 1946 and has remained essentially unchanged since then except for the addition of the language allowing for check guaranty programs and customer-sponsored credit card programs. Because of recent legislative changes, the FDIC is proposing to eliminate part 332.

On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991. The remaining portions of section 24 dealing with activities of insured state banks and their majority-owned subsidiaries are effective December 19, 1992.

Section 24(a) (12 U.S.C. 1831a(a)) provides that after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate Federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded by section 24 from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of (1) any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)) or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 (12 U.S.C. 1831a(d)(2)(B)) are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in or was employed in that state.

The FDIC adopted final regulation (12 CFR part 362) implementing the equity investment restrictions of section 24 on October 27, 1992 (57 FR 53213, November 9, 1992) and is elsewhere in today's **Federal Register** proposing an amendment to part 362 which would implement the activity restrictions of section 24.

Given the statutory prohibitions contained in section 24 pertaining to insurance underwriting, and in as much as the FDIC has been given a specific statutory charge to review and approve any as principal activity that an insured state bank may wish to conduct if that activity is not permissible for a national bank, there may no longer be a need to retain part 332 as part of the FDIC's regulations. Removing part 332 would eliminate confusion that may otherwise be created as a result of any overlap between part 332 and section 24.

If part 332 is eliminated, the question of whether or not an insured state bank may conduct any of the activities presently listed in part 332 will be resolved under the provisions of section 24 and part 362.[1] If an activity is one that is not permissible for a national bank, the state bank will not be permitted to engage in the activity unless it meets its capital requirements and the FDIC finds that the activity will not pose a significant risk to the deposit insurance fund. Thus, the FDIC is confident that the removal of part 332 should not have an adverse effect on the deposit insurance fund.

There is the possibility that some activities currently prohibited by part 332 may not be subject to the FDIC's review under part 362 in which case the removal of part 332 would allow some activities to go forward that have been prohibited under the FDIC's regulations for many years. It is the FDIC's opinion, however, that that possibility is limited. For example, (1) national banks are permitted by regulations of the Office of the Comptroller of the Currency to act as surety or guarantor of the obligations of others if the bank holds a segregated deposit or the bank has a substantial interest in the transaction, and (2) section 24 prohibits a state bank from insuring the fidelity of others (it is after all insurance underwriting) except to the extent that a national bank may be able to itself underwrite the fidelity of others. To the extent that any gap would be created by removing part 332, it is worthy of note that Congress did not itself opt to restrict state banks from engaging in activities that are permissible for national banks.[2]

Comment is sought on whether the FDIC should take the above described action. Specifically, the FDIC is interested in receiving the views of any parties who believe that removing part 332 will create a regulatory gap.

Regulatory Flexibility Analysis

The Board of Directors has concluded that the proposed amendment, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not establish any recordkeeping or reporting requirements that necessitate the expertise of specialized accountants, lawyers, or managers. The proposal would in fact make it easier for banks to comply with the FDIC's regulations and the provisions of the FDI Act, may in some instances afford state banks the opportunity to conduct activities previously prohibited, and may afford some banks the opportunity to ask the FDIC's consent to conduct an activity that was previously prohibited. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 12 CFR Part 332

Banks, Banking.

In consideration of the foregoing, the FDIC, under the authority of 12 U.S.C. 1819, hereby proposes to amend chapter III, title 12 of the Code of Federal Regulations as follows:

PART 332—[REMOVED]

1. Part 332 is removed and reserved.

By Order of the Board of Directors.

Dated at Washington, D.C. this 12th day of January, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–1474 Filed 1–28–93; 8:45 am]

BILLING CODE 6714-01-M

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[1] Insured state banks are reminded that the FDIC has proposed an amendment to part 362 elsewhere in today's **Federal Register**. That proposal, among other things, carries over the exceptions from part 332 pertaining to guarantees by foreign branches of U.S. banks and customer-sponsored credit card programs.

[2] The FDIC's authority to do so was not affected by section 24, however, as evidenced by paragraph (i) of section 24 which indicates that nothing in section 24 is to be construed as limiting the authority of the FDIC or any other appropriate federal or state regulatory authority to establish conditions or restriction that are more stringent than section 24.

12 CFR Part 333

RIN 3064–AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations on extension of corporate powers to remove a provision that makes certain prohibitions which are applicable to state chartered savings associations applicable to state banks that are members of the Savings Association Insurance Fund (SAIF). SAIF member state banks would thereafter be subject to the restrictions of FDIC regulations on activities and investments of insured state banks in lieu of the restrictions presently found in existing regulations on extension of corporate powers. The FDIC in a related rulemaking published elsewhere in today's **Federal Register** is proposing to amend its regulations which place restrictions on the activities and equity investments of insured state banks and their majority-owned subsidiaries. The effect of this proposed amendment would be to treat SAIF member state banks and Bank Insurance Fund member state banks the same rather than subject the former to any additional, or contrary, restrictions based on insurance fund membership.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F–400, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F–402 between 8:30 a.m. and 5 p.m. on business days. [FAX number: (202) 898–3838.]

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429; or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991. The remaining portions of section 24 dealing with activities of insured state banks and their majority-owned subsidiaries are effective December 19, 1992.

Section 24(a) (12 U.S.C. 1831(a)) provides that after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded by section 24 from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of (1) any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)) or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 (12 U.S.C. 1831a(d)(2)(B)) are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in or was employed in that state.

Paragraph (c) of section 24 (12 U.S.C. 1831a(c)), "Equity Investments by Insured State Banks", provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. Several exceptions to the general prohibition on making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority-owned subsidiaries and equity investments in qualified low income housing projects.

Section 24(f) (12 U.S.C. 1831a(f)), "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited exception for investments in common or preferred stock listed on a national securities exchange and shares of registered investment companies. The exception allows insured state banks that are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange (listed stock) or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) (registered shares) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain listed stock or registered shares up to a maximum of 100 percent of the bank's capital subject to the FDIC's approval. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(1), "Subsidiaries of Insured State Banks. In General", provides that after December 19, 1992 a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity will not pose a significant risk to the deposit insurance fund. As directed by paragraph (d)(2)(A), the FDIC cannot approve any subsidiary of an insured state bank engaging in any insurance underwriting activity that is not permissible for a national bank and which is otherwise not excepted by section 24. Paragraph (d)(2)(B) of section 24 provides an exception for the retention of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. An exception is also provided for a title insurance subsidiary of an insured state bank if the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and control of the bank has not changed since June 1, 1991.

Paragraph (e) of section 24 (12 U.S.C. 1831a(e)) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) (12 U.S.C. 1831a(g)) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) (12 U.S.C. 1831a(i)) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

The FDIC recently adopted a new part 362 of its regulations implementing the equity investment restrictions of section 24 and is, elsewhere in today's **Federal Register**, proposing an amendment to part 362 that would add a number of provisions to part 362 addressing the activities of insured state banks and their majority-owned subsidiaries.

On April 30, 1991 the FDIC amended its regulations by adding a new § 333.3 to part 333, "Extension of Corporate Powers" (12 CFR 333.3). That section (1) caused state banks that are members of the Savings Association Insurance Fund (SAIF member state banks) to be subject to the conditions and restrictions regarding activities and equity investments to which state savings associations are subject pursuant to section 303.13 of the FDIC's regulations (12 CFR 303.13); (2) subjected SAIF member state banks to the loan to one borrower limits found in section 5(u) of the Home Owners' Loan Act (HOLA, 12 U.S.C. 5(u)); (3) required SAIF member state banks to deduct from their capital any investments in a subsidiary if a savings association would be required to do so under section 5(t)(5) of HOLA (12 U.S.C. 1464(t)(5)); (4) subjected SAIF member state banks to the additional restrictions on transactions with affiliates found in section 11 of HOLA (12 U.S.C. 1468); (5) required SAIF member state banks to provide the FDIC notice before acquiring or establishing a subsidiary or engaging in a new activity through an existing subsidiary (see § 303.13(f) of the FDIC's regulations (12 CFR 303.13(f)); and (6) required any savings association that converted to a SAIF member state bank to file a capital plan if upon conversion the bank did not meet the minimum capital requirements set out in part 325 of the FDIC's regulations (12 CFR part 325).

Section 303.13 was adopted by the FDIC on December 12, 1989 (54 FR 53540, December 29, 1989) in order to implement section 28 of the FDI Act (12 U.S.C. 1831e) which placed certain prohibitions on the activities and equity investments of state savings associations. Section 28 was added to the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101–73, 103 Stat. 183 (1989)). Section 28 of the FDI Act and § 303.13 of the FDIC's regulations (12 CFR 303.13) prohibit state chartered savings associations from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a federal savings association. State savings associations are also prohibited from engaging as principal in any activity that is not permissible for a federal savings association unless the association meets its fully phased-in capital requirements and the FDIC determines that the activity will not pose a significant risk to the deposit insurance fund.

If a state savings association meets its fully phased-in capital requirements and the FDIC determines that there is not a significant risk to the deposit insurance fund, a state savings association may acquire or retain an equity investment in a service corporation that would not be permissible for a federal savings association. Equity investments acquired prior to August 8, 1989 that are prohibited investments must be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC may set conditions and restrictions governing the retention of the prohibited equity investments during the divestiture period.

The restrictions described above which are found in the various provisions of HOLA were also added to federal statute by FIRREA as was the requirement that savings associations give the FDIC prior notice before acquiring or establishing a subsidiary or conducting new activities through a subsidiary (see section 18(m) of the FDI Act, 12 U.S.C. 1828(m)).

It was the determination of the FDIC's Board of Directors when section 333.3 was adopted that savings associations which convert to state chartered banks and retain their membership in SAIF should continue to be subject to the safeguards enacted by FIRREA. The action was found necessary by the Board of Directors to protect SAIF from harm in view of state laws which might be lax. At the same time, however, the Board of Directors indicated that it was not its intent to permanently establish two classes of state banks that would be treated differently based upon their membership in a particular deposit insurance fund. The FDIC subsequently undertook a review of the issue of expanded bank powers with the hopes of proposing a regulation applicable to all state banks. Before the FDIC could publish a proposal, however, Congress enacted FDICIA along with the provisions of section 24 concerning activities and equity investments.

In light of the enactment of section 24 of the FDI Act, the FDIC amended § 333.3 to allow state banks to be governed by the equity investment provisions of that section and any regulations adopted by the FDIC pursuant thereto (57 FR 53211, November 9, 1992). That amendment did not address the issue of bank activities nor the other restrictions imposed by § 333.3 which are based primarily on sections of HOLA.

The FDIC is now proposing to amend part 333 by removing § 333.3 in its entirety. It is the FDIC's considered opinion that it was the intent of congress to treat all banks alike regardless of which insurance fund they are a member. By removing § 333.3, the FDIC would be implementing that intent. As to the other restrictions that would be eliminated if § 333.3 is removed (i.e., those rooted in the provisions of HOLA and section 18(m) of the FDI Act) congress could have imposed on all state banks a loan to one borrower limit, additional affiliate transactions restrictions, prior notice of the acquisition or establishment of any subsidiary, and capital deductions on investments in certain subsidiaries but did not do so when it enacted FDICIA. That Congress did not require that such restrictions be imposed does not preclude the FDIC from imposing those, or similar, restrictions, provided that there is a safety or soundness basis to do so. (In fact, the FDIC has proposed to amend part 362 of the FDIC's regulations to require banks to deduct their investments in subsidiaries in certain instances.) The Board of Directors is, however, presently of the opinion given the enactment of section 24 and the various regulatory reforms such as the prompt corrective action provisions of the FDI Act (12 U.S.C. 38) which were part of FDICIA, that removing the additional restrictions on SAIF member state banks should not pose a threat to the SAIF fund. In fact, SAIF member state banks can be expected to benefit from the amendment as it will alleviate an existing competitive disparity and remove certain additional compliance burdens.

In addition to any other comments on the proposal, the FDIC is interested in receiving comment on the propriety of eliminating section 333.3 in its entirety. Should the FDIC consider amending section 333.3 so as to make SAIF member state banks subject only to the activities and restrictions of part 362 of the FDIC's regulations and leave the remainder of the section in tact? If so, why?

Regulatory Flexibility Analysis

The Board of Directors has determined that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendment will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers or managers that small institutions are less likely to have absent hiring additional employees or obtaining these services from outside vendors. On the contrary, the proposed amendment will relieve what may be perceived as a burden on SAIF member state banks (both large and small) in that they are currently subject to a different set of rules regarding their activities than that to which Bank Insurance Fund member state banks (BIF) are subject. As a result of that fact SAIF member state banks are currently subject to a number of additional restrictions and compliance burdens to which BIF member state banks are not subject. SAIF member state banks are presently required to comply with the most restrictive rule and therefore must determine which rule is in fact the more restrictive. This amendment would relieve that burden and place SAIF member state banks on a par with BIF member state banks.

As the proposed amendment will not have a disparate economic impact on small institutions, the FDIC was not required to conduct a Regulatory Flexibility Act analysis. (See section 605 of the Regulatory Flexibility Act (5 U.S.C. 605)).

List of Subjects in 12 CFR Part 333

Banks, banking, Corporate powers, Trusts and trustees.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III, title 12 of the Code of Federal Regulations by amending part 333 as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is proposed to be revised as follows:

Authority: 12 U.S.C. 1816, 1818, 1819.

§ 333.3 [Removed]

2. Section 333.3 is removed.

By Order of the Board of Directors.

Dated at Washington, D.C. this 12th day of January, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–1475 Filed 1–28–93; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 362

RIN 3064–AA29

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to amend its regulations governing the activities and investments of insured state banks. The proposal implements new section 24 of the Federal Deposit Insurance Act (FDI Act). Under the proposal, an insured state bank must obtain the FDIC's prior consent before directly, or indirectly through a subsidiary, engaging "as principal" in any activity that is not permissible for a national bank. The proposal establishes a number of exceptions to the general prohibition, sets out application procedures for requesting FDIC's consent; sets out standard conditions on approval that will be imposed unless otherwise waived; identifies "as principal" activities for which the FDIC will not give its consent; and delegates the authority to act on applications to the Director of the Division of Supervision and the Director's designee.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. [FAX number: (202) 898–3838.] Comments may be inspected in FDIC's Reading Room, room 7118, 550 17th Street NW. between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898–3905, Legal Division, FDIC, 550 17th Street NW., Washington, DC 20429; or David K. Horne, Financial Economist, (202) 898–3981, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F–453, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The collection of information in this regulation is found in §§ 362.4(c)(2) (ii), (iii), and (iv), and 362.4(c)(3)(ii) and takes the form of an application for consent to directly or indirectly through a subsidiary engage as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank; an application for consent to continue an ongoing activity that is otherwise impermissible; and a notice of intent to either discontinue an ongoing activity that is being conducted through a subsidiary for which consent to continue the activity has been denied or, in the alternative, a plan covering the divestiture of the bank's equity investment in that subsidiary. The information will be used to fulfill the FDIC's responsibilities under section 24 of the FDI Act to ensure that no insured state bank directly or indirectly engages as principal in any activity that is not permissible for a national bank unless that activity will not present a significant risk to the deposit insurance funds.

The estimated annual reporting burden for the collection of information requirement in the regulation is summarized as follows:

Application to Directly Engage as Principal in Activity Not Permissible for a National Bank

Number of Respondents: 390
Number of Responses Per Respondent: 1
Total Annual Responses: 390
Hours Per Response: 12
Total Annual Burden Hours: 4,680

Application to Indirectly Engage as Principal in Activity Not Permissible for a National Bank

Number of Respondents: 390
Number of Responses Per Respondent: 1
Total Annual Responses: 390
Hours Per Response: 12
Total Annual Burden Hours: 4,680

Application to Directly Continue Activity

Number of Respondents: 5
Number of Responses Per Respondent: 1
Total Annual Responses: 5
Hours Per Response: 12
Total Annual Burden Hours: 60

Application to Indirectly Continue Activity

Number of Respondents: 5
Number of Responses Per Respondent: 1
Total Annual Responses: 5
Hours Per Response: 12
Total Annual Burden Hours: 60

Divestiture Plan or Notice to Discontinue Indirect Activity for Which Continuation Has Been Denied

Number of Respondents: 70
Number of Responses Per Respondent: 1
Total Annual Responses: 70
Hours Per Response: 6
Total Annual Burden Hours: 420

Background

On December 19, 1991, the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236) was signed into law. Section 303 of FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. On July 9, 1992 the FDIC's Board of Directors sought comment for thirty days on a proposed rule, implementing the equity investment restrictions of section 24 (proposed part 362, 57 FR 30435). Part 362 was adopted in final form on October 27, 1992 (57 FR 53213, November 9, 1992). This proposed amendment would add new provisions to part 362 addressing "activities" of insured state banks and their subsidiaries.

At the same time the FDIC proposed to add new part 362 to its regulations, the FDIC proposed to amend § 333.3 of the FDIC's regulations, "Savings Association Insurance Fund (SAIF) member state banks formerly savings associations", (12 CFR 333.3). That proposal sought comment on amending § 333.3 so as to relieve SAIF member state banks from the restrictions of § 333.3 insofar as that regulation made SAIF member state banks subject to the equity investment restrictions applicable to savings associations found in § 303.13 of the FDIC's regulations (12 CFR 303.13). By proposing the amendment, the FDIC sought comment on eliminating what was then a disparate treatment among banks as to their equity investments based upon deposit insurance fund membership. The proposed amendment to § 333.3 was adopted without change. (57 FR 53211, November 9, 1992).

Other portions of § 333.3 which concern "activities" of SAIF member state banks and address issues such as loans to one borrower limits, transactions with affiliates, and investments in "junk bonds", were not affected. The FDIC is today, elsewhere in the **Federal Register**, proposing to eliminate § 333.3 in its entirety. That amendment would cause SAIF member state banks to be treated in the same fashion as any other insured state bank insofar as equity investments and activities are concerned and would relieve SAIF member state banks from other restrictions found in § 333.3 which parallel restrictions to which savings associations are subject. A full discussion of the FDIC's proposal regarding § 333.3 can be found elsewhere in today's **Federal Register**.

The FDIC is also proposing elsewhere in today's **Federal Register** to remove part 332 from title 12 of the Code of Federal Regulations. Part 332 of the FDIC's regulations (12 CFR part 332, "Powers Inconsistent With Purposes of Federal Deposit Insurance Law") prohibits any state nonmember insured bank (except a district bank) from doing a surety business, insuring the fidelity of others, engaging in the insuring, guaranteeing or certifying of titles to real estate, and guaranteeing or becoming surety upon the obligations of others except as provided in § 347.3(c)(1) of FDIC's regulations (12 CFR 347.3(c)(1)). These limitations do not apply to acceptances, endorsements, or letters of credit made or issued in the usual course of the banking business and do not apply in the case of check guaranty card programs or customer-sponsored credit card programs and similar arrangements provided that certain restrictions are met. The FDIC has also recognized on an interpretive basis a number of other exceptions to the general prohibition on acting as guarantee or surety. If part 332 is removed, the provisions of part 362 will govern whether or not a state nonmember insured bank is permitted to enter into any of the above activities. A full discussion of the proposed removal of part 332 can be found elsewhere in today's **Federal Register**.

A description of section 24 of the FDI Act and the proposed amendment to part 362 follows.

Description of Statute

As indicated above, with certain exceptions, section 24 of the FDI Act as added by FDICIA limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks.

Section 24(a) provides that, after December 19, 1992, no insured state bank may engage as principal in any type of activity that is not permissible for a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity would not pose a significant risk to the deposit insurance fund of which the bank is a member.

The FDIC is precluded under the statute from allowing any insured state bank to underwrite insurance if a national bank could not do so. This general prohibition does not apply, however, in the case of: (1) Any insured state bank, and any subsidiary of an insured state bank, that provided insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation (see section 24(b)(2)), or (2) any well-capitalized bank that was lawfully providing insurance as principal on November 21, 1991 (see section 24(d)(2)(B)). The insurance underwriting activities of a bank covered by paragraph (d)(2)(B) of section 24 are limited under the exception, however, to providing insurance of the same type to residents of the state in which the bank was underwriting insurance on the relevant date, individuals employed in that state, and any person to whom the bank has provided insurance without interruption since such person resided in, or was employed in, that state.

Paragraph (c) of section 24, "Equity Investments by Insured State Banks", provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. Paragraph (c) was effective on December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority-owned subsidiaries and equity investments in qualified low income housing projects.

Section 24(f), "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited exception for investments in common or preferred stock listed on a national securities exchange and shares of registered investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange (listed stock) or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) (registered shares), and (b) made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain listed stock or registered shares up to a maximum of 100 percent of the bank's capital subject to the FDIC's approval. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(1), "Subsidiaries of Insured State Banks. In General", provides that after December 19, 1992, a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the bank meets, and continues to meet, the applicable capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the activity will not pose a significant risk to the fund. As directed by paragraph (d)(2)(A), the FDIC cannot allow any subsidiary of an insured state bank to engage in any insurance underwriting activity that is not permissible for a national bank and which is otherwise not excepted by section 24. Paragraph (d)(2)(B) of section 24 provides an exception for the retention of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. An exception is also provided for a title insurance subsidiary of an insured state bank if the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and control of the bank has not changed since June 1, 1991.

Paragraph (e) of section 24 indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

Description of Proposal and Request for Comments

This proposed amendment to part 362 supplements the action recently taken by the FDIC's Board of Directors to promulgate a regulation governing the equity investments of insured state banks as circumscribed by section 24 of the FDI Act. The proposal does not substantively alter in any way part 362 as adopted by the Board. The proposal does, however, add provisions to part 362 addressing the conduct as principal by an insured state bank and its subsidiaries of activities that are not permissible for a national bank. The proposed amendment sets out relevant definitions and establishes an applications procedure whereby an insured state bank may request the FDIC's consent to engage as principal in activities that are not permissible for a national bank or a subsidiary of a national bank. The proposal allows a bank or its subsidiaries in certain instances to engage in an otherwise impermissible activity without seeking the FDIC's consent if certain conditions are met. If a bank must seek the FDIC's consent under the proposal, certain "standard conditions" will be imposed on approval unless specifically waived. The proposal allows insured state banks the flexibility to seek the FDIC's permission to engage in any otherwise impermissible activity with one notable exception. Under the proposal an insured state bank will not be granted permission to directly conduct any commercial venture. The proposal is discussed at length below.

Alternate Approaches

Two provisions of the statute were instrumental when staff was considering the most appropriate framework to implement the activities provisions of section 24: Section 24(a) and section 24(g). As has been previously outlined, section 24(a) provides that an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the appropriate deposit insurance fund, and the state bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency. Section 24(g) provides that the FDIC shall make determinations under this section by regulation or order.

It is clear that the FDIC's mandate under this statute is to assure that activities conducted by insured state banks do not pose a risk to the insurance funds. In dealing with this mandate, staff explored several options on just how the FDIC should go about determining whether particular activities pose a risk to the fund. One option is to look at state statutes, determine which activities allowed in the state are covered by the provisions of section 24, and make a judgment by order, in effect "certify" as to whether the power as exercised in that particular state provides the insurance funds with adequate protection. Staff rejected this approach for two reasons. In making a determination based on state law, the FDIC would not be looking at the interaction of the condition and management of the bank and the power to be conducted. Some activities may be acceptable for a financially strong and well-managed institution that may not be acceptable for an institution that is in a weakened financial condition with less than satisfactory management. In addition, the FDIC would be required to continually review in any event any changes to state law and regulation to determine whether those changes affect the agency's initial "certification".

Another option considered by staff was to allow section 24 to stand on its own without any implementing regulation. That option was rejected, however, as it was staff's opinion that a regulation would provide needed guidance to banks and would speed the consideration of applications. Additionally, by having an implementing regulation the FDIC can in effect "preapprove" certain activities thereby eliminating the need for some applications. Comment is requested on whether this option should have been rejected or not. In short, rather than proceeding with a regulation, should the FDIC proceed solely on a case-by-case application basis?

Staff also considered providing through regulation a list of activities that are deemed to be a significant risk to the insurance funds. This option, while somewhat appealing from an administrative standpoint, was also rejected. This procedure would require the FDIC to make determinations on a class of activity without considering the differing ways of engaging in the activity or the condition or management of the bank engaging in the activity. This approach may work for a few activities which are clearly incompatible with banking, but would fail to address the realm of possible powers that might be exercised. By not incorporating up front a lengthy list of activities found to present a significant risk under all circumstances, the proposal allows banks and the FDIC the flexibility of assessing each situation on its own merit.

The agency recognizes that this approach could be criticized as placing an applications burden on the industry in contrast to recent initiatives to reduce regulatory burden. Staff believes that this process ultimately provides efficiency for the industry as the agency's positions are open for public comment and the banking industry is given an agency decision before incurring the costs of starting an activity.

Staff has incorporated into the proposed regulation the concept of "firewalls". "Firewalls" refers to those corporate formalities which produce an economic and market place perception of separateness between related corporations and which provide the legal basis to protect the insured bank from the liabilities of its affiliated organizations. The concept of adequate safeguards was first introduced by regulation by the FDIC in 1984 with the adoption of § 337.4 of the FDIC's regulations which deals with securities activities of subsidiaries of insured nonmembers banks and, in 1987, the effectiveness of legal separations was examined in an FDIC report entitled Mandate for Change. Thus, the reliance on "firewalls" by the FDIC to provide some degree of insulation from risk is not new. We are asking, however, for specific comment concerning the effectiveness of firewalls and their appropriateness as a method of reducing risk to an insured bank and ultimately the risk to the insurance funds. If firewalls are deemed ineffective, what alternate methods to protect the insurance funds from the liabilities associated with the activities of subsidiaries of insured state banks should the FDIC pursue?

Definitions

1. Activity Permissible for a National Bank

§ 362.2(b) of the proposed regulation provides that the phrase "activity permissible for a national bank" means any activity that is authorized for a national bank under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute. The FDIC will consider regulations issued by the Office of the Comptroller of the Currency (OCC); any official circular or bulletin issued by the OCC; or any order or written interpretation issued by the OCC as evidence of what is and is not permissible for a national bank. This proposed definition is the same as the definition of the phrase "equity investment permissible for a national bank" that is currently found in § 362.2(h) of part 362. (Under the proposal, § 362.2(h) would be redesignated as § 362.2(o).) It is the FDIC's intent to recognize OCC staff interpretations as evidence of what is a permissible activity for a national bank provided that the interpretation is considered to be valid by the OCC. A staff opinion will not be recognized if it is not the current opinion of the OCC, i.e., it is no longer considered valid, the opinion has been overruled by the OCC, or the opinion is found by a court of law to be incorrect.

In addition to inviting comment on the proposed definition as described above, comment is also invited on whether, under the law as written, section 24 incorporates any amount limitations on otherwise permissible activities. For example, if a national bank's authority to invest in bonds or commercial paper is limited to a certain amount, does section 24 require a state bank to obtain the FDIC's prior consent before making investments in bonds or commercial paper to the full extent authorized under state law if state law authorizes a bank to make such investments to a greater extent than a national bank? In this regard, it should be noted that section 28 of the FDI Act (12 U.S.C. 1831e) which governs activities and equity investments of state savings association and generally limits those activities and investments to what is permissible for a federal savings association expressly requires the FDIC to give its consent before a state savings association may exceed an amount limitation placed on federal savings associations for authorized activities.

2. Activity

Section 362.2(a) of the proposed regulation defines the term "activity" to mean the authorized conduct of business by an insured state bank. The term "activity" as used in the proposal in connection with a bank itself is to be understood to include acquiring or retaining any investment other than an equity investment. Direct equity investments by insured state banks are subject to paragraphs (c) and (f) of Section 24 and the provisions of part 362 that expressly deal with equity investments. It is the previously expressed opinion of the FDIC that Section 24 treats direct equity investments by state banks in a separate and distinct fashion from other activities undertaken directly by state banks. (See, 57 *FR* 30436, July 9, 1992.) It is the opinion of the FDIC on the other hand that Section 24(d) of the FDI Act governs the activities and equity investments of majority-owned subsidiaries of insured state banks. Therefore, the proposed regulation indicates that, as used in connection with the conduct of business by a subsidiary of an insured state bank, the term "activity" is to be understood to include acquiring or retaining any investment, including any equity investment.

The definition of "activity" set out in the proposal is intended to be very broad. For example, "activity" as used herein includes entering into a contract, making an investment, making loans, issuing debt, offering safe deposit boxes, etc. It is not contemplated, however, that loan to one borrower limits, insider loan limits, interest rate ceilings, restrictions on shared management, minimum number of directors and other similar generalized restrictions on the business of banking will be considered to be "activities". This position is consistent with the position adopted by the FDIC in applying the restrictions under Section 28 of the FDI Act.

Insured state banks should be aware that it is the FDIC's present posture that in order for a state bank to conduct an activity as principal without the FDIC's consent, the activity must be conducted in the same manner in which a national bank is authorized to conduct the activity. In short, if a national bank is authorized by regulation to engage in an activity but only subject to certain conditions or restrictions, generally speaking, a state bank must abide by those conditions or restrictions if the bank wishes to conduct the activity without first obtaining the FDIC's consent. In as much as a national bank would not be able to conduct the activity in question other than in compliance with the conditions or restrictions, if any, established by the OCC, those conditions and restrictions are certainly relevant in determining what is and is not permissible for a national bank. This position is consistent with that taken by the FDIC in applying section 28 of the FDI Act (see, FDIC staff opinion letter 90–25, July 6, 1990).

Under this position an activity should be presumed to require the FDIC's prior consent based upon conditions or restrictions found in OCC regulations, circulars, staff opinions, etc.[1] The inquiry does not necessarily stop there, however. The FDIC may determine that the differences in the way in which the state allows a bank to conduct the activity are immaterial in terms of risk. If the FDIC makes such a determination, the bank's application will be returned as unnecessary. If this occurs, the FDIC would have in essence determined that the differences allowed for by state law are so immaterial that the two activities should be considered one and the same for the purposes of Section 24.

Comment is specifically invited on whether the FDIC should consider a definition of the term "activity" that is less expansive than the one described above. The FDIC also invites comment on the above described posture on the issue of conditions or restrictions contained in OCC regulations, circulars, interpretive letters, etc. In that vein, comment is sought on whether the FDIC should consider any real estate lending guidelines established by the OCC pursuant to the authority of section 18 (o) of the FDI Act (12 U.S.C. 1828(o)) to be applicable to subsidiaries of insured state banks as a result of section 24 of the FDI Act. If such were to be the case, a subsidiary of an insured state bank would be required to obtain the FDIC's prior consent before exceeding the loan to value ratios etc. set out in the OCC's real estate lending guidelines.

3. Affiliate

The term "affiliate" as used in the proposal has the same meaning as found in § 337.4 of the FDIC's regulations (12 CFR 337.4) i.e., any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state bank.

4. As Principal

Section 362.2(d) of the proposal defines "as principal" to mean acting other than as agent for a customer, acting as trustee, or conducting an activity in a brokerage, custodial or advisory capacity. Under the definition as proposed, for example, acting as agent for the sale of insurance, agent for the sale of securities, or agent for the sale of real estate would not be an "as principal" activity nor would acting as agent in arranging for travel services. Likewise, providing safekeeping services, providing personal financial planning services, and acting as trustee activities would not involve "as principal" activities.

In contrast, real estate development, insurance underwriting, issuing annuities, and securities underwriting would constitute "as principal" activities.

The impact of the definition under the proposal is as follows. For example, as travel agency activities are not conducted "as principal", an insured state bank may, without the FDIC's consent under part 362, act as travel agent even though a national bank is not permitted to act as travel agent. (State banks should of course note that the state bank must have the authority under state law to act as a travel agent.) Even though the activity is not one that is authorized to a national bank, the state bank would not be acting "as principal" in conducting the activity and, thus, neither Section 24 of the FDI Act nor Part 362 would apply. The proposed definition is consistent with passages in the legislative history of Section 24 of the FDI Act which give as examples of "as principal" activities securities underwriting, equity ownership, real estate ownership and development, and insurance underwriting and which contrast those activities with less risky agency powers in securities, real estate and insurance. H.R. Rep. 102–167, 102d Cong., 1st Sess., 49–50 (1991).

Comment is specifically requested on whether the definition as proposed should be expanded in some fashion. In the alternative, is the definition as proposed overly broad?

5. Bona Fide Subsidiary

The term "bona fide subsidiary" as used in the proposal has essentially the same meaning as found in § 337.4(a)(2) of the FDIC's regulations. Under the proposal, "bona fide subsidiary" means a subsidiary of an insured state bank that at a minimum: (i) Is adequately capitalized; (ii) is physically separate and distinct in its operations from the operation of the insured bank; (iii) maintains separate accounting and other corporate records; (iv) observes separate corporate formalities such as separate board of directors' meetings; (v) maintains separate employees who are compensated by the subsidiary, however, this requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and recordkeeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities; (vi) shares no common officers with the insured bank; (vii) has, as a majority of its board of directors, persons who are neither directors nor officers of the insured bank; and (viii) conducts business pursuant to independent policies and procedures designed to inform customers, and prospective customers, of the subsidiary that the subsidiary is a separate organization from the insured bank.

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[1] It is not the FDIC's intent, however, to carry over restrictions or conditions that address safety and soundness issues and which are imposed by the OCC in its discretion as such restrictions go to the manner in which an activity must be conducted to be safe and sound and do not necessarily pertain to whether the activity is an authorized activity.

The proposed definition of "bona fide subsidiary" includes elements typically used by courts in determining whether or not an entity is the alter ego of another corporation. The definition is intended to ensure the separateness of the subsidiary and the insured state bank. As noted above, the proposed regulation expressly contains a restriction on shared management and requires the use of separate employees in customer contact positions. These restrictions are viewed as important factors in maintaining the separate corporate identities of the subsidiary and the insured bank in the eyes of the parties with whom the institution and the subsidiary deal. The use of "back office" employees of the insured bank by the subsidiary is considered appropriate as this arrangement reduces inefficiency and the added cost that might otherwise result. Comment is specifically requested on the propriety of these restrictions as well as the costs (including inefficiency) associated with the restrictions on shared management.

The proposed definition requires that the operations of the subsidiary be physically separate and distinct in order for the subsidiary to be bona fide. The FDIC's intent is to be flexible in assessing whether or not the subsidiary operates in a fashion so as to make the public aware that it is dealing with a subsidiary and not the insured bank itself. It is to this end also that the definition requires that the subsidiary conduct business pursuant to independent policies and procedures so that the subsidiary's customers are aware that the subsidiary is a separate organization, and that investments, assets, products or services which are recommended, offered or sold by it are not deposits, are not FDIC insured, etc.

Whether or not a subsidiary is set up with adequate capital is a central factor when assessing whether or not a parent will be held liable for the obligations and acts of its subsidiary. Adequate capital is also very important from a safety and soundness point of view as a parent institution is less likely to be harmed if its subsidiary has adequate capital. Adequate capital will enable the subsidiary to absorb its losses as well as any liabilities arising from its operation without having to look to its parent.

The FDIC will look to industry standards in order to determine if the subsidiary is adequately capitalized. The FDIC still intends to reserve the option of requiring that the subsidiary have capital over and above any industry standard if the FDIC at any time finds such requirement to be warranted. It is the FDIC's intention to make this determination during the application process or notice period, and to inform the institution whether, in the FDIC's opinion, the capital position of the subsidiary is adequate. It is the FDIC's belief that such a flexible approach will better serve the FDIC's supervisory interest of insuring the safety and soundness of insured depository institutions. Comment is specifically requested on methods the FDIC can use to determine the adequacy of a subsidiary's capital.

6. Department

The proposal defines the term "department" as a division of a bank that satisfies five requirements designed to create separation between the division and the remainder of the bank. The FDIC has found that some banks presently have departments that conduct activities which are not permissible for national banks. This is particularly true in Connecticut and New York where a number of savings banks underwrite life insurance and annuities through a department of the bank. In Delaware, insurance underwriting of all types (except title insurance) has been authorized in a department or division of the bank.

The FDIC reviewed the types of separations that exist between banks and departments where presently allowed for and evaluated those separations in the context of the separations commonly referred to as "firewalls". The state laws in some states which allow savings bank life insurance underwriting are very similar in delineating the required separations between banks and their life insurance departments. The proposed regulation draws from these similarities and requires that: (1) The department be physically distinct from the remainder of the institution, (2) the department maintains separate accounting and other records, (3) the department's assets, liabilities, obligations and expenses are separate and distinct from those of the remainder of the institution, (4) the department is liquidated separately from the other divisions of the institution, and (5) statute requires that the obligations, liabilities, and expenses of the department can only be satisfied with the assets of the department.

It is the intent of the FDIC in defining the separation between a bank and its department that the department not be confused with the remaining operations of the insured bank. If the department is separate, supervision of the activity by any organization which has responsibility for supervising the type of activity conducted by the department will be easier. The criteria necessary for an adequate separation are discussed more fully below.

(a) Physically Distinct

The term physically distinct does not necessarily mean that the department must be totally separate from the operations of the insured bank, however, areas of operation of the department must be recognizably different. This test could be satisfied in many ways, *e.g.*, a separate site for department operations or making a clear distinction within the bank itself concerning the location of the department's operations.

(b) Separate Accounting and Records

Requiring separate records and accounts will help clarify which assets are available to meet the obligations of the department and allows for a better indication of profitability of the operation. The FDIC recognizes that certain expenses may be shared between a bank and its department; however, any such sharing arrangement should reflect a reasonable estimation of the department's portion of the expense. The requirement to have separate accounting and other records should not be interpreted to preclude the inclusion of the department's net income in the operating results of the combined institution. As departments that engage in activities such as insurance underwriting may well be subject to different accounting standards than the remainder of the institution (as well as different regulatory requirements), the FDIC anticipates that most institutions would as a matter of course maintain separate accounts and records for the department.

(c) Satisfaction of Department Liabilities/Separate Liquidation

A measure of protection to the bank is provided in the case of insolvency of the department by requiring that the obligations, liabilities, and expenses of the department can only be satisfied with the assets of that department. This standard, which has been in place in the savings bank life insurance departments in Connecticut and New York for a number of years, allows the insolvency of the insurance operation to be handled by the state insurance regulator without a call on the resources of the FDIC. The standard that the department be liquidated separately from the other divisions of the institution allows the division to fail without impairing the operations of the insured institution.

7. Commercial Venture

Section 362.4(a)(2) of the proposed regulation provides that the FDIC will not permit an insured state bank to directly engage in any commercial venture. Section 362.2(f) of the proposal in turn defines "commercial venture" to mean being engaged in the conduct of any activity other than the providing of financial services. "Financial services" is to be understood for the purposes of the proposed regulation to specifically include the supplying of funds or capital; the granting of credit; the management of funds or the making of investments for or on behalf of businesses, groups or individuals; transaction services which involve facilitating payments and transfers of funds such as processing payments, clearing payments, and currency exchange; the production or distribution of financial instruments including the underwriting and sales of debt and equity securities and derivative financial instruments as well as options that represent future claims against financial instruments; the production or distribution of information pertaining to the credit markets; and insuring against risk of loss. The regulation also provides, however, that financial service can include any service which is determined by the FDIC to qualify as a financial service. This language is contained in the proposed regulation for the purpose of ensuring flexibility. It is contemplated that determinations as to whether a service that is not specifically listed in the regulation qualifies as a financial service will be made in the context of an application by a bank seeking the FDIC's approval to directly conduct the service in question. Presumably the applicant bank would argue that even though the activity in question does not fall within the scope of any of the services listed in the regulation as financial services, the service should be considered a financial service and the provision of the regulation absolutely prohibiting the bank from directly conducting that activity should not operate to bar the bank's application.

As the FDIC found it difficult to craft a definition of commercial venture, the agency opted to simply define commercial venture as anything that is not financial in nature. The agency recognizes that defining financial service is itself complicated and therefore is specifically seeking comment on what has been proposed as a description of what should be understood as financial in nature. Should the definition be expanded or contracted in any way or is the flexibility built into the definition sufficient to address any concerns?

8. Extension of Credit

The term "extension of credit" as defined in the proposal shall have the same meaning as used for the purposes of § 337.3 of the FDIC's regulations. The cross reference to § 337.3 should be understood to encompass the exceptions as well. As defined for the purposes of § 337.3, "extension of credit" means the making or renewal of any loan, a draw upon a line of credit, or an extending of credit in any manner whatsoever and includes, but is not limited to:

(a) A purchase, whether or not under repurchase agreement, of securities, other assets, or obligations;

(b) An advance by means of an overdraft, cash item, or otherwise;

(c) Issuance of a standby letter of credit (or other similar arrangement regardless of name or description);

(d) An acquisition by discount, purchase, exchange, or otherwise of any note, draft, bill of exchange, or other evidence of indebtedness upon which an insider may be liable as maker, drawer, endorser, guarantor, or surety;

(e) A discount of promissory notes, bills of exchange, conditional sales contracts, or similar paper, whether with or without recourse;

(f) An increase of an existing indebtedness, but not if the additional funds are advanced by the bank for its own protection for (A) accrued interest or (B) taxes, insurance or other expenses incidental to the existing indebtedness;

(g) An advance of unearned salary or other unearned compensation for a period in excess of 30 days; and

(h) Any other similar transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.

9. Investment in a Department

The proposal contains a definition of "investment in a department" by an insured state bank. The definition, which is contained in § 362.2(r), merely moves language which had been found in the definition of well-capitalized. No substantive change has been made. Under the definition, an investment in a department means any transfer of funds by an insured state bank to one of its departments which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by that department shall not be considered an investment in the department.

10. Investment in a Subsidiary

Under the proposal the term "investment in subsidiary" is set out as a separate definition. The language, which had been part of the well-capitalized definition, has simply been moved into proposed § 362.2(s). No substantive changes have been made. The term "investment in a subsidiary" by an insured state bank as contained in § 362.2(s) means the total of any equity investment in a subsidiary by a bank plus any debt issued by the subsidiary that is held by the insured state bank.

General Prohibition on Engaging as Principal in Activities That are not Permissible for a National Bank

Section 362.4(a)(1) of the proposal tracks section 24(a) of the FDI Act. Section 363.4(a)(1) provides that, unless the FDIC gives its consent and unless otherwise excepted, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank. Insured state banks that wish to obtain consent must file an application in accordance with § 362.4(c) of the proposal. Paragraph (a)(2) of § 362.4 sets out two exceptions to the general rule that the FDIC will allow a state bank to seek permission to conduct an activity as principal which is otherwise impermissible for a national bank: (1) The FDIC will not consent to an insured state bank directly engaging in any commercial venture;

and (2) an insured state bank will not be permitted to directly or indirectly through a subsidiary engage in insurance underwriting other than to the extent permitted to a national bank. The prohibition on conducting insurance underwriting is taken expressly from section 24(b)(1) of the statute. Section 362.4(b)(2)(ii) of the proposal contains an exception to the above prohibition for a bank that was engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation. The exception for insurance reinsured by the Federal Crop Insurance Corporation is taken verbatim from section 24(b)(2) of the FDI Act. Section 362.4(b)(2)(i) contains an exception for well-capitalized banks and their subsidiaries that were providing insurance as principal in a state on November 21, 1991 and § 362.4(b)(1) provides an exception for savings bank life insurance activities in Massachusetts, New York and Connecticut.

Paragraph (a)(2) of the proposal represents in essence the opinion of the FDIC that directly engaging in commercial ventures presents a significant risk to the deposit insurance fund and that such activities are inappropriate for federally insured depository institutions. The FDIC has the responsibility under section 24 of the FDI Act to ensure that activities conducted by insured state banks do not pose a significant risk to the deposit insurance funds. Moreover, the FDI Act also directs the FDIC to ensure that activities conducted by insured banks are consistent with the purposes of federal deposit insurance, i.e., among other things that the activities are appropriate given the extension of the federal safety net to the institution. Federal deposit insurance permits banks to fund illiquid investments (such as loans) with bank deposits (which are liquid assets), that is to say, federal deposit insurance is designed to enhance the asset transformation services of banks. Federal deposit insurance enhances those activities as it provides stability to the banking system by eliminating the motivation behind bank runs. It would be inappropriate, as well as counterproductive, for the federal safety net to in effect be extended to activities that do not compliment bank asset transformation services and which are not associated with the production and distribution of financial services. To do so may lead to greater risk taking by banks (but not bank shareholders) and may ultimately adversely affect the deposit insurance fund. What is more, it may be safely assumed that bank management is not likely to have the necessary expertise associated with conducting commercial ventures and that, if banks were to conduct commercial ventures, banks would not have any particular advantage in commercial businesses based upon economies of scale or other factors which would make those ventures profitable for banks.

Having come to the above determination, the FDIC is announcing by regulation that no insured state bank will be permitted to directly engage as principal in such activities. The bar does not extend, however, to indirect activities through a subsidiary. It is conceivable that in some specific instance the conduct of a particular enterprise may provide benefits in the way of earnings to a bank if a subsidiary of the bank were to engage in that enterprise. Furthermore, if that enterprise were not supported by federally insured deposits, the deposit insurance funds would not be at risk and market distortions that might otherwise arise would not be present. Thus, the FDIC has proposed a system whereby an insured state bank is not precluded from requesting consent to engage as principal through a subsidiary in a commercial venture that is otherwise impermissible for a subsidiary of a national bank. Whether or not the bank obtains consent will depend upon the FDIC's analysis of the risk that might be presented to the bank and the deposit insurance funds.

The FDIC is requesting comment on whether it is appropriate for the regulation to prohibit insured state banks from directly participating in commercial ventures. Comment is also specifically requested on whether the list of prohibited activities should be expanded, and if so, what activities should be included.

Exceptions to the General Requirement to Obtain FDIC's Prior Consent

Section 362.4(b) of the proposal sets out several exceptions to the general requirement that an insured state bank must obtain the FDIC's prior consent to directly or indirectly engage as principal in any activity that is not permissible for a national bank and its subsidiaries. A number of the exceptions are simply carried over from section 24 itself. Other exceptions embody the FDIC's preliminary determination that it will not present a significant risk to the deposit insurance fund for any insured state bank to engage as principal in particular activities provided that certain conditions and restrictions are observed. The FDIC has proposed three exceptions on the basis that the activities covered thereby do not present a significant risk to the deposit insurance fund. The FDIC specifically invites comment on whether the list of activities that have been found not to present a significant risk to the fund should be expanded and upon what basis that should be done if the FDIC were to do so.

Insured state banks should note that the FDIC specifically considered, but has not proposed regulatory language for, an exception that would allow a state bank to enter into a contract with a broker-dealer under which the broker-dealer would provide securities services on the bank's premises. The FDIC is aware that the OCC has by interpretive letter advised national banks that such arrangements are permissible depending upon the overall facts and just how the contract is structured. Inasmuch as it is the FDIC's posture that, generally speaking, an insured state bank is bound by the conditions and restrictions under which a national bank can enter into a contract as principal, any such contract that a state bank wanted to enter into that differed from the type of contract which is permissible for a national bank would require the FDIC's consent. In connection therewith, comment is sought on whether the FDIC should adopt an exception that would allow state banks, without the FDIC's prior consent, to enter into contracts with third parties whereby those parties would conduct on the bank's premises activities that do not fall within the definition of "as principal" activities.

If such an exception were to be adopted, should the FDIC impose any conditions or restrictions on the exception such as affirmative disclosure requirements, disclosure of the contract terms to the bank's shareholders, limitations on the manner in which the bank may be compensated, limitations on the use of shared bank employees, limitations on indemnification, etc.? Of course, even if the FDIC were to adopt an exception covering this type of contract that would obviate the need for prior consent, the terms and conditions of the contract and the manner in which the business of the third party was operated would need to comport with safe and sound banking. In short, the fact that an insured state bank may not need the FDIC's prior consent as the regulation provides for an exception does not preclude the FDIC from later finding the activity, or the manner in which it is conducted, to involve an unsafe or unsound banking practice.

The FDIC considered, but has not specifically proposed for comment, an additional exception that would fall under the category of activities permissible for an insured state bank and/or its majority owned subsidiaries without the need for FDIC's individual case-by-case prior approval. The exception considered by the agency would have allowed an insured state bank the flexibility of holding equity securities through a bona fide, majority owned subsidiary of the bank provided that certain restrictions were met. The type of restrictions under consideration by the agency were the following: The equity securities must be listed on a national securities exchange, the subsidiary could not control any issuer of the securities, the bank must meet the minimum capital requirements, and the bank must be adequately capitalized without taking into consideration the bank's investment in the subsidiary. Consideration was also given to limiting the bank's investment in the subsidiary to a maximum of 25 percent of the bank's capital.

Consideration was given to such an exception on the grounds that equity investments can offer an additional source of earnings and opportunity for diversification. At the same time, however, such investments can pose safety and soundness concerns. Given those concerns, staff attempted to evaluate whether it would be possible to in some way allow a bank's subsidiary to in effect hold a more diversified investment portfolio and for that portfolio to not pose a significant risk to the deposit insurance fund.

Comment is invited on whether the FDIC should entertain adding an exception to the regulation that would allow an insured state bank to hold equity securities at the subsidiary level and if so, under what circumstances it would be appropriate or, is it entirely inappropriate for an insured state bank to indirectly hold equity securities? Are there circumstances other than having a subsidiary which would hold all or a portion of the bank's equity security investment portfolio which the FDIC should take into consideration when evaluating this issue? For example, the FDIC is interested in receiving comment on the impact of section 24 of the FDI Act on the investment portfolios of subsidiaries of insured state banks whose insurance underwriting activities are excepted by part 362 and section 24 of the FDI Act from the general prohibition on insurance underwriting activities. To the best of the FDIC's knowledge, it is not uncommon for insurance companies to make equity investments of a type that are not permissible for national banks.

Other than exceptions which simply reiterate what is provided for by the statute, all of the exceptions proposed for comment require that the bank meet, and continue to meet, the applicable minimum capital standards as prescribed by the bank's appropriate federal banking agency. Some of the exceptions require that a bank be adequately capitalized after deducting the bank's investment in a subsidiary that conducts certain activities. The purpose of requiring such a capital deduction is discussed at length elsewhere. Comment is invited on whether it is appropriate to require a bank to meet the applicable minimum capital standards if the regulation also requires that a bank be adequately capitalized after deducting its investment in a department or a subsidiary that engages as principal in impermissible activities. Should the regulation simply require that a bank meet the minimum capital requirements after the deduction rather than meet the adequately capitalized definition? Are there any circumstances in which the bank should be required to be well-capitalized after deducting its investment in a subsidiary or department that engages in impermissible activities? Commentors are asked to keep in mind when responding to this request that section 24 of the FDI Act requires as a prerequisite to consent that the bank meet and continue to meet the applicable capital standards prescribed by the appropriate agency. The FDIC must, therefore, take capital into consideration. Lastly, comment is requested on whether the FDIC should define the phrase "minimum capital standards" if it is retained in the regulation?

As indicated above, the exceptions generally require that the bank meet the minimum capital standards. It is not the FDIC's intention to require any bank whose capital falls below those minimum standards to immediately cease an activity in which the bank had been engaged pursuant to an exception. The FDIC will deal with such eventuality on a case-by-case basis through the examination process. In short, the FDIC intends to utilize the supervisory and regulatory tools available to it in dealing with the bank's loss of capital. The issue of the bank's ongoing activities will be dealt with in the context of that effort. In the case of a state member bank, the FDIC will communicate its concerns regarding the continued conduct of an activity to the bank's appropriate federal banking agency. It is that agency which will formulate a response to the bank's drop in capital. The FDIC is of the opinion that the case-by-case approach to whether a bank will be permitted to continue an activity is preferable to forcing a bank to, in all instances, immediately cease the activity in question. Such an inflexible approach could exacerbate an already poor situation and the FDIC has opted to reject that approach. Comment is sought on whether Section 24 allows the FDIC this flexibility. This lack of flexibility is also the reason why the standard conditions provision of the proposal does not contain the requirement that the bank continue to meet the applicable capital standards. (See discussion below under the heading "Standard Conditions".)

A more detailed discussion of the exceptions follows. In addition to comment on the specific exceptions, comment is sought on whether any additional exceptions to the application requirements should be contained in the regulation.

1. Savings Bank Life Insurance

Section 362.4(b)(1) of the proposal provides that any insured state bank that is located in Massachusetts, New York or Connecticut is not prohibited from engaging in the underwriting of savings bank life insurance provided that three conditions are met: (1) The FDIC has not found that such activities pose a significant risk to the fund; (2) the bank conducts the savings bank life insurance activities through a division of the bank that meets the definition of a "department" found in § 362.2(j) of the proposal; and (3) the bank makes certain customer disclosures. This exception is based upon section 24(e) of the FDI Act which creates a savings bank life insurance exception, requires that consumer disclosures be made, and directs the FDIC to make a finding whether savings bank life insurance activities under the exception in section 24(e) will pose a significant risk to the fund. The FDIC is instructed by the statute to make that finding by December 19, 1992. The substance, timing, and placement of disclosure are the same as are required under § 362.3(b)(3) of the regulation which sets out a parallel exception for the ownership of the equity of a savings bank life insurance company. Disclosure must be prominent, must be made prior to the time of purchase of the insurance policy, other insurance product, or annuity, and must be in a separate document clearly labeled consumer disclosure if the disclosure does not appear on the face of the policy, other insurance product, or annuity. If state law or regulation provides for substantially similar disclosure, a bank may simply comply with state law. The disclosure itself must contain the following or a similar statement: "This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank's insurance department may legally be used to satisfy any obligation of that department."

The FDIC does not anticipate that the above restrictions, including the requirement for savings bank life insurance activities to take place in a department of the bank, will disrupt any ongoing savings bank life insurance operations to any significant degree. Comment is specifically sought on whether the FDIC's assumption in this matter is correct. If not, what changes should be made to the proposal, and why?

2. Insurance Underwriting

Section 24(d)(2)(A) of the FDI Act provides that no subsidiary of an insured state bank may engage in insurance underwriting except to the extent such activities are permissible for national banks. Notwithstanding the general prohibition under section 24(d)(2)(A), section 24(d)(2)(B) provides that a well-capitalized insured state bank that was lawfully providing insurance principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and the insurance is only offered to residents of that state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in or was employed in that state. In the case of resident companies or partnerships, the bank's principal activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state. Section 362.4(b)(2)(i) of the proposed regulation recites the exception for insurance underwriting found in section 24(d)(2)(B).

Section 362.4(b)(2)(ii) of the proposal provides that, notwithstanding the overall prohibition on an insured state bank underwriting insurance which a national bank could not underwrite, an insured state bank that was engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so. This exception tracks the language of section 24(b)(2) of the FDI Act.

3. Activities Found Not To Present a Significant Risk to the Deposit Insurance Fund

Section 24(d)(1) of the FDI Act provides that after December 19, 1992, a subsidiary of an insured state bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless the FDIC has determined that the activity poses no significant risk to the appropriate deposit insurance fund and the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate federal banking agency. The FDIC has preliminarily determined that certain activities do not represent a significant risk to the deposit insurance funds and therefore may be engaged in as principal without first obtaining the prior consent of the FDIC. Section 362.4(b)(3) lists those activities.

(a) Guarantee Activities

Section 362.4(b)(3)(i)(A) of the proposed rule provides that an insured state bank which meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency may directly guarantee the obligations of others as provided for in § 347.3(c)(1) of the FDIC's regulations. Section 347.3(c)(1) provides that foreign branches may guarantee customer's debts or otherwise agree for their benefit to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies the branch's maximum monetary liability thereunder. The guarantee or agreement shall be combined with all standby letters of credit and loans for purposes of applying any legal limitation on loans of the bank. If the guarantee or agreement is subject to separate limitation under state or federal law, the separate limitation shall apply in lieu of the loan limitation.

Section 362.4(b)(3)(i)(B) of the proposed regulation provides that an insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, may directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, provided that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.

Both of these exceptions are carried over from part 332 of the FDIC's regulations, "Powers Inconsistent with the Purposes of Federal Deposit Insurance Law". That regulation, which the FDIC proposes to remove (see notice published elsewhere in today's **Federal Register**), prohibits insured state nonmember banks (except a District bank) from, among other things, acting as surety or guaranteeing the obligations of others subject to certain listed exceptions. The FDIC has also recognized a number of additional exceptions over the years on an interpretive basis. Those interpretive exceptions are the same ones that the OCC has recognized by regulation for national banks. National banks have been found by the courts to lack the authority to act as surety or guarantee the obligations of others except in certain instances. The two exceptions set out in § 362.4(b)(3)(i) of the proposal which are carried over from part 332 are not found in OCC's regulations. Insured state banks should note that any guarantee that would be permissible for a national bank may be entered into by a state bank, assuming that state law authorizes the bank to do so, without the bank first obtaining the FDIC's consent under part 362.

(b) Activities That Are Closely Related to Banking

Under § 362.4(b)(3)(ii) of the proposal, an insured state bank that meets, and continues to meet, the applicable minimum capital standards as prescribed by its appropriate federal banking agency may, without first obtaining the FDIC's prior consent, engage as principal through a subsidiary in any activity that is otherwise impermissible for a subsidiary of a national bank if that activity has been found by the Board of Governors of the Federal Reserve System (FRB) to be closely related to banking for the purposes of Section 4 of the Bank Holding Company Act (12 U.S.C. 1843). Thus, any as principal activity that is on the FRB's section 4(c)(8) list (see 12 CFR 225.25), or has been found by the FRB by order to be closely related to banking, does not require the FDIC's prior consent if it is to be conducted through a subsidiary.

Comment is requested on whether the regulation should contain this exception. If so, should the regulation extend the same treatment to the direct conduct of such activities. Should the regulation require that the subsidiary be a bona fide subsidiary in order for the exception to apply?

(c) Securities Activities Conducted Through a Subsidiary of an Insured Nonmember Bank

Section 362.4(b)(iii) of the proposal sets out an exception for securities activities conducted by an insured nonmember bank through a subsidiary of the bank provided that: (1) Those activities are conducted in compliance with § 337.4 of the FDIC's regulations, (2) the bank meets, and continues to meet, the applicable minimum capital standards of part 325 of this chapter, and (3) the bank is adequately capitalized exclusive of any investment in the subsidiary that is required by § 337.4 to be deducted from the bank's capital. If § 337.4 is followed, the provisions contained therein apply in lieu of any portion of part 362.

Section 337.4 of the FDIC's regulations governs the securities activities of subsidiaries of insured nonmember banks. In brief, that regulation (1) Requires that any subsidiary which engages in securities activities that are not permissible for the parent bank under Section 16 of the Glass-Steagall Act (12 U.S.C. 24 (Seventh)) must be a bona fide subsidiary; (2) requires the bank's investment in such a subsidiary be deducted from the bank's capital; (3) requires that the FDIC be given prior notice before an insured nonmember bank acquires or establishes a subsidiary that engages in any securities activity; (4) places certain restrictions on transactions between a bank and its securities subsidiary; and (5) requires that customer disclosures be given under certain circumstances.

Section 337.4 of the FDIC's regulations was adopted in 1984 in order to address the safety and soundness and conflicts of interest concerns that can arise if an insured nonmember bank has a subsidiary which engages in securities activities of the sort that would not be permissible under the Glass-Steagall Act for the parent bank. The FDIC is satisfied that the restrictions contained in § 337.4 adequately address those concerns. The Board of Directors has therefore concluded that for a state nonmember bank to conduct securities activities through a subsidiary of the bank in accordance with § 337.4 will not pose a significant risk to the deposit insurance fund.

Comment is specifically requested on whether it is appropriate for the regulation to contain the above described exception.

Application Requirements

Generally

Under § 362.4(c)(1) of the proposal, after December 19, 1992, (unless otherwise provided for by part 362) no insured state bank may directly engage as principal in any activity that is not permissible for a national bank, and no subsidiary of an insured state bank may engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its subsidiary will not pose a significant risk to the affected deposit insurance fund. An insured state bank must obtain the FDIC's prior consent for each subsidiary that engages as principal, or will engage as principal, in any activity that is not otherwise excepted and which is not permissible for a subsidiary of a national bank. If the bank has a subsidiary that is engaging in an activity for which proper notice or application has been made, notice or application will need to be made prior to the bank acquiring or forming any other subsidiary even if that subsidiary is engaging in the same type of activity. (See § 362.4(c)(1)(ii)). The application for subsequent subsidiaries does not need to contain the same amount of information however.

Under the proposal, a bank that does not meet the minimum capital requirements set by its appropriate federal banking agency that as of December 19, 1992 engaged as principal in an otherwise impermissible activity must cease that activity as soon as practicable but in no event later than six months after the effective date of this section. This provision allows banks that do not meet the minimum capital requirements a period of time in which to terminate an impermissible activity. It is the opinion of the FDIC that to do otherwise may prove more harmful to the affected banks. If the bank attains the minimum prescribed capital level within the six month period, the bank may apply for consent to continue the activity.

If an insured state bank had obtained the FDIC's consent under section 333.3 of the FDIC's regulations to engage in an activity that is not permissible for a federal savings association and which is not permissible under this part without the FDIC's consent, the insured state bank does not need to obtain FDIC consent under this part in order to continue the activity. (See § 362.4(c)(1)(iv) of the proposal).

The effective date of the restrictions on activities of insured state banks and their majority-owned subsidiaries is December 19, 1992. Section 362.4(c)(1)(v) of the proposal provides that any insured state bank which has filed an application requesting consent to directly, or indirectly, continue any activity that is not permissible for a national bank or its subsidiary may continue to engage in the ongoing activity while the bank's application is pending, however, in no case may the activity continue for more than six months after the effective date of the regulation unless the FDIC grants an extension of time or the bank's application is granted. The language of this paragraph thus grants banks authority to continue their otherwise impermissible activities beyond December 19, 1992. Without this provision, a bank would be required to cease an otherwise impermissible activity even though the FDIC may ultimately approve of the activity. As such disruption of business would serve no purpose, the proposal creates, in effect, up to a six months safe harbor period. Comment is requested on the need for this provision.

Application for Consent to Directly or Indirectly Engage in Impermissible Activities

Applications under § 362.4(c) of the proposal for consent to directly engage in an otherwise impermissible activity are to be filed with the FDIC regional director (supervision) for the FDIC region in which the insured state bank's principal office is located. The applications should: (1) Briefly describe the activity and the manner in which it will be conducted; (2) contain a copy, if any, of the bank's feasibility study, financial projections and/or proposed business plan regarding how the activity is to be conducted; (3) provide a citation of the statutory or regulatory authority to conduct the activity from which the bank derives its authority to conduct the activity in question; (4) contain a copy of the written approval the bank received when it requested consent to conduct the activity from the appropriate regulatory authority if such approval was necessary; (5) provide an indication of the expected volume or level of the activity; (6) contain a copy of the resolution by the bank's board of directors or trustees authorizing the conduct of the activity and the filing of the application; (7) contain a brief description of the bank's policies with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank (including related interests of such persons); (8) provide a calculation of the bank's applicable capital ratios as of the date of the filing of the application; and (9) describe the bank's expertise in the activity to be undertaken. The information requested may be satisfied by submitting a copy of a pending request as filed with another regulatory authority if that request substantially meets the information requirements detailed above. The terms "director", "executive officer", "principal shareholder", and "related interest" shall have the same meaning as is relevant for purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of the FDIC's regulations (12 CFR 337.3) which concern extensions of credit to bank insiders.

Applications for consent to conduct otherwise impermissible activities through a subsidiary should contain the above information plus the following: (1) The amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary; (2) the bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and (3) the bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

If an insured state bank has previously obtained the FDIC's consent for a subsidiary to engage as principal in a particular activity, subsequent requests for consent for another subsidiary of the bank to engage as principal in the same activity need not contain as much information as the first such request. The following information is required to be filed in the subsequent requests: (1) A brief description of the proposed activity; (2) an indication of the expected volume or level of the activity; (3) the bank's applicable capital ratios as of the date of the filing of the application; (4) the amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary; (5) the bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and (6) the bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary. (See § 362.4(c)(2)(iii)).

For the purposes of this section, the term "same activity" shall be understood to refer to business lines that are generally similar, require the same expertise, and entail the same amount or character of risk. For instance, a subsidiary that has received previous consent to invest in a specific multi-family residential unit is conducting the same activity as a related subsidiary that is investing in a multi-family residential unit in a different part of town. However, the subsidiary would not be engaging in the same activity as a related subsidiary that is investing in commercial office space.

Application for Consent To Continue an Ongoing Activity

Insured state banks that wish to continue to directly engage in an ongoing activity that is otherwise impermissible must file an application with the FDIC which contains the following information: (1) A brief description of the activity and the manner in which it is presently being conducted; (2) a copy of the bank's management or business plan, if any, concerning the conduct of the activity; (3) an indication of the present and expected volume or level of the activity; (4) a brief description of the bank's policy and practice regarding the involvement in the activity by directors, executive officers or principal shareholders, or any related interest of such person; (5) a summary of management's expertise to conduct the activity; (6) a citation of the statutory or regulatory authority upon which the bank is relying in conducting the activity; (7) a brief description of how, if at all, the current conduct of the activity differs from standard conditions set out in this proposal (is the subsidiary "bona fide", is the bank adequately capitalized, is the department separated from other operations of the bank, etc.); and (8) the bank's applicable capital ratios as of the filing of the application.

In addition to the information discussed above, applications for consent to continue to engage as principal through a subsidiary in an ongoing activity that is not permissible for a subsidiary of a national bank shall contain: (1) A statement of the amount of the bank's investment in, and extensions of credit to, the subsidiary; (2) the aggregate amount of the bank's investment in, and extensions of credit to, all such subsidiaries; and (3) the bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

Phase-out of Activities for Which Consent To Continue Has Been Denied

Under § 362.4(c)(4)(i) of the proposal, insured state banks that have been denied consent to continue an ongoing activity must stop the activity as soon as practical but in no event later than one year from the denial unless the FDIC has set a different time period. Since the primary reason for any denial would be a finding that the activity presents a significant risk to the fund, the FDIC may condition or restrict the conduct of the activity until such time as the activity is terminated.

Under § 362.4(c)(4)(ii), if the insured state bank has been denied consent to continue to conduct an ongoing activity through a subsidiary, the bank must divest its equity interest in the subsidiary as quickly as prudently possible but in no event later than December 19, 1996. In such event, the bank is directed to file a divestiture plan in accordance with the provisions of this part. Section 362.4(c)(4)(ii) is consistent with the statutory provisions contained in section 24(c) of the FDI Act which allow a five-year divestiture period for impermissible equity investments. The continued conduct of the activity during the divestiture period may be conditioned or restricted by the FDIC.

An insured state bank need not divest the subsidiary if the bank chooses to discontinue the impermissible activity rather than to divest the subsidiary. If the bank so chooses, the activity must be discontinued as soon as practical but in no event later than one year from the date of the denial. If the bank elects to discontinue the impermissible activity, it must file a notice with the appropriate regional office no later than 60 days after the bank receives notice that consent to continue the activity was denied.

The FDIC is interested in receiving comment on the particular problems and concerns the timing of divestiture presents for banks that own subsidiaries which invest in real estate if a bank's application to continue the activities of that subsidiary is denied.

Standard Conditions

Any approval of a request for consent to conduct an otherwise prohibited activity shall be subject to standard conditions unless specifically waived by the approving official. If the approval involves conduct of an activity in a subsidiary of an insured state bank, approval shall be conditioned upon: (1) The subsidiary meeting all of the criteria necessary for a bona fide subsidiary, and (2) the insured state bank being adequately capitalized exclusive of the bank's investment in the subsidiary.

If an insured state bank would not be adequately capitalized exclusive of the bank's investment in its subsidiary, the FDIC may nonetheless, in its discretion, approve an application for a subsidiary to continue an ongoing activity that is otherwise impermissible provided that the bank is expected to be adequately capitalized, taking into account the deduction of the bank's investment in the subsidiary from the bank's capital.

no later than three years from the approval of the application. The three year period set out in the proposal is not automatic and it is left to the sole discretion of the FDIC to determine a workable period of time (up to three years) for an insured state bank to raise its capital levels to an appropriate level. Additionally, under the proposal the FDIC may, in its discretion, approve an application for a subsidiary that does not meet the definition of a bona fide subsidiary to continue to engage in an otherwise impermissible activity provided that subsidiary is expected to meet the requirements of a bona fide subsidiary no later than six months from the approval of the application. Both of these provisions build some flexibility into the regulation to accommodate ongoing operations.

Under the proposed regulation approval of an application by an insured state bank to directly conduct an otherwise impermissible activity shall be conditioned upon (1) the activity being conducted in a division which meets all of the criteria of a department as that term has been defined earlier in this part, and (2) the bank being adequately capitalized exclusive of the bank's investment in such division. The bank, in the FDIC's discretion, may be allowed to continue the direct conduct of an ongoing activity even though the bank would not be adequately capitalized exclusive of its investment in the department provided that the bank is expected to be adequately capitalized no later than three years from the approval of the application taking into account the deduction of the investment. Similarly, the FDIC may, in its discretion, allow a bank to continue an ongoing activity conducted in a department that does not meet the definition of "department" if the necessary adjustments are made to the operations of the department so that it meets the definition of department no later than six months after the approval of the application.

The conditions described above are to be considered standard and exceptions will only be granted if the applicant can demonstrate that other features of the bank's proposal will provide a similar degree of protection for the insured bank. Other relevant conditions may be imposed by the approving official when considered appropriate including limits on the volume of the activity and additional capital requirements to support the level of activity anticipated. Nothing in this proposal is intended to limit the types of conditions which may be imposed on an applicant by the granting official or the conditions or restrictions that may be imposed as a result of any ongoing supervision of the bank.

Comment is requested on the appropriateness of the standard conditions as proposed. Should the FDIC consider any conditions in addition to or in lieu of the proposed conditions? Should the conditions that have been proposed be modified in any way? For example, is six months sufficient time to bring an existing division into compliance with the definition of department? Are there activities, such as real estate investment activities, for example, which if conducted by a subsidiary warrant requiring that the parent bank be well-capitalized after the capital deduction is taken?

Transaction Restrictions

Section 362.4(e) of the proposal sets out five restrictions which apply in the case of any subsidiary of an insured state bank that is required by Part 362 to be a bona fide subsidiary as that term is defined in § 362.2(e). The restrictions do not apply to any subsidiary that is not required by the proposal to be a bona fide subsidiary. Comment is specifically requested on the need for the proposed restrictions; what problems, if any, would be posed by the adoption of the proposed restrictions as worded; and whether any additional restrictions should be adopted. For example, should the proposed regulation contain any anti-tying restrictions?

The first restriction, found in § 362.4(e)(i), provides that no insured state bank may engage in any transaction with its bona fide subsidiary on terms or under circumstances that are less favorable than those prevailing at the time of the transaction for comparable transactions involving companies that are not subsidiaries of the bank nor are affiliated with the bank. In addition to other types of transactions, this restriction covers extensions of credit from the bank to its subsidiary. This restriction parallels the restrictions found in Section 23B of the Federal Reserve Act (12 U.S.C. 371c–1) which places restrictions on a bank's transactions with its affiliates. As the term "affiliate" as used in section 23B of the Federal Reserve Act does not generally extend to a subsidiary of a bank, the protections afforded by that law do not apply as between a bank and its subsidiaries. Section 362.4(e)(i) of the proposal fills that gap.

Section 362.4(e)(ii) of the proposal places restrictions on purchases of any asset or product by an insured state bank acting as fiduciary when those assets or products are purchased from any of the bank's bona fide subsidiaries. Under the proposal, such purchases cannot be made unless: (1) The purchase is expressly authorized by the trust instrument, court order or local law or specific authority for the purchase is obtained from all interested parties after full disclosure (§ 362.4(e)(ii)(A)); (2) the purchase is permissible under applicable federal and/or state statute or regulation (§ 362.4(e)(ii)(C); or (3) the purchase is otherwise consistent with the bank's fiduciary obligation (§ 362.4(e)(ii)(B)). These restrictions are identical to restrictions found in § 337.4(e)(1) of this chapter which governs purchases of securities by an insured nonmember bank as fiduciary or managing agent where the securities are currently distributed, currently underwritten, or issued by a subsidiary or affiliate of the bank that engages in the sale, distribution, or underwriting of securities, or the securities are issued by an investment company advised by a subsidiary or affiliate of the bank. (For a discussion of the language as adopted in connection with § 337.4(e)(1) see 49 FR 46709, 46717, November 28, 1984.)

It is not FDIC's intent in proposing this language to change the common law of fiduciary obligation. The FDIC's intent rather is to merely restate the common law obligation of a fiduciary to refrain from self dealing. The language which references applicable federal and/or state law is designed to take into account, for example, federal law governing employee benefit and pension plans which would permit, in certain instances, transactions involving such funds and affiliates of the funds' trustees. The language allowing for purchases if they "are otherwise consistent with the bank's fiduciary obligation" is proposed in recognition that a trustee may not always be required under the common law to meet the conditions of § 362.4(e)(ii)(A) in order to make purchases from a subsidiary of the bank.

Section 362.4(e)(iii) of the proposal provides that no insured state bank may enter into a contract with any of its subsidiaries if the contract violates any law or regulation, will result in a breach of a fiduciary duty, will adversely affect or misrepresent the bank's safety or soundness, or is likely to have any such result. This language is consistent with section 30 of the FDI Act (12 U.S.C. 1831g) which prohibits any insured depository institution from entering into a contract with any person to provide goods, products, or services to or for the benefit of the depository institution if the performance of the contract would adversely affect the safety or soundness of the institution. Comment is requested on whether this provision should be adopted or not. Is the provision unnecessary in view of Section 30 of the FDI Act?

Sections 362.4(e)(4) and 362.4(e)(5) of the proposal restrict extensions of credit that an insured state bank may make to its subsidiaries. Extensions of credit to any one bona fide subsidiary cannot exceed 10 percent of the bank's tier one capital and the bank's aggregate extensions of credit to all of its bona fide subsidiaries cannot exceed 20 percent of the bank's tier one capital. These limits parallel the limits on loans by insured state banks to their affiliates under section 23A of the Federal Reserve Act (12 U.S.C. 371c). "Affiliate" as that term is defined for the purposes of section 23A of the Federal Reserve Act does not generally encompass a subsidiary of a bank. The purpose of this portion of the proposal is to fill that regulatory gap by placing limits on the amount of loans that a bank may make to its subsidiaries. In addition to covering direct loans, any loan by a bank affiliate of an insured state bank to the bank's subsidiary will count toward the insured state bank's lending limit under the proposal. This provision has been included in order that a bank cannot exceed the loan limits simply by channeling funds to its subsidiary through a sister bank. It will also protect the affiliated bank from pressures it might otherwise experience to fund the activities of its affiliated bank's subsidiaries. Finally, the proposed individual and aggregate loan limit both include any extensions of credit made by the bank, or any of its affiliated banks, that are secured by the debt of, or equity securities issued by, the bank's bona fide subsidiaries. Thus, if the bank finances the purchase by a borrower of debt issued by the bank's subsidiary and the extension of credit is secured by the subsidiary's debt, the extension of credit will count toward the bank's ten percent lending limit.

Disclosure Requirements

The FDIC is proposing that no insured state bank may have a subsidiary or a department that engages as principal in any activity that is not permissible for a national bank unless the subsidiary or department provides any persons doing or about to do business with that subsidiary or department written disclosure that the products, goods or services offered by the subsidiary or department are not insured by the FDIC, are not guaranteed by the bank, and that only the assets of the department or subsidiary (as the case may be) are available to satisfy the obligations of, or any contractual claims arising in connection with, the operation of the subsidiary or department. Under the proposal, an insured state must obtain the signature of any person to whom disclosure is made acknowledging that such person has read the disclosure. Disclosure must be made prior to the time a contractual obligation to purchase any product, good or service arises. The following or a similar statement will satisfy the disclosure requirement in the case of a subsidiary: "______ is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank. The assets of [insert name of bank and relationship of bank to subsidiary] are not available to satisfy any obligation or liability of [insert name of subsidiary]". The following or a similar statement will satisfy the disclosure requirement in the case of a department: "______ is not a federally insured deposit. Only the assets of ______ department of the bank are available to satisfy the obligations of, or any contractual claims arising in connection with the operation of, ______ department".

Comment is requested on the need for the disclosures described above. If the FDIC requires that disclosure be made, should the disclosure requirement be more tailored to the particular type of product or service? Should disclosure be required only in instances in which the department or subsidiary are offering in some manner to the public a product or service that can be described as a financial product which might be more readily confused with an insured deposit? If the product or service that is being offered is unlikely to be confused with an insured deposit, should the disclosure be confined to describing the extent to which the bank's assets may be used to satisfy the obligations of the department or subsidiary?

Insured state banks are also asked to note that the section as proposed would require disclosure in the case of any subsidiary that engages as principal in an otherwise impermissible activity. The disclosure obligation therefore attaches under the proposal whether or not the subsidiary is required to be a bona fide subsidiary. If, however, another provision of part 362 sets out disclosure requirements, such as in the case of savings bank life insurance activities, those disclosure requirements are to be followed rather than § 362.4(f). Additionally, it should be noted that the disclosure requirements attach whether or not the bank is required to obtain the FDIC's prior consent to engaging directly or indirectly in the activity in question.

The FDIC specifically considered, but has not actually proposed for comment, a requirement that any advertisements, promotions or solicitations entered into jointly by insured state banks and any subsidiary or department of the bank that engages in any activity that is not permissable for a national bank must include the disclosure set forth in proposed § 362.4(f). If such a requirement were to be adopted, it is contemplated that the disclosure could be in any form and manner consistent with the advertising or other media utilized. The FDIC also considered proposing that advertisements, promotions or other solicitations placed in account statements, or other communications from the bank to its customers which pertain to the activities of a subsidiary or a department of the bank that engages in activities that are not permissible for a national bank must contain the disclosure set forth in proposed § 362.4(f). Such a provision would basically be designed to cover statement stuffers.

Comment is sought on whether the final regulation should contain any provision dealing with joint advertisements and statement stuffers. What problems and/or burdens would be posed by such a requirement?

Conditions and Restrictions Applicable to Banks and Their Subsidiaries That Engage in Excepted Insurance Underwriting Activities

Part 362 contains several exceptions to the general prohibition on an insured state bank or its subsidiaries engaging in insurance underwriting. These exceptions pertain to title insurance, crop insurance, and insurance underwriting (in general) under particular circumstances. (See § 362.3(b)(7) and § 362.4(b)(2).) A bank must be well-capitalized in order for a bank to take advantage of the exception found in § 362.3(b)(7)(ii) and 362.4(b)(2)(i)). That requirement is taken directly from Section 24 of the FDI Act. Other than for that requirement, Section 24 does not expressly impose any other conditions or restrictions on the exercise of the excepted insurance underwriting authority by an insured state bank or its subsidiaries. The FDIC is not precluded from imposing such restrictions itself, however, as section 24(i) clearly indicates. It is the FDIC's opinion that it is appropriate for the regulation to impose restrictions on the use of the excepted insurance underwriting authority in order to protect bank safety and soundness and to protect the deposit insurance fund. The FDIC therefore, in § 362.4(g) of the proposed regulation, is proposing to prohibit any insured state bank from directly, or indirectly through a subsidiary, underwriting insurance pursuant to the exceptions contained in § 362.3(b)(7) or § 362.4(b)(2) unless the following conditions are met: (1) If the insurance underwriting is done directly by the bank, the underwriting must be done through a division of the bank that meets the definition of "department" contained in § 362.2(j) of the proposal; (2) if the insurance underwriting is done through a subsidiary of the bank, the subsidiary must meet the definition of a "bona fide subsidiary" contained in § 362.2(e) of the proposal; and (3) the disclosure requirements contained in § 362.4 of the proposal must be met.

Any bank or subsidiary of a bank that is presently underwriting insurance which is otherwise eligible for one of the exceptions contained in § 362.3(b)(7) or § 362.4(b)(2) is given up to one year to comply with the requirements set out above with the exception of the requirement to make disclosure. The obligation to make the disclosures as set out in § 362.4(f) will operate immediately upon the effectiveness of the regulation.

Comment is requested on the propriety of imposing the above described restrictions; what burden if any will be imposed by the restrictions if adopted; what restrictions, if any, in addition to or in lieu of the above should be imposed; and whether it is appropriate to impose these conditions on all three categories of excepted insurance underwriting as opposed to only some of the categories.

Regulatory Flexibility Analysis

The Board of Directors has concluded after reviewing the proposed amendments, that the amendments, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments.

In consideration of the foregoing, the FDIC hereby proposes to amend chapter III of title 12 of the Code of Federal Regulations by amending part 362 as follows:

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

1. The authority citation for part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (Tenth), 1831a.

§ 362.1 [Amended]

2. Section 362.1 is amended by adding "and their subsidiaries" at the end of the first sentence and by adding "or their subsidiaries" after the words "undertaken by insured state banks" in the second sentence.

3. Section 362.2 is amended by revising the introductory text; redesignating paragraphs (a) through (c), (d) through (h), (i), and (j) through (p) as paragraphs (g) through (i), (k) through (o), (q), and (t) through (z), respectively; amending newly designated paragraph (z) by removing the final two sentences and adding "and § 362.4(b)(2)" after "§ 362.3(b)(7)" where it appears in the second sentence; and adding new paragraphs (a) through (f), (j), (p), (r), and (s) to read as follows:

§ 362.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Activity* refers to the authorized conduct of business by an insured state bank. *Activity* as used in connection with the direct conduct of business by an insured state bank includes acquiring or retaining any investment other than an equity investment. *Activity* as used in connection with the conduct of business by a subsidiary of an insured state bank includes acquiring or retaining any investment.

(b) The phrase *activity permissible for a national bank* shall be understood to refer to any activity authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute. Activities expressly authorized by statute or recognized as permissible in regulations issued by the Office of the Comptroller of the Currency; official circulars or bulletins issued by the Office of the Comptroller of the Currency or in any order or written interpretation issued by the Office of the Comptroller of the Currency will be accepted as permissible for state banks.

(c) *Affiliate* shall mean any company that directly or indirectly, through one or more intermediaries, controls or is under common control with an insured state bank.

(d) An activity is considered to be conducted *as principal* if it is conducted other than as agent for a customer, is conducted other than in a brokerage, custodial or advisory capacity, or is conducted other than as trustee.

(e) *Bona fide subsidiary* means a subsidiary of an insured state bank that at a minimum:

(1) Is adequately capitalized;

(2) Is physically separate and distinct in its operations from the operations of the bank;

(3) Maintains separate accounting and other corporate records;

(4) Observes separate formalities such as separate board of directors' meetings;

(5) Maintains separate employees who are compensated by the subsidiary, however, this requirement shall not be construed to prohibit the use by the subsidiary of bank employees to perform functions which do not directly involve customer contact such as accounting, data processing and record keeping, so long as the bank and the subsidiary contract for such services on terms and conditions comparable to those agreed to by independent entities;

(6) Shares no common officers with the bank;

(7) A majority of its board of directors is composed of persons who are neither directors nor officers of the bank; and

(8) Conducts business pursuant to independent policies and procedures designed to inform customers and prospective customers of the subsidiary that the subsidiary is a separate organization from the bank.

(f) An insured state bank is considered to be engaged in a *commercial venture* if the bank is engaged in the conduct of any activity other than the providing of financial services. A *financial service* shall be understood for the purposes of this part to mean the supplying of funds or capital; the granting of credit; the management of funds or the making of investments for or on behalf of businesses, groups or individuals; transaction services which involve facilitating payments and transfers of funds such as processing payments, clearing payments, and currency exchange; the production or distribution of financial instruments including the underwriting and sales of debt and equity securities and derivative financial instruments as well as options that represent future claims against financial instruments; the production or distribution of information pertaining to the credit markets; insuring against risk of loss; and any other service that is determined by the FDIC to qualify as a financial service.

* * * * *

(j) *Department* means a division of an insured state bank; (1) That is physically distinct from the remainder of the bank;

(2) That maintains separate accounting and other records;

(3) The assets, liabilities, obligations and expenses of which are by statute separate and distinct from those of the remainder of the bank;

(4) The obligations, liabilities, and expenses of which can only be satisfied with the assets of the division; and

(5) That is liquidated under applicable law separately from the other divisions of the bank.

* * * * *

(p) *Extension of credit* shall have the same meaning as used for the purposes of § 337.3 of this chapter.

* * * * *

(r) *Investment in a department* by an insured state bank means any transfer of funds by an insured state bank to one of its departments which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by that department shall not be considered an investment in the department.

(s) *Investment in a subsidiary* by an insured state bank shall mean the total of any equity investment in a subsidiary by a bank plus any debt issued by the subsidiary that is held by the insured state bank.

* * * * *

§§ 362.4 and 362.5 [Redesignated as 362.5 and 362.6 respectively and amended]

4. It is proposed that part 362 be amended by redesignating §§ 362.4 and 362.5 as §§ 362.5 and 362.6, respectively and that newly designated § 362.6 be amended by removing the comma after "§ 362.3(c)(2)" and adding in lieu thereof a semicolon; removing ", and" where is appears after "§ 362.3(d)" and adding a semicolon; and adding after "§ 362.3(b)(7)(ii)" the words "; and the authority to approve or deny requests for consent pursuant to § 362.4(c)".

5. It is proposed that part 362 be amended by adding a new § 362.4 to read as follows:

§ 362.4 Activities of insured state banks and their subsidiaries.

(a) *General prohibitions.* (1) Except as otherwise provided in this part, after December 19, 1992, an insured state bank may not directly engage as principal in any activity that is not permissible for a national bank, and a subsidiary of an insured state bank may not engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the FDIC gives its consent. Applications for consent to directly, or indirectly through a subsidiary, engage in activities that are not permissible for a national bank or a subsidiary of a national bank, should be filed in accordance with § 362.4(c).

(2) Except as otherwise provided in this part, and § 362.4(a)(1) notwithstanding, no insured state bank may:

(i) Directly engage in commercial ventures; or

(ii) Directly or indirectly through a subsidiary engage in any insurance underwriting activity other than to the extent such activities are permissible for a national bank or a subsidiary of a national bank.

(b) *Exceptions.*—(1) *Savings bank life insurance.* Any insured state bank that is located in Massachusetts, New York or Connecticut that is otherwise authorized to do so is not prohibited from engaging in the underwriting of savings bank life insurance *provided that:*

(i) The FDIC has not found that such activities pose a significant risk to the insurance fund of which the bank is a member;

(ii) The insurance underwriting is conducted through a division of the bank that meets the definition of "department" contained in § 362.2(j); and

(iii) The bank discloses to purchasers of life insurance policies, other insurance products and annuities which are offered to the public that the policies, other insurance products and annuities are not insured by the FDIC and that only the assets of the insurance department may be used to satisfy the obligations of the insurance department. The disclosure must be made prior to the time of purchase of the insurance policy, other insurance product, or annuity; must be prominent; and must be in a separate document clearly labeled "consumer disclosure" if the disclosure does not appear on the face of the policy, other insurance product, or annuity. The following or a similar statement will satisfy the disclosure obligation: "This [insurance policy, other insurance product, annuity] is not a federally insured deposit and only the assets of the bank's insurance department may legally be used to satisfy any obligation of that department." If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph.

(2) *Insurance underwriting.* (i) A well-capitalized insured state bank that was lawfully providing insurance as principal on November 21, 1991 may continue to provide insurance as principal in the state or states in which the bank did so on November 21, 1991 so long as the insurance that is provided is of the same type which the bank provided as of November 21, 1991 and the insurance is only offered to residents of that state, individuals employed in that state, and any other person to whom the bank provided insurance as principal without interruption since such person resided in or was employed in that state. In the case of resident companies or partnerships, the bank's as principal activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) Any insured state bank or any subsidiary thereof that engaged in the underwriting of insurance on or before September 30, 1991 which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to do so.

(3) *Activities that do not present a significant risk.* The FDIC has determined that the following as principal activities do not represent a significant risk to the deposit insurance funds and that the listed activities may therefore be conducted without first obtaining the FDIC's prior consent pursuant to § 362.4(c):

(i) *Guarantee activities.* (A) An insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, if otherwise authorized to do so, may directly guarantee the obligations of others as provided for in § 347.3(c)(1) of this chapter; and

(B) An insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate federal banking agency, if otherwise authorized to do so, may directly offer customer-sponsored credit card programs, and similar arrangements, in which the insured state bank undertakes to guarantee the obligations of individuals who are its retail banking deposit customers, *provided, however,* that the bank must establish the creditworthiness of the individual before undertaking to guarantee his/her obligations.

(ii) *Activities that are closely related to banking.* An insured state bank that meets and continues to meet the applicable minimum capital standards as prescribed by the appropriate Federal banking agency, if otherwise authorized to do so, may engage as principal indirectly through a subsidiary in any activity that is not permissible for a subsidiary of a national bank which the Federal Reserve Board has found by regulation or order to be closely related to banking for the purposes of section 4 of the Bank Holding Company Act (12 U.S.C. 1843).

(iii) *Securities activities conducted through a subsidiary of an insured nonmember bank.* An insured nonmember bank, if otherwise authorized to do so, may conduct securities activities through a subsidiary of the bank in accordance with the requirements and restrictions of § 337.4 of this chapter in lieu of any requirement or restriction contained in this part provided that the bank meets and continues to meet the applicable minimum capital standards of part 325 of this chapter and, provided that after making any capital deduction for its investment in the subsidiary that is required to be made under § 337.4 of this chapter, the parent insured bank is adequately capitalized as that term is defined for purposes of § 325.103(b)(2) of this chapter.

(c) *Application for consent to directly, or indirectly through a subsidiary, engage as principal in an activity that is not permissible for a national bank.*—(1) *Application requirement.* (i) Except as otherwise provided by this part, after December 19, 1992, no insured state bank may directly engage as principal in any activity that is not permissible for a national bank, and no subsidiary of an insured state bank may engage as principal in any activity that is not permissible for a subsidiary of a national bank, unless the bank meets and continues to meet the applicable minimum capital standards prescribed by the appropriate federal banking agency and the FDIC determines that the conduct of the activity by the bank and/or its subsidiary will not pose a significant risk to the affected deposit insurance fund. Applications to directly or indirectly through a subsidiary engage in otherwise prohibited activities should be filed in accordance with paragraph (c)(2) of this section.

(ii) An insured state bank must obtain the FDIC's prior consent for each subsidiary that engages as principal, or will engage as principal, in any activity that is not otherwise excepted by this part and which is not permissible for a subsidiary of a national bank.

(iii) Any insured state bank which does not meet the capital requirements set out in paragraph (c)(1)(i) of this section and which as of December 19, 1992, directly, or indirectly through a subsidiary, engaged as principal in any activity that is not permissible for a national bank or a subsidiary of a national bank must cease the impermissible activity as soon as practicable but in no event later than six months from [insert the effective date of the final regulation] unless the bank is expected to meet and does in fact attain the requisite capital level prior to that date. If the bank attains the requisite capital level by [insert a date six months from effective date of the final regulation] the bank may apply for consent to continue the activity.

(iv) All applications for consent pursuant to this part should be filed with the regional director for the Division of Supervision for the FDIC regional office in which the insured state bank's principal office is located. An insured state bank that obtained the FDIC's consent pursuant to § 333.3 of this chapter, prior to that section's repeal, to directly, or indirectly through a subsidiary, engage as principal in an activity that was otherwise not permissible under § 333.3 of this chapter and which activity is not permissible under this part without the FDIC's consent, does not need to obtain the FDIC's consent pursuant to this part in order to continue the activity.

(v) Any insured state bank which has filed an application requesting consent to directly or indirectly continue any ongoing activity may continue to engage in the activity while the application is pending provided, however, that in no case may such an insured state bank continue the activity for more than six months from [insert effective date of the final regulation] unless the FDIC grants an extension under this paragraph (c) or approval of the application has been granted.

(2) *Form and content of application.*—(i) *Form.* Applications filed pursuant to this section may be in letter form.

(iii) *Content of applications for consent to directly engage as principal in activities that are not permissible for a national bank.* (A) Applications for consent to begin for the first time to directly engage as principal in any activity that is not permissible for a national bank shall contain the following:

(*1*) A brief description of the proposed activity and the manner in which it will be conducted;

(*2*) A copy, if any, of the bank's feasibility study, financial projections and/or proposed business plan regarding the conduct of the activity;

(*3*) A citation to the statutory or regulatory authority for the bank to conduct the activity;

(*4*) A copy of the order, etc. granting approval for the bank to conduct the activity from the appropriate regulatory authority is such approval is necessary;

(*5*) An indication of the expected volume or level of the activity;

(*6*) A copy of a resolution by the bank's board of directors or trustees authorizing the conduct of the activity and the filing of the application;

(*7*) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive officer or principal shareholder of the bank (or any related interest of such a person). (The terms "director", "executive officer", "principal shareholder", and "related interest" shall have the same meaning as is relevant for the purposes of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of this chapter);

(*8*) The bank's applicable capital ratios as of the date of the filing of the application; and

(*9*) A description of the bank's expertise in the activity to be undertaken.

(B) If a request for approval is pending before a state agency or another federal agency but has yet to be granted, the bank should submit a copy of the request as filed with the appropriate regulatory authority along with the information required by paragraph (c)(2)(ii)(A) of this section. If that request substantially satisfies all of the information requirements of paragraph (c)(2)(ii)(A) of this section, the bank need not submit any additional information.

(iii) *Content of applications for consent to engage as principal through a subsidiary in activities that are not permissible for a subsidiary of a national bank.* (A) Applications for consent to begin for the first time to conduct as principal through a subsidiary activities that are not permissible for a subsidiary of a national bank shall contain the following information:

(*1*) The information described in paragraph (c)(2)(ii) of this section;

(*2*) The amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary;

(*3*) The bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and

(*4*) The bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

(B) If an insured state bank previously obtained consent for a subsidiary to engage as principal in a particular activity, any subsequent request for consent for another subsidiary of the bank to engage as principal in the same activity shall contain the following:

(*1*) A brief description of the proposed activity;

(*2*) An indication of the expected volume or level of the activity;

(*3*) The bank's applicable capital ratios as of the date of the filing of the application;

(*4*) The amount of the bank's proposed investment in, and expected extensions of credit to, the subsidiary;

(*5*) The bank's investment in, and extensions of credit to, other subsidiaries conducting the same type of activity; and

(*6*) The bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

(iv) *Content of applications for consent to continue ongoing activities.* (A) Applications for consent to continue to directly conduct as principal any activity that is not permissible for a national bank that was being conducted by the bank as of December 19, 1992 shall contain the following:

(*1*) A brief description of the activity and the manner in which it is presently being conducted;

(*2*) A copy of the bank's management or business plan, if any, concerning the conduct of the activity;

(*3*) An indication of the present and expected volume or level of the activity;

(*4*) A brief description of the bank's policy and practice regarding the involvement of directors, executive officers or principal shareholders, or any related interest of such person, in the activity. (The terms "director", "executive officer," "principal shareholder", and "related interest" shall have the same meaning as is relevant for the purpose of section 22(h) of the Federal Reserve Act (12 U.S.C. 375) and § 337.3 of this chapter);

(*5*) A summary of management's expertise to conduct the activity;

(*6*) A citation of the statutory or regulatory authority to conduct the activity;

(*7*) A brief description of how, if at all, the current manner of conduct of the activity differs from that described by § 362.4(d); and

(*8*) The bank's applicable capital ratios as of the filing of the application.

(B) Applications for consent to continue to engage as principal through a subsidiary in an activity that was being conducted as of December 19, 1992 which is not permissible for a subsidiary of a national bank shall contain the following:

(*1*) The information described in paragraph (c)(2)(iv) of this section;

(*2*) A statement of the amount of the bank's investment in, and extensions of credit to, the subsidiary;

(*3*) The aggregate amount of the bank's investment in, and extensions of credit to, all such subsidiaries; and

(*4*) The bank's applicable capital ratios as of the filing of the application exclusive of the bank's investment in the subsidiary.

(3) *Phase-out of activities for which consent to continue has been denied.* (i) If a request filed pursuant to paragraph (c) of this section for consent to continue the direct conduct of an activity is denied, the bank must cease the activity as soon as practicable but in no event later than one year from the denial of the bank's application unless the FDIC specifically sets a different time period. The FDIC, as it deems necessary in order to protect the affected deposit insurance fund, may condition or restrict the conduct of the activity until such time as the activity is terminated.

(ii) If a request filed pursuant to paragraph (c) of this section for consent to continue the conduct of an activity through a subsidiary of the bank is denied, the bank must divest its equity investment in the subsidiary as quickly as prudently possible but in no event later than December 19, 1996. The bank shall file a divestiture plan in accordance with § 362.3(c)(3) no later than 60 days after the bank receives notice that consent was denied. In the alternative, the bank may choose to discontinue the activity rather than divest its equity investment in the subsidiary in which case the activity must be discontinued as soon as practicable but in no event later than one year from the denial. If the bank elects to discontinue the activity rather than to divest the subsidiary, the bank should notify the FDIC of that decision no later than 60 days after the bank receives notice that consent was denied. The notice must be in writing and should be filed with the appropriate FDIC regional office.

(d) *Standard conditions.* Except where specifically waived by the Board of Directors, or an FDIC official acting under delegated authority, any approval of an application filed pursuant to § 362.4(c) shall be subject to the following standard conditions:

(1) *Activity to be conducted in a subsidiary.* (i) In the case in which consent is sought for a subsidiary of an insured state bank to engage, or continue to engage, as principal in an activity that is not permissible for a subsidiary of a national bank, approval shall be conditioned upon:

(A) The subsidiary being a bona fide subsidiary; and

(B) The bank being adequately capitalized as that term is defined for the purposes of § 325.103(b)(2) of this chapter exclusive of the bank's investment in the subsidiary.

(ii) The FDIC may, in its discretion, approve an application for a subsidiary of a bank to continue an ongoing activity despite the fact that the bank would not be adequately capitalized after taking the requisite capital deduction provided that the bank is expected to be adequately capitalized no later than three years from the approval of the application taking the capital deduction into consideration. The FDIC may, furthermore in its discretion, approve an application for a subsidiary that does not meet the definition of a bona fide subsidiary to continue an ongoing activity provided that the subsidiary is expected to satisfy the necessary requirements to be a bona fide subsidiary no later than six months from the approval of the application. The FDIC may condition or restrict its discretionary approvals under this paragraph (d)(1) as necessary in order to protect the safety or soundness of the bank and the deposit insurance fund.

(2) *Activity to be conducted directly.* (i) In the case in which consent is sought to directly engage, or continue to engage, as principal in an activity that is not permissible for a national bank, approval shall be conditioned upon:

(A) The activity being conducted in a division of the bank which meets all of the criteria for a *department* as that term is defined in § 362.2(j); and

(B) The bank being adequately capitalized as that term is defined for the purposes of § 325.103(b)(2) of this chapter exclusive of the bank's investment in such department.

(ii) The FDIC may, in its discretion, approve an application for a bank to continue an ongoing activity despite the fact that the bank would not be adequately capitalized after taking the requisite capital deduction provided that the bank is expected to be adequately capitalized no later than three years from the approval of the application taking the capital deduction into consideration. The FDIC may, furthermore in its discretion, approve an application for a bank to continue the direct conduct of an activity despite the fact that the activity is not presently conducted through a division of the bank that meets the definition of a department provided that the bank is expected to make the necessary adjustments to its operations to move the activity into a department no later than six months from the approval of the application. The FDIC may condition or restrict its discretionary approvals under this paragraph (d)(2) as necessary in order to protect the safety or soundness of the bank and the deposit insurance fund.

(e) *Restrictions on transactions with departments and bona fide subsidiaries.* The following restrictions shall apply as between an insured state bank and any of its subsidiaries that are required by this part to be bona fide subsidiaries:

(1) No insured state bank may engage in any transactions (including making extensions of credit) with any of its bona fide subsidiaries on terms or under circumstances that are less favorable than those prevailing at the time for comparable transactions with or involving companies that are not subsidiaries of the bank nor which are otherwise affiliated with the bank;

(2) No insured state bank may purchase as fiduciary any asset or product from any of its bona fide subsidiaries or obtain as fiduciary any service from any of its bona fide subsidiaries unless:

(i) Such action is expressly authorized by a trust instrument, court order, or local law, or specific authority is obtained from all interested parties after full disclosure;

(ii) Such action is otherwise consistent with the bank's fiduciary obligation; or

(iii) Such action is permissible under applicable federal and/or state statute or regulation;

(3) No insured state bank may enter into any contract with any of its bona fide subsidiaries that violates any law or regulation, results in a breach of a fiduciary duty, adversely affects or misrepresents the bank's safety or soundness, or is likely to have any such result;

(4) No insured state bank may make extensions of credit in the aggregate to any one of its bona fide subsidiaries in excess of ten percent of the bank's tier one capital. Extensions of credit made by any bank affiliate of the insured state bank to a bona fide subsidiary of the insured state bank will be considered to be made by the insured state bank. In addition, any extension of credit made by the insured state bank or any of its affiliated banks that is secured by the debt of, or equity securities issued by, the insured state bank's bona fide subsidiary shall be included in the bank's ten percent limit; and

(5) No insured state bank may make extensions of credit in the aggregate to its bona fide subsidiaries in excess of twenty percent of the bank's tier one capital. Extensions of credit made by any bank affiliate of the insured state bank to a bona fide subsidiary of the insured state bank will be considered to be made by the insured state bank. In addition, any extension of credit made by the insured state bank or any of its affiliated banks that is secured by the debt of, or equity securities issued by, any of the insured state bank's bona fide subsidiaries shall be included in the bank's aggregate twenty percent limit.

(f) *Disclosures.* Except as otherwise permitted by this part, no insured state bank may have a subsidiary or a department that engages as principal in any activity that is not permissible for a national bank unless the subsidiary or department provides any persons doing or about to do business with that subsidiary or department' written disclosure that the products, goods or services offered by the subsidiary or department are not insured by the FDIC, are not guaranteed by the bank, and that only the assets of the department or subsidiary (as the case may be) are available to satisfy the obligations of, or any contractual claims arising in connection with the operation of, the subsidiary or department. The insured state bank must obtain the signature of any person to whom disclosure is made acknowledging that such person has read the disclosure. The disclosure may be tailored to fit the particular circumstances. The following or a similar statement will satisfy the disclosure requirement in the case of a subsidiary: "________ is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank. The assets of [insert name of bank] are not available to satisfy any obligation or liability of [insert name of subsidiary]." The following or a similar statement will satisfy the disclosure requirement in the case of a department: "________ is not a federally insured deposit. Only the assets of ________ department of the bank are available to satisfy the obligations of, or any contractual claims arising in connection with the operation of, ________ department." All disclosures must occur prior to the time any contractual obligation to purchase any product, good or service arises. If state law or regulation provides for substantially similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph.

(g) *Conditions and restrictions applicable to insured state banks and/or their subsidiaries that engage in insurance underwriting activities excepted under § 362.3(b)(7) or § 362.4(b)(2).* (1) No insured state bank may directly or indirectly through a subsidiary underwrite insurance pursuant to the exception contained in § 362.3(b)(7) or § 362.4(b)(2) unless the following conditions and restrictions are met:

(i) Any insurance underwriting directly conducted by the bank must be done through a division of the bank that meets the definition of "department" contained in § 362.2(j);

(ii) Any subsidiary that underwrites insurance must meet the definition of a "bona fide subsidiary" contained in § 362.2(e); and

(iii) The disclosure requirements of § 362.4(g) are met.

(2) Any insured state bank or a subsidiary of an insured state bank that would be eligible for the exception in § 362.3(b)(7) or § 362.4(b)(2) but for the requirements of paragraphs (g)(1) of this section may continue to conduct its insurance underwriting activities provided that the requirements of paragraphs (g)(1)(i) and (g)(1)(ii) are met no later than one year from [insert a date one year from the effective date of the final regulation].

By Order of the Board of Directors. Dated at Washington, DC this 12th day of January 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-1473 Filed 1-28-93; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 26 and 301

[PS-73-88; PS-32-90]

RIN 1545-AL75; 1545-AO69

Generation-Skipping Transfer Tax; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains a correction to proposed regulations (PS-73-88; PS-32-90), which were published Thursday, January 14, 1993, (57 FR 4372). The proposed regulations relate to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections would apply additions to the Generation-Skipping Transfer Regulations (26 CFR part 26) under sections 2601 through 2663 of the Internal Revenue Code (Code).

Need for Correction

As published, the proposed regulations contains an error which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (PS–73–88; PS–32–90), which was the subject of FR Doc. 93–661 is corrected as follows:

1. On page 4372, column 1, in the preamble the Summary is corrected to read as follows:

Summary: This document provides notice of a public hearing on proposed regulations relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code.

Dale D. Goode,

Federal Register, Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–1804 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 92–234; DA 93–54]

Inquiry Into Encryption Technology for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment deadline.

SUMMARY: This action extends the deadline for filing comments in PP Docket No. 92–234, an inquiry into encryption technology for satellite cable programming. The new reply comment deadline is January 26, 1993.

DATES: Comments must be filed on or before December 24, 1992 and reply comments must be filed on or before January 26, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION:

Order Extending Deadline for Filing Reply Comments

In the matter of inquiry into Encryption Technology for Satellite Cable Programming.

Adopted: January 21, 1993.
Released: January 21, 1993.

Comment Date: December 24, 1992.
Reply Comment Date: January 26, 1993.

By the Chief, Office of Plans and Policy

1. The Commission has received a "Motion for Extension of Time" in the above-captioned proceeding from General Instrument Corporation (GIC). GIC has requested extension of the reply comment deadline from January 22 to January 29. In support of its request, GIC notes that, because the Commission closed early on December 24, 1992, certain comments were not filed until December 28, 1992, the next business day. (Friday, December 25 was a holiday.) For this reason, some comments, including those of Titan Satellite Systems Corporation, were not available to GIC until December 29. Because of this delay, and because another holiday and the Presidential Inaugural events are also within the reply comment period, GIC believes that an extension is warranted. Good cause for an extension having been shown, *It is ordered,* That the deadline for reply comments in PP Docket No. 92–234 is extended to Tuesday, January 26, 1993. This additional filing time will compensate for the delay imposed on participants in this proceeding by the Commission's early closing on December 24, 1992. This action is taken pursuant to section 4(i) of the Communications Act of 1934, as amended, under authority delegated to the Chief, Office of Plans and Policy by § 0.271 of the Commission's Rules, 47 CFR 0.271.

Federal Communications Commission.

Robert Pepper,

Chief, Office of Plans and Policy.

[FR Doc. 93–2097 Filed 1–28–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 37

[Docket 48463; Notice 93–4]

RIN 2105–AB53

Transportation for Individuals With Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking to amend its Americans with Disabilities Act (ADA) regulation. The NPRM proposed changes in the provisions of the ADA rule with respect to detectable warnings in key rail stations, use of vehicle lifts by standees, and other issues. The extension is in response to requests from groups representing individuals with vision impairments for additional time to review the proposed rule and formulate comments.

DATES: Comments are requested by February 18, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 48463, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD), or Susan Schruth, Office of Chief Counsel, Federal Transit Administration, same address, room 9316. (202) 366–4011 (voice); (202) 366–2979 (TDD).

SUPPLEMENTARY INFORMATION: The Department of Transportation published a notice of proposed rulemaking (NPRM) to amend its Americans with Disabilities Act (ADA) rule on November 17, 1992 (57 FR 54210). Among other things, the NPRM proposed to postpone the compliance date for the installation of detectable warnings in key rail stations from July 26, 1993, to January 26, 1995. It also proposed to require transit providers to permit standees only on certain vehicle lifts (i.e., those meeting ADA standards or others that had handrails or other means to assist standees in maintaining their balance). The original 60-day comment period for this NPRM would end January 19, 1993.

The Department has received two requests from groups representing individuals with vision impairments to extend the comment period for an additional 60 days, in order to permit the groups and their constituents adequate time to review copies of the NPRM made available in accessible formats and to formulate comments on the proposal. The Department believes that it would be beneficial to extend the comment period for a time, in order to ensure that it will have the benefit of thoughtful comments from the widest possible spectrum of interested parties. At the same time, it is important for the Department to resolve the important issues raised in this NPRM expeditiously, in order to provide certainty to affected parties (e.g., rail operators who, under the existing regulation, are obliged to complete installation of detectable warnings by July 26, 1993). For these reasons, the Department has determined that a 30-day extension is appropriate. The comment period will now close on February 18, 1993. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 19th day of January 1993 at Washington, DC.

Walter B. McCormick, Jr.,

General Counsel, Department of Transportation.

[FR Doc. 93-1825 Filed 1-28-93; 8:45 am]

BILLING CODE 4910-62-M

Notices

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Agricultural Advisory Committees for Trade; Renewal

SUBJECT: Renewal of Agricultural Advisory Committees for Trade.

ACTION: Notice.

Notice is hereby given that the Secretary of Agriculture, after consultation with the United States Trade Representative, has renewed the following advisory committees: Agricultural Policy Advisory Committee for Trade and ten separate Agricultural Technical Advisory Committees for Trade in: Cotton, Dairy Products, Fruits and Vegetables, Grain and Feed, Livestock and Livestock Products, Oilseeds and Products, Poultry and Eggs, Processed Foods, Sweeteners, and Tobacco.

The purpose of these committees is to provide advice to the Secretary and the U.S. Trade Representative with respect to the trade policy of the United States pursuant to section 135(c) of the Trade Act of 1974 (Pub. L. 93–618) as amended. Meetings of these committees will be open only to members of the committees in accordance with matters listed in section 552b(c) of title 5 of the United States Code unless otherwise determined.

The renewal of such committees is in the public interest in connection with the duties of the Department imposed by the Trade Act of 1974, as amended.

Comments regarding the renewal of these committees should be addressed to Anne Joslin, Foreign Agriculture Service, United States Department of Agriculture, room 5065–S, Washington, DC 20250–1000.

Issued at Washington, DC, this 21st day of January.

Charles R. Hilty,

Assistant Secretary for Administration.

[FR Doc. 93–2125 Filed 1–28–93; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Direct Transactions of U.S. Reporter with Foreign Affiliate.

Agency Form Number: BE–577.

OMB Approval Number: 0608–0004.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 42,000 hours.

Number of Respondents: 10,500 respondents (4 responses per respondent).

Avg Hours Per Response: 1 hour.

Needs and Uses: This survey collects sample data on transactions and positions between U.S. parent companies and their foreign affiliates. Universe estimates are developed from the reported sample data. The data are needed for compiling the U.S. balance of payments accounts, the international investment position of the United States, and the national income and product accounts. They are also needed to measure the size of U.S. direct investment abroad, monitor changes in such investment, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding U.S. direct investment abroad.

Affected Public: Businesses or other for–profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093, room 3228, New Executive Office Building, Washington, DC 20503.

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification (TFC) Program: Application, Show Organizer and Quality Assurance Surveys.

Agency Form Numbers: ITA–4100P, ITA–4103P, and ITA–4124P.

OMB Approval Number: 0625–0130.

Type of Request: Revision of a currently approved collection.

Burden: 756 hours.

Avg Hours Per Response: 10.25 hours for ITA Form 4100P; 1 hour for ITA Form 4103P; and 10 minutes for ITA Form 4124P.

Needs and Uses: The U.S. Department of Commerce's Trade Fair Certification (TFC) program provides Department of Commerce endorsement and support for private sector–recruited and organized foreign trade shows. Certifying a trade show means the Commerce Department, through its U.S. and Foreign Commercial Service (US&FCS), certifies or endorses a qualified foreign trade event as a good and proven opportunity to promote U.S. exports. Certification also provides endorsement of the U.S. show organizer or agent as a reliable firm capable of effectively recruiting and managing a U.S. Pavilion or group of exhibitors at a specific show. Approximately 45 trade events are certified annually. The information collection enables the Department to determine which services provide real value–added assistance to an organizer and identify program strengths and weaknesses so that improvements can be made.

Affected Public: Businesses or other for–profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395–7340, room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Institute of Standards and Technology (NIST).

Title: State Technology Extension Program.

Agency Form Number: None.

OMB Approval Number: 0693–0010.

Type of Request: Reinstatement of a previously approved collection.

Burden: 1,200 hours.

Number of Respondents: 30.

Avg Hours Per Response: 40 hours.

Needs and Uses: In accordance with time provisions of the Omnibus Trade Competitiveness Act of 1988, NIST seeks to announce the availability of funds, and request proposals for funding under the State Technology Extension Program. The purpose of the information collection is to secure sufficient information from proposers to make it possible for NIST to determine applicant eligibility and select awardees.

Affected Public: Non-profit institutions, state and local governments.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Maya A. Bernstein, (202) 395–3785, room 3235, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the appropriate Desk Officer listed above.

Dated: January 22, 1993

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–2107 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–570–807]

Oscillating and Ceiling Fans From the People's Republic of China: Notice of Court Decision and Revocation of Antidumping Duty Order on Oscillating Fans

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On November 12, 1992, the United States Court of International Trade ("CIT") affirmed the Department of Commerce's ("Commerce") remand determination. *Holmes Products Corp.* v. *United States,* No. 91–12–00906, Slip Op. 92–203 (CIT November 12, 1992). The CIT's opinion has not been appealed. The remand resulted in a finding of a *de minimis* margin and a negative determination of sales at less-than-fair value for the investigation. Therefore, the antidumping duty order on oscillating fans from the People's Republic of China ("PRC") is hereby revoked.

EFFECTIVE DATE: November 22, 1992.

FOR FURTHER INFORMATION CONTACT: Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 377–3003.

SUPPLEMENTARY INFORMATION:

Background

In December 1991, Commerce published the antidumping duty order and amended final determination of sales at less-than-fair value for oscillating fans from the PRC. Antidumping Duty Orders and Amendments to Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 64240 (December 9, 1991). A respondent, which was comprised of two companies, Holmes Products Corp. and Esteem Industries LTD ("Holmes/Esteem"), instituted an action challenging Commerce's final determination. On July 24, 1992, the Court of International Trade issued *Holmes Products Corp* v. *United States,* 795 F. Supp. 1205, Slip Op. 92–118 (July 24, 1992), which remanded the determination to Commerce. Upon remand, Commerce determined that Holmes/Esteem had a *de minimis* margin, pursuant to 19 CFR 353.6, and that the final results of the less-than-fair value investigation were negative. This remand was affirmed by the CIT on November 12, 1992. *Holmes Products Corp.* v. *United States,* No. 91–12–00906, Slip Op. 92–203 (CIT November 12, 1992). The remand results were not appealed. Therefore, the antidumping duty order on oscillating fans from the People's Republic of China ("PRC") is hereby revoked.

Termination of Suspension of Liquidation

Pursuant to 19 U.S.C. 1516a(c), the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation and to proceed with liquidation of the merchandise which entered the United States after November 22, 1992, without regard to antidumping duties.

Dated: January 25, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2182 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–001]

Cotton Sheeting and Sateen From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton sheeting and sateen from Peru.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 4596) its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501; February 1, 1983). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On February 7, 1992, The American Textile Manufacturers Institute (ATMI) and certain of its member companies objected to our intent to revoke the order. On March 16, 1992, the Government of Peru questioned ATMI's and its member companies' standing to object to revocation as interested parties under 19 CFR 355.2(i). However, the Department concluded that ATMI and its member companies meet the definition of interested parties and has accepted their objection to revocation. See "Memorandum To: The File (C–333–001)" dated October 15, 1992. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: January 22, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2155 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–002]

Cotton Yarn From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of determination not to revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton yarn from Peru.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 4597) its intent to revoke the countervailing duty order on cotton yarn from Peru (48 FR 4508; Peru (48 FR 4501; February 1, 1983). Under 19 CFR 355.25(d)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On February 7, 1992, The American Textile Manufacturers Institute (ATMI) and certain of its member companies objected to our intent to revoke the order. On March 16, 1992, the Government of Peru questioned ATMI's and its member companies' standing to object to revocation as interested parties under 19 CFR 355.2(i). However, the Department concluded that ATMI and its member companies meet the definition of interested parties and has accepted their objection to revocation. See "Memorandum To: The File (C–333–001)" dated October 15, 1992.

Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: January 21, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2156 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

[Project I.D. No. 08–10–93005–01]

Business Development Center Applications: Denver MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $184,268 in Federal funds. An audit fee of $4,607 has been added to the Federal amount. The total funding breakdown is as follows: $188,867 Federal and $33,329 non-Federal for a total of $222,196. The period of performance will be from May 1, 1993 to April 30, 1994. The MBDC will operate in the Denver, Colorado MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is January 29, 1993. Applications must be postmarked on or before January 29, 1993.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., Room 7B23, Dallas, Texas 75242.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001. Requests for application kit must be in writing.

A pre-bid conference will be held on January 15, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: December 4, 1992.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–2254 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council (Council) will hold its 77th regular Council meeting on February 10–11, 1993, at the Conference Room, Ponce Hilton Hotel, 14 Santiago de los Caballeros Avenue, La Guancha, Ponce, Puerto Rico. The meeting will be held from 9 a.m. until 5 p.m. on February 10, and from 9 a.m. until 12 noon on February 11.

The Council will meet to make final decisions regarding the Second Amendment to the Shallow-Water Reef Fish FMP. The meeting will be conducted in the English language with simultaneous translation in Spanish. Fishermen and other interested persons are invited to attend. Members of the public will be allowed to submit oral or written statements regarding agenda items.

For more information contact Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, Puerto Rico 00918–2577; telephone: 809–/66–5926.

Dated: January 22, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–2138 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Coastal Pelagic Species Plan Development Team and Advisory Subpanel will hold a public meeting on February 10, 1993, beginning at 10 a.m. The meeting will be held in the small conference room at the California Department of Fish and Game, 330 Golden Shore, suite 50, Long Beach, CA.

The purpose of this meeting is to discuss the status of the Coastal Pelagic Species Fishery Management Plan.

For more information contact Patricia Wolf from the California Department of Fish and Game at (213) 590–5117 or Larry Jacobson from the National Marine Fisheries Service at (619) 546–7117.

Dated: January 22, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–2139 Filed 1–28–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List for production by the nonprofit agency listed:

Kit, Survival
  6545–00–139–3671
Nonprofit Agency: Opportunity Resources, Inc., Missoula, Montana

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–2189 Filed 1–28–93; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Addition

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Addition to Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 1, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1992 the Committee for Purchase from People who are Blind or Severely Disabled published notice (57 FR 56569) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial, Federal Center, 74 North Washington Avenue, Battle Creek, Michigan

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–2188 Filed 1–28–93; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and service to the Procurement List for production by the nonprofit agencies listed:

Commodities

Walker, Invalid
  6530–00–085–1814
  6530–01–183–3607
Nonprofit Agency: Human Technologies Corp., Utica, New York

Towel, Machinery Wiping
  7920–01–370–1365
  7920–01–370–1366
Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas

Service

Food Service, Naval Station, Pascagoula, Mississippi
Nonprofit Agency: Goodwill Industries of South Mississippi, Inc., Gulfport, Mississippi

Deletions

It is proposed to delete the following commodities from the Procurement List:

Shirt, Operating, Surgical
  6532–00–299–9627
Dining Packet, Tray Pack

7360-01-J19-2026

Beverly L. Milkman,

Executive Director.

[FR Doc. 93-2187 Filed 1-28-93; 8:45 am]

BILLING CODE 6820-33-M

COUNCIL ON ENVIRONMENTAL QUALITY

National Environmental Policy Act; Pollution Prevention

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only—memorandum to head of Federal departments and agencies regarding pollution prevention and the National Environmental Policy Act.

SUMMARY: This memorandum provides guidance to the federal agencies on incorporating pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and evaluating and reporting those efforts in documents prepared pursuant to the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Lucinda Low Swartz, Deputy General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20503. Telephone: 202/395-5754.

SUPPLEMENTARY INFORMATION:

Memorandum

To: Heads of Federal Departments and Agencies
From: Michael R. Deland
Subject: Pollution Prevention and the National Environmental Policy Act
Date: January 12, 1993

Introduction

Although substantial improvements in environmental quality have been made in the last 20 years by focusing federal energies and federal dollars on pollution abatement and on cleaning up pollution once it has occurred, achieving similar improvements in the future will require that polluters and regulators focus more on their efforts on pollution prevention. For example, reducing non-point source pollution—such as runoff from agricultural lands and urban roadways—and addressing cross-media environmental problems—such as the solid waste disposal problem posed by the sludge created in the abatement of air and water pollution—may not be possible with "end-of-the-pipe" solutions.

Pollution prevention techniques seek to reduce the amount and/or toxicity of pollutants being generated. In addition, such techniques promote increased efficiency in the use of raw materials and in conversation of natural resources and can be a most cost-effective means of controlling pollution than does direct regulation. Many strategies have been developed and used to reduce pollution and protect resources, including using fewer toxic inputs, redesigning products, altering manufacturing and maintenance processes, and conserving energy.[1]

This memorandum seeks to encourage all federal departments and agencies, in furtherance of their responsibilities under the National Environmental Policy Act (NEPA), to incorporate pollution prevention principles, techniques, and mechanisms into their planning and decisionmaking processes and to evaluate and report those efforts, as appropriate, in documents prepared pursuant to NEPA.

Background

NEPA provides a longstanding umbrella for a renewed emphasis on pollution prevention in all federal activities. Indeed, NEPA's very purpose is "to promote efforts which will prevent or eliminate damage to the environment * * *." 42 U.S.C. 4321.

Section 101 of NEPA contains Congress' express recognition of "the profound impact of man's activity on the interrelations of all components of the natural environment" and declaration of the policy of the federal government "to use all practicable means and measures * * * to create and maintain conditions under which man and nature can exist in productive harmony * * *." 42 U.S.C. 4331(a). In order to carry out this environmental policy, Congress required all agencies of the federal government to act to preserve, protect, and enhance the environment. See 42 U.S.C. 4331(b).

Further, section 102 of NEPA requires the federal agencies to document the consideration of environmental values in their decisionmaking in "detailed statements" known as environmental impact statements (EIS). 42 U.S.C. 4332(2)(c)). As the United States Supreme Court has noted, the "sweeping policy goals announced in section 101 of NEPA are thus realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at environmental consequences." *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332 (1989).

The very premise of NEPA's policy goals, and the thrust for implementation of those goals in the federal government through the EIS process, is to avoid, minimize, or compensate for adverse environmental impacts before an action is taken. Virtually the entire structure of NEPA compliance has been designed by CEQ with the goal of preventing, eliminating, or minimizing environmental degradation. Thus, compliance with the goals and procedural requirements of NEPA, thoughtfully and fully implemented, can contribute to the reduction of pollution from federal projects, and from projects funded, licensed, or approved by federal agencies.

Defining Pollution Prevention

CEQ defines and uses the term "pollution prevention" broadly. In keeping with NEPA and the CEQ regulations implementing the procedural provisions of the statute, CEQ is not seeking to limit agency discretion in choosing a particular course of action, but rather is providing direction on the incorporation of pollution prevention considerations into agency planning and decisionmaking.

"Pollution prevention" as used in this guidance includes, and is not limited to, reducing or eliminating hazardous or other polluting inputs, which can contribute to both point and non-point source pollution; modifying manufacturing, maintenance, or other industrial practices; modifying product designs; recycling (especially in-process, closed loop recycling); preventing the disposal and transfer of pollution from one media to another; and increasing energy efficiency and conservation. Pollution prevention can be implemented at any stage—input, use or generation, and treatment—and may involve any technique—process modification, waste stream segregation, inventory control, good housekeeping or best management practices, employee training, recycling, and substitution. Indeed, any reasonable mechanism which successfully avoids, prevents, or reduces pollutant discharges or emissions other than by the traditional method of treating pollution at the discharge end of a pipe or a stack should, for purposes of this guidance, be considered pollution prevention.[2]

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[1] For a discussion of such strategies and activities, see the Council on Environmental Quality's 20th *Environmental Quality* report, at 215-257 (1989); 21st *Environmental Quality* report, at 79-133 (1990); and 22nd *Environmental Quality* report, at 151-158 (1991).

[2] It should be noted that EPA, in accordance with the Pollution Prevention Act of 1990 (Pub. L. 101-508, 6601 *et seq.*), uses a different definition, one which describes pollution prevention in terms of source reduction and other practices which reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials,

Federal Agency Responsibilities

Pursuant to the policy goals found in NEPA section 101 and the procedural requirements found in NEPA section 102 and in the CEQ regulations, the federal departments and agencies should take every opportunity to include pollution prevention considerations in the early planning and decisionmaking processes for their actions, and, where appropriate, should document those considerations in any EISs or environmental assessments (EA) prepared for those actions.[3] In this context, federal actions encompass policies and projects initiated by a federal agency itself, as well as activities initiated by a non-federal entity which need federal funding or approval. Federal agencies are encouraged to consult EPA's Pollution Prevention Information Clearinghouse which can serve as a source of innovative ideas for reducing pollution.

1. Federal Policies, Projects, and Procurements

The federal government develops and implements a wide variety of policies, legislation, rules, and regulations; designs, constructs, and operates its own facilities; owns and manages millions of acres of public lands; and has a substantial role as a purchaser and consumer of commercial goods and services—all of these activities provide tremendous opportunities for pollution prevention which the federal agencies should grasp to the fullest extent practicable. Indeed, some agencies have a already begun their own creative pollution prevention initiatives:

Land Management

The United States Forest Service has instituted best management practices on several national forests. These practices include leaving slash and downed logs in harvest units, maintaining wide buffer zones around streams, and encouraging biological diversity by mimicking historic burn patterns and other natural processes in timber sale design and layout. The beneficial effects have been a reduction in erosion, creation of fish and wildlife habitat, and the elimination of the need to burn debris after logging—in other words, a reduction of air and water pollution.

The National Park Service and the Bureau of Reclamation have implemented integrated pest management programs which minimize or eliminate the use of pesticides. In addition, in some parks storm water runoffs from parking lots have been eliminated by replacing asphalt with the use of a "geo-block" system (interlocking concrete blocks with openings for grass plantings). The lot is mowed as a lawn but has the structural strength to support vehicles.

The Tennessee Valley Authority (TVA) has developed a transmission line right-of-way maintenance program which requires buffer zones around sensitive areas for herbicide applications and use of herbicides which have soil retention properties which allow less frequent treatment and better control. TVA is also testing whole tree chipping to clear rights-of-way in a single pass application, allowing for construction vehicle access but reducing the need for access roads with the nonpoint source pollution associated with leveling, drainage, or compaction. In addition, TVA is using more steel transmission line poles to replace traditional wooden poles which have been treated with chemicals.

For construction projects it undertakes, the Department of Veterans Affairs discusses in NEPA documents and implements pollution prevention measures such as oil separation in storm water drainage of parking structures, soil erosion and sedimentation controls, and the use of recycled asphalt.

Office Programs

Many agencies, including the Department of Agriculture's Economic Research Service and Soil Conservation Service, Department of the Army, Department of the Interior, Consumer Product Safety Commission, and Tennessee Valley Authority, have implemented pollution prevention initiatives in their daily office activities. These initiatives embrace recycling programs covering items such as paper products (e.g., white paper, newsprint, cardboard), aluminum, waste oil, batteries, tires, and scrap metal; procurement and use of "environmentally safe" products and products with recycled material content (e.g., batteries, tires, cement mixed with fly ash and recycled oil, plastic picnic tables); purchase and use of alternative-fueled vehicles in agency fleets; and encouragement of carpooling with employee education programs and locator assistance.

In planning the relocation of its headquarters, the Consumer Product Safety Commission (CPSC) is considering only buildings located within walking distance of the subway system as possible sites. By conveniently siting its headquarters facility, CPSC expects to triple the number of employees relying on public transportation for commuting and to substantially increase the number of agency visitors using public transportation for attendance at agency meetings or events.

Waste Reduction

The Department of Energy (DOE) has instituted an aggressive waste minimization program which has produced substantial results. DOE's nuclear facilities have reduced the sizes of radiological control areas in order to reduce low-level radioactive waste. Other facilities have scrap metal segregation programs which reduce solid waste and allow useable material to be sold and recycled. DOE facilities also are replacing solvents and cleaners containing hazardous materials with less or non-toxic materials.

The Department of the Army has a similar waste reduction program and is vigorously pursuing source reduction changes to industrial processes to eliminate toxic chemical usage that ultimately generates hazardous wastes. The Army's program includes material substitution techniques as well as alternative application technologies. For example, in an EIS and subsequent record of decision for proposed actions on Kwajalein Atoll, the Army committed to segregate solvents from waste oils in the Kwajalein power plant which will prevent continual contamination of large quantities of used engine oil with solvents. Oil recycling equipment will also be installed on power plant diesel generators allowing reuse of waste oil.

The Federal Aviation Administration (FAA) has also implemented a waste minimization program designed to eliminate or reduce the amount and toxicity of wastes generated by all National Airspace System facilities. This program includes using chemical life extenders and recycling additives to reduce the quantity and frequency of wastes generated at FAA facilities and providing chlorofluorocarbon (CFC) recycling equipment to each sector in

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energy, water, or other resources or the protection of natural resources by conservation. "Source reduction" is defined as any practice which reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal and which reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

[3] Under section 309 of the Clean Air Act (42 U.S.C. 7609), EPA is directed to review and comment on all major federal actions, including construction projects, proposed legislation, and proposed regulations. In addition, the Pollution Prevention Act of 1990 directs EPA to encourage source reduction practices in other federal agencies. EPA is using this authority to identify opportunities for pollution prevention in the federal agencies and to suggest how pollution prevention concepts can be addressed by the agencies in their EISs and incorporated into the wide range of government activities.

the FAA to that CFCs used in industrial chillers, refrigeration equipment, and air conditioning units can be recaptured, recycled, and reused.

Inventory Control

DOS is improving procurement and inventory control of chemicals and control of materials entering radiologically controlled areas. This can minimize or prevent non-radioactive waste from entering a radioactive waste stream, thus reducing the amount of low-level waste needing disposal.

In two laboratories operated by the Consumer Product Safety Commission, pollution prevention is being practiced by limiting quantities of potentially hazardous materials on hand.

The Tennessee Valley Authority's nuclear program has established a chemical traffic control program to control the use of disposal of hazardous materials. As a result of the program, hazardous materials are being replaced by less hazardous alternatives and use of hazardous chemicals and products has been reduced by 66%.

2. Federal Approvals

In addition to initiating their own policies and projects, federal agencies provide funding in the form of loans, contracts, and grants and/or issue licenses, permits, and other approvals for projects initiated by private parties and state and local government agencies. As with their own projects and consistent with their statutory authorities, federal agencies could urge private applicants to include pollution prevention considerations into the siting, design, construction, and operation of privately owned and operated projects. These considerations could then be included in the NEPA documentation prepared for the federally-funded or federally-approved project, and any pollution prevention commitments made by the applicant would be monitored and enforced by the agency. Thus, using their existing regulatory authority, federal agencies can effectively promote pollution prevention throughout the private sector. Below are some existing examples of incorporation of pollution prevention into federal approvals:

The Nuclear Regulatory Commission has required licensees to perform mitigation measures during nuclear power plant construction. These measures include controlling drainage by means of ditches, berms, and sedimentation basins; prompt revegetation to control erosion; and stockpiling and reusing topsoil. Similarly, mitigation measures required during the construction of transmission facilities include the removal of vegetation by cutting and trimming rather than bulldozing and avoiding multiple stream crossings, wet areas, and areas with steep slopes and highly erodible soils. The mitigation conditions in licenses serve to prevent pollution from soil erosion and to minimize waste from construction.

In the implementation of its programs, the Department of Agriculture encourages farmers to follow management practices designed to reduce the environmental impacts of farming. Such practices include using biological pest controls and integrated pest management to reduce the toxicity and application of pesticides, controlling nutrient loadings by installing buffer strips around streams and replacing inorganic fertilizers with animal manures, and reducing soil erosion through modified tillage and irrigation practices. Further, encouraging the construction of structures such as waste storage pits, terraces, irrigation water conveyances or pipelines, and lined or grassed waterways reduces runoff and percolation of chemicals into the groundwater.

The Department of Transportation's Maritime Administration is conducting research on a Shipboard Piloting Expert System. If installed on vessels, this system would provide a navigation and pilotage assistance capability which would instantly provide warnings to a ship master or pilot of pending hazards and recommended changes in vessel heading to circumvent the hazard. The system could prevent tanker collisions or groundings which cause catastrophic releases of pollutants.

The Department of the Interior's Minerals Management Service (MMS) prepares EISs which examine the effects of potential Outer Continental Shelf (OCS) oil exploration on the environment and the various mitigation measures that may be needed to minimize such effects. Some pollution prevention measures which are analyzed in these EISs and which have been adopted for specific lease sales include measures designed to minimize the effects of drilling fluids discharge, waste disposal, oil spills, and air emissions. For example, MMS requires OCS operations to use curbs, gutters, drip pans, and drains on drilling platforms and rig decks to collect contaminants such as oil which may be recycled.

Incorporating Pollution Prevention Into NEPA Documents

NEPA and the CEQ regulations establish a mechanism for building environmental considerations into federal decisionmaking. Specifically, the regulations require federal agencies to "integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts." 40 CFR 1501.2. This mechanism can be used to incorporate pollution prevention in the early planning stages of a proposal.

In addition, prior to preparation of an EIS, the federal agency proposing the action is required to conduct a scoping process during which the public and other federal agencies are able to participate in discussions concerning the scope of issues to be addressed in the EIS. See 40 CFR 1501.7. Including pollution prevention as an issue in the scoping process would encourage those outside the federal agency to provide insights into pollution prevention technologies which might be available for use in connection with the proposal or its possible alternatives.

Pollution prevention should also be an important component of mitigation of the adverse impacts of a federal action. To the extent practicable, pollution prevention considerations should be included in the proposed action and in the reasonable alternatives to the proposal, and should be addressed in the environmental consequences section of the EIS. See 40 CFR 1502.14(f), 1502.16(h), and 1508.20.

Finally, when an agency reaches a decision on an action for which an EIS was completed, a public record of decision must be prepared which provides information on the alternatives considered and the factors weighed in the decisionmaking process. Specifically, the agency must state whether all practicable means to avoid or minimize environmental harm were adopted, and if not, why they were not. A monitoring and enforcement program must be adopted if appropriate for mitigation. See 40 CFR 1505.2(c). These requirements for the record of decision and for monitoring and enforcement could be an effective means to inform the public of the extent to which[4] pollution prevention is included in a decision and to outline how pollution prevention measures will be implemented.

A discussion of pollution prevention may also be appropriate in an EA. While an EA is designed to be a brief discussion of the environmental impacts of a particular proposal, the preparer could also include suitable pollution prevention techniques as a means to lessen any adverse impacts identified.

See 40 CFR 1508.9. Pollution prevention measures which contribute to an agency's finding of no significant impact must be carried out by the agency or made part of a permit or funding determination.

Conclusion

Pollution prevention can provide both environmental and economic benefits, and CEQ encourages federal agencies to consider pollution prevention principles in their planning and decisionmaking processes in accordance with the policy goals of NEPA Section 101 and to include such considerations in documents prepared pursuant to NEPA section 102, as appropriate.[4] In its role as a regulator, a policymaker, a manager of federal lands, a grantor of federal funds, a consumer, and an operator of federal facilities which can create pollution, the federal government is in a position to help lead the nation's efforts to prevent pollution before it is created. The federal agencies should act now to develop and incorporate pollution prevention considerations in the full range of their activities.

David B. Struhs,

Chief of Staff.

[FR Doc. 93-2104 Filed 1-28-93; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0058]

Clearance Request for Schedules for Construction Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0058).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Schedules for Construction Contracts.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal construction contractors may be required to submit schedules, in the form of a progress chart, showing the order in which the contractor proposes to perform the work. Actual progress shall be entered on the chart as directed by the contracting officer. This information is used to monitor progress under a Federal construction contract when other management approaches for ensuring adequate progress are not used.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 2,500; responses per respondent, 2; total annual responses, 5,200; preparation hours per response, 1; and total response burden hours, 5,200.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0058, Schedules for Construction Contracts, in all correspondence.

Dated: January 21, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93-2148 Filed 1-28-93; 8:45 am]

BILLING CODE 6820-34-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The Architecture & Assessment Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 24 February 1993, at Headquarters ACC, Langley AFB, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to gather information, receive briefings on issues related to theater air defense. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697-4811.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 93-2199 Filed 1-28-93; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 22-23, 1993, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at the Sheraton Inn Tampa, 7401 East Hillsboro Avenue, Tampa, Florida, 33610, 813/626-0999.

FOR FURTHER INFORMATION CONTACT: Robert K. Chiago, Executive Director, National Advisory Council on Indian Education, 330 C Street SW., room 4072, Switzer Building, Washington, DC 20202-7556. Telephone: 202/205-8353.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 5342 of the Indian Education Act of 1988 (25 U.S.C. 2642). The Council is established to, among other things, assist the Secretary of Education in carrying out responsibilities under the Indian Education Act of 1988 (Part C, title V, Pub. L. 100-297) and to advise Congress and the Secretary of Education with regard to federal education programs in which Indian children or adults participate or from which they can benefit.

The meeting is open to the public. The agenda of the Executive Committee of the National Advisory Council on Indian Education includes finalizing recommendations for consideration by the Department of Education and the Congress relative to the reauthorization of the Office of Elementary and Secondary Education (OESE) Act. The current Act is due to expire on October 1, 1993. Additionally the Executive Committee will finalize dates and locations for a series of hearings to be held in conjunction with the reauthorization of the Act. The hearings will allow Indian communities with the opportunity to comment on various aspects of the Office of Elementary and Secondary Education Act.

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[4] As a guidance document, this memorandum does not impose any new legal requirements on the agencies and does not require any changes to be made to any existing agency environmental regulations.

The second day of the meeting permits the Executive Committee to finalize any discussions and/or actions from the previous day. The agenda also includes a review of the projected Council budget and activities for fiscal year 1994. Time is permitted on the agenda for interested individuals to address the Executive Committee with any concerns related to the reauthorization of the Office of Elementary and Secondary Education Act.

Records are kept of all Council proceedings and shall be available for public inspection at the office of the National Advisory Council on Indian Education located at 330 C Street SW., room 4072, Washington, DC 20202–7556 from the hours of 8 a.m. to 6 p.m. (e.s.t.), Monday through Friday.

Dated: January 14, 1993.

Robert K. Chiago,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 93–2192 Filed 1–28–93; 8:45 am]

BILLING CODE 4000–01–M

Privacy Act of 1974; Amendment to the Investigative Files of the Inspector General System of Records (System Number 18–10–0001)

AGENCY: Department of Education.

ACTION: Notice of changes to purpose clause and routine uses.

SUMMARY: On January 17, 1992, the Department (ED) published a notice of an altered system of records known as the Investigative Files of the Inspector General ED/OIG. The primary changes involved the routine uses for the information in the system, and the Department solicited comments on these changes. The only comments received came from the Office of Management and Budget (OMB), and certain changes discussed in the supplementary information section of this document were made to respond to the OMB comments.

DATES: This altered system of records will become effective January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Strong, U.S. Department of Education, 400 Maryland Avenue SW., room 4115, Switzer Building, Washington, DC 20202–1510. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The Department published in the **Federal Register** on January 17, 1992 (57 FR 2083), a notice of an altered system of records for the system of records known as the Investigative Files of the Inspector General ED/OIG. Comments were received from the Office of Management and Budget. As a result of receiving the OMB comments, the Department has not implemented the changes to the system of records as published on January 17, and, therefore, the routine uses currently in effect for this system of records are those that predated the January 17th notice. The following summarizes the OMB comments and the actions taken.

Purpose clause: The purpose clause for this system of records was amended as a result of the comments received from OMB regarding one of the routine uses. A routine use authorizes disclosure of records consistent with the purposes for which the records were collected. The routine uses for this system are appropriate and compatible with the purpose for which these records are collected in that they provide for disclosure to assist this agency and other governmental agencies and professional organizations in taking responsible action that will safeguard the public and combat fraud, waste, and abuse. This is fully consistent with the mandate of the Inspector General Act of 1978, 5 U.S.C. app. 3, to combat fraud, waste, and abuse and to coordinate with other governmental agencies and nongovernmental entities in doing so. In an effort to make clear this rationale, the "Purpose" statement has been amended to add a specific reference to this Office of Inspector General (OIG) responsibility under the Inspector General Act to coordinate relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG.

Routine use (a): OMB suggested that routine use (a) (Disclosure for use by other law enforcement agencies) was too vague and should more closely conform with the existing routine use for law enforcement disclosure. Accordingly, ED has revised this routine use to incorporate language from the current version of the routine use. The intention of this routine use is to allow the Office of Inspector General to continue to perform its statutory duty to refer evidence of fraud, waste, and abuse to the appropriate law enforcement authorities without running afoul of the holding in *Covert* v. *Harrington*, 667 F. Supp. 730 (E.D. Wash.), *affirmed on other grounds*, 876 F.2d 761 (9th Cir. 1989). The revised language is also intended to make clear that once a threshold standard is met (that is, that records in the system, alone or in conjunction with other information, indicate a violation or potential violation of law), all relevant information may be disclosed, not just information that is evidence of a violation. The new language recognizes that the recipient enforcement authority will have a legitimate need for a broader range of information than simply the direct evidence of the violation. For example, disclosure under this routine use would include information on witness credibility and likely defenses.

Routine use (c): OMB commented that the disclosures contemplated by this routine use (Disclosure for use in employment, employee benefit, security clearance, and contracting decisions both by ED and by other public agencies and professional organizations) should be made only with the consent of the individual. The Department agrees that it is generally preferable to make disclosures with consent, and consents will be solicited as a prerequisite to disclosure if practical. However, obtaining consent is not always practicable in the circumstances covered by this routine use. In an effort to circumscribe disclosure under this routine use without unduly compromising the OIG's duties and responsibilities, the routine use has been modified to delete authority for disclosure if it is practical to get a consent from the individual for disclosure.

With regard to routine use (c)(1) (Disclosures for Decisions by ED), disclosures for hiring and the issuance of a security clearance have been deleted because standard Government application forms provide the consents necessary, and it is within ED's power to require the consents as a prerequisite to hiring and granting a security clearance. In addition, because the Department of Education does not issue licenses, the authorization to disclose information from this file for licensing decisions by ED has been removed.

With regard to routine use (c)(2) (Disclosures for decisions by other public agencies and professional licensing organizations), the routine use has been modified to provide that for decisions regarding hiring and the granting of a security clearance, unconsented disclosure may not be made because it is within the capability of a requesting entity to obtain a consent from the individual. However, even in these cases, there may be circumstances under which the entity is unaware that this system of records contains information relevant to its decision. Accordingly, for hiring decisions and decisions about the granting of security clearances, the modified routine use will allow disclosure only of the fact that the system contains relevant information on an individual. This disclosure would permit the other entity to obtain the consent of the individual and request the information. In addition, in response to OMB concerns about the reliability of information released from this system of records under this portion of the routine use, the routine use has been amended so that, before a disclosure may be made under paragraph (c)(2), the Inspector General or delegate must make a determination that the information in the system of records is sufficiently reliable to support a referral for criminal, civil, administrative, personnel, or regulatory action.

Finally, paragraph (c)(2) has been modified, in accordance with OMB suggestion, so that professional organizations that may be recipients thereunder are limited to those with licensing authority.

Routine use (g): This routine use has been deleted, because disclosure necessary for suspension and debarment action by other Federal agencies may be made under routine use (a) (Disclosure for use by other law enforcement agencies), and, therefore, this routine use is unnecessary.

Routine use (h): OMB commented that this routine use was too broad, notwithstanding the OIG's legitimate need to seek legal advice from the Department of Justice. Accordingly, the routine use has been tailored to the OIG's operations by specifying that disclosure to the Department of Justice to obtain its advice will be limited to any matter relevant to an OIG investigation, audit, inspection, or other inquiry.

Routine use (i): OMB took the position that the disclosure of information to a Member of Congress acting on behalf of a constituent should be based upon a written, not an oral, request from the constituent. This routine use was not changed substantively from that currently in place for this system of records, which was based on specific guidance from OMB published in 1975. However, OMB has changed its view about whether a written request from the constituent is necessary since it published the 1975 guidance. The Department has amended this routine use to reflect OMB's current position and OIG's own experience with constituent requests to representatives, which are invariably written.

Routine use (j): This routine use for computer matching disclosure has been deleted, as suggested by OMB, because it is unnecessary under the Computer Matching and Privacy Protection Act. The Act specifically excludes from the definition of "matching program" computer matches that are performed by an agency (or any component thereof) that performs as its principal function any activity pertaining to the enforcement of criminal laws if those matches are performed for the purpose of gathering evidence against any person who is the subject of a specific criminal or civil law enforcement investigation. 5 U.S.C. 552a(a)(8).

Dated: January 25, 1993.

James B. Thomas, Jr.,

Inspector General.

Accordingly, ED hereby amends the system of records known as the Investigative Files of the Inspector General ED/OIG (System Number 18–10–0001) as follows:

18–10–0001

PURPOSES:

1. The purposes paragraph is amended by redesignating purpose number (5) as purpose number (6) and adding a new purpose number (5) to read as follows:

* * * * *

(5) coordinating relationships with other Federal agencies, State and local governmental agencies, and nongovernmental entities in matters relating to the statutory responsibilities of the OIG;

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

2. Routine use (a) is revised to read as follows:

* * * * *

(a) *Disclosure for use by other law enforcement agencies.* In the event that any records from this system of records, either by themselves or in combination with any other information, indicate a violation or potential violation of criminal or civil law or regulation, ED/OIG may disclose information from this system of records as a routine use to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

* * * * *

3. Routine use (c) is revised to read as follows:

* * * * *

(c) *Disclosure for use in employment, employee benefit, security clearance, and contracting decisions*—(1) *For Decisions by ED.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an ED decision concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

(2) *For decisions by other public agencies and professional licensing organizations.* ED/OIG may disclose information from this system of records as a routine use to a Federal, State, local, or foreign agency or other public authority or professional licensing organization, in connection with the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit.

ED/OIG may disclose to those agencies and professional licensing organizations the fact that this system of records contains information relevant to the hiring of an employee or issuance of a security clearance so that the agency or professional licensing organization may make a request for the information supported by the consent of the individual.

ED/OIG may make no disclosure under this paragraph ((c)(2)) unless the Inspector General or his or her designee determines that the information is sufficiently reliable to support a referral to another office within ED or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

* * * * *

5. Routine use (g) "Debarment and Suspension Disclosure" is removed, routine uses (h) and (i) are redesignated (g) and (h), respectively, and routine use (j) is removed.

6. Routine use (g), as redesignated in paragraph 5, is revised to read as follows:

* * * * *

(g) *Disclosure to the Department of Justice.* ED/OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary for obtaining its advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG.

* * * * *

7. Routine use (h), as redesignated in paragraph 5, is revised to read as follows:

* * * * *

(h) *Congressional Member Disclosure.* ED/OIG may disclose information from this system of records as a routine use from the record of an individual in response to an inquiry from the Member of Congress made at the written request of that individual; however, the Member's right to the information is no greater than the right of the individual who requested it.

[FR Doc. 93–2140 Filed 1–28–93; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Financial Assistance: The American Iron and Steel Institute

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department, Idaho Field Office (DOE, ID), announces that pursuant to the DOE Financial Assistance Rules 10 CFR part 600.114(e) it intends to enter into a cooperative agreement with the American Iron and Steel Institute (AISI) and subrecipients for the Advanced Process Control Program for the Steel Industry.

FOR FURTHER INFORMATION CONTACT: Ginger Sandwina, U.S. Department of Energy, Idaho Field Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, 208/526–8698.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is Public Law 93–577, Federal Non-Nuclear Energy Research and Development Act of 1974; to improve the efficiency of energy use in the industrial sector through research and development of high-risk, innovative technologies. In addition, the research is consistent with the purpose of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988, Public Law 100–680 to establish an industrial energy conservation and competitive technology program to conduct scientific research and development of steel and aluminum technologies.

The anticipated project period is for five years for a total cost of $22.791M. The total project cost will be cost shared 30% by industry and 70% by DOE. DOE funds for the first 12 months is estimated to be $3.827M.

The overall program objective is to improve energy efficiency and productivity in the steel industry by developing sensors and controls to support the intelligent and efficient production of quality steel products. The program has been divided into six major research task activities with program management by AISI. Specific objectives are as follows:

Task A—Optical Sensors and Controls for Improved Basic Oxygen Furnace (BOF) Operations. Subrecipients: Sandia National Laboratory and Bethlehem Steel Homer Research Laboratory. The objective of this major research task is to develop optical sensors for the BOF used in commercial steelmaking. The activity is organized in three parallel subtasks. The first will provide the necessary research and development to produce optical sensors for the in-situ, real-time measurement of competition and temperature of the off-gas components from the BOF. The second will focus on the development of optical sensors for measurements of bath and hot spot temperatures from within existing oxygen lances. The third focuses on the use of this new on-line process information to develop an improved BOF control strategy.

Task B—Improved Liquid Steel Feeding System for Slab Casters. Subrecipient: Westinghouse Science and Technology Center. The objective of this task is to develop an electromagnetic valve-based flow control system to address the significant problems that are currently experienced in the steel feeding of slab casters. The subrecipient will design and construct an electromagnetic valve system, and will supervise test demonstrations; first on a billet caster scale, and later on a production slab caster.

Task C—Microstructure Engineering in Hot Strip Mills. Subrecipients: National Institute for Standards and Technology (NIST) and University of British Columbia.

The objective of this major task item is to develop a predictive tool which can be used to quantitatively link the process parameters in a hot strip mill to the properties of the hot-rolled steel products.

The predictive tool will be a user-friendly computer model which incorporates heat flow, knowledge of microstructural phenomena (recrystallization, grain growth, precipitation and austenite decomposition) and structure-composition property relationships, to compute the thermal and microstructural evolution of steel during hot rolling, as well as final product properties (at the downcoiler), as a function of hot strip mill design and operating practice. The project includes laboratory testing and analysis of steel, and the development of computer programs which can then be incorporated into the control of hot strip mills.

Task D—On-Line Non-Destructive Mechanical Properties Measurements Using Magnetic and Ultrasonic Techniques. Subrecipients: NIST and National Research Council Canada and Industrial Materials Institute. The objective of this task is the development of magnetic and acoustic measurements techniques and sensors which can then be used to non-destructively and continuously monitor the mechanical properties of moving steel sheet on-line without physical contact. The mechanical properties will be inferred from both magnetic and ultrasonic measurements. Initial evaluations will be conducted in the laboratory, and at the end of a four year project it is expected that a prototype instrument will have been built and tested on a production line.

Task E—Phase Measurement of Galvanneal Steel. Subrecipients: Data Measurement Corporation (DMC) and Jet Propulsion Laboratory (JPL). The objective of this task is the demonstration of an instrument using x-ray fluorescence techniques which will measure the phase distribution of galvanneal (a special coated steel product) rapidly and non-destructively. The technique will utilize an existing instrument manufactured by DMC that determines the percent iron in zinc coatings on steel.

Design modifications to the instrument will be based on the joint research and expertise of DMC and JPL. The result of the research is intended to lead to the development of an on-line phase distribution gauge for galvanneal steel.

Task F—Temperature Measurement of Galvanneal Steel. Subrecipients: Oak Ridge National Laboratory. The objective of this task is to research, develop, and demonstrate a prototype system for in-process measurement of galvanneal steel strip temperatures. The prototype instrument will be based on thermographic phosphor technology. The equipment will be developed in the laboratory, and at the conclusion of the four year project period, will be demonstrated in an existing steel mill.

Task G—AISI Program Management: As recipient of the financial assistance award, AISI will provide overall program management functions.

Issued: January 13, 1993.

R. Jeffery Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 93–2179 Filed 1–28–93; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance: The Shoshone-Bannock Tribes

AGENCY: Idaho Field Office, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b)(2) it plans to negotiate and award non-competitive grant DE–FG07–90ID13225 to The Shoshone-Bannock Tribes. The grant implements provisions in the "Working Agreement Between The Shoshone-Bannock Tribes of the Fort Hall Indian Reservation and the Idaho Field Office of the United States Department of Energy Concerning Environment, Safety, Health, Cultural Resources, and Economic Self-Sufficiency," signed September 29, 1992. The intended effect of the grant is to provide resources for The Shoshone-Bannock Tribes to assure themselves that activities, including operations and environmental restoration, performed at the Idaho National Engineering Laboratory (INEL) Site are performed in such a manner that the health, safety, environment, and cultural resources of The Tribes are protected and to assist The Tribes in maintaining economic self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Linda A. Hallum, Contract Specialist, (208) 526–5545; U.S. Department of Energy, 785 DOE Place, MS 1221, Idaho Falls, ID 83401–1562.

SUPPLEMENTARY INFORMATION: DOE programs at the INEL Site cannot be conducted effectively without the support of the surrounding communities, including the Tribes resident at Fort Hall Indian Reservation. Programmatic and legal mandates to involve affected citizens in DOE planning and program performance monitoring require an aggressive outreach program, including transfer of funds through grants to certain affected parties, such as state and local governments and Indian tribes. Effective implementation of such a grant to The Tribes and establishment of the relationship described in the Working Agreement will promote the public good. The grant satisfies criteria at 10 CFR 600.7(b)(2)(i)(C) for justifying noncompetitive financial assistance. The applicant is a unit of government and the supported activity is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The grant award shall be for $300,000 per year for five years. DOE has authorized $300,000 for immediate initial funding, and has requested funding in out-year budget submittals. No cost-sharing is included in this grant. Statutory authority for this award is Public Law 95–41, DOE Organizational Act; Public Law 96–510, Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA); and Public Law 99–499, The Superfund Amendments and Reauthorization Act of 1986 (SARA).

Procurement Request Number: 07–93ID13225.000.

Dated: January 13, 1993.

R. Jeffrey Hoyles,

Acting Director, Contracts Management Division.

[FR Doc. 93–2178 Filed 1–28–93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF93–39–000]

AES Northside, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

January 22, 1993.

On January 14, 1993, AES Northside, Inc. (Applicant), of 1001 N. 19th Street, Suite 2000, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Maryland, and power output from the facility will be sold to Baltimore Gas & Electric Company under an executed contract. The facility will consist of circulating fluidized bed boiler(s) and an extraction/condensing steam turbine generator. Steam recovered from the facility will be used in an existing manufacturing facility for process uses. The primary energy source will be coal. The maximum net electric power production capacity of the facility will be 300 MW. The installation of the facility is scheduled to begin in late 1994.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2114 Filed 1–28–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM93–4–000]

Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations; Technical Conference

January 22, 1993.

Take notice that a technical conference will be convened in this proceeding on Friday, February 26, 1993 at 9:30 a.m. The purposes of the conference are to determine the progress made to date by the natural gas industry in developing interactive, user-friendly electronic bulletin boards and to review concrete proposals by the natural gas industry.

The conference will be held in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested parties are invited to attend. Requests to make formal presentations or give technical demonstrations, including time, format and special equipment requirements, should be submitted to the Commission in writing by February 8. The format of the conference and presentation times will be announced after that date.

For additional information, or to indicate your intent to participate in the conference, interested persons can call

Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0869.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2111 Filed 1–28–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93–02860T Wyoming-39]

Wyoming; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 22, 1993.

Take notice that on January 8, 1993, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lance Formation underlying a portion of Sublette County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers approximately 207,000 acres and includes all sections within the following townships:

Township 27 North, Range 107 West
Township 27 North, Range 108 West
Township 28 North, Range 107 West
Township 28 North, Range 108 West
Township 29 North, Range 107 West
Township 29 North, Range 108 West
Township 29 North, Range 109 West
Township 30 North, Range 108 West
Township 30 North, Range 109 West

The notice of determination also contains Wyoming's and the Bureau of Land Management's findings that the referenced portion of the Lance Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–2113 Filed 1–28–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93–145–000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

January 21, 1993.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP93–145–000]

Take notice that on January 6, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations for a certificate of public convenience and necessity authorizing Tennessee to: (1) Provide a firm transportation service for Selkirk Cogen Partners III, L.P. (Selkirk II), and (2) construct and operate certain facilities necessary to provide the service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes a firm transportation service of a maximum daily quantity of 55,000 dth for Selkirk II. The receipt point is at the interconnection of Tennessee and Iroquois Gas Transmission System at Wright, New York, and the delivery point is at the point of interconnection between Tennessee and Selkirk II at Selkirk, New York. Tennessee is proposing to charge Selkirk II the rates set forth in Tennessee's Rate Schedule NET-Northeast.

To provide this service, Tennessee proposes to construct a 1.12 mile loop of 36 inch diameter pipeline from M.P. 251+1.67 to M.P. 251+2.79 in Albany County, New York. Tennessee also proposes modification to the measurement facilities located at both the Wright and Selkirk meter stations. The total cost of the project is estimated to be $2,650,830.

Comment date: January 11, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Mid Louisiana Gas Company and Sea Robin Pipeline Company

[Docket No. CP93–146–000]

Take notice that on January 7, 1993, Mid Louisiana Gas Company (Mid Louisiana), 333 Clay Street, suite 2700, Houston, Texas 77002 and Sea Robin Pipeline Company (Sea Robin), 190 Fifth Avenue North, P.O. Box 2563, Birmingham, Alabama 35202–2563, also referred to as Applicants, filed a joint abbreviated application for authorization to abandon a transportation service provided by Sea Robin for Mid Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

The Applicants state that Sea Robin currently provides transportation service to Mid Louisiana pursuant to Sea Robin Rate Schedule X–14, which agreement was approved by the Commission in Docket No. CP76–428. The Applicants further state that Sea Robin originally was authorized to transport up to a total of 10,000 Mcf per day and that the quantity to be transported subsequently has been reduced to a current level of 6,700 Mcf per day pursuant to an order issued in Docket No. CP90–1403. The Applicants state that they have now mutually agreed to terminate the agreement and therefore request that the Commission grant abandonment of Rate Schedule X–14 as of January 1, 1993. Applicants state that as of that date, further transportation services by Sea Robin to Mid Louisiana would be provided pursuant to part 284 of the Commission's Regulations.

No abandonment of facilities would be proposed herein.

Comment date: February 11, 1993, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice, that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2110 Filed 1-28-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-36-000]

Natural Gas Pipeline Company of America; Informal Settlement Conference

January 22, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, March 3, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214(1992).

For additional information, contact Joan Dreskin at (202) 208-0738 or John P. Roddy at (202) 208-1176.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-2112 Filed 1-28-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-110-NG]

Alcan Aluminum Corp.; Final Order Granting Long-Term Authorization to Export and Import Natural Gas to and from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Alcan Aluminum Corporation authorization to export to Canada at St. Clair, Michigan, up to 8 MMcf per day of domestic natural gas and to import from Canada at Grant Island, New York, up to 8 MMcf per day of natural gas, with adjustments for line losses, for a 15-year term commencing on the date the Empire State Pipeline System is placed in service.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 25, 1993.

Anthony J. Como,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-2184 Filed 1-28-93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92-160-NG]

Chevron Natural Gas Services, Inc.; Application to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for blanket authorization to import and export natural gas from and to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 21, 1992, as supplemented on January 5, 1993, of an application filed by Chevron Natural Gas Services, Inc. (CNGS), for blanket authorization to import up to 100 Bcf of natural gas and export up to 100 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first delivery after March 31, 1993, the date CNGS' current blanket authorization expires. See DOE/FE Opinion and Order No. 314, issued May 9, 1989 (1 FE ¶70,223). CNGS intends to utilize existing pipeline facilities for the transportation of the volumes to be imported and exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Allyson C. Reilly, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9394

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667

SUPPLEMENTARY INFORMATION: CNGS, a Delaware corporation with its principal place of business in Houston, Texas, is a marketer of natural gas. CNGS intends to import and export natural gas from and to Mexico on a short-term and spot basis, either as an agent for its customers or for its own account. The specific terms of each import and export sale would be negotiated at market responsive prices. The gas to be imported would come from a variety of Mexican suppliers, including Petroleos Mexicanos, and the natural gas to be exported would be supplied by an affiliate of CNGS, Chevron U.S.A. Inc., as well as other producers and pipeline companies. CNGS requests authority to import and export this gas at any point on the U.S./Mexico border using existing pipeline facilities.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, domestic need for the gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that imports made under this arrangement would be competitive and there is no current need for the domestic gas that would be exported. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene, or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CNGS's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 22, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2185 Filed 1–28–93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92–156–LNG]

Phillips Alaska Natural Gas Corporation and Marathon Oil Company; Application for Blanket Authorization to Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt of an application filed jointly on December 9, 1992, by Phillips Alaska Natural Gas Corporation and Marathon Oil Company (Phillips/Marathon) requesting blanket authorization to export to various countries up to 10 trillion Btu's (approximately 10 Bcf) of liquefied natural gas (LNG) over a two-year term beginning on the date of first export. The proposed exports would take place at the existing Phillips/Marathon LNG facilities at Kenai, Alaska.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Phillips Alaska Natural Gas Corporation (PANGC), a Delaware corporation with its principal place of business in Bartlesville, Oklahoma, is a wholly-owned subsidiary of Phillips Petroleum Company, a Delaware corporation. Marathon Oil Company (Marathon), an Ohio corporation with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of USX Corporation, also a Delaware corporation. PANGC and Marathon are not affiliated with each other. Phillips/Marathon plan to export LNG on their own behalf and as agents for others. Applicants indicate the LNG export transactions will be short-term in duration, with prices adjusted on a monthly basis as required by market conditions and as compared with available competing fuels.

The decision on Phillips/Marathon's application for export authority will be made consistent with DOE's gas export policy guidelines, under which DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties who may oppose this application should comment in their responses on these issues as they relate to the requested export authority.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Phillips/Marathon's application is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 21, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2183 Filed 1–28–93; 8:45 am]

BILLING CODE 6450-01-M

[FE Docket No. 92–161–NG]

Aquila Southwest Marketing Corp.; Application for Blanket Authorization To Import and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on December 21, 1992, of an application filed by Aquila Southwest Marketing Corporation (Aquila) requesting blanket authorization to import and export a cumulative maximum of 360 Bcf of natural gas from and to Mexico over a two-year term beginning on the date of first import or export after March 1, 1993, the date that Aquila's current blanket authorization expires. See DOE FE Opinion and Order No. 473 issued January 31, 1991 (1 FE ¶ 70,406). The proposed imports and exports would take place at any point on the United States/Mexico border where existing pipeline facilities are located. Aquila would file with DOE quarterly reports detailing each import or export transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 1, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056,. FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4587

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503

SUPPLEMENTARY INFORMATION: Aquila is a Delaware corporation with its principal place of business in San Antonio, Texas. Aquila is an indirect subsidiary of Aquila Energy Corporation which in turn is a wholly-owned subsidiary of Utilicorp United, Inc. The corporate name of Aquila was previously Clajon Marketing, L.P. The corporate name was changed to Aquila Southwest Marketing Corporation effective July 1, 1992. See DOE FE Opinion and Order No. 473–A, issued August 6, 1992 (1 FE ¶ 70,622). Aquila is the marketing affiliate of Aquila Southwest Pipeline Corporation.

Aquila requests authorization to import and export natural gas on its own behalf or as an agent on behalf of others. Aquila would use existing pipeline facilities for transportation of the imported and exported gas. Aquila does not yet know the identity of the actual suppliers, transporters, or purchasers but states that all shipments of imported gas would be based on the specific needs of its purchasers and therefore would reflect market conditions existing at the time of negotiation of the purchase agreement. The domestically produced gas to be exported would be incremental to the needs of current domestic purchasers in the regions from which the supplies would be drawn.

The decision on the application for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, DOE considers the domestic need for the gas to be exported and any other issues determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangement. Parties that may oppose the application should comment in their responses on these issues. Aquila asserts that its proposal is in the public interest. Parties opposing Aquila's application bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Aquila's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 26, 1993.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–2292 Filed 1–28–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4557–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 11, 1993 through January 15, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65196–UT Rating LO, Coyote Hollow Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary

EPA had no environmental objections to the draft environmental impact statement.

ERP No. D–AFS–L65183–AK Rating EC2, Central Prince of Wales Ketchikan Pulp Long-Term Timber Sale, Implementation, Tongass National Forest, Prince of Wales Island, AK.

Summary

EPA had environmental concerns regarding impacts on water quality and assuring that best management practices are implemented. Water quality monitoring is required to ensure compliance with water quality standards. Additional information is needed on the effectiveness of monitoring for the effects of timber harvest and road construction on water quality.

ERP No. D–BLM–J60009–UT Rating EC2, UT–88 south of Ouray to I–70 Connector, Construction and Operation, Right-of-Way Approval and Funding, Uintah and Grand Counties, UT.

Summary

EPA identified environmental concerns regarding preservation of water quality. Additionally, the DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided and specific mitigation methods to minimize those impacts.

ERP No. D–BLM–K03006–CA Rating EC2, Cajon Crude Oil Pipeline Project, Construction, Operation and Transportation, from the Santa Barbara Channel and the San Joaquin Valley to the Los Angeles Basin, Granting of Right-of-Way Permit, San Bernardino and Los Angeles Counties, CA.

Summary

EPA expressed environmental concerns with potential impacts to water quality, riparian habitat and biodiversity. EPA asked for more information on earthquake-related spill risks and mitigation measures, efficiency of safety measures, contaminated soils testing, compliance with the 404(b)(1) Guidelines, conformity to the State Implementation Plan, cumulative impacts to public safety, and effects on other marketing alternatives, flood control and groundwater recharge facilities, and hazardous wastes on George Air Force Base. EPA asked that the FEIS analyze the feasibility of restricting the right-of-way to 25 feet for the entire length of the pipeline versus only the urban segment.

ERP No. D–COE–E36172–MS Rating EC2, Abiaca Creek Watershed Project, Demonstration Erosion Control Project, Implementation, Sediment and Flood Control Measures, Yazoo Basin, Mathews Brake National Wildlife Refuge, Carroll, Holmes and Leflore Counties, MS.

Summary

EPA had environmental concerns regarding the effectiveness and commitment to long-term efforts in the mitigation plan. EPA also noted that the proposed plan may pose short- and long-term sedimentation and turbidity problems.

ERP No. D–COE–K39035–HI Rating EC2, Ewa Beach Marina Project, Construction and Development, Marina Protection, Department of Army Permit Application, U.S. CGD Bridge Permit, Ewa Beach, Island of Oahu, Honolulu County, HI.

Summary

EPA expressed concern with potential impacts to the caprock aquifer, marine resource and wetlands. The DEIS did not include detailed information on compliance with the 404(b)(1) Guidelines, ocean disposal regulations and water quality standards. Although studies concerning compliance with these requirements may have been conducted, they were not included in the DEIS. EPA recommended that the FEIS include a detailed description and analysis of compliance with applicable environmental laws and regulations with major, relevant reports and studies supplied in appendices.

ERP No. D–FHW–J40128–ND Rating LO, North Dakota 1806 Transportation Improvements, from the Heart River Bridge in Mandan to Fort Lincoln State Park, Funding and COE 404 Permit, Morton County, ND.

Summary

EPA had no environmental objections to the draft environmental impact statement.

ERP No. DS–IBR–J35005–00 Rating EO3, Animes-La Plata Project, Additional Information concerning Agricultural, Municipal and Industrial Water Supplies, Animas and La Plata Rivers, San Juan County, NM and La Plata and Montezuma Counties, CO.

Summary

EPA objected to the project because it was not consistent with State water quality standards and it failed to provide adequate mitigation for riparian and wetland habitat losses. EPA found the document to be inadequate due to its failure to fully analyze the impacts of the U.S. Fish and Wildlife Service's Reasonable and Prudent Alternative to avoid jeopardizing endangered species and its failure to thoroughly evaluate the impact of placement of fill material into waters of the U.S. Further, the Bureau inappropriately relied on future studies to complete environmental impact assessment.

Final EISs

ERP No. F–BLM–J70017–MT Judith-Valley-Phillips Comprehensive Resource Management Plan, Implementation, Lewistown District, Judith Basin, Fergus, Petroleum, Phillips and Valley Counties, MT.

Summary

EPA expressed environmental concerns regarding changes in the preferred alternative in the final EIS. Several of these changes pose potential environmental impacts, including impacts to the westslope cutthroat trout and to unique ecological areas.

Dated: January 26, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–2176 Filed 1–28–93; 8:45 am]

BILLING CODE 6560-50-U

[ER–FRL–4557–3]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Availability of Environmental Impact Statements Filed January 18, 1993 through January 22, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930017, DRAFT EIS, COE, OH, Cleveland Harbor Navigation Channels Maintenance, Confined Disposal Facility (Site 10B 15 Year) Construction and Use, Lake Erie, Cuyahoga River, Cuyahoga County, OH, Due: March 15, 1993, Contact: Tod Smith (716) 879–4173.

EIS No. 930018, FINAL EIS, AFS, UT, Kamas Valley Grazing Allotment Management Plan, Implementation, Wasatch-Cache National Forest, Kamas Ranger District, Summit County, UT, Due: March 01, 1993, Contact: Calvin Baker (801) 783–4338.

EIS No. 930019, FINAL EIS, EPA, TX, Formosa Industrial Facilities Continued Operation and Expansion, Waste Water Discharges, National Pollutant Discharge Elimination System Permit Issuance, Point Comfort, Jackson County, TX, Due: March 01, 1993, Contact: Norm Thomas (214) 655–2260.

EIS No. 930020, FINAL EIS, FHW, NC, Hickory East Side Thoroughfare Transportation Improvement, US 127 to I–40 east of Hickory and continuing to US 70 in the vicinity of Startown Road, Funding, Section 404 Permit, City of Hickory Catawba County, NC, Due: March 15, 1993, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 930021, DRAFT EIS, AFS, MT, Bob Marshall and Great Bear Wilderness Areas Noxious Weed Management Projects, Implementation, Flathead National Forest, Spotted Bear and Hungry Horse Ranger Districts, Flathead, Powell, Missoula and Lewis and Clark Counties, MT, Due: March 15, 1993, Contact: Greg Warren (406) 387–5243.

Amended Notices

EIS No. 920434, DRAFT EIS, AFS, OR, 1991 Warner Creek Fire Recovery Project, Northern Spotted Owl Habitat and Other Resources Reforestation, Northern Spotted Owl Habitat Conservation Area 0–10, Willamette National Forest, Oakridge Ranger District, Lane County, OR, Due: February 12, 1993, Contact: Terri Jones (503) 782–2291. Published FR 11–13–92—Review period extended.

EIS No. 920463, REVISED DRAFT EIS, DOE, MO, Weldon Spring Site, Remedial Action/Feasibility Study for Chemical Plant, Funding, National Priorities List, St. Charles County, MO, Due: February 19, 1993, Contact: Stephen McCracken (314) 441–8086. Published FR -11–27–92—Review period extended.

Dated: January 26, 1993.

William D. Dickerson,

Deputy Director Office of Federal Activities.

[FR Doc. 93–2175 Filed 1–28–93; 8:45 am]

BILLING CODE 6560-01-U

[FRL–4557–7]

Science Advisory Board; Public Meetings and Conference Call

Under Public Law 92–463, notice is hereby given of the following Science Advisory Board (SAB) Committee Meetings. All meetings listed below are open to the public; however, seating is often limited and is on a first come basis.

1. *The Radon Engineering Cost Subcommittee of the Drinking Water Committee (DWC)* will meet on February 8, 1993 to review a Congressionally required radon reduction cost study prepared by EPA. This meeting will be held from 9 am to 6 pm at the U.S. Environmental Protection Agency Headquarters, Conference Room 3N, North Conference Center, Mall Level, 401 M Street, SW, Washington, DC 20460. The proposed charge to this Subcommittee is: (a) To determine whether EPA offices are employing a reasonable approach for estimating the cost-effectiveness of mitigating airborne indoor radon in residences; and (b) to assess whether the technologies which have been judged by EPA as being Best Available Technology (BAT) for each size category, and whether the cost estimates of design, operation and maintenance of these technologies are accurately estimated. Copies of the documents presented to the Committee as background and for review are available from Ms. Nena Shaw, U.S. EPA, Office of Groundwater and Drinking Water, Division of

Drinking Water Standards, 401 M Street SW, Mail Code WH 550D, Washington, DC 20640, Phone: (202) 260–5555. If necessary, this Subcommittee will conduct an open report writing/drafting session on February 9th in Room 5N (see address above) beginning at 8:30 am, adjourning no later than 3 p.m.

2. *The Drinking Water Committee (DWC)* will meet February 9–10, 1993 (from 9 a.m. to 5:30 p.m. on February 9th and 8:30 a.m. to 4:30 p.m. on February 10th) at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The purpose of the meeting is to: (a) Be briefed on the Radon Engineering Cost Subcommittee's review of the radon cost studies; (b) review the *Revision of Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health*, including discussion of criteria for cancer and non-cancer effects, exposure, bioaccumulation, minimum data, and microbiological risks; (c) review the draft *Requirements for Nationwide Approval of New and Optionally Revised Methods for Inorganic and Organic Parameters in National Primary Drinking Water Regulations Monitoring (also known as the "Chemistry Testing Protocol")*; and (d) to receive briefings on the Agency's recent risk characterization initiative, the draft *Working Paper for Considering Draft Revisions to the U.S. EPA Guidelines for Cancer Risk* (EPA/600/AP–92/003), and on recent research findings concerning arsenic carcinogenicity. To obtain copies of the documents pertaining to (b) and (d) above (except the Draft Revisions to the U.S. EPA Guidelines for Cancer Risk) contact Ms. Lynn Feldpausch, U.S. EPA, Office of Science and Technology, Health and Ecological Criteria Division, 401 M Street SW, Mail Code WH–586, Washington, DC 20460, Phone: (202) 260–8149. To obtain the Draft Revisions to the U.S. EPA Guidelines for Cancer Risk, contact the Center for Environmental Research Information (CERI), U.S. EPA, 26 Martin Luther King Drive, Cincinnati, OH 45268, Phone: (513) 569–7562 or Fax: (513) 569–7566. To obtain copies of the "Chemistry Testing Protocol," contact Mrs. Frances Dolby, U.S. EPA, SAB Staff Office, Mail Code A101F, 401 M Street, SW, Washington, DC 20460, Phone: (202) 260–6552 or FAX: (202) 260–7118.

3. *The Radiation Advisory Committee (RAC)* will conduct a conference call meeting February 10, 1993 from 3:30–5:30 p.m. Eastern Standard Time (EST) for preliminary consideration of portions of a Congressionally required multi-media risk assessment study addressing the "risk of adverse human health effects associated with exposure to various pathways of radon" (as required under the Safe Drinking Water Act Implementation, published in the Congressional Record September 25, 1992). For copies of relevant review materials, please contact Ms. Nena Shaw, U.S. EPA, Office of Groundwater and Drinking Water, Division of Drinking Water Standards, 401 M Street SW, Mail Code WH 550D, Washington, DC 20460, Phone: (202) 260–5555. The number of conference lines available is limited, therefore, persons wishing to participate should telephone Mrs. Kathleen Conway, SAB Staff Office, no later than 12 noon (EST) Monday February 8 at (202) 260–6552. The study will be reviewed at the RAC's February 17–19, 1993 meeting in Arlington, Virginia (see item 5. below).

4. *The RAC's Radon Science Subcommittee* will meet February 16–17 (from 9 a.m. Tuesday, February 16th until noon Wednesday, February 17th) at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The Committee will receive briefings on radon research and plan its review of research needs for the areas of radon measurement, exposure estimation, interpretation of data, uncertainty, and communications. No Committee review materials are available for this meeting. The proposed charge for this review is: (a) What are the remaining important areas of scientific uncertainty that affect (1) the estimates of exposure and risk associated with radon, and (2) risk reduction strategies (such as mitigation)?; (b) broadly, what scientific efforts are currently underway, both within the Agency and outside, that would address these areas?; and (c) what are the near- and longer-term research needs for the Agency's own programs, and what are the priorities for these efforts?

5. *The Radiation Advisory Committee* will meet February 17–19, 1993 (from 1 p.m. Wednesday, February 17th until 5 p.m. on Friday, February 19th) at the Howard Johnson National Airport Hotel, 2650 Jefferson Davis Highway, Arlington, Virginia. The Committee will review a Congressionally required multi-media risk assessment study of radon prepared by EPA (see item 3. above). The proposed charge for this review is to determine the adequacy of revisions of inhalation risk from radon progeny and the adequacy of uncertainty analysis regarding risk assessment of water-borne radon, including health risk analysis and exposure analysis. The Committee will also hear briefings on the plans of the RAC's Radon Science Subcommittee (see item 4. above) and on various Agency activities, discuss a commentary on quantitative uncertainty analysis, discuss issues relating to naturally occurring radioactive materials and residual radioactivity and consider the Committee's FY93 activities. The SAB Consultation on aqueous pathway modeling, which was discussed at the October 1992 RAC meeting has been assigned to the SAB's Environmental Engineering Committee (EEC). A separate **Federal Register** notice will describe that EEC meeting which is currently scheduled for March 3–4, 1993.

FOR FURTHER INFORMATION: Copies of the documents given to the Science Advisory Board for review are provided by the Agency to the public; they are not available from the Science Advisory Board staff. The contact persons for these documents are noted above. For additional administrative information concerning these meetings, including draft agendas, please contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (A101F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone: (202) 260–6552; Fax: (202) 260–7118. For additional technical or procedural information concerning these meetings, please contact the appropriate Science Advisory Board Scientific/Engineering Staff member (Designated Federal Officials): Dr. K. Jack Kooyoomjian for Meeting 1; Mr. Manuel Gomez for Meeting 2; and Mrs. Kathleen Conway for Meetings 3, 4, and 5.

Anyone wishing to provide written public comments for any of the above announced meetings should forward at least thirty-five copies to Mrs. Clark no later than ten days before the meeting. Copies of these statements received in the SAB Staff Office ten days prior to a meeting will be mailed to the Committee before that meeting; copies received after that date will be provided to the Committee at the meeting. On the conference call, opportunities for oral comment will generally be limited to no more than five minutes per speaker and no more than fifteen minutes per conference call. A fixed number of conference lines have been reserved for the meeting. For the conventional meetings, opportunities for oral comment will generally be limited to no more than ten minutes per speaker and no more than thirty minutes per day. Commenters should register with Mrs. Clark at least ten days before the meeting, being sure to specify at which meeting they wish to provide comments.

Dated: January 13, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–2166 Filed 1–28–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonville Port Authority

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200576–005

Title: Jacksonville/Blue Star Terminal Agreement

Parties:

Jacksonville Port Authority;
Blue Star (PACE) Ltd.

Synopsis: The amendment substitutes Blue Star (North America) Limited as a party to the Agreement in lieu of Blue Star (PACE) Ltd.

Dated: January 25, 1993.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–2129 Filed 1–28–93; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended: Regency Maritime Corp., Jo-Dim Investment Trust S.A. and North River Overseas S.A., 260 Madison Ave., New York, NY 10016–2401.

Vessel: Regent Rainbow.

Dated: January 25, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2142 Filed 1–28–93; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Record of Decision; Expansion of the United States Border Station; Del Rio, TX—January 13, 1993

The General Services Administration (GSA) announces its decision to purchase land northeast of the existing Border Station in Del Rio, TX to use for expansion of the Border Station.

The 60 acre tract is located in two separate sections. A 52 acre section is directly across Rio Grande Street to the northeast; the other 8 acres is across U.S. Spur 277 to the northwest of Rio Grande Street.

The existing Border Station, including commercial import inspection lot and dock facilities, is located northeast of the Rio Grande, three-quarters of a mile inland on high ground above the river floodplain, at the terminus of the Del Rio-Ciudad Acuna International Bridge. At present, the Border Station houses the U.S. Customs Service, the Immigration and Naturalization Service (INS), and the Department of Agriculture Animal and Plant Health Inspection Service (USDA–APHIS) for the purpose of routine checks and inspections of private and commercial vehicles and pedestrians entering the United States from Mexico.

Renovations were made to the existing Border Station in 1990 to support traffic flow increases brought by a growing area population, more trade, a new four-lane bridge leading to the station and improved capabilities of the Mexican Customs Services. These renovations, called Phase I in the EIS, included a truck ramp to the present import dock and expansion of the non-commercial inspection facilities. These improvements are considered an interim solution to the expansion needs at Del Rio.

The proposed project will be completed in two separate phases, known as Phase II and Phase III. Phase II will involve construction of a 25-space import dock, import lot, and import office across Rio Grande Street to the northeast. In addition, a hazardous material containment area, bulk cargo compound, a narcotics storage building, and an export lot will be constructed. The export lot will be built north of Rio Grande Street and across the street from the new Border Station. The existing primary commercial inspection booths will continue to be used. A buffer zone will be constructed to shield residential areas from noise, light and other annoying factors. This buffer zone will consist of either a grassed berm, a brick or concrete wall, or other appropriate sound barrier. After the year 2000, planning and design for Phase III facilities will begin. Phase III will include a new 25-space dock module addition to the initial 25-space dock, providing a total of 50 available dock spaces. Phase III would also include a new administration building, employee and visitor parking, headhouse, primary and secondary vehicle inspection, commercial primary inspection booth, an impound lot, empty truck inspection lot, and dog kennels.

GSA's decision to take this action is in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), and GSA Order PBS P 1095.4B, GSA.

Alternatives Considered

The Environmental Impact Statement (EIS) evaluated potential environmental impacts which would result from the proposed project. These include, but are not limited to, short-term impacts during construction as well as long-term changes in traffic, socio-economic concerns and physical conditions in the area.

The alternatives considered include the following:

No Action Alternative

The EIS considered a No Action Alternative, i.e., no change in the current facility. This alternative was rejected since the import lot is operating at full capacity at present and more traffic is projected to cross at Del Rio throughout the planning period.

Action Alternative No. 1

This alternative would divert traffic to other border crossings away from Del Rio. There are numerous other border crossings along the United States/Mexico border. Unfortunately, the highway system in Mexico is not always good and there are not easily accessible routes from Ciudad Acuna to these other crossing points. The system of using roadblocks, closing or restricting traffic on the existing Del Rio bridge, or other similar physical or economic deterrents causing trucks to travel to other crossing points would not be feasible or practical. As part of this alternative, the crossing at Amistad Dam, located near Del Rio, was considered. However, the crossing is a narrow, two-lane road, not suitable for import lot inspections and unable to withstand heavy truck traffic without damage to the dam.

Action Alternative No. 2

This alternative would expand the border station to the southwest into the floodplain. This would involve the purchase and fill of approximately 61 acres of land located entirely within the floodplain of the Rio Grande. However, during agency review of the preliminary drawings for the expansion, the International Boundary and Water Commission (IBWC) stated emphatically that construction in the floodplain of the Rio Grande would not be allowed under any circumstance. Additionally, Federal regulations (Executive Order No. 11988) prohibit the construction of U.S. Government projects in the floodplain if other viable alternatives are available.

Action Alternative No. 3

This alternative involves developing land along Rio Grande Street northeast of the Border Station. This would require closing Rio Grande Street, taking 11 homes, and cause patrons of the Faith Mission to walk an extra .6 miles to reach the mission. In addition, since many of the pedestrians are sick and elderly, this is not a favorable alternative and would not be popular locally.

Action Alternative No. 4

This alternative includes purchase of 52 acres of mostly agricultural land directly across Rio Grande Street to the northeast and 8 Acres across Spur 277 to the Northwest from the existing Border Station. This alternative would initially involve purchase and relocation of three homes (only two currently occupied) and two commercial buildings. The remainder of the site consists of agricultural land. The expansion would be accomplished through phased construction as mentioned earlier. There are no wetlands on the site and it is outside the 100-year floodplain. There are no known threatened or endangered species, and no known historic or archaeological resources on the site. No significant impact on air quality or noise is expected.

Utility services will be provided by the city of Del Rio, with the exception of wastewater, which will remain on a septic tank system during Phase II construction and operation. Any adverse impacts, such as noise or lights, to the neighboring areas will be mitigated by construction of a barrier, discussed in the migation section that follows.

Preferred Alternative

The alternative described under No. 4 above was identified as both the "environmentally preferred alternative" and GSA's preferred alternative. The site was identified as the preferred alternative in the Draft EIS issued to the public in May, 1992. The Final EIS was issued for public comment on November 27, 1992.

Environmental Mitigation

All practicable means to avoid or minimize impacts to the area are being considered in the development of the project.

A 250-foot buffer zone (berm, wall, or other appropriate noise barrier) will be constructed on the east side of the border station expansion area to eliminate adverse noise impacts to residential areas. Any impacts on cultural resources would be primarily associated with construction at the site. In the event that cultural resources are uncovered during construction, work will stop and GSA will be contacted. Two commercial buildings and three homes will be relocated as part of this project.

Much consideration was given to the Faith Mission on how to minimize problems of access by the patrons to the Mission.

During a comment period of the EIS, GSA received continued support for the expansion project and no indication that other projects, such as bridges or development projects in the area, would interfere with or obviate the need for the proposed expansion. GSA received one comment from a land owner concerned about how his property would be affected by the expansion. GSA Will work with all land owners to accommodate their future housing needs.

GSA believes that there are no outstanding environmental issues to be resolved with respect to the Border Station expansion in Del Rio, Texas. Questions regarding the EIS prepared for this action may be directed to Shelly Rives, Region 7 Planning Staff (7PL), General Services Administration, 819 Taylor Street, Fort Worth, TX, 76132, (817) 334–4234.

Dated: January 20, 1993.

Approved:

Hollis V. Rutledge,

Regional Administrator (7A), GSA, Region 7, Forth Worth, TX.

[FR Doc. 93–2150 Filed 1–28–93; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the changes in Chapter KA, the Office of the Assistant Secretary for Children and Families and Chapter KL, the Office of Management. Specifically, to transfer the ACF strategic planning function from KL, Office of Management to KA, Office of the Assistant Secretary.

The changes are as follows: 1. Amend KA.10 Organization to delete it in its entirety and replace it with the following:

KA.10 Organization. The Office of the Assistant Secretary for Children and Families is headed by the Assistant Secretary who reports directly to the Secretary and consists of:

The Office of the Assistant Secretary (KA)
Executive Secretariat Office (KAB)
Regional Operations Staff (KAC)
President's Committee on Mental Retardation Staff (KAD)
Advisory Board on Child Abuse and Neglect Staff (KAE)
Planning Staff (KAF)

2. Amend Chapter KA.20 Functions to delete paragraph A in its entirety and replace it with the following:

KA.20 Functions. A. The Office of the Assistant Secretary is responsible to the Secretary for carrying out ACF's mission and provides general supervision to the major components of ACF.

These responsibilities include providing executive leadership and direction to plan and coordinate ACF program activities to assure their effectiveness, approving instructions, policies, publications, and grant awards issued by ACF, and representing ACF in relationships with governmental and non-governmental organizations. The

Assistant Secretary for Children and Families also serves as the Director of the Office of Child Support Enforcement but will sign official Child Support Enforcement documents as Assistant Secretary for Children and Families. The Principal Deputy Assistant Secretary serves as alter ego to the Assistant Secretary on program matters and acts in the absence of the Assistant Secretary.

The Deputy Assistant Secretary for Program Operations serves as principal advisor and counsel to the Assistant Secretary for Children and Families on all aspects of management and regional operations, and on ongoing program policy matters. The Deputy for Program Operations serves as liaison to the General Counsel and, as appropriate, initiates action in securing resolution of legal matters relating to ACF management and program issues. The Deputy for Program Operations advises the Assistant Secretary for Children and Families on ongoing program policy matters to ensure program compliance and adherence to program statutes; provides oversight and guidance to ACF program and staff offices on strategic planning efforts and the development of short and long range planning initiatives within ACF; and represents the Assistant Secretary for Children and Families on all programmatic and administrative litigation matters. The Deputy for Program Operations provides executive leadership and direction for the Office of Management, Regional Operations Staff, Planning Staff, and provides day-to-day direction to the regional offices on behalf of the Assistant Secretary for Children and Families.

3. Amend Chapter KA.20 Functions to add paragraph F as follows:

KAF. The Planning Staff provides oversight and guidance to ACF program and staff offices on strategic planning efforts. It is responsible for the development of short and long range planning initiatives with ACF, including planning and implementation related to the Secretary's Program Directions. It makes recommendations to and advises the Assistant Secretary for Children and Families on all planning matters including strategic planning; manages agency-wide planning systems for determining goals; develops planning guidance for the Assistant Secretary for Children and Families and provides guidance and technical assistance to ACF components in developing operational plans; develops and implements systems to assess progress in implementing plans; and serves as the focal point for leadership and the coordinating of cross-component, intra- and inter-departmental initiatives which involve ACF programs.

4. Amend KL.00 Mission to delete it in its entirety and replace it with the following:

KL.00 Mission. The Office of Management (OM) advises the Assistant Secretary for Children and Families in the broad areas of human resource management, organizational analysis, facilities and telecommunications management, and acquisition management. OM provides leadership and direction to ACF in such administrative and management activities as personnel, staff development, labor relations, support services, management analysis, internal controls, and organizational studies. It directs and coordinates services and support to meet ACF's space management, facilities services and voice telecommunications needs, and it provides centralized acquisition management services to ACF.

5. Amend KL.10 Organization to delete it in its entirety and replace it with the following:

KL.10 Organization. The Office of Management is headed by a Director who reports to the Deputy Assistant Secretary for Program Operations and is organized as follows:

Office of the Director (KLA)
Division of Human Resources (KLB)
Division of Management Analysis (KLD)
Division of Administrative Services (KLE)
Division of Acquisition Management (KLF)

6. Amend KL.20 Functions, paragraph C. to delete it in its entirety.

Effective Date: January 15, 1993.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

[FR Doc. 93-2128 Filed 1-28-93; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, January 15, 1993.

(Call PHS Reports Clearance Officer on 202-690-7100 for copies of requests)

1. Health Education Assistance Loan (HEAL) Program—Loan Application Form—0915-0038—The application is needed for students to apply for HEAL loans. Schools use the application to determine a student's eligibility and maximum approvable amount of each loan. Lenders use the application to determine student eligibility and the amount of the installment or disbursement to be given the borrower. Respondents: Individuals or households, Businesses or other for-profits, and Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (minutes)
Reporting: Applicant	29,000	1	32
Reporting: Applicant school lender	286	104	32
Lenders	22	1,318	35

Estimated total annual burden....47,851 hours

2. The Feasibility Study for the Household Component of the National Medical Expenditure Survey (NMES): Patient Verification Survey—New—The Patient Verification Survey Component of the Feasibility Study will assess the quality of patient supplied data on medical care with provider supplied data. *Respondents*: Businesses or other for-profit, Non-profit institutions, Small businesses or organizations. *Number of Respondents:* 780; *Number of Responses per Respondent*: 1; *Average Burden Per Response:* .40 hours; *Estimated Annual Burden;* 310 hours.

3. Resources and Services Database of the CDC National AIDS Clearinghouse—0920-0255—The CDC National AIDS Clearinghouse (NAC) is a crucial member of the network of public and private organizations providing AIDS/HIV educational services. This data collection enables NAC to build and maintain a current, complete literary and service resource for AIDS/HIV. The data are also used as the main information source for the National AIDS hotline.

Respondents: State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; Small businesses or organizations. *Number of Respondents:* 11,917; *Number of Responses per Respondent:* 1.107; *Average Burden Per Response:* 0.317 hours; *Estimated Annual Burden:* 4,185 hours.

4. Symptom and Disease Prevalence Questionnaire and Supplemental Modules—New—Symptom and disease prevalence and biomarker surveys will

be conducted on private citizens living near hazardous waste sites who may have been exposed to hazardous substances and on private citizens living in comparison communities. The studies consist of a core questionnaire and supplemental organ modules to assess the adverse effect on kidney, liver, neurobehavioral and respiratory systems. *Respondents:* Individuals or households. *Number of Respondents:* 13,500; *Number of Responses per Respondent:* 1; *Average Burden Per Response:* .415 hours; *Estimated Annual Burden:* 5,604 hours.

5. Methadone Treatment Quality Assurance System Feasibility Study—Previously 0930–0154—The project examines the feasibility of a performance reporting system for Methadone treatment programs. Relative performance on objective, verifiable outcomes will be assessed considering client case-mix. Information from performance reports to programs will assist in improving the quality of treatment they provide. This submission is for the Field Test only to develop instruments and procedures. *Respondents:* Individuals or households, businesses or other for profit, Federal agencies or employees, non-profit institutions, small businesses or organizations. *Number of Respondents:* 2,612; *Number of Responses per Respondent:* 2.0789; *Average Burden Per Response:* .64664 hours; *Estimated Annual Burden:* 3,511 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: January 26, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–2201 Filed 1–28–93; 8:45 am]

BILLING CODE 4160–17–M

Ad Hoc Subcommittee on Access to Services, National Vaccine Advisory Committee, Public Hearing

AGENCY: Office of the Assistant Secretary for Health, HHS.

SUMMARY: The Office of the Assistant Secretary for Health is announcing the forthcoming Hearing on Vaccine Supply to be held by the Subcommittee on Access to Services, National Vaccine Advisory Committee.

DATE: Date, Time and Place: February 24, 1993, at 9 a.m. to 4 p.m., Lister Hill Auditorium, National Library of Medicine, National Institutes of Health, Building 38A, 8600 Rockville Pike, Bethesda, MD 20894. The entire Hearing is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Kenneth J. Bart, M.D., M.P.H., Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program Office, 5600 Fishers Lane, Parklawn Building, Room 13A–56, Rockville, Maryland 20857, (301) 443–0715.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Subcommittee

Those desiring to make presentations should notify the contact person before February 19, 1993, and submit a brief statement of the information they wish to present to the Subcommittee. Requests should include the names and addresses of proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the Hearing who does not request an opportunity to speak in advance of the Hearing will be allowed to make an oral presentation at the conclusion of the Hearing, if time permits, at the chairperson's discretion.

Open Subcommittee Discussion: The Subcommittee will receive testimony and other information from vaccine and other health care experts on the economic and commercial underpinnings associated with alternatives for the supply and delivery of vaccines. This information will be used to form the basis for vaccine policy studies of alternative models to ensure achievement of the immunization coverage goals described in the "Healthy People 2000" report (i.e., 90 percent coverage for 2-year olds). Testimony will be presented on the administrative, policy and programmatic effects of alternative vaccine supply and delivery models on public programs and institutions, including state and local health departments, Medicaid, the Centers for Disease Control Immunization program, etc.

Specifically, the Subcommittee is interested in receiving testimony and other relevant information in the following areas:

- alternative vaccine supply models that are most feasible for the public and private sectors in the United States;
- the impact on the supply, cost, price, distribution, and delivery of vaccines associated with alternative vaccine supply models;
- the impact of these alternative models on the participants in the different components of the vaccine market;
- the ability of each alternative to achieve established public health immunization goals;
- the incentives and disincentives for U.S. market entry/production of vaccine;
- the potential impact of scientific advances that would affect maintaining an adequate supply of vaccines (i.e., improvements in the cold chain, more stable antigens, additional vaccine combinations, etc.); and
- suggested Federal policy recommendations for assuring an adequate supply, distribution, and delivery of vaccines.

The Hearing will be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the Hearing.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Subcommittee members and the charter of the National Vaccine Advisory Committee will be available at the Hearing. Those unable to attend the Hearing may request this information from the contact person.

Dated: January 19, 1993.

Kenneth J. Bart,

Executive Secretary, NVAC.

[FR Doc. 93–2161 Filed 1–28–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3562]

Submission of Proposed Information Collection to OMB Forms Required for the Comprehensive Improvement Assistance Program (CIAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comment on the subject proposal.

DATES: Comments must be received by February 12, 1993.

ADDRESSES: Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; or Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 Seventh Street SW., room 4178, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of HUD, 451 Seventh Street SW., room 4178, Washington, DC 20410, Telephone (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to the forms and other information required for the Comprehensive Improvement Assistance Program (CIAP). The CIAP is authorized by section 14 of the U.S. Housing Act of 1937, as amended by section 119 of the Housing and Community Development (HCD) Act of 1987 and section 509 of the Cranston-Gonzales National Affordable Housing Act (NAHA). It also is requested that OMB complete its review within fourteen days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

(1) *Title of the information collection proposal:* Forms Required for the Comprehensive Improvement Assistance Program

(2) *Office of the agency to collect the information:* Office of the Assistant Secretary for Public and Indian Housing

(3) *Description of the need for the information and its proposed use:* The data that will be collected on the forms are necessary for HUD to determine that a Public Housing Agency/Indian Housing Authority (herein referred to as HA) has complied with applicable statutory and regulatory requirements relative to applying for and implementing the CIAP. HUD will use the information to process an HA's CIAP Application, make funding decisions, and monitor approved programs.

(4) *Agency form numbers:* Form HUD–52820; Form HUD–52822; Form HUD–52825; Form HUD–53001; Form HUD–50070; Form HUD–50071; SF–LLL; and other narrative documentation.

(5) *Members of the public who will be affected by the proposal:* HAs and residents.

(6) *How frequently information submissions will be required:* Varies.

(7) *An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response:* See attached chart with a total of 22,298 burden hours.

(8) *Type of request:* Revised.

(9) *The names and telephone numbers of an agency official familiar with the proposal:* Janice D. Rattley, Office of Public and Indian Housing, (202) 708–1800

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 7, 1993.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM (CIAP) PAPERWORK BURDEN HOURS

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Local official and resident/homebuyer consultation requirements.	968.220/905.624	900	1	900	4.0	3600
Form HUD–52822, CIAP application	968.215(c)/905.618(c)	900	1	900	4.0	3600
Form HUD–50071, certification for contracts, grants, loans and cooperative agreements.	968.215(c)/905.618(c)	900	1	900	0.25	225
SF–LLL, disclosure of lobbying activities	968.215(c)/905.618(c)	50	1	50	0.25	13
Form HUD–52825, CIAP budget*	968.215(j)/905.618(j)	600	1	600	8.0	4800
Form HUD–52820, HA board resolution approving CIAP Budget.	968.215(j)/905.618(j)	600	1	600	0.5	300
Form HUD 50070, certification for a drug-free workplace.	968.215(j)/905.618(j)	600	1	600	0.25	150
List of participating turnkey III homeownership units/costs.	968.215(j)/905.618(j)	20	1	20	0.5	10
Form HUD–52825, CIAP progress report*	968.250/905.651	600	2	1200	4.0	4800
Contracting documents/budget revisions	968.236 and 968.245/905.642 and 905.648.	600	6	3600	1.0	3600
Form HUD–53001, actual modernization cost certificate.	968.260/905.657	600	1	600	2.0	1200
Total annual paperwork burden hours						22,298

*Form HUD 52825 is a combined Budget/Progress Report.

Existing burden hours for the CIAP are:

OMB No. 2257–0044, application requirements	40,190
OMB No. 2257–0047, survey instrument (physical needs assessment)	3,600
OMB No. 2257–0048, local official and resident/homebuyer consultation	18,240
OMB No. 2257–0065, project implementation schedule	900
OMB No. 2257–0048, reporting	5,250
Total Existing Burden Hours	68,180

Supporting Statement for Comprehensive Improvement Assistance Program (CIAP)

A. Justification

1. Under section 14 of the U.S. Housing Act of 1937, as amended (Act), Public Housing Agencies and Indian Housing Authorities (herein referred to as HAs) that own or operate fewer than 250 units are eligible to apply and compete for CIAP funds.

(Note: HAs with 250 or more units are entitled to receive a formula grant under the Comprehensive Grant Program (CGP)).

The CIAP has been streamlined to make it easier for smaller HAs to participate in the program and to give smaller HAs the same flexibility as CGP agencies. The CIAP Application has been simplified, the processing groups have been reduced from six to two (Group 1 and Group 2), and the modernization types have been reduced from 11 to two (Emergency and Other). The interim rule establishes a four-step process for obtaining approval of a modernization program, as follows: (1) CIAP Application submission by HA; (2) completeness and eligibility review by HUD; (3) technical processing by HUD, including rating and ranking of the HA Applications; and (4) Joint Review by HUD. After Joint Review, HUD makes funding decisions and requests funded HAs to submit the CIAP Budget and other documents.

In order to reduce paperwork and limit the application package to statutorily required items, HUD plans to eliminate the following requirements previously approved under OMB No. 2577–0044: (1) Form HUD–52824, Five-Year Funding Request Plan; (2) Modernization Organization and Staffing Plan; (3) HA Report on Local Compliance with Cooperation Agreement: (4) Report on Project Implementation Schedule; (5) Narrative Statement Addressing Technical Review Factors; and (6) Lead Toxicity Risk Assessment form (which was used by HUD to determine funding priority for lead-based paint testing and is not the professional risk assessment referred to in Section 14(a)(5) of the Act). In addition, Form HUD–52827, Physical Needs Assessment (OMB No. 2577–0047) has been eliminated. The Replacement Reserve Estimate (OMB No. 2577–0044) and evidence of resident, homebuyer and local official consultation (OMB No. 2577–0048) have been incorporated into Form HUD–52822, CIAP Application. The Project Implementation Schedule (OMB No. 2577–0065) has been incorporated into Form HUD–52825, CIAP Budget/Progress Report.

Form HUD–52820, HA Board Resolution Approving CIAP Budget, Form HUD–50070, Certification for a Drug-Free Workplace, and additional information on modernization of Turnkey III homeownership units will be due after funding selection at the time of CIAP Budget submission. Deferral of the preparation of the CIAP Budget until Joint Review will reduce unnecessary paperwork for smaller HAs. The Department recognizes the limited staffing of smaller HAs and wants to ensure that all smaller HAs may apply for CIAP funds using existing staff resources.

2. In summary, the information collection requirements for the revised CIAP are as follows:

Before Funding Selection

Local Official and Resident/Homebuyer Consultation Requirements
HUD–52822, CIAP Application
HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements
SF–LLL, Disclosure of Lobbying Activities

After Funding Selection

HUD–52825, CIAP Budget/Progress Report
Form HUD–52870, HA Board Resolution Approving CIAP Budget
Form HUD–50070, Certification for a Drug-Free Workplace
List of Participating Turnkey III Homeownership Units/Costs

Implementation

HUD–52825, CIAP Budget/Progress Report
Contracting Documents/Budget Revisions
Form HUD–53001, Actual Modernization Cost Certificate

Before Funding Selection

Local Official and Resident/Homebuyer Consultation Requirements. Section 14(d) of the Act requires that HAs develop the application in consultation with appropriate local officials and with residents of the housing developments for which assistance is requested. To assure compliance with the statute, HUD requires evidence of consultation through HA certification on the CIAP Application and documentation during Joint Review.

Evidence of Resident Consultation. During Joint Review, the HA is required to provide HUD with its written evaluation of resident recommendations. HUD determines whether the HA has afforded residents a reasonable opportunity to present their views and has given full and serious consideration to their recommendations. Resident/homebuyer support is a technical review factor in HUD's rating of HA applications.

Evidence of Homebuyer Consultation. During Joint Review, the HA is required to provide the HUD Field Office with similar evidence of homebuyer consultation, where the proposed modernization involves a project under the Turnkey III Homeownership Opportunities Program or the Mutual Help Homeownership Opportunities Program. For consultation purposes under homeownership modernization, homebuyers are considered "tenants" within the meaning of the statute. Except where the modernization work is limited to the correction of development deficiencies, conduct of energy audits, undertaking of cost-effective energy conservation, and lead-based paint testing and abatement, modernization of Turnkey III units results in an increase in the purchase price and the amortization period for each participating homebuyer family. Therefore, before the modernization is approved, each homebuyer family that decides to participate must agree in writing that its Homebuyer Agreement will be amended upon approval of the CIAP Application to provide that, as a result of the amount of modernization cost attributed to its home, the purchase price and amortization period will be increased. The HA is required to submit with the CIAP Budget a list of the Turnkey III units to be modernized and the estimated cost attributed to each home. After HUD approval of the CIAP Budget, the HA shall amend the Homebuyer Agreements.

Evidence of Local Consultation. Before submission of the CIAP Application, the HA is required to consult with appropriate local officials regarding how the proposed modernization may be coordinated with any local plans for neighborhood revitalization, economic development, drug elimination and expenditure of local funds, such as Community Development Block Grant (CDBG) funds. HUD reviews HA compliance with this requirement during Joint Review. Local government support is a technical review factor in HUD's rating of HA applications.

HUD–52822, CIAP Application, requires the following: (1) a general description of HA development(s) including the physical condition (section 14(d)(1) of the Act); (2) the physical and management improvement needs to meet the Secretary's standards in section 14(j) of the Act (section 14(d)(3) of the Act); (3) general description of major work categories, such as kitchens and bathrooms, required to correct identified deficiencies and estimated costs (section 14(d)(4) of the Act); (4) an estimate of the replacement needs for equipment systems or structural elements (section 14(d)(2) of the Act); and (5) a certification concerning consultation with local officials and residents/homebuyers (section 14(d) of the Act) and the viability of the developments. A copy of this form is attached.

HUD-50071, Certification for Contracts, Grants, Loans and Cooperative Agreements, is required by the Byrd Amendment of HAs established under State law. For funding requests over $100,000, the HA certifies that it has not and will not make any prohibited payment from federally appropriated funds. This has been a statutory requirement since 1989. A copy of this form is attached.

SF-LLL, Disclosure of Lobbying Activities, is required by the Byrd Amendment of HAs established under State law. For funding requests over $100,000, the HA discloses where any funds other than federally appropriated funds will be or have been used to influence federal employees, Members of Congress, and congressional staff regarding specific grants or contracts. This has been a statutory requirement since 1989. A copy of this form is attached.

After Funding Selection

HUD-52825, CIAP Budget/Progress Report, covers all developments being funded under the modernization program for the current FFY. It consists of three parts: Part I—Summary shows a summary of costs by major development account; Part II—Supporting Pages describes, for each development, management improvement and HA-wide need, the work items being funded to meet identified needs, as required by the Act; and Part III—Implementation Schedule sets forth, for each development, three target dates for program implementation (award of first architect/engineer contract, obligation of all funds, and expenditure of all funds). Part III was previously a separate submission, but has been incorporated into the CIAP Budget for administrative convenience to both HAs and HUD. Part III is used by HAs as a planning tool and by HUD Field Offices as a monitoring tool. Form HUD-52825 is not a new requirement and is the controlling document during implementation in terms of HUD-approved work items and costs. A copy of this form is attached. Form HUD-52825 combines both the CIAP Budget and the Progress Report.

Form HUD-52820, HA Board Resolution Approving CIAP Application, sets forth various certifications by the HA with regard to compliance with Federal laws and regulations and program requirements. The Board Resolution is not a new requirement. A copy of this form is attached.

Form HUD-50070, Certification for a Drug-Free Workplace, is required by the Drug-Free Workplace Act and implementing regulations at 24 CFR Part 630. The Certification has been a statutory requirement since 1989. A copy of this form is attached.

List of Participating Turnkey III Homeownership Units/Costs sets forth the number of Turnkey III homeownership units to be included in the modernization program and, where applicable, the estimated cost attributed to each home. This ensures that the HA is ready to have the homebuyer family execute an amendment to its Homebuyer Agreement, reflecting an increase in the purchase prices and an extension of the amortization period where the modernization work involves non-emergency health and safety items. The List is not a new requirement. There is no form for this information collection.

Implementation

Form HUD-52825, CIAP Budget/Progress Report, combines both the CIAP Budget and the Progress Report. (Note: The Progress Report replaces Form HUD-52826, Schedule/Report of Modernization Expenditures.) The HA is required to report semiannually on funds obligated and expended by the HA against funds approved by HUD, and on implementation progress against its implementation schedule. This form provides the HA with a systematic method of recording and reporting its actual obligations and expenditures and for determining the current status of its CIAP programs in progress. It also enables the HUD Field Office to monitor HA obligations and expenditures and to ensure that modernization work is progressing in a timely manner. Where management improvements are included in the approved CIAP Budget, the HA is required to attach a narrative report, describing the current status of each management improvement work item(s), including the numerical status where the performance goal was quantified. The HA also describes any actions taken during the quarter toward accomplishment of the goal and explains any lack of progress or actions taken. Where the report is incomplete, inaccurate or inadequate, the Field Office takes all necessary steps, in writing, by telephone or by site visit, to reach mutual agreement with the HA on corrective action. A copy of this form is attached.

Contracting Documents/Budget Revisions. Based on HA past performance in modernization and in-house capability, HUD establishes thresholds for various contracting actions and budget revisions. The HA is required to submit for prior HUD review and approval actions which exceed the established thresholds. These actions include: architect/engineer and other professional service contracts; construction solicitations; contract modifications; and budget revisions.

Form HUD-53001, Actual Modernization Cost Certificate (AMCC), is required for fiscal closeout of a completed program. The HA submits the cost certificate to HUD when all funds have been expended and all contractor liens have been released. Any necessary adjustments for under- or over-advances of funds are made and then the cost certificate is included in the HA's next regularly scheduled annual audit to verify costs. Following audit and the reconciliation of any figures, the Field Office approves the AMCC. The HA remits any excess funds that may have been provided and any excess authority is recaptured. The AMCC is the primary document used to provide a final accounting of the modernization funds for a particular CIAP program. Such documentation and its audit are essential to the fiscal closeout of programs and ensure a proper accounting of Federal funds.

3. We do not know of any improved information technology that would reduce the burden.

4. All existing information was examined and no duplication was found.

5. There is no similar information already available which could be used or modified for use for the purposes described in paragraph 2.

6. The major statutory requirements, such as the needs assessment and replacement estimate on Form HUD-52822, CIAP Application, do not make any special allowances for small HAs. The Department has made an effort to reduce the level of detail so that smaller HAs may more easily apply for funding.

7. The information is required for HUD review and approval of the HA's modernization program.

8. There are no special circumstances that require the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

9. The Department wishes to implement the simplified CIAP for the FY 1993 processing cycle. Accordingly, the Department has prepared an interim rule revising the CIAP to increase efficiency, reduce unnecessary requirements, combine or simplify current requirements, and provide new flexibility for both HAs and HUD. In developing the simplified CIAP, the Department consulted with a number of smaller HAs, including holding a one-day conference, to determine how the CIAP could be simplified and streamlined. The results of that consultation are reflected in this paperwork submission.

10. There is no assurance of confidentiality provided to HAs. This information is public information.

11. There are no questions of a sensitive nature included in the requirements.

12. There is no cost to the Federal Government.

13. See attached tabulation of annual reporting burden.

14. A change in burden hours is being requested due to the decreased number of respondents applying for CIAP assistance and the reduced requirements for the application process. HUD is eliminating the following requirements: (1) Form HUD–52824, Five-Year Funding Request Plan; (2) Modernization Organization and Staffing Plan; (3) HA Report on Local Compliance with Cooperation Agreement; (4) Report on Project Implementation Schedule; (5) Narrative Statement Addressing Technical Review Factors; (6) Lead Toxicity Risk Assessment form; and (7) Form HUD–52827, Physical Needs Assessment. Implementation of statutory requirements as described in paragraph 2 is being simplified.

15. At no increased burden hours for HAs, HUD Field Offices use the information contained in the CIAP Application and CIAP Budget to complete a year-end survey from Headquarters. The survey collects data on all CIAP approvals for the Fiscal Year just ending. This information allows Headquarters to know exactly how many applications were received and the amount of CIAP funds approved for different types of modernization activities. The tabulated results of this survey are available usually in the summer of the following year. The survey results are primarily for internal use, but are made available to outside persons or groups upon request.

B. Collection Information Employing Statistical Methods

Not applicable.

BILLING CODE 4210-33-M

CIAP Application

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (exp. mm/dd/yy)

Public Reporting Burden for this collection of information is estimated to average 4.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0044), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

HA Name	FFY	Replacement Estimate: $

Development Priority (1)	Development Number (2)	General Description of Physical Condition and Need (3)	Estimated Cost (4)

I certify that all developments listed in in Column (2) have long-term physical and social viability, including prospects for full occupancy, and that the requirements for consultation with residents/homebuyers and local officials have been met.	Signature of Executive Director and Date X

Page ___ of ___

form **HUD-52822** (1/12/93)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-52822, CIAP Application

Report Submission: Prepare and submit Form HUD-52822, in an original and two copies (or any lesser number of copies as specified by the HUD Field Office), to the HUD Field Office by the deadline established annually in the Notice of Funding Availability (NOFA), published in the *Federal Register*. Use as many pages of this form as are necessary to complete the application. In addition, send a copy of this form to the appropriate local officials.

Heading Instructions:

HA Name -- Enter the Housing Authority (HA) name.

FFY -- Enter the Federal Fiscal Year (FFY) for which the CIAP Application is being submitted.

Replacement Estimate -- Enter an estimate of the cost to replace equipment systems or structural elements which would normally be replaced over the next 30 years. Do not enter where only funds for planning or management improvements are requested.

Column Instructions:

Column (1), Development Priority -- Enter a number indicating the relative priority for funding for each development listed in Column (2). It is not necessary to enter a number for the categories of "Management Improvements" and "HA-Wide Needs."

Column (2), Development Number -- Enter the abbreviated number (e.g. VA 36-1) of each development in the HA's inventory for which the HA is requesting funding. After listing the HA developments, enter the categories of "Management Improvements" and "HA-Wide Needs," if applicable.

Note: The HA has the option to include only the specific developments for which funding is requested in the current FFY or to include all its developments, regardless of whether funding is requested. The advantages of including all developments is that it then provides HUD and the HA with maximum flexibility during Joint Review to consider funding of any development or, where the HA is approved for funding, to use leftover funds at any development.

Column (3), General Description of Physical Condition and Need -- For each development listed in Column (2), enter a general description of its current physical condition and the major work categories (e.g., kitchens, bathrooms) required to correct identified deficiencies. Separately identify any emergency work. For example: "Development is 25 years old and needs general upgrading in the areas of electrical, plumbing, kitchens, bathrooms and community room. Two accessible units needed to meet Section 504 requirements. Also need exterior lighting, playground equipment, correction of site drainage problem, and new roof (emergency due to major leaks and interior damage)." If a development has no needs, enter "no needs."

For the category of "Management Improvements" listed in Column (2), enter a general description of management deficiencies and improvements needed to correct identified deficiencies. For example: "No preventive maintenance (PM) program. Need to develop PM checklist and train maintenance employee on how to use." The HA shall identify any deficiencies in the following areas: management, financial, and accounting control systems; adequacy and qualifications of personnel employed by the HA in the management and operation of its developments for each category of employment; and adequacy and efficacy of: resident programs and services; development and resident security; selection and eviction of residents; maintenance; unit turnover; and any other management policies and procedures.

For the category of "HA-Wide Needs" listed in Column (2), enter any other needs which are not covered under a specific development or by management improvements. Such needs may include: administration, architect/engineer fees, nondwelling structures and equipment which are not specific to a particular development, etc. For example: "Need architect/engineer to develop plans and specifications for physical work, carry out sealed bid procurement, administer contract and inspect work in progress. Also need new siding on maintenance storage shed which serves all developments."

Column (4), Estimated Cost -- For each development and for each management improvement and HA-wide need in Column (3), enter the estimated cost. Only enter the estimated cost for a major work category which is an emergency; otherwise, enter only the total for each development. If a development has needs, but no funding is requested, or if a development has no needs, enter "zero." Enter a subtotal for the categories of Management Improvements and HA-Wide Needs. Then enter a grand total for the entire HA.

Certifications:

The Executive Director shall sign and date the form and certify that all developments listed in Column (1) have long-term physical and social viability, and that the requirements for consultation with residents/homebuyers and local officials have been met.

APPENDIX I. FORM HUD-50071, CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

Certification for Contracts, Grants, Loans & Cooperative Agreements

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Public Housing Agency / Indian Housing Authority

PHA/IHA Name:

If other than Operating Subsidy or Section 23, enter the Federal Fiscal Year in which the funds are expected to be reserved:

If Operating Subsidy or Section 23, enter PHA's/IHA's Fiscal Year Ending date in which funds are expected to be obligated:

Program/Activity Receiving Federal Grant over $100,000: (mark one)

☐ Operating Subsidy	☐ CGP
☐ Development	☐ CIAP
☐ Drug Elimination Grants	☐ MROP
☐ Sec.23 Leased Housing Adjustments	☐ Other: (describe)

Acting on behalf of the above named PHA/IHA as its Authorized Official, I make the following certifications to the Department of Housing and Urban Development (HUD):

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure of Lobbying Activities, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

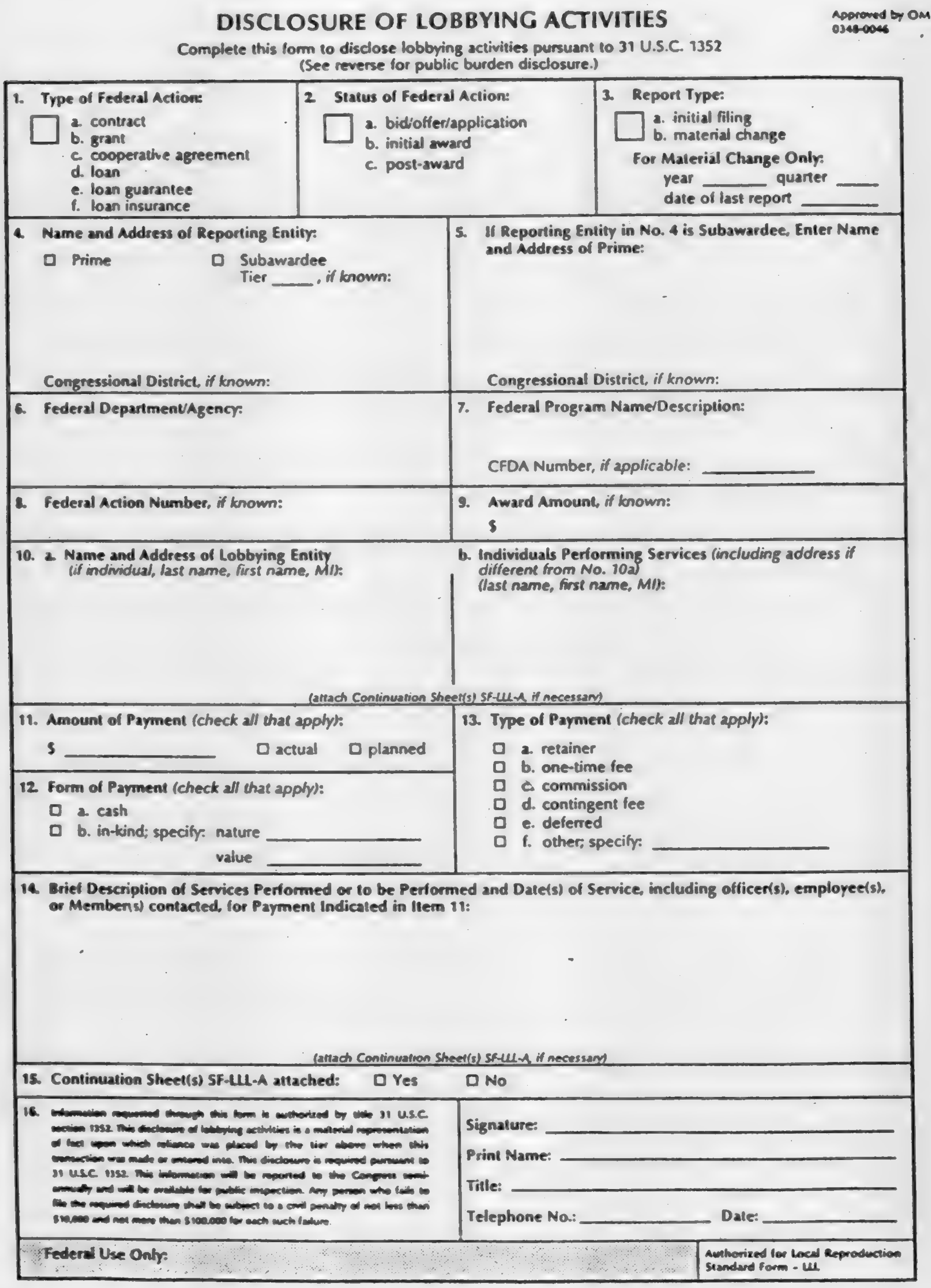
I certify under penalty of perjury that the foregoing is true and correct.

Authorized PHA/IHA Official: Name & Title:

Signature & Date:

form HUD 50071 (1/92)
ref. Handbooks 7417.1, 7475.13, 7485.1, & 7485.3

APPENDIX III. STANDARD FORM (SF)-LLL, DISCLOSURE OF LOBBYING ACTIVITIES



DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐
a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐
a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐
a. initial filing
b. material change
For Material Change Only:
year _______ quarter _____
date of last report ________

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* ____________

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ ______________ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature ______________
value ______________

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: ________________

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: ______________________
Print Name: ______________________
Title: ______________________
Telephone No.: ____________ **Date:** ____________

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: ______________________________ **Page** _____ **of** _____

Authorized for Local Reproduction
Standard Form - LLL-A

CIAP Budget /Progress Report

Part I: Summary

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (exp. mm/dd/yy)

Public Reporting Burden for this collection of information is estimated to average 12.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0044), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

HA Name	Modernization Project Number	FFY of Grant Approval

☐ Original CIAP Budget ☐ Revised CIAP Budget/Revision Number ____________ ☐ Progress Report for Period Ending ____________ ☐ Final Progress Report

Line No.	Summary by Development Account	Total Funds Approved		Total Funds	
		Original	Revised	Obligated	Expended
1	Total Non-CIAP Funds				
2	1408 Management Improvements				
3	1410 Administration				
4	1415 Liquidated Damages				
5	1430 Fees and Costs				
6	1440 Site Acquisition				
7	1450 Site Improvement				
8	1460 Dwelling Structures				
9	1465.1 Dwelling Equipment—Nonexpendable				
10	1470 Nondwelling Structures				
11	1475 Nondwelling Equipment				
12	1495.1 Relocation Cost				
13	**Amount of CIAP Grant (Sum of lines 2-12)**				
14	Amount of line 13 Related to LBP Testing				
15	Amount of line 13 Related to LBP Abatement				
16	Amount of line 13 Related to Section 504 Compliance				

Signature of Executive Director and Date

X

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Field Office Manager (or Regional Public Housing Director in co-located office)/OIP Director and Date

X

Page ___ of ___

form HUD-52825 (01/05/93)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part I

Report Submission:

For the CIAP Budget:

When requested by HUD, prepare a separate Form HUD-52825 (Parts I, II and III) for the modernization program, describing the activities which are planned to be undertaken with the CIAP funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when the HUD-established threshold requires prior HUD approval to revise the CIAP Budget.

For the Progress Report:

At the end of each six-month period, complete the sections of Parts I, II and III as noted on a copy of the original or revised CIAP Budget and mark the box, Progress Report for Period Ending ____. Submit the form and two copies to HUD, together with the narrative report on management improvements, if applicable. Continue reporting every six months until all funds are expended.

Part I: Summary

Heading Instructions:

HA Name - Enter the name of the Housing Authority (HA).

Modernization Project Number - Enter the unique Modernization Project number designated for the CIAP grant. This number is an 13-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for Public Housing or B for Indian Housing; three-digit HA number; three-digit Grant number, beginning with the number "9"; and a two-digit FFY number. The first CIAP grant approved shall be 901; e.g., VA05P03690193. The second CIAP grant approved shall be 902; e.g., VA05P03690294.

FFY of Grant Approval - Enter the FFY in which the grant is being approved/was approved.

Type of Submission - Check the appropriate box and indicate whether the submission is the Original CIAP Budget, the Revised CIAP Budget (and revision number), or the Progress Report for Period Ending (enter date, e.g., 3/31/94). Also, check the box, Final Progress Report, if the form is being submitted for the last time for the particular modernization program.

Total Funds Approved:

Line 1 - Enter the Original Funds Approved by HUD, rounded to the nearest ten dollars, for all work that will be undertaken from non-CIAP funds. Enter zero if no work will be undertaken from non-CIAP funds. After initial approval by HUD, enter any cost decrease or increase in the Revised Total Funds Approved column whenever a revised CIAP Budget is submitted to HUD for review and approval.

Lines 2 through 12 - For each line, enter the Original Total Funds Approved, rounded to the nearest ten dollars, or zero if no work will be undertaken in a particular development account. After initial approval by HUD, enter any cost decrease or increase in the Revised Total Funds Approved column whenever a revised CIAP Budget is submitted to HUD for review and approval.

Line 13 - Amount of CIAP Grant - Enter the sum of lines 2 through 12 in the Original Total Funds Approved column. After initial approval by HUD, the sum of lines 2 through 12 in the Revised Total Funds Approved column may not exceed line 13 in the Original Total Funds Approved column.

Line 14 - Amount of line 13 Related to Lead-Based Paint (LBP) Testing - Enter the amount of line 13 related to LBP testing in the Original Total Funds Approved column and; as appropriate, in the Revised Total Funds Approved column.

Line 15 - Amount of line 13 Related to LBP Abatement - Enter the amount of line 13 related to LBP abatement in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column. For example, if windows are being replaced, estimate the portion of the funding which is directly related to LBP abatement.

Line 16 - Amount of line 13 Related to Section 504 Compliance - Enter the amount of line 13 related to Section 504 compliance in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Total Funds Obligated/Expended:

At the end of the reporting period, e.g., 3/31, for each modernization program for which funds are still being expended, complete this section.

Lines 1 through 12 - For each line, enter the cumulative Total Funds Obligated and Expended at the end of the reporting period.

Line 13 - Enter the sum of lines 2 through 12 for obligated and expended.

Lines 14 through 16 - For each line, enter the amount of line 13 for obligated and expended.

CIAP Budget /Progress Report

Part II: Supporting Pages

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development

Office of Public and Indian Housing

Development Number	Description of Work Items	Development Account Number	Funds Approved			Funds Obligated	Funds Expended
			Original	Revised	Difference		

Page ___ of ___

form HUD-52825

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part II

Part II: Supporting Pages

Development Number - Enter the abbreviated number (e.g., VA-36-1) of the development where the work items will be undertaken. Enter "HA-wide" for work items that relate to an HA-wide activity (e.g., management improvements, administration, non- dwelling equipment).

Description of Work Items - For each development listed, enter a description of all work items (physical or management, as applicable) that will be undertaken at that development, including work that will be funded with non-CIAP funds and no cost items, before listing work items to be undertaken at other developments. Identify work items that will be accomplished by Force Account labor by entering (FA) in parenthesis next to the work item. After entering all work items for all developments being funded, enter a general description of HA-wide activities, such as management improvements, administrative costs, equipment, etc. When work items are subsequently deleted, draw a line through the Description, Development Account Number, and Funds Approved. When work items are subsequently added, enter the new work item under the appropriate development number. Enter the quantity of the work as a percentage or whole number. Specify the per unit cost or the quality of materials. **Note:** Describe administrative costs in sufficient detail to clearly identify items.

Development Account Number - For work items that will be funded from CIAP funds, enter the appropriate development account which corresponds to the work item described under the Description of Work Items column. For appropriate development accounts, refer to Handbook 7485.1 (latest revision). Where funding will be provided from non-CIAP sources, or the work is a no cost item, enter "NA".

Funds Approved:

Original-For each work item and HA-wide activity described, enter the Original Funds Approved. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage. Asterisk the estimated cost of each work item that will be funded with non-CIAP funds. After listing the estimated cost for all work items at a particular development, enter a subtotal of the estimated cost of only the work items that will be funded from CIAP funds. (**Note**: Do not count costs that have been asterisked in this subtotal). Enter a grand total for Part II of only the work items and HA-wide activities that will be funded with CIAP funds.

Revised-Where the funds approved is revised, enter a Revised Funds Approved as appropriate.

Difference-Enter the difference between the Original and Revised Funds Approved. If the cost increases, put a plus (+) in front of the dollar amount. If the cost decreases, put a minus (-) in front of the dollar amount. When a new work item is subsequently added, enter zero in the original column, show the cost in the revised column and in the column marked difference and put a plus (+) in front of the dollar amount. When a work item is subsequently deleted, show the original cost in the column marked difference and put a minus (-) in front of the dollar amount. Each time there is an increase or decrease in the dollar amount for a particular work item, it must be offset by a corresponding increase or decrease in another work item so that the Revised Total Funds Approved is equal to the amount of the CIAP grant. When the cumulative total of additions equals or exceeds the HUD-established threshold, obtain prior HUD approval before obligating additional funds. When this occurs, complete this form with the appropriate revisions and mark the box Revised CIAP Budget Revision Number ________.

Funds Obligated-Funds Expended - At the end of each reporting period for each CIAP grant with a separate Modernization Project Number for which funds are still being expended, complete the section on Funds Obligated and Funds Expended.

Funds Obligated - In this column, for each development listed, enter the cumulative dollar amount of all funds obligated for that development (round to the nearest ten dollars) opposite the Funds Approved subtotal. This includes funds obligated by the HA for work to be performed by contract labor (i.e., contract award) and force account labor (i.e., work actually started). Funds that are recorded as being obligated shall remain obligated so that total funds obligated are always greater than or equal to total funds expended. Total funds obligated shall not exceed the amount of the CIAP grant. For each HA-wide activity listed, enter the total amount of all funds obligated for that activity (round to the nearest ten dollars) opposite the Funds Approved subtotal.

Funds Expended - In this column, for each development listed, enter the cumulative dollar amount of all funds expended for that development (round to the nearest ten dollars) opposite the Funds Approved subtotal. Total funds expended means cash actually disbursed and does not include retainage. Total funds expended shall not exceed total funds obligated or the amount of the CIAP grant. For each HA-wide activity listed, enter the dollar amount of funds expended for that activity (round to the nearest ten dollars) opposite the Funds Approved subtotal.

CIAP Budget /Progress Report
Part III: Implementation Schedule
Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

Development Number	First Architect/Engineer Contract Awarded			All Funds Obligated			All Funds Expended		
	Original	Revised (Attach explanation)	Actual	Original	Revised (Attach explanation)	Actual	Original	Revised (Attach explanation)	Actual

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part III

Part III: Implementation Schedule:

Development Number - Enter the abbreviated number (e.g., VA 36-1) of each development listed on Part II. Enter "HA-wide" for work items that relate to HA-wide management improvements.

Implementation Schedule - First Architect/Engineer Contract Awarded - Opposite the affected development, enter the estimated quarter ending date for award of the first architect/engineer (A/E) contract under the Original column. After initial approval by HUD, enter any revised quarter ending date for award of the first A/E contract under the Revised column. When the first A/E contract is awarded, enter the quarter ending date under the Actual column.

Implementation Schedule - All Funds Obligated - Opposite each development and for each HA-wide management improvement, enter the estimated quarter ending date for obligation of all funds under the Original column.

Note: Provide an implementation schedule only for HA-wide management improvements, not for other HA-wide activities (e.g., administration, non-dwelling equipment).

After initial approval by HUD, enter any revised quarter ending date for obligation of all funds under the Revised column. When all funds are obligated, enter the quarter ending date under the Actual column.

Implementation Schedule - All Funds Expended - Opposite each development and for each HA-wide management improvement, enter the estimated quarter ending date for expenditure of all funds under the Original column.

Note: Provide an implementation schedule only for HA-wide management improvements, not for other HA-wide activities (e.g., administration, non-dwelling equipment).

After initial approval by HUD, enter any revised quarter ending date for expenditure of all funds under the Revised column. When all funds are expended, enter the quarter ending date under the Actual column.

Note: Attach an explanation of any revisions to the target dates for A/E contract award, fund obligation, or fund expenditure by specifying the valid delay outside of the HA's control.

HA Board Resolution Approving CIAP Budget

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577--0044 (exp. MM/DD/YY)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0044), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Acting on behalf of the Board of Commissioners of the ______________________________ HA, as its Chairman, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD):

1. The HA will comply with all policies, procedures, and requirements prescribed by HUD for modernization, including implementation of the modernization in a timely, efficient, and economical manner;
2. The HA has established controls to ensure that any activity funded by the CIAP is not also funded by any other HUD program, thereby preventing duplicate funding of any activity;
3. The HA will not provide to any development more assistance under the CIAP than is necessary to provide affordable housing, after taking into account other government assistance provided;
4. The proposed physical work will meet the modernization and energy conservation standards under 24 CFR 968.115 or 24 CFR 905.603;
5. The HA will comply with applicable civil rights requirements under 24 CFR 968.110(a) or 24 CFR 905.115, and, where applicable, will carry out the modernization in conformity with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973;
6. The PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises and will take appropriate affirmative action to assist resident-controlled and women's business enterprises under 24 CFR 968.110(b); or the IHA will, to the greatest extent feasible, give preference to the award of modernization contracts to Indian organizations and Indian-owned economic enterprises under 24 CFR 905.165;
7. The HA has provided HUD with any documentation that the Department needs to carry out its review under the National Environmental Policy Act (NEPA) and other related authorities in accordance with 24 CFR 968.110(c), (d) and (m) or 24 CFR 905.120(a), (b), and (j);
8. The HA will comply with the wage rate requirements under 24 CFR 968.110(e) and (f) or 24 CFR 905.120(c) and (d);
9. The HA will comply with the relocation assistance and real property acquisition requirements under 24 CFR 968.108 or 24 CFR 905.117;
10. The HA will comply with the requirements for physical accessibility under 24 CFR 968.110(h) or 24 CFR 905.120(f);
11. The HA will comply with the requirements for access to records and audits under 24 CFR 968.110(i) or 24 CFR 905.120(g);
12. The HA will comply with the uniform administrative requirements under 24 CFR 968.110(j) or 24 CFR 905.120(h);
13. The HA will comply with lead-based paint testing and abatement requirements under 24 CFR 968.110(k) or 24 CFR 905.120(i);
14. The HA has complied with the requirements governing local/tribal government and resident participation in accordance with 24 CFR 968.215(b) and 968.220 or 24 CFR 905.618 (b) and 905.624, and has given full consideration to the priorities and concerns of local/tribal government and residents;
15. The HA will comply with the special requirements of 24 CFR 968.102 or 24 CFR 905.602 with respect to a Turnkey III development; and
16. The PHA will comply with the special requirements of 24 CFR 968.101(b)(3) with respect to a Section 23 leased housing bond-financed development.

Attested By. Board Chairman's Name:	(Seal)
Board Chairman's Signature & Date: X	

Warning: HUD will prosecute false claims and statements Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Page 1 of 1

form HUD-52820 (12/30/92)
ref Handbook 7485 1

Certification for a Drug-Free Workplace

Public Housing Agency / Indian Housing Authority

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB No. 2577-0044 (exp. 10/31/92)

Public Reporting Burden for this collection of information is estimated to average 0.25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2577-0044) Washington, D.C. 20503.

PHA/IHA Name:	If Development or CIAP, enter the Federal Fiscal Year in which the funds are expected to be reserved :
Program/Activity Receiving Federal Grant Funding: (mark one) ☐ Development ☐ CIAP ☐ Operating Subsidy ☐ Sec.23 Leased Housing	If Operating Subsidy or Section 23, enter the PHA's/IHA's FiscalYear Ending date in which funds are expected to be obligated :

Acting on behalf of the above named PHA/IHA as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

1. I certify that the above named PHA/IHA will provide a drug-free workplace by:

   a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the PHA's/IHA's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

   b. Establishing a drug-free awareness program to inform employees about the following:
      (1) The dangers of drug abuse in the workplace;
      (2) The PHA's/IHA's policy of maintaining a drug-free workplace;
      (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
      (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

   c. Making it a requirement that each employee of the PHA/IHA be given a copy of the statement required by paragraph a.;

   d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment with the PHA/IHA, the employee will do the following:
      (1) Abide by the terms of the statement; and
      (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

   e. Notifying the HUD Field Office within ten days after receiving notice under subparagraph d. (2) from an employee or otherwise receiving actual notice of such conviction;

   f. Taking one of the following actions within 30 days of receiving notice under subparagraph d. (2) with respect to any employee who is so convicted:
      (1) Taking appropriate personnel action against such an employee, up to and including termination; or
      (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

   g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

WARNING: 18 U.S.C. 1001 provides, among other things, that whoever knowingly and willingly makes or uses a document or writing containing any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

2. **Sites for Work Performance.** The PHA/IHA shall list in the space provided below the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. (If more space is needed, attach additional page(s) the same size as this form. Identify each sheet with the PHA/IHA name and address and the program/activity receiving grant funding.)

Signed by: (Name, Title & Signature of Authorized PHA/IHA Official)

Name & Title :

Signature & Date :

X

form HUD-50070 (12/89)
ref. Handbooks 7417.1, 7475.13, 7485.1

Actual Modernization Cost Certificate

Comprehensive Improvement
Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (Exp. mm/dd/yy)

Public Reporting Burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0044), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

HA Name

Modernization Project Number

FFY of Grant Approval

The HA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of Modernization Cost (herein called the "Actual Modernization Cost") of theCIAP Grant, is as shown below:

A.	Original Funds Approved	$
B.	Revised Funds Approved	$
C.	Funds Advanced	$
D.	Funds Expended (Actual Modernization Cost)	$
E.	Amount to be Recaptured (A–D)	$
F.	Excess of Funds Advanced (C–D)	$

2. That all modernization work in connection with the CIAP Grant has been completed;
3. That the entire Actual Modernization Cost or liabilities therefor incurred by the HA have been fully paid;
4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such modernization work on file in any public office where the same should be filed in order to be valid against such modernization work; and
5. That the time in which such liens could be filed has expired.

Signature of Executive Director
X

Date

For HUD Use Only

The Cost Certificate is approved for audit.

Approved for Audit (Director, Public Housing Division)
X

Date

The audited costs agree with the costs shown above

Verified (Director, Public Housing Division)
X

Date

Approved (Field Office Manager or, in co-located office, Regional Public Housing Director, or OIP Director)
X

Date

form HUD-53001(12/30/92)
ref Handbook 7485.1

Instructions for Preparation of Form HUD-53001—Actual Modernization Cost Certificate

General Instructions:

Prepare and submit to the HUD Field Office an original and one copy of Form HUD-53001 for each terminated or completed modernization program under the Comprehensive Improvement Assistance Program (CIAP).

Heading Instructions:

HA Name—Enter the name of the Housing Authority (HA).

Modernization Project Number—Enter the unique Modernization Project Number for the grant for which this form is being submitted. This number is the same number as on Form HUD-52825, CIAP Budget, for the same grant.

Federal Fiscal Year of Grant Approval—Enter the FFY in which the modernization program was originally approved.

Line Instructions:

Line 1A, Original Funds Approved—For the identified grant, enter the total CIAP funds originally approved by HUD through a CIAP Amendment to the Consolidated Annual Contributions Contract(s).

Line 1B, Revised Funds Approved—For the identified grant, enter the total revised CIAP funds approved by HUD. This amount will generally be the same as the amount on Line 1A. This amount will be less than the amount on Line 1A where HUD is terminating the grant or otherwise recapturing grant funds.

Line 1C, Funds Advanced—For the identified grant, enter the total funds advanced by HUD. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1D, Funds Expended—For the identified grant, enter the total funds expended (total cash disbursed) by the HA. This amount may never exceed the amount on Line 1A and should be the same amount as on Line 1B.

Line 1E, Amount To Be Recaptured (A minus D)—For the identified grant, enter the amount to be recaptured by subtracting Line 1D from Line 1A.

Line 1F, Excess of Funds Advanced (C minus D)—For the identified grant, enter the excess of funds advanced by subtracting Line 1D from Line 1C; this is the amount to be remitted by the HA to HUD. If Line 1D is greater than Line 1C, enter the figure in brackets; this is the amount of funds owed by HUD to the HA.

[FR Doc. 93-2163 Filed 1-28-93; 8:45 am]

BILLING CODE 4210-33-C

Office of Administration

[Docket No. N–93–3567]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 13, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Relocation Payment Claim Forms.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: These forms will be used by eligible displaced persons to make proper application for relocation assistance payments.

Form Number: HUD–40054, 40055, 40056, 40057, 40058, 40061 and 40072.

Respondents: Individuals or Households, State or Local Governments, Farms, Businesses or Other For-Profit, Non-Profit Institutions and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD–40054	9,000		1		.5		4,500
HUD–40055	400		1		1.5		600
HUD–40056	400		1		1.0		400
HUD–40057	1,250		1		1.0		1,250
HUD–40058	5,750		1		1.0		5,750
HUD–40061	9,000		1		1.0		9,000
HUD–40072	2,000		1		1.0		2,000

Total Estimated Burden Hours: 23,500.

Status: Reinstatement.

Contact: Melvin J. Geffner, HUD, (202) 708–0336. Angela Antonelli, OMB, (202) 395–6880.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Request for Payment for Labels, Mobile Home Monthly Production Report, Refunds Due Manufacturer, and Adjustment Report.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The National Manufactured Home Construction and Safety Standards Act, 42 U.S.C. 5400 et seq., authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses these forms to calculate and collect monitoring inspection fees for manufacturing housing units.

Form Number: HUD–301 and 302.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Monthly.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	231		48		.47		5,211

Total Estimated Burden Hours: 5,211.

Status: Extension.

Contact: Jeannie Magee, HUD, (202) 708–0584. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 93–2184 Filed 1–28–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–93–3568]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 15, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Proposed Rule: Section 8 HAPP for Section 8 Certificate and Housing Voucher Program (FR–2294).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: Under the Section 8 Rental Certificate Program and Rental Voucher Program, the Department of Housing and Urban Development (HUD) enters into an Annual Contributions Contract (ACC) with Public Housing Agencies to assist very low-income families who enter into leases directly with private owners of existing rental housing.

Form Number: HUD–52515, 52667, 52580, 52663, 52672, 52673, 52681, 52517A, 52595, 52578 and 52646.

Respondents: Individuals or Households and State or Local Governments.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	402,600		5,6698		.3908		892.125

Total Estimated Burden Hours: 892,125.

Status: Revision.

Contact: Madeline Hastings, HUD, (202) 708–2841. Steve Balis, HUD, (202) 708–0995. Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 93–2165 Filed 1–28–93; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–16]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314–1000; (202) 272–0520; (This is not a toll-free number).

Dated: January 22, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

Title V, Federal Surplus Property Program Federal Register Report for 1/29/93

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, ATTN: AFZW–RM (LTC Anderson), Fort Ord, California 93941–5000.

Suitable/Available Properties

Property Number: 329210039
Type Facility: Housing—1431 family houses; majority are 2-story.
Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.
Property Number: 329210041
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.
Property Number: 329210042
Type Facility: Recreation—53 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.
Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—18 facilities including hangars, runway, taxiways, aprons, fire station, maintenance bldgs. and control tower.
Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.
Property Number: 329210045
Type Facility: Mess/Dining Halls—95 buildings; wood, concrete and concrete block dining facilities.
Property Number: 329210046
Type Facility: Child Care—7 buildings; wood and concrete child care centers.
Property Number: 329210047
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.
Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.
Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.
Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.
Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.
Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.
Property Number: 329210053
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.
Property Number: 329210054
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.
Property Number: 329210055
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.
Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.
Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.
Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.
Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

Suitable/Available Properties

Connecticut

15 Family Houses
Portland CT 36
Portland Co: Middlesex CT 06484
Landholding Agency: COE–BC
Property Numbers: 319011218–319011232
Status: Excess
Base Closure
Comment: 1000–1300 sq. ft., 1 story wood frame residences

Hawaii—Kapalama Military Reservation Phase III

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base comprises 21.22 acres and contains nine buildings which are currently being used for storage.

Suitable/Unavailable Properties

Property Numbers: 329210003–329210011
Type Facility: Nine buildings currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

Suitable/Available Properties

Illinois

12 Worth Family Houses

Fort Sheridan
Worth Co: Cook, IL 60482
Landholding Agency: COE–BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

Suitable/Unavailable Properties

Illinois

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage, IL, 60101
Landholding Agency: COE–BC
Property Number: 329210001
Status: Excess
Base Closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216–5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI–IS, Fort Benjamin Harrison, Indiana 46216–5000; (317) 542–5382.

Suitable/Available Properties

Property Numbers: 329210068–329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.
Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.
Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court; bowling center, recreation buildings, basketball and handball courts, baseball fields, track, and playgrounds.
Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 and 14,457 sq. ft.
Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 11,075 to 31,439 sq. ft.
Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 68,890 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branches, and service outlet.
Property Number: 329210075
Type Facility: Hospital, brick frame.
Property Number: 329210076
Type Facility: 2 Chapels; 3,747 and 16,587 sq. ft., brick and aluminum frame.
Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 and 3,835 sq. ft.; includes fire station and hose house.
Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.
Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.
Property Numbers: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.
Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.
Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters and general instruction buildings; training centers and detached garages.
Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077
Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210087
Type Facility: 1 Recreational Facility; within a floodway.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD has determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.
Property Number: 329210029
Type Facility: 404 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.
Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.
Property Number: 329210013
Type Facility: 27 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.
Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—7; six gas station bldgs. and pump stations; wood, steel or concrete block structures.
Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.
Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.
Property Number: 329210019
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.
Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,612 sq. ft.; wood or concrete block construction.
Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.
Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.
Property Number: 329210026
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.
Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.
Property Number: 329210020
Type Facility: Chapel; 22,250 sq. ft.; brick frame.
Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 6,000 sq. ft.; concrete, steel or concrete block structures including

oxygen storage facilities and flammable materials storage.
Property Number: 329210028
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs., training facilities, RG houses, reserve centers, garages.
Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210033, 329210038
Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.
Property Number: 329210031
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210034, 329210037
Type Facility: 6 Miscellaneous Buildings—including stores, service facilities, etc.
Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable explosive material.
Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

Suitable/Available Properties

Massachusetts

12 Bldgs., Burlington Housing
South Bedford
Burlington Co: Middlesex, MA 01803–
Landholding Agency: COE–BC
Property Number: 329240005
Status: Excess
Base closure—Number of Units: 12
Comment: 1100 sq. ft. each, 1-story wood frame residences, scheduled to be vacated 8/93.

Michigan

Pontiac Storge Facility
871 East South Boulevard
Pontiac Co: Oakland, MI 48054–
Landholding Agency: COE–BC
Property Number: 329240001
Status: Excess
Base closure—Number of Units: 5
Comment: 607,202 sq. ft. warehouse w/steel frame, 4 other structures inc. well house, sentry station, heating plant & water tower located on 31.24 acres.

New Jersey—Fort Dix

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for realignment on or about October 1, 1993. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

In particular, the Sheridanville Family Housing complex will be available on or about December 31, 1992. The Sheridanville complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68.

The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616 (Pemberton-Wrightstown Road). It is not available for homeless assistance use at this time. The majority of the base is being retained for Federal use.

Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD–EHP, Jean M. Johnson, Fort Dix, NJ 08640–5506.

Suitable/Available Properties

Sheridanville Family Housing Complex
Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing (12 blgs. are unavailable due to an approved homeless application)
Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing (Unavailable due to an approved homeless application)
Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing
Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing (4 bldgs. are unavailable due to an approved homeless application)
Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame (14 sheds are unavailable due to an approved homeless application)
Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings (Unavailable due to an approved homeless application)
Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame (Unavailable due to an approved homeless application)
Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters (2 bldgs. unavailable due to an approved homeless application)
Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field (Unavailable due to an approved homeless application)

Note: An approved application for 125 units is being processed.

Suitable/Unavailable Properties

Kennedy Courts Family Housing Complex
Property Numbers: 329220005–329220009
Type Facility: Housing—2, 4, 6, 8 & 10-unit buildings; 1 to 4 bedrooms, wood frame w/brick veneer facing
Property Number: 329220010
Type Facility: Detached Sheds—48; wood frame, needs rehab
Property Numbers: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services
Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreation center, museums, community centers
Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house
Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs
Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing
Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story
Property Numbers: 329220029–329220030, 329220047, 329220050
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop
Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—8 facilities; includes enlisted personnel dining, 1 story, concrete or cinderblock w/brick veneer facing
Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story
Property Number: 329220048
Type Facility: Hazardous storage—3 buildings; 1 story
Property Number: 329220049
Type Facility: Communications/Electronics—2; 1 & 2 story
Property Numbers: 329220012–329220013, 329220033, 329220042, 329220051–329220052
Type Facility: Miscellaneous—30 buildings; includes heat plant, waiting shelters, warehouses, and other specialized structures
Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame
Property Number: 329220011
Type Facility: Recreational/land—2; basketball courts

Unsuitable Properties

Property Number: 329220034
Type Facility: Sewage Pump

Suitable/Unavailable Properties

New Jersey

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen, NJ 07430
Landholding Agency: COE–BC

Property Number 319010734–319010757
Status: Excess
Base Closure
Comment: 1,196 sq. ft., 1 story wood frame residences.

32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris, NJ 07936
Landholding Agency: COE–BC
Property Numbers: 319010758–3190107789
Status: Surplus
Base Closure
Comment: 1,196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

Bldg. PO5605, Fort Dix
8th Street and Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210064
Status: Unutilized
Base closure Number of Units: 1
Comment: 6,137 sq. ft., 1 story, possible asbestos, most recent use-administration/classroom.

Bldg. PO5602, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210065
Status: Unutilized
Base closure Number of Units: 1
Comment: 40,653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. PO5603, Fort Dix
8th Street
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210066
Status: Excess
Base closure Number of Units: 1
Comment: 40,653 sq. ft., 3 story, not handicapped accessible, no sprinkler/fire escape doors on 2nd/3rd floors, most recent use—trainee barracks.

Bldg. PO5604, Fort Dix
8th Street & Doughboy Loop
Ft. Dix Co: Burlington NJ 08640–
Landholding Agency: COE–BC
Property Number: 329210067
Status: Excess
Base closure Number of Units: 1
Comment: 12,194 sq. ft., 1 story, presence of asbestos, most recent use—admin/supply building.

Suitable/Unavailable

New York

37 Nike Houses
New York 01
Tappan Co: Rockland NY
Landholding Agency: COE–BC
Property Numbers: 319011049, 319011070–319011105
Status: Excess
Base Closure
Comment: 897 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson NY 13601
Landholding Agency: COE–BC
Property Numbers: 319030015–319030041
Status: Excess
Base Closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Suitable/Unavailable Properties

Pennsylvania

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S–101–Q
Finleyville Co: Washington, PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE–BC
Property Numbers: 319011407, 319011409–319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2
Monroeville Co: Allegheny, PA 15239
Landholding Agency: COE–BC
Property Numbers: 319030051–319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos

Land (by State)

Pennsylvania

C.E. Kelly Support Facility
Finleyville Area Site 52
Finleyville Co: Washington, PA 15332
Landholding Agency: COE–BC
Property Number: 319011408
Status: Excess
Base Closure
Comment: 11.63 acres, potential utilities, most recent use—playground area.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

Suitable/Available Properties

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.

Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.

Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.

Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

Suitable/Available Properties

Rhode Island

62 Bldgs., Davisville Housing
Navy Drive
Davisville Co: Kingston, RI 02852–
Landholding Agency: COE—BC
Property Number: 329240003
Status: Excess
Base closure—Number of Units: 62
Comment: sq. ft. varies, 2-story wood frame residences, scheduled to be vacated 8/93.

16 Bldgs., Slaterville Housing
Pound Hill Street
N. Smithfield Co: Providence, RI 02895–
Landholding Agency: COE–BC
Property Number: 329240004
Status: Excess
Base closure—Number of Units: 16
Comment: 1,100 sq. ft. each, 1-story wood frame residences, scheduled to be vacated 8/93.

Virginia

Bldg. 4, DMA Herndon
925 Springvale Rd.
Great Falls, VA 22066
Landholding Agency: COE–BC
Property Number: 329240002
Status: Excess
Base closure—Number of Units: 1
Comment: 4,195 sq. ft., 1-story concrete masonary structure, most recent use—admin., scheduled to be vacated 01/94.

Washington

28 Bldgs., Youngslake Housing
Near 116th St., SE & 192nd St.
Renton Co: King, WA
Landholding Agency: COE–BC
Property Number: 329240006
Status: Excess
Base closure—Number of Units: 28
Comment: 1184–1392 sq. ft., 3-bedroom residences, scheduled to be vacated 8/93.

Indiana

Land—Plant II
Indiana Army Ammunition Plant
Charleston Co: Clark, IN 47111–
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base closure—Number of Units: 1
Comment: 858.63 acres, 34 acres subj. to flooding, access over private property by easement of roadway, manufac. facility on site not operative for 20 yrs., scheduled to be vacated 11/92.

Unsuitable

Illinois

Bldg. 117, Hangar
Fort Sheridan Co: Lake, IL 60037–5000
Landholding Agency: COE–BC
Property Number: 329230001

Status: Excess
Base closure—Number of Units: 1
Reason: Within airport runway clear zone

Land (by State)

Florida

Cape St. George Reservation
Fort Rucker, AL Installation #12050
Apalachicola Co: Franklin G C FL 32320–
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Base closure—Number of Units: 1
Reason: Floodway—Other
Comment: Inaccessible

[FR Doc. 93–2022 Filed 1–28–93; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–43–7122–06–D063; CACA 28709]

Public Scoping Notice for the Addition of Lands to the Study Area for the Proposed Expansion of the U.S. Army's National Training Center at Fort Irwin, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior (Lead Agency); U.S. Army National Training Center (Cooperating Agency).

ACTION: Notice of public scoping for addition of lands to existing study area.

SUMMARY: Notice is hereby given that the Bureau of Land Management is accepting public comment to identify issues of concern on a change to the existing Study Area for the pending Environmental Impact Statement (EIS) on the U.S. Army proposal to expand the National Training Center, Fort Irwin, California. This notice adds an area of approximately 160,200 acres to the existing Study Area. All of this added acreage is within areas currently under the control and jurisdiction of the Department of the Navy, specifically within portions of the Naval Air Weapons Station—China Lake Randsburg and Mojave B test ranges. The Navy lands are adjacent to and west of the current NTC boundary. As a part of the proposed NTC expansion, the Army proposes a joint use of the current Navy withdrawn public lands.

A June 1985 Army Land Use Requirements Study (LURS) determined the need for expansion of the current 642,000 acre NTC located approximately 40 miles north of Barstow, California. Under a June 1988 Memorandum of Agreement, BLM and the Army NTC have been involved in preparation of an EIS for the proposed expansion.

The initial 1988 Army proposal was to expand generally to the south into Coyote Basin, which involved the proposed withdrawal of approximately 250,000 acres of public lands in that area. A draft EIS was initiated. BLM published a public scoping notice for the proposal on August 22, 1988 and initial scoping meetings were held. On October 1, 1991 approximately 265,400 acres of public lands (the initial expansion Study Area) were segregated, for a two year period, from mineral entry based on the withdrawal application received from the Army.

The desert tortoise was listed as threatened on April 2, 1990 and consultation under section 7 of the Endangered Species Act of 1973 was initiated in April 1991. In October 1991 the USFWS developed a draft biological opinion which concluded that the proposed southern expansion would likely jeopardize the continued existence of the threatened desert tortoise. The draft biological opinion suggested consideration of an easterly expansion of the NTC as a reasonable and prudent alternative. The formal consultation process with USFWS was suspended.

On February 12, 1992 an additional 229,200 acres of public lands in the Silurian Valley area were segregated from mineral entry in response to an amended Army withdrawal application. On March 25, 1992 BLM published a notice of scoping for the lands added to the expansion study area. At that time, the total expansion study area involved approximately 494,600 of public lands. Concurrent with that public scoping, Army conducted additional tortoise studies in the North Alvord Slope area from January through September 1992. Based on the results of that data, and the draft USFWS jeopardy biological opinion, the Army redesigned the expansion proposal.

In September 1992, the Army identified a new expansion proposal which was referred to as the "Silurian-Mojave B". This new expansion proposal involves approximately 327,000 acres of proposed public land withdrawal in the Silurian Valley area east of the NTC, an additional 2,560 acres along the southwest NTC boundary, and proposed joint use of approximately 160,200 acres of lands currently under jurisdiction of the Department of the Navy in the Randsburg Wash and Mojave B test ranges west of the NTC. The total proposed expansion therefore involves approximately 490,000 acres. With the identification of this new expansion proposal, the total expansion Study Area is approximately 644,000 acres.

On November 6, 1992 the BLM requested that USFWS reinitiate formal consultation and render a biological opinion on the new expansion proposal. The request for consultation was qualified, with respect to proposed NTC use of Navy lands, to state that Navy concurrence with the proposed joint use will be required to make the expansion proposal viable with respect to the NTC's maneuver acreage requirements. Concurrent with this public scoping, the Department of the Navy, Naval Air Weapons Station-China Lake will complete a missions compatibility analysis to determine the viability of joint use with the NTC. Based on that analysis, the Navy role and participation in the EIS process will be determined.

The public is invited to provide additional scoping issues for the new proposed expansion proposal involving proposed Army use of Navy lands. Known issues within the area are wildlife including desert tortoise and its habitat, sensitive plants, cultural resources, and mission compatibility of current Navy uses and proposed Army use.

Specific expansion alternatives for the EIS will be finalized at the conclusion of this public scoping opportunity. The current Army proposed expansion, specifically the proposed use of Department of the Navy lands, is not considered an EIS alternative at this time. A decision on its status as an alternative is pending completion of the Navy missions compatibility analysis.

Information and maps on the project background and current expansion proposal are available at the address listed below.

DATES: Scoping comments on the addition of the Navy lands proposed for joint use by the Army must be postmarked no later than March 8, 1993.

ADDRESSES: Written comments should be sent to Mike DeKeyrel, Bureau of Land Management, 150 Coolwater Lane, Barstow, CA 92311; (619) 256–3591.

Dated: January 21, 1993.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 93–2197 Filed 1–28–93; 8:45 am]

BILLING CODE 4130-40-M

Closure Order—Atlas Superfund Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Approximately 435 acres of public lands disturbed by the abandoned Atlas mine and mill, which includes the Environmental Protection Agency's Superfund site boundary for the Atlas Mine Operable Unit located within San Benito and Fresno Counties, in the Hollister Resource Area, Bakersfield District, California, are hereby closed to entry and all public use.

SUMMARY: This action amends the closure order published in the **Federal Register** Vol. 53, No. 246, page 51590 on December 22, 1988, which closed off 200 acres of public land at the Atlas Mine. This expanded closure order will eliminate all on site public access within the entire boundary of the Atlas Superfund site operable unit. This action is necessary to comply with the need to preclude all public use of a Superfund site until the selected remedy has been applied and EPA determines the risk to humans has been reduced to an administratively determined level. The site boundary encompasses areas that have been disturbed by the past mining operation and are under EPA jurisdiction per the CERCLA regulation for future site reclamation. This area is hereby closed to all public entry and use and this closure is in effect on all public lands described below (A man depicting the closure can be viewed at the Hollister Resource Area Office).

Sections 29, 30, 31, & 32, T. 18S., R.13E., M.D.M. Section 25, T. 18S., R. 12E., M.D.M.

SUPPLEMENTARY INFORMATION: This order is necessary for the protection of public health. Soils on the mine site contain high concentration of asbestos fibers. Inhaling asbestos fibers is known to increase the risk of lung cancer and other respiratory diseases. When the surface of the mine site is disturbed by vehicles or foot traffic, a fine powered dust containing asbestos fibers is released into the air. Because of health hazards associated with asbestos this site has been placed on the Environment Protection Agency's National Priorities List (Superfund). All access trails which enter the site have been fenced posted with closed area/asbestos warning signs. The White Creek Road, which bisects the mine site will be gated and locked to restrict public use. This closure is issued under the authority of 43 CFR 8364.0–7. Federal, State, and County Employees and/or their contractors while requiring ingress and egress and individuals in possession of written authorization from the Hollister Resource Area Manager shall be exempt from this closure order.

DATES: This order is in effect immediately and is in effect until the order is canceled, amended, or replaced.

FOR FURTHER INFORMATION CONTACT: Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, 20 Hamilton Court, Hollister, CA 95023; telephone (408) 637–8183.

Dated: January 21, 1993.

Robert E. Beehler,

Area Manager.

[FR Doc. 93–2126 Filed 1–28–93; 8:45 am]

BILLING CODE 4310-84-M

[CO–010–02–4320–02]

Craig District Grazing Advisory Board Meeting

Time and Date: February 16, 1993 at 10 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado 81625.

Status: Open to the public, interested persons may make oral statements between 10 a.m. and 11 a.m., or may file written statements.

Matters to be Considered:

1. Election of officers.
2. Project presentations.
3. Worbex.
4. Advisory Board Well funded position.
5. Dump truck discussion.

Contact Person for More Information: Jim Andersen, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129. Phone: (303) 824–8261.

Dated: January 8, 1993.

Robert W. Schneider,

Associate District Manager.

[FR Doc. 93–2106 Filed 1–28–93; 8:45 am]

BILLING CODE 4310-JB-M

[NV–930–4210–05; N–41568–38]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Clark County.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land in order to expand the adjacent senior high school site. A R&PP lease was issued to the Clark County School District for the adjacent 35 acre school site on March 10, 1992.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
  Sec. 23, NE¼SE¼SE¼NW¼,
    N½SW¼SE¼NW¼.

Containing 7½ acres more or less.

The land is not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

2. Those rights for a 12.5 KV distribution line which have been granted to Nevada Power Company by permit No. N–15291 under the Act of October 21, 1976.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: January 20, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–2133 Filed 1–28–93 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-4210-05; N-56714]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Clark County.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for construction of a senior high school site.

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
  Sec. 24, SE¼NE¼SE¼,
    E½NE¼NE¼SE¼, SE¼SE¼,
    W½NE¼SE¼.

Containing 75 acres more or less.

The land is not required for any Federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County/the City of Las Vegas.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: January 19, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–2134 Filed 1–28–93; 8:45 am]

BILLING CODE 4310-HC-M

[ID-010-4333-02]

Recreation Management Restrictions; Boise District, ID

AGENCY: Boise District, Bureau of Land Management, Department of the Interior.

ACTION: Notice is given that the emergency drought closure in the Owyhee Front Special Recreation Management Area (effective May 13, 1992) which limited the size of organized recreational events is hereby rescinded. The 15-person maximum group size restriction no longer applies.

SUMMARY: Because of extreme drought conditions in 1992, it was necessary for the Owyhee Resource Area of the Boise District to temporarily restrict the size of organized recreation events in the Owyhee Front Special Recreation Management Area (SRMA) to a maximum of 15 persons to reduce the potential for damage to soil and vegetative resources. Precipitation for the winter of 1993 is at or above normal for those lands affected by the Owyhee Front SRMA. Permit applications for all types of competitive recreational events and for events involving 50 or more vehicles will be accepted beginning February 15, 1993. The authorization of recreational group events will be considered on a case-by-case basis in accordance with standards and procedures established by the BLM Special Recreation Permit Policy (43 CFR part 8372). The public is encouraged to make use of the existing recreational facilities at the Hemingway Butte, Rabbit Creek and Fossil Creek Trailheads whenever possible.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Jay Carlson, Owyhee Area Manager, Boise District, BLM at (208) 384–3430.

Dated: January 20, 1993.

R.E. Schmitt,

Associate District Manager, Boise District.

[FR Doc. 93–2127 Filed 1–28–93; 8:45 am]

BILLING CODE 4310-GG-M

[NM-940-03-4730-12]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 19, 1993.

New Mexico Principal Meridian, New Mexico

T. 18 N., R. 15 W., Accepted November 30, 1992, for Group 844 NM.
T. 17 N., R. 15 W., Accepted November 30, 1992, for Group 843 NM.
T. 18 S., R. 4 W., Accepted December 15, 1992, for Group 906 NM.
T. 10 N., R. 16 W., Accepted December 15, 1992, for Group 746 NM.

Supplementals

T. 18 S., R. 4 W., Accepted December 15, 1992.
T. 8 S., R. 13 W., Accepted December 15, 1992.
T. 17 N., R. 14 W., Accepted December 15, 1992.
T. 26 S., R. 3 E., Accepted December 15, 1992.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-list plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

John H. Whiting,

Acting Chief, Cadastral Survey.

[FR Doc. 93–2146 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Desert Pupfish for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the desert pupfish (*Cyprinodon macularius*). This fish occurs in Quitobaquito Springs, Arizona; Salton Sink, California; El Doctor, Laguna Salada, and Cerro Prieto in Baja California, Mexico; and Rio Sonoyta in Sonora, Mexico. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before March 30, 1993, to receive consideration by the Service.

EFFECTIVE DATE: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Rd., suite 6, Phoenix, Arizona 85019. Written comments and materials regarding the plans should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud, Fish and Wildlife Service Biologist; Telephone (602) 379–4720 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implemention the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal Agencies will also take these comments into account in the course of implementing approved recovery plans.

The desert pupfish is an endangered species which exists in Quitobaquito Springs, Arizona; Salton Sink, California; El Doctor, Laguna Salada, and Cerro Prieto in Baja California, Mexico; and Rio Sonoyta in Sonora, Mexico. The species occurs in springs, streams, marshes, and shallow margins of larger lakes and rivers. Habitat loss and degradation, competition and predation by exotic fishes, and pollution have eliminated desert pupfish throughout most of its historic range and threaten its continued existence.

The recovery goals are to secure, maintain and replicate all extant natural populations, acquire natural habitats, and to establish replicates in the most natural habitats within the probable historic range. Further objectives include determination of habitat and biological criteria, acquisition of life history information, development and implementation of genetic protocol, population monitoring, and information and education.

The desert pupfish recovery plan has already undergone technical review. The plan will be issued as final following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 15, 1993.

James A. Young,

Acting Regional Director.

[FR Doc. 93–2108 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Finding of No Significant Impact and Environmental Assessment for Moreno Highlands Boundary Amendment to the Stephens' Kangaroo Rat Incidental Take Permit for Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that a draft Finding of No Significant Impact (FONSI) for Moreno Highlands, one of 23 study-area boundary modifications to a permit allowing incidental take of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*) (SKR) in Riverside County, California, is available for public review. Also available is an Environmental Assessment (EA). This notice is provided pursuant to 40 CFR 1501.4(e)(2).

DATES: The draft FONSI and EA are available for public review until March 1, 1993.

ADDRESSES: Persons wishing to review the draft FONSI and EA may obtain a copy by contacting the Carlsbad, California Field Office, 2730 Loker Ave. West, Carlsbad, California, 619–431–9440. Documents will be available for public inspection during normal business hours (8 a.m. to 4:30 p.m.). Any comments concerning the draft FONSI and EA should be submitted to the Carlsbad, California Field Office. Please reference permit number PRT–739678 with your comments.

FOR FURTHER INFORMATION CONTACT: Mr. John Bradley at the above Carlsbad, California Field Office.

SUPPLEMENTARY INFORMATION: The County of Riverside, California, and the other permittees under PRT–739678 have applied to the Fish and Wildlife Service for a proposed amendment to their existing incidental take permit that would authorize changes in the Stephens' kangaroo rat (SKR) reserve study area boundaries. These changes, known as the "second-round boundary modifications" would change the areas where incidental take is allowed under the permit. They would not increase the amount of authorized incidental take.

The Moreno Highlands amendment (San Jacinto (SJ-1)) is one of 23 boundary modifications proposed by the permittee. This study area is the largest (21,530 acres) of the potential reserve sites identified in the SKR short-term Habitat Conservation Plan and contains the second largest amount of occupied habitat (2,225 acres). Over 90 percent of the study area's occupied SKR habitat and over 60 percent of its total area are under public ownership and are managed by the California Department of Fish and Game and the California Department of Parks and Recreation. The Proposed action for the Moreno Highlands boundary modification would result in the reduction of the size of the study area by up to 2,494 acres (12 percent) and the amount of occupied habitat in the study area by 82 acres (less than 4 percent).

Dated: January 22, 1993.

John H. Doebel,

Acting Regional Director.

[FR Doc. 93-2109 Filed 1-28-93; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32232]

Burlington Northern Railroad Company—Trackage Rights Exemption—Trinidad Railway, Inc.

Trinidad Railway, Inc. has agreed to grant local trackage rights to Burlington Northern Railroad Company over approximately 29.9 miles of rail line, between milepost 0.0 at Jansen, CO, and the end of the line at or near New Elk Mine, CO, at approximately milepost 29.9. The trackage rights were to become effective on January 22, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Peter M. Lee, Burlington Northern Railroad Co., 3800 Continental Plaza, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: January 25, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2167 Filed 1-28-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-No. 344X)]

Burlington Northern Railroad Co.; Abandonment Exemption; in Thurston County, WA

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its 14.42-mile line of railroad between Yelm (milepost 25.55) and Tenino (milepost 40.18), in Thurston County, WA, including the stations of Ranier (milepost 31.1), Wetico (milepost 32.9) and West Tenino (milepost 40.0).

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) that the requirements at 49 CFR 1105.7(b), 49 CFR 1105.8(c), 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 1, 1993, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 8, 1993.[4] Petitions to reopen and requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1993, with: Office of the Secretary Case, Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to BN's representative: Sarah J. Whitley, Attorney, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. SEE will prepare and issue an environmental assessment (EA) by February 3, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/trail banking conditions will be imposed, where appropriate in a subsequent decision.

Decided: January 21, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2168 Filed 1-28-93; 8:45 am]

BILLING CODE 7035-01-M

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[1] Pursuant to 49 CFR 1152.(d)(2), the railroad must file a verified notice with the Commission at least 50 days before abandonment or discontinuance is to be consummated. BN indicated in its verified notice a proposed consummation date of February 25, 1993; however, because the verified notice was not filed until January 11, 1993, consummation should not take place prior to March 2, 1993. BN's representative has confirmed the corrected consummation date.

[2] Ordinarily, a stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment (SEE) in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB-167 (Sub-No. 1109X)]

Consolidated Rail Corp.; Abandonment Exemption; Between Valparaiso and Gary, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 17.8 miles of rail line between milepost ±424.0 at Valparaiso, and milepost ±441.8 at Gary (Tolleston), in Lake and Porter Counties, IN.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 28, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 8, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P. O. Box 41416, Philadelphia, PA 19101-1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 3, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 25, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2169 Filed 1-28-93; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

[Docket No. AB-43 (Sub-No. 156X)]

Illinois Central Railroad Co.; Abandonment Exemption; Between Varnado Switch and Bassfield, MS

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 27.1 mile line of railroad from milepost 5, near Varnado Switch, to milepost 32.1, near Bassfield, MS, in Lamar, Forrest and Jefferson Davis Countries, MS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 28, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 8, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 18, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Illinois Central Railroad Company, 455 N. Cityfront Plaza Drive—20th Floor, Chicago, IL 60611.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources.

The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 3, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

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[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 4 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2170 Filed 1–28–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act; United States v. Westinghouse Bayside Communities, Inc.

In accordance with Departmental Policy, 28 CFR 50.7, notice hereby is given that a consent decree in *United States* v. *Westinghouse Bayside Communities, Inc.,*. No. 93–10–CIV–FTM–99, was lodged with the United States District Court for the Middle District of Florida on January 14, 1993.

The proposed consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344, as a result of unpermitted discharges of fill material onto portions of property located in Lee County, Florida, that are alleged to constitute "waters of the United States." The consent decree encompasses a permanent injunction and requires Westinghouse Bayside Communities, Inc., to perform a full restoration by the removal of all existing fill from the violated fifteen acres of wetlands, to pay a civil penalty of $199,088 to the U.S. Treasury, and to undertake a five-year mitigation/enhancement project concerning 98 acres of wetlands on the property.

The Department of Justice will receive written comments relating to this consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: David M. Thompson, Attorney, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice, room 7119, 10th & Pennsylvania, Washington, DC 20530 and should refer to *United States* v. *Westinghouse Bayside Communities, Inc.,* DJ Reference No. 90–5–1–4–329.

The consent decree and accompanying exhibits may be examined at the Clerk's Office, United States District Court for the Middle District of Florida, 2301 First Street, Fort Myers, Florida 33901, or a copy may be requested from David M. Thompson, (202) 514–2617.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 93–2195 Filed 1–28–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); United States et al. v. Rohm and Haas, et al.

In accordance with 42 U.S.C. 9622 and 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in United States et al. v. Rohm and Haas, et al., Civil Action No. 85–4386, was lodged with the United States District Court for New Jersey, on January 19, 1993. The consent decree partially resolves the United States' and the State of New Jersey's claims under, *inter alia,* section 107 of CERCLA against the three primary defendants involved with the Lipari Landfill Superfund Site (Site), located in Mantua, New Jersey. The Lipari Landfill is the number one Hazardous Waste Site on the National Priorities List. The three primary defendants are Rohm and Haas, a generator within the meaning of section 107 of CERCLA, Owens-Illinois, a generator and a transporter within the meaning of section 107 of CERCLA, and the Manor defendants (Manor Care, Inc., Manor Healthcare Corp., and Portfolio One, Inc., who are the corporate successors to Almo Tank Cleaning and Maintenance Co., a transporter within the meaning of section 107 of CERCLA). Under the terms of the partial consent decree, the three primary defendants will resolve their liability to the United States and State of New Jersey for the costs associated with the remedies selected in the Records of Decision (ROD) I and II, and certain components of ROD III. RODs I and II constitute the on-site remedy, while ROD III constitutes the off-site remedy. The settled components of ROD III include (a) the construction and operation of the seepage control system, including the wellpoint interception system, the French drain and the associated cap downgradient of the containment system and (b) the remediation of the Kirkwood Aquifer in the area impacted by the Landfill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.* v. *Rohm and Hass, et al.,* D.O.J. No. 90–11–3–86.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New Jersey, 402 East State Street, Trenton, New Jersey 08608; Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347–7829. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $13.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2194 Filed 1–28–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that, on January 4, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation has filed written notifications simultaneously with the Attorney General and Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new affiliate members are AG Associates, Sunnyvale, CA; Brantford Computer Haus, Ltd., Ontario, Canada; and PDF Solutions, Pittsburgh, PA.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and Semiconductor Research Corporation intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985, 50 FR 4281.

The last notification was filed with the Department on July 13, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 19, 1992, 57 FR 37557.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93-2196 Filed 1-28-93; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 9:45 A.M., Tuesday, March 9, 1993.

PLACE: Sam Houston State University Hotel, Avenue H at 16th Street, Huntsville, Texas.

STATUS: Open.

MATTERS TO BE CONSIDERED: An update on the Intensive Correctional Leadership Training Program, a progress report on the Corrections Options Incentive Act, the Corrections Telecommunications Systems, foreign technical assistance, the mental health services policies, the NIC annual Corrections Report, the dedication of the Robert J. Kutak Memorial Library, and national corrections medical issues—future considerations/action.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307-3106.

M. Wayne Huggins,

Director.

[FR Doc. 93-2211 Filed 1-28-93; 8:45 am]

BILLING CODE 4410-36-M

LEGAL SERVICES CORPORATION

Designate Recipient of State Support Grant for the Provision of Legal Services in the State of Texas

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to make a grant to Texas Legal Services Center to provide state support services to the Legal Services Corporation's recipient programs in the State of Texas. This grant will be made effective March 1, 1993.

The grant will be awarded pursuant to authority conferred by section 1006(a)(1)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice.

DATES: All comments and recommendations must be received on or before 5 p.m. March 1, 1993.

ADDRESSES: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Jay Brown, Grants Specialist, Grants and Budget Division, Office of Field Services, (202) 336-8828.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. Texas Legal Services Center has been providing "state support" services in Texas as a subgrantee of Legal Aid Society of Central Texas since 1977. With the consent of Legal Aid Society of Central Texas, the Legal Services Corporation intends to award the state support grant directly to Texas Legal Services Center.

The amount of the 1993 grant to Texas Legal Services Center will be the same as legal Aid Society of Central Texas would have received for state support in 1993, less the funds already granted to Legal Aid Society of Central Texas for the months of January and February, 1993. Thus, Texas Legal Services Center will receive $348,738 for the remainder of 1993, and its annualized funding level for 1993 will be $416,854.

Dated: January 26, 1993.

Charles T. Moses, III,

Deputy Director, Office of Field Services.

[FR Doc. 93-2186 Filed 1-28-93; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 25, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 18, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Marianne Klink, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 110 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Music Ensembles and Festivals Application Guidelines FY 1994.

Frequency of Collection: One Time.

Respondents: State or local arts agencies; non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state, regional or local arts agencies that apply for funding under the Challenge Program category guidelines.

Estimated Number of Respondents: 555.

Average Burden Hours per Response: 36.162.

Total Estimated Burden: 20,070.

Marianne Klink,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 93-2135 Filed 1-28-93; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 23, 1993, of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by February 18, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Marianne Klink, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Under-Served Communities Set-Aside Special Projects Rural. Development Projects 1994 Guidelines.

Frequency of Collection: One Time.

Respondents: State arts agencies.

Use: Guideline instructions and applications elicit relevant information from state arts agencies that apply for funding under the Under-Served Communities Set Aside Special Projects, Rural Development Projects 1994 Guidelines.

Estimated Number of Respondents: 26.

Average Burden Hours per Response: 15.

Total Estimated Burden: 390.

Marianne Klink,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 93–2136 Filed 1–28–93; 8:45 am]

BILLING CODE 7537-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–6974; 34–31751; 35–25738; 39–2299; IA–1360; IC–19225; File No. S7–2–93]

Alternative Dispute Resolution Policy

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Securities and Exchange Commission solicits comment on how alternative dispute resolution and negotiated rulemaking processes might be used in the Commission's activities, in order to assist the Commission in developing an appropriate policy on its use of such processes.

DATES: Comments should be received on or before April 1, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–2–93. All comment letters received will be made available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael G. Lenett (202) 272–3094, Senior Counsel, Office of General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 6–6, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 15, 1990, President Bush signed Public Law 101–552, the Administrative Dispute Resolution Act.[1] Companion legislation, Public Law 101–648, the Negotiated Rulemaking Act, was signed by the President on November 29, 1990.[2] The two Acts authorize federal agencies to use alternative dispute resolution (commonly referred to as "ADR"), such as arbitration, mediation, and other consensual methods of resolving disputes, and regulatory negotiation in drafting agency rules (commonly referred to as "reg-neg"), while not actually mandating the employment of ADR or reg-neg. The Acts do require, however, an evaluation by all federal agencies of potential areas for ADR leading to the adoption of an appropriate agency ADR policy, and compliance with certain rules if ADR or reg-neg is used by the agency.

The Commission has formed an ADR and Reg-Neg Task Force to evaluate the utility of ADR procedures and reg-neg to the Commission's activities, with a view toward promulgating an appropriate ADR and reg-neg policy for the Commission. The purpose of this release is to solicit comments on the utility of ADR procedures and reg-neg to the Commission's activities to assist the Commission in its effort to develop an appropriate policy.

II. Background

A. The ADR and Reg-Neg Acts

Alternative means of dispute resolution are procedures, often involving a neutral third party, that are used in lieu of adjudication to resolve issues in controversy. The primary methods of ADR are negotiation,[3] conciliation,[4] convening,[5] facilitation,[6] early neutral evaluation,[7] mediation,[8] mini-trails,[9] factfinding,[10] arbitration,[11] or any combination of these.

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[1] Public Law 101–552, 104 Stat. 2736, 5 U.S.C. 571–583.

[2] Public Law 101–648, 104 Stat. 4969, 5 U.S.C. 561–569.

[3] Negotiation is a process in which the parties meet face to face to reach a mutually acceptable resolution of a dispute of certain issues. Philip J. Harter, "Points On A Continuum: Dispute Resolution Procedures and the Administrative Process," 1 The Administrative Law Journal 141, 150 (1987) [hereinafter cited as "Harter"].

[4] Conciliation is the attempt by a neutral third party to reduce tensions and improve communications among the parties in an effort to get them to agree on a process for resolving their dispute. Harter, at 149–150.

[5] Convening is a process by which a neutral third party helps identify the disputes or issues in controversy and the interested parties to the dispute or issues. The neutral also will try to bring the parties together to negotiate if negotiation is the recommended course of action. Harter, at 149.

[6] Facilitation is the attempt by a neutral third party, without becoming deeply involved in the substantive issues, to bring the disputing parties together to agree on a process for resolving their dispute. Harter, at 149.

[7] Early neutral evaluation is consultation by opposing attorneys, at an early stage in a dispute, with an impartial attorney who gives an advisory opinion about what the outcome would be if the case were to go to litigation. Marguerite Millhauser, "Dispute Resolution: An Overview of Basic Processes," p.4 (1989), reprinted in Administrative Conference of the United States, Federal Agency Use of ADR: A Rountable for Agency Dispute Resolution Coordinators (June 11, 1990).

[8] Mediation is the assistance of a neutral third party, who has no power to render a decision, in a negotiation process. Harter, at 148–149.

The ADR Act requires the Commission, in common with all agencies, to: (1) Designate an ADR specialist; (2) review all Commission activities and adopt a policy regarding the potential use of ADR techniques; (3) provide ADR training for employees involved in developing and implementing the ADR policy; and (4) review agency contracts, grants, and other assistance programs to determine whether they should authorize and encourage ADR.[12] In developing its policy, the Commission is directed to examine ADR in connection with formal and informal adjudications; rulemakings; enforcement actions; issuing and revoking licenses or permits; contract administration; litigation brought by or against the agency; and other agency actions.[13] The ADR Act does not mandate the use of ADR in any specific case or category of cases, nor does it prescribe a deadline for the adoption of an ADR policy.

Negotiated rulemaking is a procedure by which an agency invites the parties that will be affected by a prospective rule to join the agency in forming an ad hoc committee to develop a consensus draft of the rule. The Reg-Neg Act is the result of a congressional finding that agencies are currently using rulemaking procedures that may discourage affected parties from meeting with each other, negotiating, and sharing information and expertise, thereby giving rise to expensive and time-consuming litigation over agency rules.[14] The goal of negotiated rulemaking is to improve the substance and increase compliance with agency rules, and to decrease litigation challenging agency rules.

The Reg-Neg Act authorizes agencies to use negotiated rulemaking procedures if the head of the agency determines that the use of such procedures is in the public interest.[15] Although the Act does not mandate the use of reg-neg or the adoption of a policy, it does prescribe certain procedures if reg-neg is used and encourages agencies to use reg-neg when it would enhance the rulemaking process.

B. Commission Response

On March 18, 1991, Chairman Breeden designated the General Counsel, James R. Doty, to be the Commission's ADR Specialist. The General Counsel formed the ADR and Reg-Neg Task Force with representatives from the various offices and divisions of the Commission to examine all aspects of Commission activities in order to determine where ADR and reg-neg procedures may be appropriate. The Task Force is currently engaged in this evaluation.

On June 3, 1991, the Commission authorized the General Counsel to publish a release concerning the Commission's response to the Acts. The Release stated that the General Counsel had been appointed the Commission's ADR Specialist and had formed the Task Force.[16] In addition, the Release informed the public that the Commission intended to issue another release soliciting comments regarding the utility of ADR and reg-neg to the Commission's activities. Finally, the Release announced that, in the interim, until a policy is adopted, the Commission "does not intend to consider employing ADR or reg-neg on a case-by-case basis."

III. Request for Comments

The following request for comments is organized by functions of offices and divisions within the Commission. Following a brief discussion of certain general guidelines for commenters is a description of the Commission's rulemaking programs and a request for comments as to the utility of reg-neg to those activities. Following is a general description of the activities of each office and division of the Commission, focusing on those areas in which recurring disputes arise or rules are promulgated. These latter statements are set forth in alphabetical order, with division statements preceding office statements, and include general and specific questions regarding the utility of ADR to Commission activities.

A. General Guidelines

A few general notes should guide commenters:

1. Notwithstanding the organization of this Release by division and office, commenters should feel free to comment generally upon the utility of ADR or reg-neg to broad functions of the Commission (e.g., rulemaking, litigation) rather than to specific office or division activities. Also, commenters should feel free to comment on any aspect of ADR or reg-neg in connection with any Commission activity, whether or not specifically requested.

2. Commenters advocating the use of ADR by the Commission are encouraged to specify the particular type(s) of ADR that they are recommending. In this regard, commenters should not feel constrained by particular titles of ADR techniques; rather, commenters should focus on describing the recommended method, whether it be one of the methods noted above, a combination of those, or some other method. If reg-neg is suggested, commenters should describe the details of the proposed process.

3. Commenters should be mindful of, and should address, certain factors that may suggest the appropriateness or inappropriateness of ADR or reg-neg in certain areas. For example, ADR may be appropriate for disputes in which: (1) The standard process produces unsatisfactory results, is too slow, or is too resource-intensive or otherwise expensive; (2) contentiousness and acrimony in the process could be reduced; (3) parties to the process could be expected to be more willing to follow through to implement a decision; (4) cases are routine or otherwise not precedent-setting; or (5) confidential communication with a third party expert or non-expert would be helpful. On the other hand, ADR may be inappropriate, as stated in the Act itself, in the following circumstances:

(1) A definitive or authoritative resolution of the matter is required for precedential value, and an ADR proceeding is not likely to be accepted generally as an authoritative precedent;

(2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and an ADR proceeding would not likely serve to develop a recommended policy for the agency;

(3) Maintaining established policies is of special importance, so that variations among individual decisions are not

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[9] Mini-trials are meetings at which the decisionmakers for each side and, usually, a neutral third party, hear a summary of the best case for litigation presented by attorneys for each side. Following these presentations, the decisionmakers attempt to negotiate their differences, often with the assistance of the neutral. The neutral may render an opinion or provide more limited advice to the parties. Harter, at 147–148.

[10] Factfinding is the investigation of issues by a neutral third party who possesses expertise in the subject matter. The neutral gathers information from all sides and prepares a summary of key issues. Harter, at 146–147.

[11] Arbitration is a hearing conducted by a neutral third party who hears facts and arguments presented by each side and renders a decision (non-binding or binding, as agreed by the parties) in light of relevant laws and procedures. Harter, at 145–146.

[12] Public Law 101–552, section 3, 104 Stat. 2736–37 (1990).

[13] Public Law 101–552, section 3(a)(2), 104 Stat. 2737 (1990). In addition, by Executive Order 12778, 56 FR 55195 (October 23, 1991), President Bush directed agencies to use ADR in civil litigation whenever possible.

[14] Public Law 101–648, section 2, 104 Stat. 4969 (1990).

[15] 5 U.S.C. 563(a)

[16] Exchange Act Release No. 29284, 56 FR 27546 (June 14, 1991).

increased and an ADR proceeding would not likely reach consistent results among individual decisions;

(4) The matter significantly affects persons or organizations who are not parties to the proceeding;

(5) A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record; and

(6) The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and an ADR proceeding would interfere with the agency's fulfilling that requirement.[17]

With respect to reg-neg, such procedures may be appropriate when they can: (1) Reduce time and resources expended on developing and enforcing rules; (2) increase compliance rates; (3) provide expertise and information needed or desired to obtain better rules; or (4) reduce the likelihood of litigation over the rule. However, the Reg-Neg Act provides that agencies should consider reg-neg only if the head of the agency determines that it is in the public interest. In making such determinations, the Act directs the head of the agency to consider whether:

(1) There is a need for a rule;

(2) There are a limited number of identifiable interests that will be significantly affected by the rule;

(3) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) Can adequately represent the interests identified under paragraph (2); and

(B) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(4) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(6) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and

(7) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.[18]

4. There are a number of informal procedures generally followed by the staff which are not undertaken pursuant to formal authority.[19] For example, the staff may engage in discussions with interested parties in administrative proceedings to reconcile divergent views and attempt to narrow the issues to be considered in the proceeding.[20] In addition, the Commission's Rules of Practice provide a procedure by which parties may make, and the Commission consider, offers of settlement; by which agreements on procedure may be entered into; and by which conferences may be convened, in any proceedings before the Commission, including hearings before administrative law judges.[21] The staff also may discuss with interested parties in investigations, civil lawsuits, and administrative proceedings, the possibility of disposing of such matters by consent, settlement, or some other manner.[22] Thus, procedures similar to ADR and having the same goal of informal dispute resolution are currently in operation and provide a basis for further ADR development. Commenters may wish to suggest ways in which these procedures could be speeded up, be less expensive, encourage greater compliance or be otherwise improved.

5. Finally, the Commission recognizes that the following discussion does not cover all of its activities. By focusing on certain areas, it is not intended to exclude others. Commenters should feel free to suggest additional areas that may be appropriate for ADR.

B. Rulemaking

A few general notes concerning the Commission's rulemaking process, which apply regardless of the division or office to whose activities the rules relate, may prove helpful to commenters. Commission rulemaking involves, first, research by the staff of the matter under consideration and information gathering regarding the nature of the problem and various means to address it. Then, a proposed rule and accompanying explanatory release is drafted by the staff for the Commission. If the Commission votes to accept the staff's proposal, with or without modification, generally the proposed rule and release are published for public comment. After the close of the public comment period, the staff prepares an adopting release, which frequently contains a revised version of the rule that takes into account comments received as well as any new considerations that have arisen. Alternatively, the staff may recommend that the rule be reproposed if substantial changes have been made as a result of public comments or additional study. Finally, the Commission votes on the rule, and if adopted, it is published along with the final release.

Depending upon the nature of the particular rulemaking, the process outlined above may be modified in order to make it more fruitful. In particular, various alternative means of obtaining public comment may be used, such as holding hearings or issuing a concept release to gain public input prior to formulating specific proposals, or reproposing rules to gain additional comments. Some rules benefit from discussions with or grow out of proposals submitted by affected parties either informally or in rulemaking petitions.

With respect to the Commission's rulemaking function, comment is solicited as to whether a form of reg-neg would provide a better means of receiving and using public input. As noted above, the Commission currently engages in a variety of techniques to ascertain the views of the public in connection with rulemaking proceedings. Public comments are received at various stages of the process and are carefully considered. Few of the Commission's rules have been the subject of litigation. Comment is requested on how reg-neg might increase compliance with resulting rules.

There are a number of potentially interested persons to any Commission rulemaking. For example, interested persons may include many different types of registrants, underwriters, broker-dealers, attorneys, accountants, other professionals, institutional investors, individual investors, the securities bar, the securities industry, the accounting profession, corporations, and trade or public interest groups. Among these categories of interested persons, wide differences in interest may exist. Depending upon the nature of the particular prospective rule or regulation, reg-neg would have to take many or all of these interests into account. Public comment is sought as to when reg-neg should be an available option, how such a process should be implemented, and whether there are particular areas of rulemaking that would be enhanced by this approach.

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[17] 5 U.S.C. 572(b).

[18] 5 U.S.C. 583(a).

[19] See, e.g., 17 CFR 202.1—8. In addition, the Commission's programs generally are administered by delegated authority to the staff. See 15 U.S.C. 78d–1; 17 CFR 200.30–1—16. Interested persons may request review by the Commission of any staff action taken pursuant to delegated authority. 17 CFR 201.26. Certain staff members with decisionmaking responsibilities, as well as interested parties to Commission proceedings, are subject to regulations governing ex parte communications, which should be considered by commenters in making suggestions regarding the Commission's ADR policy. 17 CFR 200.110—114.

[20] 17 CFR 202.4(c).

[21] 17 CFR 201.8.

[22] 17 CFR 202.5(f). For more controversial issues that are addressed directly by the Commission, there is usually a need to establish precedent that can guide future staff actions taken pursuant to delegated authority.

C. Summary of Commission Activities

1. Division of Corporation Finance

The Division of corporation fiance reviews registration statements, annual and other reports, proxy materials, tender offer documents, and other disclosure documents to assure that the disclosure and other requirements of the Securities Act of 1933 (the "Securities Act"),[23] the Securities Exchange Act of 1934 (the "Exchange Act"),[24] and the Trust Indenture Act of 1939 (the "Trust Indenture Act"),[25] are met. The staff of the Division is responsible for determining whether business and financial disclosure in filed documents is adequate to protect investors and in compliance with Commission rules, whether other aspects of corporate and securities transactions are in compliance with applicable requirements, and whether other applicable requirements, such as accounting standards, are satisfied.

Certain filings may be the subject of staff action pursuant to authority delegated from the Commission.[26] Such actions include acceleration of the effectiveness of a registration statement[27] and acceleration of the time period during which proxy materials must be on file with the Commission before they may be mailed.[28]

The staff treats deficient filings in a variety of ways, depending upon the particular transaction involved and the nature of the noncompliance. Frequently, the staff issues comments to the party responsible for the filing so that the deficiency may be rectified by that party. If this approach is not successful or feasible, the staff may pursue other alternatives, including recommending a course of action to the Commission. Such recommendations may be to refuse to accelerate the effectiveness of, or to issue a stop order on, a registration statement,[29] commence an informal inquiry, or to institute a formal order of investigation or some type of enforcement action.

In addition to reviewing filings, the staff reviews applications filed by companies and investors and may issue certain orders pursuant to delegated authority.[30] For example, the staff may issue orders with respect to applications for exemptions from certain registration and reporting requirements of the Exchange Act, applications for confidential treatment, and various applications under the Trust Indenture Act. Some of these matters require public notice and the opportunity for public comment before an order can be issued, while others do not. Alternatively, the staff may prepare orders for issuance by the Commission.

The staff also renders advice and assistance to registrants, prospective registrants, other filers, accountants, attorneys, and other members of the public. Depending upon the nature of the question and the extent to which informality is appropriate, this may be accomplished through telephone calls, interpretive or no-action letters, or pre-filing conferences or other meetings.

Finally, like the other operating divisions of the Commission, the Division of Corporation Finance participates in the rulemaking process with respect to rules, regulations, forms and schedules.

Comment is solicited as to whether a form of ADR or reg-neg would be useful as a method of resolving disputes with respect to any of the activities described above: Review of filings, processing of applications, rendering of interpretive advice, and rulemaking. The review of filings, processing of applications, and rendering of advice are characterized by informality and direct contact between the staff and other parties, including the opportunity for parties to explain their views before decisions are made. Even after decisions are made, there are ample opportunities for reconsideration and appeal to the Commission. Comment is solicited as to whether any means of ADR would be likely to provide a less expensive or more useful, speedy, or consistent resolution of these matters, or otherwise improve upon them.

2. Division of Enforcement

a. General responsibilities. The Division of Enforcement is charged with carrying out the Commission's responsibility to enforce the federal securities laws. It conducts informal and formal investigations into possible violations and recommends appropriate actions and remedies for consideration by the Commission.[31] In informal investigations, unlike formal investigations, no compulsory process is issued or testimony compelled, and cooperation is voluntary. Unless otherwise ordered by the Commission, investigations and reports on investigations are non-public. At the conclusion of an investigation or otherwise, the Commission may determine that no action is warranted, or, upon the staff's recommendation, the Commission may authorize the staff to proceed with one or more of the following:

(1) An action in federal court seeking an injunction to prevent further violative conduct, which may also seek additional relief such as the imposition of penalties or the disgorgement of illegal profits;

(2) Administrative proceedings; or

(3) Referral to the Department of Justice for criminal prosecution.[32]

The Commission provides a procedure, usually referred to as a "Wells Submission," by which a person, who has been advised by the enforcement staff that he or she may be the subject of a recommendation by the staff to the Commission that law enforcement action be taken, may submit a written statement to the Division explaining why no enforcement action should be brought against him or her.[33] During the course of the staff's investigation or, more typically, toward its conclusion, the staff ordinarily, but not as a matter of right, advises counsel, if the staff has come to a determination to recommend to the Commission that a law enforcement proceeding be instituted, that counsel may make a written submission on behalf of the client. The staff describes to counsel in general terms the results of its investigation and the nature of the charges it intends to recommend to the Commission. Counsel may choose to make a submission in an attempt to dissuade the staff from going forward with an enforcement recommendation to the Commission, or, should that provide unsuccessful, to persuade the Commission that the staff's adverse recommendation is inappropriate.[34] The staff forwards the Wells Submission to the Commissioners in conjunction with its own memorandum recommending the enforcement action and usually responding to the points raised by counsel.

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[23] 15 U.S.C. 77a *et seq.*

[24] 15 U.S.C. 78a *et seq.*

[25] 15 U.S.C. 77aaa *et seq.*

[26] See 17 CFR 200.30–1.

[27] 17 CFR 230.461.

[28] 17 CFR 240.14a–6.

[29] See section 8 of the Securities Act, 15 U.S.C. 77h.

[30] See 17 CFR 200.30–1.

[31] The Commission's informal enforcement procedures and its Rules Relating to Investigations are set forth at 17 CFR 202.5 and 17 CFR 203.1–8, respectively.

[32] Other recommendations may be made, such as, for example, to suspend trading in a security.

[33] The Wells Submission procedure is set forth at 17 CFR 202.5(c).

[34] Counsel sometimes elects to submit suggestions in Wells Submissions as to how the proceedings might be settled.

In general, there are three broad areas in which disputes arise in connection with the Commission's enforcement program. These are: (a) The investigative process; (b) the prosecution of administrative proceedings before the Commission and enforcement litigation before the courts; and (c) requests for relief from administrative and judicial orders. Within each of these broad categories, a variety of disputes may arise. Each type of dispute implicates different interests and, accordingly, may require different treatment under the Commission's ADR policy.

b. The Investigation Process. Most of the disputes arising out of investigations relate to the process by which the staff gathers information. These principally concern compliance with Commission subpoenas for documents or testimony, and may involve a wide range of issues. Such issues include the cost of complying with subpoenas, the scope of a subpoena, the timing of production, the appearance of the witness, the existence of a privilege, and the confidentiality of documents and testimony submitted.

Such disputes typically are resolved in one of three ways: the investigative staff may seek authority from the Commission to bring a subpoena enforcement action; the staff may negotiate a compromise with respect to the scope or timing of production; or the staff may simply hold in abeyance the request for information. The staff, therefore, employs a method of ADR when it negotiates a resolution of a dispute relating to the investigative process. Under present practice, however, this negotiation process is informal and seldom protracted because extended negotiations on such matters simply delay investigations.

One area of dispute in the investigative process concerns the cost of complying with subpoenas. These disputes include whether the Commission must reimburse a recipient of an investigative subpoena, and, if so, what reimbursement is due. As a matter of policy, the Commission ordinarily does not reimburse recipients of subpoena for their search and copying costs without a court order.[35]

Another area of potential disputes, although infrequent, relates to access to transcripts. Witnesses have a qualified right to review their own documentary and testimonial evidence.[36] The Commission has the authority, for good cause shown, to refuse to allow a witness to obtain a copy of a transcript or documentary evidence. The courts have denied interlocutory review of a refusal to provide a witness a copy of his testimony.[37]

Requests for confidentiality of testimony or documents, and requests for access to investigative files, may also give rise to disputes. In addition, subpoena recipients may ask that the staff accept limited access to documents, such as accepting redacted documents subject to inspection of the originals, examining originals and retaining copies only of important documents, or agreeing to return originals following the conclusion of an investigation. Occasionally, the staff will negotiate limited access agreements of this nature. Confidentiality disputes may also arise through Freedom of Information Act ("FOIA") requests or through subpoenas issued in connection with private litigation. Ultimately, the Office of General Counsel represents the Commission with respect to FOIA requests and subpoenas.[38]

c. Enforcement proceedings. Once the Commission authorizes the staff to initiate enforcement proceedings, a variety of disputes typically arise both before and after the filing of the action. Prior to filing an action, disputes may arise concerning the forum—administrative or judicial—in which the action is to be brought, the number and scope of the charges, and the nature of the remedies sought by the Commission. Negotiations often occur with regard to such disputes. Once administrative or judicial proceedings commence, some or all of these pre-filing disputes may continue, as may the negotiations pertaining to them.

In addition, disputes concerning discovery or evidentiary issues may also arise. Such disputes may be resolved as an adjunct to resolving the entire action. When they are resolved separately, the negotiation process is analogous to the process of negotiating subpoenas during the investigative phase. Rather than seeking judicial resolution of these disputes through the subpoena enforcement process, the staff may seek to resolve litigation disputes through discovery motions if negotiations among counsel prove fruitless.

In the past, the Commission has litigated a number of civil cases in federal court because the defendant and the Commission concurred on the issues of liability but disagreed about the appropriate relief. As disgorgement and penalties may now be obtained in administrative proceedings as a result of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (the "Remedies Act"),[39] a similar situation may occur in administrative actions. Often these cases involve a need to evaluate the ability of the defendant or respondent to pay. Delay in the settlement process may reduce a defendant's assets through costs and counsel fees. Accordingly, in cases where the principal dispute involves the amount of disgorgement or penalties and/or the ability to pay, a method of ADR may provide an expeditious means of settling the matter.

d. Requests for relief from orders. The final area in which disputes arise concerns requests for relief from Commission bar orders entered in administrative proceedings and from injunctions and ancillary relief ordered by a court. The Commission has authority to institute administrative proceedings against persons who are associated or seek association with regulated entities and have engaged in certain acts or omissions or are subject to certain convictions or injunctions, and bar such persons from being so associated.[40] In addition, self-regulatory organizations ("SROs") such as the securities exchanges and the National Association of Securities Dealers, Inc. can bar persons subject to certain "statutory disqualifications" from association with a member of the SRO.[41]

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[35] To obtain such an order, the recipient of a subpoena must refuse to produce under the subpoena and seek an order for reimbursement in a subpoena enforcement action brought by the Commission. The Right to Financial Privacy Act provides for a statutory right to reimbursement. Because the reimbursement rate for copying and research time are specified by regulation, there are rarely reimbursement disputes relating to such subpoenas. Only if an agency subpoena is unduly burdensome, and compliance would "threaten normal operation of a respondent's business," will a court refuse to enforce a subpoena unless the agency provides reasonable reimbursement. *EEOC* versus *Bay Shipbuilding Corp.*, 668 F.2d 304, 313 & n. 11 (7th Cir. 1981); *FTC* versus Rockefeller, 591 F.2d 182, 191 (2d Cir. 1979); *SEC* versus *Arthur Young & Co.*, 584 F.2d 1018, 1032–33 (D.C. cir. 1978), *cert. denied*, 439 U.S. 1071 (1979).

[36] See Rule 6 of the Rules Governing Investigations, 17 CFR 203.6.

[37] See, e.g., *Banes, et al.* versus SEC, No. 91–790272 (9th Cir. July 15, 1991) (per curiam); *Commercial Capital Corp.* versus *SEC*, 360 F.2d 856, 858 (7th Cir. 1966).

[38] While investigations are ongoing, the Commission typically declines to produce documents from its investigative files. In responding to FOIA requests, the Commission generally relies on an exemption in the statute for documents from law enforcement investigative records. In responding to subpoenas, it relies on a governmental privilege. The Commission rarely compromises such claims out of concern for harm to its investigations or unwarranted invasion of the privacy of third parties.

[39] Pub. L. 101–429, 104 Stat. 931.

[40] Exchange Act sections 15(b), 15 U.S.C. 78o(b), 15(b)(6), 15 U.S.C. 78o(b)(6), and 15B(c)(4), 15 U.S.C. 78o–4(c)(4); Investment Advisers Act of 1940 sections 203(f), 15 U.S.C. 80b–3(f); Investment Company Act of 1940 sections 9(b), 15 U.S.C. 80a–9(b).

Persons barred by the Commission or an SRO, or otherwise subject to a "statutory disqualification," cannot associate with a regulated entity or SRO unless the consent of the Commission and SRO are obtained. There are two ways in which such persons may obtain such consent. Pursuant to Rule 29 of the Commission's Rules of Practice,[42] persons subject to a Commission bar, who are seeking to associate with an entity that is not a member of an SRO or whose bar order contains a proviso that application may be made to the Commission after a specified period of time,[43] may make an application directly to the Commission for consent to associate. All other such persons must make their application pursuant to Rule 19h–1 of the Exchange Act,[44] by which applications for consent to associate are made with the assistance of the prospective employer through the employer's SRO, and the Commission reviews SRO determinations on such applications. Under either method, Commission approval of an application for consent to associate does not modify or vacate the Commission order nor does it remove or lift the bar; the order and bar remain in effect, so that a person who deviates from the terms or conditions under which his or her application was approved is subject to an enforcement action for violation of the order.

By delegated authority, the Director of the Division of Enforcement reviews applications made pursuant to Rule 29 and the Director of the Division of Market Regulation reviews applications made pursuant to Rule 19h–1. Although the Division of Enforcement sometimes engages in negotiations concerning some issue with parties seeking consent to associate under Rule 29, the Division of Market Regulation does not engage in such negotiations with applicants seeking consent to associate under Rule 19h–1. In the latter case, the Division of Market Regulation consults solely with the applicable SRO that has made an initial determination with respect to the application.

As to Rule 29 applications, the Commission has consented in the past to relief from bars when it has been in the public interest. The Rule sets forth eight factors that the applicant must address in an affidavit. Grants of such applications sometimes follow negotiations between the staff and the applicant concerning the nature of the duties the applicant would have and the extent of supervision that a new employer would provide if the applicant were to re-enter the business. Applications to re-enter the securities industry by barred persons are common, and are often granted subject to limitations on a person's activities. In cases where there has been a preliminary determination to grant some form of relief from an order, ADR may be helpful in reaching an acceptable order.

Relief also may be sought from administrative cease-and-desist orders. However, as cease-and-desist authority has only recently been granted to the Commission pursuant to the Remedies Act, there has not yet been an application for relief from such an order.

Finally, relief may be sought from injunctions and other ancillary relief ordered in connection with an injunction.[45] In exceptional cases, an injunction may be modified or dissolved by the court on motion by the defendant or by the Commission under Federal Rule of Civil Procedure 60(b). Almost always, a party seeking modification or dissolution of a court decree entered in a Commission action will seek to negotiate with the staff before making the motion in court. A strict standard governs requests to modify or dissolve Commission injunctions: "Nothing less than a clear showing of grievous wrong evoked by new and unforeseen conditions" will justify relief from an injunctive order.[46] The Commission has successfully relied on this standard to defend its injunctions. While the Commission sometimes will agree not to object to a motion to modify or vacate a portion of a court decree directing ancillary relief, such as mandatory compliance procedures, it seldom will agree to relief from "obey the law" injunctions.[47] Similarly, there are occasions when the Commission consents to relieve a party from certain provisions of an injunction, but only in truly exceptional cases involving a change in circumstances.

In cases involving relief from bar orders and injunctions, the principal dispute relates to the nature of the limitations under which a defendant will operate. The negotiation process under Rule 29 in cases involving re-entry of a barred person usually turns on finding a combination of limitations that gives the Commission sufficient comfort that the person will be working in a position and under supervision that minimizes the risk of future violations. In the case of modifications to an injunction, negotiations typically turn on whether the staff and the defendant are able to devise a substitute court order that preserves the Commission's enforcement interest in protecting the public yet interferes less with the operation of a defendant's business.

e. Considerations as to ADR. The Commission currently settles more than 80% of its enforcement cases. The Commission requests comments as to whether there are ADR techniques that would achieve settlements that are "better" from the viewpoint of the Commission enforcement program or the public interest with respect to result, timeliness, cost, or compliance.

The investigation of potential violations of the federal securities laws and the prosecution of those matters through judicial and administrative proceedings are essential parts of the Commission's statutory obligations. To assist in carrying out these responsibilities, the Commission has a powerful weapon for fact-finding that is not possessed by private parties, the subpoena, compliance with which can be enforced in court. In addition, the present negotiation and litigation processes are often used by the Commission not only to resolve particular cases but also to achieve, in the words of the ADR Act, a "definitive or authoritative resolution of the matter * * * for precedential value." Unlike private litigants, the Commission engages in litigation or negotiation to promote the public interest. Decisions to institute certain actions, charge certain offenses, and request certain remedies may, for example, reflect a need in a certain case to reinforce the Commission's commitment to enforce particular provisions of the securities laws.

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[41] Exchange Act sections 6(c)(2), 15 U.S.C. 78f(c)(2), 15A(g)(2), 15 U.S.C. 78o–3(g)(2), 17A(b)(4)(A), 15 U.S.C. 781q–1(b)(4)(A).

[42] 17 CFR 201.29. For a discussion of Rule 29, see Exchange Act Release No. 20783, [1983–84 Transfer Binder] Fed. Sec. L. Rep. (CCH), ¶ 83,509 (March 22, 1984).

[43] Persons whose order contains such a proviso and who seek to associate with a broker-dealer, may elect either to apply directly to the Commission under Rule 29 and, if the Commission approves the application, thereafter to the SRO, or to have the prospective employer apply to the SRO, subject to Commission review under Exchange Act Rule 19h–1 (discussed below in Section III.C.4. of this Release).

[44] 17 CFR 240.19h–1.

[45] These cases are handled by the Office of General Counsel and are discussed further in Section III.C.9.b.ix. of this Release.

[46] *United States* v. *Swift & Co.*, 286 U.S. 106, 119 (1932). See also, *SEC* v. *Blinder, Robinson & Co.*, 855 F.2d 677, 679–80 (10th Cir. 1988); *SEC* v. *Clifton*, 700 F.2d 744, 745 (D.C. Cir. 1983).

[47] Typically, the Commission consents to relieve a person from an injunction only where some form of ancillary relief (e.g., compliance procedures) was obtained and the Commission believes that the ancillary relief is no longer necessary.

In cases where the Commission negotiates or settles, it does so only where the resolution will not undercut its interpretation of the securities laws, its need to maintain consistency of results among cases, and its protection of the public interest. When the Commission decides to litigate matters, it typically does so to establish precedent or because the staff cannot achieve a settled result that the Commission deems consistent with the public interest or its prior interpretations of the securities laws. Commenters are requested to address whether and how ADR can be utilized to achieve the foregoing goals of interpretation and enforcement of the securities laws to establish precedent, deterrence, consistency, and to promote the public interest.[48]

ADR may not be well-adapted to subpoena negotiations, as it may delay rather than hasten the process. Where the Commission does compromise on production issues, it is typically done informally and quickly. Selecting, organizing, and employing an ADR technique could postpone the resolution date. ADR may be inappropriate in cases where, by statute, the Commission must act in a very brief period, such as when it is necessary to apply to a court promptly to obtain a temporary restraining order, freeze, or cease and desist order.

The Commission has not delegated to its staff the authority to institute court or administrative proceedings or to settle them; the Commissioners themselves vote to authorize such matters. Comment is solicited as to whether forms of ADR would be useful which do not require the direct participation of persons with authority to settle, but where it is sufficient that the staff assigned to a case have authority only to recommend a negotiated settlement for acceptance by the Commission.[49] If a proposed procedure, to be effective, depended upon direct negotiations between persons with authority to settle the matter, this would require the Commission to delegate to one person the power to settle a case submitted to ADR. Such a procedure would not be desirable or feasible for the Commission.

3. Division of Investment Management

The Division of Investment Management administers the Investment Company Act of 1940 ("Investment Company Act"),[50] the Investment Advisers Act of 1940 ("Advisers Act"),[51] and the Public Utility Holding Company Act of 1935 ("Holding Company Act").[52] Among other things, these Acts provide the Commission with authority to grant exemptions from or issue orders under provisions of the Acts if the Commission makes certain required findings.[53] In many cases this authority has been delegated to the Director of the Division. The Acts require that orders of the Commission shall issue only after notice and opportunity for a hearing.[54]

Most of the orders issued under the Investment Company Act and Advisers Act are granted upon requests for exemptions from various provisions of the Acts or Commission rules. Generally, requests for orders are discussed by the staff with applicants prior to publication of a notice. If the staff could support an application if it was modified, the applicant receives comments and often revises its request to take into account the staff's comments. As a result of these informal negotiations, almost all requests for orders are either granted without a hearing or withdrawn when the staff notifies the applicant that it will not support the application. Occasionally, persons requesting a Commission order that is not supported by the staff do not withdraw their application and the matter proceeds to a Commission hearing. In addition, persons affected by an application that has been noticed may request a hearing. If ordered by the Commission, the hearing is held before a Commission-appointed hearing officer, and appeals are made directly to the Commission.

Comment is requested as to whether a form of ADR would be useful in resolving disagreements over whether the Commission should grant an order under the Acts. How would findings, which the Acts require the Commission to make before granting an order, be made if ADR is employed? How would the Commission identify interested persons who might request a hearing on an application?

Under the Investment Company Act, the Commission has the authority to bar persons from being employed with or serving in certain capacities for an investment company,[55] and to permit persons to serve who, by statute, are prohibited from serving in these capacities.[56] In addition, as noted in the discussion of the activities of the Division of Enforcement,[57] the Commission has authority to issue money penalties in administrative proceedings[58] and cease and desist orders against certain persons associated with an investment company violating the Investment Company Act or other securities laws.[59] Under the Advisers Act, the Commission can deny, suspend, or revoke the registration of an investment adviser or persons associated with an adviser,[60] censure them,[61] and issue cease and desist orders.[62] In addition, the Commission has authority to impose money penalties in administrative proceedings for violations of the Advisers Act or rules adopted under the Act.[63] This authority is very similar to Commission authority under the Exchange Act with respect to broker-dealers.

The Commission has extensive rulemaking authority under all three statutes.[64] In some cases, rulemaking proposals seek to codify a series of exemptive orders issued after negotiations with applicants as described above. Comment is requested as to what additional use may be made of negotiated rulemaking techniques.

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[48] As previously noted is Section III.A.3. of this Release, the ADR Act directs agencies to consider not using ADR where, among other things, "a definitive or authoritative resolution of the matter is required for precedential value," "maintaining established policies is of special importance, so that variations among individual decisions are not increased," or "the matter significantly affects persons or organizations who are not parties to the proceeding." 5 U.S.C. 572(b). In most litigated enforcement matters, at least one of these considerations applies. This provision of the Act also contains other factors that may indicate that ADR is inappropriate in certain cases. Commenters should address all of the factors that the ADR Act sets forth as potential reasons for not using ADR.

[49] Once the Commission has authorized the institution of a court or administrative proceeding, it is understood to have delegated to the staff the authority to make intermediate determinating during the course of the case or proceeding, e.g., evidence, witnesses, discovery, etc. Subpoena enforcement proceedings must be authorized by the Commission.

[50] 15 U.S.C. 80a–1 et seq.

[51] 15 U.S.C. 80b–1 et seq.

[52] 15 U.S.C. 79a et seq.

[53] General exemptive authority is granted the Commission by Sections 6 (b), (c), (d), and (e) of the Investment Company Act and Section 206A of the Advisers Act. 15 U.S.C. 80a–6 (b), (c), (d), and (e); 15 U.S.C. 80b–6a. The Investment Company Act gives the Commission authority to issue orders for different types of relief from a number of specific statutory requirements of the Investment Company Act. Specific grants of authority to issue orders under the Advisers Act are also provided the Commission by sections 202(a)(11)(F), 203(f), and 203(h). 15 U.S.C. 80b–2(a)(11)(F), 80b–3(f), 80b–3(h). There are numerous provisions throughout the Holding Company Act giving the Commission the authority to issue orders. See U.S.C. 79–79z–6.

[54] Section 40(a) of the Investment Company Act, 15 U.S.C. 80a–39(a); section 211(c) of the Advisers Act, 15 U.S.C. 80b–11(c); section 20(c) of the Holding Company Act, 15 U.S.C. 79t(c).

[55] Section 9(c) of the Investment Company Act, 15 U.S.C. 80a–9(c).

[56] Section 9(b) of the Investment Company Act, 15 U.S.C. 80A–9(b).

[57] See *supra* Section III.C.2 of this Release.

[58] Section 9(d) of the Investment Company Act, 15 U.S.C. 80a–9(d).

[59] Section 9(f) of the Investment Company Act, 15 U.S.C. 80a–9(f).

[60] Section 203(e) of the Advisers Act, 15 U.S.C. 80b–3(e).

[61] *Id.*

[62] Section 203(k) of the Advisers Act, 15 U.S.C. 80b–3(k).

[63] Section 203(i) of the Advisers Act, 15 U.S C. 80b–3(i).

4. Division of Market Regulation

The Commission's program for the regulation and supervision of securities markets and market participants is governed by the Exchange Act. In administering those provisions, the Commission, through the Division of Market Regulation, engages in various formal and informal administrative actions, including rulemaking, registration of market participants and SROs, approval of SRO proposed rule changes, issuance of orders exempting persons or transactions from provisions of the Exchange Act and the rules thereunder, providing interpretive advice, approval of applications for listing and delisting of securities on exchanges, and review of SRO decisions to permit persons who are subject to "statutory disqualifications" to associate with broker-dealers.[65]

The Commission solicits comment on the advisability of utilizing ADR procedures and reg-neg in connection with its administration of the market regulation provisions of the Exchange Act. There is substantial competition in the areas regulated through the market regulation program, and, accordingly, actions in one matter affect parties not represented in the matter who are competitors of the affected party. For example, the Commission has considered SRO proposed rules that would limit the ability of its members to engage in transactions in another market operated by another SRO (thereby limiting the potential market share of the other SRO). The Commission has available substantial information about the interests of markets and market participants through SROs and from other sources. In addition, all rulemaking in the market regulation program, including those that have been challenged in court, has afforded substantial opportunity for private sector input. Each rulemaking has been characterized by the expression of strong divergent views by different private sector interests. In each case, the Commission has made a principled policy decision, which it advocates to the Congress as well as to the courts. Moreover, consideration should be given to the need to make consistent decision and to balance burdens on competition with investor protection and other statutory goals.

5. Office of the Administrative Law Judges

The Commission administers six statutes—the Securities Act, Exchange Act, Investment Company Act, Advisers Act, Holding Company Act, and Trust Indenture Act—which provide for administrative proceedings pursuant to provisions of the Administrative Procedure Act (APA).[66] Administrative Law Judges (ALJs) preside over public on-the-record hearings required by the APA in administrative proceedings initiated by the Commission on the recommendation of one of its offices or divisions. Such proceedings may result in the setting of Commission policy.

A variety of cases result in administrative proceedings. The typical cases concern whether the Commission should censure, limit the activities of, or suspend or bar from the securities business, registered broker-dealers or investment advisers and persons affiliated with those entities, and whether persons appearing or practicing before the Commission in a representative capacity (lawyers and accountants, for the most part) should be suspended or barred from such practice because of improper professional conduct or judicial actions taken against them.

The Administrative Procedures Act applies when the Commission initiates an administrative proceeding. The Chief ALJ, upon receipt of the Order Instituting Public Proceedings, assigns the case to an ALJ and sets a date, time, and place for the public hearing. The parties may request that the judge postpone the start of the hearing while they explore the possibility of a negotiated settlement. Sometimes the parties request time to explore settlement during the hearing after the prosecuting division or office has presented its evidence.

The Commission's ALJs can be involved in ADR-like procedures because Rule 8 of the Commission's Rules of Practice [67] provides for conferences in which the parties can discuss settlement. The parties may request the judge to participate in the settlement process by opining on the appropriateness of a proposed settlement, with the understanding that the parties' request constitutes a waiver of any right to claim pre-judgment based on the views expressed. The judge may decline to express a view on an offer. To date, this aspect of Rule 8 has had limited use.

Comments are solicited on the appropriateness of ADR in administrative proceedings. The Commission solicits comment on whether it would be useful to institute a modified Rule 8 procedure whereby a second judge, not the one assigned to the proceeding, would act as settlement judge and convene an informal conference at the parties' request and pursue the possibility of settlement. Should the Commission direct the ALJs to stress to the parties the benefits of a negotiated resolution, explore the possibilities of various ADR techniques with the parties, or even require a statement from the parties that they have tried ADR and a settlement is not possible? There are other ADR procedures that may be useful in this adjudicatory role. Many courts have adopted ADR procedures and others are considering them. Would use of ADR require the Commission to establish procedures for it to either accept/reject the negotiated result or delegate to the staff negotiators authority to settle on behalf of the Commission?

6. Office of the Chief Accountant

The Office of the Chief Accountant (OCA) participates in the Commission's programs for the review of registration statements and reports, enforcement of the securities laws, oversight of the accounting profession, and rulemaking.

At present, OCA engages in a form of reg-neg through its oversight and review programs. OCA's oversight objectives result in periodic meetings with, among others: The staff of the Financial Accounting Standards Board (FASB); various committees of the American Institute of Certified Public Accountants, including the Planning Subcommittee of the Auditing Standards Board, the SEC Regulations Committee, and the Accounting Standards Executive Committee; the Financial Executives Institute (FEI); and representatives of various accounting firms. Also, the Commission's Chief Accountant serves as a non-voting participant on the FASB's Emerging Issues Task Force (EITF), which includes representatives of large, medium, and small accounting firms, corporations and affiliated organizations (such as the National Association of Accountants, FEI, and the Business Roundtable), and the FASB staff. The EITF discusses novel and difficult accounting issues and indicates when there is a consensus on the appropriate accounting for a transaction. Discussions at the EITF and in the periodic oversight meetings described above, aid OCA in understanding interested parties' views on current or recurring issues in advance of drafting interpretive bulletins or proposing rulemaking.

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[64] General rulemaking authority is granted the Commission by sections 6(c) and 38(a) of the Investment Company Act, 15 U.S.C. 80a–6(c) and 80a–37(a), sections 206A and 211 of the Advisers Act, 15 U.S.C. 80b–6a and 80b–11, and section 20(a) of the Holding Company Act, 15 U.S.C. 79t(a).

[65] As discussed above in Section III.C.2. of this Release, the Division of Market Regulation, by delegated authority, reviews applications to associate with broker-dealers made pursuant to Exchange Act Rule 19h–1. As noted in that Section, the Division of Market Regulation does not engage in direct negotiations with applicants, but rather consults with the SRO that has made an initial determination with respect to the application.

[66] 5 U.S.C. 551 et seq.

[67] 17 CFR 201.8.

OCA participates in the review of registrant filings. Responses to OCA comments on individual filings may highlight registrant positions in areas that require additional interpretive guidance or rulemaking.

OCA participates in the Commission's general enforcement program by providing expert advice on accounting and auditing issues to the Division of Enforcement and the Office of General Counsel. In addition, OCA is the complainant in disciplinary actions against accountants and their firms brought under Rule 2(e) of the Commission's Rules of Practice,[68] in which it is represented by the Office of General Counsel.

Comment is solicited as to whether a form of ADR or reg-neg would be useful with respect to any OCA's activities described above: oversight of the accounting profession, review of filings, rendering interpretive advice, enforcement related activities, and rulemaking. The review of filings, oversight of the accounting profession, rulemaking, and rendering of advice generally follow direct contact between the staff and other parties as described above, including the opportunity for parties to explain their views before decisions are made. Even after decisions are made, there are ample opportunities for reconsideration and appeal to the Commission. Comment is solicited as to whether a form of ADR or reg-neg would be likely to provide a less expensive or more useful, speedy or consistent means of resolving these matters or would provide a better means of receiving and utilizing public input.

7. Office of Equal Employment Opportunity

The Equal Employment Opportunity Director administers the EEO complaint process, which consists of three major stages: the pre-complaint counseling stage, the formal complaint stage, and the appellate stage. The Equal Employment Opportunity Commission has adopted a new complaints processing regulation that sets forth policies and procedures on filing, processing, investigating, and settling complaints of discrimination.[69] Among other things, the new procedures significantly expand the counseling period and provide substantial flexibility in the formal complaint stage for fact-finding and resolving disputes.

Pre-complaint counseling is a prerequisite to filing a formal complaint of employment discrimination in the federal government. The complainant must seek EEO counseling from a designated EEO Counselor within 45 calendar days of the alleged discriminatory event or action. The EEO Counselor will then conduct the initial interview with the complainant, make whatever informal inquiry into the matter is appropriate, and attempt to bring the parties together into an amicable informal resolution.

Following counseling, the complainant is free to file a formal complaint. The complaint is assigned to an EEO Investigator. The Commission engages investigators to ensure the neutrality of the investigation file. After the investigation, the complainant is given an opportunity to discuss the findings in an attempt to resolve the matter informally. If this is not successful, the complainant may elect to have a hearing and/or a final agency decision.

If there is no resolution of the matter and if the complainant disagrees with the final agency decision on his complaint, that person may appeal to the Equal Employment Opportunity Commission and/or federal district court.

Utilization of ADR procedures may be useful in resolving EEO disputes at any stage of the administrative process, including the appellate stage. The Commission solicits comment on the utility of ADR in EEO disputes. Would ADR work within the scope of the EEO process? As a separate process?

8. Office of the Executive Director

The Executive Director is responsible for the development and execution of the overall management policies of the Commission for all its operating divisions and staff offices. The Executive Director also provides executive direction to, and exercises administrative control over, the Office of Equal Employment Opportunity, Office of Filing Information and Consumer Services, Office of the Comptroller, Office of Information Technology, Office of Human Resources Management, Office of Public Affairs, and Office of Administrative Services.

In addition, the Executive Director is delegated the full range of program administrative functions for the purposes of implementing the Paperwork Reduction Act, the Small and Disadvantaged Business Utilization Program, Government Printing and Binding Regulations, the Occupational Safety and Health Program, the Federal Managers Financial Integrity Act of 1982, as well as others designated by the Chairman.

The Executive Director also exercises delegated authority to designate certifying officers for agency payments, prescribe procurement regulations, enter into contracts, designate contracting officers, and make procurement determinations.

Contracting may be a potential area for ADR. The process for contract disputes, under the Federal Acquisition Regulations, is as follows. First, a contractor submits, in writing to the Contracting Officer (C.O.), a claim seeking payment of money, adjustment or interpretation of contract terms, or other relief arising under the contract. Second, the C.O. issues a written decision on any claim initiated against the contractor. Third, when a claim cannot be settled by mutual agreement and a decision on the claim is necessary, the C.O. reviews facts pertinent to the claim, secures legal and other assistance, and prepares a written decision. Finally, the C.O. advises the contractor that he may appeal the C.O.'s decision to the Board of Contract Appeals. During this process, it may be helpful to employ ADR when the claim cannot be settled by mutual agreement and a decision on the claim is necessary.

The Commission solicits comment as to the suitability of ADR procedures to personnel grievances and contract disputes, which have the potential to lead to litigation.

9. Office of the General Counsel

The Office of the General Counsel (OGC) serves as the focal point for representation of the Commission in all appellate litigation and litigation brought against the Commission, whether in connection with the securities laws or against the Commission or its staff.[70] OGC's duties

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[68] 17 CFR 201.2(e). Rule 2(e) disciplinary actions are discussed below in Section III.C.9.b.v. of this Release.

[69] 29 CFR part 1614.

[70] The Division of Enforcement represents the Commission in law enforcement actions brought by the Commission in court and in administrative proceedings before the Commission. See supra Section III.C.2 of this Release. The Office of General

Continued

also include representing the Commission in judicial proceedings, helping to resolve cross-divisional legal matters, and providing advice and assistance to the Commission, its operating divisions, and regional offices.

a. Adjudication. The OGC Adjudication Group assists the Commission by preparing draft decisions in administrative proceedings on appeal from adjudicative actions taken by SROs and ALJs. Many of these cases involve disciplinary actions against regulated entities or securities professionals under the Exchange Act. Other cases include regulatory proceedings under the Public Utility Holding Company and Investment Company Acts, statutory disqualification proceedings and SRO membership denial proceedings under the Exchange Act, and stop-order proceedings under the Securities Act.

The various stages involved in these cases are summarized as follows. First, an appeal to the Commission is filed. Second, briefs are filed. Third, at the request of a party in an appeal from an ALJ's decision or in the discretion of the Commission in an appeal from an SRO's decision, oral argument before the Commission is held. Fourth, the staff analyzes the record on appeal and prepares a draft opinion for the Commission. Finally, the draft is submitted to the Commission and the Commission issues its decision.

The Commission solicits comments on whether ADR would be useful in resolving disputes at this appellate level. Should a procedure be established that would provide the parties with the opportunity to mediate the issues in controversy? Alternatively, should a procedure be adopted in which a neutral third party conducts a post-briefing conference to clarify the issues and positions, and if appropriate, receives supplementary briefs and expresses views about the perceived merits of each party's case? Would ADR interfere with the Commission's obligations to maintain continuing jurisdiction over a matter and alter disposition of the matter in light of changed circumstances?[71]

b. General litigation. The OGC General Litigation Group is involved in the activities described below. Some involve disputes that are quickly disposed of either in negotiations, administrative proceedings already subject to informal ADR procedures, or by filing motions in court. The Commission solicits comment on whether any of the following may be amendable to ADR procedures or whether existing informal ADR practices can be improved:

i. EAJA claims. These are claims in district courts against the Commission by defendants in law enforcement actions instituted by the Commission seeking attorney's fees pursuant to the Equal Access to Justice Act.[72] These cases usually proceed on a motion following an enforcement action in which the defendant that he has "substantially prevailed."[73] The amount of fees may be negotiated. These matters are decided as post-judgment motions, there is no discovery, and no complex procedures are involved.

ii. MSPB claims. These are appeals by Commission employees from job actions taken against them (e.g., removals, downgrades, furloughs, reductions in force, denials of within-grade increases, and suspensions of longer than 14 days). When an employee appeals the Commission's action to the Merit Systems Protection Board (MSPB), staff attorneys represent the Commission's interests before the MSPB. The MSPB appeals process already provides for, and even encourages informal ADR procedures, in that the judges who preside over these cases aggressively encourage resolution short of a full hearing or trial and actively participate in settlement efforts. Direct negotiation is employed in these circumstances.

iii. EEOC claims. These are claims pursuant to the Civil Rights Acts, Rehabilitation Act, and Americans With Disabilities Act before the Equal Employment Opportunity Commission (EEOC). Informal ADR procedures are utilized during the internal Commission appeals process. A Commission EEO counselor acts as a facilitator in attempting to resolve the matter short of an appeal to the EEOC.

iv. FOIA/CTR matters. The General Counsel decides Freedom of Information Act (FOIA) appeals by requesters from determinations by the Commission's FOIA Officer. These matters involve FOIA requests for documents, FOIA requests for expedited review or production of documents, and confidential treatment requests ("CTRs") to withhold documents from disclosure. These cases are normally decided quickly, and are very rarely appealed to court. When a case appears headed for court, negotiations between the parties often occur.

v. Procurement and government contracts. These cases involve bid protests and government contract disputes. Resolution of these matters is governed by specific dispute resolution statutes, including the Contract Disputes Act,[74] and already involves use of ADR-like procedures.

vi. Rule 2(e) professional disciplinary proceedings. Rule 2(e) of the Commission's Rules of Practice[75] authorizes the Commission to bar or suspend the privilege of accountants, attorneys, and other professionals of practicing before the Commission. Rule 2(e) cases are administrative proceedings similar in procedural format to the administrative proceedings prosecuted by the Division of Enforcement against broker-dealers and investment advisers, involving notice of charges, an opportunity to answer and defend, pre-trial, trial, and post-trial procedures, and a decision by an ALJ which is appealable to the Commission, with the Commission's decision appealable to a U.S. Court of Appeals. The staff may enter into negotiations and propose settlements to the Commission prior to the Rule 2(e) hearing. These negotiations are informal and generally effective, and result in a high percentage of settlements.

vii. Non-party subpoenas. Staff attorneys respond to document and deposition subpoenas from parties in private actions, criminal defendants, and U.S. Attorneys seeking documents and/or testimony from Commissioners and staff in cases where the Commission is not a party. The staff normally engages in direct negotiations with the party issuing the subpoena in an attempt to resolve the mater without the necessity of making an application to the court. These matters are often quickly resolved, with the Commission generally producing public, non-privileged material, and the requesting party agreeing to withdraw his or her request for other materials. Otherwise, they are litigated through quickly-resolved motions filed in the courts, involving Commission motions for protective orders, or motions to compel made by subpoenaing parties. Comment is solicited as to whether ADR would be useful in the more difficult cases where the requesting party insists on receiving privileged or non-public materials, given the Commission's position that non-public and privileged material should not be produced.

Counsel also provides assistance to the Division of Enforcement in its law enforcement programs.

[71] For example, under the Holding Company Act, the Commission is directed to revoke its order granting an exemption if it later finds that the circumstances which gave rise to its issuance no longer exist. In addition, the Holding Company and Investment Company Acts authorize the Commission to amend and rescind orders issued under those Acts.

[72] 28 U.S.C. 2412.

[73] See id.

[74] 41 U.S.C. 601–13.

[75] 17 CFR 201.2(e).

viii. RFPA. Staff attorneys respond to motions to quash Commission subpoenas pursuant to the Right to Financial Privacy Act (RFPA).[76] The RFPA provides the exclusive means by which a person can challenge a subpoena issued to a bank for that person's financial records. The challenge is almost always resolved quickly by the district court, which is by statute required to decide the challenge within seven days of the Commission's response.

ix. Motions to vacate injunctions. These cases concern defendants' motion under Federal Rule of Civil Procedure 60(b) to vacate permanent injunctions previously entered in enforcement actions against them. As discussed above in Section III.C.2. of this Release, almost always a party seeking modification or dissolution of a court decree entered in a Commission action will have negotiated with the staff before making the motion in court. If the Commission has agreed, as a result of these negotiations, not to oppose the motion (sometimes as modified), the court will usually grant it. If the Commission has disagreed, ordinarily the party does not make the motion. Thus, there are very few cases where the party makes the motion unaware of the Commission's intended opposition or without having contacted the Commission previously.

If the defendant pursues the motion in court, it is quickly litigated, involving only the motion itself, the Commission's opposition, and a reply. The Commission has been very successful in court in its firm opposition to vacating permanent injunctions without an extraordinary unforeseeable change in circumstances.

x. Collateral motions in enforcement actions. Staff attorneys respond to motions to dismiss counter-claims and cross-claims, and motions in opposition to intervention motions, in enforcement actions. These matters are usually quickly litigated; they involve the Commission's motion to dismiss the counter-claim or cross-claim, an opposition, and the Commission's reply. There is little room for negotiation in these matters, as it is the Commission's policy that no other actions may be consolidated with enforcement actions.

xi. FTCA claims. These are claims pursuant to the Federal Tort Claims Act (FTCA).[77] The FTCA provides the exclusive means for persons (other than federal employees) to sue the government for tort damages. FTCA claims are commenced when the claimant files a "notice of claim" with the Commission. The claim is decided administratively within six months (pursuant to a statutory deadline), and the lawsuit, if any, is generally defended by the U.S. Attorney's Office, and not by the Commission's attorneys.

xii. Defense of claims. OGC attorneys defend suits against the Commission, Commissioners, and staff under a variety of statutes, including damages actions for alleged violations of rights under the U.S. Constitution and challenges to Commission authority or rulemaking. These suits are generally dismissed before any substantive litigation begins.

xiii. Labor negotiations. This is a very rare duty that the General Counsel's Office performs on behalf of the Commission, involving negotiations regarding non-mandatory work condition issues.

c. Appellate litigation. All Commission appellate and *amicus curiae* litigation is centralized in the Office of General Counsel. Commission staff attorneys represent the agency in all U.S. Courts of Appeals and (through the Solicitor General, an official of the Department of Justice) in the U.S. Supreme Court. Typically, these are appeals taken from enforcement actions, almost always by defendants, but sometimes by the Commission, and by respondents from Commission orders in administrative proceedings. Occasionally, there are appeals from Commission orders in proceedings under the Public Utility Holding Company Act or the Investment Company Act. The Commission has an active *amicus curiae* program in which it files briefs and presents oral argument in private litigation (and occasionally in U.S. Government criminal litigation), usually at the appellate level, on its own initiative and at the request of courts for its views. Many appeals in which the Commission is a party and almost all *amicus curiae* cases involve policy issues. Comment is solicited as to whether and how ADR could be utilized effectively in the appellate litigation program.

d. Bankruptcy reorganization. The Commission participates in proceedings for the reorganization of large public companies under Chapter 11 of the U.S. Bankruptcy Code, in the federal courts. It acts as a disinterested advisor to the courts and pays special attention to the rights of public security holders involved in those proceedings. Actual court appearances are made by staff attorneys in certain of the Commission's regional offices. The Office of General Counsel acts as a headquarters for this program, coordinating positions to be taken and obtaining the necessary authorizations from the Commission.

e. Ethical conduct program. The Commission's Ethics Counsel is resident within the Office of General Counsel. She administers the agency's Conduct Regulation and provides advice and guidance under that Regulation, federal conflict of interest statutes, executive orders, Rules of the Office of Government Ethics, and professional responsibility standards of lawyers and accountants. Occasional disputes arise under rules relating to restrictions on securities trading and holding, outside employment, post-government employment, and clearance of articles for publication.

10. Office of Human Resources Management

The Office of Human Resources Management (OHRM) is responsible for the development, implementation, and evaluation of the various human resources and personnel management programs of the Commission. The Director of the Office reports administratively to the Executive Director of the Commission, and manages four branches within the office: The Employee Development and Performance Management Branch, the Staffing and Employee Relations Branch, the Processing and Benefits Branch, and the Occupational Analysis and Compensation Branch.

The following are the primary areas in which disputes arise in connection with OHRM's activities: disciplinary or performance-based actions (e.g., reprimands, suspensions, removals, downgrades); performance evaluations; position classification determinations; leave administration (e.g., leave restrictions, AWOL charges); claims for workers' compensation and unemployment benefits; non-selection; adjustments to working conditions (e.g., details, reassignments, office relocation, tour of duty changes); and suitability determinations.

Both formal and informal procedures currently exist for resolving disputes in these areas. Pursuant to delegated authority for examining, appointments and classification, OHRM makes determinations regarding employee suitability, the rating and ranking of applicants, and the setting of position grades and salaries. These determinations may be challenged and, if not informally resolved within the agency, appealed to the Office of Personnel Management (OPM).

With regard to disciplinary actions, performance management, leave administration, and the assignment of work, OHRM provides advisory support and procedural guidance to the management officials authorized to take action. Generally, employee challenges to the propriety of such actions are covered by the agency's administrative grievance process. This is a two-stage process which provides the opportunity for the parties directly involved to resolve their disputes informally through direct negotiations. If resolution is not achieved, the issues may be submitted to a deciding official (either the Executive Director of the OHRM Director), who may on occasion request an employee to act as an independent fact-finder before issuing a final decision. Among the matters excluded from the Commission's grievance process are actions subject to administrative review by a third-party, such as the OPM, EEOC, MSPB, Department of Labor (for workers' compensation claims), and state unemployment offices.

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[76] 12 U.S.C. 3401 et seq.

[77] 28 U.S.C. 2671 et seq.

IV. Conclusion

This Release has identified the Commission's activities that involve recurring disputes and rulemaking. As it continues to study the utility of ADR and reg-neg in these areas, the Commission is mindful of the fact that such procedures would be used solely as a voluntary means of achieving acceptable resolutions and effective rules and not to take away any existing rights of parties or compromise the Commission's programs or policies. The Commission has not formulated any conclusions to date regarding the potential role of ADR and reg-neg and would greatly appreciate any comments or suggestions.

Dated: January 22, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2078 Filed 1-28-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31752; File No. SR-Amex-92-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Annual Fee on Listed Company Equity Issues

January 22, 1993.

Pursuant to section 19(b)(1) of the Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange is increasing the annual fee imposed on listed company equity issues.

The Fee Schedule is available at the Office of the Secretary, Amex, and at the Commission.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the fee increase and discussed any comments it received on the fee increase. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is proposing to increase the annual fee imposed on listed company equity issues. The annual fee for stocks, with separate categories based on the number of outstanding shares, would be increased starting in 1993—the minimum fee increasing from $5,500 to $6,500 and the maximum fee increasing from $13,500 to $14,500, with each category increasing by $500 from the minimum level of $6,500 to the maximum of $14,500.[2]

The annual fee was last increased in 1991.[3] The new fee level will keep the Exchange competitive with other equity exchanges offering similar services.

(2) Statutory Basis

The proposed fee increase is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees,and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden Competition

The fee increase will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the fee increase.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed fee increase that are filed with the Commission, and all written communications relating to the proposed fee increase between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-48 and should be submitted by February 19, 1993.

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[1] The exact text of the amended fee schedule was attached as Exhibit A to File No. SR-Amex-92-48 and can be obtained at the places specified in Item IV below.

[2] Although each category of fees increased by $500, the actual proposed increase from existing charges is $1,000.

[3] See Securities Exchange Act Release No. 28908 (February 22, 1991), 56 FR 9033 (March 4, 1991) (Order approving File No. SR-Amex-90-35).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2131 Filed 1–28–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31753; File No. SR–MSE–92–16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to a Two Month Waiver of Its P&L System Reports Fee

January 22, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 24, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a two month waiver of the MSE P&L System Reports fee which is set forth in paragraph (n) of the Membership Dues and Fees Section of the MSE Rules.[1] The fees under this section are $125 per account per month and 20 cents per trade. The Exchange intends to make this fee waiver effective for November and December 1992.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Purposed Rule Change

1. Purpose

The purpose of the proposed fee waiver is to reduce this expense for members because associated Exchange costs were adequately covered during the year.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of the purposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–92–16 and should be submitted by February 19, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2132 Filed 1–28–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31762; File No. SR–NYSE–92–28]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Amendments to the New York Stock Exchange's Notice of Fine for Minor Violation(s) of Rules

January 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Notice of Fine for Minor Violation(s) of Rules ("Notice of Fine") to indicate that Form BD no longer requires disclosure

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[1] The MSE P&L System receives transaction information from the Midwest Clearing Corporation and computes the profitability of these transactions based on mark-to-market prices. These transactions include executed trades from all markets as well as other adjustments to positions. This service is provided for all MSE specialists and those market makers requesting the service. In connection with the P&L System, reports are generated daily showing current security positions and valuations, daily profit or loss based on mark-to-market prices, and month-to-date and fiscal-year-to-date profit or loss.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

of any fine of $2,500 or less, imposed pursuant to NYSE Rule 476A, that is not contested.[3]

The NYSE requests accelerated approval of the proposal. Accelerated approval would enable the Exchange to conform its policy relating to the reporting of minor rule violations to the Commission's amendments to Form BD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On July 27, 1992, the Commission adopted amendments to Item 7(E)(2) of Form BD, the uniform application form for broker-dealer registration under the Act.[4] The amendments eliminate the requirement that broker-dealers disclose on Form BD any violation of a self-regulatory organization ("SRO") rule that is designated as "minor" pursuant to an enforcement and reporting plan filed with, and approved by, the Commission pursuant to Rule 19d–1 under the Act.[5]

The Exchange, a self-regulatory organization with a plan approved under SEC Rule 19d–1 as contained in Exchange Rule 476A,[6] proposes to amend its Notice of Fine in accordance with the Commission's amendments to Form BD. The Exchange's Notice of Fine would be amended to indicate that Form BD no longer requires disclosure of any fine of $2,500 or less, imposed pursuant to Rule 476A, that is not contested.[7]

(b) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–28 and should be submitted by March 1, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1) and (7), 6(d) (1) and 19(d) of the Act and Exchange Act Rule 19d–1.[8]

The Commission believes that the proposal furthers the purposes of section 6(b)(1) of the Act by referencing the Commission's recent amendment to Form BD in the rules of the Exchange. An exchange's ability to enforce compliance by its members and member organizations with exchange and Commission rules is central to its self-regulatory function. In this regard, the NYSE proposal would amend the Exchange's Notice of Fine in accordance with the Commission's amendment to Form BD by specifying that the Commission does not require an amendment to Item 7 of Form BD for any fine of $2,500 or less imposed pursuant to the NYSE's minor rule plan, unless the fine is contested.[9] As noted above, the Commission determined to amend Question (E)(2) of Item 7 of Form BD to exclude SRE rule violations designated as minor pursuant to a plan approved by the Commission under Rule 19d–1.[10] The Commission has approved the NYSE's minor rule violation plan and, as a result, the NYSE files periodic reports in accordance with Rule 19d–1.[11] Accordingly, the Commission believes that is it appropriate for the NYSE to amend its

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[3] NYSE Rule 476A authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or nonregistered employee of a member or member organization, for any violation of an Exchange rule which the Exchange determines to be minor in nature.

[4] See Securities Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028 (July 31, 1992).

[5] 17 CFR 240.19d–1 (1991). Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. An SRO is required, pursuant to paragraph (c)(1) of Rule 19d–1, to file promptly with the Commission any final disciplinary actions taken by the SRO. However, paragraph (c)(2) of Rule 19d–1 establishes that minor rule plan determinations not exceeding $2,500 are not final, thereby permitting the SRO to report on a periodic, as opposed to immediate basis.

[6] See Securities Exchange Act Release Nos. 22415 (September 17, 1985), 50 FR 38600 (September 20, 1985) (approving File No. 4–284) and 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985) (approving NYSE Rule 476A in File No. SR–NYSE–84–27).

[7] In accordance with SEC Rule 19d–1(c)(2), fines in excess of $2,500, assessed under NYSE Rule 476A, are not considered pursuant to the minor rule violation plan and thus are subject to the current reporting requirements of Rule 19d–1(c)(1) of the Act. See *infra* note 5.

[8] 15 U.S.C. 78f(b)(1) and (7), 78f(d)(1), 78s(d) and 17 CFR 240.19(d)–1 (1991).

[9] A party penalized by a Rule 476A citation and fine may either accept the citation or contest the matter and seek a full disciplinary hearing under Rule 476.

[10] See Securities Exchange Act Release No. 30958, *supra* note 4. Prior to the Commmission's adoption of amendments to Form BD, Question (E)(2) of Item 7 required applicants to disclose whether an SRO or commodities exchange ever found the applicant or a control affiliate to have been involved in any violation of its rules.

[11] See *Supra* note 6.

Notice of Fine to reflect the Commission's amendment to Form BD.

Because the revised Notice of Fine would specify the Commission's disclosure requirement, the proposal should assist members and member organizations in preparing accurate responses to Question (E)(2) of Item 7 of Form BD. The Commission, therefore, believes that the proposal is consistent with the section 6(b)(7) requirement that the rules of an exchange be consistent with section 6(d)(1) and provide fair procedures for the disciplining of exchange members and persons associated with exchange members.

Finally, the Commission notes that the proposed rule change preserves the regulatory benefits intended by the Act. Although the proposed rule change would conform NYSE rules to amended Form BD's disclosure requirements, the proposal would not alter the Exchange's reporting requirements under Rule 19d-1(c)(2).[12]

The NYSE will continue to have the obligation to report minor rule violation determinations to the Commission on a periodic basis.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The NYSE proposal simply conforms the NYSE's Notice of Fine to the Commission's recent amendments to Form BD.[13] Moreover, the Commission's proposed amendments to Form BD were published in the **Federal Register** for the full statutory period.[14]

It is therefore ordered, Pursuant to section 19(b)(2)[15] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. 93-2171 Filed 1-28-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19228; 812-8026]

Kidder Peabody California Tax Exempt Money Fund, et al.; Notice of Application

January 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Kidder Peabody California Tax Exempt Money Fund, Kidder Peabody Cash Reserve Fund, Inc., Kidder Peabody Equity Income Fund, Inc., Kidder Peabody Exchange Money Fund, Kidder Peabody Government Income Fund, Inc., Kidder Peabody Government Money Fund, Inc., Kidder Peabody Investment Trust, Kidder Peabody Investment Trust II, Kidder Peabody Municipal Money Market Series, Kidder Peabody Premium Account Fund, Kidder Peabody Tax Exempt Money Fund, Inc. (the "Funds"),[1] Kidder Peabody Asset Management, Inc. (the "Manager"), and Kidder, Peabody & Co. Incorporated (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), 22(d) and from rule 22c-1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds (i) to issue and sell multiple classes of securities representing interests in the same investment portfolio (the "Choice Pricing System") and (ii) to assess and, under certain circumstances, waive or reduce a contingent deferred sales charge ("CDSC") on certain redemptions of their shares.

FILING DATE: The application was filed on August 4, 1992 and amended on November 25, 1992. By letter dated January 15, 1993, applicants' counsel stated that an amendment, the substance of which is incorporated herein, will be filed during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m, on February 16, 1993 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 60 Broad Street, New York, New York 10005-2350.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Staff Attorney, at (202) 504-2406, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the Act. Each Fund has entered into a management and/or investment advisory agreement with the Manager pursuant to which the Manager provides management and/or investment advisory services to the Fund. Each Fund has also entered into a distribution agreement pursuant to which the Distributor acts as the principal underwriter for the Fund.

2. Shares of six of the Funds are currently offered to investors at net asset value plus a front-end sales load. These Funds have adopted plans pursuant to rule 12b-1 under the Act ("Rule 12b-1 Plans"). Seven of the Funds are money market funds and issue their shares at net asset value without the imposition of sales charges. These Funds also have adopted Rule 12b-1 Plans.

3. The Directors/Trustees of each Fund, including a majority of the Directors/Trustees who are not "interested persons" of each Fund, as that term is defined in section 2(a)(19) of the Act (the "Independent Directors/Trustees"), have approved the establishment of the Choice Pricing System. Under the Choice Pricing System, each Fund could provide investors with the option of purchasing shares: (1) With a conventional front-end sales load and subject to a service and possibly a distribution fee[2] ("Class A shares" or the "Front-End Load

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[12] See *supra* note 5.

[13] See Securities Exchange Act Release No. 30958, *supra* note 4.

[14] See Securities Exchange Act Release No. 29643 (September 6, 1991), 56 FR 44029. All of the comments that addressed the proposed amendment to Item 7 (E)(2) believed that it was appropriate. See Securities Exchange Act Release No. 30960, *supra* note 4.

[15] 15 U.S.C. 78s(b)(2) (1988).

[16] 17 CFR 200.30-3(a)(12) (1991).

[1] As used in the application, the term "Fund" includes and is used to refer to each portfolio or series in cases where multiple portfolios or series exist.

[2] As used in this application, the term "service fee" has the meaning given to that term in the amendment to Article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. ("NASD"). *See* Exchange Act Release No. 30897 (July 7, 1992), 57 FR 30985.

Option"), (2) subject to a CDSC and a service fee and a distribution fee ("Class B shares" or the "Deferred Option"), (3) without imposition of a sales charge, a service fee, or a distribution fee ("Class C shares" or the "No-Load Option"), (4) without imposition of a front-end sales load but subject to a service fee and distribution fee and possibly a nominal redemption fee or CDSC ("Class D shares" or the "Pay-As-You-Go Option"), and (5) with or without imposition of a sales charge and subject to a non-rule 12b–1 service fee ("Service Payment") and possibly a distribution fee pursuant to a Rule 12b–1 Plan ("Class E shares" or the "Financial Intermediary Option"). In addition, applicants may from time to time create one or more additional classes of shares, the terms of which may differ from the classes of shares described above.

4. Applicants request that exemptive relief also apply to any other existing or future open-end investment company registered under the Act whose principal underwriter is the Distributor or any person directly or indirectly controlling, controlled by, or under common control with the Distributor and whose shares are divided into multiple classes with differing voting rights and expense allocations and/or that employs a CDSC in a manner substantially similar to that described in the application.[3]

5. Under the Front-End Load Option, investors would purchase Class A shares at the then current net asset value plus a front-end sales load. The sales load generally would be subject to reductions for larger purchases and under a right of accumulation, other discount purchase plans, or other reductions permitted by section 22(d) of the Act. In addition, Class A shareholders of certain Funds would bear the cost of an ongoing service fee, and possibly a distribution fee, under a Rule 12b–1 Plan based upon a percentage of the average daily net asset value of the Class A shares. The aggregate annual rate of such fees is currently expected to be in the range of 0.25% to 0.50% of each Fund's net assets attributable to the class.

6. Under the Deferred Option, investors will purchase Class B shares at the net asset value per share without the imposition of a sales load at the time of purchase. The Funds would also pay a service fee and a distribution fee pursuant to a Rule 12b–1 Plan, based upon the average daily net asset value of the Class B shares, that would compensate the Distributor for its services and expenses in distributing each Fund's shares, including payments made to registered representatives and certain financial institutions as commissions or service fees. It is currently expected that the service fee would not exceed 0.25%, and the distribution fee would not exceed 0.75%, of each Fund's net assets attributable to the class. Class B shares will automatically convert to Class A shares after a period of time, expected to be approximately six years after their issuance, thereby becoming subject to the lower rule 12b–1 fee applicable to Class A shares. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period of his or her purchase may be subject to a CDSC that is paid to the Distributor. It is currently expected that the percentage generally will vary from 5% for redemptions made during the first year from initial purchase to 0% for redemptions made after the sixth year from purchase. Other schedules with different initial percentages and different periods over which the CDSC is charged may also apply. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will also be Class B shares, although these shares will not be subject to the CDSC.

7. Under the No-Load Option, Class C shares would be offered at net asset value without the imposition of either a front-end load or CDSC and without any rule 12b–1 service or distribution fees. It is anticipated that the No-Load Option would be offered to clearly defined investors. Applicants expect to offer shares of the No-Load Option to (1) employee benefit and retirement plans of the Distributor and (2) participants in certain investment advisory programs proposed to be offered by the Manager in the future, when shares are purchased through or in connection with those programs.

8. Under the Pay-As-You-Go Option, investors would purchase Class D shares at net asset value without the imposition of a sales load at the time of purchase, but subject to a service fee, expected not to exceed 0.25%, and an ongoing rule 12b–1 distribution fee, expected not to exceed 0.75%, of each Fund's net assets attributable to the class. Proceeds from the distribution fee would be used primarily to compensate the Distributor for its services and expenses in distributing each Fund's shares, including payments made to registered representatives and certain financial institutions as commissions or service fees. Funds may impose a redemption fee if the Directors/Trustees determine it to be appropriate and any shares subject to a redemption fee will be designated Class D shares. However, no shares purchased prior to the disclosure of a redemption fee in the appropriate prospectus will bear such fee. In the alternative, redemptions of Class D shares may be subject to a CDSC payable to the Distributor on the same terms and conditions applicable to Class B shares, except that the CDSC would be at a lower rate and for a shorter period (currently not anticipated to exceed 1% for redemptions only during the first year after purchase) than that proposed to be imposed on Class B shares and except that Class D shares subject to a CDSC would not automatically convert to Class A shares.

9. Under the Financial Intermediary Option, Class E shares would be available for purchase by banks or other financial intermediaries for the benefit of their customers. The Class E shares would be offered only to or through intermediaries and could not be purchased by individuals directly from the Funds or the Distributor. Each Fund's Class E shares would be offered in connection with a service plan (a "Service Plan") adopted by the Directors/Trustees of the Funds pursuant to procedures affording the major protection to investors provided by rule 12b–1, although the Service Plan would not be adopted pursuant to that rule. Under a Service Plan, the Funds would enter into a shareholder services agreement (a "Service Agreement") with each financial intermediary that purchases Class E shares, requiring the financial intermediary to provide support services to its customers who are beneficial owners of the Class E shares. Under a Service Plan, each Fund would pay a Service Payment directly to participating financial intermediaries for their services and assistance in accordance with the terms of its Service Plan and the relevant Service Agreement and the expense of these payments would be borne entirely by the beneficial owners of the Class E shares to which the Service Agreement relates. Each financial intermediary would receive as consideration for its services a Service Payment expressed as a percentage of the average daily net asset value of the Class E shares held by

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[3] The only existing investment company meeting the requirements for exemptive relief specified above that is not a signatory to the application is Liquid Institutional Reserves, which currently offers two classes of shares in each of its three series. See Investment Company Act Release Nos. 18409 (Nov. 15, 1991 (notice) and 18435 (Dec. 10, 1991 (order). Liquid Institution Reserves does not currently intend to rely on the order requested in this application. Applicants represent that if Liquid Institutional Reserves determines in the future to issue multiple classes of shares in reliance on the order requested in the application, it will do so in accordance with the conditions and representations set forth in the application.

the financial intermediary. In addition, Class E shares may be subject upon purchase to payment of a front-end sales load and/or to a distribution fee, in the latter case to be paid pursuant to a Rule 12b–1 Plan.

10. From time to time the Funds may create additional classes of shares, the terms of which may differ from the Class A, Class B, Class C, Class D, and Class E shares only in the following respects: (1) Each class of shares would have a different designation; (2) each class of shares might be sold under different sales arrangements (*e.g.*, sales with a front-end sales charge, subject to a contingent deferred sales charge, or at net asset value); (3) each class of shares would bear any Rule 12b–1 Plan or Service Plan payments related to that class (and any other costs relating to obtaining shareholder approval of the Rule 12b–1 Plan for that class or an amendment to its Rule 12b–1 Plan); (4) each class of shares would bear expenses specifically attributable to the particular class ("Class Expenses") limited to: (a) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (c) blue sky registration fees incurred by a class of shares; (d) Commission registration fees incurred by a class of shares; (e) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (f) litigation or other legal expenses relating solely to one class of shares; (g) Director's/Trustees' fees incurred as a result of issues relating to one class of shares; and (h) other expenses that are subsequently identified which shall be approved by the Commission pursuant to an amended order; (5) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment, or termination of a Rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1, except as provided in condition 18 set forth below; and (6) each class of shares would have different exchange privileges.

11. Under the Choice Pricing System, all expenses incurred by a Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that each class's net asset value and expenses will reflect the expenses associated with that class's Rule 12b–1 Plan or Service Plan (if any), including any costs associated with obtaining any required shareholder approval of the Rule 12b–1 Plan (or an amendment to the Rule 12b–1 Plan), and any Class Expenses attributable to a particular class. Because of the higher distribution fees paid by the holders of certain classes (*e.g.*, Class B and Class D), the net income attributable to and the dividends payable on each class with lower distribution fees would be lower than the net income attributable to and the dividends payable on each class with lower distribution fees (*e.g.*, Class A and Class E), or with no distribution fees at all (Class C). As a result, the net asset value per share of the classes will differ at times. Expenses of a Fund allocated to a particular class of shares of that Fund will be borne on a *pro rata* basis by each outstanding share of that class.

12. Applicants have established the manner in which the net asset value of the classes of shares will be determined and the manner in which dividends and distributions will be paid. The methodology and procedures for calculating the net asset value and dividends/distributions of the classes and the proper allocation of income and expenses among the classes has been reviewed by an expert (the "Independent Examiner"). The Independent Examiner has rendered reports to applicants that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in the reports.

13. Class B shares will, after a period of time, expected to be approximately six years, automatically convert to Class A shares without the imposition of any additional sales charge and, thereafter, be subject to the lower Rule 12b–1 Plan fee applicable to Class A.[4] This conversion feature would be discussed in the relevant prospectus. The purpose of this conversion feature will be to relieve the holders of Class B shares that have been outstanding for a period of time sufficient for the Distributor to have been compensated for distribution expenses related to those shares from the higher Rule 12b–1 Plan to which that class is subject.

14. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares are also Class B shares. However, for purposes of conversion to Class A, all Class B shares in a shareholder's Fund account that were purchased through reinvestment of dividends and other distributions paid in respect of Class B shares (and that have not converted to Class A shares as provided in the following sentence) will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account referred to in the preceding sentence) convert to Class A, a *pro rata* portion of the Class B shares then in the sub-account will also convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions. Each Fund offering Class B shares or having Class B shares outstanding will disclose in its prospectus the foregoing aspects of the conversion feature, including the aspects relating to the conversion of Class B shares purchased through reinvestment of dividends and distributions.

15. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Funds' dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended (the "Code"), and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under the Code. The conversion of Class B shares to Class A shares may be suspended if this opinion is no longer available.

16. The CDSC will not be imposed on redemptions of shares that were purchased more than a fixed number of years prior to the redemptions or on those shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation. The amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the

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[4] Shares of Kidder, Peabody Equity Income Fund, Inc., Kidder, Peabody Government Income Fund, Inc., and Kidder, Peabody Exchange Money Fund purchased prior to March 1, 1990 would become Class B shares and would automatically convert to Class A shares after the same time period after their initial purchase; shares of these Funds purchased on or after March 1, 1990 would become Class A shares upon implementation of the Choice Pricing System. Shares of these Funds purchased prior to March 1, 1990 were sold without a front-end load and if redeemed within six years of their date of purchase may be subject to a CDSC at rates that vary based on the length of time between purchase and redemption in reliance upon an exemptive order granted by the Commission. *See* Investment Company Act Release Nos. 15163 (June 23, 1986) (notice) and 15222 (July 24, 1986) (order).

amount that represents the percentage of the net asset value of the shares at the time of redemption.

17. The amount of the CDSC to be imposed will depend on the number of years since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The CDSC schedule will comply with the requirements of section 26(d) of the Rules of Fair Practice of the NASD, as amended from time to time.

18. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing reinvestment of the dividends and capital gain distributions and then of other shares held by the shareholder for the longest period of time. This will result in a charge, if any, imposed at the lowest possible rate.

19. The Funds would waive or reduce the CDSC on redemptions (1) following death or disability, as defined in section 72(m)(7) of the Code, of a shareholder if redemption is made within one year after death or disability of a shareholder and (2) of shares that constitute retirement plan distributions that are permitted to be made without penalty pursuant to the Code, other than tax-free rollovers or transfers of assets. If the Funds waive or reduce the CDSC, the waiver or reduction will be uniformly applied to all offerees in the class specified.

Applicants' Legal Analysis

1. Applicants are requesting an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares representing interests in the Funds might be deemed: (1) to result in the issuance of a "senior security" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(f)(1) of the Act and (2) to violate the equal voting provisions of section 18(i) of the Act. The creation of multiple classes of shares may result in shares of a class having "priority over (another) class as to * * * payment of dividends" and having unequal voting rights, because under the proposed arrangement: (1) Shareholders of different classes would pay different distribution fees associated with the Rule 12b-1 Plans, and different Service Payments associated with the Service Plans, of the different classes (and related costs as described above) and different Class Expenses and (2) each class would be entitled to exclusive voting rights with respect to matters concerning its Rule 12b-1 Plan.

2. Under the proposal, investors may be relieved under the Choice Pricing System of a portion of the fixed costs normally associated with investing in mutual funds since the costs would, potentially, be spread over a greater number of shares than they would be otherwise. Similarly, some of the Funds currently have an investment advisory agreement under which the fee rates decrease as the net assets of the Fund increase. Shareholders of these Funds could therefore enjoy, under the proposed arrangement, lower effective investment advisory fee rates than they would enjoy if the arrangement were not implemented. Therefore, in order to achieve these potential benefits and obviate the risks associated with the creation of a separate series for each new class of shares, the Funds propose to establish the Choice Pricing System.

3. The abuses that section 18 of the Act is intended to redress are set forth in section 1(b) of the Act which declares "that the national public interest and the interest of investors are adversely affected * * * (7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or (8) when investment companies operate without adequate assets or reserves." The Choice Pricing System described in the Application does not involve borrowings and does not affect the Fund's existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Funds, since all shares will participate in all of a Fund's appreciation, income and expenses (with the exception of the different service and distribution fees associated with the various Rule 12b-1 Plans (and related costs as described above) and any Class Expenses).

4. Applicants submit that the proposed Choice Pricing System does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. As noted above, under the Choice Pricing System, mutuality of risk will be preserved with respect to each class of shares in a Fund. Further, since each class of shares will be redeemable at all times (subject to the same limitations set forth in each Fund's prospectus and statement of additional information), since no class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have any distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account) and since the similarities and dissimilarities of the classes of shares will be disclosed when required in the Funds' prospectuses and statement of additional information, investors will not be given misleading impressions as to the safety or risk of any class of shares and the nature of each class of shares will not be rendered speculative. Moreover, the Funds' capital structures under the proposed arrangement will not induce any group of shareholders to seek investment in higher risk securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

Applicant's Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences among the terms of the various classes of shares of the same Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) expenses assessed to a class as a result of a Rule 12b–1 Plan providing for a distribution fee or a service fee or a Service Plan (*e.g.*, Class A, Class B, and Class D shares would pay a rule 12b–1 service fee and distribution fee; Class C shares would not pay a service fee or a distribution fee; and Class E shares would pay non-rule 12b–1 Service Payments and possibly a rule 12b–1 distribution fee); (c) different Class Expenses for each class of shares, which are limited to (i) transfer agent fees identified by the transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) blue sky registration fees incurred by a class of shares; (iv) Commission registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) Directors'/Trustees' fees incurred as a result of issues relating to one class of shares (*e.g.*, a higher transfer agency fee may be imposed on the Class B shares than on the Class A, Class C, Class D or Class E shares, and a higher transfer agency fee may be imposed on Class A, Class C, Class D, or Class E shares than on Class C shares); (d) the related voting rights as to matters exclusively affecting one class of shares (*e.g.*, the adoption, amendment, or termination of a Rule 12b–1 Plan) in accordance with the procedures set forth in rule 12b–1,

except as provided in condition 18; (e) different exchange privileges; and (f) the conversion feature applicable only to Class B shares. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission.

2. The Directors/Trustees of each of the Funds, including a majority of the independent Directors/Trustees, shall have approved the Choice Pricing System prior to the implementation of the Choice Pricing System by a particular Fund. The minutes of the meetings of the Directors/Trustees of each of the Funds regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to implement the Choice Pricing System will reflect in detail the reasons for determining that the proposed Choice Pricing System is in the best interests of both the Funds and their respective shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Directors/Trustees of the affected Fund, including a majority of the Independent Directors/Trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Directors/Trustees, and the Directors/Trustees shall review, at least quarterly, a written report of the amounts so expended and the purpose for which such expenditures were made.

4. On an ongoing basis, the Directors/Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The Directors/Trustees, including a majority of the Independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the Manager and the Distributor at their own costs will remedy such conflict up to and including establishing a new registered management investment company.

5. If any class will be subject to a Service Plan, the Service Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not enjoy the voting rights specified in rule 12b–1. In evaluating a Service Plan, the Directors/Trustees will specifically consider whether (a) the Service Plan is in the best interest of the applicable classes and their respective shareholders; (b) the services to be performed pursuant to the Service Plan are required for the operation of the applicable classes; (c) the financial intermediaries can provide services at least equal, in nature and quality, to those provided by others, including the Fund, providing similar services; and (d) the fees for these services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. If any class will be subject to a Service Plan, each Service Agreement entered into pursuant to the Service Plan will contain a representation by the financial intermediary that any compensation payable to the financial intermediary in connection with the investment of its customers' assets in a Fund: (a) will be disclosed by it to its customers; (b) will be authorized by its Customers; and (c) will not result in an excessive fee to the financial intermediary.

7. If any class will be subject to a Service Plan, each Service Agreement entered into pursuant to the Service Plan will provide that, in the event an issue pertaining to the Service Plan is submitted for shareholder approval, the financial intermediary will vote any shares held for its own account in the same proportion as the vote of those shares held for its Customers' accounts.

8. The Directors/Trustees of the Funds will receive quarterly and annual Statements concerning distribution and shareholder servicing expenditures and Service Payments complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the Statements, only distribution or servicing expenditures properly attributable to the sale of servicing of one class of shares will be used to support any distribution or servicing fee charged to shareholders of that class of shares. Expenditures not related to the sale or servicing of a particular class will not be presented to the Directors/Trustees to support any fees charged to shareholders of that class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Directors/Trustees in the exercise of their fiduciary duties.

9. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Class Expenses and costs and distribution fees associated with any Rule 12b–1 Plan and Service Plan relating to a particular class will be borne exclusively by each respective class.

10. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses the various classes have been reviewed by the Independent Examiner. The Independent Examiner has rendered a report to applicants stating that the methodology and procedures are adequate to ensure that the calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in those reports. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon this review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to these reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for these work papers by a senior member of the Division of the Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial reports of the Independent Examiner are each a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests," as defined and described in the Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or a similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset

value and dividends/distributions among the various classes of shares and the proper allocation of income and among the classes of shares and this representation has been concurred with by the Independent Examiner in the initial reports referred to in condition (10) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants agree to take immediate corrective action if the Independent Examiner, or appropriate substitute Independent Examiner, does not so concur in the ongoing reports.

12. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive any compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

13. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

14. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors/Trustees of the Funds with respect to the Choice Pricing System will be set forth in guidelines that will be furnished to the Directors/Trustees as part of the materials setting forth the duties and responsibilities of the Directors/Trustees.

15. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, CDSCs, and exchange privileges applicable to each class of shares in every prospectus regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of the Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Fund's net asset values and public offering prices will present each class of shares separately.

16. Class B shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

17. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their Rule 12b–1 Plans or Service Plans in reliance on the exemptive order.

18. If a Fund implements any amendment to its Rule 12b–1 Plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately as a class, approve the proposal. The Directors/Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the Directors/Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors/Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the Manager and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

19. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be re-proposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2130 Filed 1–28–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–19227; 812–8140]

MetLife—State Street Equity Trust, et al.; Notice of Application

January 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: MetLife—State Street Equity Trust; MetLife—State Street Fixed Income Trust; MetLife—State Street Income Trust; MetLife—State Street Money Market Trust; MetLife—State Street Tax-Exempt Trust; State Street Capital Trust; State Street Exchange Trust; State Street Fund for Foundations and Endowments; State Street Growth Trust; and State Street Master Investment Trust (collectively, the "Trusts"); State Street Research Investment Services, Inc.; SSRM Services, Inc. (collectively, the "Distributors"), and State Street Research & Management Company (the "Adviser").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) that would permit the Trusts (a) to issue multiple classes of shares representing interests in the same portfolio of securities, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on November 4, 1992, and amendments thereto were filed on December 21, 1992, and January 7, 1993. By supplemental letters dated January 20, 1993 and January 21, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, One Financial Center, Boston, Massachusetts 02111–2609.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act and organized as Massachusetts business trusts. Each Trust is a series company, with each series being referred to herein as a Fund. The Adviser serves as the investment adviser of each Fund. Each of the Distributors acts as principal underwriter of shares of one or more of the Funds.

2. Certain of the Funds currently offer their shares to the public at net asset value plus a front-end sales charge. Other of the Funds offer their shares to the public at net asset value. Several Funds have adopted a plan of distribution pursuant to rule 12b–1 under the Act. None of the Funds currently imposes a CDSC.[1]

3. Applicants seek an exemptive order that would permit the Funds to offer multiple classes of shares representing interests in the same portfolio of securities and to assess a CDSC on certain redemptions of shares.[2]

A. The Proposed Multiple Class Arrangement

1. Applicants propose to establish a multiple class arrangement in which each Fund may offer some or all of four different classes of shares.

2. Existing shares that are subject to a distribution fee would be designated as Class A shares. Class A shares would continue to be subject to distribution fees pursuant to the existing rule 12b–1 plans. Class A shares would continue to be sold at net asset value plus a front-end sales charge of up to 4.50%. The sales load would be subject to reductions for larger purchases, under a quantity discount, under a right of accumulation, or under a letter of intent. The sales load also would be subject to certain other reductions permitted by section 22(d) and set forth in the registration statement of each of the Trusts. For sales over $1 million, no front-end sales load would be charged. However, a "finder's fee" would be paid by the Distributor to the selling broker at the time of sale. The amount of this finder's fee would range from 1.0% to 0.25% of the sale, depending on the amount of the sale and whether the Fund is an equity or fixed-income fund. Shares sold with a finder's fee payable and redeemed within one year would be subject to a CDSC equal to 1.0% of the lesser of the purchase price or the then net asset value of the shares redeemed.

3. Class B shares would be offered to investors at net asset value. A fee of up to 4.00% would be paid to the selling securities dealer by the Distributor at the time of sale of Class B shares. Class B shares are designed to permit the investor to purchase shares without the assessment of a front-end sales load while permitting the Distributor to pay a commission and other distribution expenditures on the sale of the Class B shares to securities dealers and others selling shares of a Fund. Each Fund would pay to the Distributor a distribution fee calculated at an annual rate of up to 0.75% of the average daily net asset value of the Class B shares and a service fee at an annual rate of up to 0.25% of the average daily net asset value of the Class B shares. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period after purchase (which would range from one to five years) generally would be subject to a CDSC imposed by the Distributor. The CDSC would range from 2.00% to 5.00% on shares redeemed during the first year after purchase and would decline over the applicable CDSC period, so that redemptions of shares held after that period would not be subject to a CDSC. Under certain conditions, Class B shares would not be subject to a CDSC upon redemption.

4. Class C shares would be sold at net asset value without the imposition of a sales load at the time of purchase and would not be subject to the imposition of a CDSC or any distribution or service fees. It is expected that Class C shares would be offered primarily for purchase by institutions or by or for the account of participants in employee benefit plans, such as pension and employee savings plans, or members of a professional group or organization. In addition, existing shares that are not subject to a distribution fee would be designated as Class C shares.

5. Class D shares would be sold at net asset value without the imposition of a sales load at the time of purchase but would be subject to a distribution fee calculated at an annual rate of 0.75% of the average daily net assets of Class D shares and a service fee calculated at an annual rate of 0.25% of the average daily net asset value of Class D shares. Class D shares would also be subject to a 1.00% CDSC for shares redeemed during the first year of the purchase.

6. In addition, other classes of shares of the Funds may be offered from time to time, each in connection with one or more rule 12b–1 plans, which may differ from the plans and payments described herein, or with no distribution or service plans or payments at all. Any such classes would, however, comply with all of the conditions contained in the application.

7. Income would be allocated to each class of shares based on the relative net asset value of each class. Expenses would be allocated to each class based on the relative net asset value of each

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[1] MetLife-State Street Equity Trust has been granted an order permitting the Trust to assess a CDSC in certain cases. Investment Company Act Release Nos. 15073 (Apr. 24, 1986) (notice) and 15107 (May 19, 1986) (order). As of the date of the application, no such charges have been assessed in reliance on that order. Applicants intend that such order will be superseded by the order requested in the application.

[2] Applicants request that any relief also apply to (a) other investment companies that become a part of the same "group of investment companies," as defined in rule 11a–3 under the Act; (b) any future portfolio series of the Trusts; and (c) future investment companies which hold themselves out to investors as being related for purposes of investment and investor services, and whose principal investment adviser is the Adviser or an affiliate of the Adviser that is controlling, controlled by, or under common control with the Adviser, or whose principal underwriter is either of the Distributors or an affiliate of the Distributors that is controlling, controlled by, or under common control with the Distributors. The foregoing entities would be subject to each of the conditions of the application and would be operated in a manner substantially similar to the manner described in the application.

class, except that each class's net asset value and expenses would reflect any expenses that are directly attributable to one class ("Class Expenses"). Because shares of a particular class would bear Class Expenses that differ from the Class Expenses of other classes of shares of the same Fund, the net income of, and dividends payable with respect to, each particular class would generally differ from the net income of, and the dividends payable with respect to, the other classes of shares of such Fund. Similarly, because of such differing Class Expenses, to the extent that a Fund has undistributed net income, the net asset value of its various classes would also differ.

8. Certain Funds may adopt a conversion feature. Class B shares of such Funds would remain outstanding for a specified period. At the end of such period, Class B shares (except those purchased through the reinvestment of dividends and distributions) would automatically convert to Class A shares of that Fund at net asset value, and as a result, thereafter would be subject to lower distribution fees. For purposes of calculating the holding period required for conversion, Class B shares shall be deemed to have been issued (a) on the date on which the issuance of such Class B shares occurred; or (b) for Class B shares obtained through an exchange, or a series of exchanges, the date on which the issuance of the original Class B shares occurred.

9. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also would be Class B shares. However, for purposes of conversion to Class A shares, all such Class B shares would be considered to be held in a separate sub-account. Each time any Class B shares in the shareholder's Fund account (other than those in the sub-account) convert to Class A, a *pro rata* portion of the Class B shares in the sub-account also would convert to Class A. The portion would be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

10. The conversion of Class B shares to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel that payment of different dividends on Class A and Class B shares does not result in the Fund's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code (the "Code"), and the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. The conversion of Class B shares to Class A shares may be suspended if such an opinion is no longer available. In the event that conversions of Class B shares do not occur, Class B shares would continue to be subject to the higher distribution fee and any higher class expenses applicable to Class B shares for an indefinite period.

11. Shares of a Fund currently may be exchanged for shares in certain other Funds. Exchanges are made on the basis of the relative net asset value of the respective shares to be exchanged, except that sales charges may apply if the exchange is from a Fund which does not have a sales charge schedule and into a Fund which does have a sales charge schedule. Under the proposed multiple class arrangement, shares of each particular class would be exchangeable only for shares of the same class of another Fund. All such exchanges will comply with rule 11a–3 under the Act.

B. The CDSC

1. Applicants propose to charge a CDSC on certain redemptions of Class A, Class B, and Class D shares of the Funds. The CDSC will not be imposed on redemptions of shares which are purchased more than five years prior to redemption with respect to Class B shares, or one year prior to redemption with respect to Class A or Class D shares. No CDSC will be imposed on shares derived from reinvestment of distributions, or which represent an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC period. In no event would the aggregate amount of the CDSC exceed five percent of the aggregate purchase payments made by the investor for Class B shares, or one percent of the aggregate purchase payments made by an investor for Class A or Class D shares. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time.

2. Applicants request relief to waive the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the Code, of a shareholder if redemption is made within one year of death or disability or a shareholder; (b) in connection with qualified retirement plan distributions which are permitted to be made without penalty pursuant to the Code, or, alternatively, with respect to a redemption made mandatory by virtue of the Code's application to such retirement accounts; (c) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (d) in connection with redemptions the proceeds of which are reinvested in shares of the same Fund within 365 days after such redemption; and (e) in connection with redemptions by tax-exempt employee benefit plans resulting from the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper.

3. If the Funds waive or reduce the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified. If the Trustees of a Fund which has been waiving or reducing its CDSC pursuant to any of the items set forth above determine not to waive or reduce such CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Also, any Class A, Class B or Class D shares purchased prior to the termination of such waiver or reduction would be able to have the CDSC waived or reduced as provided in a Fund's prospectus at the time of the purchase of such shares.

4. Applicants state that no CDSC will be imposed on any shares issued prior to the date of the order granting the exemptive relief requested in the application.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(g), 18(f)(1), and 18(i) of the Act to the extent the multiple class arrangement may result in a senior security, as defined by section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1), and to the extent the allocation of voting rights under the multiple class arrangement may violate the provisions of section 18(i). Applicants assert that the multiple class arrangement does not raise any of the legislative concerns that section 18 of the Act was designed to ameliorate. The proposal does not involve borrowings and does not affect the Funds' existing assets or reserves. Each class of shares will be redeemable at all times. No class of shares will have distribution or liquidation preferences to particular assets and no class will be protected by any reserve or other account. In addition, the proposed arrangement will not increase the speculative character of the shares of the

Funds since all such shares will participate *pro rata* in all of a Fund's income and expenses with the exception of the differing Class Expenses.

2. Applicants state that owners of each class of shares may be relieved of a portion of the fixed cost normally associated with investing in mutual funds because such costs would, potentially, be spread over a greater number of shares than they would be otherwise.

3. Applicants assert that the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and would not discriminate against any group of shareholders. With respect to any class in a Fund, the rights and privileges of the shares in such class would be identical.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each class of Shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except as set forth below. The only differences among classes of Shares of the same Fund will relate solely to: (i) the impact of the disproportionate payments made under the 12b–1 Plan, any incremental expenses which the Board of Trustees of each Trust, including a majority of the independent Trustees, determines should be allocated or charged on a class basis, which expenses are limited to transfer agency fees, printing and postage expenses relating to preparing and distributing materials to shareholders and investors (such as shareholder reports, prospectuses and proxies), blue sky and Commission registration expenses, administrative and support personnel salaries and expenses, litigation or other legal expenses relating to solely the class, and Trustees' fees incurred as a result of issues relating solely to one class (together with fees payable pursuant to 12b–1 Plans, "Class Expenses"); and any other incremental expenses subsequently identified that should be properly allocated or charged to one class which shall be approved by the Commission pursuant to an amended order, (ii) voting rights on matters that pertain to 12b–1 Plans, (iii) exchange privileges, (iv) the designation of each class of shares of a Fund, and (v) any conversion feature applicable to Class B shares.

2. The Trustees of the Trust, including a majority of the independent trustees, will approve the offering of different classes of Shares (the "Multi-Class System"). The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of the Trust and its shareholders.

3. The initial determination of the Class Expenses that will be allocated or charged to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the Board of Trustees of the Trust including a majority of the Trustees who are not interested persons of the Trust. Any person authorized to direct the allocation and disposition of monies paid or payable by the Fund to meet Class Expenses shall provide to the Board of Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts of such expenses and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of Shares. The Trustees, including a majority of the independent Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor of each Fund will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will take such steps as are necessary to remedy such conflict up to and including establishing a new registered management investment company.

5. The Trustees will receive quarterly and annual statements concerning the amounts expended under the 12b–1 Plans and related agreements complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of Shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of Shares will not be presented to the Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by each Fund with respect to a class of Shares of a Fund will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of Shares in the same Fund, except that each particular class will bear exclusively its own Class Expenses.

7. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render, at least annually, a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Trust, which the Trust agrees to provide, will be available for inspection by the Commission staff upon written request by a senior member of the Division of Investment Management limited to the Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and on-going reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of Shares and the proper allocation of expenses among the classes of Shares and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert or an appropriate substitute

Expert on an on-going basis at least annually in the on-going reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the on-going reports.

9. Each prospectus pursuant to which one or more classes of a Fund are offered will include a statement to the effect that a salesperson or any other person entitled to receive compensation for selling or servicing the Shares may receive different compensation with respect to one particular class of Shares over another class in the same Fund.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the multiple class system will be set forth in guidelines to be furnished to the Trustees.

11. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of a Fund in every prospectus, regardless of whether all classes of a Fund are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to all classes of a Fund in every shareholder report. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of a Fund, it will also disclose the respective expenses and/or performance data applicable to all classes of such Fund. The information provided by the applicants for publication in any newspaper or similar listing of a Fund's net asset value or public offering price will separately present this information for each class of Shares.

12. Applicants acknowledge that the grant of the requested exemptive order does not imply Commission approval, authorization of or acquiescence in any particular level of payments that applicants may make pursuant to their 12b–1 plan or shareholders services plan in reliance on this exemptive order.

13. The Distributor will adopt compliance standards as to when each class of Shares may appropriately be sold to particular investors. Applicants will require all persons selling Shares of a Fund to agree to conform to such standards.

14. Class B shares of a Fund that adopts a conversion feature will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class B shares will stop converting into Class A unless the Class B shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class ("New Class B"), identical to existing Class B shares in all material respects except that New Class B will convert into New Class A. New Class A or New Class B may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Class A or New Class B shall be borne solely by the Adviser and the Distributor. Class B shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the Class B shares are disclosed in an effective registration statement.

16. In administering the CDSC, applicants will comply with proposed rule 6c–10 under the Act, as such rule is currently proposed and as it may be re-proposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2172 Filed 1–28–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC - 19228; 812–8018]

New Century Fund, Inc.; Notice of Application

January 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: New Century Fund Inc. ("New Century"), New Century Management, Inc.

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 23(b) for an exemption from sections 18(d) and 23(b).

SUMMARY OF APPLICATION: Applicants seek an order to permit New Century to sell a limited amount of its shares on a delayed basis at the same price per share as the initial public offering price. Shares sold on a delayed basis would not exceed 26.7% of the total number of shares that eventually would be issued.

FILING DATE: The application was filed on July 30, 1992 and amended on October 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 12 Briarwood Drive, Short Hills, NJ 07078.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. New Century is a Maryland corporation that plans to elect, under

section 54 of the Act, to be regulated as a business development company ("BDC"). New Century's investment objective is long-term capital appreciation. New Century will seek to achieve its objective by investing primarily in private equity investments in emerging growth companies, venture capital opportunities, and recapitalizations of both private and public companies. New Century will be advised by New Century Management, Inc., a Delaware corporation in its organizational stage.

2. New Century proposes to raise its capital through sales of common stock at $20 per share. The sales would take place in two phases: A private offering to large investors and a subsequent public offering pursuant to a conventional firm commitment underwriting.

3. In the first phase, New Century would engage in a private offering in which one-third of the total number of shares to be sold would be offered to large investors.[1] Each investor that wishes to invest in the private offering ("Subscribers") would be required to commit to purchase a minimum of 25,000 shares ($500,000). Subscribers would commit to purchase shares in two ways. First, Subscribers would agree to purchase 20% of their total commitment at the closing of the public offering (the "Initial Shares"). Second, Subscribers would execute a subscription agreement agreeing to purchase the remaining 80% of their shares over a five-year period (the "Subscription Shares"). Thus, pursuant to their commitments, Subscribers would purchase both Initial Shares and Subscription Shares. The commitments would be subject to the completion of the sale to public investors of at least twice as many shares as covered by the private offering. Subscribers would pay the same price per share as the public offering price for both the Initial Shares and the Subscription Shares.

4. Under the terms of the subscription agreements, New Century would have the right to call in a Subscriber's obligation to purchase Subscription Shares at any time during the five-year period, provided that at the time of the call at least 80% of New Century's paid in capital is invested in, committed to, or reserved for, specific portfolio companies, and subject to the proviso that no more than one-half the total commitment be called for at any one time. Subscribers also would have the right to elect to purchase at any time all or any part of any outstanding portion of their commitment of Subscription Shares. Subscribers would be required to purchase, and New Century to sell, any Subscription Shares that remain outstanding at the end of the five years.

5. After New Century has received sufficient commitments from Subscribers, it will terminate the private offering and file a registration statement under the Securities Act of 1933 for an underwritten public offering.[2] The underwriters will purchase at least two times the total number of shares Subscribers have committed to buy. Thus, immediately after the close of the public offering, New Century would have issued 73.3% of the total number of shares that eventually would be issued.[3] The Subscription Share that would be issued in the future would account for the remaining 26.7% of New Century's shares.

6. New Century may use one or more underwriters to place all or a part of the shares sold in the private placement, and may pay the underwriters a reasonable and customary commission for their services. In the public offering, New Century would enter into a firm commitment underwriting whereby the underwriters, at the close of the public offering, would purchase two times the total number of shares Subscribers have committed to buy. New Century would allow the underwriters a reasonable and customary underwriting discount for shares sold in the public offering.

7. New Century will undertake to have its shares listed on a national securities exchange as soon as possible following the conclusion of the public offering. New Century would register its shares under the Securities Exchange Act of 1934, as modified by section 30(c) of the Act, and would be subject to the periodic reporting requirements and would report to its shareholders at least semi-annually.

8. The proposed structure would give Subscribers the ability to participate in distributions resulting from an early successful investment by electing to pay in the balance of their subscriptions. To the extent that Subscribers exercise this right, the other investors in New Century would benefit from its ability to use the additional capital before it would otherwise have been paid in.

9. In accordance with section 18(d) of the Act, New Century also may make a rights offering to all shareholders. Any rights offering would be made only if the exercise price of the rights did not exceed the price at which shares would be sold pursuant to the subscription agreements (see condition 3). New Century contemplates that it might make such a rights offering in connection with a call on Subscribers to purchase shares at the subscription price. If the rights offering were made contemporaneous with a call on Subscribers, New Century would announce the proposed call prior to the record date for the issuance of such rights. This would allow Subscribers to elect to purchase in advance some or all of the shares they would otherwise be required to purchase, and thus to receive rights issued with respect to those shares.

10. Such an offering also would benefit the existing shareholders by enabling them to purchase shares for less than their market price, to the extent the exercise price did not exceed the market price. Unless all of the Subscribers elected to pay in the entire unfulfilled balance of their commitment, a rights offering would benefit non-Subscribers disproportionately. Thus, if the net asset value were above the subscription price when Subscription Shares were issued, a rights offering could make up at least a portion of the dilution. In addition, the issuance of such rights would increase the proportion of New Century held by non-Subscribers and therefore would reduce the per-share impact on them, of any dilution. Because the rights would be transferable, shareholders would not be required to exercise the rights in order to capture their benefits, but could sell them on the market.

Applicants' Legal Analysis

1. Applicants believe that their proposal addresses a major impediment to the achievement of the purposes of the Small Business Incentive Act of 1980 (the "BDC Amendments"). Congress adopted the BDC Amendments in 1980 to promote capital formation for small businesses by reducing the obstacles that the Act posed for public venture capital funds. At the time BDC Amendments were passed, it was expected that they would lead to the creation of numerous public venture capital funds with the resulting increased availability of capital to emerging businesses. Those expectations have not been fulfilled. A

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[1] The private offering would be addressed primarily to institutional investors of the sort that typically have confined their venture capital investments to private venture capital funds, but would be open to anyone willing to commit to a total purchase of at least $500,000.

[2] Applicants state that the private offering will be terminated before the filing of the registration statement so that the two offerings will not be integrated under rule 152 of the Securities Act of 1933. *See* Black Box, Inc. (pub. avail. June 26, 1990). Applicants do not seek, and have not obtained, any assurance from the Commission or the staff regarding this issue.

[3] Retail investors would purchase two-thirds of New Century's Shares and Subscribers would purchase 20% of the remaining one-third of New Century's shares, for a total of 73.3%.

major reason is that institutional investors have proved reluctant to invest in public venture capital funds as they typically have been structured.

2. Private venture capital funds typically take several years to invest their funds, normally reserving money for "follow-on" investments in portfolio companies. To accommodate their needs, private venture capital funds have come to raise their capital through subscription agreements that provide for investors to make investments in installments over several years.

3. Because of the limitations of the Act, specifically sections 18 and 23, as described below, BDCs have not been able to operate in this manner. BDCs typically raise most of their capital in an initial public offering, while placing their uninvested cash in high quality but lower yielding debt securities. By holding high quality debt securities, BDCs typically have a yield disadvantage as compared to private venture capital funds. Because of this, institutional investors that wish to invest in venture capital pools generally have avoided BDCs in favor of private venture capital funds. Applicants believe that their proposed structure, which allows for some delayed funding, would permit New Century to operate more like a conventional private venture capital fund. Because it would be publicly traded, it also would offer a degree of liquidity not available in private funds.

4. Applicants seek relief from sections 18(d) and 23(b). Sections 18(d) and 23(b) are made applicable to BDCs by sections 61 and 63, respectively. Section 18(d) makes it unlawful, except in certain limited circumstances, "for any registered investment company to issue any warrant or right to subscribe to or purchase a security of which such company is the issuer * * *." Because Subscribers would have a right as well as an obligation to acquire additional shares, it is possible to construe a "right to * * * purchase" to encompass a Subscriber's commitment to purchase Subscription Shares. If section 18(d) were so construed, it would prohibit New Century's proposed structure.

5. Section 23(b) provides that "no registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock" except in certain limited situations. It is possible that at the time a Subscriber purchases Subscription Shares the net asset value of New Century's shares might exceed the $20 per share subscription price. If this were the case, in the absence of exemptive relief section 23(b) would prohibit New Century from issuing Subscription Shares as provided in the proposed subscription agreements.

6. The sale of shares in a closed-end fund at a price below the net asset value of the shares has the effect of diluting the interests of existing shareholders. Sections 18(d) and 23(b) were intended to limit such dilution. Congress, however, did not intend that dilution should be prohibited altogether; both sections contain exceptions that permit dilutive transactions under certain circumstances.

7. In addition, the BDC Amendments recognize the desirability of granting flexibility to BDCs with respect to the question of dilution. Notwithstanding the general provisions of section 18(d), BDCs may issue warrants or rights accompanying debt securities under the exception provided by section 61(a)(3). In addition, section 63(2) permits BDCs, if they comply with certain procedural requirements, to issue stock at its market value, even when it is below net asset value.

8. Section 61(a)(3) provides a useful analogy to New Century's proposed structure. Both allow the possibility of dilution arising from the issuance of shares in the future at a price fixed in the present. In addition, both section 61(a)(3) and New Century's proposal are intended to provide greater flexibility in raising capital from institutional investors—debt capital in the case of the statutory provisions and equity capital in the case of New Century.

9. Section 61(a)(3) permits a BDC to sell debt securities accompanied by "warrants, options, or rights to subscribe or convert to voting securities" of the BDC. There are several conditions on the issuance of rights under section 61(a)(3) that are designed to protect investors. The proposed structure of New Century contains similar protections. The exercise or conversion price may not be less than the current market value of the voting securities or, if there is no market, the net asset value. Section 61(a)(3) also limits the amounts of voting securities that would result from the exercise of all such rights to generally not more than 25% of the total voting securities that would be outstanding after the exercise. Under New Century's proposal the price of Subscription Shares would be the same as the price for which New Century would be issuing shares at the time the subscription agreement is executed. In addition, Subscription Shares would represent no more than 26.7% of New Century total common stock outstanding.

10. Applicants represent that there proposal offers a substantial advantage over the warrants, options, or rights contemplated by the statute. Holders of warrants, options or rights to purchase shares generally will not exercise them unless the exercise price is below net asset value. Consequently, except in unusual circumstances, sales of stock pursuant to the exercise of the rights permitted by section 61(a)(3) always will cause dilution. Subscribers, on the other hand, are committed to purchase Subscription Shares at a fixed price. The purchase price either could be above or below net asset value when Subscribers purchase shares. If the price is above net asset value, the issuance of Subscription Shares would be antidilutive.

11. In addition, applicants believe their proposal differs from rights issued pursuant to section 61(a)(3) with respect to the control over the timing of the issuance of new shares. Warrants, options, and rights typically are exercisable at the election of the holder. The issuer has no control over when it may be required to issue more stock and take in more capital. Like these rights, the subscription agreements also would give Subscribers the right to choose to purchase shares whenever they want. Unlike them, however, New Century would be able to call on subscribers to pay in new capital at New Century's election when additional money is required. In this respect, New Century's structure is better for shareholders than the rights permitted under section 61(a)(3).

12. Applicants believe that their proposed structure would offer advantages for both retail and institutional investors. Retail investors would benefit from the oversight of New Century's management by sophisticated institutional investors. Retail investors also would have expanded opportunities to invest in a large, professionally-managed venture capital pool, an opportunity now limited by the high minimum investment required by private venture capital funds. Institutional investors would benefit by the increased liquidity available in a public vehicle. Furthermore, by combining retail investors and institutional investors in the same investment vehicle, New Century's structure should help attain the Congressional goal of increasing the amount of capital available to entrepreneurial businesses.

13. Section 6(c) of the Act permits the SEC to exempt any transaction or class of transaction from the provisions of the Act to the extent that such exemption is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition,

section 23(b) of the Act permits the SEC to exempt by order the sale by a registered closed-end investment company of its securities at a price below the current net asset value under such circumstances as the SEC may permit for the protection of investors. Applicants believe that the requested relief is in the public interest, and is consistent with the protection of investors and the policies of the Act.

Applicants' Conditions

Applicants agree that the order of the SEC granting the requested exemptions would be subject to the following conditions:

1. Each Subscriber shall purchase at the consummation of the public offering shares numbering not less than 25% of the total number of Subscription Shares it has agreed to purchase pursuant to its subscription agreement.

2. New Century shall sell a sufficient number of shares in the public offering so that the total number of Subscription Shares shall not exceed 26.7% of the number of shares that will be outstanding upon the issuance of all of the Subscription Shares.

3. Until all of the Subscription Shares have been issued and paid for, New Century may not issue any warrants, options, or rights to subscribe for or convert to shares of New Century other than warrants or rights permitted under section 18(d) of the Act. The exercise price of the rights shall not exceed the price at which the Subscription Shares are to be issued. Any such rights offering shall comply with the rules and administrative policies of the SEC then in effect.

4. The subscription agreements shall provide that New Century may require Subscribers to take and pay for up to 50% of the Subscription Shares at any time during the five-year period commencing on the consummation of the public offering, provided that at least 80% of New Century's paid-in capital is invested in, committed to, or reserved for investment in specific portfolio companies.

5. The subscription agreements shall require Subscribers to take and pay for any Subscription Shares not previously paid for at the end of the five-year period commencing on the consummation of the public offering.

6. The subscription agreements shall provide that the subscription price shall be no less than the public offering price net of any underwriting discounts or commissions granted in the public offering.

7. The subscription agreements shall provide that, if any Subscriber defaults in making any required payment for shares, New Century shall be deemed to have suffered liquidated damages in the amount by which $20 exceeds the market price of the New Century's shares at the time the payment is due, plus $2.50 per share. New Century shall have the right to cancel a number of shares held by the delinquent Subscriber equal to the amount of the liquidated damages divided by the price of shares on the date of the default.

8. New Century's registration statement under the Securities Act of 1933 shall describe fully and thoroughly the material provisions of the subscription agreements. It shall also set forth clearly the risk that the subscription agreements might result in the issuance of shares for consideration less than New Century's per share net asset value at the time of issuance.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2173 Filed 1-28-93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2621]

North Carolina (and Contiguous Counties in South Carolina); Declaration of Disaster Loan Area

Robeson County and the contiguous counties of Bladen, Columbus, Cumberland, Hoke, and Scotland in the State of North Carolina and Dillon, and Marlboro Counties in South Carolina constitute a disaster area as a result of damages caused by flooding which began on January 11, 1993. Application for loans for physical damage may be filed until the close of business on March 22, 1993 and for economic injury until the close of business on October 19, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 262106 for North Carolina and 262206 for South Carolina. For economic injury the numbers are 783100 for North Carolina and 783200 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 19, 1993.

Patricia Saiki,

Administrator.

[FR Doc. 93-2118 Filed 1-28-93; 8:45 am]

BILLING CODE 8025-01-M

Interest Rate; Amendment No. 1

In the Notice published on Thursday, December 24, 1992, in Volume 57, Page 61466, the interest rates for 7(a) Section Direct Business Loans and SBA share of immediate participation loans, and the Optional Peg Rate were reversed. The interest rates for the 2nd Quarter of FY 93 are as follows:

	Percent
Direct/IP Loans	7⅞
Optional peg rate	6⅞

Charles R. Hertzberg,

Assistant Administrator for Financial Assitance.

[FR Doc. 93-2123 Filed 1-28-93; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0248]

Mariner Venture Capital Corp.; Surrender of License

Notice is hereby given that Mariner Venture Capital Corp. (Mariner), 2300 West Glades Road, Suite 440 West Tower, Boca Raton, Florida 33431 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Mariner was licensed by the Small Business Administration on October 2, 1989.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on December 29, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 22, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93-2119 Filed 1-28-93; 8:45 am]

BILLING CODE 8025-01-M

Hartford District Advisory Council; Public Meeting

The U.S. Small Business Administration Hartford District Advisory Council will hold a public meeting at 8:30 a.m. on Tuesday, February 23, 1993 at the U.S. Small Business Administration, 330 Main Street, 2d Floor, Hartford, Connecticut, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jo-Ann Van Vechten, Acting District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, (203) 240–4670.

Dated: January 22, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils

[FR Doc. 93–2122 Filed 1–28–93; 8:45 am]

BILLING CODE 8025-01-M

Montpelier District Advisory Council; Public Meeting; Rescheduling of Meeting

The U.S. Small Business Administration Montpelier Advisory Council meeting scheduled for February 3, 1993 has been rescheduled for 10 a.m., Thursday, February 4, 1993.

The meeting will be held at the Vermont Chamber of Commerce, Granger Road, Berlin, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Kenneth A. Silvia, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont 05601, (802) 828–4422.

Dated: January 15, 1993.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2120 Filed 1–28–93; 8:45 am]

BILLING CODE 8025-01-M

Providence District Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting at 11:30 a.m. on Wednesday, February 24, 1993 at the Victoria House Restaurant located on 23 Rathbone Street, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: January 22, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92–2124 Filed 1–28–92; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This notice clarifies the financial reporting for 4% preferred stock issued by Small Business Investment Companies licensed pursuant to section 301(d) of the Small Business Investment Act (15 U.S.C. 681(d)).

DATES: This Notice is effective on January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas C. Bresnan, Staff Accountant, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC. 20416, (202) 205–6514.

SUPPLEMENTARY INFORMATION: Section 301(d) or Specialized Small Business Investment Companies (SSBICs) are required to submit annual audited financial statements to the U.S. Small Business Administration on SBA Form 468. The current format of Form 468 does not include lines specifically designed to accommodate the reporting of 4% preferred stock which may be issued to SBA by SSBICs. As a result, the stock has been reported inconsistently. This notice clarifies the reporting of 4% preferred stock on the current version of Form 468. SBA expects to revise Form 468 in the near future to include specific lines which will accommodate 4% preferred stock.

Background

All preferred stock purchased by SBA from SSBICs on or after November 21, 1989, must be redeemed by the issuing company not later than 15 years from the date of issuance. The preferred stock must be redeemed at par value, plus any unpaid dividends accrued to the redemption date. Dividends accrue at an annual rate of 4%. Because of the mandatory redemption provision, 4% preferred stock is fundamentally different from the 3% preferred stock which SSBICs were eligible to issue to SBA prior to November 21, 1989.

Classification

Four percent preferred stock may not be included under the general heading of "*CAPITAL*" on the Statement of Financial Position, on page 3C of Form 468. The amount of 4% preferred stock issued and outstanding must be shown in the "*Other Liabilities*" section of the Statement of Financial Position.

Carrying Amount

The initial carrying amount of the redeemable preferred stock shall be its par value at the date of issue. At the end of each accounting period, the carrying amount will be increased by the amount of any dividends not currently declared. This amount will be shown on line 39 of the Statement of Financial Position. A breakdown of the total amount on line 39, showing separately the par value of 4% preferred stock, the accrued dividends in arrears, and any other liabilities, must be included on page 3C.

Undeclared Dividends

Cumulative undeclared dividends must be recorded as a charge against undistributed net realized earnings (line 47(b) of the Statement of Financial Position). Some SSBICs may have insufficient retained earnings to cover the dividends in arrears. Ordinarily, a company in these circumstances would reduce paid-in capital by the amount of the excess dividends. Such treatment has the potential to create significant regulatory compliance problems for SSBICs, because paid-in capital is the base for a number of regulatory computations. Therefore, SSBICs shall report all dividends in arrears as a reduction of undistributed net realized earnings, even though this treatment may result in a deficit, and shall not be required to reduce private capital.

Declared Dividends

If the SSBIC has declared the 4% dividend for the current fiscal year, or for any prior periods, such dividends should not be added to the carrying amount of the preferred stock. Because the dividends will be paid within the next fiscal period, they should be reported as a current liability on Line 34 ("Distributions Payable") of the Statement of Financial Position, rather than being included on line 39. In the "*CAPITAL*" section, declared dividends will reduce Undistributed Net Realized Earnings (line 47(b)).

Required Disclosures

In a footnote to the financial statements, the Licensee must provide a description of the terms of the preferred stock issue, including disclosure of the mandatory redemption date and any amount redeemable within five years.

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 et seq., as amended, Pub. L. 100–590 and Pub. L. 101–162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101–162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub. L. 100–590.

Dated: January 19, 1993.

Patricia Saiki,

Administrator.

[FR Doc. 93–2117 Filed 1–28–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1759]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting February 25, 1993 in the Conference Room, suite 700, of the ARC Professional Services Group, 600 Maryland Avenue, SW., Washington, DC commencing at 10 a.m.

Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. The purpose of the meeting is to review work plans for the meetings of each of the Study Group 7 Working Parties that being March 29, 1993.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Those planning to attend the meeting should contact Mr. Roger Andrews, (703) 834–5600 for further information.

Dated: January 14, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92–2151 Filed 1–28–92; 8:45 am]

BILLING CODE 4710-45-M

Bureau of Consular Affairs

[Public Notice 1760]

Registration for the AA–1 Immigrant Visa Program Under Public Law 101–649

ACTION: Notice of registration for the third year of the AA–1 Immigrant Visa Program.

This public notice provides information on the application procedure for the 40,000 immigrant visas to be made available in the AA–1 category during Fiscal Year 1994. This notice is issued pursuant to 22 CFR part 43, subpart B, as amended on June 29, 1992 which implements section 132 of the Immigration Act of 1990, (Pub. L. 101–649), as amended by the Miscellaneous and Technical Immigration Amendments of 1991 (Pub. L. 102–232).

AA–1 Immigrant Visa "Lottery" Program

Information on the Application Procedures for the 40,000 Immigrant Visas To Be Made Available in the AA–1 Category During Fiscal Year 1994

Section 132 of the Immigration Act of 1990 provides 40,000 immigrant visas for each of fiscal years 1992, 1993, and 1994 to natives of the countries and areas from which immigration was previously identified as having been "adversely affected" by the 1965 immigration legislation. This program is identified by the visa symbol AA–1, and is informally known as the "visa lottery." The law specifies that there must be a separate registration for each year's AA–1 visas. The application period for the second year's visas was completed during 1992, and those visas are being issued until September 1993. This information concerns the application period during 1993 for visas to be issued during fiscal year 1994, the third and final year of the program.

Qualifying Countries and Areas Under the AA–1 Program

Natives (as that term is explained in question 1 on page 3) of the following countries and areas are entitled to apply for AA–1 visas:

Albania
Algeria
Argentina
Austria
Belgium
Canada
Czech Republic
Denmark
Estonia
Finland
France
Guadeloupe
New Caledonia
Germany
Great Britain
Northern Ireland
Bermuda
Gibraltar
Hungary
Iceland
Indonesia
Ireland
Italy
Japan
Latvia
Liechtenstein
Lithuania
Tunisia
Luxembourg
Monaco
Netherlands
Norway
Poland
San Marino
Slovakia
Sweden
Switzerland

How and When To Apply for AA–1 Status

The application period for registration for the visas to be issued during Fiscal Year 1994 (i.e., from October 1993 through September 1994) will begin at 12:01 a.m. (Washington, DC time) on Tuesday, March 2, 1993, and will end at midnight on Wednesday, March 31, 1993. Application must be typed or clearly printed and mailed to the following address: AA–1 Program, P.O. Box 1994, Dulles, VA 20199–1994, U.S.A.

Typed or clearly printed in the upper left hand corner of the front of the envelope must be the country or area (from the list above) of which the applicant is a native. Typed or clearly printed below the country must be the same name and mailing address of the applicant as they are shown on the application contained therein. Failure to include this information will disqualify the application.

Example:

Northern Ireland, George Q. Public, 1234 Any Street, Apt. 5, Center City, NJ 10001.

Only one application may be submitted by or for each applicant during this registration period. (Submission of more than one application will disqualify the person from registration.) Applications for registration will be selected strictly in a random order from among all of those received during the specified period.

Applications must be sent to the address above by regular mail or air mail, and may be mailed from within the United States or from abroad. The information required on the envelope must be typed or clearly printed. Any mail requiring signed receipt such as registered mail, express mail, certified mail, hand-delivered applications, telegrams, or applications sent by courier or any means other than regular mail or air mail will *not* be eligible for the visa lottery. Applications received at the post office box before or after the application period or delivered to any other address will *not* be processed for registration. Only one application may be included in each envelope.

Size of Envelope

The envelope in which each application is mailed must be between 6 inches and 9½ inches (15 cm to 24 cm) in length, and between 3½ inches and 4½ inches (9 cm to 11 cm) in width. This is necessary to assist the automated processing of the mail.

Information Which Must Be Included on the Application for Registration

Each application must be in the following format:

A sheet of paper on which the following information is typed or clearly printed (in the Roman (English) alphabet):

A. Applicant's Full Name

Last Name, First Name and Middle Name (Underline Last Name/Surname/Family name), **Example:** Public, George Quincy

B. Applicant's Date and Place of Birth

Date of birth: Day, Month, Year, **Example:** 15 November 1961

Place of birth: City/Town, District/County/Province, Country, **Example:** Toronto, Ontario, Canada

C. Name, Date and Place of Birth of Applicant's Spouse and Children, if any

The spouse and child(ren) of an applicant who is registered for AA–1 status are automatically entitled to the same status. The spouse or child does NOT need to be born in one of the countries listed above. To obtain a visa on the basis of this derivative status, a child must be under 21 years of age and unmarried.

Note: Do not list parents as they are not entitled to derivative status.

D. Applicant's Mailing Address

The mailing address must be clear and complete, since it will be to that address that the notification letter for the persons who are registered will be sent. A telephone number is optional.

E. United States Consular Office to Which Visa Registration Should Be Sent

Ordinarily, this will be the immigrant visa issuing consular office nearest the applicant's place of residence. If the applicant is in the United States, indicate the immigrant visa issuing office in the country of last previous residence outside the U.S. If the applicant does not know which U.S. consulates issue immigrant visas, list the city and country of the applicant's current residence abroad, or the city and country of last previous residence outside the U.S. and the processing center will identify the proper immigrant visa issuing consular office where the visa registration will be sent for processing.

Persons who claim alternate foreign state chargeability should also include a statement to that effect on the application. (See question No. 1 on page 3.) Only one application may be submitted for each applicant during this application period; persons submitting multiple applications will be disqualified.

There are no other requirements for submitting an application for registration apart from what is specified in A. thru E. above. It is not necessary to include an offer of employment with the registration request. (Applicants who are registered for AA–1 status will need to present an offer of employment in the U.S. at the time of formal visa interview. See question 7 on page 3 for more information on this point.) There is no fee for submission of an AA–1 registration request. A signature is not required on the application.

Frequently Asked Questions About the AA–1 Registration

1. How Is the Term "Native" Defined? Are There Any Basis Upon Which Persons Who Have Not Been Born in a Qualifying Country May Qualify for Registration?

Native means both someone born within one of the countries listed above and someone entitled to be "charged" to such country under the provisions of section 202(b) of the Immigration and Nationality Act. Applicants for AA–1 registration may be charged to the country of birth of a spouse; a child can be charged to the country of birth of a parent; and an applicant born in a country of which neither parent was a native or a resident at the time of his/her birth may be charged to the country of birth of either parent. An applicant who claims the benefit of alternate chargeability must include a statement to that effect on the application for registration, and must show the country of chargeability on the upper left hand corner of the envelope in which the registration request is mailed.

2. What if a Person's Birth Place Was in an "AA–1" Country at the Time of Birth, but Due to Changes in Boundaries Is No Longer Within a Qualifying Country?

For a person to be considered to have been born in a qualifying country, the place of birth must be within the boundaries currently recognized by the U.S.

3. May Persons Who Are in the U.S. Apply for Registration?

Yes, an applicant may be in the U.S. or in another country, and the application may be mailed in the U.S. or abroad.

4. Is Each Applicant Limited to Only One Application During This AA–1 Registration Period?

Yes, the law allows only *one* application *by or for* each person; Submission of more than one application will disqualify the person from registration.

Note: More than 200,000 applications were disqualified during the 1993 visa lottery due to multiple applications. Applicants may be disqualified at time of registration or at the time of the visa interview if more than one entry is detected.

5. May a Husband and a Wife Each Submit a Separate Application?

Yes, a husband and a wife may each submit one application for registration; if either is registered, the other would be entitled to derivative status.

6. Must Each Applicant Submit His/Her Own Request, or May Someone Act on Behalf of an Applicant?

Applicants may prepare and submit their own request for registration, or have someone act on their behalf. Regardless of whether an application is submitted by the applicant directly, or by a relative, friend, attorney etc., only one application may be submitted in the name of each person. There is no requirement that an applicant sign the registration request. Only one notification letter will be sent for each case registered, to the address provided on the application.

7. What Are the Requirements for an Offer of Employment in the United States?

An offer of employment should not be submitted as part of the registration application. Applicants who are successfully registered for AA–1 status will need to present an employment offer at the time of visa issuance. Applicants must submit evidence of a commitment for full-time employment in the U.S. at the visa interview. Two or more part-time jobs will meet this requirement if, taken together, they constitute full-time employment, as long as the applicant submits letters from each employer supporting the job offer. The offer may come from a business or any other institution or organization in the United States, or from a private individual. Evidence of existing self-employment in the United States can meet the offer of employment requirement; a plan to create one's own business in the future, even in the immediate future, would not qualify, however.

8. How Will Cases Be Registered?

All mail received will be individually numbered. After the end of the application period, a computer will randomly select cases from among all the mail received. The first letter randomly selected will be the first case registered, the second letter selected the second registration, etc. It makes no difference whether an application is received early or late in the application period. When a case has been registered, the applicant will immediately be sent a notification letter, which will provide appropriate visa application instructions. The registration will at the same time be forwarded to the consular office which will process the case; all subsequent visa processing information will be obtained by the applicant directly from that consular office.

9. Will Applicants Who Are Not Registered Be Informed?

No, applicants who are *not* registered will receive no response to their registration request. Only those who are registered will be informed. All notification letters are expected to be sent within about three months of the end of the application period. Anyone who does not receive a letter will know that his/her application has not been registered.

10. How Many Applicants Will Be Registered?

A total of about 50,000 persons, both principal applicants and their spouses and children, will be registered. Since it is likely that some of the first 40,000 persons who are registered will not pursue their cases to visa issuance, this larger figure should ensure use of all AA–1 numbers, but it also risks some registrants' being left out. All applicants who are registered will be informed promptly of their place on the list. Each month visas will be issued, according to registration lottery rank order, to those applicants who are ready for visa issuance during that month. Once all of the fiscal year 1994 visas have been issued, the program for the year will end. Registered applicants who wish to receive visas must be prepared to act promptly on their cases.

The law specifies that at least 40% (i.e., 16,000) of each year's AA–1 visas are to be made available to natives of Ireland. Natives of Northern Ireland are entitled to benefit from the 40% of the AA–1 numbers provided for Ireland. So that Northern Ireland natives are properly identified during registration processing, they should show their area of birth as Northern Ireland on their application and envelope.

11. Is There a Minimum Age for Applicants for Registration Under the AA–1 Program?

There is NO minimum age for submission of an application for registration, but the requirement of a firm commitment of employment for each principal applicant at the time of visa issuance will effectively disqualify anyone who is under the legal working age.

12. Will There Be Any Special Fee for Registration in the AA–1 Category?

There is no fee for submitting a request for registration, and no fee should be included with the letter sent to the post office box indicated above. There will be a special fee of US $25.00 per case registered, however, to cover the cost of processing the AA–1 registrations. This fee will be collected by the consular office to which the case is sent for processing, when the applicant responds to the registration notification letter.

13. Are AA–1 Applicants Specially Entitled To Apply for a Waiver of Any of the Grounds of Visa Ineligibility?

The law states that, for AA–1 visa applicants, the Immigration and Naturalization Service shall waive the ground of visa ineligibility based on misrepresentation on an application for a visa or for entry into the U.S. (INA 212(a)(6)(C)), unless there is a finding that such waiver is not in the national interest. In addition, the law automatically waives the two year foreign residence requirement on certain former exchange visitor ("J") visa holders under INA 212(e). Also, the requirement for a labor certification (INA 212(a)(5)(A)) does not apply. In all other respects, persons registered under the AA–1 program must meet the standard eligibility requirements before a visa can be issued.

14. May Applicants Who Are Already Registered for an Immigrant Visa in Another Category Apply in This Registration for the AA–1 Category?

Yes, such persons may seek AA–1 status through this registration as well.

15. How Long Do Applicants Who Are Registered on the Basis of This Application Period Remain Entitled to Apply for Visas in the AA–1 Category?

Under the law, persons registered following this AA–1 application period are entitled to apply for visa issuance only during fiscal year 1994, i.e., from October 1993 through September 1994. There is *no* carry-over of benefit into another year for persons who are registered but who do not obtain visas during FY–1994.

Note: There is absolutely no advantage to mailing early, or mailing from any particular locale. Every application received during the mail-in period will have an equal random chance of being selected. However more than one application per person will disqualify the person from registration. Also, failure to include the applicant's native country and full name and address on the envelope will disqualify the application.

Dated: January 25, 1993.

James L. Ward,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 93–2147 Filed 1–28–93; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 93–5]

Reports, Forms, and Recordkeeping Requirements

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

DATES: January 25, 1993.

ADDRESSES: Written comments on the DOT information collection requests should be forwarded, as quickly as possible, to Edward Clarke, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503. (202) 395–7340. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Susan Pickrel or Annette Wilson, Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4735.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on January 25, 1993:

DOT No.: 3718.

OMB No.: 2120–0067.

Administration: Federal Aviation Administration.

Title: Air Taxi and Commercial Operator Airport Activity Survey.

Need for Information: Enplanement data collected from air taxi and commercial operators are needed for the calculation of air carrier airport sponsor apportionments as specified by the Airport and Airway Improvement Act of 1982 (AAIA), as amended.

Proposed Use of Information: The information is used to determine whether an airport is eligible for funds and for calculating primary airport sponsor apportionments as specified by the AAIA, as amended.

Frequency: Annually.

Burden Estimate: 2,002 hours.

Respondents: Businesses (commercial service airports).

Form(s): FAA Form 1880–31.

Average Burden Hours Per Response: 1 hour and 18 minutes.

DOT No.: 3719.

OMB No.: 2120–0005.

Administration: Federal Aviation Administration.

Title: General Operating and Flight Rules—FAR 91.

Need for Information: The information is collected to determine compliance with FAR 91 regulations.

Proposed Use of Information: The information is used by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances require reference to records.

Frequency: On occasion.

Burden Estimate: 231,064 hours.

Respondents: Individuals and businesses operating under FAR 91.

Form(s): None.

Average Burden Hours Per Response: 30 minutes.

DOT No.: 3720.

OMB No.: 2115–0013.

Administration: U.S. Coast Guard.

Title: Application and Permit to Handle Hazardous Materials.

Need for Information: This information collection is needed by the Coast Guard to ensure that regulations are complied with under the Ports and Waterways Safety Act (33 U.S.C. 1225) in the safe handling and transporting of explosives and hazardous materials in port areas and on board vessels.

Proposed Use of Information: This information collection will be used to determine if safe practices are being followed in the stowage and handling of hazardous material. It will also enable Coast Guard to keep track and monitor all operations in the handling of hazardous materials.

Frequency: Annually.

Burden Estimate: 814 hours.

Respondents: Shipping agents and terminal operators.

Form(s): CG–4260.

Average Burden Hours Per Response: 1 hour for reporting; 12 minutes for recordkeeping.

DOT No.: 3721.

OMB No.: 2127–0040.

Administration: National Highway Traffic Safety Administration.

Title: 49 CFR part 551.45, Designation of Agent.

Need for Information: The information is needed to compile a list of designated agents representing foreign manufacturers who import vehicles into the United States.

Proposed Use of Information: The information will be used to advise foreign manufacturers of safety-related defects. Subsequently, the manufacturers can notify purchasers and correct the defects.

Frequency: On occasion.

Burden Estimate: 13 hours.

Respondents: Manufacturers.

Form(s): None.

Average Burden Hours Per Response: 30 minutes.

DOT No: 3722.

OMB No: 2137–0584.

Administration: Research and Special Programs Administration.

Title: Gas and Hazardous Liquid Pipeline Safety Program Certification/Agreement.

Need for Information: The information is needed to determine state compliance with the terms of the pipeline safety program certification/agreement.

Proposed Use of Information: The information will be used to calculate state grant allocations and to prepare an annual report to Congress on the pipeline safety program.

Frequency: Annually.

Burden Estimate: 3,556 hours.

Respondents: State public service commissions or equivalents.

Form(s): Gas Pipeline Safety Program 5(a) Certification; Gas Pipeline Safety Program 5(b) Agreement; Hazardous Liquid Pipeline Safety Program 205(a) Certification; Hazardous Liquid Pipeline Safety Program 205(b) Agreement

Average Burden Hours Per Response: 28 hours for reporting; 91 hours for recordkeeping.

DOT No: 3723.

OMB No: 2115–0054.

Administration: U.S. Coast Guard.

Title: Welding and Hot Work Permit.

Need for Information: This information collection is needed by the Coast Guard to ensure that safety regulations are complied with when using welding or hot works equipment at waterfront facilities.

Proposed Use of Information: This information will be used by the Coast Guard to issue permits to facilities engaging in welding, cutting or other hot works activities.

Frequency: On occasion.

Burden Estimate: 2,190 hours.

Respondents: Owners/operators of vessels and waterfront facilities.

Form(s): CG–4201.

Average Burden Hours Per Response: 30 minutes for reporting; 30 minutes for recordkeeping.

DOT No: 3724.

OMB No: 2115–0142.

Administration: U.S. Coast Guard.

Title: 46 CFR Subchapter F—Plan Approval and Records for Marine Engineering Systems.

Need for Information: This information collection is needed by the Coast Guard to ensure that construction, arrangement and equipment of vessels are in compliance with the applicable regulations.

Proposed Use of Information: This information collection will be used by the Coast Guard to determine that the minimum standards and technical requirements are met.

Frequency: On occasion.

Burden Estimate: 1,284 hours.

Respondents: Vessel owners and builders.

Form(s): None.

Average Burden Hours Per Response: 18 minutes.

DOT No.: 3725.

OMB No.: 2115–0556.

Administration: U.S. Coast Guard.

Title: Reports of MARPOL 73/78 Discharge Violations, Application for Equivalents, Exemptions and Alternatives and Voluntary Reports of Pollution Sightings.

Need for Information: This information collection is needed to require the master or other person in charge of a ship to report pollution sightings that violate statutory requirements. These sightings will be reported to the Coast Guard in order for an appropriate response to be taken, and to facilitate enforcement of MARPOL 73/78 and its implementing laws and regulations.

Proposed Use of Information: Coast Guard will use this information to:

(1) Determine if any corrective action is required to prevent, minimize or

mitigate the impact of pollutants discharged from ships;

(2) Evaluate applications from persons desiring relief from certain regulatory requirements involving pollution; and

(3) Encourage voluntary reporting of the existence or discharge of oil or other hazardous substance spill sightings.

Frequency: On Occasion.

Burden Estimate: 15 hours.

Respondents: Ship operators.

Form(s): None.

Average Burden Hours Per Response: 26 minutes.

DOT No.: 3726.

OMB No.: 2115–0548.

Administration: U.S. Coast Guard.

Title: Vital System Automation, 46 CFR parts 52, 56, 58, 61, 62, 110, 111, and 113.

Need for Information: This information collection requirement is needed to ensure: (1) The safety of life at sea; and (2) that U.S.-flag vessels conform to the automation regulations of the International Convention for the Safety of Life at Sea.

Proposed Use of Information: Coast Guard will use this information to determine compliance with safety regulations and to evaluate the necessary manning consistent with the safe operation of automated vessels.

Frequency: On occasion.

Burden Estimate: 630 hours.

Respondents: Vessel designers, shipyards, manufacturers, owners and crew members.

Form(s): None.

Average Burden Hours Per Response: 58 hours for reporting; 50 hours for recordkeeping.

DOT No.: 3727.

OMB No.: 2120–0514.

Administration: Federal Aviation Administration.

Title: Aviation Insurance.

Need for Information: To provide aviation insurance in emergency situations in which the President has determined there is a foreign policy need for the continuation of international air services and the FAA Administrator has determined that aviation insurance is not available on reasonable terms and conditions from commercial sources.

Proposed Use of Information: The information is used to determine the reasonableness of the terms and conditions on which commercial insurance is available and assess the risks for which insurance coverage is being sought.

Frequency: One time.

Burden Estimate: 28 hours.

Respondents: Businesses.

Form(s): None.

Average Burden Hours Per Response: 5 hours for application; 1 hour and 30 minutes for endorsements.

Issued in Washington, DC on January 25, 1993.

Cynthia C. Rand,

Director of Information Resource Management.

[FR Doc. 93–2191 Filed 1–28–93; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ended January 22, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48607

Date filed: January 21, 1993

Parties: Members of the International Air Transport Association

Subject: Telex TC2 Mail Vote 614, Europe-Middle East family fares

Proposed Effective Date: February 15, 1993.

Docket Number: 48608

Date filed: January 21, 1993

Parties: Members of the International Air Transport Association

Subject: Telex Comp Mail Vote 609, Fares to/from Algeria

Proposed Effective Date: February 1, 1993.

Docket Number: 48609

Date filed: January 21, 1993

Parties: Members of the International Air Transport Association

Subject: Telex TC1 Mail Vote 613, TC1 Standard Revalidation Resolution

Proposed Effective Date: April 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–2177 Filed 1–28–93; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In December 1992, there were 13 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Virgin Islands Port Authority, Charlotte Amalie, St. Thomas, Virgin Islands.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $3,871,005.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: February 1, 1995.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose Only: Airfield improvements (runway completion), Aircraft rescue and firefighting (ARFF) facility building.

Brief Description of Projects Approved in Part For Collection: Install airport security system.

Determination: This approval represents a decrease in the requested amount due to lower project costs. Airfield improvement (runway resurfacing).

Determination: The amount of approved PFC revenue reflects a decrease from the requested amount. This reduction limits the approved PFC amount based on the total amount of alternate project revenue approved. This project was chosen for the reduction due to its starting date for implementation and the nature of the project, which readily allows for phasing.

Brief Description of Project Disapproved for Collection: ARFF equipment.

Determination: The public agency did not provide information to show that the project is justified based on part 139 requirements. As such, the FAA is unable to determine that the project is Airport Improvement Program (AIP) eligible as required by § 158.15(b). Therefore, this project is not PFC eligible.

Decision Date: December 8, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Virgin Islands Port Authority, Christiansted, St. Croix, Virgin Islands.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $2,280,465.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: May 1, 1995.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose Only: Master plan update, Airfield improvement (apron expansion).

Brief Description of Projects Approved in Part For Collection: Real property acquisition, Airport security system.

Determination: This approval represents a decrease in the requested amount due to lower project costs. Passenger terminal improvements.

Determination: The amount of approved PFC revenue reflects a decrease from the requested amount. This reduction limits the approved PFC to the amount of funding needed to provide for the preparation of conceptual and final design plans for this project. The reduced scope of this approval provides the opportunity for the public agency to fully justify the project and determine eligible costs associated with its construction.

Brief Description of Project Disapproved for Collection: ARFF equipment.

Determination: The public agency did not provide information to show that the project is justified based on Part 139 requirements. As such, the FAA is unable to determine that the project is AIP eligible as required by § 158.15(b). Therefore, this project is not PFC eligible.

Decision Date: December 8, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Indian Wells Valley Airport District, Inyokern, California.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $127,500.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: September 1, 1995.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved to Impose and Use: Land acquisition, Pave airport drive, Overlay runway 15/33.

Brief Description of Project Approved to Impose Only: Terminal renovations.

Brief Description of Projects Withdrawn: Overlay runway 10/28, Construct run-up pads.

Determination: The Indian Wells Valley Airport District withdrew these projects from its application by letter to the FAA dated November 24, 1992.

Decision Date: December 10, 1992.

For Further Information Contact: John P. Milligan, Western-Pacific Region Airports Division, (310) 297–1029.

Public Agency: County of Monroe, Key West, Florida

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $945,937.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: December 1, 1995.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved to Impose at Key West International Airport (EYW) and Use at EYW: Master stormwater study, Environmental assessment study, Terminal expansion project, Renovation of federal inspection services facility, Airfield signage.

Brief Description of Project Approved to Impose at EYW and Use at Marathon Airport (MTH): Terminal complex construction.

Brief Description of Project Disapproved: Development of regional impact/major conditional use study.

Determination: The disapproved amount, $10,000, represents the County of Monroe's request for PFC revenues to fund the local match of a proposed AIP project. The total project cost is $200,000. The County of Monroe requests AIP discretionary funding of $180,000. The FAA cannot commit to this level of discretionary funding at this time. Further, in preparing an impose and use application, the County of Monroe did not provide an alternative funding plan. Lacking any alternative to AIP discretionary funding for a significant portion of the project's financing, any approval to impose and use by the FAA would prejudice the FAA's future funding decision. Thus, the FAA cannot assure PFC revenue collected for use on the subject project could be used on approved projects, in the event AIP discretionary funding were not forthcoming. Master plan update.

Determination: The FAA cannot make an eligibility determination on this project because the County of Monroe has not defined the scope of the project.

Decision Date: December 17, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: County of Monroe, Marathon, Florida.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $153,556.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: June 1, 1995.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved to Impose and Use: Master stormwater study, Development of regional impact/major conditional use study, Construct new terminal building, Airfield signage, Clear runway 7–25 safety area, Install obstruction lights adjacent to runway 7–25.

Brief Description of Project Disapproved: Master plan update.

Determination: The FAA cannot make an eligibility determination on this project because the County of Monroe has not defined the scope of the project.

Decision Date: December 17, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Charlottesville-Albermarle Airport Authority, Charlottesville, Virginia.

Application Type: Use PFC Revenue.

PFC Level: $2.00.

Total Approved Net PFC Revenue: $255,559.

Charge Effective Date: September 1, 1992.

Duration of Authority to Impose: November 1, 1993.

Class of Air Carriers Not Required to Collect PFC's: Previously approved in June 11, 1992 decision.

Brief Description of Project Approved to Use PFC Revenue: Relocation of taxiway A.

Decision Date: December 21, 1992.

For Further Information Contact: Robert B. Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: County of Emmett, Pellston, Michigan.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $440,875.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: June 1, 1998.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operations.

Determination: Approved. The FAA has determined that the proposed class accounts for less than 1 percent of the airport's total annual enplanements.

Brief Description of Projects Approved to Impose and Use: Extend apron, Constructed heated sand storage building, Rehabilitate taxiway "G".

Brief Description of Project Approved to Impose Only: Rehabilitate taxiway

"A", Rehabilitate taxiway "B", Purchase physically challenged passenger loading device, Purchase snow removal equipment (broom), Rehabilitate medium intensity runway lights (MIRL) on runway 5/23, Construct blast pads on runway 14/32, Construct paved shoulders on runway 14/32, Rehabilitate and resurface runway 14/32.

Decision Date: December 22, 1992.

For Further Information Contact: Dean Nitz, Detroit Airports District Office, (313) 487–7300.

Public Agency: City of Colorado Springs, Colorado Springs, Colorado.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $5,622,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: February 1, 1996.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved to Impose and Use: New terminal building—public areas, Aircraft apron and parking positions.

Brief Description of Project Disapproved: Taxiway C—southern portion.

Determination: This project is proposed to begin in 1997. This date exceeds the two-year requirement for project implementation contained in § 158.33(a)(1). Therefore, this project is disapproved for the imposition and use of PFC's.

Decision Date: December 22, 1992.

For Further Information Contact: Dakota L. Chamberlain, Denver Airports District Office, (303) 286–5537.

Public Agency: Valdosta-Lowndes County Airport Authority, Valdosta, Georgia.

Application Type: Impose PFC.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $260.526.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: October 1, 1997.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose Only: Passenger terminal building.

Decision Date: December 23, 1992.

For Further Information Contact: Catherine M. Nelmes, Atlanta Airports District Office, (404) 994–5306.

Public Agency: County of Brown (County), Green Bay, Wisconsin.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $8,140,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: March 1, 2003.

Class of Air Carriers not Required to Collect PFC'S: Part 135 air taxi/commercial operators.

Determination: Disapproved. Based on information submitted in the County's application and a letter, dated December 21, 1992, clarifying the names of air taxi/commercial operators notified, the proposed class accounts for less than 1 percent of Austin Straubel International Airport's (GRB) total annual enplanements. However, review of current fiscal year 1991 enplanement data shows that this class exceeds the 1 percent allowable in § 158.11 of the regulation and cannot be approved.

Brief Description of Project Approved to Impose and Use: Phase II terminal renovation and expansion.

Brief Description of Projects Approve to Impose Only: Taxiway C/M improvements, Taxiway D/K improvements, Construct stormwater management system, Phase III terminal renovation and expansion, Phase IV terminal renovation and expansion.

Decision Date: December 28, 1992.

For Further Information Contact: Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4331.

Public Agency: Puerto Rico Ports Authority, Aguadilla, Puerto Rico.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $1,053,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: January 1, 1999.

Class of Air Carriers not required to Collect PFC'S: None.

Brief Description of Project Approved to Impose and Use: Terminal building expansion.

Decision Date: December 29, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Puerto Rico Ports Authority, Ponce, Puerto Rico.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $866,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: January 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose and Use: Terminal building expansion.

Decision Date: December 29, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Public Agency: Puerto Rico Ports Authority, San Juan, Puerto Rico.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $49,768,000.

Earliest Permissible Charge Effective Date: March 1, 1993.

Duration of Authority to Impose: February 1, 1997.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved to Impose at Luiz Munoz Marin International Airport (SJU) and Use at SJU: New international terminal.

Brief Description of Projects Approved to Impose at SJU and Use at Mercedita Airport: Construct a 1,000-foot extension to runaway 12, Terminal building expansion.

Brief Description of Project Approved to Impose at SJU and Use at Rafael Hernandez Airport: Terminal building expansion.

Brief Description of Project Approved to Impose Only at SJU: Construct single crossfield taxiway.

Decision Date: December 29, 1992.

For Further Information Contact: Ilia A. Quinones, Orlando Airports District Office, (407) 648–6583.

Issued in Washington, DC, on January 19, 1993.

Lowell Johnson,

Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Alabama					
Huntsville Intl-Carl T Jones Field, Huntsville	03/06/1992	3	$20,831,051	06/01/1992	11/01/2008
Muscle Shoals Regional, Mucle Shoals	02/18/1992	3	104,100	11/01/1992	02/01/1995
Arizona					
Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
California					
Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
Metropolitan Oakland International, Oakland	06/26/1992	3	8,736,000	09/01/1992	09/01/1993
Palm Spring Regional, Palm Springs	06/25/1992	3	44,612,350	10/01/1992	06/01/2019
San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
San Luis Obispo County-McChesney Field, San Luis Obispo	11/24/1992	3	502,437	03/01/1993	02/01/1995
Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado					
Colorado Springs Municipal, Colorado Springs	12/22/1993	3	5,622,000	03/01/1993	02/01/1996
Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
Telluride Regional, Telluride	11/23/1992	3	200,000	02/01/1992	11/01/1997
Florida					
Southwest Florida Regional, Fort Myers	08/31/1992	3	257,673,262	11/01/1992	06/01/2015
Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	08/01/1195
Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
Sarasota-Bradenton, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
Georgia					
Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho					
Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois					
Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
Capital, Springfield	03/27/1992	3	682,306	06/01/1992	05/01/1994
Iowa					
Dubuque Regional, Dubuque	10/08/1992	3	108,500	01/01/1993	05/01/1994
Louisiana					
Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
Maryland					
Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts					
Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan					
Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
Kent County, International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
Pellston Regional Airport of Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	08/01/1995
Minnesota					
Minneaplois-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	06/01/1994
Mississippi					
Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
Key field, Meridian	08/21/1992	3	122,50	11/01/1992	06/01/1994

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Missouri					
Lambert-St. Louis International, St. Louis	09/30/1992	3	131,453,450	12/01/1992	12/01/1997
Montana					
Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada					
McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
New Hampshire					
Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey					
Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York					
Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
John F. Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota					
Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio					
Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
Oklahoma					
Lawton Municipal, Lawton	05/08/1992	3	334,078	08/01/1992	01/01/1996
Tulsa International, Tulsa	05/11/1992	3	8,450,000	08/01/1992	08/01/1994
Oregon					
Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
Pennsylvania					
Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
Tennessee					
Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1992	02/01/2004
Texas					
Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
Virginia					
Charlottesville-Albemarle, Charlottesville	06/11/1992	3	255,559	09/01/1992	11/01/1993
Charlottesville-Albemarle, Charlottesville	12/21/1992	3	255,559	09/01/1992	11/01/1993
Washington					
Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia					
Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin					
Austin Straubel International, Green Bay	12/28/1993	3	8,140,000	03/01/1993	03/01/2003
Guam					
Guam International Air Terminal, Agana	11/10/1993	3	5,632,000	02/01/1993	08/01/1994

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, airport and city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
Puerto Rico					
Rafael Hernandez, Acuedilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
Luis Munoz Marin International, San Juan	12/29/1993	3	49,766,000	03/01/1993	02/01/1997
Virgin Islands					
Cyril E. King, Charlottee Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
Alexander Hamilton Christiansted St Croix	12/08/1993	3	2,280,465	03/01/1993	05/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93–2159 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–13–M

Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Daytona Beach International Airport, Daytona Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dennis R. McGee, Airport Director of Volusia County, Florida at the following address: Volusia County, Florida, Daytona Beach International Airport, 700 Catalina Drive, Suite 300, Daytona Beach, Florida 32114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Volusia County, Florida under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Southern Region, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397, Attn: Pablo G. Auffant, Civil Engineer, Telephone: (407) 648–6583.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Daytona Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On January 20, 1993, the FAA determined that the application to impose and use a PFC submitted by Volusia County, Florida was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: May 1, 1993

Proposed charge expiration date: December 31, 2001

Total estimated PFC revenue: $11,242,218

Brief description of proposed project(s):

Impose and Use: Terminal Renovation for FIS Facility.

Impose Only: Land Aquisition for Aviation Development and Protection.

Extension of Runway 7L–25R and Taxiway November. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Volusia County, Florida.

Issued in Atlanta, Georgia on January 20, 1993.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 93–2160 Filed 1–28–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Cumberland, Hoke, and Robeson Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Cumberland, Robeson, and Hoke Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) on a proposed new highway facility known as the Fayetteville Outer Loop (western and southern portions) in Cumberland, Hoke, and Robeson Counties of North Carolina. The proposed project would extend from the western termination point of the northern segment of the Fayetteville Outer Loop (X–2) near the All American Freeway (SR 1007), would pass through portions of the Fort Bragg Military Reservation, western and southern Cumberland County, eastern Hoke County, and northern Robeson County, and would end along I–95 south of Fayetteville, a distance of approximately 19 miles. The proposed project is needed to improve access and reduce congestion on the Fayetteville urban roadway system and other roadway facilities in the area.

Alternatives under consideration include the (1) the "no-build"; (2) improve existing facilities; (3) transportation systems management; (4) mass transit; and (5) constructing a four-lane freeway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Citizens informational workshops and meetings with local officials will be held in the study area. A public hearing will also be held. Public notice will be given of the time and place of the workshops, meetings, and hearing. The draft EIS will be available for public and agency review and comment at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 21, 1993.

Roy C. Shelton,

Operations Engineer, FHWA Raleigh, North Carolina.

[FR Doc. 93–2137 Filed 1–28–93; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with title 49, Code of Federal Regulations, §§ 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) received from Union Pacific Railroad (UPRR) a request for exemptions from or waivers of compliance with a requirement of the Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Union Pacific Railroad, Waiver Petition, Docket Number RST–92–3

This notice covers the request of the Union Pacific Railroad (UPRR) to be relieved of compliance with § 213.57(b) of the track safety standards. That section refers to maximum allowable train operating speeds on non-tangent track as a function of existing curvature and superelevation and, further, introduces the concept of unbalanced superelevation in particular modes of train operation. The idea of trains negotiating curved track at speeds producing either positive or negative unbalance was discussed previously in the **Federal Register** (52 FR 38035 on October 13, 1987). Currently, § 213.57(b) accepts a maximum of three inches to be used as the underbalance term in the formulation of curve/speed tables by track maintenance engineers defining intermediate train speeds and curved track superelevations for any route between two points.

UPRR petitioned for permission to substitute the value of four inches instead of authorized three in determining maximum train speeds on several hundred route-miles of track owned by the railroad and used under contract by the National Railroad Passenger Corporation (Amtrak) in the provision of transcontinental passenger train service. UPRR is doing this to assist Amtrak in improving the intercity trip times of its passenger trains. UPRR is a freight-hauling railroad exclusively and, in the past, determined that it was in the railroad's best interest to operate freight trains at curving speeds developing not more than one and one/half inches of underbalance, a value well within the bound prescribed by the track standards. On the other hand, Amtrak would like to operate passenger trains, where possible, at the full three inches afforded by the standards. UPRR claims to have no objection to this curving speed differential considering the design and maintenance characteristics of transcontinental passenger cars compared with those of freight rolling stock.

The reason stated by UPRR for having submitted the petition is to gain some track maintenance flexibility without violating the track safety standards. UPRR claims to have no intention of operating freight trains in any speed regime that would leave that railroad vulnerable to nonconformance with § 213.57(b).

UPRR's petition is very detailed, e.g., every curve on the 19 subdivisions involved is listed in printout form presenting several of the features unique to each curve. A preliminary analysis of these data by FRA indicates that of the approximately 5500 curves involved, 150 would experience a speed increase in the order of five to ten miles per hour. Projected speed increases on a large majority of the 150 curves would still be less than the value required to produce three inches of underbalance. Only rarely do the speed increases exceed the values defining the three inch limit and then only by a few miles an hour.

Interested parties may submit written views, data, or comments on this petition. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g., Waiver Petition Docket No. RST–92–3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before March 8, 1993 will be considered by FRA before final action is taken. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on January 22, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–2198 Filed 1–28–93; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966 (the Act), as amended (15 U.S.C. 1381 et seq.).

Mrs. Linda J. Splayt submitted a petition, dated September 15, 1992, requesting that NHTSA initiate an investigation to determine whether certain component parts in 1989 Subaru Justy vehicles are defective within the meaning of the Act.

In her letter, the petitioner stated as one of the reasons for the petition:

> 48 out of 76 Justy vehicle complaints to NHTSA as of July 27, 1992 indicate a pattern of identical and related problems.

She also stated that her daughter was killed after being ejected through the sunroof in an accident involving a 1989 Subaru Justy vehicle and that a passenger was injured.

The petitioner requested that NHTSA specifically investigate the following component parts for the 1989 Subaru Justy; brakes, transmission, computer system, suspension, power train, steering, loss of power, electrical system, fuel system, wheels, tires, seat belt retractor, seat back reclining lever and safety belt warning information. Mrs. Splayt provided no substantive evidence that defects exist in any of the named components.

A search of the agency's Fatal Accident Reporting System (a census of all fatal motor vehicle crashes) for calendar years 1988 through 1991 disclosed no reports of fatal ejection of belted occupants in 1989 Subaru Justy vehicles.

Among the various parts and systems listed in the petition, the brakes, steering, and transmission are most likely to be related to accident causation. The restraint system was also examined because the driver was ejected from the vehicle during the accident, and the passenger seat belt allegedly did not function properly. The remainder historically have been "nuisance" problems to the owner or driver. No indication of mechanical defect is provided in these complaints. A review of ten repair orders covering work performed on the petitioner's vehicle disclosed no reference to brake problems or brake lockup. In summary, the petitioner's complaint concerning the vehicle's brakes and the other brake complaints in the agency's file fail to demonstrate a safety-related defect.

The petitioner alleges a defect in the vehicle's steering system. She reports that her daughter's 1989 Justy "swerved," and she lost control of the vehicle. In the dealer's repair order for this vehicle, there is no mention of a previous problem of swerving or loss of steering control. The agency's complaint file contains one other report of swerving on a 1989 Justy. This complaint reports a problem when the vehicle is driven over steel gratings on bridges. At the time of the accident, the petitioner's vehicle was not being operated on a bridge or on steel gratings. The agency's database has one other steering related complaint on a 1988 Justy. The complaint alleges that a broken tie rod end caused a loss of control and an accident. However, that report further states that two independent metallurgists hired by the vehicle's operator found the tie rod to not be the cause of the accident and broke as a result of the impact of the accident. The petitioner's vehicle did not experience a broken tie rod. In summary, these reports do not provide evidence to indicate a defect trend associated with loss of steering control.

The Splayt car was one of 12,500 1989 Justy vehicles equipped with the electronically controlled variable speed automatic transmission (ECVT). There were six complaints concerning the ECVT in the agency's database. Three 1989 owners complained only of "transmission failure." One 1990 Justy owner complained that his transmission had "excess wear" and another 1990 owner complained that the transmission slips from "Drive" to "Neutral" at various speeds. Most of the complainants stated they were made aware of the problem either through increased noise or increased difficulty in shifting gears. None of the five complaints allege an accident or safety risk associated with the transmission problem. The remaining ECVT report was the petitioner's, with the complaint being: "The transmission would voluntarily downshift and the car could not be controlled. It would go wherever it wanted to—steering would be impaired and braking was difficult." A review of the dealership repair orders indicated that the dealer could not duplicate the problem, but that the transmission was replaced to remove any doubt.

The complaints concerning transmission problems do not demonstrate a connection between transmission failure and a safety consequence.

The front seat belts in the 1989 Subaru Justy are the three-point type with an emergency locking retractor. The agency encourages full use of the vehicle's seat belt system. No matter what kind of safety belt system the vehicle has, it must be buckled for maximum protection.

The petitioner requested the agency to investigate the seat belt retractor and seat belt warning information. Subaru has certified that the subject Justy vehicles meet all applicable safety standards. A review of the information provided Mrs. Splayt did not suggest a noncompliance to any safety standard. As required by Federal Motor Vehicle Safety Standard No. 208, the Owner's Manual contains information and diagrams concerning belt usage and the function of the seat belt warning light and chimes that warn the driver that the safety belt system is not buckled.

In 1989, the agency tested seat belt strength and belt anchorage strength of a 1989 Justy vehicle as part of its regular compliance testing program by means of a static test which applied a load of 5,000 lbs (2,270 kg) to the belt and anchor. The belt and anchor passed the test.

Analysis of all Subaru Justy complaints disclosed three complaints concerning the safety belt. One alleged that the safety belts spooled out during a combination of braking, accelerating, and turning prior to the collision. Another complaint alleged that the seat belt latch release plastic button was broken, but this was not in connection with a vehicle accident. The third complaint alleged that the belts do not properly retract when the buckle is released.

Consumer complaints concerning the remaining component parts listed by the petitioner do not indicate the existence of a safely-related defect.

The Tulsa, Oklahoma, official police traffic collision report covering the accident in which the petitioner's daughter was killed was reviewed by the agency. It contained a statement by a witness who said that the Splayt vehicle was travelling at 60 to 70 miles per hour (97 to 113 kilometers per hour) when the driver lost control. He further said that the car hit the center median, rolled four times and that the driver was ejected 30 feet (9 meters) straight up and landed on her head. The responding officer further commented: "* * * the driver looked off and then looked back to the car in front of her. The car in front had slowed or stopped. The driver took evasive action. She slammed on the brakes and swerved left. The car hit the center median. The car slid and flipped on the center median and the driver was ejected through the cloth sunroof. Passenger stayed in the car." The posted speed limit for the highway was 50 mph (80 kilometers per hour).

The collision report also indicated that the driver was not wearing a safety belt, but that the passenger was wearing the available safety belts. The passenger reportedly suffered minor injuries in the accident.

The manufacturer provided a copy of the Owner's Manual Supplement placed in each 1989 Subaru Justy that had the soft top sunroof installed. The supplement was prepared to acquaint the owner/driver with the operation and care of the sunroof, and to provide important safety information. The following is included in the text:

- "To avoid the risk of injury or loss of control, never drive the vehicle unless the top is securely locked in an open position or securely closed and latched. Never drive with the wind deflector in the down position.
- To avoid loss of vehicle control, never attempt to operate the sunroof when the vehicle is in motion.

- To minimize the risk of injury or death caused by ejection from the vehicle, make certain that everyone in the vehicle wears seat belts. Seat belts should also be worn at all times to prevent or reduce the severity of injury in a collision."

Based on the information available, no defect trend has been observed and identified for any components or devices in the subject vehicle which would cause the vehicle to go out of control upon sudden, hard application of the brakes. Analysis of the available information indicates an assortment of random complaints on a variety of areas of the vehicle with no pattern and no linkage to loss of vehicle control as alleged by the petitioner. Examination of the repair history of the vehicle and the circumstances of the accident fails to indicate that the subject vehicle displayed any defects that could have caused loss of control upon hard braking.

In consideration of the foregoing, NHTSA has concluded that there is not a reasonable possibility that an order for the notification and remedy of a safety-related defect would be issued at the conclusion of an investigation that the petition has requested. Under these circumstances, further commitment of agency resources does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492: 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 26, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–2193 Filed 1–28–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 25, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8834.
Type of Review: New collection.
Title: Qualified Electric Vehicle Credit.
Description: Form 8834 is used to compute an allowable credit for qualified electric vehicles placed on service after June 30, 1993. Section 1913(b) under Public Law 102–1018 created new section 30.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—5 hours, 59 minutes.
Learning about the law or the form—30 minutes.
Preparing, copying, assembling, and sending the forms to the IRS—37 minutes.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 3,550 hours.

OMB Number: 1545–0112.
Form Number: IRS Form 1099–INT.
Type of Review: Extension.
Title: Interest Income.
Description: This form is used for reporting interest income paid, as required by sections 6049 and 6041 of the Internal Revenue Code. It is used to verify that payees are correctly reporting their income.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 790,000.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 64,400,000 hours.

OMB Number: 1545–1304.
Regulation ID Numbers: INTL–941–86, INTL–656–87, and INTL–704–87 Final; INTL–656–87 Temporary.
Type of Review: Extension.
Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.
Description: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions and deferred tax amounts.
Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents: 6,750.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 6,750 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–2158 Filed 1–28–93; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 22, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1500–0027
Form Number: POD 1681
Type of Review: Extension
Title: Application for Payment of a Deceased Depositor's Postal Savings
Description: This form is required in cases of Deceased Postal Savings Depositor's with accounts of $50 or less. The form is used by relatives of the deceased depositors showing the relationship to the depositor and the date of depositor's death. The information helps to determine who is entitled to payment.
Respondents: Individuals or households
Estimated Number of Respondents: 150
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 38 hours

Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–2115 Filed 1–28–93; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 25, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0795

Form Number: IRS Form 8233

Type of Review: Extension

Title: Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual

Description: Compensation paid to nonresident alien (NRA) for independent personal service (i.e., as independent contractors) is generally subject to the 30 percent withholding or graduated rates. However, such compensation may be exempt from withholding because of a U.S. tax treaty or personal exemption. Form 8233 is used to request the exemption. Withholding agent reviews form and accepts it or not and forwards the form to IRS, if agent accepted it.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents/Recordkeepers: 6,800

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—26 minutes

Learning about the law or the form—12 minutes

Preparing and sending the form to the IRS—41 minutes

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 9,044 hours

OMB Number: 1545–1221

Regulation ID Number: EE–147–87 Final

Type of Review: Extension

Title: Qualified Separate Lines of Business

Description: The affected public includes employers who maintain qualified retirement plans for their employees. The employer must furnish notice to IRS that the employer is treating itself as operating qualified separate lines of business. Where applicable, an employer may request a determination from IRS that such lines satisfy administrative scrutiny.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 743

Estimated Burden Hours Per Respondent: 3 hours, 55 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 2,907 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–2116 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

EFFECTIVE DATE: Performance Review Board effective February 1, 1993.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, HR:H:E, room 3515, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone No. (202) 622–6320, (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Assistant Commissioners, Regional Commissioners and senior executives in Inspection and the Office of the Commissioner are as follows:

Michael Dolan, Deputy Commissioner, Chairperson

Charles Brennan, Regional Commissioner, Mid-Atlantic Region

Thomas Coleman, Regional Commissioner, Western Region

C. Morgan Kinghorn, Jr., Assistant Commissioner (Finance)/Controller

Judy Van Alfen, Assistant Commissioner (Returns Processing)

Robert Wenzel, Assistant Commissioner (Collection)

Helen White, Assistant to the Commissioner (Equal Opportunity)

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

Michael P. Dolan,

Acting Commissioner.

[FR Doc. 93–2190 Filed 1–28–93; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 18

Friday, January 29, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

FEDERAL REGISTER NUMBER: 93–2209.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, February 4, 1993, 10 a.m. Meeting open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA:

Voting Age Population (VAP) Figures for the 1993 Texas Senate Special Election.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–2275 Filed 1–27–93 2:14 pm]

BILLING CODE 6715-01-M

NATIONAL SCIENCE BOARD EXECUTIVE COMMITTEE

DATE AND TIME:

February 11, 1993 2:00 p.m. Open Session
February 12, 1993 9:30 a.m. Closed Session
February 12, 1993 10:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street NW., Room 540, Washington, DC 20550

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, February 11, 1993

Open Session (2:00 p.m.–3:30 p.m.)

1. Report of the NSB Commission and NSB Role

Friday, February 12, 1993

Closed Session (9:30 a.m.–10:15 a.m.)

2. Personnel/Staff Issues
3. Minutes of November 1992 Meeting
4. Grants and Contracts
5. Director's Report

Open Session (10:15 a.m.–10:45 a.m.)

6. Chairman's Report
7. Minutes of November 1992 Meeting
8. Director's Report
9. Other business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 93–2238 Filed 1–27–93; 11:10 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 1, 1993.

A closed meeting will be held on Friday, February 5, 1993, at 11:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, February 5, 1993, at 11:30 a.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

January 27, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2329 Filed 1–27–93; 4:00 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 58, No. 18
Friday, January 29, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 910813 2323]

Administrative Exceptions and Favorable Consideration Treatment for Country Groups Q and Y; Revisions, Clarifications, and Corrections to the Commerce Control List

Correction

In rule document 92–30966 beginning on page 61259 in the issue of Thursday, December 24, 1992, make the following corrections:

Supplement No. 1 to §799.1 [Corrected]

The following corrections are to Supplement No. 1 to § 799.1:

1. On page 61264, in the first column, in ECCN 2A19A, under **Requirements**, the last line should read "*GFW:* No".

2. On page 61280, in the third column, in ECCN 5B94F, in the Note, in the first line, "General License G-TEST" should read "General License G-DEST".

3. On page 61290, in the first column, in amendment 91, "OE" and "OA" should read "0E" and "0A" wherever they appear.

4. On the same page, in the same column, in ECCN 0E96G, in the heading, in the last line, "Category O" should read "Category 0".

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 921107–2307]

Foreign Fishing; Groundfish of the Gulf of Alaska

Correction

In proposed rule document 92–29734 beginning on page 57982 in the issue of Tuesday, December 8, 1992, make the following corrections:

1. On page 57984, the caption "Preliminary ABCs * * * Apportioned To DAP" underneath Table 1 should have appeared as the heading to the table on page 57983 as follows: "TABLE 1 — Preliminary ABCs, Proposed TACs, One-Fourth TACs And DAPs Of Groundfish (Metric Tons) For The Western/Central (W/C), Western (W), Central (C), And Eastern (E) Regulatory Areas And In The West Yakutat (WYK), Southeast Outside (SEO), And Gulf-Wide (GW) Districts Of The Gulf of Alaska. Amounts Specified As Joint Venture Processing (JVP) And Total Allowable Level Of Foreign Fishing (TALFF) Are Proposed To Be Zero And Are Not Shown In This Table. Reserves Are Proposed To Be Apportioned To DAP."

2. On page 57988, in the 2d column, in the 33d line, "Regulatory Areas' " should read "Regulatory Areas;".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–943–4210–05; IDI–17811C]

Order Providing for Opening of Public Land; Idaho

Correction

In notice document 93–253 appearing on page 3042 in the issue of Thursday, January 7, 1993, in the second column, under T. 2 N., R. 3 W. where it first appears, under Sec. 28, in the second line, "S½NE¼NW¼," should read "S½NW¼NW¼,".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 118, 151 and 178

[T.D. 93–6]

RIN 1515–AB10

Centralized Examination Stations

Correction

In rule document 93–1494 beginning on page 5596 in the issue of Friday, January 22, 1993, make the following corrections:

1. On page 5600, in the second column, in the first full paragraph, in the second line, insert "exempt" between "to" and "existing".

2. On page 5602, in the first column, in the first full paragraph, in the eighth line, "unloading" should read "unlading".

3. On page 5603, in the third column, in the first paragraph, in the first line, "test" should read "text".

§ 118.0 [Corrected]

4. On page 5604, in the second column, in § 118.0, in the third line, "person" should read "persons".

§ 118.11 [Corrected]

5. On page 5605, in the third column, in § 118.11(e), in the sixth line, insert a semi-colon after "selection".

Subpart C [Corrected]

6. On page 5606, in the first column, in the heading for Subpart C, "Terminations" should read "Termination".

§ 118.21 [Corrected]

7. On the same page, in the same column, in § 118.21(a)(2), in the ninth line, "his official duties or operator" should read "his official duties as operator".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 602

[T.D. 8442]

RIN 1545–AO97; 1545–AQ04

Procedural Rules for Excise Taxes Currently Reportable on Form 720

Correction

In rule document 92–25429 beginning on page 48174 in the issue of Thursday, October 22, 1992, make the following corrections:

§ 40.0–1 [Corrected]

1. On page 48177, in the second column, in § 40.0–1(b), in the second line, "for" should read "to a".

2. On the same page, in the same column, in § 40.0–1(e), in the third line, "to" should read "or".

§ 40.6071(a)–2 [Corrected]

3. On page 48178, in the second column, in § 40.6071(a)–2(a), in the first line, "return" should read "returns".

§ 40.6302(c)–0 [Corrected]

4. On page 48179, in the first column, in § 40.6302(c)–0, in the second line, "40.6302–2(c)–1" should read "40.6302(c)–2".

§ 40.9999–1 [Corrected]

5. On page 48184, in the second column, in § 40.9999–1, in Example 3, in paragraph (3), in the ninth line, insert "is" between "1991" and "as".

§ 602.101 [Corrected]

6. On page 48187, in the 2d column, in § 602.101, in the 24th entry, under the "Current OMB control number" for 48.6302(c)–1, add "1545–0257" beneath "1545–0023".

BILLING CODE 1505–01–D

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federal register

Friday
January 29, 1993

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB91

Endangered and Threatened Wildlife and Plants: Proposed Determination of Critical Habitat for the Colorado River Endangered Fishes: Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to designate critical habitat for four species of endemic Colorado River Basin fishes: Razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). These species are listed as endangered under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Historically, these four species occurred throughout the Colorado River system from Wyoming to Mexico. The Service is under court order to publish a proposed rule for critical habitat for the razorback sucker by January 25, 1993, using presently available information.

The Service proposes to designate a total of 3,370 kilometers (2,094 miles) of critical habitat for the four Colorado River endangered fishes. There is considerable overlap in areas designated for the four species. The designation for all four species includes portions of Colorado, Utah, New Mexico, Arizona, Nevada, and California. The Service proposes 2,935 kilometers (1,824 miles) of critical habitat for the razorback sucker (52 percent of its historical range); 1,843 kilometers (1,148 miles) for the Colorado squawfish (29 percent of the historical range); 610 kilometers (379 miles) for the humpback chub (28 percent of the historical range); and 544 kilometers (344 miles) for the bonytail chub (15 percent of the historical range).

This proposed critical habitat designation, when made final, would result in additional consultation and conference requirements under section 7 of the Act with regard to Federal agency actions which are likely to destroy or adversely modify critical habitat. The Service is soliciting data and comments from the public on all aspects of this proposal, including information on the impacts and benefits of the designation.

DATES: Comments on this proposed rule will be accepted until March 30, 1993.

ADDRESSES: Information, comments, or questions concerning this proposed rule may be submitted to the Utah State Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Utah State Supervisor, at the above address, telephone 801/975–3630.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) has had limited time to prepare a proposed rule. Because of this, an economic analysis, a biological support document, and a complete evaluation of the effects of the critical habitat designation are not now available. The economic analysis and a biological support document are currently in preparation. Once completed, a notice will be published in the **Federal Register**, announcing their availability and the dates and locations of public hearings. A comment period will follow publication of the documents; this will allow public review of the economic analysis and the biological support document. The Service will hold public hearings on this proposed rule in Phoenix, Arizona; Denver, Colorado; and a site to be determined in southern California. The dates and specific locations for these hearings will be published in the **Federal Register** at least 15 days prior to the first hearing. Any determinations on exclusions of areas proposed as critical habitat will be published in the final rule.

The biological support document will contain detailed discussion of the process used to select critical habitat reaches. This will include a summary of known life history and ecological requirements for these species, presentation of the information used to develop the primary constituent elements, and a discussion of the biologicial basis for selection of proposed river reaches. Additionally, a discussion of activities which affect or may be affected by critical habitat designation will be included.

The economic analysis will contain an evaluation of costs and benefits resulting from this proposed designation. The information that will be contained in the economic analysis are detailed under the "Considerations of Economic and Other Factors" section within this document. The economic analysis will be used by the Service during the exclusion prosess. The exclusion process will determine whether the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat unless it is determined that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

Background

The Colorado River Basin (Basin) encompasses portions of seven Western States. The Upper Basin consists of portions of the States of Colorado, New Mexico, Utah, and Wyoming. The Lower Basin consists of portions of the States of Arizona, California, and Nevada. The Basin drains approximately 627,000 square kilometers (242,000 square miles) within the United States. An additional 5,000 square kilometers (2,000 square miles) of the Basin lies within Mexico.

Historically, the native fish fauna of the mainstream Colorado River was dominated by native minnows (cyprinids) and suckers (catostomids; Minckley et al. 1986). However, four of these, the razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*), are now listed as endangered species. These fishes are threatened with extinction due to the combined effects of habitat loss (including regulation of natural flow, temperature, and sediment regimes); proliferation of introduced fishes; and other man-induced disturbances (Miller 1961; Minckley 1973; U.S. Fish and Wildlife Service (USFWS) 1987; Carlson and Muth 1989).

Native Colorado squawfish stocks survive only in the Upper Basin, where their numbers are relatively high only in the Green River basin of Utah and Colorado (Tyus 1991). Razorback sucker and bonytail chub stocks consist predominately of old adult fish, and they remain only because of the longevity inherent in these species (USFWS 1990a; Minckley et al. 1991). Humpback chub populations in the Little Colorado River and at Black Rocks in the Colorado River appear relatively stable in number of fish, but declines have been apparent in other locations (USFWS 1990b).

Conservation of these four species will require the identification and management of water resources and habitat areas that are considered important to any fish species, such as spawning areas and nursery grounds. However, because the four endangered fishes are present in such low numbers, basic life history information and habitat use has been difficult to obtain. Some areas used by Colorado squawfish and razorback sucker for spawning have been detected by radiotracking, tagging, and collection of eggs or larvae (Tyus and Karp 1990; Tyus 1990), but these areas support the largest riverine concentrations of these species. Such information is less available in places where these species are more rare, and the low numbers or lack of young for some species have lead to hypotheses about a lack of reproduction and/or recruitment as a possible cause of their endangerment (USFWS 1990a, 1990b, 1991). In this case, not only would a lack of successful recruitment lead to small numbers of fish, but over time, remnant stocks may lose genetic diversity. Ultimately, extinction could result because the loss of genetic diversity may make populations more susceptible to environmental change.

The historical ranges of the four endangered species have been fragmented by construction of dams and water diversions throughout the Basin (Carlson and Muth 1989). The Service believes that it is important to the survival and recovery of these species to reestablish populations in areas within their former range. Providing geographically distinct areas that contain varying thermal, chemical, geological, and physical parameters will encourage maintenance of the current genetic pool. These parameters influence important life history characteristics such as time of spawning, recruitment, growth, mortality rates, and longevity.

Habitats and Status of Endangered Fishes

General

The four endangered Colorado River fishes evolved in the Colorado River and were adapted to the natural environment that existed prior to the beginning of large-scale water development. Thus, they were adapted to a system of fluctuating seasonal and annual flows influenced by wet, average, and dry climatic periods. Recent population declines and disappearances of endemic fish species in much of their former range have been associated with relatively rapid and widespread anthropogenic changes. These changes have altered the physical and biological characteristics of many mainstream rivers in the Basin and occurred so rapidly that the fishes have not had time to adapt to them (Carlson and Muth 1989). Dams and diversions have fragmented former fish habitat by restricting fish movement. As a result, genetic interchange (emigration and immigration of individuals) between some fish populations is nonexistent. Large floods were once normal in the Basin and provided food and nutrient exchange between river channels and shallow-water floodplain habitats. These floods are now controlled by numerous dams. As a result of these dams, major changes also have occurred in water quality, quantity, temperature, sediment and nutrient transport, and other characteristics of the aquatic environment (Carlson and Muth 1989). The altered habitats that have resulted are now more suitable for introduced, nonnative fishes, some of which have flourished (Minckley et al. 1982; Tyus et al. 1982; Carlson and Muth 1989). These changes have greatly altered the river environment and little or no unaltered habitat remains in the Basin for the four Colorado River endangered fish species addressed in this proposed rule. Additional detail on the status and life histories of these species will be provided in the biological support document.

Razorback Sucker

This species was once one of the most abundant and widely distributed fish in mainstream rivers of the Colorado River (Jordan and Evermann 1896; Minckley 1973). A relatively large stock of razorback suckers remain in Lake Mohave (Minckley et al. 1991). However, the formerly large Lower Basin populations have been extirpated from all natural riverine environments, and recruitment is virtually nonexistent in the remnant stocks (Minckley et al. 1991). In the Upper Basin, the fish persists in the lower Yampa and Green Rivers, mainstream Colorado River, and lower San Juan River (Tyus et al. 1982; Minckley et al. 1991; Platania et al. 1991), but there is little indication of recruitment in these remnant stocks. The largest extant riverine population occurs in the upper Green River Basin, but it consists of only about 1,000 fish (Lanigan and Tyus 1989). In the absence of conservation efforts, it is presumed that wild populations will be lost as old fish die and are not replaced.

Reproduction and habitat use of razorback suckers has been studied in lower basin reservoirs, especially in Lake Mohave. Fish reproduction has been visually observed in reservoir shorelines for many years, and spawning in the reservoir usually lasts from January or February to April or May. The fish spawn over mixed substrates that range from silt to cobble, and at water temperatures ranging from 10.5 to 21 degrees Celsius (reviewed by Minckley et al. 1991).

Habitat use and spawning behavior of adult razorback suckers in riverine habitats have been studied by radiotelemetry in the Green River Basin (Tyus and Karp 1990). The fish there spawned in the spring with rising water levels and increasing temperatures. The fish moved into flooded areas in early spring, and they made spawning migrations to specific locations as they became reproductively active. Spawning occurred over rocky runs and gravel bars.

In nonreproductive periods, adult razorback suckers occupy a variety of habitat types. These include impounded and riverine areas and habitats represented by: Eddies, backwaters, gravel pits, flooded bottoms and the flooded mouths of tributary streams, slow runs, sandy riffles, and others (reviewed by Minckley et al. 1991). Summer habitat use included deeper eddies, backwaters, holes, and midchannel sandbars (Tyus and Karp 1990; Minckley et al. 1991).

Habitats used by young razorback suckers have not been fully evaluated because of the low number of young fish present in the river system. However, most studies agree that the larvae prefer shallow, littoral zones for a few weeks after hatching, then they disperse to deeper water areas (reviewed by Minckley et al. 1991). Laboratory studies indicated that, in a riverine environment, the larvae enter stream drift and are transported downstream (Paulin et al. 1989).

During winter, adult razorback suckers utilize main channel habitats that are similar to those used during other times of the year, including eddies, slow runs, riffles, and slackwaters (Valdez and Masslich 1989; Tyus and Karp 1990).

Although habitat use of razorback suckers has been studied for years, the habitat preferences and factors limiting their abundance in native riverine habitats are not well known because of the scarcity of extant populations (Minckley 1983; Lanigan and Tyus 1989) and the absence of younger life history stages (Minckley et al. 1991). However, based on available data taken from the Green River, Tyus and Karp (1989) considered low winter flows, high spring flows, seasonal changes in river temperatures, and inundated shorelines and bottomlands as factors that potentially limit the survival, successful reproduction, and recruitment of this species.

Colorado Squawfish

This species is the only living representative of the genus *Ptychocheilus* in the Basin, where it is endemic. Its origins there predate recorded history, but by the mid-Pliocene epoch (about 6 million years ago) fossils indicate that early *Ptychocheilus* had riverine adaptations that were similar to modern forms. During the Pleistocene epoch (about 1 million years ago), an earlier wet climate was interrupted by periods of desert conditions (M. Smith 1981). It has been hypothesized that the migrations reported for Colorado squawfish are a perfect life history strategy for the survival of a large predaceous fish in the historic Colorado River environment (G. Smith 1981; Tyus 1986, 1990). During the spawning season, adult Colorado squawfish have been known to migrate up to 320 kilometers (200 miles) upstream or downstream to reach spawning areas (Tyus 1990).

During winter, adult Colorado squawfish in the Yampa River use backwaters, runs, and eddies, but are most common in shallow, ice-covered shoreline areas (Wick and Hawkins 1989). In spring and early summer, adult squawfish utilized shorelines and lowlands that were inundated during typical spring flooding, and this natural lowland inundation was viewed as important for their general health and reproductive conditioning (Tyus 1990). Use of these habitats may mitigate some of the effects of winter stress and aid in offsetting a large energy expenditure required for migration and spawning. Migration is an important component in the reproductive cycle of Colorado squawfish, and Tyus (1990) reported that migration cues, such as high spring flows, increasing river temperatures, and possible chemical inputs from flooded lands and springs, were important to successful reproduction.

Colorado squawfish spawn in white water canyons in the Yampa and Green Rivers. This reproduction was associated with declining flows in June, July, or August, and average water temperatures ranging from 22–25 degrees Celsius depending on annual hydrology. After spawning, adult Colorado squawfish utilized a variety of riverine habitats, including eddies, backwaters, shorelines, and others (Tyus 1990). Specific spawning sites of Colorado squawfish have not been identified outside of the Green River Basin. In the mainstream Colorado River, McAda and Keading (1991) suggested that Colorado squawfish spawning may have been adversely impacted by construction of mainstream dams and a 48 percent reduction in peak discharge.

In the Green River Basin, larval Colorado squawfish emerge from spawning substrates and enter the stream drift as young fry (Haynes et al. 1989). The fish are then actively or passively transported downstream for about 6 days, and they may travel average distances of up to 160 kilometers (100 miles) to reach nursery areas (Tyus and Haines 1991). These areas are productive habitats that consist of ephemeral alongshore embayments that develop as spring flows decline. Such habitat is associated with lower gradient reaches.

Humpback Chub

Humpback chub remains have been dated to about 4000 B.C., but the fish was not described as a species until recent times (Miller 1946). This recent discovery has been attributed to its restricted distribution in remote, white water canyons (USFWS 1990b), and its earlier abundance and distribution is not well known. The largest populations of this species occur in the Little Colorado and Colorado Rivers in the Grand Canyon, and in the Black Rocks area of the Colorado River. Other populations have been reported in Westwater and Debeque Canyons of the Colorado River, Desolation and Gray Canyons of the Green River, and Yampa and Whirlpool Canyons in Dinosaur National Monument (USFWS 1990b).

Populations of humpback chub are found in river canyons, where they utilize a variety of habitats, including pools, riffles, and eddies. Most of the existing information on habitat preferences has been obtained from adult fish in the Little Colorado River, the Grand Canyon, and the Black Rocks of the Colorado River (Holden and Stalnaker 1975; Kaeding and Zimmerman 1983; Kaeding et al. 1990). In these locations, the fish are found associated with boulder-strewn canyons, travertine dams, pools, and eddies. Some habitat-use data are also available from the Yampa River Canyon where the fish occupy similar habitats, but also use rocky runs, riffles, rapids, and shoreline eddies (Karp and Tyus 1990). This diversity in habitat use suggests that the adult fish is adapted to a variety of habitats, and studies of tagged fish indicated that they move between habitats, presumably in response to seasonal habitat changes and life history needs (Kaeding and Zimmerman 1983; Karp and Tyus 1990). Spring peak flows, availability of shoreline eddy and deep canyon habitats, and competition and predation by nonnative fishes were reported as potential limiting factors for humpback chub in the Yampa River (Tyus and Karp 1989).

Humpback chub in reproductive condition are usually captured in May, June, and July, depending on location. Little is known about their specific spawning requirements, other than the fish spawn soon after the highest spring flows when water temperatures approach 20 degrees Celsius (Karp and Tyus 1990; USFWS 1990b). The importance of spring flows and proper temperatures for humpback chub is stressed by Kaeding and Zimmerman (1983), who implicated flow reductions and low water temperatures in the Grand Canyon as factors curtailing successful spawn of the fish and increasing its competition with other species.

Bonytail Chub

The bonytail chub is the rarest native fish in the Colorado River. Formerly reported as widespread and abundant in mainstream rivers (Jordan and Evermann 1896), its populations have been greatly reduced. The fish is presently represented in the wild by a low number of old adult fish (i.e., ages of 40 years or more) in Lake Mohave and perhaps other lower basin reservoirs (USFWS 1990a). The fish were once common in Lake Mohave and Wagner (1955) observed the fish in eddy habitats. A few individuals were reported in other locations, but concentrations of the fish have not been recently reported (Kaeding et al. 1986).

The bonytail chub always has been considered a species that is adapted to mainstream rivers, where it has been observed in pools and eddies (Minckley 1973; Vanicek 1967). In reservoirs, the fish occupies an active limnetic niche (Minckley 1973). Spawning of the fish never has been observed in nature, but Vanicek and Kramer (1969) reported that spawning occurred in June and July at water temperatures of about 18 degrees Celsius. Although wild bonytails are old fish, they are still capable of successful reproduction, and bonytail chubs placed in ponds have produced large numbers of young (B. Jensen, Fish and Wildlife Service, pers. comm.; USFWS 1990a). Although habitats that are required for conservation of the bonytail chub are not well known, the limited data suggests that flooded, ponded, or even inundated riverine habitats may be suitable for adults, especially in the absence of competing nonnative fishes (USFWS 1990a).

Previous Federal Actions

The Colorado squawfish and humpback chub were listed as endangered species on March 11, 1967 (32 FR 4001). The bonytail chub was listed as endangered on April 23, 1980 (45 FR 27713). Critical habitat for these species was not designated at the time of their listing. On May 16, 1975, the Service published a notice of its intent to determine critical habitat for the Colorado squawfish and the humpback chub, as well as numerous other species that are not found in the Colorado River (40 FR 21499). On September 14, 1978, the Service proposed critical habitat for the Colorado squawfish (43 FR 41060). The proposal was for 1,002 kilometers (623 miles) of the Colorado, Green, Gunnison, and Yampa Rivers. This proposal was later withdrawn (44 FR 12382; March 6, 1979) to comply with the 1978 amendments to the Act (16 U.S.C. 1531 *et seq.*).

The razorback sucker was first proposed for listing as a threatened species on April 24, 1978 (43 FR 17375). The proposal was withdrawn on May 27, 1980 (45 FR 35410), in accordance with provisions of the 1978 amendments to the Act. These provisions required the Service to include consideration of designating critical habitat in the listing of species, to complete the listing process within 2 years from the date of the proposed rule, or withdraw the proposal from further consideration. The Service did not complete the listing process within the 2-year deadline.

On March 15, 1989, the Service received a March 14 petition to list the razorback sucker as endangered from the Sierra Club, National Audubon Society, The Wilderness Society, Colorado Environmental Coalition, Southern Utah Wilderness Alliance, and Northwest Rivers Alliance. The Service made a positive finding in June 1989, and subsequently published a notice in the **Federal Register** on August 15, 1989 (54 FR 33586). This notice also stated that the Service was completing a status review and was seeking additional information until December 15, 1989. A proposed rule to list the razorback sucker as endangered was published in the **Federal Register** on May 22, 1990 (55 FR 21154).

The final rule designating the razorback sucker as an endangered species was published on October 23, 1991 (56 FR 54957). Critical habitat was not designated. In the final rule, the Service concluded that critical habitat was not determinable at the time of listing and questioned whether it was prudent to designate critical habitat.

On October 30, 1991, the Service received a 60-day notice of intent to sue from the Sierra Club Legal Defense Fund. The subject of the notice was the Service's failure to designate critical habitat concurrent with listing of the razorback sucker pursuant to section 4(b)(6)(c). This was followed by a second notice of intent to sue dated January 30, 1992. On December 6, 1991, the Service concluded that designation of critical habitat was prudent and determinable, and therefore critical habitat for the razorback sucker should be designated. Because the intent of the Act is "* * * to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved * * *", the Service also decided to propose critical habitat for the Colorado squawfish, humpback chub, and bonytail chub. The four endangered Colorado River fish species coexist in the Basin and much of their habitat overlaps.

On May 7, 1992, the Sierra Club Legal Defense Fund filed a lawsuit in the U.S. District Court (Court), Colorado, on behalf of the Colorado Wildlife Federation, Southern Utah Wilderness Alliance, Four Corners Action Coalition, Colorado Environmental Coalition, Taxpayers for the Animas River, and Sierra Club. On August 18, 1992, a motion for summary judgment was filed which requested the Court to order a final rule designating critical habitat within 90 days. In the lengthy declarations filed with the response in opposition to the motion, the Service explained that the complex analyses, which were legally required for designating critical habitat, could not be completed until September 1993. This was due to the difficulty in determining the biological needs of the fish, conducting an economic analysis for portions of seven Western States (the large geographic area involved), and compiling biological and hydrological data. On October 27, 1992, the Court ruled that the Service had violated the Act in failing to designate critical habitat when the razorback sucker was listed. The Court ordered the Service to publish a proposed rule within 90 days designating critical habitat for the razorback using presently available information and to publish a final rule at the earliest time permitted by the Act and its regulations.

The biological information needed to define the physical and biological needs of these species and to propose areas for designation as critical habitat has been assimilated by the Service. Additionally, information about the activities which may affect critical habitat or be affected by the designation has been collected. This information is presently being compiled and articulated for inclusion in the biological support document. Much of the data required to assemble the economic model has been obtained. However, the data which are used to compute economic costs and benefits remain to be assembled.

The Service will complete the biological support document and economic analysis before publishing the final rule. The Service has decided that because this information is not presently available for review and public comment, these documents will be made available to the public for review before the Service finalizes the designation and issues a final rule. This will allow for meaningful public comment on the rule.

Recovery plans have been written for three of the four species. The Colorado Squawfish Recovery Plan was approved on March 16, 1978, and revised on August 6, 1991 (U.S. Fish and Wildlife Service 1991). The Humpback Chub Recovery Plan was approved on August 22, 1979, with a first revision on May 15, 1984, and a second revision September 19, 1990 (U.S. Fish and Wildlife Service 1990a). The Bonytail Chub Recovery Plan was approved on May 16, 1984, with a revised plan approved September 4, 1990 (U.S. Fish and Wildlife Service 1990b). Recovery goals contained in these recovery plans have been used in identifying and evaluating critical habitat for these three species. A recovery plan for the razorback sucker is currently in preparation by the Colorado River Fishes Recovery Team (Recovery Team) and Service staff, but it was not available for use in preparing this rule.

Considerations and Impacts of Critical Habitat

A list and discussion of activities which affect or may be affected by this proposed critical habitat designation has not been completed. Once completed, this information will be presented in the economic analysis and the biological support document and will be incorporated into the final rule.

"Critical habitat," as defined in section 3(5)(A) of the Act, means: (i) The specific areas within the geographical area occupied by the species at the time it is listed, on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species.

The term "conservation," as defined in section 3(3) of the Act, means: The use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.

Therefore, in the case of critical habitat, conservation represents the areas required to recover a species to the point of delisting (i.e., the species is recovered and is removed from the list of endangered and threatened species). In this context, critical habitat preserves options for a species' eventual recovery. Section 3(5)(C) further states that the entire geographical area which can be occupied by the species shall not be included in critical habitat except in special circumstances.

The designation of critical habitat will not, by itself, lead to recovery, but is one of several measures available to contribute to conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) regardless of whether or not they are currently occupied by the listed species. Such designations alert Federal Agencies, States, the public, and other entities about the importance of an area for the conservation of a listed species. Critical habitat can also identify areas that may require special management or protection. Areas designated as critical habitat receive protection under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal Agency which are likely to adversely modify or destroy critical habitat. Section 7 requires that Federal Agencies consult on their actions which may affect critical habitat and ensure that their actions are not likely to destroy or adversely modify critical habitat. It also requires conferences on Federal actions which are likely to result in the modification or destruction of proposed critical habitat. Except for these added consultation (designated critical habitat) and conference (proposed critical habitat) requirements provided under section 7, the Act does not have other requirements relating to critical habitat.

Designation of critical habitat only affects Federal actions, and it is useful in notifying Federal Agencies about areas that are important to a listed species. Designation does not create a management plan for a listed species. Designation does not prohibit certain actions, entail specific habitat requirements, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), nor does it have a direct effect on habitat not designated as critical habitat. However, critical habitat may provide added protection for areas designated and thus shorten the time needed to achieve recovery.

Areas designated as critical habitat are essential to the conservation of a species. Areas not included in critical habitat that contain one or more of the essential elements may still be important for conservation of a species and may be protected by other provisions of the Act, by other conservation laws, and by agency regulations. Also, some areas may no longer contain some of the constituent elements, but these elements may be restored in the future. These areas may also be essential for the long-term recovery of the species and, therefore, may be designated as critical habitat. However, not all areas containing habitat features of a listed species are necessarily essential for its survival and recovery. Although designated critical habitat also may be of considerable value in maintaining ecosystem integrity and supporting other species, these attributes are only considered in the economic analysis and exclusion process.

Determination of Critical Habitat

General

The primary constituent elements and additional selection criteria used to propose critical habitat areas are presented in this rule. Detailed descriptions and biological basis for the constituent elements will be presented in the biological support document. In determining which areas to designate as critical habitat for a species, the Service considers those physical and biological attributes that are essential to species conservation (i.e., constituent elements). In addition, the Act stipulates that the areas containing these elements may require special management considerations or protection. Such physical and biological features are stated in 50 CFR 424.12 and include, but are not limited to, the following items:

(1) Space for individual and population growth, and for normal behavior;
(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
(3) Cover or shelter;
(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally;
(5) Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

In considering the biological basis for proposing critical habitat, the Service focuses on the primary physical and biological elements that are essential to the conservation of the species without consideration of land or water ownership or management. The Service is required to list the known primary constituent elements together with a description of any critical habitat that is proposed.

The primary constituent elements determined necessary to the survival and recovery of the four Colorado River endangered fishes include, but are not limited to:

Water

This includes a quantity of water of sufficient quality (i.e., temperature, dissolved oxygen, contaminants, nutrients, turbidity, etc.) that is delivered to a specific location in accordance with a hydrologic regime that is required for the particular life stage for each species.

Physical Habitat

This includes areas of the Colorado River system that are inhabited or potentially habitable for use in spawning, nursery, feeding, and rearing, or corridors between these areas. In addition to river channels, these areas also include bottomlands, side channels, secondary channels, oxbows, backwaters, and other areas in the 100-year floodplain, which when inundated provide spawning, nursery, feeding and rearing habitats, or access to these habitats.

Biological Environment

Food supply, predation, and competition are important elements of the biological environment and are considered components of this constituent element. Food supply is a function of nutrient supply, productivity, and availability to each life stage of the species. Predation, although considered a normal component of this environment, may be out of balance due to introduced fish species in some areas. This may also be true of competition, particularly from nonnative fish species.

These primary constituent elements are interrelated in the life history of these four endangered fishes. This relationship was a prime consideration in selection of proposed critical habitat for the fishes.

Only those areas in the 100-year floodplain that contain the constituent elements will be considered part of critical habitat. The Service stresses that although critical habitat may only be seasonally occupied by the fish, such habitat remains important for their conservation.

Pursuant to section 4(b)(2) of the Act, critical habitat is to be designated on the basis of the best scientific data available, and after considering the economic and other impacts of designation. Areas may be excluded from the designation if the Secretary determines that the benefits of exclusion outweigh the benefits of critical habitat designation, unless the exclusion will result in the species' extinction.

This designation of critical habitat for the Colorado River endangered fish consisted of three major steps. The first step was to complete a biologically-based determination of potential critical habitat areas. The second step will determine the impacts of this designation. The third step will be to decide which areas, if any, should be excluded based upon economic or other relevant impacts and to determine the costs and benefits associated with the final designation.

The first step required an inventory of areas needed for the survival and recovery of the four species. For the razorback sucker, the biological determination was based on the primary constituent elements, additional selection criteria determined by the Service, past Service findings, and other published and nonpublished sources. These constituent elements and selection criteria were then applied throughout the historical range of the razorback sucker. For the Colorado squawfish, humpback chub, and bonytail chub, the biological determination was based on the primary constituent elements, recovery plans for these species, past Service findings, and other published and nonpublished sources. The biological support document will provide the details of the biological determinations.

The second step will be to determine the potential impacts of the proposed designations. These impacts will be addressed in the economic analysis.

The third step will be to decide which areas, if any, should be excluded based upon a determination that the benefits of the exclusion outweigh the benefits of designation unless the exclusion will result in the extinction of any of the four species. Any changes in critical habitat areas resulting from the exclusion process will be noted in the final rule.

Additional Selection Criteria for the Razorback Sucker

Because a recovery plan for the razorback sucker has not yet been prepared, additional selection criteria were developed to assist the Service in making a determination of which areas to propose as critical habitat. Previous Service findings, other published and unpublished literature sources, and discussions with individual members of the Colorado River Fishes Recovery Team were utilized to develop the constituent elements and additional selection criteria.

The razorback sucker has displayed a degree of versatility in its ability to survive and spawn in different habitats. However, razorback sucker populations continue to decline and are considered below the survival level. Thus, as versatile as the razorback sucker appears to be in selecting spawning habitat, there has been little or no recruitment of young to the adult population. Therefore, special consideration was given to habitats required for its reproduction and recruitment.

The following selection criteria were used by the Service to help determine areas necessary for survival and recovery of the razorback sucker.

1. Known or suspected wild spawning populations, although recruitment may be limiting or nonexistent.
2. Areas where juvenile razorback suckers have been collected or which could provide suitable nursery habitat (backwaters, flooded bottomlands, or coves).
3. Areas presently occupied or that were historically occupied that are considered necessary for recovery and that have the potential for establishment of razorback sucker.
4. Areas and water required to maintain rangewide fish distribution, and diversity under a variety of physical, chemical, and biological conditions.
5. Areas that need special management or protection to insure razorback survival and recovery. These areas once met the habitat needs of the razorback sucker and may be recoverable with additional protection and management.

Summary

The primary constituent elements were applied throughout the historical range of the Colorado River endangered fishes. In addition, the five selection criteria described above were also used to evaluate potential razorback sucker critical habitat areas. The proposed critical habitat designations are based on the primary constituent elements, published and unpublished sources, Service reports and other findings, recovery plans (for Colorado squawfish, humpback chub, and bonytail chub), additional selection criteria, and the preliminary recovery goals being presently discussed for the razorback sucker by the Colorado River Fishes Recovery Team.

Proposed Critical Habitat Designation

The results of the critical habitat inventory process described above are presented in this section. The presence of one or more primary constituent elements did not automatically result in inclusion as proposed critical habitat. Section 3(5)(C) of the Act states that "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." This proposal is in compliance with the provisions of the Act, as only a portion of the historical range is proposed for designation.

A detailed discussion of the biological basis for selection of each river reach proposed for critical habitat will be included in the biological support document. This will include a discussion of which attributes of the constituent elements may need to be enhanced.

The critical habitat areas proposed below are those that the Service believes are required for the survival and recovery of each species. Figure 1 displays the total extent of proposed critical habitat for all four species combined. This includes the considerable overlap of proposed critical habitat between species. A specific description of the location of each area proposed for critical habitat is provided later in this rule.

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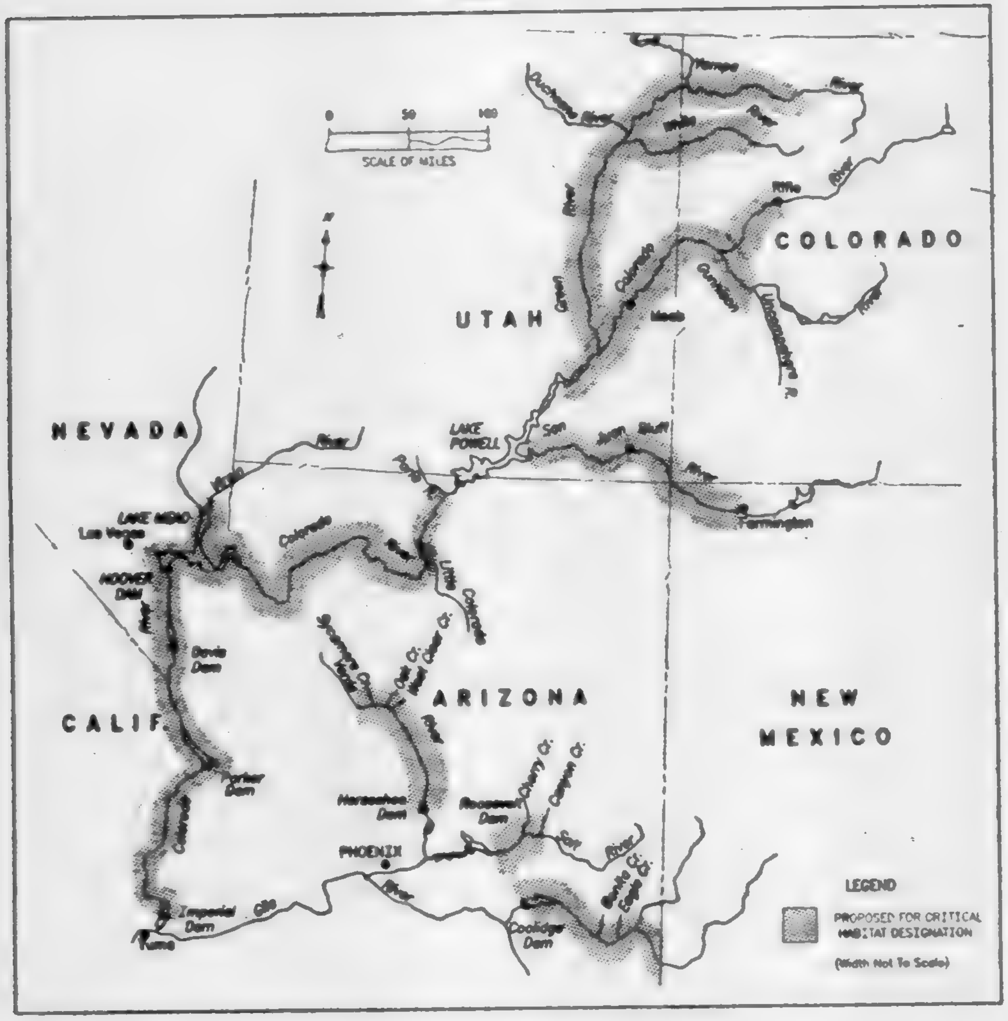
Figure 1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SCALE OF MILES
N
COLORADO
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ARIZONA
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Yampa River
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White River
Green River
Colorado
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Moab
Gunnison
Uncompahgre R.
LAKE POWELL
San Juan River
Bluff
Farmington
Virgin River
Paria
LAKE MEAD
Las Vegas
HOOVER DAM
Colorado
Little Colorado
Davis Dam
Parker Dam
Verde
Horseshoe Dam
Roosevelt Dam
Cherry Cr.
Canyon Cr.
Salt River
PHOENIX
Gila River
Coolidge Dam
Bonita Cr.
Eagle Cr.
Imperial Dam
Yuma
LEGEND
PROPOSED FOR CRITICAL HABITAT DESIGNATION
(Width Not To Scale)

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Critical habitat for each species by State is summarized in Table 1. The 100-year floodplain delineates the lateral boundary of the proposed critical habitat for the razorback sucker and Colorado squawfish. This boundary encompasses the productive areas adjacent to the rivers, including the mouths of smaller tributaries and other habitats that provide essential fish habitat when inundated.

TABLE 1.—RIVER KILOMETERS (MILES) OF CRITICAL HABITAT FOR FOUR ENDANGERED COLORADO RIVER FISHES

State	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub	Total[1]
Colorado	349	583	95	95	583
	(217)	(362)	(59)	(59)	(362)
Utah	1107	1168	224	224	1172
	(688)	(726)	(139)	(139)	(728)
New Mexico	63	97	....	....	97
	(39)	(60)	....	....	(60)
Arizona	993	....	291	....	993
	(617)	....	(181)	....	(617)
AZ/Nevada	209	....	....	132	209
	(130)	....	....	(82)	(130)
AZ/California	214	....	....	103	317
	(133)	....	....	(64)	(197)
Basin Total[2]	2936	1848	610	554	3370
	(1824)	(1148)	(379)	(344)	[3](2094)

[1] Total—Distances include all overlapping critical habitat reaches by State for all four Colorado River endangered fishes.
[2] Basin Total—Distances include total extent of critical habitat by species for the entire Basin.
[3] Total Basin Total—Note that the sum of critical habitat by species is greater than actual river distance due to extensive overlap.

Razorback Sucker

The Service is proposing 15 reaches of the Colorado River system as critical habitat for the razorback sucker. These reaches total 2,935 kilometers (1,824 miles) as measured along the center line of the river within the subject reaches (table 1). This represents approximately 52% of the historical habitat for the species. In the Upper Basin, critical habitat is being proposed in the Green, Yampa, Duchesne, Colorado, White, Gunnison, and San Juan Rivers. Portions of the Colorado, Gila, Salt and Verde Rivers are being proposed in the Lower Basin. These reaches flow through a variety of landownerships, both public and private. The approximate mileage of critical habitat by landownership of shoreline for the razorback sucker is presented in table 2.

TABLE 2.—OWNERSHIP OF SHORELINE IN KILOMETERS (MILES) FOR PROPOSED CRITICAL HABITAT FOR THE ENDANGERED COLORADO RIVER FISHES[1]

Ownership[2]	Razorback sucker	Colorado squawfish	Humpback chub	Bonytail chub
NPS	1,955	900	545	686
	(1,215)	(559)	(338)	(426)
BLM	1,147	1,119	203	134
	(713)	(695)	(126)	(83)
USFS	460	0	0	0
	(286)	....	....	....
USFWS	159	35	0	40
	(99)	(22)	....	(25)
Tribal	998	451	444	138
	(620)	(280)	(276)	(86)
State Lands	69	79	1	40
	(43)	(49)	(<1)	(25)
Private	1,083	1112	27	60
	(673)	(691)	(17)	(37)
Total	5,871	3,696	1,220	1,098
	(3,649)	(2,296)	(756)	(682)

[1] The river distances shown in this table were compiled using total shoreline kilometers (assuming 1 kilometer of river centerline has 2 kilometers of shoreline) for each proposed critical habitat reach. There is considerable overlap of proposed critical habitat reaches between species; thus, total miles of critical habitat for all four Colorado River endangered fishes proposed to be designated cannot be obtained from this table.
[2] NPS—National Park Service; BLM—Bureau of Land Management; USFS—U.S. Forest Service; USFWS—U.S. Fish and Wildlife Service.

Humpback Chub

The Service is proposing seven reaches of the Colorado River system as critical habitat for the humpback chub. These reaches total 610 kilometers (379 miles) as measured along the center line of the subject reaches (table 1). This represents approximately 28% of the historical habitat of the species. Critical habitat for the humpback chub is being proposed in the Colorado, Green, and Yampa Rivers in the Upper Basin, and the Colorado and Little Colorado Rivers in the Lower Basin. The approximate mileage of critical habitat by landownership of shoreline for the humpback chub is presented in table 2.

Bonytail Chub

The Service is proposing five reaches of the Colorado River system as critical habitat for the bonytail chub. These reaches total 554 kilometers (344 miles) as measured along the center line of the subject reaches (table 1). This represents approximately 15 percent of the historical habitat of the species. Critical habitat for the bonytail chub is being proposed in the Colorado, Green, and Yampa Rivers in the Upper Basin, and the Colorado River in the Lower Basin. The approximate mileage of critical habitat by landownership of shoreline for the bonytail chub is presented in table 2.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal Agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to appreciably reduce the likelihood of survival and recovery of a species in the wild by reducing its numbers, reproduction, or distribution. Destruction or adverse modification of critical habitat is defined at 50 CFR 402.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. The requirement to consider potential adverse modification of critical habitat is an incremental consideration above and beyond the review necessary to evaluate the likelihood of jeopardy and of incidental take in a section 7 consultation. Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation.

As required by 50 CFR 402.14, a Federal Agency must consult with the Service if it determines that an action may affect either a listed species or its critical habitat. Federal action agencies are responsible for determining whether or not to consult with the Service. The Service will review action agencies' determinations on a case-by-case basis and may or may not concur with the action agencies' determination of "no effect" or "may affect" for critical habitat, as appropriate.

Survival and recovery, mentioned in the definitions of adverse modification and jeopardy, are conceptually related. The survival of a species may be viewed, in part, as a progression between extinction and recovery of the species. The closer a species is to recovery, the greater the certainty of its continued survival. Thus, terms "survival" and "recovery" differ by the degree of confidence about the ability of a species to persist in nature over a given time period.

The purpose of critical habitat is to contribute to a species' conservation, which by definition leads to recovery and delisting. Section 7(a)(2) prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of a listed species. As a result of the link between critical habitat and recovery, these prohibitions should protect the value of critical habitat until recovery.

In section 7 consultations, the Service will consider effects of proposed actions on the primary constituent elements in view of the value of that particular area to the species. Section 7 consultation is initiated by a Federal Agency when its actions may affect critical habitat by impacting any of the primary constituent elements or reduce the potential of critical habitat to develop these elements. This is independent from any other Federal action that may affect the species. The consultation also would take into consideration Federal actions outside of critical habitat that also may impact a critical habitat reach (e.g., water management, water quality, water depletions, and nonnative fish stocking or introductions). The consultation should consider the effects of Federal actions within a critical habitat reach relative to other critical habitat reaches. Though an action may not adversely modify critical habitat, it still may affect one or more of the Colorado River endangered fish and, therefore, be subject to consultation under section 7 of the Act to determine the likelihood of jeopardy to the species.

Federal Agencies are required to confer on any of their discretionary actions which are likely to result in the adverse modification or destruction of proposed critical habitat. The conference is designed to identify and resolve potential conflicts. Conferences are different than formal consultations in that they involve informal discussions and the Service only makes advisory recommendations on ways to minimize or avoid adverse effects. Agencies are not precluded from making irreversible and irretrievable commitments of resources while critical habitat is merely proposed; they are, however, precluded by section 7(d) from making such commitments after a final designation is effective.

Considerations of Economic and Other Factors

The economic, environmental, and other impacts of a designation also must be evaluated and considered. Thus, the Service must identify present and anticipated activities that may adversely modify the proposed critical habitat or be affected by its designation. The Secretary may exclude any area from critical habitat should it be determined that the benefits of such exclusion outweigh the benefits of specifying such an area as part of the critical habitat unless it is determined, based upon the best scientific and commercial data available, that the failure to designate such an area as critical habitat will result in the extinction of the species concerned.

The economic analysis will only consider impacts that result from critical habitat designation. These impacts are in addition to existing economic and other impacts which are attributable to listing of the species. Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the Act and associated regulations. "Taking" as defined in section 3(18) of the Act includes harm to a listed species. "Harm" means: An act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (50 CFR 17.3).

Impacts attributable to listing also include those resulting from the responsibility of Federal Agencies under section 7 to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat regardless of whether that habitat has been formally designated as critical. The Act provides significant protection to species, including habitat, as a result of listing. Therefore, the direct economic and other impacts resulting from additional habitat protection through critical habitat designation may be minimal. In general, the designation of critical habitat reinforces the substantive protection resulting from listing.

To complete an economic analysis for the four Colorado River endangered fishes, costs and benefits that may result from designating critical habitat must be analyzed. The most time consuming and complex portion of this analysis is developing a range of flow scenarios for river reaches where biological information is limited on the needs of these species. This range of flow scenarios will be evaluated for impacts from potential changes in flows. For river reaches where flow requirements of the fish are known, these flows must be compared to present and historical flows. This analysis will capture the costs of having endangered fish present in the river including listing and critical habitat designation costs. Where the data are available, flow scenarios will be developed. These flow scenarios will then be evaluated to determine possible costs and benefits to hydropower production, recreation, water management, etc. Cost/benefit data must also be collected for activities not directly affected by water flow. All the impacts will then have to be quantified and assembled into data bases for input into the economic model. The national and regional economic effects will then be analyzed using the developed and calibrated model. Costs and benefits must then be allocated between:

(1) Listing effects and effects of the critical habitat designation,

(2) Effects among species, and

(3) Effects among river reaches being proposed. The draft economic analysis will then be prepared and undergo a public review prior to incorporating the results into the final rule.

The economic analysis of critical habitat designations has two major components. The first component involves identifying the potential impacts of the critical habitat designations and estimating their magnitude. The second component involves developing and utilizing economic models to demonstrate how the positive and negative economic impacts may affect various economic interests in the Basin, and the economy of the Basin as a whole. The major types of economic impacts that may occur have been identified, and efforts are under way to estimate their magnitude. This includes development of an input-output model for each of the seven States in the Basin, and a computerized model for the entire Basin.

Because of the large geographical area of the study and the complex nature of potential impacts, a considerable amount of work on economic impacts remains to be completed. Specifically, computerized modeling studies must be completed to assess the potential effects of critical habitat designation on the seven-State area. Furthermore, a Basin-wide survey of recreational resources must be completed to assess the potential magnitude of recreational impacts. Finally, a Basin-wide economic model must be developed and parameterized to assess the overall economic consequences of positive and negative impacts to the various economic interests throughout the Basin. These activities require a complex and diverse set of economic activities over a large geographic area and will require time to complete.

The Service's economic analysis will use a Computable General Equilibrium Model (CGE Model) to describe the interrelationships in the economy at a chosen level of spatial aggregation (e.g., counties) and the relationships between sectors (e.g., recreation and hydropower). In addition, the model allows for analysis of resource reallocation proposals (e.g., changes in river flows as represented by increased or decreased hydropower production) in a manner such that the net effects, not just the total effects, are calculated. Given this capability, the impacts are properly represented as net impacts throughout the economy; thus, the model provides a comprehensive assessment of economic impacts.

CGE Models are excellent tools to estimate the direct and indirect economic impacts of resource reallocation decisions, such as critical habitat designation. CGE Models explicitly predict the price adjustments observed in an economy. It is important to capture the adjustment of the prices of goods and services in the economy which result from changes in how resources are utilized. Failure to represent and allow for changes, such as price changes, will result in a misrepresentation of the true impacts of critical habitat designation. CGE Models also will allow substitution possibilities in production and consumption.

The source of regional production data to be used in the analysis is the Department of Agriculture's Forest Service's IMPLAN Project. These data represent the economic flow between sectors in the economy, such as purchases of inputs from one industry to be used in another industry. The CGE Model captures these economic interactions of consumers, production sectors, and government sectors.

The number of economic sectors in the IMPLAN data set has been collapsed from 523 to 20 sectors. The number of sectors was reduced by merging related activities to make the analysis tractable. This allows focus on those sectors representing the most significant economic activities associated with the Basin. These 20 sectors capture the principal activities associated with hydroelectric power, agriculture, municipal, industry, recreation, mining, and oil and gas production. Other data, which will be incorporated into the CGE Model, include the Consumer Expenditure Survey, the Bureau of Economic Analysis' capital stock data and value added data, the Census of Agriculture land use by crop type data, and recreation data.

Any direct impacts will occur at sub-State levels; therefore, it is appropriate to base the analysis on sub-State data. The CGE Model allows for inputs at the county level and includes in excess of 150 counties of the seven-State region. This level of desegregated county data was chosen because any direct impacts will be concentrated at the county level, while total impacts may be observed regionwide.

As a result of the time constraints under which this initial proposed critical habitat designation was prepared and the magnitude of the issues and area under consideration, the Service's economic analysis has not been completed. However, once completed it will be made available for public review and then be incorporated in the final rule.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land and water acquisitions in cooperation with States and requires that recovery actions be carried out for all listed species. The requirements for Federal Agencies with respect to protection of designated critical habitat of a federally listed species and prohibitions against taking are discussed below.

Section 7 of the Act requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to any critical habitat that is designated or proposed for the species. Section 7(a)(4) of the Act and 50 CFR 402.10 require Federal Agencies to confer informally with the Service on any action that is likely to result in destruction or adverse modification of proposed critical habitat. If critical habitat is subsequently designated, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into consultation with the Service.

Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

In the case of any of the Colorado River endangered fish, the Service will confer on projects affecting proposed critical habitat when so requested by an action agency. The evaluation of Federal actions involving designated critical habitat will be made on a case-by-case basis during section 7 consultation. The Service will consider the effects of a proposed Federal action on the primary constituent elements associated with critical habitat, along with the reasons why that area was determined to be critical habitat.

When the Service issues a jeopardy biological opinion, it must also provide reasonable and prudent alternatives to the project, if any are identifiable. This is also true when the Service makes a finding of adverse modification to designated critical habitat. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as:

> Alternative actions identified during formal consultation that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid * * * resulting in the destruction or adverse modification of critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

The Service may reinitiate consultation and confer on some projects for which biological opinions on the effect of Federal Agency actions on the Colorado River endangered fish already have been issued when discretionary Federal involvement remains, and the Service and lead Federal Agency determine their action may affect this proposed critical habitat. As necessary, the Service will prepare conference reports addressing effects of these actions on proposed critical habitat. Until a final rule is published, the Service will issue combined consultation/conference documents for any new consultation request received subsequent to publication of this proposed rule and before a final designation is effective.

Public Comments Solicited

The Service intends that any action resulting from this proposal will be appropriate and effective. Therefore, comments from the public, other concerned government agencies, Indian nations, the scientific and environmental communities, industry, or any other interested organization concerning the information presented within this proposed rule are hereby sought.

As stated previously, comments received during the 60-day comment period on this proposed rule will be considered during preparation of the final rule. Additionally, comments received after the economic analysis and biological support document are made available will be used to prepare a final rule. The final decision on the designation of critical habitat will take into consideration the comments and any additional information received by the Service and will include any exemption determinations.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in conjunction with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, it is not clear whether significant economic impacts will result from the critical habitat designation. There are a limited number of actions on private land that have Federal involvement through funds or permits that may be affected by critical habitat designation. A final determination of the impacts of this proposal is not possible until the required economic analysis is completed. The final rule will contain a determination of the proposed actions in compliance with the Regulatory Flexibility Act and Executive Order 12291. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1990.

References Cited

A complete list of all references cited herein is available upon request from the Service's Salt Lake City Field Office (see **ADDRESSES** above).

Author

The primary authors of this proposed rule are Henry Maddux, U.S. Fish and Wildlife Service, Ecological Services (see **ADDRESSES** section); Lesley Fitzpatrick, U.S. Fish and Wildlife Service, Arizona Field Office; William Noonan, U.S. Fish and Wildlife Service, Colorado State Office; and Harold Tyus, U.S. Fish and Wildlife Service, Denver Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§17.11 [Amended]

2. It is proposed to amend § 17.11(h) by revising the "critical habitat" entry for "Chub, bonytail," "Chub, humpback," "Squawfish, Colorado," and "Sucker, razorback," under Fishes, to read 17.95(e).

3. It is proposed to amend § 17.95(e) by adding critical habitat of the bonytail chub (*Gila elegans*), humpback chub (*Gila cypha*), Colorado squawfish (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*), in the same alphabetical order as these species occur in 17.11(h).

§17.95 Critical habitat—fish and wildlife.

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(e) * * *

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Bonytail Chub (*Gila elegans*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Hite Crossing, UT 1982; Parker, AZ/CA 1980; Davis Dam, AZ/NV/CA 1982; Boulder City, NV/AZ 1978; Needles, CA 1986.

Colorado, Moffat County. The Yampa River from the boundary of Dinosaur National Monument in T.6N., R.99W., section 27 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah County, and Colorado, Moffat County. The Green River from the confluence with the Yampa River in T.7N., R.103W., section 28 (6th Principal Meridian) to the boundary of Dinosaur National Monument in T.6N., R.24E. section 30 (Salt Lake Meridian).

Utah, Uintah and Grand Counties. The Green River (Desolation and Gray Canyons) from Sumner's Amphitheater (river mile 85) in T.12S., R.18E., section 5 (Salt Lake Meridian) to Swasey's Rapid (river mile 12) in T.20S., R.16E., section 3 (Salt Lake Meridian).

Utah, Grand County, and Colorado, Mesa County. The Colorado River from Black Rocks (river mile 137) in T.10S., R.104W., section 25 (6th Principal Meridian) to Fish Ford (river mile 106) in T.21S., R.24E., section 35 (Salt Lake Meridian).

Utah, Garfield and San Juan Counties. The Colorado River from Brown Betty Rapid (river mile 212.5) in T.30S., R.18E., section 34 (Salt Lake Meridian) to Imperial Canyon (river mile 200) in T.31S., R.17E., section 28 (Salt Lake Meridian).

Arizona, Mohave County; Nevada, Clark County; and California, San Bernardino County. The Colorado River from Hoover Dam in T.30N., R.23W., section 3 (Gila and Salt River Meridian) to Parker Dam in T.11N., R.18W., section 16 (Gila and Salt River Meridian) including Lakes Mohave and Havasu up to their full pool elevations.

Known constituent elements include water, physical habitats, and biological environment as required for each particular life stage for each species.

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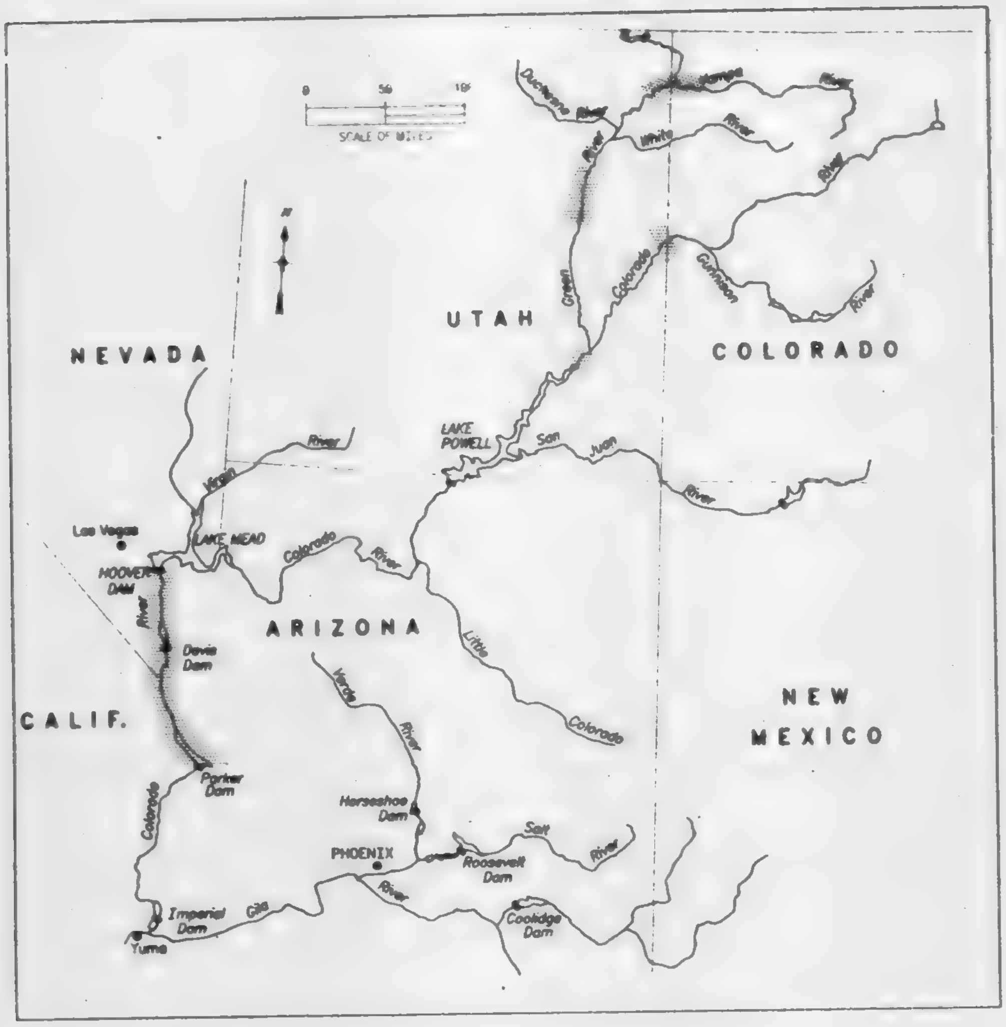
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ARIZONA
NEW MEXICO
CALIF.
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Yampa
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Green River
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Gunnison
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River
LAKE POWELL
San Juan
River
Virgin
River
Las Vegas
HOOVER DAM
LAKE MEAD
Colorado
River
River
Davis Dam
Little
Colorado
Verde
River
Parker Dam
Colorado
Horseshoe Dam
PHOENIX
Salt
River
Roosevelt Dam
Imperial Dam
Gila
River
Coolidge Dam
Yuma

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Humpback Chub (*Gila cypha*)

Description of areas taken from BLM 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; Vernal, UT/CO 1982; Grand Junction, CO 1990; Moab, UT/CO 1985; La Sal, UT/CO 1985; Tuba City, AZ 1983; Peach Springs, AZ 1980; Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979.

Colorado, Moffat County. The Yampa River from the boundary of Dinosaur National Monument in T6N., R.99W., section 27 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah County, and Colorado, Moffat County. The Green River from the confluence with the Yampa River in T.7N., R.103W., section 28 (6th Principal Meridian) to the southern boundary of Dinosaur National Monument in T.6N., R.24E., section 30 (Salt Lake Meridian).

Utah, Uintah and Grand Counties. The Green River (Desolation and Gray Canyons) from Sumners Amphitheater (river mile 85) in T.12S., R.18E., section 5 (Salt Lake Meridian) to Swasey's Rapid (river mile 12) in T.20S., R.16E., section 3 (Salt Lake Meridian).

Utah, Grand County, and Colorado, Mesa County. The Colorado River from Black Rocks (river mile 137) in T.10S., R.104W., section 25 (6th Principal Meridian) to Fish Ford River (mile 106) in T.21S., R.24E., section 35 (Salt Lake Meridian).

Utah, Garfield and San Juan Counties. The Colorado River from Brown Betty Rapid River (mile 212.5) in T.30S., R.18E., section 34 (Salt Lake Meridian) to Imperial Canyon (river mile 200) in T.31S., R.17E., section 28 (Salt Lake Meridian).

Arizona, Coconino County. The Little Colorado River from river mile 8 in T.32N., R.6E., section 12 (Salt and Gila River Meridian) to the confluence with the Colorado River in T.32N., R.5E., section 1 (Salt and Gila River Meridian).

Arizona, Coconino County. The Colorado River from Nautiloid Canyon (river mile 34) in T.36N., R.5E., section 35 (Salt and Gila River Meridian) to Granite Park (river mile 208) in T.30N., R.10W., section 25 (Salt and Gila River Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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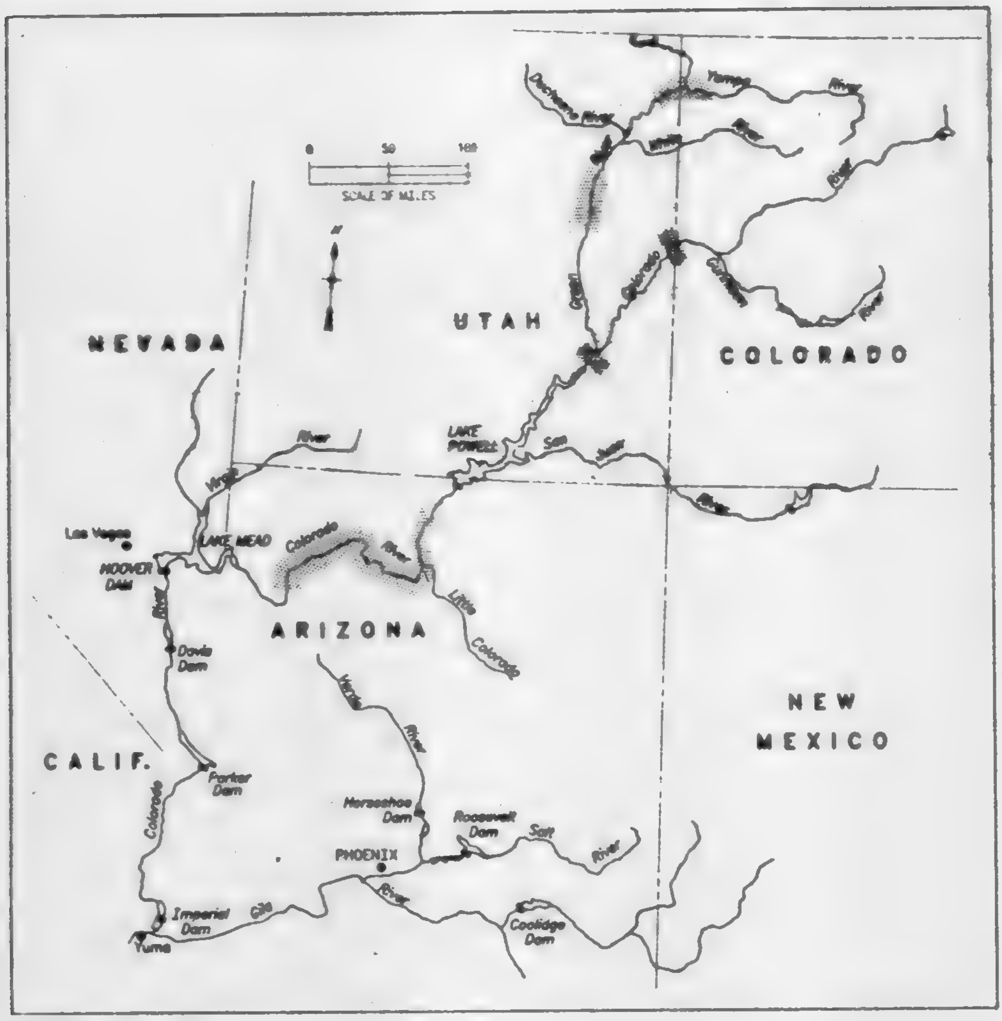
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SCALE OF MILES
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NEVADA
UTAH
COLORADO
ARIZONA
NEW MEXICO
CALIF.
Las Vegas
HOOVER DAM
LAKE MEAD
LAKE POWELL
Duchesne River
Yampa River
White River
Green
Colorado
Gunnison River
Virgin River
San Juan River
Colorado River
Little Colorado
Verde River
Salt River
Gila River
Davis Dam
Parker Dam
Imperial Dam
Yuma
Horseshoe Dam
Roosevelt Dam
PHOENIX
Coolidge Dam

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Colorado Squawfish (*Ptychocheilus lucius*)

Description of areas taken from BLM 1:100,000 maps (available from BLM State Offices): Canyon of Lodore, CO 1990; La Sal, UT/CO 1985; Rangely, CO 1989; Delta, CO 1989; Grand Junction, CO 1990; Hite Crossing, UT 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Farmington, NM 1991; Navajo Mountain, UT/AZ 1982. The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing constituent elements are considered critical habitat.

Colorado, Moffat County. The Yampa River and its 100-year floodplain from the State Highway 394 bridge (river mile 137.7) in T.6N., R.91W., section 1 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties, and Colorado, Moffat County. The Green River and its 100-year floodplain from the confluence with the Yampa River in T.7N., R103W., section 28 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., section 7 (Salt Lake Meridian).

Colorado, Rio Blanco County, and Utah, Uintah County. The White River and its 100-year floodplain from Rio Blanco Lake Dam (river mile 150) in T.1N., R.96W., section 6 (6th Principal Meridian) to the confluence with the Green River in T.9S., R.20E., section 4 (Salt Lake Meridian).

Colorado, Delta and Mesa Counties. The Gunnison River and its 100-year floodplain from the confluence with the Uncompahgre River in T.15S., R.96W., section 11 (6th Principal Meridian) to the confluence with the Colorado River in T.1S., R.1W., section 22 (Ute Meridian).

Colorado, Mesa and Garfield Counties; and Utah, Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year floodplain from the Colorado River Bridge at exit 90 north off Interstate 70 (river mile 238) in T.6S., R.93W., section 16 (6th Principal Meridian) to North Wash including the Dirty Devil arm of Lake Powell up to the full pool elevation in T.33S., R.14E., section 29 (Salt Lake Meridian).

New Mexico, San Juan County, and Utah, San Juan County. The San Juan River and its 100-year floodplain from the State Route 371 Bridge in T.29N., R.13W., section 17 (New Mexico Meridian) to Neskahai Canyon in the San Juan arm of Lake Powell in T.41S., R.11E., section 26 (Salt Lake Meridian) up to the full pool elevation.

Known constituent elements include water, physical habitats, and biological environment as required for each particular life stage for each species.

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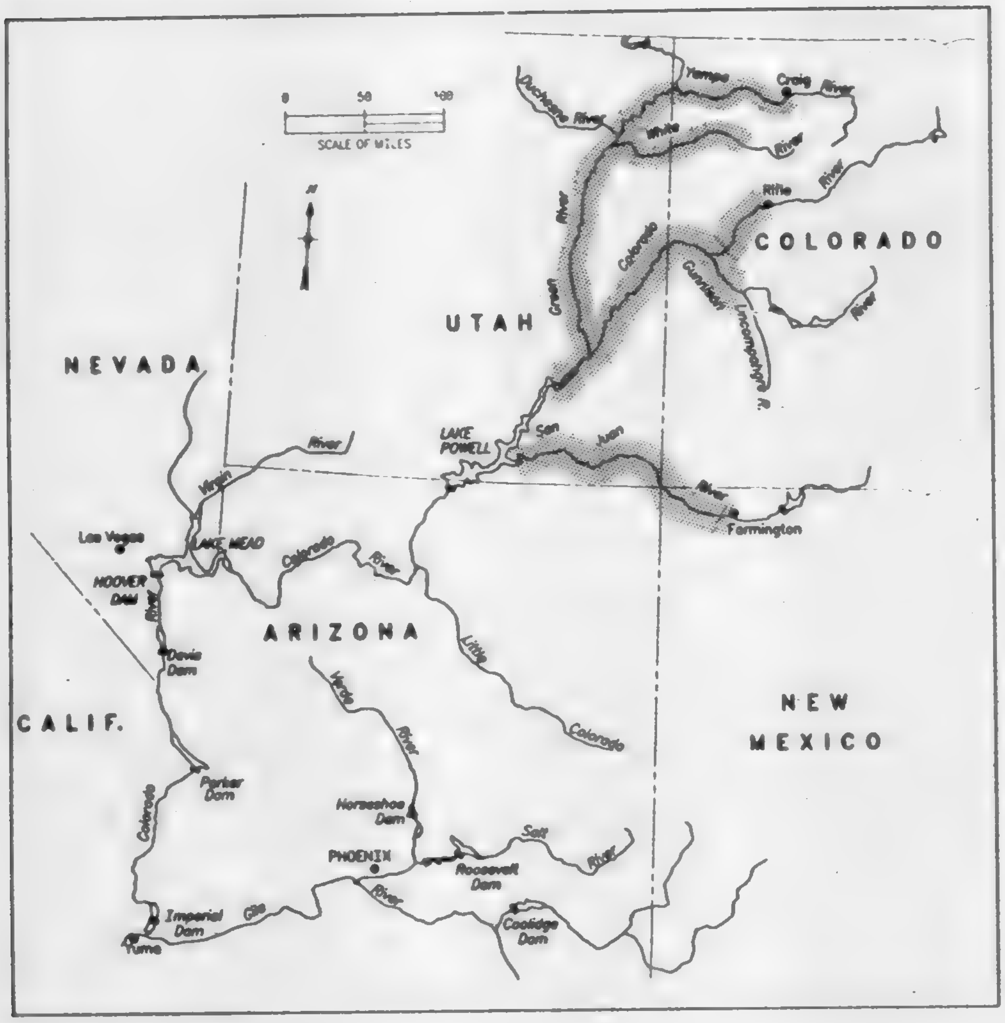
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SCALE OF MILES
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NEVADA
UTAH
COLORADO
ARIZONA
CALIF.
NEW MEXICO
Yampa
Craig
River
Duchesne River
White
River
Rifle
River
Green
River
Colorado
Gunnison
Uncompahgre R.
River
LAKE POWELL
San
Juan
River
Farmington
River
Virgin
Las Vegas
LAKE MEAD
Colorado
River
HOOVER DAM
River
Davis Dam
Little
Colorado
Verde
River
Parker Dam
Colorado
Horseshoe Dam
PHOENIX
Salt
River
Roosevelt Dam
River
Coolidge Dam
Imperial Dam
Gila
Yuma

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Razorback Sucker (*Xyrauchen taxanus*)

Description of areas taken from Bureau of Land Management (BLM) 1:100,000 scale maps (available from BLM State Offices): Rangely, CO 1989; Canyon of Lodore, CO 1990; Seep Ridge, UT/CO 1982; La Sal, UT/CO 1985; Westwater, UT/CO 1981; Hite Crossing, UT 1982; Glenwood Springs, CO 1988; Grand Junction, CO 1990; Delta, CO 1989; Navajo Mountain, UT/AZ 1982; Vernal, UT/CO 1990; Craig, CO 1990; Bluff, UT/CO 1985; Moab, UT/CO 1985; Hanksville, UT 1982; San Rafael Desert, UT 1985; Huntington, UT 1982; Price, UT 1989; Tuba City, AZ 1983; Lake Mead, NV/AZ 1981; Davis Dam, AZ/NV/CA 1982; Parker, AZ/CA 1980; Yuma, AZ/CA 1988; Safford, AZ 1991; Globe, AZ 1980; Clifton, AZ/NM 1975; Prescott, AZ 1982; Theodore Roosevelt Lake, AZ 1982; Grand Canyon, AZ 1980; Mt. Trumbull, AZ 1979; Boulder City, NV/AZ 1978; Blythe, CA/AZ 1976; Trigo Mountains, AZ/CA 1988; Sedona, AZ 1982; Payson, AZ 1988; and U.S. Forest Service map: Tonto National Forest, Phoenix AZ. The 100-year floodplain for many areas is detailed in Flood Insurance Rate Maps (FIRM) published by and available through the Federal Emergency Management Agency (FEMA). In areas where a FIRM is not available, the presence of alluvium soils or known high water marks can be used to determine the extent of the floodplain. Only areas of floodplain containing constituent elements are considered critical habitat.

Colorado, Moffat County. The Yampa River and its 100-year floodplain from the mouth of Cross Mountain Canyon in T.6N., R.98W., section 23 (6th Principal Meridian) to the confluence with the Green River in T.7N., R.103W., section 28 (6th Principal Meridian).

Utah, Uintah County, and Colorado, Moffat County. The Green River and its 100-year floodplain from the confluence with the Yampa River in T.7N., R.103W., section 28 (6th Principal Meridian) to Sand Wash at river mile 96 in T.11S., R.18E., section 20 (6th Principal Meridian).

Utah, Uintah, Carbon, Grand, Emery, Wayne, and San Juan Counties. The Green River and its 100-year floodplain from Sand Wash at river mile 96 at T.11S., R.18E., section 20 (6th Principal Meridian) to the confluence with the Colorado River in T.30S., R.19E., section 7 (6th Principal Meridian).

Utah, Uintah County. The White River and its 100-year floodplain from the boundary of the Uintah and Ouray Indian Reservation at river mile 18 in T.9S., R.22E., section 21 (Salt Lake Meridian) to the confluence with the Green River in T.9S., R.20E., section 4 (Salt Lake Meridian).

Utah, Uintah County. The Duchesne River and its 100-year floodplain from river mile 2.5 in T.4S., R.3E., section 30 (Salt Lake Meridian) to the confluence with the Green River in T.5S., R.3E., section 5 (Uintah Meridian).

Colorado, Delta and Mesa Counties. The Gunnison River and its 100-year floodplain from the confluence with the Uncompahgre River in T.15S., R.96W., section 11 (6th Principal Meridian) to Redlands Diversion Dam in T.1S., R.1W., section 27 (Ute Meridian).

Colorado, Mesa and Garfield Counties. The Colorado River and its 100-year floodplain from Colorado River Bridge at exit 90 north off Interstate 70 (river mile 238) in T.6S., R.93W., section 16 (6th Principal Meridian) to Westwater Canyon (river mile 125) in T.20S., R.25E., section 12 (Salt Lake Meridian) including the Gunnison River and its 100-year floodplain from the Redlands Diversion Dam in T.1S., R.1W., section 27 (Ute Meridian) to the confluence with the Colorado River in T.1S., R.1W., section 22 (Ute Meridian).

Utah, Grand, San Juan, Wayne, and Garfield Counties. The Colorado River and its 100-year floodplain from Westwater Canyon (river mile 125) in T.20S., R.25E., section 12 (Salt Lake Meridian) to full pool elevation, upstream of North Wash and including the Dirty Devil arm of Lake Powell in T.33S., R.14E., section 29 (Salt Lake Meridian).

New Mexico, San Juan County, and Utah, San Juan County. The San Juan River and its 100-year floodplain from the Hogback Diversion in T.29N., R.16W., section 9 (New Mexico Meridian) to the full pool elevation at the mouth of Neskahai Canyon on the San Juan arm of Lake Powell in T.41S., R.11E., section 26 (Salt Lake Meridian).

Arizona, Coconino and Mohave Counties, and Nevada, Clark County. The Colorado River and its 100-year floodplain from the confluence with the Little Colorado River in T.32N., R.5E., section 1 (Gila and Salt River Meridian) to Hoover Dam in T.30N., R.23W., section 3 (Gila and Salt River Meridian) including Lake Mead to the full pool elevation.

Arizona, Mohave County, and Nevada, Clark County. The Colorado River and its 100-year floodplain from Hoover Dam in T.30N., R.23W., section 1 (Gila and Salt River Meridian) to Davis Dam in T.21N., R.21W., section 18 (Gila and Salt River Meridian) including Lake Mohave to the full pool elevation.

Arizona, La Paz and Yuma Counties, and California, San Bernadino, Riverside, and Imperial Counties. The Colorado River and its 100-year floodplain from Parker Dam in T.11N., R.18W., section 16 (Gila and Salt River Meridian) to Imperial Dam in T.6S., R.22W., section 25 (Gila and Salt River Meridian) including Imperial Reservoir to the full pool elevation or 100-year floodplain, whichever is greater.

Arizona, Graham, Greenlee, Gila, and Pinal Counties. The Gila River and its 100-year floodplain from the Arizona-New Mexico border in T.8S., R32E., section 34 (Gila and Salt River Meridian) to Coolidge Dam in T.3S., R.18E., section 17 (Gila and Salt River Meridian), including San Carlos Reservoir to the full pool elevation, Bonita Creek and its 100-year floodplain from the infiltration gallery in T.6S., R.28E., section 5 (Gila and Salt River Meridian) to the confluence with the Gila River in T.6S., R.28E., section 21 (Gila and Salt River Meridian) and Eagle Creek and its 100-year floodplain from the Phelps-Dodge Pumping Plant in T.4S., R.28E., section 26 (Gila and Salt River Meridian) to the confluence with the Gila River in T.5S., R.29E., section 31 (Gila and Salt River Meridian).

Arizona, Gila County. The Salt River and its 100-year floodplain from the old U.S. Highway 60/State Route 77 bridge (unsurveyed) to Roosevelt Diversion Dam in T.3N., R.14E., section 4 (Gila and Salt River Meridian) including Cherry Creek and its 100-year floodplain from the Cherry Creek road crossing in T.4N., R.15E., section 3 (Gila and Salt River Meridian) to the confluence with the Salt River in T.4N., R.15E., section 23 (Gila and Salt River Meridian) and Canyon Creek and its 100-year floodplain from the OW Ranch road crossing in T.R. section (Gila and Salt River Meridian) to the confluence with the Salt River in T.5N., R.16E., section 21 (Gila and Salt River Meridian).

Arizona, Yavapai County. The Verde River and its 100-year floodplain from the base of the dam forming Sullivan Lake in T.17N., R.2E., section 15 (Gila and Salt River Meridian) to Horseshoe Dam in T.7N., R.6E., section 2 (Gila and Salt River Meridian), including Horseshoe Lake to the full pool elevation including Sycamore Creek and its 100-year floodplain from the boundary with the Sycamore Canyon Wilderness Area in T.17N., R.3E., section 8 (Gila and Salt River Meridian) to the confluence with the Verde River in T.17N., R.3E., section 7 (Gila and Salt River Meridian), Oak Creek and its floodplain from Page Springs State Fish Hatchery in T.16N., R.4E., section 23 (Gila and Salt River Meridian) to the confluence with the Verde River in T.15N., R.4E., section 20 (Gila and Salt River Meridian) and West Clear Creek and its 100-year floodplain from the boundary of the West Clear Creek Wilderness Area in T.13N., R.6E., section 15 (Gila and Salt River Meridian) to the confluence with the Verde River in T.13N., R.6E., section 21 (Gila and Salt River Meridian).

Known constituent elements include water, physical habitat, and biological environment as required for each particular life stage for each species.

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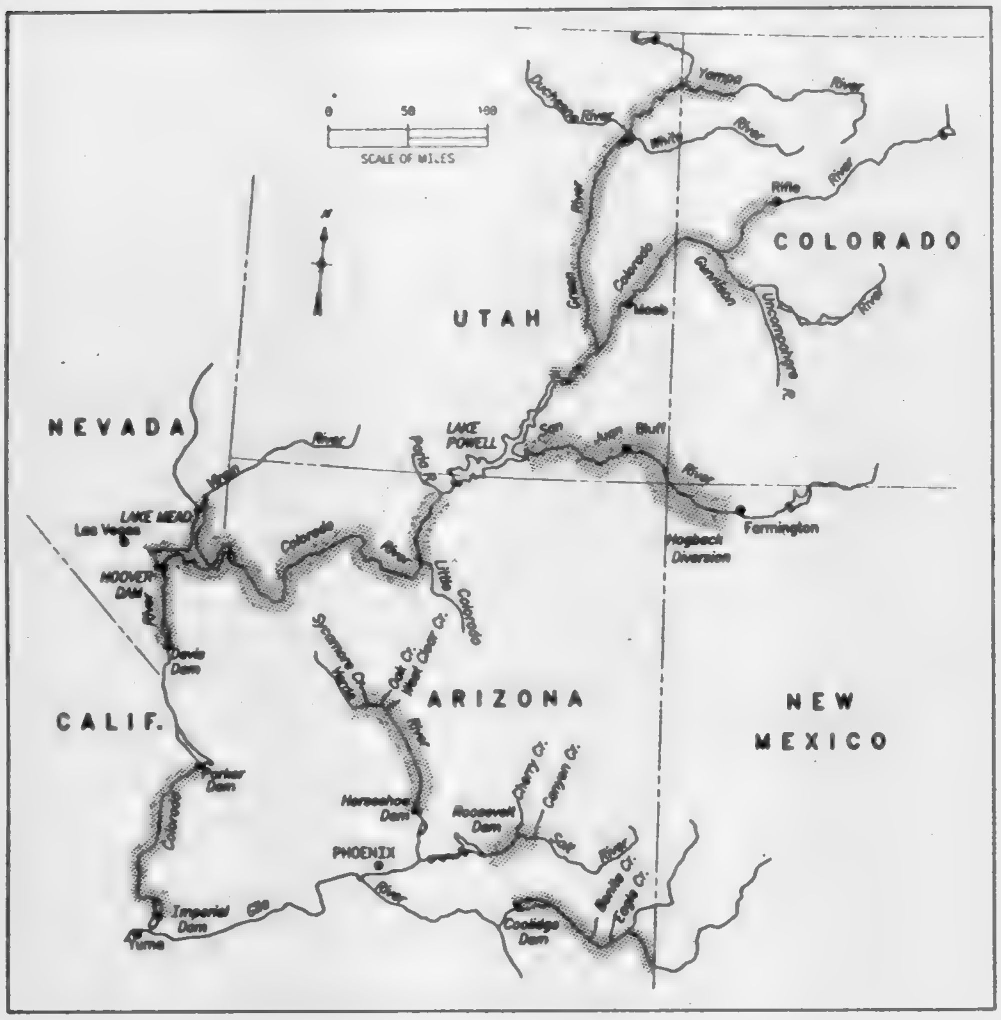
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Virgin
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Las Vegas
HOOVER DAM
Colorado River
Little Colorado
River
Davis Dam
Sycamore Cr.
Verde
Oak Cr.
West Clear Cr.
River
Parker Dam
Colorado
Horseshoe Dam
Roosevelt Dam
Cherry Cr.
Canyon Cr.
Salt River
PHOENIX
Gila
River
Bonita Cr.
Eagle Cr.
Coolidge Dam
Imperial Dam
Yuma

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* * * * *

Dated: January 21, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–2036 Filed 1–25–93; 2:46 pm]

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federal register

Friday
January 29, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Mississippi Band of Choctaw Indians; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Mississippi Band of Choctaw Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact Between the Mississippi Band of Choctaw Indians and the State of Mississippi, enacted on December 4, 1992.

DATES: This action is effective January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: January 15, 1993.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 93–2105 Filed 1–28–93; 8:45 am]

BILLING CODE 4310–02–M

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Friday, January 29, 1993

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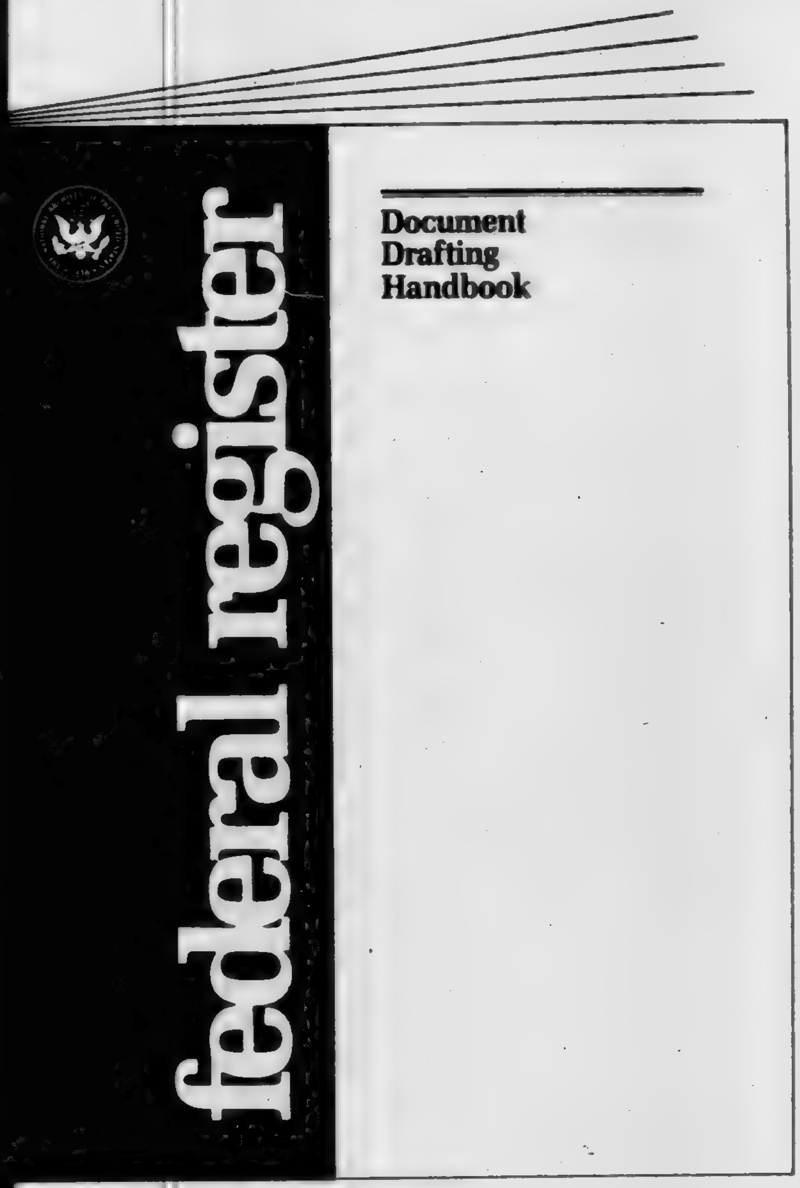

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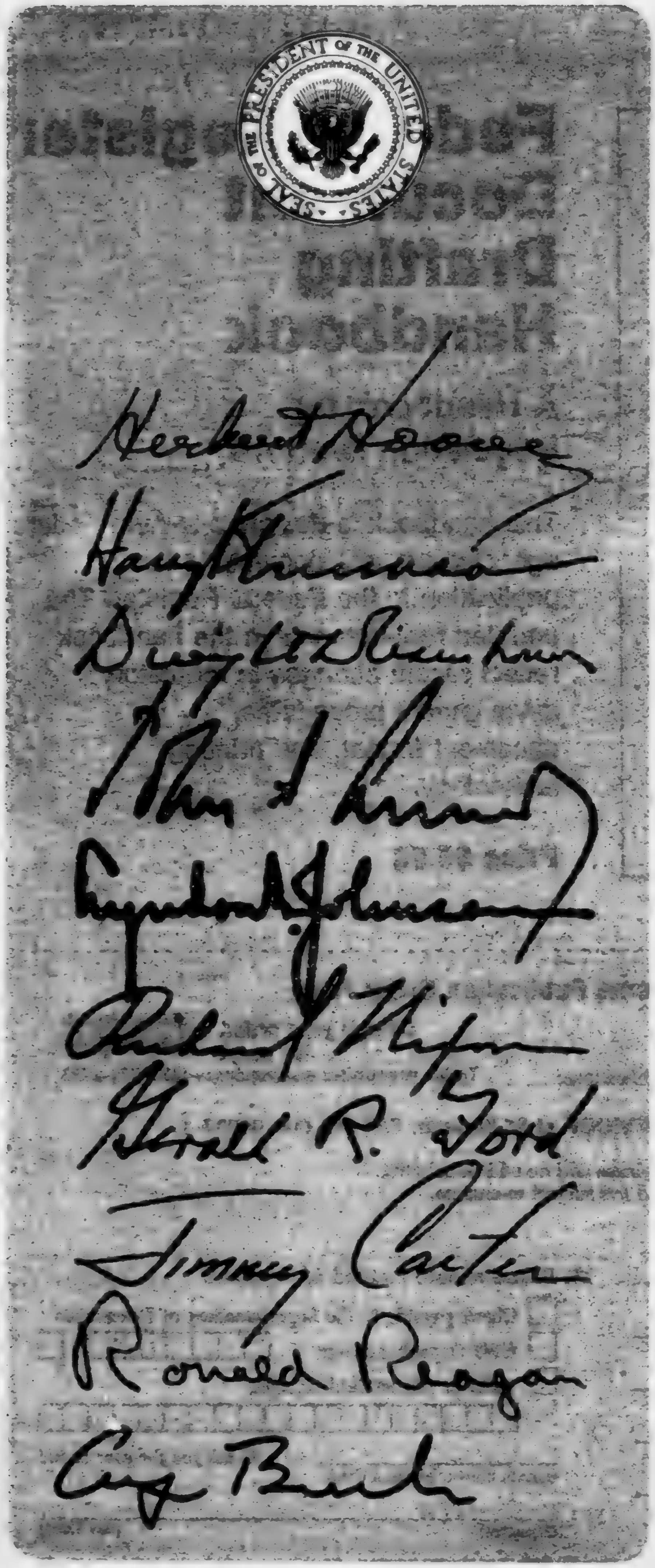
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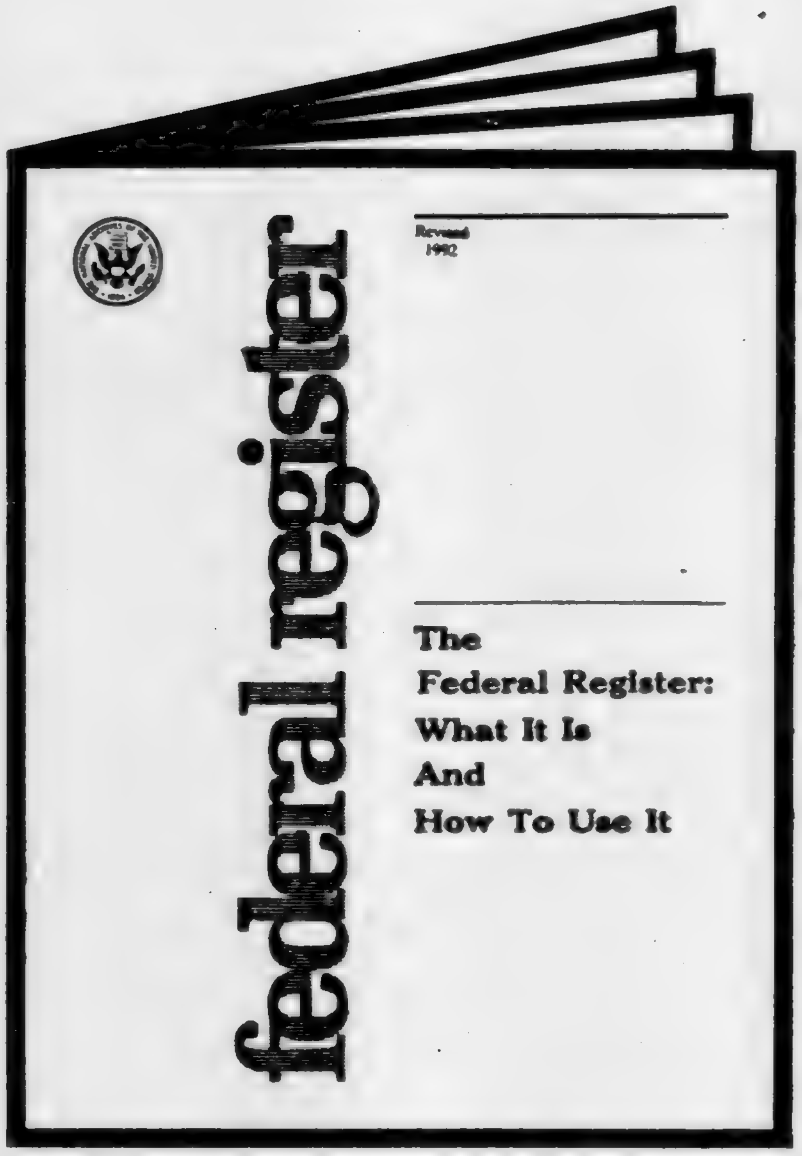
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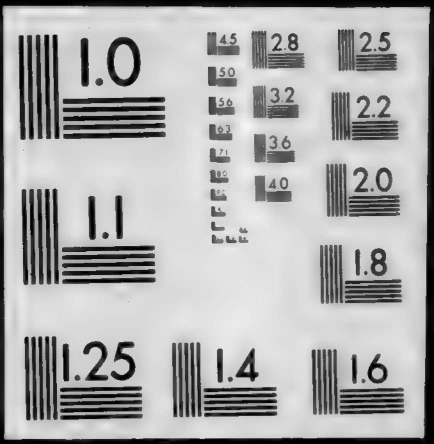
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Monday
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0794]

Home Mortgage Disclosure; Use of MSA Designations for 1993 Data Collection and for Determining Coverage for 1993

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: MSA designations to be used for collecting 1993 HMDA data and for determining coverage under HMDA for 1993.

SUMMARY: The Federal Reserve Board announces that lenders should continue to use, through 1993, the MSA designations that were in place prior to the Office of Management and Budget's recent redesignation of areas boundaries, for collecting HMDA data and for determining coverage under UMDA. The Board has delayed implementing these designations in order to provide adequate time for lenders to make the necessary changes for data collection.

EFFECTIVE DATES: January 1, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). HMDA requires lenders located in metropolitan statistical areas (MSAs) to annually report information on the geographic distribution of their home mortgage and home improvement loans, and to provide information on the race or national origin, sex, and income of applicants and borrowers for such loans. Regulation C requires institutions covered by HMDA to give the location of the property to which the loan or application relates (MSA, state, county, and census tract) for MSAs in which they have an office. These requirements apply to depository institutions that have more than $10 million in assets and to nondepository lenders that either meet the $10 million asset test or that originated 100 or more home purchase loans in the preceding calendar year.

The instructions to the HMDA loan application register (HMDA–LAR) direct lenders to use the MSA boundaries that are in effect on January 1 of the calendar year covered by the data. On December 28, 1992, the Office of Management and Budget (OMB) issued a revised list of metropolitan areas, having redefined their boundaries based on changes in population and economic patterns revealed in the 1990 decennial census. Given that OMB's designations were issued before year-end 1992, lenders covered by HMDA ordinarily would be required to use the new designations beginning on January 1, 1993.

The Federal Reserve Board has decided to delay implementing the numerous boundary changes in OMB's new MSA designations until calendar year 1994 because of the general difficulty that lenders would have in doing so for 1993 in a timely and orderly fashion. Because of the need to provide guidance to lenders as quickly as possible, this Board action is being taken without notice and comment rulemaking.

This delayed implementation of reporting and coverage requirements will reduce the overall compliance burden for lenders. Many lenders use software packages that have built-in edit-checks to help catch erroneous entries by identifying all "valid" codes for counties and census tracts located in MSAs. The HMDA software developed and distributed by the FFIEC is among those that incorporate these edit-checks.

The software already distributed by the agencies for lenders to use in the geocoding of 1993 loan activity does not reflect the revised MSA designations. Comparable software packages provided by vendors also may not reflect the new boundaries. Modifying and replacing geocoding software is a costly and time-consuming process. Moreover, lenders and appraisers who rely on census tract maps for geocoding purposes would face difficulties in obtaining the necessary information from the Government Printing Office as quickly as they need it.

Given the importance of data quality in the collection and reporting of HMDA data, the Board believes it is necessary to provide adequate time for lenders to implement the required changes to ensure that data are accurate and complete. When the regulatory provision was first enacted, geocoding typically was done at year-end. Covered lenders are now encouraged (and in the case of one agency are required) to geocode as loan and application information is entered in the HMDA–LAR. It would be difficult for lenders to obtain the necessary information to begin coding immediately, and inefficient to delay coding until the information became available.

The new MSA designations also affect lenders who were previously exempt from HMDA because they did not have an office in an MSA pursuant to § 203.3(a). Under HMDA, an institution with an office in a newly-designated MSA on December 31, 1992, would be required to begin collecting data on January 1, 1993. Because the HMDA data collected and compiled by lenders for 1993 will be based on previous MSA designations and not the newly-designated boundaries, the Board sees little purpose in covering for 1993 institutions whose coverage came about as a result of the new designations. These institutions will be required to collect data beginning January 1, 1994. This delay in coverage applies only in regard to newly designated areas. Institutions that established or acquired offices during calendar year 1992 in other MSAs are required to comply beginning January 1, 1993.

By order of the Board of Governors of the Federal Reserve System, January 26, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–2253 Filed 1–29–93; 8:45 am]

BILLING CODE 6210–01–P

12 CFR Parts 207, 220, 221, and 224

Regulations G, T, U, and X; Securities Credit Transactions; List of Marginable OTC Stocks and List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Marginable OTC Stocks (OTC List) is comprised of stocks traded over-the-counter (OTC) in the United States that have been determined by the Board of Governors of the Federal Reserve System to be subject to the margin requirements under certain Federal Reserve regulations. The List of Foreign Margin Stocks (Foreign List) represents foreign equity securities that have met the Board's eligibility criteria under Regulation T. The OTC List and the Foreign List are published four times a year by the Board. This document sets forth additions to and deletions from the previous OTC List and an addition to the Foreign List. Both Lists were last published on October 29, 1992 (57 FR 48939) and effective on November 9, 1992.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2781, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below are additions to and deletions from the OTC List. This supersedes the last OTC List which was effective November 9, 1992. Additions and deletions to the OTC List were last published on October 29, 1992 (57 FR 48939). A copy of the complete OTC List is available from the Federal Reserve Banks.

The OTC List includes those stocks that meet the criteria in Regulations G, T and U (12 CFR Parts 207, 220 and 221, respectively). This determination also affects the applicability of Regulation X (12 CFR Part 224). These stocks have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant regulation in the same fashion as exchange-traded securities. The OTC List also includes any OTC stock designated under a Securities and Exchange Commission (SEC) rule as qualified for trading in the national market system (NMS security). Additional OTC stocks may be designated as NMS securities in the interim between the Board's quarterly publications. They will become automatically marginable upon the effective date of their NMS designation. The names of these stocks are available at the Board and the SEC and will be incorporated into the Board's next quarterly publication of the OTC List.

Also listed below is an addition to the Board's Foreign List, which was last published October 29, 1992 (57 FR 48939), and effective November 9, 1992. There are no deletions from the Foreign List. The Foreign List includes those securities that meet the criteria in § 220.17 of Regulation T and are eligible for margin treatment at broker-dealers on the same basis as domestic margin securities. A copy of the complete Foreign List is available from the Federal Reserve Banks.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Lists specified in 12 CFR 207.6 (a) and (b), 220.17 (a), (b), (c) and (d), and 221.7 (a) and (b). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of these Lists as soon as possible. The Board has responded to a request by the public and allowed approximately a two-week delay before the Lists are effective.

List of Subjects

12 CFR Part 207

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 220

Banks, Banking, Brokers, Credit, Margin, Margin requirements, Investments, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 221

Banks, Banking, Credit, Margin, Margin requirements, National Market System (NMS Security), Reporting and recordkeeping requirements, Securities.

12 CFR Part 224

Banks, Banking, Borrowers, Credit, Margin, Margin requirements, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 207.2(k) and 207.6 (Regulation G), 12 CFR 220.2(u) and 220.17 (Regulation T), and 12 CFR 221.2(j) and 221.7 (Regulation U), there is set forth below a listing of deletions from and additions to the OTC List and an addition to the Foreign List.

Deletions From the List of Marginable OTC Stocks

Stocks Removed for Failing Continued Listing Requirements

Action Auto Rental, Inc.
  $.01 par common
Adtec, Inc.
  $.01 par common
Aegis Group PLC
  American Depositary Receipts
Aero Systems, Inc.
  $.02 par common
Artel Communications Corporation
  $.01 par common
Burritt Interfinancial Bancorporation
  $1.00 par common
CBL Medical Inc.
  Warrants (expire 12–21–93)
Cencor, Inc.
  $1.00 par common
Congress Street Properties, Inc.
  $.10 par common
Crownamerica, Inc.
  No par common
Crystal Oil Company
  Series A, $.01 par convertible preferred
Eastland Financial Corporation
  $.01 Par common
First Bank of Philadelphia
  $2.00 par common
First New York Bank for Business
  $.10 par common
FLS Holdings Inc.
  Series A, $.01 par convertible preferred
Hotelecopy, Inc.
  $.01 par common
Ilio, Inc.
  $.01 par common
  Warrants (expire 08–31–93)
Indiana Financial Investors, Inc.
  No par common
KMS Industries, Inc.
  $.08 par common
Marine Drilling Company
  Rights (expire 12–23–92)
Meritor Savings Bank

  - $1.00 par common
- Networks Electronic Corporation
  - $.25 par common
- Newport Electronics, Inc.
  - $.01 par common
- Piedmont Federal Corporation
  - $.01 par common
- Quartz Mountain Gold Corp.
  - No par common
- Rocky Mount Undergarment Co., Inc.
  - $.01 par common
- Sanborn Inc.
  - Series A, convertible preferred stock
  - Warrants (expire 08–07–96)
- Second National Bancorporation
  - $1.00 par common
- Sheffield Industries, Inc.
  - $.01 par common
- Simtek Corporation
  - $.01 par common
  - Warrants (expire 03–06–96)
- Sun Microsystems, Inc.
  - 6⅜% convertible subordinated debentures
- Symbolics, Inc.
  - $.01 par common

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

- Advanced Telecommunications Corporation
  - $.02 par common
- Affiliated Bankshares of Colorado, Inc.
  - $5.00 par common
- American Biodyne, Inc.
  - $.01 par common
- American Funeral Services Corp.
  - $.05 par common
- Archive Corporation
  - $.01 par common
- Betz Laboratories, Inc.
  - $.10 par common
- Brandon Systems Corporation
  - $.10 par common
- Carmike Cinemas Inc.
  - Class A, $.03 par common
- CCNB Corporation
  - $1.00 par common
- Century Medicorp, Inc.
  - No par common
- Chesapeake Utilities Corporation
  - $.48⅔ par common
- CK Federal Savings Bank
  - $1.00 par common
- Compusa, Inc.
  - No par common
- First Commercial Bancshares Inc.
  - $1.00 par common
- First Florida Banks, Inc.
  - $1.00 par common
- Flagship Financial Corporation
  - $.01 par common
- Fleer Corporation
  - $.01 par common
- Hadson Energy Resources Corp.
  - $.10 par common
- Healthsource, Inc.
  - $.10 par common
- Home Financial Corporation
  - $1.00 par common
- Hometrust Bank of Georgia
  - $1.00 par common
- Horizon Industries, Inc.
  - No par common
- INB Financial Corporation
  - No par common
- Insituform Group, Ltd.
  - Ordinary shares, par ⅓ pence
- Moorco International Inc.
  - $.01 par common
- Patlex Corporation
  - $.10 par common
- Phoenix Resource Companies, Inc.
  - $.01 par common
- Ramsey—HMO, Inc.
  - $.001 par common
- Savannah Foods & Industries, Inc.
  - $.25 par common
- Summit Holding Corporation
  - $.625 par common
- Sunair Electronics, Inc.
  - $.10 par common
- Tejas Gas Corporation
  - $.25 par common
- Ultra Bancorp
  - $.01 par common
- Uni-Marts Inc.
  - Class A, $.10 par common
- Value Health, Inc.
  - No par common
- Viratek Inc.
  - $.10 par common
- Western Capital Investment Corp.
  - $1.00 par common
- Wetterau Incorporated
  - $1.00 par common

Additions to the List of Marginable OTC Stocks

- Aaron Rents, Inc.
  - Class B, $.50 par common
- Ace Cash Express, Inc.
  - $.01 par common
- ACX Technologies, Inc.
  - $.01 par common
- Alpha-Beta Technology, Inc.
  - $.01 par common
- American Educational Products Inc.
  - $.01 par common
- Amfed Financial, Inc.
  - $.01 par common
- ANB Corporation
  - No par common
- Autofinance Group, Inc.
  - No par common
- Bankunited, A Savings Bank (Florida)
  - Class A, $.01 par common
- Belize Holdings Inc.
  - $.01 par non-voting ordinary shares
- Books-a-Million, Inc.
  - $.01 par common
- Boomtown, Inc.
  - $.01 par common
- BPI Environmental, Inc.
  - Warrants (expire 10–06–94)
  - Warrants (expire 10–08–96)
- Brooktrout Technology, Inc.
  - $.01 par common
- Canterbury Educational Services, Inc.
  - $.001 par common
- Casino Magic Corporation
  - $.01 par common
- Celebrity, Inc.
  - $.01 par common
- Central Mortgage Bancshares, Inc. (Missouri)
  - $1.00 par common
- Citation Computer Systems, Inc.
  - $.01 par common
- Citizens National Corporation (Florida)
  - $2.50 par common
- Commercial Bancorp (Oregon)
  - $2.50 par common
- Comptronix Corporation
  - 6¾% convertible subordinated debentures
- Compuware Corporation
  - $.01 par common
- Continental Savings of America, a Federal Savings & Loan Association (California)
  - Series A, non-cumulative convertible preferred
- Copley Pharmaceutical, Inc.
  - $.01 par common
- Corel Corporation
  - No par common
- Cortech Inc.
  - $.002 par common
  - Units (expire 05–24–94)
- Creative Biomolecules, Inc.
  - $.01 par common
- Danka Business Systems PLC
  - American Depository Receipts
- DEP Corporation
  - Class A, $.01 par common
- Dial Page, Inc.
  - $.01 par common
- E-Z-EM, Inc.
  - Class B, $.10 par common
- Edmark Corporation
  - No par common
- Edusoft Ltd.
  - Ordinary shares (NIS .1 par)
- Embrace Systems Corporation
  - $.001 par common
- Energy Research Corporation
  - $.0001 par common
- Environmental Technologies Corporation
  - $.01 par common
  - Warrants (expire 12–17–97)
- Exstar Financial Corporation
  - $.01 par common
- F.N.B. Corporation
  - Series B convertible preferred, $25.00 stated value
- Financial Security Corporation
  - $.01 par common
- Fonic, Inc.
  - $.01 par common
  - Warrants (expire 05–01–93)
- Fortune Bancorp, Inc. (Florida)
  - Series A, 6% per convertible preferred
- Fresh Choice, Inc.
  - $.001 par common

Fritz Companies, Inc.
  $.01 par common
GBC Technologies, Inc.
  $.01 par common
Gray Communications Systems, Inc.
  No par common
Ha-Lo Industries, Inc.
  No par common
Haggar Corporation
  $.10 par common
HCC Insurance Holdings, Inc.
  $1.00 par common
Health Management Systems, Inc.
  $.01 par common
Home Savings Bank, F.S.B. (Florida)
  $1.00 par common
HS Resources, Inc.
  $.001 par common
Hyal Pharmaceutical Corporation
  No par common
Imageamerica, Inc.
  $.01 par common
Infu-Tech, Inc.
  $.01 par common
Interfirst Bankcorp, Inc. (Michigan)
  $.01 par common
IQ Software Corporation
  $.00033 par common
ISG International Software Group Ltd.
  Ordinary shares (NIS .1)
Kankakee Bancorp, Inc. (Illinois)
  $.01 par common
Kemet Corporation
  $.01 par common
Kendall International, Inc.
  $.01 par common
Landoptics Ltd.
  Ordinary shares (NIS .02)
Ligand Pharmaceuticals Incorporated
  Convertible class A, $.001 par common
Liposome Company, Inc., The
  Depositary shares
Main St. & Main, Inc.
  $.001 par common
  Warrants (expire 09-04-96)
Matritech, Inc.
  $.01 par common
Mayflower Group, Inc.
  No par common
MB Communications, Inc.
  $.001 par common
Media Vision Inc.
  $.001 par common
Memtec Limited
  American Depositary Receipts
Micro Warehouse, Inc.
  $.01 par common
Microtest, Inc.
  $.001 par common
Midland Financial Group, Inc.
  No par common
Miles Homes, Inc.
  $.10 par common
Neoprobe Corporation
  $.001 par common
  Class E, warrants (expire 11-10-96)
Networth, Inc.
  $.01 par common
NPM Healthcare Products, Inc.
  $.01 par common
Nu Horizons Electronics Corporation
  $.01 par common
Olicom A/S
  DKK .25 par common
Olympic Financial Ltd. (Minnesota)
  $.01 par common
Orion Pictures Corporation
  $.25 par common
Patterson Dental Company
  $.01 par common
Peoplesoft, Inc.
  $.01 par common
Physicians Clinical Laboratory, Inc.
  $.01 par common
Platinum Software Corporation
  $.001 par common
President Riverboat Casinos, Inc.
  $.01 par common
Purolator Products Company
  $.01 par common
Rand Capital Corporation
  $.10 par common
Raven Industries, Inc.
  $1.00 par common
Res-Care, Inc.
  No par common
Rottlund Company, Inc., The
  $.01 par common
Seacor Holdings, Inc.
  $.01 par common
Simmons First National Corporation (Arkansas)
  Class A, $5.00 par common
Snapple Beverage Corporation
  $.01 par common
Sport Chalet, Inc.
  $.01 par common
St. Mary Land & Exploration Company
  $.01 par common
Sterling Bancshares, Inc. (Texas)
  $1.00 par common
Syratech Corporation
  $.01 par common
Taco Cabana, Inc.
  Class A, $.01 par common
Tracor, Inc.
  $.01 par common
  Warrants (expire 12-31-2001)
Trident Microsystems, Inc.
  $.001 par common
U.S. Physical Therapy, Inc.
  $.01 par common
Ultralife Batteries, Inc.
  $.10 par common
United Waste Systems, Inc.
  $.001 par common
USA Classic, Inc.
  $.01 par common
Vision-Sciences, Inc.
  $.01 par common
Washington Mutual Savings Bank
  Series C, $1.00 par concumulative perpetual preferred
  Series D, $1.00 par convertible perpetual preferred
Western Water Company
  No par common
Whitman Medical Corporation
  No par common
Wholesome & Hearty Foods, Inc.
  No par common

Addition to the List of Foreign Margin Stocks

Jefferson Smurfit Group, PLC
  Ordinary shares, £.25 par value

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), January 19, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-2121 Filed 1-29-93; 8:45 am]

BILLING CODE 6210-01-P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AA09

Organization; Director Compensation; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 611 on September 21, 1992 (57 FR 43393). The final regulation amends 12 CFR part 611 to authorize Farm Credit System (System) banks to pay their directors fair and reasonable compensation that does not exceed the amount set forth in section 4.21 of the Farm Credit Act of 1971, as amended. The regulation also requires System banks to disclose the amount of reimbursement that directors receive for travel, subsistence, and other related expenses separately from cash compensation in annual disclosures to shareholders and reports to the FCA. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 29, 1993.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4498,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: January 26, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–2206 Filed 1–29–93; 8:45 am]

BILLING CODE 6705-01-P

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12 CFR Part 612

RIN 3052–AB06

Personnel Administration; Human Resources Policies, Retirement Plans; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final regulation under part 612 on September 21, 1992 (57 FR 43394). The final regulation amends 12 CFR part 612 to require Farm Credit System institutions to assume greater responsibility for developing human resources management policies consistent with safe and sound operation. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 29, 1993.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT:

Linda C. Sherman, Policy Analyst, Regulation Development Division, Office of Examination, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

Authority: 12 U.S.C. 2252(a)(9) and (10).

Dated: January 26, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–2207 Filed 1–29–93; 8:45 am]

BILLING CODE 6705-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 796

Employee Responsibility and Conduct; Removal of CFR Part

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration Board is removing 12 CFR part 796, Employee Responsibility and Conduct, for the reason that it is superseded by 5 CFR part 2635, a final rule issued by the Office of Government Ethics applicable to employees in the executive branch of the Federal Government.

EFFECTIVE DATE: February 3, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, at the above address, or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics issued a final rule, effective February 3, 1993, that establishes uniform standards of ethical conduct for officers and employees of the executive branch of the Federal Government. 57 FR 35006–35067, August 7, 1992. That final rule appears at 5 CFR part 2635 and supersedes the regulations of individual agencies, including NCUA's regulation on employee responsibility and conduct.

Therefore, the NCUA Board is removing part 796.

PART 796—REMOVED

Accordingly, pursuant to 12 U.S.C. 1766, 12 CFR part 796 is removed.

By the National Credit Union Administration Board on January 26, 1993.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–2268 Filed 1–29–93; 8:45 am]

BILLING CODE 7535-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2616 and 2617

Distress Terminations of Single-Employer Plans; Standard Terminations of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; amendment.

SUMMARY: This final rule amends regulations of the Pension Benefit Guaranty Corporation ("PBGC") (29 CFR parts 2616 and 2617), which contain the rules for distress and standard terminations of single-employer pension plans. The amendments add a new section to each part in order to display the control number assigned by the Office of Management and Budget when it approved the collection of information contained in these rules and in the termination forms and instructions issued by the PBGC. These amendments conform PBGC's regulations to OMB's regulations implementing the Paperwork Reduction Act.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; 202–778–8850 (202–778–1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, as amended (44 U.S.C. chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget ("OMB") with regulatory responsibility over these burdens, and OMB has promulgated rules on the clearance of collections of information by Federal agencies (5 CFR part 1320).

On December 14, 1992, the Pension Benefit Guaranty Corporation ("PBGC") published in the **Federal Register** (57 FR 59206) final rules (29 CFR parts 2616 and 2617) governing the voluntary termination of single-employer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended. On the same day, the PBGC published a notice of its request for approval by the Office of Management and Budget ("OMB") of the information collection requirements in the final regulations and in the revised termination forms and instructions that were published with the notice (57 FR 59129). The OMB has approved those information collection requirements.

This amendment to the final regulations adds a new § 2616.10 to 29 CFR part 2616 and a new § 2617.11 to 29 CFR part 2617 in order to reflect OMB approval and to display the OMB control number in each regulation.

Because this amendment merely reflects OMB approval and adds the OMB control number to these rules in accordance with the requirements in 5 CFR 1320.5(a) and 1320.7(e)(2), the PBGC finds that notice and public procedure on this rule are unnecessary and that good cause exists for making the rule effective immediately. See 5 U.S.C. 553.

E.O. 12291 and the Regulatory Flexibility Act

The PBGC has determined that this is not a "major rule" for the purposes of Executive Order 12291 and certifies, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that sections 603 and 604 do not apply.

List of Subjects in 29 CFR Parts 2616 and 2617

Employee benefit plans, Pension insurance, Pensions, and Reporting requirements.

In consideration of the foregoing, the PBGC is amending 29 CFR parts 2616 and 2617 of subchapter C of chapter XXVI, title 29 of the Code of Federal Regulations as follows:

PART 2616—DISTRESS TERMINATIONS OF SINGLE-EMPLOYER PLANS

1. The authority citation for part 2616 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

2. Section 2616.10 is added to read as follows:

§ 2616.10 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under control number 1212–0036.

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

3. The authority citation for part 2617 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, and 1344.

4. Section 2617.11 is added to read as follows:

§ 2617.11 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under control number 1212–0036.

Issued in Washington, DC this 27th day of January 1993.

William M. DeHarde,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–2317 Filed 1–29–93; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN11–2–5676; FRL–4558–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is disapproving a request by the State of Indiana to revise its State Implementation Plan (SIP) for lead to include fugitive lead control plans for number of sources. Indiana is required to submit these plans pursuant to the SIP, as approved in USEPA's rulemaking actions on April 19, 1988 (53 FR 12896) and on October 3, 1988 (53 FR 38719). This revision request was submitted by the State on November 9, 1989, to satisfy the requirements of section 110 of the Clean Air Act. A notice proposing disapproval of this SIP revision request was published on October 23, 1992 (57 FR 48352).

EFFECTIVE DATE: This final rulemaking becomes effective on March 3, 1993.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Rosanne Lindsay at (312) 353–1151, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Rosanne Lindsay, Regulation Development Branch, Regulation Development Section (5AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–1151.

SUPPLEMENTARY INFORMATION: Presented below is an historical review of the State's submittal. The State's submittal and USEPA's detailed evaluation are available for inspection at the USEPA Region 5 Office listed above.

On April 19, 1988 (53 FR 12896), and October 3, 1988 (53 FR 38719), USEPA approved most of Indiana's SIP for lead, including 325 IAC 15–1.[1] 325 IAC 15–1–3 contains a requirement for certain lead sources to submit operation and maintenance programs and fugitive lead control plans. The fugitive lead control plans, which are to be contained in revised operating permits, were to be designed to minimize emissions of lead from all fugitive emission points. The control plans were also to include good housekeeping practices for the cleanup of spills and for minimizing emissions from loading and unloading areas, as applicable. These control plans, which were submitted to USEPA by the State for approval as SIP revisions, are the subjects of this final rulemaking.

The sources required to submit control plans under 325 IAC 15–1[2] were:

Refined Metals Corporation, Indianapolis
Chrysler Foundry, Indianapolis
Delco Remy, Division of General Motors Corporation, Muncie
Oxide and Chemical Corporation, Brazil
Hammond Lead Products, Lead Plant and Halstab Division, Hammond
Exide Corporation, Frankfort and Logansport
C and D Power Systems, Attica
Quemetco, Incorporated, Indianapolis
U.S.S. Lead Refinery, East Chicago.

Control plans were developed for all of the above companies, except for U.S.S. Lead Refinery and Quemetco.[3]

A notice proposing disapproval of this SIP revision was published in the **Federal Register** on October 23, 1992 (57 FR 48353). The public comment period closed on November 23, 1992. One commentor provided comments in response to USEPA's proposed rule, as summarized below. USEPA's response is also presented.

Public Comment

Comment 1: Hammond Lead Product (HLP) does not wish to identify a list of potential process fugitive emission sources, as requested by USEPA in the proposal, and refers to an appendix C to the HLP plan which states: "There are no points of fugitive lead dust emission(s) into the ambient air from any process in the Lead Plant". Likewise, HLP describes a particulate filtration control device to prevent fugitive emissions at the Halstab plant, referred to in an appendix D. HLP also mentions the following statements as providing adequate information to the State and EPA regarding fugitive dust problems: " 'no points of fugitive lead dust emission[s]' are present in the Lead plant" and " '[a]ll [process] sources' in the Halstab facility have potential to emit fugitive lead dust * * *"

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[1] A detailed discussion of the Indiana lead plan is provided in the April 19, 1988 and October 3, 1988 **Federal Register** notices.

[2] Subsequent to USEPA's approval of Indiana's Lead rule in 325 IAC Article 15, Indiana recodified this rule (and its other air pollution control rules) under title 326. USEPA has not taken action on this recodification nor on subsequent modifications to 326 IAC Article 15.

[3] The U.S.S. Lead refinery facility has shut down. Quemetco is currently involved in litigation concerning Indiana's lead rules against both the State and USEPA. See *Quemetco Inc. v. Air Pollution Control Board*, Case No. 29C01–8808–CP00536 (Hamilton Circuit Court), and *Quemetco, Inc. v. USEPA*, No. 88–3129 (7th Cir.)

USEPA Response: USEPA has never received the Appendices or any documentation to substantiate the statements identified above. In addition, USEPA efforts to procure such information from Indiana have not been successful. Therefore, USEPA cannot consider this information.

Comment 2: HLP states that attachments A and B to the Company's fugitive emission control plan provide specific measures for the clean-up of spills occurring outdoors, in various weather conditions, as requested by USEPA.

USEPA Response: The SIP revision request received by USEPA contains no reference to specific clean-up measures for spills in various weather conditions. In addition, USEPA efforts to acquire such information have proven unsuccessful.

Comment 3: In response to USEPA's statement of plan vagueness in maintaining outdoor paved surfaces, HLP cites specific procedures for the implementation of the "prevention of accumulation" requirement in several sections of the plan.

USEPA Response: USEPA has received only the original Appendices A and B which describe trailer loading operations for both the Lead plant and Halstab division, and Enclosure 2, a one-page summary of the fugitive lead dust control program and the operation and maintenance program. The references made by HLP regarding full compliance with all USEPA requirements are not substantiated.

It should be noted that USEPA's October 23, 1992 proposal identified additional deficiencies in the submission—both general and company specific. See 57 FR 48352–53. Other than the HLP comments discussed above, however, no other comments have been received; and the deficiencies remain.

Final Rulemaking Action

The requirements for the State of Indiana to submit an enforceable plan for the control of fugitive dust has not been met, and comments provided by HLP have not been substantiated by documentation. In addition, all the other deficiencies identified in USEPA's October 23, 1992, proposal remain. Based on these facts, USEPA is disapproving the November 9, 1989, SIP revision submitted by the Indiana Department of Environmental Management.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under 5 U.S.C. 605(b), USEPA must determine the impact of this rule on small entities. Final disapproval of this State regulation will not have a significant impact on a substantial number of small entities. It merely disapproves the incorporation of stated adopted requirements into the SIP. It imposes no additional requirements.

The Clean Air Act Amendments of 1990 were enacted on November 15, 1990, Public Law 101–549, 104 Stat 2399, codified at 42 U.S.C. 7401–7671q. Sections 191(a) and 192(a) of the 1990 Amendments contain new requirements for lead nonattainment areas which the State is in the process of addressing. In addition, section 193 of the 1990 Amendments provides that each regulation, standard, rule, notice, order and guidance promulgated or issued by USEPA prior to the Amendments' enactment shall remain in effect (with certain exceptions not relevant here). This Includes the SIP requirement for submittal of these control plans.

List of Subjects in 40 CFR Part 52

Lead, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671(q).

Dated January 14, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–2223 Filed 1–29–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 266

[EPA/OSW–FR–93–SWH–FRL–4556–4]

Public Meeting on the Boiler and Industrial Furnace (BIF) Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting.

SUMMARY: Pursuant to the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), EPA promulgated on February 21, 1991, air emissions and permit standards for boilers and industrial furnaces (BIFs) that burn hazardous waste. Since publication of the rule, new data and information have been generated during implementation of the rule. As a result, the Agency believes it appropriate to assess the current state of the BIF regulation and will hold a roundtable discussion on the BIF regulation on February 24 and 25, 1993. The roundtable is aimed at those implementing and affected by the BIF regulation, and is intended to be a forum for sharing concerns and information rather than to reach broad consensus on solutions or serve as formal negotiations. The purpose of the roundtable is to hear from persons on what is working or not working in the implementation of the regulation, and to hear ideas about what can be done to improve the regulation.

The public is welcome to observe the discussions among the invited participants; however, these meetings are not intended as public hearings.

DATES: The roundtable will be held on February 24 and 25, 1993 from 8:30 a.m. to 5 p.m.

ADDRESSES: The roundtable will be held at the Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Shiva Garg of the Waste Treatment Branch, Office of Solid Waste, at (703) 308–8459.

Dated: January 22, 1993.

Fredric D. Chanania,

Acting Deputy Director, Waste Management Division.

[FR Doc. 93–2269 Filed 1–29–93; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends regulations to allow the use of Legal Services Corporation ("LSC") funds for the representation of permanent amnesty aliens, i.e., aliens who have adjusted their status to that of permanent resident alien under the provisions of the Immigration and Nationality Act ("INA").

EFFECTIVE DATE: March 3, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336-8810.

SUPPLEMENTARY INFORMATION: On April 27, 1989, LSC published at 54 FR 18111 a final rule which, in part, prohibited LSC recipients from representing permanent amnesty aliens for a period of five years from the date such aliens received their temporary resident status. The rule's prohibition on such representation was adopted pursuant to a provision in the 1986 amendments to the INA which disqualified amnesty aliens from being eligible for "programs of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need." 8 U.S.C. 1255a(h). Both the United States Department of Justice ("DOJ") and LSC interpreted the prohibition as disqualifying amnesty aliens from legal services funded by LSC. See DOJ Rule, 54 FR 29434-29438 (July 12, 1989).

However, the amnesty alien provision of LSC's rule was challenged in Federal court, and the United States District Court for the Northern District of California issued a permanent injunction against implementation of that provision. *California Rural Legal Assistance, Inc.* v. *Legal Services Corp.*, 727 F. Supp. 553 (N.D. Cal. 1989), *aff'd*, 917 F.2d 1171 (9th Cir. 1990). Due to the injunction against enforcement of the rule's amnesty alien provision, amnesty aliens who gain permanent resident status remain eligible for LSC-funded legal assistance.

LSC thereafter gave notice of and requested public comment on its proposal to amend the rule to allow representation of permanent amnesty aliens. 57 FR 33699 (July 30, 1992). LSC received and reviewed eight written public comments, all in favor of the amendment. In addition, LSC's Board of Directors and the Board's Operations and Regulations Committee heard public comment at meetings in Minneapolis, Minnesota, on September 24, 1992; Washington, DC, on October 19, 1992; and Lake Buena Vista, Florida, on December 7, 1992. On December 7, 1992, in order to conform the rule to the court injunction to allow representation of permanent amnesty aliens the Board voted to amend part 1626.

List of Subjects in 45 CFR Part 1626

Aliens, Legal services, Migrant labor, Reporting and recordkeeping requirements.

For reasons set out in the preamble, 45 CFR part 1626 is amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The authority citation for part 1626 continues to read as follows:

Authority: Sec. 1006(e); Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99-603, 100 Stat. 3417; Pub. L. 100-459, 102 Stat. 2188.

2. Section 1626.4 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by section 1101(a)(20) of the Immigration and Nationality Act (INA)(8 U.S.C. 1101(a)(20).

* * * * *

Dated: January 27, 1993

Victor M. Fortuno,

General Counsel.

[FR Doc. 93-2284 Filed 1-29-93; 8:45 am]

BILLING CODE 7050-01-M

Proposed Rules

Federal Register
Vol. 58, No. 19
Monday, February 1, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-4558-9]

Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public meeting regarding regulations that will apply to the pulp, paper, and paperboard industry. The regulations are scheduled to be proposed in October 1993. EPA is sponsoring this meeting to report on the status of regulatory development and to gather information and ideas from interested parties.

DATES: The date for the public meeting is Wednesday, February 24, 1993.

ADDRESSES: The meeting will be held at the Omni Durham Hotel and Convention Center, 201 Foster Street, Durham, NC 27701.

FOR FURTHER INFORMATION CONTACT: Wendy Smith at U.S. Environmental Protection Agency—by mail at WH-552, Office of Science and Technology, 401 M Street SW., Washington, DC 20460; by telephone at (202) 260-7184.

SUPPLEMENTARY INFORMATION: EPA is developing effluent limitations guidelines and standards under authority of the Clean Water Act and maximum achievable control technology standards under authority of the Clean Air Act. The Agency is scheduled to propose these water and air regulations in October 1993.

At the public meeting on February 24, 1993, EPA will summarize the regulatory alternatives and present preliminary impacts of the technology-based options.

Rooms are being offered by the Omni Durham Hotel at a special group rate if reservations are made by February 2, 1993. Reservations and other hotel information should be arranged directly with the hotel by calling (919) 683-6664. In order to receive the group rate, individuals must identify themselves as associated with the EPA Pulp and Paper Public Meeting; additionally, all rooms must be guaranteed by a credit card or one night's deposit.

Inspection of Documents

Meeting materials, including a preliminary agenda, will be mailed by EPA approximately one week prior to the meeting. The mailing list has been compiled from previous public meeting attendees and by requests. Anyone wishing to be added to the mailing list for meeting materials may contact Wendy Smith at the address or phone number above.

Dated: January 19, 1993.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 93-2270 Filed 1-29-93; 8:45 am]

BILLING CODE 6560-01-M

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40 CFR Part 372

[OPPTS-400066; FRL-4060-8]

Sulfuric Acid and Hydrochloric Acid; Toxic Chemical Release Reporting; Community Right-To-Know; Reopening of Comment Period; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment period; notice of public meeting.

SUMMARY: This notice requests comments on issues raised by public commenters on a recent proposal to modify the listing for sulfuric acid on the list of toxic chemicals that are subject to reporting under section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), and section 6607 of the Pollution Prevention Act of 1990 (PPA). The original comment period for the sulfuric acid proposal ended September 24, 1991; the comment period for the sulfuric acid proposal is reopened for the limited purpose of requesting comment on these issues. EPA intends to reply to these comments when it makes its final determination in the sulfuric acid rulemaking as well in its determination on rulemaking on hydrochloric acid that raises similar issues. EPA will hold a 1-day public meeting to discuss issues raised by public commenters on the sulfuric acid proposal.

DATES: Written comments must be received by April 2, 1993. The public meeting will take place on March 3, 1993, at 1 p.m. and adjourn by 4 p.m.

ADDRESSES: Written comments must be submitted in triplicate to: OPPT Docket Clerk, TSCA Public Docket Office (TS-793), Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPPTS-400066. The public meeting will be held at the: Environmental Protection Agency, Auditorium, Education Center, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free number: 800-535-0202, Toll number: 703-920-9877, TDD Toll free number: 800-553-7672, TDD Toll number: 703-486-3323.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Provisions

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) requires certain facilities that manufacture, process or otherwise use toxic chemicals to submit annual reports on releases of these chemical to the environment on-site and transfers of the chemicals in wastes to off-site locations. Beginning with the 1991 reporting year, these facilities also must report source reduction and recycling data under section 6607 of the Pollution Prevention Act (PPA).

EPCRA section 313 establishes an initial list of toxic chemicals. EPA may add a chemical to or delete a chemical from the list in accordance with criteria set out in EPCRA section 313(d)(2). Any person may petition EPA to add or delete a chemical, on the basis of the following criteria set out in EPCRA section 313(d)(2):

> A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:

> (A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring releases.
>
> (B) The chemical is known to cause or can reasonably be anticipated to cause in humans—
>
> (i) Cancer or teratogenic effects, or
> (ii) Serious or irreversible—
> (I) Reproductive dysfunction,
> (II) Neurological disorders,
> (III) Heritable genetic mutations, or
> (IV) Other chronic health effects.
>
> (C) The chemical is known to cause or can reasonably be anticipated to cause, because of—
>
> (i) Its toxicity,
> (ii) Its toxicity and persistence in the environment, or
> (iii) Its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgement of the Administrator, to warrant reporting under this section.

Within 180 days after receipt of a petition, EPA must either initiate a rulemaking to add or delete the chemical, or publish an explanation of why the petition has been denied.

B. Background

On December 24, 1990, EPA received a petition from the American Cyanamid Company to modify the listing of sulfuric acid by requiring reporting only for sulfuric acid aerosols and deleting liquid forms of sulfuric acid from the EPCRA section 313 list. EPA responded to the petition by proposing to delete non-aerosol forms of sulfuric acid (July 26, 1991, 56 FR 34156). Similarly, on September 11, 1991, EPA received a petition from BASF Corporation, E. I. du Pont de Nemours and Company, Monsanto, and Vulcan Materials Company to modify the listing of hydrochloric acid by requiring reporting only of aerosol forms of hydrochloric acid and deleting other forms. EPA is currently reviewing this petition.

II. Request for Comments

EPA is soliciting comments on a number of issues raised by commenters in the sulfuric acid rulemaking that also apply to hydrochloric acid. EPA intends to use the response to comments on these issues as a basis for its determination in both rulemakings. EPA believes this approach is appropriate for the following reasons: (1) Both chemicals are strong mineral acids; (2) both chemicals can pose acute human health hazards and environmental hazards that are directly related to the pH of the solution; (3) both are subject to regulation under a variety of environmental statutes primarily through pH limits; and (4) both chemicals are subject to accidental release reporting requirements under provisions other than EPCRA section 313.

EPA requests that commenters provide concise position statements (with supporting examples and data as appropriate) that focus on the issues outlined below. EPA acknowledges that its determination on these issues could affect future decisions on other chemicals and petitions. However, the Agency believes that the comments will be most helpful if directed primarily to the sulfuric acid and hydrochloric acid petitions.

The comment period for the sulfuric acid proposal is reopened for the limited purpose of receiving comment on the issues outlined below. Comments relating to other issues will not be considered. Commenters who have already provided detailed comments on the sulfuric acid proposal on any of these issues need not repeat their comments for purposes of this document.

A. Regulatory Controls Under Other Statutes

To what extent should EPA rely on existing regulatory controls under other environmental statutes to support a determination that continuous or frequently recurring releases of sulfuric acid and hydrochloric acid are unlikely to cause adverse acute human health effects or significant adverse environmental effects?

In support of its sulfuric acid proposal, EPA cited requirements under a number of environmental statutes that impose controls on sulfuric acid releases. These include Clean Water Act (CWA) pH restrictions, controls on underground injection under the Safe Drinking Water Act (SDWA) and Resource Conservation and Recovery Act (RCRA), and RCRA requirements governing management of aqueous wastes with a pH of less than or equal to 2 (July 26, 1991, 56 FR 34157). Some commenters point to specific examples of incomplete statutory coverage and documented non-compliance. They argue that EPA cannot rely on these controls to support its determination. For example, commenters assert that CWA restrictions do not apply to all industries and facilities and that there are known compliance problems. They also maintain that adverse environmental effects could result from management of sulfuric acid wastes with a pH greater than 2, which are not RCRA hazardous wastes. Similarly, commenters contend that human exposures to sulfuric acid (e.g., Publicly Owned Treatment Works (POTW) workers that are exposed to sulfuric acid aerosols) could result in significant acute human health effects. Anyone submitting comments on this issue should provide examples and supporting data, if appropriate.

B. Sufficiency of Evidence

If EPA were to reconsider its conclusion regarding the likelihood of adverse acute human health and environmental effects from continuous or frequently recurring releases of non-aerosol forms of sulfuric acid, what type of evidence should be required under EPCRA sections 313(d)(2)(A) and (C) to support a determination that this chemical meets the listing criteria? The questions that follow directly address sulfuric acid because the discussion below is based on information presented by commenters on the sulfuric acid proposal. These questions may apply to hydrochloric acid as well to the extent that commenters provide comparable information with respect to hydrochloric acid.

1. *Adverse acute human health effects.* Sulfuric acid is acutely toxic. However, EPA's proposal concluded that EPCRA section 313(d)(2)(A) is not met because it is unlikely that persons will be exposed to acutely toxic concentration levels beyond facility boundaries as a result of continuous or frequently recurring releases (July 26, 1991, 56 FR 34158). In response, some commenters argue that exposures to workers, including POTW employees and emergency response personnel that respond to transportation incidents, should be considered in the determination. Is this type of evidence sufficient to meet the criteria under EPCRA section 313(d)(2)(A)?

2. *Adverse environmental effects.* The sulfuric acid proposal concluded that non-aerosol forms of sulfuric acid do not meet the environmental listing criteria because they cannot reasonably be anticipated to cause a significant adverse effect on the environment of sufficient seriousness to warrant reporting. Some commenters note that sulfuric acid can leach metals from soil into surface and ground waters and can have indirect toxic effects on plants due to soil acidification. They also contend that non-compliance with CWA pH restrictions can be lethal to fresh water organisms. Other commenters provide examples of acid disposal methods that could present an environmental hazard (e.g., disposal in pits). Is this type of information sufficient to support listing? If not, what additional evidence would be sufficient? (Comments regarding

damage from accidental releases are discussed below.) Should EPCRA reporting be used to deal with non-compliance issues?

C. Accidental Releases

Should accidental releases of non-aerosol forms of sulfuric acid and hydrochloric acid be considered in the determination of whether these chemicals meet the environmental listing criteria under EPCRA section 313(d)(2)(C)?

In its sulfuric acid proposal, EPA determined that non-aerosol forms of sulfuric acid do not meet the environmental listing criteria, based on a finding that "there is no evidence that non-aerosol sulfuric acid releases cause adverse effects to . . . the environment under ordinary exposure scenarios" (July 26, 1991, 56 FR 34158). Some commenters on the sulfuric acid proposal agree with this finding, asserting that the purpose of EPCRA section 313 is to establish an inventory of routine chemical emissions. Others take the position that this determination does not meet the requirements of the statute. In particular, one commenter argues that EPCRA section 313(d)(2)(C) requires EPA to consider the significance of "adverse environmental impacts that occur accidentally during normal business operations (such as excursions from pH limits in permits), in addition to the environmental impacts that occur during routine operations." To support this interpretation, the commenter points out that although EPCRA section 313(d)(2)(A) contains the limiting phrase "continuous, or frequently recurring, releases," EPCRA section 313(d)(2)(C) does not.

EPA solicits comment on the following issues: Does EPCRA section 313(d)(2)(C) require EPA to take accidental releases into account? If so, what approach to considering accidental releases would be most consistent with the statutory purpose and provide the most useful information to the public? For example, what types of releases should be considered (e.g., all non-routine releases including catastrophic releases or only accidents that occur during normal business operations)? Is the evidence relating to environmental damage from accidental releases of sulfuric acid and hydrochloric acid sufficient to conclude that the environmental criteria are met (i.e., that the effects are of sufficient seriousness to warrant reporting for these chemicals)?

D. Release Reporting Under Other Statutes

What is the relevance of release reporting under other statutory provisions to the issue of whether non-aerosol forms of hydrochloric acid and sulfuric acid meet the listing criteria? EPA's sulfuric acid proposal indicated that if the sulfuric acid listing were modified to include only aerosol forms, no meaningful information would be lost. Reporting would still be required under section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and EPCRA section 304 for releases of non-aerosol forms of these acids equaling or exceeding the reportable quantity. Although many commenters agree with this conclusion, others comment that source reduction information required by the PPA would be lost; that accidental releases of less than the reportable quantity would not be reported under CERCLA or EPCRA; and that information reported under other statutory provisions is not as accessible as information reported under EPCRA section 313. EPA asks for comment on whether and how EPA should factor considerations relating to reporting under other statutes into its determination on sulfuric acid and hydrochloric acid under EPCRA section 313(d)(2). EPA specifically requests comments, with rationale, on whether and how the purposes and mandates of the PPA should be factored into the determination under EPCRA section 313(d)(2).

E. Listing Options

EPA is aware that the data collected on releases and transfers of the non-aerosol forms of the mineral acids do not accurately represent the hazards that may result from non-routine releases. If EPA were to determine that modifying the listings for sulfuric acid and hydrochloric acid is not justified, what other options that would provide better information to the public should EPA consider? For example, as the toxicity and corrosivity of mineral acids are due to acidity, which is measured by pH, should EPA consider creating a pH category that would capture information on acidic releases? Should EPA define such a category so that all acidic releases are reportable or should this category be limited to only acidic releases from mineral acids? Rather than modify the sulfuric acid and hydrochloric acid listings, should EPA propose the addition of form elements that capture information on pH and duration of release? The creation of a pH category or the addition of form elements may also apply to other mineral acids (i.e., phosphoric acid and nitric acid) listed under EPCRA section 313. EPA requests that commenters address the applicability of these options to all mineral acids listed under EPCRA section 313.

III. Public Meeting

EPA will hold a 1–day public meeting to discuss the issues presented above. The tentative agenda for this public meeting will include a discussion of the issues presented above in the order given, and a presentation of analyses conducted on releases to surface waters of sulfuric acid and hydrochloric acid reported to the Emergency Response Notification System.

Scheduling of oral statements will be on a first come first served basis by calling the number listed under **FOR FURTHER INFORMATION CONTACT**. All statements will be made part of the public record and will be considered in the development of the final rule on the EPCRA section 313 petition to delete non-aerosol forms of sulfuric acid and in the review of the EPCRA section 313 petition to delete non-aerosol forms of hydrochloric acid.

List of Subjects in 40 CFR Part 372

Chemicals, Community-right-to-know, Environmental protection, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: January 12, 1993.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–1502 Filed 1–29–93; 8:45 am]

BILLING CODE [illegible]

LEGAL SERVICES CORPORATION

45 CFR Part 1607

Governing Bodies

AGENCY: Legal Services Corporation.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws proposed amendments to 45 CFR part 1607, which prescribes requirements for governing bodies of the Legal Services Corporation's ("LSC" or "Corporation") recipients. This withdrawal implements congressional intent that the Corporation not impose the proposed rule's requirements on recipient governing bodies.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336–8810.

SUPPLEMENTARY INFORMATION: On October 19, 1987, LSC published proposed amendments to 45 CFR part 1607, which sets out requirements for the governing bodies of its recipients. See 52 FR 38900 (Oct. 19, 1987). The Operations and Regulations Committee ("Committee") of the Corporation's Board of Directors ("Board") held hearings on the proposed changes on November 20, 1987, and on January 28–29, 1988, and the Board held hearings on February 26, 1988.

While the revisions were still under consideration, Congress included a proviso in LSC's FY 1988 appropriations act, Public Law 100–202, 101 Stat. 1329–33 (1987), which prohibited the Corporation from imposing requirements on recipient governing bodies that are additional to, or more restrictive than, the provisions of section 1007(c) of the LSC Act. Although the LSC Board voted to accept several of the proposed revisions, the revisions were never published as final, in part due to the fact that each subsequent appropriations act has included the restrictive proviso.

Due to the consistent use of this restriction in LSC's appropriations acts, LSC gave notice of and requested public comment on its consideration of whether to withdraw the proposed amendments to the rule. 57 FR 33697 (July 30, 1992). LSC received and reviewed eight written public comments. In addition, public comments were heard variously by the Committee and the Board in Minneapolis, Minnesota, on September 24, 1992; Washington, DC, on October 19, 1992; and Lake Buena Vista, Florida, on December 7, 1992. Generally, the comments favored the proposal to withdraw, although most stated that the proposed withdrawal was ill-timed due to Congress' then pending consideration of LSC's reauthorization legislation. On December 7, 1992, the Board voted to withdraw the proposed amendments. Therefore, for the foregoing reasons, the Corporation is withdrawing the proposed amendments to the rule as published at 52 FR 38900 (Oct. 19, 1987).

Dated: January 27, 1993.

Victor M. Fortuno,

General Counsel.

[FR Doc. 93–2287 Filed 1–29–93; 8:45 am]

BILLING CODE 7050-01-M

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45 CFR Part 1609

Fee-Generating Cases

AGENCY: Legal Services Corporation.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws proposed amendments to 45 CFR part 1609, which governs acceptance of fee-generating cases by the Legal Services Corporation's ("LSC") recipients, to reflect congressional intent that LSC grantees not be subject to any amendments to part 1609 that were not in operational effect on October 1, 1988.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, (202) 336–8810.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published at 52 FR 50982 (Dec. 19, 1988) proposed amendments to 45 CFR part 1609, LSC's regulation governing LSC recipients' acceptance of fee-generating cases. The Committee on Operations and Regulations ("Committee") of LSC's Board of Directors ("Board") heard public comment on the proposed regulation on January 20, 1989, at its meeting in Raleigh, North Carolina. At that time, the Committee voted to recommend to the Board a revised version of part 1609. On January 27, 1989, at its meeting in Washington, DC, the Board considered the Committee recommendation but deferred action until the next Board meeting, which was held on March 3, 1989, in Atlanta, Georgia. At the March meeting, the Board voted to accept the Committee recommendation with amendments.

The revisions, however, were never published as final, largely due to a congressional prohibition against their implementation that first appeared in LSC's FY 1990 appropriations act, Public Law 101–162, 103 Stat. 1036–37 (1989). This prohibition, which has been retained in all subsequent appropriations acts covering LSC, provides that LSC grants and contracts shall not be subject to any amendments to regulations relating to fee-generating cases (45 CFR part 1609) not in operational effect on October 1, 1988. See Public Law 102–140, 105 Stat. 824 (1991), incorporating, Public Law 101–515, 104 Stat. 2153 (1990).

Due to the consistent use of this restriction in LSC's appropriations acts since FY 1990, LSC gave notice of and requested public comment on its consideration of whether to withdraw the proposed amendments to the rule. 57 FR 33698 (July 30, 1992). LSC received and reviewed eight written public comments. In addition, public comments were heard variously by the Committee and the Board in Minneapolis, Minnesota, on September 24, 1992; Washington, DC, on October 19, 1992; and Lake Buena Vista, Florida, on December 7, 1992. Generally, the comments favored the proposal to withdraw, although most stated that the proposed withdrawal was ill-timed due to Congress' then pending consideration of LSC's reauthorization legislation. On December 7, 1992, the Board voted to withdraw the proposed amendments in order to conform to Congress' intent that LSC not impose the proposed restrictions on LSC recipients. Therefore, for the foregoing reasons, LSC is withdrawing the proposed amendments to the rule as published at 52 FR 50982 (Dec. 19, 1988).

Dated: January 27, 1993.

Victor M. Fortuno,

General Counsel.

[FR Doc. 93–2286 Filed 1–29–93; 8:45 am]

BILLING CODE 7050-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 18)]

Railroad Consolidation Procedures: Class Exemption for Transactions Within a Corporate Family

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; discontinuance of proceeding.

SUMMARY: This proceeding was instituted to consider making the rail carrier corporate family class exemption applicable to all intrafamily transactions proposed under 49 U.S.C. 11343 that would not result in adverse changes in service levels. After comments were filed, the Commission considered the proposed modification but failed to obtain a majority vote either in support of, or in opposition to, the proposal. Accordingly, for lack of majority, the proceeding is being discontinued.

DATES: This proceeding is discontinued on February 1, 1993. The discontinuance of this proceeding does not constitute a substantive rule. It simply preserves the status quo, and therefore it does not require a 30-day delay in the effective date.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660, [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The 49 CFR 1180.2(d)(3) corporate family class exemption exempts from the prior approval requirements of 49 U.S.C. 11343 *et seq.* "[t]ransactions within a corporate family that do not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family."

In a decision served August 6, 1992, 57 FR 34891 (August 7, 1992), we proposed to modify this class exemption to exempt "[t]ransactions within a corporate family that do not result in adverse changes in service levels."

Comments with respect to this proposal have been filed by the Association of American Railroads and its member railroads, The American Short Line Railroad Association, and Patrick W. Simmons, for and on behalf of the Illinois Legislative Board of the United Transportation Union.

We have considered the proposal, but have been unable to reach a majority decision with respect to the disposition thereof. Accordingly, for lack of a majority, we are discontinuing the proceeding.

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant impact on a substantial number of small entities.

It is ordered:

This proceeding is discontinued.

Decided: January 19, 1993.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons and Phillips. Chairman Philbin and Commissioner Phillips voted to modify the corporate family class exemption as proposed in the decision served August 6, 1992. Vice Chairman McDonald and Commissioner Simmons voted to reject the proposed modification.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2267 Filed 1-29-93; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 58, No. 19
Monday, February 1, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 628]

Resolution and Order Approving the Application of the City of Palmdale, CA, for a Foreign-Trade Zone in Palmdale (Los Angeles-Long Beach Customs Port of Entry Area)

Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Palmdale, California, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on November 6, 1991, requesting a grant of authority to establish a general-purpose foreign-trade zone at sites in the City of Palmdale, California, adjacent to the Los Angeles-Long Beach Customs port of entry, the Board, finding that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The City of Palmdale, California (the Grantee), has made application (filed 11–6–91, FTZ Docket 85–91, 57 FR 2250, 1/21/92) to the Board, requesting the establishment of a foreign-trade zone at sites in Palmdale, adjacent to the Los Angeles-Long Beach Customs port of entry;

Whereas, Notice of said application has been given in the **Federal Register** and public comment has been invited; and

Whereas, The Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, The Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 191, at the sites described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 15th day of January 1993.

Foreign-Trade Zones Board.

Barbara H. Franklin,
Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93–2152 Filed 1–29–93; 8:45 am]

BILLING CODE 3510–DS–M

[Docket (A28c3)–2–92]

Foreign-Trade Subzone 29C—Louisville, KY; General Electric Co. Compressors for Refrigerators and Room Air Conditioners

Correction

In notice document 93–547 beginning on page 3532 in the issue of Monday, January 11, 1993, make the following correction:

On page 3532, in the third paragraph of the notice, the second sentence and the text preceding the parenthetical phrase in the third sentence should read:

. . . While compressors are among the items sourced abroad, they were not included in that list. GE has now notified the Board that it wishes to admit the compressors . . .

Dated: January 21, 1993.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 93–2180 Filed 1–29–93; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 616]

Resolution and Order Approving the Application of the Kent, Ottawa, Muskegon Foreign Trade Zone Authority for a Foreign-Trade Zone; Counties of Kent, Ottawa and Muskegon, MI (Grand Rapids Customs Port of Entry Area)

Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Kent, Ottawa, Muskegon Foreign Trade Zone Authority, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on September 27, 1991, and amended on September 17, 1992 (to delete one proposed site), requesting a grant of authority to establish a general-purpose foreign-trade zone at sites in the Counties of Kent, Ottawa and Muskegon, Michigan, adjacent to the Grand Rapids Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application, as amended.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue an appropriate Board Order.

Grant of Authority

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The Kent, Ottawa, Muskegon Foreign Trade Zone Authority (the Grantee), an intergovernmental public corporation, has made application (filed 9–27–91, FTZ Docket 57–91, 56 FR 51372, 10–11–91) to the Board, requesting the establishment of a foreign-trade zone at sites in the Counties of Kent, Ottawa and Muskegon, Michigan, adjacent to the Grand Rapids Customs port of entry;

Whereas, The applicant amended the application on September 17, 1992, to remove proposed Site 3 from the request;

Whereas, Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the amended application is in the public interest;

Now, therefore, The Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 189, at the sites described in the application, as amended, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 15th day of January 1993.

Foreign-Trade Zones Board.

Barbara H. Franklin,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–2154 Filed 1–29–93; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 622]

Resolution and Order Approving the Application of the City and County of Butte-Silver Bow for a Foreign Trade Zone in Butte-Silver Bow, MT

Resolution and Order

Pursuant to the authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City and County of Butte-Silver Bow, Montana, filed with the Foreign-Trade Zones (FTZ) Board (the Board) on February 27, 1992, requesting a grant of authority for a general-purpose foreign-trade zone in Butte-Silver Bow, Montana, within the Butte Customs port of entry, the Board, finding that the requirements of the Act and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, By an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, The City and County of Butte-Silver Bow (the Grantee), a Montana public corporation, has made application (filed 2–27–92, FTZ Docket 5–92, 57 FR 8293, 3–9–92) to the Board, requesting the establishment of a foreign-trade zone in Butte-Silver Bow, Montana, within the Butte Customs port of entry;

Whereas, Notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, The Board has found that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, The Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 190, at the site described in the application, subject to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 15th day of January 1993.

Foreign-Trade Zones Board.

Barbara H. Franklin,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–2153 Filed 1–29–93; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–122–601]

Brass Sheet and Strip From Canada; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of affirmative preliminary determination of circumvention of antidumping duty order.

SUMMARY: On October 2, 1991, the Department of Commerce received an application for a circumvention inquiry of the antidumping duty order on brass sheet and strip from Canada. Pursuant to that application, the Department of Commerce initiated a circumvention inquiry on October 18, 1991, which was published in the **Federal Register** on October 25, 1991. The circumvention inquiry covers the period September 1, 1990 through September 30, 1991.

We preliminarily determine that imports of brass plate from Canada used in the production of brass sheet and strip in the United States constitute circumvention of the antidumping duty order on brass sheet and strip from Canada within the meaning of section 781(a) of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: David Mason or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1987, the Department of Commerce (the Department) published in the **Federal Register** (52 FR 1217) the antidumping duty order on brass sheet and strip from Canada. On October 2, 1991, the petitioners in that investigation (Hussey Copper Ltd., The

Miller Company, Olin Corporation (Brass Group), Outokumpu American Brass, Revere Copper Products, the International Association of Machinists & Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), the Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC)) alleged that the antidumping duty order on brass sheet and strip from Canada was being circumvented and requested that the Department initiate an inquiry to investigate the matter.

The petitioners alleged that Wolverine Tube (Canada) Inc. (Wolverine), a producer of brass in Canada, and Great Lakes Metals Corporation (Great Lakes), a U.S. importer of brass, circumvented the antidumping duty order on brass sheet and strip by importing Canadian brass plate, a product not covered by the antidumping duty order, into the United States where it was rolled down into brass sheet and strip, which is included in the order.

The petitioners requested, in accordance with section 781 of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 353.29(e), that we conduct a circumvention inquiry. On October 16, 1991, pursuant to petitioners' application and in accordance with 19 CFR 353.29(e), the Department initiated a circumvention inquiry in this matter. A notice of initiation of circumvention inquiry of the antidumping duty order on certain brass sheet and strip from Canada was published in the **Federal Register** on October 25, 1991 (56 FR 55270).

On October 25, 1991, the Department issued an initial request for information to Wolverine and Great Lakes. The Department received Wolverine's and Great Lakes' timely responses in separate submissions on November 8, 1991. The Department issued circumvention questionnaires to Wolverine and Great Lakes on November 15, 1991. The Department received timely responses from both companies on December 16, 1991. The Department then requested additional information from both companies through supplemental questionnaires issued February 5, 1992. Wolverine responded to the supplemental questionnaire on February 14, 1992; Great Lakes responded to the supplemental questionnaire on February 19, 1992.

In addition, on February 28, and March 10, 1992, the Department requested additional clarifying information from Great Lakes and received responses on March 3 and March 18, 1992, respectively.

Scope of the Antidumping Duty Order

Imports covered by the antidumping duty order are shipments of brass sheet and strip, other than leaded brass and tin brass sheet and strip, from Canada. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this order.

The physical dimensions of the products covered by this order are brass sheet and strip of solid rectangular cross-section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thicknesses or gauge, regardless of width. Coiled, wound on reels (traverse wound), and cut-to-length products are included.

During the relevant period of this inquiry, such merchandise was classifiable under subheadings 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and for Customs purposes, our written description of the scope of this order remains dispositive.

Scope of the Circumvention Inquiry

Products subject to the circumvention inquiry are entries of brass plate, also known as copper-zinc base alloy plate, over .188 inches in gauge used in the production of brass sheet and strip covered by the antidumping duty order. The chemical composition of the products covered is currently defined in the Copper Development Association (C.D.A.) 200 series or the Unified Numbering System (U.N.S.) C20000 series. Products whose chemical composition is defined by other C.D.A. or U.N.S. series are not covered by this inquiry.

Our evaluation of the increase in imports of brass plate is based upon data from the period January 1985 through February 1992. The pattern of trade analysis is based upon data from the period November 1988 through September 1991. Our evaluation of the remaining circumvention criteria is based upon information for the period September 1, 1990 through September 30, 1991.

Nature of the Circumvention Inquiry

Section 781(a)(1) of the Tariff Act provides that if:

(1) Merchandise of the same class or kind as that covered by the existing antidumping or countervailing duty order is being sold in the United States;

(2) Such merchandise sold in the United States is completed or assembled in the United States from parts or components which were produced in the country with respect to which the order applies; and

(3) The difference between the value of the completed merchandise sold in the United States and the value of the imported parts or components from the country with respect to which the antidumping duty order applies is small,

the Department, after taking into consideration any advice which the U.S. International Trade Commission (ITC) provides, may include those parts or components within the scope of that antidumping duty order.

In determining whether to include parts or components within an order, section 781(a)(2) of the Tariff Act directs the Department to consider such other factors as (1) the pattern of trade, (2) whether the manufacturer or exporter of the parts or components is related to the entity that assembled or completed the merchandise sold in the United States, and (3) whether imports of the parts or components from the country with respect to which the antidumping duty order applies have increased after issuance of that order.

(1) Class or Kind of Merchandise

In this inquiry, the merchandise completed at Great Lakes' Euclid, Ohio, facility and sold in the United States is brass sheet and strip, the chemical composition of which is currently defined in the C.D.A. 200 series or the U.N.S. C20000 series. The physical dimensions of the products covered by this inquiry are within the range of 0.006 through 0.188 inches in thickness. Accordingly, the merchandise sold in the United States is the same class or kind of merchandise as that subject to the antidumping duty order on brass sheet and strip from Canada.

(2) Parts/Components Produced in the County to Which the Order Applies

It is undisputed that the parts or components were produced in the order country and imported into the United States. Brass plate of 260 alloy in thicknesses of more than 0.188 inches was produced by Wolverine in Canada and imported into the United States specifically for rerolling into 260-series brass sheet or strip at the Great Lakes facility in Euclid, Ohio.

(3) Difference in Value

We calculated the difference in value between the brass sheet and strip completed and sold in the United States and the value of the Canadian brass plate which was used in the production of that merchandise. In this case, we did not allocate portions of selling, general, and administrative expenses, or profit or loss incurred in the United States to the value of the Canadian brass plate due to the difficulties in obtaining an appropriate cost basis for these allocations.

(a) Value of Completed Merchandise

We used the selling price of the completed brass sheet and strip on a gauge-specific per pound basis to represent the value of the brass sheet and strip sold in the United States. U.S. inland freight was separately listed by Great Lakes and was not included in the selling price. It was therefore unnecessary to deduct U.S. inland freight to derive the ex-factory price of the completed brass sheet and strip.

(b) Value of Canadian Components

We used a weighted-average selling price of brass plate from Wolverine to Great Lakes to represent the value of Canadian brass plate during the period of inquiry. We included in our calculation of Canadian value all movement expenses that the respondents incurred on Canadian brass plate which were not included in the selling price of the brass plate.

In addition, we adjusted the weighted average price of plate to reflect the costs and quantities of recovered scrap.

(c) Value of U.S. Completion

To determine the value of the U.S. rerolling operation at Euclid, Ohio, we deducted the value of Canadian brass plate from the value of brass sheet and strip as sold in the United States. We then divided this by the brass sheet and strip to obtain difference-in-value percentage.

We preliminarily determine that the difference in value is approximately 15 percent of the value of the completed merchandise. (Since the precise figure is business proprietary, the stated percentage is within a range of plus or minus 10 percent.)

To determine whether 15 percent is "small" within the meaning of section 781(a) of the Tariff Act of 1930, as amended, we examined the operations performed by rerollers of brass, and in particular the operations of Great Lakes at its Euclid facility, relative to the major operations performed by the brass sheet and strip industry as a whole.

Based upon our examination of the industry, we determine that the cooper industry, which includes brass production, is generally segmented into two groups, producers and fabricators, depending on the level of distinction. Broadly speaking, producers conduct mining, milling, smelting, and refining operations, while fabricators, such as brass mills, wire mills, foundries, and powder plants, perform fabrication processes which include casting, melting, and some rerolling. However, a subgroup of fabricators, known as secondary mills, perform rerolling operations exclusively. Generally, secondary mills purchase brass and reroll the material to thinner gauges based upon customer-specific requirements.

In general, fabricators purchase cooper and zinc for melting, alloying, and casting a variety of products. Specifically, sheet, strip, plate, rod, bar, mechanical wire, tubing, forgings, extrusions, and castings are the end products of fabricators. The fabrication process includes such operations as hot rolling, cold rolling, extrusion, and drawing to convert the melted and cast feedstock into wrought mill products. (See The Metals Handbook, American Metals Society, Metals Park, Ohio, 1985, at page 7–19.) By contrast, secondary mills do not perform melting and casting operations. Instead, these mills merely reroll brass to thinner gauges or redraw tubing or mechanical wire to smaller dimensions. (See The Metals Handbook, at page 7–19.)

During the period of inquiry, Great Lakes did not perform any melting or casting operations, but instead performed rerolling operations exclusively. The company specifically performed six discrete rerolling processes at its facility in Euclid, making the facility a secondary mill by definition. The Department has no indication that these processes are different from those performed by other secondary mills when rerolling brass plate into brass sheet and strip. Thus, Great Lakes' rerolling operations, and the value added in those rerolling operations, are indicative of rerollers in general.

The specific processes performed by Great Lakes are characterized in the industry as cold breakdown rolling, annealing, pickling, finish cold rolling, slitting, and packaging. Some of these processes were repeated depending on the gauge or thickness requirements of the final product.

During the period of inquiry, Great Lakes first purchased brass plate from Wolverine and then performed a cold breakdown rolling process which reduced the gauge of the brass plate and hardened the material. Great Lakes used two installations, a two-stand unit and a four-stand unit, to perform the cold breakdown rolling process.

The second operation, known as annealing, is a heating process which recrystallized the hardened material for further cold rolling or as a finish softening operation. Next, the company removed surface debris through a chemical or acid cleaning process known as pickling. Then, to reduce the thickness further, the cold breakdown rolling and annealing processes were repeated. In some cases, the annealing process may have been performed a third time depending on the gauge requirements.

In its fourth step, Great Lakes rolled the material from intermediate to finish gauge in a process referred to as finish cold rolling. For customer orders requiring full soft condition, Great Lakes performed another annealing process following the final cold rolling operation. As a final stage before packaging, brass strip was cut to a specific width or slit in accordance with customer specifications. Only one or two slitting passes per coil were required. Lastly, the coil was banded, palletized, or wrapped for shipment as specified by the customer.

The rerolling operations required to make brass plate into brass sheet, while significant in themselves, are of minor value when compared with the production and brass fabrication operations performed by producers and fabricators in the industry. Producers mine, mill, smelt, and refine copper through a series of labor- and capital-intensive operations. Moreover, brass mills, through the melting and casting operations, add significantly to the production process. By contrast, Great Lakes' operations indicate that rerollers of brass provide limited value to the final product relative to the production and fabrication processes. Accordingly, we preliminarily determine that for this industry 15 percent is "small" within the meaning of section 781(a) of the Tariff Act of 1930.

(4) Pattern of Trade

To evaluate the pattern of trade factors in this case, we examined the timing and quantities of brass plate imports from Wolverine, attempted to compare the activities of Wolverine and Great Lakes with those of other U.S. fabricators and foreign brass plate manufacturers, and examined Great Lakes' channel of trade for rerolled brass sheet and strip.

Wolverine entered the brass sheet and strip business in November 1988 with its purchase of the assets of Noranda Metal Industries (Noranda). Prior to its purchase of such assets, Wolverine neither manufactured brass plate, or sheet and strip, nor exported those products to the United States. Therefore, we have no basis upon which to compare Wolverine's activities prior to the imposition of the antidumping order to its activities subsequent to the order. Further, for the period prior to its purchase of Noranda's assets, Wolverine is unable to provide Noranda's data on the manufacture and export of brass plate, and sheet and strip. However, Wolverine stated in its February 14, 1992, response that it made shipments of brass sheet and strip to the United States from November 1, 1988 through May 1989, but made no shipments of brass sheet and strip between June 1989 and September 1991 (the end of the inquiry period). Wolverine also stated, in its December 16, 1991, response, that it made no sales of brass plate to Great Lakes prior to the period of inquiry, which began in September 1, 1990.

Great Lakes was founded in 1990, more than three years after the issuance of the antidumping order. Thus, there is no historical experience with which to compare Great Lakes' activities during the period of inquiry.

Trade data indicate that brass plate has been imported into the United States throughout the period prior to the original investigation (1985–87), and after the order was issued (1987-present). Brass plate was sourced from all countries to which brass sheet and strip antidumping orders pertained. But we are unable to discern whether the activities engaged in by Wolverine and Great Lakes are similar to the activities in which other U.S. fabricators and foreign brass plate manufacturers have engaged throughout the period 1985 through the first quarter of 1992, that is, both before and after the antidumping investigation and order. The anti-circumvention petition notes that "virtually all C.D.A. 200-series brass plate is sold by mills to rerollers for further fabrication into sheet and strip or foil." (Anti-circumvention petition at 7.) However, we do not know if the majority of this plate was rerolled into sheet and strip, as was done by Great Lakes, or if it was rerolled, with greater value added, into foil.

We note that the channel of trade for brass sheet and strip sold in the United States by Great Lakes resembles that of brass sheet and strip sold by Wolverine. In general, however, Great Lakes did not inherit Wolverine's customers. In short, the pattern of trade in this case in inconclusive with respect to whether circumvention might have been occurring.

(5) Relationship

Generally, we consider circumvention to be more likely when the manufacturer/exporter of the parts or components is related to the party completing or assembling merchandise in the United States using the imported parts or components. Our inquiry indicates that the relationship between Wolverine, the manufacturer and exporter of Canadian brass plate, and Great Lakes, the entity which sold completed sheet and strip in the United States, was limited to a contract for the purchase of brass plate. Therefore, in this inquiry, no purchases of Canadian brass plate occurred between related parties within the meaning of section 773(e)(4) of the Tariff Act.

(6) Increase in Imports

It is clear that a substantial increase in imports of brass plate into the United States occurred several years after the issuance of the antidumping duty order on brass sheet and strip from Canada. To measure the increase in imports, we examined U.S. import data for imports of brass plate from Canada to the United States from January 1985 through February 1992. During the 1985–1990 period, annual brass plate imports from Canada ranged from 1,435 pounds to 360,831 pounds, with 239,662 pounds imported during 1990. In 1991, Canadian brass plate imports jumped ten-fold from 1990 levels. See November 30, 1992, analysis memorandum. Accordingly, this factor indicates that circumvention activities may have occurred during the period of inquiry.

Affirmative Preliminary Determination of Circumvention

After consideration of the factors discussed above, we preliminarily determine that circumvention of the antidumping duty order on brass sheet and strip from Canada has occurred within the meaning of section 781(a) of the Tariff Act. We base this determination on the following. First, the items produced at Great Lakes' facility and sold in the United States were of the class or kind of merchandise covered by the order, and are made of parts and components from Canada. Second, the difference in value between the brass sheet and strip sold in the United States and the brass plate imported into the United States was small. And finally, imports of Canadian brass plate increased 10-fold during the period of inquiry.

Suspension of Liquidation

In accordance with section 773(d) of the Tariff Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of Canadian brass plate, with the exception of brass plate manufactured by Ratcliffs/Severn Limited since the antidumping duty order on brass sheet and strip from Canada was revoked, in part, with respect to Ratcliffs/Severn (see 56 FR 57317). The merchandise subject to suspension of liquidation is brass plate, also known as copper-zinc base alloy plate, over .188 inches in gauge, as defined in the "Scope of the Circumvention Inquiry" section of this notice, used in the production of brass sheet and strip, as defined in the "Scope of the Antidumping Duty Order" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond in the amount of 21.32 percent. This suspension of liquidation will remain in effect until further notice.

Requirement of End-use Certification

Considered within the scope of the antidumping duty order on brass sheet and strip are all imports of brass plate, as defined in the "Scope of the Inquiry" section of this notice, unless (1) manufactured by Ratcliffs/Severn Limited, or (2) accompanied by an end-use certificate stating that such brass plate will not be used in the production of brass sheet and strip, as defined in the "Scope of the Antidumping Duty Order" section of this notice.

Notification of the International Trade Commission

The Department, consistent with section 781(e) of the Tariff Act, will notify the ITC of this preliminary determination to include the merchandise subject to this inquiry within the antidumping duty order on brass sheet and strip from Canada. Pursuant to section 781(e) of the Tariff Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, the ITC may provide written advice to the Department. In such a case, the ITC will have 60 days to provide written advice to the Department.

Public Comment

Interested parties may request disclosure within 5 days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted not later than February 26, 1993. Rebuttal briefs and rebuttals to comments, limited to issues raised in those briefs or comments, may be filed not later than March 5, 1993. Any hearing, if requested, will be held on March 26, 1993. The Department will publish the final determination with respect to the circumvention inquiry, including the results of its analysis of any written comments.

This preliminary affirmative circumvention determination is in accordance with section 781(a) of the Tariff Act (19 U.S.C. 1677j) and 19 CFR 353.29.

Dated: January 15, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–2296 Filed 1–29–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–822]

Postponement of Preliminary Determination: Certain Helical Spring Lock Washers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: William H. Crow II, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0116.

Postponement

Pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 353.15(b), we determine that this investigation is "extraordinarily complicated," because of the complexity of the issues surrounding respondent selection, market-oriented industry status, the possible use of separate rates for unique exporters, and the difficulties in obtaining publicly available published information for the purpose of establishing the foreign market value of the subject merchandise.

We are also required by the Act to affirmatively determine whether parties are cooperating. Regarding this issue, we have received questionnaire responses from Hangzhou Spring Washer Factory (Hangzhou), a major producer of the subject merchandise, and from the Embassy of the People's Republic of China, representing all producers/exporters other than Hangzhou.

For the reasons cited above, we determine that this investigation is extraordinarily complicated in accordance with section 733(c)(1)(B)(i)(II) of the Act, that additional time is necessary to make this preliminary determination and that, for the purposes of extending the preliminary determination, responding parties have cooperated. The statutory deadline for issuing the preliminary determination is no later than April 26, 1993.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: January 26, 1993.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2294 Filed 1–29–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–046]

Polychloroprene Rubber From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce has determined not to revoke the antidumping finding on polychloroprene rubber from Japan because it continues to be of interest to an interested party.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 58180) its intent to revoke the antidumping finding on polychloroprene rubber from Japan (38 FR 18382, July 10, 1973).

Scope of the Finding

Imports covered by the finding are shipments of polychlorprene rubber, currently classifiable under the Harmonized Tariff Schedule item numbers 4002.41.00 and 4002.49.00.

Determination Not To Revoke

The Department may revoke a finding if the Secretary of Commerce concludes that the finding is no longer of interest to interested parties. We had not received a request for an administrative review of this finding for the last four consecutive annual anniversary months and, therefore, published a notice of intent to revoke pursuant to 19 CFR 353.25(d)(4).

On December 10, 1992, the E.I. Du Pont de Nemours & Company, Inc., the petitioner, objected in writing to our intent to revoke the finding. We received no further comments.

Based on the objection, the Department has concluded that the finding continues to be of interest to an interested party. Therefore, we no longer intend to revoke the antidumping finding on polychloroprene rubber from Japan.

Dated: January 19, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2295 Filed 1–29–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–809 and A–583–821]

Initiation of Antidumping Duty Investigations: Certain Stainless Steel Flanges From India and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Raphiel Hampton, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0176.

INITIATION OF INVESTIGATIONS:

The Petitions

On December 31, 1992, we received petitions filed in proper form by the Flowline Division of Markovitz Enterprises Inc., Gerlin Inc., Ideal Forging Corporation, and Maass Flange Corporation (petitioners). In accordance with 19 CFR 353.12, petitioners allege that certain stainless steel flanges from India and Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under section 771(9)(C) of the

Act, and because the petitions were filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Scope of Investigations

For purposes of these investigations, certain stainless steel flanges are flanges both finished and not-finished made in alloys such as 304, 304L, 316, and 316L. The scope includes 5 general types of flanges. They are Weld Neck, used to make butt-weld line connections, Threaded, used to make threaded line connections, Slip-On & Lap Joint, used to make stub end/butt-weld line connections, Socket Weld, used to fit pipe into machined recessions, and Blind, used to seal off lines. The sizes of the flanges covered in the scope range generally from one to six inches. However, all sizes of the above described merchandise are included within the scope. The flanges subject to these investigations are classifiable under subheading 7307.211.1000 and 7307.215.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price (USP) and Foreign Market Value (FMV)

Petitioners based USP for India on observed price quotes of flanges provided by Indian manufacturers to U.S. distributors. Petitioners made one adjustment to this price. They deducted the per piece ocean transportation costs required to deliver the good to a U.S. port. USP quotes for Taiwan were provided by Taiwanese manufacturers to (a) one of the petitioners and (b) a U.S. distributor. Again, petitioners made only one adjustment to USP. They deducted the per piece ocean transportation costs. For India, petitioner based foreign market value on price quotes from Indian distributors of the subject merchandise. The petitioners made one adjustment to these prices. They subtracted from the prices an estimate of the mark-up charged by Indian distributors in order to arrive at the price paid by the Indian distributor to the Indian manufacturer. Petitioners based this figure on estimates of U.S. distributors' mark-ups for the subject merchandise. FMV for Taiwan came from a market survey performed by a consultant in Taiwan, which based FMV on price quotes from a Taiwanese supplier. Based on petitioners' calculations, dumping margins range from 20% to 210% with respect to India and from 12% to 48% with respect to Taiwan. For purposes of this initiation, no adjustments were made to petitioners' calculations. If it becomes necessary at a later date to consider the petition as a source of best information available (BIA), we may review all of the bases for the petitioners' estimated dumping margins in determining BIA.

Initiation of Investigations

We have examined the petitions on flanges from India and Taiwan and have found that the petitions meet the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine where imports of flanges from India and Taiwan are being, or are likely to be, sold in the United States at less than fair value.

International Trade Commission (ITC) Notification

Section 732(d) of the Act requires us to notify the ITC of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by February 16, 1993, whether there is a reasonable indication that imports of flanges from India and Taiwan are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination will result in the investigation(s) being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c) of the Act and 19 CFR 353.13(b).

Dated: January 21, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2208 Filed 1–29–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–806]

Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On November 10, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain small business telephone systems (SBTS) and subassemblies thereof from Taiwan (57 FR 53469). The review covers one manufacturer/exporter, Tecom Co., Ltd. (Tecom) and the period December 1, 1990, through November 30, 1991. We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, the final results differ from the preliminary results of review.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 53469) the preliminary results of its administrative review of the antidumping duty order on small business telephone systems (SBTS) and subassemblies thereof from Taiwan (54 FR 50790, December 11, 1989). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act) and 19 CFR 353.22 (1992).

Scope of the Review

Imports covered by this review are shipments of certain small business telephone systems (SBTS) and subassemblies thereof, currently classifiable under the following Harmonized Tariff Schedule (HTS) item numbers: 8504.40.0004, 8504.40.0008, 8504.40.0010, 8504.40.0015, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.81.0010, 8517.81.0020, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8517.90.4000, and 8518.30.1000. The HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Certain SBTS and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are designed as follows:

(1) Telephone sets and consoles, consisting of proprietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: Answer all lines in the system, monitor the status of other phone sets, and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: Housing, hand set, cord (line or hand set), power supply, telephone set circuit cards, or console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: Connectors to accept circuit cards of modules and building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise is excluded from the scope of this order: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

The review covers one manufacturer/exporter of this merchandise to the United States, Tecom, and the period December 1, 1990, through November 30, 1991.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results as provided by § 353.22 of the Commerce Regulations. We received comments from the respondent, Tecom.

Comment 1: Tecom argues that the Department erroneously adjusted for differences in physical characteristics of the merchandise by adding to foreign market value (FMV) the difference between the variable cost of manufacture (direct materials, direct labor, and variable factory overhead) of the home market and U.S. merchandise. According to Tecom, the variable cost of manufacture (VCOM) of the home market merchandise exceeds that of the U.S. merchandise for all such or similar comparisons. As a result, Tecom states that the Department should adjust for differences in the physical characteristics of the merchandise by deducting from, not adding to, FMV the difference between the VCOM of the home market and U.S. merchandise.

Department's Position: We agree with Tecom and have subtracted from FMV the difference between the VCOM of the home market and U.S. merchandise.

Comment 2: Tecom contends that an upward adjustment to U.S. price for revenue earned based on a warranty contract should be allowed. Tecom states that all relevant information was provided in its April 20, 1992, submission to explain the warranty expense incurred on specific sales. It identified the customer which paid the service fee, the contractor which charged Tecom for this expense, the percentage of invoice price of each sale, and the purpose for which this service fee was paid.

Department's Position: We agree. In reviewing the submissions for the final results, we determined that Tecom provided sufficient information to show that the additional revenue in connection with a warranty contract was tied to individual U.S. sales transactions, and the Tecom sufficiently reported the expense related to this adjustment. Therefore, we made this adjustment for the final results. See 19 CFR 353.56 (1992).

Comment 3: Citing *American Permac, Inc. v. U.S.*, 703 F.Supp. 97, 101–102, (CIT, 1988), Tecom argues that the Department should make a level-of-trade adjustment to FMV, because Tecom sells only to original equipment manufacturers (OEMs) in the United States and only to dealers/distributors in Taiwan. According to Tecom, its prices to dealers/distributors differ from those to OEMs, because Tecom incurs certain expenses on dealers/distributor sales in the home market that it claims it would not incur on OEM sales in the home market. Specifically, Tecom asserts that technical service and warranty expenses, bad debt expenses, warehousing costs, and expenses associated with regional sales offices, are necessary for sales to dealers/distributors in the home market, but are not incurred on sales to OEMs in the United States. As evidence that Tecom would not incur these expenses on OEM sales in the home market if it were to sell to OEMs in the home market, Tecom cites the experience of other Taiwan SBTS producers, Tecom's cost experience with cordless telephones, and Tecom's experience with SBTS in "similar" markets. Based on these experiences, Tecom contends that the Department should deduct from FMV technical service and warranty expenses, bad debt expenses, warehousing costs, and expenses associated with regional sales offices incurred in selling to dealers/distributors in the form of a level-of-trade adjustment.

Department's Position: We disagree. Pursuant to 19 CFR 353.54, the Department will make an adjustment for differences in level of trade only if the respondent has established its claim to such an adjustment to the satisfaction of the Secretary. In order for Tecom to demonstrate eligibility for a level-of-trade adjustment, Tecom must show that, where all other factors are equal, differences in price between merchandise sold in the U.S. and the home market are due to level-of-trade differences, and not other differences in conditions present in two distinct geographical markets. See 19 CFR 353.58 (1992). In this instance, Tecom has not met this requirement, because it has not shown that it would not have incurred the expenses in question had it made sales to OEMs in the home market.

First, Tecom referred to other previously reviewed companies, Taisel (which sold SBTS to OEMs in Taiwan but is no longer in the SBTS business) and Sinoca (which considered selling SBTS to OEMs in Taiwan), to show costs associated with selling at both levels of trade in the home market. Taisel made broad statements offering general observations of selling expenses it incurred when it sold SBTS to OEMs in Taiwan. Sinoca also offered general observations listing selling expenses it would not expect to incur if it entered the SBTS market in Taiwan and sold SBTS to OEMs. However, neither Taisel nor Sinoca provided factual data to support its general observations. Further, we believe that it would be inappropriate to speculate regarding the expenses that one company might incur to sell its products based on the experiences of other companies that may have completely different business practices.

Tecom also referred to its cordless telephone business to show its experience with another product sold in the home market. In order to qualify for the level-of-trade adjustment, the data should be based on merchandise that is sufficiently similar to the merchandise under review. Although Tecom has stated that cordless telephones and SBTS are of the same general nature, there is no evidence on the record to substantiate its claim that the experience associated with cordless telephones is sufficiently similar to the experience associated with SBTS. There must also be some demonstration that the marketing and distribution channels for such a product are similar enough to be used to approximate the experience of the investigated merchandise. Tecom's submission contained many assertions that cordless telephones and SBTS had similar marketing and distribution channels, but no factual information was provided to substantiate this claim. Because we can not conclude that SBTS and cordless telephones are sufficiently similar products and because the information that Tecom provided does not clearly demonstrate that the marketing and distribution channels for the two products are of a similar nature, the Department can not conclude that these products are sufficiently comparable for purposes of quantifying expenses associated with selling SBTS at different levels of trade.

Finally, Tecom points to its experience in the Singapore and Hong Kong markets as an indication of the difference in cost associated with selling to OEMs rather than dealers/distributors in Taiwan. Tecom argues that "Hong Kong and Singapore basically have the same type of customers, product, and distribution network as Taiwan." A level-of-trade adjustment, however, must be based on home market experience. Experience in third-country markets is not evidence of what experience would be in the home market. See *Fundicao Tupy S.A.* v. *U.S.*, 678 F. Supp. 898 (CIT 1988); *aff'd.*, 859 F2d 915 (1988).

Tecom cites *American Permac, Inc.* v. *U.S.*, 703 F. Supp. 97, 101–102, (CIT, 1988) as the basis for its claim for a level-of-trade adjustment. However, in that case the German manufacturer, Boewe, was able to provide an accounting study that quantified expenses that Boewe would not have incurred if it had sold to distributors rather than end-users. Boewe was able to show that the level of trade affected price comparability and was able to quantify that difference. By contrast, Tecom has failed to demonstrate that sales to different levels of trade in the home market and the United States have adversely affected price comparability. Based on the aforementioned, Tecom has not provided sufficient evidence for the Department to make a level-of-trade adjustment.

Final Results of Review

As a result of this review, we determine the following dumping margin exists for the period December 1, 1990 through November 30, 1991:

Manufacturer/Exporter	Margin (percent)
Tecom	0.67

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as shown above; (2) for previously reviewed or investigated companies not listed above the cash deposit rate will continue to be the company specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 0.67 percent.

This rate represents the highest rate for any firm in this administrative review, other than those firms receiving rates based entirely on the best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 14, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–2297 Filed 1–29–93; 8:45 am]

BILLING CODE 3510-DS-M

[C–333–001]

Cotton Sheeting and Sateen From Peru; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru. Interested parties who object to this revocation must submit their comments in writing not later than February 28, 1993.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Anne D'Alauro, or

Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce ("the Department") published a countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than February 28, 1993, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), nor object to the Department's intent to revoke by February 28, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: January 26, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2298 Filed 1–29–93; 8:45 am]

BILLING CODE 3510-DS-M

[C–333–002]

Cotton Yarn From Peru; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on cotton yarn from Peru. Interested parties who object to this revocation must submit their comments in writing not later than February 28, 1993.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Particia W. Stroup, Anne D'Alauro, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0983 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1983, the Department of Commerce ("the Department") published a countervailing duty order on cotton yarn from Peru (48 FR 4508). The Department has not received a request to conduct an administrative review of this countervailing duty order for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than February 28, 1993, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

If interested parties neither request an administrative review (pursuant to the Department's notice of opportunity to request administrative review) nor object to the Department's intent to revoke by February 28, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(4)(i).

Dated: January 26, 1993.

Joseph A. Spetrini

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–2299 Filed 1–29–93; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Public Meeting on and Availability of Final Management Plan for the Hudson River National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of public meetings and availability of final management plan.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the New York State Department of Environmental Conservation have made available the Final Management Plan (FMP) prepared for the Hudson River National Estuarine Research Reserve (HRNERR). This FMP sets forth the program missions, goals and objectives of the HRNERR, and establishes policies that will protect the natural resources and ecological integrity of the HRNERR.

The Office of Ocean and Coastal Resource Management and New York State Department of Environmental Conservation will hold a public meeting at the following time and place: February 17, 1993, 7 p.m., New York Department of Environmental Conservation, Region 3 Office, 21 South Putt Corners Road, New Paltz, New York.

The views of interested persons and organizations on the adequacy of the FMP are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maxmum of five (5) minutes. The time allotment may be extended before the meeting when the number of speakers can be determined. The public comment period for the FMP will end on Monday, March 1, 1993.

FOR FURTHER INFORMATION CONTACT: R. Randall Schneider, (202) 606–4122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource

Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., suite 714, Washington, DC 20235. Copies of the final management plan are available upon request to the Sanctuaries and Reserves Division.

(Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Estuarine Sanctuaries)

Dated: January 26, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 93-2174 Filed 1-28-93; 8:45 am]

BILLING CODE 3510-08-M

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

DATES: The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on February 23, 1993.

PLACE: U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

STATUS: The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

MATTERS TO BE CONSIDERED: The agenda for the meeting is as follows:

(1) Finance
(2) Automation
(3) Strategic Planning
(4) Current Trademark Office Practice Issues
(5) International Trademark Law

CONTACT PERSON FOR MORE INFORMATION: For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231. Telephone: (703) 305-9464.

Dated: January 25, 1993.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93-2300 Filed 1-29-93; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1146, published on January 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 7, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1992 and extends through January 31, 1993.

Effective on January 26, 1993, you are directed to amend further the directive dated January 7, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
335	153,560 dozen.
645/646	236,494 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-2229 Filed 1-29-93; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Safety Standard for Walk-Behind Power Lawn Mowers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through January 31, 1996, of information collection requirements in the Safety Standard for Walk-Behind

Power Lawn Mowers (16 CFR part 1205). The standard is intended to eliminate or reduce risks of amputations, avulsions, lacerations, and other serious injuries which have resulted from the accidental contact of some part of an operator's body with the rotating blade of a power lawn mower.

The standard contains performance and labeling requirements for walk-behind power lawn mowers to address risks of blade-contact injuries. The standard also requires manufacturers and importers of mowers subject to its provisions to test mowers for compliance with the performance requirements of the standard and to maintain records of testing. Additionally, the standard requires manufacturers and importers to label each mower which is subject to the standard with certain information about its production.

The Commission uses the information compiled and maintained by manufacturers and importers of mowers to determine that these firms have complied with the standard. The Commission uses the production information required to appear on the label of each mower to facilitate corrective action in the event mowers which are subject to the standard fail to comply with its requirements in a manner which creates a substantial risk of injury to the public.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205.

Type of request: Extension of approval.

General description of respondents: Manufacturers and importers of mowers subject to the standard for walk-behind power lawn mowers.

Frequency of collection: Varies depending upon the number of individual mowers or production units of mowers manufactured or imported.

Estimated number of respondents: 75.

Estimated average number of hours per respondent: 390 per year.

Estimated number of hours for all respondents: 29,250 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Donald Arbuckle, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503; telephone (202) 395-7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504-0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: January 26, 1993

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-2304 Filed 1-29-93; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD-DOE System Safety Red Team Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The DoD-DOE System Safety Red Team Advisory Committee (Red Team) will meet in closed session on February 24–26, 1993, at Albuquerque, NM.

The mission of the Red Team is to perform technical evaluations of the safety of nuclear weapons in development and in the stockpile. At this meeting, the Red Team will receive classified briefings on the nuclear safety design basics, W–80 (Air Launch Cruise Missile/Advanced Cruise Missile (ALCM/ACM) and Tomahawk) military characteristics and stockpile to target sequence, and W–80 hardware and technology overviews.

In accordance with section 10(d) of the Federal Advisory Committee Act Public Law 92–463, as amended, (5 U.S.C. app. II, (1988)), it has been determined that this Red Team meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1988), and that accordingly this meeting will be closed to the public.

Dated: January 26, 1993.

Linda M. Bynum,

Alternate OSC Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–2266 Filed 1–29–93; 8:45 am]

BILLING CODE 3810–01–M

DoD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Monday, February 8, 1993.

ADDRESS: Meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. app. II section 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: January 26, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–2265 Filed 1–29–93; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 16 February 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011

Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: January 26, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–2255 Filed 1–29–93; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Record of Decision to Homeport and Construct Support Facilities for Two Fast Combat Support Ships at Naval Weapons Station Earle, Colts Neck, NJ

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to homeport and construct support facilities for two Fast Combat Support Ships (AOE–6 Class) at Naval Weapons Station (WPNSTA) Earle, Colts Neck, New Jersey. The two AOE–6 Class ships to be homeported at WPNSTA Earle will be temporarily homeported at the Naval Station (NAVSTA), Norfolk, Virginia, while the necessary berthing and shore facilities are being constructed at WPNSTA Earle. This action was identified as the preferred alternative in the Draft Environmental Impact Statement (DEIS) distributed to the public on July 31, 1992.

The U.S. Navy is acquiring a new class of auxiliary ships, designated the AOE–6 Class. Present plans call for these new ships to be delivered to the Navy over the next ten years. These AOE–6 Class ships will provide fuel, ammunition, and dry and refrigerated stores to operational fleet forces. At the present rate of ship funding and acquisition, two AOE–6 Class ships will require a homeport on the U.S. east coast. While ship construction proposals indicate that additional ships could be funded and built in the future, only two ships are currently proposed for homeporting on the U.S. east coast.

To identify a homeport for AOE–6 Class ships, a program for identifying the most practicable east coast locations for homeporting was implemented. This program evaluated twelve military installations along the U.S. east and gulf coasts. The potential for unacceptable, adverse environmental impact, along with operational concerns, eliminated nine sites. The three remaining sites evaluated in detail in the DEIS were WPNSTA Earle, New Jersey; WPNSTA Yorktown, Virginia; and WPNSTA Charleston, South Carolina. The no action alternative was dismissed from further consideration because the operational need for adding AOE–6 Class ships to the U.S. Atlantic Fleet has been established and their construction has been authorized by Congress.

Based on environmental and operational considerations, WPNSTA Earle was selected as the preferred alternative for the homeporting action. While this decision involves constructing support facilities needed to homeport two AOE–6 Class ships at WPNSTA Earle, it does not include final decisions for homeporting additional AOE–6 Class ships at Eagle, Yorktown, or Charleston. Decisions, including appropriate environmental documentation, regarding homeporting additional ships will be made as subsequent homeporting proposals are developed.

Facilities to be constructed in support of the homeporting action at WPNSTA Earle include extension of Pier 4; and magazine, warehouse, scale house, personnel support facilities, and parking lot construction. Homeporting will also require the dredging of approximately 2.25 million cubic yards to expand the turning basin and provide access to Pier 4. Officer and enlisted personnel at WPNSTA Earle will increase by a total of 498 as a result of homeporting two AOE–6s. Military dependents would increase by approximately 538. Married military personnel attached to the homeported ships will be assigned to live in military family housing units located at Staten Island, New York, or at WPNSTA Earle. No new facilities are required to support the temporary homeporting action at NAVSTA Norfolk; however, the dredging of approximately 198,500 cubic yards at Pier 2 is required.

All practicable means to avoid or minimize environmental impacts at WPNSTA Earle have been adopted. Sediment analyses for dredged material have been performed and the material found to be acceptable for in-water disposal at the Mud Dump Ocean Disposal Site. Necessary permits from the U.S. Army Corps of Engineers and the State of New Jersey Water Control Board will be obtained prior to dredging operations. Final resolution of appropriate mitigation measures, including those recommended by the New Jersey Department of Environmental Protection and Energy, will occur during this permitting process.

Sediment sampling will be performed as necessary for future maintenance dredging operations in accordance with the requirements of section 103 of the Marine Protection, Research, and Sanctuaries Act and the Environmental Protection Agency's December 1992, Guidance for Performing Tests on Dredged Material to be Disposed of in Ocean Waters.

The Navy is in the process of updating the Spill Prevention, Control, and Countermeasure Plan and the Spill Contingency Plan for WPNSTA Earle to reflect the addition of the two AOE–6 Class ships. In accordance with section 311 of the Clean Water Act, these plans will be implemented prior to the homeporting of the two ships at WPNSTA Earle.

The proposed action will not impact federally protected wetlands or endangered species. The proposed action conforms with the New Jersey State Implementation Plan for meeting Federal ambient air quality standards. The proposed action will not impact archaeological, cultural, or historic resources listed, or determined eligible for listing, on the National Register of Historic Places. The Navy has determined that the proposed action is consistent to the maximum extent practicable with the New Jersey State Coastal Zone Management Plan.

The increase in net income generated by the ship crews and families is estimated at $7.0 million annually when both AOE–6s are homeported. Temporary construction salaries are estimated at almost $22.1 million. New Navy population demands upon local services, schools, medical facilities, parks and recreation, transportation, and community facilities will not exceed existing or projected capacities.

The temporary homeporting of two AOE–6 Class ships at NAVSTA Norfolk will not have any significant environmental or socioeconomic impacts, since no facilities are to be constructed and any increase in population would be temporary. Dredging of approximately 198,500 cubic yards at Pier 2 is required. Sediment analyses for the dredged material has been performed and the material found to be acceptable for disposal at the Craney Island Disposal Site. This dredging operation has received a Department of the Army permit and concurrence from the State of Virginia on the Navy's Coastal Zone Management Consistency Determination.

Comments received from the public on the DEIS included concerns about the following issues: Ordnance storage and nuclear weapons; need for AOE–6 homeporting in light of reduced Department of Defense/Navy manpower; potential for increased noise to residential land uses as a result of ordnance loading/unloading operations; concern about marine life impacts as a result of dredging the proposed turning basin; and traffic impacts as a result of increased personnel assigned to WPNSTA Earle. All of these issues, as well as others, were addressed in the Final Environmental Impact Statement.

Questions regarding the EIS prepared for this action may be directed to Chesapeake Division, Naval Facilities Engineering Command, Washington Navy Yard, Washington, DC 20374 (Attn: Mr. Robert Schwarz), telephone (202) 433–3387.

Dated: January 26, 1993.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: January 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–2302 Filed 1–29–93; 8:45 am]

BILLING CODE 3810–AE–M

Public Hearing for the Draft Programmatic Environmental Impact Statement for Dredged Material Disposal, San Diego, CA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency the Draft Programmatic Environmental Impact Statement (DPEIS) for Proposed Dredged Material Disposal from Navy projects in San Diego Bay.

The DPEIS has been distributed to various Federal, state, and local agencies, elected officials, special interest groups, and the media. A limited number of single copies are available at the address listed at the end of this notice.

A public hearing to inform the public of the DPEIS findings and to solicit comments will be held on Thursday, February 18, 1993, beginning at 7 p.m., in the Silver Room of the San Diego Civic Center, 202 "C" Street, San Diego, California.

The public hearing will be conducted by the Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to ensure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record for the study. Equal weight will be given to both oral and written statements.

Statements may also be submitted to the address listed at the end of this announcement. All written statements must be postmarked by March 15, 1993, to become part of the official record.

The DPEIS identifies a number of dredging projects proposed for implementation within the next five years. These projects are needed to accomplish the existing mission and to accommodate new and deep draft ships at Naval shoreside facilities in San Diego. The purpose of the DPEIS is to investigate dredged material disposal options for San Diego Bay sediments, and to eliminate from further consideration those alternatives which are considered to be infeasible. When project-specific environmental analyses are conducted, the Navy, the environmental regulators, and the public can concentrate on the feasible disposal alternatives identified in the National Environmental Policy Act process.

The point of contact for obtaining copies of the Draft Programmatic EIS is Mr. Lowell Martin (Code 232.LM), Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132–5190.

Dated: January 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–2301 Filed 1–29–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Conduct of Employees; Notice of Waiver Pursuant to Section 602(c) of the Department of Energy Organization Act (Pub. L. 95–91)

Section 602(a) of the Department of Energy ("DOE") Organization Act (Pub. L. 95–91, hereinafter referred to as the "Act") prohibits a "supervisory employee" (defined in section 601(a) of the Act) of the Department from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any "energy concern" (defined in section 601(b) of the Act).

Section 602(c) of the Act authorizes the Secretary of Energy to waive the requirements of section 602(a) in cases of exceptional hardship or where the interest is a pension, insurance, or other similarly vested interest.

Hazel R. O'Leary is being considered to be the Secretary of Energy. As Secretary, Mrs. O'Leary will be a "supervisory employee," as that term is defined in section 601(a) of the Act.

As a result of the employment of her husband, John F. O'Leary, Mrs. O'Leary receives a survivor annuity pursuant to a binding agreement between General Public Utilities Service Corporation (GPUSC), General Public Utilities Corporation (GPU), and Mr. O'Leary, and installment distributions of deferred compensation from the Deferred Compensation Plan for Elected Officers of GPUSC (until 2003) and Deferred Compensation Plan for Outside Directors of GPU or GPU Nuclear Corporation (until 1998). These annuity and installment payment interests have been determined to be interests in General Public Utilities Corporation (and its subsidiaries), an energy concern within the meaning of section 602(a) of the Act.

It has been established to my satisfaction that requiring Mrs. O'Leary to divest of these survivor benefits would impose an exceptional hardship on her. Accordingly, I have granted Mrs. O'Leary a waiver of the divestiture requirement of section 602(a) with respect to her interests in the survivor annuity received pursuant to the agreement between GPUSC, GPU, and Mr. O'Leary, and installment distributions of deferred compensation under the Deferred Compensation Plan for Elected Officers of GPUSC and Deferred Compensation Plan for Outside Directors of GPU or GPU Nuclear Corporation. This waiver is effective for the duration of her service with the Department of Energy.

In accordance with section 208, title 18, United States Code, Mrs. O'Leary has been directed not to participate personally and substantially, as a Government employee, in any particular matter the outcome of which could have a direct and predictable effect upon General Public Utilities Corporation or any of its subsidiaries, unless her appointing official determines that the financial interest in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect of her.

Dated: January 21, 1993.

Linda G. Stuntz,

Acting Secretary of Energy.

[FR Doc. 93-2288 Filed 1-29-93; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance to Jefferson County School District R-1

AGENCY: DOE, Rocky Flats Office.

ACTION: Notice of acceptance of an unsolicited application for federal assistance.

SUMMARY: The Department of Energy, Rocky Flats Office (DOE/RFO), gives notice of its plan to award to a grant to Jefferson County School District R-1, Golden, Colorado, in the amount of $119,412. In accordance with the criteria prescribed in 10 CFR 600.14(e)(1), Jefferson County School District's program entitled "Expanding Horizons for the 21st Century" was evaluated and was determined to represent an innovative approach for achieving the goals of DOE's Educational Development Program to develop, motivate, and allocate human resources to the environmental restoration and waste management needs of the Nation. Jefferson County's 5-year program will be operational in the Arvada West area, involving approximately 300 teachers at grade levels K-12 and 7,000 students at seven elementary schools, two junior highs, and one senior high school. Probability of success is rated as excellent, given the fact that budget and staffing commitments have been made at each of the schools. The overall objective is for students to begin using technological systems as a tool to problem solving as soon as they begin school and to become progressively more adept and familiar with different technologically oriented concepts. Elementary students will rotate among seven technology modules selected according to their developmental needs and integrated with academic subject matter, including basics like math and science, environmental resource management, data input, and economics. At the junior high level, modules will focus on a variety of technological areas through the use of computers, videos, hands-on activities, texts, and other related educational materials. At the high school level, concepts of technology, career exploration, and problem solving skills will be taught by combining the efforts of both academic and vocational/technical teachers. Environmental technology will be a primary focus at the high school level and an underlying theme for all grade levels. All teachers will be trained to effectively deliver this model of education through a series of staff development sessions. DOE's funding will provide for the purchase of some of the needed computers, software, and accompanying equipment. DOE funding for the remaining four years is subject to availability. RFO staff will assist the School District in marketing the program within the community to encourage participation from other businesses.

FOR FURTHER INFORMATION CONTACT: Dorothy Gross, Contract Specialist, U.S. DOE, Rocky Flats Office, Contracts and Services Division, P.O. Box 928, Golden, CO 80402-0928, Purchase Requisition Number: DE-FG34-93RF00649.

Issued at Golden, Colorado, January 21, 1993.

Al H. Pauole,

Deputy Manager.

[FR Doc. 93-2290 Filed 1-29-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD93-03001T, Colorado-54]

State of Colorado; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 25, 1993.

Take notice that on January 14, 1993, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commissions's regulations, that the Marine member of the Mesa Verde Formation underlying certain lands in Moffat County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers 24,417.59 acres of Federal (79.09%), State (6.41%) and Fee (14.50%) lands described as follows:

Township 10 North, Range 94 West
  Sections 3-5: All
Township 11 North, Range 94 West
  Sections 4-9: All
  Sections 16-21: All
  Sections 28-33: All
Township 11 North, Range 95 West
  Sections 1-3: All
  Sections 10-15: All
  Sections 22-27: All
  Sections 34-36: All

The notice of determination also contains Colorado's findings that the referenced portion of the Marine member of the Mesa Verde Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-2218 Filed 1-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-03304T-Kansas-5]

State of Kansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 25, 1993.

Take notice that on January 15, 1993, the State Corporation Commission of the State of Kansas (Kansas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Mississippian Chester Formation underlying a portion of Clark County, Kansas qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described as follows:

Township 34 South, Range 24 West
  Section 34: E/2
  Section 35: W/2

The notice of determination also contains Kansas' findings that the referenced portion of the Mississippian Chester Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-2219 Filed 1-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-03305T; Texas-97]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 26, 1993.

Take notice that on January 21, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Marble Falls Formation (Momma Bear Field) underlying Erath and Palo Pinto Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Marble Falls Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended portion of the Marble Falls Formation (Momma Bear Field) is located in Erath and Palo Pinto Counties, Texas, within Railroad Commission District 7B and includes all or a portion of the following surveys:

Erath County

Thos. Toby, A-789
S. Romick, A-1419
Burnett, A-123
Geo. W. Treighen, A-758
S. Jordan, A-444
James McCoy, A-562
James McCoy, A-563
Geo. Lamon, A-931
M. Hagwood, A-414
John Davis, A-215
John Davis, A-216
John Davis, A-217
B.B.B. & C. R.R., A-114
Thomas Stubblefield, A-664
S.P.R.R., A-1312, A-1351
Josiah Bishop, A-47
Oliver Smith, A-725
T.C. Ray, A-1161

Palo Pinto County

J.H. Bond, A-43
T.C. Ray, A-1753
E.V. Landreph S.M. Fyffe, A-2065
E.V. Landreph S.M. Fyffe, A-2021
Hood County School Land, A-220
J.R. Jennings, A-263
G. Treighen, A-1937
T. & N.O. R.R., A-695
C.N. Deaton, A-2189

[FR Doc. 93-2249 Filed 1-29-93; 8:45 am]

BILLING CODE 6717-01-M

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

[Docket Nos. TQ93-3-20-000; TM93-10-20-000]

January 26, 1993.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 15, 1993, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective January 15, 1993

2 Sub 1 Rev 16 Rev Sheet No. 21
2 Sub 1 Rev 16 Rev Sheet No. 22
3 Sub 12 Rev Sheet No. 25
2 Sub 1 Rev 16 Rev Sheet No. 26
2 Sub 1 Rev 16 Rev Sheet No. 27
2 Sub 1 Rev 16 Rev Sheet No. 28
3 Sub 16 Rev Sheet No. 29

Algonquin states that the revised tariff sheets are being filed as part of Algonquin's Out-of-Cycle Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment pursuant to sections 17 and 39 of the General Terms and Conditions of Algonquin's FERC Gas Tariff. Algonquin also states that the sales demand rate reflects a decrease of $0.5010 per MMBtu from the demand rate contained in Algonquin's last Quarterly PGA filing. In addition, the sales commodity rate reflects an increase of $0.5205 per MMBtu from the commodity rate contained in Algonquin's last Quarterly PGA filing. Algonquin further states that these adjustments reflect changes to Algonquin's suppliers' demand and commodity rates.

Algonquin requests that the Commission approve the tariff sheets be allowed to become effective on January 15, 1993.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2246 Filed 1-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-31-013]

Arkla Energy Resources, a Division of Arkla, Inc.; Filing

January 26, 1993.

Take Notice that on January 19, 1993, Arkla Energy Resources ("AER"), a division of Arkla, Inc., tendered for filing as a part of its FERC Gas Tariff, six copies of the following tariff sheets:

Sheet No.	Effective date
Set I	
Rate schedule G-2:	
2nd sub. 58th revised sheet No. 4.	Nov. 1, 1990.
2nd sub. 61st revised sheet No. 4.	Jan. 1, 1991.
2nd sub. 1st revised original sheet No. 11.	Feb. 1, 1991.
4th sub. 2nd revised original sheet No. 11.	Apr. 1, 1991.
3rd sub. 5th revised sheet No. 11.	July 1, 1991.
2nd sub. 7th revised sheet No. 11.	Oct. 1, 1991.
2nd sub. 8th revised sheet No. 11.	Jan. 1, 1992.
3rd sub. 11th revised sheet No. 11.	Apr. 1, 1992.
3rd sub. 12th revised sheet No. 11.	June 1, 1992.
3rd sub. 13th revised sheet No. 11.	July 1, 1992.
2nd sub. 15th revised sheet No. 11.	Oct. 1, 1992.
Rate schedule CD:	
2nd sub. 11th revised sheet No. 7A.	Nov. 1, 1990.
2nd sub. 14th revised sheet No. 7A.	Jan. 1, 1991.
2nd sub. 1st revised original sheet No. 16.	Feb. 1, 1991.
4th sub. 2nd revised original sheet No. 16.	Apr. 1, 1991.
3rd sub. 5th revised sheet No. 16.	July 1, 1991.
2nd sub. 7th revised sheet No. 16.	Oct. 1, 1991.

Sheet No.	Effective date
2nd sub. 8th revised sheet No. 16.	Jan. 1, 1992.
3rd sub. 11th revised sheet No. 16.	Apr. 1, 1992.
3rd sub. 12th revised sheet No. 16.	June 1, 1992.
2nd sub. 13th revised sheet No. 16.	July 1, 1992.
2nd sub. 15th revised sheet No. 16.	Oct. 1, 1992.
Set II	
Rate schedule G–2:	
4th sub. 5th revised sheet No. 11.	July 1, 1991.
3rd sub. 7th revised sheet No. 11.	Oct. 1, 1991.
3rd sub. 8th revised sheet No. 11.	Jan. 1, 1992.
4th sub. 11th revised sheet No. 11.	Apr. 1, 1992.
4th sub. 12th revised sheet No. 11.	June 1, 1992.
4th sub. 13th revised sheet No. 11.	July 1, 1992.
3rd sub. 15th revised sheet No. 11.	Oct. 1, 1992.
2nd sub. 16th revised sheet No. 11.	Jan. 1, 1993.
Rate schedule CD:	
4th sub. 5th revised sheet No. 16.	July 1, 1991.
3rd sub. 7th revised sheet No. 16.	Oct. 1, 1991.
3rd sub. 8th revised sheet No. 16.	Jan. 1, 1992.
4th sub. 11th revised sheet No. 16.	Apr. 1, 1992.
4th sub. 12th revised sheet No. 16.	June 1, 1992.
3rd sub. 13th revised sheet No. 16.	July 1, 1992.
3rd sub. 15th revised sheet No. 16.	Oct. 1, 1992.
Sub. 16th revised sheet No. 16.	Jan. 1, 1993.

AER states that the tendered tariff sheets are filed in compliance with a letter order of the Director of the Office of Pipeline and Producer Regulation issued on December 4, 1992. AER states that the order rejected a compliance filing AER submitted in Docket No. TA91–1–31 on June 30, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2242 Filed 1–29–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93–42–001]

Colorado Interstate Gas Co.; Compliance Filing

January 26, 1993.

Take notice that Colorado Interstate Gas Company ("CIG"), on January 15, 1993, has tendered for filing certain revisions to its FERC Gas Tariff, Original Volume No. 3, to comply with the Order of the Federal Energy Regulatory Commission ("Commission") issued December 31, 1992 in the referenced docket ("Order of December 31"). CIG has tendered the following sheets:

Substitute Second Revised Sheet No. 77
Substitute Original Sheet No. 77B
Substitute Original Sheet No. 77C
Substitute Original Sheet No. 77D

CIG requests that the tendered tariff sheets be given an effective date on January 1, 1993.

CIG states that the purpose of this filing is to comply with the Order of December 31 which accepted, subject to conditions, tariff sheets proposed by CIG intended to implement new methods for resolving present and future transportation imbalances.

CIG states that copies of the filing have been served upon all of the parties to the styled proceeding as appearing on the service list maintained by the Commission's Secretary.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2245 Filed 1–29–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93–2–70–002]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

January 26, 1993.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on January 14, 1993, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993:

Substitute Ninth Revised Sheet No. 021

Per Commission Order of the Director Accepting and Rejecting GRI Related Tariff Sheets issued December 31, 1992, Columbia Gulf is filing Substitute Ninth Revised Sheet No. 021 to correct a pagination error.

Columbia Gulf states that copies of the filing were served on Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2250 Filed 1–29–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93–3–70–000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

January 26, 1993.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on January 19, 1993, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1, with the proposed effective date of January 1, 1993:

Second Sub Ninth Revised Sheet No. 021

Columbia Gulf states that it is filing Second Sub Ninth Revised Sheet No. 021 to correct a typographical error. Columbia Gulf further states that the Annual Charge Adjustment for Rate Schedule ITS–2 should be $.0022 as approved by the Commission September 30, 1992.

Columbia Gulf states that copies of the filing were served upon all of Columbia Gulf's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2244 Filed 1–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–327–000]

Florida Power & Light Co; Filing

January 26, 1993.

Take notice that on January 15, 1993, Florida Power & Light Company (FP&L) tendered for filing an Amendment No. 23 to Revised Agreement To Provide Specified Transmission Service between FP&L and Utilities Commission, City of New Smyrna Beach, Florida.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2251 Filed 01–29–93; 8:45 am]

BILLING CODE 6717–01–M

Notice of New Docket Prefix

January 26, 1993.

Notice is hereby given that a new docket prefix has been established for applications for transmission service under section 211 of the Federal Power Act.

Title VII, subtitle B, section 721 of the Energy Policy Act of 1992 amends section 211 of the Federal Power Act (16 U.S.C. 824j). The first sentence of subsection (a) is amended to read as follows:

> Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant.

In order to properly docket and manage this type of case and assess Commission resources applicable to this type of work, it is necessary to establish a new docket prefix for transmission service applications. The new docket prefix will be TXFY–NN–NNN, where the FY stands for the fiscal year in which the filing was made and the NN and NNN are sequential numbers. For example, the first transmission service application made this fiscal year will be assigned TX93–1–000, the second will be TX93–2–000, etc.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2243 Filed 1–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–229–016]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

January 26, 1993.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on January 15, 1993, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Sub Third Revised Sheet No. 32–AC
2nd Sub Second Revised Sheet No. 32–BF
Third Sub Third Revised Sheet No. 32–BS
3rd Sub Second Revised Sheet No. 32–BT
Second Sub Original Sheet No. 43–04.5

Panhandle requests an April 1, 1993 effective date.

Panhandle states that these revised tariff sheets are being filed in compliance with the Commission's December 22, 1992 Order Accepting Compliance Filings With Conditions and January 5, 1993 Notice of Extension of Time in Docket Nos. RP91–229–003, RP91–229–004, RP91–229–005 and RP91–229–006.

Panhandle states that a copy of this filing is being sent to all jurisdictional customers, affected state commissions and parties to the above-referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2248 Filed 1–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–37–002 and TM93–2–9–001]

Tennessee Gas Pipeline Co.; Filing

January 26, 1993.

Take notice that on January 15, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following revised tariff sheets to be included in its FERC Gas Tariff:

To be effective January 1, 1993:

Fourth Revised Volume No. 1

Substitute Second Revised Sheet No. 24
Substitute Second Revised Sheet No. 24A
Substitute First Revised Sheet No. 290
Substitute First Revised Sheet No. 331
Substitute First Revised Sheet No. 332

Tennessee states that the revised tariff sheets reflect changes to the GRI surcharge collection and the period of limitations applicable to billing disputes in accordance with ordering paragraphs (D) and (E) of the Commission's December 31, 1992 order in the above-referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 2, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2247 Filed 1-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TX93-1-000]

Tex-La Electric Cooperative of Texas, Inc.; Filing

January 26, 1993.

On January 19, 1993, Tex-La Electric Cooperative of Texas, Inc. (Tex-La) filed an application pursuant to section 211 of the Federal Power Act, 16 U.S.C. 824j, as amended by the Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (1992), for an order requiring Texas Utilities Electric Company (TU) to provide transmission services to Tex-La. Tex-La asserts that, since January 19, 1993, TU has refused to provide transmission services it contracted to supply Tex-La.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2252 Filed 1-29-93; 8:45 am]

BILLING CODE 6717-01-M

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval for the following retransfer: RTD/AU(EU)-8, for the transfer from Belgium to Australia of 0.015 grams of uranium, containing 1 milligram of uranium-233 and 7.1 milligrams of uranium-235 for use as reference material for calibration of mass spectrometers.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on January 27, 1993.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 93-2285 Filed 1-29-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket EA-58-E]

Waiver of Annual Energy Limitation

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of issuance.

SUMMARY: The Office of Fossil Energy gives notice that it has issued an order waiving the annual electric energy limitation contained in the electricity export authorization in Docket E-7206 issued to Detroit Edison and Consumers Power on October 10, 1972.

DATES: This action is effective January 25, 1993, and expires on December 31, 1993.

ADDRESSES: Copies of this order are available for inspection during normal business hours in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9624.

Issued in Washington, DC, January 26, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-2289 Filed 1-29-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Science and Technology

Integration of Research and Development

AGENCY: Department of Energy (DOE).

ACTION: Notice of inquiry.

SUMMARY: The Office of Science and Technology of the Department of Energy (DOE) hereby invites the views of representatives of industry, institutions of higher education, the DOE national laboratories, and professional and technical societies on the preparation of a 5-year program plan for improving the integration of its basic energy research programs with other energy programs within the agency. This notice supplements direct contacts with representative entities and is intended to facilitate input from a suitably wide range of viewpoint.

DATES: Views and comments are to be submitted as soon as possible, but no later than March 6, 1993, to receive adequate consideration in the preparation of the plan.

ADDRESSES: Comments should be directed to Charles R. Mandelbaum, U.S. Department of Energy, Science and Technology Affairs Staff, ST-12, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Charles R. Mandelbaum, U.S. Department of Energy, Science and Technology Affairs Staff, ST-12, Washington, DC 20585, telephone (202) 586-0413.

SUPPLEMENTARY INFORMATION: The program plan, which is required by section 2205 of the Energy Policy Act of 1992, Public Law 102-486 (Oct. 24, 1992), must include evaluation of current procedures and mechanisms used to achieve the integration of basic energy research and other departmental programs, assessment of the role that the Department of Energy national laboratories play in such integration, and identification and evaluation of models that could enhance such integration; identification and evaluation of new programs, mechanisms, and related policy options that could improve the integration, including set-aside funding for matching or leveraging basis and applied programs, more formal linkages, and program coordination; and recommendations for expanded research and development and new technology areas.

William Happer,

Science and Technology Advisor.

[FR Doc. 93-2291 Filed 1-29-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4558-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before March 3, 1993.

For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: TSCA Inspection-Related Forms. (EPA ICR No. 0163.04; OMB No. 2070-0007). This is an extension of the expiration date of a currently approved collection.

Abstract: To verify compliance with the Toxic Substances Control Act (TSCA), section 11 authorizes EPA to inspect establishments used to manufacture, process, or store chemicals. Manufacturers, processors and storers of chemicals, are notified of upcoming EPA inspections and are requested to read and sign the various forms which are the subject of this collection request.

Following are the titles and uses of the forms: (1) "TSCA Notice of Inspection". This form is used by the Agency to inform the owner, operator or agent in charge, of an upcoming inspection of a facility. (2) "TSCA Inspection Confidentiality Notice". This form—which is completed by the EPA inspector before inspection of a facility—serves as the mechanism that informs the owner, operator or agent in charge of a facility, of his or her right to claim inspection data as confidential information pursuant to TSCA § 14. (3) "Receipt for Samples and Documents". This form—which is completed by the EPA inspector during or at the conclusion of an inspection—constitutes the official record of all information belonging to the firm obtained by EPA through an official inspection. It also serves as the official record of data submission for the purpose of making claims of TSCA Confidential Business Information (CBI). (4) "Declaration of Confidential Business Information". This form serves as the mechanism by which the owner, operator or agent in charge of a facility may designate documents and samples taken during an inspection that are entitled to confidential treatment. The form is optional and the company may choose other written mechanisms for making CBI claims.

The Agency uses the forms for enforcement purposes and to ensure that the Agency conducts inspections legally.

Burden Statement: The public reporting burden for this collection of information is estimated to vary from 5 to 30 minutes per response. This estimate includes the time to review instructions, and complete and review the collection of information.

Respondents: Chemical manufacturers, processors, and storers.

Estimated No. of Respondents: 5700.

Estimated No. of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1,754 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street, SW., Washington, DC 20460

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: January 26, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-2271 Filed 1-29-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4558-8]

Proposed Administrative Settlement; Haynes Warehouse Fire Site (Sum Chemical Co.), Grand Forks, ND

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed administrative settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h) concerning the Haynes Warehouse Fire Site (also known as Sum Chemical Co.) near Grand Forks, North Dakota. The proposed administrative settlement requires Terra International, Inc. (Terra), a potentially responsible party at the site, to pay $45,000.00 to the U.S. Environmental Protection Agency (EPA). In exchange for this payment, EPA will covenant not to sue Terra for reimbursement of response costs incurred by EPA in connection with the site as of January 4, 1993.

DATES: Comments must be submitted within 30 days of the date of publication of this notice.

ADDRESSES: Comments should be addressed to James R. Rhodes, (8HWM-ER), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, and should refer to Haynes Warehouse Fire Site, Grand Forks, North Dakota.

It is so agreed:

Jack W. McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 93-2274 Filed 1-29-93; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

[BM-14-JAN-93-03]

Policy Statement Concerning Rules for Transaction of Business of the Farm Credit Administration Board

AGENCY: Farm Credit Administration.

ACTION: Policy statement.

SUMMARY: On January 14, 1993, the Farm Credit Administration Board (Board) adopted Rules for Transaction of Business of the Farm Credit Administration Board. The revised rules update existing rules, eliminating redundancy with existing statutes and make the rules consistent with current regulations, and, in addition, adopt Robert's Rules of Order (Newly Revised) (9th Edition) as the applicable manual of parliamentary procedure.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4003, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The text of the Board's policy statement concerning the rules for transaction of business is set forth below in its entirety:

Effective Date: January 14, 1993.

Effect on Previous Action: Revoke BM–05–JUN–86–01, BM–05–AUG–86–02, and BM–05–JUN–86–07.

Source of Authority: 12 U.S.C. 2242(c).

Rules for the Transaction of Business of the Farm Credit Administration Board

Article I

Purpose of Rules

These Rules for the Transaction of Business ("Rules") of the Farm Credit Administration ("FCA)" Board ("Board") are adopted by the Board to supplement the statutes and regulations which govern the procedures and practice of the Board (see the Farm Credit Act of 1971, as amended, and 12 CFR 600 *et seq.*), and shall constitute the official rules of the Board for purposes of section 5.8(c) of the Farm Credit Act of 1971, as amended.

Article II

Board Organization

Section 1. Secretary to the Board. The Chairman of the Board ("Chairman") shall appoint a Secretary to the Board ("Secretary") who shall be an employee of the FCA. The Secretary shall keep permanent and complete records and minutes of the acts and proceedings of the Board. The Secretary shall be the parliamentarian for the Board.

Section 2. General Counsel. The General Counsel of the FCA shall serve as the chief legal officer of the Board.

Section 3. Individual Assignments. To the extent consistent with law, the Board or the Chairman may offer individual Members of the Board ("Member(s)") special assignments and define the duties incident thereto, and the Chairman may delegate to individual Members certain duties and responsibilities of the Chairman.

Section 4. Two Vacancies/Authority to Act. In the event two (2) Members are not available by reason of resignation, temporary or permanent incapacitation, or death, to perform the duties of their offices, the Board hereby delegates to the remaining Member the authority to exercise, in his/her discretion, any and all authorities of the FCA granted to the Agency or the Board by statute, regulation or otherwise, except those authorities which are nondelegable. This delegation of authority does not include authority to establish general policy and promulgate rules and regulations, or any delegation expressly prohibited by statute. This delegation shall include, but shall not be limited to, the exercise of the following powers:

(a) The approval of any and all actions of the Farm Credit institutions as required by statute, regulations or otherwise to be approved by the FCA or its Board;

(b) The exercise of all powers of enforcement granted to the FCA by statute, including but not limited to, the authorities contained in 12 U.S.C. 2154, 2154a, 2183, 2202a, and 2261–2274; and

(c) Any actions or approvals required in connection with the conduct of a receivership or conservatorship of a Farm Credit institution.

Authorities delegated by this Section may be redelegated, in writing, at the discretion of the remaining Member, to other FCA officers or employees.

Article III

Voting

Section 1. Affirmative Vote Required. Action on any matter shall require the affirmative vote of at least two (2) Members.

Section 2. Votes To Be Recorded. The vote of each Member, including the Chairman, on a question shall be recorded in the minutes.

Section 3. Notational Voting.

(a) Nothing in these Rules shall preclude the transaction of business by the circulation of written items ("notational votes") to the Members, provided all Members participate, in writing, in the disposition of the item pursuant to article III, section 3(c).

(b) *Matters that may be decided by notational vote:* The Board may consider any matter that comes before it by use of notational voting procedures; however, it is best used only for routine and noncontroversial items. Any Member may submit an item to the Secretary for distribution as a notational vote.

(c) *Notational vote ballots and material:* Upon submission of an item for notational vote, the Secretary shall provide each Member a complete package of all relevant information and a notational vote ballot sheet (indicating the Member making the motion, the substance of the motion, and the deadline for return of the vote) upon which each Member can indicate his/her position by voting in the following manner: (1) To approve; (2) to disapprove; (3) to abstain; or (4) not appropriate for notational vote.

(d) *Modifications, amendments, and withdrawals:* No partial concurrences or amendments are appropriate; however, a Member may suggest a revision to the proponent, subject to compliance with the Government in the Sunshine Act, and the proponent may withdraw his motion at any time prior to receipt by the Secretary of the votes of all Members or the end of the time period provided for on the ballot sheet.

(e) *Time limits to vote:* Within ten (10) business days of receipt, or earlier if circumstances require, each Member shall act on the matter by returning the ballot sheet. Failure to return a ballot sheet by the date requested on the sheet will result in the vote being recorded as "not voting", which causes the motion to fail pursuant to article III, section 3(a).

(f) *Veto of notational voting procedure:* In view of the public policy of openness reflected in the Government in the Sunshine Act and the desire to allow any Member to present viewpoints to the other Members, any Member can veto the use of the notational voting procedure for the consideration of any particular matter by voting "not appropriate for notational vote".

(g) *Disclosure of results:* A summary of any action taken by notational vote shall be provided by the Secretary to the Members, Chief Executive Officer, and Chief Operating Officer, and shall be reflected in the appropriate minutes of the Board. Public disclosure is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

(h) *Authority to designate staff to initial:* If the conduct of agency business so requires, and the Member has been apprised of the contents of any notational vote, a Member who is absent from the office may authorize a staff member to initial the item for him/her, as long as the Member has a designation memorandum on file with the Secretary.

Section 4. Telephone Conference. Any Member may participate in a meeting of the Board through the use of conference call telephone or similar equipment, provided that all persons participating in the meeting can simultaneously speak to and hear each other. Any Member so participating shall be deemed present at the meeting for all purposes.

Article IV

Minutes

Section 1. Format. The format of minutes of the Board Meetings, unless otherwise stated in these rules, or relevant statutes or regulations, shall comply with Robert's Rules of Order (Newly Revised) and the Government in the Sunshine Act.

(a) The minutes shall clearly identify the date, time, and place of the meeting, the type of meeting held, the identity of Members present, and where applicable that they participated by telephone, and the identity of the Secretary and the General Counsel present, or, in their absence, the names of the persons who substituted for them.

(b) The minutes shall contain a separate paragraph for each subject matter, and shall note all main motions or motions to bring a main motion before the assembly, except any that were withdrawn.

(c) The minutes shall not contain any reference to statements made unless a request is specifically made that a statement be made a part of the record, or if required by the Government in the Sunshine Act.

(d) The minutes of Regular Meetings shall indicate the substance and disposition of any notational votes completed since the last Regular Meeting of the Board.

(e) The vote of each Member on a question shall be recorded or the Secretary will note a unanimous consent.

(f) The minutes of the Board shall be signed by the Chairman and the Secretary, indicating the date of approval by the Board.

Section 2. Circulation.

(a) Draft minutes shall be reviewed by the Chairman and General Counsel.

(b) Minutes shall be circulated to all Members one (1) week prior to their consideration at a Board Meeting.

(c) Copies of the minutes of the Meetings of the Board (Open Session) to be voted on at a Board Meeting shall be placed in all Board Briefing Books.

(d) Copies of the minutes of the Meetings of the Board (Closed Session) to be voted on at a Board Meeting shall be placed only in the Board Briefing Books of the Members, the Secretary, and the General Counsel.

Section 3. Supporting Documentation.

(a) *Board Briefing Books.* One copy of all Board Briefing Book material shall be maintained by the Secretary. All other copies of the Board Briefing Book material for Closed Sessions shall be returned to the Secretary for disposal or maintained in a secure location approved by the Secretary.

(b) *Executive Summaries.* One copy of each Executive Summary provided to any Member shall be provided to and maintained by the Secretary.

Article V

Board Meetings

Section 1. Presiding Officer. The Chairman shall preside at each meeting. In the event the Chairman is unavailable, the Member from the Chairman's political party shall preside.

Section 2. Order of Business. The agenda for each meeting shall be substantially in the following order:

I. Open Session
A. Approval of Minutes
B. Reports
C. Special Orders
D. Unfinished Business and General Orders
1. Policy Statements
2. Regulations
3. Other
E. New Business
1. Policy Statements
2. Regulations
3. Other
II. Closed Session
A. Reports
B. Special Orders
C. Unfinished Business and General Orders
D. New Business
III. Adjournment

Section 3. Calls and Agenda.

(a) *Regular Meeting.* The Secretary, at the direction of the Chairman, shall issue a call for items for the agenda to each Member, the Chief Operating Officer, and the Office Directors of FCA. The Secretary shall provide to the Chairman a list of all the items submitted, including a list of outstanding notational votes and matters voted "not appropriate for notational vote"; the Chairman shall then establish the agenda to be published in the **Federal Register**.

(b) *Special Meeting.* Special Meetings of the Board may be called:

(1) By the Chairman; or

(2) By any two Members; or

(3) If there is at the time a vacancy on the Board, by any Member.

Any call for a Special Meeting shall set forth the business to be transacted and shall state the place and time of such meeting. Except with the unanimous consent of all Members, no business shall be brought before a Special Meeting that has not been specified in the notice of call of such meeting.

(c) *Notice.* The Secretary shall give appropriate notice on any and all meetings and make the call for Special Meetings. Reasonable efforts to provide such notice to Members shall be made for all meetings of the Board, but failure of notice shall in no case invalidate a meeting.

Article VI

Public Appearances and Attendance

Section 1. Attendance. Members of the public may attend all meetings of the Board except those meetings or portions of meetings which are closed as directed by the Board, consistent with the Government in the Sunshine Act. Members of the public may speak or make presentations to the Board under the rules outlined under this article.

Section 2. Presentations to the Board. Members of the public may make a presentation to the Board only on the basis of a written request and statement covering the subject matter received at least five (5) days prior to the meeting, which is approved by a majority of the Board.

Section 3. Limitations. Public presentations may not conflict with the provisions of the Administrative Procedure Act and other Board policies on the handling of public comments. In the event that a presentation is made concerning a regulation during the comment period, the presenter must submit a summary or a text of their comments to be filed along with other comments received.

Article VII

Other

Section 1. Regulations. The promulgation of regulations adopted by the Board shall be in compliance with the requirements of the Farm Credit Act of 1971, as amended, and the Administrative Procedure Act.

Section 2. Board Materials. Complete Board Briefing Books shall be distributed to each Member at least two (2) full business days prior to any regular meeting. Unless agreed to by all Members, no vote may be taken on an issue unless the necessary material has been provided to the Members not less than twenty-four (24) hours prior to the Board Meeting to consider such issue.

Section 3. Parliamentary Rules. Unless otherwise stated in these Rules, or relevant statutes or regulations, the meetings of this Board shall be conducted in accordance with Robert's Rules of Order (Newly Revised) (9th Edition).

Article VIII

Amendments

Section 1. The business of the Board shall be transacted in accordance with these Rules as the same may be amended from time to time: Provided, however, that upon agreement of at least two (2) Members convened in a duly called meeting, the Rules may be waived in any particular instance, except that action may be taken on items at a Special Meeting only in accordance with article V, section 3(b), hereof.

Section 2. These Rules may be changed or amended by the concurring vote of at least two (2) Members upon notice of the proposed change or amendment's having been given at least thirty (30) days before such vote.

Adopted this 14th day of January, 1993.

By Order of the Board.

Dated: January 26, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93-2234 Filed 1-29-93; 8:45 am]

BILLING CODE 6705-01-P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

Dated: January 26, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0323.

Title: Section 97.527, Reimbursement for expenses.

Action: Extension of a currently approved collection.

Respondents: Individuals or households and non-profit institutions.

Frequency of Response: Recordkeeping requirement and annual reporting.

Estimated Annual Burden: 3,500 responses, .167 hours average burden per response, 585 hours total burden per response; 3,500 recordkeepers, 12 hours average burden per recordkeeper, 42,585 hours total annual burden.

Needs and Uses: The recordkeeping and reporting requirements contained in § 97.527 are necessary to allow cost reimbursement up to a maximum of $5.60 from each applicant examined for an amateur radio license pursuant to the volunteer examination program. The coordinators or persons administering the examinations must keep records of their expenditures and certify annually to the FCC that all expenses for which they were reimbursed were necessarily and prudently incurred. Records must be kept and a report made to the FCC, so that the FCC can detect any wrongdoing in the program allowing reimbursement of expenses. The records are journal entries showing expenses incurred and reimbursements collected. The records may be inspected by FCC field investigators. The data will provide a vehicle for the FCC to cancel the designation of a person or organization as a volunteer examiner coordinator if there is a discrepancy between the certification and the record kept. Likewise, if a discrepancy is detected between the certification of a volunteer examiner and his or her record of expenses, the volunteer examiner will lose their accreditation. If the data were not collected, it is conceivable that fraud and abuse could occur in the amateur volunteer examination program.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-2239 Filed 1-29-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Galveston/Galveston Shipholding Group, Inc. Operating Agreement, et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200728.

Title: Port of Galveston/Galveston Shipholding Group, Inc. Operating Agreement.

Parties:

The Board of Trustees of the Galveston Wharves
Galveston Shipholding Group, Inc. ("GSG")

Agent: Mr. Herbert L. Smith, Marketing Services Representative, Port of Galveston, 123 Rosenberg, P.O. Box 328, Galveston, Texas 77553.

Synopsis: The Agreement provides for a berth assignment at Pier 21 for GSG, for the operation of a cruise ship.

Dated: January 26, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-2222 Filed 1-29-93; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Venezuelan American Maritime Association, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-067.

Title: Venezuelan American Maritime Association.

Parties:

Seaboard Marine Ltd.
Venezuelan Container Line, C.A.
Crowley American Transport, Inc.
Sea-Land Service, Inc.
Ivaran Lines
Kirk Line, Ltd.

Synopsis: The proposed amendment expands the geographic scope of the Agreement to include service between ports and inland points in Puerto Rico and Venezuela. It also establishes voting procedures governing the parties participating in Section 7 of the Agreement.

Agreement No.: 202-010717-028.

Title: United States/Panama Freight Association.

Parties:

Crowley American Transport, Inc.

Sea-Land Service, Inc.
Seaboard Marine Line, Ltd.

Synopsis: The proposed amendment expands the geographic scope of the Agreement to include service between Puerto Rico and Panama. It also establishes voting procedures governing the parties participating in Section 4 of the Agreement and deletes any reference to Nicaragua from the geographic scope.

Agreement No.: 202–010987–017.

Title: United States/Central America Liner Association.

Parties:

Seaboard Marine, Ltd.
Crowley American Transport, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment expands the geographic scope of the Agreement to include service between Puerto Rico and Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. It also establishes voting procedures governing the parties participating in Section 4 of the Agreement.

Agreement No.: 203–011256–004.

Title: PNS Agreement.

Parties:

P&O Container Limited
Nedlloyd Lijnen, B.V.
Sea-Land Service, Inc.
Compagnie Generale Maritime.

Synopsis: The proposed amendment (1) deletes Compagnie Generale Maritime as a party to the Agreement; (2) amends the geographic scope to permit the parties to rationalize equipment use; and (3) makes other technical changes to the Agreement's authority.

Agreement No.: 224–200164–005.

Title: Port of Oakland/CMB Transport N.V./Norsul Internacional S.A. Terminal Agreement.

Parties:

City of Oakland ("Port")
CMB Transport N.V. ("CMB")
Norsul Internacional S.A.

Synopsis: This modification permits CMB the occasional use of Port-owned terminal(s) for break-bulk cargo consisting of cocoa or coffee beans which cannot be handled on CMB's assigned premises.

Agreement No.: 224–200726.

Title: Port Authority of New York & New Jersey/Maher Terminal, Inc. Terminal Agreement.

Parties:

The Port Authority of New York and New Jersey Maher Terminals, Inc. ("Maher")

Synopsis: This Agreement provides for the use and occupancy by Maher of 12.46 acres of open area and Buildings 2170 and 2180 at the Elizabeth-Port Authority Marine Terminal.

Dated: January 26, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2221 Filed 1–29–93; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1700

Name: Olympic International Freight Forwarders, Inc.

Address: 4411 NW., 74th Avenue, Miami, FL 33166

Date Revoked: December 23, 1992

Reason: Failed to furnish a valid surety bond.

License Number: 3344

Name: B&M International, Inc.

Address: 9505 West Central #102, Wichita, KS 67212

Date Revoked: December 24, 1992

Reason: Failed to furnish a valid surety bond.

License Number: 3066

Name: Apex Group, Inc.

Address: 841 N. Pioneer Ave., Wilmington, CA 90744

Date Revoked: January 1, 1993

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–2216 Filed 1–29–93; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Rescission of Order of Revocation

Notice is hereby given that the Orders of Revocation pertaining to the licenses of the following ocean freight forwarders have been rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address
3412	Ahmed Moselhy and Qadir Ali Waddiuddin, dba Safe Shipping Company, 3311 Richmond Ave., Suite 330, Houston, TX 77098.
2477–R	MDR Enterprises, Inc., 7377 Pacific Street, Suite 219, Omaha, NE 68114.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–2217 Filed 1–29–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. 7100–0128]

Bank Holding Company Reporting Requirements

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: (1) Final approval of proposed changes to the bank holding company report FR Y–9C published for comment on November 2, 1992, and (2) initial approval of, and request for public comment on, proposed additional changes to the FR Y–9C and revisions to other bank holding company reports (FR Y–11Q and FR Y–11AS).

SUMMARY:

1. Final Approval

Notice is hereby given of final approval by the Board of Governors of the Federal Reserve System (the Board) under delegated authority from the Office of Management and Budget (OMB), as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public), of changes to the Consolidated Financial Statements for Bank Holding Companies With Total Consolidated Assets of $150 Million or More or With More Than One Subsidiary Bank (FR Y–9C; OMB No. 7100–0128), for implementation in March 1993. These proposed changes were published for comment on November 2, 1992. One comment letter was received, which stated support for the revisions. The Board has considered the one public comment received and has determined that the changes as proposed should become final. These changes were initially proposed as optional for bank holding companies filing the FR Y–9C for the December 31, 1992, reporting date. However, these changes will not be implemented until the March 31, 1993, reporting date when all changes will be mandatory. Therefore, no optional reporting will be in effect for December 31, 1992, as previously proposed.

2. Request for Public Comment

Notice also is given of initial Board approval and request is made for public comment on a proposal to revise further the FR Y–9C and also to revise two other bank holding company reports: The Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies (FR Y–11Q; OMB No. 7100–0244) and the Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary (FR Y–11AS; OMB No. 7100–0244). The proposed revisions to these three forms, for which public comment is being requested, are outlined below. If approved following public comment, these changes will be required for the March 31, 1993, reporting date.[1]

In addition to these two sets of changes, further revisions may be required for the March 31, 1993, reporting date dependent upon Board of Governors' action regarding the implementation of Financial Accounting Standards Board Statement No. 109, "Accounting for Income Taxes," for regulatory reporting purposes. Any such changes would be announced in a separate notice.

DATES: All comments regarding the proposed changes, for which the Board has granted initial approval and now seeks comment, must be submitted on or before February 16, 1993.

ADDRESSES: Comments, which should refer to the OMB Docket numbers, should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Arleen Lustig, Supervisory Financial Analyst (202/452–2987), Robert T. Maahs, Senior Financial Analyst (202/872–4935), or Mark S. Benton, Senior Financial Analyst (202/452–5205), Division of Banking Supervision and Regulation. The following individuals may be contacted with respect to issues related to the Paperwork Reduction Act of 1980: Stephen Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452–3920); Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics (202/452–3829); and Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503 (202/395–7340); for the hearing impaired only, telecommunications device for the deaf (TTD) (202/452–3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

A. General Information

1. Changes Receiving Final Approval

Under the Bank Holding Company Act of 1956, as amended, the Board is responsible for the supervision and regulation of all bank holding companies. The Board has given final approval to allow the reporting, effective with the March 31, 1993, reporting date, of certain items described in Section C below, under "Reporting Form Revisions—Final Approval" on the FR Y–9C.

2. Changes Receiving Initial Approval and Request for Comment

In addition, the Board has given initial approval, effective with the March 31, 1993, reporting date, of a second set of revisions described in section C below, under "Reporting Form Revisions—Initial Approval" to the FR Y–9C and also revisions to the FR Y–11Q and the FR Y–11AS.

B. Description of Affected Reports

1. Report Title: Consolidated Financial Statements for Bank Holding Companies with Total Consolidated Assets of $150 Million or More, or With More Than One Subsidiary Bank.

This report is filed by all bank holding companies that have total consolidated assets of $150 million or more and by all multibank holding companies regardless of size. The following bank holding companies are exempt from filing the FR Y–9C, unless the Board specifically requires an exempt company to file the report: bank holding companies that are subsidiaries of another bank holding company and have total consolidated assets of less than $1 billion; bank holding companies that have been granted a hardship exemption by the Board under section 4(d) of the Bank Holding Company Act; and foreign banking organizations as defined by § 211.23(b) of Regulation K.

Agency Form Number: FR Y–9C
OMB Docket Number: 7100–0128
Frequency: Quarterly
Reporters: Bank Holding Companies
Annual Reporting Hours: 148,054
Estimated Average Hours per Response:
Range from 5 to 1,250 hours
Number of Respondents: 1,598
Small businesses are affected.

2. Report Title: Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies.

This report is filed by the top tier of bank holding companies that have total consolidated assets of $1 billion or more, or by a top tier bank holding company with total consolidated assets of $150 million or more but less than $1 billion that have significant holdings in nonbank subsidiaries.

Agency Form Number: FR Y–11Q
OMB Docket Number: 7100–0244
Frequency: Quarterly
Reporters: Bank Holding Companies
Annual Reporting Hours: 3,878
Estimated Average Hours per Response:
Range from 1 to 6 hours
Number of Respondents: 303
Small businesses are affected.

3. Report Title: Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by Type of Nonbank Subsidiary.

This report is filed by the top tier of bank holding companies that have total consolidated assets of $1 billion or more, or by a top tier bank holding company with total consolidated assets of $150 million or more but less than $1 billion that have significant holdings in nonbank subsidiaries.

Agency Form Number: FR Y–11AS
OMB Docket Number: 7100–0244
Frequency: Annual
Reporters: Bank Holding Companies
Annual Reporting Hours: 1,879
Estimated Average Hours per Response:
Range from 1 to 17 hours
Number of Respondents: 303
Small businesses are affected.

These information collections are mandatory (12 U.S.C. 1844) and part of the information is given confidential treatment. Confidential treatment is not routinely given to the remaining information on the form. However, confidential treatment for the remaining information, in whole or in part, can be requested in accordance with the instructions to the form.

C. Reporting Form Revisions

1. Final Approval

The Board has granted final approval to the revisions to the reporting on the consolidated bank holding company financial statements (FR Y–9C) described below. These items, which were initially proposed as optional reporting items for the December 31, 1992, reporting date and mandatory for the March 31, 1993, reporting period, will be required for the March 31, 1993, reporting date.

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[1] The reporting change to the FR Y–11AS is effective with the December 1993 reporting date.

a. *Risk-Weighted Cells on Schedules HC–I and HC–J*—The Board approved the opening of certain 50 percent risk-weighted cells (Column C) on Schedule HC–I, Part II, and Schedule HC–J, Part II, of the FR Y–9C.[2] These reporting changes will allow bank holding companies to report certain off-balance-sheet transactions in the appropriate risk-weighted categories, or cells, that were previously closed. Bank holding companies have requested that the Board open these cells to ease the reporting burden associated with these schedules.

In addition, the Board approved the opening of the 0 percent risk weight (Column A) for Schedules HC–I and HC–J, Part I, item 3. The Board approved, effective December 30, 1992, changes to the Risk-Based Capital Guidelines that will reduce the risk weight for certain assets collateralized by U.S government securities from 20 percent to 0 percent. These additional cells will allow bank holding companies to take advantage of the amended Risk-Based Capital Guidelines.

b. *Intangible Assets on Schedule HC–I*—The Board approved the addition of line items to collect the fair market value and the discounted book value of purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs). In addition, it approved the collection of a line item containing the book value of other intangible assets recorded on the balance sheet on or before February 19, 1992.[4]

These additional line items will allow bank holding companies to report in accordance with the amendments to the Risk-Based Capital Guidelines, as they pertain to the treatment of intangible assets. Under the revised guidelines, the Board will allow, subject to limitations, PMSRs and PCCRs in the risk-based capital calculation. All other intangible assets will be deducted in calculating the risk-based capital ratios.

2. Initial Approval and Request for Comment

The Board has granted initial approval to the revisions described below and requests public comment.

a. FR Y–9C

1. The deletion of Memorandum item 1, of Schedule HC–I, Part I, "Goodwill incurred on or after March 12, 1988."

This line item was originally added to enable analysts to calculate Tier 1 capital under the transition rules for risk-based capital. The final rules became effective as of December 31, 1992; therefore, this information is no longer needed.

2.The addition of two line items to Schedule HC–H for past due and nonaccrual assets wholly or partially guaranteed by the U.S. government or by U.S. government agencies and the guaranteed portion of such assets.

These line items will parallel the comparable line items being added to Schedule RC–N of the commercial bank Reports of Condition and Income for the March 31, 1993, reporting date. The addition of this information will enable the Board to analyze more accurately the asset quality of bank holding companies.

b. FR Y–11Q and Y–11AS

The addition of a line item for the "Provision for loan and lease losses" on the income statement of both of these reports.

Currently, these reports collect information only on the "allowance for loan and lease losses." The amount of the provision is included in "Other expense." The breakout of the provision for loan and lease losses will enable the Board to analyze asset quality more effectively.

Regulatory Flexibility Act Analysis

The Board certifies that the above bank holding company reporting requirements are not expected to have a significant economic impact on small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The reporting requirements for the small companies require significantly fewer items of data to be submitted than the amount of information required of large bank holding companies.

The information that is collected on the reports is essential for the detection of emerging financial problems, the assessment of a holding company's financial condition and capital adequacy, the performance of pre-inspection reviews, and the evaluation of expansion activities through mergers and acquisitions. The imposition of the reporting requirements is essential for the Board's supervision of bank holding companies under the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, January 26, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–2235 Filed 1–29–93; 8:45 am]

BILLING CODE 6210-01-F

Bankers Trust New York Corp., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

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[2] Schedule HC–I, Part II, items 3, 5, 8, and 9, and Schedule HC–J, items 1 and 5, will be affected.

[4] As published in the Federal Register (57 FR 49476 November 2, 1992), the Board granted initial approval to collect the fair market value of PMSRs and PCCRs and any related intangible assets information deemed necessary to calculate risk-based capital. The Board granted final approval to amend the Risk-Based Capital Guidelines on December 9, 1992. As a result of the Board's action, additional reporting items are now necessary for purposes of calculating risk-based capital. These reporting items consist of the discounted book value (as defined in the instructions to the FR Y–9C) of PMSRs and PCCRs and the book value of other intangible assets, excluding goodwill, recorded on the balance sheet by bank holding companies on or before February 19, 1992.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 25, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation*, New York, New York; The Chase Manhattan Corporation, New York, New York; Chemical Banking Corporation, New York, New York; Citicorp, New York, New York; First Chicago Corporation, Chicago, Illinois; and J.P. Morgan & Co. Incorporated, New York, New York; to acquire Government Pricing Information System, Inc., New York, New York, and thereby engage in data processing and transmission services of government securities prices pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 26, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2233 Filed 1-29-93; 8:45 am]

BILLING CODE 6210-01-F

Bank of Boston Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 25, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to merge with Society for Savings Bancorp, Inc., Hartford, Connecticut, and thereby indirectly acquire Society for Savings, Hartford, Connecticut.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Premier Financial Services, Inc.*, and its wholly owned subsidiary, Premier Acquisition Company, both of Freeport, Illinois; to acquire 100 percent of the voting shares of First Northbrook Bancorp, Inc., Northbrook, Illinois, and thereby indirectly acquire First Security Bank of Cary-Grove, Cary, Illinois, and First National Bank of Northbrook, Northbrook, Illinois. In connection with this application, Premier Acquisition Company has applied to become a bank holding company.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Crested Butte State Bank Holding Company*, Crested Butte, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Crested Butte State Bank, Crested Butte, Colorado.
2. *Mountain Bancshares, Inc.*, Newport, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle Agency, Inc., Golden Valley, Minnesota, and thereby indirectly acquire First Bank of Eagle County, Eagle, Colorado.
3. *Orchard Valley Financial Corp.*, Englewood, Colorado; to acquire 5.49 percent of the voting shares of MegaBank Financial Corporation, Englewood, Colorado, and thereby indirectly acquire MegaBank of Arapahoe, N.A., Arapahoe, Colorado.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *BBS Corp.*, Socorro, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Socorro, New Mexico.

Board of Governors of the Federal Reserve System, January 26, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2230 Filed 1-29-93; 8:45 am]

BILLING CODE 6210-01-F

Deposit Guaranty Corp., et al.; of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.*, Jackson, Mississippi; to engage *de novo* through its subsidiary, DGC Services, Inc., Jackson, Mississippi, in owning, installing, and operating electronic fund transfer terminals and equipment in retail locations owned and operated by unaffiliated entities and free-standing terminals pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Mississippi.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central-State Bancorp, Inc.*, Frankfort, Michigan; to engage *de novo* through its subsidiary, Central State Service Corp., Beulah, Michigan, in the making and selling of fixed rate mortgages in the secondary mortgage market through Central State Service Corp., Beulah, Michigan, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 26, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2231 Filed 1-29-93; 8:45 am]

BILLING CODE 6210-01-F

William T. Graham; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *William T. Graham*, to retain 15 percent of the voting shares of First Business Bancshares, Inc., Madison, Wisconsin, and thereby indirectly acquire First Business Bank, Kingston, Wisconsin.

Board of Governors of the Federal Reserve System, January 26, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2232 Filed 1-29-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Meetings of the National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Training Subcommittee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 4–5, 1993, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Training Subcommittee of the above Council will meet together on February 3, at the Marriott Hotel, Bethesda, Maryland.

The Council meeting will be open to the public on February 4 from 9 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., section 10(d) of Public Law 92–436, the Council meeting will be closed to the public from approximately 3:30 p.m. to recess on February 4 and from 8:30 a.m. to adjournment on February 5 for the review, discussion and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Training Subcommittee of the above Council on February 3, will be closed from 7 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meetings and a roster of the Council members.

Dr. Ronald G. Geller, Executive Secretary, National Heart, Lung, and Blood Advisory Council, Westwood Building, Room 7A–17, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7416, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 26, 1993

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2401 Filed 1–29–93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3561; FR–3401–C–01]

Notice of Formula Allocations for the HOME Investment Partnerships Program for FY 1993 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Correction to Notice of HOME Program formula allocations for FY 1993 and Deadlines for Submission of Notices of Intent to Participate, Comprehensive Housing Affordability Strategies, and Program Descriptions.

SUMMARY: This notice corrects one of the due dates in the announcement of formula allocations of HOME Program funds for metropolitan cities, urban counties, consortia of units of general local government, States, and the four insular areas for FY 1993 that was published in the **Federal Register** on January 27, 1993 (58 FR 6288).

DATES: Not later than February 26, 1993, a jurisdiction that has not previously been designated as a participating jurisdiction must notify the Community Planning and Development (CPD) Division Director in the appropriate HUD Field Office in writing, of its intention to become a participating jurisdiction, and, if applicable, must submit evidence that it has met the threshold allocation requirements.

FOR FURTHER INFORMATION CONTACT: David M. Cohen, Director, Office of Affordable Housing Programs, room 7162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–7000; telephone

(202) 708–2685. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 755–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 27, 1993, the Department published in the **Federal Register** (58 FR 6288) a Notice of Formula Allocations for the HOME Investment Partnerships Program for FY 1993 and Deadlines for Submission of Notices of Intent, Comprehensive Housing Affordability Strategies, and Program Descriptions. In the Notice, the date for a jurisdiction that has not yet been designated as a participating jurisdiction to notify the Community Planning and Development (CPD) Division Director in the appropriate HUD Field Office in writing of its intention to become a participating jurisdiction was incorrectly published as March 15, 1993. That date, 45 days after the published notice, should have read February 26, 1993, since the statute provides for not more than 30 days following publication for this notification to be made. Accordingly, this Notice amends the January 27, 1993 Notice at 58 FR 6289, in the paragraph under the heading, For Jurisdictions That Have Not Yet Been Designated as Participating Jurisdictions, to read as follows:

For Jurisdictions That Have Not Yet Been Designated as Participating Jurisdictions

Notification of Intent to Participate

Not later than February 26, 1993 a jurisdiction that has not previously been designated as a participating jurisdiction must notify the Community Planning and Development (CPD) Division Director in the appropriate HUD Field Office in writing, of its intention to become a participating jurisdiction, and, if applicable, must submit evidence that it has met the threshold allocation requirements.

Dated: January 28, 1993.

Don I. Patch,

Acting Deputy Assistant, Secretary for Grant Programs.

[FR Doc. 93–2454 Filed 1–29–93; 8:45 am]

BILLING CODE 4210–29–M

Office of Fair Housing and Equal Opportunity

[Docket No. N–93–3559; FR–3429–N–02]

Task Force on Occupancy Standards in Public and Assisted Housing; Meeting

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Task Force Executive Committee meeting.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550), the Federal Advisory Committee Act (FACA) (5 U.S.C. app 2), and the Task Force's charter (58 FR 3039, January 7, 1993). This is a notice announcing a Task Force Executive Committee Meeting.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3727, (TDD) (202) 708–0113 (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Time and Place

The Executive Committee of the Task Force will meet on Wednesday, February 3 from 1 p.m. to 5 p.m. The meeting will take place at the Mental Health Law Project, 1101 Fifteenth Street, NW., suite 1212, Washington, DC. Fifteen days advance notice of this meeting could not be provided because of the desire of the Task Force to expeditiously proceed with its business in order to attempt to meet the congressionally-mandated date for its final report (April 29, 1993).

Agenda

The Task Force Executive Committee is scheduled to discuss the addition of new members, the convening of public hearings, and Task Force budget issues.

Public Participation

This is an open meeting. The public is also invited to submit written comments on any aspect of the Task Force's mandate or activities.

Dated: January 26, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–2224 Filed 1–29–93; 8:45 am]

BILLING CODE 4210–28–M

[Docket No. N–93–3558; FR–3428–N–02]

Task Force on Occupancy Standards in Public and Assisted Housing; Meeting

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of open meeting.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550), the Federal Advisory Committee Act (FACA) (5 U.S.C. app 2), and the Task Force's charter (58 FR 3039, January 7, 1993). The Secretary has appointed 33 members to the Task Force. (58 FR 3041, January 7, 1993). The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and to make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. This is a notice announcing the second meeting of the Task Force.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3727, (TDD) (202) 708–0113. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Time and Place

The Task Force will meet on Thursday, February 4 from 10 a.m. to 5 p.m. and on Friday, February 5 from 9 a.m. to 5 p.m. The meeting will take place in room 10233 (10th floor) of the Department of HUD Building, 451 Seventh Street, SW., Washington, DC. Fifteen days advance notice of this meeting could not be provided because of the desire of the Task Force to expeditiously proceed with its business in order to attempt to meet the congressionally-mandated date for its final report (April 29, 1993).

Agenda

The Task Force is scheduling presentations which will familiarize its members with existing laws, regulations, standards and guidelines which are relevant to the Task Force's area of interest.

Public Participation

This is an open meeting. The public is also invited to submit written comments on any aspect of the Task Force's mandate or activities. The Task Force will plan for subsequent public hearings as required by section 643(a)(5) of the Housing and Community Development Act of 1992.

Dated: January 26, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93-2225 Filed 1-29-93; 8:45 am]

BILLING CODE 4210-28-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-315]

Certain Plastic Encapsulated Integrated Circuits; Provisional Acceptance of Petition for Modification of Remedial Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has provisionally accepted a Petition for Modification of Final Commission Action Taken With Respect to Respondent Analog Devices, Inc. (Analog), which petition was filed by Texas Instruments, Inc. (TI), the complainant in the above-captioned investigation. Responses to the petition may be filed by parties to the investigation within fourteen (14) days of service of this notice.

ADDRESSES: Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3105. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-2000.

SUPPLEMENTARY INFORMATION: On February 18, 1992, the Commission issued its final determination in this investigation. The Commission found that there was a violation of section 337 in the unlicensed importation and sale of certain plastic encapsulated integrated circuits manufactured by a process that infringed certain claims of U.S. Letters Patent 4,043,027 (the '027 patent), owned by TI. The Commission issued a limited exclusion order and cease and desist orders to five respondents, including Analog. The orders explicitly did not cover licensed products, and the limited exclusion order allowed for entry of products which the manufacturer or importer certified were covered by a license. The cease and desist orders contained quarterly reporting requirements.

The Commission adopted the presiding administrative law judge's finding that Analog had obtained a limited license under the '027 patent when Analog acquired another company which had a cross-license agreement with TI. The Commission's remedial orders do not specify the dollar amount above which Analog's sales of the subject plastic encapsulated integrated circuits would exceed the scope of the license and therefore become subject to the exclusion and sales prohibition provisions of those orders. The Commission presumed that there were mechanisms in place for TI to keep track of Analog's sales under the license agreement, and consequently for the parties to ascertain when the remedial orders become operative.

On September 23, 1992, TI filed its Petition for Modification. In that petition, TI stated that there is no mechanism in place for TI and Analog to ascertain licensed sales, and that, without a decision by the Commission as to the license ceiling and proper method for reporting licensed sales, the Commission's remedial orders cannot be implemented. TI requests that the Commission establish a license ceiling equal to the amount of sales of licensed plastic encapsulated circuits by the company acquired by Analog at the time of acquisition; impose a reporting requirement sufficient to enable TI to determine when this ceiling, or whatever ceiling the Commission establishes, has been reached; and issue such further relief as the Commission deems just and proper.

The Commission has determined to provisionally accept TI's petition and to allow any party to the original investigation to file a response within fourteen (14) days of service of this notice. The parties other than TI that have an interest in the issues raised in the petition have previously presented the facts and arguments supporting their views in their briefs to the ALJ or to the Commission on remedy, the public interest, and bonding. In addition, TI served these parties with a copy of its petition at the time it was filed. For these reasons, and in order to address the petition as expeditiously as possible, the Commission has shortened the 30-day response period provided for in Commission interim rule 211.57(b). After review of the petition, any responses, and other relevant information previously placed in the record in this investigation, the Commission will take such action as it deems appropriate.

The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 211.57(b) of the Commission's Interim Rules of Practice and Procedure (19 CFR 211.57(b)).

By order of the Commission.

Issued: January 26, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-2220 Filed 1-29-93; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States; 1993 Agricultural Adverse Effect Wage Rates; and Allowable Charges for Agricultural and Logging Workers' Meals

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates (AEWRs) and allowable charges for meals for 1993.

SUMMARY: The Director, U.S. Employment Service, announces 1993 adverse effect wage rates (AEWRs) for employers seeking nonimmigrant alien (H-2A) workers for temporary or seasonal agricultural labor or services and the allowable charges employers seeing nonimmigrant alien workers for

temporary or seasonal agricultural labor or services or logging work may levy upon their workers when they provide three meals per day.

AEWRs are the minimum wage rates which the Department of Labor has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant alien agricultural workers (H–2A visaholders). AEWRs are established to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Director also announces the new rates which covered agricultural and logging employers may charge their workers for three daily meals.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Schaerfl, Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–219–5257 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Attorney General may not approve an employer's petition for admission of temporary alien agricultural (H–2A) workers to perform agricultural labor or services of a temporary or seasonal nature in the United States, unless the petitioner has applied to the Department of Labor (DOL) for an H–2A labor certification showing that: (1) There are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H–2A program require that covered employers offer and pay their U.S. and H–2A workers no less than the applicable hourly adverse effect wage rate (AEWR). 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble to the July 5, 1989, final rule (54 FR 28037), which explains in great depth the purpose and history of AEWRs, DOL's discretion in setting AEWRs, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502–20505 (June 1, 1987).

A. Adverse Effect Wage Rates (AEWRs) for 1993

Adverse effect wage rates (AEWRs) are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by employers of nonimmigrant (H–2A) agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR part 655, subpart B, the regionwide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor (H–2A) certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA does not provide data on Alaska). 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Director, U.S. Employment Service, to publish USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** notice. Accordingly, the 1993 AEWRs for work performed on or after the effective date of this notice, are set forth in the table below:

TABLE—1993 ADVERSE EFFECT WAGE RATES (AEWRS)

State	1993 AEWR
Alabama	$5.04
Arizona	5.37
Arkansas	4.87
California	6.11
Colorado	5.44
Connecticut	5.82
Delaware	5.81
Florida	5.91
Georgia	5.04
Hawaii	6.11
Idaho	5.25
Illinois	5.85
Indiana	5.85
Iowa	5.65
Kansas	5.78
Kentucky	5.09
Louisiana	4.87
Maine	5.82
Maryland	5.81
Massachusetts	5.82
Michigan	5.38
Minnesota	5.38
Mississippi	4.87
Missouri	5.65
Montana	5.25
Nebraska	5.78
Nevada	5.44
New Hampshire	5.82
New Jersey	5.81
New Mexico	5.37
New York	5.82
North Carolina	5.07
North Dakota	5.78
Ohio	5.85
Oklahoma	5.01
Oregon	6.31
Pennsylvania	5.81

TABLE—1993 ADVERSE EFFECT WAGE RATES (AEWRS)—Continued

State	1993 AEWR
Rhode Island	5.82
South Carolina	5.04
South Dakota	5.78
Tennessee	5.09
Texas	5.01
Utah	5.44
Vermont	5.82
Virginia	5.07
Washington	6.31
West Virginia	5.09
Wisconsin	5.38
Wyoming	5.25

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H–2A agricultural labor certification is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H–2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H–2B logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI–U for Food) between December of the year just past and December of the year prior to that. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI–U for Food between December of the year just past and December of the year prior to that. The regulations require the Director, U.S. Employment Service, to make the annual adjustments and to cause a notice to be published in the **Federal Register** each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 1992 rates were published in a notice on February 12, 1992 at 57 FR 5182.

DOL has determined the percentage change between December of 1991 and December of 1992 for the CPI–U for Food was 1.2 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 1993 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than $6.66 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to $8.33 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

Signed at Washington, DC, this 21st day of January, 1993.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 93–2283 Filed 1–29–93; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act; Native American Programs' Advisory Committee; Appointment of Members

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of appointment of members.

SUMMARY: Notice is hereby given that appointments have been made to fill ten (10) vacancies on the Job Training Partnership Act (JTPA) Native American Programs' Advisory Committee.

The following seven individuals, all of whom are JTPA, section 401 grantees, have been newly appointed to the Committee:

Ms. Anne Richardson, Executive Director, Mattaponi-Pamunkey-Monacan Consortium, Inc., King William, Virginia.
Mr. Elkton Richardson, JTPA Director, North Carolina Commission on Indian Affairs, Raleigh, North Carolina.
Mr. Frank Siow, JTPA Director, Pueblo of Laguna, Laguna, New Mexico.
Ms. Alice Roach, JTPA Director, Lincoln Indian Center, Lincoln, Nebraska.
Ms. Bernadine Wallace, JTPA Director, Montana United Indian Association, Helena, Montana.
Mr. Harold Wauneka, JTPA Director, Navajo Nation, Window Rock, Arizona.
Ms. Carol Peloza, JTPA Director, Seattle Indian Center, Inc., Seattle, Washington.

Three individuals have been reappointed to the Committee. The first two individuals are JTPA, section 401 grantees and the final appointee is a representative from another discipline.

Ms. Winoma Whitman, JTPA Director, Alu Like, Inc., Honolulu, Hawaii.
Mr. Eddie L. Tullis, Tribal Chairman, Poarch Band of Creek Indians, Atmore, Alabama.
Dr. Rose-Alma McDonald-Jacobs, Native American Consultant, Hogansburg, New York.

The JTPA Native American Programs' Advisory Committee was established under section 401(h)(1) of title IV of JTPA to advise the Assistant Secretary for Employment and Training on rules, regulations and performance standards specifically and solely for Native American programs authorized under that section.

DATES: These appointments were made and were effective on January 6, 1993. All of these appointments will expire on June 30, 1993, when the Native American Employment and Training Council mandated in the Job Training Reform Amendments of 1992 becomes operational.

FOR ADDITIONAL INFORMATION CONTACT: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 219–5500 (this is not a toll-free number).

Signed at Washington, DC, 15th day of January, 1993.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 93–2281 Filed 1–29–93; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process:

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–291–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part

655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the ADDRESSES section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the ADDRESSES section of this notice.

Signed at Washington, DC, this 15th day of January 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 12/01/92 TO 12/31/92

CEO-name/facility name/address	State	Approval date
Mr. Joseph W. McKinley, Meridian Point Rehab. Hosp., Rehab. Systems Co., Scottsdale 85260, 800–228–1540.	AZ	12/04/92
Mr. George Perez, Walter O. Boswell Mem. Hosp. and Del E. Webb Mem. Hosp., Sun City 85351, 602–977–7211.	AZ	12/09/92
Mr. Michael Erne, Grossmont Hospital, 5555 Grossmont Center Drive, La Mesa 91942, 619–465–0711.	CA	12/04/92
Ms. Mary Umali, Bellflower Home Health, Inc., 10251 E. Artesia Blvd. #205, Bellflower 90706, 310–925–5495.	CA	12/08/92
Mr. Martin G. Axel, Rio Hondo Convalescent Hosp., 273 East Beverly Blvd., Montebello 90640, 213–724–5100.	CA	12/09/92
Ms. Benica Schraback, Walnut Whitney Conval. Ctr., Sierra Med. Enterprises dba, Carmichael 95608, 916–624–6236.	CA	12/09/92
Mr. Timothy J. Egan, Rafael Convalescent Hosp., 234 N. San Pedro Road, San Rafael 94903, 415–479–3450.	CA	12/09/92
Mr. Charles Puhl, Brommer Manor Conval. Hosp., 1098 38th Avenue, Santa Cruz 95062, 408–475–6900.	CA	12/09/92
Norman Shorr, M.D., Norman Shorr, M.D. a Medical Corp., Beverly Hills 90210, 310–278–1839.	CA	12/09/92
Mr. Paul A. Harris, Central California Rehab. Hosp., Modesto 95354, 209–523–9006.	CA	12/09/92
Ms. Marietta F. Subbert, Nurses "R" Special, 3400 W. 6th Street, Los Angeles 90020, 213–383–7384.	CA	12/14/92
Ms. Remy Tibayan, Fruitvale Care Conval. Hosp., Oakland 94601, 510–261–5613.	CA	12/15/92
Mr. Bryan Burklow, Midway Hospital Med. Ctr., 5925 San Vicente Blvd., Los Angeles 90019, 213–938–3161.	CA	12/21/92
Mr. Mahmood Median, Del Rio Conval. Ctr., 7002 East Gage Avenue, Bell Gardens 90201, 213–927–6586.	CA	12/22/92
Ms. Ellen L. Kuykendall, Hilltop Manor Conval. Hosp., Inc., Auburn 95602, 916–885–7511.	CA	12/22/92
Mr. Steven R. Fraser, Orangegrove Rehab. Hosp., 12332 Garden Grove Blvd., Garden Grove 92643, 714–534–1041.	CA	12/22/92
Stanley Ruggles, M.D., New West Dialysis Clinics, Inc., 300 University Ave. #201 Sacramento 95825, 916–920–0256.	CA	12/22/92
Mr. David Chen, Supernurse, 1316 Wilshire Blvd., Suite 12, Los Angeles 90017, 213–483–8388.	CA	12/22/92
Mr. Mark Chastang, District of Columbia General Hospital, DC 20003, 202–675–5039.	DC	12/21/92
Ms. Mary Cottler, Snapper Creek Nursing Home, I, 9200 SW., 87 Avenue, Miami 33156, 305–271–1313.	FL	12/02/92
Mr. Lionel Jadoo, Dania Nursing Home, Inc., 440 Phippen Road, Dania 33004, 305–927–0508.	FL	12/04/92
Mr. E. Tim Cook, Larkin General Hospital, Doctors Hosp. of South Miami, South Miami 33143, 305–284–7700.	FL	12/04/92
Mr. Ronald A. Cass, Hospital Staffing Services, Inc., Fort Lauderdale 33308, 305–771–0500.	FL	12/09/92
Mr. David Carbone, Humana Hospital Biscayne, Humana, Inc. d/b/a, Aventura 33180, 305–937–3905.	FL	12/21/92
Mr. Richard J. Stull, II, North Broward Med. Ctr., 201 East Sample Road, Pompano 33064, 305–786–6400.	FL	12/21/92
Mr. Richard J. Stull, II, Imperial Point Med. Ctr., 6401 North Federal Highway, Ft. Lauderale 33308, 305–776–8500.	FL	12/21/92
Mr. Richard Moss, Majestic Towers, Ltd., DBA Health Center, St. Petersburg 33707, 813–381–7301.	FL	12/21/92
Mr. Richard J. Stull, II, Broward Gen'l Med. Ctr., 1600 South Andrews Avenue, Ft. Lauderdale 33316, 305–355–4400.	FL	12/21/92
Mr. Richard J. Stull, II, Coral Springs Med. Ctr., 3000 Coral Hills Drive, Coral Springs 33065, 305–344–3000.	FL	12/21/92
Mr. Andrew Oravec, Jr., HCA New Port Richey Hosp. Med. Ctr., New Port Richey 34656, 813–845–9117.	FL	12/22/92
Mr. Denny Powell, Gulf Coast Hospital, Drs. of Osteopathic Med. Ctr., Ft. Myers 33912, 813–768–8687.	FL	12/22/92
Ms. Sue Lane, Russell Nursing Home, Winder Nursing Inc. d/b/a/, Winder 30680, 404–867–2108.	GA	12/22/92
Ms. Gina Graham, Jacksonville Terrace, Ltd., Jacksonville 62651, 217–243–6405.	IL	12/4/92
Mr. Richard Haskell, Terracom, c/o Richton Crossing, Richton Park 60471, 708–747–6120.	IL	12/04/92
Ms. Lisa Hilliard, Sunshire Terrace, Lt., 1800 Fifth Street, Lincoln 62656, 217–735–4336.	IL	12/09/92
Mr. Robert Nataupsky, Woodstock Residence, Inc., 309 McHenry Avenue, Woodstock 60098, 815–338–1700.	IL	12/09/92
Mr. Michael Palmer, Springfield Terrace, Ltd., 525 S. Martin Luther King Dr., Springfield 62703, 217–789–1680.	IL	12/09/92
Mr. Michael Elkes, Lakeview Nursing & Geriatric Centre, Inc., Chicago 60614, 312–348–4055.	IL	12/14/92
Mr. Michael Kaplan, York Convalescent Ctr., 127 W. Diversey, Elmhurst 60126, 708–530–5225.	IL	12/21/92
Ms. Flora Steinberg, Westmont Convalescent Ctr., 6501 S. Cass, Westmont 60559, 708–960–2026.	IL	12/21/92
Mr. Michael Kaplan, Forest Villa, Ltd., 6840 W. Touhy Avenue, Niles 60648, 708–647–8994.	IL	12/21/92
Ms. Zina Ward, Northshore Geriatric and Nursing Ctr., Waukegan 60085, 708–249–2400.	IL	12/22/92
Ms. Susan Mead, Northwoods Healthcare Centre, 2250 S. Pearl Street Rd., Belvidere 61008, 815–544–0358.	IL	12/22/92
Ms. Judith Wright, Holt Healthcare Centre, 707 W. Riverside Blvd., Rockford 61103, 815–877–5752.	IL	12/22/92

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS 12/01/92 TO 12/31/92—Continued

CEO-name/facility name/address	State	Approval date
Mr. Emanuel Binstock, Deerbrook Nursing Centre, 306 N. Larkin Ave., Joliet 60435, 815–744–5560.	IL	12/22/92
Mr. Mark Shapiro, Westshire Retirement & Healthcare Centre, Cicero 60650, 708–656–9120.	IL	12/22/92
Sr. Marie Moore, Mercy Hospital and Med. Ctr., Chicago 60616, 312–567–2000.	IL	12/22/92
Mr. S. James Blitz, HCA Wesley Med. Ctr., 550 N. Hillside, Wichita 67214, 316–688–2468.	KS	12/14/92
Sr. Mary Norberta, St. Joseph Hospital, P.O. Box 403, Bangor 04401, 207–947–8311.	ME	12/22/92
Mr. David Ameen, Detroit Riverview Hospital, 7733 East Jefferson Avenue, Detroit 48214, 313–499–4190.	MI	12/09/92
Mr. H. J. Blessit, South Sunflower County Hosp., 121 East Baker Street, Indianola 38751, 601–887–5235.	MS	12/15/92
Ms. Ronnette Cox, Conval. Center of Enfield, 208 Cary Street, Enfield 27823, 919–445–2111.	NC	12/15/92
Mr. Steven Goldberg, Eatontown Convalescent Ctr., Eatontown Senior Care Ct., d/b/a, Eatontown 07724, 908–542–4700.	NJ	12/04/92
Mr. James M. Toomey, El Jen Convalescent Hospital, 5538 West Duncan Drive, Las Vegas 89130, 702–645–2606.	NV	12/03/92
Paul R. Kessler, The New York Eye & Ear Infirm, New York 10003, 212–979–4000.	NY	12/09/92
Mr. Gary Gambuti, St. Luke's Roosevelt Hosp., Ctr., New York 10025, 212–523–2162.	NY	12/17/92
Mr. Jeffrey Frerichs, Cabrini Medical Center, 227 East 19th Street, New York 10003, 212–995–6000.	NY	12/21/92
Ms. Louise Kane, Community Hosp. of Brooklyn, Inc., Brooklyn 11229, 718–377–7900.	NY	12/22/92
Mr. Bernard Moskowitz, Health Care Opportunity, Inc., 102 E. Silver Street, Lebanon 45036, 513–932–0300.	OH	12/02/92
Mr. David Buchmueller, Providence Memorial Hospital, 2001 North Oregon, El Paso 79902, 915–542–6662.	TX	12/04/92
Mr. Charles Van Vorst, Santa Rosa Health Care Corp., 519 West Houston Street, San Antonio 78207, 512–228–2011.	TX	12/04/92
Mr. Patrick Wallace, East Texas Med. Ctr.—Athens, 2000 S. Palestine, Athens 75751, 903–675–2216.	TX	12/15/92
Mr. John Mims, McAllen Medical Center—UHS, 301 W. Expressway 83, McAllen 78503, 210–632–4000.	TX	12/22/92
Mr. William R. Blanchard, DeTar Hospital, 506 E. San Antonio St., Victoria 77902, 512–575–7441.	TX	12/22/92
Ms. Laurel L. Wilkening, U. of Washington Med. Ctr., 1959 N.E. Pacific Street, Seattle 98195, 206–686–3247.	WA	12/22/92
Total attestations 65.		

[FR Doc. 93–2282 Filed 1–29–93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Theater Advancement Section) to the National Council on the Arts will be held on February 18, 1993 from 9 a.m.–5:30 p.m. and February 19 from 9 a.m.–5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 18 from 9 a.m.–10 a.m. and February 19 from 4 p.m.–5 p.m. The topics will be opening remarks and policy discussion.

The remaining portions of this meeting on February 18 from 10 a.m.–5:30 p.m. and February 19 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 26, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2227 Filed 1–29–93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Arts in Education Advancement Section) to the National Council on the Arts will be held on February 23, 1993 from 1 p.m.–4:30 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 1 p.m.–1:45 p.m. and from 3:30 p.m.–4:30 p.m. for introductory remarks and policy discussion.

The remaining portion of this meeting from 1:45 p.m.–3:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c), (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–

5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 26, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2228 Filed 1–29–93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Partnerships in Commissioning Section) to the National Council on the Arts will be held on February 25, 1993 from 9 a.m.–5:30 p.m. and February 26 from 9 a.m.–5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 26 from 2:30 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on February 25 from 9 a.m.–5:30 p.m. and February 26 from 9 a.m–2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 26, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2226 Filed 1–29–93; 8:45 am]

BILLING CODE 7537-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31759; File No. SR–DGOC–92–02]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving a Proposed Rule Change Modifying the Definition of Expiration Date

January 25, 1993.

On October 23, 1992, Delta Government Options Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to modify the definition of expiration date. The proposal was amended on November 12, 1992.[1] The Commission published notice of this proposed rule change in the **Federal Register** on November 27, 1992.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change modifies the definition of Expiration Date (*i.e.*, the date upon which an option contract expires), set forth in Article I of Delta's Procedures, to include "any Business Day within sixty calendar days from the Business Day in which the writing of the Option Contract occurs." The rule previously limited the Expiration Date to "any Friday occurring not later than the last Friday of the month in which the second anniversary of the writing of the Option Contract occurs, or if any Friday is not a Business Day, then the Expiration Date shall be the preceding Business Day."

II. Discussion

The Commission believes that Delta's proposal is consistent with the Act and in particular with section 17A(b)(3)(F) thereunder.[3] That section provides, among other things, that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for accurate and prompt clearance and settlement of securities transactions.

The proposed rule change gives Delta's participants the opportunity to select Expiration Dates which match more precisely other financial contracts utilized by those participants in the over-the-counter ("OTC") market and other trading environments. As a result, the proposed rule change will give Delta's participants greater flexibility in adjusting the option duration in relation to their overall securities portfolios. Moreover, the proposal will enable participants to submit for processing at Delta OTC Treasury option trades that previously could not be submitted because the stated Expiration Dates of those trades did not fall within Delta's definition of Expiration Date. By expanding the number of days that qualify under Delta's Procedures as Expiration Dates, the proposal should result in a greater number of OTC options on government securities being cleared through Delta, a clearing agency registered under section 17A of the Act and a part of the national clearance and settlement system. Such a result should help remove impediments to and help perfect a national clearance and settlement system, especially in the area of transactions involving OTC options on government securities.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (file No. SR–DGOC–92–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2262 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

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[1] The amendment made minor, nonsubstantive changes to the proposal. Letter from Robert C. Mendelson, Partner, Morgan, Lewis & Bockius, to Richard C. Strasser, Attorney, Division of Market Regulation, Commission (November 12, 1992).

[2] Securities Exchange Act Release No. 31477 (November 18, 1992), 57 FR 56389.

[3] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[4] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34-31758; File No. SR-NSCC-92-14]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change to Modify the Fund/Serv System

January 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 18, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The primary purpose of the proposed rule change is to permit NSCC to modify its Rule 52, Mutual Fund Services, to provide system flexibility in processing mutual fund transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Mutual Fund Settlement, Entry, and Registration Service ("Fund/Serv") was implemented in 1986.[2] It provided firms and load funds with numerous benefits, including automatic settlement of purchases on T+5, fewer errors, and reduced dependence on telephone calls and correspondence. Enhancements to the system allowed for the processing of exchanges and cash adjustments and provided funds with the ability to acknowledge the processing of registration instructions.

The current system has become difficult to enhance further. The system needs flexibility in order to accommodate the increased needs of the system users. The revised Fund/Serv system will allow a participant the ability to tailor processing requirements as the business and the industry grow and change.

The purpose of the proposed rule change is to make the Fund/Serv system flexible to enable it to process any type of mutual fund product. The revised Fund/Serv system will provide a system that can process any type of mutual fund transaction, regardless of its settlement cycle or type of funds settlement. The revised rule will accommodate flexible settlement capabilities. Thus, it will support same day and next day settlement in Federal Funds and a short settlement cycle for underwritings. This change will also permit NSCC to accommodate the Group of Thirty's proposed T+3 settlement cycle and same day funds settlement.[3] (While the rule will accommodate same day funds settlements, NSCC will not offer this option until the appropriate methodology has been determined and an additional filing has been made with and approved by the SEC.)

The revised system will allow the selections of processing options to be determined by both a member's capability and by the type of product. This will permit greater flexibility for individual members that may require unique processing. It also will provide participants with the capability for preconfirmation trade corrections, fund correction confirmations, and pre- and post-settlement corrections.

As revised, Fund/Serv will support single batch processing, multiple batch processing, and interactive transaction processing capabilities. Single batch processing will allow members to submit one file per day for all activity, and NSCC will create output files once a day. Time frames for single batch processing will be similar to current Fund/Serv input and output time frames. Multiple batch processing will allow members to submit more than one file per day, and NSCC will make multiple output files available throughout the day. Interactive transaction processing will allow members to submit activity as individual transactions or groups of transactions as they are available. NSCC will make output from this option available immediately on a transactions as they are available. Output from this option will be made available immediately on a transactional basis or in the case of settlement or reminder activity on a file basis.

Initially, implementation of the revised Fund/Serv services will be transparent to members. A period of time will be allowed for members to convert their current systems to the new Fund/Serv system. NSCC will announce conversion time frames following system implementation.

The proposed rule change will streamline and enhance NSCC's mutual fund clearance and settlement process and will therefor permit NSCC to offer a more efficient service. Thus, these changes are consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

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[1] 15 U.S.C. 78s (1988).

[2] For a description of Fund/Serv, refer to Securities Exchange Act Release No. 26377 (December 28, 1988), 53 FR 52546 [File No. SR-NSCC-87-12] (order approving rule changes concerning Fund/Serv).

[3] Group of Thirty, Clearance and Settlement in the World's Securities Markets (March 1989).

[4] 15 U.S.C. 78q-1 (1988).

All submissions should refer to File No. SR–NSCC–92–14 and should be submitted by February 22, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2261 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31760; File No. SR–NYSE–92–36]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Amendment To Enhance Specialist Performance Standards

January 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 23, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend rule 103A to enhance performance standards relating to the turnaround time for specialists' handling of Designated Order Turnaround ("DOT") system orders.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change and discussed any comments it received on the propose rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

Exchange Rule 103A specifies performance standards for specialist, and provides for the initiation of a formal "Performance Improvement Action" in any case where a specialist unit does not meet a performance standard specified in the rule.[2] Rule 103A has historically contained performance standards applicable to the handling of orders received by specialists by means of the DOT system.

Effective with the second quarter 1993, the Exchange intends to implement a new DOT turnaround standard for specialists. The current standard requires a specialist unit to turn around 90% of its DOT orders in two minutes during any two quarters an "rolling" four quarter period. The Exchange proposes to raise this standard by requiring specialist units to turn around 90% of their DOT orders in one minute during any two quarters in a "rolling" four quarter period.

Rule 103A requires that any modification of existing standards be communicated to the membership at least one quarter before it is actually implemented. The Exchange intends to notify the membership prior to the first quarter of 1993 of its intention to implement the revised turnaround standard as of the beginning of the second quarter of 1993.

The Exchange is also seeking the Commission's approval at this time to adopt a 30-second turnaround performance standard for implementation at some appropriate future date. The Exchange will provide both the Commission and its membership with at least one quarter's notice before implementation of the 30 second standard.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The amendments to Rule 103A are consistent with these objectives in that they are intended to promote timely, efficient and high quality specialist performance in the handling and servicing of market orders received by means of the Exchange's automated order routing system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

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[1] The NYSE's DOT system (also known as Super Dot) was developed by the NYSE to facilitate the routing of orders from NYSE members' offices to specialists on the NYSE floor.

[2] See NYSE Rule 103A.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–36 and should be submitted by February 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2212 Filed 1–28–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31761; File No. SR–PSE–92–44]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Adding a Monthly Fee for the Monitoring of Capital for Certain Alternate Specialists

January 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, submits this rule filing to establish a fee of $150.00 per month for the routine monitoring of capital for certain alternate specialists.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to PSE 2.2(b), an alternate specialist who is not also a registered specialist (alternate and registered specialists are separately qualified by the Exchange) must meet a minimum capital requirement of $15,000 for each security in which the alternate specialist is registered. (An alternate specialist that is also a registered specialist must meet the specialist post capital requirement of $150,000 or an amount equal to 25% of the market value of its positions, whichever is greater (Rule 2.2(a).) The monitoring of capital and the clearing of transactions for alternate specialists and registered specialists generally is conducted by the Exchange's Post Cashiering Department. The alternate specialists and registered specialist who clear their transactions through the post Cashiering Department, currently are charged a fee for this service. However, at this time, the Exchange is permitting an alternate specialist that is not also a registered specialist to clear transactions through a clearing entity other than the Post Cashiering Department. The Exchange's Financial Compliance Department is now responsible for the monitoring the capital of such alternate specialist.[1] The Financial Compliance Department does not charge a fee for this service at this time.

The Exchange proposes to establish a fee of $150.00 per month to be paid by alternate specialists who are not also registered specialists and who clear transactions through a clearing entity other than the Post Cashiering Department. This fee is intended to cover the routine monitoring of the capital of such alternate specialists by the Financial Compliance Department staff. The Exchange states that this fee is based upon the amount of staff time required to conduct such monitoring of capital.[2]

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(4) in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among PSE's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change it if appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[1] The Exchange believes that it is appropriate for the Financial Compliance Department to monitor the capital of alternate specialists, who clear through an entity other than the Post Cashiering Department, since the Financial Compliance Department routinely monitors the financial and capital compliance of Exchange members and member firms. Telephone conversation between Michael D. Pierson, Senior Attorney, PSE, and Elizabeth M. Cosgrove, Attorney, SEC, on December 16, 1992.

[2] Telephone conversation between Michael D. Pierson, Senior Attorney, PSE and Elizabeth M. Cosgrove, Staff Attorney, SEC, on December 21, 1992.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–92–44 and should be submitted by February 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2213 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19236; 812–8192]

Allmerica Funds, et al.; Application for Exemption

January 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Allmerica Funds (the "Trust"), Allmerica Investment Management Company, Inc. (the "Adviser"), and Allmerica Investments, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1.

SUMMARY OF APPLICATION: Applicants seek a conditional order to permit the Trust to assess a contingent deferred sales charge ("CDSC") on redemptions of shares sold pursuant to a complete front-end sales load waiver applicable to large purchases, and to waive the CDSC in certain cases.

FILING DATE: The application was filed on November 25, 1992, and amended on January 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 440 Lincoln Street, Worcester, MA 01653.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act. The Trust, organized as a Massachusetts business trust, offers shares of five series to the public, including: Growth Fund, Growth and Income Fund, and Investment Grade Income Fund (the "Portfolios"). The Adviser provides investment advisory services, and the Distributor acts as principal underwriter, to the Trust.

2. All shares of the Portfolios are currently offered to the public at their net asset value plus a front-end sales load calculated as a percentage of the offering price at the time of sale. For purchases of $1,000,000 or more, the Portfolios waive the front-end sales charge. The Portfolios also impose a fee of up to .25% per annum of a Portfolio's average daily net assets pursuant to a distribution and servicing plan adopted under rule 12b–1 of the Act. Applicants now propose to allow the Trust and any other existing or future registered open-end investment company for which the Adviser, or any entity controlling, controlled by, or under common control with the Adviser, acts as investment adviser, or whose principal underwriter is the Distributor, or any entity controlling, controlled by, or under common control with the Distributor to impose a CDSC on certain redemptions of shares and to waive the CDSC under certain circumstances.

3. Under the proposed CDSC arrangement, applicants will impose a CDSC on redemptions within one year of the purchase of Trust shares that were purchased with no initial sales charge because the purchase was in the amount of $1,000,000 or more. The CDSC will be equal to 1 percent of the lesser of (a) the net asset value of the shares at the time of purchase, or (b) the net asset value of the shares at the time of redemption. No CDSC will be imposed on amounts derived from capital appreciation, shares purchased through the reinvestment of dividends or capital gains distributions, or shares held for more than 12 months. In determining whether a CDSC is applicable, it will be assumed that shares held the longest are the first to be redeemed.

4. No CDSC will be imposed on exchanges of Trust shares in compliance with rule 11a–3. If, however, the shares acquired in an exchange are redeemed within 12 months following the original investment, the CDSC will be assessed. No CDSC will be imposed on shares purchased prior to the date the SEC grants the requested order.

5. The CDSC will be waived or reduced in the following instances: (a) In connection with distributions from retirement plans qualified under section 401(a) of the Internal Revenue Code (the "Code") when such redemptions are necessary to make distributions to plan participants (such payments include, but are not limited to death, disability, retirement, or separation of service); (b) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account (an "IRA") due to death, disability, or attainment of age 59½; (c) a tax-free return of an excess contribution to an IRA; (d) distributions by other employee benefit plans to pay benefits; and (e) periodic redemptions made pursuant to a systematic withdrawal plan or an automatic redemption plan, provided that total annual withdrawals by an investor from all assets that would otherwise be subject to the CDSC under such plans do not exceed 10% of such assets.

6. The Distributor will provide a credit in full for any CDSC paid by a redeeming shareholder in connection with a redemption of shares of a Trust followed by a reinvestment in any Trust, effected within 60 days of the redemption. Such a credit will be distributed by the Distributor from its house account.

The Distributor's house account will maintain a sufficient balance to make such credits.

Applicants' Legal Conclusion

Applicants submit that the proposal to impose a CDSC is fair, in the public interest and the interest of the Trust's shareholders, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act. Consequently, applicants request an order of the Commission pursuant to section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act (including any modifications that are proposed prior to the adoption of such rule) until such rule is adopted, and after such adoption will comply with such rule in the form in which it is in effect from time to time.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2258 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31757; File No. SR–Amex–92–47]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Fee Increase by the American Stock Exchange, Inc., Relating to Joint Industry Equity Options Marketing Program

January 25, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1992 the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex has increased the transaction fees charged to options professionals on equity and index options trades by $.01 to fund the Exchange's share of the Joint Industry Equity Options Marketing Program. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed fee increase and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below. The self-regulatory organization has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange is participating in a three year joint marketing program developed by the five options exchanges ("Participating Exchanges") aimed at brokerage firms and investors. Under a joint agreement between The Options Clearing Corporation ("OCC") and the Participating Exchanges, OCC will pay for half of the $6 million cost of the marketing program, with the Participating Exchanges sharing the remaining cost proportionately based on their percentage share of customer equity options trading volume.

The Exchange intends to fund its share of the cost of this program by increasing by $.01 the transaction fees it charges options professionals on equity and index options trades. The professional fee on equity options trades is being increased from $.06 to $.07 per contract and the fee on index options trades is being increased from $.10 to $.11 per contract. The level of these fees will be reviewed at the end of the three year marketing program. It should be noted that the other options exchanges also plan to fund their share of the costs through similar transaction fee increases.

The proposed fee increase is consistent with section 6(b) of the Securities Exchange Act of 1934 in general and furthers the objectives of section 6(b)(4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed fee increase will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing fee increase has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such fee increase if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-92–47 and should be submitted by February 22, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2259 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–19231; 812–8184]

Fidelity Investments Life Insurance Co., et al.; Application for Exemption

January 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Fidelity Investments Life Insurance Company ("Fidelity"), Fidelity Investments Variable Annuity Account I (The "Account"), and Fidelity Brokerage Services, Inc. ("Fidelity Brokerage").

RELEVANT SECTIONS OF THE 1940 ACT: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to deduct a mortality and expense risk charge from the assets of the Account in connection with the offering of certain variable annuity contracts.

FILING DATE: The application was filed on November 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 19, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: Fidelity, Mr. Rodney R. Rohda, President, 82 Devonshire Street R25B, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Attorney, or Wendell M. Faria, Deputy Chief, both at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Fidelity, a stock life insurance company organized under the laws of Utah, is a wholly owned subsidiary of FMR Corp. ("FMR"), the parent company for a group of financial services companies. Fidelity is the sponsor and the depositor of the Account. Prior to November 10, 1992, Fidelity's state of domicile was Pennsylvania. In 1986, FMR acquired all of the outstanding capital stock of Providentmutual Variable Life Insurance Company ("Providentmutual"). In 1987, the name of Providentmutual was changed to Fidelity.

2. The Account, a separate account of Fidelity, was established under the laws of Pennsylvania on July 22, 1987 to fund certain variable annuity contracts (the "Contracts") issued by Fidelity. The Account is registered under the 1940 Act as a unit investment trust.

3. The Account will invest in shares of the portfolios of the Variable Insurance Products Fund and the Variable Insurance Products Fund II (together, the "Funds"). Both of the Funds are Massachusetts business trusts and are registered under the 1940 Act as open-end management investment companies.

4. Fidelity Brokerage, a registered broker-dealer under the Securities Exchange Act of 1934, will be the principal underwriter for the Contracts.

5. The Contracts are single premium immediate variable annuities. A Contract is purchased with a single purchase payment and the minimum purchase payment is $25,000. Purchasers of Contracts may allocate the purchase payment between fixed or variable annuity income. For values allocated to variable annuity income via the Account, the annuitant bears all of the investment risk. Fidelity guarantees the interest assumption for only that portion of the purchase payment, if any, allocated to fixed annuity income.

6. Initially, the Contracts will offer three annuity income options. An annuitant may choose: (a) A single life annuity; (b) a joint and survivor annuity with full annuity income to the survivor; or (c) a joint and survivor annuity with reduced annuity income to the survivor. All three options will be available on a fixed, variable or combination basis. If a combination annuity is selected, the purchase payment will be divided to provide annuity income that is fixed in part and variable in part.

7. For those Contracts subject to state premium taxes, Fidelity will deduct the amount of the tax from the purchase payment. The application states that premium taxes currently range from 0% to 3.5%. The application also states that Fidelity reserves the right to charge for any other taxes which it may have to fund.

8. To compensate it for expenses incurred in administering the Contracts, Fidelity deducts a daily administrative charge from the assets of the Account at an effective annual rate of 0.25% of the assets of the Account. The application states that this charge contains no element of anticipated profit and its deduction meets the standard of Rule 26a–1 under the 1940 Act.

9. Fidelity deducts a daily asset charge for its assumption of certain mortality and expense risks. Applicants state that the mortality risk borne by Fidelity is that of making the periodic annuity income distributions for the life or lives of the annuitant or annuitants regardless of how long that might be. Applicants states that the expense risk assumed by Fidelity is the risk that the costs of issuing and administering the Contracts will be greater than expected when setting the administrative charge.

10. The mortality and expense risk charge will be deducted daily from the assets of the Account at an effective annual rate of 0.75% of those assets. Of the 0.75% charge, 0.50% is for assuming mortality risks and 0.25% is for assuming expense risks. Applicants acknowledge that, to the extent that the mortality and expense risk charge is not needed to provide for benefits and expenses under the Contracts, Fidelity will realize a gain from the charge.

11. The Contracts contain no sales charges. Distribution expenses for the Contracts will be paid from the general assets of Fidelity. These assets may include proceeds from the mortality and expense risk charge.

Applicants Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to section 6(c) of the 1940 Act, grant the exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the daily deduction of the mortality and expense risk charge at an effective annual rate of 0.75%.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefore from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal

underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Fidelity represents that the charge of 0.75% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. The application states that this representation is based upon Fidelity's analysis of publicly available information about similar industry products, taking into consideration such factors as: Current charge levels; the existence of charge level guarantees; and guaranteed annuity rates. Applicants represent that Fidelity will maintain at its executive office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. There is no sales load to cover costs relating to the distribution of the Contracts. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being used to cover distribution expenses. The application represents that Fidelity has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Account and Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Fidelity at its executive office and will be available to the Commission.

5. Fidelity also represents that the Account will invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan approved by a board of directors or trustees, a majority of the members of which are not interested persons of such company within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under designated authority.

Margaret H. McFarland,
Deputy Secretary

[FR Doc. 93–2214 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel No. IC–19239; 812–8150]

Scudder Variable Life Investment Fund, et al.; Application for Exemption

January 26, 1993.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Scudder Variable Life Investment Fund (the "Fund") and Scudder, Stevens & Clark, Inc. ("Scudder") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) from the provisions of section 2(a)(19) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an exemption from section 2(a)(19) of the 1940 Act to the extent necessary to permit Dr. J.D. Hammond to serve as a director of Provident Mutual Life Insurance Company of Philadelphia, while also serving as a disinterested trustee of the Fund (or any other investment company for which Scudder or a subsidiary of Scudder acts as investment adviser or principal underwriter ("Other Sponsored Funds") and on whose board of trustees Dr. Hammond may serve) without being considered an "interested person" under the 1940 Act.

FILING DATE: The application was filed on November 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 175 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Thomas E. Bisset, Senior Attorney, at (202) 272–2058 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund was organized in 1985 as a Massachusetts business trust. The Fund's shares are presently divided into five separate series, representing interests in the following five diversified portfolios: The Money Market Portfolio, the Managed Bond Portfolio, the Managed Capital Growth Portfolio, the Managed Diversified Portfolio and the Managed International Portfolio. The Fund serves as the funding vehicle for variable annuity contracts and variable life insurance policies offered by separate accounts of certain life insurance companies. The Fund does not serve as a funding vehicle for any variable annuity contracts or variable life insurance policies offered by separate accounts of Provident Mutual or any of its subsidiaries. Scudder acts as the investment adviser to the Fund.

2. The Fund currently has five trustees, three of whom, including Dr. Hammond, are not interested persons of the Fund, Scudder, or any principal underwriter of the Fund. Dr. Hammond may also, but currently does not, serve as a trustee of Other Sponsored Funds.

3. The Fund greatly benefits from Dr. Hammond's insurance and financial expertise. For the past four years, Dr. Hammond has been the Dean of the Smeal College of Business Administration of Pennsylvania State University, and since 1982 Dr. Hammond has been the William Elliot Professor of Insurance at the Smeal College of Business Administration. Dr. Hammond has held numerous positions over the course of his career with the American Risk and Insurance Association, serving as its President from 1974–75, and with the International Insurance Society, serving as its President and Chief Operating Officer from 1985–87, and has written and published numerous papers and articles on the insurance industry. Dr. Hammond currently serves as a director of Mid-State Bank and Atlantic Mutual Insurance Company.

4. Dr. Hammond has been offered a position to serve as an outside director, but not an officer, of Provident Mutual. Provident Mutual has one direct wholly-owned subsidiary, PML Securities, Inc. ("PML Securities"), that is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"). PML Securities deals primarily in the sale of investment company shares, limited partnerships and certain insurance products, and engages in brokerage transactions, on a principal and an agency basis, in securities other than investment company shares and insurance products. PML Securities has no subsidiaries.

Applicants' Legal Analysis

1. Section 2(a)(3) of the 1940 Act defines an "affiliated person" of a company, in relevant parts, as any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting securities of such other company or as any officer, director, partner, copartner, or employee of such company. Section 2(a)(19) of the 1940 Act defines "interested person" of an investment company, in relevant part, as any broker or dealer registered under the Securities Exchange Act or any affiliated person of such broker or dealer.

2. If Dr. Hammond accepts the offer to become a director of Provident Mutual, Dr. Hammond would be an affiliated person, as defined by section 2(a)(3) of the 1940 Act, of Provident Mutual, which by virtue of owning 100% of the outstanding voting securities of PML Securities, is an affiliated person of PML Securities. Dr. Hammond would, therefore, be an affiliated person of an affiliated person of PML Securities. Applicants do not believe that Dr. Hammond would be an interested person of the Fund, Scudder, or any principal underwriter of the Fund within the meaning of sections 2(a)(19)(A)(v) and 2(a)(19)(B)(v) of the 1940 Act, which refer to "any affiliated person of such a broker or dealer." However, to eliminate the risk of this conclusion. Applicants request an order granting relief from the provisions of section 2(a)(19) of the 1940 Act. Further, Applicants may not rely on Rule 2a19–1 of the 1940 Act with respect to Dr. Hammond because it has already done so for one of its three trustees who are not interested persons, and the Rule provides that no more than a minority of trustees who are not interested persons may be registered brokers or dealers.

3. As noted above, PML Securities is a broker-dealer that deals primarily in the sale of shares in investment companies, limited partnerships and certain insurance products, and engages in brokerage transactions, on a principal and an agency basis, in securities other than products under the 1940 Act.

4. For the year ended December 31, 1991, the net income of PML Securities represented less than one percent of the consolidated net income of Provident Mutual. The brokerage activity conducted through PML Securities would constitute a small part of Dr. Hammond's attention as a director of Provident Mutual. Furthermore, Dr. Hammond would play an insignificant role in the daily operations of PML Securities. Dr. Hammond does not own stock in Provident Mutual, a mutual company, or any of the corporate subsidiaries of Provident Mutual.

5. PML Securities has not distributed shares of the Fund or any Other Sponsored Funds, and it has not executed portfolio transactions for or engaged in principal transactions with the Fund, Scudder (including accounts over which Scudder has brokerage placement discretion), or any Other Sponsored Funds. The Fund's Board of Trustees has determined that the Fund and its shareholders will not be adversely affected if PML Securities does not execute any portfolio transactions for, engage in any principal transactions with, or distribute any shares of the Fund.

6. In the event Dr. Hammond accepts the offer to become a director of Provident Mutual, Dr. Hammond's position as a trustee of the Fund, Other Sponsored Funds and as a director of Provident Mutual would not present the potential for conflict of interest against which the provisions of the 1940 Act relating to interested persons were designed to guard. The Fund and Scudder represent that they will not carry on any business with PML Securities, whether it involves the execution of transactions or the sales of shares of the Fund or the Other Sponsored Funds.

7. The Fund and Scudder believe that Dr. Hammond is well qualified to be, and would, in fact, continue to be, an independent trustee and that his relationship with the Fund, Other Sponsored Funds and Scudder would in no way be altered by his affiliation with Provident Mutual.

8. If the requested order is granted, Applicants undertake to comply with all provisions of Rule 2a19–1 of the 1940 Act with respect to Dr. Hammond other than the requirement that not more than a minority of disinterested directors of the Fund be persons who are brokers, dealers, or affiliates of a broker or dealer.

Conclusion

Applicants believe that the order requested herein is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

[FR Doc. 93–2260 Filed 1–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19232; 811–2966]

Steedman Financial Fund; Application

January 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Steedman Financial Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on May 9, 1991, and amended on October 6, 1992 and November 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1730 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a District of Columbia common law trust, is an open-end, diversified management investment company. On January 9, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. Applicant's registration statement was declared effective, and its initial public offering commenced on January 29, 1980.

2. Applicant converted its portfolio securities to cash in October 1987, after the fund lost 90% of its value between September 30, 1987 and October 31, 1987.[1] As a result of market action, redemptions, and a reserving funds for current and anticipated expenses, applicant's net asset value was reduced to $0.00. At that time, applicant had outstanding 88,119.735 shares, held by 225 securityholders.

3. On July 17, 1989, the SEC filed a complaint in the United States District Court for the District of Columbia (*SEC.* v. *Steadman* (D.D.C. CA 89–2026)), in which applicant was a party. On February 28, 1991, the court entered judgment in favor of the SEC. On June 26, 1992, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's findings of willful or reckless securities fraud and vacated the injunction imposed by the district court.

4. On February 26, 1990, applicant's board of trustees resolved that a program be established to terminate applicant. Securityholder authorization for terminating applicant was not required and not obtained. Applicant has retained $17,432.45 to pay accrued expenses. No liquidating distributions to any of the remaining shareholders has or will be made.

5. Applicant has no net assets. Applicant is not a party to any litigation or administrative proceeding. Applicant has only the liabilities associated with expenses resulting from preparing regulatory reports to the SEC, financial reports, and tax filings. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2256 Filed 1–29–93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—19238; 812–8100]

TCW High Grade Fixed Income Limited Partnership, et al.; Application

January 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: TCW High Grade Fixed Income Limited Partnership, TCW High Yield Limited Partnership, TCW Latin America Equity Limited Partnership, TCW Private Equity Limited Partnership, and TCW Specialized Cash Management Limited Partnership (the "Partnerships"), TCW Funds, Inc. (the "Company"), TCW Asset Management Company ("TAMCO"), and TCW Funds Management, Inc. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from the provisions of section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Partnerships to transfer their assets and liabilities to certain series of the Company (the "Funds") in exchange for the Funds' shares, which then will be distributed to the partners of the Partnerships.

FILING DATE: The application was filed on September 22, 1992, and amended on December 4, 1992 and January 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 865 South Figueroa Street, Suite 1800, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504–2283, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnerships were organized as California limited partnerships. They are private investment partnerships that have not been registered under the Act in reliance on section 3(c)(1) of the Act, and their interests have not been registered under the Securities Act of 1933 in reliance on section 4(2) of the Securities Act.

2. TAMCO serves as the sole general partner of each of the Partnerships and has exclusive responsibility for the overall administration of the Partnerships. It also serves as the investment manger with respect to the assets of the Partnerships.

3. The Company is an open-end investment company that is registered under the Act. Initially, the Company will offer six series, including the five Funds that will correspond to the five Partnerships in terms of investment objectives and policies. The Company intends to enter into an advisory agreement with the Adviser. The Adviser will provide investment management services to the Funds that are substantially the same as the services that TAMCO currently provides to the Partnerships. The officers of TAMCO serving as portfolio managers of the Partnerships also serve as officers of the Adviser and will serve as portfolio managers of the Funds.

4. Applicants propose that each of the Funds acquire the assets and assume the liabilities of its corresponding Partnership in exchange for Fund shares (the "Exchanges"). The Exchanges (except with respect to the High Yield Partnership) will be effected pursuant to an Agreement and Plan of Exchange, whereby each Partnership will transfer all of its assets and liabilities to the appropriate Fund in exchange for Fund shares. These Fund shares will have an aggregate net asset value equivalent to the net asset value of the assets transferred by the Partnership (except for the effect of organizational expenses paid by the Fund). Upon consummation of the Exchange, the Partnership will

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[1] In October 1987, the Fund issued a put option, which resulted in a loss of 90% of the fund's value when, after the stock market declined, the put was exercised.

distribute the Fund shares to its partners, with each partner receiving shares having an aggregate net asset value equivalent to the net asset value of his prior Partnership interest (except for the effect of organizational expenses paid by the Fund). Each of these Partnerships then will be liquidated and dissolved.

5. With regard to the High Yield Partnership, applicants propose, for tax reasons, to effect the Exchange pursuant to an Agreement of Exchange. Under this Agreement, each limited partner of the High Yield Partnership will be offered the opportunity to exchange his interest in the High Yield Partnership for the appropriate Fund shares. These Fund shares will have an aggregate net asset value equivalent to the net asset value of the partnership interest transferred by the exchanging limited partner (except for the effect of organizational expenses paid by the Fund). Concurrently with the exchange of Fund shares for interests in the High Yield Partnership, such interests will be redeemed and the Fund will receive from the High Yield Partnership an "in-kind" distribution representing the pro rata share of each asset and liability of the High Yield Partnership attributable to the Partnership interests being redeemed. The High Yield Partnership will continue as a limited partnership with those partners who have not elected to participate in the Exchange.

6. The Exchanges will establish the Company as the successor investment vehicle to the Partnerships, except for the High Yield Partnership. The Exchanges will permit partners to pursue as shareholders of the Funds the same investment objectives and policies they were expecting from the Partnerships without sacrificing the pass-through tax features of the Partnerships. In addition, shareholders of the Funds will be able to purchase and redeem shares on each business day, as opposed to only once per month as is currently provided with the Partnerships. Shareholders of the Funds also will have the advantage of being able to shift investments easily among the Funds and between any Fund and TCW Money Market Portfolio, a separate money market mutual fund.

7. Each partnership agreement of the Partnerships provides that the Partnership may be converted into a registered investment company if the general partner determines that a conversion is in the best interest of the Partnership. It expressly provides that no further approval or consent of the limited partners is required for such conversion, so long as at least 60 days advance written notice is provided to the limited partners. Limited partners who do not wish to participate in the conversion of their Partnership will have adequate opportunity to redeem their Partnership interests before the conversion occurs. As a result, no limited partner will receive shares in exchange for Partnership interests unless the limited partner determines to retain the investment.

8. The expenses of the Exchanges will be borne by TAMCO. Fund organizational expenses, up to a maximum of $50,000 per Fund, will be paid by the Funds and amortized over 5 years. Fund organizational expenses in excess of $50,000 per Fund will be paid by the Advisor.

9. The management fees for the Funds will not exceed the maximum fees currently paid by the limited partners in each corresponding Partnership. It is expected that Fund expenses, apart from management fees, generally will be higher as a percentage of net asset value than the expenses of a corresponding Partnership. This is primarily because of the increased operating costs of a registered investment company and compliance with additional regulatory requirements.

10. The Funds' Boards of Directors and TAMCO have considered the desirability of the Exchanges from the respective points of view of the Company and the Partnerships. All of the members of the Board and TAMCO have approved the Exchanges and concluded that, among other things, the Exchanges are in the best interests of the Company and the Partnerships, and the interests of existing shareholders in the Company and existing partners will not be diluted as a result of the Exchanges.

11. The Exchanges will not be effected until each of the following conditions is satisfied: the Company's registration statement has been declared effective, the SEC has issued an order relating to the application, and the Company has received a favorable opinion of counsel or a private letter ruling from the Internal Revenue Service regarding the tax consequences of the Exchanges.

Applicants' Legal Conclusions

1. Applicants seek an exemption under section 17(b) of the Act from the provisions of section 17(a) of the Act to the extent necessary to permit the Exchanges. Section 17(a) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell securities to the company or to purchase securities from the company. Section 17(b) provides for SEC approval of a proposed affiliated transaction that would be otherwise prohibited by section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policy of each registered investment company concerned, and the transaction is consistent with the general purposes of the Act.

2. Each Partnership is an affiliated person of the Company because TAMCO, the general partner of the Partnerships, and the Adviser, the investment adviser of the Company, are under the common control of TCW Management Company. Thus, the proposed Exchanges may be prohibited by section 17(a) if the Exchanges are viewed as principal transactions between the Company and the partners of the Partnerships, or between the Company and the Partnerships.

3. Applicants believe that the proposed Exchanges meet the terms of section 17(b). They represent, among other things, that the investment objectives and policies of each Fund are substantially similar to the corresponding Partnership. In addition, after the Exchanges, limited partners will hold substantially the same assets as Fund shareholders as they had previously as limited partners, and no brokerage commission, fee, or other remuneration will be paid in connection with the Exchanges. In this sense, the Exchanges can be viewed as a change in the form in which the assets are held, rather than a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2257 Filed 1-29-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19230; 811-6125]

USF&G Money Market Funds, Inc.; Application for Deregistration

January 25, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: USF&G Money Market Funds, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 17, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 19, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o USF&G Investment Management Group, Inc., 100 Light Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company that was organized as a corporation under the laws of Maryland. On June 26, 1990, applicant registered under the Act and failed a registration statement on Form N–1A pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on June 26, 1990. The registration statement was declared effective and applicant's initial public offering commenced on September 19, 1990.

2. On May 19, 1992, USF&G Corporation ("USF&G") and USF&G Investment Management Group, Inc. ("IMG"), a wholly owned subsidiary of USF&G, entered into a stock purchase agreement (the "Stock Purchase Agreement") with T. Rowe Price Associates, Inc. ("Price"), pursuant to which Price agreed to acquire all of the outstanding capital stock of USF&G Review Management Corp., a wholly-owned subsidiary of IMG, from IMG. The Stock Purchase Agreement provided for five USF&G mutual funds (including applicant) to be acquired by and combined with Price mutual funds having comparable investment objectives and policies.

3. On June 24, 1992, applicant's board of directors approved an agreement and plan of reorganization (the "Plan") with T. Rowe Price Prime Reserve Fund Inc. (the "Price Fund"). On July 15, 1992, applicant mailed proxy materials to its shareholders. At a special meeting held on August 26, 1992, applicant's shareholders approved the Plan.

4. On August 31, 1992, applicant transferred substantially all of its assets to the Price Fund in exchange for shares of the Price Fund having an aggregate net asset value equal to the aggregate value of the assets transferred as of the close of trading on the New York Stock Exchange or August 28, 1992, the business day immediately preceding the closing date of the reorganization transaction (the "Valuation Date"). On August 28, 1992, applicant had 26,399,920 shares outstanding, having an aggregate new asset value of $26,398,991 and a per share net asset value of $1.00. The Price Fund did not assume nor was it otherwise responsible for any liabilities of applicant. The number of Price Fund shares issued to applicant in the exchange was determined by dividing the aggregate value of applicant's assets transferred by the net asset value per share of the Price Fund as of the close of trading on the Valuation date. Applicant's shareholders received 1.000 shares of the Price Fund for each of applicant's shares held. Immediately after the exchange, applicant distributed to its shareholders of record as of the close of business on the Valuation Date the full and fractional shares of the Price Fund received in the exchange.

5. On June 3, 1992, USF&G, applicant, Price, the Price Fund, and others filed an application with the Commission for an order of the Commission exempting the Price Fund and certain other mutual funds managed by Price from the 75% disinterested director requirement of section 15(f)(1)(A) of the Act. Section 15(f)(1)(A) requires that, for three years after the transaction, at least 75% of the directors of the investment company not be interested persons of the investment adviser or of the predecessor investment adviser. The basis for the application was section 15(f)(3)(B) of the Act, which provides that the Commission may grant relief from the 75% requirement where there is a significant discrepancy in size between an acquiring fund (the Price Fund) and an acquired fund (applicant). On June 15, 1992, the Commission issued a notice of the filing of the application (Investment Company Act Release No. 18784), and on July 13, 1992 the Commission issued the requested order (Investment Company Act Release No. 18844).

6. All expenses incurred in connection with the reorganization, other than the meeting fees of the independent directors for special joint meetings of the boards of directors of USF&G's family of mutual funds held in connection with the reorganization and the other related transactions described in paragraph two, were borne by USF&G Corporation. The special meeting fees were allocated among six USF&G mutual funds (including applicant) on the basis of their relative new assets.

7. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

8. On November 10, 1992, articles of dissolution of applicant were accepted for record by the State Department of Assessments and Taxation of Maryland and applicant was dissolved as a Maryland corporation.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Security.

[FR Doc. 93–2215 Filed 1–29–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 3, 1993. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the

Agency Clearance Officer. Submit comments to the Agency Clearance Office and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416. Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBDC Quarterly and Financial Reports
SBA Form No.: N/A
Frequency: Quarterly
Description of Respondents: SBDC Directors
Annual Responses: 57
Annual Burden: 9000

Title: Small Business Development Centers Onsite Review and Recordkeeping Requirements
SBA Form No.: SBA Form 1496
Description of Respondents: SBDC's
Annual Responses: 28.5
Annual Burden: 3975.75

Dated: January 26, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–2205 Filed 1–29–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, St. Augustine/St. Johns County Airport, St. Augustine, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the St. Augustine-St. Johns County Airport Authority for St. Augustine/St. Johns County Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the St. Augustine/St. Johns County Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before July 12, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is January 13, 1993. The public comment period ends March 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397, (407) 648–6583. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for St. Augustine/St. Johns County Airport are in compliance with applicable requirements of part 150, effective January 13, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before July 12, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The St. Augustine/St. Johns County Airport Authority submitted to the FAA on December 9, 1992, noise exposure maps, descriptions and other documentation which were produced during development of the St. Augustine/St. Johns County Airport FAR part 150 Noise Study between August 1, 1990 and December 6, 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the St. Augustine/St. Johns County Airport Authority. The specific maps under consideration are "Existing 1992 Noise Contours" and "Future 1997 Noise Abatement Contours" in the submission. The FAA has determined that these maps for the St. Augustine/St. Johns County Airport are in compliance with applicable requirements. This determination is effective on January 13, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the St. Augustine/St. Johns County Airport, also effective on January 13, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 12, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827–5397

St. Augustine-St. Johns County Airport Authority, 4796 U.S. 1 North, St. Augustine, FL 32095.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, January 13, 1993.

John W. Reynolds, Jr.,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 93–2236 Filed 1–29–93; 8:45 am]

BILLING CODE 4910–13–M

Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Transport Airplane and Engine Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 17, 1993 at 8 a.m. Arrange for oral Presentation by February 3, 1993.

ADDRESSES: The meeting will be held in the McDonnell Room, McDonnell-Douglas Corp., suite 1200, 1735 Jefferson-Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, Aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Transport Airplane and Engine Subcommittee to be held on February 17, 1993, in the McDonnell Room, McDonnell-Douglas Corp., suite 1200, 1735 Jefferson-Davis Highway, Arlington, VA 22202. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Reports of working groups
- Discussion of harmonization and working group schedules
- Status of harmonization activities and organization of working groups

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by February 3, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 25, 1993.

William J. Sullivan,

Executive Director, Transport Airplane and Engine Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–2237 Filed 1–29–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

[Docket No. 92–60; Notice 2]

Determination That Nonconforming 1991 Mercedes-Benz 500SE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 Mercedes-Benz 500SE passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 Mercedes-Benz 500SE passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 Mercedes-Benz 300SE), and they are capable of being readily modified to conform to the standards.

DATE: The determination is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1991 Mercedes-Benz 500SE passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 30, 1992 (57 FR 49213) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 26 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1991 Mercedes-Benz 500SE (Model ID 140.050) is substantially similar to a 1991 Mercedes-Benz 300SE (Model ID 126.024) originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 27, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93-2279 Filed 1-29-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; Liquidation of MCA Insurance Co.

MCA Insurance Company, an Oklahoma Corporation, formerly held a Certificate of Authority as an acceptable surety on Federal bonds and was last listed as such at 57 FR 29380, July 1, 1992. The Company's authority was suspended by the Department of the Treasury effective October 22, 1992. The suspension notice was published in the **Federal Register** of October 30, 1992, pages 49214 and 49215. The Company was subsequently terminated by the Department of the Treasury effective December 15, 1992. Notice of the termination is being published elsewhere in this issue of the **Federal Register**.

On, October 23, 1992, upon a petition by the Insurance Commissioner of the State of Oklahoma, the District Court of the State of Oklahoma, issued an Order of Liquidation with respect to MCA Insurance Company. Ms. Catherine J. Weatherford, the Insurance Commissioner of the State of Oklahoma, was appointed as Receiver of the company. In addition, on October 26, 1992, upon petition by the Insurance Commissioner of the State of Florida, the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, issued an Order of Liquidation with respect to MCA Insurance Company. Mr. Tom Gallagher, the Insurance Commissioner of the State of Florida, was appointed as the Ancilliary Liquidator of the Company. According to the State of Florida Order of Liquidation, all persons having claims against MCA Insurance Company must file their claims with the Ancilliary Receiver, by April 26, 1993, or be barred from sharing in the distribution of assets. According to the State of Oklahoma Order of Liquidation, all persons having claims against MCA Insurance Company must file their claims with the Receiver by October 23, 1993.

All claims must be filed in writing and shall set forth the amount of the claim, the facts upon which the claim is based, any priorities asserted, and any other pertinent facts to substantiate the claim. It is recommended that Federal Agency claimants asserting priority status under 31 U.S.C. 3713 who have not yet filed their claim, do so in writing, to: Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 875, Ben Franklin Station, Washington, DC 20044-0875. Attn: Ms. Sandra P. Spooner, Deputy Director.

The above office will be consolidating any and all claims against MCA Insurance Company, on behalf of the United States Government. Any questions concerning filing of claims may be directed to Ms. Spooner at (202/FTS) 724-7194.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, Telephone (202/FTS) 874-6905.

Dated: January 25, 1993

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93-2203 Filed 1-29-93; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1992—Rev., Supp. No. 8]

Surety Companies Acceptable on Federal Bonds Termination of Authority: MCA Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to MCA Insurance Company, Newark, New Jersey, an Oklahoma Corporation, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds was terminated effective December 15, 1992.

MCA Insurance Company was listed as an acceptable surety on Federal bonds at 57 FR 29380, July 1, 1992, and had its Treasury authority suspended effective October 22, 1992, at 57 FR 49214, October 30, 1992. An Order of Liquidation of the Company was issued by Oklahoma on October 23, 1992. A notice of the Liquidation is published elsewhere in this issue of the **Federal Register**.

With respect to any bonds currently in force with MCA Insurance Company, bond-approving officers should secure new bonds with acceptable sureties.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874-6696.

Dated: January 25, 1993.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 93-2204 Filed 1-29-93; 8:45 am]

BILLING CODE 4810-35-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With the Republic of Poland To Participate in the Establishment of a Schedule of Tariff Concessions in the Context of the Renegotiation of Poland's Terms of Accession to the General Agreement on Tariffs and Trade (GATT)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written comments on Poland's intent to establish a GATT schedule of tariff concessions in the context of the renegotiation of its Protocol of Accession. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for the bilateral negotiations concerning the tariff and non-tariff measure commitments to be negotiated in Poland's Schedule of Concessions.

DATES: Public comments are due by 12 noon, February 19, 1993.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, Director for GATT Affairs (202–395–3063), or Catherine Novelli, Director for Eastern Europe and Independent States (202–395–3074), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

1. Written Comments

The Chairman of the Trade Policy Staff Committee invites written public comments on issues that will be addressed during bilateral negotiations to establish Poland's GATT Schedule of bound tariff concessions. The Committee is particularly interested in tariff items of specific interest to U.S. exporters to Poland and on the experiences of U.S. firms in trading with Poland. Information provided on products subject to these negotiations should include Poland's import tariff classification number.

Persons wishing to submit comments should provide a written statement, in twenty copies, by noon, Friday, February 12, 1993, to Carolyn Frank, TPSC Secretary, Office of the U.S. Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, 600 17th Street, NW., room 101, Washington DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment, call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 19 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages, and must be accompanied by a non-confidential summary thereof.

2. Background

On January 15, 1990, the Republic of Poland informed the GATT Contracting Parties of its desire to renegotiate the accession Protocol established on June 13, 1967, and to establish a tariff-based schedule of concessions to replace the original non-tariff provisions of Schedule LXV. These provisions and a special Protocol were established for Poland in 1967 to protect GATT contracting parties from the unbalanced trade effects of Poland's non-market economic regime. In addition, and in lieu of tariff commitments that would have little meaning under the economic and trade regime existing at the time of Poland's accession, Poland established a GATT Schedule of Concessions that bound Poland to fixed yearly increases in imports from GATT contracting parties.

Based on its ongoing efforts to reform its economic and trade regime to eliminate the non-market, centrally planned economic system that made these types of Protocol and GATT Schedule necessary, Poland now seeks to establish terms of GATT participation similar to those negotiated with other contracting parties, including a normal GATT schedule of tariff concessions. Poland established a comprehensive applied tariff regime based on the Harmonized System of tariff nomenclature in 1988, but progressively suspended the application of tariffs and other border measures to accelerate the process of economic liberalization.

After freeing prices, and with increased competition from Western imports and the sharp decline in commerce among the former members of the Council of Mutual Economic Assistance in 1990, however, Poland signaled that it would need to "restructure" its tariff regime to include higher tariffs and other barriers. On August 1, 1991, Poland established a new tariff schedule including sharply higher tariff rates on most imports. By February 1992, remaining tariff suspensions had been revoked. In early 1993 licensing requirements were introduced for imports of certain dairy and poultry products. Poland, in consultation with the IMF, has also applied a 6 percent tax surcharge on imports for fiscal and balance of payments purposes. The Polish government is also considering establishing variable levies on certain agricultural imports to protect domestic production.

As Poland restructured its tariff regime at a higher level, it also negotiated a broad agreement covering economic, cultural, political, and trade relations with the European Communities (EC). Part of this agreement is a free trade arrangement which eliminates most tariffs on non-agricultural trade between Poland and the EC over a ten year period, with Polish access to the EC market to be improved in advance of similar Polish liberalization. On March 1, 1992, Poland eliminated tariffs on imports from the EC for over one-quarter of its non-agricultural tariff lines and established a fixed margin of preference for the EC on many agricultural products. A large portion of U.S. exports to Poland, therefore, are subject to tariffs that are up to 20 percentage points higher than those applied to imports from EC countries. Further tariff reductions for imports from the EC will be phased-in over the ten-year period. Poland has also concluded free trade agreements with EFTA, and with Hungary, the Czech Republic, and Slovakia covering non-agricultural trade. Ultimately, the great majority of Poland's non-agricultural imports will be governed by these free trade agreements. Exports to Poland from the United States and Poland's other non-preferential trading partners, however, will continue to be subject to import tariffs and other border restrictions.

As part of the process of renegotiation of its GATT Protocol, Poland initiated negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its new Protocol, attached to the text of the General Agreement. Tariff concessions granted in such negotiations normally consist of tariff reductions and a commitment to "bind" these reductions, i.e., not to increase tariffs above the negotiated levels without offering appropriate compensatory tariff concessions on other items. The rates of duty agreed with Poland in these negotiations will be applied to the trade of all of Poland's non-preferential trading partners, i.e., those that are subject to Most Favored Nation treatment.

The TPSC requested written comments on Poland's tariff and Protocol negotiations in June 1991, and is now requesting additional and updated comments concerning the establishment of Poland's GATT schedule of tariff concessions to address the changed circumstances that have developed in the intervening period that may have affected U.S. exporters.

Authority: 15 CFR 2002.2

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–2202 Filed 1–29–93; 8:45 am]

BILLING CODE 3190-01-M

Generalized System of Preferences; Information on Imports During First 10 Months of 1992; USITC Advice in the 1992 GSP Annual Review; Opportunity for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice informs the public of certain import statistics for the period from January through October 1992 and affords the public an opportunity to comment on certain discretionary decisions the President may make with respect to the Generalized System of Preferences (GSP) program. These decisions concern: (1) The GSP "competitive need" limits set forth in section 504(c) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2464(c)); (2) the "de minimis waiver" authority set forth in section 504(d)(2) of the 1974 Act; and (3) the redesignation authority set forth in section 504(c)(5) of the 1974 Act. This notice also announces an opportunity for public comment on the USITC advice rendered in the 1992 GSP Annual Review. Presidential decisions concerning the application of competitive need limits and other product-related decisions stemming from the 1992 Annual Review are expected to be announced in April, and implemented on July 1, 1993.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limits

Pursuant to section 504(c), any GSP-eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million indexed to the nominal growth of U.S. Gross National product (GNP) since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility with respect to that article not later than July 1 of the next calendar year. The preliminary estimate of this dollar limit, subject to revision, is $100,398,494 for calendar year 1992.

II. Reduced Competitive Need Limits

Pursuant to section 502(c)(2) of the 1974 Act, a general review of the GSP was initiated in 1985 and the results of the review were announced on January 2, 1987 (52 FR 389). The purpose of the general review was to determine whether beneficiary countries had become sufficiently competitive in GSP-eligible products, on a product and country specific basis. For beneficiaries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million, indexed to the nominal growth of U.S. GNP since 1984. The preliminary estimate of this dollar limit, subject to revision, is $39,936,604 for calendar year 1992.

III. Discretionary Decisions

A. De Minimis Waivers

Section 504(d)(2) of the 1974 Act permits the President to disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, indexed to the nominal growth of U.S. GNP since 1979. The preliminary estimate of the *de minimis* level, subject to revision, is $11,743,692 for calendar year 1992.

B. Redesignation of Eligible Articles

If a country is no longer a beneficiary developing country with respect to an eligible article because imports exceeded the competitive need limits in a prior year, then, pursuant to section 504(c)(5) of the 1974 Act, the President may redesignate the beneficiary developing country with respect to the eligible article if imports do not exceed the competitive need limits in a subsequent year.

IV. Implementation of Competitive Need Limits, Waivers, and Redesignations

A proclamation will be issued to be effective July 1, 1993, making the adjustments to the list of eligible articles that are required by section 504(c) of the 1974 Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1992.

It should be emphasized that the information set forth below covers only the first 10 months of 1992. Partial year data is being published now to provide the maximum possible advance indication of adjustments that may be made to meet the requirements of section 504(c) of the 1974 Act and to afford the earliest opportunity for comment on the possible discretionary decisions.

List I below shows specific GSP-eligible articles for beneficiaries which have already exceeded estimated competitive need limitations (i.e., a beneficiary supplied over $100,398,494 or $39,936,604 in the case where a beneficiary has been found sufficiently competitive in the product, during January-October, 1992) or have been graduated from the GSP in early years pursuant to the President's discretionary authority.

List II below shows beneficiaries which are approaching the competitive need limitations (i.e., a beneficiary accounted for over 42 percent of the value of total U.S. imports and/or over $83.7 million or in the case where a beneficiary has been found sufficiently competitive, over 21 percent and/or $33.3 million during January-October 1992).

List III below shows beneficiaries which, despite accounting for more than 50 percent (or 25 percent in the case of a beneficiary found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis* waiver (i.e., where a beneficiary accounted for more than the applicable percentage limit but the value of total U.S. imports of the item was less than $11,743,692 during January-October 1992).

List IV below shows articles from beneficiaries which are currently ineligible for GSP duty-free treatment but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (i.e., a beneficiary accounted for less than 50 percent, or 25 percent in the case of products for which it was found sufficiently competitive, of the value of U.S. imports and the value of U.S. imports of the article from the beneficiary developing country was less than the applicable dollar limit during January-October 1992). This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamations 6425 of April 29, 1992 (57 FR 19067), 6446 of June 15, 1992 (57 FR 26969) or 6447 of June 15, 1992 (57 FR 26981).

V. Notice of Opportunity for Public Comment on the USITC Advice Rendered in the 1992 GSP Annual Review

On August 21, 1992, USTR announced which product and country practice petitions were being accepted for further review in the 1992 GSP Annual Review (57 FR 38088). In that notice, it was noted that USTR would seek advice from the USITC on the probable economic effect of the modification of the list of articles eligible for GSP on industries producing like or directly competitive articles and on consumers.

The report containing the public version of the USITC advice is entitled President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences, Report to the President on Investigation Nos. TA–131–19, 503(a)–24, and 332–331, USITC Publication 2582 (December 1992) (hereinafter USITC Publication 2582). USITC Publication 2582 is available from the USITC by calling the Office of the Secretary of the USITC at (202) 205–1806. USITC Publication 2582 is also available for review by appointment with the USTR Public Reading Room. The USTR Public Reading Room is located at 600 17th Street, NW., room 101, Washington, DC 20506. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

VI. Public Comments

All written comments with regard to the decisions summarized above and the USITC report should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. All submissions must be in English and should conform to the information requirements of 15 CFR part 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (i.e. the use of the President's *de minimis* waiver authority, etc.) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Tuesday, February 16. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. the version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
* R	0603.10.70	Colombia............	96,819,445	89.4%
*	2203.00.00	Mexico..............	126,284,657	17.6%
G	2825.90.15	Brazil..............	10,293,459	81.4%
G D	2827.59.05	Israel..............	1,881,906	85.1%
G	2903.40.00	Israel..............	19,113	0.0%
*	2918.90.30	Bahamas.............	340,930,603	79.4%
G D	2933.40.10	Israel..............	1,920,329	55.6%
*	4015.11.00	Malaysia............	191,371,791	72.5%
G D	4017.00.00	Malaysia............	89,581	3.6%
*	4412.11.20	Indonesia...........	211,495,587	74.9%
*	6210.10.20	Mexico..............	106,091,212	95.0%
*	6406.10.65	Dominican Republic..	128,964,815	58.0%
*	7113.19.50	Israel..............	169,001,106	12.8%
*	7113.19.50	Thailand............	138,427,366	10.5%
G D	7202.21.10	Brazil..............	639,907	26.4%
G	7307.91.50	Brazil..............	2,606,936	7.9%
2	7321.11.30	Mexico..............	137,786,899	93.0%
G	7323.94.00	Mexico..............	7,109,159	9.1%
G D	7604.10.30	Venezuela...........	72,000	2.3%
G D	7605.11.00	Venezuela...........	61,206	1.1%
G	7605.21.00	Venezuela...........	3,255,723	18.0%
*	8407.34.20	Mexico..............	312,387,577	19.2%
* R	8409.91.91	Mexico..............	84,908,394	10.1%
* R	8415.82.00	Mexico..............	41,379,971	39.6%
* R	8415.90.00	Mexico..............	86,428,023	34.8%
* R	8428.90.00	Mexico..............	70,168,125	27.3%
	8471.92.40	Malaysia............	109,884,640	3.8%
*	8501.40.40	Mexico..............	171,448,283	86.4%
2	8507.30.00	Mexico..............	107,765,155	33.4%
2	8517.10.00	Thailand............	106,919,128	13.6%
*	8521.10.00	Thailand............	252,091,803	9.9%
2	8521.10.00	Malaysia............	349,409,602	13.7%
	8521.10.00	Indonesia...........	109,490,878	4.3%
* R	8523.11.00	Mexico..............	51,327,278	25.8%
2	8527.11.60	Malaysia............	193,249,167	31.3%
*	8527.21.10	Mexico..............	144,692,269	18.4%
* R	8527.21.10	Brazil..............	44,235,528	5.6%
*	8536.50.00	Mexico..............	257,960,444	32.7%
*	8544.51.80	Mexico..............	198,234,337	52.4%
*	8708.21.00	Mexico..............	589,242,434	82.5%
2	8708.29.00	Mexico..............	122,173,528	10.4%
*	8802.30.00	Brazil..............	108,604,532	8.3%
2	9032.89.60	Mexico..............	111,731,107	22.0%
G	9401.90.40	Croatia.............	643,626	2.1%
G	9401.90.40	Slovenia............	89,730	0.3%
* R	9403.60.80	Thailand............	43,629,042	5.4%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun;
'2'=Excl Jul/Dec; 'R'=Reduced limits apply; 'D'=De min;
'X'=Reduced limit waiver; 'H'=Grad, Reduced limit would apply;
'Z'=Subject to reduced limits, All limits waived.

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0202.30.20	Costa Rica..........	154,974	77.3%
D	0210.20.00	Uruguay.............	6,832,535	84.0%
D	0210.90.40	Venezuela...........	75,904	57.5%
D	0303.77.00	Mexico..............	252,412	45.5%
D	0303.77.00	Chile...............	298,741	53.9%
D	0701.90.10	Jamaica.............	55,073	53.9%
*	0702.00.60	Mexico..............	37,804,233	98.3%
2	0703.20.00	Mexico..............	11,183,041	60.0%
* D	0704.10.40	Mexico..............	835,403	93.4%
* D	0704.20.00	Mexico..............	3,021,797	99.1%
D R	0704.90.20	Mexico..............	910,783	31.4%
* D	0705.11.40	Mexico..............	1,643,706	98.6%
* D	0705.19.40	Mexico..............	482,273	90.7%
D	0706.90.20	Mexico..............	4,137,144	96.3%
D	0706.90.30	Mexico..............	83,494	46.4%
*	0707.00.20	Mexico..............	18,350,654	85.6%
*	0707.00.40	Mexico..............	15,117,729	87.6%
D	0707.00.60	Mexico..............	1,694,304	58.3%
D	0708.10.20	Guatemala...........	1,270,728	87.6%
* D R	0708.10.40	Mexico..............	4,223,103	47.4%
D	0708.10.40	Guatemala...........	4,599,903	51.6%
D	0708.20.10	Mexico..............	5,484	100.0%
D	0708.90.05	Turkey..............	362,785	77.8%
D	0708.90.15	India...............	169,926	61.3%
D	0708.90.30	Ecuador.............	175,560	63.4%
D	0709.10.00	Colombia............	215,425	79.1%
D	0709.20.10	Peru................	881,189	47.9%
* D	0709.30.20	Mexico..............	3,108,435	99.0%
* D	0709.30.40	Mexico..............	5,537,186	99.5%
*	0709.60.00	Mexico..............	89,245,213	75.4%
D	0709.90.05	Mexico..............	9,000,023	86.5%
D	0709.90.13	Mexico..............	1,278,662	99.8%
D	0709.90.16	Mexico..............	2,746,481	98.7%
*	0709.90.20	Mexico..............	32,013,734	97.0%
D	0710.22.10	Guatemala...........	14,942	80.5%
D	0710.29.05	Turkey..............	80,474	87.8%
D	0710.29.30	Dominican Republic..	3,432,484	92.0%
D	0710.80.50	Hungary.............	5,770	45.4%
D	0710.80.65	Guatemala...........	966,670	45.7%
1	0710.80.70	Guatemala...........	8,006,248	59.1%
D	0710.80.93	Guatemala...........	1,861,496	60.2%
D	0711.10.00	Israel..............	68,164	81.2%
D	0711.20.15	Mexico..............	4,800	51.7%
D	0711.40.00	Mexico..............	369,441	56.4%
D	0712.90.65	Israel..............	408,696	63.3%
D	0713.20.10	Mexico..............	303,360	63.8%
D	0713.20.20	Mexico..............	4,884,829	70.8%
D	0714.10.00	Costa Rica..........	5,310,161	94.5%
D	0714.20.00	Dominican Republic..	1,231,912	96.8%
D	0802.50.20	Turkey..............	77,930	71.9%
D	0802.50.40	Turkey..............	233,247	60.2%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0804.50.60	Mexico...............	31,662,077	97.8%
D	0804.50.80	Philippines..........	381,104	51.0%
D	0805.90.00	Jamaica..............	224,575	85.3%
*	0807.10.20	Mexico...............	27,663,474	46.1%
D	0807.10.30	Mexico...............	6,492,579	71.7%
D	0807.10.60	Israel...............	23,387	100.0%
* R	0807.10.70	Mexico...............	8,217,176	29.3%
* D	0807.20.00	Mexico...............	3,794,935	70.0%
D	0810.10.20	Mexico...............	202,034	92.4%
* D	0810.10.40	Mexico...............	9,238,436	91.3%
* R	0810.90.40	Mexico...............	16,388,109	79.4%
*	0811.10.00	Mexico...............	15,355,582	78.5%
D	0811.20.20	Chile................	2,241,941	57.6%
D	0811.20.40	Chile................	344,238	45.1%
D	0811.90.10	Costa Rica...........	3,092,040	69.7%
D	0811.90.50	Guatemala............	331,813	46.1%
D	0811.90.52	Mexico...............	240,168	60.3%
D	0811.90.55	Mexico...............	1,431,818	50.3%
D	0811.90.55	Guatemala............	1,412,020	49.6%
*	0813.10.00	Turkey...............	11,630,947	96.9%
* D R	0813.30.00	Argentina............	2,643,912	73.9%
D	0813.40.10	Thailand.............	870,214	96.8%
D	0813.40.80	Mexico...............	65,009	43.4%
D	0910.40.30	Jamaica..............	43,980	76.2%
D	0910.99.40	Turkey...............	374,111	58.9%
D	1006.30.10	Brazil...............	359,096	75.5%
D	1007.00.00	Mexico...............	56,656	45.6%
* D	1102.30.00	Thailand.............	1,372,328	87.0%
D	1301.90.40	Brazil...............	87,632	98.1%
D	1403.90.40	Mexico...............	1,874,960	63.1%
D	1515.30.40	India................	981,329	46.0%
D	1515.60.00	Mexico...............	2,274,483	100.0%
D	1518.00.40	Mexico...............	1,247,643	54.0%
D	1519.11.00	Malaysia.............	1,063,806	71.8%
D	1519.19.20	Malaysia.............	4,961,843	42.4%
D	1601.00.40	Brazil...............	221,400	78.2%
D	1602.31.00	Israel...............	1,029,185	52.7%
D	1602.50.09	Argentina............	2,022,631	80.3%
2	1602.50.20	Argentina............	[illegible],166,818	86.5%
D	1604.14.50	Thailand.............	400,523	91.8%
D	1604.15.00	Chile................	3,360,855	65.9%
	1604.16.10	Morocco..............	7,726,322	55.1%
D	1604.16.30	Morocco..............	1,121,634	91.1%
D	1605.10.05	Thailand.............	160,776	66.4%
*	1605.10.20	Thailand.............	5,998,832	44.0%
D	1605.90.05	Thailand.............	53,786	44.2%
D	1605.90.10	Indonesia............	2,100,247	43.4%
1	1701.11.01	Dominican Republic..	84,911,658	18.9%
2	1701.11.02	Guatemala............	57,267,069	61.0%
D	1701.91.21	Colombia.............	32,990	60.5%
D	1701.99.01	Colombia.............	1,741,856	57.5%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	1702.90.35	Belize...............	2,609,980	47.7%
D	1702.90.35	Dominican Republic..	2,860,100	52.2%
D	1702.90.40	Brazil...............	993,360	74.2%
D	1703.90.30	Lebanon..............	31,991	69.8%
2	1905.90.90	Mexico...............	21,712,874	63.6%
*	2001.90.39	Mexico...............	30,851,178	74.4%
D	2004.10.40	Colombia.............	5,705	80.2%
D	2005.80.00	Thailand.............	5,175,422	95.5%
* D R	2005.90.55	Mexico...............	2,602,143	51.0%
D	2005.90.85	Lebanon..............	214,749	42.6%
D	2007.99.40	Thailand.............	663,942	87.6%
D	2007.99.48	Chile................	87,864	42.0%
* D R	2007.99.50	Brazil...............	1,380,186	22.1%
D	2008.30.10	Brazil...............	65,975	70.8%
D	2008.30.95	Israel...............	102,657	67.3%
D	2008.50.20	Argentina............	92,951	70.0%
D	2008.99.23	Dominican Republic..	414,307	69.5%
D	2008.99.35	Thailand.............	2,361,524	87.7%
D	2008.99.40	Mexico...............	2,598,438	58.4%
D	2008.99.45	Dominican Republic..	518,222	82.4%
D	2008.99.50	Dominican Republic..	499,105	50.4%
D	2008.99.80	Mexico...............	2,176,942	57.2%
D	2009.30.10	Mexico...............	414,525	100.0%
D	2009.30.20	Mexico...............	404,994	83.4%
D	2104.20.00	Mexico...............	303,310	61.1%
D	2106.90.11	India................	2,168	100.0%
D	2204.21.30	Hungary..............	3,984	56.9%
D	2208.90.10	Trinidad and Tobago.	267,499	77.7%
D	2208.90.50	Mexico...............	2,859,706	100.0%
D	2306.30.00	Argentina............	345,346	75.5%
	2401.10.40	Bulgaria.............	81,383,958	9.7%
D	2401.20.20	Dominican Republic..	1,440,819	56.5%
	2401.20.50	Indonesia............	7,949,937	42.9%
*	2402.10.80	Dominican Republic..	17,945,247	61.1%
D	2515.11.00	Brazil...............	18,114	51.7%
D	2530.20.20	India................	12,763	83.1%
	2603.00.00	Indonesia............	39,792,700	45.0%
D	2607.00.00	Mexico...............	1,566,464	93.5%
D	2620.19.60	Mexico...............	65,998	49.6%
D	2620.90.90	Mexico...............	735,653	89.9%
D	2811.19.10	Mexico...............	33,814	100.0%
D	2824.10.00	Mexico...............	9,163,655	99.8%
D	2825.50.30	Mexico...............	1,214,216	99.2%
D	2825.70.00	Chile................	2,936,936	80.1%
D	2826.11.10	Mexico...............	2,683,775	51.1%
2 D	2827.39.20	India................	393,352	54.2%
D	2827.41.00	Mexico...............	240,912	42.4%
D	2827.51.10	Israel...............	1,103,746	84.7%
D	2827.51.20	Israel...............	990,382	72.1%
D	2827.59.50	Israel...............	1,299,518	66.2%
2 D	2827.60.20	India................	333,405	42.3%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2833.23.00	Turkey	57,000	84.8%
D	2833.25.00	Mexico	3,223,196	50.9%
D	2833.26.00	Mexico	1,477,319	80.0%
D	2833.29.50	Mexico	6,397,943	63.8%
D	2834.22.00	Mexico	238,354	54.6%
D	2834.29.20	Mexico	1,388,453	98.6%
D	2840.11.00	Turkey	2,825,400	99.7%
D	2841.60.00	Czechoslovakia	991,339	54.9%
D R	2843.21.00	Mexico	380,240	91.1%
D	2843.30.00	Chile	522,034	46.3%
D	2901.10.30	Mexico	807,929	87.7%
D	2903.14.00	Brazil	3,690,797	42.6%
D	2903.19.10	Brazil	201,365	54.7%
D	2905.16.00	Mexico	3,305,751	82.6%
D	2905.21.00	Chile	1,912,272	99.8%
D	2905.44.00	Mexico	1,417,204	72.3%
D	2907.11.00	Brazil	2,885,271	61.1%
D	2909.42.00	Mexico	1,076,245	99.0%
D	2909.43.00	Mexico	721,406	90.3%
D	2914.13.00	Mexico	3,706,621	54.5%
D	2914.22.10	Czechoslovakia	220,911	91.5%
2	2915.24.00	Mexico	12,022,236	67.7%
* D R	2915.31.00	Brazil	499,832	22.2%
D	2915.39.50	Mexico	6,399,257	54.7%
D	2916.31.20	Brazil	237,837	50.0%
D R	2917.14.10	Brazil	260,433	34.0%
D	2917.32.00	Brazil	640,505	63.5%
D	2917.35.00	Mexico	7,383,448	64.8%
D	2917.39.20	Brazil	1,273,292	51.1%
D	2918.15.10	Israel	5,130,196	63.4%
D	2918.21.10	Brazil	5,832,116	58.5%
	2918.90.30	Mexico	85,910,516	20.0%
2 D	2920.10.10	India	197,536	66.0%
D	2920.90.10	Israel	830,331	98.1%
D	2921.42.23	Brazil	729,600	100.0%
D	2921.42.24	Hungary	866,673	42.0%
2 D	2921.49.30	India	450,058	100.0%
D	2922.11.00	Mexico	1,139,273	42.2%
D	2922.11.00	Brazil	1,559,889	57.7%
	2922.19.50	Bahamas	11,998,266	48.8%
2 D	2922.29.25	India	649,192	68.7%
D	2924.21.10	Hungary	1,208,750	49.6%
	2924.21.15	Brazil	11,469,600	43.7%
D	2924.29.02	Hungary	202,395	88.0%
D	2926.10.00	Israel	75,417	100.0%
D	2929.10.15	Argentina	154,778	48.0%
D	2930.90.30	Israel	2,841,911	46.6%
D	2931.00.25	Brazil	4,385,600	78.3%
D	2933.39.27	Israel	412,508	77.6%
D	2933.59.10	Venezuela	398,549	100.0%
D	2933.59.18	Israel	5,181,527	82.8%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2933.90.87	Israel	589,960	66.0%
D	2934.90.12	Brazil	6,806,604	75.2%
D	2934.90.16	Israel	138,507	98.2%
D	2935.00.33	Poland	376,191	99.6%
	2937.22.00	Bahamas	7,004,285	47.0%
* R	2937.92.10	Mexico	9,103,782	42.6%
D	3001.10.00	Argentina	811,154	45.5%
D	3003.39.10	Argentina	1,776,237	99.6%
* D R	3207.40.10	Mexico	3,866,953	35.1%
* D	3301.12.00	Brazil	6,036,630	69.9%
D	3301.19.10	Israel	702,272	67.1%
2 D	3301.24.00	India	281,653	58.0%
	3402.20.10	Mexico	17,472,437	61.3%
D	3404.20.00	Mexico	1,765,145	54.7%
D	3603.00.30	Israel	2,869,000	48.9%
	3702.31.00	Mexico	6,629,355	42.6%
D	3806.30.00	Argentina	605,980	65.4%
D	3808.30.20	Guatemala	130,453	57.0%
D	3812.20.10	Brazil	1,321,471	53.4%
D	3812.30.20	Mexico	2,324,350	51.1%
D	3814.00.20	Argentina	2,901,366	57.2%
D	3823.90.25	Mexico	104,412	89.1%
D	3902.20.50	Mexico	2,512,914	60.7%
* D	3917.33.00	Mexico	6,595,101	65.7%
D	3920.59.50	Mexico	680,719	57.6%
2	3920.71.00	Mexico	7.141,531	47.3%
*	3926.90.87	Mexico	6.535,196	51.4%
	3926.90.90	Mexico	82,013,300	8.9%
D	4006.10.00	Brazil	27,810	49.7%
2	4007.00.00	Malaysia	17,468,566	88.6%
*	4011.91.50	Israel	13,461,687	67.9%
	4013.10.00	Mexico	7,959,197	44.4%
	4015.19.10	Malaysia	29,212,425	42.2%
2 D	4016.99.25	Thailand	5,503,215	51.6%
2 D	4104.10.20	Argentina	6,111,159	57.8%
D	4104.22.00	Brazil	5,336,403	56.3%
2 D	4104.29.30	India	1,022,619	46.3%
*	4104.31.20	Thailand	13,035,498	97.4%
	4104.39.60	Brazil	14,082,413	50.6%
D	4106.12.00	Pakistan	240,699	62.7%
* D	4106.20.30	India	2,044,103	44.3%
* D	4106.20.60	India	5.796,128	55.6%
* D R	4107.29.30	Argentina	2,432,355	27.5%
D	4109.00.70	Brazil	307,670	44.3%
D	4202.22.35	Philippines	9,325	87.3%
D	4205.00.60	Argentina	232,813	63.1%
D	4302.30.00	Argentina	436,782	42.5%
D R	4409.10.60	Mexico	473,759	21.9%
* R	4411.11.00	Brazil	9,906,129	54.4%
* D R	4411.19.20	Brazil	1,586,206	47.5%
	4412.11.10	Indonesia	10,886,065	56.9%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
* D	4412.11.50	Indonesia............	5,665,316	75.3%
D	4412.12.15	Brazil...............	4,802,655	96.4%
*	4412.12.20	Indonesia............	32,312,320	42.6%
D	4412.19.10	Brazil...............	120,733	85.7%
D	4412.19.40	Indonesia............	5,154,076	80.3%
D	4412.29.10	Indonesia............	1,069,035	53.4%
* D	4412.29.30	Indonesia............	3,756,312	53.1%
* D	4412.29.40	Brazil...............	2,199,441	43.2%
D	4412.99.10	Brazil...............	334,548	100.0%
D	4412.99.40	Poland...............	1,680,859	74.8%
D	4412.99.50	Indonesia............	1,019,039	57.4%
D	4416.00.90	Mexico...............	791,291	77.2%
D	4421.90.30	Mexico...............	1,588,521	70.0%
D	4804.31.20	Colombia.............	305,658	53.3%
	4804.31.60	Mexico...............	11,852,654	78.5%
D	4808.10.00	Venezuela............	917,441	51.6%
* D	4818.50.00	Mexico...............	4,315,291	87.3%
	4820.30.00	Mexico...............	12,832,274	44.8%
2	4820.90.00	Mexico...............	7,813,699	60.6%
D	4823.90.20	Philippines..........	2,913,517	46.5%
D	5102.10.60	Hungary..............	85,057	70.7%
2 D	5208.31.20	India................	276,539	99.3%
2 D	5208.32.10	India................	515,642	99.5%
2 D	5208.41.20	India................	6,377,150	86.5%
2 D	5208.42.10	India................	5,479,641	99.1%
2 D	5208.51.20	India................	488,932	99.9%
2 D	5208.52.10	India................	248,575	69.1%
2 D	5209.31.30	India................	350,968	80.0%
2 D	5209.41.30	India................	1,421,678	93.3%
D	5311.00.60	Mexico...............	281,204	92.3%
D	5607.29.00	Brazil...............	2,971,926	48.3%
D	5607.30.20	Philippines..........	2,633,953	93.9%
2 D	5702.20.10	India................	566,165	94.5%
2 D	6304.99.25	India................	223,157	94.1%
*	6307.90.60	Mexico...............	78,599,462	99.4%
D	6405.90.20	Mexico...............	203,991	50.4%
D	6501.00.60	Czechoslovakia.......	296,852	97.4%
D	6504.00.60	Mexico...............	2,807,287	60.9%
* D R	6702.90.65	Thailand.............	3,360,921	35.6%
D	6802.29.00	Mexico...............	578,873	64.1%
	6807.10.00	Mexico...............	5,536,448	42.4%
D	6810.19.50	Mexico...............	4,519,065	66.3%
D	6811.30.00	Mexico...............	67,704	94.9%
D	6905.10.00	Venezuela............	3,762,618	53.1%
D	6905.90.00	Mexico...............	3,744,969	62.2%
* R	6908.10.20	Thailand.............	3,873,621	23.6%
*	6910.10.00	Mexico...............	30,891,911	51.1%
	7008.00.00	Mexico...............	7,123,479	49.9%
2 D	7012.00.00	India................	569,277	51.1%
2	7103.99.10	Thailand.............	44,604,821	45.6%
D	7106.91.50	Peru.................	1,302,783	94.4%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	7109.00.00	Chile................	9,727,702	99.5%
* D	7113.11.20	Thailand.............	7,175,329	61.8%
	7113.19.50	India................	84,033,716	6.3%
D	7113.20.21	Malta and Gozo.......	32,150	46.0%
D	7113.20.30	Mauritius............	1,024,871	57.4%
D	7114.11.40	Chile................	2,455,875	95.4%
D	7114.19.00	Chile................	7,650,323	89.5%
D	7115.90.10	Chile................	3,441,788	48.6%
D	7115.90.20	Chile................	4,686,933	64.0%
D	7116.20.50	India................	1,778,325	45.7%
D	7306.30.30	Mexico...............	1,355,831	65.5%
D	7307.21.10	India................	4,389,555	55.4%
D	7307.91.30	Mexico...............	1,985,654	70.6%
D	7308.20.00	Brazil...............	2,578,734	79.9%
D	7319.20.00	Malaysia.............	1,426,955	56.9%
	7320.10.30	Mexico...............	10,579,407	80.0%
2	7322.90.00	Mexico...............	16,103,413	53.7%
D	7401.10.00	Philippines..........	4,345,723	79.3%
D	7401.20.00	Bolivia..............	55,641	100.0%
D	7403.12.00	Peru.................	545,385	100.0%
*	7403.19.00	Chile................	19,726,685	80.[illegible]
2 R	7407.21.90	Brazil...............	7,274,609	30.0%
D	7407.22.10	Malaysia.............	94,904	51.1%
D	7409.39.50	Hungary..............	76,116	43.4%
D	7416.00.00	Barbados.............	303,994	49.0%
	7418.10.20	India................	23,599,427	45.5%
D	7603.10.00	Bahrain..............	964,198	65.5%
D	7606.91.60	Mexico...............	4,535,548	62.1%
D	7613.00.00	Venezuela............	1,263,575	46.6%
D	7614.10.50	Brazil...............	915,370	83.4%
D	7614.90.20	Venezuela............	6,967,485	99.1%
D	8104.90.00	Mexico...............	2,204,399	69.7%
D	8107.90.00	Mexico...............	124,359	51.6%
2 D	8112.91.50	Chile................	5,184,848	81.7%
D	8203.20.80	Mexico...............	960,319	60.8%
	8207.12.30	Mexico...............	14,681,479	42.1%
D	8213.00.60	Brazil...............	1,339,308	56.2%
D	8215.99.22	Mexico...............	89,602	58.5%
D	8301.50.00	Mexico...............	2,412,273	74.2%
D	8302.49.20	Mexico...............	477,461	97.2%
	8402.20.00	Philippines..........	13,986,460	98.7%
R	8408.20.90	Brazil...............	20,098,981	31.6%
R	8409.99.91	Brazil...............	28,864,038	21.5%
	8415.10.00	Malaysia.............	55,464,416	43.6%
*	8419.19.00	Mexico...............	43,707,946	83.7%
D	8419.90.10	Mexico...............	6,409,349	74.3%
2	8422.90.05	Mexico...............	9,767,145	68.0%
*	8424.20.10	Mexico...............	13,757,606	77.2%
* R	8429.20.00	Brazil...............	31,878,212	59.3%
* D R	8429.30.00	Brazil...............	5,020,538	69.0%
D R	8430.62.00	Brazil...............	139,109	86.4%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2	8431.42.00	Mexico..............	9,545,135	46.2%
D	8447.12.10	Czechoslovakia......	1,025,060	59.4%
D	8450.19.00	Mexico..............	2,125,255	78.0%
	8481.80.90	Mexico..............	99,401,782	16.1%
D	8483.20.40	Mexico..............	2,769,713	46.6%
*	8501.40.60	Mexico..............	30,252,918	71.9%
	8503.00.40	Mexico..............	6,301,974	43.9%
*	8504.40.00	Mexico..............	95,767,637	11.7%
	8504.50.00	Mexico..............	80,357,279	44.4%
*	8509.90.20	Mexico..............	43,615,671	71.4%
*	8512.40.40	Mexico..............	96,543,371	85.0%
D	8513.90.20	Mexico..............	1,855,381	87.4%
2	8516.10.00	Mexico..............	15,057,756	60.0%
	8516.40.40	Mexico..............	55,699,250	42.7%
	8516.80.80	Mexico..............	16,394,536	48.6%
	8516.90.60	Mexico..............	24,523,941	43.5%
	8517.82.00	Thailand............	80,685,167	7.6%
* D	8522.10.00	Mexico..............	1,684,306	44.9%
D	8524.22.20	Israel..............	3,708,000	49.1%
	8525.20.20	Philippines.........	6,421,725	45.9%
D	8535.21.00	Mexico..............	5,069,014	54.7%
	8536.10.00	Mexico..............	17,742,747	48.0%
	8536.20.00	Mexico..............	57,075,867	43.8%
	8536.61.00	Mexico..............	25,515,070	51.2%
* [illegible]	8539.90.00	Mexico..............	21,377,518	50.5%
2	8541.40.80	Mexico..............	19,518,579	54.8%
	8542.80.00	Malaysia............	51,081,852	64.5%
	8544.59.20	Mexico..............	38,363,339	45.3%
[illegible]	8545.90.20	Mexico..............	1,003,082	80.6%
R	8548.00.00	Mexico..............	28,699,242	27.5%
	8607.99.10	Brazil..............	14,922,743	50.6%
2	8713.10.00	Mexico..............	10,689,361	70.1%
	8716.39.00	Mexico..............	29,951,804	78.5%
	9006.99.00	Mexico..............	9,993,569	51.2%
D	9010.90.40	Israel..............	2,082,282	58.6%
D	9014.10.60	Israel..............	1,548,285	68.3%
	9015.90.00	Israel..............	13,553,737	42.2%
D	9018.90.10	Argentina...........	318,627	57.9%
2	9018.90.80	Mexico..............	80,466,327	16.6%
2	9018.90.80	Dominican Republic..	90,471,506	18.7%
*	9022.29.40	Mexico..............	41,336,349	98.1%
D	9022.90.70	Mexico..............	532,240	93.0%
* D R	9025.11.20	Brazil..............	1,258,598	36.3%
* D	9025.11.20	India...............	1,541,690	44.4%
2	9026.80.60	Mexico..............	26,496,595	45.6%
D	9032.20.00	Mexico..............	6,744,482	71.1%
D	9102.29.04	Philippines.........	2,209,427	42.1%
	9107.00.40	Mexico..............	11,464,775	46.9%
D	9305.10.80	Israel..............	495,300	48.1%
D	9401.90.15	Czechoslovakia......	459,337	56.4%
D	9401.90.25	Indonesia...........	1,420,401	47.5%

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	9403.90.25	Indonesia...........	1,873,770	45.8%
2 D	9403.90.60	Mexico..............	4,121,175	53.6%
	9405.50.30	India...............	9,563,505	52.8%
D	9405.60.20	India...............	48,175	51.5%
D	9405.91.40	Mexico..............	1,244,846	77.0%
D	9506.61.00	Indonesia...........	4,015,385	63.1%
D	9602.00.40	Israel..............	199,485	42.3%
D	9606.29.20	Thailand............	271,688	47.9%
	9608.60.00	Mexico..............	6,029,963	47.4%
D	9608.99.30	Mexico..............	916,399	77.1%
2 R	9613.80.20	Mexico..............	9,708,606	49.9%
D	9614.20.60	Turkey..............	114,544	78.2%
D	9614.20.80	Turkey..............	150,073	76.0%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0202.30.20	Costa Rica..........	154,974	77.3%
D	0210.20.00	Uruguay.............	6,832,535	84.0%
D	0210.90.40	Venezuela...........	75,904	57.5%
D	0303.77.00	Mexico..............	252,412	45.5%
D	0303.77.00	Chile...............	298,741	53.9%
D	0701.90.10	Jamaica.............	55,073	53.9%
* D	0704.10.40	Mexico..............	835,403	93.4%
* D	0704.20.00	Mexico..............	3,021,797	99.1%
D R	0704.90.20	Mexico..............	910,783	31.4%
* D	0705.11.40	Mexico..............	1,643,706	98.6%
* D	0705.19.40	Mexico..............	482,273	90.7%
D	0706.90.20	Mexico..............	4,137,144	96.3%
D	0706.90.30	Mexico..............	83,494	46.4%
D	0707.00.60	Mexico..............	1,694,304	58.3%
D	0708.10.20	Guatemala...........	1,270,728	87.6%
* D R	0708.10.40	Mexico..............	4,223,103	47.4%
D	0708.10.40	Guatemala...........	4,599,903	51.6%
D	0708.20.10	Mexico..............	5,484	100.0%
D	0708.90.05	Turkey..............	362,785	77.8%
D	0708.90.15	India...............	169,926	61.3%
D	0708.90.30	Ecuador.............	175,560	63.4%
D	0709.10.00	Colombia............	215,425	79.1%
D	0709.20.10	Peru................	881,189	47.9%
* D	0709.30.20	Mexico..............	3,108,435	99.0%
* D	0709.30.40	Mexico..............	5,537,186	99.5%
D	0709.90.05	Mexico..............	9,000,023	86.5%
D	0709.90.13	Mexico..............	1,278,662	99.8%
D	0709.90.16	Mexico..............	2,746,481	98.7%
D	0710.22.10	Guatemala...........	14,942	80.5%
D	0710.29.05	Turkey..............	80,474	87.8%
D	0710.29.30	Dominican Republic..	3,432,484	92.0%
D	0710.80.50	Hungary.............	5,770	45.4%
D	0710.80.65	Guatemala...........	966,670	45.7%
D	0710.80.93	Guatemala...........	1,861,496	60.2%
D	0711.10.00	Israel..............	68,164	81.2%
D	0711.20.15	Mexico..............	4,800	51.7%
D	0711.40.00	Mexico..............	369,441	56.4%
D	0712.90.65	Israel..............	408,696	63.3%
D	0713.20.10	Mexico..............	303,360	63.8%
D	0713.20.20	Mexico..............	4,884,829	70.8%
D	0714.10.00	Costa Rica..........	5,310,161	94.5%
D	0714.20.00	Dominican Republic..	1,231,912	96.8%
D	0802.50.20	Turkey..............	77,930	71.9%
D	0802.50.40	Turkey..............	233,247	60.2%
D	0804.50.80	Philippines.........	381,104	51.0%
D	0805.90.00	Jamaica.............	224,575	85.3%
D	0807.10.30	Mexico..............	6,492,579	71.7%
D	0807.10.60	Israel..............	23,387	100.0%
* D	0807.20.00	Mexico..............	3,794,935	70.0%
D	0810.10.20	Mexico..............	202,034	92.4%
* D	0810.10.40	Mexico..............	9,238,436	91.3%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0811.20.20	Chile...............	2,241,941	57.6%
D	0811.20.40	Chile...............	344,238	45.1%
D	0811.90.10	Costa Rica..........	3,092,040	69.7%
D	0811.90.50	Guatemala...........	331,813	46.1%
D	0811.90.52	Mexico..............	240,168	60.3%
D	0811.90.55	Mexico..............	1,431,818	50.3%
D	0811.90.55	Guatemala...........	1,412,020	49.6%
* D R	0813.30.00	Argentina...........	2,643,912	73.9%
D	0813.40.10	Thailand............	870,214	96.8%
D	0813.40.80	Mexico..............	65,009	43.4%
D	0910.40.30	Jamaica.............	43,980	76.2%
D	0910.99.40	Turkey..............	374,111	58.9%
D	1006.30.10	Brazil..............	359,096	75.5%
D	1007.00.00	Mexico..............	56,656	45.6%
* D	1102.30.00	Thailand............	1,372,328	87.0%
D	1301.90.40	Brazil..............	87,632	98.1%
D	1403.90.40	Mexico..............	1,874,960	63.1%
D	1515.30.40	India...............	981,329	46.0%
D	1515.60.00	Mexico..............	2,274,483	100.0%
D	1518.00.40	Mexico..............	1,247,643	54.0%
D	1519.11.00	Malaysia............	1,063,806	71.8%
D	1519.19.20	Malaysia............	4,961,843	42.4%
D	1601.00.40	Brazil..............	221,400	78.2%
D	1602.31.00	Israel..............	1,029,185	52.7%
D	1602.50.09	Argentina...........	2,022,631	80.3%
D	1604.14.50	Thailand............	400,523	91.8%
D	1604.15.00	Chile...............	3,360,855	65.9%
D	1604.16.30	Morocco.............	1,121,634	91.1%
D	1605.10.05	Thailand............	160,776	66.4%
D	1605.90.05	Thailand............	53,786	44.2%
D	1605.90.10	Indonesia...........	2,100,247	43.4%
D	1701.91.21	Colombia............	32,990	60.5%
D	1701.99.01	Colombia............	1,741,856	57.5%
D	1702.90.35	Belize..............	2,609,980	47.7%
D	1702.90.35	Dominican Republic..	2,860,100	52.2%
D	1702.90.40	Brazil..............	993,360	74.2%
D	1703.90.30	Lebanon.............	31,991	69.8%
D	2004.10.40	Colombia............	5,705	80.2%
D	2005.80.00	Thailand............	5,175,422	95.5%
* D R	2005.90.55	Mexico..............	2,602,143	51.0%
D	2005.90.85	Lebanon.............	214,749	42.6%
D	2007.99.40	Thailand............	663,942	87.6%
D	2007.99.48	Chile...............	87,864	42.0%
* D R	2007.99.50	Brazil..............	1,380,186	22.1%
D	2008.30.10	Brazil..............	65,975	70.8%
D	2008.30.95	Israel..............	102,657	67.3%
D	2008.50.20	Argentina...........	92,951	70.0%
D	2008.99.23	Dominican Republic..	414,307	69.5%
D	2008.99.35	Thailand............	2,361,524	87.7%
D	2008.99.40	Mexico..............	2,598,438	58.4%
D	2008.99.45	Dominican Republic..	518,222	82.4%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2008.99.50	Dominican Republic	499,105	50.4%
D	2008.99.80	Mexico	2,176,942	57.2%
D	2009.30.10	Mexico	414,525	100.0%
D	2009.30.20	Mexico	404,994	83.4%
D	2104.20.00	Mexico	303,310	61.1%
D	2106.90.11	India	2,168	100.0%
D	2204.21.30	Hungary	3,984	56.9%
D	2208.90.10	Trinidad and Tobago	267,499	77.7%
D	2208.90.50	Mexico	2,859,706	100.0%
D	2306.30.00	Argentina	345,346	75.5%
D	2401.20.20	Dominican Republic	1,440,819	56.5%
D	2515.11.00	Brazil	18,114	51.7%
D	2530.20.20	India	12,763	83.1%
D	2607.00.00	Mexico	1,566,464	93.5%
D	2620.19.60	Mexico	65,998	49.6%
D	2620.90.90	Mexico	735,653	89.9%
D	2811.19.10	Mexico	33,814	100.0%
D	2824.10.00	Mexico	9,163,655	99.8%
D	2825.50.30	Mexico	1,214,216	99.2%
D	2825.70.00	Chile	2,936,936	80.1%
D	2826.11.10	Mexico	2,683,775	51.1%
2 D	2827.39.20	India	393,352	54.2%
D	2827.41.00	Mexico	240,912	42.4%
D	2827.51.10	Israel	1,103,746	84.7%
D	2827.51.20	Israel	990,382	72.1%
D	2827.59.50	Israel	1,299,518	66.2%
2 D	2827.60.20	India	333,405	42.3%
D	2833.23.00	Turkey	57,000	84.8%
D	2833.25.00	Mexico	3,223,196	50.9%
D	2833.26.00	Mexico	1,477,319	80.0%
D	2833.29.50	Mexico	6,397,943	63.8%
D	2834.22.00	Mexico	238,354	54.6%
D	2834.29.20	Mexico	1,388,453	98.6%
D	2840.11.00	Turkey	2,825,400	99.7%
D	2841.60.00	Czechoslovakia	991,339	54.9%
D R	2843.21.00	Mexico	380,240	91.1%
D	2843.30.00	Chile	522,034	46.3%
D	2901.10.30	Mexico	807,929	87.7%
D	2903.14.00	Brazil	3,690,797	42.6%
D	2903.19.10	Brazil	201,365	54.7%
D	2905.16.00	Mexico	3,305,751	82.6%
D	2905.21.00	Chile	1,912,272	99.8%
D	2905.44.00	Mexico	1,417,204	72.3%
D	2907.11.00	Brazil	2,885,271	61.1%
D	2909.42.00	Mexico	1,076,245	99.0%
D	2909.43.00	Mexico	721,406	90.3%
D	2914.13.00	Mexico	3,706,621	54.5%
D	2914.22.10	Czechoslovakia	220,911	91.5%
* D R	2915.31.00	Brazil	499,832	22.2%
D	2915.39.50	Mexico	6,399,257	54.7%
D	2916.31.20	Brazil	237,837	50.0%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D R	2917.14.10	Brazil	260,433	34.0%
D	2917.32.00	Brazil	640,505	63.5%
D	2917.35.00	Mexico	7,383,448	64.[illegible]
D	2917.39.20	Brazil	1,273,292	51.1%
D	2918.15.10	Israel	5,130,196	63.4%
D	2918.21.10	Brazil	5,832,116	58.5%
2 D	2920.10.10	India	197,536	66.0%
D	2920.90.10	Israel	830,331	98.1%
D	2921.42.23	Brazil	729,600	100.0%
D	2921.42.24	Hungary	866,673	42.0%
2 D	2921.49.30	India	450,058	100.0%
D	2922.11.00	Mexico	1,139,273	42.2%
D	2922.11.00	Brazil	1,559,889	57.7%
2 D	2922.29.25	India	649,192	68.7%
D	2924.21.10	Hungary	,208,750	49.6%
D	2924.29.02	Hungary	202,395	88.0%
D	2926.10.00	Israel	75,417	100.0%
D	2929.10.15	Argentina	154,778	48.0%
D	2930.90.30	Israel	,841,911	46.6%
D	2931.00.25	Brazil	,385,600	78.3%
D	2933.39.27	Israel	412,508	77.6%
D	2933.59.10	Venezuela	398,549	100.0%
D	2933.59.18	Israel	,181,527	82.8%
D	2933.90.87	Israel	589,960	66.0%
D	2934.90.12	Brazil	6,806,604	75.2%
D	2934.90.16	Israel	138,507	98.2%
D	2935.00.33	Poland	376,191	99.6%
D	3001.10.00	Argentina	811,154	45.5%
D	3003.39.10	Argentina	1,776,237	99.6%
* D R	3207.40.10	Mexico	3,866,953	35.1%
* D	3301.12.00	Brazil	6,036,630	69.9%
D	3301.19.10	Israel	702,272	67.1%
2 D	3301.24.00	India	281,653	58.0%
D	3404.20.00	Mexico	1,765,145	54.7%
D	3603.00.30	Israel	2,869,000	[illegible].9%
D	3806.30.00	Argentina	605,980	65.4%
D	3808.30.20	Guatemala	130,453	57.0%
D	3812.20.10	Brazil	1,321,471	53.4%
D	3812.30.20	Mexico	2,324,350	51.1%
D	3814.00.20	Argentina	2,901,366	57.2%
D	3823.90.25	Mexico	104,412	89.1%
D	3902.20.50	Mexico	2,512,914	60.7%
* D	3917.33.00	Mexico	6,595,101	65.7%
D	3920.59.50	Mexico	680,719	57.6%
D	4006.10.00	Brazil	27,810	49.7%
2 D	4016.99.25	Thailand	5,503,215	51.6%
2 D	4104.10.20	Argentina	6,111,159	57.8%
D	4104.22.00	Brazil	5,336,403	56.3%
2 D	4104.29.30	India	1,022,619	46.3%
D	4106.12.00	Pakistan	240,699	62.7%
* D	4106.20.30	India	2,044,103	44.3%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
* D	4106.20.60	India	5,796,128	55.6%
* D R	4107.29.30	Argentina	2,432,355	27.5%
D	4109.00.70	Brazil	307,670	44.3%
D	4202.22.35	Philippines	9,325	87.3%
D	4205.00.60	Argentina	232,813	63.1%
D	4302.30.00	Argentina	436,782	42.5%
D R	4409.10.60	Mexico	473,759	21.9%
* D R	4411.19.20	Brazil	1,586,206	47.5%
* D	4412.11.50	Indonesia	5,665,316	75.3%
D	4412.12.15	Brazil	4,802,655	96.4%
D	4412.19.10	Brazil	120,733	85.7%
D	4412.19.40	Indonesia	5,154,076	80.3%
D	4412.29.10	Indonesia	1,069,035	53.4%
* D	4412.29.30	Indonesia	3,756,312	53.1%
* D	4412.29.40	Brazil	2,199,441	43.2%
D	4412.99.10	Brazil	334,548	100.0%
D	4412.99.40	Poland	1,680,859	74.[illegible]
D	4412.99.50	Indonesia	1,019,039	57.4%
D	4416.00.90	Mexico	791,291	77.2%
D	4421.90.30	Mexico	1,588,521	70.0%
D	4804.31.20	Colombia	305,658	53.3%
D	4808.10.00	Venezuela	917,441	51.6%
* D	4818.50.00	Mexico	4,315,291	87.3%
D	4823.90.20	Philippines	2,913,517	46.5%
D	5102.10.60	Hungary	85,057	70.7%
2 D	5208.31.20	India	276,539	99.3%
2 D	5208.32.10	India	515,642	99.5%
2 D	5208.41.20	India	6,377,150	86.5%
2 D	5208.42.10	India	5,479,641	99.1%
2 D	5208.51.20	India	488,932	99.9%
2 D	5208.52.10	India	248,575	69.1%
2 D	5209.31.30	India	350,968	80.0%
2 D	5209.41.30	India	1,421,678	93.3%
D	5311.00.60	Mexico	281,204	92.3%
D	5607.29.00	Brazil	2,971,926	48.3%
D	5607.30.20	Philippines	2,633,953	93.9%
2 D	5702.20.10	India	566,165	94.5%
2 D	6304.99.25	India	223,157	94.1%
D	6405.90.20	Mexico	203,991	50.4%
D	6501.00.60	Czechoslovakia	296,852	97.4%
D	6504.00.60	Mexico	2,807,287	60.9%
* D R	6702.90.65	Thailand	3,360,921	35.6%
D	6802.29.00	Mexico	578,873	64.1%
D	6810.19.50	Mexico	4,519,065	66.3%
D	6811.30.00	Mexico	67,704	94.9%
D	6905.10.00	Venezuela	3,762,618	53.1%
D	6905.90.00	Mexico	3,744,969	62.2%
2 D	7012.00.00	India	569,277	51.1%
D	7106.91.50	Peru	1,302,783	94.4%
D	7109.00.00	Chile	9,727,702	99.5%
* D	7113.11.20	Thailand	7,175,329	61.8%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	7113.20.21	Malta and Gozo	32,150	46.0%
D	7113.20.30	Mauritius	1,024,871	57.4%
D	7114.11.40	Chile	2,455,875	95.4%
D	7114.19.00	Chile	7,650,323	89.5%
D	7115.90.10	Chile	3,441,788	48.6%
D	7115.90.20	Chile	4,686,933	64.0%
D	7116.20.50	India	1,778,325	45.7%
D	7306.30.30	Mexico	1,355,831	65.5%
D	7307.21.10	India	4,389,555	55.4%
D	7307.91.30	Mexico	1,985,654	70.6%
D	7308.20.00	Brazil	2,578,734	79.9%
D	7319.20.00	Malaysia	1,426,955	56.9%
D	7401.10.00	Philippines	4,345,723	79.3%
D	7401.20.00	Bolivia	55,641	100.0%
D	7403.12.00	Peru	545,385	100.0%
D	7407.22.10	Malaysia	94,904	51.1%
D	7409.39.50	Hungary	76,116	43.4%
D	7416.00.00	Barbados	303,994	49.0%
D	7603.10.00	Bahrain	964,198	65.5%
D	7606.91.60	Mexico	4,535,548	62.1%
D	7613.00.00	Venezuela	1,263,575	46.6%
D	7614.10.50	Brazil	915,370	83.4%
D	7614.90.20	Venezuela	6,967,485	99.1%
D	8104.90.00	Mexico	2,204,399	69.7%
D	8107.90.00	Mexico	124,359	51.6%
2 D	8112.91.50	Chile	5,184,848	81.7%
D	8203.20.80	Mexico	960,319	60.8%
D	8213.00.60	Brazil	1,339,308	56.2%
D	8215.99.22	Mexico	89,602	58.5%
D	8301.50.00	Mexico	2,412,273	74.2%
D	8302.49.20	Mexico	477,461	97.2%
D	8419.90.10	Mexico	6,409,349	74.3%
* D R	8429.30.00	Brazil	5,020,538	69.0%
D R	8430.62.00	Brazil	139,109	86.4%
D	8447.12.10	Czechoslovakia	1,025,060	59.4%
D	8450.19.00	Mexico	2,125,255	78.0%
D	8483.20.40	Mexico	2,769,713	46.6%
D	8513.90.20	Mexico	1,855,381	87.4%
* D	8522.10.00	Mexico	1,684,306	44.9%
D	8524.22.20	Israel	3,708,000	49.1%
D	8535.21.00	Mexico	5,069,014	54.7%
D	8545.90.20	Mexico	1,003,082	80.6%
D	9010.90.40	Israel	2,082,282	58.6%
D	9014.10.60	Israel	1,548,285	68.3%
D	9018.90.10	Argentina	318,627	57.9%
D	9022.90.70	Mexico	532,240	93.0%
* D R	9025.11.20	Brazil	1,258,598	36.3%
* D	9025.11.20	India	1,541,690	44.4%
D	9032.20.00	Mexico	6,744,482	71.1%
D	9102.29.04	Philippines	2,209,427	42.1%
D	9305.10.80	Israel	495,300	48.1%

LIST III : POSSIBLE de MINIMIS ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	9401.90.15	Czechoslovakia......	459,337	56.4%
D	9401.90.25	Indonesia...........	1,420,401	47.5%
D	9403.90.25	Indonesia...........	1,873,770	45.8%
2 D	9403.90.60	Mexico..............	4,121,175	53.6%
D	9405.60.20	India...............	48,175	51.5%
D	9405.91.40	Mexico..............	1,244,846	77.0%
D	9506.61.00	Indonesia...........	4,015,385	63.1%
D	9602.00.40	Israel..............	199,485	42.3%
D	9606.29.20	Thailand............	271,688	47.9%
D	9608.99.30	Mexico..............	916,399	77.1%
D	9614.20.60	Turkey..............	114,544	78.2%
D	9614.20.80	Turkey..............	150,073	76.0%

LIST IV : POSSIBLE REDESIGNATION ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0713.31.40	Thailand............	345,429	31.6%
*	0807.10.20	Mexico..............	27,663,474	46.1%
* R	1005.90.20	Argentina...........	425,860	3.5%
*	1005.90.40	Argentina...........	914,800	35.3%
*	1103.14.00	Thailand............	0	0.0%
*	1605.10.20	Thailand............	5,998,832	44.0%
*	1605.10.20	Malaysia............	2,073,178	15.2%
*	1701.11.01	Brazil..............	44,896,020	10.0%
*	1701.11.02	Brazil..............	1,767,677	1.8%
*	1701.12.01	Brazil..............	0	0.0%
*	1701.91.21	Brazil..............	0	0.0%
*	1701.99.01	Brazil..............	0	0.0%
*	1901.90.90	Mexico..............	2,376,171	18.0%
* R	2007.99.50	Brazil..............	1,380,186	22.1%
* R	2202.10.00	Mexico..............	14,429,570	18.0%
*	2603.00.00	Mexico..............	27,474,557	31.0%
* R	2804.69.10	Brazil..............	285,789	1.3%
*	2903.59.40	Israel..............	0	0.0%
2	2905.31.00	Mexico..............	21,056,350	40.5%
*	2906.11.00	Brazil..............	1,770,360	8.5%
* R	2915.31.00	Brazil..............	499,832	22.2%
*	2918.22.10	Turkey..............	0	0.0%
*	2933.39.25	Brazil..............	0	0.0%
*	2933.90.87	Mexico..............	158,322	17.7%
2	2934.90.14	Brazil..............	0	0.0%
*	3203.00.50	Mexico..............	3,769,864	35.7%
*	3402.90.10	Mexico..............	405,904	6.5%
* R	3823.90.40	Brazil..............	646,612	7.5%
*	3904.21.00	Brazil..............	0	0.0%
*	3909.10.00	Israel..............	444,689	4.5%
2	3920.71.00	Mexico..............	7,141,531	47.3%
2	4008.19.10	Malaysia............	114,028	2.0%
*	4011.10.00	Brazil..............	59,783,958	6.2%
*	4011.20.00	Brazil..............	28,301,531	3.8%
*	4104.10.40	India...............	3,802	0.5%
*	4104.21.00	Argentina...........	3,861,264	27.8%
*	4104.22.00	Argentina...........	479,201	5.0%
*	4104.29.50	Argentina...........	1,592,360	30.2%
*	4104.29.90	Argentina...........	631,437	2.0%
*	4104.31.50	Argentina...........	3,316,762	20.4%
*	4104.31.60	Argentina...........	3,191,767	10.4%
*	4104.31.80	Argentina...........	8,102,272	9.9%
*	4104.39.50	Argentina...........	23,616	0.[illegible]%
*	4104.39.60	Argentina...........	5,780,147	20.8%
*	4104.39.80	Argentina...........	3,040,791	11.9%
*	4105.20.60	Argentina...........	0	0.0%
*	4106.12.00	India...............	0	0.0%
*	4106.19.00	India...............	174,005	5.1%
*	4106.20.30	India...............	2,044,103	14.3%
* R	4107.21.00	Argentina...........	33,005	8.5%
*	4107.29.60	Argentina...........	277,102	6.4%

LIST IV : POSSIBLE REDESIGNATION ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	4107.90.60	Argentina...........	0	0.0%
*	4109.00.70	Argentina...........	6,389	0.9%
*	4411.19.40	Brazil..............	2,731,449	22.0%
* R	4411.21.00	Brazil..............	4,803	0.0%
*	4411.29.60	Brazil..............	0	0.0%
*	4411.29.90	Brazil..............	0	0.0%
*	4412.12.20	Brazil..............	14,111,072	18.6%
*	4412.12.20	Indonesia...........	32,312,320	42.6%
*	4412.12.50	Brazil..............	88,223	2.6%
*	4412.12.50	Indonesia...........	177,752	5.1%
*	4412.29.30	Brazil..............	751,858	10.[illegible]
*	4412.29.40	Brazil..............	2,199,441	43.2%
*	4412.29.40	Indonesia...........	871,646	17.1%
*	4421.90.50	Brazil..............	365,038	10.7%
*	4421.90.60	Brazil..............	228,588	3.4%
*	4823.20.10	Brazil..............	0	0.0%
* R	6406.10.65	Brazil..............	5,325,969	2.3%
*	6406.99.60	Argentina...........	3,809,986	32.1%
*	6810.11.00	Mexico..............	18,466	0.7%
*	6905.10.00	Mexico..............	1,235,011	17.4%
* R	6908.10.20	Thailand............	3,873,621	23.6%
* R	6910.10.00	Brazil..............	1,168,635	1.9%
* R	6910.90.00	Brazil..............	191,474	3.6%
* R	6911.90.00	Brazil..............	68,459	0.2%
*	6912.00.44	Brazil..............	422,357	0.5%
2	7103.99.10	Thailand............	44,604,821	45.6%
*	7113.11.50	Thailand............	65,995,336	39.7%
*	7113.20.50	Thailand............	631,249	6.1%
*	7116.10.10	Thailand............	0	0.0%
*	7116.20.10	Thailand............	16,798,553	34.0%
*	7202.19.50	Mexico..............	14,191,963	30.0%
*	7202.21.50	Brazil..............	27,209,504	38.5%
*	7202.30.00	Brazil..............	16,759,609	18.5%
*	7307.21.50	Brazil..............	0	0.0%
* R	7314.19.00	Mexico..............	156,449	3.3%
*	7401.10.00	Mexico..............	1,094,451	19.9%
* R	7402.00.00	Mexico..............	15,080,355	15.4%
*	7402.00.00	Chile...............	40,942,755	41.8%
*	7403.11.00	Chile...............	60,073,451	11.2%
*	7403.12.00	Chile...............	0	0.0%
*	7403.13.00	Chile...............	1,161,570	26.1%
*	7403.21.00	Chile...............	7,050	0.0%
*	7403.22.00	Chile...............	0	0.0%
*	7403.23.00	Chile...............	36,351	1.6%
*	7403.29.00	Chile...............	0	0.0%
*	7413.00.10	Peru................	0	0.0%
*	7604.29.30	Venezuela...........	0	0.0%
* R	8408.20.20	Brazil..............	2,778,205	12.1%
* R	8409.91.91	Brazil..............	19,928,889	2.3%
* R	8409.99.99	Brazil..............	29,273,426	12.2%
*	8419.19.00	Israel..............	50,637	0.0%

[FR Doc. 93-2276 Filed 1-29-93; 8:45 am]

BILLING CODE 3190-01-M

LIST IV : POSSIBLE REDESIGNATION ITEMS
1992 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	8419.90.10	Israel..............	0	0.0%
* R	8429.11.00	Brazil..............	2,663,280	5.8%
2	8431.42.00	Mexico..............	9,545,135	46.2%
* R	8431.49.90	Brazil..............	14,392,710	3.8%
*	8471.99.34	Mexico..............	20,267,371	33.7%
*	8504.40.00	Mexico..............	95,767,637	11.7%
2	8512.90.20	Mexico..............	6,366,041	33.8%
*	8522.10.00	Mexico..............	1,684,306	44.9%
*	8535.40.00	Mexico..............	6,075,465	29.7%
* R	8543.80.90	Mexico..............	23,590,118	5.2%
2	9018.90.80	Mexico..............	80,466,327	16.6%
2	9018.90.80	Dominican Republic..	90,471,506	18.7%
*	9025.11.20	India...............	1,541,690	44.4%
2	9026.80.60	Mexico..............	26,496,595	45.6%
2	9105.19.10	Brazil..............	0	0.0%
2	9105.19.40	Brazil..............	257,047	4.1%
*	9401.20.00	Mexico..............	16,054,390	17.5%
*	9401.30.40	Croatia.............	0	0.0%
*	9401.30.40	Slovenia............	0	0.0%
*	9401.40.00	Thailand............	0	0.0%
*	9401.61.40	Croatia.............	48,801	0.0%
*	9401.61.40	Slovenia............	243,354	0.2%
* R	9401.61.60	Thailand............	1,898,111	1.2%
*	9401.69.60	Croatia.............	1,963,468	0.7%
*	9401.69.60	Slovenia............	12,164,627	4.7%
* R	9401.69.80	Thailand............	2,680,602	9.6%
* R	9403.30.80	Thailand............	571,237	0.5%
* R	9403.40.90	Thailand...........	7,986,386	7.9%
* R	9403.50.90	Thailand............	2,298,973	0.9%
*	9405.30.00	Thailand............	70,215,188	25.5%
*	9405.91.30	Mexico..............	3,176,191	14.4%
* R	9504.20.60	Brazil..............	1,056,093	20.8%

Sunshine Act Meetings

Federal Register
Vol. 58, No. 19
Monday, February 1, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, February 5, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–2443 Filed 1–28–93; 3:32 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, February 12, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–2444 Filed 1–28–93; 3:32 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, February 19, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–2445 Filed 1–28–93; 3:32 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, February 26, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 93–2446 Filed 1–28–93; 3:32 pm]
BILLING CODE 6351-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Thursday, February 4, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on January 11, 1993.)
2. Proposed acquisition of an information distribution system within the Federal Reserve System.
3. Proposals regarding two Federal Reserve Banks' renovation projects.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 28, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–2361 Filed 1–28–93; 2:16 pm]
BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine-thirty a.m. on Tuesday, January 26, 1993 at the Commissioner's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about twelve-thirty p.m. The purpose of the meeting was to decide nine appeals from National Commissioners' decisions pursuant to 28 CFR Section 2.27. Also discussed was internal management reports with respect to the Commission's internal organization, personnel and policy practices. Five Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Carol Pavilack Getty, Jasper Clay, Jr., Vincent Fechtel, Jr., and John R. Simpson.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: January 26, 1993.

Edward F. Reilly, Jr.,
Chairman, U.S. Parole Commission.

[FR Doc. 93–2442 Filed 1–28–93; 3:31 pm]
BILLING CODE 4410-01-M

RAILROAD RETIREMENT BOARD

Amendment to Notice of Meeting

Based on a request dated January 22, 1993, from the Board's General Counsel, the Board has determined to add an additional item to the agenda for its meeting on January 28, 1993. The additional item, listed below, will be considered during the portion of the meeting closed to the public.

Denver S. Cooper v. *Railroad Retirement Board*

For the Board:

Beatrice Ezerski,
Secretary to the Board.

[FR Doc. 93–2336 Filed 1–28–93; 8:59 am]
BILLING CODE 7905-01-M

Corrections

Federal Register
Vol. 58, No. 19
Monday, February 1, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921226–2326]

Groundfish of the Gulf of Alaska

Correction

In proposed rule document 93–135 beginning on page 532 in the issue of Wednesday, January 6, 1993, make the following corrections:

1. On page 533, in the first column, in the fifth full paragraph, in the fifth line, "Kodiak 63" should read "Kodiak (63)".
2. On the same page, in the second column, in the first full paragraph, in the seventh line, "commence" should read "commenced".
3. On the same page, in the same column, in the same paragraph, in the last line, "1993" should read "1991".
4. On page 534, in the first column, in the first full paragraph, in the second line, insert "a" between "action," and "pollock".
5. On the same page, in the same column, in the 2d full paragraph, in the 11th line, "contract" should read "contrast".

BILLING CODE 1505–01–D

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

Correction

In notice document 92–31936 appearing on page 87 in the issue of Monday, January 4, 1993, make the following corrections:

In the third column, in the table, for category 648–W, the following HTS numbers should be corrected:

a. In the first line, "6304.23.0040" should read "6204.23.0040"; and

b. In the fourth line from the bottom, "6204.60.2560" should read "6204.69.2560".

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Procedures Regarding Public Availability of No-Action, Interpretative and Exemption Letters and Other Written Communications

Correction

In rule document 92–31122 beginning on page 61290 in the issue of Thursday, December 24, 1993 make the following correction:

On pages 61290 and 61291, "140.97" is corrected to read "140.98" wherever it appears.

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268, DA 92–1714]

Broadcast Service; Advanced Television Systems

Correction

In proposed rule document 92–31363 beginning on page 61591 in the issue of Monday, December 28, 1992, make the following correction:

On page 61592, in the first column, in the sixth line, "not" should read "now".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–03–4210; N–56458]

Exchange of Public Lands in Clark County, NV; Realty Action

Correction

In notice document 92–27608 beginning on page 54101 in the issue of Monday, November 16, 1992, make the following corrections:

1. On page 54102, in the first column, under T. 20 S., R. 60 E., in Sec. 9, in the third line, "SW¼,SE¼" should read "SW¼SE¼".
2. On the same page, in the same column, under T. 22 S., R. 61 E., under Sec. 14, in the third line, "E½NE¼NW¼NE¼ME¼," should read "E½NE¼NW¼NE¼NE¼,".
3. On the same page, in the same column, under the same heading, in the same section, in the sixth line, "E½NE¼NE¼NW¼NE¼SE¼" should read "E½NE¼NE¼NW¼NE¼,SE¼".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[G–910–G3–0014–4210–06; NMNM 88896]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; NM

Correction

In notice document 93–967 beginning on page 4715 in the issue of Friday, January 15, 1993, make the following corrections:

1. On page 4715, in the third column, in the land description, T. 18 N., R. 3 E., in Sec. 2, in the third line, "SW¼SW¼NW¼NW¼," should read "SW¼SW¼NW¼,".
2. On page 4716, in the first column, in the land description, T. 18 N., R. 3 E., in Sec. 10, in the third line, "NW½NW¼," should read "NW¼NW¼,".
3. On the same page, in the same column, in the land description, T. 18 N., R. 4 E., in Sec. 18, "and NE¼NW½" should read "and NE¼NW¼".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

Elimination of Certain Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Provisions and Programs

Correction

In proposed rule document 93–1015 beginning on page 4615 in the issue of

Friday, January 15, 1993, make the following corrections:

§ 10.173 [Corrected]

1. On page 4621, in the first column, in § 10.173(a)(2), in the second line, *"manufacturer"* should read *"manufacture"*.

2. On the same page, in the same column, in § 10.173(c), in the fifth line, "seems" should read "deems".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8448]

RIN 1545-AP64

Enhanced Oil Recovery Credit

Correction

In rule document 92-27741 beginning on page 54919 in the issue of Monday, November 23, 1992, make the following corrections:

§ 1.43-2 [Corrected]

1. On page 54926, in the second column, in § 1.43-2(e)(2), in the second line, "(1)" should read "(i)".

2. On the same page, in the third column, in § 1.43-2(e)(2)(ii), the paragraph designated "(b)" should read "(B)".

3. On the same page, in the same column, in § 1.43-2(e)(2)(iii)(A), in the second line, insert "(" after "system".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8437]

Limitations on Percentage Depletion in the Case of Oil and Gas Wells

Correction

In rule document 92-23097 beginning on page 43697 in the issue of Wednesday, September 23, 1992, make the following corrections:

1. On page 43898, in the second column, in the second full paragraph, in the seventh line from the bottom, insert "a" after "(e.g.,".

§ 1.613A-2 [Corrected]

2. On page 43899, in the third column, in § 1.613A-2(a)(3), "deposits" should read "deposit".

§ 1.613A-3 [Corrected]

3. On page 43900, in the third column, in § 1.613A(e)(3)(ii)(B), in the second line, "partner's" should read "partners' ".

§ 1.613A-7 [Corrected]

4. On page 43903, in the third column, in § 1.613A-7(r)(1), in the third line, "1992" should read "1982".

BILLING CODE 1505-01-D

Reader Aids

Federal Register

Vol. 58, No. 19

Monday, February 1, 1993

INFORMATION AND ASSISTANCE

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Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

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Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
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Executive orders and proclamations	523–5230
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Guide to Record Retention Requirements	523–3187
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TDD for the hearing impaired	523–5229

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

6601–6678..............................1

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes seperately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List January 25, 1993

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** Service for Public Law Numbers is available on 202–275–1538 or 275–0920.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $775.00 domestic, $193.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at (202) 783–3238 from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to (202) 512-2233.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–017–00001–9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869–017–00002–7)	17.00	\1\Jan. 1, 1992
4	(869–017–00003–5)	16.00	Jan. 1, 1992
5 Parts:			
1–699	(869–017–00004–3)	18.00	Jan. 1, 1992
700–1199	(869–017–00005–1)	14.00	Jan. 1, 1992
1200–End, 6 (6 Reserved)	(869–017–00006–0)	19.00	Jan. 1, 1992
7 Parts:			
0–26	(869–017–00007–8)	17.00	Jan. 1, 1992
27–45	(869–017–00008–6)	12.00	Jan. 1, 1992
46–51	(869–017–00009–4)	18.00	Jan. 1, 1992
52	(869–017–00010–8)	24.00	Jan. 1, 1992
53–209	(869–017–00011–6)	19.00	Jan. 1, 1992
210–299	(869–017–00012–4)	26.00	Jan. 1, 1992
300–399	(869–017–00013–2)	13.00	Jan. 1, 1992
400–699	(869–017–00014–1)	15.00	Jan. 1, 1992
700–899	(869–017–00015–9)	18.00	Jan. 1, 1992
900–999	(869–017–00016–7)	29.00	Jan. 1, 1992
1000–1059	(869–017–00017–5)	17.00	Jan. 1, 1992
1060–1119	(869–017–00018–3)	13.00	Jan. 1, 1992
1120–1199	(869–017–00019–1)	9.50	Jan. 1, 1992
1200–1499	(869–017–00020–5)	22.00	Jan. 1, 1992
1500–1899	(869–017–00021–3)	15.00	Jan. 1, 1992
1900–1939	(869–017–00022–1)	11.00	Jan. 1, 1992
1940–1949	(869–017–00023–0)	23.00	Jan. 1, 1992
1950–1999	(869–017–00024–8)	26.00	Jan. 1, 1992
2000–End	(869–017–00025–6)	11.00	Jan. 1, 1992
8	(869–017–00026–4)	17.00	Jan. 1, 1992
9 Parts:			
1–199	(869–017–00027–2)	23.00	Jan. 1, 1992
200–End	(869–017–00028–1)	18.00	Jan. 1, 1992
10 Parts:			
0–50	(869–017–00029–9)	25.00	Jan. 1, 1992
51–199	(869–017–00030–2)	18.00	Jan. 1, 1992
200–399	(869–017–00031–1)	13.00	\6\Jan. 1, 1987
400–499	(869–017–00032–9)	20.00	Jan. 1, 1992
500–End	(869–017–00033–7)	28.00	Jan. 1, 1992
11	(869–017–00034–5)	12.00	Jan. 1, 1992
12 Parts:			
1–199	(869–017–00035–3)	13.00	Jan. 1, 1992
200–219	(869–017–00036–1)	13.00	Jan. 1, 1992
220–299	(869–017–00037–0)	22.00	Jan. 1, 1992
300–499	(869–017–00038–8)	18.00	Jan. 1, 1992
500–599	(869–017–00039–6)	17.00	Jan. 1, 1992
600–End	(869–017–00040–0)	19.00	Jan. 1, 1992
13	(869–017–00041–8)	25.00	Jan. 1, 1992
14 Parts:			
1–59	(869–017–00042–6)	25.00	Jan. 1, 1992
60–139	(869–017–00043–4)	22.00	Jan. 1, 1992
140–199	(869–017–00044–2)	11.00	Jan. 1, 1992
200–1199	(869–017–00045–1)	20.00	Jan. 1, 1992
1200–End	(869–017–00046–9)	14.00	Jan. 1, 1992
15 Parts:			
0–299	(869–017–00047–7)	13.00	Jan. 1, 1992
300–799	(869–017–00048–5)	21.00	Jan. 1, 1992
800–End	(869–017–00049–3)	17.00	Jan. 1, 1992
16 Parts:			
0–149	(869–017–00050–7)	6.00	Jan. 1, 1992
150–999	(869–017–00051–5)	14.00	Jan. 1, 1992
1000–End	(869–017–00052–3)	20.00	Jan. 1, 1992
17 Parts:			
1–199	(869–017–00054–0)	15.00	Apr. 1, 1992
200–239	(869–017–00055–8)	17.00	Apr. 1, 1992
240–End	(869–017–00056–6)	24.00	Apr. 1, 1992
18 Parts:			
1–149	(869–017–00057–4)	16.00	Apr. 1, 1992
150–279	(869–017–00058–2)	19.00	Apr. 1, 1992
280–399	(869–017–00059–1)	14.00	Apr. 1, 1992
400–End	(869–017–00060–4)	9.50	Apr. 1, 1992
19 Parts:			
1–199	(869–017–00061–2)	28.00	Apr. 1, 1992
200–End	(869–017–00062–1)	9.50	Apr. 1, 1992
20 Parts:			
1–399	(869–017–00063–9)	16.00	Apr. 1, 1992
400–499	(869–017–00064–7)	31.00	Apr. 1, 1992
500–End	(869–017–00065–5)	21.00	Apr. 1, 1992
21 Parts:			
1–99	(869–017–00066–3)	13.00	Apr. 1, 1992
100–169	(869–017–00067–1)	14.00	Apr. 1, 1992
170–199	(869–017–00068–0)	18.00	Apr. 1, 1992
200–299	(869–017–00069–8)	5.50	Apr. 1, 1992
300–499	(869–017–00070–1)	29.00	Apr. 1, 1992
500–599	(869–017–00071–0)	21.00	Apr. 1, 1992
600–799	(869–017–00072–8)	7.00	Apr. 1, 1992
800–1299	(869–017–00073–6)	18.00	Apr. 1, 1992
1300–End	(869–017–00074–4)	9.00	Apr. 1, 1992
22 Parts:			
1–299	(869–017–00075–2)	26.00	Apr. 1, 1992
300–End	(869–017–00076–1)	19.00	Apr. 1, 1992
23	(869–017–00077–9)	18.00	Apr. 1, 1992
24 Parts:			
0–199	(869–017–00078–7)	34.00	Apr. 1, 1992
200–499	(869–017–00079–5)	32.00	Apr. 1, 1992
500–699	(869–017–00080–9)	13.00	Apr. 1, 1992
700–1699	(869–017–00081–7)	34.00	Apr. 1, 1992
1700–End	(869–017–00082–5)	13.00	Apr. 1, 1992
25	(869–017–00083–3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1–1.60	(869–017–00084–1)	17.00	Apr. 1, 1992
§§ 1.61–1.169	(869–017–00085–0)	33.00	Apr. 1, 1992
§§ 1.170–1.300	(869–017–00086–8)	19.00	Apr. 1, 1992
§§ 1.301–1.400	(869–017–00087–6)	17.00	Apr. 1, 1992
§§ 1.401–1.500	(869–017–00088–4)	38.00	Apr. 1, 1992
§§ 1.501–1.640	(869–017–00089–2)	19.00	Apr. 1, 1992
§§ 1.641–1.850	(869–017–00090–6)	19.00	Apr. 1, 1992
§§ 1.851–1.907	(869–017–00091–4)	23.00	Apr. 1, 1992
§§ 1.908–1.1000	(869–017–00092–2)	26.00	Apr. 1, 1992
§§ 1.1001–1.1400	(869–017–00093–1)	19.00	Apr. 1, 1992
§§ 1.1401–End	(869–017–00094–9)	26.00	Apr. 1, 1992
2–29	(869–017–00095–7)	22.00	Apr. 1, 1992
30–39	(869–017–00096–5)	15.00	Apr. 1, 1992
40–49	(869–017–00097–3)	12.00	Apr. 1, 1992
50–299	(869–017–00098–1)	15.00	Apr. 1, 1992
300–499	(869–017–00099–0)	20.00	Apr. 1, 1992
500–599	(869–017–00100–7)	6.00	[5] Apr. 1, 1990
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–017–00107–4)	32.00	July 1, 1992
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–017–00109–1)	29.00	July 1, 1992
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–017–00114–7)	25.00	July 1, 1992
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
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1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–017–00119–8)	30.00	July 1, 1992
190–399	(869–017–00120–1)	33.00	July 1, 1992
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[6] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–017–00128–7)	27.00	July 1, 1992
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–017–00130–9)	32.00	July 1, 1992
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–017–00134–1)	17.00	July 1, 1992
38 Parts:			
0–17	(869–017–00135–0)	28.00	Sept 1, 1992
18–End	(869–017–00136–8)	28.00	Sept. 1, 1992
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–017–00139–2)	33.00	July 1, 1992
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–017–00142–2)	17.00	July 1, 1992
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–017–00144–9)	34.00	July 1, 1992
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–017–00147–3)	36.00	July 1, 1992
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–017–00150–3)	26.00	July 1, 1992
700–789	(869–017–00151–1)	23.00	July 1, 1992
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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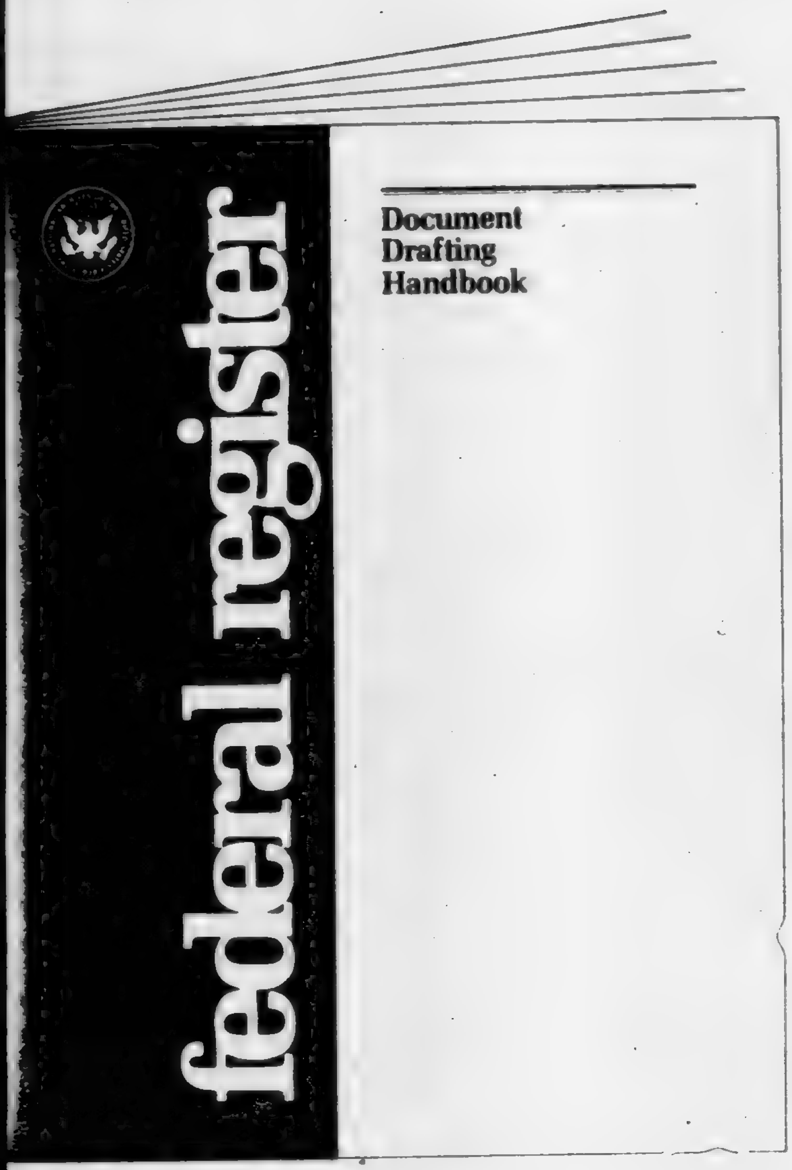

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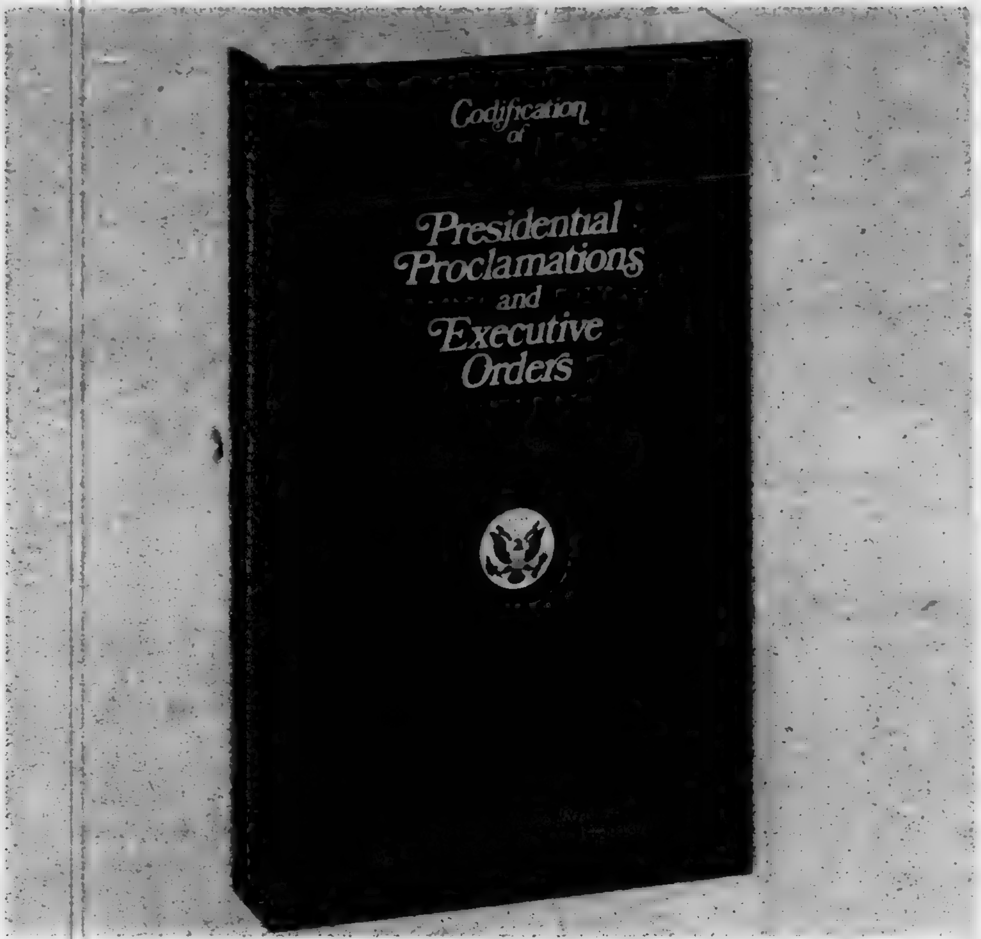

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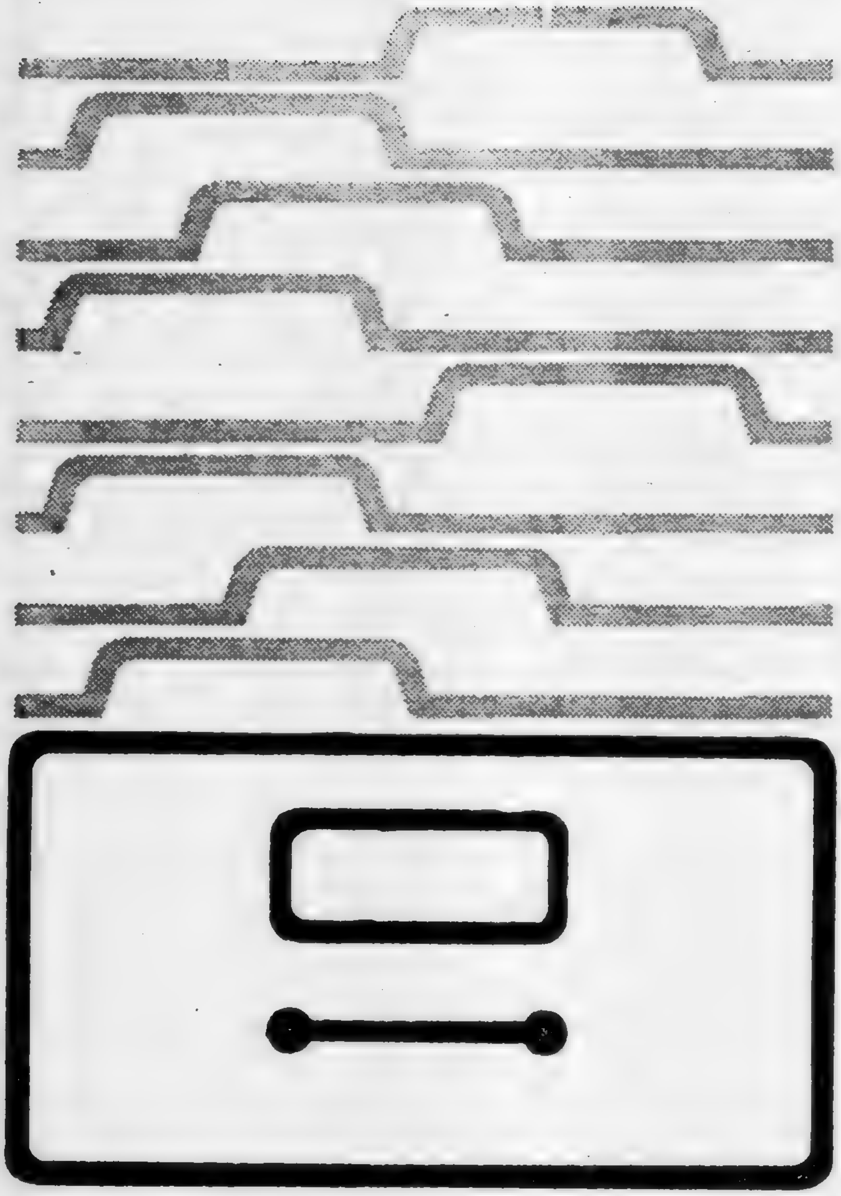

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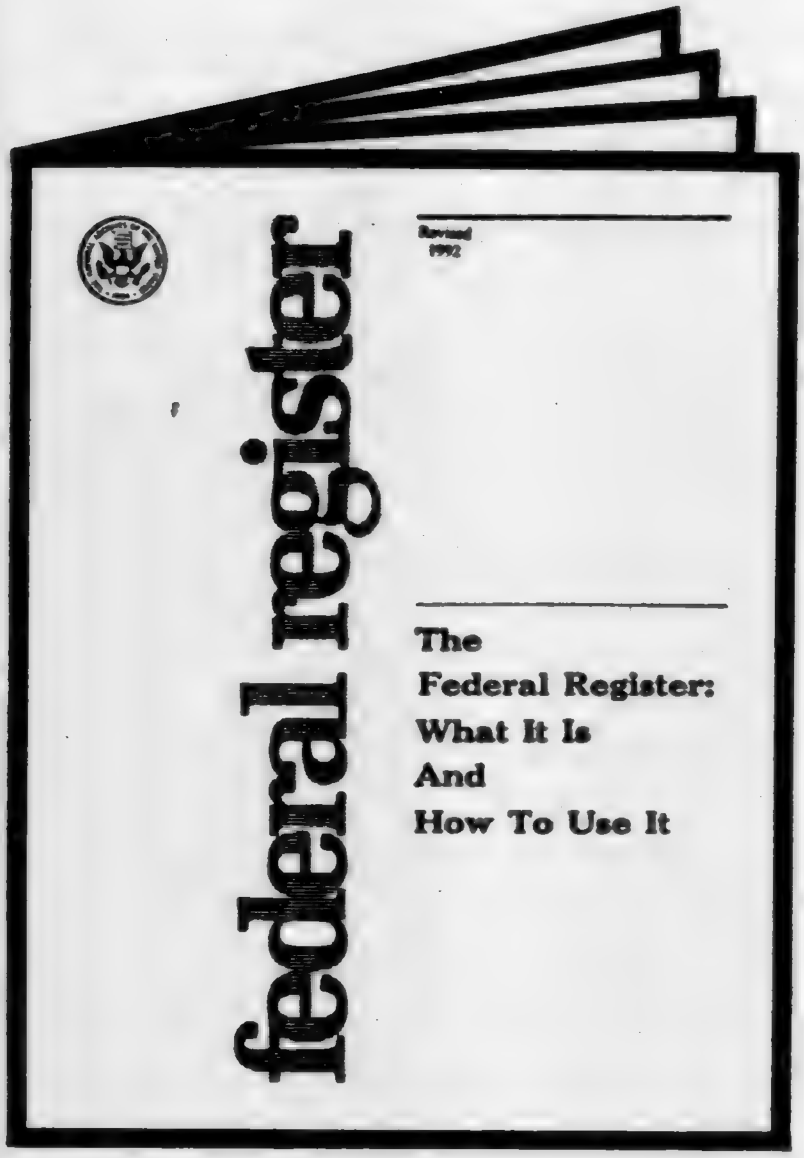
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Health Resources and Services Administration

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1097 and 1099

[DA-92-35]

Milk in the Memphis, TN, and Paducah, KY, Marketing Areas; Reinstatement of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This action suspends the order issued October 20, 1992, and reinstates the orders regulating the handling of milk in the Memphis, Tennessee, and Paducah, Kentucky, marketing areas. This action is being taken to comply with a temporary restraining order issued by the United States District Court for the Western District of Tennessee on December 31, 1992.

EFFECTIVE DATE: December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Order Terminating the Orders: Issued October 20, 1992; published October 26, 1992 (57 FR 48449).

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), an order terminating the orders regulating the handling of milk in the Memphis, Tennessee, and Paducah, Kentucky, marketing areas was issued on October 20, 1992. Specifically §§ 1097.2–1097.95 of part 1097 were removed and §§ 1099.2–1099.86 of part 1099 were removed, effective December 1, 1992 (57 FR 48449).

The termination order removing all sections except §§ 1097.1 and 1099.1 of parts 1097 and 1099 are hereby suspended and such sections of parts 1097 and 1099 are hereby reinstated indefinitely to comply with a temporary restraining order issued by the United States District Court for the Western District of Tennessee on December 31, 1992.

List of Subjects in 7 CFR Parts 1097 and 1099

Milk marketing orders.

1. The authority citation for 7 CFR parts 1097 and 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 1097—MILK IN THE MEMPHIS, TENNESSEE MARKETING AREA

2. Part 1097 is amended by reinstating §§ 1097.2 through 1097.95 and their undesignated center headings to read as follows:

Definitions

1097.2 Memphis, Tennessee marketing area.
1097.3 Route disposition.
1097.7 Fluid milk plant.
1097.8 Nonfluid milk plant.
1097.9 Handler.
1097.10 Producer-handler.
1097.12 Producer.
1097.13 Producer milk.
1097.14 Other source milk.
1097.15 Fluid milk product.
1097.16 Fluid cream product.
1097.17 Filled milk.
1097.18 Cooperative association.
1097.19 [Reserved]
1097.20 Product prices.

Handler Reports

1097.30 Reports of receipts and utilization.
1097.31 Payroll reports.
1097.32 Other reports.

Classification of Milk

1097.40 Classes of utilization.
1097.41 Shrinkage.
1097.42 Classification of transfers and diversions.
1097.43 General classification rules.
1097.44 Classification of producer milk.
1097.45 Market administrator's reports concerning classification.

Class Prices

1097.50 Class prices.
1097.51 Basic formula price.
1097.51a Basic Class II formula price.
1097.52 Plant location adjustments for handlers.
1097.53 Announcement of class prices.
1097.54 Equivalent price.

Uniform Prices

1097.60 Handler's value of milk for computing uniform price.
1097.61 Computation of uniform price for each handler (including weighted average price and uniform price for base milk and excess milk).
1097.62 Announcement of uniform prices for each handler and butterfat differential.

Payments for Milk

1097.71 Payments to market administrator.
1097.72 Rate of partial payments.
1097.73 Payments to producers and to cooperative associations.
1097.74 Butterfat differential.
1097.75 Plant location adjustments for producers.
1097.77 Adjustment of accounts.
1097.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1097.85 Assessment for order administration.
1097.86 Deduction for marketing services.

Base-Excess Plan

1097.90 Base milk.
1097.91 Excess milk.
1097.92 Computation of daily average base for each producer.
1097.93 Determination of monthly base for each producer.
1097.94 Base rules.
1097.95 Announcement of established bases.

Definitions

§ 1097.2 Memphis, Tennessee marketing area.

Memphis, Tennessee, marketing area means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9), Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette, and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.3 Route disposition.

Route disposition means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution plant shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

§ 1097.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, *fluid milk plant* means:

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant, is disposed of during the month as route disposition in the marketing area.

(b) [Reserved]

(c) The term *fluid milk plant* shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) or (b) of this section which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: *Provided,* That a plant which was a fluid milk plant pursuant to paragraph (a) or (b) of this section in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as route disposition in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this subparagraph; and

(3) A plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater route disposition under the Memphis, Tenn., order.

§ 1097.8 Nonfluid milk plant.

Nonfluid milk plant means any milk or filled milk manufacturing, processing, or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) Other order plant means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) Producer-handler plant means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) Partially regulated distributing plant means a nonfluid milk plant that is neither another order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) Unregulated supply plant means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not another order plant nor a producer-handler plant.

§ 1097.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any cooperative association with respect to milk of its member producers diverted by it pursuant to § 1097.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its member-producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of such cooperative, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative association delivers the milk. The cooperative association, once it becomes the handler for such bulk tank milk, shall remain the handler for such bulk tank milk from month to month until the cooperative association notifies the market administrator and handler that such status is to be discontinued, effective the first day of the month following receipt of such notice;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1097.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1097.10 Producer-handler.

Producer-handler means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

(1) Received at a fluid milk plant; or

(2) Diverted from a fluid milk plant; to a nonfluid milk plant that is not a producer-handler plant for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1097.44(a)(8)(iii) and the corresponding step of § 1097.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1097.13 Producer milk.

Producer milk means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

(a) Received directly from producers at a fluid milk plant;

(b) Diverted pursuant to § 1097.12; or

(c) Received by a handler described in § 1097.9(c).

§ 1097.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1097.40(b)(1) from any source other than producers, handlers described in § 1097.9(c), or fluid milk plants;

(b) Receipts in packaged form from other plants of products specified in § 1097.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1097.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1097.40(b)(1)) for which the handler fails to establish a disposition.

§ 1097.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1097.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1097.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1097.18 Cooperative association.

Cooperative association means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1097.19 [Reserved]

§ 1097.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1097.51a:

(a) Butter price. *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) Cheddar cheese price. *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) Nonfat dry milk price. *Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide by the number of days for which there is a daily price.

(d) Edible whey price. *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday except national holidays.

Handler Reports

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the sixth day after the end of each month or by delivery not later than the eighth day after the end of such month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1097.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1097.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1097.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1097.31 Payroll reports.

(a) By mailing on or before the sixth day after the end of the month, or by delivery not later than the eighth day after the end of such month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producers;

(4) The average butterfat content of such milk;

(5) The location at which such milk was received; and

(6) The amount of any deductions authorized in writing by the producer to be made in making payments to such producer.

(b) On or before the 21st day of each month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address or appropriate identification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions authorized in writing by producers from whom such handler received milk, the total pounds of milk received from each handler described in § 1097.9(c), and the name and address of each such cooperative association.

§ 1097.32 Other reports.

(a) Each handler operating a partially regulated distributing plant shall report on or before the seventh day after the end of the month, the respective amounts of skim milk and butterfat in route disposition in the marketing area.

(b) [Reserved]

(c) In addition to the reports required pursuant to §§ 1097.30 and 1097.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(d) On or before the second day prior to the reporting dates specified in § 1097.31, each cooperative association that operates a fluid milk plant from which bulk fluid milk products were transferred to fluid milk plants of other handlers within the time periods described in § 1097.31 shall report to each such fluid milk plant operator and to the market administrator the name and location of the transferor plant and the total pounds and butterfat content of the bulk fluid milk products transferred from the plant.

Classification of Milk

§ 1097.40 Classes of utilization.

Except as provided in § 1097.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1097.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of

this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1097.15; and

(6) In shrinkage assigned pursuant to § 1097.41(a) to the receipts specified in § 1097.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1097.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1097.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1097.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1097.42 Classification of transfers and diversions.

(a) Transfers to fluid milk plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the conditions set forth in paragraphs (a) (1), (2), and (3) of this section. For purposes of this paragraph, skim milk and butterfat transferred as bulk milk to the fluid milk plant of another handler by a handler described in § 1097.9(c) shall be considered a receipt of producer milk in the transferee plant.

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1097.44(a)(12) and the corresponding step of § 1097.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1097.44(a)(7) or the corresponding step of § 1097.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1097.44(a) (11) or (12) or the corresponding steps of § 1097.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purposes of establishing classification under this

paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1097.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1097.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator:

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(*b*) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, and fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1097.43 General classification rules.

In determining the classification of producer milk pursuant to § 1097.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1097.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1097.9 (b) or (c) the pounds of skim and butterfat, respectively, in each class in accordance with §§ 1097.40, 1097.41, and 1097.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1097.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1097.9(a) for each of his fluid milk plants separately and of each handler described in § 1097.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1097.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1097.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraphs (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1097.40(b)(1) that was not subtracted pursuant to paragraphs (a) (4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between fluid milk plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1097.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1097.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraphs (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(12) Subject to the provisions of paragraphs (a)(12) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler (excluding any duplication of utilization in each class resulting from transfers between fluid milk plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that were not offset by transfers or diversions of bulk fluid milk products to the same other order plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this paragraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other fluid milk plant of the handler, and then at each successively more distant fluid milk plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this paragraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other fluid milk plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another fluid milk plant according to the classification of such products pursuant to § 1097.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1097.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1097.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

Class Prices

§ 1097.50 Class prices.

Subject to the provisions of § 1097.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.77.

(b) Class II price. The Class II price shall be computed by the Director of the Diary Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1097.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1097.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1097.51a.

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1097.74 shall be used.

§ 1097.51a Basic Class II formula price.

The "basic Class II formula price" for the month shall be the basic formula price determined pursuant to § 1097.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1097.20 and yield factors in effect under the Dairy Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor used under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

Note: The computation of the basic Class II formula price is affected by a determination document published on September 6, 1984, 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1097.52 Plant location adjustments for handlers.

(a) For milk received at a fluid milk plant from producers or a handler described in § 1097.9(c) and which is classified as Class I milk without movement to another fluid milk plant, the price specified in § 1097/50(a) shall be adjusted by the amount or at the rate specified in paragraphs (a) (1) through (4) of this section for the location of such plant.

(1) For a plant located in the State of Tennessee and more than 50 miles from the City Hall in Memphis, Tennessee, the adjustment shall be minus 25 cents.

(2) For a plant located in the State of Mississippi, the adjustment shall be as follows:

(i) In the Mississippi counties of Itawamba, Lafayette, Lee, Panola, Pontotoc, Prentiss, Tate, Tunica or Union, the adjustment shall be plus 13 cents; and (ii) In any Mississippi county not specified in paragraph (a)(2)(i) of this section and more than 50 miles from the City Hall in Memphis, Tennessee, the adjustment shall be plus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee. (3) For a plant located in the State of Arkansas, the adjustment shall be as follows:

(i) In the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittenden, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Spring, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff or Yell, no adjustment shall apply;

(ii) In any Arkansas county lying north of any county specified in paragraph (a)(3)(i) of this section, the adjustment shall be minus 22 cents; and

(iii) In any Arkansas county lying south of any county specified in paragraph (a)(3)(i) of this section, the adjustment shall be plus 31 cents.

(4) For a plant located outside the areas described in paragraphs (a) (1), (2) and (3) of this section, the adjustment shall be minus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(b) For fluid milk products transferred in bulk between fluid milk plants and classified as Class I milk, such location adjustments shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made in sequence beginning with the transferor plant with the highest Class I price.

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1097.50(b).

§ 1097.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1097.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1097.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1097.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1097.44(a)(11) and the corresponding step of § 1097.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) In computing, for the purposes of § 1097.61, the value of milk of a handler described in § 1097.9(c), the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.61(a)(2) with respect to such milk as adjusted pursuant to § 1097.75 for the location of the fluid milk plant to which delivered.

§ 1097.61 Computation of uniform price for each handler (including weighted average price and uniform price for base milk and excess milk).

(a) The market administrator shall compute for each handler a "weighted average price" for each month and for each of the months of August through February a "uniform price" per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.60 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to § 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(4) Divide the resulting amount by the total hundredweight of producer milk received by the handler and deduct any fraction of a cent per hundredweight. The result shall be the "weighted average price."

(5) For each of the months of August through February, the weighted average price shall be such handler's "uniform price" for milk received from producers.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided in paragraphs (a) (1) through (3) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in these computations, by the Class III price;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in these computations, by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and reduce to the nearest cent. The resulting figure shall be the uniform price for such handler for excess milk;

(4) Subtract, for each handler, the total value of such handler's excess milk obtained in paragraph (b)(2)(iv) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of base milk received by such handler and deduct any fraction of a cent per hundredweight. The result, shall be the uniform price for such handler for base milk.

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

Payments for Milk

§ 1097.71 Payments to market administrator.

(a) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 2nd day prior to the last day of each month an amount determined by multiplying the handler's receipts during the first 15 days of such month of producer milk (excluding the milk of any producer who had discontinued shipping milk to such handler before the 25th of the month and, in the case of a handler described in § 1097.9(c), producer milk delivered to fluid milk plant) and milk from a handler described in § 1097.9(c) by the applicable partial payment rate less proper deductions authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received from the producers during the partial payment period and the handler has paid such deductions to assignees by the date payment is otherwise due the producer.

(b) Subject to paragraphs (d) and (e) of this section, each handler shall pay to the market administrator on or before the 14th day after the end of each month an amount equal to such handler's value of milk for such month determined pursuant to § 1097.60(a), as adjusted by the butterfat differential specified in

§ 1097.74 and pursuant to § 1097.60 (b), (c) and (d), less:

(1) Payments made by the handler pursuant to paragraph (a) of this section for such month; and

(2) Proper deductions that were authorized in writing by producers from whom the handler received milk, provided that the amount deducted for each producer does not exceed the value of the milk received during the final payment period and provided that the handler has paid such deductions to assignees by the date payment is otherwise due the producer;

(c) Each handler who received bulk fluid milk and bulk fluid cream products from a fluid milk plant operated by a cooperative association shall pay the following amounts for such products to the market administrator, who in turn shall transmit such money to the cooperative association.

(1) On or before the 2nd day prior to the last day of each month, an amount determined by multiplying such receipts during the first 15 days of the month by the applicable partial payment rate. If the handler so elects, such prices may be adjusted by the butterfat differential specified in § 1097.74 for the preceding month.

(2) On or before the 14th day after the end of each month, an amount determined by multiplying the quantity of such receipts during the month that was classified in each class pursuant to § 1097.42(a) by the applicable class price, as adjusted by the butterfat differential specified in § 1097.74, plus the applicable administrative assessment, less any payments made by the handler pursuant to paragraph (c)(1) of this section. For the purpose of such computation, the applicable Class I price shall be the Class I price applicable at the transferee plant plus the applicable administrative assessment rate.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a), (b) and (c) of this section:

(1) Payment to the market administrator shall be deemed not to have been made until such payments have been received by the market administrator; and

(2) If the date by which payments must be received by the market administrator falls on a Saturday or Sunday or anyday that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

(e) Payments due the market administrator from a cooperative association handler may be offset by payments determined by the market administrator to be due the cooperative association pursuant to § 1097.73(c).

§ 1097.72 Rate of partial payments.

Partial payment rates shall be computed as follows:

(a) During the months of March through July, the previous month's Class III price.

(b) for the months of August through February, the previous month's Class III price plus $1.00, and further adjusted by the zone or location adjustment applicable at the receiving plant.

§ 1097.73 Payments to producers and to cooperative associations.

(a) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the last day of each month for milk which was received during the first 15 days of each month; provided, payment pursuant to § 1097.71 (a) has been received by the market administrator. Such payment shall be uniform to all suppliers of each plant at a rate per hundredweight equal to that received by the market administrator less the deductions authorized by each producer pursuant to § 1097.71 (a).

(b) Subject to paragraphs (c) through (e) of this section, the market administrator shall pay each producer on or before the 16th day after the end of each month for milk for which payment pursuant to § 1097.71 (b) has been received by the market administrator. Such payment shall be at the uniform price(s) computed pursuant to § 1097.61 for the month, subject to the following adjustments:

(1) Any applicable adjustments pursuant to §§ 1097.74 and 1097.75;

(2) Less the payment described in paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less the authorized deductions specified in § 1097.71 (a) and (b)(2); and

(5) Any adjustments for errors in calculating payments to an individual producer for past months.

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator, on or before the day prior to the dates specified in such paragraphs, shall pay to each cooperative association that so requests with respect to those producers for whom it markets milk and who are certified to the market administrator by the cooperative association as having authorized the cooperative association to receive such payment an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraphs (a) and (b) of this section.

(d) The following conditions shall apply with respect to the payments prescribed in paragraphs (a) through (c) of this section:

(1) If the date by which such payments are to be made falls on a Saturday, or Sunday or on any day that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business; and

(2) If the application of § 1097.71(c)(2) or paragraph (e)(1) of this section results in a delay in the partial or final payments by handlers to the market administrator, the corresponding partial or final payments prescribed in paragraphs (a) through (c) of this section may be delayed by the same number of days.

(e) If the market administrator does not receive the full payment required of a handler pursuant to § 1097.71 he shall reduce uniformly per hundredweight the payments due producers and cooperative associations for their milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall complete such payments on or before the next date for making payment pursuant to this section following the date on which the remaining payment is received from such handler.

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1097.75 Plant location adjustments for producers.

In making payment pursuant to § 1097.73, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.52.

§ 1097.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1097.78 Charges on overdue accounts.

(a) Any unpaid obligation of a handler pursuant to §§ 1097.71, 1097.73, 1097.77, and 1097.85 shall be increased one percent beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due, subject to the following conditions:

(1) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid overdue charges previously computed pursuant to this section; and

(2) For the purpose of this section, any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(b) All charges on overdue accounts shall be paid to the administrative assessment fund maintained by the market administrator.

Administrative Assessment and Marketing Service Deduction

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month six cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1097.44(a)(7) and (11) and the corresponding steps of § 1097.44(b);

(c) Receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section; and

(d) Receipts of milk by a handler described in § 1097.9(b).

§ 1097.86 Deduction for marketing services.

(a) The market administrator in making payments to producers pursuant to § 1097.73 shall:

(1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or

(2) If so requested in writing by a cooperative association, deduct such amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) The monies received by the market administrator pursuant to paragraph (a)(1) of this section shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

Base-Excess Plan

§ 1097.90 Base milk.

Base milk means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93, except that for the months of March 1985 through July 1985 base milk shall be determined by the producer's base multiplied by the number of days in the month times the percentage of the producer's production pooled pursuant to § 1097.13.

§ 1097.91 Excess milk.

Excess milk means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.93.

§ 1097.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (this Part 1097 and Parts 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant during such period. For producer bases to be calculated on or before February 25, 1985, and subject to § 1097.94, the base to be calculated for each producer shall be an amount obtained by dividing the total pounds of his producer milk (as defined under the respective orders) received from the producer by all handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Georgia; Tennessee Valley; Louisville-Lexington-Evansville; Alabama-West Florida; Memphis, Tennessee, Nashville, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (parts 1007, 1011, 1046, 1093, 1097, 1098, 1102, and 1108, respectively, of this chapter) during the immediately preceding months of September 1984 through January 1985 by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant or a pool plant under any of the above orders during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant or a pool plant during such period.

§ 1097.93 Determination of monthly base for each producer.

Subject to the rules set forth in § 1097.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Central Arkansas (part 1108 of this chapter) or Fort Smith, Ark. (part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.94 Base rules.

The following rules shall apply in connection with the establishment of bases for each producer computed pursuant to § 1097.92:

(a) An entire base or share of a joint holder shall be transferred from a person holding such base to other persons as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base holder(s) or by the heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) The share of a joint base holder may be transferred to a person other than a joint holder of the base only if all shares of the entire base are at the same time transferred to the same or other persons; and

(3) If one of more bases are transferred to a producer already holding a base, a new base shall be computed by adding together the total eligible deliveries during the period of September through January of all persons in whose names such bases were earned and dividing the total by the total number of days in such period beginning with the first day on which milk was received during the months of September through January from any of such persons but not less than 120 days.

§ 1097.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer, or shall notify the cooperative association of which such producer is a member of such daily average base.

PART 1099—MILK IN PADUCAH, KENTUCKY MARKETING AREA

3. Part 1099 is amended by reinstating §§ 1099.2 through 1099.86 to read as follows:

Definitions

Sec.
1099.2 Paducah, Kentucky marketing area.
1099.3 Route disposition.
1099.5 Distributing plant.
1099.6 Supply plant.
1099.7 Pool plant.
1099.8 Nonpool plant.
1099.9 Handler.
1099.10 Producer-handler.
1099.12 Producer.
1099.13 Producer milk.
1099.14 Other source milk.
1099.15 Fluid milk product.
1099.16 Fluid cream product.
1099.17 Filled milk.
1099.18 Cooperative association.
1099.19 [Reserved]
1099.20 Product prices.

Handler Reports

1099.30 Reports of receipts and utilization.
1099.31 Payroll reports.
1099.32 Other reports.

Classification of Milk

1099.40 Classes of utilization.
1099.41 Shrinkage.
1099.42 Classification of transfers and diversions.
1099.43 General classification rules.
1099.44 Classification of producer milk.
1099.45 Market administrator's reports and announcements concerning classification.

Class Prices

1099.50 Class prices.
1099.51 Basic formula price.
1099.51a Basic Class II formula price.
1099.52 Plant location adjustments for handlers.
1099.53 Announcement of class prices.

Uniform Price

1099.60 Handler's value of milk for computing uniform price.
Sec.
1099.61 Computation of uniform price (including weighted average price).
1099.62 Announcement of uniform price and butterfat differential.

Payments for Milk

1099.70 Producer-settlement fund.
1099.71 Payments to the producer-settlement fund.
1099.72 Payments from the producer-settlement fund.
1099.73 Payments to producers and to cooperative associations.
1099.74 Butterfat differential.
1099.75 Plant location adjustments for producers and on nonpool milk.
1099.76 Payments by handler operating a partially regulated distributing plant.
1099.77 Adjustment of accounts.

Administrative Assessment and Marketing Service Deduction

1099.85 Assessment for order administration.
1099.86 Deduction for marketing services.

Definitions

§ 1099.2 Paducah, Kentucky marketing area.

The *Paducah, Ky. marketing area,* hereinafter called the *marketing area,* means all the territory within the counties listed below (except that portion of any of these counties contained in the Fort Campbell military reservation):

Kentucky Counties

Ballard, Caldwell, Calloway, Carlisle, Christian, Fulton, Graves, Hickman, Livingston, Lyon, Marshall, McCracken, Todd, Trigg.

Missouri Counties

Mississippi, New Madrid, Pemiscot, Scott.

§ 1099.3 Route disposition.

Route disposition means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

§ 1099.5 Distributing plant.

Distributing plant means a plant in which milk is processed and packaged and from which there is route disposition during the month in the marketing area.

§ 1099.6 Supply plant.

Supply plant means a plant (except a distributing plant) which is qualified as a pool plant pursuant to the proviso in § 1099.7(b) or a plant from which milk or skim milk which may be distributed in the marketing area under a Grade A label is supplied during the month to a plant qualified pursuant to § 1099.7(a).

§ 1099.7 Pool plant.

Except as provided in paragraph (c) of this section, pool plant means:

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to 45 percent or more of its receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmer diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, from other plants during the month and from which there is route disposition, except filled milk, in the marketing area in an amount equal to a daily average of 3,000 pounds or more per day, or 10 percent or more of such receipts, whichever is less: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month.

(b) A distributing plant or supply plant from which the volume of milk and skim milk shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as route disposition (excluding filled milk) is equal to not less than 50 percent of the receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, received from other plants: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section, milk and skim milk equal to at least 75 percent of its receipts of milk from such dairy farmers and handlers described in § 1099.9(c) in October and November and 35 percent of such milk in three additional months during the period from August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the term of this proviso, And provided further, That in the case of a supply plant operated by a cooperative association which supplies to other pool plants at least two-thirds of the producer milk of its producer members (including both the milk delivered directly from the farms of member producers and that delivered from the plant of the association) delivered to all plants during the current month or during the immediately preceding 12-month period, the milk which such association causes to be delivered to the pool plants of other handlers in its capacity as a handler described in § 1099.9(c), shall be considered as having been received first at the plant of such cooperative association for the purpose of qualifying such plant as a pool plant pursuant to this paragraph.

(c) The term *pool plant* shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than in the Paducah, KY, marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph: *And provided further*, on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited-term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in the Paducah marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Paducah, KY, order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period.

§ 1099.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant (other than a producer-handler plant or an other order plant) from which fluid milk products are shipped to a pool plant.

§ 1099.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association qualified pursuant to § 1099.18 with respect to milk of producers diverted pursuant to § 1099.13 for the account of such association;

(c) A cooperative association which chooses to report as a handler with respect to milk which is delivered from the farm to a pool plant(s) of another handler in a tank truck owned or operated by, or under contract to, such cooperative association for the account of such cooperative association. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1099.7(c).

§ 1099.10 Producer-handler.

Producer-handler means any person who operates a dairy farm and a distributing plant, from which there is route disposition within the marketing area but which receives no other source milk or milk from other dairy farmers.

§ 1099.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority, which milk is received at a pool plant or by a handler described in § 1099.9(c).

(b) *Producer* shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1099.44(a)(8)(iii) and the corresponding step of § 1099.44(b); and

(3) Any person with respect to milk produced by him which is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order.

§ 1099.13 Producer milk.

Producer milk means all skim milk and butterfat contained in milk produced by a producer which is:

(a) Received during the month at a pool plant from producers or from a handler described in § 1099.9(c);

(b) Received by a handler described in § 1099.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1099.41(c) or Class I shrinkage; or

(c) Diverted by the operator of a pool pant or by a handler described in § 1099.9(b) to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Not less than 5 days' production of any producer whose milk is diverted is physically received at a pool plant;

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 33 percent of the milk physically received from member producers of such cooperative association at pool plants during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of members is diverted by the cooperative association in excess of the specified percentages, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to paragraph (c)(2) of this section, which does not exceed 33 percent of the aggregate quantity of milk received at such plant from such nonmember producers during the month in any of the months of April through August and December and 25 percent in other months, except that if milk of nonmember producers is diverted by the handler in excess of the specified percentages, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk; and

(4) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant to which diverted.

Effective Date Note: At 53 FR 44854, Nov. 7, 1988, in § 1099.13, the provisions of paragraphs (c)(2) were suspended and in paragraph (c)(3) the words "in his capacity as the operator of a pool plant", "milk of a", "who is not a member of a cooperative association diverting", "pursuant to paragraph (c)(2) of this section", "at such plant", "such nonmember", "in any of the months of April through August and December and 25 percent in other months" and "nonmember" are suspended indefinitely, pending a hearing to amend the order.

§ 1099.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1099.40(b)(1) from any source other than producers, handlers described in § 1099.9(c), or pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1099.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1099.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1099.40(b)(1)) for which the handler fails to establish a disposition.

§ 1099.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term *fluid milk product* shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1099.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1099.17 Filled milk.

Filled milk means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid product, and contains less than 6 percent nonmilk fat (or oil).

§ 1099.18 Cooperative association.

Cooperative association means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1099.19 [Reserved]

§ 1099.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1099.51a:

(a) Butter price. *Butter price* means the simple average, for the first 15 days of the month, of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(b) Cheddar cheese price. *Cheddar cheese price* means the simple average, for the first 15 days of the month, of the daily prices per pound of cheddar cheese in 40-pound blocks. The prices used shall be those of the National Cheese Exchange (Green Bay, WI), as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following work-day until the next price is reported. A work-day is each Monday through Friday, except national holidays. For any week that the Exchange does not meet to establish a price, the price for the following week shall be the last price that was established.

(c) Nonfat dry milk price. *Nonfat dry milk price* means the simple average, for the first 15 days of the month, of the daily prices per pound of nonfat dry milk, which average shall be computed by the Director of the Dairy Division as follows:

(1) The prices used shall be the prices (using the midpoint of any price range as one price) of high heat, low heat and Grade A nonfat dry milk, respectively, for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service.

(2) For each week, determine the simple average of the prices reported for the three types of nonfat dry milk. Such average shall be the daily price for the day that such prices are reported and for each preceding work-day until the day such prices were previously reported. A work-day is each Monday through Friday except national holidays.

(3) Add the prices determined in paragraph (c)(2) of this section for the first 15 days of the month and divide the number of days for which there is a daily price.

(d) Edible whey price. *Edible whey price* means the simple average, for the first 15 days of the month, of the daily prices per pound of edible whey powder (nonhygroscopic). The prices used shall be the prices (using the midpoint of any price range as one price) of edible whey powder for the Central States production area, as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each preceding work-day until the day such price was previously reported. A work-day is each Monday through Friday, except national holidays.

Handler Reports

§ 1099.30 Reports of receipts and utilization.

On or before the 6th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1099.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1099.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1099.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1099.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1099.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1099.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1099.32 Other reports.

(a) On or before the 6th day after the end of each month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) The name and address of each producer from whom milk was not received during the previous months and the date on which milk was first received from such producer; and

(2) The name and address of each producer who discontinues deliveries of milk and the date on which milk was last received from such producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1099.30 and 1099.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1099.40 Classes of utilization.

Except as provided in § 1099.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1099.30 shall be classified as follows:

(a) Class I milk. Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) Class II milk. Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) Class III milk. Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1099.15; and

(6) In shrinkage assigned pursuant to § 1099.41(a) to the receipts specified in § 1099.41(a)(2) and in shrinkage specified in § 1099.41 (b) and (c).

§ 1099.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1099.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1099.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1099.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quality for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1099.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1099.42 Classification of transfers and diversions.

(a) Transfers to pool plants. Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1099.44(a)(12) and the corresponding step of § 1099.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1099.44(a)(7) or the corresponding step of § 1099.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1099.44(a)(11) or (12) or the corresponding steps of § 1099.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) Transfers and diversions to other order plants. Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1099.40.

(c) Transfers to producer-handlers. Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) Transfers and diversions to other nonpool plants. Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1099.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence;

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1099.43 General classification rules.

In determining the classification of producer milk pursuant to § 1099.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1099.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1099.9(b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1099.40, 1099.41, and 1099.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1099.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1099.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1099.9(a) for each of his pool plants separately and of each handler described in § 1099.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1099.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from another order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1099.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1099.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1099.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1099.40(b)(1) that was not subtracted pursuant to paragraphs (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(8)(ii) *(a)* through *(c)* of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in Class III the pounds of skim milk in fluid milk products and products specified in § 1099.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of milk subtracted pursuant to paragraph (a)(1) of this section:

(11) Subject to the provisions of paragraphs (a)(11)(i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraphs (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount, beginning with the nearest plant at which Class I utilization is available.

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraphs (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraphs (a)(12) (ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1099.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased (increasing as necessary Class III and then Class II to the extent of available utilization in such classes at the nearest other pool plant of the handler, and then at each successively more distant pool plant of the handler) by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount beginning with the nearest plant at which Class I utilization is available;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1099.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1099.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1099.44(a)(12) and the corresponding step of § 1099.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1099.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) Upon request, report, on or before the 25th day after the end of each month, to each cooperative association described in § 1099.86(b) the percentage of milk which was caused to be delivered by such association or by its members and which was used in each class by each handler receiving any such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1099.50 Class prices.

Subject to the provisions of § 1099.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) Class I price. From the effective date hereof through April 30, 1988, and thereafter until amended, the Class I price shall be the basic formula price for the second preceding month plus $2.39.

(b) Class II price. The Class II price shall be computed by the Director of the Dairy Division and transmitted to the market administrator on or before the 15th day of the preceding month. The Class II price shall be the basic Class II formula price computed pursuant to § 1099.51a for the month plus the amount that the value computed pursuant to paragraph (b)(1) of this section exceeds the value computed pursuant to paragraph (b)(2) of this section, plus any amount by which the basic Class II formula price for the second preceding month, adjusted pursuant to paragraphs (b)(1) and (b)(2) of this section, was less than the Class III price for the second preceding month.

(1) Determine for the most recent 12-month period the simple average (rounded to the nearest cent) of the basic formula prices computed pursuant to § 1099.51 and add 10 cents; and

(2) Determine for the same 12-month period as specified in paragraph (b)(1) of this section the simple average (rounded to the nearest cent) of the basic Class II formula prices computed pursuant to § 1099.51a.

(c) Class III price. The Class III price shall be the basic formula price for the month.

§ 1099.51 Basic formula price.

The *basic formula price* shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential pursuant to § 1099.74 shall be used.

§ 1099.51a Basic Class II formula price.

The *basic Class II formula price* for the month shall be the basic formula price determined pursuant to § 1099.51 for the second preceding month plus or minus the amount computed pursuant to paragraphs (a) through (d) of this section:

(a) The gross values per hundredweight of milk used to manufacture cheddar cheese and butter-nonfat dry milk shall be computed, using price data determined pursuant to § 1099.20 and yield factors in effect under the Diary Price Support Program authorized by the Agricultural Act of 1949, as amended, for the first 15 days of the preceding month and, separately, for the first 15 days of the second preceding month as follows:

(1) The gross value of milk used to manufacture cheddar cheese shall be the sum of the following computations:

(i) Multiply the cheddar cheese price by the yield factor used under the Price Support Program for cheddar cheese;

(ii) Multiply the butter price by the yield factor used under the Price Support Program for determining the butterfat component of the whey value in the cheese price computation; and

(iii) Subtract from the edible whey price the processing cost used under the Price Support Program for edible whey and multiply any positive difference by the yield factor under the Price Support Program for edible whey.

(2) The gross value of milk used to manufacture butter-nonfat dry milk shall be the sum of the following computations:

(i) Multiply the butter price by the yield factor used under the Price Support Program for butter; and

(ii) Multiply the nonfat dry milk price by the yield factor used under the Price Support Program for nonfat dry milk.

(b) Determine the amounts by which the gross value per hundredweight of milk used to manufacture cheddar cheese and the gross value per hundredweight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraphs (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

Note: The computation of the basic Class II formula price is affected by a determination document published on September 6, 1984, 49 FR 35078.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

§ 1099.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Kentucky and north of an east-west line running through the southern boundary of the State of Kentucky and more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1099.50(a) shall be reduced by 12.5 cents, plus 2.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of the receipts at such plant from producers and handlers described in § 1099.9(c), and the volume assigned as Class I to receipts from other order plants (and unregulated supply plants) such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1099.50(b).

Uniform Price

§ 1099.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1099.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1099.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1099.44(a)(14) and the corresponding step of § 1099.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1099.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1099.44(a)(9) and the corresponding step of § 1099.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(7) (i) through (iv) and the corresponding step of § 1099.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(7) (v) and (vi) and the corresponding step of § 1099.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1099.44(a)(11) and the corresponding step of § 1099.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(g) With respect to milk marketed on and after the effective date hereof, through February 1985, subtract the amount obtained by multiplying the pounds of bulk fluid milk products that were transferred to the handler's pool plant from another order plant and allocated to Class I milk, by a rate equal to 3.3 cents per hundredweight for each 10 miles or fraction thereof, less any difference (positive only) between the Class I differential applicable at the receiving plant less the Class I differential applicable at the shipping plant.

§ 1099.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content, f.o.b. market, received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1099.60 for all handlers who filed the reports prescribed by § 1099.30 for the month and who made the payments pursuant to §§ 1099.71 and 1099.73 for the preceding month;

(b) Add an amount equivalent to the sum of the net deductions (reductions less increases) for location adjustments to be made from producer payments pursuant to § 1099.75;

(c) Add an amount equivalent to one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1099.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the "weighted average price," and, the "uniform price" for milk received from producers.

§ 1099.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1099.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers, pursuant to §§ 1099.71 1099.76, and 1099.77 shall be deposited in this fund, and all payments made pursuant to §§ 1099.72 and 1099.77 shall be made from this fund: Provided, That payments due to any handler shall be offset by payments due from such handler.

§ 1099.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1099.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1099.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1099.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1099.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1099.71(a)(2) exceeds the amount computed pursuant to § 1099.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1099.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler operating a pool plant shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each such producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph;

(2) On or before the 17th day of the following month, an amount equal to not less then the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions for marketing services made pursuant to § 1099.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 1099.72 from the market administrator for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association qualified pursuant to § 1099.18 which has so requested any handler in writing, such handler shall on or before the third day prior to the date on which payments are due individual producers pursuant to paragraph (a) of this section pay the cooperative association for milk received during the month from the producer members of such association an amount equal to not less than the amount due such producer members pursuant to paragraph (a) of this section: *Provided*, That the proper deductions referred to in paragraphs (a)(1) and (2)(iv) of this section shall be valid in the case of cooperative members only if authorized in writing by such cooperative;

(c) Each handler shall also make payment to a cooperative association delivering milk to such handler pursuant to § 1099.9(c) for milk so delivered as follows:

(1) On or before the 25th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk so received from such cooperative association during the first 15 days of the month, less proper deductions authorized in writing by the cooperative association;

(2) On or before the 14th day of the following month not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk so received from the cooperative association during the month, subject to the following adjustments: (i) Less payments made to such cooperative association pursuant to paragraph (c)(1) of this section, and (ii) Less proper deductions authorized in writing by such cooperative association: *Provided*, That if by such date the handler has not received full payment pursuant to § 1099.72 from the

market administrator for such month, he may reduce pro rata his payments on such milk as in the case of payments to producers pursuant to paragraph (a) of this section, and payments hereunder shall be completed not later than the date for making payments pursuant to this subparagraph next following the receipt of the balance due from the market administrator;

(d) On or before the 14th day of the following month each handler shall pay to a cooperative association, with respect to such milk as was received from the association in its capacity as a handler operating a pool plant during the month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1099.74, that are applicable at the location of the handler's pool plant; and

(e) Each handler who receives producer milk for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association with respect to each such producer as follows:

(1) On or before the 28th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month together with the butterfat content of such milk, (ii) the amount or rate and nature of any deductions, and (iii) the amount and nature of payments due pursuant to § 1099.77.

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the butter price less 0.0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92-score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

§ 1099.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk shall be reduced according to the location of the plant at which the milk was physically received, at the rate set forth in § 1099.52; and

(b) For purposes of computations pursuant to §§ 1099.71 and 1099.72 the weighted average price shall be adjusted at the rates set forth in § 1099.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1099.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1099.30(b) and 1099.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1099.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1099.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1099.60 for such handler shall include, in lieu of the value of other source milk specified in § 1099.60(f) less the value of such other source milk specified in § 1099.71(a)(2)(ii), a value of milk determined pursuant to § 1099.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1099.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1099.30(b) and 1099.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1099.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1099.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1099.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1099.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1099.73, the handler shall make up the difference of such payment not later than the next time for making payments as set forth in the provisions relating to payments which were in error.

Administrative Assessment and Marketing Service Deduction

§ 1099.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month five cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1099.9(c);

(b) Other source milk allocated to Class I pursuant to § 1099.44(a) (7) and (11) and the corresponding steps of § 1099.44(b), except such other source milk that is excluded from the computations pursuant to § 1099.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1099.76(a)(2).

§ 1099.86 Deduction for marketing services.

(a) Deductions for marketing services. Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1099.73 with respect to milk received from producers (excluding such handler's own farm production), shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe; and, on or before the 20th day after the end of the month, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator to verify weights, samples, and tests of the milk of such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Cooperative associations. In the case of producers who are members of a cooperative association, which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section and which is not receiving payment for its producer members, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers pursuant to § 1099.73(b) as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 20th day after the end of each month, pay over such deductions to the association rendering such services.

Dated: January 19, 1993.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–1755 Filed 2–1–93; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–158–AD; Amdt. 39–8478; AD 93–01–24]

Airworthiness Directives; Airbus Industrie Model A300 B2, B4–100, and B4–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, that requires supplemental structural inspections to detect fatigue cracking, and repair or replacement, if necessary; or the installation of specific modifications. This amendment is prompted by a structural reevaluation, which identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original fatigue design life goal. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: March 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700

Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300 series airplanes was published in the **Federal Register** on May 28, 1992 (57 FR 22443). That action proposed to require supplemental structural inspections to detect fatigue cracking, and repair or replacement, if necessary; or the installation of specific modifications.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter, Airbus Industrie, requests that the applicability of the AD be revised to include Model A300 C4 and A300 F4 series airplanes. The commenter provides no justification for this request. The FAA does not concur. The FAA has not issued type certificates for Model A300 C4 or A300 F4 series airplanes. The FAA cannot issue AD's applicable to airplane models for which U.S. type certificates have not been issued.

Airbus Industrie also requests that the risk ratios identified in paragraphs (d) and (e) of the proposed rule not be identified as percents. The commenter suggests that these sentences be revised to read, "* * * a certain value of 'Risk Ratio' (RR) equal to 100," rather than the proposed phrasing, which reads, "* * * a certain value of 'Risk Ratio' (RR) equal to 100 percent * * *" The FAA concurs with the commenter's suggestion, since the revised phrasing is more accurate. The final rule has been revised accordingly.

One commenter requests that the reporting requirements specified in the proposed rule be extended. The commenter notes that the proposed AD would require reporting requirements that correspond with those specified in chapters 5 and 7 of the Airbus Industrie A300 Supplemental Structural Inspection Document (SSID). The commenter asks that the FAA require submittal of reports of initial findings within 7 days and complete reports of inspection results on a quarterly basis. The commenter justifies this request by noting that its program administration is not available at night or on weekends; consequently, the reporting requirement in the proposed AD does not allow sufficient time to prepare and submit a report.

The FAA concurs partially. The reporting requirements of chapters 5 and 7 of the SSID apply only to those airplanes selected for the Fleet Leader Program (FLP). The level of safety of airplanes that are not part of the FLP is ensured by the accomplishment of inspections on airplanes that are part of the FLP. Therefore, it is essential that initial inspection findings and complete inspection reports for those airplanes that are part of the FLP be submitted within the time period identified in the SSID so that appropriate action can be taken in a timely manner with regard to the remainder of the fleet. Consequently, the FAA has changed paragraph (h) of the final rule to clarify that only those airplanes that are part of the FLP are subject to the reporting requirements of that paragraph. In addition, a new paragraph (i) has been included in the final rule to state that, for all airplanes that are not part of the FLP, the inspection results must be reported in accordance with instructions provided in the applicable service bulletins identified in Chapter 6 of the SSID.

The wording of paragraphs (g) and (h) of the final rule has been clarified to highlight the fact that Chapter 5 of the SSID identifies those airplanes selected for the FLP.

Paragraph (k) of the final rule [designated as paragraph (j) of the proposed AD] has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 52 airplanes of U.S. registry will be affected by this AD, that it will take approximately 564 work hours per airplane (including estimated work hours for access, inspection, and close-up) to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,613,040, or $31,020 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–24. Airbus Industrie: Amendment 39–8478. Docket 91–NM–158–AD.

Applicability: All Model A300 B2, B4–100, and B4–200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced structural integrity of these airplanes, accomplish the following:

(a) Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program that provides for supplemental maintenance, inspections, modifications, repair, or replacement of the significant structural details (SSD) and significant structural items (SSI) specified in Airbus Industrie A300 Supplemental Structural Inspection Document (SSID), dated September 1989 (hereafter referred to as "the SSID").

(b) Cracked structure detected during the inspections required by paragraph (a) of this AD must be repaired or replaced, prior to further flight, in accordance with the service bulletins listed in Chapter 6 of the A300 SSID, or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the Direction Generale de l'Aviation Civile (DGAC).

(c) For airplanes identified in Chapter 5, Fleet Leader Program (FLP), of the SSID: Inspect according to the instructions and intervals specified in Chapter 4, paragraph 4.4, and Chapter 9 of the A300 SSID for each SSD.

(d) For Model A300-B2 series airplanes: For any SSD that has exceeded a certain value of "Risk Ratio" (RR) equal to 100, or equal to the values of the threshold specified in Chapter 9 of the SSID when the RR curves are not provided, inspect within 2,000 landings after the effective date of this AD.

(e) For Model A300-B4 series airplanes: For any SSD that has exceeded a certain value of RR equal to 100, or equal to the values of the threshold specified in Chapter 9 of the SSID when the RR curves are not provided, inspect within 1,500 landings after the effective date of this AD.

(f) For the FLP airplanes (identified in Chapter 5 of the SSID): Within one year after the effective date of this AD, set up a procedure that ensures monitoring of each SSD in accordance with the calculation method of RR described in Chapter 4 of the SSID.

(g) For the FLP airplanes (identified in Chapter 5 of the SSID) that are listed in Chapter 7, SSI List, of the SSID: Inspect at intervals not to exceed the interval for each SSI, in accordance with the values given in Chapter 7 of the SSID after adjustment according to the method described in Chapter 4, paragraph 4.4, of the SSID.

(h) For the FLP airplanes (identified in Chapter 5 of the SSID): All inspection results, positive or negative, must be reported to Airbus Industrie in accordance with the instructions in Chapter 5, paragraph 5.2, and Chapter 7, paragraph 7.1, of the SSID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(i) For all airplanes that are not part of the FLP (those not identified in Chapter 5 of the SSID): All inspection results, positive or negative, must be reported to Airbus Industrie in accordance with the instructions in the applicable service bulletins identified in Chapter 6 of the SSID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(j) Accomplishment of the requirements of this AD constitutes terminating action for the requirements of the following AD's:

89-25-07
89-26-03
90-02-20
90-02-21
90-03-01
90-03-14
90-06-01
90-06-05
90-06-08
90-06-11
90-06-13
90-06-17
90-07-03
90-08-16

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(l) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(m) The maintenance, inspections, modifications, repair, and replacement shall be done in accordance with Airbus Industrie A300 Supplemental Structural Inspection Document (SSID), dated September 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(n) This amendment becomes effective on March 8, 1993.

Issued in Renton, Washington, on January 15, 1993.

Darrell M. Pedersen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2277 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92-NM-01-AD; Amendment 39-8481; AD 93-01-27]

Airworthiness Directives; Boeing Model 737-100, -200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-100, -200, -300, and -400 series airplanes, that requires replacement of plastic flight control cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are properly installed. This amendment is prompted by a report of locked elevator controls and horizontal stabilizer trim caused by cable guards that had melted onto the control cables. The actions specified by this AD are intended to prevent the loss of primary and secondary pitch control.

DATES: Effective March 9, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2778; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737-100, -200, -300, and -400 series airplanes was published in the Federal Register on August 27, 1992 (57 FR 38784). That action proposed to require replacement of plastic flight control cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are properly installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of two of its members, requests that the proposed compliance time for replacement of the cable guards be increased from 18 to 48 months after the effective date of the AD. One ATA member expresses concern that the proposed compliance time does not allow sufficient lead time to obtain required parts. Another ATA member that operates a large fleet of these airplanes requests the compliance time extension so that the retrofit can be accomplished during a scheduled "D" check, rather than special scheduling the modification at considerable expense.

Another commenter requests that a statement be added to the proposal indicating that operators of airplanes on which aluminum cable guards have been installed in accordance with the service bulletin cited in the notice may delay installation of grommets until the next layover check, regardless of the 18-month compliance time. This commenter has installed aluminum cable guards, but has not installed grommets. The commenter believes that the amount of airplane down time required to accomplish the grommet installation within the proposed 18-month compliance time would have an adverse affect on its operation.

In light of these considerations, the FAA concurs that an extension of the proposed compliance time to 48 months is warranted. Paragraphs (a) and (b) of the final rule have been revised accordingly. The FAA has determined that such extension will not adversely impact safety.

One commenter requests that the proposed rule be withdrawn. Based on the unique series of events that transpired to cause the addressed service difficulty, the commenter believes this incident should be considered an isolated occurrence. The commenter also indicates that sufficient methods exist (i.e., an overheat light and a pre-flight controls check) to ensure early detection of the problem, the probability of a similar incident occurring in the future is extremely low, and the majority of the Model 737 fleet will be retrofitted with aluminum cable guards within a reasonable time. If the rule is not withdrawn, the commenter requests that the compliance time be significantly increased to provide sufficient lead time for the modification kits to be ordered and shipped and to provide an opportunity for kit installation to be integrated into operators' scheduled maintenance plans.

The FAA does not concur with this commenter's request to withdraw the proposed rule. The FAA has determined that sufficient data exist to demonstrate that locked elevator controls and horizontal stabilizer trim could recur if plastic cable guards were to melt onto the control cables. This condition is considered unsafe since it could result in the loss of primary and secondary pitch control. The FAA has determined that replacement of plastic cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are installed properly, as required by this AD action, will positively address the unsafe condition. Therefore, the FAA will not withdraw the proposed rule. However, the FAA does concur with the commenter's request to increase the proposed compliance time, as reflected in the FAA's response to the comments discussed previously.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,851 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 636 airplanes of U.S. registry will be affected by this AD, that it will take approximately 21 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $1,753 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,849,488, or $2,908 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-01-27. Boeing: Amendment 39-8481. Docket 92-NM-91-AD.

Applicability: Model 737-100, -200, -300, and -400 series airplanes, through line number 1869; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of primary and secondary pitch control, accomplish the following:

(a) Within 48 months after the effective date of this AD, replace plastic flight control cable guards with aluminum cable guards, in accordance with Boeing Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991.

(b) Within 48 months after the effective date of this AD, remove any previously-installed aluminum cable guards located at right buttock line (RBL) 6.60, between body stations (BS) 947.5 and 967, and relocate the aluminum cable guards to RBL 14.75, between BS 947.5 and 967; and verify that grommets are properly installed at all locations; in accordance with Boeing Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement, relocation, and verification shall be done in accordance with Boeing Service Bulletin 737–27A1164, Revision 1, dated November 14, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 9, 1993.

Issued in Renton, Washington, on January 20, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2278 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 92–NM–247–AD; Amendment 39–8482; AD 93–01–28]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10 series airplanes. This action requires inspections to detect cracks in the left and right wing-to-fuselage titanium attach tees and repair, if necessary. This amendment is prompted by a report of a fatigue crack in the wing-to-fuselage titanium attach tee. The actions specified in this AD are intended to prevent failure of the wing-to-fuselage titanium attach tee and subsequent reduced structural integrity of the fuselage.

DATES: Effective February 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1993.

Comments for inclusion in the Rules Docket must be received on or before April 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications - Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen A. Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Recently, an operator of McDonnell Douglas Model DC–10 series airplanes reported that a 31-inch fatigue crack was found in the wing-to-fuselage titanium attach tee. The crack generally followed the fillet radius of the undercut pocket in the lower end of the attach tee upper leg. The crack was found on a Model DC–10 series airplane that had accumulated 59,419 flight hours and 24,606 landings.

Inspection of the wing-to-fuselage titanium attach tee is required by AD 92–02–08, Amendment 39–8144 (57 FR 3931, February 3, 1992). That AD requires inspection of various Principal Structural Elements (PSE's), including the tee, in accordance with McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)." The tee is designated as PSE number 53.10.047 (left side) and 53.10.048 (right side).

For all of the Model DC–10–10 and –15 series airplanes, inspection of this PSE (the tee) follows the 100 percent inspection criteria with a fatigue life threshold (N_{th}) of 38,484 landings. The 100 percent inspection criteria requires that all airplanes in the population be inspected before reaching N_{th}.

For Model DC–10–30 and –40 series airplanes, inspections of this PSE (the tee) follows the fleet leader sampling criteria with an N_{th} of 31,897 landings. The fleet leader sampling criteria requires sampling inspection of airplanes in the sampling population after they have exceeded $N_{th/2}$ (15,948 landings). Sampling inspection of this PSE for the population of Model DC–10–30 and –40 series airplanes began in September 1989 for those airplanes that had exceeded 15,948 landings.

Subsequent to the recent finding of a fatigue crack in this PSE (the tee), the manufacturer evaluated the fatigue and damage tolerance characteristics for this PSE. The evaluation indicated that the fatigue life of the wing-to-fuselage titanium attach tee installed on airplanes having fuselage numbers 1 through 83 is shorter than that initially predicted by the SID. Fatigue life improvements for the wing-to-fuselage tee were incorporated in production for airplanes having fuselage numbers 84 and subsequent. Because these fatigue life improvements were not incorporated on airplanes having fuselage numbers 1 through 83, these earlier Model DC–10 series airplanes are susceptible to fatigue cracking prior to the fatigue life threshold that is indicated for this PSE (the tee) in the SID.

Since fatigue cracking has been detected on an airplane that had not yet reached the fatigue life threshold for this PSE (the tee), and since the manufacturer's evaluation indicated that such cracking could occur on other Model DC–10 series airplanes having fuselage numbers 1 through 83, the FAA has determined that inspection of this area is warranted on all Model DC–10 series airplanes having fuselage numbers 1 through 83.

Cracking and eventual failure of the wing-to-fuselage titanium attach tee, if not detected and corrected, could result in reduced structural integrity of the fuselage.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A53–164, dated December 16, 1992, that describes procedures for a visible dye penetrant inspection to detect cracking in the left and right wing-to-fuselage titanium attach tees.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC–10 series airplanes of the same type design, this AD is being issued to prevent failure of the wing-to-fuselage titanium attach tee and subsequent reduced structural integrity of the fuselage. This AD requires visible dye penetrant inspections to detect cracks in the left and right wing-to-fuselage titanium attach tees. The actions are required to be accomplished in accordance with the service bulletin described previously. This AD also requires repair of cracked wing-to-fuselage titanium attach tees.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–247–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–28. McDonnell Douglas: Amendment 39–8482. Docket 92–NM–247–AD.

Applicability: Model DC–10 series airplanes, manufacturer's fuselage numbers 1 through 83, inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the wing-to-fuselage titanium attach tee and subsequent reduced structural integrity of the fuselage, accomplish the following:

(a) Within 45 days after the effective date of this AD, unless accomplished within the last 2,190 landings prior to the effective date of this AD, perform a visible dye penetrant inspection to detect cracks in the right and left wing-to-fuselage titanium attach tees, in accordance with McDonnell Douglas Alert Service Bulletin A53–164, dated December 16, 1992.

Note: Inspections of Principal Structural Elements 53.10.047 and 53.10.048 performed in accordance with McDonnell Douglas Report No. L26–012, "DC–10 Supplemental Inspection Document (SID)," Volume II, Revision 1, dated May 1990; or Revision 2, dated April 1992; constitute compliance with this paragraph.

(1) If no crack is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 2,190 landings.

(2) If any crack is found, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with McDonnell Douglas Alert Service Bulletin A53–164, dated December 16, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 17, 1993.

Issued in Renton, Washington, on January 20, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2083 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 91-ACE-4]

Alteration of Transition Area; Ames, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on December 7, 1992. This final rule altered the 700-foot transition area at Ames, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure at the Ames, Iowa, Municipal Airport utilizing a localizer located on the airport.

EFFECTIVE DATE: 0901 u.t.c., February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION: On December 7, 1992, the Federal Aviation Administration (FAA) published a final rule that amended part 71 of the Federal Aviation Regulations to alter the transition area at Ames, Iowa (57 FR 57662). The longitude of the Ames Municipal Airport, Iowa, was the same as that given for the Ames NDB.

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on December 7, 1992, FR Doc. No. 92-29584, and the description in FAA Order 7400.7A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§71.1 [Corrected]

On page 57662, in the second column, the description for "ACE IA TA Ames Municipal Airport, Iowa" is corrected by removing "Longitude 93°37′37″ W" and inserting in its place "Longitude 93°37′18″ W"

Billy G. Peacock,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 93-2055 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 27115; Amdt. No. 1529]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notices to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on January 15, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
01/04/93	TX	Houston	Houston-Southwest	FDC 3/0016	NDB Rwy 9, Amdt 4A.
01/05/93	CA	Merced	Merced Muni-Macready Field	FDC 3/0037	LOC BC Rwy 12, Amdt 8.
01/06/93	MO	Charleston	Mississippi County	FDC 3/0061	NDB Rwy 36, Amdt 2.
01/07/93	NC	North Wilkesboro	Wilkes County	FDC 3/0082	NDB Rwy 1, Amdt 1.
01/07/93	NC	Roxboro	Person County	FDC 3/0096	NDB Rwy 6, Amdt 1.
01/07/93	NY	Potsdam	Potsdam Muni (Damon Field)	FDC 3/0100	NDB Rwy 24, Amdt 3.
01/08/93	MA	Bedford	Laurence G. Hanscom Field	FDC 3/0110	NDB Rwy 11, Amdt 19A.
01/08/93	ND	Pembina	Pembina Muni	FDC 3/0122	VOR Rwy 33, Amdt 6.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0151	ILS Rwy 32R, Amdt 17.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0152	NDB Rwy 32R, Amdt 15.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0153	VOR Rwy 32R, Amdt 18.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0154	VOR Rwy 21, Amdt 3.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0155	RNAV Rwy 21, Amdt 6.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0157	VOR Rwy 3, Amdt 4.
01/11/93	WA	Moses Lake	Grant County	FDC 3/0158	VOR Rwy 14L, Amdt 10.
01/12/93	IL	Sparta	Sparta Community-Hunter Field	FDC 3/0163	NDB Rwy 18, Orig.
01/12/93	NY	Poughkeepsie	Dutchess County	FDC 3/0166	VOR/DME Rwy 6, Amdt 5.
01/13/93	GA	Rome	Richard B. Russell	FDC 3/0183	VOR/DME Rwy 1, Amdt 8.
11/30/92	TX	Nacogdoches	A L Mangham Jr Regional	FDC 2/7147	LOC Rwy 36, Orig.
12/22/92	MA	Boston	General Edward Lawrence Logan Intl	FDC 2/7626	ILS Rwy 4R (Cat II), Amdt 7A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7743	RNAV Rwy 9, Amdt 1A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7744	RNAV Rwy 27, Amdt 2A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7745	NDB Rwy 27, Amdt 3A.
12/30/92	TX	Houston	Houston-Southwest	FDC 2/7746	LOC/DME Rwy 9, Amdt 2A.
12/31/92	MO	Aurora	Aurora Memorial Muni	FDC 2/7755	VOR/DME–A, Amdt 2.

NFDC Transmittal Letter Attachment

Rome

Richard B. Russell
Georgia
VOR/DME RWY 1, AMDT 8 . . .
Effective: 01/13/93

FDC 3/0183/RMG/ FI/P Richard B. Russell, Rome, GA. VOR/DME RWY 1, AMDT 8 . . . S–1 VIS 1 ¼ CAT C, add note . . . inoperative table does not apply to CAT C. This becomes VOR/DME RWY 1, AMDT 8A.

Merced

Merced Muni-MacReady Field
California
LOC BC RWY 12 AMDT 8. . .
Effective: 01/05/93

FDC 3/0037/MCE/ FI/P Merced Muni-Macready Field, Merced, CA. LOC BC RWY 12 AMDT 8 . . . add profile note . . . disregard glide slope indications. This becomes LOC BC RWY 12 AMDT 8A.

Sparta

Sparta Community-Hunter Field
Illinois
NDB RWY 18 Orig. . .
Effective: 01/12/93

FDC 3/0163/SAR/ FI/P Sparta Community—Hunter Field, Sparta, IL. NDB RWY 18 ORIG . . . terminal routes . . . delete feeders FAM VORTAC to SAR NDB, TOY VORTAC to SAR NDB, ENL VORTAC to SAR NDB. This is NDB RWY 18 ORIG–A.

Boston

General Edward Lawrence Logan Intl
Massachusetts
ILS RWY 4R (CAT II) AMDT 7A. . .
Effective: 12/22/92

FDC 2/7626/BOS/ FI/P General Edward Lawrence Logan Intl, Boston, MA. ILS RWY 4R (CAT II) AMDT 7A . . . delete—approach minima when control tower reports tall vessels in approach area and inoperative table does not apply. Add note—when control tower reports tall vessels in approach area, PROC NA. ILS RWY 4R (CAT III) AMDT 7A . . . add note—when control tower reports tall vessels in approach area, PROC NA. This is ILS RWY 4R AMDT 7B.

Bedford

Laurence G. Hanscom Field
Massachusetts
NDB RWY 11 AMDT 19A. . .
Effective: 01/08/93

FDC 3/0110/BED/ FI/P Laurence G. Hanscom Field, Bedford, MA. NDB RWY 11 AMDT 19A . . . circling CAT C MDA 720/HAA 587. This is NDB RWY 11 AMDT 19B.

Aurora

Aurora Memorial Muni
Missouri
VOR/DME–A AMDT 2. . .
Effective: 12/31/92

FDC 2/7755/2H2/ FI/P Aurora Memorial Muni, Aurora, MO. VOR/DME–A AMDT 2 . . . MSA 200–020 2900′. This is VOR/DME–A AMDT 2A.

Charleston

Mississippi County
Missouri
NDB RWY 36 AMDT 2. . .
Effective: 01/06/93

FDC 3/0061/CHQ FI/P Mississippi County, Charleston, MO. NDB RWY 36 AMDT 2 . . . TRML RTE . . . MAW VORTAC to CHQ NDB 2000. This is NDB RWY 36 AMDT 2A

North Wilkesboro

Wilkes County
North Carolina
NDB RWY 1 AMDT 1 . . .
Effective: 01/07/93

FDC 3/0082/UKF FI/P Wilkes County, North Wilkesboro, NC. NDB RWY 1 AMDT 1 . . . terminal route . . . PUMMP INT/RADAR (IAF) to UK LOM (NOPT) 005/8.3. This becomes NDB RWY 1 AMDT 1A.

Roxboro

Person County
North Carolina
NDB RWY 6 AMDT 1 . . .
Effective: 01/07/93

FDC 3/0085/TDF/ FI/P Person County, Roxboro, NC. NDB RWY 6 AMDT 1 . . . terminal route DAN VOR to HUR NDB. Chg min alt to 2700. Delete Raleigh-Durham altimeter setting minimums. Change note . . . if local altimeter not received use Raleigh-Durham setting and increase all MDA's 100 ft. This becomes NDB RWY 6 AMDT 1A.

Pembina

Pembina Muni
North Dakota
VOR RWY 33 AMDT 6. . .
Effective: 01/08/93

FDC 3/0122/PMB/ FI/P Pembina Muni, Pembina, ND. VOR RWY 33 AMDT 6 . . . add note . . . chart . . . Princeton radio 122.1R. This is VOR RWY 33 AMDT 6A.

Potsdam

Potsdam Muni (Damon Field)
New York
NDB RWY 24 AMDT 3. . .
Effective: 01/07/93

FDC 3/0100/PTD/ FI/P Potsdam Muni (Damon Field), Potsdam, NY. NDB RWY 24 AMDT 3 . . . DLT . . . CAT D MINS; DLT note . . . activate MIRL . . . thru . . . CTAF. This is NDB RWY 24 AMDT 3A.

Poughkeepsie

Dutchess County
New York
VOR/DME RWY 6 AMDT 5. . .
Effective: 01/12/93

FDC 3/0168/POU/ FI/P Dutchess County, Poughkeepsie, NY. VOR/DME RWY 6 AMDT 5 . . . S–6 CATS A/B VIS 1. Add note . . . INOP table does not apply to CATS A/B. This is VOR/DME RWY 6 AMDT 5A.

Nocogdoches

A L Mangham Jr Regional
Texas
LOC RWY 36 ORIG. . .
Effective: 11/10/92

FDC 2/7147/OCH/ FI/P A L Mangham Jr Regional, Nocogdoches, TX. LOC RWY 36 ORIG. . . S–36/circling category D NA; DME MINS. . . S–36/circling CAT D NA. ALTN MINS NA. This is LOC RWY 36 ORIG A.

Houston

Houston-Southwest
Texas
RNAV RWY 9 AMDT 1A. . .
Effective: 12/30/92

FDC 2/7743/AXH/ FI/P Houston-Southwest, Houston, TX. RNAV RWY 9 AMDT 1A. . . S–9 MDA/HAT ALL CATS 540/472, VIS CAT C 1 1/4, circling MDA/HAA ALL CATS 580/512. This is RNAV RWY 9 AMDT 1B

Houston

Houston-Southwest
Texas
RNAV RWY 279 AMDT 2A. . .
Effective: 12/30/92

FDC 2/7744/AXH/ FI/P Houston-Southwest, Houston, TX. RNAV RWY 27 AMDT 2A. . . S–27 MDA/HAT ALL CATS 540/473, VIS CAT C 1 1/4, circling MDA/HAA ALL CATS 580/512. This is RNAV RWY 27 AMDT 2B.

Houston

Houston-Southwest
Texas
NDB RWY 27 AMDT 3A. . .
Effective: 12/30/92

FDC 2/7745/AXH/ FI/P Houston-Southwest, Houston, TX. NDB RWY 27 AMDT 3A. . . S–27 MDA/HAT ALL CATS 700/633, VIS CAT C 1 3/4, circling MDA/HAA ALL CATS 700/632, VIS CAT C 1 3/4. This is NDB RWY 27 AMDT 3B.

Houston

Houston-Southwest
Texas
LOC/DME RWY 9 AMDT 2A. . .
Effective: 12/30/92

FDC 2/7746/AXH/ FI/P Houston-Southwest, Houston, TX. LOC/DME RWY 9 AMDT 2A. . .circling MDA/HAA ALL CATS 580/512. This is LOC/DME RWY 9 AMDT 2B.

Houston

Houston-Southwest
Texas
NDB RWY 9 AMDT 4A. . .
Effective: 01/04/93

FDC 3/0016/AXH/ FI/P Houston-Southwest, Houston, TX NDB RWY 9 AMDT 4A. . .S–9 MDA 580/HAT 512 ALL CATS. VIS CAT C 1–1/2. Circling MDA 580/HAA 513 ALL CATS. This is NDB RWY 9 AMDT 4B.

Moses Lake

Grant County
Washington
ILS RWY 32R, AMDT 17. . .
Effective: 01/11/93

FDC 3/0151/MWH/ FI/P Grant County, Moses Lake, WA. ILS RWY 32R, AMDT 17. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes ILS RWY 32R, AMDT 17A.

Moses Lake

Grant County
Washington
NDB RWY 32R, AMDT 15. . .
Effective: 01/11/93

FDC 3/0152/MWH/ FI/P Grant County, Moses Lake, WA. NDB RWY 32R, AMDT 15. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes NDB RWY 32R, AMDT 15A.

Moses Lake

Grant County
Washington
VOR RWY 32R, AMDT 18. . .
Effective: 01/11/93

FDC 3/0153/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 32R, AMDT 18. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes VOR RWY 32R, AMDT 18A.

Moses Lake

Grant County
Washington
VOR RWY 21, AMDT 3. . .
Effective: 01/11/93

FDC 3/0154/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 21R, AMDT 3. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes VOR RWY 21, AMDT 3A.

Moses Lake

Grant County
Washington
RNAV RWY 21, AMDT 6. . .
Effective: 01/11/93

FDC 3/0155/MWH/ FI/P Grant County, Moses Lake, WA. RNAV RWY 21, AMDT 6. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes RNAV RWY 21, AMDT 6A.

Moses Lake

Grant County
Washington
VOR RWY 3, AMDT 4. . .
Effective: 01/11/93

FDC 3/0157/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 3, AMDT 4. . .delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes ILS RWY 3, AMDT 4A.

Moses Lake

Grant County
Washington
VOR RWY 14L, AMDT 10. . .
Effective: 01/11/93

FDC 3/0158/MWH/ FI/P Grant County, Moses Lake, WA. VOR RWY 14L, AMDT 10. . .add 'NOPT' to each 10 DME initial arc segment. Delete light activation note. . .activate MALSR RWY 32R—CTAF. This becomes VOR RWY 14L, AMDT 10A.

[FR Doc. 93–2050 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 27114; Amdt. No. 1528]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on January 15, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective April 1, 1993*

Jackson, CA, Westover Field Amador County, VOR/DME RWY 1, Orig.
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 6, Orig.
Windsor Locks, CT, Bradley International, VOR/DME RWY 6, Orig. A, Cancelled
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 15, Amdt. 2
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 24, Amdt. 1
Windsor Locks, CT, Bradley International, VOR or TACAN RWY 33, Orig.
Windsor Locks, CT, Bradley International, NDB RWY 6, Amdt. 26
Windsor Locks, CT, Bradley International, ILS RWY 24, Amdt. 6
Windsor Locks, CT, Bradley International, ILS RWY 33, Amdt. 4
Destin, FL, Destin-Fort Walton Beach, RADAR–1, Amdt. 7
Colby, KS, Shaltz Field, NDB RWY 17, Amdt. 3, Cancelled
Colby, KS, Shaltz Field, NDB RWY 17, Orig.
Richmond, KY, Madison, VOR/DME RNAV RWY 36, Amdt. 6
De Ridder, LA, Beauregard Parish, RADAR–1, Orig.
Grand Rapids, MI, Kent County Intl, ILS RWY 8R, Amdt. 4
Columbus, OH, Ohio State University, VOR/DME RNAV RWY 27L, Amdt. 6
Willard, OH, Willard, VOR–A, Amdt. 5, Cancelled
Willard, OH, Willard, VOR/DME–A, Orig.
Lewisburg, TN, Ellington, NDB RWY 20, Amdt. 4
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 17L, Amdt. 5
Dallas-Fort Worth, TX, Dallas/Fort Worth International, ILS RWY 18R, Amdt. 4

* * * *Effective March 4, 1993*

Baltimore, MD, Baltimore-Washington Intl, ILS RWY 33L, Amdt. 6
Baltimore, MD, Baltimore-Washington Intl, ILS/DME RWY 33R, Amdt. 2
Muskegon, MI, Muskegon County, ILS RWY 24, Amdt. 3
Grain Valley, MO, East Kansas City, VOR RWY 23, Amdt. 2
Grain Valley, MO, East Kansas City, VOR/DME RNAV RWY 27, Amdt. 1
Beatrice, NE, Beatrice Municipal, VOR RWY 13, Amdt. 15
Whitefield, NH, Mount Washington Regional, LOC RWY 10, Amdt. 3
Whitefield, NH, Mount Washington Regional, NDB RWY 10, Amdt. 6
Toms River, NJ, Robert J. Miller Air Park, ILS RWY 6, Amdt. 1
Chambersburg, PA, Chambersburg Muni, VOR–B, Amdt. 1, Cancelled
Chambersburg, PA, Chambersburg Muni, VOR/DME–B, Orig.
Doylestown, PA, Doylestown, VOR RWY 23, Amdt. 6
Doylestown, PA, Doylestown, NDB RWY 23, Amdt. 2
Pittsburgh, PA, Allegheny County, VOR/DME RNAV RWY 10, Amdt. 6
Shamokin, PA, Northumberland County, VOR RWY 8, Amdt. 3
Washington, PA, Washington Co., NDB RWY 27, Orig.
Point Pleasant, WV, Mason County, VOR/DME–A, Amdt. 4
Beckley, WV, Raleigh County Memorial, VOR/DME RWY 1, Amdt. 3
Beckley, WV, Raleigh County Memorial, VOR RWY 10, Amdt. 12
Beckley, WV, Raleigh County Memorial, VOR RWY 19, Amdt. 3
Beckley, WV, Raleigh County Memorial, ILS RWY 19, Amdt. 3

* * * *Effective February 4, 1993*

Marshall, MO, Marshall Mem'l Muni, NDB RWY 36, Orig.
Myerstown, PA, Deck Airport, VOR/DME–A, Orig.

* * * *Effective January 4, 1993*

Fairview, OK, Fairview Muni, NDB RWY 17, Amdt. 3

[FR Doc. 93–2051 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 140

[FHWA Docket No. 92–7]

RIN 2125–AC96

Reimbursement; Temporary Matching Fund Waiver

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is issuing the final regulations establishing procedures for a temporary waiver of State matching fund requirements as mandated by section 1054 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991. Section 1054 of the ISTEA authorizes a State to request an increase in the Federal share (normally 75 to 90 percent) of the construction costs of a qualifying Federal-aid highway project based upon a certification by the Governor of the State that sufficient funds are not available to pay the cost of the non-Federal share of the project. The provisions permit a State to receive up to 100 percent Federal funds on a project for a period through September 30, 1993. The State is required to repay the amount of funds received above the regular Federal share by March 30, 1994. If the State does not make the repayment, 50 percent of the amount will be deducted from the State's apportionments in fiscal year 1995 and the remaining 50 percent in fiscal year 1996.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Max I. Inman, Chief, Federal/States Financial Management Branch, (202) 366–2853; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366–0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Pub. L. 102–240, 105 Stat. 1914 (1991), was signed by the President on December 18, 1991. Section 1054 of the ISTEA provides that a State may request a waiver of its normal share of the construction cost of a qualifying Federal-aid highway project provided the Governor of the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. The non-Federal share of a project normally ranges from 10 percent to 25 percent. This statute allows a State to claim Federal funds up to 100 percent of project costs until September 30, 1993. This regulation prescribes procedures for administering section 1054 of the ISTEA.

The amount claimed by the State in excess of the regular Federal share must be repaid by March 30, 1994. The State may choose not to make repayment which will result in a deduction from the State's apportionments in fiscal years 1995 and 1996. One-half of the amount to be repaid by the State will be deducted in each of the fiscal years.

Any amounts deducted from apportionments will be reapportioned to States which did not use the waiver and to States which made the repayment.

The statute establishes the requirements for a project to qualify for a temporary matching fund waiver. The project must receive Federal approval under title 23, United States Code, after December 18, 1991, the effective date of the ISTEA, and be subject to the Governor's certification that funds are not available to pay the cost of the non-Federal share of the project.

Discussion of Comments

A notice of proposed rulemaking was published in the **Federal Register** on July 16, 1992, requesting comments on the proposed rule. Two comments were received.

The first comment was from the U.S. Small Business Administration requesting a more complete explanation of the effect the rule will have on small entities. An explanation is included under the statement on the Regulatory Flexibility Act.

The second comment was received from a county transportation agency which recommended that the waiver of a local match be automatically provided regardless of the availability of State funds to pay for the non-Federal share of the project costs. The law specifically states that a waiver can be granted only when the State certifies that sufficient funds are not available to pay the cost of the non-Federal share of the project. Therefore, no change is made to the proposed rule.

A question was raised within FHWA regarding § 140.311, paragraph (e), which states that appropriate adjustments will be made to each State's obligation limitation. The provision suggests that obligation limitation will be deducted from the waiver States and distributed to the other States, which is misleading. Each State will receive obligation limitation based on its normal share of apportionments. Apportionments will then be adjusted to reflect the payback of the waivers. States receiving additional apportionments will also receive a proportional amount of obligation limitation from the allocation reserve. Subsection 140.311(e) is deleted from the final rule to avoid confusion.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act (Explanation and Analysis)

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This rule is directed toward State governments, and it is anticipated that fewer than 15 States will qualify for temporary matching fund waivers. In some of these States, qualifying projects may be built in small local government jurisdictions and could result in a reduction of local government funds needed for the non-Federal share of project costs. However, no significant economic impact is expected on a substantial number of small entities because the matching fund waiver is temporary and the number of projects involving small entities is expected to be small.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 140

Accounting, Grant program-transportation, Highways and roads.

Issued on: January 15, 1993.

T.D. Larson,
Administrator.

In consideration of the foregoing, the FHWA hereby amends 23 CFR part 140 to read as follows:

PART 140—REIMBURSEMENT

1. The authority citation for 23 CFR part 140 is revised to read as follows:

Authority: 23 U.S.C. 101(e), 114(a), 120, 120 note, 121, 122 and 315; and 49 CFR 1.48(b).

2. Part 140 is amended by adding a new subpart C to read as follows:

Subpart C—Temporary Matching Fund Waiver

Sec.
140.301 Purpose.
140.303 Applicability.
140.305 Definitions.
140.307 Submission of certification by Governor.

Sec.
140.309 Request and approval of increase in Federal share.
140.311 Repayment of the increased Federal share.

Subpart C—Temporary Matching Fund Waiver

§ 140.301 Purpose.

The purpose of this regulation is to prescribe procedures for administering section 1054 of the Intermodal Surface Transportation Efficiency Act of 1991, providing for a temporary waiver of State matching fund requirements.

§ 140.303 Applicability.

The provisions of this subpart are applicable to qualifying projects as defined in § 140.305 during the period beginning October 1, 1991, and ending September 30, 1993.

§ 140.305 Definitions.

As used in this subpart:

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Increased Federal share means the portion of the approved Federal share which is in excess of the regular Federal share that would have been approved if a matching fund waiver had not been requested.

Qualifying project means a project approved after December 18, 1991, under 23 U.S.C. 106(a), or a project for which the United States becomes obligated to pay after December 18, 1991, under 23 U.S.C. 117 or 23 U.S.C. 133(e), for which the Governor has submitted a certification described in § 140.307.

§ 140.307 Submission of certification by Governor.

The Governor of the State shall submit a certification in writing to the Federal Highway Administration (FHWA) Division Administrator certifying that sufficient funds are not available to pay the cost of the non-Federal share of a qualifying project, taking into account all State and local funds that are available for obligation on Federal-aid highway projects. Funds encumbered or committed to other existing programs are considered unavailable for matching purposes.

§ 140.309 Request and approval of increase in Federal share.

(a) The State may submit a request in writing to the FHWA Division Administrator for an increase in the Federal share of a qualifying project up to and including 100 percent at the time the State submits a request for project approval or obligation. The request shall specify the Federal pro rata share, the amount of regular Federal funds and the amount of the increased Federal share desired.

(b) To maximize the obligation of Federal funds, the amount obligated for the increased Federal share may be based on the estimated costs to be incurred by the State before September 30, 1993, instead of the total estimated project costs.

(c) When submitting the project agreement, Form PR–2, pursuant to § 630.304 of this title, the State shall include in the agreement the following provision:

> The Federal-aid participation is increased to _______ percent for reimbursement claims paid on or before September 30, 1993, in accordance with Pub. L. 102–240, section 1054. The additional Federal funds requested total $___________. Claims paid after September 30, 1993, shall be at the regular Federal pro rata share of _______ percent.

(d) The State may claim reimbursement for the increased Federal share as a part of its normal billing procedures. Participating costs incurred by the State on qualifying projects shall be charged on a pro rata basis to the regular Federal share, increased Federal share, and non-Federal share, if any.

§ 140.311 Repayment of the increased Federal share.

(a) The State shall repay the amount of the increased Federal share made pursuant to this subpart on or before March 30, 1994. If such repayment is not made by the State, the FHWA shall make the deductions as provided in paragraph (c) of this section.

(b) The FHWA shall deposit all repayments made by a State under paragraph (a) of this section to the Highway Trust Fund and shall credit the repayments to the appropriate apportionment accounts of the State.

(c) If the total amount of the increased Federal share is not repaid on or before March 30, 1994, deductions shall be made from the State's fiscal year 1995 and fiscal year 1996 apportionments. The total amount deducted shall be the amount reimbursed to the State on the increased Federal share of all qualifying projects. In each of the fiscal years, one-half of the total deduction shall be made from the following categories on a pro rata basis: National Highway System, Surface Transportation Program, Interstate Construction, Interstate Substitute, Interstate Maintenance Program, Bridge Program, and Congestion Mitigation and Air Quality Improvement Program.

(d) The total amount deducted in accordance with paragraph (c) of this section shall be reapportioned to those States which did not receive an increased Federal share under this subpart and to those States which have made repayment under this section. These reapportioned funds shall be credited to the same categories of funds on which the deductions occurred.

[FR Doc. 93–1834 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 592 through 606, 608, 612 and 616

Removal of Rules

AGENCY: Office of the Assistant Secretary of the Army (Research, Development and Acquisition), DOD.

ACTION: Removal of rule.

SUMMARY: The purpose of this document is to remove 32 CFR parts 592 through 606, 608, 612 and 616, subchapter G. The reason for this removal is that this part is outdated and no longer valid. The purpose of this subchapter was to implement Department of Defense publications, pursuant to 1.108 of this title and to establish for the Department of the Army uniform policies and procedures relating to the procurement of supplies and services.

EFFECTIVE DATE: February 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Esther Morse or Mr. Curtis Stevenson, Office of the Assistant Secretary of the Army (RDA), Washington, D.C. 20310–0103, (703) 756–7577 or (703) 697–0723.

SUPPLEMENTARY INFORMATION:

a. List of Subjects in 32 CFR Parts 592 through 606, 608, 612 and 616.

Procurement by Formal Advertising, Procurement by Negotiation, Special Types and Methods of Procurement, Interdepartmental and Coordinated Procurement, Foreign Purchases, Contract Clauses, Termination of Contracts, Patents, Data, and Copyrights, Bonds, Insurance, and Indemnification, Taxes, Labor, Government Property, Procurement Quality Assurance, Contract Cost Principles and Procedures, Procurement Forms, Procurement of Construction and Contracting for Architect-Engineer Services, Service Contracts, Appendixes to Army Procurement Procedure.

Regulatory Flexibility Act.

The removal does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S. Code 601 et seq., because it eliminates language which is no longer applicable.

Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply as the language being eliminated is no longer applicable.

PARTS 592–606, 608, 612, 616 [REMOVED]

Accordingly, pursuant to 44 U.S.C. 15, 32 CFR Parts 592 through 606, 608, 612 and 616 are removed.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–2342 Filed 2–1–93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 92–051]

Realignment of Marine Inspection Zones and Captain of the Port Zones for Houston and Galveston, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule realigns the Marine Inspection Zones and Captain of the Port Zones for the Coast Guard Marine Safety Offices in Houston and Galveston, Texas. These changes are being made to improve the Coast Guard's command and control of marine safety around Clear Lake, Texas. They will not impair any services to the public supplied by the Coast Guard.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant John P. Sifling, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MPS–3), (202) 267–0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Lieutenant John P. Sifling, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Background and Purpose

No notice of proposed rulemaking was prepared for this final rule, which covers "agency organization" and is therefore exempt from the requirements of 5 U.S.C. 553(b) for notice and comment. Because the rule has no substantive effect, good cause exists under 5 U.S.C. 553(d) to give it effect less than 30 days after publication. The rule merely realigns two Marine Inspection Zones and Captain of the Port Zones to reduce the administrative burden and to simplify the current alignment. It will work no adverse impact on the public, since Marine Safety units in Houston and Galveston, Texas, will continue to perform all functions affecting the public that they previously performed.

Discussion

The boundaries of the Marine Inspection Zones and Captain of the Port Zones for Coast Guard Marine Safety Offices, Houston and Galveston, Texas, are being adjusted for more efficient internal management and to enhance performance of missions. In particular, they are being adjusted to eliminate a split of responsibility for a single body of water: Clear Lake, Texas. This adjustment will not impair any services to the public supplied by the Coast Guard.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 because it pertains to matters of "agency organization" as provided for in section 1(a)(3) of the Order. It is "nonsignificant" under DOT regulatory policies and procedures (44 FR 11040 (February 26, 1979)). Its economic impact will be so minimal that further evaluation is unnecessary. It places no new requirements on any sector of the public. It will not impair any services to the public supplied by the Coast Guard. It streamlines and enhances internal logistics and support. As its impact is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3510 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This organizational realignment has no preemptive effect; it leaves duties and powers of State and local governments as they are.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. The rule is an administrative matter within the meaning of subsection 2.B.2.1. of Commandant Instruction M16475.1B that clearly has no environmental impact.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 3 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.40–25, paragraph (b), is revised to read as follows:

§ 3.40–25 Houston Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Houston Marine Inspection Zone and Captain of the Port Zone starts at the junction of the east bank of the Trinity River and 30° N. latitude; thence northerly along the east bank of the Trinity River; thence northwesterly along the eastern shore of Lake Livingston; thence northwesterly along the east bank of the Trinity River to the southern boundary of Dallas County, Texas; thence westerly along the southern boundary of Dallas County, Texas to 97° W. longitude; thence north along 97° W. longitude to the Texas-Oklahoma boundary; thence northwesterly along the Texas-Oklahoma boundary; thence north along the New Mexico-Oklahoma boundary; thence west along the New Mexico-Colorado boundary; thence south along the New Mexico-Arizona boundary; thence easterly along the southern boundary of New Mexico to the southeast corner of New Mexico at 32° N. latitude; thence southeasterly to 29°18′ N. latitude, 96°07′ W. longitude; thence northeasterly to 29°31.1′ N. latitude, 95°11.5′ W. longitude, in Friendswood, Texas; thence east along the north edge of Farm-to-Market Road

(FM) 518 to the junction of Texas Highway 146 in Kemah, Texas; thence northeasterly to 29°35′ N. latitude, 94°55′ W. longitude; thence north along 94°55′ W. longitude to 30° N. latitude; thence east along 30° N. latitude to the east bank of the Trinity River.

3. Section 3.40–30, paragraph (b), is revised to read as follows:

§ 3.40–30 Galveston Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The boundary of the Galveston Marine Inspection Zone and Captain of the Port Zone starts at the junction of the sea and 94°23′ W. longitude; thence north along 94°23′ W. longitude to 30° N. latitude; thence west along 30° N. latitude to 94°55′ W. longitude; thence south to 29°35′ N. latitude, 94°55′ W. longitude; thence southwesterly to the junction of Texas Highway 146 and Farm-to-Market Road (FM) 518 in Kemah, Texas; thence west along the north edge of FM 518 to 29°31.1′ N. latitude, 95°11.5′ W. longitude in Friendswood, Texas; thence southwesterly to the east bank of the Colorado River at 29°18′ N. latitude, 96°07′ W. longitude; thence southerly along the east bank of the Colorado River to the sea.

Dated: January 25, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–2425 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–92–89]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, From St. Marys River to Key Largo

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Mayor of Sea Ranch Lakes, the Coast Guard is changing the regulations governing the operation of the Commercial Boulevard Drawbridge (Northeast 50th Street/State Road 870), mile 1059.0, at Lauderdale-by-the-Sea, Broward County, Florida. This change is being made as a result of complaints about the highway traffic delays. This action should accommodate current needs of highway traffic while still meeting the reasonable needs of navigation. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property will continue to be passed at any time.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Brodie Rich, Project Manager, and LT, J.M. Losego, Project Attorney, Seventh District Legal Office.

Regulatory History

On September 22, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Atlantic Intracoastal Waterway, from St. Marys River to Key Largo, in the **Federal Register** (57 FR 43647). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal except that, from November 1 through May 15 from 8 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour. The Mayor of Sea Ranch Lakes has requested the bridge be opened only on the hour and half-hour to reduce highway traffic congestion.

The Coast Guard analysis of bridge openings, highway traffic levels of service, and waterway holding conditions has determined this bridge averages only 2 openings per hour on weekdays with no apparent increases in commuter traffic levels during morning and afternoon rush hours. On weekends there is a reduction in highway traffic levels; however, during the winter season the number of drawbridge openings increases due to heavy boating activities on the Intracoastal Waterway. In order to reduce highway traffic delays, the Coast Guard is implementing a 20-minute opening schedule on weekends during the seasonal period.

Discussion of Comments and Changes

The Coast Guard received one letter commenting on the proposal. This letter recommended that weekend and weekday operating schedules should be similar to avoid confusion for mariners and highway traffic. Additional restrictions are only warranted on weekends during the season due to increased bridge openings and highway traffic. Therefore, the existing 15-minute schedule will continue to be maintained on weekdays during the season. The final rule is unchanged from the proposed rule.

Regulatory Evaluation

These regulations are not considered to be major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this change would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this change, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this change in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261 is amended by revising paragraph (ee) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(ee) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal; except that, from November 1 through May 15 from 8 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour, and from 8 a.m. to 6 p.m. on Saturdays, Sundays, and federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: January 6, 1993.

K.M. Ballantyne,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 93–2424 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Areas in the West Arm of Behm Canal near Ketchikan, Alaska

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correcting amendment.

SUMMARY: The Corps of Engineers is amending the regulations in 33 CFR 334.1275 to correct minor errors in the coordinates which establish a restricted area in the waters of the West Arm of Behm Canal near Ketchikan. The regulations were promulgated by the Corps of Engineers on 25 January 1990. The errors were revealed by the National Ocean Service while updating nautical charts of the area.

EFFECTIVE DATE: March 4, 1993.

ADDRESSES: Any written comments concerning these rules should be addressed to: HQUSACE, ATTN: CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Payne at (907) 753–2724 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: On 25 January 1990, the Corps of Engineers published final rules in the Federal Register (55 FR 2586–2587) establishing five restricted areas in the waters of the West Arm of the Behm Canal, north of Ketchikan, Alaska. A correction to these rules was published on 20 March 1990 (55 FR 10237). The purpose of the restricted areas is to regulate vessel activities which could interfere with naval testing activities in those areas and to protect Government owned equipment and instrumentation. According to the National Ocean Service, the coordinates which define the boundaries of Area #5, do not accurately reflect the location of the actual area. However, the corrected coordinates will not greatly enlarge the restricted area.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, part 334 of title 33 is corrected by making the following correcting amendments:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

§ 334.1275 [Amended]

2. In § 334.1275 (a) *The areas,* Area No. 5, revise "55°33.4′ N latitude" to read "55°33.3′ N latitude"; revise "131°43.6′ W longitude" to read "131°43.62′ W longitude"; revise "216 °T" to read "218 °T"; and revise "55°31.52′ N latitude" to read "55°31.55′ N latitude".

Approved

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–2311 Filed 2–1–93; 8:45 am]

BILLING CODE 3710-92-M

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33 CFR Part 334

Restricted Area for Gulf Coast Homeports at Ingleside, TX; Mobile, AL and Pascagoula, MS; Correction

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Correction to final regulations.

SUMMARY: The U.S. Army Corps of Engineers published final rules in the Federal Register on October 8, 1992, (57 FR 46303–46304) establishing naval restricted areas in the waters of the Gulf of Mexico at the Naval Homeports located at Ingleside, Texas; Mobile, Alabama; and Pascagoula, Mississippi. Minor errors were found in the coordinates which establish the limits of the naval restricted area located at Ingleside, Texas. Accordingly, the Corps is publishing corrections to the coordinates found in 33 CFR 334.802 (a).

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia J. Wood at (409) 766–3980 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: In the final regulations that are the subject of this correction, the Corps established restricted areas at each of the Navy Gulf Coast Homeports located at Ingleside, Texas; Mobile, Alabama; and Pascagoula, Mississippi.

The restricted areas encompass the waters surrounding the Naval Stations and piers where extensive Naval operations take place. The restricted areas are used extensively by U.S. Naval ships and commercial vessels under contract to the Navy, in daily operations around the pier. The piers are used to provide fuel, maintenance, and other services for these vessels. The restricted areas are essential to protect persons and property from the dangers associated with these operations and safeguard the area from accidents, sabotage, and other subversive acts. According to the National Ocean Service, the coordinates which establish the boundaries of the restricted area at Ingleside, Texas, contain errors in positions A and E; another position (F), is needed, and the direction from position C to position D should read "west-northwesterly" instead of "north-northeasterly". The Navy has agreed to these changes. Accordingly, the publication on October 8, 1992, of the final regulations in 57 FR 46303–46304, is corrected as follows:

On page 46303, in the third column, in § 334.802, paragraph (a), the area, is corrected to read:

§ 334.802 Ingleside Naval Station, Ingleside, Texas; restricted area.

(a) *The area.* The waters of Corpus Christi Bay beginning at a point at latitude 27°49′15.0″ N, longitude 97°12′6.0″ W, thence southerly to latitude 27°49′7.3″ N, longitude 97°12′5.4″ W, thence south-southwesterly to latitude 27°49′01″ N, longitude 97°12′39.4″ W, thence west-northwesterly to latitude 27°49′02.4″ N, longitude 97°12′48.3″ W, thence north-northeasterly to latitude 27°49′16.5″ N, longitude 97°12′41.5″, thence easterly to latitude 27°49′17.0″ N, longitude

97°12′27.5″ W, thence easterly along the shoreline to the point of beginning.

* * * * *

Approved:

John R. Brown,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 93-2313 Filed 2-1-93; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6956

[ID-943-4210-06; IDI-15798-01]

Partial Revocation of Geological Survey Order Dated July 26, 1948, Which Established Powersite Classification No. 390; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Geological Survey order insofar as it affects 22.50 acres of public lands withdrawn for Bureau of Land Management's Powersite Classification No. 390. The lands are no longer needed for the purpose for which they were withdrawn. This action will open 22.50 acres to surface entry and will permit the sale of the lands to resolve an agricultural trespass. The 22.50 acres have been open to mining under the provisions of the Mining Claims Restoration Act of 1955, and these provisions are no longer required. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-384-3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Geological Survey Order dated July 26, 1948, which established Powersite Classification No. 390, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 8 S., R. 14 E.,
  Sec. 7, N½NE¼SW¼NE¼,
    N½SE¼NE¼SW¼NE¼, and
    N½NW¼SW¼NE¼.
T. 8 S., R. 13 E.,
  Sec. 12, N½NE¼NE¼NE¼,
    N½SW¼NE¼NE¼NE¼,
    SE¼NE¼NE¼NE¼, and
    NE¼NW¼NE¼NE¼.

The areas described aggregate 22.50 acres in Twin Falls County.

2. At 9 a.m. on March 4, 1993, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 4, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The State of Idaho has waived its right of selection in accordance with the provisions of section 24 of the Federal Power Act of June 10, 1920, 16 U.S.C. 818, as amended

Dated: January 14, 1993.

Dave O'Neal

Assistant Secretary of the Interior.

[FR Doc. 93-2307 Filed 2-1-93; 8:45 am]

BILLING CODE 4310-GG-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 9

[OST Docket No. 48043]

RIN 2105-AB56

Testimony of Employees of the Department and Production of Records in Legal Proceedings

AGENCY: Office of the Secretary; Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT or Department) is establishing procedures that must be followed when a Department employee, former employee or DOT contractor is requested or subpoenaed to provide testimony or produce records concerning information acquired in the course of performing official duties or because of the official status of that person. These procedures are necessary to ensure more efficient use of Department resources (Department attorneys and employees currently spend a considerable amount of time responding to litigants' requests for documents or testimony), to minimize the possibility of involving the Department in controversial issues not related to its mission, to maintain the impartiality of the Department among private litigants, to protect sensitive, confidential information and the deliberative processes of the Department, and to enhance the Department's ability to respond to such requests.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Paul M. Geier, Assistant General Counsel for Litigation, or Alexander J. Millard, Office of the Assistant General Counsel for Litigation, U.S. Department of Transportation, 400 Seventh Street SW., room 4102, Washington, DC 20590, (202) 366-9279.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1992, the Department of Transportation published a notice of proposed rulemaking (NPRM) (57 FR 9224, March 17, 1992) to modify and broaden its regulations at 49 CFR part 9 governing the Department's policies and procedures with respect to testimony by its employees as witnesses in legal proceedings, the acceptance of service of legal process and pleadings in legal proceedings involving the Department, and the production of records of the Department pursuant to subpoenas.

Currently, the Department's regulations at 49 CFR part 9 do not contain any procedural requirements that private parties must meet in order to obtain departmental records or testimony of DOT employees for use in legal proceedings between private litigants.The existing regulations require only that the General Counsel or other appropriate counsel determine whether the employee is required to comply with a subpoena, and impose certain restrictions on the employee's testimony. In addition, the regulations now in effect extend only to current DOT employees. Former DOT employees, and contractors (past and present), are not covered.

As the Department noted in its NPRM, private litigants are requesting or serving subpoenas for testimony, documents, or both, from DOT agencies and their personnel in a large number of cases. The Department is a large executive agency that is composed of nine operating administrations plus the Office of the Secretary. The Department further observed in its NPRM that many of the requests that are filed with it for documents and testimony involve transportation accidents. These accidents can generate numerous private lawsuits and other proceedings, in which private litigants may seek testimony and documents from DOT investigative personnel. Responding to these requests for documents and for testimony can be burdensome and time consuming. When employees are required to testify in depositions, hearings or trials that are brought for private purposes, employees are taken away from their official duties and responsibilities. Moreover, these requests for testimony are often made on very short notice.

The Department proposed to establish new procedural requirements that private litigants must meet before the Department would produce documents or make an employee available to testify in a private legal or administrative proceeding. These procedures were not proposed to inflict an unnecessary burden on private litigants. Rather, the Department's objectives were to conserve DOT resources, to minimize the possibility of involving the Department in controversial issues not related to its mission, to maintain the Department's impartiality among private litigants, to protect the confidentiality of the Department's deliberative processes, and to enhance the Department's ability to respond more efficiently to requests for testimony and documents. The Department also proposed adopting new procedures governing the testimony of its employees in legal proceedings in which the United States is a party.

DOT's new rules would include the Maritime Administration and the Research and Special Programs Administration in the definition of "Department" because the current regulation became effective before those operating administrations were part of DOT. In addition, to preclude having to revise this part for a similar reason in the future, the new rule would include within the definition of "Department" any operating administration established after the effective date of a final rule. The new rule also would clarify the definition of "Legal proceeding between private litigants" to mean those proceedings in which neither DOT (or one of its operating administrations), nor the United States (including any federal agency or officer of the United States in his or her official capacity) is a party. The definition of "Employee" would also be expanded to include former employees of the Department, retired or former officers and enlisted members of the Coast Guard, and individuals or (other entities) who are or have been under contract with the Department, whose testimony is sought about official duties or functions of the Department. The new rule would more specifically define "Testimony" to mean any written or oral statements given in a legal proceeding, including depositions, affidavits, declarations, answers to interrogatories, and statements at a hearing or trial.

A definition for "Agency counsel" would also be added. Under the proposed definition, the term "Agency counsel" would include the General Counsel, the Chief Counsels of the operating administrations, and any person to whom the General Counsel or a Chief Counsel has delegated authority under this part. This would make it clear that, for a decision on how to respond to a demand or a request for testimony, an employee must contact the agency counsel in that employee's operating administration. The definition also would include any person, such as a Department of Justice attorney, who is authorized to represent the Department in a specific legal proceeding.

Agency counsel, under certain circumstances, would be permitted to grant an exception from any requirement in the proposed rule. For example, agency counsel may grant an exception from a requirement of part 9 if he or she believes that to do so would be in the best interests of the Department. The Department's Inspector General would also be permitted to grant an exception from any requirement concerning Office of Inspector General employees and documents.

Sections 9.13 and 9.15 of the Department's new rule provide that the proper method for obtaining testimony or records from an employee is to submit a request to agency counsel, not to serve a subpoena, order or other demand (collectively referred to as demands) on the employee. The new rule would also require employees to notify agency counsel if they are served with demands, or otherwise receive requests, to testify or produce documents, and would prohibit employees from honoring such demands or requests absent explicit approval from the agency counsel. Agency counsel would have discretion to grant demands for records or testimony of an employee and to determine the manner in which documents are disclosed or testimony is given in particular cases or types of cases.

If the party fails to follow the Department's procedures or does not withdraw a demand when requested to do so by agency counsel, the Department may move to quash the demand. If that motion is denied, the agency counsel would then instruct the employee whether to testify or produce documents pursuant to the demand. If a response to a demand is required before the court rules on the motion to quash and the court fails to stay the demand, the employee would appear with agency counsel at the time and place stated in the demand, produce a copy of these regulations, and respectfully decline to testify or produce any documents. If the court orders his or her testimony, agency counsel may permit an exception under § 9.1(c), or, consistent with longstanding case law, direct the employee not to testify. For example, the agency counsel might permit the employee to give factual testimony if permission would have been granted had the party seeking the testimony followed the procedures set forth in this part. This would prevent a miscarriage of justice by not subjecting the employee to a contempt charge. In appropriate circumstances, agency counsel could still appeal the denial of the motion to quash.

The Department's new rule also stipulates that private litigants who wish to obtain documents from the Department must follow the procedures specified at 49 CFR part 7 concerning Freedom of Information Act (FOIA) requests. Private litigants who do not follow those procedures would be required to submit a statement setting forth the relevancy of the records to the proceeding. The rule would also require private litigants to submit requests for records before submitting any request for testimony. If these parties desire additional documents, they would have to indicate how the new request differs from previous record requests.

The Department's new rule also describes when and to what extent an employee of the Department would be allowed to testify in legal proceedings in which the United States is a party and those in which it is not. Department employees generally would not be permitted to testify as an expert or opinion witness at a hearing or trial in legal proceedings between private litigants; and would only be allowed to testify as to facts within their personal knowledge in these proceedings under limited circumstances. More specifically, the Department's new rule provides that, in legal proceedings between private litigants, an employee may not testify to facts in a report unless the employee receives permission from the agency counsel. The reason for restricting this testimony is to ensure that agency findings and conclusions expressed in reports are appropriately protected. The use of Department employees as expert or opinion witnesses would impose a serious administrative burden on the Department and compromise its impartiality toward private litigants. Moreover, the Accident Reports Act and other statutes prohibit the admission into evidence of certain accident and investigative reports. However, agency counsel would be permitted to grant an exception under § 9.1(c) in a civil proceeding in which the testimony might be vital to the case and would not unduly harm the Department.

The Department's new rule would also require that private litigants seeking the testimony of an employee of the Department submit a request for that testimony to the agency counsel 30 days before the testimony is scheduled to be taken or received. In addition, a party seeking employee testimony would be required to furnish the agency counsel with certain facts about the proceeding together with a written summary of the information sought and its relevance to the proceeding. A party seeking testimony would also be required to certify that the information sought is not reasonably available from other sources.

With respect to testimony at a hearing or trial in legal proceeding involving the United States, under the Department's new rule, an employee would only be permitted to testify as an expert or opinion witness for the United States. Additionally, an employee would be permitted to testify only as to facts within that employee's personal knowledge with regard to matters arising out of that employee's official duties. For example, in a proceeding arising from an accident, an employee could testify only to personally known facts, not reasonably available from other sources, uncovered during the employee's investigation of the accident, or observed by the employee even the employee did not investigate the accident. Thus, an employee who inspected a facility before an accident occurred could testify concerning the employee's observations.

The Department's new rule does not apply to situations in which an employee, although on official duty, observes facts regarding matters that do not arise out of his or her official duties.

The Department's new rule also explains the Department's policy on fees for obtaining records, and costs of processing and responding to requests for witness testimony by private parties. Finally, the Department's new rule would alter the Department's procedures relating to the service of subpoenas and other demands. Specifically, the Department's new rule states that this service is not to be inconsistent with, and does not waive, the requirements of Rules 4(d)(4) and 4(d)(5) of the Federal Rules of Civil Procedure.

Discussion of Comments

Comments in response to the Department's NPRM were filed by the Air Transport Association of America on behalf of its member carriers, the Section of Administrative Law and Regulatory Practice of the American Bar Association, the Cessna Aircraft Company, and a DOT employee in his capacity as a private citizen. These comments are discussed below. For ease of discussion, these comments are discussed jointly since, to a large degree, they raise similar issues and concerns.

Several commenters questioned the need and authority for the proposed revisions to the Department's witness regulations. Generally, these commenters asserted that the Department has failed to provide sufficient justification for its proposed action. The Department does not concur with this assertion. As the Department noted in its NPRM, the Department of Transportation—which is composed of nine operating administrations and the Office of the Secretary—frequently receives requests for testimony in private litigation and other proceedings. These requests are often received on extremely short notice, based upon a local subpoena that is easily and routinely obtained by private counsel. As a result, DOT employees must expend a considerable amount of public time testifying to routine matters that are usually susceptible to proof by alternative methods. This practice interferes with DOT employees' public duties and usually is at the public's expense. This problem is further aggravated when employees must travel to provide such testimony. Moreover, many times DOT does not have sufficient time or ability to quash, or otherwise resist, a subpoena. Even if DOT is successful in resisting a subpoena or other demand, there is still likely to be a significant drain on DOT resources. This situation has been further exacerbated by the recent explosion in private litigation. The Department has every reason to believe that this problem is likely to persist in the future and possibly intensify. The adoption of these regulations will assist the agency in the management of its resources and in ensuring that its employees' time and energies are not devoted to private litigation at public expense.

Some commenters also suggested that statistics cited in the NPRM on the number of subpoenas and other demands that the Department has been receiving for testimony and documents were inadequate and dated. These data were developed by the U.S. Coast Guard for the 1988 calendar year. They clearly show the scope of the problem. Indeed, in that year alone, the U.S. Coast Guard received nearly 350 subpoenas. This level of activity, in just one of the Department's nine operating administrations, clearly illustrates a significant problem; and, in the Department's view, provides ample justification for the Department's new rule. DOT has every reason to believe that this situation has continued unabated since 1988, and in as much as the commenters have provided no data or information to indicate why these numbers would not have continued, the Department does not believe that it should expend DOT's limited resources to develop more current statistics.

The view was also expressed that the Department's new rule would exceed both statutory and judicial case law authority. However, as the Department stated in its NPRM, many federal courts, including the U.S. Supreme Court, have upheld the right of agencies to promulgate regulations, pursuant to 5 U.S.C. 301 and other statutory authority, restricting the right of private litigants to require testimony of, or production of documents from, employees of federal agencies. The cited statutory authority, 5 U.S.C. 301, confers upon the head of executive departments broad authority to "prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers and property."

Moreover, as the Department noted in its NPRM, the Supreme Court in *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), held that a Department of Justice (DOJ) official, acting on order of the Attorney General, could not be held in contempt for declining to produce records in response to a *subpoena duces tecum*. It reasoned that the variety of information contained in the files of any government agency and the possibilities of harm from unrestricted disclosure in court necessitate centralizing determinations as to whether to obey or challenge a *subpoena duces tecum*. The Court stated that it was, therefore, appropriate for the Attorney General to prescribe regulations for the preservation of records of the Department of Justice. The Department is satisfied that its new regulations comport fully with both the statutory and decisional authority that permits the head of an executive department, within certain constraints, to run an agency in a manner best benefiting it, and thus the United States.

The Department believes that its new rule complies fully with other laws making information and documents available to the public. DOT records and information will, of course, continue to be available under 49 CFR part 7, the Department's Freedom of Information Act regulations. As the Department noted in its NPRM, these avenues should be used to the extent possible to reduce the need for actual employee testimony. The Department's new rule recognizes that this may not be possible in all cases, and that actual employee testimony may be necessary on occasion under some circumstances. The Department's new rule accordingly confers upon agency counsel for each of its operating administrations, as well as the Office of the Secretary, flexibility in processing requests for information from private litigants and determining the best warranted and most economical reply, given the actual and varied needs of each of these operating administrations and the Office of the Secretary.

To sum up, the Department believes that there is a demonstrable need for the changes it has proposed to its employee testimony rules, and that the modifications to its rules the Department is hereby adopting comport fully with the applicable underlying statutory authority and well established judicial case law. Frequently employee testimony adds nothing to information that DOT can more conveniently provide through documents. However, DOT continues, at the request of private counsel, to be subjected to the additional burden and unwarranted cost of employee testimony to confirm that information. To gain some semblance of control over this problem, DOT, therefore, feels its new rule is necessary, and is in accord with the spirit and intent of 5 U.S.C. 301, and other applicable law. Similar rules restricting testimony, limiting testimony to factual matters, and compelling employees to refuse to testify have passed judicial muster as a valid exercise of executive power in the public interest. The Department's new rule, based on DOT's analysis of the applicable law and similar rules already promulgated, does not infringe upon the prerogatives of the other branches of the federal government, and is permissible as an agency housekeeping regulation.

Several commenters addressed the various limitations on "employee" testimony in the Department's new rule. Some suggested that the guidelines established for "employee" testimony contravened the free speech rights conferred by the First Amendment of the U.S. Constitution, as well as the due process rights of potential litigants to procure testimony under the Fifth Amendment. However, after considering those comments, and again reviewing the applicable case law discussed in the NPRM, the Department does not believe that these concerns are warranted. An individual employee's First Amendment rights are not changed by this rule. DOT, however, has the obligation to ensure that employee testimony, sought because an individual is a DOT employee, properly and fairly reflects official DOT views and does not disclose the nature of the Department's deliberations or otherwise disclose confidential information.

Comments were also received on the proposal to broaden the definition of "employee" in § 9.3 of the Department's new rule. The Air Transport Association, in its comments, for example, questioned the authority of the Department to extend the scope of its witness regulations to include former DOT employees and contractors. The Department, however, believes that it possesses ample authority under the broad language of 5 U.S.C. 301 to enlarge the definition of Department employees in its regulations. Any construction that the Department lacks this authority obviously could have very deleterious consequences throughout the entire government. The mere fact that an individual is no longer employed by an agency, or that a contractor is not a regular employee of an agency, does not in any way lessen an agency's concerns about protecting the propriety of information that individual or entity may have had access to while associated with that agency. The departure of an employee from the Department does not confer upon the employee the right to disregard the confidential or proprietary nature of the information that employee has received as an employee and to disclose it to the general public. The disclosure of sensitive, confidential information by a former employee, of course, can be just as detrimental to an agency's deliberative processes as would the disclosure of such information by a current employee. Additionally, 5 U.S.C. 301 does not exclude former employees or contractors from the realm of its coverage.

The Department, moreover, based on the experience of one of its operating administrations, the Maritime Administration (Marad), has decided that the definition of employee in § 9.3 needs to be clarified to make it clear that corporate contractors, as well as their employees and independent subcontractors, are included within this definition. Marad has expended considerable resources in responding to witness requests involving corporate contractors and subcontractors acting as DOT agents in connection with its maintenance of the National Defense Reserve Fleet pursuant to 46 App. U.S.C. 1744. Accordingly, the Department has decided to change the last phrase of the definition of employee in § 9.3 so as to delete the word "individual", and substitute the phrase "person (including any corporation or other entity) and any employee of such person who is a subcontractor of such person." The Department views this modification as being minor and fully consistent with the concerns and objectives the Department discussed in its NPRM.

A good portion of the comments focused on §§ 9.7 and 9.9 of the Department's new rules. Section 9.7 governs testimony by DOT employees in proceedings before the Department or in legal proceedings in which the United States is a party. Section 9.9, on the other hand, concerns testimony by DOT employees in legal proceedings between private litigants.

Several commenters took exception to the general prescription in both §§ 9.7 and 9.9 against DOT employees providing expert or opinion testimony on behalf of private litigants. This restriction, however, as well as the underlying rationale for it, is longstanding. Indeed, such testimony is already prohibited under the Department's current employee testimony rule (see 49 CFR 9.5(a) and 9.7). It is not a DOT function, nor is it a proper use of public resources, to provide government employees as experts for private litigants. The Department's rule conserves agency time and resources by forcing private litigants, whether or not the United States is involved in the concerned proceeding, to retain their own experts whenever possible. Having retained such experts, these litigants are free to utilize them as they deem fit. On the other hand, it is not the United States' role to provide witnesses for private litigants at the expense of the taxpaying public. The Department believes that the public interest is best served by allowing official, job-related testimony to be determined by the United States rather than by private litigants, who may be adversaries to the United States in the proceeding in question.

Some commenters perceived the prohibition in § 9.7(b) on DOT employees testifying as expert or opinion witnesses for a party other than the United States as precluding litigants from cross-examining these witnesses as to the basis for any expert or opinion testimony they may have provided for the United States. The rule does not do this. Nor did the Department's former part 9 rule do this. Once a DOT employee testifies as an expert or opinion witness for the United States, the Department's employee testimony rules do not preclude or restrict him or her from being appropriately cross-examined. Having testified, a witness is usually subject to additional inquiry within the scope of that initial testimony. Such inquiry is not governed by this rule, but rather by whatever rules, procedures and laws, such as the Federal Rules of Civil Procedure, may be applicable to that specific proceeding. Accordingly, the Department's rules are not intended to bar, or limit, any appropriate cross-examination or further questioning of DOT employees who testify as expert or opinion witnesses under the Department's rule.

The Air Transport Association is concerned that the limitation in 9.7(b) on DOT employees testifying as expert or opinion witnesses conflicts with the rules the Federal Aviation Administration has promulgated at 14 CFR part 13 governing expert or opinion testimony by FAA personnel in FAA civil penalty procedings (see 14 CFR 13.227). The Department does not agree that these two provisions are necessarily in conflict. However, in any event, it has not been the purpose of this rulemaking to either alter or modify the rules the FAA has promulgated at 14 CFR part 13. Those rules did not fall within the ambit of this rulemaking and remain fully intact. Accordingly, any expert or opinion testimony that is given by FAA employees in FAA civil penalty procedings that are conducted under 14 CFR part 13 will continue to be governed by that more specific regulation.

Some of the commenters also objected to the requirements in §§ 9.7(b) and 9.9(b) of the Department's new rules which state that DOT employees may testify only as to facts within their personal knowledge. The Air Transport Association, for example, is concerned that this limitation could preclude the admissibility of hearsay testimony, which it notes the FAA specifically permits to be admitted into evidence in its civil penalty proceedings pursuant to 14 CFR 13.222(c). Again, the purpose of this limitation was not to inflict any unnecessary burdens on private litigants, or to alter whatever evidentiary or procedural rules that may be applicable to the proceeding at issue. Rather, the Department's objective in revising its employee testimony rules is to conserve the Department's limited resources and to ensure that Department employees are not needlessly diverted from their public responsibilities. The Department recognizes, however, that this requirement, standing alone, could be construed as being inconsistent with the rights the FAA has afforded in its civil penalty proceedings. Accordingly, the Department wishes to reiterate that it is not by this rulemaking modifying any of the provisions in the rules the FAA has promulgated at 14 CFR part 13 to govern its civil penalty proceedings. Section 222(c) of that part thus will continue to be in effect.

Various commenters also questioned the Department's authority to charge fees and costs as set out in § 9.19 of the Department's proposed rule. As the Department noted in its NPRM, it is DOT's position that it has the authority to charge such costs. DOT continues to believe that it possesses this authority. No comment provided any authority to the contrary. Moreover, it is only fair that such costs should be borne by private litigants engaged in their private proceedings rather than the general public. However, at this time, the Department has decided to delete this provision inasmuch as it is not integral to the overall objectives of the Department's new regulation. Litigants and other requesters will, of course, continue to be subject to any applicable fees specified in the Department's Freedom of Information Act regulations, 49 CFR part 7, as well as any fees that may apply under the rules governing the underlying proceeding.

Lastly, various commenters suggested: (1) That the Department's rule should emulate the simpler, less restrictive rules of other agencies outside DOT; (2) that too much discretion was given in the rule to agency counsel; and (3) that the rule would encourage unnecessary disputes and is contrary to recent efforts to reduce litigation. DOT disagrees with these views. Agencies have varying needs and responsibilities. Agencies thus have promulgated various housekeeping rules, some less, some more, restrictive than this rule. DOT believes that it has crafted a rule that best suits its particular needs. Moreover, since agencies within DOT have varying needs and programmatic responsibilities, the rule grants DOT's various operating administrations, as well as the Office of the Secretary, within general guidelines, the discretion and latitude to determine how best to comply with, or resist, individual witness requests by private litigants. Further, each of these operating administrations, and the Office of the Secretary, are being granted authority to determine the nature and extent of permitted agency employee testimony in any proceeding except for congressional proceedings, which are specifically exempted from the rule. Additional guidelines are not necessary. It is also anticipated that agency implementation of the rule in a reasonable manner will lead to a decrease in depositions of employees, a decrease in time responding to requests from private litigants, and a decrease in public expenditures for private litigation. The Department believes that often alternative methods, such as affidavits or written interrogatories, can suffice in lieu of more time consuming and onerous depositions on trial appearances. The rule should not foster additional private litigation. Rather, it should minimize the adverse impact of such litigation upon DOT and the public by placing the primary burden for conducting such litigation on the private litigants where it reasonably belongs. As a corollary, the rule should eliminate the necessity for DOT to institute litigation to protect DOT employees from unnecessary and burdensome requests for testimony and documents.

Finally, DOT would like to direct the public's attention to a final rule that was recently promulgated by the Office of Government Ethics (OGE) (57 FR 35006, August 7, 1992). Section 2635.805 of that rule (see 57 FR 35063) sets forth various restrictions on government employees testifying as expert witnesses. The Department views that regulation as being restrictive, as opposed to permissive. Accordingly, the Department does not construe the OGE rule as allowing any employee testimony to take place that would otherwise not be permissible under the Department's rule. Rather, to the contrary, the Department is of the view that any employee testimony that may be allowable under its new rule must also comport with the OGE regulation, as well.

Executive Order 12291, DOT Regulatory Policies and Procedures, and Regulatory Flexibility Act

The Department has considered the impact of this rule and has determined that this rule is neither a "major" rule under Executive Order 12291, nor a "significant" rule under the Department's Regulatory Policies and Procedures. The Department believes that the economic impact of the rule would be so minimal that further regulatory evaluation is unnecessary. The Department has also considered the impact of this rule under the Regulatory Flexibility Act. The Department certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980.

Federalism

This action has been reviewed under Executive Order 12612, "Federalism," and the Department has determined that this action does not have implications for principles of federalism that warrant the preparation of a federalism assessment. This rule would not limit the policymaking and administrative discretion of the states, nor would it affect the states' abilities to discharge traditional state governmental functions or otherwise affect any aspect of state sovereignty.

List of Subjects in 49 CFR Part 9

Administrative practice and procedure, Courts, and Government employees.

In consideration of the foregoing, the Department of Transportation revises p[illegible] 9 of its regulations (49 CFR part 9) as follows:

PART 9—TESTIMONY OF EMPLOYEES OF THE DEPARTMENT AND PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.
9.1 Purpose.
9.2 Applicability.
9.3 Definitions.
9.5 General prohibition of production or disclosure in legal proceedings.
9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.
9.9 Legal proceedings between private litigants: General rules.
9.11 Legal proceedings between private litigants: Demands.
9.13 Legal proceedings between private litigants: Procedures to request records.
9.15 Legal proceedings between private litigants: Procedures to request testimony.
9.17 Legal proceedings between private litigants: Procedures for taking testimony.
9.19 Acceptance of service on behalf of Secretary.

Authority: 5 U.S.C. 301; 45 U.S.C. 41–42; 49 U.S.C. 322; 49 U.S.C. 504(f); 23 U.S.C. 409.

§ 9.1 Purpose.

(a) This part sets forth procedures governing the testimony of an employee in legal proceedings in which the United States is a party. It also sets forth procedures to be followed when an employee is issued a subpoena, order or other demand (collectively referred to in this part as a "demand") by a court or other competent authority, or is requested by a private litigant, to provide testimony or produce records concerning information acquired in the course of performing official duties or because of the employee's official status. It also prescribes the policies and procedures of the Department with respect to the acceptance of service of legal process and pleadings in legal proceedings involving the Department.

(b) The purposes of this part are to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the Department in controversial issues not related to its mission;

(3) Maintain the impartiality of the Department among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information and the deliberative processes of the Department.

(c) Agency counsel, in his or her discretion, may permit an exception from any requirement in this part. The exception may be granted only when the deviation will not interfere with matters of operational or military necessity, and when agency counsel determines that:

(1) It is necessary to prevent a miscarriage of justice;

(2) The Department has an interest in the decision that may be rendered in the legal proceeding; or

(3) The exception is in the best interest of the Department or the United States.

For Office of Inspector General employees and documents, the Inspector General, in conjunction with the General Counsel of the Department, may permit an exception from any requirement of this part if the Inspector General determines, based on the Inspector General Act of 1978, as amended, that application of the requirement would be inappropriate.

§ 9.2 Applicability.

This part applies to the testimony of an employee in legal proceedings in which the United States is a party. It also applies in legal proceedings between private litigants to requests or demands for testimony or records concerning information acquired in the course of an employee performing official duties or because of the employee's official status. This part does not apply to any legal proceeding in which an employee is to testify as to facts or events that are in no way related to the employee's official duties or the functions of the Department. Nor does it apply to Congressional demands for testimony or documents.

§ 9.3 Definitions.

For purposes of this part:

Department means the Department of Transportation (DOT), including the Office of the Secretary (which encompasses the Office of the Inspector General) and the following operating administrations while they are part of DOT:

(a) The U.S. Coast Guard.

(b) The Federal Aviation Administration.

(c) The Federal Highway Administration.

(d) The Federal Railroad Administration.

(e) The Federal Transit Administration.

(f) The St. Lawrence Seaway Development Corporation.

(g) The National Highway Traffic Safety Administration.

(h) The Maritime Administration.

(i) The Research and Special Programs Administration.

(j) Any DOT operating administration established after the effective date of this part.

Legal proceeding means any case or controversy pending before any federal, state, or local court (including grand jury proceedings), any administrative proceeding pending before any federal, state, or local agency, or any legislative proceeding pending before any state or local agency.

Legal proceeding between private litigants means any legal proceeding in which neither the Department of Transportation nor the United States (including any federal agency or officer of the United States in his or her official capacity) is a party.

Employee of the Department or *Employee* means any current or former officer or employee of the Department; any active duty, retired, or former officer or enlisted member of the Coast Guard; or any current or former contractor (including any corporation or other entity and any employee or subcontractor).

Agency counsel means the General Counsel of the Department or the Chief Counsel of any operating administration of the Department concerned, any person to whom the General Counsel or Chief Counsel has delegated authority, or any person who is authorized to represent the Department in a specific legal proceeding.

Testimony means any written or oral statement by a witness, including depositions, answers to interrogatories, affidavits, declarations, and statements at a hearing or trial.

§ 9.5 General prohibition of production or disclosure in legal proceedings.

No employee of the Department may provide testimony or produce any material contained in the files of the Department, or disclose any information relating to, or based upon, material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or because of that employee's official status unless authorized in accordance with this part, or by other applicable law.

§ 9.7 Testimony by employees before the Department or in other legal proceedings in which the United States is a party.

In any legal proceeding before the Department or in which the United States (including any federal agency or officer of the United States) is a party:

(a) Agency counsel shall arrange for an employee to testify as a witness for the United States whenever the attorney representing the United States requests it.

(b) An employee may testify for the United States both as to facts within the employee's personal knowledge and as an expert or opinion witness. Except as provided in paragraph (c) of this section, an employee may not testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Department, for any party other than the United States in any legal proceeding in which the United States is a party. An employee who receives a demand to testify on behalf of a party other than the United States may testify as to facts within the employee's personal knowledge, provided that the testimony be subject to the prior approval of agency counsel and to the Federal Rules of Civil Procedure and any applicable claims of privilege.

(c) An employee may testify as an expert or opinion witness on behalf of an officer or enlisted member of the Coast Guard in any legal proceeding conducted by the Coast Guard.

§ 9.9 Legal proceedings between private litigants: General rules.

In legal proceedings between private litigants:

(a) The proper method for obtaining testimony or records from an employee is to submit a request to agency counsel as provided in §§ 9.13 and 9.15 of this part, not to serve a demand on the employee. Whenever, in a legal proceeding between private litigants, an employee is served with a demand, or receives a request, to testify in that employee's official capacity or produce records, the employee shall immediately notify agency counsel.

(b) If authorized to testify pursuant to these rules, an employee may testify only as to facts within that employee's personal knowledge with regard to matters arising out of his or her official duties.

(1) When the proceeding arises from an accident, an employee may testify only as to personally known facts, not reasonably available from other sources, observed by the employee or uncovered during the employee's investigation of the accident or observed by the employee even if he or she did not investigate the accident. The employee shall decline to testify regarding facts beyond the scope of his or her official duties.

(2) The employee shall not testify to facts that are contained in a report, or any part of a report, unless the employee has obtained permission from agency counsel to disclose the information.

(3) The employee shall not disclose confidential or privileged information unless the employee has obtained permission from agency counsel to disclose the information.

(4) The employee shall not testify as to facts when agency counsel determines that the testimony would not be in the best interest of the Department or the United States if disclosed.

(c) An employee shall not testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the Department. An employee who is asked questions that call for expert or opinion testimony shall decline to answer on the grounds that it is forbidden by this part. Agency counsel shall advise the employee on how to proceed if the presiding officer directs the employee to provide expert or opinion testimony.

(d) An employee shall not provide testimony at a trial or hearing. An employee's testimony shall be limited to a single deposition, affidavit, or set of interrogatories, concerning the circumstances (e.g. an accident) from which the proceeding arose. Where multiple legal proceedings concerning those circumstances are pending, or can occur, it shall be the duty of the private litigant seeking the testimony to ascertain, to the extent feasible, the identities of all parties, or potential parties, to those proceedings and notify them that a deposition has been granted and that they have the opportunity to participate. The private litigant shall submit an affidavit or certification describing the extent of the search for parties and potential parties and listing the names of the parties and potential parties notified.

(e) Where an employee has already provided testimony, any party wishing to obtain further testimony from that employee concerning the same matter or occurrence, whether in the same or a different private legal proceeding, may submit a request to agency counsel to waive the restrictions of paragraph (d) of this section. The request shall, in addition to meeting the requirements of § 9.15 of this part, state why the requester should be permitted to gather additional information despite not having previously requested the information when it had an opportunity to do so, and why the additional testimony is now required and the prior testimony or previously supplied documents are insufficient.

§ 9.11 Legal proceedings between private litigants: Demands.

(a) If an employee receives a demand that has not been validly issued or served, agency counsel may instruct the employee not to comply with the demand.

(b) If an employee receives a demand (validly issued and served) to testify or produce records, agency counsel, in his or her discretion, may grant the employee permission to testify or produce records only if the purposes of this part are met or agency counsel determines that an exception is appropriate.

(c) If a demand is issued to an employee, agency counsel shall contact the requester of the demand, inform that person of the requirements of this part, and may, in agency counsel's discretion, ask that the demand be withdrawn.

(d) If the requester of the demand refuses to have it withdrawn or fails to comply with this part, the Department may seek to quash the demand.

(e) If the court or other competent authority declines to grant the Department's motion to quash, agency counsel shall instruct the employee whether to testify or produce documents pursuant to the demand. Agency counsel may permit the testimony under § 9.1(c) of this part. If response to a demand is required before the court or other competent authority rules on the motion to quash and the court fails to stay the demand, the employee must appear at the stated time and place, produce a copy of this part, and respectfully refuse to provide any testimony or produce any documents. Agency counsel shall take steps to arrange for legal representation for the employee. Agency counsel shall advise the employee how to respond, including not to testify, if the court or other competent authority rules that the demand must be complied with irrespective of these regulations.

§ 9.13 Legal proceedings between private litigants: Procedures to request records.

(a) In a legal proceeding between private litigants, a party who wishes to obtain records from the Department shall submit to agency counsel a request for the records. The request will ordinarily be handled in accordance with the Department's procedures concerning requests for records found at 49 CFR part 7. If the party does not follow the procedures specified in that part, the request must be accompanied by a statement setting forth the relevance of the records to the proceeding. The request should be resolved before any request for testimony under § 9.15 is submitted. Where a request for testimony includes a request for additional records, it shall indicate precisely how this new request differs in scope from any previous request in order to avoid agency duplication of effort. Agency counsel shall notify the requester of the approval or denial of the request.

§ 9.15 Legal proceedings between private litigants: Procedures to request testimony.

(a) Any party seeking the testimony of an employee in a legal proceeding between private litigants, concerning facts within the employee's personal knowledge with regard to matters arising out of the employee's official duties, shall, rather than serving a demand for the testimony, request the testimony at least 30 days before it is intended to be taken or received. The request must be submitted to agency counsel and must include:

(1) The title of the case, docket number, and the court, or otherwise clearly identify the legal proceeding involved;

(2) A statement setting forth the basic facts in the proceeding, such as the type, date, and location of an accident;

(3) A summary of the unresolved issues applicable to the testimony sought;

(4) A summary of the testimony sought and its relevant to the proceeding;

(5) A certification with support, that the information desired is not reasonably available from other sources, including Departmental documents;

(6) Pursuant to § 9.9(d) of this part, an affidavit or certification describing the extent of a search of parties and potential parties and listing the names of the parties and potential parties notified; and

(7) A declaration that the party will not seek expert or opinion testimony from the witness or seek the testimony of the witness at a hearing or trial in the proceeding.

The request shall specify which form of testimony (deposition, affidavit, declaration, or answers to interrogatories) is desired and the date by which it is desired; however, only one form, the one least burdensome to the Department that will provide the needed information, will be permitted for each witness.

(b) The party seeking the testimony shall include with its request for testimony a copy of any prior request(s) made by the same requester to the Department or other agency of the United States for records pertaining to the matter being litigated and of the response (not including the records themselves) to the request(s). The party seeking the testimony shall also comply with any agency counsel request that copies of the records previously disclosed by the Department, or a list of those records, be furnished.

(c) In accordance with the requirement of this section and the general provisions of this part, agency counsel shall notify the requester of the approval or denial of the request. Agency counsel may attach special conditions to its approval.

§ 9.17 Legal proceedings between private litigants: Procedures for taking testimony.

(a) Testimony of an employee of the Department may be taken only at the office to which the employee is assigned, or any other place designated by agency counsel. Additional conditions may be specified under § 9.15(c) of this part. The time shall be reasonably fixed to avoid substantial interference with the performance of the employee's or agency counsel's official duties.

(b) Upon completion of the testimony of an employee of the Department, a copy of the transcript of the testimony shall be furnished, at the expense of the party requesting the testimony, to agency counsel for the Department's files.

§ 9.19 Acceptance of service on behalf of Secretary.

In any legal proceeding, at the option of the server, process or pleadings may be served on agency counsel, with the same effect as if served upon the Secretary or the head of the operating administration concerned, as the case may be. The official accepting service under this section shall acknowledge the service and take appropriate action. This section does not in any way abrogate or modify the requirements of Rule 4(d)(4) and 4(d)(5) of the Federal Rules of Civil Procedure regarding service of summons and complaint.

Issued in Washington, DC, on January 19, 1993.

Andrew H. Card, Jr.,
Secretary of Transportation.

[FR Doc. 93-1773 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

49 CFR Parts 390 and 394

[FHWA Docket Nos. MC-90-2 and MC-92-12]

RIN 2125-AC48

Notification and Reporting of Accidents

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 390, General Applicability and Definitions, and is removing Part 394, Notification and Reporting of Accidents, of the Federal Motor Carrier Safety Regulations (FMCSRs). This final rule eliminates the requirements that motor carriers submit accident reports to the FHWA and notify the agency of fatal accidents as currently required by 49 CFR part 394. Instead of submitting reports, carriers will now be required to maintain an accident register of accidents meeting the definition of an accident for a period of one year after an accident occurs. The actions included in this final rule capitalize on an automated State accident reporting system being implemented nationwide under the Motor Carrier Safety Assistance Program (MCSAP), thereby justifying the elimination of the requirement for individual motor carrier submission of similar information. This action will reduce paperwork burdens on the motor carrier industry.

EFFECTIVE DATE: March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. Van Ness, Office of Motor Carrier Standards, (202) 366-2981, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION

Background

On October 15, 1990, the FHWA published a notice of proposed rulemaking (NPRM), Docket MC-90-2 in the **Federal Register** (55 FR 41705) proposing to change the "$4,400 "property damage" accident reporting criterion in § 394.3(a)(3) to a "towaway" criterion. The FHWA proposed that an accident be reportable if it results in (1) the death of a person, (2) bodily injury to a person, who, as a result of the accident, immediately receives medical treatment away from the scene of the accident, or (3) one or more motor vehicles incurring disabling damage as a result of the accident and requiring a vehicle to be transported from the scene of the accident by a tow truck or other vehicle.

The FHWA received thirty comments to this docket. Sixteen of the commenters supported the proposed change, thirteen voiced opposition to the proposed change, and one offered no position on the proposed change.

In response to the President's announcement of a moratorium and review of regulations, the DOT published a request for comments on February 7, 1992. That publication requested public comments on which Departmental regulations substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape (See 57 FR 4744). One hundred commenters recommended changes to the accident reporting regulations. A discussion of these and the earlier comments was included in a supplemental notice of proposed rulemaking (SNPRM) published on July 30, 1992 (57 FR 33712).

The July 30, 1992, SNPRM included a reaffirmation of the FHWA's intent to eliminate the $4,400 property damage accident reporting criterion. Although the FHWA originally proposed to adopt a "towaway" definition as a criterion to replace the $4,400 property damage criterion in the NPRM, the SNPRM instead proposed to adopt a "disabling damage" definition as a criterion, in accordance with the recommendations of the National Governors Association (NGA). Additionally, the FHWA proposed to eliminate the requirement that motor carriers submit accident reports to the FHWA and/or immediately notify the agency of fatal accidents.

Comments Submitted to the Docket

The FHWA received twenty-one comments to the SNPRM. The commenters included nine motor carrier industry associations, seven motor carriers, four State agencies, and one motor carrier safety consultant.

Several commenters expressed concern that the proposed NGA data elements would exclude vital information about the vehicle(s) and driver(s) involved in the accidents reported. Two industry associations and one motor carrier safety consultant contended that additional data elements depicting the "who, what, why, where, and how" are necessary for this accident reporting program to meet its full potential. All three recommended specific changes to the proposed form. These changes included adding data elements that would focus on the vehicle(s) and driver(s).

The FHWA has adopted the data elements contained in the NGA proposal. Although one State law enforcement agency stated the NGA elements are not compatible with data they currently collect, twenty-one States currently use this reporting format. While additional data elements and definitions could have been added, the FHWA believes that the agreed upon data elements appearing in the SNPRM represent the best combination of elements to meet the needs of the State and Federal agencies involved.

Other issues of concern included the cost of training law enforcement officers, implementing the new form into existing data bases, processing costs of the new forms, and the proposed implementation dates. Commenters expressed concern that the States will be unable to implement this program before the proposed date of January 1, 1994. Further, they were concerned that the cost of implementing this program, along with the cost of training law enforcement officers, was too great for the States to bear. Under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914), Federal funding is available through the MCSAP to assist States in training personnel and in implementing the accident reporting program. These funds are also available to States not participating in the basic MCSAP. This should help alleviate some of the cost burdens associated with implementation and training. The FHWA believes that the benefits to be derived from a uniform and reliable accident reporting program will justify the additional expense incurred.

Commenters expressed concern about the discontinuance of the use of the MCS 50–T and MCS 50–B accident report forms one year before the implementation of the State generated program. The FHWA believes that the reporting requirement may be rescinded without decreasing program effectiveness. Motor carriers will be required to maintain an accident register, as proposed in the SNPRM. The FHWA believes that any loss in data continuity will be negligible in light of its intention to shift to an alternate and improved data source.

One motor carrier expressed concern that it would be held responsible for and have to rely on the States for accurate and timely reporting of accidents and fatalities. Motor carriers will not be responsible for State-generated accident reports. Motor carriers must maintain a register of accidents meeting the definition of an accident. For each accident listed, the record shall include the date, city nearest the accident site, State in which the accident occurred, driver's name, number of persons injured, number of fatalities, and whether hazardous materials were released (other than fuel spilled from the fuel tanks of vehicles involved in the accident). Motor carriers must retain copies of accident reports required to be filed by the various States, other governmental authorities, or insurers for a period of 365 days after the date of the accident and make these documents available on demand of a Federal or State official with jurisdiction over the carrier.

One State agency and one association stated that farm-to-market accidents should be included. They reasoned that all accidents meeting the reporting criteria should be reported and that it would be extremely difficult to train enforcement officers to distinguish between farm-to-market operations and other transportation. Once investigated, accidents occurring in farm-to-market operations will be reported to SAFETYNET. The FHWA, however, believes that since farmers have previously been exempted from preparing and maintaining MCS 50–T accident reports, they should be exempted from maintaining an accident register.

One association expressed concern about the definition of the term "disabling damage." It stated that many accidents involving only property damage would go unreported. The FHWA believes that using the term "disabling damage" has three distinct advantages over a property damage definition. First, a law enforcement official is generally on the scene before a vehicle is towed; second, the removal of the vehicle is a definite triggering event; third, there is no need to rely on cost estimates of damages that may be untimely, inaccurate, geographically inconsistent and subject to inflationary adjustments.

One State expressed support for the proposed accident reporting program, but stated that it has no law or regulation requiring an accident to be reported to the State or any other government agency. Additionally, the State has no law or regulation requiring an accident to be investigated once it is reported. This rulemaking does not alter or change State law, nor does it impose any legal obligation upon States to report accidents. As a condition for continued MCSAP funding, States will be required to report accidents to SAFETYNET instead of having motor carriers complete this task.

Fourteen commenters expressed support for the SNPRM reasoning that the FHWA will now collect more accurate, uniform, and reliable accident data. They also voiced strong support for the substantial reduction in paperwork and recordkeeping requirements.

Discussion of Final Rule

The SNPRM also noted that accident reports are currently being electronically submitted from 21 States to the FHWA. As a condition of MCSAP funding, States are required to participate in the FHWA's SAFETYNET program, a shared database of driver and vehicle inspection and accident data, by January 1, 1994. This deadline was mandated in section 4002 of the Motor Carrier Act of 1991, which reauthorized the MCSAP through FY 1997. 49 U.S.C. app. 2302(b)(1)(K). Currently, all but two States participate in and receive basic grants in the MCSAP. Through MCSAP, however, these States are eligible to receive special grants to assist them in adopting, collecting, and uploading the accident data into SAFETYNET. Accordingly, the FHWA will have a much more reliable and uniform source of accident information available for planning and regulatory purposes. Notwithstanding State reporting, motor carriers are required to maintain an accident register for all accidents meeting the new definition. This requirement will aid motor carriers in further developing accident countermeasure programs, aid the FHWA personnel in making recommendations to motor carriers, assist the FHWA personnel in their motor carrier investigations, and provide data with which the success of the accident reporting program can be measured.

For the purposes of this rulemaking, disabling damage means damage which precludes departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs. Included in this would be vehicles that could have been driven, but would have been further damaged if so driven. Excluded from this would be damage that can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage (even if no spare tire is available), headlamp or taillight damage, or damage to turn signals, horn, or windshield wipers which makes them inoperative. The FHWA believes that this definition provides sufficient guidance to properly trained law enforcement officials to ensure more accurate and reliable reporting of accidents over that of a monetary or towaway threshold.

A definition of "fatality" has been added to section 390.5. This definition will assist motor carriers in characterizing an accident's status.

Rulemaking Analyses and Notices

Executive Order 12291(Federal Regulation) and DOT Regulatory Policies and Procedures

Based on the comments received to dockets MC–90–2 and MC–92–12, the FHWA is adopting the proposals presented in docket MC–92–12 as final.

The action being taken by the FHWA in this document eliminates the requirement for motor carriers to submit accident reports to the FHWA and notify the agency immediately of any fatalities. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. This rule is consistent with the objectives outlined in the President's memorandum of January 28, 1992, to Federal agencies on the subject of reducing unnecessary burdens of government regulations. A preliminary evaluation conducted pursuant to the President's memorandum estimated that removing this reporting requirement would result in a total cost savings to industry of about $750,000 annually and a similar cost savings to governments of $750,000. The FHWA estimated that this latter cost savings would accrue to both State and Federal governments, because we anticipated that State accident reports will be made electronically through SAFETYNET, at minimal additional costs to the States. Some States have commented that they believe their costs will be increased as a result of this proposal. The FHWA believes that any short term increase in costs (*e.g.* to train law enforcement personnel) will be offset by available Federal funds (*i.e.*, MCSAP), long term savings, and the benefits associated with an improved commercial motor vehicle accident database. Nevertheless, the FHWA has not quantified these longer term savings to State governments, nor has the FHWA quantified the cost savings it anticipates from receiving these reports electronically from States rather than in paper form from motor carriers. For purposes of this rulemaking, however, the FHWA believes that the $750,000 annual cost savings to industry adequately supports taking this action.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612) the agency has evaluated the effects of this final rule on small entities and has determined that, since this action reduces the accident reporting requirements imposed upon the industry, it will not have a significant economic impact on a substantial number of small entities. Small motor carrier operations are involved in statistically fewer reportable accidents and thus spend less time completing accident reports. Accordingly, the FHWA hereby certifies that removing the requirement that motor carriers submit accident reports to the FHWA will have no significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Some commenters to this rulemaking are concerned that the cost of implementing this provision, including the cost of training law enforcement officers, may be too great for some States to bear. Under the ISTEA, however, Federal funding is available through the MCSAP to assist States in training personnel and implementing the accident reporting program. These funds are also available to States not participating in the basic MCSAP. Accordingly, it is certified that the policies contained in this document have been assessed under Executive Order 12612 and it has been determined that they do not have sufficient federalism implications to warrant the preparation of a full Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This final rule would reduce the amount of paperwork and other collection of information requirements under the Paperwork Reduction Act of

1980 (44 U.S.C. 3501–3520) by about 35,000 two-page documents per year. This figure represents the approximate number of accidents reported to the FHWA in 1990.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 390 and 394

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

Issued on: January 19, 1993.

T.D. Larson,

Administrator.

In consideration of the foregoing, under the authority of 49 CFR 1.48 and 23 U.S.C. 315, the FHWA amends subchapter B of chapter III of title 49, Code of Federal Regulations, as set forth below:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by revising the introductory text of the section and by adding three definitions, placing them in alphabetical order, as follows:

§ 390.5 Definitions.

Unless specifically defined elsewhere, in this subchapter: *Accident* means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a public road which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.

(2) The term *accident* does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo; or

(iii) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

* * * * *

Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which makes them inoperative.

* * * * *

Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within 30 days of the accident.

* * * * *

3. Part 390 is amended by adding § 390.15 to read as follows:

§ 390.15 Assistance in investigations and special studies.

(a) A motor carrier shall make all records and information pertaining to an accident available to an authorized representative or special agent of the Federal Highway Administration upon request or as part of any inquiry within such time as the request or inquiry may specify. A motor carrier shall give an authorized representative of the Federal Highway Administration all reasonable assistance in the investigation of any accident including providing a full, true and correct answer to any question of the inquiry.

(b) Motor carriers shall maintain for a period of one year after an accident occurs, an accident register containing at least the following information:

(1) A list of accidents containing for each accident:

(i) Date of accident,

(ii) City or town in which or most near where the accident occurred and the State in which the accident occurred,

(iii) Driver name,

(iv) Number of injuries,

(v) Number of fatalities, and

(vi) Whether hazardous materials, other than fuel spilled from the fuel tanks of vehicles involved in the accident, were released.

(2) Copies of all accident reports required by State or other governmental entities or insurers.

PART 394 [REMOVED AND RESERVED]

4. Part 394 is removed and reserved.

[FR Doc. 93–1830 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-22-M

Proposed Rules

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150–AE22

Procedures and Criteria for On-Site Storage of Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would establish a regulatory framework containing the procedures and criteria that would apply to on-site storage of low-level radioactive waste (LLW), beyond January 1, 1996. The Commission has determined, under the authority of the Atomic Energy Act of 1954, as amended, that these changes are appropriate because of potential health and safety concerns associated with the increased reliance upon on-site storage of LLW. The proposed rule is intended to support the goals that have been established by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) and is consistent with the June 19, 1992, United States Supreme Court (Supreme Court) decision, in *New York* v. *United States*. Comments are requested on this proposed rule and on strategies and options that the Commission might pursue, in addition to this proposed rulemaking, that would encourage the States and compacts to move forward with development of LLW disposal facilities.

DATES: Comment period expires on April 5, 1993. Comments received after that date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Copies of the regulatory analysis, environmental assessment and finding of no significant impact, and the comments received on the rule may be examined and copied, for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, telephone (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Robert Nelson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2004.

SUPPLEMENTARY INFORMATION: The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) (Pub. L. 99–240) establishes a series of milestones, penalties, and incentives to ensure that regional compacts and States make adequate progress toward being able to manage their LLW, by 1993. Section 5(a) of the Act requires the sited States of Nevada, South Carolina, and Washington to make disposal capacity available to LLW generators until December 31, 1992, subject to: The States and compacts meeting the other milestones of the Act, the sites remaining operational, and received waste being within site-specific volume limitations.

To help ensure that the States make adequate progress toward developing new LLW disposal facilities, the Act established six milestones by which the States should make decisions and commit to certain actions. The majority of the States met the requirements of the three milestone dates that had passed, by January 1990. Only the Central, Central-Midwest, and Southwestern Compact States met the January 1, 1992, milestone requirement, because their host States, Nebraska, Illinois, and California, respectively, submitted a facility license application to their State regulatory authorities before that date. The State of Texas conformed to this milestone on March 2, 1992. The remaining milestones of the Act, as it was enacted, are:

- January 1, 1993—If a State or compact cannot provide for disposal of its LLW after January 1, 1993, generators can request the State to take title to, and possession of, the generated waste. The State also becomes liable for damages as a consequence of failure to take possession of the waste. In 1993, States may avoid taking title and possession of the waste and assuming liability, but will forfeit the surcharge rebates established by the Act.
- January 1, 1996—If a State or compact cannot provide for disposal of its LLW after January 1, 1996, the States, upon proper notice by the generator or owner, shall take title to, and be obligated to take possession of, LLW. The State will also be liable for all damages directly or indirectly incurred by the generator or owner if it fails to take possession as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

The section of the Act requiring the States to take title to, and possession of, the generated waste by January 1, 1996 (often referred to as the "take-title" provision), was held to be unconstitutional, by the Supreme Court on June 19, 1992, in a lawsuit brought by the State or New York (a non-compact State) and two of its counties. The constitutionality of the take-title provision, as applied to compact States, was not before the Supreme Court. Even though the take-title provision was held unconstitutional, clearly a goal of the LLRWPAA is the development of new LLW disposal facilities by January 1, 1993, and in no case later than January 1, 1996.

Because no new LLW disposal facilities were operational on January 1, 1993, and the compact commissions that control the existing LLW disposal sites either closed their site or set restrictions or conditions on receiving LLW from outside their regional compacts effective January 1, 1993, some licensees who generate LLW may be forced to store their LLW on-site, until disposal capacity is available, unless other arrangements for storage or disposal can be made. Nearly all the Governors' Certifications submitted to meet the 1990 milestone of the Act indicated that the State planned on interim storage by waste generators from 1993 through 1996. However, many States do expect to have access to the Barnwell LLW disposal facility from January 1, 1993 through June 30, 1994.

Early in 1990, the Commission directed the NRC staff to provide the Commission with information on the issues concerning the waste title-transfer and possession provisions set forth in the Act, so that the Commission might determine what role, if any, the NRC should play with regard to these provisions. The Commission was also interested in the adequacy of its existing regulatory framework for implementing the title-transfer provision. On September 12, 1990, the NRC staff sent the Commission an analysis of the issues associated with the waste title-transfer and possession provisions of the Act (SECY–90–318). Major issues related to these provisions included States taking possession of commercial LLW after 1993 or 1996, and licensing of this possession by the NRC and Agreement States.

The Commission discussed the issues associated with the waste title-transfer and possession provisions of the Act and the recommendations presented in SECY–90–318, in a public meeting, on October 29, 1990. In response to a request from the Low-Level Radioactive Waste Forum, the Commission decided to solicit public and State comments on the NRC staff's recommendations provided in SECY–90–318 and on eight questions addressing the title-transfer provision of the Act. The Commission requested that the NRC staff provide the Commission with an analysis of the comments received in response to the letter dated November 28, 1990, from Samuel J. Chilk, Secretary of the Commission, to Mr. Jerry Griepentrog, Convenor, Low-Level Radioactive Waste Forum, and from the **Federal Register** notice soliciting public comments.

The Commission solicited public comment on the NRC staff's recommendations provided in SECY–90–318 and the eight questions in the **Federal Register** notice published December 4, 1990 (55 FR 50064). The comment period expired on March 2, 1991. Seventy-four individuals or organizations responded.

The commenters raised many specified issues. Most can be grouped under the single, broad issue of NRC's role in implementing the Act. The eight questions, a comment summary, an analysis of those comments, and conclusions are provided as appendix A to this proposed rule. In response, the Commission directed the NRC staff to develop a proposed rulemaking that would establish a regulatory framework containing the procedures and criteria applicable to on-site storage of LLW after January 1, 1996.

Although LLW can be safely stored, NRC believes that the protection of the public health and safety and the environment is enhanced by disposal, rather than by long term, indefinite storage of waste. Disposal of waste in a limited number of facilities, licensed under the requirements of 10 CFR Part 61 or compatible Agreement State regulations, will provide better protection of the public health and safety and the environment than long-term storage at hundreds or thousands of sites around the country. Stored waste packages need to maintain sufficient integrity to prevent dispersal of the waste during storage, transport, and handling, up to and including emplacement for disposal. Because of the variability of certain storage environments, waste packages may suffer degradation over the extended storage period. Among the ways in which a storage environment can cause waste package degradation are temperature fluctuations (in heated facilities in areas with cold winters) and corrosive atmospheres (e.g., industrial and marine atmospheres as well as acid deposition). Other waste package concerns during storage include external and internal corrosion, radiolytic generation of gases (predominantly hydrogen) and corrosive substances, radiation induced embrittlement of polyethylene containers, and biodegradation of institutional wastes. These processes may accelerate internal corrosion and failure of common storage containers, even if the waste is stabilized prior to storage. Waste form degradation could result in spills or releases during handling for disposal, if the degradation goes undetected. In addition, waste package deterioration prior to disposal will require repackaging of the LLW and cleanup of any spills. As a result, workers will be potentially exposed to additional doses of radiation. The NRC contractor document, "Extended Storage of Low-Level Radioactive Waste: Potential Problem Areas," NUREG/CR–4062, provides a detailed discussion of these concerns.[1]

Storage also involves a number of activities that could increase radiation doses to the public. First, storage of LLW will result in potential increased worker exposures, from unloading the waste from storage, for disposal. Second, waste forms may need to be repackaged or otherwise processed, again, as a result of waste form failure or to meet waste acceptance criteria for a new disposal facility, once one becomes available. This additional handling by workers will also cause increased exposures. The site-specific conditions at a new disposal facility may necessitate these new waste form criteria and these criteria may not be known when LLW is placed into storage. Third, radiation surveys and inspections of LLW in storage will result in potential additional doses to those involved in performing these activities. For these reasons and to support the goals of the Act, the NRC is proposing this rulemaking, which makes storage of LLW an option of last resort. The Commission specifically invites comment on the above public health and safety rationale, as well as on the comparative risk of potential releases as a result of an event or accident at numerous LLW storage sites around the country, as opposed to the potential release from a limited number of disposal sites designed to meet the siting and design requirements in 10 CFR part 61 or compatible Agreement State regulations.

The proposed rule, as it was originally drafted and set to the Agreement States for comment, included a requirement for the licensee to request that the State take title to, and possession of, the waste, pursuant to section 5(d)(2)(C) (the "take-title" provision) of the Act, before LLW could be stored on-site after January 1, 1996. The text of the rule has been revised to delete the requirement for the generator to request the State to take title to, and possession of, the generator's LLW. In view of the recent Supreme Court decision in *New York* v. *United States*, the Commission will not require this action as a prerequisite for storing LLW on-site after January 1, 1996.

Coordination With NRC Agreement States

The NRC Agreement States were informed of the NRC's intent to issue a proposed rule and were provided the draft regulatory text, by letter dated February 7, 1992. The letter explained that the Commission is taking this action in view of the potential health and safety concerns associated with an increased reliance upon on-site storage and in light of the framework that has been established by the Act. This initial notification reiterated the Commission's position that it will not look favorably on generator on-site storage of LLW, after January 1, 1996. Supplementary information, which included a summary of the related provisions of the Act and a discussion of the proposed revisions, was forwarded to the Agreement States on February 14, 1992. The Agreement States were asked to provide comments by March 14, 1992.

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[1] Copies of NUREG documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

The Agreement States of Arizona, Arkansas, California, Colorado, Illinois, Kansas, Kentucky, Nevada, New York, North Carolina, Oregon, South Carolina, Texas, and Washington, and the Midwest Interstate Low-Level Radioactive Waste Commission responded to the NRC staff's request for comments. One State supported the proposed rulemaking, and three States opposed it. Two States, although not opposing any provisions of the rule, stated that the rulemaking should not proceed until the Supreme Court decides on the constitutionality of the Act and the title-transfer provision. Three States and the one commission provided comments and questions without taking a position on the proposed rulemaking. One State reserved comment and four States had no comments. Fifteen Agreement States did not respond.

Response to NRC Agreement State Comments

Comment. The revisions do not appear to be based on protection of public health and safety or any technical arguments.

Response. As previously discussed, the potential risk to the public health and safety, from on-site storage of LLW, is greater than for disposal, because storage involves a number of conditions and activities that could increase radiation doses to the public. Although LLW can be safely stored, the NRC believes that the protection of the public health and safety and the environment will be enhanced by disposal.

Comment. There appears to be no substantive rationale for prohibition of on-site storage after January 1, 1996.

Response. The proposed rule would prohibit on-site storage after January 1, 1996, only if the generator had not exhausted other waste management options. As discussed in response to the previous comment, disposal is preferred over storage, to enhance the protection of the public health and safety and the environment. Therefore, generators should exhaust all disposal options before storing their LLW on-site.

Comment. The proposed revisions would improperly establish NRC as the enforcer of the "take-title" provisions, contrary to the Act.

Comment. It is inappropriate for NRC to require, as a condition for on-site storage, that licensees request the State in which they are located to take title to, and possession of, the waste, pursuant to section 5(d)(2)(C) of the Act, because the Act gives licensees the option not to request the State to take possession.

Comment. One State has a different law regarding title: "Title to any LLW shall at all times remain in the generator of such waste * * *." The proposed rule conflicts with State law.

Response. The text of the rule, which had been provided to the Agreement States for comment, has been revised to delete the requirement for the generator to request the State to take title to, and possession of, the generator's LLW. In view of the recent Supreme Court decision in *New York* versus *United States*, the Commission will not require this action as a prerequisite for storing LLW on-site after January 1, 1996.

Comment. What legal authority does the Commission have to impose the prohibition of possession of LLW, by the State, at a generator's facility?

Comment. How can "the prohibition" of State possession of LLW, at the generator's facility, be reconciled with the language of the Compact Act, which authorizes "* * * management of waste on the site where it is generated if such is otherwise lawful?"

Response. It is not envisioned that a State would take possession of LLW at a generator's facility.

Comment. It is inappropriate for NRC to require, as a condition for on-site storage, that licensees exhaust the contract option of section 5(e)(1)(F) of the Act as a condition for on-site storage. This section of the Act applies to States, not licensees.

Response. The NRC agrees that section 5(e)(1)(F) of the Act applies to States but not licensees. The text of the rule, which was provided to the Agreement States for comment, has been revised to eliminate the reference to this section of the Act.

Comment. The rule is silent with regard to financial surety aspects of extended storage, and "totally ignores" the requirements that would be placed on States that take title to, and/or possession of, LLW, after January 1, 1996.

Response. Financial assurance requirements for the affected licenses are contained in 10 CFR 30.35, 40.36, 50.75, 70.25, and 72.30. Financial assurance guidance for fuel cycle and materials licensees is provided in Information Notice 90–09, "Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees."

Comment. If NRC continues to pursue the "no on-site storage" option past January 1, 1996, as the NRC staff proposes, it will be NRC's responsibility to provide for emergency access to operating LLW disposal facilities for the LLW it prohibits from on-site storage.

Response. The NRC is not pursuing a "no on-site storage" option. The NRC recognizes that some generators will have to store LLW on-site. The NRC seeks to minimize the amount of LLW placed in storage, by requiring generators to exhaust all other reasonable waste management options. The guidance governing implementation of the emergency-access provision, of the Act, contained in Information Notice 91–65, "Emergency Access to Low-Level Radioactive Waste Disposal Facilities," will remain in effect. The NRC does not anticipate any situation where the provisions of this rule, in addition to a lack of access, would create a serious and immediate threat to the public health and safety or common defense and security, thereby requiring emergency access.

Comment. A more immediate concern, directly related to the storage of waste, is the authority of a generator to accept its processed waste after this waste has been sent off-site for treatment.

Response. The NRC has amended its regulations governing the condition of licenses for production and utilization facilities to allow a reactor licensee to receive back byproduct and special nuclear material that is produced by operating the reactor after the material has been sent off-site for processing, such as compaction or incineration. The final rule was published on October 21, 1992 (57 FR 47978). The rule became effective on November 20, 1992.

Comment. Any rulemaking on this issue must incorporate maximum flexibility, consistent with the protection of the public health and safety and the environment.

Response. Maximum flexibility has been considered. The proposed rulemaking does not preclude on-site LLW storage, as long as other waste management options are exhausted.

Comment. NRC's guidance would be expected to be consistent and compatible with NRC actions taken with respect to indefinite storage of high-level radioactive waste (HLW).

Response. The LLW situation is significantly different from that of HLW. Under the Nuclear Waste Policy Act of 1982, as amended, the Federal government is developing a facility for disposal of HLW. In the LLW program, it is the Commission's judgment that the NRC's regulations will encourage disposal by requiring generators to seek available disposal options. Furthermore, unlike HLW, commercial LLW disposal sites are currently operational, and development of new LLW disposal facilities continues, with two new facilities schedule to be operational by January 1, 1996. The risk to public health and safety from hundreds or thousands of temporary storage facilities is greater than that from a limited number of well-controlled disposal sites in the country.

Comment. There should be a definition that describes when radioactive material becomes waste.

Response. The term "waste" is defined in 10 CFR 61.2. Waste is considered to be any material or component for which the licensee foresees no further use. The NRC continues to believe that the licensee is in the best position to determine the continued utility, of radioactively contaminated material and components, to its operations. The NRC will continue to rely on the licensee to determine when material and components become waste and will periodically review the licensee's conclusions, to determine if they are reasonable and appropriate.

Comment. Does any provision of the Act prohibit a State from exercising its powers of eminent domain, and thereby moving to condemn existing licensee facilities, to establish a LLW management program for generators at the site.

Response. Although the NRC knows of no such provision, any exercise of a State's power of eminent domain would have to comply with applicable law.

Comment. There should be a maximum time limit, for "short-term," that would apply equally to all forms, including decay-in-storage. This commenter recommends a maximum storage time of one year. This commenter also states that this will allow sufficient time for isotopes with short half-lives to decay sufficiently for disposal in a sanitary landfill.

Response. Generally, for non-medical LLW, radioactive material with a half-life of less than 65 days can be held in storage before disposal as non-radioactive material. If allowed by the license, LLW disposed of in this manner must be held for decay a minimum of 10 half-lives. Decay in storage for medical waste is governed by 10 CFR 35.92. The proposed rule would not affect this practice.

Comment. To whom does the revision apply? As the State is required by the Amended Act to take possession, is the proposed language intended to cover that time interval between the licensee requesting the State to take possession and the State actually taking possession?

Response. The proposed rule would apply to all LLW generators licensed under 10 CFR parts 30, 40, 50, 70, and 72. As discussed in reponse to an earlier comment, the text of the rule, which had been provided to the Agreement States for comment, has been revised to delete the requirement for the generator to request the State to take title to, and possession of, the generator's LLW.

Comment. Will NRC licensees be required or encouraged to ship all wastes before January 1, 1993, that will reach five years in storage, between January 1, 1993, and January 1, 1996?

Response. Guidance on storage, which is optional, in Generic Letters 81–38 and 85–14, and Information Notices 89–13 and 90–09, includes consideration of keeping storage to limited periods of time (i.e., five years or less) and emphasizes shipment of LLW for final disposal. It is the NRC's policy that licensees should continue to ship LLW, for disposal, to the maximum extent practicable. Although the NRC has not set specific dates or deadlines for LLW shipments, Generic Letter 81–38 states that a part 30 license should be obtained if the time in storage exceeds five years.

Issue of Compatibility With Agreement States

Opinion varied among the 14 Agreement States that responded, on the issue of compatibility. Two States commented that this rulemaking should not be a matter of compatibility; one State recommended Division 1 (regulation must be adopted verbatim); two States recommended Division 2 (language identical to that in NRC rules is not necessary, provided that the underlying principles are the same); one State recommended Division 3 (States are encouraged to adopt the regulatory approach taken by the NRC, but are not required to do so); and eight States did not comment on compatibility.

The NRC considers the proposed implementation of these amendments to its licensing conditions to be directly related to the basic regulatory function of protecting the public health and safety and the environment. Unless the proposed rule is made a matter of compatibility, the waste management practices in both Agreement States and non-Agreement States could be inconsistent, and the Commission's goal to encourage disposal would be frustrated. Therefore, the amendments contained in this proposed rule would be a matter of compatibility for NRC Agreement States. The additional license conditions for LLW on-site storage, after January 1, 1996, in 10 CFR 30.34, 40.41, and 70.32, are considered to be Division 2 categories of compatibility. Although Agreement States must adopt Division 2 rules in their regulations, the use of language identical to that in NRC rules is not necessary, provided that the underlying principles are the same. The Agreement States may adopt more restrictive requirements.

The Commission is currently considering a re-evaluation of its compatibility policy and may decide to revise its general requirements regarding compatibility for the Agreement States. The Commission's compatibility determination, on this proposed rule, may be re-examined in light of any change to the general policy.

Discussion of Proposed Revisions

The proposed rule would establish procedures and criteria, for on-site storage of LLW, that would apply to all categories of LLW generators. On-site storage of LLW would not be permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay, or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), unless the licensee can document that it has exhausted other reasonable waste management options. The NRC's proposed regulations would require that the licensee attempt to contract, either directly or through the State, for the disposal of its waste. In addition, reactor licensees would have to document that on-site storage activities would be consistent with, and not compromise, the safe operation of the licensee's activities, and would not decrease the level of safety provided by applicable regulatory requirements. In view of the recent Supreme Court decision in *New York* versus *United States*, the Commission will not require the generator to request that the State take title to, and possession of, the waste, as a prerequisite for storing LLW on-site after January 1, 1996. Even though the take-title provision was held unconstitutional, clearly a goal of the LLRWPAA is the development of new LLW disposal facilities by January 1, 1993, and in no case later than January 1, 1996. To support the goals of the LLRWPAA and its legislated preference for disposal over storage of LLW, the NRC has concluded that action is necessary to require licensees to exhaust other reasonable management options before on-site storage of LLW will be permitted after January 1, 1996.

The exemption for collection or consolidation for shipment off-site is limited to those licensees that have access to an operating LLW disposal facility. Without this limitation, licensees not having access to a disposal facility could avoid or delay the actions required by the proposed rule, by "collecting or consolidating for shipment off-site," when disposal facility access becomes available.

The proposed rule would make these requirements standard license conditions for every license issued for reactor, materials, fuel cycle, and independent spent fuel storage licensees. The rulemaking would amend 10 CFR 30.34, 40.41, 50.54, 70.32, and 72.44. These sections of the regulations identify standard conditions for reactor, materials, fuel cycle, and independent spent fuel storage licenses. The licensee would not be required to make a formal submittal to the NRC, to show compliance with these conditions. The proposed rule would require that all relevant documentation of the steps taken to satisfy the requirements of this rulemaking be maintained by the licensee, and be made available to the NRC, for inspection.

To show compliance with this proposed rule, the NRC would expect the licensee to make an annual request for access to each operating commercial LLW disposal facility, for disposal of the licensee's LLW. Adequate documentation of the licensee's efforts to exhaust other reasonable waste management options would consist of copies of all correspondence to LLW disposal facility operators and responses to these requests. This documentation shall be retained for at least three years. The NRC will verify compliance, by reviewing this documentation, during periodic inspections, and at other times, as may be necessary, to determine whether additional inspections or other regulatory attention is required. Absent a willful act, any non-repetitive violation of these requirements would normally be considered a Severity Level IV violation under the Commission's Enforcement Policy, contained in Appendix C to 10 CFR part 2.

On-site storage of LLW resulting from reactor operations can be undertaken pursuant to the existing authorities and procedures, such as 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to on-site storage. Material, fuel cycle, and independent spent fuel storage licensees may store LLW on-site if storage: (1) Is authorized under the existing license conditions; and (2) is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage.

The Commission continues to hold the position that it will not look favorably on generator on-site storage of LLW, after January 1, 1996. It considers the on-site storage of LLW to be a last-resort measure. The Commission's preference is that LLW be permanently disposed of as soon after it is generated as possible.

This proposed rule would supplement, but not supersede, the existing regulations and guidance applicable to storage of LLW. The conditions in themselves would not authorize on-site storage. The existing regulatory and licensing framework will continue to be applicable. The following seven documents, in conjunction with the regulations in 10 CFR parts 20, 30, 40, 50, 70, and 72, provide this framework for LLW storage. However, note that the generic letters and information notices are informational and not binding. These documents are available, for inspection and copying, for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

APPLICABLE LICENSING—FRAMEWORK DOCUMENTS FOR ON-SITE LLW STORAGE

Type	Number	Title
Generic Letter	81–38	"Interim Storage of Utility Licensee-Generated Low-Level Radioactive Waste at Reactor Sites".
Generic Letter	85–14	"Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility".
Information Notice	89–13	"Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites".
Information Notice	90–09	"Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees".
Regulatory Guide	1.143	"Design Guidance for Radioactive Waste Management Systems, Structures, and Components Installed in Light-Water-Cooled Nuclear Power Plants".
Standard Review Plan (NUREG–0800).	Sec. 11.4	"Solid Waste Management Systems".
Inspection and Enforcement Circular.	80–18	"10 CFR 50.59 Evaluations for Changes to Radioactive Waste Management Systems".

Finding of No Significant Environmental Impact: Availability

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This proposed rulemaking would supplement, but not supersede, the existing regulatory framework applicable to the storage of LLW. The additional conditions of this rulemaking, in themselves, would not authorize on-site storage. These amendments would add administrative and verification requirements to existing regulations governing the licensing of byproduct material, source material, production and utilization facilities, special nuclear material, and independent spent fuel storage. The proposed rule would encourage disposal as opposed to storage, and this should have beneficial environmental effects. The proposed rule would not result in any increase in radiation exposure from transportation of LLW, compared to that expected from the ultimate disposal of LLW envisioned by the Act. Any environmental impact of operating an on-site LLW storage facility will be addressed, as required, as part of the licensing action for that facility, under previously established regulatory requirements. The environmental assessment and finding of no significant impact, on which this determination is based, may be examined and copied, for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC, telephone (202) 634–3273.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This rulemaking has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3109 (3150–0017, 3150–0020, 3150–0011, 3150–0009, and 3150–0132), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on these proposed amendments. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft analysis may be examined and copied, for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC, telephone (202) 634–3273.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC, as indicated under the "ADDRESSES" heading.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule affects approximately 6200 NRC licenses under 10 CFR parts 30, 40, 50, 70, and 72. Of this total, approximately 2000 are small entities. The proposed rule will require licensees planning to store LLW beyond January 1, 1996 (except for other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site in the case where the licensee has access to an operating LLW disposal facility) to document that other reasonable waste management options have been exhausted. The required documentation and maintenance of these records will require minimal administrative resources. Licensees will need to prepare and mail letters to appropriate LLW management authorities, retain all relevant documentation, and make these records available for NRC inspection. The annual recordkeeping burden imposed by the proposed rule is estimated to be 12 hours for the average licensee. The NRC does not believe that this burden will have a significant economic impact on small entities.

Backfit Analysis

The proposed rule does not constitute "* * * the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. * * *" Therefore, the proposed action is not a backfit, as defined in 10 CFR 50.109. The proposed rule primarily addresses the off-site disposal of low-level radioactive waste, generated as a result of reactor operation. The existing regulatory framework, applicable to assuring the safety of on-site storage of low-level radioactive waste, generated by reactor operations, remains unchanged. The NRC is seeking public comment on the backfit analysis. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

List of Subject Terms

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 30, 40, 50, 70 and 72.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244; 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.34(j) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.10, 30.34 (b), (c), (f), (g), (i), and (j), 30.41 (a) and (c), and 30.53 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 30.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 30.6, 30.9, 30.34 (g) and (j), 30.36, 30.50, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.34, paragraph (j) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(j) The following conditions are contained in every license issued under the regulations in this part.

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (j)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other

reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (j)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec.122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.41(h) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35 (a)-(d) and (f), 40.41 (b), (c), and (h), 40.46 40.51, (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 40.10 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 40.5, 40.9, 40.25 (c), (d)(3), and (4), 40.26(c)(2), 40.35(e), 40.41(h), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.8, paragraphs (a) and (b) are revised as follows:

§ 40.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0020.

(b) The approved information collection requirements contained in this part appear in §§ 40.25, 40.26, 40.31, 40.35, 40.36, 40.41, 40.42, 40.43, 40.44, 40.60, 40.61, 40.64, 40.65, and Appendix A.

* * * * *

5. In § 40.41, paragraph (h) is added to read as follows:

§ 40.41 Terms and conditions of licenses.

* * * * *

(h) The following conditions are contained in every license issued under the regulations in this part.

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (h)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (h)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

6. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.54(ff) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.5, 50.46 (a) and (b), and 50.54 (c) and (ff) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34 (a) and (e), 50.44(a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a)(i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), (dd), and (ff), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. In § 50.54, paragraph (ff) is added to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(ff) (1) On-site storage of low-level radioactive waste (LLW) may be undertaken pursuant to existing authorities and procedures (such as 10 CFR 50.59) and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (ff)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that—

(i) The licensee has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for the disposal of LLW; and

(ii) On-site storage activities will be consistent with, and not compromise, safe operation of the licensee's activities, nor decrease the level of safety provided by applicable regulatory requirements.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraphs

(ff)(2)(i) and (ii) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

8. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C 2077). Section 70.32(1) also issued under Pub. L. 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.10, 70.19(c), 70.21(c), 70.22(a), (b), (d)–(k), 70.24(a) and (b), 70.32(a)(3), (5) and (6), (d), (i), and (l), 70.36, 70.39(b) and (c), 70.41(a), 70.42(a) and (c), 70.56, 70.57(b), (c), and (d), 70.58(a)–(g)(3), and (h)–(j) are issued under sec. 161b, 68 Stat. 948 as amended (42 U.S.C. 2201(b)); §§ 70.7, 70.10, 70.20a(a) and (d), 70.20b(c) and (e), 70.21(c), 70.24(b), 70.32(a)(b), (c), (d), (e), and (g), 70.36, 70.51(c)–(g), 70.56, 70.57(b) and (d), and 70.58(a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b(d) and (e), 70.32(l), 70.38, 70.50, 70.51(b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58(g)(4), (k) and (l), 70.59, and 70.60(b) and (c) are issued under sec. 161o, 68 Stat 950, as amended (42 U.S.C. 2201(o)).

9. In § 70.32, paragraph (l) is added to read as follows:

§ 70.32 Conditions of licenses.

* * * * *

(l) The following conditions are contained in every license issued under the regulations in this part:

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (l)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (l)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

PART 72—LICENSING REQUIREMENTS FOR INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

10. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec, 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Public Law 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Public Law 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Public Law 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Public Law 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Public Law 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.44(h) also issued under Public Law 99–240, sec. 102, 99 Stat. 1842 (42 U.S.C. 2021). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Public Law 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Public Law 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Public Law 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.12, 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), (h), 72.48(a), 72.50(a), 72.52(b), 72.72(b), (c), 72.74(a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10(a), (e), 72.12, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(a), (b)(1), (4), (5), (c), (d)(1), (2), (e), (f), 72.48 (a), 72.50(a), 72.52(b), 72.90(a)–(d), (f), 72.92, 72.94, 72.98, 72.100, 72.102(c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140(b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat 949, as amended (42 U.S.C. 2201(i)); and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44(b)(3), (c)(5), (d)(3), (e), (f), (h), 72.48(b), (c), 72.50(b), 72.54(a), (b), (c), 72.56, 72.70, 72.72, 72.74(a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140(b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154(a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192, 72.212(b), 72.216, 72.218, 72.230, 72.234(e) and (g) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

11. In § 72.44, paragraph (h) is added to read as follows:

§ 72.44 License conditions.

* * * * *

(h) The following conditions are contained in every license issued under the regulations in this part:

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (h)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of the LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (h)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

Dated at Rockville, Maryland, this 26th day of January, 1993.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Appendix A—Summary and Analysis of Comments in Response to the Federal Register Notice of December 4, 1990 (55 FR 50064)

Summary, Analysis, and Conclusions of Responses to Eight Questions Concerning the Low-Level Radioactive Waste Policy Amendments Act of 1985

Introduction

During a public meeting of the Commission on October 29, 1990, the Commission decided to solicit the views of the public on the staff recommendations in SECY–90–318, "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions," dated September 12, 1990. Public comment was solicited in a **Federal Register** notice (FRN) published on December 4, 1990 (55 FR 50064). This notice also requested responses to eight related questions. A summary and an analysis of the responses to this FRN are provided below. Because of the U.S. Supreme Court's decision in *New York* v. *United States*, the summary and analysis related to the take-title provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) were rendered moot and consequently have been omitted.

Question 1. What factors should the Commission consider in deciding whether to authorize on-site storage of low-level waste (other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for treatment or decay) beyond 1996?

Summary of Comments

The principal issue raised by the commenters was whether NRC can and should consider ultimate disposal as a factor in its storage authorizations. Some commenters believe that NRC should consider only protection of the public health and safety, without any preference for disposal over storage in its licensing decisions. In this role, NRC would simply carry out its normal licensing and inspection functions for either the storage or disposal option. Others suggested that NRC consider not just public health and safety, but also evidence of progress in developing a disposal facility as a condition for issuing a storage license. Commenters characterized this role for NRC as the "enforcer" of the LLRWPAA. Others agreed with the staff's approach in SECY–90–318 which stated that the Commission "does not look favorably upon long-term on-site storage after 1996," but which acknowledged that at least some short-term storage will likely be required after 1996. In this role, NRC would "encourage" disposal (or not look favorably on storage), but would not make disposal plans an explicit condition for authorizing storage.

Many specific technical or administrative issues, such as waste container degradation and NRC resources to perform storage license reviews, were also mentioned in response to this question. Commenters also suggested that miscellaneous factors, such as the efforts of individual generators in cooperating with the States, the time needed to "do the job right", and time for development of new waste disposal technology, be considered in any Commission storage authorizations.

The only significant trend in the comments was that individuals and public interest groups tended to favor on-site storage beyond 1996. Many of these commenters also believe that waste generation activities should be stopped until disposal capacity is available. Their favoring of on-site storage at a generator's facility was an outgrowth of the belief that States should not be responsible for LLW management. States, compacts, utilities, and other generators showed no clear preference for any NRC role.

Analysis

With respect to whether NRC has the authority to "enforce" the provisions of the LLRWPAA, NRC could take actions to encourage disposal. NRC has broad authority under the Atomic Energy Act of 1954, as amended (AEA), for rules and orders as it "may deem necessary or desirable to * * * protect health or to minimize danger to life and property." The public health and safety is enhanced by disposal, rather than by long-term, indefinite storage of wastes. Disposal of wastes in facilities licensed under the requirements of part 61 or its equivalent will provide better protection of the public health and safety and environment than long-term storage at perhaps hundreds or even thousands of sites throughout the country. Further, a nexus was established between disposal and public health and safety and environment and long-term storage with the passage of the LLRWPAA. Thus, NRC has the broad authority to encourage disposal over storage, if it feels that specific measures would be beneficial.

To date, the need for extended storage of low-level waste has been small to almost non-existent because low-level waste has been shipped to the existing waste disposal sites in operation. As a result, industry experience and staff reviews and guidance have not addressed longer-term storage. Many of the commenters on this question pointed out specific hazards and technical considerations that need to be addressed if long-term storage is to be used. For example, container degradation from storage in humid environments, and gas generation from radiolysis were two concerns that were highlighted and which would need to be addressed. Addressing all of these concerns with indefinite long-term storage could require safety measures analogous to those for permanent disposal. An above ground vault meeting the performance requirements of part 61 is an example of the type of facility that could be justified if a licensee were to need explicit authorization for long-term storage. Guidance for acceptable low-level waste storage practices for periods significantly beyond 5-years may need to be reviewed and assessed as noted in SECY–90–318, to assure safety.

Given that the NRC has authority to encourage disposal but at the same time believes that LLW could be safely stored, the question becomes "What actions could the NRC take and what would these accomplish?" The options range from taking no new actions, to encouraging disposal as we have in the past, to formally considering disposal plans and progress in the licensing of storage facilities (See responses to Question 7 for a discussion of these additional assurances for disposal).

Other factors for storage licensing suggested by commenters go beyond the considerations that normally apply to licensing. Included in these are forecasting the availability and benefits of new technology for waste disposal and consideration of generators cooperating with States in developing disposal capacity.

With respect to the suggestion that the Commission consider suspending any waste producing activities if disposal capacity is not available, storage could be safely accomplished until disposal capacity becomes available. There is no public health and safety reason for stopping waste producing activities.

In summary, the principal factor in the Commission's decision to authorize on-site storage is what consideration needs to be given to ultimate disposal plans. Question 7 (assurances NRC should require for disposal) discusses what actions the Commission can take if it chose to consider disposal plans.

Question 2. What are the potential health and safety and environmental impacts of increased reliance on on-site storage of low-level waste?

Summary of Comments

Although some commenters believe there would be neither health and safety nor environmental effects from storage of LLW, other commenters believe that risk or exposures to workers would increase. Various concerns were raised by some commenters regarding the risk associated with multiple storage sites, with fire hazards, and with enhanced corrosion of waste packages. Others pointed out that occupational exposures would be increased by maintenance and surveillance activities, and the possible repackaging of waste for disposal.

Several commenters believe that a risk assessment should be performed to better define the risks associated with storage. The risk assessment should include a comparison of centralized storage vs. on-site storage by generators. Finally, several commenters pointed out that storage on-site would eliminate any risk from transportation hazards and would take advantage of already contaminated sites. These commenters favored long-term, indefinite, on-site storage over near surface disposal.

Analysis

NRC agrees with commenters who believe that the public health and safety and the environment could be adequately protected with on-site storage of LLW. Although the safety measures for long-term storage facilities will be greater than those employed now for short-term storage, measures can be undertaken to prevent or mitigate the effects of the various internal and external hazards at a storage facility. However, potential exposures to workers will be reduced if disposal is accomplished. Permanent disposal of LLW has always been the preferred option for managing wastes. The LLRWPAA reflects this preference. The design features of a disposal facility, including the natural features of the site, protect against a wide range of events and phenomena over a long period of time. In contrast, and as a number of commenters noted, storage would involve increased worker exposure from unloading the waste from storage for disposal, possible waste from processing (such as solidification or repackaging) to meet the waste acceptance criteria of a disposal facility when one became available, and radiation surveys during storage.

In order to adequately protect public health and safety, existing storage facilities may need to be substantially improved to store wastes safely for long periods of time. Actual storage conditions in use now range from sheet steel buildings on a concrete pad to rooms in hospitals and universities to several foot thick concrete modules. These structures may or may not have humidity and temperature control systems and could be subject to changing environmental conditions. The possibility for degradation of the waste containers will exist and will be a function of the materials used and the environment in which they are located. As a bounding condition, a storage facility with an indefinite period of storage for its design could need controls similar to those in part 61 for a disposal facility, because the design life would be the same.

Increased waste form requirements may be particularly important for Class A waste which normally is not stabilized prior to shipment for disposal, and for any stable waste forms which degrade as a result of the storage environment. This waste may contain quantities of absorbed liquid which, when alone or in the presence of radiation and organic materials, may produce organic acids and/or other species. These species may accelerate internal corrosion and failure of common storage containers.

Several commenters pointed out the need for risk assessments of storage options. NRC is unaware of any quantitative comparisons of the risks and exposures associated with storage vs. disposal and on-site storage vs. centralized storage. NRC will have available information from other programs on storage (such as the NY State storage study and DOE studies) and will use this information in its planning. Additional NRC work may be needed in this area depending on developments between now and 1996.

Question 3. Would low-level waste storage for other than operational needs beyond January 1, 1966, have an adverse impact on the incentive for timely development of permanent disposal capacity?

Summary of Comments

Comments in response to this question can be put into the following categories:

Yes, there would be an adverse impact—somewhat less than half of those who gave a yes or no answer believe that storage would adversely affect timely development of disposal capacity. Generally these responses were provided by host States, a compact or industry.

No, there would not be an adverse impact. Many individual commenters or public interest groups believe that storage was the preferred option over disposal and stated that there would be no adverse impact. They believe that current disposal technology is not adequate for protecting public health and safety. Several others believe that allowing for storage would help in achieving disposal capacity by allowing time for contracting among States, thereby reducing the number of sites that are needed in the country. They also believe that storage would provide the time needed to do the job right. The question is moot. A few commenters pointed out that the reality of the national waste disposal situation is that storage beyond 1996 will be necessary and therefore the question is moot. Several recognized that storage will be necessary, but at the same time encouraged the NRC to permit storage only when necessary. Another commenter pointed out that the LLRWPAA contains ample incentives to promote disposal without needing to consider the effect of NRC's storage policy. Commenters cited the cost to generators or States for storage, the resources (space and personnel) which would need to be devoted to on-site storage at a generator site, the possible loss of jobs in a State if companies move to areas which have disposal capacity, and the political impact in a State if LLW must be stored in increasingly larger quantities at numerous sites throughout a State.

The NRC should not consider any adverse impacts of storage. As noted in the response to the first question on factors the NRC should consider in authorizing storage, a number of commenters believe that NRC's role is one of only licensing and overseeing storage or disposal facilities, without having a preference for one or the other. These same commenters therefore believe that it was inappropriate for NRC to ask this question.

Analysis

Commenters who stated that storage would have an adverse impact provided little or no bases for their position. This is not surprising given that the question calls for prediction of the future which often must be based on judgment rather than hard data and scientific formulae.

Commenters who believe that there would be no adverse impact on disposal pointed to the incentives that will remain for a State to develop disposal capacity, irrespective of the relief provided by storage. In particular, there are costs (to the State and/or generators); the possible loss of jobs if a generator moves to a State with disposal availability; and, if generator storage is common, the political impact of a large number of LLW sites with ever growing amounts of LLW.

At the same time, NRC agrees with some commenters that short-term storage may be necessary in some States, especially those which have made a good faith effort and continue to do so into the future. Nevertheless, on balance, the NRC believes that an NRC policy which placed no disincentives on extended or inadequate storage would likely tend to discourage disposal.

Question 4. What specific administrative, technical and legal issues are raised by the requirements for transfer of title?

Summary of Comments

The comments in response to this question addressed the take-title provisions of the LLRWPAA. Because of the U.S. Supreme Court decision in *New York* v. *United States* and the revision to the proposed rule, these comments and the associated analysis are moot and consequently are not included.

Question 5. What are the advantages and disadvantages of transfer of title and possession as separate steps?

Because of the U.S. Supreme Court decision in *New York* v. *United States* and the revision to the proposed rule, the question is moot and consequently the summary and analysis associated with this question are not included.

Question 6. Could any state or local laws interfere or preclude transfer of title or possession of LLW?

Because of the U.S. Supreme Court decision in *New York* v. *United States* and the revision to the proposed rule, the question is moot and consequently the summary and analysis associated with this question are not included.

Question 7. What assurances of the availability of safe and sufficient disposal capacity for low-level waste should the Commission require and when should it require them? What additional conditions, if any, should the Commission consider in reviewing such assurances?

Summary of Comments

No assurances were needed according to seven of the 27 commenters on this question. The NRC lacks the authority and its role is limited to facility licensing of either disposal or storage, in their view. Other commenters indicated that if NRC believes that such assurances are needed, it should seek an amendment to the LLRWPAA or initiate a rulemaking similar to the one for spent fuel storage in 10 CFR part 51 in which the Commission made a finding that there was confidence that ultimate disposal of spent fuel would be achieved at a future date.

For those commenters who believe that assurances were appropriate, the kinds of assurances varied. One recommended that storage beyond 5 years should require a State or compact plan on how the State or compact intends to dispose of the waste so that storage is not *de facto* disposal. The commenters also believe that, while a State lacks disposal capacity, there should be no licensing between now and January 1, 1996 of any facility that may generate significant amounts of waste after that date. Others believe that the generator should project waste volumes accurately and that demonstrated progress towards issuance of a license to operate a regional disposal facility would be sufficient.

One commenter suggested that a governor's certification be required that would be similar to those already submitted as part of the LLRWPAA milestone compliance of January 1, 1990. The requirements of the certification should be simple and available to licensees to submit with the license to store or with the application to amend the possession limit. In addition, they believe that the NRC should require that the governor's certification include estimates of the costs for disposal capacity for waste management decision making.

With regard to when the Commission should require the assurances, two commenters addressed the timing issue and focused on the 5-year storage time frame. The other commenters presumably believe that the assurances should apply at any time the licensee would apply for a storage license. Another recommended action by NRC "in the next few years."

Analysis

Like Question 1 (concerning the factors the Commission could consider in authorizing storage), this question also addresses the role of the NRC in implementing the LLRWPAA. It presumes that the NRC has both the authority and the willingness to seek additional assurances for ultimate disposal. Because commenters often did not agree with this premise, as noted in the analyses of earlier questions, they also believe that this was not an appropriate question for the NRC to ask. However, the NRC, under the AEA, does have broad authority to promulgate rules and regulations to protect the public health and safety and minimize danger to the public.

A number of commenters gave examples of the types of assurances that could be furnished by the States. Examples would include a "plan" for disposal or a governor's certification, both of which would be meant to demonstrate that a State has an active, viable program for the development of disposal capability.

With respect to the question of whether the NRC has assurance that LLW disposal capacity will be available in the future, such assurance is available, as indicated in the analysis section of Questions 1 and 2, and does not require a formal rulemaking, as was suggested by several commenters and performed for HLW. Unlike the HLW program, where no repository has yet been in operation, disposal sites have been in operation and safely isolating waste for decades at Barnwell, SC, Hanford, WA, and Beatty, NV. Additional disposal capacity is expected soon. Some States may have their facilities in operation before 1996. There continued to be other options, including storage until a disposal site is located, or contracting with another State, or continuing to pursue development of a site within the State or compact. Thus, the question is not whether LLW will be safely disposed of, but exactly where and when it will take place.

Question 8. Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of low-level waste and mixed (radioactive and chemical hazardous) waste?

Summary of Comments

A wide variety of comments was provided in response to this question. A number of them were discussed in connection with previous questions. Comments strictly addressing transfer of title and possession are not included because they are moot. Remaining issues include the following:

1. Some commenters mentioned NRC storage policy and whether or not it will be a matter of compatibility with Agreement States was mentioned by some commenters. If not, Agreement States will license storage in accordance with their own storage policies and procedures.
2. The failure of some States to resolve legal, economic, and/or political issues will cause additional delays.
3. Accidents that generate large amounts of waste not previously planned for could cause a significant disposal problem.
4. NRC and Agreement State resources, as well as personnel trained in storage licensing, need to be in place.
5. Orphan waste and naturally-occurring and accelerator-produced radioactive materials (NARM) waste need to be addressed.

Analysis

NRC has not attempted to resolve each of these issues in connection with this analysis of public comments. Many go beyond the scope of the NRC's responsibilities and will need to be resolved by States and generators as they proceed. Others require a decision on the role of the NRC in encouraging disposal and others will need to be followed up at a later time.

Two of the above comments deserve attention here, however. The first is that Agreement States, which will perform much of the licensing for storage, should adopt the same or similar storage policy as NRC. License conditions for storage beyond 1996 are not currently compatibility requirements.

The second issue concerns the scope of the waste for which the State is responsible. Wastes falling within State responsibility include some Federal waste and any decommissioning waste or waste from contaminated sites that is removed in order to allow sites to meet the unrestricted use criterion in decommissioning.

Conclusions

The following conclusions can be reached as a result of the foregoing analyses:

1. Although LLW can be safely stored, disposal would enhance the protection of the public health and safety and the environment;
2. The LLRWPAA has established the preference for disposal over storage and established national goals for achieving adequate disposal capacity;
3. The NRC has broad authority under the Atomic Energy Act to advance the goal of disposal pursuant to the LLRWPAA.
4. On-site storage by many LLW generators will likely be necessary due to the lack of progress by States and compacts in developing sufficient disposal capacity.

The NRC has concluded that a rulemaking should be initiated to ensure that LLW generators exhaust all other reasonable management options before onsite storage will be permitted beyond January 1, 1996. One such option is to pursue a contract for disposing of waste. This action will reinforce the Commission's position that it will not look favorably on on-site storage by generators, after January 1, 1996, and the action actively supports the goals set forth in the LLRWPAA.

[FR Doc. 93-2321 Filed 2-1-93; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-201-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. This proposal would also require stress relieving of the crossover duct assemblies. This proposal is prompted by several reports of ruptured engine bleed air crossover ducts. The actions specified by the proposed AD are intended to prevent failure of the engine bleed air crossover ducts, which could result in loss of pneumatics and damage to adjacent structure.

DATES: Comments must be received by March 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-201-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Dulin, Aerospace Engineer, Seattle Aircraft Certification Office, ANM-130S; FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2675; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-201-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-201-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

There have been several reported incidents of ruptured engine bleed air crossover ducts on certain Boeing Model 767 series airplanes. The duct ruptures have resulted in a loss of cabin pressure, loss of bleed air to the air driven hydraulic pump, loss of wing thermal anti-ice capabilities, and damage to the air conditioning panels. These duct ruptures were caused by cracking, which started and progressed around the circumferential welds. The FAA has been advised that these cracks formed in the heat affected zones of the duct welds, because of hydrogen oxide (hydride) concentration. The hydrides have an embrittling effect on the duct material, which may initiate the cracking. This condition, if not corrected, could result in loss of pneumatics for cabin pressurization, air conditioning, air driven hydraulic pump, wing thermal anti-ice, hydraulic reservoir pressurization, engine cross starting ability, and cargo heating, and could also damage air conditioning panels.

The FAA has reviewed and approved Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992, that describes procedures for conducting dye penetrant inspections and proof pressure tests of the crossover pneumatic ducts. This service bulletin also describes procedures for repairing or replacing these ducts, and stress relieving these ducts. Stress relieving these ducts will eliminate the residual stress and local stress concentration. A dye penetrant inspection, proof pressure test, and stress relieving will reduce the possibility of engine bleed air crossover duct rupture caused by cracking due to hydride formation.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require dye penetrant inspection and proof pressure testing to detect cracks or ruptures of the crossover pneumatic ducts, and repair or replacement, as necessary. This proposal would also require stress relieving of the crossover duct assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This proposal also provides for an optional terminating action. This terminating action entails replacement of all crossover pneumatic ducts with stress relieved ducts.

There are approximately 307 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 64 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $404,800, or $3,520 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 92-NM-201-AD.

Applicability: Model 767 series airplanes, line position 001 through 307, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine bleed air crossover ducts, which could result in loss of pneumatics and damage to adjacent structure, accomplish the following:

(a) Within 6 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs later, conduct a dye penetrant inspection and proof pressure test of the crossover pneumatic ducts, in accordance with Boeing Alert Service Bulletin 767-36A0041, dated July 2, 1992.

(1) If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(2) Stress relieving of the ducts, in accordance with the service bulletin, may be accomplished in conjunction with the initial dye penetrant inspection and proof pressure test required by this paragraph. Such action

constitutes terminating action for the requirements of paragraph (b) of this AD.

(b) Within 3,000 flight cycles after accomplishing the initial dye penetrant inspection and proof pressure test required by paragraph (a) of this AD, conduct an additional dye penetrant inspection and proof pressure test of the crossover pneumatic ducts, and stress relieve the crossover pneumatic duct assemblies, in accordance with Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992. If cracks or ruptures are detected, prior to further flight, repair or replace the crossover pneumatic ducts in accordance with the service bulletin.

(c) Replacement of all crossover pneumatic ducts with stress relieved ducts in accordance with Boeing Alert Service Bulletin 767–36A0041, dated July 2, 1992, constitutes terminating action for the requirements of paragraph (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 25, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2143 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–219–AD]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. This proposal would require modification of the upper part of frame 30 in the stiffener area between stringers 7 and 8. This proposal is prompted by the results of fatigue tests, which revealed cracking in the upper part of frame 30. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could lead to reduced structural integrity of the fuselage.

DATES: Comments must be received by March 29, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–219–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. The DGAC advises that during fatigue testing on a Dassault Aviation Model Mystere-Falcon 900 series airplane, cracks were found on frame 30 in the stiffener area, between stringers 7 and 8 on the right-hand and left-hand sides. These cracks were due to the deformation of the structural elements within this area. Fatigue cracking in this area, if not detected and corrected, could lead to reduced structural integrity of the fuselage.

Dassault Aviation has issued Service Bulletin F900–53–14 (F900–93) and Appendix 1 to that service bulletin, both dated July 8, 1992, which describe procedures for accomplishing Modification F900 M299. This modification entails modifying a stiffener, adding a doubler, and adding a rivet on the edge of frame 30, at the lower part of stringer 8. Accomplishing this modification would reduce frame 30 deformations by reinforcing its connection with the stiffener. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–140–012(B), dated July 8, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the upper part of frame 30 in the stiffener area between stringers 7 and 8. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 29 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,165, or $1,595 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 92–NM–219–AD.

Applicability: Model Mystere-Falcon 900 series airplanes; serial numbers 1 through 14, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage, accomplish the following:

(a) For airplane serial number 1: Prior to the accumulation of 3,750 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the upper part of frame 30 in the stiffener area between stringers 7 and 8, in accordance with Dassault Aviation Service Bulletin F900–53–14 (F900–93) and Appendix 1 to that service bulletin, both dated July 8, 1992.

(b) For airplanes having serial numbers 2 through 14, inclusive: Modify the upper part of frame 30 in the stiffener area between stringers 7 and 8, in accordance with Dassault Aviation Service Bulletin F900–53–14 (F900–93) and Appendix 1 to that service bulletin, both dated July 8, 1992; and at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 3,750 total landings, or within 6 years since date of manufacture, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 25, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2144 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–191–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This proposal would require a one-time inspection to detect cracks in the lower skin near the ribs at certain wing stations, and repair, if necessary. This proposal is prompted by reports of fatigue cracks found in the lower skin at the runout of stringers 2 and 10 near wing station 6490 on two of these airplanes. The actions specified by the proposed AD are intended to prevent reduced structural capability of the wings.

DATES: Comments must be received by March 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–191–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–191–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F27 series airplanes. The RLD advises that fatigue cracks measuring 95 mm and 60 mm in length have been found in the lower skin at the runout of stringers 2 and 10 near wing station 6490 on two Model F27 series airplanes. These cracks were found on Model F27 series airplanes in post-Service Bulletin F27/57–9 configurations. These airplanes had accumulated 34,721 and 37,936 landings, respectively. This condition, if not corrected, could result in reduced structural capability of the wings.

Fokker has issued Service Bulletin F27/57–69, dated April 6, 1992, which describes procedures for a one-time inspection to detect cracks in the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92–055, dated April 21, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

The service bulletin indicates that, dependent on the findings of the inspection discussed previously, Fokker may consider a reduced initial inspection threshold and corresponding repetitive inspection intervals, which would be addressed in a revision to the Fokker Structural Integrity Program (SIP) document, if necessary. At that time, the FAA may consider further rulemaking to address these issues.

[**Note:** The Fokker Model F27 SIP is required currently by AD 92–19–07, Amendment 39–8365 (57 FR 42693, September 16, 1992).]

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect cracks in the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100, and repair, if necessary. Operators would also be required to report positive findings of cracks to Fokker. The inspection would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 58 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,570, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92–NM–191–AD.

Applicability: Model F27 series airplanes in post-Fokker Service Bulletin F27/57–9 configuration; serial numbers 10115, 10126 through 10684, inclusive, 10686, 10687, and 10689 through 10692, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the wings, accomplish the following:

(a) Inspect the lower skin at the runout of stringers 2 and 10 near wing stations 6490, 5330, and 6100 to detect cracks, in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable:

(1) For airplanes that have accumulated less than 20,000 landings as of the effective date of this AD: Prior to the accumulation of 20,000 landings, or within 1 year after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 20,000 or more landings, but less than 30,000 landings, as of the effective date of this AD:

Prior to the accumulation of 30,000 landings, or within 5 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated 30,000 or more landings as of the effective date of this AD: Within 2 months after the effective date of this AD.

(b) If any crack is found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, report positive findings of cracks to Fokker, in accordance with Fokker Service Bulletin F27/57–69, dated April 6, 1992. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2076 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–196–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 series airplanes. This proposal would require an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number; and replacement, if necessary. This proposal is prompted by a recent report of damage to the aileron cable on a Model F27 series airplane, which occurred when one of two noise filter capacitors on the flap actuators became detached from its bracket, causing damage to the lower aileron cable due to electrical arcing between the capacitor and the aileron cable. The actions specified by the proposed AD are intended to prevent reduced aileron roll control authority.

DATES: Comments must be received by March 24, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–196–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–196–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F27 series airplanes. The RLD advises that it has received a recent report of damage to the aileron cable on a Model F27 series airplane, which occurred when one of two noise filter capacitors on the flap actuators became detached from its bracket.

The noise filters on the flap actuators eliminate electrical distortions generated during operation of the flaps. Each noise filter consists of two capacitors that are mounted on a bracket on the flap actuator. A capacitor can become detached from its bracket when its mounting ears break away from the bracket completely or separate and suspend via the terminal lead. Whenever the actuator motor operates, an electrical arc may occur between a capacitor and metal components or structure. In the incident discussed previously, the detached capacitor caused damage to the lower aileron cable due to electrical arcing between the capacitor and the aileron cable. Failure of an aileron control cable, if not corrected, could result in reduced aileron roll control authority.

Fokker has issued Service Bulletin F27/27–135, dated June 1, 1992, which describes procedures for an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage, and to determine the manufacturer and part number of the capacitors; and, if necessary, the replacement of discrepant capacitors with certain other capacitors whose in-service history has proven that they are unlikely to fail and become detached from the capacitor brackets. (The Fokker service bulletin references Lucas Aerospace Service Bulletin D7–9–27–

01, dated May 15, 1992, for additional information.) The RLD classified the Fokker service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA No. 92-076, dated July 10, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require an inspection of the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number of the capacitor. If a damaged capacitor is detected or if a certain discrepant capacitor is installed, operators would be required to replace the capacitor with specific capacitors whose in-service history has proven that they are unlikely to fail and become detached from the capacitor brackets. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,375, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92-NM-196-AD.

Applicability: All Model F27 series airplanes; excluding Model F27 Mark 050 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of an aileron control cable and subsequent reduced aileron roll control authority, accomplish the following:

(a) Within 500 hours time-in-service or 2 months after the effective date of this AD, whichever occurs first, inspect the noise filter capacitors mounted on the rotary flap actuator to detect damage and to determine the manufacturer and part number, in accordance with Fokker Service Bulletin F27/27-135, dated June 1, 1992.

(1) If no damaged capacitor is found, and if no capacitor manufactured by John B. Fast Company and having part number A-16446 is installed, no further action is required by this AD.

(2) If any damaged capacitor is found, or if any capacitor manufactured by John E. Fast Company and having part number A-16446 is found, prior to further flight, replace that capacitor with either a capacitor manufactured by P.R. Mallory Company and having part number CA275X, or a capacitor manufactured by Potter Company and having part number 1136-5004, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2077 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 91-CE-49-AD]

Airworthiness Directives; de Havilland DHC-6 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 73-19-06, which currently requires repetitively inspecting the overhead console control quadrants for cracks on certain de Havilland DHC-6 series airplanes, and replacing any cracked part. The Federal Aviation Administration's policy on aging commuter-class aircraft is to eliminate, or in certain instances, reduce certain repetitive short-interval inspections when improved parts or modifications are available. The proposed action would require modifying the overhead console control quadrants as terminating action for the repetitive inspections that are currently required by AD 73-19-06. The actions specified in the proposed AD are intended to prevent failure of the overhead control console, which could result in loss of control of the airplane.

DATES: Comments must be received on or before April 16, 1993.

ADDRESSES: Submit comments on the proposal in triplicate to the Federal

Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–49–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario, Canada, M3K 1Y5. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; Telephone (516) 791–6220.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–CE–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–49–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of repetitions of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of an adjacent structure being damaged as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace or, in certain instances, reduce the number of repetitions of a critical inspection. With this policy in mind, the FAA recently conducted a review of existing ADs that apply to de Havilland DHC–6 series airplanes. Assisting the FAA in this review were (1) Transport Canada, which is the airworthiness authority for Canada; (2) de Havilland, Inc.; (3) the Regional Airlines Association (RAA); and (4) several U.S. and foreign operators of the affected airplanes.

From this review, the FAA has identified AD 73–19–06, Amendment 39–1800, as one that should be superseded with a new AD that would require a modification that could eliminate the need for short-interval and critical repetitive inspections. AD 73–19–06 currently requires repetitively inspecting the overhead control quadrants for cracks on certain de Havilland DHC–6 series airplanes, and replacing any cracked part in accordance with de Havilland Service Bulletin (SB) No. 6/298, dated April 18, 1973.

De Havilland has revised SB No. 6/298, which now consists of the following pages:

Pages	Revision	Date
3, 4, 5, and 6	A	Nov. 30, 1973.
1 and 2	B	Nov. 30, 1973.
7 and 8	C	May 2, 1975.

This service bulletin revision specifies procedures for inspecting and installing improved overhead control quadrants on certain de Havilland DHC–6 series airplanes. This installation is referred to as Modification No. 6/1467. As a result of the previously discussed AD review, Transport Canada considers Modification 6/1467 as mandatory and has issued Transport Canada AD CF–73–06R1 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

Based on its aging commuter-class aircraft policy and after reviewing all available information including that received from Transport Canada, the FAA has determined that AD action should be taken to eliminate the short-interval and critical inspections required by AD 73–19–06 and to prevent failure of the overhead control console, which could result in loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other de Havilland DHC–6 series airplanes of the same type design, the proposed AD would supersede AD 73–19–06 with a new AD that would (1) retain the repetitive inspections of the overhead control quadrants required by the current AD and replacement of any cracked part; and (2) require installing new improved overhead control quadrants as terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with de Havilland SB 6/298.

The FAA estimates that 144 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 30 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $309,600.

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 144 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 50 percent are operated in scheduled passenger service by 14 different operators. A significant number of the remaining 50 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed AD allows 2,400 hours time-in-service (TIS) before mandatory accomplishment of the design modification. The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter-class airplanes involved in commercial operation would have to accomplish the proposed modification within 12 to 24 calendar months after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 12 to 24 calendar years before the proposed modification would be mandatory.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 73–19–06, Amendment 39–1800, and adding the following new AD:

de Havilland: Docket No. 91–CE–49–AD. Supersedes AD 73–19–06, Amendment 39–1800.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes (serial numbers 1 through 420), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the overhead control console, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 175 hours TIS, visually inspect the overhead console control quadrants for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland Service Bulletin (SB) 6/298, which consists of the following:

Pages	Revision	Date
3, 4, 5, and 6	A	Nov. 30, 1973.
1 and 2	B	Nov. 30, 1973.
7 and 8	C	May 2, 1975.

(1) If cracks are found that meet or exceed the requirements specified in paragraph 3.1 of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298, prior to further flight, replace the overhead control console quadrants, part number (P/N) C6–CE–1010, with P/N C6CE1421–27 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298.

(2) If cracks are found that meet or exceed the requirements specified in paragraph 3.2 of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298, within the next 200 hours TIS, replace the overhead control console quadrants, P/N C6–CE–1010, with P/N C6CE1421–27 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298.

(3) If cracks are found that are less than that specified in paragraph 3.2 of the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298, reinspect at intervals not to exceed 100 hours TIS until the modification specified in paragraph (b) of this AD is accomplished.

(4) If no cracks are found, reinspect at intervals not to exceed 200 hours TIS until the modification specified in paragraph (b) of this AD is accomplished.

(b) Within the next 2,400 hours TIS after the effective date of this AD, unless already accomplished as specified in paragraph (a)(1) or (a)(2) of this AD, replace the overhead control console quadrants, P/N C6–CE–1010, with P/N C6CE1421–27 in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of de Havilland SB No. 6/298.

(c) The installation of new overhead control console quadrants (Modification No. 6/1467) as specified in paragraphs (a)(1), (a)(2), and (b) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 181 Franklin Avenue, Room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to de Havilland, Inc., 123 Garratt Boulevard, Downsview, Ontario Canada, M3K 1Y5; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 73–19–06, Amendment 39–1800.

Issued in Kansas City, Missouri, on January 21, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2145 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 10 and 145

Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Futures Trading Practices Act of 1992 (1992 Act), amended the Commodity Exchange Act (CEAct or Act) in several respects, including imposition of a requirement for registration of floor traders (FTs) for the first time. The Commission is proposing amendments to its registration rules to implement this requirement. These rules include a rule that would provide temporary "no-action" relief so that existing FTs who meet the criteria for registration can be registered without unnecessarily disrupting their ongoing business. However, any person seeking to act as an FT who is not granted

trading privileges by a contract market until after the effective date of final rules would be treated like any other applicant for registration and would have to be granted registration or a temporary license (TL) before commencing such activity. The Commission is also proposing to permit TLs for floor brokers (FBs) to act as FTs and to adopt several technical changes to its registration rules.

Another provision of the 1992 Act requires ethics training for registrants. The 1992 Act provides that such training shall be conducted within six months of registration for a new registrant and otherwise periodically. The Commission is proposing that periodic training be conducted every three years.

The Commission is also proposing a new rule to implement authority granted in the 1992 Act that permits the suspension or modification of the registration of a registrant charged with a felony.

DATES: Comments must be received by March 4, 1993.

ADDRESSES: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 and should refer to "Registration of Floor Traders—Mandatory Ethics Training for Registrants—Suspension of Registrants Charged with Felonies."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, at the above address. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Registration of Floor Traders

A. Introduction

Historically, the CEAct required registration of FBs but not of FTs. In passing the 1992 Act, however, it was noted that "[t]he central goal of requiring registration of floor traders is to assure that these individuals are subject to the same background fitness checks as other Commission registrants and to allow the Commission to act with respect to the person's registration in appropriate cases."[1] Accordingly, the Commission is proposing to incorporate FTs within the existing framework of registration rules applicable to other categories of registrant.

The 1992 Act, which was enacted on October 28, 1992, amended the CEAct in several respects. Section 207 of the 1992 Act amended section 4e of the CEAct (7 U.S.C. 6e (1988)) to require registration of FTs and that the Commission issue rules necessary to implement that requirement no later than 180 days after the date of enactment of the 1992 Act (which will be April 26, 1993). An FT is defined as "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market." The definition of FB is similar except that an FB purchases or sells for any other person rather than solely for his own account. See section 404(a) of the 1992 Act, to be codified at section 1a (9) and (8) of the CEAct, respectively (7 U.S.C. 2). The Commission's definitions of FB and FT parallel these statutory definitions, and in addition include any person required to register as an FB or FT under the Act by virtue of part 33 of the Commission's rules, which would cover an FB or FT who handles only domestic exchange-traded commodity option transactions. See 17 CFR 1.3(n) (1992) (definition of FB) and proposed amendment to 17 CFR 1.3(x) set forth below (definition of FT). The definition of FT would include any person who executes or is authorized to execute futures or commodity option transactions on an exchange floor or trading system, without regard to whether such person owns an exchange membership or the limited nature of such person's trading privileges. Thus, a person who trades solely for his own account via computer terminal through the Chicago Mercantile Exchange/Chicago Board of Trade GLOBEX system, through the New York Mercantile Exchange ACCESS program or any other electronic trading mechanism of a contract market would be required to register as an FT under section 4e of the CEAct. Similarly, lessees or holders of membership rights which carry floor trading privileges would be required to register as FTs.

However, the Commission specifically requests comment as to whether persons who hold trading privileges but do not exercise such privileges should be required to register as FTs and, if not, what mechanisms are currently in place or can be established at contract markets to prevent such persons from trading for their own account on a contract market floor or through a contract market electronic system without registration as an FT. For example, some persons may have leased their seats to others or may be holding the seat for investment purposes only. Separately, the Commission recognizes that there may be persons who are listed as principals of futures commission merchants, for example, and who have a contract market membership listed in their own name which they have assigned to the firm. Where such persons do not trade for their own account on the floor of or through an electronic system operated by a contract market, such persons would not be required to register as FTs. However, there may be other persons who hold contract market trading privileges but have chosen not to exercise such privileges and are not registered or listed as principals of a registrant. The Commission requests comment as to the appropriate treatment of such persons with respect to application of registration requirements.

B. Temporary No-Action Positions

The Commission recognizes that there are numerous persons currently operating as FTs.[2] These FTs will be required to register under the Act since there is no provision in the 1992 Act that provides a basis for "grandfathering" the status of such individuals such that they may continue to act as FTs without satisfying the requirements for registration. The Commission has endeavored to develop transitional registration procedures to apply to persons currently holding FT status that recognize these persons' interests in continuing to conduct business while fulfilling the Congressional mandate to integrate FTs into the registration framework of the CEAct applicable to all other registrant categories. The Commission therefore has determined that it would be appropriate to adopt temporary "no-action" positions that would permit, subject to the procedures set forth herein and subject to adverse actions being taken by the Commission under its part 3 rules, existing FTs to remain in business while their registration applications are processed by the National Futures Association (NFA).

Proposed Rule 1.62–T would provide for two temporary "no-action" positions. The first no-action position would be applicable to those FTs whose trading privileges were granted on or before February 2, 1993 and the second no-action position would be applicable to those FTs whose privileges are granted after that date but on or before the effective date of final rules, which is intended to be April 26, 1993.[3] FTs whose trading privileges are granted after that date would be required to comply with the normal application procedures set forth in amendments to Commission Rule 3.11.

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[1] H.R. Rep. No. 978, 102d Cong., 2d Sess. 59 (1992).

[2] Commission staff estimates that approximately 4,000 persons who are not otherwise registered currently have floor trading privileges on contract markets.

[3] This date is 180 days from the date of enactment of the 1992 Act.

1. First No-Action Position

The first no-action position, set forth in paragraph (a) of proposed Rule 1.62–T, would permit an FT who was granted contract market trading privileges on or before February 2, 1993 and whose trading privileges remain in effect as of April 26, 1993 to remain in business pending a final determination of his fitness for registration, unless an Administrative Law Judge (ALJ) issues an interim order suspending the no-action position as to the FT in accordance with paragraph (c) of Rule 1.62–T.[4]

In order for FTs to qualify for relief under proposed Rule 1.62–T(a), each contract market must submit to NFA by April 26, 1993 a list of FTs who were granted trading privileges on that contract market on or before February 2, 1993 whose trading privileges continue in effect, and who are not then registered as FBs.[5] The Commission recommends that contract markets start preparing their lists immediately since the time between adoption of final rules and their effective date is expected to be brief. Such lists must include the name, date of birth and social security number of the FTs, as well as any information known by the contract market regarding such FTs relative to matters which are set forth as statutory disqualifications in section 8a(2) of the CEAct,[6] and must be signed by the chief operating officer of the contract market as specified in the rule.

For an FT that is otherwise eligible for relief but is statutorily disqualified by section 8a(2), the FT's contract market must file a supplemental statement signed by the chief operating officer of the contract market stating that in light of the Congressional mandate requiring registration of FTs under the Act, the contract market understands its responsibility to take affirmative action to conduct appropriate surveillance of such FT.[7] If no supplemental statement is filed with regard to such a statutorily disqualified FT, the FT must cease exercising FT privileges as of April 26, 1993 pending the determination of his application for registration under proposed Rule 1.62–T. A single statement can be filed on behalf of all such potentially disqualified FTs who the contract market believes should be permitted to retain trading privileges during the registration process. The Commission believes that requiring such a supplemental statement to qualify for no-action relief is appropriate because Congress recognized, in enacting the FT registration requirement, that FTs may collude with FBs to violate the Act or Commission regulations and therefore should be subject to the same fitness checks and regulatory sanctions as FBs and others who deal directly with the public.[8]

The purpose of the contract market list for the first no-action position is to allow NFA to identify the persons who were acting as FTs on the relevant cut off date to facilitate monitoring filing of registration applications, and to assist the Commission in its registration determination. The lists should include all FTs at the contract market, even if the FT also is an FT at another contract market. This procedure is intended to assure that all eligible FTs can take advantage of the relief proposed under Rule 1.62–T(a) and avoid confusion as to which contract market should be responsible for listing the FT.

The information to be included on the contract market list regarding section 8a(2) statutory disqualifications is similar to the information which contract markets are currently required to submit regarding FBs under Rule 1.62(b). By requiring this information on the FT list, the Commission hopes to be able to expedite determinations as to registration fitness of FTs with such statutory disqualifications. FTs could also assist in expediting the determination as to their registration fitness by filing a Form 8–R as soon as possible, and by including therein full explanations as to any "yes" answers to the questions pertaining to statutory disqualifications. See Commission Rule 3.60(b)(2)(ii), 57 FR 23136, 23152–53 (June 2, 1992).

If a contract market submits its FT list and supplemental statement as to any section 8a(2) disqualified FTs to NFA in a timely manner, i.e., by April 26, 1993, the Commission will not commence an enforcement proceeding against an FT on that list based solely upon the FT's failure to register under section 4f of the Act and Commission Rule 3.11, nor will the Commission commence an enforcement proceeding against the contract market under Commission Rule 1.62 based solely upon its failure to bar the FT from operating as such.[9] Contract markets that have granted trading privileges to section 8a(2) disqualified FTs must file the supplemental statement referred to above; otherwise, such FTs will be ineligible for the relief provided under proposed Rule 1.62–T(a) and therefore barred from exercising their FT privileges as of April 26, 1993 unless or until they are notified that their applications for registration have been granted.

The second step in the process would require an FT whose name appears on a contract market list referred to above to submit an application for registration as an FT (or as an FB) to NFA in accordance with Commission Rule 3.11 no later than 30 days after the effective date of final rules. If the no-action position is not perfected by filing an application by May 26, 1993 the no-action as to such person would expire. FTs are encouraged to make the required submissions as soon as possible and should not wait until the last day to file. The earlier a completed registration application is submitted the earlier the person's registration status can be resolved. Rule 3.11 will require the FT to submit a Form 8–R and a fingerprint card to NFA. If those submissions are made on a timely basis, i.e., by May 26, 1993, the no-action positions with respect to the FT and the contract market would be extended until the FT is granted or denied registration under the Act, unless, as noted above, an ALJ issues an interim order under Rule 1.62–T(c) suspending the no-action status of the FT. Determinations as to whether to initiate a proceeding under proposed Rule 1.62–T(c) would be made within the Commission's discretion on a case-by-case basis. If an FT does not make the required submissions within the time allowed, the no-action position will terminate as to that FT and the contract market will be notified by the Commission that such person cannot act as an FT.

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[4] The procedure in proposed Rule 1.62–T(c) is modeled on Commission Rule 3.55, which permits registration of a section 8a(2) disqualified registrant to be suspended by *pendente lite* order upon notice and hearing. See also section 227 of the 1992 Act and proposed Rule 3.56 set forth below which would provide that the registration of any person charged with certain violations of the Act or other federal or state laws may be suspended upon notice and hearing.

[5] A registered FB need not also register as an FT in order to engage in activity as an FT. However, an FT registered in some other capacity such as commodity trading advisor must, as of April 26, 1993, file a Form 8–R to indicate that he also wishes to be registered as an FT. See proposed amendment to Commission Rule 3.4(a) *infra*.

[6] Such disqualifications include, among other things, a prior revocation or denial of registration, and felony convictions within the preceding ten years, and injunctions, relating to futures or securities activity, embezzlement, theft, extortion or fraud.

[7] See, generally Rule 1.51 which provides, *inter alia*, that each contract market must use due diligence in maintaining a continuing affirmative action program to secure compliance with specified provisions of the Act as well as all of the contract market's bylaws, rules, regulations and resolutions which such contract market is required by the Act to enforce. The affirmative action program required by Rule 1.51 includes, among other things, surveillance of trading practices on the floor of such contract market, examination of books and records kept by contract market members, investigation of customer complaints, investigation of alleged or apparent rule violations, and "[s]uch other surveillance, record examination and investigation as is necessary to enforce such bylaws, rules regulations and resolutions."

[8] S. Rep. No. 191, 101st Cong., 1st Sess. 47–48 (1989).

[9] As discussed more fully below, the Commission is proposing to amend Rule 1.62 to provide generally that contract markets must enforce rules to prevent persons from acting as an FB or FT on their markets unless registered or temporarily licensed as such.

FTs who would be eligible for relief under proposed Rule 1.62–T(a) should pay particular attention to the disciplinary history questions on Form 8–R.[10] The Commission notes that false statements on the Form 8–R are a separate ground for denying registration[11] and that a "yes" answer to a disciplinary history question may not necessarily result in denial of registration depending upon the nature and circumstances of the particular matter involved. For example, the Commission may exercise discretion so that settlements of previous Commission enforcement actions which permitted persons to continue trading for their own account would not be the sole basis for denial of FT registration. The Commission may delegate authority to its staff to permit registration in such circumstances.

The no-action position as to the FT will continue unless and until the FT fails to file a Form 8–R by the date required or an ALJ issues an interim order under proposed Rule 1.62–T(c) suspending the no-action status of the FT. If a Rule 3.60 registration proceeding were initiated without the accompanying suspension of no-action status, denial of registration would not become final and the person could continue acting as an FT until the FT has had an opportunity for a hearing and all appeal rights are exhausted. Thus, in general the Commission would treat such persons in a manner similar to that accorded registrants under the Act and a proceeding against them as if it were a proceeding to revoke the registration of a registrant.[12]

The Commission further notes that all registrants and applicants for registration, including FTs eligible for no-action relief as discussed herein, have an obligation under Commission Rule 3.31 to report promptly, by means of a Form 3–R, any deficiency, inaccuracy or change in the registration information previously provided to NFA on the original Form 8–R or a previously-filed Form 3–R. If information is disclosed on a Form 3–R or is discovered in the course of fitness checks that constitutes a statutory disqualification under section 8a(2) of the Act prior to granting registration to an FT eligible for relief in accordance with the first no-action position, such FT may be subject to the procedure relating to suspension of no-action relief under proposed Rule 1.62–T(c).

The Commission intends to authorize NFA to perform the registration processing function for FTs as it has previously authorized NFA to perform that function for other registrant categories. However, as is the case for FBs, any adverse action against FT would be instituted by the Commission. NFA will review the applications for registration from FTs and if such applications are deficient, NFA will so notify the FT. Such a notice will specify a time period for response and failure to respond may be deemed a request to withdraw a registration application.

The Commission is proposing that the transition phase necessary to permit those persons granted trading privileges prior to February 2, 1993 to file registration applications would end May 26, 1993, i.e., 30 days after the effective date of final rules in this area. The Commission notes, however, that no-action relief for any particular FT who qualifies for it would be allowed to continue beyond May 26, 1993 until his registration status is resolved in accordance with the proposed no-action position discussed above.

2. Second No-Action Position

The second no-action position would be set forth under paragraph (b) of proposed Rule 1.62–T. This would apply to persons granted contract market trading privileges after February 2, 1993 (and are thus ineligible to be included on a contract market list in accordance with proposed Rule 1.62–T(a)) but on or before April 26, 1993. This proposed second no-action position would presumably affect fewer persons than the first.

This second no-action position would require the FT to file a Form 8–R and fingerprint card and proof of contract market trading privileges with NFA on or before April 26, 1993 that would indicate an FT could qualify for a TL, i.e., there could be no "yes" answers to the disciplinary history questions. The second no-action position would basically be intended to cover the brief period of time between the filing of the Form 8–R and the issuance of a TL by NFA. Since the no-action position also applies to the contract market granting trading privileges, the person eligible for the second no-action position should file a copy of his Form 8–R with the contract market so that, if there are no "yes" answers to the disciplinary history questions, the person can continue trading. In order for FTs to be eligible for TLs, the contract market granting trading privileges must have filed with NFA the certification referred to in Rule 3.40(c), discussed below.

Any person who is granted trading privileges after February 2, 1993 cannot trade after April 26, 1993 if he must answer "yes" to any of the disciplinary history questions. The Commission believes it is appropriate to treat these persons as applicants for registration and thus make them subject to the standards applicable for TLs generally. After publication of this release, contract markets and prospective FTs are on notice as to the Commission's proposals for implementing the Congressional mandate referred to above. The Commission is not imposing new standards for registration eligibility, but simply incorporating a new registrant category into the existing system which sets forth explicit standards. The Commission is proposing to establish the date of publication of the proposed rules as the demarcation point after which new entrants into the affected category of futures professionals should be treated as applicants for registration. This proposal is consistent with the Commission's treatment of other new registrant categories previously added to the CEAct.

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[10] The disciplinary history questions generally correspond to the grounds for statutory disqualification set forth in section 8a(2) and 8a(3) of the CEAct. They require disclosure of, among other things, a prior revocation or denial of registration, injunctions relating to futures or securities activity, felony convictions, certain misdemeanor convictions (such as those involving the commodities or securities laws, theft or fraud), a plea of *nolo contendere* to criminal charges of felonious conduct, self-regulatory organization disciplinary actions, and pending charges. A "yes" answer to a disciplinary history question may require furnishing of supplemental documents.

[11] Sections 8a(2)(G) and 8a(3)(G) of the CEAct, 7 U.S.C. 12a(2)(G) and 12a(3)(G), as amended by sections 208(d) and 208(g) of the 1992 Act, provide that registration can be denied if, among other things, an applicant willfully makes any materially false or misleading statement or omits to state any material fact in an application or any update thereto.

[12] See 57 FR 23136 (June 2, 1992) (amending the Commission's Part 3 rules concerning adverse actions to implement the Commission's decision of *In re Kangles and Chamberlain*, [1990–1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶24,855 (June 6, 1990) by providing equal treatment of applicants and registrants who are subject to statutory disqualifications).

C. Normal Application Procedures

An individual applying for registration as an FT who is granted trading privileges after April 26, 1993 or who otherwise is ineligible for the no-action relief discussed above would be subject to normal application procedures. In accordance with Rule 3.11, the applicant must file with NFA a Form 8–R, fingerprint card and proof of contract market trading privileges. The Commission is proposing to amend Rule 3.40 to permit such applicants to be granted TLs on essentially the same basis currently available to applicants for registration as associated persons (APs). The Commission believes that the primary rationale of the TL procedure should apply equally to FT applicants and AP applicants—to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check.[13] The Commission also notes that currently an applicant for registration as an FB can trade solely for his own account (i.e., act as an FT) while awaiting the granting of registration as an FB.[14]

The key determinant of the availability of a TL is set forth in Rule 3.40(a), which is that the disciplinary history portion of the applicant's Form 8–R contain no "yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) and 8a(3) of the CEAct. The Commission is also proposing to require that an FT applicant (and an FB applicant in order to act as an FT as well) would only be eligible for a TL if a certification signed by the chief operating officer of the contract market is on file with NFA. This certification would be modified from that contained in Form 8–R for APs to accommodate FTs and FBs seeking a TL, and would be based upon the contract market's review of an applicant's employment, credit and other history in connection with the granting of trading privileges. A contract market could submit a single statement on behalf of all FT (and FB) applicants with respect to the reviews undertaken in connection with the granting of trading privileges.

Under the TL procedure proposed for FT applicants, as is the case for AP applicants, an FT applicant would be required to wait until receiving a TL before beginning to engage in activity as an FT on the floor of a contract market or through an electronic trading system. If the applicant is eligible for a TL, it should be issued promptly. However, an incomplete application could delay issuance of a TL. The Commission also notes that if the applicant is ineligible for a TL because of a "yes" answer to a disciplinary history question, the FT applicant cannot commence acting as an FT unless and until registration is granted.

D. Matters Related to Registered FTs

Once a person is registered as an FT, he would remain registered indefinitely as long as he continuously maintains trading privileges at a contract market. However, an FT whose registration is suspended, or whose trading privileges at all contract markets where he had such privileges were suspended, would be prohibited from engaging in FT activities during the period of suspension. See proposed amendment to Rule 3.11(b). If an FT were to lose trading privileges at all contract markets where he had such privileges, he would be eligible to receive a TL to act as an FT if he were granted trading privileges at any contract market and he submitted a new Form 8–R and fingerprint card to NFA within sixty days of termination of the former trading privileges. In order to be eligible to receive a TL, the person's registration as an FT could not be suspended or revoked, he could not be subject to a pending adjudicatory proceeding under the Act or have been permitted to withdraw a registration application after institution of a proceeding under Rule 3.51 within the preceding year, he could not have any new "yes" answers to the disciplinary history questions on Form 8–R and the contract market that had granted trading privileges has made the certification referred to in Rule 3.40(c). If the person is eligible for a TL, the TL would be effective upon mailing of the Form 8–R and fingerprint card but the person would be subject to new fitness checks.[15]

If an FT were to lose trading privileges at all contract markets where he had such privileges and wanted to register as an FB at a contract market, the same procedures could apply only if that person had never answered "yes" to any of the disciplinary history questions on the registration application form. If such person had ever answered "yes" to such a question, even if he was previously registered as an FT despite the "yes" answer, he must apply for FB registration as if he were a new applicant. The Commission is proposing this so that such a person would be subject to reconsideration of his entire fitness history. This difference in procedures for FTs and FBs is intended to reflect the fact that the former are not permitted to deal with customers directly.[16] Accordingly, a person previously registered as an FT with a "yes" answer to a disciplinary history question at any time would be re-evaluated even as to previously disclosed matters before being granted FB registration. The Commission's reconsideration of any issue raised by such an answer would take into account that the person had previously answered "yes" and that such answer had been previously passed upon in a prior fitness inquiry. See proposed Rule 3.11(c)(1)(ii)(E).[17]

An FT who maintains trading privileges continuously at any contract market could be registered as an FB upon mailing of a Form 3–R to NFA only if he never had answered "yes" to any of the disciplinary history questions. If the Form 3–R procedure is applicable, no new fitness checks would be performed, but any conditions or restrictions applicable to the FT registration would remain applicable to the FB registration. For the reasons discussed above, if an FT wanted to become an FB at the same contract market but had never answered "yes" to disciplinary history questions, he would have to apply for such FB registration, like any new applicant, by filing a new Form 8–R and fingerprint card. The proposal would, however, allow a transfer in the opposite direction, i.e., from FB to FT, by means of a Form 3–R, so long as there is no break in the continuity of trading privileges (i.e., an FB has privileges only at Exchange A and desires to leave Exchange A at the close of Friday's trading session and start trading as an FT at Exchange B the following trading session).[18] A Form 3–R could also be used by an FT in the following situations: (1) To report the granting of trading privileges at an additional contract market; and (2) to move from one contract market to another as an FT with no break in the continuity of trading privileges.

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[13] 49 FR 8208, 8210 (March 5, 1984).

[14] After the rules for registration of FTs become effective, an applicant for registration as an FB would be eligible to receive a TL that would permit him to act as an FT pending a determination of his application for registration as an FB.

[15] An FB losing all trading privileges could be eligible for a TL to act as an FT at any contract market under similar conditions, as discussed *infra*.

[16] Gradations in fitness standards are not uncommon. For example, certain persons can retain registration yet be disqualified from service on self-regulatory organization governing boards or committees. See Commission Rule 1.63, 17 CFR 1.63.

[17] The procedures are similar to those now in place for an AP transferring to a new sponsoring firm. See Commission Rule 3.12(d), 17 CFR 3.12(d), *as amended by* 57 FR 23136, 23145–46.

[18] However, if there is any break in trading privileges, even for one day, a new Form 8–R and fingerprint card would be required.

The Commission is also proposing to amend Rule 3.31 to include FTs, applicants for registration as FTs and those operating as FTs pursuant to no-action relief under Rule 1.62–T. Rule 3.31 requires deficiencies, inaccuracies and changes to information on Form 8–R or a supplemental statement thereto to be promptly reported to NFA on Form 3–R. An FT will not, however, be required to review on a biennial basis the information pertaining to him in NFA's registration database, as is the case for an FB.[19] In this regard, the Commission is proposing that FTs be subject to a registration update procedure comparable to that for FBs (See Commission Rule 3.11(d) *as amended by* 57 FR 23136, 23140 and as proposed to be further amended below) but that the update cycle be every three years. The Commission, however, is requesting comment in view of the changes in procedure proposed herein whether it would be less burdensome for the update cycle to be the same as for FBs. Contract markets would in either case have an obligation under proposed amendments to Rule 1.62(b) to notify the Commission about section 8a(2) statutory disqualifications regarding FTs within ten business days of the date upon which the contract market first knows of such facts (unless such facts concern a Commission initiated enforcement action) and of terminations of FT privileges for cause under Commission Rule 9.11(c). See also Commission Rule 3.31(d).

The Commission is proposing technical, conforming changes to certain other rules to include references to FTs where there are references to FBs, including: Rule 3.4 (which provides that registration in one capacity, such as FT, does not include registration in any other capacity, such as FB, but that an FB need not also register as an FT to act as such); Rule 3.21 (fingerprint exemptions); Rule 3.33 (withdrawal from registration);[20] Appendix A to part 3 (interpretative statement with respect to fitness determinations); Rule 10.1 (Commission Rules of Practice) and Rule 145.6 (public availability of registration records).

The Commission further notes that FTs and those considering applying for registration as FTs should familiarize themselves generally with the Commission's part 3 registration rules. Even though some part 3 provisions do not appear in this release because amendment thereof is unnecessary, those provisions may nevertheless be applicable to FTs. The Commission notes particularly Rules 3.1 (definitions), 3.2 (registration processing by NFA; notification of registration), 3.22 (supplemental filings), and 3.30 (current address for purpose of delivery of communications from the Commission or NFA). The Commission further notes that although only certain portions of subparts B and C of part 3, which deal with TLs and denial, suspension or revocation of registration, respectively, are being amended, FTs and potential applicants should familiarize themselves with all of the provisions of these subparts, such as termination of a TL and the procedural aspects of an adverse registration action. Those provisions of the Commission's rules that do not appear in this release may be found at title 17 of the Code of Federal Regulations, as amended by 57 FR 23136 (June 2, 1992).

The Commission also wishes to note that it is proposing amendments to recently adopted Rules 3.60 and 3.64 to incorporate FTs and applicants for registration as FTs into the Commission's procedures for adverse registration actions and for lifting or modifying conditions or restrictions on registration.[21] As indicated above, FTs and potential FT applicants should familiarize themselves with those rules, among others. One aspect of the proposed amendments to Rules 3.60 and 3.64 would also affect FBs and FB applicants. Currently, an FB subject to conditions or restrictions on his registration can be supervised by another FB who meets certain criteria set forth in the rule.[22] Sponsors of conditionally registered APs or FBs usually are the registrant's employer. FTs, however, trade for their own accounts, and the ordinary supervisory relationships present for APs and FBs do not exist. In the absence of such routine supervisory relationships, the Commission has considered what other entities may be appropriate supervisors for conditional registration purposes. The contract market which has granted the FT trading privileges or the clearing member who handles the FT's account have existing relationships with the FT. The proposed amendments to Rule 3.60 would permit a conditioned or restricted FT to be supervised by the contract market that has granted trading privileges itself or by an officer of the FT's clearing member if such officer is registered or listed as a principal of a registrant under the Act, although a conditioned or restricted FB could continue to be supervised by another FB. A person barred from service on self-regulatory organization governing boards or committees under Rule 1.63 would also be barred from acting as a supervisor under the proposed amendments to Rule 3.60, as is currently the case for a supervisory FB. The Commission specifically requests comment as to how a program for supervision of a conditioned or restricted FT should be structured and whether other persons should be permitted to act to act as a supervisor of a conditioned or restricted FT.

The Commission is also proposing to add a new paragraph (1) to Rule 3.60 to provide that in addition to any action with respect to the undertaking itself, the failure of a supervisor to fulfill its obligations with respect to supervision or monitoring of *any* conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement may be deemed a violation of that rule. This rule would apply to sponsors of conditioned or restricted APs.

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[19] The Conference Committee Report states that: [W]hile current Commission rules require that floor brokers must renew their registration every two years, such frequent renewals are not needed to fulfill the purposes underlying the registration of floor traders. The central goal of requiring registration of floor traders is to assure that these individuals are subject to the same background fitness checks as other Commission registrants and to allow the Commission to act with respect to the person's registration in appropriate cases. The Conferees encourage the Commission to develop means of maintaining the up-to-date status of floor trader registrations that are less frequent than the system of two-year renewals required of floor brokers who execute purchases and sales for customer accounts.

See H.R. Rep. No. 978, 102d Cong., 2d Sess. 59 (1992).

[20] The Commission is proposing that FTs be permitted to request withdrawal from registration using a new Form 8–W. The current withdrawal form, Form 7–W, would remain applicable to firms requesting withdrawal, but any FT or FB requesting withdrawal would be required to use Form 8–W. The use of different forms for firm and individual withdrawal requests would be more appropriate and would parallel Form 7–R used by firms and Form 8–R used by individuals when applying for registration. This applies only to voluntary withdrawals and FTs or FBs will be required to file a copy of Form 8–W with each contract market where the FT has trading privileges. Where the contract market terminates trading privileges, notice of such termination is required to be provided to NFA within twenty days under Rule 3.31(d).

[21] 57 FR 23136, 23152–23155.

[22] The criteria for a supervisor in the proposed rule amendments are that such person not be subject to a pending adjudicatory proceeding pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the CEAct and not be barred from service on SRO boards or committees based on disciplinary history. See proposed amendments to Rule 3.60(b)(2)(i) (A) and (C). These proposed amendments are technical and conforming in nature, and the amendment to Rule 3.60(b)(2)(i) (A) is necessitated by section 209(a)(1) of the 1992 Act redesignating subsections (a) through (d) of section 6 of the CEAct as subsections (b) through (e), respectively. That 1992 Act provision also necessitates the amendments to Rules 1.10(j)(2)(ii), 3.12(d)(1)(iv) and 3.12(i)(1)(iv) proposed herein.

II. Matters Related to FBs

In addition to the ability to transfer from FB to FT status by means of a Form 3–R where there is no break in the continuity of trading privileges and the proposal to require FBs requesting withdrawal from registration to use Form 8–W instead of 7–W referred to above, the Commission is proposing certain other rule amendments applicable to FBs. Rule 3.40 would be amended to permit applicants for registration as an FB to receive a TL to act as an FT on essentially the same basis as an AP can receive a TL. Generally, TLs have not been available to FB applicants. The Commission's Division of Trading and Markets has previously granted no-action relief to a limited category of FB applicants who would trade only for the proprietary account of their employers pending the grant of registration, where the employer is not engaged in any public customer business, is not a vehicle for public participation in securities or commodity interests and does not sell partnership interests or other interests to the public.[23] The Commission recognizes that such relief is only available to a limited number of persons and believes that, in light of its experience in administering and overseeing registration of FBs, the fact that, as noted above, current FB applicants can act as FTs pending a decision on their FB registration, and the proposal to allow TLs for FTs, FB applicants should be eligible for TLs at least to act as FTs.[24]

In light of the proposal to permit TLs for FB applicants to act as FTs, the Commission is proposing to amend the special registration procedures under Rule 3.11(c) applicable when an FB's registration has terminated within the preceding sixty days and he seeks to register again as an FB. Currently, so long as the FB's registration has not been revoked or suspended, he would be granted registration upon mailing of a new Form 8–R and fingerprint card to NFA. An AP in somewhat similar circumstances under Commission Rule 3.12(d) only obtains a TL upon mailing of a new Form 8–R and fingerprint card. Since there have been no TLs for FB applicants, there has been no method to give an FB in these circumstances a TL and he was given a new registration, a more favorable result than for a similarly situated AP. Since the Commission is now proposing TLs for FB applicants to act as FTs, the Commission believes that an FB seeking re-registration as an FB within sixty days of termination of his previous registration should be treated similarly to an AP and eligible for a TL to act as an FT only upon mailing of a new Form 8–R and fingerprint card. In addition, even to be eligible for a TL to act as an FT, such an FB would have to meet standards similar to those of an AP under Rule 3.12(d):

(1) The person's registration as an FB could not be suspended or revoked;

(2) He could not be subject to a pending adjudicatory proceeding under the Act or have been permitted to withdraw a registration application after institution of a proceeding under Rule 3.51 within the preceding year;

(3) He could not have any new "yes" answers to the disciplinary history questions on Form 8–R; and

(4) The contract market that had granted trading privileges has made the certification necessary for a TL under Rule 3.40(c).

The Commission is also proposing to amend recently-adopted Rule 3.11(d) with respect to the biennial review of FB registration information.[25] The Commission has reviewed this new rule with a view toward minimizing any unnecessary costs and burdens entailed in compliance with the rule. Based upon this review, the Commission has determined to propose an amendment to Rule 3.11(d). The proposal states that NFA shall provide each FB with a printout of current data in NFA's registration database on a biennial basis and require that an FB make a filing with NFA only if the printed information is incorrect. In the case of incorrect information, the FB should indicate in writing what corrections need to be made. If no corrections are necessary, no further action by the FB would be required. Therefore, if an FB does not return the printout provided by NFA, the FB's registration would continue in effect and he would be deemed to have certified the current information as correct and not be deemed to have requested a withdrawal from registration unless NFA takes some further action.

The Commission also wishes to point out that all registrants and applicants for registration, including FBs, have an obligation under Rule 3.31 to report promptly, by means of a Form 3–R, any deficiency, inaccuracy or change in the registration information previously provided to NFA. This will continue to be the primary means used to maintain an accurate and current registration database for the benefit of all users.

III. Role of Contract Markets

As noted above, contract markets will have a key role in obtaining no-action relief for FTs with trading privileges as of on or before April 26, 1993 under Proposed Rule 1.62–T(a). The contract market will be required to submit a list of such persons to NFA, including name, date of birth, social security number and known statutory disqualifications under section 8a(2) of the CEAct, signed by the chief operating officer of the contract market, as well as a supplemental statement referred to above regarding persons subject to section 8a(2) statutory disqualifications by the effective date of final rules with respect to the first no-action procedure. We reiterate that these lists should *not* include registered FBs, but should include all FTs with trading privileges as of February 2, 1993, even if such FTs also have trading privileges at another contract market. This process is important to the contract market itself, because the no-action position would also affect the contract market. Under proposed amendments to Rule 1.62, a contract market will generally be required to bar from acting as an FT any person not registered or temporarily licensed as such. Thus, a person whose name is not included on the list referred to herein would be required to be barred from acting as an FT or the contract market would be subject to enforcement action. Commission staff will check trade register data against these lists to confirm compliance.

The Commission also notes, as stated above, that persons on the list who do not file a Form 8–R and fingerprint card within the time allotted will lose their no-action status and would then be required to be barred from acting as an FT by the contract market. Further, no-action status will terminate as to a person on the list if an interim order is issued by an ALJ under Proposed Rule 1.62–T(c) suspending the no-action position as to the FT.

The Commission is also proposing that in order for FTs and FBs to be eligible for TLs, the contract market that has granted trading privileges must file with NFA the certification under Rule 3.40(c) discussed above.

The Commission anticipates that beyond merely fulfilling their obligations under the rules, contract markets may provide valuable assistance to FTs and FT applicants in meeting their new registration obligations. Assistance in "getting it right the first time" should prove beneficial to all parties concerned and minimize the time and cost involved.

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[23] CFTC Advisory No. 92–1, [Current Binder] Comm. Fut. L. Rep. (CCH) ¶25,334 (July 10, 1992).

[24] The Commission is also proposing certain amendments to Rules 3.42 and 3.46 so that the bases for terminations of TLs for APs, FBs, FTs and guaranteed introducing brokers will be consistent and so that the Commission's rules and NFA's rules in this area will be consistent.

[25] 57 FR 23136, 23145.

The Commission is also proposing an amendment to Rule 1.62 to require each contract market to have in effect and enforce rules which require ethics training of FBs and FTs, as discussed more fully below.

IV. Role of NFA

As noted above, the Commission intends to authorize NFA to assume the responsibility to process applications for registration as an FT and, where appropriate, grant TLs and registration as an FT in accordance with the standards established by the CEAct and Commission rules promulgated thereunder. The Commission expects to issue a delegation order authorizing NFA to perform certain registration functions for FTs when it adopts final rules in this area. The Commission does not intend, however, to authorize NFA to deny, condition, suspend, restrict or revoke FT registration. NFA's authority with respect to FTs, then, will be similar to that currently in effect with respect to FBs, other than the authority with respect to TLs.[26]

The effect of a Commission order authorizing NFA to perform registration processing functions with respect to FTs would be that FT applicants and FTs would file all of their registration materials (Form 8–R, fingerprint card, proof of contract market trading privileges, supplemental information concerning disciplinary history, and Form 3–R) with NFA. Where it is appropriate for NFA to grant a TL or registration, it will do so.[27] However, if derogatory information is disclosed by the FT or applicant for registration as an FT, or if derogatory information is uncovered during the fitness checks, such information will be forwarded to the Commission. It would be the Commission's responsibility to review such information and, where appropriate, institute adverse actions that could lead to denying, conditioning, suspending, restricting or revoking FT registration. The Commission may provide guidance to NFA in the review of such information.

The Commission envisions that NFA, like the contract markets, would serve as a resource for FTs and FT applicants in meeting their new registration obligations. The NFA prepares the necessary forms referred to above as well as booklets regarding the registration process. These can be obtained through NFA's Information Center, which can be reached at 800–621–3570 (outside Illinois), 800–572–9400 (inside Illinois), or 312–781–1410. Information Center personnel are also available to answer individual questions.

The Commission's staff has discussed with NFA the need to make conforming changes in registration forms and processing procedures.[28] The Commission expects NFA to proceed expeditiously to adopt conforming amendments to its registration rules to take account of final Commission rules in this regard.

V. Ethics Training for Registrants

Section 210 of the 1992 Act adds a new paragraph (b) to section 4p of the CEAct mandating ethics training for registrants.[29] That provision states that the Commission shall issue regulations to require new registrants, within 6 months after receiving such registration, to attend a training session, and all other registrants to attend periodic training sessions, to ensure that registrants understand their responsibilities to the public under [the CEAct], including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable Federal or State law, rule or regulation.

To implement this provision, the Commission is proposing new Rule 3.34. That rule would provide that any individual registered as a futures commission merchant (FCM), introducing broker (IB), commodity trading advisor (CTA), commodity pool operator (CPO), leverage transaction merchant (LTM), AP, FB or FT must attend ethics training directed towards the responsibilities described in section 210 of the 1992 Act.[30] Some further guidance as to the types of issues which should be addressed are contained in the list of the International Conduct of Business Principles[31] developed by Working Party No. 8 of the Technical Committee of the International Organization of Securities Commissions, which was adopted in June, 1990. Training also should be designed to focus on those functions performed by the category of registrant receiving instruction. The Commission is also proposing that an individual's initial training be at least four hours in duration and that periodic training thereafter be at least a one-hour session every three years. The training must be provided by a self-regulatory organization as defined in Commission Rule 1.3(ee), an entity that meets the criteria set forth in section 501(c)(3) of the Internal Revenue Code (such as the Futures Industry Institute,[32] an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, or a trade association or other person approved by the Commission who offers a program for this purpose. The Commission is, however, requesting comment on whether additional criteria for vendors should be developed, or whether vendors' programs should be subject to audit.

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[26] 51 FR 34490 (September 29, 1986). If the Commission adopts TL procedures for FBs as proposed, it would also authorize NFA to grant TLs to applicants for registration as FBs to act as FTs and to terminate such TLs pending a registration determination where appropriate.

[27] In order to grant TLs to applicants for registration as FTs or FBs, NFA must have on file from the contract market that has granted trading privileges a certification as to its review of an applicant's employment, credit and other history in connection with the granting of trading privileges, as discussed *supra*.

[28] The basic changes necessary to Form 8–R are to include a reference to FTs. For the time being, applicants for FT registration could use existing forms and mark at the top thereof "Floor Trader Application."

[29] Section 210 of the 1992 Act identified the class of persons subject to the ethics training requirement as "registrants." The Conference Committee Report also refers to "registrants" in its discussion of the ethics training requirement. See H.R. Rep. No. 978, 102 Cong., 2d Sess. 60 (1992).

Commission registrants include both natural persons and firms. The Commission is interpreting the term "registrant" as used in Section 210 to mean natural persons including APs and principals of firms to the extent that such principals are required to be registered as APs pursuant to the Commission's interpretive statement concerning the scope of the registration requirement of Section 4k of the Act as it applies to all individuals in the line of supervisory authority with respect to persons required to register as APs under the Act. See Interpretative Statement Regarding the Scope of the Term "Supervision" in the Associated Person Registration Requirement, 45 FR 54032 (August 14, 1980).

[30] These responsibilities are to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation. In this connection, reference to Commission interpretations and decisions with respect to specific fact situations may be helpful.

[31] These principles are: To act honestly and fairly and with due skill, care and diligence in the best interests of customers and the integrity of the market; to have and employ effectively the resources and procedures which are needed for the proper performance of business activities; to know your customer's financial situation and investment experience; to disclose relevant material information in dealings with customers; and to avoid conflicts of interests.

[32] These criteria include: an entity organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition (subject to certain conditions), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not attempt to participate or intervene in political campaigns.

The Commission recognizes that it may be difficult for registrants located substantial distances from major metropolitan areas to attend in-person training sessions offered by appropriate vendors without incurring significant expense or business disruption. It would be acceptable for such registrants to fulfill their ethics training obligation through a computerized "self-training" program, the viewing of videotapes or other materials provided by appropriate vendors designed to facilitate ethics training for which completion can be substantiated without undue burdens on registrants. Such substantiation contemplates, for example, an interactive computerized training program that requires the registrant's participation and return of such computer disk to the vendor for verification of such participation and the issuance of a certificate so signifying by the vendor to the registrant. The registrant would have to maintain that certificate as a record subject to audit as discussed below. The Commission also proposes to recognize training programs offered on an in-house basis by registered firms if such programs are offered pursuant to a plan of instruction developed by a self-regulatory organization, 501(c)(3) institution or other entity specified in the rule.

As to the time period within which such training must be taken, the Commission is proposing a general framework of six months following registration, as mandated by the 1992 Act, and thereafter every three years. However, several exceptions to these requirements would be provided. If a person is registered when Rule 3.34 becomes effective, or if a person becomes registered after Rule 3.34 becomes effective and has been registered at any time during the two-year period immediately preceding the date such individual's most recent application for registration was received by NFA,[33] the person would not be considered a "new" registrant and, accordingly, would be subject only to the periodic three-year training requirement.

Any person who would be considered a new registrant generally would be required to attend ethics training within six months after receiving such registration. However, the Commission is proposing that if a new registrant attended ethics training within six months prior to applying for registration, the requirement for training within six months after being granted registration would be considered satisfied. The Commission is making this proposal for the following reasons. The preparation for the Series 3 test and the items to be covered by ethics training will tend to overlap to some degree. Preparation for that test will occur shortly before registration is granted in most cases and the Commission believes if such preparation and ethics training are taken on a fairly contemporaneous basis, attending ethics training within what would probably be about one year's time would ordinarily be unnecessary. The Commission anticipates that providers of Series 3 test preparation may also wish to offer ethics training and that it may be convenient to attend both training classes at about the same time. This is especially true for those who may be required to travel a substantial distance to attend these training sessions who could thus fulfill the ethics training requirement without making an additional trip.[34]

The Commission is also proposing to require maintenance of evidence of attendance at ethics training in accordance with Commission Rule 1.31. An individual registered as an FCM, IB, CTA, CPO, or LTM would have to maintain the evidence himself. In the case of an AP, each of the AP's sponsors would have to maintain such evidence. In the case of an FB or FT, each contract market that has granted trading privileges to the FB or FT would be required to maintain such evidence itself. Evidence of attendance could consist of a certificate of attendance for the requisite number of hours from an appropriate vendor. Where a firm decides that it would be more efficient and economical to use materials from an appropriate vendor in-house rather than having its APs attend the training at the vendor's site, the firm must retain evidence it has obtained the necessary program materials from an appropriate vendor and taken steps to conduct in-house training on the basis of these materials as required by Rule 3.34. The evidence of ethics training would be subject to inspection during audits of firms required to be conducted by NFA and other self-regulatory organizations (SROs) and during reviews of contract market operations. It would be part of a firm's supervisory obligation to assure that training has been attended by APs and failure of an AP to attend as required could subject both the AP and his sponsors to enforcement action. Similarly, a contract market has an affirmative obligation under proposed amendments to Rule 1.62 to assure its FBs and FTs receive appropriate ethics training and failure of an FB or FT to do so could result in enforcement action against the FB or FT and the contract market.

Although the Commission is only proposing that evidence of ethics training be maintained subject to inspection as discussed above, the Commission specifically requests comment concerning a requirement that, in addition to the recordkeeping requirement, evidence of ethics training be filed with the Commission and/or, as appropriate, SRO.

In connection with the ethics training requirement, the Commission specifically requests comment as to whether firms should be permitted to provide their own in-house training program for APs in lieu of being required to use materials of an approved vendor and, if so, as to what minimum standards should apply to in-house programs. The Commission is also requesting comment as to whether further guidance should be provided as to other ethics training programs to assure compliance with the statutory mandate of the 1992 Act.

VI. Suspension of Registrants Charged With Felonies

Section 227 of the 1992 Act creates a new section 8a(11) of the CEAct, which authorizes the Commission to adopt rules permitting the Commission to suspend or modify the registration of any registrant under the CEAct who is charged with the commission of or participation in a felony involving a violation of the CEAct or of any other provision of Federal or state law that would reflect on the honesty or the fitness of the registrant to act as a fiduciary, if the Commission also determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. The 1992 Act provides that the Commission shall have the burden of showing that the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. Such a requirement differs from the burden associated with statutory disqualifications under sections 8a(2) and 8a(3) of the CEAct which, if shown, shift the burden to the applicant or registrant to demonstrate why his registration would not pose a substantial risk to the public. Unlike other suspensions of registration, which are limited to six months, a suspension or modification of registration under new section 8a(11) of the CEAct shall remain in effect until the information, indictment or complaint forming the basis for the suspension or modification is disposed of or until the suspension or modification is terminated by the Commission.

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[33] This two-year "window" corresponds to the time parameters set by NFA requiring re-passing of the National Commodity Futures Examination (Series 3 test) in order to be granted registration. NFA Registration Rule 401.

[34] The Commission is thus interpreting the six month requirement of the Act to permit training within six months prior to applying for registration or six months after registration is granted.

The Commission is proposing new Rule 3.56 to implement this authority. The rule would provide for a hearing chiefly on written submissions, although the Administrative Law Judge (ALJ) shall grant an oral hearing upon the written request of the registrant unless the Division of Enforcement can demonstrate that there is no genuine issue of material fact to be determined. As part of the written submissions, a registrant charged with a felony could present a Supplemental Sponsor Certification Statement signed by an appropriate sponsor, floor broker or, in the case of an FT, supervising registrant or contract market in support of having his registration modified rather than suspended. The proposed Rule 3.56 is modeled on certain portions of Rules 3.55 and 3.60 as well as section 227 of the 1992 Act, with notice to the registrant, an opportunity for response by the registrant, and an opportunity for reply by the Division of Enforcement to the registrant's response. The Commission envisages a streamlined procedure and is proposing that an ALJ make his determination on such a matter within thirty days after the last written submission or oral hearing.

The Commission reminds all registrants that, if they are indicted, they are required to update their registration applications by means of a Form 3–R in accordance with Commission Rule 3.31 to note that they have a "yes" answer in response to Question 13 on Form 7–R or Question 16 on Form 8–R. Appropriate supplemental documentation should be supplied.

VII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rules discussed herein will affect IBs, FCMs, APs, FBs, FTs, CTAs, CPOs and LTMs. The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such small entities in accordance with the RFA.[35] FCMs, registered CPOs and LTMs have been determined not to be small entities under the RFA. With respect to the other registrant categories that may be affected by these rules, the Commission is carrying out Congressional mandates by proposing these rules. The Commission is proposing to incorporate registration of FTs into the existing registration structure applicable to other registrants. By proposing the temporary no-action positions referred to herein, as well as TLs, without biennial review of information,[36] the Commission is attempting to accomplish registration of FTs in the manner that is least disruptive to ongoing businesses and most efficient and expeditious, consistent with the public interest.

Ethics training is also being proposed pursuant to Congressional mandate. The Commission believes its proposed schedule for periodic training and the ability to obtain training materials from an appropriate vendor in lieu of attendance at the vendor's site should reduce the potential impact of compliance with the ethics training requirement on small entities.

Suspension of registrants charged with felonies is another proposal put forth in response to Congressional mandate. The burden is on the Commission to demonstrate that continued registration of such person does, or is likely to, pose a threat to the public interest or threaten to impair public confidence in any market regulated by the Commission, so the rule being proposed under this Congressional authority should not impose an undue burden on small entities.

Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the rules proposed herein will not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comments from any person or entity which believes that these proposed rules and rule amendments would have a significant impact on its operations.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501–3512 (1988), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rules and rule amendments and their associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these proposed rules and rule amendments, is as follows:

Average Burden Hours per Response—0.80.

Number of Respondents—5,980.

Frequency of Response—On Occasion and Triennially.

The burden associated with these specific rules, as proposed to be amended, is as follows:

Average Burden Hours Per Response—0.10.

Number of Respondents—5,800.

Frequency of Response—On Occasion and Triennially.

Persons wishing to comment on the information which would be required by these rules as amended should contact Gary Waxman, Office of Management and Budget, room 3220, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures.

17 CFR Part 3

Brokers, Registration.

17 CFR Part 10

Administrative practice and procedure.

17 CFR Part 145

Freedom of information.

Accordingly, the Commission, pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 1a, 4c, 4e, 4f, 4g, 4p, 6d, 8a and 17 thereof (7 U.S.C. 2, 6c, 6e, 6f, 6g, 6p, 13a–2, 12a and 21), as amended by the Futures Trading Practices Act of 1992, Public Law 102–546, hereby proposes to amend parts 1, 3, 10 and 145 of title 17 of the Code of Federal Regulations as follows:

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[35] 47 FR 18618–18621 (April 30, 1982).

[36] See H.R. Rep. No. 978, 102 Cong., 2d Sess. 59 (1992).

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24, unless otherwise stated.

2. Section 1.3 is proposed to be amended by revising paragraph (x) to read as follows:

§ 1.3 Definitions.

* * * * *

(x) *Floor trader.* This term means any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases or sells solely for such person's own account, or has been authorized by a contract market to purchase or sell for such person's own account, any commodity for future delivery on or subject to the rules of any contract market and shall include any person required to register as a floor trader under the Act by virtue of part 33 of this chapter.

* * * * *

3. Section 1.10 is proposed to be amended by revising paragraph (j)(2)(ii) to read as follows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

* * * * *

(j) * * *

(2) * * *

(ii) There is filed against the futures commission merchant an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of this chapter.

* * * * *

4. Section 1.62 is proposed to be revised to read as follows:

§ 1.62 Contract market requirement for floor broker and floor trader registration.

(a)(1) Each contract market shall adopt, maintain in effect, and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 and which provide that no person in or surrounding any pit, ring, post, or other place provided by such contract market for the meeting of persons similarly engaged:

(i) Shall purchase or sell for any other person any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered as a floor broker; or

(ii) Shall purchase or sell solely for such person's own account, any commodity for future delivery, or any commodity option, on or subject to the rules of that contract market, unless such person is registered or has been granted a temporary license as a floor trader, or has been granted a temporary license as a floor broker to act as a floor trader, in accordance with section 4f of the Act and § 3.11 or § 3.40 of this chapter, and such registration has neither been revoked nor withdrawn: *Provided, however,* That such rules must provide that a floor broker or floor trader will be prohibited from engaging in activities requiring registration under the Act or from representing such floor broker or floor trader is a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such person's registration.

(2) Each contract market shall also adopt, maintain in effect and enforce rules which have become effective pursuant to section 5a(12) of the Act and § 1.41 which provide for requests for withdrawal of floor broker or floor trader registration using Form 8–W in accordance with § 3.33 of this chapter, which require training of floor brokers and floor traders in accordance with § 3.34 of this chapter and which require review of registration information by floor brokers every two years and by floor traders every three years in accordance with § 3.11(d) of this chapter.

(b) Each contract market must notify the Commission of any facts regarding a floor broker or floor trader or an applicant for registration as a floor broker or floor trader, or a floor trader whose name appears on a list submitted in accordance with § 1.62–T(a) in order to qualify for a temporary no-action position thereunder, who has been granted trading privileges at the contract market, which are set forth as statutory disqualifications in section 8a(2) of the Act (unless such facts result from an enforcement action filed by the Commission) or which are terminations of floor trading privileges for cause under § 9.11(c) of this chapter within ten business days of the date upon which the contract market first knows of such facts. Notice to the Commission shall be sufficient if the contract market gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, DC office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581).

5. Section 1.62–T is proposed to be added to read as follows:

§ 1.62–T No-action positions with respect to floor traders.

(a) Notwithstanding any other provision of law, if a contract market submits to the National Futures Association by April 26, 1993 a list of floor traders who were granted trading privileges on that contract market on or before February 2, 1993, and whose floor trading privileges remain in effect, which includes the name, date of birth and social security number of such floor traders, as well as facts regarding such floor traders which are set forth as statutory disqualifications in section 8a(2) of the Act if the contract market knows of such facts, and such list is signed by the chief operating officer of the contract market, the Commission will not commence an enforcement proceeding against a floor trader on that list based solely upon the floor trader's failure to register under section 4f of the Act and § 3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under § 1.62 for failing to bar such floor trader from operating as such: *Provided, however,* that for those floor traders listed as to whom the contract market knows of facts set forth as statutory disqualifications in section 8a(2) of the Act, the no-action position contained in paragraph (a) of this section will only apply if the contract market submits a supplemental statement signed by the chief operating officer of the contract market stating that, in light of the Congressional mandate requiring registration of floor traders under the Act, the contract market understands its responsibility to take affirmative action to conduct appropriate surveillance of such floor traders. These no-action positions shall expire upon the floor's trader being granted or denied registration under the Act, or on May 26, 1993, whichever comes earliest: *Provided, however,* that if the floor trader files an application for registration in accordance with § 3.11 of this chapter with the National Futures Association by May 26, 1993, the no-action positions for the floor trader and the contract market as to such floor trader will be extended until the floor trader is granted or denied registration under the Act, unless an Administrative Law Judge issues an interim order suspending the no-action position as to such floor trader in accordance with paragraph (c) of this section.

(b) Notwithstanding any other provision of law, if a floor trader who was granted trading privileges on a contract market after February 2, 1993 but on or before April 26, 1993, files an application for registration as a floor trader in accordance with § 3.11 of this chapter with the National Futures Association on or before April 26, 1993 demonstrating that the floor trader would qualify to receive a temporary license under § 3.40 of this chapter, and the contract market granting trading privileges has filed with the National Futures Association the certification referred to in § 3.40(c) of this chapter, the Commission will not commence an enforcement proceeding against such a floor trader based solely upon the floor trader's failure to register under section 4f of the Act and § 3.11 of this chapter, nor will the Commission commence an enforcement proceeding against the contract market under § 1.62 of this part for failing to bar such floor trader from so operating. These no-action positions for the floor trader and the contract market shall expire upon the floor trader's being granted a temporary license under the Act.

(c) *Suspension of no-action position under paragraph (a) of this section pursuant to section 8a(2) of the Act.*—(1) *Notice.* On the basis of information obtained by the Commission, the Commission may at any time serve notice upon a floor trader whose name appears on a list submitted in accordance with paragraph (a) of this section that:

(i) The Commission alleges and is prepared to prove that such floor trader is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the floor trader is subject to such statutory disqualification; and

(iii) If the floor trader is found to be subject to a statutory disqualification, the no-action status of the floor trader under paragraph (a) of this section may be suspended and the floor trader ordered to show cause why registration should not be denied.

(2) *Written submission.* If the floor trader wishes to challenge the accuracy of the allegations set forth in the notice, the floor trader may submit written evidence limited to the type described in § 3.60(b)(1) of this chapter. Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the floor trader.

(3) *Reply.* Within ten days of receipt of any written submission filed by the floor trader, the Division of Enforcement may serve upon the floor trader and file with the Hearing Clerk a reply.

(4) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the floor trader is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the floor trader in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(5) *Suspension and order to show cause.* (i) If the floor trader is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the floor trader's written submission, if any, and any reply thereto, shall issue an interim order suspending the no-action status of the floor trader under paragraph (a) of this section and requiring the floor trader to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the floor trader should not be denied. The no-action status of the floor trader shall be suspended, effective five days after the order to show cause is served upon the floor trader in accordance with § 3.50(a) of this chapter, until a final order with respect to the order to show cause has been issued; *Provided, That* if the sole basis upon which the floor trader is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the floor trader shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however,* That in no event shall the floor trader's no-action status be suspended for a period to exceed six months.

(ii) If the floor trader is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect and the Hearing Clerk shall promptly serve a copy of such order on the floor trader, the Division of Trading and Markets and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the floor trader in accordance with the provisions of § 3.50(a) of this chapter unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (d) of this section.

(6) *Further proceedings.* If an order to show cause is issued pursuant to paragraph (c)(5)(i) of this section, further proceedings on such order shall be conducted in accordance with the provisions of § 3.60(b) through (j) of this chapter.

PART 3—REGISTRATION

6. The authority citation for part 3 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 18, 19, 21 and 23.

7. The authority citations at the end of each section and at the beginning of each subpart and Appendix A are proposed to be removed.

Subpart A—Registration

8. Section 3.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.4 Registration in one capacity not included in registration in any other capacity.

(a) Except as may be otherwise provided in the Act or in any rule, regulation, or order of the Commission, each futures commission merchant, floor broker, floor trader, associated person, commodity trading advisor, commodity pool operator, introducing broker and leverage transaction merchant must register as such under the Act. Registration in one capacity under the Act shall not include registration in any other capacity: *Provided, however,* that a registered floor broker need not also register as a floor trader in order to engage in activity as a floor trader.

* * * * *

9. Section 3.11 is proposed to be revised to read as follows:

§ 3.11 Registration of floor brokers and floor traders.

(a) *Application for registration.* (1) Application for registration as a floor broker or floor trader must be on Form 8–R, completed and filed with the National Futures Association in accordance with the instructions thereto. Each Form 8–R filed in accordance with paragraph (a) of this section must be accompanied by the fingerprints of the applicant on a fingerprint card provided for that purpose by the National Futures Association, except that a fingerprint card need not be filed by any applicant who has a current Form 8–R on file with the Commission or the National Futures Association.

(2) An applicant for registration as a floor broker or floor trader will not be registered as a floor broker or floor trader, respectively, or granted a temporary license to act as a floor trader, unless the applicant has been granted trading privileges by a board of trade designated as a contract market by the Commission.

(3) When the Commission or the National Futures Association determines that an applicant for registration as a floor broker or floor trader is not disqualified from such registration or temporary license, the National Futures Association will provide notification in writing to the applicant and to any contract market that has granted the applicant trading privileges that the applicant's registration as a floor broker or floor trader, respectively, or temporary license to act as a floor trader, is granted.

(b) *Duration of registration.* A person registered as a floor broker or floor trader in accordance with paragraphs (a) or (c) of this section, and whose registration has neither been revoked nor withdrawn, will continue to be so registered unless such person's trading privileges on all contract markets have ceased. Such person will be prohibited from engaging in activities requiring registration under the Act or from representing himself to be a registrant under the Act or the representative or agent of any registrant during the pendency of any suspension of such registration or of all such trading privileges. In accordance with § 3.31(d), each contract market that has granted trading privileges to a person who is registered, or has applied for registration, as a floor broker or floor trader, must notify the National Futures Association within twenty days after such person's trading privileges on such contract market have ceased.

(c) *Special registration for certain persons where there is a break in continuity of trading privileges.* (1)(i) *Floor broker.* Any person whose registration as a floor broker has terminated within the preceding sixty days and who is granted trading privileges by any contract market will be granted a temporary license to act in the capacity of a floor trader upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor broker on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (C)) that contains conditions identical to those agreed to by the previous sponsor, provided that:

(A) Such person's registration as a floor broker is not suspended or revoked;

(B) There is no pending adjudicatory proceeding against such person under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51;

(C) The Disciplinary History questions (items 14–18) of such person's registration application contain no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(D) The contract market that has granted trading privileges has made the certification required under § 3.40(c).

(ii) *Floor trader.* Any person whose registration as a floor trader has terminated within the preceding sixty days and who is granted trading privileges by any contract market will be granted a temporary license to act in the capacity of a floor trader upon mailing to the National Futures Association of a Form 8–R completed and filed in accordance with the instructions thereto, accompanied by the fingerprints of the floor trader on a fingerprint card provided by the National Futures Association for that purpose and, if applicable, a Supplemental Sponsor Certification Statement signed by the new sponsor (who must meet the requirements set forth in § 3.60(b)(2)(i) (A) and (C) that contains conditions identical to those agreed to by the previous sponsor, provided that:

(A) Such person's registration as a floor trader is not suspended or revoked;

(B) There in no pending adjudicatory proceeding against such person under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55 or 3.60 and, within the preceding twelve months, the Commission has not permitted the withdrawal of an application for registration in any capacity after initiating the procedures provided in § 3.51;

(C) The Disciplinary History questions (items 14–18) of such person's registration application contain no "yes" answers, or none except those arising from a matter which already has been disclosed in connection with a previous application for registration in any capacity if such registration was granted, or which was disclosed more than thirty days previously in an amendment to such application; and

(D) The contract market that has granted trading privileges has made the certification required under § 3.40(c) of this part.

(E) If such person is seeking registration as a floor broker, he will be granted a temporary license to act in the capacity of floor trader under the same conditions set forth in paragraph (c)(1)(ii) introductory text and paragraphs (c)(1)(ii) (A)–(D) of this section, except that, in lieu of the condition set forth in paragraph (c)(1)(ii)(C) of this section, such person's previously filed Form 8–R and Forms 3–R, if any, must contain no "Yes" answers to the Disciplinary History questions (items 14–18) and his new Form 8–R also must contain no "Yes" answers to the Disciplinary History questions (items 14–18).

(F) A temporary license received in accordance with paragraph (c)(1) of this section shall be subject to the provisions of §§ 3.41, 3.42 and 3.43.

(2) *Transfer of registration category where there is no break in continuity of trading privileges.* (i) Any person registered as a floor broker who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 will be registered as, and in the capacity of, a floor trader upon mailing to the National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, accompanied by evidence of the granting of trading privileges at the new contract market, if applicable. Any person changing registration categories in accordance with this paragraph shall remain subject to any conditions or restrictions applicable to the previous registration.

(ii) Any person registered as a floor trader who continuously maintains trading privileges at any contract market that has made the certification required under § 3.40 of this part will be registered as, and in the capacity of, a floor broker upon mailing to the

National Futures Association of a Form 3–R completed and filed in accordance with the instructions thereto indicating the intention to change registration category, provided his previously filed Form 8–R and any Forms 3–R, as well as the Form 3–R indicating the intention to change registration category, contain no "Yes" answers to the Disciplinary History questions (items 14–18), accompanied by evidence of the granting of trading privileges at the new contract market, if applicable. Any person changing registration categories in accordance with this paragraph shall remain subject to any conditions or restrictions applicable to the previous registration.

(d) *Review of floor broker or floor trader registration information.* Every two years in the case of a floor broker and every three years in the case of a floor trader, the National Futures Association shall provide each such registrant with a printout of information contained in the National Futures Association's registration database regarding such registrant. This printout shall be promptly reviewed by the floor broker or floor trader. If the information contained therein is correct, the floor broker or floor trader need not take any further action. If the information contained therein is incorrect, the floor broker or floor trader must indicate what changes are necessary and return the printout promptly to the National Futures Association with appropriate changes. The failure of a registrant to return the printout will be deemed to constitute recertification of the registration information contained therein.

10. Section 3.12 is proposed to be amended by revising paragraphs (d)(1)(iv) and (i)(1)(iv) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators and leverage transaction merchants.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

* * * * *

(i) * * *

(1) * * *

(iv) Whether there is a pending adjudicatory proceeding under sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act or §§ 3.55, 3.56 or 3.60 of if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in § 3.51 and, if so, that the sponsor has been given a copy of the notice of the institution of a proceeding in connection therewith;

* * * * *

11. Section 3.21 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 3.21 Exemptions from fingerprinting requirements in certain cases.

* * * * *

(b) * * *

(2) *With respect to fingerprints of a floor broker or floor trader.* The applicant for registration; or

* * * * *

12. Section 3.31 is proposed to be amended by revising the first sentence of paragraph (a), and paragraphs (b) and (d) to read as follows:

§ 3.31 Deficiencies, inaccuracies, and changes, to be reported.

(a) Each applicant or registrant as a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in Form 7–R or Schedule D of Form 7–R which no longer renders accurate and current the information contained therein. * * *

(b) Each applicant or registrant as a floor broker, floor trader or associated person, each person who qualifies for the temporary no-action positions under § 1.62–T of this chapter, and each principal of a futures commission merchant, commodity trading advisor, commodity pool operator, introducing broker, or leverage transaction merchant must, in accordance with the instructions thereto, promptly correct any deficiency or inaccuracy in the Form 8–R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8–R or supplemental statement. Each such correction must be made on Form 3–R and must be prepared and filed in accordance with the instructions thereto.

* * * * *

(d) Each contract market that has granted trading privileges to a person who is registered, has received a temporary license, or has applied for registration as a floor broker or floor trader, or whose name appears on a list of floor traders submitted in accordance with § 1.62–T(a) of this chapter or who has submitted an application for registration under § 1.62–T(b) of this chapter in order to qualify for temporary no-action positions thereunder, must notify the National Futures Association within twenty days after such person has ceased having trading privileges on such contract market.

* * * * *

13. Section 3.33 is proposed to be amended by revising paragraph (a) introductory text, the first sentence of paragraph (b) introductory text, paragraph (e) and paragraph (f) introductory text to read as follows:

§ 3.33 Withdrawal from registration.

(a) A futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, floor broker or floor trader may request that its registration be withdrawn in accordance with the requirements of this section if:

* * * * *

(b) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, or leverage transaction merchant must be made on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader must be made on Form 8–W, completed and filed with National Futures Association in accordance with the instructions thereto. * * *

* * * * *

(e) A request for withdrawal from registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant on Form 7–W, and a request for withdrawal from registration as a floor broker or floor trader on Form 8–W, must be sent to the National Futures Association, Registration Office, 200 West Madison Street, Chicago, Illinois 60606 and a copy of such request must be sent by the National Futures Association within three business days of the receipt of such withdrawal request to the Commodity Futures Trading Commission, Division of Trading and Markets, Registration Unit, 2033 K Street, NW., Washington, DC 20581. In addition, any floor broker or floor trader requesting withdrawal from registration must file a copy of his Form 8–W with each contract market that has granted him trading privileges. Within three business days of any determination by the National Futures Association under § 3.10(d) of this part to treat the failure by a registrant to file an annual Form 7–R as a request for withdrawal, the National Futures Association shall send the Commission notice of that determination.

(f) Except as otherwise provided in § 3.10(d), a request for withdrawal from registration will become effective on the thirtieth day after receipt of such request by the National Futures Association, or earlier upon written notice from the National Futures Association (with the written concurrence of the Commission) of the granting of such request, unless prior to the effective date:

* * * * *

14. Section 3.34 is proposed to be added to read as follows:

§ 3.34 Mandatory ethics training for registrants.

(a) Any individual registered as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person, floor broker or floor trader under the Act must attend ethics training to ensure that he understands his responsibilities to the public under the Act, including responsibilities:

(1) To observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or other self-regulatory organization, or any other applicable federal or state law, rule or regulation;

(2) To act honestly and fairly and with due skill, care and diligence in the best interests of his customers and the integrity of the market;

(3) To have and employ effectively the resources and procedures which are needed for the proper performance of his business activities;

(4) To know the financial situation and investment experience of his customers;

(5) To disclose material information in dealings with his customers; and

(6) To avoid conflicts of interest.

(b) The training required by this section must:

(1) Be at least four hours in duration for an individual's initial session and one hour in duration for subsequent periodic sessions;

(2) Provide a description of the requirements of the Act and rules promulgated thereunder concerning treatment of customer orders and handling of customer business;

(3) Cover the subject matter referred to in paragraph (a) of this section, as it pertains to the registration category in which the person is registered or seeking registration; and

(4) Be provided by or pursuant to a program of training (including videotape or electronic presentation) sponsored by a self-regulatory organization, an entity that meets the criteria set forth in section 501(c)(3) of the Internal Revenue Code, an entity accredited to conduct continuing education programs by a state professional licensing authority in the fields of law, finance, accounting or economics, or a trade association or other person the program of which is approved by the Commission for this purpose.

(c) Any individual granted registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant, associated person or floor broker under the Act after the effective date of this section who has not been duly registered under the Act at any time during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, must attend training referred to in this section within six months after being granted registration, and thereafter every three years. Any individual registered as a floor trader under the Act after the effective date of this section who has not been duly registered under the Act during the two-year period immediately preceding the date such individual's application for registration was received by the National Futures Association, and whose name did not appear on a list submitted by a contract market to the National Futures Association in accordance with § 1.62–T(a) of this chapter or who did not file his registration application in accordance with § 1.62–T(b) of this chapter must attend training within six months after being granted registration, and thereafter every three years. All other individual registrants must attend the training referred to in this section every three years. The requirement that new registrants attend ethics training within six months of being granted registration can be satisfied if such training is taken within six months prior to the registrant having filed his application for registration.

(d) Evidence of attendance at ethics training, including evidence of completion of videotape or electronic training, must be maintained in accordance with § 1.31 of this chapter by:

(1) An individual registered as a futures commission merchant, introducing broker, commodity trading advisory, commodity pool operator, or leverage transaction merchant;

(2) In the case of an associated person, by each sponsor of the associated person; and

(3) In the case of a floor broker or floor trader, by each contract market that has granted trading privileges to the floor broker or floor trader.

Subpart B—Temporary Licenses

15. Section 3.40 is proposed to be amended by revising the section heading, the introductory text of the section and paragraph (c) to read as follows:

§ 3.40 Temporary licensing of applicants for associated person, floor broker or floor trader registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an associated person, floor broker (to act in the capacity of a floor trader) or floor trader upon the contemporaneous filing with the National Futures Association of:

* * * * *

(c) If the applicant is applying for registration as an associated person, the sponsor's certification required by § 3.12(c), and if the applicant is applying for registration as a floor broker or floor trader, evidence that the applicant has been granted trading privileges by a contract market that has filed with the National Futures Association a certification signed by its chief operating officer with respect to the review of an applicant's employment, credit and other history in connection with the granting of trading privileges.

* * * * *

16. Section 3.41 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.41 Restrictions upon activities.

(a) Subject to the provisions of § 3.42 of this part and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person, and an applicant for registration as a floor broker or floor trader who has received written notification that a temporary license has been granted may act in the capacity of a floor trader.

* * * * *

17. Section 3.42 is proposed to be amended by revising paragraphs (a)(2), (a)(4), (a)(5), and (a)(6), by adding paragraphs (a)(7) and (a)(8), and by revising paragraph (b) to read as follows:

§ 3.42 Termination.

(a) * * *

(2) Immediately upon termination of the association of the applicant for registration as an associated person with the registrant which filed the sponsorship certification, or immediately upon loss of trading privileges on all contract markets on which such trading privileges are held by an applicant for registration as a floor broker or floor trader as described in § 3.40(c);

* * * * *

(4) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under sections 6(e), 6b or 6c(d) of the Act;

(5) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act;

(6) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum;

(7) Immediately upon the revocation or withdrawal of the registration of the applicant's sponsor; or

(8) Immediately upon notice to the applicant and the applicant's sponsor or the contract market that has granted the applicant trading privileges that:

(i) The applicant failed to disclose relevant disciplinary history information in response to items 14 through 18 on the applicant's Form 8–R; or

(ii) An event has occurred leading to an affirmative response to any of items 14 through 18 on the applicant's Form 8–R.

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person, floor broker or floor trader.

18. Section 3.43 is proposed to be amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 3.43 Relationship to registration.

* * * * *

(b) * * *

(1) A determination by the National Futures Association that the applicant is qualified for registration as an associated person, floor broker or floor trader; or

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under section 8a(2) or 8a(3) of the Act.

19. Section 3.46 is proposed to be amended by revising paragraph (a) to read as follows:

§ 3.46 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the National Futures Association that the applicant for registration may be found subject to a statutory disqualification from registration;

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10 (j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b) of this subpart;

(3) Immediately upon the failure of an applicant to respond to a written request by the Commission or the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart in accordance with such request;

(4) Immediately upon the revocation or withdrawal of the guarantor futures commission merchant's registration.

(5) Immediately upon the withdrawal of the registration application pursuant to § 3.44(c) of this subpart;

(6) Immediately upon failure to comply with an order to pay a civil monetary penalty within the time permitted under sections 6(e), 6b or 6c(d) of the Act;

(7) Immediately upon failure to pay the full amount of a reparation order within the time permitted under section 14(f) of the Act;

(8) Immediately upon failure to comply with an award in an arbitration proceeding conducted pursuant to part 180 of this chapter within the time permitted for such compliance as specified in section 10(g) of National Futures Association's Code of Arbitration or the comparable time period specified in the rules of a contract market or other appropriate arbitration forum;

(9) Whenever a person not listed as a principal on the applicant's initial registration application becomes a principal under § 3.1(a); or

(10) Immediately upon notice to the applicant and the guarantor futures commission merchant that:

(i) The applicant or any principal (including any branch officer manager) failed to disclose relevant disciplinary history information in response to items 11 through 15 on the applicant's Form 7–R or items 14 through 18 on a principal's Form 8–R; or

(ii) An event has occurred leading to an affirmative response to any of items 11 through 15 on the applicant's Form 7–R or items 14 through 18 on a principal's Form 8–R.

* * * * *

20. Section 3.47 is proposed to be amended by revising paragraph (b)(2) to read as follows:

§ 3.47 Relationship to registration.

* * * * *

(b) * * *

(2) The expiration of six months from the date of issuance unless a notice has been issued under § 3.60 of the initiation of a proceeding to deny registration under sections 8a(2) or 8a(3) of the Act.

Subpart C—Denial, Suspension or Revocation of Registration

21. Section 3.55 is proposed to be amended by revising paragraph (e)(1) to read as follows:

§ 3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.

* * * * *

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order to show cause is served upon the registrant in accordance with § 3.50(a), until a final order with respect to the order to show cause has been issued: *Provided*, That if the sole basis upon which the registrant is subject to statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however*, That in no event shall the registrant be suspended for a period to exceed six months.

* * * * *

22. Section 3.56 is proposed to be added to read as follows:

§ 3.56 Suspension or modification of registration pursuant to section 8a(11) of the Act.

(a) *Notice*. (1) On the basis of information obtained by the Commission, the Commission may at any time serve written notice upon a registrant in any capacity under the Act that:

(i) The Commission alleges and is prepared to prove, by reference to an information, indictment or complaint authorized by a United States Attorney or an appropriate official of any State that the registrant is charged with the commission of or participation in a crime involving a violation of the Act or a violation of any other provision of federal or state law that would reflect on the honesty or the fitness of the person to act as a fiduciary that is punishable by imprisonment for a term exceeding one year, and that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission;

(ii) An Administrative Law Judge shall make a determination, based upon written evidence and any oral hearing granted, as to whether the registrant is charged with the commission of or participation in such a crime and whether the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission; and

(iii) If the registrant is found to be charged with the commission of or participation in such a crime and it is found that the continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission, the registration of the registrant shall be suspended or modified.

(2) The notice referred to in paragraph (a) of this section shall include a short and plain statement that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission.

(b) *Response*. (1) If the registrant wishes to challenge the accuracy of the allegations in the notice, the registrant may submit written evidence as to:

(i) The registrant's identify;

(ii) The existence of a clerical error in any record documenting the information, indictment or complaint;

(iii) The nature of the information, indictment or complaint; or

(iv) The statement accompanying the notice referred to in paragraph (a)(2) of this section and, in an effort to have his registration modified rather than suspended, the Supplemental Sponsor Certification Statement signed by a sponsor, supervising floor broker or, in the case of a floor trader, a supervising registrant or contract market, as appropriate for the registrant in accordance with § 3.60(b)(2)(i) of this subpart and who meets the standards set forth in § 3.60(b)(2)(i) (A) and (C) of this subpart.

(2) The registrant may also request an oral hearing, which shall include a statement of the issues to be addressed, a list of any witnesses to be called and copies of any documents to be introduced. A request for an oral hearing shall be granted unless the Division of Enforcement can demonstrate that there is no genuine issue of material fact to be determined.

(3) Such written submissions must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant under paragraph (a) of this section.

(c) *Reply*. Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(d) *Oral hearing*. An oral hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(e) *Determination by Administrative Law Judge*. (1) A determination by the Administrative Law Judge as to whether the Division of Enforcement has shown by a preponderance of the evidence that the registrant is charged with the commission of or participation in a crime as set forth in the notice and that the continued registration of the registrant may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission must be based upon the evidence of service, the response, if any, filed by the registrant, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit, and the oral hearing, if any. If the Division of Enforcement has made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order suspending or modifying the registration of the registrant. If the Division of Enforcement has not made the required showings, the Administrative Law Judge, within thirty days after the last written submission or the oral hearing, shall issue an order to that effect.

(2) The Hearing Clerk shall promptly serve a copy of such order on the registrant, the Division of Trading and Markets and the Division of Enforcement. Such order shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a) of this part unless a timely application for review is filed in accordance with § 10.102 of this chapter. The appellate procedures set forth in §§ 10.102, 10.103, 10.104, 10.106, 10.107 and 10.109 of this chapter shall apply to any appeal brought under paragraph (e)(2) of this section.

(f) Any order of suspension or modification issued under this section shall remain in effect until such information, indictment, or complaint is disposed of or until terminated by the Commission.

(g) On disposition of such information, indictment, or complaint, the Commission may issue and serve on such registrant a notice under § 3.55 or § 3.60 of this subpart to suspend, restrict, or revoke the registration of such person.

(h) A finding of not guilty or other disposition of the charge shall not preclude the Commission from thereafter instituting any other proceedings under the Act or its rules.

(i) A person aggrieved by an order issued under this section may obtain review of such order in the same manner and on the same terms and conditions as are provided in section 6(c) of the Act.

23. Section 3.60 is proposed to be amended by revising paragraphs (b)(2)(i) introductory text, (b)(2)(i)(A),

(b)(2)(i)(C), (b)(2)(ii)(C) and (f)(3) and by adding paragraph (1) to read as follows:

§ 3.60 Procedure to deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a(2), 8a(3) and 8a(4) of the Act.

* * * * *

(b) * * *

(2)(i) In the response, if the person is not an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he intends to show that registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, the applicant or registrant shall also state whether he intends to show that full, conditioned or restricted registration would not pose a substantial risk to the public despite the existence of the disqualification set forth in the notice. If the applicant or registrant is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities and intends to make such a showing, he must also submit a letter signed by an officer or general partner authorized to bind the sponsor or, in the case of a floor broker or applicant for registration as a floor broker, another floor broker, or in the case of a floor trader, or applicant for registration as a floor trader, an officer of the floor trader's clearing member, if such officer is a registrant or a principal of a registrant, or all contract markets that have granted trading privileges, whereby the sponsor, floor broker or appropriate registrant, principal or contract market agrees to sign a Supplemental Sponsor Certification Statement and supervise compliance with any conditions or restrictions that may be imposed on the applicant or registrant as a result of a statutory disqualification proceeding under this section: *Provided, That,* with respect to such sponsor or supervising floor broker or supervising registrant or principal:

(A) An adjudicatory proceeding pursuant to the provisions of sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Act is not pending; and

* * * * *

(C) Such person is not barred from service on self-regulatory organization governing boards or committees based on disciplinary history in accordance with § 1.63 of this chapter.

(ii) * * *

(C) If the person is an associated person, floor broker or floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from the applicant's or registrant's future wrongdoing, including proposed conditions or restrictions.

* * * * *

(f) * * *

(3) If the person is an associated person, a floor broker or a floor trader or an applicant for registration in any of those capacities, evidence that the applicant's or registrant's registration on a conditioned or restricted basis would be subject to supervisory controls likely both to detect future wrongdoing by the applicant or registrant and protect the public from any harm arising from future wrongdoing by the applicant or registrant. Any decision providing for a conditioned or restricted registration shall take into consideration the applicant's or registrant's statutory disqualification and the time period remaining on such statutory disqualification, and shall fix a time period after which the registrant and his sponsor, supervisory floor broker or supervisory registrant or contract market may petition to lift or modify the conditions or restrictions in accordance with § 3.64 of this part.

* * * * *

(1) The failure of any sponsor, supervisory floor broker or supervisory registrant, principal or contract market to fulfill its obligations with respect to supervision or monitoring of a conditioned or restricted registrant as agreed to in the Supplemental Sponsor Certification Statement shall be deemed a violation of this rule under the Act.

24. Section 3.61 is proposed to be amended by revising the section heading and paragraph (a) to read as follows:

§ 3.61 Extensions of time for proceedings brought under § 3.55, § 3.56 and § 3.60.

(a) *In general.* Except as otherwise provided by law or by these rules, for good cause shown, the Commission or an Administrative Law Judge before whom a proceeding brought under § 3.55, § 3.56 or § 3.60 is then pending, on their own motion or the motion of a party, may at any time extend or shorten the time limit prescribed by those rules for filing any document. In any instance in which a time limit is not prescribed for an action to be taken concerning any matter, the Commission or the Administrative Law Judge may set a time limit for that action.

* * * * *

25. Section 3.64 is proposed to be amended by revising paragraphs (a)(2) and (d) to read as follows:

§ 3.64 Procedure to lift or modify conditions or restrictions.

(a) * * *

(2) In the petition, the registrant and his sponsor, supervising floor broker or supervising registrant, principal or contract market shall be limited to a showing, by affidavit, that the conditions or restrictions have been satisfied pursuant to the order which imposed them. A sponsor's, supervising floor broker's or supervising registrant's, principal's or contract market's affidavit must be sworn to by a person with actual knowledge of registrant's activities on behalf of the sponsor, supervising floor broker or supervising registrant, principal or contract market

* * * * *

(d) *Effect of the Administrative Law Judge's Determination.* The Administrative Law Judge's written determination shall become the final decision of the Commission thirty days following the date the Hearing Clerk serves the determination on the registrant, the registrant's sponsor, supervising floor broker or supervising floor trader, and the Division of Enforcement unless one or more of the parties files a timely notice of appeal in accordance with § 10.102 of this chapter.

* * * * *

26. Appendix A to part 3 is proposed to be amended by revising the fourth paragraph following the heading "Section 8a(2) (C) and (E)" to read as follows:

Appendix A to Part 3—Interpretative Statement With Respect to Section 8a(2) (C) and (E) and Section 8a(3) (J) and (M) of the Commodity Exchange Act

* * * * *

If such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction * * *, including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, floor trader, commodity trading advisor, commodity pool operator, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of the Act, or concerning securities;

* * * * *

PART 10—RULES OF PRACTICE

27. The authority citation for part 10 is proposed to continue to read as follows:

Authority: Pub. L. 93–463, sec. 101(a)(11), 88 Stat. 1391, 7 U.S.C. 4a(j), unless otherwise noted.

Subpart A—General Provisions

28. In section 10.1 paragraph (a) is proposed to be revised to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning, restricting or modifying of registration as a futures commission merchant, introducing broker, or associated person, floor broker, floor trader, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(c), 8a(2), 8a(3), 8a(4) and 8a(11) of the Act, 7 U.S.C. 9, 12a(2), 12a(3), 12a(4) and 12(a)(11), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6(a) and 6(b) of the Act, 7 U.S.C. 8;

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

29. The authority citation for part 145 is proposed to continue to read as follows:

Authority: Pub. L. 89–554, 80 Stat. 383, Pub. L. 90–23, 81 Stat. 54, Pub. L. 93–502, 88 Stat. 1561–1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93–463, 88 Stat. 1389 (5 U.S.C. 4a(j)); Pub. L. 99–570, unless otherwise noted.

30. Section 145.6 is proposed to be amended by revising paragraph (b) to read as follows:

§ 145.6 Commission offices to contact for assistance; registration records available.

* * * * *

(b)(1) The publicly available portions of Form 7–R (application for registration as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant), Form 8–R (application for registration as an associated person, floor broker, floor trader and biographical supplement to application on Form 7–R), Form 3–R (changes and corrections; multiple associations) Form 8–S (certificate of special registration), Form 8–T (notice of termination), Form 7–W (withdrawal from firm registration) and Form 8–W (withdrawal from floor broker or floor trader registration) will be available for public inspection and copying. Such registration forms will be available in the offices of the National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. Telephone: (312) 781–1300.

(2) The fingerprint card and any supplementary attachments filed in response to items 6–9 and 14–21 on Form 8–R, to item 3 on Form 8–S, to items 3–5 and 9–11 on Form 8–T, to items 9–10 on Form 7–R, to item 7 on Form 7–W or to item 7 on Form 8–W generally will not be available for public inspection and copying unless such disclosure is required under the Freedom of Information Act. Changes or corrections to those items reported on Form 3–R will be treated similarly. When such fingerprint cards or supplementary attachments are on file, the FOI, Privacy and Sunshine Acts compliance staff will decide any request for access in accordance with the procedures set forth in §§ 145.7 and 145.9.

Issued in Washington, DC on January 26, 1993 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2280 Filed 2–1–93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–92–099]

RIN 2115–AE31

Drawbridge Operation Regulations; Potomac River, District of Columbia

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Coast Guard is considering whether an amendment to the regulations concerning the operation schedule of the Woodrow Wilson Memorial Bridge, mile 103.8, to require 24 hour advance notice by owners and operators of commercial vessels of a requested opening is practical. Pursuant to a provision in the Coast Guard Authorization Act this advance notice of proposed rulemaking (ANPRM) is being published to solicit comments from the public.

DATES: Comments must be received on or before April 5, 1993.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, VA 23704–5004. Comments may be hand delivered to this address room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The comments and other materials referenced in this notice will be available for inspection and copying at this address between 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at 804–398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons may participate in this solicitation of comments by submitting written data, views, or arguments. Each letter should include the name and address of the person submitting the comments and a reference to the docket number (CGD5 92–099), and give the reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received by the close of the comment period before it acts further on this matter.

Background

The Woodrow Wilson Bridge operated under several temporary deviations from the existing permanent regulations, and an interim final rule, from August of 1990 until November 17, 1992.

During this period a notice of proposed rulemaking (NPRM) to establish new permanent operating regulations was published in the **Federal Register** (December 20, 1991, 56 FR 66326). The Coast Guard Authorization Act of 1992 (Public Law 102–587, 106 Stat. 5039) imposed operating schedule regulations for the bridge, removing the need to complete the notice and comment rulemaking (NPRM) and it was withdrawn by a notice published in the **Federal Register** on November 17, 1992 (57 FR 54202). Furthermore, a final rule amending § 117.255 (57 FR 54178), published the same date, replaced the interim final rule which was in effect at the time.

Under the existing operating schedule commercial vessels are not allowed passage through the bridge during rush hours, and other peak schedule traffic hours, but may arrange passage at other times by providing at least 12 hours advance notice, with a 4 hour confirmation. Pursuant to a provision in the act cited above, the Coast Guard is publishing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on whether there are practical ways to encourage owners and operators of commercial vessels to make every reasonable effort to notify the bridge tender of the time a vessel will arrive at the Woodrow Wilson Memorial Bridge by at least 24 hours before that arrival.

Drafting Information

The drafters of this notice are Ann B. Deaton, Project Officer, and CAPT M.K. Cain, Project Attorney.

Questions

The Coast Guard solicits input from the public in general, as well as those parties specifically impacted regarding the following issues:

Is it practical for owners and operators of commercial vessels to notify the bridge tender of the time a vessel will need the drawspan raised at the Woodrow Wilson Memorial Bridge as much as 24 hours before its arrival?

What specific problems with this length of advance notice, if any, might be anticipated? What benefits?

Dated: December 14, 1992.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93-2426 Filed 2-1-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-92-113]

Drawbridge Operation Regulations; Grand Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Tortoise Island Homeowners Association and the Lansing Island Development Corporation, the Coast Guard proposes to change the regulations governing the operation of the Tortoise Island Drawbridge, at mile 2.6, and the Lansing Island Drawbridge at mile 0.7 at Satellite Beach, Brevard County, Florida, by increasing the advance notification time now required for an opening of the draws during certain periods. This proposal is being made because of infrequent requests to open the draws during the nightime hours. This action would relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before March 19, 1993.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is 305-536-4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Walter Paskowsky, Project Manager, Bridge Section at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7-92-113] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Walter Paskowsky at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Walter Paskowsky, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

The drawbridges presently open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draws open on signal if at least 15 minutes advance notice is given. The owners of the Tortoise Island bridge and the Lansing Island Bridge have requested relief from the requirement to maintain full time drawtender service due to the lack of openings during evening hours. The Coast Guard proposes to change the 15 minute advance notice to 2 hours during weekdays from 10 p.m. to 6 a.m. This should reduce the owners operating costs while still meeting the needs of navigation.

Discussion of Proposed Amendment

A Coast Guard analysis of 833 vessels logged through the Tortoise Island bridge between January 1 and August 23, 1992 shows that only 13 were passed between the hours of 10 p.m. and 6 a.m. Of these 13, all but 2 passed on weekends when a tender would continue to be present. Only two vessels were required to give the 15 minutes advance notification. A similar 2 hours advance notice for the nearby Mathers Bridge which has been in effect since 1984 has generated no complaints from waterway users.

The proposal would also change the name of the waterway from Great Canal to Grand Canal which is the name designated by the Department of the Interior, U.S. Geological Survey.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because there is no commercial traffic on the waterway.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule effects no commercial users, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. § 117.285 is revised to read as follows:

§ 117.285 Grand canal.

(a) The draw of the Lansing Island bridge, mile 0.7 shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 2 hours notice is given.

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal, except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 2 hours notice is given.

Dated: January 15, 1993.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–2427 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Restricted Area in the Kuluk Bay Near Adak, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers proposes to amend the regulations in 33 CFR 334.1320 because the regulations contain errors in the coordinates which establish a restricted area in the waters of the Kuluk Bay, Adak, Alaska. The area encompassed by the coordinates in 33 CFR 334.1320 does not exactly agree with the location of submarine cables the area was designed to protect. The regulations presently prohibit anchoring and the dragging of anchors within the restricted area, except in great emergency. Due to the possibility of damage to the existing submarine cables, we also propose that fishing and trawling are prohibited within the restricted area. Accordingly, the Corps is proposing to amend the regulations to correct the coordinates and add the prohibition on fishing and trawling in the area. The changes to the coordinates will cause an overall expansion of the restricted area.

DATES: Written comments must be received on or before March 4, 1993.

ADDRESSES: All written comments concerning these proposed rules should be addressed to: HQUSACE, ATTN: CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Weger at (907) 753–2716 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: The Commander, U.S. Navy Undersea Surveillance, U.S. Pacific Fleet, Pearl Harbor, Hawaii, has requested that the Corps of Engineers amend the regulations in 33 CFR 334.1320, which establish a naval restricted area in Kuluk Bay, near Adak, Alaska, (NOAA Nautical Chart No. 16475). The purpose of the amendment is to correct the coordinates which define the restricted area boundaries. The corrections will expand the area approximately 1.3 nautical miles east, and the northern boundary approximately ½ nautical mile north. Furthermore, it is proposed to amend the regulations of the naval restricted area to include placing a restriction on fishing and trawling activities, in addition to anchoring and dragging of anchors, as currently stated in the regulations. The naval restricted area regulations in 33 CFR 334.1320 were established in 1963 and last amended in 1977. Kuluk Bay, on the northeast side of Adak Island, Alaska, is about 4 miles long and 4 miles wide, and is one of the best natural harbors in the Aleutians. It is entered between Zeto Point on the north and Thunder Point on the south, and includes Kuluk Bay proper, Clam Lagoon, Sweeper Cove, Finger Bay, and Scabbard Bay. Tidal currents in the bay are weak and the flow appears to depend mainly upon the winds. It should be noted that it will be necessary to disestablish an explosives anchorage area, which would be within the expanded boundary of the restricted area. Changes to the regulations (if any) which establish the explosives anchorage area is solely the responsibility of the U.S. Coast Guard. We have been informed that the Coast Guard has no objection to the elimination of the explosives anchorage area within the boundaries of the expanded naval restricted area. If the regulations in 33 CFR 334.1320 are amended as proposed, we will formally request that the Coast Guard take appropriate action to disestablish the explosives anchorage area.

Economic Assessment and Certification

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12291 do not apply. These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small businesses (i.e., small businesses and small government jurisdictions.) It has been determined that this rule will not have a significant economic impact on a substantial number of small entities and that preparation of a regulatory flexibility analysis is not warranted.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

In consideration of the above, the Corps of Engineers proposes to amend part 334 of title 33 to read as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.1320 is revised to read as follows:

§ 334.1320 Kuluk Bay, Adak, Alaska; naval restricted area.

(a) *The area.* The northwest portion of Kuluk Bay bounded as follows: Beginning on shore at latitude 51° 55′ 00″ N, longitude 176° 33′ 09″ W; thence due east to latitude 51° 55′ 00″ N, longitude 176° 31′ 09″ W; thence due south to latitude 51° 51′ 55″ N longitude 176° 31′ 09″ W; thence due west to the shore at latitude 51° 51′ 55″ N, longitude 176° 37′ 43″ W; thence along the shoreline to the point of beginning.

(b) *The regulations.* (1) Except in great emergency, no vessel shall anchor in the restricted area described above.

(2) The dragging of anchors in or across the restricted area is prohibited and no object attached to a vessel shall be placed on or near the bottom.

(3) Fishing and trawling activities in the restricted area are prohibited.

(4) The regulation of this restricted area shall be enforced by the Commander, Patrol Wing, U.S. Pacific Fleet, Naval Air Station Moffett Field, California, and such agencies as he/she may designate.

John R. Brown,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 93–2312 Filed 2–1–93; 8:45 am]

BILLING CODE 3710–92–M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM93–1, Order No. 959]

Complexity in Rates Inquiry

AGENCY: Postal Rate Commission.

ACTION: Extension of time for comments, and notice and opportunity to respond to motion.

SUMMARY: On December 3, 1992, the Commission published an advance notice of proposed rulemaking in the **Federal Register** (57 FR 57124-25) soliciting suggestions from interested persons regarding the consideration which should be given to complexity when examining rate and classification schedules. A number of mailer groups have requested the Commission to either suspend or defer the proceeding. The Commission is giving interested parties an opportunity to respond to that request, and extending the time for comments until after the Commission rules on the request.

DATES: Any responses to the request to suspend or defer are due February 16, 1993. If the Commission decides to proceed after consideration of the request and any responses, a new date for comments responding to the December 3, 1992, advance notice of proposed rulemaking will be set in the order addressing that request.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789-6840). All documents submitted in this proceeding are available at the Commission's Docket Office at this address.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Acting Legal Advisor, Postal Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: The Commission began this proceeding by publishing a **Federal Register** notice on December 3, 1992, stating that it might be profitable to focus on the topic of the appropriate amount of complexity in rates and classifications outside the confines of a case proposing specific changes. The Commission anticipated providing a forum for the exchange of ideas on whether it is possible to simplify the existing rate and classification schedules while continuing to reflect the other necessary considerations. Three possible outcomes of the proceeding were mentioned in the December 3, 1992, notice: (1) Changes in the Commission's filing rules, (2) publication of a compilation of the comments received, and (3) initiation of one or more classification cases.

The Commission has received three comments to date. Two are from mailers who have participated in previous Commission rate proceedings. The third comment was submitted by the former Vice Chairman of the Commission.

On January 15, 1993, representatives of ten mailer groups filed a joint motion requesting that the Commission abandon the proceeding or defer the time for filing comments until August 1, 1993. The joint motion asserts that consideration of possible simplification of rates and classifications could be done more efficiently if specific proposals were before the Commission. The joint motion mentions ongoing discussions within the Postal Service, as well as talks between the Postal Service and mailer groups. Those who signed the joint motion are concerned that this rulemaking might impede progress being made elsewhere.

We are setting February 16, 1993 as the date for responses to the January 15, 1993, joint motion. If the Commission decides to proceed after considering the joint motion and any responses, a new date for submission of comments will be set.

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 93–2360 Filed 2–1–93; 8:45 am]

BILLING CODE 7710–FW–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 93–1; FCC 93–1]

Radio Scanners That Receive Cellular Telephone Transmissions

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making proposes to deny equipment authorization to radio scanners capable of receiving transmissions in the Domestic Public Cellular Radio Telecommunications Service. This action is taken in response to the Telephone Disclosure and Dispute Resolution Act (Pub. L. 102–556). The intended effect of this action is to help ensure the privacy of cellular telephone conversations.

DATES: Comments must be submitted on or before February 22, 1993, and reply comments on or before March 8, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David Wilson, Office of Engineering and Technology, (202) 653–8138.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 93–1, FCC 93–1, adopted January 4, 1993, and released January 13, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, at (202) 659–8657 or 1990 M Street, NW., suite 640, Washington, DC 20036.

Paperwork Reduction

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's duplicating contractor, Downtown Copy Center, at (202) 659–8657 or 1990 M Street, NW., suite 640, Washington, DC 20036. Persons wishing to comment on this collection of information should direct their comments to Mr. Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20554, (202) 395–4814. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Federal Communications Commission: Federal Communications Commission, Office of the Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Ms. Judy Boley, (202) 632–7513.

OMB Number: None.

Title: Scanning Receiver Compliance Exhibit.

Respondents: Businesses or other for profit, small businesses or organizations.

Action: New collection.

Frequency of Response: On occasion reporting.

Estimated Annual Burden:

Number of respondents: 40.

Annual hours per respondent: 0.25.

Total annual burden: 10.

Needs and Uses: An exhibit accompanying a Form 731 Application for Equipment Authorization will determine compliance of applicants requesting authorization to market scanning receivers and frequency converters with Congressionally mandated regulations. The regulations prohibit the marketing of radio scanners capable of intercepting, or being modified to intercept, cellular telephone conversations.

Summary of the Notice of Proposed Rule Making

1. By this action, the Commission proposes to amend 47 CFR parts 2 and 15 to prohibit the manufacture or importation of radio scanners capable of receiving frequencies allocated to the Domestic Public Cellular Radio Telecommunications Service. This action is in response to the Telephone Disclosure and Dispute Resolution Act (Act), Pub. L. 102–556.

2. The Domestic Public Cellular Radio Telecommunications Service ("Cellular Radio Service") provides telephone service to mobile customers. Cellular telephones use frequencies in the bands 824–849 MHz and 869–894 MHz to connect their users to other cellular system users and to the Public Switched Telephone Network.

3. As defined in 47 CFR part 15 scanning receivers, or "scanners," are radio receivers that automatically switch between four or more frequencies anywhere within the 30–960 MHz band. In order to control their potential to cause harmful interference to authorized radio communications, the rules require that scanners receive an equipment authorization (certification) from the Commission prior to marketing.

4. In the past five years, 22 different models of scanning receivers capable of receiving cellular telephone transmissions have been issued grants of equipment authorization. During this same period, ten other models capable of tuning frequencies between 806 and 900 MHz except for the cellular bands have also been authorized. Several publications currently on the market describe relatively simple modifications that users can make to many of the latter scanning receivers to enable that equipment to receive cellular telephone transmissions.

5. The Telephone Disclosure and Dispute Resolution Act requires that the Commission, by April 26, 1993, prescribe and make effective regulations denying equipment authorization for any scanning receiver capable of:

- Receiving transmissions in the frequencies allocated to the domestic cellular radio service,
- Readily being altered by the user to receive transmissions in such frequencies, or
- Being equipped with decoders that convert digital cellular transmissions to analog voice audio.

The Act also stipulates that, beginning one year after the effective date of the regulations adopted to satisfy the above requirements, no receiver having the above capabilities shall be manufactured in the United States or imported for use in the United States.

6. In accordance with the Act, we are proposing to deny equipment authorization to scanning receivers that tune frequencies used by cellular telephones. We are also proposing to require applicants for the authorization of scanning receivers to include in their applications a statement declaring that their receivers cannot be tuned to receive cellular telephone transmissions.

7. Also in accordance with the Act, we are proposing to require that scanning receivers be incapable of being readily altered by the user to operate within the cellular bands. To assist us in determining whether a scanner complies with this requirement, we propose to require applicants for scanning receiver equipment authorization to include in their applications a statement pledging that their receivers cannot be readily altered to receive cellular telephone transmissions. We also propose to prohibit the authorization of any scanning receiver for which cellular coverage can be readily restored by the user. We solicit comment on this proposed reporting requirement and on the definition of "readily altered." We also seek comment on whether additional information, such as why the receiver cannot be readily altered, should be required.

8. In further compliance with the Act, we propose to deny equipment authorization to any scanning receiver that can be equipped with decoders that convert digital cellular transmissions to analog voice audio. We invite comment on the potential impact of this requirement on existing models of scanning receivers.

9. There currently are a number of frequency converters on the market that can be used in conjunction with scanners that receive frequencies below 800 MHz to enable the reception of cellular telephone transmissions. We are proposing to deny equipment authorization to converters that tune, or can be readily altered by the user to tune, cellular telephone frequencies. We will require that applicants for FCC equipment authorization of frequency converters used with scanners include in their applications a statement pledging that the converters cannot be easily altered to enable a scanner to receive cellular transmissions. We seek comment on whether this statement should also include evidence indicating why the converter cannot be easily modified.

10. The Initial Regulatory Flexibility Analysis is contained in the text of the Notice.

11. Comment Dates

Pursuant to applicable procedures set forth in 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 22, 1993, and reply comments on or before March 8, 1993. In order to comply with the requirement of the Telephone Disclosure and Dispute Resolution Act that FCC rules be promulgated within 180 days of enactment, we will proceed with this Notice without furnishing a prior text as provided by Article 607 of the United

States-Canada Free-Trade Implementation Act of 1988 (Pub. L. 100–499, 102 Stat. 1851). To do so would frustrate achievement of a legitimate domestic objective. In addition, the Commission is not likely to be able to accommodate requests for extension of the comment periods. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during normal business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

12. Ex-Parte Rules—Non-Restricted Proceeding

This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

13. For further information on this proceeding contact David Wilson, Technical Standards Branch, Office of Engineering and Technology, 202–653–8138.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, Wiretapping and electronic surveillance.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Parts 2 and 15 of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 302, 303, 303(r) and 307.

2. Section 2.975 is amended by adding a new paragraph (a)(8) to read as follows:

§ 2.975 Application for notification.

(a) * * *

(8) Applications for the notification of receivers contained in frequency converters used with scanning receivers shall be accompanied by an exhibit indicating compliance with the provisions of § 15.121 of this chapter.

* * * * *

3. Section 2.1033 is amended by adding a new paragraph (b)(12) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(12) Applications for the certification of scanning receivers under part 15 shall be accompanied by an exhibit indicating compliance with the provisions of § 15.122 of this chapter.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: Secs. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303 and 307.

2. Section 15.37 is amended by adding a last sentence to paragraph (b), and adding a new paragraph (f), to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(b) * * * In addition, receivers are subject to the provisions in paragraph (f) of this section.

* * * * *

(f) The manufacture or importation of scanning receivers, and frequency converters used with scanning receivers, that do not comply with the provisions of § 15.121 shall cease on or before April 26, 1994. Effective April 26, 1993, the Commission will not accept applications for equipment authorization for receivers that do not comply with the provisions of § 15.121. This paragraph does not prohibit the sale or use of authorized receivers manufactured in the United States, or imported into the United States, prior to April 26, 1994.

3. Section 15.121 is added to read as follows:

§ 15.121 Scanning receivers and frequency converters used with scanning receivers.

Scanning receivers, and frequency converters used with scanning receivers, must be incapable of operating (tuning), or readily being altered by the user to operate, within the frequency bands allocated to the Domestic Public Cellular Radio Telecommunications Service. Receivers capable of "readily being altered by the user" include, but are not limited to, those for which the ability to receive transmissions in the restricted bands can be added by clipping the leads of, or installing, a diode, resistor and/or jumper wire; or replacing a plug-in semiconductor chip. Scanning receivers, and frequency converters used with scanning receivers, must also be incapable of converting digital cellular transmissions to analog voice audio.

[FR Doc. 93–2241 Filed 2–1–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Chapter 53

RIN 0701–AA39

Air Force Federal Acquisition Regulation Supplement Clause; Contractor Toxicological Testing—Aircraft Accidents

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Proposed rule; withdrawal.

SUMMARY: On May 24, 1991, the Department of the Air Force published (at 56 FR 23829) a proposed rule to amend chapter 53 of title 48 of the Code of Federal Regulations by adding part 5323—Environment, Conservation, Occupational Safety and Drug-Free Workplace, and part 5352.2—Solicitation Provisions and Contract Clauses. After departmental review the Air Force has decided not to finalize this proposed rule at this time. Therefore the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT:

R. Summerour, SAF/AQCF, 1060 Air Force Pentagon, Washington DC 20330–1060, telephone (703) 695–3859.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2335 Filed 2–1–93; 8:45 am]

BILLING CODE 3910-01-M

Notices

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tepee Area Salvage and Recovery; Kootenai National Forest, Lincoln and Flathead Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for the Tepee Timber Sale. The Forest Service proposes to harvest approximately 892 thousand board feet of dead and dying lodgepole pine timber through application of a variety of harvest methods on approximately 191 acres. The proposal includes site-preparation and regeneration on 115 acres. The salvage and regeneration harvest is intended to increase health, vigor, stocking and species diversity of stands for long term vegetative growth; reduce fuel accumulations to minimize fire danger and protect existing regeneration stands; salvage lodgepole pine before it loses its value; and clear road surfaces and ditches of dead lodgepole pine to enable road maintenance to be accomplished without barriers of down material. The EIS will tier to the final EIS and Forest Plan for the Kootenai National Forest (September 1987).

The proposed activities are located in the Little Wolf drainage. The project analysis area is located approximately 30 miles east of Libby, Montana. The proposed project is scheduled to sell in the summer of 1994. There will be no new road construction as part of this proposal.

The Kootenai National Forest invites written comments and suggestions on the scope of the analysis. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by February 22, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Lawrence A. Froberg, District Ranger, Fisher River Ranger District, 12557 Hwy. 37, Libby, Montana, 59923.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and environmental impact statement to Leanne Marten, Interdisciplinary Team Leader, Fisher River Ranger District, 12557 Hwy. 37, Libby, Montana, 59923. (Phone: (406) 293–7773).

SUPPLEMENTARY INFORMATION: The decision area contains approximately 4300 acres within the Kootenai National Forest in Lincoln and Flathead Counties, Montana. All of the project area is within the Little Wolf drainage. The legal description of the decision area is as follows:

> Sections 7, 8, 17, 18, and 19 of Township 29 North, Range 25 West, Flathead County, Montana; Sections 1, 2, 3, 4, 5, 10, 11, 12, 13, and 24 of Township 29 North, Range 26 West, Lincoln County, Montana; and Sections 26, 27, 28, 29, 32, 33, 34, 35 and 36 of Township 30 North, Range 26 West, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposal.

Mountain pine beetle infestations have killed the majority of merchantable lodgepole pine in the analysis area. In lodgepole pine stands mortality ranges from 50–100%. However, in most of the stands mortality is 90–100%. In mixed conifer stands where lodgepole pine comprises 10–40% of the stand, merchantable lodgepole pine mortality ranges from 80–100%.

These concentrations of dead lodgepole pine create areas of high fuel loadings which increase the potential of wildfire. In addition, deer and elk movement within and through these dense lodgepole stands is difficult. Thus, summer/fall range effectiveness is in a steady rate of decline.

The proposed action includes salvage harvest of dead lodgepole pine resulting from mountain pine beetle attack. A small amount of green lodgepole pine would be removed in understocked areas to facilitate the silvicultural system for regeneration. Approximately 115 acres will resemble a clearcut with reserve trees or patch seedtree. Eight units would be placed adjacent to existing clearcuts which will create three openings greater than 40 acres in size (43, 49 and 95 acre openings). Approximately 61 acres will be salvaged. A fully stocked stand will remain on these acres. Of the 61 acres, 49 are road-side salvage in which all dead lodgepole will be removed from areas 40–80 feet of specified roadsides. Additionally, 15 acres will be a post and pole area. The harvest will resemble a pre-commercial thinning, leaving a fully stocked stand on these acres. The total harvest volume of this proposal would be 892 thousand board feet of timber.

Issues

Tentatively, several issues have been identified through the scoping process. These issues are briefly described below:

1. Concern was expressed over how the proposed action may impact water quality of the streams in the area.

2. Wildlife: Concern was expressed that the proposed action may have an adverse affect on the cover/forage ratio in the area and thus would represent an impact on wildlife.

3. Forest Health: Concern was expressed that no action would result in stands with a very low level of health, vigor and productivity due to poor regeneration and growth.

Public Participation and Scoping

Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft EIS.

The scoping process includes:

—Identifying potential issues.

—Identifying major issues to analyzed in depth.

—Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.

—Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

—Determining potential cooperating agencies and task assignments.

The analysis will consider a range of alternatives. Along with the proposed actions and all reasonable action alternatives, the analysis will consider a "No Action" alternative.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1993. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. City of *Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338, (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by September 1993. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Lawrence A. Froberg, District Ranger, Fisher River Ranger District, Kootenai National Forest, 12557 Highway 37, Libby, Montana 59923, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 21, 1993.

Lawrence A. Froberg,

District Ranger, Fisher River Ranger District, Kootenai National Forest.

[FR Doc. 93–2305 Filed 2–1–93; 8:45 am]

BILLING CODE 3410–11–M

Berray Mountain Timber Sales and Associated Projects, Kootenai National Forest, Sanders County, MT.

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA will prepare an environmental impact statement (EIS) for two proposed timber sales and associated activities. The EIS will tier to the final EIS and Forest Plan for the Kootenai National Forest.

The Cabinet Ranger District is proposing timber harvest activities and big game habitat improvement for the Berray Mountain project area located on the Kootenai National Forest, Sanders County, Montana. The proposed projects include the North Pine Ridge Timber Sale, and Berray Creek Timber Sale which includes Bighorn Sheep and big game habitat improvement. Approximately 4 MMBF of timber would be removed from approximately 398 acres. Road construction needed to access the proposed areas would consist of approximately 2 miles of new road construction and 5 miles of road re-construction.

The proposed projects are located, wholly or in part, in the Berray Mountain Roadless Area #672 within the Bull River drainage. The legal descriptions are as follows: T28N, R33W, Sec. 2, 11, 22, 23, 27, 28, & 21 and T27N, R33W, Sec. 3, 4, 9, 10, 33, 34.

The proposed sales are scheduled to be sold during FY 1995 and have an expected contract life of 3 years.

Even-aged management would be used in implementing the proposed actions. Seedtree and shelterwood regeneration harvests are general prescriptions that are to be applied. Patch clearcuts are recommended for bighorn sheep habitat improvement. Where timber harvest has occurred for wildlife enhancement, prescribed burning will also occur. Logging systems include tractor and helicopter.

The proposed actions are meant to bring the existing conditions closer to the desired conditions of the Kootenai National Forest Plan. The ID team has identified site specific objectives (purpose and need) for this project which are consistent with the management goals of the Kootenai National Forest Plan.

This proposed action was developed by the ID team in order to accomplish the following objectives: (1) Provide for healthy growing stand conditions resulting in vigorous growth and a sustainable timber harvest on suitable timberlands; (2) manage the area for long-term diversity through maintaining and enhancing big game habitat; (3) maintain ponderosa pine as a seral species.

The Kootenai National Forest invites written comments and suggestions on the scope of the analysis in addition to comments already received as a result of local public participation activities. The agency also gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of this proposal must be received by February 19, 1993.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to James I. Mershon, District Ranger, Cabinet Ranger District, 2693 Hwy. 200, Trout Creek, Montana, 59874.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed actions and environmental impact statement to David Clay, Project Coordinator, Cabinet Ranger District, 2693 Hwy. 200, Trout Creek, Montana, 59874. [Phone: (406) 827–3533].

SUPPLEMENTARY INFORMATION: The proposed actions include the following:

Area	MA	Acres	Harvest method	Volume estimate	Logging system
N. Pine Ridge	11	70	ST/SW	.77 MBF	Tractor 100%.
Berray Mtn	10	60	ST/SW	.66 MBF	Tractor 32%.
	11	62	ST/SW	.68 MBF	Heli 68%.
	12	101	ST/SW	1.1 MBF	
	19	41	ST/SW	.45 M[illegible]	
Bighorn Sheep	10	64	Patch clearcut	.70	Heli 100%.

The Berray Mountain analysis area contains approximately 16,842 acres. The EIS will tier to the Final EIS and Kootenai Forest Plan (September 1987). The Forest Plan provides goals and objectives, forest-wide standards and guidelines, management area standards and guidelines, and management area prescriptions for the various lands on the Forest. This direction provides for management practices that will be utilized during the implementation of the Forest Plan.

Management Area Allocations include the following:

MA 2 comprises 3 percent of the area. This area is to be managed as roadless recreation.

MA 8 comprises 13 percent of the area. This area has been recommended by the Kootenai National Forest for congressional designation as Wilderness.

MA 10 comprises 31 percent of the area. This area is to be managed for big game winter range.

MA 11 comprises 11 percent of the area. This area is to be managed for big game winter range while producing a programmed yield of timber and maintaining the viewing resource in areas of high visual significance.

MA 12 comprises 19 percent of the area. This area is to be managed to maintain or enhance nonwinter big game habitat and produce a programmed yield of timber.

MA 13 comprises 4 percent of the area. This area is to be managed to provide the special habitat necessary for old-growth dependent wildlife.

MA 14 comprises 13 percent of the area. This area is to be managed for grizzly bear habitat, while reducing grizzly/human conflicts, assist in the recovery of the grizzly bear and realize a programmed level of timber production.

MA 19 comprises 5 percent of the area. This area occurs on steep slopes and breaklands over 60 percent. The management objective of this area is to ensure soil stability and water quality by maintaining the vegetation in a healthy condition and by minimizing surface disturbance.

MA 21 comprises .3 percent of the area. This area is to be managed as a botanical area of special interest.

The analysis will consider a range of alternatives. Along with the proposed actions and all reasonable action alternatives the analysis will consider a "No Action" alternative for each proposed timber sale.

Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the Draft and Final EIS.

The scoping process includes:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives based on themes which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).
- Determining potential cooperating agencies and task assignments.

Public participation to this point involved the presentation of the project at a public open house at the Noxon School and personal contacts with local residents by the Project Coordinator. Future public participation will include continued public meetings, personal contacts, and contact through the media and written material. The following potential issues have been identified through the scoping efforts that have occurred to date:

- What are the cumulative effects, including all of the Champion International clearcuts north of Berray Mountain?
- What are the effects of sediment from logging activities on the fisheries within Berray Creek and the Bull River?
- Will the proposed action effect the wild and scenic classification of the Bull River?
- What effect will the proposed action have on the grizzly bear travel corridor that was recently purchased by the USFS?
- What effect would the proposal have on the soils of the area?
- What effect would the proposal have on wildlife?
- Can wildlife security be maintained?
- Can the cover/forage of the area be improved?
- What effect would the proposal have on the roadless character of Berray Mountain Roadless Area #672?
- Could we maintain/improve the biodiversity of the area?
- What effect would the proposal have on the watersheds of the area?
- What effect would the project have on air quality?
- What would be the effects on the visual quality objectives for the area?
- Are there any sensitive, threatened, or endangered plant or animal species in the area? How would this project affect them if they are present?
- What would be the effect to private land and private uses of federal lands in the area?

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1993. At that time EPA will publish a notice of availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986 and *Wisconsin Hertiages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed (see Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

The final EIS is scheduled to be completed by September 1993. In the final EIS the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

James I. Mershon, District Ranger, Cabinet Ranger District, Kootenai National Forest, 2693 Hwy. 200, Trout Creek, Montana, 59874, is the Responsible Official. As the Responsible Official he will decide which, if any, of the proposed projects will be implemented. The Responsible Official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: January 21, 1993.

James I. Mershon,

District Ranger, Cabinet Ranger District.

[FR Doc. 93–2306 Filed 2–1–93; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Central Virginia Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Central Virginia Electric Cooperative (CVEC) to construct the New Martin's Store Electric Generating Station in Nelson County, Virginia. The FONSI is based on the Borrower's Environmental Report (BER) prepared for CVEC by Mr. Gary Gilpin of Gilpin Group Environmental Consulting and Planning. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted the CVEC's BER as the environmental assessment for the project.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Corwin, Environmental Protection Specialist, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: The New Martin's Store Electric Generating Station is located in northern Nelson County, Virginia. The proposed electric generating facilities will consist of either two 1,500 kilowatt (KW) or three 1,250 KW diesel electric generating units which will be housed in a one-story metal building 36 by 60 feet and 20 feet in height, a 10,000 gallon aboveground tank or two 5,000 gallon aboveground tanks, a 500 foot 24.9 kilovolt (kV) underground distribution line and a 600 foot construction/maintenance access road composed of four inch thick crushed stone. CVEC will construct the facilities on 3 acres of land which is adjacent to the existing Martin's Store Substation.

Alternatives examined for the proposed project included no action, conservation, alternative generating technologies, and constructing the proposed facilities at alternative sites.

Based on an independent analysis of the adopted BER, REA has concluded that the construction of the proposed generating facilities will have no significant impact on air quality, water quality, wetlands, the 100-year floodplain, existing land uses, prime farmland, historic properties, federally-listed threatened and endangered species, or designated critical habitat or species proposed for listing or proposed critical habitat.

No other potential significant impact resulting from the construction and use of the proposed project has been identified. Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Central Virginia Electric Cooperative, P.O. Box 247, Front Street, Lovingston, Virginia 22949.

Dated: January 22, 1993.

George E. Pratt,

Deputy Administrator, Program Operations, Rural Electrification Administration, U.S. Department of Agriculture.

[FR Doc. 93–2357 Filed 2–1–93; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Industrial Resource Administration, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comments on the market impact of proposed disposals of excess commodities currently held in National Defense Stockpile.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the market impact of proposed disposals of excess materials currently held in the National Defense Stockpile. Comments should be received by March 4, 1993.

ADDRESSES: Send all comments to Edward L. Levy; Co-Chair, Stockpile Market Impact Committee; Office of Industrial Resource Administration; room 3878; U.S. Department of Commerce; 14th Street and Constitution Avenue NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward L. Levy, Office of Industrial Resource Administration; U.S. Department of Commerce; (202) 482–3795 or Milt Drucker, Office of International Commodities, U.S. Department of State; (202) 647–2871 (co-chairs of the Stockpile Market Impact Committee).

SUPPLEMENTARY INFORMATION: Under authority of the Strategic and Critical Materials Stockpiling Act of 1949, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. In making disposals and acquisitions of Stockpile materials, Defense is required by law to refrain from causing undue market disruption, while at the same time protecting the government against avoidable loss.

Section 3314 of the FY 1993 National Defense Authorization Act (NDAA) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic efforts of all acquisitions and disposals of materials from the National Defense Stockpile." The Committee includes representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

With this in mind, it is the Defense National Stockpile Center's (DNSC) intention to become a dependable, long-term source of materials that will be sold as close to market prices as the conditions of sale permit (*e.g.* consideration will be given for the certifiable quality of the materials being sold, and any appropriate transportation differential). In order to protect the government against avoidable loss, the DNSC intends to exercise restraint regarding the quantities and timing of any offers of excess materials for sale.

The Committee will soon begin its consideration of Defense's FY 1994 Annual Materials Plan (AMP) of proposed disposals and acquisitions of Stockpile materials. In order for the Committee to obtain sufficient information to prepare its recommendations to Defense, the Committee hereby requests that interested parties provide comment on the potential market impact of the commodities identified below as candidates for sales in FY 1994.

Although comments in response to this notice must be received by (30 days after publication) for the Committee to consider them in its evaluation of the FY 1994 AMP, the Committee would welcome further comments as the sales proceed.

The FY 1994 AMP has not yet been prepared in final form, but the following are the materials for which Defense has been granted disposal authority by Congress, and which therefore *may* be included in the FY 1994 AMP. Interested parties are requested to provide any comments that would be useful to the Committee in reviewing proposed schedules and quantities of Stockpile sales.

Commotidies Which May Be Included In FY 1994 AMP

Aluminum Oxide, Abrasive
Aluminum Oxide, Fused, Crude
Antimony
Asbestos (all types)
Bauxite, Metal Grade, Jamaica Type
Bauxite, Metal Grade, Surinam Type
Bauxite, Refractory
Beryl Ore
Bismuth
Cadmium
Celestite
Chromite, Chemical Grade
Chromite, Metallurgical Grade
Chromite, Refractory Grade
Chromium, Ferro, High Carbon
Cobalt
Copper
Diamond, Industrial, Crushing Bort
Diamond, Stones
Fluorspar, Acid Grade
Fluorspar, Metallurgical Grade
Germanium
Graphite, Natural, Malagasy
Graphite, Natural, Other than Ceylon and Malagasy
Iodine
Jewel Bearings NSG
Kyanite
Lead
Manganese, Chemical Grade
Manganese, Battery Grade, Natural Ore
Manganese, Battery Grade, Synthetic Dioxide
Manganese, Metallurgical Grade
Manganese, Ferro, High Carbon
Mercury
Mica, Muscovite Block
Mica, Muscovite Film
Mica, Muscovite Splitting
Mica, Phlogopite Splitting
Nickel
Quartz Crystals, Natural
Rutile
Sapphire and Ruby
Sebacic Acid
Silicon Carbide
Silver (coinage use only)
Talc
Tin
Thorium Nitrate
Vegetable Tannin Extract, Chestnut
Vegetable Tannin Extract, Quebracho
Vegetable Tannin Extract, Wattle
Zinc

Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this request. All materials should be submitted with 10 copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure to the extent permitted by law and regulation. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this investigation will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et. seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: January 27, 1993.

John A. Richards,

Deputy Assistant Secretary for Industrial Resource Administration.

[FR Doc. 93–2345 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DT–M

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
Custom Products of Litchfield, Inc.	1715 S. Sibley Avenue, Litchfield, MN 55355	11/12/92	Cab enclosures of metal and glass, rollover bars of steel and fabricated enclosures, steel panels.
Sea Sky USA aka SPCL EFX, Unlimited.	680 Kakio Street #5 & #6, Honolulu, HI 96819 ...	11/12/92	Apparel—tee shirts.

Firm name	Address	Date petition accepted	Product
Excellon Automation Company	24751 Crenshaw Boulevard, Torrance, CA 90505.	12/21/92	Spindle drilling machine and parts for spindle drilling machine.
Monroe Fluid Technology, Inc	36 Draffin Road, Box 810, Hilton, NY 14468	12/22/92	Metal working fluids.
Aerolite	425 West Rider, Suite B8, Perris, CA 92571	12/22/92	Paragliders.
Remarque Mfg. Corp	110 Field Street, West Babylon, NY 11704	12/29/92	Manufacturer of assemblies and components.
Island Spring, Inc	18846 103rd Avenue Southwest, Vashon, WA 98070.	12/29/92	Food & bevg.—soybean products.
Republic Technology, Inc	1745 Broadway Street, Charlottesville, VA 22902.	12/29/92	Electronics—Fabricated circuit boards and wire harnesses.
Snobird Aircraft, Inc	13007 122nd Avenue KPN, Gig Harbor, WA 98329.	12/29/92	Misc.—Aircraft kits.
Gainey Ceramics, Inc	1200 Arrow Highway, Laverne, CA 91750–5293	12/30/92	Misc.—Ceramic containers.
Reimers Engineering, Inc	6314 Gravel Avenue, Alexandria, VA 22301	12/30/92	Transportable recompression chambers and multiplace hyperbaric facilities designed and assembled.
Ascot Tag & Label Co., Inc	577 North 3rd Street, Newark, NJ 07107	12/30/92	Misc.—Labels and decals.
Apex Industrial Equipment, Inc	P.O. Drawer 1049, Salem, VA 24153	12/30/92	Industrial equipment for the tire manufacturing industry.
Allen Company (The)	712 East Main Street, Blanchester, OH 45107	1/4/93	Misc. mugs and artwork.
Blackhawk Foundries	323 S. Clark Street, Davenport, IA 52808	1/4/93	Metal Products—Hydraulic pump housing and diesel engine components cast of iron.
Sun Metal Products, Inc	2156 N. Detroit Street, Box 1508, Warsaw, IN 46581–1508.	1/4/93	Golf, wheelchair, motorcycle and exercise wheels and aluminum rims and rolled aluminum.
Bogue Electric Manufacturing Company.	100 Pennsylvania Avenue, Paterson, NJ 07509	1/4/93	Mach. & equip.—Rotors, stators, exciters, generators and/or motors, and static systems.
Anionics, Inc	300 Hangar Road, Oriskany, NY 13424	1/5/93	Mach. & equip.—vacuum sealing fuel systems and electron beam welding.
Kewaunee Engineering Corp	North Main Street, Kewaunee, WI 54216	1/6/93	Components of construction equipment, hoist, lifts, cranes, and ships of iron and steel.
Taylor Forge Engineered Systems, Inc.	First & Iron Streets, Paola, KS 66071	1/6/93	Mach. & equip.—pressure vessels and skid mounted gas processing equipment.
Bryce D. Jewett Machine Manufacturing Co., Inc.	2901 Maury Street, Richmond, VA 23229	1/8/93	Metal products—precision machine parts—castings of carbon steel & stainless steel.
Besly Products Corporation	100 Dearborn Avenue, South Beloit, IL 61080	1/11/93	Metal products—steel cutting tool to be mounted on a tapping machine.
Huther Brothers, Inc	1290 University Avenue, Rochester, NY 14607	1/11/93	Mach. & equip.—machine knifes that cut paper and metal.
Centennial Shipping Products Company Inc.	302 Northern Pacific Avenue, Fargo, ND 58102	1/11/93	Wood products—wood shipping and construction related products, i.e. pallets, crates and stakes.
Modern Industries, Incorporated	3229 East Washington Street, Phoenix, AZ 85034–1607.	1/12/93	Mach. & equip.—turbine engine parts for military & commercial aircraft blades, starters, etc.
Dec International, Inc	1919 S. Stoughton Road, Madison, WI 53708	1/14/93	Mach. & equip.—dairy farm equipment, food processing equipment and dispensing control systems.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 25, 1993.

Craig M. Smith,

Deputy Director for Program Operations.

[FR Doc. 93–2293 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–588–807]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan; Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Court of International Trade Decision.

SUMMARY: On March 5, 1992, the United States Court of International Trade (CIT) held that cash deposits should not have been collected before the date of publication in the **Federal Register** of the International Trade Commission's (ITC) final determination concerning industrial belts from Japan which occurred on June 7, 1989. Therefore, pursuant to the CIT's order, the Department will issue instructions to the U.S. Custom Service to release or refund any bonds or deposits of estimated dumping duties on imports of industrial belts entered from Japan during the period of February 1, 1989 through June 6, 1989.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta in the Office of Agreements Compliance; International Trade Administration; U.S. Department of Commerce; Washington, DC 20230; telephone number (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On July 26, 1990, the Department initiated an administrative review (55 FR 30490) of the antidumping duty order on industrial belts from Japan (54 FR 25314, June 14, 1989; amended 54 FR 32104, August 4, 1989). On November 12, 1991, the Department published the preliminary results of that review (56 FR 57513). The review covered sales of the subject merchandise in the United States during the period of February 1, 1989 through May 31, 1990. Before the review was initiated Mitsuboshi Belting Limited (MBL) and its U.S. affiliate, a respondent in the review, filed suit in the CIT challenging the antidumping duty order (MBL (USA) and Mitsuboshi Belting Limited, 89–07–00403, Complaint, July 7, 1989 (Complaint)). MBL claimed the order was not in accordance with Section 736(b)(2) of the Tariff Act of 1930, as amended (Tariff Act) (19 USC 1673e(b)(2)), because it did not require the release of any bond or refund any cash deposit made against estimated antidumping duties for entries of industrial belts from Japan during the period of February 1, 1989 through June 6, 1989 (Complaint at 5).

On March 5, 1992, the CIT held that as a result of a negative ITC "but for" vote (threat of material injury found, but would not find material injury itself but for suspension of liquidation of entries) and three negative votes, cash deposits should not have been collected before the date of publication of the ITC's final affirmative determination in the **Federal Register** (Investigation Nos. 731–TA–412 through 419 (Final Determination), 54 FR 24430, June 7, 1989). *MBL (USA) Corp. and Mitsuboshi Belting Ltd.* v. *United States*, 787 F. Supp. 202 (CIT, March 5, 1992). The CIT ordered the Department to "release or refund or cause to be released or refunded any bonds or deposits of estimated antidumping duties on imports of power-transmission belts from Japan," in accordance with section 736(b)(2) of the Tariff Act (Order, 89–07–00403, March 5, 1992). Therefore as a result of the CIT order, there are no longer any suspended entries from February 1, 1989 through June 6, 1989.

Notice of CIT Order

Pursuant to the CIT order, the Department will issue instruction directly to the U.S. Customs Service to release or refund any bonds or cash deposits of estimated antidumping duties on imports of industrial belts from Japan entered during the period of February 1, 1989 through June 6, 1989. Accordingly, the Department's final results of administrative review will cover sales of subject merchandise in the United States during the period of June 7, 1989 through May 31, 1990. The final results will be published subsequently.

Dated: January 19, 1993.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 93–2437 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–003]

Court Decision and Suspension of Liquidation: Ceramic Tile From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 17, 1993.

SUMMARY: On January 7, 1993, in *Ceramica Regiomontana, S.A. et al.* v. *United States*, Court No. 88–05–00394, a lawsuit challenging the Department of Commerce's (the "Department") final results of countervailing duty administrative review of the countervailing duty order on ceramic tile from Mexico, the Court of International Trade ("CIT") affirmed the Department's second results of redetermination on remand. As a result, the final countervailing duty rate for all firms without specified individual rates (the "all others" rate) has decreased from 3.16% *ad valorem* to 2.63% *ad valorem* for 1984, and from 4.17% *ad valorem* to 3.60% *ad valorem* for 1985. Consistent with the decision of the Court of Appeals for the Federal Circuit ("CAFC") in *Timken Co.* v *United States*, 893 F.2d 337 (Fed. Cir. 1990), Commerce will not order the liquidation of the subject merchandise entered or withdrawn from warehouse for consumption prior to a "conclusive" decision in this case.

FOR FURTHER INFORMATION CONTACT: Gayle Longest, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1988, the Department published notice of its final results of countervailing duty administrative review in connection with the countervailing duty order on ceramic tile from Mexico. Ceramic Tile from Mexico; Final Results of Countervailing Duty Administrative Review, 53 FR 15090. In that determination, the Department set forth its finding of the total bounty or grant being given on the subject merchandise during the period or review, July 1, 1984 through December 31, 1985. This determination included a finding, *inter alia*, of an "all other" rate of 3.16% *ad valorem* for the period of July 1, 1984 through December 31, 1984, and of 4.17% *ad valorem* for the period of January 1, 1985 through December 31, 1985.

Subsequent to the Department's determination, respondents filed a lawsuit with the CIT challenging this determination. Thereafter, the CIT issued an order and Slip Opinion 92–71 dated May 15, 1992, in *Ceramica Regiomontana, S.A., et al.* v. *United States*, Court No. 88–05–00394 remanding the Department's determination so that the Department could recalculate the all other rate based on a weighted average of all companies investigated, including those with *de minimis* or zero individual rates. On July 20, 1992, the Department filed its required remand results with the CIT. On October 1, 1992 the CIT ordered a second remand because the Department had only applied the newly recalculated "all other" rate to those firms which had filed suit, rather than to all firms investigated without a specified individual rate. On December 17, 1992, the Department filed its second remand results with the CIT. On January 7, 1993, the CIT affirmed the Department's second remand results in their entirety and dismissed the case. *Ceramica Regiomontana, S.A., et al.* v. *United States*, Court No. 88–05–00394, Slip Op. 93–1. As a result the "all other" rate for ceramic tile from Mexico has decreased from 3.16% to 2.63% *ad valorem* for 1984, and from 4.17% to 3.60% *ad valorem* for 1985.

Suspension of Liquidation

In its decision in *Timken*, the CAFC held that Commerce must publish notice of a decision of the CIT or the CAFC which is not "in harmony" with Commerce's determination. Publication of this notice fulfills this obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. The option of appealing this decision is being weighed, and a "conclusive" decision can not be reached until the opportunity to appeal expires, or any appeal is decided by the CAFC. Therefore, the Department will continue to suspend liquidation pending the expiration of the period to appeal or pending a final decision of the CAFC if *Ceramica Regiomontana*, Slip Op. 93–1, is appealed.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2438 Filed 2–1–93; 8:45 am]

BILLING CODE 3510–DS–M

[C-351-037]

Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On December 10, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (57 FR 58458). We have now completed that review and determine the net subsidy to be 0.19 percent *ad valorem* for all firms during the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis.*

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC. 20230; telephone: (202) 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 58458) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991, ten companies and six programs: (1) Income Tax Exemption for Export Earnings; (2) Reductions of Taxes and Import Duties through BEFIEX; (3) SUDENE Regional Tax Exemption; (4) CACEX Preferential Export Financing under CIC-OPCRE of the Banco do Brasil; and (6) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans).

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the subsidy rates of the ten companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was *de minimis*, as defined by 19 CFR 355.7, we did not proceed any further in our analysis.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.19 percent *ad valorem* for all firms during the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis.*

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

The Department will instruct the Customs Service to continue to suspend liquidation on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. Because the net subsidy is *de minimis*, however, the cash deposit on such shipments will be zero. These instructions shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2439 Filed 2-1-93; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATE AND LOCATION: The meeting will be held on Friday, February 26, 1993 from 10 a.m. to 5 p.m. at the Department of Commerce in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Affairs, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 482-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 24, 1991, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: January 25, 1993.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 93–2340 Filed 2–1–93; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Personal Property Claims Symposium

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 25 February 1993, at the Best Western Old Colony Inn, Alexandria, Virginia, and will convene at 0830 and adjourn at approximately 1500 hours.

PROPOSED AGENDA: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTPP–M, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1600, between 0800–1530 hours. Topics to be discussed should be received on or before 5 February 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–2341 Filed 2–1–93; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 17–18 February 1993.

Time of Meeting: 0800–1700, each day, Army Research Laboratory, Ft. Monmouth, NJ, Bell Laboratories, Communications, and Electronics Command.

Place: Pentagon.

Agenda: The Army Science Board's Ad Hoc Subgroup on "Evaluating and Selecting Proposals" will meet to review concerns about unsolicited proposals. This meeting will be closed to the public in accordance with section 552b. (c) of title 5, U.S.C., specifically subparagraph (4) thereof and title 5, U.S.C. appendix 2, subsection 10(d). The proprietary and non-proprietary information to be discussed will be so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–2348 Filed 2–1–93; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Secretary of the Navy's Advisory Committee on Naval History; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is given that the Secretary of the Navy's Advisory Committee on Naval History will meet on February 18-19, 1993, from 8 a.m. to 4 p.m., in the Dudley Knox Center for Naval History Conference Room, second floor, building 57, Washington Navy Yard, Washington, DC 20374-5060. The purpose of the meeting is to elicit the advice of the committee concerning various aspects of the Navy's historical programs.

For further information concerning this meeting contact: Dr. William S. Dudley, Naval Historical Center, Washington Navy Yard, Washington, DC 20374-5060, telephone (202) 433-7230.

Dated: January 22, 1993.

Michael P. Rummel

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–2310 Filed 2–1–93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10375–003–UT]

Weber Basin Water Conservancy District; Surrender of Conduit Exemption

January 27, 1993.

Take notice that Weber Basin Water Conservancy District (District), exemptee for the Drought Relief Pipeline Project No. 10375, has requested that its exemption be terminated. The conduit exemption for Project No. 10375 was issued June 8, 1989, and would have been located in Weber County, Utah. No construction has been done at the site.

The exemption for Project No. 10375 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2432 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03002T; Colorado–55]

State of Colorado; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1993.

Take notice that on January 14, 1993, the Oil and Gas Conservation Commission of the State of Colorado (Colorado), submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the "J" Sand Formation underlying certain lands in Adams County, Colorado, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as all of Section 6, Township 2 South, Range 62 West.

The notice of determination also contains Colorado's findings that the referenced portion of the "J" Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18

CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2429 Filed 2-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-03305T; Texas-97]

State of Texas; Corrected NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Marble Falls Formation (Momma Bear Field) underlying Erath and Palo Pinto Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Marble Falls Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended portion of the Marble Falls Formation (Momma Bear Field) is located in Earth and Palo Pinto Counties, Texas, within Railroad Commission District 7B and includes all or a portion of the following surveys:

Erath County

Thos. Toby, A-789
S. Romick, A-1419
Burnett, A-123
Geo. W. Treighen, A-758
S. Jordan, A-444
James McCoy, A-562
James McCoy, A-563
Geo. Lamon, A-931
M. Hagwood, A-414
John Davis, A-215
John Davis, A-216
John Davis, A-217
B.B.B. & C. R.R., A-114
Thomas Stubblefield, A-684
S.P.R.R., A-1312, A-1351
Josiah Bishop, A-47
Oliver Smith, A-725
T.C. Ray, A-1161

Palo Pinto County

J.H. Bond, A-43
T.C. Ray, A-1753
E.V. Landreph S.M. Fyffe, A-2055
E.V. Landreph S.M. Fyffe, A-2021
Hood County School Land, A-220
J.R. Jennings, A-263
G. Treighen, A-1937
T. & N.O. R R., A-695
C.N. Deaton, A-2189

[FR Doc. 93-2430 Filed 2-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93-03306T; Texas-98]

State of Texas NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Upper Cretaceous Second San Miguel Sand Formation underlying Dimmit and Maverick Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is more fully described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Upper Cretaceous Second San Miguel Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended portion of the Upper Cretaceous Second San Miguel Sand Formation consists of approximately 47,472 acres in Dimmit and Maverick Counties, Texas, within Railroad Commission District 1 and includes all or a portion of the following surveys:

Survey name	Block No.	Abstract No.
Dimmit County:		
J. Bowers	586	24
G. Denton	27½	1548
I & GN RR	4	293
I & GN RR	5	294
I & GN RR	6	295
I & GN RR	7	296
I & GN RR	8	297
I & GN RR	9	298
I & GN RR	10	299
I & GN RR	11	300
I & GN RR	12	301
I & GN RR	26	417
I & GN RR	27	418
I & GN RR	28	419
I & GN RR	29	420
I & GN RR	33	322
I & GN RR	34	323
I & GN RR	35	324
I & GN RR	37	326
I & GN RR	40	329
F. Lombrano		1360
Maverick County:		
F. Lombrano		731

[FR Doc. 93-2431 Filed 2-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-67-000]

Columbia Gas Transmission Corp.; Petition To Establish a Restricted Investment Arrangement Account

January 27, 1993.

Take notice that on January 21, 1993, Columbia Gas Transmission Corporation (Columbia) pursuant to Rule 207 of the Commission's rules of practice and procedure, 18 CFR 385.207, petitioned the Commission to issue an order directing that all supplier refunds related to overcharges for service rendered prior to July 31, 1991, be made to Columbia and deposited by Columbia into a Restricted Investment Arrangement (RIA) account, consistent with the provisions of a January 6, 1993 order in Columbia's bankruptcy proceedings authorizing the establishment of such RIA account.

Columbia states that due to the uncertainties surrounding the disposition of supplier refunds owed to Columbia, prior to July 31, 1991, the date of its bankruptcy petition, certain of Columbia's pipeline suppliers have been hesitant to make such refunds to Columbia. Columbia states that to remove the uncertainties, Columbia, on December 9, 1992, filed a motion with the bankruptcy court for authorization to establish an RIA for all pre-petition supplier refunds for refunds received prior to July 31, 1991, refunds received subsequent to that date, and interest earned by Columbia's RIA, and to invest such funds in compliance with the investment guidelines approved by the bankruptcy court. Columbia states that on January 6, 1993, the bankruptcy court issued an unopposed order authorizing Columbia to establish its RIA arrangement.

Columbia requests that the Commission issue an order directing that (1) all of Columbia's suppliers regulated by this Commission make such pre-petition refunds to Columbia pursuant to the Commission's order and regulations; and (2) Columbia deposit such refunds into its RIA account, consistent with the bankruptcy court's January 6, 1993 order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2433 Filed 2-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-66-000]

Columbia Gas Transmission Corp.; Joint Complaint and Request for Emergency Action

January 27, 1993.

Take notice that on January 21, 1992, the Public Service Commission of the Commonwealth of Kentucky (Kentucky) and the Public Service Commission of the State of New York (New York) filed a Joint Complaint and Request for Emergency Action. Kentucky and New York request that the Commission take action effective no later than April 1, 1993 to eliminate an alleged "tying arrangement" in Columbia Gas Transmission Corporation's (Columbia) WS tariff which forces WS customers to purchase gas for injection into storage solely from Columbia, in violation of Order No. 636. Kentucky and New York state that unless the Commission promptly takes such action, Columbia will, in effect, delay the restructuring of the unbundled WS Service until April 1, 1994.

Kentucky and New York request that the Commission eliminate, as of April 1, 1993, the restriction in the WS tariff which forces customers to purchase gas from Columbia.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before February 26, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2434 Filed 2-1-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-65-000]

Public Service Electric and Gas Co. v. Texas Eastern Transmission Corp; Complaint

January 27, 1993.

Take notice that on January 21, 1993, Public Service Electric and Gas Company (PSE&G) file an "emergency complaint" against Texas Eastern Transmission Corporation (Texas Eastern), and requested the Commission to issue an order directing Texas Eastern to implement a December 3, 1992 request of PSE&G to convert a portion of its firm sales entitlements on Texas Eastern to an equivalent volume of firm transportation to be effective February 1, 1993.

PSE&G argues that Texas Eastern's refusal to grant PSE&G's conversion request is in direct violation of the Commission's order issued in Docket Nos. RP85-177-097, *et al.* on November 25, 1992,[1] and constitutes an unlawful denial of PSE&G's substantive rights under § 284.10 of the Commission's regulations and the NGA, as promulgated by the Commission pursuant to Order Nos. 436/500.

PSE&G argues that Texas Eastern is attempting to deny PSE&G its Order Nos. 436/500 conversion rights, while simultaneously increasing the cost of sales service to PSE&G just as the period of sustained cold weather has begun in PSE&G's service territory PSE&G asserts that its conversion request is substantively identical to Elizabethtown Gas Company's conversion request, which the Commission's November 25 order specifically directed Texas Eastern to grant.

PSE&G states that the Commission should take immediate action and also direct Texas Eastern to grant PSE&G's conversion request, effective February 1, 1993, given that the Commission has already decided the fundamental legal issues in its November 25 order.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before February 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before February 26, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2435 Filed 2-1-93; 8:45 am]

BILLING CODE 6717-01-M

Federal Energy Regulatory Commission

[Docket No. RP93-68-000]

Tennessee Gas Pipeline Co.; Tariff Filing

January 27, 1993.

Take notice that on January 22, 1993, Tennessee Gas Pipeline Company ("Tennessee") tendered for filing an original and ten copies of the following tariff sheets to be effective on March 1, 1993:

Fourth Revised Volume No. 1

Original Sheet Nos. 20B, 20C, 21B, 21C, 23A, 24B, 24C, 25B, 25C, 26B, 26C, 28C, 28D, 29B and 29C.

Original Volume No. 2

Original Sheet Nos. 5B, 5C, 6B, 6C, 7B, 7C, 8B, 8C, 9B, 9C, 10B and 10C.

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[1] 61 FERC ¶61,271 (1992).

Tennessee states that the purpose of these tariff sheets is to implement an optional, immediate commodity rate reduction for those customers who elect to pay the reduced commodity rates in lieu of the commodity rates currently in effect in Docket No. RP91–203. Tennessee proposes that the rates reflected on the revised tariff sheets remain in effect through the earlier of October 1, 1993 or the day prior to the day Tennessee's Order No. 636 compliance filing (in Docket No. RS92–23) becomes effective (Termination Date).

Tennessee further states that the optional, reduced commodity rates are based upon the level of variable costs and throughput utilized in Tennessee's general rate filing in Docket No. RP91–203. Tennessee states that, upon the Commission's determination of the just and reasonable rates, Tennessee will make refunds to each customer of any net overcollections for the period February 1, 1992 (when the RP91–203 rates became effective subject to refund) through the Termination Date (Refund Period). Tennessee asserts that it will not surcharge any customer from whom it undercollected for the Refund Period, although customers opting for the reduced rates must sign an agreement governing refunds.

Any person desiring to be heard or to protest this filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before February 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2436 Filed 2–1–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of November 27 Through December 4, 1992

During the Week of November 27 through December 4, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 27 through Dec. 4, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 30, 1992	Chuck Hansen, Sunnyvale, CA	LFA–0251	Appeal of an information denial. If granted: Chuck Hansen would receive access to a history of U.S. nuclear testing written by William E. Ogle.
Do	Home Oil Company, Inc., Ashford, AL	LEE–0046	Exception to the reporting requirements. If granted: Home Oil Company, Inc., would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Products Sales Report."
Do	Williams, Youle & Koenigs, P.C., Denver, CO	LFA–0252	Appeal of an information request denial. If granted: The November 16, 1992 Freedom of Information Request Denial issued by the Albuquerque Field Office of the Department of Energy would be rescinded, and Williams, Youle & Koenigs, P.C., would receive access to material relating to the payment of production bonuses to Rockwell International.
Dec. 4, 1992	Shell/Parkway Shell, East Orange, NJ	RR315–4	Request for modification/rescission in the Shell Refund proceeding. If granted: The November 24, 1992 Decision and Order (Case No. RF315–7304) issued to Parkway Shell regarding the firm's Application for Refund submitted in the Shell refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

[Week of Nov 27 through Dec. 4, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/30/92	Weslaco I.S.D	RF272–93978.
11/30/92	Eunice Canal	RF346–13.
11/30/92	Turner Cty Bd of Commissioners.	RC272–166.
12/02/92	Rolfers Construction Co.	RF272–93979.
12/07/92	West Mifflin Area Sch Dist.	RC272–167
11/27/92 thru 12/04/92	Texaco Oil Refund applications received.	RF321–19478 thru RF321–19487.

REFUND APPLICATIONS RECEIVED—Continued

[Week of Nov. 27 through Dec. 4, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/27/92 thru 12/04/92.	Gulf Oil Refund applications received.	RF300–20734 thru RF300–20746.
11/27/92 thru 12/04/92	Atlantic Richfield refund applications received.	RF304–13415 thru RF304–13425.

[FR Doc. 93–2396 Filed 2–1–93; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed During the Week of January 1 Through January 8, 1993

During the Week of January 1 through January 8, 1993, the applications for relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 1 through January 8, 1993]

Date	Name and location of applicant	Case No.	Type of submission
1/7/93	Gulf/Danny R. Holton, Cordova, Tennessee	RR300–220	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The April 3, 1992 Dismissal Letter (Case No. RF300–19558) issued to Danny R. Holton would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
1/7/93	Gulf/Knight's Gulf, Cordova, Tennessee	RR300–219	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The March 20, 1991 Dismissal Letter (Case No. RF300–11608) issued to Knight's Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
1/7/93	Gulf/Roberts Oil Company, Cordova, Tennessee	RR300–221	Request for Modification/Rescission in the Gulf Refund Proceeding. *If granted:* The July 1, 1991 Dismissal Letter (Case No. RF300–16779 issued to Roberts Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of Jan. 1 through Jan. 8, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
1/4/93	Don's Texaco	RF321–19542.
1/4/93	Bill's Texaco Service Station.	RF321–19543.
1/4/93	Sink's Texaco	RF321–19544.
1/4/93	Mid Continent Coal & Coke.	RF321–19545.
1/4/93	Wheeling Steel Corporation.	RF321–19546.
1/4/93	Sanborn's Texaco	RF321–19547.
1/4/93	Ivan Ryder	RF321–19548.
1/4/93	Republic Steel Corporation.	RF321–19549.
1/4/93	Jones & Laughlin Steel Corp.	RF321–19550.
1/4/93	Yongstown Sheet & Tube Corp.	RF321–19551
1/1/93 thru 1/8/93.	Atlantic Richfield Applications Received.	RF304–13490 thru RF304–13508.
1/1/93 thru 1/8/93.	Gulf Oil Refund Applications Received.	RF300–20807 thru RF300–20822.
1/1/93 thru 1/8/93.	Crude Oil Refund Applications Received.	RF272–94022 thru RF272–94036.

[FR Doc. 93–2397 Filed 2–1–93; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of December 7 Through December 11, 1992

During the week of December 7 through December 11, 1992, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Dane Energy Company, Economic Regulatory Administration, 12/10/92, HRO–0124, LRZ–0015

Dane Energy Company filed a Statement of Objections to a Proposed Remedial Order (PRO) issued to it by the Economic Regulatory Administration (ERA) on January 7, 1983. In the PRO, the ERA alleged that during the audit period, November 1978 through December 1980, Dane violated the layering regulation codified at 10 CFR 212.186, the certification regulation at 10 CFR 12.131(b)(1), the anti-circumvention regulation set forth at 10 CFR 205.202, and the normal business practices rule contained in 10 CFR 219,62(c).

In considering the Dane objections, the DOE found that Dane's crude oil resales violated the layering rule. The DOE dismissed Dane's general objections to the regulations underlying the PRO that had been considered and rejected in many other similar proceedings. The DOE also rejected the argument that Dane had provided at least one historical and traditional crude oil reseller service or function in every sale, finding instead that Dane failed to provide any substantive evidence of the alleged services. In finding that Dane violated the certification regulations, the DOE dismissed Dane's argument that it did not violate the regulation because it engaged in a balancing system of inventory. The DOE noted that it and the Temporary Emergency Court of Appeals had previously required a tracking of the certification for each gallon of crude oil sold, thereby repudiating the balancing system. Further, Dane argued that it did not violate the normal business practices and the anti-curcumvention rules, because those rules do not apply to crude oil sales. However, the DOE noted that in this case, Dane had misread the regulation in question.

In the PRO, the ERA had established Dane's liability on the basis of its total overcharges. ERA acknowledged that the overcharges received by Dane were in excess of the actual gross profits realized by Dane during the audit period and, therefore, Dane's overcharge liability might be also computed on the basis of Dane's gross profits in the transactions in question. This methodology reduces the overcharges assessed because losses are offset against gains. Both ERA and Dane made this calculation, with the ERA reaching a slightly higher figure. In view of the minor difference and the need for administrative finality, the DOE accepted Dane's figure, establishing overcharge liability as $8,361,227.88; plus interest. In addition, the DOE determined that any refunds recovered from Dane shall be distributed in accordance with the procedures set forth in 10 CFR part 205, subpart V.

The other matter disposed of in this Remedial Order was a Motion to Modify filed by the ERA. The Motion requests that the PRO be modified so that interest will continue to accrue on Dane's overcharge liability until it has been paid. As the PRO was issued, interest could arguably cease accruing 20 days after the issuance of the Remedial Order. The DOE granted ERA's Motion because good cause exists and there has been no undue prejudice to Dane. Accordingly, the DOE issued the PRO, as modified, as a final Remedial Order.

Refund Applications

Texaco Inc./State of Connecticut, 12/8/92, RF321-15303

The DOE issued a Decision and Order granting in part an Application for Refund filed by the State of Connecticut in the Texaco Inc. subpart V special refund proceeding. In its Application, Connecticut claimed that it had purchased 62,873,640 gallons of fuel oil from Texaco during the March 1973 through June 1976 refund period for that product. However, Connecticut could neither document its claim that it purchased Texaco fuel oil nor the volume of any such purchases. Instead, the State had (1) assumed that it had purchased fuel oil from Texaco because Texaco marketed in Connecticut and (2) estimated these assumed purchases by applying Texaco's 1979–1981 percentage market share in the State to Connecticut's total volume of fuel oil purchases during the refund period. In the absence of any documentation, the DOE rejected the assumed estimated purchases as a basis for a refund. However, records supplied to the DOE by Texaco did show that the State had purchased 18,352 gallons of naphthas/gas oils and on this bases a refund of $27, including $7 of accrued interest was granted.

Vickers Energy Corporation/Kansas, 12/10/92, RQ1-585

The DOE issued a Decision and Order granting a second-stage refund Application filed by the State of Kansas in the Vickers special refund proceeding. Kansas requested permission to use $463,379 of its allocated Vickers monies to establish a central video teleconferencing facility at the state capitol complex for use by state agencies and educational institutions. The DOE found that this program, as part of Kansas' overall balanced restitutionary program, would provide restitution to injured consumers of refined petroleum products by reducing the amount of necessary business travel for state employees. Accordingly, the State's second-stage refund Application was granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Bahu's Arco #2 et al.	RF304-11221	12/08/92
Atlantic Richfield Company/Fair Oil Company, Inc.	RR304-47	12/09/92
Atlantic Richfield Company/Petroleum Products Corporation.	RF304-28	12/08/92
Atlantic Richfield Company/Simmons Arco et al.	RF304-13289	12/08/92
Beacon Oil Company/Seiberts' Oil Company, Inc.	RF238-34	12/09/92
A & S Service	RF238-35	
City of Devils Lake.	RF272-83523	12/08/92
Village of Westmont.	RF272-83542	
City of San Marcos.	RF272-83580	
City of O'Fallen	RF272-83344	12/08/92
City of Bisbee	RF272-83394	
City of Lower Burrell.	RF272-83421	
Town of Milton	RF272-83585	
Farmington School District et al.	RF272-79001	12/10/92
Gulf Oil Corporation/H.E. Sanson & Sons, Inc.	RF300-13176	12/10/92
Henry Sanson & Sons, Inc.	RF300-15057	
Gulf Oil Corporation/John J. Pisano et al.	RF300-17548	12/10/92
Gulf Oil Corporation/Onyx Corporation.	RF300-9675	12/08/92
Kenilworth Equities, Ltd.	RF272-86824	12/09/92
Mark S. Prosser	RF272-26270	12/10/92
Carl N. Becker	RF272-26378	
Vyrl Fegel	RF272-29163	
Gerald A. Sothers.	RF272-29449	
Peters Truck Lines, Inc. et al.	RF272-65652	12/10/92
S.A.D. #23—Carmel et al.	RF272-87500	12/08/92
Shell Oil Company/Lakeland Shell et al.	RF315-8706	12/11/92
Texaco Inc./Bray's Texaco et al.	RF321-15281	12/09/92
Texaco Inc./David Martin, Jr. Texaco.	RF321-19479	12/08/92
Texaco Inc./Doberty's Texaco.	RF321-14062	12/11/92
Texaco Inc./Industrial Lubricants Co. et al.	RF321-16015	12/10/92
Texaco Inc./Inter City Texaco.	RF321-19481	12/10/92
Texaco Inc./Port Malabar Texaco et al.	RR321-87	12/11/92
Texaco Inc./Robben Oil Company, Inc. et al.	RF321-16029	12/10/92
Texaco Inc./Spring Hope Grocery Company et al.	RF321-15719	12/09/92
Texaco Inc./Steare's Texaco & Food Store.	RF321-3090	12/08/92
Apex Management.	RF321-12885	

Dismissals

The following submissions were dismissed:

Name	Case No.
Admiral Cruises, Inc	RF272-15947.
Admiral Cruises, Inc	RD272-15947.
B&B Automotive	RF300-16648.
Bobby King Grocery	RF300-16689.
Bud's Service Station	RF300-16686.
Coastal Fruit Company	RF300-17826.
Don Morrow Gulf	RF300-16507.
Ernest Barwick	RF321-12800.
Frank Martinez Gulf #2	RF300-17360.
Goofy's	RF300-16894.
Hawthorne Gulf	RF300-16679.
Ingalls Shipbuilding, Inc	RF272-18693.
Ingalls Shipbuilding, Inc	RD272-18693.
Kennebuck Gulf	RF300-16638.
Morgan Brothers	RF300-17483.
Morgan Oil Company	RF300-5418.
Nash County School District	RF272-79478.
Norwegian Caribbean Lines	RD272-23818.
Norwegian Caribbean Lines	RF272-23818.
Pangles Store	RF300-16636.
Patrons Oil Co	RF326-196.
Syroco Inc	RF272-27738.
Tony's Truck Stop	RF300-16696.
Walker Oil Co., Inc	RF304-13269.
Westburne Drilling, Inc	RF272-15845.
Westburne Drilling, Inc	RD272-15845.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 27, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-2398 Filed 2-1-93; 8:45 am]

BILLING CODE 6450-01-M

Office of Placement and Administration

Sale of Natural Gas From the Naval Petroleum Reserves in Kern County, California

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: DOE announces that it is considering revising its next solicitation, expected to be issued February 25, 1993, for the sale of natural gas from the Naval Petroleum Reserves in California (NPRC), Kern County,

California. DOE proposes to change its sales solicitations from an unindexed four-month, fixed-price contract to a six-month contract under which a buyer will pay its bid price, adjusted by a monthly price adjustment factor (index).

DATES: Persons who wish to provide comments concerning the revisions to the solicitation for the sale of NPRC natural gas should submit their comments within 15 days of publication of this notice.

ADDRESSES: Interested persons can obtain a copy of the proposed provisions and should provide comments and address any questions to: Mr. James F. Thompson, U.S. Department of Energy, Office of Placement and Administration, PR–322.1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 634–4410.

Scott Sheffield,

Acting Director, Division B, Office of Placement and Administration.

[FR Doc. 93–2395 Filed 2–1–93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4557–6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 4, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Investigations into Possible Noncompliance of Motor Vehicles with Federal Emission Standards (EPA ICR No. 222.03; OMB No. 2060–0086). This ICR requests renewal of the existing clearance.

Abstract: Owners of vehicles are asked to provide the EPA with their name, address, telephone number, their vehicle make and model year, and the data needed to determine if the vehicle meets certain maintenance and use criteria. Based upon these responses, EPA selects vehicles for testing to ascertain manufacturers' compliance with Federal emission standards. EPA needs these test results for its recall program.

Burden Statement: The public reporting burden for this collection of information is estimated to average 9 minutes per response, including time for reviewing instructions, answering questions, and completing and reviewing the collection of information.

Respondents: Motor vehicle owners and heavy duty truck owners

Estimated Number of Respondents: 20,050.

Estimated Total Annual Burden on Respondents: 3,500 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC, 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW.,Washington, DC, 20530.

Dated: January 27, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–2365 Filed 2–1–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4555–4]

Request for Nominations for Essential Use Exemptions for Halons 1211, 1301, and 2402

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, EPA requests nominations for exemptions from the production and consumption phase-out under the Montreal Protocol of halons typically used for fire fighting and explosion protection, in accordance with the "essential uses" decision adopted by the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer at their November 1992 meeting. Nominations for essential use exemptions for other Class I substances will be requested in a future notice.

DATES: Nominations for essential use exemptions for halon that are to be considered at the Fifth Meeting of the Parties should be submitted to the Agency no later than March 2, 1993.

ADDRESSES: Program Manager, Essential Use Exemptions, Mail Stop 6202J, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Metchis, Substitutes Analysis and Review Branch, Stratospheric Protection Division (6202J), Office of Atmospheric Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 233–9193.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background—Fourth Meeting of the Parties to the Protocol
II. Purpose of Today's Notice—Essential Use Exemptions for Halons

I. Fourth Meeting of the Parties to the Protocol

At the Fourth Meeting of the Parties to the Montreal Protocol in Copenhagen on November 23–25, 1992, the Parties agreed to accelerate the phase-out schedules for certain controlled substances, including halons. With respect to halons, the Parties agreed to the phase out by January 1, 1994. The Parties also rendered decisions on a variety of other matters, including the adoption of essential use criteria.

II. Essential Use Exemptions for Halons

The Parties to the Montreal Protocol agreed at the 1992 meeting in Copenhagen to allow for an exemption of essential uses of controlled substances from the production and consumption phase out schedule. Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures. (See also Decision IV/25 of the Fourth Meeting of the Protocol). The Parties recognized the importance of including such an exemption, especially for halons, because of the accelerated phaseout dates for these chemicals. The Parties will decide on specific essential use exemptions for halons at the Fifth Meeting of the Parties tentatively scheduled for October 1993 and at subsequent meetings, and on essential use exemptions for the remaining substances at the Sixth Meeting of the Parties in approximately September 1994 and at subsequent meetings. Nominations need not be made at this time in cases where companies have essential uses still requiring halon, but where adequate supplies of halons are currently available. Nominations for these uses may be made at a later date for consideration at subsequent meetings of the Parties.

The Parties set out criteria to apply in identifying essential uses and established a process for the Parties to decide on what uses would qualify under this provision. Decision IV/25 states that a controlled substance should qualify as "essential" only if "it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects)" and "there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances."

Any essential use exemptions would also have to comply with the provisions of the Clean Air Act (CAA). Section 604 sets forth specific exemptions from the phaseout schedules contained in the Clean Air Act. To the extent that an accelerated phaseout schedule is adopted under the Montreal Protocol, EPA could provide exemptions beyond those specified in the Act, so long as these exemptions do not exceed amounts allowed in the schedule contained in section 604(a). Since section 604(b) specifies the phaseout date for Class I substances, that section effectively limits the authority of the Agency to provide essential use exemptions for periods after the CAA's termination date, which is the year 2000 for halons.

The exemptions outlined in section 604 are limited in scope, amount and time. Section 604(d)(3) allows exceptions for limited quantities of halons solely for purposes of aviation safety. Exceptions under section 604(d) are limited to annual quantities no greater than 10 percent of the baseline year production of the person receiving the exception. Section 604(f) permits the President to issue exemptions for the production and use of CFC–114 and halons if necessary for national security. (This subsection does not provide such authority to EPA.) Finally, section 604(g) permits the Agency to authorize production of halons for fire suppression and explosion prevention, but expressly provides that the Administrator may not grant such exceptions after 1999. A further exception to that is provided by section 604(g)(3), which provides the authority to grant exceptions through 2004 for halons used on the North Slope of Alaska. In sum, for a use to qualify for an exemption in the United States, the exemption must be consistent with both the Montreal Protocol and the Clean Air Act.

The need for essential use exemptions for halon will largely depend on the success of programs to reallocate those halons stored in existing systems to more necessary applications where other alternatives are suitable. Efforts to initiate such "halon banking" have recently begun, and EPA urges all halon users to act quickly to assess their current use of those compounds and to determine if alternative approaches to fire protection are feasible. If so, the Agency encourages users to contribute any unneeded halon to one of the banking programs currently being established, such as the Halon Recycling Corporation (HRC) recently established by the Halon Alternative Research Corporation. Interested parties may call EPA's Stratospheric Ozone Hotline (1–800–296–1996) for information about halon banking, or HRC may be contacted directly at 1–800–258–1283. If a halon user determines that other alternatives are not feasible and that sources of future supply do not exist, the user should prepare and submit to EPA an essential use application as described below.

In accordance with the essential use decision taken by the Parties to the Montreal Protocol in Copenhagen, governments which are Parties must submit nominations for essential uses to the United National Environment Programme's Secretariat for the Montreal Protocol. For halon essential uses, these nominations must be submitted at least six months before the meeting at which the Parties will take a decision on whether to approve the essential use, e.g., by April 1993 for the Fifth Meeting of the Parties, which may be held as early as October 1993. Thus, the first step in the process to qualify a use as essential is for the user to notify EPA or its candidate use and for EPA to evaluate that use for consistency with the criteria adopted by the Parties in Copenhagen. EPA will review the candidate for exemption and working with other interested federal agencies will determine whether or not it should be submitted to the Ozone Secretariat for further consideration. Nominations submitted to the Ozone Secretariat by Parties will then be directed to UNEP's Montreal Protocol Technology and Economic Assessment Panel which will review such submissions and prepare recommendations to the Parties for exemptions. The Panel will review these nominations to determine whether the eligibility criteria have been satisfied and examine the expected duration of the essential use, emission controls for the essential use application, sources of already produced controlled substances which could be made available to meet the essential use, and the steps necessary to ensure that alternatives and substitutes are available as soon as possible for the proposed essential use. The Parties also instructed the Technical Panel to consider the environmental acceptability, health effects, economic feasibility, availability and regulatory status of alternatives and substitutes.

The Technical Panel must submit its report to the Parties at least three months before the Parties meet to designate essential uses. The Panel is currently working under the assumption that it must submit recommendations for halons by July 1, 1993.

In order to meet these tight deadlines, the Agency must act quickly, and through this Notice requests nominations for the essential use exemptions for halons to be considered at the Fifth Meeting of the Parties. Recommendations for essential use exemptions for halon should be submitted to the Agency no later than (one month after date of publication), to allow EPA time to review the information before the deadline for submitting nominations to the Secretariat.

All nominations should present the following information:

(1) Description of the specific use of the controlled substance, as well as annual projected amount required;

(2) Demonstration that continued use of that substance in that application is necessary for health and safety reasons or is critical to the functioning of society;

(3) Demonstration that no alternatives are technically, economically or legally available;

(4) Description of the steps taken to date to find alternatives;

(5) Description of future steps to be taken to find alternatives;

(6) Demonstration that steps have been taken to secure existing stocks of the chemicals, either from a bank or from recovery sources, and that necessary quantities of appropriate quality are not available for this use;

(7) The expected time period for which this exemption is required; and

(8) Consistency with CAA provisions on essential uses. All nominations should be sent to: Program Manager,

Essential Use Exemptions, Mail Stop 6202J, Environmental Protection Agency, Washington, DC, 20460.

The Agency will work with submitters, other interested federal agencies, and outside experts to review this information and forward nominations to the Protocol's Secretariat for consideration as appropriate and consistent with any CAA limitations.

Dated: January 21, 1993.

Michael H. Shapiro,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 93-2364 Filed 2-1-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4559-3]

Notice of Open Meeting on February 23-24, 1993, Industrial Pollution Prevention Project Focus Group of the Technology Innovation and Economics Committee, National Advisory Council for Environmental Policy and Technology (NACEPT)

Under PL 92463 (The Federal Advisory Committee Act), EPA gives notice of the final meeting of the Industrial Pollution Prevention Project Focus Group of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. The meeting will convene from 9 am to 5 pm on February 23, 1993, and from 8:30 am to 1 pm on February 24. It will be located in the Omni Shoreham Hotel, 2500 Calvert St NW., Washington, DC 20008.

The Industrial Pollution Prevention Project Focus Group is examining methods by which industrial pollution prevention can be encouraged, particularly through effluent guidelines. The Focus Group is investigating the possibility that among the most important barriers to the implementation of pollution prevention concepts and programs are disincentives inadvertently built into standard setting processes, including the effluent guidelines. The Focus Group, which includes individuals from industry, academia, environmental groups, all levels of government, and other interested parties, is developing recommendations for EPA about the incorporation of pollution prevention into EPA's Office of Water effluent guidelines process and about EPA's efforts to spread the pollution prevention ethic.

The Focus Group is an "Ongoing Forum" for the Industrial Pollution Prevention Project. At the meeting, the Focus Group will continue to discuss ideas originally presented in previous meetings. The objective of this discussion will be to formulate possible recommendations to EPA.

The February 23-24 meeting will be open to the public. Written comments submitted by February 19 will be received and considered by the Focus Group. Additional information about the meeting may be obtained from Jim Lund by calling 202-260-7811, by writing him at EPA (WH-551), 401 M Street, SW., Washington, DC 20460, or by sending him a fax at 202-260-5394.

Dated: January 26, 1993.

Abby J. Pirnie,

NACEPT Designated Federal Official.

[FR Doc. 93-2366 Filed 2-1-93; 8:45 am]

BILLING CODE 6560-50-M

[EMAP-01-93; FRL-4558-5]

Office of Research and Development; Indicators of Ecosystem Stress

AGENCY: Environmental Protection Agency.

ACTION: Request for applications.

SUMMARY: Natural and managed ecosystems are exposed continually to both natural and anthropogenic stresses, and the condition and extent of these resources are continually changing. To document these dynamics, the U.S. Environmental Protection Agency (USEPA), in conjunction with other Federal agencies, has established the Environmental Monitoring and Assessment Program (EMAP), the programmatic objectives of which are:

1. To estimate with known confidence and on a regional basis the current status, trends, and changes in selected indicators of the condition of the Nation's ecological resources (i.e., agroecosystems, arid lands, estuaries, forests, the Great Lakes, surface waters, and wetlands);
2. To estimate with known confidence the geographic coverage and extent of the Nation's ecological resources;
3. To seek associations between selected indicators of natural and anthropogenic stresses and indicators of the condition of ecological resources; and
4. To provide annual statistical summaries and periodic assessments of the Nation's ecological resources.

As implied by these objectives, the concept of an ecological indicator is a central theme of the EMAP program. As defined by EMAP, an indicator is any expression of the environment that estimates the condition of ecological resources, the magnitude of stress, the exposure of a biological component, or the amount of change in ecosystem health or condition. EMAP has adopted a process to develop indicators to meet these objectives. The first stage in this process is to identify the societal and ecological values that the resource of concern is considered to fulfill. Based on these values, sets of assessment questions are then formulated. Indicators that have well defined conceptual links to the resource's recognized values and that will answer the assessment questions of concern are then identified and evaluated for long-term monitoring and assessment.

I. Scope

The objective of this Request for Application (RFA) is to support the development and evaluation of indicators for estimating the ecological condition of estuarine, forested, and wetland resources as related to the values of biological integrity/biodiversity and ecological sustainability. Indicators developed under the aegis of this RFA will be evaluated by EMAP for their utility in the program's long-term implementation.

For the purpose of this RFA, biological integrity is defined to be a balanced, integrated, and adaptive community of organisms having a species composition, diversity, and functional organization that is representative of natural habitats within a geographic region. Although ecological sustainability has no simple definition, this value does encompass the ability of a resource to maintain: (1) A desired level of biological integrity, (2) intact biotic and abiotic forcing functions, (3) a nominal area of extent, and (4) relevant inter-resource/landscape interactions. Ecological sustainability also includes the ability of a resource to resist change and to recover from natural and anthropogenic stresses. For some resource values such as fishability, i.e., the presence of catchable fish that are safe to eat, it is immediately obvious what indicators should be pursued. For whole system values, like biological integrity and ecological sustainability, however, the best choice of indicators is unclear. To remedy this situation, EMAP assumes that the indicator selection process for such values should be based on conceptual models of the resource's structure and function. These models then are used not only to specify the spectrum of quantifiable attributes of the values of interest, but more importantly, to identify indicators that might be most appropriate and productive. Applicants responding to this RFA should discuss their conceptual framework as a necessary and integral part of their proposed research.

Because the condition of estuarine, forested, and wetland ecosystems is generally dependent on the resource classes that are physically adjacent to them and on the biological transport of material and energy from distant resources (e.g., transport phenomena associated with migrating fish and wildlife), indicator research proposed in resource classes other than those identified above will be considered by this RFA if their conceptual linkages to the condition of estuarine, forested, and wetlands ecosystems are delineated clearly. For example, to estimate certain dimensions of the ecological sustainability of forests, interactions with surface waters (i.e., lakes, streams, and rivers), grasslands, shrub lands, or agroecosystems may need to be addressed for an integrated resource assessment. Under these circumstances, indicator research in these other resource classes will be considered appropriate for this RFA.

II. The Application

Application forms, instructions, and other pertinent information for assistance programs are available in the EPA Research Grants Application/Information Kit. Interested investigators should review the materials in this kit before preparing an application for assistance. The kits are available from U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M St., SW., Washington, DC 20460, (202) 260–9266.

Each application will consist of the Application for Federal Assistance Form (Standard Forms 424 and 424A) and separate sheets providing the budget breakdown for each year of the project, curriculum vitae for the principal investigator and co-workers, abstract of the proposed project, and a project narrative. All certification forms (drug-free workplace, etc.) must be signed and included with the application.

III. Special Instructions

Proposed projects must be investigative research which advances the state of knowledge in the environmental sciences and technology. Proposals will not be accepted that are routine monitoring, state-of-the-art or market surveys, literature reviews, development or commercialization of proven concepts, or the preparation of materials and documents, including process designs or instruction manuals.

Applications containing proprietary or other types of confidential information will be immediately returned to the applicant without review.

The following special instructions apply to all applicants responding to this solicitation:

- Applications must be identified by printing "EMAP–01–93" in the upper right-hand corner or block 10 of Application Form SF–424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.
- A one-page abstract must be included with the application.
- The project narrative section of the application must not exceed twenty-five 8½ × 11 inch, consecutively numbered pages of standard type (10–12 characters per inch), including tables, graphs, and figures. For purposes of this limitation, the "project narrative section" of the application consists of the following items in the Application/Information/Kit:

(1) Description of Project
(2) Objectives
(3) Results or benefits expected
(4) Approach
(5) General Project Information
(6) Quality Assurance (if needed).

Attachments, appendixes, and reference lists for the narrative section may be included, but are within the 25-page limitation.

Items not included under the 25-page limitation are the SF–424 and other forms, the budget, a curriculum vitae, and the abstract.

The curriculum vitae must not exceed two consecutively numbered pages for each principal investigator and should focus on education, positions held, and most recent or related publications.

Itemized budgets, including budget justifications must not exceed five consecutively numbered pages (excluding budget information on the SF–424 forms).

Applications not meeting these requirements will not be forwarded without corrections to reviewers. Applicants will be notified of deficiencies and requisite changes will be requested.

IV. Application Submission/Closing Dates

To be considered, the original and eight copies of the application must be received by EPA's Grants Operation Branch no later than the close of business on April 30, 1993. Fully developed research grant applications, prepared in accordance with instructions in the Application for Federal Assistance Form SF–424, should be sent to the Grants Operation Branch. Informal, incomplete, or unsigned proposals will not be considered. The application must be sent to U.S. Environmental Protection Agency, Grants Operations Branch (PM–216F), 401 M St., SW., Washington, DC 20460.

For overnight express mail, the address is U.S. Environmental Protection Agency, Grants Operation Branch, Fairchild Building, room 801, 499 South Capitol Street, SW., Washington, DC 20460, (202) 260–9266.

Closing date for all applications responding to this solicitation is April 30, 1993.

V. Eligibility

The following eligibility requirements apply to this request for applications.

Academic and nonprofit institutions located in the United States as well as State or local governments are eligible under all existing authorizations. Profit-making firms are eligible only under certain laws, and then under restrictive conditions, including the absence of any profit from the project.

Project applicants who are uncertain of their eligibility should study the restrictive language of the law governing the area of research interest or contact EPA's Grants Operations Branch at (202) 260–9266.

Federal agencies and Federal employees are not eligible to participate in this program.

VI. Review and Selection

All grant applications are initially reviewed by the Agency to determine their legal and administrative acceptability.

Acceptable applications are then reviewed by an appropriate peer review panel. This review is designed to evaluate and rank each proposal according to its scientific merit and utility as a basis for recommending Agency approval or disapproval. Each peer review panel is composed primarily of non-EPA scientists, engineers, and economists who are experts in their respective disciplines.

The panels use the following criteria in their reviews:

- Quality of the research plan (including theoretical and/or experimental design, originality, and creativity);
- Qualifications of the principal investigator and staff including knowledge of relevant subject areas;
- Utility of the research, including potential contribution to scientific knowledge in the environmental area;

- Availability and adequacy of facilities and equipment;
- Budgetary justification—in particular justification and cost requests for equipment will be carefully reviewed.

A summary statement of the scientific review and recommendation of the panel is provided to each applicant. Grants are selected by EPA on the basis of technical merit, program balance, and budget.

VII. Funding Mechanism

For all general and targeted grants, the funding mechanism will consist of a grant agreement between EPA and the recipient.

Federal grant regulation 40 CFR 30.307 requires that all recipients provide a minimum of 5% of the total project cost, which may not be taken from Federal sources. OER will not support a request for a deviation from this requirement for any grant supported by its Research Grants Program.

All budget costs and justifications, particularly requests for equipment, will be carefully reviewed. The maximum project period is three years; shorter periods are encouraged. Subcontractors for research to be conducted under the grant should not exceed approximately 40% of the total direct cost of the grant for each year in which the subcontract is awarded.

Approximately $2 million will be available from fiscal 1993 funds. Each project will be funded for up to three years at an annual level of support up to approximately $150,000.

VIII. References

Hunsacker CT, Carpenter DE (eds.). 1990. Ecological Indicators for the Environmental Monitoring and Assessment Program. (Available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. No. PB91141796).

Karr JR. 1981. Assessment of Biotic Integrity Using Fish Communities. Fisheries, 6:21–27.

Karr JR, Fausch DD, Angermeier PL, Yant PR, and Schlosser IJ. 1986. Assessing Biological Integrity in Running Waters: A Method and its Rationale. Special Publication 5. Illinois Natural History Survey. Champaign, IL 61820.

Thornton KW. 1988. The Lake and Reservoir Restoration Guidance Manual (First Edition). (Available from National Technical Information Service. No. PB88230719).

IX. Contacts

Applicants may telephone for further information on schedules and review processes. The number is (202) 260–7474. Applicants with additional questions of a technical nature may contact Clyde Bishop, Science Review Administrator, on (202) 260–5727. The address is: U.S. Environmental Protection Agency, Office of Exploratory Research (RD–675), 401 M St., SW., Washington, DC 20460.

Dated: January 22, 1993.

Robert A. Papetti,

Director, Research Grants Staff.

[FR Doc. 93–2272 Filed 2–1–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 92–267; DA 93–49]

Private Land Mobile Radio Services; Montana Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Montana (Region 25). As a result of accepting the Plan for Region 25, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1993.
Released: January 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer.

1. On June 22, 1992, Region 25 (Montana) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Montana.

2. The Montana Plan was placed on Public Notice for comments on November 9, 1992, 57 FR 54234 (November 17, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Montana and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Montana.

4. Therefore, we accept the Montana Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Montana may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–2315 Filed 2–1–93; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 92–268; DA 93–50]

Private Land Mobile Radio Services; Nevada Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Nevada (Region 27). As a result of accepting the Plan for Region 27, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1993.
Released: January 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer.

1. On April 19, 1990, Region 27 (Nevada) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Nevada. On May 31, 1990, the Commission sent a letter to the region pointing out certain deficiencies in the Plan. Revisions to the Plan were filed on May 15, 1992.

2. The Nevada Plan was placed on Public Notice for comments on November 9, 1992, 57 FR 54234 (November 17, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Nevada and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current

and projected mobile communications requirements of the public safety and special emergency entities in Nevada.

4. Therefore, we accept the Nevada Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Nevada may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93-2314 Filed 2-1-93; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 92-269; DA 93-51]

Private Land Mobile Radio Services; Oregon Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Oregon (Region 35). As a result of accepting the Plan for Region 35, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: January 25, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 12, 1993.

Released: January 25, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer.

1. On June 12, 1992, Region 35 (Oregon) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Oregon.

2. The Oregon Plan was placed on Public Notice for comments on November 9, 1992, 57 FR 54234 (November 17, 1992). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Oregon and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Oregon.

4. Therefore, we accept the Oregon Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Oregon may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93-2316 Filed 2-1-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010493 AND 011593

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
Insituform of North America, Inc., Naylor Industries, Inc., Naylor Industries, Inc	93–0301	01/04/93
Apache Corporation, Apache Corporation, APC Operating Partnership, L.P	93–0466	01/04/93
Pacific Telesis Group, Craig O. McCaw, Midwest Cellular Telephone Company	93–0479	01/04/93
Healthsource, Inc., Physicians' Health Systems, Inc., Physicians' Health Systems, Inc	93–0389	01/06/93
Seagate Technology, Inc., SunDisk Corporation, SunDisk Corporation	93–0415	01/06/93
UNUM Corporation, Gayle O. Averyt, Colonial Companies, Inc	93–0477	01/06/93
Burlington Resources, Inc., Unocal Corporation, Union Oil Company of California	93–0486	01/06/93
General Electric Company, Exergy, Inc., Exergy, Inc	93–0451	01/07/93
The Dial Corporation, Anne Murchison, United Exposition Services Co., Inc	93–0460	01/07/93
National Auto/Truckstops Holdings Corporation, Unocal Corporation, Unocal Corporation	93–0471	01/11/93
Bergen Brunswig Corporation, W. Michael Keiser, Healthcare Distributors of Indiana, Inc	93–0487	01/11/93
OHM Corporation, Waste Management, Inc., Brand Environmental Services, Inc	93–0490	01/11/93
American Industrial Partners Capital Fund, L.P., Lear Siegler Holdings, Corp., Lear Siegler Truck Products Corp	93–0493	01/11/93
I.I.S. Intelligent Information Systems Limited, Onset Corporation, Decision Data Inc	93–0495	01/11/93
AOC Limited Partnership, Peter Munk, CMAT, Inc	93–0498	01/11/93
Crop Production Services, Inc., Unocal Corporation, PureGro Company	93–0501	01/11/93
Georg von Holtzbrinck GmbH & Co., Worth Publishers, Inc., Worth Publishers, Inc	93–0476	01/12/93
Harry Lebensfeld, Barnes Group Inc., Barnes Group Inc	93–0436	01/13/93
United HealthCare Corporation, Western Ohio Health Care Corporation, Western Ohio Health Care Corporation	93–0458	01/13/93
BOC Group plc, E.I. du Pont de Nemours & Company, Inc., The Du Pont Merck Pharmaceutical Company	93–0447	01/15/93
BOC Group plc, Merck & Co., Inc., The Du Pont Merck Pharmaceutical Company	93–0448	01/15/93
Peter K. Williams, 3Com Corporation, 3Com Corporation	93–0454	01/15/93
3Com Corporation, Thomas H. Williams, Star-Tek, Inc	93–0455	01/15/93
O'Sullivan Corporation, Capitol Plastics of Ohio, Inc., Capitol Plastics of Ohio, Inc	93–0492	01/15/93
Dr. Francesco Caporossi, Equity Holdings Limited, Signet Armorlite, Inc	93–0494	01/15/93
Sonat Inc., W.R. Grace & Co., Grace Petroleum Corporation	93–0500	01/15/93
Charles Schusterman, W.R. Grace & Co., Grace Petroleum Corporation	93–0504	01/15/93
Mannesmann AG, Crown Cork & Seal Company, Inc., Van Dorn Company	93–0506	01/15/93
Occidental Petroleum Corp., Sirgo Production Company, Inc., Sirgo Production Company, Inc	93–0512	01/15/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 010493 AND 011593—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date Terminated
Takeshi Sekiguchi, Yuichiro Inomata (a Japanese person), TAT Los Angeles Co., Limited	93–0516	01/15/93
Patrick Ngiam (a/k/a Ngiam Mia Je), Robert Diwan, Austin Computer Systems, Inc	93–0517	01/15/93
Benjamin Ngiam (a/k/a Ngiam Mia Kiat), Robert Diwan, Austin Computer Systems, Inc	93–0518	01/15/93
Cirrus Logic, Inc., Pacific Communication Sciences, Inc., Pacific Communication Sciences, Inc	93–0527	01/15/93

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–2384 Filed 2–1–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 901 0172]

B & J School Bus Service, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, three school bus transportation companies (B & J, Ryder, and Mayflower) that provide bus service in the Kansas City, Missouri School District from entering into agreements with each other or with any other school bus transportation provider or potential provider—with respect to school bus transportation services in the Kansas City area—to submit jointly determined bids; to refrain from bidding; to allocate or divide jobs, markets, customers, contracts, or territories; or to set prices or other terms and conditions. In addition, the agreement would prohibit the companies, for three years, from communicating to each other or to past, present or likely future providers of bus service to the Kansas City school district their plans to bid, or not to bid, for those services.

DATES: Comments must be received on or before April 5, 1993.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Thomas Russell or Catherine Fuller, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., suite 1437, Chicago, IL 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of B & J School Bus Service, Inc., a corporation, Ryder Student Transportation Services, Inc., a corporation, and Mayflower Contract Services, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices by B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc., corporations, hereinafter sometimes referred to as "B & J," "Ryder," and "Mayflower," respectively, or as "proposed respondents," collectively, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated.

It is hereby agreed by and between proposed respondents, by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. B & J is a corporation organized, existing and doing business under and by virtue of the laws of the State of Missouri, with its offices and principal place of business located at 3707 Beacon, Kansas City, Missouri 64129.

2. Ryder is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its offices and principal place of business located at 3600 NW. 82nd Avenue, Miami, Florida 33166.

3. Mayflower is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Indiana, with its offices and principal place of business located at 5360 College Boulevard, Overland Park, Kansas 66211.

4. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here

attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

(A) "B & J" means B & J School Bus Service, Inc., and its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives, that B & J School Bus Service, Inc. controls, directly or indirectly, and their respective successors and assigns.

(B) "Ryder" means (1) Ryder Student Transportation Services, Inc.; (2) its successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates and related companies engaged in school bus transportation services, now or in the future; (3) all companies or entitles created in the future by any of the parent companies of Ryder Student Transportation Services, Inc., which companies or entities are engaged in school bus transportation services; and (4) the respective directors, officers, employees, agents and representatives of any of the entities described in subparagraphs (1), (2) and (3) above.

(C) "Mayflower" means Mayflower Contract Services, Inc., its parent, Mayflower Group, Inc., and their predecessors, including, but not limited to, R. W. Harmon and Sons, Inc., and PACE School Bus Service, Inc., successors and assigns, partnerships, joint ventures, subsidiaries, divisions, groups and affiliates involved in school bus transportation services now or in the future, and their respective directors, officers, employees, agents and representatives, successors and assigns.

(D) "Respondents" means B & J, Ryder and Mayflower.

(E) "Kansas City Area" means Clay, Platte and Jackson counties in the State of Missouri.

II.

It is ordered, That respondents cease and desist from, directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, continuing or attempting to continue, or soliciting any combination, agreement, or understanding, either express or implied, with any other respondent or other provider or potential provider of school bus transportation services in the Kansas City Area:

1. To submit jointly determined bids or refrain from bidding for school bus transportation services in the Kansas City Area;

2. With respect to price or other terms and conditions relating to school bus transportation services in the Kansas City Area; or

3. To allocate or divide jobs, markets, customers, contracts, or territories for school bus transportation services in the Kansas City Area.

III.

It is further ordered, That for a period of three (3) years after the date this order becomes final respondents cease and desist from directly, indirectly, or through any corporate or other device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, communicating to:

1. Any other respondent,

2. Any entity that has at any time since 1982 provided school bus transportation services in the Kansas City Area,

3. Any entity that is providing school bus transportation services in the Kansas City Area,

4. Any entity that is known or reasonably should be known to have been requested to provide school bus transportation services in the Kansas City Area, or

5. Any entity that has publicly announced an intention to provide school bus transportation services in the Kansas City Area,

any intentions, decisions, or plans to bid or to refrain from bidding for school bus transportation services for the Kansas City, Missouri School District.

Provided, however, that paragraph III shall not apply to communications to KCMSD, potential purchasers of substantially all of any respondent's stock or assets, suppliers, vendors, lenders, creditors, landlords, tenants or subcontractors that are limited to the context of the relationship.

IV.

It is further ordered, That nothing in this order shall prohibit any respondent from:

1. Forming, facilitating the formation of, or participating in any joint venture that is lawful under the antitrust laws; or

2. Subcontracting, preparing joint bids, allocating markets, communicating with respect to price or other terms and conditions, or otherwise jointly undertaking with other providers of school bus transportation services to provide such services where requested to do so in writing by any potential purchaser of those services.

V.

It is further ordered, That each respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute a copy of the complaint and order to each of its directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area;

B. For a period of three (3) years after the date on which this order becomes final, furnish a copy of the complaint and order to each of its new directors, to each officer of any of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City Area at the time they are elected, hired, or promoted;

C. Within sixty (60) days after the date on which this order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this order becomes final, and at any time the Commission, by written notice, may require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order;

D. For a period of five (5) years after the date on which this order becomes final, notify the Commission at least thirty (30) days prior to any proposed change in respondent affecting the provision of school bus transportation services in the Kansas City Area, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries, or any other change that may affect its compliance obligations arising out of this order, so far as those obligations relate to the provision of school bus transportation services in the Kansas City Area;

E. For a period of five (5) years after the date on which this order becomes final, notify the Commission within thirty (30) days after the respondent forms or participates in the formation of, or joins any joint venture for the provision of school bus transportation services in the Kansas City Area.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order, subject to final approval, from B & J School Bus Service, Inc., Ryder Student Transportation Services, Inc., and Mayflower Contract Services, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance along with the proposed order alleges that the proposed respondents have violated Section 5 of the Federal Trade Commission Act by combining or conspiring with each other to allocate the market for school bus transportation services in the Kansas City Missouri School District ("KCMSD") among themselves and otherwise to restrain price competition among school bus transportation companies servicing the KCMSD.

All of the proposed respondents are, or have been, engaged in the business of owning or operating school bus transportation companies within the Kansas City, Missouri area. Except to the extent that competition has been restrained as alleged in the complaint, the respondents have been and are now in competition among themselves and with other providers of school bus transportation services in the KCMSD.

School bus transportation companies supply transportation for students to and from school. Absent restraints on competition, school bus transportation companies compete among themselves to provide transportation for students in various markets and at prices school district's prefer.

The complaint alleges that in the years prior to the 1984/1985 school year, four school bus transportation companies supplied most of the school bus transportation services to the Kansas City, Missouri School District ("KCMSD"). These four companies were B & J, two companies that were purchased in 1984 and 1985, respectively, by a predecessor of Mayflower—R. W. Harmon & Sons, Inc. ("Harmon") and Pace School Bus Service ("Pace")—and a fourth company, KAL Leasing, Inc. ("KAL"), the assets of which were purchased in 1986 by a predecessor of Ryder. These four companies had provided school bus transportation services for many years to discrete areas within the KCMSD pursuant to privately and individually negotiated contracts with the KCMSD.

The complaint alleges that for the 1984/1985 school year the KCMSD decided to purchase school bus transportation services pursuant to a competitive bidding process. The KCMSD expected that by increasing the ability of school bus transportation companies to compete with one another to provide service to portions of the KCMSD the school district would be able to receive lower rates. The KCMSD sent out a request for bids for a single contract covering the 1984/1985, 1985/1986 and 1986/1987 school years. The request sought bids for six separate areas of the school district and for three special services. Bidders were requested to bid for any or all of the areas and services.

The complaint alleges that, in response to KCMSD's request for bids, Harmon and Pace (which were subsequently acquired by a predecessor of Mayflower), KAL (the assets of which were subsequently acquired by a predecessor of Ryder) and B & J agreed not to compete with each other with respect to whether, and on what terms, they would submit bids to KCMSD for providing school bus transportation services. In lieu of competing with one another, the four companies agreed to submit a joint bid for all of the KCMSD's service areas and special services, and to then allocate among themselves the portions of the KCMSD to which each company would provide transportation services. The four companies would, thereby, be able to continue to serve schools located in areas of the KCMSD that they had served in the past.

The complaint further alleges that B & J, Harmon, Pace and KAL implemented their agreement by forming Kansas City School Transportation ("KCST"). Although they called KCST a joint venture, B & J, Harmon, Pace and KAL did not integrate their operations in any substantial manner, and did not make any substantial contributions of capital to KCST. Any financial risk that they faced for losses that might occur from KCST's operation was not substantial. KCST and its members did not provide significantly new or more efficient services. The principal function of KCST was to provide a vehicle for reaching collective decisions on market areas to be served.

The complaint alleges that pursuant to their agreement, B & J, Harmon, Pace and KAL submitted a single, joint bid as KCST to the KCMSD covering all of the areas and services for which bids were sought. With these four firms submitting a joint bid, and with few bids received from outside firms, the KCMSD had little choice but to accept the joint bid from the four companies. KCST was awarded the contract for five of the six areas for which KCMSD had solicited bids.

The complaint also alleges that the proposed Respondents' conspiracy to eliminate competition among the school bus transportation companies servicing the KCMSD has had the purpose or effect or the tendency to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By allocating the market for school bus transportation services in the KCMSD;

B. By restraining trade unreasonably and thereby hindering price competition among school bus transportation companies servicing the KCMSD;

C. By depriving the KCMSD of the benefits of competition among school bus transportation companies.

The Proposed Consent Order

The proposed order would prohibit each proposed respondent from entering into, attempting to enter into, organizing, adhering to or maintaining any agreement, understanding, or program with any other respondent or other provider or potential provider of school bus transportation services in the Kansas City area:

1. To submit jointly determined bids or refrain from bidding for school bus transportation services in the Kansas City area;

2. With respect to price or other terms and conditions relating to school bus transportation services in the Kansas City area; or

3. To allocate or divide jobs, markets, customers, contracts, or territories for school bus transportation services in the Kansas City area.

The proposed order also prohibits, for a period of three (3) years after the date the order becomes final, the proposed respondents from directly, indirectly, or through any corporate or other device, in or affecting commerce, communicating to any other respondent, any entity that has at any time since 1982 provided school bus transportation services in the Kansas City area, any entity that is providing school bus transportation services in the Kansas City area, any entity that is known or reasonably should be known to have been requested to provide school bus transportation services in the Kansas City area, or any entity that has publicly announced an intention to provide school bus transportation services in the Kansas City area any intentions, decisions, or plans to bid or to refrain from bidding for school bus transportation services for the Kansas City Missouri School District. This prohibition would not apply to communications to KCMSD, potential purchasers of substantially all of any respondent's stock or assets, suppliers, vendors, lenders, creditors, landlords, tenants or subcontractors that are limited to the context of the relationship.

The proposed order, however, should not be construed to prohibit any of the proposed respondents from:

1. Forming, facilitating the formation of, or participating in any joint venture that is lawful under the antitrust laws; or

2. Subcontracting, preparing joint bids, allocating markets, communicating with respect to price or other terms and conditions, or otherwise jointly undertaking with other providers of school bus transportation services to provide such services where requested to do so in writing by any potential purchaser of those services.

The order also requires each respondent to distribute a copy of the complaint and order to each respondent's directors, to each officer of its related companies engaged in school bus transportation services, and to each of its managers responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City area. The obligation to provide copies of the complaint and order extends for three (3) years for each new director, each new officer of its related companies engaged in school bus transportation services, and each new manager responsible for supervising employees involved in the provision of school bus transportation services in the Kansas City area at the time they are elected, hired, or promoted.

The order also requires each respondent to file a compliance report within sixty (60) days after the order becomes final, and annually thereafter for a period of three (3) years and at any time the Commission, by written notice, may require. Each respondent would also be required to notify the Commission at least thirty (30) days prior to any proposed change in itself such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent that may affect its compliance obligations arising out of this order, so far as those obligations relate to the provision of school bus transportation services in the Kansas City area.

The order also requires each respondent for a period of five (5) years to notify the commission within thirty (30) days after the respondent forms or participates in the formation of, or joins any joint venture for the provision of school bus transportation services in the Kansas City area.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga

I concur in the Commission decision to issue a complaint against B & J School Bus Service, Inc. ("B & J"), Ryder Student Transportation Services, Inc. ("Ryder"), and Mayflower Contract Services, Inc. ("Mayflower") for allegedly participating in a conspiracy to allocate the market for school bus services provided to the Kansas City, Missouri School District. Like price fixing conspiracies, agreements among competitors to rig bids and allocate markets are *per se* unlawful. *Addyston Pipe and Steel Co.* v. *United States*, 175 U.S. 211 (1899). The *per se* prohibition against market allocation and bid rigging is not a novel or exotic theory, but has been a central tenet of antitrust law for nearly a century.

I dissent from the decision to limit the effectiveness of the core prohibitions of the accompanying consent order ("Order") to a small three-county area of Missouri, termed the "Kansas City Area" in the Order. Section II of the Order prohibits the respondents from conspiring to submit joint bids, to fix prices, or to allocate the market for school bus transportation services only in the Kansas City Area. The Order does nothing to prohibit price fixing, bid rigging, or market allocation outside this small geographic area.

Ryder Student Transportation Services, Inc. is an affiliate of Ryder Systems, Inc., and Mayflower Contract Services, Inc. is an affiliate of Mayflower Group, Inc. Complaint, ¶¶ 2, 3. B & J is a local concern. *Id.* ¶ 1. The Order's geographic limitation means that a repeat conspiracy violation by the two national companies outside the three Missouri counties would not violate the Order. In that event, the Commission could not seek civil penalties, and the only remedy would be to seek another prospective order. Indeed, if Mayflower or Ryder exits this tiny geographic market, the Order will impose no restriction on its conduct.

The conduct alleged in the complaint is plainly unlawful. To secure the benefits of competition, the Kansas City, Missouri School District solicited bids to provide school bus services in six designated areas for three school years, beginning with the 1984/1985 school year. Complaint ¶ 7. Instead of submitting competitive bids, the four local companies that had previously provided school bus service signed an agreement, styled as a joint venture, to submit a joint bid for all service areas and to divide the territory among themselves. Complaint ¶ 8. The so-called joint venture was named Kansas City School Transportation (KCST) and was awarded the contract to provide school bus service for five of the six designated areas. Complaint ¶ 10. As alleged in paragraph nine of the complaint, KCST did not involve any substantial integration of operations, not any substantial pooling of capital, nor any substantial sharing of financial risk. It provided no new or more efficient services. In short, the joint venture can aptly be characterized as a sham or cover for an illegal conspiracy.

Mayflower and Ryder were not parties to the original agreement, but they acquired local bus companies that were participants in the conspiracy. As alleged in paragraph nine of the complaint, Mayflower or an affiliate acquired one of the local bus firms in 1984, the same year that the unlawful agreement was made, and acquired a second one in 1985. Ryder or an affiliate purchased a Kansas City bus company in 1986. Although the complaint makes no allegation concerning Mayflower's or Ryder's knowledge of or ratification of the original unlawful agreement, the timing of the acquisitions shortly after the formation of KCST raises a reasonable ground for suspicion that the acquiring firms would have acquainted themselves with the activities of KCST. Nonetheless, I need not base my concerns about Ryder's and Mayflower's participation in KCST on mere suspicion because the complaint alleges the KCST continued to supply school bus services to the Kansas City Missouri School district until it was disbanded in May 1989, well after the acquisitions. Complaint ¶ 11. Ryder and Mayflower did not disassociate themselves from the conspiracy, but instead continued to participate in KCST.

Regardless of whether Ryder and Mayflower expressly or implicitly ratified the original three-year agreement, extensions of the same arrangement for the school years 1987/1988 and 1988/1989 were negotiated after Ryder and Mayflower acquired the local bus companies, as alleged in paragraph eleven of the complaint. This allegation tends to confirm Ryder's and Mayflower's involvement in the conspiracy.

It is unusual for the Commission to uncover a flagrant violation of the antitrust laws, and acceptance of a narrowly circumscribed order sends the wrong signal to corporations that may be inclined to ignore these laws. The unlawfulness of conduct, such as market allocation, bid rigging and price fixing, does not depend on the structure and characteristics of a particular geographic market. Although orders in merger cases, for example, are drafted to provide relief in the particular product and geographic market in which competition is affected, the same approach to drafting a remedy does not apply in cases of *per se* illegality, because the conduct is unlawful whenever and wherever it occurs. When the Commission finds bid rigging, market allocation or price fixing, it should take strong action to prohibit the participants from repeating the violation. In a case such as this one, in which there are no special circumstances indicating that the Kansas City Area is uniquely susceptible to market allocation or bid rigging, I see no basis for limiting the Order to this area. This Order, limited to three counties in Missouri, hardly amounts to a slap on the wrist. I hope that it does not signal a new leniency to *per se* violations of the antitrust laws.

[FR Doc. 93–2386 Filed 2–1–93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C–3407]

Dentsply International Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Pennsylvania-based manufacturer of professional dental-care products to divest, within nine months of the order, all assets related to the manufacturing and marketing of its U.S. Valiant silver alloy product line to a Commission-approved purchaser. If the divestiture is not completed in the designated time-frame, the respondent is required to agree to a Commission-appointed trustee to divest its interest in the assets related to its Valiant Alloy products. In addition, the order requires a Hold Separate Agreement during any period in which the respondent possesses an ownership interest in the U.S. Valiant assets, and, for a 10-year period, requires the respondent to obtain Commission approval prior to acquiring any silver alloy manufacturer or distributor.

DATES: Complaint and Order issued January 6, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Casey Triggs, FTC/S–2308, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Thursday, October 22, 1992, there was published in the **Federal Register**, 57 FR 48228, a proposed consent agreement with analysis In the Matter of Dentsply International Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 93–2381 Filed 2–1–93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C–3411]

Site for Sore Eyes, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair act and practices and unfair methods of competition, this consent order requires, among other things, a California chain of retail stores that sell eye-care products and services to have competent and reliable scientific evidence to substantiate any future claim that any lens, shade, coating or other material sold in connection with eyeglasses protects eyes from radiation from any source. In addition, the respondent is required to maintain materials relied upon to substantiate claims covered by the order and to distribute copies of the order to specified individuals and entities.

DATES: Complaint and Order issued January 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Linda Badger or Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: On Wednesday, November 4, 1992, there was published in the **Federal Register**, 57 FR 52629, a proposed consent agreement with analysis In the Matter of Site for Sore Eyes, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–2383 Filed 2–1–93; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C–3410]

Southeast Colorado Pharmacal Association; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

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[1] Copies of the Complaint, the Decision and Order, and Commissioners Azcuenaga's and Owen's statements are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Colorado-based association of pharmacies, that dispense prescriptions which are paid for by third-party payers according to predetermined formulas, from entering into or threatening to enter into any agreement with pharmacies to withdraw or refuse to participate in these kinds of reimbursement programs in the future.

DATES: Complaint and Order issued January 15, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Claude Wild, III or Jeff Dahnke, Denver Regional Office, Federal Trade Commission, 1405 Curtis St., suite 2900, Denver, CO. 80202. (303) 844–2271 or 844–2254.

SUPPLEMENTARY INFORMATION: On Wednesday, November 4, 1992, there was published in the **Federal Register**, 57 FR 52631, a proposed consent agreement with analysis In the Matter of Southeast Colorado Pharmacal Association, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 93–2382 Filed 2–1–93; 8:45 am]

BILLING CODE 6750-01-M

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures; Order Granting Exemption

In the matter of a Petition for Exemption from the Trade Regulation Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" Filed by Porsche Cars of North America, Inc.

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On March 10, 1992, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Porsche Cars of North America, Inc. The Commission now grants the petition and determines that the provisions of 16 CFR part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Porsche Cars of North America, Inc.

EFFECTIVE DATE: February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth Grant, Attorney, PC–H–238, Federal Trade Commission, Washington, DC 20580, (202) 326–3299.

SUPPLEMENTARY INFORMATION:

On March 10, 1992, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Porsche Cars of North America, Inc. ("PCNA"). PCNA imports and markets Porsche sports cars and associated parts and services. The petition sought an exemption, pursuant to section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule").

In accordance with section 18(g), the Commission conducted an exemption proceeding under section 553 of the Administrative Procedure Act, 5 U.S.C. 553, and invited public comment during a 60-day period ending May 11, 1992. After reviewing the petition and the comments received, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor with a relative lack of business experience and sophistication;

(2) Inadequate time for the investor to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance in which the franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule provides investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus to protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has convincingly shown that the conditions that create a potential for a pattern or practice of abuse are absent, and that there is no likelihood of unfair or deceptive acts or practices in the appointment of its automobile dealership franchises for that reason.

The petition demonstrates that potential Porsche dealers are and will continue to be a select group of highly sophisticated and experienced businessmen and women; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We note in particular that Porsche has a relatively small number of dealers, approximately 250; that prospective Porsche dealers are generally established dealers for other automobile manufacturers or importers; that investment costs for Porsche dealerships range from $1 million to $10 million; and that applicants participate in an extensive application and approval process, during which time information is exchanged between the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on five prior occasions since 1980, and found no evidence of likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings. The public comment in this matter does not demonstrate the existence of any of the factors that would lead to deceptive or unfair practices with respect to the offering of Porsche dealerships.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of motor vehicle dealer franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR part 436 shall not apply to the adverting, offering, licensing, contracting, sale or other promotion of motor vehicle dealerships by Porsche Cars of North America, Inc.

It is so ordered.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93-2385 Filed 2-1-93; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-977-DR]

Arizona; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona, (FEMA-977-DR), dated January 19, 1993, and related determinations.

EFFECTIVE DATE: January 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arizona dated January 19, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1993: The counties of Cochise and Santa Cruz for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-2332 Filed 2-1-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-973-DR]

New Jersey; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA-973-DR), dated December 18, 1992, and related determinations.

EFFECTIVE DATE: January 13, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Jersey, dated December 18, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 18, 1992: The county of Salem for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-2330 Filed 2-1-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-974-DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA-974-DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: January 6, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective December 14, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93-2331 Filed 2-1-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Maritz Inc. and Maritz Travel Company, 1375 North Highway Drive, Fenton, St. Louis County, MO 63099

Vessel: CROWN ODYSSEY

Dated: January 27, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-2327 Filed 2-1-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank South Corporation; Application to Engage De Novo in Underwriting and Dealing in Certain Bank-Ineligible Securities on a Limited Basis, and Other Securities-Related Activities

Bank South Corporation, Atlanta, Georgia (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire Bank South Securities, Inc. (Company), through a corporate reorganization and engage *de novo* in various securities and securities related activities described below. These activities will be conducted on a nationwide basis.

Applicant proposes to engage de novo in the following activities previously authorized by the Board:

(1) Providing discount securities brokerage services and activities related or incidental thereto pursuant to § 225.25(b)(15) of Regulation Y;

(2) Providing financial advisory services to states, their political subdivisions, authorities and agencies pursuant to § 225.25(b)(4)(v) of Regulation Y; and

(3) Underwriting and dealing in government obligations and money market instruments pursuant to § 225.25(b)(16) of Regulation Y.

Applicant also proposes to engage *de novo* in activities which previously have been determined by the Board by Order to be closely related to banking. Applicant proposes to underwrite and deal in revenue obligations of states and their political subdivisions, authorities and agencies ("municipal revenue bonds") that are rated as investment quality by a nationally recognized rating agency. Applicant also proposes to act as a riskless principal in the purchase and sale of revenue obligations of states and their political subdivisions, authorities and agencies on the order of investors. Finally, Applicant proposes to engage, as agent, in the private placement of general and revenue obligations of states, their political subdivisions, authorities and agencies.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board has previously authorized private placement and riskless principal activities, subject to certain prudential limitations which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). The Board has also previously authorized bank holding companies to underwrite and deal in municipal revenue bonds provided that the underwriting subsidiary derives no more than 10 percent of its total gross revenue from underwriting and dealing in the approved securities over any two-year period. *See Citicorp*, 73 Federal Reserve Bulletin 473 (1987) *aff'd sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988), *modified by Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989).

In conducting these activities, Applicant will comply with the commitments and prudential limitations established by the Board in previous Orders. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant states that the expected benefits to the public include increased efficiency and greater customer convenience resulting from an internal reorganization of Applicant's existing services, as well as increased competition because of a stronger and more unified system for marketing and delivering services.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 19, 1993. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, January 27, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2352 Filed 2-1-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending March 31, 1993

Section 701 of the Public Health Service Act (42 U.S.C. 292) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

Section 60.13(a)(4) of the program's implementing regulations (42 CFR part 60, previously 45 CFR part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending March 31, 1993, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 6¾ percent. Using the regulatory formula (45 CFR 126.13(a)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of the 91-day U.S. Treasury bills for the preceding calendar quarter (3.17 percent), and rounding the result (6.67 percent) upward to the nearest ⅛ percent (6¾ percent).

However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending March 31, 1993, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 7⅝ percent for the quarter ending June 30, 1992; 7⅜ percent for the quarter ending September 30, 1992;

and 6¾ percent for the quarter ending December 31, 1992.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 6¾ percent. Using the regulatory formula (42 CFR 60.13(a)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.17 percent); adding 3.50 percent (6.67 percent) and rounding that figure to the next higher one-eight of one percent (6¾ percent).

3. For fixed rate loans executed during the period of January 1, 1993 through March 31, 1993, and for variable rate loans executed on or after October 22, 1985, the interest rate is 6¼ percent. The Health Professions Training Assistance Act of 1985 (Public Law 99–129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (3.17 percent); adding 3.0 percent (6.17 percent) and rounding that figure to the next higher one-eighth of one percent (6¼ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: January 25, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–2347 Filed 2–1–93; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting of National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases on February 11 and 12, 1993, Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public February 11 from 8:30 a.m. to 9 a.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on February 11 from 9 a.m. to recess and again on February 12 from 8:30 a.m. to adjournment in accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Further information concerning the Council meeting and individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Michael Lockshin, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Building 31, room 4C32, Bethesda, Maryland 20892, (301) 496–0802.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIAMS, Building 31, room 4C32, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–0803.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–2403 Filed 2–1–93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1993.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, NICHD, and scientific review administrators, for approximately one hour at the beginning of the first session of the first day of the meeting unless otherwise listed. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meetings and rosters of committee members. If you plan to attend the open session of the meeting and need special disability-related assistance, such as sign language interpretation or other reasonable accommodations, please contact Ms. Plummer.

Other information pertaining to the meetings may be obtained from the Scientific Review Administrator indicated.

Name of Committee: Maternal and Child Health Research Committee.

Scientific Review Administrator: Dr. Gopal Bhatnagar, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1696.

Date of Meeting: March 2–3, 1993.

Place of Meeting: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland, Delaware Room.

Open: March 2, 1993, 8 a.m.–9:30 a.m.

Closed: March 3, 1993, 8 a.m.–adjournment.

Name of Committee: Population Research Committee.

Scientific Review Administrator: Dr. A.T. Gregoire, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 4–5, 1993.

Place of Meeting: Savoy Suites Georgetown, 2505 Wisconsin Avenue, N.W., Washington, DC 20007, Ballroom A.

Open: March 4, 1993, 8 a.m.–9:30 a.m.

Closed: March 5, 1993, 8 a.m.–adjournment.

Name of Committee: Mental Retardation Research Committee.

Scientific Review Administrator: Dr. Norman Chang, 6100 Executive Boulevard—rm. 5E03, Telephone: 301–496–1485.

Date of Meeting: March 8–10, 1993.

Place of Meeting: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland, Severn Susquehenna Room.

Open: March 8, 1993, 7 p.m.–10 p.m.
Closed: March 9, 1993, 9:30 a.m.–5 p.m., March 10, 1993, 8 a.m.–adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.864, Population Research and No. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2391 Filed 2–1–93; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the Research Centers in Minority Institutions Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Centers in Minority Institutions Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Research Centers in Minority Institutions Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Research Centers in Minority Institutions Program. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator. Individuals who need sign language interpretation or other assistance should contact the Committee Management Office, (301) 496–9567, in advance of the meeting.

Name of Committee: Research Centers in Minority Institutions Review Committee
Scientific Review Administrator: Dr. John Lymangrover, Research Centers in Minority Institutions Review Committee, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A16, Bethesda, Maryland 20892, Telephone: 301/496–4390.
Date of Meeting: March 9, 1993.
Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 8, Bethesda, MD 20892.
Open: March 9, 8:30 a.m.–11 a.m.
Agenda: Report and review of administrative details.
Closed: March 9, 11 a.m.–Adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.389, Research Centers in Minority Institutions, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2390 Filed 2–1–93; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 25–26, 1993, at the National Institutes of Health, Building 31, C Wing, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on Thursday, February 25 and on Friday, February 26 from 8:30 a.m. to adjournment. The Committee will discuss scientific program needs and develop recommendations for future research directions. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.838, Lung Diseases Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2387 Filed 2–1–93; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 24–25, 1993. The meeting will be held in the Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to recess on February 24 and 8:30 a.m. to adjournment on February 25 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lawrence Friedman, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2388 Filed 2–1–93; 8:45 am]

BILLING CODE 4140-01-M

National Center for Research Resources; Meeting of the Biomedical Research Support Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Support Advisory Committee, National Center for Research Resources (NCRR), National Institutes of Health, February 25, 1993, Building 31C, Conference Room 2C15, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 25, from 9 a.m. to adjournment to discuss program policies, the Minority High School Student Research Apprentice Program, other education-related activities, and the Biomedical Research Support Shared Instrumentation Grant Program. Attendance by the public will be limited to space available.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members upon request.

Dr. Abraham Levy, Executive Secretary, Biomedical Research Support Advisory Committee, (301) 496–6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalog of Federal Domestic Assistance Program No. 93.337, Biomedical Research Support, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2389 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, April 19–20, 1993, in Conference Room B1–19, Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public on April 19, from 9 a.m. to 5 p.m. and from 9 a.m. to adjournment on April 20, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, room 5A08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2399 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute; Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, March 4–5, 1993, Federal Building, room B119, 7550 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public from approximately 8:30 a.m. to recess on March 4, and 8:30 a.m. to adjournment on March 5, to evaluate program support in arteriosclerosis, hypertension and lipid metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4237, will provide a summary of the meeting and a roster of the committee members.

Dr. Basil M. Rifkind, Deputy Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, room 4A14, Federal Building, National Institutes of Health, Bethesda, MD 20892, (301) 496–1681, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2400 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting of Research Training Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Research Training Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on February 21–23, 1993, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

This meeting will be open to the public on February 21, from 7:30 p.m. to approximately 8:30 p.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 21, from 8:30 p.m. to adjournment on February 23, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Scientific Review Administrator, NHLBI, Westwood Building, room 550, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2392 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Demonstration and Education Research Grant Applications (R18s) and Small Grant Program Applications (R03s).
Dates of Meeting: February 18–19, 1993.
Time of Meeting: 7: p.m.
Place of Meeting: Seattle Hilton Hotel, Seattle, Washington.
Agenda: To review and evaluate grant applications.
Contact Person: Dr. David Monsees, 5333 Westbard Avenue room 550, Bethesda, MD 20892, (301) 496–7361.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, HIH

[FR Doc. 93–2393 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the following Heart, Lung, and Blood Special Emphasis Panels.

These meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on Clinical Investigator Development Awards (KO8's) and 1 Institutional National Research Service Award (T32).

Dates of Meeting: February 7–8, 1993

Time of Meeting: 7 p.m.

Place of Meeting: Hyatt Regency Bethesda, Bethesda, Maryland.

Agenda: To review grant applications.

Contact Person: Dr. Lynn M. Amende, (301) 496–8818.

Name of Panel: NHLBI SEP on Demonstration and Education Research Grant Applications and Small Grant Applications Meeting.

Dates of Meeting: February 9–10, 1993.

Time of Meeting: 9 a.m.

Place of Meeting: Stouffer Concourse Hotel, Arlington, Virginia.

Agenda: To review grant applications.

Contact Person: Dr. Louise Corman, (301) 496–7363.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2402 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 12, 1993. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 7, C-Wing, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment, to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2404 Filed 2–1–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Title II, Section 224 of the Public Health Services Act; Protect Certain Health Care Professionals From Liability; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authorities to the Assistant Secretary for Health by the Secretary of Health and Human Services on July 1, 1973, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration (HRSA), the authorities under title II, section 224, of the Public Health Service (PHS) Act, as amended, as they pertain to the functions assigned to HRSA. This delegation excluded the authority to promulgate regulations and to submit reports to Congress.

This delegation is effective upon date of signature.

Dated: January 19, 1993.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 93–2351 Filed 2–1–93; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–93–3569; FR–3448–N–01]

Mortgagee Review Board Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: William Heyman, Director, Office of Lender Activities and Land Sales registration, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1824. The Telecommunications

Device for the Deaf (TDD) number is (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) requires that HUD "publish in the Federal Register a description of and the cause for administrative action against a HUD-approved mortgagee" by the Department's Mortgagee Review Board. In compliance with the requirements of section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from September 1, 1992 through December 31, 1992.

1. Empbanque Capital Corporation, Carle Place, New York

Action: Letter of Reprimand and Settlement Agreement that provides for payment to the Department in the amount of $352,000 for claim losses in connection with improperly originated FHA insured mortgages.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements which included: Failure to verify that a mortgagor had sufficient assets to close; failure to verify or credit earnest money deposits; use of falsified Verification of Deposit to close an insured mortgage; closing loans in violation of the seven unit limitation; failure to assure that mortgagors made the minimum required investment in the property; failure to establish the stability of a mortgagor's self-employment; failure to conduct face-to-face interviews with mortgagors; failure to verify the physical soundness and increased value of a previously rejected property; completing the lender's certification on the form HUD 92900 prior to the borrower's certification; failure to verify the mortgagor's source of funds; and failure to comply with HUD–FHA reporting requirements with respect to the Home Mortgage Disclosure Act (HMDA).

2. Goldpost Mortgage Corporation, Rochester, New York

Action: Proposed withdrawal of HUD mortgagee approval.

Cause: A HUD monitoring review citing a violation of HUD–FHA single family program requirements. The company submitted mortgages for HUD–FHA insurance endorsement which exceeded permissible maximum mortgage amounts.

3. Freedom Mortgage Corporation, Independence, Ohio

Action: Letter of Reprimand.

Cause: A HUD Office of Inspector General audit citing violations of HUD–FHA program requirements that included: Failure to comply with the requirements of the Direct Endorsement Program; failure to maintain an adequate Quality Control Plan; and underwriting deficiencies.

4. DFW Southwestern Mortgage Corporation, Irving, Texas

Action: Withdrawal of HUD mortgagee approval.

Cause: Failure to comply with HUD–FHA requirements for approval as a mortgagee, and a Federal tax lien that was filed against the company for failure to pay payroll taxes.

5. Bridges Mortgage Company, Jackson, Mississippi

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

6. First Home Mortgage Corporation, Mount Prospect, Illinois

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

7. Pinnacle Financial Corporation, Winter Park, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

8. Homeowners Mortgage Corporation, Edina, Minnesota

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for noncompliance with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA), and the prohibition against tiered pricing of HUD–FHA insured mortgages.

9. Community Mortgage Services, Inc., Southfield, Michigan

Action: Settlement Agreement that provides for indemnification for HUD's claim loss in connection with an improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements including: Improperly originating an FHA insured mortgage; failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to comply with the prohibition against tiered pricing of HUD–FHA insured mortgages.

10. Delta National Mortgage Company, Shaker Heights, Ohio

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

11. Hallmark Mortgage Services, Inc., Tampa, Florida

Action: Proposed Settlement Agreement.

Cause: A HUD monitoring review citing the company for violation of HUD–FHA program requirements in the origination of a HUD–FHA insured mortgage.

12. Sibley Mortgage Corporation, Rochester, New York

Action: Proposed Settlement Agreement that provides for indemnification to HUD for claim losses in connection with 10 improperly originated mortgages, and indemnification and/or a buydown of overinsured mortgage amounts in connection with four loans.

Cause: A HUD Office of Inspector General audit, and a Monitoring Division review citing violations of HUD–FHA single family program requirements including: Overinsured mortgages; failure to verify mortgagors' downpayments, cash assets and gift letters; permitting mortgagors to sign loan applications after the date of underwriting; overstating the income of a mortgagor; failure to verify the adequacy and source of mortgagors' assets to close; failure to credit earnest money deposits; submitting incomplete HUD–1 Settlement Statements; and underwriting loans when the credit analysis ratios exceeded HUD–FHA standards.

13. Federated Mortgage Associates, Inc., Pembroke Pines, Florida

Action: Withdrawal of HUD mortgagee approval.

Cause: A HUD Office of Inspector General audit citing violations of HUD–

FHA program requirements which included: Failure to adequately verify mortgagors' income; failure to assure that mortgagors made the required minimum investment in the property; misstating mortgagors' income or liabilities; excessive debt ratios; failure to perform appropriate reviews and analyses to support certifications made to HUD–FHA; expired appraisal; conflict of interest; closing proceeds improperly distributed; and inadequate Quality Control Plan.

14. California Financial Corporation, Colton, California

Action: Proposed Settlement Agreement that would include indemnification to HUD for its claim loss in the amount of $122,000 in connection with one improperly originated mortgage, agreement not to submit future claims on 11 improperly originated mortgages, and payment to the Department the sum of $20,000 in lieu of a civil money penalty.

Cause: A HUD monitoring review citing violations of HUD–FHA requirements including: Submission of inaccurate documents and information to HUD–FHA; failure to comply with HUD–FHA requirements under the Home Mortgage Disclosure Act (HMDA); failure to implement an adequate Quality Control Plan; incorrect income computations; and overinsured mortgages.

15. Marion Mortgage, Inc., El Paso, Texas

Action: Settlement Agreement which includes payment to the Department the sum of $10,000 in lieu of a civil money penalty, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which disclosed that the company failed to remit to HUD, or timely remit, One-Time Mortgage Insurance Premiums (OTMIPs).

16. American Mortgages, Inc., Bethesda, Maryland

Action: Proposed Settlement Agreement that would include a corrective plan of action to be implemented by the company to assure compliance with HUD–FHA net worth requirements under the multifamily coinsurance program.

Cause: Noncompliance with HUD–FHA sound capital resources requirements for a multifamily coinsurance mortgagee.

17. Terra Funding, Inc., Denver, Colorado

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim loss sustained by the Department in connection with an improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements including: Improperly originating a HUD–FHA insured mortgage; failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; and failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA).

18. Virginia Mortgage Services, Inc., Colonial Heights, Virginia

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim loss sustained in connection with an improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which disclosed violations of HUD–FHA requirements including: Improperly originating a HUD–FHA insured mortgage; failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; and failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA).

19. Builders Financial Corporation, Tempe, Arizona

Action: Proposed Settlement Agreement that would include indemnification to HUD for its claim loss of $36,665 in connection with one improperly originated mortgage, agreement not to submit a future claim in connection with one improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements that included: Improperly originating two HUD–FHA insured mortgages; failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; and failure to comply with the reporting requirements under the Home Mortgage Disclosure Act (HMDA).

20. Intermountain Mortgage Company, Inc., Billings, Montana

Action: Proposed Settlement Agreement that would include indemnification to HUD for one improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited the company for improperly originating a HUD–FHA insured mortgage; and failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

21. Pro-Net Financial, Inc., San Diego, California

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to maintain a Quality Control Plan for the origination of HUD–FHA insured mortgages which complies with HUD–FHA requirements.

22. First Colony Mortgage Corporation, North Port, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements including: Failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

23. Empire Mortgage Group, Inc., Margate, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: Failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

24. Harbor Financial Mortgage Corporation, Houston, Texas

Action: Letter of Reprimand.

Cause: A HUD monitoring review that cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

25. Gainesville Mortgage Company, Gainesville, Florida

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited violations of HUD–FHA requirements including: Failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages.

26. Realty Mortgage Corporation, Jackson, Mississippi

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for failure to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA).

27. Love Funding Corporation, Washington, DC

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim loss or a buydown of the mortgage amount, for an over-mortgaged HUD–FHA insured multifamily mortgage originated by the company.

Cause: A HUD Office of Inspector General audit which cited violations of HUD–FHA program requirements.

28. Finlay Financial Corporation, Cerritos, California

Action: Proposed Settlement Agreement that would include indemnification to HUD in the amount of $308,000 in connection with six improperly originated mortgages, agreement not to submit future claims on three improperly originated mortgages, and a proposed civil money penalty in the amount of $19,000.

Cause: A HUD monitoring review citing violations of HUD–FHA program requirements that included: Submission of inaccurate information to the Department; false certifications; permitting the use of strawbuyers in connection with HUD–FHA insured transactions; and failure to properly verify mortgagors' financial information.

29. Bancorp Mortgage, Anaheim, California

Action: Withdrawal of HUD mortgagee approval, and a proposed civil money penalty in the amount of $17,000.

Cause: A HUD monitoring review which cited violations of HUD–FHA program requirements that included: Failure to comply with reporting requirements under the Home Mortgage Disclosure Act (HMDA); failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; submitting false documentation to HUD–FHA; failure to adequately verify mortgagors' assets; using independent contractors to assist in preparing FHA mortgage insurance applications; making prohibited payments to independent contractors; and submitting a defaulted loan for HUD–FHA mortgage insurance.

30. Primary Mortgage Banking Corporation, Happague, New York

Action: Proposed Settlement Agreement that would include indemnification to HUD for any claim losses sustained in connection with 13 improperly originated mortgages, and a civil money penalty in the amount of $12,000.

Cause: A HUD monitoring review which disclosed violations of HUD–FHA program requirements including: Failure to maintain an adequate Quality Control Plan for the origination of HUD–FHA insured mortgages; failure to adequately verify mortgagors' source of funds; submitting inaccurate income information for a mortgagor; and submitting a mortgage for insurance which exceeded the maximum permissible mortgage amount.

31. Community West Mortgage Company, Sacramento, California

Action: Letter of Reprimand.

Cause: A HUD monitoring review which cited the company for noncompliance with the Department's mortgagee approval requirements. The company failed to ensure that employees conduct only the company's business affairs during normal business hours.

32. California Mortgage Service, Santa Ana, California

Action: Letter of Reprimand and a proposed civil money penalty in the amount of $35,000.

Cause: A HUD monitoring review which cited violations of HUD–FHA mortgage servicing requirements that included: Failure to properly dispose of mortgagors' escrow surpluses; failure to segregate mortgagors' escrow funds; failure to comply with the partial payment and partial prepayment rules; failure to refund escrow funds to mortgagors following mortgage payoff; improperly holding mortgagors' funds in suspense following mortgage payoff; and failure to properly remit monthly mortgage insurance premiums to HUD–FHA.

33. Preferred Financial Funding, Inc., Colton, California

Action: Probation and a proposed civil money penalty in the amount of $22,000.

Cause: A HUD monitoring review which cited violations of HUD–FHA Title I program requirements which included: Advising and allowing borrowers to use loan proceeds for ineligible items; falsely advising borrowers that discount points and other charges were set by HUD; allowing borrowers to finance up-front fees in their loan amounts; disbursing loan proceeds to finance property improvements which were started prior to loan approval; failing to ensure that detailed descriptions and copies of proposals or contracts were provided by borrowers; failing to verify funds used by borrowers for their initial payment; on supplemental loans, failing to ensure that the liens to secure the Title I loans had priority over their conventional liens; failing to comply with HUD–FHA reporting requirements under the Home Mortgage Disclosure Act (HMDA); and utilizing misleading advertising that misrepresented the Title I program.

34. Sound Mortgage, Inc., Seattle, Washington

Action: Proposed Settlement Agreement that would include indemnification to HUD in the amount of $48,000 for one improperly originated mortgage, and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review which cited the company for violations of HUD–FHA program requirements in the origination of one HUD–FHA insured mortgage. The company failed to assure that the mortgagor made the minimum required investment in the property, and failed to conduct a property inspection.

Dated: January 27, 1993.

James E. Schoenberger,

Associate General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–2328 Filed 2–1–93; 8:45am]

Billing Code 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–942–00–4730–02; GP3–088]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 41 S., R. 4 E., accepted November 24, 1992
T. 3 S., R. 5 E., accepted January 6, 1993
T. 33 S., R. 24 E., accepted December 18, 1992
T. 33 S., R. 25 E., accepted December 18, 1992

T. 16 S., R. 32 E., accepted May 11, 1992
T. 14 S., R. 35 E., accepted January 6, 1993
T. 36 S., R. 4 W., accepted October 22, 1992

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: January 21, 1993.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-2344 Filed 2-1-93; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 23, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 17, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ALABAMA

Etowah County

Gunn, Charles, House, 872 Chestnut St., Gadsden, 93000052

ARKANSAS

Saline County

Clary, J.H. and Ann Lowe, House, 305 N. East St., Benton, 93000053

COLORADO

Teller County

Stratton's Independence Mine and Mill, Jct. of Rangeview Rd. and CO 67, Victor vicinity, 93000054

[FR Doc. 93-2394 Filed 2-1-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 440X)]

CSX Transportation Co., Inc; Abandonment Exemption; in Hamilton County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903 and 10904, CSX Transportation Company, Inc.'s abandonment of a 0.45-mile segment of track in Hamilton County, OH, subject to the standard labor protective conditions.

DATES: Unless a formal expression of intent to file an offer of financial assistance is received, this exemption will be effective on March 4, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 12, 1993, petitions to stay must be filed by February 17, 1993, and petitions for reopening must be filed by February March 1, 1993. Requests for a public use condition must be filed by February 22, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 440X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;
(2) Petitioner's representative: Charles M. Rosenberger, Esq., 500 Water Street J150, Jacksonville, FL 32202.

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[1] *See Exemp. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721].

Decided: January 21, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-2371 Filed 2-1-93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 443X)]

CSX Transportation, Inc.; Abandonment Exemption; Hillsborough County, FL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts CSX Transportation, Inc. (CSXT), from the prior approval requirements of 49 U.S.C. 10903-10904, to permit CSXT to abandon an approximately 0.64-mile segment of its Yeoman Subdivision, between milepost 844.46 and milepost 845.11, in Hillsborough County, FL, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 4, 1993. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by February 12, 1993, petitions to stay must be filed by February 17, 1993, and petitions for reconsideration must be filed by March 1, 1993. Requests for a public use condition must be filed by February 22, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 443X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;
(2) Petitioner's representative: Charles M. Rosenberger, CSX Transportation,

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[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987).

Inc., 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610 [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: January 26, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2370 Filed 2–1–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to CERCLA in United States v. The Michael Co., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 19, 1993, a proposed Consent Decree in *United States* v. *The Michael Company, et al.*, Civil Action No. 90–70–D–S, was lodged with the United States District Court for the Southern District of Iowa (Davenport Division).

The Complaint in this enforcement action was filed on May 25, 1990, pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, seeking reimbursement of costs incurred by the United States in responding to the release or threat of release of hazardous substances from four sites (the Bettendorf Site, the Rolff Road Site, the Rockingham Road Site, and the Farragut Road Site) located in the Bettendorf/Davenport area of Iowa. The proposed consent decree has been entered into between the United States and Americold Corporation, Hawkeye Wholesale Grocery Company, Inc., Heatilator, Inc., Geo. A. Hormel & Company, Monsanto Company, Swiss Valley Farms, and Thoms-Proestler Company. Under the terms of the proposed consent decree, Americold Corporation, Hawkeye Wholesale Grocery Company, Inc., Heatilator, Inc., Geo. A. Hormel & Company, Monsanto Company, Swiss Valley Farms, and Thoms-Proestler Company will pay the United States three hundred and twenty five thousand dollars and no cents ($325,000.00) to reimburse the United States for its response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Michael Company, et al.* (DOJ # 90–11–3–555).

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of Iowa, 115 U.S. Courthouse, East 1st & Walnut Sts., Des Moines, Iowa 50309 and the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 634–0892. In requesting a copy, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the "Consent Decree Library."

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2318 Filed 2–1–93; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Phillips Industries, Inc. et al.*, Civil Action No. 90–0127 E, was lodged with the United States District Court for the District of Idaho on November 20, 1992. This Consent Decree settles an action filed by the United States, pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412, against Phillips Industries, Inc., H.H. Phillips, and Tom Simko.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, to recover civil penalties from and obtain injunctive relief against the Defendants for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") promulgated thereunder, during renovation and demolition activities which took place at the Old Ralston Purina Plant in Pocatello, Idaho in 1986 and 1988 to 1989. In this settlement, the Defendants will pay the United States a civil penalty of $66,350.00. Also, any future renovation and demolition operations conducted at the Defendants' facilities will be subject to the provisions set out in the consent decree, as well as to the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Phillips Industries, Inc., et al.*, DOJ number 90–5–2–1–1423.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Room 328 Federal Building, 550 West Fort Street, Boise, Idaho 83724, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2319 Filed 2–1–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, on December 11, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed a written notification on behalf of Bellcore and Ericsson Cables AB ("Ericsson Cables") simultaneously with the Attorney General and the Federal

Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Ericsson Cables, Hudiksvall, Sweden. Bellcore and Ericsson Cables entered into an agreement effective as of November 15, 1992, to engage in cooperative research directed to fiber reliability, including understanding the significance of fiber reliability for exchange and exchange access services and prototype fabrication for experimental demonstration related to such fiber reliability research.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93-2308 Filed 2-1-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, on December 17, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") filed written notifications on behalf of Bellcore and NORTEL Federal Systems, Inc. ("NORTEL"), Hughes Aircraft Company ("Hughes"), Rockwell International Corporation ("Rockwell"), United Technologies Corp., ("United Technologies"), and The Trustees of Columbia University in the City of New York ("Columbia") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bell Core, Livingston, NJ; NORTEL, McLean, VA; Hughes, Los Angeles, CA; Rockwell, Thousand Oaks, CA; United Technologies, East Hartford, CT; and Columbia, New York, NY. Bellcore, NORTEL, Hughes, Rockwell, United Technologies and Columbia entered into a collaboration agreement effective on September 24, 1992, to form an Optical Network Technology Consortium to engage in cooperative research in the area of all-optical communications networks to better understand the applications of this technology for exchange and exchange access service networks, including without limitation research prototype fabrication for the experimental demonstration of such technology.

Constance K. Robinson,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 93-2309 Filed 2-1-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 12, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 12, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of January, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
ARCO Alaska, Inc (Co)	Anchorage, AK	01/19/93	12/29/92	28,194	Oil and Gas.
Dover Electronics Co (Co)	Conklin, NY	01/19/93	12/30/92	28,195	Chip Modules.
Grayling Oil, Inc (Co)	Hobart, OK	01/19/93	01/05/93	28,196	Oil and Gas.
Johnson Controls, Inc (AIW)	Watertown, WI	01/19/93	01/05/93	28,197	Transformers and Thermocouples.
Morristown Manufacturing Co (ILGWU)	Talbot TN	01/19/93	01/08/93	28,198	Dresses and Jumpsuits.
North American Directory Corp (Wkrs)	Lowell, MA	01/19/93	01/08/93	28,199	Telephone Books.
Olotsson Corp, Inc (UAW)	Lansing MI	01/19/93	01/05/93	28,200	Turing and Boring Machines.
McDonnell Douglas Corp (UAW)	Long Beach, CA	01/19/93	12/23/92	28,201	Commercial Aircrafts.
McDonnell Douglas Corp (UAW)	Monrovia, CA	01/19/93	12/23/92	28,202	Commercial Aircrafts.
McDonnell Douglas Corp. (UAW)	Huntington Beach, CA	01/19/93	12/23/92	28,203	Commercial Aircrafts.
Mayfair Industries (Co)	New York, NY	01/19/93	12/30/92	28,204	Warehouse and Distribution for Co.
Pioneer Industrial Products (URW)	Willard, OH	01/19/93	01/06/93	28,205	Rubber Gloves.
American National Can Co (USA)	Chicago, IL	01/19/93	01/05/93	28,206	Aerosol Cans.
Tetley Tea, Inc (Wkrs)	Morrisplains, NJ	01/19/93	01/07/93	28,207	Tea.
Schweizer Aircraft Corp (Wkrs)	Elmira, NY	01/19/93	01/06/93	28,208	Military Training Aircraft.
Allied Bendix (UAW)	Green Island, NY	01/19/93	01/05/93	28,209	Brake Linings and Resins.
General Electric Co (Wkrs)	Syracuse, NY	01/19/93	12/02/92	28,210	Sonar and Radar Systems.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Capital Creations, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,211	Coats and Jackets.
Gregg Originals, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,212	Ladies Wool Coats.
Nicolette Fashions, Inc (ILGWU)	West New York, NJ	01/19/93	01/05/93	28,213	Coats and Suits.
Wool Fashions (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,214	Coats and Suits.
Verona Fashion, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,215	Ladies Coats and Suits.
Cotone, Inc. (ILGWU)	Jersey City, NJ	01/19/93	01/05/93	28,216	Ladies' Coats.
Five Sons Coats (ILGWU)	Jersey City, NJ	01/19/93	01/05/93	28,217	Coats and Suits
H&P Garment (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,218	Ladies' Coats and Suits.
Palermo Fashions, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,219	Ladies' Coats.
M.C.M. Coats, Inc (ILGWU)	Hoboken, NJ	01/19/93	01/05/93	28,220	Ladies' Coats and Suits.
Dell Coat Co., Inc (ILGWU)	Union City, NJ	01/19/93	01/05/93	28,221	Ladies' Coats.
Utica Alloys, Inc (Wkrs)	Utica, NY	01/19/93	01/07/93	28,222	High Temperture Alloys.
William Carter Co (The) (Wkrs)	Senatobia, MS	01/19/93	12/02/92	28,223	Girl's & Boys' Underwear.
Sharon Jay Togs, Inc (Wkrs)	New Bedford, MA	01/19/93	01/05/93	28,224	Childrens Sportswear.
Pump Unit Service (Wkrs)	Williston, ND	01/19/93	01/08/93	28,225	Oilfield Services.
Baker Dietzel & Smith, Inc (Wkrs)	Center Point, TX	01/19/93	12/16/92	28,226	Aircraft Parts.
United States Steel Corp (USWA)	Braddock, PA	01/19/93	01/05/93	28,227	Steel and Related Products.
Geneva Steel Co (USWA)	Vineyard, UT	01/19/93	01/05/93	28,228	Carbon Plate and Coil Sheet Products.
Al Tech Specialty Steel (USWA)	Dunkirk, NY	01/19/93	01/07/93	28,229	Steel Bar and Rods.
Al Tech Specialty Steel (USWA)	Watervliet, NY	01/19/93	01/07/93	28,230	Steel Bar and Rods.
Leslie Fay Co, Dress Div. (Wkrs)	Wilkes-Barre, PA	01/19/93	01/05/93	28,231	Ladies Apparel.
Binns Machinery Products (Co)	Cincinnati, OH	01/19/93	01/01/93	28,232	Roll Lathes.
Mayfair Industries (Co)	Hamburg, PA	01/19/93	01/06/93	28,333	Ladies' and Childrens' Sportswear.
Mayfair Industries (Co)	New Haven, CT	01/19/93	01/06/93	28,234	Administrative and Office for Mfg Plants.

[FR Doc. 93–2337 Filed 2–1–93; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of January 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,787; Praxair, Inc., Linde Div., Tonawanda, NY

TA–W–27,967; Stiles Apparel Team, Inc., Dallas, TX

TA–W–28,000; Garfield Sportswear, Inc., Garfield, NJ

TA–W–27,949; Dyna Turn of Oklahoma, Inc., Elk City, OK

TA–W–28,001; Q&T Coat, Inc., Paterson, NJ

TA–W–27,796; Production Pattern Co., Bedford, OH

TA–W–27,907; Douglas & Lomson Co., Cleveland, MS

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–27,938; Daishowa America Co., Ltd., Airport Road Log Yard, Port Angeles, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,997; Texaco Exploration & Production, Inc., Eastern E&P Region, New Orleans, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,898; Cambria & Induana Railroad Co., Colver, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,947; Shallow Production, Inc., Evanston, WY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,954 & TA–W–27,955; Intershoe, Inc., DIP, Millersburg, PA and Harrisburg, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,005; Casual Coat Co., Inc., Paterson, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–28,057; Dante Sportswear, Clifton, NJ

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

TA–W–27,918; Autologic, Inc., Norcross, GA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–28,139; GTE, Potosi, MO

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,015; Nestle Beverage Co., Sunbury, OH

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Affirmative Determinations

TA-W-27,892; Reynolds Cable Plant, Longview, WA

A certification was issued covering all workers engaged in the production of aluminum redraw rod and bare aluminum conductor separated on or after September 29, 1991.

TA-W-27,962; Evelyn Pearson Div. of Leslie Fay, Brooklyn, NY

A certification was issued covering all workers separated on or after October 22, 1991.

TA-W-27,969 & TA-W-27,969A; Western Atlas Core Laboratories, Aurora, CO & Carrollton, TX

A certification was issued covering all workers separated on or after October 23, 1991.

TA-W-27,988; Country Miss, Inc., Bristol, VA

A certification was issued covering all workers separated on or after November 6, 1991.

TA-W-27,732; JFP Energy, Inc., Houston, TX

A certification was issued covering all workers separated on or after August 19, 1991.

TA-W-27,961; Brown Shoe Co., Salem, IL

A certification was issued covering all workers separated on or after October 19, 1991.

TA-W-27,970; W.R. Grace & Co., Construction Products Div., New Castle, PA

A certification was issued covering all workers separated on or after September 30, 1991.

TA-W-27,993; Rogers Corp Circuit Interconnections Group, Chandler, AZ

A certification was issued covering all workers separated on or after November 6, 1991.

TA-W-27,952; Austin Powder Co., McArthur, OH

A certification was issued covering all workers separated on or after October 21, 1991 and before November 1, 1992.

TA-W-27,958; Engineered Well Services, Inc., Prudhoe Bay, AK

A certification was issued covering all workers separated on or after October 5, 1991.

TA-W-28,033; Exlog, Inc., Houston, TX

A certification was issued covering all workers separated on or after November 2, 1991.

TA-W-27,881; Grant Tensor Geophysical Corp., Houston, TX

A certification was issued covering all workers separated on or after September 21, 1991.

TA-W-27,939; Powerex, Inc., Youngwood, PA

A certification was issued covering all workers separated on or after September 26, 1992.

TA-W-28,003; RCR Sportswear Co., Passaic, NJ

A certification was issued covering all workers separated on or after October 29, 1991.

TA-W-28,042; Shell Oil Co., Administration and E & P, Birmingham, AL & Operating at Various Locations in the Following States: A; AL, B; MS, C; NM

A certification was issued covering all workers separated on or after November 2, 1991.

TA-W-28,043; Shell Oil Co., Shell Western E & P Inc., Birmingham, AL & Operating at Various Locations in the Following States: A; AL, B; MS, C; NM

A certification was issued covering all workers separated on or after November 2, 1991.

TA-W-28,046; Shell Oil Co., Shell Offshore, Inc., Birmingham, AL & Operating at Various Locations in the Following states: A; AL, B; MS

A certification was issued covering all workers separated on or after November 2, 1991.

I hereby certify that the aforementioned determinations were issued during the month of January 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 26, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-2338 Filed 2-1-93; 8:45 am]

BILLING CODE 4510-30-M

TA-W-27,814

Weyerhaeuser Snoqualmie, WA

Notice of Negative Determination Regarding Application for Reconsideration

By an application dated December 14, 1992, the Western Council of Industrial Workers Local #1845 (WCIW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 12, 1992 and published in the **Federal Register** on December 3, 1992 (57 FR 57241).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that lumber imports from Canada have adversely affected the workers at Weyerhaeuser while at the same time there was a lumber supply problem in the Northwest. Lumber supply problems would not form a basis for a worker group certification. Further, U.S. imports of softwood lumber from Canada were included in the Department's aggregate U.S. import tables.

The Department's denial was based on the fact that the "contributed importantly" test of the Worker Group Requirements of the Trade Act of 1974 was not met for softwood lumber and wood chips in the period relevant to the worker petition.

The Department's survey of Snoqualmie's major customers shows that they did not purchase imported softwood lumber or wood chips during the survey period. The survey also shows that more than half of their top ten customers were foreign. A decline in export sales would not form a basis for a worker group certification.

Investigation findings show that sales and production at Snoqualmie increased in 1992 compared to 1991. The findings also show that the workers are not separately identifiable by product.

Other findings show that worker separations occurred because of the introduction of labor saving equipment. Automatic lumber sorters with laser readers and computers eliminated several jobs at Weyerhaeuser's Snoqualmie mill. Previously the sorting of lumber in 10 foot, 12 foot lengths and

4 inch, 6 inch and 8 inch widths was done by hand. Technological unemployment would not provide a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of January 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–2339 Filed 2–1–93; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–008]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC, Aeronautics Advisory Committee Task Force on General Aviation Transportation.

DATES: February 16, 1993, 8:30 a.m. to 4:30 p.m.; and February 17, 1993, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 625, Building 10B, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Hood, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2841.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Discussion of Charter and Schedule
—Review NASA Research Activities

Dated: January 22, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–2349 Filed 2–1–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–007]

NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: February 9, 1993, 8:30 a.m. to 5 p.m.; and February 10, 1993, 8:30 a.m. to 12:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC–3, 300 E Street, SW., Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–2147).

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Tuesday, February 9, 1993, from 9 a.m. to 10 a.m. and on Wednesday, February 10, 1993, from 8:30 a.m. to 9 a.m. in accordance with 5 U.S.C. 552b(c)(6), to allow for a discussion on qualifications of individuals being considered for membership to the Subcommittee. The remainder of the meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Life Sciences Status
—Russian Cooperation Program
—Strategic Planning and Budgetary Initiatives
—Review of Discipline Working Group Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–2350 Filed 2–1–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *Type title of the information collection:* NRC Form 241—Report of Proposed Activities in Non-Agreement States.

3. *The form number if applicable:* NRC Form 241.

4. *How often the collection is required:* The forms are submitted only as the specified uses occur.

5. *Who will be required or asked to report:* Any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States under the general license in 10 CFR 150.20.

6. *An estimate of the number of responses annually:* 200.

7. *An estimate of the total number of hours needed annually to complete the requirement or request:* 50 (15 minutes per response).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* NRC Form 241 is required to be filed with NRC by any Agreement State licensee who engages in activities (use of radioactive byproduct material) under the general license in 10 CFR 150.20. This notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0013), NEOB–3019), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 25th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–2324 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

Brunswick Steam Electric Plant, Units 1 and 2, Carolina Power & Light Company, et al.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–325 and 50–324]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–71 and DPR–62 issued to Carolina Power & Light Company (CP&L or the licensee) for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed amendments would allow a one-time only revision to the requirements of Section 3.3.3 of Technical Specification 3/4.3.3, Emergency Core Cooling System Actuation Instrumentation when in Operational Condition 4 (Cold Shutdown) to support modifications to upgrade the seismic qualification of instrument racks H21–P009 (Unit 2 only) and H21–P010 (Unit 1 and Unit 2). The amendments would allow the minimum number of operable channels for one reactor steam dome pressure—low instrumentation trip system to be temporarily reduced from two (2) channels to one (1) channel. This would allow, on three separate occasions during this present outage, one reactor steam dome pressure—low (injection permissive) channel to be placed in the condition (tripped) that would satisfy the logic for allowing injection by the associated emergency core cooling system (ECCS) for up to seven (7) days without invoking the associated Action statement requirements.

The proposed amendment is in accordance with CP&L's application dated November 16, 1992.

The Need for the Proposed Action

The proposed change to the Facility Operating Licenses is needed so modifications can be made to upgrade the seismic qualification of the ECCS instrument racks H21–P009 (Unit 2 only) and H21–P010 (Unit 1 and Unit 2) prior to startup from the current outage.

Environmental Impacts of the Proposed Action

The proposed one-time amendment will not alter the function of the emergency core cooling system actuation instrumentation, and the planned compensatory actions will ensure that the consequences of any previously evaluated accident are not increased. Therefore, there will not be a significant increase in the types or amounts of any effluent that may be released offsite and, as such, the proposed amendment does not involve irreversible environmental consequences beyond those already associated with normal operation of the plant.

The staff has determined that the proposed change does not alter any initial conditions assumed for the design basis accidents previously evaluated nor change operation of safety systems utilized to mitigate the design basis accidents.

The proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the License involves one component in the plant which is located within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed actions, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the licensee's request for amendments. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (FES) for the Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

For further details with respect to this action, see the application for amendment dated November 16, 1992, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and the local public document room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 28th day of January 1993.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2489 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 70–36; License No. SNM–33]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Amendment of Special Nuclear Material; Combustion Engineering, Inc.; Hematite, MO

Correction

In FR. Doc. 92–31706, appearing on pages 62392–62394 in the issue of Wednesday, December 30, 1992, three corrections are required:

1. Page 62392, the right column, the third line of the third paragraph reads,

"8,000 kilograms of uranium enriched to * * *" and should read "8,000 kilograms of U–235 contained in uranium enriched up to * * *"

2. Page 62393, right column, third paragraph, the location of the nearest resident reads "east-southeast" and should read "west-northwest."

3. Page 62394, left column, second line under heading Opportunity for a Hearing, the word "renewal" should be "amendment."

Dated at Rockville, Maryland, this 22nd day of January 1993.

For the Nuclear Regulatory Commission.

John Hickey,

Chief, Fuel Cycle Safety Branch Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 93–2373 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Co.; Notice of Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–39 and DPR–48, issued to Commonwealth Edison Company (the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, respectively, located in Lake County, Illinois.

Identification of Proposed Action

The amendment would consist of a change to the Technical Specifications (TS) that would increase the storage capacity of the spent fuel pool to 3012 fuel assemblies, including six (6) defective fuel storage cells.

The amendment to the TS is responsive to the licensee's application dated January 15, 1992, as supplemented by additional correspondence dated October 2 and 16, 1992. The NRC staff has prepared an Environmental Assessment of the proposed action.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3 (1979), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Zion Station, Units 1 and 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or nonradiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement (FES) issued in December 1972 related to the operation of Zion Station, and in the Safety Evaluation Reports issued August 9, 1976, and February 28, 1980, in support of license amendments concerning storage capacity.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than three percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action see (1) the application for amendment dated January 15, 1992, as supplemented by additional correspondence dated October 2 and 16, 1992, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the FES for Zion Station dated December 1972, and (4) the Environmental Assessment dated January 25, 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Waukegan Public Library, 128 North County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland, this 25th day of January 1993.

Clyde Y. Shiraki,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2374 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–219]

GPU Nuclear Corp.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to the GPU Nuclear Corporation (the licensee), for operation of the Oyster Creek Nuclear Generating Station, located in Ocean County, New Jersey.

Identification of Proposed Action

The amendment would consist of a change to the Oyster Creek Nuclear Generating Station Facility Operating License No. DPR–16 to extend the expiration date of the operating license from December 15, 2004 to April 9, 2009. These dates represent 40 years from the dates of issuance of the construction permit and the operating license, respectively. The license amendment is in response to the licensee's application dated October 4, 1991, as supplemented December 11 and 24, 1991, May 19, June 3 and 24, and November 5, 1992.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration date of the operating license for the Oyster Creek Nuclear Generating Station. The staff reviewed the Final Environmental Statement Related to Operation of Oyster Creek Nuclear Generating Station, dated December 1974, the Environmental Assessment for the Oyster Creek Full Term Operating License issued April 10, 1986, and Supplement 1 to the Environmental Assessment issued June 19, 1991, and additional information provided by the licensee in its license amendment submittal, as supplemented, to determine if any significant environmental impacts, other than those previously considered, would be associated with the proposed license extension.

With regard to normal plant operation, occupational radiation exposures to personnel have decreased as a result of recent plant improvements. Further reductions in radiation dose rates are expected as a result of the ongoing as low as is reasonably achievable (ALARA) program.

Accordingly, the NRC staff concludes, that as a result of the license extension, the radiological impact on the general public would not increase over that previously evaluated in the FES and the occupational exposures will be consistent with the industry average and in accordance with 10 CFR part 20.

The NRC staff has in the past concluded that the environmental impacts associated with the uranium fuel cycle are very small when compared with the dose commitments resulting from natural background sources.

The environmental impacts attributable to transportation of fuel and waste to and from the Oyster Creek Nuclear Generating Station, with respect to normal conditions of transport and possible accidents in transport, would be bounded as set forth in Summary Table S–4 of 10 CFR 51.52, and the values in Table S–4 would continue to represent the contribution of transportation to the environmental costs associated with reactor operation.

The NRC staff has concluded that the proposed extension would not cause a significant increase in the nonradiological impact to the environment and would not change any conclusions previously reached by the NRC staff.

Finding of No Significant Impact

The NRC staff has reviewed the proposed change to the expiration date of the operating license for the Oyster Creek Nuclear Generating Station relative to the requirements set forth in 10 CFR part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment dated October 4, 1991, as supplemented December 11 and 24, 1991, May 19, June 3 and 24, and November 5, 1992; (2) the Final Environmental Statement Related to Operation of the Oyster Creek Nuclear Generating Station issued December 1974; (3) the Environmental Assessment for the Oyster Creek Full-Term Operating License issued April 10, 1984, and Supplement 1 to the Environmental Assessment issued June 19, 1991; and (4) the Environmental Assessment dated January 25, 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Ocean County Library Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 25th day of January 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2326 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

Design Basis Threat; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: Nuclear Utility Management and Resources Committee (NUMARC) requested a meeting to discuss the Nuclear Regulatory Commission's threat program and the process utilized to establish the design basis threat statements contained in 10 CFR 73.1. NUMARC's letter of December 21, 1993 to Mr. Selin, Chairman, U.S. Nuclear Regulatory Commission addressed several regulations that they believe increase costs to licensees without a commensurate safety benefit. NUMARC suggested that the design basis threat be reassessed in order to bring plant security programs in line with today's environment, which they believe has changed significantly since the publication of the threat statements in 1977.

DATES: February 9, 1993, 10 a.m.

ADDRESSES: 11555 Rockville Pike, room IF–19, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Burnett, Director, Division of Safeguards and Transportation, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 504–3365.

Dated at Rockville, Maryland, this 27th day of January, 1993.

For the Nuclear Regulatory Commission.

Robert F. Burnett,

Director, Division of Safeguards and Transportation.

[FR Doc. 93–2372 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–13027; License No. 12–00722–06; EA 92–162]

Order Imposing Civil Monetary Penalty

In the Matter of Department of the Army, U.S. Army Armament Headquarters, Rock Island, Illinois.

I.

Department of the Army (Licensee) is the holder of Byproduct Material License No. 12–00722–06 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 13, 1977. The license was amended in its entirety on February 25, 1989, and is due to expire on April 30, 1994. The license was most recently amended on May 14, 1992. The license authorizes the Licensee to possess and use sealed tritium sources in glass ampoules, not to exceed 85,000 curies total and 10.2 curies per device, to be used in fire control devices in accordance with the conditions specified therein.

II.

An inspection of the Licensee's activities was conducted on June 5 through August 17, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 2, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice by two letters dated October 23, 1992. In its response, the Licensee takes exception to the proposed imposition of civil penalty and provides arguments why the proposed penalty is not justified. The Licensee does not take issue with any of the seven violations. The events upon which the violations are based were independently confirmed through investigations performed by the Licensee. However, the Licensee does not agree that the number and scope of the violations represent a significant failure to provide adequate management oversight of licensed activities, and an ineffective training program. Further, the Licensee takes exception to the NRC Staff's application of the civil penalty adjustment factors in the areas of corrective action, licensee performance, and prior opportunity to identify.

III.

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

> The Licensee pay a civil penalty in the amount of $15,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective and final without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 25th day of January 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix

Evaluations and Conclusions

On October 2, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on June 5 through August 17, 1992. The Department of the Army responded to the Notice in two letters dated October 23, 1992. In its responses, the Licensee does not take issue with any of the seven violations. However, the Licensee does not agree that the number and scope of the violations represent a significant failure to provide adequate management oversight of licensed activities, and an ineffective training program. Further, the Licensee takes exception to the NRC Staff's application of certain civil penalty adjustment factors. The NRC's evaluation and conclusions regarding the Licensee's requests are as follows:

Restatement of Violations

A. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application and its enclosures dated November 6, 1988.

Enclosure 7 of the November 6, 1988 application states that in the event there is no illumination (of licensed devices), notify the local radiological protection officer.

Contrary to the above, on February 3 and 4, 1992, Fort Bragg, NC artillery, direct support and general support personnel identified a tritium M1A1 collimator as being non-illuminated and failed to notify the local radiological protection officer.

B. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application and its enclosures dated November 6, 1988.

Enclosure 7 of the November 6, 1988 application states that when radioactively illuminated instruments are defective, these items must be placed in a plastic bag and packaged in the shipping container.

Contrary to the above, from February 3 to May 26, 1992, a defective non-illuminated M1A1 collimator was not placed in a plastic bag by Fort Bragg, NC artillery, direct support or general support personnel. In addition, on June 12 and 13, 1992, Camp Blanding, FL artillery personnel identified that two M1A1 collimators were defective (and non-illuminated) but failed to place the collimators in a plastic bag as required.

C. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 750–116 issued to Fort Bragg, NC artillery personnel states in Section 4–3 to "Purge the collimator by turning regulator valve clockwise until low pressure gage indicates 5 psi. Maintain pressure for 5 minutes."

Contrary to the above, on February 3, 1992, Fort Bragg, NC artillery personnel used a high pressure regulator which was not calibrated to deliver 5 psi, resulting in two damaged tritium M1A1 collimators. In addition, on June 12 and 13, 1992, Camp Blanding, FL artillery personnel purged two M1A1 collimators to a pressure greater than specified in the Technical Manual. Other examples of overpurging M1A1 collimators were identified on April 22, 1992 at Fort Knox, KY and in May 1992 at Fort McCoy, WI.

D. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 9–1240–324–34&P, issued to Fort Bragg, NC general support personnel, states in chapter 2, section III(2–9) that repair of an M1A1 collimator is limited to replacing the reticle cell assembly provided the radioactive light source is not broken.

Contrary to the above, Fort Bragg, NC general support maintenance personnel stated that they routinely replaced reticle cell assemblies without regard to the condition of the radioactive light sources. For example, on May 26, 1992, a repairman replaced an M1A1 collimator reticle cell assembly even though the radioactive light source was known to be broken.

E. Condition 15 of License No. 12–0072–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 9–1240–324–34&P, issued to Fort Bragg, NC support personnel, states in the chapter 2, section II troubleshooting guide that if there is no M1A1 reticle illumination, direct or general support units should send a defective collimator to a depot-level facility. Section IV(2–31)(b)(5) states that collimators should not be stored in inhabited or unventilated buildings.

Contrary to the above, as of May 26, 1992, four non-illuminated tritium M1A1 collimators were in storage in the Fort Bragg, NC Optical Repair Shop, which is not a depot-level facility. The Fire Control Building, in which the shop is located, was occupied.

F. Condition 15 of License No. 12–00722–06 requires that the licensee conduct its program in accordance with the statements, representations, and procedures contained in the application dated November 6, 1988.

Item 10(b)(3) of the November 6, 1988 application requires that users of devices containing tritium illumination devices are required to utilize and maintain each device in accordance with military regulations and technical manuals issued.

Technical Manual 9–1240–324–34&P, issued to Fort Bragg, NC general support personnel, states in chapter 2, section III (2–13) that a strap wrench will be used to unscrew the reticle cell assembly from the optical element cell (collimator) on an M1A1 collimator.

Contrary to the above, as of May 26, 1992, Fort Bragg, NC general support maintenance personnel have routinely, over a number of years, used tools other than strap wrenches to remove reticle cell assemblies from M1A1 collimators. Specifically, propane torches and a large pipe wrench have been used to remove the assemblies.

G. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the requirements of part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, the Licensee did not make surveys to assure compliance with 10 CFR 20.105(b) which limits radiation levels in unrestricted areas. Specifically, after a tritium M1A1 collimator was damaged on May 26, 1992, in the Fort Bragg, NC Optical Repair Shop, an unrestricted area, surveys were not performed until June 2, 1992.

Summary of Licensee's Request for Mitigation

The Licensee does not agree that the number and scope of the violations represent a significant failure to provide adequate management oversight of licensed activities, and an ineffective training program. The Licensee also takes exception to the NRC Staff's application of the civil penalty adjustment factors in the areas of corrective action, Licensee performance, and prior opportunity to identify.

1. Safety Significance and Scope of the Violations

The Licensee notes that six of the seven violations are for failure to follow License Condition 15 of License No. 12–00722–06. This condition requires that the Army adhere to Army-generated requirements published in technical manuals covering tritium-illuminated devices. The Licensee states that these requirements were generated in order to keep exposures to tritium, as a result of use of these devices, as low as reasonably achievable. The Licensee argues that since that the violations did not result in an unreasonable exposure, the number of violations should not be considered significant. Further, had the Army-generated requirements not existed, it is the Licensee's position that the events that occurred at Ft. Bragg would not represent violations of other specific provisions of title 10 of the Code of Federal Regulations. The Licensee argues that the scope of the violations should not be considered significant since the violations are only cited at a limited number of facilities (Fort Bragg, Fort Knox, and Camp Blanding) and given that: (1) six of the seven violations are for failure to follow Army-generated requirements, and (2) the storage of collimators in uninhabited buildings is recommended but not absolutely required in the Army technical manual.

2. Corrective Actions

The Licensee states that the corrective actions taken and planned in response to the tritium incidents at Fort Bragg and elsewhere have been prompt and extensive. The Licensee acknowledges that the exposure at Fort Bragg occurred on May 26, 1992; the local Radiation Protection Officer and the Licensee's Radiation Safety Officer were notified on June 2, 1992; and the NRC was notified on June 3, 1992, but asserts that these delays were all caused by the single failure to notify the local Radiation Protection Officer of a non-illuminated M1A1 collimator. The Licensee acknowledges that the Radiation Safety Officer did not begin an on-site investigation at Fort Bragg until June 5, 1992. However, the Licensee emphasizes that the local Radiation Protection Officer performed a survey and investigation immediately upon notification.

The Licensee states that: (1) The vast majority of corrective actions that have been taken or planned are directed Army-wide; (2) the Reply to the Notice of Violation describes actions that have benefit and application Army-wide, and (3) the corrective actions that focus on Fort Bragg are included to emphasize that the location where the exposure occurred has training, procedures, and controls in place that minimize the likelihood of a similar exposure.

The Licensee asserts that it does not have the authority to mandate that the 3-day tritium course that is planned be attended by all local Radiation Protection Officers. However, a message will be prepared for signature by the Director of Army Safety announcing the dates and location for the course and strongly encouraging local Radiation Protection Officers to attend.

The Licensee also emphasizes that the majority of corrective actions had been taken or were planned well before receipt of NRC Inspection Report No. 030–13027/92001(DRSS), dated September 11, 1992. The Licensee's position is that the base civil penalty should be mitigated based on the proactive and extensive corrective actions that have been and will be taken.

3. Licensee Performance

The Licensee notes that the proposed $5,000 base civil penalty has been escalated 100 percent based on poor past performance; specifically, because of a tritium contamination incident involving an M1A1 collimator that occurred at Letterkenny Army Depot on April 4, 1988. The Licensee asserts that prior performance, as described in title 10 Code of Federal Regulations, part 2, appendix C, refers to the Licensee's performance normally within the last 2 years of the inspection at issue or the period within the last two inspections, whichever is longer. The Licensee states that the last two inspections occurred September 6–16, 1991, and June 5 through August 17, 1992. Therefore, the Licensee concludes that the longer of the two periods is two years, and since the incident at Letterkenny Army Depot occurred over 4 years ago, escalation based on poor past performance is not justified.

4. Prior Opportunity to Identify

The Licensee notes that the proposed $5,000 base civil penalty has been escalated an additional 100 percent based on the prior opportunity to identify factor. The Licensee asserts that, based on tritium contamination identified at Fort Lewis, Washington, the Licensee sent wipe test kits to six tritium repair facilities at Fort Sill, Schofield Barracks, Fort Drum, Fort Lewis, Fort Ord, and Fort Bragg. The purpose of this action was to proactively assess whether tritium contamination was a systemic problem at tritium repair facilities. Five of the six facilities performed the requested wipe tests, and the results indicated tritium contamination was not a significant problem. Although the Licensee acknowledges that followup with Fort Bragg was not accomplished, there was no reason to suspect that Fort Bragg had a problem based on the other results received.

The Licensee further acknowledges that a 1988 memorandum for the United States Army Europe discussed increased breakage of the M1A1 collimator with resulting high and persistent contamination. However, the Licensee notes that this memorandum was included in the application to renew this license that was submitted to the Nuclear Regulatory Commission and the license was renewed without comment by the Commission.

The Licensee also notes that the United States Army Environmental Hygiene Agency performed a radiation safety audit at Fort Bragg in March 1992. The Optical Repair Shop was not reviewed, simply because the Agency was not advised of its existence. The resulting inspection report, therefore, did not document problems with repair of tritium devices at Fort Bragg. The Licensee argues that since the audit did not identify problems, the audit should not be cited as a factor that gave the Licensee prior opportunity to identify. To the contrary, the Licensee could presume from the favorable inspection report results that Fort Bragg did not have a problem.

NRC Evaluation of Licensee's Request for Mitigation

1. Safety Significance and Scope of the Violations

The Licensee expresses a belief that the prohibition against the storage of collimators in inhabited buildings, as stated in Violation E., is only a recommendation. The Licensee is committed, through Condition 15 of the license, to follow an Army Technical Manual which states, "* * * [C]ollimators should not be stored in inhabited or unventilated buildings." To view this provision as anything less than a requirement would be inconsistent with a reading of the manual as a whole and with sound radiation safety principles. In the case at hand, the storage of damaged collimators that may be leaking tritium in an inhabited building is clearly not consistent with the goal of keeping exposures to tritium as low as reasonably achievable. In any event, Violation E. remains a violation because the defective collimator was not sent to a depot-level facility, and this second requirement was not challenged by the Licensee as being merely "advisory."

The Licensee is incorrect in concluding that the violations are insignificant because they are only violations of license conditions. 10 CFR 30.34(e) states, in part, that the Commission may incorporate, in any license issued pursuant to the regulations in parts 31 through 35 and 39, such additional requirements and conditions with respect to the Licensee's receipt, possession, use and transfer of byproduct material as it deems appropriate or necessary in order to protect health or minimize danger to life or property. License conditions are therefore Commission requirements and are equally as significant as requirements specifically set forth in title 10 of the Code of Federal Regulations.

The NRC Enforcement Policy, Supplement VI.C.7 gives as an example of a Severity Level III violation, a breakdown in the control of licensed activities involving a number of violations that are related that collectively represent a potentially significant lack of attention or carelessness toward licensed responsibilities. The NRC classified the seven violations in the Notice of Violation and Proposed Imposition of Civil Penalty as a Severity Level III problem in accordance with this example. The NRC does not wait for an overexposure to occur before taking escalated enforcement action. The purpose of an escalated action is, in part, to remedy the conditions which may lead to unnecessary contamination or radiation exposures and, therefore, hopefully avoid any overexposures. In this case, the civil penalty is being issued to emphasize the need to assure that required procedures are being followed in order to avoid the potential for a significant contamination or exposure problem.

With regard to the Licensee's argument that since the violations are only cited at a limited number of facilities the scope of the violations should not be considered significant, the NRC emphasizes that, even though these violations may have occurred at a limited number of facilities, taken together, they represent a significant regulatory concern, i.e., a potential for radioactive contamination and personnel exposures at the facilities involved.

2. Corrective Actions

As provided in the NRC Enforcement Policy, the NRC normally mitigates when both the immediate and the long term corrective actions are prompt as well as extensive; and, in weighing this factor, consideration is given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action. The Licensee's answer and reply to a Notice of Violation provide no new information which changes the conclusion reached in the Notice.

As stated in the Notice, no mitigation was warranted for the corrective action factor in that the NRC had concerns regarding the Licensee's corrective actions. Specifically, the Licensee's immediate corrective actions were not sufficiently prompt in that it took a week to seal off and evacuate the area and to notify the NRC, the local Radiation Protection Officer, and the Radiation Safety Officer. Additionally, the NRC was concerned that the Radiation Safety Officer had not yet begun an investigation as of June 4, 1992. Further, some of the Licensee's longer term corrective actions appeared to be narrowly focused on Fort Bragg and the tritium isotope; for example, procedures were apparently revised at Fort Bragg only.

The Licensee's primary generic corrective action for the program breakdown was to issue a safety-of-use message worldwide; however, the message did not require the local Radiation Protection Officers to audit their facilities for compliance with applicable license conditions and NRC requirements, and to forward the results to the Radiation Safety Office. Furthermore, although the message reiterated a number of requirements and, for example, directed local Radiation Protection Officers to verify that procedures exist which include the requirements outlined in the message, the message did not specify appropriate feedback to the Radiation Safety Office regarding the extent of problems identified during the local Radiation Protection Officers' review of procedures.

Additionally, the NRC is concerned with the Licensee's statement that it does not have the authority to mandate that the three-day tritium course be attended by all local Radiation Protection Officers. The NRC expects the Licensee to obtain through its chain of command whatever authority it deems necessary to ensure that the radiation safety program is fully implemented and that licensed material is used safely.

3. Licensee Performance

The Licensee has incorrectly interpreted the NRC Enforcement Policy regarding Licensee performance. The Policy states that prior performance refers to the Licensee's performance normally (1) within the last two years of the inspection at issue, or (2) the period within the last two inspections, whichever is longer. The Licensee interpreted this to mean the time between the inspection at issue and the previous inspection. However, the correct interpretation is that the period of time goes back two inspections prior to the inspection at issue. The two previous inspections to be considered are the inspection conducted on September 6–16, 1991 (Inspection Report No. 030–13027/91001), and the special inspection conducted on April 22 and 28, 1988 (Special Inspection Report No. 030–13027/88001). The 1988 inspection specifically reviewed the circumstances surrounding the tritium contamination incident at Letterkenny Army Depot. Therefore, the last two inspections encompass the Letterkenny incident and full escalation of the base civil penalty for licensee performance is warranted.

4. Prior Opportunity to Identify

The Licensee argues that it was proactive in sending wipe test kits to six tritium repair facilities, but acknowledges that it did not follow up with Fort Bragg when Fort Bragg failed to perform the requested wipe tests. The Licensee also asserts that there was no reason to suspect a problem at Fort Bragg, based on other results received. Lack of aggressiveness on the part of the Radiation Safety Office is an example of Licensee performance the NRC specifically discourages. The wipe test kits were sent to the six tritium repair facilities specifically in response to a December 1990 radiation survey at Fort Lewis, WA that identified tritium contamination and, therefore, all six wipe tests should have been analyzed.

Regarding the 1988 memorandum for the United States Army Europe which discussed increased breakage of the M1A1 collimator with resulting high and persistent contamination, the failure to comment by the NRC does not relieve the Licensee of its responsibility to conduct licensed activities safely. If anything, the fact that the Army was aware of the potential problem reemphasizes the importance that the Army should have placed on following required procedures that could prevent or mitigate the consequences of the problem.

Finally, the Licensee argues that the United States Army Environmental Hygiene Agency did not audit the Optical Repair Shop, simply because the Agency was not advised of its existence. The NRC's position is that the Army had prior opportunity to perform an adequate audit of the Optical Repair Shop, and thereby identify the potential problem, but failed to do so due to this flaw in the auditing process.

NRC Conclusion

Based on its evaluation of the Licensee's response, the NRC staff concludes that the violations did occur as stated, and that neither an adequate basis for a reduction of the severity level nor for mitigation of the civil penalty has been provided by the Licensee. Accordingly, NRC concludes that a civil monetary penalty of $15,000 should be imposed by order.

[FR Doc. 92–2323 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–05373 License No. 29–09814–01 EA 92–136]

Eastern Testing and Inspection, Inc., Thorofare, NJ; Order Imposing Civil Monetary Penalty

I

Eastern Testing and Inspection, Inc. (Licensee) is the holder of Byproduct Material License No. 29–09814–01, issued by the Nuclear Regulatory Commission (NRC or Commission), which authorizes the Licensee to use byproduct materials for use in industrial radiography and replacement of sources in accordance with the conditions specified therein. The license was issued on February 2, 1964, was last renewed on February 20, 1987, and remains active under the timely renewal application submitted on February 3, 1992.

II

An inspection of the Licensee's activities was conducted on June 17, and July 7 and 8, 1992. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated September 17, 1992. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in two letters, dated October 16 and 26, 1992, respectively. In its responses, the Licensee did not deny the violations, but required full mitigation of the civil penalty.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be final and effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations set forth in the Notice, this Order should be sustained.

Dated at Rockville, Maryland this 25th day of January 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusion

On September 17, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for nine violations identified during an NRC inspection on June 17, and July 7 and 8, 1992, at the Eastern Testing and Inspection, Inc. (Licensee or ETI) facility in Thorofare, New Jersey, and at a field site in Carney's Point, New Jersey. The Licensee responded to the Notice in a reply dated October 16, 1992 and an answer dated October 26, 1992 (collectively "responses"). The Licensee did not deny the violations, but requested full mitigation of the civil penalty. The NRC's evaluations and conclusions regarding the Licensee's requests are as follows:

1. Summary of Licensee Answer

The Licensee, in its answer, requests remission/mitigation of the proposed imposition of penalties, claiming that there are areas where extenuating circumstances played a very relevant part in causing some of the violations. The Licensee states that it has a very good Radiation Safety Program, and has consistently had acceptable NRC inspections over many years. While the Licensee acknowledged the NRC concern over the violations, the Licensee contends that the NRC statement that the RSO and ETI management acted in careless disregard is totally unjustified. The Licensee states that attention to safety has always been extremely important to the RSO and ETI management.

The Licensee also states that it has been licensed since 1964, and has always endeavored to conduct activities in accordance with NRC regulations; does not have a history of disregard for public safety; and does not have a history of not calibrating instruments in a timely manner. The Licensee also claims that the open enforcement conference was extremely damaging to its reputation, in that it had numerous inquires from customers questioning the safety program, and has lost a major customer, coincidentally, who also was concerned about the news releases. The Licensee also states that the NRC's decision to classify the violation in the aggregate at Severity Level III is extreme in that the Licensee does not feel it endangered public health and safety.

2. NRC Evaluation of Licensee Responses

The NRC has evaluated the licensee responses, and based upon that evaluation, the NRC has concluded that (1) some of the violations did occur as a result of careless disregard by the RSO; (2) the violations collectively did constitute a lack of management attention to, and control of, the radiation safety program, and were appropriately classified in the aggregate at Severity Level III; and (3) the licensee did not provide an adequate basis for mitigation of the civil penalty.

With respect to the licensee contention that the violations did not involve careless disregard on the part of the RSO and ETI management, the NRC concluded that the RSO, and not ETI management, acted with careless disregard. As stated in the Notice, the RSO indicated at the enforcement conference that he understood the need for action to comply with the requirements, but just did not get around to completing those actions. Further, the RSO stated, with regard to the violation involving the movement of a radiographic device in an unauthorized container, that he understood the requirement for an authorized container, but believed that the container fabricated for transport was safe enough. Thus, the failures here to ensure that licensed activities were conducted in accordance with NRC requirements, when the RSO was fully aware of the NRC requirements, constitutes careless disregard on the part of the RSO and therefore are considered willful within the context of the NRC Enforcement Policy.

With respect to the licensee contention that the classification of violations at Severity Level III was extreme, and that such classification was inappropriate since they did not endanger the public health and safety, the NRC also disagrees with this licensee contention. A total of nine violations were identified during the inspection. Some of the violations involved multiple examples that existed over an extended duration which were not identified and corrected by management or the RSO. Some of the violations resulted from careless disregard on the part of the RSO, as already described herein. On this basis, the NRC concludes that the violations demonstrated a lack of adequate attention to, and oversight of, the Radiation Safety Program by management and the RSO, and, therefore, were appropriately classified in the aggregate at Severity Level III. This conclusion is consistent with NRC action taken in the past in cases similar to this one. Although there may not have been any actual endangerment of the public resulting from these violations, such violations can create the potential for unnecessary exposures to workers and members of the public.

The licensee contends that the NRC should mitigate the civil penalty on the basis that (1) the Severity Level III classification was inappropriate, and a lower severity level would not result in a civil penalty, and (2) it lost a major customer as a result of the enforcement conference. That NRC arrived at the proposed civil penalty by applying escalation/mitigation factors as required by the NRC Enforcement Policy. The explanation of the bases for the civil penalty was described in the Notice. The licensee's bases for requesting mitigation in no way relate to or impact the application of the escalating/mitigating factors. Therefore, since the NRC maintains that the violations were appropriately classified at Severity Level III, as already described herein, the licensee argument does not provide a basis for mitigation of the civil penalty.

3. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $7,500 should be imposed.

[FR Doc. 93–2376 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to Georgia Power Company, et al. (the licensee), for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The proposed amendments would revise Technical Specification (TS) 5.3.1, "Design Features—Fuel Assemblies," in accordance with NRC Generic Letter (GL) 90–02, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications," as issued February 1, 1990, and supplemented July 31, 1992. Specifically, the amendments would supplement TS 5.3.1 by adding that:

> Limited substitutions of zirconium alloy or stainless steel filler rods for fuel rods, in accordance with NRC-approved applications of fuel rod configurations, may be used. Fuel assemblies shall be limited to those fuel designs that have been analyzed with applicable NRC staff-approved codes and methods, and shown by tests or analyses to comply with all fuel safety design bases. A limited number of lead test assemblies that have not completed representative testing may be placed in non-limiting core regions.

In GL 90–20, the NRC provided guidance for a line-item change to TS 5.3.1. The change provides flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies and provides for conditional use of lead test assemblies without prior NRC approval.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The proposed change to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated because it will not result in a change to any of the process variables that might initiate an accident. The operating limits will not be changed and the analysis methods to demonstrate operation within the limits will remain in accordance with NRC-approved methodology. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this Technical Specification change. The consequences of an accident previously evaluated will not be increased because the safety analyses to be performed for each cycle will continue to demonstrate compliance with all fuel safety design bases. The ability to remove potentially leaking fuel rods should result in a reduction in the radiological consequences of any transients or accidents.
>
> This change to the Technical Specifications will not create the possibility of a new or different kind of accident from any accident previously evaluated because it will only affect the assembly configuration and will be limited to NRC-approved applications of fuel rod configurations. The other aspects of plant design, operation, limitations and responses to events will remain unchanged.
>
> The use of stainless steel or zirconium alloy filler rods in fuel assemblies will not involve a significant reduction in a margin of safety because analyses using NRC-approved methods will be performed for each configuration to demonstrate continued operation within the limits that assure acceptable plant response to accidents and transients. These analyses will be performed using NRC-approved methods that have been approved for application to the fuel configuration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filling of requests for hearing and petitions for leave to intervene is discussed below.

By March 3, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Art Domby, Esquire, Troutman Sanders, NationsBank Plaza, suite 5200, 600 Peachtree Street, Atlanta, Georgia, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 5, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 26th day of January 1993.

Darl S. Hood,

Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-2325 Filed 2-1-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-40 issued to Omaha Public Power District for operation of the Fort Calhoun Station, Unit 1 located in Washington County, Nebraska.

The proposed amendment would allow the fuel rack storage capacity in the Spent Fuel Pool to be increased to provide storage for 1083 assemblies.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The proposed changes do not involve significant hazards considerations because operation of the Fort Calhoun Station Unit No. 1 in accordance with these changes would not:
>
> **(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated**
>
> In the course of the analysis, the following potential accident scenarios have been considered:
>
> a. A spent fuel assembly drop in the Spent Fuel Pool (SFP)
> b. Loss of SFP cooling system flow
> c. A seismic event
> d. A spent fuel cask drop
> e. A construction accident
>
> *Probability of an Accident*
>
> The increased storage capacity of the SFP has been analyzed for the existing fuel handling equipment and procedures, SFP cooling system, and seismic events. No cask movement is contemplated as part of this modification. The Auxiliary Building crane will be used to bring the racks into the Auxiliary Building. Thus, the proposed modification does not increase the probability of any of the first four accidents.
>
> With regard to the construction accident, the Technical Specifications prohibit loads heavier than the weight of a single spent fuel assembly plus CEA [Control Element Assembly], and the tool for moving that assembly, from being carried over fuel stored in the SFP. All work in the SFP area will be controlled and performed in strict accordance with specific written procedures and administrative controls to preclude the movement of a rack directly over any fuel. Therefore, the probability of occurrence of a construction accident is not significantly increased as a result of the proposed reracking.
>
> In addition, §§ 5.1.1, 5.1.2 and 5.1.6 of NUREG-0612, entitled "Control of Heavy Loads at Nuclear Power Plants", provide guidance for heavy load handling operations pursuant to a spent fuel storage rack replacement. Section 5.1.2 provides four alternatives for assuring the safe handling of heavy loads during a fuel storage rack replacement. Alternative (1) of Section 5.1.2 provides that the control of heavy loads guidelines can be satisfied by establishing that the potential for a heavy load drop is extremely small.
>
> The Auxiliary Building overhead electric crane with rated load capacity of 75 tons will

be used for the reracking operation. The maximum weight of an individual new rack or existing rack is less than 10 tons. The weight of the lifting fixture is less than 2 tons, which results in a minimum factor of safety of 6.25. In addition, the crane system and the lift rig to be employed in the rerack operation are single-failure proof. Therefore, the potential for crane failure is extremely low and alternative (1) of § 5.1.2 of NUREG–0612 is satisfied.

Accordingly, the proposed modification does not involve a significant increase in the probability of a load drop accident since NUREG–0612 guidelines for defense-in-depth to prevent load drop accidents have been satisfied.

Potential Consequences of an Accident

The consequences of a spent fuel assembly drop in the SFP were evaluated and it was found that the critically acceptance criterion, $k_{eff} \leq 0.95$, is not violated. In addition, it was found that there was no significant change in the radiological consequences of a fuel assembly drop from the previous analyses. The analyses found that the calculated doses are well within 10 CFR part 100 guidelines. The results of an analysis show that a dropped spent fuel assembly on the racks will not distort the racks such that they would not perform their safety function. Thus, the consequences of this type of accident are not significantly changed from the previously evaluated spent fuel assembly drops.

The consequences of a loss of SFP cooling system flow have been evaluated and it was found that sufficient time is available to provide an alternate means for cooling in the event of a complete failure of the cooling system. Thus, consequences of this type accident are not significantly increased from previously evaluated loss-of-cooling system flow accidents.

The consequences of a seismic event have been evaluated. The new racks will be designed and fabricated to meet the requirements of applicable portions of the NRC Regulatory Guides and published standards. The new free-standing racks are designed, as are the existing racks, so that the integrity of the racks and the pool structure is maintained during and after a design basis seismic event. Thus, the consequences of a seismic event are not increased from previously evaluated events.

The consequences of a spent fuel cask drop will not be affected by the replacement of the racks, as no spent fuel cask movement is contemplated as part of this modification. OPPD (Omaha Public Power District) does not presently utilize or own a spent fuel sample cask or spent fuel shipping cask. If such casks were to be utilized the single-failure-proof main hook of the Auxiliary Building Crane would be used to move these casks. In addition, electrical interlocks are installed which preclude travel of the main hook over the spent fuel pool (NUREG–0612). The likelihood of occurrence of a cask drop is greatly reduced through these considerations. Heavy Load paths have been proposed to circumvent carrying a cask over spent fuel. Thus the need for consideration of a radiological release impact of a cask drop accident is obviated. OPPD concludes that an analysis of the radiological consequences of a cask drop accident is not required.

The consequences of a construction accident have been considered. A heavy load will not be carried in the SFP area until all fuel in the pool has decayed for a minimum of two months. This provides sufficient time for decay of gaseous radionuclides in the fuel (gap activity) such that an assumed accidental release of gases from damage to all stored fuel assemblies would result in a potential off-site dose less than 10% of 10 CFR part 100 limits. In addition, load paths were evaluated in accordance with the Criteria contained in NUREG–0612 and found to be acceptable. It is concluded, therefore, that the consequences of a construction accident are not significantly increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to replace the spent fuel racks in the SFP does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed modification was evaluated in accordance with the guidance of the NRC Position Paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", appropriate NRC Regulatory guides, appropriate NRC Standard Review Plans, and appropriate industry codes and standards. In addition, several previous NRC Safety Evaluation Reports for rerack applications similar to this proposed modification have been reviewed.

No unproven technology will be utilized either in the construction process or in the analytical techniques necessary to justify the planned fuel storage expansion. In fact, the basic reracking technology in this instance has been developed and demonstrated in over 80 applications for fuel pool capacity increases previously approved by the NRC.

Based upon the foregoing, it is concluded that the proposed reracking does not create the possibility of a new or different type accident from any accident previously evaluated.

(3) Involve a Significant Reduction in a Margin of Safety

Nuclear Criticality Considerations

The established acceptance criterion for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design.

The methods used in the criticality analysis conformed to the applicable portions of the appropriate NRC guidance and industry codes, standards, and specifications, as listed in the Licensing Report. In meeting the acceptance criteria for criticality in the SFP, such that k_{eff} is always less than 0.95, including uncertainties at a 95%/95% probability/confidence level, the proposed amendment does not involve a significant reduction in the margin of safety for nuclear criticality.

Thermal-hydraulic Considerations

Conservative methods were used to calculate the maximum fuel cladding temperature and the increase in temperature of the water in the SFP. The thermal-hydraulic evaluation used the methods previously employed for evaluations of the present spent fuel racks to demonstrate that the margins of safety for pool temperatures are maintained. The proposed modification will increase the heat load in the SFP. The evaluation shows that the existing SFP system will maintain the bulk pool water temperature below 140 °F. Thus, a margin of safety exists such that the maximum allowable temperature for bulk boiling is not exceeded for the calculated increase in pool heat load. The evaluation also shows that maximum local water temperature along the hottest fuel assembly is below the nucleate boiling condition value. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or spent fuel cooling concerns.

Mechanical, Material and Structural Considerations

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal or abnormal loadings. Abnormal loadings which have been considered are the effect of an earthquake, the impact due to a spent fuel cask drop, the drop of a spent fuel assembly, or the drop of any object used in the rerack modification. The mechanical, material, and structural design of the new spent fuel racks is in accordance with applicable portions of "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications", dated April 14, 1978, as modified January 18, 1979; Standard Review Plan § 3.8.4; and other applicable NRC guidance and industry codes. The rack materials used are compatible with the SFP and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and deflection or movement, such that the racks do not impact each other in the cellular region during the postulated seismic events. In addition, the spent fuel assemblies remain intact and no criticality concerns exist. Thus, the margins of safety are not significantly reduced by the proposed rerack.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 4, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John T. Larkins: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, NW., Washington, DC 20009–5728, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, is authorized to use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 (October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no part to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated December 7, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 27th day of January 1993.

For the Nuclear Regulatory Commission.

George T. Hubbard,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2377 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030–31765; License No. 37–28540–01; EA 93–006]

Order Suspending License (Effective Immediately)

In the Matter of Oncology Services Corporation, Harrisburg, Pennsylvania

I.

Oncology Services Corporation (Licensee) is the holder of Byproduct Material License No. 37–28540–01 (Licensee) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The License authorizes possession and use of over 500 curies of iridium-192 as sealed sources for use in brachytherapy remote afterloaders for the treatment of humans at several specified facilities located within the State of Pennsylvania. The License was originally issued on August 3, 1990, and is due to expire on August 31, 1995. The License names Dr. David E. Cunningham as the Radiation Safety Officer (RSO). The duties and responsibilities of the RSO are set forth in the License and in 10 CFR 35.21(b).

II.

On December 1, 1992, the NRC Region I Office was notified of an incident involving the loss of a 3.7 curie iridium-192 source from the Licensee's Indiana, Pa. facility (Indiana Regional Cancer Center) on November 16, 1992. It was subsequently determined that the source, which was connected to the metal drive wire on an Omnitron 2000 High Dose Rate (HDR) remote afterloader machine, had broken off during a patient treatment. The machine directs the source into catheters placed in a patient and retrieves the source at the conclusion of the treatment via the drive wire. When the source became disconnected, it remained in one of the catheters in the patient for approximately 91 hours. During that time period, the patient incurred a radiation dose estimated at greater than one million rads to the wall of the bowel.

When the radiation therapy technologists at the Indiana Regional Cancer Center operated the machine to insert the radioactive source into the last of five patient catheters involved in the treatment, the machine gave numerous "error" messages. The technologists next operated the machine to insert a nonradioactive source wire into the catheter in an attempt to clear any potential constriction. At some time during the time the machine was indicating error messages, the area radiation monitor alarmed with a flashing red light although the source was not then thought to be in use. A technologist informed the attending physician of the difficulties with the treatment and that the alarm had flashed. The physician, who is an authorized user named on the NRC license, went into the room to examine the patient. The physician directed the technologists to terminate the treatment and disconnect the patient from the HDR machine.

License Condition 17 requires that a radiation monitor be mounted on the wall and remain in place as a means of verifying the source location. Further, failure of the radiation monitor requires termination of treatment until the monitor is repaired and no personnel will be permitted to enter the room without a portable survey meter or audible dosimeter. In addition, 10 CFR 20.20(b) requires that the Licensee make such surveys as (1) may be necessary to comply with the regulations in 10 CFR part 20 and (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. In direct violation of these requirements, and even though a calibrated, operational survey meter has available in the immediate vicinity, neither the physician nor the technologists utilized an audible dosimeter or survey meter upon entering the room, when they apparently believed that the area radiation monitor had malfunctioned and signaled a false alarm. In spite of the obvious difficulty encountered with the treatment, these individuals also did not survey the patient following discontinuation of the treatment to assure that all sources had been removed from the patient.

In violation of 10 CFR 19.12, the radiation therapy technologists had not been trained in the use of a survey meter and did not know when to use a survey meter or how to interpret the readings of a survey meter to determine the presence of a radioactive source in the patient or in the area.

The patient, whose body still contained the catheter with the radioactive source lodged inside it, was returned to a nearby nursing home. At the nursing home, the catheter containing the source became loose and dislodged itself from the patient's body on November 20, 1992. The catheter, with the source still in it, unknowingly was initially placed in a biological waste bag which was stored with other biomedical waste in a room at the nursing home and was subsequently placed in a storage shed behind the nursing home. On November 25, 1992, the biomedical waste containing the radioactive source was collected by a waste carrier and transported to a disposal facility where the source was detected when a radiation alarm sounded.

The patient expired on November 21, 1992. Regardless of the specific cause of death in this case, the amount of radiation received by the patient was significant. Numerous other individuals including health care workers, visitors, sanitation workers, and other members of the general public, were exposed to unnecessary radiation as a result of this event.

III.

On December 1, 1992, NRC initiated an inspection to review the Licensee's actions. On December 2, 1992 a Confirmatory Action Letter (CAL 1–92–016) was issued to the Licensee to, among other things, confirm its commitment to suspend use of the HDR at the Indiana Regional Cancer Center for patient treatment until specifically authorized by NRC to resume use of the HDR. The CAL stated that its issuance did not preclude issuance of further actions. On December 3, 1992, NRC established an Incident Investigation Team to review this event.

On December 8, 1992, NRC conducted unannounced inspections at two of the Licensee's facilities, the Licensee's Exton Cancer Center, Exton, Pa. (Exton), and the Mahoning Valley Cancer Center, Lehighton, Pa. (Lehighton). These inspections included reviews of the organization and scope of licensed activities, training of personnel, posting, instrumentation, personnel monitoring, HDR afterloader operations, and the Licensee's Quality Management (QM) program. The findings of this inspection included:

A. Dr. Cunningham, who is the RSO named on the License, had not visited the Lehighton facility in the past 6–9 months.

B. Dr. David J. Moylan, Medical Director of the Lehighton facility and an authorized user named on the License, indicated that he had not read the terms and conditions of the License and was not aware that Dr. Cunningham was the RSO named on the License.

C. At the Exton and Lehighton facilities, the Licensee failed to provide training to the radiation therapy technologists in the requirements of the License conditions and of the NRC regulations as required by 10 CFR 19.12. Copies of the documents incorporated into the License by reference were not available to the individuals at the Lehighton facility as required by Condition 17 of the License.

D. Emergency training provided to the radiation therapy technologists at the Exton and Lehighton facilities did not include a "Simulation Emergency" (i.e., "dry run") of the source not retracting at the end of a treatment as required by Condition 17 of the License.

E. At the Exton facility, emergency procedures were not posted at the console of the HDR afterloader as required by the License.

F. At both the Exton and Lehighton facilities, the key to activate the Linear accelerator and the key to activate the HDR unit were not on the same key ring so as to prohibit the simultaneous activation of both units within the same room as required by Condition 17 of the License. Instead, the key to each unit was left in the respective console of that unit.

G. The staff of the Exton facility was not aware of the specifics of the Licensee's Quality Management program.

Additionally, although the physicists at the Exton and Lehighton facilities are key personnel who bear responsibility for avoiding or preventing the recurrence of an event such as the November 16 event described in Section II above, the inspectors determined that these individuals did not learn of the event via an appropriate corporate radiation safety communication, but instead learned about the event through the coverage in the news media.

On December 14, 1992, NRC Region I issued a Confirmatory Action Letter (CAL 1–192–020) to the Licensee's president wherein the Licensee committed to: (1) Have independent audits of the radiation safety program, (2) provide a corrective action plan, (3) clarify the reporting and oversight responsibilities of the corporate RSO, (4) conduct training on radiation safety and routine and emergency operations of the HDR machines, and (5) communicate to its staff management expectations for operating the HDR machines and the specifics and significance of recent failures of these machines. The CAL stated that its issuance did not preclude issuance of further actions.

On December 11, 1992, the Licensee requested that it be allowed to resume patient treatment with the HDR at the Indiana facility. This request was made because patients, whose palliative treatments had been discontinued as a result of the December 2, 1992 CAL, were in need of relief from pain and suffering through treatment with this modality. By letter dated, December 15, 1992, the NRC approved resumption of treatment with a HDR afterloader provided that the Licensee had taken the actions specified in NRC Bulletin 92–03, December 8, 1992.

IV.

Following the NRC inspection at the Exton and Lehighton facilities and the issuance of the December 14, 1992 CAL, the NRC learned that the Licensee's RSO communicated with the medical directors of the Licensee's five satellite facilities by letter dated December 18, 1992. The letter stated, "It is not possible for Corporate Administration to supervise your radiation safety program on a routine basis." In the letter, Dr. Cunningham sought to delegate to the Medical Director/Authorized User at each of the satellite facilities the radiation safety officer responsibilities that are assigned to Dr. Cunningham under the terms and conditions of the License. Dr. Cunningham also stated in the letter that it is appropriate for the Medical Director/Authorized User to further delegate the radiation safety responsibilities of the Medical Director/Authorized User to "the technical support including the physicists and chief technologist."

V.

The facts described above demonstrate a significant corporate management breakdown in the control of licensed activities wherein key Licensee employees at several satellite facilities do not know the requirements of the NRC License, do not have access to the pertinent License documents, and have not been adequately trained in either the pertinent regulatory requirements or the procedures and instrumentation to be employed to protect themselves and others from radiation exposure. This problem is of the utmost regulatory concern because it contributed to a situation in which a patient was unknowingly exposed to a significant level of radiation, and in which numerous members of the general public received unnecessary radiation exposure.

In addition, the corporate RSO contributed in large part to this problem by not maintaining an adequate physical presence at the satellite facilities; failing to implement appropriate training programs for Licensee employees, which the RSO is required to do under 10 CFR 35.21; and failing to establish and implement a periodic corporate audit program to identify and promptly correct violations to ensure compliance with NRC regulatory requirements. The corporate RSO now seeks to delegate these functions in violation of the License to the managers of the individual facilities where the problems are occurring and suggests that those managers, in turn, delegate the functions further down the chain of command. Therefore, it has been concluded that the Licensee's RSO is not willing to be responsible for its radiation safety program so as to ensure that the radiation safety activities are being performed in accordance with Commission requirements in the daily operation of licensed activities as required by 10 CFR 35.21.

Consequently, while NRC is continuing to investigate the activities of this Licensee, as a result of the information available to date and the incident in which an iridium-192 source was unknowingly left within a patient, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 37–28540–01 in compliance with the Commission's requirements and that the health and safety of the public, including the Licensee's employees and patients, will be protected. Therefore, the public health, safety, and interest require that License No. 37–28540–01 be suspended pending the results of the NRC investigations and the institution of appropriate corrective actions on the part of the licensee. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the circumstances described above is such that the public health, safety, and interest require that this Order be immediately effective. This Order supersedes the relief provided in the December 15, 1992 letter.

VI.

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 35, *it is hereby ordered, effective immediately, that:*

License No. 37–28540–01 is suspended pending further Order. This suspension precludes the performance of any licensed activity at any of the Licensee's facilities authorized by the License. The Licensee is required to place all licensed material in a locked, stored, and shielded condition. All other requirements of the License continue in force.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

VII.

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee, if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), 57 FR 20194 (May 12, 1992), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in section VI above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 20th day of January 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 93–2322 Filed 2–1–93; 8:45 am]

BILLING CODE 7590–01–M

Atomic Safety and Licensing Board

[Docket Nos. 50–275–OLA–2 and 50–323–OLA–2; ASLBP No. 92–669–03–OLA–2]

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2): Notice of Hearing; Facility Operating Licenses No. DPR–80 and DPR–82

January 27, 1993.

Before Administrative Judges: Charles Bechhoefer, Chairman, Dr. Jerry R. Kline, Frederick J. Shon.

On July 22, 1992, the Nuclear Regulatory Commission published in the **Federal Register** a notice of opportunity for hearing with respect to proposed operating-license amendments that would extend the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, located in San Luis Obispo County, California, to recover or recapture into the licenses the period of construction of the reactors (57 FR 32571, 32575). The amendments would extend the expiration date of the Unit 1 license from April 23, 2008 to September 21, 2021, and the expiration date of the Unit 2 license from December 9, 2010 to April 26, 2025.

One request for a hearing and petition for leave to intervene, filed by San Luis Obispo Mothers for Peace, was received. On September 10, 1992, an Atomic Safety and Licensing Board was established to rule on this request/petition and to preside over the proceeding in the event that a hearing were ordered. 57 FR 43035 (September

17, 1992). The Licensing Board is comprised of Dr. Jerry R. Kline, Frederick J. Shon, and Charles Bechhoefer, Chairman of the Board.

After holding a prehearing conference in San Luis Obispo, California, the Atomic Safety and Licensing Board issued a Prehearing Conference Order (LBP–93–1) on January 21, 1993, granting the request/petition. San Luis Obispo Mothers for Peace was admitted as a party and, pursuant to its request, the State of California Public Utilities Commission was permitted to participate as an Interested State pursuant to 10 CFR 2.715(c).

Please take notice that a hearing will be conducted in this proceeding. The hearing is authorized by 10 CFR 50.58(b)(2), 50.90 and 50.92. Matters at issue are the two safety issues accepted by the Licensing Board in LBP–93–1.

During the course of the proceeding, the Board may hold further prehearing conferences, pursuant to 10 CFR 2.752, as well as evidentiary hearing sessions, at times and places to be hereafter announced, through notices to be published in the Federal Register and/or made available to the public at the Public Document Rooms.

Supplementing the opportunity afforded at the first prehearing conference, during some or all of these sessions, and in accordance with 10 CFR 2.715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may assist the Board and/or parties in the definition of issues being considered. The number of persons making oral statements and the time allotted for each statement may be limited depending upon the time available at various sessions and whether or not the person seeking to make such a statement previously was permitted to do so. (Normally, oral statements may extend for up to five minutes.) Written statements may be submitted at any time. Persons desiring to make a limited appearance are requested to inform the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of the Licensing Board.

Documents related to this proceeding are on file at the Local Public Document Room, located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., NW., Washington, DC 20037.

Bethesda, Maryland, January 27, 1993.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 93–2378 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

Notice of Amendment Receipt and Opportunity for a Hearing; License No. Sub–1010; Sequoyah Fuels Corporation, Gore, OK

[Docket No. 40–8027]

The U.S. Nuclear Regulatory Commission is considering the amendment of Materials License No. SUB–1010 to provide Sequoyah Fuels Corporation (SFC) relief from testing a system while the facility is shut down.

Proposed Action: By amendment request dated January 14, 1993, SFC submitted a request for relief from a license commitment which required that the entire safety interlock system in the fluorine production system be maintained fully operational, and that the process instrumentation, alarms, and interlocks be tested monthly and calibrated each calendar year. Since the fluorine production system is not in operation, SFC is requesting relief from the requirement to conduct monthly tests and annual calibrations until such time as production were to resume. The documents related to the proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC, and the Local Public Document Room at the Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the Federal Register; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852) and on the licensee (Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 27th day of January 1993.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 93–2379 Filed 2–1–93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of SF 2824, SF 2824A, and SF 2824C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Standard Form 2824, Documentation in Support of Disability Retirement Application, SF 2824A, Applicant's Statement of Disability, and SF 2824C, Physician's Statement, are used to collect information from applicants for Civil Service Retirement System disability retirement so that OPM can determine whether to approve a disability retirement.

Approximately 9,000 SF 2824, SF 2824A, and SF 2824C forms are completed annually. The SF 2824A

requires approximately 30 minutes to complete and the SF 2824C requires approximately 60 minutes to complete. The annual burden is 9,500 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to:

Lorraine E. Dettman, Retirement and Insurance Group, Operations Support Division, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0616.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 93–2320 Filed 2–1–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31763; File No. SR–NASD–91–73]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Suspension or Cancellation of Membership or Registration for Failure To Comply With Arbitration Awards

On November 19, 1992,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 12b–4 thereunder.[3] The rule change amends Article VI, Section 3 of the NASD By-Laws[4] to permit the NASD to suspend the membership or registration of a party that has failed to comply with a valid arbitration award, when the award is not the subject of a motion to vacate or modify the award or when such a motion has been denied.

Notice of the proposed rule change, as amended, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31609, December 16, 1992) and by publication in the **Federal Register** (57 FR 60828, December 22, 1992). No comments were received on the proposal by the Commission. This order approves the proposed rule change.

As the NASD stated in its original rule filing, the impetus for the rule change approved herein is the NASD's concern regarding the significant number of referrals made to the NASD's District Business Conduct Committee ("DBCCs") for failure to comply with arbitration awards. The NASD believes such referrals have had a negative impact on the DBCCs' complaint dockets. In order to address this problem, and to expedite the processing of such complaints, the NASD is extending its suspension and cancellation procedures (hereinafter referred to jointly as "revocation proceedings") to include situations in which member firms or registered persons fail to comply with arbitration awards.

Currently, the NASD's Code of Arbitration Procedure contains a Resolution of the Board of Governors[5] ("Resolution") which states that failure to pay an arbitration award properly rendered by any one of several arbitration fora may be deemed "conduct inconsistent with just and equitable principles of trade and a violation of Article III, Section 1 of the Rules of Fair Practice" of the NASD. The Resolution contemplates the bringing of a disciplinary action against a member firm or associated person for failure to pay an arbitration award rendered by the NASD, or a self-regulatory organization ("SRO") which administers the Securities Industry Conference on Arbitration's Uniform Code ("Uniform Code"), or by the American Arbitration Association ("AAA").

The NASD states that its Arbitration Department has referred numerous cases to the DBCCs for disciplinary action for failure to pay an arbitration award.[6] The NASD also states that it routinely investigates and brings disciplinary actions for failure to pay arbitration awards whenever such violations are discovered, whether through referrals from other NASD departments, referrals from other SROs, through routine or non-routine investigations or through customer complaints.

In addition to enforcing arbitration awards rendered in NASD arbitrations, the intent of the Resolution is to permit the NASD to enforce awards rendered by other SROs that administer the Uniform Code, as well as by the AAA. The NASD regarded the broad scope of the resolution as necessary and appropriate if the NASD were to recommend arbitration fora other than its own, such as AAA, as appropriate for resolution of disputes. The recommendation of alternative fora by securities industry SROs was encouraged by the Commission to alleviate the perception of unfairness in mandatory securities industry arbitration.

The NASD has determined, however, that bringing formal disciplinary actions for failure to pay an arbitration award rendered by the NASD's arbitration forum may not be the most efficient method of disposing of such matters. The instant rule change allows the NASD, in addition to bringing a formal disciplinary action, to employ its revocation proceedings for a member's or associated person's failure to pay an arbitration award rendered by an NASD arbitration panel. Revocation proceedings are brought under Article VI of the NASD's Code of Procedure.[7] In accordance with Article VI, the NASD must send notice of the commencement of a revocation proceeding to the affected party at least fifteen (15) days prior to the effective date of the suspension or cancellation. Members or associated persons that wish to contest a revocation proceeding may request in writing that the matter be brought before a designated hearing panel. Such a request must be received by the NASD before the expiration of the applicable notice period. Thus, with respect to arbitration awards rendered in the NASD's arbitration forum, and which are subject to the NASD's administrative control, the NASD will not be required to initiate a formal disciplinary action against a member or associated person for failure to pay an arbitration award. As with formal disciplinary actions brought pursuant to the Resolution, such revocation proceedings will be available only where a timely motion to vacate or modify the arbitration award has not been filed.

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[1] The NASD amended the proposed rule change three times subsequent to its original filing on December 26, 1991. Amendment No. 1, submitted on May 6, 1992, provided the results of a vote of the NASD membership on the proposed rule change. Amendment No. 2 was filed on July 2, 1992 to add additional descriptive language to the filing. Amendment No. 3 was submitted on November 19, 1992 to conform the language of the filing to that of section 15A(h)(3) of the Act. The amendment provides that suspensions or cancellations will be in accordance with revocation proceedings provided under Article VI of the NASD's Code of Procedure.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] NASD Securities Dealers Manual, Article VI, Section 3 of the By-Laws, CCH, ¶ 1173.

[5] NASD Securities Dealers Manual, Code Arbitration Procedure, Resolution of the Board of Governors—Failure to Act Under Provisions of Code of Arbitration Procedure, CCH, ¶ 3744.

[6] In 1991 the Arbitration Department referred 122 cases to the NASD's district offices for investigation of failure to pay an arbitration award rendered in the NASD's arbitration forum. In 1990 the Arbitration Department referred 82 cases for failure to pay arbitration awards.

[7] NASD Securities Dealers Manual, Code of Procedure Revocation Proceedings, CCH, ¶¶ 3063–3067.

The Resolution also provides that the failure to submit a dispute to arbitration as required by the NASD's Arbitration Code or failure to appear or to produce documents as directed pursuant to the NASD's Arbitration Code may be deemed "conduct inconsistent with just and equitable principles of trade" in violation of Article III, Section 1 of the Rules of Fair Practice. These provisions also contemplate the bringing of a disciplinary action against a firm or associated person for failing to submit a claim to arbitration as required or for failing to appear or produce documents as required. The NASD's Arbitration Department will continue to evaluate cases for referral for disciplinary action where a member or associated person has failed to submit a claim to arbitration as required or where a member or associated person has failed to appear or produce documents as required. Finally, the NASD also will continue to evaluate cases for referral for disciplinary action where it is discovered that a member or associated person has failed to pay an arbitration award validly rendered by an arbitration forum other than the NASD or failed to pay NASD awards entered against it in a timely manner in accordance with section 41(h) of the Code.[8]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of section 15A(b)(6) of the Act.[9] Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The proposed rule change is designed to encourage member firms and associated persons to pay duly rendered arbitration awards and to ease the burden on the DBCCs' complaint docket. The payment of arbitration awards and the facilitation of the arbitration process, in general, will assist in the protection of investors and further the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2358 Filed 2-1-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19241; 812-7735]

Goldman Sachs Equity Portfolios, Inc., et al.; Application

January 26, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Goldman Sachs Equity Portfolios, Inc. ("Equity Inc."), Goldman Sachs Trust ("Bond Trust"), Goldman, Sachs & Co. ("Goldman Sachs"), Goldman Sachs Funds Management, L.P. ("Funds Management"), and any future investment company or series thereof (except those subject to an existing exemptive order of the SEC with respect to multiple class or contingent deferred sales charge relief) that is a member of the same group of investment companies by virtue of the fact that it holds itself out to investors as being a related company for purposes of investment and investor services and (a) whose investment adviser is Funds Management, Goldman Sachs Asset Management (a separate operating division of Goldman Sachs) ("GSAM"), or an entity that is under common control with Goldman Sachs, or (b) whose principal underwriter is Goldman Sachs or an entity that is under common control with Goldman Sachs.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f)(1), 18(g), 18(i), 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the applicant investment companies (a) to issue separate classes of shares representing interests in their various investment portfolios, which classes will be identical in all respects except for differences relating to the offerees, class designations, distribution expenses, service expenses, voting rights, exchange privileges, conversion features, and possibly proxy expenses, and (b) to assess, and under certain circumstances to waive, a contingent deferred sales charge ("CDSC") on certain redemptions of the shares of one of the classes.

FILING DATE: The application was filed on June 7, 1991 and was amended and restated on July 19, 1991, November 27, 1991, March 30, 1992, September 2, 1992, October 26, 1992, November 30, 1992, and January 21, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Goldman Sachs Funds Management, 32 Old Slip, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504-2284, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Equity Inc. is a Maryland corporation and Bond Trust is a Massachusetts business trust. Both entities are registered under the Act as open-end management investment companies. Equity Inc., Bond Trust, and any investment companies formed in the future that are, or will be, subject to this order are sometimes referred to hereafter as "Investment Companies."

2. Equity Inc. currently offers shares representing interests in four investment portfolios: GS Capital Growth Fund, GS International Equity Fund, GS Select Equity Fund, and GS Small Cap Equity

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[8] NASD Securities Dealers Manual, Code of Arbitration Procedure, Awards, CCH, ¶ 3741.

[9] 15 U.S.C. 78o-3(b)(6) (1988).

[10] 17 CFR 200.30-3(a)(12) (1992).

Fund (collectively, the "Equity Funds"). Bond Trust currently offers shares representing interests in five investment portfolios: GS Short-Term Government Agency Fund, GS Global Income Fund ("Income Fund"), GS Adjustable Rate Government Agency Fund, GS Government Agency Portfolio, and GS Short Duration Tax-Free Fund (collectively, the "Bond Funds"). The Equity Funds and the Bond Funds, together with all other series of Equity Inc. and Bond Trust that may subsequently be created or acquired, and any series of future Investment Companies, are referred to herein as the "Funds."

3. Funds Management or GSAM serves as investment adviser to each of the Funds. Goldman Sachs acts as the principal underwriter and transfer agent to each of the Funds.

4. Shares of the Equity Funds and Income Fund ("Load Funds") currently are offered to the public daily at net asset value plus a front-end sales load. Shares of the Bond Funds other than Income Fund ("No-Load Funds") currently are offered daily to the public, but are marketed primarily to institutional investors, at net asset value without a sales or redemption charge. Load Funds currently may be sold without the load to Exempt Investors (as defined in the next paragraph) and other persons that may be specified from time to time in a Fund's prospectus. Also as described in each Fund's prospectus, a sales load may not be applied when an investor acquires shares of a Fund either in exchange for his existing shares of another Fund, or through exercise of a "Reinvestment Privilege." Pursuant to the Reinvestment Privilege, a shareholder of a Load Fund who redeems his shares may use some or all of the redemption proceeds to purchase shares of any Fund at net asset value. The Reinvestment Privilege is subject to the condition that the shares redeemed have been held for at least 30 days and that the reinvestment is effected within 90 days after redemption.

5. "Exempt Investors" are defined as:

(a) Goldman Sachs, its affiliates, and their respective officers, partners, directors, and employees (including retired employees and former partners), any partnership of which Goldman Sachs or an affiliate is a general partner, any board member or officer of the Investment Companies, and designated family members of any of the above individuals;

(b) Qualified retirement plans of Goldman Sachs or its affiliates;

(c) Trustees or directors of investment companies for which Goldman Sachs or an affiliate acts as sponsor;

(d) Any employee or registered representative of an authorized dealer;

(e) Institutional investors, including insurance companies, broker-dealers, discretionary accounts of investment advisers with at least $100 million under management for the last twelve months, and business entities that have either gross assets of at least $100 million or publicly traded securities outstanding;

(f) Banks, trust companies, and other types of depository institutions;

(g) Any state, county, or city, or any instrumentality, department, authority, or agency thereof, that is prohibited by applicable investment laws from paying a sales charge or commission in connection with the purchase of shares of the Funds;

(h) Pension and profit sharing plans, pension funds, and other benefit plans sponsored by state or municipal governments or business entities, provided that any such plan has total assets of at least $25 million under management or is prohibited by law from paying a sales load or commission;

(i) Taft-Hartley plans with a minimum of $25 million under management; and

(j) Qualified non-profit organizations, foundations, and endowments.

6. Each of the Load Funds has adopted a distribution plan pursuant to rule 12b–1 under the Act ("Distribution Plan"). Each Distribution Plan provides for a quarterly fee ("Distribution Fee") equal to, on an annual basis, 0.50% of the average daily net assets of the applicable Fund. The Distribution Fee is intended to compensate Goldman Sachs for the services it provides and expenses it incurs in the distribution of a Fund's shares. Goldman Sachs may in turn pay the entire amount of the Distribution Fee it receives to its registered representatives or selling brokers for providing services in connection with the sale of Fund shares.

7. Applicants propose to establish a multiple class distribution plan (the "Multi-Class Plan") to enable each of the Funds to offer investors the option of purchasing shares that could be subject to (a) a front-end sales load and a Distribution Plan ("Class A Shares"); (b) a CDSC and a Distribution Plan ("CDSC Shares"); (c) no sales load or Distribution Plan ("Institutional Shares"); (d) a front-end sales load and an "Administration Plan" pursuant to which a service charge is paid to certain institutions for the provision of account administration services to their customers ("Administration Shares"), or (e) a front-end sales load and a "Service Plan" pursuant to which a service charge is paid to certain institutions for the provision of certain account administration and shareholder liaison services to their customers ("Service Shares"). (Applicants currently do not intend to impose a front-end sales load on the purchase of Administration and Service Shares, but may wish to do so in the future.)

8. If the Multi-Class Plan is adopted, each existing Fund will be able to designate and issue up to four new classes of shares, and any future Funds will be authorized to designate and issue up to five classes of shares. The outstanding shares of the Load Funds will be designated Class A Shares; the outstanding shares of the No-Load Funds will be designated Institutional Shares. For any given Fund, shares of the various classes will represent interests in the same portfolio of investments, and will be identical in all respects, except as set forth in condition 1 below.

9. The decision to create and issue new classes of shares will be made on a Fund by Fund basis by each Investment Company's board of directors/trustees. (Hereinafter, the term "Directors" will refer to an Investment Company's directors of trustees, as appropriate.) Currently, the Load Funds to not intend to offer Service Shares; the No-Load Funds do not intend to offer Class A Shares; and none of the Funds intends to offer CDSC Shares.

10. After implementation of the Multi-Class Plan, an investor will be able to purchase Class A Shares at net asset value plus a front-end sales load. The Distribution Plan for Class A Shares of a Fund will provide for a Distribution Fee equal to, on an annual basis, up to 0.50% of the average daily net assets of Class A Shares. Class A Shares will be essentially the same as the shares currently available to the shareholders of each Load Fund.

11. CDSC Shares will be subject to a Distribution Fee at an annual rate of up to 0.75% of the average daily net assets of the CDSC Shares and a service fee of up to 0.25% of the average daily net assets of the CDSC Shares. (With respect to the CDSC Shares, any reference to the Distribution Fee hereafter will include the service fee.) An investor's proceeds from a redemption of CDSC Shares made within a specified period after purchase (which could range from one to five years) will be subject to a CDSC payable to Goldman Sachs. The CDSC proceeds and Distribution Fees will be used to pay commissions and other costs associated with the sale of CDSC Shares incurred by Goldman Sachs, as well as the costs incurred in servicing CDSC shareholder accounts.

12. After six years, CDSC Shares will convert automatically to Class A Shares

and be subject to the lower Distribution Fee imposed under the Class A Distribution Plan. For purposes of conversion to Class A Shares, all CDSC Shares purchased through the reinvestment of dividends and other distributions will be considered to be held in a separate sub-account. Each time any CDSC Shares in the shareholder's Fund account (other than those in the sub-account) convert to Class A Shares, and equal *pro rata* portion of the CDSC Shares in the sub-account also will convert to Class A Shares.

13. Institutional Shares will not be subject to a front-end or deferred sales load or to a distribution, administration, or service fee. Applicants intend to make Institutional Shares available only to certain institutional investors that may be specified from time to time in a Fund's prospectus.

14. Administration Shares and Service Shares will be offered only to or through institutional investors acting on behalf of customers ("Service Organizations"). Under an Administration Plan and/or a Service Plan, a Fund will enter into servicing agreements ("Service Agreements") with Service Organizations concerning the provision of certain services to the customers ("Customers") of the Service Organizations who from time to time beneficially own the Administration and Service Shares. Payments made to a Service Organization for services rendered pursuant to a Service Agreement are referred to as "Service Payments." Service Plans will be subject to rule 12b–1. Administration Plans will be adopted and operated in compliance with certain provisions of rule 12b–1. See condition 4 below.

15. Depending on the terms of its particular Service Agreement, a Service Organization may provide some or all of the following services to its Customers who beneficially own Administration Shares: acting as the sole shareholder of record and nominee for all Customers; maintaining account records for each Customer who beneficially owns Administration shares; answering questions and handling correspondence from Customers about their accounts; processing Customer orders to purchase, redeem, and exchange Administration Shares; handling the transmission of funds representing the purchase price or redemption proceeds; issuing confirmations for transactions in Administration Shares by Customers; and similar account administration functions (collectively, the "Account Administration Services"). The provision of Account Administration Services by a Service Organization will augment (and not be duplicative of) the services to be provided to the Funds by Goldman Sachs.

16. Service Payments paid to a Service Organization pursuant to an Administration Plan will not exceed .50% per annum of the average daily net assets of those Administration Shares beneficially owned by Customers of the Service Organization. A Service Organization may charge fees, in addition to any fees received under the Service Agreement, to its Customers who are the beneficial owners of Administration Shares, in connection with their customer accounts.

17. Depending on the terms of its particular Service Agreement, a Service Organization may provide some or all of the following services to its Customers who beneficially own Service Shares: Account Administration Services (as defined above); providing facilities to answer questions from prospective and existing investors about the Fund; receiving and answering investor correspondence, including requests for prospectuses and statements of additional information; displaying and making prospectuses available on the Service Organization's premises; assisting Customers in completing application forms, selecting dividend and other account options, and opening custody accounts with the Service Organization; and acting as a liaison between Customers and the Fund, including obtaining information from the Fund, working with the Fund to correct errors and resolve problems, and providing statistical and other information to the Fund (collectively, the "Shareholder Liaison Services"). The provision of Shareholder Liaison Services by a Service Organization will augment (and not be duplicative of) the services to be provided to the Funds by Goldman Sachs.

18. Service Payments paid to a Service Organization pursuant to a Service Plan will not exceed .75% per annum of the average daily net assets of those Service Shares beneficially owned by Customers of the Service Organization. A Service Organization may charge fees, in addition to any fees received under the Service Agreement, to its Customers who are the beneficial owners of Service Shares, in connection with their customer accounts.

19. Expenses attributable to an Investment Company but not a particular Fund thereof ("Investment Company Expenses") will be allocated to each Fund based on the relative net assets of such Fund. Investment Company Expenses could include, for example, Directors' fees expenses, unallocated audit and legal fees, insurance premiums, expenses relating to shareholder reports, and printing expenses.

20. Expenses attributable to a particular Fund but not a particular class thereof ("Fund Expenses") will be allocated daily to each class of shares based on the ratio of the net assets of such class to the total net assets of all classes of shares of such Fund. Fund Expenses could include, for example, advisory fees, custodian fees, and fees related to preparation of separate documents of a particular Fund, such as a separate propsectus for such Fund.

21. Expenses attributable to a particular class ("Class Expenses") will consist of (i) Distribution Fee expenses of a Fund, which are allocated to the Class A and CDSC Shares in accordance with the Distribution Plan of each such class; (ii) Administration Plan and Service Plan expenses of a Fund, which are allocated to the Administration and Service Shares, respectively, and (iii) those expenses that relate to a Distribution, Administration, or Service Plan and that can only be directly attributable to a particular class of shares. Currently, the only expenses that fall into category (iii) are the cost of preparing, printing, and mailing proxy materials (if any) relating only to a particular Distribution, Administration, or Service Plan.

22. Shares of a particular class of a Fund will be exchangeable only for shares of that same class of another Fund, provided however, that shares of a Fund may be exchanged for shares of such other Funds that have not adopted the Multi-Class Plan as may be described from time to time in the former Fund's prospectus. In addition, upon implementation of the Multi-Class Plan, existing shareholders of the Load Funds (whose shares have been designated Class A), may during a period of time to be specified by the relevant Investment Company's Directors or officers exchange their shares for Institutional, Administration, or Service Shares (if they are eligible to hold such shares). Similarly, existing shareholders of the No-Load Funds (whose shares have been designated Institutional Shares) may be permitted for a specified period of time to exchange their shares for Administration or Service Shares. After such periods, no exchanges between different classes or shares will be permitted.

23. Each Fund's CDSC schedule (the rate and time period used in calculating the CDSC) may vary, but the CDSC will comply with the applicable NASD sales load limitations. The CDSC will not be imposed on redemptions of CDSC

Shares that were purchased more than a specified period (the "CDSC Period")—generally one to five years—prior to redemption, or on the CDSC Shares obtained from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the CDSC Shares. In determining whether a CDSC is applicable, it will be assumed that a redemption is made: first, of shares derived from reinvestment of distributions or amounts which represent an increase in the value of the shareholder's account resulting from capital appreciation; second, of shares purchased prior to the CDSC Period; and third, of shares purchased during the CDSC Period. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of CDSC Shares held by the investor for the longest period of time within the CDSC Period. Any CDSC imposed will be imposed on the lesser of the net asset value of the shares redeemed (exclusive of reinvestment of dividends or distributions) at the time of redemption or the net asset value of such shares at the time of purchase.

24. Applicants are requesting authority to waive or reduce the CDSC assessed on redemptions of CDSC Shares in the following circumstances: (a) Redemptions made within one year after a shareholder's death or disability, as defined in section 72(m)(7) of the Internal Revenue Code; (b) in connection with distributions from retirement plans that are not subject to any penalties under the Internal Revenue Code; (C) in connection with redemptions of shares by shareholders with accounts in excess of $50,000, with additional reductions of the CDSC occurring in connection with redemptions of shares by shareholders with accounts in excess of certain additional break-points, exactly the same as those under which the front-end sales load on Class A Shares is reduced pursuant to rule 22d–1 under the Act; (d) in connection with redemptions of shares purchased by Exempt Investors, as defined in paragraph 5 above; (e) in connection with an exercise of the Reinvestment Privilege;[1] (f) pursuant to each Fund's right to liquidate or involuntarily redeem shares in a shareholder's account; (g) pursuant to a systematic withdrawal plan; and (h) in connection with the redemption of shares of any Fund that is combined with another Fund or Investment Company by virtue of merger, acquisition or other similar reorganization transaction. In waiving or reducing a CDSC, the Funds will comply with the requirements of rule 22d–1 under the Act.

25. Applicants will defer the CDSC in connection with an exchange of the CDSC Shares of one Fund for CDSC Shares of another Fund. In such case, the second Fund will "tack" the period during which the shareholder held CDSC Shares of the first Fund onto the holding period of the CDSC Shares acquired in the exchange for purposes of determining what, if any, CDSC is applicable at the time of redemption. An investor redeeming shares acquired through one or more exchanges will be subject to the CDSC of the Fund with the CDSC schedule that results in the greatest CDSC payment.

Applicants' Legal Analysis

1. Applicants are requesting an order pursuant to section 6(c) of the Act exempting them from sections 18(g), 18(f)(1), and 18(i) to the extent the proposed Multi-Class Plan might be deemed (a) to result in a "senior security" within the meaning of section 18(g), the issuance and sale of which is prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i).

2. The Multi-Class Plan does not create the potential for the abuses that section 18 was designed to redress. It does not involve borrowing and does not affect the Funds' existing assets or reserves. It will not increase the speculative character of the Funds' shares. No class of shares will have a distribution or liquidation preference with respect to particular assets of a Fund and no class will be protected by any reserve or other account. The concerns that complex capital structures may facilitate control without equity or other investment and may make it difficult for investors to value Fund shares are not present under the proposed Multi-Class Plan. The Funds' capital structures will not enable insiders to manipulate the expenses and profits among the different classes of shares.

3. Applicants believe that the Multi-Class Plan will better enable them to meet the competitive demands of today's financial services industry. It will also benefit investors by enabling the Funds to offer a broader choice regarding the distribution method and level of service appropriate to each investor, without having to organize separate investment portfolios. To the extent the adoption of the Multi-Class Plan increases sales of Fund shares, owners of all classes of shares may benefit since the Fund's fixed costs will be spread over a larger pool of assets.

4. Applicants believe that the proposed allocation of expenses and voting rights relating to the Distribution Plans, Administration Plans, and Service Plans is equitable and will not discriminate against any group of shareholders. Investors purchasing shares offered in connection with the Distribution, Administration, and Service Plans and receiving services provided under those plans will bear the costs associated with such services and will also enjoy exclusive shareholder voting rights (if any) with respect to matters affecting their respective plans.

5. Applicants also are requesting an exemption pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act, and rule 22c–1 thereunder, to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of CDSC Shares and to waive, reduce, or defer the CDSC with respect to certain types of redemptions.

6. Permitting the Funds to offer CDSC Shares benefits investors, applicants contend, because holders of CDSC Shares have the advantage of greater investment dollars working for them from the time of their purchase of CDSC Shares than if a sales load were imposed at the time of purchase. Applicants further contend that the waiver or deferral of the CDSC under the circumstances set forth above will not harm the Funds of their shareholders, or unfairly discriminate among shareholders or purchasers.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each class of shares of a Fund will represent interests in the same portfolio of investments, and be identical in all respects, except as set forth below. The only differences among the classes of shares of a Fund will relate solely to:

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[1] This Reinvestment Privilege is identical to the Reinvestment Privilege currently in effect for the Load Funds as described in paragraph 4 above, except as follows. If proceeds from a redemption of shares upon which a CDSC was imposed are reinvested in other CDSC Shares within the period specified in a Fund's prospectus, Goldman Sachs (or any of its affiliates other than the Fund) will credit the shareholder's account with the amount of the CDSC previously imposed, and the CDSC Shares acquired through reinvestment will continue to be subject to the CDSC. The holding period of CDSC Shares acquired through reinvestment will include the holding period of the redeemed CDSC Shares.

(a) The impact of the disproportionate payments made under the Distribution Plan, the Service Plan, and the Administration Plan; the cost of preparing, printing, and mailing proxy materials relating only to one class; and any other incremental expenses subsequently identified that should properly be allocated to one class and which shall be approved by the SEC pursuant to an amended order:

(b) The fact that the classes have different voting rights with respect to Distribution Plans, Service Plans, and Administration Plans;

(c) The different exchange privileges of the classes;

(d) The fact that only CDSC Shares will be subject to a conversion feature; and

(e) The designation of each class of shares.

2. The Directors, including a majority of the independent Directors, will approve the Multi-Class Plan. The minutes of the meetings of the Directors regarding their deliberations concerning, and their approval of, the Multi-Class Plan will reflect in detail the reasons for the Directors' determination that the proposed Multi-Class Plan is in the best interests of both the Funds and their respective shareholders.

3. On an ongoing basis, the Directors, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor their respective Funds for the existence of any material conflicts among the interests of the classes of shares. The Directors, including a majority of the independent Directors, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. Goldman Sachs or such affiliates of Goldman Sachs as may be serving as advisers and distributors of the Funds will be responsible for reporting any potential or existing conflicts to the Directors. If a conflict arises, Goldman Sachs or such affiliates of Goldman Sachs as may be serving as advisers and distributors of the Funds, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The Administration Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1. In evaluating the Administration Plan, the Directors will specifically consider whether

(a) Such Administration Plan is in the best interest of the applicable classes and their respective shareholders,

(b) The services to be performed pursuant to the Administration Plan are required for the operation of the applicable classes,

(c) The Service Organizations can provide services at least equal, in nature and quality, to those provided by others, including the Funds, providing similar services, and

(d) The fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

5. Each Service Agreement entered into pursuant to an Administration Plan will contain a representation by the Service Organization involved that any compensation payable to the Service Organization in connection with the investment of its customers' assets in the Fund

(a) Will be disclosed by it to its customers,

(b) Will be authorized by its customers, and

(c) Will not result in an excessive fee to the Service Organization.

6. Each Service Agreement entered into pursuant to an Administration Plan will provide that, in the event an issue pertaining to such a plan is submitted for shareholder approval, the Service Organization will vote any shares held for its own account in the same proportion as the vote of those shares held for its Customers' accounts.

7. The Directors will receive quarterly and annual statements concerning the amounts expended under each Distribution Plan, Service Plan and Administration Plan complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time, for their respective Funds. In these statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify the Distribution Fees or Service Payments charged to that class. Expenditures not related to the sale or servicing of a specific class of shares will not be presented to the Directors to justify any Distribution Fees or Service Payments charged to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors in the exercise of their fiduciary duties.

8. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Distribution Fees or Service Payments, as the case may be, made by a class under its Distribution Plan or Service or Administration Plan and any Class Expenses will be borne exclusively by the affected class.

9. The methodology and procedures for calculating the net asset value, dividends and distributions of the five classes of shares and the proper allocation of expenses among the five classes have been reviewed by an expert (the "Expert"). The Expert has rendered a report to the applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 70 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

10. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value, dividends and distributions of the five classes of shares and the proper allocation of expenses among the five classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition (9) above and will be

concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (9) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

11. The prospectus of each Fund, or if applicable, the prospectus of each class of shares of a Fund, will include a statement to the effect that any person entitled to receive compensation for selling or servicing shares may receive different levels of compensation with respect to one particular class of shares over another in the Fund.

12. Goldman Sachs or such affiliate(s) of Goldman Sachs as may be serving as distributor(s) of the Funds will adopt compliance standards as to when shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to conform to such standards.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Directors with respect to the Multi-Class Plan will be set forth in guidelines which will be furnished to the Directors.

14. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares offered through the prospectus. In the event that the shares of each class are offered through separate prospectuses, the prospectuses will each contain cross disclosure describing the foregoing information with respect to each of the other four classes of shares. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares of that Fund. Any advertising material or sales literature which describes the expenses and/or performance data applicable to any class of shares will disclose such information for all classes. Any publication in any newspaper or similar listing of the net asset values or public offering prices of any class of shares will include a separate presentation of such information for all classes of shares.

15. The initial determination of the proxy expenses that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the applicable Investment Company's Directors, including a majority of the Directors who are not interested persons of such Investment Company. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet proxy expenses shall provide to the Directors, and the Directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

16. CDSC Shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee or other charge.

17. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization or acquiescence in any particular level of payments that a Fund may make pursuant to any Distribution Plan, Administration Plan or Service Plan in reliance on the exemptive order.

18. If a Fund implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing CDSC shares will stop converting into Class A unless the CDSC shareholders, voting separately as a class, approve the proposal. The Directors shall take such action as is necessary to ensure that existing CDSC shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of the proposal, no later than the date such CDSC shares previously were scheduled to convert into Class A. If deemed advisable by the Directors to implement the foregoing, such action may include the exchange of all existing CDSC shares for a new class ("New CDSC Class"), identical to existing CDSC shares in all material respects except that New CDSC Class will convert into New Class A. New Class A or New CDSC Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Class A or New CDSC Class shall be borne solely by the Fund's adviser and distributor. CDSC Class shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to the CDSC shares are disclosed in an effective registration statement.

19. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2359 Filed 2–1–93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Politico Military Affairs

[Public Notice 1758]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Bureau of Politico Military Affairs, Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.6(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38 (g)(4)(A) of the Arms Export Control Act (AECA) prohibits the issuance of export licenses to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

Section 127.6 of the ITAR authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons convicted of violating or conspiracy to violate the AECA from participating directly or indirectly in the export of defense articles or in the furnishing of defense services.

Such a prohibition is referred to as a statutory debarment, which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.6(c). The period for debarment will normally be three years. The ITAR provides the Assistant Secretary with discretion to determine an alternative period of time for debarment. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4).

Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, those procedures of part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

During the period of debarment the Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating the AECA, or of conspiracy to violate the AECA. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision.

The Department of State policy permits debarred persons to apply for an exception from the debarment under section 38 (g)(4)(A) of the AECA, one year after the date of the debarment. Debarred persons may seek such an exception from the Director of the Office of Defense Trade Controls, in accordance with section 38(g)(4)(A) and under 22 CFR 127.6. If the exception is granted, the debarment will be suspended. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) have been satisfied.

Pursuant to section 38(g)(4)(A) of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military Affairs has debarred eight persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA.

These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to § 127.6(c) of the ITAR, the names of these persons (and their offense, date of conviction(s) and court of conviction(s)) are being published in the **Federal Register**. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291 (44 FR 13193). It implements statutory and regulatory requirements that entered into force on December 22, 1987 and April 4, 1988, respectively.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/ offense/ date/ court):

1. Luis Fernando Arcila-Giraldo, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, April 30, 1991, Middle District of Florida.
2. Fu Chin Chung, a/k/a Alfred Chung, 22 U.S.C. 2778, May 20, 1990, Northern District of Georgia.
3. Brian Joseph Fleming, a/k/a Brian Joseph McSulla, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), July 3, 1990, Middle District of Alabama.
4. Francisco Ernesto Jerez, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), January 29, 1992, Central District of California.
5. Charles Farrell Malone, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), June 20, 1990, Middle District of Alabama.
6. Francisco Salvador Martin Panameno, 18 U.S.C. 371(conspiracy to violate 22 U.S.C. 2778), January 29, 1992, Central District of California.
7. Ricardo Benitez Perez, 22 U.S.C. 2778, January 21, 1992, Southern District of Texas, Corpus Cristi Division.
8. Alfredo Antonio Ramos-Tinoco, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), and 22 U.S.C. 2778, April 4, 1991, Middle District of Florida.

Dated: January 14, 1993.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico Military Affairs, Department of State.

[FR Doc. 93–2343 Filed 2–1–93; 8:45 am]

BILLING CODE 4710-25-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 48501]

Application of Atlantic Southeast Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 93–1–34).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Atlantic Southeast Airlines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 8, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48501 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: January 27, 1993.

Patrick V. Murphy, Jr.,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–2380 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 93–003]

Coast Guard Academy Advisory Committee

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Tuesday, March 22 and 23, 1993. The open sessions on Monday will be held from 10 a.m. to 11 a.m. and 1:15 p.m. to 2:15 p.m. Open sessions on Tuesday will be held from

2:30 to 3:15 p.m. The Agenda for the meeting consists of the following items:

1. Recruiting and Admissions
2. Athletics
3. Faculty and Curricula
4. Library

The Coast Guard Academy Advisory Committee was established in 1937 by Public Law 75–38 to advise on the course of instruction at the Academy and to make recommendations as necessary. Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than March 8, 1993.

Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Dr. William A. Sanders, Dean of Academics, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444–8275.

Issued in Washington, DC, on January 26, 1993.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

[FR Doc. 93–2428 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to Congress

The attached document, Automotive Fuel Economy Program, Seventeenth Annual Report to the Congress, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163) which requires in pertinent part that "each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Dated: January 26, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

Automotive Fuel Economy Program, Seventeenth Annual Report to the Congress, January 1993

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Section I: Introduction
Section II: Fuel Economy Improvement by Manufacturers
Section III: 1992 Activities
Section IV: Use of Advanced Technology

Section I: Introduction

This Seventeenth Annual Report to Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1992 regarding implementation of applicable sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report each year. Included in this report are sections summarizing rulemaking activities during 1992 and a discussion of the use of advanced automotive technology by the industry as required by section 305, title III, of the Department of Energy Act of 1978 (Pub. L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include:

(1) Establishing and amending average fuel economy standards for manufacturers of passenger cars and light trucks, as necessary;

(2) Promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards;

(3) Considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them;

(4) Preparing reports to Congress annually on the fuel economy program;

(5) Enforcing fuel economy standards and regulations; and

(6) Responding to petitions concerning domestic production by foreign manufacturers and other matters.

Passenger car fuel economy standards have been established by Congress for Model Year (MY) 1985 and thereafter at a level of 27.5 mpg. NHTSA has authority to amend the standard above or below that level. Standards for light trucks have been established by NHTSA for MYs 1979 through 1994. Most recently, NHTSA published a notice of proposed rulemaking (NPRM) proposing light truck fuel economy standards for MYs 1995–1997. All current standards are listed in Table I–1.

To estimate the potential for vehicle fuel economy improvements over the next decade, NHTSA contracted with the National Academy of Sciences (NAS) to study the extent to which automobile fuel economy could be improved while still meeting environmental and safety needs. The study report was completed in April 1992. While the study concluded that higher levels of fuel economy can be attained in the future, it also discussed the costs of reaching higher levels and problems with the current Corporate Average Fuel Economy (CAFE) regulatory program.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS MODEL YEARS 1978 THROUGH 1994 (IN MPG)

Model year	Passenger cars	Light trucks [1]		
		Two-wheel drive	Four-wheel drive	Combined [2] [3]
1978 ...	[4] 18.0	....	....	....
1979 ...	[4] 19.0	17.2	15.8	....
1980 ...	[4] 20.0	16.0	14.0	([5])
1981 ...	22.0	[6] 16.7	15.0	([5])
1982 ...	24.0	18.0	16.0	17.5
1983 ...	26.0	19.5	17.5	19.0
1984 ...	27.0	20.3	18.5	20.0
1985 ...	[4] 27.5	[7] 19.7	[7] 18.9	[7] 19.5
1986 ...	[8] 26.0	20.5	19.5	20.0
1987 ...	[9] 26.0	21.0	19.5	20.5
1988 ...	[9] 26.0	21.0	19.5	20.5
1989 ...	[10] 26.5	21.5	19.0	20.5
1990 ...	[4] 27.5	20.5	19.0	20.0
1991 ...	[4] 27.5	20.7	19.1	20.2
1992 ...	[4] 27.5	....	....	20.2
1993 ...	[4] 27.5	....	....	20.4
1994 ...	[4] 27.5	....	....	20.5

[1] Standards for MY 1979 light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY 1980 and beyond are for light trucks with a GVWR of 8,500 lbs. or less.

[2] For MY 1979, light truck manufacturers could comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[3] For MYs 1982–1991, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine all light trucks and comply with the combined standard.

[4] Established by Congress in Title V of the Act.

[5] A manufacturer whose light truck fleet was powered exclusively by basic engines which were not also used in passenger cars could meet standards of 14 mpg and 14.5 mpg in MYs 1980 and 1981, respectively.

[6] Revised in June 1979 from 18.0 mpg.

[7] Revised in October 1984 from 21.6 mpg for two-wheel drive, 19.0 mpg for four-wheel drive, and 21.0 mpg for combined.

[8] Revised in October 1985 from 27.5 mpg.

[9] Revised in October 1986 from 27.5 mpg.

[10] Revised in September 1988 from 27.5 mpg.

Consumers continue to choose more spacious and higher performing vehicles in the market place. This choice reflects the continuing availability of gasoline at a relatively low price. As a consequence, the overall passenger car fleet fuel economy average for MY 1992 declined to 27.9 mpg (from 28.3 mpg in MY 1991), and the light truck fleet average declined to 20.7 mpg (from 21.3 mpg in MY 1991). Light trucks represented 32.9 percent of the light truck/passenger car fleet, the highest share ever. The average weight of the MY 1992 passenger car fleet was the highest since MY 1979 and the light truck average weight is the highest in over eight years. Both fleets reached new levels of performance with the highest horsepower-to-weight ratios in recent years. The import share of the passenger car fleet reached its highest level in MY 1992 at 43.6 percent, but the import share of the light truck fleet was the lowest in 14 years at 17.3 percent.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements for domestic and foreign manufacturers in MY 1991 have been updated to include final Environmental Protection Agency (EPA) calculations, where available, since the publication of the Sixteenth Annual Report to the Congress. These fuel economy achievements and current data for MY 1992 are listed in Tables II–1 and II–2.

Overall fleet fuel economy for passenger cars was 27.9 mpg in MY 1992, the lowest value since MY 1985, due primarily to increased market demand for heavier and higher performance passenger cars. With continued lower real fuel prices, CAFE values decreased over MY 1991 levels for 14 of 23 passenger car manufacturers' fleets. (See Table II–1.) These 14 companies accounted for about 70 percent of the total MY 1992 production. Manufacturers continued to introduce new technologies and more fuel-efficient models, as well as some larger, less fuel-efficient models. For MY 1992, only one of the three domestic manufacturers raised its passenger car CAFE from MY 1991 levels. Chrysler's CAFE rose 0.3 mpg above the MY 1991 CAFE level.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER[1] MODEL YEARS 1991 AND 1992

Manufacturer	Model year cafe (MPG)	
	1991	1992
Domestic:		
Chrysler	27.5	27.8
Ford	27.6	27.3
GM	27.1	26.8
Sales weighted average (domestic)	27.3	27.0
Imported:		
BMW	23.2	24.0
Chrysler imports	26.7	29.2
Daihatsu	43.6	41.3
Fiat	23.8	22.4
Ford imports	33.2	25.3
GM imports	31.8	31.1
Honda	30.7	30.8
Hyundai	32.9	31.1
Isuzu	34.2	32.5
Mazda	30.5	30.5
Mercedes-Benz	22.3	21.8
Mitsubishi	30.3	28.9
Nissan	29.9	29.4
Peugeot	26.3	24.7
Porsche	21.1	22.4
Sterling	25.2	....
Subaru	28.4	27.8
Suzuki	43.2	44.7
Toyota	30.9	28.8
Volvo	25.3	25.6
VW	29.9	29.2
Yugo	34.6	....
Sales weighted average (imported)	30.0	29.0
Total fleet average	28.3	27.9
Fuel economy standards	27.5	27.5

[1] Manufacturers or importers of fewer than 1,000 passenger cars annually are not listed.

NOTE: Some MY 1991 CAFE values differ from those used in the Sixteenth Annual Report to the Congress due to the use of final EPA calculations.

TABLE II–2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER MODEL YEARS 1991 AND 1992

Manufacturer	Model year cafe (MPG)			
	2-Wheel drive	4-Wheel drive	Combined[1]	
	1991	1991	1991	1992
Domestic:				
Chrysler	....	....	21.1	21.2
Ford	....	....	20.4	20.2
GM	....	....	21.2	20.2
PAS	....	17.8	....	18.6
Sales weighted average (domestic)	....	17.8	20.9	20.4
Imported:				
Chrysler Imports	....	....	20.4	21.4
Daihatsu	....	26.9	....	26.7
Isuzu	22.7	19.6	....	20.8
Mazda	....	....	24.0	23.2
Mitsubishi	24.8	20.0	....	21.9
Nissan	....	....	24.8	23.8
Range Rover	....	16.3	....	16.3
Subaru	....	29.1	....	28.6
Suzuki	....	....	29.9	30.1
Toyota	24.3	20.4	....	21.9
VW	....	....	20.7	....
Sales weighted average (imported)	23.9	20.5	24.5	22.3
Total fleet average	23.9	20.5	21.2	20.7
Fuel economy standard	20.7	19.1	20.2	20.2

[1] In MY 1991, manufacturers could comply with the 2-wheel and 4-wheel drive standards or could combine their 2-wheel and 4-wheel drive trucks and comply with the combined standards.

NOTE: Some MY 1991 CAFE values differ from those used in the *Sixteenth Annual Report to the Congress* due to the use of final EPA calculations.

In MY 1992, the fleet average fuel economy for imported passenger cars decreased by 1 mpg, from the MY 1991 CAFE level. Import CAFE was 29.0 mpg in MY 1992, its lowest level since MY 1979. Twelve of the 20 import car manufactures decreased their CAFE values between MYs 1991 and 1992. And six of the nine Asian importers experienced declining CAFE values. Figure II–1 illustrates the changes in total new passenger car fleet CAFE from MY 1978 to MY 1992. About ⅗ of the total passenger car fleet fuel economy decline can be attributed to the import fleet decline. For MY 1992, domestic manufacturer fleet average fuel economy was the closest it has ever been to import manufacturer CAFE—differing by only 2.0 mpg.

CAFE levels for imported light truck manufacturers decreased by 2.2 mpg using the combined standard. The domestic and total light truck fleet CAFEs decreased by 0.5 mpg each from MY 1991 to MY 1992 for manufacturers using the combined standards. Figure II–2 illustrates the progress in total fleet CAFE from MY 1979 to MY 1992 for light trucks.

A number of passenger car and a few light truck manufacturers are projected to fail to achieve the levels of the MY 1992 CAFE standards. All of the light truck manufacturers in this category are low volume or limited line producers. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some MY 1992 CAFE values may change when final figures are provided to NHTSA by EPA, in mid-1993. In addition, several manufacturers are not expected to pay civil penalties because the credits they earned by exceeding the fuel economy standards in earlier years offset later shortfalls. Other manufacturers may file carryback plans to demonstrate that they anticipate earning credits in future model years to offset current deficits.

BILLING CODE 4910-59-M

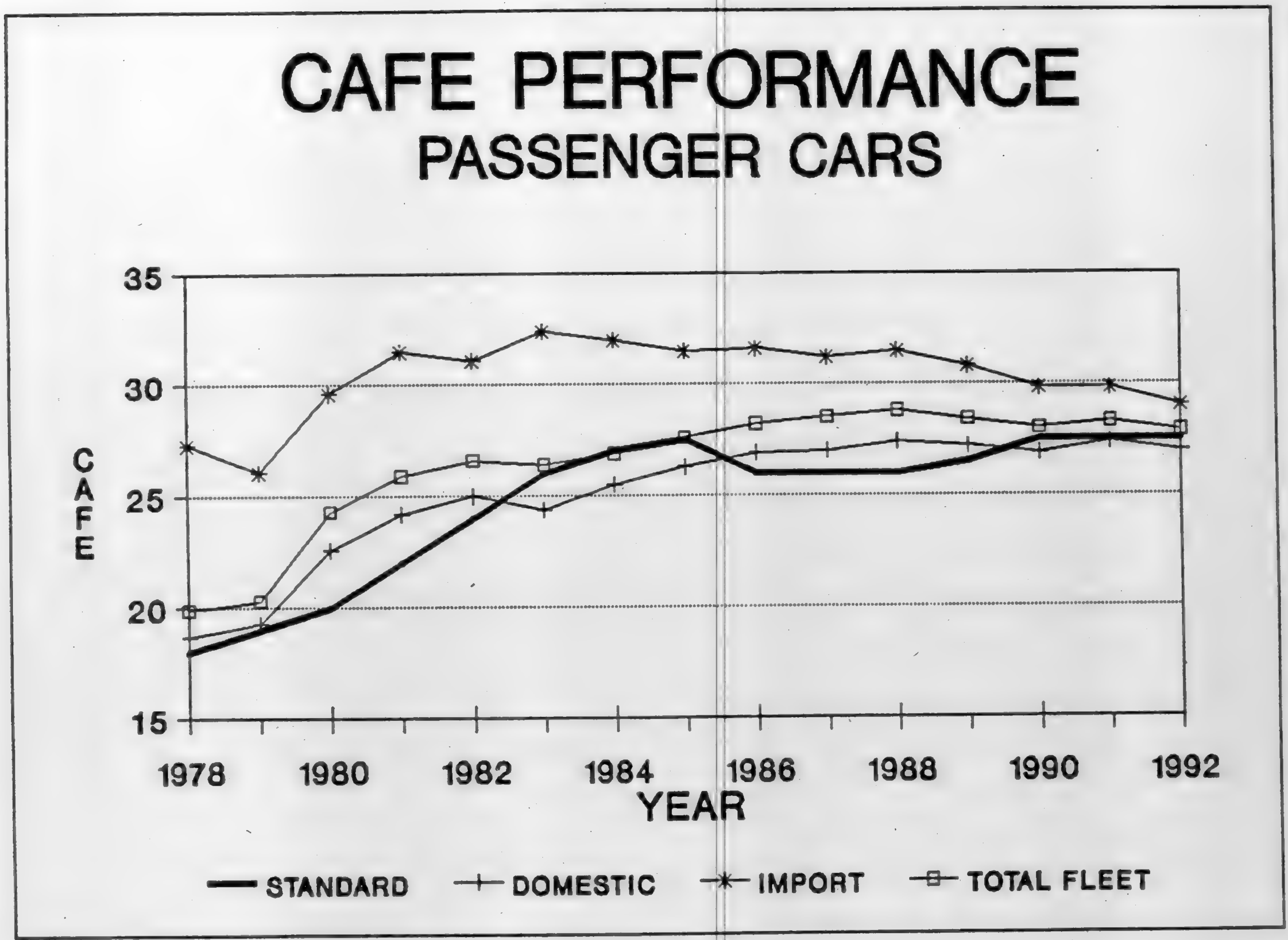
CAFE PERFORMANCE
PASSENGER CARS
CAFE
35
30
25
20
15
1978
1980
1982
1984
1986
1988
1990
1992
YEAR
STANDARD
DOMESTIC
IMPORT
TOTAL FLEET

FIGURE II-1

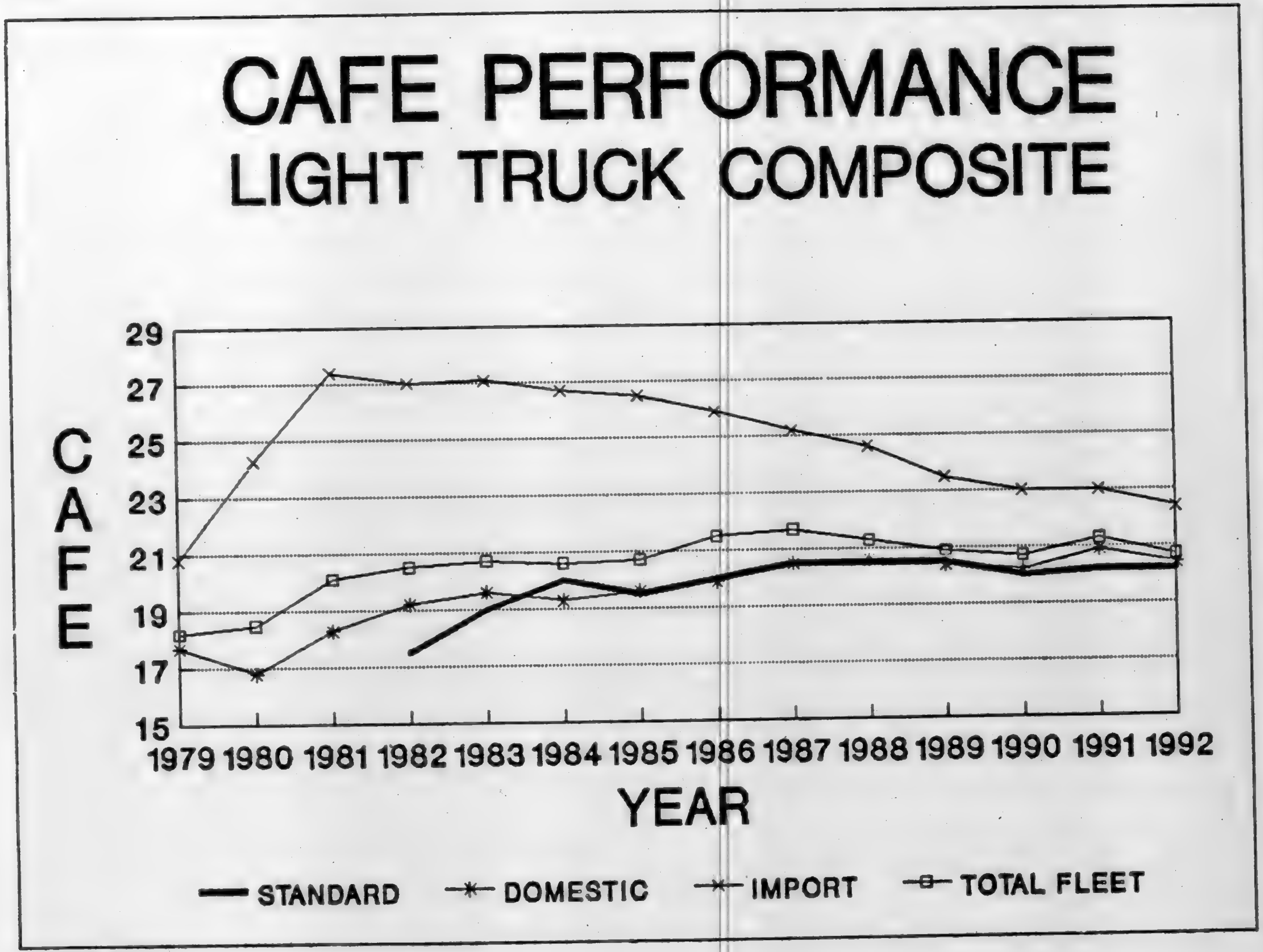

FIGURE II-2

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Fleet average fuel economy for all MY 1992 passenger cars combined exceeded the MY 1992 standard. Fleet average fuel economy for all MY 1992 light trucks combined also exceeded the MY 1992 standards.

The characteristics of the MY 1992 passenger car fleet reflect a continuing trend toward heavier passenger cars. (See Table II–3.) Compared to MY 1991, the average curb weight for MY 1992 increased 29 pounds for the domestic fleet and increased 140 pounds for the imported fleet. The total new car fleet is 73 pounds heavier than it was in MY 1991, primarily because of the significant share of relatively heavier imports. This is the highest average curb weight since MY 1979. From MY 1991 to MY 1992, horsepower per 100 pounds, a measure of vehicle performance, increased from 4.37 to 4.48 for domestic passenger cars and increased by a greater amount, from 4.47 to 4.62, for imported passenger cars. The total fleet average for passenger cars increased from 4.42 in MY 1991 to 4.56 hp/100 lbs. Average engine displacement increased from 191 to 192 cubic inches for domestic passenger cars but increased from 125 to 139 cubic inches for imported passenger cars, the highest value for imported passenger cars since CAFE standards were established. The size class breakdown shows an increased trend towards large and midsize passenger cars and a decrease in subcompact and compact passenger cars for the overall fleet. The domestic fleet shift is almost exclusively from subcompact and midsize passenger cars to compact and large passenger cars. The import fleet shift to large cars is primarily due to Ford's transfer of its LTD Crown Victoria and Grand Marquis models to the import fleet by increasing the imported content of these models to over 25 percent. Midsize imported cars also increased significantly in share. The imported share of the passenger car market increased by 3.4 percentage points in MY 1992. And, for the third consecutive year, imports exceeded 40 percent of the new passenger car fleet.

The 0.3 mpg fuel economy decrease for the MY 1992 domestic passenger car fleet may be attributed primarily to increases in performance and average weight. Some of the weight increase reflects increased applications of safety features such as air bag and antilock braking systems.

TABLE II–3.—PASSENGER CAR FLEET CHARACTERISTICS FOR MYS 1991 AND 1992

Characteristics	Total fleet		Domestic fleet		Imported fleet	
	1991	1992	1991	1992	1991	1992
Fleet Average Fuel Economy, mpg	28.3	27.9	27.3	27.0	30.0	29.0
Fleet Average Curb Weight, lbs	2934	3007	3071	3100	2735	2875
Fleet Average Engine Displacement, cu. in	164	169	191	192	125	139
Fleet Average Horsepower/Weight ratio, HP/100 lbs	4.42	4.56	4.37	4.48	4.47	4.62
Percentage of Fleet	100	100	59.8	56.4	40.2	43.6
Segmentation by EPA Size Class, Percentage:						
Two-Seater	1.8	1.0	0.4	0.4	3.7	1.6
Minicompact	1.2	1.3	0.0	0.0	3.0	3.1
Subcompact*	28.1	25.9	17.2	15.3	43.7	39.6
Compact*	30.8	29.6	26.2	27.7	37.6	32.0
Mid-size*	26.0	27.0	36.3	35.8	11.1	15.6
Large*	12.1	15.2	19.9	20.8	0.9	8.0
Percent Diesel Engines	0.13	0.06	0.0	0.0	0.30	0.15
Percent Turbo or Supercharged Engines	1.6	2.4	0.3	2.9	3.6	5.6
Percent Fuel Injection	100	100	100	100	99.9	99.9
Percent Front-Wheel Drive	83.7	84.4	83.3	87.7	84.3	80.0
Percent Automatic Transmissions	79.6	81.6	91.0	91.8	63.1	68.3
Percent Automatic Transmissions with Lockup Clutches	92.7	92.6	94.1	92.8	89.9	92.3
Percent Automatic Transmissions with Four or More Forward Speeds	69.4	70.2	62.5	60.9	83.7	86.3

*Includes associated station wagons.

The 1 mpg loss in average fuel economy for the MY 1992 imported passenger car fleet may be attributed to the effects of increased weight and higher performance, offset somewhat by the greater use of automatic transmissions with four or more speeds and lockup torque converter clutches.

Both fleets had a dramatic increase in share of turbocharged and supercharged engines. Diesel engines declined in share after a small increase in MY 1991. Diesel engines were offered only on certain Volkswagen and Mercedes models during 1991 and 1992.

Passenger car fleet average characteristics have changed significantly since MY 1978 (the first year of fuel economy standards). After substantial initial weight loss (from MY 1978 to MY 1982, the average passenger car fleet curb weight decreased from 3,349 to 2,808 pounds), the passenger car fleet average curb weight has stabilized at 2,800 to 3,000 pounds. Table II–4 shows that the MY 1992 passenger car fleet has nearly equal interior volume, higher performance, but with over 40 percent fuel economy improvement compared to the MY 1978 fleet, although fuel economy declined to its lowest level since 1985. (See Figure II–3.) The passenger car fleet in MY 1992 averaged the highest horsepower-to-weight ratio recorded in any year since 1955, the earliest year for which the agency has data.

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1992

Model year	Fuel economy mpg	Curb weight lb.	Interior space cu. ft.	Engine size cu. in.	Horse-power/weight hp/100 lb.
1978	19.9	3349	112	260	3.68
1979	20.3	3180	110	238	3.72
1980	24.3	2867	105	187	3.51

TABLE II–4.—NEW PASSENGER CAR FLEET AVERAGE CHARACTERISTICS MODEL YEARS 1978–1992—Continued

Model year	Fuel economy mpg	Curb weight lb.	Interior space cu. ft.	Engine size cu. in.	Horsepower/weight hp/100 lb.
1981	25.9	2883	108	182	3.43
1982	26.6	2806	107	173	3.47
1983	26.4	2908	109	182	3.57
1984	26.9	2878	108	178	3.66
1985	27.6	2867	108	177	3.84
1986	28.2	2821	106	169	3.89
1987	28.5	2805	109	162	3.98
1988	28.8	2831	107	161	4.11
1989	28.4	2879	109	163	4.24
1990	28.0	2908	108	163	4.53
1991	28.3	2934	108	164	4.42
1992	27.9	3007	108	169	4.56

The characteristics of the MY 1992 light truck fleet (see Table II–5) show an average test weight increased of 153 pounds and slightly higher performance as reflected by the increase in the average horsepower-to-weight ratio and the larger average engine size. Increased popularity of large pickups and heavier and higher performance trucks contributed to the 0.6 mpg fleet fuel economy decline for MY 1992, offsetting the increased share of compact vans and the small increase in the use of fuel injection and lockup converter clutches on automatic transmissions. Diesel engine usage remained nearly the same in light trucks for MY 1992 from MY 1991. The import share of the MY 1992 light truck fleet decreased to 17.3 percent, 2.8 percent lower than MY 1991 and the lowest share since light truck fuel economy standards were established.

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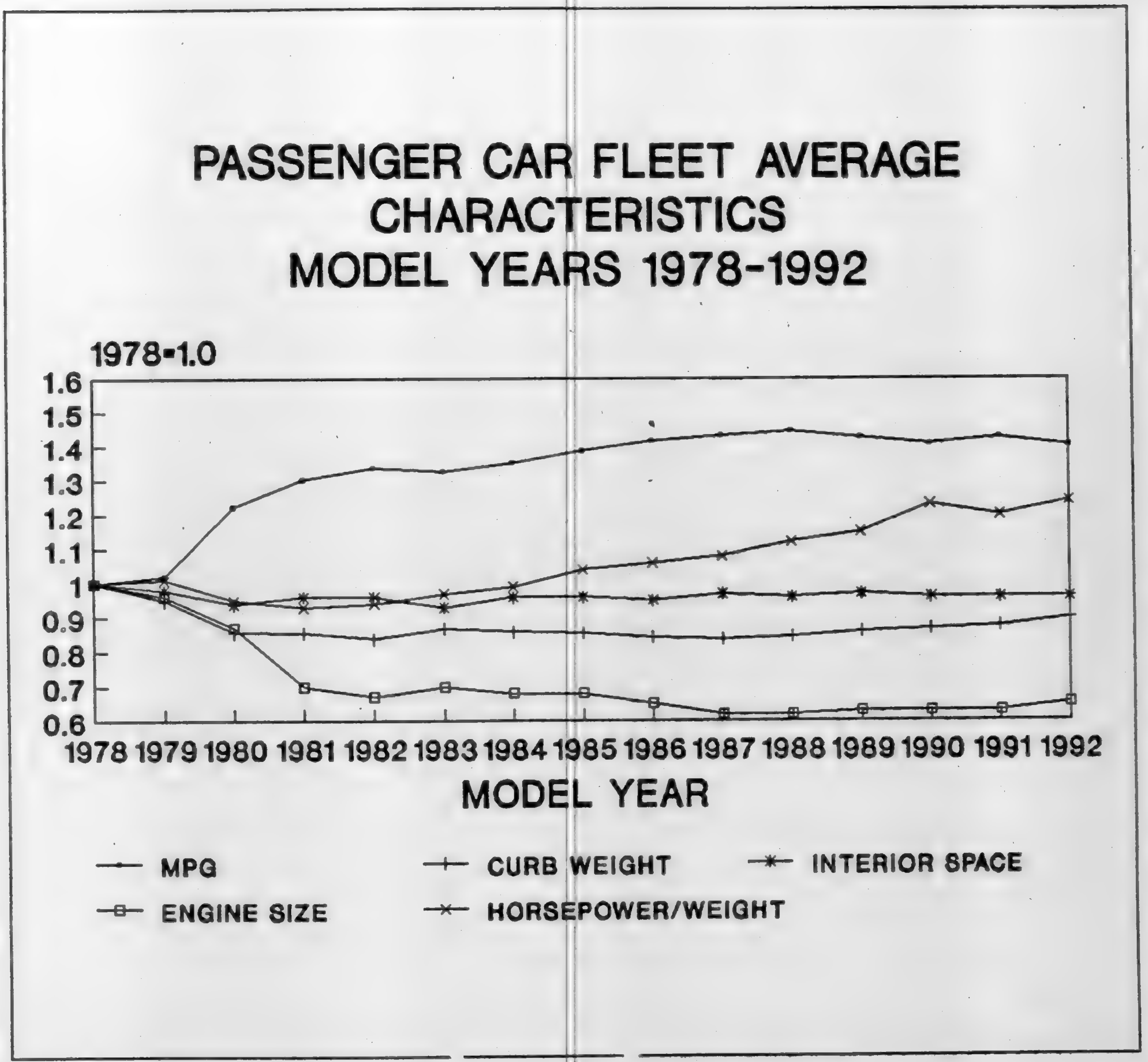

FIGURE II-3

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TABLE II–5.—LIGHT TRUCK FLEET CHARACTERISTICS FOR MYs 1991 AND 1992

Characteristics	Total fleet		Domestic Fleet		Imported fleet	
	1991	1992	1991	1992	1991	1992
Fleet Average Fuel Economy, mpg	21.3	20.7	20.9	20.4	23.0	22.3
Fleet Average Equivalent Test Weight, lbs	4016	4169	4112	4260	3641	3733
Fleet Average Engine Displacement, cu. in	229	235	247	251	158	160
Fleet Average Horsepower/Weight ratio, HP/100 lbs	3.76	3.92	3.83	4.02	3.51	3.46
Percentage of Fleet	100	100	79.9	82.7	20.1	17.3
Segmentation by Type, Percentage:						
Passenger Van:						
Compact	17.5	21.4	17.6	23.1	16.9	12.9
Large	2.0	0.6	2.5	0.7	....	....
Cargo Van:						
Compact	1.1	1.7	1.4	2.1	....	....
Large	2.9	5.4	3.6	6.5	....	....
Small Pickup*	19.9	14.2	19.7	13.8	20.6	16.6
Large Pickup*	28.3	31.3	26.7	30.5	34.5	35.3
Special Purpose	28.4	25.4	28.5	23.4	28.1	35.3
Diesel Engines	0.1	0.1	0.2	0.1	....	....
Fuel Injection	98.4	98.9	99.9	100	92.7	93.5
Automatic Transmissions	68.8	72.2	75.6	78.9	41.8	40.3
Automatic Transmissions with Lockup Clutches	97.1	98.1	98.4	98.8	87.9	91.2
Automatic Transmissions with Four Forward Speeds	88.6	88.6	87.8	87.8	94.1	96.5
4-Weel Drive	34.7	32.8	33.2	29.9	48.0	47.1

*Including Cab Chassis.

During MYs 1980 through 1992, CAFE levels for light trucks in the 0–8500 lbs. gross vehicle weight (GVW) class have increased, beginning at 18.5 mpg in MY 1980 and reaching 21.7 mpg in MY 1987 before dropping to lower values in MYs 1988 through MY 1992, as average weight, engine size, and performance increased. During these years, light trucks production has increased from 1.9 million in MY 1980 to 4.1 million in MY 1992. Light trucks comprised nearly a third of the total fleet production in MY 1992, almost double their share in MY 1989.

Fiqure II–4 illustrates that the light duty fleet (passengers cars and light trucks together) average fuel economy steadily increased to MY 1987, but subsequently has been below the MY 1987 level. (See Table II–6.) Light trucks average fuel economy also declined, but the passenger car average fuel economy has remained relatively constant for MYs 1987–1992. Thus, the overall decline illustrates the growing influence of light trucks in the light duty fleet.

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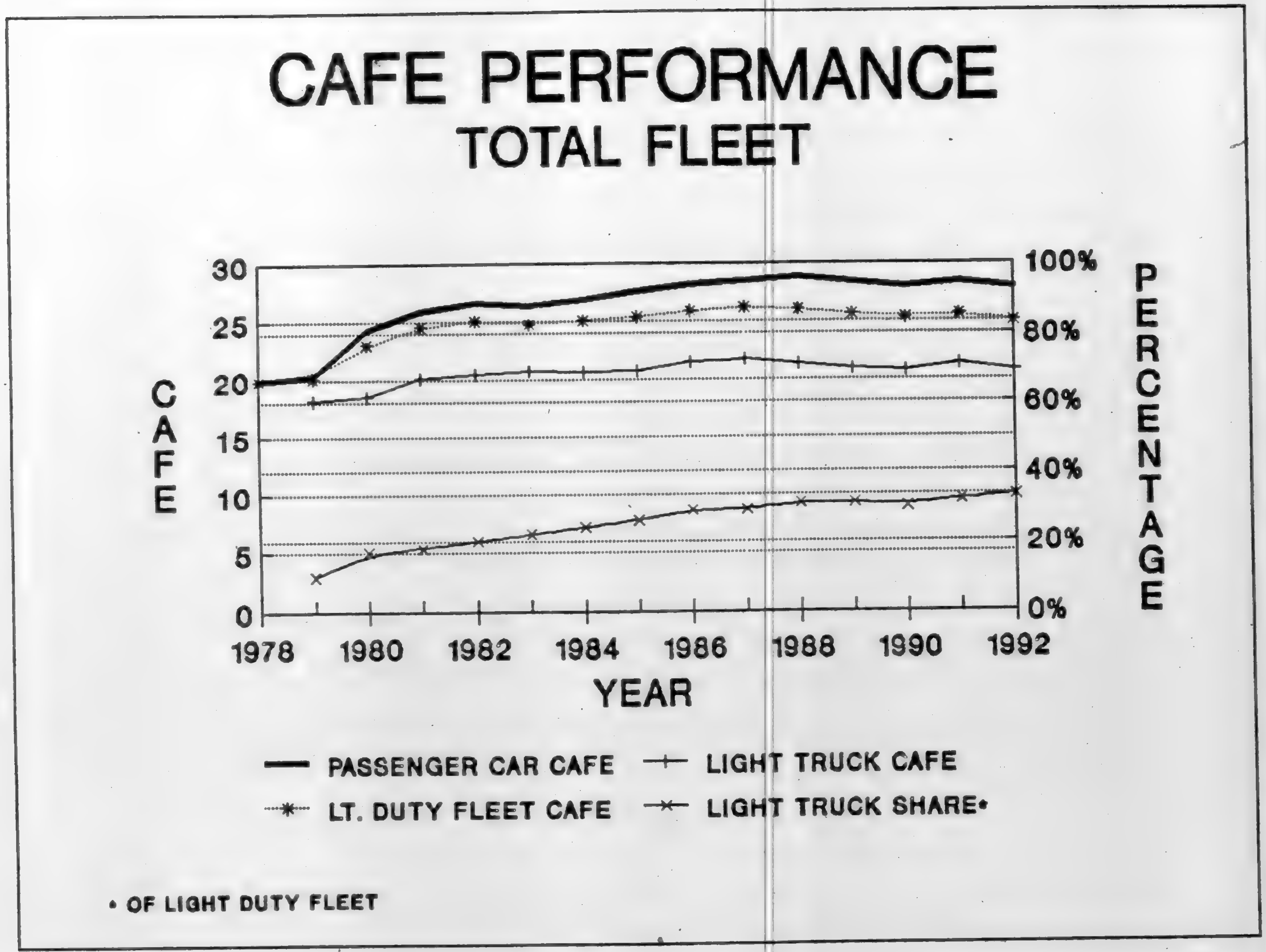

FIGURE II-4

BILLING CODE 4910-59-C

TABLE II–6.—DOMESTIC AND IMPORTED PASSENGER CAR AND LIGHT TRUCK FUEL ECONOMY AVERAGES FOR MODEL YEARS 1978–1992 (IN MPG)

Model year	Domestic			Imported			Total fleet
	Car	Light truck	Combined	Car	Light truck	Combined	
1978	18.7			27.3			
1979	19.3	17.7	19.1	26.1	20.8	25.5	20.1
1980	22.6	16.8	21.4	29.6	24.3	28.6	23.1
1981	24.2	18.3	22.9	31.5	27.4	30.7	24.6
1982	25.0	19.2	23.5	31.1	27.0	30.4	25.0
1983	24.4	19.6	23.0	32.4	27.1	31.5	24.8
1984	25.5	19.3	23.6	32.0	26.7	30.6	25.0
1985	26.3	19.6	24.0	31.5	26.5	30.3	25.4
1986	26.9	20.0	24.4	31.6	25.9	29.6	25.9
1987	27.0	20.5	24.6	31.2	25.2	29.6	26.2
1988	27.4	20.6	24.5	31.5	24.6	30.0	26.0
1989	27.2	20.4	24.2	30.8	23.5	29.2	25.6
1990	26.9	20.3	23.9	29.9	23.0	28.4	25.4
1991	27.3	20.9	24.4	30.0	23.0	28.3	25.6
1992	27.0	20.4	23.8	29.0	22.3	27.7	25.0

Domestic and imported passenger car fleet average fuel economies have both improved since MY 1978. However, in MY 1992 the domestic and import passenger car fleet average fuel economies decreased to 27.0 mpg and 29.0 mpg, respectively. This reflects an increase of 8.3 mpg since MY 1978 for domestic cars. For import cars, the MY 1992 average fuel economy is only 1.7 mpg higher than that of MY 1978 and the lowest level since MY 1979.

Domestic and imported light truck fleet average fuel economies have both improved since MY 1979. The domestic manufacturers continued to dominate the light truck market. Domestic light trucks comprised nearly 83 percent of the total light truck fleet. For MY 1992, the domestic light truck fleet has an average fuel economy only 1.9 mpg lower than the imported light truck fleet, the closest these fleets have ever been in average fuel economy. The imported light truck fleet fuel economy improved rapidly between MYs 1979 and 1981, but has steadily decreased since then. The imported light truck fleet fuel economy decreased to 22.3 mpg from the MY 1990–1991 level of 23.0 mpg, the lowest level it has been since MY 1979.

The gap between the average CAFEs of the import and domestic manufacturers is shrinking as domestic manufacturers maintain relatively stable CAFE values while the import manufacturers move to larger, higher performance vehicles and more 4-wheel drive light trucks.

For MYs 1991 and 1992, the domestic combined passenger car and light truck fleet fuel economy level was the closest it has ever been to the imported combined fleet, with a fuel economy value of 3.9 mpg below the import combined fleet. The import combined fleet average fuel economy is the lowest since MY 1979.

Section III: 1992 Activities

A. Passenger Car CAFE Standards

The following synopsis describes litigation challenging NHTSA actions under the CAFE program, that was decided in 1992.

Competitive Enterprise Institute (CEI) v. *NHTSA*, 956 F.2d 321 (D.C. Cir. 1992).

On February 19, 1992, in a 2–1 decision, the D.C. Circuit held that NHTSA had failed to adequately evaluate the safety consequences of its decision to retain the MY 1990 passenger car CAFE standard of 27.5 mpg rather than proceeding with proposed rulemaking to reduce that model year's standard. The court remanded the matter to NHTSA for further consideration.

NHTSA issued a notice requesting further information on safety issues in connection with its MY 1990 petition denial on October 26, 1992 (57 FR 48777).

B. Light Truck CAFE Standards

In late 1991, NHTSA published a request for comments regarding manufacturer's fuel economy capabilities for light trucks for model years after 1994 (56 FR 50694, October 8, 1991). Based on the information received in response to that questionnaire and other sources, NHTSA published a NPRM for fuel economy standards for MYs 1995–1997 on December 24, 1992 (57 FR 61377). The NPRM proposes ranges of fuel economy standards of 20.5 to 21.0 mpg for MY 1995 and 20.5 to 21.5 mpg for MYs 1996 and 1997. A regulatory impact analysis and an environmental analysis supporting the NPRM were placed in the NHTSA docket when the NPRM was published.

C. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger cars may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured fewer than 10,000 passenger cars worldwide, in the model year for which the exemption is sought (the affected model year) and in the second model year preceding that model year.

NHTSA acted on one low volume petition during 1992, which was filed by Maserati. Maserati was denied a low volume exemption since it manufactures more than 10,000 passenger automobiles each year when its contracted production for Innocenti and Fiat is included. Therefore, Maserati's petition for MYs 1992, 1993, 1994, and 1995 was denied (57 FR 2807).

Another petition requesting an alternative standard for Rolls-Royce passenger cars for MYs 1995 and 1996 was received on October 26, 1992. NHTSA will review this petition and issue a proposed decision in early 1993.

D. Carryback Plans

Section 502(l) of the Act allows an automobile manufacturer to earn fuel economy credits during any model year in which the manufacturer's fleet exceeds the established CAFE standard. The amount of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the average fuel economy of the manufacturer's fleet in the model year exceeds the standard by the total number of vehicles in the manufacturer's fleet for that model year.

Previously earned fuel economy credits are carried forward by NHTSA, (with affected manufacturers given an opportunity to comment on the NHTSA's allocation of credits) and distributed to any of the three succeeding model years in which the manufacturer's fleet falls below the CAFE standard. For example, credits earned in MY 1988 have been used to offset deficiencies in MYs 1989, 1990, and 1991. A manufacturer also may submit to the agency a carryback plan, which demonstrates that it will earn sufficient credits within the following three model years which can be allocated to meet the CAFE standard in the model year(s) involved.

On June 17, 1992, PAS, Inc., submitted a carryback plan for MY 1991 light truck CAFE compliance. On October 19, 1992, the agency approved PAS's carryback plan, which uses credits anticipated to be earned in MY 1993 to offset the penalties of MY 1991. This plan is unique in that it is the first instance of a manufacturer planning to use the fuel economy credits accrued from producing compressed natural gas vehicles (made available by the Alternative Motor Fuels Act of 1988) to offset penalties earned by a gasoline-fueled fleet.

E. Enforcement

Section 508(b)(1) of the Act imposes a civil penalty of five dollars ($5) for each tenth of a mpg by which a manufacturer's CAFE level falls short of the standard, multiplied by the total number of passenger automobiles or light trucks produced by the manufacturer in that model year. Credits that were earned for exceeding the standard in any of the three model years immediately prior to or subsequent to the model years in question can be used to offset the penalty.

With completion by EPA of final CAFE computations for MY 1991 for most passenger car fleets, the agency initiated appropriate enforcement actions for manufacturers that did not meet the CAFE standard. Table III–1 shows those manufacturers which paid CAFE penalties in 1992.

TABLE III–1

Cafe fines paid in 1992

Model year	Manufacturer	Amount fined	Date paid
1990	Callaway	$20,400	01/92
1989	PAS	294,500	02/92
1990	Peugeot	72,500	03/92
1991	BMW	11,249,230	06/92
1991	PAS	187,525	06/92
1987	Fiat	279,350	07/92
1988	Fiat	897,260	07/92
1989	Fiat	670,120	07/92
Total		13,670,885	

The following synopsis describes an administrative adjudication involving NHTSA actions under the CAFE program that was decided in 1992.

Chrysler Corporation, Docket 47414

On January 8, 1992, an Administrative Law Judge issued an initial decision and order recommending that NHTSA's complaint seeking a civil penalty of $1,371,420 for Chrysler's failure to comply with the MY 1984 domestic light truck fuel economy standard be dismissed, without prejudice. He concluded that NHTSA could not interpret the extent to which predecessors or successors are included in the term "manufacturer" without issuing rules pursuant to section 501(8) of the Motor Vehicle Information and Cost Savings Act, but that Chrysler could not claim credits earned by American Motors Corporation except under the terms of a properly adopted rule. Both parties filed Notices of Intention to Appeal the Initial Decision to NHTSA's Administrator. On March 31, 1992, after a meeting to consider settlement proposals, the Administrator set aside the initial decision and terminated the enforcement proceeding, without prejudice, to permit NHTSA to prescribe regulations pursuant to section 501(8) of the Act.

F. Environmental Impact Statement

Under section 102(2)(c) of the National Environmental Protection Act, an Environmental Impact Statement (EIS) is required for all major Federal actions significantly affecting the quality of the human environment. In recent years, NHTSA prepared an environmental assessment each time it has established or amended a CAFE standard for cars or light trucks. Each assessment has led to finding of no significant impact.

The agency previously published a notice of intent to prepare a programmatic EIS covering the CAFE program and held a public scoping meeting with the intention of contracting for the EIS in fiscal year (FY) 1992. However, Congress did not approve the request for funding for the programmatic EIS in FY 1992 or in FY 1993.

G. National Academy of Sciences Study

To support the development of President Bush's National Energy Strategy, in late 1990 NHTSA and the Federal Highway Administration asked the NAS to perform a study estimating fuel economy levels that could practically be achieved for new passenger cars and light trucks in the next decade, while meeting environmental and safety needs. The NAS report entitled, "AUTOMOTIVE FUEL ECONOMY: How Far Should We Go?," was released in April 1992.

In outlining the scope of work for the study, the Department asked NAS to provide estimates of achieveable fuel economy by vehicle class. In determining these fuel economy levels, NAS was asked to consider a number of factors, including recent Clean Air Act amendments and current safety regulations, the availability of technologies to improve fuel economy, the costs and benefits of these technologies (and any barriers to their introduction and widespread use), the financial capabilities and economic health of the auto industry, the impact on consumers, and safety implications.

Among the study's conclusion were that, for the year 2006, fuel economy levels of 34–37 mpg for cars and 26–28 mpg for light trucks are "technically achievable." NAS estimated that the consumer costs to achieve these levels would range between $500 and $2,750 per vehicle. In estimating these fuel economy levels and costs, NAS considered only technologies that are in mass production today somewhere in the world, assumed that these future vehicles would have to meet all applicable safety standards and "Tier 1" emission standards, and assumed that they would need to have acceleration capabilities and interior roominess comparable to those of current vehicles. In their report, NAS emphasized that the above fuel economy levels should *not* be viewed as recommendations on future fuel economy standards. They stated:

> * * * the practically achievable levels—the levels of fuel economy for each size class that achieve an appropriate balance of a broad array of costs and benefits—are likely to be found in the regions between the levels that would be achieved without any government intervention and the "technically achievable" levels. It remains for policy makers to determine the form of any future regulations and the levels of fuel economy—the "practically achievable" levels—that in their judgement provide the appropriate balance of costs and benefits to

consumers, manufacturers, and the nation as a whole.

The study also concluded that the current CAFE regulatory approach has "serious defects." It discussed several alternatives to the CAFE regulatory scheme (such as sized-based standards, increased fuel taxes, and consumer fees and rebates tied to a vehicle's fuel economy level), and it made suggestions for changes in the current regulatory system if it is retained (such as considering allowing manufacturers to trade CAFE credits and eliminating the domestic content provision). The results of the NAS study will be an important consideration in future policy making on automotive fuel efficiency.

Section IV: Use of Advanced Technology

This section fulfills the statutory requirement of section 305 of Title III of the Department of Energy Act of 1978 (Pub. L. 95–238), which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models and new engine technology, the application of materials to save weight, and the advances in electronic technology which improved fuel economy in MY 1992.

A. New Models

The domestic automakers introduced and replaced several cars as well as updating several previous passenger cars. Ford Motor Company gave the Taurus and Sable a major facelift for MY 1992, the biggest change since the car debuted in 1985. Every exterior panel of the Taurus was new, except for the doors. The Taurus and Sable grew in overall length by 3.8 inches to 192 inches. Despite this increase in size, the average fuel economy of these cars improved by about 0.1 mpg due, in part, to slightly improved aerodynamics.

Ford dropped the LTD Crown Victoria and Colony Park station wagons and redesigned the LTD Crown Victoria and Mercury Grand Marquis sedans to be more aerodynamic, and roomier with a new engine and electronically controlled 4-speed automatic transmission, improving the average fuel economy by 1 mpg.

Chrysler introduced the Dodge Viper RT/10, an all-new high performance, limited production sports car with an 8.0L V–10 engine, the largest offered in any passenger car sold in the United States in many years. Despite this large engine, the wide use in this vehicle of aluminum and plastics, as well as other technologies such as a 6-speed manual transmission, enabled the Viper to achieve an average fuel economy of 18.1 mpg. The Plymouth Division offered a redesigned Colt Vista Wagon with both 2- and 4-wheel drive. Similar vehicles were marketed as the Eagle Summit Wagon and Mitsubishi Expo. Due to improved engine efficiency, the average fuel economy of these wagons improved by 0.9 mpg even though they are somewhat heavier and roomier than the MY 1991 counterparts.

Automobile importers also introduced a variety of new passenger cars and updates of their previous models for MY 1992. Honda's Acura Division introduced the Vigor with a 2.5L I-5 engine, a 5-speed manual or 4-speed automatic transmission and an average fuel economy of 25.5 mpg. The Honda Civic was totally redesigned and re-engineered for MY 1992. The new Civic HB VX had a 1.5L I-4 engine mated to a 5-speed manual transmission and an average fuel economy of nearly 60 mpg.

Hyundai introduced the Elantra, an all-new 4-door sedan. The Elantra was powered by a 1.6L DOHC I–4 engine with 113 hp mated to a 5-speed manual transmission and had an average fuel economy of 28.8 mpg.

Mazda introduced an all-new MX–3 model powered by a 1.6L I–4 engine, a 5-speed automatic transmission, and an average fuel economy of 35 mpg. The Mazda 929 was completely redesigned to include a 195-hp 3.0L V–6 engine. Also as an option on this model was the first solar-powered ventilation system. Average fuel economy of this model improved by over 1 mpg.

Mitsubishi introduced an all-new Diamante luxury sedan with 4-speed automatic transmission. The base model Diamante was equipped with a 175-hp 3.0L single-overhead-cam (SOHC) V–6 engine and the LS model had a 202-hp 3.0L DOHC V–6 engine. The base model had a fuel economy average of 24.2 mpg and the upper model had an average fuel economy of 23.6 mpg.

Nissan Motor Corporation introduced an all-new 2-door 240 SX convertible with a 155 hp, 2.4L DOHC I–4 engine mated to a 5-speed automatic transmission with an average fuel economy of 28.3 mpg or a 4-speed automatic with an average of 26.9 mpg.

Porsche replaced the 944 with a new 968 model which came equipped with a 236 hp 3.0L I–4 engine and a 6-speed manual transmission or a 4-speed automatic transmission. The average fuel economy was virtually unchanged by this model replacement, even though the engine output increased by 28 hp.

Saab had a new 9000CD Turbo Griffin Edition which was equipped with traction control and a new system for improved side impact protection and torsion rigidity. This Saab had a 200 hp, 2.3L I–4 engine along with a 4-speed automatic transmission yielding 23.3 mpg or a 5-speed manual with an average fuel economy of 25.2 mpg. Both values are only slightly different than those with the 150 hp naturally aspirated engine and are 0.3 mpg higher than last year's turbocharged 9000.

Toyota introduced the all-new 2 + 2 2-door sporty Paseo with a 1.5L I–4 engine. The Paseo had a low drag coefficient (0.32 C_D), aiding highway fuel economy and helping to give this model an average fuel economy of 34.4 mpg. The Toyota Lexus Division introduced two new models and replaced the ES 250 with an all-new ES 300. The Lexus ES 300 comes equipped with a 3.0L DOHC V–6, 24-valve, engine with 185 hp, computer controlled programmed sequential multipoint fuel ignition system with knock sensors. The two new models were the Lexus SC 300 and the SC 400. The SC 300 is powered by a 3.0L I–6 engine with a 5-speed manual transmission and the SC 400 featured a 4.0L V–8 engine and automatic transmission. The new electronically-controlled hydraulic cooling fan added to the engine's improved efficiency.

It also had a new fuel pump design to reduce electric power loss. The lower drag coefficient (0.31C_D) of these models contributed to their fuel efficiency which averaged 23 mpg, but was still about 1.3 mpg lower than last year's ES 250 average.

Audi had two all-new models, the S4 which replaced the 200 Quattro sedan and the V8 Quattro. The S4 was powered by a more powerful 2.2L turbocharged DOHC, 4-valve per cylinder I–5 engine with 230 hp and achieved an average fuel economy of 23.2 mpg, the same as the MY 1991 200 Quattro. The V8 Quattro was powered by a larger 4.2L V–8 engine that generated 276 hp (compared to 240 hp in 1991 models) and was still listed as a "gas guzzler" with an average fuel economy of 19 mpg.

Volvo introduced the 960 sedan and wagon which joined the 9-series lineup. Both were powered by a new 3.0L engine with an average fuel economy of 25.7 mpg, about the same as the 940 series using the smaller, 2.3L engine.

For MY 1992, the BMW 3-Series achieved a drag coefficient of 0.33 C_D and the coefficient of lift has been reduced by 44 percent at the front and 19 percent at the rear to a value of 0.10 C_L for both front and rear. Average fuel economy for this series declined by 0.6

mpg, however, as the average weight of these models increased by over 250 lbs.

Subaru introduced an all-new SVX sports model with a 230 hp, DOHC 3.3L horizontally opposed 6-cylinder, 4-valve-per-cylinder engine with a 4-speed automatic transmission and an average fuel economy of 23.5 mpg. The new SVX had a low drag coefficient of 0.29 C_D.

Ford's full sized F-Series pickups for MY 1992 has a more aerodynamic front styling with a sloping hood and flush headlamps. Ford trucks also offered completely redesigned Econoline and Club Wagon large vans for the first time in over 15 years. The all-new exterior had a sleeker design with flush side glass resulting in an average fuel economy improvement of about 0.3 mpg on these models.

B. Engine Technology

Many manufacturers are incorporating a 3- or 4-valve per-cylinder configuration to produce higher specific power and better fuel efficiency. There engines typically develop higher power at higher speeds, and, depending on the manufacturer's choice of gearing, may have only small fuel economy benefits. Used differently, e.g., to supplant larger displacement engines of the same power output, the multivalve engine could provide some fuel economy improvement for passenger cars and smaller light trucks where low speed torque is not such a critical factor.

Variable valve actuation for the optimization of engine torque by improving valve-lift timing and valve phasing at both low and high engine speeds is now being developed by some automobile manufacturers to increase engine efficiency. Honda already introduced variable valve timing in the 1989 Civic CRX which evolved from the Honda motorcycle and, since 1990, has offered it in the Acura NSX. Variable cam phasing systems have also been incorporated in some engines by Nissan and Mercedes Benz. These advanced engines with variable valve actuation typically result in improved fuel economy, emissions, and performance.

The Honda uses a 4-valve, lean burn, VTEC–E engine in the MY 1992 49-State Honda Civics. By limiting the opening of one of the intake valves at low speeds, Honda has reduced the swirl of the mixture and extended the lean limit of the air fuel ratio from 18:1 to 25:1. This improvement has resulted in an 8 percent gain in fuel economy for the city cycle and 12 percent for the highway cycle while still meeting the 49-state NO_x standard.

The new Audi 100 series for MY 1992 introduced a new 2.8L 90 degree V6 engine which featured thin-wall engine block casting techniques for reduced weight. The intake manifold had six throttle valves for better power output at higher RPM and to accelerate the intake air at low engine speed. An electronic engine management system, designed in cooperation with Hitachi, monitored the sequential fuel injection, electronic idle control, oxygen, and knock sensors to maximize engine efficiency.

Other engine updates included the replacement of the Chevrolet L98 V–8 engine used on the Corvette since MY 1985. In its place is a second generation small-block engine: The LT1 overhead valve V–8. The new powerplant retained the 5.7L displacement of its predecessor, but contained about 70 percent new components. It delivered 300 hp—50 hp more than the L98 engine. The compression ratio was increased from 10.0:1 to 10.25:1 and the maximum engine speed raised by 700 rpm to 5700 rpm. The factors contributing to the increase in power were: improved engine cooling with a reverse-flow arrangement that cools the head more efficiently, computer controlled ignition timing, free flow cylinder heads, low-restricted exhaust system, higher compression ratio, and new camshaft profile. Despite the increase in power, the car's average fuel economy improved by 1 mpg over last year's model.

Chrysler's 3.0L V–6 engine received multipoint fuel injection for use in the Imperial, LeBaron coupe and convertible, Dodge Dynasty, Dodge Spirit, and Plymouth Acclaim. The Dodge Spirit 2.2L, 16 valve DOHC turbocharged 4-cylinder engine included an intercooler and twin balance shafts. The Plymouth Colt Vista added a 1.8L MPI I–4 16-valve engine, and the Laser offered an optional 2.0L 16-valve I–4 DOHC MPI and turbocharged intercooled engine. The Dodge Ram pickup received new 3.9L V–6 and 5.2 L V–8 Magnum engines which both featured sequential, multipoint, fuel injection. Both engines were lighter and more fuel efficient.

GM's new single-overhead-cam (SOHC) version of the 2.3L DOHC Quad 4, replaced the 2.5L pushrod 4-cylinder as the base engine in GM's MY 1992 N-cars (Buick Skylark, Oldsmobile Achieva, and Pontiac Grand Am). The Buick Park Avenue Ultra, Pontiac Bonneville, and Oldsmobile 98 had a new Roots-type supercharged 3.8L V–6 engine with 205 hp (up from 170 hp in MY 1992), and the Roadmaster used a larger, 180 hp 5.7L V–8 engine and 4-speed automatic transmission.

Mazda introduced the world's smallest displacement production 6-cylinder engine in its new MX–3 coupe. The 1.8L DOHC 60-degree V–6 produced 134 hp at 6,800 rpm and 118 ft.-lbs of torque at an extremely high 5,300 rpm.

The Mercedes limited edition 500E had a 5.0L DOHC V–8 engine with four valves per cylinder and variable valve timing.

The Toyota Paseo for MY 1992 came equipped with an electronically fuel injected, twin cam, 16-valve engine. This engine had a centrally located spark plug, small valve angle, pentroof combustion chamber, and higher cam-lift distance for increased performance and fuel efficiency.

Volkswagen produced a radically designed 15-degree 2.8L V–6 engine, the VR6, for its Corrado, Golf, and Passat cars. The VR6 (R being the German designation for an inline configuration) highlights the fact that the engine embodies traits of both configurations. The cylinders are staggered in the same cast-iron block and share a single aluminum-alloy cylinder-head. The VR6 develops 174 hp at 5,800 rpm. Peak torque is 177 ft.-lbs. (240Nm) at 4,200 rpm. The VR6 is a SOHC 12-valve engine. Valves operate via self-adjusting hydraulic bucket-type tappets.

The GM 4.3L V–6 L–35 light truck engine (used on 50 percent of the GM light truck fleet) was improved in MY 1992 to include a roller camshaft, better intake and exhaust port flow at high engine speeds, and a balance shaft. These improvements enable the engine to meet the California Tier I emissions standards with no loss in fuel economy.

C. Electronics

Applications of electronic components in vehicles continues to rise. Some of the applications include 4-wheel steering, tire-pressure sensing, instrumentation, and in particular, in-car entertainment grouping. However, the main concentration is in engine management, powertrain management, antilock braking systems, air bags, air conditioning and, increasingly, suspension control.

Another important area of automotive electronics is multiplexing, or networking a vehicle's electronic-control devices on a single wire. Mercedes-Benz AG and Robert Bosch GmbH offered for the first time in vehicles, an extremely fast 16-bit data bus, known as a controller area network. It links six controllers in the engine- and powertrain-management systems of Mercedes' V–12 S–Class sedan and coupe via a single data-exchange duct.

D. Materials

Automotive material applications for MY 1992 underwent few changes. The trend in MY 1992 was to larger vehicles which, in most cases, means more steel. Because steel currently is the most easily recycled automotive material, it will still be used extensively in the future. Along with steel, automakers continue to utilize plastics, aluminum, powder metal, and magnesium.

For MY 1992 a number of redesigned cars and trucks contained more steel than their MY 1991 counterparts. These included the Ford Taurus and Mercury Sable, Pontiac Bonneville, Cadillac Eldorado and Seville, and the Chevy and GMC Suburban, as well as the Chevy Blazer and GMC Yukon (Jimmy), and the compact Pontiac Grand Am, Oldsmobile Achieva, and Buick Skylark.

A unique vehicle for MY 1992 was the Dodge Viper. It used one of the largest sheet molding compound (SMC) production parts—the massive hood—and was one of the first passenger cars to use resin-transfer molding (RTM). RTM is a low-volume alternative to SMC and is primarily used in the heavy-duty truck market.

The Buick Roadmaster is one of the latest cars to use a molded plastic fuel tank; and GM's new Northstar V–8 engine bowed early for my 1993 with plastic inlet horns, or tubes, in its induction system. This was the closest thing to a plastic intake manifold ever employed in a North American-built GM car.

Cast-aluminum water pumps were employed in place of iron units on Chrysler's revised 5.2L V–8 engines for MY 1992, and aluminum wheels were featured on a number of cars, including the Chrysler LeBaron coupe and Oldsmobile Achieva.

Magnesium was another lightweight material that found increased application in 1992. Magnesium weighs 33 percent less than an equal volume of aluminum and 70 percent less than zinc. Debuting on the new Cadillac Allante for MY 1993, the Northstar engines used 15 pounds or more of magnesium in the induction system, valve covers, oil filter adapters, and other components. Also, the torque converter in the GM 4T80E automatic transmission used on the Allante is magnesium.

E. Summary

Due to the stabilization of oil prices and oil supply, consumer demand continued to shift to larger, more powerful and roomier passenger cars and light trucks. The auto industry, responding to this shift, increased the proportion of engines with 4-valves-per-cylinder design, increased the horsepower of its engines and shifted the production mix to larger vehicles. Weight also increased somewhat in passenger cars and light trucks due, in part, to additional safety features such as air bags and antilock braking systems. However, the average fuel economy of the new passenger car and light truck fleets continues to exceed applicable CAFE standards.

[FR Doc. 93–2333 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535–0113
Form Number: PD F 1849
Type of Review: Extension
Title: Disclaimer and Consent with Respect to United States Bonds/Notes
Description: This form is used to obtain a disclaimer and consent as the result of an error in registration or otherwise the payment, refund or the purchase price, or reissue as requested by one person would appear to affect the right, title or interest of some other person.
Respondents: Individuals or households
Estimated Number of Respondents: 7,000
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 700 hours

OMB Number: 1535–0114
Form Number: PD F 2001
Type of Review: Extension
Title: Release
Description: This form is used by the owner, coowner, or other person entitled to ratify payment of savings bonds/notes and release the United States of America from any liability.
Respondents: Individuals or households
Estimated Number of Respondents: 200
Estimated Burden Hours Per Response: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 20 hours

Clearance Officer: Vicki S. Ott, (304) 420–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–2356 Filed 2–1–93; 8:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

January 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0922
Form Number: IRS Forms 8329 and 8330
Type of Review: Extension
Title: Lender's Information Return for Mortgage Credit Certificates (MCCs) (Form 8329). Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs) (Form 8330)
Description: Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to report on mortgage credit certificates (MCCs) authorized under Internal Revenue Code (IRC) section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Respondents: State or local governments, Businesses or other for-profit

Estimated Number of Respondents/Recordkeepers: 10,500

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8329	Form 8330
Recordkeeping..	3 hr., 21 min	4 hr., 32 min.
Learning about the law or the form.	35 min	1 hr., 12 min.
Preparing and sending the form to the IRS.	41 min	1 hr., 19 min.

Frequency of Response: Form 8329: Annually, Form 8330: Quarterly

Estimated Total Reporting/Recordkeeping Burden: 60,300 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–2355 Filed 2–1–93; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Scrolls from the Dead Sea: The ancient Library of Qumran and Modern Scholarship" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Library of Congress, Washington, DC from on or about April 21, 1993 to on or about July 11, 1993 and at the New York Public Library, New York, New York, from on or about October 2, 1993, to on or about January 8, 1994, is in the national interest.

The action of the United States in this matter and the immunity based on the application of the provisions of law involved does not imply any view of the United States concerning the ownership of the exhibit objects. Further, it is not based upon and does not represent any change in the position of the United States regarding the status of Jerusalem or the territories occupied by Israel since 1967. See Letter of September 22, 1978, of President Jimmy Carter, attached to the Camp David Accords, reprinted in 78 Dept. of State Bulletin 11 (October 1978); Statement of September 1, 1982, of President Ronald Reagan, reprinted in 82 Dept. of State Bulletin 23 (September 1982).

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 27, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–2334 Filed 2–1–93; 8:45 am]

BILLING CODE 8230–01–M

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[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 58, No. 20
Tuesday, February 2, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 1, 8, 15, and 22, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 1

Wednesday, February 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Monday, February 8

10:00 a.m.
Briefing by IIT on Loss of Iridium-192 Source and Therapy Misadministration at Indiana Regional Cancer Center, Indiana, PA, November 16, 1992 (Public Meeting)
(Contact: Carl Paperiello, 708–790–5517)

2:00 p.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Jim McDermott, 301–492–4661)

Tuesday, February 9

2:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: William Bateman, 301–504–1711)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 15—Tentative

Friday, February 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51 (Public Meeting)
(Contact: Donald Cleary, 301–492–3936)

Week of February 22—Tentative

Monday, February 22

9:00 a.m.
Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)
(Contact: John Glenn, 301–504–3415)

Thursday, February 25

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: Richard Major, 301–492–8109)

ADDITIONAL INFORMATION: By a vote of 5–0 on January 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Letter Requesting Publication of Federal Register Notice Regarding Proposed Issuance of Operating License for Comanche Peak Unit 2" (Public Meeting) be held on January 29 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 29, 1993.

William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–2550 Filed 1–29–93; 2:13 pm]

BILLING CODE 7590–01–M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled

Correction

In rule document 92–23223 beginning on page 44490, in the issue of Monday, September 28, 1992, make the following correction:

§ 150.3 [Corrected]

On page 44492, in the third column, amendment number 3 should read "Section 150.3 is amended by revising paragraphs (a)(4) and (b) to read as follows:".

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[FRL–4536–5]

RIN 2050–AC32

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Revision

Correction

In rule document 92–28320 beginning on page 55114 in the issue of Tuesday, November 24, 1992, make the following corrections:

PART 261—[CORRECTED]

1. On page 55117, in part 261, in appendix II, in the second column, in the last paragraph, in the first line, 84.4.4 should read 8.4.4.

§ 271.1 [Corrected]

2. On the same page, in § 271.1, in Table 1, under Federal Register reference, "publication citation" should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–164–84]

RIN 1545–AG98

Allocation Reflecting Built-in Gain or Loss on Property Contributed to a Partnership

Correction

In proposed rule document 92–31064 beginning on page 61345 in the issue of Thursday, December 24, 1992, make the following corrections:

1. On page 61345, in the third column, under **Introduction**, in the first full paragraph, in the fifth line, "1.704–1(b)(1)(2)(vi)" should read "1.704–1(b)(1)(vi)".

§ 1.704–3 [Corrected]

2. On page 61350, in the third column, in § 1.704–3(c)(4)(ii), in the table, in the second column, in the third line, "350" should read "450".

3. On page 61351, in the third column, in § 1.704–3(d)(2)(iii), the undesignated paragraph should read "(B) *Disposition of property.* * * *".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–25–92]

RIN 1545–AQ70

Qualified Accelerated Death Benefits Under Life Insurance Contracts

Correction

In proposed rule document 92–29919 beginning on page 59319 in the issue of Tuesday, December 15, 1992, make the following corrections:

§ 1.7702–2 [Corrected]

On page 59322, in the third column, in § 1.7702–2(d)(3), *Example 2*, in the second line from the bottom, remove "not"; and in *Example 3*, in the second line from the bottom, insert "not" after "is".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[PS–32–90]

RIN 1545–AO99

Generation—Skipping Transfer Tax

Correction

In proposed rule document 92–30945 beginning on page 61353 in the issue of Thursday, December 24, 1992, make the following corrections:

On page 61355:

1. In the first column, under **Special Analyses**, in the last line, insert "major" after "not".

§ 26.2601–1 [Corrected]

2. In the second column, in § 26.2601–1(b)(1)(v)(B)(*2*), in the third line, insert "a" after "in".

3. In the third column, in § 26.2601–1(b)(1)(v)(D), in *Example 7*, in the second line from the bottom, insert "been" after "have".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[INTL–978–86]

RIN 1545–AJ93

Information Reporting by Passport and Permanent Residence Applicants

Correction

In proposed rule document 92–31062 beginning on page 61373 in the issue of Thursday, December 24, 1992, make the following correction:

§ 301.6039E–1 [Corrected]

On page 61375, in the second column, in § 301.6039E–1(c)(3), in the sixth line, "(1)" should read "(i)".

BILLING CODE 1505–01–D

federal register

Tuesday
February 2, 1993

Part II

Federal Emergency Management Agency

Changes to the Hotel and Motel Fire Safety Act National Master List; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: March 4, 1993.

ADDRESSES: Comments on the master list or any changes to the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes on December 23, 1992, 57 FR 61234.

Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list.

Each update contains or will contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows.

Dated: January 19, 1993.

Wallace E. Stickney,

Director.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE

ADDITIONS				
Alaska				
Kenai Princess Lodge	PO Box 676		Cooper Landing, AK 99572	907–595–1425
Denali National Park Hotel		Mile 237 Parks Hwy	Denali Park, AK 99755	907–279–2653
Fairbanks Princess Hotel		4477 Pike's Landing Road	Fairbanks, AK 99709	
Summit Lake Lodge		Mile 195 Richardson Hwy	Glennallen, AK 99588	907–822–3969
Denali Princess Lodge	PO Box 110		McKinley Park, AK 99755	907–683–2282
Fairview Motel		1930 Glen Hwy	Palmer, AK 99645	907–745–1505
Arizona				
Clarion Hotel Tucson Airport		6801 S Tucson Blvd	Tucson, AZ 85706	602–746–3932
California				
Marina Village Inn		3 Pacific Marina	Alameda, CA 94501	510–523–9450
Angels Inn Motel	PO Box 521	600 N Main	Angels Camp, CA 95221	209–736–4192
Best Western Casa Grande Inn		850 Oak Park Road	Arroyo Grande, CA 93420	805–481–7398
E–Z 8 Motels Inc		555 Camino Mercado	Arroyo Grande, CA 93420	805–481–4774
Best Western Inn		2620 Pierce Road	Bakersfield, CA 93308	805–327–9651
Comfort Inn Bakersfield		2514 White Lane	Bakersfield, CA 93304	805–833–8000
Courtyard By Marriott—Bakersfield		3601 Marriott Drive	Bakersfield, CA 93308	805–324–6660
E–Z 8 Motels Inc		5200 Olive Tree Court	Bakersfield, CA 93308	805–392–1511
E–Z 8 Motels Inc		2604 Pierce Road	Bakersfield, CA 93308	805–322–1901
Econo Lodge		2700 White Lane	Bakersfield, CA 93304	805–832–3111
E–Z 8 Motels Inc		900 W Rice Street	Blythe, CA 92225	619–922–9191
Ramada Inn Burbank Airport		2900 N San Fernando Blvd	Burbank, CA 91504	818–843–5955
Days Inn San Fernando Valley		20128 Roscoe Blvd	Canoga Park, CA 91306	818–341–7200
Ramada Inn Suites—Carlsbad		751 Macadamia Drive	Carlsbad, CA 92009	619–436–2285
E–Z 8 Motels Inc		1581 Concord Avenue	Concord, CA 94520	510–674–0888
Sheraton Hotel And Conference Center		45 John Glenn Drive	Concord, CA 94520	510–825–7700
Best Western Corte Madera Inn		1815 Redwood Hwy	Corte Madera, CA 94925	415–924–1502
Red Lion Hotel/Orange County Airport		3050 Bristol Street	Costa Mesa, CA 92626	714–540–7000
Pacific Motor Hotel	PO Box 595	440 Hwy 101 North	Crescent City, CA 95531	707–464–4141
Howard Johnson's Plaza Hotel		5990 Green Valley Circle	Culver City, CA 90230	310–641–7740
Dana Point Hilton		34402 Pacific Coast Hwy	Dana Point, CA 92629	714–661–1100
Embassy Suites Hotel		8425 E Firestone Blvd	Downey, CA 90241	310–861–1900
St. Francis Motel		1368 E Main Street	El Cajon, CA 92021	619–444–8147
E–Z 8 Motels Inc		455 Wake Avenue	El Centro, CA 92243	619–352–6620

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

E-Z 8 Motels Inc		3331 N Texas Street	Fairfield, CA 94533	707-428-8161
Fresno Hilton		1055 Van Ness	Fresno, CA 93710	209-485-9000
Red Lion Hotel		221 East Glenoaks Blvd Ste 200	Glendale, CA 91207	818-956-5466
Comfort Inn		24997 Mission Blvd	Hayward, CA 94544	510-538-4466
Ramada Inn Hemet		3885 West Florida Avenue	Hemet, CA 92545	909-929-8900
Sunset 8 Motel		6516 Sunset Blvd	Hollywood, CA 90028	213-469-5051
Keefer's Inn		615 Canal Street	King City, CA 93930	408-385-4843
E-Z 8 Motels Inc		7851 Fletcher Parkway	LA Mesa, CA 92042	619-698-9444
Days Inn La Palma		3 Centerpointe Drive	LA Palma, CA 90623	714-670-1400
Saddleback Inn	PO Box 1890	300 S State Hwy 173	Lake Arrowhead, CA 92352	714-336-3571
E-Z 8 Motels Inc		43530 N 17th Street West	Lancaster, CA 93534	805-945-9477
E-Z 8 Motels Inc		7458 Broadway	Lemon Grove, CA 91945	619-462-7022
Holiday Inn Convention World Trade Ctr.		500 East First Street	Long Beach, CA 90802	310-435-8511
Comfort Inn—Eagle Rock		2300 W Colorado Blvd	Los Angeles, CA 90041-1145	213-256-1199
Wilshire Motel		12023 Wilshire Blvd	Los Angeles, CA 90025	310-478-3545
Barnabey's Hotel		3501 Sepulveda Blvd	Manhattan Beach, CA 90266	310-545-8466
Mariposa Lodge	PO Box 733	1052 Hwy 140	Mariposa, CA 95338	209-966-3607
Millwood Inn		1375 El Camino Real	Millbrae, CA 94030	415-583-3935
Ramada Inn Modesto		2001 W Orangeburg Avenue	Modesto, CA 95350	209-521-9000
Red Lion Hotel Modesto		1150 9th Street	Modesto, CA 95354	209-526-6000
Holiday Inn Resort		1000 Aquajito Road	Monterey, CA 93940	408-373-6141
Best Western Image Suites		24840 Elder Avenue	Moreno Valley, CA 92557	714-924-4546
E-Z 8 Motels Inc		607 Roosevelt Avenue	National City, CA 91950	619-474-7502
E-Z 8 Motels Inc		1700 Plaza Blvd	National City, CA 91950	619-474-6491
E-Z 8 Motels Inc		5555 Cedar Street	Newark, CA 94560	510-794-7775
E-Z 8 Motels Inc		2434 W Hillcrest Drive	Newbury Park, CA 91320	805-499-0755
E-Z 8 Motels Inc		8471 Enterprise Way	Oakland, CA 94621	510-562-4888
Country Suites By Carlson		231 N Vineyard Avenue	Ontario, CA 91764	714-983-8484
Holiday Inn Express		74675 Hwy 111	Palm Desert, CA 92260	619-340-4303
Best Western Host Hotel		1633 S Palm Canyon	Palm Springs, CA 92264	619-325-9177
Ramada Hotel Resort		1800 E Palm Canyon Drive	Palm Springs, CA 92264	619-323-1711
E-Z 8 Motels Inc		430 W Palmdale Blvd	Palmdale, CA 93551	805-273-6400
Best Western Black Oak Motor Lodge		1135 24th Street	Paso Robles, CA 93446	805-238-4740
Sheraton Inn Pleasanton		5115 Hopyard Road	Pleasanton, CA 94588	510-460-8800
Days Inn Sunrise		11131 Folsom Blvd	Rancho Cordova, CA 95670	916-635-0666
Red Lion Inns, Sonoma County		1 Red Lion Drive	Rohnert Park, CA 94928	707-584-5466
Best Inn		8714 E Valley Blvd	Rosemead, CA 91770	818-571-6942
Capitol Center Travelodge		1111 H Street	Sacramento, CA 95814	916-444-8880
E-Z 8 Motels Inc		1750 S Waterman Avenue	San Bernardino, CA 92408	714-888-4827
Ramada Inn San Bernardino		2000 Ostrems Way	San Bernardino, CA 92407	714-887-3001
Holiday Inn San Clemente Resort		111 S Avenue De Estrella	San Clemente, CA 92672	714-361-3000
Days Inn Downtown		1449 9th Avenue	San Diego, CA 92101	619-239-9113
E-Z 8 Motels Inc		1010 Outer Road	San Diego, CA 92154	619-575-8808
E-Z 8 Motels Inc		3333 Channel Way	San Diego, CA 92110	619-223-9500
E-Z 8 Motels Inc		4747 Pacific Hwy	San Diego, CA 92110	619-294-2512
E-Z 8 Motels Inc		3325 Midway Drive	San Diego, CA 92110	619-224-3166
E-Z 8 Motels Inc		2484 Hotel Circle Place	San Diego, CA 92108	619-291-8252
Embassy Suites Hotel		4550 La Jolla Village Drive	San Diego, CA 92122	619-453-0400
Hyatt Islandia Hotel		1441 Quivira Road	San Diego, CA 92109-7898	619-224-1234
Red Lion Hotel—San Diego		7450 Hazard Center Drive	San Diego, CA 92108	619-297-5466
San Diego Marriott Hotel And Marina		333 W Harbor Drive	San Diego, CA 92101-7709	619-234-1500
Travelodge Sports Arena		3737 Sports Arena Blvd	San Diego, CA 92110	619-226-3711
Comfort Inn		240 7th Street	San Francisco, CA 94103	415-861-6469
Grant Plaza Hotel		465 Grant Avenue	San Francisco, CA 94108	415-434-3883
The Chancellor Hotel		433 Powell Street	San Francisco, CA 94102	415-362-2004
E-Z 8 Motels Inc		2050 N First Street	San Jose, CA 95131	408-436-0636
E-Z 8 Motels Inc		1550 N First Street	San Jose, CA 95112	408-453-1830
Red Lion Hotel—San Jose		2050 Gateway Place	San Jose, CA 95110	408-453-4000
San Jose Hilton And Towers		300 Alameda Blvd	San Jose, CA 95110	408-287-2100
E-Z 8 Motels Inc		3550 El Camino Real	Santa Clara, CA 95051	408-246-3119
Casa Blanca Motel		101 Main Street	Santa Cruz, CA 95060	408-423-1570
Santa Maria Airport Hilton Hotel		3455 Skyway Drive	Santa Maria, CA 93455	805-928-8000
Best Western Trailside Inn	PO Box 759	2785 Main Street	Susanville, CA 96130	916-257-4123
Circle C		6340 El Rey Avenue	Twenty Nine Palms, CA 92277	619-367-7615
E-Z 8 Motels Inc		4 Mariposa Street	Vallejo, CA 94590	707-554-1840
Marina Motel		3130 Washington Blvd	Venice, CA 90291	310-821-5086
E-Z 8 Motels Inc		15368 La Paz Avenue	Victorville, CA 92392	619-243-2220
E-Z 8 Motels Inc		15401 Park Avenue East	Victorville, CA 92392	619-241-7516
Best Western Westminster Inn		5755 Westminster Blvd	Westminster, CA 92683	714-898-4043
Delaware				
New Devon Inn	PO Box 516	2nd & Market Streets	Lewes, DE 19958	302-645-5973
Newark Travelodge		268 East Main Street	Newark, DE 19711	302-737-5050
Georgia				
Super 8 Motel Albany		2444 North Slappy Blvd	Albany, GA 31702	912-888-8388
Residence Inn Alpharetta		5465 Windward Parkway West	Alpharetta, GA 30201	404-664-0664
Atlanta Hilton And Towers		255 Courtland Street NE	Atlanta, GA 30303	404-659-2000
Doubletree Hotel Atlanta Concourse		7 Concourse Parkway	Atlanta, GA 30328	404-395-3900
Regency Suites Hotel		975 West Peachtree Street NE	Atlanta, GA 30309	404-876-5003

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

Residence Inn By Marriott		1901 Savoy Drive	Atlanta, GA 30341	404–455–4446
Sheraton Colony Square Hotel		188 Fourteenth Street NE	Atlanta, GA 30361	404–892–6000
Summerfield Suites Hotel		505 Pharr Road	Atlanta, GA 30305	404–262–7880
Super 8 Motel Atlanta		301 Fulton Industrial Circle	Atlanta, GA 30336	404–696–9713
Days Inn Augusta		3654 Wheeler Road	Augusta, GA 30909	706–868–8610
Super 8 Motel Augusta		2137 Gordon Hwy	Augusta, GA 30906	706–738–5018
Ramada Inn Macon		5009 Harrison Road	Macon, GA 31206	912–474–0871
Madison Travelodge		2091 Eatonton Road	Madison, GA 30650	706–342–7800
Sheraton Inn Atlanta Northwest		1775 Parkway Place	Marietta, GA 30067	404–428–4400
Travelodge N. W. Atlanta		1940 Leland Drive	Marietta, GA 30067	404–952–0052
Atlanta Hilton Northeast		5993 Peachtree Industrial Blvd	Norcross, GA 30092	404–447–4747
Travelodge N.E. Atlanta		6045 Oakbrook Parkway	Norcross, GA 30093	404–449–7322
Travelodge #1052		100 Westview Lane	Perry, GA 31069	912–987–7355
Savannah deSoto Hilton		15 E Liberty Street	Savannah, GA 31401	912–232–9000
Charter House Inn		2710 Osborne Road	St. Mary's, GA 31558	912–882–6250
King & Prince Beach Resort		201 Arnold Road	St. Simon's Island, GA 31522	912–638–3631
Thomson Travelodge		1847 Washington Road	Thomson, GA 30824	706–595–8700
Days Inn Union City		6840 Shannon Parkway South	Union City, GA 30291	404–964–3777
Idaho				
Capri Motel		2600 Fairview Avenue	Boise, ID 83702	
Idanha Hotel		928 Main	Boise, ID 83702	
Rodeway Inn		1115 N Curtis	Boise, ID 83704	
Shilo Inn		4111 Broadway Avenue	Boise, ID 83705	
Airport Inn		409 E Cedar Street	Hailey, ID 83333	
Silver Horn Motor Inn		699 W Cameron	Kellogg, ID 83837	
Riverside Inn		255 Portneuf	Lava Hot Springs, ID 83246	
Evergreen Motel		2125 3rd Avenue N	Lewiston, ID 83501	
Illinois				
Holiday Inn—Alsip		5000 W 127th Street	Alsip, IL 60658	708–371–7300
Super 8 Motel—Alton		1800 Homes Adams Parkway	Alton, IL 62202	618–465–8885
Random House Motel		4205 St Charles Road	Bellwood, IL 60104	708–544–5585
Super 8 Motel—Carbondale		1180 E Main Street	Carbondale, IL 62901	618–457–8822
Budgetel Inn—Champaign		302 W Anthony	Champaign, IL 61821	217–356–8900
Red Roof Inn—Champaign		212 W Anthony Drive	Champaign, IL 61820	217–352–0101
Courtyard By Marriott Chicago Downtown.		30 East Hubbard Street	Chicago, IL 60611	312–329–2500
O'Hare Hilton Hotel		11601 West Touhy Avenue	Chicago, IL 60666	312–686–8000
Stouffer Riviere Hotel		1 West Wacker Drive	Chicago, IL 60601	312–372–7200
Drury Inn—Collinsville		602 North Bluff Road	Collinsville, IL 62234	618–345–7700
Pear Tree Inn		552 Ramada	Collinsville, IL 62234	618–345–9500
Super 8 Motel—Collinsville		#2 Gateway Drive	Collinsville, IL 62234	618–345–8008
Super 8 Motel—East Peoria		725 Taylor Street	East Peoria, IL 61611	309–698–8889
Days Inn—Effingham	PO Box 1168	West Fayette Avenue	Effingham, IL 62401	217–342–9271
Super 8 Motel—Effingham		1400 Thelma Keller Drive	Effingham, IL 62401	217–342–6888
Super 8 Motel—Fairview Heights		#45 Ludwig Drive	Fairview Heights, IL 62208	618–398–8338
Best Western Inn—Lagrange		5631 S Lagrange Road	Lagrange, IL 60525	708–352–2480
Best Western Airport Inn	Box 348–1	Rt 3	Marion, IL 62959	618–993–3222
Super 8 Motel—Marion		2601 W Deyoung Street	Marion, IL 62959	618–993–5577
Super 8 Motel—Mokena		9485 W 191st	Mokena, IL 60448	708–479–7808
Super 8 Motel—Mt. Vernon		401 S 44th Street	Mt. Vernon, IL 62864	618–242–8800
Thrifty Inn—Mt. Vernon		I–57 & I–64	Mt. Vernon, IL 62864	618–244–7750
Super 8 Motel—Mundelein		1950 S Lake Street	Mundelein, IL 60060	708–949–8842
Travelodge—Naperville		1617 Naperville Road	Naperville, IL 60563	708–505–0200
Travelers Inn Motel		1801 E Main Street	Olney, IL 62450	618–393–2186
Red Roof Inn—Peoria		4031 N War Memorial Drive	Peoria, IL 61614	309–685–3911
Super 8 Motel—Peoria		4025 W Memorial Drive	Peoria, IL 61614	309–688–8074
Days Inn—Peru	PO Box 626	I–80 & 251	Peru, IL 61354	815–224–1060
Lighthouse Motel, Inc		3160 N River Road	River Grove, IL 60171	708–456–3600
Mil—Pau Motor Inn		204 N Jackson	Robinson, IL 62454	618–544–2308
Super 8 Motel—Romeoville		1301 Marquette Drive	Romeoville, IL 60441	708–759–8880
Super 8 Motel—Salem	Rt 50 West	I–57	Salem, IL 62881	618–548–5882
Hampton Inn—Chicago South		17355 Tollview Drive	South Holland, IL 60473	708–321–3200
Best Western Lincoln Plaza		101 E Adams	Springfield, IL 62701	217–523–5661
Comfort Inn—Springfield		3442 Freedom Drive	Springfield, IL 62704	217–787–2250
Super 8 Motel—St. Charles		1520 E Main Street	St. Charles, IL 60174	708–377–8388
Best Western Cunningham Place		1907 N Cunningham	Urbana, IL 61801	217–367–8331
Kentucky				
Cincinnati Riverfront Travelodge		222 York Street	Newport, KY 41071	606–291–4434
Louisiana				
Red Roof Inn		102 Constitution Drive	West Monroe, LA 71292	318–388–2420
Massachusetts				
Colonial Inn		48 Monument Square	Concord, MA 01742	508–369–9200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

Maryland				
Thunderbird Apartments		9265 Crain Hwy	Bel Alton, MD 20611	301–932–6255
Lexington Park Super 8 Motel		9290 Three Notch Road	California, MD 20619	301–862–9822
Capitol Heights Super 8 Motel		150 Hampton Park Blvd	Capitol Heights, MD 20743	301–350–8899
Brampton Bed & Breakfast		25227 Chestertown Road	Chestertown, MD 21620	410–778–1860
Havre de Grace Super 8 Motel		929 Pulaski Hwy	Havre De Grace, MD 21078	410–939–1880
Thurmont Super 8 Motel		300 Tippin Drive	Thurmont, MD 21788	301–271–7888
Minnesota				
Brainerd Days Inn		1630 Fairview Drive N	Brainerd, MN 56401	218–829–0391
Minneapolis—St. Paul Airport Hilton		3800 East 80th Street	Minneapolis, MN 55425	612–854–2100
The Minneapolis Hilton And Towers		1001 Marquette Avenue	Minneapolis, MN 55403	612–376–1000
Sunwood Inn Hotel		One Sunwood Plaza	St. Cloud, MN 56301	612–253–0606
Missouri				
Mountain Oak Lodge	PO Box 1106		Branson, MO 65616	417–338–2141
Red Roof Inn #32		13712 E 42nd Ter	Independence, MO 64055	816–373–2800
Capitol Plaza Hotel		415 West McCarty	Jefferson City, MO 65101	314–635–1234
Comfort Inn		1926 Jefferson Street	Jefferson City, MO 65101	314–636–2797
Inn Towne Lodge		2650 NE 43rd Street	Kansas City, MO 64117	816–453–6550
Red Roof Inn 51		3636 Randolph Rd NE	Kansas City, MO 64117	816–452–8585
Knights Court		3501 W Broadway	Sedalia, MO 65301	816–826–6400
Best Western Deerfield Inn		3343 E Battlefield	Springfield, MO 65804	
Days Inn		2700 N Glenstone	Springfield, MO 65803	417–865–5511
Holiday Inn North I–44		2720 North Glenstone	Springfield, MO 65803	417–865–8600
Park Inn International		1772 South Glenstone	Springfield, MO 65804	417–882–1113
Ramada Hawthorne Park		2431 North Glenstone	Springfield, MO 65803	417–831–3131
Best Western Airport Inn		10232 Natural Bridge	St. Louis, MO 63134	314–427–5955
Budget Host Inn/Way—Station Hotel	PO Box 278		West Plains, MO 65775	417–256–4135
Mississippi				
Days Inn—Forest	PO Box 1523	Rt 2	Forest, MS 39074	601–469–2500
Hampton Inn—Briarwood		465 Briarwood Drive	Jackson, MS 39206	601–956–3611
Holiday Inn—North	I–55 North		Jackson, MS 39206	601–366–9411
Holiday Inn—Southwest		2649 US 80 West	Jackson, MS 39204	601–355–3472
Ramada Inn & Convention Center		854 North Gloster Street	Tupelo, MS 38801	601–844–4111
New Jersey				
Marriott's Seaview Golf Resort		401 S York Road	Absecon, NJ 08201	609–652–2307
Best Western Gloucester Inn		Rt 130 & N–S Freeway	Gloucester, NJ 08030–1699	609–456–7400
Red Roof Inn—Princeton North		208 New Road	Monmouth Jct, NJ 08852	908–821–8800
Courtyard By Marriott Mt. Laurel		1000 Century Pkwy	Mt. Laurel, NJ 08054	609–273–4400
Hilton Gateway		Gateway Ctr Raymond Blvd	Newark, NJ 07102	201–622–5000
Embassy Suites Hotel		909 Parsippany Blvd	Parsippany, NJ 07054	201–334–1440
Princeton Marriott		201 Village Blvd	Princeton, NJ 08540	609–452–7900
Days Hotel Secaucus		455 Harmon Meadow Blvd	Secaucus, NJ 07094	201–617–8888
Embassy Suites Secaucus		455 Plaza Drive	Secaucus, NJ 07094	201–864–7300
Somerset Marriott		110 Davidson Avenue	Somerset, NJ 08873	908–560–0500
Glenpointe Marriott Teaneck		100 Frank West Burr Blvd	Teaneck, NJ 07666	201–836–0600
Tinton Falls Courtyard By Marriott		600 Hope Road	Tinton Falls, NJ 07724	908–389–2100
Courtyard By Marriott Hanover	157 Rt 10		Whippany, NJ 07981	201–887–8700
Nevada				
Cal Dan Prtnrs Ltd Prntr. Dba Town Hall Hotel.		4155 Koval Lane	Las Vegas, NV 89109	702–731–2111
Flamingo Hilton Las Vegas		3555 Las Vegas Blvd South	Las Vegas, NV 89109	702–733–3320
Las Vegas Hilton		3000 Paradise Road	Las Vegas, NV 89109	702–732–5111
Ramada Hotel San Remo		115 E Tropicana Avenue	Las Vegas, NV 89109–7304	702–739–9000
El Rey Lodge		430 S Hobson At Hwy 95	Searchlight, NV 89046	702–297–1144
New York				
Maybrook/Montgomery Super 8 Motel		207 Montgomery Road	Montgomery, NY 12549	914–457–3143
Holiday Inn—Schenectady		100 Nott Terrace	Schenectady, NY 12308	518–393–4141
Hilton At Syracuse Square		500 South Warren Street	Syracuse, NY 13202	315–471–7300
Super 8 Motel of Troy		1 Fourth Street	Troy, NY 12180	518–274–8800
South Carolina				
Holley Inn		235 Richland Avenue	Aiken, SC 29801	803–648–4265
Quality Inn		3509 Clemson Blvd	Anderson, SC 29621	803–226–1000
Economy Inns of America		1776 Burning Tree Road	Columbia, SC 29210	803–798–9210
Best Way Motel		1304 Poinsett Hwy	Greenville, SC 29609	803–271–1700
Texas				
Country Suites		1075 Wet N Wild Way	Arlington, TX 76011	817–261–8900
Drury Inn Austin North		6511 IH 35 N	Austin, TX 78752	512–467–9500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

Bay City Inn	PO Box 129	Rt 1	Bay City, TX 77414	409-245-0985
Drury Inn Corpus Christi		2021 N Padre Island	Corpus Christi, TX 78408	512-289-8200
Race Track Inn		6255 I H 37	Corpus Christi, TX 78409-2717	512-289-0991
Drury Inn Dallas North		2421 Walnut Hill Lane	Dallas, TX 75229	214-484-3330
Sheraton Mockingbird Hotel		1893 W Mockingbird Lane	Dallas, TX 75235	214-634-8850
El Paso Airport Hilton		2027 Airway Blvd	El Paso, TX 79925	915-778-4241
The Victorian Condo—Hotel		6300 Seawall Blvd	Galveston, TX 77551	409-740-3555
Hilton Southwest		6780 Southwest Freeway	Houston, TX 77074	713-977-7911
Houston West Hilton Inn		12401 Katy Freeway	Houston, TX 77095	713-496-0090
Nassau Bay Hilton And Marina		3000 Nassau Road One	Houston, TX 77058	713-333-9300
Ramada Inn Houston South/Nasa		1301 Nasa Road 1	Houston, TX 77058	713-488-0220
Westchase Hilton And Towers		9999 Westheimer	Houston, TX 77042	713-974-1000
Drury Inn DFW Airport South		4210 W Airport Freeway	Irving, TX 75062	214-986-1200
Brazosport Hilton Inn		925 Hwy 322 W	Lake Jackson, TX 77566	409-297-1161
Drury Inn McAllen		612 West Exprwy 83	McAllen, TX 78501	512-687-6100
Hampton Inn McAllen		300 West Exprwy 83	McAllen, TX 78501	512-682-4900
McAllen Airport Hilton Inn		2721 S 10th Street	McAllen, TX 78503	210-687-1161
Thrifty Inn McAllen		620 West Exprwy 83	McAllen, TX 78501	512-631-6700
Odessa Hilton		5200 E University	Odessa, TX 79751	915-368-5885
Richardson Hilton		1981 N Central Exprwy	Richardson, TX 75080	214-644-4000
Drury Inn San Antonio East #41		8300 I H 35 N	San Antonio, TX 78239	512-654-1144
Drury Suites San Antonio Airport		8811 Jones Maltsheigor Road	San Antonio, TX 78216	512-300-8100
Vermont				
Ho Hum Motel		1200 Shelburne Road	S Burlington, VT	
Susse Chalet Inn		Sykes Avenue	White River Jct., VT	
Washington				
Nendels Valu Inn		4117 196th Street SW	Lynnwood, WA 98036	206-775-8030
Stouffer Madison Hotel		515 Madison Street	Seattle, WA 98104	206-583-0300
Comfort Inn Valley		N 905 Sullivan Road	Veradale, WA 99037	509-924-3838
CORRECTIONS				
Georgia				
Howard Johnson Athens		2465 West Broad Street	Athens, GA 30606	706-548-1111
Hampton Inn Savannah Stephenson		201 Stephenson Avenue	Savannah, GA 31406	912-355-4100
Howard Johnson Savannah West Boundary.		224 West Boundary Street	Savannah, GA 31401	912-232-4371
Idaho				
Evergreen		635 W Main	Burley, ID 83318	
White Pine Motel		222 Brown Avenue	Orofino, ID 83544	
Massachusetts				
Boston Marriott Copley Place		110 Huntington Avenue	Boston, MA 02116	617-236-5800
Great Vacations	PO Box 1748	2660 Rt 6a	Brewster, MA 02631	508-896-2090
Royal Sonesta Hotel		5 Cambridge Pkwy	Cambridge, MA 02142	617-491-3600
Howard Johnson Lodge		740 Elm Street	Concord, MA 07142	508-369-6100
Sheraton Ocean Park Inn	Rt 6		Eastham, MA 02642	508-255-5000
Ancyent Mariner		9 Mechanic Street	Foxborough, MA 02035	508-543-5564
Comfort Suites Hotel		106 Bank Road	Haverhill, MA 01832	508-374-7755
Orleans Holiday Motel	48 Rt 6A		Orleans, MA 02653	508-255-1514
Pilgrim Sands Motel		150 Warren Avenue Rt 3a	Plymouth, MA 02360	508-747-0900
Provincetown Inn		1 Commerical Street	Provincetown, MA 02657	508-487-9500
White Wind Inn, Inc.		174 Commercial Street	Provincetown, MA 02657	508-487-1526
Ramada Inn		940 Forbes Road	Seekonk, MA 02771	508-336-7300
Moby Dick Motel		767 Rt 28	South Harwich, MA 02661	508-432-1434
Gull Wing Suite Hotel Inc.		822 Main Street	South Yarmouth, MA 02664	508-394-9300
Southboro Motor Lodge		50 Turnpike Road	Southboro, MA 01745	508-481-7061
Swansea Motor Inn		999 G A R Hwy	Swansea, MA 02777	508-675-7700
Westfield Motor Inn		21 Southamton Road	Westfield, MA 01085	413-568-2821
Radisson Hotel		2 Forbes Road	Woburn, MA 01801	617-932-0999
Missouri				
Motel 6 #797		1624 Jefferson Street	Jefferson City, MO 65109	314-634-4220
Velt's Village		1309 Jefferson	Jefferson City, MO 65101	314-636-6167
Courtyard By Marriott Kansas City		500 E 105th Street	Kansas City, MO 64131	816-941-3333
Village Inn Motel	PO Box 6736		Kirksville, MO 63501	816-665-3722
Mansion At Elfindale		1701 South Fort	Springfield, MO 65807	417-831-5400
Residence Inn Westport		1881 Craigshire	St. Louis, MO 63146	314-469-0060
Residence Inn By Marriott		1100 McMorrow	St. Louis, MO 63117	314-662-1900
Ramada Inn		Drawer L	Waynesville, MO 65583	314-336-3121
Texas				
Quality Inn, Ennis		I-45 Hwy 34	Ennis, TX 75119	214-875-9641

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST JANUARY 13, 1993 UPDATE—Continued

Vermont				
Maplewood Motel—Comfort Inn		Berlin Four Corners	Berlin, VT 05602	802-229-5291
Brandon Inn		20 Park Street	Brandon, VT	
Super 8 Motel		Putney Road	Brattleboro, VT	
Groton State Park—Seyon Main Lodge			Groton, VT 05676	802-244-8711
Andrie Rose Inn		13 Pleasant Street	Ludlow, VT	802-228-4846
Longmeadow Farm Bed and Breakfast Tourist.		Rfd #1-Box 5	Ryegate, VT	802-757-2538
Swiss Host Motel House Unit		1272 Williston Road	S Burlington, VT 05403	802-862-5734
Liftline Lodge—Glocken Hoff		Stratton Mountain Road	Stratton Mountain, VT	
Doveberry Inn	Rt 100		W Dover, VT 05356	802-464-5652
P & H Truck Stop	Rt 302 & I91		Wells River, VT 05081	802-429-2141
Crafts Inn—Alonzo's		Main Street	Wilmington, VT	
Deletions				
(None)				

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Tuesday
February 2, 1993

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Oil Spill Prevention and Response Plans; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, and 176

[Docket No. HM-214; Amendment Nos. 171-119, 172-128, 173-232, 174-71, and 176-32]

RIN 2137-AC31

Oil Spill Prevention and Response Plans

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule is applicable to bulk packagings containing oil, specifically cargo tanks (tank trucks), railroad tank cars, and portable tanks. RSPA is amending the Hazardous Materials Regulations to specify minimum standards for the safe transportation of oil that is currently unregulated, and to require the preparation of plans for preventing and responding to the discharge of oil. This rule also implements requirements of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990. The preparation of plans for preventing and responding to the discharge of hazardous substances will be addressed in a separate rulemaking. In addition, requirements for pipelines are addressed in a separate rulemaking published under Docket No. PS-130, 58 FR 244 (January 5, 1993).

DATES: The effective date of this interim final rule is February 2, 1993. Persons subject to this rule must comply with its requirements by October 1, 1993, except for the requirements of § 171.5(c) which requires compliance by February 18, 1993. Comments must be received on or before April 5, 1993.

ADDRESSES: Address comments to the Dockets Unit, Research and Special Programs Administration, Department of Transportation, room 8421, 400 Seventh Street, SW., Washington, DC 20590-0001. Comments should identify the docket number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in the Department of Transportation headquarters building (Nassif Building) on the eighth floor. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Allan, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-4488 or Robert A. Monniere, Office of the Chief Counsel, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-4400.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, several major oil discharges damaged the marine environment of the United States. In response to those discharges, Congress passed the Oil Pollution Act of 1990 (OPA) (Pub. L. 101-380). OPA includes amendments to the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1251 *et seq.* These amendments mandate greater oil spill prevention efforts and oil spill response capability. The OPA is designed "to create a system in which private parties supply the bulk of any equipment and personnel needed for oil spill response in a given area." H.R. Rep. No. 653, 101st Cong., 2d Sess., 101, 148, reprinted in 1990 U.S. Code Cong. & Admin. News 779, 827. In addition to oil, certain requirements of OPA also apply to hazardous substances.

The statute directs the President to issue regulations establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from onshore facilities, and to contain such discharges. 33 U.S.C. 1321(j)(1)(C). In addition, the statute directs the President to issue regulations requiring an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines. 33 U.S.C. 1321(j)(5).

On October 18, 1991, the President signed Executive Order (E.O.) 12777 (56 FR 54757, October 22, 1991). Section 2(b)(2) of E.O. 12777 delegates authority to establish procedures, methods, and equipment and other requirements for equipment to prevent and contain discharges of oil and hazardous substances from vessels and transportation-related onshore facilities and deepwater ports * * * to the Secretary of Transportation (the Secretary).

The Secretary re-delegated this OPA authority to the Commandant, United States Coast Guard; the Administrator, Maritime Administration; and the Administrator, Research and Special Programs Administration (RSPA). 57 FR 8581 (March 11, 1992). The Secretary's re-delegation grants the RSPA Administrator authority to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges from, and to contain oil and hazardous substances in pipelines, motor carriers, and railways." 57 FR 8582.

In a more recent delegation, the RSPA Administrator received authority under section 2(d)(2) of E.O. 12777 to: (1) Issue regulations requiring submission of OPA response plans for pipelines, railroads, and motor carriers, (2) review and approve response plans for pipelines, and (3) authorize pipelines to operate pending approval of response plans. 57 FR 62484 (December 31, 1992). Under that same delegation, the Federal Highway Administrator has authority to review and approve OPA response plans for motor carriers and to authorize them to operate pending approval of response plans. Similarly, the Federal Railroad Administrator has authority to review and approve OPA response plans for railroads and to authorize them to operate pending approval of response plans.

The Coast Guard has response plan authority covering vessels and marine transportation-related (MTR) facilities including motor carriers and railroads, if those facilities are transferring oil or a hazard substance to or from a vessel. The Coast Guard published an advance notice of proposed rulemaking (ANPRM) (56 FR 43534, August 30, 1991) and a notice of proposed rulemaking (NPRM) (57 FR 27514, June 19, 1992) containing proposed regulations implementing the OPA requirements applicable to vessels. The Coast Guard published an ANPRM (57 FR 8708, March 11, 1992) containing proposed regulations implementing the OPA requirements applicable to MTR facilities. In addition, on September 15, 1992, the Coast Guard issued two navigation and vessel inspection circulars (NVIC) that serve as guidelines for preparing response plans for certain vessels and marine transportation-related facilities (NVICs 7-92 and 8-92).

This rulemaking addresses the requirements of the OPA as they apply to motor carriers and railroads. It also addresses similar requirements for portable tanks. As used in this rule, an owner or operator of an onshore facility is the carrier as defined in 49 CFR 171.8.

In accordance with 5 U.S.C. 553(b)(3)(B), this interim final rule is issued without prior notice of proposed rulemaking and opportunity to comment. The Oil Pollution Act of

1990, Public Law 101–380, 104 Stat. 484, (OPA 90) which amends the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., contains statutory deadlines for the preparation and submission of response plans for onshore facilities (including, but not limited to, motor vehicles and rolling stock). After these deadlines, carriers not in compliance with the Act are prohibited from transporting oil in bulk packagings.

In order to allow the timely implementation of OPA 90, RSPA determined that good cause exists for finding that notice and comment is impracticable and contrary to public interest. RSPA believes that any further delay in issuing these regulations would create an undue hardship on the regulated community and have the potential to disrupt the sale and delivery of oil.

Although an opportunity for public comment has not been provided prior to issuing this interim final rule, RSPA seeks public comment to assure that the rule is feasible and workable. If appropriate, RSPA will amend the provisions of this rule. RSPA will consider holding public hearings to obtain comments at a later date, if needed. As an interim final rule, this regulation is fully in effect and binding upon publication in the **Federal Register**.

Although no further regulatory action by RSPA is essential to implement this rule, RSPA encourages interested persons to participate in this rulemaking by submitting written views, data, or information on this interim final rule. Persons submitting comments should include their names and addresses, identify this rulemaking by the docket number stated in the heading of this rule and the specific section of the rule to which each comment applies, and give the basis for each comment. RSPA will consider all public comments and will make changes to this rule if public comments indicate a change is necessary.

II. Introduction

RSPA is requiring protection of the environment through response plan regulations applicable to the transportation of oil in bulk packagings. "Bulk packaging," as defined in § 171.8 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), includes containers with a maximum capacity greater than 450 liters as a receptacle for a liquid. Therefore, there should be no misunderstanding of the term "bulk packaging" by the transportation industry. Current standards for most hazardous materials use this breakpoint as the determinant to apply detailed requirements for packaging, marking and placarding that are appropriate to the greater threat that bulk quantities pose to life, property and the environment. These regulations are issued under sections of the FWPCA, 33 U.S.C. 1321(j) and the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. app. 1804. Under these requirements, a carrier of oil in bulk packagings is required to have a current, written basic response plan.

The basic plan must describe the manner of response to discharges in transportation, consider the maximum potential discharge, identify those persons to be contacted in the event of a discharge, identify those persons who will respond to a discharge, and be on file at specific locations.

In addition to the basic plan, RSPA is requiring more extensive planning requirements for each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons). Any person who transports oil in a bulk packaging in a quantity greater than 1,000 barrels must prepare and file, with a designated DOT official, an extensive response plan meeting the requirements of 33 U.S.C. 1321(j)(5).

Extensive response plans must identify a qualified individual having full authority to implement removal actions, identify the method of immediate communications between that individual and Federal and response personnel, identify and ensure the availability of private personnel and equipment necessary to remove a worst case discharge and to mitigate or prevent a substantial threat of such a discharge, and be consistent with the National Contingency Plan (NCP) and Area Contingency Plans (ACPs).

The NCP is a plan that outlines response actions for Federal agencies, in coordination with state and local agencies, in order to minimize the damage resulting from the discharge of oil or a hazardous substance. An ACP is a plan for a specific geographic area that describes responsibilities of the carrier and Federal, state, and local agencies in removing a worst case discharge, and in mitigating or preventing a substantial threat of such a discharge and the equipment necessary to remove a worst case discharge. ACPs are prepared by Area Committees, composed of Federal, state and local personnel, and under the direction of the Federal On-Scene Coordinator (OSC) for each area. For coastal areas, a Captain of the Port is the Federal OSC and for inland areas, an EPA regional administrator is the Federal OSC.

Because revisions to the NCP were not completed by August 18, 1992, owners and operators may base their response plans on the existing NCP published in 40 CFR part 300. ACPs are in various stages of development and in most areas will not be completed in time for facility owners or operators to consult when developing their response plans. Until the applicable ACP is completed, response plans submitted to meet the February 18, 1993 deadline should be consistent with the ACP or local contingency plan in effect on August 18, 1992. A response plan submitted after February 18, 1993 must be consistent with the applicable ACP or local contingency plan in effect when the response plan is submitted. If the NCP or ACP is revised within six months of the date of submission, the carrier's response plan may conform to the prior NCP or ACP.

III. Pollution Response Plans for Shipments of Oil in Bulk Packagings

RSPA is requiring protection of the environment through pollution response plan regulations applicable to the transportation of oil in bulk packagings. § 171.5 applies certain requirements in the HMR to the transportation of oil, consistent with requirements of the FWPCA. Under § 171.5(b), each carrier of a bulk packaging containing oil in a quantity of 1,000 barrels or less is required, under 33 U.S.C. 1321(j)(1)(C), to have a basic response plan.

In addition to having a basic response plan, under § 171.5(c), each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels is required, pursuant to 33 U.S.C. 1321(j)(5), to submit an extensive response plan meeting all the requirements of § 1321(j)(5). This more burdensome requirement is discussed in Section IV below.

In terms of volume carried, most packaged shipments of oil (e.g., gasoline, fuel oil and most crude oil) covered by the FWPCA are already regulated as hazardous materials under the HMR. Therefore, RSPA has decided not to issue a new, self-contained set of rules specifically to implement OPA 90 for transportation of oil in bulk packagings. In order to avoid duplicative regulatory schemes and to carry out the statutory mandates of the FWPCA and the HMTA, RSPA instead is amending the current hazardous materials transportation regulations.

Under these regulations, persons transporting, in intrastate, interstate or foreign commerce, oil in a package with a capacity over 450 liters are required to have a current basic written plan that:

(1) Describes the manner of response to discharges in transportation;

(2) Considers the maximum potential discharge of the contents from the package;

(3) Identifies persons and agencies (and their addresses and phone numbers) to be contacted concerning any discharge;

(4) Identifies who will respond to a discharge; and

(5) For motor carriers, is retained on file at the carrier's principal place of business and locations where dispatching occurs; or, for railroads, is retained on file at the carrier's principal place of business and the dispatcher's office.

In their development of generic response plans which conform with these requirements, carriers are expected to address plausible spill scenarios consistent with actual or potential threats they may experience in day-to-day operations. Thus, plans should reflect a wide range of situations, such as a slow leak from a discharge valve at an enroute location, to a catastrophic failure of a tank and a full release of the contents into a waterway. For each plausible situation, the plan must reflect a reasoned approach to containment and recovery operations by carrier or contractor personnel with the experience and capability to respond in a timely manner.

Carriers of oil are not required to prepare a separate plan for each cargo tank, tank car, and portable tank. Rather, they may develop nationwide, regional, or other types of generic pollution response plans. Plans prepared to meet the requirements of other agencies (e.g., the EPA) may be used or supplemented to meet the requirements of this regulation.

Comments are invited on the 450-liter threshold used in this rule. On the basis of comments on this rule, RSPA could raise or lower that threshold or determine that some other criteria are appropriate for determining who must prepare a response plan.

IV. Additional Requirements for Shipments of a Bulk Packaging Containing Oil in a Quantity Greater Than 1,000 Barrels

Under § 171.5(c), each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels must, pursuant to 33 U.S.C. 1321(j)(5), submit an extensive response plan meeting all the requirements of that section. Under 33 U.S.C. 1321(j)(5)(B)(iii) and (D), an owner or operator of an onshore facility that, because of its location, could reasonably be expected to cause "substantial harm" or "significant and substantial harm" to the environment by discharging oil into or on the navigable waters, or adjoining shorelines, must prepare and submit a response plan to the Secretary by February 18, 1993.

The statute does not define "substantial harm," or "significant and substantial harm." Section 1321 defines "onshore facility" as "any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land." 33 U.S.C. 1321(a)(10).

Although plans for "significant and substantial harm" facilities must be reviewed and approved by the Secretary, plans for "substantial harm" facilities do not require Secretarial review or approval. The response plan must, "to the maximum extent practicable," address both a "worst case discharge" of oil from the facility and "a substantial threat of such a discharge."

Each owner or operator of a non-marine transportation facility (MTR) required to prepare a response plan under section 1321(j)(5) must submit a response plan by February 18, 1993. After this date, an owner or operator must cease handling, storing, or transporting oil until it submits a response plan. In addition, after August 18, 1993, each owner or operator of any of these facilities may handle, store, or transport oil only if they are operating each facility in compliance with a response plan. Moreover, after August 18, 1993, each owner or operator of a "significant and substantial harm" facility may not handle, store, or transport oil at such a facility, unless or until the facility's response plan is approved.

If, however, a response plan has been submitted but not approved, the appropriate DOT modal administrator may authorize the facility to operate for up to two years after submission of the plan provided the owner or operator certifies that it has ensured the availability of private personnel and equipment to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Each extensive response plan prepared under 33 U.S.C. 1321(j)(5)(C) must:

(1) Be consistent with the requirements of the NCP and ACP;

(2) Identify the qualified individual having full authority to implement removal actions;

(3) Require immediate communications between the qualified individual and the appropriate Federal official and those persons providing personnel and equipment for the spill response;

(4) Identify, and ensure by contract or by other means approved by the appropriate DOT modal administrator, the availability of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge, including a discharge resulting from a fire or an explosion, and to mitigate or prevent a substantial threat of such a discharge;

(5) Describe the training, equipment testing, periodic unannounced drills, and response actions of persons at the facility, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of a discharge;

(6) Be updated periodically; and

(7) Be resubmitted for approval of each significant change.

Because these OPA 90 response plan requirements apply to cargo tanks and railroad tank cars, RSPA worked with the Federal Railroad Administration (FRA) and the Federal Highway Administration (FHWA) to analyze existing regulatory requirements and spill experience and, based thereon, determined an appropriate threshold for applying these extensive response plan requirements.

A. Existing Regulatory Requirements

A comprehensive regulatory regime exists which reduces the likelihood that any individual bulk packaging containing oil, because of its location, could cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. Most oils (e.g., gasoline, fuel oil and most crude oil) are regulated as hazardous materials under the HMR.

The HMR set forth requirements for classification, description, packaging, marking, labeling and placarding of hazardous materials. The HMR also contain requirements for HAZMAT employee training and for reporting of hazardous materials releases. Also, 49 CFR part 172, subpart G of the HMR, entitled Emergency Response Information, prescribes requirements for providing and maintaining emergency response information during transportation and at facilities where hazardous materials are loaded for transportation, stored incidental to transportation or otherwise handled during any phase of transportation. Operators of motor vehicles and trains carrying hazardous materials are required to carry emergency response information on each truck or train, including: A description of the hazardous material, the immediate hazards to health, the risk of fire or explosion, immediate precautions to take in the event of an accident or incident, immediate methods for handling fires, initial steps to be taken in the event of a spill or leak in the absence of a fire, and immediate first aid actions.

The Federal Motor Carrier Safety Regulations (FMCSR) apply to for-hire and private commercial motor vehicles (CMV) carrying property including vehicles used for the transportation of hazardous materials in interstate commerce and, in certain cases, intrastate commerce. Part 397 of the FMCSR, entitled, Transportation of Hazardous Materials, Driving and Parking Rules, contains regulations governing the attendance and surveillance of motor vehicles, routing guidelines, parking requirements, and other regulations that promote safety and protect the environment.

Rail transportation of most oil is subject to the HMR and other regulations. FRA has extensive regulations, issued under the Federal Railroad Safety Act (FRSA), which promote safety and protect the environment. In addition, FRA and the Federal Emergency Management Agency recently completed work on emergency response planning documents. FRA's Hazardous Materials Emergency Response Plan Guidance Document for Railroads emphasizes the preventive nature of planning and the importance of preparedness to mitigate the effect of an accident, especially one involving hazardous materials.

Transport vehicles (railroad tank cars, motor carrier cargo tanks, and intermodal portable tanks) are most vulnerable to spills during the loading and unloading process. The Coast Guard and EPA are issuing regulations that cover these operations.

B. Spill Data

Over the past decade, the combined domestic movements of petroleum by highway and rail, in any one year, have not exceeded five percent of the total volume of petroleum transported. Existing spill data reflect a small number of oil spills, and these spills from cargo tanks and railroad tank cars generally involve small quantities.

There are 3.6 million commercial motor vehicles with a gross vehicle weight rating over 10,000 lbs. registered in the United States. Approximately 120,000 commercial motor vehicles transport oil and derivatives in bulk cargo tanks. Another 2.5 million commercial motor vehicles transport oil and derivatives in non-bulk packagings.

In 1990, trucks accounted for 29.8 billion ton miles (2.8 percent) of the 1,075.2 billion ton miles of crude and petroleum products transported in the United States. Approximately 42,000 motor carriers may be subject to OPA 90 response plan requirements. Of the annual 66.7 million shipments of gasoline, fuel oil, and home heating oil by cargo tanks, one in 245,000 shipments results in a spill during transportation. Approximately 12 of those 273 spills enter a waterway.

The FRA identified approximately 600 freight railroads which may be affected by OPA 90 response plan requirements. FRA, based on data supplied by the industry, also identified 47 railroads that list a petroleum product as one of their top three transported commodities.

Annually, there are approximately 844,500 shipments of petroleum products. Of those shipments, approximately 60 result in release of the material. Over the last eight years, according to reports filed with RSPA's Hazardous Materials Information System, only one of those spills entered a waterway.

Additional data indicate the low probability of release in rail transportation of those types of materials addressed in this rulemaking. The following data are for combustible liquids, many of which are petroleum oils. They demonstrate that, for combustible liquids transported by rail, less than one-tenth of one percent of the tank cars involved release any cargo during transportation (including loading and unloading):

UNINTENTIONAL RELEASES OF COMBUSTIBLE LIQUIDS TRANSPORTED BY RAILROAD

	1988	1989	1990	1991
Cars originated	66,299	90,636	90,245	114,287
Percent releasing any cargo	.11	.09	.08	.06

The maximum possible spill into water from a single tank car is approximately 42,000 gallons, and the average spill size is about 1,800 gallons.

C. Conclusions

On the basis of the foregoing incident and spill statistics and the regulatory requirements currently applicable to transportation of oil in bulk packagings, RSPA believes there is a low risk of substantial environmental harm resulting from such spills. Therefore, RSPA concludes that shipments of bulk packagings containing oil in a quantity of 1,000 barrels or less could not, based on location, be reasonably expected to cause "substantial harm" to the environment by discharging into or on navigable waters or adjoining shorelines.

In addition, many carriers currently transporting oil, subject to the FWPCA, have already implemented procedures, required by the HMR, that satisfy some of the response plan requirements added by the OPA 90 (training and emergency response information requirements). Furthermore, it is not feasible for every railroad and every cargo tank carrier to prepare detailed plans for combatting discharge of oil in the event of a spill near every riverbank, bridge, culvert or other such location on every route the carriers' vehicles may traverse. These carriers' plans must, of necessity, be somewhat basic and generic.

Section 171.5(b) requires response planning for a far broader spectrum of facilities transporting oil than is required by section 1321(j)(5) of the FWPCA. These requirements, issued under the authority of the Hazardous Materials Transportation Act and 33 U.S.C. 1321(j)(1), apply not only to rail and motor carriers but also to air and water carriers transporting bulk packagings containing oil.

In summary, there are sufficient existing regulations and historical spill data to justify excepting carriers of bulk packagings containing oil in a quantity of 1,000 barrels or less, from the requirements to prepare and file extensive response plans. 33 U.S.C. 1321(j)(5). Those shipments in cargo tanks or tank cars could not reasonably be expected, because of their locations, to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines. While requiring the broad spectrum of carriers to prepare and submit the more extensive section 1321(j)(5) response plans would be an unnecessary burden on both industry and government, RSPA believes that instructions for preparing and submitting the more extensive plans should become part of the HMR to be available for those few carriers that must prepare such response plans. Therefore, RSPA is establishing a 1,000-barrel threshold for rolling stock and motor vehicles.

Any person who transports a bulk packaging containing oil in a quantity greater than 1,000 barrels must file an extensive response plan (§ 171.5(c)) with RSPA's Associate Administrator for Hazardous Materials Safety (for a portable tank), the Federal Highway Administrator (for a cargo tank), and the Federal Railroad Administrator (for a tank car). Plans prepared to meet the requirements of other agencies (e.g., the Environmental Protection Agency) may be used or supplemented to meet the requirements of this regulation.

Since only a few facilities have the potential to exceed the 1,000-barrel threshold, only a few carriers (possibly none) may be required to file extensive response plans under this rule, and therefore the rule's economic impact is minimal. RSPA is aware of approximately 15 tank cars used to transport oil that have capacities that meet or exceed 1,000 barrels; however, it has not been determined with certainty that they are loaded to their capacities thereby making them subject to the extensive planning requirement.

Comments are specifically requested on whether any bulk packagings are used to transport oil in quantities exceeding 1,000 barrels. Comments also are invited on whether any different or additional criteria should be used to determine which facilities should be required to file the extensive response plans under 33 U.S.C. 1321(j)(5). On the basis of comments on this rule, RSPA could raise or lower that threshold or determine that some other criteria are appropriate for requiring submission of response plans.

V. Review by Section

Section 171.1

This section expands the scope of the HMR to regulate the transportation of oil by intrastate, as well as interstate, carriers.

Section 171.5

This new section applies certain requirements in the HMR to the transportation of oil, consistent with requirements of the FWPCA. Each carrier of oil in a bulk packaging must, under 33 U.S.C. 1321(j)(1)(C), have a basic response plan. In addition to having a basic response plan, each carrier of a bulk packaging containing oil in a quantity greater than 1,000 barrels must, pursuant to 33 U.S.C. 1321(j)(5), submit an extensive response plan meeting all the requirements of section 1321(j)(5).

Section 171.8

The definition of "oil" in the FWPCA, with a slight clarifying modification, is added in this section.

Section 171.11

This section is revised to require, for shipments of oil that are transported in bulk packagings in accordance with the International Civil Aviation Organization's Technical Instructions, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.12

This section is revised to require, for shipments of oil that are transported in bulk packagings in accordance with the International Maritime Organization's IMDG Code, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.12a

This section is revised to require, for shipments of oil that are transported in bulk packagings from Canada, conformance with the shipping paper and response planning requirements specified in §§ 171.5 and 172.203(o).

Section 171.15

This section is revised to require immediate reporting of incidents involving oil to the National Response Center. This requirement is necessary to assure that appropriate response organizations receive timely notification of incidents involving oil.

Section 172.101

The Hazardous Materials Table (HMT) is revised by designating as a Class 9 hazardous material, "oils," as defined in § 171.8, which were previously unregulated because they did not meet the criteria for any other hazard class. Those materials offered for transportation or transported in domestic commerce must be described by the proper shipping name "Oil, n.o.s., *with flash point not less than 93°C (200°F),*" as indicated by the letter "D" in column 1. This material is assigned to packing group III, based on the minor degree of danger which it presents during transportation. The Class 9 label is prescribed in column 6 for use with shipments in bulk packagings, other than tank cars and cargo tanks. Column 8A of the HMT refers to the exception in § 173.155 from all requirements of the HMR for Class 9 oil that does not meet the definition of a hazardous waste or hazardous substance and is offered for transportation or transported in a non-bulk packaging. Also, the low-hazard material non-bulk packaging requirements specified in § 173.203 is added to column 8B to provide a packaging reference for waste oil. The low-hazard material bulk packaging requirements specified in § 173.241 is added to column 8C. The letter "A" is added to column 10A to specify that the material may be stowed "on deck" or "under deck" on a cargo vessel and a passenger vessel.

Section 172.203

Paragraph (o) is added to this section to require the word "oil" to be added, in parentheses, when not specifically identified in the proper shipping name of any hazardous material which is an "oil."

Section 173.140

This section is amended to add oil to the definition of Class 9. If oil meets the definition of another hazard class, however, the class of the material must be determined in accordance with § 173.2a. Oil that does not meet the definition of another hazard class must be classified as a Class 9 material and shipped under the proper shipping name of "Oil, n.o.s. *with flash point not less than 93°C (200°F),*" or under another more appropriate proper shipping name for a Class 9 material.

Section 173.150

This section is revised to add oil to the list of other flammable and combustible liquids which must conform to specifically designated requirements of the HMR.

Section 173.155

Paragraph (d) is added to this section to except shipments of oil, other than a hazardous waste or hazardous substance, in a non-bulk packaging from all requirements of the HMR.

Section 174.25

This section is amended to require that the word "oil" appear on switching orders, receipts and tickets in association with shipping descriptions for materials meeting the definition of "oil."

Section 176.70

This section is amended to add "oil" as a material for which specific stowage requirements are prescribed for transportation by vessel.

Federal Preemption Under the HMTA

The HMTA, at 49 U.S.C. app. 1804, preempts any non-Federal (i.e., state, political subdivision, or Indian tribe) law or regulation concerning certain "covered subjects" unless the non-Federal requirement is "substantively the same" as the Federal law or regulation on that subject. The "covered subjects" are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a February 28, 1991 final rule (56 FR 8616), RSPA added a new preemption standard to § 107.202 to mirror the requirements of the HMTA. States, political subdivisions, or Indian tribes are allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning the shipment of bulk packagings containing oil only if they are substantively the same as the requirements adopted in Docket HM-214. In a May 13, 1992 final rule (57 FR 20424), RSPA defined the phrase "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted."

The HMTA, at 49 U.S.C. (App. 1804(a)(5), provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance. The date of Federal preemption for this rule is February 2, 1995. Comments are requested as to the effective date of the Federal preemptive effect of this rule.

Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule, but it is considered a significant rule under the section 5(a)(2)(f) of DOT's Regulatory Policies and Procedures ("the Procedures") (44 FR 11034; February 26, 1979) because of significant public and congressional interest. This rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

In accordance with section 10(e) of the Procedures, RSPA has determined that a draft Regulatory Analysis is not required because these regulations do not meet any of the criteria mandating the preparation of such an analysis. As a result, in accordance with section 10(e), RSPA prepared a draft Regulatory Evaluation, which includes an analysis of the economic consequences of the regulation and an analysis of its anticipated benefits and impacts. The draft Regulatory Evaluation is available for review in the Dockets Unit. Comments are requested on the estimated costs and benefits of this rule.

B. Regulatory Flexibility Act

RSPA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule will have minimal impact on shippers and carriers of oil, some of whom may be small business entities. Most of those shippers and carriers are already subject to the HMR, thus, for them there are only minimal additional requirements. This rule only slightly expands the response planning requirements applicable to small entities and does not require any of them to file OPA 90 response plans with the DOT.

Based on limited information available concerning the size and nature of entities likely affected by this rule, I certify this regulation will not have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act. This certification is subject to modification as a result of a review of comments received in response to this rule. The rule will have no direct impact on small units of government.

C. Executive Order 12612

This rule has been reviewed in accordance with Executive Order 12612 ("Federalism"). The HMTA contains an express preemption provision (49 U.S.C. app. 1804(a)(4)) that preempts state and local requirements on certain covered subjects (including the designation, description, and classification of hazardous materials) unless the State or local requirement is substantively the same as the Federal requirement on that subject. Thus, RSPA lacks discretion in this area.

However, these regulations have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

D. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35.

OMB No.—New; *Administration:* Research and Special Programs Administration; *Title:* Preparation of Response Plans for Shipments of Oil; *Need for Information:* The Oil Pollution Act of 1990 requires carriers of bulk packagings containing oil to prepare a plan for responding to a worst case discharge or the threat of such a discharge; *Proposed Use of Information:* This information is designed to eliminate, to the extent possible, uncertainty on the part of carrier personnel regarding their role and responsibility in potential, and actual, spill scenarios; *Burden Estimate:* 1.363 million hours; *Respondents:* 42,000 motor carriers (30,899 cargo tank truck companies, 11,000 trucking companies engaged in the transportation of portable tanks), and approximately 600 freight railroads; *Forms:* None; *Average Burden Hours per Respondent:* 2.6 (20-year average); *Initial Year Burden:* 32 hours.

FOR FURTHER INFORMATION CONTACT: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may be provided to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, room 3228, Washington, DC 20503, Attention: Desk Officer for RSPA.

Under 44 U.S.C. chapter 35 and 5 CFR 3121.18, DOT is submitting a request for emergency clearance of the requirements in § 171.5(c) which requires compliance by February 18, 1993, as mandated by 33 U.S.C. 1321(j)(5)(E). In addition, RSPA is submitting a request for other information collections in this rule which will be reviewed under normal clearance procedures. These information collections would become effective on October 1, 1993.

During the interim, it is suggested that persons who have submitted spill prevention and mitigation plans, or will be doing so in response to other OPA 90 requirements, review these plans to determine that they meet the requirements specified in § 171.5(b). A general information collection requirement may be authorized by OMB (after notice and comment) prior to the October 1, 1993 compliance date specified in this rule.

E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

RSPA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impacts of RSPA actions as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, executive orders, and DOT Order 5610.1c. These regulations have no significant impact on the quality of the environment, and no environmental impact statement is required. In addition, the regulatory evaluation for this rule contains the costs and benefits to government, industry, and the environment.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Oil, Reporting and record keeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Oil, Packaging and containers, Reporting and record keeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, parts 171, 172, 173, 174, and 176 of title 49, Code of Federal Regulations, are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808 and 1818; 33 U.S.C. 1321; 49 CFR part 1.

2. In § 171.1, paragraph (a)(3)(v) is added to read as follows:

§ 171.1 Purpose and scope.

(a) * * *

(3) * * *

(v) Oil.

* * * * *

3. Section 171.5 is added to read as follows:

§ 171.5 Oil.

(a) *General.* The requirements of this section for the transportation of oil implement provisions of section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)), as amended by section 4202(a)(6) of the Oil Pollution Act of 1990 (Pub. L. 101–380), and of the Hazardous Materials Transportation Act.

(b) *Response plans for shipments of oil in bulk packagings.* After September 30, 1993, no person may transport oil in a bulk packaging unless that person has a current written plan that:

(1) Sets forth the manner of response to discharges that may occur during transportation;

(2) Takes into account the maximum potential discharge of the contents from the packaging;

(3) Identifies who will respond to a discharge;

(4) Identifies the appropriate persons and agencies (including their telephone numbers) to be contacted in regard to such a discharge and its handling, including the National Response Center (see Note following § 171.15); and

(5) For each motor carrier, is retained on file at that person's principal place of business and at each location where dispatching of motor vehicles occurs; and for each railroad, is retained on file at that person's principal place of business and at the dispatcher's office.

(c) *Response plans for shipments of bulk packagings containing oil in a quantity greater than 1,000 barrels (42,000 U.S. gallons).* After February 18, 1993, no person may transport a bulk packaging containing oil in a quantity greater than 1,000 barrels unless that person has a current written plan that:

(1) Conforms with all requirements specified in paragraph (b) of this section;

(2) Is consistent with the requirements of the National Contingency Plan (40 CFR part 300) and Area Contingency Plans;

(3) Identifies the qualified individual having full authority to implement removal actions, and requires immediate communications between that individual and the appropriate Federal official and the persons providing spill response personnel and equipment;

(4) Identifies, and ensures by contract or other means the availability of, private personnel (including address and phone number) and equipment necessary to remove, to the maximum extent practicable, a worst case discharge (including a discharge resulting from fire or explosion) and to mitigate or prevent a substantial threat of such a discharge;

(5) Describes the training, equipment testing, periodic unannounced drills, and response actions of facility personnel, to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent the discharge, or the substantial threat of a discharge; and

(6) Is submitted, and resubmitted in event of any significant change, to the Associate Administrator for Hazardous Materials Safety (for portable tanks), to the Federal Railroad Administrator (for tank cars), or to the Federal Highway Administrator (for cargo tanks).

4. In § 171.8, a definition for "oil" is added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Oil means oil of any kind or in any form, including, but not limited to, petroleum, vegetable oil, animal oil, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

* * * * *

5. In § 171.11, paragraph (d)(14) is added to read as follows:

§ 171.11 Use of ICAO technical instructions.

* * * * *

(d) * * *

(14) When a bulk packaging contains a hazardous material which meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

6. In § 171.12, paragraph (b)(17) is added to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(17) When a bulk packaging contains a hazardous material which meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

* * * * *

7. In § 171.12a, paragraph (b)(16) is added to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(16) When a bulk packaging contains a hazardous material that meets the definition of "Oil" (see § 171.8)—

(i) The shipping description must include the word "Oil", as specified in § 172.203(o) of this subchapter; and

(ii) The requirements of § 171.5 with respect to response plans are applicable.

* * * * *

8. In § 171.15, the Note is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

Note: 40 CFR parts 117 and 302, and 33 CFR part 153, require persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any discharge of oil or any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to the U.S. Coast Guard National Response Center at (toll free) 800–424–8802 or (toll) 202–267–2675.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION AND TRAINING REQUIREMENTS

9. The authority citation for part 172 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 33 U.S.C. 1321; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Amended]

10. In the § 172.101 Table, the following entry is added in appropriate alphabetical order:

§ 172.101 Hazardous materials table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	Packing group	Label(s) required (if not excepted	Special provisions	(8) Packaging authorizations (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage requirements	
							Exceptions	Nonbulk packaging	Bulk packaging	Passenger aircraft or rail car	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* * * * * * *												
D	Oil, n.o.s., *with a flashpoint not less than 93 °C (200 °F).*	9	NA9277	111	Class 9 ...	....	155	203	241	....	....	A	....
	* * * * * * *												

11. In § 172.203, paragraph (o) is added to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(o) *Oil.* Except for shipments in non-bulk packagings and petroleum distillates specifically identified in the § 172.101 Table (e.g., gasoline, kerosene), if the fact that a hazardous material that meets the definition of oil is not communicated through the proper shipping name, the word "oil" must be entered, in parentheses, in association with the basic description.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

12. The authority citation for part 173 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

13. In § 173.140, paragraph (b) is revised to read as follows:

§ 173.140 Class 9—Definitions.

* * * * *

(b) Any material that meets the definition in § 171.8 of this subchapter for an elevated temperature material, a hazardous substance, a hazardous waste, a marine pollutant, or oil.

14. In § 173.150, paragraphs (f)(3)(viii) and (f)(4) introductory text are revised to read as follows:

§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).

* * * * *

(f) * * *

(3) * * *

(viii) The requirements of §§ 171.5, 173.1, 173.21, 173.24, 173.24a, 173.24b, 174.1, 177.804, 177.817, and 177.834 of this subchapter.

(4) A combustible liquid that is not a hazardous substance, a hazardous waste, a marine pollutant, or oil is not subject to the requirements of this subchapter if it is a mixture of one or more components that—

* * * * *

15. In § 173.155, paragraph (d) is added to read as follows:

§ 173.155 Exceptions for Class 9 (miscellaneous hazardous materials).

* * * * *

(d) *Oil.* Except for hazardous wastes, hazardous substances, and marine pollutants the requirements of this subchapter do not apply to oil in non-bulk packagings.

PART 174—CARRIAGE BY RAIL

16. The authority citation for part 174 is revised to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1808; 33 U.S.C. 1321; 49 CFR 1.53(e), 1.53, app. A to part 1.

17. In § 174.25, paragraph (b)(1)(i), reference to "§ 172.10" is revised to read "§ 172.101", and paragraph (b)(6) is added to read as follows:

§ 174.25 Additional information on way bills, switching orders and other billings.

* * * * *

(b) * * *

(6) Except for shipments in non-bulk packagings and petroleum distillates specifically identified in the § 172.101 Table (e.g., gasoline, kerosene), if the fact that a hazardous material that meets the definition of oil is not communicated through the proper shipping name, the word "oil" must be

entered, in parentheses, in association with the basic description.

* * * * *

PART 176—CARRIAGE BY VESSEL

18. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. App. 1803, 1804, 1805, 1808; 49 CFR 1.53, app. A to part 1.

§ 176.70 [Amended]

19. In § 176.70 the words ", and shipments of oil in bulk packagings," are added to paragraph (a) following the words "Marine pollutants."

Issued in Washington, DC on January 19, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–1866 Filed 2–1–93; 8:45 am]

BILLING CODE 4910-60-P

federal register

Tuesday
February 2, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Seneca Nation of Indians, New York; Use and Distribution of Liquor; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Seneca Nation of Indians, New York; Use and Distribution of Liquor

January 13, 1993.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. This notice certifies that Ordinance No. 89–01 enacting the "Seneca Nation of Indians Use and Distribution of Liquor Ordinance" was duly adopted by the Seneca Nation of Indians on January 21, 1989. The ordinance provides for the distribution of alcoholic beverages in the area of Indian country under the jurisdiction of the Seneca Nation of Indians.

DATES: This Ordinance is effective as of February 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Chief, Branch of Judicial Services, Division of Tribal Government Services, 18th & C Streets, NW., MS 2611–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Seneca Nation hereby adopts Ordinance No. 89–01, regulating possession and prohibiting sale of intoxicating beverages on the Seneca Reservations. The Ordinance reads as follows:

Section 1. *Unlawful Sale and introduction of Intoxicating Beverages.* The sale, and introduction for purposes of sale of intoxicating beverages shall be unlawful within the Indian country subject to this Ordinance.

Section 2. *Unlawful possession of Intoxicating Beverages.* The possession and consumption of intoxicating beverages shall be unlawful on the public lands of the Seneca Reservation within the Indian country subject to this Ordinance, including public highways, bridges, Seneca Nation property, parking lots, driveways, and grounds surrounding Seneca Nation Buildings.

Section 3. *Possession by minors.* It shall be unlawful for any person under the age of twenty-one to possess or consume intoxicating beverages, or for any person to give intoxicating beverages to any person under the age of twenty-one, on Indian country subject to this Ordinance.

Section 4. *Maintaining premises where intoxicating beverages are consumed, possessed or served.* It shall be unlawful for any person to maintain premises where intoxicating beverages are: (1) Consumed, possessed, or served to any person under the age of twenty-one; (2) consumed, possessed or served in violation of this Ordinance.

Section 5. *Conformity with State laws and this Ordinance.* The possession of intoxicating beverages shall be lawful within the Indian county subject to this Ordinance, provided that such possession is not prohibited by this Ordinance and is in conformity with the laws of the State of New York.

Section 6. *Application of Ordinance to Reservation lands.* The Seneca Reservation land to which this Ordinance applies is the Indian country subject to the jurisdiction of the Nation, except for those Allegany Reservation lands which are within the City of Salamanca and are not included in the area set aside for Seneca Nation Housing Authority Project 40–9. For the purposes of this Ordinance, these lands shall be referred to as "the Indian country subject to this Ordinance."

Section 7. *Violations—Remedies.*

(a) The Nation may bring an action in the Peacemakers Courts against any person for violation of this Ordinance. The action shall be initiated by the filing of a written compliant with the court of the tribal prosecutor, sworn to by a person having personal knowledge of the charged violation, or by a Marshall or Seneca Nation Law Enforcement officer having personal knowledge of the charged violation. The complaint shall set forth the essential facts charging that a named individual has violated this Ordinance. Such action, including any appeal which is taken from the decision of the Peacemakers Court, shall be governed by the Seneca Nation Civil Procedure Rules.

(b) Any person found to have violated this Ordinance shall pay a fine of:

(1) No more than $5000 and no less than $0 for a Section 1 violation, plus court costs.

(2) No more than $5000 and no less than $0 for a Section 2 violation, plus court costs.

(3) No more than $5000 and no less than $0 for a Section 3 violation, plus court costs.

(4) No more than $5000 and no less than $0 for a Section 4 violation, plus court costs.

In addition to the penalty described for such a violation, all intoxicating beverages confiscated from any person found to have violated this Ordinance shall be destroyed.

(c) In lieu of imposing a fine pursuant to subsection (b) above, the Peacemakers Court may employ the procedure provided in section 4–102(a), (b) of the Seneca Nation of Indians Civil Procedure Code.

(d) Any person found to have violated this Ordinance who is charged with a second subsequent violation may be referred to any other jurisdiction which the Peacemakers Court determines has concurrent jurisdiction over the charge.

(e) In addition to other remedies, the Peacemakers Court may enjoin any person in violation of this Ordinance.

Section 8. *Enforcement.* The Marshals, the Seneca Nation Conservation Officers and officers of the Seneca Nation Law Enforcement Department are authorized to enforce this Ordinance within the Indian country subject to this Ordinance.

Section 9. *Unlawfully intoxicating beverages to be confiscated.* The Marshals, the Seneca Nation Conservation Officers and law enforcement officers shall confiscate and preserve as evidence all intoxicating beverages sold, introduced for purposes of sale, or possessed in violation of this Ordinance within the Indian country subject to this Ordinance.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–2362 Filed 2–1–93; 8:45 am]

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Tuesday, February 2, 1993

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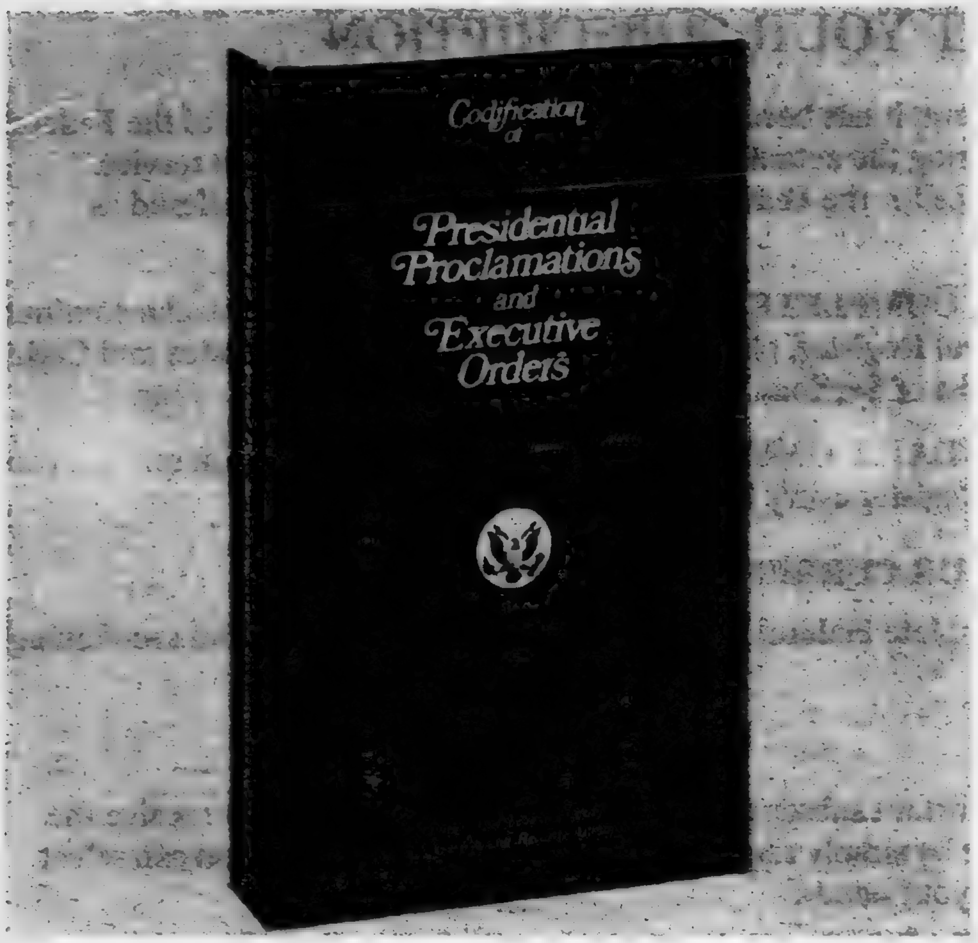

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Vol. 58 No. 21

federal register

Wednesday
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federal register

Wednesday
February 3, 1993

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 5 at 9:00 a.m.

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register

Vol. 58, No. 21

Wednesday, February 3, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 201

[Notice 1993-3]

Ex Parte Communications

AGENCY: Federal Election Commission.

ACTION: Notice of public hearing.

SUMMARY: The Federal Election Commission is considering holding a public hearing on its interim ex parte communication rules. The rules establish procedures for handling communications made to Commissioner offices in connection with Commission audits, litigation, rulemaking proceedings and advisory opinions, by persons not employed by the Commission.

DATES: The Commission is considering holding a hearing on March 31, 1993 at 10:00 a.m. if a sufficient number of persons are interested in testifying. Requests to testify must be received on or before March 5, 1993. Persons requesting to testify must also submit written comments by March 5, 1993, if they have not previously filed written comments on the proposed rules.

ADDRESSES: Requests to testify, and any accompanying comments, must be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463. Commission hearings are held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On December 9, 1992 (57 FR 58133), the Commission published interim final rules, with a request for comments. The rules established procedures for handling communications made to Commissioner offices in connection with Commission audits, litigation, rulemaking proceedings and advisory opinions, by persons not employed by the Commission. These communications are prohibited, in the case of audits and litigation; and are to be part of the public record, in the case of rulemaking proceedings and advisory opinions.

Although these rules became effective upon publication in the Federal Register, the Commission stated that it would consider comments received on or before January 8, 1993, and might re-evaluate the rules in light of such comments. A number of timely comments were received, one of which requested that the Commission hold a public hearing on these rules. The Commission is willing to hold a hearing if a sufficient number of interested parties request an opportunity to testify.

Dated: January 29, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93-2525 Filed 2-2-93; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 92-ANE-29; Special Conditions No. SC-92-01-NE]

Special Conditions: Turbomeca Makila 1A2 Turboshaft Engine

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Turbomeca Model Makila 1A2 turboshaft engine. This engine will have novel or unique engine ratings that are not defined by the applicable airworthiness regulations. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations.

EFFECTIVE DATE: March 5, 1993.

FOR FURTHER INFORMATION CONTACT: Chung Hsieh, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; (617) 273-7077; Fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, Turbomeca, applied for an amendment to Type Certificate No. E12-NE, to include a new Model Makila 1A2 turboshaft engine. The Makila 1A2 turboshaft engine, a derivative of the Makila 1A turboshaft engine, is rated at 30-Second one engine inoperative (OEI), 2-Minute OEI, 30-Minute OEI, continuous OEI, Takeoff, and Maximum Continuous ratings.

The applicable airworthiness requirements do not contain 30-Second OEI, and 2-Minute OEI, rating definitions, and do not contain adequate or appropriate safety standards for the type certification of these new and unusual engine ratings.

Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Turbomeca must show that the Model Makila 1A2 turboshaft engine meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. E12-NE, or the applicable regulations in effect on the date of application. The Federal Aviation Regulations incorporated by reference in Type Certificate No. E12-NE are: § 21.29 and part 33, effective February 1, 1965, as amended.

The Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model Makila 1A2 turboshaft engine because of the new and unique engine ratings, therefore, the Administrator prescribes special conditions under the provisions of § 21.16 to establish a level safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion of Comments

Interested persons have been afforded the opportunity to participate in the making of these special conditions. No comments were received on the special conditions as proposed.

The FAA has determined that since the issuance of the Proposed special conditions, "The Special Conditions" section required the following two typographical changes in paragraphs (c)(1) and (g)(4), and one clarification in paragraph (h)(2):

(a) Paragraph (c)(1): The word "operation" was changed to "operating."

(b) Paragraph (g)(4): The header "* * * Maximum Continuous OEI power" was changed to "* * * Maximum Continuous power."

(c) Paragraph (h)(2): The end of the last sentence "* * * the maximum operating temperature limit" was changed to "* * * the 30-second OEI rating operating limit," as the meaning and intent of these two phrases are the same.

After careful review of the available data, the FAA determined that air safety and the public interest require the adoption of the special conditions with the changes described above.

Conclusion

This action affects only certain novel or unusual design features on one model engine. It is not a rule of general applicability, and affects only the manufacturer who applied to the FAA for approval of these features on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions for the Turbomeca Model Makila 1A2 turboshaft engine are issued as part of the type certification basis:

(a) In addition to the requirements of Section 33.7, the following ratings are defined:

(1) RATED 30-SECOND ONE-ENGINE-INOPERATIVE (OEI) POWER: The brake horsepower developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after the failure of one engine in multi-engine rotorcraft, limited to three periods of use no greater than 30 seconds each, at rotor shaft rotation speed and gas temperature established for this rating by FAR part 33 or this special condition.

(2) RATED 2-MINUTE OEI POWER: The brake horsepower, developed statically in standard atmosphere at sea level, or at a specified altitude and temperature, for continued one-flight operation after failure of one engine in multi-engine rotorcraft, limited to three periods of use of up to 2 minutes each, at rotor shaft rotation speed and gas temperature established for this rating by FAR part 33 or this special condition.

(b) In addition to the requirements of § 33.4, mandatory inspection and maintenance actions required, following the use of the 30-Second or 2-Minute OEI rating, must be included in the airworthiness limitations section of the appropriate engine manuals.

(c) In addition to the requirements of § 33.27, the following tests must be conducted for the most critically stressed rotor component of each turbine and compressor, including integral drum rotors, and centrifugal compressors. For 30-Second and 2-Minute OEI conditions, test for a period of 2½ minutes.

(1) At its maximum operation temperature, except as provided in § 33.27(c)(2)(iv), and

(2) At the highest speed determined in accordance with § 33.27(c)(2)(i) through (c)(2)(vi).

(3) This test may be performed using a separate test vehicle if desired.

(4) Following the test based on the 30-Second OEI rating, rotor growth and distress beyond dimensional limits for an overspeed condition is permitted, provided the structural integrity of the rotor is maintained, as shown by a procedure acceptable to the Administrator.

(d) In addition to the requirements of § 33.29, the engine must provide for a means to indicate when the engine is at either 30-Second or 2-Minute OEI rated power level, and to determine the elapsed time of operation at 2-Minute OEI and 30-Second OEI rated power levels.

(e) In addition to the requirements of § 33.67, the engine must provide for a means for automatic availability of the 30–Second OEI power, and engine test runs must be performed to demonstrate automatic switching to a 30-Second OEI rating condition.

(f) In addition to the requirements of § 33.85, tests performed at the 30-Second and 2-Minute OEI ratings during the applicable endurance test prescribed in § 33.87, may be used in showing compliance with the requirements of § 33.85 for these OEI ratings.

(g) In addition to the requirements of § 33.87, an engine test must be conducted four times, using the following test sequence for a total of not less than 120 minutes:

(1) Takeoff Power—three minutes at rated takeoff power

(2) 30-Second OEI power—thirty seconds at rated 30-Second OEI power

(3) 2-Minute OEI power—two minutes at rated 2-Minute OEI power

(4) 30-Minute OEI, Continuous OEI, or Maximum Continuous power—five minutes at rated 30-Minute OEI power, or rated Continuous OEI power, or rated Maximum continuous power, whichever is greatest, except that during the first test sequence this period shall be 65 minutes

(5) Minimum flight power—one minute at minimum flight power

(6) 30-Second OEI power—thirty seconds at rated 30-Second OEI power

(7) 2-Minute OEI power—two minutes at rated 2-Minute OEI power

(8) Idle power—one minute at Idle power

(h) In addition to the requirements of Section 33.88, the following must be performed:

(1) For engines that do not provide a means for temperature limiting, conduct a test for a period of five minutes at the maximum permissible power-on RPM, with the gas temperature at least 75 degrees Fahrenheit higher than the 30-Second OEI rating operating limit.

(2) For engines that provide a means for temperature limiting, conduct a test for a period of four minutes at the maximum permissible power-on RPM, with the gas temperature at least 35 degrees Fahrenheit higher than the 30-Second OEI rating operating limit.

(3) Following the test, rotor assembly growth and distress beyond serviceable limits for an over temperature condition is permitted provided that the structural integrity of the rotor assembly is maintained, as shown by a procedure that is acceptable to the Administrator.

(i) In addition to the requirements of § 33.93, the engine must be completely disassembled after completing the additional testing of § 33.87, required under this special condition. The engine may exhibit deterioration in excess of that permitted in § 33.93(b), and may include some engine parts and components that may be unsuitable for further use. It must be shown by procedures approved by the Administrator that the structural integrity of the engine including mounts, cases, bearing supports, shafts and rotors, is maintained.

Issued in Burlington, Massachusetts, on January 19, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–2056 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92–NM–177–AD; Amendment 39–8476; AD 93–01–22]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the oxygen drop-out panels of the forward and aft cabin attendant positions. This amendment is prompted by reports that the lanyards for the oxygen masks and mask retainers at the forward and aft cabin attendant seats are too short for the attendants seated there to reach easily. This condition if not corrected, could result in the cabin attendants seated in the forward and aft cabin attendant seats being unable to reach their oxygen masks in an emergency situation.

DATES: Effective March 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on October 21, 1992 (57 FR 48002). That action proposed to require modification of the oxygen drop-out panels of the forward and aft cabin attendant positions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $223 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,438, or $553 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–22. FOKKER: Amendment 39–8476. Docket 92–NM–177–AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11365, inclusive, and 11367; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the cabin attendants seated in the forward and aft cabin attendant seats can reach their oxygen masks in emergency situations, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the oxygen drop-out panels of the forward and aft cabin attendant positions, in accordance with Fokker 100 Service Bulletin SBF100–35–003, dated March 23, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Fokker 100 Service Bulletin SBF100–35–003, dated March 23, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 10, 1993.

Issued in Renton, Washington, on January 14, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2551 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–80–AD; Amendment 39–8472; AD 93–01–18]

Airworthiness Directives; Gulfstream Model G–1159 (GII), G1159A (GIII), and G–1159B (GIIB) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Gulfstream Model GII, GIIB, and GIII series airplanes, that requires inspections to detect cracks in the forward and aft fail-safe channels and splice fittings between buttock line (BL) 135 and 156, and repair or replacement of cracked parts. This amendment is prompted by reports of cracks found in the fail-safe channels and splice fittings on the wings of several Model GII and GIII series airplanes. The actions specified by this AD are intended to prevent progressive structural degradation at BL 145 wing spanwise splice and possible loss of fail-safe strength capability.

DATES: Effective March 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Flanagan, Aerospace Engineer, Airframe Branch, ACE–120A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–2910; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Gulfstream Model GII, GIIB, and GIII series airplanes was published in the **Federal Register** on July 7, 1992 (57 FR 29844). That action proposed to require inspections to detect cracks in the forward and aft fail-safe channels and splice fittings between buttock line (BL) 135 and 156, and repair or replacement of cracked parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests that paragraph (a)(4) of the proposed AD be revised to require that operators submit reports of crack damage to Gulfstream, rather than to the FAA. The commenter states that a requirement to report inspection findings to the FAA would be redundant, since Gulfstream is currently collecting this data and the FAA could obtain that information, as necessary. The FAA concurs and has revised the final rule accordingly.

The commenter also requests clarification as to why the notice specifies that the AD is interim action when inspections and repair or replacement of any damaged parts found would be required. The FAA's intent in stating that the proposed AD is interim action is to allow for the possibility that a preventive modification may be developed, at which time the FAA may consider further rulemaking to require accomplishment of that modification.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 445 Model GII, GIIB, and GIII series airplanes of the affected design in the worldwide fleet. The FAA estimates that 345 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions (excluding preparation and close-up time), and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,300 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $831,450, or $2,410 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–18. Gulfstream Aerospace Corporation: Amendment 39–8472. Docket 92–NM–80–AD.

Applicability: All Model G–1159 (GII), G–1159A (GIII), and G–1159B (GIIB) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent progressive structural degradation at buttock line (BL) 145 wing spanwise splice and possible loss of fail-safe strength capability, accomplish the following:

(a) Within 150 hours time-in-service after the effective date of this AD, or within 90 days after the effective date of this AD, whichever occurs first, inspect the forward and aft lower plank splice fail-safe channels and flanges and splice fittings between wing BL 135 and 156 to detect cracks, in accordance with Gulfstream Customer Bulletin No. 400A, dated April 27, 1992 (for Model GII series airplanes); Gulfstream Customer Service Bulletin No. 403A, dated April 27, 1992 (for Model GIIB series airplanes); or Gulfstream Customer Service Bulletin No. 114A, dated April 27, 1992 (for Model GIII series airplanes); as applicable.

Note: Inspections of the same type as those required by paragraph (a) of this AD that were accomplished prior to the effective date of this AD in accordance with Gulfstream Customer Service Bulletin No. 400, dated March 16, 1992 (for Model GII series airplanes); Gulfstream Customer Service Bulletin No. 403, dated March 16, 1992 (for Model GIIB series airplanes); or Gulfstream Customer Service Bulletin No. 114, dated March 16, 1992 (for Model GIII series airplanes); are considered in compliance with the requirements of paragraph (a) of this AD.

(1) If no cracks are found, no further action is required.

(2) If cracks are found in the fail-safe channels or splice fittings, and the cracks meet the conditions and are within the limits specified in the applicable customer bulletin:

(i) Flight is permitted provided that repetitive inspections of the same type as the inspections required by paragraph (a) of this AD are accomplished at intervals not to exceed 6 months, in accordance with the applicable customer bulletin.

(ii) Repair cracked fail-safe channels and replace cracked splice fittings no later than the next regularly scheduled 18-month wing tank interior inspection, in accordance with the applicable customer bulletin.

(iii) Accomplishment of the repair and replacement procedures required by paragraph (a)(2)(ii) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a)(2)(i) of this AD.

(3) If cracks are found as a result of the initial or repetitive inspections required by paragraph (a) or (a)(2)(i) of this AD, and the cracks do not meet the conditions and are outside the limits specified in the applicable customer bulletin: Prior to further flight, repair cracked fail-safe channels and replace cracked splice fittings, in accordance with the applicable customer bulletin.

(4) Within 10 days after the detection of cracks as a result of the initial and repetitive inspections required by paragraphs (a) and (a)(2)(i) of this AD, submit a report of crack damage to Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), ACE-115A, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, repair, and replacement shall be done in accordance with Gulfstream Customer Bulletin No. 400A, dated April 27, 1992 (for Model GII series airplanes); Gulfstream Customer Service Bulletin No. 403A, dated April 27, 1992 (for Model GIIB series airplanes); or Gulfstream Customer Service Bulletin No. 114A, dated April 27, 1992 (for Model GIII series airplanes). (NOTE: The issue dates of those service bulletins are indicated only on the first page of each service bulletin; no other pages of those documents are dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D-10, Savannah, Georgia 31402-9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 10, 1993.

Issued in Renton, Washington, on January 13, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-2552 Filed 2-2-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-130-AD; Amendment 39-8473; AD 93-01-19]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires a repetitive operational check to manually open and close all entry/service doors to verify the integrity of the door counterbalance inner torsion springs, and replacement, if necessary This amendment provides for an optional installation which, when accomplished, constitutes terminating action for the currently required repetitive operational checks. This amendment also adds airplanes to the applicability of the rule. This action is prompted by the development of an improved graphite-composite inner torsion spring that positively addresses the identified unsafe condition. The actions specified by this AD are intended to ensure opening of entry/service doors when required for emergency evacuation.

DATES: Effective March 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Pliny Brestel, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2783; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-08-07, Amendment 39-6186 (54 FR 14206, April 10, 1989), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on August 31, 1992 (57 FR 39372). The action proposed to require a replacement of certain inner torsion springs or certain counterbalance assemblies; this replacement would terminate the need for the currently required operational checks to verify the integrity of the door counterbalance inner torsion springs. It also proposed to revise the applicability of the rule to include additional airplanes that had been identified as subject to the addressed unsafe condition.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter requests that paragraph (a) of the proposal either be revised to extend the repetitive interval for the operational checks from 350 flight hours to 400 flight hours so as to be consistent with proposed paragraph (b), or be deleted altogether. This commenter considers that, as it is currently formatted, paragraph (a) of the proposal is confusing with regards to this repetitive check interval. The FAA does not concur with the commenter's requested changes. The intent of paragraph (a) is to retain the initial and repetitive check requirements of AD 89–08–07 so that operators are given credit for checks that they have already accomplished in accordance with that AD; and to ensure that any Model 767 series airplane placed on the U.S. register in the future will be subject immediately to the initial check. It is also important to retain this information, since the compliance time for performing the checks in accordance with paragraph (b) is directly related to the time that the operator last performed a check in accordance with AD 89–08–07.

Several commenters request that proposed paragraph (b) be clarified to specify exactly which counterbalance assemblies are considered to be those for which no further action is needed. The proposal only refers to "improved counterbalance assemblies." One commenter questions whether counterbalances containing titanium springs would be considered "improved" units. The FAA concurs that clarification is warranted. The FAA considers that assemblies for which no further action is required are:

1. Counterbalance assemblies equipped with titanium inner torsion springs;
2. Counterbalance assemblies rated for escape slides;
3. Improved counterbalance assemblies (those having part numbers specified in Section III, paragraphs A. through F., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992); and
4. Counterbalance assemblies equipped an improved graphite-composite inner torsion spring (those having part numbers specified in Section III, paragraphs A. through F., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992).

Airplanes that are equipped with these assemblies require no further action and the operational checks currently required by the existing AD may be discontinued. The FAA has revised paragraph (b) of the final rule to clarify this point.

Two commenters request that proposed paragraph (b) be revised to extend the initial inspection time from the proposed 400 flight hours to 900 flight hours. Such an extension will allow operators to avoid having to revise their normal maintenance schedules in order for this inspection to be accomplished. The costs incurred by such special scheduling would be more than the costs described in the economic impact information that was contained in the preamble to the notice. The FAA does not concur that such an extension is warranted. The inspection called for in paragraph (b) is merely a determination of the types of components installed in the entry/service doors. The 400-flight hour compliance time should not necessitate any special scheduling for the majority of the affected fleet; additionally, this determination can be made by reviewing airplane records, rather than by physically inspecting the airplane.

Two commenters request that proposed paragraph (b)(2) be revised to extend the interval for repetitive operational checks from the proposed 400 flight hours to either 425 flight hours or 900 flight hours. These commenters state that such an extension will allow them to avoid the additional costs of special scheduling of airplanes to times other than those of normal maintenance schedules. The FAA concurs that the interval for repetitive operational checks may be extended to 425 flight hours; this will allow the check to be accomplished during a regularly scheduled "B" check for the majority of the affected fleet. The FAA has determined that this extension of an additional 25 flight hours will not adversely impact safety. The FAA does not consider that any further extension is warranted, however, since the checks take less than one work hour to perform and should not necessitate special scheduling; moreover, this AD extends the repetitive check interval from that which was previously required by AD 89–08–07.

One commenter requests that proposed paragraph (c), which would require the installation of the improved door components as terminating action, be deleted or revised so as not to mandate the installation. This commenter considers that the repetitive operational checks should be allowed to continue indefinitely as an alternative to terminating action. This alternative ensures adequate checking for the broken graphite-composite inner torsion springs, and is the preferred method for some operators. The FAA concurs. Upon further consideration of the problems associated with the integrity of the door counterbalance inner torsion springs, the FAA considers that (1) the inspection area is easily accessible, (2) the failure is easily detectable, and (3) the consequences of the failure are not likely to be catastrophic. In consideration of these items, the FAA has determined that the circumstances warrant continual operational checks rather than a mandated terminating modification. The final rule has been revised accordingly. Additionally, the economic impact information, below, has been revised to delete the costs associated with the proposed mandatory modification.

Paragraph (a) has been revised and reformatted to clarify that the requirements of that paragraph are terminated once the requirements of paragraph (b) are initiated.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 122 Boeing Model 767 series airplanes of the affected design in the worldwide fleet; this number includes 18 additional airplanes worldwide that have been added as a result of this AD action. The FAA estimates that 50 airplanes of U.S. registry will be affected by this proposed AD. (No additional U.S.-registered airplanes have been added as a result of this AD action.) The FAA estimates that it will take approximately 1 work hour per airplane to accomplish each operational check, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the requirements of this AD on U.S. operators is estimated to be $2,750 per cycle, or $55 per airplane per cycle. This total cost figure assumes that no operator has yet accomplished the requirements of this AD action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6186 (54 FR 14206, April 10, 1989), and by adding a new airworthiness directive (AD), to read as follows:

93–01–19. Boeing: Amendment 39–8473. Docket 92–NM–130–AD. Supersedes AD 89–08–07, Amendment 39–6186.

Applicability: Model 767 series airplanes with entry or service doors equipped with slide rafts; line positions 002 through 409, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To ensure opening of entry/service doors when required for emergency evacuation, accomplish the following:

(a) For airplanes having line positions 132, 136, and 140 through 409, inclusive: Within 350 flight hours after May 9, 1989 (the effective date of AD 89–08–07, Amendment 39–6186), perform an operational check on each entry/service door to detect a broken counterbalance inner torsion spring, in accordance with Boeing Alert Service Bulletin 767–52A0053, dated August 25, 1988; or Revision 1, dated December 22, 1988.

(1) Repeat this operational check thereafter at intervals not to exceed 350 flight hours, until the requirements of paragraph (b) of this AD are accomplished.

(2) If any broken counterbalance inner torsion spring is detected during an operational check, prior to further flight, replace it with an airworthy part in accordance with the service bulletin. After replacement of any counterbalance inner torsion spring, continue to perform the operational checks at intervals not to exceed 350 flight hours until the requirements of paragraph (b) of this AD are accomplished.

(b) For airplanes having line positions 002 through 409, inclusive: Within 425 flight hours after the effective date of this AD, or within 425 flight hours after the last operational check accomplished in accordance with paragraph (a) of this AD, whichever occurs first, determine if the entry/service doors are equipped with a counterbalance assembly using a titanium inner torsion spring, a counterbalance assembly rated for escape slides, an improved counterbalance assembly, or an improved graphite-composite inner torsion spring; and if further action is necessary; in accordance with Section III, paragraphs A. through F., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992. The airplane records may be reviewed in order to make this determination.

Note: The part numbers of the "improved" parts referred to in this AD are specified in Section III, paragraphs A. through F., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992.

(1) For those doors equipped with a counterbalance assembly using titanium inner torsion springs, a counterbalance assembly rated for escape slides, an improved counterbalance assembly, or an improved graphite-composite inner torsion spring, no further action is required.

(2) For those doors not equipped with a counterbalance assembly using a titanium inner torsion spring, a counterbalance assembly rated for escape slides, an improved counterbalance assembly, or an improved graphite-composite inner torsion spring: Prior to further flight, perform an operational check to detect the existence of a broken inner torsion spring, in accordance with Section III, paragraph G., of the Boeing service bulletin.

(i) If any broken inner torsion spring is found, prior to further flight, accomplish the procedures specified in either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Replace the spring with an airworthy part in accordance with Section III., paragraph G., of the Boeing service bulletin, and repeat the operational check at intervals not to exceed 425 flight hours; or

(B) Install an improved counterbalance assembly or an improved graphite-composite inner torsion spring, in accordance with Section III, paragraph H., of the Boeing service bulletin. Such installation constitutes terminating action for the requirements of this AD.

(ii) If no broken inner torsion spring is found, accomplish the procedures specified in either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this AD:

(A) Repeat the operational check at intervals not to exceed 425 flight hours; or

(B) Install an improved counterbalance assembly or an improved graphite-composite inner torsion spring, in accordance with Section III, paragraph H., of the Boeing service bulletin. Such installation constitutes terminating action for the requirements of this AD.

(c) Installation of a counterbalance assembly using a titanium inner torsion spring, a counterbalance assembly rated for escape slides, an improved counterbalance assembly, or an improved graphite-composite inner torsion spring, in accordance with Section III, paragraph H., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992, constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The operational checks and replacement procedures shall be done in accordance with Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 10, 1993.

Issued in Renton, Washington, on January 13, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2549 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–99–AD; Amendment 39–8480; AD 93–01–26]

Airworthiness Directives; De Havilland, Inc., Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD),

applicable to certain de Havilland Model DHC–8–300 series airplanes, that currently requires repetitive external and internal inspections to detect fuel leaks in the wing dry bay. Such leaking, if not corrected, could result in the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike. This amendment requires modification of the wing dry bay which, when accomplished, constitutes terminating action for the requirements of this AD. This action also adds airplanes to the applicability of the AD. This amendment is prompted by the development of a modification that eliminates potential sources of combustible vapors within the wing dry bay.

DATES: Effective March 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1993.

Incorporation by reference of de Havilland Alert Service Bulletin S.B. A8–28–16, Revision "B", dated June 24, 1991, was approved previously by the Director of the Federal Register as of September 26, 1991 (56 FR 46228, September 11, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, Propulsion Branch, ANE–174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–7421; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–19–04, Amendment 39–8031 (56 FR 46228, September 11, 1991), which is applicable to certain de Havilland Model DHC–8–300 series airplanes, was published in the **Federal Register** on August 27, 1992 (57 FR 38791). The action proposed to add a requirement to install an improved modification which, when accomplished, constitutes terminating action for the requirements of the AD. In addition, the action proposed to remove the optional terminating action referenced in the existing AD, since that modification does not provide lightning strike protection, which the new modification provides. The action also proposed to add airplanes to the applicability of the AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule. However, the commenter notes that many of the systems on the airplanes addressed in the proposed rule are similar to the systems on Model DHC–8–100 series airplanes. The commenter requests that the FAA conduct a review to determine if Model DHC–8–100 series airplanes should have been subject to the proposal.

The FAA is cognizant that certain design similarities exist between Model DHC–8–100 and DHC–8–300 series airplanes. The FAA is currently investigating the possibility of fuel leakage in the wing dry bay on Model DHC–8–100 series airplanes and may consider further rulemaking if this unsafe condition is found to be likely to exist or develop on these airplanes.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 136 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. The FAA has confirmed that all 6 airplanes of U.S. registry have been modified with the terminating modification specified in paragraph (d) of this AD. Based on this information, the AD will impose no cost impact on U.S. operators.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8031(56 FR 46228, September 11, 1991), and by adding a new airworthiness directive (AD), amendment 39–8480, to read as follows:

93–01–26. De Havilland, Inc.: Amendment 39–8480. Docket 92–NM–99–AD. Supersedes AD 91–19–04, Amendment 39–8031.

Applicability: Model DHC–8–300 series airplanes; serial numbers 202, 210, 216, 221, 224, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 257, 259, 261, 262, 264, 266, 267, 269, 271, 272, 274, 276, 278, 279, 281, 283, 284, 286, 288, and 307; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike, accomplish the following:

(a) For those airplanes listed in de Havilland Alert Service Bulletin S.B. A8–28–16, dated May 30, 1991, accomplish the following:

(1) Within 24 hours after August 26, 1991 (the effective date of AD 91–12–51, Amendment 39–7076), and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in

accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 24 hours after August 26, 1991, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after August 26, 1991, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (a)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (a)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (a)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (a)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action only for the repetitive internal visual inspections required by paragraph (a)(3)(i) of this AD.

(b) For those airplanes listed in de Havilland Alert Service Bulletin S.B. A8–28–16, Revision 'B', dated June 24, 1991, that are not subject to paragraph (a) of this AD, accomplish the following:

(1) Within 24 hours after September 26, 1991 (the effective date of AD 91–19–04, Amendment 39–8031), and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 24 hours after September 26, 1991, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after September 26, 1991, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (b)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (b)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action only for the repetitive internal visual inspections required by paragraph (b)(3)(i) of this AD.

(c) For airplane serial numbers 279, 281, 283, 284, 286, 288, and 307, accomplish the following in accordance with de Havilland Alert Service Bulletin S.B. A8–28–16, Revision 'C', dated January 31, 1992:

(1) Within 7 days after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 7 days after the effective date of this AD, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after the effective date of this AD, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (c)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (c)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (c)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (c)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action only for the repetitive internal visual inspections required by paragraph (c)(3)(i) of this AD.

(d) Within 6 months after the effective date of this AD, accomplish Modification No. 8/1776 in accordance with de Havilland Service Bulletin S.B. 8–57–20, Revision A, dated January 31, 1992. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Certain inspections, repairs, and modification shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–28–16, dated May 30, 1991; de Havilland Alert Service Bulletin S.B. A8–28–16, Revision 'C', dated January 31, 1992; and de Havilland Service Bulletin S.B. 8–57–20, Revision 'A', dated January 31, 1992; as indicated. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Certain other inspections, repairs, and modifications shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–28–16, Revision 'B', dated June 24, 1991. Incorporation by reference of de Havilland Alert Service Bulletin S.B. A8–28–16, Revision 'B', dated June 24, 1991, was approved previously by the Director of the Federal Register as of September 26, 1991 (56 FR 46228, September 11, 1991). Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 10, 1993.

Issued in Renton, Washington, on January 20, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2545 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 91–AWA–8]

Establishment of Jet Route J–488 and Alteration of Jet Route J–559; NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Jet Route J–488 and alters the description of Jet Route J–559 located in the State of New York and Canada. These actions will simplify the routings, facilitate the flow of air traffic in the Ottawa terminal airspace, and improve the operations of transborder flights between the United States and Canada.

EFFECTIVE DATE: 0901 UTC, April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On October 31, 1991, the FAA proposed to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish J–488 and to alter the description of J–559 located in the State of New York and Canada (56 FR 56041). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. FAR part 75 was merged into FAR part 71, Subpart M, effective December 17, 1991 (56 FR 65638). Jet Routes are published in Section 71.607 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The Jet Routes listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Jet Route J–488 and modifies Jet Route J–559 located in the State of New York and Canada. These modifications were requested by the Canadian Government to simplify the routings and facilitate the flow of air traffic in the Ottawa terminal airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet Routes.

* * * * *

J–488 [New]

From Watertown, NY; to Uplands NDB, Ontario, Canada, excluding the airspace within Canada.

* * * * *

J–559 [Revised]

From Syracuse, NY; Watertown, NY; to Ottawa, Ontario, Canada, excluding the airspace within Canada.

* * * * *

Issued in Washington, DC, on January 25, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–2499 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 90–ASO–5]

Establishment of Restricted Area R–2938 Horseshoe Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish Restricted Area R–2938 located in the vicinity of Horseshoe Beach, FL. The U.S. Customs Service will install an aerostat-borne radar system in R–2938. The aerostat-borne radar system will provide surveillance to detect suspected illegal drug transportation into the United States. The aerostat balloon will fly up to 15,000 feet mean sea level (MSL). This action supports the Drug Interdiction Program. In addition, the Continental Control Area is amended to reflect the 15,000-foot MSL altitude of R–2938.

EFFECTIVE DATE: 0901 UTC, April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–

240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On May 21, 1991, the FAA proposed to amend parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) to establish Restricted Area R-2938 in the vicinity of Horseshoe Beach, FL, and to amend the Continental Control Area to reflect the 15,000-foot MSL altitude of R-2938 (56 FR 23255). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Four comments were received objecting to the proposal. The Florida Department of Transportation recommended that the tether cable and hull be marked with suitable high intensity strobes for day and night operations. Three other commenters' primary concern was the possible danger to visual flight rules (VFR) aircraft operating in reduced visibility situations. FAA regulations under part 73 state, in part, that restricted areas shall be designated when it has been determined necessary to confine or segregate activities considered hazardous to nonparticipating aircraft. Flight within a restricted area is prohibited without prior permission. We agree that flashing white lights on the aerostat and the tether would make the structure more conspicuous and would permit visual recognition at greater distances. However, for the following reasons, the FAA believes that by locating the system within the lateral and vertical limits of the restricted area, a safe environment for flight operations can be maintained without the use of lights on the tether.

The United States Customs Service states that the aerostat itself will be lighted at all times with three flashing strobes. One will be mounted on the chin of the hull, one on top of the hull at the highest/widest point, and one at the tail of the underside of the hull.

The location of the restricted area in relation to prominent landmarks, specifically the Suwanee River and the town of Cross City, makes it easy to locate. In addition, the restricted area can be readily circumnavigated to the west by adhering to a course just offshore, or to the east, by directly overflying the Cross City very high frequency omnidirectional radio range.

Consideration was given for the impact of requiring strobes on the tether. Secure mounting of strobes requires high clamping forces on the tether. Strumming of the tether is increased by wind forces on the strobes. Either of these conditions may damage the tether. During the threat of thunderstorms or lightning, there is a need to rapidly inhaul the aerostate. Stopping and starting the winch to detach the strobes greatly delays the recovery of the aerostat, placing personnel and the system at increased risk. Based on all of these considerations, we will not require the tether to be illuminated. Except for editorial changes, these amendments are the same as those proposed in the notice. The airspace of certain restricted areas included in the Continental Control Area is published in Section 71.151 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. Section 73.29 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8 dated November 1, 1991. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83.

The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations establish Restricted Area R-2938 to contain an aerostat-borne system located at Horseshoe Beach, FL. The restricted area will provide airspace for the operation of a tethered aerostat-borne radar system. This system will provide surveillance of airspace to detect low-flying aircraft attempting to penetrate U.S. airspace undetected. The restricted area will encompass a 3-nautical-mile radius of geographical lat. 29°30′00″N., long. 83°16′16″W., from the surface up to and including 15,000 feet MSL. The system will increase the probability of the interception and interdiction of suspect aircraft and provide low-altitude radar coverage for the Customs Service. The Continental Control Area is also amended to reflect R-2938.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

In compliance with the National Environmental Policy Act of 1969 (NEPA), the U.S. Customs Service evaluated the environmental impacts resulting from the establishment of Restricted Area R-2938. On the basis of the Environmental Assessment developed by the U.S. Customs Service, which has been placed in the public docket, the FAA finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Incorporation by reference, Restricted areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 71 and 73, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.151 Restricted Areas included.

* * * * *

R-2938 Horseshoe Beach, FL [New]

* * * * *

PART 73—[AMENDED]

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§73.29 [Amended]

4. § 73.29 is amended as follows:

R–2938 Horseshoe Beach, FL [New]

Boundaries. That airspace within a 3-nautical-mile circle, centered at lat. 29°30'00"N., long. 83°16'16"W.

Designated altitudes. Surface to and including 15,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Jacksonville ARTCC.

Using agency. United States Customs Service.

Issued in Washington, DC, on January 25, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–2498 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–AEA–17]

Alteration of Jet Route J–37

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters a segment of Jet Route J–37 between the States of South Carolina and Virginia. Modifying this jet route between the Spartanburg, SC, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) via Lynchburg, VA, VORTAC to the Gordonsville, VA, VORTAC will improve navigation. This action will enhance air traffic procedures and serve to expedite the flow of air traffic.

EFFECTIVE DATE: 0901 u.t.c., April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

History

On March 25, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by altering a segment of Jet Route J–37 between the States of South Carolina and Virginia (57 FR 10305). This action proposed to realign the jet route over the Lynchburg, VA, VORTAC. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters a segment of Jet Route J–37 between the States of South Carolina and Virginia. Jet Route J–37 will be realigned over the Lynchburg, VA, VORTAC. Modifying J–37 will enhance navigation, improve air traffic procedures, and expedite the flow of traffic using the airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Jet routes.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.607 Jet Routes.

* * * * *

J–37 [Revised]

From Hobby, TX, via INT of the Hobby 090° and New Orleans, LA, 257° radials; New Orleans; Semmes, AL; Montgomery, AL; Spartanburg, SC; Lynchburg, VA; Gordonsville, VA; Brooke, VA; INT Brooke 067° and Coyle, NJ, 226° radials; to Coyle. From Kennedy, NY; Kingston, NY; Albany, NY; Massena, NY, to the INT of the Massena 037° radial and the United States/Canadian Border.

* * * * *

Issued in Washington, DC, on January 25, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–2504 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AGL–8]

Modification of Control Zone; Wilmington, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This document contains corrections to the final rule published on Monday, December 7, 1992. This final rule expanded the existing control zone's effective hours. This correction describes the vertical limit of the control zone, which was inadvertently omitted from the final rule.

EFFECTIVE DATE: 0901 UTC, February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION: On Monday, December 7, 1992, the Federal Aviation Administration (FAA) published a final rule that modified the Wilmington, Ohio control zone (57 FR 57663). A part of the description of the control zone was inadvertently omitted and should be included to define the vertical limit of the control zone. The omitted portion is in the beginning of the description and should read, "That airspace extending upward from the surface to and including 3,600 feet MSL * * *".

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on Monday, December 7, 1992, Federal Register Document No. 92–29583 and the description in FAA Order 7400.7A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 57664, in the first column, the description for the Wilmington, Ohio control zone is corrected to read as follows:

Section 71.171 Designation of Control Zones

* * * * *

AGL OH CZ Wilmington, OH [Revised]

Wilmington, Airborne Airpark Airport, OH
(lat. 39°25′52″ No., long. 83°47′52″ W.)

Wilmington, Hollister Field Airport, OH
(lat. 39°26′15″ N., long. 83°42′30″ W.)

Midwest VOR/DME (lat. 39°25′47″ N., long. 83°48′05″ W.)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.2-mile radius of the Airborne Airpark, and within 3.7-miles each side of the Midwest VOR/DME 215° radial, extending from the 4.2-mile radius to 7 miles southwest of the Airborne Airpark and within 3.7-miles each side of the Midwest VOR/DME 041° radial extending from the 4.2-mile radius to 7-miles northeast of the Airborne Airpark, excluding that portion of airspace within a 1-mile radius of Hollister Field Airport. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on, January 20, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–2502 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 27116; Amdt. No. 374]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on January 12, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 GMT: 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1993); and 14 CFR 11.49(b)(2).

PART 95—[AMENDED]

Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 374 Effective Date, February 4, 1993]

From	To	MEA
§ 95.1001 DIRECT ROUTES-U.S.		
BAHAMA ROUTES		
Is Amended by Adding		
49		
Andrew, FL NDB/DME	Junur, FL FIX	2000
Junur, FL FIX	Clami, FL FIX	6000
49V		
Clami, FL FIX	Wired, BF FIX	6000
Wired, BF FIX	Tinky, BF FIX	6000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 374 Effective Date, February 4, 1993]

From	To	MEA
Tinny, BF FIX	Nicko, BF FIX	4000
Nicko, BF FIX	Looks, BF FIX	2500
Looks, BF FIX	Nassau, BF VOR/DME	2000
	Is Amended to Delete	
Biscayne Bay, FL VORTAC	Eeons, FL FIX	3000
Eeons, FL FIX	Int BSY VORTAC 120 & ZQA VORTAC 278	3000
Int BSY VORTAC 120 & ZQA VORTAC 278	Rumba, BF FIX	3000
Rumba, BF FIX *1400–MOCA	Nassau, BF VOR/DME	*2000
	Is Added to Read	
B3LIMA		
Andrew, FL NDB/DME	Reele, FL FIX	2000
Reele, FL FIX	Bkene, BF FIX	4000
Bkene, BF FIX	Swimm, BF FIX	4000
Swimm, BF FIX	Wooze, BF FIX	4000
Wooze, BF FIX	Rajay, BF FIX	4000
	Is Deleted	
B3V		
Biscayne Bay, FL VORTAC *1200–MOCA	Reele, FL FIX	*2000
Reele, FL FIX *1200–MOCA	INT BSY VORTAC 094 & ZBV VORTAC 111	*4000
INT BSY VORTAC 094 & ZBV VORTAC 111 *1300–MOCA	Prune, BF FIX	*2000
Prune, BF FIX *1400–MOCA	Nassau, BF VOR/DME	*2000
	Is Amended by Adding	
B5V		
Rajay, BF FIX	Prune, BF FIX	4000
	Is Amended to Read in Part	
Bimini, BF VORTAC	Rajay, BF FIX	4000
	ATLANTIC ROUTES	
	Is Amended by Adding	
A555		
Looks, BF FIX	Jymme, BF FIX	2000
Jymme, BF FIX	Resin, BF FIX	2000
Resin, BF FIX	Gerot, BF FIX	2000
Gerot, BF FIX	Stella Maris, BF NDB	2000
	Is Amended to Read	
Bimini, BF NDB VIA BIMINI NDB 121.00/132.58	Wooze, BF FIX	2000
Wooze, BF FIX *1300–MOCA	Looks, BF FIX	*2000
	§ 95.6001 VOR FEDERAL AIRWAY 1	
	Is Amended to Read in Part	
Drone, NC FIX	Norfolk, VA VORTAC	6000
Norfolk, VA VORTAC	Cape Charles, VA VORTAC	4000
Coyle, NJ VORTAC *1600–MOCA	Kennedy, NY VORTAC	*2500
	§ 95.6003 VOR FEDERAL AIRWAY 3	
	Is Amended to Delete	
Ranco, FL FIX	Biscayne Bay, FL VORTAC	2000
Biscayne Bay, FL VORTAC	Fort Lauderdale, FL VOR/DME	2000
	§ 95.6005 VOR FEDERAL AIRWAY 5	
	Is Amended to Read in Part	
Chattanooga, TN VORTAC	McMin, TN FIX	4000
McMin, TN FIX *3500–MOCA	Harme, TN FIX	*6000
Harme, TN FIX *2200–MOCA	Bowling Green, KY VORTAC	*2800
Bowling Green, KY VORTAC *2300–MOCA	New Hope, KY VOR/DME	*2900
	§ 95.6006 VOR FEDERAL AIRWAY 6	
	Is Amended to Read in Part	
Allentown, PA VORTAC	Solberg, NJ VORTAC	6000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 374 Effective Date, February 4, 1993]

From	To	MEA
§ 95.6007 VOR FEDERAL AIRWAY 7		
Is Amended to Read in Part		
Tyson, FL FIX *1500–MOCA	Swags, FL FIX	*6000
Is Amended to Delete		
Biscayne Bay, FL VORTAC *1500–MOCA	Swags, FL FIX	*6000
§ 95.6011 VOR FEDERAL AIRWAY 11		
Is Amended to Read in Part		
Holly Springs, MS VORTAC *2000–MOCA	Dyersburg, TN VORTAC	*2500
§ 95.6016 VOR FEDERAL AIRWAY 16		
Is Amended to Read in Part		
Pine Bluff, AR VORTAC *2000–MOCA	Holly Springs, MS VORTAC	*5000
Jacks Creek, TN VORTAC *2400–MOCA	Shelbyville, TN VOR/DME	*3000
Shelbyville, TN VOR/DME	Hinch Mountain, TN VORTAC	5000
Hinch Mountain, TN VORTAC	Bucky, TN FIX	5000
Coyle, NJ VORTAC *1600–MOCA	Kennedy, NY VORTAC	*2500
§ 95.6020 VOR FEDERAL AIRWAY 20		
Is Amended to Read in Part		
South Boston, VA VORTAC *9000–MRA **2300–MOCA	*Nutts, VA FIX	**3000
Nutts, VA FIX *2300–MOCA	Melia, VA FIX	*3000
§ 95.6035 VOR FEDERAL AIRWAY 35		
Is Amended by Adding		
Curve, FL FIX *4000–MRA **1300–MOCA	*Deeds, FL FIX	**5000
Is Amended to Delete		
*Drown, FL FIX *5000–MRA **1500–MOCA	Coote, FL FIX	**5000
Coote, FL FIX	Biscayne Bay, FL VORTAC	2000
Biscayne Bay, FL VORTAC *1500–MOCA	Dormy, FL FIX	*5000
Dormy, FL FIX *4000–MRA **1300–MOCA	*Deeds, FL FIX	**5000
§ 95.6037 VOR FEDERAL AIRWAY 37		
Is Amended to Read in Part		
Pulaski, VA VORTAC	Hawkl, WV FIX	8000
§ 95.6051 VOR FEDERAL AIRWAY 51		
Is Amended to Delete		
Biscayne Bay, FL VORTAC	Miami, FL VORTAC	2000
§ 95.6052 VOR FEDERAL AIRWAY 52		
Is Amended to Read in Part		
Central City, KY VORTAC	Bowling Green, KY VORTAC	2400
Bowling Green, KY VORTAC	Livingston, TN VORTAC	2900
§ 95.6054 VOR FEDERAL AIRWAY 54		
Is Amended to Read in Part		
Walet, MS FIX *2000–MOCA	Holly Springs, MS VORTAC	*2500
Chattanooga, TN VORTAC *4500–MCA Crand FIX, E BND	Crand, GA FIX	3000
Melle, GA FIX *5200–MOCA	Harris, GA VORTAC	*8000
Harris, GA VORTAC *7000–MCA DILLA FIX, W BND	Dilla, GA FIX	7000
Dilla, GA FIX	Sunet, SC FIX	6000
§ 95.6084 VOR FEDERAL AIRWAY 84		
Is Amended to Read in Part		
Kubbe, IL FIX *3500–MRA **1900–MOCA	*Story, IL FIX	**2500

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 374 Effective Date, February 4, 1993]

From	To	MEA
Story, IL FIX *1900–MOCA	Pullman, MI VORTAC	*2500
§95.6103 VOR FEDERAL AIRWAY 103		
Is Amended to Read in Part		
U.S. Canadian Border	Pontiac, MI VORTAC	3000
Pontiac, MI VORTAC	Lansing, MI VORTAC	3000
§95.6114 VOR FEDERAL AIRWAY 114		
Is Amended to Read in Part		
Vesty, TX FIX	Wichita Falls, TX VORTAC	3200
§95.6124 VOR FEDERAL AIRWAY 124		
Is Amended to Read in Part		
Jacks Creek, TN VORTAC	Graham, TN VORTAC	2500
§95.6136 VOR FEDERAL AIRWAY 136		
Is Amended to Delete		
Nashville, TN VORTAC *2400–MOCA	Grill, TN FIX	*3000
Grill, TN FIX	Hinch Mountain, TN VORTAC	5000
§95.6139 VOR FEDERAL AIRWAY 139		
Is Amended to Read in Part		
Pears, NC FIX *5000–MCA SUNNS FIX, SE BND	*Sunns, NC FIX	10000
Sunns, NC FIX	Norfolk, VA VORTAC	6000
Norfolk, VA VORTAC	Cape Charles, VA VORTAC	4000
§95.6149 VOR FEDERAL AIRWAY 149		
Is Amended to Read in Part		
Mazie, PA FIX	Allentown, PA VORTAC	6000
§95.6154 VOR FEDERAL AIRWAY 154		
Is Amended to Read in Part		
Lotts, GA FIX	Savannah, GA VORTAC	2000
§95.6158 VOR FEDERAL AIRWAY 158		
Is Amended to Read in Part		
Pound, IA FIX *2600–MOCA	Dubuque, IA VORTAC	*6000
§95.6216 VOR FEDERAL AIRWAY 216		
Is Amended to Read in Part		
Ottumwa, IA VORTAC	Iowa City, IA VORTAC	3000
§95.6220 VOR FEDERAL AIRWAY 220		
Is Amended to Read in Part		
Panze, NJ FIX *8000–MRA	*Dixie, NJ FIX	8000
§95.6266 VOR FEDERAL AIRWAY 266		
Is Amended to Read in Part		
Lawrenceville, VA VORTAC	Franklin, VA VORTAC	2000
Mazon, VA FIX *1500–MOCA	Franklin, VA VORTAC	*4000 *2000
Franklin, VA VORTAC *5000–MCA SUNNS FIX, SE BND	*SUNNS, NC FIX	8500
§95.6267 VOR FEDERAL AIRWAY 267		
Is Amended to Read in Part		
Gremm, FL FIX *1400–MOCA	Pahokee, FL VORTAC	*2000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 374 Effective Date, February 4, 1993]

From	To	MEA
Is Amended to Delete		
Biscayne Bay, FL VORTAC *2000–MOCA	Dougs, FL FIX	*5000
Dougs, FL FIX	Pahokee, FL VORTAC	1500
§ 95.6286 VOR FEDERAL AIRWAY 286		
Is Amended to Read In Part		
Elkins, WV VORTAC	Derin, WV FIX	6000
Derin, WV FIX	Teakk, VA FIX	6500
Teakk, VA FIX	Casanova, VA VORTAC	6700
§ 95.6294 VOR FEDERAL AIRWAY 294		
Is Amended to Read In Part		
Nasal, IA FIX *2100–MOCA	Cedar Rapids, IA VORTAC	*2700
§ 95.6322 VOR FEDERAL AIRWAY 322		
Is Amended by Adding		
Cape Newenham, AK NDB *4300–MOCA	King Salmon, AK VORTAC	*5000
§ 95.6362 VOR FEDERAL AIRWAY 362		
Is Amended to Delete		
Chattanooga, TN VORTAC	Shelbyville, TN VOR/DME	4000
Shelbyville, TN VOR/DME	Nashville, TN VORTAC	3000
Nashville, TN VORTAC	Bridy, TN FIX	3000
Brady, TN FIX *2000–MOCA	Bowling Green, KY VORTAC	*2600
§ 95.6397 VOR FEDERAL AIRWAY 397		
Is Amended to Read In Part		
Walet, MS FIX *2000–MOCA	Holly Springs, MS VORTAC	*2500
§ 95.6434 VOR FEDERAL AIRWAY 434		
Is Amended to Read In Part		
Ottumwa, IA VORTAC *2500–MOCA	Moline, IL VORTAC	*3000
§ 95.6437 VOR FEDERAL AIRWAY 437		
Is Amended to Read In Part		
Gremm, FL FIX *1400–MOCA	Pahokee, FL VORTAC	*2000
Is Amended to Delete		
Biscayne Bay, FL VORTAC *2000–MOCA	Dougs, FL FIX	5000
Dougs, FL FIX	Pahokee, FL VORTAC	1500
§ 95.6445 VOR FEDERAL AIRWAY 445		
Is Amended to Read In Part		
Bettles, AK VORTAC	*Kanut, AK FIX	#3500
	NW BND	#7000
	SE BND	
*4400–MCA Kanut FIX, SE BND #COP Is 85 NM From and Utilizes Nenana (ENN) VORTAC		
§ 95.6454 VOR FEDERAL AIRWAY 454		
Is Amended to Read In Part		
King Salmon, AK VORTAC *4300–MOCA	Dillingham, AK VOR/DME	*5000
§ 95.6511 VOR FEDERAL AIRWAY 511		
Is Amended to Delete		
Mikki, FL FIX *1400–MOCA	Biscayne Bay, FL VORTAC	*6000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 374 Effective Date, February 4, 1993]

From	To	MEA
§ 95.6515 VOR FEDERAL AIRWAY 515		
Is Deleted		
Chattanooga, TN VORTAC	Nashville, TN VORTAC	4000
Nashville, TN VORTAC *2500–MOCA	Barry, KY FIX	*4000
Barry, KY FIX *2400–MOCA	New Hope, KY VOR/DME	*3000
New Hope, KY VOR/DME	Louisville, KY VORTAC	2700
§ 95.6521 VOR FEDERAL AIRWAY 521		
Is Amended to Read in Part		
*Cross City, FL VORTAC *5000–MCA Cross City VORTAC, W BND **1300–MOCA.	Hevvn, FL FIX	**5000
*Hevvn, FL FIX *7000–MCA Hevvn Fix, W BND *1300–MOCA	Teres, FL FIX	**7000
§ 95.6529 VOR FEDERAL AIRWAY 529		
Is Amended to Read in Part		
Famin, FL FIX *1500–MOCA	Swags, FL FIX	*5000
Is Amended to Delete		
Biscayne Bay, FL VORTAC	Famin, FL FIX	2000
§ 95.6532 VOR FEDERAL AIRWAY 532		
Is Amended to Read In Part		
Little Rock, AR VORTAC *3500–MRA	*Paron, AR FIX	2800

From	To	MEA	MAA
§ 95.7042 Jet Route No. 42 is Amended to Read in Part			
Nashville, TN VORTAC	Bosey, KY FIX	18000	45000
Bosey, KY FIX	Beckley, WV VORTAC	18000	35000
§ 95.7053 Jet Route No. 53 is Amended to Read in Part			
Dougs, FL FIX	Orlando, FL VORTAC	18000	
§ 95.7058 Jet Route No. 58 is Amended to Read in Part			
Lee County, FL VORTAC	Jazzi, FL FIX	18000	45000
§ 95.7075 Jet Route No. 75 is Amended to Read in Part			
Jazzi, FL FIX	Lee County, FL VORTAC	19000	45000
Gordonsville, VA VORTAC	Modena, PA VORTAC	19000	45000

Airway segment		Changeover points	
From	To	Distance	From
–§ 95.8003 VOR Federal Airways Changeover Points			
V–37 is Amended to Delete			
Pulaski, VA VORTAC	Elkins, WV VORTAC	45	Pulaski.
V–140 is Amended to Delete			
Dyersburg, TN VORTAC	Nashville, TN VORTAC	92	Dyersburg.
V–286 is Amended to Delete			
Elkins, WV VORTAC	Casanova, VA VORTAC	45	Elkins.
V–329 is Amended by Adding			
Andalusia, AL VOR	Montgomery, AL VORTAC	10	Andalusia.
V–428 is Amended to Delete			
Ithaca, NY VOR/DME	Georgetown, NY VORTAC	25	Ithaca.

Airway segment		Changeover points	
From	To	Distance	From
V§ 95.8005 Jet Routes Changeover Points			
J–5 Is Amended to Delete			
Lakeview, OR VORTAC	Seattle, WA VORTAC	176	Lakeview.

[FR Doc. 93–2500 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Project Cost and Annual Limits

January 28, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline and Producer Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Martin A. Burless, Jr., Chief, Pipeline Certificates and Projects Branch, Division of Pipeline Certificates, OPPR (202) 208–0581.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Publication of Project Cost Limits Under Blanket Certificates

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶61,216). Section 157.215(a) specified the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such costs limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 through 1993, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator rather than the Gross National Product (GNP) Implicit Price Deflator, which is not yet available for 1992. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

List of Subjects in 18 CFR Part 157

Natural gas.

Robert J. Cupina,

Deputy Director, Office of Pipeline and Producer Regulation.

Accordingly, 18 CFR part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. Proj. Cost Limit (Col. 1)	Prior Notice Proj. Cost Limit (Col. 2)
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

TABLE II

Year	Limit
1982	$2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000

[FR Doc. 93–2583 Filed 2–2–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300253A; FRL–4174–2]

RIN 2070–AB78

Propionic Acid; Exemptions From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes exemptions from the requirement of a tolerance for residues of propionic acid in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses and poultry, milk, and eggs as a result of application to livestock drinking water, poultry litter, and storage areas for silage and grain. EPA is issuing this rule on its own initiative. Propionic acid is a normal component of metabolism in the human body. Humans ordinarily consume propionic acid as a natural component of common food and as an added ingredient. Dietary exposure from pesticidal use of propionic acid is expected to be very low.

EFFECTIVE DATE: This regulation becomes effective February 3, 1993.

ADDRESSES: Written objections, identified by the document control number, [OPP-300253A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1992 (57 FR 28157), upon his own initiative, the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), proposed that an exemption from the requirement of a tolerance under 40 CFR 180.1023 be established for residues of propionic acid in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses and poultry, milk, and eggs, as a result of application to livestock drinking water, poultry litter, and storage areas for silage and grain.

In response to the proposed rule, one comment was received from Union Carbide Chemicals & Plastics Co. This document proposed that the Agency amend the proposed exemptions to include the proposed exemptions, notice of which appeared in the **Federal Register** of June 21, 1989 (54 FR 26056), for residues of propionic acid in or on the following raw agricultural commodities: cottonseed, peanuts, rice grain, and soybeans, when used as a fungicide in postharvest application. The Agency has determined to not include this proposed amendment in the final rule. Pesticide petition 8F3634 requesting these exemptions was submitted by Stop-Shock, Inc., of Dallas, TX, and is pending the satisfactory completion of certain requirements for the registration of its product under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Generally, EPA will not establish a tolerance until an associated FIFRA registration is ready for approval. Premature establishment of the tolerance may encourage misuse of the pesticide. The commenter gave no reason why EPA should deviate from this policy.

There were no requests for referral to an advisory committee received in response to the proposed rule.

Data reviewed by the Agency were discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance exemptions will protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.1023, to read as follows:

§ 180.1023 Propionic acid; exemptions from the requirement of a tolerance.

(a) Propionic acid is exempt from the requirement of a tolerance for residues in or on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch, and wheat grain from postharvest application of propionic acid or a mixture of methylene bispropionate and oxy(bis-methylene) bisproprionate when used as a fungicide.

(b) Propionic acid is exempt from the requirement of a tolerance for residues in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses and poultry, milk, and eggs when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain.

[FR Doc. 93-2367 Filed 2-2-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 281

[FRL-4560-2]

Rhode Island; Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Rhode Island's application for final approval.

SUMMARY: The State of Rhode Island has applied for final approval of its underground storage tank program under subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Rhode Island's application and has reached a final determination that Rhode Island's underground storage tank program satisfies all the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Rhode Island to operate its program.

EFFECTIVE DATE: Final approval for Rhode Island shall be effective at 1 p.m. on March 5, 1993.

FOR FURTHER INFORMATION CONTACT: Andrea Beland, Office of Underground Storage Tanks, HPU-7, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, 617/573-9604.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of RCRA enables EPA to approve state underground storage tank programs to operate in a state in lieu of the Federal underground storage tank program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program, and (2) provide for adequate enforcement [Section 9004(a) of RCRA, 42 U.S.C. 6926(b)].

On July 2, 1992, EPA acknowledged receiving from the State of Rhode Island a complete official application to obtain final approval to administer its underground storage tank program. On November 13, 1992, EPA published a tentative decision announcing its intent to grant Rhode Island final approval of its program. Further background on the tentative decision to grant approval appears at 57 FR 220, November 13, 1992.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel for lack of public interest. In light of EPA receiving only one letter from a petroleum distributor expressing general support for EPA's approval of Rhode Island's underground storage tank program, no public hearing was held.

B. Decision

I conclude that the State of Rhode Island's application for final approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, Rhode Island is granted final approval to operate its underground storage tank program. The State of Rhode Island now has the responsibility for managing all regulated underground storage tank facilities within its borders and carrying out all aspects of the Federal underground storage tank program. Rhode Island also has primary enforcement responsibility, although EPA retains the right to conduct enforcement actions under section 9006 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain federal regulations in favor of the State of Rhode Island's program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks within the State. It does not impose any new burdens on small entities. This rule, therefore, does not require flexibility analysis.

List of Subjects in 40 CFR Part 281

Administrative practice and procedure, Hazardous substances, Insurance, Intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

Authority: Section 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. §§ 6912(a), 6974(b), and 6991c.

Dated: January 11, 1993.

Julie Belaga,

Regional Administrator.

[FR Doc. 93–2533 Filed 2–2–93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 93–12]

Forfeiture Proceedings

In the Matter of Amendment of § 1.80 of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this action, the Commission amends § 1.80(c) of the rules, 47 CFR 1.80(c), to reflect amendments to section 503(b)(6) of the Communications Act of 1934, as amended. Section 503(b)(6) of the Act was recently amended by Congress to extend the statute of limitations for issuing forfeitures to broadcast station licensees. The amendment to § 1.80(c) merely restates the statutory language of amended section 503(b)(6) to conform the Commission's forfeiture rules to the statute. In addition, the Commission is taking this opportunity to make typographical corrections and make updates to several citations to sections of the Communications Act contained in §§ 1.80(a)(3) and (a)(4), and to update the forfeiture payment procedures in § 1.80(h) to state the correct address for submitting payments.

EFFECTIVE DATE: February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas Cooper, Office of General Counsel, Federal Communications Commission, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

Order

Adopted: January 11, 1993.

Released: January 28, 1993.

By the Commission:

1. Congress recently amended section 503(b)(6) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(6), to extend the statute of limitations for issuing forfeitures to broadcast station licensees. Pub. L. No. 102–538, 106 Stat. 3543, enacted October 27, 1992. The amendment extended the statute of limitations to encompass the entire current license term and clarified the meaning of the term "current license term." By this Order, we amend § 1.80(c)(1) of our rules, 47 CFR 1.80(c)(1), to reflect the amended statute.

2. In addition, we are taking this opportunity to make typographical corrections and updates to several citations to sections of the Communications Act contained in §§ 1.80(a)(3) and (a)(4) of our rules, and to update the forfeiture payment procedures in § 1.80(h) of the rules to state the correct address for submitting payments.

3. The change to § 1.80(c)(1) of our rules adopted herein merely restates in our rules the statutory language of 47 U.S.C. 503(b)(6) and the changes to §§ 1.80(a)(3) and (a)(4) simply correct or update citation references that are not controversial and are matters in which the public is not likely to be interested. Therefore, the Commission for good cause finds that compliance with the notice and comment and effective date provisions of the Administrative Procedure Act (APA) is unnecessary for these amendments. See 5 U.S.C. 553(b)(B), 553(d)(3). The change to § 1.80(h) of our rules is a matter of agency organization, practice or procedure. Accordingly, the notice and comment and effective date provisions of the APA do not apply. See 5 U.S.C. 553(b)(A), 553(d).

4. Accordingly, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), *it is ordered,* That 47 CFR 1.80(a)(3) and (a)(4), 1.80(c)(1), and 1.80(h) are amended as set forth in the Rule Changes, effective upon publication in the **Federal Register**.

List of Subjects in 47 CFR Part 1

Penalties.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, part 1, is amended to read as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

2. Section 1.80 is amended by revising the introductory text of paragraph (a) and paragraphs (a)(3), (a)(4), (c)(1), (h), and the concluding text to paragraph (a) to read as follows:

Miscellaneous Proceedings

§ 1.80 Forfeiture proceedings.

(a) *Persons against whom and violations for which, a forfeiture may be assessed.* A forfeiture penalty may be assessed against any person found to have:

* * * * *

(3) Violated any provision of section 317(c) or 508(a) of the Communications Act; or

(4) Violated any provision of section 1304, 1343, or 1464 of title 18, United States Code.

A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall not apply to conduct which is subject to a forfeiture penalty under sections 202, 203, 205, 214(d), 219, 220, 223, 364, 386, 506 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

* * * * *

(c) *Limits on the time when a proceeding may be initiated.* (1) In the case of a broadcast station, no forfeiture penalty shall be imposed if the violation occurred more than 1 year prior to the issuance of the appropriate notice or prior to the date of commencement of the current license term, whichever is earlier. For purposes of this paragraph, "date of commencement of the current license term" means the date of commencement of the last term of license for which the licensee has been granted a license by the Commission. A separate license term shall not be deemed to have commenced as a result of continuing a license in effect under section 307(c) pending decision on an application for renewal of the license.

* * * * *

(h) *Payment.* The forfeiture should be paid by check or money order drawn to the order of the Federal Communications Commission. The Commission does not accept responsibility for cash payments sent through the mails. The check or money order should be mailed to: Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673–7482.

* * * * *

[FR Doc. 93–2453 Filed 2–2–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–254]

Organization and Delegation of Powers and Duties; Secretarial Succession

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to alter the order of Secretarial succession for the Department of Transportation.

EFFECTIVE DATE: The effective date of this amendment is January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, DC (202) 366–9154.

SUPPLEMENTARY INFORMATION: In 49 CFR 1.26, the order of succession to act as Secretary of Transportation is set forth: The Deputy Secretary, General Counsel, Assistant Secretary for Policy and International Affairs, Assistant Secretary for Governmental Affairs, Assistant Secretary for Budget and Programs, Assistant Secretary for Public Affairs, Assistant Secretary for Administration, Associate Deputy Secretary, and Saint Lawrence Seaway Development Corporation Administrator, in that order. For the purpose of the upcoming transition, we deem it preferable to reverse the order of the positions of the Saint Lawrence Seaway Development Corporation Administrator and the Assistant Secretary for Administration in the order of succession.

Analysis of Regulatory Impacts

This amendment has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

This amendment is not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this amendment will not have a significant economic impact on a substantial number of small entities.

This amendment does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Finally, the amendment does not contain any collection of information requirements. Accordingly, review by the Office of Information and Regulatory Affairs of the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 is not required.

Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary, and it may be made effective in less than 30 days after publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.26 is amended by revising paragraphs (a) (7), (8), and (9) to read as follows:

§ 1.26 Secretarial succession.

(a) * * *

(7) Associate Deputy Secretary.

(8) Saint Lawrence Seaway Development Corporation Administrator.

(9) Assistant Secretary for Administration.

* * * * *

Issued in Washington, DC, on January 14 1993.

Andrew H. Card, Jr.,
Secretary of Transportation.

[FR Doc. 93-1368 Filed 2-2-93; 8:45 am]

BILLING CODE 4910-62-M

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49 CFR Part 1

[OST Docket No. 1; Amdt. 1-253]

Organization and Delegation of Powers and Duties; Secretarial Succession

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends agency regulations on Secretarial Succession. The Associate Deputy Secretary is added to the line of succession to act as Secretary of Transportation, in case of the absence or disability of the Secretary, until the absence or disability ceases, or in cases of a vacancy, until a successor is appointed. This final rule also adds provisions concerning the new Office of Intermodalism, as established by the Intermodal Surface Transportation Efficiency Act of 1991.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C-50. (202) 366-9307, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Title 49 U.S.C. 102(a) established the Department of Transportation, (b) placed the Secretary as head of the Department, (c) put the Deputy Secretary as first in line of succession to be Acting Secretary, and (d) established the General Counsel and the Assistant Secretaries and included them in the order of succession to be Acting Secretary "in the order prescribed by the Secretary." Section 102 was amended in 1984 by the addition of a new subsection (d) which created the position of Associate Deputy Secretary and redesignating the original (d) as (e). This amendment did not change the provision that, after the Deputy Secretary, the order of succession would be the General Counsel and the Assistant Secretaries, in the order prescribed by the Secretary Under 49 U.S.C. 322, the Secretary may issue regulations governing the organization of the Department and the conduct of its business. Under this authority, the Secretary can extend the order of succession beyond the General Counsel and the Assistant Secretaries, and has done so by including the Administrator of the Saint Lawrence Seaway Development Corporation. This authority allows the Secretary to include the associate Deputy Secretary in the order of succession either before or after the Saint Lawrence Seaway Administrator.

This final rule also amends § 1.22(a) and § 1.23(q) of this part to include references to the Office of Intermodalism in the Office of the Secretary. Section 5002 of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240) established the Office of Intermodalism within the Office of Secretary. As discussed in § 1.23(q) of this Part, the Office of Intermodalism coordinates Federal policy on intermodal transportation.

Since this amendment relates to departmental management, organization, procedure, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than 30 days after publication in the **Federal Register**. Therefore, this final rule is effective upon publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.22(a) is revised to read as follows:

§ 1.22 Structure.

* * * * *

(a) *Secretary and Deputy Secretary.* The Secretary and Deputy Secretary are assisted by the Associate Deputy Secretary, Executive Secretariat, the Board of Contract Appeals, the Departmental Office of Civil Rights, the Office of Small and Disadvantaged Business Utilization, the Office of Commercial Space Transportation, the Office of Intelligence and Security, and the Office of Intermodalism all of which report to the Secretary. The Assistant Secretaries, the General Counsel, and the Inspector General also report directly to the Secretary.

3. Section 1.23(i) is revised to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(i) *Associate Deputy Secretary.* Assists the Secretary and Deputy Secretary in carrying out a variety of executive and managerial policies, programs, and initiatives.

4. Section 1.23(p) is added and reserved and (q) is added to read as follows:

§ 1.23 Spheres of primary responsibility.

* * * * *

(p) [Reserved]

(q) *Office of Intermodalism.* Focal point within the Federal Government for coordination of intermodal transportation policy which brings together Departmental intermodal perspectives, advocates intermodal interests, and provides Secretarial leadership and visibility on issues that involve or affect more than one operating administration.

5. Section 1.26 is amended by redesignating paragraph (a)(8) as (a)(9) and adding a new (a)(8) to read as follows:

§ 1.26 Secretarial succession.

(a) * * *

(8) Associate Deputy Secretary.

* * * * *

Issued at Washington, DC this 24th day of December, 1992.

Andrew H. Card, Jr.,
Secretary of Transportation.

[FR Doc. 93-1412 Filed 2-2-93; 8:45 am]

BILLING CODE 4910-62-M

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49 CFR Parts 1 and 89

[OST Docket No 1; Amdt. 1-256]

Organization and Delegation of Powers and Duties; Delegations to All Administrators and the Assistant Secretary for Administration

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document amends the delegations to all DOT Administrators and the Assistant Secretary for Administration by increasing the amount by which they are authorized to compromise claims from "not more than $20,000 (excluding interest)" to "not more than $100,000 (excluding interest)." The increased amount reflects the increase in the Secretary's statutory authority to compromise claims. It also reflects authority that has

been delegated to the Secretary by the Attorney General relating to the administrative settlement of Federal tort claims.

EFFECTIVE DATE: This rule becomes effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law (202) 366–9167, or Steven B. Farbman, Office of the Assistant General Counsel for Regulation and Enforcement (202) 366–9306, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Administrative Dispute Resolution Act, Public Law 101–552, section 8(b), 31 U.S.C. 3711(a)(2), enacted on November 15, 1990, increased the authority of the heads of executive agencies to settle claims from $20,000 to $100,000. The delegations of the Secretary's authority to the Assistant Secretary for Administration and the heads of each of the Department's Operating Administrations are being revised to reflect the change in the Secretary's authority. Although 49 CFR 89.5 delegates, in part, the Secretary's authority to the heads of the Operating Administrations, 49 CFR 1.45, "Delegations to all Administrators," does not contain this delegation. Accordingly, a new 49 CFR 1.45(a)(15) has been added to reflect this delegation. On April 8, 1992, the Attorney General delegated to the Secretary authority to compromise and settle administrative claims involving the Department under the Federal Tort Claims Act if the amount of the proposed compromise does not exceed $100,000. The Attorney General's delegation also requires that if the claim presents a novel question of law of fact, then the Secretary of Transportation should obtain the advice of the Assistant Attorney General in charge of the Civil Division of the Department of Justice; and further that for claims in excess of $50,000 but not exceeding $100,000, the Secretary shall prepare a memorandum explaining the basis for its action and forward it to the Director of the Torts Branch of the Civil Division. This additional authority is reflected in a new 49 CFR 1.45(a)(16).

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects

49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

49 CFR Part 89

Administrative practice and procedure, Debt collection.

In consideration of the foregoing, Parts 1 and 89 of Title 49, Code of Federal Regulations, are amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 is revised to read as follows:

Authority: 40 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. Section 1.59 is amended by revising "$20,000" to read "$100,000 (excluding interest)" in paragraph (c)(6).

3. Section 1.45 is amended by revising "$25,000" to read "$100,000 (excluding interest)" in paragraph (a)(3).

4. Section 1.45 is amended by adding paragraphs (a)(15) and (a)(16) as follows:

§ 1.45 Delegations to all Administrators.

(a) * * *

(15) Compromise, suspend collection action on, or terminate claims of the United States not exceeding $100,000 (excluding interest) that are referred to, or arise out of the activities of, his or her Operating Administration;

(16) Compromise, suspend collection action on, or terminate claims against the United States not exceeding $100,000 (excluding interest) that are referred to, or arise out of the activities of, his or her Operating Administration; *provided that* when the Administrator believes that a claim against the United States presents a novel question of law or of policy, he or she shall obtain the advise of the Assistant Attorney General in charge of the Civil Division; and *provided further that* whenever he or she settles any administrative claim against the United States for an amount in excess of $50,000, the Administrator shall prepare a memorandum fully explaining the basis for the action taken and send a copy of the memorandum to the Director, Federal Torts Claims Act Staff, Torts Branch of the Civil Division, U.S. Department of Justice.

* * * * *

PART 89—[AMENDED]

1. The authority citation for part 89 is revised to read as follows:

Authority: Pub. L. 89–508; Pub. L. 89–365, secs. 3, 10, 11, 13(b), 31 U.S.C. 3701–3720A; Pub. L. 98–167; Pub. L. 98–369; Pub. L. 99–578; Pub. L. 101–552, 31 U.S.C. 3711(a)(2).

2. Section 89.5 introductory text is amended by revising "$20,000" to read "$100,000 (excluding interest)".

Issued at Washington, DC this 14th day of January 1993.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 93–1607 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-62-M

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49 CFR Part 1

[Docket 1; Amdt. 1–258]

Organization and Delegation of Powers and Duties Delegations to All Administrators

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This document amends the delegations to all DOT Administrators by adding a delegation to all Administrators to enter into memoranda of understanding (MOUs) with the Occupational Safety and Health Administration (OSHA), Department of Labor. This rule is necessary to enable the Administrators to discuss and negotiate with OSHA the particular characteristics of their safety regulatory programs and the structure and operations of the industry or industries they regulate.

EFFECTIVE DATE: This rule becomes effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Paul B. Larsen, Office of the Assistant General Counsel for Environmental Rights and General Law (202) 366–9161, Department of Transportation, 400 7th Street SW., Washington DC 20590.

SUPPLEMENTARY INFORMATION: In section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653(b)(1), Congress provided that nothing in the Occupational Safety and Health Act "shall apply to working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." DOT, in accordance with 49 U.S.C. subtitle I (recodified DOT Act), through its operating administrations, exercises statutory authority to prescribe and enforce occupational safety and health standards with respect to employees in DOT-regulated industries.

The Administrators of the DOT operating administrations are most familiar with the safety and health problems regarding the industries which they regulate. It is most efficient that they discuss with OSHA the particular characteristics of their safety regulatory programs and the structure and operations of the industry or industries they regulate. Therefore, the Administrators are delegated the function of negotiating and concluding MOUs directly with OSHA regarding the particulars of each modal program with regard to memoranda of understanding that may be entered into with OSHA.

To insure consistency throughout the Department, the General Counsel shall concur in each memorandum of understanding with OSHA prior to its execution by the Administrator of the operating administration concerned.

Since this rule relates to departmental management, organization, procedure, and practice, notice and public comment are unnecessary. For the same reason, good cause exists for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). Therefore, this rule is effective on the date of its publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

2. Section 1.45 is amended by adding paragraph (a)(17) as follows:

§ 1.45 Delegations to all administrators.

(a) * * *

* * * * *

(17) Enter into memoranda of understanding with the Occupational Safety and Health Administration (OSHA) in regard to setting and enforcing occupational safety or health standards for employees in DOT-regulated industries. The General Counsel shall concur in each memorandum of understanding with OSHA prior to its execution by the Administrator of the operating administration concerned.

* * * * *

Issued at Washington DC, the 15th day of January 1993.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 93–1772 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

49 CFR Part 229

[FRA Docket No. RSGC–2, Notice No. 5]

RIN 2130–AA80

Locomotive Conspicuity; Minimum Standards for Auxiliary External Lights

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim rule with request for comments.

SUMMARY: As required by statute, FRA is establishing interim standards regarding locomotive lighting to enhance the conspicuity of trains. This rule identifies several auxiliary external lighting arrangements as acceptable interim locomotive conspicuity measures. The purpose of this rule is to encourage the installation on locomotives of such lighting arrangements as are now widely used and available. Lighting devices installed in conformance to acceptable current practice will not be immediately rendered obsolete when FRA issues final standards in this area. The effect of this rule would be to help alert motorists and pedestrians of an approaching train. This action is intended to reduce the number of accidents that occur at points where highways cross railroad tracks.

DATES: This interim rule is effective February 3, 1993; written comments must be received on or before April 1, 1993. Comments received after that date will be considered so far as possible without incurring additional expense or delay.

ADDRESSES: *Written Comments:* Written comments and petitions for reconsideration should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590. *Public Hearing:* Given the limited scope of this interim rule and the statutory exception from public proceedings, FRA does not believe that a public hearing is warranted at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed by the deadline for written comments.

FOR FURTHER INFORMATION CONTACT: Gordon Davids, Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–9186); Edward R. English, Director, Office of Safety Enforcement, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–9252); or Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION: FRA is issuing this interim rule on locomotive conspicuity to fulfill the requirements mandated by section 14 of the recently enacted Amtrak Authorization and Development Act (Pub. L. 102–533). In an effort to reduce further the number of accidents at highway-rail crossings, this rule attempts to enhance the visibility of trains at such crossings by encouraging installation and use of an auxiliary external lighting arrangement on railroad locomotives. Before discussing the specific details of this interim rule, an overview of past regulatory proposals to enhance locomotive conspicuity is warranted.

Background

On March 7, 1978, the FRA published an advance notice of proposed rulemaking (ANPRM). The purpose of the ANPRM was to determine whether Federal regulations should require locomotives to be equipped with lighted devices, in addition to the standard headlight, intended to alert motorists that a train is approaching a highway-rail grade crossing (43 FR 9324). See provision on headlights at 49 CFR 229.125.

Although the comments were largely negative, FRA determined that the alerting light concept warranted further exploration. Hence, FRA issued a notice of proposed rulemaking (NPRM) on June 18, 1979 (44 FR 34982). This NPRM proposed to require the display by railroad locomotives of dual alternating electronic flash tube lights (strobe lights) at public highway-rail crossings at grade.

The response to the strobe light NPRM was overwhelmingly negative. Substantial questions were raised about the effectiveness of the strobe light (and alerting lights generally), the costs involved, and the operational reliability of the strobe devices. As a result, the FRA withdrew the strobe light NPRM on April 15, 1982 (47 FR 16189).

On October 12, 1982, FRA issued a second NPRM (47 FR 44791). This notice proposed the installation of a single alerting light on railroad locomotives, with a wide variety of light types qualifying as an alerting light. By removing the concerns expressed by the commenters to the earlier NPRM that related solely to the strobe type light, FRA sought to focus attention on the critical question whether alerting lights were effective at all.

Once again, the comments were largely negative. In view of the practical experience of the commenters with alerting lights and the depth of the technical analysis, the working hypothesis of the proposed rule was substantially undermined. FRA concluded that the information collected at that point did not support the proposition that alerting lights were effective in reducing the incidence of grade-crossing accidents. FRA thus withdrew this NPRM on May 5, 1983 (48 FR 20257).

On October 27, 1992, the Amtrak Authorization and Development Act (Pub. L. 102–533) was signed into law. This legislation added new subsection (u) to section 202 of the Federal Railroad Safety Act of 1970 ("Safety Act") (45 U.S.C. 431). Subsection 202(u)(1) requires the Secretary to complete locomotive conspicuity research no later than December 31, 1993. Subsection 202(u)(2) provides that the Secretary shall issue interim regulations identifying ditch lights, crossing lights, strobe lights, and oscillating lights as interim locomotive conspicuity measures, and authorizing and encouraging installation and use of such measures. This subsection also provides that any locomotive equipped with such interim conspicuity measures on the date of issuance of the final regulations shall be considered in full compliance with such final regulations until four years after issuance of such final regulations.

Subsection 202(u)(3) directs the Secretary to commence rulemaking for the final regulations no later than June 30, 1994. This subsection lists various factors that FRA is to consider when issuing the final regulations. Further, subsection 202(u)(4) provides that any category of train or rail operation may be excluded from any specific locomotive conspicuity requirement provided that such an exclusion is in the public interest and is consistent with rail safety, including highway-rail grade crossing safety.

Subsection 202(u)(5) provides that such final regulations requiring enhanced locomotive conspicuity measures shall be issued no later than June 30, 1995. This subsection also requires that all locomotives not excluded from the regulations be equipped with either the interim conspicuity lighting arrangements identified in this rule or the conspicuity arrangements mandated by the final regulations, no later than December 31, 1997.

Thus, conspicuity measures that comply with this interim rule, or any amendment thereto, will be deemed to comply with the final rule for four years after its issuance, whenever that may be. That is, the final rule could be issued prior to June 30, 1995, the deadline for its issuance, and, if so, the four-year grace period would begin on that earlier date. Likewise, although this interim rule does not require that any train be equipped with conspicuity measures, the final rule may require such equipping even prior to December 31, 1997, which is the latest date for requiring such measures.

Subsection 202(u)(6) defines the term "locomotive conspicuity" to mean "the enhancement of day and night visibility of the front-end unit of a train, by means of lighting, reflective materials, or other means, with particular consideration to the visibility and perspective of drivers of motor vehicles at grade crossings."

Substantial data have been gathered and analyses have been developed and continue to be developed to determine means of enhancing visibility of trains at highway-rail grade crossings. In 1991, FRA initiated additional research into locomotive conspicuity through the Volpe National Transportation Systems Center. That research is scheduled to continue into 1994.

Several types of lighting devices are currently available and installed on a large number of locomotives. FRA recognizes the concern of locomotive owners that lighting devices now used might be rendered obsolete by further regulations. This interim rule is intended to reduce the inhibiting effects of those concerns by promoting the installation and use of currently available lighting devices. Such use has the potential to reduce near-term losses from highway-rail grade crossing accidents.

FRA also believes that the quality of future regulations will be enhanced by the consideration of data on the performance of a variety of lighting arrangements for enhancement of locomotive conspicuity. Data gathered by the more widespread use of currently available lighting devices encouraged by this rule will be used in conjunction with existing FRA studies to find the most effective lighting arrangement(s) to increase locomotive conspicuity.

Public Participation in the Rulemaking

Subsection 202(u)(2) of the Federal Railroad Safety Act of 1970 provides that this interim rule and any amendment to it shall be adopted without regard to subchapter II of chapter 5 of title 5, United States Code. This subsection thus allows this interim rule to be issued without regard to the Administrative Procedure Act's general requirement of providing an opportunity for public participation in the rulemaking process or, by implication, the Safety Act's requirement that an opportunity for oral presentation be provided where notice and comment are necessary. Similarly, the normal requirement that a rule be effective no sooner than 30 days after issuance does not apply here. Given this statutory exception and the brief period of time for issuance of this interim rule, FRA has endeavored to describe acceptable interim lighting devices based upon information already available.

Although the enabling legislation suspended the requirements for notice and comment, FRA will consider written comments received on or before April 1, 1993. During this period, FRA will also consider petitions for amendment of this rule, provided that such petitions clarify the descriptions of devices addressed in this rule, or identify devices that perform the same function at least as effectively as those devices addressed in this rule.

FRA will not consider requests that would disqualify devices addressed in this rule. There need be no concern that a device acquired or installed in conformance with this rule would become obsolete earlier than the date specified in this rule.

Section-by-Section Analysis

Section 229.133

This section encourages the installation and use of external auxiliary lighting arrangements on locomotives at the front of a train or other movement. The most reasonable means of issuing the rule is by adding it as a section of the Railroad Locomotive Safety Standards. This interim rule will expire when it is no longer necessary to define compliance with the final rule. Section 229.133 is declaratory, rather than restrictive, in that nothing contained in this interim rule is to be interpreted as requiring or prohibiting any system of locomotive lights beyond the requirements of other Federal railroad safety regulations.

In general, § 229.133 provides that auxiliary external lighting types listed in that section shall be deemed acceptable devices if currently installed on railroad locomotives or installed at any time prior to issuance of a final rule. Further, such acceptable lighting devices shall be deemed in compliance with that final rule for a period of time not to exceed four years from the date of issuance of that final rule. Assuming the final regulation is issued on June 30, 1995, adherence to the interim locomotive conspicuity measures identified in this rule will constitute compliance with that final rule for a period of four years, or until June 30, 1999.

FRA encourages installation of one of the auxiliary external lighting arrangements specified in this section on each locomotive subject to the Railroad Locomotive Safety Standards; however, FRA recommends that such lights be turned on only on a locomotive at the head of a train or other movement. The phrase "at the head of a train or other movement" is intended to encompass two situations. In the first situation, a locomotive, while coupled to one or more pieces of rolling equipment, is the first piece of rolling equipment to enter a crossing. If a locomotive is not the first piece of rolling equipment to enter a crossing, turning on one of the lighting arrangements is not encouraged. In the second situation, a locomotive is operated alone, without being coupled to other equipment. Thus, in the case where a locomotive enters a highway-rail crossing without any rolling equipment in front, turning on of one of the lighting arrangements is encouraged irrespective of whether it is pulling any other equipment.

Specifications for acceptable auxiliary external lighting devices are contained in paragraph (b) and list four types of lighting arrangements that are acceptable devices if currently installed or installed at any time prior to issuance of a final rule: ditch lights, strobe lights, crossing lights, and oscillating lights.

The list of external light arrangements in § 229.331 is based on FRA's knowledge of alerting light devices now being utilized. If other such devices are in use and should be included in the list, FRA would welcome a description of the devices and a brief summary of why their alerting qualities warrant inclusion in this rule. Since the purpose of this rule is to promote safety enhancements by encouraging installations of alerting lights during the period of research and regulatory development, FRA will not review at this time the status of existing installations, as such.

The performance standards listed for each type of lighting arrangement are based on an analysis by FRA of the characteristics of devices currently manufactured and available for railroad installation. The performance standards represent FRA's understanding of alerting light technology and the criteria for describing lighting devices in terms of operational characteristics. However, since they are intended to be descriptive of currently available devices, FRA has not analyzed the significance or function of each component of the performance standards in alerting motorists or making a locomotive conspicuous.

FRA therefore solicits comments from railroads, light manufacturers, railroad employees, and other interested persons regarding the specific performance standards and the concept of locomotive conspicuity generally.

In this section each qualifying arrangement of auxiliary external lights would have to be white in color. FRA believes that the color white is appropriate because it is the only brilliant color that does not hold particular significance in the railroad environment. The color white also offers the highest level of conspicuity at the specified levels of illumination and causes the least confusion with lights used on the railroad for other purposes. The intensity requirements correspond with current practice to the best knowledge of FRA.

Section 229.133 also requires that each light or light arrangement be capable of (i) operating continuously at speeds over 8 miles an hour or (ii) being displayed at least 20 seconds before the front of the locomotive passes over any public highway crossing at grade. This 20-second time frame reflects FRA's view of the period when the lighting arrangements will be effective in warning vehicles approaching the crossing of the presence of the locomotive. It should provide motorists with ample opportunity to take action to avoid an accident, while minimizing any adverse effects from the use of these lights. This section also provides for automatic operation of each auxiliary external light arrangement by activation of a locomotive audible warning device. In addition, each lighting arrangement has lateral and vertical mounting specifications to ensure that the lights are visible from a considerable distance. Based on current data and information, FRA believes that these specifications should accentuate the alerting quality of each arrangement of lights and improve overall locomotive conspicuity. Railroads remain free to utilize these alerting lights as they see fit and make such exceptions as may be warranted.

The flash rates specified for strobe lights and crossing lights were chosen to avoid disorientation of rail or highway users and to minimize the possibility of adversely affecting persons with seizure disorders related to photosensitivity. The flash rates are based on research conducted for FRA and on practical service experience by FRA.

This section does not address what action should be taken in the case of failure enroute because this interim rule does not require the use of an auxiliary lighting system. In any event, FRA believes the available evidence indicates that alerting lights will have a high level of reliability so that enroute failures should be infrequent.

Regulatory Impact

Executive Order 12291 and DOT Regulatory Policies and Procedures

This interim rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be nonmajor under Executive Order 12291. It is, however, considered to be significant under DOT policies and procedures (44 FR 11304) because of Congressional and public interest in promoting rail safety by reducing near-term losses from highway-rail grade crossing accidents.

Consequently, FRA has prepared a regulatory evaluation addressing the economic impact of the rule. The regulatory evaluation estimates the economic costs and consequencies of this interim rule, as well as its anticipated benefits and impacts. This regulatory evaluation has been placed in the docket and is available for public inspection and copying during normal business hours in room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. This interim rule will not have an adverse impact on any entity because it does not place any new requirements or burdens on the public. Therefore, it is certified that the interim rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not contain a colllection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes. Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

Federalism Implications

This rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibiilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Under section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter.

List of Subjects in 49 CFR Part 229

Railroad safety.

Adoption of the Amendment

In consideration of the foregoing, FRA amends part 229, title 49, Code of Federal Regulations to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

1. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 45 U.S.C. 431, 438, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; Pub. L. 102–533; 49 CFR 1.49 (c), (g) and (m).

2. Section 229.133 is added to read as follows:

§ 229.133 Interim locomotive conspicuity measures—auxiliary external lights.

(a) A locomotive at the head of a train or other movement is authorized to be equipped with auxiliary external lights, additional to the headlight required by § 229.125, for the purpose of improved conspicuity. A locomotive that is equipped with auxiliary external lights in conformance with the specifications or performance standards set forth in paragraph (b) of this section on the date of issuance of a final rule that requires additional or other external lights on locomotives for improved conspicuity, as required by section 202(u) of the Federal Railroad Safety Act of 1970, shall be deemed to conform to the requirements of the final rule for four years following the date of issuance of that final rule.

(b) Each qualifying arrangement of auxiliary external lights shall conform to one of the following descriptions:

(1) *Ditch lights.* (i) Ditch lights shall consist of two white lights, each producing a steady beam of not less than 200,000 candela, placed at the front of the locomotive, not less than 60 inches apart, and not less than 36 inches nor more than 84 inches above the top of the rail.

(ii) Ditch lights shall be focused horizontally within 45 degrees of the longitudinal centerline of the locomotive.

(iii) Ditch lights shall be capable of being operated:

(A) continuously while the locomotive is in motion at speeds above 8 miles per hour or

(B) automatically for at least 20 seconds before the front of the locomotive passes over any public highway crossing at grade. Automatic operation shall be activated by the sounding of the locomotive audible warning device.

(2) *Strobe lights.* (i) Strobe lights shall consist of two white stroboscopic lights, each with effective intensity, as defined by the Illuminating Engineering Society's Guide for Calculating the Effective Intensity of Flashing Signal Lights (November 1964), of not less than 500 candela.

(ii) The flash rate of strobe lights shall not be slower than one pulse every 1.3 seconds nor faster than one pulse every 1.0 seconds.

(iii) Strobe lights shall be placed at the front of the locomotive, not less than 60 inches apart, and not less than 36 inches above the top of the rail.

(iv) Strobe lights shall be capable of being operated:

(A) continuously while the locomotive is in motion at speeds above 8 miles per hour or

(B) automatically for at least 20 seconds before the front of the locomotive passes over any public highway crossing at grade. Automatic operation shall be activated by the sounding of the locomotive audible warning device.

(3) *Crossing lights.* (i) Crossing lights shall consist of two white lights, placed at the front of the locomotive, not less than 60 inches apart, and not less than 48 inches above the top of the rail.

(ii) Each crossing light shall produce not less than 200,000 candela, either steadily burning or alternatively flashing.

(iii) The flash rate of crossing lights shall not be faster than once every 1.0 seconds, nor slower than once every 1.3 seconds.

(iv) Crossing lights shall be focused horizontally within 15 degrees of the longitudinal centerline of the locomotive.

(v) Crossing lights shall be capable of being operated:

(A) continuously while the locomotive is in motion at speeds above 8 miles per hour or

(B) automatically for at least 20 seconds before the front of the locomotive passes over any public highway crossing at grade. Automatic operation shall be activated by the sounding of the locomotive audible warning device.

(4) *Oscillating light.* (i) An oscillating light shall consist of one steadily burning white light producing not less than 200,000 candela in a moving beam that depicts a circle or a horizontal figure 8 to the front, about the longitudinal centerline of the locomotive.

(ii) An oscillating light shall be capable of being operated:

(A) continuously while the locomotive is in motion at speeds above 8 miles per hour or

(B) automatically for a least 20 seconds before the front of the locomotive passes over any public highway crossing at grade. Automatic operation shall be activated by the sounding of the locomotive audible warning device.

(c) It is Federal policy to encourage the installation and use of an auxiliary external light arrangement specified in this section on each locomotive employed at the front of a train or other movement at highway-rail grade crossings. Failure to equip a locomotive with such lights or lighting arrangement does not render a locomotive unsafe or otherwise in noncompliance with this part or part 230 of this chapter.

Issued in Washington, DC, on January 22, 1993.

Perry A. Rivkind,

Acting Federal Railroad Administrator.

[FR Doc. 93–2014 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–06–M

Proposed Rules

Federal Register
Vol. 58, No. 21
Wednesday, February 3, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Cost, Feasibility and Privacy Implications of Tracking Deposits

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is required to conduct a study of the cost and feasibility of tracking any individual's insured and uninsured deposits across all insured depository institutions. The FDIC seeks public comment on the desirability, cost and feasibility of developing such a tracking system, as well as the privacy implications of such tracking.

DATES: Written comments must be received on or before April 5, 1993.

ADDRESSES: Written comments shall be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–402, 1776 F Street, NW., Washington, DC on business days between 8:30 and 5 p.m. Comments may also be inspected in FDIC's Reading Room, room 7118, 550 17th Street, NW., between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 898–3838].

FOR FURTHER INFORMATION CONTACT: Jay W. Golter, Financial Analyst, Division of Research and Statistics, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–3924.

SUPPLEMENTARY INFORMATION: Section 311(d) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law No. 102–242, requires the FDIC to conduct a study of the cost and feasibility of tracking the insured and uninsured deposits of any individual[1] and the exposure of the Federal Government with respect to all insured depository institutions. The study must include detailed technical analysis of the costs and benefits associated with the least expensive manner of implementing the tracking system. As part of the study, the FDIC must investigate, review, and evaluate—

(A) The data systems that would be required to track deposits in all insured depository institutions;

(B) The reporting burdens of such tracking on individual depository institutions;

(C) The system which exist or which would be required to be developed to aggregate such data on an accurate basis;

(D) The implications such tracking would have for individual privacy; and

(E) The manner in which systems would be administered and enforced.

Pursuant to section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) and the FDIC's deposit insurance regulations (12 CFR part 330), deposit insurance coverage is based on the ownership "rights and capacities" in which deposit accounts are maintained in depository institutions insured by the FDIC. The FDIC's regulations categorize the ownership rights and capacities in which deposit accounts are maintained at insured depository institutions. All deposits maintained in the same right and capacity category (i.e., owned in the same manner) in the domestic offices of one insured depository institution are added together and insured up to $100,000 in the aggregate. All deposits maintained in different rights and capacities, as recognized under the FDIC's regulations, are separately insured from each other, provided that all of the requirements of the regulations are satisfied.

For example, if a depositor maintains two individual (single ownership) accounts at the same insured institution, those accounts are added together and insured up to $100,000 in the aggregate since they are maintained in the same right and capacity. However, if a depositor has an individual account and a joint account at the same insured institution, those accounts are insured separately, up to $100,000 each, provided that all regulatory requirements are satisfied, since the accounts are maintained in different rights and capacities (i.e., owned in different manners).

The different types of accounts which reflect the different rights and capacities in which funds are owned and may be separately insured under the regulations include the following:

(1) Individual accounts;
(2) Joint accounts;
(3) Some revocable trust accounts;
(4) Irrevocable trust accounts;
(5) Accounts of a corporation, partnership or unincorporated association;
(6) Accounts held by insured depository institutions in a fiduciary capacity;
(7) Employee benefit plan accounts;
(8) Individual Retirement Accounts & Keogh Plan accounts; and
(9) Public unit accounts.

Section 311 of FDICIA amended certain provisions of sections 3, 7, and 11 of the Federal Deposit Insurance Act (12 U.S.C. 1813, 1817, and 1821) governing the insurance coverage provided by the FDIC for deposits in insured depository institutions. The FDIC has proposed regulatory amendments to implement the statutory changes made by FDICIA (57 FR 49027, October 29, 1992).

Approach to Tracking

A tracking system would require each insured depository institution to determine the insurance coverage of each of its deposit accounts. Information concerning the insured and uninsured balances of each account at each institution would be submitted via an electronic medium to a central facility at which the information from all institutions would be aggregated. The final product of the tracking system would include the following information:

- The total amount of funds that are insured and uninsured at each insured depository institution.
- The total amount of funds that are insured and uninsured in all insured depository institutions combined.

The total amount of insured and uninsured deposits owned under any right and capacity by each depositor, at any insured depository institution, and across all institutions.

At present, there are nearly 390 million deposit accounts maintained at all depository institutions insured by the FDIC.

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[1] The FDIC recognizes that the term "individual" may be construed to limit the scope of the study to accounts in which a natural person has an ownership interest. The FDIC has determined to study the cost and feasibility of tracking the insured and uninsured deposits of any depositor and the total exposure of the Federal Government with respect to all insured depository institutions.

One approach to generating the above information would require each FDIC-insured depository institution to report the following information for each deposit account:

Field name	Description
Account Number	Customer's account number at institution.
Balance	Collected balance plus accrued interest.
Secured Deposit	Amount of deposit backed by collateral.
Ownership Right & Capacity.	Code to indicate insurance capacity (e.g. individual, joint).
Owner	Account title.
TIN	Social Security number for individuals, Taxpayer identification number for businesses and associations.

A social security number or taxpayer identification number would have to be reported for each ownership interest. Accounts receiving pass-through coverage[3] would have to be listed repeatedly, each time indicating a different beneficiary/depositor and each beneficiary's share of the account balance. On joint accounts, the same account number would have to be repeatedly listed, each time identifying one owner and that depositor's share of the balance, until all owners had been reported. Testamentary trust accounts would have to be reported as if each settlor/beneficiary relationship were a separate account with the same account number. For qualifying relationships, insured institutions would have to report the settlor's name and TIN, then repeat those fields for one of the beneficiaries. Relationships that do not qualify for separate insurance would have to be reported as individual accounts for the settlor.

Determining the insurance coverage of each deposit account could, at least initially, be a difficult task. The rules under which this coverage is provided are complex. Furthermore, some of the information depository instutitions would be required to report is not currently maintained on the computer systems of most depository institutions. For example, an institution may not have a social security number on file for each owner of funds in a joint account. In addition, institutions may not presently maintain records indicating whether a beneficiary of a testamentary trust account is within the qualifying degree of kinship for separate insurance coverage. Institutions which presently choose to maintain such records would probably have difficulty verifying the exact nature of the relationships as reported by the customer. The situation may be even more complicated for accounts which are covered by pass-through insurance. Regulations governing pass-through accounts (12 CFR 330.4(b)) require that certain record-keeping obligations be met by either the depository institution or the fiduciary trustee. However, at present, such records are often maintained by manual systems. Furthermore, at present, the records may not reflect all of the information that would be required by the tracking system. Not only would a new burden be placed on those trustee/depositors who might need to upgrade their record systems, methods would also have to be devised for transmitting the information to the FDIC.

Insurance Coverage Rules

The potential cost and difficulty of developing a tracking system might be reduced significantly if the rules governing insurance coverage were simplified. It should be noted that statutory changes would be required prior to most changes in the rules governing insurance coverage. Some of the changes to current coverage rules could be modest in nature. For example, current rules governing the insurability of joint accounts require that a two-step analysis take place. In the first step, all joint accounts with the same combination of owners are aggregated together. Any aggregate balances that exceed $100,000 are not insured. In the second step, the balances of those joint accounts within the insurance limit in the first step are assigned to each joint owner on a pro-rata basis (unless account documents indicate that some other basis is appropriate). The amounts assigned to each individual are then aggregated. Any funds assigned to an individual in excess of $100,000 are not insured. For example, suppose the following accounts were held at an insured institution:

Acct. No.	Owners	Balance
1	A+B	$100,000
2	B+C	100,000
3	B+A	100,000
4	A+B+C	150,000

The first step of determining insurance coverage would be to aggregate the balances held by the same combination of owners. Aggregate amounts in excess of $100,000 are not insured.

Ownership group	Acct. No.	Aggregate balance	Uninsured	Eligible
A+B	1, 3	$200,000	$100,000	$100,000
B+C	2	100,000	0	100,000
A+B+C	4	150,000	50,000	1000,000
		$450,000	$150,000	$300,000

$150,000 of the original $450,000 would not be insured because of the first step of the determination process. The insurance coverage of the remaining $300,000 is subject to the second step of the process. In the second step, the eligible funds are allocated to each owner on a pro-rata basis. Each individual is then eligible for a maximum of $100,000 of insurance coverage.

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[3] Pass-through insurance coverage is applied to certain deposit accounts maintained by fiduciaries. Examples include some employee benefit plans; brokered deposits; escrow accounts maintained by lawyers, landlords, travel agents, mortgage servicing firms and others; and accounts maintained to facilitate the payments system, including credit card processing. Under the principle of pass-through insurance, coverage is provided to each principal or beneficiary for that individual's share of the account balance as if the funds were held in an individual account in that person's name.

Owner	Share of A+B	Share of B+C	Share of A+B+C	Total	Insured
A	$50,000	0	$33,333	$83,333	$83,333
B	50,000	$50,000	33,333	133,333	100,000
C	0	50,000	33,333	83,333	83,333

An additional $33,333 of the funds owned by B would lose insurance coverage because B exceeds the $100,000 maximum per depositor. Of the original $450,000 held in the four joint accounts, $266,666 would be insured.

Eliminating the first step of this analysis could make it easier to determine the insurance coverage of each depositor with jointly owned accounts. However, such a change would incrementally increase the FDIC's exposure to loss. Some funds in joint accounts at failed institutions which currently lose insurance coverage in the first step of the analysis would become eligible for insurance coverage. In the previous example, each of the three depositors would be insured for $100,000 under the joint ownership category. Thus, the FDIC's exposure to that group of depositors would increase from $266,000 to $300,000.

Determining the insurance coverage of testamentary accounts is complicated by the need to establish whether the beneficiary is within the qualifying degree of kinship that permits separate insurance under this category. It would be possible to simplify the coverage rules by eliminating the qualification requirement.

Under such rules, any combination of settlor and beneficiary could qualify for separate deposit insurance. However, the removal of all restrictions on separate insurance could result in an expansion of the amount of money that individual depositors could protect with deposit insurance. Such an expansion may or may not be desirable from a public policy perspective. Therefore, it may be advisable to maintain some form of restriction on the amount of insurance coverage available under this category, perhaps through a limit on the number of separate trustee/beneficiaries that depositors may use for insurance purposes or by establishing a cap on the total amount by which funds deposited by any one settlor may be covered by deposit insurance under this category at any one depository institution.

A more sweeping approach to simplifying the rules governing deposit insurance coverage would be to eliminate some or all categories of rights and capacities which are provided separate insurance coverage. However, such change could disrupt current banking relationships and possibly alter the role of deposit insurance in the banking system. Changes in the coverage rules which are motivated by a desire to ease the administration of the insurance system could have unforeseen economic consequences and must be considered carefully. Therefore, it may be beneficial to consider simplification of coverage rules in tandem with other rule changes which would serve to neutralize the overall impact on the scope of deposit insurance. For example, elimination of some or all insurance categories might be offset by an increase in the current insurance limit of $100,000.

Privacy

Various statutes currently protect privacy. The FDIC is aware that, if a tracking system were to be developed, certain statutory amendments may be necessary and desirable before the system could be implemented.

The Right to Financial Privacy Act (RFPA) (12 U.S.C. 3401 et seq.) generally prohibits a Federal agency or department from obtaining access to an individual's financial records with certain exceptions. The RFPA does not generally apply to the examination by or disclosure to any supervisory agency of financial records or information in the exercise of the agency's supervisory, regulatory, or monetary functions, including conservatorship or receivership functions, with respect to any financial institution, holding company, or subsidiary of a financial institution or holding company. The RFPA protects from disclosure financial records of individual customers and small partnerships. The Act does not protect the financial records of corporations. Under the RFPA, a "financial record" is an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

The Privacy Act (5 U.S.C. 552a) generally prohibits an agency from disclosing any record contained in a system of records to any agency or person except with the written consent of the individual to whom the record pertains, unless the disclosure is permitted by one of the Act's twelve exceptions. The Privacy Act defines a "record" in relevant part as: any item, collection, or grouping of information about an individual that is maintained by an agency, including financial transactions and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual.[3]

The Privacy Act permits disclosure of a record for a "routine use". The term "routine" is defined to mean "the use of [a] record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. 552a(b)(3). The Privacy Act requires **Federal Register** publication of each routine use of a record contained in a system of records including categories of users and purpose of use. The Privacy Act also permits disclosure of a record to either House of Congress. 5 U.S.C. 552a(b)(9). This exception does not authorize disclosure of a record to an individual member of Congress acting on his or her own behalf or on behalf of a constituent. In addition, the Privacy Act permits disclosure of a record pursuant to the order of a court of competent jurisdiction. 5 U.S.C. 552a(b)(11).

Section 7 of the Privacy Act (5 U.S.C. 552a note) makes it unlawful for any Federal agency to deny to any individual any right, benefit, or privilege provided by law due to the individual's refusal to disclose his or her social security number. In addition, any Federal agency which requests an individual to disclose his or her social security number must inform that individual whether disclosure is mandatory or voluntary, by what authority the number is requested, and what uses will be made of it.

The Freedom of Information Act (FOIA) (5 U.S.C. 552) generally provides that any person has a right of access to Federal agency records, except to the extent that such record may be protected from disclosure by one of nine exemptions. Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)) protects from disclosure by a Federal agency any financial information obtained from a person which is privileged or confidential. Exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) protects from disclosure by a Federal agency all information about individuals in personnel, medical, and "similar files" where the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy."

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[3] 5 U.S.C. 552a(a)(4).

Nature of Comments

I General

The FDIC hereby requests comments on all aspects of the cost and feasibility of tracking insured and uninsured deposits. In addition to general comments, the FDIC seeks comments that address whether the tracking system described earlier in this request for comment would be the least expensive way to track deposits across all insured depository institutions. The FDIC invites specific suggestions as to the manner of implementing other systems for tracking deposits. The FDIC also seeks comments which discuss the extent to which the frequency of reporting would influence the costs and feasibility of developing a tracking system.

II Cost and Feasibility

The FDIC seeks comments on:

- The costs to the FDIC and to financial institutions associated with establishing and maintaining data systems that would be required to track deposits in all insured depository institutions, including:

(1) Systems development costs such as programming, file restructuring, and upgrading computer hardware, telecommunications equipment and data security systems;

(2) Costs associated with collecting necessary information and entering it on the data processing system including employee training, customer contact, data entry, and verification;

(3) Administrative costs that would be incurred including, for example, the cost of redesigning and replacing forms used in establishing and maintaining accounts;

(4) Costs of determining the ownership and insurance coverage of deposits from brokers, fiduciaries, benefit plans, and others, the identity of each depositor and that depositor's respective share of account balances insured under "pass-through" coverage, and the costs incurred by the brokers, and others in providing such information to the depository institution;

- The reporting burdens of tracking on individual depository institutions, including;

(5) On-going costs, including the costs of creating and transmitting reports, and the staffing requirements to maintain and operate the system;

- The systems which exist or would be required to be developed to aggregate the data necessary for tracking on an accurate basis, including;

(6) Limits in the current technology that would impair the FDIC's ability to receive and compile data from all institutions in a timely manner;

- Simplification of Insurance Rights and Capacities including;

(7) How might the current rules regarding ownership rights and capacities be simplified in order to reduce the effort required to determine the insurance coverage of each account at depository institutions?

(8) To what extent would such changes reduce the cost of developing a tracking system?

(9) What effect would such rule changes have on the role of deposit insurance in the banking system and the economy? How might such effects be offset by other modifications?

- The implications tracking would have for individual privacy, including;

(10) Would the maintenance of a database of information on deposits represent an unwarranted intrusion by government into private affairs?

(11) To what extent, if at all, would funds be deposited outside the banking system to avoid the tracking of deposits?

(12) What privacy safeguards, if any, should be incorporated into a system of tracking the insured and uninsured deposits of individuals and others?

(13) Who should have access to information on insured and uninsured deposits?

(a) What, if any, access to information on deposits should be provided to federal and state governmental authorities? Should such access, if any, vary based on the purpose for access to the information (for example, law enforcement, credit reporting, etc.)?

(b) What, if any, access to information on individual deposits should be provided to private parties?

(14) Should individuals be permitted access to information on their own deposits?

If individuals should be permitted such access,

(a) should a procedure be established to provide individuals an opportunity to supply information to correct or otherwise amend the information on their deposits and, if so, what specific procedures should be established?

(b) should a fee be charged for access, and if so, how should the amount of the fee be determined?

(15) What notification of reporting of deposit information should be provided to individuals?

(a) Should either the FDIC or depository institutions or both be required to notify individuals that information on their deposits will be or has been reported to the FDIC and, if so, when and by what means should such notification take place?

(b) Should the FDIC be required to notify individuals that information on their deposits will be or has been reported to third parties and, if so, when and by what means should such notification take place?

- The manner in which systems would be administered and enforced, including:

(16) What additional auditing and examination burdens on institutions would be created, and what sanctions would be appropriate for compliance violations.

- Miscellaneous issues, including:

(17) Any additional costs or issues which may not be described above.

(18) Any benefits that institutions could derive from the development of the necessary systems that would offset some of the costs that would be incurred.

By order of the Board of Directors. Dated at Washington, DC this 26th day of January, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-2481 Filed 2-2-93; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-241-AD]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Lockheed Model L-1011 series airplanes. This proposal would require the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the

airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Comments must be received by March 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Peters, Aeronautical Engineer, Flight Test Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–241–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No 92–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AATF was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs.
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Inspection Documents (SID); and
5. Assess repair quality.

The Working Group assigned to review the Lockheed Model L–1011 series airplanes completed its work on Item 1 (mandatory structural modifications), above, in June 1990. The Working Group's recommendations are contained in Lockheed Service Bulletin 093–51–035, "Structures—Aging Aircraft Structural Modifications and Inspections—Collector Service Bulletin," dated June 28, 1990. On March 22, 1991, the FAA issued AD 91–05–05, amendment 39–6878 (56 FR 6556, February 19, 1991), which mandates the installation of the modifications specified in that document.

The Working Group has now completed its work on Item 2 (corrosion-directed inspections) and has developed a baseline program for controlling corrosion problems that may jeopardize the continued airworthiness of the Lockheed Model L–1011 fleet. This program is contained in Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," dated March 15, 1991, which the FAA has reviewed and approved. Lockheed has also issued "Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L–1011," issued September 29, 1992, which contains a correction to section 7.2 of the Document. (Hereafter, these two publications are referred to as the "Document.")

Section 1.1 of the Document defines three levels of corrosion: Level 1 is corrosion which does not exceed certain limits. Level 2 corrosion is that which exceeds those limits. Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Section 3.1 of the Document provides guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 4.1 of the Document also sets forth the general implementation requirements for the corrosion inspection/control program. As described in that section, each airplane is assigned an "Implementation Age" and a "Repetitive Interval." The program is applicable in each "airplane area" on all Model L–1011 airplanes that have reached or exceeded the Implementation Age for that area. For each airplane area, the program must be implemented on all affected airplanes within the period identified as the Repetitive Interval for that area. For airplanes that have already exceeded the applicable Implementation Age, this period is to be measured starting from the date the operator adopts the program. For airplanes whose age exceeds 20 years, the maximum period for implementing the program in any area is 6 years or the Repetitive Interval for that area, whichever is less. Finally, this section establishes a minimum implementation rate of one airplane per year for each task.

Section 4.2 of the Document describes the "Basic Task" to be accomplished in each defined airplane area as part of the Baseline Program. The task includes visual inspections of all primary and secondary structure, and may also include detailed visual and non-destructive inspections (NDI). Where NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected. Any corrosion or other damage found during these inspections must be repaired.

Section 4.3 of the Document identifies the specific corrosion task numbers, the airplane areas that are subject to the program, the "Implementation Age" and "Repeat Intervals" for each area, and other information necessary to carry out the program for each area.

Section 5.0 establishes the procedures for reporting the results of the inspections required by the corrosion prevention and control program.

Section 6.0 provides for periodic review and update of the data contained in the Document.

Section 7.0 lists existing AD's and service bulletins that are related to corrosion issues.

Since corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention and control program that is equivalent to or better than the program specified in the Document previously described. Operators would be permitted to accomplish this either by performing the specific corrosion tasks described in the Document (the "task-by-task method"), or by revising their FAA-approved maintenance program to include such a program.

Paragraph (a) of the proposal sets forth the proposed compliance times for the initial "corrosion task" of each airplane area. These compliance times are measured from a date one year after the effective date of the final rule. (Operators should note that the compliance times proposed in the AD differ from the compliance times recommended in the Document; the Document recommends that the compliance times begin with the effective date of the AD. The proposed compliance times are consistent with those of other similar AD's that the FAA has issued on this subject.) Generally, operators would be required to complete the initial corrosion task before reaching the "implementation age (IA)" plus one "repeat (R) interval" for the airplane area, as detailed in the Document. The corrosion task would be required to be repeated at a time interval not to exceed the R interval for that area, as detailed in the Document.

Paragraph (a) includes paragraph (a)(1)(iv), which states that performance of the initial tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). While this provision is also consistent with the Document, the FAA recognizes that this may cause an undue hardship on some small operators. In those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. (A note to this effect is included in the proposal.)

Operators should note that the proposal does not contain a paragraph specifically to address repair actions. The FAA considers that any repairs would be carried out necessarily as a part of each "corrosion task," as it is defined in the Document. "Corrosion task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well. Paragraph (a) contains a note to reference the portion of the Document that defines a "corrosion task," and to emphasize the importance of these corrective actions.

Paragraph (b) of the proposal provides for an optional method of complying with the rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document or an equivalent program approved by the FAA.

Paragraph (b) also would require that, subsequent to the accomplishment of the initial corrosion task, any extensions of R intervals specified in the Document must be approved by the FAA.

Any operator electing to comply with proposed paragraph (b) would be permitted to use an alternative recordkeeping method to that otherwise required by Federal Aviation Regulations (FAR) section 91.417 or section 121.380, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. In response to questions raised previously concerning recordkeeping and record retention requirements as they relate to the programmatic approach proposed in this AD action and other similar proposals that have been issued applicable to other airplane models, the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this proposal, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each corrosion task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each corrosion task on each airplane. Once this cross-reference system has been established, this recording provision of sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under section 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a corrosion task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) (current status of AD's and current inspection status) be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed previously by operators regarding the recordkeeping obligations imposed by section 121.380 with regard to similar rulemaking on corrosion prevention and control programs, the FAA has included in this proposal certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. (The FAA currently is developing guidance material that will contain information to be considered by PMI's when reviewing proposals for alternative recordkeeping methods.)

Paragraph (c) of the proposal provides for increasing a repetitive inspection interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the proposal sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is determined to exist. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the corrosion task in the affected area on the remainder of the Model L–1011 series airplanes in the operator's fleet; or

2. Submit a proposed schedule, for approval by the FAA, for performing the corrosion tasks in the affected area on the remainder of the operator's Model L–1011 series fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the corrosion tasks performed on the remainder of the operator's Model L–1011 series fleet.

Paragraph (d)(2) of the proposal specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model L–1011 series fleet is detected in a timely manner.

Paragraph (d)(3) of the proposal would require that, within the time schedule approved by the FAA, the operator must accomplish the corrosion tasks in the affected areas on the remaining airplanes in its Model L–1011 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that, upon finding corrosion exceeding Level 1 during a repetitive inspection, an operator must adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that, if corrosion found is not considered representative of an operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator has already implemented means to reduce corrosion in an airplane area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the proposal concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. This paragraph differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each airplane area to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first corrosion task in each airplane area to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The proposed rule would require that the specified procedures be accomplished before any operator places into service any airplane subject to the requirements of the proposed AD.

Paragraph (g) of the proposal would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to Lockheed. A note has been included in this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR section 121.703.

There are approximately 241 Model L-1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per task to accomplish the 226 corrosion tasks called out in the Document; this represents a total of 4,520 work hours. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the 6-year average inspection cycle is estimated to be $29,086,200, or $248,600 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Lockheed: Docket 92-NM-241-AD.

Applicability: All Model L-1011 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L-1011," dated March 15, 1991, including "Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L-1011," issued September 29, 1992 (hereafter, both publications are referred to as "the Document"), for corrosion tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Atlanta Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in section 4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 3: A "corrosion task," as defined in section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 4: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed, in accordance with section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR § 43.13.

(1) Complete the initial corrosion task of each "airplane area" specified in section 4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "implementation age" (IA) for a corrosion task as of one year after the effective date of this AD: Initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For airplane areas that have exceeded the IA for a particular corrosion task, as of one year after the effective date of this AD: Initial compliance must occur within one R interval for that task, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD: Initial compliance must occur for all airplane areas within one R interval or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) In all cases, accomplishment of the initial corrosion tasks by each operator must occur at a minimum rate equivalent to one airplane per year, beginning one year after the effective date of this AD.

Note 6: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative

recordkeeping method to that otherwise required by FAR section 91.417 or section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model L–1011 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model L–1011 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 7: Notwithstanding the provisions of section 1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model L–1011 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each airplane area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each airplane area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to Lockheed Aeronautical Systems in accordance with Section 5 of the Document.

Note 8: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Atlanta ACO.

Note 9: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Issued in Renton, Washington, on January 28, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2546 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AWP–1]

Proposed Modification of the Yuma MCAS (Marine Corps Air Station)–Yuma International Airport, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the Yuma MCAS–Yuma International Airport, AZ, Control Zone. This action would modify the airspace exclusion over the Somerton Airport and increase the size of the control zone to provide additional controlled airspace for terminal instrument operations at Yuma MCAS–Yuma International Airport.

DATES: Comments must be received on or before March 4, 1993.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, System Management Branch, AWP–530, Docket No. AWP–1, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, room 6W14, 15000 Aviation Boulevard, Lawndale, California. An informal docket may also be examined during normal business hours at the Office of the Manager, System Management Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Gene Ensted, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–AWP–1." The postcard will be date/time stamped and returned to the commenter. All communications on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, AWP–530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the control zone at Yuma MCAS-Yuma International Airport, AZ. This action would modify the airspace excluded from the Yuma MCAS-Yuma International Airport control zone over the Somerton Airport, AZ, from the surface to 2,500 feet above ground level (AGL) to surface to 300 feet AGL. This action would provide continued access to the Somerton Airport and provide controlled airspace for terminal instrument operations at Yuma MCAS-Yuma International Airport. Enlarging the Yuma MCAS-Yuma International Airport control zone from a radius of 4.3 nautical miles to 5.2 nautical miles would also provide sufficient controlled airspace for terminal instrument operations. The coordinates for this airspace docket are based on North American Datum 83. Control zones are published in § 71.171 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The control zone listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

AWP AZ CZ Yuma, AZ [Revised]

Yuma MCAS—Yuma International Airport, AZ
(lat. 32°39′23″ N, long. 114°36′22″ W)
Somerton Airport, AZ
(lat. 32°36′03″ N, long. 114°39′57″ W)
Bard VORTAC, AZ
(lat. 32°46′05″ N, long. 114°36′10″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Yuma MCAS/Yuma International Airport and within 1.8 miles either side of the Bard VORTAC 181 degree radial extending from the Bard VORTAC to the 5.2-mile radius of the Yuma MCAS/Yuma International Airport and within 1.8 miles either side of the 044 degree bearing from the Yuma MCAS/Yuma International Airport extending from the 5.2-mile radius to 6 miles northeast of the Yuma MCAS/Yuma International Airport excluding that airspace from the surface up to and including 300 feet AGL within 1 mile of the Somerton Airport west of a line one-quarter mile northeast of and parallel to the Somerton Airport northwest-southeast runway.

* * * * *

Issued in Los Angeles, California, on January 26, 1993.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 93–2509 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-13-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1056

[Ex Parte No. MC–19 (Sub-No. 42)]

Practices of Motor Common Carriers of Household Goods; Performance Reports

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to modify the Annual Performance Report, Form OCP–101 (OCP–101), which sets forth the requirements that relate to carrier performance information given to prospective individual shippers of household goods. This proceeding is instituted to address concerns expressed by consumer groups and the moving industry regarding the quality and reliability of the information provided by household goods carriers in the OCP–101. The modified OCP–101 would require release of verified data.

DATES: Comments are due March 22, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. MC–19 (Sub-No. 42) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Charles E. Wagner (202) 927–5530 or John Fristoe (202) 927–5520. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: For almost two decades, certain household goods carriers have been required to report to the Commission and provide each prospective shipper with a summary of their performance as required by Practices of Motor Common Carriers of Household Goods, 119 M.C.C. 585 (1974). Under existing rules, a household goods carrier that delivers 100 or more individual-type shipments during a calendar year is required to give prospective customers an Annual Performance Report or Form OCP–101, which reports the carrier's previous year's performance, prior to the execution of a shipper's order for service. The OCP–101 must also be filed with the Commission's Office of Compliance and Consumer Assistance by March 31 of the following calendar year. The OCP–101 shows a carrier's performance in the areas of estimating, on-time performance, and claims handling in a calendar year for the three types of shippers (*i.e.*, Government, commercial, and individual).

Consumer groups and industry representatives have brought to the Commission's attention several concerns regarding the quality and reliability of the information provided by movers in the OCP–101. Some of the concerns expressed relate to: The lack of any audit of the OCP–101's, which detracts from the reliability of the data being reported; complaints that it is difficult to identify which carriers are required to file the OCP–101; allegations of inconsistent reporting of data between movers; criticism that instructions for completing the OCP–101 are unclear; and the evident use of the form as a competitive tool by movers, which, it is alleged, skew the data to show more favorable results.

We are seeking public comment on the continued viability of the OCP–101 and are proposing certain modifications of the reporting information to address the concerns expressed above. The proposed revision of OCP–101 is set forth below. Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Energy and Environmental Consideration

We preliminarily conclude that modification of the regulations governing the OCP–101 would not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we preliminarily conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. We are proposing to modify the OCP–101 requirements that relate to a carrier's performance information given to prospective individual shippers of household goods by motor common carriers of household goods transporting over 100 individual-type shipments per year. The modified form would require verification of the data in the report by a company official. Although the proposed regulations would have some impact on the administrative costs of preparing and duplicating the OCP–101 for smaller carriers (*i.e.*, Class II and III carriers) of household goods, it is unlikely that the economic impact on these small entities would be significant within the meaning of the Regulatory Flexibility Act.

Paperwork Burden

It is estimated that, on average, the current OCP–101 requires 25 burden hours per response to complete the collection of information. With the proposed modifications, it is estimated that 5 less burden hours per response are required to complete this collection of information. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The information collection requirements contained in this proposal will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and 5 CFR 1320. Interested parties may direct comments concerning the paperwork burden and burden estimates to the OMB and ICC by addressing them to:

Office of Management & Budget, Office of Information and Regulatory Affairs, Desk Officer for ICC (Forms 3120–), Washington, DC 20503

Interstate Commerce Commission, Attn: Forms Clearance Officer, Room 1312, Washington, DC 20423

List of Subjects in 49 CFR Part 1056

Advertising, Consumer protection, Freight, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

Decided: January 28, 1993.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Walden. Commissioner Walden did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1056 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. The authority citation for part 1056 continues to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

2. In § 1056.2, paragraph (a)(3) is proposed to be revised to read as follows:

§ 1056.2 Information for shippers.

(a) * * *

(3) A copy of Form OCP–101, *Annual Performance Report,* most recently filed with the Commission, if the carrier prepares and files the report as prescribed in § 1056.18.

* * * * *

3. Section 1056.18 is proposed to be revised to read as follows:

§ 1056.18 Preparation and filing of annual performance report.

(a) *Minimum filing requirement.* Each motor common carrier for household goods as defined in § 1056.1(b)(1), which delivers 100 or more interstate shipments to individual shippers as defined in § 1056.1(b)(5), during any calendar year *shall,* on or before March 31 of the following year, file with the Office of Compliance and Consumer Assistance, Interstate Commerce Commission, Washington, DC 20423–0001, a report of the service performed during the report year. The report shall be submitted on Form OCP–101, and its accuracy must be verified by an official of the carrier.

(b) *Prescribed Annual Performance Report Form OCP–101.*

Interstate Commerce Commission, Office of Compliance and Consumer Assistance, Annual Performance Report for Year Ended December 31, 19_____

Carrier's Name ____________________
Carrier's Address ____________________
ICC number ____________________

Part A

With reference to shipments delivered for individual shippers as defined in § 1056.1(b)(5) during the calendar year:

1. Number of shipments delivered________.

2. Number of shipments on which a binding estimate of charges was given________.

3. Number of shipments on which a non-binding estimate of charges was given ________.

4. Number of shipments on which an estimate of charges was not given ________.

Part B

With reference to shipments delivered for individual shippers as defined in § 1056.1(b)(5) during the calendar year:

1. The number of shipments delivered upon payment of the amount of a binding estimate (§ 1056.3(a))________.

2. Percent of shipments on which a non-binding estimate was furnished for which the final charges for the services included in the estimate did not exceed the amount of the estimate ________.

3. Percent of shipments delivered which were picked up on or before the last date for pickup specified in the order for service/bill of lading ________.

4. Percent of shipments delivered which were delivered on or before the last date for delivery as specified in the bill of lading contract ________.

5. Percent of shipments delivered which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $100 ________.

6. Percent of shipments delivered which did not result in the filing of a claim in excess of $100 by the shipper within 60 days following the date of delivery for damages and expenses arising out of the delayed pickup or delivery of the shipment ________.

7. The average number of days between the date of filing of a claim for property loss or damage or delay in excess of $100 and the date on which the carrier pays, declines payment, or makes a firm compromise offer of settlement in writing to the shipper ________.

8. The percent of all claims for amounts in excess of $100 filed for property loss or damage or for damages or expenses incurred as a result of delayed pickup or delivery:

a. Which were resolved through the use of a dispute settlement (arbitration) program maintained or participated in by the carrier ________.

b. Which were not referred to a dispute settlement program and which were concluded after the carrier received legal notice of suit by claimant to recover ________.

Carrier's Oath (Must be Completed by a Carrier Official)

I, *(name and title of company official)*, verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relative to the data contained in the form is true and correct. Further, I certify that I am qualified and authorized to certify the accuracy of the data. I know that willful misstatements or omission of material facts constitutes Federal crime violations punishable under 18 U.S.C. § 1001 by imprisonment up to five years and fines up to $10,000 for each offense.

Signature

Date

Title

(c) *Instructions for Preparation of Annual Performance Report, Form OCP–101.*

Instructions for Preparation

Part A

With reference to shipments delivered for individual shippers as defined in § 1056.1(b)(5) during the calendar year:

1. Enter the total number of shipments delivered that were transported for individuals as defined in § 1056.1(b)(5).

2. Enter the number of shipments delivered on which a binding estimate of charges was given.

3. Enter the number of shipments delivered on which a non-binding estimate of charges was given.

4. Enter the number of shipments delivered on which an estimate of charges was not given. (The sum of shipments reported in items 2, 3 and 4 must equal the total shipments delivered to individuals reported in item 1.)

Part B

With reference to shipments delivered for individual shippers as defined in § 1056.1(b)(5) during the calendar year:

1. Enter the number of shipments delivered on which a binding estimate was furnished where the final charges were the same or less then the binding estimate.

2. Enter the percent of the shipments on which a non-binding estimate of cost was furnished, which were delivered upon payment of an amount not exceeding the non-binding estimate.

3. Enter the percent of the shipments that were picked up on or before the last date for pickup specified in the order for service. For purposes of this report, all shipments picked up late shall be counted as late regardless of the reason or the party responsible for the delay.

4. Enter the percent of all shipments that were delivered on or before the last date for delivery as specified in the bill of lading. For purposes of this report, all shipments delivered late shall be counted as late regardless of the reason or the party responsible for the delay.

5. Enter the percent of all shipments that did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $100. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of § 1005.2(b) and for an apparent loss in excess of $100.

6. Enter the percent of all shipments that did not result in the filing of a claim by the shipper within 60 days following the date of delivery for damages or expenses in excess of $100 incurred as a result of the delayed pickup and/or delivery of the shipment. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements for § 1005.2(b) and for apparent damages or expenses in excess of $100.

7. Enter the average number of days required to pay, decline, or make a firm compromise offer of settlement of all claims for $100 or more relating to loss or damage or the delayed pickup and/or delivery of shipments during the report year. For the purposes of this report a claim shall be considered to be a "claim filed" if it meets the criteria set forth in items 5 and 6 and shall be considered as paid, declined, or compromised on the date on which a written offer is mailed or delivered in person to a claimant.

8a. Enter the percent of the loss and damage or delay claims for $100 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the report year through the use of a dispute resolution or arbitration procedure maintained or participated in by the carrier.

8b. Enter the percent of loss and damage or delay claims for $100 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the year on a date subsequent to the date of which legal notice of suit to recover was received by the carrier.

General Instructions

1. Data for completion of Form OCP–101 may be obtained by random sampling providing that in every instance the universe sampled is all shipments delivered for individual shippers during the report year or all claims arising out of the transportation of individual shipments which were received or settled, as appropriate, during the report year.

2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95 percent confidence level.

3. Carriers submitting Form OCP–101 shall retain and make available for review by an authorized Commission employee all working papers, notes and other files relating to the preparation of each report for a period of not less than 24 months following the date of filing such a report.

4. The data in Form OCP–101 must be verified by a sworn statement signed by an official of the company.

[FR Doc. 93–2548 Filed 2–2–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 92–8, Notice No. 2]

RIN 2125–AC84

Design Standards for Highways; Requirements for Roadside Barriers and Safety Appurtenances

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Administration (FHWA) proposes to incorporate into the "Guides and References" section of 23 CFR part 625, for guidance on the acceptability of roadside barriers and other safety appurtenances for use on Federal-aid projects, the National Cooperative Highway Research Program (NCHRP) Report 350, "Recommended

Procedures for the Safety Performance Evaluation of Highway Features," 1993.

DATES: Comments must be received on or before March 29, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No.92–8, Federal Highway Administration, room 4232, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Hatton, Jr., Office of Engineering (202) 366–1329, or Mr. Wilbert Baccus, Office of the Chief Counsel (202) 366–0780. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 1073 of Public Law 102–240, 105 Stat. 1914, The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), enacted December 18, 1991, states that the Secretary [of Transportation] shall initiate a rulemaking proceeding to revise the guidelines and establish standards for installation of roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such rulemaking shall reflect state-of-the-art designs, testing, and evaluation criteria contained in National Cooperative Highway Research Program Report 230 ["Recommended Procedures for the Safety Performance Evaluation of Highway Appurtenances"], relating to approval standards which provide an enhanced level of crashworthy performance to accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles.

The section further states that, not later than 1 year after the date of enactment of this Act, the Secretary shall complete the rulemaking proceeding and issue a final rule regarding the implementation of revised guidelines and standards for acceptable roadside barriers and other safety appurtenances, including longitudinal barriers, end terminals, and crash cushions. Such revised guidelines and standards shall accommodate vans, mini-vans, pickup trucks, and 4-wheel drive vehicles and shall be applicable to the refurbishment and replacement of existing roadside barriers and safety appurtenances as well as to the installation of new roadside barriers and safety appurtenances.

Currently, the FHWA recognizes guidance on the design and use of traffic barriers and safety appurtenances found in the American Association of State Highway and Transportation Officials (AASHTO) publications, "A Policy on Geometric Design of Highways and Streets," "Standard Specifications for Highway Bridges," "Standard Specifications for Structural Supports for Highway Signs, Luminaries and Traffic Signals," "Roadside Design Guide," and "Guide Specifications for Bridge Railings." None of these documents expressly addresses performance with the vehicles cited in the ISTEA except the "Guide Specifications for Bridge Railings," which does recommend testing bridge railings with a pickup truck (and larger and smaller vehicles).

The National Cooperative Highway Research Program (NCHRP) Report 230, which has been given tacit recognition by the FHWA, does not include guidance for testing or evaluating appurtenances with the vehicles cited in the ISTEA. However, under an NCHRP project a replacement for Report 230 has been developed. The replacement, NCHRP Report 350, "Recommended Procedures for the Safety Performance Evaluation of Highway Features," 1993, addresses testing and evaluating appurtenances with pickup trucks and with smaller and larger vehicles. The FHWA believes that following the testing and evaluation guidance contained in NCHRP Report 350, along with rational roadside features selection procedures, will result in highway design and upgrade practices that will be acceptably compatible with the vehicles cited in the ISTEA. The information and practices considered in reaching this conclusion are presented below. It should also be noted that the FHWA has contracted for a study to examine the crash characteristics of various types of vehicles and to recommend candidate vehicles to represent large or important segments of the vehicle population. Also, the NCHRP is undertaking a study to investigate the performance of existing roadside features relative to the ISTEA vehicles. Should the information from these two studies, or other sources, indicate a need for the FHWA to follow a different course than that described in this NPRM it will, of course, consider appropriate changes. (The NCHRP study is Project 22–11. It is titled, "An Evaluation of Current Roadside Barriers and Other Safety Appurtenances to Accommodate Vans, Mini-vans, Pickup Trucks, and 4-wheel Drive Vehicles as Described in the Intermodal Surface Transportation Efficiency Act (ISTEA) 1991".)

Light Trucks

The vehicles cited in the ISTEA constitute what the motor vehicle manufacturers call light trucks. Unless otherwise noted, this term will be used in the remainder of this NPRM to represent the vehicles cited in the ISTEA. Light trucks in 1991 accounted for about one quarter of the registered vehicles in the United States. They also accounted for a like proportion of the vehicle occupant fatalities. By comparison, automobiles accounted for about two-thirds of both the registered vehicles and the occupant fatalities. In the same year light trucks accounted for nearly one-third of the new vehicle sales in the country and automobiles accounted for a little less than two-thirds of these sales, indicating a trend toward an increasing portion of the vehicle fleet being light trucks, a trend that has existed for several years.

Between 1970 and 1988 the number of registered light trucks increased 161 percent, while automobile registrations increased only 56 percent. The increase in auto registrations between mid-1988 and mid-1991 was 1.5 percent, while that for light trucks was 17.8 percent. Over this same period the total increase in the sum of automobiles and light trucks was 5.4 percent, with light trucks contributing 78.9 percent of the increase.

From the foregoing observations it appears that light trucks, which serve largely as passenger vehicles, are tending toward becoming one-third of the vehicle fleet. It also appears that the overall occupant fatality record for light trucks is about the same per vehicle as that for automobiles. However, just as the safety record for automobiles is not homogeneous (most small automobiles have worse safety records than most large automobiles), there is considerable difference between the safety records of the various vehicle classifications that fall under the general classification of light trucks. For example, in an unpublished analysis done by the National Highway Traffic Safety Administration (NHTSA) on 1991 data it was shown that small vans had an occupant fatality rate per registered vehicle equal to 0.6 that for all registered automobiles and light trucks combined, standard vans had a rate 0.5 that of all automobiles and light trucks, small pickups 1.2, standard pickups 1.2, and utility vehicles 1.0. Comparable numbers for small, medium, and large cars were 1.1, 1.0, and 0.6, respectively. (A copy of the analysis is in the docket.)

In an attempt to get a different insight into the performance of light trucks and to specifically address the requirements of the ISTEA, the FHWA conducted an analysis comparing fatalities of automobile drivers with those of light truck drivers involved in fatal accidents where the first harmful event was reported as contact with an impact attenuator, bridge rail, concrete traffic barrier, sign support, luminaire support, or utility pole. This analysis indicated that the relative numbers of deaths of drivers of automobiles and light trucks from these types of accidents were approximately proportional to the relative number of registered automobiles and light trucks. It should also be noted that the results of unpublished studies (copies on file in the docket) done for the FHWA of two States' (North Carolina and Michigan) accident data bases on accidents involving highway features cited in the ISTEA did not reveal significant differences between the safety performance of light trucks and those of automobiles. Nevertheless, since light trucks are a significant, and growing, portion of the vehicle fleet, it is essential that all appropriate steps be taken to ensure the compatibility of roadside safety features with light trucks.

Testing

As previously stated, the FHWA believes that requiring new roadside feature designs to be evaluated and accepted through crash testing with both automobiles and pickup trucks (as well as with other vehicles in some instances) will provide adequate assurance that new roadside feature designs are reasonably compatible with light trucks. However, should the previously cited FHWA and NCHRP studies to examine the performance characteristics of ISTEA vehicles and the compatibility of existing roadside appurtenances with them show that the 3/4-ton pickup truck, recommended as a test vehicle in Report 350, is not suitable or sufficient as a test vehicle to represent the light truck segment of the vehicle fleet, the FHWA will look for another test vehicle or an additional test vehicle or vehicles.

Selection

The FHWA also believes that, along with appropriate test procedures, there need to be rational procedures for selecting roadside feature designs for new and rebuilt highways and for determining when to replace or retrofit obsolete roadside features on existing highways. NCHRP Project 22–9, Improved Procedures for Cost-Effectiveness Analysis of Roadside Safety Features, which is underway, is intended to produce such procedures. The objective of the project is to develop improved micro-computer based cost-effectiveness analysis procedures for use in:

1. Assessing alternative roadside safety treatments at both point locations and sections of roadway.
2. Developing warrants and guidelines, including those which consider performance levels of safety features.

It is likely that this project will develop a computer program that integrates the results of several vehicle types encroaching on the roadside at various speed and angle combinations. The FHWA has written to NCHRP to suggest that the researchers ensure that there are sufficient vehicles, with appropriate characteristics, to adequately cover the range of vehicles in the light truck category. (A copy of the letter is on file in the docket.)

NCHRP Report 350

The NCHRP Report 350 is scheduled for printing in February 1993. An unedited copy of the final draft has been placed in the docket and will be replaced with the published version when available. The report differs from NCHRP Report 230 in one fundamental way: it fully supports the concept of multiple test levels, detailing six test levels for longitudinal barriers and fewer levels for other features. Report 230 did recognize the concept under the name of "multiple performance levels," but was much much less explicit in its approach to the subject. The new report differs from Report 230 in two other important respects. All of its quantitative guidance is expressed in the International System of Units (SI), sometimes referred to as the modernized metric system. In converting to SI units most values were changed slightly from the imperial (English) values cited in Report 230. The other important change is in the test vehicles. Report 230 recognized eight test vehicles, a 1,800-pound (816-kg) sedan, a 2,250-pound (1021-kg) sedan, a 4,500-pound (2041-kg) sedan, a 20,000-pound (9072-kg) utility bus, a 32,000-pound (14 515-kg) intercity bus, a 40,000-pound (18 144-kg) intercity bus, an 80,000-pound (36 287-kg) tractor/van trailer, and an 80,000-pound (36 287-kg) tractor/fluid tanker. The new report makes a vehicle nearly identical to the Report 230 1,800-pound sedan the standard small car test vehicle, where the Report 230 vehicle had been treated as a special test vehicle. It also retains the two tractor/trailer vehicles, assigning the tractor/van trailer and the tractor/tank trailer vehicles the roles of barrier strength-test vehicles for test levels 5 and 6, respectively. All the other Report 230 vehicles were dropped and three others recognized. An optional light test car, with a mass of about 0.85 that of the standard small (light weight) test car is described for those wishing to explore the needs of this size vehicle, which, currently, makes up a very small portion of the vehicle fleet. The large sedan has been replaced by a ¾-ton pickup truck of approximately the same mass. This vehicle becomes the barrier strength-test vehicle for test levels 1, 2, and 3. The test vehicle designated for the strength test at test level 4 is an 8,000-kg (17,637-pound) single-unit, van-type truck. The nominal masses of the test vehicles recommended in the NCHRP Report 350 are shown in Table 1. The recommended test conditions for various highway features are shown in Tables 2 through 5. The safety evaluation guidelines given in the report are shown in Table 6.

TABLE 1.—NCHRP REPORT 350 TEST VEHICLES

Type	Designation	Mass
Small Car (optional)	700C	700 kg (1,543 lb)
Small Car	820C	820 kg (1,808 lb)
Pickup Truck (¾-ton)	2,000P	2,000 kg (4,409 lb)
Single-unit Van Body	8,000S	8,000 kg (17,637 lb)
Tractor w/Cargo Van Trailer	36,000V	36,000 kg (79,366 lb)
Tractor w/Tanker Trailer	36,000T	36,000 kg (79,366 lb)

TABLE 2.—NCHRP REPORT 350 TEST CONDITIONS FOR LONGITUDINAL BARRIERS AND TRANSITIONS

Test level	Test vehicle	Impact condition km/h (mph)/deg.
1	820C[2]	50 (31)/20
	700C[1]	50 (31)/20
	2000P	50 (31)/25
2	820C[2]	70 (43)/20
	700C[1]	70 (43)/20
	2000P	70 (43)/25
3 Basic level	820C[2]	100 (62)/20
	700C[1]	100 (62)/20
	2000P	100 (62)/25
4	820C[2]	100 (62)/20
	700C[1]	100 (62)/20
	2000P[2]	100 (62)/25
	8000S	80 (50)/15
5	820C[2]	100 (62)/20
	700C[1]	100 (62)/20
	2000P[2]	100 (62)/25
	36000V	80 (50)/15
6	820C[2]	100 (62)/20
	700C[1]	100 (62)/20
	2000P[2]	100 (62)/25
	36000T	80 (50)/15

1. Optional test vehicle. If used, comparable test with 820C vehicle is not required.
2. Test may not be required for some transitions.

TABLE 3.—NCHRP REPORT 350 TEST CONDITIONS FOR TERMINALS AND CRASH CUSHIONS

Feature	Type[1] feature	Test vehicle	Test speed km/h (mph) test level			Test angle deg.	Impact point
			1	2	3[3]		
Terminals and redirective crash cushions	G/NG	820C	50 (31)	70 (43)	100 (62)	0	On nose, offset ¼ width of veh.
	G/NG	700C[2]	50 (31)	70 (43)	100 (62)	0	
	G/NG	2000P	50 (31)	70 (43)	100 (62)	0	Centered on nose.
	GO/NG	820C	50 (31)	70 (43)	100 (62)	15	
	GO/NG	700C[2]	50 (31)	70 (43)	100 (62)	15	Centered on nose.
	GO/NG	2000P	50 (31)	70 (43)	100 (62)	15	Centered on nose.
	G	820C	50 (31)	70 (43)	100 (62)	15	Contact corner of veh. at critical impact point.
	G	700C[2]	50 (31)	70 (43)	100 (62)	15	
	G	2000P	50 (31)	70 (43)	100 (62)	20	Contact corner of veh. at beginning of length of need.
	NG	820C	50 (31)	70 (43)	100 (62)	15	Contact corner of veh. at beginning of length of need.
	NG	700C[2]	50 (31)	70 (43)	100 (62)	15	
	NG	2000P	50 (31)	70 (43)	100 (62)	20	Contact corner of veh. at beginning of length of need.
	NG	2000P	50 (31)	70 (43)	100 (62)	20	Contact corner of veh. at critical impact point.
	G/NG	2000P	50 (31)	70 (43)	100 (62)	20	Reverse direction contact corner at mid-length.
Nonredirective crash cushions	G	820C	50 (31)	70 (43)	100 (62)	0	On nose, offset ¼ width of veh.
	G	700C[2]	50 (31)	70 (43)	100 (62)	0	
	G	2000P	50 (31)	70 (43)	100 (62)	0	
	G	820C	50 (31)	70 (43)	100 (62)	15	
	G	700C[2]	50 (31)	70 (43)	100 (62)	15	Centered on nose.
	G	2000P	50 (31)	70 (43)	100 (62)	15	
	G	2000P	50 (31)	70 (43)	100 (62)	20	Centered on side at mid-length.

[1] G/NG = Test applicable to gating and non-gating devices.
GO/NG = Test optional for gating devices but applicable to non-gating devices.
G = Test applicable to gating devices only.
NG = Test applicable to non-gating devices only.
[2] Optional test vehicle. If used, comparable test with 820C vehicle is not required.
[3] Basic test level.

TABLE 4.—NCHRP REPORT 350 TEST CONDITIONS FOR SUPPORT STRUCTURES, WORK ZONE TRAFFIC CONTROL DEVICES, AND BREAKAWAY UTILITY POLES

Feature	Impact conditions speed, km/h (mph) test level				Impact point
	Vehicle	2	3[2]	Angle[1] deg.	
Support	820C 700C[3]	35 (22)	35 (22)	0–20	Vehicle centered on center of pertinent element of feature.
	820C 700C[3]	70 (43)	100 (62)		
Work zone traffic control devices	820C 700C[3]	35 (22)	35 (22)		
	820C 700C[3]	70 (43)	100 (62)		

TABLE 4.—NCHRP REPORT 350 TEST CONDITIONS FOR SUPPORT STRUCTURES, WORK ZONE TRAFFIC CONTROL DEVICES, AND BREAKAWAY UTILITY POLES—Continued

Feature	Impact conditions speed, km/h (mph) test level				Impact point
	Vehicle	2	3[2]	Angle[1] deg.	
Breakaway utility poles	820C 700C[3]	50 (31)	50 (31)		
	820C 700C[3]	70 (43)	100 (62)		

[1] Within the given range, the critical impact angle is to be determined by tester.

[2] Basic level.

[3] Optional test vehicle. If used, comparable test with 820C vehicle is not required.

TABLE 5.—NCHRP REPORT 350 TEST CONDITIONS FOR TRUCK MOUNTED ATTENUATORS

Vehicle	Speed, km/h (mph) test level		Angle deg.	Impact point
	2[1]	3		
820C	70 (43)	100 (62)	0	
700C[2]	70 (43)	100 (62)	0	Vehicle centered on TMA.
2000P	70 (43)	100 (62)	0	
2000P	70 (43)	100 (62)	0	Vehicle, centerline offset ⅓ its width from centerline of TMA.
2000P	70 (43)	100 (62)	10	Vehicle centerline offset ¼ its width from centerline of TMA.

[1] Basic Level.

[2] Optional test vehicle. If used, comparable test with 820C vehicle is not required.

TABLE 6.—NCHRP REPORT 350 SAFETY EVALUATION GUIDELINES

Evaluation factors	Evaluation criteria	Applicable texts
Structural adequacy.	A. Test article should contain and redirect the vehicle; the vehicle should not penetrate, underride, or override the installation, although controlled lateral deflection of the test article is acceptable.	All tests on longitudinal barriers and transitions and all tests on the sides of "NG" redirective terminals and crash cushions and at or beyond the length-of-need of "G" redirective terminals and crash cushions.
	B. The test article should readily activate in a predictable manner by breaking away, fracturing, or yielding.	All tests on support structures, work zone traffic control devices, and utility poles.
	C. Acceptable test article performance may be by redirection, controlled penetration, or controlled stopping of the vehicle.	All tests on terminals and crash cushions except tests on the sides of "NG" redirective terminals and crash cushions and at or beyond the length-of-need of "G" redirective terminals and crash cushions.
Occupant risk	D. Detached elements, fragments, or other debris from the test article should not penetrate or show potential for penetrating the occupant compartment, or present an undue hazard to other traffic, pedestrians, or personnel in a work zone. Deformations of, or intrusions into, the occupant compartment that could cause serious injuries should not be permitted.	All.
	E. Detached elements, fragments or other debris from the test article, or vehicular damage should not block the driver's vision or otherwise cause the driver to lose control of the vehicle.	All work zone traffic control devices.
	F. The vehicle should remain upright during and after collision, although moderate roll, pitching, and yawing are acceptable.	All except those listed in Criterion G.
	G. It is preferable, although not essential, that the vehicle remain upright during and after collision.	Tests on longitudinal barriers and transitions with a single unit truck or with semis, and all tests on Test Level 1 crash cushions and terminals.
	H. Occupant impact velocities should satisfy the following:	

		Occupant Impact Velocity Limits m/s (ft/s)			
		Component	Preferred	Maximum	
	H.1.	Longitudinal and Lateral	9.0 (29.5)	12.0 (39.4)	All tests with small cars on longitudinal barriers and transitions; all tests on terminals and crash cushions, except tests into sides with pickup trucks.
	H.2.	Longitudinal	3.0 (9.8)	5.0 (16.4)	All tests on support structures and work zone traffic control devices.

I. Occupant ridedown accelerations should satisfy the following:

		Occupant Ridedown Acceleration Limits (G's)			
		Component	Preferred	Maximum	
		Longitudinal and Lateral	15	20	Same as criteria H.1. plus H.2.

	J. (Optional) Hybrid III dummy. Response should conform to evaluation criteria of Part 571.208 Title 49 of Code of Federal Regulations, Chapter V (10–1–88 Edition).	Same as criteria H.1. plus H.2.
Vehicular trajectory.	K. After collision it is preferable that the vehicle's trajectory not intrude into adjacent traffic lanes	All.
	L. The occupant impact velocity in the Longitudinal direction should not exceed 12 m/s and the occupant ridedown acceleration in the longitudinal direction should not exceed 20 g's.	All tests of longitudinal barriers and transitions with pickup trucks; all tests on the sides of terminals and crash cushons with pickup trucks, including reverse direction tests.
	M. The exit angle from the test article, preferably, should be less than 60 percent of test angle, measured at time of vehicle loss of contact with test device.	All tests on longitudinal barriers and transitions plus all impacts into the sides of redirective terminals and crash cushions, including reverse direction tests.
	N. Vehicle trajectory behind the test article is acceptable	All tests on "G/NG" and "GO/NG" redirective type terminals and crash cushions; angle hits on the noses of non-redirective terminals and crash cushions, and all tests on support structures, work zone traffic control devices, and breakaway utility poles.

Response to ANPRM

An advance notice of proposed rulemaking (ANPRM) on this proposed rule appeared at 57 FR 4941 on February 11, 1992. A total of seventeen commenters responded to that notice. Ten of the commenters were with state highway or transportation agencies (one of whom was writing as Chairman of the AASHTO Task Force for Roadside Safety), one was with a county department of public works (DPW), one is with a highway safety advocacy organization (safety advocate), three represented safety hardware suppliers (two with a manufacturer that currently supplies safety hardware (current supplier), and one an attorney for potential safety hardware suppliers (potential supplier)), and two are individuals with no indicated affiliations. However, one of these latter individuals is known to have had a long affiliation with the current supplier and the other (paired individual) provided, as a response, a corrected photocopy of the comments offered by one of the current supplier representatives. A summary of the comments follows:

In various ways commenters (four from highway agencies, two from the current supplier, and the individual paired with a current supplier representative) expressed concern about the lack of interface compatibility between the prevalent, existing barrier designs and light trucks. Specific items such as high vehicle centers of gravity and high bumpers were cited, with one highway agency representative specifically citing four-wheel drive vehicles as being particularly bad in these regards. At least one highway agency representative suggested that barrier hardware suitable for light trucks might not be available. Another expressed concern that barriers designed for light trucks would be incompatible with other vehicles. One current supplier, while not supplying supporting data, suggested that the driving public is not protected by current barrier designs, while two other commenters (a current supplier representative along with the paired individual) suggested that existing hardware may be giving the driving public a false sense of security. The safety advocate went further and recommended that the FHWA specifically disallow the use of specific hardware items because of alleged performance problems.

A current supplier representative and the paired individual pointed out the importance of taking soil conditions into account when designing foundations for barriers and other appurtenances.

The potential supplier representative advocated the use of special barriers described as being available from the potential supplier. However, no information on the barriers was supplied.

The safety advocate and one highway agency representative suggested expanding the rule to include vehicles larger than light trucks, with the highway agency representative specifically suggesting the inclusion of school buses. One the other hand, one highway agency representative pointed out that current designs offer protection to all vehicles under some conditions.

The safety advocate suggested the need for a systems approach to safety, with the FHWA and the NHTSA collaborating to see that highway and vehicle design requirements are compatible.

Eight commenters (four from highway agencies, the two current supplier representatives, the paired individual, and the formerly affiliated individual) directly or indirectly expressed views on crash testing procedures for light trucks. The paired commenter and the current supplier affiliate commented on the need to identify the special appurtenance performance requirements for light trucks. One highway agency representative suggested that the pickup truck test vehicle specified in the AASHTO "Guide Specifications for Bridge Railings" is not representative of typical pickup trucks. Four highway agency representatives and one current supplier representative expressly supported using the testing guidance resulting from the NCHRP's project to update Report 230 (the guidance in Report 350). Three highway agency representatives either expressed an expectation or a recommendation that crash testing be undertaken in developing a rule.

One highway agency representative and the safety advocate speculated on the possibility of incompatibility between light trucks and breakaway sign supports.

Representatives from seven highway agencies, the DPW, and the potential supplier, in one way or another, expressed concern over the potential cost a rule might have and/or a need to justify any increase in costs. Two highway agency representatives indicated there needs to be a showing of a problem to justify a rule. Three highway agency representatives and the potential supplier representative suggested the need to ensure the cost-effectiveness of any rule that might be issued. A representative from another highway agency suggested the application of a cost-effectiveness analysis program, citing the program being developed under NCHRP Project 22–9, while another cited the large investment in existing traffic barriers. Still another suggested a rule might be particularly burdensome on entities managing low volume roads. However, only the DPW representative provided any data or analysis of the potential impact a rule might have and, on the basis of the assumptions used in the analysis, suggested there is no need for a rule.

Representatives of five highway agencies, two from the current supplier, the paired individual, and the formerly affiliated individual discussed implementation of the rule. One from a highway agency suggested that upgrades of existing barriers be undertaken only with other planned improvements, that there be no mandated upgrades under maintenance operations, and "* * * that catch-up type improvements specifically to enhance the crashworthiness of roadside barrier should not be required * * *." Another highway agency representative expressed a desire for language in the rule that would protect a state from tort claims if its barriers did not conform to the resulting new standards. Three highway agency representatives, the two current supplier representatives, the paired individual, and the formerly affiliated individual either expressed support for, or recognition of the need for, developing a rule to ensure that roadside barriers and other roadside features are compatible with light trucks. One of the current supplier representatives went further, suggesting that such a rule should be adopted immediately. On the other hand, at least three highway agency representatives suggested waiting to issue a rule. One cited the need to develop barriers, another cited the need to test existing barriers, and the third suggested waiting until the NCHRP Report 230 update can be evaluated. One current supplier representative suggested the proposed rule would aid in risk management. The other current supplier representative and the paired individual suggested the possibility of lowering liability exposure and enhancing risk managment through rehabilitation of existing barrier systems.

Finally, for different reasons, one highway agency representative and the safety advocate suggest that the proposed rule should be considered significant.

FHWA Response to Comments

Most traffic barriers in use today have been developed to safely redirect or stop automobiles. Nevertheless, several of the longitudinal barriers developed to redirect automobiles have performed acceptably when tested with pickup trucks and light vans. In addition, several longitudinal barriers have proven effective in redirecting even larger vehicles in crash tests, and some have been developed specifically to contain large vehicles. While not confirmed through crash tests, the FHWA believes that these barriers will prove quite effective in redirecting all the vehicles in the light truck category. On the other hand, some barriers developed to redirect automobiles have not worked well when subjected to standard (albeit severe) containment crash tests run with light vans. The FHWA would also expect lower effectiveness from many barriers developed to redirect automobiles if tested with short wheelbase or four-wheel drive light trucks. To repeat, although not fully confirmed through crash tests, the FHWA believes there are longitudinal traffic barriers available that will reasonably safely redirect the full range of vehicles in the light truck category and that some longitudinal barriers developed to redirect automobiles will safely redirect a large majority of the vehicles in the light truck category. It must also be recognized that all traffic barriers will prove effective with all vehicles under some impact conditions, meaning that failure under crash test conditions does not necessarily mean a barrier is totally or even largely ineffective. Thus, the FHWA believes that the vast majority of the traveling public is well protected by the modern barriers currently in place and is not being given a false sense of security.

Admittedly, there are some predictable impact conditions that will exceed the capacities of most barriers but a majority of these will be with vehicles larger than light trucks. In all but rare locations it will be prohibitively expensive to protect against these impacts. Consider that, while 5 percent of vehicle occupant fatalities are the result of striking traffic barriers, only 0.34 percent of occupant fatalities result from medium and heavy trucks and buses striking barriers. Nevertheless, the guidelines being proposed in this rulemaking will give consideration to the full range of vehicles on our highways and will ensure that barriers will be installed to cover the maximum range of predictable impacts that is economically justifiable.

For those persons concerned that barriers developed to redirect light trucks will not prove safe for other vehicles, presumably automobiles, it should be pointed out that testing under NCHRP Report 350 guidelines will require testing with automobiles, thus ensuring safe performance for a wide range of vehicle types.

To the safety advocate who recommends that the FHWA disallow the use of specific barriers (cable guardrails, weak-post box-beam barrier systems, sand barrel crash cushions, bullnose median w-beam terminals (crash cushions), and the Oregon two-tube, curb-mounted bridge railing), the FHWA must respond that it has no evidence of serious service problems with these barrier systems. In fact, it believes that at least two of the systems, the cable guardrail and the sand barrel crash cushion, fill important niches in our needs for traffic barriers. The FHWA does not anticipate, as part of this rulemaking, disallowing the use of any specific barrier systems. It believes the guidelines being proposed will bring to light inappropriate practices and lead to needed changes.

The FHWA concurs with the safety advocate on the need for a systems engineering approach to highway safety and has been working to increase coordination between the NHTSA's activities and its own.

The FHWA believes the test requirements in the NCHRP Report 350 are basically responsive to the interests and concerns of those who commented on the test procedures. The one exception might be a question on how well the ¾-ton pickup truck represents the spectrum of vehicles in the light truck category. The researchers who developed Report 350 addressed this question directly, commenting in Report 350 as follows:

> A ¾-ton pickup is recommended for the following reasons:
>
> (1) Section 1073 of the Intermodal Surface Transportation Efficiency Act of 1991 mandated the development of standards for roadside barriers and other safety appurtenances ". . . which provide an enhanced level of crashworthy performance to accommodate vans, minivans, pickup trucks, and 4-wheel drive vehicles . . ." The ¾-ton pickup is believed to be representative of a large segment of the light-duty truck population. The light-duty truck population includes large numbers of conversion vans on ¾-ton chassis, Blazers, Broncos, and pickups with and without 4-wheel drive, pickups with campers, minivans, etc., whose mass and center of mass above ground approximate those of the ¾-ton pickup. However, the exact degree to which features designed to meet test and evaluation requirements recommended herein will satisfy the intent of Section 1073 is not known at this time. Impact performance of any given feature is known to be sensitive to small changes in test parameters, especially those associated with the test vehicle. It must also be noted that some 4-wheel drive vehicles, as well as some conventional-drive vehicles, are either manufactured or customized by their owners to have oversized tires, extended suspension systems, small track widths, etc. These design features can greatly diminish a vehicle's stability, i.e., its resistance to overturn. It is not economically feasible to design safety features to accommodate vehicles of this type.
>
> (2) Very little, if any, ballast will be needed to meet the recommended test inertial mass.
>
> (3) Use of a specific pickup type will enhance test standardization.

The FHWA is satisfied with the recommendation in Report 350 but, as stated earlier, will look to its own sponsored research and that being undertaken by the NCHRP for additional information on the compatibility of roadside features with light trucks.

Nobody has brought forward information indicating a unique incompatibility between light trucks and breakaway supports. Until the FHWA sees a problem, it will accept the recommendation in Report 350 that these features only be tested with small cars.

It is the intention of the FHWA to support the concept of multiple test levels as contained in Report 350. It also intends to see that this concept is coupled with a rational, economics-based evaluation and selection procedure that will ensure that the safety of the motoring public and the competing needs for available highway funds are properly addressed. Work currently underway on NCHRP Project 22–9 is expected to be a major input to this procedure. For the present, there is no basis for believing the evaluation and selection procedures likely to be developed will indicate a need for an immediate or massive replacement of existing, modern traffic barrier installations. In fact, because of the broad range of impact conditions for which most existing traffic barriers are effective, there will probably only be rare locations where replacement will be economically justified. The impact of recognizing the traffic barrier requirements of the full range of vehicles on our highways is likely to be greatest in the construction, reconstruction, upgrading, or major refurbishment of high-speed, high-volume highways, where some increase in barrier costs should be expected, and in the construction or major refurbishment of low-speed, low-volume highways, where lower unit cost barriers should be expected. At this time, however, it is unknown if the applicability of lower test level barriers on some highways will lead to the greater use of barriers. If it does, even though the unit costs are lower, there is a chance total barrier expenditures will increase. The FHWA believes, though, that the most likely outcome will be that, nationally, the net expenditure on traffic barriers will remain much as it is now, with an improvement in the protection afforded the motoring public. On the other hand, because of the character of the highways under their jurisdiction, some highway agencies will have to increase expenditures on traffic barriers to provide justified improvements in barrier protection.

For those state highway agencies concerned about an increase in tort liability resulting from changed recommended traffic barrier policies, it is more likely that their vulnerability to tort losses will be less if the rational traffic barrier evaluation and selection procedures contemplated here are followed in conjunction with a parallel, sound, ISTEA-mandated safety management system.

Implementation

At this time the FHWA does not believe there is sufficient knowledge nor adequate procedures upon which to base a prescription for practices related to the use of traffic barriers or other safety features to accommodate the range of vehicles on our highway. It does believe the guidance contained in NCHRP Report 350 represents a major step toward attainment of that goal. Therefore, it proposes to issue a rule to incorporate NCHRP Report 350 in the "Guides and References" section of 23 CFR part 625. The FHWA intends, contingent upon adoption of this rule, to immediately accept for consideration of acceptability any new or modified highway safety features that have been tested and evaluated according to the guidance in Report 350. And, nine months after adoption of the rule, the FHWA intends to consider for acceptability only newly proposed or modified highway safety features that have been tested and evaluated in accordance with the guidance in NCHRP Report 350, except for those features that, in the FHWA's view, have been subjected to more demanding requirements or have been subjected to testing and evaluation procedures designed to evaluate the suitability of a feature to meet a specific or special need. Also, contingent upon adoption of this rule, the results of ongoing research, and service performance information available at the time, the FHWA anticipates, approximately five years after adoption of the rule, requiring that all new installations of traffic barriers and other roadside safety features be shown to be acceptable under the testing and evaluation criteria in Report 350. At the same time, the FHWA anticipates requiring that the suitability of all traffic barriers and other roadside safety features be determined through an evaluation and selection procedure that considers the needs of all classes of vehicles and is acceptable to the FHWA. In the interim, the FHWA will work with the state highway agencies and the NCHRP to develop a model evaluation and selection procedure. It will also be vigilant for findings and new developments in the area of roadside safety features and, when warranted, will encourage their immediate application.

At this time the FHWA is requesting all interested parties with information or views on the subject of this NPRM to respond to the docket at the address given under the heading ADDRESSES.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being considered by the FHWA in this document would amend requirements for traffic barriers and other safety appurtenances installed on the National Highway System. The FHWA has determined that, since this action basically will adopt crash test and evaluation guidance that approximately matches current practice, it does not constitute a major rule under Executive Order 12291. For the same reason, the FHWA does not consider this to be a significant regulation under the regulatory policies and procedures of the Department of Transportation. The potential economic impact of this rulemaking would be so minimal that no further evaluation is needed. Therefore, a full regulatory evaluation has not been prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the agency has evaluated the effects of this proposal on small entities and certifies this proposed action will not have a significant economic impact on a substantial number of small entities. This certification is based on the guidance in NCHRP Report 350 being essentially a codification of current practice and the belief that application of that guidance will have only minor, if any, economic impact on a very few small entities developing or marketing roadside hardware.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has determined that this action will not, for the purpose of the National Environmental Policy Act of 1969, have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference.

In consideration of the foregoing, the FHWA proposes to amend chapter 1 of title 23, Code of Federal Regulations, part 625 as set forth below.

Issued on: January 14, 1993.

T.D. Larson,

Administrator.

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation for part 625 is revised to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; Sec. 1073 of Pub. L. 102–240, 105 Stat. 1914, 2012; 49 CFR 1.48 (b) and (n).

2. In § 625.5, paragraph (a)(13) is added to read as follows:

§ 625.5 Guides and references.

* * * * *

(a) * * *

(13) National Cooperative Highway Research Program Report 350, Recommended Procedures for the Safety Performance Evaluation of Highway Features, TRB 1993. [5]

* * * * *

[FR Doc. 93–1556 Filed 1–22–93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–100–88]

RIN 1545–AM81

Valuation Tables; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to proposed regulations.

SUMMARY: This document contains corrections to proposed regulations (PS–100–88), which were published in the **Federal Register** on Monday, November 2, 1992 (57 FR 49514). The proposed regulations relate to the valuation of certain partial interests in property under section 7520 of the Internal Revenue Code of 1986, as added by section 5031 of the Technical and Miscellaneous Revenue Act of 1988.

FOR FURTHER INFORMATION CONTACT: William L. Blodgett, telephone 202–622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction amend regulations under section 7520 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations (PS–100–88), which was the subject of FR Doc. 92–26052, is corrected as follows:

1. On page 49516, the table following instructional "Paragraph 1." is corrected by removing the entries for §§ 1.170A–12(b)(1), 1.170A–12(b)(2), 1.170A–12(e)(1) and 1.170A–12(e)(2); and adding an entry for § 1.170A–12(a)(3) to read as follows:

Section	Remove	Add
* * * * *		
1.170A–12(a)(3), 4th sentence.	or 25.2512–9, whichever is appropriate.	

Section	Remove	Add
* * * * *		

2. On page 49517, column 1, following the authority paragraph, an instructional paragraph 2a., and text for § 1.170A–12 is added to read as follows:

Par. 2a. Section 1.170A–12 is amended as follows:

1. Paragraphs (b), (e) (1) and (2) are revised as set forth below.

2. Paragraph (f) is removed.

§ 1.170A–12 Valuation of a remainder interest in real property for contributions made after July 31, 1969.

* * * * *

(b) *Valuation of a remainder interest following only one life*—(1) *General rule.* The value of a remainder interest in real property following only one life shall be determined under the rules provided in § 20.2031–7 of this chapter (or for certain prior periods, § 20.2031–7A of this chapter) using the interest rate and life contingencies prescribed for the date of the gift. However, if any part of the real property is subject to exhaustion, wear and tear, or obsolescence, the special factor determined under paragraph (b)(2) of this section shall be used in valuing the remainder interest in that part. Further, if any part of the property is subject to depletion of its natural resources, such depletion shall be taken into account in determining the value of the remainder interest.

(2) *Computation of depreciation factor.*—If the valuation of the remainder interest in depreciable property is dependent upon the continuation of one life, a special factor must be used. The special factor is to be computed on the basis of the interest rate and life contingencies prescribed in § 20.2031–7 of this chapter (or for certain prior periods, § 20.2031–7A of this chapter) of the regulations and the assumption that the property depreciates on a straight line basis over its estimated useful life. The factor determined under this paragraph (b)(2) is carried to the fifth decimal place. In the case of the valuation of a remainder interest following one life, the special factor may be obtained through use of the following formula:

$$(1+r)\sum_{t=0}^{n-1} v^{(t+1)}\left[\left(1-\frac{lx+t+1}{lx}\right)-\left(1-\frac{lx+t}{lx}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

r=the applicable interest rate under section 7520 of the Code divided by 2
n=estimated years of useful life
v=1 dividend by the sum of 1 plus the applicable interest rate under section 7520 of the Code
x=age of the life tenant
lx=number of persons living at age x set forth in Table LN of § 20.2031–7 of this chapter (or, for prior periods, in § 20.2031–7A of this chapter)

(3) The following example illustrates the provisions of this paragraph (b):

Example. In June 1992, A, who is 62, donates to Y University a remainder interest in a personal residence, consisting of a house and land, subject to a reserved life estate in A. At the time of the gift, the land has a value of $30,000 and the house has a value of $100,000 with an estimated useful life of 45 years, at the end of which the value of the house is expected to be $20,000. The portion of the property considered to be depreciable is $80,000 (the value of the house ($100,000) less its expected value at the end of 45 years). The portion of the property considered to be nondepreciable is $50,000 (the value of the land at the time of the gift ($30,000) plus the expected value of the house at the end of 45 years ($20,000)). The interest rate prescribed under section 7520 for June 1992 is 8.4 percent. Based on an interest rate of 8.4 percent, the remainder factor for $1.00 prescribed in § 20.2031–7 of this chapter for a person age 62 is 0.29567. The value of the nondepreciable remainder interest is $14,784 (0.29567 times $50,000). The value of the depreciable remainder interest is $17,387 (0.21734, computed under the formula, times $80,000).The value of the entire remainder interest is $32,171.

*   *   *   *   *

(e) * * * (1)(i) If the valuation of the remainder interest in the real property is dependent upon the continuation or the termination of more than one life or upon a term certain concurrent with one or more lives, a special factor must be used.

(ii) The special factor is to be computed on the basis of—

(A) Interest at the rate prescribed under § 25.2512–5 of this chapter (or, for certain prior periods, § 25.2512–5A of this chapter), compounded annually;

(B) Life contingencies determined from the values that are set forth in the mortality table in § 20.2031–7 of this chapter (or, for certain prior periods, § 20.2031–7A of this chapter); and

(C) If depreciation is involved, the assumption that the property depreciates on a straight line basis over its estimated useful life.

(iii) If any part of the property is subject to depletion of its natural resources, such depletion must be taken into account in determining the value of the remainder interest.

(2) In the case of the valuation of a remainder interest following two lives, the special factor may be obtained through use of the following formula:

$$(1+r)\sum_{t=0}^{n-1} v^{(t+1)}$$

$$\left[\left(1-\frac{lx+t+1}{lx}\right)\left(1-\frac{ly+t+1}{ly}\right)-\left(1-\frac{lx+t}{lx}\right)\left(1-\frac{ly+t}{ly}\right)\right]\left(1-\frac{1}{2n}-\frac{t}{n}\right)$$

Where:

r=the applicable interest rate under section 7520 of the Code divided by 2
n=estimated years of useful life
v=1 divided by the sum of 1 plus the applicable interest rate under section 7520 of the Code
x and y=ages of the life tenants
lx and ly=number of persons living at age x and y set forth in Table LN of § 20.2031–7 of this chapter (or, for prior periods, in § 20.2031–7A of this chapter)

*   *   *   *   *

3. On page 49531, § 1.664–4(e)(6), second table, the heading "Adjusted Payout Rate (in percentages)" appearing in the first column, is corrected to read "Years". In the same table, the heading "Years" appearing over the rates, is corrected to read "Adjusted payout rate (in percentages)".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–1630 Filed 2–2–93; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[EE–74–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (EE–74–92), published in the **Federal Register** for Friday, January 22, 1993 (58 FR 5687), concerning whether sponsorship payments received by exempt organizations are unrelated business taxable income.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Regina L. Oldak, at (202) 622–6080 (not a toll-free number); concerning the hearing, Carol Savage of the Regulations Unit, at (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The subject of this correction is the notice of proposed rulemaking that proposed amendments to the regulations under § 1.512(a)–1 and the addition of § 1.513–4.

Need for Correction

As published, the notice of proposed rulemaking contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (EE–74–92), which was the subject of FR Doc. 93–1402, is corrected as follows:

1. On page 5687, in the third column, the first sentence of the "**DATES**" portion of the preamble is corrected by removing the date "April 30, 1993" and adding "June 17, 1993" in its place.

2. On page 5689, in the first column, the fourth sentence of the "Comments and Requests to Appear at a Public Hearing" portion of the preamble is corrected by removing the date "April 30, 1993" and adding "June 17, 1993" in its place.

Dale D. Goode,

Federal Register Liaison Officer, Ass't Chief Counsel (Corporate).

[FR Doc. 93–2440 Filed 2–2–93; 8:45 am]

BILLING CODE 4830-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket 93–1]

Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities; Children's Environments

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board is developing accessibility guidelines for newly constructed and altered children's environments under the Americans With Disabilities Act of 1990. The guidelines will address such places as day care centers; nursery, pre-school, kindergarten, elementary, and other school programs; and children's museums. This advance notice of proposed rulemaking seeks comments from the public on various issues relating to the development of accessibility guidelines for these children's environments.

DATES: Comments should be received by April 5, 1993. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: John Murdoch, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 (Voice); (202) 272–5449 (TDD). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for issuing accessibility guidelines for newly constructed and altered buildings and facilities under the Americans With Disabilities Act of 1990 (ADA). The Access Board has issued the Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG). See 36 CFR part 1191. ADAAG is to be applied during the design, construction, and alteration of buildings and facilities to the extent required by regulations issued by the Department of Justice and Department of Transportation which are responsible for implementing certain titles of the ADA. See 28 CFR parts 35 and 36; 49 CFR part 37.

Under the Department of Justice's regulations, ADAAG applies to newly constructed and altered places of public accommodation and commercial facilities. 28 CFR 36.406. Among the places of public accommodation covered are such children's environments as privately operated day care centers; nursery, pre-school, kindergarten, elementary, and other school programs; and children's museums. 28 CFR 36.104. State and local government programs currently have the option of applying ADAAG or the Uniform Federal Accessibility Standards (UFAS) when constructing or altering buildings or facilities. 28 CFR 35.151. The Access Board has recently proposed to revise ADAAG by adding new sections for certain State and local government facilities. See 57 FR 60612 (December 12, 1992). The Department of Justice is considering adopting the revised ADAAG as the accessibility standard for newly constructed and altered State and local government facilities and eliminating UFAS as an option. The Access Board is also considering adopting the revised ADAAG as the applicable guidelines for newly constructed, altered and leased Federal facilities under the Architectural Barriers Act of 1968. These actions will be the subject of future rulemaking. When completed, however, it is anticipated that ADAAG will be the single accessibility standard for places of public accommodation and commercial facilities, State and local government facilities, and Federal facilities.

ADAAG contains scoping provisions and technical specifications for making those elements and spaces that typically comprise a building readily accessible to and usable by individuals with disabilities. ADAAG's technical specifications are adopted from the American National Standard Institute (ANSI) A 117.1–1980 standard. That standard is based upon adult dimensions and anthropometrics and does not accommodate the needs of younger children with disabilities. For instance, although children's environments contain similar elements and features (e.g., ramps, handrails, water closets, storage) to those found in adult environments, specific guidelines are necessary to appropriately accommodate the needs of children with disabilities.

The Access Board has undertaken two activities which specifically address accessibility issues for children with disabilities. In 1986, the Access Board, in cooperation with the U.S. Department of Education, developed "Recommendations for Accessibility to Serve Physically Handicapped Children in Elementary Schools." These recommendations contain modifications and additions to the Uniform Federal Accessibility Standard (UFAS) and serve as a design guide when planning elementary schools for grades one through six. Where UFAS sections are not referenced by these recommendations, they are intended to apply without modification or addition.

In 1989, the Access Board contracted with the Center for Accessible Housing (CAH) at North Carolina State University's School of Design to develop recommendations for accessibility standards for children's environments. CAH prepared a report titled "Accessibility Standards for Children's Environments" which recommends standards that would supplement UFAS. The scope of the CAH recommended standards would not be limited to elementary schools and special education facilities serving children with physical disabilities. Rather, the CAH recommended standards would apply to all environments where children with disabilities are the primary users.

The CAH report involved:

- A review of selected building codes, standards and guidelines;
- A review of ergonomic studies and new products and technologies;
- A review of recent evaluation literature on children's environments;
- On-site evaluations of existing children's facilities having accessible features;
- Development of draft recommendations for standards for children's environments; and
- A concluding technical report presenting the final recommendations.

Copies of the CAH report, and the recommendations developed in conjunction with the U.S. Department of Education, are available from the Access Board. As a result of the two activities, the Access Board is aware of a number of State accessibility standards that address the needs of children; State education agencies with accessibility standards for elementary schools; and literature, research and technologies relevant to accessibility for children with disabilities.

The Access Board requests comments on the following issues concerning accessibility for children's environments:

Scope and Application of the Intended Guidelines

What types of facilities should be covered by guidelines for accessible children's environments? Should application be limited to only those facilities where children make up the majority of the user population? Examples of these facilities would include day care centers; nursery, pre-school, kindergarten, elementary, and other school programs; children's museums; and temporary child care facilities in shopping malls. Should the guidelines also cover facilities used and occupied by both children and adults such as libraries, theaters, and multi-purpose community facilities? How should the guidelines apply to such facilities as children's day camps and camps requiring overnight stay?

Ages and Grades To Be Covered

What age groups should be covered by the guidelines? How do the needs of pre-schoolers differ from children in grades K–3 and 4–6? For example, should the guidelines call for a range in which to mount certain accessible elements depending on the user's age group? Should the guidelines discern between age groups and grades, and should the scoping and technical requirements reflect those differences? What grades and age groups are served by different school buildings (e.g., elementary and middle schools)? In some jurisdictions, middle schools enroll students in grades four through six, while in other jurisdictions middle schools enroll students in grades six through eight. How should these different grade groupings be addressed in the guidelines? To what extent, and in what situations are assistive services the only means of providing access? To what extent are children of widely varying ages (e.g., ages 5 through 21) served by the same facility, such as in certain special education facilities and developmental centers or small private schools? Should such facilities be required to provide accessible elements and features within various reach ranges to meet the needs of all users?

Other Standards and Guidelines for Children's Environments

What standards are currently being used by design professionals when designing for accessible children's environments? What accessibility guidelines are used by State and local education agencies for elementary schools? How do national and local plumbing codes address the type, placement and spacing of such features as accessible water closets for schools and other children's facilities? Have the needs of children with disabilities been properly served by current accessibility standards and guidelines when applied to children's environments? In environments designed and built to be accessible to adults, how have children with disabilities adapted or managed to safely utilize those accessible elements?

Accessible Building Products and Technologies

What accessible building products, such as water closets and grab bars, are available that may suit the needs of children with disabilities? What current or emerging technologies may be applied to the built environment and result in increasing access for children with disabilities?

Elements and Features Unique to Children's Environments

Children's environments contain unique elements and features (e.g., chalkboards and lockers) not typically addressed in accessibility guidelines. Should scoping and technical requirements be developed for such unique elements and features?

The Access Board intends to address accessibility issues regarding fixed play and recreation equipment for children with disabilities under separate guidelines to be developed for recreation facilities. Therefore, the scope of the intended guidelines for children's environments will not cover such equipment.

Authorized by vote of the Access Board on January 13, 1993.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 93–2448 Filed 2–2–93; 8:45 am]

BILLING CODE 8150-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–4560–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Marathon Oil Company (Marathon), Texas City, Texas, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until March 22, 1993. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by February 18, 1993. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–93–MOEP–FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261 31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (i.e., ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (i.e., ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (i.e., excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing listed hazardous wastes are also considered hazardous wastes. See 40 CFR 261.3 (a)(2)(iv) and (c)(2)(i), referred to as the "mixture" and "derived-from" rules, respectively. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. On December 6, 1991, the U.S. Court of Appeals for the District of Columbia vacated the "mixture/derived from" rules and remanded them to the Agency on procedural grounds (*Shell Oil Co.* v. *EPA*, 950 F.2d 741 (D.C. Cir. 1991)). On March 3, 1992, EPA reinstated the mixture and derived-from rules on an interim basis, and solicited comments on other ways to regulate waste mixtures and residues (57 FR 7628). The Agency is going to address issues related to waste mixtures and residues in a future rulemaking.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (i.e., ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for Marathon's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the disposal of Marathon's petitioned waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because Marathon is seeking an upfront delisting (i.e., an exclusion based on data from waste generated from a pilot-scale treatment process), ground-water monitoring data collected from the areas where the petitioner plans to dispose of the waste in the future are not necessary. Because the petitioned waste is not currently generated or disposed of, ground-water monitoring data would not characterize the effects of the petitioned waste on the underlying aquifer at the disposal sites and, thus, would serve no purpose. Therefore, the Agency did not request ground-water monitoring data.

Marathon petitioned the Agency for an upfront exclusion (for waste that has not yet been generated) based on descriptions of a pilot-scale thermal desorption system used to treat the filter cake of API separator bottom sludge and dissolved air flotation (DAF) float, characterization of untreated API/DAF wastes that will be treated in the future by the thermal desorption system, and results from the analysis of unstabilized and stabilized residual solids generated during treatability tests conducted (using samples of Marathon's API/DAF filter cake) at an off-site pilot-scale thermal desorption system.

Similar to other facilities seeking upfront exclusions, this upfront exclusion (i.e., an exclusion based on information characterizing the process and waste) would be contingent upon Marathon conducting analytical testing of representative samples of the petitioned waste once the treatment unit is on-line at the Texas City refinery. Specifically, Marathon will be required to collect representative samples from its full-scale thermal desorption treatment system, once it is operational, to verify that the treatment system is on-line and operating as described in the petition. The verification testing would require Marathon to demonstrate that the established thermal desorption system can render the petitioned waste non-hazardous (i.e., a waste that meets the Agency's verification testing conditions).

From the evaluation of Marathon's delisting petition, a list of constituents was developed for the verification testing conditions. Proposed maximum allowable leachable concentrations for these constituents were derived by back calculating from the delisting health-based levels through the proposed fate and transport model for a landfill management scenario. These concentrations (i.e., "delisting levels") are part of the proposed verification testing conditions of the exclusion.

The Agency encourages the use of upfront delisting petitions because they have the advantage of allowing the applicant to know what treatment levels for constituents will be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delistings will allow new facilities to receive exclusions prior to generating wastes, which, without upfront exclusions, would unnecessarily have been considered hazardous. Upfront delistings for existing facilities can be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional testing requirements to verify that the delisting levels are achieved by the fully operational treatment systems will ensure that only non-hazardous wastes are removed from subtitle C control.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Marathon Oil Company, Texas City, Texas

A. Petition for Exclusion

Marathon Oil Company's (Marathon) refinery, located in Texas City, Texas, produces fuels, aromatics, and petrochemical feedstocks from crude oil. Marathon petitioned the Agency to exclude residual solids resulting from thermal desorption treatment of API separator bottom sludge and dissolved air floatation (DAF) float. The residual solids are presently listed, in accordance with 40 CFR 261.3(c)(2)(i) (i.e., the "derived from" rule), as EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry" and EPA Hazardous Waste No. K048—"Dissolved air floatation (DAF) float from the petroleum refining industry". The listed constituents of concern for K048 and K051 wastes are hexavalent chromium and lead (see 40 CFR part 261, appendix VII).

Marathon petitioned the Agency to exclude its residual solids because it does not believe that the waste, once generated, will meet the listing criteria. Based on treatability studies using Marathon's API/DAF wastes, Marathon claims that its treatment process will generate a non-hazardous waste because the constituents of concern in the waste are either not present or are in an essentially immobile form. Marathon also believes that the treated waste will not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Marathon's petition.

B. Background

On June 28, 1991, Marathon petitioned the Agency to exclude its residual solids resulting from treatment of its API separator bottom sludge and DAF float by thermal desorption from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, and subsequently provided additional information to complete its petition. Specifically, Marathon requested that the Agency grant an upfront exclusion (i.e., an exclusion that applies to waste not presently generated) for residual solids generated by the thermal desorption treatment system to be constructed at its Texas City, Texas refinery.

In support of its petition, Marathon submitted (1) detailed descriptions and schematics of its manufacturing process and the pilot-scale treatment process; (2) detailed descriptions of the proposed full-scale thermal desorption unit and its proposed operating parameters[1]; (3) total constituent analysis results for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24 and five other metals from representative samples of the thickened API/DAF sludge, untreated API/DAF filter cake, and residual solids; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) for the TC constituents and other extractable metals, volatile organics and semi-volatile organics, pesticides, and herbicides from representative samples of residual solids; (5) total constituent analysis results for volatile and semi-volatile organic constituents from the thickened API/DAF sludge, untreated filter cake, and residual solids; (6) results from total oil and grease analyses from the untreated filter cake and residual solids; (7) total cyanide results and moisture content from the thickened API/DAF sludge, untreated filter cake, and residual solids; (8) test results and information regarding the hazardous waste characteristics of ignitability, corrosivity, and reactivity for the residual solids; (9) results from the Multiple Extraction Procedure (MEP, SW–846 Method 1320) for the TC and other metals from representative samples of the stabilized residual solids; (10) results from the TCLP for cyanide for the stabilized residual solids; and (11) reactive sulfide and cyanide results for the stabilized residual solids.

Marathon produces fuels, aromatics, and petrochemical feedstocks by processing crude oil at its Texas City, Texas refinery. The refinery also produces fuel blendstocks and partially refined feedstocks for other Marathon Oil facilities. Marathon's refinery is designed to process only light, low sulfur (less than 0.2 percent) crude oils which are low in metals and other impurities. The crude oil undergoes a series of processes including separation/distillation, fluid catalytic cracking conversion, alkylation, and blending. Wastewater streams are produced throughout the refining process. Specifically, wastewater originates from the Crude unit, Reformer/Udex units, Light Ends unit, Fluid Catalytic Cracking Unit, Cooling Towers, Boiler House, and spent caustic tanks, as well as from equipment cleaning. The various wastewater streams are transported to Marathon's on-site wastewater treatment plant. Marathon's wastewater treatment plant includes primary, intermediate, secondary, and tertiary treatment. The primary and intermediate treatment section consists of an American Petroleum Institute (API) separator and a Dissolved Air Floatation (DAF) Unit. The API separator and DAF unit allow for the continuous gravity separation of oil, oily sludge and grit from the wastewater. The oil and solids removed from the API/DAF waste are transferred to tanks for free water removal. This mixture is then dewatered in a recessed plate filter press. The water from the transfer tanks and filter press is recycled to the front of the API separator, the oil is returned to the refinery process, and the solids (filter cake) are transported off-site for disposal.

Prior to November 8, 1988, Marathon disposed of its API bottom sludge and DAF float at the Gulf Coast Waste Disposal Authority (GCWDA) land treatment unit located in Texas City, Texas. On November 8, 1988, GCWDA initiated closure of the unit. Marathon began dewatering operations on November 8, 1988 using an on-site recessed filter press to produce a combined API/DAF waste filter cake suitable for landfill disposal. Between November 8, 1988 and the promulgation of Land Disposal Restrictions (LDR) on November 8, 1990, Marathon disposed of dewatered API/DAF filter cake at the GCWDA landfill located in Texas City, Texas and the Chemical Waste Management, Inc. landfill located in Carlyss, Louisiana. (The promulgation of LDR required the treatment of API/DAF waste prior to land disposal using solvent extraction or incineration.) Marathon selected the Rhone-Poulenc Basic Chemical Company incinerator in Houston, Texas to meet LDR requirements for API/DAF wastes, with the larger Rhone-Poulenc incinerator in Baton Rouge, Louisiana as a backup incinerator should problems arise at the Houston facility. As the incinerators selected for treatment of these wastes only accept dilute sludges, Marathon discontinued the use of the recessed plate filter press and currently only generates a dilute sludge waste.

Marathon elected to investigate the feasibility of treating its API/DAF filter cake using a proprietary thermal desorption process developed by Remediation Technologies, Inc. Thermal desorption refers to the separation of volatile and semi-volatile constituents from a solid matrix through volatilization by an indirect heat source. Marathon believes that efficient removals can be achieved at relatively low treatment temperatures, making thermal desorption a cost effective technology for the remediation of solids contaminated with hazardous organic constituents.

Marathon chose to perform API/DAF sludge treatability studies on a 1,000 pound per hour thermal desorption treatment unit at an off-site facility. The system was designed and constructed to perform large scale treatability studies and to test and optimize system components. Marathon believes that the 1,000 pound per hour system provides pilot study capabilities with minimal field scale-up. Marathon's proposed full-scale thermal desorption unit will have the capacity to process 2,000 pounds per hour of API/DAF filter cake.

Marathon's pilot-scale thermal desorption treatability study was performed as described below. The raw filter cake was fed into the processor through a covered gravity feed hopper. The thermal desorption unit contained two 7-inch intermeshing counter-rotational screw conveyors and had the capacity to process 1,000 pounds of material per hour. The thermal screw processors are an indirect heat exchanger commonly used to dry solid and sludge materials. The thermal screws contain a non-contact circulating heat transfer fluid (a molten salt) to elevate the temperature of the solids in the processor. The heated media continuously circulates through the hollow flights of the screw augers, travels the length of the screws and returns through the center of the shaft to the heater. The molten salt raises the temperature of the solids, resulting in the volatilization of volatile and semi-volatile constituents. The heater for the molten salt was direct fired with natural gas as fuel. Because the filter cake was 40–50 percent water, during the treatability demonstration, the waste was put through an initial pass through the system to selectively remove water. The residence time during this phase was approximately 15–20 minutes with the solids attaining an exit temperature of approximately 212 °F. The material was then reprocessed for an additional 60 minutes using two consecutive 30 minute cycles, with molten salt temperatures of 850 °F to 900 °F. Therefore, all waste material were treated for 75–80 minutes (in three passes, including an initial 15- to 20-minute pass to remove moisture and two 30-minute passes to remove organics) and had an average exit temperature of 738 °F. A cooling screw is the final component in the solids handling system which is designed to cool the residual materials to a temperature of 140 °F for subsequent handling.

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[1] Marathon has claimed some treatment process descriptions as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

An inert atmosphere was maintained in the thermal desorption processor through the introduction of a nitrogen stream (preheated to 1,000 °F) at a flow rate of approximately 10 standard cubic feet per minute. This gas stream also enhances volatilization of organics. Vapors were removed from the thermal processor with a vacuum blower and treated in the off-gas handling system. Particulates entrained in the gas stream were collected using a cyclone. These particulates were combined with the residual solids as they exited the cooling screw and were included in the sampling of the waste. The volatilized moisture and organics are subsequently condensed in a two-stage system. Initial gas cooling takes place in a quench/settling chamber. This is followed by condensation in a shell and tube heat exchanger. Materials condensed are collected in an oil/water separator where most of the water is recycled as quench water and the oil phase is returned to the refinery for recycling. The remaining non-condensable gas stream is passed through an activated carbon unit to remove organic compounds prior to release to the atmosphere.

Marathon's proposed full-scale thermal desorption unit will treat the API/DAF filter cake by a very similar process. The process will vary from the pilot-scale process in the following areas: (1) The API/DAF filter cake will be fed to the processor from a hopper using a covered conveyor system equipped with a weigh bridge; (2) filter cake will be introduced to the thermal processor through a double dump air lock to minimize the introduction of ambient air into the system; (3) the full-scale thermal processor will consist of two 24-inch intermeshing counter-rotational screw conveyors and the unit will be designed to operate as a single pass treatment system (instead of the three passes used in the pilot-scale operation); and (4) the particulates collected in the cyclone will be recycled to the processor waste feed. If the exclusion is granted, Marathon plans to dispose of the residual solids at either an on-site or off-site non-hazardous waste landfill.

Marathon proposed to monitor metal concentrations in the residual solids. If metal concentrations do not meet delisting levels, then Marathon would follow the thermal desorption treatment with stabilization. The waste would be stabilized through the addition of water and a high concentration alkaline reagent, (i.e., portland cement). This addition would be accomplished with a twin ribbon screw mixer, pug mill, or twin screw conveyor which incorporates the water and alkaline reagent with the residual material as it exits the cooling screw. Addition rates of water and alkaline reagent would be achieved with an in-line weigh-feeder which controls separate actuators for each addition.

Marathon petitioned for an upfront delisting for residual solids generated from the thermal desorption treatment of its API/DAF filter cake. Therefore, Marathon initiated a sampling program in October 1990 to characterize untreated API/DAF filter cake and treated residual solids. Subsequently, the Land Disposal Restrictions (LDR) regulations for K048 and K051 nonwastewater wastes went into effect on November 8, 1990 (see 55 FR 22520; June 1, 1990). Marathon was able to collect three composite samples of the API/DAF waste filter cake, before Marathon ceased operation of the filter press in November of 1990 to comply with the LDR requirements. The dilute sludge generated prior to the filter press was more suitable for incineration. To supplement the treatability demonstration, Marathon obtained five additional representative API/DAF waste grab samples upstream of the inactive filter press. These grab samples were used to document the uniformity of Marathon's waste generation.

For Marathon's treatability study, three 55-gallon drums of API/DAF filter cake material were collected directly from Marathon's recessed-plate filter press. A minimum of four randomly selected grab samples of filter cake were collected from each cycle of the filter press. The filter press was cycled two to three times per day, providing a minimum of eight individual grab samples per composite. A 55-gallon volume of each sample of API/DAF filter cake was required to conduct a treatability demonstration that would be representative of the full-scale thermal desorption process.

In order to characterize the residual solids from the thermal desorption treatability study, samples of the filter cake and final residual solids were collected during the treatability demonstrations. An 8-ounce grab sample of feed material was collected at 10 minute intervals throughout each of the three individual treatability tests. Following each of the three individual treatability tests, the grab samples were combined to form composite samples.

The collection vessel for the residual solids forms an air tight seal with the processor during treatment. Therefore, after each of the three individual treatability tests, composite samples of residual solids were generated by collecting grab samples at increasing depths in the collection vessel. A minimum of eight grab samples were used for each composite. Each composite of residual solids corresponds to a composite of filter cake.

Each of the three composite samples of filter cake and residual solids were analyzed for total constituent concentrations of the TC metals, antimony, beryllium, nickel, vanadium, and zinc; total constituent concentrations of volatile and semi-volatile organic compounds; percent oil and grease content; percent moisture content; and total concentrations of cyanide. Each of the three composite samples of residual solids were also analyzed for Toxicity Characteristic Leaching Procedure (TCLP) leachate concentrations (i.e., mass of a particular constituent per unit volume of extract) of the TC metals, antimony, beryllium, nickel, vanadium, zinc, volatile and semi-volatile organic compounds, and pesticides and herbicides.

Marathon claims that due to consistent manufacturing and waste treatment, the analytical data obtained from the samples are representative of any variation in the residual solids constituent concentrations. To demonstrate this, Marathon collected an additional five grabs of unfiltered, thickened API/DAF sludge upstream of the inactive filter press. To secure representative samples of the thickened API/DAF sludge, samples were taken from full 5,000-gallon tank trucks immediately following the transfer of waste from Marathon's thickening tanks. The samples were taken over a period of four weeks and analyzed for total constituent concentrations of the TC metals, antimony, beryllium, nickel, vanadium, zinc, volatile and semi-volatile organic compounds, and cyanide. The Agency believes that these samples are representative of the API/DAF waste that will be treated using the filter press and thermal desorption process.

Marathon also stabilized four samples of the residual solids resulting from the treatment of Marathon's API/DAF filter cake. Marathon used three composite samples of residual solids from the treatability demonstration, and a fourth composite, consisting of equal portions of the other three composites, to demonstrate the effectiveness of its stabilization process. Prior to final stabilization testing, a separate two-gallon composite of thermal desorption residual solids (a screening sample with similar physical and analytical properties to Marathon's four composite samples) was utilized for preliminary stabilization testing and reagent optimization. Reagents utilized for the stabilization treatability study included portland cement (Type I), fly ash, lime kiln residue, and quicklime. Bench-scale tests were performed on the screening samples to determine the optimum formulation of stabilization reagent(s) required to achieve maximum immobilization of inorganic constituents of concern. The recommended reagent formulation, based on the bench-scale test, was then used to stabilize Marathon's residual solids in the laboratory. Specifically, each of Marathon's four samples was stabilized with the addition of 0.25 parts of water and 0.15 parts of portland cement (Type I) per 1.00 part by weight of sample. The four stabilized residual solids were subjected to the TCLP-Multiple Extraction Procedure (TCLP-MEP)[2] to demonstrate long-term leaching characteristics. Marathon analyzed each of the four stabilized residual solids for TCLP-MEP leachate concentrations of the TC metals, antimony, beryllium, nickel, vanadium, and zinc; total organic carbon; TCLP leachate concentrations of cyanide; corrosivity and ignitability; reactive sulfide and cyanide; and strength, bulk density, and volume expansion.

C. Agency Analysis

Marathon used SW-846 Methods 7041 through 7950 to quantify the total constituent concentrations of the TC metals, antimony, beryllium, nickel, vanadium and zinc in the thickened sludge, untreated filter cake, and residual solids. Marathon used SW-846 Method 9010 to quantify the total constituent concentrations of cyanide in the same three materials. Marathon used SW-846 Method 1311 (TCLP) to quantify the leachable concentrations of the TC metals, antimony, beryllium, nickel, vanadium and zinc in the residual solids. Table 1 presents the maximum total constituent concentrations of the metals and cyanide for the thickened sludge, untreated filter cake, and residual solids. Table 2 presents the maximum leachate (TCLP) concentrations of the metals and cyanide in the residual solids.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (MG/KG)[1] (API/DAF WASTES)

Constituents	Unfiltered sludge	Untreated filter cake	Residual solids
Antimony	<2	<2	1.8
Arsenic	<2	48.0	38.0
Barium	750	673.0	1520.0
Beryllium	<2.5	<2.5	<2.5
Cadmium	<0.5	8.5	6.2
Chromium	1150	3370.0	3140.0
Lead	70	144.0	200.0
Mercury	10	.83	<0.05
Nickel	<10	42.0	94.0
Selenium	<3	<3	<3
Silver	<0.5	2.9	2.6
Vanadium	<10	110.0	117.0
Zinc	716	1260.0	1240.0
Cyanide	<0.2	15.0	.8

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any sample of thickened sludge, untreated filter cake and residual solids collected by Marathon. These levels do not necessarily represent the specific levels found in one sample.

TABLE 2.—MAXIMUM TCLP LEACHATE CONCENTRATIONS (MG/L) (API/DAF WASTES)

Constituents	Residual solids[1]
Antimony	<0.05
Arsenic	.346
Barium	1.1
Beryllium	<0.02
Cadmium	.05
Chromium	.08
Lead	.46
Mercury	<0.005
Nickel	.40
Selenium	<0.05
Silver	<0.05
Vanadium	1.1
Zinc	.94
Cyanide	[2].04

<Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any sample and do not necessarily represent the specific levels found in one sample.

[2] Calculated from the maximum total cyanide concentration of 0.8 mg/Kg, by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

Detection limits in Tables 1 and 2 represent the lowest concentrations quantifiable by Marathon when using the appropriate SW-846 analytical method to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using SW-846 Method 9071, Marathon determined that its residual solids had a maximum oil and grease content of 0.0086 percent; therefore, the TCLP analysis did not have to be modified in accordance with the Oily Waste Extraction Procedure (i.e., wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard TCLP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW-846 Method 1330 for the Oily Waste Extraction Procedure.

Marathon provided information, pursuant to 40 CFR 260.22, indicating that the residual solids are not expected to demonstrate the characteristics of ignitability or corrosivity. See 40 CFR 261.21 and 261.22, respectively.

Marathon used SW-846 Methods 8240 and 8270 to quantify the total constituent concentrations of volatile and semivolatile organic compounds, respectively, in the thickened sludge, untreated filter cake, and residual solids. Marathon used the same methods to quantify the leachable concentrations of volatile organic compounds and semi-volatile organic compounds in the residual solids, following extraction by SW-846 Method 1311 (TCLP). Marathon used SW-846 Methods 8080 and 8150 to quantify the total leachable constituent concentrations of pesticides and herbicides, respectively, following extraction by SW-846 Method 1311

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[2] Per Agency instructions, Marathon modified the MEP (SW-846 Method 1320) by substituting the TCLP for the extraction procedure in Step 7.1 of the MEP.

(TCLP) in the residual solids. Table 3 presents the maximum total concentrations of all detected organic constituents in Marathon's waste in the untreated filter cake and residual solids, as well as other toxic constituents found in the upstream sludge prior to filtering. Only benzene and toluene were detected in the total constituent analyses of the treated residuals. No organic constituents were detected in the leachate from the residual solids samples.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (MG/KG)[1] (API/DAF WASTES)

Constituents	Unfiltered sludge	Untreated filter cake	Residual solids
Acenaphthene	8.7	NA	NA
Benzene	29	9.9	0.71
Benzo(a)anthracene	<20	46	<0.330
Benzo(a)pyrene	<20	44	<0.330
Benzo(b)fluoranthene	<20	24	<0.330
Chrysene	15	93	<0.330
7,12-Dimethyl benz(a)anthracene	<20	44	<0.330
Ethyl benzene	24	9.1	<0.5
Fluoranthene	8.1	<5	<0.330
Fluorene	24	NA	NA
1-Methyl naphthalene	NA	704	<0.330
Naphthalene	305	300	<0.330
Phenanthrene	120	177	<0.330
Pyrene	15	96	<0.330
Toluene	62	37.0	0.84
Xylene	303	106	<1.0

< Denotes that the constituent was not detected at the detection limit specified in the table.

NA Not analyzed.

[1] These levels represent the highest concentration of each constituent found in any sample of unfiltered sludge, untreated filter cake, and residual solids collected by Marathon. No organic constituents were detected in the TCLP leachate from the residual solids. These levels do not necessarily represent the specific levels found in one sample.

Marathon used the modified SW–846 Method 1320 (TCLP–MEP, with the extraction procedure in Step 7.1 of the MEP replaced with the TCLP) to quantify the leachable concentrations of the TC metals, antimony, beryllium, nickel, vanadium and zinc in the stabilized residual solids. Marathon used SW–846 Method 9060 to quantify the total percent organic carbon for the stabilized residual solids.

Table 4 presents the maximum TCLP–MEP concentrations of the TC metals, antimony, beryllium, nickel, vanadium, and zinc.

TABLE 4.—MAXIMUM TCLP–MEP LEACHATE CONCENTRATIONS (MG/L) (API/DAF WASTES)

Constituents	Stabilized residual solids[1]
Antimony	0.017
Arsenic	<0.05
Barium	0.57
Beryllium	<0.02
Cadmium	<0.005
Chromium	0.12
Lead	0.011
Mercury	<0.002
Nickel	0.17
Selenium	<0.05
Silver	0.04
Vanadium	0.35
Zinc	0.11

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] These levels represent the highest concentration of each constituent found in any of the four stabilized residual solids samples (three individual samples and one composite of the three individual samples) collected by Marathon. These levels do not necessarily represent the specific levels found in one sample.

Marathon submitted a signed certification stating that, based on projected annual waste generation, the maximum annual generation rate of stabilized residual solids to be produced by Marathon's Texas City refinery will be 1,000 tons. The Agency may review a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate the estimated waste generation rate. EPA accepts Marathon's certified estimate of 1,000 tons (approximately 1,000 cubic yards) of stabilized residual solids for its Texas City refinery.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for Marathon's residual solids and decided, based on the information provided in the petition, that disposal in a landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated groundwater. The Agency, therefore, evaluated Marathon's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for groundwater contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (i.e., a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor resulting from subsurface processes such as three-dimensional dispersion and dilution from groundwater recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of Marathon's waste.

For the evaluation of Marathon's petitioned waste, the Agency used the EPACML to evaluate the mobility of hazardous inorganic constituents detected in the extract from Marathon's residual solids. The Agency's evaluation, using a maximum annual waste volume estimate of 1,000 cubic yards and the maximum reported and estimated TCLP leachate concentrations (see Table 2), generated the compliance-point concentrations for the constituents of concern as shown in Table 5.

TABLE 5.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) (RESIDUAL SOLIDS)

Constituents	Compliance-point concentrations[1]	Levels of regulatory concern[2]
Arsenic	0.00346	0.05
Barium	.011	2.0
Cadmium	.0005	.005
Chromium	.0009	.1
Lead	.0046	.015
Nickel	.004	.1
Vanadium	.011	.2
Zinc	.0094	7.0
Cyanide	.0004	.2

[1] Assuming a maximum annual waste volume of 1,000 cubic yards, the EPACML model calculated a dilution/attenuation factor of 100.

[2] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.

The residual solids exhibited arsenic, barium, cadmium, chromium, lead, nickel, vanadium, zinc, and cyanide levels at the compliance point below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of antimony, beryllium, mercury, selenium, and silver from Marathon's waste because they were not detected in the TCLP extracts using the appropriate SW-846 analytical test methods and adequate detection limits (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

As reported in Table 1, the maximum concentration of total cyanide in the residual solids is 0.8 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed 0.8 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency Memorandum in the RCRA public docket.

As noted, Marathon performed TCLP leachate analysis on the residual solids for the hazardous organic constituents of concern. No hazardous organic constituent was detected in the leachate for the residual solids samples. The Agency, therefore, did not evaluate the mobility of hazardous organic constituents in the residual solids.

The Agency concluded, after reviewing Marathon's processes that no other hazardous constituents, other than those tested for, are likely to be present in Marathon's residual solids. In addition, on the basis of test results and information provided by Marathon, pursuant to 40 CFR 260.22, the Agency concludes that the residual solids do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

In addition, the Agency evaluated the data from the stabilized residual solids. The Agency used the EPACML to evaluate the mobility of hazardous inorganic constituents detected in the extract from Marathon's stabilized residual solids. The Agency's evaluation, using a maximum annual waste volume estimate of 1,000 cubic yards per year and the maximum reported TCLP-MEP leachate concentrations (see Table 4), generated the compliance-point concentrations for the constituents of concern as shown in

TABLE 6.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) (STABILIZED RESIDUAL SOLIDS)

Constituents	Compliance-point concentrations[1]	Levels of regulatory concern[2]
Antimony	0.00017	0.006
Barium	.0057	2.0
Chromium	.0012	.1
Lead	.00011	.015
Nickel	.0017	.1
Silver	.0004	.2
Vanadium	.0035	.2
Zinc	.0011	7.0

[1] Assuming a maximum annual waste volume of 1,000 cubic yards, the EPACML calculated a dilution/attenuation factor of 100.

[2] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.

The stabilized residual solids exhibited antimony, barium, chromium, lead, nickel, silver, vanadium, and zinc levels at the compliance point below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of arsenic, beryllium, cadmium, mercury, and selenium from Marathon's stabilized waste because they were not detected in the TCLP-MEP extracts using the appropriate SW-846 analytical test methods (see Table 4). Additionally, the maximum reported levels of reactive cyanide and reactive sulfide in Marathon's stabilized residual solids were 1.3 and <0.3 ppm respectively. These concentrations are below the Agency's interim standards of 250 and 500 ppm, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and sulfide levels are not of concern.

In addition, because levels of cyanide and hazardous organic constituents in the residual solids prior to stabilization were not of concern, the Agency believes that concentrations of cyanide and hazardous organic constituents in the stabilized residual solids will also not be of concern.

During its evaluation of Marathon's petition, the Agency also considered the potential impact of the petitioned waste via non-ground-water routes, with regard to airborne dispersal of waste contaminants in particular. Since Marathon's unstabilized residual solids are dry and may not be solidified following the thermal desorption, Agency believes that some exposure to airborne contaminants from this waste may be possible. The Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the unstabilized residual solids using a simple air dispersion model for releases from a landfill. The results of this conservative, worst-case evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Marathon's residual solids. A description of the Agency's assessment of the potential impact of Marathon waste, with regard to airborne dispersal of waste contaminants, is presented in the docket for today's proposed rule.

The Agency also considered the potential impact of the petitioned wastes via a surface water route (a description of the Agency's assessment is included in the docket). While some contamination of surface water is possible through runoff from the waste disposal area, the Agency believes that the concentrations of any hazardous constituents in the runoff will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic medium used for extraction in the TCLP. In addition, any transported contaminants would be further diluted in the receiving surface water body. Finally, the Agency believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur.

E. Conclusion

The Agency believes that the descriptions of Marathon's thermal desorption process and analytical characterizations, in conjunction with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis to grant Marathon's petition for an upfront conditional exclusion. The Agency believes that the samples collected from the treatability study and waste variability study adequately represent the variations in raw materials and processing. The Agency believes that the data submitted in support of the petition show that Marathon's proposed thermal desorption process can render API/DAF filter cake non-hazardous. In general, the process used by Marathon can treat the API/DAF filter cake to efficiently remove volatile and semi-volatile organics. The data provided by Marathon also indicate that the treated residuals meet delisting levels of concern for leachable metals. Marathon also demonstrated that the residuals can be stabilized to reduce the mobility of the metals, and requested that stabilization be included as an option if metals concentrations of the residual solids exceed the delisting levels. Under the testing provisions of the conditional exclusion, Marathon will be required to retreat or dispose as hazardous any batch exhibiting any leachate extract level above a specified "delisting level" (see Section F—Verification Testing Conditions).

The Agency proposes to grant a conditional exclusion to Marathon Oil Company, located in Texas City, Texas, for the residual solids described in its petition as EPA Hazardous Waste Nos. K051 and K048. The Agency's decision to exclude this waste is based on process descriptions, characterization of untreated API/DAF filter cake, and results from the analysis of residual solids generated by a pilot-scale thermal desorption unit. If the proposed rule becomes effective, the petitioned residual solids, provided the conditions of the exclusion are met, will no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

F. Verification Testing Conditions

The testing requirements are to be conducted in two phases, initial and subsequent testing. The initial testing requirements apply to the first 40 days that the thermal desorption unit, once established at Marathon's Texas City, Texas facility, is operated as an on-line, full-scale unit at typical operating conditions (i.e., similar to those residence times and temperatures described in the petition). The subsequent testing requirements apply to the period of time following the initial 40-day period.

If the final exclusion is granted as proposed, Marathon will be required to: (1) Submit information on the operating parameters of the new thermal desorption unit, (2) collect and analyze 5-day composite samples (over a 40-day period) to verify that the new thermal desorption unit meets the treatment capability of the pilot-scale thermal desorption unit described in the petition, and (3) continue to collect and analyze composite samples of the petitioned waste on a monthly basis to verify that the residual solids continue to meet the Agency's verification testing limitations (i.e., "delisting levels"). These proposed conditions are specific to the upfront exclusion petitioned for by Marathon. The Agency may choose to modify these proposed conditions based on comments that may be received during the public comment period for this proposed rule. The proposed exclusion for Marathon's thermal desorption unit in Texas City, Texas is conditional upon the following requirements:

(1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Condition (3)(B), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA).

(A) *Initial Verification Testing:* During at least the first 40 operating days of full-scale operation of the thermal desorption unit, Marathon must monitor the operating conditions and analyze 5-day composites of residual solids. 5-day composites must be composed of representative grab samples collected from every batch during each 5-day period of operation. The samples must be analyzed prior to disposal for constituents listed in Condition (3). Marathon must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch.

The Agency believes that an initial period of 40 days is sufficient for a facility to collect sufficient data to verify that a full-scale treatment process is operating correctly. The initial verification testing conditions, if promulgated as proposed, will require samples of residual solids to be composited every five days during the first 40 operating days of full-scale operation of the new thermal desorption unit in Texas City, Texas. The Agency proposes this initial verification testing condition to ensure that the full-scale thermal desorption unit is closely monitored during the start-up period. If the Agency determines that the data collected under this condition reveal that the thermal desorption unit is not being operated as described in Marathon's petition, the exclusion will not cover the generated residual solids. If the Agency determines that the data from the initial verification period demonstrates the treatment process is effective, EPA will notify Marathon in writing that the testing conditions in (1)(A) may be replaced with the testing conditions in (1)(B).

The Agency believes that the concentrations of the constituents of concern in the residual solids may vary somewhat over time. As a result, in order to ensure that Marathon's treatment process can effectively handle any variation in constituent concentrations in API/DAF filter cake, the Agency is proposing a subsequent verification testing condition. The proposed subsequent testing would verify that the new thermal desorption unit is operated in a manner similar to its operation during the initial verification testing and that the residual solids do not exhibit unacceptable levels of toxic constituents. Therefore, the Agency is proposing to require Marathon to analyze representative samples of the residual solids on a monthly basis as described in Condition (1)(B).

(B) *Subsequent Verification Testing:* Following notification by EPA, Marathon may substitute the testing conditions in (1)(B) for (1)(A). Marathon must continue to monitor operating conditions, and analyze samples representative of each month of operation. The samples must be composed of representative grab samples collected during at least the first five days of operation of each month. These monthly representative samples must be analyzed for the constituents listed in Condition (3) prior to the disposal of the residual solids.

(C) *Termination of Organic Testing:* Marathon must continue testing as required under Condition (1)(B) for organic constituents specified in Condition (3)(B) until the analyses submitted under Condition (1)(B) show a minimum of four consecutive monthly representative samples with levels of specific constituents significantly below the delisting levels in Condition (3)(B), and EPA notifies Marathon in writing that monthly testing for specific organic constituents may be terminated. Following termination of monthly testing, Marathon must continue to test a representative 5-day composite sample for all constituents listed in Condition (3)(B) on an annual basis. If delisting levels for any constituents listed in Condition (3)(B) are exceeded in the annual sample, Marathon must reinstitute complete testing as required in Condition (1)(B).

The Agency believes that collecting monthly representative samples will ensure that Marathon's treatment process is able to handle any potential variability in concentrations of those constituents of most concern. Furthermore, the Agency is proposing to terminate the subsequent testing requirement for organics as allowed in Condition (1)(C) after Marathon has established a significant database for the residual solids that demonstrates delisting levels are consistently met. In order to confirm that the characteristics of the waste do not change significantly over time, Marathon must continue to analyze a representative sample of residual solids for organic constituents on annual basis. If Marathon changes operating conditions as described in Condition (4), then Marathon must reinstitute all testing in Condition (1)(A), pending a new demonstration under this condition for termination.

Future delisting proposals and decisions issued by the Agency may include different testing and reporting requirements based on an evaluation of the manufacturing and treatment processes, the waste, the volume of waste, and other factors normally considered in the petition review process. For example, wastes with variable constituent concentrations, discussed in previous delisting decisions (e.g., 56 FR 67197, December 30, 1991), may require more frequent batch testing.

As discussed earlier in this notice, the thermal desorption treatment process as described in the petition was demonstrated to be effective in removing organic constituents from solid matrices, but not inorganic constituents. Therefore, Condition (3)(A), which requires Marathon to test for the specified inorganic constituents of concern that may not be treated by this process, is not subject to the termination condition in Condition (1)(C).

(2) *Waste Holding and Handling:* Marathon must store as hazardous all residual solids generated until verification testing (as specified in Condition (1)(A) and (1)(B)) is completed and valid analysis demonstrates that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of residual solids are below all of the levels set forth in Condition (3), then the residual solids are non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any 5-day composite or other representative sample equal or exceed any of the delisting levels set in Condition (3), the residual solids generated during the corresponding time period must be retreated and/or stabilized as allowed below, until the residual solids meet these levels, or managed and disposed of in accordance with Subtitle C of RCRA.

If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in Condition (3)(A), then Marathon may stabilize the material with Type I portland cement as demonstrated in the petition to immobilize the metals. Following stabilization, Marathon must repeat analyses in Condition (3)(A) prior to disposal.

The purpose of this condition is to ensure that residual solids which contain hazardous levels of inorganic or organic constituents are managed and disposed of in accordance with subtitle C of RCRA. Holding the residual solids until characterization is complete will protect against improper handling of hazardous material. The 5-day composite sample must be analyzed for the appropriate parameters, and must meet the appropfiate delisting levels, in order for the waste to be considered non-hazardous. As a contingency, Marathon demonstrated that its stabilization process can immobilize metals in the thermally treated waste. The Agency is proposing to allow Marathon to further treat the material with portland cement-type stabilization in the event that metals concentrations are not below delisting levels of concern.

(3) *Delisting Levels:* All leachable concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24, and must be less than the following levels (ppm):

(A) Inorganic Constituents

antimony—0.6; arsenic, chromium, or silver—5.0; barium—100.0; beryllium—0.4; cadmium—0.5; lead—1.5; mercury—0.2; nickel—10.0; selenium—1.0; vanadium—20.0

(B) Organic Constituents

acenaphthene—200
benzene—0.5
benzo(a)anthracene—0.01
benzo(a)pyrene—0.02
benzo(b)fluoranthene—0.02
chrysene—0.02
ethyl benzene—70
fluoranthene—100
fluorene—100
naphthalene—100
pyrene—100
toluene—100

The Agency selected the set of constituents specified in Condition (3) after reviewing information about the composition of Marathon's API/DAF filter cake, descriptions of Marathon's treatment process, and the health-based levels used in delisting decision-making. Condition (3) as listed above provides the list of constituents for which Marathon must test the leachate from the residual solids, as well as the levels below which the waste will be considered non-hazardous. The constituents in Condition (3)(B) reflect the toxic organic constituents of concern that were detected in Marathon's API/DAF sludge, API/DAF filter cake, or residual solids.

The Agency established the delisting levels by first back-calculating the maximum allowable leachate concentrations (MALs) from the health-based levels (HBLs) for the constituents of concern using the EPACML dilution/attenuation factor of 100 for Marathon's maximum annual waste volume of 1,000 cubic yards, i.e., MAL=HBL×DAF. The calculated MALs were then compared with the maximum contaminant concentrations for the toxicity characteristic (i.e., TC levels) shown in 40 CFR 261.24, as 40 CFR 260.22(d)(3) precludes delisting any waste that exhibits a characteristic. The delisting levels established in Condition (3) are the lesser of the calculated MALs and the TC levels.

The Agency is also considering the option of using an additional testing parameter to ensure that the full-scale process operates as efficiently as the pilot-scale process in removing organic constituents from the untreated wastes. The data from the pilot-scale runs (Table 3) indicate that the treatment process is capable of reducing the total concentrations of all organic constituents in the waste to levels approaching detection limits (about 0.3 ppm). The Agency believes that setting a maximum level for a key indicator chemical will provide additional assurance that the process is operated properly. While the Agency could attempt to establish operating parameters for the treatment process to ensure proper operation (e.g., residence time, temperature, feed rate), EPA believes that testing the waste for a key constituent would be a more practical indication that the process was operating as described in the petition.

Based on the levels and prevalence of the organic constituents found in the waste, the Agency would, if it follows this approach, choose 1-methyl naphthalene as an appropriate indicator parameter. 1-methyl naphthalene appeared in all of the samples of untreated filter cake at high levels (521–704 ppm). Therefore, monitoring the total levels of 1-methyl naphthalene in the treatment residues would ensure that the thermal desorption process is operating as effectively as the pilot-scale process in removing all organic constituents.

If the option of including an indicator chemical in the testing conditions is chosen, the Agency believes that a total level of 3 ppm would be appropriate for 1-methyl naphthalene (and other indicator constituents). The level of 3 ppm is an order of magnitude above the detection limit reported by Marathon for the treatment residuals, and would allow a sufficient margin for any variability in the waste sampling and analysis. The Agency has often used an order of magnitude (i.e., a factor of 10) in chemical analyses to allow for variations in analyses and matrices. (For example, see 55 FR 22541, June 1, 1990, where the Agency allowed an order of magnitude leeway in analyses for treatment standards, and 55 FR 30414, July 25, 1990, where a factor of 10 was used to account for analytical variability in setting drinking water standards). Therefore, the Agency is seeking comment on the option of setting a process-based level of 3 ppm for 1-methyl naphthalene as a requirement for the delisting. Under this option, Marathon would be required to analyze for the total constituent level of 1-methyl naphthalene as an additional organic parameter in condition (3)(B). If samples of the treatment residues contained 3 ppm or more of 1-methyl naphthalene, the waste would either be retreated, or handled as hazardous.

(4) *Changes in Operating Conditions:* After completing the initial verification test period in Condition (1)(A), if Marathon significantly changes the operating conditions established under Condition (1), Marathon must notify the Agency in writing. After written approval by EPA, Marathon must re-institute the testing required in Condition (1)(A) for a minimum of four 5-day operating periods. Marathon must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, Marathon may replace testing Condition (1)(A) with (1)(B). Marathon must fulfill all other requirements in Condition (1), as appropriate.

To ensure consistent and efficient treatment, the Agency is requiring Marathon to operate the thermal desorption system in accordance with the operating conditions established under Condition (1). However, the proposed exclusion allows Marathon some flexibility in modifying the operating conditions to optimize its treatment process, if Marathon can demonstrate the effectiveness of the modified operating conditions through a new initial verification testing under Condition (1)(A). The Agency believes that once the full-scale treatment process has been on line and operating properly, four 5-day operating periods would be sufficient for the new demonstration in this case.

(5) *Data Submittals:* At least two weeks prior to system start-up, Marathon must notify in writing the Section Chief, Delisting Section (see address below) when the thermal desorption and stabilization units will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS-333), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA or the State of Texas and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 USC 1001 and 42 USC 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

If made final, the proposed exclusion will apply only to the processes and waste volume (a maximum of 1,000 cubic yards generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered beyond the changes in operating conditions described in Condition (4), such that an adverse change in waste composition (e.g., if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated in excess of 1,000 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedure Act, 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to manage its waste as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: January 14, 1993.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 2 of appendix IX, part 261 add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Marathon Oil Co	Texas City, Texas ...	Residual solids (at a maximum annual generation rate of 1,000 cubic yards) generated from the thermal desorption treatment and, where necessary, stabilization of wastewater treatment plant API/DAF filter cake (EPA Hazardous Waste Nos. K048 and K051), after [insert effective date of final rule]. Marathon must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Testing:* Sample collection and analyses (including quality control (QC) procedures) must be performed according to SW–846 methodologies. If EPA judges the treatment process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in Condition (1)(A) with the testing required in Condition (1)(B). Marathon must continue to test as specified in Condition (1)(A), including testing for organics in Condition (3)(B), until and unless notified by EPA in writing that testing in Condition (1)(A) may be replaced by Condition (1)(B), or that testing for organics may be terminated as described in (1)(C) (to the extent directed by EPA). (A) *Initial Verification Testing:* During at least the first 40 operating days of full-scale operation of the thermal desorption unit, Marathon must monitor the operating conditions and analyze 5-day composites of residual solids. 5-day composites must be composed of representative grab samples collected from every batch during each 5-day period of operation. The samples must be analyzed prior to disposal for constituents listed in Condition (3). Marathon must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Verification Testing:* Following notification by EPA, Marathon may substitute the testing conditions in (1)(B) for (1)(A). Marathon must continue to monitor operating conditions, and analyze samples representative of each month of operation. The samples must be composed of representative grab samples collected during at least the first five days of operation of each month. These monthly representative samples must be analyzed for the constituents listed in Condition (3) prior to the disposal of the residual solids. (C) *Termination of Organic Testing:* Marathon must continue testing as required under Condition (1)(B) for organic constituents specified in Condition (3)(B) until the analyses submitted under Condition (1)(B) show a minimum of four consecutive monthly representative samples with levels of specific constituents significantly below the delisting levels in Condition (3)(B), and EPA notifies Marathon in writing that monthly testing for specific organic constituents may be terminated. Following termination of monthly testing, Marathon must continue to test a representative 5-day composite sample for all constituents listed in Condition (3)(B) on an annual basis. If delisting levels for any constituents listed in Condition (3)(B) are exceeded in the annual sample, Marathon must reinstitute complete testing as required in Condition (1)(B). (2) *Waste Holding and Handling:* Marathon must store as hazardous all residual solids generated until verification testing (as specified in Condition (1)(A) and (1)(B)) is completed and valid analysis demonstrates that Condition (3) is satisfied. If the levels of hazardous constituents in the samples of residual solids are below all of the levels set forth in Condition (3), then the residual solids are non-hazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If hazardous constituent levels in any 5-day composite or other representative sample equal or exceed any of the delisting levels set in Condition (3), the residual solids generated during the corresponding time period must be retreated and/or stabilized as allowed below, until the residual solids meet these levels, or managed and disposed of in accordance with Subtitle C of RCRA. If the residual solids contain leachable inorganic concentrations at or above the delisting levels set forth in Condition (3)(A), then Marathon may stabilize the material with Type I portland cement as demonstrated in the petition to immobilize the metals. Following stabilization, Marathon must repeat analyses in Condition (3)(A) prior to disposal. (3) *Delisting Levels:* All leachable concentrations must be measured in the waste leachate by the method specified in 40 CFR 261.24, and must be less than the following levels (ppm):

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Inorganic Constituents:* antimony—0.6; arsenic, chromium, or silver—5.0; barium—100.0; beryllium—0.4; cadmium—0.5; lead—1.5; mercury—0.2; nickel—10.0; selenium—1.0; vanadium—20.0. (B) *Organic Constituents:* acenaphthene—200, benzene—0.5, benzo (a) anthracene—0.01, benzo (a) pyrene—0.02, benzo (b) fluoranthene—0.02, chrysene—0.02, ethyl benzene—70, fluoranthene—100, fluorene—100, naphthalene—100, pyrene—100, toluene—100. (4) *Changes in Operating Conditions:* After completing the initial verification test period in Condition (1)(A), if Marathon significantly changes the operating conditions established under Condition (1), Marathon must notify the Agency in writing. After written approval by EPA, Marathon must re-institute the testing required in Condition (1)(A) for a minimum of four 5-day operating periods. Marathon must report the operations and test data, required by Condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by EPA, Marathon may replace testing Condition (1)(A) with (1)(B). Marathon must fulfill all other requirements in Condition (1), as appropriate. (5) *Data Submittals:* At least two weeks prior to system start-up, Marathon must notify in writing the Section Chief, Delisting Section (see address below) when the thermal desorption and stabilization units will be on-line and waste treatment will begin. The data obtained through Condition (1)(A) must be submitted to the Section Chief, Delisting Section, OSW (OS–333), U.S. EPA, 401 M Street, SW, Washington, DC 20460 within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA or the State of Texas and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

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[FR Doc. 93–2535 Filed 2–2–93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

MSS Above 1 GHz Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, this notice advises interested persons of the fifth and sixth meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee ("Committee").

DATES: *Meeting No. 5:* Thursday, February 18, 1993 at 9:30 a.m. *Meeting No. 4:* Wednesday, February 25, 1993 at 9:30 a.m.

ADDRESSES: Both meetings will be held at the Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell, Administrative Assistant to the Committee, at (202) 634–1952.

SUPPLEMENTARY INFORMATION: The agenda for both meetings of the MSS Above 1 GHz Negotiated Rulemaking Committee is as follows:

1. Opening Remarks/Comments
2. Adoption of Agenda
3. Minutes/Records of Previous Meeting
4. Introduction of Documents
5. Informal Working Group Reports
   —Issues
6. Acceptance/Approval of Recommended Rules
7. Acceptance/Approval of Report Text
8. Agenda for future meetings
   —Schedule for future meetings
9. Other Business

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Fern J. Jarmulnek, the Committee's Designated Federal Officer, before the meeting.

Subsequent Committee meetings are currently scheduled for Thursday, March 4; Tuesday, March 9; Thursday, March 18; Thursday, March 25; and Friday, April 2. All subsequent Committee meetings noted in this paragraph are scheduled to begin at 9:30 a.m. at the Federal Communications Commission, 1919 M Street, NW., room 856, Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2510 Filed 2–2–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 395

[FHWA Docket No. MC–92–30]

RIN 2125–AD04

Hours of Service of Drivers; On-Duty Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FHWA is withdrawing its notice of proposed rulemaking (NPRM) addressing hours of service regulations for commercial motor vehicle (CMV) drivers. The NPRM would have permitted the on-duty time limitation of 60-hours in 7 consecutive days or 70-hours in 8 consecutive days to begin

anew after the driver had an off-duty "recovery period" of 24 consecutive hours or more.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Scapellato, Office of Motor Carrier Standards, (202) 366–2981, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: On August 19, 1992, the FHWA published an NPRM which would have permitted the 60 or 70 hour time limitation to begin anew after the driver had an off-duty recovery period of 24 consecutive hours or more (57 FR 37504). The comment period, originally set to close on October 5, 1992, was extended until November 4, 1992, based upon a petition from the Commercial Vehicle Safety Alliance (57 FR 44158).

The FHWA received 67,922 comments and signatures on petitions in response to the NPRM. Because of the potential impact of the proposal on motor carriers operations, the FHWA specifically asked 11 questions soliciting views and opinions on such issues as the sufficiency of the 24 hour recovery period, alternative on-duty/off-duty schedules, and the relationship of the off-duty period to over-the-road driving exposure. The overwhelming majority of commenters who were in favor of the proposal did not offer substantive, quantitative justification to support their position. Many motor carrier and motor carrier industry association commenters relied upon improvements in commercial motor vehicles and highway design since 1937, the year in which hours of service regulations were first promulgated by the Interstate Commerce Commission, as their rationale for supporting the proposal. Others mentioned improved productivity and better utilization of equipment, ability to meet the demands of shippers and customers, and reduced falsification of drivers' records of duty status.

Virtually none of the commenters in favor of the proposal provided substantive responses to the critical, fundamental questions posed in the NPRM, offering instead opinions unsupported by empirical or anecdotal material. Except in the most general terms, there were no discussions of potential impacts on highway safety which could result from increasing the available on-duty hours in an 8 day period from 70 to 115, and, in a 31-day period, from 280 to as much as 420 hours. This would mean available driving time of up to 100 hours in 8 days, 170 hours in 14 days, and 370 hours in one month. (These illustrations are worst-case scenarios.)

Many of the comments received were identical form letters. It appeared that several motor carriers and industry associations mounted letter-writing campaigns to encourage drivers and others to comment in favor of the proposal.

Comments against the proposal fell into several categories. Many opposing commenters also elected to submit identical form letters, noting that carbon copies were being provided to an advocacy group, Citizens for Reliable and Safe Highways (CRASH). The International Brotherhood of Teamsters submitted approximately 30,000 signatures on petitions as an attachment to its extensive comments on the proposal. Several other organizations, including the Insurance Institute for Highway Safety, Advocates for Highway and Auto Safety, Teamsters for a Democratic Union, and the Sleep Disorders Center of the Scripps Clinic and Research Foundation, also provided extensive comments citing research on driver fatigue and loss of alertness, shiftworker issues, and highway accident statistics in support of their position against the proposal. The Commercial Vehicle Safety Alliance (CVSA), as well as a number of State and local law enforcement and highway agencies, expressed concern that the potential increase in driving and on-duty hours could cause an increase in the incidence of driver fatigue. The CVSA also expressed the belief that many of the questions asked in the NPRM would need to be addressed by research.

In full consideration of all docket comments and available data and information, the FHWA has decided to withdraw the proposal and close Docket MC–92–30. Because of the lack of substantive information concerning sufficiency of the 24 hour recovery period, alternative on-duty/off-duty schedules, and the relationship of the off-duty period to over-the-road driving exposure that specifically addressed the NPRM questions, we do not, at this time, have sufficient information to make an informed decision on this issue. For example:

1. Is 24 hours sufficient time for a driver to obtain the rest necessary to resume driving [safely]?
2. What safeguards exist to ensure motor carriers will abide by the provision which allows a driver to refuse to drive after reaching the current limits of on-duty time without any retribution by the motor carrier?
3. Are there sufficient precautions and data to suggest that a driver may drive safely for up to 100 hours in 8 days, 170 in 14 days, and 370 hours in a month as would be allowed under the proposal?

These questions still remain unanswered despite nearly 68,000 comments and signatures on petitions submitted to the docket. The FHWA is well aware that the rationale for the establishment of maximum hours of service regulations is to promote safe operations and to provide drivers with a means of protecting themselves against unreasonable demands of employers. Drivers may refuse to operate a commercial motor vehicle when such operation would be a violation of a Federal regulation and employers are prohibited from penalizing such drivers in any manner on account of such refusal. 49 U.S.C. 2305(b). Moreover, many motor carriers have implemented good safety practices which are grounded on the reasonable limitations set forth in the hours of service regulations. Whether removing the regulatory restrictions would erode the foundations for safe and sound business practices is an issue on which comments were particularly sought. This information was simply not provided by those commenters responding to the docket.

The FHWA is currently sponsoring several studies of CMV driver fatigue and loss of alertness to provide a technically sound basis for evaluating existing hours of service requirements and to develop countermeasures for reducing fatigue and increasing driver alertness. Two ongoing studies are the "Driver Fatigue and Alertness Study," Conducted by Essex Corporation and the Trucking Research Institute, and "Literature Review and Critique of Past Research on Rest and Recovery Cycles of Commercial Motor Vehicle Drivers," conducted by Work Systems Research. In addition, the FHWA has been directed to perform additional studies to respond to congressional directives to undertake research on the cause of, and potential countermeasures to, the problem of driver fatigue under the Department of Transportation and Related Agencies Appropriations Act, 1992. See Pub. L. 102–143, 105 Stat. 917 (1991).

The FHWA will be initiating additional research in areas such as fitness for duty, sleep disorders, physiological assessments of driver alertness, driving-oriented performance evaluations, effects of circadian rhythm on alertness, and other related technical areas in order to develop a scientifically sound, quantitative basis for potential amendments and refinements to the hours of service regulations. Moreover, the FHWA is currently conducting its "zero-base" regulatory review hearings to obtain additional information and benefit from the experience of the motor carrier industry in its efforts to reevaluate the Federal Motor Carrier Safety Regulations. Accordingly, the FHWA intends to incorporate the issues raised here in the formulation of future research questions, as well as in the ongoing zero-base review process.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being withdrawn by the FHWA in this document would have amended the driver's hours of service requirements for CMV drivers subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291. However, it is considered a significant regulation under the regulatory policies and procedures of the DOT. The potential economic impact of the proposed rulemaking is zero because the proposal is not being promulgated. Comments were specifically requested on the costs and benefits associated with this proposed change, but insufficient substantive information was received from commenters to the docket. Therefore, a full regulatory evaluation will not be prepared.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency evaluated the effects of this proposal on small entities. This proposal, if adopted, would have increased the number of on-duty hours permitted in 7 and 8 consecutive days to permit the cumulative hours total to be reset after the driver had been off-duty for a period of time of at least 24 consecutive hours. The FHWA believes that the cost of this change would have been minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this withdrawal of a proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the withdrawal of the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Nothing in this document preempts any State law or regulation. The proposed rule, if adopted, would not have limited the policymaking discretion of the States. States would not have been required as part of the Motor Carrier Safety Assistance Program to adopt the proposed rule for intrastate safety regulations, but they would have had to adopt this amendment for interstate operations. This action withdrawing the proposed revision of the hours of service regulations retains the status quo, and thus, raises no additional federalism issues.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed rule did not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action, if implemented, would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 395

Driver's record of duty status, Highway Safety, Highways and Roads, Hours of service of drivers, Motor carriers, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 19, 1993.

T.D. Larson,

Administrator.

[FR Doc. 93–1663 Filed 2–2–93; 8:45 am]

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National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-88-01; Notice 6]

RIN 2127–AE51

Passenger Automobile Average Fuel Economy Standard Model Year 1990

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: In a notice published in the **Federal Register** (57 FR 48777) on October 28, 1992, NHTSA announced that, in response to an order of the U.S. Court of Appeals for the District of Columbia Circuit, the agency was reopening the rulemaking proceeding it commenced in 1988 to consider whether to reduce the corporate average fuel economy (CAFE) standard specified by statute for model year (MY) 1990 passenger cars. The agency had terminated the proceeding in May 1989 and allowed the statutory standard of 27.5 mpg to remain in effect. In doing so, NHTSA concluded, among other things, that retaining the statutory standard, instead of reducing it to as low as 26.5 mpg, as was proposed, would not have any adverse safety consequences. On judicial review, the court ruled that NHTSA had not adequately analyzed the safety issue and remanded the matter to the agency for further explanation. In the October 1992 reopening notice, the agency requested comments from interested persons, to aid it in reaching a new decision with respect to the MY 1990 standard. After considering the court decision and the public comments, NHTSA has again decided not to amend the statutory standard and to terminate that rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366–0846.

SUPPLEMENTARY INFORMATION:

Statutory Provisions

In December 1975, Congress enacted the Energy Policy and Conservation Act in response to the energy crisis created by the oil embargo of 1973–74, the overall level of oil imports, and the level of oil imports from OPEC sources. Congress included a provision establishing an automotive fuel economy regulatory program. That provision added a new title, Title V, to the Motor Vehicle Information and Cost Savings Act (Act).

Section 502(a)(1) of the Act, 15 U.S.C. 2002(a)(1), established the corporate average fuel economy (CAFE) standard for passenger automobiles for model year (MY) 1985 and each model year thereafter at 27.5 miles per gallon (mpg). This long-term statutory standard represented an approximate doubling of the average fuel economy that existed in MY 1974.

While a separate fuel economy standard applies to manufacturers for each model year, the Act provides flexibility regarding the timing of compliance. The Act does not require that the level of fuel economy required for a particular model year be achieved during that model year. Instead, under certain circumstances, it allows a shortfall in fuel economy for one year (or years) to be offset if a manufacturer earns credits for exceeding the standard in another year (or years) by a like amount. The credits may be carried back for three model years or carried forward for three model years.

Manufacturers are required to meet passenger car CAFE standards separately for their domestic and import fleets. The division into separate fleets based on whether a car has at least 75 percent domestic content creates the possibility that a domestic manufacturer could reduce the domestic content of a car with relatively low fuel-efficiency to a level below 75 percent. This reduction has the effect of moving the car from the domestic fleet to the import fleet, where it is averaged together with imported cars (many of which are small) for CAFE purposes. This practice is referred to as "outsourcing."

Section 502(a)(4) of the Act provides that NHTSA may amend the 27.5 mpg statutory standard for a particular model year by raising or lowering to the level it determines to be the "maximum feasible average fuel economy level for such model year." In determining the "maximum feasible average fuel economy level," the agency is required by section 502(e) of the Act to consider the following four factors: (1) Technological feasibility; (2) economic practicability; (3) the effect of other Federal motor vehicle standards on fuel economy; and (4) the need of the nation to conserve energy.

Section 502(f)(2) of the Act requires that any amendment which has the effect of making a standard for a particular model year more stringent must be issued at least 18 months before the beginning of that model year. Therefore, NHTSA clearly does not have the authority to raise the MY 1990 standard at this time.

As a general matter, NHTSA may not reduce a CAFE standard after the beginning of the model year to which it applies. See *GMC* v. *NHTSA*, 898 F.2d 165 (D.C. Cir. 1990). However, in the court decision requiring NHTSA to reconsider its termination of a rulemaking proceeding addressing whether the MY 1990 CAFE standard should be reduced, *Competitive Enterprise Institute* v. *NHTSA*, 956 F.2d 321, 323 (D.C. Cir. 1992), the court held that nothing in *GMC* v. *NHTSA* undermined its power to order retroactive reconsideration of a standard.

The issue the agency must decide in this proceeding is whether it should retain the 27.5 mpg statutory standard for MY 1990 or amend the standard. In the latter case, the agency would make a determination of the "maximum feasible average fuel economy level" for MY 1990 and, if that level is below 27.5 mpg, reduce the standard to that level.

MY 1989–90 Proceeding

In response to five petitions for rulemaking to reduce the MY 1989–1990 CAFE standards, NHTSA published in the **Federal Register** (53 FR 33080; August 29, 1988) a notice of proposed rulemaking (NPRM) seeking public comment on whether the agency should reduce the passenger car CAFE standards for MY 1989 or MY 1990, or both, to a level not lower than 26.5 mpg. Shortly thereafter, NHTSA published a final rule reducing the MY 1989 standard from 27.5 mpg to 26.5 mpg (53 FR 39275; October 6, 1988).

Subsequently, NHTSA decided not to amend the statutory standard for MY 1990. On May 22, 1989, several months before the beginning of MY 1990, the agency published in the **Federal Register** (54 FR 21985) a notice terminating the rulemaking proceeding for that model year. That decision was based upon the increasing need of the nation to conserve energy and the agency's conclusion that retaining the 27.5 mpg standard for MY 1990 would not have a significant adverse effect on U.S. employment or on the competitiveness of the U.S. auto industry due, in part, to the availability of credits from past years.

The agency also discussed the issue of whether its retention of the statutory standard would have any effect on motor vehicle safety. One of the petitioners requesting a reduction in the 27.5 mpg standard, the Competitive Enterprise Institute (CEI), argued that retaining the standard would adversely affect safety. CEI asked the agency to conclude that CAFE standards result in vehicle "downsizing" (reductions in size and weight), and that downsizing, in turn, degrades safety. CEI advocated a CAFE standard of 24.0 mpg, which it contended would be the CAFE level of the fleet in the absence of CAFE standards. Several other commenters also addressed the safety issue. See 54 FR 21991–92. In responding to these comments, NHTSA presented an analysis of the safety issue, and concluded that there would not be any adverse safety consequences associated with its decision to retain the 27.5 mpg standard for MY 1990. See 54 FR 21992–94.

Court Decision

NHTSA's termination of the MY 1990 rulemaking proceeding was challenged by CEI in the U.S. Court of Appeals for the District of Columbia Circuit. That organization claimed that the agency had not adequately considered the impact of its action on safety and disputed NHTSA's conclusion that retaining the 27.5 mpg standard for MY 1990 would not create adverse safety consequences.

On judicial review, a 2–1 majority of the D.C. Circuit ruled that NHTSA had not adequately analyzed CEI's contention that the 27.5 mpg standard would force car makers to produce smaller, less safe cars, thus making it more difficult and expensive for consumers to buy larger, safer cars. The court remanded the matter to the agency for further explanation. *CEI* v. *NHTSA*, 956 F.2d 321 (D.C. Cir. 1992).

Notice of Reopening; Request for Comments

As a result of the court's order, NHTSA reopened the MY 1990 proceeding. The agency announced this reopening in a notice published in the **Federal Register** (57 FR 48777) on October 28, 1992. The notice requested comments from interested persons to aid NHTSA in reaching a new decision with respect to the MY 1990 standard.

In the reopening notice, NHTSA noted that many events related to fuel economy have occurred since the May 1989 decision terminating the MY 1990 rulemaking. Manufacturers have completed their production of MY 1990–92 vehicles, and are well into their MY 1993 production. The agency has also performed additional analyses of the effect of car size on fatality and injury risk. In a recent paper on this subject based on studies completed as of

April 1991, NHTSA estimated that the 1,000 pound reduction in average curb weight (and/or the associated reduction in size) that occurred between 1970 and 1982 results in nearly 2,000 more deaths and 20,000 more serious injuries per year, than would have occurred had the weight reduction not taken place. See Docket FE–GR, item 39. This paper did not address what role, if any, the CAFE program played in causing this weight reduction.

NHTSA also noted that overall traffic safety improved throughout the 1970's and 1980's, despite the reduction in average car size and weight. The fatality rate per 100 million vehicle miles traveled declined from 4.7 in 1970 to 3.3 in 1980, and fell to 1.9 in 1991 and 1.8 in 1992. The improvement in safety reflects many factors, including but not limited to: Safety improvements to motor vehicles, increased safety belt usage, alcohol enforcement efforts and age-21 drinking laws, and enforcement of speed laws. These other factors have thus more than offset the adverse safety effect of reduced vehicle weight/size, and motor vehicle travel in the United States is safer than ever. However, assuming that these other factors had occurred and vehicle weight/size had not been reduced, motor vehicle travel would be safer still.

Also, another post-termination event was that, in light of widespread interest in automotive fuel economy, NHTSA and the Federal Highway Administration (FHWA) requested the National Research Council (NRC) to undertake a study of the potential and prospects for improving the fuel economy of new light-duty vehicles. A copy of NRC's report, which was released in April 1992, was placed in the docket for the reopening notice. As requested by NHTSA and FHWA, the report includes a chapter on the safety implications of measures to improve fuel economy.

In its October 1992 notice, NHTSA requested commenters to address all pertinent issues related to the agency's decision concerning the MY 1990 standard. The notice set forth a number of specific questions asking what specific actions, if any, manufacturers would actually take depending on whether the MY 1990 CAFE standard were reduced (e.g., changes in product offerings or pricing for MY 1993 or subsequent model years), and what actual safety impacts, if any, would result if the agency were now to reduce the standard. NHTSA also requested comments concerning the role safety should play in agency decisions under the Act.

Public Comments

The agency received comments from General Motors (GM), Ford, Chrysler, Volvo, the Insurance Institute for Highway Safety (IIHS), the Council of Economic Advisers (CEA), and various organizations concerned about the continuing availability of full-size vehicles, including, among others, the Coalition for Vehicle Choice (CVC), CEI, and Consumer Alert.

GM stated that NHTSA should have lowered the MY 1990 CAFE standard during the initial rulemaking proceeding and still could take that step. It stated, however, that at this late date, the MY 1990 standard bears on safety only through the operation of the CAFE credit system. That company asserted that relaxing the MY 1990 standard at this time could in some cases generate credits giving manufacturers more flexibility to offer larger, safer cars in later model years. GM did not, however, provide any basis or explanation for this assertion. In particular, it did not provide any analysis concerning which manufacturers would benefit from such flexibility, the level to which the MY 1990 standard would need to be reduced in order to provide the flexibility, the statutory and factual basis for reducing the standard to such a level, or the specific vehicles and model years which would be affected by flexibility attributable to a reduction in the MY 1990 standard. The agency observes that it specifically reported this type of information in the reopening notice. See Question 2 in that notice.

GM stated that given the limited benefits of retroactively lowering the standard at this point, NHTSA should focus on the future rather than the past and, in particular, seize this opportunity to address the adverse safety impact of CAFE standards and establish a framework for proper consideration of safety in future proceedings.

Ford commented that it did not request and is not requesting a reduction to the MY 1990 standard. That company stated that it believes that NHTSA should develop a procedure that would require that safety be taken into consideration when reviewing or revising CAFE standards for any given model year. Ford stated that this procedure should assure that the consideration of safety would be handled consistently and thoroughly in any future rulemaking.

Chrysler stated that it does not support reducing the MY 1990 fuel economy standard. Chrysler stated that any reduction in this standard could entitle manufacturers which paid CAFE penalties during that period to a refund. However, the action would have no effect on energy conservation, which is the underlying purpose of the Act.

CVC stated that although the court's remand addressed the MY 1990 CAFE standard for passenger cars, it believes that the more important issue is how NHTSA will address safety in future rulemaking proceedings, both for passenger cars and light trucks. CVC stated that it strongly recommends that NHTSA respond to the court's remand by formally incorporating a methodology for considering safety concerns in the context of all future CAFE rulemaking proceedings.

IIHS commented that, given that a lower CAFE standard may be used either to sell more large cars or to raise horsepower, the effects on safety of lowering the 27.5 mpg standard cannot be predicted with certainty. That organization stated that if manufacturers used the increased flexibility resulting from lower CAFE standards to sell proportionately more large cars, there would be an overall increase in the safety of the new car fleet. It also stated, however, that if manufacturers instead chose to increase the average horsepower of new cars, with resultant faster travel speeds, there would be an overall decrease in the safety of motor vehicle travel. IIHS stated that it believes the effect on safety of a lower CAFE standard is likely to be nil, and would be negative if there were significant increases in horsepower. It believes further that, as a result, there is no compelling safety argument for reducing the CAFE requirement for MY 1990 (or other model year) cars.

CEI stated that NHTSA should formally interpret the CAFE statute to require the consideration of safety issues in setting fuel economy standards, and issue a detailed risk assessment procedure to estimate the safety impact of CAFE standards and to employ this procedure to assess the safety impacts of the MY 1990 passenger car CAFE standard. That organization stated that the assessment should essentially take the form of estimating the additional deaths and injuries associated with a CAFE standard at specified levels above the estimated new-car fuel economy level that would occur in the absence of any constraining CAFE standard. CEI argued that, using an earlier Crandall-Graham analysis and applying it to MY 1990, there would have been no additional deaths with a standard at 24.5 mpg, 1,100 to 2,000 additional deaths at 26.0 mpg, and 2,200 to 3,900 additional deaths at 27.5 mpg. CEI also stated that a reduction of the MY 1990 standard would dramatically demonstrate NHTSA's commitment to ensuring that safety will "no longer be ignored in the CAFE process."

Consumer Alert commented that NHTSA should issue without delay a clear "binding policy statement" announcing its intent to give careful consideration to safety issues, and to accord them great weight in any overall determinations, in every future CAFE rulemaking proceeding. That organization stated that such a statement would help NHTSA to respond to the recent court directive, to establish an orderly framework for future deliberations, and to resist pressures from those who would argue for higher CAFE levels. Consumer Alert stated that it believes that the establishment of a prospective NHTSA policy for all future CAFE determinations is more important than the agency's actions regarding the MY 1990 standard. That organization also requested that NHTSA formally publish both an interpretation of the statute as requiring consideration of safety issues, and a formal assessment of the safety impacts of the MY 1990 standard.

Robert Crandall, of the Brookings Institution, stated that the vehicle companies will obviously be unable to adjust their MY 1990 fleet mix in response to the outcome of this proceeding, and that any credits from a potentially reduced MY 1990 standard would not likely be of much use by the time any revised MY 1990 standard is announced. That commenter stated that the outcome of the reconsideration of the MY 1990 CAFE standard is important for its value as regulatory precedent and the signal that it sends the vehicle companies as they struggle with vehicle-design decisions for MY 1996 or 1997 and beyond. Based on earlier analyses by Crandall and Graham, which assume that manufacturers choose vehicle weights based on expected gasoline prices and expected steel prices four years prior to the sale of the car (and hence that any weight changes over time that cannot be explained by those factors must be attributable to CAFE standards), Crandall estimated that cars were 20 percent lighter in MY 1990 than they would have been without CAFE, and that CAFE caused an increase of at least 4,000 fatalities in MY 1990 cars over the period 1990–2010. Crandall stated that using this type of analysis, NHTSA could calculate the number of highway deaths likely to be caused under alternative CAFE standards.

John Graham, of the Harvard Center for Risk Analysis, recommended that NHTSA develop a rule-of-thumb relationship about fuel economy standards and occupant fatalities that accounts for changes in fleet size and mass. That commenter also suggested that the agency commission a study of the relative safety effects of tighter CAFE standards and higher gasoline taxes.

CEA recommended that in this rulemaking, and in all future CAFE rulemaking proceedings, NHTSA include a summary of the safety consequences of the alternatives under consideration. CEA stated that, using Crandall and Graham's estimates, and assuming a linear relationship between CAFE levels and rates of deaths and injuries, the safety consequences of several CAFE levels can be computed.

All commenters urged that the agency consider safety in CAFE proceedings, and suggested a number of different ways in which they believed safety might be considered within the framework of the CAFE statute. CEI commented that in an earlier *CEI v NHTSA* decision, decided in 1990, the Court of Appeals noted that, despite NHTSA's established practice of considering safety issues in CAFE proceedings, the "precise statutory basis" for doing so has not been "clearly identified." CEI stated that the agency should formally resolve any ambiguity regarding this question through issuing a formal interpretation of the CAFE statute. Various commenters believed that safety could be made a part of the "maximum feasible" determination by considering safety either:

- As part of the "economic practicability" criterion (section 502(e)(2)), based on the argument that safety impacts are among the "costs" associated with CAFE standards;
- As part of the "technological feasibility" criterion (section 502(e)(1)), based on the argument that technologies (such as downsizing) that improve fuel efficiency but lead to decreased safety are not "feasible;" or
- As part of the "need of the Nation to conserve energy" criterion (section 502(e)(4)), based on the argument that that need must be weighed against other consequences, such as increased highway casualties.

New Decision to Terminate MY 1990 Proceeding

During the second half of the 1980's NHTSA conducted several rulemaking proceedings considering whether to reduce the statutory 27.5 mpg passenger car standard for MYs 1986–90. In each proceeding, commenters voiced their concern that CAFE standards can adversely affect safety to the extent that the standards result in reductions in car size and/or weight.

As the Federal agency primarily responsible for motor vehicle safety, NHTSA has special reason to be concerned about the relationship between CAFE standards, vehicle weight and size, and safety. Because of its concern, the agency has confronted the weight/size/safety issue forthrightly and publicly. For example, it has conducted a number of evaluations of the issue. These evaluations led NHTSA to the conclusion, cited above, that the 1000 pound reduction in average car curb weight (and/or the associated reduction in size) that occurred between 1970 and 1982 results in nearly 2,000 additional fatalities and 20,000 additional serious injuries per year. NHTSA strongly communicated its safety concerns to the Congress in connection with its consideration in recent years of bills regarding significantly higher CAFE standards. Further, the agency has emphasized on a number of occasions the importance that safety would have if NHTSA were in the future to consider whether to exercise its discretion to raise the 27.5 mpg standard. See 51 FR 35613, October 6, 1986 (MY 1987–88 proceeding); 53 FR 39294, October 6, 1988 (MY 1989 proceeding); 54 FR 21994, May 22, 1989 (MY 1990 proceeding).

At the same time, throughout the car CAFE rulemaking proceedings of the late 1980's, NHTSA consistently assessed safety and concluded that a CAFE standard at the levels established for the model years at issue or even at the statutory 27.5 mpg level would not have any significant effect on safety. The agency took this position because it believes that the market, and not the CAFE program, has been primarily responsible for the size/weight reductions that have occurred since the initiation of the CAFE program in 1975, and because of the availability of technological means that can be used by the manufacturers to continue to improve their fuel economy without downsizing.

In the final rule for the MY 1987–88 proceeding, NHTSA stated the following:

> * * * [W]hile manufacturers have used and are generally planning to continue to use weight reduction as a means of improving fuel efficiency, NHTSA believes that this weight reduction is largely related to consumer demand. CEI itself stated that in the absence of CAFE standards, "the general downsizing of the American passenger car fleet * * * accompanied by improved energy efficiency * * * for cars in all size categories would have occurred in any case." While it is true that consumers place less emphasis on fuel economy and more emphasis on such things as size and performance when gasoline prices are low, fuel efficiency

> remains an important factor in consumers' purchasing decisions. For example, GM commented that a recent market research program shows that even though stabilization of fuel prices had caused new car intenders to shift their preferences toward more acceleration performance, their preference toward expected fuel economy increases had also risen. Thus, even if there were no CAFE standards, there is no reason to assume that consumers would return to larger and heavier cars. 51 FR 35613, October 6, 1986.

NHTSA specifically referenced this discussion in the MY 1990 termination notice. See 54 FR 21992–93, May 22, 1989. In that notice, the agency also noted that most downsizing occurred in the late 1970's and early 1980's, when manufacturers were exceeding the applicable CAFE standards; that the average vehicle weight of the new car fleet has not changed appreciably since the early 1980's, although the average fuel economy has steadily improved; and that GM and Ford have been increasing both their CAFE values and fleet average weights. See 54 FR 21993. NHTSA also stated that, because of credits earned before MY 1990 by GM and Ford, a 27.5 mpg standard for MY 1990 was not likely to have a constraining effect. See 54 FR 21991, 21993.

As indicated above, on judicial review, a 2–1 majority of the D.C. Circuit ruled that NHTSA had not adequately responded to CEI's contention that the 27.5 mpg standard would force car makers to produce smaller, less safe cars, thus making it more difficult and expensive for consumers to buy larger, safer cars. The court stated that the agency had not adequately explained why one of the following propositions is false: (1) adopting a 27.5 mpg standard (as opposed to a lower standard) will have some constraining effect on car makers, if not in MY 1990 then in subsequent years; (2) car makers will, as one consequence of the standard, decrease the average size of their cars below what it would have been absent the standard; (3) this decrease will make it more difficult for consumers to drive large cars; and (4) all other things being equal, a large car is safer than a small car. The court concluded that the agency did not provide such an explanation. 956 F.2d 324.

With respect to the issue of whether the 27.5 mpg standard for MY 1990 was constraining, the court stated that NHTSA agreed during oral argument that the standard affects car makers; behavior, if not in MY 1990, then in subsequent years. At the same time, the court also stated that the agency stated during oral argument that even if the 27.5 mpg standard constrained the behavior of car makers, it would not lead to smaller cars. It concluded, however, that the agency had not justified this claim.

The court stated that the agency had come the closest to supporting this position when it determined that GM and Ford "should be able" to improve their fuel economy in the future by specified technological means, without outsourcing their larger cars, without further downsizing or mix shifts toward smaller cars, and without sacrificing acceleration or performance. (NHTSA notes that neither outsourcing nor reducing acceleration or performance would have any adverse safety consequences, although such actions could result in adverse economic consequences for manufacturers and/or their employees.) The court concluded, however, that the agency had not found that the manufacturers would meet the standard without downsizing, or analyzed whether the cost associated with other technological improvements would translate into higher prices for large cars.

The court also found that the agency's examination of weight and mileage improvements over time missed the point, and that the appropriate comparison NHTSA must address is between the world with more stringent CAFE standards and the world with less stringent CAFE standards. It stated that the fact that weight has remained constant over time despite mileage improvements shows the effect of technological improvements but does not undermine the "natural inference" that weight is lower than it would be absent CAFE regulation. The court stated that NHTSA had observed in its termination notice that, in the court's words, "economic recovery and declining gasoline prices sharply raised consumer demand for large cars over the relevant period." The court believed that, absent regulation, this would have produced substantially bigger cars and not ones that remained at essentially the same weight. 956 F.2d 325. The court also stated that the agency had not given any reason to believe that the technological improvements made during the 1980's did not raise costs, thereby pricing consumers out of the market for new large cars.

After carefully reviewing the court's decision and the entire record, NHTSA does not see any valid factual or analytical basis warranting a change in its longstanding position that, as of the late 1980's and early 1990's, a 27.5 mpg passenger car CAFE standard does not have a significant impact on safety. At that level, the standard does not significantly affect vehicle weight or size. The agency has further concluded that a reduction in the MY 1990 standard now would not have any effect on vehicle size/weight or safety. In response to the court's order for further explanation of the safety issue, the agency is setting forth its reasons for these conclusions, with a particular focus on MY 1990, and the model years immediately thereafter.

In evaluating this issue, NHTSA begins with the fact that the major domestic manufacturers had, by the late 1980's, already approached, and in some years exceeded, the statutory 27.5 mpg level. For example, GM achieved a CAFE of 27.6 mpg in MY 1988 and 27.3 mpg in MY 1989; Ford achieved a CAFE of 27.0 mpg by MY 1986; and Chrysler had a CAFE of 27.5 mpg in MY 1987 and 28.5 mpg in MY 1988. These manufacturers' CAFE levels fluctuated up and down in the late 1980's. However, for MY 1990 and beyond, it was clear that the manufacturers would not have to make major product changes to comply with a 27.5 mpg standard, but instead would either (1) have to ensure that their CAFE does not fall or (2) make relatively minor incremental improvements to the fuel economy performance of their passenger cars.

NHTSA therefore believes that the relevant question is whether the 27.5 mpg statutory standard, by requiring the domestic manufacturers to ensure that their CAFE does not fall or make relatively minor incremental changes to improve CAFE, has the effect of (1) causing them to refrain from upsizing their vehicles or (2) causing them to reduce their sales of larger or heavier cars (or increase their sales of small cars). The agency believes that the record does not support the existence of either of these effects.

As indicted above, the court noted that NHTSA had, in the MY 1990 termination notice, concluded that the domestic manufacturers should be able to improve their fuel economy in the future by specified technological means, without outsourcing their larger cars, without further downsizing or mix shifts toward smaller cars, and without sacrificing acceleration or performance. More specifically, the agency stated in that notice that the record of that and prior CAFE rulemaking proceedings indicated that, while GM and Ford had made considerable improvement in the fuel economy of their passenger cars, there are still a number of fuel-efficiency enhancing methods that are not fully utilized throughout their fleets. The agency specifically cited the possibility of further use of front-wheel drive; four-speed automatic transmissions; engine improvements such as four-valve designs, reduced friction, lean-burn fast-burn combustion, and electronic control; reduction of parasitic losses; aerodynamic and rolling resistance reductions; and material substitution. NHTSA noted that all of these methods are partially used in the GM and Ford fleets, as well as by other manufacturers. 54 FR 21996.

The court rejected this analysis, stating that the agency had not determined that it is likely that the manufacturers would in fact meet the 27.5 mpg standard without downsizing or mix shifts toward smaller cars. 956 F.2d 324.

In further explanation of this issue, the agency notes first that there is no question that the domestic manufacturers can use the technological methods cited above to ensure compliance with the 27.5 mpg statutory standard. The issue that NHTSA faced in the rulemaking proceedings of the mid- to late-1980's was never whether the manufacturers could meet the long-term 27.5 mpg statutory standard by these sorts of technological means. Instead, the issue was whether the manufacturers had developed other reasonable product plans to meet the standard which were overtaken by changes in market conditions at a time when it was too late for the manufacturers to make additional technological improvements. NHTSA notes that the availability of technology which can be used by the domestic manufacturers to continue to improve their CAFE was confirmed by the NRC study.

As noted in the same paragraph of the termination notice in which the agency listed a number of the technological improvements that manufacturers can make, NHTSA acknowledged that adoption of such technological changes requires leadtime. However, the agency also observed that it had placed the manufacturers on notice in earlier rulemaking notices that their plans for complying with the 27.5 mpg standard must be adjusted to take into account the possibility that gasoline prices will remain low. Therefore, leadtime to make additional technological changes was no longer a relevant factor by the time of the MY 1990 rulemaking.

In addressing the issue raised by the court, NHTSA believes that the question is thus not whether the domestic manufacturers can make the technological changes that may be needed to ensure continued compliance with the 27.5 mpg standard, but whether they will instead choose to engage in additional downsizing or mix shifts toward smaller cars. NHTSA notes that the manufacturers are free under the statute to comply with CAFE standards by any means of their choosing. Given the market economy in which manufacturers must sell their products, however, the agency believes that they are most likely to choose methods that do not reduce the desirability of their products.

For this reason, NHTSA believes that the manufacturers are much less likely to use significant additional downsizing and mix shifts than either the technological means cited above or the outsourcing of larger or less fuel-efficient vehicles. For the same reason, the agency believes that, to the extent that the domestic manufacturers conclude that consumers desire larger or heavier cars, they are likely to produce such cars, notwithstanding the 27.5 mpg standard, and offset the CAFE impacts of such production by the technological means cited above. However, the agency cannot unequivocally predict with certainty precisely what the various manufacturers will do in any given model year.

The technological improvements cited by the agency can be applied in ways that enhance fuel economy without reducing a vehicle's desirability. Consumers are in fact likely to be unaware of the application of many of these technologies, such as a number of engine improvements. Moreover, as discussed later in this notice, these technological changes are generally cost-effective to the first purchaser (i.e., the person who purchases a vehicle when new), and some of the technological changes provide significant consumer benefits in addition to improve fuel efficiency.

By contrast, to the extent that some consumers desire larger or heavier cars, manufacturers' efforts at additional downsizing and/or mix shifts are likely to reduce the appeal of their products to those consumers. In the case of additional downsizing, the cars would be smaller or lighter than preferred by those consumers. If manufacturers attempted to induce mix shifts by significantly raising the prices of their large cars, the cars would have less appeal because of price.

Another way a manufacturer could attempt to induce mix shifts would be to reduce the price of smaller cars. However, a significant majority of smaller, lighter cars are in fleets that are *not* constrained by CAFE standards, i.e., the cars are in the fleets of the Asian manufacturers or the domestic manufacturers' import fleets. Most of these fleets are not constrained by CAFE standards since they have CAFE levels well above 27.5 mpg. For example, in MY 1990, Daihatsu achieved a CAFE of 41.0 mpg, Honda 30.8 mpg, Hyundai 33.3 mpg, Isuzu 33.5 mpg, Mazda 30.2 mpg, Mitsubishi 30.4 mpg, Nissan 28.5 mpg, Subaru 27.8 mpg, and Toyota 30.8 mpg. Ford achieved an import CAFE of 32.4 mpg, GM's import CAFE was 32.1 mpg, and Chrysler's import CAFE was 28.9 mpg.

Since most of these fleets achieved CAFE well above 27.5 mpg, it is clear that market forces, and not CAFE, are responsible for the smaller, lighter cars included in the fleets. Moreover, given the larger number of manufacturers competing in this market segment, any lower prices associated with this market are primarily attributable to strong competition and not to efforts by the domestic manufacturers to sell smaller domestic cars.

The court also stated that NHTSA had not analyzed whether the costs associated with additional technological improvements would translate into higher prices for large cars, thereby making it more difficult for consumers to purchase them. The agency has addressed the cost impacts of these technological improvements in prior rulemaking proceedings, and has concluded that they are generally cost-effective for the first purchaser, even at low gasoline prices.

The agency has never claimed that the costs associated with additional technological changes would not raise the prices of cars. However, the agency's past analyses indicate that manufacturers have generally used cost-effective techniques in their efforts to improve fuel economy since the beginning of the CAFE program. NHTSA's analyses have shown that essentially all of the fuel economy technologies pay for themselves in operating savings over the life of the vehicle, and that most technologies pay for themselves within the first four years of operation, a typical ownership period for the purchaser of a new vehicle. The present value of the fuel savings more than covers the increased initial price of the vehicle. Thus, these technological changes do not price consumers out of the market for new large cars. See Final Regulatory Impact Analysis (FRIA) for MY 1986 Passenger Car CAFE Standard, September 1985, pp. III–30, to III–35; FRIA for MY 1987–88 Passenger Car CAFE Standards, September 1986, Chapter III, beginning at p. III–25; FRIA for MY 1989 Passenger Car CAFE Standard, September 1988, Chapter IV.

NHTSA also notes that these technologies are widely used by the Asian manufacturers in both their smaller and larger cars, which, as discussed above, are in fleets unconstrained by CAFE standards. The Asian manufacturers are thus providing the technologies for their vehicles in response to market forces and not CAFE standards. The agency believes that the domestic manufacturers would similarly provide the same technologies even in the absence of CAFE standards, and that passenger car CAFE standards, at the 27.5 mpg level, have only a minor impact on the technologies being used and their degree of penetration. NHTSA also notes that while the court appears to have assumed that the technologies will be used only on large cars, thereby raising the price of large cars relative to small cars, there is no factual basis to make that conclusion. Some technologies may have been introduced on larger or more expensive vehicles, but they have rapidly been adopted for lower cost vehicles, as well.

NHTSA therefore believes that there is no evidence that the CAFE improvements made to date, or the ones that manufacturers are likely to make if they need to take action to ensure continued compliance with the 27.5 mpg standard, have or would "price consumers out of the market for large cars." It is also important to note again that, for MY 1990 and subsequent model years, manufacturers needed, at most, to make minor additional technological improvements to ensure compliance with the 27.5 mpg standard. Therefore, the agency believes that any associated cost impacts from achieving compliance are minor.

As indicated above, the court stated that NHTSA had observed in its termination notice that, in the court's words, "economic recovery and declining gasoline prices sharply raised consumer demand for large cars over the relevant period." As the court understood this observation, it indicated that, absent regulation, these factors would have resulted in the production of cars that were substantially bigger than the ones that were actually produced. 956 F.2d 325. The court cited 54 FR 21987/1 (i.e., column 1 on that page). NHTSA believes it is appropriate to clarify what was said and the context in which it was said.

In examining what the agency said, it is critical to distinguish between the size and mix of cars that consumers are actually demanding for purchase in a given model year, and the size and mix of cars that the consumers had been expected, several years previously, to demand in that year. At 54 FR 21987, column 1, NHTSA noted that, in 1980, during the energy crisis brought on by events in Iran, gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. NHTSA explained that the domestic manufacturers announced in that year that they expected to achieve average fuel economy levels in excess of 30 mpg for MY 1985. This projection was based in part on the expectation that the increased consumer demand for small cars would result by MY 1985 in significant mix shifts toward smaller cars and smaller engines.

The agency next explained that the combination of falling gasoline prices and economic recovery in 1982–83 caused changes in expectations about consumer demand in MY 1985. Consumer demand was no longer expected to shift quite so far toward smaller cars and smaller engines. By mid-1983, GM and Ford submitted data to the agency indicating that they would be unable to achieve even 27.5 mpg by MY 1985. The agency explained further, at the second column of 54 FR 21987, that it concluded that there had been a substantial shift, relative to the mix of cars and engines previously projected by Ford and GM, in "expected" consumer demand toward larger cars and engines. Thus, much of the shift in consumer demand was actually a shift in what consumers had been expected to demand by the mid-1980's, and not a shift in what the manufacturers were in fact producing. Further, the shift was not only related to larger cars but, in substantial part, to larger, more powerful engines.

In light of the compliance difficulties facing the domestic manufacturers during the mid- to late 1980's, which the agency concluded resulted from unexpected changes in market conditions and occurred at a time when there was insufficient time remaining for the manufacturers to make additional fuel-efficiency enhancing technological changes to achieve compliance, NHTSA reduced the passenger car CAFE standards for MY 1986–89. The agency believes that these reductions fully resolved the compliance difficulties facing the domestic manufacturers at that time, and ensured that they had sufficient time to make the additional technological changes needed for them to comply in the future with the statutory 27.5 mpg standard while also providing vehicles with the size, weight and performance demanded by consumers during the early 1990's. Manufacturers are providing consumers with higher performance than ever (horsepower/weight ratio averaged 4.53 hp/100 lb. in MY 1990 and 4.56 in MY 1992, as compared to about 3.50 during the early 1980's), in response to what they perceive consumers are demanding and despite the adverse impact on CAFE, and there is no reason to believe that the manufacturers are not also providing the size of vehicles demanded by consumers.

A number of commenters on the MY 1990 proceeding cited the work of Crandall and Graham and their estimates of the safety impacts of retaining the 27.5 mpg CAFE standard for MY 1990. Crandall and Graham's estimates of increased fatalities and injuries associated with the 27.5 mpg standard are dependent on their assumption that manufacturers choose vehicle weights based on two factors: expected gasoline prices and expected steel prices four years before the sale of the car. See "The Effect of Fuel Economy Standards on Automobile Safety," Crandall and Graham, Journal of Law and Economics, April 1989, p. 102. Based on this assumption, Crandall and Graham conclude that manufacturers reduced vehicle weight during 1970–81 in response to higher fuel prices and, in the absence of CAFE restraints, would have significant increased vehicle weight during the mid- and late 1980's in response to lower fuel prices. In a comment on the MY 1990 reopening notice, Crandall used the model developed in the April 1989 article to estimate that cars were 20 percent lighter in MY 1990 than they would have been without the CAFE program.

NHTSA appreciates the contributions of Crandall and Graham in promoting a better understanding the relationship between CAFE standards, vehicle weight and size, and safety. However, the agency believes that Crandall and Graham's assumption about the primary determinants of vehicle weight is invalid, and therefore that their estimates of the weight and safety impacts of the 27.5 mpg standard for MY 1990 are without any basis.

As indicated above, Crandall and Graham assume that manufacturers choose vehicle weights based on expected gasoline prices and expected steel prices four years prior to the sale of the car (and hence that any weight changes over time that cannot be explained by those factors must be attributable to CAFE standards). The agency does not believe that this is a reasonable assumption, particularly in comparing the weight of cars made during different time periods.

In particular, Crandall and Graham's methodology omits technological advances and a number of other relevant factors that affected vehicle weight during the time period in question. Because of this shortcoming, their model incorrectly attributes weight changes that result from these other relevant factors to the CAFE standards.

NHTSA believes that much of the weight reduction that occurred during the late 1970's/early 1980's, particularly the reduction related to downsizing and the switch to front-wheel drive, would have occurred even in the absence of concerns about fuel-efficiency, because of the other significant benefits that these technological improvements provide. Downsizing enabled manufacturers to provide essentially the same vehicle attributes (i.e., interior size, cargo capacity, and performance) with smaller exterior size and less material usage. In addition to improved fuel economy, downsized vehicles offered better handling, easier parking, and potential cost savings associated with the reduced materials usage. The agency notes that the size and weight of many other products, ranging from SLR cameras to computers, was reduced during the same period, even though the price of fuel was not a relevant factor. Similarly, the switch to front-wheel drive provided benefits related to vehicle packaging and traction, in addition to improved fuel economy.

Moreover, to the extent that consumer demand for higher fuel-efficiency during the late 1970's and early 1980's was a significant factor in causing manufacturers to adopt these technological improvements, a lessened consumer interest in fuel-efficiency would not cause manufacturers to go backward technologically. Consumers expect later car models to be more advanced than earlier models, not less advanced. Indeed, technology is one of the key bases on which manufacturers are competing in today's market.

The cars of the 1990's clearly differ from those of the late 1970's/early 1980's with respect to the technologies they incorporate, but also reflect major technological advances in the way they were designed. For example, car designers today have computer-aided design capabilities only dreamed about in the 1970's. These tools allow manufacturers to develop vehicles that are lighter and more fuel-efficient for a given interior and exterior size.

Just as Crandall and Graham's model fails to account for the fact that automotive technology leaped forward during the same period that CAFE standards moved upward, it also fails to account for other significant factors that affected vehicle designs during the time period in question, such as the increased competition from other manufacturers and changes in consumer preferences. NHTSA believes that if a model could be developed that did correctly account for these other factors, instead of merely assuming that any weight changes not explainable by expected changes in gasoline prices and steel prices must be caused by CAFE standards, the model would demonstrate that any CAFE standard effect is negligible.

Moreover, the Crandall and Graham model produces a result that is counterintuitive. Crandall estimates that MY 1989 cars were about 14 percent lighter than they would have been in the absence of CAFE standards, and that MY 1990 cars were about 20 percent lighter. Crandall did not indicate the specific increased weight that would be associated with his 20 percent estimate for MY 1990. However, Crandall may have believed that the average test weight of the MY 1990 fleet was approximately 3,100 pounds, because in the 1989 Crandall/Graham paper, he assumed "* * * that average passenger car weight will remain at approximately 3,100 pounds." See p. 109. (Crandall and Graham used test weight rather than curb weight.) In this case, the "20 percent lighter" figure would translate into a 775 pound weight reduction (calculated as (3100/0.8)—3100). Crandall's conclusion implies that, without CAFE standards, the MY 1990 fleet would have weighed 3,875 pounds, on average. This conclusion is not credible. The new passenger car fleet for any model year has *never* been this heavy; NHTSA data indicate that the average weight of the new passenger car fleet peaked at 3,768 pounds 19 years ago, in MY 1973.

NHTSA notes that it estimates the average test weight of the MY 1990 fleet at 3,196 pounds. If this figure were used, Crandall's analysis would imply that the MY 1990 fleet would have been even heavier, 3,995 pounds.

There is no evidence that consumers desire or that auto manufacturers would like to add nearly 800 pounds of weight, on average, to their cars, but for the existence of CAFE standards. Such weight increases would almost certainly result in substantial cost and price increases for manufacturers and consumers, at a time when manufacturers are making major efforts to reduce their costs.

As indicated above, the court stated that NHTSA had not adequately explained why any one of four premises stated by the court was false. The agency notes that it fully agrees with the last of those premises: that all other things being equal, a large car is safer than a small car. However, the relationship between size/weight and safety is an imprecise one. There is no basis to conclude that insignificant changes in size/weight will have a measurable effect on safety.

With respect to the second premise, whether car makers will, as one consequence of the standard, decrease the average size of their cars below what it would have been absent the standard, NHTSA believes, for the reasons stated above, that a 27.5 mpg passenger car CAFE standard does not significantly affect vehicle size and weight. This does not mean that the agency is concluding that the 27.5 mpg standard has absolutely no effect on vehicle weight or size. No matter how much analysis is conducted, there is probably no conclusive way to totally separate market and technology effects from possible CAFE effects. Instead, looking at the recent and current CAFE levels of the domestic manufacturers, the technologies available to them to improve their CAFE, the use of those technologies by manufacturers not constrained by the CAFE standards, and market forces leading the domestic manufacturers to produce the type and mix of vehicles desired by consumers, the agency concludes that any weight impacts attributable to CAFE standards at this level are both speculative and insignificant.

The third premise, that the decrease in average size will make it more difficult for consumers to drive large cars, is dependent on the second premise being correct. Since the agency believes that the second premise is incorrect, it believes that the third premise also is incorrect.

The remaining premise cited by the court was that "adopting a 27.5 mpg standard (as opposed to a lower standard) will have some constraining effect on car makers, if not in MY 1990 then in subsequent years." NHTSA notes first that it did not "adopt" a standard of 27.5 mpg for MY 1990; the standard was established by the Congress. Second, the court did not dispute the agency's explanation in the termination notice that retaining the 27.5 mpg standard for MY 1990 would not affect the behavior of manufacturers in that year. Among other things, NHTSA cited the fact that GM and Ford had more than sufficient carryforward credits to offset the MY 1990 shortfalls that were then projected by those manufacturers, as well as the fact that both GM and Ford had testified that they would not make any design changes for MY 1990 based on the result of the MY 1990 rulemaking. 54 FR 21993.

The 27.5 mpg standard for model years after 1990 was potentially constraining for GM, and the agency recognizes that a decision in 1989 to reduce the MY 1990 standard to the level likely to be achieved by GM could have eased those constraints by allowing that company to carry additional MY 1988 credits to MY 1991 and additional MY 1989 credits to MY 1991–92. Even without a reduction in the MY 1990 standard, however, GM was unable, based on the latest information available to the agency, to use all of its MY 1988 or MY 1989 credits (MY 1988 credits may not be used after MY 1991 and MY 1989 credits may not be used after MY 1992). This suggests that the only real effect of a reduction in the MY 1990 standard on GM would have been to increase the number of credits that it was unable to use.

For the reasons discussed below, the agency would not have reduced the MY 1990 CAFE standard based solely on Ford's capability. NHTSA observes, however, that a reduction in the MY 1990 standard to GM's likely capability would have enabled Ford to carry additional MY 1988 credits to MY 1991 and additional MY 1989 credits to MY 1991–92. Even without a reduction in the MY 1990 standard, however, Ford was unable to use all of its MY 1988 credits.

Aside from what might have happened if the MY 1990 standard had been reduced in 1989, it would be impossible for a reduction in the MY 1990 standard at this time to have any effect whatsoever on vehicle weight or safety.

NHTSA notes that if it were to decide to reduce the 27.5 mpg standard for MY 1990, it would still be required to set a new standard at the "maximum feasible average fuel economy level." (This also would have been true had the agency decided in 1989 to reduce the standard, which is why the above discussion focuses on GM's likely capability.) As discussed in many previous rulemaking notices, the agency interprets "feasible" to refer to whether something is capable of being done, taking into account the four statutory criteria cited near the beginning of this notice. The agency has also explained that it must take "industrywide considerations" into account. See 53 FR 39298. NHTSA has therefore focused on the capabilities of the major domestic manufacturers. Finally, NHTSA has explained that, if a manufacturer chooses, in light of the flexibility offered by the credit provisions, not to make the efforts necessary to achieve the level of a standard for a particular model year, it would be inconsistent with the statutory scheme for the agency then to exercise its discretion to lower the standard solely on the basis of that manufacturer's inability to meet the standard. See 53 FR 39292.

If NHTSA were at this time to determine the "maximum feasible average fuel economy level" for MY 1990, it is clear that the manufacturers were capable of achieving at least as high a CAFE as they actually achieved. GM achieved a CAFE of 27.1 mpg, Ford 26.3 mpg, and Chrysler 27.4 mpg.

NHTSA also believes, given the record, that Ford's MY 1990 achievement does not necessarily reflect its highest capability had that company been striving to achieve the level of the standard for that model year. The agency notes that Ford stated throughout the MY 1989–90 proceeding, as far back as September 1988, that it would not do anything different with respect to increasing efforts to improve its MY 1990 CAFE if the standard remained at 27.5 mpg or were reduced, since it had a compliance plan using available carryforward credits earned during MY 1987–88 that would expire if they were not used. In commenting on the MY 1990 reopening notice, Ford noted again that it did not request and was not requesting a reduction in the MY 1990 standard.

Given the fact that Ford was not making continuing efforts to achieve 27.5 mpg CAFE for MY 1990, NHTSA has concluded that, if it were at this time to make a determination of the MY 1990 maximum feasible average fuel economy level, that level would be no lower than the CAFE achieved by GM, 27.1 mpg. NHTSA has on a number of occasions stated that it would be inconsistent with the statutory scheme for the agency to reduce a longstanding CAFE standard based on a manufacturer's current capability if that manufacturer has not made continuing "reasonable efforts" to achieve the level of the standard. As discussed in the MY 1989 proceeding, if a manufacturer chooses, in light of credits, not to make the efforts to achieve the level of a standard for a particular model year, it would be inconsistent with the statutory scheme for the agency then to exercise its discretion to lower the standard solely on the basis of that manufacturer's level of CAFE achievement. Since Ford was not making continuing efforts to achieve a CAFE of 27.5 mpg in MY 1990, the agency would not reduce the standard based on that manufacturer's achievement.

If NHTSA were to reduce the MY 1990 standard to a level as low as 27.1 mpg, GM would not earn any credits for that year. While such a reduction would mean that company would not need to use credits from MY 1988–89 for MY 1990, those credits would expire if they are not used for MY 1990, since they are not needed for any other model year. While GM had CAFE levels of 27.2 mpg in MY 1991 and 26.8 mpg in MY 1992, it had enough carryforward credits from MY 1988–89 (even after using some of those credits for MY 1990) to offset those shortfalls and remain in overall compliance. Therefore, a reduced standard would have absolutely no effect on GM.

A reduction of the MY 1990 standard to a level as low as 27.1 mpg would similarly have no effect on Ford or Chrysler. While a reduction in the standard would reduce the number of credits needed by Ford for MY 1990, the MY 1987–88 credits it is using would expire if they are not used for MY 1990. A reduction in the standard would result in some credits for Chrysler. However, Chrysler has not had any difficulty in complying with the 27.5 mpg standard in recent model years and has specifically opposed reducing the MY 1990 standard.

NHTSA notes that all of the commenters addressing the issue acknowledged that a reduction in the MY 1990 standard at this time would have little or no practical effect, and hence little or no effect on safety. Some commenters, however, including CEI and Kathy Hutchins, a research fellow at the Hudson Institute, argued that a reduction in the MY 1990 standard would send a message about NHTSA's commitment to considering the safety issue in fuel economy rulemaking proceedings.

NHTSA has concluded that a reduction in the MY 1990 standard would have no impact on safety. Such action would therefore not send any positive safety message. In fact, as Chrysler noted, the only practical effect of reducing the standard at this time would be to require the United States to refund civil penalties previously paid by manufacturers which did not comply with the standard. Therefore, the agency has again decided not to amend the statutorily set 27.5 mpg standard for MY 1990 and is again terminating rulemaking.

NHTSA now turns to the question of how the safety issue should be addressed in future CAFE proceedings. The commenters generally recognized that this issue is much more important that what happens to the MY 1990 standard. All commenters urged that the agency consider safety in CAFE proceedings, and suggested a number of different approaches for considering safety within the framework of the CAFE statute. In addition, a number of commenters suggested that the agency develop a specific methodology for considering safety in future CAFE proceedings.

Given the importance of motor vehicle safety, NHTSA strongly believes that all government agencies, Federal, state, and local, should carefully evaluate motor vehicle safety before taking any action that might have a significant adverse impact on such safety. It is simple common sense and good public policy to assess these impacts, not just a concern related to CAFE standards.

Any government action that may cause significant reductions in vehicle size and weight raises a particularly serious safety issue, given NHTSA's studies showing that earlier size and weight reductions result in nearly 2,000 additional fatalities and 20,000 serious injuries per year. While it is known that safety decrease with significant reductions in size and weight, the safety effects of any future major reductions in vehicle size and weight cannot be precisely estimated without a careful analysis of changes in automotive designs and technology, market forces, and vehicle use patterns. A more specific methodology for evaluating the safety issue would depend on many factors, including the levels of the standards and how far in advance they were being set. The agency notes that while it has issued, or is considering, a number of important measures to reduce deaths and injuries in car crashes, the numbers of deaths and injuries would be smaller still if major reductions in vehicle weight and size did not occur. NHTSA will assess potential safety impacts in any CAFE rulemaking.

Under the CAFE statute, there are no express criteria governing NHTSA's exercise of its discretion with respect to whether to increase the 27.5 mpg statutory standard. Thus, the agency has very broad discretion regarding this matter, within the bounds of not being arbitrary or capricious. In previous CAFE rulemaking notices, the agency has recognized that standards above the 27.5 mpg level could have a significant adverse impact on safety if they force consumers into significantly smaller or lighter cars. NHTSA has also stated that if it were to consider standards above 27.5 mpg in the future, the issue would require further attention. In making any decision concerning whether to exercise its discretion to increase the 27.5 mpg standard, NHTSA will analyze and weigh the safety issue.

(15 U.S.C. 2002, delegations of authority at 49 CFR 1.50.)

Issued on: January 15, 1993.

Marion C. Blakey,

Administrator.

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Federal Transit Administration

49 CFR Part 611

[Docket No. 89–A]

RIN 2132–AA34

Major Capital Investment Projects

AGENCY: Federal Transit Administration, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule issued by the agency on April 25, 1989, proposing new criteria for determining eligibility for funding for major capital investment projects. The Federal Transit Administration's (FTA) recent reauthorization legislation has provided a new mandate to the agency, making this rulemaking obsolete.

FOR FURTHER INFORMATION CONTACT: Holly Vandervort, Office of the Chief Counsel, voice (202) 366–4011; TTD (202) 366–2979.

SUPPLEMENTARY INFORMATION: On April 25, 1989, the Federal Transit Administration (FTA; then called the Urban Mass Transportation Administration) published a proposed rule defining procedures applicants would have to follow in developing fixed guideway projects, as well as the means by which FTA would evaluate the cost-effectiveness, the results of the alternatives analysis and the degree of local financial commitment required. (See 54 FR 17878.)

This proposed rule was intended to implement section 303 of the agency's 1987 reauthorization legislation, the Surface Transportation and Uniform Relocation Assistance Act of 1987. Before the agency could promulgate its final rule, two successive appropriations bills prohibited the agency from issuing any further rulemakings. (See the Department of Transportation and Related Agencies Appropriations Act, 1990 (Pub. L. 101–164) and Department of Transportation and Related Agencies Appropriations Act, 1991 (Pub. L. 101–516)).

Further, the Department's 1991 reauthorization legislation mandates the FTA to undertake a rulemaking for new fixed guideway projects that considers a number of matters in addition to cost-effectiveness and local financial commitment—specifically, costs related to congestion, improved mobility, air and noise pollution, and energy consumption and the degree to which a project may promote economic development and serve the needs of transit dependent population. (See section 3010 of the Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102–240, Dec. 18, 1991.) The agency is in the process of developing such a rule.

For all of these reasons, the agency has determined that it is inappropriate to continue the current rulemaking. Accordingly, the agency today is withdrawing its 1989 proposed rule on major capital investment projects.

Regulatory Analyses and Notices

Since this document withdraws a proposed rule whose applicability has been superseded by intervening legislation, the agency has determined that the various regulatory analyses and notices do not apply. Specifically, the rule is not major under Executive Order 12291, nor is it significant under the Department's Regulatory Policies and Procedures. Since there will be no economic impacts from this rulemaking, we have not prepared a regulatory evaluation. For similar reasons—that the regulation is being withdrawn and therefore has no effects—the agency has determined that it is unnecessary to do a Federalism assessment. The agency certifies that the rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 611

Government contracts, Grant programs—Transportation, Mass transit.

Authority: 49 U.S.C. 1601 *et. seq.*, 1602(i); 23 U.S.C. 103(e)(4); 23 U.S.C. 142; 40 CFR Parts 1500–1506; Sec. 3010, Pub. L. 102–240, Dec. 18, 1991.

Issued: January 19, 1993.

Brian W. Clymer,

Administrator.

[FR Doc. 93–1714 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-57-M

Notices

Federal Register

Vol. 58, No. 21

Wednesday, February 3, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

[Docket 93–2]

Access to Recreational Facilities and Outdoor Developed Areas

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to form advisory committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is considering the establishment of an advisory committee to provide advice on issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. The advice will be used by the Access Board to develop accessibility guidelines under the Americans with Disabilities Act and the Architectural Barriers Act for newly constructed and altered recreational facilities and outdoor developed areas. The advisory committee would be composed of owners and operators of various recreational facilities; persons who design recreational facilities or manufacture related equipment; Federal, State and local government officials responsible for parks and other outdoor developed areas; and individuals with disabilities and organizations representing the interests of such persons. The Access Board requests interested persons to submit nominations for membership on the advisory committee. The Access Board also seeks comments from the public on various issues concerning accessibility to recreational facilities and outdoor developed areas.

DATES: Nominations and comments should be received by April 5, 1993. Nominations and comments received after this date will be considered to the extent practicable.

ADDRESSES: Nominations and comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Nominations and comments will be available for inspection at the above address from 9 a.m. to 5:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Peggy Greenwell, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 (Voice); (202) 272–5449 (TDD). These are not toll-free numbers. This document is available in accessible formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing guidelines to ensure that newly constructed and altered recreational facilities and outdoor developed areas are readily accessible to and usable by individuals with disabilities under the Americans with Disabilities Act and the Architectural Barriers Act. Among the places to be addressed by such guidelines are:

- Amusement parks;
- Outdoor parks, trails, and other outdoor developed areas, including fixed boating and fishing facilities;
- Beaches, pools, and other aquatic facilities;
- Playgrounds and related equipment;
- Indoor and outdoor sports facilities (e.g., racquetball courts, bowling alleys, golf courses, exercise and fitness centers, and related equipment); and
- Zoos and botanical gardens.

The guidelines will apply to private entities, State and local governments, and the Federal government.

The Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) issued by the Access Board contain scoping provisions and technical specifications for making those elements and spaces that typically comprise a building readily accessible to and usable by individuals with disabilities. See 36 CFR part 1191. While recreational facilities and outdoor developed areas may have some elements in common with buildings (e.g., parking areas, toilet facilities), they also contain many unique features for which supplemental accessibility guidelines are needed.

The Access Board has been working with the National Park Service, U.S. Forest Service, and several other agencies and groups that are interested in accessible recreational facilities and outdoor developed areas. These include: International Association of Amusement Parks and Attractions, States Organization for Boating Access, New Mexico Natural Resources Department, Clemson University, and the American Society of Testing and Materials (ASTM) F 15.29 Committee that is dealing with playground safety and accessibility issues. The Access Board intends to use the information that these groups have produced in the development of future guidelines on access to recreational facilities and outdoor developed areas.

The Access Board believes that it would be in the public interest and would support the agency in performing its duties and responsibilities under the Americans with Disabilities Act and Architectural Barriers Act to establish a Recreation Access Advisory Committee (Committee). The purpose of the Committee would be to exchange information and discuss issues related to making recreational facilities and outdoor developed areas readily accessible to and usable by individuals with disabilities. It is anticipated that the Committee will present a report of its activities to the Access Board within six months of its first meeting. The Access Board will consider the Committee's advice and recommendations when developing accessibility guidelines for newly constructed and altered recreational facilities and outdoor developed areas covered by the Americans with Disabilities Act and Architectural Barriers Act.

The Access Board seeks nominations from the following interests for membership on the Committee:

- Owners and operators of various recreational facilities;
- Persons who design recreational facilities or manufacture related equipment;
- Federal, State and local government officials responsible for parks and other outdoor developed areas;

- Individuals with disabilities and organizations representing the interests of such persons; and
- Other persons with substantial expertise in accessibility issues related to recreational facilities and outdoor developed areas.

The number of committee members will be limited to the fewest possible to accomplish the Committee's objectives and will be balanced in terms of interests represented. The Access Board may form subcommittees for particular types of recreational facilities and outdoor developed areas.

Persons interested in serving on the Committee should submit a letter to the Access Board at the address listed in the beginning of this notice. The letter should include a statement of qualifications; any organizational affiliation, including title or position; and an address and telephone number. Committee members will not be compensated for their service. The Access Board may pay travel and per diem expenses for a limited number of persons who would otherwise be unable to participate on the Committee.

After evaluating the nominations and comments on this notice, the Access Board will issue a notice in the **Federal Register** announcing the establishment of the Committee and the appointment of its members. The Committee will be established and operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2. Meetings will be held in Washington, DC. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen days in advance of the meeting. Records will be kept of each meeting and made available for public inspection.

The Access Board also seeks comments and information on the following issues:

1. The Access Board is considering the development of accessibility guidelines for the following types of facilities: Amusement parks, outdoor parks, trails, fixed boating and fishing facilities, beaches, pools, playgrounds and related equipment, indoor and outdoor sports facilities (e.g., racquetball courts, bowling alleys, golf courses, exercise and fitness centers and related equipment), zoos and botanical gardens. Comments are requested on the appropriateness of this proposed list.
2. What has been your experience in applying ADAAG to recreational facilities and outdoor developed areas?
3. How has access been provided in recreational facilities and outdoor developed areas where no previous mandatory standards have existed? What have been your experiences in using recreational facilities and outdoor developed areas where modifications have been made to provide access? What recommendations would you have based on these experiences?
4. To what degree, and how, should access be provided in outdoor developed areas such as trails and other places in the "natural" environment?
5. How has physical access been provided on amusement park rides?
6. To what extent should fixed recreation equipment be accessible to individuals with disabilities? What experiences have you had in using "accessible" recreational equipment that is presently available? Information is also requested on any products or designs that are presently available to provide access to various recreational facilities and outdoor developed areas.
7. To what extent, and how, should accessibility guidelines for recreational facilities and related equipment be adapted to meet the needs of persons with various disabilities (e.g., individuals with mobility impairments, visual impairments, hearing impairments, and cognitive disabilities)?
8. The Access Board is aware of several State and local building codes that have specific accessibility requirements for recreational facilities and outdoor developed areas. Comments are requested on your experiences in using these codes.

Authorized by vote of the Access Board on January 13, 1993.

Kathleen K. Parker,

Chairman, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 93–2447 Filed 2–2–93; 8:45 am]

BILLING CODE 8150-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 90–00011.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Strand International, Inc. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Strand International, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1986). Pursuant to this authority, a certificate of review was issued on October 9, 1990 to Strand International, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 235.14(a) of the Regulations, 15 CPR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§ 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation. Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c).

On September 29, 1992, the Department of Commerce sent to Strand International, Inc. a letter containing annual report questions with a reminder that its annual report was due on November 23, 1992. Additional reminders were sent on November 24, 1992 and on December 8, 1992. The Department has received no written response from Strand International, Inc. to any of these letters.

On December 22, 1992, and in accordance with § 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Strand International, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Strand International, Inc. thirty days to respond was published in the **Federal Register** on December 29, 1992 at 57 FR 61883. Pursuant to § 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Strand International, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Strand International, Inc. for its failure to file an annual report. The Department has sent a letter, dated January 29, 1993, to notify Strand International, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: January 29, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93–2544 Filed 2–2–93; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Determination of Dumping pursuant to paragraph 41(a) of the Special Import Measures Act respecting Gypsum Board Originating in or Exported from the United States of America made by the Deputy Minister of National Revenue, Revenue Canada, Customs and Excise published in the Canada Gazette on December 26, 1992. The Requests for Panel Review were filed with the Canadian Section on January 7, 1993.

SUMMARY: On January 7, 1993 The National Gypsum (Gold Bond Building Products) filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative dumping determination made by the Deputy Minister of National Revenue, Revenue Canada for Customs and Excise respecting Gypsum Board Originating in or Exported from the United States of America. The Binational Secretariat has assigned Case Number CDA–93–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on January 7, 1993, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) a Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is February 8, 1993);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is February 22, 1993); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: January 27, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93–2346 Filed 2–2–93; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: See **SUPPLEMENTARY INFORMATION** for dates of scheduled meetings.

ADDRESSES: Recommendations to the U.S. Commissioner to the IWC and nominations to the U.S. delegation to the IWC should be sent to: Dr. John A. Knauss, United States Commissioner to the International Whaling Commission, Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230, with a copy sent to Kevin Chu, Office of International Affairs, room 7306, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, Office of International Affairs, National Marine Fisheries Service, Department of Commerce, Washington, DC 20910. Phone: (301) 713-2276.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary of NOAA. The U.S. Commissioner to the IWC has primary responsibility with the Secretary for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce, and assisted by the Department of the Interior, the Marine Mammal Commission, and other interested agencies.

Each year NOAA conducts a series of meetings and other actions to prepare for the annual meeting of the IWC which is usually held in the summer. The major purpose of the preparatory meetings is to provide for input in the development of policy by members of the public and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling.

Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information. Such measures are a necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practice.

The tentative schedule of meetings and deadlines, including those of the IWC and deadlines for the preparation of position papers during 1993 is as follows:

February 15, 1993—Nominations for the U.S. Delegation to the May IWC meetings are due to the U.S. Commissioner, with a copy to Kevin Chu at the address above. All persons wishing to be considered pursuant to the U.S. Commissioner's recommendation to the Department of State concerning the composition of the Delegation should ensure that nominations are received by this date. Prospective Congressional advisors to the Delegation should contact the Department of State directly.

March 9, 1993—Tentative Interagency Committee meeting date to review recent events relating to the IWC, to continue preparations for the upcoming IWC Annual Meeting. As with all such meetings, interested persons who are unable to attend are welcome to submit comments. Recommendations to the U.S. Commissioner should be sent to: The United States Commissioner to the International Whaling Commission, at the above address.

March 10, 1993—Publish in the **Federal Register** the Agency views on (1) the current population levels and annual net recruitment rate of bowhead whales, (2) the nature and extent of the aboriginal/subsistence need for bowhead whales, (3) the level of take of bowhead whales that is consistent with provisions of the IWC aboriginal/subsistence whaling management scheme, and (4) a list of documents reviewed by NOAA and used by the Administrator in formulating these views.

April 7, 1993—Tentative Interagency Committee Meeting date for finalizing preparations for 1991 IWC meetings.

In addition, working groups will be established to receive views on a number of critical issues to be considered at the 1993 IWC Annual Meeting. These groups will focus on: The Antarctic, Inspections and Observation, and Small Cetaceans. The working groups will report to the Interagency Committee. Persons who would like to be included in IWC Interagency Committee meetings may contact Kevin Chu at the address or telephone number provided above to obtain meeting times and locations.

Dated: January 28, 1993.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 93–2495 Filed 2–2–93; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Futures Option Contracts on Rolling Spot Pound Sterling

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in a rolling spot pound sterling futures contract and options on that futures contract. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before March 5, 1993.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME rolling spot pound sterling futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 28, 1993.

Gerald D. Gay,

Director.

[FR Doc. 93–2456 Filed 2–2–93; 8:45 am]

BILLING CODE 6351-01-M

Regulatory Coordination Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Regulatory Coordination Advisory Committee will conduct a public meeting in the Hearing Room at the Commission's Washington, DC headquarters located at level B–1, 2033 K Street NW., Washington, DC 20581, on Wednesday, February 24, 1993, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

Agenda

1. Report from the Working Group on International Competitiveness on international net capital requirements.

2. Report from the Working Group on Pension Funds discussing unnecessary regulatory barriers to the use of futures and derivatives by pension plans.

3. Report from the Working Group on Clearing and Settlement concerning a survey of the U.S. clearing system.

4. Update on advisories concerning Performance Reporting and Beginning Net Asset Value.

5. Update on rulemakings concerning Swaps and Hybrids and Rule 4.5 (definition of "Commodity Pool Operator").

6. Discussion of new issues and topics for the committee to undertake.

7. Other issues for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on the agenda matters listed above. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on ways to improve coordination and to facilitate cross market transactions, including cross border transactions. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1992 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee is empowered to conduct the meeting in a manner that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the Attention of: The Commodity Futures Trading Commission Regulatory Coordination Advisory Committee, c/o Ms. Nancy E. Yanofsky, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC. 20581, before the meeting. Members of the public who wish to make oral statements should inform Ms. Yanofsky in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration

Issued by the Commission in Washington, DC on January 28, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-2455 Filed 2-2-93; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Livingston Parish Flood Study, LA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: This study will investigate Federal involvement in resolving the flooding problems of Livingston Parish.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed project can be answered by Mr. Frank Vicidomina, (504) 862-1597, and questions concerning the DEIS can be answered by Mr. Michael Saucier, (504) 862-2525, U.S. Army Corps of Engineers, Planning Division (CELMN-PD), P.O. Box 60267, New Orleans, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION:

1. *Proposed action.* As part of the larger Amite River and Tributaries Study, this study proposes to develop an economically feasible and environmentally acceptable solution to flooding in the Livingston Parish urban area. The Amite River and Tributaries Study is being conducted in response to a resolution of the committee on Public Works of the United States Senate of April 14, 1967. The resolution requested the Board of Engineers for Rivers and Harbors to review the report of the Chief of Engineers on Amite River and Tributaries, Louisiana, published as House Document Number 419, Eighty-fourth Congress, and other pertinent reports, with a view to determining whether the existing project should be modified in any way at this time with particular reference to additional improvements for flood control and related purposes on Amite River, Bayou Manchac, and Comite River and their tributaries.

2. *Alternatives.* Alternatives being considered include channel modifications, levees, pump stations, and non-structural measures. These alternatives will be compared to the No-Action alternative.

3. *Scoping Process.*

a. Scoping will be conducted by an informal letter sent to persons and agencies known to have an interest in flooding problems and related issues in the area. This letter will request that interested parties provide comments on alternatives, significant issues, or impacts of alternatives for inclusion in the DEIS. All relevant issues will be addressed.

b. Significant issues to be addressed in the DEIS currently include: Extent of projected flooding with future development and no remedial action taken, economically justifiable flood protection, relocations required, locations for disposal of material to be excavated, and effects on fish and wildlife, endangered species, cultural resources, recreation, and socio-economic concerns.

c. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

d. A 45-day period will be allowed to all interested agencies and individuals for review and comment.

4. *Meeting Schedule.* No official scoping meeting is being planned at this time; however, a public meeting will be held during the review period to receive comments on the DEIS.

5. *Availability.* The DEIS is scheduled to be available to the public in August 1993.

Dated: January 15, 1993.

Michael Diffley,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 93-2469 Filed 2-2-93; 8:45 am]

BILLING CODE 3710-84-M

DEPARTMENT OF ENERGY

Notice Reopening the Public Review and Comment Period on the Draft Environmental Impact Statement for the Proposed Expansion of the Strategic Petroleum Reserve

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice to reopen the public review and comment period on the Draft Environmental Impact Statement (DEIS) to assess the environmental effects of the proposed plan to construct and operate the final 250-million-barrel increment of a one-billion-barrel Strategic Petroleum Reserve (SPR) pursuant to Congressional directive (Pub. L. 101-383 and Pub. L. 101-512).

SUMMARY: On November 6, 1992, the Environmental Protection Agency (EPA) published in the **Federal Register** (57 FR 53109) a Notice of Availability (NOA) for the SPR DEIS (DOE/EIS-

0165–D) thereby initiating the public comment period. The Department of Energy (DOE) announced the availability of the SPR DEIS and the schedule of public hearings in the **Federal Register** of November 17, 1992 (57 FR 54227). The SPR DEIS addresses a plan to develop underground crude oil storage facilities in two Gulf Coast salt domes. Five salt domes located in Louisiana, Mississippi, and Texas are under consideration. In addition, various crude oil distribution alternatives could require the construction and operation of pipelines and terminals in the above three States and Alabama. The end of the comment period as stated in the foregoing DOE and EPA Notices, was December 29, 1992. Subsequently, the comment period was extended to January 13, 1993, by a **Federal Register** notice of December 24, 1992 (57 FR 61422). By this notice, DOE is reopening the comment period on the SPR DEIS. Comments are due March 5, 1993.

INVITATION TO COMMENT AND DATES: DOE will continue to solicit comments on the DEIS from all interested parties. Written comments or suggestions regarding the adequacy, accuracy, and completeness of the DEIS will be considered in preparing the final EIS and should be postmarked by March 5, 1993. Written comments postmarked after that date will be considered to the degree practicable. Comments will not be accepted by telephone.

ADDRESSES: Envelopes should be marked: "ATTN: SPR DEIS Comments." Written comments or questions concerning this DEIS should be directed to: Mr. Hal Delaplane, Strategic Petroleum Reserve, FE–423, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–4730, Facsimile: (202) 586–7919.

FOR FURTHER INFORMATION CONTACT: For general information on the EIS process and other matters related to the National Environmental Policy Act (NEPA), please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: In addition to announcing the availability of the DEIS, DOE has distributed nearly 700 copies of the SR DEIS since the NOA was published November, 1992. Public hearings announced in the NOA were held in December, 1992, in Hattiesburg and Pascagoula, Mississippi; in Lake Jackson and Beaumont, Texas; and in New Iberia, Louisiana in December, 1992. Notice of these public hearings was sent to local news media. All comments and suggestions submitted during the extended period will be considered in preparing the final EIS. Written comments received after that date will be considered to the degree practicable.

Issued in Washington, DC on January 29, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–2613 Filed 2–2–93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4559–4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 5, 1993.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Final Authorization for Hazardous Waste Management Programs (ICR No. 969.03; OMB No. 2050–0041). This is a renewal of a currently approved collection.

Abstract: The Resource Conservation and Recovery Act (RCRA) of 1976 as amended by the Hazardous and Solid Waste Amendments of 1984, requires the EPA to authorize State hazardous waste programs. The requirements that States and territories must follow in developing and revising their RCRA Subtitle C programs are specified in 40 CFR Part 271, Subpart A. In applying for authorization, States must demonstrate compliance with the Federal guidelines regulating State program standards (e.g. adequate enforcement, procedures for public notice and hearing, public availability of information). State programs must adopt or enforce requirements that are at least as stringent as the Federal requirements. A State's initial application for final authorization must contain the following: Governor's letter, program description, statement from the State's Attorney General, memorandum of agreement, copies of all applicable State statutes and regulations, and documentation of public participation.

Burden Statement: The public reporting burden for this collection is estimated to average 305 hours per response and includes all aspects of the information collection, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: States.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7,637 hours.

Frequency of Collection: As submitted by the State.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: January 27, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–2539 Filed 2–2–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4559–2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget

(OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before March 5, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Policy, Planning and Evaluation

Title: Pretesting and Evaluation of Risk Communication Activities (EPA No. 1552.02; OMB No. 2010–0022).

Abstract: This ICR is an extension of an existing collection in support of continued small scale studies evaluating the EPA's risk communication activities. Risk communication is used to: (1) Promote changes that reduce personal risk without regulation, and (2) improve regulatory compliance by using risk communication as a complement to a myriad of mandated environmental programs such as RCRA section 3007, Clean Air Act section 114, and Residential Lead-Based Paint Hazard Reduction Act section 1021. The data gathered by these studies are used to develop and refine risk communication materials (printed materials, public service announcements, videotapes, etc.) prepared by the Agency for public dissemination.

Following approval of this ICR, studies will be conducted to assess risk communication materials using voluntary participants selected from the general public. Volunteers will be asked to evaluate risk communication materials using criteria such as effectiveness, credibility, clarity, and relevance of the materials for the purposes of communicating an environmental risk. Study methods may include: telephone and mail surveys, focus group sessions, individual interviews, theater testings, and gatekeeper reviews. The information will be tabulated, analyzed, and used to improve risk communication activities by the Agency.

Burden Statement: Public reporting burden for this collection of information is estimated to average 1 hour per response including time for listening to or reading instructions, gathering information, and preparing oral or written responses to survey questions.

Respondents: Individuals or households.

Estimated Number of Respondents: 855.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: One time.

Estimated Total Annual Burden on Respondents: 870 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: January 28, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–2538 Filed 2–2–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL 4559–6]

Virginia: Final Partial Program Determination of Adequacy of State Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final partial program determination of adequacy on Virginia's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (NSWLFs) which may receive household hazardous waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule governing such determinations. The EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that provides procedures by which the EPA approves, or partially approves, State/Tribal municipal solid waste (msw) landfill permit programs. However, the Agency intends to approve adequate State MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal msw permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal msw permit program allows such flexibility.

Virginia applied for a partial program determination of adequacy under section 4005 of RCRA. The EPA reviewed Virginia's application and made a tentative determination of adequacy on August 18, 1992 for those portions of the MSWLF permit program that are adequate to ensure compliance with the revised Federal MSWLF Criteria. After reviewing and considering all comments received, the EPA today is granting final partial approval to Virginia's program.

EFFECTIVE DATE: The determination of adequacy for Virginia shall be effective on February 3, 1993.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region 3, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew Uricheck, mailcode (3HW53), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the EPA promulgated revised Federal MSWLF Criteria (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) requires States to develop permitting programs to ensure that municipal solid waste landfill facilities comply with the revised Federal Criteria.

Subtitle D also requires in section 4005 that the EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal MSWLF Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal msw landfill permit programs must satisfy to be determined adequate. The STIR allows for partial approval if (1) the Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with 40 CFR part 258; (2)

changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet these requirements; and, (3) provisions not included in the partially approved portions of the State/Tribal permit program are a clearly identifiable and separable subset of 40 CFR part 258. As provided in the revised Federal MSWLF Criteria, the EPA's national subtitle D standards will generally take effect in October 1993. Consequently, any portions of the revised Federal MSWLF Criteria which are not included in an approved State/Tribal msw landfill program by October 1993 would apply directly to owners/operators, since 40 CFR 258 is self-implementing in unapproved states. The requirements of the STIR will ensure that any mixture of State/Tribal and Federal rules that take effect will be fully workable and leave no significant gaps in environmental protection. These practical concerns apply to individual partial approvals granted prior to the promulgation of the STIR. Consequently, the EPA reviewed the program approved today and concluded that the State and the Federal requirements mesh reasonably well and leave no significant gaps. Partial approval allows the Agency to approve those provisions of the State msw landfill permit program that meet the requirements and allow the State to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State permitting agency to take advantage of the revised Federal MSWLF Criteria's flexibility for those portions of the program which have been approved.

The EPA reviewed the State's requirements to determine whether they are "adequate" under section 4005 (c)(1)(C) of RCRA. The EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal MSWLF Criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Third, the EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

The EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The EPA expects States/Tribes to meet the STIR requirements for a MSWLF program before it gives full approval to a MSWLF program. The EPA is also requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs.

B. State of Virginia

On May 29, 1992, Virginia submitted an application to obtain a partial program adequacy determination for the State's municipal solid waste landfill permit program. On August 18, 1992, the EPA Region III published a tentative determination of adequacy for Virginia's program. Further background on the tentative partial program determination of adequacy appears at 57 FR 37160, August 18, 1992. Along with the tentative determination, the EPA announced the availability of the application for public comment and the date of a public hearing on the application, if sufficient interest was expressed to hold such a hearing. A similar announcement was published in the Richmond Times-Dispatch newspaper on August 28, 1992. There were no requests for a public hearing. Therefore, one was not held.

The EPA has reviewed Virginia's application and has determined that the following portions of the existing Virginia solid waste permit program will ensure compliance with the revised Federal MSWLF Criteria.

1. Subpart A, General, purpose, scope, and applicability and consideration of other federal laws (40 CFR 258.1 and 258.3);
2. Subpart B, Location restrictions for fault areas, seismic impact zones, unstable areas, and closure of existing units (40 CFR 258.13, 258.14, 258.15, and 258.16);
3. Subpart C, Operating criteria for disease vector control, air criteria, access requirements, run-on/run-off control systems, surface water, and liquids restrictions (40 CFR 258.22, 258.24, 258.25, 258.26, 258.27, and 258.28);
4. Subpart E, Groundwater monitoring and corrective action criteria for applicability, groundwater monitoring systems, assessment monitoring program, assessment corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.50, 258.51, 258.55, 258.56, 258.57, and 258.58);
5. Subpart F, Closure and post-closure care, closure criteria (40 CFR 258.60); and,
6. Subpart G, Financial assurance criteria, allowable mechanisms (40 CFR 258.74).

Virginia's MSWLF permit program has the authority to issue permits that incorporate the requirements in the revised Federal MSWLF Criteria to all MSWLFs in the Commonwealth of Virginia. In addition, the EPA has determined that Virginia's permit program contains provisions for public participation, compliance monitoring, and enforcement.

To ensure compliance with all of the revised Federal MSWLF Criteria, Virginia intends to revise the following aspects of its permit program for purposes of obtaining final approval:

1. Virginia will revise its regulations to add the Federal definitions for active life, active portion, existing unit, fault, lateral expansion, new unit, run-on, saturated zone, seismic impact zone, unstable area, and uppermost aquifer in 40 CFR 258.2;
2. Virginia will revise its regulations to incorporate the Federal location restrictions for the post-facto demonstrations for airport safety and floodplains, and the prohibition of location in wetlands without demonstration in 40 CFR 258.10, 258.11, and 258.12;
3. Virginia will revise its regulations to incorporate the Federal operating requirements for the exclusion of hazardous waste, daily cover, explosive gases control, and recordkeeping in 40 CFR 258.20, 258.21, 258.23, and 258.29;
4. Virginia will revise its regulations to adopt the Federal composite liner requirement consisting of an upper component of a minimum of 30-mil flexible membrane liner (or 60-mil high density polyethylene) installed in direct and uniform contact over a lower component of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec design requirements in 40 CFR 258.40(a)(2). Existing facilities, and only existing facilities, proposing a lateral expansion will be offered the option of demonstrating that any alternate liner design meets the performance standard allowed under 40 CFR 258.40(a)(1).
5. Virginia will revise its regulations to incorporate the groundwater sampling and detection monitoring requirements, including the structure and parameter coverage listed in Appendices I and II, that are consistent with the revised Federal Criteria under 40 CFR 258.53 and 258.54;
6. Virginia will adopt the Federal criteria pertaining to a length of the

post-closure period as 30 years, and the level of detail as specified in 40 CFR 258.61;

7. Virginia will seek to amend a State statute, and, following that, their regulations, to fully meet the financial assurance requirements especially as they apply to public owners and operators of MSWLF's, for closure, post-closure care, and corrective action under 40 CFR 258.70, 258.71, 258.72 and 258.73.

The EPA received the following written public comments on its tentative determination of partial program adequacy for Virginia's MSWLF permit program.

Two commentors expressed concern that the extent and detail of EPA's partial approval was not clearly defined in our tentative determination, and expressed the belief that those portions of the Virginia regulations set aside for approval were too limited, based on the state's commitment to more completely adopt the EPA criteria. After long and careful consideration of this issue, we agreed with these comments. As a result, this final determination identifies in far more specific detail than our tentative determination, those portions of the existing Virginia program deemed adequate to ensure compliance with 40 CFR 258. Likewise, it identifies in detail those portions of Virginia's regulations which must be revised to ensure this compliance.

One commentor suggested that the EPA should condition approval of the Virginia application upon the state's commitment that a general exemption process will not result in requirements for a facility that are less stringent than the revised Federal MSWLF Criteria. Discussions with Virginia have indicated that the situations in which the exemption has been used in the past would not pose a deviation from the revised Federal MSWLF Criteria. The general exemption process serves to foster innovative, but equivalent, methods of complying with Virginia requirements. Furthermore, the same commentor acknowledged that Virginia has to date acted responsibly in granting exemptions from the solid waste rules. The EPA is satisfied that the use of this general exemption does not undermine the effectiveness of Virginia's program.

One commentor noted that the financial assurance requirements will not apply to public owners/operators until December 1993, while they currently apply to private facilities, citing this as differential treatment. Our response is that this difference in timing is the result of existing Virginia statute, which is the prerogative of the state. If financial assurance is required for all owners/operators by April 9, 1994, the state is in compliance with the EPA criteria.

One commentor recommended that the state allow owners/operators to utilize statistical tests for their Phase I monitoring other than the Student's t-test currently required. In discussing this issue with Virginia, the state has agreed to accept alternate tests upon written request and justification, and state approval.

Lastly, one commentor requested that Virginia be allowed to extend the period within which closure of landfills must be completed to at least 12 months. As this is a clear violation of 40 CFR 258.60(g) which requires the completion of closure within 180 days, we cannot agree with this comment. We note, however, that the criteria allows approved states to grant extensions to this period if demonstrated to be necessary.

Virginia submitted a schedule indicating that it will be able to complete these revisions and amendments by December 2, 1993. As explained in the notice of tentative determination, the EPA reviewed the schedule and concluded that it was reasonable.

The EPA cautions Virginia that it currently plans to propose in the STIR that all partial approvals will expire in October 1995 for States/Tribes that have not received final approval for all provisions of 40 CFR part 258. Expiration of a partial approval would mean that the less flexible revised Federal Criteria would once again be effective in that State/Tribe. The EPA urges Virginia to work diligently to make all of the necessary revisions to those portions of its permit program that are not receiving approval today.

C. Decision

After reviewing the public comments submitted since the tentative decision, I conclude that Virginia's application for partial program adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Virginia is granted a final partial program determination of adequacy for the following areas of its municipal solid waste landfill permitting program:

1. Purpose, scope, and applicability and consideration of other federal laws (40 CFR 258.1 and 258.3);
2. Location restrictions for fault areas, seismic impact zones, unstable areas, and closure of existing units (40 CFR 258.13, 258.14, 258.15, and 258.16);
3. Operating criteria for disease vector control, air criteria, access requirements, run-on/run-off control systems, surface water, and liquids restrictions (40 CFR 258.22, 258.24, 258.25, 258.26, 258.27, and 258.28);
4. Groundwater monitoring and corrective action criteria applicability, groundwater monitoring systems, assessment monitoring program, assessment corrective measures, selection of remedy, and implementation of the corrective action program (40 CFR 258.50, 258.51, 258.55, 258.56, 258.57, and 258.58);
5. Closure criteria (40 CFR 258.60); and,
6. Financial assurance criteria allowable mechanisms (40 CFR 258.74).

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal MSWLF criteria in 40 CFR part 258 independent of any State enforcement program. As the EPA explained in the preamble to the revised Federal MSWLF Criteria, the EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the EPA should be considered to be in compliance with the revised Federal MSWLF Criteria. See 56 FR 50978, 50995 (October 9, 1991). Today's action takes effect on the date of publication. The EPA believes it has good cause under section 553(d) of the Administrative Procedure Act, 5 U.S.C., to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in Virginia's program are already in effect as a matter of state law. The EPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by the EPA as Federal law.

Consequently, the EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this final approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: January 21, 1993.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93-2541 Filed 2-2-93; 8:45 am]

BILLING CODE 6560-50-M

[PF-570; FRL-4183-4]

Hoechst Celanese Corp. and SKW Trostberg AG; Notice of Filing and Notice of Amendment of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the the Hoechst Celanese Corp. an initial filing of pesticide petition (PP) 3F4182 for fenoxaprop-ethyl on barley grain and straw and from SKW Trostberg AG an amendment to PP 0F3868 for hydrogen cyanamide on grapes and grape byproducts.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-570], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Miller, Product Manager (PM 23), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-7830.

SUPPLEMENTARY INFORMATION: Under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), EPA has received an initial filing of a pesticide petition and an amended filing of a pesticide petition as follows:

Initial Filing

1. *PP 3F4182.* The Hoechst Celanese Corp., Route 202-206, P.O. Box 2500, Somerville, NJ 08876-1258, has submitted PP 3F4182 proposing the amendment of 40 CFR 180.430 to establish a tolerance for the herbicide fenoxaprop-ethyl [(±)-ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate] and its metabolites 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoic acid and 6-chloro-2,3-dihydrobenzoxazol-2-one], each expressed as fexnoxaprop-ethyl) in or on barley grain at 0.05 part per million (ppm) and barley straw at 0.10 ppm. The analytical method used is gas chromatography.

Amended Filing

2. *PP 0F3868.* SKW Trostberg, Siemer Associates, Inc., 4672 W. Jennifer, Fresno, CA 93722, proposed in a notice issued in the **Federal Register** of July 18, 1990 (55 FR 29268), to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of hydrogen cyanamide on grapes. SKW Trostberg AG has submitted an amended petition proposing to establish an exemption from the requirement of a tolerance for the plant growth regulator hydrogen cyanamide in or on grapes and grape byproducts. The analytical method used is high-performance liquid chromatography.

Authority: 7 U.S.C. 346a and 371.

Dated: January 15, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-2368 Filed 2-2-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-60044; FRL-4184-8]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing ______________ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for ____________ Dated ______________.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report—Product List

Attachment II Suspension Report—Requirement List

Attachment III Suspension Report—Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring.

Attachments:

Attachment I—Product List
Attachment II—Requirement List
Attachment III—Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Milazzo Co., Samuel J.	00821800001	Dried Blood	Milazzo Brand Animal Chaser	12/21/92
Fassy & Beethoff Inc.	00077900029	Dried Blood	F & B Rabbit & Dog Chaser	12/21/92
Dragon Corporation	00001600128	Dried Blood	Dragon Rabbit & Dog Chaser	

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
Dried Blood	Milazzo Co., Samuel J.	Confidential Statement of Formula (CSF) Form		10/27/92
		Chemical Identity	61-1	10/27/92
		Beginning Material and Manuf Process	61-2(a)	10/27/92
		Certification of Ingredient Limits	62-2	10/27/92
		Analytical Method to Verify Certified Limits	62-3	10/27/92
		Color	63-2	10/27/92
		Physical State	63-3	10/27/92
		Odor	63-4	10/27/92
		Density, Bulk Density, or Specific Gravity	63-7	10/27/92
		Storage Stability	63-17	10/27/92
		Corrosion Characteristics	63-20	10/27/92
		Acute Oral Toxicity—Rat	81-1	10/27/92
		Acute Dermal Toxicity—Rabbit/Rat	81-2	10/27/92
		Acute Inhalation Toxicity—Rat	81-3	10/27/92
		Primary Eye Irritation—Rabbit	81-4	10/27/92
		Primary Dermal Irritation	81-5	10/27/92
		Dermal Sensitization	81-6	10/27/92
		Domestic Dog and Cat Repellent Study	96-18	10/27/92
		Browsing Animal Repellent Study	96-19	10/27/92
	Fassy & Beethoff Inc.	Confidential Statement of Formula (CSF) Form		10/27/92
		Acute Oral Toxicity—Rat	81-1	10/27/92
		Acute Dermal Toxicity—Rabbit/Rat	81-2	10/27/92
		Acute Inhalation Toxicity—Rat	81-3	10/27/92
		Primary Eye Irritation—Rabbit	81-4	10/27/92
		Primary Dermal Irritation	81-5	10/27/92
		Dermal Sensitization	81-6	10/27/92
Dried Blood	Dragon Corporation	Confidential Statement of Formula (CSF) Form		10/27/92
		Acute Oral Toxicity—Rat	81-1	10/27/92
		Acute Dermal Toxicity—Rabbit/Rat	81-2	10/27/92
		Acute Inhalation Toxicity—Rat	81-3	10/27/92
		Primary Eye Irritation—Rabbit	81-4	10/27/92
		Primary Dermal Irritation	81-5	10/27/92
		Dermal Sensitization	81-6	10/27/92
		Domestic Dog and Cat Repellent Study	96-18	10/27/92
		Browsing Animal Repellent Study	96-19	10/27/92

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

On February 27, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing dried blood to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Dried Blood Phase 5 Reregistration Data Requirements Notice dated February 27, 1992 required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: January 25, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93–2273 Filed 2–2–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66170; FRL 4181–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by May 4, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 17 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000070–00040	Kill-KO 5% Cythion Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000100 ME–91–0003	Ridomil MZ 58 Fungicide	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product *N*-(2,6-Dimethylphenyl)-*N*-(methoxyacetyl)alanine, methyl ester
000239–02526	Ortho Home Orchard Spray Formula II	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000352 CA–88–0011	Dupont Benlate 50–DF	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 CO–89–0002	Dupont Glean Herbicide	2-Chloro-*N*-(((4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino)carbonyl)benzenesulfonamide
000352 PA–80–0001	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
000352 SC–77–0002	Du Pont Benlate Fungicide Wettable Powder	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide cis-*N*-Trichloromethylthio-4-cyclohexene-1,2-dicarboximide
000572–00344	Rockland Benomyl Fungicide DF	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
001021 OR–88–0011	MGK Big Game Repellent Powder BGR–P	Putrescent whole egg solids
001021 WA–88–0004	MGK Big Game Repellent Powder BGR–P	Putrescent whole egg solids
004313–00067	Floral Air Deodorant	1,2-Propanediol Triethylene glycol
004866–00008	Deer Away Big Game Repellent BGR(1-Part) Concentrate	Putrescent whole egg solids
010182 LA–89–0015	Karate Insecticide	(RS)-alpha-Cyano-3-phenoxybenzyl (1RS)-cis-3-((*Z*)-2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate
039398–00015	Sumithion 8E	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate
042697–00018	Safer's Garden Fungicide-Miticide Concentrate	Sulfur
059639 LA–91–0003	Bolero 8EC	*S*-((4-Chlorophenyl)methyl) *N,N*-diethylthiocarbamate
062499 LA–84–0009	Ortho Bolero 10G	*S*-((4-Chlorophenyl)methyl) *N,N*-diethylthiocarbamate

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	Chevron Chemical Co., Ortho Consumer Products Division, 940 Hensley St, Richmond, CA 94804.
000352	E. I. Du Pont DeNemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave. North Minneapolis, MN 55427.
004313	Carroll Co., 2900 W. Kingsley Rd., Garland, TX 75041.
004866	Intagra, Inc., 8500 Pillsbury Ave. South Minneapolis, MN 55420.
010182	ICI Americas Inc., Agricultural Products, New Murphy Rd. & Concord Pike, Wilmington, DE 19897.
039398	Sumitomo Chemical America, Inc., c/o Director of Insect Control & Research, Inc., 1330 Dillon Heights Ave., Baltimore, MD 21228.
042697	Safer Inc., c/o Delta Analytical Corp., 1414 Fenwick Ln., Silver Springs, MD 20910.
059639	Valent U.S.A. Corp., 1333 North California Blvd., Box 8025, Walnut Creek, CA 94596.
062499	Chevron Chemical Co, Valent USA Corp., Box 5058, San Ramon, CA 94583.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before May 4, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: January 19, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–2369 Filed 2–2–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4560–3]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of the 1993 EPA SO_2 allowance auctions.

SUMMARY: Pursuant to title IV of the Clean Air Act and 40 CFR part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, EPA is directed under section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Acid Rain Division is giving notice of the first annual SO_2 allowance auctions. The regulations governing the auctions and sales were promulgated on December 17, 1991 (40 CFR part 73, subpart E).

EPA has delegated the administration of the EPA allowance auctions to the Chicago Board of Trade (CBOT). The auctions will be conducted under the regulations cited above. Anyone can participate in the EPA auctions and bidders are not restricted as to the quantity or price of their bid.

Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1993 auctions will consist of one "spot" auction and one "advance" auction. Allowances sold in the spot auction are useable for compliance beginning in 1995. Allowances sold in the advance auction are useable for compliance beginning in 2000. 50,000 spot allowances will be sold in the spot auction and 100,000 allowances will be sold in the advance auction. Bid Forms for the 1993 auctions must be received by the CBOT by the close of business on March 23, 1993. The auctions themselves will be conducted on March 29, 1993, with the results announced shortly thereafter.

CBOT will also sell in the 1993 auctions any 1995 or 2000 allowances offered for sale by affected utilities that are allocated allowances by EPA through regulation. Utilities may set a minimum price for the sale of their allowances. Offered allowances will be sold after the allowances that were withheld from the utilities, beginning with those allowances offered at the lowest minimum price and continuing in ascending order of minimum price. Though offered allowances will consequently be sold at a lower price than the withheld allowances, no sales of offered allowances will occur if the bid prices, which are matched with the offers, are below the offerors' stated minimum sale prices. To offer allowances in the EPA auctions, utilities must submit a SO_2 Allowance Offer Form to EPA by the close of business on March 5, 1993. If necessary, EPA will accept contingent offers of year 2000 allowances pending promulgation of Phase II allowance allocations. Once Phase allowance allocations are promulgated, EPA will confirm that the contingent offers are valid and make such allowances available for sale in the advance auction.

ADDRESSES: U.S. EPA Acid Rain Division (6204J), Attn: Auctions and Sales, 401 M Street SW., Washington, DC 20460. Chicago Board of Trade, Attn: EPA Auctions, 141 W. Jackson Blvd., suite 2240, Chicago, IL 60604.

SO_2 Allowance Offer Forms will be available from EPA at the address above by February 22, 1993. Forms needed to bid in the EPA auctions will be available from the Acid Rain Hotline (617) 674–7377, by the beginning of March 1993.

FOR FURTHER INFORMATION CONTACT: The Acid Rain Hotline at (617) 674–7377. Information on bidding in the 1993 EPA auctions can be found in the brochure "How to Bid in the EPA SO2 Allowance auctions;" general information on the EPA auctions can be found in the "Acid Rain Program Allowance Auctions and Direct Sales" fact sheet. These publications can be obtained by calling the Acid Rain Hotline or by writing to EPA at the above address listed above.

Dated: January 28, 1993.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 93–2537 Filed 2–2–93; 8:45 am]

BILLING CODE [illegible]

[OPPTS–59317; FRL–4184–1]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of application for test marketing exemptions (TMEs) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME–93–6 and TME–93–7. The test marketing conditions are described below.

EFFECTIVE DATES: January 15, 1993. Written comments will be received until February 18, 1993.

ADDRESSES: Written comments, identified by the document control number "(OPPTS–59317)" and the specific TME numbers "TME–93–6" and "TME–93–7" should be sent to: Document Control Officer (TS–790), Confidential Data Branch, Information Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–201, 401 M St., SW., Washington, DC 20460, (202) 260–1532.

FOR FURTHER INFORMATION CONTACT: Paul Matthai and/or Edna Pleasants, New Chemicals Branch, Chemical Control Division (TS–794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–611, 401 M St. SW., Washington, DC 20460. For information on TME–93–6, contact Paul Matthai, (202) 260–3385, and for TME–93–7, contact Edna Pleasants, (202) 260–4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to human health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME–93–6 and TME–93–7. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in these applications and in this notice must be met.

Inadvertently, notice of receipt of the applications was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–93–6 and TME–93–7. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TMEs. In addition, the Company shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–93–6

Date of Receipt: December 7, 1992.

Close of Review Period: January 20, 1993. The extended comment period will close February 18, 1993.

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane prepolymer.

Use: (G) Adhesive component.

Import Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant human health or environmental concerns. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

T-93-7

Date of Receipt: December 7, 1992.

Close of Review Period: January 20, 1993. The extended comment period will close February 18, 1993.

Applicant: Reichhold Chemicals, Inc.

Chemical: (G) Polyurethane adhesive.

Use: (G) Adhesive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified no significant environmental concerns. EPA identified potential health concerns for lung sensitization based on data on an analogous chemical substance. However, EPA does not expect significant inhalation exposure for workers exposed to the TME substance. Therefore, the test market activities will not present an unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: January 15, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-2540 Filed 2-2-93; 8:45 am]

BILLING CODE 6560-50-F

[LAG290000 and TXG290000; FRL-4559-7]

Proposed NPDES General Permits for Produced Water and Produced Sand Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Louisiana and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period of draft NPDES general permit.

EPA Region 6 is extending the closing date for Comments from February 5, 1993 to March 15, 1993 on the draft general permits for produced water and produced sand discharges to coastal waters in Louisiana and Texas. These permits were proposed on December 22, 1992 in the **Federal Register** (57 FR 60926).

SUMMARY: The proposed draft permits prohibit discharges of produced water and produced sand derived from Oil and Gas Point Source Category facilities to coastal waters of Louisiana and Texas. Facilities covered by these permits included those in the Coastal Subcategory (40 CFR 435, subpart D), the Stripper Subcategory (40 CFR 435, subpart F) that discharge to coastal waters of Louisiana and Texas, and the Offshore Subcategory (40 CFR 435, subpart A) that discharge to waters of Louisiana and Texas. As proposed the permits' prohibitions will become effective 30 days after their final publication. The Region may also issue an administrative order requiring that permittees discharging produced water from existing Coastal, Stripper or Offshore wells to other than "upland area" waters in Louisiana and other than "inland and fresh" water in Texas comply with the permits' produced water discharge prohibitions within three years after final publication of the permits.

Signed this 25th day of January, 1993.

Myron O. Knudson, P.E.,

Director, Water Management Division, EPA Region 6.

[FR Doc. 93-2542 Filed 2-2-93; 8:45 am]

BILLING CODE 6560-50-M

Office of Research and Development

[FRL 4559-9]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated two additional equivalent methods for ambient air monitoring, one for the measurement of ambient concentrations of ozone, and the other for the measurement of ambient concentrations of sulfur dioxide.

The new equivalent method for ozone is an automated method (analyzer) which utilizes the measurement principle based on absorption of ultraviolet radiation by ozone at a wavelength of 254 nm. This new designated method is identified as follows:

EQSA-0193-091, "Lear Siegler Measurement Controls Corporation Model ML 9810 Ozone Analyzer," operated on any full scale range between 0-0.050 ppm and 0-1.0 ppm, with auto-ranging enabled or disabled, at any temperature in the range of 15 °C to 35 °C, with a five-micron Teflon filter element installed in the filter assembly behind the secondary panel, the service switch on the secondary panel set to the IN position; with the following menu choices selected: Filter type: Kalman, Pres/temp/flow comp: On, Span comp: Disabled, Diagnostic mode: Operate; with the 50-pin I/O board installed on the rear panel configured at any of the following output range settings: Voltage, 10 V, 5 V, 1 V, 0.1 V; Current 0-20 mA, 2-20 mA, 4-20 mA; and with or without any of the following options:

Valve Assembly for External Zero/Span (EZS)
Rack Mount Assembly
Internal Floppy Disk Drive.

The new equivalent method for sulfur dioxide is an automated method (analyzer) which utilizes a measurement principle based on UV fluorescence. The new designated method is identified as follows:

EQSA-0193-092, "Lear Siegler Measurement Controls Corporation Model ML 9850 Sulfur Dioxide Analyzer," operated on any full scale range between 0-0.050 ppm and 0-1.0 ppm, with auto-ranging enabled or disabled, at any temperature in the range of 15 °C to 35 °C, with a five-micron Teflon filter element installed in the filter assembly behind the secondary panel, with the service switch on the secondary panel set to the IN position; with the following menu choices selected: Filter type: Kalman, Pres/temp/flow comp: On, Span comp: Disabled, Background: NOT Disabled, Diagnostic mode: Operate; with the 50-pin I/O board installed on the rear panel configured at any of the following output range settings: Voltage, 10 V, 5 V, 1 V, 0.1 V; Current 0-20 mA, 2-20 mA, 4-20 mA; and with or without any of the following options:

Valve Assembly for External Zero/Span (EZS)
Rack Mount Assembly
Internal Floppy Disk Drive.

Both of these methods are available from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, CO 80112-5189. A notice of of selected institutions. The FDIC select reinsurers to engage in actual reinsurance receipt of application for these methods appeared in the **Federal Register**, Volume 57, Number 183, September 21, 1992, page 43456.

A test analyzer representative of each of these methods has been tested by the applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated as equivalent methods. The information submitted by the applicants will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, either of these methods is acceptable for use by States and other air monitoring agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating temperature range) specified in the applicable designation (see description of the methods above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under § 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B–1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Methods Research and Development Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these equivalent methods will assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning either method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–2622.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 93–2536 Filed 2–2–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 27, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0105.
Title: Licensee Qualification Report.
Form Number: FCC Form 430.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion and annual reporting.
Estimated Annual Burden: 1,900 responses; 2 hours average burden per response; 3,800 hours total annual burden.
Needs and Uses: The FCC Form 430, Licensee Qualification Report is filed by new applicants or annually be licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. Part 22 applicants are required to file FCC Form 430 when soliciting authority for assignment or transfer of control if a current one is not on file as required by item 18 on FCC Form 490. Information is used by Commission staff to determine whether applicants are legally qualified to become or to remain common carrier telecommunications licensees, as required by the

Communications Act. If the information is not submitted, the Commission would be unable to fulfill its responsibility under the Communications Act to make a finding as the legal qualifications of an applicant or licensee.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2451 Filed 2–2–93; 8:45 am]

BILLING CODE 6712–01–M

[DA 93–85]

Clarification of Mellon Bank Stamp and Receipt Procedures for Feeable Application

January 29, 1993.

The Federal Communications Commission is taking this opportunity to clarify its Mellon Bank stamping procedures and how receipted copies are obtained.

Applicants wishing a stamped receipt copy of any filing must provide an additional copy (to be stamped and returned) with each filing submitted. Each application package must be assembled with the requested stamped receipt copy on top, followed by the remittance, the original application with FCC Form 155 (if required) on top, then any other supporting documentation.

Applications that are mailed or otherwise shipped must contain a self-addressed stamped envelope of sufficient size to accommodate the stamped receipt copy to be returned. If the envelope is not of sufficient size, the requested stamped receipt copy will *not* be returned to the applicant. The receipt copy of the submission and the self-addressed stamped envelope must be placed inside the mailing envelope, but on top of the original application.

When hand delivering an application, the receipt copy must be attached to the outside of the envelope containing the original application. The copy will be stamped and immediately returned when presented to the acceptance clerk at Mellon Bank.

Only those receipt copies which conform to the above filing procedures will be stamped and receipted. Any submission of receipt copies apart from the original application or any receipt copies submitted in any other packaging order will not be receipted. This policy will not prevent the original application from being processed in accordance with established procedures.

Questions concerning this Public Notice should be addressed to Regina Dorsey, Chief, Billings and Collections Branch, at 202–632–0241.

A copy of this Public Notice shall be published in the **Federal Register**.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2452 Filed 2–2–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Coastal Barrier Improvement Act; Property Availability; Prince George Joint Venture Tract "Waccamaw Neck" Area of Georgetown County, SC

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY. Notice is hereby given that the property known as the Prince George Joint Venture Tract (a/k/a the Arcadia II Tract or Carolina Dunes Tract), located in the "Waccamaw Neck" area of Georgetown County, South Carolina, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990.

DATES: Written notice of serious interest to purchase the property must be received on or before May 4, 1993;

ADDRESSES: Copies of detailed descriptions of the property, including maps, may be obtained by contacting Pete Brown, ORE Specialist, at the Federal Deposit Insurance Corporation, Addison Consolidated Office, 5080 Spectrum Drive, suite 1000E, Dallas, Texas 75248. Telephone (800) 759–9314, Extension 4744, or (214) 385–4744; Telecopier (214) 385–6273.

SUPPLEMENTARY INFORMATION: The approximately 1951.81 acre tract of land is located on both the east and west sides of U.S. Highway 17, about 7.7 miles north of Georgetown, South Carolina. The property has frontage along the Atlantic Ocean, Pawleys Inlet and the Waccamaw River. The property currently is undeveloped, but has been approved by Georgetown County, South Carolina, as a Planned Unit Development, to be comprised of three golf courses, a 500 room hotel, a marina, approximately 2308 residential units, and neighborhood commercial land uses. Several hundred acres of the property contain wetlands, ponds and saltwater marshes. Several sites of possible archaeological significance are believed to be located on the property. There also is an unconfirmed suspicion that endangered or protected species, including without limitation, the Loggerhead Turtle, Red-Cockaded Woodpecker, American Osprey and American Bald Eagle or their habitats exists in the area.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the federal government;
2. Agencies or entities of state or local government; and
3. "Qualified organizations" pursuant to section 170(h) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(s)).

Form of Notice

Notices of serious interest should be in the following form:

Notice of Serious Interest:
Prince George Joint Venture Tract,
Georgetown County, South Carolina

1. Name of eligible entity.

2. Declaration of eligibility to submit notice under criteria set forth in Public Law 101–591, section 10(b)(2).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural or natural resource conservation purposes.

Dated: January 28, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–2480 Filed 2–2–93; 8:45 am]

BILLING CODE 6714–01–M

Pilot Reinsurance Program

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is soliciting public comment on all aspects of a planned Pilot Reinsurance Program authorized by section 322 of the Federal Deposit Insurance Corporation Improvement Act of 1991 including the reinsurance process, the terms and conditions of participation by private reinsurers, and the appropriate criteria for determining which insured depository institutions may be included in the Program. The FDIC is also soliciting public comment on alternate methods of structuring a Pilot Reinsurance Program.

DATES: Written comments must be received on or before April 5, 1993.

ADDRESSES: Written comments shall be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to room F–402, 1776 F Street NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in the FDIC's Reading Room, room 7118, 550 17th Street NW., between 9 a.m. and 4:30 p.m. on business days. [FAX number (202) 898-3838]

FOR FURTHER INFORMATION CONTACT: Arthur J. Murton, Deputy Director, Division of Research and Statistics (202) 898-3938; Jennifer L. Eccles, Senior Financial Analyst, Division of Research and Statistics, (202) 898-8537; or Lisa M. Stanley, Senior Attorney, Legal Division, (202) 898-7494.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Section 322 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Public Law 102-242, requires the Board of Directors of the FDIC, in consultation with the Secretary of the Treasury and individuals from the private sector with expertise in private insurance, private reinsurance, depository institutions, or economics, to conduct a study of the feasibility of establishing a private reinsurance system. The study must include a demonstration project consisting of a simulation, by a sample of private reinsurers and insured depository institutions, of the activities required for a private reinsurance system. These activities include—

(1) Establishing a pricing structure for risk-based premiums;

(2) Formulating insurance or reinsurance contracts; and

(3) Identifying and collecting information necessary for evaluating and monitoring risks in insured depository institutions.

Section 322(a)(3) of FDICIA authorizes the FDIC to engage in actual reinsurance transactions as part of the demonstration project. As part of the new risk-based assessment system required by section 302(a) of FDICIA, the FDIC is authorized to obtain private reinsurance covering not more than 10 percent of any loss the FDIC incurs with respect to an insured depository institution and to base that institution's semiannual assessment, wholly or partially, on the cost of the reinsurance. Pursuant to section 302(g) of FDICIA, the new risk-based assessment system will become effective no later than January 1, 1994.

The FDIC intends to conduct a Pilot Reinsurance Program (Pilot Program) in 1993 and 1994 with reinsurance coverage to commence with the semiannual assessment period beginning January 1, 1994.

The FDIC may consider reinsurance information in making assessment risk classification assignments.

Before June 19, 1993, the FDIC must submit to the Congress a report on the study which must include—

(1) An analysis and review of the demonstration project;

(2) Conclusions regarding the feasibility of a private reinsurance system;

(3) Recommendations regarding whether—

(A) A private reinsurance system should be restricted to depository institutions over a certain asset size;

(B) Similar reinsurance systems are feasible for depository institutions or groups of such institutions with total assets below any recommended asset size restriction; and

(C) Public policy goals can be satisfied by such reinsurance systems; and

(4) Recommendations for administrative and legislative action as may be necessary to establish such reinsurance systems.

Before June 19, 1993, the FDIC intends to submit to the Congress a report on the study. After completion of the Pilot Program, the FDIC intends to submit an additional report to the Congress based on the results of the Pilot Program.

II. Description of Pilot Reinsurance Program

Section 322 of FDICIA requires the FDIC to conduct a private reinsurance study which must include a demonstration project and may include actual reinsurance transactions. In order to ascertain whether establishing a private reinsurance system is feasible, the FDIC has determined to engage in a Pilot Program.[1] The goal of the Pilot Program would be to determine whether private reinsurance may be a useful supplement to federal deposit insurance without compromising the public policy objectives of deposit insurance. The FDIC solicits comments on all aspects of the Pilot Program described below.

Private reinsurers would be invited to participate in the Pilot Program for the purpose of deriving market-based deposit reinsurance prices for eligible insured depository institutions. Participating reinsurers would be required to enter into contracts with the FDIC which set the terms and conditions of participation. The FDIC intends to develop a "Request for Proposal" (RFP) delineating the terms and conditions of participation based in part on comments received in response to this request for comment. Reinsurers would then submit bids or price quotes to the FDIC for reinsurance of selected institutions. The FDIC would select reinsurers to engage in actual reinsurance transactions.

A reinsurer would participate in the reinsurance transactions by agreeing to be liable for some portion of the loss or cost of assistance incurred by the FDIC in connection with an insured depository institution that fails or is provided assistance during the period for which reinsurance coverage is in effect. A reinsurer would assume liability for individual insured depository institutions. All reinsurers would operate under uniform terms with the FDIC and charge the FDIC premiums for assuming risk.

III. Description of Proposed Process

The Pilot Program would commence in 1993, with reinsurance coverage to commence with the semiannual assessment period beginning on January 1, 1994. The Pilot Program would be divided into three phases. The first phase would include the selection of participating reinsurers. The FDIC would issue an RFP to solicit participation in the Pilot Program by all interested reinsurers. The RFP would include detailed terms and conditions of participation in the Pilot Program. Interested reinsurers would be required to demonstrate that they meet the eligibility criteria established by the FDIC. In order to participate in the Pilot Program, a reinsurer must enter into a contractual agreement with the FDIC binding the reinsurer to a set of uniform terms and conditions of participation.

During the second phase of the Pilot Program, participating reinsurers would be provided with approximately six months during which to complete their analysis of insured depository institutions deemed eligible by the FDIC for reinsurance. This phase would culminate in submission of a reinsurance bid to the FDIC by each participating reinsurer. The bid would include prices for each insured depository institution the participating reinsurer is willing to reinsure and a statement of the total volume of reinsurance business desired. All other terms and conditions of reinsurance would have been established previously by the participation contract. The FDIC would assign reinsurance on the basis of price, among other possible factors, for each insured depository institution to be reinsured. Reinsurance would be allocated until the desired volume of business based on total exposure per reinsurer is reached.

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[1] Actual reinsurance transactions would commence with the semiannual assessment period beginning January 1, 1994. At that time, section 7(b) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b), will authorize the FDIC to obtain private reinsurance in connection with the new risk-based assessment system

The FDIC intends to set a maximum acceptable reinsurance price for all insured depository institutions deemed eligible by the FDIC for reinsurance. The FDIC is interested in receiving comments concerning how a maximum acceptable reinsurance price should be determined and what maximum is appropriate.

During the third phase of the Pilot Program, a separate reinsurance contract would be signed by each reinsurer for each insured depository institution to be reinsured. Reinsurance coverage would be provided for the first and second semiannual assessment periods during 1994.

The FDIC is considering requiring each participating reinsurer to assume a fixed dollar amount of liability for a particular insured depository institution. The amount of liability would be determined at the time of entering into the contract. Alternatively, the FDIC is considering ceding reinsurance equal to a percentage of the FDIC's loss from the resolution of an insured depository institution with reinsurance or the FDIC's cost of assistance.

The FDIC intends to solicit bids for participation through an RFP during the Spring of 1993. Reinsurers would be selected for participation shortly thereafter. Final Pilot Program participation contracts would be signed during late Spring of 1993. Reinsurers would begin the pricing analysis and submit prices to the FDIC by a deadline in the Fall of 1993. Actual reinsurance transactions would commence with the semiannual assessment period beginning January 1, 1994.

IV. Participants

All segments of the insurance industry and other financial firms would be eligible for participation. One requirement for selection would be the approval of the reinsurer's primary regulator. This requirement would ensure that a participant has adequate financial capacity to participate and that the type of business is authorized by the participant's primary regulator. The FDIC may establish certain financial criteria for participation including a minimum capital requirement. Furthermore, participants would be required to agree to and be bound by the terms and conditions established in the participation contract. These terms and conditions may include a strict confidentiality agreement and provisions relating to conflicts of interest.

The Pilot Program may be difficult to manage if the FDIC seeks reinsurance coverage for all insured depository institutions. Therefore, it may be necessary to select a limited group of insured institutions for which the FDIC will seek coverage. The FDIC is considering limiting the Pilot Program to insured depository institutions with assets over a given asset size, perhaps $1 billion. An alternative under consideration is to select a random sample of insured institutions. The FDIC believes that selecting institutions on the basis of financial condition or allowing institutions to opt out of the Pilot Program could severely bias the results of the study. The FDIC seeks comments on the appropriate manner of limiting the number of insured depository institutions in the Pilot Program.

Insured depository institution subsidiaries of a depository institution holding company which meet the criteria established for inclusion in the Pilot Program would be reinsured separately from affiliated insured depository institutions.

V. Process Issues

The FDIC is interested in receiving comments on alternate methods of structuring a Pilot Program. Additionally, the FDIC is interested in receiving comments on all general process issues relating to the Pilot Program under consideration, including:

1. How should the pricing information received by the FDIC during the Pilot Reinsurance Program affect an insured depository institution's assessment rate, if at all?
2. What should be the effect of an insured depository institution being considered "unreinsurable" as determined based on the bids received from participating reinsurers?
3. Should participating reinsurers be reimbursed for development costs? If so, should reinsurers be reimbursed fully or should development costs be shared between the FDIC and reinsurers? How should any reimbursement for development costs factor into the FDIC's acceptance or bids?
4. Should the FDIC accept only one bid for reinsurance for each insured depository institution or accept multiple bids for reinsurance up to the total amount of reinsurance desired?

VI. Issues Related to Terms and Conditions of Participation by Private Reinsurers

The FDIC is interested in receiving comments relating to establishing appropriate terms and conditions of participation in the Pilot Program by private reinsurers, including the following possible terms and conditions:

1. General Terms

Reinsurance contracts would be entered into between the FDIC and participating reinsurers. An insured depository institution deemed eligible for reinsurance by the FDIC would not be a party to the reinsurance contract.

All reinsurers would be required to agree to a uniform set of terms and must enter into identical participation contracts with the FDIC. Terms and conditions of participation in the Pilot Program and for actual reinsurance would be set forth in contracts prepared by the FDIC. Commenters may wish to recommend specific contract language for consideration by the FDIC. Reinsurers would be required to enter into separate contracts for participation in the Pilot Program and for reinsurance of individual insured depository institutions. Separate reinsurance contracts identifying the insured depository institution to be reinsured and setting the reinsurance premium would be signed for each transaction. Reinsurers would be excluded from any participation in the supervision, resolution, and liquidation processes.

The FDIC intends to reserve the right to cancel a reinsurance contract at any time during the term of the contract. The FDIC does not intend to permit reinsurers to cancel reinsurance during the term of the contract.

2. Duration

The FDIC envisions an appropriate term for reinsurance contracts as a period of one to two years. The FDIC requests comments on whether one year or some longer term is appropriate for such contracts.

3. Pricing

The FDIC would determine a maximum acceptable reinsurance price for all eligible insured depository institutions. The FDIC would not enter into reinsurance contracts in which the premium quoted exceeds the maximum acceptable reinsurance price, as determined by the FDIC. All bids received with reinsurance prices in excess of this maximum amount would be rejected. Each reinsurer would charge the FDIC directly for the reinsurance premium.

4. Repricing

The FDIC seeks comments on whether reinsurers should be permitted to adjust premiums during the term of the reinsurance contract. If so, should there be a cap on the amount of repricing permitted?

5. Exposure

The FDIC is considering setting a fixed dollar amount of reinsurer liability for the cost of resolution or assistance at the time of entering into reinsurance contracts. Alternatively, the FDIC is considering ceding reinsurance equal to 1 percent of the FDIC's loss from the resolution of an insured depository institution with reinsurance or the FDIC's cost of assistance. This alternative may be subject to a stop-loss provision whereby the maximum loss exposure to a reinsurer would be tied to the size of the institution. The FDIC requests comment on the appropriate percentage of loss to cede for reinsurance and the appropriate stop-loss provisions.

6. Information Requirements

Most data necessary for determining reinsurance premiums would be generated based on the quarterly consolidated reports of condition and income and other publicly available information.

The FDIC requests comments on whether access to reports of examination is essential to providing reinsurance. If access to examination reports were permitted for the purpose of formulating a reinsurance bid, such access would be subject to appropriate privacy safeguards, confidentiality agreements, and the receipt of express permission of the appropriate Federal banking agency.

The FDIC is also interested in receiving comments concerning the anticipated burden on insured depository institutions of possible contacts from reinsurers interested in submitting a reinsurance bid for a particular insured depository institution.

7. Bidding Requirements

Each participating reinsurer would be required to submit a list of reinsurance prices to the FDIC by a deadline established by the FDIC for receipt of bids. Each such reinsurer would be required to specify which insured depository institutions it is willing to reinsure, under the terms previously established by the participation contract. The bid must also state the total volume of reinsurance exposure that the reinsurer is willing to accept, based on the price and exposure established per insured depository institution.

8. Conflicts of Interest

The FDIC intends to require interested reinsurers to disclose to the FDIC all potential conflicts of interest prior to entering into the participation contract.

9. Captive Insurance Companies

Insured depository institutions may own or control a subsidiary engaged in insurance or reinsurance activities. The FDIC intends to prohibit such "captive" insurance companies from reinsuring affiliated insured depository institutions.

10. Eligibility

The FDIC may require the approval of a reinsurer's regulator in order to affirm that the reinsurer is in sound financial condition and authorized by the regulator to engage in reinsurance business. The FDIC is considering establishing certain minimum financial criteria for participating reinsurers such as a minimum capital requirement to be maintained throughout the duration of the Pilot Program. The FDIC is interested in receiving comments concerning whether minimum financial criteria for participating reinsurers are feasible, and, if so, how the appropriate minimum requirements should be determined.

VII. Issues Related to Eligibility of Insured Depository Institutions To Be Included in the Pilot Reinsurance Program

The FDIC is interested in receiving comments relating to establishing appropriate criteria for eligibility of insured depository institutions to be included in the Pilot Program.

1. Insured Depository Institutions

All insured depository institutions would be eligible for reinsurance, except insured branches of foreign banks. To make the Pilot Program manageable, the FDIC intends to select a limited group of insured institutions for which the FDIC will seek coverage. As discussed earlier, the FDIC is seeking comments on the appropriate manner of limiting the number of insured depository institutions in the Pilot Program.

2. Depository Institution Holding Companies

Insured depository institution subsidiaries of a depository institution holding company which meet the criteria that may be established for inclusion in the Pilot Program would be reinsured separately from affiliated insured depository institutions.

By Order of the Board of Directors. Dated at Washington, DC, this 26th day of January, 1993.

Federal Deposit Insurance Corp.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-2482 Filed 2-2-93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-977-DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA-977-DR), dated January 19, 1993, and related determinations.

EFFECTIVE DATE: January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 19, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

> I have determined that the damage in certain areas of the State of Arizona, resulting from flooding on January 5, 1993, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arizona.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

The counties of Apache, Coconino, Gila, Graham, Greenlee, Maricopa, Navajo, Pima, Pinal, and Yavapai for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

William C. Tidball,

Acting Director.

[FR Doc. 93–2512 Filed 2–2–93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA–974–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–974–DR), dated December 21, 1992, and related determinations.

EFFECTIVE DATE: January 23, 1993.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Stephen Kempf, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates the appointment of Jose Bravo as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Acting Director.

[FR Doc. 93–2513 Filed 2–2–93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Jacksonville Port Authority and Columbus Line, Inc., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200609–001.

Title: Jacksonville Port Authority and Columbus Line, Inc. Marine Terminal Agreement.

Parties:

The Jacksonville Port Authority ("JPA") Columbus Line, Inc.

Synopsis: The Agreement reflects rate increases and enlarges the leased premises under the basis Agreement.

Agreement No.: 224–200727.

Title: San Francisco/Central American Container Line Terminal Agreement.

Parties:

San Francisco Port Commission
Central American Container Line, S.A. ("CACL")

Synopsis: In return for making San Francisco its Northern California port of call CACL will receive a reduction in dockage and wharfage rates specified in the Port's tariff. The Agreement will remain in effect for three years.

Dated: January 28, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2515 Filed 2–2–93; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; State of Hawaii/Matson Terminals, Inc., et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–003813–014.

Title: State of Hawaii/Matson Terminals, Inc., Terminal Agreement.

Parties:

Department of Transportation of the State of Hawaii
Matson Terminals, Inc.

Filing Party: Rex D. Johnson, Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813–5097.

Synopsis: The subject modification reflects revisions in the size of several areas and easements incorporated in the lease between the parties.

Dated: January 29, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2516 Filed 2–2–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation*, New York, New York; to engage *de novo* through its subsidiary, Bankers Trust Company Connecticut Ltd., Greenwich, Connecticut, in trust company functions through organization of a limited purpose state chartered trust company in Greenwich, Connecticut, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, InvestNet, in permissible securities brokerage activities and investment advisory services pursuant to § 225.25(b)(15) and (b)(4) of the Board's Regulation Y.

C. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Union Bancorp, Inc.*, Bowling Green, Virginia; to engage *de novo* through its subsidiary, Union Investment Services, Inc., Bowling Green, Virginia, in providing securities brokerage services pursuant to § 225.25(b)(15)(i); and investment advisory services pursuant to § 225.25(b)(15)(ii) of the Board's Regulation Y. These activities will be conducted in the State of Virginia.

D. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Columbus Bancorp, Inc.*, Indianapolis, Indiana; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1); and investing in a low income housing project pursuant to § 225.25(b)(6) of the Board's Regulation Y.

2. *Salin Bancshares, Inc.*, Indianapolis, Indiana; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Bank of Tokyo, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, BOT Financial Corporation, Boston, Massachusetts, in higher residual value leasing pursuant to § 225.25(b)(5)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2487 Filed 2–2–93; 8:45 am]

BILLING CODE 6210-01-F

Firstar Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 26, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Firstar Corporation*, Milwaukee, Wisconsin, and Firstar Corporation of Iowa, Des Moines, Iowa; to merge with Metro Bancorporation, Waterloo, Iowa, and thereby indirectly acquire The Waterloo Savings Bank, Waterloo, Iowa.

2. *Illinois State Bancorp, Inc.*, Wheaton, Illinois, and Bourbonnais Bancorp, Inc., Bourbonnais, Illinois, to acquire 99 percent of the voting shares of Presidential Holdings, Inc., Bourbonnais, Illinois, and thereby indirectly acquire Bank of Bourbonnais, Bourbonnais, Illinois. In connection with this application, Bourbonnais Bancorp, Inc. has applied to become a bank holding company by merging with Presidential Holdings, Inc.

3. *River Forest Bancorp, Inc.*, Chicago, Illinois; to acquire 100 percent of the voting shares of Belmont National Bank, Chicago, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to merge with DCB Corporation, Jasper, Indiana, and thereby indirectly acquire Dubois County Bank, Jasper, Indiana.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Commerce Bancshares, Inc.*, Kansas City, Missouri, and its subsidiary, CBI Security Corp., Kansas City, Missouri; to acquire Republic Bancshares, Inc., Neosho, Missouri, and thereby indirectly acquire Republic Bank, Republic, Missouri. In connection with this application, CBI Security Corp. has applied to become a bank holding company by merging with Republic Bancshares, Inc.

2. *The Farmers State Bank of Hardtner, Kansas, Employee Stock Ownership Plan*, Hardtner, Kansas; to become a bank holding company by acquiring 50 percent of the voting shares of B-K Agency, Inc., Hardtner, Kansas, and thereby indirectly acquire The Farmers State Bank, Hardtner, Kansas.

Board of Governors of the Federal Reserve System, January 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2486 Filed 2–2–93; 8:45 am]

BILLING CODE 6210–01–F

David Walthall; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 19, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *David Walthall*, Dallas, Texas; to acquire an additional 29.0 percent of the voting shares of Equitable Bancshares, Inc., Dallas, Texas, for a total of 52.8 percent, and thereby indirectly acquire Equitable Bank, N.A., Arlington, Texas, and Equitable Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, January 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2488 Filed 2–2–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse Mental Health Services Administration

Drug Testing Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board.

The Drug Testing Advisory Board will be performing reviews of the National Laboratory Certification Program inspections and operations; therefore portions of this meeting will be closed to the public as determined by the Acting Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and a roster of committee members may be obtained from: Ms. Peggy Cockrill, Committee Management Officer, Substance Abuse and Mental Health Services Administration, Parklawn Building, room 12C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4266).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date(s): March 11, 1993.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: 8:30 a.m.–10:15 a.m.

Closed : Otherwise.

Contact: Donna Bush, room 9A–53, Parklawn Building, Telephone: (301) 443–6014.

Dated: January 28, 1993.

Peggy W. Cockrill,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–2496 Filed 2–2–93; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3570]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The Office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 28, 1993.

Kay Weaver,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Preauthorization Debit-HUD PAD Authorization

Office: Housing.

Description of the Need for the Information and its Proposed Use: The preauthorized debit is a method for making monthly payments using electronic funds transfer to debit a program participant's checking or, in some instances, savings account. The program participant owes the Department a specific monthly amount and may elect to pay by this method. This form is needed to obtain the data to effect a preauthorized debit.

Form Number: HUD–56144.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Questionnaire	2,000		1		.25		500

Total Estimated Burden Hours: 500

Status: Extension.

Contact: Ann Baird-Bridges, (202) 708–3206. Angela Antonelli, OMB, (202) 395–6880.

Dated: January 28, 1993.

Proposal: Request for Insurance Endorsement Under the Direct Endorsement Program.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The Direct Endorsement Program permits mortgage lenders to underwrite applications for mortgage insurance applications without prior HUD review. Lenders then submit the closing package to the Department with a request for insurance endorsement.

Form Number: HUD–5411.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–54111	4,800		125		0.167		100,000

Total Estimated Burden Hours: 100,000.

Status: Extension.

Contact: Roxanne Zimmerman, HUD, (202) 708–2700, Angela Antonelli, OMB, (202) 395–6880.

Dated: January 28, 1993.

[FR Doc. 93–2511 Filed 2–2–93; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Sisseton-Wahpeton Sioux Tribe, North Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Control of Class III Games of Chance for the Sisseton-Wahpeton Sioux Tribe in North Dakota, enacted on December 9, 1992.

DATES: This action is effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–0994.

Dated: January 25, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–2483 Filed 2–2–93; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[OR–030–03–4333–01: G3–101]

Call for Nominations for District Advisory Council

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Call for nominations for District Advisory Council.

SUMMARY: The purpose of this notice is to solicit public nominations to fill the position of Non-Renewable Resources on the BLM Vale District Multiple-Use Advisory Council for the term expiring December 31, 1994.

To assure council membership that is fairly balanced in terms of points of view represented and functions performed, nominees must be qualified to provide advice in the area identified, Non-Renewable Resources (Mining, oil and gas, extractive industries).

The purpose of the council is to provide informed advice to the respective BLM District Manager on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager at the corresponding BLM District Office.

DATES: All nominations should be received by March 31, 1993.

ADDRESSES: The nominations should be mailed to the BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Bureau of Land Management, Vale District, 100 Oregon Street, Vale, OR 97918, (Telephone 503–473–3144).

James E. May,

District Manager.

[FR Doc. 93–2450 Filed 2–2–93; 8:45 am]

BILLING CODE 4310-33-M

[NV–930–4210–05; N–52545]

Realty Action; Lease/Purchase Recreation and Public Purposes (R&PP) Act, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of public lands in Nye County.

SUMMARY: The following described public land in Armagosa Valley, Nye County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Nye County

School District proposes to use the land for school site expansion of the existing facilities which are developed under a Recreation and Public Purposes patent.

Mount Diablo Meridian, Nevada

T. 16 S., R. 49 E.,
Section 9, NW¼SW¼SE¼.
Containing 10 acres more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest.

The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Nye County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: January 20, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93-2475 Filed 2-2-93; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Migratory Bird Hunting and Conservation Stamp (Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Service announces the dates and locations of the 1993 Federal Duck Stamp Contest, and the public is invited to attend.

DATES: 1. This action is effective July 1, 1993, the beginning of the 1993–1994 contest.

2. The public may view the 1993 Federal Duck Stamp Contest entries on Sunday, November 7, from 1–5 p.m., and Monday, November 8, 1993, from 10 a.m. to 2 p.m., in the Department of the Interior Auditorium.

3. This year's contest will be held from November 9–10, 1993, beginning at 10:30 a.m. on Tuesday and continuing at 9 a.m. on Wednesday.

4. Persons wishing to enter this year's contest may submit entries anytime after July 1, but all must be postmarked no later than midnight September 15.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights and the display and participation agreements should be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, NW., Suite 2058, Washington, DC 20240.

Location of contest: Department of the Interior Building Auditorium (C Street Entrance), 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Wyman, Acting Chief, Federal Duck Stamp Program, U.S. Fish and Wildlife Service, Washington, DC 20240, Telephone: (202) 208–4354.

SUPPLEMENTARY INFORMATION: The following five eligible species for the 1993–1994 Duck Stamp Contest are listed below:

(1) Black Scoter
(2) Barrow's Goldeneye
(3) Red-Breasted Merganser
(4) Surf Scoter
(5) Mottled Duck

The primary author of this document is Barbara Wyman, U.S. Fish and Wildlife Service.

Dated: January 27, 1993.

Richard N. Smith,

Deputy Director

[FR Doc. 93-2543 Filed 2-2-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service.

ACTION: Notice of correction of meetings dates for the Vancouver Historical Study Commission.

This notice corrects the February meeting date published in the **Federal Register** December 24, 1993, (Volume 57, No. 248, Page 61448) for a public meeting of the Vancouver Historical Study Commission. The scheduled meeting for February 9, 1993, has been cancelled. The cancelled meeting will be replaced by a conference call on Tuesday, February 16, 1993, to be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. The Commission conference call will start at 9 a.m., and will adjourn no later than 11 a.m.

The public is welcome to monitor the conference call in the Vancouver City Council Chambers. No further public meetings are anticipated to be held by the Vancouver Historical Study Commission. It is expected that the final Commission report will be printed and sent to the Secretary of the Interior and the Secretary of the Army on or before March 30, 1993.

Further information concerning the conference call, please contact the Superintendent, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661–3811, or by telephone (206) 696 7655.

Dated: January 26, 1993.

Charles H. Odegaard,

Regional Director.

[FR Doc. 93-2449 Filed 2-2-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-338]

Certain Bulk Bags and Process for Making Same; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: Sanwey Industria de Containers, Ltda.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 26, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register.** Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: January 26, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–2520 Filed 2–2–93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–571 (Final)]

Professional Electric Cutting and Sanding/Grinding Tools From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–571 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of professional electric cutting and sanding/grinding tools.[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules or general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202–205–3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of professional electric cutting and sanding/grinding tools from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 29, 1992, by Black & Decker Corp., Towson, MD.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 10, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

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[1] For purposes of this investigation, professional electric cutting tools have blades or other cutting devices used for cutting wood, metal, and other materials. This category of tools includes chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools, provided for in subheadings 8508.20.00, 8461.50.00, and 8465.91.00 of the Harmonized Tariff Schedule of the United States (HTS).

Professional electric sanding/grinding tools have moving abrasive surfaces used primarily for grinding, scraping, cleaning, deburring, and polishing wood, metal, and other materials. This category of tools includes angle grinders, finishing sanders, disc sanders, orbital sanders, belt sanders, polishers, straight grinders, die grinders, and similar sanding/grinding tools, provided for in HTS subheading 8508.80.00.

The products subject to this investigation may be assembled or unassembled (in kits), corded or cordless, and include all hand-held professional electric cutting and sanding/grinding tools and the following bench-top, hand-operated professional electric cutting tools: cut-off saws, PVC saws, chop saws, cutoff machines, miter saws (including slide compound saws), and band saws with detachable bases, provided for in HTS subheadings 8461.50.00 and 8465.91.00. The subject products do not include consumer electric tools, professional electric drilling/fastening tools, lawn and garden tools, heat guns, paint and wallpaper strippers, and chain saws.

For a more detailed description of the products subject to this investigation, see the Department of Commerce's notice of preliminary determinations published on January 4, 1993 (58 FR 81).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 21, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 13, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 10 a.m. on May 17, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 17, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 1, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 1, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 27, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-2519 Filed 2-2-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-572 (Final)]

Certain Special Quality Carbon and Alloy Hot-Rolled Steel Bars and Semifinished Products From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-572 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain special quality carbon and alloy hot-rolled steel bars and semifinished products, provided for in subheadings 7207.11.00, 7207.12.00, 7207.19.00, 7207.20.00, 7214.30.00, 7214.40.00, 7214.50.00, 7214.60.00, 7224.10.00, 7224.90.00, and 7228.30.80 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: January 11, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie Kaplan (202-205-3199) or Jim McClure (202-205-3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information of this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain special quality carbon and alloy hot-rolled bars and semifinished products from Brazil are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 9, 1992, by Republic Engineered Steels, Inc., Massillon, OH, and the Timken Company, Canton, OH.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 19, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 2, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 20, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 26, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

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[1] For a more detailed description of the products subject to this investigation, see the Department of Commerce's notice of preliminary determination (58 FR 3533, Jan. 11, 1993).

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 26, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 10, 1993; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before June 10, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 28, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-2518 Filed 2-2-93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-341]

Decision Not To Review an Initial Determination Granting in Part Motion for Summary Determination on the Issue of Domestic Industry

In the Matter of Certain Static Random Access Memories, Components Thereof, and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 5) issued on December 30, 1992, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting in part the motion of complainant SGS-Thomson Microelectronics, Inc. ("ST") for summary determination on the issue of domestic industry.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation and sale of static random access memories (SRAMs), components thereof, and products containing same, on September 25, 1992. Complainant ST alleges infringement of claims 1 and 4 of U.S. Letters Patent 4,125,854 ("the '854 patent") and claims 1, 2, 3, 6, 7, 8, 11, 12, 15, and 17 of U.S. Letters Patent 4,251,876 ("the '876 patent").

ST filed a motion for summary determination on the domestic industry issue on November 20, 1992. As originally framed, the motion sought a determination that a domestic industry existed with respect to the '854 and '876 patents. ST, however, subsequently withdrew its request for a determination that it practices the '854 and '876 patents. Instead, it limited its motion to the question of whether its economic activities in the United States are sufficient to satisfy the requirements of section 337(a)(2). ST's motion was opposed, both as originally framed and as limited, by respondent United Microelectronics Corporation and by the Commission investigative attorney.

In the ID, the ALJ granted the motion as limited by ST. In other words, the ALJ concluded that, if ST can establish that it practices the '854 and '876 patents, it satisfies the remaining elements of the "domestic industry" requirement with respect to these patents. No petitions for review of the ID or agency comments were filed. This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the nonconfidential version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Dated: January 25, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-2521 Filed 2-2-93; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 343X)]

Burlington Northern Railroad Co.—Abandonment Exemption—In Latah County, ID

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon a 0.333-mile rail line between milepost 90.424 and milepost 90.091 in Moscow, in Latah County, ID.

BN has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b), 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication), and

49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 5, 1993, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29[4] must be filed by February 15, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 23, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to BN's representative: Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

If the notice contains false or misleading information, the exemption is void *ab initio*.

BN has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 8, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2547 Filed 2–2–93; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Under the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on the 20th day of January, 1993, a proposed Consent Decree in *United States* v. *Arizona Electric Power Cooperative*, Civil Action CIV 92–383 TUC RBM, was lodged with the United States District Court for the District of Arizona. The Complaint was filed in this case for civil penalties and injunctive relief against Arizona Electric Power Cooperative pursuant to sections 111(e) and 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7411(e) and 7413(b), for violations of the Arizona State Implementation Plan (SIP) by failing to obtain a State permit before modifying its pollution control operating procedures and for violations of the New Source Performance Standards at 40 CFR 60.11(d), that prohibits operation of a major source without practicing good air pollution control to minimize discharges of pollutants. The violations involved operations of Generating Units Nos. 2 and 3 at the Apache Generating Station, near Cochise, Arizona.

The proposed Consent Decree requires that the defendant pay $120,000 in settlement of the United States' claims for civil penalties. The defendant is subject to an injunction requiring future operations to be in compliance with the Arizona regulations contained in the SIP. Additionally, the consent decree requires the installation of redesigned and modified sootblower on Unit No. 2 and testing to determine the need for modifying, and modifying if found necessary, its electrostatic precipitator on Unit No. 2. The decree requires payment of stipulated penalties in the event of violation of emissions standards specified in the decree or of time requirements for modifying and testing of equipment.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Arizona Electric Power Cooperative*, D.J. Ref. No. 90–5–2–1–1441.

The proposed Consent Decree may be examined at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Copies of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone number (202) 634–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please tender a check in the amount of $6.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section.

[FR Doc. 93–2474 Filed 2–2–93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, set out in 28 CFR 50.7, notice is hereby given that on January 19, 1993, a proposed consent decree in settlement of *United States* v. *Industrial Resources, Inc., R.H.S. Lee, Inc., and Santa Fe Engineers, Inc.*, Civil Action No. 93–00038 HMF, was lodged with the United States District Court for the District of Hawaii. In the Complaint in that action, the United States seeks civil penalties and injunctive relief for alleged violations of the National Emission Standards for Hazardous Pollutants promulgated under section 112 of the Clean Air Act, 42 U.S.C. 7412, and codified at 40 CFR part 61, subpart M. The alleged violations occurred in December 1988 and February 1989 at the renovation of the Tripler Army Hospital, Ft. Shafter, Honolulu, Hawaii, and in June 1989 at the Market Place, Kauai, Hawaii. The proposed settlement requires the payment of a civil penalty of $30,000 and imposes injunctive relief regarding future work involving asbestos.

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[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. BN indicated in its verified notice a proposed consummation date of February 1, 1993; however, because the verified notice was not filed until January 14, 1993, consummation should not take place prior to March 5, 1993. BN's representative has confirmed the corrected consummation date.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987)

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Industrial Resources, Inc., et al.*, D.J. Ref. No. 90-5-2-1-1403.

The consent decree may be examined at the Office of the United States Attorney, District of Hawaii, room C-242, United States Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850; at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005) Tel. (202) 624-0892. A copy of the consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please tender a check in the amount of $5.25 (25 cents per page reproduction charge) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2472 Filed 2-2-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree in United States v. Town of Lowell, IN

In accordance with 28 CFR 50.7, notice is hereby given that on January 19, 1993, a proposed Consent Decree in *United States of America* v. *Town of Lowell, Indiana*, Civil Action No. H91-191, was lodged with the United States District Court for the Northern District of Indiana. This action was brought pursuant to the Safe Drinking Water Act ("SDWA"), 42 U.S.C. 300f et seq. The complaint alleged that Defendant Town of Lowell violated certain requirements of the SDWA, the National Primary Drinking Water Regulations, codified at 40 CFR part 141, and an Administrative Order issued by the United States Environmental Protection Agency pursuant to SDWA section 1414(g), 42 U.S.C. 300-g-3, requiring the Town to comply with the fluoride maximum contaminant level by December 1, 1989.

Under the proposed Decree, the Town of Lowell will abide by a schedule that will bring the Town into compliance with the fluoride maximum contaminant level by June 16, 1995, through either (1) construction of a new water well source, or (2) connection with an existing water system. In addition, the Town will pay a civil penalty of $65,000.

The Department of Justice will receive comments on the proposed Consent Decree for a period of 30 days from the date of publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Town of Lowell, Indiana*, D.J. Ref. No. 90-5-1-1-3644.

The proposed Consent Decree may be examined at the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604 (312-886-0556); the Office of the United States Attorney for Northern Indiana, 507 State St., 4th Floor, Hammond, Indiana 46320 (219-937-5364); and the U.S. Department of Justice, Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202-624-0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please specify the document sought, together with a check payable to the "Consent Decree Library" for $4.25 ($.25 per page reproduction costs).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2473 Filed 2-2-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act (CAA)

In accordance with 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Twin County Recycling Corp.* (Twin County) (E.D.N.Y.), Civil Action No. 89-0946, was lodged with the United States District Court for the Eastern District of New York on January 22, 1993. The Consent Decree requires Twin County of Hicksville, New York to apply to the New York State Department of Environmental Conservation for a special condition, to be included in its facility's Certificate to Operate a source of air contamination, which would limit the facility's operation to 7,092 hours per calendar year. The Consent Decree further requires Twin County to pay a civil penalty in the amount of $6,500 to the United States for its failure to comply timely with an information request under section 114 of the CAA and an Administrative Order issued by the Environmental Protection Agency under section 113(a) of the CAA to conduct stack emissions testing at the facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Twin County Recycling Corp.*, D.O.J. No. 90-5-2-1-1345.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of New York, 1 Pierrepont Plaza, 11th Floor, Brooklyn, New York 11021; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.75 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2471 Filed 2-2-93; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 73-93]

Privacy Act of 1974; Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and Office of Management and Budget Circular No. A-130, Department components have reviewed their Privacy Act systems of records to identify any minor changes that will clarify and/or more accurately describe their systems of records. As a result, the Department is republishing four systems of records and one appendix of system locations.

Specifically, the Office of the Pardon Attorney is republishing three systems of records entitled "Executive Clemency Files, Justice/OPA-001," "Miscellaneous Correspondence File, Justice/OPA-002," and "Freedom of Information/Privacy Acts (FOI/PA) Request File, Justice/OPA-003." In addition, the Executive Office for United States Attorneys is republishing the "Appendix of United States Attorneys' Office Locations, Justice/USA-999." Finally, the Antitrust Division is republishing its "Congressional and White House

Referral Correspondence Log File, Justice/ATR–002" system to show that the records will be retrieved from the system not only by name of the person who originated the inquiry but, on occasion, by name of the individual who may have "referred" the inquiry to the Antitrust Division. As a result, the system will now cover a new category of individuals. Accordingly, we are providing an opportunity to comment on the routine uses of the system in accordance with 5 U.S.C. 552a(e) (4) and (11). Address any comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC. 20530 (room 850, Washington Center Building).

All changes to the systems of records have been italicized for public convenience.

Dated: December 7, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/OPA–001

SYSTEM NAME:

Executive Clemency Files.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, *500 First Street, NW., Seventh Floor, Washington, DC. 20530*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for or been granted Executive clemency.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the individual petitions for executive clemency and accompanying oath and character affidavits, investigatory material, evaluative reports, official and other correspondence, both solicited and unsolicited and inter-agency and intra-agency correspondence and memoranda relating to individual petitions for clemency. The system includes Presidential Clemency Board files transferred to the OPA upon termination of the Board on September 15, 1975.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2; Executive Order of the President dated June 16, 1893; Order of the Attorney General No. 1011–83, 48 FR 22290 (1983), as codified in 28 CFR 1.1 et seq.; Order of the Attorney General No. 1012–83, 48 FR 22290 (1983), as codified in 28 CFR 0.35 and 0.36; E.O. 11878 dated September 10, 1975; and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

Exectutive clemency files are maintained by the Attorney General or his designee to investigate each petition for Executive clemency, to review each petition and the information developed by the investigation and to determine whether, in his judgment, the request for clemency is of sufficient merit to warranty a recommendation for favorable action by the President. The information also is used by Federal parole authorities and other Department of Justice employees to assist them in the performance of their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system may be used as follows: (a) To provide information to the President and member of his staff to facilitate the consideration of the Attorney General's recommendation regarding each petition for Executive clemency; (b) to prepare notices to the public of the name of each grantee of clemency, date of Presidential action, nature of clemency granted, nature of grantee's offense, date and place of sentencing, description of sentence imposed, and names of character affiants and interested parties; to disclose similar information to that specified above with respect to clemency denials of general public interest if the disclosure does not constitute an unwarranted invasion of privacy; (c) to prepare bound and indexed volumes containing photocopies of the official warrant of clemency granted each recipient of clemency as a public and official record of Presidential action; (d) upon specific request, to advise the requester whether a named person has applied for, been granted or denied clemency, the date thereof, and the nature of the clemency granted or denied; (e) upon specific request, to make closed files available for historical research purposes when in the public interest and in conformity with Department of Justice policy; (f) to provide information which indicates a violation or apparent violation of law, whether civil, criminal or regulatory in nature, to the appropriate agency, whether Federal, State, local or foreign; or to provide information either in connection with the solicitation of information necessary and relevant to Executive clemency review or to assist these agencies, where appropriate, in performing their law enforcement responsibilities in situations other than those involving a violation or apparent violation of law, e.g., state parole or clemency review; (g) to provide information to present and former law enforcement and judicial authorities to permit the formulation of comments and recommendations regarding individual clemency matters arising from cases with which they may be familiar; (h) to provide information to assist sentencing authorities in executing appropriate actions subsequent to Presidential clemency decisions; (i) to release information in a proceeding before a court or adjudicative body before which the OPA is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. the OPA; ii. any employee of the OPA in his or her official capacity; iii. any employee of the OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or, iv. the United States where the OPA determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the OPA to be arguably relevant to the litigation; (j) to disseminate information to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (k) to make information available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and (l) to make records available to the National Archives and Record Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained in its original form (i.e., paper letters, notes and memoranda) and stored in locked file cabinets in the OPA and in the Federal Records Center in Suitland, Maryland.

RETRIEVABILITY:

Information is retrieved by using a name index to obtain the case file number assigned to each applicant for Executive clemency.

SAFEGUARDS:

Information contained in the system is protected in accordance with Department of Justice security regulations for Privacy Act systems of records. Files are maintained in the OPA or in the Federal Records Center, are not commingled with other Department of Justice records, and are made available only in accordance with the aforementioned routine uses. When not in the custody of an appropriate official, records are stored in a central file room *in a secure government building*.

RETENTION AND DISPOSAL:

Records are stored in the OPA and closed cases generally are transferred to the Federal Records Center in Suitland, Maryland when two years old. Except for clemency reports which are furnished to the President in connection with clemency application, Presidential responses, warrants or other documents signifying the President's action in a clemency case, and cases which may be designated by the Pardon Attorney as having significant public interest, records are destroyed after 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Pardon Attorney, Office of the Pardon Attorney, Department of Justice, *500 First Street, NW., Seventh Floor, Washington, DC 20530*

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney, Department of Justice, *500 First Street, NW., Seventh Floor, Washington, DC 20530*

RECORD ACCESS PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document. Provided full name, current address, date and place of birth, signature (which must be notarized) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted Executive Clemency files from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the OPA staff, individual applicants for clemency and their representatives, Federal Bureau of Investigation or other official investigatory reports. Bureau of Prisons records, Armed Forces reports, probation of parole reports, and reports from individuals or non-Federal organizations, both solicited and unsolicited.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

Justice/OPA-002

SYSTEM NAME:

Miscellaneous Correspondence File.

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, *500 First Street, NW., Seventh Floor Washington D.C. 20530*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the named subjects of OPA incoming and outgoing correspondence, but who have not formally applied for or received Executive clemency. Also, individuals who have corresponded with the OPA, either directly or by referral, but whose correspondence either may or may not pertain to a particular named individual, including the correspondent, or whose correspondence does not contain a request for information under the Freedom of Information/Privacy Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains miscellaneous correspondence originated by OPA and received by OPA, either directly or by referral, excluding correspondence pertaining to (1) individuals who have formally applied for or received Executive clemency and (2) individuals who have made formal requests for records under the Freedom of Information/Private Acts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2; Executive Order of the President dated June 16, 1893; Order of the Attorney General No. 1011-83, 48 FR 22290 (1983), as codified in 28 CFR 1.1 *et seq.*; Order of the Attorney General No. 1012-83, 48 FR 22290 (1983), as codified in 28 CFR 0.35 and 0.36; E.O. 11878 dated September 10, 1975; and 44 U.S.C. 3101.

PURPOSE OF THE SYSTEM:

Records in the system are used by employees in the performance of their duties for reference and informational purposes to facilitate efficient, accurate and consistent responses to oral and written inquiries, particularly successive inquiries, and to provide access for a reasonable period of time to any relevant and necessary information which may assist in formulating policy and/or in considering potential and/or in considering potential candidates for Executive clemency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system may be used as follows: (a) To provide information to the President and members of his staff which may be of political, policy or official interest and/or which may assist them in formulating policy decisions regarding the exercise of Executive clemency; (b) to release information in a proceeding before a court or adjudicative body before which the OPA is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. The OPA; ii. any employee of the OPA in his or her official capacity; iii. any employee of the OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or, iv. the United States where the OPA determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the OPA to be arguably relevant to the litigation; (c) to disseminate information to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (d) to make information available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (e) to make records available to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained in its original form (i.e., paper letters, notes and memoranda) and stored in locked file cabinets in the OPA.

RETRIEVABILITY:

Information is retrieved by the name of the individuals covered by the system.

SAFEGUARDS:

Information in the system is protected in accordance with Department of Justice security regulations for Privacy Act systems of records. Records are maintained in the OPA and are not commingled with other Department of Justice records. When not in the custody of an appropriate official, records are stored in a central file room *in a secure government building*.

RETENTION AND DISPOSAL:

Records are destroyed at the end of the calendar year following the calendar year in which they were received (incoming correspondence). If an individual covered by the system formally applies for or receives Executive clemency, all records pertaining to that individual will be transferred immediately to the Executive Clemency Files (JUSTICE/OPA–001).

SYSTEM MANAGER(S) AND ADDRESSES:

Pardon Attorney, Office of the Pardon Attorney, Department of Justice, *500 First Street, NW., Seventh Floor, Washington, DC 20530*.

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney, Department of Justice, *500 First Street, NW., Seventh Floor, Washington, DC 20530*.

RECORD ACCESS PROCEDURES:

Requests for records in the system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request" and shall be addressed to the system manager listed above. Include in the request the general subject matter and date of correspondence. Provide full name, current address, date and place of birth, signature (which must be notarized) and a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Requests to contest or amend records shall be addressed in writing to the system manager and shall state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information are the individuals covered and the OPA staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/OPA–003

SYSTEM NAME:

Freedom of Information/Privacy Acts (FOI/PA) Request File

SYSTEM LOCATION:

Office of the Pardon Attorney (OPA), U.S. Department of Justice, *500 First Street, NW., Seventh Floor Washington, DC. 20530*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests pursuant to the FOI/PA (5 U.S.C. 552 and 552a) for copies of records in the custody of the OPA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the FOI/PA requests and a copy of the outgoing response advising the requester of the disposition of the request. The system includes copies of the requested records which have not been released either in whole or in part. In addition, it also contains copies of memoranda addressed to the Office of Information and Privacy prepared in connection with any administrative appeals of the Pardon Attorney's determination, and copies of the pleadings filed in connection with any judicial appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with the United States Constitution, Article II, Section 2; Executive Order of the President dated June 16, 1893; Order of the Attorney General No. 1011–83, 48 FR 22290 (1983), as codified in 28 CFR 1.1 *et seq.*; Order of the Attorney General No. 1012–83, 48 FR 22290 (1983), as codified in 28 CFR 0.35 and 0.36; E.O. 1187 dated September 10, 1975; and 44 U.S.C. 3101.

PURPOSES OF THE SYSTEM:

The FOI/PA Request File is maintained to facilitate complete, accurate and consistent responses to written FOI/PA requests and to expedite response time. The system also assists the OPA in compiling its contribution to the Department of Justice annual FOI/PA statistical reports and enables it to readily determine that portion of its resources devoted to FOI/PA processing. The FOI/PA Request File also aids in processing administrative and judicial appeals of access and amendment denials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records in the system may be used as follows: (a) To release information in a proceeding before a court or adjudicative body before which the OPA is authorized to appear when (1) one of the following is a party to or has an interest in the litigation: i. The OPA; ii. any employee of the OPA in his or her official capacity; iii. any employee of the OPA in his or her individual capacity where the Department of Justice has agreed to represent the employee; or iv. the United States where the OPA determines that it is likely to be affected by the litigation; and (2) the records, or information derived therefrom, are determined by the OPA to be arguably relevant to the litigation; (b) to make available information to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; (c) to provide information to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; (d) to release records to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is maintained in its original form (i.e., paper letters, notes and memoranda) and stored in locked file cabinets in the OPA.

RETRIEVABILITY:

Records are retrieved by the name of the individual submitting the FOI/PA request.

SAFEGUARDS:

Records in the system are protected in accordance with Department of Justice security regulations for Privacy Act systems of records. Records are maintained in the OPA and are not commingled with other Department of Justice records. When not in the custody of an appropriate official, records are stored in a central file room *in a secure government building.*

RETENTION AND DISPOSAL:

Records in the system are retained according to General Records Schedule (GRS) No. 14, Informational Services Records, which contains the mandatory records disposition standards for FOI/PA requests as promulgated by the National Archives and Records Administration. GRS 14, item 16a(3)(a) requires that denied requests not appealed be retained for six years and item 17a requires that appealed requests be retained for six years after final agency determination or three years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Pardon Attorney, Office of the Pardon Attorney, Department of Justice, *500 First Street, NW., Seventh Floor Washington, DC. 20530*

NOTIFICATION PROCEDURE:

Address inquiries to the Pardon Attorney, Department of Justice, *500 First Street, NW., Seventh Floor Washington, DC. 20530*

RECORD ACCESS PROCEDURE:

While the Attorney General has exempted the FOI/PA Request File from the access provisions of the Privacy Act, requests for discretionary releases of records shall be made in writing to the system manager listed above with the envelope and letter clearly marked "Privacy Access Request." Include in the request the general subject matter of the document. Provide full name, current address, date and place of birth, signature (which must be notarized) and return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

While the Attorney General has exempted the FOI/PA Request File from the correction (contest and amendment) provisions of the Privacy Act, requests for the discretionary correction (contest and amendment) of records should be directed to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the FOI/PA requester and the OPA staff.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USA–999

SYSTEM NAME:

Appendix of United States Attorneys' office locations: (Written requests for access to records in any of the following U.S. Attorneys' offices except the District of Columbia may be addressed to: FOIA/Privacy Unit, Patrick Henry Building, 601 D Street NW., room 6410, Washington, DC 20530.

Requests for access to records in the District of Columbia may be addressed to: FOIA/Privacy, United States Attorney's Office for the District of Columbia, Judiciary Center Building, 555 4th Street NW., Washington, DC 20001.)

Systems are located as listed below:

ALABAMA

Northern District

200 Federal Bldg., 1800 5th Ave. N., Birmingham 35203

Middle District

P.O. Box 197, Montgomery 36101

Southern District

169 Dauphin St., Suite 200, Mobile 36602

ALASKA

222 W. 7th Ave., #9, Federal Bldg. & Courthouse, Rm. C–253, Anchorage, 99513-7567
*Rm. 310, New Federal Bldg. & Courthouse, 101 12th Ave., Box 2, Fairbanks 99701

ARIZONA

4000 U.S. Courthouse, 230 N. First Ave., Phoenix 85025
*Suite 8310, 110 South Church Ave., Tucson 85701

ARKANSAS

Eastern District

P.O. Box 1229, Little Rock 72203

Western District

P.O. Box 1524, Fort Smith 72902

CALIFORNIA

Northern District

450 Golden Gate Ave., Box 36055, San Francisco 94102
*280 South First St., Rm. 371, San Jose 95113

Eastern District

3305 Federal Bldg., 650 Capitol Mall, Sacramento 95814
*4304 Federal Bldg., 1130 O St., Fresno 93721

Central District

312 N. Spring St., Los Angeles 90012
*751 West Santa Ana Blvd., Santa Ana 92701

Southern District

5–N–19 U.S. Courthouse, 940 Front St., San Diego 92189

COLORADO

Suite 1200, Federal Bldg., Drawer 3615, 1961 Stout St., Denver 80294

CONNECTICUT

P.O. Box 1824, New Haven 06508
*250 Federal Bldg., 450 Main St., Hartford 06103
*309 Federal Building & Courthouse, 915 Lafayette Blvd., Bridgeport 06603

DELAWARE

Manufacturer's Hanover Plaza, 1201 Suite 1100, P.O. Box 2046, Wilmington 19899–2046

DISTRICT OF COLUMBIA

Judiciary Center Bldg. 555 4th St., NW, Washington, DC 20001 (Information)
Superior Court Division (Information)

FLORIDA

Northern District

315 S. Calhoun St., Suite 510, Tallahassee, 32301
*114 East Gregory St., Pensacola 32501
*401 SE 1st Ave., Room 318, Gainesville, 32602

Middle District

Rm. 400 Robert Timberlake Bldg., 500 Zack Street, Tampa 33602
*P.O. Box 600, Jacksonville 32201
*201 Federal Bldg., 80 N. Hughey Ave., Orlando 32801
*2000 Main St., The Barnett Centre, Suite 701,
Fort Myers, 33901

Southern District

155 South Miami Ave., Miami 33130
*Rm. 202B, 299 E. Broward Blvd., Fort Lauderdale 33301
*701 Clematis St., West Palm Beach 33401
*505 S. 2nd St., Suite 200, Ft. Pierce, 34950

GEORGIA

Northern District

Rm. 1800 Richard Russell Bldg., 75 Spring St. SW, Atlanta 30335

Middle District

P.O. Box U, Macon 31202

Southern District

P.O. Box 8999, Savannah 31412
*P.O. Box 2017, Augusta 30903—All mail goes to Savannah

GUAM

Suite 502–A, Pacific News Bldg., 238 Archbishop Flores St., Agana 96910

*3rd Floor, Horiguchi Bldg., P.O. Box 377, Saipan, MP 96950

HAWAII

Rm. 6100, PJKK Federal Bldg., Box 50183, 300 Ala Moana Blvd., Honolulu 96850

IDAHO

Rm. 328, Federal Bldg., Box 037, 550 W. Fort St., Boise 83724

ILLINOIS

Northern District

1500 South, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Chicago 60604
*211 South Court St., Rockford 61101

Southern District

9 Executive Dr., Suite 300, Fairview Heights, 62208

Central District

PO Box 375, Springfield 62705
*Rm. 253, Federal Building, 100 NE Monroe St., Peoria 61602
*14 Towne Centre, 2 East Main St., Danville 61832
*211 19th St., Room 14, Rock Island 61201

INDIANA

Northern District

1001 Main St., Suite A, Dyer 46311
*3128 Federal Bldg., 1300 S. Harrison St., Fort Wayne 46802
*MO–1 Federal Bldg., 204 S. Main St., South Bend 46601

Southern District

U.S. Courthouse, 5th Floor, 46 East Ohio St., Indianapolis 46204

IOWA

Northern District

425 2nd St., SE., Suite 950, The Center, Cedar Rapids 52401
*PO Box 3629, Sioux City 51102

Southern District

115 U.S. Courthouse, East 1st & Walnut Sts., Des Moines 50309

KANSAS

1200 Epic Center, 301 N. Main, Wichita 67202–4812
*444 Quincy St., Topeka 66683
*412 Federal Bldg., 812 N. Seventh St., Kansas City 66101

KENTUCKY

Eastern District

110 W. Vine St., Suite 400, Lexington 40507
*PO Box 72, Covington 41012

Western District

Bank of Louisville Bldg., 510 W. Broadway, 10th Floor, Louisville 40202

LOUISIANA

Eastern District

Hale Boggs Federal Bldg., Rm., 210, 501 Magazine St., New Orleans 70130

Middle District

339 Florida St., 6th Floor, Baton Route 70801

Western District

401 Edwards St., Suite 2100, Shreveport 71101–6133
*600 Jefferson St., Suite 1000, Lafayette 70501–7206

MAINE

East Tower, 6th Floor, 100 Middle St. Plaza, Portland 04101
99 Franklin St., Bangor 04401

MARYLAND

8th Floor, U.S. Courthouse, 101 W. Lombard St., Baltimore 21201

MASSACHUSETTS

1107 John W. McCormack Federal Bldg., USPO & Courthouse, Boston 02109
*1550 Main Street, Rm. 533, U.S. Courthouse, Springfield 01103

MICHIGAN

Eastern District

817 Federal Bldg., 231 W. Lafayette, Detroit 48226
*PO Box 26, 204 Federal Bldg., 1000 Washington St., Bay City 48707
*204 Federal Bldg., 600 Church St., Flint 48502

Western District

399 Federal Bldg., 110 Michigan St. NW., Gerald Ford Fed. Bldg., Grand Rapids 49503
*D&N Bank of Marquette Bldg., PO Box 20, Marquette 29855

MINNESOTA

234 U.S. Courthouse, 110 South 4th St., Minneapolis 55401
*678 U.S. Courthouse, 316 N. Robert St., St. Paul 55101

MISSISSIPPI

Northern District

PO Drawer 886, Oxford 38655

Southern District

188 East Capitol St., Rm. 500, Jackson 39201
*PO Box 1417, Biloxi 39533

MISSOURI

Eastern District

401 U.S. Court & Custom House, 1114 Market St., St. Louis 63101
*PO Box 2107, Cape Girardeau, 63702–2107

Western District

1201 Walnut, Suite 300, Kansas City 64106–2149
*Hammons Tower Suite 500, 901 St. Louis St., Springfield 65806–2511

MONTANA

PO Box 1478, Billings 59103
*167 Federal Bldg., 400 N. Main, Butte 59703
*PO Box 3447, Great Falls 59401
*Drawer 10031, Federal Bldg., 301 South Park Ave., Helena 59626

NEBRASKA

PO Box 1228, DTS, Omaha 68101–1228
*487 Federal Bldg., 100 Centennial Mall North, Lincoln 68508

NEVADA

Box 16030, Las Vegas 89101
*Rm. 2–032, 300 Booth St., Reno 89509

NEW HAMPSHIRE

55 Pleasant Street Rm. 439, PO Box 480, Concord 03302–0480

NEW JERSEY

Federal Bldg., 970 Broad St., Room 502, Newark 07102
*402 East State St., Rm. 502, Trenton 08608
*PO Bldg., 401 Market St., Fifth Floor, Camden 08101

NEW MEXICO

PO Box 607, Albuquerque 87103
*U.S. Courthouse, 200 East Griggs St., Rm. E–108, Las Cruces 88001

NEW YORK

Northern District

PO Box 7198, 100 South Clinton St., Syracuse 13261–7198
* U.S. Courthouse & Post Office, Room 231, 445 Broadway, Albany 12207
*319 Federal Bldg., Binghamton 13901

Eastern District

U.S. Courthouse, 225 Cadman Plaza East, Brooklyn 11201
*825 East Gate Blvd., Garden City 11530
*300 Rabro Drive, Hauppauge 11788

Western District

502 U.S. Courthouse, 68 Court St., Buffalo 14202
*233 U.S. Courhouse, 100 State St., Rochester 14614

Southern District

One St. Andrews Plaza, New York 10007
*150 Grand St., 4th Floor, White Plains, NY 10601

NORTH CAROLINA

Eastern District

310 New Bern Ave., Suite 800, Raleigh 27601–1461

Middle District

PO Box 1858, Greensboro 27402

Western District

Rm. 306, U.S. Courthouse, 100 Otis St., Asheville 28801–2611 (all mail goes to Charlotte)
*Rm. 260, U.S. Courthouse, 401 W. Trade St., Charlotte 28202

NORTH DAKOTA

PO Box 2505, Fargo 58108
*PO Box 699, Bismarck 58502

OHIO

Northern District

1800 Bank One Center, 600 Superior Ave. East, Cleveland 44114–2600
*208 Federal Bldg., 2 South Main St., Akron 44308
*307 U.S. Courthouse, 1716 Spielbusch Ave., Toledo 43624

Southern District

2 Nationwide Plaza, 280 N High St., 4th Floor, Columbus 43215
*5th & Walnut Sts., 220 U.S. Post Office & Courthouse, Cincinnatti 45202
PO Box 280, Mid City Station, Dayton 45402

OKLAHOMA

Northern District

3900 U.S. Courthouse, 333 W. Fourth St., Tulsa 74103

Eastern District

333 Federal Courthouse, 5th & Okmulgee, Muskogee 74401

Western District

Rm. 4434, U.S. Courthouse & Federal Office Bldg., Oklahoma City 73102

OREGON

888 S.W. 5th Ave., Suite 1000, Portland 97204–2024
*701 High St., Eugene 97401

PENNSYLVANIA

Eastern District

3310 U.S. Courthouse, Independence Mall West, 601 Market St., Philadelphia 19106

Middle District

PO Box 309, Scranton 18501–0309 (send USA mail to Harrisburg)
*Suite 1162 Federal Bldg. 3rd & Walnut Sts., PO Box 11754 Harrisburg 17108
*Rm. 307, US Post Office Bldg., Lewisburg 17837

Western District

633 USPO & Courthouse, 7th Ave. & Grant St., Pittsburgh 15219
*Rm. 137, U.S. Courthouse & Federal Bldg., 617 State St., Erie 16501
*Suite 224, 10 Traffic Bldg., 319 Washington Ave., Johnstown, 15901

PUERTO RICO

Federal Office Bldg., Rm. 452, Carlos E. Chardon Ave., Hato Rey 00918

RHODE ISLAND

10 Dorrance St., 10th Floor, Providence 02903

SOUTH CAROLINA

1st Union Blvd., 1441 Main St., Suite 500, Columbia 29201
*PO Box 978, Charleston 29402
*PO Box 10067, Greenville 29603
*PO Box 1567, Florence 29503

SOUTH DAKOTA

PO Box 1073, Sioux Falls 57101
*PO Box 2893, Rapid City 57709
*326 Federal Bldg. & Courthouse, 225 S. Pierre St., Pierre 57501
*311 PO & Courthouse Bldg., 102 SE Fourth Ave., Aberdeen 57401

TENNESSEE

Eastern District

PO Box 872, Knoxville 37901
*1100 Market St., Suite 301, Chattanooga 37402
*104 ½ W. Summer St., Greenville 37743
*208 Sunset Drive, Suite 509, Johnson City 37604

Middle District

110 9th Ave. S., Suite A961, Nashville 37203–3870

Western District

1026 Federal Office Bldg., 167 N. Main St., Memphis 38103
USPO & Courthouse Bldg., Rm. 308, 109 South Highland, Jackson 38302

TEXAS

Northern District

Burnett Plaza, Suite 1700, 801 Cherry St., Ft. Worth 76102–6897
*Rm. 16C28, U.S. Federal Bldg. & Courthouse, 1100 Commerce St., Dallas 75242
*Rm. C–201, U.S. Federal Bldg. & Courthouse, 1205 Texas Ave., Lubbock 79401
PO Box 13236, Amarillo 79101–1559

Southern District

PO Box 61129, Houston 77208
*PO Box 886, Laredo 78042–0886
*PO Box 1671, Brownsville 78522
*Wilson Plaza, Suite 1400, 606 N. Carancahua, Corpus Christi 78476
*Texas Commerce Bldg., 1701 West Highway 83, Suite 305, McAllen 78501–5159

Eastern District

350 Magnolia St., Suite 150, Beaumont 77701–2237
*110 N. College, Suite 600, Tyler 75702
*One Grand Centre, Suite 504, 1 Grand Ave., Sherman 75090

Western District

727 East Durango Blvd., Suite A–601, San Antonio 78206
*Rm. 353 U.S. Courthouse Bldg., 511 E. San Antonio Ave., El Paso 79901
*816 Congress Ave., Suite 650, First City Centre, Austin 78701
*U.S. Courthouse, 200 E. Wall St., Midland 79701
*700 University Parks Dr., Suite 770, Waco 76706

UTAH

U.S. Courthouse, Room 476, 350 South Main Street, Salt Lake City 84101

VERMONT

P.O. Box 570, Burlington 05402
*P.O. Box 10, Rutland 05701

VIRGIN ISLANDS

P.O. Box 1440, Charlotte Amalie, St. Thomas 00804–1440
All Mail to This Office
*1108 King St., Suite 201, Christiansted, St. Croix 00820–4951

VIRGINIA

Eastern District

1101 King Street, Suite 502, Alexandria 22314
*Main Street Center, Suite 1800, 600 E. Main St., Richmond 23219
*World Trade Center, Suite 1800, 101 W Main St., Norfolk 23510

Western District

*P.O. Box 1709, Roanoke 24008
*P.O. Box 1098, Abingdon 24210

WASHINGTON

Eastern District

P.O. Box 1494, Spokane 99210–1494
*P.O. Box 1363, Yakima 98907–1363

Western District

3600 Seafirst 5th Ave. Plaza, 800 5th Ave., Seattle 98104
*Suite 400, 1201 Pacific Ave., Tacoma 98402

WEST VIRGINIA

Northern District

P.O. Box 591, Wheeling 26003
*P.O. Box 190, Elkins 26241
*P.O. Box 750, Clarksburg 26302
*U.S. Courthouse, Room 236, Martinsburg 25401

Southern District

P.O. Box 3234, Charleston 25332
*P.O. Box 1239, Huntington 25714

WISCONSIN

Eastern District

330 Federal Bldg., 517 E. Wisconsin Ave., Milwaukee 53202

Western District

600 West Washington Ave., P.O. Box 1585, Suite 200, Madison 53703

WYOMING

P.O. Box 668, Cheyenne 82003

NORTH MARIANNA ISLANDS

c/o U.S. Attorney's Office, 6th Floor, Nauru Bldg., P.O. Box 377, Saipan, CM 96950

JUSTICE/ATR–002

SYSTEM NAME:

Congressional and White House Referral Correspondence Log File.

SYSTEM LOCATIONS:

U.S. Department of Justice; 10th & Constitution Avenue, NW., Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former members of Congress and citizens whose correspondence is received directly or referred by *government officials*, members of Congress or Congressional or White House staff. *Government officials, Members of Congress, Congressional or White House staff who refer the correspondence.*

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index record to correspondence *received from the individuals covered by this system.*

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*Branch Office

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the establishment and maintenance of this system exists under 44 U.S.C. 3101 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system is to enable Antitrust Division personnel to monitor responses *to the correspondence and to identify any other related correspondence/material.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system, or any facts derived therefrom, may be disseminated in a proceeding before a court or adjudicative body before which the Antitrust Division is authorized to appear, when (1) the Antitrust Division, or any subdivision thereof; or (2) any employee of the Antitrust Division in his or her official capacity; or (3) any employee of the Antitrust Division in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (4) the United States, or any agency or subdivision thereof; or (5) the United States, where the Antitrust Division determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation and such record are determined by the Antitrust Division to be arguably relevant to the litigation.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to Members of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is subject of the record.

Release of information to the National Archives and Records Administration (NARA) and to the General Services Administration (GSA): A record from a system of records may be disclosed as a routine use to NARA and GSA in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents are stored in looseleaf binders and file folders; abbreviated or summarized information is stored in a computerized tracking system.

RETRIEVABILITY:

Inquiry and response documents are retrieved by date or through manual and automated indexes which are accessed by name, subject matter, control number, etc. Summary data on inquiries received prior to March 7, 1983, is retrieved from the manual index cards; as of March 7, 1983, a summary data is retrieved from magnetic disks and tapes. Summary data *includes such data elements as name of the individual and/or entity who originated the inquiry or referral,* subject matter, date of inquiry, date assigned, date of response, etc.

SAFEGUARDS:

Information contained in the system is unclassified. During working hours access to the system is controlled and monitored by Antitrust division personnel in the area where the system is maintained; during non-duty hours all doors to such area are locked. In addition only Antitrust Division personnel who have a need for the information contained in the system have the appropriate password for access to the system.

RETENTION AND DISPOSAL:

Indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief. Legislative Unit: Antitrust Division: U.S. Department of Justice: 10th & Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Antitrust Division; Department of Justice; 10th & Constitution Avenue NW., Washington, DC 20530.

RECORD ACCESS PROCEDURES:

Request for access for a record from this system shall be written and clearly identified as "Privacy Access Request". The request should include the name of the *individual and/or entity who originated the inquiry or* referral and the date thereof. Requester should indicate a return address.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should state clearly and concisely what information is being contested, the reasons for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

The individuals covered by the system are the record sources of this system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93-2476 Filed 2-2-93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—the Frame Relay Forum

Notice is hereby given that, on January 4, 1993, pursuant to Section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identifies of the additional members of FRF are: Newport Systems Solutions, Newport Beach, CA and Primary Access, San Diego, CA.

No other changes have been made in either the membership or planned activities of the FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on October 6, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 13, 1992 (57 FR 53932).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 93-2470 Filed 2-2-93; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills [(202) 219–5095].

Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 [(202) 395–6880].

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Employment and Training Administration

Job Training Partnership Act (JTPA) Semiannual and JTPA Summer Performance Reports

1205–0200; ETA 9009, 9010

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 9009	State or local governments	59	2	7 hours.
ETA 9010	State or local governments	59	1	2 hours.
ETA 9009 recordkeeping	State or local governments	59	1	2 hours.
ETA 9010 recordkeeping	State or local governments	59	1	30 minutes.
Recordkeeping for audit purposes	State or local	59	1	25 minutes.
2,541 total hours.				

This information collections will be used to assess JTPA statewide programs and learn who is served by Title II–B summer programs. Participant and financial data will be used to respond to congressional oversight, to prepare budget requests and make annual reports to Congress as required by statute.

Signed at Washington, DC this 28th day of January, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–2527 Filed 2–2–93; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA–W–27,862]

American Optical Corp., Southbridge, MA; Affirmative Determination Regarding Application for Reconsideration

On January 13, 1993, the company requested administrative reconsideration of the Department of Labor's notice of determinations for workers at the subject firm. The Department's notice was issued on December 4, 1992 and published in the **Federal Register** on December 30, 1992, (57 FR 62389).

The company states that all lens production has been transferred to Mexico and that company imports of both plastic and glass lenses have arrived in the U.S.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 26th day of January 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–2528 Filed 2–2–93; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–28,037]

BethEnergy Mines, Inc., 84 Complex, Bethlehem, PA; Negative Determination Regarding Application for Reconsideration

By an application dated December 30, 1992, District 5 of the United Mine Workers of America (UMW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 15, 1992 and was published in the **Federal Register** on December 30, 1992 (57 FR 62388).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the increased import criterion and the decreased sales or production criteria of the Group Eligibility Requirements of the Trade Act were not met.

The investigation findings show that U.S. imports of coal are negligible in the periods relevant to the petition. Other findings show that sales and production at Complex 84 of the BethEnergy Mines, Inc., increased, in value and quantity, during the relevant periods.

The union contends that the Department should have considered the loss of jobs through the imports of steel. Coal and steel are not interchangeable. Imported steel is not like or directly competitive with coal within the meaning of section 222(3) of the Trade Act. Accordingly, steel imports cannot be considered in determining import injury to workers engaged in employment related to the production of coal.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of January 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–2529 Filed 2–2–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,869]

Monessen, Inc., Monessen, PA; Negative Determination Regarding Application for Reconsideration

By an application dated December 27, 1992, Cokeworkers' Local #2698 of the United Steelworkers of America requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice as signed on December 18, 1992 and was published in the **Federal Register** on January 13, 1993 (58 FR 4186).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the "contributed importantly" test of the group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the customers of the subject firm. However, all of Monessen coke production was shipped to its parent company, Sharon Steel. The findings show that Sharon Steel Does not import coke.

With respect to the union's fresh mushroom and canned mushroom example, the Department does not see any relevance to the case at hand. One has to do with packaging the same product while the other is a raw material used in making a different product. Coke and steel are not interchangeable. Imported steel is not like or directly competitive with coke within the meaning of section 222(3) of the Trade Act. Accordingly, steel imports cannot be considered in determining import injury to workers engaged in employment related to the production of coke.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 26th day of January 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93–2530 Filed 2–2–93; 8:45 am]

BILLING CODE 4510–30–M

Job Training Partnership Act Section 402: Identification of Qualified Sources to Administer Farmworker Housing Assistance Projects.

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration seeks to identify qualified sources currently operating housing assistance programs serving the migrant and seasonal farmworker community in order to explore the possibility of their participation in the Department of Labor's Farmworker Housing Program under section 402 of the Job Training Partnership Act.

DATES: Interested organizations shall submit the information requested in this notice by March 5, 1993.

ADDRESSES: Responses to this notice shall be mailed to Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue NW., rm. C–4305, Washington, DC 20210, Attention: FR–SOURCES SOUGHT DESK.

FOR FURTHER INFORMATION CONTACT: James DeLuca, Grant Officer; Telephone: (202) 219–8702 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration seeks to identify qualified organizations which currently operate housing assistance programs serving the migrant and seasonal farmworker community in order to explore the possibility of their participation in the Department of Labor's (Department) Farmworker Housing Program under section 402 of the Job Training Partnership Act.

The general purpose of the Farmworker Housing Program is to expand and improve the existing housing stock for migrant and seasonal farmworkers. Thus, the Department funds certain private non-profit and public organizations, including local housing administrations, to provide housing information and assistance to migrant and seasonal farmworkers eligible under section 402 of the Job Training Partnership Act, and others.

Among the allowable housing services provided by these organizations to eligible farmworkers and others are:

(1) *Technical Assistance and Training*, including assisting existing farmworker housing agencies and organizations, training housing program staff and boards, assisting in the preparation of funding applications, networking, developing new housing alternatives on behalf of farmworkers, creating agencies to assist farmworkers, etc.;

(2) *Housing Rehabilitation*, including but not limited to program development, target area identification, program design, environmental review, promotion of citizen participation, applications for Community Development Block Grants and other funds, weatherization, construction, repair and renovation assistance, etc.;

(3) *Single Family Housing*, including but not limited to, program development, participation in FmHA 523 programs, self-help housing activities, land acquisition, family recruitment, site identification, engineering selection, contractor selection, 502 packaging, administrative support, loan assistance, etc.;

(4) *Rental Housing Assistance*, including but not limited to housing survey/market analysis, sponsor development, project identification, architect selection, environmental review, mortgage loan assistance, rental assistance, coordination with other housing programs, etc.;

(5) *Sewer and Water hook-up assistance;*

(6) *Housing Counseling;* and

(7) *New Program Development.*

Interested non-profit and public organizations which are interested in conducting housing assistance for migrant and seasonal farmworkers on a county, multi-county, State, multi-State, regional or in any given geographic area are invited to respond to this sources-sought notice by submitting the following information:

(1) Capability statement of organization;

(2) Previous and current housing assistance activities on behalf of farmworkers;

(3) A description of the professional personnel specifically qualified to provide the identified services; and

(4) Other available descriptive material concerning the organization and the services it provides.

Note: This is not a Solicitation for Grant Applications announcement and no selection for funding will result from this notice.

Signed at Washington, DC this 25th day of January 1993.

Robert D. Parker,

Grant Officer.

[FR Doc. 93-2531 Filed 2-2-93; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on February 16–17, 1993, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., room S–4215A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

The agenda for this meeting includes reports regarding the OSHA/EPA incinerator inspection protocol, the incorporation of general industry standards in part 1926, the State plan State programs for construction, the VPP construction program and the status of OSHA's regulatory efforts with regard to lead, permissible exposure limits for air contaminants, ergonomics, cranes and asbestos. The agenda also includes discussion of the definition of the term "construction", the indemnification of general contractors by subcontractors and work group procedures.

Written data, views or comments may be submitted preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone 202–219–8615.

An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 29th day of January 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93-2582 Filed 2-2-93; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services

Information Collection Submitted to OMB for Review

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of information collection submitted to OMB for review.

SUMMARY: The Institute of Museum Services (IMS) is submitting an information collection entitled "1993 Survey of MAP Grantees" for review by the Office of Management and Budget under the Paperwork Reduction Act.

IMS needs this information to determine why some museums choose not to participate in the Museum Assessment Program, and to determine how the program could be made more attractive to them. The information will be used for a statistical analysis.

The respondents will be museums that have requested information about the Museum Assessment Program, but have not subsequently participated.

The extimated average burden hours is .33, the frequency of response is once, and the estimate number of respondents is 60. The total annual reporting and recordkeeping burden is 20 hours.

ADDRESSES: Submit comments to Mr. Steve Semenuk, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Submit requests for information, including copies of the proposed collection of information and supporting documentation, to MAP Evaluation, Institute of Museum Services, room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 93-2467 Filed 2-2-93; 8:45 am]

BILLING CODE 7036-01-M

Information Collection Submitted to OMB for Review

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of information collection submitted to OMB for review.

SUMMARY: The Institute of Museum Services (IMS) is submitting an information collection entitled "1993 Survey of MAP Grantees" for review by the Office of Management and Budget under the Paperwork Reduction Act.

IMS needs this information to assess the effects of the Museum Assessment Program, and to determine how the program could be improved. The information will be used for a statistical analysis.

The respondents will be museums that have received Museum Assessment Program grants from IMS.

The estimated average burden hours is .75, the frequency of response is once, and the estimate number of respondents is 150. The total annual reporting and recordkeeping burden is 113 hours.

ADDRESSES: Submit comments to Mr. Steve Semenuk, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Submit requests for information, including copies of the proposed collection of information and supporting documentation, to MAP Evaluation, Institute of Museum Services, room 609, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 93-2466 Filed 2-2-93; 8:45 am]

BILLING CODE 7036-01-M

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (Arts Education Partnership Grants Section) to the National Council on the Arts will be held on February 24, 1993 from 9 a.m.-5:30 p.m., February 25 from 9 a.m.-6 p.m., and February 26 from 9 a.m.-3 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on February 24 from 9 a.m.-2:30 p.m. and February 26 from 11:15 a.m.-1:30 p.m. for orientation, guidelines review and policy discussion.

The remaining portions of this meeting on February 24 from 2:30 p.m.-5:30 p.m., February 25 from 9 a.m.-6 p.m., and February 26 from 9 a.m.-11:15 a.m. and 1:30 p.m.-3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: January 28, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2479 Filed 2-2-93; 8:45 am]

BILLING CODE 7537-01-M

Expansion Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on February 24, 1993 from 9 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506.

Portions of this meeting will be open to the public from 9 a.m.-9:45 a.m. and 4 p.m.-5 p.m. for opening remarks, general program overview, and policy discussion.

The remaining portion of this meeting from 9:45 a.m.-4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: January 28, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2478 Filed 2-2-93; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions: Contemporary Section) to the National Council on the Arts will be held on February 22-26, 1993 from 9 a.m.-5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 22 from 9 a.m.-10 a.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on February 22 from 10 a.m.-5:30 p.m. and February 23-26 from 9 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5439.

Dated: January 28, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93-2477 Filed 2-2-93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy Advisory Board, National Institute for Literacy.

ACTION: Notice of partially closed meeting.

SUMMARY: This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATE AND TIME: March 1, 1993, 9 a.m. to 4 p.m.; March 2, 1993, 9 a.m. to 4 p.m.

ADDRESS: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Thomas R. Hill, Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632-1500.

SUPPLEMENTARY INFORMATION: The Board is established under section 384 of the Adult Education Act, as amended by title I of Public Law 102-73, the National Literacy Act of 1991. The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions:

(a) Makes recommendations concerning the appointment of the Director and the staff of the Institute;

(b) Provides independent advice on operation of the Institute; and

(c) Receives reports from the Interagency Group and the Director of the Institute.

In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on March 1 and 2, 1993. On March 1, 1993, the Board will meet from 9 a.m. to 12 p.m. in open session to discuss the status of the recruitment process for the Director position and to be briefed on amended standards of conduct rules.

From 1 p.m. to 4 p.m. on March 1, 1993 and from 9 a.m. to 4 p.m. on March 2, 1993, the Board will meet in closed session to discuss scopes of work options and associated costs for proposed request for proposals (RFP). The discussion will focus on the expected costs of different scopes of work options. The scopes of work options must be presented in closed session because premature disclosure of costs associated with proposed RFP options might have the economic interest of the Institute, and might frustrate implementation of proposed agency action. Such matters are protected by exemption 9(b) of section 552(c) of title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Franmarie Kennedy-Keel,

Interim Director, National Institute for Literacy.

[FR Doc. 93-2517 Filed 2-2-93; 8:45 am]

BILLING CODE 6055-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 30—Domestic Licensing of Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments are submitted only once. Applications for renewal licenses are submitted every five years. Information submitted in previous applications may be referenced without being resubmitted.

5. *Who will be required or asked to report:* Persons applying for or holding a license to manufacture, produce, transfer, receive, acquire, own, possess, or use radioactive byproduct material.

6. *An estimate of the number of responses:* Approximately 5,600 Material License Application responses subject to 10 CFR part 30 requirements are accounted for separately under the clearance previously approved for NRC Form 313, OMB No. 3150-0120, and other clearances. An additional 526

responses are accounted for under this information collection clearance request.

7. *An estimate of the total number hours needed to complete the requirement or request:* Approximately 7.5 hours per Material License Application subject to part 30, for a total of 42,250 hours, is accounted for separately under the clearance previously approved for NRC Form 313, OMB No. 3150–0120. An additional 53.77 hours per response and 17.06 hours per recordkeeper, for a total annual industry burden of 149,425 hours, is accounted for under this information collection clearance request.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR part 30 establishes requirements governing domestic licensing of radioactive byproduct material. The application, reporting and recordkeeping requirements are necessary to permit the NRC to make a determination whether the use of byproduct material is in conformance with the Commission's regulations for protection of the public health and safety. The revision primarily reflects the inclusion of burden imposed by a previously approved rulemaking that added decommissioning financial assurance requirements.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0017), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084. The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated: at Bethesda, Maryland, this 26th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–2491 Filed 2–2–93; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revised, or extension:* Revision.

2. *The title of the information collection:* 10 CFR parts 30, 40, 50, 70, and 72: Procedures and Criteria for On-site Storage of Low-Level Radioactive Waste.

3. *The form number, if applicable:* Not applicable.

4. *How often the collection is required:* Annually, whenever low-level radioactive waste (LLW) is stored after January 1, 1996.

5. *Who will be required or asked to report:* Approximately 13,286 NRC and Agreement State licensees storing LLW on-site after January 1, 1996.

6. *An estimate of the number of annual responses:* 79,716 (approximately 39,858 records kept by licensees storing LLW on-site after January 1, 1996, and approximately 39,858 responses by LLW disposal facilities).

7. *An estimate of the total number of hours needed to complete the requirement or request:* 179,361 (an average of 0.5 hours per response for LLW disposal sites and an average of 4 hours per record for licensees storing waste on-site).

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.

9. *Abstract:* The amendments to 10 CFR parts 30, 40, 50, 70, and 72 would require licensees to document and maintain a record showing that they have exhausted other reasonable management options in order to be permitted to store LLW on-site after January 1, 1996.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0017, –0020, –0011, –0009, –0132), Office of Management and Budget, Washington, DC 20503.

Comments may be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 27th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–2490 Filed 2–2–93; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97–415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 8, 1993, through January 22, 1993. The last biweekly notice was published on January 21, 1993 (58 FR 5427).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 5, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (**Project Director**): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 28, 1992

Description of amendment requests: The amendments would change the frequency of several channel functional tests for the reactor protection system (RPS) and engineered safety feature actuation system (ESFAS) instrumentation from once per month to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1—Involve a significant increase in the probability or consequences of an accident previously evaluated.

Increasing the surveillance interval for RPS and ESFAS instrumentation has two principle effects with opposing impacts on core melt risk. The first impact is a slight increase in core melt frequency that results from the increased unavailability of the instrumentation in question. The unavailability of the tested instrumentation components is translated to result in a failure of the reactor to trip, an Anticipated Transient Without Scram, or a failure of the appropriate engineered safety features to actuate when required. The opposing impact is the corresponding reduction in core melt frequency that would result due to the reduced exposure of the plant to test induced transients.

Representative fault tree models were developed for Palo Verde and the corresponding core melt frequency increases and decreases were quantified in CEN-327-A and CEN-327-A, Supplement 1. The NRC Staff found that changes in the RPS unavailabilities that result from extending the surveillance test intervals from 30 days to 90 days were not considered to be significant. Estimates of the reduction in scram frequency from the reduction in test-induced scrams and the corresponding reduction in core melt frequency were found acceptable. Extended surveillance intervals were found to result in a net reduction in core melt risk. Operation of the facility in accordance with this proposed amendment, therefore, will not involve a significant increase in the probability or consequence of an accident previously evaluated.

Standard 2—Create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request does not involve any changes in equipment and will not alter the manner in which the plant will be operated. For this reason, this amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3—Involve a significant reduction in a margin of safety.

The margin of safety is not significantly reduced. There are no changes to the equipment or plant operations. The changes to [plant protection system] PPS setpoints and allowable values, while nonconservative, are not significant. The only impact of this change is the development of a more appropriate balance between increased core melt risk due to slightly increased equipment unavailability and reduced core melt risk due to a reduction in plant exposure to test-induced transients. Implementation of the proposed change is expected to result in an overall improvement in safety due to the fact that reduced testing intervals will result in fewer inadvertent reactor trips and less frequent actuation of ESFAS components. The conclusions of the accident analyses in the [Palo Verde Nuclear Generating Station] PVNGS [Updated Final Safety Analysis Report] UFSAR remain valid and the safety limits continue to be met.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Commonwealth Edison Company, Docket Nos. STN 50-454, STN 50-455, STN 50-456 and STN 50-457, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, and Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: December 22, 1992

Description of amendment request: The proposed amendment would add requirements to the Braidwood Technical Specifications (TS) to address the staff concerns cited in Generic Letter (GL) 91-13. The proposed TS would be applicable when one unit is shut down while the other is operating and would ensure that an Essential Service Water system (SX) pump and crossover path is available from the shutdown unit to serve as a backup to the operating unit. In addition, requirements would be added to require the unit crosstie to be open, or capable of being opened from the Main Control Room, whenever either, or both, units are in an operating mode (mode 1, 2, 3, or 4). Byron addressed the concerns raised in GL 91-13 in a previous TS amendment. The proposed amendment for Byron would provide clarifications to the SX system TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

For Byron

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Periodic testing of the Essential Service Water system crosstie and manipulating during a loss of service water accident have been addressed by Commonwealth Edison (CECo) for Byron and Braidwood stations during the NRC's review of CECo's LCO Relaxation Program and the licensing of Byron Unit 2. Byron Station adopted Technical Specifications governing the availability of the third SX pump and the crosstie valves to support an operating unit. These commitments have been previously reviewed and accepted by the NRC. NRC SER dated November 23, 1988 documents that the NRC staff found the Technical Specifications issued in Amendment 24 acceptable.

The proposed changes do not affect the application of the Technical Specifications. The additional surveillance provides an additional limitation and is therefore more stringent than the current requirements. The rewording ensures that the specifications are applied uniformly. The proposed change to 3.7.4.1 is more restrictive than the existing specification to ensure that an SX pump from a shut down unit is always available to support operation of the opposite unit. Adding to the Bases has no impact on plant operation; the requirements that ensure that the crosstie will service its design function are in Specification 3/4.7.4.2.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change is consistent with the previously approved Technical Specifications that were added to address concerns not controlled by existing Technical Specifications. The proposed changes to the original Technical Specifications enhance readability without changing the requirements. The modified specifications are consistent with previous single failure analysis criteria, since they do not delete or modify any current requirements that were utilized in the accident analysis. The proposed addition of controls to verify SX pump availability increases the level of protection. Since there are no changes to equipment or equipment operation, no new accidents or failures are created.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The Bases for Technical Specification 3/4.7.4 states that the operability of the SX system ensures that sufficient cooling capacity is available for continued operation of safety related equipment. The proposed changes retain controls to ensure that cooling capacity is available for both units without deleting the requirements for operability of any other Technical Specification. These editorial changes provide enhancements and do not compromise the system's ability to fulfill the function described in the bases. The NRC review of the original Technical Specifications concluded that Byron's SX system has suitable redundancy to transfer heat from structures, systems and components important to safety to a heat sink under both normal operating and accident conditions. The change to the Bases emphasizes the importance of the SX crosstie feature. The refinements to the Technical Specifications enhance the availability of the SX system and crosstie.

For Braidwood

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

No additional plant equipment will be installed as a result of any of the proposed changes. Additionally, none of the proposed changes will require currently installed plant equipment to be operated in a new or different manner. Therefore, none of the proposed changes will increase the probability of any accident that has been previously evaluated.

The proposed addition of Specification 3/4.7.4.1 which requires an Essential Service Water pump on a shut down unit be available to support an operating unit and the proposed addition of Specification 3/4.7.4.2 which requires the Essential Service Water System Unit Crosstie to be open, or capable of being open from the Main Control Room, any time one or more units are operating are simply the formalization of commitments made to the USNRC by letter dated August 5, 1986, A. D. Miosi to H. R. Denton. These commitments were made as the result of a concern identified by the USNRC regarding a loss of essential service water accident during their review of WCAP 10526, Byron Generating Station Limiting Condition for Operation Relaxation Program. These commitments were made to reduce the consequences of a loss of essential service water accident.

The proposed addition to the Bases of Specifications 3/4.7.4 only serve to describe the addition of proposed Specifications 3/4.7.4.1 and 3/4.7.4.2. Therefore, this proposed change will not increase the consequences of any accident previously evaluated.

The deletion of Specification 4.7.4.b will not cause any physical conditions to be changed at the plant. The essential Service Water System Return Valves, OSX165A and OSX165B, will continue to be maintained in the open position with power removed. Valve position will be verified less frequently than the current Specification and be governed by plant administrative procedures. However, if these valves were to be closed, there would be significant changes in Essential Service Water System parameters indicated on instrumentation in the Main Control Room which is continuously monitored by licensed operators. This does not represent an increase in the consequences of any accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

No additional plant equipment will be installed as a result of any of the proposed changes. Additionally, none of the proposed changes will require currently installed plant equipment to be operated in a new or different manner. The proposed additions of Specifications 3/4.7.4.1 and 3/4.7.4.2 and the addition to the Bases of Specifications 3/4.7.4 formalize commitments made to the USNRC by letter dated August 5, 1986, A. D. Miosi to H. R. Denton, and already incorporated into plant administrative procedures. The deletion of Specification 4.7.4.b affects only the manner and frequency by which the Essential Service Water System Return Valves, OSX165A and OSX165B, will be verified in the open position. Therefore, there is no possibility of a new or different kind of accident from any accident previously evaluated occurring as a result of these proposed changes.

C. The proposed changes do not involve a significant reduction in the margin of safety.

The margin of safety was increased when Braidwood Station committed to make an Essential Service Water pump on a shut down unit available to support an operating unit by providing additional redundant cooling capacity. This commitment was made by letter dated August 5, 1986, A. D. Miosi to H. R. Denton. The proposed additions of Specifications 3/4.7.4.1 and 3/4.7.4.2 and the addition to the Bases of Specifications 3/4.7.4 formalize that commitment in the OL. Formalizing that commitment has no effect on the margin of safety. The proposed deletion of Specification 4.7.4.b affects only the manner and frequency by which the Essential Service Water System Return Valves, OSX165A and OSX165B, will be verified in the open position. However, if these valves were to be closed, there would be significant changes in Essential Service Water System parameters indicated on instrumentation in the Main Control Room which is continuously monitored by licensed operators. Therefore, this proposed change also has no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: September 28, 1992

Description of amendment request: The proposed amendment revises the required sodium hydroxide (NaOH) tank level specified in Technical Specification (TS) 3.3.4(B), deletes the stated value for the weight of NaOH specified in TS 3.3.4(B), and revises the Bases for TS 3.3.4 to reflect the new required level for the NaOH solution in the tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

NaOH tank level is not an initiator of any event analyzed in the Safety Analysis. The accident mitigation features of the plant are not affected by the proposed amendment, as the most limiting analysis affected by the change in minimum NaOH tank level has been shown to be bounded by the proposed level range. The proposed level range adequately ensures that values assumed for the minimum NaOH tank level remain bounded with an allowance for worst case instrument error. The deletion of NaOH weight is intended to remove extraneous and redundant information from the specification and is administrative in nature. The minimum and maximum NaOH concentrations are not affected by this change. The Bases change is proposed to maintain consistency in the ANO-1 [Arkansas Nuclear One, Unit 1] TS and is also administrative in nature.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The scope of the change does not establish a potential new accident precursor. All analyses associated with NaOH tank level and volume have been shown to be bounded by the proposed level range for the NaOH tank with adequate margin for worst case instrument loop error. The deletion of NaOH weight is intended to remove extraneous and redundant information from the specification and is administrative in nature. The minimum and maximum NaOH concentrations are not affected by this change. The Bases change is proposed to maintain consistency in the ANO-1 TS and is also administrative in nature.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

All analyses associated with NaOH tank level and volume have been shown to be bounded by the proposed range for the NaOH tank level with adequate margin for worst case instrument loop error. The deletion of NaOH weight is intended to removed extraneous and redundant information from the specification and is administrative in nature. The minimum and maximum NaOH concentrations are not affected by this change. The Bases change is proposed to maintain consistency in the ANO-1 TS and is also administrative in nature.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: George Hubbard (acting)

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: September 28, 1992

Description of amendment request: The amendment revises the Technical Specifications (TS) for each unit to add limiting conditions for operation and surveillance requirements for the main steam line radiation monitors (MSLRMs) in accordance with U.S. Nuclear Regulatory Commission Generic Letter 83-37. This application for amendment supersedes the request dated October 19, 1989, as published in the **Federal Register** on February 7, 1990 (55 FR 4262).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The Main Steam Line Radiation Monitors (MSLRM) do not provide information that is required to safely shutdown the plant. The monitors provide release information for evaluating offsite emergency action when venting through the steam safety and atmospheric dump valve paths. Also, with this change there are no modifications to the configuration or the operation of the plant. This change only adds operability and surveillance requirements for these monitors. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The MSLRMs are used to provide passive monitoring of radiation levels during and following an accident in which a primary to secondary system leak has occurred. The accident conditions for which the monitors would provide useful information have previously been analyzed. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The MSLRMs are not required to safely shutdown the plant. The proposed change imposes additional limitations, restrictions, or controls not presently in the TS. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2 (ANO-1&2), Pope County, Arkansas

Date of amendment request: September 28, 1992, as supplemented by letter dated December 2, 1992

Description of amendment request: The proposed changes are to the ANO Industrial Security Plan (ISP). These changes would allow added flexibility to determine the security shift staffing requirements and compensatory measures based on plant activities and the status of the overall security program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve A Significant Increase in the Probability or Consequences of An Accident Previously Evaluated.

The accident mitigation features of the plant are not affected by the proposed changes. The minimum staffing levels required by 10CFR73.55 are still maintained. These changes provides [sic] flexibility in the staffing levels only. Ample protection against a design basis security threat is provided. Therefore, these changes do not increase the probability or consequences of an accident previously evaluated.

Criterion 2—Does Not Create the Possibility of A New or Different Kind of Accident from Any Previously Evaluated.

These changes add flexibility in the staffing levels only. New systems, modes of operation, failure modes or other plant perturbation are not introduced by these changes. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

Criterion 3—Does Not Involve A Significant Reduction in the Margin of Safety.

These changes add flexibility in the staffing levels only. The proposed changes do not change a safety limit, an LCO [limiting condition for operation], or a surveillance requirement on equipment required to operate the plant. Adequate physical protection of the plant is maintained. Therefore, the margin of safety is not reduced.

Therefore, based on the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has concluded that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: November 10, 1992

Description of amendment request: The proposed amendment would temporarily revise Hatch Unit 2 Technical Specifications (TS) 3.6.6.1 regarding the operability of Hatch Unit 1 standby gas treatment system (SGTS). This temporary revision will allow both subsystems of the Unit 1 standby gas treatment system to be simultaneously inoperable for a cumulative total of up to 7 days during Unit 2 power operation for the purpose of installing the torus hardened vent pursuant to the recommendations of NRC Generic Letter (GL) 89-16.

As a result of the NRC Mark I containment Performance Improvement Program, NRC GL 89-16, "Installation of a Hardened Wetwell Vent," encouraged licensees to install a hardened wetwell vent under the provisions of 10 CFR 50.59. By letter dated October 24, 1989, the licensee informed the NRC that both Plant Hatch units would install hardened vents.

Unit 2 TS requires the operability of two Unit 2 SGTS subsystems and two Unit 1 SGTS subsystems. This is based on a Unit 2 design basis accident (DBA) loss-of-coolant accident (LOCA) and takes into consideration the secondary containment (SC) design for the two units. Following a DBA LOCA on Unit 2, it is postulated a certain amount of leakage will occur out of the Unit 2 primary containment. some of this leakage will go into the Unit 2 reactor building area, and some will go up through the shield blocks above the Unit 2 primary containment into the Unit 1 and Unit 2 common area above the refueling floor. Therefore, to contain and treat the radioactive gases postulated to leak out of the Unit 2 primary containment, the SGTS must be able to simultaneously maintain a negative pressure in the SC of both units. Four operable SGTS subsystems can fulfill this requirement given the single failure of one of the subsystems. If one of the four subsystems is inoperable, a 7-day limiting condition for operation (LCO) is entered per Action a of TS 3.6.6.1. If two of the four subsystems are inoperable, immediate shutdown is required by Action b of TS 3.6.6.1. Safe Unit 2 operation can be met with only the two Unit 2 SGTS subsystems operable by taking advantage of a Unit 1 TS which allows reconfiguration of the Unit 1 SC.

Unit 1 TS 3.7.C.2 provides for a reconfiguration of the Unit 1 SC referred to as modified Unit 1 SC. In the modified SC mode, the Unit 1 reactor building area is segregated from the Unit 1 and Unit 2 common area above the refueling floor such that these two air volumes do not communicate. In this configuration, given a Unit 2 DBA LOCA, the SGTS is only required to maintain a negative pressure in the Unit 2 reactor building area and the Unit 1 and Unit 2 common area above the refueling floor. Two of the four SGTS subsystems can maintain a negative pressure in these areas.

During the time when both Unit 1 SGTS subsystems are inoperable for installation of the containment hardened vents, the Unit 1 SC will be maintained in the modified configuration per Unit 1 TS 3.7.C.2, and both Unit 2 SGTS subsystems will be maintained operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Unit 2 TS requirements for operability of two Unit 2 SGTS subsystems and two Unit 1 SGTS subsystems is based on a Unit 2 DBA LOCA and takes into consideration the secondary containment (SC) design for the two units and the possibility of a single failure. By taking advantage of the Unit 1 specification for modified Unit 1 SC, two Unit 2 SGTS subsystems can contain and treat the leakage of fission product gases from the Unit 2 primary containment following a DBA LOCA, assuming no single failure of a SGTS subsystem occurs. Applying a 7-day LCO in this situation is justifiable because of the low probability of a DBA LOCA, coupled with the single failure of a SGTS subsystem occurring during this time period. Therefore, this proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated. The SGTS, and therefore the SGTS TS, have no impact on the probability of occurrence of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed amendment increases the allowable time limit for operation with both Unit 1 SGTS subsystems inoperable. Operation with the Unit 1 SC in the modified mode has been previously considered, and criteria for such operation are provided by the Unit 1 TS. Therefore, this proposed amendment does not create any new modes of operation or failure, nor does it create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The compensatory measures being implemented as part of this proposed amendment will ensure the margin of safety is not significantly reduced. By maintaining the Unit 1 SC in the modified mode, the area which would contain fission product gases following a Unit 2 DBA LOCA is reduced such that only two SGTS subsystems are required to contain and treat these gases. Therefore, applying a 7-day LCO for the condition of two inoperable SGTS subsystems with the Unit 1 SC in the modified mode results in the same risk as a 7-day LCO for the condition of one inoperable Unit 1 SGTS subsystem with the Unit 1 SC in the normal mode, as is required by the current Unit 2 TS. Therefore, this proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: December 21, 1992

Description of amendment request: The proposed amendment would delete two primary containment isolation valves (PCIVs), E11-F022 and E11-F023, associated with the residual heat removal (RHR) head spray mode from Hatch Unit 1 Technical Specification (TS) Table 3.7-1, "Primary Containment Isolation Valves Which Receive a Primary Containment Isolation Signal;" Table 4.2-1, "Check, Functional Test, and Calibration Minimum Frequency for Instrumentation Which Initiates Reactor Vessel and Primary Containment Isolation;" and Table 3.7-4, "Primary Containment Testable Isolation Valves." In addition, Table 3.7-3, "Testable Penetrations with Testable Bellows," will be revised to identify Penetration

X-17 as a spare. The testable bellows for Penetration X-17 will not be removed and surveillance testing of the bellows will continue.

The purpose of this change is to support the physical removal of the above valves. The function of the head spray mode of RHR is to spray water in the reactor vessel head area, while in the process of reactor shutdown, to provide a rapid reactor head cooldown. It is a low flow, low pressure system designed to supply water to the vessel steam dome, through the head spray nozzle. Hatch Unit 1 was designed with this capability when it was anticipated that reactor vessel head conditions would be critical path for beginning a refueling outage. However, operating experience has shown that the RHR head spray mode is unnecessary for cooldown of the vessel head, does not perform any safety-related functions, and is not addressed in the emergency operating procedures. In addition, use of the head spray mode of RHR is not practical given the restrictive cooldown rates established in TS 3.6. Additionally, removal of the RHR head spray piping spool piece delayed removal of the reactor head for refueling which resulted in unnecessary personnel exposure. Accordingly, the licensee deactivated the RHR head spray mode, and removed the spool piece (between the flanged connection on the reactor vessel head and the flanged connection just downstream of valve E11-F019) in 1986 in accordance with 10 CFR 50.59.

Although the RHR head spray mode of operation was deactivated and the spool piece removed, the associated PCIVS, E11-F022 and E11-F023, were not removed. Accordingly, testing in accordance with 10 CFR 50, Appendix J, has continued on the PCIVs, resulting in unnecessary personnel exposure. The licensee currently plans to physically remove these valves during the upcoming Unit 1, spring 1993, refueling outage. Following removal of the PCIVs, Penetration X-17 will be capped, thus, preserving containment integrity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. The proposed change to the TS does not involve a significant increase in the probability or consequences of an accident previously evaluated. The process lines associated with PCIVs E11-F022 and E11-F023 have been removed and therefore, the PCIVs are no longer needed. Accordingly, PCIVs E11-F022 and E11-F023 will be removed and replaced by a welded cap which will serve as the containment pressure boundary, subject to testing in accordance with 10 CFR 50, Appendix J. Therefore, containment integrity will be preserved in a manner equal to, or better than, that provided by PCIVs E11-F022 and E11-F023.
>
> 2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Incorporation of the proposed change does not create any new interfaces with safety-related equipment, systems, or structures or any new system subject to failure or malfunction. The proposed change does not create any new operating modes or accident initiating mechanisms.
>
> 3. The proposed change does not involve a significant reduction in a margin of safety because removal of PCIVs E11-F022 and E11-F023 does not affect any system that is required for normal operation, accident mitigation, or shutdown of Plant Hatch. Removal of PCIVs E11-F022 and E11-F023, and the installation of a welded cap on the penetration will provide an equivalent or better containment pressure boundary, without relying on the PCIVs to close on a containment isolation signal. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 22, 1992

Description of amendment request: Gulf States Utilities is requesting a change to River Bend Station (RBS) Technical Specification 4.5.1 to correct minor non-conservative calculational errors in technical specification surveillance requirements for Emergency Core Cooling System (ECCS) pumps. The licensee determined that the surveillance requirement acceptance criteria were not consistent with the Bases for Technical Specification 3/4.5.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> 1. The proposed change would not significantly increase the probability or the consequences of an accident previously evaluated because:
>
> Each of the ECCS systems and subsystems are designed to provide cooling water to the reactor vessel following various transient and accident conditions. The performance of the ECCS was determined through application of the 10 CFR 50 Appendix K evaluation models and then showing conformance to the acceptance criteria of 10 CFR 50.4
>
> The ECCS performance is evaluated for the entire spectrum of break sizes for postulated LOCAs [loss-of-coolant accidents]. The accidents, as listed in USAR [Updated Safety Analysis Report] Chapter 15, for which ECCS operation is required are:
>
> 15.2.8 Feedwater line break
>
> 15.6.4 Steam system piping break outside containment
>
> 15.6.5 Loss-of-coolant accidents (inside containment)
>
> The applicable ECCS performance acceptance criteria from 10 CFR 50.46 are as follows:
>
> a. Criterion 1, Peak Cladding Temperature - "The calculated maximum fuel element cladding temperature shall not exceed 2200°F."
>
> b. Criterion 2, Maximum Cladding Oxidation - "The calculated total local oxidation of the cladding shall nowhere exceed 0.17 times the total cladding thickness before oxidation."
>
> c. Criterion 3, Maximum Hydrogen Generation - "The calculated total amount of hydrogen generated from the chemical reaction of the cladding with water or steam shall not exceed 0.01 times the hypothetical amount that would be generated if all the metal in the cladding cylinder surrounding the fuel, excluding the cladding surrounding the plenum volume, were to react."
>
> d. Criterion 4, Coolable Geometry - "Calculated changes in core geometry shall be such that the core remains amenable to cooling."
>
> e. Criterion 5, Long-Term Cooling - "After any calculated successful initial operation of the ECCS, the calculated core temperature shall be maintained at an acceptably low value and decay heat shall be removed for the extended period of time required by the long-lived radioactivity remaining in the core."
>
> The design of the various ECCS systems is such that the ECCS network will ensure that the above acceptance criteria are met for the various postulated transients and accidents of Chapter 15 of the USAR.
>
> The technical specification surveillance requirements are specified to ensure that the various ECCS pumps are able to deliver the minimum required flows at the required reactor to suction source differential pressures as assumed in the ECCS performance analysis.
>
> The proposed change to the technical specification surveillance requirements will ensure that the ECCS pumps can deliver the

required flows at design conditions and, thus, there is no increase in the possibility or consequences of a previously evaluated accident.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed change to the technical specification surveillance requirement will ensure that the ECCS pumps are able to meet their existing design bases. There are no physical modifications required as a result of this requested change. The proposed operability limits are more conservative than existing limits.

Based upon the above discussion, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed changes to the surveillance requirements provide new operability limits calculated to ensure that the ECCS pumps meet the existing design bases for the systems as discussed in the current bases for Technical Specification 3/4.5.1, the existing USAR analyses, and the system design specifications. Some additional conservatism is included in the new operability limits by assuming a higher suppression pool temperature than required by the system design specifications. Therefore, it was concluded that there is no reduction in the margin of safety created by this requested revision.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 15, 1992

Description of amendment request: The proposed changes to Technical Specification 3/4.3.2, "Containment and Reactor Vessel Isolation Control System," would provide a reasonable period of time to detect and correct inoperabilities of differential temperature isolation instruments caused by air handling unit inoperabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The differential temperature instruments involved in these proposed changes are not assumed to function to mitigate any accidents described in Chapter 6 or 15 of the CPS [Clinton Power Station] Updated Safety Analysis Report (USAR). As a result, the proposed changes cannot increase the consequences of any accident previously evaluated. The ambient and differential temperature instruments are provided only to detect and initiate isolation of a 25-gpm equivalent steam leak. Although the proposed changes will allow a loss of diversity for mitigating the effects of a 25-gpm equivalent steam leak for a limited period of time, this loss of diversity would be allowed only when sufficient ambient temperature isolation instruments for the associated area are operable to initiate the associated isolation concurrent with a single failure. As a result, automatic isolation of a 25-gpm equivalent steam leak will still occur, even in the event of a single failure. The consequences of a 25-gpm equivalent steam leak will thus not be increased by these proposed changes. In addition, these proposed changes do not affect those factors which can initiate a line break. As a result, the probability of a line break or a 25-gpm equivalent steam leak occurring will not be increased by these proposed changes. Therefore, these proposed changes will not increase the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not result in a change to the plant design. As a result, no new failure modes are introduced. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The differential temperature instruments involved in these proposed changes are not assumed to function to mitigate any accidents described in Chapter 6 or 15 of the CPS USAR. These differential temperature instruments (in conjunction with the ambient temperature instruments) are provided only to detect and initiate isolation of a 25-gpm equivalent steam leak. The proposed changes will allow a loss of diversity for mitigating the effects of a 25-gpm equivalent steam leak for a limited period of time. However, the capability to isolate such a leak, even in the event of a single failure, would continue to be maintained by the ambient temperature instruments required to be operable during this extended time period. The proposed time limit permits a reasonable period of time to detect and correct problems with area unit coolers without requiring an unnecessary plant shutdown (transient). In addition, these proposed changes do not affect the setpoints of these ambient temperature isolation instruments. As a result, the associated automatic actions will occur as assumed by plant design. Further, an established IP [Illinois Power] program will ensure that the ambient temperature of plant areas are monitored and the impact on environmental qualification of equipment needed for safe shutdown is evaluated in the event of elevated area temperatures caused by loss of an air handling unit. Therefore, these proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.Local Public Document Room locations: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 15, 1992

Description of amendment request: The proposed changes to Technical Specifications 3/4.7.1.1, "Shutdown Service Water System (Loops A, B, C)," and 3/4.7.2, "Control Room Ventilation System," would add exceptions to Technical Specification 3.0.4 to allow tensioning and detensioning the reactor pressure vessel head with one of the required divisions of the systems addressed by these Technical Specifications inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The probability of occurrence of postulated accidents associated with plant shutdown conditions (inadvertent criticality and fuel handling accidents) is not increased by the proposed changes since those accidents are prevented or mitigated by other controls, design features, and requirements, such as the one-rod-out interlock, shutdown margin, crane physical stops, etc. Further, the applicable mode changes (RPV [reactor pressure vessel] head removal/installation) do not affect the probability of occurrence of such accidents. Since the proposed changes will still require one SX [Shutdown Service Water system] loop associated with an operable diesel generator, DC power source, electrical power distribution system, and main control room ventilation system to be operable during the applicable mode changes, these proposed changes will not increase the consequences of any accident previously evaluated. Therefore, the

proposed changes do not involve a significant increase in the probability or the consequences of any accident previously evaluated.

(2) The proposed changes do not involve any changes to plant design nor do they involve a significant change in plant operation from what is currently allowed by the CPS [Clinton Power Station] Technical Specifications. The impact of the proposed changes is limited to the potential effect on main control room air conditioning system availability and core decay heat removal during removal or installation of the RPV head. At least one main control room air conditioning subsystem associated with an operable SX loop must continue to be operable and two RHR [Residual Heat Removal] shutdown cooling mode loops (or their alternates) must also be operable while removing or installing the RPV head. Therefore, IP [Illinois Power] believes that the proposed changes do not involve a significant change to the requirements for these safety functions during these conditions. Based on the above, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) As noted above, at least one main control room air conditioning subsystem associated with an operable SX loop must continue to be operable and two RHR shutdown cooling mode loops (or their alternates) must also be operable while removing or installing the RPV head. As a result, the proposed changes do not involve a significant reduction in core decay heat removal capability or protection for main control room personnel during the period of time the RPV head is being removed or installed. Therefore, the proposed changes do not involve a significant reduction in a margin of safety assumed or required in any accident or transient analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 15, 1992

Description of amendment request: The proposed change will add a requirement to perform an evaluation prior to plant restart of the impact on the reactor coolant system of chemistry parameters exceeding their limit for specified time periods during plant shutdown conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed change merely brings the current CPS [Clinton Power Station] Technical Specifications into conformance with the Standard Technical Specifications. This change would ensure that an engineering evaluation is completed to assess the effects of any chemistry parameter exceeding its limit for more than 72 hours. The engineering evaluation will supply the needed assessment of the impact of the out-of-limit condition on the reactor coolant system prior to reactor startup. In addition, these changes do not affect any previous analyses. Therefore, this request does not result in a significant increase in the probability or the consequences of any accident previously evaluated.

(2) The proposed change does not involve any changes to plant design nor does it involve a significant change in current plant operation. No new failure modes are introduced as this change requires the performance of an engineering evaluation to determine the impact resulting from an out-of-limit parameter prior to reactor startup. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve any changes to plant design nor does it involve a significant change in current plant operation. The proposed change does not involve changes to the currently specified chemistry limits nor to the specified time limits. The change to the Technical Specification would ensure that an engineering evaluation is completed to assess the out-of-limit parameter with respect to the impact on the structural integrity of the reactor coolant system prior to reactor startup. With approval of the proposed change, engineering evaluations will now be required where they previously were not. Therefore, this change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.Local Public Document Room locations: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: James E. Dyer

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 11, 1992

Description of amendment request: The proposed amendment would extend the Reactor Protection System (RPS) Electrical Protection Assembly (EPA) surveillance intervals for the channel functional test and channel calibration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not increase the probability or consequences of an accident previously evaluated. The proposed amendment extends the surveillance interval for the RPS EPA channel functional test from 6 months to a maximum of 18 months and extends the channel calibration interval from 12 months to an operating cycle (18 months). This amendment will have no adverse affect on the ability of the Reactor Protection System and Primary Containment Isolation System to perform their intended safety functions. The proposed surveillance frequencies will reduce the amount of time the plant is in a half scram condition and vulnerable to challenges to plant shutdown systems. As stated by the NRC in GL 91-09, this more than offsets any increased risk associated with the extended surveillance interval, resulting in a net increase in plant safety.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment requires no plant modifications, does not alter the function of any affected systems, and creates no new mode of plant operation. The design capabilities of affected systems and components are not challenged in a manner which has not been previously addressed. Therefore, no new equipment failures or accidents are introduced.

(3) The proposed change will not involve a significant reduction in the margin of safety. As stated by the NRC in GL 91-09, any increased risk associated with the extended functional test surveillance interval is more than offset by the safety benefits associated with the reduction in safety system challenges. The extended channel calibration interval is necessary to eliminate RPS EPA testing during power operation and realize those same safety benefits. Since the proposed surveillance intervals are accounted for in our setpoint methodology, the reliability of the RPS EPAs is unaffected by this change. Therefore, the proposed change would result in a net increase in plant safety and would not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: January 5, 1993.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the Cooper Nuclear Station (CNS) to remove the Limiting Conditions for Operation (LCOs) and Surveillance Requirements for Residual Heat Removal (RHR) and Core Spray (CS) relays 27X3 1A/1B from the CNS TS. The following changes would be made to the TS:

(1) On TS page 53, Table 3.2.B (page 1), "Aux. Bus Low Voltage Relay 27X3 - 1A & 1B" would be completely removed.

(2) On TS page 55, Table 3.2.B (page 3), "Bus 1A Low Voltage Aux. Relay 27 X 3/1A" and "Bus 1B Low Voltage Aux. Relay 27 X 3/1B" would be completely removed.

(3) On TS page 70, Table 4.2.B (page 1), "Aux. Bus Low Voltage Relay 27X3 - 1A & 1B" would be completely removed.

(4) On TS page 71, Table 4.2.B (page 2), "Low Voltage Relays 27 X 3/1A" and "Low Voltage Relays 27 X 3/1B" would be completely removed.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed license amendment will remove the Auxiliary Low Voltage Relays 27X3 1A/1B in both the Residual Heat Removal (RHR) and Core Spray (CS) systems These relays are used to provide a start permissive signal to the RHR and CS pump motors if voltage is available at buses 1A and 1B respectively and the tie breakers between 1A and 1F are closed or the tie breakers between 1B and 1G are closed. During accident conditions emergency Buses 1F and 1G normally receive power from the SSST [Startup Station Service Transformer] via buses 1A and 1B, with backup power directly provided by either the ESST [Emergency Station Service Transformer] or the EDG [Emergency Diesel Generator]. Removal of these relays will not affect the RHR and CS system logic that requires adequate bus voltage be available prior to initiating the start sequence of the ECCS [Emergency Core Cooling System] pumps. The existing plant configuration of the Bus 1F and 1G first and second level undervoltage relay logic schemes (References 1, 2, & 3) ensures that adequate voltage is available from either offsite power sources (SSST and ESST) or the onsite power source (EDG); therefore, adequate voltage at Bus 1F and 1G would be an acceptable condition to allow sequential loading. Identifying the actual power source (SSST, ESST, EDG) supplying power to buses 1F and 1G is no longer important since all available power sources can adequately power the RHR and CS pumps during sequential loading.

The safety function of the RHR and CS relay logic is to sense an accident condition, start the ECCS pumps, and open the injection valves at a preset pressure. The safety function of the RHR & CS 27X3 1A/1B relays is to monitor voltage on buses 1A and 1B, and tie breaker status for 1FS/1GS, and if adequate voltage is available and the tie breakers are closed to initiate a permissive signal to start the sequential loading timers for the ECCS pumps during a LOCA [Loss of Coolant Accident]. The ECCS pumps are loaded on buses 1F and 1G which are powered from buses 1A and 1B via the SSST. However, this safety function is also provided by the first and second level undervoltage relay schemes, which ensure buses 1F and 1G are always powered from a source with adequate voltage. The safety function of the bus 1F and 1G first level undervoltage relay is to provide an immediate loadshed of the ECCS loads and a transfer to an available power source after detecting a loss of voltage. The second level undervoltage relay system ensures that an offsite power source or the onsite power source with adequate voltage is available to buses 1F and 1G to start and run the ECCS loads. The proposed removal of the RHR & CS 27X3 1A/1B relays and RHR and CS relay logic modifications will not change the operation, duration, or timing of the sequential loading logic for the ECCS loads. Therefore, the safety function of the RHR and CS relay logic is not affected by the removal of RHR & CS 27X3 1A and 1B relays.

The RHR and CS Emergency Core Cooling Systems will still perform their intended safety function as described in the Updated Safety Analysis Report (USAR) for the Loss of Coolant Accident with the approval of this proposed change. By maintaining the safety function of these ECCS systems CNS will continue to meet the criteria prescribed in the 10 CFR 50.46 and Appendix K analysis assuring that the CNS ECCS are capable of meeting their design bases and licensing requirements. The probabilities of a LOCA or other design basis accident will not be increased with approval of this proposed change because, the performance characteristics of the RHR and CS systems are not affected by this change, only a change in the logic scheme for initiating ECCS sequential loading is taking place. This is accomplished by using the bus 1F and 1G first level undervoltage relay system instead of the first level RHR & CS 27X3 1A/1B relays to monitor the emergency buses 1F and 1G for voltage when powered by the SSST to initiate sequential loading of the ECCS pump motors. Furthermore, the first and second level undervoltage relays are currently controlled by the CNS Technical Specifications with attendant setpoints and surveillance frequencies, to ensure the components are operable.

The removal of the RHR & CS 27X3 1A/1B relays will simplify the RHR and CS pump start circuitry while providing the same safety function. The modified RHR and CS relay logic, will not change the desired performance or safety function of the RHR or CS systems. Therefore, based on the above discussions, the changes proposed in this amendment request do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility for a new or different kind of accident from any accident previously evaluated?

This proposed change removes auxiliary relays RHR & CS 27X3 1A/1B which monitor voltage on buses 1A and 1B, and tie breaker status for 1FS/1GS, and if adequate voltage is available and the tie breakers are closed would initiate a permissive signal to start the sequential loading timers for the ECCS pumps during a LOCA. The function of auxiliary relays RHR & CS 27X3 1A/1B is unnecessary since the safety function is performed by the existing first and second level undervoltage relay logics, which ensures that Buses 1F and 1G are powered from either offsite power source (SSST or ESST) with adequate voltage, or the onsite power source (EDG). The bus 1F and 1G first level undervoltage relay system provides an immediate loadshed of the ECCS loads and a transfer to an available power source after detecting a loss of voltage with a subsequent initiation signal to the sequential loading timer. The second level undervoltage relay system ensures an offsite or onsite power source with adequate voltage is available to buses 1F and 1G to start and run the ECCS loads. The monitoring of Bus 1A and 1B by these relays will not be required since the first and second level undervoltage logic monitors voltage at Bus 1F and 1G which directly powers the ECCS loads from one of the three available power sources (SSST, ESST, or EDG). Bus 1F and 1G normally receive power from Bus 1A and 1B respectively, therefore, monitoring Bus 1F and 1G to initiate any ECCS sequential loading would be acceptable. Identifying the actual power source (SSST, ESST, EDG) to Buses 1F and 1G is no longer important since all power sources can adequately power the RHR and CS pumps during sequential loading. Therefore, the utilization of bus 1F and 1G voltage as a permissive signal to begin sequential loading of the ECCS pump motors does not create the possibility for a

> new or different kind of accident from any accident previously evaluated.
>
> 3. Does the proposed amendment involve a significant reduction in the margin of safety?
>
> This proposed change to the Technical Specifications removes relays RHR & CS 27X3 1A/1B, that monitor available voltage on Buses 1A/1B and tie breaker status for 1FS/1GS. These relays are used to provide a start permissive signal to the RHR and CS pump motors if adequate voltage is available at buses 1A/1B respectively, and the 1FS/1GS tie breakers are closed. The adequacy of voltage at buses 1A and 1B provides an indirect indication of voltage at buses 1F and 1G, because buses 1F and 1G normally receive power from the SSST via buses 1A and 1B, respectively. The function that these relays performed will now be accomplished by the bus 1F and 1G first and second level undervoltage relay logic. The bus 1F and 1G first level undervoltage relay system provides an immediate loadshed of the ECCS loads and a transfer to an available power source with a subsequent initiation signal to the sequential loading timer after detecting a loss of voltage. The second level undervoltage relay system (References 1 & 2) ensures an offsite power source with adequate voltage is available to buses 1F and 1G to start and run the ECCS loads. Monitoring both Bus 1A/1B and 1F/1G is not needed or necessary, because buses 1F and 1G normally receive power from the SSST via buses 1A and 1B, with backup power directly provided by either the ESST or the EDG. By monitoring Bus 1F and 1G for adequate voltage to initiate sequential loading of the ECCS pump motors, the safety function of the RHR and CS logic systems is maintained. The RHR and CS Emergency Core Cooling Systems will still perform their intended safety function as described in the Updated Safety Analysis Report (USAR) for the Loss of Coolant Accident with the approval of this proposed change. By maintaining the safety function of these ECCS systems CNS will continue to meet the criteria prescribed in the 10 CFR 50.46 and Appendix K analysis assuring that CNS ECCS are capable of meeting their design bases and licensing requirements. Therefore, the removal of the RHR & CS 27X3 1A/1B relays for RHR and CS pump start circuitry will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: George T. Hubbard, Jr. (acting)

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 25, 1992

Description of amendment request: The proposed amendment would modify the Seabrook Station Technical Specifications to allow the fixed incore detectors to be utilized in addition to the movable incore detectors to perform technical specification surveillances. The amendment proposes modifying Technical Specification sections 3.1.3 "Movable Control Assemblies," 4.2 "Power Distribution Limits," and 3.3.3.2 "Movable Incore Detectors" to incorporate the fixed incore detectors into the definition of the incore detection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes do not involve any physical changes to the Seabrook Station. Neither the movable incore nor fixed incore detectors are used to mitigate any of the accidents described in the Updated Final Safety Analysis Report. The use of the fixed incore detectors to perform technical specification surveillances does not compromise the initial power distribution limits assumed in accident analyses.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not modify any plant equipment, change any reactor core power distribution limits, or affect the manner by which the facility is operated. The proposed changes merely allow an additional incore flux monitoring system to be used to monitor core parameters for technical specification surveillances.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not modify any reactor core flux distribution limits or affect the manner in which the facility is operated. The use of the fixed incore detectors does not reduce the accuracy of the measurements taken to perform technical specification surveillances.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Grey, One International Place, Boston, Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 22, 1992 (Reference LAR 92-08)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change the second level undervoltage trip setpoint and allowable values and revise the diesel generator (DG) steady state voltage surveillance requirements. The specific TS changes proposed are as follows: (1) TS 3/4.3.2, "Engineered Safety Features Actuation System Instrumentation," Table 3.3-4 functional unit 7.b, Second Level Trip Setpoint and Allowable Values would be revised from 3600 volts to 3785 volts. And (2) TS 3/4.8.1, "A.C. Sources," Surveillance Requirements 4.8.1.1.2.a.2), 4.8.1.1.2.b.3), 4.8.1.1.2.b.5)b), 4.8.1.1.2.b.6), 4.8.1.1.2.b.7)b), and 4.8.1.1.2.b.8) would be revised to change the steady state voltage requirements for the Emergency Diesel Generators (EDGs) from 4160 + 420 volts to 4160 +240/-375 volts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> a. Do the changes involve a significant increase in the probability or consequences of an accident previously evaluated?
>
> The proposed changes to increase the [second level undervoltage relays] SLUR TS minimum setpoint and allowable value provide additional conservatism for the 4160 volt vital buses to provide safety-related equipment adequate voltage at the 4160 volt, 480 volt, and 120 volt levels, and therefore reduce the risk of tripping or damaging the vital equipment associated with accident mitigation.

The proposed changes to increase the minimum steady state voltage and decrease the maximum steady state voltage for EDG surveillance requirements provide additional conservatism for equipment powered by the EDG thereby reducing the risk of tripping or malfunction of vital equipment associated with accident mitigation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously postulated.

b. Do the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not alter the method by which any safety related system performs its function.

Increasing the TS minimum SLUR setpoint will have no adverse effect on the ability of the 4160 volt vital buses to perform their intended function; their function is enhanced by this proposed change. Increasing the EDG steady state minimum voltage and decreasing the maximum voltage surveillance requirement provide additional assurance of adequate voltage to equipment powered by the EDGs. Hence, no new failure mechanisms will be introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Do the changes involve a significant reduction in a margin of safety?

The proposed changes will not alter any accident analysis assumptions, initial conditions, or results. Consequently the proposed changes do not have any effect on the margin of safety.

Increasing the TS minimum SLUR setpoint is conservative; the change ensures adequate voltage is available for safety-related equipment at the 4160 volt, 480 volt, and 120 volt levels.

Increasing the EDG minimum voltage and decreasing the maximum voltage surveillance requirements are also conservative changes to ensure adequate voltage is available for safety-related equipment at the 4160 volt, 480 volt, and 120 volt levels.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 22, 1992 (Reference LAR 92-09)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to change the Overtemperature Delta-T reactor trip setpoint as a result of a non-conservatism in the Westinghouse methodology used to calculate the f(delta I) penalty function. The specific TS changes proposed are as follows: The proposed changes to TS 2.2.1 would change Note 1 to Table 2.2-1 to replace the f(delta I) penalty slope of 1.76% with 2.38% and the delta I deadband of -19% - +9% with -19% - +7%.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Do the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Operation with the revised f(delta I) function will not cause any design or analysis acceptance criteria to be exceeded. The structural and functional integrity of any plant system is unaffected. The f(delta I) penalty function is part of the accident mitigation response and is not itself an initiator for any transient.

The changes to the f(delta I) penalty function do not affect the integrity of the fission product barriers for mitigation of radiological dose consequences as a result of an accident. Both the margin to DNB and fuel temperature limits remain protected with the revised f(delta I) penalty function. In addition, the offsite mass releases used as input to the dose calculations are unchanged from those previously assumed. Therefore, the offsite dose predictions remain within acceptance criteria.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Do the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The revised f(delta I) penalty function does not affect the assumed accident initiation sequences. No new operating configuration is being imposed by the f(delta I) penalty function that would create a new failure scenario. In addition, no new failure modes are being created for any plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Do the changes involve a significant reduction in a margin of safety?

The revision of the f(delta I) penalty function will not change any accident analysis assumptions, initial conditions, or results. The accident analysis acceptance criteria are unaffected by the revision to the f(delta I) penalty function. Thereby, the revised TS values will adequately maintain the plant in a safe operating range.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: December 22, 1992 (Reference LAR 92-10)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise Technical Specification 6.9.1.6, "Semiannual Radioactive Effluent Release Report," extending the reporting period from semiannually to annually and to add a List of Effective Pages to the Technical Specifications. The specific TS changes proposed are as follows:(1) Section 6.0 regarding the semiannual radioactive effluent release report would be changed. TS 6.9.1.6 is proposed to be changed to revise the reporting period from semiannual to annual, and the report submission date would be revised from 60 days after January 1 and July 1 of each year to before May 1 of each year. And (2) a List of Effective TS Pages would be added as a preface.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Do the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed TS changes are administrative in nature. The proposed changes to TS 6.9.1.6 are consistent with 10 CFR 50.36a report requirements. The proposed changes do not affect accident evaluations. The proposed changes are administrative in nature, should result in improved administrative practices, and do not affect plant operations.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Do the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes are administrative in nature, do not result in physical alterations or changes to the operation of the plant, and cause no change in the method by which any safety-related system performs its function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Do the changes involve a significant reduction in a margin of safety?

These administrative changes do not alter the basic regulatory requirements and do not affect any safety analyses.

The proposed change to TS 6.9.1.6 does not alter any administrative controls over radioactive effluent, nor does the proposed change involve any physical alterations to the plant with respect to radioactive effluents. Therefore, the proposed change would not affect the meaning, application, and function of the TS requirements.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 29, 1992, as supplementedDecember 23, 1992

Description of amendment request: The licensee commenced operating on a 24-month fuel cycle, instead of the previous 18-month fuel cycle, with fuel cycle 9. Fuel cycle 9 started in August 1992. In order to accommodate operation on a 24-month cycle, the licensee requested a Technical Specifications (TS) amendment to incorporate the changes listed below:

(1) The licensee proposed changing the frequency of auxiliary feedwater (AFW) pump full-flow testing (specified in TS Section 4.8) to accommodate operation on a 24-month cycle.

(2) The licensee proposed changing the frequency of verifying that the AFW pumps automatically start upon receipt of an actuation signal (specified in TS Section 4.8) to accommodate operation on a 24-month cycle.

(3) The licensee proposed changing the frequency of verifying that the AFW recirculation valve actuates to its correct position (specified in TS Section 4.8) to accommodate operation on a 24-month cycle.

(4) The licensee proposed changing the frequency of testing the AFW backup supply valves from the city water system (specified in TS Section 4.8) to accommodate operation on a 24-month cycle.

These proposed changes follow the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle," as applicable.

In addition, the licensee proposed changing the wording of the AFW pump automatic start verification requirement (specified in TS Section 4.8.3.b.) from "each" actuation signal to "an" actuation signal. This proposed wording is consistent with the Westinghouse Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the requirements of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of a previously-analyzed accident. The changes propose extending the surveillance intervals for auxiliary feedwater system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. On-line surveillances and testing help to assure equipment operability. A review of surveillance test records from 1986 to 1990 indicated that in each case, the system was able to perform its safety function. (However, a recirculation valve failed during one surveillance test. The valve was repaired and satisfactorily retested.) The change to Technical Specification 4.8.3.b (from "each" actuation signal to "an" actuation signal) is an administrative change that, when considered in combination with other existing technical specification requirements, does not reduce the overall testing of the auxiliary feedwater pump actuation test signals. The ABFP full flow test verifies the start of the ABFPs by simulating a loss of the Main Boiler Feed Pumps. Other start signals are governed by tech. spec. Table 4.1-1 and specification 4.5.A.1.b. The proposed wording is similar to the approach taken by the Westinghouse Standard Technical Specifications.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed license amendment does not create the possibility of a new or different kind of accident. The changes propose extending the surveillance intervals for auxiliary feedwater system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. On-line surveillances and testing help to assure equipment operability. The change to Technical Specification 4.8.3.b (from "each" actuation signal to "an" actuation signal) is an administrative change that, when considered in combination with other existing technical specification requirements, does not reduce the overall testing of the auxiliary feedwater pump actuation test signals. The ABFP full flow test verifies the start of the ABFPs by simulating a loss of the Main Boiler Feed Pumps. Other start signals are governed by tech. spec. Table 4.1-1 and specification 4.5.A.1.b. The proposed wording is similar to the approach taken by the Westinghouse Standard Technical Specifications.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed amendment does not involve a significant reduction in a margin of safety. The changes propose extending the surveillance intervals for auxiliary feedwater system testing. The changes do not involve any physical changes to the plant, nor do they alter the way any equipment functions. On-line surveillances and testing help to assure equipment operability. A review of surveillance test records from 1986 to 1990 indicated that in each case, the system was able to perform its safety function. (However, a recirculation valve failed during one surveillance test. The valve was repaired and satisfactorily retested.] The change to Technical Specification 4.8.3.b (from "each" actuation signal to "an" actuation signal) is an administrative change that, when considered in combination with other existing technical specification requirements, does not reduce the overall testing of the auxiliary feedwater pump actuation test signals, nor does it change any system setpoints. The ABFP full flow test verifies the start of the ABFPs by simulating a loss of the Main Boiler Feed Pumps. Other start signals are governed by tech. spec. Table 4.1-1 and specification 4.5.A.1.b. The proposed wording is similar to the approach taken by the Westinghouse Standard Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Southern California Edison Company, et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: January 15, 1993 (Reference PCN-258)

Description of amendment request: This proposed change would modify the Technical Specifications incorporated in

Facility Operating License No. DPR-13 as Appendix A by revising Technical Specification section 6.1, "RESPONSIBILITY"; Technical Specification section 6.2, "ORGANIZATION"; Technical Specification section 6.3, "UNIT STAFF QUALIFICATIONS"; Technical Specification section 6.4, "TRAINING"; and Technical Specification section 6.8, "PROCEDURES AND PROGRAMS." The proposed change is needed to provide appropriate operator qualification and staffing requirements following permanent shutdown of the plant and defueling of the reactor and will allow use of operators qualified in accordance with site specific programs appropriate to the defueled condition, rather than operators licensed per 10 CFR Part 55.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility according to this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed change will not become effective until the reactor has been defueled and a license change prohibiting subsequent plant operation has been made effective. In this condition the only credible accidents evaluated in Chapter 15 of the [Updated Final Safety Analyses Report] UFSAR are a fuel handling accident and a loss of electrical power. Since the defueled plant operator training and qualification programs will provide the expertise needed to mitigate the consequences of these accidents, the proposed change in operator qualification requirements will not increase the consequences of a previously evaluated accident.

The shift staffing levels specified by the proposed change will provide adequate manpower to respond to a loss of electrical power or fuel handling accident. Thus the minimum shift crew will be able to mitigate the consequences of the credible accidents evaluated in Chapter 15 of the UFSAR, and the proposed change in manning levels will not increase the consequences of a previously evaluated accident.

The proposed change affects only operator qualifications and staffing, and does not affect any hardware. Therefore, only the probability of an operator error causing a previously evaluated accident need be considered. The defueled plant operator qualification programs will provide operator expertise on the systems and procedures for fuel handling and electrical power distribution which is at least equivalent to that provided prior to implementing the proposed change. Also, the manning levels specified by the proposed minimum shift crew are adequate to operate these systems. Thus the potential for operator errors is not increased, and the probability of an accident previously evaluated in Chapter 15 of the UFSAR resulting from operator error is not increased.

Therefore the proposed change will not involve an increase in the consequences or probability of a previously evaluated accident.

2. Will operation of the facility according to this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change affects only operator qualification and staffing. The proposed change does not affect any systems, components, or structures, or the manner in which they function. The types of accidents possible will not change. Therefore, the proposed change will not create the possibility of a new or different kind of accident.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

Response: No

The margin of safety is the difference between the value of a critical design, operating, or post accident parameter, and the value of the parameter which would produce unacceptable results. The proposed change affects only operator qualification and staffing and does not affect any hardware. The ability of the operating staff to control the critical parameters affecting the margin of safety will not be changed.

The proposed changes in operator qualification will not reduce the level of expertise in the normal and post-accident operation of the systems which can affect these parameters. The staffing specified in the proposed change provides adequate manpower to operate these systems during normal and accident conditions. Thus the ability of the minimum shift crew to control these parameters will not be reduced. Therefore, the proposed change will not involve a reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: October 13, 1992

Description of amendments request: The amendments would revise Technical Specification 3.4.5 and Bases Section 3/4.4.5 to include new requirements with respect to operability and surveillance of power-operated relief valves (PORVs) and block valves. The changes are based on the guidance contained in Generic Letter 90-06 and are intended to enhance the reliability of the PORVs and block valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Automatic actuation of the PORVs at Farley Nuclear Plant is not assumed to mitigate the consequences of a design basis accident as described in Chapter 15 of the [Final Safety Analysis Report] FSAR. The

safety functions performed by the PORVs are: 1) inactive valves which form part of the [Reactor Coolant System] RCS boundary, and 2) manual operation as required by emergency operating procedures. The proposed changes will increase the reliability of the PORVs thus ensuring they are available to perform their function when required to do so. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any physical changes to the PORVs or their setpoints. The proposed changes do not delete any function previously provided by the PORVs nor has the probability of inadvertent opening been increased. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve significant reduction in a margin of safety. The proposed changes increase the reliability of the PORVs thus ensuring their availability when called upon to perform their function and will not impact any safety analysis assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P.O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Elinor G. Adensam

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 8, 1993 (TS 92-10)

Description of amendment request: The proposed amendment would incorporate new requirements associated with steam generator tube inspection and repair. The new requirements establish alternate steam generator tube plugging criteria that take into account the reinforcing effect that the steam generator tubesheet has on the external surface of expanded steam generator tubes referred to as Westinghouse Explosive Tube Expansion (WEXTEX) region. The new criteria would be used to change Technical Specification (TS) bases and Surveillance Requirements 4.4.5.2 through 4.4.5.5 to reduce the need for repairing or plugging steam generator tubes having indications that exceed the current technical specification depth-based plugging limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA proposes to modify the SQN Unit 1 and Unit 2 TSs to incorporate alternate steam generator (S/G) tube plugging criteria (i.e., W* criteria). The W* criteria take into account the reinforcing effect the tubesheet has on the external surface of an expanded S/G tube. TVA is requesting this change to: (1) maximize reactor coolant system flow, (2) maximize tube plugging margin to prolong S/G life, and (3) reduce occupational radiation exposure, man-hours, and S/G critical path time.

Tube-bundle integrity will not be adversely affected by the implementation of the W* tube plugging criteria. S/G tube burst or collapse cannot occur within the confines of the tubesheet; therefore, the tube burst and collapse criteria of Regulatory Guide (RG) 1.121 are inherently met. The W* distance is shown by analyses and test results to retain the tube within the tubesheet during all plant conditions, thereby precluding an event with consequences similar to a postulated tube rupture event. For S/G tubes with indications that are returned to service as a result of the application of the W* criteria, postulated steam-line break (SLB) leak rates are required to remain within the Final Safety Analysis Report (FSAR) limits.

The W* distance has been shown to restrict primary to secondary leakage below current TS limits during all plant conditions. In the unlikely event that a through-wall crack develops and results in primary to secondary leakage, the leakage characteristics and trends would allow safe shutdown of the plant. Relative to the potential for SLB leakage, the distribution of cracking within the W* distance will be limited such that expected leakage and associated radiological consequences will not exceed the FSAR limits.

In conclusion, the incorporation of the W* criteria into SQN TSs maintains existing design limits and does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

Tube-bundle integrity is expected to be maintained during all plant conditions upon implementation of the proposed alternate tubesheet plugging criteria. Use of the criteria does not inducea new mechanism that would result in a different kind of accident from those previously analyzed.

Even with the limiting circumstance of a complete circumferential separation of a tube occurring below the W* distance, S/ G tube pullout is precluded and leakage is predicted to be maintained within the FSAR limits during all plant conditions. Administrative leak rate limits and leakage trending are in place at SQN to address the potential for plant operation with circumferential cracking.

(3) Involve a significant reduction in a margin of safety.

Upon implementation of the W* criteria, operation with potential cracking in the WEXTEX expansion region of the S/G tubing is predicted to meet the criteria of RG 1.21 and RG 1.83 and thereby meet the requirements of General Design Criteria 14, 15, 31 and 32. Calculations have shown that tubes within the W* distance with circumferential cracks having arc lengths less than 92 degrees (beginning of the cycle) would not pull out during a postulated an SLB event. The most significant effect would be a possible increase in leakage following an event. Excessive leakage during an SLB event is precluded since calculations and testing have shown that the potential distribution of cracks both within and below the W* distance would not exceed leakage limits during all plant conditions. Consequently, the margin of safety would not be significantly reduced.

Neglected in the above evaluation is the leakage restriction and tube restraint offered by corrosion product buildup in the tube-to-tubesheet crevice. This buildup will restrict leakage to below the currently calculated amounts, in addition to adding to the tube pullout resistance, as shown by test results. The addition of a new TS requirement for inspecting tubes using a rotating pancake coil probe will also contribute to the identification of any degradation mechanism that is not readily detectable using bobbin probe.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: January 8, 1993 (TS 92-16)

Description of amendment request: The proposed amendment would delete Surveillance Requirement 4.4.10.b, thereby eliminating the need to perform a supplemental 10-year inspection of the reactor vessel nozzles for underclad cold cracking.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issues of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequencesof an accident previously evaluated.

TVA proposes to modify the SQN Units 1 and 2 TSs to delete an existing surveillance requirement (SR) (SR 4.4.10.b) that currently requires that the reactor vessel nozzles be inspected for underclad cold cracks at the end of each 10-year inspection interval using techniques at least as sensitive as those used to conduct the supplemental examination performed before fuel loading. Ultrasonic examinations were performed on SQN's reactor vessel nozzles in 1980.

The Unit 1 nozzles were potentially susceptible to the underclad cold cracking because of the two-layer cladding process. Examination of the Unit 1 nozzles revealed one outlet nozzle with a cracking pattern characteristic of underclad reheat cracking, two outlet nozzles with no indications, and five nozzles (one outlet, four inlets) with a cracking pattern characteristic of underclad cold cracking confined to the nozzle bore. The results of the Unit 2 examinations revealed no evidence of any underclad cold cracking since the single-layer cladding process used on Unit 2 precluded the formation of cold cracks. All indications from the Unit 1 and Unit 2 nozzles were within the acceptance criteria of the American Society of Mechanical Engineers (ASME) code.

Westinghouse Electric Corporation has performed fracture-mechanics analyses that conclude that the minimum critical flaw depth is 1.5 inches at the governing region of the nozzle (the nozzle corner region) and that fatigue crack growth would not exceed 0.06 inch over a 10-year service period. For a 40-year service life, these flaws would not exceed 0.21 inch. These analyses indicate that there would be no detrimental impact from underclad indications and that the original design margins would be maintained for the life of the plant. In addition, nuclear power plants in France that exhibited known underclad cold cracking similar to SQN Unit 1 have performed preservice and periodic ISIs and have reported no evidence of crack growth. Examinations performed in accordance with Section XI of the ASME code as supplemented by Regulatory Guide 1.150, plus expansion of the examination coverage to the safe-end regions on the Unit 1, Loop 1 outlet nozzle, provide a sufficient basis upon which to determine whether indications previously recorded during the 1980 SQN examinations satisfy the ASME Section XI code criteria. The expanded ASME Section XI examination of the Unit 1 nozzles will include over one-half the total number of underclad cold crack indications reported in 1980.

Framatone, a Westinghouse licensee; and Electricite de France (EdF), owner of nuclear power plants in France, have also performed fracture-mechanics analyses that conclude that the critical flaw size is greater than one inch and that fatigue crack growth of underclad cold cracks is insignificant. Based on the above information, TVA concludes that the elimination of the supplemental 10-year inspection requirement from TSs does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of new or different kind of accident from any previously analyzed.

The ASME Section XI examinations, plus the expanded examination of the safe-end region on the Unit 1, Loop 1 outlet nozzle, will provide sufficient information to determine if nozzle indications that were recorded during the SQN 1980 preservice examinations satisfy the ASME Section XI code criteria. Accordingly, the elimination of the current TS requirement would not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety .

Fracture-mechanics analyses performed by Westinghouse, Framatone, and EdF indicate that reheat cracking and underclad cold cracking in reactor vessel nozzles do not reduce the original design margins over 40-year plant life. In addition, periodic ISIs of reactor vessel nozzles with known underclad cracks have demonstrated no growth. The ASME Section XI examinations, plus the expanded examination of the safe-end region on the Unit 1, Loop 1 outlet nozzle, will provide sufficient information to determine if nozzle indications that were recorded during the SQN 1980 preservice examinations satisfy the ASME sectional code criteria. Consequently, the removal of the supplemental examination requirement from SQN TSs does not involve a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: December 21, 1992

Description of amendment request: The proposed amendment would add an Action statement to Technical Specification (TS) 3/4.6.4.3, "Containment Hydrogen Dilution System," which would apply when both containment hydrogen dilution (CHD) systems are inoperable and allow 72 hours to return one of the two inoperable CHD systems to operable status or be in at least Hot Standby within the next six hours. Also, the associated TS Bases Section 3/4.6.4, "Combustible Gas Control," would be revised to clarify the discussion of the CHD and containment hydrogen purge systems, and to add mention of the capability to install an external hydrogen recombination system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Toledo Edison has reviewed the proposed change and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no Updated Safety Analysis Report (USAR) accident initiators are affected by the proposed changes. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours has no bearing on the probability of an accident previously evaluated. The proposed changes to TS Bases 3/4.6.4 provide additional clarifying information regarding the containment Hydrogen Purge System Filter Unit and the Hydrogen Recombiner System, and have no adverse effect on the probability of experiencing an accident previously evaluated.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate accident conditions or assumptions used in evaluating the radiological consequences of any accident. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours does not alter the source term, containment isolation, or alllowable releases, and therefore will not increase the radiological consequences of a previously evaluated accident. The proposed changes to TS Bases 3/4.6.4 provide additional clarifying information regarding the Containment Hydrogen Purge System Filter Unit and the Hydrogen Recombiner System, and have no adverse effect on the consequences of an accident previously evaluated.

2a. Not create the possibility of a new kind of accident from any accident previously evaluated because no new types of failures or accident initiators are introduced by the proposed changes.

2b. No create the possibility of a different kind of accident from any accident previously evaluated because no different accident initiators or failure mechanisms are introduced by the proposed changes.

3. Not involve a significant reduction in the margin of safety. The proposed change to TS 3/4.6.4.3 adding an additional Action statement allowing both containment hydrogen dilution systems to be inoperable for up to 72 hours will not have an adverse effect on the margin of safety because as shown in USAR Figure 6.2-50, Post-LOCA Hydrogen Percent by Volume, the lower flammability limit of four volume percent hydrogen would not be reached until approximately 37 days following a postulated Loss of Coolant Accident (LOCA). The hydrogen concentration control function can be established in the event of a LOCA via the hydrogen recombination system within this timeframe. All accident analyses will remain valid. The proposed changes to TS Bases 3/4.6.4 provides additional clarifying information and have no adverse impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: John N. Hannon

Virginia Electric and Power Company, Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of amendment request: December 4, 1992

Description of amendment request: The proposed change would allow a reduced minimum reactor coolant system (RCS) flow rate associated with increased steam generator tube plugging (SGTP) levels. The proposed change would revise the NA-2 Technical Specifications (TS), Table 2.2-1, Reactor Trip System Instrumentation Trip Setpoints, of TS 2.2.1 and Table 3.2-1, DNB parameters, of TS 3.2.5 to allow a reduction in the minimum RCS flow rate. The change is necessary to accommodate the systems effects associated with increased SGTP. NA-2 is scheduled to conclude Cycle 9 operations and begin a refueling/SG inspection outage in September 1993. It is anticipated that this SG inspection will result in plugging additional SG tubes. As required by TS 3.2.5 and 4.2.5.2, NA-2 performs RCS flow rate measurements once per fuel cycle. NA-2 safety analyses are based in part on verifying, via the TS surveillance, that the RCS total flow rate is greater than or equal to 284,000 gallons per minute (gpm). Additional SGTP increases the likelihood of violating this TS requirement. Therefore, safety analyses and evaluations have been performed which support an approximate 3 percent reduction in the RCS total flow rate limit from 284,000 to 275,300 gpm. The proposed TS changes implement a reduced total flow rate requirement which is intended to bound future measured flow values and any required SGTP until SG replacement. The changes will allow NA-2 to continue to operate with the expected increase in RCS loop resistance caused by increased SGTP levels and ensure that the required safety margins for core cooling and accident analyses are maintained.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The impact of the reduced minimum measued RCS flow rate on operating characteristics, and accident analyses which support Unit 2 operation, have been fully assessed and documented in the safety evaluation. The proposed reduction to the Technical Specifications minimum measured RCS flow rate does not impact either equipment or operating conditions that are considered in determining the probability of occurrence for any of the UFSAR Chapter 15 accident analyses. The proposed reduction of minimum measured RCS flow rate has the potential to increase accident analysis consequences. However, the results of the reanalyses show that the design limits are met. Therefore, the consequences of an accident previously evaluated remain unchanged.

b. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the Technical Specifications does not involve modifications to any of the existing equipment. The impact of the proposed reduced minimum measured RCS flow rate on North Anna Unit 2 operating characteristics, and accident analyses which support Unit 2 operation, have been fully assessed and documented in the safety evaluation. The proposed reduction to the Technical Specifications minimum measured RCS flow rate does not create any new or different accident initiators, so no unique accident possibility is created. Therefore, the proposed Technical Specifications changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does not involve a significant reduction in a margin of safety.

The proposed amendment has been analyzed and the Technical Specifications continue to ensure that adequate reactor coolant system total flow is maintained. The impact of the proposed reduced minimum measured RCS flow rate on North Anna Unit 2 operating characteristics, and accident analyses which support Unit 2 operation, have been fully assessed and documented in the attached safety evaluation. The analyses and equipment evaluations show that the applicable design limits are met. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 22, 1992

Description of amendment request: The proposed amendment consists of a revision to Technical Specification Table 4.8-1, Diesel Generator Test Schedule, which eliminates the requirement to increase the testing frequency upon experiencing five or more failures in the last 100 valid tests. The provision for increased testing based upon the last 20 valid tests is maintained.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only the criteria for entering and leaving the accelerated diesel generator testing schedule. The operability requirements and limiting conditions for operation remain unchanged. The return to a normal testing frequency following a series of diesel failures that exceeded 2 out of the last 20 tests would be made only after 7 successful tests without a failure and at least 20 tests without more than 1 failure. Continued testing on a weekly rather than a monthly schedule will not significantly improve the ability to determine whether the most recent failure indicated a sudden change in diesel reliability. Thus, the ability of the diesel generators to provide emergency electrical power would not be diminished. Therefore, the proposed change will not increase the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated

The proposed change does not involve any change in plant design or in the manner of any other plant operation. The criteria for initiating and suspending accelerated diesel testing are being slightly changed. This change does not result in a significant difference in the monitoring of diesel generator reliability. Therefore, the proposed change does not create the possibility of any new or different kind of accident from those previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety

The diesel generators will continue to provide a redundant source of acceptably reliable onsite power. The revised criteria for initiating and suspending accelerated diesel testing have an insignificant effect on diesel generator reliability and are acceptable according to Generic Letter 84-15. In addition, the changes eliminate excessive testing, which can have an adverse effect on diesel reliability, beyond that necessary to demonstrate continued reliability. Therefore, the revision to the test frequency requirements does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W. Washington, D. C. 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 22, 1992

Description of amendment request: The proposed amendment deletes the surveillance requirement of Technical Specification 4.8.1.1.2(i)(2), which involves performing a pressure test of portions of the emergency diesel fuel oil system. Alternative testing for the tanks and piping would include leak testing at hydrostatic head pressure with the tanks filled to design capacity and would be governed by Technical Specification 4.0.5.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would remove a duplication in the technical specifications and allow appropriate surveillance testing to be performed on the diesel fuel oil system. The revised testing requirement would not affect the probability or consequences of an accident previously analyzed as it maintains equivalent testing requirements.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter the parameters of plant operation or equipment design. The change will allow an appropriate surveillance test to be performed on the diesel fuel oil system. Therefore, the change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change to allow an appropriate surveillance test on the diesel fuel oil system will not have an adverse impact on the margin of safety as defined in the technical specifications. The alternate test is equivalent to the previously specified test. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N. W., Washington, D. C. 20037

NRC Project Director: Suzanne C. Black, Director

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 24, 1991, as supplemented June 2, 1992, and December 1, 1992

Brief description of amendments: The amendments propose the addition of Allowed Outage Times (AOT) for the Scram Discharge Volume (SDV) vent and drain valves, the removal from the Control Rod Operability Technical Specifications of the Unit 1 and Unit 2 SDV Surveillance Requirements (TS 4.1.3.1.4.b) for SDV Level Instrumentation, and the deletion of TS requirement 4.1.3.1.4 for the SDV vent and drain valve surveillance to be performed from a normal control rod configuration of less than or equal to 50% rod density. These changes are consistent with Revision 0 of the BWR Improved Standard Technical Specifications.

Date of issuance: January 15, 1993

Effective date: Immediately to be implemented within 45 days.

Amendment Nos.: 89 and 74

Facility Operating License Nos. DPR-11 and DPR-18. The amendments revised the Technical Specifications.Dates of notices in **Federal Register:** June 12, 1991 (56 FR 27039); July 8, 1992 (57 FR 30242). The December 1, 1992, submittal supplemented the earlier requests and did not change the proposed no significant hazards consideration determinations. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 5, 1992, as supplemented December 9 and 18, 1992

Brief description of amendments: The amendments revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and relocates the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the new 10 CFR Part 20.

Date of issuance: January 6, 1993

Effective date: January 6, 1993

Amendment Nos.: 104, 98

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1992 (57 FR 55008)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1993.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 27, 1992

Brief description of amendments: The amendments revise the minimum channels operable requirement of Technical Specification Table 3.3-10, Item 17, Steam Relief Valve Exhaust Radiation Monitor from "1" to "1/Steam Line."

Date of issuance: January 12, 1993

Effective date: January 12, 1993

Amendment Nos.: 105, 99

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58245)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 1993.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 5, 1992, as supplemented December 9 and 18, 1992

Brief description of amendments: The amendments revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and relocate the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. The changes are in response to the new 10 CFR Part 20.

Date of issuance: January 6, 1993

Effective date: January 6, 1993

Amendment Nos.: 134, 116

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1992 (57 FR 55005)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina Date of application of amendments: November 5, 1992, as supplemented December 9 and 18, 1992

Brief description of amendments: The amendments revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and relocates the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the new 10 CFR Part 20.

Date of issuance: January 6, 1993

Date of issuance: January 6, 1993

Effective date: January 6, 1993

Amendment Nos.: 198, 198, and 195

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1992 (57 FR 55006)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 6, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501

West South Broad Street, Walhalla, South Carolina 29691

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 15, 1991, as supplemented by letters dated September 30, 1991, December 31, 1991, and November 2, 1992.

Brief description of amendment: This amendment revises the Appendix A Technical Specifications (TSs) relating to reactor overpressure protection. Changes are made to TSs involving Reactor Coolant Pump Startup, Reactor Coolant System Pressure - Temperature Limits, and Reactor Coolant System Overpressure Protection System. Specifically, the amendment 1) revises TS 3.4.1.6 to ensure that the limiting conditions specified for pressurizer level and secondary water temperature of each steam generator are met to mitigate the consequences of starting a reactor coolant pump, 2) revises Figures 3.4-2 and 3.4-3 (TS 3.4.9.1) to extend the applicability of the heatup and cooldown curves to 16 effective full power years (EFPY), and 3) revises the enable temperature for the overpressure protection system specified in TS 3.4.9.3 to be consistent with the new 16 EFPY curves. Bases Section 3/4 4.1 also is revised to reflect the changes to the TSs mentioned above.

Date of issuance: January 15, 1993

Effective date: January 15, 1993

Amendment No. 169

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 13, 1991 (56 FR 57894).The licensee's letters dated September 30, 1991, December 13, 1991, and November 2, 1992, provided minor revisions to the application but they do not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 28, 1992

Brief description of amendment: The amendment revised the Technical Specifications to incorporate reliability-based improvements to instrumentation Action Statements and surveillance test intervals. The improvements are based on NRC-approved Licensing Topical Reports previously submitted by the Boiling Water Reactor Owners Group, of which Entergy Operations, Inc., is a member.

Date of issuance: January 6, 1993

Effective date: January 6, 1993Amendment No: 105

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7810)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 6, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: October 29, 1992

Brief description of amendment: The amendment changed the Technical Specifications to remove cycle-specific reactor physics parameters and incorporate them into a new document called the Core Operating Limits Report. The amendment was requested in response to Generic Letter 88-16.

Date of issuance: January 21, 1993

Effective date: 90 days from the date of issuanceAmendment No: 106

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55578)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 21, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: May 19, 1992 as supplemented July 29, 1992

Brief description of amendments: These amendments provide specific revisions to Technical Specifications (TS) Section 6.0, "Administrative Controls," concerning organizational and typographical errors.

Date of issuance: January 8, 1993

Effective date: January 8, 1993Amendment Nos. 153, 148Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40213)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 8, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: March 4, 1992

Brief description of amendments: The amendments modify the Technical Specifications in accordance with Generic Letter 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP)."

Date of issuance: January 5, 1993

Effective date: To be implemented within 30 days from the date of issuance

Amendment Nos.: 55, 34

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37565)The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 5, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316 Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendment: July 26, 1991 as supplemented June 7, 1991, February 4, April 1, and October 26, 1992

Brief description of amendment: The proposed amendments would change the Technical Specification (TS) to permit expansion of the spent fuel pool (SFP) storage capacity from 2050 assemblies to 3613 assemblies. The expansion will be accomplished by replacing the existing spent fuel pool storage racks with higher density storage racks and by placing racks in areas of the pool where no racks currently exist.

Date of issuance: January 14, 1992

Effective date: January 14, 1992

Amendment Nos.: 169 and 152

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37570)The additional information contained in the supplemental letter dated October 26, 1992, served to clarify the amendments, was within the scope of the initial notice, and did not affect the Commission's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: October 19, 1992

Brief description of amendment: This amendment modifies the remedial action requirements of Technical Specifications 3.6.B and 3.6.C, by deleting alternate train testing requirements.

Date of issuance: January 11, 1993

Effective date: January 11, 1993

Amendment No.: 136

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55582) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 4, 1992

Brief description of amendment: The proposed changes removed component lists of Testable Containment Isolation Valves and Penetrations from the Technical Specifications (TS) in accordance with guidance provided in NRC Generic Letter 91-08, "Removal of Component Lists from Technical Specifications." The lists removed from the TS will be incorporated into plant procedures and the Updated Safety Analysis Report (USAR), which are subject to the administrative control of TS 6.2.1.A.4.

Date of issuance: January 7, 1993

Effective date: January 7, 1993

Amendment No.: 157

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30252) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7,,1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: September 25, 1992

Brief description of amendment: The amendment revises Technical Specification Table 3.6.2a to permit bypassing of the High Reactor Pressure and Main Steam Line Isolation Valve Position scram signals during reactor coolant system pressure testing and/or control rod scram testing when the Reactor Mode Switch is in the Refuel Position.

Date of issuance: January 8, 1993

Effective date: January 8, 1993

Amendment No.: 138

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48821) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: September 29, 1992, as supplemented by November 6, 1992.

Brief description of amendment: The amendment to Technical Specification (TS) Surveillance Requirement 4.7.A.3.a.2 provides an alternative to the currently required increase in 10 CFR Part 50, Appendix J, Type A test frequency incurred after the failure of two successive Integrated Leak Rate Tests. This change would only apply to the current condition of two consecutive Type A test failures (cycle 11 and cycle 13 refueling outages) vice a permanent change to the TS Surveillance Requirements.

Date of issuance: January 11, 1993

Effective date: January 11, 1993

Amendment No.: 60

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 23, 1992 (57 FR 55009) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 15, 1990, as supplemented by letters dated May 19, 1992, and October 8, 1992 (reference License Amendment Request LAR 90-11).

Brief description of amendments: The amendments revise the combined technical specifications (TS) for the Diablo Canyon Nuclear Power Plant Unit Nos. 1 and 2 to (1) revise and relocate the Fire Protection license conditions, (2) relocate the Fire Protection TS and associated bases to plant procedures and the Updated Final Safety Analysis Report, (3) augment the administrative TS to define the fire protection program controls, and (4) revise the condensate storage tank TS and associated bases to clarify the requirement for water sources used by the auxiliary feedwater system.

Date of issuance: January 13, 1993

Effective date: January 13, 1993

Amendment Nos.: 75 and 74

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11784)The additional information provided by letters dated May 19, 1992 and October 8, 1992, is within the scope of the initial notice and did not affect the Commission's initial determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.

Date of application for amendment: November 6, 1992

Brief description of amendment: The amendment provided a one-time change to the Technical Specifications to extend the allowed outage time for the Residual Heat Removal (RHR) Service Water System and the Suppression Pool Cooling Mode of the RHR System to allow continued Unit 1 operation while upgrades are made to the 'B' RHR heat exchanger outlet valve of both units.

Date of issuance: January 11, 1993

Effective date: January 11, 1993

Amendment No. 58

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55585)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.Date of amendments request: February 26, 1991, as supplemented on May 6, 1991

Brief description of amendments: The amendments revise the fire protection license conditions and delete fire protection Technical Specifications consistent with the guidance of Generic Letters 86-10 and 88-12.

Date of issuance: January 12, 1993

Effective date: January 12, 1993

Amendment Nos.: 96 and 88

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** May 1, 1991 (56 FR 20026)The May 6, 1991, letter incorporated the change in licensed operator and did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 1993.No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P. O. Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: July 19, 1991, as supplemented by letter dated October 24, 1991

Brief description of amendments: The amendments incorporate revised pressure and temperature limits into the technical specifications for plant operation during heatup, cooldown, criticality and hydrotest based on guidelines provided by Generic Letter 88-11.

Date of issuance: January 8, 1993

Effective date: January 8, 1993

Amendment Nos.: 190 - Unit 1; 205 - Unit 2; 162 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revise the technical specifications.Date of initial notice in Federal Register: December 11, 1991 (56 FR 64662).The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 8, 1993.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: November 2, 1992 (TS 92-11)

Brief description of amendments: The amendments incorporate an exception to the refueling water level requirement of maintaining at least 23 feet of water over the top of the reactor pressure vessel flange, such that the requirement would not be applicable when the control rods are being latched and unlatched during the refueling operations.

Date of issuance: January 12, 1993

Effective date: January 12, 1993

Amendment Nos.: 166 - Unit 1; 156 - Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** December 9, 1992 (57 FR 58252) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 1993.No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

TU Electric Company, Docket No. 50 445, Comanche Peak Steam Electric Station, Unit 1, Somervell County, Texas

Date of amendment request: April 26, 1991, as supplemented by letters dated May 4, 1992 and October 15, 1992.

Brief description of amendment: The proposed amendment revises Unit 1 Technical Specifications Sections 3.3.1/4.3.1 and 3.3.2/4.3.2 and associated Bases to relax the allowed outage times (AOT) and surveillance test intervals (STI) for analog channels shared by the reactor protection system (RPS) and the engineered safety features actuation system (ESFAS).

Date of issuance: January 12, 1993

Effective date: January 12, 1993, to be implemented within 30 days of issuance.

Amendment No.: Amendment No. 13

Facility Operating License No. NPF-87. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 22, 1992 (57 FR 32577) and November 25, 1992 (57 FR 55594). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1993.No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: Suzanne C. Black

Dated at Rockville, Maryland, this Wednesday, January 27, 1993.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director Director of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[Doc. 93-2375 Filed 2-2-93; 8:45 am]

BILLING CODE 7590-01-F

Application for a License To Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following request to amend Export License XR135. A copy of the amendment request is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petition upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of a request to amend a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this request to amend follows:

NRC EXPORT LICENSE AMENDMENT

Name of applicant, date of appl., date received, application No.	Description	Value	End use	Country of destination
General Electric, 11/16/92, 12/09/92, XR135/03.	4005 MWt (1356 MWe), Taiwan Power, Nuclear Units, Lungmen 1 and 2.	$4,000,000,000	Amended to increase power from 2894 MWt to 4005 MWt; increase $ value from $900,000,000 to $4,000,000,000; and, change names from Taiwan Power Nuclear Units 7 and 8 to Taiwan Power Nuclear Units Lungmen 1 and 2.	Taiwan.

Dated this 26th day of January 1993 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation, Office of International Programs.

[FR Doc. 93-2494 Filed 2-2-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co.; Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its January 16, 1990 application, as supplemented March 29, 1990, and December 13, 1990, for proposed amendments to Facility Operating License Nos. NPF-4 and NPF-7 for the North Anna Power Station, Unit Nos. 1 and 2, located in Louisa County, Virginia.

The proposed amendments would have changed the Technical Specifications to allow the use of solid stainless steel or solid Zircaloy-4 filler rods in place of fuel rods that are known to be failed, to remove the rod uranium weight limit of 1780 grams, and to limit the use of filler rods.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on February 7, 1990 (55 FR 4286) which was reissued in the **Federal Register** on May 29, 1991 (56 FR 24222). However, by letter dated December 30, 1992, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated January 16, 1990, as supplemented March 29, 1990, and December 13, 1990, and the licensee's letter dated December 30, 1992, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland this 28th day of January 1993.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93-2492 Filed 2-2-93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

January 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Centura Banks, Inc.
  Common Stock, No Par Value (File No. 7-10081)
Chesapeake Utilities Corp.
  Common Stock, $.4847 Par Value (File No. 7-10082)
Hook Superex, Inc.

Common Stock, $.01 Par Value (File No. 7–10083)
First Israel Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10084)
Integra Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–10085)
North Carolina Natural Gas Corp.
Common Stock, $2.50 Par Value (File No. 7–10086)
Thermo Cardiosystems, Inc.
Common Stock, $.10 Par Value (File No. 7–10087)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 19, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 93–2463 Filed 2–2–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Sterling Optical Corp.
Common Stock, $1.00 Par Value (File No. 7–10117)
Suave Shoe Corp.
Common Stock, $.01 Par Value (File No. 7–10118)
Sun Distributors LP
Class B Ltd. Int., No Par Value (File No. 7–10119)
Sunshine Mining Co. (Holding Co.)
$11.94 Cum. Red. Pfd., $1.00 Par Value (File No. 7–10120)
Swiss Helvetia Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10121)
Systems Center, Inc.
Common Stock, $.01 Par Value (File No. 7–10122)
TeleCom Corp.
Common Stock, $1.00 Par Value (File No. 7–10123)
Teppco Partners LP
Units, Common Stock, No Par Value (File No. 7–10124)
Tesoro Petroleum Corp.
$2.16 Cum. Conv. Pfd., $1.00 Par Value (File No. 7–10125)
Texaco, Inc.
Var. Rte. Cum. Pfd. Ser. C, $1.00 Par Value (File No. 7–10126)
Texfi Industries, Inc.
Cum. Pfd. 1987 Ser., $1.00 Par Value (File No. 7–10127)
Texfi Industries, Inc.
Cum. Pfd. 1988 B Ser. $1.00 Par Value (File No. 7–10128)
Textron, Inc.
$2.08 Cum. Conv. Pfd. Ser. A, No Par Value (File No. 7–10129)
Textron, Inc.
$1.40 Conv. Pfd. Div. Ser. B, No Par Value (File No. 7–10130)
Thackeray Corp.
Common Stock, No Par Value (File No. 7–10131)
Thermo Electron Corp.
Common Stock, $1.00 Par Value (File No. 7–10132)
TNP Enterprises, Inc.
Common Stock, No Par Value (File No. 7–10133)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 19, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protections of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 93–2464 Filed 2–2–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Borg Warner Security Corp.
Common Stock, $.01 Par Value (File No. 7–10103)
Duff & Phelps Utility and Corp. Bond Trust, Inc.
Common Stock, $.01 Par Value (File No. 7–10104)
Genesis Health Ventures, Inc.
Common Stock, $.02 Par Value (File No. 7–10105)
Glamis Gold Ltd.
Common Stock, No Par Value (File No. 7–10106)
Municipal Partners Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–10107)
United American Healthcare Corp.
Common Stock, No Par Value (File No. 7–10108)
Van Kampen Merritt Strategic Sector Municipal Trust
Common, Shares Beneficial Interest, $.01 Par Value (File No. 7–10109)
Williams Coal Seam Gas Royalty Trust
Trust Units, No Par Value (File No. 7–10110)
Integra Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–10111)
American Annuity Group, Inc.
Common Stock, $.01 Par Value (File No. 7–10112)
Hospitality Franchise Systems, Inc.
Common Stock, $.02 Par Value (File No. 7–10113)
Nuveen Insured Florida Premium Income Municipal Fund
Shares Beneficial Interest, $.01 Par Value (File No. 7–10114)
Nuveen Ohio Premium Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10115)
Nuveen Texas Premium Income Municipal Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–10116)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 19, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-2458 Filed 2-2-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31783; File No. SR-NASD-92-58]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Guidelines Regarding Communications with the Public About Collateralized Mortgage Obligations (CMOs)

January 27, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to adopt Guidelines Regarding Communications with the Public About Collateralized Mortgage Obligations ("Guidelines"). The NASD intends to publish the Guidelines in the NASD Manual following Article III, Section 35 of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized.

Guidelines Regarding Communications with the Public About Collateralized Mortgage Obligations (CMOs)

1. General Considerations

In order to prevent a communication about CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following.

Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use proprietary names for CMOs as they do not adequately identify the product.

To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

Safety Claims

A communication should not overstate the relative safety offered by the CMO. Although CMOs generally offer low investment risk, they are subject to market risk like all investment securities and there should be no implication otherwise. Accordingly, references to liquidity should be balanced with disclosure that, upon resale, an investor may receive more or less than his original investment.

Claims About Government Guarantees

Communications should accurately depict the guarantees associated with CMO securities. For example, in most cases it would be misleading to state that CMOs are "government guaranteed" securities. A government agency issue could instead be characterized as government agency backed. Of course, private-issue CMO advertisements should not contain references to guarantees or backing, but may disclose the rating.

If the CMO is offered at a premium, the communication should clearly indicate that the government agency backing applies only to the face value of the CMO, and not to any premium paid. Furthermore, communications should not imply that either the market value or the anticipated yield of the CMO is guaranteed.

Simplicity Claims

CMOs are complex securities and require full, fair and clear disclosure in order to be understood by the investor. A communication should not imply that these are simple securities that may be suitable for any investor seeking high yields. All CMOs do not have the same characteristics and it is misleading to indicate otherwise. Even though two CMOs may have the same underlying collateral, they may differ greatly in their prepayment speed and volatility.

Claims About Predictability

A communication would be misleading if it indicated that the anticipated yield and average life of a CMO were assured. It should disclose that the yield and average life will fluctuate depending on the actual prepayment experience and changes in current interest rates.

2. Print Advertising

Educational advertising, discussing generally the features of CMOs, can be a very useful and informative tool in explaining these securities to the investing public. However, such "generic" advertising should not contain anticipated yield or coupon rates.

Advertising relating to CMOs must be filed with the NASD's Advertising Department for review at least ten days prior to use, pursuant to requirements in Article III, Section 35 of the NASD Rules of Fair Practice and Section 8 of the NASD Government Securities Rules (NASD Rules).

The NASD has developed a standardized CMO yield advertisement that provides information deemed necessary to prevent the communication from being misleading. Members must file the standardized advertisement, ten days prior to its first use, with the NASD Advertising Department.

Members are not required to use the standardized advertisement. If firms do not elect to use the standardized advertisement, they should ensure that their advertising contains the same information and meets the same conditions as the standardized advertisement. Members using a non-standardized format must file the advertisement ten days prior to first use

After an advertisement has been filed prior to initial use, subsequent use of the identical advertisement, changed only to reflect the updated information for the security being advertised, does not require re-filing with the NASD. Such advertisements must be approved by a principal (or designee) and maintained in the member firm's files as required by NASD Rules.

Standardized CMO Advertisement

The standardized advertisement contains four sections, each of which must be given an equal portion of space in the ad. The information in Sections 1 and 2 is required to be included in advertising for CMOs. The information suggested for Section 3 is optional; therefore, the member may elect to include any, all or none of this information in the advertisement. The information in Section 4 may be tailored to the member's preferred signature.

An example of the standardized format may be found at the end of these Guidelines.

Section 1 Title—Collateralized Mortgage Obligations

Coupon Rate
Anticipated Yield/Average Life
Specific Tranche—Number & Class
Final Maturity Date
Underlying Collateral

Section 2 Disclosure Statement:

"The yield and average life shown above consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life. Please contact your representative for information on CMOs and how they react to different market conditions."

Section 3 Product Features (Optional):

Minimum Denominations
Rating Disclosure
Agency/Government Backing
Income Payment Structure
Generic Description of Tranche (e.g., PAC, Companion)

Section 4 Company Information:

Name, Address, Telephone Number, Representative's Name, Membership.

If this standardized advertisement is used, the following conditions must also be met:

1. All figures in Section 1 must be in equal type size.

2. The disclosure language in Section 2 may not be altered and must be given equal prominence with Section 1.

3. The prepayment assumption used to determine the advertised yield and average life must either be obtained from a nationally recognized service (e.g., Bloomberg, Telerate) or the member firm must be able to justify the assumption used. A copy of either the service's listing for the CMO or the firm's justification must be attached to the copy of the ad that is maintained in the firm's advertising files in order to verify that the prepayment scenario advertised is reasonable and to satisfy the conditions for waiving the pre-use filing requirement.

4. If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.

5. The advertisement must include language stating that the security is "offered subject to prior sale and price change." This language may be included in any one of the four sections.

6. If the bond advertised is an accrual bond, the following language should be included in Section 1: "This is an accrual bond and may not currently pay principal and interest."

7. If the bond is being offered at par, the advertisement may include the yield to maturity in Section 1.

No additional information may be included in the standardized advertisement.

3. Radio/Television Advertising

Radio and television advertising alternatives are too varied to attempt to provide standardized formats for either medium. Such advertisements must be filed with the NASD at least ten days prior to first use. The storyboard or other description should accompany the filing of a television ad.

If an advertisement is filed with the NASD prior to its initial use, it is not necessary to subsequently refile the advertisement if the only changes are to update the information relating to the security being advertised. A copy of each advertisement should be approved by a principal (or designee) and should be maintained, along with a copy of the listing for the CMO or the firm's justification, in the member firm's files in accordance with NASD Rules.

The following guidelines should be followed when developing radio and television advertisements:

1. The advertisements must be preceded by the following oral disclaimer: "The following is an advertisement for Collateralized Mortgage Obligations. Contact your representative for information on CMOs and how they react to different market conditions."

2. The advertisements must disclose the information contained in the first section of the prototype print ads: Coupon Rate, Anticipated Yield, Average Life, Final Maturity Date, Initial Issue Tranche (Number and Class) and Underlying Collateral.

3. The advertisements must contain the following oral disclosure statement: "The yield and average life consider prepayment assumptions that may or may not be met. Changes in payments may significantly affect yield and average life."

4. The advertisements must state that the CMO is "offered subject to prior sale and price change."

5. If a member intends to impose a sales charge, a reasonable sales charge should be reflected in the anticipated yield.

6. If the bond advertised is an accrual bond, the following language should be included: "This is an accrual bond and may not currently pay principal and interest."

7. If the bond is being offered at par, the advertisement may include the yield to maturity.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As interest rates have come down in recent years, the NASD has observed an increasing emphasis by member firms on sales of investment products that are alternatives to certificates of deposit ("CDs") and government securities for investors seeking to maximize returns while maintaining a high degree of safety. Asset-backed securities, specifically collateralized mortgage obligations ("CMOs"), appear to be one of the leading alternatives being actively promoted. Substantiating this observed trend is the NASD Advertising Department's receipt of an increasing number of advertisements for review relating to CMOs. These advertisements generally emphasize high yields, safety, government guarantees and liquidity allegedly associated with these securities, and frequently compare them with CDs.

Concurrently with the increase in the number of filings related to CMOs, the NASD is receiving increasing numbers of complaints about CMO advertisements. In light of this trend, the NASD is concerned that the sales practice employed by members in retailing CMOs as alternatives to CDs or government securities, imply that CMOs are the equivalent of such instruments in safety and guarantees of interest and principal. The NASD is also concerned about the suitability of CMOs for certain investors, the disclosure of risks and other sales practice abuses.

The NASD is taking a number of steps to address the issues relating to CMOs in addition to the proposed rule change contained herein. In the September 1991 edition of the NASD Regulatory and Compliance Alert the NASD cautioned members about misleading CMO advertising and stated the Association's position on various aspects of such advertising. In Notice to Members 92–27 published in May 1992 the NASD restated its previous pronouncement relating to CMO advertisements, and recommend that members adhere to several enumerated standards and file CMO advertisements with the NASD prior to use. Finally, on October 28, 1992, the SEC approved SR–NASD–92–32 amending the NASD's advertising and government securities rules to require members to file CMO advertisements with the NASD's Advertising Department prior to use.[1]

CMO Advertising Guidelines

The proposed rule change contained herein is complementary to, and completes, the previous actions taken by the NASD with respect to CMOs. The Guidelines set forth extensive and detailed standards for CMO advertisements. They will serve not only to govern advertising communications with potential customers, but will augment the business conduct framework for all communications and sales practices relating to CMOs.

The Guidelines contain General Considerations relating to Product Identification, Safety Claims, Claims About Government Guarantees, Simplicity Claims and Claims About Predictability. The Guidelines also contain standards relating specifically to print advertising, including a standardized CMO advertisement, and standards for radio and television advertising.

For example, under Product Identification the Guidelines warn against CMOs to other products. Under Claims About Government Guarantees the Guidelines emphasize that referring to CMOs as "government guaranteed" is probably misleading, even if the collateral is guaranteed, unless the CMO itself is guaranteed by a government agency. Finally, under Claims About Predictability the Guidelines caution that it is misleading to state that the yield and average life of a CMO are assured.

Among the guiding principals of the Guidelines, and the standards contained in them, are that CMOs are complex investment vehicles and communications must fully and fairly disclose all material aspects of CMOs in order to avoid misleading investors. Further, in the NASD's view all CMOs are not equal, and it is difficult to distinguish between them based on the content of an advertisement. Therefore, communications about CMOs should disclose all information necessary to show the features of the particular CMO being promoted. For example, two CMOs might have the same underlying collateral, yet differ greatly in their likely prepayment rates—the so-called "prepayment assumptions." Further, the advertisement of a CMO yield alone could be misleading without extensive disclosure, such as illustrations showing that yield predictions vary greatly if differing prepayment assumptions, average life and maturities are used. Finally, terms such as "interest only" or "principal only" CMOs are usually not adequately explained in advertisements and should be avoided unless adequate discussion and disclosure is included.

Standardized CMO Advertisement

The Guidelines also provide a standardized CMO advertisement for print advertising that permits members to advertise CMO yields and sets forth the information the NASD deems necessary to prevent the communication from being misleading. Members are not required to use the standardized advertisement, however, members using a non-standardized format should provide the same information and comply with the same conditions as the standardized advertisement.

Among the features of the standardized advertisement are: (1) Standard (essential) information (coupon rate, anticipated yield/average life, specific tranche, final maturity date and underlying collateral); (2) a disclosure statement indicating that the yield and average life are based on certain prepayment assumptions that may not be realized; (3) optional product features; and (4) broker/dealer information. The Guidelines require that the information in items 1 and 2 appear in all CMO advertising, while item 3 is optional and item 4 may be tailored to the member's preference.

Among the most important of the Guidelines for print advertisements, whether a member uses the standardized advertisement or its own, are the standards relating to statements of the yield and average life. They require that they be based on consensus prepayment assumptions from a nationally recognized service such as Bloomberg or the member must be able to justify the assumption used. This standard is designed to prevent advertisements which mislead investors by relying on unrealistic or excessively optimistic yield and average life projections. Finally the Guidelines also require the disclosure of the specific tranche in order to permit investors to evaluate the quality and characteristics of the security and underlying collateral, which are unique to each CMO.

Radio/Television Advertising

Finally, the Guidelines set forth standards for radio and television advertising. Because radio and television advertising is subject to much more variability than print advertising, the NASD has not attempted to develop a standardized format. Instead, the Guidelines require that all radio and television advertising contain certain statements or information, including: (1) An oral notice recommending that interested individuals contact their representative for information on CMOs and how they react to certain market conditions; (2) an oral notice regarding prepayment assumptions identical to that required for print advertisements; and, (3) standard information on the CMO being advertised (coupon rate, anticipated yield, average life, final maturity date, specific tranche, underlying collateral and, it applicable, accrual bond disclosure).

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[2] in that the Guidelines will work to protect investors and the public interest by preventing the use of misleading advertising to promote CMOs and by establishing a baseline of standards to guide sales practices relating to CMOs.

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[1] Securities Exchange Act Release No. 31369 (October 28, 1992), 57 FR 49732 (November 3, 1992). The requirement was approved on a one year, temporary basis. Prior to the end of the first year, the Association has represented that it will evaluate the efficacy of the rule and determine whether to extend the rule, propose alternative requirements, or eliminate the rule. Regardless of whether or not the Association maintains the pre-filing requirement for CMO advertising, the Guidelines for CMO advertising are intended to be permanent.

[2] 15 U.S.C. 78o–3.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective as of December 21, 1992 pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Record-Keeping and Other Requirements for Members with respect to Cash and Non-Cash Compensation for the Sale of Investment Company Shares and Variable Contracts

January 27, 1993

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 20, 1992,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of The Proposed Rule Change

The NASD is filing a proposed rule change to Article III, Sections 26 and 29 of the Rules of Fair Practice. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

ARTICLE III

Investment Companies

Section 26

(a) Unchanged.

Definitions

(b)(1)–(6) Unchanged.

[(7) "Associated person of an underwriter," as used in subsection (1) of this section, shall include an issuer for which an underwriter is the sponsor or a principal underwriter, any investment adviser to such issuer, or any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of such underwriter, issuer, or investment adviser.]

(7) The terms "offeror", "cash compensation" and "non-cash compensation" as used in subsection (1) of this section shall have the following meanings:

"Offeror" shall mean an investment company, an adviser to an investment company, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

"Cash compensation" shall mean compensation received in connection with the sale and distribution of investment company securities in cash, by check and by electronic means, and shall include loans and overrides.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of investment company securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

(c)–(k) Unchanged.

[Dealer concessions]

[(l)(1) No underwriter or associated person of an underwriter shall offer, pay or arrange for the offer or payment to any other member in connection with retail sales or distribution of investment company securities, any discount, concession, fee or commission (hereinafter referred to as "concession") which:]

[(A) is in the form of securities of any kind, including stock, warrants or options;]

[(B) is in a form other than cash (e.g., merchandise or trips), unless the member earning the concession may elect to receive cash at the equivalent of no less than the underwriter's cost of providing the non-cash concession; or]

[(C) is not disclosed in the prospectus of the investment company. If the concessions are not uniformly paid to all dealers purchasing the same dollar amounts of securities from the underwriter, the disclosure shall include a description of the circumstances of any general variations from the standard schedule of concessions. If special compensation arrangements have been made with individual dealers, which arrangements are not generally available to all dealers, the details of the arrangements, and the identities of the dealers, shall also be disclosed.]

[(2) No underwriter or associated person of an underwriter shall offer or pay any concession to an associated person of another member, but shall make such payment only to the member.]

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[1] The NASD filed Amendment No. 1 to the filing on January 13, 1993, which amended the proposed definitions for cash and non-cash compensation. The terms, as amended, are provided herein.

[(3)(A) In connection with retail sales or distribution of investment company shares, no underwriter or associated person of an underwriter shall offer or pay to any member or associated person, anything of material value, and no member or associated person shall solicit or accept anything of material value, in addition to the concessions disclosed in the prospectus.]

[(B) For purposes of this paragraph (1)(3), items of material value shall include but not be limited to:]

[(i) gifts amounting in value to more than $50 per person per year.]

[(ii) gifts or payments of any kind which are conditioned on the sale of investment company securities.]

[(iii) loans made or guaranteed to a non-controlled member or person associated with a member.]

[(iv) wholesale overrides (commissions) granted to a member on its own retail sales unless the arrangement, as well as the identity of the member, is set forth in the prospectus of the investment company.]

[(v) payment or reimbursement of travel expenses, including overnight lodging, in excess of $50 per person per year unless such payment or reimbursement is in connection with a business meeting, conference or seminar held by an underwriter for informational purposes relative to the fund or funds of its sponsorship and is not conditioned on sales of shares of an investment company. A meeting, conference or seminar shall not be deemed to be of a business nature unless: the person to whom payment or reimbursement is made is personally present at, or is en route to or from, such meeting in each of the days for which payment or reimbursement is made; the person on whose behalf payment or reimbursement is made is engaged in the securities business; and the location and facilities provided are appropriate to the purpose, which would ordinarily mean the sponsor's office.]

[(C) For purposes of this paragraph (1)(3), items of material value shall not include:]

[(i) an occasional dinner, a ticket to a sporting event or the theater, or comparable entertainment of one or more registered representatives which is not conditioned on sales of shares of an investment company and is neither so frequent nor so extensive as to raise any question of propriety.]

[(ii) a breakfast, luncheon, dinner, reception or cocktail party given for a group of registered representatives in conjunction with a bona fide business or sales meeting, whether at the headquarters of a fund or its underwriter or in some other city.]

[(iii) an unconditional gift of a typical item of reminder advertising such as a ballpoint pen with the name of the advertiser inscribed, a calendar pad, or other gifts amounting in value to not more than $50 per person per year.]

[(4) The provisions of this subsection (1) shall not apply to:]

[(A) Contracts between principal underwriters of the same security.]

[(B) Contracts between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.]

[(C) Compensation arrangements of an underwriter or sponsor with its own sales personnel.]

Member Compensation

(1) In connection with the sale and distribution of investment company securities:

(1) Except for gifts as described in paragraph (1)(5)(a), a member shall maintain records of all compensation, cash and non-cash, received from offerors and the distribution by the member of any such compensation to its associated persons. The records shall include the names of the offerors, the names of the associated persons and the amount and nature of the compensation received and distributed.

(2) Except as described in paragraph (5), no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated.

(3) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(4) Except as described in paragraph (5), no member shall accept any compensation, cash or non-cash, from an offeror unless such is described in the current prospectus of the investment company. When special compensation arrangements are offered by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus.

(5) Notwithstanding the provisions of subsections (2) and (4) of this section, the following items of compensation may be accepted and are not required to be disclosed in a prospectus provided that they are not conditioned on sales or the promise of sales:

(a) Gifts by an offeror to associated persons of members, with the approval of the member, that do not exceed an annual amount per person fixed periodically by the Board of Governors.[1]

(b) Payment or reimbursement by offerors to members in connection with training or educational meetings where the location is appropriate to the purpose of the meeting. A location appropriate to the purpose of a meeting shall mean an office of the offeror or the member or a facility located in the vicinity of such an office.

(6) The provisions of this Section (1) shall not apply to:

(a) Compensation arrangements between principal underwriters of the same security.

(b) Compensation arrangements between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(c) Compensation arrangements between a member and its own associated persons.

(d) Compensation arrangements between a non-member company and its sales personnel who are registered representatives of an NASD member which, directly or indirectly controls, is controlled by, or is under common control with that non-member company.

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Variable Contracts of an Insurance Company

Section 29

(a) Unchanged.

Definitions

(b)(1)–(2) Unchanged.

(3) The terms "offeror," "cash compensation" and "non-cash compensation" as used in subsection (h) of this Section shall have the following meanings:

"Offeror" shall mean a separate account of an insurance company, an adviser to a separate account of an insurance company, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.

"Cash compensation" shall mean compensation received in connection with the sale and distribution of variable contracts in cash, by check and by electronic means and shall include loans and overrides.

"Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but

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[1] The current annual amount fixed by the Board of Governors is $100.

not limited to merchandise, gifts and prizes, and payment of travel expenses, meals and lodging.

(c)–(g) Unchanged.

Member Compensation

(h) In connection with the sale and distribution of variable contracts:

(1) Except for gifts as described in paragraph (h)(5)(a), a member shall maintain records of all compensation, cash and non-cash, received from offerors and the distribution by the member of any such compensation to its associated persons. The records shall include the names of the offerors, the names of the associated persons and the amount and nature of the compensation received and distributed.

(2) Except as described in paragraph (5), no associated person of a member shall accept any compensation, cash or non-cash, from anyone other than the member with which the person is associated. This requirement will not prohibit arrangements, agreed to by a member, where an insurance company maintains a commission account as a ministerial service for a member and, on behalf of the member, pays commission checks from such an account directly to associated persons of the member.

(3) No member or person associated with a member shall accept any compensation from an offeror which is in the form of securities of any kind.

(4) Except as described in paragraph (5), no member shall accept any compensation, cash or non-cash, from an offeror unless such is described in the current prospectus of the variable contract. When special compensation arrangements are offered by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the variable contracts of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus.

(5) Notwithstanding the provisions of subsections (2) and (4) of this section, the following items of compensation may be accepted and are not required to be disclosed in a prospectus provided that they are not conditioned on sales or the promise of sales:

(a) Gifts by an offeror to associated persons of members, with the approval of the member, that do not exceed an annual amount per person fixed periodically by the Board of Governors.[1]

(b) Payment or reimbursement by offerors to members in connection with training or educational meetings where the location is appropriate to the purpose of the meeting. A location appropriate to the purpose of a meeting shall mean an office of the offeror or the member or a facility located in the vicinity of such office.

(6) The provisions of this Section (h) shall not apply to:

(a) Compensation arrangements between principal underwriters of the same security.

(b) Compensation arrangements between the principal underwriter of a security and the sponsor of a unit investment trust which utilizes such security as its underlying investment.

(c) Compensation arrangements between a member and its own associated persons.

(d) Compensation arrangements between a non-member company and its sales personnel who are registered representatives of an NASD member which, directly or indirectly controls, is controlled by, or is under common control with that non-member company.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend Sections 26 and 29 to Article III of the Rules of Fair Practice in order to revise and simplify the existing rules to reflect current practices within the industry, and to adopt a record-keeping requirement for members with respect to cash and non-cash compensation paid to members by offerors for the sale of investment company shares and variable contracts.

Description of Proposed Rule Change

Article III. Section 26—Investment Companies

Subsection (b)(7)—The definition of the term "associated person of an underwriter" is proposed to be deleted from Subsection (b)(7). This term was in language proposed to be deleted from Section 26 and is not used in the proposed rule change to Subsection (1). Instead, the term "person associated with a member" or "associated person of a member" is used to reference persons registered with an NASD member firm. These terms are defined in Article I, Section (m) to the NASD By-Laws. The NASD is proposing to adopt as new Subsection (b)(7) to Section 26 definitions of the terms "offeror," "cash compensation," and "non-cash compensation." All the persons and entities who are likely to pay sales compensation to members in connection with the sale of mutual fund shares are defined collectively as an "offeror." Payments of sales compensation to a member or an associated person of a member by an offeror in connection with the sale of mutual fund shares would be subject to the restrictions on cash and non-cash compensation set forth in the proposed rule change. The term "offeror" is proposed to include an investment company, an adviser to an investment company, an underwriter and any affiliated person of such entities. The term "affiliated person" is proposed to be defined in accordance with section 2(a)(3) of the Investment Company Act of 1940 ("1940 Act").[1] The categories of entities included in the proposed definition of "offeror" are currently contained in the definition of "associated person of an underwriter", which is proposed to be deleted.

The terms "cash compensation" and "non-cash compensation" are proposed to be defined in Subsection (b)(7) to distinguish between the two forms of compensation as they are proposed to be subject to different restrictions under the proposed rule change. "Cash compensation" is proposed to be defined to include payments received by a member in cash, by check and by electronic means and shall include loans and wholesale overrides.

"Non-cash compensation" is proposed to be defined to include any payment received by a member which is not cash compensation. Examples of non-cash compensation items that are often used in the industry are included in the definition, i.e., merchandise, gifts and prizes, and payment of travel expenses, meals and lodging. Thus, the definition of "non-cash compensation" encompasses payments of cash to reimburse costs incurred by a member or person associated with a member in connection with travel, meals and lodging.

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[1] The current annual amount fixed by the Board of Governors is $100.

[1] Under section 2(a)(3) of the 1940 Act, an "affiliated person" means:

(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with such other person; (D) any officer, director, partner, co-partner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

Subsection (1)—Current Subsection (1) governs concessions paid by underwriters to dealers for the retail sale of mutual fund securities. The rule was adopted prior to the advent of asset-based and deferred sales charges and only regulates the reallowance to a dealer by an underwriter of part of the front-end sales charge or "concession." Payments to dealers, however, may emanate from front-end, deferred and/or asset-based sales charges and may be paid by underwriters and/or investment companies.

Therefore, the NASD is proposing to replace current subsection (1) in its entirety with new provisions that provide a regulatory structure for the member's receipt of any kind of compensation from an offeror in connection with the sale of mutual fund shares.

Title—The current title to the Subsection of "dealer concession" is no longer appropriate and is proposed to be replaced by the term "Member Compensation." The term "compensation" is intended to encompass every kind of payment received by a member for retailing investment company securities, regardless of the source of the payment or the payor.

Subsection (l)(1)—The NASD is proposing a new requirement that members maintain records of the receipt and distribution of all compensation, cash and non-cash, from offerors and the distribution by the member of such compensation to its associated persons. The NASD expects that this requirement will enhance a member's ability to control the flow of non-cash sales incentives from offerors to registered representatives.

The current language of Subsection (l)(1)(A), which prohibits compensation in the form of securities, has been incorporated into proposed new Subsection (l)(3).

The current language of Section (l)(1)(B), which provides that a member may elect to receive cash in lieu of non-cash compensation, is proposed to be deleted. The NASD believes that the currently available option to receive cash is rarely used.

The current language of Subsection (l)(1)(C) requires that concessions be disclosed in the prospectus, but does not require that members maintain records of such concessions. This current requirement has been incorporated into proposed new Subsection (l)(4).

Subsection (l)(2)—In order to ensure that members retain control over the payment of compensation in connection with the sale of mutual fund shares, the NASD is proposing a new requirement that would prohibit a person associated with a member from accepting any compensation from any person other than the member with which the person is associated. This limitation is particularly necessary since it is not unusual for non-cash compensation payments to be made by entities that are not NASD members, e.g., mutual funds. In situations where compensation is in the form of merchandise, meals and lodging, travel vouchers, or tickets, compliance with the proposed rule change requires that the offer be directed to the member, that the member decide whether to accept or reject the offer, and that the member record any such non-cash compensation received by its registered representatives.

The current language of Subsection (l)(2) prohibits an underwriter or its associated persons from paying a concession directly to an associated person of another member and requires that any payment be made to a member for distribution to its representatives. The NASD believes that the proposed new provision more appropriately controls the flow of compensation in connection with the sale of mutual fund shares by ensuring that associated persons only receive compensation from their member-employer.

Subsection (l)(3)—The NASD is proposing to adopt in Subsection (l)(3) the prohibition currently in Subsection (l)(1)(A) on members and persons associated with members from receiving compensation in the form of securities of any kind.

Subsection (l)(4)—The NASD is proposing to adopt in Subsection (l)(4) a requirement prohibiting compensation unless disclosed in the prospectus that is contained in the existing rule at Subsection (l)(1)(C).

Subsection (l)(5)—Current Subsection (l)(3)(C) sets forth the items of "material value" that are not subject to the limitation on payment or the requirement to be disclosed in the prospectus. The NASD is proposing to replace this provision with new requirements in proposed Subsection (l)(5). Proposed Subsection (l)(5) provides that, so long as such compensation is approved by the member and not conditioned on sales or the promise thereof, the following items are excepted: (1) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors pursuant to a footnote to the provision, proposed to be $100 per person; and (2) payments to members to defray the cost of educational and training meetings held at an appropriate business location. Moreover, pursuant to proposed Subsection (l)(1), the gift provision also provides an exception to the record-keeping requirements. The cost of educational and training meetings, however, would continue to be compensation and would be subject to the record-keeping requirement proposed in Subsection (l)(1).

Subsection (l)(6)—This subsection of the proposed rule change sets out arrangements that are not subject to the prohibitions of Section (l). Subsections (l)(6) (a), (b) and (c) reiterate the paragraphs (A), (B), and (C) of current subsection (l)(4) with minor language changes for clarification.

The NASD is also proposing to adopt a new exception provision in proposed paragraph (d) which would except from the prohibitions of Section (l) compensation arrangements between a non-member company and its sales personnel who are registered representatives of an NASD member which directly or indirectly controls, is controlled by, or is under common control with the non-member company. The purpose of this provision is to permit a mutual fund to provide underwriting compensation in the form of cash or non-cash items to the employees of an NASD member firm that is in a control relationship with the mutual fund. The NASD believes that the rationale that underlies the exception retained in Subsection 1(6)(c) for compensation arrangements between a member and its own associated persons is equally applicable in the context of compensation arrangements between a non-member company and the employees of the company's affiliated member firm. In both cases, the compensation arrangement is internal to the employer-employee relationship and, therefore, would not raise the supervisory concerns that are present in the compensation arrangements between a non-member and the unaffiliated broker/dealers selling its product. Moreover, it has not been the NASD's practice to regulate the internal compensation arrangements between a member and its associated persons.

Provision To Be Deleted—The proposed amendments omit current Subsection (l)(B) that permits a member to accept cash in lieu of a non-cash compensation item because the proposed rule change provides greater controls than the current rule over the manner in which cash and non-cash compensation are received by a member and person associated with the member.

Article III, Section 29—Variable Contracts

Currently, Section 29 which is applicable to the sale of variable contract insurance products does not contain a section dealing with cash and non-cash compensation. In proposing similar rule amendments be added to Section 29, the language has been changed from that proposed in Section 26 where necessary to accommodate procedures and language used in the variable contracts industry.

Subsection (b)(3)—Subsection (b)(3) is proposed to be adopted to define "offeror," "cash compensation," and "non-cash compensation" in the same manner as proposed to be defined in paragraph (b)(7) of Section 26.

Subsection (h)—New Subsection (h) is proposed to be created to provide guidelines for the payment of cash and non-cash compensation in connection with the sale of variable contracts. Provisions are substantially similar to those contained in the proposed subsections of Section 26(l). With respect to proposed Subsection 29(h)(2), the second sentence does not appear in the comparable provision in Section 26. The second sentence clarifies that the prohibition on receipt of compensation by an associated person from any person other than the member with which the person is associated does not prohibit arrangements, agreed to by a member, where an insurance company maintains a commission account as a ministerial service for a member and pays commission checks from the account directly to associated persons of the member. This exception is intended to recognize current practice in the insurance industry.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which require that the Association adopt and amend its rules to promote just and equitable principles of trade, foster cooperation and coordination with regulators, and generally provide for the protection of the investors and the public interest inasmuch as the proposed rule change is designed to uniformly regulate the cash and non-cash compensation paid to members and persons associated with members in connection with the sales of investment company securities and variable contracts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD received 22 comments in response to Notice to Members 91–25 (May 1991) requesting comment on the proposed rule change. A copy of the Notice is attached as Exhibit 2 to the rule filing. Copies of the comment letters received in response thereto are attached as Exhibit 3 to the rule filing and are more fully discussed under Section C of this Notice. Set forth below are the comments that raised competitive issues.

Inter-Industry Competition

Four commentors of the 22 comments received in response to Notice to Members 91–25 (May 1991) asserted that the proposed rules do not treat the various securities product market segments even-handedly. (See Comments 2, 3, 19, and 22 to the rule filing.) Two of the commentors argued that allowing non-cash compensation to be paid to representatives selling investment company shares and variable contracts gave an unfair advantage to those products over direct participation programs ("DPPs"), real estate investment trusts ("REITs"), and corporate offerings. (See Comments 2 and 19 to the rule filing.)

The proposed rule change is the latest in a series of NASD proposals and rule changes designed to control the use of non-cash compensation in connection with a public offering of securities. Previous rule filings amending the NASD's rules include SR–NASD–84–2[2] SR–NASD–86–22,[3] which established restrictions on non-cash compensation in connection with transaction in DPP units, and SR–NASD–88–13,[4] which established restrictions on non-cash compensation in connection with REITs, and corporate debt and equity offerings. The rule changes resulted from the NASD's belief that the practices that were present in connection with the sale of DPPs resulted in members experiencing problems in supervising their associated persons when sponsors of the DPPs provided non-cash sales incentives, such as merchandise and trips to exotic locations, directly to the associated persons. The earlier rule adopted by the NASD in SR–NASD–84–2, which required that all compensation be controlled by the member, was found to be inadequate in controlling the relationship of sponsors and associated persons. It was necessary, therefore, to adopt in SR–NASD–86–22 a prohibition on members and associated persons from accepting any non-cash sales incentive, except in connection with a member's in-house sales incentive program.

In the SEC release publishing SR–NASD–86–22 for comment,[5] the NASD addressed comments received with respect to the proposed rule change to amend Appendix F, to Article III, Section 34 of the Rules of Fair Practice ("Appendix F") that urged that if non-cash incentives were inappropriate in connection with the sale of DPPs, they are also inappropriate in connection with the sale of mutual fund and insurance products. In response to these comments, the Board of Governors referred the issue on whether the prohibition on non-cash sales incentives should be extended to other areas to the appropriate NASD Committees. The Corporate Financing Committee determined to amend the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice[6] with respect to the sale of REITs and debt and equity corporate securities. The Corporate Financing Committee found that non-cash sales incentives offered in connection with REITS were substantially similar to those offered in connection with DPPs.

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[2] SR–NASD–84–2 amended Subsections 5(e) and 5(f) of Appendix F to require that all sales incentives and bonuses be paid directly by a sponsor, affiliate of a sponsor or program to a member and that such incentives be paid only in the form of cash, that such incentives be disclosed in the offering document, and that the distribution, if any, of such incentives or bonuses to associated persons be controlled solely by the member. This rule change was approved by the SEC in Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041 (April 16, 1984).

[3] This rule change amended Subsections 5(e) and 5(f) of Appendix F to prohibit a member and persons associated with a member (other than a member dealing with persons associated with that member) from directly or indirectly accepting non-cash sales incentive items with a value in excess of $50, including but not limited to travel bonuses, prizes and awards. The rule change permitted a member to provide non-cash sales incentive items to its associated persons in connection with an in-house sales incentive program, provided that no sponsor "directly or indirectly participates in or contributes to providing such non-cash sales incentive items." Approved in Securities Exchange Act Release No. 26185 (October 14, 1988), 53 FR 41262 (October 20, 1988). This rule change was approved concurrently with SR–NASD–88–13 which amended the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice. See *infra* note 4.

[4] This rule change amended the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice ("Interpretation") to prohibit members and associated persons from accepting non-cash sales incentives in excess of $50 per person per issuer annually in connection with distributions of public offerings. With respect to members' in-house sales incentive programs, a member is permitted to provide non-cash sales incentive items to associated persons provided that no issuer, affiliate of an issuer (including an affiliate of the member) directly or indirectly participates in or contributes to providing such non-cash sales incentives. The SEC approved this rule change in Securities Exchange Act Release No. 26186 (October 14, 1988), 53 FR 41265 (October 20, 1988). Comparable language was recently adopted in Subsection (c)(6)(xi) to the Corporate Financing Rule, Article III, Section 44 of the Rules of Fair Practice ("Rule") which replaced the Interpretation in its entirely. See SR–NASD–91–19 approved by the SEC in Securities Exchange Act Release No. 30587 (April 15, 1992), 57 FR 14597 (April 21, 1992).

[5] Securities Exchange Act Release No. 23527 (August 13, 1986), 51 FR 29729 (August 20, 1986).

The NASD subsequently distributed for member comment a proposed amendment to Article III, Sections 26 and 29 of the Rules of Fair Practice in Notice to Members 88–17 (March 1, 1988) to prohibit members and their associated persons from accepting non-cash sales incentives offered by underwriters, investment companies, advisers to investment companies, or their affiliates in connection with sales of investment company and variable contract products.[7] The Investment Companies Committee and the Variable Contracts Committee concluded, as a result of their review of the comments, that a complete prohibition of non-cash sales incentives was unnecessary because the problems experienced by members in supervising their associated persons in connection with the sale of direct participation programs are not present in the sale of mutual fund securities and insurance products. As a result of the comments received in response to Notice to Members 88–17, the Investment Companies and Variable Contracts Committees issued another proposal in Notice to Members 89–51 (July 1989) to amend Article III, Section 26 of the Rules of Fair Practice to impose a record-keeping requirement with respect to the receipt of non-cash sales incentives for the retail sale of investment company securities and require that underwriters pay any cash or non-cash concession to members and not directly to associated persons of members. As set forth in Notice to Members 91–25 (May 1991), attached as Exhibit 2 to the rule filing, the NASD received six comment letters in response to Notice to Members 89–51 (July 1989). As a result of further consideration, the NASD Board of Governors determined not to prohibit non-cash sales incentives in connection with the sale of mutual fund and variable contract products on the recommendation of the Investment Companies and Variable Contracts Committees that the problems present with respect to the payment of non-cash sales incentives in connection with DPPs are not applicable to sales of mutual fund and variable contract securities.[8] Notice to Members 91–25 (May 1991) published for comment provisions similar to those published in Notice to Members 89–51 (July 1989), but added similar requirements to Article III, Section 29 of the Rules of Fair Practice (Variable Contracts Rule) that had been proposed in connection with Article III, Section 26 of the Rules of Fair Practice (Investment Company Rule).

Based on the foregoing, the Board of Governors has considered the applicability to mutual fund and variable contract securities of the type of across-the-board prohibition on the receipt of non-cash sales incentives that was adopted with respect to DPPs, REITs and debt and equity corporate securities since 1986. The Board has found that the type of supervisory problems associated with sponsors of DPPs providing non-cash incentives to associated persons of member firms is not present in connection with the sale of mutual fund and variable contracts products. In this connection, the requests for comment on the proposals related to mutual fund/variable contracts products have not resulted in comments from members that they are experiencing supervisory problems due to the payment of non-cash incentives similar to the comments that were received in connection with the rule change filed in SR–NASD–86–22. To the contrary, the mutual fund/variable contracts industries have long maintained that non-cash sales incentives have been paid in connection with sales without causing any supervisory problem for the member firm.[9] The Board has determined that functional regulation of the receipt of non-cash sales incentives is appropriate, i.e., that non-cash sales incentives should be regulated in a manner that is appropriate to the characteristics of each product. In the case of mutual funds and insurance products, the NASD believes that prospectus disclosure and recordkeeping requirements will permit the NASD to identify potential abuses in the examination process and will ensure that investors are aware of all distribution compensation, thereby providing regulation appropriate to the manner in which such products are sold, in addition to ensuring that members maintain supervisory control over the receipt of compensation by their associated persons.[10]

Therefore, the NASD believes that the proposed rule change does not result in an impact on the competition between sales of mutual fund/variable contract products and the sale of DPPs, REITs, and debt and equity corporate securities that is not necessary or appropriate in furtherance of the purposes of the Act.

Competition Between Entities With In-House Broker/Dealers and Entities With Affiliated Broker/Dealer Entities

Two commentors on the proposed exception for payments to in-house members stated that the proposed rule change would give an unfair advantage to insurance companies and mutual funds that are registered as broker/dealers and market their own products rather than market their products through wholly-owned subsidiaries. (See Comments 16 and 22 to the rule filing.) Seven commentors argued that compensation received from an affiliated or commonly controlled source should be treated the same as compensation from the employing member. (See Comments 1, 3, 13, 15, 16, 18, and 20 to the rule filing.) The NASD agrees and has added Subsections 26(l)(6)(d) and 29(h)(6)(d) to this proposal to provide for compensation arrangements between a non-member company and its sales personnel who are registered representatives of an NASD member, where the member controls, is controlled by, or is under common control with the non-member.

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[6] See *supra* note 3.

[7] See Securities Exchange Act Release No. 26185 (October 14, 1988), 53 FR 41262 (October 20, 1988), footnote at 41265.

[8] See comment letter of the American Council of Life Insurance Companies (Comment Letter No. 2) which sets forth at page 13 *et seq* an argument distinguishing the sales practices of the insurance industry in comparison to those of the DPP industry.

[9] The different experience of members related to supervisory control may be because associated persons of members that sell DPP products will generally only sell DPP products (i.e., securities products), while associated persons that sell mutual fund or insurance company products will generally sell both non-securities and securities products. Thus, one of the differences associated with regulating securities-related compensation of associated persons that sell mutual funds or insurance products is that their compensation will also cover sales of non-securities products which are not subject to NASD jurisdiction. See supra note 8.

[10] The NASD also filed a letter submitted with the Commission providing further explanation of the NASD's rationale for regulating the receipt of non-cash compensation by broker/dealers in connection with the sale of mutual fund/variable contract products in a different manner from that of DPP products and REITs. See letter to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation from Suzanne Rothwell, Associate General Counsel, NASD, dated November 25, 1992.

The letter apprised the Commission that in connection with DPPs, the NASD received complaints from members regarding the receipt of non-cash sales incentives, some of which asked for regulation of the receipt of non-cash sales incentives, some of which asked for regulation of the receipt of non-cash sales incentives in the form of a total prohibition. By contrast, the NASD did not receive similar complaints with respect to mutual fund/variable contract sales. This letter also reiterated the NASD's position that there has not been any indication of a supervisory problem regarding the receipt of non-cash incentives by associated persons selling mutual funds/variable contracts.

Finally, the letter of November 25, 1992, informed the Commission that there were industry differences that led to the NASD's conclusion that a total prohibition of non-cash sales incentives was not necessary in connection with the sale of mutual fund/variable contract products. For example, mutual fund/variable contract industries tend to be integrated, and because most of the sales are generated by non-securities products, the NASD believes it would be difficult to separately regulate the security product sales.

Competition Between Entities With In-House/Affiliated Broker/Dealers and Entities Without an In-House/Affiliated Broker/Dealer

One commentor argued that the proposed rule change provides an unfair advantage to mutual funds that are sold through an in-house sales force as compared to independently distributed funds. (See Comment 22 to the rule filing.) It was stated that it is the practice for broker/dealer firms to pay their sales representatives a higher commission for the sale of a proprietary mutual fund than they pay with respect to sales of an independently distributed fund. This practice, it was argued, creates an incentive for the sales representative to sell a proprietary fund regardless of the relative merit of the fund vis-a-vis an independent fund. The commentor requested that any special compensation to be paid to the sales force for the sale of a proprietary product be disclosed to investors.

The NASD believes that the proposed rule change will not place mutual funds without an in-house or affiliated broker/dealer ("independent mutual funds") at a competitive disadvantage that is greater than they already experience vis-a-vis mutual funds with an in-house or affiliated broker/dealer ("integrated mutual funds"). All mutual funds (and insurance companies) are equally in a position to determine whether to integrate their sales effort by establishing a broker/dealer for the sales of their product. The NASD believes that where an integrated mutual fund sells a proprietary product, such mutual fund is naturally in a position, through its cash compensation structure and employer/employee relationship, to encourage the sales of its proprietary product by its in-house or affiliated broker/dealer sales force. To expect otherwise is unrealistic. Moreover, where a broker/dealer is in a position to sell the mutual fund products of a mutual fund other than that with which it is affiliated, it is likely that non-cash compensation will be compensation that will be based on total sales of securities products of all issuers and on sales of non-securities products, not just sales of the affiliate's securities. (See Comment 13 to the rule filing.) Finally, the exception for compensation arrangements of integrated mutual funds is consistent with the NASD's long-term policy to not regulate the internal compensation arrangements between associated persons and their employer.

The NASD believes, therefore, that there is no additional burden on competition as a result of the exception for compensation arrangements related to a mutual fund's or insurance company's in-house sales force that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

Based on the foregoing, the NASD believes that any burden on competition resulting from the proposed rule change is necessary and appropriate in furtherance of the purposes of the Act, as amended, and is outweighed by the need for members to control the payment to their associated persons of any compensation received in connection with the sale of mutual fund and insurance products, the enhanced ability of the NASD to identify potential abuses through the examination process as a result of the expanded record-keeping requirements, and the enhanced investor protection which will result from the expanded prospectus disclosure.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Member's, Participants, or Others

The proposed rule change was published for comment in Notice to Members 91–25 (May 1991) ("Notice"). Twenty-two comments were received in response thereto. A copy of Notice to Members 91–25 is attached as Exhibit 2 to the rule filing. A Copy of each comment letter received in response thereto is attached as Exhibit 3 to the rule filing. Of the 22 comment letters received, 10 were in favor of the proposed rule change, 6 were opposed, and 6 offered comments but expressed no opinion.

$100 Gift Limitation—The most frequent comment made concerned the proposal published in the Notice which would have excepted gifts under $100 in value from the obligation to be disclosed in the prospectus. (Proposed Section (1)(5)(a) to Section 26 and Section (h)(5)(a) to Section 29.) The original proposal published for comment in the Notice would have required that the receipt of such items be subject to the record-keeping requirement proposed in Subsection (l)(1) to Section 26 and to Subsection (h)(1) to Section 29. Ten commentors recommended that such gifts be excluded from the recordkeeping requirements. (See Comments 6, 7, 8, 11, 12, 14, 15, 16, 17, and 18 to the rule filing.) Moreover, one commentor suggested that the $100 limitation be adjusted according to an inflation index in order to make the standard more flexible. (See Comment 7 to the rule filing.) Similarly, three commentors requested that the provisions of current Subsection (l)(3)(C) which set forth items that are not considered to be of material value, proposed to be deleted, be retained for the purpose of excluding those items from both the recordkeeping and prospectus disclosure requirements. (See Comments 7, 8, and 18 to the rule filing.) Another commentor suggested that members be permitted to rely in good faith on letters from offerors documenting the number and value of non-cash gifts of nominal value. (See Comment 17 to the rule filing.)

In response to these comments, the NASD changed its proposal to exclude gifts under $100 from the recordkeeping requirement set forth in proposed Subsection (l)(1). The NASD is also providing the requested flexibility by further amending the proposed rule change in proposed Subsection (l)(5)(a) to allow the Board of Governors to determine the annual limit on annual gifts. Subsections 26(l)(1), 26(l)(5)(a), 29(h)(1), and 29(h)(5)(a) have thus been amended. The NASD has, however, determined that retention of the original structure of Subsection 26(l)(2)(C) setting out items that do not have a material value is not necessary to the revised structure of the proposal.

Training and Educational Meetings—Commentors also recommended that the NASD exclude reimbursements for educational and training seminars from the recordkeeping requirements. As originally proposed in the Notice, such expense reimbursements would only be excluded from the requirement of disclosure in the offering document. (See Comments 14 and 18 to the rule filing.) In addition, one commentor requested clarifications as to whether the social activity expenses associated with educational and training programs may be reimbursed and what recordkeeping and disclosure requirements would apply. (See Comment 11 to the rule filing.) Four commentors suggested that educational training not be restricted exclusively to locations where the member maintains offices. (See Comments 1, 3, 11, and 15 to the rule filing.)

The NASD has considered these comments and determined to amend the proposal to permit educational and training meetings to be held at or in the vicinity of an office of the offeror. Subsections 26(l)(5)(b) and 29(h)(5)(b) have thus been amended. The NASD has determined to retain the recordkeeping requirements for reimbursements of training expenses, however, reimbursements are believed to be considerable and should be set forth as such on the books and records of a member firm.

Exception for Commission Accounts—One commentor recommended that the language of proposed Subsection 29(h)(2) be amended to avoid conflicting with state insurance laws by deleting any reference to a "commission" or "ministerial service." (See Comment 13 to the rule filing.) The NASD determined that the changes recommended by this commentor would confuse the rule language and not make clear the narrow scope of the exception intended to be available under Subsection 29(h)(2).

Elimination of Requirement to Receive Cash Instead of Non-Cash Compensation—One commentor was in favor of the elimination of current Section 26(l)(1)(B) which requires that a member elect to receive cash in lieu of non-cash compensation. (See Comment 18 to rule filing.) The current provisions of Subsection 26(l) apply to compensation arrangements between members. The proposed rule change modifies this subsection to be applicable to compensation arrangements between offerors and members. In this context, the requirement would be imposed on offerors and appears inappropriate. Moreover, the NASD believes that the currently available option to receive cash is rarely used.

Internal NASD Consideration of the Proposed Rule Change—One commentor stated that a compromise proposal had been developed between representatives of the various industry segments which was not reflected in the proposed rule change. It is argued that the compromise was intended to provide a "level playing field." (See Comment 3 to the rule filing.) A determination of the Board of Governors is final action by the NASD with respect to a proposed rule change. Any earlier discussions in committee do not represent final action of the NASD.

Record-Keeping/Prospectus Disclosure Requirements—Two commentors suggested requiring record-keeping and prospectus disclosure of compensation agreements between a registered representative and the employing member as a means of assuring suitability and a level playing field. (See Comments 9 and 22 to the rule filing.) The NASD believes the current record-keeping proposals to be sufficient and does not perceive a regulatory rationale to adopt a rule regulating a member's internal compensation structure with its own salespersons.

Three commentors asserted that the requirement that broker/dealers keep records for incentives received and paid to their sales force is excessive and supported additional disclosure as a better alternative. (See Comments 4, 10, and 15 to the rule filing.) It was stated that it is difficult to determine and break out the cost of such non-cash incentives. (See Comment 15 to the rule filing.) The purpose of the proposed record-keeping requirements is to enhance member control over the flow of compensation from mutual funds and insurance companies, which the recommended prospectus disclosure would not accomplish. The NASD believes, further, that members will not find it inappropriately difficult to break-out the cost of non-cash incentives from the value of cash payments.

Authority to Require Prospectus Disclosure—Three commentors questioned the need for the added prospectus disclosure requirements and two of these comments included statements that the NASD lacks the authority to promulgate additional prospectus requirements. (See Comments 3, 13, and 20 to the rule filing.) The SEC, through its rules and through its review and approval of the rules of the NASD pursuant to section 19(b)(1) of the Act, has recognized the special obligation of the NASD to specify disclosure in the prospectus related to underwriting compensation and related arrangements. Item 508 of Regulation S-K requires that the Plan of Distribution section of the offering document include a statement of the underwriting compensation as determined by the NASD. Schedule E to the NASD's By-Laws includes in Section 6 thereof a provision requiring disclosure in the offering document of the identity of any qualified independent underwriting and the relationship between the member and the issuer. The Corporate Financing Rule, Article III, Section 44 of the Rules of Fair Practice requires disclosure in the offering document of all items deemed to be compensation by the NASD. The NASD believes that review and approval of the prospectus disclosure proposed herein by the SEC pursuant to section 19(b)(1) of the Act, after publication for public comment, provides the requisite authority to the NASD to impose such requirements.

General Comments: One insurance industry commentor argued that the proposed rule change imposed unfair burdens on the insurance industry and will require dramatic changes in insurance industry compensation practices without apparent justification. (See Comment 3 to the rule filing.) Furthermore, it was the opinion of two commentors that without additional changes, the proposed amendment would disrupt the traditional sales incentive programs which exist in the insurance industry. (See Comments 3 and 20 to the rule filing.) One commentor stated that permitting non-cash compensation would not promote high standards of commercial honor or self-discipline among members. (See Comment 21 to the rule filing.) The NASD believes that the proposed rule change will benefit investors and the mutual fund/variable contracts industries by uniformly regulating the cash and non-cash compensation paid to members and persons associated with members in connection with the sales of investment company securities and variable contracts. The NASD does not believe that the changes to the compensation structure required by the proposed rule change are materially burdensome to the insurance industry. The NASD believes the changes are necessary in the interest of the investing public.

One commentor recommended the proposed rule change "* * * be expanded to prohibit the request, offer, receipt or payment to a member * * * of any compensation other than prospectus disclosed sales charges, 12b-1 plan fees and services fees, which compensation is based upon a percentage or other formula derivation of sales of the offeror's fund(s) by a member." (See Comment 8 to the rule filing.) The NASD does not agree with this commentor's proposal to eliminate all non-cash compensation, preferring to regulate the receipt of such form of compensation.

Request for Clarification: Clarification was requested by commentors on several issues. Two commentors asked whether compensation by an issuer of a registered representative for the sales of non-securities is required to go through the employing member. (See Comments 1 and 3 to the rule filing.) A third commentor wanted the NASD to clarify how fees paid to a registered representative for administrative services should be treated. (See

Comment 11 to the rule filing.) Clarification was also requested regarding the manner in which a broker/dealer records and maintains books reflecting non-cash compensation. (See Comment 18 to the rule filing.)

The NASD Rules of Fair Practice do not apply to transactions involving exempt securities and non-securities products. The Rules of Fair Practice do, however, apply to the payment of administrative fees. Members are encouraged to review these Rules. Furthermore, the NASD declines to mandate an exact form in which such records should be kept in order to meet the requirements of the rule in order to provide members with leeway to establish individual procedures in accordance with the type of business that the member transacts.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2523 Filed 2–2–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31784; File No. SR–OCC–92–38]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed By-Law Changes Relating to OCC's Authority to Impose Exercise Restrictions

January 27, 1993.

On November 12, 1992, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–92–38) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act").[1] The proposed rule change will amend article VI, section 17(a) of the OCC's By-laws and add an interpretation to article VI, section 17(b) of OCC's By-laws regarding OCC's authority to impose an exercise restriction. The Commission published notice of the proposed rule change in the **Federal Register** on December 4, 1992.[2] No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change will amend article VI, section 17(a) of OCC's By-laws. The proposal will allow OCC to impose an exercise restriction consistent with that of a national securities exchange ("exchange") on all its clearing members who hold the particular series of options being restricted by the exchange.

Under the current language of article VI, section 17(a) of OCC's By-laws, whenever an exchange, acting pursuant to its rules, imposes exercise restrictions on a particular series of options, OCC is authorized to impose similar exercise restrictions in respect of all its clearing members who are members of that particular exchange. However, article VI, section 17(a) of OCC's By-laws does not grant OCC the authority to impose similar exercise restrictions on clearing members who hold the same series of options on another exchange. As a result, those clearing members who are members of the exchange imposing the restriction are prohibited from exercising the restricted series of options, while those who are not members of such exchange are, in effect, exempt from the restriction. If OCC wants to impose a consistent restriction on all of its members, it is required to call an emergency meeting of the Board of Directors. The proposed revisions to article VI, section 17(a) of OCC's By-laws will give the OCC the authority to impose an exercise restriction consistent with that of an exchange on all its clearing members, whether or not the clearing members are members of such exchange, without the necessity of convening a Board of Directors meeting.

OCC also is proposing to delete language from article VI, section 17(a) of OCC's By-laws which provides for the automatic imposition of exercise restrictions on a particular series of options consistent with an exercise restriction imposed by an international market. OCC, however, will still have the authority to impose an exercise restriction consistent with that of an international market under section 17(b) of article VI of the OCC's By-laws should circumstances require it.[3]

OCC is proposing to delete language from section 17(a) of article VI of the OCC's By-laws respecting an exchange's reason for imposing an exercise restriction. Currently, an exercise restriction goes into effect only if the exchange imposes a restriction because it is advisable in the interests of maintaining a fair and orderly market, or is otherwise in the public interest or for the protection of investors. This revision will permit the OCC to impose an exercise restriction without reviewing the reasoning behind the exchange's decision.

Finally, an interpretation is being added to article VI, section 17(b) of OCC's By-laws. The interpretation will delegate to OCC's Chairman, the President or the delegatees of either of them the initial decision to impose an exercise restriction pursuant to article VI, section 17(b) of OCC's By-laws, subject to review and ratification by the Board of Directors at its next regularly scheduled meeting.

II. Discussion

The Commission believes that OCC's proposed rule change is consistent with section 17A of the Act and, specifically, with sections 17A(b)(3) (A) and (F) thereunder.[4] Sections 17A(b)(3) (A) and (F) of the Act require that a clearing agency be organized and its rules be designed to enable it to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. Section 17A(b)(3)(F) of the Act also requires that the rules of a clearing agency be designed to enable it to protect investors and the public interest.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 31534 (November 30, 1992), 57 FR 57522.

[3] Article VI, section 17(b) empowers OCC's Board of Directors to impose restrictions on exercises of one or more series of options as the Board deems advisable in the interest of maintaining a fair and orderly market in options contracts, or in underlying securities, or otherwise deems advisable in the public interest or for the protection of investors.

The purpose of the proposed By-law change is to enhance OCC's ability to protect investors by allowing it to impose exercise restrictions in a timely, equitable and prudential manner. The imposition of an exercise restriction on members of one exchange, but not another, creates a disparity in contractual rights among holders of the same series of options since identical options (that is, options covering the same underlying interest and having the same exercise price and expiration date) are simultaneously traded on more than one United States options market. In order to prevent such a disparity, OCC must convene an emergency meeting of the Board of Directors, pursuant to article VI, section 17(b) of OCC's By-laws, to obtain the authority to impose a similar exercise restriction on all its clearing members who hold the particular series of options. An emergency Board meeting for these purposes, however, is operationally burdensome as it is difficult to convene the Board within the time constraints demanded by the events compelling a restriction. The imposition of similar restrictions on all clearing members would generally be necessary in order to protect investors and maintain a fair and orderly market. The Commission believes that this proposal is consistent with the provisions of section 17A(b)(3)(F) of the Act because OCC's rules are designed to protect investors and the public interest.

The OCC has made a review of the international markets and concluded that many of the exercise restrictions placed on options by international markets were based on reasons generally unique to those markets. Section 17(a) of article VI of OCC's By-laws gave international markets the ability to halt trading on markets in the United States, regardless of the relevance to the United States markets of the event compelling the international market's decision. The deletion in section 17(a) of article VI of OCC's By-laws will grant OCC the flexibility to evaluate the decision of the international market prior to imposing a similar restriction in the United States. If the OCC deems it advisable, it may impose the restriction under section 17(b) of article VI of OCC's By-laws. The Commission believes that this proposal is consistent with the provisions of section 17A(b)(3)(F) of the Act which requrie the rules of a clearing agency to promote the prompt and accurate clearance and settlement of securities transactions.

The Commission believes that an OCC review of an exchange's rationale for imposing an exercise restriction may delay the implementation of a necessary restriction. Moreover, exchanges, like OCC, are self-regulatory organizations and are required to have rules that, among other things, are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling securities, and to protect investors and the public interest.[5] Therefore, it is reasonable for OCC to assume that an exchange will impose exercise restrictions when it finds good cause for doing so and only when the exercise restriction is designed to protect investors and the public interest.

The interpretation added to section 17(b) of article VI of OCC's By-laws, which delegates the authority of the Board to impose an exercise restriction, expedites the imposition of an exercise restriction. When the need arises to impose an exercise restriction, typically, there is insufficient time to call an emergency meeting of the Board of Directors. This interpretation will permit OCC to respond more rapidly to market developments, and thereby enhance its ability to safeguard the securities and funds under its control in accordance with the requirements of section 17A(b)(3)(F) of the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, and in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–OCC–92–38) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,
Deputy Security.
[FR Doc. 93–2457 Filed 2–2–93; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 28, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

United American Healthcare Corporation
  Common Stock, No Par Value (File No. 7–10088)
BankAmerica Corporation
  Depositary Shares (File No. 7–10089)
Asia Pacific Fund, Inc.
  Rights (File No. 7–10090)
United States Banknote Corporation
  Common Stock, $.01 Par Value (File No. 7–10091)
PEC Israel Economic Corporation
  Common Stock, $1.00 Par Value (File No. 7–10092)
Borg Warner Security Corporation
  Common Stock, $0.01 Par Value (File No. 7–10093)
Glamis Gold Ltd.
  Common Stock, No Par Value (File No. 7–10094)
Integra Financial Corporation
  Common Stock, $1.00 Par Value (File No. 7–10095)
Integra Financial Corporation
  $2.31 Cum. Cv. Pfd. Stock, No Par Value (File No. 7–10096)
Ford Holdings Inc.
  Depositary Shares Series B Cum. Pfd. Stock, $1.00 Par Value (File No. 7–10097)
Duff and Phelps Utility and Corporate Bond Trust
  Common Stock, $0.01 Par Value (File No. 7–10098)
Genesis Health Ventures, Inc.
  Common Stock, $0.02 Par Value (File No. 7–10099)
Van Kampen Merritt Strategic Sector Municipal Trust
  Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10100)
TRW/DW Term Trust 2002
  Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–10101)
Hospitality Franchise Systems, Inc.
  Common Stock, $.01 Par Value (File No. 7–10102)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

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[4] 15 U.S.C. 78q–1(b)(3) (A) and (F).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

Interested persons are invited to submit on or before February 19, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-2462 Filed 2-2-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. 48626; Notice 93-6]

Request for Public Comments on Potential Nontechnical Constraints to the Implementation and Use of Intelligent Vehicle-Highway Systems (IVHS)

AGENCY: Office of the Secretary, DOT.

ACTION: Notification of open docket for public comments.

SUMMARY: Intelligent vehicle-highway systems (IVHS) are intended to improve safety, reduce congestion, and help promote other important national transportation goals. The Department's IVHS program was formally established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (23 U.S.C. 307 note). This program is described in a report prepared for Congress by the Department of Transportation, *IVHS Strategic Plan: Report to Congress,* December 18, 1992.

A number of nontechnical constraints have been identified as potential deterrents to the successful adoption of IVHS technologies. Section 6054(d) of the ISTEA requires the Department of Transportation, in consultation with the Departments of Commerce and Justice, to prepare a report to Congress that identifies and evaluates nontechnical constraints and barriers to the adoption of IVHS technologies (section 6054(d)(1)). The purpose of this notice is to solicit comments from state and local officials, academics, industry, and private individuals on the various nontechnical constraints to IVHS deployment we have identified, as well as others we may not have identified.

According to the relevant statute, the report should consider the following issues: Antitrust, privacy, educational and staffing needs, patent, liability, and architectural/technical standards. The report should also recommend legislative and administrative actions to further the Department's IVHS program, as well as to suggest ways to encourage industry and state and local governments to become more actively involved in the national IVHS program.

In addition, the Senate Appropriations Committee Report to the Fiscal Year 1993 DOT Appropriations Act requested the Department to consider whether the deployment of IVHS projects will affect the ability of a state or region to meet the requirements of the Clean Air Act. Finally, the *Strategic Plan for Intelligent Vehicle Highway Systems in the United States,* 1992, prepared by IVHS America, discusses additional nontechnical issues that may have a major impact on the success of the national IVHS program.

Acting on these recommendations, our report will, in addition to the issues listed above, discuss contracting and acquisition issues, local government coordination issues, and barriers that may prevent private firms from providing IVHS services.

INFORMATION REQUESTED: In each of the following subject areas, we are interested in having information submitted that will help us understand how the nontechnical constraints we have identified may inhibit the adoption of IVHS technologies. We are also interested in identifying potential actions the Department of Transportation or the Federal government could take to reduce these constraints, as well as obtaining suggestions as to how we can promote industry and state and local government involvement in the IVHS program.

I. Antitrust: The development of IVHS technologies may require businesses to pool their technical skills, capital, and facilities. Concern about antitrust prosecution and liability, however, may inhibit the formation of joint ventures. By providing that certain joint ventures are to be evaluated under a rule of reason standard for antitrust purposes (rather than under the more restrictive per se test) and limiting liability to actual damages, the National Cooperative Research Act of 1984 (NCRA), (15 U.S.C. 4301-4305) provides limited protection for private firms from antitrust prosecution. We seek information as to whether the antitrust laws unduly inhibit the ability of U.S. companies to work together to develop IVHS products and services, as well as to participate in public/private partnerships.

II. Patents: Developers and manufacturers of IVHS products must work cooperatively to ensure that components properly interface with established IVHS technologies; they must also work cooperatively with state and local governments to install and operate these technologies. Some IVHS development and deployment, moreover, will be funded by Federal and state governments. The cooperative nature of IVHS development, as well as government involvement in funding and operating IVHS technologies, may affect the patent, copyright, and other intellectual property rights of the developers of these technologies. At this time, it is not clear how the cooperative development nature of many IVHS technologies will be influenced by existing patent and copyright provisions. The full implications of government rights to IVHS-related intellectual property developed at government expense, or partially at government expense, may also need to be further addressed.

III. Liability: Large court damage awards in product liability suits may inhibit private firms from developing and marketing certain products and services. In the IVHS area, this potential liability concern may escalate more rapidly as emerging IVHS technologies assume more of the functions now performed by individuals. In these circumstances, liability claims could be raised against the public agency owning or operating the highway, as well as against the manufacturer or distributor of the allegedly defective technology. Moreover, because the financial risks involved in introducing new technologies could be substantial and are uncertain it may be difficult, or very costly, for private firms to insure against these risks. We would like to solicit views on various approaches to managing the IVHS product liability issue, including insurance, indemnification, and immunity.

IV. Standards: Because of the limited market for many IVHS technologies, private firms may need assurances that their product development plans will not only meet the needs of their customers but will also technically conform with other IVHS products and services. Thus it has been suggested that one critical action that will be needed to promote the adoption and diffusion of IVHS technologies is for all parties to reach an agreement on appropriate industry standards and protocols. We need to determine what industry standards and protocols are necessary and/or desirable. We also need to evaluate the additional social benefits and costs of greater industry standardization.

It is expected that such standards and protocols will be developed and promulgated by existing standard-setting organizations, like the American Society for Testing and Materials (ASTM) the Institute of Electrical and Electronics Engineers (IEEE), and the Society of Automotive Engineers (SAE). We would like comments on the adequacy of this approach.

V. Acquisition: Industry spokesmen concerned with promoting IVHS technologies often allege that Federal, state, and local acquisition requirements unduly delay or inhibit progress in developing and adopting IVHS technologies. Federal procurements are governed by the Federal Acquisition Regulations (FAR). Government contracting and acquisition rules, it is alleged, are not sufficiently flexible with regard to long-term developmental requirements; in particular, organizational conflict of interest requirements may have the effect of deterring companies from participating in the early phases of developing IVHS technologies.

There is also a concern that existing acquisition rules inhibit the ability of government agencies to work with private sector companies to develop, test, and adopt various IVHS technologies. Some argue that government agencies should be granted greater latitude to establish contractual relationships with private firms, particularly in areas where the work is being undertaken in a collaborative manner. Views on this issue are requested.

VI. Privacy: Some motorists may consider their privacy jeopardized if certain IVHS technologies, such as automatic vehicle identification devices or other traffic surveillance systems, were widely adopted. It has also been suggested that these privacy concerns could precipitate consumer backlash against various IVHS technologies. We are interested in views on whether the possible loss of privacy could reduce the willingness of consumers to accept and purchase IVHS products and services.

VII. Education and Staffing: The successful introduction of new IVHS technologies may require employee and managerial skills that are different from those that were previously in demand. We need to understand if colleges, universities, and technical institutes are preparing students with the training and skills they need to pursue potential high technology jobs in the IVHS sector. We also need to determine if government employees have the skills necessary to meet the demands that will be placed upon them if new IVHS technologies are widely adopted. Finally, we need to assess what types of IVHS-related training and retraining programs for transportation employees may be appropriate in the future.

VIII. Local Government Coordination: Responsibility for traffic management operations has evolved in response to various institutional, political, and funding arrangements.

In many metropolitan areas such responsibilities are often dispersed among distinct political jurisdictions; moreover, within jurisdictions there are likely to be a number of separate agencies involved in traffic management operations.

Various IVHS technologies will improve the efficiency of metropolitan traffic management services. Some experts have suggested that these technologies must be adopted on an areawide basis to achieve maximum efficiency. Some parties also have suggested that the deployment and operations of these technologies are a natural extension of current services provided by the public sector; others have suggested that new traffic management services will be provided by the private sector. We are particularly concerned as to what measures may be needed to facilitate adequate cooperation by local governments for the provision of certain IVHS services in an efficient manner.

IX. Private Sector Access: In many cases, new IVHS services will be offered by the private sector. For example, while governments are responsible for road signs and traffic signals, in-vehicle information on traffic conditions and other traffic information could be offered by public agencies or private firms on a subscription basis. There are, however, a variety of statutory or regulatory constraints that could prevent private companies from offering such services. This is particularly the case if there needs to be access to the highway system by private companies, or if the radio spectrum allocated to the public sector is to be used for these services. We are particularly interested in views on institutional and regulatory changes that need to be made to enhance the private sectors' ability to offer IVHS services.

X. Environment: Some parties are concerned that reduced traffic congestion could have negative implications for the environment. Under one scenario, any short-term successes achieved in alleviating traffic congestion will merely encourage higher levels of automotive traffic, thus leading to more air pollution. On the other hand, some IVHS supporters argue that these traffic management technologies will lead to smoother traffic flows, decreasing much of the air pollution now caused by stop-and-go traffic patterns. Also, some IVHS supporters believe these technologies could result in a higher level of transit use and carpool and vanpool use, as well as facilitate road pricing. Views on how IVHS technologies can contribute to a positive environmental impact are requested.

DATE: Comments should be received by April 15, 1993. Comments that are received after that date will be considered to the extent possible.

ADDRESSES: Comments should be sent (four copies) to: Docket Clerk, Docket No. ____, room 4107, United States Department of Transportation, 400 7th Street, SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Laurence T. Phillips or Thomas E. Marchessault, Office of Economics, P-37, Office of the Secretary, U.S. Department of Transportation, Washington, DC, 20590. Phone (202) 366–5412, Fax (202) 366–3393.

Joseph F. Canny,

Deputy Assistant Secretary for Policy and Regulatory Affairs.

[FR Doc. 93–2497 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[Summary Notice No. PE–93–7]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 24, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. ______, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7624.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on January 28, 1993.

Michael E. Chase,

Acting Assistant Chief Counsel.

Dispositions of Petitions

Docket No.: 25337

Petitioner: ERA Aviation, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought/ Disposition: To allow the pilots employed by ERA Aviation, Inc., to remove and replace aircraft cabin seats when away from the maintenance base.

GRANT, January 6, 1993, Exemption No. 5582

Docket No.: 25988

Petitioner: Soloy Dual Pac, Inc.

Sections of the FAR Affected: 14 CFR 21.19(b)(1)

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5172, which allows the conversion of the Cessna Caravan from a single-engine to a multi-engine aircraft, using the supplemental type certification process. The new exemption would also change the Pratt & Whitney engine models to be installed from the PT 6B–35F to the PT6A–114A.

GRANT, January 12, 1993, Exemption No. 5172B

Docket No.: 26732

Petitioner: Air Transport Association of America

Sections of the FAR Affected: 14 CFR 121.652 (a) and (c)

Description of Relief Sought/ Disposition: To extend the termination date of Exemption No. 5549, which permits a pilot in command under part 121 to conduct an alternative instrument approach procedure to the weather minima prescribed in the exemption during the first 100 hours of service as a pilot in command, in the type of airplane he or she is operating. This exemption would also be amended to combine crosswind and braking restrictions, and to make other technical corrections.

GRANT, January 15, 1993, Exemption No. 5549A

Docket No.: 26986

Petitioner: Thomas J. Skipp, III

Sections of the FAR Affected: 14 CFR 65.57

Description of Relief Sought/ Disposition: To allow Mr. Skipp to apply for an aircraft dispatcher's certificate without meeting the minimum requirements that are prescribed to be eligible for that certificate.

DENIAL, January 21, 1993, Exemption No. 5590

Docket No.: 26999

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.663 and 121.697 (a) and (b)

Description of Relief Sought/ Disposition: To permit Northwest Airlines, Inc.'s flight dispatchers to use a computer-generated electronic authorization in lieu of an actual signature on flight releases under their control.

GRANT, January 15, 1993, Exemption No. 5589

Docket No.: 27083

Petitioner: Mandarin Airlines Co., Limited

Sections of the FAR Affected: 14 CFR 61.77 (a) and (b), and 63.23 (a) and (b)

Description of Relief Sought/ Disposition: To permit the issuance of U.S. special purpose pilot and flight engineer certificates to Mandarin Airlines Co., Limited's airmen, without meeting the requirement that they hold a current foreign certificate or license issued by a foreign contracting State to the Convention on International Civil Aviation.

GRANT, January 21, 1993, Exemption No. 5592

[FR Doc. 93–2506 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–3]

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; correction.

SUMMARY: This action makes a correction to the summary described for Docket No. 26734 in a notice of petitions for exemption published on January 14, 1993, (58 FR 4450). This action corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved, and must be received on or before February 2, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rules Docket (AGC–10), Petition Docket No. 26734, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mrs. Jeanne Trapani, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7624.

SUPPLEMENTARY INFORMATION: The document was published on January 14, 1993. The description of relief sought for Docket No. 26734 was incorrect. The description should be amended to read, "To amend condition no. 3b of Exemption No. 5517, which expires September 30, 1994, to allow a reduction of the 500 hours required as pilot in command or copilot of turbojet airplanes in exchange for turbo-powered flight time."

Issued in Washington, DC, on January 28, 1993.

Michael E. Chase,

Acting Assistant Chief Counsel.

[FR Doc. 93–2507 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee Air Carrier/General Aviation Maintenance Subcommittee.

DATES: The meeting will be held on February 18, 1993, at 9 a.m. Arrange for oral presentations by February 4, 1993.

ADDRESSES: The meeting will be held at Air Transport Association of America, 1301 Pennsylvania Avenue, NW., Washington, DC at 9 a.m.

FOR FURTHER INFORMATION CONTACT:

Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–7461.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on February 18, 1993. The agenda for the meeting will include reports from the working groups dealing with establishment of current standard weights for passengers and baggage, development of a notice of proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of an NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR) 36, and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records. In addition, a representative from Northwest Airlines will brief the subcommittee on structural difficulty reporting requirements for the new § 121.704 rule.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before February 4, 1993, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting coordinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "FOR FURTHER INFORMATION CONTACT."

Frederick J. Leonelli,

Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–2505 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Storage Blue Ribbon Panel.

DATES: The meeting will be held March 11, 1993, from 8 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, Maple Room, 800 Rainier Avenue South, Renton, Washington 98055.

FOR FURTHER INFORMATION CONTACT:

Daniel C. Beaudette, Executive Director, 800 Independence Ave., SW., Washington, DC, 20591; telephone (202) 267–7804.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel to be held March 11, 1993. The meeting agenda will include:

- Opening comments
- Public comments
- Future operations.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before March 1, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on January 27, 1993.

Daniel C. Beaudette,

Executive Director of the Pilot and Aviation Maintenance Technician Shortage Blue Ribbon Panel.

[FR Doc. 93–2508 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Bellingham International Airport at Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC at Bellingham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Theodore D. Soliday, Aviation Manager of the Bellingham International Airport, at the following address: 4255 Mitchell Way, #2, Bellingham, Washington, 98226.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Bellingham under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Johnson, (206) 227–2655; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Bellingham International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 20, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Port of Bellingham was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1993.

Proposed charge expiration date: May 1, 1994.

Total estimated PFC revenue: $366,000.00.

Brief description of proposed project: Terminal area expansion planning and land acquisition reimbursement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Scheduled air carrier's operating aircraft with less than 10 seats and Non-scheduled air carrier and charter flights using aircraft with less than 10 seats. The total activity of these excluded classes is less than 1% of total passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Bellingham at Bellingham International Airport.

Issued in Renton, Washington, on January 20, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–2501 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-13-M

Phoenix Sky Harbor International Airport, Phoenix, AZ; Intent To Rule on Application To Impose a Passenger Facility Charge

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose a passenger facility charge (PFC) at Phoenix Sky Harbor International Airport, Phoenix, Arizona.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose a PFC at Phoenix Sky Harbor International Airport, Phoenix, Arizona under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 5, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, P.O. Box 92007, WWPC, Los Angeles, CA 90009.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Neilson A. Bertholf, Jr., Aviation Director of the City of Phoenix at the following address: City of Phoenix, Aviation Department, 3400 Sky Harbor Boulevard, Phoenix, Arizona 85034.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Phoenix Aviation Department under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621, Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90261, Tel (310) 297–1029. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Phoenix Sky Harbor International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 14, 1993, the FAA determined that the application to impose the revenue from a PFC submitted by the City of Phoenix Aviation Department was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 1993.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1993.

Proposed charge expiration date: September 30, 1997.

Total estimated PFC revenue: $149,589,000.

Brief description of proposed projects: Extend north runway (8L–26R) and adjacent Taxiways "A" and "B" approx. 100 feet to the west; Relocate entrance to Old Tower Road; Build-out Terminal 4 Concourse N–4; Noise mitigation efforts; Third runway—Purchase land (approx. 6 acres) and demolish structures; Construct third runway (approx. 7800′ × 150′) and parallel taxiway (approx. 7800′ × 75′) including connector taxiways; Realign taxiway "D" to eliminate jog; Relocate the Air National Guard.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

Business Air Service South
Corporate Flight Inc.
Critical Care Service Inc.
I J A Inc.
KMR Aviation Inc.
Lousiana Pacific Corp.
Ponderosa Aviation and Poncero
Raleigh Jet Charter
Sioux Valley Hospital Intensive Air
Windstar Aviation Corp.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Building, 3rd Floor, room 3E23, 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Phoenix Aviation Department.

Issued in Los Angeles, California on January 29, 1993.

Herman C. Bliss,

Manager, Airports Division, Western Pacific Region.

[FR Doc. 93–2503 Filed 2–2–93; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 93–04; Notice 1]

Subaru of America, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Subaru of America, Inc. (Subaru) of Cherry Hill, New Jersey, had determined that some of its replacement seat belts fail to comply with 49 CFR 571.209, Federal Motor Vehicle Safety Standard No. 209, "Seat Belt Assemblies," and has filed an appropriate report pursuant to 49 CFR part 473. Subaru has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the

National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Between October 1984 and November 1992, Subaru produced and sold approximately 25,000 sets of replacement seat belts which did not include installation instructions. Subaru sold approximately 1,000,000 vehicles to which these replacement seat belt assemblies are applicable and is unable to determine which of these vehicles contain the replacement belt assemblies.

Standard No. 209, Section S4.1(k) requires that "[a] seat belt assembly or retractor shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle except for a seat belt assembly installed in a motor vehicle by an automobile manufacturer. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles * * *." In addition, section S4.1(1) requires that "[a] seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened." The instructions pertaining to threading and nonlocking retractors do not apply to Subaru's belt designs.

Subaru supports its petition for inconsequential noncompliance with the following:

I. Mismatch of Belt Assembly in Vehicle or Seating Positing

Subaru replacement seat belts are offered as exclusive parts, unique to each model, vehicle configuration, and seating position. Those parts have specific part numbers identified in Subaru parts catalogs with illustrations. The item numbers attached to each illustration enable the ordering dealer to specify the replacement seat belt assembly he (or she) is ordering by referring to the corresponding page which shows the applicable part number, specific vehicle model type, location, applicable model year, etc. When ordering Subaru replacement parts, the dealer must refer to the Subaru parts catalog to identify the ordering part number with the information on the specific vehicle model type, location, and model year. Each replacement seat belt assembly is packaged individually with a specific part number label clearly attached on the package to ensure shipping the correct parts. Also, the dealer routinely checks to see that the part he received matches the one he ordered.

There are a variety of significant physical differences among Subaru seat belt assemblies, which include various mounting configuration and location differences, differences in buckle latch plate configuration and retractor locking device, webbing length and housing configuration differences, and differences in motorized seat belt guide track shapes. Given these variances in physical properties, (Subaru feels) it is not possible that a mechanic would install a replacement seat belt assembly in the wrong vehicle or wrong seating position.

Thus, (Subaru believes) that the ordering and shipping procedures for Subaru replacement seat belts make it highly unlikely that a wrong seat belt assembly will be delivered to a dealer and, should the wrong seat belt be delivered, the above mentioned physical differences make it virtually impossible to install the seat belt in the wrong model vehicle or at an incorrect seating position.

II. Improper Installation of Belt Assembly

Subaru dealers install replacement seat belt assemblies in accordance with the instructions in Subaru service manuals for Subaru vehicles. Subaru service manuals are provided to every Subaru dealer and are widely available to the public and independent repair facilities. Therefore, (Subaru feels) improper installation of replacement seat belt assemblies is highly unlikely.

In most cases of installation of a replacement seat belt, the installer will first remove the seat belt that needs to be replaced from the vehicle. After removal of the old seat belt, the installer will then reverse the steps of removal to properly locate and install the replacement belt. (Subaru feels that there) is no need to specify instructions for threading the webbing or finding locations for and drilling anchorage holes because replacement seat belt assemblies are furnished ready for installation in the vehicle's preexisting anchorage holes with a few simple steps.

Interested persons are invited to submit written data, views, and arguments on the petition of Subaru, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 5, 1993.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 28, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-2465 Filed 2-2-93; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Pipeline Safety Advisory Bulletin; Snow Accumulation on Gas Pipeline Facilities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory to gas pipeline facilities of possible hazards due to snow accumulation.

SUMMARY: This advisory is to inform propane system owners and operators of the need to inform the public of possible hazards relating to snow accumulation on pipeline facilities, and to monitor the potential impact of snow accumulation on those facilities. The text of the advisory bulletin appears below.

Advisory

During the week of January 18, 1993, a series of liquefied petroleum gas (propane) incidents occurred in the California Sierra Nevadas in which escaping propane ignited causing 6 deaths, 20 injuries, and an unknown amount of property damage. A contributing factor in most of these propane gas incidents was the record-breaking snowfall. Damage can result to propane tanks, piping, and regulators from snow or ice falling from roofs as well as actions taken to protect dwellings from abnormal snow accumulation by shoveling snow from roofs. Accordingly, the Research and Special Programs Administration (RSPA) is advising operators of propane gas pipeline facilities, regardless of whether those facilities are regulated by

RSPA, to notify customers and other entities involved with snow removal of the hazardous consequences of improper removal and excessive snow accumulation.

Background

The RSPA regulation, 49 CFR 192.11, incorporates by reference the National Fire Protection Association (NFPA) Standard 58 for the storage and handling of liquefied petroleum gases. Specifically, NFPA Standard 58 3–2.5.2(b) requires all regulators for outdoor installations, except regulators used for portable industrial applications, to be designed, installed, and protected so their operation will not be affected by the elements (freezing rain, sleet, snow, ice, mud, or debris). RSPA advises operators of propane systems that precautions should be taken in the case of regulator vents such as directing them downward to prevent accumulation of moisture which, if frozen, could prevent the regulator from functioning properly. Relief device stacks should be protected to prevent ice and snow accumulation in the stacks, which could prevent the devices from functioning properly. Consumers should be advised to contact their propane operators immediately, if snow or ice accumulation is blocking regulator vents or relief stacks. Persons involved in snow removal activities should be advised a broom instead of a shovel is more appropriate when clearing snow off propane tanks, associated piping regulators, tubing, gauges, or other propane system appurtenances. Operators should advise consumers that heavy snow and ice falling from roofs can damage propane systems and special care must be taken when clearing roofs of snow and ice to prevent impact on propane tanks, associated piping, and regulators. Exhaust and combustion air vents for gas appliances should be checked to assure they are clear of snow and ice. Additionally, if propane odors are detected, consumers should be advised to leave the residence immediately and contact the propane operator.

Issued in Washington, DC, on January 28, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–2353 Filed 2–2–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 28, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0082.

Form Number: ATF F 5120.24 (1582–A).

Type of Review: Extension.

Title: Drawback on Wine Exported.

Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for a drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 900.

Estimated Burden Hours Per Respondent: 1 hour, 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,025 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–2459 Filed 2–2–93; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 28, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Customs Service

OMB Number: 1515–0045.

Form Number: CF 7533C.

Type of Review: Extension.

Title: U.S. Customs In-Transit Manifest.

Description: CF 7533C is used by railroads to transport merchandise (products and manufactures of the U.S.) from one port to another in the United States through Canada.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 3 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15 hours.

OMB Number: 1515–0121.

Form Number: None.

Type of Review: Extension.

Title: Establishment of a Bonded Warehouse.

Description: Owners or lessees desiring to establish a bonded warehouse must make written application to the district director for the warehouse, along with a fee and any other documents required.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 45.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 135 hours.

Clearance Officer: Ralph Meyer, (202) 927–1552, Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93-2461 Filed 2-2-93; 8:45 am]

BILLING CODE 4830-02-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: January 28, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Correction

This document is to correct a **Federal Register** notice for the Bureau of Alcohol, Tobacco and Firearms [FR Doc. 93-1734], dated January 15, 1993 and published on January 25, 1993. The "Description" portion of this document was not complete. The correction is as follows:

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

OMB Number: 1512-0141.

Form Number: ATF F 2635 (5620.8).

Type of Review: Extension.

Title: Claim—Alcohol, Tobacco and Firearms Taxes.

Description: ATF F 2635 (5620.8) is used by taxpayers to show the basis for a credit remission and allowance of tax on a loss of taxable articles. To request a refund or abatement on taxes excessively or erroneously collected. To request a drawback of tax paid on distilled spirits used in the production of non-beverage products. ATF F 2635 (5620.8) is submitted along with supporting documents to indicate the reason a credit of Federal tax should be made to the claimant.

Respondents: Individuals or households, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 10,000.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion, Monthly, Quarterly.

Estimated Total Reporting Burden: 10,000 hours.

Clearance Officer: Robert N. Hogarth, (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93-2460 Filed 2-2-93; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Daumier Drawings" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about February 26, 1993, to on or about May 2, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: January 29, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93-2626 Filed 2-2-93; 8:45 am]

BILLING CODE 8230-01-M

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[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collections and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: January 26, 1993.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy, Assistant Secretary for Information Resources Policies and Oversight.

Revision

1. Application for Fee Personnel Designation, VA Form 26-6681
2. The form is used to obtain information on the applicant's professional experience in the real estate valuation field. The information is used to evaluate the professional expertise of fee applicants.
3. Individuals or households
4. 2,067 hours
5. 20 minutes
6. On occasion
7. 6,200 respondents

Extension

1. Fiduciary Account Book, VA Form 27–4718, and Annual-Final Report and Accounting, VA Form 27–4706
2. Both forms are used by VA's Fiduciary and Field Examination Program to provide fiduciaries of VA beneficiaries acceptable formats to collect data to be reported in accountings and an acceptable form to submit the collected data to the appointing State court. These accounting are usually required by State law.
3. Individuals or households—State or local governments—Federal agencies or employees—Non-profit institutions—Small businesses or organizations
4. 32,330 hours (1,830 hours for VA Form 27–4706 and 30,500 hours for VA Form 27–4718)
5. 30 minutes for VA Form 27–4706 and 2 hours and 30 minutes for VA Form 27–4718
6. On occasion
7. 15,860 respondents (3,660 for VA Form 27–4706 and 12,200 for VA Form 27–4718

Reinstatement

1. Certification of Lessons Completed, VA Form 22–6553b and VA Form 22–6653b–1
2. The forms are issued to veterans and other eligible persons authorized to receive educational benefits for the pursuit of approved correspondence courses. The rate of payment is based upon the information furnished on the completed form.
3. Individuals or households—Businesses or other for-profit—Small businesses or organizations
4. 2,003 hours
5. 10 minutes
6. Quarterly
7. 3,981 respondents

Reinstatement

1. Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849
2. The form is a legal agreement between builder/seller, lender, and escrow agent covering escrow of funds for unfinished exterior onsite improvements of newly constructed housing proposed for VA guaranteed financing.
3. Individuals or households—Businesses or other for-profit
4. Because escrow agreements are a common practice in the mortgage lending industry, only one burden hour is being reported for the entire collection.
5. 30 minutes
6. On occasion
7. 32,000 respondents

Reinstatement

1. Report of Treatment in Hospital, VA Form Letter 29–551
2. The form letter is used to collect information from the insured's hospital to determine his/her eligibility for a claim for disability insurance benefits.
3. Individuals or households
4. 4,055 hours
5. 12 minutes
6. On occasion
7. 20,277 respondents

[FR Doc. 93–2485 Filed 2–2–93; 8:45 am]

BILLING CODE 8320-01-M

Fiscal Year 1993 State Home Per Diem Rates for Domiciliary, Nursing Home, and Hospital Care

AGENCY: Department of Veterans Affairs.

ACTION: Notice of state home program per diem rates for FY 1993.

SUMMARY: Public Law 100–322, section 134(a)(2) provides for an increase in per diem rates for domiciliary, nursing home, and hospital care in State Veterans Homes. The VA is giving notice of increases for State home per diem for FY 1993 as follows: Domiciliary care—$11.79, nursing home care—$27.61, and hospital care—$27.61.

DATES: The per diem rates are effective October 1, 1992.

FOR FURTHER INFORMATION CONTACT:

L. Nan Stout, Chief of State Home Per Diem Program (114B), Office of Geriatrics and Extended Care, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 535–7538.

SUPPLEMENTARY INFORMATION: The "Veterans' Benefits and Service Act of 1988" (Pub. L. 100–322) was enacted on May 20, 1988. Section 134(a)(2) gives the Secretary of the Department of Veterans Affairs (VA) authority to evaluate the per diem rates annually and increase as appropriate. The law requires that increases in per diem rates not exceed the actual increase in the costs of care in VA general hospitals. Actual figures that are used to determine per diem increases are actual increases that occurred three years prior to the target fiscal year. The increase in the cost of care in VA general hospitals for Fiscal Year 1990 was used to calculate the maximum allowable increase (8.9%) for the Fiscal Year 1993 budget.

Dated: January 26, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–2484 Filed 2–2–93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 21
Wednesday, February 3, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 25, 1993, 58 FR 6053.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 27, 1993, 10:00 a.m.

CHANGE IN THE MEETING: Item CAG-14 has been added and the following Docket Numbers have been added to Items CAG-12 and CAG-25 to the Agenda scheduled for January 27, 1993:

Item No., Docket No., and Company

CAG-12—RS92-90-000, Wyoming Interstate Company, Ltd.
CAG-14—RP93-6-002, Paiute Pipeline Company
CAG-25—CP93-180-000, El Paso Natural Gas Company

Lois D. Cashell,
Secretary.

[FR Doc. 93-2609 Filed 2-1-93; 8:50 am]

BILLING CODE 6717-02-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, February 8, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 29, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93-2612 Filed 2-1-93; 8:52 am]

BILLING CODE 6210-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-01]

TIME AND DATE: February 9, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 731-TA-636-638 (Preliminary) (Stainless Steel Wire Rod from Brazil, France, and India)—briefing and vote
5. Invs. Nos. 731-TA-639-640 (Preliminary) (Stainless Steel Flanges from India and Taiwan)—briefing and vote
6. Inv. No. 731-TA-563 (Final) (Stainless Steel Butt-Weld Pipe Fittings from Korea)—briefing and vote
7. Continuation of discussion of APO matters
8. Outstanding action jacket requests—
    1. ID-92-040, Institution of an investigation under section 332 of the Tariff Act of 1930 on communications technology and equipment
    2. GC-92-102, Proposed Parts 201 and 207 rules amendments
    3. GC-93-003, *Federal Register* notice in Inv. No. 337-TA-276, *EPROMs*
9. Any items left from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: January 29, 1993.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 93-2610 Filed 2-1-93; 8:51 am]

BILLING CODE 7020-02-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-02]

TIME AND DATE: February 11, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 731-TA-548, 550-551 (Final) (Sulfur Dyes from China, India, and the United Kingdom)—briefing and vote
5. Invs. Nos. 701-TA-318, 731-TA-560-561 (Final) (Sulfanilic Acid from Hungary and India)—briefing and vote
6. Outstanding action jacket requests—
    None
7. Any items left from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205-2000.

Issued: January 29, 1993.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 93-2611 Filed 2-1-93; 8:51 am]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 1, 8, 15, and 22, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 1

Wednesday, February 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of February 8—Tentative

Monday, February 8

10:00 a.m.
Briefing by IIT on Loss of Iridium-192 Source and Therapy Misadministration at Indiana Regional Cancer Center, Indiana, PA., November 16, 1992 (Public Meeting)
(Contact: Carl Paperiello, 708-790-5517)

2:00 p.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Jim McDermott, 301-492-4661)

Tuesday, February 9

2:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: William Bateman, 301-504-1711)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Amendments to 10 CFR Part 61, "Licensing Requirements for land Disposal of Radioactive Waste" (Tentative)
(Contact: Janet Lambert, 301-492-3857)

Week of February 15—Tentative

Friday, February 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51 (Public Meeting)

(Contact: Donald Cleary, 301–492–3936)

Week of February 22—Tentative

Monday, February 22

9:00 a.m.

Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)

(Contact: John Glenn, 301–504–3415)

Thursday, February 25

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.

Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)

(Contact: Richard Major, 301–492–8109)

ADDITIONAL INFORMATION: By a vote of 5–0 on January 29, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Letter Requesting Publication of Federal Register Notice Regarding Proposed Issuance of Operating License for Comanche Peak Unit 2" (Public Meeting) be held on January 29 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: January 29, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–2630 Filed 2–1–93; 10:41 am]

BILLING CODE 7590-01-M

Corrections

Federal Register

Vol. 58, No. 21

Wednesday, February 3, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 920944-2302]

RIN 0648-AE80

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

Correction

In rule document 92–28377 beginning on page 54936 in the issue of Monday, November 23, 1992, make the following corrections:

1. On page 54937, in the second column, in the third full paragraph, in the third line, "§ 675.27(b)(3)(1)" should read "§ 675.27(b)(3)(i)".
2. On the same page, in the third column, in the ninth line, "The" should read "To".
3. On the same page, in the same column, in the fourth full paragraph, in the fourth line, "ground fish" should read "groundfish".

§ 675.27 [Corrected]

4. On page 54943, in § 675.27(b)(1)(iii), in the first line, "The length of the time" should read "The length of time".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 51222-6240]

Atlantic Sea Scallop Fishery

Correction

In rule document 93–1132 beginning on page 4944 in the issue of Tuesday, January 19, 1993, make the following correction:

On page 4945, in the third column, in the second full paragraph, in the second line, "February 1, 1992" should read "February 1, 1993".

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Commission Eastern Regional Office; Change of Address

Correction

In rule document 92–15309 appearing on page 29203 in the issue of July 1, 1992, make the following correction:

PART 145 [Corrected]

In the second column, in part 145, in the third paragraph, in the first line, "Section 1456.6(d)" should read "Section 145.6(a)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970-AA91

Child Support Enforcement Program: Review and Adjustment of Child Support Orders

Correction

In rule document 92–31106 beginning on page 61559 in the issue of Monday, December 28, 1992, make the following corrections:

§ 303.8 [Corrected]

1. On page 61581, in the third column, in § 303.8(c)(5), in the sixth line, "42 CFR 433.17(c)" should read "42 CFR 433.147(c)".
2. On the same page, in the same column, in the same section, in the seventh line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4210-06; N-52465]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

Correction

In notice document 92–29375 beginning on page 57509 in the issue of Friday, December 4, 1992, make the following corrections:

1. On page 57509, in the third column, under T. 39 N., R. 23 E., in Sec. 20, in the first line, "SE¼SE¼;" should read "SW¼SE¼;".
2. On the same page, in the same column, under T. 40 N., R. 23 E., in Sec. 6, in the first line, "E¼SW¼," should read "E½SW¼,".
3. On the same page, in the same column, under the same township and range, in Sec. 16, in the third line, delete "NW¼NW¼);".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-010-03-4210-04; IDI-28361]

Exchange of Public and Private Lands; Elmore County, ID

Correction

In notice document 93–682 beginning on page 4177 in the issue of Wednesday, January 13, 1993, make the following correction:

On page 4178, in the first column, under **DATES:**, in the seventh line, "83750." should read "83705."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 300

[Docket 48582, Notice No. 92-36]

RIN 2105-AB89

Rules of Conduct in DOT Proceedings

Correction

In proposed rule document 93–225 beginning on page 516 in the issue of

Wednesday, January 6, 1993, in the third column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8462]

Definition of Affiliated Group

Correction

In rule document 92-31058 beginning on page 61797 in the issue of Tuesday, December 29, 1992, make the following corrections:

§ 1.1504-4 [Corrected]

1. On page 61801, in the first column, the section heading should read as set forth above.

2. On the same page, in the third column, in § 1.1504-4(b)(3), in Example (i), in the sixth line, "and" should read "an".

BILLING CODE 1505-01-D

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federal register

Wednesday
February 3, 1993

Part II

The President

Executive Order 12836—Revocation of Certain Executive Orders Concerning Federal Contracting

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Presidential Documents

Title 3—

The President

Executive Order 12836 of February 1, 1993

Revocation of Certain Executive Orders Concerning Federal Contracting

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to eliminate Executive orders that do not serve the public interest, it is hereby ordered as follows:

Section 1. Executive Order No. 12818 of October 23, 1992 (prohibiting the use of project agreements on Federal construction contracts), and Executive Order No. 12800 of April 13, 1992 (requiring Federal contractors to post a notice that workers are not required to join unions), are revoked.

Sec. 2. The heads of executive agencies shall promptly revoke any orders, rules, or regulations implementing Executive Order No. 12818 of October 23, 1992, or Executive Order No. 12800 of April 13, 1992, to the extent consistent with law.

William J. Clinton

THE WHITE HOUSE,
February 1, 1993.

[FR Doc. 93–2744
Filed 2–2–93; 11:29 am]
Billing code 3195–01–M

Editorial note: For a White House statement on these revocations of Federal contracting regulations, see issue 5 of the *Weekly Compilation of Presidential Documents.*

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Federal Register

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 25, 1993

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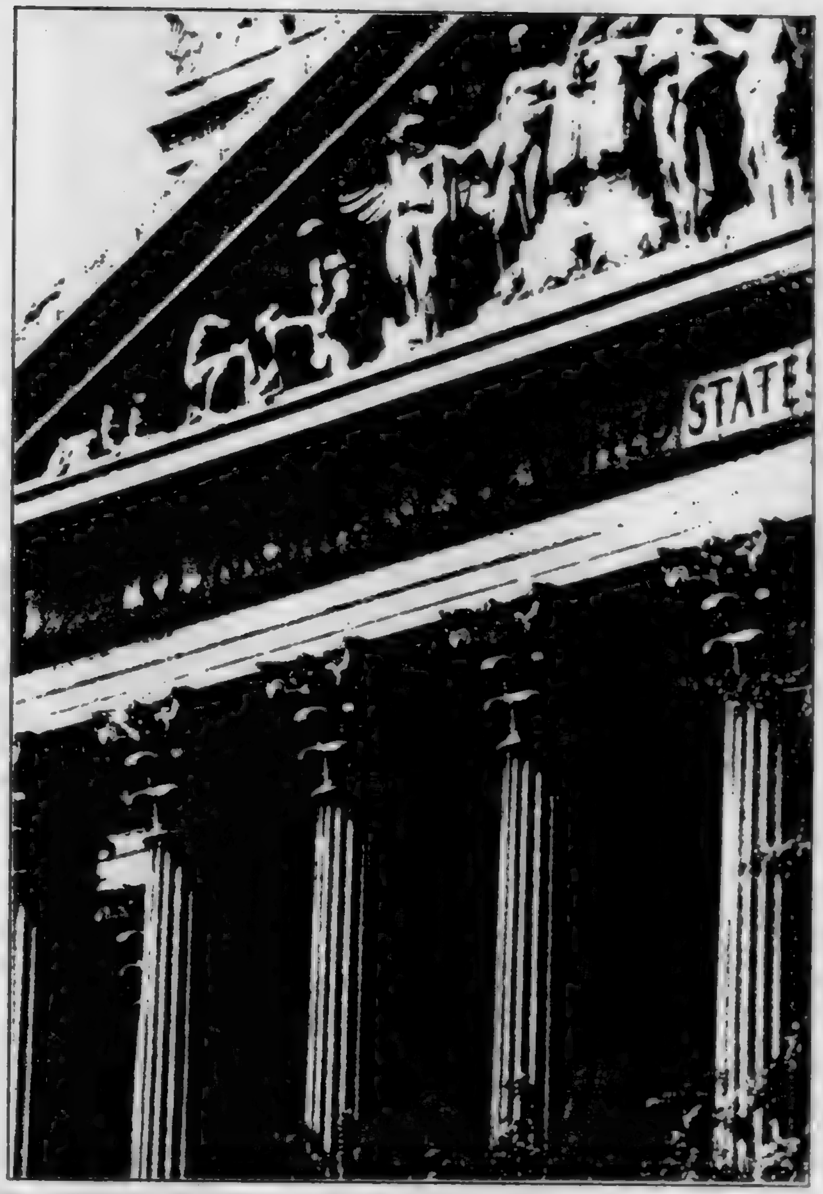

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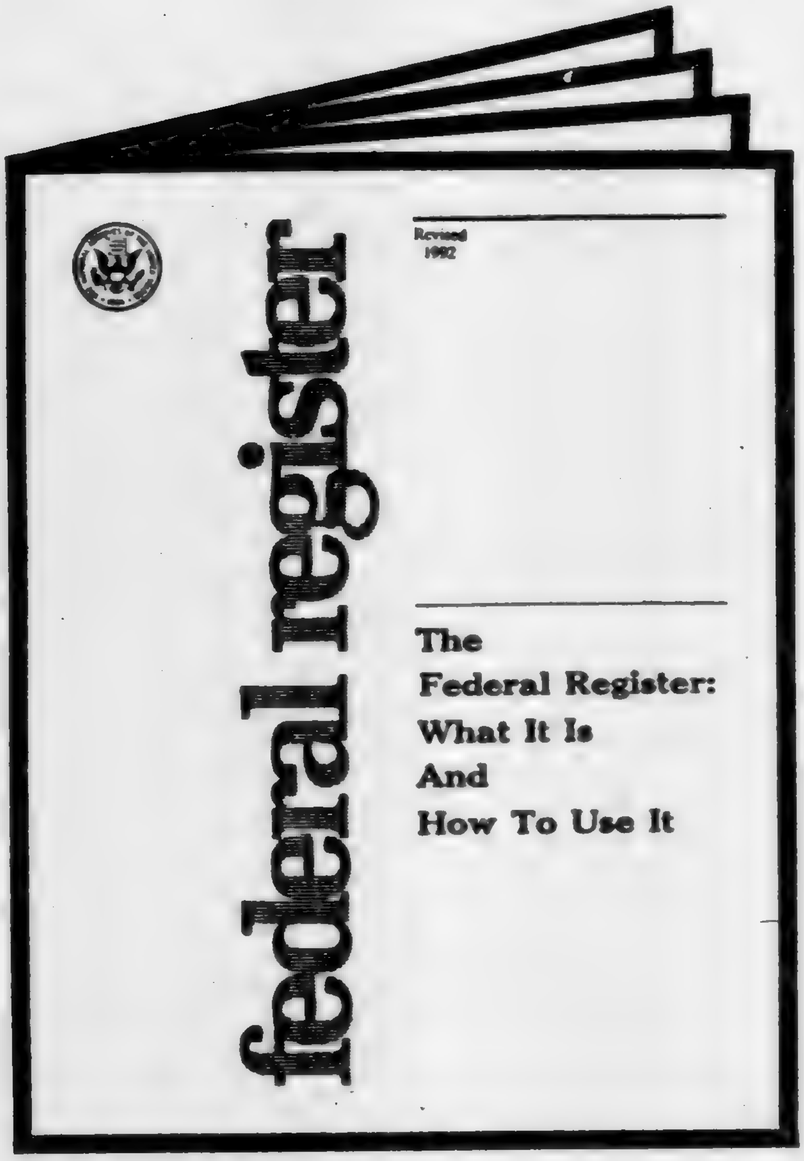
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Vol. 58 No. 22

federal register

Thursday
February 4, 1993

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federal register

Thursday
February 4, 1993

Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR:	Any person who uses the Federal Register and Code of Federal Regulations.
WHO:	The Office of the Federal Register.
WHAT:	Free public briefings (approximately 3 hours) to present: 1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations. 2. The relationship between the Federal Register and Code of Federal Regulations. 3. The important elements of typical Federal Register documents. 4. An introduction to the finding aids of the FR/CFR system.
WHY:	To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN:	March 5 at 9:00 a.m.
WHERE:	Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC
RESERVATIONS:	202–523–4538

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Federal Register
Vol. 58, No. 22
Thursday, February 4, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL TRADE COMMISSION

16 CFR Part 4

Privacy Act; Implementation

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Privacy Act exemption rule by adding eight systems as exempt systems and deleting two systems no longer maintained by the Commission. The systems of records are exempt from certain Privacy Act provisions due to the investigatory nature of the records. This rule amendment is required in order to invoke the relevant exemptions. The exemptions relieve the Commission of certain restrictions, and, thereby, help ensure that the Commission may efficiently and effectively perform investigations and other authorized duties and activities. This action also renders effective the Privacy Act system notice previously published by the Commission.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Keith Golden, Information Management and Dissemination Division, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2410.

SUPPLEMENTARY INFORMATION: The FTC received no comments in response to the proposed Privacy Act Systems of Records notice and corresponding amendments to Commission Rule 4.13(m), 16 CFR 4.13(m) 57 FR 45676 (Oct. 2, 1992). The Privacy Act systems notice provided an up-to-date, complete text of the Commission's notice of its systems of records, proposed the establishment of fourteen new systems of records, and proposed new routine uses for all of the Commission's systems. The proposed amendments to Commission Rule 4.13(m) proposed that three systems of records previously designated as exempt from certain provisions of the Privacy Act retain that designation, proposed that eight additional new and revised systems of records be designated as exempt from those provisions, and proposed that two systems of records, which are no longer maintained by the Commission, be deleted from the Rule. Accordingly, by this notice, the FTC formally adopts the amendment to Rule 4.13(m) as proposed. This action makes the proposed Systems of Records published in the **Federal Register** notice, 57 FR 45678 (October 2, 1992), effective without change.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of Information, Privacy, Sunshine Act.

In consideration of the foregoing, the FTC amends title 16, chapter I, subchapter A of the Code of Federal Regulations, as follows:

PART 4—MISCELLANEOUS RULES

1. The authority for part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46.

2. Section 4.13 is amended by revising paragraph (m) to read as follows:

§ 4.13 Privacy Act Rules.

* * * * *

(m) *Specific exemptions.* (1) Pursuant to 5 U.S.C. 552a(j)(2), investigatory materials maintained by an agency component in connection with any activity relating to criminal law enforcement in the following systems of records are exempt from all subsections of 5 U.S.C. 552a, except (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(j)(2):

Office of Inspector General Investigative Files—FTC

(2) Pursuant to 5 U.S.C. 552a(k)(2), investigatory materials compiled for law enforcement purposes in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 552a(k)(2):

Investigational, Legal, and Public Records—FTC
Disciplinary Action Investigatory Files—FTC
Clearance to Participate Applications and the Commission's Responses Thereto, and Related Documents—FTC
Management Information System—FTC
Office of the Secretary Control and Reporting System—FTC
Office of Inspector General Investigative Files—FTC
Stenographic Reporting Service Requests—FTC
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Privacy Act Requests and Appeals—FTC
Information Retrieval and Indexing System—FTC

(3) Pursuant to 5 U.S.C. 552a(k)(5), investigatory materials compiled to determine suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only where disclosure would reveal the identity of a confidential source of information, in the following systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a, and from the provisions of this section, except as otherwise provided in 5 U.S.C. 552a(k)(5):

Personnel Security File—FTC

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–2671 Filed 2–3–93; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendment to the Bank Secrecy Act Regulations Regarding Administrative Rulings

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is amending the appendix to 31 CFR part 103 to list a new administrative ruling. These rulings are issued in response to requests for clarification of the verification of identity requirements for elderly and disabled customers and the reporting of multiple currency

transactions. They clarify existing and do not create new regulatory requirements.

DATES: Bank Secrecy Act Administrative Rulings 92–1 and 92–2 were effective November 16, 1992.

ADDRESSES: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, room 5000 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220. Copies of administrative rulings may be obtained from the Office of Financial Enforcement.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Assistant Director, Regulations and Rulings, Office of Financial Enforcement, 202–622–0400.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Public Law 91–508 (codified at 12 U.S.C. 1730d, 1829b, 1951–1959, and 31 U.S.C. 5311–5326), authorizes the Secretary of the Treasury to require financial institutions to keep records and file reports that the Secretary determines have a high degree of usefulness in criminal, tax, or regulatory matters. The regulations implementing the Bank Secrecy Act are at part 103 of title 31 of the Code of Federal Regulations. On September 22, 1987, Treasury issued final regulations implementing an administrative ruling system for interpretations of the Bank Secrecy Act. 52 FR 35545. Administrative rulings are published in the appendix to part 103. The administrative rulings are effective when signed. Publication in the **Federal Register** is merely a method of publicizing their existence.

Two rulings are being added to the Appendix by this Final Rule. Bank Secrecy Act Administrative Ruling 92–1 deals with identification of elderly or disabled patrons conducting large currency transactions. Ruling 92–1 deals with the proper completion of the Currency Transaction Report (CTR) when reporting multiple transactions.

Copies of rulings may be obtained by contacting the Office of Financial Enforcement at the address listed above. Please make all requests for rulings in writing, specifying the relevant number or subject of the ruling.

Applicability of Notice and Effective Date Requirements

This amendment merely revises the appendix to add the text of an issued administrative ruling that interprets the Bank Secrecy Act regulations. The regulations in Part 103 are not amended in any way. Therefore, for good cause found, pursuant to 5 U.S.C. 553 (b) and (d), notice and public procedure thereon and a delayed effective date are unnecessary.

Executive Order 12291

As this final rule promulgates a regulation that is interpretative and imposes no substantive obligation upon any individual or industry, will not have an annual effect on the economy of $100 million or more, and has no impact upon the costs or prices to consumers, it is not a major rule. Therefore, regulatory impact analysis is not required.

Regulatory Flexibility Act

As no Notice of Proposed Rulemaking is required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or by any other statute, this document is not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document is the Office of Financial Enforcement. However, personnel from other offices participated in its development.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Amendment

For reasons set forth in the preamble, 31 CFR Part 103 is amended as set forth below:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation of Part 103 continues to read as follows:

Authority: Public Law 91–508, Title I, 84 Stat. 1114 (12 U.S.C. 1730d, 1829b and 1951–1959); and the Currency and Foreign Transactions Reporting Act, Pub. L. 91–508, Title II, 84 Stat. 1118, as amended (31 U.S.C. 5311–5326).

2. The Appendix to 31 CFR part 103 is amended by adding at the end the following:

Appendix—Administrative rulings

* * * * *

92–1 (November 16, 1992)

31 U.S.C. 5313—Reports on Domestic Coins and Currency Transactions

31 U.S.C. 5325—Identification Required to Purchase Certain Monetary Instruments

31 CFR 103.28—Identification Required

31 CFR 103.29—Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

Identification of elderly or disabled patrons conducting large currency transactions. Financial institutions must file a form 4789, Currency Transaction Report (CTR) on transactions in currency in excess of $10,000, and must verify and record information about the identity of the person(s) who conduct(s) the transaction in Part I of the CTR. Financial institutions also must record on a chronological log sales of, and verify the identity of individuals who purchase, certain monetary instruments with currency in amounts between $3,000 and $10,000, inclusive. Many financial institutions have asked Treasury how they can meet the requirement to examine an identifying document that contains the person's name and address when s/he does not possess such a document (*e.g.*, a driver's license). Financial institutions have indicated that this question arises almost exclusively with their elderly and/or disabled patrons. This Administrative Ruling answers those inquiries.

Issue

How does a financial institution fulfill the requirement to verify and record the name and address of an elderly or disabled individual who conducts a currency transaction in excess of $10,000 or who purchases certain monetary instruments with currency valued between $3,000 and $10,000 when he/she does not possess a passport, alien identification card or other official document, or other document that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors?

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs and to maintain complete and accurate monetary instrument logs pursuant to 31 CFR §§ 103.27(d) and 103.29 of the BSA regulations. It is also the responsibility of a financial institution to verify and to record the identity of individuals conducting reportable currency transactions and/or cash purchases of certain monetary instruments as required by BSA regulations §§ 103.28 and 103.29. Only if the financial institution is confident that an elderly or disabled patron is who s/he says s/he is may it complete these transactions. A financial institution shall use whatever information it has available, in accordance with its established policies and procedures, to determine its patron's identity. This includes review of its internal records for any information on file, and asking for other forms of identification, including a social security or medicare/medicaid card along with another document which contains both the patron's name and address such as an organizational membership card, voter registration card, utility bill or real estate tax bill. These forms of identification shall also be identified as acceptable in the bank's formal written policy and operating procedures as identification for transactions involving the elderly or the disabled. Once implemented, the financial institution should permit no exception to its policy and procedures. In these cases, the financial institution should record the word "Elderly" or "Disabled" on the CTR and/or chronological log and the method used to identify the elderly, or disabled patron such as "Social Security and (organization) Membership Card only ID."

Law and Analysis

Before concluding a transaction for which a Currency Transaction Report is required pursuant to 31 CFR 103.22, a financial institution must verify and record the name and address of the individual conducting the transaction. 31 CFR 103.28. Verification of the individual's identity must be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.*, a driver's license). A bank signature card may be relied upon only if it was issued after documents establishing the identity of the individual were examined and a notation of the method and specific information regarding identification (*e.g.*, state of issuance and driver's license number) was made on the signature card. In each instance, the specific identifying information noted above and used to verify the identity of the individual must be recorded on the CTR. The notation of "known customer" or "bank signature card on file" on the CTR is prohibited. 31 CFR 103.28.

Before issuing or selling bank checks or drafts, cashier's checks, traveler's checks or money orders to an individual(s), for currency between $3,000 and $10,000, a financial institution must verify whether the individual has a deposit account or verify the individual's identity. 31 CFR 103.29. Verification may be made by examination of a signature card or other account record at the financial institution if the deposit accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or record being examined.

Verification may also be made by examination of a document that contains the name and address of the purchaser and which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors. In the case of a deposit accountholder whose identity has not been previously verified, the financial institution shall record the specific identifying information on its chronological log (*e.g.* state of issuance and driver's license number). In all situations, the financial institution must record all the appropriate information required by § 103.29(a)(1)(i) for deposit account holders or 103.29(a)(2)(i) for nondeposit account holders.

Certain elderly or disabled patrons do not possess identification documents that would normally be considered acceptable within the banking community (*e.g.*, driver's licenses, passports, or state-issued identification cards). Accordingly, the procedure set forth below should be followed to fulfill the identification verification requirements of §§ 103.28 and 103.29.

Financial institutions may accept as appropriate identification a social security, medicare, medicaid or other insurance card presented along with another document that contains both the name and address of the patron (*e.g.* an organization membership or voter registration card, utility or real estate tax bill). Such forms of identification shall be specified in the bank's formal written policy and operating procedures as acceptable identification for transactions involving elderly or disabled patrons who do not possess identification documents normally considered acceptable within the banking community for cashing checks for nondepositors.

This procedure may only be applied if the following circumstances exist. First, the financial institution must establish that the identification the elderly or disabled patron has is limited to a social security or medicare/medicaid card plus another document which contains the patron's name and address. Second, the financial institution must use whatever information it has available, or policies and procedures it has in place, to determine the patron's identity. If the patron is a deposit accountholder, the financial institution should review its internal records to determine if there is information on file to verify his/her identity. Only if the financial institution is confident that the elderly or disabled patron is who s/he says s/he is, may the transaction be concluded. Failure to identify an elderly or a disabled customer's identity as required by 31 CFR § 103.28 and as described herein may result in the imposition of civil and or criminal penalties. Finally, the financial institution shall establish a formal written policy and implement operating procedures for processing reportable currency transactions or recording cash sales of certain monetary instruments to elderly or disabled patrons who do not have forms of identification ordinarily considered "acceptable." Once implemented, the financial institution shall permit no exceptions to its policy and procedures. In addition, financial institutions are encouraged to record the elderly or disabled patron's identity and address as well as the method of identification on a signature card or other record when it is obtained and verified.

In completing a CTR, if all of the above conditions are satisfied, the financial institution should enter the words "Elderly" or "Disabled" and the method used to verify the patron's identity, such as "Social Security and (organization) Membership Cards Only ID," in Item 15a.

Similarly, when logging the cash purchase of a monetary instrument(s), the financial institution shall enter on its chronological log the words, "Elderly" or "Disabled," and the method used to verify such patron's identity.

Example

Jesse Fleming, a 75 year old retiree, has been saving $10 bills for twenty years in order to help pay for his granddaughter's college education. He enters the Trustworthy National Bank where he has no account but his granddaughter has a savings account, and presents $13,000 in $10 bills to the teller. He instructs the teller to deposit $9,000 into his granddaughter's savings account, and requests a cashier's check for $4,000 made payable to State University.

Because of poor eyesight, Mr. Fleming no longer drives and does not possess a valid driver's license. When asked for identification by the teller he presents a social security card and his retirement organization membership card that contains his name and address.

Application of Law to Example

In this example, the Trustworthy National Bank must check to determine if Mr. Fleming's social security and organizational membership cards are acceptable forms of identification as defined in the bank's policy and procedures. If so, and the bank is confident that Mr. Fleming is who he says he is, it may complete the transaction. Because Mr. Fleming conducted a transaction in currency which exceeded $10,000 (deposit of $9,000 and purchase of $4,000 monetary instrument), First National Bank must complete a CTR. It should record information about Mr. Fleming in Part I of the CTR and in Item 15a record the words "Elderly—Social Security and (organization) Membership Cards Only ID." The balance of the CTR must be appropriately completed as required by §§ 103.22 and 103.27(d). First National Bank must also record the transaction in its monetary instrument sales log because it issued to Mr. Fleming a cashier's check for $4,000 in currency. Mr. Fleming must be listed as the purchaser and the bank should record on the log the words "Elderly—Social Security and (organization) Membership Cards Only ID" as the method used to verify his identity. In addition, because Mr. Fleming is not a deposit accountholder at First National Bank, the bank is required to record on the log all the information required under § 103.29(a)(2)(i) for cash purchases of monetary instruments by nondeposit accountholders.

92–2 (November 16, 1992)

31 U.S.C. 5313—Reports on Domestic Coins and Currency Transactions
31 CFR 103.22—Reporting of Currency Transactions
31 CFR 103.28—Identification Required

Proper completion of the Currency Transaction Report (CTR), IRS Form 4789, when reporting multiple transactions. Financial institutions must report transactions in currency that exceed $10,000 or an exempted account's established exemption limit and provide certain information including verified identifying information about the individual conducting the transaction. Multiple currency transactions must be treated as a single transaction, aggregated, and reported on a single Form 4789, if the financial institution has knowledge that the transactions are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000, or the exemption limit, during any one business day. All CTRs must be fully and accurately completed. Some or all of the individual transactions which comprise an aggregated CTR are frequently below the $10,000 reporting or applicable exemption threshold and, as such, are not reportable and financial institutions do not gather the information required to complete a CTR.

Issue

How should a financial institution complete a CTR when multiple transactions are aggregated and reported on a single form and all or part of the information called for in the form may not be known?

Holding

Multiple transactions that total in excess of $10,000, or an established exemption limit, when aggregated must be reported on a CTR if the financial institution has knowledge that the transactions have occurred. In many cases, the individual transactions being reported are each under $10,000, or the exemption limit, and the institution was not aware at the time of any one of the transactions that a CTR would be required. Therefore, the identifying information on the person conducting the transaction was not required to be obtained at the time the transaction was conducted.

If after a reasonable effort to obtain the information required to complete items 4 through 15 of the CTR, all or part of such information is not available, the institution must check item 3d to indicate that the information is not being provided because the report involves multiple transactions for which complete information is not available. The institution must, however, provide as much of the information as is reasonably available.

All subsections of item 48 on the CTR must be completed to report the number of transactions involved and the number of locations of the financial institution and zip codes of those locations where the transactions were conducted.

Law and Analysis

Sections 103.22(a)(1) and (c) of the Bank Secrecy Act (BSA) regulations, 31 CFR part 103, require a financial institution to file a CTR for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution, which involves a transaction in currency of more than $10,000 or the established exemption limit for an exempt account. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, any person and result in either cash in or cash out of the financial institution totalling more than $10,000 or the exemption limit during any one business day. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of the financial institution or on the part of any existing automated or manual system at the financial institution that permits it to aggregate transactions.

The purpose of item 3 on the CTR is to indicate why all or part of the information required in items 4 through 15 is not being provided on the form. If the reason information is missing is solely because the transaction(s) occurred through an armored car service, a mail deposit or shipment, or a night deposit or Automated Teller Machine (ATM), the financial institution must check either box a, b, or c, as appropriate, in item 3. CTR instructions state that item 3d is to be checked for multiple transactions where none of the individual transactions exceeds $10,000 or the exemption limit and all of the required information might not be available.

As described in Example No. 5 below, there may be situations where one transaction among several exceeds the applicable threshold. Item 3d should be checked whenever multiple transactions are being reported and all or part of the information necessary to complete items 4 through 15 is not available because at the time of any one of the individual transactions, a CTR was not required and the financial institution did not obtain the appropriate information.

When reporting multiple transactions, the financial institution must complete as many of items 4 through 15 as possible. In the event the institution learns that more than one person conducted the multiple transactions being reported, it must check item 2 on the CTR and is encouraged to make reasonable efforts to obtain and report any appropriate information on each of the persons in items 4 through 15 on the front and back of the CTR form, and if necessary, on additional sheets of paper attached to the report.

The purpose of item 48 is to indicate that multiple transactions are involved in the CTR being filed. Items 48 a, b, and c require information about the number of transactions being reported and the number of bank branches and the zip code of each branch where the transactions took place. If multiple transactions exceeding $10,000 or an account exemption limit occur at the same time, the financial institution should treat the transactions in a manner consistent with its internal transaction posting procedures. For example, if a customer presents four separate deposits, at the same time, totalling over $10,000, the institution may report the transactions in item 48a to be one or four separate transactions. If the transactions are posted as four separate transactions the financial institution should enter the number 4 in item 48a and the number 1 in item 48b. If the transactions are posted as one transaction the institution should enter the 1 in both 48a and 48b. Reporting the transactions in this manner will guarantee the integrity of the paper trail being created, that is, the number of transactions reported on the CTR will be the same as the number of transactions showing in the institution's records.

These situations should be differentiated from those cases where separate transactions occur at different times during the same business day, and which, when aggregated, exceed $10,000 or the exemption limit. For instance, if the same or another individual conducts two of the same type of transactions at different times during the same business day at two different branches of the financial institution on behalf of the same person, and the institution has knowledge that the transactions occurred and exceed $10,000 or the exemption limit, then the financial institution must enter the number 2 in items 48a and 48b.

Examples and Application of Law to Examples

Example No. 1

Dorothy Fishback presents a teller with three cash deposits to the same account, at the same time, in amounts of $5,000, $6,000, and $8,500 requesting that the deposits be posted to the account separately. It is the bank's procedure to post the transactions separately. A CTR is completed while the customer is at the teller window.

Application of Law to Example No. 1

A CTR is completed based upon the information obtained at the time Dorothy Fishback presents the multiple transactions. Item 3d would not be checked on the CTR because all of the information in items 4 through 15 is being provided contemporaneously with the transaction. As it is the bank's procedure to post the transactions separately, the number of transactions reported in item 48a would be 3 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions were conducted would be entered in item 48c.

Example No. 2

Andrew Weiner makes a $7,000 cash deposit to his account at ABC Federal Savings Bank. Later the same day, Mr. Weiner returns to the same teller and deposits $5,000 in cash to a different account. At the time Mr. Weiner makes the second deposit, the teller realizes that the two deposits exceed $10,000 and prepares a CTR obtaining all of the necessary identifying information directly from Mr. Weiner.

Application of Law to Example No. 2

Even though the two transactions were conducted at different times during the same business day, Mr. Weiner conducted both transactions at the same place and the appropriate identifying information was obtained by the teller at the time of the second transaction. Item 3d would not be checked on the CTR. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions took place would be entered in item 48c.

Example No. 3

Internal auditor Mike Pelzer is reviewing the daily cash transactions report for People's Bank and notices that five cash deposits were made the previous day to account #12345. The total of the deposits is $25,000 and they were made at three different offices of the bank. Mike researches the account data base and finds that the account belongs to a department store and that the account is exempted for deposits up to $17,000 per day Each of the five transactions was under $17,000.

Application of Law to Example No. 3

Having reviewed the report of aggregated transactions, Mike Pelzer has knowledge that transactions exceeding the account exemption limit have occurred during a single business day. A CTR must be filed. People's Bank is encouraged to make a reasonable effort to provide the information for items 4 through 15 on the CTR. Such efforts could include a search of the institution's records or a phone call to the department store to identify the persons that conducted the transactions. If all of the information is not contained in the institution's records or otherwise obtained, item 3d must be checked. The number of transactions reported in item 48a must be 5 and the number of branches reported in 48b would be 3. The zip codes for the three locations where the transactions occurred must be entered in item 48c.

Example No. 4

Mrs. Saunders makes a cash withdrawal, for $4,000, from a joint savings account she owns with her husband. That day her husband, Mr. Saunders, withdraws $7,000 cash using the same teller. Realizing that the withdrawals exceed $10,000, the teller obtains identifying information on Mr. Saunders required to complete a CTR.

Application of Law to Example No. 4

In this case, item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 5

On another day, Mrs. Saunders makes a deposit of $3,000 cash and no information required for Part I of the CTR is requested of her. She is followed later the same day by her husband, Mr. Saunders, who deposits $12,000 in currency and who provides all data required to complete Part I for himself.

Application of Law to Example No. 5

Item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 6

A review of First Federal Bank's daily cash transactions report for a given day indicates several cash deposits to a single account totaling more than $10,000. Two separate deposits were made in the night depository at the institution's main office, and two deposits were conducted at the teller windows of two other branch locations. Each deposit was under $10,000.

Application of Law to Example No. 6

Item 3c should be checked to indicate that identifying information is not provided because transactions were received through the night deposit box. If the tellers involved with the two face to face deposits remember who conducted the transactions, institution records can be checked for identifying information. If the records contain some of the information required by items 4 through 15, that information must be provided, and item 3d must be checked to indicate that some information is missing because multiple transactions are being reported and the information was not obtained at the time the transactions were conducted. Item 48a must indicate 4 transactions and item 48b must indicate 3 locations. The zip code of those locations would be provided in item 48c.

Dated: November 16, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 93-2048 Filed 2-3-93; 8:45 am]

BILLING CODE 4810-25-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

[Docket No. 92-2-PBRA]

1992 Adjustment of the Public Broadcasting Royalty Rates and Terms; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; correction.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009 (202) 606-4400.

SUMMARY: In Public Broadcasting Royalty Rates and Terms; 1992 Adjustment; Final Rule, in the issue of Tuesday, December 22, 1992, please make the following corrections:

§ 304.7 [Corrected]

1. On page 60956, in column 1, in § 304.7(b)(2), in the table, Concert feature (per minute), should read Concert feature (per half hour).

§ 304.8 [Corrected]

2. On page 60956, in column 3, in § 304.8(b)(1)(ii)(D) remove the 2d and 3d line from the bottom. (This portion of the sentence was repeated.)

Dated: January 29, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93-2646 Filed 2-3-93; 8:45 am]

BILLING CODE 1410-09-M

Proposed Rules

Federal Register
Vol. 58, No. 22
Thursday, February 4, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 970

RIN 3206–AD76

Nonprocurement Debarment and Suspension

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes adoption of the Nonprocurement Debarment and Suspension Common Rule as required by Executive Order 12549. This proposed rule originated from the final rule on Nonprocurement Debarment and Suspension adopted by 27 agencies on May 26, 1988. On January 30, 1989, 6 additional agencies also adopted the final rule. The rules are intended to prevent waste, fraud, and abuse in Federal nonprocurement transactions.

In that this rule has already been subject to public scrutiny and comment, the Office of Personnel Management is requesting public comment on one proposed additional provision, contained in the supplementary information section of this publication.

DATES: Comments on this Notice must be in writing and must be received by March 8, 1993. Late comments will be considered to the extent practicable.

ADDRESSES: All comments must be submitted to Joyce Blalock, Chief, Administrative Sanctions Branch, Office of the Inspector General, Office of Personnel Management, 2300 Clarendon Boulevard, room 1314, Arlington, VA 22201 and Abby L. Block, Chief, Insurance Policy Division, Retirement and Insurance Group, Office of Personnel Management, 1900 E Street NW, room 4351, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Joyce Blalock, Office of the Inspector General, OPM, telephone (703) 908–8688.

SUPPLEMENTARY INFORMATION: As part of the initiatives to curb fraud, waste, and abuse, on February 18, 1986, President Reagan signed Executive Order 12549, "Debarment and Suspension." It was published on February 21, 1986 (51 FR 6370–6371). The Executive Order established governmentwide effect for an agency's nonprocurement debarment or suspension action.

Section 6 of the Executive Order directed the Office of Management and Budget (OMB) to issue guidelines governing implementation of the Order, and section 3 of the Executive Order directed the departments and agencies to promulgate final rules, consistent with these guidelines. On May 26, 1988, 27 agencies issued a final common rule (53 FR 19161–19211), consistent with OMB's guidelines. The common preamble for that publication provides full background for the promulgation of the Executive Order and the history of the common rulemaking.

The second common rulemaking included the Department of Agriculture and various small Federal agencies which did not participate in the May 26, 1988, publication. These agencies published the final common rule on January 30, 1989 (54 FR 4722–4735). These agencies concluded that the common rulemaking had already been subject to extensive public scrutiny.

To prevent waste, fraud, and abuse in Federal nonprocurement transactions, OPM wishes to give effect to the nonprocurement debarment and suspension actions taken by the 33 other Federal agencies. Transactions between insurance carriers participating as procurement contractors in the Federal Employees Health Benefits Program (FEHBP) and providers of health care services and supplies are "covered transactions" for purposes of implementing the common rule. OPM will exclude health care providers (physicians, hospitals and other individuals or entities which furnish health care services or supplies) from participation in the FEHBP if they have been debarred or suspended from participation by one of the 33 other Federal agencies, e.g., by the Department of Health and Human Services from programs under the Social Security Act.

OPM will be adopting the common rule with the following one proposed additional provision (which will be codified under 5 CFR 970.200(b)):

> To protect an enrollee who has not been notified, reimbursement may be provided for services rendered by a provider who has been debarred or suspended by another Federal agency. At the time of reimbursement, an enrollee who utilized the health care services or supplies of such an excluded party will be notified of the exclusion and that subsequent claims will be denied.

This provision is designed to protect enrollees under the FEHBP. It will allow reimbursement for services rendered by a provider who has been debarred or suspended by another Federal agency. Notice will be provided to the enrollee not to do business with this excluded service provider or supplier in the future and that all subsequent claims for this service provider or supplier will be denied under the FEHBP, except under the case-by-case exception provision in the final common rule (§ 970.215). This additional protection for the enrollee is consistent with the practice of the Department of Labor for its black lung beneficiaries.

Adoption of the common rule is also consistent with the intent of Public Law 102–393, which states that no payment may be made from the Employees Health Benefits Fund to health care providers excluded from participation under title XVIII of the Social Security Act.

OPM will not begin to take its own nonprocurement debarment and suspension actions, which will have governmentwide effect, until OPM incorporates the specific statutory provisions of the Federal Employees Health Benefits Amendments Act of 1988 (5 U.S.C. 8902a). This Notice also informs the public of OPM's intent to propose, within one year, technical amendments to the governmentwide nonprocurement debarment and suspension final common rule to reflect the specific statutory provisions of this Act which are inconsistent with specific provisions of the common rule or which are additional to the provisions of the common rule.

OPM will be proposing for public comment technical amendments to the governmentwide common rule to reflect the unique provisions in this statute. Specific statutory provisions include: A minimum period of debarment, a hearing on the record, and review by the U.S. Court of Appeals.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Director.

[FR Doc. 93–2566 Filed 2–3–93; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. 47581; Amdt. 92; Notice 93–3]

RIN 2105–AB83

Unfair Competition by Commonly Owned Carriers in Alaska

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Termination of rulemaking proceeding.

SUMMARY: The Department of Transportation is terminating the rulemaking proceeding in Docket 47581 and is withdrawing its Notice of Proposed Rulemaking (NPRM) issued June 7, 1991 (56 FR 27469, June 14, 1991) to amend 14 CFR Part 399—Statements of General Policy by adding a new policy statement, § 399.89—Unfair Competition by Commonly Owned Carriers in Alaska. After considering the comments to the NPRM and more recent related events in Alaskan air service markets, the Department has decided that a more direct and practicable means of addressing the issues raised in the rulemaking proceeding is to rely on the United States Postal Service, which has both the ability and the primary responsibility, to fashion a practical solution to the current problems caused by its mail distribution practices within Alaska. Therefore, the Department has issued Order 93–1–21, dated January 15, 1993, terminating the rulemaking proceeding in Docket 47581 and invoking its authority under section 405(a) of the Federal Aviation Act (the Act) to identify the USPS practices that are inconsistent with the provisions of the Act and to request that the USPS take appropriate corrective action.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION: The following is the Department's Order 93–1–21, dated January 15, 1993, which terminates the rulemaking proceeding in Docket 47581 and requests the United States Postal Service to take appropriate steps to resolve the problems identified in this proceeding.

Issued in Washington, DC, on January 15, 1993.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

In the Matter of Unfair Competition by Commonly Owned Carriers in Alaska; Intra-Alaska Class Service Mail Rates; and Intra-Alaska Bush Service Mail Rate Investigation. [Docket Nos. 47581, 38961 and 44445]

Order

By this Order, the Department of Transportation (1) finds the current practice of the United States Postal Service ("USPS") of tendering separate "equitable" shares of mail to commonly owned certificated air carriers operating in the same market within Alaska, without consideration of service factors in the market, to be inconsistent with the policies of the Federal Aviation Act ("the Act") within the meaning of section 405(a) of the Act; (2) requests that the USPS modify its mail tender practice in such situations to remove the incentive for economic entities to provide service in a market using multiple operating certificates chiefly in order to receive additional mail shares and revenues; and (3) terminates the proposed rulemaking proceeding set forth in Docket 47581 (56 FR 27469, June 4, 1991).

Background

In 1990, the Department received complaints from Alaskan air carriers alleging that two Fairbanks-based section 401 certificated air carriers, Bidzy Ta Hot' Aana, Inc. d/b/a Tanana Air Service and Yutana Airlines, Inc., which are commonly owned by a holding company, the Athabascan Air Group, Inc. ("AAG"), were serving the same Alaskan markets primarily for the purpose of receiving a "disproportionate" share of the mail that the USPS tenders for transport under its equitable tender procedures. AAG also owns a third carrier, Koyukon Air, Inc., whose section 401 certificate authority had not been made effective by the Department. Koyukon had published a prospective schedule of service in direct competition with Tanana and Yutana in various markets.

The Department investigated the situation described by the complainants and found that all of the markets served by Yutana were, in fact, also served by Tanana, which is the older of the two carriers and has the more developed service network. We found that, with both carriers advertising the required minimum scheduled service in a market, the holding company indirectly would be eligible for roughly twice the bypass mail, thus reducing the amount of mail available to competing carriers under USPS rules. The addition of Koyukon to markets served by the other two would result in a triple share for AAG and an even greater loss of mail to other carriers in the market. We further found that the three AAG companies, based at the Fairbanks International Airport, share the same aircraft, ground facilities, crews, office staff, and management.

Mail revenues constitute a much higher percentage of total revenues for Alaskan carriers, particularly bush carriers, than for carriers serving the Lower 48 States. Therefore, the economic impact of the USPS's mail tender practices is a matter of great importance to those carriers and to their customers, who are heavily dependent upon air service. We were concerned that, given the USPS's apparent interpretation of its rules as contemplating equitable tender to each certificate holder providing at least three flights per week in a market, without regard to other factors,[1] carriers would be tempted to maximize the number of certificates under common ownership in an effort to gain a larger percentage of total mail traffic and revenues in each market.

On June 7, 1991, the Department issued a notice of proposed rulemaking ("NPRM") (56 FR 27469, June 14, 1991) proposing to amend 14 CFR Part 399—Statements of General Policy by adding a new policy statement, § 399.89—Unfair Competition by Commonly Owned Carriers in Alaska, declaring that it is the Department's policy to consider it to be an unfair method of competition under section 411 of the Act for commonly owned air carriers to compete in the same Alaskan city-pair market for mail transport revenues.

Comments supporting adoption of the rule were received from Wright Air Service, Inc., Arctic Circle Air Service, Inc., Larry's Flying Service, Inc., and Northern Air Cargo, Inc. The USPS filed a comment stating that it had no objection to the adoption of the rule. Comments filed in opposition to the rule were received from Ketchikan Air Service, Inc., and AAG.

Wright Air Service, Arctic Circle Air, and Larry's Flying Service maintained that the current regulatory atmosphere, wherein an owner may receive a disproportionate financial benefit from having multiple subsidiary section 401 carriers compete for mail revenues in the same markets, would encourage competing carriers to seek multiple section 401 certificates in order to protect their mail transport market shares. Arctic Circle also noted that such a "proliferation" of new section 401 carriers would increase the burden on the Department of Transportation, including the Federal Aviation Administration, in having to certificate and monitor the operations of these multiple air carriers, as well as on the USPS in having to incorporate additional carriers into the mail transport system. Larry's provided data for a three-month period in 1991 showing that, of the eight bush air carriers competing out of Fairbanks, the two AAG carriers received 30.4 percent of the mail by weight (when the average share per carrier should have been 17.8 percent) and 32.7 percent of the mail revenues. Northern Air noted that the issue of fair competition, which is also a goal of the USPS's equitable mail tender policy, is an important one to the health of the Alaskan air carrier industry and efficient mail transport in that State. The USPS stated that it had no objection to the proposed policy statement. It acknowledged that "as a practical matter, the public will look to the Postal Service for enforcement in the first instance." However, since it lacked the necessary records on air carrier ownership to enable it to determine whether related air carriers were serving the same market, the USPS requested that the Department make available to it, at the time of adoption of the final rule, a list of the section 401 carriers operating in Alaska that are related to each other, and to provide periodic updates of this list.

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[1] As will be discussed further below, USPS mail distribution procedures for Alaska do prohibit dual tender of mail shares to a carrier as both a subcontractor and a section 401 operator in the same market, as well as designation, for mail tender purposes, of a single schedule/flight in the name of two carriers. *See* section 732.2—Dual Consideration, *Intra-Alaska Certificated Air Carrier Instructions*, HBK PO–508, March 1992.

Ketchikan Air Service stated that it was opposed to the rule because it believed that the policy's intention was to prevent carriers from buying, selling, combining with, or entering into joint operating agreements with other carriers. AAG also opposed adoption of the policy statement, stating that the issue covered by this rulemaking should more properly be addressed by the USPS, rather than the Department, since the USPS is more knowledgeable of its needs and how they should be met; and that the USPS has been aware that Tanana and Yutana are related and has found the service offered by the two carriers to be compatible with its needs. AAG argued that the operating efficiencies of related carriers enable them to keep their costs lower than those of non-related carriers, which in turn brings the industry cost average down. Since the USPS bases its mail rates on carriers' costs, mail distribution costs are correspondingly reduced, and the Department's proposal would now penalize AAG for its efficient management structure. AAG argued that the Department's proposed action represents an unjustified intrusion upon a business's right to direct its own course, *i.e.*, to decide to acquire or sell businesses or to enter or exit markets based on economic considerations and that the Department's policy is, in effect, a reinstitution of route regulation and is counter to the spirit of deregulation.

Disposition

After carefully weighing the comments provided in response to the NPRM and considering more recent related events in Alaskan markets, we have decided that a more direct and practicable means of addressing the issues raised in the proceeding is to rely on the USPS, which has both the ability and the primary responsibility, to fashion a practical solution to the current problems caused by its mail distribution practices within Alaska. As has been done once before, we are therefore invoking our authority under section 405(a) of the Act to identify the USPS practices that are inconsistent with the provisions of the Act, and to request that the USPS take appropriate corrective action.[2]

We find that the policy statement as proposed would be an inappropriate means of accomplishing the underlying intent of the proposal, which is to correct the market and regulatory distortions caused by current mail tender policies. The proposed policy statement is directed at carrier conduct rather than at the consistency of USPS practices with the policies of the Act under section 405. Such an approach raises a number of implementation problems, particularly given the carriers' duty to carry tendered mail. Therefore, since we have decided to directly address the mail tender problem under section 405(a) of the Act, a continuation of the rulemaking is unnecessary and we are terminating the rulemaking proceeding in Docket 47581 and stand ready to cooperate with the USPS to achieve an effective and balanced solution to the problems identified.

It is the USPS that has both the primary authority and the responsibility to determine the tender of mail under its statute and regulations. In this context, we recognize that the USPS, in its comment on the NPRM, acknowledged that, "as a practical matter, the public will look to the Postal Service for enforcement in the first instance," and it requested that the Department make available to it, at the time of adoption of the rule, a list of the commonly owned section 401 carriers operating in Alaska, and to provide periodic updates of this list. We agree with the USPS's reasoning. Its willingness to alter its tender policies to effectuate the basic intent of the proposed rule and, therefore, the intent of this order, is indeed crucial, and its comments suggest that, acting in concert under the strictures of section 405 of the Act, the USPS and the Department can find common ground in harmonizing the needs of the USPS with the policies of the Act.

The comments to the NPRM have not altered our basic conclusion that, given the importance of mail traffic and revenues in Alaska, particularly among bush carriers, the practice of the USPS of tendering equitable shares of mail to each carrier in a market holding a section 401 certificate and publishing a minimum schedule of three flights per week, without more, has created an economic incentive for carriers to maximize the number of certificates under common ownership in an effort to gain a larger percentage of total mail tendered in various markets. The effect of this incentive can be seen in the operations of AAG.[3] We would not characterize the impact of this incentive as deceptive, since the number of certificates and the shares of mail pay are quickly apparent to others in the market; also, the effect is not necessarily anticompetitive since competing carriers can regain their lost share of mail by matching certificate with certificate. Rather, the effect of the incentive is not in the public interest or consistent with the policies and provisions of the Act because it results in little, if any, increased service, but does lead to increased costs, increased regulatory burdens, and decreased efficiency.

If other carriers are to protect their mail shares, their only recourse under present USPS practices is to follow the leader and acquire or create additional certificated subsidiaries. In fact, several other Fairbanks-based section 401 bush carriers, after becoming aware of AAG's related-carrier operations, notified the Department that they intended to take this course of action, if necessary, to protect their mail shares. The result of such a proliferation process would not necessarily change mail shares, unless some carriers could not absorb the additional expenses involved, but the costs of all parties would increase: to carrier owners in securing the required authorities, incurring additional ongoing reporting and other regulatory costs, and paying additional operating costs; to the Department in investigating and monitoring their fitness, recording consumer complaints, and collecting and analyzing the operating and financial data that each certificated carrier is required to file; to the FAA in licensing these companies and overseeing their flight operations; and to the USPS in recording and monitoring mail distributions to additional entities. There is little indicating that these additional costs would benefit the public or the USPS through a real increase in service. In cases where some competing carriers could not bear the additional regulatory or operating expenses of maintaining certificate parity, the process could lead to markedly less competition and service as they abandon the market, or cease operations altogether.[4]

The monitoring problems of the USPS would not only include separate mail tender accounts and related auditing for each additional certificate, but also difficult and expensive problems in ensuring compliance with its current regulations on mail security and scheduling. Current USPS regulations, for example, require carriers to adhere to published schedules unless advance notice to the USPS is provided. Comments from USPS field representatives, however, indicate that commonly owned carriers operating in the same market may find it easier to publish schedules that they then do not operate, instead carrying the mail on flights of the related carrier.[5] Indeed, carriers that are only nominally separate entities must publish minimum schedules to meet mail tender eligibility criteria, whether or not they can meet them on a consistent basis. Although the failure to substantially conform operations with published schedules may result in violations of our unrealistic-scheduling prohibitions (*see, e.g.*, 14 CFR 399.81 and Order 89–12–9), monitoring compliance with regulations is particularly time-consuming and costly in Alaska.

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[2] *See* Order 83-3-7, March 1, 1983. Section 405(a) of the Act states that "The Postmaster General is authorized to make such rules and regulations, not inconsistent with the provisions of this Act, or any order, rule, or regulation made by the [Department] thereunder, as may be necessary for the safe and expeditious carriage of mail by aircraft." *See also* section 5401(b) of the Postal Reorganization Act, 39 U.S.C. 5401(b).

[3] As calculated from USPS records and carrier reports filed with the Department for calendar year 1991, mail pay for the seven principal Fairbanks-based bush carriers (Arctic Circle, Frontier, Larry's, Tanana, Warbelow's, Wright Air, and Yutana) averaged $8,892,263, or 36.5 percent of their total revenues. Taken together, the AAG carriers earned mail pay in 1991 totaling $1,130,357, or 64.3 percent of their combined revenues. In that year, Tanana's mail pay amounted to 53.9 percent of its total revenues and Yutana's amounted to 88.8 percent of its total revenues. Yutana's 1991 non-mail revenues were therefore less than 12 percent of total revenues, compared to an average of over 63 percent for all seven carriers. We also note that in FY 1992, based on USPS records, Yutana competed with Tanana only in markets where there was competition from other carriers, but not in markets where Tanana had a monopoly, *i.e.*, at the three small points of Lake Minchumina, Manley Hot Springs, and Minto, where Tanana earned $82,000 in mail pay in FY 1992.

[4] In its comments on the NPRM, AAG argued that its combined mail share did not harm competing carriers, citing FY 1990 USPS data indicating that Tanana and Yutana together received only 12 percent of the mail revenues paid to the Fairbanks-based bush carriers. However, 1990 was not typical because Yutana was not eligible for bypass mail for nearly all of that period. Combined AAG total FY 1992 annualized revenues in the six markets where both Tanana and Yutana competed against other carriers show a share in each of those markets of about 46 percent.

In 1983, the USPS defended a bush mail distribution policy that equated interline subcontract service with on-line service, found by the Civil Aeronautics Board to be anticompetitive and contrary to the provisions of the Act, on the grounds that "an expanded, indiscriminate interlining policy in Alaska would not necessarily improve mail service and would very definitely impose a significant economic burden on the Postal Service."[6] In this situation, it would seem that these very same interests of the USPS argue in favor of a change in its equitable tender policy to take account of the different economic interests of commonly owned carriers.

Mail tender practices that create incentives for increased costs and regulatory activities are contrary to a number of policy considerations set forth in section 102 of the Act, including the encouragement of efficiency (paragraphs 3 and 9), the continued strengthening of small air carriers (paragraph 10), and the development and maintenance of a sound regulatory environment in which the air transportation system may be adapted to the present and future needs of the USPS (paragraph 5). Furthermore, the Department currently provides annual subsidy of about $1.8 million to ten carriers that provide Essential Air Service to 32 Alaskan villages that would otherwise be virtually inaccessible, and the carriers' mail revenues are a factor in determining the amount of subsidy each carrier receives. To the extent that their mail shares would be diminished by certificate proliferation activities, or to the extent that their costs would be increased to maintain parity, costs would be added to this program which are not in the public interest.

We believe that corrective action by the USPS in this instance is consistent not only with its comments on the NPRM, but also with its previous action in the face of attempts by code-sharing or subcontracting carriers to gain multiple mail shares. In that instance, the USPS clarified its regulations, cited above, to provide that "Under no circumstances shall a carrier receive dual Postal consideration as a subcontractor and a "401" operator in the same market. Furthermore, a single schedule/flight is prohibited from carrying two carrier identifications." While the application of these provisions may occasionally be controversial,[7] it is manifest that the balancing of interests involved in the interrelationship of USPS mail distribution policies and service patterns in Alaska requires pragmatic adjustments at the operational level regardless of any statutory issues that may be involved. Moreover, it appears that USPS attention to the common-ownership situation may indeed strengthen its ability to implement its existing policies and regulations in this area.

We emphasize that we are not attempting to anticipate or direct the corrective action that the USPS might take in this instance. It may decide to adopt a separate practice in the case of commonly owned carriers, or it may choose to make more general changes. It may choose to tender no more in total to commonly owned carriers in a market than to each independent carrier,[8] or it may decide to consider percentages of service in some fashion. It may also find an entirely different solution. Our concern is only the removal of the current incentive for the proliferation of certificates for mail tender purposes with little or no regard for other aspects of marketplace economics. We note the position of the USPS that it does not have access to ownership data. We will, of course, provide such data on a timely basis to the extent necessary for the USPS to craft an effective solution to the problem, and we are eager to cooperate fully with the USPS in resolving this situation effectively.

Accordingly,

1. We find that the current practice of the United States Postal Service of tendering separate shares of mail to commonly owned certificated air carriers operating in the same market within Alaska is inconsistent with the provisions of the Federal Aviation Act within the meaning of section 405(a) thereof, to the extent that such practice provides an incentive for economic entities to provide service in a market using multiple certificates primarily in order to receive additional mail shares and revenues;

2. We request that the SSPS modify its mail tender policies and/or practices in Alaska to remove the incentive described above;

3. We terminate the proposed rulemaking proceeding in Docket 47581;

4. This order will be served upon all commenters to Docket 47581 and all parties to the proceedings in Dockets 38961 and 44445; and

5. We will publish this order in the **Federal Register**.

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[5] *See* USPS correspondence dated January 13, 1992, and January 24, 1992, which we have recently placed in the correspondence section of Docket 47581.

[6] Order 83–3–7, *supra*, at page 3.

[7] *See, e.g.*, a letter from Northern Air Cargo to the USPS dated August 18, 1992, which we have also recently placed in the correspondence section of Docket 47581.

[8] The USPS is not bound by the solution proposed in the Department's NPRM, which, among other things, suggested that only one of the commonly owned carriers in a market should be tendered mail. Such an all-or-nothing approach could create legal and practical problems requiring careful resolution.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Proposed Regulation on Contract Market Emergency Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule; request for comments.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing rule amendments which would implement the statutory directive set forth in section 213 of the Futures Trading Practices Act of 1992 ("Futures Trading Act") by establishing new procedures for a contract market emergency action. The amendments would require a contract market to make every effort practicable to give the Commission notice of its intention to implement, modify, or terminate a temporary emergency rule before taking action. The contract market also would have to supplement its notice with specific information and documentation. Within ten days of receipt from a contract market of all of the required information, the Commission would make a determination either to permit the rule to remain in effect or to suspend the effect of the rule pending review under section 5a(12)(A) or otherwise, based upon whether the Commission found that the emergency action was arbitrary, capricious, or an abuse of discretion; lacking a reasonable basis in fact; or taken in bad faith by the contract market or its officials. All contract markets would have to maintain in effect rules that were consistent with this regulation.

DATES: Comments on the proposed rule amendments must be received on or before March 8, 1993.

ADDRESSES: Comments on the proposed rule amendments should be sent to: Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Shauna L. Turnbull, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Law and Procedures

Contract market emergency actions are governed by section 5a(12)(B) of the Commodity Exchange Act ("Act") and Commission regulation 1.41. Section 5a(12)(B) provides that a contract market, by a two-thirds vote of its governing board, may make a temporary emergency rule effective without prior Commission approval under terms and conditions specified by the Commission. Under current regulation 1.41(a)(4), an emergency is defined as any occurrence or circumstance which is considered an emergency under the rules of a contract market. In addition, the term "emergency" encompasses any other occurrence or circumstance which, in the opinion of the governing board of the contract market, requires immediate action and threatens or may threaten such things as the fair and orderly trading, liquidation, or delivery of futures or option contracts.[1]

Under current regulation 1.41(f), a contract market may place a temporary emergency rule into immediate effect without prior Commission approval and without compliance with the ten-day notice requirement under section 5a(12)(A) of the Act. A temporary emergency rule may not extend beyond the duration of the emergency, as determined by the contract market, and may not continue beyond 30 days after the rule is first put into effect, without express Commission authorization. In addition, a temporary emergency rule may not remain in effect for more than 90 days after it is first put into effect.

A contract market must notify the Commission of the adoption, modification, and termination of a temporary emergency rule by the fastest available means of communication. Written copies of each temporary emergency rule, and any modification and termination of a rule, must be furnished promptly thereafter to the Commission. The contract market must include a complete explanation of the emergency and the action taken to meet the emergency with its submission of the rule.

Upon receipt of notice and an explanation of an emergency, the Division of Trading and Markets ("Division") currently reviews an emergency action under the standard articulated in CFTC Interpretative Letter Number 79–2.[2] The Office of General Counsel stated in this Interpretative Letter that a contract market emergency rule would violate Regulation 1.41(f) if it were arbitrary, capricious, or an abuse of discretion; lacking a reasonable basis in fact; or taken in bad faith by the contract market or its officials. In addition, section 8a(9) of the Act generally provides that the Commission may direct a contract market to take action necessary to maintain or restore orderly trading whenever the Commission has reason to believe that an emergency exists.

B. Section 213

Section 213 of the Futures Trading Act amends section 5a(12) of the Act to provide for more specific procedures for Commission review of a contract market emergency action. The section requires the Commission to issue regulations which specify the terms and conditions under which a contract market may take emergency action. It also requires a contract market to make every effort practicable to provide the Commission with notice and a complete explanation of the emergency conditions prior to implementing any temporary emergency rule.[3] If the contract market did not provide the Commission with notice and an explanation before making the emergency rule effective, the contract market would have to provide the Commission with such notification and explanation at the earliest possible time.

Within ten days of a receipt of notice and an explanation from the contract market, or as soon as practicable, the Commission must determine whether it is appropriate either to permit a rule to remain in effect during the emergency or to suspend the effect of the rule pending review either under the procedures of section 5a(12)(A) or otherwise. Following this decision, the Commission must submit a report on its determination and the basis for its decision to the affected contract market, the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the Commission submitted its report more than ten days after the receipt of notice and explanation, the report would have to include an explanation of why it was not practicable to submit the report within ten days.

II. Overview of Proposed Amendments

A. Definition of "Emergency"

Section 213 requires the Commission to make a formal determination within ten days on whether to permit a temporary emergency rule to remain in effect or to suspend the effect of the rule. Given the intention of Congress to increase Commission oversight of contract market emergency actions, as demonstrated by the new requirements in section 213 for Commission review of temporary emergency rules, the proposed amendments would require greater consistency among contract markets in their definitions of the term "emergency." Consistency in this area would facilitate Commission review and would provide additional guidance to a contract market in their emergency actions.

Specifically, the Commission proposes to delete regulation 1.41(a)(4)(i). This provision permits a contract market to define the term "emergency" as any occurrence or circumstance noted in rules of the contract market. The contract market must have submitted its rules defining "emergency" to the Commission under section 5a(12) of the Act.

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[1] Regulation 1.41(a)(4)(ii) lists circumstances which a governing board of a contract market may deem emergencies, including:

(A) Any manipulative activity or attempted manipulative activity;

(B) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(C) Any circumstances which may materially affect the performance of contracts or commodity options traded on the contract market;

(D) Any action taken by the United States or any foreign government or any state or local governmental body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the contract market;

(E) Any circumstance which may have a severe, adverse effect upon the physical functions of a contract market including, for example, fire or other casualty, bomb threats, substantial inclement weather, power failures, communication breakdowns, and transportation breakdowns;

(F) The bankruptcy or insolvency of any member or member firm of the contract market or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a member of the contract market which may affect the ability of that member to perform on its contracts;

(G) Any circumstance in which it appears that a member or any other person has failed to perform contracts of sale for future delivery or commodity option contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of customer funds, members of the contract market, or the contract market; and

(H) Any other unusual, unforeseeable and adverse circumstance with respect to which it is impracticable for the contract market to submit, in a timely fashion, a rule to the Commission for prior review under Section 5a(12) of the Act.

[2] CFTC Interpretative Letter No. 79–2 (Standard of Review of Temporary Emergency Rules Adopted by Contract Markets), (CCH) ¶20,890 [1977–80 Transfer Binder] (July 26, 1979).

[3] Section 213 does not apply to a physical emergency that is addressed by actions other than implementation of a temporary emergency rule. This type of physical emergency is governed by Regulation 1.41(g).

Under the proposed amendments, a contract market would have to ensure that its rules were consistent with modifications to Regulation 1.41(a)(4)(ii) set forth in proposed Regulation 1.41(a)(4). Under this modified provision, a contract market governing board could determine that an emergency existed when, in its opinion, occurrences or circumstances listed in Regulation 1.41(a)(4) required immediate action and threatened or could threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any contract for the future delivery of a commodity or any commodity option on such contract market. The occurrences and circumstances listed in regulation 1.41(a)(4) would remain similar to the items currently found in regulation 1.41(a)(4)(ii), with the addition of specific references to failure of the payment system, computer system breakdowns, and screen-based trading system breakdowns.[4]

In addition, the proposed amendments would alter the language of regulation 1.41(a)(4)(ii)(H). Rather than stating that a contract market could find an emergency when there was "[a]ny other unusual, unforeseeable and adverse circumstance with respect to which it is impracticable for the contract market to submit, in a timely fashion, a rule to the Commission for prior review under section 5a(12) of the Act," a contract market could find an emergency under these circumstances only when it was "not practicable" for it to submit a rule to the Commission for prior review. Courts have interpreted the word "impracticable" as meaning "inconvenient."[5] The change from "impracticable" to "not practicable" would emphasize that a contract market should not declare an emergency merely because it was inconvenient to submit a rule for prior review.

B. Temporary Emergency Rule Procedures

1. Prior Notice and Contract Market Submissions

Section 213 directs the Commission to issue regulations that require a contract market to make every effort practicable to notify the Commission of an emergency rule, along with a complete explanation of the emergency involved, prior to making the emergency rule effective. The Commission has proposed amendments to regulation 1.41(f) consistent with this directive. The Commission also is proposing application of the notice provision to the implementation, modification, termination of a temporary emergency rule. Although section 213 did not mention modification to or termination of a temporary emergency rule, the legislative history did not indicate that Congress intended to change the scope of the current Regulation 1.41(f).[6]

Under the proposed amendments, "[a] contract market must make every effort practicable to provide notice to the Commission that it intends to implement, modify or terminate a temporary emergency rule prior to implementing, modifying or terminating the rule. If it is not practicable for the contract market to notify the Commission prior to taking emergency action, the contract market shall provide the Commission with notice of the implementation, modification, or termination of any emergency rule at the earliest possible time." As permitted by section 213, the Commission is proposing to delegate authority for receiving notice to the Director of the Division of Trading and Markets or any employee of the Commission, as may be designated by the Director.

The proposed amendments also specify the information that the contract market should include in its notice of an emergency action. To the extent practicable, a contract market should provide a complete explanation of the contract market action intended or taken to meet the emergency and a description of the nature of the emergency. In any instance in which a contract market did not provide prior notice of an emergency action, the contract market would have to explain why it was not practicable for it to provide such notice. This explanation would implement the requirement in section 213 that a contract market must "to the extent practicable" provide the Commission with prior notice of an emergency action. A contract market also would have to explain why it was not practicable for it to submit the temporary emergency rule to the Commission for prior review under section 5a(12)(A) of the Act. This required explanation would lessen any likelihood that a contract market would proceed under Regulation 1.41(f) without sufficient cause for emergency action.

The proposed amendments also would require the submission of any available written documentation on the nature of the emergency conditions and the intended or actual emergency action at the time of notification. The Commission particularly would be interested in receiving a draft of a temporary emergency rule, if available, prior to action on the rule by the governing board. Receipt of a draft would facilitate Commission review of any emergency action.

As soon as possible after providing notice, but in no event more than five days after such time, a contract market would have to supplement its notice by submitting additional information to the Commission. The additional information would include:

(1) A written copy of the temporary emergency rule and any modification to or termination of the rule;

(2) A complete written explanation of the emergency action;

(3) Written documentation, not previously provided, of the emergency conditions and the emergency action;

(4) A copy of the contract market governing board meeting minutes in which the governing board determined to implement a temporary emergency rule, with specified information, described in the proposed regulation, included in the minutes;

(5) A description of the basis for and procedures followed by a governing board in making any determination as to the eligibility of interested persons to deliberate or to vote on matters relating to the emergency;

(6) Documentation of all positions in the subject contract market held by governing board members in personal accounts, controlled accounts, any other accounts in which a governing board member had an interest, and customer and proprietary accounts at a governing board member's affiliated firm;[7] and

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[4] The proposed amendments also would add computer system breakdowns and screen-based trading system breakdowns to the examples of physical emergencies listed in Regulation 1.41(g).

[5] *Fifth Mooring Condominium, Inc.* v. *Shere*, 81 F.R.D. 712, 716 (S.D. Fla. 1976) (the word "impracticable," as used in rule precluding class action unless class is so numerous that joinder of all members is impracticable, refers to whether joinder is inconvenient or difficult); *Janson* v. *Continental Financial Corp.*, 404 F. Supp. 806, 809 (D. Minn. 1975) (the word "impracticable," as used in rule precluding class action unless class is so numerous that joinder of all members is impracticable, does not refer to impossibility, but only to difficulty or inconvenience.

[6] In addition, the Commission has proposed amendments to Regulation 1.41(g), governing physical emergencies. Currently, a contract market may take any action necessary to address an physical emergency without notifying the Commission of its action. For purposes of facilitating oversight of contract markets, the proposed amendments would require a contract market to notify the Commission as soon as possible after implementing, modifying, or terminating a physical emergency action.

[7] The term "affiliated firm" would be defined in Regulation 1.41(a)(8) as any firm in which the

(7) Such other information as the Commission may require.

The Commission based this list of supplementary information on the types of information currently needed to review emergency rules submitted under Regulation 1.41(f). The position information requests reflect the Commission's need to make a determination on whether the contract market acted in bad faith, discussed below.[8]

2. Commission Action

Section 213 directs the Commission to make a determination within ten days of its receipt of notice and an explanation, or as soon thereafter as practicable, on whether it is appropriate to permit the rule to remain in effect during the emergency or to suspend the effect of the rule pending review either under the procedures of section 5a(12)(A) or otherwise. Thus, under the proposed amendments, within ten days of receipt from a contract market of the notice and supplementary information, or as soon as practicable, the Commission would make a determination either to permit the rule to remain in effect during the pendency of the emergency or to suspend the effect of the rule.

The Commission would permit a rule to remain in effect unless it determined that the contract market's emergency action was arbitrary, capricious, or an abuse of discretion; lacking a reasonable basis in fact; or taken in bad faith by the contract market or its officials. This standard of review is identical to the standard currently used by the Division and articulated in CFTC Interpretative Letter No. 79–2. In considering whether a contract market had acted in bad faith, the Commission, among other things, would review the governing board members' relevant market positions to determine the extent, if any, of participation in the contract market determination by interested members. The Commission also would consider a rule that had met the standard of Interpretative Letter 79–2 as an action that was consistent with the policies and purposes of the Act. Any Commission findings would be based solely on the information before it at the time and would not preclude subsequent Commission action based on additional or changed information.

Upon finding that a contract market's temporary emergency rule had failed to meet this standard, the Commission would have discretion to suspend the effect of the rule, pending review under section 5a(12)(A) of the Act or otherwise, under the terms and conditions that it deemed appropriate. The Commission would suspend the rule if suspension were not contrary to the public interest and the purposes of section 5a(12) of the Act. In making a determination on whether to suspend a rule that had failed to meet the standard, the Commission would consider the impact of suspension on the affected contract market. Specifically, the Commission may consider whether suspending the rule would harm market participants more than permitting the rule to remain in effect. The Commission would attempt to minimize any adverse market impact of its action by imposing any indicated terms and conditions on a suspension. In addition, nothing in the proposed regulations or the Futures Trading Act would prevent the Commission from issuing its own emergency order under section 8a(9) in lieu of or in conjunction with suspending the effect of a contract market temporary emergency rule. Moreover, neither the regulation, the Act, nor the Commission's review of a temporary emergency rule would in any way affect the institution or conduct of any Commission enforcement action authorized by the Act.

As required by section 213, the Commission would submit a report on its determination and the basis for its determination to the affected contract market; the Committee on Agriculture of the House of Representatives; and the Committee on Agriculture, Nutrition, and Forestry of the Senate. If the report were submitted more than ten days after the Commission had received all of the information required of a contract market, the Commission would include an explanation of why submission within ten days from receipt of notification and explanation was not practicable. A determination by the Commission to suspend the effect of a rule under the proposed amendments would be subject to judicial review on the same basis as an emergency determination under section 8a(9) of the Act.[9] In addition, each contract market would have to maintain in effect rules that were consistent with these regulations.

D. Permissible Emergency Actions

For purposes of updating current Regulation 1.41(f)(3), the proposed amendments would expand the list of permissible emergency actions to include certain additional emergency actions which have been taken or may be taken in the future. The proposed amendments would change the permissible emergency actions listed in Regulations 1.41(f)(3) (iii) and (iv) from "[e]xtending the time of delivery" and "[c]hanging delivery points" to "altering delivery terms or conditions." By broadening the language of these provisions and consolidating them into one subsection, the Commission would make clear that a contract market could take a variety of permissible emergency actions associated with delivery.[10] The Commission also added the modification of price limits and circuit breakers to the list of permissible actions. Although contract markets frequently take emergency action by altering price limits, this type of emergency action currently is not listed in Regulation 1.41(f)(3). In addition, the Commission would add the suspension of a contract market prohibition against dual trading to the list of permissible actions. A contract market may need to suspend the effect of any dual trading prohibition, including a prohibition implemented pursuant to section 101 of the Futures Trading Act and regulations to be issued by the Commission, for purposes of restoring or ensuring fair and orderly trading in a contract market.

III. Conclusion

The Commission believes that the proposed amendments to Regulation 1.41 satisfy the statutory directive of the Futures Trading Act. The amendments would create a more formal procedure for Commission oversight of contract market emergency actions. In addition, the amendments would provide greater guidance to a contract market in implementing a temporary emergency

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person is a general partner, officer, director, employee, or owner of more than ten percent of the equity interest. See infra footnote 8. As position information is subject to the confidentiality provisions of section 8 and is not generally publicly available, the Commission will be particularly sensitive to the treatment of such information in any report.

[8] Additional guidance in this area will be provided by the forthcoming proposed rules under section 217 of the Futures Trading Act, which prohibits voting by interested members. Nevertheless, the Commission at this time has endeavored to identify the relevant exchange documents that would provide the basis for making required decisions on the existence of any conflict of interest.

[9] Commission emergency actions under section 8a(9) are reviewable only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business or in the United States Court of Appeals for the District of Columbia Circuit.

[10] This amendment would be consistent with CFTC Interpretative Letter No. 77–7, in which the Office of General Counsel stated that a contract market could reduce the number of days for delivery through an emergency action, even though such action was not specified in Regulation 1.41. CFTC Interpretative Letter No. 77–7 (Emergency Reduction of Time for Delivery), (CCH) ¶20,417 [1977–80 Transfer Binder] (1977). The amendment also would be consistent with the language of most contract market emergency rules.

rule. Finally, they would reflect current practices and technology.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The proposed amendments to Regulation 1.41(f) affect contract markets. The Commission previously has established that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of the proposed amendments on contract markets. 47 FR 18618, 18619 (April 30, 1982).

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted the proposed amendments and their associated information collection requirements to the Office of Management and Budget ("OMB"). The burden associated with the entire collection, including the proposed amendments, is as follows:

Average burden hours per response: 83.01
Number of respondents: 1375
Frequency of response: on occasion

The burden associated with the proposed amendments is as follows:

Average burden hours per responses: 2.0
Number of respondents: 239
Frequency of response: on occasion

Persons wishing to comment on the information which would be required by the proposed amendments should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 1

Definitions, Registration, Minimum financial and related reporting requirements, Prohibited trading in commodity options, Customer's money, Securities and property, Recordkeeping and miscellaneous.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 5a(12) and 8a(5) thereof, 7 U.S.C. 7a(12) and 12a(5), the Commission proposes to amend part 1 of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23 and 24, unless otherwise noted.

2. Section 1.41 would be amended by revising paragraph (a)(4) and adding paragraph (a)(8); by revising paragraphs (f) (2) and (3) and adding paragraph (f) (4) through (9); and by revising paragraph (g) to read as follows:

§ 1.41 Contract market rules; submission of rules to the commission, exemption of certain rules and certain operational and administrative rules, emergencies.

(a) * * *

(1) * * *

(2) * * *

(3) * * *

(4) The term *emergency* means any occurrence or circumstance listed in this paragraph (a)(4) which, in the opinion of the governing board of the contract market, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any contract for the future delivery of a commodity or any commodity option on such contract market. Occurrences and circumstances which a governing board of a contract market may deem emergencies are limited to the following:

(i) Any manipulative activity or attempted manipulative activity;

(ii) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(iii) Any circumstances which may materially affect the performance of contracts or commodity options traded on the contract market, including failure of the payment system;

(iv) Any action taken by the United States or any foreign government or any state or local governmental body, any other contract market, board of trade, or any other exchange or trade association (foreign or domestic), which may have a direct impact on trading on the contract market;

(v) Any circumstances which may have a severe, adverse effect upon the physical functions of a contract market including, for example, fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns, and transportation breakdowns.

(vi) The bankruptcy or insolvency of any member or member firm of the contract market or the imposition of any injunction or other restraint by any government agency, court or arbitrator upon a member of the contract market which may affect the ability of that member to perform on its contracts;

(vii) Any circumstance in which it appears that a member or any other person has failed to perform contracts of sale for future delivery or commodity option contracts, is insolvent, or is in such financial or operational condition or is conducting business in such a manner that such person cannot be permitted to continue in business without jeopardizing the safety of customer funds, members of the contract market, or the contract market; and

(viii) Any other unusual, unforeseeable and adverse circumstance with respect to which it is not practicable for the contract market to submit, in a timely fashion, a rule to the Commission for prior review under section 5a(12)(A) of the Act.

(5) * * *

(6) * * *

(7) * * *

(8) The term *affiliated firm* of a person means any firm in which the person is a general partner, officer, director, employee, or owner of more than ten percent of the equity interest.

* * * * *

(f) * * *

(1) * * *

(2)(i) A contract market must make every effort practicable to provide notice to the Commission that it intends to implement, modify or terminate a temporary emergency rule prior to implementing, modifying or terminating the rule. If it is not practicable for the contract market to notify the Commission prior to taking emergency action, the contract market shall provide the Commission with notice of the implementation, modification, or termination of any emergency rule at the earliest possible time. Notice must be given to the Director of the Division of Trading and Markets or any employee of the Commission, as may be designated by the Director for such purpose. The contract market must provide notice to the Commission by the fastest means available and must use its best efforts to ensure that the notice is actually received by one of the persons authorized by this paragraph (f)(2)(i). Notice should include:

(A) To the extent practicable, a complete explanation of the contract market action intended or taken to meet the emergency and a description of the nature of the emergency;

(B) In any instance where a contract market does not provide prior notice of an emergency action, an explanation of why it was not practicable for a contract market to provide such notice; and

(C) An explanation of why it was not practicable for the contract market to submit the temporary emergency rule to the Commission for prior review under section 5a(12)(A) of the Act.

(ii) Any available written documentation of the nature of the emergency conditions and the intended or actual emergency action should be submitted at the time of notification.

(3) As soon as possible after providing notice under paragraph (f)(2) of this section, but in no event more than five (5) days after such time, the contract market shall supplement its notice by submitting the following information to the Commission at its Washington, DC headquarters:

(i) A written copy of the temporary emergency rule and any modification to or termination of the rule;

(ii) A complete written explanation of the emergency action;

(iii) Written documentation, not previously provided, of the emergency conditions and the emergency action, including documentation of the reasons for the specific emergency action taken;

(iv) A copy of the minutes of the contract market governing board meeting in which the governing board determined to implement a temporary emergency rule, which minutes must include the names of all persons who were members of the governing board at the time of the meeting; the names of all persons who attended the meeting in person or who were otherwise present by electronic means; the name of any person who recused himself from the meeting, the reason for recusal, and the time that the recusal occurred; the time that notice of the meeting was given to the governing board members and the times that the meeting began and ended; the name of any person who was directed to abstain from deliberating or voting at the meeting; a summary of all discussions; a complete description of any matter voted on; an itemized list of how each governing board member voted; and a summary of any disclosure made by a person on his or her positions in any subject contract market, including disclosure of positions held in personal accounts, controlled accounts, any other accounts in which a person has an interest, and customer and proprietary accounts at a person's affiliated firm;

(v) A description of the basis for and procedures followed by a governing board in making any determination as to the eligibility of an interested person to deliberate or to vote on matters relating to the emergency;

(vi) Documentation of all positions in the subject contract market held by a governing board member in personal accounts, controlled accounts, any other accounts in which a governing board member has an interest, and customer and proprietary accounts at a governing board member's affiliated firm; and

(vii) Such other information as the Commission may require.

(4) Within 10 days of the receipt from a contract market of all of the information required by paragraphs (f) (2) and (3) of this section, or as soon as practicable thereafter, the Commission will make a determination either:

(i) To permit the rule to remain in effect, consistent with paragraph (f)(1) of this section, or

(ii) To suspend the effect of the rule pending review either under the procedures of section 5a(12)(A) or otherwise.

(5)(i) The Commission will make a determination to permit the temporary emergency rule to remain in effect, consistent with paragraph (f)(1), unless it finds that the contract market's emergency action is:

(A) Arbitrary, capricious or an abuse of discretion;

(B) Lacking a reasonable basis in fact; or

(C) Taken in bad faith by the contract market or its officials.

(ii) If the Commission determines that the contract market's emergency action is arbitrary, capricious or an abuse of discretion; lacking a reasonable basis in fact; or taken in bad faith, then the Commission may, in its discretion and upon such terms and conditions as it deems appropriate, suspend the effect of the rule if it finds that suspension of the rule is not contrary to the public interest and the purposes of section 5a(12) of the Act.

(6)(i) The Commission will submit a report on its determination pursuant to paragraph (f)(5) of this section and the basis for this determination to:

(A) The affected contract market;

(B) The Committee on Agriculture of the House of Representatives; and

(C) The Committee on Agriculture, Nutrition, and Forestry of the Senate.

(ii) If the report is submitted more than 10 days after the Commission receives all of the information required under paragraphs (f) (2) and (3) from a contract market, the report will include an explanation of why submission within 10 days from receipt of notification and explanation was not practicable.

(7) A determination by the Commission to suspend the effect of a rule under paragraph (f)(5)(i)(B) of this section will be subject to judicial review on the same basis as an emergency determination under section 8a(9) of the Act.

(8) A temporary emergency rule may provide for, or may authorize the contract market, or the governing board thereof or any committee thereof, to undertake actions necessary or appropriate to meet the emergency, including, but not limited to, such actions as:

(i) Limiting trading to liquidation only, in whole or in part, or limiting trading to liquidation only except for new sales by parties who have the commodity to deliver pursuant to such sales;

(ii) Extending or shortening the expiration date for trading in contracts;

(iii) Altering delivery terms or conditions;

(iv) Modifying price limits;

(v) Modifying circuit breakers;

(vi) Ordering the liquidation of contracts, the fixing of a settlement price or the reduction in positions;

(vii) Ordering the transfer of contracts, and the money, securities, and property securing such contracts, held on behalf of customers by a member of the contract market to another member, or other members, of the contract market willing to assume such contracts or obligated to do so;

(viii) Extending, limiting or changing hours of trading;

(ix) Suspending trading; and

(x) Modifying or suspending any provision of the rules of the contract market, including any contract market prohibition against dual trading.

(9) Each contract market must maintain in effect rules that are consistent with this section.

(g) *Physical emergencies.* In the event the physical functions of a contract market are, or are threatened to be, severely and adversely affected by a "physical emergency," such as fire or other casualty, bomb threats, substantial inclement weather, power failures, communications breakdowns, computer system breakdowns, screen-based trading system breakdowns or transportation breakdowns, a contract market official, duly authorized to take such action for and on behalf of the contract market with respect to such a "physical emergency" pursuant to a rule of the contract market that has been approved by the Commission or has become effective pursuant to section 5a(12) of the Act and this section, may take any action authorized by such rule necessary or appropriate to deal with the emergency, including, but not limited to, suspending trading on the contract market. In no event, however, shall suspension of trading on the contract market by such a designated official continue in effect for more than five (5) days. If so authorized by such a rule of the contract market, the designated official may also order restoration of trading on the contract market, or removal of other restrictions imposed by the official as permitted by this paragraph (g), in the absence of action by the governing board of the contract market, upon a determination by such official that the "physical emergency" has sufficiently abated to permit the physical functions of the contract market to continue in an orderly manner. A contract market must notify the Director of the Division of Trading and Markets or any employee of the Commission, as may be designated by the Director for such purpose, of the implementation, modification or termination of a physical emergency action as soon as possible after taking the action.

* * * * *

3. Section 1.41c as proposed to be added would read as follows:

§ 1.41c Delegation of authority to the Director of the Division of Trading and Markets to receive notice of an emergency action.

The Commission hereby delegates authority to receive notification and explanation of a temporary emergency rule and notification of a physical emergency action, until the Commission orders otherwise, to the Director of the Division of Trading and Markets. This authority may be exercised by the Director or by another employee or employees of the Commission as may be designated from time to time by the Director.

Issued in Washington, DC on January 29, 1993 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-2662 Filed 2-3-93; 8:45 am]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

MSS Above 1 GHz Negotiated Rulemaking Committee

AGENCY: Federal Communications Commission.

ACTION: Notice of Cancellation of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, this notice advises interested persons that the third meeting of the MSS Above 1 GHz Negotiated Rulemaking Committee ("Committee") scheduled for Thursday, February 4, 1993 (58 FR 5319, January 21, 1993) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell, Administrative Assistant to the Committee, at (202) 634-1952.

SUPPLEMENTARY INFORMATION: Full Committee meetings are currently scheduled for Wednesday, February 10; Thursday, February 18; Thursday, February 25; Thursday, March 4; Tuesday, March 9; Thursday, March 18; Thursday, March 25; and Friday, April 2.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-2628 Filed 2-3-93; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 58, No. 22
Thursday, February 4, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 29, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. The list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Stabilization and Conservation Service.

7 CFR parts 1421, 1425, 1434, and 1427—Loan Deficiency Payments.
CCC–666LDP, 700, 700A, 701, 709, CCC-Cotton AA and CCC-Cotton AA–1. On occasion.
Farms; small businesses or organizations; 223,016 responses; 65,415 hours.
Margaret Wright, (202) 720–8481.

New Collection

- Food Safety and Inspection Service.

Accreditation Fees, Standards, and Procedures for FSIS-Accredited Laboratories.
FSIS 10,110–2; FSIS 10,100–4; FSIS 10,600–1; FSIS 10,120–1.
Recordkeeping; on occasion.
Businesses or other for-profit; 11,406 responses; 8,032 hours.
Chuck Williams, (202) 720–7163.

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 93–2568 Filed 2–3–93; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to E.I. Du Pont and de Nemours & Company, Inc., having a place of business in Wilmington, Delaware, an exclusive license on U.S. Patent 4,774,098 patented September 27, 1988, "Modified Plant Fiber Additive for Food Formulations.".

DATES: Comments must be received on or before April 5, 1993.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 403, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Technology Transfer at the Beltsville address given above; telephone: COMM: 301–504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to license this invention on an exclusive basis and the company has submitted a complete and sufficient application for a license.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

W.H. Tallent,

Assistant Administrator.

[FR Doc. 93–2665 Filed 2–3–93; 8:45 am]

BILLING CODE 3410-03-M

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given to the following committee meeting:

Name: Federal grain Inspection Service Advisory Committee.

Date: February 24–25, 1993.

Place: Holiday Inn-Crowne Plaza, 775 12th Street NW., Washington, DC.

Time 8 a.m. February 24 and February 25.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service with respect to the implementation of the U.S. Grain Standards Act.

The agenda includes: (1) Status of financial matters, (2) Official Commercial Inspection, (3) Aflatoxin Issues, (4) removing large foreign material from Export Shipments, (5) Research Issues, (6) International Monitoring, (7) Pesticide Residue Testing, (8) Regulatory Update, (9) Moisture Reference Methods, (10) Wheat Protein Issues and (11) other matters.

The meeting will be open to the public. Pubic participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Acting Administrator, FGIS, U.S. Department of Agriculture, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 720–0219 or FAX (202) 205–9237.

Dated: January 28, 1993.

David R. Galliart,

Acting Administrator.

[FR Doc. 93–2522 Filed 2–3–93; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Exemption of Decision for Beetlejuice Salvage Timber Sale From Appeal, Wallowa-Whitman National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Beetlejuice Salvage Timber Sale located on the La Grande Ranger District of the Wallowa-Whitman National Forest is exempt from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Kaufman, Timber Staff, Wallowa-Whitman National Forest, 1550 Dewey Avenue, Baker City, Oregon 97814, phone (503) 523–6391.

SUPPLEMENTARY INFORMATION: The La Grande Ranger District has experienced several epidemic outbreaks of Douglas-fir barkbeetle and western spruce budworm in recent years due to a variety of environmental conditions including historic fire suppression, past logging practices, and the ongoing drought. An aggressive timber salvage program has been ongoing on the district since the early 1980's within stands containing an abundance of Douglas-fir and grand fir. However, the district has recently experienced some isolated instances where overstocked ponderosa pine stands are being infested with western pine beetle (*Dendroctonus brevicomis*). Once populations of these insects are established within a stand, epidemic conditions allow the beetle to cause mortality in trees of all ages that appear vigorous. Western pine beetle can produce up to three broods per year and can also attack stands in conjunction with other insects.

The La Grande District interdisciplinary team (IDT) and public comments received on the salvage program identified the need to salvage dead and dying timber in as short a time as possible while the logs remain merchantable and of high quality without blue stain associated with ponderosa pine. The average size of western pine beetle infested ponderosa pine within the Beetlejuice project is 18 inches in diameter at breast height. In general, the smaller the diameter of the tree the more rapidly it will deteriorate.

During the summer of 1992 the La Grande IDT began the process of scoping and analyzing an ecosystem restoration project proposal within a project area formally designated as the Birdtrack Springs Restoration Project. This proposal included a variety of activities such as: Timber salvage and stand rehabilitation; relocation of dispersed camping from within the floodplain of the Grande Ronde River to an upland area; rehabilitation of the floodplain by planting hardwood vegetation; and obliteration of several miles of draw-bottom roads. Following distribution of the proposed Birdtrack Springs Restoration project proposal to interested publics and other state and local governments, it was determined that the western pine beetle infestation within the 35 acre ponderosa pine stand originally planned for a salvage/thinning treatment was more important than earlier surveys indicated.

The project ID Team recommended that this stand be included in a separate decision which has been re-named Beetlejuice Salvage Timber Sale due to the urgency of physically removing the beetles before offspring from parent progeny had a chance to infest additional trees in the spring and damage a greater proportion of the stand. The stand will also be commercially thinned to release the remaining healthy ponderosa pine and reduce the likelihood of additional bark beetle infestation. The project was specifically designed to facilitate removal of infested ponderosa pine, utilize dead and dying trees, and improve overall timber stand health.

Through the initial scoping process the following issues were identified for the Beetlejuice environmental analysis: (1) Forest tree health; (2) riparian habitat, fish habitat, and water quality; (3) big game/wildlife habitat; and (4) timber yield and utilization.

The IDT developed the No-Action alternative and an action alternative for the Beetlejuice analysis. The environmental analysis indicated that the salvage project falls within a category of actions that can be excluded from documentation in an environmental impact statement or environmental assessment.

Biological evaluations have been completed for all plant, wildlife, and fish Proposed, Endangered, Threatened, and Sensitive species within the project area. The biological evaluations document that the project can proceed as planned.

This Beetlejuice Salvage Timber Sale was designed to remove western pine beetle from the site by salvaging trees containing beetles and effectively preventing additional infestation of the remaining trees by thinning and improving tree vigor. Cruised volume, of a 35 acre stand, for the Beetlejuice Salvage includes: 12,000 board feet of dead and dying ponderosa pine and 48,000 board feet of suppressed pine. The project will minimize the amount salvage volume lost and will reduce the chance of losing the entire stand to bark beetle infestation. To expedite this salvage, this project is exempted from appeal (36 CFR part 217). Under this Regulation, the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System Lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice in the **Federal Register**, this Decision Memo for the Beetlejuice Salvage Timber Sale will be signed by the La Grande District Ranger. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 28, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–2616 Filed 2–3–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Decision for Chucker Salvage Timber Sale From Appeal, Willamette National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement Chucker Salvage Timber Sale in the area of Groundhog Creek on the Willamette National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Darrel L. Kenops, Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, phone (503) 465–6517.

SUPPLEMENTARY INFORMATION: In 1990, an intense, localized, windstorm caused extensive windthrow in this area. This material was included in the Woodchuck Timber Sale analysis which also includes green, standing, volume. The green portion of Woodchuck is northern spotted owl habitat and therefore under injunction. A decision was made to process a Decision Memo on the spotted owl non-habitat portion of Woodchuck so it could be offered for sale immediately. Exemption from appeal of Chucker Salvage is needed to facilitate the rapid removal of the material to reduce further commercial loss of the wood products; reduce the potential for catastrophic losses from wildfire; and to help reduce the spread of insect infestations and disease.

The interdisciplinary team (IDT) began the analysis of the impacts of this project during the scoping meeting held March 13, 1991. After the completion of the scoping process which included mailings to the public and contacts with individuals and State and federal agencies, the following issues were identified: (1) Impacts to big game habitat; (2) habitat diversity; (3) impacts to the watershed; (4) timber supply and economics.

The IDT developed four alternatives, including the No-Action Alternative. The effects of these alternatives were disclosed in the environmental assessment, which was prepared for the original proposal. The Chucker Salvage portion of the proposed action (Alternative D) includes 20 acres of salvage producing 800,000 board feet of timber. Approximately one quarter mile of temporary road will be constructed.

The Chucker Salvage Timber Sale portion of Alternative D is designed to accomplish the project objectives as quickly as possible and minimize economic and resource loss. To expedite this salvage and the accompanying work, this project is exempted from appeal (36 CFR part 217). Under this Regulation, the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires, severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, the Decision Memo for Chucker Salvage Timber Sale may be signed by the Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR part 217.

Dated: January 28, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–2614 Filed 2–3–93; 8:45 am]

BILLING CODE 3410–11–M

Exemption of Decision for Knoll Salvage Timber Sale From Appeal, Willamette National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement Knoll Salvage Timber Sale in the area of Packard Creek on the Willamette National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the **Federal Register** on January 23, 1989 (54 FR 3342).

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Darrel L. Kenops, Forest Supervisor, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, phone (503) 465–6517.

SUPPLEMENTARY INFORMATION: In 1990, an intense, localized, windstorm caused extensive windthrow in this area. This material was included in the Knoll Timber Sale analysis which also includes green, standing, volume. The green portion of Knoll is northern spotted owl habitat and therefore under injunction. A decision was made to process a Decision Notice on the non-spotted owl habitat portion of Knoll so it could be offered for sale immediately. Exemption from appeal of Knoll Salvage is needed to facilitate the rapid removal of the material to reduce further commercial loss of the wood products; reduce the potential for catastrophic losses from wildfire; and to help reduce the spread of insect infestations and disease.

The interdisciplinary team (IDT) began the analysis of the impacts of this project during the scoping meeting held October 10, 1990. After the completion of the scoping process which included mailings to the public and contacts with individuals and State and other federal agencies, the following three issues were identified: (1) Watershed impacts; (2) biological diversity; and (3) timber supply.

The IDT developed four alternatives to analyze, including the No-Action Alternative. The effects of these alternatives were disclosed in the environmental assessment which was prepared for the original proposal. The Knoll Salvage Timber Sale portion of the proposed action (Alternative 4) includes 70 acres of salvage producing 2.2 million board feet of timber. Approximately one quarter mile of temporary road will be constructed.

The Knoll Salvage Timber Sale portion of Alternative 4 is designed to minimize economic and resource loss. To expedite this salvage project and the accompanying work, this salvage is exempted from appeals (36 CFR part 217). Under this Regulation, the following are exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires, severe wind * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

After publication of this notice in the **Federal Register**, this Decision Notice for the Knoll Salvage Timber Sale may be signed by the Forest Supervisor. Therefore, Knoll Salvage Timber Sale will not be subject to review under 36 CFR part 217.

Dated: January 28, 1993.

Nancy Graybeal,

Deputy Regional Forester.

[FR Doc. 93–2615 Filed 2–3–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the West Virginia State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia State Advisory Committee will be convened at 2 p.m. and adjourn at 5 p.m. on Thursday, February 25, 1993, in the Governor's Conference Room, State Capitol, Charleston, WV 25305. The purpose of the meeting is (1) to update Committee members and the public on the Commission; (2) to provide an orientation for new Committee members; and (3) to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Joan T. Hairston (304–752–3422) or John I. Binkley, Director, ERO, (202–376–7533), or TDD (202–376–8116). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the regional office at least (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-2602 Filed 2-3-93; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-808]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Sjoberg or Linda L. Pasden, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

PRELIMINARY DETERMINATION: We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Argentina are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992 (57 FR 33488, July 29, 1992), the following events have occurred.

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 19, 1992, the Department of Commerce (the Department) presented a questionnaire to Sociedad Mixta Siderurgia Argentina (SOMISA). This respondent accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided SOMISA with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire response.

SOMISA submitted sales questionnaire responses in September, October, and December, 1992. The petitioner submitted comments relating to these responses in October and November, 1992 and January 1993. The Department issued supplemental sales questionnaires in October, November, and December, 1992. The respondent submitted responses to these supplemental questionnaires in November and December, 1992. However, due to time constraints, the Department is not using either respondent's December supplemental response or the petitioner's January comments for the purposes of the preliminary determination. The respondent's information will, however, be verified and, together with petitioner's comments, be considered for the final determination.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of the like products in the United States, requested status as co-petitioners in this investigation. Petitioners amended the petition to include the steelworkers as co-petitioners on December 16, 1992.

On December 14, 1992, petitioners alleged that SOMISA sold cold-rolled steel in its home market at prices which were below SOMISA's cost of production. The Department is currently considering this allegation and will initiate an investigation if deemed necessary.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations are affirmative.

Scope of Investigation

The products covered by this investigation constitute a single "class or kind" of merchandise: Certain cold-rolled carbon steel flat products. The full description of the subject merchandise is included in Appendix I of this preliminary determination.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that the class or kind of the product covered by this investigation also constitutes a single category of such or similar merchandise. Where within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B-099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Argentina to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We did not include barter transactions in the calculation of FMV because we determined that these sales were not in the ordinary course of trade.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed, f.o.b. foreign port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, and foreign port and handling charges.

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed.

Foreign Market Value

In order to determine whether there was sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of the subject merchandise to the volume of third country sales of the class or kind of subject merchandise in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of cold-rolled steel by SOMISA.

We calculated FMV based on prices charged to unrelated customers in the home market. We compared U.S. sales to home market sales made at different levels of trade due to the fact that there were no sales at identical levels between the home market and the U.S. We made deductions, where appropriate, for cash discounts, credit notes, port and handling charges, and credit expenses.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in the value added tax, credit expenses, and packing.

The Department disallowed SOMISA's claimed adjustment for quantity discounts because SOMISA provided insufficient evidence to support their claim. The Department disallowed a claimed adjustment for a small sale discount due to SOMISA's inconsistent responses. We disallowed a claimed circumstance of sale adjustment relating to two indirect taxes because both taxes are related to inputs which are not physically incorporated into the exported product.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the average monthly or quarterly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel from Argentina that are entered, or withdrawn from warehouse, for consumption on or after the date of publication. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Sociedad Mixta Siderurgia Argentina	20.28
All Others	20.28

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in Certain Cold-Rolled Carbon Steel Flat-Rolled Products From Argentina; Final Results of Countervailing Duty Administrative Review, 56 FR 28527 (June 21, 1991), which is 1.75 percent *ad valorem*, will be subtracted from the dumping margin for deposit or bonding purposes, resulting in a cash deposit rate of 18.53 percent *ad valorem* for SOMISA and all other exporters.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b) oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by April 12, 1993.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute the following four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTSUS) subheadings are provided for convenience and customs purposes, our written descriptions and the scope of these proceedings are dispositive.

Also outlined below are issues pertaining to the scope of these investigations which have arisen subsequent to their initiation.

Certain Hot-Rolled Carbon Steel Flat Products

These products include hot-rolled carbon steel flat products, of rectangular shape, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils, or in straight lengths which are less than 4.75 millimeters in thickness and measuring at least 10 times the thickness, as currently classifiable in the HTSUS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0090, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000.

Certain Cold-Rolled Carbon Steel Flat Products

These products include cold-rolled (cold-reduced) carbon steel flat products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Excluded from these investigations is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Excluded from these investigations are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel").

Certain Cut-to-Length Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from these investigations is grade X–70 plate.

Scope Issues Since the Notices of Initiation

Since the initiation of these investigations on July 20, 1992, the Department has addressed the following scope issues. All memoranda referred to below are available in Import Administration's Central Records Unit located in room B–099 of the Main Commerce Building.

A. Grade X–70 Plate

On July 20 and 22, 1992, petitioners requested that grade X–70 plate be excluded from the scope of the investigations regarding certain cut-to-length carbon steel plate. After analyzing all information submitted on the record regarding this issue, we excluded grade X–70 plate from the scope of those investigations. For further information on this issue, please refer to the August 21, 1992, decision memorandum from Holly Kuga, Director of the Office of Agreements Compliance, to Joseph Spetrini, Deputy Assistant Secretary for Compliance, and Frank Sailer, Deputy Assistant Secretary for Investigations (the August 21 memo).

B. Shadow Mask Steel

On August 6, 1992, petitioners requested that certain shadow mask steel be excluded from the scope of the investigations regarding certain cold-rolled carbon steel flat products. After analyzing all information submitted on the record regarding this issue, we excluded certain shadow mask steel from the scope of those investigations. For further information on this issue, please refer to the August 21 memo.

C. Coils and Narrow-Width Flat-Rolled Products

On August 21, 1992, the Department requested that petitioners clarify which types of coils, *e.g.*, successively superimposed coils and/or otherwise coiled, such as spirally oscillated coils, they intended to include in the scope of the investigations regarding certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products. On October 28, 1992, petitioners informed the Department that they intended to include all types of coils in the scope of the above-mentioned investigations. After analyzing all information submitted on the record, we agreed that all types of coils should be covered by those investigations. However, recognizing petitioners' assertion in their petitions that flat-rolled products normally are manufactured in widths of 0.5 inch or greater, we modified the scope of the investigations regarding certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products so that only coils—and, for consistency, straight lengths—of a width of 0.5 inch or greater are included in the three above-mentioned classes or kinds. For further information on this issue, please refer to the January 25, 1993, decision memorandum from Roland MacDonald, Director of the Office of Agreements Compliance, to Joseph Spetrini, Deputy Assistant Secretary for Compliance, and Richard Moreland, Acting Deputy Assistant Secretary for Investigations (the January 25 memo).

D. Products of Nonrectangular Cross-Section

On November 25, 1992, petitioners requested that products of nonrectangular cross-section be included in the scope of the investigations regarding all four classes or kinds of merchandise. Petitioners noted that this was a clarification and not a broadening of the scope. After analyzing all information submitted on the record on this issue, we have included products of nonrectangular cross-section in the scope of all four classes or kinds. For further information on this issue, please refer to the January 25 memo.

E. Products of Nonrectangular Shape

On November 25, 1992, petitioners requested that products of nonrectangular shape be included in the scope of the investigations regarding all four classes or kinds of merchandise. After analyzing all information submitted on the record on this issue, we denied petitioners' request. For further information on this issue, please refer to the January 25 memo.

F. Certain Precision Steel Products

On November 18, 1992, Theis Precision Steel Corporation (Theis), an interested party in the investigations regarding certain hot-rolled carbon steel flat products from Germany and Japan, requested that five specific types of hot-rolled "precision steel products" be excluded from the scope of the above-mentioned investigations. After analyzing all information submitted on the record on this issue, we denied Theis's request. For further information on this issue, please refer to the January 25 memo.

G. Certain Clad Products

On November 20, 1992, Regal Ware, Inc. (Regal), an interested party in the investigation regarding certain corrosion-resistant carbon steel flat products from Japan, requested that carbon steel sheet in coil that is clad on both sides with three layers of cold-rolled stainless steel and used in manufacturing cookware be excluded from the scope of the above-mentioned investigation. After analyzing all information submitted on the record on this issue, we denied Regal's request. For further information on this issue, please refer to the January 25 memo.

Appendix II—Issues Common to All Antidumping Investigations of Flat-Rolled Steel Products

A. Arm's Length Test for Related Party Transactions

In the antidumping questionnaire issued to all respondents in these investigations, we required that all home market sales made to the first unrelated customer be reported. The questionnaire states:

> Where a sale is made through an affiliated company, the price actually charged to the unrelated buyer must be reported.

Additionally, our questionnaire states:

> * * * related party sales shall not be used in making fair value comparisons unless they are demonstrated to be at arm's length.

Many respondents argued either (1) that the burden of reporting downstream sales (*i.e.*, sales made by related resellers to their unrelated customers) was extraordinary and/or (2) that reporting downstream sales was unnecessary because sales to the related reseller were at arm's length. These respondents reported only sales to related resellers and not downstream sales.

For purposes of our preliminary determinations, we first examined whether respondents made a credible attempt to demonstrate that related party sales were at arm's length. If no attempt was made, we presumed that no related party sales were at arm's length. For those that did, we then conducted a detailed analysis to determine if an arm's length relationship exists between a related customer and a respondent. To make this determination, for *each* related customer, we compared total related party sales (weight averaged for each product tested) to unrelated party sales of identical merchandise. In effect, we calculated customer-specific total average related/unrelated price ratios.

If the customer-specific related/unrelated price ratio was greater than or equal to 99.5 percent (which rounds to 100 percent), we determined that all sales to that related customer were made at arm's length, including sales of individual products to that customer that we were unable to test (because there were no sales of that product to unrelated customers). Conversely, if the customer-specific related/unrelated price ratio was less than 99.5 percent, we determined that all sales to that related customer were not arm's length transactions because, on average, that customer was paying less than unrelated customers for the same merchandise.

We then excluded from our less than fair value (LTFV) analysis *all* sales to any related customer that we determined did not have an arm's length relationship with the respondent. For some related customers, we were unable to determine whether total average related party sales to that customer were at arm's length because no products sold to that related customer were also sold to unrelated customers. In that case, we excluded all sales to these related customers for which we could not perform the arm's length test.

Some respondents reported downstream sales (*i.e.*, sales made by related resellers to their unrelated customers). If a related customer that made downstream sales was found to have an arm's length relationship with the respondent, we excluded the downstream sales made by that related customer from our LTFV analysis. If a related customer was not found to have an arm's length relationship with the respondent, we excluded all sales to the related customer, as explained above, but considered all downstream sales made by that related customer and reported by the respondent in our LTFV analysis.

After excluding all related party transactions not found to be at arm's length and appropriate downstream sales from our analysis, we used respondents' reported product concordance to match U.S. sales with sales of identical or most similar home market products. On occasion, the most appropriate match to a U.S. product, based on a respondent's submitted product concordance, was a home market sale that was excluded from our analysis because of changes in the home market database resulting from the application of the arm's length test, as described above. In all such cases where a U.S. sale was left with no home market match, we assigned a margin equal to best information available (BIA) to that U.S. sale. In cases where more than one home market sale would have been matched to a particular U.S. sale, and some, but not all, of those home market sales were excluded from our analysis, we matched the U.S. transaction to the remaining home market sales that were not excluded from our analysis. We did not assign BIA to U.S. sales in these cases.

As BIA, we used the higher of either (1) the average of all margins alleged in the petition for the class or kind of merchandise, or (2) the highest non-aberrational calculated margin for any other sale of merchandise of the same class or kind made by the same respondent.

The Department recognizes that the use of BIA as outlined above may affect the rate for companies that matched U.S. sales to sales to related end-users. In addition, the application of BIA to companies that did not report downstream sales by related resellers may be mitigated as a result of product matches. The Department may revisit these matters for the final determinations.

B. Best Information Available (BIA)

Section 776(c) of the Act requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

In deciding what to use as best information available, the Department's regulations provide that the Department may take into account whether a party refuses to provide requested information (19 CFR 353.37(b)). Thus, the Department may determine, case by case, what the best information available is. For the purposes of these preliminary determinations, we have applied two tiers of overall BIA:

1. When a company refused to cooperate with the Department or otherwise significantly impeded these proceedings, we have used as BIA the higher of: (a) The highest calculated rate found for any firm for the same class or kind of merchandise in the same country of origin in these less than fair value (LTFV) investigations or (b) the highest margin alleged in the petition for the same class or kind of merchandise in the same country of origin.

2. When a company cooperated with our requests for information but failed to provide the information requested in a timely manner or in the form required, we have used as BIA the higher of: (a) The highest calculated rate found for any firm for the same class or kind of merchandise from the same country of origin in these investigations or (b) the average petition rate for the same class or kind of merchandise from the same country of origin.

In certain situations, we found it necessary to use partial BIA. For any U.S. sales where we were unable to calculate a margin due to a respondent's failure to provide the necessary information, we used as BIA for those particular transactions the higher of: (a) The highest non-aberrational transaction margin calculated for that firm from among the sales of the same class or kind of merchandise where we were able to calculate a margin or (b) the average petition rate for the same class or kind of merchandise from the same country of origin.

C. Critical Circumstances

Petitioners have alleged that "critical circumstances" exist with respect to imports of: hot-rolled steel products from Belgium and Korea; cold-rolled steel products from Belgium and Spain; corrosion-resistant steel products from Korea; and steel plate from Belgium, Spain, Korea, and the United Kingdom.

Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

We normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise to demonstrate a history of dumping. In addition, we normally consider dumping margins of a certain magnitude to impute knowledge of dumping under section 733(e)(1)(A) of the Act (*i.e.*, margins of 25 percent or more when U.S. price is based on purchase price (PP), and margins of 15 percent or more if the U.S. price is based on exporters sales price (ESP). If the U.S. price is based on both PP and ESP, we normally weight-average the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, to arrive at a weighted-average benchmark percentage for imputing knowledge of dumping.

According to 19 CFR 353.16(f), we generally consider the following to determine whether imports have been massive over a relatively short period of time: (1) Volume and value of the imports; (2) Seasonal trends (if applicable); and (3) The share of domestic consumption accounted for by the imports.

When examining volume and value data, we normally compare the export volume for equal periods immediately preceding and following the filing of the petition (the "pre-initiation period" and the "post-initiation period"), in accordance with 19 CFR 353.16(g). Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports to have been "massive."

To determine whether there have been massive imports of those steel products from the countries named by the petitioners, when available, we relied upon the company-specific export data submitted by respondents for our preliminary analyses. Otherwise, we relied on import statistics provided by the U.S. Bureau of the Census. We were unable to consider import penetration in our analysis because the available data does not reflect post-filing activity. If such information becomes available, we will consider it for the final determinations.

The notices for Belgium, Korea, Spain and the United Kingdom include the results of our analysis based on the foregoing methodology, specific to each of the classes or kinds of merchandise for which petitioners have alleged critical circumstances.

D. Secondary Merchandise

The Department used specific physical matching criteria in these investigations to identify the sales of prime as well as non-prime (off-specification, seconds, co-products, byproducts, etc.) material. The criteria were developed for the questionnaire and required respondents to report salient quality characteristics of the subject merchandise: for example, for hot-rolled steel, "commercial or structural," "drawing," "deep drawing," "pressure vessel," and "other (specify)."

When respondents reported all characteristics of the physical matching criteria for each transaction, the Department could account for the complete range of prime and non-prime material and was thereby able to avoid matching prime to non-prime material. When respondents used all matching criteria in their responses, we included these sales in our analysis.

However, when respondents reported the sales of non-prime material using only some, or none, of the Department's physical matching criteria, we responded as follows:

(1) If the respondent claimed, and the Department preliminarily determined, that the missing information resulted from the nature of the companies record keeping with regard to the merchandise in question, *i.e.*, the record keeping did not contain the level of detail required by the Department's questionnaire, we excluded those sales of non-prime material from the analysis for purposes for the preliminary determination.

(2) If, on the other hand, the respondent did not make this claim about their record keeping, we included in our analysis non-prime U.S. sales and applied to any resulting unmatched U.S. sales best information available (BIA) equal to the higher of: (1) The highest non-aberrational transaction margin calculated for that firm from among the sales of the same class or kind of merchandise, where we were able to calculate a margin; or (2) The average petition margin for the same class or kind of merchandise from the same country of origin.

[FR Doc. 93–2416 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DS-P

[A-602-803]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Corrosion-Resistant Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4,1993.

FOR FURTHER INFORMATION CONTACT: Sally Craig or Wendy Frankel, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0165.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain corrosion-resistant steel from Australia are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted average margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case. The ITC also issued a negative preliminary determination with respect to cold-rolled carbon steel flat products from Australia, an investigation of which was initiated concurrently with the corrosion-resistant steel investigation.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to The Broken Hill Proprietary Company Ltd. and its U.S. subsidiaries, BHP Trading, Inc., SupraCote, Inc., and ASC Pacific, Inc., (collectively, BHP). This respondent accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided BHP with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

On September 17, 1992, the Department presented to BHP section E of the antidumping questionnaire, which concerns further manufacturing in the United States.

BHP submitted sales questionnaire responses for home market and purchase price sales in September and October, 1992. The Department issued a supplemental sales questionnaire for these sales in November, 1992. BHP submitted a response to the November, 1992, supplemental questionnaire in December, 1992.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of the like products in the United States, requested status as co-petitioners in this investigation. Petitioners amended the petition to include the steelworkers as co-petitioners on December 16, 1992.

BHP submitted its response to the portion of Section C relating to further-manufactured sales and to Section E in November, 1992. The Department issued a supplemental questionnaire for further-manufactured sales in December, 1992, as well as a letter informing BHP that it had the opportunity to remedy potential deficiencies in its submissions. BHP submitted its response to the supplemental questionnaire and to the letter on December 21, 1992. However, due to time constraints, the Department is not using the latter December 21, 1992, supplemental responses for purposes of the preliminary determination. This information will, however, be verified and considered for the final determination.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any investigation for which the preliminary determination is negative.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on January 22, 1993, BHP requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determination until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigation

The products covered by this investigation constitute a single "class or kind" of merchandise: certain corrosion-resistant carbon steel flat products. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that the class or kind of merchandise covered by this investigation also constitutes a single category of such or similar merchandise. Where, within this class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B-099 of the main building of the Department of Commerce.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several claimed adjustments or U.S. sales transactions. For a discussion of our general application of BIA, see the section on "Best Information Available" in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice. For a discussion of BHP-specific BIA applications, please see the "United States Price" and "Foreign Market Value" sections of this notice.

Fair Value Comparisons

To determine whether sales of corrosion-resistant steel from Australia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

BHP has reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not these transactions are at arms-length prices and should be included in our calculations of USP and FMV is discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is published concurrently with this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation. In addition, where certain sales to the first unrelated purchaser took place after importation into the United States, we also based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act. For ESP sales, where values under certain variables were either misreported or missing, we used the BIA for these values. As BIA, we used the highest value reported under that variable, as long as the highest value was not an aberration. For a full discussion of such situations, see the Concurrence Memorandum for this investigation, which is on file in Room B–099 of the main building of the Department.

We calculated purchase price based on packed prices, with various sales terms (EX DO, FOB W, FOB L, DLGRN, FOB D, DLPEO, DLSDY, DLCAM, DLWAS), to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, marine insurance, ocean freight, port charges, surcharges, U.S. brokerage and handling, U.S. duty, U.S. inland freight, and wharfage, in accordance with section 772(d)(2) of the Act.

We calculated ESP based on packed prices, with various sales terms (EX DO; FOB warehouse; freight allowed; freight collect; freight billed—quote; pre-pay add, back out excess; pre-pay and add; pre-pay add and back; and will call), to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign inland freight, foreign inland insurance, ocean freight, port charges, surcharges, U.S. brokerage and handling, U.S. duty, U.S. inland freight, and wharfage, in accordance with section 772(d)(2) of the Act. We made additional deductions, where appropriate, for charges (credits issued for problems related to order), credit expenses, inventory carrying costs, third party commissions, U.S. indirect selling expenses, and warehousing expenses, in accordance with section 772(e) of the Act.

In addition, we made further deductions from ESP, where appropriate, for all value added to the corrosion-resistant steel in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further-manufactured products, other than the costs associated with the imported corrosion-resistant steel, and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added was deducted from ESP.

In determining the costs incurred to produce the further-manufactured products, the Department included: (1) The costs of manufacture; (2) movement and packing expenses; and (3) general expenses, including selling, general and administrative expenses, and interest expenses.

Where we were unable to fully merge the home and U.S. market cost databases into ASCP's further manufacturing sales database due to problems with respondent's instructions, we applied as BIA the higher of the highest non-aberrant transaction margin calculated for BHP where we were able to calculate a margin or the average petition rate for the same class or kind of merchandise from the same country of origin.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of the subject merchandise to the volume of third country sales of the class or kind of subject merchandise, in accordance with section 773(a) of the Act. We found that the home market was viable for sales of corrosion-resistant steel by BHP.

We calculated FMV based on packed, FIS (free into store) prices charged to unrelated customers in the home market and to related customers in the home market whose sales we have determined to be at arm's length under our related party test, as referenced in the "Fair Value Comparisons" section of this notice. For a full discussion of how we treated these sales in this investigation, see the Concurrence Memorandum for this investigation, which is on file in room B–099 of the main building of the Department. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. Where we were not able to match at the same level of trade, we made comparisons without regard to level of trade.

We made deductions from FMV, where appropriate, for discounts, rebates, inland freight, and inland insurance in accordance with section 773(a)(4) of the Act. We did not accept a claim under 19 CFR 353.55 for an adjustment to home market price to account for differences in quantities between sales in the home and U.S. markets (item mass adjustment) because respondent did not provide a correlation between the cost differentials submitted for different quantity ranges and the prices offered on different quantities in the home and U.S. markets. We did not accept an additional claim under 19 CFR 353.55 to apply a quantity discount to all home market sales when discounts were granted to at least 20 percent of sales of such or similar merchandise in the home market. This is because respondent provided insufficient explanation for the calculation or derivation of certain of the constructive quantity discount amounts, which were applied by respondent to the sales that had no actual quantity discounts. For a full discussion of these claimed adjustments, see the Concurrence Memorandum for this investigation, which is on file in room B–099 of the main building of the Department. We rejected a claim for technical service expenses under the computer variable TECHSERH because the narrative response stated that such expenses were included under the "other expense" variable (OTHEXPH), which we accepted. Although we accepted a claim for warranty expenses under the computer variable WARRH, we rejected a claim for warranty expenses under the computer variable WARRIH because respondent provided no explanation for this variable in its narrative response.

For home market to purchase price comparisons, in accordance with section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, direct advertising expenses, post-sale warehousing expenses, and warranty expenses. Where appropriate, we added U.S. third-party commissions to FMV and deducted from FMV the weighted-average home market indirect selling expenses, including inventory carrying costs, technical service expenses, and other indirect selling expenses, up to the amount of the third-party commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1). We deducted home market packing costs and added U.S. packing costs. We also made adjustments, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57.

For home market to ESP comparisons, we made deductions, where appropriate, for credit expenses, direct advertising expenses, and warranty expenses. Where appropriate, we also deducted from FMV the weighted-average home market indirect selling expenses, including inventory carrying costs, technical service expenses, and other indirect selling expenses, up to the amount of indirect selling expenses and third-party commissions attributable to the foreign input product for those U.S. sales which have undergone further manufacturing in the United States, in accordance with 19 CFR 353.56(b). We deducted home market packing costs and added U.S. packing costs. We also made adjustments, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of corrosion-resistant steel from Australia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
BHP	21.47
All others	21.47

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by the 135th day after the date of publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2417 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-433-803]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Austria

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Judith Wey or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-6320 or (202) 482-5288, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) from Austria are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Voest Alpine Stahl AG (Voest). Voest accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided Voest with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire response.

Since the Department determined at initiation that it had reasonable grounds to believe or suspect that Voest had sold cold-rolled steel in Austria at prices which were below Voest's cost of production, the Department also presented a cost of production and constructed value questionnaire (section D) to Voest.

Voest submitted sales and cost questionnaire responses in September and October 1992. Citing significant deficiencies in Voest's responses, the Department issued a supplemental sales questionnaire on November 5, 1992. Voest submitted its response to this supplemental questionnaire on November 19, 1992.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in this investigation. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On December 11, 1992, we notified respondent that we would allow additional time (until December 21, 1992) for it to provide additional information and remedy deficiencies in its responses. Voest submitted no additional information by the December 21, 1992, deadline.

Voest's section D response was determined to be significantly deficient, and on January 6, 1993, the Department essentially re-issued the section D questionnaire to Voest in the form of a deficiency letter and requested full responses. Voest's supplemental section

D response was received on January 21, 1993.

In a telephone conversation on January 12, 1993, we requested that counsel for Voest confirm, in writing, that Voest had reported all home market sales of the subject merchandise during the POI in its home market sales (section B) response. On January 13, 1993, Voest submitted a letter indicating that its home market sales listing consisted only of sales of identical or similar merchandise that were matched to products sold by Voest in the U.S. market during the POI. On January 15, 1993, Voest requested that it be allowed to submit additional information concerning the unreported home market sales of the subject merchandise.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on January 22, 1993, Voest requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determination until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigation

The products covered by this investigation constitute a single "class or kind" of merchandise: certain cold-rolled carbon steel flat products. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that the class or kind of merchandise covered by this investigation constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Austria to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Although Voest responded to the Department's questionnaires, as discussed in the "Best Information Available" section of this notice below, it failed to report the majority of its home market sales. In fact, it appears that Voest may have failed to report over 90 percent of its home market sales of such or similar merchandise. Therefore, in accordance with section 776(c) of the Act, our results are based on best information available (BIA). As BIA, we used price and constructed value information provided in the petition. We compared actual U.S. import prices and average customs value U.S. prices derived from IM–145 import statistics to actual home market prices and constructed value. We based our BIA margin on an average of all of the margins in the petition.

United States Price

When basing USP on actual invoice prices of cold-rolled sheet products sold by Voest in the United States, petitioners made adjustments for movement charges based on the average CIF charges for those transactions, as derived from the corresponding IM–145 data. Petitioners also made adjustments for U.S. duty. In accordance with section 772(d)(1)(C) of the Act, petitioners added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed.

When basing USP on average customs value derived from IM–145 statistics, petitioners added to USP the amount of the VAT that would have been collected, had the exported merchandise been taxed.

Foreign Market Value

Petitioners calculated FMV based on home market prices derived from a market research report concerning cold-rolled sheet sold in Austria. The market research report contained information on base prices, width/thickness add-ons and other add-ons, so that home market prices could reflect certain product characteristics. Petitioners made deductions for rebates, based on information in the market research report. Petitioners made circumstance-of-sale adjustments for differences in credit expenses and the VAT.

Petitioners also calculated FMV based on constructed value information provided in the petition. Petitioners based constructed value on Voest's alleged average process costs for cold-rolled coils, adding amounts for depreciation, selling, general, and administrative expenses, and interest expenses. Petitioners added the statutory minimum eight percent for profit. Petitioners made adjustments to account for the possible variance between the costs of production for specific cold-rolled coils and the average cold-rolled coil costs of production.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Best Information Available

The Department's questionnaire clearly states that all sales of the subject merchandise during the POI must be reported. In our November 5, 1992, deficiency letter, we stated that "all home market sales of the subject merchandise should be reported. If you have not provided a complete sales listing, revise your response accordingly." As discussed above, on January 13, 1993, Voest submitted a letter indicating that it did not report all home market sales of the subject merchandise during the POI, but instead reported only those home market sales that were matched to U.S. sales.

When comparing the total volume of sales as reported in Voest's section A response to the total volume of reported home market sales, it becomes apparent that Voest has failed to report the vast majority of its home market sales.

Since the issuance of the questionnaire, Voest was informed that all home market sales of the subject merchandise made during the POI should be reported. Although Voest had the opportunity on three separate occasions to provide the Department with these sales, it has failed to provide this information.

The Department has allowed respondents in other concurrent steel cases to provide limited reporting of home market sales which the respondents claimed would never be matched to U.S. products (*i.e.*, product code, product control number, quantity, date of sale, sales invoice number, and product characteristics as outlined in Appendix V of the Department's questionnaire). In this case, however, Voest did not request that it be allowed not to report these sales or that it be permitted to provide limited reporting. Without the benefit of product characteristic information for all unreported home market transactions, the Department cannot confirm that unreported merchandise would not provide the most suitable match for a U.S. sale.

In Brass Sheet and Strip From Sweden; Final Results of Antidumping Duty Administrative Review (57 FR 29278, July 1, 1992), the Department found that respondent's failure to report all home market sales of the subject merchandise "constituted 'noncompliance with an information request' within the meaning of *Olympic Adhesives, Inc.* v. *United States* (*Olympic*), 899 F.2d 1565, 1573 (Fed. Cir. 1990), which noncompliance justifies, indeed dictates, use of BIA here * * *. [T]he fact remains that the incomplete and inadequate responses rendered the Department unable to determine accurately the extent to which (respondent) may have sold its merchandise in the United States at prices less than foreign market value * * *."

In *Olympic,* the Court noted that "if responses provided to an information request are only partially complete in that not all questions requiring a response are answered or answers to questions do not fully or accurately supply the information requested, partial completeness under section 1677e(b) may justify resort to the best information available rule * * *. Otherwise, alleged unfair traders would be able to control the amount of antidumping duties by selectively providing ITA with information." *Olympic* at 1572.

Given that the Department has put respondents on notice of the need for strict adherence to its reporting requirements and the treatment of other respondents in companion steel investigations, we have no alternative but to assign Voest a margin based on BIA for the preliminary determination.

In determining what margin to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II–B to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina.

In this case, Voest apparently has attempted to comply with the Department's requests for information. Therefore, we have determined the BIA to be the average of all of the margins in the petition.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel from Austria that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Voest Alpine Stahl AG	19.50
All Others	19.50

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Steel Products from Austria (57 FR 57881, December 7, 1992), which is 0.03 percent *ad valorem,* will be subtracted from the dumping margin for deposit or bonding purposes, resulting in a cash deposit rate of 19.47 percent for Voest and all other exporters.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determination by the 135th day after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2418 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–423–803, A–423–804, and A–423–805]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Wells or Michelle Frederick, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3003 or (202) 482–0186, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), and certain cut-to-length carbon steel plate (steel plate) from Belgium are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On July 29, 1992, the Department of Commerce (the Department) published in the **Federal Register** notice of an addendum (57 FR 33487) to its notice of initiation. The addendum explained that a company that decided to participate in an investigation as a voluntary respondent would be considered a mandatory respondent once it had submitted a questionnaire response.

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department presented antidumping duty questionnaires for cold-rolled steel and hot-rolled steel to Sidmar N.V. (Sidmar), for hot-rolled steel to Cockerill Sambre S.A. (Cockerill Sambre), and for steel plate to S.A. Forges de Clabecq (Clabecq). Within each class or kind of merchandise, these respondents accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI).

In addition, we provided questionnaires to companies that had notified us of their intent to submit voluntary responses for certain classes or kinds of merchandise, as follows: Cockerill Sambre for cold-rolled steel and steel plate; S.A. Fabrique de Fer de Charleroi (FFC) for hot-rolled steel and steel plate; and Usines Gustave Boel for hot-rolled steel and cold-rolled steel.

We also provided all of the above-named companies with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

On August 31, 1992, the Department received notice, transmitted through the Belgian Embassy in Washington, that Cockerill Sambre would not respond to the questionnaire. On September 4, 1992, the Department advised Cockerill Sambre that failure to respond to the questionnaire would result in the use of best information available (BIA) for purposes of estimating Cockerill Sambre's LTFV sales of hot-rolled steel.

Usines Gustave Boel submitted no questionnaire responses in any of these investigations, and FFC did not submit a questionnaire response in the hot-rolled steel proceeding.

As stated in our August 19, 1992, questionnaire cover letters to those firms indicating a desire to respond voluntarily, non-mandatory respondents will be subject to the "all others" deposit rate in proceedings where they submitted no questionnaire response. Because FFC submitted a response in the steel plate investigation, it is treated as a mandatory respondent for that product only.

On September 17, 1992, the Department presented to Sidmar section E of the antidumping questionnaire, which requested information on value added to hot-rolled and cold-rolled products that underwent further manufacture after importation into the United States.

Clabecq, FFC, and Sidmar submitted sales questionnaire responses in September and October 1992. The Department issued supplemental sales questionnaires in November 1992. Clabecq, FFC, and Sidmar submitted responses to these supplemental questionnaires in November and December 1992.

On December 11, 1992, we notified respondents that we would allow additional time (until December 21, 1992) for them to remedy deficiencies in, or otherwise supplement, their questionnaire responses. We received supplemental responses from FFC and Sidmar in December 1992. However, due to time constraints, the Department is not using these latest responses for purposes of the preliminary determinations. This information will, where appropriate, be verified and considered for the final determinations.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in these investigations. The petitions were amended to include the Steelworkers as co-petitioners on December 16, 1992.

In November 1992, petitioners alleged that Clabecq and FFC sold steel plate in the home market at prices below their respective costs of production. In addition, petitioners alleged that Sidmar sold hot-rolled and cold-rolled steel in Belgium at prices below Sidmar's costs of production for these products. On December 21, 1992, the Department determined that it had reasonable grounds to believe or suspect that Clabecq and FFC had sold steel plate in the home market at below cost prices. Cost investigations were therefore initiated in accordance with section 773(b) of the Act. On January 12, 1993, the Department determined that it had reasonable grounds to believe or suspect that Sidmar had sold cold-rolled steel in the home market at below cost prices. Therefore, a cost investigation was initiated in accordance with section 773(b) of the Act. The Department did not find reason to believe or suspect that Sidmar sold hot-rolled steel in the home market at below cost prices. The Department issued to Clabecq and FFC cost of production questionnaires (section D) on December 23, 1992. The Department issued to Sidmar a section D questionnaire on January 13, 1993. Responses to the section D questionnaire were not received in time for the preliminary determinations. Therefore, we will address the issue of whether respondents were selling subject merchandise in Belgium at below cost prices in our final determinations.

On November 24, 1992, petitioners amended the petitions in these investigations to allege the existence of critical circumstances with respect to imports of hot-rolled steel, cold-rolled steel, and steel plate from Belgium. On December 1, 1992, the Department sent letters to Clabecq, FFC, and Sidmar, requesting information on volume and value of shipments of the subject merchandise to the United States. We received their responses in December 1992 and January 1993.

On December 30, 1992, petitioners again amended the hot-rolled steel petition by providing additional information on the appropriate BIA margin for Cockerill Sambre.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on January 14, 1993, Clabecq requested that, in the event of an affirmative preliminary determination in the investigation of steel plate, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Sidmar filed a similar request on January 22, 1993, with respect to the hot-rolled steel and cold-rolled steel investigations. Therefore, we are postponing the final determinations for these investigations until the 135th day after the publication of this notice in the **Federal Register**.

Scopes of the Investigations

The products covered by these investigations constitute three separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina (Cold-Rolled Steel From Argentina), which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of products covered by these investigations constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping questionnaire, which is on file in room B–099 of the main building of the Department of Commerce.

Both Clabecq and Sidmar reported that they made home market sales of secondary merchandise. As discussed in Appendix II to Cold-Rolled Steel From Argentina, we have not analyzed any of Clabecq's or Sidmar's home market sales of secondary merchandise because the companies are unable to report the product specifications of those products.

Fair Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, and steel plate from Belgium to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Both Clabecq and Sidmar reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include these transactions in our calculations of FMV is discussed in Appendix II to Cold-Rolled Steel From Argentina, which is being published concurrently with this notice.

Clabecq and FFC failed to prepare their model match concordances according to the instructions set forth in Appendix V to our antidumping questionnaire. However, because of the limited number of U.S. and home market models involved, and the relatively small size of the data base, we were able to correct both companies' deficient model matching. For Clabecq, there was sufficient information on the record that we were able to adjust for differences in merchandise. With respect to FFC, where the corrected matching methodology resulted in the use of home market models for which difference in merchandise data was not on the record, statements in the questionnaire response implied that, as BIA, these model matches would be adverse to respondent. This issue will be carefully examined at verification.

Clabecq reported U.S. prices and home market prices on different weight bases. However, because statements on the record by Clabecq indicate that Clabecq's improper reporting resulted in higher margins, we have not attempted to adjust the reported prices to correct for this inconsistency. This issue will be carefully examined at verification.

Because Cockerill Sambre failed to respond to our questionnaire with respect to hot-rolled steel, we based our determination on best information available (BIA) pursuant to 19 CFR 353.37. In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II to Cold-Rolled Steel From Argentina.

In this case, Cockerill Sambre has been a noncooperative respondent since it did not respond to the Department's antidumping questionnaire for hot-rolled steel. Therefore, we based our determination on the higher of (1) the highest margin based on acceptable information in the petition; or (2) the margin calculated for Sidmar for hot-rolled steel (the other respondent in that investigation). We did not consider petitioners' December 30, 1992, petition amendment for the hot-rolled steel preliminary determination.

United States Price

For Clabecq steel plate, FFC steel plate and Sidmar cold-rolled steel, we based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated. For Sidmar hot-rolled and cold-rolled steel, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

In accordance with section 772(d)(1)(C) of the Act, we added to USP, for both purchase price and ESP comparisons, the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed. Because there were two VAT rates in effect during the POI, we calculated VAT for each U.S. sale using the rate effective on the date of the U.S. sale. Because some home market sales were not subject to VAT, the two rates used were adjusted to reflect the average imposition rate of VAT on home market sales.

A. Clabecq

For Clabecq, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. For purposes of the preliminary determination, we accepted Clabecq's claim that sales to one customer were not related party transactions. We made deductions, where appropriate, for the following movement charges in accordance with section 772(d)(2) of the Act: foreign inland freight and foreign brokerage and handling.

We recalculated credit expenses because Clabecq's reported figures were calculated using incorrect credit periods and interest rates.

B. Cockerill Sambre

To calculate USP for sales of hot-rolled steel by Cockerill Sambre, we applied BIA as detailed in Appendix II to Cold-Rolled Steel From Argentina. Because we determined BIA to be the margin calculated for Sidmar for hot-rolled steel, the U.S. prices leading to that margin are discussed in part D of this section, below.

C. FFC

We calculated purchase price based on c.i.f., duty paid prices to unrelated customers in the United States. We made deductions, where appropriate, for the following movement charges in accordance with section 772(d)(2) of the Act: Foreign inland freight; foreign brokerage and handling; ocean freight; marine insurance; U.S. duties, including harbor maintenance and merchandise processing fees; and U.S. brokerage and handling charges.

We recalculated inland freight charges to be VAT-exclusive because FFC's reported home market prices were inclusive of VAT that FFC paid on charges for freight services.

We recalculated the credit expenses because FFC's reported figures were calculated using the incorrect interest rates.

D. Sidmar

For sales of cold-rolled steel, we calculated purchase price based on packed, f.o.b., c&f or c.i.f., duty paid prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, and the following movement charges in accordance with section 772(d)(2) of the Act: Foreign inland freight; foreign brokerage and handling; marine insurance; ocean freight; wharfage; U.S. duties; harbor maintenance and merchandise processing fees; U.S. brokerage and handling; and U.S. inland freight.

For sales of both hot-rolled and cold-rolled steel, we calculated ESP based on packed, prepaid, collect-at-customer, or collect-at-plant prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, and for the following movement charges in accordance with section 772(e) of the Act: Foreign inland freight; foreign brokerage and handling; ocean freight; marine insurance; U.S. duties, including harbor maintenance and merchandise processing fees; U.S. brokerage and handling; U.S. inland freight from port to plant; and U.S. inland freight from plant to customer. We also made deductions, where appropriate, for direct and indirect selling expenses, in accordance with section 772(e) of the Act, as follows: Direct expenses including credit, related party commissions, Belgium-incurred warranty expenses, and U.S.-incurred warranty expenses; and indirect selling expenses including inventory carrying costs and product liability expenses.

In accordance with the Department's instructions, Sidmar reported full information for a sample of its POI ESP sales of cold-rolled products. Therefore, in calculating the overall weighted-average margin percentage, the ESP margin calculated on the sample sales was weighted by the quantity reported for the entire universe of Sidmar's POI ESP sales of cold-rolled products.

We recalculated Belgium-incurred warranty expenses because the figures reported in the sales listing could not be reconciled with the methodology reported in the narrative part of Sidmar's questionnaire response. We also deducted an amount for U.S.-incurred warranty expenses which Sidmar reported in its narrative, but did not include in its sales listing. We accepted Sidmar's claim, for purposes of these preliminary determinations, that commissions paid to a related party for sales made in the U.S. were at arm's length. For both hot-rolled and cold-rolled products, we have treated the commission expense reported in the Sidmar's U.S. sales listing as denominated in U.S. dollars. Although Sidmar's computer variable description indicated that the commission amount was denominated in Belgian francs, Sidmar's narrative response clearly indicated that the figure reported was in dollars.

We recalculated credit, which Sidmar had incorrectly calculated on a discount-inclusive, rather than discount-net, basis.

In addition, we made further deductions, where appropriate, for all value added to the hot-rolled and cold-rolled steel in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported flat-rolled steel, and a proportional amount of any profit related to the further manufacturer. Profit was calculated by deducting from the sales price of the finished product the total cost of production of the imported product, as well as all applicable movement charges, discounts, rebates, and commissions. The total profit was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted.

In determining the costs incurred to produce the hot-rolled steel or cold-rolled steel product, we included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general expenses, including selling, general, and administrative expenses, and interest expenses.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value ("FMV"), for each respondent and each class or kind of merchandise, we compared the volume of home market sales of the subject merchandise to the volume of third country sales of that merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of steel plate by Clabecq and FFC and hot-rolled steel and cold-rolled steel by Sidmar.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. Where we were not able to match at the same level of trade, we made comparisons without regard to level of trade.

For all comparisons to purchase price sales, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses. For all respondents, we made circumstance-of-sale adjustments for differences between the amount of VAT collected on home market sales and the amount that would have been collected on U.S. sales had the exported merchandise been taxed. We also made adjustments, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57.

For Clabecq and Sidmar, we deducted home market packing costs and added U.S. packing costs. FFC reported that it did not incur packing costs on U.S. or home market sales.

We calculated FMV based on delivered prices (FFC); delivered or ex-factory prices (Clabecq); and ex-works and free delivered prices (Sidmar). All were home market prices to unrelated customers and/or to related customers whose sales we have determined to be at arm's length, as discussed in the "Fair Value Comparisons" section of this notice.

A. Clabecq

With respect to Clabecq's steel plate sales, for home market to purchase price comparisons, we made deductions, where appropriate for discounts, rebates, and foreign inland freight, in accordance with section 773(a)(4) of the Act.

We also deducted from FMV the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average of indirect selling expenses paid on the home market sales, in accordance with 19 CFR 353.56(b)(1). Home market indirect selling expenses consisted of, where appropriate, product liability premiums.

We recalculated credit expenses because Clabecq's reported figures were calculated using incorrect credit periods and interest rates, and were not calculated on a discount-net basis.

Since there were no warranty claims made with respect to POI sales of steel plate, we have disallowed Clabecq's reported warranty expense.

Where appropriate, we adjusted Clabecq's reported amount for similar merchandise adjustment as described above in the "Fair Value Comparisons" section of this notice.

B. Cockerill Sambre

To calculate FMV for Cockerill Sambre, we applied BIA as detailed in Appendix II to Cold-Rolled Steel from Argentina. Because we determined BIA to be the margin calculated for Sidmar for hot-rolled steel, the FMVs leading to that margin are discussed in part D of this section, below.

C. FFC

With respect to FFC's steel plate sales, for home market to purchase price comparisons, we made deductions, where appropriate, for foreign inland freight and quality inspection expenses.

We recalculated credit using the home market short-term interest rate in effect during the POI. Where appropriate, we adjusted FFC's reported amount for similar merchandise adjustment as described above in the "Fair Value Comparisons" section of this notice.

D. Sidmar

Sidmar failed the arm's length test for sales of cold-rolled products to certain related customers in the home market. As a result, home market sales to those related customers were not used in calculating FMV. For U.S. sales that, as a result of this exclusion, no longer had a model match using Sidmar's concordance, we applied BIA as detailed in Appendix II to Cold-Rolled Steel From Argentina.

For all home market sales, technical service expenses that Sidmar had reported as direct selling expenses were reclassified as indirect selling expenses because, based on Sidmar's description, these expenses would have been incurred regardless of whether sales were made.

Finally, Sidmar claimed that end users constitute two distinct levels of trade based upon whether or not the customer is a part of the automotive industry. However, since Sidmar provided insufficient information to support its claim that sales to automotive end users constitute a level of trade distinct from sales to other end users, we have considered all sales to end users as a single level of trade for purposes of our preliminary determinations.

Purchase Price Comparisons

With respect to Sidmar's cold-rolled sales, for home market to purchase price comparisons, we made deductions, where appropriate for discounts, rebates, and foreign inland freight.

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, differences in warranty expenses (including both Belgium- and U.S.-incurred warranty expenses), and commissions.

We adjusted for commissions as follows: Where commissions were paid on some home market sales used to calculate FMV, we deducted from FMV both (1) indirect selling expenses attributable to those sales on which commissions were not paid; and (2) commissions. The total deduction was capped by the amount of the commission paid on the U.S. sale. Where no commissions were paid on home market sales used to calculate FMV, in accordance with 19 CFR 353.56(b)(1), we deducted the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average of indirect selling expenses paid on the home market sales. Home market indirect selling expenses included advertising, technical service expenses, warranty expenses, and inventory carrying expenses. Finally, the amount of the commission paid on the U.S. sale was added to FMV.

We recalculated Belgium-incurred warranty expenses because the figures reported in the sales listing could not be reconciled to the methodology reported in the narrative part of Sidmar's questionnaire response. We also deducted an amount for U.S.-incurred warranty expenses which Sidmar reported in its narrative, but did not include in its sales listing. We accepted Sidmar's claim, for purposes of these preliminary determinations, that commissions paid to a related party for sales made in the U.S. were at arm's length.

ESP Comparisons

With respect to Sidmar's hot-rolled sales, for home market to ESP comparisons, we made deductions, where appropriate, for discounts, rebates, and foreign inland freight. We also deducted direct expenses including warranty expenses, credit, and commissions. Finally, we deducted the weighted-average home market indirect selling expenses, including, where appropriate, advertising, technical services and inventory carrying costs. Where commissions were paid in both markets, the deduction for home market indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales. Otherwise, the deduction for home market indirect selling expenses was capped by the sum of U.S. commissions paid (if any) and U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b)(1) and (2).

For home market to ESP comparisons that involved further manufacturing in the United States, the cap to the deduction for home market indirect selling expenses was the portion of U.S. indirect selling expenses and the portion of commissions (if any) attributable to the foreign-produced input product.

We deducted the amount of VAT collected on home market sales and added the amount that was not collected on the U.S. sale by reason of exportation of the merchandise.

We recalculated credit, which Sidmar had incorrectly calculated on a discount-inclusive, rather than discount-net, basis.

For hot-rolled steel, we did not deduct amounts for related party commissions that were reported as third party payments; similarly, for cold-rolled steel, we did not deduct amounts for related party commissions that were reported as rebates and third party payments. These deductions were denied for the preliminary determination because Sidmar did not adequately show that these payments represented arm's length transactions.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determinations.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of hot-rolled steel, cold-rolled steel, and steel plate from Belgium. Pursuant to section 733(e)(1) of the Act, we have analyzed the allegations using the methodology described in Appendix II to Cold-Rolled Steel From Argentina.

To determine whether there have been massive imports of hot-rolled steel, cold-rolled steel, and steel plate, we compared, on a company- and class-or-kind-specific basis, export volume for the five months subsequent to the filing of the petition to export volume for the five months prior to the filing of the petition, using data submitted by Clabecq, FFC, and Sidmar.

In the case of Sidmar, we found that imports of the hot-rolled steel and cold-rolled steel during the period subsequent to receipt of the petition have been massive. Because Cockerill Sambre failed to participate in the investigation, we assume, as BIA, that its shipments to the United States have also been massive since the filing of the petition. In the cases of Clabecq and FFC, we found that imports of steel plate during the period subsequent to receipt of the petition have not been massive.

To determine whether the importers of hot-rolled steel and cold-rolled steel from Belgium knew, or should have known, that the products were being sold at less than fair value, we first considered the preliminary margins in these investigations, as discussed in Appendix II to Cold-Rolled Steel From Argentina. The margins do not indicate that importers of hot-rolled steel from Belgium knew, or should have known, that Cockerill Sambre and Sidmar were selling that product at prices below FMV. The margin for cold-rolled steel does not indicate that importers of cold-rolled steel from Belgium knew, or should have known, that Sidmar was selling that product at prices below FMV.

Therefore, we must determine whether there is a history of dumping in the United States or elsewhere of hot-rolled steel and cold-rolled steel from Belgium. In this case, we find that there is a history of dumping of hot-rolled steel and cold-rolled steel from Belgium because an antidumping duty order was issued covering imports into Mexico of hot-rolled steel and cold-rolled steel from the European Community.

Based on our analyses, we preliminarily determine that critical circumstances exist with respect to all companies' imports of hot-rolled steel and cold-rolled steel from Belgium. We also preliminarily determine that critical circumstances do not exist with respect to imports of steel plate from Belgium.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel plate from Belgium that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. For imports of cold-rolled steel and hot-rolled steel, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel from Belgium that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	Critical circumstances
Hot-Rolled Steel:		
Cockerill Sambre	4.87	Yes.
Sidmar	4.87	Yes.
All Others	4.87	Yes
Cold-Rolled Steel:		
Sidmar	13.10	Yes.
All Others	13.10	Yes.
Steel Plate:		
Clabecq	0.77	No.
FFC	11.07	No.
All Others	0.88	No.

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "(n)o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its preliminary affirmative determinations in the concurrent countervailing duty investigations involving sales in the United States of hot-rolled steel, cold-rolled steel, and steel plate from Belgium, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the AD deposit rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If any of the final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determinations by the 135th day after the publication of this notice in the **Federal Register**.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2419 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–351–814, A–351–815, A–351–816, and A–351–817]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Bruce Harsh or Alain Letort, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3793.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Brazil are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992 (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 10, 1992, Companhia Siderúrgica Paulista (COSIPA), one of the respondents named in the petition, informed the Department of Commerce (the Department) that it had not exported the subject merchandise to the United States during the period covered by these investigations. Therefore, on August 19, 1992, the Department presented antidumping duty questionnaires to the two remaining respondents, Companhia Siderúrgica Nacional (CSN) and Usinas Siderúrgicas de Minas Gerais, S.A. (USIMINAS). We also provided CSN and USIMINAS with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

On September 3, 1992, petitioners requested that the Department expand the period of investigation (POI) for COSIPA only in order to capture sales made by COSIPA during the second half of 1991. Petitioners alleged, *inter alia*, that the Department could not capture a representative sample of Brazilian steel exports to the United States without including sales by COSIPA, which has traditionally been a high-volume steel supplier in this market. On September 14, 1992, the Department denied this request, on the grounds that none of the four reasons the Department normally requires to extend the period of investigation (long-term sales contracts, seasonal sales patterns, custom or special-order sales, or unusual sales depression resulting in too few sales for an adequate investigation) were present in these cases. Subsequent to the decision not to include COSIPA in these investigations, however, several facts came to the Department's attention which warranted revisiting the issue. These facts consisted of substantial shipments by COSIPA of the products under investigation during the second half of the POI when, by COSIPA's own admission, there should have been no shipments to the United States after March 1992. On October 8, 1992, the Department, stating that a POI which did not capture any sales by COSIPA was not representative of the normal pattern of trade in steel products imported from Brazil, expanded the POI (for COSIPA only) to the period July 1, 1991 through June 30, 1992, and presented an antidumping questionnaire and model computer program to COSIPA. On November 3, 1992, COSIPA informed the Department of its decision not to participate in these investigations and not to answer the questionnaire.

CSN and USIMINAS submitted sales questionnaire responses in October 1992. As noted above, COSIPA did not submit a sales questionnaire response to the Department. The Department issued supplemental sales questionnaires in November of 1992 to CSN and USIMINAS. CSN and USIMINAS submitted the responses to these supplemental questionnaires in December.

On June 30, 1992, petitioners alleged that COSIPA and USIMINAS sold cold-rolled steel, hot-rolled steel, and steel plate in Brazil at prices which were below the cost of production. On July 20, 1992, the Department determined that it had reasonable grounds to believe or suspect that USIMINAS had sold cold-rolled steel in Brazil below cost, and, therefore, initiated a cost investigation in accordance with section 773(b) of the Act. That same day, the Department determined that it could not initiate a cost investigation on COSIPA or on hot-rolled steel and steel plate from USIMINAS because petitioners had relied for their home-market price information on a study prepared by a consulting firm which petitioners were unwilling to identify. The Department issued USIMINAS section D of the antidumping questionnaire for cold-rolled steel only on August 19, 1992. On October 13, 1992, petitioners pointed out that home-market price information in USIMINAS' own response to section A of the antidumping questionnaire precisely matched the price information in the consulting firm's study. On October 16, 1992, the Department determined—on the basis of (a) the new home-market price information provided by USIMINAS in its response to section A of the antidumping questionnaire, and (b) the cost data contained in petitioners' cost allegation of June 30, 1992—that it had reasonable grounds to believe or suspect that USIMINAS had sold hot-rolled steel and steel plate in Brazil below cost, and, therefore, initiated additional cost investigations in accordance with section 773(b) of the Act. On the same date the Department issued section D of the antidumping questionnaire to USIMINAS for those products. USIMINAS responded to section D on October 19, 1992, for cold-rolled steel, and on December 7, 1992, for hot-rolled steel and steel plate.

On July 14, 1992, petitioners alleged that CSN sold corrosion-resistant steel in Brazil at prices which were below CSN's cost of production. On July 20, 1992, the Department determined that it could not initiate a cost investigation because petitioners had relied for their home-market price information on a study prepared by a consulting firm which petitioners were unwilling to identify. On October 16, 1992, petitioners pointed out that home-market price information in CSN's own response to section A of the antidumping questionnaire precisely matched the price information in the consulting firm's study. On October 21, 1992, the Department determined—on the basis of (a) the new home-market price information provided by CSN in its response to section A of the antidumping questionnaire, and (b) the cost data contained in petitioners' cost allegation of June 30, 1992—that it had reasonable grounds to believe or suspect that CSN had sold corrosion-resistant steel in Brazil below cost, and initiated a cost investigation in accordance with section 773(b) of the Act. The Department issued section D of the antidumping questionnaire to CSN on October 21, 1992. On December 11, 1992, petitioners alleged that CSN sold hot- and cold-rolled steel in Brazil at prices which were below CSN's cost of production. The Department is currently reviewing these allegations.

On January 19, 1993, petitioners requested that, for any of these investigations where the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the publication after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations where the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on January 26, 1993, CSN and USIMINAS requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain cold-rolled carbon steel flat products, certain hot-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992 through June 30, 1992 for CSN and USIMINAS, and July 1, 1991 through June 30, 1992 for COSIPA.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations also constitute a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B–099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of cold-rolled steel, hot-rolled steel, corrosion-resistant steel, and steel plate from Brazil to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

CSN and USIMINAS have reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include these transactions in our calculations of USP and FMV is discussed in Appendix II of the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is published concurrently with this notice.

Because COSIPA declined to answer the Department's questionnaire, we based our preliminary determinations for that company on the best information otherwise available (BIA), in accordance with section 776(c) of the Act. In these cases, because we deemed COSIPA to be uncooperative, we used as BIA the highest of: (1) The dumping margins calculated in the petitions, or (2) the highest dumping margin calculated for either CSN or USIMINAS with respect to the relevant class or kind of merchandise.

United States Price

In accordance with section 772(b) of the Act, we based USP for both CSN and USIMINAS on purchase price, because the subject merchandise was sold to unrelated purchasers in the United States before importation.

We made several additions to purchase price. In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of certain value-added and indirect taxes[1] that would have been collected had the Brazilian government taxed the exported merchandise. In the case of CSN only, we added the ICMS to USP during the last two months of the POI when the State of Rio de Janeiro imposed this tax on exported as well as domestically sold products.

We made additional, company-specific adjustments as follows:

A. CSN

For CSN, we calculated purchase price based on packed, f.o.b. or c. & f. prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, warehouse expenses, port and stevedore charges, and ocean freight. In a certain number of U.S. sales of hot- and cold-rolled steel, where the date of shipment was missing, we used as BIA the weighted-average of the movement charges for those sales where the date of shipment was available (see below the "Currency Conversion" section of this notice). In accordance with section 772(d)(1)(B) of the Act, we made an addition to purchase price for duty drawback, *i.e.*, import duties which were rebated or not collected by reason of the exportation of the merchandise to the United States.

B. USIMINAS

For USIMINAS, we calculated purchase price based on packed, c. & f. "free out" prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling charges, and ocean freight. We did not make the upward addition to purchase price USIMINAS had claimed for duty drawback since the respondent did not adequately document or support its claim.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home-market sales of the subject merchandise to the volume of third-country sales of each class or kind of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of hot- and cold-rolled steel by CSN and USIMINAS, corrosion-resistant steel by CSN, and steel plate by USIMINAS.

Publicly available information indicates that Brazil's rate of inflation, as measured by Brazil's INPC index ("Indice Nacional dos Preços ao Consumidor"—equivalent to the Consumer Price Index in the United States), was never less than 20 percent a month from October 1991 through April 1992. Furthermore, in each of the past five years, Brazil's annual inflation rate has never been lower than 225 percent (see Conjuntura Econômica, São Paulo, May 1992, p. 71). Under the circumstances, we have determined that Brazil's economy was hyperinflationary during the POI. In accordance with past Department practice, and in order to eliminate the distortional effects of hyperinflation, we calculated separate weighted-average FMV's for each month of the POI where product comparisons were based on identical products.

Where product comparisons were based on non-identical (similar) merchandise, we used home-market sales of similar merchandise in the same month as the date of the U.S. sale, as long as both products were produced during the month of sale, regardless of the destination. We required that both products being compared be produced during the month of the U.S. sale in order to calculate adjustments for differences in the physical characteristics of the merchandise (diffmers) based on actual variable replacement costs of manufacture. Differs were based on the difference between the variable replacement costs of manufacture on the date of sale.

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[1] These taxes included:

- Fundo de Investimento Social (FINSOCIAL), or Social Investment Fund Tax;
- Imposto sobre a Circulação de Mercadorias e Serviços (ICMS), or Tax on the Circulation of Merchandise and Services, the State-level value-added tax;
- Imposto sobre Produtos Industrializados (IPI), or Tax on Industrialized Products, the Federal value-added tax; and
- Programa de Integração Social (PIS), or Social Integration Program tax.

Where no home-market sales of similar merchandise were available for comparison in the same month as the U.S. sale, or where neither product was produced during the month of sale, regardless of destination, we used constructed value (CV) as the basis for foreign market value.

Because of Brazil's hyperinflation, we calculated CV on a monthly basis, rather than on a six-month basis (as is our normal practice), based on replacement cost of production during the month of shipment of the U.S. sale being compared.

In accordance with 19 CFR 353.58, we compared U.S. sales to home-market sales made at the same level of trade. Where we were unable to match sales at the same level of trade, we disregarded the level of trade in our comparisons.

We made an allowance for differences in commissions where commissions were paid in one market but not the other. Pursuant to 19 CFR 353.56(b)(1), we limited the allowance for differences in commissions to the amount of indirect selling expenses actually incurred in the other market.

We also adjusted for differences between certain value-added and other indirect taxes (FINSOCIAL, ICMS, IPI, and PIS) on home-market sales and that amount which would have been collected on U.S. sales if the export sales had been taxed. Because the ICMS tax rate varies with the destination of the merchandise in the home market, we simply deducted the ICMS tax from FMV and made no addition for that tax to USP, except for CSN during the last two months of the POI, when the State of Rio de Janeiro imposed the ICMS tax on exported as well as domestically sold merchandise. We also made a diffmer adjustment, in accordance with 19 CFR 353.57.

We made additional, company-specific adjustments as follows:

A. CSN

Because the overwhelming majority of its U.S. sales of hot- and cold-rolled steel products had identical matches in the home market, CSN did not quantify or report any diffmers for the small percentage of U.S. sales that had no identical, but rather similar, matches in the home market. For those sales, we based FMV on the best information otherwise available, in these cases the highest of (1) the highest non-aberrational calculated dumping margin for CSN, or (2) the average of all the margins in the petition for any company. For CSN, we calculated FMV based on prices charged to unrelated customers in the home market. CSN also sold the subject merchandise in the home market to a related end-user. We did not apply our "arm's-length" test to those related-party sales because CSN made no attempt to substantiate its claim that those sales were in fact at arm's length. We therefore disregarded CSN's related-party home-market sales. For the remainder of CSN's U.S. sales, we calculated FMV based on at-sight, ex-works prices charged to unrelated customers in the home market. Such prices do not include taxes, packing, or movement expenses.

We made deductions, where appropriate, for discounts and rebates (except those rebates that did not affect the unit price charged to the customer, or were not used in the calculation of the gross unit price). We added U.S. packing costs to the unpacked FMV.

We disallowed the circumstance-of-sale adjustment claimed by CSN for differences in credit expenses between the home market and the U.S. market, because CSN calculated credit expenses and credit revenues in the home market on a different basis and for different periods of time, and because CSN did not report the actual credit income it earned.

B. Usiminas

For USIMINAS, we calculated FMV based on prices charged to unrelated customers in the home market. USIMINAD also sold the subject merchandise in the home market to a related party which was both an end-user and a reseller of the subject merchandise. We did not apply our "arm's-length" test to those related-party sales because USIMINAS made no attempt to substantiate its claim that those sales were in fact at arm's length. We therefore disregarded USIMINAS' related-party home-market sales where the related party was an end-user. However, we did consider in our calculations sales made by that related party to unrelated purchasers in the home market. We also disregarded home-market sales of section- and third-quality products which are not comparable to the merchandise under investigation. (See Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

For USIMINAS, we calculated FMV based on f.o.b. prices charged to unrelated customers in the home market. Such prices do not include ICMS, IPI, and movement expenses. We added U.S. packing costs to the unpacked FMV.

We disallowed USIMINAS' claimed circumstance-of-sale adjustment for differences in credit expenses between the U.S. and home markets, because that company did not report interest revenue, although its response indicates that USIMINAS charged its customers interest on home-market sales.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, the Department initiated investigations to determine whether CSN's home-market sales of corrosion-resistant steel and USIMINAS' home-market sales of hot- and cold-rolled steel and steel plate were made at less than the cost of production (COP).

If over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determine that the respondent's below-cost sales were not made in substantial quantities nor over an extended period of time. If between 10 and 90 percent of a respondent's sales of a given product were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales of a given product were at prices below the COP, we disregarded all sales of that product made in substantial quantities over an extended period of time, and calculated FMV based on constructed value (CV). We disregarded such below-cost sales because the respondents failed to demonstrate, as requested by the Department in the COP questionnaire, that those below-cost sales were made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade.

In order to establish that sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in a single month during the POI and any of those sales were below the COP, or (2) if a respondent sold a product during two months or more of the POI and any of those sales were below the COP during any two of those months, then we deemed below-cost sales to have been made over an extended period of time.

We calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and home-market packing. We adjusted respondents' cost data as described below.

For CSN, the Department relied on the submitted COP and CV data except in those cases where it appeared that these costs were not appropriately quantified and/or valued.

1. CSN reported a negative interest expense because, according to its unaudited interim "correção integral" (constant currency) financial statement for the first six months of 1992, interest income exceeded interest expense during the POI. We recalculated financial expenses as a percentage of cost of goods sold (COGS), based upon CSN's audited "legislação societária" (corporate legislation) financial statement for the fiscal year ending on December 31, 1991. We did not offset financial expenses with short-term production-related interest income, since CSN did not separately identify short-term interest income in its response.

2. CSN reported general and administrative expenses (G&A) based upon its unaudited interim "correçao integral" financial statement for the first six months of 1992. We recalculated G&A as a percentage of COGS based upon CSN's audited "legislação societária" financial statement for the fiscal year ending on December 31, 1991. We adjusted G&A to include social contribution expenses and depreciation relating to G&A.

For USIMINAS, the Department relied on the submitted COP and CV data except in those cases where it appeared that these costs were not appropriately quantified and/or valued.

1. USIMINAS reported a negative interest expense because, according to its unaudited interim "correção integral" financial statement for the first six months of 1992, interest income exceeded interest expense during the POI. We recalculated financial expenses as a percentage of COGS, based upon USIMINAS' audited "legislação societária" financial statement for the fiscal year ending December 31, 1991. We did not offset financial expenses with short-term production-related interest income, since USIMINAS did not separately identify short-term interest income in its response.

2. USIMINAS reported G&A based upon its unaudited interim "correção integral" financial statement for the first six months of 1992. We recalculated G&A as a percentage of COGS based upon USIMINAS' audited "legislação societária" financial statement for the fiscal year ending December 31, 1991. We adjusted G&A to include social contribution expenses and depreciation relating to G&A. We also included operating expenses net of other income. Finally, we included non-operating expenses (net of non-operating income) because we were unable to determine whether or not those expenses were related to operations.

3. We included in COP and CV for hot- and cold-rolled steel packing costs which USIMINAS had reported in its response but improperly deducted from COP and CV. We made no addition to COP and CV for packing for steel plate because USIMINAS did not report packing costs for steel plate. We also included inventory holding costs in COP.

4. We used the variable PLATECOM (rather than the variable PLATECOM2, as suggested by the respondent) as BIA for the cost of manufacture for steel plate in our COP and CV calculations, because the variable PLATECOM2 was improperly formatted and not usable in automated data processing.

We compared home-market selling prices, net of movement charges, rebates, and invoice corrections, to the COP for each product. We found that for some products, more than 90 percent of the sales were at prices above the COP. For other products, there were fewer than 10 percent of sales at prices above the COP. For the remainder of the products, between 10 and 90 percent of the sales were at prices above the COP.

Constructed Value

For those products without an adequate number of sales at prices above COP, we based FMV on constructed value (CV), pursuant to section 773(a)(2) of the Act. In accordance with section 773(e) of the Act, we based CV on the sum of the cost of materials, fabrication, general expenses, profit, and U.S. packing. We adjusted CV as discussed in the "Cost of Production" section of this notice. In accordance with section 773(e)(1)(B)(i) of the Act, for general expenses we included in CV the respondents' actual general expenses because they exceeded the statutory minimum of 10 percent of the cost of manufacture. In accordance with section 773(e)(1)(B)(ii) of the Act, we used the statutory minimum of eight percent for profit.

Pursuant to 19 CFR 353.56, when comparing CV to purchase price, we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and commissions, as explained in the "Foreign Market Value" section of this notice.

We were unable to calculate CV for a small number of sales. For those sales, we based FMV on BIA, in these cases the highest of (1) the highest non-aberrational calculated dumping margin for the appropriate company and product, or (2) the average of all the margins in the petition for any company.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates—the "sell" rate—for Brazilian cruzeiros as published by the Banco Central do Brasil.

In hyperinflationary economies, the Department ordinarily converts movement charges on U.S. sales on the date these charges become payable. In these cases, we converted charges on U.S. sales on the date of shipment, which is the closest approximation to the date the charges become payable.

Verification

As provided in section 766(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel, hot-rolled steel, corrosion-resistant steel, and steel plate from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Producer/manufacturer/exporter	Weighted average margin (percent)
Certain Hot-Rolled Carbon Steel Flat Products:	
CSN	25.47
COSIPA	87.00
USIMINAS	24.16
All Others	45.54
Certain Cold-Rolled Carbon Steel Flat Products:	
CSN	8.47
COSIPA	88.00
USIMINAS	23.54
All Others	40.00
Certain Corrosion-Resistant Carbon Steel Flat Products:	
CSN	58.96
All Others	58.96
Certain Cut-to-Length Carbon Steel Plate:	
COSIPA	109.00
USIMINAS	37.72
All Others	73.36

The products under investigation are also subject to concurrent countervailing duty investigations. Article VI ¶5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. The Department has determined, in its Preliminary Affirmative Countervailing Duty Determination (sic) and Alignment of Final Countervailing Duty Determinations With Final Antidumping Duty Determinations: Certain Steel Products from Brazil (57 FR 57806—December 7, 1992), that the products under investigation benefitted from export subsidies under two different programs. One program, however, was terminated on December 31, 1991, and the other program resulted in a subsidy which was *de minimis*. The cash deposit rate for both programs was therefore zero. Accordingly, no adjustment to the dumping margin is required.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing. We will make our final determinations in these cases by June 12, 1993.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2420 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-122-820, A-122-821, A-122-822, and A-122-823]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jean Kemp or Art Stern, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On July 29, 1992, the Department of Commerce (the Department) published in the **Federal Register** notice of an addendum to its notice of initiations. The addendum explained that a company that decided to participate in an investigation as a voluntary respondent would be considered a mandatory respondent once it had submitted a questionnaire response.

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

The following producers and/or fabricators of the subject merchandise voluntarily asked, prior to the August 7, 1992 deadline for such requests, to receive questionnaires in this proceeding: Algoma Steel, Inc. (Algoma), and Continuous Color Coat, Ltd. (CCC). The following service centers also asked, prior to August 7, 1992, to receive questionnaires: Fedmet, Forsythe, Makagon, Manitoba Rolling Mills (MRM), Renown Steel (Renown), and Samuel. On August 18, 1992, the Department determined which companies would be required to respond, and decided not to accept voluntary responses from any service centers.

On August 19, 1992, the Department presented an antidumping duty questionnaire to Cold Metal Products, Inc. (CMP) for cold-rolled steel, Dofasco, Inc. (Dofasco) for hot-rolled steel, cold-rolled steel, and corrosion-resistant steel, IPSCO, Inc. (IPSCO) for steel plate, Sidbec-Dosco, Inc. (Sidbec-Dosco) for cold-rolled steel, and Stelco, Inc. (Stelco) for hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate.

Within each class or kind of merchandise, these respondents accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided these respondents with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses. In addition, we provided questionnaires to companies that had notified us of their intent to submit voluntary response for certain classes or kinds of merchandise, as follows: Ipsco for the hot-rolled steel investigation and Algoma for the steel plate investigation. Ipsco had already been named as a mandatory respondent in the investigation of steel plate.

Since the Department determined at initiation that it had reasonable grounds to believe or suspect that Stelco had sold steel plate in Canada at prices which were below Stelco's cost of production, the Department initiated an investigation of Stelco's sales of steel plate (57 FR 33488, July 29, 1992) and presented section D (cost of production section) of the antidumping duty questionnaire to Stelco on August 19, 1992. However, on October 20, 1992, Stelco informed the Department that it was unable to respond to section D of the questionnaire.

On August 20, 1992, the Department determined it would not accept a voluntary antidumping response from CCC because it was related to Stelco during the period of investigation and its sales would be investigated as part of

Stelco's response. On September 2, 1992, Algoma withdrew its request for voluntary respondent status in a timely fashion. On September 4, 1992, MRM withdrew its request for voluntary respondent status in a timely fashion.

On September 17, 1992, the Department presented to CMP and IPSCO section E of the antidumping questionnaire, which concerns further manufacturing in the United States. CMP and IPSCO submitted Section E responses on October 28, 1992.

The Department received sales questionnaire responses from respondents on the following dates: September 3, October 20 and October 28, 1992 (CMP); September 3, 1992, and October 20, 1992 (Dofasco); September 3, 1992, and October 20, 1992 (IPSCO); September 4, 1992, and October 20, 1992 (Sidbec-Dosco); and September 11, 1992 (Stelco). The Department issued supplemental questionnaires on the following dates: November 10, 1992, December 16, 1992, and January 6, 1993 (CMP); November 10, 1992 (Dofasco); November 6, 1992 (IPSCO); October 9, 1992, November 10, 1992, and December 15, 1992 (Sidbec-Dosco); and November 10, 1992 (Stelco). The Department received responses to these supplemental questionnaires on the following dates: November 27, 1992, and December 21, 1992 and January 22, 1993 (CMP); November 25, 1992, December 3 and 21, 1992 (Dofasco); November 24, 1992, and December 21, 1992 (IPSCO); October 22, 1992, November 25, 1992, and December 21, 1992 (Sidbec-Dosco); and November 25, 1992 (Stelco).

On December 11, 1992, we notified respondents that we would allow additional time (until December 21, 1992) for them to provide additional information and remedy deficiencies in their responses, but that we would not use December 21, 1992, submissions for our preliminary determinations.

Due to time constraints, the Department is not using the following supplemental responses received too late to be considered for these preliminary determinations: December 21, 1992 and January 22, 1993 (CMP); December 21, 1992 (Dofasco); December 21, 1992 (IPSCO); and December 21, 1992 (Sidbec-Dosco). This information will, however, be considered for the final determinations subject to verification and comment.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture of production of subject merchandise in the United States, entered an appearance as a co-petitioner in this investigation. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

Petitioners alleged that respondents had sold the following products in Canada at prices below each company's cost of production on the following dates:

CMP: Cold-rolled steel (December 8, 1992);
Dofasco: Hot-rolled steel (December 14, 1992);
IPSCO: Hot-rolled steel and steel plate (December 14, 1992);
Sidbec-Dosco: Cold-rolled steel (December 1, 1992);
Stelco: Hot-rolled steel, cold-rolled steel and corrosion-resistant steel (December 14, 1992).

The Department is considering these cost allegations. If we determine that we have reasonable grounds to believe or suspect that respondents sold one or more of the above products in Canada below cost, we will initiate additional cost investigations, as appropriate, in accordance with section 773(b) of the Act and issue section D of the antidumping questionnaire.

On January 5, 1993, the Department informed Stelco that, because it had not responded to section D of the questionnaire with regard to the steel plate investigation, Stelco would not receive any supplemental questionnaires on its sales data for steel plate.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations also constitute a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B-099 of the main building of the Department of Commerce. Dofasco, Sidbec-Dosco, and IPSCO sold non-prime (secondary) merchandise in the United States and/or Canada during the period of investigation. For a discussion of our treatment of these sales see the section on "Evaluation of Non-Prime Material" in Appendix II to the Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for Stelco's steel plate determination and that partial BIA is appropriate for CMP, and Sidbec-Dosco's cold-rolled investigations and Stelco's hot-rolled investigation. For a discussion of our general application of BIA, see the section on "Best Information Available" in Appendix II to the Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Because Stelco failed to respond to the Department's section D (cost of production) questionnaire for the investigation on steel plate, and because this failure was so significant as to render the entire response inadequate, therefore, as best information available, we are using the highest margin in the petition on steel plate from Canada, which is 68.7 percent.

On October 28, 1992, CMP responded to the Department's section C (U.S. sales) questionnaire for exporter's sales price transactions (ESP) in an untimely fashion. The Department, however, allowed all respondents the opportunity to remedy any deficiencies by December 21, 1992. Therefore, the Department will use CMP's ESP submission for the final determination, subject to comment and verification, but will apply BIA to CMP's ESP sales for the preliminary determination.

In addition, because CMP had U.S. sales with product matches that did not meet the Department's 20-percent difference in merchandise test for similar merchandise and because CMP did not provide constructed value data, we are applying a BIA margin for those U.S. sales. See "Constructed Value" section below. As best information available, for both CMP's ESP sales and its unmatched U.S. sales, we are using for the preliminary determination the average rate from the petition for cold-rolled steel from Canada, 45.73 percent.

Because Sidbec-Dosco also had U.S. sales with product matches that did not meet the Department's 20-percent difference in merchandise test for similar merchandise and because Sidbec-Dosco did not provide constructed value data, we are applying a BIA margin for those U.S. sales. As best information available, for Sidbec-Dosco's unmatched U.S. sales, we are using for the preliminary determination the average rate from the petition for cold-rolled steel from Canada, 45.73 percent.

Because Stelco did not provide adequate difference in merchandise adjustment data for the Department to conduct its 20-percent difference in merchandise test for similar merchandise, and because Stelco did not provide constructed value data, we are applying a BIA margin for those U.S. sales of hot-rolled steel, cold-rolled steel and corrosion-resistant steel with no matches. See "Constructed Value" section below. As best information available, for Stelco's unmatched U.S. sales of hot-rolled steel, we are using for the preliminary determination, the highest non-aberrant transaction margin calculated for Stelco from among the sales of hot-rolled steel where we were able to calculate a margin, which was 46.07 percent. As best information available, for Stelco's unmatched U.S. sales of cold-rolled steel, we are using for the preliminary determination, the average rate from the petition for cold-rolled steel from Canada, 45.73 percent. As best information available, for Stelco's unmatched U.S. sales of corrosion-resistant steel, we are using for the preliminary determination, the highest non-aberrant transaction margin calculated for Stelco from among the sales of corrosion-resistant steel where we were able to calculate a margin, which was 35.01 percent.

Fair Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Canada to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Dofasco, Sidbec-Dosco, and Stelco reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include home market sales to related parties in our calculations of USP and FMV is discussed in Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States. For CMP, IPSCO, and Stelco, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed. Canada imposes a seven-percent goods and services tax (GST) on products that are not exported.

We made additional, company-specific adjustments as follows:

A. CMP

For CMP's sales of cold-rolled steel, we calculated purchase price based on packed, f.o.b. prices to unrelated customers in the United States. We made deductions, where appropriate, for cash discounts, foreign inland freight, U.S. brokerage, and U.S. duties.

CMP reported its ESP sales data in an untimely fashion (See "Best Information Available" section). Because we are not considering CMP's ESP sales data for this preliminary determination, we based our antidumping margins for CMP's ESP sales on BIA in accordance with 19 CFR 353.37(a). For CMP's ESP sales we applied the average rate for cold-rolled steel from the petition, 45.73 percent.

B. Dofasco

For Dofasco's sales of hot-rolled steel, cold-rolled steel, and corrosion-resistant steel, we calculated purchase price based on prices to unrelated customers. We made deductions, where appropriate, for cash and other discounts, rebates, and the following movement charges: Foreign brokerage, handling charges, Foreign inland freight, U.S. duty, U.S. inland freight and U.S. brokerage and handling charges.

C. IPSCO

For IPSCO's sales of hot-rolled steel and steel plate, we calculated purchase price based on packed, f.o.b. and freight included prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, U.S. inland freight, U.S. brokerage, and U.S. duty.

We calculated ESP for sales of hot-rolled steel and steel plate based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, freight to customer, freight to stockpoint, U.S. inland freight, U.S. brokerage, U.S. duty, U.S. warehousing expenses, inventory carrying costs, credit, U.S. commissions, and U.S. incurred indirect selling expenses.

In addition, where appropriate, we made further deduction for all value added to hot-rolled steel in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs of materials, fabrication, and general expenses associated with the production of the further manufactured hot-rolled steel in the United States, and a proportional amount of profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price of the hot-rolled steel. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added was deducted.

In determining the costs incurred to produce the further manufactured hot-rolled sheet, the Department included (1) the costs of manufacture, (2) movement and packing expenses, and (3) general expenses, including selling, general and administrative expenses (SG&A), and interest expenses.

D. Sidbec-Dosco

For Sidbec-Dosco's sales of cold-rolled steel, we calculated purchase price based on packed, f.o.b. destination prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, U.S. and foreign inland freight, U.S. duty, U.S. warehousing, and U.S. brokerage. We recalculated the credit expense deduction because Sidbec-Dosco's reported credit interest calculations did not adequately explain why the interest rate was multiplied by two. We recalculated the credit expenses by dividing Sidbec's reported credit expenses by two and deducted this amount (see also the "Foreign Market Value" section below). To adjust for GST, because Sidbec-Dosco did not provide invoice prices, we multiplied the GST tax rate by the U.S. gross unit price and added this to both U.S. and home market prices. We rejected a level of trade adjustment because Sidbec-Dosco did not substantiate its claim.

E. Stelco

For Stelco, we calculated purchase price for sales of hot-rolled steel, cold-rolled steel and corrosion-resistant steel based on packed, delivered and ex-factory prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, U.S. brokerage, inland freight, and U.S. duty. Where appropriate, in addition to adding to USP the amount of GST which would have been collected on U.S. sales if the export sales had been taxed, we also made similar adjustments for provincial sales taxes (PST). We added to purchase price the amount of uncollected and rebated duties and taxes, and post-sale price increases.

We calculated ESP for Stelco's sales of corrosion-resistant steel based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, inland freight, U.S. brokerage, and U.S. duty. We made additional deductions, where appropriate, for U.S. credit, U.S. warranties, inventory carrying costs, warehousing, product liability premia, indirect selling expenses, and U.S. commissions. We added an amount to ESP for uncollected and rebated duties and taxes and post-sale price increases.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of the subject merchandise to the volume of third country sales of each class or kind of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. In accordance with 19 CFR 353.48(a), we found that the home market was viable for sales of subject merchandise by all Canadian respondents.

We calculated FMV based on home market prices. We calculated FMV based on ex-factory, ex-basis point or delivered prices, inclusive of packing, to unrelated customers. See discussion in "Fair Value Comparisons" section above, for treatment of sales to related parties in the home market. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible.

For home market to purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit and warranty expenses. Where appropriate, we also made adjustments for differences between GST on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs. Where appropriate, we also made an adjustment for physical differences in the merchandise being compared, in accordance with 19 CFR 353.57.

For home market to ESP comparisons, we made deductions, where appropriate, for credit and warranty expenses. We deducted home market packing costs and added U.S. packing costs. Where appropriate, we also made an adjustment for physical differences in the merchandise, in accordance with 19 CFR 353.57. We made additional, company-specific adjustments as follows:

A. CMP

For CMP's home market to purchase price comparisons of cold-rolled steel, we calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions for inland freight. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for differences in credit expenses, warranty expenses, and technical services expenses and we deducted interest revenue from U.S. direct selling expenses. Where appropriate, we added to FMV the amount of U.S. direct expenses. Because CMP incurred only U.S. commissions, we also deducted from FMV, where appropriate, the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1).

Because the GST was not included in the gross unit price, we did not subtract it from the home market gross unit price. In accordance with our practice, we calculated that GST which would have been collected on U.S. gross unit price sales had they been taxed and added this amount to FMV.

B. Dofasco

For Dofasco's home market to purchase price comparisons for hot-rolled steel, cold-rolled steel and corrosion-resistant steel, we calculated FMV based on prices in the home market to unrelated customers and to related customers whose sales we determined to be at arm's length under our related party test discussed in the "Fair Value Comparisons" section of this notice. We made deductions for rebates, discounts, inland freight, and home market packing expenses. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for differences in credit expenses, warehousing, warranty expenses, and technical services expenses. Where appropriate, we added to FMV the amount of U.S. direct expenses. Because Dofasco incurred only U.S. commissions, we also deducted from FMV, where appropriate, the weighted-average home market indirect selling expenses, up to the amount of commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1).

C. IPSCO

For IPSCO, we calculated FMV based on f.o.b. and freight included prices. For home market to purchase price comparisons for hot-rolled steel and steel plate, we made deductions, where appropriate, for discounts, rebates, and inland freight. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for differences in credit expenses. Additionally, for hot-rolled steel, we deducted home market commissions. Where appropriate, we added to FMV the amount of U.S. direct expenses. Because IPSCO incurred U.S. commissions only on its U.S. sales of steel plate, we deducted home market indirect selling expenses up to the amount of commissions incurred on U.S. sales from FMV for steel plate.

Because the GST was not included in the gross unit price, we did not subtract it from the home market gross unit price. In accordance with our practice, we calculated that GST which would have been collected on U.S. gross unit price sales had they been taxed and added this amount to FMV.

For home market to ESP comparisons for hot-rolled steel and steel plate, we made deductions, where appropriate, for discounts, rebates, credit expenses, product certification expenses, and inland freight. For both products, we also deducted from FMV the weighted-average indirect selling expenses, including where appropriate, inventory carrying costs, up to the amount of commissions in the other market, in accordance with 19 CFR 353.56(b)(1). For home market to ESP comparisons for hot-rolled steel, we also deducted home market commissions.

D. Sidbec-Dosco

For Sidbec-Dosco's sales of cold-rolled steel, we calculated FMV based on delivered prices to unrelated customers in the home market. We disregarded Sidbec's sales to its home market related customer, which were not at arm's length under our related party test discussed in the "Fair Value Comparisons" section of this notice. We deducted a discount for prime products. We recalculated the credit expense deduction because Sidbec-Dosco's reported credit interest calculations did not adequately explain why the interest rate was multiplied by two. We recalculated the credit expenses by dividing Sidbec's reported credit expenses by two and deducted this amount (see also the "United States Price" section above). Where appropriate, we added to FMV the amount of U.S. direct expenses. We rejected Sidbec-Dosco's claims for the following adjustments because they did not specify to which sales they applied or failed to provide the data on their computer tape in time for us to use it for the preliminary determination: rebates for defective merchandise, inland freight, and warehousing expenses.

Because the GST was not included in the gross unit price, we did not subtract it from the home market gross unit price. In accordance with our practice, we calculated that GST which would have been collected on U.S. gross unit price sales had they been taxed and added this amount to FMV.

E. Stelco

For Stelco's sales of hot-rolled steel, cold-rolled steel, and corrosion resistant steel, we calculated FMV based on delivered and ex-factory prices to unrelated customers in the home market and related customers whose sales we have determined to be at arm's length under our related party test discussed in the "Fair Value Comparisons" section of this notice. We included resales by CCC, a related party customer of Stelco. In addition to adjusting for differences between GST on home market sales and that GST which would have been collected on U.S. sales had the export sales been taxed, where appropriate, we also made similar adjustments for provincial sales taxes (PST).

For home market to purchase price comparisons of hot-rolled steel, cold-rolled steel, and corrosion-resistant steel, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for discounts, rebates, inland freight, and direct selling expenses. Where appropriate, we added to FMV the amount of post-sale price increases and U.S. direct expenses. Because Stelco incurred only U.S. commissions, we also deducted from FMV, where appropriate, the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1).

For home market to ESP comparisons of corrosion-resistant steel, we made deductions, where appropriate, for discounts, rebates, inland freight, warranties, credit expenses, and indirect selling expenses. Where appropriate, we added to FMV the amount of post-sale price increases. Because Stelco incurred only U.S. commissions, we also deducted from FMV, where appropriate, the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(1).

Constructed Value

No respondent supplied constructed value information. Therefore, for those U.S. sales for which we could not find a product concordance match or for which the product did not meet the 20-percent differences in merchandise test, we applied BIA, as explained in the "Best Information Available" section of this notice.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Company	Hot-rolled	Cold-rolled	Corrosion-resistant	Plate
CMP	N/A	35.75	N/A	N/A
Dofasco	2.85	[*]0.47	1.62	N/A
IPSCO	1.05	N/A	N/A	[*]0.03
Sidbec	N/A	10.16	N/A	N/A
Stelco	10.80	3.49	7.19	68.70
All Others	3.99	10.95	5.96	68.70

[*] Dofasco's rate for cold-rolled steel is *de minimis*. IPSCO's rate for plate is *de minimis*.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by April 12, 1993.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2421 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-405-802]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From Finland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0108 or (202) 482-4136, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cut-to-length carbon steel plate (steel plate) from Finland are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Rautaruukki Oy. This respondent accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided this respondent with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

Respondent submitted its sales questionnaire response, and the Department issued a supplemental sales questionnaire, in October 1992. Respondent submitted the response to this supplemental questionnaire in November 1992.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in this investigation. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On December 11, 1992, we notified respondent that we would allow additional time (until December 21, 1992) for it to provide additional information and remedy deficiencies in its responses. Rautaruukki submitted no new information by the December 21, 1992, deadline.

On December 14, 1992, petitioners alleged that Rautaruukki sold steel plate in Finland at prices which were below its cost of production. On January 7, 1993, the Department determined that it had reasonable grounds to believe or suspect that Rautaruukki had sold steel plate in Finland below cost, and, therefore, initiated a cost investigation in accordance with section 773(b) of the Act. The Department issued to Rautaruukki a cost of production questionnaire (section D) on January 7, 1993. Rautaruukki's response to section D was not received in time to be considered for this determination. However, we will consider this information for the final determination.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on January 15, 1993, Rautaruukki requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determination until the 135th day after the publication of this notice in the **Federal Register.**

Scope of the Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

Period of Investigation

The period of investigation is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in appendix V to the antidumping duty questionnaire, which is on file in room B-099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of certain cut-to-length carbon steel plate from Finland to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Respondent failed to provide in its model match concordance home market matches for certain U.S. sales. In addition, respondent included in the concordance certain products which do not appear to have been sold in its home market. Therefore, some U.S. sales were left without home market matches. Because of the limited size of the data base, for certain of those unmatched U.S. sales, we were able to find alternative matches among home market products. Such rematching was possible only when respondent both (1) sold home market products of the same quality and grade (the first two criteria for this class or kind of merchandise as identified in appendix V of our antidumping questionnaire) and (2) provided differences in merchandise data for the U.S. and home market products involved. For unmatched models which we were unable to rematch, we used as the best information available the highest margin calculated from among those sales for which we were able to calculate a margin.

Rautaruukki has reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include these transactions in our calculations of FMV is discussed in appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on prices to unrelated customers. We made deductions, where appropriate, for the following movement charges: Foreign brokerage, marine insurance, ocean freight, U.S. brokerage, and U.S. duty.

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed.

We disallowed the following claimed U.S. direct expenses: Advertising, technical services, quality control and other unspecified direct selling expenses. These expenses were disallowed because Rautaruukki failed to provide sufficient information regarding the expenses or because the information provided appeared to indicate that the claimed expenses were indirect. These disallowed direct expenses have been included in the indirect expenses used to offset Rautaruukki's claimed home market commissions.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value, we compared the volume of home market sales of the subject merchandise to the volume of third country sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of certain cut-to-length carbon steel plate by Rautaruukki.

We calculated FMV based on prices charged to both unrelated and related customers in the home market because we found Rautaruukki's sales to related customers to be at arm's length. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. We made deductions, where appropriate, for inland freight and discounts and rebates.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit expenses, warranty expenses, and VAT (*i.e.*, "Turnover Tax"). We deducted home market commissions and added U.S. indirect selling expenses, up to the amount of home market commissions, in accordance with 19 CFR 353.56(b)(1).

We reclassified the following claimed home market direct expenses as indirect expenses: Advertising, technical services, quality control and other unspecified direct selling expenses. These expenses were disallowed because Rautaruukki failed to provide sufficient information regarding the expenses or because the information provided appeared to indicate that the claimed expenses were indirect. We disallowed a claimed quantity adjustment because Rautaruukki failed to provide sufficient information regarding this expense to support its claim. We also disallowed Rautaruukki's various claimed rebates because Rautaruukki failed to report individual rebates in separate sales listing fields as required by our antidumping questionnaire.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the average monthly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel plate from Finland that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Rautaruukki Oy	53.37
All Others	53.37

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determination by the 135th day after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2411 Filed 2–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–806, A–427–807, A–427–808, and A–427–809]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777 or (202) 482–5288.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from France are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992 (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Usinor Sacilor (Usinor). Usinor accounted for at least 60 percent of the exports to the United States for each of the classes or kinds of subject merchandise during the period of investigation (POI). We also provided Usinor with a standard computer program for submitting, on an optional basis, completed margin analyses along with the antidumping duty questionnaire responses.

Since the Department determined at initiation that it had reasonable grounds to believe or suspect that Usinor had sold hot-rolled steel and cold-rolled steel in France at prices which were below Usinor's cost of production, the Department also presented a cost of production questionnaire to Usinor. On September 17, 1992, the Department presented to Usinor section E of the antidumping questionnaire, which concerns further manufacturing in the United States.

On October 9, 1992, in response to Usinor's requests, the Department permitted Usinor to sample sales made by related home market steel service centers and those made by certain related U.S. steel service centers. On October 14, 1992, the Department permitted the limited reporting of sales information by the related home market steel service centers based on Usinor's claim that other home market sales to unrelated parties and related parties would always provide either identical or the most similar matches to U.S. products.

Usinor submitted its response to the sales and cost sections of the questionnaire in November 1992. Usinor also submitted voluntarily a response to the cost questionnaire in the corrosion-resistant steel and steel plate investigations. Citing deficiencies in Usinor's sales response, the Department issued a supplemental sales questionnaire on November 18, 1992. At that time, we informed Usinor that if it responded to all outstanding requests for information by December 2 and 3, 1992, the due dates for the response to the supplemental questionnaire, the Department would use this information for these preliminary determinations. If, however, Usinor submitted the information after the specified due date, but no later than December 21, 1992, we stated that the Department would consider the information only in making its final determinations. Usinor submitted an incomplete response to the supplemental sales questionnaire on December 2 and 3, 1992.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of the like products in the United States, requested status as co-petitioners in these investigations. Petitioners amended the petitions to include the Steelworkers as co-petitioners on December 16, 1992.

On November 23, 1992, petitioners alleged that Usinor sold corrosion-resistant steel and steel plate in France at prices which were below Usinor's cost of production (COP). On December 22, 1992, the Department determined that it had reasonable grounds to believe or suspect that Usinor had sold corrosion-resistant steel and steel plate in France below the COP and, therefore, initiated additional COP investigations in accordance with section 773(b) of the Act. Inasmuch as Usinor had already submitted COP information for corrosion-resistant steel and steel plate in its original section D questionnaire response for hot-rolled and cold-rolled steel, the Department gave Usinor an opportunity to supplement those submissions.

On December 11, 1992, we notified Usinor that we would allow it to provide additional information and remedy any deficiencies in its responses by December 21, 1992. Usinor filed an additional submission with an accompanying computer tape on December 21, 1992. On January 6, 1993, Usinor submitted a corrected computer tape.

On January 7, 1993, the Department issued a supplemental cost and further manufacturing questionnaire in the hot-rolled and cold-rolled steel investigations.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on January 15, 1993, Usinor requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the **Federal Register.**

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full descriptions of the subject merchandise are included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the kinds of products covered by these investigations also constitute single categories of such or similar merchandise. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade. We adjusted Usinor's reported levels of trade by combining automobile manufacturers with other end users.

Fair Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate exported from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Although Usinor responded to the Department's original and supplemental sales questionnaires, as discussed in the "Best Information Available" section of this notice, it failed to provide adequate responses in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations on a timely basis for our use in the preliminary determinations. Because of this failure, we are basing the preliminary determinations in these investigations, in accordance with section 776(c) of the Act, on the best information available (BIA).

In determining what rate to use as best information available, the Department follows a two-tiered methodology, whereby the Department normally assigns lower rates to those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II–B to the notice for Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

In these cases, Usinor has been a cooperative respondent because it has attempted to comply with the Department's requests for information. Therefore, we have determined BIA to consist of the average of all the margins alleged in each of the respective petitions in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations.

Usinor did not fully report its U.S. sales of further manufactured products until after the deadline for the submission of all information to be considered for the preliminary determinations in each of these investigations. Although this is moot for the preliminary determinations in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations, the Department assigned a BIA margin to Usinor's U.S. sales of further manufactured steel plate, as described in the "United States Price" section of this notice.

United States Price

For the preliminary determinations in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations, we based USP on information in the petition. For steel plate, we have based USP on information provided by Usinor as well as information in the petition.

Petitioners provided U.S. prices based on a quoted price to U.S. customers, actual sales prices, and values derived from fourth quarter 1991, IM–145 statistics. Petitioners adjusted the actual and quoted prices by deducting foreign inland freight, ocean freight and insurance, U.S. duties, harbor maintenance and merchandising fees, and U.S. inland freight. In accordance with section 772(d)(1)(c) of the Act, petitioners added to USP the amount of value-added tax (VAT) that would have been collected had the U.S. sale been taxed.

For those allegations based upon values derived from IM–145 statistics, petitioners deducted estimated foreign inland freight expenses and added the amount of VAT that would have been collected had the U.S. sale been taxed.

For our preliminary determination in the investigation of steel plate, we based USP, in part, on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We made deductions, where appropriate, for the following movement charges: Foreign brokerage, foreign inland freight, loading, marine insurance, ocean freight, U.S. brokerage, and U.S. duty. In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of VAT that would have been collected had the U.S. sale been taxed.

For steel plate, we also based USP, in part, on BIA. Usinor had reported further manufactured sales in the United States in addition to its purchase price sales. However, Usinor's further manufactured sales response was incomplete as of the December 2 and 3, 1992, deadline for submission of information to be considered for these preliminary determinations. (See the "Best Information Available" section of this notice.) As BIA for the further manufactured U.S. sales of steel plate, we selected the highest non-aberrational calculated dumping margin from the purchase price sales transactions. See Appendix II–B to the notice for Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice, for a description of the methodology used to select BIA. We have weight-averaged this BIA margin with the weight-averaged margin calculated for all purchase price sales.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we compared the volume of home market sales of subject merchandise to the volume of third country sales to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV in each of these preliminary determinations. We found that the home market was viable for sales of each of the classes or kinds of merchandise subject to investigation.

For the preliminary determinations in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations, we based FMV on home market price quotations and constructed value (CV) information provided in the petition. Petitioners adjusted the home market delivered price quotations by deducting estimated costs for inland freight. In addition, petitioners made circumstance of sale adjustments for credit and, in the case of price quotations, for VAT. They deducted home market packing costs and added U.S. packing costs. Finally, petitioners also made adjustments for physical differences in the merchandise being compared.

Petitioners based CV on Usinor's average process costs for hot-rolled coils, adding amounts for depreciation, selling, general, and administrative expenses, and interest expenses. Adjustments were made for possible variances between the cost of production for the specific hot-rolled coils sold to the United States and an average hot-rolled coil cost.

For the preliminary determination in the steel plate investigation, we calculated FMV based on delivered prices, inclusive of packing, to unrelated customers in the home market and to related customers whose sales we have determined to be at arm's length under our related party methodology. This methodology is explained in Appendix II–A of the Preliminary Determination of Sales at Less Than Fair

Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is published concurrently with this notice. We did not include in our analysis any sales to related customers that we determined were not at arm's length. We also excluded from our analysis any sales made by related parties in France of merchandise that had been purchased from Usinor, whether or not the product purchased from Usinor had been processed, further manufactured, or resold as the same product. See the "Best Information Available" section of this notice.

For purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments for credit expenses and warranties. We also made a circumstance of sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs.

We recalculated home market credit expenses by reducing Usinor's claimed credit days because not all of Usinor's customers appear to benefit from the number of credit days reported and the Department cannot determine, from the responses to our questionnaire, which customers enjoy the different terms. Usinor also claimed a credit day for bank processing that is inconsistent with the Department's practice of using the date the funds from the sale are deposited as the date of payment.

We also recalculated Usinor's claimed U.S. credit expenses. We added credit days because Usinor reported credit days as of the time merchandise was invoiced by the related U.S. importer rather than from the time the merchandise was shipped from the mill in France. We also used the average Bankers Acceptance Rates in effect in the United States during the POI as the interest rate because Usinor subsidiaries had actual borrowings in the United States.

We disallowed Usinor's claim that warranty expenses were a direct selling expense in the home market because the reported expenses were not specific to the class or kind of merchandise.

In addition, we considered payments between related Usinor companies on U.S. sales as commissions because they were directly tied to sales. Moreover, as BIA, we determined these related party commissions to be at arm's length because Usinor provided no information addressing the arm's length criteria set out in our questionnaire. We applied the commissions to the gross unit price of the merchandise because we do not have the FOB port of export value available to us.

Best Information Available

A. Inaccurate Reporting of Product Control Numbers

On December 21, 1992, more than two weeks after the December 3, 1992, deadline for the submission of all information to be considered for the preliminary determinations, Usinor reported that home market sales listings with corrected control numbers in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations would be submitted not later than January 6, 1993. Therefore, for purposes of our preliminary determinations, we are assigning margins based on BIA in the investigations of hot-rolled steel, cold-rolled steel, and corrosion-resistant steel. We will, however, consider all information submitted by December 21, 1992, for our final determinations.

The Department's questionnaire instructs respondents to assign a unique control number to each product for every data base in which that product is reported. Usinor did not assign control numbers to its reported home market sales listings correctly in each of these three investigations, as the company admitted in a submission on December 21, 1992.

The incorrect control numbers Usinor submitted in response to the Department's supplemental sales questionnaire in the hot-rolled steel, cold-rolled steel, and corrosion-resistant steel investigations, render the computer tapes inadequate and not useable in the preliminary determinations for the following reasons: (1) Identical home market products may not have been assigned the same control numbers; (2) Home market sales that should have been matched to identical U.S. products may not have been so matched; and (3) U.S. products may not have been matched to the identical or the most similar home market product. For the Department to rely on faulty product coding as the basis for its price comparisons in these investigations would necessarily result in the Department's making incorrect product comparisons that, in turn, would thwart any appropriate price comparisons.

For the Department to use the corrected computer tapes submitted by Usinor on January 6, 1993, would require us to use information supplied well after the clearly established cut-off date for the submission of information used in making these preliminary determinations.

B. Sales of All Products Made by Usinor's Related Parties in France

Usinor has many related companies in the home market to which it "sells" each of the subject classes or kinds of steel. They, in turn, resell, reprocess, or remanufacture it. On the basis of Usinor's representations that the home market sales of these companies, involving steel purchased from Usinor, would never be appropriate for comparisons to U.S. sales, the Department permitted Usinor to report limited information for all sales made by the largest three such related companies and to report limited information for sample invoices by the others. On December 21, 1992, past the deadline for reporting information for use in the preliminary determinations, Usinor reported limited information for all the home market sales of six additional companies because an analysis of their sampled invoices revealed that certain sales would have been appropriate matches to United States sales. Later, in the course of analyzing the computer tapes submitted with the December 2 and 3, 1992, response, the Department found tens of thousands of reported sales transactions by these related companies with incorrect prices or incorrect units of measurement applied to sales quantities. Accordingly, the Department determined that the home market sales reported by these related companies were not useable for our preliminary determinations and decided to use only those home market sales to unrelated purchasers or to other related purchasers that passed the Department's arm's length pricing test, as referenced in the "Foreign Market Value" section of this notice and discussed in detail in Appendix II–A to the notice for Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

C. Further Manufactured U.S. Sales of Steel Plate

After its December 2 and 3, 1992, response, Usinor reported an indeterminate number of additional sales and additional price adjustments made by its related steel service centers in the United States. (All such sales made by related steel service centers in the United States are further manufactured transactions.) Because this information, too, was submitted after the deadline for the submission of all information to be considered for the preliminary determinations, the Department assigned a BIA margin for the further manufactured sales reported in the steel plate investigation.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Producer/manufacturer/exporter	Average margin
Certain Hot-Rolled Carbon Steel Products:	
Usinor	12.39
All Others	12.39
Certain Cold-Rolled Carbon Steel Products:	
Usinor	13.92
All Others	13.92
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Usinor	10.58
All Others	10.58

Producer/manufacturer/exporter	Weighted-average margin
Certain Cut-to-Length Carbon Steel Plate:	
Usinor	23.70
All Others	23.70

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of a margin attributable to export subsidies, there is no reason to require a case deposit or bond for that amount.

In a preliminary affirmative determination in the concurrent countervailing duty investigation involving sales in the United States of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate by Usinor, the Department did not find any export subsidies. We therefore have not taken action to offset the antidumping deposit rate to comply with section 772(d)(1)(D) of the Act.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determinations by the 135th day after the publication of this notice in the **Federal Register**.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2412 Filed 2–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–428–813, A–428–814, A–428–815, and A–428–816]

Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Cynthia Thirumalai, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2616 and (202) 482–4087, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion resistant carbon steel flat products (corrosion resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department of Commerce (the Department) presented antidumping duty questionnaires on hot-rolled steel to Preussag Stahl AG (Preussag), on hot-rolled steel and cold-rolled steel to Klöckner Stahl GmbH (Klöckner), on cold-rolled steel and corrosion-resistant steel to Thyssen Stahl AG (Thyssen), and on steel plate to AG der Dillinger Hüttenwerke (Dillinger). Within each class or kind of merchandise, these respondents accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided the respondents with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

Section A responses containing general company information were received on September 3, 1992, from Dillinger, Klöckner, Preussag and Thyssen. On September 17, 1992, the Department presented section E of the antidumping questionnaire pertaining to further manufacturing in the United States to Preussag, Thyssen, and Dillinger. On October 20, 1992, responses to sections B and C of the questionnaire regarding home market and U.S. sales, respectively, were received from Dillinger, Klöckner, Preussag and Thyssen. On November 4, 1992, Preussag and Thyssen submitted responses to the section E questionnaire. Dillinger's November 4, 1992, response to Section E lacked the required computer tape and was, therefore, not complete. As a result, Dillinger's Section E response was rejected by the Department as untimely filed (see memorandum from case team to Francis J. Sailer, Deputy Assistant Secretary for Investigations, of November 17, 1992). Dillinger objected to the Department's decision to reject its section E response on December 16, 1992.

The Department informed Dillinger on November 3, 1992, that a rebracketed proprietary version and a new public version of its Section A response would be required since the bracketing of proprietary information in the proprietary version and the summarization of proprietary information in the public version of the response were not adequate. Dillinger submitted revised proprietary and public versions of its section A response on November 4, 1992.

The Department issued supplemental questionnaires pertaining to Sections A, B and C of the questionnaire to Dillinger, Klöckner, Preussag and Thyssen on November 4, 1992. Dillinger submitted responses to its supplemental questionnaire on November 18, 1992; Klöckner filed its supplemental responses on November 19, 1992. On November 18, 1992, Preussag and Thyssen submitted only narrative responses. After being informed by the Department that revised computer tapes accompanying the responses would also be required, both Preussag and Thyssen submitted revised computer tapes on November 20 and 23, 1992, respectively.

On November 16, 1992, Dillinger requested that it be allowed to report only a limited sample of sales made by a related reseller. The Department issued sampling instructions to Dillinger on November 18, 1992.

On November 18, 1992, Theis Precision Steel Corporation, an importer of certain hot-rolled steel products, requested that seat belt retractor spring steel, piston ring steel, shock absorber steel, throwaway blade steel, and carbon band saw steel be classified as distinct classes or kinds of merchandise separate from hot-rolled steel and, thus, excluded from the scope of investigation. A consumer of the products imported and subsequently converted by Theis, Kern-Liebers USA, supported the request of Theis to exclude certain products from the scope of the investigation of hot-rolled steel on January 7, 1993. Petitioners objected to the request by Theis on January 15, 1993. This request is addressed in Appendix I of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina which is being published concurrently with this notice.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in these investigations. Petitioners amended the petitions to include the Steelworkers as co-petitioners on December 16, 1992.

On November 25, 1992, petitioners filed a request to amend the scopes of the investigations. Dillinger objected to petitioners' requested scope amendments on December 31, 1992.

In November 1992, petitioners alleged that Preussag and Klöckner sold hot-rolled steel, that Klöckner and Thyssen sold cold-rolled steel, that Thyssen sold corrosion resistant steel, and that Dillinger sold steel plate in the home market at prices below the cost of production (COP).

During the month of December, the Department received comments from Preussag, Klöckner, Thyssen, and Dillinger regarding petitioners' allegations of sales below COP in the respective cases, and rebuttal comments from petitioners. On December 21, 1992, the Department determined that it had reasonable grounds to believe or suspect that Preussag had sold hot-rolled steel, that Thyssen had sold cold-rolled and corrosion resistant steel, and that Dillinger had sold steel plate in the home market below COP. As a result, the Department initiated sales below cost investigations in accordance with section 773(b) of the Act. A sales below cost investigation was not initiated regarding Klöckner at the same time because proprietary information in petitioners' allegation regarding Klöckner was not properly summarized in the public version. Petitioners submitted an updated public version of its allegation of sales below cost regarding Klöckner on December 11, 1993. On January 12, 1993, the Department determined that it had reasonable grounds to believe or suspect that Klöckner had sold hot-rolled and cold-rolled steel in the home market below COP and, therefore, initiated a sales below cost investigation. The Department issued section D of the questionnaire pertaining to COP and constructed value (CV) to Thyssen and Dillinger on December 22, 1992, and to Klöckner on January 13, 1993. The Department did not issue Preussag section D of the antidumping questionnaire for reasons explained below (see Best Information Available section of this notice). Allegations of sales below cost were not received in time for the Department to perform sales below cost analyses for the preliminary determinations. Therefore, we will address the issue of whether respondents were selling subject merchandise in Germany at prices below COP in our final determinations.

On December 2, 1992, Dillinger submitted the sample of sales made by its related reseller; however, it failed to follow the Department's instructions and, as a result, reported an incorrect sample. Petitioners objected to Dillinger's sampling methodology on December 8, 1992.

On December 11, 1992, we notified all respondents that they would be given additional time to supplement information on the record and to remedy deficiencies in their responses on or before December 21, 1992. We received supplemental responses from Klöckner, Thyssen and Dillinger.

Petitioners filed comments in advance of the Department's preliminary determinations regarding the responses of Dillinger on January 8 and 15, 1993; of Klöckner on January 6, 1993; of Preussag on January 7 and 19, 1993; and of Thyssen on January 8, 1993. Klöckner responded to petitioners' comments on January 14, 1993. In response to a request from the Department, Thyssen made a submission on January 15, 1993, clarifying certain information in its responses.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, Dillinger, Klöckner, Preussag and Thyssen in January 1993 requested that, in the event of affirmative preliminary determinations in their respective investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations until the 135th day after the date of publication of this notice in the **Federal Register**.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of products covered by these investigations also constitute single categories of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B–099 of the main building of the Department of Commerce. We made comparisons at the same level of trade, where possible. Where we were not able to match sales at the same level of trade, we made comparisons without regard to level of trade. We adjusted Thyssen's reported levels of trade by combining automobile manufacturers with other end users.

Best Information Available

We based our preliminary determinations on the best information available (BIA) in accordance with section 776(c) of the Act, for Dillinger (steel plate), Klöckner (hot-rolled and cold-rolled steel) and Preussag (hot-rolled steel).

Dillinger

On November 16, 1992, Dillinger requested that it be allowed to report a sample of sales made by a related reseller in the home market. In its letter granting Dillinger permission to sample these sales, the Department said, "given the late date on which you notified us of your reporting burden and the fact that this burden only applies to home market sales, no extensions will be granted beyond December 2, 1992. If your response is unclear or inadequate, it will be rejected." As stated above in the Case History section of this notice, Dillinger failed to sample properly sales made by the related reseller in the home market. As a result, its sampling methodology resulted in a disproportionate share of sampled sales being taken from the latter part of the POI. Because of concerns over Dillinger's self-selection of sample data, the Department determined that information submitted by Dillinger pertaining to its sampled sales was unusable. Furthermore, Dillinger's home market sales information was incomplete as of December 2, 1992, the last date by which the Department stated that information on the sampled sales could be submitted for consideration in the preliminary determination.

Unlike other respondents that reported sales to related customers and claimed that these sales were at arm's length, Dillinger has not reported sales to its related customers nor made a claim that such sales are at arm's length. Accordingly, we consider the sales made by Dillinger's related reseller essential to performing our less than fair value analysis. Therefore, we are basing our preliminary determination for Dillinger on BIA (see memorandum to R. Moreland, Acting Deputy Assistant Secretary for Investigations, of December 14, 1992).

In its letter of December 11, 1992, the Department allowed Dillinger to provide a corrected sample and to remedy other deficiencies in its responses for consideration for the final determination. On December 21, 1992, Dillinger submitted a revised sample in response to the December 11, 1992 letter. Dillinger's revised sample will be subject to verification and, if found to be appropriate, considered for our final determination.

Klöckner

For many home market sales, Klöckner failed to report transaction prices in either its original questionnaire response or its deficiency response. In addition, Klöckner reported sales to related resellers claiming that these were arm's length transactions. In its December 21, 1992, submission in response to the Department's invitation to remedy outstanding deficiencies and supplement information on the record, Klöckner provided none of the missing price information.

Home market sales without price information were made to both related and unrelated customers, and include the majority of home market products matched to U.S. sales. As a result, we are unable to perform the arm's length test outlined in Appendix II–A of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina. We find that any calculation of estimated preliminary dumping margins based on Klöckner's reported information in its present form would be unreliable given the large number of home market sales lacking price information and our inability to perform the arm's length test for related party transactions. Therefore, we are basing our preliminary determinations for Klöckner on BIA (see memorandum from case team to Richard W. Moreland of January 25, 1993).

Preussag

In its October 20, 1992, response to Section B of the questionnaire, Preussag failed to report home market sales of slit coils and cut-to-length sheets believing these products would not be matched to U.S. sales. The Department's deficiency letter of November 4, 1992, repeated its instructions in the questionnaire requiring Preussag to report all home market sales, with explicit reference to sales of slit coil and cut-to-length sheet. In Preussag's November 19, 1992, response to the deficiency letter, it again failed to report sales of slit coil and cut-to-length sheet. The Department made an additional request for complete home market sales reporting of subject merchandise in its letter of December 11, 1992. In Preussag's December 21, 1992, response to the December 11, 1992, letter, it failed, for the third time, to provide complete home market sales information.

Without any information on the record regarding Preussag's home market sales of slit coil and cut-to-length sheet, we are unable to ascertain whether the products Preussag has reported are the most appropriate matches for U.S. products. In addition, the Department has given Preussag ample opportunity to provide complete information on its home market sales of subject merchandise. To allow Preussag to choose what it considers to be the most appropriate match to U.S. products and disregard the Department's requests for information in this matter might encourage future respondents to also selectively report home market sales. Therefore, we have assigned Preussag an estimated dumping margin based on BIA for the preliminary determination, and intend not to verify its data.

BIA Margins

Since Dillinger, Klöckner and Preussag have attempted to comply with the Department's requests for information, we have assigned to them the BIA rate for cooperative respondents. For a detailed explanation of the methodology used to calculate the BIA rate, *see* Appendix II–B of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina which is being published concurrently with this notice.

Fair Value Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales for each class or kind of the subject merchandise to the volume of third country sales of each class or kind of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for all respondents and their respective sales of the relevant classes or kinds of merchandise.

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion resistant steel and steel plate from Germany to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV) for each company, as specified in the "United States Price" and "Foreign Market Value" sections of this notice. As stated above, we based USP and FMV on information provided in the petition for Dillinger, Klöckner and Preussag. We based our margin calculation for Thyssen on its submitted data.

United States Price

Dillinger, Klöckner, and Preussag

We based USP on information contained in the petition for Dillinger, Klöckner and Preussag. Petitioners' estimates of USP are based on actual delivered price quotations to U.S. customers obtained from domestic industry sources, and on customs values taken from IM–145 import statistics.

Petitioners adjusted the delivered price quotations for foreign inland freight, ocean freight and insurance, U.S. duty, harbor maintenance fees, merchandise processing fees, and U.S. inland freight. In making price-to-price comparisons, petitioners added to USP the amount of value-added tax (VAT) that would have been collected had the U.S. sale been taxed, in accordance with section 772(d)(1)(C) of the Act. Petitioners deducted amounts for foreign inland freight from the customs values.

Thyssen

We based USP for both cold-rolled and corrosion resistant steel on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because all sales to the first unrelated purchaser took place after importation into the United States.

We calculated ESP based on packed prices at which the merchandise was sold at various terms to unrelated customers in the United States. In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of VAT that would have been collected had the U.S. sale been taxed. We also added an amount for currency exchange gains realized by Thyssen.

We made deductions, where appropriate, for cash discounts, foreign inland freight, marine insurance, ocean freight, U.S. customs duty, merchandising processing fee, harbor maintenance fee, inland freight to Thyssen's U.S. warehouses, U.S. inland freight to the customer, U.S. customs brokerage, credit expense, warranty expenses, technical services expenses, warehouse expenses, inventory carrying cost, other indirect selling expenses incurred in the United States, and a portion of the claimed non-U.S. indirect selling expenses incurred in Germany. We disallowed the remaining portion of indirect selling expenses incurred in Germany for the reasons stated below in the Foreign Market Value section of this notice.

In addition, we made further deductions, where appropriate, for all value added in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported products and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting all applicable expenses from the sales price. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added in the United States was deducted.

In determining the costs incurred to produce the further manufactured products, the Department included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general expenses, including selling, general and administrative expenses, and interest expenses.

Thyssen omitted from its questionnaire response the materials portion of U.S. manufacturing cost for certain further manufactured sales which had not undergone further manufacture as of the time Thyssen replied to the relevant portion of our questionnaire. For the purpose of these preliminary determinations, we have assigned these sales a margin based on BIA pursuant to section 776(c) of the Act because Thyssen failed to report estimates of the materials costs that will eventually be incurred, thereby understating its further manufacturing expenses on these sales. As BIA, we assigned the highest non-aberrational margin calculated for any other sale made by Thyssen pursuant to our methodology outlined in Appendix II of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

In addition, Thyssen omitted cost of production information for the product imported into the United States on certain sales for which further manufacturing was performed in the United States by parties unrelated to Thyssen. Without such information, we are unable to calculate the amount of profit to be allocated to the further manufacturing cost of these sales. We therefore used BIA to determine the profit allocation amount. As BIA, we have used the highest allocated profit figure which we calculated for any other sale.

Foreign Market Value

Dillinger, Klöckner and Preussag

We calculated FMV based on information contained in the petition for Dillinger, Klöckner and Preussag. Petitioners' estimates of FMV are based on price quotations and price lists obtained through market research in Germany, and CV.

Ex-freight basis point prices were adjusted by petitioners for price extras, discounts, and inland freight, where appropriate, to arrive at ex-factory prices. Petitioners then made circumstance of sale adjustments to account for differences in credit expenses between Germany and the United States. Petitioners deducted home market packing costs and added packing costs for U.S. sales. In accordance with section 772(d)(1)(C) of the Act, petitioners also added the amount of VAT that would have been incurred had the U.S. sale been taxed.

To calculate CV, petitioners used the costs of producing the subject merchandise by a domestic producer and adjusted these costs for known differences between Germany and the United States. Costs of manufacturing a base product for each class or kind of merchandise, including materials, labor, overhead and depreciation, were adjusted to calculate the costs of manufacturing (COMs) of individual products. To the COMs, petitioners added an amount for selling, general and administrative expenses (SG&A) to arrive at the COP for each individual product. As SG&A, petitioners used the higher of amounts calculated from the financial statements of German producers, or the statutory minimum of ten percent, as appropriate. To the COP for each product, petitioners added the statutory minimum of eight percent for profit, and an amount for packing.

Thyssen

Thyssen reported sales of the subject merchandise to related customers in the home market. In this case, we disregarded certain home market sales to related customers that we found not to be arm's length transactions. The Department's methodology for determining whether or not to include these transactions in our calculations of FMV is discussed in Appendix II of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina. For U.S. sales left with no home market comparison products as a result of performing the arm's length test, we assigned margins based on BIA. As BIA, we used the highest calculated non-aberrational margin.

We calculated FMV based on ex-freight basis point prices to unrelated customers in the home market and to related customers whose sales we have determined to be at arm's length. We made deductions for discounts, commissions, insurance, freight adjustments, and credit and warranty expenses. We also deducted from FMV the weighted-average home market indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2), or, for those U.S. sales which have undergone further manufacturing in the United States, up to the amount of indirect selling expenses incurred on U.S. sales attributable to the foreign input product. However, for home market products compared to further manufactured sales for which Thyssen omitted cost of production information (see United States Price section of this notice), we did not deduct home market indirect selling expenses because we were unable to calculate the amount of indirect selling expenses attributable to the foreign input product. In addition, we disallowed part of the claimed adjustment for home market indirect selling expenses because these expenses were inadequately explained and, based on the description provided, appeared in part to be production costs, rather than selling expenses. (As noted above, we also adjusted reported U.S. indirect selling expenses by disallowing the same portion of the expenses incurred on U.S. sales.) We also made a circumstance of sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank in accordance with 19 CFR 353.60.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, corrosion resistant steel and steel plate from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
Hot-Rolled Steel:	
Preussag Stahl AG	29.02
Klöckner Stahl GmbH	29.02
All Others	29.02
Cold-rolled Steel:	
Klöckner Stahl GmbH	23.54
Thyssen Stahl AG	11.13
All Others	15.00
Corrosion Resistant Steel:	
Thyssen Stahl AG	5.04
All Others	5.04
Steel Plate:	
Dillinger Hüttenwerke	16.29
All Others	16.29

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its preliminary affirmative determinations in the concurrent countervailing duty investigations involving sales in the United States of hot-rolled steel, cold-rolled steel, corrosion resistant steel and steel plate from Germany, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the antidumping duty deposit rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry on or before 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determinations by the 135th day after the publication of this notice in the **Federal Register**.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2413 Filed 2–3–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–475–806 and A–475–807]

Notice of Preliminary Determinations of Sales at Less Than Fair Value; certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Lori Way or Judith Wey, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–6320, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) and certain cut-to-length carbon steel plate (steel plate) from Italy are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases. The ITC also issued a negative preliminary determination with respect to certain hot-rolled carbon steel flat products from Italy, an investigation which was initiated concurrently with the cold-rolled steel and steel plate investigations.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to ILVA, S.p.A. (ILVA). This respondent accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided ILVA with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

Since the Department determined at initiation that it had reasonable grounds to believe or suspect that ILVA had sold cold-rolled steel and steel plate in Italy at prices which were below ILVA's cost of production, the Department also presented a cost of production and constructed value questionnaire (section D) to ILVA.

ILVA submitted sales and cost questionnaire responses in September and November 1992. Citing significant deficiencies in ILVA's sales responses, the Department issued a supplemental sales questionnaire on November 20, 1992. ILVA submitted its responses to this supplemental questionnaire in December 1992.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in these investigations. The petitions were amended to include Steelworkers as co-petitioners on December 16, 1992.

ILVA's section D cost response was determined to be significantly deficient. On December 10, 1992, the Department issued a supplemental section D cost questionnaire.

On December 11, 1992, we notified respondent that we would allow additional time (until December 21, 1992) for it to provide additional information and remedy deficiencies in its responses. ILVA submitted some additional information by the December 21, 1992, deadline.

On January 15, 1993, the deadline for ILVA's section D deficiency response, ILVA informed the Department that it was not providing its supplemental section D information at this time. ILVA did not request an extension of time to file this response.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

Petitioners submitted comments on January 22, 1993, and requested that we consider these comments for our preliminary determinations. These comments were submitted too late for consideration for the preliminary determinations, but will be considered for the final determinations.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Scope of the Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: Certain cold-rolled carbon steel flat products and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that the classes or kinds of merchandise covered by these investigations constitute single categories of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of cold-rolled steel and steel plate from Italy to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Although ILVA responded to the Department's original sales and cost questionnaires and the supplemental sales questionnaire, as discussed in the "Best Information Available" section of this notice below, it failed to provide adequate responses. In addition, ILVA failed to provide a supplemental section D response. Therefore, in accordance with section 776(c) of the Act, our results are based on best information available (BIA).

In determining what margin to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II-B to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

We considered ILVA to be a cooperative respondent in these investigations until it indicated that it would not respond to our supplemental section D questionnaire by the due date. Further, ILVA did not request an extension of time to file this response. When it failed to file its supplemental section D response, we considered ILVA to have withdrawn from these investigations, and consequently determined ILVA to be an uncooperative respondent. Therefore, we have determined BIA to be the highest of the margins alleged in the petitions.

As BIA, we used prices and constructed value information provided in the petitions. We compared U.S. prices derived from IM–145 import statistics to constructed value (cold-rolled steel) and home market prices (steel plate) and based our determinations on the comparison that yielded the highest margin.

United States Price

We based USP for cold-rolled steel and steel plate on information provided in the petitions. Petitioners based USP on IM–145 import statistics. For steel plate, petitioners made deductions for foreign inland freight based on information provided in the petition.

In accordance with section 772(d)(1)(C) of the Act, for steel plate, petitioners added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed.

Foreign Market Value

We based FMV for cold-rolled steel on constructed value information provided in the petition. Petitioners added materials, labor, overhead, depreciation, and U.S. packing costs. Petitioners added the statutory minimum of ten percent for selling, general, and administrative expenses and eight percent for profit. Pursuant to 19 CFR 353.56, petitioners made circumstance-of-sale adjustments for differences in credit expenses.

Petitioners calculated FMV for steel plate based on a market research report on home market price quotes that was provided in the petition. The market research report contained information on base prices, thickness/width add-ons, and other dimensional add-ons, so that home market prices could reflect certain characteristics of merchandise for which there was a U.S. price in the petition. Petitioners made deductions for discounts and credit expenses based on information provided in the petition. Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit expenses. Petitioners also made a circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. Petitioners deducted home market packing costs and added U.S. packing costs.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Best Information Available

Due to the numerous significant deficiencies in ILVA's sales and cost questionnaire responses and its failure to provide a supplemental cost questionnaire response, the Department is compelled to use BIA in making its preliminary determinations and to cancel verification. The significant deficiencies in ILVA's responses are discussed below.

On January 15, 1993, the deadline for ILVA's section D deficiency response, ILVA informed the Department that it was not providing the supplemental section D information at this time. ILVA did not request an extension of time to file this response. Any additional information filed subsequently would therefore be considered untimely filed. ILVA's failure to provide or request an extension of time to provide this information is the basis for our determination that ILVA is an uncooperative respondent.

For both cold-rolled steel and steel plate, ILVA's original section D cost response also contained significant deficiencies. For instance, ILVA's cost of manufacturing data was not in the product specific format required by the Department. ILVA provided no product control numbers or methodology to enable the Department to attribute any of such costs to specific products. ILVA did not calculate a cost of sales for purposes of responding to these investigations. ILVA failed to provide any explanation or supporting documentation for its calculated G&A rate and interest rate. Additionally, ILVA has not provided its 1991 financial statements.

The Department determined ILVA's cold-rolled steel product concordance to be inadequate and unusable for purposes of matching home market products to U.S. products due to the following specific deficiencies: (1) The Department's questionnaire instructs respondents to assign a unique control number to each product for every data base in which that product is reported. ILVA has not assigned a unique control number to each product in its product concordance. Instead, ILVA assigned the same control number to multiple home market products with different physical characteristics; (2) ILVA did not assign to identical home market products the same control numbers; therefore, certain home market sales that should have been matched to U.S. sales may have been excluded from ILVA's product concordance; (3) ILVA incorrectly assigned to identical U.S. products different control numbers with the result that different home market products are matched to identical U.S. products; (4) ILVA did not assign to products with identical characteristics the same control number in its sales and product concordance databases, thereby precluding any use of the concordance to match home market sales to U.S. sales; (5) ILVA has defined some matches as "similar" rather than "identical" when the U.S. and home market products have identical physical characteristics; and (6) based on ILVA's December 4, 1992, deficiency response, it appears that ILVA incorrectly based its product matching on factors such as "steel quality group" and "performance criteria" rather than on the physical characteristics detailed in the Department's Appendix V matching hierarchy.

The Department also determined ILVA's product concordance for steel plate to be significantly deficient: (1) ILVA has assigned the same U.S. control number to products that have different physical characteristics; (2) the control numbers in ILVA's product concordance do not appear in the home market sales listing, thereby precluding any use of the concordance to match home market sales to U.S. sales; and (3) ILVA does not appear to have followed the Department's Appendix V matching hierarchy. Based on ILVA's explanation of its product codes, it has not matched U.S. sales to home market sales of the same grade.

We encountered several problems when we attempted to re-match ILVA's U.S. sales of plate. We searched for home market products with identical grades to the U.S. products. We found identical grade matches, but the reported thickness groups were not identical matches, and the reported heat treatment for the U.S. and home market product were also not the same. Because we could not make identical matches, we would have needed to make difference in merchandise (difmer) adjustments for which we did not have the necessary difmer information. Respondent also had not provided the necessary cost of production and constructed value information. In addition, because grade was not reported for several of ILVA's home market products, we could not be certain that such products would not have been an identical or more similar match. There were also discrepancies between the width and thickness group codes assigned and the actual widths and thicknesses reported by ILVA in both the U.S. and home market databases.

ILVA has indicated that up to 25 percent of its sales of cold-rolled steel undergo further processing in the United States. However, ILVA has not provided a section E further manufacturing questionnaire response, and it has not identified in its sales listing which of its sales of cold-rolled steel are further processed. ILVA's reported gross unit prices reflect the costs of further processing in the United States, but ILVA has not reported the actual further processing costs. Without being able to deduct value-added further processing costs from ILVA's reported U.S. gross unit price, we would be unable to perform a LTFV analysis on U.S. and home market sales.

ILVA has interpreted the statute to conclude that it is exempt from providing further manufacturing information, since its U.S. date of sale may precede the further manufacturing operations performed in the United States. However, the fact that further processing was performed on these sales before delivery to the first unrelated U.S. customer, and that the price paid by that customer reflects such processing, serve to cast doubt on ILVA's claim that these are purchase price transactions. In addition, the circumstances surrounding the processing and sales activity in the United States leads the Department to question whether ILVA has reported the correct date of sale for these transactions.

The Department's questionnaire instructed respondents to report all sales of subject merchandise made by related parties. In its November 20, 1992, deficiency letter, the Department instructed ILVA to report sales by related parties, or to demonstrate that (1) ILVA has no operational control over these companies, and pricing and production decisions are made independently without participation by ILVA, (2) there is not a close relationship between ILVA and these companies in terms of shared board members or directors, ownership, sharing of sales and customer information, joint billing, management, etc., and (3) ILVA cannot compel these related entities to provide U.S. and home market sales information.

Evidence on the record indicates that ILVA may exercise, or is capable of exercising, some control over its related entities and therefore possesses the potential to influence its related entities' pricing and production decisions. ILVA has not reported sales by related Italian entities in which it holds a "minority interest", and has not provided convincing evidence that sales by such entities should not have been reported. If ILVA can exercise control over its related entities, such control could result in price manipulation in the home market and U.S. market.

There are no strict administrative or judicial guidelines as to when the Department should collapse related producers for purposes of reporting requirements. The Department's current standard is to determine whether the relationship between the related parties is such that there is a strong possibility of price or production manipulation between or among them. The Department's practice is generally to collapse related parties where there is a strong possibility of price manipulation. (See, e.g., Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan (56 FR 12156, March 22, 1991); Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany (54 FR 18992, May 3, 1989)). The cases involving the decision of whether or not to collapse related parties for these purposes suggests that the percentage ownership of the parent of the subsidiary is not itself a sure indicator of when the Department determines collapsing is appropriate. Rather, the Department has regarded percentage ownership as one of many factors to consider in making these determinations.

Additional factors the Department considers in determining when it is appropriate to collapse related parties are: (1) Whether related parties have similar production processes, facilities or equipment so as to facilitate shifting of production between facilities; (2) whether related parties share marketing and sales information or offices; (3) whether related parties have interlocking boards of directors; and (4) whether and to what extent the parent is involved in the pricing or production decisions of the subsidiaries.

ILVA has reported that it has "minority interests" (less than 40 percent) in several related entities. Despite ILVA's central argument that it should not be required to report sales by related entities in which it owns a "minority interest", ILVA's indirect and direct percentage stock ownership in these entities is significant enough that it may enable ILVA to influence pricing and production decisions.

In addition to ILVA's ownership interests in its related entities, certain of these entities also have interlocking directorships with ILVA. Individuals serving in management positions at ILVA also act in a management capacity for certain of ILVA's related entities. Because there are shared board members and management between ILVA and certain of its related entities, there is the potential for sharing of information.

Based on information provided in Iron and Steel Works of the World, ILVA and its related entities potentially possess similar production processes, facilities, and equipment, thereby enabling ILVA and its related entities to facilitate the shifting of production between their facilities.

Concerning the sharing of marketing and sales information or offices and whether and to what extent the parent is involved in the pricing or production decisions of the subsidiaries, ILVA has stated that its related entities make decisions independently, without consulting with or obtaining approval from ILVA. At a minimum, ILVA possesses knowledge of its related entities' operations, as evidenced by the fact that ILVA has provided estimated shipment information for certain of its related entities.

While ILVA has claimed that it has no operational control over these related entities and does not control their pricing decisions, it has failed to provide documentation supporting these claims, (*e.g.*, financial documents and board reports from ILVA and its related entities demonstrating no strong financial or decision-making relationship or affidavits from mutually affiliated directors).

ILVA has failed to provide convincing evidence that sales made by certain of its related parties should not have been reported. In fact, the evidence on the record indicates that ILVA may exercise, or be able to exercise, some control over its related entities, requiring that sales be reported.

ILVA stated that it sells the subject merchandise "primarily" on an actual weight basis in the home market and "generally" on a theoretical minimum weight (TMW) basis in the United States. In the Department's November 20, 1992, deficiency letter, we instructed ILVA to explain its different weight bases and how its home market actual weights can be converted to a TMW basis in order for the Department to make "apples-to-apples" comparisons. In its December 4, 1992, deficiency response, ILVA stated that its average actual weight was more than its TMW. In its December 21, 1992, submission ILVA provided a conversion factor which it stated should be multiplied by the TMW weights to convert TMW to actual weights.

ILVA's December 4 and 21, 1992 responses contained conflicting information concerning its conversion factors. ILVA has also failed to provide a narrative explanation or supporting documentation demonstrating how conversion factors were derived. Without appropriate conversion factors, we cannot make "apples-to-apples" comparisons.

In summary, there are numerous significant deficiencies in ILVA's sales and cost questionnaire responses, including ILVA's failure to: (1) Provide adequate product concordances; (2) provide further manufacturing information for cold-rolled steel products; (3) report sales by related parties in which ILVA owns a minority interest or to demonstrate that ILVA asserts no controlling interest; (4) provide appropriate actual weight/theoretical minimum weight conversion factors; and (5) provide complete and useable section D information. In addition, ILVA has failed to provide a supplemental section D response by the due date. Based on the numerous deficiencies in ILVA's responses and its failure to submit its supplemental section D questionnaire response, the Department is compelled to use BIA in making its preliminary determinations and to cancel verification.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel and steel plate from Italy that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Certain Cold-Rolled Carbon Steel Flat Products:

Producer/manufacturer/exporter	Margin percentage
ILVA S.p.A.	50.15
All Others	50.15
Certain Cut-to-Length Carbon Steel Plate:	
ILVA S.p.A.	53.88
All Others	53.88

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its affirmative preliminary determination in the concurrent countervailing duty investigation involving sales in the United States of cold-rolled steel and steel plate from Italy, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the antidumping deposit rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If these investigations proceed normally, we will make our final determinations by April 12, 1993.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2414 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-824, A-588-825, and -A-588-826]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, andCertain Corrosion-Resistant Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich, Stephen Jacques, or James Rice, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), and certain corrosion-resistant carbon steel flat products (corrosion-resistant steel) from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases. The ITC also issued a negative preliminary determination with respect to cut-to-length carbon steel plate products from Japan, an investigation of which was initiated concurrently with the cold-rolled steel, hot-rolled steel, and corrosion-resistant steel investigations.

On August 26, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Kawasaki Steel Corporation (Kawasaki), NKK Steel Corporation (NKK), Nippon Steel Corporation (Nippon), and Sumitomo Metal Industries (Sumitomo) through the Japanese Ministry of International Trade and Industry. These respondents accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided these respondents with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses. On September 17, 1992, the Department presented to Sumitomo Section E of the Antidumping questionnaire, which concerns further manufacturing in the United States. Sumitomo did not respond to the Section E questionnaire. All four Japanese respondents submitted sales questionnaire responses in October 1992.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of the like products in the United States, requested status as co-petitioners in these investigations. Petitioners amended the petition to include the steelworkers as co-petitioners on December 16, 1992.

The Department issued supplemental sales questionnaires in November and December 1992. All four respondents submitted their responses to these supplemental sales questionnaires in December 1992. However, due to time constraints, the Department is not using any information received on or after December 21, 1992, for purposes of the preliminary determinations. This information will, however, be verified and considered for the final determinations.

On December 11, 1992, petitioners alleged that NKK and Nippon sold cold-rolled steel in the home market at prices which were below their cost of production. On December 11, 1992, petitioners also alleged that Kawasaki and Nippon sold corrosion resistant steel at prices that were below its cost of production. On December 24, 1992, petitioners alleged that Sumitomo sold cold-rolled steel in the home market at prices which were below the cost of production. On January 14, 1993, Sumitomo withdrew all of its information from the record, stating that it would no longer participate in these investigations. On January 22, 1993, the Department determined that it had reasonable grounds to believe or suspect that NKK and Nippon had sold cold-rolled steel in the home market below cost, and therefore, initiated cost investigations in accordance with section 773(b) of the Act. On January 25, 1993, the Department determined that it had reasonable grounds to believe or suspect that Nippon and Kawasaki had sold corrosion-resistant steel in the home market below cost, and therefore, initiated cost investigations in accordance with section 773(b) of the Act. The Department issued to NKK, Kawasaki, and Nippon section D of the antidumping questionnaire on January 22 and January 26, 1993. However, we have not received cost data in time for consideration for these preliminary determinations. We will verify any timely and complete responses. The results of these COP investigations will be used in the final determinations of these investigations.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determinations until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations are affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any investigations for which the preliminary determination is negative.

Scope of the Investigations

The products covered by these investigations constitute three separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, and certain corrosion-resistant carbon steel flat products. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of products covered by these investigations also constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B-099 of the main building of the Department of Commerce. NKK requested that the high carbon steel category be divided into two separate subcategories. We did not agree to NKK's categorization of high carbon steel and therefore the Department is not subdividing the category for comparison purposes. NKK sold production overrun merchandise in the United States and/or Japan during the POI. For a discussion of our treatment of these sales see the section on "Evaluation of Non-Prime/Production Overrun Material" in Appendix II to the Preliminary Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Best Information Available

In accordance with section 776(c) of the Act, we have determined that the use of best information otherwise available (BIA) is appropriate for several firms. For certain firms, total BIA was necessary, while for other firms, only partial BIA was applied. For a discussion of our general application of BIA, see the section on "Best Information Available" in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice.

Kawasaki has four related manufacturers that produce corrosion-resistant steel. In such cases, the Department's questionnaire requires respondents to collapse related manufacturers' sales of the subject merchandise, and to submit a response that consolidates the respondent's data with those of its related manufacturers. Kawasaki failed to do this with respect to three related manufacturers. Although Kawasaki did provide this data for the fourth related manufacturer, the information was not submitted in time for consideration for the preliminary determination. We will consider whether to use this information for the final determination. Therefore, for this preliminary determination we are applying an overall BIA rate for Kawasaki.

Since Kawasaki attempted to substantially cooperate with the Department, as BIA we used the higher of (1) The highest calculated rate in these investigations for this class or kind of merchandise for any firm from Japan or (2) the average petition rate for this class or kind of merchandise from Japan.

Sumitomo withdrew its information from the record of these investigations; therefore, we are considering Sumitomo to be nonresponsive and are applying an overall BIA rate to Sumitomo. Because Sumitomo refused to cooperate with the Department as BIA we have used the higher of: (1) The highest calculated rate in these investigations for each class or kind of merchandise for any firm from Japan; or (2) the highest margin alleged in the antidumping petition for each class or kind or merchandise.

Fair Value Comparisons

To determine whether sales of hot-rolled, cold-rolled and corrosion resistant steel from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

NKK, Nippon, and Kawasaki have reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not these transactions are at arm's length prices and should be included in our calculations of USP and FMV is discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is published concurrently with this notice. If application of the arm's length test resulted in unmatched U.S. sales, we used BIA for those sales.

Nippon incorrectly included the level of trade as part of the model match concordance. In addition, Nippon applied an inappropriate methodology for accounting for level of trade. For similar matches Nippon matched sales of less similar models at the same or the most comparable level of trade rather than matching sales of more similar products at other levels of trade. Therefore, for these sales we applied BIA. In all circumstances where we applied BIA for unmatched U.S. sales, we used the higher of: (1) The highest non-aberrant transaction margin calculated for that firm among the sales of the same class or kind of merchandise where we were able to calculate a margin or (2) the average petition rate for the same class or kind of merchandise from the same country of origin.

United States Price

For NKK and Nippon we based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated trading companies in Japan for export to the U.S. and to unrelated customers in the U.S. prior to exportation to the United States.

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of consumption tax that would have been collected had the exported merchandise been taxed.

We made additional company specific adjustments as follows:

A. NKK

For NKK we calculated purchase price based on packed F.O.B. and F.A.S. prices to unrelated trading companies in Japan which then exported the merchandise to the United States. We made adjustments, where appropriate, for rebates, foreign inland freight, and surcharges. We reclassified technical service expenses from a direct to an indirect selling expense because these services consisted of activities not directly related to sales of subject merchandise.

B. Nippon

For Nippon, we calculated purchase price based on packed F.O.B. port of export prices to unrelated trading companies in Japan for export to the U.S. and to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, and the following movement charges: Truck delivery plant to customer, ocean freight, handling, and truck delivery port to customer. We reclassified technical service expenses from a direct to an indirect selling expense because these services consisted of activities not directly related to sales of subject merchandise.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value (FMV), we compared the volume of home market sales of the subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of certain cold-rolled carbon steel flat products and certain hot-rolled carbon steel flat products by NKK and Nippon, and for sales of certain corrosion-resistant carbon steel flat products by Kawasaki and Nippon.

Price to Price Comparisons

For these preliminary determinations we based FMV on home market prices. We calculated FMV based on ex-factory, FOB or delivered prices inclusive of packing, to unrelated customers and to related customers whose sales we have determined to be at arm's length under our related party test referenced in the Fair Value Comparison section of this notice. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. Where we were not able to match at the same level of trade we made comparisons without regard to level of trade. For home market to purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments for direct selling expenses. We also made a circumstance of sale adjustment for the difference between consumption taxes on home market sales and those which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs. Where appropriate, we also made an adjustment for physical differences in the merchandise, in accordance with 19 CFR 353.57. We made additional company specific adjustments as follows:

A. NKK

For NKK we calculated FMV based on ex mill, free delivered, free on truck, ex ship and ex quay prices charged to both related and unrelated customers in the home market. Sales to several related customers were not used as we found these sales not to be at arm's length prices. We made adjustments, where appropriate, for rebates, discounts, and inland freight.

We also made circumstance-of-sale adjustments for differences in credit expenses, interest revenue, and warranty expenses. In addition, we made an offset adjustment where commissions were paid in the home market but not in the United States. We reclassified technical service expenses from a direct to an indirect selling expense because these services consisted of activities not directly related to sales of subject merchandise. Therefore, we did not adjust FMV for this item for purposes of purchase price comparisons.

B. Nippon

We calculated FMV based on F.O.B. point of delivery prices charged to both related and unrelated customers in the home market. Sales to several related customers were not used as we found these sales not to be at arm's length prices. We also collapsed the home market sales of four manufacturers related to Nippon into Nippon's home market sales data base. In addition, Nippon sampled home market sales transactions pursuant to the Department's letter of October 9, 1992. We made deductions, where appropriate, for discounts, rebates, and movement expenses.

We also made circumstance-of-sale adjustments for differences in credit expenses, interest revenue, warranty expenses, third party payments, commissions, and other additions to price. In addition, we made an offset adjustment where commissions were paid in the home market but not in the United States. We denied an adjustment for home market inventory carrying costs because the company did not calculate the expense appropriately. We reclassified technical service expenses from a direct to an indirect selling expense because these services consisted of activities not directly related to sales of subject merchandise. Therefore, we did not adjust FMV for this item for purposes of purchase price comparisons.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel, cold-rolled steel, and corrosion-resistant steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The preliminary LTFV margins are as follows:

Produced/manufacturer/exporter	Margin percentage		
	Cold-rolled	Hot-rolled	Corrosion-resistant
Kawasaki Steel Corp.	NA	NA	26.71
NKK Steel Corp.	22.86	24.98	NA
Nippon Steel Corp.	15.22	21.16	26.71
Sumitomo Metal Industries	22.86	24.98	NA
All Others	19.82	23.67	26.71

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by April 12, 1993.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2415 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-580-814, A-580-815, A-580-816, and A-580-817]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Karin Price, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-2923.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel), certain cold-rolled carbon steel flat products (cold-rolled steel), certain corrosion-resistant carbon steel flat products (corrosion-resistant steel), and certain cut-to-length carbon steel plate (steel plate) from Korea are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Pohang Iron and Steel Company, Ltd. (POSCO), with regard to the investigations of hot-rolled, cold-rolled, and corrosion-resistant steel, and to Dongkuk Steel Mill Company, Ltd. (Dongkuk), with regard to the investigation of steel plate. These respondents accounted for at least 60 percent of the exports of each class or kind of the subject merchandise to the United States during the period of investigation (POI). We also provided POSCO and Dongkuk with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

Since the Department determined at initiation that it had reasonable grounds to believe or suspect that POSCO had sold hot-rolled steel in Korea at prices which were below POSCO's cost of production, the Department also presented section D of the antidumping duty questionnaire to POSCO. On September 17, 1992 the Department presented to POSCO, in the investigation of hot-rolled steel, section E of the antidumping questionnaire, which concerns further manufacturing in the United States.

POSCO submitted sales questionnaire responses on September 10, 1992, and October 19, 1992. In its questionnaire response, POSCO failed to report home market sales by related parties and U.S. sales by three related parties, Feralloy Reliance Limited Partnership (FRLP), Pohang Coated Steel (PCS), and Pohang Steel Industries (PSI). On November 2, 1992, and November 10, 1992, the Department requested that POSCO submit these data to the Department. These responses were received on November 9, 1992, and December 2, 1992. In our November 10, 1992 letter, we informed POSCO that we might not be able to use the U.S. sales data due to time constraints, and that, for U.S. sales by PCS and PSI, we might resort to the use of best information available (BIA) for the preliminary determination. As suggested in our November 10, 1992 letter, the Department is not using the U.S. sales data contained in the December 2, 1992 response for purposes of the preliminary determinations. This information will, however, be verified and considered for the final determinations. The Department issued a supplemental sales questionnaire to POSCO on November 13, 1992. POSCO submitted the response to this supplemental questionnaire on November 30, 1992.

On November 6, 1992, petitioners alleged that POSCO sold cold-rolled and corrosion-resistant steel in the home market at prices which were below POSCO's cost of production. On December 16, 1992, the Department determined that it had reasonable grounds to believe or suspect that POSCO had sold cold-rolled and corrosion-resistant steel in the home market below cost, and therefore initiated additional cost investigations in accordance with section 773(b) of the Act. The Department issued to POSCO section D of the antidumping questionnaire, in the investigations of cold-rolled and corrosion-resistant steel, on December 31, 1992. The responses are due on February 1, 1993, and will be verified and considered for the final determinations.

Dongkuk submitted sales questionnaire responses on September 10, 1992 and October 19, 1992. The Department issued a supplemental sales questionnaire on November 24, 1992. Dongkuk submitted the response to this supplemental questionnaire on December 9, 1992.

On November 12, 1992, petitioners alleged that Dongkuk sold steel plate in the home market at prices which were below Dongkuk's cost of production. On January 26, 1993, the Department determined that it had reasonable grounds to believe or suspect that Dongkuk had sold steel plate in the home market below cost, and therefore, initiated an additional cost investigation in accordance with section 773(b) of the Act. The Department issued Dongkuk section D of the antidumping questionnaire on January 26, 1993. The response is due on February 25, 1993, and will be verified and considered for the final determinations.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, entered an appearance as co-petitioner in these investigations. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On January 12, 1993, POSCO and Dongkuk requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. See "Postponement of Final Determinations" section of this notice.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations are affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, the respondents have requested that, in the event of affirmative preliminary determinations in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations to the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise: Certain hot-rolled carbon steel flat products, certain cold-rolled carbon steel flat products, certain corrosion-resistant carbon steel flat products, and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations also constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B–099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of hot-rolled steel, cold-rolled steel, corrosion-resistant steel, and steel plate from Korea to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

We first attempted to compare U.S. sales to home market sales of identical merchandise at the same level of trade; if no such match was available, we then attempted to compare the U.S. sale to a home market sale of identical merchandise at a different level of trade. If there was no identical match, sales of the most similar model at the same level of trade were used, then sales of the most similar model at a different level of trade, etc.

POSCO has reported sales of the subject merchandise to related parties in the home market. POSCO has stated that home market sales to related parties are not made at arm's length prices. Therefore, these sales have been excluded from our calculations of FMV. Dongkuk has also reported sales of the subject merchandise to related parties in the home market. None of these sales was of merchandise identical to that sold to the United States. Because we were able to compare all of Dongkuk's merchandise sold to the United States to identical merchandise sold to unrelated customers in the home market, sales to related parties in the home market have been excluded from our calculations of FMV.

United States Price

For POSCO and Dongkuk, we based USP on purchase price (PP), in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation. In addition, for POSCO's sales of hot-rolled steel, where certain sales to the first unrelated purchaser took place after importation into the United states, we also based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value added tax (VAT) that would have been collected had the merchandise not been exported. We also made an addition for duty drawback, *i.e.*, import duties which were rebated or not collected by reason of the exportation of the merchandise. We made additional, company-specific adjustments as follows:

A. POSCO

For POSCO's sales of hot-rolled steel, we calculated PP based on packed, C&F U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland movement expenses (inland freight and brokerage) and ocean freight.

We calculated ESP based on packed, ex-U.S. warehouse or delivered prices to unrelated customers in the United States. These sales were made by POSCO's related company, U.S.S.–POSCO Industries, Inc. (UPI). We made deductions, where appropriate, for discounts, rebates, foreign movement expenses (inland freight and brokerage), ocean freight, marine insurance, U.S. duties, U.S. inland freight, U.S. brokerage, credit, commissions, warranties, and indirect selling expenses, including technical service expenses. We made additions for interest revenue offsetting U.S. credit expenses.

We also deducted all value added to hot-rolled steel after importation, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further-manufactured products, other than the costs associated with the imported hot-rolled steel, as well as a proportional amount of profit or loss attributable to the value added. Profit or loss was calculated by deducting from the sales price of hot-rolled steel all production and selling costs incurred by the company for hot-rolled steel. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added in the United States was deducted. In determining the costs incurred to produce hot-rolled steel, we included (1) The costs of manufacture, (2) movement and packing expenses, and (3) general expenses, including SG&A and interest expenses.

For the hot-rolled steel investigation, POSCO has not provided certain sales information for sales by FRLP, as requested by the Department. POSCO notes in its questionnaire response that, although FRLP maintains the records which would allow FRLP to determine the source of the hot-rolled steel it purchases, compiling this information would be difficult. Since POSCO could have, but did not provide the data, we have used BIA for these sales. We are using a cooperative BIA rate which, as discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, is the higher of (1) The average margin from the petition, or (2) the highest non-aberrational margin of any of POSCO's sales of hot-rolled steel.

Also for the hot-rolled steel investigation, we were unable to analyze UPI's sales of secondary grade merchandise because POSCO has claimed that UPI does not, in the normal course of business, retain data on the product characteristics of such merchandise. Therefore, we have excluded these sales from the preliminary determination. See Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

For POSCO's sales of cold-rolled steel, we calculated PP based on packed, C&F U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland movement expenses (inland freight and brokerage) and ocean freight.

U.S. sales of corrosion-resistant steel include sales made by POSCO and two related companies, PCS and PSI. As indicated in our November 10, 1992 letter to POSCO, in which we requested that POSCO submit sales data not reported in its questionnaire response, for sales by PCS and PSI, we are using BIA. As discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, we are using a cooperative BIA rate which is the higher of (1) The average margin from the petition, or (2) the highest non-aberrational margin of any of POSCO's sales of corrosion-resistant steel. For POSCO's sales, we calculated PP based on packed, C&F U.S. port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland movement expenses (inland freight and brokerage), and ocean freight.

B. Dongkuk

For Dongkuk's sales of steel plate, we calculated PP based on packed, C&F and ex-dock duty paid prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland movement expenses (inland freight and brokerage), ocean freight, marine insurance, U.S. brokerage and handling, U.S. duty and U.S. inland freight.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of each class or kind of the subject merchandise to the volume of third country sales of each class or kind of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of hot-rolled, cold-rolled, and corrosion-resistant steel by POSCO and for sales of steel plate by Dongkuk.

Cost of Production

Based on petitioners' allegation, and in accordance with section 773(b) of the Act, the Department initiated an investigation to determine whether POSCO had home market sales of hot-rolled steel that were made at prices less than the cost of production (COP). The Department also has initiated sales below cost investigations with regard to

POSCO's home market sales of cold-rolled and corrosion-resistant steel, and Dongkuk's home market sales of steel plate. However, we have only included the COP investigation of hot-rolled steel in our analysis for the preliminary determinations in these investigations. We should receive the data for the COP investigations of cold-rolled and corrosion-resistant steel on February 1, 1993 and for the COP investigation of steel plate on February 25, 1993.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we did not disregard any below-cost sales because, in accordance with our longstanding policy, we do not consider such below-cost sales to be made in substantial quantities or over an extended period of time. If between ten and 90 percent of a respondent's sales of a given model were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales of a given model were at prices below the COP, we disregarded all sales for that model made in substantial quantities over an extended period of time, and calculated FMV based on constructed value (CV). In addition, we disregarded such below cost sales because respondent failed to demonstrate, as requested by the Department in the COP questionnaire, that such below-cost sales were made at prices which will permit recovery of all costs within a reasonable period of time in the normal course of trade.

We considered sales to have been made over an extended period of time if (1) a respondent only has sales in a single month during the POI and any of those sales are below the COP, or (2) a respondent has sales during the POI for two months or more and has made any sales at below the COP during any two of those months.

We calculated the COP based on the sum of a respondent's cost of materials, fabrication, general expenses, and packing. We adjusted respondent's cost data as described below:

For POSCO, the Department relied on POSCO's submitted COP and CV data except in those cases where it appeared that these costs were not appropriately quantified and/or valued, as described below:

1. We adjusted submitted general and administrative (G&A) expenses to exclude several non-operating income items;
2. We included an amount to account for costs incurred at POSCO's Kwangyang Works plant, since these costs were not included by the company;
3. We revised interest expense using POSCO's audited unconsolidated financial statements for the year ended December 31, 1991, since it appears the calculation submitted by POSCO was based on its unaudited combined financial statements;
4. We included all current foreign exchange gains and losses in the revised interest expense calculation;
5. We adjusted UPI's submitted G&A expense calculation to include amortized start-up expenses based on the amortization period reported in its audited financial statements; and
6. We adjusted UPI's submitted interest expense calculation to reflect interest expense as reported in its 1991 audited financial statements.

We compared home market selling prices, net of movement charges, to each product's COP. We found that for some products, more than 90 percent of the sales were at prices above the COP. For other products, there were fewer than 10 percent of sales at prices above COP. For the remainder of the products, between 10 and 90 percent of the sales were at prices above the COP.

Price-to-Price Comparisons

For those hot-rolled products for which we have an adequate number of sales at prices above the COP, and for all cold-rolled, corrosion-resistant, and steel plate products, we based FMV on home market prices. We calculated FMV based on ex-factory or delivered prices, inclusive of packing, to unrelated customers. Local sales to domestic purchasers of merchandise which POSCO knows is to be exported have been excluded from the calculation of FMV. We will further examine this issue for the final determination.

For home market to PP comparisons, pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we deducted inland freight and made circumstance-of-sale adjustments, where appropriate, for credit, technical services, and warranty expenses. We also made a circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs.

For home market to ESP comparisons, we made deductions, where appropriate, for foreign inland freight, credit, warranty, and warehousing expenses. We also deducted from FMV the weighted-average home market indirect selling expenses, including, where appropriate, advertising and inventory carrying costs, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2), or the amount of these expenses attributable to the foreign input product for those U.S. sales which have undergone further manufacturing in the United States. We also made a circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs. We made additional, company-specific adjustments as follows:

POSCO

For POSCO, we made an adjustment, where appropriate, for physical differences in the merchandise in accordance with 19 CFR 353.57.

Dongkuk

For Dongkuk's PP sales, we made an adjustment for U.S. commissions by deducting home market indirect selling expenses up to the amount of the U.S. commission.

Constructed Value

For those models of hot-rolled steel without an adequate number of sales at prices above COP, and for those models for which COP was not provided, we based FMV on CV, pursuant to section 773(b) of the Act. CV was only required for PP sales. In accordance with section 773(e) of the Act, we based CV on the sum of the cost of materials, fabrication, general and administrative expenses, U.S. packing, and profit. We adjusted CV as discussed in the "Cost of Production" section of this notice. We reduced interest for an amount attributable to maintaining accounts receivable to avoid double counting imputed credit. We used the actual general expenses, in accordance with section 773(e)(1)(B)(i) of the Act, because they exceeded the statutory minimum of ten percent of the cost of manufacture. In accordance with section 773(e)(1)(B)(ii) of the Act, for profit we used the statutory minimum of eight percent.

For CV to PP comparisons, we made circumstance-of-sale adjustments, where appropriate, for credit and warranty expenses. We adjusted CV for home market direct selling expenses, in accordance with 19 CFR 353.56(b)(1). CV was not required for ESP sales.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determinations.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of certain hot-rolled steel, certain corrosion-resistant steel, and certain steel plate from Korea. Pursuant to section 733(e)(1) of the Act, we have analyzed the allegations using the methodology described in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

To determine whether or not there have been massive imports of hot-rolled steel and corrosion-resistant steel by POSCO, and steel plate by Dongkuk, we analyzed export data supplied by the respondents. For hot-rolled steel, we compared the five-month period subsequent to the filing of the petition to the five-month period prior to the filing of the petition. For corrosion-resistant steel and steel plate, we had sufficient data to compare six-month periods prior to and subsequent to the petition.

For corrosion-resistant steel, we found that the volume of imports did not increase by 15 percent or more from the pre-initiation period to the post-initiation period. Therefore, we preliminarily determine that there have not been massive imports of the subject merchandise over a relatively short period of time. Because we did not find that massive imports exist with respect to corrosion-resistant steel from Korea, there was no need to establish whether there was a history of dumping or whether importers had knowledge of dumping.

The data for hot-rolled steel and steel plate showed that, for each class or kind, the volume of imports increased by 15 percent or more from the pre-initiation period to the post-initiation period. We did a similar analysis of the 1991 export data for these two classes or kinds to ensure that the increases in exports did not simply reflect seasonal trends. We found no indication that the increases were occasioned by seasonal trends. Therefore, in accordance with 19 CFR 353.16(f), we preliminarily find that exports of hot-rolled steel by POSCO and steel plate by Dongkuk have been massive over a relatively short period of time. To determine whether or not the importers of hot-rolled steel and steel plate knew or should have known that the merchandise was being sold at less than fair value, we considered the preliminary margins in these investigations, as discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina. The margins indicate that importers should have known that hot-rolled steel was being sold at less than fair value. The margins do not indicate that importers should have known that steel plate was being sold at less than fair value. Although Dongkuk's margins do not indicate knowledge of dumping, a history of dumping of the same class or kind of steel plate has been established according to 19 CFR 353.16(a)(1)(i), in the antidumping duty order on Carbon Steel Plate from the Republic of Korea, 49 FR 33298 (August 22, 1984).

Based on our analysis, we preliminarily determine that critical circumstances do exist with respect to imports of hot-rolled steel, and exist with respect to steel plate from Korea. We find that critical circumstances do not exist with respect to corrosion-resistant steel from Korea.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel and corrosion-resistant steel from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and entries of hot-rolled steel and steel plate on or after the date 90 days prior to the date of publication. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Certain Hot-Rolled Carbon Steel Flat Products:	
Pohang Iron and Steel Company, Ltd.	30.00
All Others	30.00
Certain Cold-Rolled Carbon Steel Flat Products:	
Pohang Iron and Steel Company, Ltd.	12.73
All Others	12.73
Certain Corrosion-Resistant Carbon Steel Flat Products:	
Pohang Iron and Steel Company, Ltd	3.28
All Others	3.28
Certain Cut-to-Length Carbon Steel Plate:	
Dongkuk Steel Mill Company, Ltd.	4.72
All Others	4.72

Adjustment of Deposit Rates for Countervailing Duties

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no basis to require a cash deposit or bond for that amount.

Accordingly, the level of export subsidies as determined in the Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Korea (57 FR 57761, December 7, 1992), which are 0.01 percent *ad valorem* for hot-rolled steel, 0.03 percent *ad valorem* for cold-rolled steel, 0.06 percent *ad valorem* for corrosion-resistant steel, and 0.01 percent *ad valorem* for steel plate, will be subtracted from the respective dumping margins for cash deposit or bonding purposes. This results in deposit rates of 29.99 percent for POSCO and all other exporters of hot-rolled steel, 12.70 percent for POSCO and all other exporters of cold-rolled steel, 3.22 percent for POSCO and all other exporters of corrosion-resistant steel, and 4.71 percent for Dongkuk and all other exporters of steel plate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by the 135th. day after the publication of this notice in the Federal Register.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2422 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-201-808; A-201-809]

Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: N. Gerard Zapiain or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-3793.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain corrosion-resistant carbon steel flat products (corrosion-resistant steel products), and certain cut-to-length carbon steel plate (cut-to-length steel plate) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992 (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department of Commerce (the Department) presented sections A, B, and C of its antidumping duty questionnaire to Altos Hornos de Mexico, S.A. de C.V. (AHMSA), and to Industrias Monterrey, S.A. de C.V. (IMSA). These respondents accounted for at least 60 percent of the exports of the subject merchandise to the United States. We also provided AHMSA and IMSA with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

The deadline set for AHMSA and IMSA to respond to section A of the questionnaire was September 3, and the due date to respond to sections B and C was October 5.

On August 26, AHMSA requested a two-week extension for filing its response to section A. On September 1, the Department granted the full extension, thus making September 17, 1992 the due date for AHMSA's section A response.

On September 11, 1992, AHMSA informed the Department that it had decided not to respond to the antidumping questionnaire since it "could not justify the time and expense of responding to the questionnaire given the negligible amount of the subject merchandise exported by AHMSA to the United States."

On August 31, IMSA requested an extension to file its response to section A until September 11, 1992; on September 2, the Department granted the full extension. On September 26, 1992, IMSA requested a three-week extension to file its response to sections B and C of the questionnaire, moving the due date to October 26. On October 2, 1992, the Department granted IMSA an extension until October 20, 1992 to file its response to sections B and C of the questionnaire. IMSA submitted its sales questionnaire response for section A of the questionnaire on September 11, 1992 and, on October 20, 1992, its response to sections B and C. The Department issued a supplemental questionnaire on November 9, 1992. IMSA submitted the written narrative to this supplemental questionnaire on November 24, 1992, and submitted its computer tapes on November 27, 1992.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of the like products in the United States, requested status as co-petitioners in these investigations. Petitioners amended the petition to include the Steelworkers as co-petitioners on December 16, 1992.

On December 11, 1992, petitioners alleged that IMSA sold corrosion-resistant steel products in Mexico at prices which were below IMSA's cost of production. The Department is currently considering this allegation and will initiate an investigation if deemed necessary.

On December 11, 1992, the Department afforded respondents an opportunity to provide additional information to be considered in its final determination; the deadline for such submissions was December 21, 1992. On that date, IMSA furnished its response. However, due to time constraints, the Department is not using this supplemental response for purposes of the preliminary determination. This information will, however, be verified and considered for the final determination.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Scope of the Investigations

The products covered by these investigations constitute two classes or kinds of merchandise: corrosion-resistant carbon flat steel products and cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

We received comments from IMSA arguing that U.S. origin cold-rolled coil processed in Mexico and returned to the United States as corrosion-resistant sheet under Harmonized Tariff System (HTS) item 9802.00.60 should be excluded from this investigation. IMSA further states that even if U.S. imports under HTS item 9802.00.60 are subject to this investigation, "Grade E" sheet processed from U.S. origin full-hard cold-rolled coil should be excluded because it is not of Mexican origin. IMSA states that Grade E sheet does not undergo any annealing process and that the Customs Service has consistently ruled that galvanizing steel without subjecting it to the annealing process is not a substantial transformation. Therefore, according to Customs rules, Grade E sheet is considered to be of U.S., not Mexican, origin.

Section 479A of the Customs and Trade Act of 1990, Public Law 382, 104 Stat. 629, 705 (1990) provides that metal items imported under HTS item 9802.00.60 can be subject to duties imposed under the antidumping and countervailing duty laws. Moreover, as we have consistently stated in past cases, the Department is not bound by Customs' rules of origin when determining country of origin for antidumping or countervailing duty purposes. See, *e.g.* Erasable Programmable Read Only Memories (EPROMs) from Japan: Final Determination of Sales at Less Than Fair Value, 51 FR 39680 (October 30, 1986). Subject merchandise imported under HTS item 9802.00.60 is covered by this investigation, and we preliminarily determine that Grade E sheet processed in Mexico from full-hard cold-rolled coils is of Mexican origin and therefore, constitutes subject merchandise. We will, however, consider further comments and/or technical information regarding the origin of the Grade E sheet for the purpose of this investigation, and will address such comments in our final determination.

Period of Investigation

The period of investigation (POI) is January 1, 1992 through June 30, 1992.

Use of Best Information Available

AHMSA

As stated above, AHMSA did not respond to the questionnaire. Therefore, the Department, in accordance with section 776(c) of the Act, used the best information available (BIA) for AHMSA. Section 353.37(b) of the Department's regulations provides that the Department may take into account whether a party fails to provide requested information, or otherwise significantly impedes the Department's investigation in determining what is the best information available. Because AHMSA failed to respond to the questionnaire, consistent with Department practice, we are using as BIA for AHMSA petitioner's highest adjusted margin of 49.25 percent. (See, *e.g.*, Heavy-forged Hand Tools from the People's Republic of China, 56 FR Reg. 244 (January 1, 1991)).

For a discussion of our general application of best information available, see the section on "Best Information Available" in Appendix II the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this notice

IMSA

As a result of the following significant flaws in responses provided, the Department also used BIA for IMSA for purposes of the preliminary determination.

1. Improper Determination of Date of Sale

For both U.S. and home market sales, IMSA reported the date of invoice as date of sale indicating that: (1) "customers can often change their orders after the original purchase order"; (2) "several invoices or shipments can occur from one purchase order"; (3) "the final tonnage shipped (and invoiced) might not correspond to that in the order"; and (4) purchase orders are not entered on IMSA's computer."

The Department's questionnaire, Appendix II, "Glossary of Terms," clearly states that "there can be no new dates of sale after shipment." Because IMSA normally generates its invoice after shipment, the reported date of sale followed the date of shipment for over 70% of IMSA's home market sales by an average of eight days; this is also the case for sales to the United States. The reported dates of sale are, in some cases, more than two months after the purchase order dates. Therefore, the home market and U.S. databases reported by IMSA may be distorted because sales invoiced during the POI may have actually been made prior to the POI, and sales made during the POI but not invoiced until later would not have been included in the databases provided.

The purchase order date would normally be considered the date of sale, unless the essential terms of sale change subsequent to issuance of the purchase order. In the steel industry, the terms of sale generally specify that the quantity shipped can vary from the quantity ordered within a specific level. Therefore, a difference in the actual tonnage shipped and the amount stated on the original order does not necessarily represent a change in the terms of sale.

Respondent's second point is irrelevant. The fact that multiple shipments/invoices can be generated from one purchase order simply means that different invoice and shipment dates can be associated with the same sale date. An examination of the documentation provided by IMSA also calls into question their alleged inability to provide sales data by purchase order date, if that is the appropriate date of sale. For example, a review of the sales documents for a sale to one company showed that the purchase order date was recorded on the internal production order, the Special Summary Steel Invoice, and the shipping documents. Further, IMSA may have in its computer system at least a close proxy to the purchase order date, i.e., the internal production order date, which typically follows the purchase order by not more than several days.

2. Product Matches resulting in DIFMERs greater than Twenty Percent

IMSA stated that for four of its U.S. ESP sales, no home market product could be identified that was within the twenty percent difference-in-merchandise (DIFMER) range. The company advised the Department that it would provide alternate matches for these sales. No such information was provided. Moreover, in a random sample analyzed by the Department, many more U.S. sales were found to be out of the DIFMER range of twenty percent, and no alternate matches or constructed value data exists for those sales.

3. Level of Trade

IMSA did not classify its customers by level of trade for either its home market or U.S. purchase price sales, as requested in the Department's original questionnaire. Instead, IMSA classified its customers by sector, i.e., commercial, industrial, or construction.

Other Issues

In addition to the fundamental flaws described above, there were other discrepancies which undermined the Department's confidence in IMSA's data and contributed to the decision to use best information available.

(a) ESP Packing Charges—IMSA did not report packing expenses for any of its U.S. ESP sales. However, respondent did claim packing expenses for all of its purchase price and home market sales.

(b) Miscellaneous Errors:

(1) U.S. Sales Expenses—IMSA reports that certain expenses on U.S. sales had not been incurred, but lists such charges in the computer printout.

(2) Rebates—IMSA states in the narrative that no rebates were granted, but reports a rebate for at least one purchase price sale.

(3) Quality Control Costs—IMSA claims in its supplementary response that no such expenses are paid, yet reports such costs on the computer printout.

(4) Duferco's Indirect Selling Expenses—supplementary questionnaire response states that none are claimed, but computer printout lists amounts under this heading.

(5) Other Expenses—IMSA provides no written explanation whatsoever for this adjustment. However, the ESP computer printout lists data in this column.

(6) "Other" Category—For U.S. ESP sales, IMSA matches sales in one "STRENGTU" category to sales in one of two other categories reported for sales in the home market. IMSA does not explain what this category means, or the basis on which it matches to one of the two home market categories.

(7) Unexplained Codes in Home Market Sales Listing—In IMSA's home market sales listing codes 5 through 7 appear for the product characteristic "FINISHH." However, the index to this listing describes only codes 1 through 4.

Because of the numerous defects in the information IMSA provided, consistent with Department practice, we have used best information available for the preliminary determination. Since IMSA attempted to substantially cooperate with the Department, as BIA we used the average petition rate for this class or kind of merchandise from Mexico.

Verifications

Because AHMSA has declined to cooperate in the investigation of cut-to-length carbon steel plate, no verification will be necessary for this investigation.

With respect to corrosion-resistant carbon steel products, according to section 776(b) of the Act, we will verify the information submitted by IMSA, at which time we will review the issues discussed above regarding the company's questionnaire responses. We will then consider the results of verification in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cut-to-length steel plate and corrosion-resistant carbon steel products from Mexico that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The LTFV margins are as follows for cut-to-length steel plate:

Producer/manufacturer/exporter	Weighted-average margin percentage
AHMSA, S.A. de CV.	49.25
All Others	49.25

The LTFV margins are as follows for corrosion-resistant steel products:

Producer/manufacturer/exported	Weighted-average margin percentage
IMSA, S.A. de C.V.	76.12
All others	76.12

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Accordingly, the level of export subsidies as determined in Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Mexico, 57 FR 57813 (December 7, 1992), which is .07 percent *ad valorem* for certain cut-to-length carbon steel products, and 5.01 percent *ad valorem* for certain corrosion-resistant carbon steel flat products, will be subtracted from the dumping margins for deposit or bonding purposes, resulting in a cash deposit rate of 49.18 percent *ad valorem* for certain cut-to-length carbon steel products for AHMSA and all other exporters, and a cash deposit rate of 71.11 percent *ad valorem* for certain corrosion-resistant carbon steel flat products for IMSA and all other exporters.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by April 12, 1993.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2423 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-421-803 and A-421-804]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Jeffery B. Denning or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4194 or (202)482-4136, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain hot-rolled carbon steel flat products (hot-rolled steel) and certain cold-rolled carbon steel flat products (cold-rolled steel) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Hoogovens Groep BV. Hoogovens accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided Hoogovens with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses. Since the Department determined at initiation that it had reasonable grounds to believe or suspect that Hoogovens had sold the subject merchandise in the Netherlands at prices which were below Hoogovens' cost of production, the Department also presented to Hoogovens our cost of production questionnaire (Section D). Hoogovens submitted its responses to these questionnaires in September and October 1992.

On September 17, 1992, we presented Hoogovens with section E of our antidumping questionnaire, dealing with United States value-added sales transactions. Hoogovens submitted its response to this questionnaire in November 1992.

The Department issued supplemental questionnaires in November 1992. Hoogovens provided responses to these questionnaires in November and December 1992.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioner in these investigations. The petitions were amended to include the Steelworkers as co-petitioners on December 16, 1992.

On December 11, 1992, we notified Hoogovens that we would allow additional time (until December 21, 1992) for it to provide additional information and remedy deficiencies in its responses. Hoogovens submitted additional information by the December 21, 1992, deadline.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on January 22, 1993, Hoogovens requested that, in the event of an affirmative preliminary determination in these investigations, the Department postpone the final determinations to 135 days after the date of publication of the affirmative preliminary determinations. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: certain hot-rolled carbon steel flat products and certain cold-rolled carbon steel flat products. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (Cold-Rolled Steel from Argentina), which is being published concurrently with this notice.

Period of Investigation

The POI is January 1, 1992, through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in Room B–099 of the main building of the Department of Commerce.

Hoogovens reported sales in the U.S. of secondary merchandise and scrap material. As discussed in Appendix II to Cold-Rolled Steel from Argentina, we have analyzed those sales for which Hoogovens was able to provide complete product specification data, and have not analyzed those sales for which Hoogovens was unable to provide product specification data.

Fair Value Comparisons

To determine whether sales of hot-rolled steel and cold-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

In a few instances, we found that Hoogovens' proposed model matches submitted in its concordance for the hot-rolled steel investigation did not follow the Department's model matching criteria, as outlined in Appendix V. However, since Hoogovens provided all necessary data for rematching, and the number of models involved was relatively small, we rematched the U.S. sales in accordance with that criteria. Additionally, in both its hot-rolled steel and cold-rolled steel concordances, Hoogovens proposed a few matches of U.S. products with home market products which have differences in merchandise (difmers) in excess of that allowed by the Department's "20 percent difmer test." Based upon an analysis of all home market products, we have selected, where possible, new matches which fit within the aforementioned matching methodology and which meet the Department's difmer test. *See*, Memorandum to File, dated January 21, 1993. In the cold-rolled steel investigation there was no acceptable match which would meet the 20 percent difmer test for one U.S. product. Further, Hoogovens failed to submit constructed value data for these sales. Consequently, we are calculating the margins for these sales based on the best information available (BIA), pursuant to section 776(c) of the Act. For a discussion of our methodology for determining BIA in these investigations, see Appendix II to Cold-Rolled Steel from Argentina.

Hoogovens has reported sales of the subject merchandise to related parties in the home market. For purposes of our preliminary determinations we have accepted some of those sales (hot-rolled steel only), and rejected others, based on our determination that these sales were not at arm's length. The Department's methodology for determining whether or not home market sales are made at arm's length is discussed in appendix II to Cold-Rolled Steel from Argentina, which is being published concurrently with this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated. In addition, where sales to the first unrelated purchaser took place after importation of the subject merchandise into the United States, we based USP on exporter's sales price, in accordance with section 772(c) of the Act.

For both hot-rolled and cold-rolled steel, we calculated purchase price based on packed, delivered and/or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. brokerage, U.S. duties and U.S. inland freight, in accordance with section 772(d)(2) of the Act.

For both hot-rolled and cold-rolled steel, we calculated exporter's sales price based on packed, delivered and/or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. brokerage, U.S duties and U.S. inland freight, in accordance with section 772(d)(2) of the Act.

We made additional deductions, where appropriate, for commissions, credit expenses, warranty expenses, product liability premium expenses, technical service expenses and inventory carrying expenses, in accordance with section 772(e) of the Act.

For certain hot-rolled steel and cold-rolled steel ESP sales, Hoogovens reported no amount in the sales listing for certain types of expenses where, according to the narrative portion of the response, an expense was incurred. These expenses include credit expenses and indirect selling expenses. For the missing credit expenses, we calculated the expense based on sales and payments dates reported in the response. For indirect selling expenses we assigned, as BIA pursuant to section 776(c) of the Act, the highest value for that expense reported in the ESP sales database.

We also deducted all value added to the subject merchandise after importation, pursuant to section 772(e)(3) of the Act. The U.S. value added consists of the costs of materials, fabrication, and general expenses associated with the portion of the subject merchandise further manufactured in the United States as well as a proportional amount of profit or loss attributable to the value added. We recalculated Hoogovens' reported total cost of further manufacturing because the reported interest expense included an amount relating to accounts receivable and finished goods inventory, which costs were also included in the submitted selling expenses. Profit or loss was calculated by deducting from the sales price of the further manufactured merchandise all production and selling costs, including commissions where appropriate, incurred by the company for such merchandise. The total profit or loss was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted. In determining the costs incurred to produce the subject merchandise, we included (1) materials, (2) fabrication, and (3) general expenses, including selling, general and administrative expenses (SG&A), research and development expenses, and interest expenses.

For certain hot-rolled steel and cold rolled steel sales involving further manufacturing, Hoogovens failed to report amounts for the costs of further manufacturing. Consequently, for preliminary determinations, we are calculating the margins for these sales based on BIA, pursuant to section 776(c) of the Act. (See, Appendix II to Cold-Rolled Steel from Argentina for a discussion of our methodology for determining BIA in these investigations.)

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value-added tax (VAT) that would have been collected had the U.S. sales been taxed.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared, for each class or kind of merchandise, the volume of home market sales of the merchandise to the volume of third country sales of the merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for Hoogovens' sales of both classes or kinds of merchandise.

For hot-rolled steel, we calculated FMV based on delivered prices charged to unrelated customers in the home market, as well as prices charged to related customers where such prices were found to be at arm's length (see, discussion of our arm's length test in the "Fair Value Comparisons" section of this notice). For cold-rolled steel, we calculated FMV based on delivered and undelivered prices charged to unrelated customers in the home market. For both hot-rolled and cold rolled steel, we compared U.S. sales to home market sales made at the same level of trade, where possible, in accordance with 19 CFR 353.58. Where we were not able to match at the same level of trade, we made comparisons without regard to the level of trade. Hoogovens claimed that home market end-users constitute two distinct levels of trade based upon whether or not the customer is a part of the automotive industry. However, for purposes of these preliminary determinations since Hoogovens provided insufficient information to support this claim, we have considered all sales to home market end-users as a single level of trade.

For both hot-rolled and cold-rolled steel, we made deductions, where appropriate for discounts and inland freight, in accordance with section 773(a)(4) of the Act. For cold-rolled steel we also made deductions for certain rebates.

For home market to purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for credit expenses and warranty expenses. We also made a circumstance of sale adjustment for the difference between the VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. We deducted home market packing costs and added U.S. packing costs.

For home market to ESP comparisons which involved further manufacturing in the United States, we made deductions, where appropriate, for credit expenses and warranty expenses. Where appropriate, we also deducted from FMV the weighted-average home market indirect selling expenses, including inventory carrying costs and product liability premium expenses, up to the amount of indirect selling expenses and, where appropriate, commissions incurred on the U.S. sales, in accordance with 19 CFR 353.56(b). Since these comparisons involve further manufacturing, in determining the ESP offset amount we utilized that portion of indirect selling expenses and commissions which is attributable to the foreign input product. We also made a circumstance of sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. Finally, we deducted home market packing costs and added U.S. packing costs.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the Act, the Department initiated investigations to determine whether Hoogovens had home market sales of hot-rolled steel and cold-rolled steel that were made at less than their respective costs of production (COP).

We calculated the COP based on the sum of a Hoogovens' cost of materials, fabrication, general expenses, and packing. We made no adjustments to Hoogovens' reported cost data. We compared home market selling prices, net of movement charges, rebates, and invoice corrections, to each model's COP.

In both the hot-rolled steel and the cold-rolled steel COP investigations, Hoogovens has been found to have had no sales below the COP. Therefore, for these preliminary determinations in determining FMV we have not disregarded any of Hoogovens' home market sales based upon their being at less than the COP.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of hot-rolled steel and cold-rolled steel from the Netherlands that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of these preliminary determinations. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer	Weighted-average margin percentage
Hot-Rolled Steel:	
Hoogovens Groep, BV	26.34
All Others	26.34
Cold-Rolled Steel:	
Hoogovens Groep, BV	23.20
All Others	23.20

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determinations by the 135th day after the date of publication of this notice in the **Federal Register**.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2405 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–455–802]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From Poland

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Judith Wey or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6320 or 482–5288, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cut-to-length carbon steel plate (steel plate) from Poland are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On July 29, 1992, we contacted the Embassy of Poland and requested that it identify the Polish exporters of steel plate to the United States during the period of investigation (POI). We received a response on August 5, 1992, identifying PHZ Stalexport as the exporter of steel plate, and Huta Czestochowa/Czestochowa, Huta Batory/Chorzow Batory, and Huta Ostrowiec/Ostrowiec Swietokrzyski as manufacturers of steel plate. On August 6, 1992, we received a notice of appearance on behalf of PHZ Stalexport and Huta Czestochowa, (collectively Stalexport) which indicated that Huta Czestochowa was also an exporter of steel plate to the United States.

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 20, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to counsel for Stalexport. Stalexport was designated as responsible for collecting the necessary information from Huta Czestochowa and any other companies in Poland that are known to export and/or manufacture steel plate for export to the United States.

In the letter accompanying the questionnaire, we explained that in past cases, the Department has treated Poland as a nonmarket economy (NME) country, and that, in accordance with section 771(18)(c) of the Act, the Department's prior determination that Poland is an NME country will remain in effect until revoked. We invited the Polish authorities to provide information regarding: (1) Whether the Department should continue to treat Poland as an NME country and (2) whether available information would permit the Department to base foreign market value (FMV) on price information under section 773(a) of the Act. We stated that, unless Poland was determined to no longer be an NME, FMV would be based on factors-of-production as required in section 773(c) of the Act. We also informed the Polish authorities that, if they intended to claim market-oriented industry (MOI) status with regard to the steel plate industry, they should respond to Attachment I of the questionnaire based upon criteria established in recent antidumping investigations. Additionally, we requested that, if the Polish authorities intended to assert that multiple exporters of the subject merchandise were separate and independent based upon the Department's established criteria and therefore entitled to separate antidumping margins should there be any, they should respond to Attachment II of the questionnaire.

On August 28, 1992, Stalexport requested that Poland be reclassified as a market economy country. The Department is considering this request and will address it at a later date. Stalexport also requested that it be issued section B of the questionnaire concerning home market/third country sales. We did so on September 4, 1992.

Stalexport submitted its sections A (General Information), C (Sales to the United States), and D (Factors of Production) questionnaire responses in September and October 1992. On October 20, 1992, Stalexport requested that its section B reporting requirements be reduced. On October 21, 1992, we informed Stalexport that Poland's classification as an NME country had not been revoked and that Stalexport's section B response would be considered only if Poland's NME status were to be revoked or if the industry producing steel plate were determined to be a MOI. We detailed for Stalexport how it could limit its reporting of information for those home market sales of products which it believed would never be matched to a U.S. sale, if FMV were to be based on home market sales.

On October 21, 1992, Import Administration's Office of Policy recommended that the following six surrogate countries, in order of preference, be used for valuing the factors of production in this investigation: Thailand; South Africa; Malaysia; Mexico; Argentina; and Turkey. On October 21, 1992, we invited interested parties to this investigation to submit publicly available data they believed the Department should consider when valuing the Polish factors of production.

On November 3, 1992, the Department issued a supplemental questionnaire concerning sections A, C, and D. Stalexport's response was received on November 17, 1992.

Stalexport submitted its section B response on November 3, 1992. On November 10, 1992, we received a letter from Stalexport indicating that its section B response was incomplete and did not contain the required information for sales of products which Stalexport thought would never be matched to U.S. sales. Stalexport indicated that for it to comply with the Department's reporting requirements and submit a complete response would take months.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in this investigation. The petitioner was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On November 23, 1992, petitioners submitted publicly available data they believed the Department should consider when valuing the Polish factors of production.

On December 11, 1992, we notified respondent that we would allow additional time for it to provide additional information and remedy deficiencies in its responses. At that time, we informed Stalexport that any additional information submitted would not be considered for our preliminary determination, but would be considered for the final determination. Stalexport submitted additional factors of production information on December 16, 1992.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on January 8, 1993, Stalexport requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determination until the 135th day after the publication of this notice in the **Federal Register**.

Scope of Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Such or Similar Comparisons

We have determined that the class or kind of merchandise covered by this investigation constitutes a single category of such or similar merchandise.

Period of Investigation

The POI is January 1 through June 30, 1992.

Fair Value Comparisons

To determine whether sales of steel plate from Poland to the United States were made at less than fair value, we compared the United States price (USP) to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Although Stalexport responded to the Department's questionnaires, it failed, in a timely manner for the preliminary determination, to provide complete factors of production information for the mill primarily responsible for production of the subject merchandise. Stalexport did not submit complete factors of production information for Huta Czestochowa until December 16, 1992, after the deadline for submission of information for consideration for the preliminary determination. Therefore, in accordance with section 776(c) of the Act, we have based our preliminary determination on best information available (BIA). We will consider the supplemental information submitted by Stalexport for our final determination.

In determining what margin to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II–B to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

In this case, Stalexport has been a cooperative respondent and has attempted to comply with the Department's requests for information. Therefore, we have determined BIA to be the average of the calculated margins based on U.S. prices and acceptable surrogate-country information provided in the petition, as described below.

United States Price

We based USP on information provided in the petition. Petitioners calculated USP based on actual delivered price quotations for Polish steel plate for sale in the United States. Petitioners made deductions for ocean freight and insurance based on the average CIF charges, as derived from IM–145 import statistics. Petitioners also made adjustments for U.S. duty.

Foreign Market Value

We based FMV on information provided in the petition. In accordance with section 773(c) of the Act, petitioners calculated FMV using the factors of production methodology. Petitioners based their calculations on production costs in 15 potential surrogate countries. For this determination we have accepted only those FMV calculations which are based upon factor values taken from South Africa, Mexico, Argentina, and Turkey, which are countries the Department regards as acceptable surrogates in this investigation.

Petitioners calculated the values of raw materials, labor, and energy using surrogate costs and, where possible, Polish usage rates based on usage rates of a Polish steel producer, Sendzimir Iron and Steel Works. Petitioners summed these values and added amounts for selling, general, and administrative expenses, depreciation, and interest expenses. Finally, petitioners added the statutory minimum of eight percent for profit.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Where Federal Reserve rates were not available, petitioners used the average monthly exchange rates published by the International Monetary Fund.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel plate from Poland that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
PHZ Stalexport and All Others	75.44

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determination by the 135th day after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2406 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–485–803]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0922 or (202) 482–4136, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cut-to-length carbon steel plate (steel plate) from Romania are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992 (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 20, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to the Romanian Embassy in Washington for transmittal to Metalexportimport (MEI) in Romania. The Department established a deadline of September 4, 1992, for responding to section A of the questionnaire. MEI accounted for all exports of the subject merchandise to the United States during the period of investigation (POI).

MEI submitted a response to section A of the questionnaire (which requested general information on respondent's organization, accounting practices, merchandise, and total sales of subject merchandise in all markets), on September 9, 1992.

On September 15, 1992, MEI's section A response was rejected and returned, and MEI was informed that no further responses to the questionnaire would be accepted. This action was taken because MEI had neither filed its response by the September 4, 1992, deadline nor made a timely request for an extension of that deadline. A second section A response, filed by MEI on September 11, 1992, was rejected and returned for the same reasons on September 25, 1992.

On September 18 and September 30, 1992, MEI requested additional time to file its questionnaire response. The Department rejected these requests by letters of September 29 and October 9, 1992. On October 5, 1992, MEI filed responses to sections C and D of the questionnaire; these responses were returned on October 9, 1992. Although the section C and D responses were submitted by the deadline that had been set forth in the original questionnaire for these sections, our September 15, 1992, letter informed MEI that no further responses to the questionnaire would be accepted. MEI's section C and D responses were thus unsolicited and, accordingly, were returned pursuant to 19 CFR 353.31(b)(2).

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in this investigation. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On January 19, 1993, petitioners requested that, if the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Scope of the Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that the merchandise covered by this investigation constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of steel plate from Romania to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We based our determination on best information available (BIA) as required by section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II–B to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, published concurrently with this notice.

Because MEI indicated continued willingness to comply with the Department's request for information, we consider it to be a cooperative respondent despite having failed to file a timely response to our questionnaire. Accordingly, we have determined BIA to be the average of those margins calculated based on U.S. prices and appropriate surrogate country information provided in the petition, as described below.

United States Price

We calculated USP based on actual price quotations contained in the petition. Petitioners made deductions, where appropriate, for the following movement charges: Insurance, ocean freight, and U.S. duties.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on information in the petition. Petitioners used the factors-of-production methodology. Petitioners based their calculations on production costs in potential surrogate countries. From those countries for which petitioners provided information, we selected Argentina, Chile, and Turkey as the most appropriate surrogate countries on which to base valuation of Romanian production factors because, of the countries considered as appropriate surrogates in the most recent investigation involving products from Romania, those countries have been deemed appropriate surrogate countries. See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania (57 FR 42957, September 17, 1992).

For each of the three countries that we have selected as appropriate surrogates, petitioners calculated the value of raw materials, labor, and energy using costs in the surrogate country and, where possible, Romanian usage rates. Petitioners summed these values, and then added an amount for overhead and general expenses. Finally, petitioners added the statutory minimum eight percent profit. Petitioners provided no information on packing factors or costs. Consequently, no amount for packing was added.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank or, where Federal Reserve Bank rates were not available, based on the average monthly exchange rates published by the International Monetary Fund.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel plate from Romania that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
Metalexportimport and All Other Companies	75.04

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

If this investigation proceeds normally, we will make our final determination by April 12, 1993.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2407 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-469-802 and A-469-803]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0108 or (202) 482-4136, respectively.

PRELIMINARY DETERMINATIONS: We preliminarily determine that imports of certain cold-rolled carbon steel flat products (cold-rolled steel) and certain cut-to-length carbon steel plate (steel plate) from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of these investigations on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued affirmative preliminary injury determinations in these cases.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Empresa Nacional Siderurgica, S.A. (Ensidesa). This respondent accounted for at least 60 percent of the exports of each class or kind of the subject merchandise to the United States during the period of investigation (POI). We also provided this respondent with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

Respondent submitted sales questionnaire responses in September and October 1992. The Department issued a supplemental sales questionnaire in November 1992. Respondent submitted the response to this supplemental questionnaire in December 1992.

On November 6, 1992, petitioners alleged that Ensidesa sold cold-rolled steel and steel plate in Spain at prices which were below its cost of production. On January 7, 1993, the Department determined that it had reasonable grounds to believe or suspect that Ensidesa had sold cold-rolled steel and steel plate in Spain below cost and, therefore, initiated cost investigations in accordance with section 773(b) of the Act. The Department issued to Ensidesa a cost of production questionnaire (section D) on the same date. Ensidesa's response to section D was not received in time to be considered for these determinations. However, we will consider this information for the final determinations.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of the products in the United States, entered an appearance as a co-petitioner in these investigations. The petitions were amended to include the Steelworkers as co-petitioners on December 16, 1992.

On November 24, 1992, and January 6, 1993, respectively, petitioners alleged the existence of critical circumstances with regard to imports of steel plate and cold-rolled steel from Spain.

On December 11, 1992, we notified respondent that we would allow additional time (until December 21, 1992) for it to provide additional information and remedy deficiencies in its responses. Ensidesa submitted additional information by the December 21, 1992, deadline.

On January 19, 1993, petitioners requested that, for any of these investigations for which the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determinations, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determinations

Pursuant to section 735(a)(2)(A) of the Act, on January 15, 1993, Ensidesa requested that, in the event of an affirmative preliminary determination in either of these investigations, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determinations until the 135th day after the publication of this notice in the Federal Register.

Scope of the Investigations

The products covered by these investigations constitute two separate "classes or kinds" of merchandise: certain cold-rolled carbon steel flat products and certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigations

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that each of the classes or kinds of the products covered by these investigations constitutes a single category of such or similar merchandise. Where, within a class or kind, there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, which is on file in room B–099 of the main building of the Department of Commerce.

Fair Value Comparisons

To determine whether sales of cold-rolled steel and steel plate from Spain to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Ensidesa has reported sales of the subject merchandise to related parties in the home market. The Department's methodology for determining whether or not to include these transactions in our calculations of FMV is discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

Ensidesa has reported that sales of steel plate in the United States were made, and reported to the Department, on a theoretical weight basis, while home market sales, except for those to certain customers, were made and reported on an actual weight basis. We have used respondent's conversion factor, submitted on December 21, 1992, to convert home market actual weight values to a theoretical weight basis for comparison to U.S. sales. We were able to use this single factor from Ensidesa's December 21, 1992, submission because of the limited burden on the Department. Since respondent did not submit information enabling the Department to distinguish home market theoretical-weight sales from home market actual-weight sales, we have used the conversion factor on all home market sales.

Ensidesa failed to provide in its model match concordance home market matches for a few U.S. sales of cold-rolled steel. In those instances, we used as the best information available the highest margin calculated among cold-rolled sales for which we were able to calculate a margin.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States before importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on prices to unrelated customers. We made deductions, where appropriate, for the following movement charges: Marine insurance, ocean freight, U.S. brokerage, and U.S. duty.

In accordance with section 772(d)(1)(C) of the Act, we added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value, we compared the volume of home market sales of the subject merchandise to the volume of third country sales of each class or kind of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales by Ensidesa of both cold-rolled steel and steel plate.

We calculated FMV based on prices charged to unrelated and related customers in the home market because we found Ensidesa's sales to its related customers to be at arm's length. In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. We made deductions, where appropriate, for discounts and rebates.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit expenses and interest revenue, and for VAT incurred on home market sales and not on export sales.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determinations.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of cold-rolled steel and steel plate from Spain. Pursuant to section 733(e)(1) of the Act, we have analyzed the allegations using the methodology described in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina. To determine whether or not there have been massive imports of steel plate, we compared export volume for the six months subsequent to the filing of the petition to the six months prior to the filing of the petition, using data submitted by Ensidesa. For cold-rolled products, we used U.S. Department of Commerce import statistics since information from Ensidesa was not available for the preliminary determination. In both cases, we found that imports of the subject merchandise from Spain during the period subsequent to receipt of the petition have been massive.

To determine whether or not the importers of the products knew or should have known that they were being sold at less than fair value, we considered the preliminary margins in these investigations, as discussed in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina. The margins indicate that importers of cold-rolled steel should have known that it was being sold at less than fair value, and that importers of steel plate should have known that it was being sold at less than fair value

Based on our analyses, we preliminarily determine that critical circumstances do exist with respect to imports of cold-rolled steel from Spain, and that critical circumstances do exist with respect to imports of steel plate from Spain.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel and steel plate from Spain that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Cold-Rolled Steel:	
Ensidesa	41.81
All Others	41.81

Producer/manufacturer/exporter	Weighted-average margin percentage
Steel Plate:	
Ensidesa	105.61
All Others	105.61

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping and export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its preliminary affirmative determination in the concurrent countervailing duty investigation involving sales in the United States of cold-rolled steel and steel plate from Spain, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the AD deposit rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If either or both of our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of these preliminary determinations or 45 days after our final determinations.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determinations by the 135th day after the publication of this notice in the **Federal Register**.

These determinations are published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2408 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-401-805]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0922 or (202) 482-4136, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cut-to-length carbon steel plate (steel plate) from Sweden are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Svenskt Staal, AB (SSAB). This respondent accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided SSAB with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

SSAB responded to section A of our questionnaire (which requested general information on respondent's organization, accounting practices, merchandise, and total sales of subject merchandise in all markets) in September 1992. In October 1992, SSAB submitted its responses to sections B and C of our questionnaire, which request information on sales in the home market and in the United States, respectively.

The Department issued, and received a response to, a deficiency letter in November 1992.

On November 21, 1992, the United Steelworkers of America (AFL-CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in this investigation. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On December 9, 1992, petitioners alleged that SSAB made home market sales of the subject merchandise at prices below the cost of production (COP) during the POI. Since the Department determined that it had reasonable grounds to believe or suspect that SSAB had sold steel plate at prices which were below SSAB's COP, the Department presented a cost of production questionnaire (section D) to SSAB on January 19, 1993.

On December 11, 1992, we notified SSAB that we would allow additional time (until December 21, 1992) for it to remedy deficiencies in, or otherwise supplement, its questionnaire responses. We received a supplemental response from SSAB in December 1992. However, due to time constraints, the Department is not using this latest response for purposes of the preliminary determination. This information will, where appropriate, be verified and considered for the final determination.

On January 19, 1993, petitioners requested that, if the preliminary determination in this investigation is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of this investigation if the preliminary determination is negative.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on January 22, 1993, SSAB requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determination for this investigation until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that the product covered by this investigation constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of steel plate from Sweden to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because respondent failed to respond adequately to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act. Chief among respondent's questionnaire deficiencies were failure to report sales to the first unrelated party, failure to prepare its model match concordance according to the instructions set forth in appendix V to the Department's antidumping questionnaire, and failure to define products as unique based on our matching criteria, as instructed in our antidumping questionnaire.

The relatively large number of models and transactions contained in respondent's questionnaire response rendered infeasible any attempt by the Department to correct the product identification and matching deficiencies in time for the preliminary determination.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who substantially cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, published concurrently with this notice. Because SSAB has responded to all our requests for information, we have determined it to be substantially cooperative for purposes of this preliminary determination.

We compared U.S. and home market prices, as provided in the petition. As BIA, we based our determination on the average of all margins based on information in the petition.

United States Price

We calculated USP based on prices contained in the petition. Petitioners made deductions, where appropriate, for the following movement charges: Foreign inland freight; ocean freight and insurance; U.S. duty; harbor maintenance fees; and merchandise processing fees.

In accordance with section 772(d)(1)(C) of the Act, petitioners added to USP the amount of value-added tax (VAT) that would have been collected had the exported sale been taxed

Foreign Market Value

We calculated FMV based on home market prices provided in the petition. Petitioners made deductions, where appropriate, for discounts and credit expenses.

Pursuant to 19 CFR 353.56, petitioners made circumstance-of-sale adjustments for differences in credit expenses. A circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed was also made. Home market packing costs were deducted and U.S. packing costs were added.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel plate from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Average margin percentage
Svenskt Staal, AB	21.77
All Others	21.77

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product * * * shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its preliminary affirmative determination in the concurrent countervailing duty investigation involving sales in the United States of steel plate by SSAB, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the antidumping deposit rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determination by the 135th day after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2409 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DS-P

(A–412–814)

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cut-to-Length Carbon Steel Plate from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga or David J. Goldberger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0922 or (202) 482–4136, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain cut-to-length carbon steel plate (steel plate) from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on July 20, 1992, (57 FR 33488, July 29, 1992), the following events have occurred:

On August 14, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case. The ITC also issued a negative preliminary determination with respect to cold-rolled carbon steel flat products from the United Kingdom, an investigation of which was initiated concurrently with the steel plate investigation.

On August 19, 1992, the Department of Commerce (the Department) presented an antidumping duty questionnaire to British Steel plc (British Steel). This respondent accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). We also provided British Steel with a standard computer program for submitting, on an optional basis, a completed margin analysis along with the antidumping duty questionnaire responses.

Since the Department determined at initiation that it had reasonable grounds to believe or suspect that British Steel had sold steel plate in the United Kingdom at prices which were below British Steel's cost of production, the Department also presented a cost of production questionnaire (section D) to British Steel.

British Steel notified the Department on September 3, 1992, that it would not participate in this investigation.

On November 21, 1992, the United Steelworkers of America (AFL–CIO/CLC) (Steelworkers), a certified union representative of an industry whose workers are engaged in the manufacture or production of like products in the United States, requested status as co-petitioners in this investigation. The petition was amended to include the Steelworkers as co-petitioners on December 16, 1992.

On November 24, 1992, petitioners alleged the existence of critical circumstances pursuant to section 733(e). Respondent rebutted petitioners' critical circumstances allegation on December 23, 1992. On January 19, 1993, respondent filed additional comments on the issue of critical circumstances, as well as the basis for the Department's preliminary LTFV determination.

On January 19, 1993, petitioners requested that, in the event that the preliminary determination is negative, the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, provided that similar requests are received in all other concurrent antidumping investigations of flat-rolled steel products for which the preliminary determinations were affirmative.

On January 25, 1993, petitioners amended their request to request unconditional postponement of any of these investigations for which the preliminary determination is negative.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on January 22, 1993, British Steel requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Therefore, we are postponing the final determination for this investigation until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigation

The product covered by this investigation constitutes a single "class or kind" of merchandise: Certain cut-to-length carbon steel plate. The full description of the subject merchandise is included in Appendix I to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, which is being published concurrently with this notice.

Period of Investigation

The POI is January 1 through June 30, 1992.

Such or Similar Comparisons

We have determined that the merchandise covered by this investigation constitutes a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of steel plate from the United Kingdom to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

Because respondent failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. A full description of the Department's BIA methodology is included in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

We compared U.S. prices to home market prices, as provided in the petition. As BIA, given that British Steel has been uncooperative, we based our determination on the comparison that yielded the highest margin.

United States Price

We calculated USP based on average customs values of subject merchandise imported into the United States, as reported in the petition. Petitioners deducted foreign inland freight.

In accordance with section 772(d)(1)(C) of the Act, petitioners added to USP the amount of value-added tax (VAT) that would have been collected had the exported merchandise been taxed.

Foreign Market Value

We calculated FMV based on home market prices provided in the petition. Petitioners made deductions, where appropriate, for discounts and credit expenses.

Pursuant to 19 CFR 353.56, we made circumstance-of-sale adjustments for differences in credit expenses. For price-to-price comparisons, we also made a circumstance-of-sale adjustment for the difference between VAT on home market sales and that which would have been collected on U.S. sales if the export sales had been taxed. When comparing actual prices, we deducted home market packing costs and added U.S. packing costs.

Currency Conversion

Petitioners made currency conversions based on the official exchange rates in effect during the quarter of the U.S. sale as certified by the Federal Reserve Bank.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of steel plate from the United Kingdom. Pursuant to section 733(e)(1) of the Act, we have analyzed the allegations using the methodology described in Appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina.

With respect to our determination as to whether there have been massive imports of steel plate, we note that respondent failed to respond to our questionnaire. By deciding not to submit a questionnaire response, British Steel explicitly indicated that it did not intend to be an active participant in the investigation. Accordingly, the Department is under no obligation to consider factual information contained in other submissions from such a respondent in making LTFV determinations. Therefore, factual information contained in British Steel's December 23, 1992, and January 19, 1993, submissions on critical circumstances has not been considered. Because British Steel has refused to provide requested information, the Department must resort to BIA. In these particular circumstances, the most adverse BIA is warranted. Therefore, we determine that imports were massive over a relatively short period.

To determine whether the importers knew or should have known that the merchandise was being sold at less than fair value, we considered the preliminary margins in these investigations, as discussed in appendix II to the Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina. The preliminary margins indicate that importers knew, or should have known, that imports of steel plate from the United Kingdom were being sold in the United States at less than fair value.

Based on our analysis, we preliminarily determine that critical circumstances exist with respect to imports steel of plate from the United Kingdom.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of steel plate from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days before the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
British Steel plc	109.22
All Others	109.22

Article VI, paragraph 5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by 772(d)(1)(D) of the Act. Since antidumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount.

In its preliminary affirmative determination in the concurrent countervailing duty investigation involving sales in the United States of steel plate from the United Kingdom, the Department did not find any export subsidies. Therefore, we did not need to make any offset to the AD deposit rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

A schedule for case briefs, rebuttal briefs, and hearings, if requested, will be published at a later date after all interested parties have had the opportunity to request a hearing.

We will make our final determination by the 135th day after the publication of this notice in the **Federal Register**.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2410 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DS-P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancellation of Staged Entry for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

January 29, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling staged entry periods.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade

Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 30, 1992, a notice was published in the **Federal Register** (57 FR 62304), which announced, among other things, the establishment of staged entry periods for cotton and man-made fiber textile products in Categories 314 and 617, produced or manufactured in China and exported during the period beginning on January 1, 1992 and extending through December 31, 1992. It has been determined by CITA that the remaining staged entry periods for Categories 314 and 617 are no longer needed.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on February 1, 1993, you cancel the staged entry periods established in the directive dated December 23, 1992 for cotton and man-made fiber textile products in Categories 314 and 617, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–2650 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DR-F

Settlement of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Arab Republic of Egypt

February 1, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated January 6, 1993, the Governments of the United States and the Arab Republic of Egypt agreed amend their Bilateral Cotton and Man-Made Fiber Textile Agreement, effected by exchange of notes dated March 15, 1992 and June 9, 1992, to include the coverage of wool textile and apparel products. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish a limit for wool textile products in Category 448 for the period beginning on January 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 54221, published on November 17, 1992; and 57 FR 59092, published on December 14, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Effective on February 8, 1993, you are directed to cancel the directive dated December 8, 1992, which directed you to count imports of wool textile products in Category 448, produced or manufactured in Egypt and exported during the period beginning on November 27, 1992 and extending through November 26, 1993.

Also, this directive amends, but does not cancel, the directive issued to you on November 10, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the Arab Republic of Egypt and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on February 8, 1993, you are directed, pursuant to a Memorandum of Understanding dated January 6, 1993, to amend the November 10, 1992 directive to include a limit for Category 448 at a level of 16,000 dozen[1].

Import charges will be provided at a later date.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–2652 Filed 2–3–93; 8:45 am]

BILLING CODE 3510-DR-F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1993 Correlation

February 1, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1993 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1993) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The following changes will be published in the first supplement to the Harmonized Tariff Schedule of the United States (1993):

Category	Changes to the 1993 Correlation
237	Delete 6103.43.2025 Delete 6104.63.1030
659	Add 6103.43.2025—definition remains unchanged. Add 6104.63.1030—definition remains unchanged.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-2651 Filed 2-3-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, part 236, Construction and Architect-Engineer Contracts, and related clauses at 252.236; OMB Control No. 0704-0255.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 103 Hours.

Responses per Respondent: 1.

Number of Respondents: 2,680.

Annual Burden Hours: 276,620.

Annual Responses: 2,680.

Needs and Uses: DoD FAR Supplement, part 236 prescribes policies and procedures for contracting for construction and architect-engineer services. The information generated by these requirements is used by Government personnel to (a) evaluate contractor offers for modifications, (b) determine that the contractor has removed all obstructions to navigation, and (c) review contractor requests for payment.

Affected Public: Businesses or other for-profit; Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: February 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-2631 Filed 2-3-93; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of Defense.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Defense FAR Supplement, Part 225, Foreign Acquisition.

Type of Request: New Collection.

Average Burden Hours/Minutes per Response: 25 hours.

Responses per Respondent: 1.

Number of Respondents: 181.

Annual Burden Hours: 45.

Annual Responses: 181.

Needs and Uses: Section 834 of the National Defense Authorization Act for Fiscal Year 1992 extends the restriction on acquisition of certain machine tools and accessories through fiscal year 1996. Implementation of this statutory restriction includes a contract provision which requires offerors to list machine tool accessories not specifically required by the specifications. If such accessories are not of U.S. or Canadian origin, the country of manufacture and cost must be identified.

Affected Public: Businesses or other for-profit; and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204 Arlington, Virginia 22202-4302

Dated: February 1, 1993

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-2632 Filed 2-3-93; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, Defense.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications copies sold to avoid premature disclosure.

DATES: February 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCCIP), Arlington, Virginia 22217-5660, telephone (703) 696-4001.

Patent 5,079,220: PROCESS FOR SINGLE CRYSTAL GROWTH OF HIGH TC SUPERCONDUCTORS; filed 25 May 1989; patented 7 January 1992.

Patent 5,082,318: GIRTH HITCHING MECHANISM: filed 26 October 1990; patented 21 January 1992.

Patent 5,083,128: LOW OBSERVABILITY APERTURE DESIGN FOR EXPENDABLE COUNTERMEASURES DEVICE; filed 1 April 1986; patented 21 January 1992.

Patent 5,083,909: SEAWATER HYDRAULIC VANE TYPE PUMP; filed 29 November 1990; patented 21 January 1992.

Patent 5,085,998: BIODEGRADATION OF 2,4,6-TRINITROTOLUENE BY WHITE ROT FUNGUS; filed 7 May 1991; patented 4 February 1992.

Patent 5,086,432: RESONANTLY PUMPED ERBIUM–DOPED, 2.8 MICRON SOLID STATE LASER WITH HIGH SLOPE EFFICIENCY; filed 23 May 1991; patented 4 February 1992.

Patent 5,089,941: FLUX CONTAINMENT DEVICE, filed 6 September 1990; patented 18 February 1992.

Patent 5,091,362: SILVER COATED SUPERCONDUCTING CERAMIC POWDER; filed 10 October 1990; patented 25 February 1992.

Patent 5,092,944: HIGH ENERGY CAST EXPLOSIVES BASED ON DINITROPROPYLACRYLATE; filed 7 May 1976; patented 3 March 1992.

Patent 5,092,945: GLYCIDYL AZINE PROPELLANT WITH ANTIGASSING ADDITIVES; filed 1 March 1982; patented 3 March 1992.

Patent 5,093,235: IMMUNO–DYE REAGENT AND ASSAY FOR DETECTION OF ENDOTOXIN, filed 29 September 1989; patented 3 March 1992.

Patent 5,097,156: CIRCUITRY FOR COMPENSATING FOR TRANSISTOR PARAMETER MISMATCHES IN CMOS ANALOG FOUR QUADRANT MULTIPLIER; filed 11 April 1991; patented 17 March 1992.

Patent 5,097,265: TRIANGULAR TARGET BOAT REFLECTOR; filed 24 May 1991; patented 17 March 1992.

Patent 5,097,477: A LASER DIODE PUMPED MULTIPLE ROD RING LASER ALLOWING COMBINATION OF MULTIPLE PUMP SOURCES; filed 7 May 1991; patented 17 March 1992.

Patent 5,098,588: NEW CLASS OF LUBRICANTS DERIVED FROM ARCHAEBACTERIAL LIPIDS; filed 29 November 1989; patented 24 March 1992.

Patent 5,101,181: LOGARITHMIC–PERIODIC MICROWAVE MULTIPLEXER, filed 12 June 1990; patented 31 March 1992.

Patent 5,103,174: MAGNETIC FIELD SENSOR AND DEVICE FOR DETERMINING THE MAGNETOSTRICTION OF A MATERIAL BASED ON A TUNNELING TIP DETECTOR AND METHODS OF USING SAME; filed 26 February 1990; patented 7 April 1992.

Patent 5,103,280: DUAL ACTIVE LAYER PHOTOCONDUCTOR; filed 29 June 1988; patented 7 April 1992.

Patent 5,104,222: SYSTEM AND METHOD FOR MINIMIZING INPUT POLARIZATION–INDUCED PHASE NOISE IN INTERFEROMETRIC FIBER–OPTIC SENSOR DEPOLARIZED INPUT LIGHT; filed 18 September 1990; patented 14 April 1992.

Patent 5,106,829: METHOD OF MAKING SUBSTANTIALLY SINGLE PHASE SUPERCONDUCTING OXIDE CERAMICS HAVING A TC ABOVE 85 DEGREES; filed 19 September 1990; patented 21 April 1992.

Patent 5,107,270: METHOD AND APPARATUS FOR INCREASING A RADAR'S RANGE WITH IMPROVED SCAN-TO-SCAN INTEGRATION OF DOPPLER FILTERED SIGNALS; filed 22 June 1990; patented 21 April 1992.

Patent 5,108,393: NON-INVASIVE BODY-CLAMP; filed 8 April 1991; patented 28 April 1992.

Patent 5,108,931: METHOD FOR DETECTING CHEMICAL VAPORS USING A LASING DYE SENSOR; filed 16 September 1988; patented 28 April 1992.

Patent 5,110,334: METHOD OF PRODUCING GLASS FIBER WITH CORES OF A DIFFERENT MATERIAL; filed 31 July 1990; patented 5 May 1992.

Patent 5,110,760: METHOD OF NANOMETER LITHOGRAPHY; filed 28 September 1990; patented 5 May 1992.

Patent 5,111,438: METHOD OF ACOUSTIC PROCESSING FOR ACOUSTIC IMAGE CLASSIFICATION; filed 28 October 1991; patented 5 May 1992.

Patent 5,113,367: CROSS ENTROPY DECONVOLVER CIRCUIT ADAPTABLE TO CHANGING CONVOLUTION FUNCTIONS; filed 31 January 1990; patented 12 May 1992.

Patent 5,114,104: ARTICULATED CONTROL SURFACE; filed 1 October 1990; patented 19 May 1992.

Patent 5,115,483: HIGH STRENGTH IN-LINE FIBER OPTIC CONNECTOR; filed 26 April 1991; patented 19 May 1992.

Patent 5,115,668: NON-INVASIVE PRESSURE MEASURING DEVICE & METHOD; filed 30 November 1990; patented 26 May 1992.

Patent 5,115,710: LOAD-REDUCING ROCKET NOZZLE OPERATION METHOD; filed 15 February 1991; patented 26 May 1992.

Patent 5,116,268: BUOY FLOTATION GIMBAL; filed 10 June 1991; patented 26 May 1992.

Patent 5,117,397: PLANAR WAVEFRONT SIMULATOR; filed 4 October 1991; patented 26 May 1992.

Patent 5,117,731: TACTICAL OVERBOARD ACOUSTIC DECOY; filed 14 November 1991; patented 2 June 1992.

Patent 5,119, 751: VERTICAL STABILIZER INSTALLED TOWED ARRAY HANDLING SYSTEM; filed 23 November 1990; patented 9 June 1992.

Patent 5,120,133: INTERFEROMETER WITH TWO PHASE-CONJUGATE MIRRORS; filed 21 December 1990; patented 9 June 1992.

Patent 5,120,704: METHOD OF MAKING TL–SR–CA–CU-OXIDE SUPERCONDUCTORS COMPRISING HEATING AT ELEVATED PRESSURES IN A SEALED CONTAINER; filed 8 November 1989; patented 9 June 1992.

Patent 5,122,989: DIGITAL ECHO REPEATER; filed 26 September 1991; patented 16 June 1992.

Patent 5,123,361: ANNULAR VORTEX COMBUSTOR; filed 25 November 1991; patented 23 June 1992.

Patent 5,125,265: CONTAMINATION CAPACITANCE PROBE SYSTEM; filed 9 October 1990; patented 30 June 1992.

Patent 5,125,268: METHOD AND APPARATUS FOR ACOUSTICALLY MEASURING RAINFALL; filed 8 July 1991; patented 30 June 1992.

Patent 5,126,674: PLANAR IMAGING NUCLEAR MAGNETIC RESONANCE; filed 29 August 1990; patented 30 June 1992.

Patent 5,126,978: UNDERSEA DATA COLLECTION ANALYSIS AND DISPLAY SYSTEM; filed 23 April 1991; patented 30 June 1992.

Patent 5,127,275: IN-LINE LOAD CELL FOR FLEXIBLE STRENGTH MEMBER MATERIAL; filed 27 August 1990; patented 7 July 1992.

Patent 5,131,538: FIBER OPTIC COIL SHIPPING AND STORAGE CONTAINER; filed 11 March 1991; patented 21 July 1992.

Patent 5,133,663: PORTABLE AUTOMATIC RADAR SIMULATOR; filed 23 January 1992; patented 28 July 1992.

Patent 5,134,361: OPTICAL SYSTEM FOR LINEARIZING NON-LINEAR ELECTRO-OPTIC; filed 19 February 1991; patented 28 July 1992.

Patent 5,134,508: OPTICAL HIGH-SPEED PARALLEL BACKPLANE; filed 29 January 1990; patented 28 July 1992.
Patent 5,136,241: DEVICE TO MEASURE UNWANTED ELECTRIC AND MAGNETIC FIELD INDUCED VOLTAGES IN REMOTE MEASUREMENT SENSORS; filed 27 August 1990; patented 4 August 1992.
Patent 5,138,311: BROADBAND QUADRIFILAR PHASE ARRAY HELIX; filed 17 October 1990; patented 11 August 1992.
Patent 5,138,587: HARBOR APPROACH–DEFENSE EMBEDDED SYSTEM; filed 27 June 1991; patented 11 August 1992.
Patent 5,139,679: TREATMENT OF WASTEWATER CONTAINING CITRIC ACID AND TRIETHANOLAMINE; filed 24 February 1992; patented 18 August 1992.
Patent 5,143,545: ANTIFOULING MARINE COATINGS; filed 15 March 1991; patented 1 September 1992.
Patent 5,144,587: EXPANDABLE, LONG, MOVING ECHO RADIATOR; filed 27 June 1991; patented 1 September 1992.
Patent 5,144,595: ADAPTIVE STATISTICAL FILTER PROVIDING IMPROVED PERFORMANCE FOR TARGET MOTION ANALYSIS NOISE DISCRIMINATION; filed 27 January 1992; patented 1 September 1992.
Patent 5,145,257: INFRARED FIBER–OPTICAL TEMPERATURE SENSOR; filed 21 August 1991; patented 8 September 1992.
Patent 5,146,145: ELECTRIC DRIVE SYSTEM FOR SUBMARINE MACHINERY; filed 10 June 1991; patented 8 September 1992.
Patent 5,148,762: SAFETY LINE HARNESS; filed 11 January 1990; patented 22 September 1992.
Patent 5,150,064: METHOD AND APPARATUS FOR DETERMINING PARAMETERS OF A TRANSMISSION LINE DEPLOYED IN A SEAWATER ENVIRONMENT; filed 1 August 1991; patented 22 September 1992.
Patent 5,150,127: PORTABLE RADAR SIMULATOR; filed 5 May 1992; patented 22 September 1992.
Patent 5,150,414: METHOD AND APPARATUS FOR SIGNAL PREDICTION IN A TIME–VARYING SIGNAL SYSTEM; filed 27 March 1991; patented 22 September 1992.
Patent 5,154,788: METHOD FABRICATING LOAD–BEARING COMPOSITES FREE FROM MICROBUCKLING DEFORMATION UP TO A PREDETERMINED LOAD; filed 3 July 1991; patented 13 October 1992.
Patent Application 756,261: LASER OPTICAL MOUSE; filed 15 August 1991.
Patent Application 806,384: DEPOLARIZED LIGHT SOURCE FOR FIBER OPTIC SENSORS; filed 13 December 1991.
Patent Application 811,335: AN EFFICIENT BATCHED–REPORT GATING TECHNIQUE; filed 20 December 1991.
Patent Application 828,630: SUPERSTRENGTH METAL COMPOSITE MATERIAL AND PROCESS FOR MAKING THE SAME; filed 31 January 1992.
Patent Application 839,159: 800–B/S VOICE COMMUNICATION PROCESSOR; filed 21 February 1992.
Patent Application 841,105: MODE TRANSITION MATRIX MEASUREMENT SYSTEM; filed 25 February 1992.
Patent Application 841,699: HOT WATER STORAGE TANK FOR SOLAR COLLECTORS; filed 26 February 1992.
Patent Application 867,577: ARBITRARY WAVEFORM GENERATOR; filed 13 April 1992.
Patent Application 872,263: ADAPTIVE FORMED SIGNAL–FREE REFERENCE SYSTEM; filed 16 April 1992.
Patent Application 880,271: I/O INTERFACE VME BUS AND SYNCHRONOUS SERIAL DATA COMPUTER; filed 8 May 1992.
Patent Application 888,074: FIBER–OPTIC TESTING SYSTEM HAVING A DETECTION CIRCUIT; filed 26 May 1992.

Dated: 26 January 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–2601 Filed 2–3–93; 8:45 am]

BILLING CODE 3810–AE–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Privacy Act; Systems of Records

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Annual notice of systems of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on four previously-noticed systems of records.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, (202) 208–6387.

SUPPLEMENTARY INFORMATION: The Board currently maintains four systems of records under the Privacy Act. Each system is described below.

Systems of Records

DNFSB–1

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Classified and unclassified materials.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB and DNFSB contractors; consultants; other individuals requiring access to classified materials and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security folders and requests for security clearances, Forms SF 86, 86A, 87, 312, and DOE Forms 5631.18, 5631.29, 5631.20, and 5631.21. In addition, records containing the following information:

(1) Security clearance request information;
(2) Radiation exposure and whole body count, including any mandatory training associated with site work/visits;
(3) Records of security education and foreign travel lectures;
(4) Records of any security infractions;
(5) Names of individuals visiting DNFSB;
(6) Employee identification files (including photographs) maintained for access purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

DNFSB–(1) to monitor radiation exposure of its employees and contractors, (2) to determine which individuals should have access to classified material and to be able to transfer clearances to other facilities for visitor control purposes.

DOE–(1) to monitor radiation exposure of visitors to the various DOE facilities in the United States, (2) to determine eligibility for security clearances.

Other Federal and State Health Institutions—To monitor radiation exposure of DNFSB personnel.

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, and numeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. Attention: Security Management Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–1 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedure above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, Questionnaire for Sensitive Positions (SF–86), agency files, official visitor logs, contractors, and DOE Personnel Security Branch. Radiation exposure records are obtained from previous employee records, DOE contractors' film badges, and dosimetry badges.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–2

SYSTEM NAME:

Administrative and Travel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Washington, DC 20004.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;
(2) Payroll actions and deduction information requests;
(3) Authorizations for overtime and night differential;
(4) Credit cards and telephone calling cards issued to individuals;
(5) Destination, itinerary, mode and purpose of travel;
(6) Date(s) of travel and all expenses;
(7) Passport number;
(8) Requests for advance of funds, and voucher with receipts;
(9) Travel authorizations;
(10) Name, address, social security number and birth date;
(11) Employee parking permits;
(12) Employee public transit subsidy applications and vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Treasury Department—To collect withheld taxes, print payroll checks, and issuing savings bonds.
Internal Revenue Service—To process Federal income tax.
State and Local Governments—To process state and local income tax.
Office of Personnel Management—Retirement records and benefits.
Social Security Administration—Social Security records and benefits.
Department of Labor—To process Workmen's Compensation claims.
Department of Defense—Military Retired Pay Offices—To adjust Military retirement.
Savings Institutions—To credit accounts for savings made through payroll deductions.
Health Insurance Carriers—To process insurance claims.
General Accounting Office—Audit—To verify accuracy and legality of disbursement.
Veterans Administration—To evaluate veteran's benefits to which the individual may be entitled.
States' Departments of Employment Security—To determine entitlement to unemployment compensation or other state benefits.
Travel Agencies—To process travel itineraries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name, social security number, travel dates, and alphanumeric code.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding, burning, or burial in a sanitary landfill, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, Attention: Chief Administrative Officer.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if DNFSB–2 contains information about him/her should be directed to the Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORDS ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license, passport, or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Record Access procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, official personnel records, GSA for accounting and payroll, OPM for official personnel records, IRS and State officials for withholding and tax information, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DNFSB–3

SYSTEM NAME:

Drug Testing Program Records—DNFSB.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION: PRIMARY SYSTEM:

Division of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Washington, DC 20004.

DUPLICATE SYSTEMS:

Duplicate systems may exist, in whole or in part, at contractor testing laboratories and collection/evaluation facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DNFSB employees and applicants for employment with the DNFSB.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding results of the drug testing program; requests for and results or initial, confirmatory and follow-up testing, if appropriate; additional information supplied by DNFSB employees or employment applicants in challenge to positive test results; information supplied by individuals concerning alleged drug abuse by Board employees or contractors; and written statements or medical evaluations of attending physicals and/or information regarding prescription or nonprescription drugs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) Executive order 12564; September 15, 1986.

(2) Section 503 of the Supplemental Appropriations Act of 1987, Public Law 100–71, 101 Stat. 391, 468–471, codified at 5 U.S.C. 7301 note (1987).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in these records may be used by the DNFSB management:

(1) To identify substance abusers within the agency;
(2) To initiate counseling and rehabilitation programs;
(3) To take personnel actions;
(4) To take personnel security actions; and
(5) For statistical purposes.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper in file folders.

RETRIEVABILITY:

Records are indexed and accessed by name and social security number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access, with records maintained and used with the highest regard for personal privacy. Records in the Division of Personnel are stored in an approved security container under the immediate control of the Director, Division of Personnel, or designee. Records in laboratory/collection/evaluation facilities will be stored under appropriate security measures so that access is limited and controlled.

RETENTION AND DISPOSAL:

(1) Test results, whether negative or positive, and other drug screening records filed in the Division of Personnel will be retained and retrieved as indicated under the Retrievability category. When an individual terminates employment with the DNFSB, negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(2) Test results, whether negative or positive, on file in contractor testing laboratories, ordinarily will be maintained for a minimum of two years in the laboratories. Upon instructions provided by the Division of Personnel, the results will be transferred to the Division of Personnel when the contract is terminated or whenever an individual, previously subjected to urinalysis by the laboratory, terminates employment with the DNFSB. Records received from the laboratories by the Division of Personnel will be incorporated into other records in the system, or if the individual has terminated, those records reflecting negative test results will be destroyed by shredding, or by other approved disposal methods. Positive test results will be maintained through the conclusion of any administrative or judicial proceedings, at which time they will be destroyed by shredding, or by other approved disposal methods.

(3) Negative specimens will be destroyed according to laboratory/contractor procedures.

(4) Positive specimens will be maintained through the conclusion of administrative or judicial proceedings.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004, Attention: Director of Personnel.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if a system of records contains information about him/her should be directed to Director of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver license or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

DNFSB employees and employment applicants who have been identified for drug testing, who have been tested, or who have admitted abusing drugs prior to being tested; physicians making statements regarding medical evaluations and/or authorized prescriptions for drugs; individuals providing information concerning alleged drug abuse by Board employees or contractors: DNFSB contractors for processing, including but not limited to, specimen collection, laboratories for analysis, and medical evaluations; and DNFSB staff administering the drug testing program to ensure the achievement of a drug-free workplace.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(5), the Board has exempted portions of this system of records from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(c), (h), and (j), and (f). The exemption is invoked for information in the system of records which would disclose the identity of a person who has supplied information on drug abuse by a Board employee or contractor.

DNFSB–4

SYSTEM NAME:

Personnel Files.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Defense Nuclear Facilities Safety Board, 625 Indiana Ave., NW., Washington, DC 20004

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the DNFSB, including DNFSB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning the following information:

(1) Name, social security number, sex, date of birth, home address, grade level, and occupational code
(2) Official Personnel Folders (SF–66), Service Record Cards (SF–7), and SF–171
(3) Records on suggestions, awards, and bonuses.
(4) Training requests, authorization data, and training course evaluations
(5) Employee appraisals, appeals, grievances, and complaints
(6) Employee disciplinary actions
(7) Employee retirement records
(8) Records on employment transfer
(9) Applications for employment with the DNFSB

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Defense Authorization Act, Fiscal Year 1989 (amended the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) by adding new Chapter 21—Defense Nuclear Facilities Safety Board).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

GSA—Maintains official personnel records for DNFSB.

Office of Personnel Management—Transfer and retirement records and benefits, and collection of anonymous statistical reports.

Social Security Administration—Social Security records and benefits.

Federal, State, or Local government agencies—For the purpose of investigating individuals in connection with, security clearances, and administrative or judicial proceedings.

Private Organizations—For the purpose of verifying employees' employment status with the DNFSB.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic disk, and computer printouts.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access is limited to employees having a need-to-know. Records are stored in locked file cabinets in a controlled access area in accordance with Board directives and Federal guidelines.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within DNFSB are destroyed by shredding or burning, as appropriate.

SYSTEM MANAGER AND ADDRESS:

Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 2004, Attention: Director of Personnel.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if a system of records contains information about him/her should be directed to Director of Personnel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as Notification procedures above, except individual must show official photo identification, such as driver's license or government identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as Notification procedures above.

RECORD SOURCE CATEGORIES:

Subject individuals, official personnel records, GSA, OPM for official personnel records, State employment agencies, educational institutions, and supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: January 29, 1993.

John T. Conway,
Chairman.

[FR Doc. 93–2661 Filed 2–3–93; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before March 8, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement;

(2) Title;

(3) Frequency of collection;
(4) The affected public;
(5) Reporting burden; and/or
(6) Recordkeeping burden; and
(7) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: January 29, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Extension
Title: Application for State Educational Agency Grants under the Desegregation of Public Education Program
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 53
Burden Hours: 461.1
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The application is used by State Educational Agencies to apply for assistance under title IV of the Civil Rights Act of 1964. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.

Office of Postsecondary Education

Type of Review: New
Title: Credit Reform System
Frequency: Quarterly
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 48
Burden Hours: 1920
Recordkeeping Burden:
Recordkeepers: 12
Burden Hours: 48
Abstract: this form will be used to collect loan data from 12 guarantee agencies to budget and account for the Federal Family Education Loan programs under credit reform. The Department will use the information for management and budget purposes.

Office of Research and Improvement

Type of Review: Revision
Title: Application for Educational Research and Development Center Program
Frequency: Quarterly
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 20
Burden Hours: 2,800
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The Office of Research invites research and development centers established by institutions of higher education or by interstate agencies to conduct educational research and development to submit applications for an award.

Office of Policy and Planning

Type of Review: Revision
Title: Evaluation of Upward Bound
Frequency: One-time
Affected Public: Individuals or households; non-profit institutions
Reporting Burden:
Responses: 5,140
Burden Hours: 3,598
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The evaluation of Upward Bound will include case studies of 20 Upward Bound grantees.

[FR Doc. 93-2604 Filed 2-3-93; 8:45 am]

BILLING CODE 4000-01-M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming closed meeting of the Nominations Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATED: February 5, 1993.

TIME: 9 a.m. to 4:30 p.m.

LOCATION: Hyatt Regency Hotel, 400 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Nominations Committee of the National Assessment Governing Board will meet on February 5, 1993 from 9 a.m. until 4:30 p.m. to review the nominees recommended for Board membership. This meeting will be closed to the public to permit the Committee to discuss the nominees' qualifications to serve in the respective category. The review and subsequent discussions of this information relate solely to the internal rules and practices of an agency and would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of title 5 U.S.C.

The public is given less than fifteen days notice of this meeting because of problems encountered in securing a meeting place.

A summary of the activities of the meeting and related matters, which are informative to the public, consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: January 29, 1993.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 93-2564 Filed 2-3-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance for Rural Education Enrichment Program

AGENCY: Department of Energy (DOE) Albuquerque Field Office (AL).

ACTION: Notice of Program Interest (NOPI).

SUMMARY: DOE-AL, in order to further the Department's goal of providing support for science, mathematics, and engineering education, is seeking the

submission of unsolicited proposals from rural public school districts within the state of New Mexico. The purpose of this financial assistance is to stimulate the development and motivation of students in the math and sciences to provide the trained human resources to meet the environmental restoration and waste management needs of the nation.

SUPPLEMENTARY INFORMATION: Public school districts located in rural areas of New Mexico are eligible to submit a proposal to participate in this program. A rural area is defined as that territory of the state that is not within the outer boundary of any city having a population of fifty thousand or more and its immediately adjacent urbanized and urbanizing area with a population density of more than one hundred persons per square mile, according to the latest decennial census of the United States. The school districts of Chama, Belen, Lordsburg, Zuni, and Santa Rosa, which have already received financial assistance from DOE, are not eligible to participate in this program

ELIGIBLE ACTIVITIES: The Rural Education Enrichment Program encourages the individual public school district to design programs to meet their specific needs in light of the overall objectives of the program:

(1) Support and sustain excellence and innovation in the teaching of math and science.

(2) Provide new opportunities for math and science teachers.

(3) Encourage programs which inspire students to pursue careers in environmental sciences.

In designing programs to meet these objectives, school districts may want to consider the following types of projects:

(1) Teacher training in the most current math and science techniques.

(2) Purchase appropriate math and science manipulatives for the classroom.

(3) Afterschool math and science workshops for getting parents involved in school activities.

(4) Integrated math and science programs.

(5) Student incentives for math and science programs.

AWARD SIZE AND DURATION: Financial assistance awards of approximately $25,000 will be awarded to ten rural New Mexico public school districts during fiscal year (FY) 1993. If sufficient funds are made available, awards of approximately $25,000 will also be available during FY 1994 and FY 1995. Proposals should be prepared to reflect activities for a three-year period. DOE expects projects to begin by June 1, 1993.

PROPOSAL PREPARATION GUIDELINES: Applicants must provide the following information in their proposal package:

(1) *School District Information*—A summary of information on the school district. Larger school districts which plan to implement this program in a select group of schools should also provide supplemental information on each of these schools. The following information should be included:

(a) School district name, mailing address, and telephone number.

(b) Name of school superintendent.

(c) Name of faculty point of contact.

(d) Name and address of parent organization contact.

(e) Student enrollment by type of school (i.e., elementary, middle, and high school).

(f) Names of participating teachers and the grade levels which they teach.

(2) *Proposed Activities*—A narrative description of the proposed activities to meet one or more of the objectives of the Education Enrichment Program. The narrative should be a minimum of two and a maximum of five typed pages.

(3) *Schedule of Activities*—A listing or timeline of the dates when major activities will occur.

(4) *Budget*—A summary of all program related items or activities that cost money. No more than half of the total project budget may be spent on non-consumable items. Non-consumable items have a useful life of more than one year, such as microscopes, computer peripherals, and materials consumable items include such things as labor costs, periodicals, specimens, film, and development costs.

Manny Martinez, Director of Education Programs, is available to provide technical assistance in answering questions or meeting with school districts interested in submitting a proposal. Mr. Martinez can be reached at (505) 845-6790.

DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

EVALUATION PROCESS AND SELECTION CRITERIA: Proposals will be reviewed and rated by a panel consisting of DOE employees and New Mexico educators based upon the criteria listed below:

(1) The potential contribution which the proposed effort is expected to make to the program's objectives.

(2) Evidence of overall merit.

(3) Unique capabilities, related experience, and techniques of the school staff, or a combination of these, as integral factors for achieving the program's objectives.

(4) Use of unique, innovative, or meritorious methods, approaches or ideas.

Half of the grants awarded will be reserved for the rural public school districts with a total student enrollment of 2,500 or less.

CLOSING DATE FOR SUBMISSION OF PROPOSALS: To be eligible, proposals must be postmarked no later than March 15, 1993. Proposals should be sent to Mr. Manny Martinez, Director of Education Programs, U.S. Department of Energy, Albuquerque Field Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400.

FOR FURTHER INFORMATION CONTACT: All technical questions concerning this NOPI should be directed to Manny Martinez, Director of Education Programs, Albuquerque Field Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, Telephone: (505) 845-6790. All other inquiries should be directed to Erwin E. Fragua, Contract Specialist, U.S. Department of Energy, Albuquerque Field Office, P.O. Box 5400, Albuquerque, New Mexico 87185–5400, Telephone: (505) 845–6442.

Issued in Albuquerque, New Mexico, on January 26, 1993.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 93–2668 Filed 2–3–93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project No. 848–019 Nevada]

Wells Rural Electric Co.; Availability of Environmental Assessment

January 28, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for amendment of license to install a surge tank at the Trout Creek Project on Trout Creek, Elko County, Nevada. The staff of OHL's Division of Project Compliance and Administration prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that construction and operation of the surge tank would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2588 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket PL93–2–000]

Prior Notice and Filing Requirements Under Part II of the Federal Power Act; Notice Setting Date for Supplemental Comments and Answers

January 29, 1993.

As announced by Chairman Allday at yesterday's technical conference[1] in this proceeding, supplemental comments and answers to questions may be filed on or before March 1, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2634 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03307T, Texas–99]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 28, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Lower Vicksburg Patriot Sand Formation underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, lying within Railroad Commission District 4, covers approximately 3,200 acres in portions of the following abstracts and surveys:

San Salvador del Tule Grant, Abstract No. 290

Santa Anita Grant, Abstract No. 63

The notice of determination also contains Texas' findings that the referenced portion of the Lower Vicksburg Patriot Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2587 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03309T Texas–101]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 29, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg Formation, Monte Christo (56–A, N) Field underlying a portion of Hidalgo County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, lying within Railroad Commission District 4, includes:

Valley Farms Subdivision

"Santa Anita" Manuel Gomez Survey (A–63)

All of portions of Lots 56, 65–67, 74–76, 85–87, 94–96

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2636 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03308T Texas–100]

Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 29, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Vicksburg Formation, Monte Christo (58, 59 Cons.) Field underlying a portion of Hidalgo County,Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, lying within Railroad Commission District 4, includes:

Valley Farms Subdivision

"Santa Anita" Manuel Gomez Survey (A–63)

All or portions of Lots 56, 65–66, 74–76, 85–87, 94–96

Take notice of determination also contains Texas' findings that the referenced portion of the Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2635 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA93–1–1–003]

Alabama-Tennessee Natural Gas Co.; Notice of Filing

January 29, 1993.

Take notice that on January 15, 1993, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), in response to the Commission's letter order issued on December 31, 1992 in the above-referenced proceeding, submitted for filing a schedule showing gas received and delivered for the period June, 1991 through August, 1992.

Alabama-Tennessee states that the schedule shows Alabama-Tennessee's actual lost and unaccounted for gas for the PGA period was 0.79 percent, contrary to the conclusion as stated in the December 31 letter order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

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[1] Notice of Technical Conference and Request for Comments, issued December 9, 1992 (57 FR 59339, December 15, 1992).

Lois D. Cashell,

Secretary.

[FR Doc. 93–2645 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–161–027]

ANR Pipeline Co.; Notice of Compliance Filing

January 29, 1993.

Take notice that on December 30, 1992, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets:

First Revised Volume No. 1

First Revised Sheet No. 122
First Revised Sheet No. 123
First Revised Sheet No. 124

ANR states that the tariff sheets are being filed in compliance with the November 1, 1992 order which required ANR to file within 60 days an updated Index of Purchasers.

ANR states that copies of the filing have been served by mail to all parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2643 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2612 Maine]

Central Maine Power Co.; Intent To File an Application for a New License

January 29, 1993.

Take notice that Central Maine Power Company, the existing licensee for the Flagstaff Storage Project No. 2612, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2612 was issued effective January 1, 1948, and expires December 31, 1997.

The project is located on the Dead River in the unorganized townships of Flagstaff, Bigelow, Carrying Place, Dead River, Spring Lake and Eustis in Somerset and Franklin Counties, Maine. The principal works of the Flagstaff Project include a storage reservoir and one dam; with zero installed plant capacity.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at its offices on Anthony Avenue, Augusta, ME 04336, and may be viewed Monday through Friday from 8 a.m. to 3:30 p.m.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2638 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–23–001]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

January 29, 1993.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on January 14, 1993 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective February 1, 1993.

ESNG states that the substitute tariff sheets are being filed due to various transposition errors and keypunch errors that did not change the sales rates but corrected the components that when added together make up the sales rates from the original quarterly filing in Docket No. TQ93–3–23–000.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2633 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2061 Idaho]

Idaho Power Co.; Intent To File an Application for a New License

January 29, 1993.

Take notice that Idaho Power Company, the existing licensee for the Lower Salmon Falls Hydroelectric Project No. 2061, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 2061 was issued effective December 24, 1947, and expires December 23, 1997.

The project is located on the Snake River in Twin Falls and Gooding Counties, Idaho. The principal works of the Lower Salmon Falls Project include a reservoir; a concrete overflow dam and a gated concrete spillway; a powerhouse with an installed capacity of 60,000 kW; two 138–kV transmission lines; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 1221 West Idaho Street, Corporate Library, Second Floor, P.O. Box 70, Boise, Idaho 83707, Phone: (208) 383–2491.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 23, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2639 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1975 Idaho]

Idaho Power Co.; Intent To File an Application for a New License

January 29, 1993.

Take notice that Idaho Power Company, the existing licensee for the Bliss Hydroelectric Project No. 1975, filed a timely notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commission's Regulations. The original license for Project No. 1975 was issued effective March 1, 1948, and expires February 28, 1998.

The project is located on the Snake River in Elmore and Gooding Counties, Idaho. The principal works of the Bliss Project include a reservoir; a concrete gravity dam with a concrete spillway; a concrete powerhouse at the base of the dam with an installed capacity of 75,000 kW; one 138-kV transmission line; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 1221 West Idaho Street, Corporate Library, Second Floor, P.O. Box 70, Boise, Idaho 83707, Phone: (208) 383-2491.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 1996.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2637 Filed 2-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-224-007 and RP92-1-012]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 29, 1993.

Take notice that Northern Natural Gas Company (Northern) on January 15, 1993, tendered for filing to become part of Northern's FERC Gas Tariff, the following tariff sheets, proposed to be effective January 15, 1993:

Fourth Revised Volume No. 1

Fourth Revised Sheet No. 53
Second Revised Sheet No. 262
First Revised Sheet No. 262A
Original Sheet No. 262B
Second Revised Sheet No. 277

Northern states that such tariff sheets are being submitted in compliance with the Commission's Letter Order dated October 29, 1992, in Docket Nos. RP91-224-005, RP91-224-006, RP92-1-009 and RP92-1-010, to clarify the tariff provisions regarding processing.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2640 Filed 2-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-162-003]

Superior Offshore Pipeline Co.; Notice of Compliance Filing

January 29, 1993.

Take notice that on December 4, 1992, Superior Offshore Pipeline Company (SOPCO), in compliance with the Commission's letter order dated November 19, 1992, in the above-captioned docket, tendered for filing the following revised tariff sheets:

First Revised Volume No. 1

First Substitute Original Sheet No. 35a
First Substitute Original Sheet No. 36a

SOPCO states that copies of the filing have been served upon all of SOPCO customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2642 Filed 2-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-162-004]

Superior Offshore Pipeline Co., Notice of Compliance Filing

January 29, 1993.

Take notice that on December 11, 1992, Superior Offshore Pipeline Company (SOPCO), pursuant to the Commission's order issued on June 26, 1992, submitted its compliance filing in the above-captioned docket. SOPCO states that it inadvertently omitted from an earlier version of this filing made on July 24, 1992 the revisions required in section 8(c) (Scheduling and Notification Interruption) of its Firm Transportation Service.

SOPCO states that it is filing for inclusion in its FERC Gas Tariff the revisions as follows:

Substitute First Revised Sheet No. 15

SOPCO states that copies of the filing have been served upon all of SOPCO customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2644 Filed 2-3-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA93-1-17-003, TQ93-4-17-001 and TF93-3-17-001]

Texas Eastern Transmission Corp.; Motion To Continue PGA Rates

January 28, 1993.

Take notice that on January 26, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a motion to continue in effect its January 8, 1993 PGA rates, conditioned upon pre-determined eligibility of certain costs.

Texas Eastern requests that the Commission permit Texas Eastern to continue in effect the January 8, 1993 PGA rates that were approved by Commission order dated January 15, 1993, in Docket No. TF93-3-17-000; not place into effect Texas Eastern's annual PGA filing (December 2 and December 31, 1992, in Docket Nos. TA93-1-17 and TQ93-3-17) or its January 8, 1993 out-of-cycle PGA filing in Docket No. TQ93-4-17-000; and find that Texas Eastern may recover through direct billing in accordance with Order No. 636 any unrecovered gas costs resulting from the January 8, 1993 rates that were approved by the Commission's January 15, 1993 order. Texas Eastern also requested a shortened notice and comment period on the motion.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. In light of Texas Eastern's request and notice and protest period will be shortened. All such protests should be filed on or before February 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2586 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–7–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

January 29, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on January 25, 1993 Third Revised Sixth Revised Sheet No. 28 to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheet is proposed to be effective January 12, 1993.

TGPL states that the purpose of the instant filing is to track a rate change attributable to the storage service purchased from North Penn Gas Company (North Penn) under its Storage Service rate schedule the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–1. The tracking filing is being made pursuant to section 5 of TGPL's Rate Schedule SS–1.

Included in appendix A attached to the filing is the explanation of the rate change and details regarding the computation of the revised SS–1 rates.

TGPL states that copies of the filing are being mailed to each of its SS–1 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 5, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2641 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL93–14–000]

Western Resources, Inc; Notice of Filing

January 28, 1993.

Take notice that on January 7, 1993, Western Resources, Inc. (Western Resources) tendered for filing an Application for Waiver. Western Resources requests that the Commission issue an order waiving the effect of its generally FAC regulations and allow the Company to book its Amax buy-down costs to Account 151, Fuel Stock and to recover such costs through the operation of its fuel adjustment clause.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2589 Filed 2–3–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 93–03—Certification Notice—113]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Gordonsville Energy, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing is available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Gordonsville Energy, L.P., Fairfax, Virginia.

Operator: Gordonsville Energy, L.P.

Location: Louisa County, near Gordonsville, Virginia.

Plant Configuration: Topping-cycle cogenerations (Units I and II).

Capacity: 128 megawatts each (Units I and II).

Fuel: Natural gas.

Purchasing Utilities: Virginia Electric and Power Company.

Expected In-Service Date: 1994 (Units I and II).

Issued in Washington, DC, on January 29, 1993.

Anthony J. Como.

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-2669 Filed 2-3-93; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Notice of Floodplain/Wetland Involvement for the Big George-Carter Mountain Transmission Line Rebuild Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The Department of Energy proposes to rebuild and upgrade a 69-kilovolt (kV) transmission line to 115-kV in floodplains and wetlands in Park and Hot Springs Counties, Wyoming. In accordance with 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Public comments or suggestions concerning the floodplain involvement of Western Area Power Administration's (Western) proposed action are invited. Written comments are due no later than February 19, 1993.

ADDRESSES: Comments or suggestions should be sent to: Mr. Robert H. Jones, Acting Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7200.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Rodney D. Jones, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 490-7371.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH-25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: Western is proposing to replace approximately 28.2 miles of its existing Big George-Carter Mountain 69-kV transmission line in Park County and Hot Springs County, Wyoming. The line would be built to 115-kV specifications and operated at 69-kV. The transmission line crosses the floodplain of the Greybull River, and floodplains of its tributaries. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements at 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment for the proposed action. The floodplain and wetlands assessment will be part of the environmental assessment (EA) which Western is preparing for the proposed project in accordance with the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA.

Issued at Golden, Colorado, on January 21, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93-2670 Filed 2-3-93; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 28, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037 (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0440.
Title: Fee Processing Form.
Form Number: FCC Form 155.
Action: Extension of a currently approved collection.
Respondents: Individuals or households and businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting.
Estimated Annual Burden: 16,000 responses; .166 hours average burden per response; 2,656 hours total annual burden.
Needs and Uses: The information contained on the FCC Form 155, Fee Processing Form, is used by the Commission's lockbox bank (Mellon Bank, Pittsburgh, PA) to verify that the amount remitted by the payee for Commission services or licenses is correct, as stated on the FCC Form 155. The lockbox bank key enters the data contained on the FCC Form 155 to provide the required linkage between the deposit and the application or filing. The resulting data base is electronically transmitted to the FCC daily for internal control, audit, management planning and reporting purposes. The data base, which essentially provides a record of who paid what fee on which day, and is also used in the event it becomes necessary to refund a fee.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-2553 Filed 2-3-93; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Advanced Television Service; Special Panel Meeting

The time of the meeting of the Special Panel of the Advisory Committee on Advanced Television Service set to convene on Monday, February 8, 1993, at the Sheraton Premiere Hotel, Vienna, Virginia, has been changed. The Special Panel will convene at 9 a.m. (rather than 10 a.m.) on Monday.

Any questions regarding this meeting should be directed to Robert Hopkins at (202) 828-3130 or William Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-2554 Filed 2-3-93; 8:45 am]

BILLING CODE 6712-01-M

Calvary Educational Broadcasting Network, Inc. Applications, etc.

1. The Commission has before it the following application for an FM station license renewal:

Applicant, City, and State	File No.	MM Docket No.
Calvary Educational Broadcasting Network, Inc.; Poplar Bluff, MO.	BRED-891103UA	92-122

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above application has

been designated for hearing upon the issues set forth below.

1. To determine whether Calvary Educational Broadcasting Network, Inc. violated § 73.318 of Commission's Rules, 47 CFR 73.318 ("FM blanketing interference"), and, if so, the nature and extent of this violation;

2. To determine, whether Calvary has misrepresented facts or lacked candor in its statements to the Commission regarding the extent and success of its efforts to correct the blanketing interference problems;

3. To determine whether the licensee's management and operation of Station KOKS was so negligent, careless, or inept, or evidenced such disregard for the Commission's rules, that it cannot be relied upon to fulfill the responsibilities imposed upon it;

4. To determine, in light of the evidence adduced pursuant to the preceding issues, whether or not grant of the subject license renewal application would serve the public interest, convenience and necessity.

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800.)

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2555 Filed 2–3–93; 8:45 am]

BILLING CODE 6713–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Secretary's Council on Health Promotion and Disease Prevention; Notice of Reestablishment

Pursuant to Public Law 92–643, the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) announces the reestablishment by the Secretary of the Secretary's Council on Health Promotion and Disease Prevention.

The Committee shall advise and make recommendations to the Secretary and the Assistant Secretary for Health on health promotion and disease prevention activities and on the national goals and objectives to enhance the health status and reduce health risks for all Americans.

The Committee shall terminate on December 1, 1994, unless the Secretary, DHHS formally determines that continuance is in the public interest.

Dated: January 22, 1993.

J. Michael McGinnis,

Deputy Assistant Secretary for Health, Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 93–2559 Filed 2–3–93; 8:45 am]

BILLING CODE 4160–17–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 58 FR 107, January 4, 1993 is amended to reflect functional changes in the Office of Minority Health (OMH), Office of the Assistant Secretary for Health, to improve administrative management responsiveness in support of OMH activities.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, under Office of Minority Health (HAM), following the statement for the Division of Community Demonstrations and Assistance (HAM4), delete the title and statement for the Division of Management Support (HAM5), and substitute the following:

Division of Grants Management (HAM5)

The Division of Grants Management is responsible for all business matters associated with the review, negotiation, award, and administration of grants and cooperative and interagency agreements as well as interpreting grants administration policies and provisions. The Division: (1) Advises and assists in developing, implementing, and evaluating program plans, strategies, regulations, guidelines, procedures and program announcements; (2) provides consultation and technical assistance on grant matters and procedures to internal staff, applicants and grantees; (3) serves as the central point for distribution and receipt of all grant applications, correspondence, reports and related documents; (4) performs cost analyses and negotiates final project budget on approved grant applications prior to award to determine the necessity, reasonableness, allocability, and allowability of the amounts in the budget in accordance with applicable cost principles; (5) issues Notices of Grant Awards; (6) is responsible for the postaward administration of funded projects; (7) analyzes individual and total financial commitments, forecasting future obligations and identifying potential lapses of appropriations and status of Federal funds available for each program; (8) performs monitoring of grants to ensure compliance with grant policies and sound business practices; (9) performs all actions necessary to the closeout of projects; (10) maintains general program information files and official individual grant files; and (11) provides information for the PHS Grants Management Information System.

Dated: January 25, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

[FR Doc. 93–2560 Filed 2–3–93; 8:45 am]

BILLING CODE 4160–17–M

Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 57 FR 47107–08, October 14, 1992), is amended to revise the functional statements to reflect more accurately the responsibilities and activities in the Office of Research Integrity (HAG) and to retitle the Division of Policy (HAG2) as the Division of Policy and Education, and the Division of Research Integrity Assurance (HAG3) as the Division of Research Investigations.

This notice does not affect the authority of the Food and Drug Administration to conduct investigations of alleged misconduct solely involving regulated research.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, HA–20, Functions, after the statement for the Office of Research Integrity (HAG), delete the titles and statements for the Division of Policy (HAG2) and the Division of Research Integrity Assurance (HAG3), and insert the following:

Division of Policy and Education (HAG2)

The Director and staff: (1) Develop policies, procedures, and regulations for presentation to the Advisory Committee on Scientific Integrity for their review and recommendation to the Assistant Secretary for Health and the Secretary; (2) administer, review, and approve institutional assurances documents; (3) administer the PHS ALERT system which provides pertinent information on research misconduct findings and sanctions to PHS awarding officials; (4) provide administrative and program support to the Advisory Committee on Scientific Integrity; (5) develop and implement research misconduct prevention and education activities in PHS extramural and intramural programs; (6) coordinate the dissemination of research integrity policies, procedures, and regulations; (7) conduct policy analyses and studies to improve PHS research integrity policies and procedures, including studies requested by the Advisory Committee; and (8) coordinate Freedom of Information (FOI) and Privacy Act responsibilities pertaining to research misconduct issues.

Division of Research Investigations (HAG3)

The Director and staff: (1) Review and monitor investigations conducted by applicant and awardee institutions; (2) conduct investigations involving extramural and intramural research programs when necessary; (3) develop findings and misconduct and proposed sanctions; (4) evaluate investigations and investigatory findings of the applicant and awardee institutions and make findings of misconduct and propose appropriate sanctions; (5) assist the Office of the General Counsel (OGC) in preparing and presenting cases for hearings before the Research Integrity Adjudications Panel of the DHHS Departmental Appeals Board; (6) provide information on PHS policies and procedures, as requested, to researchers who have made an allegation or have been accused of research misconduct; and (7) assure that PHS policies and procedures are properly implemented in intramural and extramural misconduct cases.

Section HA-30, Delegations of Authority

All delegations and redelegations of authority to officials of the Office of Research Integrity that were in effect prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect pending further redelegation.

Dated: January 15, 1993.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 93-2561 Filed 2-3-93; 8:45 am]

BILLING CODE 4160-17-M

Centers for Disease Control and Prevention

Childhood Blood Lead Surveillance Cooperative Agreement Recipient; Meeting

The National Center for Environmental Health (NCEH), of the Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Meeting of CDC Funded Childhood Blood Lead Surveillance Cooperative Agreement Recipients.

Times and Dates:

8:30 a.m.–5 p.m., February 18, 1993.
8:30 a.m.–12 noon, February 19, 1993.

Place: CDC, (Chamblee Facility), Building 101, Conference room 1301, 4770 Buford Highway, NE., Chamblee, Georgia 30341.

Status: Open to the public, limited only by space available.

Purpose: This meeting will provide the recipients of CDC Cooperative Agreement funds a forum to review program progress and discuss surveillance issues and concerns.

Matters To Be Discussed: Topics to be discussed at this meeting include case definitions and data fields for the National Childhood Blood Lead Surveillance System. There will be a demonstration of how surveillance data can be obtained from the Systematic Tracking of Elevated Lead Levels and Remediation software program developed by CDC.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Carol Pertowski, M.D., Childhood Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects (F42), NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia 30341, telephone 404/488–7330.

Written comments are welcome and should be received by the contact person no later than February 11, 1993. Persons wishing to make oral comments at the meeting should notify the contact person in writing or by telephone no later than close of business February 11, 1993. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: January 28, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-2617 Filed 2-3-93; 8:45 am]

BILLING CODE 4160-18-M

Childhood Lead Poisoning Prevention Program Grantee Workshop; Meetings

The National Center for Environmental Health (NCEH), of the Centers for Disease Control and Prevention (CDC), announces the following workshop.

Name: CDC Funded Childhood Lead Poisoning Prevention Program Grantee Workshop.

Times and Dates:

9 a.m.–5 p.m., March 1–3, 1993.
9 a.m.–12 noon, March 4, 1993.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: Open to the public, limited only by space available.

Purpose: The primary purpose of this workshop is to provide assistance to CDC's Childhood Lead Poisoning Prevention grant recipients in addressing program development, assessment and evaluation issues and concerns.

Matters to be Discussed: Topics to be discussed include information management, program evaluation, new information on epidemiologic studies to support program activities, and training issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Dave Forney, Childhood Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects (F42), NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia 30341, telephone 404/488–7330.

Written comments are welcome and should be received by the contact person no later than February 22, 1993. Persons wishing to make oral comments at the workshop should notify the contact person in writing or by telephone no later than February 22, 1993. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: January 28, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–2619 Filed 2–3–93; 8:45 am]

BILLING CODE 4160–18–M

Fernald Dosimetry Reconstruction Project Workshop: Public Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), and the Radiological Assessments Corporation announce the following meeting.

Name: Fernald Dosimetry Reconstruction Project Workshop.

Time and Date: 7 p.m.–9 p.m., February 18, 1993.

Place: Sheraton Springdale Hotel, Paul Weimer Room, 11911 Sheraton Lane, Springdale, Ohio 45246.

Status: Open to the public for observation and comment, limited only by space available. The meeting room accommodates approximately 50 people.

Purpose: Under the Memorandum of Understanding with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards form non-nuclear energy production and use. The purpose of the workshop is to review the Task 4 report, Environmental Pathway Analysis—Models and Validation for the Fernald Dosimetry Reconstruction Project, and methods for calculating radiation doses to the public. In addition, CDC's information on demographics of the Fernald area from 1950 through 1990 will be reviewed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta, Georgia 30341–3724, telephone 404/488–7040.

Dated: January 28, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–2620 Filed 2–3–93; 8:45 am]

BILLING CODE 4160–18–M

Fetal Alcohol Syndrome (FAS) Prevention Technical Assistance Workshop for Cooperative Agreement Recipients; Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Fetal Alcohol Syndrome (FAS) Prevention Technical Assistance Workshop for Cooperative Agreement Recipients.

Times and Dates: 8 a.m.–4:30 p.m., February 18, 1993.

8:30 a.m.–3:45 p.m., February 19, 1993.

Place: Holiday Inn Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open.

SUPPLEMENTARY INFORMATION: The workshop will convene a group of recipients of CDC FAS Prevention and FAS Research Cooperative Agreements, and recipients of Disability Prevention Program Grants with FAS project activities.

FAS is a birth defect syndrome which is the most common environmental cause of mental retardation. Studies estimate that there are about 8,000 new cases of FAS each year, even though the cause has been known since the early 1970s. Although FAS has no cure, it is preventable. CDC is actively involved in research on the prevalence of FAS in different populations, epidemiologic risk factors associated with FAS, methods for identifying specific women at risk for having children with FAS, and what types of intervention strategies will be most successful at reducing the incidence of FAS.

Purpose: The primary purpose of this workshop is to provide technical assistance to recipients of CDC cooperative agreements as they implement FAS state prevention and FAS prevention research programs. The workshop is not designed to provide general information on FAS or FAS prevention.

Contact Person for Additional Information: R. Louise Floyd, D.S.N., Chief, Fetal Alcohol Syndrome Prevention Section, Developmental Disabilities Branch, Division of Birth Defects and Developmental Disabilities, NCEH, CDC, Mailstop F–15, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, telephone 404/488–7370.

Dated: January 28, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–2618 Filed 2–3–93; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements—State Plan Requirements and Other Provisions Relating to Third Party Liability (TPL) Programs; *Form Number:* HCFA–R–122; *Use:* These requirements allow States to exclude specific codes from the diagnosis and trauma code edits if the State submits documentation to HCFA to substantiate exclusion. The regulation also imposes some provider requirements—States are required to monitor provider compliance; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 55; *Average Hours per Response:* 1; *Total Estimated Burden Hours:* 55.

2. *Type of Request:* Extension; *Title of Information Collection:* Information Collection Requirements for Requesting Cost Avoidance Waivers; *Form Number:* HCFA–R–121; *Use:* These requirements allow States to seek and obtain waivers from using the cost avoidance method of claims payment when a third party is liable. The State must submit documentation to substantiate that it is at least as cost effective to pay claims and seek recovery from the third party as it is to "cost avoid" the claims; *Frequency:* On occasion; *Respondents:* State/local governments; *Estimated Number of Responses:* 35; *Average Hours per Response:* 8; *Total Estimated Burden Hours:* 280.

3. *Type of Request:* New; *Title of Information Collection:* Visual Display Terminal (VDT) Operators' Eye Care Program; *Form Numbers:* HCFA–81; *Use:* The form is needed to gather

information necessary to process employees' requests to participate in the VDT Operator's Eye Care Program. Part of the form will be completed by HCFA employees, their supervisors and personal eye care practitioners, and opticians contracted to provide services to HCFA; *Frequency:* On occasion; *Respondents:* State/local governments, individuals/households, Federal agencies/employees, and small businesses/organizations; *Estimated Number of Responses:* 200; *Average Time per Response:* 4 minutes; *Total Estimated Burden Hours:* 13.

4. *Type of Request:* Revision; *Title of Information Collection:* Medicare/Medicaid Hospital Swing-Bed Survey Report Form; *Form Number:* HCFA–1537C; *Use:* In order to participate in the Medicare program as a "swing-bed" hospital, a provider must meet the Federal standards. This form will be used to record providers compliance with the standards and report this information to the Federal Government; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 375.

5. *Type of Request:* New; *Title of Information Collection:* Request for Approval as a Hospital Provider of Extended Care Services (Swing-Bed) in the Medicare and Medicaid Programs; *Form Number:* HCFA–605; *Use:* This is a facility identification and screening form to be completed by hospitals requesting initial approval for providing "swing-bed" services under the Federal Medicare and Medicaid programs; *Frequency:* One-time; *Respondents:* Businesses/other for profit, Federal agencies/employees, non-profit institutions; *Estimated Number of Responses:* 1,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 375.

6. *Type of Request:* New; *Title of Information Collection:* Evaluation of Medicaid Extension Demonstration; *Form Number:* HCFA–R–151; *Use:* This collection consists of two annual surveys of families of school children in Maine, Florida, and Michigan and will evaluate the effectiveness of the Medicaid extension demonstrations, mandated under section 6407 of OBRA 1989, to increase the access and quality of care to uninsured children under alternative health insurance delivery models; *Frequency:* Annually; *Respondents:* Individuals/households; *Estimated Number of Responses:* 10,400; *Average Hours per Response:* .0743; *Total Estimated Burden Hours:* 773.

7. *Type of Request:* Revision; *Title of Information Collection:* Questions on Other Insurance Available to Medicare Beneficiaries—Medicare Secondary Payer; *Form Number:* HCFA–250–254; *Use:* The questionnaire will be mailed to all new Medicare beneficiaries to determine if there is other insurance primary to Medicare. These forms extend and standardize the collection activity previously approved and will centralize it under one contract; *Frequency:* On occasion; *Respondents:* Individuals/households; *Estimated Number of Responses:* 2.6 million; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 650,000.

8. *Type of Request:* New; *Title of Information Collection:* Long Term Care Program and Market Characteristics Study; *Form Number:* HCFA–R–147; *Use:* This survey will collect primary and secondary data to study the effects of nursing home and home health care characteristics and markets for Medicare and Medicaid services in 50 States. This effort will add 4 years to an existing database and will result in preparation of a public-use database; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 51; *Average Hours per Response:* 2.25; *Total Estimated Burden Hours:* 115.

9. *Type of Request:* Revision; *Title of Information Collection:* Medicare Contractor Administrative Budget and Cost Reporting System Forms; *Form Numbers:* HCFA–1523, 1523A–G, 1524, 1524A–G, 2580, 3258, 3259; *Use:* These forms are multi-use financial management forms completed by Medicare intermediaries and carriers. This revision includes an additional schedule covering fraud and abuse activities. HCFA uses the information to reimburse the intermediaries and carriers for administrative costs and to prepare the budget for the upcoming year; *Frequency:* Annually/Quarterly/Monthly; *Respondents:* Businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,470; *Average Hours per Response:* 54.43; *Total Estimated Burden Hours:* 80,016.

Additional Information or Comments: Call the Reports Clearance Office on 410–966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 21, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–2557 Filed 2–3–93; 8:45 am]

BILLING CODE 4120-03-M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* New; *Title of Information Collection:* Long Term Care Program and Market Characteristics Study; *Form Number:* HCFA–R–147; *Use:* Results of this study will permit HCFA to study the effects of nursing home and home health care characteristics and markets for Medicare and Medicaid services in 50 States; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 51; *Average Hours per Response:* 1.58; *Total Estimated Burden Hours:* 81.

2. *Type of Request:* Extension; *Title of Information Collection:* Medicare Collection of Medical Information on Home Health Services; *Form Number:* HCFA–485–488; *Use:* These forms are used by Medicare fiscal intermediaries to assure that reimbursement is made to home health agencies only for services that are covered under Medicare Part A or B. The information describes the patient and level of medical needs and/or services provided; *Frequency:* On occasion; *Respondents:* Businesses/other for profit and small businesses or organizations; *Estimated Number of Responses:* 10,988,500; *Average Hours per Response:* .25; *Total Estimated Burden Hours:* 2,747,125.

3. *Type of Request:* Extension; *Title of Information Collection:* Annual Report on Home and Community-based Services Waivers; *Form Numbers:* HCFA–372; *Use:* States with an approved waiver under section 1915(c) of the Social Security Act submit Form HCFA–372 so that HCFA can (1) verify that State assurances regarding waiver cost-effectiveness are met and (2) determine the waiver's impact on the type, amount, and cost of services provided under the State plan and the

welfare of recipients; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 127; *Average Hours per Response:* 40; *Total Estimated Burden Hours:* 5,080.

4. *Type of Request:* New; *Title of Information Collection:* Medicaid Capitated Managed Care Program for Supplemental Security Supplemental Security Income (SSI) Disabled; *Form Number:* HCFA–R–149; *Use:* The results of this mail/telephone survey will permit HCFA to examine plans' experiences to determine how well managed care can meet the needs of SSI disabled adults while containing costs; *Frequency:* One-time; *Respondents:* State/local governments, businesses/other for profit, non-profit institutions, and small businesses/organizations; *Estimated Number of Responses:* 139; *Average Hours per Response:* .75; *Total Estimated Burden Hours:* 104.

5. *Type of Request:* Reinstatement; *Title of Information Collection:* HCFA Forms and Manuals Order; *Form Number:* HCFA–1961; *Use:* This form is used by Medicare intermediaries, carriers, State agencies, Social Security Administration, and End Stage Renal Disease networks to order Medicare/Medicaid forms and program manuals from HCFA; *Frequency:* Semi-annually; *Respondents:* State/local governments, businesses/other for profit, non-profit institutions, and federal agencies/employees; *Estimated Number of Responses:* 584; *Average Hours per Response:* 3.983; *Total Estimated Burden Hours:* 2,326.

6. *Type of Request:* Reinstatement; *Title of Information Collection:* Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) National Data Reporting Requirements (NDRR); *Form Number:* HCFA–906; *Use:* The NDRR provides HCFA with information required to effectively monitor and evaluate the progress and effectiveness of the HMO/CMP program and to seek corrective action by HMO/CMPs, as appropriate. This ensures the protection of Federal investment and enrolled members of HMO/CMPs and provides statistical data for continued regulation; *Frequency:* Quarterly; *Respondents:* State/local governments, businesses/other for profit and non-profit institutions; *Estimated Number of Responses:* 1,007; *Average Hours per Response:* 2.612; *Total Estimated Burden Hours:* 2,630.

7. *Type of Request:* Reinstatement; *Title of Information Collection:* Information Collection Requirements in 42 CFR 411.25, 411.32(c), 411.65(b)(2), and 489.20(f), Medicare Secondary Payer; *Form Number:* HCFA–R–136; *Use:* These information collection requirements are necessary for HCFA to determine situations where Medicare does not have primary responsibility for paying the medical expenses of a Medicare beneficiary; *Frequency:* On occasion; *Respondents:* Individuals/households and businesses/other for profit; *Estimated Number of Responses:* 11,845,835; *Average Hours per Response:* .033; *Total Estimated Burden Hours:* 394,834 (reporting) and 267,030 (recordkeeping) for a total of 661,864.

8. *Type of Request:* Revision; *Title of Information Collection:* Independent Rural Health Clinic/Federally Qualified Health Center Cost Report; *Form Numbers:* HCFA–222; *Use:* This form is used by independent rural health clinics and federally qualified health centers to report their health care costs to determine amounts reimbursable for the services furnished to Medicare beneficiaries; *Frequency:* Annually; *Respondents:* Non-profit institutions and businesses/other for profit; *Estimated Number of Responses:* 2,000; *Average Hours per Response:* 10; *Total Estimated Burden Hours:* 20,000 (reporting) and 80,000 (recordkeeping) for a total of 100,000.

9. *Type of Request:* Reinstatement; *Title of Information Collection:* Outpatient Rehabilitation Provider Cost Report; *Form Number:* HCFA–2088; *Use:* This form is used to determine Medicare reimbursement for outpatient services rendered to Medicare beneficiaries; *Frequency:* Annually; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 2,050; *Average Hours per Response:* 10; *Total Estimated Burden Hours:* 20,500 (reporting) and 184,500 (recordkeeping) for a total of 205,000.

Additional Information or Comments: Call the Reports Clearance Office on 410–966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Eydt, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 29, 1993.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 93–2558 Filed 2–3–93; 8:45 am]

BILLING CODE 4120–03–M

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provides at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under authority of sections 102 and 104 of Public Law 100–713, the Indian Health Care Amendments of 1988 (25 U.S.C. 1613–1613a).

The following is a list of Indian Health Scholarship Recipients for Fiscal Year 1992:

Aaberg, Aaden-Elleph, University of Alaska, Aleut
Abe, Winifred Vivian, University of Phoenix, Navajo
Abeita, Camila Ann, University of New Mexico, Pueblo
Abold, Carol Ann, Colorado State University, Oglala Sioux
Aceveda, Marcia Lynn, University of Washington, Navajo
Adkison, Dean Wendell, Loma Linda University, Aleut
Akins, Thea Lorena, Weber State College, Penobscot
Albert, Corrina Dynalle, New Mexico State University, Pueblo
Allard, Stephanie, North Dakota State Univ., Turtle Mt. Chippewa
Allen, Alana Dawn, Northeastern Oklahoma A&M, Cherokee
Allen, Phylomine, University of South Dakota, Turtle Mt. Chippewa
Allick, Albert P., University of Minnesota, Turtle Mt. Chippewa
Alstrom, Gail, Stanford University, Alaska
Anderson, Channa Lee, Oklahoma State University, Creek
Anderson, Matthew C., Eastern Oklahoma State University, Choctaw
Anderson, Raymond, Phoenix College, Navajo
Antone, Lucy T., Pima Community College, Navajo
Arkansas, Carmen, Appalachian State University, Cherokee
Arkie, Carolyn Ann, University of New Mexico, Pueblo of Acoma
Armijo, Darlene Jean, Albuquerque Tech. Vocational Inst., Pueblo
Armstrong, Samantha Dee, Texas Women's University, Cherokee
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Arviso, Alberta, Washington State University, Navajo

Arviso, Angela Mary, Arizona State University, Navajo
Atkins, Shanun Micaela, Colorado State University, Kiowa
Auten, Krista Renee, East Central Oklahoma State University, Choctaw
Azure, Joan Marie, Belcourt Community College, Turtle Mt. Chippewa
Azure, Joette D., University of North Dakota, Turtle Mt. Chippewa
Azure, Lane Alan, University of North Dakota, Turtle Mt. Chippewa
Baker, Biron Dale, University of North Dakota, Three Affiliated
Baloo, Mary Ann, University of New Mexico, Navajo
Bancroft, Trina Ann, University of Colorado, Navajo
Barlow, Allen, San Juan College, Navajo
Barnes, Mannix Deroin, University of Oklahoma, Dental School, Kiowa
Barnett, Frank, University of Washington, School of Soc. Work, Alaska
Barnett, Ronald Ray, Boston University, School of Medicine, Creek
Bartlett, Onna Mae, University of North Dakota, Rosebud Sioux
Bartmess, Valene N., University of Oklahoma, Hlth. Sci. Center, Creek
Bartolaba, Miguela Mae, University of Alaska, Alaska
Beard, Candis Lesley, University of Oklahoma, Chickasaw
Beauvais, Robert James, University of Hawaii, Rosebud Sioux
Becenti, Roland, Northern Arizona University, Navajo
Beets, Billy Conn, University of Minnesota, Cherokee
Begay, Adriann Westine, University of North Dakota, Navajo
Begay, Angela Ann, Kansas Newman College, Navajo
Begay, Carol Jean, Ft. Lewis College, Navajo
Begay, Elsie, University of Albuquerque, Navajo
Begay, Lelia, Northern Arizona University, Navajo
Begay, Melinda Rose, San Juan College, Navajo
Begay, Morris Wayne, University of New Mexico, Navajo
Begay, Tina Rae, University of Arizona, Navajo
Begay, Tommy Kenneth, University of Arizona, Navajo
Belgarde, Clayton M., University of Minnesota, Turtle Mt. Chippewa
Belgarde, Patrick Edward, North Dakota State University, Chippewa
Bell, Whitney Merle, University of North Dakota, Three Affiliated
Benally, Belinda Jane, Arizona State University, Navajo
Benally, Cheryl Lynn, University of Arizona, Navajo
Bender, Darlyn-Luree, University of Mary, Cheyenne River Sioux
Benn, Denise Michelle, Hinds Community College, Mississippi Choctaw
Berry, Tamara Jean Dillon, Abilene Christian University, Cherokee
Berryhill, Wayne Edward, University of Minnesota, Creek
Bethel, Dennis Wayne, University of California, Alabama-Quassarte
Bia, Claira, Western New Mexico University, Navajo
Billedeaux, Mary-Jane, Salish Kootenai College, Confederated Salish
Billie, Sharon Lynn, Northern Arizona University, Navajo
Billy, Julie Ann, University of Utah, Navajo
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Bird, Evelyn Catherine, University of California, Tohono O'Odham
Birdinground Hogan, Valerie Suzette, University of Osteo Med., Crow
Birney, Debra Lynn, Oklahoma Baptist University, Creek
Bitselley, Wendolyn, Northern Arizona University, Navajo
Blackwater, Marlene, Mesa Community College, Navajo
Blackwater, Norma, University of North Dakota, Navajo
Blemmel, Kimberly Marie, Southwestern State College, Chickasaw
Blue, Donald Ray, East Central Oklahoma State University, Lumbee
Blue, Joanne Cecile, University of North Dakota, Turtle Mt. Chippewa
Blue, Joleen Renee, Bemidji State University, Bad River Band
Blue, Virginia Pamela, University of North Dakota, Turtle Mt. Chippewa
Bluehouse, Orpha Eleanor, Phoenix College, Navajo
Bluehouse, Sandra Carolene, New Mexico State University, Navajo
Bogdanski, Matilda Catherine, University of Washington, Alaska
Bormann, Teresa Jo, University of South Dakota, Oglala Sioux
Boyle, John William, University of Oklahoma, Cherokee
Bradley-Faherty, Margaret Marie, University of New Mexico, Cherokee
Braziel, Holly Jean, Oklahoma Baptist University, Chickasaw
Brewster, Cindy Lou, Northeastern Oklahoma State University, Cherokee
Brings, Terra Beth, Huron College, Lower Brule Sioux
Brock, Tammy Sue, University of Central Oklahoma, Choctaw
Brown, Emmeline Gail, Salish Kootenai College, Crow
Brown, Freddie Herman, University of Utah, Navajo
Brown, Heather Dawn, Oklahoma State University, Choctaw
Brown, Valerie Lee, University of North Dakota, Cherokee
Brown, Ella Mae, University of Minnesota, Turtle Mt. Chippewa
Bruce, Roger Allen, University of Washington, Turtle Mt. Chippewa
Bruce, Wendell, North Dakota State Coll. of Sci., Turtle Mt. Chippewa
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Buckley, Erica Dawn, Bacone College, Creek
Burdette-Stevens, Brenda, Phoenix College, Apache
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Butler, Sherry L., Oklahoma Baptist University, Creek
Byrum, Daneece Michelle, California State University, Choctaw
Caley, Jean Karen, University of Alaska, Alaska
Calf Looking, Patrick Faron, University of Montana, Blackfeet
Campbell Abrahamson, Lucinda J., Washington State University, Spokane
Canyon, Sam, California State, Fresno, Navajo
Carlson, Gwendolyn Ann, Alderson-Broaddus College, Aleut
Carmona, Happy Elizabeth, University of New Mexico, Omaha
Carpenter, James Spencer, University of Minnesota, Yankton, Sioux
Carpenter, Julie Camille, Oklahoma City University, Chickasaw Nation
Carpenter, Michael K., Oklahoma City Community Coll., Choctaw Nation
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Cayatineto, Barbara A., University of New Mexico, Navajo
Chacon, Gayle, University of New Mexico, Navajo
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Chavez, Virgil Thompson., San Juan College, Navajo
Chavis, Karen Benetta, University of North Carolina, Lumbee
Cheama, Marvelyn, College of Santa Fe, Zuni
Cheatwood, Darla Jo, East Central Oklahoma State, Creek Nation
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Clanton, Marc Anthony, University of Denver, Cherokee Nation
Claw, Carol Jean, Western New Mexico, Navajo

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Collins, Gloria Ann, Utah State University, Assiniboine and Sioux
Cooeyate, Norman James, University of New Mexico, Zuni
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Darwin, Donovan, University of New Mexico, Navajo
Darwin, Wilbert, University of New Mexico, Navajo
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Davis, Mitchell Ryan, Boston University, Cherokee
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Finley, Tina Dionne, Oklahoma City Community College, Choctaw Nation
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Francis, Michael, Northern Arizona University, Navajo
Francisco-Montoya, Juanita Rose, University of Phoenix, Navajo
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Fry, Michael Allen, Dartmouth Medical School, Cherokee Nation
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Gatzman, Sidney Joseph, Langston University, Choctaw Nation
George, Shgen-Doo-Tan, University of Puget Sound, Tlingit & Haida
Ghahate, Alvera Jean, University of New Mexico, Zuni
Gibbons, Philip Jeffre Y, Connors State College, Cherokee Nation
Gilbert, Barbara Louise, University of Hawaii, Spokane Tribe
Gilham, Quentin Edward, Eastern Montana College, Blackfeet
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Hanks, Dawn Marie, University of Maryland, Standing Rock Sioux
Hansen, Anamarie-June, Oregon Institute of Technology, Aleut
Hardin, Christina, Peace College, Lumbee
Hardy, Joseph, University of New Mexico, Navajo
Hardy, Katherine Ann, Northern Arizona University, Navajo
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Hately, Mari Carlin, Stanford University, Alaska
Hattie, Daryl Faith, University of New Mexico, Zuni
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Haycock-Whitehair, Lorraine, Colorado State University, Navajo
Hayes, Robert Wayne, Rose State College, Chickasaw Nation
Heffington, Jina Suzette, Lynchburg General Hospital, Choctaw Nation
Hendren, Florence Velma, University of New Mexico, Navajo
Henry, Daniel James, University of North Dakota, Turtle Mt. Chippewa
Henshaw, Aubrey Judson, University of Oklahoma, Cherokee Nation
Heredia, Joyce Christine, University of New Mexico, Zuni
Herrod, Jon David, University of Kansas, Cheyenne-Arapho
Hicks, Kimberlee Rujuan, Northeastern State University, Creek Nation
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Hillaire, Carla Rae, University of North Dakota, Lummi
Hogner, David Adam, Western Carolina University, Creek Nation
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Houston, Gloria Sue, Bacone College, Cherokee, Nation
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Howe, Wilford, University of New Mexico, Navajo
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Hubbard, Joseph H., University of Arizona, Navajo
Hudson, Dana Noel, University of Oklahoma, Kiowa
Hunter, Terry Lynn, University of Oklahoma, Kiowa
Ignace, Lyle Anthony, University of Minnesota, Coeur D'Alene
Iron Moccasin, Brian Aquilar, Northern Arizona University, Navajo
Isburg, Anthony, South Dakota Sch. of Mines & Tech., Crow Creek Sioux
Ivey, Jimmy Don, East Central University, Chickasaw Nation
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Jackson, Sheila, Clackamas Community College, Confederated-Yakima
Jacobs, Rhoda Mae, Oglala Lakota College, Oglala Sioux
Jake, Kirsten Leigh, University of Oklahoma, Pawnee
Jarvis, David Lloyd, University of Washington, Osage
Jenkins, Holly S., East Central Oklahoma State University, Cherokee
Jenkins, Jeffery Lee, University of Oklahoma, Cherokee
Jensen, Carmen Sue, Colorado State University, Oglala Sioux
Jim, Cephia K., University of New Mexico, Navajo
John, Wendy Theo, University of Hawaii, Seneca Nation of New York
Johnson, Brian Lee, Northeastern State University, Choctaw
Johnson, Britt Shannon, University of Oklahoma, Choctaw
Johnson, Murna Mae, University of New Mexico, Navajo
Jondreau, Michelle Marie, University of California, Keweenaw Bay
Jones, Catherine Jeanne, Rogers State College, Onondaga
Jones, Denise Dawn, University of New Mexico, Navajo
Jones, Stella Marie, Wichita State University, Creek
Jones-Ingram, Deanna Eileen, Missouri Southern State, Cherokee
Jordan, Florence Mary, San Juan College, Navajo
Judson, Susan Beulah, University of Maine, Penobscot
Jumping-Eagle, Sara Juanita, University of North Dakota, Oglala
Juvinel, Lorna Tuanda, Everett Comm. College, Confederated-Yakima
Kasier, Eric K., University of Alaska, Ponca
Kalectaca, David, Arizona State University, Navajo
Kasey, Ida Lee, Grand Canyon College, White Mt. Apache
Keeto, Alberta Marie, Glendale Community College, Navajo
Kelly, Dawn Aileen, Northeastern State University, Cherokee
Kent, Lawanda Gail, Northern Oklahoma College, Ponca
Keplin, Sherry Lee, University of North Dakota, Turtle Mt. Chippewa
Kester, Shelly Jo, Southwestern Oklahoma State University, Cherokee
Kezar, Kristina Signe, Montana State University, Ft. Belknap-Montana
Kiddie, Lisa Louise, Bacone College, Cherokee
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LaPlant, Henrietta, Carroll College, Blackfoot
Lacroix, Castle Renee, South Dakota State University, Rosebud Sioux
Lacroix, Joe Mathe, University of North Dakota, Devils Lake Soiux
Lafferty, Dennis Allen, Santa Fe Community College, Creek Nation
Lamar, Regina Ann, University of Oklahoma, Blackfeet
Lambert, Angela Marie, Western Carolina University, Eastern Cherokee
Larocque, Brian A., University of North Dakota, Turtle Mt. Chippewa
Laroque, Michael J., University of North Dakota, Turtle Mt. Chippewa
Lashley, Joseph Grant, St. Louis University, Chickasaw
Latray, James Eldon, Montana State University, Blackfeet
Laverdure-Bernard, Adrienne, Univ. of No. Dak., Turtle Mt. Chippewa
Lawrence, Lynnae S., Arizona State University, Pueblo of Sandia
Lawson-Wesley, Carol J., University of Tulsa, Red Lake Chippewa

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Leslie, Katrina Jeanette, Creighton University, Hopi
Lincoln, Carol Sue, University of New Mexico, Navajo
Little, Elaine Benally, University of New Mexico, Navajo
Locklear, Grover Kevin, Boston University, Lumbee
Lofgren, Paul Arthur, Catholic University, Cherokee Nation
Logg, Michael J., University of Texas, Cheyenne River Sioux
Lohnes, Lisa Rae, University of New Mexico, Devils Lake Sioux
Lone Fight, Erin Lynne, South Dakota State University, Sisseton
Long, Linda Jane, Northern Arizona University, Navajo
Long, Michelle Lori, University of Colorado, Alaska
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Loock, Celeste Ann, North Dakota State University, Three Affiliated
Loom, Elizabeth Ann, Pima Community College, Tohono O'Odham Nation
Lord, Darlene Marie, University of Alaska, Alaska
Lovell, Michelle P., Oklahoma University, Citizen Band Potawatomi
Loy, Mary K., Linfield/Good Samaritan, Confederated-Siletz
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Luger, Patrick A., University of North Dakota, Standing Rock Sioux
Lujan, Jose Vicente, University of New Mexico, Pueblo of Taos
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Lusty, Georgiana Davine, El Reno Jr. College, Seminole Nation
Lynch, Roger Harvey, University of Arizona, Navajo
Mackey, Jeffrey Alan, Western Michigan University, Chippewa
Malone-Parker, Sharon Frances, Northern Arizona University, Navajo
Marin, Nadine Marie, University of Arizona, San Carlos Apache
Marion, Robert J., University of North Dakota, Turtle Mt. Chippewa
Marsh, Bryan, University of Oklahoma, Cherokee
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Masters, Paul Bryon, Bacone College, Cherokee
Mayer, Monica, University of North Dakota, Three Affiliated
Mayerhoefer, Carrie Renae, Southern Nazarene University, Cherokee
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Melbourne, Linda A., Salish Kootenai, Assiniboine
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Naseyowma, Elizabeth Joyce, University of Hawaii, Hopi
Navarro, Freida Anne, St. Martins College, Alaska
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Negale, Verenda Christine, University of New Mexico, Navajo
Neil, Kendra Leann, University of Tulsa, Cherokee
Nelson, Carrie Ann, Carroll College, Bad River Chippewa
Nelson, Tina Ann, San Juan College, Navajo
Nelson, Tonya Lynn, Pittsburg State University, Absentee-Shawnee
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Nez, Richard Lee, Northern Arizona University, Navajo
Nez, Victoria, Glendale Community College, Navajo
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Otero, Linda Diane, University of California, Fort Mojave of Arizona
Owen, Mary June, University of Oregon, Alaska
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Oxendine, Kevin, University of North Carolina, Lumbee
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Painter, Michael Wayne, University of Washington, Cherokee
Paris, Patti Anne, University of Vermont, Penobscot
Parker, Catherine Joyce, University of Oklahoma, Comanche
Parsons, Dolores, Univ. of Northern Colorado, Cheyenne River Sioux
Patterson, Donna Sue, Oklahoma Baptist University, Cherokee
Patterson, Gregory Frank, Oklahoma Baptist University, Cherokee
Peaches, Shirley Ann, Northern Arizona University, Navajo
Pepion-Healy, Lita Jean, University of Nevada, Blackfeet
Peterson, Jolene Ann, University of Nebraska, Cheyenne River Sioux

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Polequaptewa, Honani, Northern Arizona University, Hopi
Pollock, Steven Eugene, Brigham Young University, Blackfeet
Pond, Leland James, University of Montana, Assiniboine
Porter, Billy James, University of Houston, Seminole Nation of Okla.
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Quam, Elana Marie, University of New Mexico, Navajo
Quam, Lori Ann, University of New Mexico, Zuni
Quam, Paula, University of New Mexico, Zuni
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Roach, Bridgette Annette, University of Oklahoma, Cherokee
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Sawyer, Marie Louise, University of Oklahoma, Kiowa
Schindler, Dancia, University of North Dakota, Turtle Mt. Chippewa
Schmasoww, Sarah P., College of Great Falls, Chippewa-Cree
Schrader-Cottier, Lisa Ann, University of Utah, Oglala Sioux
Schroeder, Debbie, University of North Dakota, Turtle Mt. Chippewa
Scott, Lita Ann, University of Utah, Navajo
Scott, Mary, Northern Arizona University, Navajo
Scott, Rose Ann, University of New Mexico, Navajo
Self, Andrea Joy, Southwestern Oklahoma State University, Cherokee
Shackelford, Michael, University of Oklahoma, Osage
Shaw, Darren, College of Eastern Utah, Navajo
Shepro, Constance Ann, Bellin College of Nursing, Hannahville
Shields, Marion L., Salish Kootenai College, Upper Sioux
Shipp, Darren, University of North Dakota, Ponca
Shuman, Tweed, Wisc. Indianhead Tech. College, Lac Courte Oreilles
Simmons, Dorlynn Louise, University of Texas, Mescalero Apache
Simmons, Lee David, University of Texas, Yankton Sioux
Simon, Ramona P., Cheyenne River Lakota Nursing Program, Cheyenne
Simpson, Colleen Mae, University of North Dakota, Crow
Simpson, Loren Patrick, University of North Dakota, Washoe
Simpson, Shawna M., East Central University, Confederated Salish
Siow, David Earl, University of New Mexico, Pueblo of Laguna
Sky, Francine, University of New Mexico, Navajo
Small, Arlene, Salish Kootenai, Assiniboine
Smalley, Jack Owen, University of Missouri, Standing Rock Sioux
Smiley, Bennett, American River College, Gila River
Smiley, Clarence, University of New Mexico, Navajo
Smith, Margie Ida, University of Washington, Kiana Village
Smith, Marian D., University of Hawaii, Confederated of Yakima
Smith, Martin Douglas, Washington State University, Assiniboine
Snyder, Orrenzo Benally, University of Iowa, Navajo
Soap, Chris Lee, Northeastern State University, Cherokee
Spencer, Irene, Albuquerque Technical Vocational Institute, Navajo
Stacey (Gene), Miriam Jean, Northern Arizona University, Hopi
Starritt, Glenna Ann, California State University, Hoopa Valley
Stephens, Connie Ann, University of Central Oklahoma, Cherokee
Stewart, Mark Gregory, Rush University, Echota Cherokee
Stewart, Millie Faith, Salish Kootenai, Crow
Stoeckmann, Kyle Jane Clark, University of Arizona, Caddo
Stone, Joseph B., Utah State University, Blackfeet
Strickland, Deena Joanne, Tulane University, Lumbee
Strickland, Shakira Dawn, Eastern Oklahoma State University, Choctaw
Sudder, Carol Elaine, University of Hawaii, Aleut
Sully, Debra Jo, Oglala Sioux Community College, Rosebud Sioux
Summers, Heather Dawn, East Central Oklahoma State, Chickasaw
Sunday, Robyn Rachelle, University of Oklahoma, Cherokee
Susan, Myrtis, Central Arizona University, White Mt. Apache
Sutton, Nicholas Lloyd, Stanford University, Alaska
Taber, Sherra L., Eastern Oklahoma State College, Choctaw
Taylor, Alice-Faye, Oklahoma Univ. Health Sciences Center, Choctaw
Taylor Laurie Ann, University of Vermont, Miami Nation of Indians
Taylor, (Ebert), Mendy Ann, Fort Lewis College, Osage
Teague, Gloria Ann, University of Oklahoma, Cherokee
Teehee, Michael Don, Connors State College, Cherokee
Teller, Donnell Rae, Northern Arizona University, Navajo
Thomas, Jennifer Lee, Minot State College, Turtle Mt. Chippewa
Thomas, Leonard Don, University of New Mexico, Navajo
Thomas, Pauletta, University of New Mexico, Navajo
Thomas, Quinton Keith, University of North Dakota, Navajo
Thompson, Karen-Lee, South Dakota State Univ., Cheyenne River Sioux

Thompson, Tracy Lee, College of Osteo. Medicine of Oklahoma, Cherokee
Thornton, Luella Vann, Loma Linda University, Eastern Band Cherokee
Tims, Janice Kathleen, University of Oklahoma, Choctaw
Tincher, Michelle, University of North Dakota, Ft. Belknap
Todicheeney, Debbie B., Northern Arizona University, Navajo
Toledo, Laureen, Trucker Meadows Community College, Pueblo of Laguna
Tollefsen, Cheryl Collins, University of North Dakota, Arapahoe
Tracy, Rachael Lavina, Arizona State University, Navajo
Treat, Shannon N., East Central Oklahoma State University, Chickasaw
Truesdell, Michael Paul, University of Arizona, White Mt. Apache
Tso, Glenn, Pima Medical Institute, Navajo
Tso, Lenora, University of Albuquerque, Navajo
Twobears, Shantell, University of North Dakota, Standing Rock Sioux
Tyon, Warren Glen, University of Oklahoma, Choctaw
Underwood, Michael Randolph, University of Oklahoma, Navajo
Valderas, Anna M., University of Oklahoma, Choctaw
Van Tuyl-Ziegler, Amy Sandell, University of Oklahoma, Cherokee
Vanatta, Elizabeth Ann, Neosho County College, Cherokee
Vanbuskirk, Paula Elaine, University of Oklahoma, Chickasaw
Vandall, Kristen Dawn, Northern Montana College, Turtle Mt. Chippewa
Varner, Denise Ann, Humbolt State University, Creek
Vent, Liza Sarah, University of Alaska, Huslia
Vicenti, Darren, University of New Mexico, Hopi
Vickers, Francine Judith, University of Colorado, Pueblo of Isleta
Vigneux, Katherine-Valandra, Gateway Comm. College, Rosebud Sioux
Vilas, Arleigh Wayne, Bemidji State University, Minnesota Chippewa
Vizenor, Kristi, North Dakota State University, Minnesota Chippewa
Wagner, Patricia A., Salish Kootenai, Blackfeet
Wahkinney, Michael Alan, University of Oklahoma, Comanche
Wails, Sharon Loretta, Northern Oklahoma College, Creek Nation
Walker, Thomas Stuart, University of North Dakota, Three Affiliated
Wanna, Katherine Nora, University of North Dakota, Sisseton-Wahpeton
Wanoskia, Floydina S., University of New Mexico, Jicarilla Apache
Waquie, Anna, Albuquerque Tech. Vocational Institute, Pueblo of Jemez
Warhol, Peter, University of Minnesota, Sisseton-Wahpeton Sioux
Warlick, Ethan Aaron, University of Kansas, Cherokee
Warlick, Matthew Eli, University of Oklahoma, Cherokee
Warren, William Earl, University of Minnesota, Minnesota Chippewa
Watchman, Emily Rose, University of Oklahoma, Navajo
Watts, Kenneth L., Southwestern State College, Choctaw
Watty, Mandel, Southwestern Community College, Eastern Band Cherokee
Webber, George Stewart, University of Montana, Blackfeet
Webber, Jaime Scott, Northeastern State University, Quapaw
Wedding, Pamella Sue, Oklahoma State University, Cherokee
Welch, Brian Keith, East Central University, Choctaw
Welch, Trudy E., Western Carolina University, Eastern Band Cherokee
Wero, Anthony, Northern Arizona University, Navajo
West, Darin Joy, Ann Arundel Community College, Mississippi Choctaw
West, Jess, Bishop Clarkson College, Cheyenne River Sioux
West, Michael, George Washington University, Mississippi Choctaw
Westbrook, Sonja, California School of Prof. Psychology, Comanche
Weston, Evelyn Jewel, Oglala Lakota College, Oglala Sioux
Whipple, Katherine Joy, University of Minnesota, Spokane Tribe
White, Betty Jane, Baker University, Cherokee
White, Valinda Jeanne, North Dakota State University, Santee Sioux
White Eyes, Robbi Marie, Cheyenne River Lakota, Cheyenne
White Horse, Marilyn, University of North Dakota, Three Affiliated
White Horse, Wyatt Arthur, Augustana College, Rosebud Sioux
Whitman, Carolene Elizabeth A., University of New Mexico, Navajo
Widow, Norma Mary, Cheyenne River Lakota, Cheyenne
Wiegand, Shannon Lea, University of Washington, Chippewa
Wight, Teresa Lynn, Carroll College, Crow
Wilcox, Christopher Michael, Northeastern State University, Cherokee
Wilkie, Penny Marie, University of North Dakota, Turtle Mt. Chippewa
Willhoite, Lois Darlene, Rogers State College, Cherokee
Williams, Bonnie-Loretta, University of Tulsa, Cherokee
Williams, Carmelita Sue, University of New Mexico, Navajo
Williams, Jeana Lynn, George Washington University, Cherokee
Williams, Karen Elizabeth, University of Alaska, Alaska
Williams, Randal Alan, East Central University, Chickasaw
Williams, Verdi Elizabeth, Pacific Lutheran University, Sitka
Williams, Vern Raymond, Boise State University, Creek Nation
Williams, Winona Delores, Salish Kootenai College, Ft. Belknap
Williamson, Tracy Lynn, University of Montana, Blackfeet
Wills, Susan Elaine, University of Missouri, Creek Nation
Wilson, Kathy Susan, Washington University, Aleut
Wind, William Alva, Eureka College, Creek Nation
Womack, Bob Hayward, University of Oklahoma, Choctaw
Wood, Susan Kay, University of Tulsa, Cherokee
Woodbridge, Lorna Kaye, University of Kansas, Cherokee
Wright, Wenda Leann, University of New Mexico, Rosebud Sioux
Wynecoop, Teresa Ann, Eastern Washington State, Spokane
Yazzie, Delvin, University of New Mexico, Navajo
Yazzie, Elvira Eva, Northern Arizona University, Navajo
Yazzie, Eulalia Faye, University of New Mexico, Navajo
Yazzie, Jeannette, Glendale Community College, Navajo
Yazzie, Lucille, University of Utah, Navajo
Yazzie, Nadine Rae, Northern Arizona University, Navajo
Ybarra, Ysidro Patrick, Flathead Valley Community College, Crow
Yeager, Gail Ann, Wayne State University, Pueblo of Acoma
Yellow Cloud, Kendra E., South Dakota State University, Oglala Sioux
Yellowman, Marilyn Frances, Arizona State University, Navajo
Young, Roseann, Mesa Community College, Navajo
Yuselew, Melissa, New Mexico State University, Zuni
Yuselew, Tracy, Western New Mexico University, Zuni
Zegiel, Catherine M., Arizona State University, Standing Rock Sioux
Zonnie, Bertha C., Northern Arizona University, Navajo

FOR FURTHER INFORMATION CONTACT: Mr. Wesley J. Picciotti, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852; Telephone 301/443–6197.

Dated: January 27, 1993.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 93–2556 Filed 2–3–93; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Cancer Institute; Notice of Meeting of the Cancer Research Manpower Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, on February 17–19, 1993, The Saint James Hotel, 950 24th Street, NW., Washington, DC 20037.

This meeting will be open to the public on February 17, 1993, from 7:30 p.m. to 8 p.m., to review administrative details and other cancer research manpower review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 17 from 8 p.m. to recess, February 18 from 8 a.m. to recess and on February 19 from 8 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Officer, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Mary Bell, Scientific Review Administrator, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, room 809, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7978) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Mary Bell, (301) 496–7978 in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 26, 1993.

Susan Feldman,

Committee Management Offices, NIH.

[FR Doc. 93–2577 Filed 2–3–93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposal, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the applications an/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.

Dates of Meeting: February 19, 1993.

Time of Meeting: February 19—8 a.m. until adjournment.

Place of Meeting: Radisson Hotel Metrodome, 615 Washington Avenue, SE., Minneapolis, MN.

Agenda: Review of Program Project Grant.

Contact Person: Dr. Mary Nekola, Scientific Review Administrator, NIDCD/SRB, Executive Plaza South, room 400B, Bethesda, Maryland 20892, (301) 496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2592 Filed 2–3–93; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Deafness and Other Communication Disorders Programs Advisory Committee on March 19, 1993. The meeting will take place from 8:30 a.m. to 5 p.m. in Conference Room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting, which will be open to the public, is being held to discuss the Extramural Research and Training Support programs. Attendance by the public will be limited to space available.

Further information concerning the Committee meeting may be obtained from Dr. Ralph F. Naunton, Executive Secretary, NDCD Programs Advisory Committee, National Institute on Deafness and Other Communication Disorders, Executive Plaza South, room 400B, National Institutes of Health, Bethesda, Maryland 20892, 301–496–1804. A summary of the meeting and a roster of the members may also be obtained from his office.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders)

Dated: January 26, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–2578 Filed 2–3–93; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of Subcommittee D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of Subcommittee D of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on February 25–26, 1993, at the Columbia Inn, Wincopin Circle, Columbia, Maryland 21044. This meeting will be open to the public on February 25 from 2 p.m. to 2:15 p.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on February 25 from 2:15 p.m. to recess and February 26 from 8 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2580 Filed 2–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting of Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of Subcommittee B of the Diabetes and Digestive and Kidney Diseases Special Grants Review Committee, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), on March 4–5, 1993, at the Embassy Suites Hotel, Chevy Chase Pavillion, 4300 Military Road, NW., Washington, DC 20015. This meeting will be open to the public on March 4 from 8 a.m. to 8:15 a.m. to discuss administrative details or other issues relating to committee activities. Attendance by the public will be limited to space available. Notice of the meeting rooms will be posted in the hotel lobby.

In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on March 4 from 8:15 a.m. to recess and March 5 from 8 a.m. to adjournment for the review, discussion and evaluation of individual research grant applications. Discussion of these applications could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winnie Martinez, Committee Management Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Building 31, room 9A19, Bethesda, Maryland 20892, 301–496–6917, will provide a summary of the meeting and a roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2581 Filed 2–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Biomedical Library Review Committee on March 3–4, 1993, convening on March 3 at 8:30 a.m. in the Board Room and on March 4 at 8:30 a.m. in Conference Room B of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 3 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Roger Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on March 3 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on March 4 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Roger W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance, National Institutes of Health.)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2576 Filed 2–3–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on March 4–5, 1993, convening at 9 a.m. on March 4 and at 8:30 a.m. on March 5 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 4 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Diane Gibbs at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in section 552b(c)(9)(B), title 5, U.S.C. Public Law 92-463, the meeting will be closed on March 4 from 10:30 a.m. to approximately 5 p.m. and on March 5 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2579 Filed 2–3–93; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the following study sections for February through March 1993, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public for approximately one half hour at the beginning of the first session of the first day of the meeting during the discussion of administrative details relating to study section business. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in Section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and Section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each scientific review administrator, whose telephone number is provided. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the scientific review administrator to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the scientific review administrator at least two weeks in advance of the meeting.

Study section	February–March 1993 meetings	Time	Location
AIDS & Related Research 1: Dr. Sami Mayyasi; Tel. 301–496–0012	Mar. 1–2	8	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
AIDS & Related Research 2: Dr. Gilbert Meier; Tel. 301–496–5191	Feb. 26	8	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3: Dr. Marcel Pons; Tel. 301–496–7286	Feb. 22–24	8:30	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 4: Dr. Mohindar Poonian; Tel. 301–496–4666	Mar. 1–2	8:30	Hyatt Regency, Bethesda, MD.
AIDS & Related Research 5: Dr. Mohindar Poonian; Tel. 301–496–4666	Mar. 12	8:30	Holiday Inn Crowne Plaza, Rockville, MD.
AIDS & Related Research 6: Dr. Gilbert Meier; Tel. 301–496–5191	Mar. 8	8	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7: Dr. Gilbert Meier; Tel. 301–496–5191	Mar. 12	8	Holiday Inn, Chevy Chase, MD.
Behavioral and Neurosciences—1: Dr. Luigi Giacometti; Tel. 301–496–5352	Mar. 17–19	9	St. James Hotel, Washington, DC.
Behavioral and Neurosciences—2: Dr. Luigi Giacometti; Tel. 301–496–5352	Mar. 9	8:30	St. James Hotel, Washington, DC.
Biological Sciences—1: Dr. James R. King; Tel. 301–496–1067	Mar. 24–26	8:30	St. James Hotel, Washington, DC.
Biological Sciences—2: Dr. Syed Amir; Tel. 301–402–2683	Mar. 15–17	8:30	Holiday Inn, Chevy Chase, MD.
Biological Sciences—3: Dr. Donna Dean; Tel. 301–402–2690	Mar. 22–23	8:30	Holiday Inn, Chevy Chase, MD.
Biomedical Sciences: Dr. Charles Baker; Tel. 301–496–7150	Mar. 22–24	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences—1: Mrs. Jo Pelham; Tel. 301–496–7477	Mar. 11–12	8:30	Holiday Inn, Chevy Chase, MD.
Clinical Sciences—2: Mrs. Jo Pelham; Tel. 301–496–7477	Mar. 18–19	8	Holiday Inn, Bethesda, MD.
Immunology, Virology & Pathology: Dr. Lynwood Jones; Tel. 301–496–7510	Mar. 17–19	8:30	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects: Dr. G.B. Warren; Tel. 301–496–7600	Mar. 15–17	8	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Physiological Sciences: Dr. Nicholas Mazarella; Tel. 301–496–1069	Mar. 25–26	8	Holiday Inn Crowne Plaza, Rockville, MD.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–2591 Filed 2–3–93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–697830

Applicant: U.S. Fish and Wildlife Service, Regional Director—Region 3, Twin Cities, MN

The applicant requests an amendment to their current permit to take Karner blue butterfly (*Lycaeides melissa samuelis*) for purposes of scientific research and enhancement of propagation or survival of the species in accordance with recovery documents.

PRT–773926

Applicant: Dennis W. Engler, North Riverside, IL

The applicant requests a permit to purchase in interstate commerce one male and two female captive-hatched eastern indigo snakes (*Drymarchon corais couperi*) from Don Hamper, Columbus, OH, for enhancement of propagation and survival of the species.

PRT–775641

Applicant: John Aynes, Oklahoma City, OK

The applicant requests a permit to import 3 captive born Siberian tigers (*Panthera tigris altaica*) and 2 captive born snow leopards (*P. uncia*) from the Alberta Wildlife Park, Canada for the purpose of enhancement of propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 29, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–2584 Filed 2–3–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of Final Environmental Impact Statement on the Proposed Tijuana Estuary Tidal Restoration Program, Tijuana Slough National Wildlife Refuge/Tijuana River National Estuarine Reserve, San Diego County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, this notice advises the public that the U.S. Fish and Wildlife Service and the California State Coastal Conservancy have prepared a Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the proposed Tijuana Estuary Tidal Restoration Program at Tijuana Slough National Wildlife Refuge/Tijuana River National Estuarine Reserve, San Diego County, California. The Tijuana Slough Refuge provides habitat for four federally listed endangered birds, a plant and one state listed endangered bird. Six alternative plans have been considered. No final decision can be made on this proposal during the 30 days following the filing of this Final EIS/EIR, in accordance with the Council of Environmental Quality Regulations, 40 CFR 1506.10(b)(2).

ADDRESSES: The Final EIS/EIR may be inspected by appointment during normal business hours at: U.S. Fish and Wildlife Service, Southern California Coastal Complex, 301 Caspian Way, Imperial Beach, CA 91933. Telephone: (619) 575–1290. U.S. Fish and Wildlife Service, Enhancement Office, 2730 Loker Ave. West, Carlsbad, CA 92008. Telephone: (619) 431–9440. The California State Coastal Conservancy, 1330 Broadway, suite 1100, Oakland, CA 94612–2530. Telephone: (510) 286–1015.

Public libraries in San Diego County will also have the Final EIS/EIR available for review; contact the Southern California Coastal Complex for a list of specific libraries.

FOR FURTHER INFORMATION CONTACT: Mari Hoffmann-Nelson, Wildlife Biologist, Southern California Coastal Complex, P.O. Box 335, Imperial Beach, CA 91933. Telephone: (619) 575–1290.

SUPPLEMENTARY INFORMATION: The Tijuana Estuary is the southern-most estuary in the United States on the Pacific coast. The Tijuana Estuary is within the Tijuana River National Estuarine Research Reserve, which was established in 1982 by the National Oceanic Atmospheric Administration. Tijuana Slough National Wildlife Refuge is part of the Reserve. The Reserve encompasses approximately 2,531 acres of tidal and non-tidal land extending north from the border between the United States and Mexico. The Tijuana Estuary Management Plan was developed in 1986 to provide a framework for future enhancement of the estuary and to address the physical changes that were adversely affecting the estuary. The primary goal of this plan is to protect the estuarine environment and resources within the Reserve in a manner consistent with the policies of land-ownership and the agencies regulating land use in the Reserve. The Tijuana Estuary Tidal Restoration Program was developed in response to the 1986 plan and subsequent analysis that have documented the decline in resource values and the need for restoration in the Reserve.

The lead agencies in the project, the U.S. Fish and Wildlife Service and the California State Coastal Conservancy, have undertaken restoration planning and this analysis at the request of the Tijuana River National Estuarine Sanctuary Management Authority (TRNESMA). The local, state and Federal agencies that make up TRNESMA acted in response to a series of hydrological and biological studies of the estuary. These studies indicated that a rapid and perhaps catastrophic loss of resource values could occur at the Tijuana Estuary unless action was taken to reverse trends that were currently underway. This deterioration includes loss of significant endangered species habitat.

This document constitutes the foundation for the restoration project. Because of the large scale of the proposed project and a recognition of the present rudimentary knowledge of the art and science of wetland restoration, the project will be undertaken in increments. This approach to restoration, termed "the modular approach", will begin the "Model Project". The Model Project, consisting of a 20 acre marsh restoration and other actions, is subjected to a more rigorous level of impact analysis in this document than is the overall 495-acre Restoration Project. The EIS/EIR serves as a first step in the permitting process for the Model Project. Supplemental impact assessments providing more detailed information will be required under NEPA and CEQA before proceeding with subsequent project modules.

The purpose of the restoration project is to define and implement a program that will assure the long-term protection of the valuable Tijuana Estuary ecosystem. A key element in the restoration of the estuary has always been to return to an earlier historic state when tidal flushing was self-maintaining. Another important element is to develop a restoration plan based on what has been learned of the estuary's historic condition and what can be achieved under existing constraints. The tidal prism has decreased from 1,550 acre-feet in 1852 to 290 acre-feet in 1989. In 1852, the tidally-influenced portion of the estuary was approximately 870 acres compared to the current 330 acres. The 1852 tidal slough channels extended into the estuary over 3,000 feet east, 5,000 feet north and 2,000 feet south of the tidal inlet. While these channels still extend into the east, north and south portions of the estuary, the northern channel is migrating eastward into an erosion-resistant headland and the southern channels are constricted due to sedimentation. In addition, the marsh plain dissected by the southern arm is approximately two feet higher in elevation than that of the north arm. The mouth of the estuary was estimated to be 1,000 feet wide in 1852, when the ebb-flow velocities were strong enough to scour away sand deposited by wave action in the tidal inlet, and to keep the mouth open. The mouth is now about 100 feet wide, and the reduction in tidal prism has substantially reduced the tidal scouring of the entrance channel, making it unstable and susceptible to closure.

Six alternative plans were considered: (1) No action, (2) Restoration of Wetlands in the Central Estuary, (3) Restoration of 250 Acres in the South Arm, (4) Restoration of 500 Acres in the South Arm, (5) Minimum Dredging, and

(6) Alternatives to a River Training Structure.

Alternative 4 is the preferred alternative. This alternative is designed to increase salt marsh habitat and restore tidal flushing to areas that have been silted-in over the past few decades. The Program consists of two related projects: (1) The Model Project and (2) the 495-acre Restoration Project. The Model Project will be implemented first and consists of three components: (a) Oneonta Slough Widening; (b) construction of the Connector Channel; and (c) construction of a 20-acre experimental marsh. The 495-acre Restoration Project consists of four components: (a) Restoration of 495 acres of tidal marsh in the south arm; (b) construction of a river training structure; (c) stabilization of sand dunes; and (d) restoration of riparian habitat.

Restoration of the tidal marsh will proceed in modules. This will facilitate the learning process because early modules will generate information about how well procedures work, what problems develop, and what unforeseen benefits might be capitalized upon in designing future modules. The river training structure will protect the restored tidal marsh, thus reducing the risk of closure of the mouth and loss of tidal flushing by protecting against the loss of tidal volume due to sedimentation. The total footprint of the 495-acre Restoration Project with a river training structure will be between 507 and 540 acres depending on the alternative design for the river training structure.

Copies of the Final EIS have been sent to all agencies and individuals who participated in the scoping process, submitted comments to the Draft EIS/EIR, and have requested copies of the Draft EIS/EIR. A limited number of copies of the Final EIS/EIR may be obtained upon request from the contact person identified above. A Record of Decision will be prepared on this proposal after a minimum of 30 days following the filing of the FEIS/FEIR.

Dated: January 22, 1993.

John H. Doebel,

Acting Regional Director.

[FR Doc. 93-2621 Filed 2-3-93; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended (U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR parts 17 and 18).

PRT-684532

Applicant: U.S. Fish and Wildlife Service, National Ecology Center, San Simeon, CA

Type of Permit: Scientific Research.

Name of Animals: West Indian Manatee (*Trichechus manatus*).

Summary of Activity to be Authorized: The applicant requests amendment to their current permit, which currently authorizes non-harmful behavioral and physiological studies on captive-manatees, to include non-harmful and non-invasive behavioral and physiological studies on free-ranging tame manatees.

Source of Marine Mammals for Research: Wild and captive manatees and all sexes and ages to be used in the research throughout its range.

Period of Activity: Through 1994.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, Office of Management Authority (OMA), 4401 N. Fairfax Dr., room 432, Arlington, VA 22203 and must be received by the Director within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, OMA, 4401 North Fairfax Drive, room 432, Arlington, VA 22203. Phone: (1-800-358-2104); Fax: (703/358-2281).

Dated: January 29, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93-2585 Filed 2-3-93; 8:45 am]

BILLING CODE 4310-55-M

Great Lakes Panel on Nonindigenous Aquatic Nuisance Species Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Great Lakes Panel on Nonindigenous Aquatic Nuisance Species (Great Lakes Panel), a regional committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed, including: the proposed annual report to the Task Force; the information/education strategy on nonindigenous species for the Great Lakes; and State Aquatic Nuisance Species Management Plans. The meeting is open to the public. Interested persons may make oral statements to the Panel or may file written statements for consideration.

DATES: The Great Lakes Panel will meet from 1 p.m. to 5 p.m. on Monday, February 22, 1993.

ADDRESSES: The meeting will be held in Room Pier 9 at the Westin Harbour Castle, 1 Harbour Square in Toronto, Canada.

FOR FURTHER INFORMATION CONTACT: Kathe Glassner-Schwayder, Great Lakes Commission, The Argus Building, 400 Fourth Street, Ann Arbor, Michigan, at (313) 665-9135.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Great Lakes Panel on Nonindigenous Aquatic Nuisance Species, a regional committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101-646, 104 Stat. 4761, 16 U.S.C. 4701 et seq., November 29, 1990). Minutes of meeting will be maintained by Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Great Lakes Panel Coordinator, Great Lakes Commission, The Argus Building, 400 Fourth Street, Ann Arbor, Michigan, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: January 29, 1993.

Gary Edwards,

Assistant Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93-2654 Filed 2-3-93; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau Clearance Office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1028–0013), Washington, DC 20503, telephone: (202) 395–7340.

Title: Inventory of Hydrologic Data.

OMB Approval Number: 1028–0013.

Abstract: The collection is required to provide a data base for coordination of water-data acquisition activities in compliance with OMB Memorandum M–92–01, dated December 10, 1991, Coordination of Water Resources Information. It is used within all governmental, academic, and private levels of the water-data community for national or regional network design and operation and for water resources and environmental management planning.

Bureau Form Number: 9–1981–1 through 9–1981–7A.

Frequency: Biennially.

Description of Respondents: Federal, State, County, River Basin, Interstate, Municipality, Local Government.

Estimated Completion Time: .575 hours.

Annual Response: 1624.

Annual Burden Hours: 467.

Bureau Clearance Officer: Geraldine A. Wilson, (703) 648–7309.

Dated: November 4, 1992.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 93–2603 Filed 2–3–93; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[MT–070–4210–05; M81444]

Realty Action; Noncompetitive Sale of Public Lands in Madison County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Noncompetitive sale of public lands in Madison County, Montana.

SUMMARY: The following lands have been found suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, title 43 United States Code, section 1713), at not less than the estimated fair market value:

Montana Principal Meridian

T. 4 S., R. 8 W., Section 29, S½ SE¼ NW¼

The above described land comprising 20 acres, is being offered to Garrison Ranches, Inc., the adjoining landowner, who has a past history of use of the land and has improvements on the tract.

DATES: Comments regarding the proposed sale of lands must be submitted by March 22, 1993 to the Butte District Manager, Bureau of Land Management, PO Box 3388, Butte, MT 59702. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of objections, this proposed realty action will become final.

FOR FURTHER INFORMATION CONTACT: Edward Scherick, Area Manager, 1005 Selway Drive, Dillon, MT 59725; (406) 683–2337.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the above described lands from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action or on November 1, 1993, whichever occurs first. The surface estate and the mineral estate, except for saleable minerals on a portion of the tract, will be sold. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of that portion of the mineral interest which will not be reserved. The patent when issued will contain a reservation for the following terms, conditions, and reservations:

1. A right-of-way 60 feet in width for a dedicated county road known as "The Burma Road."
2. Reservation to the United States for a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.
3. A reservation to the United States for the saleable minerals on the NE¼ NW¼ SW¼ SE¼ NW¼, N½ NE¼ SW¼ SE¼ NW¼, N½ SE¼ SE¼ NW¼, and the N½ S½ SE¼ SE¼ NW¼.
4. A reservation for MTM79306, a Community Gravel Pit, as it affects that portion of the tract located north of the County Road.
5. A reservation for MTM60935, a right-of-way 20 feet in width for an electrical distribution line.

Dated: January 25, 1993.

James R. Owings,

District Manager.

[FR Doc. 93–2600 Filed 2–3–93; 8:45 am]

BILLING CODE 4310–DN–M

[WO 220–93–4320–03]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0020), Washington, DC 20503, Telephone 202–395–7340.

Title: Exchange-Of-Use Grazing Agreement.

OMB Approval Number: 1004–0020.

Abstract: Individuals or farm owners may request this use agreement for recognition of unfenced and intermingled private land in the grazing capacity and management objectives for an allotment.

Bureau Form Number: 4130–4.

Frequency: On occasion.

Description of Respondents: Livestock grazing permittees using the public lands.

Estimated Completion Time: 20 minutes.

Annual Response: 600.

Annual Burden Hours: 198.

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105.

Dated: November 17, 1992.

Henry Noldan,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 93–2599 Filed 2–3–93; 8:45 am]

BILLING CODE 4310–84–M

[CO–050–4333–04]

Draft Rationing Plan for Commercial Use of Arkansas River

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) Canon City District, in cooperation with the Colorado Division of Parks and Outdoor Recreation (DPOR), announces the availability of a draft Rationing Plan for commercial use of the Arkansas River within the Arkansas Headwaters Recreation Area (AHRA). The AHRA is jointly managed by BLM and DPOR through a Cooperative Management Agreement. Through this Agreement, both agencies were involved in the development of this plan.

DATES: Written comments should be sent in by February 27, 1993.

ADDRESSES: Copies of the draft Rationing Plan are available from: Arkansas Headwaters Recreation Area, P.O. Box 126, Salida, CO 81201, telephone (719) 539–7289. Written comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Outdoor Recreation Planner, BLM Canon City District, P.O. Box 2200, Canon City, CO 81215–2200, telephone (719) 275–0631 or Steve Reese, Park Manager, Arkansas Headwaters Recreation Area, P.O. Box 126, Salida, CO 81201, telephone (719) 539–7289.

SUPPLEMENTARY INFORMATION: Development of this draft Rationing Plan was based on decisions in the Arkansas River Recreation Management Plan, approved in 1988. That Plan identified a specific threshold for triggering the development of a rationing plan. That threshold was met during the 1991 use season.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93–2575 Filed 2–3–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–030–03–4210–05; NVN 34192]

Realty Action; Conveyance of Public Land in Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Initiation of a 45-day public comment period on the proposed classification of public land for recreation and public purposes.

SUMMARY: Pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), a 45-day public comment period is initiated on the following land proposed to be classified as suitable for lease and sale to the State of Nevada for a maintenance station:

Mt. Diablo Meridian, Nevada

T. 12 N., R. 20 E.,
  Sec. 13, NE¼NW¼NW¼.

Containing 10.00 acres.

SUPPLEMENTARY INFORMATION: The public land is located four miles southeast of Gardnerville at the Gardnerville Maintenance Station. The land is currently classified for lease and this action will modify the classification to include sale. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

The land is now and will continue to be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments.

ADDRESSES: Written comments should be sent to: Walker Resource Area Manager, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Walker Area Realty Specialist, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, NV 89706–0638; (702) 885–6000.

Dated: January 26, 1993.

John Matthiessen,

Walker Resource Area Manager.

[FR Doc. 93–2594 Filed 2–3–93; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Prince William Forest Park, Virginia, General Management Plan/ Environmental Assessment

AGENCY: National Park Service; Interior.

ACTION: Notice of Release of the Draft General Management Plan/ Environmental Assessment.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the Draft General Management Plan/Environmental Assessment (GMP/EA) for Prince William Forest Park, Virginia. The document will be on public review until April 9, 1993. A public meeting will be held Saturday, March 6 at the A.J. Ferlazzo Building, First Floor, Northwest Wing, Fire and Rescue Classroom, 160–C, 15941 Cardinal Drive, Woodbridge, Virginia. The meeting will be held from 9 am–12 noon and 1 pm–4 pm. Copies of the GMP/EA, staff, information and exhibits about the park will be available as well as comment sheets.

The draft GMP/EA presents three alternatives for future management and use of Prince William Forest Park. Alternative A, the preferred alternative, will enhance existing use. Under this alternative, the NPS would undertake actions to improve visitor experiences and enhance general public use of park facilities at the park while retaining and expanding existing facilities and current patterns of use. The "Resource Management Plan" would be implemented to ensure long-term protection of significant resources, and land protection options would be initiated to protect the Quantico Creek watershed. Alternative B will continue existing management and operations at the park. Managers would continue to accommodate traditional recreational activities while preserving important natural and cultural features; the approved Resource Management Plan would provide direction in preservation efforts. Existing facilities would be modified to meet basic health and safety requirements. The land protection strategy would be to continue working cooperatively with adjacent landowners and management authorities to ensure that the significant resources of the park are not threatened. Alternative C would achieve many of the park's objectives by concentrating active use in an attractive natural setting near the park entrance and removing facilities and development-intensive activities from the core of the park. A forested area on Quantico Creek north of the Pine Grove, Telegraph Road, and Cabin Camp 3 developments would be designated as the main visitor use areas in the park, and would be linked to offer opportunities ranging from structured group picnicking and sheltered camping

to casual play and nature study along streambanks. After the visitor use area is established, the loop road would be removed from the park interior, and this large area of mature piedmont forest would be restored to its natural condition, to be reached only on foot. To further meet the natural resource management objectives, certain private lands and in particular the lands now on the Quantico Marine Corps Base that include the uppermost portion of the Quantico Creek watershed would be brought under NPS management through land exchanges.

For copies of the draft GMP/EA, please contact: Superintendent, Prince William Forest, P.O. Box 209, Triangle, Virginia 22172.

Again, the review period for this document ends April 6, 1993. All review comments must be postmarked no later than April 6, 1993.

Dated: January 29, 1993.

Chrysandra L. Walter,

Acting Regional Director, National Capital Region.

[FR Doc. 93-2565 Filed 2-3-93; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Corporation for Open Systems International

Notice is hereby given that, on December 24, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: Tekelec, Inc., Calabasas, CA; and ISODE Consortium, Inc., London, England, and Austin, TX, have become members of COS on September 25, 1992 and October 26, 1992, respectively. COS was advised that Dowty Network Systems, Inc. ("Dowty"), a member of COS, has been acquired by Cray Electronic Holdings plc, a United Kingdom company, and that Dowty has been merged into Cray Communications, Inc. and its operations moved to Annapolis, MD.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986 (51 FR 21260).

The last notification was filed with the Department on March 9, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 5, 1992 (57 FR 19310).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-2574 Filed 2-3-93; 8:45 am]

BILLING CODE 4410-01-M

LIBRARY OF CONGRESS

American Folklife Center; Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Public Law 94-463.

DATES: Friday, February 26, 1993; 9 a.m. to 1 p.m.

ADDRESSES: Librarian's Conference Room, LM 608, Library of Congress, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contract Raymond Dockstader at (202) 707-6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 93-2573 Filed 2-3-93; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-009]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Astrophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Astrophysics Subcommittee.

DATES: February 18, 1993, 9:30 a.m. to 5:15 p.m.; and February 19, 1993, 8:15 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC-5, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Lia LaPiana, Code SZ, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0346.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Developments Since October 1992 Meeting
—Status of FY 1993 and 1994 Budgets
—INTEGRAL and XTE Mission Updates
—Strategies for the Astrophysics Missions Operations and Data Analysis Program
—Astrophysics Division Education Strategy
—Status of Infrared, Submillimeter and Radio Missions
—New Office of Advanced Concepts and Technology
—Historical Perspective of NASA
—Potential Measures of the Scientific Productivity of Astrophysics Missions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 27, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–2563 Filed 2–3–93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by March 8, 1993.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Roberta Dunn, National Endowment for the Arts, Congressional Liaison Office, room 525, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5434).

FOR FURTHER INFORMATION CONTACT: Ms. Judith O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revised collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 94 Opera-Musical Theater Application Guidelines

Frequency of Collection: One-time

Respondents: Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit arts organizations that apply for funding under the Opera-Musical Theater Program. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the application review process.

Estimated Number of Respondents: 412

Average Burden Hours Per Response: 26.95

Total Estimated Burden: 11,100

Robbi Dunn,

Congressional Liaison, National Endowment for the Arts.

[FR Doc. 93–2571 Filed 2–3–93; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Organizational Grants Section) to the National Council on the Arts will be held on March 2–3, 1993 from 9 a.m.–6 p.m., March 4, from 9 a.m.–7 p.m. and March 5 from 9 a.m.–4 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 5 from 2 p.m.–4 p.m. The topic will be policy discussion.

The remaining portions of this meeting on March 2–3 from 9 a.m.–6 p.m., March 4 from 9 a.m.–7 p.m. and March 5 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, as amended, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Office, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 28, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2570 Filed 2–3–93; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (The Arts on Television Section) to the National Council on the Arts will be held on March 3, 1993 from 9:15 a.m.–6:30 p.m. and March 4 from 9 a.m.–5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public on March 3 from 9:15 a.m.–9:45 a.m. and March 4 from 4 p.m.–5:30 p.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on March 3 from 9:45 a.m.–6:30 p.m. and March 4 from 9 a.m.–4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100

Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 28, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2569 Filed 2–3–93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 26, 1993 from 9 a.m. to 6 p.m.; February 27, 1993 from 8:30 a.m. to 12 noon.

Place: National Science Foundation, room 540, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: John W. Lightbody, Program Director for Nuclear Physics, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7993.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda: Status of DOE and NSF Nuclear Physics Programs—Report on the NSF-Conducted Review of NSF-Supported University Based Nuclear Physics Labs—Presentation and Discussion of the Report of the NSAC Subcommittee on NSF-Sponsored National User Facilities for Nuclear Physics—Preparation of a Response to the Charge to NSAC on the Apportionment of the Budgets to the User Facilities Under Several Overall Budget Cut Scenarios—Public Comment(*)—(*) Persons wishing to speak should make arrangements through the Contact Person identified above.

Dated: February 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2658 Filed 2–3–93; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Earth Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 23–25, 1993; 8:30 a.m. to 5 p.m.

Place: Room 543, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. James F. Hays, Division Director, Division of Earth Sciences, room 602, National Science Foundation, Washington, DC 20550, (202) 357–7958.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences.

Agenda: Review of NSF program performance; Long Range Planning for Earth Sciences programs.

Dated: February 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2656 Filed 2–3–93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 24–26, 1993; 8 a.m.–5 p.m.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Wanda E. Ward, Program Director, Career Access, HRD room 1225, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7461.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Summer Science Camps proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2657 Filed 2–3–93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Date, Time and Place: February 23, 1993; 8:30 a.m.–5 p.m. NSF Conference & Training Center, 1110 Vermont Avenue, NW., rooms 500 C & E, Washington, DC 20550 and February 24, 1993; 8:30 a.m.–5 p.m. NSF Conference & Training Center, 1110 Vermont Avenue, NW., room 500 C, Washington, DC 20550.

Type of Meetings: Closed.

Contact Person: Dr. John C. Hurt, Program Director, Materials Research Groups, Division of Materials Research, room 408, National Science Foundation, Washington, DC, 20550. Telephone (202) 357–9791.

Purpose of Meetings: To provide advice and recommendations concerning support for the Materials Research Groups on Advanced Processing.

Agenda: Examine proposals, reviewers' evaluations, and make recommendations for new and renewal awards for Materials Research Groups in the FY 1993 competition.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2659 Filed 2–3–93; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Research, Evaluation, and Dissemination; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 26, 1993; 8:30 a.m.–5 p.m.

Place: St. James Hotel, 950 24th Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Madeleine J. Long, Special Assistant for Comprehensive Design and Planning, Education and Human Resources, room 516, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9522.

Purpose of Meeting: To determine technical assistance needs for the Urban Systemic Initiatives.

Agenda: To examine planning proposals to help determine the nature and scope of technical assistance necessary under the Urban Systemic Initiatives.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2660 Filed 2–3–93; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

Consideration of Issuance of Amendment to Facility Operating License, Proposed no Significant Hazards Consideration Determination, and Opportunity for Hearing; Duquesne Light Company, et al

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit No. 1, located in Beaver County, Pennsylvania.

The proposed amendment would modify the appendix A Technical Specifications (TSs) to allow for increasing the number of spent fuel assemblies that may be stored in the spent-fuel pool. The changes would allow for 1627 storage locations, including two that would be used for storage cans for defective fuel. Additionally, the changes also would allow for the storage of fuel with U–235 enrichment up to 5.0% (weight). The proposed amendment would affect TS sections 3/4 9.14, 5.6.1, and 5.6.3, and table 3.9–1.

The present allowable spent fuel storage at Unit 1 is limited to 833 assemblies. The number of unused storage locations in the spent-fuel storage racks is sufficient for operational needs, including sufficient reserve capacity for full-core discharge, through 1996. The proposed increased capacity is projected to be sufficient to support facility operation through the year 2013, including full-core reserve storage capability.

The proposed increase in the storage capacity will be accomplished by replacing the current spent-fuel storage racks with 13 new free-standing high-density storage modules (racks). Two different rack designs would be used to accommodate fuel with initial U–235 enrichments up to 5% (weight), and various fuel burnup. Both designs would be fabricated from stainless steel and would incorporate Boral neutron absorber material.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)). The following previously analyzed accidents have been considered by the licensee:

1. Dropped spent fuel assembly—The radiological consequences of a dropped spent fuel assembly are not significantly increased from the previous analysis. The thyroid dose and whole body gamma dose at the exclusion boundary are bounded by the results of the previous analysis, and the whole body beta dose is increased only slightly. Criticality analysis shows that k_{eff} will remain ≤ 0.95 as before. The fuel handling equipment is not affected by the proposed storage rack replacement; therefore, the probability of a dropped spent fuel assembly accident is unchanged.

2. Dropped spent-fuel cask—The proposed rack replacement has no effect upon the procedures or equipment to be used for handling a spent-fuel cask. Therefore, the probability or consequences of this type accident are unchanged.

3. Dropped heavy load—The movement of loads in excess of 3000 pounds over spent fuel stored in the storage pool is prohibited whenever spent fuel assemblies are in the pool by the Appendix A Technical Specifications. This prohibition is not affected by the proposed rack replacement. All rack replacement work in the spent-fuel pool will be controlled and performed in accordance with specific written procedures and administrative control to preclude movement of a rack directly over any fuel. Therefore, the probability of this type accident is not changed significantly.

4. Seismic events—The new racks are designed and will be fabricated as seismic Category I structures in accordance with Regulatory Guide 1.29, Rev. 3 (1978) whereas the existing racks are seismic Category II structures. The racks are designed so that the integrity of the racks and pool structure will be maintained during and after a safe shutdown earthquake for all postulated loading conditions. Therefore, the consequences of a seismic event are not increased.

5. Loss of spent-fuel pool cooling flow—The proposed modification will increase the heat load in the spent-fuel pool. However, even in the event of a complete failure of the spent-fuel pool cooling system, the evaluation shows that there is sufficient time available to provide alternate means of pool cooling. Therefore, the consequences of this accident are not increased. The proposed rack replacement does not involve any change to the spent-fuel pool cooling system; therefore, the probability of this accident is not affected.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)). The physical and/or operational changes that would be allowed by the amendment are an increase in the initial fuel enrichment and an increase in the amount of spent fuel that may be stored in the pool through replacement of the existing storage racks. These changes do not create the possibility of a new or different kind of accident. The fuel handling operations that will be conducted with the new racks are similar to those that are currently in use, and the fuel handling operations will be accomplished using the currently-installed equipment. However, the change to a two-region spent-fuel pool requires the performance of additional evaluations to assure that the criticality criterion is not violated through misplacement of unirradiated fuel with 5% initial enrichment into a Region 2 storage cell or adjacent to the outside of a Region 2 rack module. No new types of operations will be conducted as a result of the proposed amendment following the replacement of the storage racks, and no unproven technology is utilized in the replacement racks.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)). Analyses have been performed to demonstrate that the established criticality acceptance criterion ($k_{eff} \leq 0.95$), including uncertainties, is satisfied under all conditions of storage rack loading, fuel enrichment and burnup, and events involving mispositioned fuel. Thermal-hydraulic analyses demonstrate that even though the heat load to the pool will be increased, the existing poolcooling system will maintain the bulk water temperature below 165 °F assuring a substantial margin to bulk boiling. These analyses also show that nucleate boiling will not occur in the hottest fuel assembly. Structural considerations assure that margins of safety for spent-fuel pool structural loading and margins of safety against rack tilting, deflection, or movement have been maintained. Rack materials used are proven to be compatible with the pool and fuel assemblies.

Based on this review, it appears that the three criteria of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition also should identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for a hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR part 2, subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, these procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated November 2, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 28th day of January, 1993.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2627 Filed 2–3–93; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Proposed Action and Request for Public Comment With Respect to the European Community Pursuant to Title VII of the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intention of prohibit awards of contracts by federal agencies for products and services from some or all of the Member States of the European Community (EC). Action to take effect with respect to U.S. issuances of solicitation published on or after March 22, 1993. Request for public comment concerning this as well as additional possible actions to be taken with respect to the European Community regarding discrimination against U.S. businesses in government procurement.

SUMMARY: On April 22, 1992, the President identified the EC under title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended), as discriminating against U.S. businesses in government procurement. The President committed to take action against the EC if such discrimination were not eliminated.

The United States Trade Representative (USTR), on behalf of the Administration, announces that the Administration intends to prohibit awards of contracts by federal agencies for products and services from some or all of the EC's twelve member states. This prohibition will take effect with respect to U.S. issuances of solicitation published on or after March 22, 1993. Purchases covered by the Agreement on Government Procurement (Code) and purchases by U.S. government agencies in support of U.S. national security interests, including all procurements by the Department of Defense, will be excluded from this action. Also excluded will be specific procurements or classes of procurements where public health, safety, or public interest considerations require such exclusions. This action will be taken pursuant to title VII of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2515, as amended). This action will not be taken if the discrimination identified

in the April 22, 1992 title VII identification is eliminated prior to the scheduled imposition of the action, or if the President determines such action to be contrary to the national interest. The details of the specific action to be taken will be published in a subsequent **Federal Register** notice. USTR requests written comments from the public concerning the above action.

Parties are also invited to comment concerning the costs and benefits of continued U.S. participation in the Code, in connection with a U.S. Government study of the desirability and feasibility of withdrawing from the Code, which is now being initiated. Comments are also invited on the impact of other possible actions restricting imports of telecommunications and power generation equipment from some or all of the EC member states, and other possible actions under title VII and other U.S. laws.

DATES: The USTR invites all interested persons to provide written comments concerning the proposed action and other possible actions. Submissions are to be made, in English, by noon on Friday, March 5, 1993.

ADDRESSES: Comments may be submitted to the Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506, and must include not less than twenty (20) copies. Submissions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover page and succeeding pages. Such submissions must be accompanied by a nonconfidential summary thereof.

FOR FURTHER INFORMATION CONTACT: Scott Pearson, Office of Europe and the Mediterranean, USTR (202-395-3211), or Sanford Reback, Assistant General Counsel, USTR (202-395-7203), Office of the United States Trade Representative, 600 Seventeenth Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On February 21, 1992, in its report to the Congress concerning its "Early Review" of certain procurement practices of the EC, France, Germany, and Italy under title VII, the Bush Administration identified the EC for the discriminatory procurement policies of government-owned telecommunications and electrical utilities in certain EC member states. Specifically cited was the EC's "Utilities Directive" (Directive on the Procurement Procedures of Entities Operating in the Water, Energy, Transport, and Telecommunications sectors—EEC 90/531), which came into effect on January 1, 1993, and which requires EC utilities to favor EC goods over those of the U.S. and other foreign countries. The Directive replaces the informal barriers U.S. firms had faced previously in some EC markets with official discrimination in all EC utilities markets, with the exception of Spain, where the Directive will become effective on January 1, 1996, and Greece and Portugal, where the Directive will become effective on January 1, 1998.

On April 22, 1992, pursuant to section 305(g)(1)(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)(a)), the President identified the EC as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses. In accordance with the provisions of title VII, the President modified the imposition of sanctions so that they would take effect by January 1993, subject to EC implementation of the discriminatory provisions of the Utilities Directive. The President noted that, in accordance with the statute, the sanctions would be equivalent, in their effect, to the discrimination against U.S. products or services, and would be subject to such terms and conditions as he considers appropriate. (57 FR 15217)

The United States is engaged in intensive negotiations with the EC, both to expand coverage of the Code and to reach a bilateral market access agreement for telecommunications equipment procurement. Seven rounds of bilateral negotiations between the U.S. and the EC, along with several rounds of meetings under the Code, were held in 1992. Progress to date, however, has not been sufficient to conclude either bilateral or multilateral agreements that would eliminate EC discrimination.

Consequently, USTR, on behalf of the Administration, proposes to prohibit awards of contracts by federal agencies for products and services from some or all of the Member States of the European Community (EC). This action will take effect with respect to U.S. issuances of solicitation published on or after March 22, 1993. Purchases covered by the United States under the Code and purchases by U.S. government agencies in support of U.S. national security interests, including all procurements by the Department of Defense, will be excluded from this action. (Contracts for the purchase of products valued at or above $176,000 by the U.S. Government agencies listed in Annex A are generally covered under the Code. Contracts for the purchase of services, including construction, or purchases by U.S. Government agencies not on the list in Annex A, or contracts valued at less than $176,000 by any U.S. Government agency, are not covered under the Code). Also excluded will be specific procurements or classes of procurements where public health, safety, or public interest considerations require such exclusions. This action will not be taken if the discrimination cited in the April 22, 1992 title VII identification is eliminated prior to the scheduled imposition of the action, or if the President determines such action to be contrary to the national interest. USTR requests written comments from the public concerning the above action.

Parties are also invited to comment concerning the costs and benefits of continued U.S. participation in the Code, in connection with a U.S. Government study of the desirability and feasibility of withdrawing from the Code, which is now being initiated. Comments are also invited on the impact of other possible actions restricting imports of telecommunications and power generation equipment from some or all of the EC member states, and other possible actions under title VII and other U.S. laws.

Frederick L. Montgomery,

Chariman, Trade Policy Staff Committee.

Annex A

Department of Agriculture
Department of Commerce
Department of Education
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
United States Agency for International Development
Department of the Treasury
General Services Administration
National Aeronautics and Space Administration
Department of Veterans Affairs
Environmental Protection Agency
United States Information Agency
National Science Foundation
Panama Canal Commission
Executive Office of the President
Farm Credit Administration
National Credit Union Administration
Merit Systems Protection Board
ACTION
United States Arms Control and Disarmament Agency
Office of Thrift Supervision
Federal Housing Finance Board
National Labor Relations Board
National Mediation Board

Railroad Retirement Board
American Battle Monuments Commission
Federal Communications Commission
Federal Trade Commission
Interstate Commerce Commission
Securities and Exchange Commission
Office of Personnel Management
United States International Trade Commission
Export-Import Bank of the United States
Federal Mediation and Conciliation Service
Selective Service System
Smithsonian Institution
Federal Deposit Insurance Corporation
Consumer Product Safety Commission
Equal Employment Opportunity Commission
Federal Maritime Commission
National Transportation Safety Board
Nuclear Regulatory Commission
Overseas Private Investment Corporation
Administration Conference of the United States
Board for International Broadcasting
Commission on Civil Rights
Commodity Futures Trading Commission
Peace Corps
National Archives and Records Administration
Department of Defense (national security purchases excluded)

[FR Doc. 93-2667 Filed 2-3-93; 8:45 am]

BILLING CODE 3190-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public hearing and meeting.

SUMMARY: The Commission will hold its next public meeting on Monday, February 22 and Tuesday, February 23, 1993 in the National Gallery Room A at the Omni Georgetown Hotel, 2121 P Street NW., Washington, DC (202-293-3100). The meeting is scheduled to begin at 9 a.m. on Monday. The public meeting will be devoted to review of the Commission's recommendations for its 1993 annual report to the Congress. Once that review is completed, the Commission will go into executive session to edit the chapters of the report. It is likely that all of the meeting on Tuesday will be in executive session.

ADDRESSES: The Commission is located at 2120 L Street, NW., in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant or Lauren LeRoy, Deputy Director at 202/653-7220.

SUPPLEMENTARY INFORMATION: More precise information on the plans for the meeting will be available on Wednesday, February 17, 1993. Please direct all requests for information to Annette Hennessey.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93-2562 Filed 2-3-93; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31786; File No. CBOE-92-39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to the Trading of Options on Industry Indices

January 28, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on December 14, 1992, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to review its rules to permit it to trade options on industry indices that satisfy certain criteria without further Commission review pursuant to Rule 19b-4 of the Securities Exchange Act of 1934.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise CBOE Rules 24.2 and 24.9 to permit the Exchange to trade options on industry indices that satisfy certain criteria without further review by the Commission. In addition, the proposed rule change would amend CBOE Rule 24.9 to establish standards for adjusting the composition of stock indices underlying index options.

The Commission previously has approved the trading on CBOE of options on a number of industry indices. Specifically, on August 26, 1983, the Commission approved listing and trading on CBOE of options on the Oil (Integrated International) Industry Index. (Exchange Act Release No. 20125 (August 26, 1983).) In approving those options, the Commission noted that CBOE had not proposed standards for making adjustments to that index, a concern the Commission reiterated when it subsequently approved options on the Standard & Poor's ("S&P") Office and Business Equipment Industry Index (Exchange Act Release No. 20178 (September 13, 1983)), as well as options on the S&P Transportation Index and the S&P Telephone Index (Exchange Act Release No. 20717 (March 6, 1984)). More recently, the Commission has approved options on the CBOE BioTech Index (Exchange Act Release No. 31243 (September 28, 1992)).

The Exchange currently has in place certain rules that have been approved by the Commission which govern the trading of options on industry indices. The Exchange proposes to establish additional criteria for industry indices so that the Exchange could, if a particular index satisfies these criteria, trade an option on that index without further review by the Commission. The Exchange believes that, due to the cyclical nature of investor interest in different industry sectors, it is important that options on industry indices be introduced as close in time to the emergence of investor interest as possible. While the Commission and its staff have attempted, given the regulatory process and the staff's limited resources, to approve applications to trade such options in a timely manner, the Exchange believes that eliminating the need for the Commission to approve an industry index that satisfies criteria that have previously been approved by the Commission benefits investors seeking to trade such options while simultaneously reducing the administrative burden on the Commission and the Exchange.

The proposed rule change revises the Exchange's rules in the following manner. First, the proposal adds a provision to CBOE Rule 24.2 stating that the Exchange may list an index option contract without prior Commission approval under the standards set forth in the Exchange's rules. In addition, the proposal adds paragraph (d) and Interpretation .06 to CBOE Rule 24.9 to set forth the criteria that an option on an industry index would be required to satisfy at the time it is initially listed for trading before such option could be traded on the Exchange without prior Commission approval. Under these criteria: (1) Each of the underlying securities in the index must have an aggregate market value of $50 million; (2) the average monthly trading volume across all U.S. markets for each of the underlying securities in each of the six months preceding such listing must have been at least 1 million shares;[1] (3) if any foreign country securities or ADRs thereon represented in an index cause a particular foreign country's weight in the index to exceed 20% of the index's numerical index value, the Exchange will have in place a surveillance agreement with the appropriate regulatory organization in that country; (4) absent exceptional circumstances, 90% of the numerical value of an industry index must be accounted for by securities that satisfy the criteria of Exchange Rule 5.3; (5) all industry indices must be comprised of at least five securities, all of which either must be listed on national securities exchange or designated as NASDAQ/National Market System securities; and (6) the value of an industry index option at expiration must be calculated by reference to the opening prices of the underlying securities.

In addition to the foregoing, the Exchange also proposes to add subparagraph (a)(6) to Rule 24.9 to establish standards for making adjustments to indices underlying index options traded on the Exchange once those options have begun trading. Where the index is compiled by an entity other than the Exchange, the composition of the index will reflect changes made by the index publisher. If the Exchange compiles the index, the Exchange would change the composition of the index by adding, deleting or replacing any of the securities comprising the index if, in the Exchange's judgment, such action is necessary or appropriate to maintain the quality or character of the index.

2. Basis

CBOE believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act") and Section 6(b)(5) of the Act in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market in options on industry indices.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period; (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 25, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2596 Filed 2–3–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Eight Over-the-Counter Issues

January 28, 1993.

On January 18, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, i.e., securities not registered under section 12(b) of the Act.

File No.	Issuer
7–10072 ...	U.S. Healthcare Inc., Common Stock, $0.005 Par Value.
7–10073 ...	Biomet Incorporated, Common Stock, No Par Value.
7–10074 ...	Tele-Communications Inc., Class A Common Stock, $1 Par Value.
7–10075 ...	Midlantic Corporation Inc., Common Stock, $3 Par Value.
7–10076 ...	Medco Containment Services, Inc., Common Stock, $0.01 Par Value.
7–10077 ...	Telefonos De Mexico S.A. (ADS), Series A Shares (Nominative Shares), No Par Value.
7–10078 ...	Noise Cancellation, Technologies, Common Stock.
7–10079 ...	DeBeers consolidated Mines, Ltd., S. Ordinary Stock, R0.05 Par Value.

The above-referenced issues are being applied for as an expansion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

Comments

Interested persons are invited to submit, on or before February 18, 1993 written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant to UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

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[1] The average monthly trading volume of American Depositary Receipts ("ADRs") will be calculated by multiplying the number of ADRs traded on U.S. markets during a month by the number of shares underlying each ADR.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2595 Filed 2–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19244; 811–5265]

Federated Variable Rate Mortgage Securities Trust; Notice of Application for Deregistration

January 28, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Federated Variable Rate Mortgage Securities Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on October 11, 1990, and amended on April 19, 1991, April 3, 1992, and January 15, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Federated Investors Tower, Pittsburgh, PA 15222–3779.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management company organized as a Massachusetts business trust. On August 6, 1987, applicant registered under the Act by filing a Notification of Registration on Form N–8A. On this same date, applicant filed a registration statement pursuant to section 8(b) of the Act, and pursuant to the Securities Act of 1933, to register an indefinite number of shares. Applicant's registration statement was declared effective, and its initial public offering commenced on October 8, 1987.

2. On January 30, 1990, applicant's board of trustees approved an Agreement and Plan of Reorganization (the "Plan") between the applicant and Federated Income Trust ("FIT"). Proxy materials related to the Plan were distributed to applicant's shareholders on March 27, 1990. At a special meeting of shareholders held on April 26, 1990, a majority of applicant's shareholders approved the Plan.

3. On April 26, 1990 (the "Closing Date"), applicant transferred all of its assets to FIT in exchange for shares issued by FIT. FIT is an affiliated person of the applicant by virtue of having a common investment adviser. The exchange was made in accordance with the requirements of rule 17a–8.

4. Applicant distributed the FIT shares it received to its shareholders *pro rata* in complete liquidation of the applicant. As a result of the exchange, each of applicant's shareholders became the owner of that number of full and fractional shares of FIT having a total net asset value of his or her holdings in the applicant.

5. The expenses related to the Plan amounted to $53,113. Because the costs associated with the merger were above the expense cap established for applicant, these expenses were paid by applicant's investment adviser.

6. At the time of filing of this application, applicant had no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceedings. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind-up its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2598 Filed 2–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–19243; 811–4425]

Noddings Investment Trust; Notice of Deregistration

January 27, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Noddings Investment Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on December 7, 1992, and a supplemental letter was filed on January 26, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, Two Mid America Plaza, suite 920, Oak Brook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end, diversified investment company, and is organized as a business trust under Massachusetts law. On August 31, 1987, applicant acquired all of the assets and liabilities of Noddings-Calamos Convertible Growth Fund (the "Series"), a series of Noddings-Calamos Convertible Funds, Inc. ("Noddings-Calamos"). Following the reorganization, applicant adopted Noddings-Calamos' registration statement. The Series was renamed "Noddings Convertible Strategies Fund" (the "Fund"), and is applicant's only series.

2. At a meeting on June 23, 1992, applicant's board of trustees determined that, given the Fund's declining assets and the fixed and incremental costs involved in its operations, the Fund had insufficient net assets to be economically viable. Accordingly, the board of trustees unanimously adopted a resolution declaring that liquidation and dissolution of the Fund was advisable, and directed that the resolution be submitted to the shareholders for consideration. At a meeting held on August 19, 1992, a majority of the Fund's outstanding shares voted in favor of liquidation and dissolution. As a result, applicant commenced redemption of securityholders' shares on September 18, 1992. Shares were redeemed on a rolling basis at the net asset value of such shares as of the time they were tendered. The final redemption of applicant's shares occurred on October 9, 1992. During the redemption period, the variation in net asset value paid per share was between $6.84 and $6.85 per share.

3. Expenses applicable to the liquidation were paid by Noddings Investment Group, Inc., applicant's investment adviser. No brokerage commissions were paid in connection with the liquidation.

4. As of the date of the application, applicant had no shareholders, assets or liabilities, and was not a party to any current or pending litigation or administrative proceeding.

5. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. Applicant intends to file a statement with the State of Massachusetts reporting its termination and the termination of the Fund.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2597 Filed 2-3-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 92-35]

Studies of the Regulation of Emergency Vehicles on the Interstate System and Transporters of Water Well Drilling Rigs on Public Highways; Request for Comments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Reopening of comment period.

SUMMARY: The FHWA issued a notice and request for comments in the **Federal Register** on October 13, 1992 (57 FR 46940). The notice requested information to assist the Secretary in responding to a provision of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requiring two studies of vehicle weight laws. The first is a study of: (a) State laws regulating the use of the Interstate System by emergency vehicles during delivery to or operation by a firefighting agency; and (b) the issuance of permits to exempt such vehicles from the maximum weight limits on the Interstates. The second is a study of State or Federal regulations which place a burden on transporters of water well drilling rigs on public highways. The emergency vehicle study must be submitted to Congress by June 18, 1993, and the water well drilling rig study by December 18, 1993. The comment period closed January 11, 1993.

The FHWA received a petition from the International Association of Fire Chiefs dated December 18, 1992, stating that it will require additional time to collect the requested information. As a result, they requested that the closing date be extended for 60 days.

A petition was also received from the National Ground Water Association dated January 6, 1993, stating that it has established an industry task force to accumulate, organize, and evaluate the information to be submitted. They requested a 280 day extension of the comment period for this purpose.

After carefully considering the requests, the FHWA has decided to allow additional time for comments in order to obtain more and better information for the studies. Since the emergency vehicle study must be submitted to Congress by June 18, 1993, a 60 day extension will allow approximately three months after the closing date to evaluate the information and submit the study to Congress. Therefore, the comment period will be reopened and extended to March 15, 1993.

The water well drilling rig study must be submitted to Congress by December 18, 1993. In order to allow the same three-month evaluation period after the close of the comment period, it will be reopened and extended for approximately eight months to September 20, 1993.

The comment period for the emergency vehicle study is hereby reopened and extended to March 15, 1993, and the comment period for the water well drilling rig study is hereby reopened and extended to September 20, 1993.

DATES: Responses to the emergency vehicle study must be received by March 15, 1993 and responses to the water well drilling rig study must be received by September 20, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-35, Federal Highway Administration, room 4232, HCC-10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366-2212 or Mr. Charles Medalen, Office of the Chief Counsel, at (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

Authority: Secs. 411 and 416 of Pub. L. 97-424, 96 Stat 2097, 2150; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: January 29, 1993.

E. Dean Carlson,

Executive Director.

[FR Doc. 93-2629 Filed 2-3-93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Fond du Lac County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) may be prepared for the proposed reconstruction and expansion of U.S. Highway 151 in Fond du Lac County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jacki Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905: Telephone: (608) 264–5967. You may also contact Ms. Carol Cutshall, Director, Office of Environmental Analysis, Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, Wisconsin, 53707; Telephone: (608) 266–9626.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation, may prepare an Environmental Impact Statement (EIS) on a proposal to reconstruct and expand U.S. Highway 151 between the cities of Waupun and Fond du Lac in Fond du Lac County, Wisconsin, a distance of about 16 miles. An initial environmental assessment will be prepared to evaluate the significance of impacts on the quality of the human environmental, and to determine the need for a full EIS.

The expansion of USH 151 is being considered to improve the safety of the roadway and provide additional roadway capacity for present and future traffic volumes. Alternatives under consideration include: (1) No build; (2) widen U.S. Highway 151 to four lanes along its present alignment; and (3) realignment at select locations.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have interest in this proposal. Public information meetings will be held in the project corridor throughout data gathering and development of alternatives. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft environmental document will be available for public and agency review and comment prior to the public hearing. Agencies having an interest in, or jurisdiction regarding, the proposed action, will be contacted throughout the development and refinement of alternatives.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the environmental document should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. This document is being prepared in conformance with 40 CFR part 1500 and the FHWA regulations. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 22, 1993.

James R. Zaveral,

Area Engineer, Madison, Wisconsin.

[FR Doc. 93–2567 Filed 2–3–93; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Decatur, Hardin, Wayne Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Decatur, Hardin, and Wayne Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Research and Technical Systems Engineer, Federal Highway Administration, 249 Cumberland Bend Drive, Nashville, TN 37228; Telephone (615) 736–7106.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct a two-lane facility from U.S. 64 (State Route 15) east of Savannah to existing State Route 69 south of Decaturville in Decatur, Hardin, and Wayne Counties, Tennessee. The proposed improved State Route 69 would be on new location and be approximately 20–25 miles in length, depending upon the choice of proposed alternatives. Improvements to the corridor are considered necessary to provide for both present and projected traffic needs.

Options under consideration include (1) taking no action and (2) constructing a two-lane facility on new location. There are three major build alternatives, with variations, under consideration.

Letters describing the proposed action and soliciting comments were sent to appropriate Federal, state, and local agencies in May, 1992. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The Draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding state and local clearinghouse review of federal and federally assisted programs and projects apply to this program.)

Issued on: January 25, 1993.

Wright B. Aldridge, Jr.,

Research & Technical Systems, Tennessee Division, Nashville, Tennessee.

[FR Doc. 93–2572 Filed 2–3–93; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3210

Applicant: Southern Pacific Transportation Company, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Transportation Company seeks approval of the proposed discontinuance and removal of the traffic control system on the single main track between Black Butte, California, milepost C–345.34 and Gazelle, California, milepost C–360.84 and the automatic block signal system on the single main track, between Gazelle, California, milepost C–360.84 and Ashland, Oregon, milepost C–428.42, on the Shasta Division, Siskiyou District, a distance of approximately 83 miles.

The reason given for the proposed changes is that the traffic on the route is such that the signal system is no longer required and it will reduce costs and improve train operations.

BS-AP—No. 3211

Applicants:

Central Vermont Railway, Incorporated, Mr. Chris J. Burger, General Manager, 2 Federal Street, St. Albans, Vermont 05478

National Railroad Passenger Corporation, Mr. James L. Larson, Assistant Vice President Operations and Planning, 60 Massachusetts Avenue, NE., Washington, DC 20002

Central Vermont Railway, Incorporated (CV) and the National Railroad Passenger Corporation jointly seek approval of the proposed discontinuance and removal of "Elm Street" Interlocking, milepost 0.0, in St. Albans, Vermont, on the CV Swanton Subdivision, consisting of the following:

1. The removal of the nine controlled interlocking signals, numbers 13LA, 13LB, 13LC, 13R, 15R, 25L, 25RA, 25RB, and 25RC;
2. The conversion of the seven power-operated switches to hand operation; and
3. The installation of one operative approach signal for northward train movements.

The reasons given for the proposed changes is to eliminate facilities no longer required for present day operations and the cost to maintain the aging signal system.

BS-AP—No. 3212

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, System Communications and Signal Building, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of two automatic block signals, numbers 182 and 191, near Eudora, Kansas, milepost 19.08, on the single main track, Eastern Region, Topeka Subdivision.

The reason given for the proposed changes is that the signals are no longer required due to the retirement of the siding at Eudora.

BS-AP—No. 3213

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, System Communications and Signal Building, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of two automatic block signals, numbers 372 and 373, near Lecompton, Kansas, mileposts 37.0 and 38.0, on the single main track, Eastern Region, Topeka Subdivision.

The reason given for the proposed changes is that the signals are no longer required due to the retirement of the siding at Lecompton.

BS-AP—No. 3214

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, System Communications and Signal Building, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of 4 controlled signals (numbers R46, 12R, 12LA, and 12LB) and 13 automatic block signals (numbers 31, 32, 33, 34, 41, 42, 43, R41, 44, 47, 49, 52, and 54), on the two main tracks, between milepost 3.0 and 6.0, near Corwith, Illinois, Eastern Region, Chillicothe Subdivision.

The reason given for the proposed changes is that the signals are no longer required due to changes in operating requirements.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on February 1, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93-2664 Filed 2-3-93; 8:45 am]

BILLING CODE 4910-06-M

Federal Transit Administration

Environmental Impact Statement, Fixed Guideway Transit System (Tren Urbano), Phase 1, San Juan Metropolitan Area, PR

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the Puerto Rico Department of Transportation and Public Works (DTPW), through its agency, the Puerto Rico Highway and Transportation Authority (PRHTA), intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA), for transportation improvements in the San Juan Metropolitan Area (SJMA). The action to be taken is the construction of Phase 1 of a fixed guideway transit system beginning at the south end of Santurce Ward in the Municipality of San Juan and ending in the Municipality of Bayamon. The action is necessary to reduce traffic congestion, high energy consumption and other impacts of motor vehicle use. The local lead agency (DTPW/PRHTA) will make certain that the EIS also satisfies the requirements of the Puerto Rico Environmental Policy Act (PREPA) and serves as the EIS required by this Act. Besides the light rail alternative, the EIS will evaluate the No Action and Transportation System Management (TSM) Alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations and federal, state, and local agencies. The comments received at three public meetings will be considered.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to (in addition to those received at or subsequent to the three public meetings) Mr. Jose S. Rodriguez, Deputy Executive Director for Transportation, Puerto Rico Highway and Transportation Authority, P.O. Box 42007, Minillas Station, San Juan, Puerto Rico 00940-2007 by March 8, 1993.

Scoping Meetings: Scoping meetings were held at the following locations:

1. Tuesday, October 20, 1992, at 10 a.m. in the Engineers and Surveyors Association Building in Hato Rey Ward, San Juan, Puerto Rico 00918.
2. Wednesday, October 21, 1992, at 10 a.m. in the Bayamon Municipal Assembly Room located at the

intersection of Maceo and Degetau Streets, Bayamon, Puerto Rico 00956.

3. Tuesday, December 1, 1992, at 9 a.m. in the Minillas Government Center Building in Santurce Ward, San Juan, Puerto Rico, 00940–2007.

Transcripts of these meetings are available for review at the PRHTA Environmental Studies Office (see **ADDRESSES** section below).

ADDRESSES: *Written comments* concerning the project scope should be sent to Jose S. Rodriguez, Deputy Executive Director for Transportation, Puerto Rico Highway and Transportation Authority, P.O. Box 42007, San Juan, Puerto Rico 00940–42007.

FOR FURTHER INFORMATION CONTACT: Mr. Roger H. Krahl, Director, Program Development Staff, Federal Transit Administration, Telephone (404) 347–7875.

SUPPLEMENTARY INFORMATION

I. Scoping

FTA and the local lead agency invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and defining the alternatives to be evaluated in the EIS and identifying any significant social, economic or environmental issues related to the alternatives. Additional information regarding the proposed project may be obtained by contacting Mr. Jose S. Rodriguez at the address above or by visiting or calling the Environmental Studies Office, located in room 504, 15th Floor, South Building, Minillas Government Center, Santurce, Puerto Rico. The telephone number is (809) 727–6290. Scoping comments made orally at the three public meetings in October and December will be considered. Additional scoping comments may be made in writing. See the **ADDRESSES** section above. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggested alternatives that are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate preference for a particular alternative. Comments on preference should be communicated after the Draft EIS has been completed. To be placed on the mailing list, contact Mr. Jose S. Rodriguez.

II. Description of Study Area and Project Need

The proposed project consists of 19 kilometers of light transit to be constructed between Santurce Ward in the Municipality of San Juan and the northwestern part of the Municipality of Bayamon. The guideway will be a sequence of two-track elevated sections and ground sections due to traffic and topographical factors.

The northern terminus of the proposed project is in Santurce Ward, near Sagrado Corazon Street, just north of the Martin Pena Canal. The route will extend southwestward through Hato Rey and Rio Piedras Wards of the Municipality of San Juan. From Rio Piedras Ward, the alignment will take a westerly alignment through the Municipalities of Guaynabo and Bayamon, traversing through the Municipality of Bayamon and ending at Luchetti Industrial Park, east of the PR–5 and PR–28 interchange, for an approximate length of 19 kilometers.

III. Alternatives

Alternatives under consideration include: (1) Building the Locally Preferred Alternative (LPA) as described above and variations that may arise during the environmental and design process; (2) The No-Build Alternative which will consist of all transit service and highway and transit facilities that now exist or that are included in the Ten Year Plan and will be operational by the year 2010; and, (3) the Bus/TSM Alternative that consists of providing the best transit service that can be reasonably provided without the construction of major transit capital projects such as the fixed guideway system now proposed. This alternative would include TSM measures that are now under study: for example, the provision of an HOV lane in PR–2 between San Juan and Bayamon, and the provision of new bus routes between Carolina and San Juan, and between Bayamon and San Juan. It would also include the reconstruction of several important interchanges on PR–2 in Buchanan and Caparra, the PR–28 and PR–165 interchange in Catano, and the upgrading of a segment of PR–5 in Catano. The construction of a segment of Martinez Nadal Freeway and segments of PR–21, 65th Infantry Freeway in Guaynabo-Bayamon, where a portion of the LPA is planned to be constructed, would also be part of this alternative.

IV. Probable Effects

In the EIS, the FTA and the local lead agency will evaluate all significant social, economic and environmental impacts of the alternatives. Among the primary issues are the expected increases in transit ridership, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, and financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geologic forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

V. FTA Procedures

According to the Federal Transit Act, as amended, and FTA policy, the Draft EIS will be prepared in conjunction with an Alternative Analysis, and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and comments received, the Puerto Rico Highway and Transportation Authority will select a locally preferred alternative and seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: February 1, 1993.

Peter N. Stowell,

Regional Federal Transit Administrator.

[FR Doc. 93–2673 Filed 2–3–93; 8:45 am]

BILLING CODE 4910–57–M

National Highway Traffic Safety Administration

[Docket No. 92–67; Notice 2]

TRW Inc.; Grant of Petition for Determination of Inconsequential Noncompliance

Pursuant to 49 CFR part 556, TRW Inc. (TRW) of Cleveland, Ohio petitioned the agency on behalf of the Quality Safety Systems Company (QSS) of Ontario, Canada, a partnership whose owners are TRW Canada Ltd. and Tokai Rika Co., Ltd. TRW determined that some of the safety belts manufactured by QSS, which are installed on Toyota trucks manufactured by New United Motor Manufacturing, Inc. (NUMMI), fail to comply with the labeling requirements of 49 CFR 571.209, "Seat Belt Assemblies," (Federal Motor Vehicle Safety Standard (FMVSS) No. 209). TRW then filed an appropriate report pursuant to 49 CFR part 573.

TRW's petition also asked that NUMMI and Toyota be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*). The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice grants that petition. Notice of receipt of the petition was published on December 7, 1992, and an opportunity afforded for comment (57 FR 57867).

As of October 27, 1992, QSS had found a total of 40 front safety belts which did not comply with the labeling requirements of FMVSS No. 209. Section S4.1(j) of the standard requires that:

> [e]ach seat belt assembly shall be permanently and legibly marked or labeled with year of manufacture, model, and name or trademark of manufacturer or distributor, or of importer if manufactured outside the United States.

The model number on the label is different for the different seating positions. In some instances, the label for the right front belt assembly (Model Number 50026N) was inadvertently applied to the left front seat belt assembly (Model Number 50027N). In other instances, the label for the left assembly was inadvertently applied to the right assembly.

TRW supported its petition for inconsequential noncompliance with the following:

> The subject seat belt assemblies, while incorrectly labeled, were correctly shipped in containers including only seat belt assemblies for the left or right side, as the case may be. Because of the design of the seat belt assemblies, it would have been very difficult to inadvertently install either of the front seat belt assemblies on the wrong side of the vehicle. Operators at NUMMI have been interviewed and have indicated that they believe it did not occur.
>
> Neither NUMMI nor Toyota is aware of any owner complaints, field reports or allegations of hazardous circumstances relating to either (i) mislabeled seat belt assemblies or (ii) misapplication of seat belt assemblies in Toyota Trucks. In addition, neither NUMMI nor Toyota has found any mislabeled seat belt assembly that was incorrectly installed.
>
> Replacement parts for the subject seat belt assemblies are not distributed through the general automotive after market; they are only sold by Toyota dealers. Toyota dealers utilize a system to obtain replacement parts which is based on part numbers assigned by Toyota. Each seat belt assembly has been assigned a Toyota part number.
>
> The number appearing on the seat belts themselves is not the part number under which the belt is cataloged and sold. If an owner of a Toyota Truck wished to replace a seat belt, he would order it by providing the following information to a Toyota dealer: "1993 Toyota Truck, seat belt, driver (or passenger) side, color (blue, black, etc.)" and not by the QSS model number appearing on the belt label. The Toyota dealer would look up the proper part number from a parts book, and select the belt from stock (or order it) by the Toyota part number.
>
> The mislabeling in question relates to the QSS model numbers that are printed on the seat belt label. Because Toyota's parts ordering system is based on Toyota's part numbers, it will not be impaired by the subject mislabeling. In support of the foregoing, [TRW] would note that NHTSA recently granted a petition for exemption filed by Chrysler Corporation (Docket No. 92–24). The Chrysler petition concerned 375,000 vehicles which were not marked or labeled in accordance with FMVSS 209. Based on its conclusion that Chrysler's part ordering system would prevent misapplication, NHTSA granted the petition on October 5, 1992 (See 57 FR 45865). TRW would also make reference to comments in support of that petition submitted by both Volkswagen of America, Inc. and the Automotive Occupant Restraints Council."

No comments were received on the TRW petition.

The TRW petition raises two issues. The first of these is whether the improper labeling may have caused NUMMI to install the restraints improperly. TRW stated that it had interviewed the NUMMI personnel who installed the restraints and these persons expressed their belief that the belts were properly installed. Because of the obvious differences between a left and right restraint, and the fact that individuals familiar with safety belt assemblies installed them, NHTSA has concluded that the belts were properly installed.

The second issue is whether an incorrect QSS model number might result in the purchase of the wrong replacement belt. This could result in a delay in installation of a replacement belt, which has a potential adverse effect upon safety. Although the noncompliant belts have reversed model numbers, NHTSA deems it unlikely that confusion will result. As with Chrysler, the structure of Toyota's parts ordering system makes confusion unlikely because Toyota depends on the number that it assigns to the part, instead of on the number assigned by QSS. In summary, when a person obtains replacement restraints through a Toyota dealer, the difference in belt configuration, the structure of the parts ordering system, and comparison of old parts to new ones will all help to assure that the belts are not misapplied.

For the reasons set forth above, NHTSA finds that the petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and grants its petition.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: January 29, 1993.

Barry Felrice,

Associated Administrator for Rulemaking.

[FR Doc. 93–2590 Filed 2–3–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 29, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0117.
Form Number: None.
Type of Review: Extension.
Title: Establishment of Container Station.
Description: A container station that is independent of either an importing carrier or a bonded carrier may be established at any port or portion thereof where under the jurisdiction of district director. This information collection is the application to establish such a container station.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 177.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 354 hours.

OMB Number: 1515–0133.
Form Number: None.
Type of Review: Extension.
Title: Application to Receive Free Materials in a Bonded Manufacturing Warehouse.
Description: The proprietor of a bonded manufacturing warehouse must make application to the district director to enter into that warehouse any domestic merchandise, except

merchandise which subject to IRS tax, which is to be used in connection with the manufacture of articles permitted to be manufactured.

Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 8.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,000 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 93–2593 Filed 2–3–93; 8:45 am]
BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: The Department is requesting approval of the Internal Revenue Service Survey, described below, by February 12, 1993, in order to implement this study by February 15, 1993. To allow public review and comment on this survey a copy will accompany this notice. Comments should be received by close of business February 10, 1993.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Forms Distribution Improvement Survey
Description: The proposed telephone study would be conducted on a national basis and would question individual taxpayers who call the IRS distribution centers to order tax forms, instructions, and/or publications. This study will attempt to identify taxpayers' actions and habits when filling out their tax returns. Additionally, taxpayers will be questioned to determine if they are willing to provide their social security number when they call to order tax forms. The information collected by this proposed study way allow the IRS to make changes to the forms distribution process that would: (1) Reduce the number of taxpayers having to call the IRS to order additional copies of items, and (2) provide taxpayers with better service.
Respondents: Individuals or households
Estimated Number of Respondents: 2,136
Estimated Burden Hours Per Respondent: 3 minutes
Frequency of Response: On occasion
Estimated Total Reorting Burden: 1,575 hours
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

Forms Distribution Improvement Survey

We are trying to gather information that will allow the IRS to improve the service provided by our tax forms distribution channels. Would you help us by taking about 3 minutes of your time to answer some questions?

1. Yes ☐
2. No ☐

1. The tax forms and materials you are ordering will be used: (read first 3 responses to caller)

1. By an Individual Taxpayer ☐
2. By an Accountant or Bookkeeper ☐
3. By a Business ☐
4. Don't Know ☐

• If the caller answered something other than "by individual taxpayer", read this: Thank You for Your Time and Cooperation!! and end the conversation.

2. Did you hire someone (such as an accountant or bookkeeping service) to do your federal income taxes last year (1991 Tax Year)?

1. Yes ☐
2. No ☐
3. Don't Know ☐

3. Did you receive your 1992 tax forms and instruction booklet in the mail?

1. Yes ☐ skip to 6
2. No ☐
3. Don't Know ☐

Only ask the caller questions 4 & 5 if they responded "no" or "don't know" to question 3!

4. Did you receive a post card from the IRS that included a label to use when you file your tax return?

1. Yes ☐ skip to 6
2. No ☐
3. Don't Know ☐

Only ask the caller question 5 if they responded "no" or "don't know" to question 4!

5. Have you moved sometime within the last 12 months?

1. Yes ☐
2. No ☐
3. Don't Know ☐

6. How willing would you be to give your Social Security Number when you call to order tax forms if it would allow us to automatically send them to you in the future? Would you be: (read first 5 responses to caller)

1. Very Willing ☐
2. Willing ☐
3. Neither Willing nor Unwilling ☐
4. Unwilling ☐
5. Very Unwilling ☐
6. Don't Know ☐

7. How many calendar days do you consider to be a reasonable amount of time for it to take to get the tax materials you just ordered? Please stop me when I read the number of days you consider to be reasonable. (read responses until caller stops you)

1. 23 or more days ☐
2. 18–22 days ☐
3. 13–17 days ☐
4. 8–12 days ☐
5. 4–7 days ☐
6. 1–3 days ☐
7. Don't Know ☐

New technologies are available that would allow the IRS to provide tax forms to the public on demand. Because these new technologies are very costly, the IRS would probably charge a fee to obtain forms through them. We would like to see how taxpayers feel about paying a fee to receive tax forms immediately.

This Does Not Mean The IRS Is Going To Start Charging You For Tax Forms.

8. Would you pay between $.05–$.25 for each page of a tax form to immediately obtain a copy of the form?

1. Yes ☐ go to 9
2. No ☐ skip to 10
3. Don't Know ☐ skip to 10

Only ask the caller question 9 if they responded "yes" to question 8!

9. What is the maximum amount you would pay per page for the convenience of getting a tax form immediately? (check the "other" box and record the amount if the caller says something other than a listed amount)

1. $.25 ☐
2. $.20 ☐
3. $.15 ☐
4. $.10 ☐
5. $.05 ☐
6. Other (Specify) ☐ ______
7. Don't Know ☐

10. How do you make a copy of your income tax return to keep for your records? (read first 5 responses to caller)

1. Keep a Scratch Copy ☐
2. Handwrite or Type an Original ☐
3. Print from Computer ☐
4. Photocopy Forms Sent to IRS ☐
5. Don't Keep a Copy ☐
6. Other (Specify) ☐ ______

11. Did you call to order: (read first 2 responses to caller)

1. Additional Copies of Items You Have ☐
2. Items You Do Not Have ☐
3. Both Responses 1 & 2 ☐
4. Don't Know ☐

12. Do you usually need the same kinds of tax forms and instruction booklets each year?

1. Yes ☐
2. No ☐
3. Don't Know ☐

13. Would you be able to identify ALL of the tax forms and instruction booklets you need for the 1993 tax year when you submit your 1992 tax return?

1. Yes ☐
2. No ☐
3. Don't Know ☐

14. Do you live in a state that has a state income tax?

1. Yes ☐ (Go To 15)
2. No ☐ (Skip to **)
3. Don't Know ☐ (Skip to **)

15. Does your state require you to file a copy of all or part of your federal income tax return along with your state forms?

1. Yes ☐ (Go To 16)
2. No ☐ (Skip to **)
3. Don't Know ☐ (Skip to **)

16. How do you make a copy of your federal tax forms to file with your State income tax return?

1. Send a Scratch Copy ☐
2. Handwrite or Type an Original ☐
3. Print from Computer ☐
4. Photocopy Forms Sent to IRS ☐
5. Don't Send a Copy to State ☐
6. Other (Specify) ☐ ______

17. How would you react to the following statement? Would you: strongly agree, agree, neither agree nor disagree, disagree, or strongly disagree?

If the IRS sent 3 copies of each tax form in my booklet, that would *COMPLETELY ELIMINATE* the need for me to call the IRS to order tax forms and related materials.

1. Strongly Disagree ☐
2. Disagree ☐
3. Neither Agree nor Disagree ☐
4. Agree ☐
5. Strongly Agree ☐
6. Don't Know ☐

** This is the end of the interview. Thank you very much for your time and participation! According to the Paperwork Reduction Act Notice, you can send your comments about the length of the survey to the IRS and the Office of Management and Budget. Do you want me to read the notice and give you the address to send your comments? (If yes, read the box below.)

Paperwork Reduction Act Notice. We ask for this information to carry out the Internal Revenue laws of the United States. Your response is voluntary. The time needed to complete this survey will vary depending on the individual circumstances. The estimated average time is 3 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this survey more simple, we would be happy to hear from you. You can write to both the Internal Revenue Service, Washington, DC 20224. Attention: IRS Reports Clearance Officer T:FP; and the Office of Management and Budget, Paperwork Reduction Project; (1545–XXXX); Washington, DC 20503. DO NOT send this survey to either of these offices. Instead use the self-addressed envelope provided.

Assistor Answer—Do Not Ask Caller

Date completed:
Mo. ____Day ____Yr. ____
State ________
Taxpayer ordered *(check all that apply)*
F1040 ☐
F1040A ☐
F1040EZ ☐
Other Forms/Schedules ☐
Instructions ☐
Publications ☐

[FR Doc. 93–2655 Filed 2–3–93; 8:45 am]

BILLING CODE 4830-01-M

Fiscal Services

[Dept. Circ. 570, 1992 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Century Surety Company

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under section 9304 to 9308, title 31, of United States Code. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570, 1992 Revision, on page 29365 to reflect this addition:

Century Surety Company. *Business Address:* P.O. Box 2689, Columbus, Ohio, 43216–2689. *Underwriting Limitation*[b]: $504,000. *Surety Licenses*[c] AZ, IN, OH, WI, WV. Incorporated In: Ohio. *Federal Process Agents*[d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6765.

Dated: February 1, 1993

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–2649 Filed 2–3–93; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1992—Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Correction; Contractor's Bonding and Insurance Co.

The above company name was listed in error in the Treasury Department Circular 570, July 1, 1992. The error is hereby corrected to read Contractors Bonding and Insurance Company (Note: The apostrophe in Contractors has been deleted). Federal bond-approving officers should annotate their reference copies of the treasury Circular 570, 1992 Revision, at page 29368 to reflect this change.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6507.

Dated: January 29, 1993.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–2647 Filed 2–3–93; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1992 Rev., Supp. No. 11]

Surety Companies Acceptable on Federal Bonds; NAC Reinsurance Corp.

A certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1992 Revision, on page 29382 to reflect this addition:

NAC Reinsurance Corporation. *Business Address:* One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836–2568. *Underwriting Limitation*[b]: $20,970,000. *Surety Licenses*[c]: AK, AZ, CA, CO, DE, FL, ID, IL, IN, LA, KY, ME, MD, MA, MI, MN, MS, MT, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SD, TN, UT, VT, VA, WA, WV, WI, WY. *Incorporated In:* New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6507.

Dated: December 31, 1992.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–2648 Filed 2–3–93; 8:45 am]

BILLING CODE 4810-35-M

Office of Thrift Supervision

[AC 3: OTS No. 2740]

Coral Gables Federal Savings and Loan Association, Coral Gables, FL; Approval of Conversion Application

Notice is hereby given that on January 22, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or his/her designee, acting pursuant to delegated authority, approved the application of Coral Gables Federal Savings and Loan Association, Coral Gables, Florida, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, Georgia 30348–5217.

Dated: January 29, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–2605 Filed 2–3–93; 8:45 am]

BILLING CODE 6720-01-M

[AC–4: OTS No. 1144]

Delta Federal Savings, F.S.B., Delta, CO; Approval of Conversion Application

Notice is hereby given that on January 25, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or his/her designee, acting pursuant to delegated authority, approved the application of Delta Federal Savings, F.S.B., Delta, Colorado, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75309.

Dated: January 29, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–2606 Filed 2–3–93; 8:45 am]

BILLING CODE 6720-01-M

[AC–5: OTS No. 0541]

First Federal Savings and Loan Association of New Castle, New Castle, PA; Approval of Conversion Application

Notice is hereby given that on January 25, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or his/her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of New Castle, New Castle, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: January 29, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–2607 Filed 2–3–93; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Marion, Marion, IN; Approval of Conversion Application

Notice is hereby given that on December 28, 1992, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or his/her designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank of Marion, Marion, Indiana to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: January 29, 1993.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 93–2608 Filed 2–3–93; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

Cooperative Agreement With a Non-Profit Organization in Support of the Publication of a Quarterly Journal for Professionals Engaged in Overseas Educational Advising on Opportunities for Studying in U.S. Institutions of Higher Education and the Performance of Supplemental Research Services for Responding in Inquiries from USIA-Affiliated Overseas Educational Advisers on Various Aspects of Higher Education in the United States

AGENCY: United States Information Agency.

ACTION: Notice—Request for proposals.

SUMMARY: In collaboration with the Agency, the organization will research, write, edit and publish a quarterly reference journal to bring timely and in-depth information on issues and topics of importance to overseas educational advisers. Four issues of the publication are to be prepared during the period of the agreement with 500 copies of each

edition reserved for USIA-designated addressees. An additional service will provide direct replies to reference inquiries from overseas USIA-designated educational advising offices.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on March 1, 1993. Faxed documents will not be accepted, nor will documents postmarked on March 1, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants should begin April 19, 1993 and extend through April 30, 1994.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, Advising Journal and Related Research, Office of Grants Management, E/XE, room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions should contact Ms. Mary K. Reeber or Ms. Doris B. McCants at U.S. Information Agency, 301 4th St., SW., Advising and Student Services Branch, E/ASA, room 349, Washington, DC 20547, Tel. (202) 619–5434 to a request detailed application packet, which includes all necessary forms, and technical guidelines for preparing proposals, including specific budget preparation information.

SUPPLEMENTARY INFORMATION:

Overview

Overall authority for this publication is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and other countries of the world.

USIA strives to accomplish this goal by supporting the publication of a professional journal for overseas educational advisers who are responsible for providing accurate and unbiased information to foreign nationals about opportunities for studying in the United States. Overseas advisers and U.S. professionals in education contribute articles to various thematic issues. Past themes have included topics such as: Liberal Arts Colleges; Good Homes for International Students; Advanced Studies in Business and Management; Nursing; Communicating Across Cultures; Financing Higher Education; Community Colleges; Short-Term Training Programs. Themes to be addressed are based on recommendations from overseas advisers, and of an unpaid Advisory Board, with Agency concurrence. The unpaid Advisory Board, made up of professionals in the field of international education, will be selected by grant recipient with Agency concurrence. An Agency officer serves as observer on the Advisory Board.

Each issue will focus on an overall theme or topic in U.S. higher education or educational advising which will be relevant to and increase the professional knowledge of overseas educational advisers working with international students and others who inquire about opportunities for studying in U.S. institutions of higher education. Additionally, each issue will feature current information on academic news, university programs, new advising resources, short-term training programs, current testing announcements, news briefs, reference questions of world-wide interest, and scholarship and financial information useful to overseas educational advisers in the conduct of their duties. USIA will reserve the right to submit relevant articles, as appropriate.

USIA will be consulted by the recipient's editorial staff during the development of issues of the journal. The first edition of the journal will be published and available for overseas distribution no later than 90 days from receipt of the grant with no more than 90 days between subsequent editions.

In addition, funds will be awarded to enable the recipient to perform supplemental research services to respond directly to specific inquiries from USIA-affiliated educational advisers overseas. The research service will answer individually questions that are too narrow, too geographically specific, or too legally sensitive for publication in the aforementioned journal. Typical reference inquiries involve locating unusual degree or postgraduate programs, locating and/or evaluating a particular type of reference publication, locating short-term training and determining institutional accreditation or legitimacy. Many field of study inquiries require defining the field (or fields) in which a topic would be studied and finding schools that have done research or held courses on that specific topic. The research service should provide for responding to approximately 35–45 reference inquiries per year at a minimum of 100 hours of reference work and the related costs (postage, telephone, fax, duplication).

Pursuant to the Bureau's authorizing legislation, products must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

Guidelines

The proposal will include details on the editorial and publication capabilities to produce four issues of the advising journal and the ability to provide accurate and timely supplemental research and reference services for responding directly to inquiries from USIA-affiliated educational advisers. 500 copies of each issue of the publication will be made available to USIA and/or to a mailing facility to be determined by USIA for overseas and internal distribution. In-house desktop publishing facilities are required so that journal issues will be produced quickly and efficiently in an attractive typeset quality format.

Proposed Budget

A comprehensive line item budget should be submitted together with the proposal. The budget should not exceed $75,000 for publication of four issues of the advising journal and no more than $5,000 for responding directly to research inquiries from USIA-affiliated overseas educational advisers. Cost-sharing by an organization through journal subscriptions and appropriate advertising to offset production costs in excess of the grant will be a priority criterion for selection. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000 for publication of the journal and conduct of the research service.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area offices, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of Program Idea

Proposals should exhibit originality, substance, knowledge of the subject, and ability to produce an attractive quarterly journal which will successfully supply timely information and an in-depth and balanced exploration of issues and topics important to overseas educational advisers. The proposal should demonstrate that the applicant has the resources and professional contacts necessary to respond accurately and quickly to inquiries by overseas educational advisers.

2. Program Planning

Detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals.

4. Institution's Track Record/Ability

Applicant should demonstrate a track record of successful programs, including responsible fiscal management. The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

5. Cost Effectiveness

The overhead and administrative components of grants should be kept as low as possible.

6. Cost-sharing

Proposals should demonstrate the organization's ability to sell subscriptions and appropriate advertising to offset some of the costs of publishing the journal. All income derived from subscription or advertising sales of the journal must be applied to the production costs.

7. Evaluation Plan

Proposals should provide a plan for evaluation by readers and recipients of services.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government.

Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures. A successful bidder may be awarded up to three renewal grants.

Notification

All applicants will be notified of the results of the review process on or about April 15, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements. The successful grantee may be awarded follow-on grants based on performance during the first year.

Dated: January 25, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–2363 Filed 2–3–93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 22
Thursday, February 4, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Wednesday, February 17, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2817 Filed 2–2–93; 2:32 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, February 23, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Reviews.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2818 Filed 2–2–93; 2:32 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, February 23, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2819 Filed 2–2–93; 2:32 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Tuesday, February 23, 1993.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2820 Filed 2–2–93; 2:32 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Thursday, February 25, 1993.

PLACE: 2033 K St., NW., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Quarterly Review
  1st quarter, FY 1993
—Proposed rules on Dual Trading
—Proposed rules on Disciplinary Committees and Governing Boards of Self-Regulatory Organizations

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–2821 Filed 2–2–93; 2:32 pm]

BILLING CODE 6351-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:04 a.m. on Tuesday, February 2, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Recommendation regarding the liquidation of a depository institution's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,796 (Amendment)
  Firstsouth, FA
  Pine Bluff, Arkansas

Matters relating to the Corporation's assistance agreement with an insured bank.

Matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: February 2, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–2851 Filed 2–2–93; 3:25 pm]

BILLING CODE 6714-01-M

FEDERAL HOUSING FINANCE BOARD

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 5059, January 19, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m. Wednesday, January 27, 1993.

CHANGES IN THE MEETING: The following topics were deleted from the agenda during the open portion of the meeting.

1. Office of Strategic Planning
   - System 2000 Update
   - GSE Hearing
2. Examination and Regulatory Oversight Division
   - Advances Regulations
   A. Approval of Final Rule
   B. Approval of Interim Final Rule on Advances to Non-Member Mortgages

CHANGES IN THE MEETING: The following topic was deleted from the agenda during the closed portion of the meeting.

- Approval of the December Board Minutes

The above matter is exempt under Section 552b(c)(9)(B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–2853 Filed 2–2–93; 3:40 pm]

BILLING CODE 6725-01-M

Corrections

Federal Register
Vol. 58, No. 22
Thursday, February 4, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Privacy Act; Systems of Records

Correction

In notice document 93–1890 beginning on page 6105 in the issue of Tuesday, January 26, 1993, make the following correction on page 6106, in the second column, under the heading "ROUTINE USES OF RECORDS * * *", in the first paragraph, in the fourth line, "an" should read "a".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–5410–10–A100]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests; Safford District, Arizona

Correction

In notice document 92–31684 appearing on page 62351 in the issue of Wednesday, December 30, 1992, in the second column, in the land description, under "Sec. 35," in the second line, "SW½SW¼," should read "W½SW¼,".

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91–ASW–26]

Revision of Control Zones; Lafayette, LA; New Iberia, LA

Correction

In rule document 93–361 beginning on page 3217 in the issue of Friday, January 8, 1993, make the following correction:

§71.1 [Corrected]

On page 3218, in the amendment to § 71.1, in § 71.171, under the heading **ASW LA CZ Lafayette, LA. [Revised]**, in the fourth line, "30°02′19″" should read "30°12′19″".

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–18–90]

RIN 1545–AO54

Notice of Proposed Rulemaking Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

Correction

In proposed rule document 92–26160 beginning on page 52743 in the issue of Thursday, November 5, 1992, make the following corrections:

1. On page 52744, in the 2d column, in the 2d full paragraph, in the 30th line, "fights" should read "rights".

2. On page 52745, in the first column, in the first line, "it" should read "if".

3. On the same page, in the same column, in the 19th line, "amend" should read "amended".

4. On the same page, in the same column, in the third full paragraph, in the fourth line, "disclosure" should read "disclose".

§1.382–2 [Corrected]

5. On page 52746, in the third column, in § 1.382–2(b)(2)(ii), in the second line, "covertible" should read "convertible".

§1.382–2T [Corrected]

6. On the same page, in the same column, in § 1.382–2T(a)(2)(i), in the second line, insert "* * *" after *"1992."*.

§1.382–4 [Corrected]

7. On page 52747, in the first column, in § 1.382–4(d)(2)(ii)(a), in the first line, "(a)" should read "(A)".

8. On the same page, in the third column, in § 1.382–4(d)(3)(ii), in the eighth line, delete "the" the second time it appears.

9. On the same page, in the same column, in § 1.382–4(d)(4)(ii), in the 21st line, delete "the transfer after".

10. On page 52748, in the second column, in § 1.382–4(h)(2)(ii)(B), in the first line, *"(11)"* should read *"(1)"*.

11. On the same page, in the third column, in § 1.382–4(h)(2)(iv)(B), in the first line, "exercise" was misspelled.

12. On the same page, in the same column, in the same section, in the fifth line, "directly" was misspelled.

BILLING CODE 1505–01–D

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federal register

Thursday
February 4, 1993

Part II

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Fiscal Year 1993; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program, Aquaculture Research; Fiscal Year 1993; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program, Aquaculture Research, for fiscal year 1993.

The authority for this program is contained in section 2(c)(1)(A) of the Act of August 4, 1965, Public Law No. 89–106, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624, (7 U.S.C. 450i(c)(1)(A)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the program discussed below.

Eligible Participants

Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, private organization, corporation, or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Please note that section 726 of the Fiscal Year 1993 Appropriations Act, Public Law No. 102–341, states: "None of the funds in this Act shall be available to pay indirect costs on research grants awarded competitively by the Cooperative State Research Service that exceed 14 per centum of total Federal funds provided under each award."

Applicable Regulations

Regulations applicable to this program include the following: (a) The administrative provisions governing the Special Research Grants Program, 7 CFR part 3400 (56 FR 58146, November 15, 1991), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to post-award administration of grant projects; (b) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (c) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; (d) the regulations governing Governmentwide Debarment and Suspension (Nonprocurement) and the Governmentwide Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017; (e) the New Restrictions on Lobbying, 7 CFR part 3018; and (f) the CSRS regulations implementing the National Environmental Policy Act of 1969 (NEPA), 7 CFR part 3407.

Introduction to Program Description

Standard grants will be awarded to support basic studies in selected areas of aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below that are consistent with the mission of USDA. Program subareas and guidelines are provided below as bases from which proposals may be developed:

Program Area

1.0 Aquaculture Research

CSRS Contact: Dr. Meryl Broussard; Telephone: (202) 401–4061.

Funds will be awarded to support research seeking solutions to improve waste management in commercially important aquacultural species. A total of $298,356 will be available for this program area in fiscal year 1993. This amount may be allocated to a single proposal or multiple proposals.

The overall objective of this research program is to enhance the knowledge base necessary for the continued growth of the domestic aquaculture industry as a form of sustainable agriculture. Emphasis is placed on research leading to improved production efficiency, increased competitiveness and wise environmental stewardship in private sector aquaculture in the United States. Because of limited funds for this program, only proposals focused on the impact of feeds and feeding strategies on waste management in commercially important finfish species will be considered.

Research should be directed toward:

Studies aimed at reducing the source of waste in aquacultural systems through improved nutritional efficiency including feed formulation and feeding strategies. Studies should include the quantitative and qualitative characterization of dissolved and solid waste as related to feed formulation and feeding strategies.

Research should consider the availability and digestibility of key nutrients and feed ingredients in the evaluation of existing commercial feeds and alternative feeds designed to reduce waste production in aquacultural systems. Mass balance approaches to understanding the fate of these nutrients, particularly phosphorus and nitrogen, from feed to waste, should be considered. Emphasis should be placed on the characterization of waste produced by the fish in response to certain feeds and feeding strategies as opposed to characterization of waste from production systems (effluent characterization).

Economic factors should be considered in the evaluation of alternative feeds and feeding strategies. The impact of alternative feeds and feeding strategies on body composition of fish should also be considered. Waste characterization studies should be designed to provide baseline information necessary for the rational design of control systems and alternative waste management strategies.

Priority will be given to multi-disciplinary, multi-institutional team approaches and proposals with the broadest application to the aquaculture industry.

Compliance With NEPA

As outlined in 7 CFR part 3407 (the CSRS regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSRS so that CSRS may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA. The applicant shall review the following categorical exclusions and determine if the proposed project may fall within one of the categories.

(1) Department of Agriculture Categorical Exclusions (7 CFR 1b.3).

(i) Policy development, planning and implementation which relate to routine activities such as personnel, organizational changes, or similar administrative functions;

(ii) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(iii) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(iv) Educational and informational programs and activities;

(v) Civil and criminal law enforcement and investigative activities;

(vi) Activities which are advisory and consultative to other agencies and public and private entities; and

(vii) Activities related to trade representation and market development activities abroad.

(2) CSRS Categorical Exclusions (7 CFR 3407.6). Based on previous experience, the following categories of CSRS actions are excluded because they have been found to have limited scope and intensity and to have no significant individual or cumulative impacts on the quality of the human environment:

(i) The following categories of research programs or projects of limited size and magnitude or with only short-term effects on the environment:

(A) Research conducted within any laboratory, greenhouse, or other contained facility where research practices and safeguards prevent environmental impacts;

(B) Surveys, inventories, and similar studies that have limited context and minimal intensity in terms of changes in the environment; and

(C) Testing outside of the laboratory, such as in small isolated field plots, which involves the routine use of familiar chemicals or biological materials.

(ii) Routine renovation, rehabilitation, or revitalization of physical facilities, including the acquisition and installation of equipment, were such activity is limited in scope and intensity.

In order for CSRS to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, a separate statement must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the project proposed falls within the categorical exclusions, the specific exclusion must be identified. The information submitted shall be identified in the Table of Contents as "NEPA Considerations" and the narrative statement with supporting documentation shall be placed after the cover sheet of the proposal.

Even though a project may fall within the categorical exclusions, CSRS may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Review Criteria

Proposals will be evaluated by a peer review group of qualified scientists selected in accord with § 3400.11 of the administrative provisions governing the Special Research Grants Program. In accordance with 7 CFR 3400.5(a), the following selection criteria for proposals will be used in lieu of those which appear in § 3400.15 of the administrative provisions:

Criteria	Maximum score
Overall Scientific and Technical Quality	40
Creative and innovative scientific approach	
Clear, concise, and achievable objectives	
Technical soundness of procedures	
Feasibility of attaining objectives	
Justification, Review of Literature and Current Research	20
Importance of the problem	
Relevance of proposed research to the problem	
Literature focused on specific research approach and objective	
Budget, Resources, and Personnel	20
Necessary facilities, resources, and personnel available	
Budget appropriate for proposed research	
Demonstrated scientific capability of investigators	
Collaboration	10
Evidence of significant contributions by collaborators	
Evidence and justification of multi-disciplinary and/or multi-institutional collaboration	
Application of Research Results	10
Planned application and implementation of research results	
Extension, transferability and publication of results	
Potential for results to enhance agricultural sustainability	
Total	100

How To Obtain Application Materials

Copies of this solicitation, the Application Kit, and the administrative provisions governing this program, 7 CFR part 3400 (56 FR 58146, November 15, 1991), may be obtained by writing to the address or calling the telephone number below:

Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200 Telephone: (202) 401–5048.

What To Submit

In addition to the requirements of 7 CFR 3400.4(c), proposals must adhere to the following criteria. An original and nine copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of each proposal must include a Form CSRS–661, "Application for Funding." Proposers should note that one copy of this form, preferably the original, must contain pen-and-ink signatures of the principal investigator(s) and the authorized organizational representative. (Form CSRS–661 and the other required forms and certifications are contained in the September 1992 version of the Application Kit.)

Members of review committees and the staff expect each project description to be complete in itself. Grant proposals must be limited to 15 pages (single-spaced) on one side only exclusive of required forms, and include the summary of progress for any prior Aquaculture Special Research grants, bibliography, and vitae of the principal investigator(s), senior associate(s) and other professional personnel. Reduction by photocopying or other means for the purpose of meeting the 15-page limit is not permitted. Attachment of appendices is discouraged and should be included only if pertinent to understanding the proposal. Reviewers are not required to read beyond the 15-page maximum to evaluate the proposal.

All copies of each proposal must be mailed in one package and each copy must be stapled securely in the upper left-hand corner. Do not bind. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the guidelines contained in the administrative provisions that govern the Special Research Grants Program, 7 CFR part 3400.

Where and When To Submit Grant Applications

Each research grant application must be submitted by the date set forth below to: Proposal Services Branch, Awards Management Division, Office of Grants and Program Systems, Cooperative State Research Service, U.S. Department of Agriculture, room 303, Aerospace Center, Washington, DC 20250–2200.

Please Note: Hand-delivered proposals or those delivered by overnight express service should be brought by 4 p.m., April 12, 1993, to: room 303, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

To be considered for funding under the Special Research Grants Program, Aquaculture Research, during fiscal year 1993, proposals must be postmarked by April 12, 1993.

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Requirements

On Form CSRS–661 provided in the Application Kit, the Special Research Grants Program should be indicated in Block 7, and "Aquaculture Research 1.0" should be indicated in Block 8.

Investigators and co-investigators who have received Special Research Grant awards in the Aquaculture area during the past five years must include a brief summary of progress and a list of publications resulting from such grants.

Supplementary Information

The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 1st day of February 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 93–2666 Filed 2–3–93; 8:45 am]

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Federal Register

Vol. 58, No. 22

Thursday, February 4, 1993

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Last List January 25, 1993

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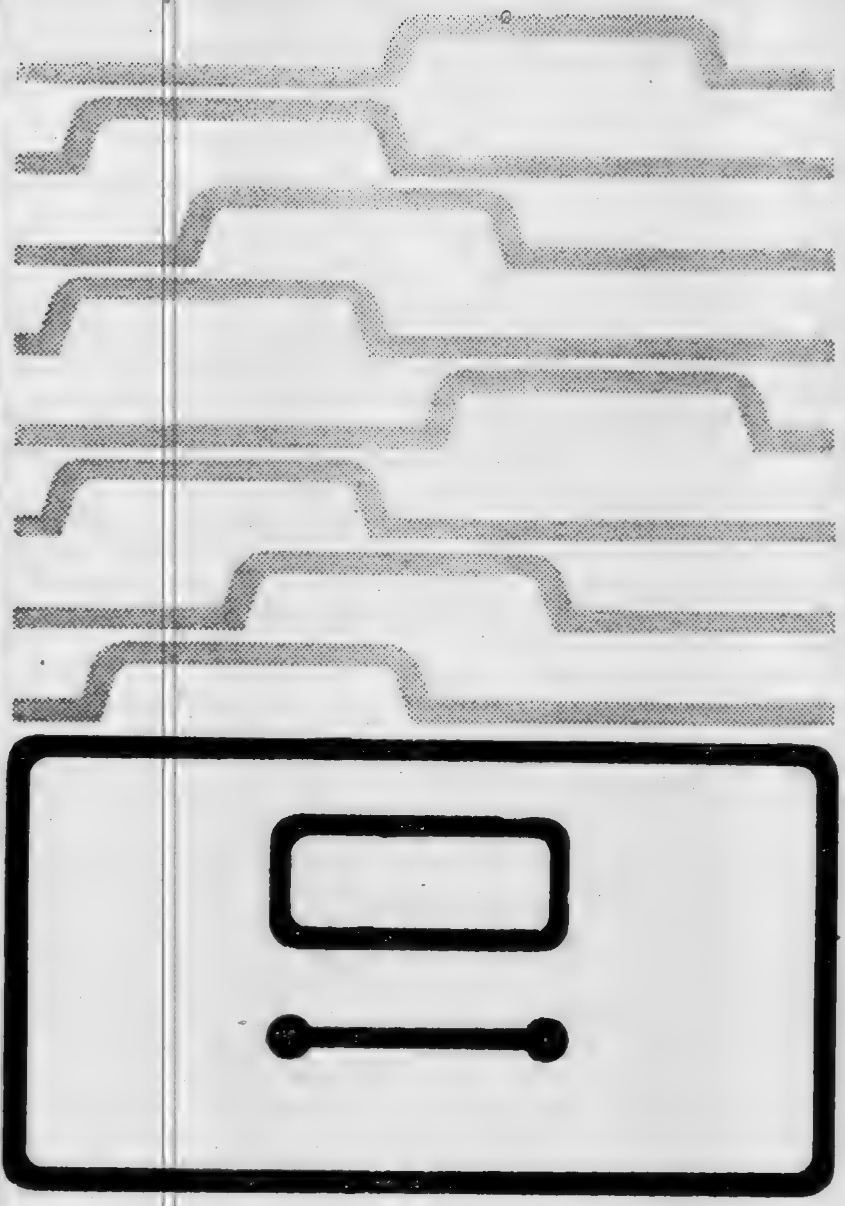

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

The GUIDE to record retention is a useful reference tool, compiled from agency regulations, designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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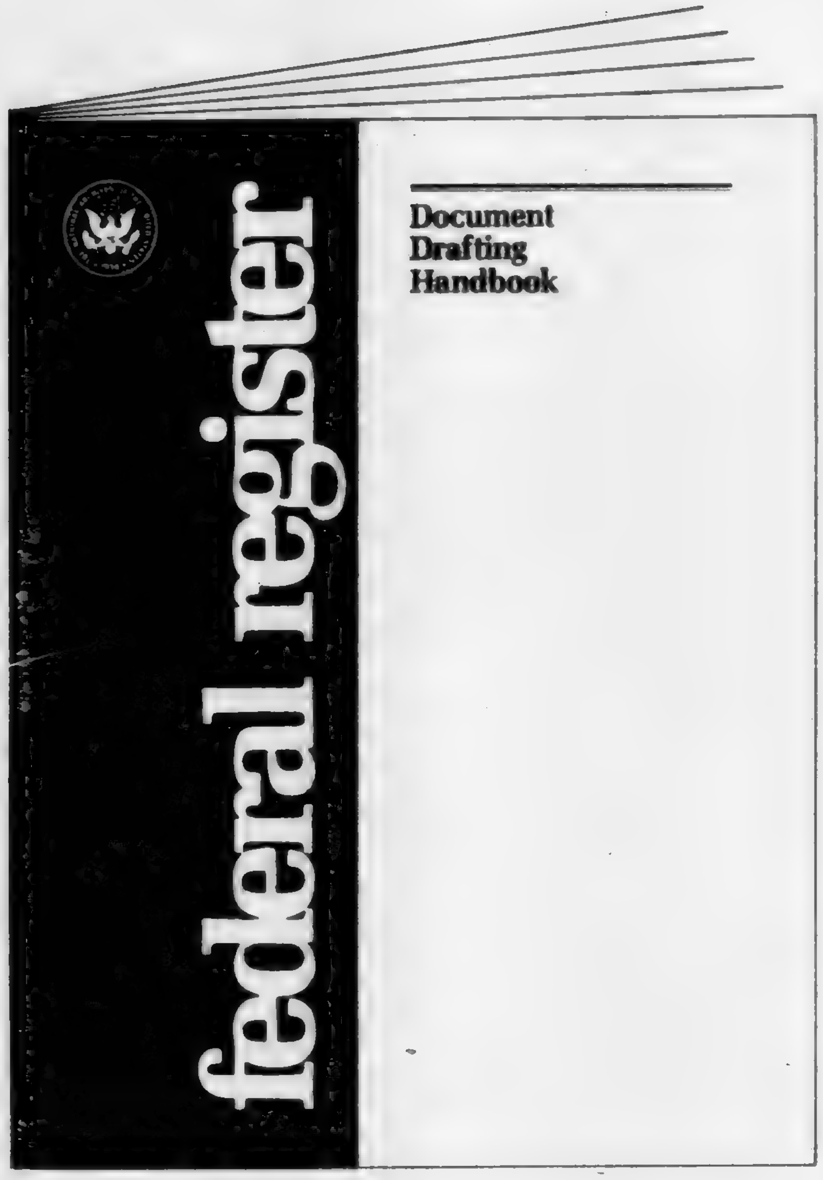

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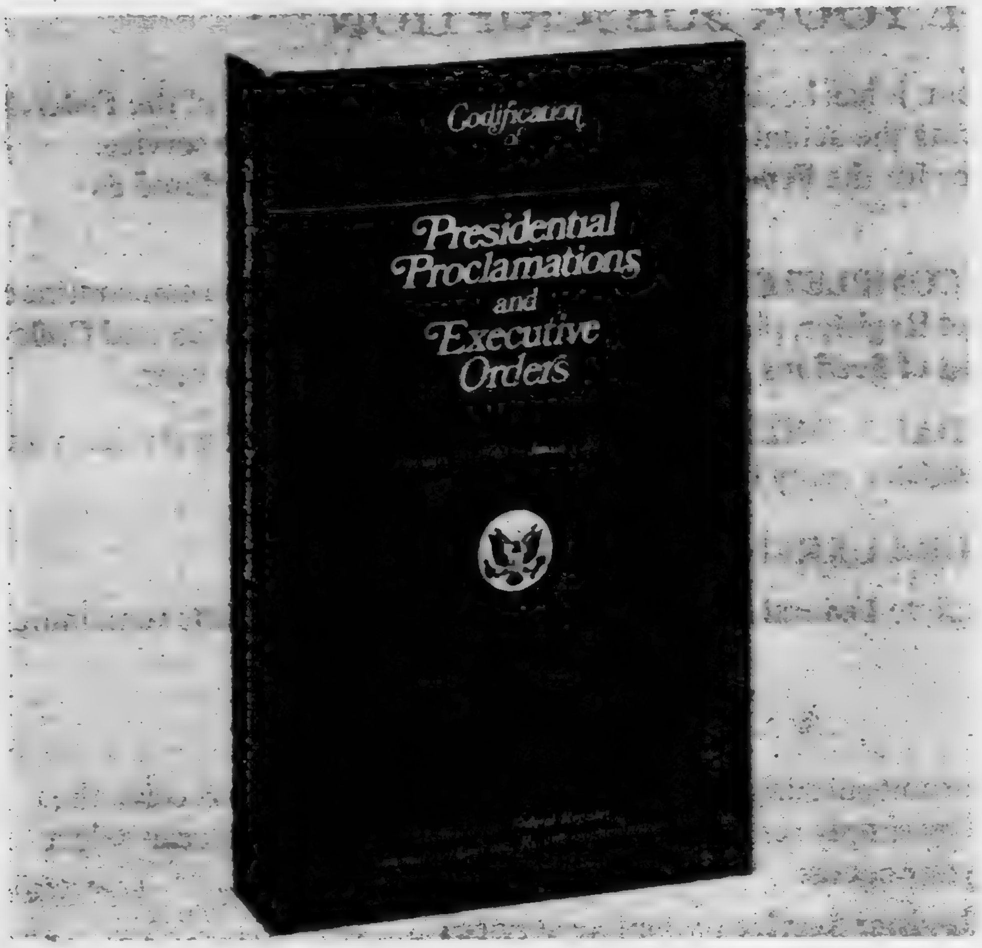

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Friday
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For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920

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Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–192–AD; Amendment 39–8488; AD 93–02–06]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires replacing each long bolt at the wing truss and rib attachment points with two shorter improved bolts. This amendment is prompted by reports of loose truss members in the wing. The actions specified by this AD are intended to prevent reduced structural integrity of the wing.

DATES: Effective March 12, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the **Federal Register** on October 30, 1992 (57 FR 49150). That action proposed to require replacing each long bolt at the wing truss and rib attachment points with two shorter improved bolts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,640, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–02–06. Fokker: Amendment 39–8488. Docket 92–NM–192–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Within 3 years after the effective date of this AD, remove each bolt, part number AN3–15A or AN3–16A, attaching the truss members to the ribs at wing stations 4800, 5950, 7200, 8350, and 9397, and install two bolts, part number NAS1303, in accordance with Fokker Service Bulletin F27/57–25, Revision 1, dated August 1, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The bolt installation shall be done in accordance with Fokker Service Bulletin F27/57–25, Revision 1, dated August 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 12, 1993.

Issued in Renton, Washington, on January 28, 1993.

Ronald T. Wojnar,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2705 Filed 2–4–93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Zolpidem Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Administrator of the Drug Enforcement Administration (DEA) places zolpidem into Schedule IV of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of zolpidem.

EFFECTIVE DATE: February 5, 1993.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Zolpidem is a hypnotic drug pharmacologically similar to the benzodiazepines. It will be marketed under the trade name of Ambien for the treatment of transient, short-term and chronic insomnia. The Assistant Secretary for Health, acting on behalf of the Secretary of the Department of Health and Human Services, by letter dated September 4, 1992, recommended to the Administrator of the DEA that zolpidem be placed into Schedule IV of the CSA pending approval of a New Drug Application (NDA) for the drug. The Administrator of the DEA, in a November 24, 1992 **Federal Register** notice (57 FR 55201), proposed to place zolpidem into Schedule IV of the CSA if and when the Food and Drug Administration (FDA) approved an NDA for zolpidem. This notice provided an opportunity for all interested persons to submit their comments, objections or requests for a hearing in writing on the proposed scheduling of zolpidem until December 24, 1992. DEA received no comments regarding this proposal. The FDA notified the DEA that it has determined that zolpidem is safe and effective for use as recommended in the final labelling and accordingly approved the NDA for zolpidem on December 16, 1992.

Based on the information gathered and reviewed by the DEA, the scientific and medical evaluation and scheduling recommendation of the Assistant Secretary for Health, and the FDA's approval of the NDA for zolpidem, the Administrator of the DEA, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) Zolpidem has a low potential for abuse relative to the drugs or other substances currently listed in Schedule III;

(2) Zolpidem has a currently accepted medical use in treatment in the United States; and

(3) Abuse of zolpidem may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

The above findings are consistent with the placement of zolpidem into Schedule IV of the CSA. In order to avoid delays in the marketing of zolpidem, the Schedule IV control of zolpidem will be effective upon publication of this final notice in the **Federal Register**. In the event that the regulations impose special hardships on any registrant, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding zolpidem. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, delivers, imports or exports zolpidem, or who engages in research or conducts instructional activities with zolpidem, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* Zolpidem must be manfactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of zolpidem shall comply with the requirements of §§ 1302.03–1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Every registrant required to keep records and who possesses any quantity of zolpidem shall maintain an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall do so regarding zolpidem.

6. *Prescriptions.* All prescriptions for products containing zolpidem shall comply with §§ 1306.01–1306.06 and §§ 1306.21–1306.26 of Title 21 of the Code of Federal Regulations.

7. *Importation and Exportation.* All importation and exportation of zolpidem shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal Liability.* Any activity with respect to zolpidem not authorized by, or in violation of the CSA or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of zolpidem into Schedule IV of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action will allow the initial marketing of a drug product which has been approved by the FDA.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that this matter does not have sufficient federalism implications to require the preparation of a Federalism Assessment.

In accordance with the provisions of 21 U.S.C. 811(a), this order to place zolpidem into Schedule IV of the CSA is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193). Accordingly, this action is not subject to those provisions of E.O. 12778 which are contingent upon review by OMB. Nevertheless, the Administrator has determined that this is not a "major rule," as that term is used in E.O. 12291, and that it would otherwise meet the applicable standards of Sections 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 811(a) and delegated to the Administrator of DEA by the regulations of the Department of Justice (28 CFR part 0.100), and based on the information gathered and reviewed by the DEA, the scientific and medical evaluation and scheduling recommendation of the Assistant Secretary for Health, and the FDA's approval of the NDA for zolpidem, the Administrator of the DEA hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation of 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by adding paragraph (c)(48) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(48) Zolpidem 2783

* * * * *

Dated: January 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–2753 Filed 2–4–93; 8:45 am]

BILLING CODE 4410-09-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–4560–7]

Disclosure of Confidential Data to Persons Working Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim rule with request for comments.

SUMMARY: EPA is issuing interim regulations modifying certain of EPA's regulations at 40 CFR part 2, subpart B governing confidential business information. This rule authorizes disclosure of confidential data, submitted pursuant to certain environmental statutes administered by the Agency, to persons working under the Senior Environmental Employment Program.

EFFECTIVE DATE: This rule is effective February 5, 1993.

ADDRESSES: Send or deliver written comments to Donald A. Sadowsky, Contracts, Information and General Law Division (LE–132K), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donald A. Sadowsky, Office of General Counsel. Telephone 202/260–5469.

SUPPLEMENTARY INFORMATION: On May 20, 1975 EPA published in the **Federal Register** (40 FR 21987) a proposed rule concerning procedures for the treatment of confidential business information (CBI) submitted under various environmental statutes. This rule was made final on September 1, 1976 (41 FR 36902), codified as 40 CFR part 2, subpart B. Rules governing treatment of CBI submitted under additional environmental statutes were promulgated on September 8, 1978 (43 FR 40003), December 18, 1985 (50 FR 51663), and July 29, 1988 (53 FR 28772).

A. The SEE Program

The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control."

EPA currently has cooperative agreements under the SEE program with organizations such as the American Association for Retired Persons and the National Urban League. Persons working under the SEE program perform a multitude of functions for the Agency, including opening mail, filing documents, clerical support, answering telephones, staffing hot lines, providing support to Agency enforcement activities, and compiling data.

B. Disclosure of Confidential Data to SEE Enrollees

Under sections 114, 208, and 307(a) of the Clean Air Act (42 U.S.C. 7414, 7542, and 7607), sections 308 and 509(a) of the Clean Water Act (33 U.S.C. 1318 and 1369(a)), section 1445(d) of the Safe Drinking Water Act (42 U.S.C. 300j–4), sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Solid Waste Disposal Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), and section 104(e)(7) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604(e)(7)) EPA may disclose CBI to authorized representatives of the United States. Similarly, under section 10(e) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136h(e)) EPA may disclose CBI to contractors with the United States. And under section 408(f) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346a(f)) EPA may disclose CBI to persons authorized by the Administrator or by an advisory committee.

Although Congress did not require that authorized representatives have a contractual relationship with EPA, the Agency chose to confine the definition of authorized representatives to contractors (and state or local governmental bodies where allowed by statute) when it first proposed and promulgated regulations governing disclosure of CBI to authorized representatives. See 40 FR 21990, 40 CFR 2.301(h)(2)(i). At the time there was no SEE program, and it was therefore not contemplated that there would be a need to disclose CBI to persons assisting EPA who were not contractors. EPA's regulations at 40 CFR 350.23(b)(1), implementing section 322(f) of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11042(f)) and promulgated after the inception of the SEE program, specifically allow a grantee who performs work for EPA in connection with EPCRA or regulations which implement EPCRA to be an authorized representative. See the **Federal Register** notice of July 29, 1988 (53 FR 28772).

The nature of EPA's work requires that the Agency collect significant amounts of CBI. In order for SEE enrollees to perform their duties, they must be authorized for access to this information. Many Agency offices have been providing SEE enrollees with access to CBI, under the impression that EPA regulations allowed such access. The Agency is hereby rectifying this error by amending its regulations to provide for access to SEE enrollees.

Although section 10(e) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) provides for access to CBI by "contractors", rather than the broader term "authorized representatives" employed in other environmental statutes, EPA's Office of Pesticide Programs has a long-standing interpretation that FIFRA section 10 authorizes access to SEE enrollees.

Neither FIFRA nor its legislative history contain any definition of "contractor". Although Federal contract and grant law distinguishes contractors and grantees, there is reason to conclude that FIFRA section 10 allows SEE grantees access to CBI. First, the Environmental Programs Assistance Act of 1984 was drafted in part to allow a certain class of grantees to perform tasks which otherwise would require a contractual relationship with EPA. Second, FIFRA section 10 does not forbid all disclosures of CBI; section 10(b) provides that EPA "shall not make public" information which is entitled to confidentiality. (Similarly, section 10(c) refers to situations in which EPA would "release for inspection" FIFRA CBI, and sections 10(d) and 10(e) refer to "disclosure to the public".) By disclosing FIFRA CBI to SEE enrollees who are bound by agreement not to further disclose the data and who would be subject to criminal penalties for unauthorized disclosure (FIFRA section 10(f) imposes penalties on contractors and Federal employees for unauthorized disclosure), EPA is not making the information public or releasing it for inspection, and is thus acting within the limits of FIFRA section 10.

By comparison, section 14 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2613, prohibits disclosure of CBI collected under the Act to anyone, with the exceptions of Federal employees and contractors. Therefore, EPA does not interpret TSCA to allow access to TSCA CBI by SEE enrollees (and has not provided SEE enrollees with such access in the past under TSCA), and the regulation is written accordingly.

By disclosing CBI to SEE enrollees, EPA does not compromise the confidentiality of the information. This regulation provides procedures for the protection of confidential data, including a bar from disclosure of confidential information unless the grant or cooperative agreement provides that:

a. Persons working under the grant or cooperative agreement shall use the information only for the purpose of carrying out the work required by the grant or cooperative agreement;

b. Persons working under the grant or cooperative agreement shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office;

c. Persons working under the grant or cooperative agreement shall return to EPA all copies of such information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required for performance of the work required under the grant or cooperative agreement, or upon completion of the grant or cooperative agreement;

d. The grantee organization shall obtain a written agreement to honor such terms of the grant or cooperative agreement from each of the persons working under the grant or cooperative agreement who will have access to such information, before such employee is allowed access; and

e. The grantee organization acknowledges and agrees that the provisions concerning the use and disclosure of business information supplied to the grantee organization by EPA under the grant or cooperative agreement are included for the benefit of, and shall be enforceable by, both EPA and any affected business having an interest in information concerning the business.

In addition, before such disclosure is made, the Agency must notify the submitter of the information to be disclosed, the identity of the grantee organization, and the purposes to be served by the disclosure, and give the submitter an opportunity to comment on the disclosure. Note also that SEE enrollees have their duty stations in Agency facilities, work directly with Agency staff, and will be subject to the same security requirements as Federal employees.

This rule is by its nature retroactive, in that it authorizes disclosure of information already obtained by EPA. The retroactivity is inherent in the authority granted by the statutes discussed above to disclose information to authorized representatives. Moreover, the public interest in efficient operation of the Agency weighs in favor of such a result, while the restrictions on further use and disclosure of the information discussed above ensure that there is no adverse effect on persons who have submitted confidential information to EPA.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

I find that prior notice is unnecessary and that good cause exists for making this rule effective immediately, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), for the following reason: Persons working under the SEE program and grantee organizations will be required by agreement, regulation, and grant or cooperative agreement to have the same protections against unauthorized use and disclosure of CBI as are EPA contractors. These protections have been in place for Agency contractors for many years, and the record of the Agency with respect to protection of confidential information is excellent. Thus, the rights of CBI submitters are unaffected, and there are no issues for comment.

Executive Order 12291

Executive Order (E.O.) 12291 requires the preparation of a regulatory impact analysis for major rules, defined by the order as those likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic industries; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this regulation does not meet the definition of a major rule under E.O. 12291 and has therefore not prepared a regulatory impact analysis.

Paperwork Reduction Act

Information collection requirements in a rule must be submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No reporting or recordkeeping requirements are included as part of this regulation. Therefore, no Information Collection Request document has been prepared.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule authorizes the disclosure to authorized representatives of the United States of confidential information and disclosure pursuant to a proceeding. The persons receiving the confidential information are bound by agreement, regulation, and in some cases criminal statute not to disclose the information except where authorized or to use the information for unauthorized purposes. These restrictions ensure that such disclosure does not affect the competitive position of the submitters of the information. Thus, there is no economic impact on small entities.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Confidential business information, Courts, Freedom of Information, Government employees.

Dated: January 15, 1993.

William K. Reilly,

Administrator.

Therefore 40 CFR Part 2 is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301; 552 (as amended), 553; secs. 114, 206, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); sec. 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604, 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.301 is amended by adding a sentence after the first sentence of paragraph (h)(2)(i) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(2)(i) * * * For purposes of this section, the term "contract" includes grants and cooperative agreements under the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), and the term "contractor" includes grantees and cooperators under the Environmental Programs Assistance Act of 1984. * * *

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[FR Doc. 93–2695 Filed 02–04–93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 60

[FRL–4560–9]

Standards of Performance for New Stationary Sources; Supplemental Delegation of Authority to Nashville-Davidson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: On October 6, 1992, the Nashville-Davidson County Metropolitan Health Department of the State of Tennessee requested delegation of authority for the implementation and enforcement of an additional category of the Standards of Performance for New Stationary Sources (NSPS). EPA's review of Nashville-Davidson County's laws, rules, and regulations showed them to be adequate for the implementation and enforcement of this federal standard. On December 3, 1992, EPA granted the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is December 3, 1992.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, Nashville, Tennessee 37243–1531.

Metropolitan Health Department, Nashville-Davidson County, 311 23rd Avenue, North, Nashville, Tennessee 37203.

Effective immediately, all requests, applications, reports and other correspondence required pursuant to the newly delegated standards should not be submitted to the Region IV office, but should instead be submitted to the following address: Paul J. Bontrager, P.E., Director, Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311 23rd Avenue, North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT: Leslie Cox, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, and telephone number (404) 347–2864.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110, 111(c)(1), and 112(d)(1) of the Clean Air Act as amended November 15, 1990, authorize the Administrator to delegate his authority to implement and enforce the standards set out in 40 CFR part 60, Standards of Performance for New Stationary Sources (NSPS) to any state which has submitted adequate implementation and enforcement procedures.

On May 25, 1977, EPA initially delegated to Nashville-Davidson County the authority to implement the NSPS. On October 6, 1992, Nashville-Davidson County requested a delegation of authority for implementation and enforcement of the following NSPS category promulgated on September 28, 1992: Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries, which construction commenced after April 23, 1986.

After a thorough review of the category requested for delegation, the Regional Administrator determined that such delegation was appropriate for this source category with the conditions set forth in the initial delegation letter of May 25, 1977, and subsequent delegation letters of February 20, 1986; January 28, 1987; September 30, 1987; May 31, 1989; June 18, 1990; June 28, 1991; and May 11, 1992.

Review of the pertinent Nashville-Davidson County laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS. EPA, thereby, delegated its authority for 40 CFR part 60, Subpart UUU, Standards of Performance for Calciners and Dryers in Mineral Industries, which construction commenced after April 23, 1986.

The Administrator retains the exclusive right to approve equivalent and alternative test methods, continuous monitoring procedures, and reporting requirements.

The EPA hereby notifies the public that it has delegated the authority over Subpart UUU to Nashville-Davidson County of the State of Tennessee.

The Office of Management and Budget exempted this rule from the requirements of section 3 of Executive Order 12291.

This notice is issued under the authority of sections 101, 110, 111, 112, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 74121, 7412, and 7601).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–2785 Filed 2–4–93; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-4560-5]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Waste Research & Reclamation site in Eau Claire, Wisconsin from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which

is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Wisconsin have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further CERCLA response action by responsible parties is appropriate; rather, all remaining remedial actions will be performed under the Research Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: February 5, 1993.

FOR FURTHER INFORMATION CONTACT: Susan Menconi, Remedial Section Chief, Office of Superfund, U.S. Environmental Protection, Region V, 77 West Jackson Blvd. (HSRM-6J), Chicago, IL 60604-3507, (312)886-3010.

SUPPLEMENTARY INFORMATION:

The site to be deleted from the NPL is:

Waste Research & Reclamation Co., Eau Claire, WI

A Notice of Intent to Delete this site was published October 19, 1992 (57 FR 47585). The closing date for comments on the Notice of Intent to Delete was November 18, 1992. EPA received no comments. A Responsiveness Summary is not being prepared because no comments were received. See the October 19, 1992, notice for further information on the site.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Hazardous waste.

Dated: January 14, 1993.

Don. R. Clay,

Assistant Administrator, Office of Solid Waste and Emergency Response

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

1. The authority citation for part 300 continues to read as follows:

PART 300—[AMENDED]

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended under Wisconsin by removing the entry, "Waste Research & Reclamation Co;"; and by revising the total number of sites,"1,082" to read, "1,081".

[FR Doc. 93-2698 Filed 2-4-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 721

[OPPTS-50601A; FRL-4169-3]

Significant New Use Rule; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects a final rule (FR Doc. 92-22779) published in the **Federal Register** of September 23, 1992 (57 FR 44050), that promulgated significant new use rules for 63 chemical substances under section 5(a)(2) of the Toxic Substances Control Act. In that document on page 44061, third column, the date of signature and name of signatory were inadvertently omitted. The date of signature was September 8, 1992. The signatory was Victor J. Kimm, Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances. Because this is a nonsubstantive change, notice and public comment are not required.

DATES: This document is effective on November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

Dated: January 22, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93-2691 Filed 2-4-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Part 571

[Docket No. 92-46]

Unpaid Freight Charges

AGENCY: Federal Maritime Commission.

ACTION: Final interpretive rule.

SUMMARY: The Federal Maritime Commission adds to its regulations a statement that the Commission will not, in the absence of evidence of bad faith or deceit, infer from a shipper's failure to pay ocean freight due that the shipper has obtained or attempted to obtain transportation at less than the applicable rates by an "unjust or unfair device or means" in violation of section 10(a)(1) of the Shipping Act of 1984. This is being issued in order to clarify the elements necessary for an offense under section 10(a)(1). Proceedings previously held in abeyance pending completion of this rulemaking may now be resumed.

DATES: Final Interpretive Rule effective on March 8, 1993.

ADDRESSES: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission ("Commission" or "FMC") published in the **Federal Register** on August 27, 1992 (57 FR 38,807), a proposed interpretive rule ("Proposed Rule"), which would add to 46 CFR Part 571, Interpretations and Statements of Policy, a notice that the Commission does not have jurisdiction under section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(a)(1), to adjudicate a complaint brought by an ocean common carrier against a shipper for a "simple failure" by the shipper to pay the carrier's freight bill. The Proposed Rule tentatively concluded that the Commission has jurisdiction over such complaints only when the shipper's failure to pay is compounded by additional conduct, such as false measurement or false commodity description, that amounts to an "unjust or unfair device or means" within the meaning of section 10(a)(1). Comments on the Proposed Rule have been filed by various members of the ocean shipping industry, the U.S. Department of Transportation ("DOT") and the Maritime Administrative Bar Association ("MABA").

The Proposed Rule

The Supplementary Information section of the proposed interpretive rule noted that in its original form, the Shipping Act, 1916 ("1916 Act") did not include substantive prohibitions applicable to shippers. That changed in 1936, when section 16 of the 1916 Act, 46 U.S.C. app. 815, was expanded to include a new initial paragraph outlawing certain behavior by shippers. However, the Commission noted that no change was made in section 22 of the 1916 Act, 46 U.S.C. app. 821, to authorize the filing of private complaints against shippers. Shipper violations of the new provision of section 16 were punishable only by a public remedy, which initially was a criminal prosecution by the Department of Justice and subsequently civil penalties assessed or compromised by the Commission. Authorization for private reparations actions against shippers did not occur until passage of the 1984 Act, in which section 11(a), 46 U.S.C. app. 1710(a), authorizes complaints for reparations for any injury caused by "a violation" of the Act without the former restriction to violations by carriers, terminal operators and freight forwarders.

A few years after the enactment of the new complaint provision in the 1984 Act, the Commission began to receive carrier complaints under section 10(a)(1) seeking reparations from shippers for unpaid freight charges. Usually, these cases resulted in a settlement or a default judgment against the shipper for failure to answer the complaint or to respond to procedural orders.

The Commission in issuing the Proposed Rule found no indication in the legislative history of the 1984 Act that Congress meant to expand the FMC's substantive jurisdiction in enacting section 11(a)'s complaint-filing provision. Section 10(a)(1) of the 1984 Act simply carried forward, in essentially unchanged language and without comment from Congress, the initial paragraph added in 1936 to section 16 of the 1916 Act.[1] From those facts, the Commission reasoned that the legislative history and subsequent case interpretations of the original section 16, initial paragraph, are the best available guides to the proper scope of section 10(a)(1) of the 1984 Act.

Having reviewed the relevant Congressional hearings and reports, the Commission stated that there was no indication that Congress intended that failure by a shipper to pay ocean freight charges in and of itself was to be considered a chargeable offense under the original criminal penalties attached to section 16 or, later, a violation subject to civil penalties. Congress appeared to focus exclusively on active subterfuges, especially false declarations and false weighing. To the extent that failure to pay freight was mentioned during the hearings, it appeared that the carriers—who were the initiating force behind the legislation—expected to continue to pursue their debtors through civil litigation in the courts, while any underlying deception or concealment would be subject to a separate (and perhaps parallel) prosecution under the new provision of section 16.

The Commission explained that the case law under section 16 was similarly focused. For example, in *Pacific Far East Lines—Alleged Rebates,* 11 F.M.C. 357, 364 (1968), aff'd, 410 F.2d 257 (D.C. Cir. 1969), the FMC stated that there must be "some element of falsification, deception, fraud, or concealment" in order to violate the statute. *Capitol Transportation, Inc.* v. *United States,* 612 F.2d 1312 (1st Cir. 1979) ("*Capitol Transportation*"), involved a failure by a shipper to pay a carrier's demurrage charges, coupled with continuous assertions of baseless objections to the charges even after they had been verified by the shipper's own auditor, and attempts to persuade other shippers to boycott the carrier's collection agent. The court of appeals affirmed the Commission's holding that this pattern of conduct violated section 16, but cautioned that it "undoubtedly nears the outer limits" of the statute. *Id.* at 1324. The court also stated that "a mere stubborn but good faith refusal to pay a disrupted rate or charge" or a "refusal to pay based on honest differences" would not constitute the requisite "unjust or unfair device or means." *Id.* at 1323, 1324.

The Commission pointed out that the freight collection cases filed under section 10(a)(1) in recent years have not alleged fraud, deception, misclassification, false weighing or similar malpractices. Instead, they typically have pleaded only that the respondent shipper failed to pay ocean freight, that this by itself amounted to a violation of section 10(a)(1), and that reparations should be awarded in the amount of the unpaid freight. The Commission tentatively concluded that, based on the case law and especially the legislative history of the 1936 amendment, the act of failing to pay a freight bill is not, in and of itself, an "unjust or unfair device or means" within the meaning intended by Congress, and that the freight collection complaints should return to the courts. The proposed interpretive rule was intended to provide guidance to the ocean shipping industry on this question and, in effect, a warning to carriers that lawsuits seeking to collect unpaid freight would be more safely filed in an appropriate state or federal court than at the Commission.

Comments

Comments Supporting Proposed Rule

Comments supporting the Proposed Rule were filed by Cyprus Minerals Company ("Cyprus"), the National Industrial Transportation League ("NIT League") and DOT.

Cyprus supports the Proposed Rule and also urges the inclusion of an additional caveat, as follows:

> In all proceedings initiated more than two years after the completion of the ocean transportation in question, there shall be a rebuttable presumption that there has been a simple failure by the shipper to pay such ocean freight bills.

Comments at 2.

The NIT League likewise urges adoption of the Proposed Rule, expressing full agreement with the Commission's tentative analysis of section 10(a)(1) and the relevant legislative history and case law.

DOT agrees with the rationale for the Proposed Rule as set forth by the Commission, but believes that the rule does not go far enough. It urges the

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[1] Section 16, initial paragraph, of the 1916 Act stated: That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and wilfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

46 U.S.C. 815 (1982).

Section 10(a)(1) provides that no person may—

* * * knowingly and wilfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable * * *.

46 U.S.C. app. 1709(a)(1).

Commission to issue a rule "disclaiming jurisdiction over all complaints brought by carriers against shippers, that is, even those that allege more than a simple failure of a shipper to pay the applicable freight." Comments at 2. DOT states that it believes that Congress did not intend to give the Commission jurisdiction to adjudicate carrier complaints against shippers when it enacted the 1984 Act, despite the revised complaint-filing provision in section 11(a). It points out that no such jurisdiction exists with respect to carriers and shippers in the domestic offshore trades, since no change was made in section 22 of the current 1916 Act, 46 U.S.C. app. 821, which still permits only complaints against carriers, freight forwarders and terminal operators. DOT notes that actions for breach of a service contract must be filed in an appropriate court rather than before the Commission, and further asserts that undercharge complaints against shippers generally do not lie under the Interstate Commerce Act. Therefore, DOT argues, "it makes little logical or equitable sense to continue to subject a limited class of shippers in foreign trades to FMC reparation proceedings simply because the 1984 Act does not explicitly carry forward the 1916 Act provision restricting complaint jurisdiction to proceedings commenced against" carriers, forwarders and terminal operators. Comments at 5.

DOT also asserts that the broader rule it recommends would prevent a carrier from invoking FMC jurisdiction by simply alleging in its complaint something more than mere failure by the shipper to pay its freight bill. Even if such wider allegations would not in fact be supportable during the course of a hearing, DOT warns that this would not be possible to determine if carriers, having filed such complaints, continue to be awarded default judgments against shippers who fail to answer the complaint or to otherwise participate in the hearing.

Comments Opposing Proposed Rule

Comments opposed to the Proposed Rule and urging that it be withdrawn or substantially modified were filed by a group of conferences serving Central and South America ("Latin America Conferences"); [2] the Trans-Atlantic Agreement ("TAA") and its members; the Asia North America Eastbound Rate Agreement, the South Europe/U.S.A. Freight Conference and the Israel Trade Conference, filing jointly ("ANERA, et al."); Tropical Shipping and Construction Co., Ltd. ("Tropical"); the Council of European & Japanese National Shipowners' Associations ("CENSA"); American President Lines, Ltd. ("APL"); the Transpacific Westbound Rate Agreement ("TWRA"); and MABA.[3]

The major arguments made by these commenters are that the Commission's proposed interpretation of section 10(a)(1) is contrary to the statute and an unlawful renunciation of jurisdiction over shipper malpractices. They assert that the Proposed Rule, if made final, would deprive the carriers of a remedy that Congress created when it broadened the complaint-filing authority with the enactment of the 1984 Act. Some commenters also argue that the Proposed Rule is too vague in its reference to a "simple failure" by a shipper to pay ocean freight, and that the Commission must clarify how the rule would work in particular cases filed with the Commission.

The Latin America Conferences contend that the Commission's analysis in the Proposed Rule "lost sight of the overall purpose (of section 10(a)(1)), which is to prohibit a shipper from obtaining or attempting to obtain ocean transportation of property at less than the applicable rates and charges." Comments at 3. The Conferences acknowledge that there is no discussion in the legislative history of the 1936 amendment concerning the effect of a shipper's failure to pay freight charges. However, they assert that "the result in that circumstance would be exactly what the Congress was trying to prevent * * *." *Id.* at 3–4.

The commenters argue that the Proposed Rule is contrary to the result in *Capitol Transportation*, which, according to TWRA, "clearly makes a shipper's refusal to pay a violation of section 10(a)(1) in the absence of a showing of a bona fide dispute over the freight or similar defense." Comments at 3. These parties would read *Capitol Transportation* as implanting a rule of law that establishes substantive FMC jurisdiction under section 10(a)(1) whenever a shipper fails to pay its freight bills without providing any defense or explanation. Further, this argument continues, a carrier should be deemed to have satisfied its burden of establishing jurisdiction "at the pleading stage" (ANERA, et al. Comments at 4) by alleging in its complaint that it has demanded the freight due from the shipper and that the shipper has, in turn, "indicated a refusal to pay the same, either in writing or by conduct, without any justification." *Id.* In other words, if the carrier pleads in its complaint that it has billed the shipper and that the shipper has failed to pay, this should shift the burden onto the shipper to come forward with an explanation for its failure to pay. Failure to meet that burden would then constitute "an admission against interest compelling entry of default judgment" against the shipper. TAA Comments at 5.

Tropical seeks to buttress this argument by describing the background of a freight collection complaint:

> In virtually all cases, a shipper with Tropical must complete a credit application to be allowed to transport its cargo without prepaying the freight. The shipper, by executing the application, knowingly induces the carrier to undertake the transportation of cargo with the promise of payment for the carriage subsequent to its performance. By such inducement, the carrier gives up its possessory lien for freight. In addition, in the Tropical credit application, the shipper agrees that in return for credit it will pay the freight charges in a timely fashion.

Comments at 2.

Some commenters contend that a carrier may proceed against a debtor shipper before either the Commission or a court of appropriate jurisdiction. Comments of ANERA, et al. at 5–6; Comments of CENSA at 3; see Comments of TAA at 5–6. They cite *Application of Sea-Land Service, Inc., for the Benefit of Affiliated Food Corporation*, 23 S.R.R. 105 (I.D.), *administratively final*, Special Docket No. 1299 (F.M.C. Apr. 29, 1985), where the administrative law judge asserted:

> If there has been a violation of section 10(a)(1) by a shipper or consignee, the regulatory scheme of the 1984 Act providing for interaction between Commission and the courts, if necessary, now authorizes a remedy to carriers as an alternative to the traditional common law court action for non-payment of freight charges.

23 S.R.R. at 107. ANERA, et al. urge the Commission to amend the Proposed Rule to allow carriers "the choice of bringing their claims either before the Commission or a court." Comments at 5.

On the other hand, MABA argues that requiring carriers to pursue the

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[2] Venezuelan American Maritime Association; Atlantic and Gulf/West Coast South America Conference; United States/Central America Discussion Agreement; United States Atlantic & Gulf/Hispaniola Steamship Freight Association; Hispaniola Discussion Agreement; United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association; Southeastern Caribbean Discussion Agreement; Jamaica Discussion Agreement; United States/Panama Freight Association; PANAM Discussion Agreement; Puerto Rico/Caribbean Agreement; Caribbean and Central American Discussion Agreement; Inter-American Freight Conference; and United States Atlantic and Gulf/Ecuador Conference.

[3] MABA cautions that its comments "do not necessarily reflect the views of all members of the organization." Comments at 1, n.1.

"parochial remedy" of collection actions in local courts would undercut the tariff system and be contrary to the 1984 Act's goal of nondiscriminatory common carrier practices. Comments at 4. MABA and the Latin America Conferences also assert that the 1984 Act's provisions for attorney's fees in reparation cases is an indication that Congress wanted unpaid freight complaints to be pursued before the Commission rather than the courts.

Discussion

Some of the points raised by the commenters appear to require little discussion. TWRA asserts that there is no significant administrative burden imposed on the Commission by the collection cases filed by carriers under section 10(a)(1). Comments at 2. Similarly, APL argues that the Commission should not decline jurisdiction over such cases "out of considerations of its own convenience or distaste for 'collection' matters." Comments at 5. The Proposed Rule was not based on such policy considerations but on the Commission's legal analysis of the scope of section 10(a)(1).

Cyprus urges that the rule include a statement that, if the complaint has been filed more than two years after the ocean transportation in question, there will be a "rebuttable presumption" that the Commission lacks jurisdiction over the case.[4] This suggestion is consistent with the 1984 Act's three-year statute of limitations for reparations actions. 46 U.S.C. app. 1710(g). The Commission has no power to impose, by rulemaking, a codicil to the statute to the effect that reparations complaints based on unpaid freight must be filed within two years, or face an additional evidentiary burden.

Similarly, the Commission lacks the authority to bar all complaints against shippers as advocated by DOT. The violations covered by section 10(a)(1) can be by "any person," which certainly includes shippers, and section 11(a) states that all violations of the 1984 Act, except section 6(g), can be the subject of a reparations complaint. 46 U.S.C. app. 1710(a). Thus, if conduct by a shipper does come within section 10(a)(1), a carrier injured by that conduct can recover under section 11(a). Against such clear statutory language, the fact that the *1916 Act* does not permit complaints against shippers is irrelevant. If this inconsistency between the 1984 Act and the 1916 Act is undesirable, the solution must come from Congress. The Commission cannot disregard the explicit language of the 1984 Act.

Lastly, the argument advanced by some of the opposing commenters that a carrier faced with an unpaid freight bill has a choice of proceeding before the Commission or a court seems clearly wrong. The Commission has exclusive jurisdiction to administer and enforce the 1984 Act. Violations of the 1984 Act can be rectified only by the sanctions and remedies provided for in that Act. If failure by a shipper to pay a freight bill violates section 10(a)(1), as the opposing commenters contend, then the affected carrier *must* seek to recover through a reparations complaint before the Commission and may not seek relief from a court, the administrative law judge *dicta* cited by the commenters notwithstanding.

The underlying legal basis for the Proposed Rule set forth in the Supplementary Information has not been effectively refuted by the opposing commenters, whose arguments are essentially policy-driven. The Supplementary Information explicitly acknowledged that "[s]ound policy reasons may exist as to why carrier complaints seeking to collect unpaid freight from a shipper should be brought under the Commission's jurisdiction." 57 FR at 38,809. However, the Commission may not itself act upon those policy reasons in the first instance; that power is reserved to Congress. At present, it continues to appear that section 10(a)(1) does not encompass ordinary freight collection complaints.

As acknowledged in the Supplementary Information and advanced now by the opposing commenters, *Capitol Transportation* is an arguable precedent for Commission jurisdiction over freight collection complaints.[5] However, the simple, one-count collection complaints now being filed bear little resemblance to the elaborate efforts of the *Capitol Transportation* respondent to avoid paying the carrier's demurrage bills (including attempts to persuade other persons to refuse to pay). Although the court in *Capitol Transportation* found that the record in that case was sufficient to support the Commission's finding that the requisite element of fraud or concealment had been established, it observed that "this case undoubtedly nears the outer limits of Section 16." 612 F.2d at 1324.

The opposing commenters would have the Commission interpret *Capitol Transportation* as establishing a rule that, when a shipper fails to pay a carrier's freight bill and also fails to provide a "good faith" defense of the nonpayment, the shipper has obtained transportation at less than the applicable rates by an "unjust or unfair device or means." This would amount to a rebuttable presumption that every failure to pay ocean freight involves an "unjust or unfair device or means." The burden of proof regarding the use of an "unjust or unfair device or means" would be on the respondent shipper, not on the complainant carrier. The Commission finds no justification for such a presumption. As the complainant, the carrier has the burden of proving each element of the alleged offense. See 5 U.S.C. 556. It may not rely on the failure to pay plus the shipper's silence to establish that the shipper has obtained transportation at less than the applicable rates by an "unjust or unfair device or means" in violation of section 10(a)(1) of the 1984 Act.

The most compelling argument made by the opposing commenters was that advanced by Tropical. Tropical avers that, when a shipper executes a credit application, it induces the carrier to relinquish its possessory lien over the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges. Under such circumstances, Tropical contends, the shipper defrauds the carrier if it subsequently fails to pay the freight bill after the shipment has been completed.

The Commission is not willing to assume that every shipper that fails to pay its freight bill in accordance with its credit arrangement with the carrier is guilty of fraud. However, to the extent the shipper in Tropical's example misrepresented its ability to pay on its credit application, it would be engaging in the sort of conduct that was found unlawful in *Capitol Transportation*. The Commission's finding of violation in that care was based in part on its conclusion that Capitol misled the carrier by first suggesting that auditors be jointly appointed to review the outstanding demurrage accounts receivable, but then, upon completion of the audit, refusing to honor the conclusions of the auditors or pay even a portion of the carrier's claims.[9]

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[4] APL's complaints against Cyprus in Docket Nos. 91–27 and 92–1 allege misclassification of the cargo involved; and thus differ from the freight collection complaints addressed by the Proposed Rule.

[5] These commenters also cite *Hohenberg Brothers Company* v. *FMC*, 316 F.2d 381 (D.C. Cir. 1963), where the Commission successfully applied section 16 to a shipper who sought to obtain transportation at unlawfully reduced rates by applying for a refund from the carrier that it knew to be unjustified. The commenters argue that the shipper's action was tantamount to not paying the carrier's freight bill in the first place. However, the refund request was based upon a false classification by the shipper of its cargo, a malpractice clearly covered then by section 16, initial paragraph, of the 1916 Act and now by section 10(a)(1). *Id.* at 383–84.

Accordingly, the Commission finds that it could have section 10(a)(1) jurisdiction over a freight collection complaint that recited facts showing some kind of shipper inducement or deceit, as described above. In that case, the shipper would be required to answer the complaint, and if it did not, a default judgment could properly follow. This will be reflected in the final interpretive rule.

Several commenters criticized the Proposed Rule's operative phrase "simple failure" as overly cryptic and lacking in sufficient guidance to a carrier trying to decide whether to pursue a debtor in court or before the Commission. From the other camp, DOT points out that the Proposed Rule would do nothing to prevent a carrier from simply including a boilerplate recitation in its complaint that the failure to pay stemmed from section 10(a)(1) trickery, and then hoping for a default judgment. To meet these concerns, the final rule will make it clear that, in the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an "unjust or unfair device or means" from the failure of a shipper to pay ocean freight.

Finally, by separate rulemaking, the Commission is proposing to amend Rule 62 of the Commission's Rules of Practice and Procedure to require that a complaint alleging a violation of section 10(a)(1), state with particularity the circumstances constituting the violation. In the event that the complaint fails to specify the circumstances, as required by the rule, the presiding officer may dismiss the complaint without waiting for an answer to the complaint. A complaint which merely alleges that respondent has failed to pay ocean freight bills without alleging conduct that violates section 10(a)(1) will be subject to dismissal.

List of Subjects in 46 CFR Part 571

Administrative practice and carriers; Antitrust; Maritime carriers.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act, 1984, 46 U.S.C. app. 1716, part 571 of Title 46, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1706, 1707, 1709 and 1716.

2. Part 571 is amended by adding a new section 571.2 to read as follows:

§ 571.2 Interpretation of Shipping Act of 1984—unpaid ocean freight charges.

Section 10(a)(1) of the Shipping Act of 1984 states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any "unjust or unfair device or means." An essential element of the offense is use of an "unjust or unfair device or means." In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an "unjust or unfair device or means" from the failure of a shipper to pay ocean freight. An "unjust or unfair device or means" could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges. By the Commission

Joseph C. Polking,

Secretary.

[FR Doc. 93-2692 Filed 2-4-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-522; RM-7493, RM-7499]

Radio Broadcasting Services; Douglas, GA, and LaCrosse, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 258C for Channel 258C1 to Douglas, Georgia, at the request of WDMG, Inc., and allots Channel 258A to LaCrosse, Florida, at the request of Robert E. Wideman. See 55 FR 47343, November 13, 1990. Channel 258C can be allotted to Douglas, Georgia, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at coordinates North Latitude 31-30-36 and West Longitude 82-50-54. Channel 258A can be allotted to LaCrosse, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kilometers (8.2 miles) southeast, in order to avoid a short-spacing to Station WQIK(FM), Channel 256C, Jacksonville, Florida, at coordinates North Latitude 29-44-38 and West Longitude 82-19-52. With this action, this proceeding is terminated.

DATES: Effective March 18, 1993. The window period for filing applications will open on March 19, 1993, and close on April 19, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-522, adopted January 6, 1993, and released February 1, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Channel 258A, LaCrosse.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 258C1 and adding Channel 258C at Douglas.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-2678 Filed 2-4-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-232; RM-8077]

Radio Broadcasting Services; Monticello, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 270C3 for Channel 270A at Monticello, Florida, at the request of Webster Broadcasting Corporation. See 57 FR 49058, October 29, 1992. Channel 270C3 can be allotted to Monticello, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.0 kilometers (11.2

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[9] *See* 21 F.M.C. at 196, 202-203.

miles) south at petitioners's desired site. The coordinates are North Latitude 30–22–56 and West Longitude 83–53–26. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 18, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–232, adopted January 8, 1993, and released February 1, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 270A and adding Channel 270C3 at Monticello.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–2679 Filed 2–4–93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92–49; RM–7924 and RM–8009]

Radio Broadcasting Services; Greenfield, Halfway, and Seligman, MO, and Huntsville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 227C1 for Channel 227C2 at Seligman, Missouri, and modifies the license for Station KESE to specify operation on Channel 227C1 in response to a petition filed by KJEM FM, A Limited Partnership. See 57 FR 9997, March 23, 1992. The coordinates for Channel 227C1 are 36–28–03 and 94–10–25. To accommodate the upgrade at Seligman, we shall substitute Channel 299A for Channel 228A at Greenfield, Missouri, and modify the license for Station KXBR and substitute Channel 258A for Channel 225A at Huntsville, Arkansas, and modify the license for Station KFAY–FM. The coordinates for Channel 299A at Greenfield are 37–23–10 and 93–53–16. The coordinates for Channel 258A at Huntsville are 36–05–35 and 93–36–16. The counterproposal filed by KYOO Broadcasting Company to substitute Channel 226C3 for Channel 226A at Halfway, Missouri, was withdrawn on November 18, 1992, in accordance with § 1.420(j) of the Commission's rules (RM–8009). With this action, this proceeding is terminated.

EFFECTIVE DATE: March 18, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–49, adopted January 8, 1993, and released February 1, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 225A and adding Channel 258A at Huntsville.

3. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 227C2 and adding Channel 227C1 at Seligman, and by removing Channel 228A and adding Channel 299A at Greenfield.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–2680 Filed 2–4–93; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–224–AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A320 series airplanes. This proposal would require installation of a nylon insulation plate on each attachment bracket in the center fuel tank, and installation of new support bracket assemblies on the fuel probes in the left- and right-hand inner wing fuel tanks. This proposal is prompted by reports of insufficient clearance between the fuel probes and their attachment brackets of the center and inner wing fuel tanks. The actions specified by the proposed AD are intended to prevent the occurrence of electrical arcing between the fuel probes and the center and inner wing fuel tanks in the event of a lightning strike on the airplane.

DATES: Comments must be received by April 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98056–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–224–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion:

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A320 series airplanes. The DGAC advises that a safety analysis has revealed that insufficient clearance exists between the fuel probes and their attachment brackets of the center fuel tanks, as well as fuel probes 1 and 2 of the inner wing fuel tanks. Other fuel probes in the inner wing fuel tanks also have insufficient clearance. This condition, if not corrected, could result in the occurrence of electrical arcing between the fuel probes and the center and inner wing fuel tanks in the event of a lightning strike on the airplane.

Airbus Industrie has issued Service Bulletin A320–28–1040, Revision 1, dated April 3, 1992, which describes procedures for installation of a nylon insulation plate on each attachment bracket in the center fuel tank; and installation of new support bracket assemblies on the fuel probes in the inner fuel tanks of the left- and right-hand wings. Modification 22647J0833 entails the installation of a nylon plate between each attachment bracket and the fuel probe in the center fuel tank, in order to provide positive insulation between the fuel probe and the airplane structure in case of a lightning strike. Modification 22855J0899 entails the installation of new support bracket assemblies on the fuel probes to increase clearance by moving the fuel probes away from the wing tanks; it also entails the installation of a nylon packer on the attachment brackets for fuel probes 1 and 2 in the inner tanks. The DGAC classified this service bulletin as mandatory and issued Airworthiness Directive 92–048–024(B), dated February 19, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of a nylon insulation plate on each attachment bracket in the center fuel tank, and installation of new support bracket assemblies on the fuel probes in the left- and right-hand inner wing fuel tanks. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 91 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $240,240, or $5,005 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–224–AD.

Applicability: Model A320 series airplanes, as listed in Airbus Industrie Service Bulletin A320–28–1040, Revision 1, dated April 3, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the occurrence of electrical arcing between the fuel probes and the center and wing fuel tanks, accomplish the following:

(a) For airplanes on which Modification 22647J0833 has not been accomplished: Within 9 months after the effective date of this AD, remove fuel probes 35QT, 36QT, 37QT, 38QT and 39QT; install a nylon plate on each attachment bracket in the center fuel tank, Modification 22647J0833; reinstall the fuel probes; and perform a functional check; in accordance with Airbus Industrie Service Bulletin A320–28–1040, Revision 1, dated April 3, 1992.

(b) For airplanes on which Modification 22855J0899 has not been accomplished: Within 9 months after the effective date of this AD, remove fuel probes 21QT1, 21TQ2, 22QT1, 22QT2, 23QT1, 23QT2, 25QT1, 25QT2, 26QT1, 26QT2, 27QT1, 27QT2, 29QT1, 29QT2, 31QT1 and 31QT2; install new support bracket assemblies on fuel probes 1 and 2 in the inner fuel tanks of the left- and right-hand wings, Modification 22855J0899; reinstall fuel probes; and perform a functional check; in accordance with Airbus Industrie Service Bulletin A320–28–1040, Revision 1, dated April 3, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 1, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2710 Filed 2–4–93; 8:45 am]

BILLING CODE 4910–13–P

Office of the Secretary

14 CFR Parts 61, 63, 65, 121, and 135; 49 CFR Parts 40, 199, 217, 219, 350, 382, 383, 391, 392, 395, 653, and 654

[Notice No. 93–7; Docket Nos.: (OST) 48513; (FAA) 27065, 25148; (FHWA) MC–92–19, MC–93–3; MC–93–2; MC–92–23; (FRA) RSOR–6; (FTA) 92–H; 92–I; (RSPA) PS–128; PS–129]

RIN Nos. 2105–AB95; 2120–AE43; 2120–AE–80; 2125–AC85; 2125–AD11; 2125–AC81; 2125–AD06; 2130–AA81; 2130–AA82; 2130–AA64; 2132–AA37; 2132–AA38; 2137–AC21; 2137–AB95

Alcohol Misuse Prevention and Drug Testing Rulemakings; Public Hearings

AGENCIES: The Office of the Secretary, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the Federal Transit Administration, and the Research and Special Programs Administration.

ACTION: Proposed rules; public hearings.

SUMMARY: On December 15, 1992, the Office of the Secretary and several operating administrations of the Department of Transportation published NPRMs that would implement the mandate in the Omnibus Transportation Employee Testing Act of 1991 and other statutes to develop alcohol misuse prevention and anti-drug rules for several transportation industries, and announced that the Department planned to conduct public hearings on these proposals. This notice announces the dates, times, locations, and procedures for those hearings.

DATES: The three public hearings are scheduled 8:30 a.m. to 5 p.m. (local time) as follows:

1. February 25–26, 1993; Washington, DC.
2. March 1–2, 1993; Chicago, IL.
3. March 4–5, 1993; San Francisco, CA.

ADDRESSES: The Washington, DC meeting will be held at: U.S. Department of Transportation, room 2230, 400 7th Street SW., Washington, DC 20590. The Chicago, IL, meeting will be held at: The Palmer House Hilton Hotel, 17 East Monroe, Chicago, IL, 60631; (phone number 312–726–7500. Special room rate $100.00 single) (inclusive). The San Francisco, CA, meeting will be held at: Holiday Inn-Union Square, 480 Sutter Street, San Francisco, CA 94108; (phone number 415–398–8900. Special room rate of: $105.45 single/$127.65 double) (inclusive). The individuals interested in speaking at one of the public hearings should contact and provide the requested information to Donna Smith at 202–366–3784, no later than February 17, 1993, for the Washington, DC hearing and February 22, 1993, for the Chicago and San Francisco hearings. Registration information can also be obtained from the DOT's Anti-Drug Information Center through automated telephone or fax requests, 1–800–225–3784, or by modem, 1–800–225–3804. Written materials submitted at the hearings will be placed in the appropriate rulemaking dockets. Interpreters are available upon request; requests should be made by the dates listed above.

FOR FURTHER INFORMATION CONTACT: Donna Smith, Acting Director, Office of Drug Enforcement and Program Compliance, Department of Transportation, (202) 366–3784, 400 7th Street SW., Washington, DC 20590. For information concerning a particular DOT agency NPRM, contact the individual(s) listed under "**FOR FURTHER INFORMATION CONTACT**" in the particular document.

SUPPLEMENTARY INFORMATION: On December 15, 1992, the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) published proposed rules to implement the Omnibus Transportation Employee Testing Act of 1991 (the Act), which requires alcohol misuse prevention programs, including testing, in the aviation, motor carrier, rail, and mass transit industries in the interest of public safety. It also requires anti-drug programs in the mass transit industry and changes to the existing anti-drug programs in the other transportation industries. The Research and Special Programs Administration (RSPA) has proposed to apply similar alcohol misuse prevention requirements to the pipeline transportation industry using existing statutory authority. All of these agencies and the U.S. Coast Guard (USCG) also published proposed rules to establish uniform reporting requirements for their anti-drug rules. Because the USCG is only proposing reporting requirements for its existing drug and alcohol testing program, the USCG will not be participating in these hearings. Any comments to the USCG NPRM should be submitted, in writing, to the USCG as directed in its NPRM.

Notice of Public Hearings and Hearing Procedures

The Department believes that the public will benefit from an opportunity to make oral presentations concerning the rulemaking documents described below that it has issued on alcohol misuse and drug use prevention. Therefore, the Department of Transportation is holding three public hearings beginning at 8:30 a.m. and ending at 5 p.m. (local time) on February 25–26, 1993, Washington, DC; March 1–2, 1993, Chicago, IL; and March 4–5, 1993, San Francisco, CA. Information gathered at the public hearings will be included in the appropriate rulemaking dockets and evaluated in conjunction with the development of the final rules. This notice establishes the general procedures set forth below to facilitate the hearing process; the Federal Railroad Administration-specific hearing will be conducted under its own statutorily-mandated procedures.

The following related documents are the subject of these hearings:

(1) An NPRM on alcohol and drug testing procedures issued by the Office of the Secretary and adopted by each of the affected DOT agencies in their NPRMs or existing rules;

(2) Modal-specific alcohol misuse prevention NPRMs and a common preamble issued jointly by each of the five operating administrations (FAA, FHWA, FRA, FTA, and RSPA) issuing the NPRMs that provides the background for and an overview of the general, common elements of the NPRMs;

(3) An FTA NPRM that would impose on transit operator recipients (of Federal funds) anti-drug requirements similar to those in the other transportation industries;

(4) FAA, FHWA, FRA, and RSPA NPRMs that would require submission of drug test results to each agency's Management Information System (the FTA proposal is contained in number 3 above); and

(5) An FHWA NPRM that proposes changes to its existing drug rule in order to conform to the Act, including extending coverage to intrastate truck and motorcoach operators.

Each hearing will last 2 days, beginning at 8:30 a.m. The hearings will be conducted in two successive parts: (1) A DOT-wide hearing and (2) Modal-specific hearings. At the DOT-wide hearing, testimony will be taken on the common testing procedures (number 1, above), as well as from anyone who specifically asks to address all of the affected DOT agencies together. After that, the hearing will split into separate rooms to discuss the operating administrations' specific alcohol, drug and management information system proposals. Those who would be subject to more than one rule may testify at more than one of the applicable operating administration hearings, and we will attempt to schedule speaking times to facilitate this.

There will be a morning and afternoon break as well as a break for lunch. Seating will be restricted by available room size and will be made available on a first-come-first-served basis, with some seats reserved for scheduled speakers. For those who cannot attend, a tape-recording, transcript, or other record of the hearings will be available in the rulemaking dockets after the hearings. Individuals who wish to speak at one of the hearings should notify the Department no later than February 17, 1993, for the Washington, DC hearing and February 22, 1993, for the Chicago and San Francisco hearings; they should (1) specify the hearing at which they wish to speak, (2) the issue(s) they wish to address, (3) the position(s) they wish to take on that issue(s); and (4) whether, if more time becomes available, they would want additional time, and, if so, how much. To register, they should contact Donna Smith, (202) 366–3784, who will coordinate scheduling of testimony with the modal administrations. Registration information can also be obtained from DOT's Anti-Drug Information Center (ADIC) by modem, 1–800–225–3804; or through automated telephone or fax requests, 1–800–225–3784.

An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, when we confirm a speaker's time and place of testimony, we will notify the speaker if additional time is available. The Department officials chairing the hearing may take additional time to ask clarifying questions of the speakers. Sign and oral interpretation can be made available at each hearing, as well as an assistive listening device, if requested at the above number seven calendar days before the hearing. The Department intends to transcribe the hearings.

We will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the Department reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues. The Department will confirm by mail, fax, or telephone the time and place of each speaker's testimony. Four calendar days before the hearing, a final schedule of when the modal-specific hearings will begin, and the specific speakers and their scheduled times for both the DOT-wide and modal-specific hearings will be available from the ADIC by modem, 1–800–225–3804; or through automated telephone or fax requests, 1–800–225–3784. Individuals may be able to register to speak on the hearing day at each location between 8:00 a.m. and 8:30 a.m. to the extent there is any time available.

It would be appreciated if any individuals who wish to provide prepared written statements or documents at the hearings would provide three copies at the hearing at which the individual will be speaking so that the panel members can have a copy. All statements and materials received at the hearing will become part of the appropriate rulemaking dockets.

The hearings are intended to solicit public views and information on the proposed rules. Therefore, they will be conducted in an informal and nonadversarial manner. Department officials will be available half an hour before the hearing begins in the main hearing room to answer any questions about the rules. If time permits, written questions to be asked of speakers at the hearing may be submitted by the public to Department officials during the testimony.

Issued in Washington, DC on January 29, 1993.

Rosalind A. Knapp,

Acting General Counsel.

[FR Doc. 93–2683 Filed 2–2–93; 11:44 am]

BILLING CODE 4910–62–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Union Dues Regulations

AGENCY: National Labor Relations Board.

ACTION: Notice of oral argument.

SUMMARY: The National Labor Relations Board gives notice that it is scheduling oral argument on March 8, 15, and 16, 1993, on the proposed rulemaking for the implementation of the United States Supreme Court's decision in *Communications Workers of America* v. *Beck*, 487 U.S. 735 (1988).

DATES: The Board will hold oral argument on March 8, 15, and 16, 1993. Persons wishing to be heard at the oral argument should notify the Office of the Executive Secretary by close of business Tuesday, February 16, 1993. Thereafter, the Board will notify interested persons of the time and place of the oral argument and those who will be scheduled to participate and the time to be allotted to each speaker.

ADDRESSES: Persons wishing to be heard at the oral argument should notify the Office of the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, DC 20570. Telephone: (202) 254–9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary. Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION:

Background

The Board's notice of proposed rulemaking and original notice of oral argument was published in the **Federal Register** (57 FR 43635) on September 22, 1992. The notice provided that the period for comment ended at the close of business on October 22, 1992. The notice also provided that oral argument would be held on November 5, 1992. On October 14, 1992, the Board published in the **Federal Register** (57 FR 47023) a notice extending the time for filing comments until the close of business on Monday, November 30, 1992, but also advised that it would adhere to the date of November 5, 1992, for the purpose of hearing oral argument. Oral argument was held on that date. The Board subsequently extended the time for filing comments to the close of business on December 4, 1992 (57 FR 55491).

The Board has now determined that additional oral argument, focused more narrowly on specific areas covered by the Proposed Rule, will aid it in its formulation of final rules. Accordingly, the Board has scheduled additional oral argument on the proposed rule on March 8, 15, and 16, 1993. The March 8 session will focus on issues raised by the notice and informational provisions of the proposed rule contained in §§ 103.40(e) 103.40(f) (1) and (2). The March 8 argument also will concern the model union security clause set forth in § 103.42 and the Appendix to that section. On March 15 the Board will focus on the financial aspects of the proposed rule raised by § 103.41, including but not limited to unit-by-unit accounting and chargeability issues. Finally, the March 16 session will focus on the procedural aspects of the proposed rule, such as those contained in §§ 103.40(f) (3) and (4) and 104.30(g).

Persons wishing to be heard at any of these sessions should notify the Office of the Executive Secretary by close of business February 16, 1993, and specify in which session or sessions they wish to participate. The Board will thereafter give notice of the time and place of the oral argument, those persons who will be scheduled to participate, and the time periods for each participant.

Dated Washington, DC, February 2, 1993.

By direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–2780 Filed 2–4–93; 8:45 am]

BILLING CODE 7545–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 505, 510, 540

[Docket No. 93–02]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its rules of practice and procedure in numerous respects. Experience under these rules indicates that several changes are desirable to remove ambiguities, to delete outdated or extraneous provisions, and to improve the efficient administration of proceedings.

DATES: Comments due March 22, 1993.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 N. Capitol Street NW., Washington, DC 20573–0001, 202–523–5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 202–523–5725.

SUPPLEMENTARY INFORMATION: The Commission's Rules of Practice and Procedure, 46 CFR part 502, govern procedures in proceedings before the Commission. Experience under the rules suggests certain provisions are either outdated, unclear, conflicting or inadequate to achieve their desired purpose. Additionally, it would appear that certain provisions in parts 505 and 540 dealing with assessment and compromise of civil penalties would more appropriately be included in part 502. To remedy these deficiencies, the Commission proposes to make several revisions to its rules.

A section-by-section explanation of the proposed rule changes follows:

Federal Rules of Civil Procedure

The Commission has consistently endorsed the policy of following the

Federal Rules of Civil Procedure in situations not covered by a specific Commission rule and where there is no conflict with administrative law or another Commission rule. This policy is well established in Commission cases, see, e.g., *Brazilian National Steel Co.* v. *Lloyd Brasileiro*, 21 SRR 1505, 1507–1508 (ALJ 1983). It is proposed that a new § 502.12 be added which codifies this policy in the Commission's Rules of Practice and Procedure.

Firms and Corporations

Section 502.28 currently bars "firms or corporations" from practicing before the Commission on behalf of others. This rule is confusing in its application and is frequently not followed. For example, tariff publishing firms or filing agent firms often represent carriers in special docket proceedings and rate auditors often represent shippers in overcharge claim proceedings. It is unclear whether the existing rule is intended to bar practice by such firms or corporations when their representative is one who is admitted to practice before the Commission. The current prohibition appears to serve no purpose and it is proposed to be removed. Firms and corporations then would be permitted to represent others, subject of course to the requirement in 46 CFR 502.27 that their representative is admitted to practice before the agency.

Section 10(a)(1) Complaints

In recent years the Commission has experienced a marked increase in the volume of complaints alleging violations of section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(a)(1). In the large majority of such cases, complainants merely allege that respondent shippers have failed to pay ocean freight on the shipments involved, the respondent shippers fail to answer the complaint or respond to orders and notices, and default judgments are issued.

In a final interpretive rule issued in Docket No. 92–46, *Unpaid Freight Charges*, the Commission has provided guidance to persons who wish to file complaints alleging violations of section 10(a)(1), explaining in part:

> An essential element of [section 10(a)(1)] is use of an "unjust or unfair device or means." In the absence of evidence of bad faith or deceit, the Federal Maritime Commission will not infer an "unjust or unfair device or means" from the failure of a shipper to pay ocean freight. An "unjust or unfair device or means" could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

Under the current Rules of Practice and Procedure ("Rules"), 46 CFR part 502, however, the Commission cannot promptly determine with reasonable assurance that the case properly involves section 10(a)(1) and is therefore a matter for the Commission rather than the courts which have traditionally heard such cases. Furthermore, the typical complaint in such cases fails to give respondents adequate notice of the true nature of a section 10(a)(1) violation, possibly discouraging respondents from asserting a valid defense under the Shipping Act. Even though further proof or amendment to the complaint could be required by the presiding officer under the present Rules, such action consumes time and leads to unnecessary delay which could have been avoided had complainants taken more care to identify the unjust or unfair device or means or the conduct which section 10(a)(1) expressly mentions.

The Commission is therefore proposing to amend its Rules applicable to the filing of complaints so as to enable presiding officers to determine more promptly and efficiently whether such complaints are proper matters for the Commission rather than the courts. The proposed amendment is patterned after the corresponding rule 9(b) of the Federal Rules of Civil Procedure, ("FRCP"), governing complaints alleging fraud, which, by its nature, bears some resemblance to the type of conduct which is prohibited by section 10(a)(1). In addition, the proposed amendment will encourage complainants to be careful to frame their complaints with particularity as to the operative events by authorizing presiding officers to dismiss inadequately drafted complaints without waiting for answers or for defaults. Such a rule should help to screen out mere freight-collection cases and ensure that future complaints invoking section 10(a)(1) have proper jurisdictional bases. Since the dismissal would normally be without prejudice, a complainant having a legitimate claim under section 10(a)(1) could refile a properly framed complaint, if the facts permitted, so that the Commission could have reasonable assurance of its subject-matter jurisdiction, respondent would receive adequate notice, and the delays experienced in default situations could be avoided.

Counter-complaints

The Commission currently has no rule permitting or governing the filing of counter-complaints in complaint proceedings, even though in practice they have been allowed. See *A/S Ivaran* v. *Lloyd Brasileiro*, 24 SRR 1029, 1032, n.7 (FMC 1988). The frequency with which such filings have been made has been increasing and often they fail to include a verification, which is required by statute for complaints before the Commission, 46 U.S.C. app. 1710. It is proposed that § 502.64 be amended to provide for the filing of properly verified counter-complaints and providing for their service directly by the parties if authorized by the presiding officer.

Amendments to Pleadings

Section 502.113 provides that complaints and amendments to complaints will be served by the Secretary of the Commission. Section 502.70(b) states that amendments to pleadings allowed prior to hearing will be served in the same manner as the original pleading. These rules would seem to mandate that amended complaints be served only by the Secretary. In practice, when amended complaints are filed, the complainant simultaneously serves a copy on respondents. In such situations, there appears to be no need to have the complaint re-served by the Secretary, and the presiding Administrative Law Judge ("ALJ") has sometimes, with agreement of the parties, waived application of the requirement. It is proposed, therefore, to amend §§ 502.70(b) and 502.113 to authorize the presiding officer to allow service of amended complaints merely by having the filing party serve respondent or its counsel of record.

Bill of Particulars

Section 502.71 contains provisions for a bill of particulars. Under the FRCP, the bill of particulars has been replaced by motions for more definite statement, FRCP 12 (e). To avoid confusion and to bring Commission rules more in line with modern Federal practice, § 502.71 is proposed to be revised to include provisions modeled on present Rule 12(e) of the FRCP.

Satisfaction of Complaint

Section 502.93 contains provisions relating to satisfaction of complaints. This rule is outdated, is drafted to apply to shipper complaints against carriers only, and refers to a nonexistent form ("Exhibit No. 1 to Subpart D"). The rule would appear to be unnecessary, in any event, because any proceeding may be dismissed by the presiding officer upon a proper showing, and the requirement for seeking dismissal would be no different where the complaint has been satisfied than where any other settlement has been reached. It is proposed that the rule be removed.

Subscription and Verification of Documents

Section 502.112(a) currently provides that the signature of the attorney or practitioner on a filing constitutes a certificate that the filer has read the filing and "that to the best of his or her knowledge, information, and belief there is good ground to support it." This rule is the Commission's counterpart to FRCP 11, which now imposes a requirement that a filer's signature on a pleading represents that the filer has made reasonable inquiry that the pleading is well grounded in fact and is warranted in existing law. The FRCP provision imposes a stricter standard on the filer and is designed to avoid the bringing of frivolous actions or the submission of frivolous pleadings. It is proposed to amend § 502.112 to pattern it after FRCP 11 provisions. This language in conjunction with the current provision of the Commission's rule which subjects violators to disciplinary action, should serve to minimize the filing of inappropriate pleadings in Commission proceedings.

Section 502.112(b) currently requires that when filings are made by an officer or agent of a party not represented by someone admitted or qualified to practice before the Commission, the filing either must (in the case of a corporate part) by attested under seal of the corporation, or (in the case of non-corporate party) be accompanied with a power of attorney. These requirements have not been uniformly applied and do not appear to be necessary inasmuch as such filings are otherwise required to be sworn, verified, or submitted under penalty of perjury. It is therefore proposed that this requirement be removed.

Modern practice in civil courts and in some administrative agencies permits the filing of unsworn declarations under penalty of perjury in lieu of requiring the submission of sworn or verified filings. This is embodied in the provisions of 28 U.S.C. 1746 which applies to any rule, regulation, order or requirement made pursuant to United States law. It is especially appropriate to permit such unsworn declarations where the filing is executed outside of the United States and filers are unfamiliar with United States verification requirements. It is proposed that a new paragraph be added to § 502.112 which permits the use of unsworn declarations whenever the rules otherwise require a sworn or verified filing.

Deposition Upon Oral Examination

Section 502.203 contains procedures for the taking of depositions upon oral examination. It has been discovered that when this rule was reissued in 1984, a portion of the rule which required a notice of oral deposition to provide the name and address of each person to be examined or, if unknown, a general description sufficiently complete to identify the person, was inadvertently omitted. This proposal would reinsert the omitted language.

Exceptions/Appeals

Section 502.227 includes procedures for filing of exceptions to an ALJ's initial decisions and appeals of an ALJ's order of dismissal, and allows 22 days for their filing. The rule allows 22 days for filing of replies to exceptions, but allows only 15 days for filing of replies to appeals. In the interest of consistency and fairness, the rule is proposed to be amended to allow 22 days for filing of replies to appeals.

Attorney's Fees

Section 502.254 governs proceedings to determine whether an award of attorney's fees is appropriate in particular Commission reparation proceedings. Paragraph (f) of this section governs appeals to the Commission of a presiding officer's award of attorney's fees. The procedures for such appeals are significantly different than those contained in § 502.227 for exceptions and appeals of other presiding officer decisions. Additionally, no provision is included for review of such awards by the Commission on its own motion in the absence of appeal. It is proposed that the rule be amended to include the same appeal and review procedures that apply under current Rule 227.

Petitions for Reconsideration and Replies

Section 502.261 governs the filing of petitions for reconsideration and stay. Under this rule, such petitions are limited to specific and narrow grounds. The rule provides that "[p]etitions which merely elaborate upon or repeat arguments made prior to the decision or order will not be received * * *" Despite these restrictions, lengthy petitions are too frequently filed that deal with extraneous matters. The Federal Rules of Appellate Procedure limit petitions for rehearing of a circuit court decision to 15 pages. It is proposed that a page limitation be imposed on such petitions at the Commission. Since Commission decisions and petitions for reconsideration of such decisions may involve questions of evidence, however, and such questions may require more space to discuss than would pure issues of law, the page limit is proposed to be set at 25.

Section 502.262 currently permits "any party" to file a reply to a petition for reconsideration. It is proposed that this rule be amended to clarify that only replies in opposition to petitions for reconsideration may be filed. The filing of replies in support of petitions usually evokes a request for the filing of a further reply to the reply. Additionally, it is reasonable to require parties who feel aggrieved by a Commission decision to timely file their own petitions for reconsideration rather than tagging onto someone else's petition. It is further proposed that the same 25 page limitation be imposed on replies to petitions for reconsideration.

Civil Penalty Procedures

The Commission's rules on compromise and settlement of civil penalties currently are contained in part 505 of title 46 CFR. Because these rules are essentially procedural in nature and in part pertain to proceedings conducted under part 502 of 46 CFR, it is proposed that they be relocated and incorporated as a new subpart in part 502. It is further proposed that Appendix A (model compromise agreement) be revised to better reflect current practice and that Appendix B (Example of Promissory Note) be deleted because installment payments are seldom permitted, and the presence of this appendix leaves the wrong impression that the Commission welcomes them. References to the civil penalty provisions of section 19 of the Merchant Marine Act, 1920, 46 U.S.C. app. 875, also are proposed to be added.

Subpart C of 46 CFR part 540, the Commission's passenger vessel certification rules, also contains provisions governing civil penalties, *viz.*, for violations of Public Law 89–777. Confusion has resulted, however, from those provisions being separated from, and sometimes conflicting with, part 505. Accordingly, it is proposed that subpart C of part 540 be removed and that the new subpart of part 502 be amended to reflect that its procedures also govern civil penalties for violations of Public Law 89–777.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that because this rule deals only with agency practice and procedure, it will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 505

Administrative practice and procedure, Maritime carriers, Penalties.

46 CFR Part 510

Freight forwarders, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 540

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Surety bonds.

Therefore, notice is hereby given that the Commission proposes to amend parts 502, 505, 510 and 540 of title 46 CFR as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707–1711, 1713–1716; E.O. 11222 of May 8, 1965 (30 FR 6499); 21 U.S.C. 853a; and Pub. L. 89–777 (46 U.S.C. app. 817d, 817e).

2. A new § 502.12 is added to subpart A reading as follows:

§ 502.12 Applicability of Federal Rules of Civil Procedure.

In proceedings under this part, for situations which are not covered by a specific Commission rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice.

§ 502.28 [Removed]

3. Section 502.28 is removed.

4. Section 502.62 is amended by redesignating paragraphs (b) through (g) as paragraphs (c) through (h) and by adding a new paragraph (b), to read as follows:

§ 502.62 Complaints and fee.

* * * * *

(b) In all averments of violations of section 10(a)(1), the circumstances constituting such violations shall be stated with particularity. In the event that the complaint fails to specify the circumstances, as required by this paragraph, the presiding officer may dismiss the complaint at any time whether or not an answer has been filed. A complaint which merely alleges that respondent has failed to pay ocean freight bills without alleging conduct that violates section 10(a)(1) will be deemed not to have complied with this paragraph. For a discussion of an essential element of this offense and the evidence necessary to satisfy it, reference should be had to the Federal Maritime Commission Interpretation set forth at § 571.2 of this chapter.

* * * * *

5. Section 502.64 is amended to revise the section title and to add a new paragraph (d) reading as follows:

§ 502.64 Answer to complaint; counter-complaint.

* * * * *

(d) In addition to filing an answer to a complaint, respondent may file a counter-complaint alleging violations of the Shipping Acts within the jurisdiction of the Commission. The filing of counter-complaints and answers to counter-complaints is governed by the rules and requirements of § 502.62 (excluding fees) and of this section for the filing of complaints and answers. Counter-complaints may be served directly by the parties if authorized by the presiding officer.

6. Section 502.70 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 502.70 Amendments or supplements to pleadings.

(a) * * *

(b) * * * . Amendments or supplements allowed prior to hearing will be served in the same manner as the original pleading, except that the presiding officer may authorize the service of amended complaints directly by the parties rather than by the Secretary of the Commission.

* * * * *

7. Section 502.71 is revised to read as follows:

§ 502.71 Motions for more definite statements.

If a pleading (including a complaint or cross complaint filed pursuant to § 502.62 or § 502.64) to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall be filed within 15 days of the pleading and shall point out the defects complained of and the details desired. If the motion is granted and the order of the presiding officer is not obeyed within 10 days after service of the order or within such time as the presiding officer may fix, the presiding officer may strike the pleading to which the motion was directed or make such order as is deemed just. If the motion is disallowed, the time for responding to the pleading shall be extended to a date 10 days after service of the notice of disallowance.

§ 502.93 [Removed]

8. Section 502.93 is removed.

9. Section 502.112 is amended by revising the third sentence of paragraph (a) and by adding a new paragraph (c) to read as set forth below; and is further amended by removing the last sentence of paragraph (b).

§ 502.112 Subscription and verification of documents.

(a) * * * . The signature of a person admitted or qualified to practice before the Commission constitutes a certificate by the signer that the signer has read the pleading, document or paper; that the signer is authorized to file it; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. * * *

* * * * *

(c) Wherever, under any rules of this part, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition under § 502.203 or § 502.204), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification or statement, in writing of such person which is subscribed by such person, as true under penalty of perjury, in substantially the following form.

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct."

10. The first sentence of § 502.113 is revised to read as follows:

§ 502.113 Service by the Commission.

Complaints filed pursuant to § 502.62, amendments to complaints (unless otherwise authorized by the presiding officer pursuant to § 502.70(b)), and complainant's memoranda filed in shortened procedure cases will be served by the Secretary of the Commission. * * *

* * * * *

11. Section 502.203 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 502.203 Depositions upon oral examination.

(a) *Notice of examination.* (1) * * * The Notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. * * *

* * * * *

12. Section 502.227 is amended by revising paragraph (b)(2) to read as follows:

§ 502.227 Exceptions to decision or orders of administrative law judges; replies thereto; and review of decisions or orders of dismissal by Commission.

* * * * *

(b)(1) * * *

(2) Any adverse party may file and serve a reply to an appeal under this paragraph within twenty-two (22) days after the appeal is served.

13. Section 502.254 is amended by revising paragraph (f) to read as follows:

§ 502.254 Attorney's fees in reparation proceedings.

* * * * *

(f) In cases where the presiding officer issues an award order, appeal of that order and Commission review of that order in the absence of appeal shall be governed by the procedures of § 502.227 of his part. (Rule 254)

14. Section 502.261 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 502.261 Petitions for reconsideration and stay.

(a) * * * Such petition shall be limited to 25 pages in length and shall be served in conformity with the requirements of subpart H of this part. * * *

* * * * *

15. Section 502.262 is revised to read as follows:

§ 502.262 Reply to petition for reconsideration or stay.

Any party may file a reply in opposition to a petition for reconsideration or stay within fifteen (15) days after the date of service of the petition in accordance with § 502.74.

The reply shall be limited to 25 pages in length and shall be served in conformity with subpart H of this part. (Rule 262.)

16. Subpart W—Paperwork Reduction Act is redesignated as Subpart X.

PART 505—COMPROMISE, ASSESSMENT, SETTLEMENT AND COLLECTION OF CIVIL PENALTIES

17. Part 505 of chapter IV, title 46 CFR, is redesignated as subpart W of part 502, and is revised to read as follows:

Subpart W—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

Sec.
502.601 Purpose and scope.
502.602 Definitions.
502.603 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.
502.604 Compromise of penalties: Relation to assessment proceedings.
502.605 Payment of penalty: Method; default.

Appendix A—Example of Compromise Agreement To Be Used Under 46 CFR 502.604

Subpart W—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties

§ 502.601 Purpose and scope.

The purpose of this subpart is to implement the statutory provisions of section 32 of the Shipping Act, 1916, section 19 of the Merchant Marine Act, 1920, section 13 of the Shipping Act of 1984, and sections 2(c) and 3(c) of Public Law 89–777 by establishing rules and regulations governing the compromise, assessment, settlement and collection of civil penalties arising under certain designated provisions of the Shipping Act, 1916, the Merchant Marine Act, 1920, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, Public Law 89–777, and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under those statutes.

§ 502.602 Definitions.

For the purposes of this subpart;

(a) *Assessment* means the imposition of a civil penalty by order of the Commission after a formal docketed proceeding.

(b) *Commission* means the Federal Maritime Commission.

(c) *Compromise* means the process whereby a civil penalty for a violation is agreed upon by the respondent and the Commission outside of a formal, docketed proceeding.

(d) *Mitigation* means the reduction, in whole or in part, of the amount of a civil penalty.

(e) *Person* includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(f) *Respondent* means any person charged with a violation.

(g) *Settlement* means the process whereby a civil penalty or other disposition of the case for a violation is agreed to in a formal, docketed proceeding instituted by order of the Commission.

(h) *Violation* includes any violation of sections 14 through 21 (except section 16 First and Third) of the Shipping Act, 1916; sections 19(6)(d), 19(7)(d) and 19(11) of the Merchant Marine Act, 1920; section 2 of the Intercoastal Shipping Act, 1933; any provision of the Shipping Act of 1984; sections 2 and 3 of Public Law 89–777; and/or any order, rule or regulation (except for procedural rules and regulations contained in this part) issued or made by the Commission in the exercise of its powers, duties and functions under the Shipping Act, 1916, the Merchant Marine Act, 1920, the Intercoastal Shipping Act, 1933, the Shipping Act of 1984, or Public Law 89–777.

(i) Words in the plural form shall include the singular and vice versa; and words importing the masculine gender shall include the feminine and vice versa. The terms "includes" and "including" do not exclude matters not listed but which are in the same general class. The word "and" includes "or", except where specifically stated or where the context requires otherwise.

§ 502.603 Assessment of civil penalties: Procedure; criteria for determining amount; limitations; relation to compromise.

(a) *Procedure for assessment of penalty.* The Commission may assess a civil penalty only after notice and opportunity for hearing. Civil penalty assessment proceedings, including settlement negotiations, shall be governed by the Commission's Rules of Practice and Procedure in this part. All settlements must be approved by the Presiding Officer. The full text of any settlement must be included in the final order of the Commission.

(b) *Criteria for determining amount of penalty.* In determining the amount of any penalties assessed, the Commission shall take into account the nature, circumstances, extent and gravity of the violation committed and the policies for deterrence and future compliance with the Commission's rules and regulations and the applicable statutes. The Commission shall also consider the respondent's degree of culpability, history of prior offenses, ability to pay and such other matters as justice requires.

(c) *Limitations; relation to compromise.* When the Commission, in its discretion, determines that policy, justice or other circumstances warrant, a civil penalty assessment proceeding may be instituted at any time for any violation which occurred within five years prior to the issuance of the order of investigation. Such proceeding may also be instituted at any time after the initiation of informal compromise procedures, except where a compromise agreement for the same violations under the compromise procedures has become effective under § 502.604(e).

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

(a) *Scope.* Except in pending civil penalty assessment proceedings provided for in § 502.603 the Commission, when it has reason to believe a violation has occurred, may invoke the informal compromise procedures of this section.

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a registered or certified Notice and Demand Letter ("NDL") to the respondent. The NDL will describe specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NDL also will state the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

(c) *Request for compromise.* Any person receiving an NDL provided for in paragraph (b) of this section may, within the time specified, deny the violation, or submit matters explaining, mitigating or showing extenuating circumstances, as well as make voluntary disclosures of information and documents.

(d) *Criteria for compromise.* In addition to the factors set forth in § 502.603(b), in compromising a penalty claim, the Commission may consider litigative probabilities, the cost of collecting the claim and enforcement policy.

(e) *Disposition of claims in compromise procedures.* (1) When a penalty is compromised and the respondent agrees to settle for that amount, a compromise agreement shall be executed. (One example of such compromise agreement is set forth as Appendix A to this subpart.) This agreement, after reciting the nature of the claim, will include a statement evidencing the respondent's agreement to the compromise of the Commission's penalty claim for the amount set forth in the agreement and will also embody an approval and acceptance provision which is to be signed by the appropriate Commission official. Upon compromise of the penalty in the agreed amount, a duplicate original of the executed agreement shall be furnished to the respondent.

(2) Upon completion of the compromise, the Commission may issue a public notice thereof, the terms and language of which are not subject to negotiation.

(f) *Relation to assessment proceedings.* Except by order of the Commission, no compromise procedure shall be initiated or continued after institution of a Commission assessment proceeding directed to the same violations. Any offer of compromise submitted by the respondent pursuant to this section shall be deemed to have been furnished by the respondent without prejudice and shall not be used against the respondent in any proceeding.

(g) *Delegation of compromise authority.* The compromise authority set forth in this subpart is delegated to the Director, Bureau of Hearing Counsel.

§ 502.605 Payment of penalty: Method; default.

(a) *Method.* Payment of penalties by the respondent is to be made as follows:

(1) By bank cashier's check or other instrument acceptable to the Commission;

(2) Upon execution of a promissory note containing a confess-judgment agreement, by periodic regular installments, with interest where appropriate, by bank cashier's check or other instrument acceptable to the Commission; or

(3) By combination of the above alternatives.

(b) All checks or other instruments submitted in payment of claims shall be made payable to the Federal Maritime Commission.

(c) *Default in payment.* Where a respondent fails or refuses to pay a penalty properly assessed under § 502.603, or compromised and agreed to under § 502.604, appropriate collection efforts will be made by the Commission, including, but not limited to, referral to the Department of Justice for collection. Where such defaulting respondent is a licensed freight forwarder, such default also may be grounds for revocation or suspension of the respondent's license, after notice and opportunity for hearing, unless such notice and hearing have been waived by the respondent in writing.

Appendix A to Subpart W—Example of Compromise Agreement

Compromise Agreement

FMC File No. ______

This Agreement is entered into between:

(1) The Federal Maritime Commission, hereinafter referred to as Commission, and

(2) ________, hereinafter referred to as Respondent.

Whereas, the Commission is considering the institution of an assessment proceeding against Respondent for the recovery of civil penalties provided under the [appropriate statute], for alleged violations of section ______;

Whereas, this course of action is the result of practices believed by the Commission to have been engaged in by Respondent, to wit:

[General description of practices and dates or time period involved]

Whereas, the Commission has authority under the Shipping Act of 1984 and the Shipping Act, 1916, to compromise and collect civil penalties; and, Whereas, Respondent has terminated the practices which are the basis for the allegations of violation set forth herein, and has instituted and indicated its willingness to maintain measures designed to eliminate these practices by Respondent, its officers, directors or employees.

Now Therefore, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations, Respondent and the Commission hereby agree upon the following terms and conditions of compromise and settlement:

1. Respondent shall make a monetary payment to the Commission herewith, by bank cashier's check, in the total amount of $_______.

2. Upon acceptance in writing of this Agreement by the Director of the Bureau of Hearing Counsel of the Commission, this instrument shall forever bar the commencement or institution of any assessment proceeding or other claim for recovery of civil penalties from the Respondent arising from the alleged violations set forth above.

3. It is expressly understood and agreed that this Agreement is not, and is not to be construed as, an admission by Respondent to the alleged violations set forth above.

(Respondent's Name) ____________________
By: ____________________
Title: ____________________
Date: ____________________

Approval and Acceptance

The above terms, conditions and consideration are hereby approved and accepted:

By the Federal Maritime Commission:

____
Director, Bureau of Hearing Counsel
Date:

PART 510—LICENSING OF OCEAN FREIGHT FORWARDERS

18. The authority citation for part 510 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718; 21 U.S.C. 853a.

19. The references to "part 505" in §§ 510.15 and 510.16(a)(5) and (b) are revised to read "subpart W of part 502."

PART 540—SECURITY FOR THE PROTECTION OF THE PUBLIC

20. The authority citation for part 540 continues to read as follows:

Authority: 5 U.S.C. 552, 553; secs. 2 and 3, Public Law 89–777, 80 Stat. 1356–1358 (46 U.S.C. app. 817e, 817d); sec. 43 of the Shipping Act, 1916 (46 U.S.C. app. 841a); sec. 17 of the Shipping Act of 1984 (46 U.S.C. app. 1716).

21. The heading of Subpart C of Part 540 is revised to read:

Subpart C—General

22. Sections 540.30 through 540.36 and Appendices A and B to subpart C are removed.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 93–2693 Filed 2–4–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[ET Docket No. 93–7; FCC 93–30]

Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Inquiry.

SUMMARY: The Commission seeks to obtain information regarding means of assuring compatibility between consumer electronics equipment and cable systems, as required by the section 17 of the Cable Television Consumer Protection and Competition Act of 1992. The information obtained through this inquiry will form the basis for a report to Congress and subsequent rule making to develop appropriate rules to implement the provisions of section 17.

DATES: Comments must be submitted on or before March 22, 1993, and reply comments on or before April 21, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–632–7060) or Alan Stillwell (202–653–8162), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry in ET Docket No. 93–7, FCC 93–30, adopted January 14, 1993 and released January 29, 1993. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 1990 M Street, NW., Washington, DC 20036, (202) 452–1422.

Summary of the Notice of Inquiry

1. Section 17 of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) requires that the Commission, in consultation with representatives of the cable and consumer electronics industries, report to Congress within one year of the enactment of the legislation, *e.g.* October 5, 1994, on means of assuring compatibility between consumer TV equipment and cable systems, consistent with the need to prevent theft of cable service. The legislation further provides that within 180 days of that report, the Commission must issue regulations to ensure compatibility between consumer equipment and cable systems. The goal of section 17 is to ensure that cable subscribers will be able to enjoy the full benefits and functions of their television receivers and VCRs when receiving cable service.

2. Problems between cable systems and consumer TV equipment generally tend to arise from conflicts between new features in consumer television equipment and the techniques used by cable systems to address security and other technical operating considerations. Examples of TV receiver features affected by cable operating methods and devices include functions that permit the subscriber:

—To watch a program on one channel while simultaneously recording a program on another channel;

—To record two programs that appear on different channels; or,

—To use advanced features such as picture in picture.

3. In this first phase of the Commission's implementation of section 17, the Notice of Inquiry (Notice) seeks information on the nature and extent of the compatibility problem between cable systems and consumer equipment. The Notice asks questions on the nature of the various features incorporated in consumer TV receivers and VCRs that can be affected by the manner in which cable service is delivered and the definition of a "cable ready" unit. It also seeks information on cable operating technologies and practices and cable devices such as converters and remote control units that can affect the operation of consumer equipment. In examining these issues, the Notice requests comment on alternative approaches available to cable operators for protecting against unauthorized reception of their service. It further seeks information and suggestions regarding possible alternative regulatory approaches for ensuring compatibility that will minimize costs for cable operators, consumer electronics manufacturers and consumers.

4. In addition to requesting information relating to the current situation, the Notice asks questions on likely future developments in consumer and cable system equipment that could affect compatibility. It also indicates that the Commission intends to consult with representatives of the cable and consumer electronics industries and will also consult with other parties, as appropriate, in developing this information.

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 22, 1993, and reply comments on or before April 21, 1993. All relevant and timely comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comment and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1991 M Street, NW., Washington, DC 20554.

List of Subjects

47 CFR Part 15

Communications equipment, Television receivers, TV interface devices.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2681 Filed 2–4–93; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–66; Notice 2]

Federal Motor Vehicle Safety Standards; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments; notice to extend comment period.

SUMMARY: In response to a petition by Nissan, this notice extends the comment period for a notice requesting information about whether NHTSA should initiate rulemaking to upgrade Federal Motor Vehicle Safety Standard No. 301, Fuel System Integrity. NHTSA believes that commenters need more time to formulate their responses given that the agency has recently issued a series of important rulemaking notices that request comments within the same time period. An extension of the comment period will allow commenters more time to better address the areas covered in the notice. Accordingly, the agency has decided to extend the comment period from February 12, 1993 to March 5, 1993.

DATES: Comments on the request for comments, Docket 92–66, Notice 1, must be received on or before March 5, 1993.

ADDRESSES: Comments should refer to Docket No. 92–66, Notice 1 and be submitted to: Docket Section, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 to 4 pm. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, Office of Rulemaking, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–2264).

SUPPLEMENTARY INFORMATION: On December 14, 1992, NHTSA published a notice in the **Federal Register** requesting comments about whether the agency should initiate rulemaking to upgrade Federal Motor Vehicle Safety Standard No. 301, Fuel System Integrity. (57 FR 59041) The notice discussed the development of Standard No. 301 and research about motor vehicle fires. The notice also requested answers to questions about Standard No. 301 and the dangers caused by fuel system related fires to assist NHTSA in developing specific proposals for possible amendments to the Standard. The agency specified that comments had to be submitted on or before February 12, 1992.

Nissan Research and Development, Inc., petitioned the agency to extend comment period on the request for comments an additional 15 working days. Nissan stated that several recent NHTSA notices requesting comments have resulted in a "resource allocation problem." Accordingly, it stated that an extension of the comment closing date would allow Nissan to more fully consider and address the issues set forth in the request for comments about upgrading Standard No. 301.

After reviewing the petition, NHTSA agrees with the petitioner that extending the comment closing date is desirable given that the agency has recently issued a series of important rulemaking notices that request comments within the same time period. An extension of the comment period will allow Nissan and other commenters more time to better address the areas covered in the notice requesting comments. Based on the above considerations, the agency believes that there is good cause to extend the comment period and this decision is consistent with the public interest.

Accordingly, the agency has decided to extend the comment period until March 5, 1993.

Issued on: February 2, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–2829 Filed 2–4–93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 920783–2183]

Designated Critical Habitat; Snake River Sockeye Salmon, Snake River Spring/Summer Chinook Salmon, and Snake River Fall Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS is extending the public comment period on proposed regulations to designate critical habitat for the Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River spring/summer chinook salmon (*Oncorhynchus tschawytscha*), and Snake River fall chinook salmon (*Oncorhynchus tschawytscha*). This proposal was made December 2, 1992 (57 FR 57051), under provisions of the Endangered Species Act. The proposed critical habitat for the Snake River sockeye salmon is: Alturas, Pettit, Redfish, Stanley, and Yellow Belly Lakes (including their inlet and outlet creeks); Alturas Lake Creek, and Valley Creek; the Salmon River from Alturas Lake Creek to its confluence with the Snake River; the Snake River from its confluence with the Salmon River to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the Pacific

Ocean. The proposed critical habitat for Snake River spring/summer chinook salmon is: The Grande Ronde, Imnaha, Salmon, and Tucannon subbasins; Asotin, Granite, and Sheep Creeks; the Snake River from its confluence with Sheep Creek to its confluence with the Columbia River; the Columbia River from its confluence with the Snake River to the Pacific Ocean. The proposed critical habitat for Snake River fall chinook salmon is: The Snake River below Hells Canyon Dam; the lower reaches of the Clearwater, Grande Ronde, Imnaha, Salmon, and Tucannon Rivers; Asotin Creek; the Columbia River from its confluence with the Snake River to the Pacific Ocean.

DATES: Comments on the proposed rule will be accepted until March 2, 1993.

ADDRESSES: Send written comments to Dr. Michael F. Tillman, Acting Director, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Marta Nammack at 301/713–2322, or Garth Griffin at 503/230–5430.

Dated: January 29, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2711 Filed 2–4–93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-199-1]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and a finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
92-232-01	Monsanto Agricultural Company.	12-17-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects.	Puerto Rico.

The environmental assessment and finding of no significant impact have been prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*),

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508),

(3) USDA Regulations Implementing NEPA (7 CFR part 1b), and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 1st day of February 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-2747 Filed 2-4-93; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 93-001-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that nine applications for permits to release genetically engineered organisms into the environment are

being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
92–365–01, renewal of permit 92–021–01, issued on 05–22–92.	U.S. Department of Agriculture, Agricultural Research Service.	12–31–92	Potato plants genetically engineered to express the coat protein of potato leaf roll virus.	Washington.
92–365–02	U.S. Department of Agriculture, Agricultural Research Service.	12–31–92	Potato plants genetically engineered to express the coat protein of potato leaf roll virus.	Washington.
92–365–03	U.S. Department of Agriculture, Agricultural Research Service.	12–31–92	Potato plants genetically engineered to express the coat protein of potato leaf roll virus.	Idaho.
92–365–04, renewal of permit 91–317–01, issued on 01–22–92.	Dekalb Plant Genetics	12–31–92	Corn plants genetically engineered to express a gene from *Streptomyces hygroscopicus*, for tolerance to the herbicide bialaphos.	Hawaii.
92–365–05	Pioneer Hi-Bred International, Incorporated.	12–31–92	Soybean plants genetically engineered to express a methionine rich seed storage protein gene.	Iowa, Illinois Indiana, Kansas Nebraska, Missouri Ohio.
92–365–06	Frito-Lay, Incorporated	12–31–92	Potato plants genetically engineered to express a chitinase and or a glucanase gene, for resistance to *Rhizoctonia solani.*	Alaska.
92–365–07	Cornell University	12–31–92	Apple rootstock genetically engineered to express a lytic protein attacin E gene, for resistance to Fire Blight disease.	New York.
93–004–01	Monsanto Agricultural Company.	01–04–93	Potato plants genetically engineered to express an insect resistance gene from *Bacillus thuringiensis* subsp. *tenebrionis* for resistance to Colorado potato beetle, a coat protein gene for resistance to Potato Virus Y (PVY), and a gene to increase the percentage of solid matter.	Wisconsin.
93–004–02, renewal of permit 90–351–01, issued on 03–15–91.	U.S. Department of Agriculture, Agricultural Research Service.	01–04–93	Walnut trees genetically engineered to express a delta-endotoxin protein from *Bacillus thuringiensis* subsp. *kurstaki* for resistance to lepidopteran insects.	California.

Done in Washington, DC, this 1st day of February 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–2748 Filed 2–4–92; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 92–198–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that 10 applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
92-350-01, renewal of permit 92-041-01, issued on 05-05-92.	Monsanto Agricultural Company.	12-15-92	Soybean plants genetically engineered to express the enzyme 5-enol-pyruvyl shiki-mate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Mississippi, Missouri, South Carolina, Tennessee.
92-351-01	Frito-Lay, Incorporated	12-16-92	Potato plants genetically engineered to express metabolic enzymes in order to increase levels of dry matter in potato tubers.	Wisconsin.
92-352-01, renewal of permit 92-049-03, issued on 04-15-92.	Petoseed Company, Incorporated.	12-17-92	Tomato plants genetically engineered to express antisense gene constructs of polygalacturonase (PG), pectinesterase (PE), and ethylene forming enzymes, to modify ripening.	California.
92-359-01	Monsanto Agricultural Company.	12-24-92	Soybean plants genetically engineered to express the enzyme 5-enol-pyruvyl shiki-mate-3-phosphate synthase (EPSPS) and a metabolizing enzyme for tolerance to the herbicide glyphosate.	Alabama, Illinois, Indiana, Iowa, Maryland, Michigan, Missouri, Ohio, South Dakota.
92-363-01, renewal of permit 91-346-01, issued on 04-16-92.	Calgene, Incorporated	12-28-92	Rapeseed plants genetically engineered to express a thioesterase gene and a marker gene, to increase the percentage of fatty acid laurate.	Michigan.
92-363-02, renewal of permit 91-352-01, issued on 04-13-92.	Calgene, Incorporated	12-28-92	Rapeseed plants genetically engineered to express an antisense desaturase gene and a marker gene for modification of oil profiles.	Michigan.
92-363-03, renewal of permit 91-333-03, issued on 04-20-92.	Calgene, Incorporated	12-28-92	Cotton plants genetically engineered to express a lepidopteran-specific gene from *Bacillus thuringiensis* subsp. *kurstaki* and a gene from *Klebsiella ozaenae*, which confers tolerance to the herbicide bromoxynil.	Mississippi.
92-363-04, renewal of permit 91-357-01, issued on 04-17-92.	Calgene, Incorporated	12-28-92	Cotton plants genetically engineered to express a lepidopteran-specific gene from *Bacillus thuringiensis* subsp. kurstaki and a gene from *Klebsiella ozaenae*, for tolerance to the herbicide bromoxynil.	Arizona, Mississippi, South Carolina.
92-363-05	Monsanto Agricultural Company.	12-28-92	Potato plants genetically engineered to express an insect-resistant gene from *Bacillus thuringiensis* var. *tenebrionis*, a coat protein gene for resistance to Potato Leaf Roll Virus (PLRV) and Potato Virus Y (PVY), and a quality improvement gene to increase the percentage of solid matter.	Colorado, Idaho, Maine, Maryland, Michigan, Montana, New York, North Dakota, Ohio, Oregon, Pennsylvania, Washington.
92-363-06	Dekalb Plant Genetics	12-28-92	Corn plants genetically engineered to express a hygromycin-B phospho-transferase gene (HPT), and an E.-coli beta-glucuronidase (GUS) gener and, modified storage protein genes.	Hawaii.

Done in Washington, DC this 1st day of February 1993.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93-2796 Filed 2-4-93; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Big Mountain Ski and Summer Resort Expansion Flathead National Forest, Flathead County, MT.

AGENCY: Forest Service, USDA

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: This revises the January 24, 1992 notice in the **Federal Register** Volume 57, No. 16, pp. 2891-2892, that the Draft Environmental Impact Statement for the Big Mountain Ski and Summer Expansion will be released March, 1993 instead of the July, 1992. The proposal is to expand winter and summer recreation opportunities at the Big Mountain Ski and Summer Resort on the Tally Lake Ranger District. The Big Mountain is located approximately 6 miles north of Whitefish, Montana.

DATE: Comment period concerning the scope of the analysis was from January 24, 1992-March 15, 1992.

ADDRESSES: Bert Stout, District Ranger, Tally Lake Ranger District, 1335 Highway 93 North, Whitefish, Montana 59937.

FOR FURTHER INFORMATION CONTACT: Becky Smith, Big Mountain Expansion Interdisciplinary Team Leader, or Bert Stout, District Ranger.

SUPPLEMENTARY INFORMATION: The proposed action includes construction of 447 acres of low intermediate, intermediate and advanced ski terrain, two T-bars, three chairlifts, warming/eating hut, snow making, reservoir, well, summit house expansion and access road to summit. Proposed development will raise the skier capacity from 6862 skiers at one time to 12,280 skiers at one time. Completion of the proposed development will occur over a long period of time in response to market demand and financial capabilities of Winter Sports, Inc. Proposed summer activities include construction of a mountain bike trail, horse trail, hiking trail, and paragliding.

These management activities would occur in an area encompassing approximately 3600 acres of National Forest Lands located in Management Area 20, as delineated in the Flathead National Forest Land and Resource Management Plan (Forest Plan), approved 1-22-86. Included in the area of analysis are all or portions of the following: Sections 19, 20, 29, 30, 31, and 32, T32N, R21W and in sections 14, 23, 24, 25, 26, 35, and 36, T32N, R22W, Principal Montana Meridian.

This EIS will tier to the Forest Plan which provided the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for this area. The Forest Plan allocates Management Area 20 as the Big Mountain Winter Sports Area (3,574 acres). Currently, about 3,036 acres are managed under a special use permit. The remainder of lands within Management Area 20 provides opportunities for Big Mountain expansion according to the Forest Plan.

The purpose and need for the proposed action are to:

(1) Consider approval of Winter Sports, Inc.'s updated Master Plan;

(2) Provide opportunity for year round economic viability by expanding summer recreation activities;

(3) Respond to ski area management and safety issues:

(a) Increase safety by expanding avalanche protection,

(b) Reduce skier congestion through expanding ski terrain, additional lifts and or management activities,

(c) Reduce numbers of lost skiers,

(d) Improve driving access to the summit by relocating a segment of road; and

The process used in preparing the Draft EIS will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives.
6. Determination of potential agencies and task assignments.

The agency has invited written comments and suggestions on the issues and management opportunities in the area being analyzed.

Issues identified from previous requests for comments on this proposal include but are not limited to:

(1) Threatened and Endangered Species, the grizzly bear and gray wolf;

(2) Water quality;

(3) Safety;

(4) Quality of life;

(5) Recreation opportunities.

A range of alternatives will be considered. One of these will be the "no-action" alternative, in which the ski area expansion or additional summer activities would not be implemented on National Forest Lands. Other alternatives will examine additional ski runs, lifts, trails, roads and summer activities in different locations and varied combinations to achieve the purpose of the proposed action.

The Forest will analyze and document the direct, indirect, and cumulative environmental effects of the alternatives. In addition, the EIS will disclose the analysis of site specific mitigation measures and their effectiveness.

Public participation is especially important at several points of the analysis. People may visit with Forest Service officials at any time during the analysis and prior to the decision. However, two periods of time are identified for the receipt of comments on the analysis. The two public comment periods are during the scoping process the first ended March 15, 1992 and the second review period will be the Draft EIS (March-April, 1993). The Forest Service has previously sent informational letters and news releases on this proposal to area newspapers, radio and television stations, organizations and interested citizens. An open house was held in November, 1991 to discuss issues and alternatives. At this time no additional public meetings will be held.

The Fish and Wildlife Service, Department of the Interior, will be informally consulted throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and if necessary, render a formal Biological Opinion of the effects on the Threatened and Endangered Species including grizzly bear and gray wolf. An FG–124 permit may need to be issued by the State of Montana Department of Fish, Wildlife and Parks Department before any construction in and around streams can take place. Revision of the existing ski area permit will need to be completed if the proposed activities are allowed.

The draft environmental impact statement (DEIS) is expected to be available for public review in March, 1993. After a 45-day public comment period, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by September, 1993. The Forest Service will respond to the comments received in the FEIS. The Flathead Forest Supervisor who is responsible official for this EIS will make a decision regarding this proposal considering the comments and response, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc*, v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: January 29, 1993.

Bert Stout,

District Ranger.

[FR Doc. 93–2737 Filed 2–4–93; 8:45 am]

BILLING CODE 3410-11-M

Advisory Council Meeting; Allegheny Wild and Scenic River; Allegheny National Forest, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Northern Advisory Council for the Allegheny Wild and Scenic River will meet at 7:00 PM, Wednesday, February 24, 1993, at the Harmony Township Community Center in West Hickory, PA.

The Southern Advisory Council for the Allegheny Wild and Scenic River will meet at 7:00 PM, Thursday, February 25, 1993, at the Inn at Franklin in Franklin, PA.

The purpose of the meetings is to review and discuss draft interim guidelines for management of the wild and scenic river corridor.

Meetings are open to the public. A sign language interpreter will be provided if requested by February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lionel Lemery, Wild and Scenic River Coordinator, Allegheny National Forest, 222 Liberty Street, Warren, Pennsylvania 16365, 814/723–5150 (voice).

Dated: February 1, 1993.

John E. Palmer,

Forest Supervisor.

[FR Doc. 93–2714 Filed 2–4–93; 8:45 am]

BILLING CODE 3410–11–M

Newberry National Volcanic Monument Advisory Council Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on February 25 at 7 a.m. at the American Legion Hall, La Pine, Oregon. The meeting will move to Paulina Lake Resort in the Monument that afternoon, and will continue at the resort through February 26. Agenda items to be covered include: issues and alternatives for management, public involvement, winter recreation needs and facilities, and desired future condition for the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE. 3rd., Bend, OR 97701, (503) 383–4702.

Dated: January 28, 1993.

Sally Collins,

Deputy Forest Supervisor.

[FR Doc. 93–2740 Filed 2–4–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process of Revoke Export Trade Certificate of Review No. 85–00005.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Opti-Copy, Inc. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Opti-Copy, Inc.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011–21) authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on November 26, 1984 to Opti-Copy, Inc.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (§§ 325.14 (a) and (b) of the Regulations). Failure to submit a complete annual report may be the basis for revocation. (§§ 325.10(a) and 325.14(c) of the Regulations].

An annual report was due from Opti-Copy, Inc. on January 10, 1992. No annual report was received. On February 10, 1992, the Department of Commerce contacted Opti-Copy, Inc. to remind it that the January 10, 1992 annual report was overdue, and an additional set of the annual report questions was sent by facsimile. On April 10, 1992, the Department of Commerce contacted Opti-Copy, Inc. again, and another set of the annual report questions was sent to it by facsimile. On November 10, 1992, the Department of Commerce contacted Opti-Copy, Inc. one more time to remind it that the Department still had not received its responses to the annual report questions.

On January 29, 1993, and in accordance with 325.10 (c)(2) of the Regulations, a letter was sent by certified mail to notify Opti-Copy, Inc. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, a certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions (§ 325.10(c)[3] of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (§ 325.190(c)[4] of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations).

Dated: January 29, 1993.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 93–2653 Filed 2–4–93; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing on an application for a permit for scientific research and to enhance the survival of an endangered species and extension of the comment period (P504B).

SUMMARY: On January 26, 1993, (58 FR 6116) NMFS announced the receipt of an application for scientific research and to enhance the survival of an endangered species from the U.S. Army Corps of Engineers (Corps), Walla Walla District. The applicant requests authorization to collect and transport juvenile Snake River sockeye salmon (*Oncorhynchus nerka*) and juvenile Snake River spring/summer and fall chinook salmon (*O. tshawytscha*) around mainstem dams and associated downstream reservoirs on the Snake and Columbia Rivers for the purpose of increasing their chances of survival over the alternative of in-river passage, given current in-river conditions. The Corps proposes to route the fish to raceways and then load them into trucks or barges for transportation and release below Bonneville Dam. Subsets of salmon collected for transportation and additional listed salmon will be used for smolt monitoring and research purposes. Collection and transportation of juvenile salmon is projected to occur March 25 through October 31 at Lower Granite, Little Goose, and Lower Monumental dams, and March 25 through December 31 at McNary Dam. The requested duration of the permit is March 25 through December 31, 1993.

NMFS has scheduled a public hearing on the application submitted by the Corps. Anyone wishing to make a presentation at the public hearing should register upon arrival and be prepared to provide a written copy of their testimony at the time of presentation. Depending on the number of persons wishing to speak, a time limit may be imposed.

DATES: The Public hearing is scheduled for February 25, 1993, from 6 p.m.—9:30 p.m., or until all comments have been heard, at the Federal Complex Auditorium, 911 Northeast 11th Ave, Portland, Oregon (1st floor—near entrance on 9th St.). The comment period on this application is extended to February 28, 1993, to allow commentors the opportunity to respond to concerns voiced at the public hearing.

ADDRESSES: Send written comments to Dr. Michael Tillman, Acting Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Office of Protected Resources. Karen Holtz, Environmental and Technical Services Division.

Dated: January 29, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources.

[FR Doc. 93–2712 Filed 2–4–93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Application for scientific research permit (P521).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Scientific Research Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing threatened and endangered fish and wildlife permits (50 CFR parts 217 and 222).

1. *Applicant:* James R. Spotila, Department of Bioscience and Biotechnology, College of Arts and Sciences, Drexel University, Philadelphia, PA. 19104.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Species:* Six Leatherback Sea Turtles, (*Dermochelys coriacea*).

4. *Type of Take:* The leatherback sea turtles will be captured incidentally by commercial fishermen using trapnets, also known as pound nets. Trapnets do not entangle the turtles but lead them into a net box by means of a leader and wings. The turtle is captured when the box is raised and is brought onboard the boat with a sling secured behind its front flippers in such a manner as to evenly distribute the turtle's weight and gently place it on deck. The turtle will be transported to the dock, experiments will be conducted, and the turtle will be released unharmed within 24 hours.

The applicant proposes to measure the tissue metabolic rates of the pectoral muscles, cloacal body temperatures, skin and muscle blood flow, and ventilation and respirator gas exchange, in an effort to determine the cellular, physiological and biophysical mechanisms that allow leatherback sea turtles to maintain body temperatures which are higher than their surrounding environment and to gain an understanding of this species metabolic rate, nutritional needs, and its energy levels.

5. *Location and Duration of Activity:* The applicant requests a permit for the period from June 1993 through June 1994. All of the research activities during this period will take place in the waters off New England and the mid-Atlantic states including Maryland, New Jersey, Rhode Island, and Massachusetts.

Written data or views, or requests for a public hearing on this application should be submitted to NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, MD 20910, (301/713–2289); and Director, NMFS Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Dated: January 29, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic And Atmospheric Administration.

[FR Doc. 93–2713 Filed 2–4–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service, NMFS, NOAA, Commerce.

ACTION: Issuance of scientific research permit (P254C).

On November 20, 1992, notice was published in the **Federal Register** (57 FR 54771) that an application had been filed by The Pacific Whale Foundation, Kealia Beach Plaza, 101 N. Kihei Road, suite 21, Kihei, Maui, HI 96753–8833, to approach, up to five times each, up to 1000 humpback whales (*Megaptera novaeangliae*) annually in Hawaiian waters over a five-year period during the course of photo-identification, observational, and acoustic recording studies, and aerial surveys for purposes of scientific research.

Notice is hereby given that on January 29, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a permit to the above applicants to harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the findings that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016; and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: January 29, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2706 Filed 2–4–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification to Scientific Research Permit No. 807 (P171C).

On December 18, 1992, notice was published in the **Federal Register** (57 FR 60173) of a correction to the notice previously published on November 20, 1992 (57 FR 54771). This was necessary in order to include information that had inadvertently been omitted, concerning an application that had been filed by Deborah A. Glockner-Ferrari and Mark J. Ferrari, Center for Whale Studies, 39 Woodvine Court, Covington, LA 70433–4724, for authorization to approach small cetaceans on an opportunistic basis during the conduct of scientific research on humpback whales (*Megaptera novaeangliae*).

Notice is hereby given that on January 29, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a modification to Permit No. 807 to the above applicants to inadvertently harass the species/numbers of marine mammals described above, subject to certain conditions set forth therein.

The permit, modification and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: January 29, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2707 Filed 2–4–93; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

AGENCY: National Technical Information Service, Technology Administration, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board will meet Monday, February 22, 1993, from 9 a.m. to 4:30 p.m. and on Tuesday, February 23, 1993, from 9 a.m. to 4 p.m. The NTIS Advisory Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The NTIS Advisory Board was established by statute (Pub. L. 100–519) on October 24, 1988, and received its charter on September 15, 1989.

AGENDA: The purpose of this meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include presentations on NTIS modernization, a review of fiscal data, an update on the proposed new facility, and a review of the progress with FedWorld.

DATES: The meeting will convene February 22, 1993, at 9 a.m. and will adjourn at 4 p.m. on February 23, 1993.

ADDRESSES: The meeting will be held in Room 1412, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Approximately 30 minutes each day at the end of the session will be set aside for oral comments or questions as indicated in the agenda. Seats will be available for the public and for the media. Seats will be available on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within 30 days from the address given below.

FOR FURTHER INFORMATION CONTACT: Barbara Hull, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: 703–487–4612; by fax 703–487–4093.

Dated: February 1, 1993.

Ronald E. Lawson,

Acting Director.

[FR Doc. 93–2685 Filed 2–4–93; 8:45 am]

BILLING CODE 3510–04–M

COMMISSION ON AGRICULTURAL WORKERS

Report Presentation

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of report presentation.

SUMMARY: This notice announces the scheduled presentation of the Commission on Agricultural Workers' report to Congress. The Commission was established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304.

On February 17, the Chairman of the Commission, Henry Voss, will present the Commission's report to Congress.

DATES: 10:30 a.m., February 17, 1993.

ADDRESSES: 2226 Rayburn House Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beth Bickley, Telephone: (202) 673–5348.

Dated: January 29, 1993.

Aaron Bodin,

Executive Director.

[FR Doc. 93–2757 Filed 2–4–93; 8:45 am]

BILLING CODE 6820–62–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a service and commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 8, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30 and December 18, 1992, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (57 FR 56569 and 60176) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and commodities, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the service and commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service and commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the service and commodities.

3. The action will result in authorizing small entities to furnish the service and commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service and commodities proposed for addition to the Procurement List.

Accordingly, the following service and commodities are hereby added to the Procurement List:

Commodities

Deployment Bag, Parachute
1670–01–235–0923

Drill, Twist
5133–00–988–5684
5133–00–988–5673
5133–00–988–5655
5133–00–065–0980
5133–00–065–0981
5133–00–051–5749

Service

Janitorial/Custodial
Andersonville National Historic Site
Route 1, Box 85
Andersonville, Georgia

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–2815 Filed 2–4–93; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 8, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48C) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and service to the Procurement List for production by the nonprofit agency listed:

Commodities

Congressional Record Microfiche 7690–00–NSH–0022
(Requirements for the U.S. Congress)
Nonprofit Agency: Alliance, Inc., Baltimore, Maryland

Gloves, Men's
8440–00–160–0770
8440–00–160–0874
8440–00–160–0875
(50% of the Government's Requirement)
Nonprofit Agency: Bi-County Services, Inc., Bluffton, Indiana

Service

Administrative Services
NASA, 4200 Complex
Marshall Space Flight Center, Alabama
Nonprofit Agency: Madison County Association for Retarded Citizens, Inc., Huntsville, Alabama

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–2816 Filed 2–4–93; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DIA Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of sub section (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

DATES: Tuesday and Wednesday, 9–10 February 1993 (9 a.m. to 5 p.m.).

ADDRESSES: The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. W.S. Williamson, Executive Secretary, DIA Scientific Advisory Board, Washington, DC 20340–1328 (202) 373–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(I), title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical intelligence matters.

Dated: February 2, 1993.

L.M. Bynum,
Alternate OSD Federal Register, Liaison Officer, Department of Defense.
[FR Doc. 93–2729 Filed 2–4–93; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

National Advisory Council on Educational Research and Improvement; Meeting

AGENCY: National Advisory Council on Educational Research and Improvement, Education.

ACTION: Full Council Meeting of the National Advisory Council on Educational Research and Improvement.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Educational Research and Improvement. This notice also describes the functions of the Council. Notice of this meeting is required section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 24, 1993, 9 a.m. to 5 p.m. Meeting will take place at the Houston Museum of Natural Science. Meeting site will be posted. February 25, 1993, 9:30 a.m. to 4:15 p.m. Meeting will convene at the Space Center Houston, Johnson Space Center. Meeting site will be posted. February 26, 1993, 8:30 a.m. Meeting will resume at the Doubletree Hotel at Post Oak and adjourn at approximately 3:30 p.m. Meeting site will be posted.

ADDRESSES: Houston Museum of Natural Science, One Herman Circle Drive, Houston, TX 77030–1799. Space Center Houston, Johnson Space Center, 1601 NASA Road 1 (One), Houston, TX 77058. Doubletree Hotel at Post Oak, 2001 Post Oak Boulevard, Houston, TX 77056.

FOR FURTHER INFORMATION CONTACT: Mary Grace Lucier, Executive Director, National Advisory Council on Educational Research and Improvement, 330 C Street, SW., Washington, DC 20202–7579, (202) 205–9004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Educational Research and Improvement is established under section 405 of the 1972 Education Amendments, Public Law 92–318, as amended by the Higher Education Amendments of 1986, Public Law 99–498, (20 U.S.C. 1221e). The Council is established to advise the President, the Secretary of Education and the Congress on policies and activities carried out by the Office of Educational Research and Improvement (OERI). The meeting of the Council is open to the public. The proposed agenda for February 24 includes presentations on reforms in science curricula in elementary and secondary education as developed by the Houston Museum of Natural Science, the Houston Independent School District, Rice University, Baylor College of Medicine, and the Challenger Center for Space Science Education.

On February 25, the meeting will focus on outreach programs and pre-college education programs of the NASA Johnson Space Center. On February 26, members will discuss curriculum and evaluation standards in school mathematics, and formulate research recommendations pertaining to Goal Four (First in the World in Science and Mathematics) of the National Education Goals. The final agenda will be available from the Council office on February 12.

Records are kept of all Council Proceedings and are available for public inspection at the Office of the National Advisory Council on Educational Research and Improvement, 330 C Street, SW., suite 4076, Washington, DC 20202–7579, from 9 a.m. to 5 p.m. Monday through Friday.

Dated: February 1, 1993.

Mary Grace Lucier,
Executive Director.
[FR Doc. 93–2703 Filed 2–4–93; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

San Francisco Field Office; Grant Award for Environmental Restoration Program for Technical Review and Services for Lawrence Livermore National Laboratory—Site 300; Noncompetitive Award

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b) the U.S. Department of Energy, San Francisco Field Office announces that it plans to make a noncompetitive

grant award for the technical review and services for the Environmental Restoration Program—Lawrence Livermore National Laboratory—Site 300. The term of the award will cover the period January 15, 1993 and end on September 30, 1993. The total grant award is $150,894.

ADDRESSES: U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, CA 94612.

FOR FURTHER INFORMATION CONTACT: Terrie Brown of the DOE San Francisco Field Office, Contracts Management Division, telephone (510) 273–4134.

SUPPLEMENTARY INFORMATION: The proposed grant award primarily supports the management and operation of the environmental restoration program at Lawrence Livermore National Laboratory—Site 300. The overall objectives and goals of the work are to perform timely technical reviews and substantive comments on reports and studies, identification and explanation of unique State requirements; field investigations and cleanup activities and support and assist DOE in conducting public participation activities.

Eligibility for this grant award is being limited to the State of California, Central Valley Regional Water Quality Control Board because LLNL—Site 300 is located in the State of California and the state has sole authority within its borders to perform the proposed review and services.

Issued in Oakland, CA, January 5, 1993.

Joan Macrusky,

Chief, ER/DP/EM Branch, Contracts Management Division.

[FR Doc. 93–2787 Filed 2–4–93; 8:45 am]

BILLING CODE 6450–01–M

Preparation of Nuclear Waste Management Plan Report; Request for Comments/Notice of Public Meeting

AGENCY: Department of Energy, Office of Civilian Radioactive Waste Management.

ACTION: Request for comments/Notice of public meeting.

SUMMARY: Pursuant to section 803 of the Energy Policy Act of 1992 (EPACT) (Pub. L. 102–486, Oct. 24, 1992) the Department of Energy (DOE) Office of Civilian Radioactive Waste Management (OCRWM) hereby requests the views and comments of the Nuclear Regulatory Commission (NRC), the Environmental Protection Agency (EPA), and other interested parties on whether current programs and plans for management of nuclear waste, as mandated by the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 *et seq.*) are adequate for management of any additional volumes or categories of nuclear waste that might be generated by any new nuclear power plants that might be constructed and licensed after the date of the enactment of EPACT. Views and comments received in accordance with the instructions given below will be used by OCRWM in the preparation of the Nuclear Waste Management Plan Report required under section 803 of EPACT. There will be a further request for comments and notice of public meeting following preparation of a draft Nuclear Waste Management Plan Report

To facilitate preparation of the required report and to present a forum for consultation with the NRC and the EPA and to allow members of the public an opportunity to provide information and comment, as required by EPACT, OCRWM gives notice of a public meeting to be held on the date and at the place indicated below.

DATES: Comments are to be submitted to OCRWM at the address below no later than April 6, 1993. The meeting will be held on February 17, 1993, beginning at 8:30 a.m., at the address given below.

ADDRESSES: Comments should be addressed to: Dwight E. Shelor, OCRWM, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

The public meeting will be held at Loews L'Enfant Plaza Hotel in the Monet Room at 480 L'Enfant Plaza SW., Washington, DC (202) 484–1000. Accessible by metro on the green, yellow, orange and blue lines

SUPPLEMENTARY INFORMATION: Section 803 of EPACT states that the Secretary shall prepare the report for submission to the President and the Congress within 1 year after the date of the enactment of EPACT. The report shall examine any new relevant issues related to management of spent nuclear fuel and high-level radioactive waste that might be raised by the addition of new nuclear-generated electric capacity, including anticipated increased volumes of spent nuclear fuel or high-level radioactive waste, any need for additional interim storage capacity prior to final disposal, transportation of additional volumes of waste, and any need for additional repositories for deep geologic disposal.

FOR FURTHER INFORMATION: For information on substantive matters, please contact Dwight E. Shelor of the Office of Civilian Radioactive Waste Management, at (202) 586–3623.

Lake Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93–2788 Filed 2–4–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before March 8, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-519.
3. 1902-0082.
4. Disposition of Facilities, Mergers, and Acquisitions of Securities.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for-profit.
9. 30 respondents.
10. 1 response per respondent.
11. 80 hours per response.
12. 2,400 hours.
13. The Federal Power Act requires that public utilities file for approval of dispositions of jurisdictional facilities; mergers of such facilities with other such facilities owned by other parties; or acquisitions of securities of other public utilities. Supporting data is required to determine if transactions are consistent with public interest.

Statutory Authority: Sec. 3506 (a) and (c)(1), Paperwork Reduction Act of 1980, as amended (Pub. L. 96-511), 44 U.S.C. 3506 (a) and (c)(1).

Issued in Washington, DC, January 28, 1993.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93-2789 Filed 2-4-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-330-000, et al.]

Lockhart Power Company, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Lockhart Power Company

[Docket No. ER93-330-000]

January 27, 1993.

Take notice that on January 15, 1993, Lockhart Power Company filed with the Commission an Electric Service Agreement—Lockhart Power Company with the City of Union, South Carolina. The Agreement supersedes two service agreements between Union and Lockhart, for which agreements notices of termination have been filed. The rates to be charged Union are those already on file under Lockhart's FERC Electric Tariff, Original Volume No. 1 (Resale Service—Municipalities). The only changes to be made in the service to be provided are an additional delivery point and a change in the notice period for termination. Lockhart requests that the Commission made the notices of termination and the Agreement effective as of January 21, 1993, and has requested waiver of the Commission's notice requirements for good cause shown. Lockhart states that copies of the filing have been served on Union and on the Public Service Commission of South Carolina.

Comment date: February 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Orange and Rockland, Inc.

[Docket No. ER93-328-000]

January 27, 1993.

Take notice that on January 14, 1993, Orange and Rockland, Inc. (O&R) tendered for filing a Consent Settlement Agreement between O&R and the FERC Litigation Staff.

Comment date: February 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Indiana & Michigan Municipal Distributors Association, City of Auburn, Indiana v. Indiana Michigan Power Company

[Docket Nos. EL88-1-004; ER88-31-003 and ER88-32-003; ER90-270-003 and ER90-271-004

January 27, 1993.

Take notice that on January 14, 1993, Indiana Michigan Power Company (I&M) tendered a modified compliance filing in the above-referenced dockets, in compliance with the Commission's December 22, 1992 Opinion and Order on Initial Decision. The modified compliance filing amends a prior compliance filing made by I&M on July 15, 1992 in order to reflect the elimination of section 5.10 of Rate Schedule No. 70 and section 266 of Rate Schedule No. 74.

Copies of the modified filing were served upon Richmond Power & Light, the Indiana Municipal Power Agency and the Indiana Utility Regulatory Commission.

Comment date: February 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania Power & Light Company

[Docket No. ER93-268-000]

January 27, 1993.

Take notice that on January 11, 1993, Pennsylvania Power & Light Company (PP&L) tendered for filing an amendment to its original filing filed in this docket on December 8, 1992.

Comment date: February 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Public Service Company

[Docket No. ER93-17-001]

January 27, 1993.

Take notice that on January 11, 1993, Maine Public Service Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 11, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Power & Light Company

[Docket No. ER93-159-000]

January 28, 1993.

Take notice that on January 19, 1993, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 16 or construction, relocation, operation, maintenance or ownership of facilities by Puget or Bonneville Power Administration (Bonneville). A copy of the filing was served upon Bonneville.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Iowa Electric Light and Power Company

[Docket No. ER93-262-000]

January 28, 1993.

Take notice that Iowa Electric Light and Power Company (Iowa Electric) on January 25, 1993, tendered for filing an Amendment to its December 7, 1992 filing in the above docket. The Amendment provides additional information relating to and justification for a change in the rates charged in Service Schedule C (Short Term Power) to the Interconnection Agreement between Iowa Electric and Central Illinois Public Service Company.

Copies of this filing have been sent to Central Illinois Public Service Company, the Iowa State Utilities Board, and the Illinois Commerce Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER93–331–000]

January 28, 1993.

Take notice that on January 19, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 112 for transmission service for New York State Electric & Gas Corporation (NYSEG). The Supplement is an executed letter agreement substantially similar to, and superseding, an unsigned letter agreement, Supplement No. 1 to the Rate Schedule. Con Edison has requested waiver of notice requirements so that the Supplement can be made effective as of January 1, 1988.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Kentucky Power Company

[Docket No. ER93–332–000]

January 28, 1993.

Take notice that on January 19, 1993, Kentucky Power Company tendered for filing a letter agreement between Kentucky Power and the City of Vanceburg, Kentucky which extends until March 1, 1993, the time for Vanceburg to enter into a service agreement for full-requirements service from Kentucky Power beginning January 1, 1994. Vanceburg agreed to purchase such service, beginning January 1, 1994, in a 1988 agreement with Kentucky Power accepted for filing by the Commission on July 20, 1988 in Docket No. ER88–408–000.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER93–228–000]

January 28, 1993.

Take notice that on January 14, 1993, Florida Power & Light Company (FPL) tendered for filing Supplemental Information to the Letter Agreement Regarding Construction and Reimbursement of Calusa-Lee No. 2 Line Terminal at Calusa between FPL and Lee County Electric Cooperative, Inc.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice

11. Puget Sound Power & Light Company

[Docket No. ER93–168–000]

January 28, 1993.

Take notice that on January 19, 1993, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 82 or construction, relocation, operation, maintenance or ownership of facilities by Puget or the United States Department of Navy (Navy). A copy of the filing was served upon the Navy.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Power & Light Company

[Docket No. ER93–171–000]

January 28, 1993.

Take notice that on January 19, 1993, Puget Sound Power & Light Company (Puget) tendered for filing information relating to construction, operation, maintenance, ownership or interconnection of facilities by Puget or Public Utility District No. 2 of the Grant County (District). A copy of the filing was served upon the District.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Power & Light Company

[Docket No. ER93–120–000]

January 28, 1993.

Take notice that on January 19, 1993, Puget Sound Power & Light Company (Puget) tendered for filing information relating to the Service Agreements Filed Under Western Systems Power Pool Agreement (Docket No. ER91–195–000).

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2809 Filed 2–4–93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10536–001; Washington]

Public Utility District No. 1 of Okanogan County; Availability of Environmental Assessment

February 1, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for license for the Enloe Dam Project, located near the town of Oroville on the Similkameen River, Okanogan County, Washington, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission's staff has analyzed the environmental impacts of the project and has concluded that relicensing the project would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2808 Filed 2–4–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93–03310T Texas–102]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 1, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Wilcox 1st Hinnant Formation underlying a portion of Jim Hogg County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area covers approximately 2,983.9 acres in Jim Hogg County and includes all or part of the following surveys:

Survey	Section	Acreage
H. Rodriguez, A–268	142	468.5
A.B. & M., A–26	143	80.0
San Felipe A.M. & I. Co., A–277	145	640.0
Wm. Key, A–200	269	1,084.7
Sam Honey, A–164	270	626.3
J.S. Williams, A–344	271	84.4

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox 1st Hinnant Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203, and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2811 Filed 2–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–03311T Texas–103]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 1, 1993.

Take notice that on January 21, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation, Lower 1st Reagan Sand underlying a portion of Bee County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area, lying within Railroad Commission District 2, includes portions of the Thomas Duty Survey A–21 and the Jose Maria Uranga Survey A–68.

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2812 Filed 2–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–167–000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP93–167–000]

Take notice that on January 21, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92–167–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a firm sale of natural gas to Avant Utilities Authority (Avant) in Osage County, Oklahoma, under WNG's blank certificate issued in Docket No. CP82–479–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon the sale in response to a request from Avant to terminate the sales agreement between WNG and Avant. It is stated that the sale was carried out under the terms of WNG's Rate Schedule F and was authorized by the Commission in Docket No. G–18991. It is explained that the peak day sales volume was 3,015 Dt equivalent. It is asserted that the sale is replaced by a firm transportation agreement, which went into effect January 1, 1993. It is further asserted that the transportation service utilizes the same facilities, and that no facilities are proposed for abandonment herein. It is stated that the proposed abandonment would have no impact on WNG's system or on its other customers.

Comment date: March 11, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP93–163–000]

January 25, 1993.

Take notice that on January 21, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP93–163–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a sales tap and appurtenant facilities under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon a farm tap described as the Montana-Dakota sales tap station 896+64, located on its Cabin Creek-Bismarck Transmission Line in Wibaux County, Montana. It is stated that Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., advised that service through the sales tap is no longer necessary, by consent statement dated December 10, 1992. Williston Basin states that the tap would be abandoned on its existing transmission right-of-way, and estimates the cost of removal would be $250.

Comment date: March 11, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Williams Natural Gas Company

[Docket No. CP93–168–000]

January 25, 1993.

Take notice that on January 21, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–168–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon sales service for Mannford Public Works Authority (Mannford) under its blanket certificate issued in Docket No. CP82–479–000, pursuant to section 7(b) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is indicated that Mannford by letter dated May 28, 1992, has requested that the July 1, 1988, sales service agreement with Williams be terminated as of January 1, 1993, to be replaced by a firm transportation service under Williams' Rate Schedule FTS. No abandonment of facilities is proposed.

Comment date: March 11, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. Williams Natural Gas Company

[Docket No. CP93–169–00]

January 25, 1993.

Take notice that on January 21, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92–169–000 a request pursuant to § 157.205 of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a firm sale of natural gas to the Town of Burlington (Burlington) in Alfalfa County, Oklahoma, under WNG's blanket certificate issued in Docket No. CP82–479–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG proposes to abandon the sale in response to a request from Burlington to terminate the sales agreement between Burlington and WNG. It is stated that the sale was carried out under the terms of WNG's Rate Schedule F and was authorized by the Commission in Docket No., CP63–51. It is explained that the peak day sales volume was 1,346 Dt equivalent. It is asserted that the sale is replaced by a firm transportation agreement, which went into effect January 1, 1993, as reported in Docket No. ST92–993. It is further asserted that the transportation service utilizes the same facilities, and that no facilities are proposed for abandonment herein. It is stated that the proposed abandonment would have no impact on WNG's system or on its other customers.

Comment date: March 11, 1993, in accordance with Standard Paragraph G at the end of this notice.

5. Florida Gas Transmission Company

[Docket No. CP93–165–000]

January 26, 1993.

Take notice that on January 21, 1993, Florida Gas Transmission Company, (FGT), 1400 Smith Street, Houston, Texas 77002, filed an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an interruptible transportation service for Southern Natural Gas Company (SNG), under Rate Schedule X–15, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that SNG, by letter dated December 20, 1991, requested termination of the relative agreement because the transportation service is no longer needed. FGT also indicates that the proposed abandonment will not result in the abandonment of facilities nor will it result in the abandonment of service to any other customers of FGT.

Comment date: February 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

6. Transwestern Pipeline Company

[Docket No. CP93–166–000]

January 26, 1993.

Take notice that on January 21, 1993, Transwestern Pipeline Company, (Transwestern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP93–166–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon a direct interruptible sale of natural gas to Climax Chemical Company (Climax) in Lea County, New Mexico, under Transwestern's blanket certificate issued in Docket No. CP82–534–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transwestern states that, by order issued June 15, 1962, in Docket No. CP62–185, it was authorized to make direct interruptible sales of up to 2,000 Mcf of natural gas per day to Climax from its Monument Lateral in Lea County, New Mexico, pursuant to an interruptible sales agreement dated January 24, 1962.

Transwestern further states that, by order dated December 17, 1992, the United States Bankruptcy Court for the District of New Mexico approved an agreement between Transwestern and Climax for rejection of the gas sales agreement and termination of the automatic stay and authorized Transwestern to initiate abandonment proceedings.

Transwestern does not propose to abandon the related facilities, it is stated.

Comment date: March 12, 1993, in accordance with Standard Paragraph G at the end of this notice.

7. Colorado Interstate Gas Company

[Docket No. CP93–171–000]

January 27, 1993.

Take notice that on January 22, 1993, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–171–000 a request pursuant to § 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Policy Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a new meter station pursuant to CIG's blanket certificate issued in Docket No. CP83–21–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to construct and operate the Fort Morgan SW Meter Station located in Morgan County, Colorado. CIG states that the meter station will be constructed pursuant to a request by the City of Fort Morgan dated August 12, 1992. It is also stated that the Fort Morgan SW Meter Station is not proposed to increase total peak day or firm volumes delivered to the City of Fort Morgan and the meter station will be designed with a maximum capacity of 4,000 Mcf per day.

Comment date: March 15, 1993, in accordance with Standard Paragraph G at the end of this notice.

8. Colorado Interstate Gas Company

[Docket No. CP93–162–000]

January 28, 1993.

Take notice that on January 15, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–162–000, a request pursuant to section 7(b) of the Natural Gas Act and section 157 of the Commission's Regulations for permission and approval to abandon two compressor units at the Spindle Compressor Station (Spindle) located in Weld County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that the two 600-horsepower units certificated in 1979 have been determined to be in excess for the volumes being produced in the Spindle area of Colorado, and the remaining 1,096 horsepower of compression is sufficient to compress the Spindle volumes.

Comment date: February 18, 1993, in accordance with Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP93–172–000]

January 28, 1993.

Take notice that on January 22, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–172–000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon the sale of gas for resale to the Town of Freedom, Oklahoma (Freedom) in Woods County, Oklahoma, under Williams' blanket certificate authorization issued in Docket No. CP82–479–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williams sold gas to Freedom under a sales agreement designated as Rate Schedule F. However, Freedom has requested cancellation of the firm sales agreement, effective January 1, 1993, or as soon thereafter, because the service is no longer needed, as stated by Williams. Williams contends that Freedom has a firm transportation agreement in place, effective January 1, 1993, which would take the place of the resale sales agreement.

No abandonment of facilities is requested in this proposal, as Williams indicates the facilities will remain in place and be available for the delivery of transportation gas.

Comment date: March 15, 1993, in accordance with Standard Paragraph G at the end of this notice.

10. CNG Transmission Corporation

[Docket No. CP93–175–000]

January 28, 1993.

Take notice that on January 25, 1993, CNG Transmission Corporation (CNGT), 445 West Main Street, Clarksburg, West Virginia 26302–2450, filed in Docket No. CP93–175–000 a request pursuant to §§ 157.205, 157.211(a) and 157.216(b) of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain sales and transportation taps and associated gas supply facilities, related rights-of-way and all other associated equipment, pipe and appliances connected therewith to Ardent Resources, Inc. (Ardent Resources), under its blanket certificate issued in Docket No. CP82–537–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNGT states that the facilities it proposes to abandon are located in Erie, Seneca, Cayuaga, Livingston, Madison and Chatauqua Counties, New York, and in Potter and Tioga Counties, Pennsylvania. CNGT indicates that these facilities service wells under expired CNGT gas purchase contracts and company production, and that the gas related to these facilities has been removed from jurisdiction under the Natural Gas Act by virtue of the Wellhead Decontrol Act of 1989.

CNGT states that it currently makes sales to North Penn Gas Company (North Penn) and New York State Electric and Gas Corporation (NYSEG) through facilities CNGT proposes to abandon herein. According to CNGT, North Penn and NYSEG have agreed to the discontinuance of service by CNGT.

Comment date: March 15, 1993, in accordance with Standard Paragraph G at the end of this notice.

11. Williams Natural Gas Company

[Docket No. CP93–178–000]

January 28, 1993.

Take notice that on January 25, 1993, Williams Natural Gas Company (WNG), P. O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–178–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the sale of gas for resale to Wakita Utilities Authority (Wakita) under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that Wakita has requested cancellation of their firm sales agreement under WNG's Rate Schedule F. An existing firm transportation agreement will remain in effect. The facilities would be left in place for the delivery of transportation gas.

Comment date: March 15, 1993, in accordance with Standard Paragraph G at the end of this notice.

12. Williston Basin Interstate Pipeline Company

[Docket No. CP93–176–000]

January 28, 1993.

Take notice that on January 25, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, suite 300, Mismarck, North Dakota 58501, filed in Docket No. CP93–176–000 a request pursuant to § 157.205 of the Commission's Regulations to construct and operate a metering station for an interruptible transportation service for Duncan Energy Company (Duncan) in Billings County, North Dakota under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate a metering station and appurtenant facilities on an existing right-of-way for the delivery of up to 225 Mcf per day of natural gas, on an interruptible basis, for use in oil field operations by Duncan in the Fryburg Field, Billings County, North Dakota at an estimated cost of $9,055, which would be reimbursed by Duncan. Williston Basin states that the transportation service would be provided under its Rate Schedule IT–1 and would have no significant effect on its peak day and annual requirements.

Comment date: March 15, 1993, in accordance with Standard Paragraph G at the end of this notice.

13. Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation

[Docket No. CP93–170–000]

January 28, 1993.

Take notice that on January 22, 1993, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642 and Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP93–170–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation and exchange service provided pursuant to Texas Eastern's Rate Schedule X–123 and TGPL's Rate Schedule X–202, effective July 1, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that by order issued May 23, 1979 (May 23, 1979 Order) in Docket No. CP79–79, TGPL was authorized to transport up to 17,400 Mcf of natural gas per day on a firm basis for Texas Eastern. It is further stated that the gas is transported through a segment of TGPL's system extending from Vermilion Block 331, offshore Louisiana, to South Marsh Island Block 66, offshore Louisiana. At South Marsh Island Block 66 the gas is considered to be exchanged with TGPL's gas which is delivered to Texas Eastern's offshore system at a point in Main Pass Area Block 7, offshore Louisiana.

Texas Eastern and TGPL state that the May 23, 1979 Order was amended by order issued June 22, 1984, in Docket No. CP79–79–002, authorizing the transportation and exchange of gas from an additional delivery point in Breton Sound Block 54, offshore Louisiana, where TGPL would deliver gas to Texas Eastern. It is stated that the source of supply for the gas delivered to the Breton Sound Block 54 delivery point was a commitment to TGPL of reserves in Breton Sound Blocks 54 and 55.

No facilities are proposed to be abandoned herein.

Comment date: February 18, 1993, in accordance with Standard paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2810 Filed 2–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–229–000 and RP89–137–000, et al.]

Northwest Pipeline Corp.; Notice of Settlement Conference

February 1, 1993.

Pursuant to the Commission's order issued October 29, 1992 (61 FERC ¶61,126), an informal conference will be held to explore settlement of issues raised in Docket No. RP92–229–000. This is a continuation of the conferences held January 14 and 28, 1993. The conference may also involve discussion of issues in Northwest Pipeline Corporation Docket No. RP89–137–000, *et al. (See,* order issued September 24, 1992, 60 FERC ¶61,286). All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Wednesday, February 10, 1993, beginning at 9 a.m. in room 2402–A of the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2813 Filed 2–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA91–1–17–000, TA91–1–17–003, TA91–1–17–005, and TM91–2–17–002]

Texas Eastern Transmission Corp.; Notice of Informal Technical Conference

February 1, 1993.

Pursuant to the Commission's order issued on October 22, 1992, an informal technical conference will be held to explore settlement of the issues raised in the above-captioned proceedings. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference will be held on Tuesday, February 9, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2814 Filed 2–4–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of January 8 Through January 15, 1993

During the week of January 8 through January 15, 1993, the appeals and applications for exception or other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 1, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 8 through January 15, 1993]

Date	Name and location of applicant	Case No.	Type of submission
1/8/93	Gulf/Hawthorne Gulf, Atlantic Beach, FL	RR300–222	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 8, 1992 Dismissal Letter (Case No. RF300–16679) issued to Hawthorne Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 8 through January 15, 1993]

Date	Name and location of applicant	Case No.	Type of submission
1/11/93	Citizen's Action Committee, Piketon, OH	LFA–0262	Appeal of an information request denial. If granted: The December 17, 1992 Freedom of Information Request Denial issued by the Oak Ridge Field Office would be rescinded and the Citizen's Action Committee would receive access to certain DOE information concerning shipments of contaminated waste from Cincinnati's Fernald Plant and Miamisburg Mound Facility to the DOE Plant, Piketon, Ohio.
1/11/93	J. Garlin Commercial Furnishings, Denver, CO	LFA–0263	Appeal of an information request denial. If granted: The December 17, 1992 Freedom of Information Request Denial issued by Rocky Flats Office would be rescinded and J. Garlin Commercial Furnishings would receive access to certain information involving EG&G Rocky Flats Plant Purchase Order No. 226086TB.
1/11/93	Marlene R. Flor, Albuquerque, NM	LFA–0261	Appeal of an information request denial. If granted: The December 3, 1992 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Marlene R. Flor would receive access to her personnel security file.
1/11/93	Harbert Corporation, Birmingham, AL	LFA–0264	Appeal of an information request denial. If granted: The December 7, 1992 Freedom of Information Request Denial issued by the Office of Placement and Administration would be rescinded and Harbert Corporation would receive access to documents related to the Agrifuels Project.
1/12/93	Gulf/Goofys Gulf, Woodbridge, VA	RR300–223	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 8, 1992 Dismissal Letter (Case No. RF300–16694) issued to Goofys Gulf would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
9/10/91	Rushco Shell	RF315–10275
2/14/92	Benoit Distributing	RF321–19555
1/8/93 thru 1/15/93	Atlantic Richfield applications received	RF304–13509 thru RF304–13533
1/8/93 thru 1/15/93	Gulf Oil refund applications received	RF300–20823 thru RF300–20848
1/8/93 thru 1/15/93	Crude Oil refund applications received	RF272–94037 thru RF272–94051
1/11/93	Monk Brothers, Inc	RF321–19552
1/11/93	Joe's Texaco	RF321–19553
1/11/93	Finley & Sons Texaco	RF321–19554
1/11/93	Bay Pine Marina	RF309–1428
1/11/93	Gordon Olson Clark Super 10	RF342–314
1/14/93	Hydratane Gas Company, Inc	RF321–19556
1/14/93	Park Texaco Car Wash & Tire	RF321–19557

[FR Doc. 93–2790 Filed 2–4–93; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings, and Appeals During the Week of January 15 Through January 22, 1993

During the week of January 15 through January 22, 1993, the appeals and applications for exception or other relief listed in the Appendix to this notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 1, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of January 15 through January 22, 1993]

Date	Name and location of applicant	Case No.	Type of submission
1/19/93	Milton L. Loeb, Albuquerque, NM	LFA–0265	Appeal of an information request denial. If granted: The December 1, 1992 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Milton L. Loeb would receive access to a complete response to requested information pertaining to Contract No. DE–AC04–90AL57502.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of January 15 through January 22, 1993]

Date	Name and location of applicant	Case No.	Type of submission
1/19/93	Arco/Swann Oil, Inc., Memphis, TN	RR304-54	Request for modification/rescission in the Arco refund proceeding. If granted: The April 9, 1991 Decision and Order (Case No. RF304-11451) issued to Swann Oil, Inc. would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
1/21/93	Gulf/Pangles Store, Woodbridge, VA	RR300-224	Request for modification/rescission in the Gulf refund proceeding. If granted: The December 8, 1992 Dismissal Letter (RF300-18636) issued to Pangles Store would be modified regarding the firms' application for refund submitted in the Gulf refund proceeding.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
1/15/93 thru 1/22/93	Gulf Oil refund applications received	RF300-20849 thru RF300-20854
1/15/93 thru 1/22/93	Texaco Oil refund applications received	RF321-19558 thru RF321-19586
1/19/93	Industrial Fuel & Asphalt Corp.	RF304-13534
1/21/93	Central Petroleum Company	RF272-94052
1/21/93	Waldenn Oil Company	RF304-13535
1/21/93	Thor Lieungh	RF304-13536
1/22/93	Dejong Service	RF272-94053
1/22/93	Buckeye Countrymark, Inc.	RF272-94054

[FR Doc. 93-2791 Filed 2-4-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4591-7]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intended transfer of confidential business information to contractors.

SUMMARY: EPA intends to transfer confidential business information (CBI) collected from the pulp, paper and paperboard manufacturing industry to two contractors. Transfer of the information will allow the contractors to assist EPA in developing regulations under the Clean Water Act and the Clean Air Act for the pulp, paper, and paperboard manufacturing industry. The information being transferred was collected under authority of section 308 of the Clean Water Act, section 114 of the Clean Air Act, and section 3007 of the Resource Conservation and Recovery Act. Interested persons may submit comments on this intended transfer of information to the address shown below.

DATES: Comments on the transfer of data are due February 16, 1993.

ADDRESSES: Comments may be sent to Marion Thompson, Engineering and Analysis Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marion Thompson, Engineering and Analysis Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-7117.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to a subcontractor, Eastern Research Group of Arlington, Massachusetts, information, including confidential business information (CBI), concerning the pulp, paper, and paperboard industry. The information was collected under authority of section 308 of the Clean Water Act, section 114 of the Clean Air Act, and section 3007 of the Resource Conversation and Recovery Act.

The information transferred includes questionnaire data requested by EPA in 1990 and provided in 1990, 1991, and 1992. The transferred data includes economic and financial information about the companies that EPA will analyze during development of revised regulations. EPA collected information on assets, liabilities, revenues, and expenses. EPA also collected information about individual product categories, including production quantities, shipments, and values. Many companies claimed that their responses should be considered confidential business information. EPA determined that this transfer was necessary to enable the subcontractor to perform their work under EPA Contract No. 68-C8-0084 by assisting EPA in developing economic impact analyses that support effluent limitations guidelines and standards and maximum achievable control technology standards for the pulp, paper, and paperboard industry. Notice to this effect was provided to the affected companies. This contract is scheduled to expire in the next few months.

Today, EPA is giving notice that it has entered into an additional contract, No. 68-C0-0080, with Abt Associates, Inc. of Cambridge, Massachusetts and Abt Associates has entered into an additional contract with its subcontractor, Eastern Research Group, to assist EPA in developing economic impact analysis. Abt Associates and Eastern Research Group will provide support for economic analysis and for questionnaire data analysis. EPA intends to maintain Eastern Research Group's access to information, including CBI, that has already been transferred. EPA also intends to transfer to Eastern Research Group information to be collected in the future to support the economic analysis for the regulations of the pulp, paper, and paperboard industry. Further, to the extent that Abt Associates must review information to perform their work as prime contractor, EPA intends to transfer information, including CBI, to Abt Associates.

In accordance with 40 CFR part 2, subpart B, the previously collected information and information that may be collected in the future to support development of regulations for the pulp, paper, and paperboard industry will be transferred to Abt Associates and its subcontractor, Eastern Research Group (if not already transferred for use by Eastern Research Group under the previous contract). The contractor and subcontractor are given access only to the data that they need to perform their assignments under their contracts. EPA has determined that this transfer is necessary to enable the contractor and subcontractor to perform their work under EPA Contract No. 68–C0–0080 and the subcontract.

Dated: January 29, 1993.

James Hanlon,

Acting Director,

[FR Doc. 93–2781 Filed 2–4–93; 8:45 am]

BILLING CODE 6560-01-M

[ER–FRL–4591–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 18, 1993 through January 22, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-BLM-K02007-CA

Rating EC2, Hollister Oil and Gas Leasing, Land and Resource Management Plan Amendment, Implementation and Applications for Permits to Drill, Bakersfield District, Monterey, San Benito, Fresno, Madera and Merced Counties, CA.

Summary: EPA expressed environmental concerns with potential impacts to air quality, wildlife habitat, and threatened and endangered species including plant species. EPA requested that the Final EIS provide additional information on impacts to floodplains and wetlands, including section 404 of the Clean Water Act, and threatened and endangered species. EPA also asked that the FEIS address how the project will meet the conformity requirements of section 176 of the Clean Air Act.

ERP No. D-FHW-E50289-SC

Rating EC2, Cooper River Bridges Replacement Project, Grace Memorial/ Silas N. Pearman Bridges on US 17 over Cooper River and Town Creek, Funding, COE Section 10/404 Permits and CGD Permit, Charleston County, SC.

Summary: EPA found that additional information on wetland impacts and mitigation are needed to adequately evaluate project impacts to aquatic resources.

ERP No. D-SCS-J36044-ND

Rating EC2, Belfield Watershed Protection and Flood Prevention Plan, Funding and section 404 Permit, City of Belfield, Billings and Stark Counties, ND.

Summary: EPA had environmental concerns with the proposed project. Environmental impacts to aquatic resources were identified.

ERP No. D-SCS-J36045-WY

Rating EC2, Allison Draw Watershed Protection and Flood Control Plan, Implementation, Funding, section 404 Permit and Right-of-Way, Laramie County, WY.

Summary: EPA had environmental concerns with the proposed project. These concerns were for impacts to water quality and the lack of adequate analysis regarding reasonable alternatives.

Final EISs

ERP No. F-BOP-G81006-AR

Forrest City Federal Correctional Complex (FCC), Construction and Operation, St. Francis County, AR.

Summary: EPA had no objections to this project.

ERP No. F-NOA-A91058-00

Atlantic Ocean Sharks Fishery Management Plan (FMP), Implementation, Possible NPDES, COE and Coast Guard Permits, Exclusive Economic Zone (EEZ) the Gulf of Mexico, Atlantic Ocean and the Caribbean Sea.

Summary: EPA found that the FEIS addressed concerns with finning and over fishing in the U.S. EEZ. EPA encouraged treaties with foreign nations to conserve shark resources.

ERP No. F-UAF-H11002-MO

B–2 Advanced Technology Bomber, A/OA–10 Thunderbolt and T–38 Talon Jet Trainer Aircrafts Basing at Whiteman Airforce Base, Implementation, Johnson County, MO.

Summary: EPA had no objections to the proposed action.

ERP No. FS-UMC-E11019-NC

Cherry 1 Military Operating Areas (MOA), Craven, Beaufort, Hyde, Pamlico and Washington Counties and Core MOA, North Carolina Outer Banks/Cape Lookout National Seashore Establishments, Additional Mitigation Alternatives and Regional Cumulative Effects Analysis, NC.

Summary: EPA noted that the noise issues associated with the projects continue to be a matter of contention among the involved parties, and remain unresolved.

Dated: February 2, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–2822 Filed 2–4–93; 8:45 am]

BILLING CODE 6560-50-U

[ER–FRL–4591–5]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements, filed January 25, 1993 through January 29, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930022, FINAL EIS, NOA, DE, Delaware National Estuarine Research Reserve Management Plan, St. Jones River and Blackbird Creek Designation Sites, Implementation and Funding, Kent and New Castle Counties, DE, Due: March 8, 1993, Contact: R. Randall Schneider (202) 606–4122.

EIS No. 930023, FINAL SUPPLEMENT, USN, CA, P–202 Naval Air Station Alameda and P–882 Naval Supply Center Oakland Dredging Projects, Additional Information, Site Designation, Implementation and Section 404 Permit, Alameda and Oakland Cities, San Francisco Bay, CA, Due: March 8, 1993, Contact: John Kennedy (415) 244–3713.

EIS No. 930024, FINAL EIS, SFW, CA, Tijuana Estuary Tidal Restoration Project, Implementation, Tijuana River National Estuarine Research Reserve, section 10 and 404 Permits and Special Use Permit, San Diego County, CA, Due: March 8, 1993, Contact: Mari Hoffmann-Nelson (619) 575–1290.

EIS No. 930025, DRAFT EIS, AFS, MT, Little Snowies Vegetative Management and Public Access, Fire and Timber Management Practices, Lewis and Clark National Forest, Musselshell Ranger District, City of Harlowton, Fergus and Golden Valley Counties, MT, Due: March 22, 1993, Contact: Dave Wanderaas (406) 632–4391.

EIS No. 930026, FINAL EIS, AFS, VA, WV, George Washington National Forest Land and Resource Management Plan and Alleghany Front Lease Area Oil and Natural Gas Leasing, several counties, WV and VA, Due: March 8, 1993, Contact: George W. Kelly (703) 433–2491.

EIS No. 930027, FINAL EIS, BLM, OR, Lower Deschutes Wild and Scenic River Management Plan, Implementation, Addresses Alternatives for Access to Public Lands Upstream from the Deschutes Club Locked Gate, Wasco County, OR, Due: March 8, 1993, Contact: Jim Kenna (503) 447–4115.

EIS No. 930028, DRAFT EIS, AFS, CA, 1992 Cleveland Watershed Fire Recovery Project, EL Dorado National Forest, South Fork American River, EL Dorado, Alpine and Amador Counties, CA, Due: April 1, 1993, Contact: Duane Nelson (916) 644–2324.

EIS No. 930029, FINAL EIS, EPA, VA, Norfolk Offshore Ocean Dredged Material Disposal Site, Designation, Norfolk, VA, Due: March 8, 1993, Contact: William Muir (215) 597–2541.

Amended Notices

EIS No. 920492, DRAFT EIS, FRC, LA, MS, West-East Cross Interstate Natural Gas Pipeline Project, Construction and Operation, section 10 and 404 Permits, NPDES Permit and Right-of-Way Grant, several Parishes, LA and several counties, MS, Due: March 2, 1993, Contact: Laura Turner (202) 208–0916.

Published FR 12–18–92—Review period extended.

EIS No. 920499, DRAFT EIS, AFS, UT, Chevron Table Top Project Exploratory Oil and Gas Wells Drilling, Leasing and Permit, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Due: February 19, 1993, Contact: Bernard Asay (307) 789–3194.

Published FR 12–18–92—Review period extended.

EIS No. 930011, FINAL EIS, AFS, UT, CO, Manti-La Sal National Forest Oil and Gas Leasing, Implementation, Sanpete, Utah, Juab, Sevier, Emery, Carbon, Grand and San Juan Counties, UT and Montrose and Mesa Counties, CO, Due: February 28, 1993, Contact: Carter E. Reed (801) 637–2817.

Published FR 01–22–93—Title Correction.

Dated: February 2, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–2823 Filed 2–4–93; 8:45 am]

BILLING CODE 6560-50-U

[FRL–4591–3]

Old Springfield Landfill Superfund Site, Springfield, VT; Proposed Administrative Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act; As Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice; Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a *de minimis* administrative settlement to resolve claims for recovery of costs incurred at the Old Springfield Landfill Superfund Site in Springfield Vermont, under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the past and potential future administrative and civil cost recovery liability of a *de minimis* landowner. The settlement requires the landowner to provide access to the EPA for the purposes of monitoring and remedial action.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA's response to any comments received will be available for public inspection at the Springfield Town Library, Springfield, Vermont, and at the EPA Records Center at 90 Canal Street, Boston, Massachusetts.

DATES: Comments must be provided on or before March 8, 1993.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Records Center at 90 Canal Street, Boston, Massachusetts, and the Springfield Town Library, Springfield, Vermont. A copy of the proposed settlement may be obtained from Diane Nye, U.S. Environmental Protection Agency, Region I, Office of Regional Counsel, Mailcode: RCV, JFK Federal Building, Boston, Massachusetts 02203–2211. Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building—RCG, Boston, Massachusetts 02203, and should refer to: "In the Matter of the Old Springfield Landfill Superfund Site, Springfield, Vermont," U.S. EPA Docket No. I–92–1111, for which comments are being submitted.

FOR FURTHER INFORMATION CONTACT: Diane Nye, U.S. Environmental Protection Agency, Region I, Office of Regional Counsel, RCV, J.F.K. Federal Building, Boston, Massachusetts 02203, (617) 565–3441.

NOTICE OF ADMINISTRATIVE SETTLEMENT: In accordance with section 122(i)(1) of CERCLA, 42 U.S.C. section 9622(i)(1), notice is hereby given of a proposed *de minimis* administrative settlement concerning the Old Springfield Landfill, Superfund Site. This settlement is made and entered into pursuant to the authority vested in the President of the United States by section 122(g) of CERCLA, 42 U.S.C. section 9622(g), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, 100 Stat. 1613, 122(g) (1986), delegated to the Administrator of the United States Environmental Protection Agency on January 23, 1987 by Executive Order 12580, 52 FR 2923 and further delegated to the Regional Administrator by Delegation 14–14–E, September 13, 1987. The U.S. Department of Justice approved this settlement in writing on December 11, 1992. "In the Matter of The Old Springfield Landfill Superfund Site, Springfield, Vermont," U.S. EPA Docket No. I–92–1111: Under this settlement, the settling party listed below, who is an owner of the facility, will provide access to parcels 3, 4, and 5 of his property. The Settling Party is Mr. Harold Millay.

Dated: January 21, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–2784 Filed 2–4–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program; October 1, 1992–December 31, 1992

Summary Report

Total Number of Sponsored Events: 18
Total Number of Sponsoring Organizations: 16
Total Number of Different Commissioners/Employees Attending: 20
Total Amount of Reimbursement Expected:

Transportation	$8,350.57
Subsistence	5,628.41
Other Expenses	1,072.27
Total	15,051.25

Individual Event Report

Sponsoring Organization:
United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006
Date of the Event:
October 1, 1992
Description of the Event:
USTA Seminar, San Diego, California
Commissioners Attending:
Andrew C. Barrett
Other Employees Attending:
None
Amount of Reimbursement:

Transportation	$.00

Subsistence	16.00
Other Expenses	26.00
Total	42.00

Sponsoring Organization:
Association of American Railroads, Operations & Maintenance Dept., Communications and Signal Division, 50 F Street, NW., Washington, DC 20001
Date of the Event:
October 28–30, 1992
Description of the Event:
Annual Technical Conference of Communication and Signal Division, Montreal, Quebec, Canada
Commissioners Attending:
None
Other Employees Attending:
Ralph A. Haller—Chief, Private Radio Bureau
Amount of Reimbursement:

Transportation	$285.32
Subsistence	189.57
Other Expenses	27.42
Total	502.31

Sponsoring Organization:
Arizona Broadcasting Association, 3101 North Central Avenue, Suite 560, Phoenix, Arizona 85012
Date of the Event:
November 5—6, 1992
Description of the Event:
40th Annual State Convention, Tucson, Arizona
Commissioners Attending:
None
Other Employees Attending:
Charles W. Kelley—Chief, Enforcement Division, Mass Media Bureau
Amount of Reimbursement:

Transportation	$518.00
Subsistence	185.00
Other Expenses	.00
Total	703.00

Sponsoring Organization:
American Mobile Telecommunications Association, 1835 K Street, NW., Suite 203, Washington, DC 20006
Date of the Event:
October 12—13, 1992
Description of the Event:
SMR/Private Carrier Management Conference, San Diego, California
Commissioners Attending:
None
Other Employees Attending:
Ralph Haller—Chief, Private Radio Bureau
Amount of Reimbursement:

Transportation	$413.00
Subsistence	296.50
Other Expenses	.00
Total	709.50

Sponsoring Organization:
AT&T, 1120 20th Street, NW., Suite 1000, Washington, DC 20036
Date of the Event:
December 16—17, 1992
Description of the Event:
"A Global Business Symposium", Morristown, New Jersey
Commissioners Attending:
None
Other Employees Attending:
Kathleen Abernathy—Legal Advisor to Commissioner Marshall
Diane Cornell—Attorney Advisor for Common Carrier Bureau
Linda Oliver—Legal Advisor to Commissioner Duggan
Amount of Reimbursement:

Transportation	$660.00
Subsistence	346.10
Other Expenses	58.02
Total	1,064.12

Sponsoring Organization:
California Cable Television Association, 4341 Piedmont Avenue, P.O. Box 11080, Oakland, California 94611
Date of the Event:
December 2—4, 1992
Description of the Event:
Western Cable Show, Anaheim, California
Commissioners Attending:
None
Other Employees Attending:
Robert L. Corn-Revere—Legal Advisor to Commissioner James H. Quello
Ellen J. Schned—Attorney Advisor, Office of Legislative Affairs
Linda Townsend Solheim—Director, Legislative Affairs
Alexandra Wilson—Attorney Advisor, Office of the Chairman
Amount of Reimbursement:

Transportation	$1,906.00
Subsistence	1,782.82
Other Expenses	312.30
Total	4,001.12

Sponsoring Organization:
Financial Times, 102–108 Clerkenwell Road, London ECIM 5SA
Date of the Event:
December 1—2, 1992
Description of the Event:
Conference on "World Communications", London, England
Commissioners Attending:
None
Other Employees Attending:
Terry Haines—Chief of Staff, for the Chairman
Amount of Reimbursement:

Transportation	$.00
Subsistence	721.25
Other Expenses	.00
Total	721.25

Sponsoring Organization:
Forest Industries Telecommunications, 871 Country Club Road, Suite A, Eugene, Oregon 97401
Date of the Event:
October 10, 1992
Description of the Event:
Annual Membership Social and Luncheon, Clayton, Missouri
Commissioners Attending:
None
Other Employees Attending:
W. Riley Hollingsworth—Deputy Chief, Licensing Division, Private Radio Bureau
Amount of Reimbursement:

Transportation	$343.00
Subsistence	114.50
Other Expenses	67.34
Total	524.84

Sponsoring Organization:
IEEE, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855
Date of the Event:
November 19–20, 1992
Description of the Event:
Methods of Measurement of Radio-Noise Emissions from Low Voltage Equipment, Sunnyvale, California
Commissioners Attending:
None
Other Employees Attending:
Leslie A. Wall—Chief, Sampling and Measurements Branch, Office of Engineering and Technology
Amount of Reimbursement:

Transportation	$582.25
Subsistence	307.30
Other Expenses	181.75
Total	1,071.30

Sponsoring Organization:
IEEE, AT&T Bell Laboratories, 1600 Osgood Street, Room 2A30, North Andover, MA 01845
Date of the Event:
October 30, 1992
Description of the Event:
WARC–92, Denver, Colorado
Commissioners Attending:
None
Other Employees Attending:
Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology
Amount of Reimbursement:

Transportation	$239.00
Subsistence	179.18
Other Expenses	33.00
Total	451.18

Sponsoring Organization:
CSC Index, Five Cambridge Center, Cambridge, Massachusetts 02142
Date of the Event:
November 17, 1992

Description of the Event:
Index Vanguard Meeting, Boston, Massachusetts
Commissioners Attending:
None
Other Employees Attending:
Bruca Franca—Deputy Chief Engineer, Office of Engineering and Technology
Amount of Reimbursement:

Transportation	$224.00
Subsistence	34.00
Other Expenses	35.13
Total	293.13

Sponsoring Organization:
KY Broadcasters Association, Radio Station Road, P.O. Box 680, Lebanon, Kentucky 40033
Date of the Event:
October 16, 1992
Description of the Event:
KBA Convention, Louisville, Kentucky
Commissioners Attending:
Alfred C. Sikes
Other Employees Attending:
None
Amount of Reimbursement:

Transportation	$328.00
Subsistence	89.50
Other Expenses	9.50
Total	427.00

Sponsoring Organization:
KMB Associates Inc., 437 3rd Avenue N., Tierra Verde, Florida 33715
Date of the Event:
October 28–30, 1992
Description of the Event:
Eighth Video Journal, Tarpon Springs, Florida
Commissioners Attending:
None
Other Employees Attending:
Robert M. Pepper—Chief, Plans and Policy
Amount of Reimbursement:

Transportation	$328.00
Subsistence	82.00
Other expenses	47.00
Total	457.00

Sponsoring Organization:
New Jersey Broadcasters Association, 9 Davison Avenue, Jamesburg, New Jersey 08831
Date of the Event:
October 22, 1992
Description of the Event:
Annual Meeting, Hightstown, New Jersey
Commissioners Attending:
None
Other Employees Attending:
Terry L. Haines—Chief of Staff for the Chairman
Amount of Reimbursement:

Transportation	$71.00
Subsistence	19.50
Other expenses	14.00
Total	104.50

Sponsoring Organization:
PTIJ, Kubodera Building 1-1, Kudan-Minami 3-Chome, Chiyoda-Ku, Tokyo 102 Japan
Date of the Event:
December 7, 1992
Description of the Event:
International Satellite Communications Policy Meeting, Tokyo, Japan
Commissioners Attending:
None
Other Employees Attending:
Wendel R. Harris—Chief, International Common Carrier Bureau
Amount of Reimbursement:

Transportation	$1,192.00
Subsistence	768.00
Other expenses	126.22
Total	2,086.22

Sponsoring Organization:
Intertec Publishing Corporation, 55 East Jackson Boulevard, Chicago, Illinois 60604
Date of the Event:
October 28–30, 1992
Description of the Event:
"Person to Person: Building Your Personal Communications Future" Conference, Orlando, Florida
Commissioners Attending:
None
Other Employees Attending:
Thomas M. Walsh—Electronics Engineer, Office of International Communications
Amount of Reimbursement:

Transportation	$345.00
Subsistence	149.00
Other expenses	99.25
Total	593.25

Sponsoring Organization:
SIRSA Inc., 1110 North Glebe Road, Suite 500, Arlington, Virginia 22201
Date of the Event:
October 7–10, 1992
Description of the Event:
SIRSA Annual Meeting, Asheville, North Carolina
Commissioners Attending:
None
Other Employees Attending:
Ralph A. Haller—Chief, Private Radio Bureau
Amount of Reimbursement:

Transportation	$518.00
Subsistence:	124.69
Other Expenses	.00
Total	642.69

Sponsoring Organization:
United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006
Date of the Event:
October 5–8, 1992
Description of the Event:
95th Annual Convention, New Orleans, Louisiana
Commissioners Attending:
None
Other Employees Attending:
Elaine Lorentz—Confidential Assistant to the Chairman
Amount of Reimbursement:

Transportation	$398.00
Subsistence:	223.50
Other Expenses	35.34
Total	656.84

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–2684 Filed 2–4–93; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order and Notice of Apparent Liability

1. The Commission has before it the following applications:

Applicant, city and state	File No.	MM docket No.
A. Atkins Broadcasting, Station KRGN (FM); Amarillo, TX	BRH–900327UP	93–4
B. Caprock Educational Broadcasting Foundation, Noncommercial Educational Station KLMN (FM); Amarillo, TX	BRED–900327UQ	93–4
C. Caprock Educational Broadcasting Foundation, Noncommercial Educational Station KAMY (FM); Lubbock, TX	BMPED–890726IF, BLED–901210KD	93–4
D. Southwest Educational Media Foundation of Texas, Inc., Noncommercial Educational Station KENT; Odessa, TX	BRED–900327UO	93–4
E. Southwest Educational Media Foundation of Texas, Inc., Noncommercial Educational Station KENT–FM; Odessa, TX	BLED–910705KA	93–4
F. Southwest Educational Media Foundation of Texas, Inc., Noncommercial Educational FM Station on Channel 290A; Stanton, TX	BPED–890313MD	93–4

Applicant, city and state	File No.	MM docket No.
G. Family Stations, Inc., Assignor (KBTT (FM)) and Southwest Educational Media Foundation of Texas, Inc., Assignee; Bridgeport, TX.	BAPED-891130HR	93-4
H. Southwest Educational Media Foundation Noncommercial Educational Station KOJO (FM); Lake Charles, LA	BLED-900226KA	93-4

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of some of the issues have been standardized and are set forth in their entirety under the corresponding headings at 51 FR 19347, published May 29, 1986. The letter shown before each applicant's name is used below to dignify whether the issue applies to that particular applicant.

Issue Heading and Applicant

1. To determine whether the applicant made misrepresentations of fact, lacked candor and/or violated § 73.1015 of the Commission's Rules—B, C, E
2. To determine whether the applicant violated sections 301 and 319(a) of the Communications Act of 1934, as amended, and §§ 73.277(b), 73.1560(b), 73.1620, 73.1635, and 73.1745 of the Commission's Rules—B, C, E
3. Ultimate—All

3. A copy of the complete Hearing Designation Order and Notice of Apparent Liability in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 [Telephone (202) 857-3800].

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-2682 Filed 2-4-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1993-4]

Filing Dates for the Ohio Special Elections

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: Ohio has scheduled special elections on March 16, 1993, and May 4, 1993, in the Second Congressional District to fill the seat of Representative Willis D. Gradison, Jr.

Committees required to file reports in connection with the Special Primary Election should file a 12-day Pre-Primary Report on March 4, 1993. Committees required to file reports in connection with both the Special Primary and Special General Election to be held on May 4, 1993, must file a 12-day Pre-Primary Report, a 12-day Pre-General Report on April 22, 1993, and a Post-General Report on June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street NW., Washington, DC 20463, Telephone: (202) 219-3420; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates in the Special Primary and Special General Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-Primary Report on March 4, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through February 24, 1993, and a 12-day Pre-General Election Report on April 22, 1993, with coverage dates from February 25, 1993, through April 14, 1993, and a 30-day Post-General Election Report on June 3, 1993, with coverage dates from April 15, 1993, through May 24, 1993.

All principal campaign committees of candidates in the Special Primary Election only and all other political committees not filing monthly which support candidates in the Special Primary Election shall file a 12-day Pre-Primary Report on March 4, 1993, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through February 24, 1993, and a Mid-Year Report on July 31, 1993, with coverage dates from February 25, 1993, through June 30, 1993.

All political committees not filing monthly which support candidates in the Special General only shall file a 12-day Pre-General Election Report on April 22, 1993, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through May 24, 1993, and a 30-day Post-General Election Report on June 3, 1993, with coverage dates from April 15, 1993, through May 24, 1993. Such committees must also file a Mid-Year Report on July 31, 1993, with coverage dates from May 25, 1993, through June 30, 1993.

CALENDAR OF REPORTING DATES FOR OHIO SPECIAL ELECTIONS

Report	Period covered	Reg./cert. mailing date [1]	Filing date
I. All Committees Involved in the Special Primary (03/16) and Special General (05/04) Must File:			
Pre-Primary	[2] 01/01/93—02/24/93	03/01/93	03/04/93
Pre-General	02/25/93—04/14/93	04/19/93	04/22/93
Post-General	04/15/93—05/24/93	06/03/93	06/03/93
Mid-Year	05/25/93—06/30/93	07/31/93	07/31/93
II. All Committees Involved in the Special Primary (03/16) Only Must File:			
Pre-Primary	[2] 01/01/93—02/24/93	03/01/93	03/04/93
Mid-Year	02/25/93—06/30/93	07/31/93	07/31/93
III. All Committees Involved in the Special General (05/04) Only Must File:			
Pre-General	[2] 01/01/93—04/14/93	04/19/93	04/22/93
Post-General	04/15/93—05/24/93	06/03/93	06/03/93
Mid-Year	05/25/93—06/30/93	07/31/93	07/31/93

[1] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: February 2, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–2749 Filed 2–4–93; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

First Community Financial Group, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1993.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. First Community Financial Group, Inc., Lacey, Washington; to engage *de novo* through its subsidiary, First Community Mortgage, Inc., Lacey, Washington, in the origination and sale of single family residential mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

2. First Community Financial Group, Inc., Lacey, Washington; to engage *de novo* through its subsidiary, Information Management Services, Inc., Lacey, Washington, in processing and transmission of financial, banking, and economic data for the Bank and other financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2721 Filed 2–4–93; 8:45 am]

BILLING CODE 6210-01-F

Kempton and Grace Spooner Revocable Trust; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 25, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Kempton and Grace Spooner Revocable Trust, Exeland, Wisconsin; to acquire 50 percent of the voting shares of Gilman Corporation, Exeland, Wisconsin, and thereby indirectly acquire State Bank of Gilman, Gilman, Wisconsin.

Board of Governors of the Federal Reserve System, February 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2722 Filed 2–4–93; 8:45 am]

BILLING CODE 6210-01-F

Norwest Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 25, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire the Insurance Agency Business of Merchants and Miners State Bank of Hibbing, Hibbing, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. **Comments on this application must be received by February 19, 1993.**

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. American Bancorp of Edmond, Inc., Edmond, Oklahoma; to acquire American Capital Mortgage Company, Inc., Edmond, Oklahoma, and thereby engage in the origination and selling of residential loans pursuant § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2723 Filed 2-4-93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting

AGENCY: General Accounting Office.

ACTION: Notice of February meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, February 25, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes: Discussions of issues in (1) the Exposure Draft on Accounting for Liabilities, (2) the project on Accounting for Investment Expenditures, and (3) the Exposure Draft on Accounting for Direct Loans and Loan Guarantees.

Other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., suite 1001, Washington, DC 20002, or call (202) 512-7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92-463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101-6.1015 (1990).

Dated: February 2, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93-2756 Filed 2-4-93; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Times and Dates: 7 p.m.–9 p.m., February 22, 1993—9 a.m.–12 noon, February 23, 1993.

Place: Red Lion Inn, 2525 North 20th Street, Pasco, Washington 99301.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The committee will review development of the study protocol and recommend changes of scientific merit to CDC, advise on the conduct of the pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters To Be Discussed: The Hanford Thyroid Morbidity Study Advisory Committee will meet to: (1) Conduct a public meeting for open discussion and inform the public of a pilot study being conducted by the Fred Hutchinson Cancer Research Center and, (2) discuss updates of the clinical component of the Hanford Thyroid Disease Study.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 404/488-7040.

Dated: February 1, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-2708 Filed 2-4-93; 8:45 am]

BILLING CODE 4160-18-M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Long-Term Care Statistics; Meeting Pursuant to Public Law 92-463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Times and Dates: 9 a.m.–5 p.m., March 1, 1993—9 a.m.–2 p.m., March 2, 1993.

Place: Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will receive a briefing on several Federal national surveys which collect long-term care statistics in an effort to identify key research questions on the adequacy usefulness of the data being collected.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436-7050.

Dated: February 2, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-2709 Filed 2-4-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Ophthalmic Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. February 26, 1993, 9 a.m., First Floor Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Daniel W. C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 10, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. Alan Andersen, Acting Director of the Office of Device Evaluation (ODE), will present an overview of ODE activities regarding clinical trials. The committee will discuss specific issues relating to class III surgical and diagnostic devices and intraocular lenses. For example, there will be an update presented to the panel on the revisions of the Multifocal Intraocular Lens guidance document and an open panel discussion on potential revisions of the Photorefractive Keratectomy (PRK) guidance document. An explanation of ODE's laser program will be given. Also, there will be updates presented on the following contact lens issues: extended wear contact lenses, disinfection of contact lenses, labeling, user information, and reclassification.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 25, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–2686 Filed 2–4–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration Advisory Council

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of March 1993:

Name: Advisory Commission on Childhood Vaccines

Date and Time: March 10, 1993, 10 a.m.–5 p.m.—March 11, 1993, 8:30 a.m.–12 p.m.

Place: Conference Rooms D & E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission:

(1) Advises the Secretary on the implementation of the Program,

(2) On its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table,

(3) Advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) Surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) Recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: The first day of the meeting will consist of simultaneous meetings of the Commission's Working Subcommittees. The full commission will meet commencing at 10 a.m. until 2:45 p.m. and from 8:30 a.m. to 12 p.m. on Thursday, March 11. Agenda items will include, but not be limited to: The routine Program reports, reports from the National Vaccine Program and the National

Vaccine Advisory Committee (NVAC), reports from the ACCV Subcommittees.

Name: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines

Date and Time: March 10, 1993, 3 p.m.–5 p.m.

Place: Conference Room D, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside studies and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: This Subcommittee will receive updates on the section 313 IOM study and on VAERS.

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines

Date and Time: March 10, 1993, 3 p.m.–5:30 p.m.

Place: Conference Room E, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Subcommittee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will discuss and review the status of funding and spending on pre-1988 awards and the status of the Trust Fund. Further, the Subcommittee will review the funding proposal presented to the Commission at its December 1992 meeting by the National Vaccine Information Center/Dissatisfied Parents Together.

Public comment will be permitted at the respective subcommittee meetings on March 10 before they adjourn in the evening; before noon and at the end of the full Commission meeting on March 10; and also before noon of the second day on March 11. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms D & E before 10 a.m. March 10 and 11. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Name: HRSA AIDS Advisory Committee

Time: March 17–19, 1993, 8:30 a.m.

Place: National Institutes of Health, Building 31, Conference Rm. 10, 9000 Rockville Pike, Bethesda, MD 20205.

The meeting is open to the public.

Purpose: The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

Agenda: Discussions will be held concerning the status of Health Resources and Services Administration (HRSA) program activities, issues related to homeless programs, Information Dissemination and Health Reform.

Anyone requiring information regarding the subject Committee should contact Pearl Katz, Ph.D., AIDS Program Office, Health Resources and Services Administration, room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4588.

Agenda items are subject to change as priorities dictate.

Dated: February 1, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–2735 Filed 2–4–93; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, January 15, 1993. (Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Application for a Social Security Number Card—0960–0066. The information on form SS–5 is used by the Social Security Administration to assign correct Social Security numbers to applicants. The respondents are applicants for original or replacement Social Security number cards.

Number of Respondents: 15,000,000

Frequency of Response: 1

Average Burden Per Response: 8 minutes

Estimated Annual Burden: 2,000,000 hours

2. Application for U.S. Benefits Under the Canada-U.S. International Social Security Agreement—0960–0371. The information on form SSA–1294 is used by the Social Security Administration to determine a Canadian filer's eligibility to Social Security benefits. The respondents are people who live in Canada and file for U.S. Social Security benefits.

Number of Respondents: 600

Frequency of Response: 1

Average Burden Per Response: 15 minutes

Estimated Annual Burden: 150 hours

3. Questionnaire for Children Claiming SSI Benefits—0960–0499. The information obtained by form SSA–3881 concerns the evaluation of disability in children and is used by the Social Security Administration to comply with the requirements of the *Zebley* court case. The respondents are individuals who apply for Supplemental Security Income as a disabled child.

Number of Respondents: 276,000

Frequency of Response: 1

Average Burden Per Response: 20 minutes

Estimated Annual Burden: 92,000 hours

4. Government Pension Questionnaire—0960–0160. The information on form SSA–3885 is used by the Social Security Administration to determine if an individual's Social

Security benefit should be reduced because of his or her receipt of a Government pension. The respondents are claimants for Social Security benefits who receive, or are qualified to receive, a Government pension.

Number of Respondents: 76,000

Frequency of Response: 1

Average Burden Per Response: 12.5 minutes

Estimated Annual Burden: 15,833 hours

5. Letter to Landlord Requesting Rental Information—0960–0454. The information on form SSA–L5061 is used by the Social Security Administration to determine if a rental subsidy agreement exists between a landlord and an applicant for or recipient of Supplemental Security Income benefits. The affected public consists of landlords who may be subsidizing such a rental arrangement.

Number of Respondents: 49,000

Frequency of Response: 1

Average Burden Per Response: 10 minutes

Estimated Annual Burden: 8,167 hours

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 1, 1993.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–2663 Filed 2–4–93; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–17]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S Air Force:* John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 614–9692; (This is not a toll-free number).

CORRECTION: Property #329220004, Land at Indiana Army Ammunition Plant, was inadvertently published as suitable/available. Since it is being transferred to the State, it is not available.

Dated: January 29, 1993.

Don I. Patch,

Acting Deputy Assistant Secretary for Grant Programs.

Title V, Federal Surplus Property Program Federal Register Report for 2/5/93

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and

700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1-story with 2 to 5 bedrooms.

Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3-story structures including dorms and lodging.

Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel, a gate house, a post office and an education center.

Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreation centers, theater, commissary and stores.

Property Numbers: 199210100–199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp.

Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete structures including a hospital, clinics and pharmacy.

Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures.

Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities.

Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs.

Property Number: 199210106
Type Facility: Base Support and Flight Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops.

Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures.

Arkansas—Eaker Air Force Base

Eaker Air Force Base is located in Blytheville, Arkansas 72317–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block, masonry or metal/brick construction.

Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and forms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.

Property Number: 199210073
Type Facility: Commissary—1 building; 38,575 sq. ft., one story concrete block/metal commissary.

Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer.

Suitable/Unavailable

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25 four-unit buildings with two story four bedroom units; four playgrounds.

Property Number: 199210044
Type Facility: Security Related Facilities—13 buildings; 30 to 2400 sq. ft., 1 story; metal, concrete block or wood frame; includes traffic check houses, kennels, guard towers, alert shelters.

Property Number: 199210045
Type Facility: Office/administration—26 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction.

Property Number: 199210056
Type Facility: Warehouses/multi-use buildings—36; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities.

Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.

Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction.

Property Numbers: 199210063–199210065
Type Facility: Stores and services—3 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store.

Property Number: 199210066
Type Facility: Airfield related buildings—9; 96 to 49,000 sq. ft.; shingle, metal or concrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers.

Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings.

Property Number: 199210069
Type Facility: Fuels/related storage facilities—33 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage.

Property Number: 199210070
Type Facility: Hazardous storage buildings—4; 96 to 3,000 sq. ft.; one story metal structures.

Property Number: 199210071
Type Facility: Munitions facilities—10 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines.

Property Numbers: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audiovisual photo lab.

Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions.

Property Number: 199210079
Type Facility: Land; 1,962 acres; restrictive agricultural lease.

Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame.

Property Number: 199210072
Type Facility: Cold Storage—Building 435; 3,195 sq. ft., 1 story concrete block frame.

Unsuitable Properties

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures.

Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies.

California—George Air Force Base

George Air Force Base is located in San Bernardino, California, 92394–5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 269-2020.

Suitable/Unavailable Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—400 buildings with a total of 1,525 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos.

Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos.

Property Numbers: 199120421–199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos.

Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos.

Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangars, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos.

Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos.

Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos.

Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos.

Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos.

Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos.

Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos.

Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos.

Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos.

Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos.

Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos.

Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos.

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings.
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings.
Reason: Within 2000 ft. of flammable or explosive materials.

Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures.
Reason: Within 2000 ft. of flammable or explosive materials.

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655-5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Unavailable Properties

Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos.

Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos.

Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos.

Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos.

Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos.

Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos.

Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos.

Property Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos.

Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos.

Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos.

Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos.

Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos.

Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos.

Property Number: 199210033
Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos.

Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos.

Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure.

Property Number: 199210036
Type Facility: Fuel Facilities—8 buildings; one story structures.

Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures.

Property Number: 199210038

Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures.

Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres).

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 585 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210139
Type Facility: Housing—585 houses including off-base Chapman Courts with 1 to 8 units, brick and wood structure, possible asbestos.

Property Number: 199210140
Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos.

Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos.

Property Number: 199210142
Type Facility: Storage/Warehouse—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs.
Property Number: 199210143
Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos.

Property Number: 199210144
Type Facility: Engine Test Cells/Warehouse—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos.

Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations.

Property Number: 199210146
Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos.

Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch exchanges and 1 commissary, possible asbestos.

Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos.

Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos.

Property Number: 199210150
Type Facility: Recreation—48 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range.

Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos.

Property Number: 199210153
Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/wood band center, needs rehab.

Suitible/Unavailable Properties

Property Number: 189010232, 189010255, 189010259–189010260
Type Facility: Miscellaneous Bldgs.—4 buildings including training facility, jail, pump house and bath house.

Unsuitable Properties

Property Number: 189010227–189010231
Type Facility: Waste Treatment Facilities.

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,282 acres and contains 568 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/Available Properties

Property Numbers: 199210080–199210081
Type Facility: Housing—286 buildings with 568 dwelling units; one and two story; wood or masonry frame; 1,190 to 6,701 sq. ft.

Property Number: 199210082
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame; presence of asbestos in several structures.

Property Number: 199210094
Type Facility: Land, airfield, runways—parcels 10 to 398,099 square yards; concrete or asphalt.

Suitable/Unavailable Properties

Property Numbers: 199210083–199210084
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, theatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures.

Property Number: 199210085
Type Facility; Dorms and dining areas—14 buildings; 3,902 to 25,715 sq. ft.; brick or masonry frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall.

Property Number: 199210086
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structures; includes classrooms, child care center, school, education office and field training facility.

Property Number: 199210087
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital.

Property Number: 199210088
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mall, photo lab, post office, service station and base package store.

Property Number: 199210089
Type Facility: Storage/Warehouses—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to 60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures.

Property Number: 199210090
Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures.

Property Number: 199210091
Type Facility: Airfield related facilities—36 buildings including vehicle fuel station, petroleum operations building, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures.

Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos.

Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame.

Unsuitable Properties

Property Number: 199210095
Type Facility: Fuel storage containers—14 hazardous storage containers.

Michigan—Wurtsmith Air Force Base

Wurtsmith Air Force Base is located in Oscoda, Michigan 48753. All the properties will be excess to the needs of the Air Force on or about June 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base consists of approx. 5,221 acres with 62 government-owned buildings and 1,349 units of housing. The suitable/available properties include various types of housing; office buildings; recreational facilities; dining and child care facilities; stores; warehouses and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199240001–199240005
Type Facility: Housing—1,349 units and 13 dormitories; 1, 2, 4, 6, 7 and 8 unit buildings; 1073 to 90501 sq. ft.

Property Numbers: 199240006–199240007, 199240015–199240018, 199240022–199240025
Type Facility: Recreational—18 facilities; includes swim bath house; recreation center; library; bowling alley; running track; softball, baseball, football, and soccer fields; theatre.

Property Number: 199240008
Type Facility: Dining—3 buildings; 13388 to 15062 sq. ft.; includes open mess.

Property Number: 199240009
Type Facility: Stores—4 buildings; 4208 to 40701 sq. ft.; includes sales store; service outlet exchange; exchange branch; and base package store.

Property Number: 199240010
Type Facility: Warehouses—4; 7856 to 104213 sq. ft.; includes commissary; supply and equipment base; and traffic facility.

Property Numbers: 199240011, 199240014, 199240021
Type Facility: Miscellaneous—11 buildings; includes storage facilities; vehicle maintenance shops; arts & crafts center; radar building.

Property Numbers: 199240012–199240013; 199240020
Type Facility: Offices—15 buildings; includes admin offices; child care centers; education facility; headquarters group; family housing management offices; environmental health.

Property Number: 199240019
Type Facility: Chapel—19977 sq. ft.; roof leaks.

Property Number: 199240026
Type Facility: Air Force Land—56 acres; portion located in airport runway area.

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base.

Suitable/Unavailable Properties

Property Number: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall.

Property Number: 189040326
Type Facility: 1 bachelor quarters buildings.

Property Number: 189040327
Type Facility: Hospital heat plant.

Property Number: 189040328
Type Facility: Hospital.

Property Number: 189040329
Type Facility: Trailer (hospital office space).

Property Number: 189040330–198040332
Type Facility: 3 training facilities.

Property Number: 189040333–198040334
Type Facility: 2 child care facilities.

Property Number: 189040335
Type Facility: Fire station.

Property Number: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences.

Property Number: 189040352
Type Facility: 1 chapel.

Property Number: 189040387–189040394
Type Facility: 8 dormitories.

Property Number: 189040395–189040404
Type Facility: 10 residences with detached garage.

Property Number: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage.

Property Number: 189040468–189040471
Type Facility: 4 6-unit residences with attached garage.

Property Number: 189040472–189040561
Type Facility: 90 detached housing storage sheds.

Property Number: 189040737–189040740
Type Facility: 4 recreational facilities.

Property Number: 189040748
Type Facility: 1 small concrete munitions storage building.

Property Number: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities.

Property Number: 189040774–189040775, 189040777–189040778, 189040787–189040790, 189040795–189040805
Type Facility: 17 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes.

Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive.

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course.
Reason: Within airport runway clear zone.

Property Number: 189010536
Type Facility: Vehicle fuel station
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses
Reason: Within 2000 ft. of flammable or explosive material.

Property Number: 189010539
Type Facility: Weapons storage area
Reason: Within 2000 ft. of flammable or explosive material.

Property Numbers: 189040354–189040359
Type Facility: Bldgs. 399–401, 403, 405, 407
Reason: Within airport runway clear zone.

Property Numbers: 189040361, 189040369, 189040373
Type Facility: Industrial facilities
Reason: Within 2000 ft. of flammable or explosive material.

Property Number: 189040717
Type Facility: Utility plant
Reason: Other.

Property Numbers: 189040772, 189040794
Type Facility: Bus shelters
Reason: Other.

Property Numbers: 189040806, 189040825–189040829
Type Facility: Sewage pump stations
Reason: Other.

Property Numbers: 189040820, 189040822–189040824
Type Facility: Pump stations
Reason: Other.

Property Numbers: 189040830–189040851
Type Facility: Power stations
Reason: Other.

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties will be excess to the needs of the Air Force on or about March 31, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two, three, and four bedrooms single family dwellings and duplexes with attached carports.

Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures.

Property Number: 199210003
Type Facility: Miscellaneous—12 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall.

Property Number: 199210005
Type Facility: Office/Administration—44 buildings; one to two story modular, block, wood and brick structures.

Property Numbers: 199210006–199210007
Type Facility: Recreation—12 buildings and land including bath houses, bowling center, gymnasium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground (golf course bldgs. are unavailable—leased to local community).

Property Number: 199210009
Type Facility: Utility Type Facilities—36 buildings; one story structures including warehouses, shops and sheds.

Property Number: 199210010
Type Facility: Security—3 police buildings; one story masonry structures including a jail.

Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures.

Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest.

Suitable/Unavailable Properties

Property Number: 199210004
Type Facility: Six one-story medical support buildings.

Property Number: 199210008
Type Facility: Golf course and driving range.

Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—15 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons.

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building
Reason: Extensive Deterioration.

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force had advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210108–199210122
Type Facility: Housing—352 military family residences; 1- and 2-story wood frame, concrete and brick/wood buildings.

Property Number: 199210123
Type Facility: Dormitories—7 buildings; 3- and 4-story concrete block dorms.

Property Number: 199210124
Type Facility: Temporary Living Quarters—6 buildings; 1- and 2-story brick and frame lodging facilities.

Property Number: 199210125
Type Facility: Administration Facilities—45 buildings; 1- to 4-story concrete block, brick, metal and wood structures including education centers, child care, clinics and admin. bldgs.

Property Number: 199210126
Type Facility: Recreational Facilities—13 buildings; metal, concrete block, brick and wood structures including golf club equip. houses, bathhouse, gym, bowling, youth and recreation centers and NCO clubs.

Property Number: 199210127
Type Facility: Recreation Areas—14 areas; approximately 172 acres including golf course, riding stables, playground and picnic area, camps and tennis courts.

Property Number: 199210128–199210130
Type Facility: Miscellaneous Facilities—80 buildings; 1 story metal, concrete, block, wood, and brick structures including maintenance and storage bldgs., shops, warehouses, sheds and a commissary.

Property Number: 199210131
Type Facility: Facility 1506—24,000 sq ft., 1-story brick dining hall.

Property Number: 199210132
Type Facility: Facility 3000—345,186 sq. ft., 5-story concrete hospital.

Property Number: 199210133
Type Facility: Bank/Credit Union—2 buildings; a 1-story concrete bank and a 2-story brick credit union.

Property Number: 199210134
Type Facility: Facility 1838—8790 sq. ft., 1-story brick chapel.

Property Number: 199210135
Type Facility: Facility 1845—9967 sq. ft., 1-story brick theater.

Property Number: 199210136
Type Facility: Fuel Stations—2 buildings; 1-story metal and brick/metal vehicle fuel and exchange service stations.

Property Number: 199210137
Type Facility: Hazardous Storage and Igloos—40 buildings; 4 metal and concrete block hazardous storage bldgs. and 36 concrete igloo storage bldgs.

Property Number: 199210138
Type Facility: Airport Related Areas—26 areas; approximately 205 acres including runways, aprons, taxiways and pads.

Suitable/Unavailable Properties

Property Number: 189120235
Type Facility: #237

Unsuitable Properties

Property Number: 189030043–189030218
Type Facility: Kings Branch Housing
Reason: Extensive deterioration

Maine—Loring Air Force Base

Suitable/Available Properties

Buildings

Bldgs. 1–16
Family Housing Annex, Loring Air Force Base
U. S. Route #1
Caswell, ME, Aroostook, Zip: 04750–
Federal Register Notice Date; 02/05/93
Property Numbers: 189010590–189010605
Status: Excess
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Colorado—Lowry Air Force Base

Suitable/Available Properties

Land

NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Denver, Zip: 80230–5000
Federal Register Notice Date: 02/05/93
Property Number: 189010254
Status: Excess
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary
Comment: Approximately 20 acres; sloping parts in the area.

[FR Doc. 93–2514 Filed 2–4–93; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Establishing the Closing Date for Transmittal of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 1994

AGENCY: U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the NEHRP.

Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95–124 (42 U.S.C. 7701, *et seq.*).

The purpose of this program is to support research in earthquake hazards prediction to provide earth-science data and information essential to mitigate earthquake damage.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of State and local governments.

The NEHRP supports research related to the following general areas of interest: I. Understanding the earthquake source: Determine the physical properties and mechanical behavior of active crustal fault zones and their surroundings; and develop quantitative models of the physics of earthquake processes. II. Evaluating earthquake potential: Determine the geological and geophysical setting and characteristics of seismically active regions; determine the occurrence, distribution and source properties of earthquakes, and relate seismicity to geologic structures and tectonic processes; determine the nature and rates of crustal deformation; characterize the earthquake potential of the United States on a regional and national basis; identify active faults, define their geometry, and determine the characteristics and dates of past earthquakes; conduct research to facilitate long-term probabilistic forecasts of the likelihood of large earthquakes on active fault; conduct intensified monitoring experiments in selected regions of high seismic

potential; and develop and evaluate short- and intermediate-term earthquake prediction methods. III. Predicting the effects of earthquakes: Acquire data needed for the prediction of ground shaking, ground failure, and response of engineered structures; predict strong ground shaking at local, regional and national scales; predict ground failure at local and regional scales; and evaluate earthquake risk and losses. IV. Applying and utilizing research results: Application of research results; transference of hazards and risk information and assessment methods to users.

ADDRESSES: The program announcement is expected to be available on or about February 1, 1993. You may obtain a copy of Announcement 7964 by writing to Mary Burkett, U.S. Geological Survey, Office of Procurement and Contracts—Mail Stop 205C, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Organizations that applied for a FY 1993 award, and organizations that requested to be retained on the mailing list since the last announcement will be mailed a copy of Announcement.

DATES: Applications must be received on or before April 29, 1993.

FOR FURTHER INFORMATION CONTACT: William Phelps, Office of Earthquakes, Volcanoes, and Engineering—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston, Virginia 22092. Telephone: (703) 648–6701.

Jack J. Stassi,

Assistant Director for Administration.

[FR Doc. 93–2792 Filed 2–4–93; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[WO 220–93–4320–03]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1004–0047), Washington, DC 20503, Telephone 202–395–7340.

Title: Grazing Application—Preference Summary and Supplemental Information OMB Approval Number, 1004–0047

Abstract: The combined application is submitted by individuals requesting recognition of changes from previous named individuals for grazing privileges. It is used to verify qualifications and maintain records on legal permittees.

Bureau Form Numbers: 4130–1a and 4130–1b

Frequency: On Occasion

Description of Respondents: Individuals stating qualifications for livestock grazing permits

Estimated Completion Time: 15 minutes

Annual Responses: 3,400

Annual Burden Hours: 850

Bureau Clearance Officer (Alternate): Gerri Jenkins 202–653–6105

Dated: November 17, 1992.

Henry Noldan,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 93–2677 Filed 2–4–93; 8:45 am]

BILLING CODE 4310–84–M

[MT–922–4110–03; M 53323]

Record of Decision for Final Environmental Impact Statement for Fina Oil and Chemical Co. Exploratory Oil/Gas Well; Lewis and Clark National Forest, Glacier County, MT

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability, record of decision.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) has issued a second Record of Decision (ROD) dated January 14, 1993, that approves that Application for Permit to Drill (APD) submitted by Fina Oil and Chemical Company on its lease on the Rock Mountain Ranger District, Lewis and Clark National Forest, Glacier County, Montana. A decision concerning the Chevron APD, also addressed in the Final Environmental Impact Statement (FEIS), will be made separately.

On March 8, 1991, notice was published in **Federal Register** (56 FR 9935) that a joint decision, dated February 19, 1991, was made by the Lewis and Clark Forest Service Supervisor and the BLM Great Falls Resource Area Manager to approve the APD submitted by Fina Oil and Chemical Company on its lease on the Rocky Mountain Ranger District, Lewis and Clark National Forest, Glacier County, Montana. The decision was based on the FEIS for Exploratory Oil and Gas Wells—Proposed Oil and Gas Drilling near Badger Creek and Hall Creek.

That decision stated that the BLM's approval was only on the Drilling Plan and Hydrogen Sulfide Contingency Plan and also stated that appeals on surface-related issues must be appealed to the Forest Service. The BLM subsequently received four requests for State Director Review of the Area Manager's decision that claimed the BLM was responsible for reviewing surface effects on national forest land. In response, the Area Manager's decision was rescinded and the BLM conducted further analysis and an independent review of the surface-related issues addressed in the FEIS to determine if compliance with all applicable laws had been accomplished. The results of that review have led to the issuance of this, a second ROD, by the BLM Area Manager. This decision, with concurrence from Interior's assistant secretary for land and minerals, constitutes final agency action for the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Richard Hopkins; Great Falls Resource Area Manager, 812 14th Street North, Great Falls, Montana 59401; Phone: (406) 727–0503. Copies of this ROD are available upon request from the Great Falls Resource Area, 812 14th Street North, Great Falls, Montana 59401. Additional copies of the February 19, 1991, joint ROD and the associated FEIS are available for viewing at several Forest Service and BLM offices in Montana. Please contact the Lewis and Clark National Forest, P.O. Box 869, Great Falls, MT 59403, for a complete list of viewing locations.

SUPPLEMENTARY INFORMATION: The decision allows Fina to build approximately 4.5 miles of access road on National Forest Land to drill a single exploratory well to determine if geologic structures contain oil and/or natural gas. If the well is try, the access road and well pad will be reclaimed. Should the well encounter commercial quantities of oil and/or gas, additional environmental analysis will be conducted. The approval of the Surface Use and Operating Plan includes a strict set of mitigation measures that will minimize the impacts of the project on other surface resources and Forest users.

Dated: January 21, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93–2064 Filed 2–4–93; 8:45 am]

BILLING CODE 4310–DN–M

[WY-030-93-4111-16]

Availability of Final Environmental Impact Statement; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement on the MetFuel Hanna Basin Coalbed Methane Project in central Carbon County, Wyoming.

SUMMARY: This Final Environmental Impact Statement assesses the environmental consequences of a methane gas development project in the Hanna Basin of northeast central Carbon County, approximately 7 miles north of Hanna, Wyoming. The proposed project entails the drilling, testing, operation, abandonment, and reclamation of a coalbed methane gas production operation in the Hanna Basin by MetFuels, Inc.

DATES: The public comment period will begin on or about February 12, 1993, and will end on or about March 15, 1993. To ensure that comments will be considered in the Record of Decision, they should be received no later than close of business, March 15, 1993 at the address listed below.

ADDRESSES: Comments or concerns should be addressed to Area Manager, Great Divide Resource Area, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Bob Tigner, Rawlins District Office (phone 307–324–7171), or contact the address listed above.

SUPPLEMENTARY INFORMATION: The proposed project addressed in this FEIS involves the drilling and development of a maximum of 123 coalbed methane wells on a 160-acre spacing within the project area. The proposed project would disturb approximately 1,021 acres on or adjacent to the 28,044-acre project area from the construction of pipelines, well pads, roads, powerlines, and compressor stations. It is anticipated that full field development would require several years, with approximately 32 wells being drilled in 1993 and the remainder drilled in 1994, 1995, and 1996.

Dated: January 28, 1993.

Ray Brubaker,

State Director.

[FR Doc. 93–2718 Filed 2–4–93; 8:45 am]

BILLING CODE 4310-22-M

[ID-942-03-4730-02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., January 26, 1993.

The plat representing the dependent resurvey of portions of the east boundary, and subdivisional lines, the subdivision of certain sections, and the survey of Tracts 37 and 38, Township 5 South, Range 6 East, Boise Meridian, Idaho, Group No. 835, was accepted January 20, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: January 26, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–2716 Filed 2–4–93; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-03-4730-02]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., January 26, 1993.

The supplemental plat prepared to show the subdivision of original Lot 2 in section 19, Township 45 North, Range 4 East, Boise Meridian, Idaho, was accepted January 20, 1993.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: January 26, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–2717 Filed 2–4–93; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

Implementation of Section 3409 of the Central Valley Project Improvement Act, Title 34 of Public Law 102–575

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement and notice of scoping meetings.

SUMMARY: Pursuant to section 3409 of the Central Valley Project Improvement Act (Act) and section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a programmatic environmental impact statement (EIS) to analyze the direct and indirect impacts and benefits of implementing this Act, including all fish, wildlife, and habitat restoration actions and the potential renewal of all existing Central Valley Project (CVP) water contracts.

It is anticipated that the "No Action" alternative in the EIS will reflect the administration of the CVP in accordance with Federal Reclamation law in effect prior to enactment of the Act on October 30, 1992. In addition, it is envisioned that there will be a reasonable range of action alternatives which reflect implementation of all provisions of the Act.

DATES AND ADDRESSES: Reclamation will seek public input on alternatives, concerns, and issues to be addressed in the EIS through a series of scoping meetings. The schedule and locations of the scoping meetings are as follows:

March 22, 1993, 1–4:30 p.m., Sacramento Inn-Comstock I & II, 1401 Arden Way, Sacramento, California 95815.

March 23, 1993, 6–9:30 p.m., Red Lion—Redding Sierra Room, 1830 Hilltop Drive, Redding, California 96002.

March 24, 1993, 1–4:30 p.m., Franco's, 610 S. Tehama, Willows, California 95988.

March 25, 1993, 6–9:30 p.m., Sheraton Smugglers Inn—Crystal Room I & II, 3737 North Blackstone, Fresno, California 93720.

March 26, 1993, 1–4:30 p.m., Holiday Inn—Ponce de Leon Room, 13070 S. Highway 33 & I–5, Santa Nella, California 95322.

March 30, 1993, 1–4:30 p.m., Burbank Hilton, 2500 Hollywood Way, Burbank, California 91505.

March 31, 1993, 6–9:30 p.m., Kona Kai Resort, 1551 Shelter Island Drive, San Diego, California 92106.

April 1, 1993, 6–9:30 p.m., Westin Hotel, 5101 Great American Parkway, Santa Clara, California 95054.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk Rodgers, Manager, Office of Water Policy and Allocation, Bureau of Reclamation (Code: MP–180), Federal Building, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978–4981.

SUPPLEMENTARY INFORMATION: The draft programmatic EIS will focus on the impacts and benefits common to all methods of implementing the provisions of the Act. It will contain a general analysis of the physical, biological, social, and economic impacts arising from the implementation of the Act. In addition, it will address the cumulative impacts of implementation of the Act as a whole and in conjunction with other relevant past, present, and reasonably foreseeable actions. A proposed approach for this analysis is being developed and will be available to individuals before public meetings are held by calling the contact shown above.

The programmatic EIS is intended to serve as an analytical overview document that will precede the completion of subsequent NEPA documents (environmental impact statements or assessments) on specific activities or groups of activities addressed in the Act, including the renewal of existing CVP water service contracts. When a specific method of implementing an activity or activities specified in the Act is proposed, a subsequent NEPA document will be prepared which addresses the specific physical, biological, social, and economic impacts arising from that method of implementing the activity. In addition, the subsequent NEPA documents will present a summary of the issues addressed in the programmatic EIS and, as appropriate, incorporate by reference the analyses presented in the programmatic EIS.

Reclamation envisions the preparation of separate site-specific NEPA documents relating to the renewal of existing CVP water service contracts in each of the units of the CVP. It is expected that the preparation of these documents will be initiated prior to completion of the programmatic EIS.

The Act includes a wide range of environmental improvements and measures. Several of the major provisions which are intended to benefit the environment include:

(1) Expanding purposes of the CVP to include fish and wildlife mitigation, protection, and restoration;

(2) Establishing a restoration fund to cover a portion of the costs of fish, wildlife, and habitat restoration programs and projects;

(3) Requiring the increase of anadromous fish populations in Central Valley streams except for the San Joaquin River between Friant Dam and the Mendota Pool;

(4) Dedicating, on an annual basis, 800,000 acre-feet of CVP water to fish, wildlife, and habitat restoration;

(5) Requiring the development and implementation of a comprehensive plan to address fish, wildlife, and habitat concerns on the San Joaquin River;

(6) Promoting water conservation and water conservation projects;

(7) Acquiring land and associated water rights from CVP contractors;

(8) Developing a plan to increase the yield of the CVP;

(9) Directing the Secretary to provide firm water supplies to certain wetlands in the Central Valley; and

(10) Directing that CVP power used for fish and wildlife purposes be, in certain situations, repaid at the lowest price paid by CVP contractors.

Major provisions of the Act which are related to water service contracts include:

(1) Requiring the fulfillment of specific conditions before entering into new or renewed water service contracts;

(2) Establishing limitations on the duration of long-term water contracts;

(3) Authorizing CVP contractors to transfer their water, subject to certain conditions, to other users;

(4) Requiring CVP contractors to install water measuring equipment;

(5) Establishing a tiered pricing system for CVP water subject to contracts longer than 3 years;

(6) Contracting with a variety of entities to store and deliver CVP and non-CVP water for all beneficial uses; and

(7) Authorization for CVP contractors to use project facilities to bank water.

Dated: January 29, 1993.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 93–2731 Filed 2–4–93; 8:45 am]

BILLING CODE 4310–09–M

River Maintenance Program for the Rio Grande-Velarde to Caballo Dam, Rio Grande and Middle Rio Grande Projects, NM

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public hearing on the draft supplement to the final environmental impact statement (DSFEIS) DES–93–02.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a draft supplement to the 1977 final environmental impact statement (DSFEIS) on a reformulated river maintenance program within the Rio Grande floodway. The DSFEIS (DES–93–02) was made available to the public on January 8, 1993. Public hearings will be held to receive comments from interested organizations and individuals on the environmental impacts of the project.

DATES: The public hearings are scheduled for March 9, 1993, at 7 p.m., in Espanola, New Mexico; March 10, 1993, at 2 p.m., in Albuquerque, New Mexico; and March 11, 1993, at 6 p.m., in Socorro, New Mexico.

ADDRESSES: The hearings will be held at the following locations:

March 9—Española NM—Park Inn, 920 North Riverside Drive, North Highway 68, Española NM 87532.
March 10—Albuquerque NM—Hyatt Regency Hotel, 330 Tijeras Avenue NW., Albuquerque NM 87102.
March 11—Socorro NM—Macy Center, New Mexico Tech University, Socorro NM 87801.

Addresses for Comments, Requests to Testify, and Further Information

Projects Manager, Bureau of Reclamation, Albuquerque Projects Office, 505 Marquette NW., Suite 1313, Albuquerque, New Mexico 87102–2162; telephone: (505) 766–3381.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Burleigh (Activity Manager, Albuquerque Projects Office); telephone: (505) 766–2518.

SUPPLEMENTARY INFORMATION: Organizations and individuals wishing to present statements at the hearing should contact the Bureau of Reclamation, Albuquerque Projects Office, at the above address, to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on March 5, 1993.

Oral comments at the hearing will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be schedule according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Albuquerque Projects Office at the above address by March 15, 1993, for inclusion in the hearing record.

Dated: January 29, 1993.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 93–2734 Filed 2–4–93; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Lakeshore Road Reconstruction, Lake Mead National Recreation Area; Notice of Availability of Final Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service has prepared a Final Environmental Impact Statement (FEIS) on the proposed improvement of Lakeshore Road, Lake Mead National Recreation Area, Clark County, Nevada.

The Draft Environmental impact Statement (DEIS) for this project was circulated for public review between November 29, 1991 and January 30, 1992 (56 FR 61047). Both the FEIS and DEIS describe and evaluate three alternatives. Alternative A, no action, would make no improvements to the roadway except for routine maintenance. Alternative B, the proposal, would rehabilitate 8.8 miles of the existing road, relocate a 4.3-mile middle segment of the road closer to the lakeshore, construct six additional lake access roads and overlooks, redesign/channelize intersections and provide bicycle/pedestrian paths. Alternative C would also provide for rehabilitation of 8.8 miles of existing road, but would reconstruct a 3.6-mile section of the middle segment on the existing alignment. It would also provide for one additional lake access road and overlook, and similar to Alternative B, provide for redesign and channelization of intersections and for bicycle/pedestrian paths.

The 30 day no action period on the FEIS will end March 15, 1993. Requests for additional information and/or copies of the FEIS should be directed to: Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, telephone number (702) 293–8920.

Copies of the FEIS are available at the park headquarters and at libraries located in the park's vicinity. Copies also are available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St. suite 600, San Francisco, CA 94107–1372.

Dated: January 11, 1993.

Lewis Albert,

Acting Regional Director.

[FR Doc. 93–2825 Filed 2–4–93; 8:45 am]

BILLING CODE 4310-70-M

Delta Region Preservation Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, March 3, 1993, at the Ducros Museum, 1345 Bayou Road, St. Bernard, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—1993 programs and activities
—General Management Plan update
—New facilities
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, Telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: January 26, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–2826 Filed 2–4–93; 8:45 am]

BILLING CODE 4310-70-M

Advisory Commission of the San Francisco Maritime National Historical Park

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Advisory Commission of the San Francisco Maritime National Historical Park will be held from 10:15 a.m. to 12 noon and 1 p.m. to 4 p.m. (PST) on Thursday, February 18, 1993 in Building f (Firehouse), Fort Mason, San Francisco, California. The Advisory Commission was established for a period of ten years by Public Law 100–348 to provide advice on the management and development of the park.

The main agenda item at this public meeting will be a complete report on the Park finances. The Western Regional Office, National Maritime Museum Association, Associates of the National Maritime Museum Library, and Golden Gate National Park Association will explain their respective roles in providing assistance and funding to the San Francisco Maritime National Historical Park.

The meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval by the Commission. Upon approval, a transcript will be available by contacting the Superintendent, San Francisco Maritime National Historical Park, Fort Mason, Building E, Second Floor, San Francisco, California 94123.

Dated: January 26, 1993.

B.J. Griffin,

Acting Regional Director, Western Region.

Agenda for the February 18, 1993 Meeting

Executive Session—Fort Mason, Building F (Firehouse) 9 a.m.–10 a.m.

9 a.m.—Introductory remarks from the Chair
  Remarks from the Superintendent
  Discussion of Goals from November 19, 1992 meeting
9:30 a.m.—Committee Reports
10 a.m.—Break

Public Meeting—Fort Mason, Building F (Firehouse) 10:15 a.m.–4 p.m.

10:15 a.m.—Welcome—Superintendent, William G. Thomas
  Opening Remarks—Chairman, Patrick Flanagan
  Old Business

Approval of Minutes
10:45 a.m.—Report on Park Finances
National Park Service Funding Sources, Patricia Neubacher, Budget Officer, Western Regional Office
Public questions and comments
12 p.m.—Lunch
1 p.m.—New Business
Report on San Francisco Maritime NHP Park Finances
Budget Needs
William G. Thomas, Superintendent SAFR, Jeanne Haugh, Administrative Officer SAFR
Public Questions and Comments
2 p.m.—Park Support Groups
—National Maritime Museum Association, Joseph Hoeghteling, President, Kathy Lohan, Executive Director
—Associates of the National Maritime Museum Library, Graydon S. Staring, President
—Golden Gate National Park Association, Greg Moore, Executive Director
Public questions and comments.
3:30 p.m.—Goals for next meeting
Commission questions and comments.
Public questions and comments.
4 p.m.—Adjournment

[FR Doc. 93-2827 Filed 2-4-93; 8:45 am]

BILLING CODE 4310-70-M

Mining Plan of Operation; Wrangell-St. Elias National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR 9A, James Moody has filed a supplement to his currently approved plan of operations for Bonanza Nos. 4 through 6 located within Wrangell-St. Elias National Park and Preserve. This supplement proposes that Bonanza Nos. 2 and 3 placer claims be included within the approved plan of operations. If approved, the revised plan of operations will expire at the end of the 1993 mining season.

ADDRESSES: This supplemental plan of operations is available for inspection during normal business hours at the following locations:

Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503-2892

Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 29, Glennallen, Alaska 99588

FOR FURTHER INFORMATION CONTACT: Floyd Sharrock of the National Park Service, Minerals Management Division at the address given above; telephone (907) 257-2626.

John M. Morehead,
Regional Director.

[FR Doc. 93-2828 Filed 2-4-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-469 (Remand)]

Certain High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan; Remand Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that the U.S. Court of International Trade (CIT) has remanded to the Commission its affirmative final determination in the above-captioned investigation. Written briefs concerning those issues that are the subject of the remand may be submitted by persons who were parties to the Commission's investigation in Certain High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan, Inv. No. 731-TA-469 (Final), to the Commission no later than Friday, February 12, 1993. The deadline for the Commission to report its remand determination to the CIT is March 1, 1993.

ADDRESSES: Briefs should be addressed to Paul R. Bardos, Acting Secretary, and sent to the U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, U.S. International Trade Commission, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission issued an affirmative determination in the above-captioned investigation on August 26, 1991. On December 29, 1992, the CIT issued a decision remanding that determination. The CIT directed the Commission to make two separate determinations corresponding to the two classes or kinds of imported merchandise found by Commerce to be dumped, i.e., active matrix liquid crystal high-information content flat panel displays and electroluminescent high-information content flat panel displays.

On January 15, 1993, respondents Apple Computer, Inc., COMPAQ Computer Corp., and IBM Corp. filed a request for permission to file briefs before the Commission makes its remand determination. Among the reasons provided by the requesting parties for their request was the statement that they wished to discuss the effect of certain scope determinations issued by the Department of Commerce on the Commission's remand determination. Petitioners the Advanced Display Manufacturers of America filed on January 21, 1993, an opposition to respondents' request. On January 22, 1993, certain Japanese respondents joined in the request for permission to file briefs. On January 26, 1993, respondent Tandy Corp. also joined in the request.

Persons who were parties to the original Commission final investigation, and only such persons, may file briefs in this remand proceeding no later than Friday, February 12, 1993. Any such briefs should be filed in accordance with Commission rule 201.8, 19 CFR 201.8, and may not exceed twenty (20) double-spaced, typewritten pages. Only two (2) such briefs will be accepted: (1) one brief from parties in support of the imposition of antidumping duties, and (2) one brief from parties in opposition to the imposition of antidumping duties. Briefs must be accompanied by a certificate of service indicating that copies of the briefs were served on all parties of record in accordance with Commission rule 201.16(b), 19 CFR 201.16(b). If a brief contains business proprietary information, the business proprietary version should be served on all parties subject to the judicial protective order issued by the CIT, and a public version with all business proprietary information deleted should be served on all other parties.

Briefs may address (1) the issues raised by the CIT remand order, (2) whether the Commission can and should reopen the record to include Commerce's scope determinations, and (3) what impact, if any, Commerce's scope determinations should have on the Commission's remand determination. Briefs may not address other aspects of the Commission's final determination, and may not include information not contained in the administrative record compiled in the original investigation, other than information concerning Commerce's scope determinations.

By order of the Commission.

Issued: February 1, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–2758 Filed 2–4–93; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–342]

Certain Circuit Board Testers; Commission Determination To Designate Temporary Relief Proceedings More Complicated; Setting of Administrative Deadline

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to designate the temporary relief proceedings in the above-captioned investigation "more complicated," thereby extending the statutory deadline for determining whether to issue temporary relief by 60 days, *i.e.*, until April 1, 1993. The Commission has set an administrative deadline of March 10, 1993, for issuing its determination on temporary relief under 19 U.S.C. 1337(e). The Commission has determined to declare the temporary relief phase of this investigation more complicated because the presiding administrative law judge's initial determination (ID) on temporary relief contains insufficient factual findings to support a denial of relief under *Pretty Punch Shoppettes Inc.* v. *Hauk*, 844 F.2d 782 (Fed. Cir. 1988). Moreover, the ID contains incomplete and/or erroneous legal analyses to support several of its legal conclusions. In view of these deficiencies, the ID presents complex issues for review. Consequently, the Commission requires more time to supplement the ID's factual findings and to provide complete legal analysis of the issues presented.

ADDRESSES: Copies of the nonconfidential version of the presiding administrative law judge's ID denying temporary relief and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: On September 25, 1992, Integri-Test, Corp. (Integri-Test) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain circuit board testers allegedly covered by certain claims of Integri-Test's U.S. Letters Patent 4,565,966. The notice of investigation instituting an investigation on the basis of Integri-Test's complaint was published in the **Federal Register** on November 2, 1992. 57 FR 49490. Bath Scientific Ltd. of the United Kingdom and BSL North America of Massachusetts were named as respondents. Pursuant to Commission interim rule 210.24(e)(8) (19 CFR 210.24(e)(8)), the Commission also provisionally accepted Integri-Test's motion for temporary relief.

The presiding administrative law judge held an evidentiary hearing on temporary relief from December 7–11, 1992. On January 4, 1993, all parties filed written submissions on the issues of remedy, the public interest, and respondents' bond, as provided for in Commission interim rule 210.24(e)(18)(ii) (19 CFR 210.24(e)(18)(ii)). On January 11, 1993, the administrative law judge issued an ID denying complainant's motion for temporary relief. On January 19, 1993, the parties filed written comments concerning the ID. The deadline for filing of reply comments was extended by the Chairman until January 25, 1993. All parties filed reply comments, but no government agency comments were filed.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.24(e)(11) of the Commission's interim rules (19 CFR 210.24(e)(11)).

Issued: February 1, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–2755 Filed 2–4–93; 8:45 am]

BILLING CODE 7020-02-M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing and Meeting of the Judicial Conference Advisory Committee on Appellate Rules; Correction

AGENCY: Advisory Committee on Appellate Rules, Judicial Conference of the United States.

ACTION: Notice of open hearing and meeting.

Correction

SUMMARY: The two-day meeting of the Advisory Committee on Federal Rules of Appellate Procedure scheduled for April 20–21, 1993 will begin each day at 8:30 a.m., instead of 9 a.m. as published in the January 22, 1993 issue of the **Federal Register**. The meeting will be held at the Federal Judiciary Building, Agency Conference Room, 4th Floor, One Columbus Circle, NE., Washington, DC.

For additional information contact John K. Rabiej, Chief, Rules Committee Support Office, at (202) 273–1820.

Dated: January 29, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–2830 Filed 2–4–93; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–24]

William L. Alford, Jr., M.D.; Denial of Application for Registration

On December 13, 1991, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William L. Alford, Jr., M.D. (Respondent) of Norfolk, Virginia proposing to deny his application, executed on October 14, 1990, for registration as a practitioner under the Controlled Substances Act. 21 U.S.C. 823(f). The basis for the Order to Show Cause was that Respondent's registration would be inconsistent with the public interest. As grounds, the DEA alleged that (1) Respondent, as a medical student in 1976, unlawfully diverted the Schedule II controlled substance morphine for his personal use and by 1983 had established a pattern of unlawful abuse in quantities up to 700 milligrams per day; (2) on December 15, 1983, he was convicted in the Circuit Court of the City of Chesapeake of the felonies of possession of morphine with intent to distribute and of conspiracy to distribute morphine; (3) on April 13, 1984, he was convicted by the Circuit Court of the County of Henrico of six felonies including possession of marijuana with intent to distribute, and possession of Demerol, Quaalude, dextroamphetamine, and Preludin, all Schedule II controlled substances, with intent to distribute; and (4) on July 20, 1984, the Commonwealth of Virginia Board of Medicine revoked his license to practice medicine. On December 6, 1989, the Virginia Board reinstated Respondent's medical license on indefinite probation with terms and conditions which included a prohibition from handling controlled substances.

Respondent, by counsel, requested a hearing. The matter was docketed before Administrative Law Judge Mary Ellen Bittner and a hearing was scheduled for September 9, 1992. On August 31, 1992, the Government presented a motion for summary disposition alleging that Respondent did not possess a current license from the Commonwealth of Virginia to permit him to handle controlled substances. On September 4, 1992, the Respondent replied to the government's motion and requested a continuance until the Virginia Board of Medicine met and ruled on Respondent's state licensure status. Respondent did not deny that he is currently without authority from the Commonwealth of Virginia to handle controlled substances.

On September 18, 1992, Judge Bittner issued an Opinion and Recommended Decision of the Administrative Law Judge which granted the Government's motion for summary disposition and recommended that the Respondent's application for registration be denied. No exceptions were filed, and on October 19, 1992, the administrative law judge transmitted the record of the proceedings to the Administrator.

The Administrator has considered the record in its entirety and, under the provision of 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

Judge Bittner determined that the Respondent is not licensed to prescribe or dispense controlled substances in the State of Virginia, the jurisdiction in which he seeks registration with the DEA. Judge Bittner also concluded that the Respondent is not entitled to possess a DEA Certificate of Registration, and that DEA has no authority to grant him a registration. Accordingly, the administrative law judge recommended that his application for registration should be denied.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to dispense controlled substances. 21 U.S.C. 802(21), and 823(f). See, e.g., Bobby Watts, M.D., Docket No. 87–71, 53 FR 11920 (1988); Wingfield Drugs, Inc., Docket No. 87–13, 52 FR 27070 (1987); and Robert F. Witek, D.D.S., Docket No. 87–54, 52 FR 47770 (1987).

The Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. Based on the foregoing, the Administrator concludes that Dr. Alford's application for registration must be denied. 21 U.S.C. 823(f). Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for registration, executed by William L. Alford, Jr., M.D. on November 6, 1990, be, and it hereby is, denied. This order is effective February 5, 1993.

Dated: January 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–2751 Filed 2–4–93; 8:45 am]

BILLING CODE 4410-09-M

Romulo Robleda Gamad, Jr., M.D.; Revocation of Registration

On October 15, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Romulo Robleda Gamad, Jr., M.D. (Dr. Gamad) of 2953 Beal Street, Warren, Ohio 44485, proposing to revoke his DEA Certificate of Registration, AG5934080, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Gamad's lack of authorization to handle controlled substances in the State of Ohio. 21 U.S.C. 823(f). The Order to Show Cause also alleged that Dr. Gamad had been convicted in the Court of Common Pleas, State of Ohio, of selling or offering to sell controlled substances on November 13, 1991, and that such convictions were felonies relating to controlled substances under applicable State law as that term is used in 21 U.S.C. 824(a)(2).

The Order to Show Cause was sent to Dr. Gamad by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Gamad and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Romulo Robleda Gamad Jr., M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that Dr. Gamad's medical license was permanently revoked on June 18, 1992, by the State Medical Board of Ohio. The revocation was based upon the aforementioned controlled substance convictions. Consequently, Dr. Gamad is no longer authorized to handle controlled substances in any schedule in the State of Ohio.

Therefore, the Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. See 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See Howard J. Reuben, M.D., 52 FR 8375 (1987); Ramon Pla, M.D., Docket No. 86–54, 51 FR 41168 (1986); Dale D. Shahan, D.D.S., Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Since Dr. Gamad lacks State authorization to handle controlled substances, it is not necessary for the Administrator to decide the issue of whether Dr. Gamad's State felony convictions may be the basis to revoke his registration. No evidence of explanation or mitigating circumstances has been offered by Dr. Gamad.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AG5934080, previously issued to Romulo Robleda Gamad, Jr., M.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective February 5, 1993.

Dated: January 29, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–2754 Filed 2–4–93; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92–41]

Arunkumar J. Shah, M.D.; Denial of Application for Registration

On February 26, 1992, the Deputy Assistant Administrator, Office of

Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Arunkumar J. Shah, M.D. (Respondent) of Houston, Texas, proposing to deny his application, executed on November 6, 1990, for registration as a practitioner under the Controlled Substances Act. 21 U.S.C. 823(f). The basis for the Order to Show Cause was that respondent's registration would be inconsistent with the public interest. As grounds, the DEA alleged that the Respondent wrote prescriptions to undercover officers without a valid medical indication on three occasions, that he had surrendered his Texas medical license and controlled substance registration, and that his DEA Certificate of Registration had been previously revoked.

Respondent, by counsel, requested a hearing. The matter was docketed before Administrative Law Judge Paul A. Tenney. A hearing was held in Houston, Texas on July 28, 1992. Based on new information acquired on that date, the Government presented a motion for summary disposition alleging that Respondent did not possess a current license from the Texas Department of Public Safety to permit him to handle controlled substances. The administrative law judge deferred ruling on the Government's motion to allow Respondent to file a response. Judge Tenney proceeded with the scheduled hearing and received evidence on the merits of the issues raised by the Order to Show Cause. On September 9, 1992, the Respondent, in reply to the Government's motion, did not deny that he is currently unauthorized by the State of Texas to handle controlled substances, but asked that the administrative law judge make a finding on the public interest issue.

On September 11, 1992, Judge Tenney issued an opinion and recommended decision of the administrative law judge which granted the Government's motion for summary disposition and recommended that the Respondent's application for registration be denied. No exceptions were filed, and on October 8, 1992, the administrative law judge transmitted the record of the proceedings to the Administrator.

The Administrator has considered the record in its entirety and, under the provision of 21 CFR 1316.67, enters his final order in this matter, based on findings, of fact and conclusions of law as hereinafter set forth.

Judge Tenney found that the Respondent is not licensed to prescribe or dispense controlled substances in the State of Texas, the jurisdiction in which he seeks registration with the DEA.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the State to dispense controlled substances. 21 U.S.C. 802(21), and 823(f). A lack of a state license to handle controlled substances requires that DEA revoke the registrant's DEA Certificate of Registration or deny an application for registration. See, Bobby Watts, M.D., Docket No. 87–71, 53 FR 11920 (1988); Wingfield Drugs, Inc., Docket No. 87–13, 52 FR 27070 (1987); and Robert F. Witek, D.D.S., Docket No. 87–54, 52 FR 47770 (1987). Accordingly, the administrative law judge concluded that the Respondent's application for registration should be denied.

The administrative law judge also concluded that the Respondent, by his request for a finding on the merits of the public interest question, was asking that the Administrator enter a declaratory order pursuant to 5 U.S.C.A. 554(e). The Administrator, in his discretion, is permitted to enter a declaratory order if such an order is issued to terminate a controversy or remove an uncertainty. In this case, the administrative law judge found that the potential benefit of judicial economy gained by ruling on the public interest question was outweighed by the dynamic nature of the public interest determinations. The administrative law judge concluded that a declaratory order is inappropriate when there is a possibility that a subsequent event could alter the critical facts. Since the State of Texas has not made a final decision on Respondent's ability to handle controlled substances, the information regarding the Respondent and the public interest is yet incomplete.

The Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. Based on the foregoing, the Administrator declines to enter a declaratory order on the public interest issue and concludes that the Respondent's application for registration must be denied. 5 U.S.C.A. 554(e) and 21 U.S.C. 823(f).

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that the application for registration, executed by Arunkumar J. Shah, M.D. on November 6, 1990, be, and it hereby is, denied. This order is effective February 5, 1993.

Dated: January 26, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–2750 Filed 2–4–93; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 92–35]

James C. Womack, M.D.; Denial of Application

On January 27, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to James C. Womack, M.D., 1300 Cedar, Bandera, Texas 78003, (Respondent), proposing to deny his application for DEA registration as a practitioner under 21 U.S.C. 823(f). The Order to Show Cause was issued based on allegations that the Respondent's registration would be inconsistent with the public interest.

By letter dated February 28, 1992, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held before Judge Tenney in San Antonio, Texas on July 30, 1992. On October 19, 1992, the administrative law judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. On November 12, 1992, the Respondent filed exceptions to the ruling of the administrative law judge. On November 20, 1992, the administrative law judge transmitted the record of these proceedings to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67 hereby adopts the findings, conclusions and recommendations of the administrative law judge and issues his final order in this matter.

The administrative law judge found that the Respondent had surrendered his DEA Certificate of Registration on December 16, 1991, based upon his personal abuse of controlled substances. The administrative law judge further found that, following the surrender of his own DEA registration, the Respondent continued to prescribe controlled substances using his father's DEA Certificate of Registration, issuing more than 700 controlled substances prescriptions. The administrative law judge correctly found from the evidence presented that the Respondent was fully aware that he had no authority to prescribe or otherwise handle controlled substances, yet continued to prescribe such controlled substances using his father's DEA number. These facts are not disputed in the record.

The administrative law judge found that the Respondent offered little explanation or justification for his misconduct, nor did he actually acknowledge any wrongdoing. While it is true that the Respondent demonstrated rehabilitation from substance abuse, the record indicates that the Respondent failed to demonstrate that his behavior was in any way justified or that such behavior was not likely to recur. The facts bear out the administrative law judge's findings.

In evaluating whether the issuance of a DEA registration to Respondent would be inconsistent with the public interest, the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In determining whether an applicant's registration would be inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See David E. Trawick, D.D.S., Docket No. 88–69, 53 FR 5326 (1988).

The administrative law judge found that the Government made a prima facie showing of 21 U.S.C. 823(f)(4) and (5), and found that the Government established conduct by the Respondent that would threaten the public health and safety. The Administrator takes particular note of the administrative law judge's finding that, although the Respondent initially acted lawfully in having patients, his behavior deteriorated to the point of completely ignoring the significance of a DEA Certificate of Registration.

The Administrator finds that not only was a showing made of Respondent's illegal behavior, but that the behavior of the Respondent indeed posed a threat to the public health and safety. The Respondent clearly is uncertain of, and even oblivious to, the laws and regulations under which he must function as a DEA registrant. The Administrator has considered the exceptions filed by the Respondent and, given the evidence in the record, finds them to be without merit. The Administrator determines that the Respondent's application for a DEA Certificate of Registration must be denied at this time. However, in accordance with the administrative law judge's recommendation, and pursuant to the evidence in the record regarding the Respondent's rehabilitation from substance abuse and his contribution in a medically underserved area, the Administrator finds that any application subsequently made by the Respondent to DEA for registration as a practitioner after one year will be favorably considered, provided there is no additional evidence of wrongdoing by the Respondent.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him under the provisions of 21 U.S.C. 823(f) and 28 CFR 0.100(b), hereby orders that the Respondent's pending application for a DEA Certificate of Registration be, and it hereby is, denied.

This order is effective February 5, 1993.

Dated: January 27, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–2752 Filed 2–4–93; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27,960]

Pennzoil Sulphur Co., Galveston, TX; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the notice on petition TA–W–27,960 which was published in the **Federal Register** on January 13, 1993 (58 FR 4186) in FR Document 93–751. A printing error appears on page 4186 in the 5th line of the second column under TA–W–27,960. The line should read "26, 1991" instead of "26, 1992".

The sentence should read "A certification was issued covering all workers separated on or after October 26, 1991." Signed in Washington, DC, this 22nd day of January, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–2782 Filed 2–4–93; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–27,801]

Spaulding Composites Co., Inc., Tonawanda, NY; Negative Determination Regarding Application for Reconsideration

By an application dated January 11, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on November 27, 1992 and was published in the **Federal Register** on December 15, 1992 (57 FR 59359).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the decreased sales or production criterion and the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act were not met during the relevant periods.

The investigation findings show that the company produced fibre tube, high pressure laminates and fibre sheet.

In order for workers to obtain a worker group certification, all three of the Group Eligibility Requirements of the Trade Act including the "contributed importantly" test must be met. The criteria are (1) a significant decrease in employment; (2) an absolute decrease in sales or production and (3) increased imports of like or directly competitive articles which "contributed importantly" to declines in sales or production and employment at the firm or appropriate subdivision.

The Department agrees with the company that the decreased production or sales criterion has since been met since all production ceased at Tonawanda by November 1992. However, the "contributed importantly" test has not been met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey showed that none of the major declining customers reported increasing their purchases of imports while decreasing their purchases from Spaulding during the period applicable to the petition.

Section 223(b)(1) of the Trade Act limits the Department's earliest certification of workers to only one year prior to the petition or postmarked date. Accordingly, worker separations and declines in sales or production in the early or mid-1980s would not form a basis for a worker group certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of January 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-2783 Filed 2-4-93; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Supersedeas Decisions to General Wage Determination Decisions

The number of the decisions being superseded and their date of notice in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of decisions being superseded.

Volume I

Pennsylvania:
PA91-4 (Feb. 22, 1991) p. All. (PA93-4).
PA91-23 (Feb. 22, 1991) p. All. (PA93-23).
Virginia:
VA91-15 (Feb. 22, 1991) p. All. (VA93-15).
VA91-17 (Feb. 22, 1991) p. All. (VA93-17).
VA91-50 (Feb. 22, 1991) p. All. (VA93-50).
VA91-78 (Sept. 4, 1992) p. All. (VA93-78).
VA91-79 (Sept. 4, 1992) p. All. (VA93-79).
VA91-80 (Sept. 4, 1992) p. All. (VA93-80).
VA91-81 (Sept. 4, 1992) p. All. (VA93-81).

Volume II

Iowa:
IA91-14 (Feb. 22, 1991) p. All. (IA93-14).

Volume III

Washington:
WA91-1 (Feb. 22, 1991) p. All. WA93-1).

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 29th day of January 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–2526 Filed 2–4–93; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D–9061, et al.]

Proposed Exemptions; Elk Promotions, Inc.; Pension Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ELK Promotions, Inc., Pension Plan (the Plan), Located in Worthington, OH

[Exemption Application No. D–9061]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of its interests in certain notes (collectively, the Notes) to Fred N. Egelhoff, Jr. (Egelhoff), party in interest with respect to the Plan, provided that: (a) The Plan receives a price equal to the greater of the outstanding balance of the Notes plus any accrued interest, or the fair market value of the Notes as determined by an independent, qualified appraiser; (b) the sale will be a one-time sale for cash; and (c) the Plan will pay no fees in connection with the sale.

Summary of Facts and Representations

1. ELK Promotions, Inc. (the Employer), located in Worthington, Ohio, is engaged in the business of providing promotional items to companies and individuals.

2. The Plan is a defined benefit pension plan which, prior to March 1, 1992, had twenty-seven (27) participants and beneficiaries and total assets of $475,559. In March of 1992, the Plan filed a notice of intent to terminate under section 4041 of the Act and has, as of March 1, 1992, distributed the majority of the Plan's assets to the participants and beneficiaries of the Plan. As of April 15, 1992 the Plan had two participants and beneficiaries and total assets of $68,909. The two remaining participants in the Plan are Fred N. Egelhoff, Jr. and Larry L. Dill, both of whom are trustees (the Trustees) of the Plan.

3. The Plan acquired its interests in the Notes by entering into two loan participation agreements; one on May 18, 1989 and one on June 30, 1989. On May 18, 1989, the Plan and the ELK Promotions, Inc. Employees Profit Sharing Plan entered into a cognovit promissory note with Wood Financial Services, Inc. (the Wood Note), an Ohio corporation which is an unrelated party. The Wood Note is secured by a second mortgage on one four family unit and one three family unit located in Franklin County, Ohio. The Plan participates in the Wood Note to the extent of $10,000 of the $50,000 face amount. The monthly payments under the Wood Note include interest at a rate of twelve percent (12%) compounded per annum and principal amortized over a thirty year period, with a five year maturity. The outstanding balance and any accrued interest on the Wood Note are due on June 1, 1994.

On June 30, 1989, the Plan entered into a loan agreement, in conjunction with several unrelated parties, with Cedar Wood Apartments of Belpre II, Ltd. (the Cedar Note), also an unrelated party. The Cedar Note is secured by a first mortgage on a thirty-four unit apartment facility, Cedarwood Apartments of Belpre II, Ltd., located at 431 East Broad St., Columbus, Ohio. The Plan participated in the Cedar Note to the extent of $25,000 of the $575,000 face amount. The monthly payments under the Cedar Note include interest at a rate of ten percent (10%) per annum and principal amortized over a thirty year period, with a five year maturity. The outstanding balance and any accrued interest on the Cedar Note are due at maturity on June 1, 1994.

The applicant represents that the payments to the Plan under the Notes are current.

4. The applicant states that in order to complete the termination of the Plan, the Plan must have sufficient cash to pay the accrued benefit balances to the remaining two participants. Because the Notes represent a significant amount of the Plan's assets, it is essential to liquidate the Notes in order to pay the remaining two participants their accrued balances.

5. The applicant represents that the Notes are not publicly-traded or freely transferable and, therefore, are fairly illiquid. The Trustees believe that the Plan could incur substantial losses, as well as commissions and other related expenses, if the Plan attempted to sell the Notes to an unrelated party or parties. Accordingly, the Trustees propose the sale of the Notes, by the Plan to Egelhoff, at a price equal to the greater of the outstanding balance of the Notes plus an accrued interest, or the fair market value of each of the Notes as determined by an independent qualified appraiser at the time of the sale. The Plan would not pay any commissions or other expenses with respect to the sale.

6. BancOhio National Bank-Trust Group (BNB) has appraised the fair market value of the Notes. BNB has extensive experience evaluating both equity and debt instruments and provides valuation services for use in personal financial planning, Employee Stock Ownership Plans, estate and gift taxes and corporate restructuring. It is represented that BancOhio National Bank derives less than 1% of its income in the aggregate from the Trustees and the Employer. In addition, none of the Notes held by the Plan were purchased through BancOhio National Bank.

The fair market value of the Notes has declined since the Plan acquired them. BNB has concluded that the total fair market value of the Notes was $30,900 as of June 15, 1992. The appraisal indicates that the fair market value of the Notes is approximately the outstanding balance of the Notes discounted to yield an extra 200 basis points which reflects the risks associated with: The illiquid nature of the Notes; the "balloon" payment schedule of the Notes; and the impact of the economic recession of the value of the real estate in the area where the underlying collateral is located.

BNB states that the depressed real estate markets where the collateral (the Properties) underlying the Notes is located would cause serious difficulties in refinancing the Properties at the time the balloon payments are due, including: The provision of additional unrelated collateral to secure refinancing; or the Note holders may become the providers of permanent financing. In addition, foreclosing on the respective Properties appears unlikely to produce net proceeds sufficient to cover the outstanding balance of the Notes.

7. It is proposed that the Plan will receive the greater of the current fair market value of the Notes, as determined by BNB, or the outstanding balance of the Notes. The applicant states that BNB will update its appraisal of the Notes as of the date of the sale to obtain the most current fair market value of the Notes.

8. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Plan will receive a price which equal to the greater of the fair market value of each of the Notes, as determined by an independent appraiser, or the outstanding balance of each of the Notes plus any accrued interest; (b) the sale will be a one-time sale for cash; and (c) the Plan will not pay any commissions or other expenses with respect to the sale.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Berger of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

The Retirement Income Plan for Employees of the Colonial Williamsburg Foundation (the Plan), Located in Williamsburg, VA

[Application No. D–9055]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975 (c)(2) of the Code and in accordance with the procedures set forth in 29 CFR PART 2570, Subpart b (55 FR 32836, 32847, August 10, 1990). If the Exemption is granted the restriction of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) by the Plan of certain parcels of real property (the Property, to the Colonial Williamsburg Foundation (the employer), a party in interest with respect to the Plan, provided that (a) the Plan receives not less than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, and (b) the Plan will not incur any expenses incident to the Sale.

Summary of Facts and Representations.

1. The Employer, which sponsors the Plan, was formed in 1926 and is a non-profit, non-stock Virginia corporation. It was established to restore and preserve areas of the historic City of Williamsburg, Virginia, which had been the Colonial capital of Virginia. The Employer provides visitors to Williamsburg an opportunity to tour original and accurately reproduced 18th century buildings, and furnishings, and to experience interpretations of life in 18th century Williamsburg. Also, the Employer has a for-profit subsidiary, Colonial Williamsburg Hotel Properties, Inc., which operates various hotels, restaurants, and facilities in Williamsburg for the sole purpose of supporting its museum and other facilities.

The Employer is managed by a 26 member Board of Trustees that is composed of a diversified group of professional and executive personages that includes a Supreme Court Justice, an editor, an agriculturist, educators, lawyers, consultants, and executives of financial, manufacturing, merchandising, and service organizations from various parts of the country. The Board of Trustees appoints the various officers of the Employer to manage its daily operations, and the Board of Trustees also selects from its members a seven member Investment Committee that is responsible for the management of the Endowment Funds of the Employer.

2. The Plan is a qualified non-contributory defined benefit pension plan with 2,359 participants who are actively employed by the Employer, 1,122 retired participants or their beneficiaries, and 315 terminated employees with vested benefits, as of December 31, 1991. The total assets of the Plan were $78,598,933, as of December 31, 1991. The Plan is funded through the Retirement Income Trust Fund (the Trust) which is qualified and tax exempt under the Code, and its fiduciaries are empowered to hold, manage, and invest funds to be used for providing benefits under the Plan.

The custodial trustee (the Trustee) of the assets in the Trust is State Bank and Trust Company of Boston, Massachusetts, pursuant to a trust agreement, dated October 1, 1985, between the Employer and the Trustee.

Prior to October 1985, the custodial trustee was the Crestar Bank (Crestar), a wholly owned subsidiary of Crestar Financial Corporation, located in Richmond, Virginia, and successor to

United Virginia Bank, which had become custodial trustee of the assets of the trust pursuant to a trust agreement on May 2, 1976.

After October 1, 1985, Crestar continued to serve the Trust only with respect to the Property, as Custodial Sub-trustee.

The seven member Investment Committee (the Committee), which manages the Employer's Endowment Fund, also manages the Plan and its Trust. The Committee is responsible for the investment policy of the plan and the retention, monitoring, and discharge of its investment managers. Three of the seven members of the committee are the chairman of the Board of the Trustees of the Employer, the President of the Employer, and the Chairman of the Budget and Finance Committee of the Employer. The other four members of the Committee are the Chairman and Managing Partner of Beck, Mack & Oliver of New York, N.Y.; the Managing Partner of Geddy, Harris & Geddy of Williamsburg, Virginia; the Chairman of Putnam Management Company, Inc. of Boston Massachusetts; and the Managing Partner of Middlegreen Associates of Boston, Massachusetts.

3. The Property is located in York County, Virginia in the Vicinity of the City of Williamsburg. It is identified in the records of the York Assessor as Parcel A, Section 6/Lot 2A, containing approximately 123.11 Acres and Parcel B, Section 6/Lot 2B, containing approximately 214.29 acres. The Property is densely wooded with marshy areas, steep ravines, and rolling terrain of which approximately 139 acres is usable for building purposes.

4. The Plan now proposes to sell the Property to the Employer for the fair market value of the Property as determined by two qualified, independent appraisers, and in accordance with the determinations and approval of a qualified, independent fiduciary. The Plan's Investment Committee, acting in its fiduciary capacity for the Plan, determined that the proposed Sale of the Property to the Employer would allow the Plan to realize substantial appreciation on its investment in the Property; the Sale would improve the liquidity of the portfolio of the Plan by allowing the proceeds from the Sale to be invested in other assets of a more liquid nature; and would relieve the Plan for management functions inherent in ownership of land, such as, protecting the Property from vandalism and the potential liabilities from accidents occurring upon the Property. The applicant represents that the Sale of the Property to the Employer would allow the Plan to realize the fair market value of the Property while not incurring any expenses from the transaction, such as, sales commissions or legal fees.

After obtaining additional information regarding the Property and its proposed Sale, the Investment Committee engaged Paine Webber Properties, Incorporated, a Delaware Corporation (PWPI) on August 13, 1991, as its qualified, independent fiduciary in order to evaluate the terms of the Sale and determine whether the Sale was in the best interests of the Plan and its participants and beneficiaries. PWPI contracted with Dominion Realty Advisors, Inc., MAI, a successor to Drucker & Falk (Dominion), to update its earlier appraisal of the Property on February 9, 1990. Dominion determined the Property to have a fair market value of $2.9 million, as of February 25, 1992. In addition, PWPI hired LandVest of Boston, Massachusetts, MAI, to determine the fair market value of the Property. LandVest determined the fair market value of the Property to be $2.7 million, as of February 20, 1992. Based upon these two appraisals, PWPI, as a qualified independent fiduciary for the Plan with respect to the proposed Sale, determined, as of April 3, 1992, that the fair market value of the Property was $2.8 million; and furthermore determined that it was in the best interests of the Plan and its participants and beneficiaries to sell the Property at this time to the Employer. PWPI found that, due to economic changes in the area and the declining market values of real property, owning the Property does not serve the interests of the Plan. PWPI concluded in its representations that the potential for growth in the area has declined, especially, because of the change in tourism and military expenditures in the area. PWPI determined that the economy of the area where the Property is located principally depends upon tourism, the retail sales industry, lodging facilities, the military, and the ship building industry. All the above items are represented by PWPI to be experiencing a decline in opportunity for growth and profitability since the latter part of the 1980s from their highs of the mid-1980s. The applicant, citing a report by ZHA, Inc. of Annapolis, Maryland, a real estate consulting firm, represents that the potential for commercial development of the Property will not ripen for another 5 to 15 years.

5. In summary, the applicant represents that the proposed Sale will satisfy the criteria of section 408(a) of the Act because (a) the Sale of the Property involves a one-time transaction; (b) the Plan will not incur any expenses incident to the Sale; (c) the Sales price will be determined from appraisals of the Property prepared by qualified, independent appraisers; (d) the Sale was determined by a qualified, independent Plan fiduciary to be in the best interests of the Plan and its participants and beneficiaries and protective of the interests of the participants and beneficiaries of the Plan; (e) the Sale will permit the Plan to realize and reinvest the appreciated return from the Sale of the Property in more liquid assets; and (f) the Plan will not have to invest any of its assets in the development of the Property.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Metropolitan Life Insurance Company (Metropolitan), Located in New York, New York

[Application No. D–8469]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code shall not apply, effective February 20, 1984, to the past and continued leasing by Metropolitan's Separate Account RE (Account RE), a pooled separate account sponsored by Metropolitan in which employee benefit plans (Plans) invest, of office space in Commerce Plaza, a commercial development located in Oakbrook, Illinois, to Metropolitan, provided that the terms and conditions of the transaction were and remain at least as favorable to Account RE as those available in similar transactions between unrelated parties.

Effective date: If this proposed exemption is granted, the effective date will be February 20, 1984.

Summary of Facts and Representations

1. Metropolitan is a mutual life insurance company organized under the laws of the state of New York. Metropolitan has under management, in its general account (the General Account) and all of its separate accounts, a portfolio of mortgage loans and real estate equities of approximately $22.1 billion.

2. Metropolitan organized Account RE in 1972 as a separate account within the contemplation of section 3(17) of the

Act, under which income and gains and losses, whether or not realized, from assets allocated to the Account are credited to or charged against the Account without regard to other income, gains, or losses of Metropolitan. Account RE is open-ended with respect to investments and participation. Participation in Account RE is effected pursuant to group annuity contracts issued to participating plans (or Plan sponsors) which provide, among other things, that amounts received under the contracts are applied to Account RE and that the investment experience of the Account will be credited or charged, as the case may be, to the participating contracts proportionately to the relative interests of such contracts in the assets held in the Account. Account RE invests in equity and debt interests in real estate. The value of the real estate interests held in Account RE as of June 30, 1987 was approximately $322 million and 27 Plans were then participating in the Account. Metropolitan has been designated as an investment manager within the contemplation of section 3(38) of the Act with respect to each Plan participating in Account RE.

3. Commerce Plaza is comprised of three buildings, two of which were formerly owned by a joint venture known as Commerce Plaza North, and one of which was formerly owned by a joint venture known as Commerce Plaza South. Commerce Plaza South was formed on February 7, 1973 in connection with the purchase of an improved property as a joint venture comprised of three general partners: Metropolitan—owning a 50% interest in the venture; Arthur Rubloff & Co.—owning a 25% interest; and Mr. Lee Miglin—owning a 25% interest.[1] In accordance with its standard acquisition procedures as then in effect for Account RE, 90% of Metropolitan's joint venture interest in Commerce Plaza South was acquired for the General Account and 10% for Account RE. The Property is encumbered by two mortgages to the Equitable Life Assurance Society of the United States. Metropolitan, acting on behalf of the General Account and Account RE, acquired a 100% interest in all three buildings on May 25, 1982 in the same proportions as above, at which time the joint ventures were dissolved, and the three buildings consolidated into a single property.[2]

4. On May 11, 1973, Commerce Plaza South entered into a lease (the Primary Lease) for office space with Metropolitan. The Primary Lease was for a term of sixty months for an area of 10,020 square feet. Metropolitan reserved the right to renew the Primary Lease on the same terms and conditions for an additional sixty months.

On July 26, 1977, a supplement to the Primary lease (First Supplementary Lease) was executed under which Commerce Plaza South leased to Metropolitan additional space of approximately 1,661 square feet.

By letter agreement date August 30, 1977, the Primary Lease and the First Supplementary Lease were renewed for a term commencing June 1, 1978 and extending through may 31, 1983. Further supplemental leases were executed for storage and additional office space in 1981. Such supplemental leases also expired with the Primary Lease on May 31, 1983.[3]

5. Upon the expiration of the Primary Lease, First Supplementary Lease and the other supplementary leases, Metropolitan entered into a new lease, effective June 1, 1983, which was supplemented on July 10, 1984, effective August 1, 1984, for a term to expire on July 31, 1989, for office space known as Suite 300. Additional space (known as Suite 440) was leased on July 20, 1984, effective August 1, 1984, for a term to expire on September 30, 1989 (together, the Second Leases). Under the Second Leases, Metropolitan leases approximately 22,000 square feet, or 4.9% of the available leasable space in Commerce Plaza, for $18.00 per square foot. Upon the expiration of the Second Leases, Metropolitan continued to occupy the two suites on a month-to-month holdover basis under the terms of the Second Leases. This holdover lasted until November 30, 1989. The applicant represents that, consistent with the landlord's normal policies in respect of similarly situated tenants in Commerce Plaza, the holdover was treated by the landlord as a renewal which the applicant further represents was permissible under the Second Leases.

6. On August 4, 1989, Metropolitan entered into a lease for space known as Suite 400, which was amended on October 19, 1989 (the Current Lease). The Current Lease commenced on December 1, 1989 and continues to November 30, 1994. Under the Current Lease, Metropolitan is leasing 14,823 square feet for a rental of $1,761,556.49 for the five year term of the Lease, for an annual rental of $23.77 per square foot.

7. In January, 1984, Mr. Richard A. Rauch was appointed independent fiduciary for Account RE with respect to the lease of space to Metropolitan. Mr. Rauch is the owner and president of Rauch and Associates, an independent real estate investment and consulting firm in Chicago. As the fiduciary for Account RE with respect to the Second and Current Leases, Mr. Rauch reviewed the determination that a renewed lease

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[1] The applicant represents that Commerce Plaza South would have constituted a "real estate operating company", as defined in the Department's "plan asset" regulation, 29 CFR 2510.3–101, if that regulation had been in effect during the pre-May 25, 1982 period when the building was owned and operated by Commerce Plaza South, and that, therefore, the assets of Account RE included only its investment in the joint venture and not any of the underlying assets thereof. The Department expresses no opinion whether Commerce Plaza South was a "real estate operating company."

[2] In this notice the applicant has not requested exemptive relief for the initial allocation of the shared investment in Commerce Plaza between Account RE and Metropolitan. In this regard, it is the view of the Department that the mere investment of the assets of a plan on identical terms with a fiduciary's investment for his or her own account in the equity interests of a shared real estate investment would not, in itself, cause the. fiduciary to have an interest in the transaction that may affect his or her best judgment as a fiduciary. Therefore, such an investment would not in itself, violate section 406(b)(1) which states that a fiduciary may not deal with the assets of a plan for his or her own interest or account. In addition, such shared investment, pursuant to reasonable procedures established by the fiduciary, would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan. Therefore, such an investment would not, in itself, violate section 406(b)(2) which states that a fiduciary may not act in any capacity in a transaction involving the plan on behalf of a party whose interests are adverse to the interests of the plan.

With respect to section 406(a)(1)(D) of the Act, which prohibits the transfer to, or use by or for the benefit of, a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party interest does not violate that section merely because he or she derived some incidental benefit from a transaction involving plan assets. The Department assumes, for this analysis, that the fiduciary does not rely upon, and is not otherwise dependent upon, the participation of the plan in order to undertake its share of the investment.

Thus, with respect to the investment of plans assets in shared equity investments which are made simultaneously with investments by a fiduciary for its own account on identical terms it is the view of the Department that any benefit that the party in interest/fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

We further note that the investment needs of a plan may change over a period of time and, in the case of shared investments, the needs and objectives of other investors may become different from one another. At this point conflicts of interest may develop. We express no opinion as to possible prohibited transactions which may occur during the course of the joint ownership in Commerce Plaza.

For a more complete discussion of these issues, see the Notice of Proposed Exemption for Certain Transactions Involving the Equitable Life Assurance Society of the United States, 52 FR 30965, 30973, August 18, 1987.

[3] The applicant represents that Arthur Rubloff & Co. was the managing venturer of the Commerce Plaza South property and that Metropolitan did not have the authority to make unilateral decisions concerning the leasing of space in the Commerce Plaza South property, and that, therefore, Metropolitan could not unilaterally cause the joint venture to enter into the Leases with Metropolitan.

constitutes a desirable and appropriate transaction and investment for Account RE, and negotiated the terms and conditions of such lease. Mr. Rauch also has monitored Metropolitan's performance under the Leases and has enforced and will continue to enforce the terms of the Leases, if necessary, on behalf of Account RE.

8. Mr. Rauch made his findings with respect to the Second Leases on February 20, 1984,[4] which he supplemented on March 7, 1986. Mr. Rauch opined on the Current Lease on July 21, 1989. Mr. Rauch found, based on examination of the premises and lease agreements, as well as comparable leases at Commerce Plaza and similar properties in the Chicago marketplace, and his personal knowledge of the Chicago office building market since 1959, that the investment by Account RE in Commerce Plaza is a high quality investment, that Metropolitan is a tenant in good standing and that Metropolitan's leasing of space on Commerce Plaza under both the Second and Current Leases has been at fair market terms and conditions, including the rental rate.

9. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) because: (a) Mr. Rauch, as independent fiduciary for Account RE, has reviewed and approved the terms and conditions of the Leases and monitors and enforces the terms of the Leases; (b) Metropolitan has paid and continues to pay no less than fair market rental value for the Leases as determined by Mr. Rauch and (c) Mr. Rauch has determined that the Leases have been and continue to be appropriate and in the best interests of the Plans which have invested in Account RE.

FOR FURTHER INFORMATION CONTACT: Mr. David Lurie of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction in subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of January 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–2676 Filed 2–4–93; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 93–6; Exemption Application No. D–9169, et al.]

Grant of Individual Exemptions; Union Labor Life Insurance Company (ULLICO), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.Q02

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Union Labor Life Insurance Company (ULLICO), Located in Washington, DC

[Prohibited Transaction Exemption 93–6; Exemption Application No. D–9169]

Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

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[4] Metropolitan represents that it will file a Form 5330 and pay all applicable excise taxes for the leasing of space to Metropolitan for the period of May 25, 1982 (the date on which Metropolitan acquired the entire equity interest in Commerce Plaza) to February 20, 1984 within 60 days of the date of a grant of this proposed exemption.

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4976(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraph B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H), or (I) of the Act or section 4975(e)(2) (F), (G), (H), or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which ULLICO or any of its affiliates is the trust sponsor.

For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Obligations that bear interest or are purchased at a discount and which are secured by multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); or

(b) Fractional undivided interests in any of the obligations described in clause (a) of this subsection B(1);

(2) Property which had secured any of the obligations described in subsection B(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means the person or persons who are primarily responsible for the sale of the certificates.

D. "Sponsor" means:

(1) ULLICO; and

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with ULLICO.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any sub-servicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificate from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of propose exemption published on November 30, 1992 at 57 FR 56597.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Pension Plan of Government Employees Hospital Association, Inc. (the Plan), Located in Kansas City, Missouri

[Prohibited Transaction Exemption 93–7; Exemption Application No. D–9066]

Exemption

The restrictions of sections 406(a), 406(b)(1), and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the guaranty by Government Employees Hospital Association, Inc. (the Employer), the sponsor of the Plan, of the maturity values of the sub-funds (the Sub-funds), plus additional interest on one of the Sub-funds (together, the Guaranteed Amount), under group annuity contract number GA–1010 (the GAC) issued to the Plan by Mutual Benefit Life Insurance Company of New Jersey (Mutual Benefit); (2) the interest-free extensions of credit to the Plan by the Employer (the Advances) as advances on the Guaranteed Amount; and (3) the Plan's potential repayment of the Advances (the Repayments); provided that the following conditions are satisfied:

(A) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(B) No interest and/or expenses are paid by the Plan;

(C) The advances are made only in lieu of payments due from Mutual Benefit with respect to the GAC;

(D) The Repayments are made only from the amounts actually received by the Plan from Mutual Benefit, its successors or assigns, or any guaranty fund or other association (Third Party Recoveries);

(E) The Repayments do not exceed the lesser of (1) the total Advances, or (2) the Guaranteed Amount; and

(F) The repayments are waived to the extent the Advances exceed the Third Party Recoveries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 30, 1992 at 57 FR 56595.

Written Comments: The Department received one written comment and no requests for a hearing. The comment was submitted on behalf of the Employer, in correction of a typographical error which appeared in the Notice of Proposed Exemption. The Employer notes that the third paragraph of the summary of facts and representations in the Notice describes a subfund maturity date of December 31, 1992. The correct maturity date of the referenced subfund is December 31, 1991.

After consideration of the entire record, the Department has determined to incorporate the aforementioned correction and grant the exemption as proposed.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Fortunoff Pension Plan—Employer Group A (the Group A Plan), Fortunoff Pension Plan—Employer Group B (the Group B Plan) and Fortunoff Fine Jewelry and Silverware, Inc. Profit Sharing Plan (the Profit Sharing Plan; collectively, the Plans), Located in Westbury, NY

[Prohibited Transaction Exemption 93–8; Exemption Application Nos. D–8778, D–9073 and D–9074]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) The purchase by the Plans of undivided interests in certain improved real property (the Property), for the total cash consideration of $6 million, from M. Fortunoff of Westbury Corporation (M. Fortunoff), the sponsor of the Group B Plan; (2) the leasing of the Property by the Plans to Fortunoff Fine Jewelry and Silverware, Inc. (FFJ), the sponsor of the Group A Plan and the Profit Sharing Plan under the provisions of an amended lease (the Amended Lease); and (3) the use of space in the Property by Fortunoff Information Services (FIS) pursuant to the terms of a license agreement (the License) between FFJ and FIS, provided the following conditions are met: (1) the terms of the transactions are at least as favorable to the Plans as those obtainable in arm's length transactions with an unrelated party; (2) the independent fiduciary has determined that the subject transactions are in the best interests of the Plans, will monitor and enforce compliance with the terms and the conditions of the transactions and exemption at all times, and will appoint one or more independent fiduciaries to resolve any conflicts of interest which may develop between the Plans with respect to the Amended Lease, the Property or each Plan's interest therein; (3) the acquisition price that is paid by the Plans for proportionate interests in the Property is less than the independently appraised value of the Property; (4) the value of the proportionate interests in the Property that are acquired by each Plan does not exceed 25 percent of each Plan's assets; (5) with the exception of mandatory title insurance charges, no Plan pays any real estate fees or commissions in connection with its acquisition of an interest in the Property; (6) the rental amount (the Base Rent) under the existing lease, which will be incorporated into the Amended Lease, is (as of March 17, 1992) in excess of the fair market rental value of the Property; (7) the Base Rent is adjusted annually by the independent fiduciary based upon an independent appraisal of the Property; (8) FFJ incurs all real estate taxes and other costs that are associated with the Property and which are incident to the Amended Lease; (9) FFJ obtains a one year irrevocable letter of credit (the Letter of Credit) in favor of the Plans as security for its rental obligations under the Amended Lease; (10) M. Fortunoff enters into an escrow agreement (the Escrow Agreement) under which at least one year's rental under the Amended Lease is maintained through the sixth anniversary date that the Property is transferred to the Plans; (11) the fee paid by FIS to FFJ under the License is proportionate to the rental payment made by FFJ to the Plans under the Amended Lease; and (12) the License has no effect on the Plans' ownership rights in the Property or FFJ's obligations to the Plans under the Amended Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on May 8, 1992 at 57 FR 19951.

I. Discussion of Written Comments

The Department received seventeen written comments with respect to the Notice and four requests for a public hearing. Of the hearing requests received, one was subsequently withdrawn.

A number of the commentators requested clarification of the terms and conditions of the Notice and had questions as to the provisions of the respective Plan in which they participated. Other commentators expressed concerns regarding (1) whether the applicants and/or members of the Fortunoff Family (the Fortunoffs) would finance the construction of a shopping mall development known as the Long Island Galleria, (2) actual or potential conflicts of interest that might be engaged in by the parties to the proposed transactions, (3) the feasibility of allowing the Plans to invest in the Property given current economic conditions, (4) the structure of the proposed transactions and, (5) the creditworthiness of FFJ. The following is a discussion of these comments including the responses given by Mr. Browde and FFJ.

Several comments were focused on the proposed construction of the Long Island Galleria within the vicinity of FFJ's Westbury, New York store and excess land surrounding it (the Westbury Property). Specifically, these commentators questioned whether the applicants or the Fortunoffs would seek to finance the construction of the Long Island Galleria with the proceeds of the sale of the subject Property by M. Fortunoff to the Plans.

In this regard, FFJ states that the proceeds from the sale of the Property will not be used to finance the construction of the Long Island Galleria. Instead, FFJ explains that plans are currently being implemented for the sale of portions of the Westbury Property to third party developers. As a preliminary step, FFJ states that a 31 acre parcel of property has been sold to the Price Club and construction is currently underway.

Another comment was directed to conflicts of interest that were believed to be inherent in the proposed transactions. Here, the commentator expressed concerns in several areas. First, the commentator wondered whether the Fortunoffs would be vigilant in enforcing the terms of the Amended Lease since the commentator thought the Fortunoffs made all management decisions for the Plans and also managed FIS and FFJ. Second, the commentator questioned the independence of both Mr. Sanford Browde, the independent fiduciary, and Mr. James Peel, the independent appraiser. Third, the commentator remarked that the Plans had divergent interests which the commentator did not believe Mr. Browde could resolve.

In response to the initial comment, Mr. Browde represents that he and not the Fortunoffs is charged with vigilance in protecting the rights of the Plans under the Amended Lease. As an attorney specializing in Labor Law and matters pertaining to the Act, he maintains that he is well acquainted with his fiduciary duties and that he is charged with a personal obligation always to act in the best interests of the Plans. Mr. Browde also asserts that he is generally familiar with commercial real properties in the vicinity of the Property and that he has knowledge of real estate values for income-producing real property and fair rental values for commercial real property. Mr. Browde agrees that if a future conflict develops between the Plans as to the Amended Lease, the Property or the interests of each Plan with respect thereto, he will appoint one or more independent fiduciaries to act on behalf of such Plans that are in conflict in order that the respective interests of each Plan will be separately represented.

In response to the second comment, FFJ notes that Mr. Browde was selected to serve on behalf of the Plans as the independent fiduciary in order to minimize conflicts of interest that may exist in connection with the proposed transactions. FFJ explains that Mr. Browde has impressive credentials as an attorney specializing in Labor Law and matters pertaining to the Act, and he has expressed an understanding of his personal and fiduciary obligations to the Plans. FFJ further notes that Mr. Browde has advised the Department that his business dealings with FFJ represent less than one percent of his annual income.

As for Mr. Peel's independence, FFJ represents that Mr. Peel is a certified MAI appraiser who derives less than one percent of his annual income from the applicants and other Fortunoff interests.

In response to the commentator's argument about the divergent needs of the Plans, Mr. Browde represents that the Plans have consistent investment goals and the principal purpose of the transactions is to afford each Plan with the opportunity to increase its investment yield on fixed income investments and to diversify its portfolio by acquiring an interest in income-producing property. Mr. Browde states that Property is likely to generate additional income to the Plans of nearly $200,000 and he foresees no circumstances where one Plan would have to sell or partition its interest in the Property. Mr. Browde represents further that the Plans are now (and expect to remain) fully funded and have sufficient liquidity with which to pay benefits. Therefore, he believes each Plan is capable of holding the Property as an income-producing capital investment. Should the Plans' interests diverge at some time in the future, Mr. Browde represents that he will take appropriate independent fiduciary action.

In commenting on the appropriateness of the Property as an investment for the Plans, Mr. Browde explains that the subject Property can be easily used by a multitude of lessees should it be vacated by FFJ during the term of the Amended Lease. He states that the Property is not a special purpose building and can support many of the retail, industrial or office requirements of users in the area.

This same commentator raised two additional concerns about the proposed acquisition transaction. One of the concerns related to the fact that engineering and environmental impact studies had not been conducted on the Property. The other pertained to the proposed leasing arrangements.

In response to the initial comment, Mr. Browde points out that environmental and engineering studies are not required under New York law to sell commercial property such as the subject Property. However, if these studies are conducted, the costs are typically borne by the purchaser. Due to the size of the Property, Mr. Browde does not advise that environmental and engineering studies be conducted because of their expense to the Plans. He also states that in the proposed Contract of Sale, M. Fortunoff represents that the condition of the Property is "good." In this regard, Mr. Browde notes that FFJ's 16 year use of the Property as a warehouse does not impose any environmental or material engineering risks or burdens on the Property. He also states that M. Fortunoff would be contractually liable if it sold a defective property to the Plan for which it is a sponsor. As lessee under a triple net lease, he notes that FFJ and not the Plans, is responsible for operating, maintaining and repairing the Property. Additionally, he states that FFJ as a net lessee is fully responsible under the Amended Lease for engineering defects or environmental conditions existing on the Property.

With respect to the leasing arrangements, the same commentator questions (1) the methodology for calculating rent under the Amended Lease and (2) whether FIS, which occupies only 7 percent of the area of the Property under the License arrangement, should have a non-disturbance agreement. In response to these comments, Mr. Browde represents that the amount of Base Rent payable to the Plans under the Amended Lease is above the current fair market rental value for the Property and the Amended Lease provides that it may not fall below this amount. He also explains that the Amended Lease requires him to increase such rent in the future if necessary to maintain the Base Rent at fair market rental value in accordance with the requirements of the Department.

With respect to the commentator's suggestion that FIS should have a non-disturbance provision incorporated into its License, Mr. Browde states that this provision would be contrary to customary real estate practice because it would deprive the land owner of desired flexibility should the primary lessee default. With a non-disturbance provision, FIS would receive only a small part of the total lease area and it could prevent the Plans from selling, re-leasing or even mortgaging the property as it would burden future users. Thus, Mr. Browde believes the present structure is the proper arrangement because the Plans would have the option of retaining FIS or requiring it to vacate the premises if FFJ defaults on the Amended Lease.

The commentator also questioned the creditworthiness of FFJ and its ability to make payments under the Amended Lease. In addressing this comment, Mr. Browde states that after undertaking an extensive review of the financial position of FFJ, he is fully satisfied with the ability of FFJ to meet all of its debt obligations. Mr. Browde explains that FFJ has consistently paid all amounts due with respect to its borrowings and other obligations on a timely basis, including all obligations under its lease with M. Fortunoff. In determining that FFJ is creditworthy, Mr. Browde has prepared an analysis of the financial condition of FFJ. In this regard, Mr. Browde has reviewed current financial statements of FFJ as well as projections for FFJ's current fiscal year which ends on January 31, 1993. Further, Mr. Browde has conducted interviews with officials at FFJ and with an official of a bank with which FFJ has had a long-standing relationship.

In analyzing FFJ's financial balance sheets for the years 1987 through February 3, 1992, Mr. Browde indicates that the years 1987 and 1988 were the two most profitable ones in the 25 year history of FFJ. In January 1989, he notes that FFJ retired the last installment of a $10 million long term debt facility originated in 1982 to finance its Wayne, New Jersey expansion. He explains that the only debt remaining in January 1989 was a $10 million first mortgage on FFJ's Fifth Avenue, New York store (the Fifth Avenue Property). The mortgage, which is held by Dime Savings Bank, is due in full at June 1996. The loan carries interest at the rate of 10⅝ percent annually and has been timely paid since its inception. The loan is secured by land, a building and improvements having an independently appraised value in excess of $46 million. The property is carried on FFJ's balance sheets at a book value of $4.7 million.

Mr. Browde explains that FFJ opened a new store in Woodbridge, New Jersey (the Woodbridge Property) in October 1989. He states that financing for this expansion was secured in the form of a $9 million loan from National Westminster Bank USA (NWB), FFJ's major lender. As of February 2, 1992, the loan had an outstanding principal balance of $7 million. Mr. Browde states that installments of $1 million have been timely made by FFJ and are payable annually until 1997.

Mr. Browde notes that while most retailers would have amortized these expansion costs over a period of years, pre-opening and grand opening advertising costs were totally expended in 1989 resulting in the first loss year for FFJ. Excluding these costs or amortizing them over a multi-year period would have resulted in a profitable year for FFJ according to Mr. Browde. Mr. Browde states that the repayment schedule for the remaining years of this loan fits within future scheduled cash flows and presents no burdens to FFJ's operations.

According to Mr. Browde, the year 1990 was characterized by lackluster sales activity during the Christmas season which resulted in a loss for FFJ. The loss was modest and after add back of depreciation and other non-cash items, Mr. Browde represents that the year was breakeven.

For 1991, Mr. Browde explains that FFJ implemented a cost reduction strategy which helped control losses that year to the extent of 2.6 percent greater than 1990.

For 1992, Mr. Browde has compared FFJ's financial statement as of February 2, 1992, with the prior year statement. He notes that cash balances shown on the balance sheet were consistent with prior years and that there was a net positive cash flow of $248,000. Among Mr. Browde's other observations are that (1) FFJ has a sufficient budget for fixed asset expenditures, (2) FFJ would not be making any further loans or advances to its affiliate, Westbury Property Investment Company (WPIC) after April 1992 as a result of the recent sale of a portion of the Westbury Property to the Price Club, (3) the accounts payable trail balance is current and according to terms and (4) accrued expenses and customer deposits are proper.

In addition to the above, Mr. Browde states that he has reviewed FFJ's Statement of Operations and that he has analyzed, in depth, the reason for losses experienced by FFJ in 1991 and 1992. He indicates that he is satisfied that FFJ has taken measures aimed at reducing expenses. For the year ended February 2, 1992, he explains that FFJ's net loss was $1,937,000 which were mostly attributable to non-cash items of depreciation and amortization.

As for FFJ's long term debt, Mr. Browde again makes reference to the loans on the Fifth Avenue Property and Woodbridge Property as described above. He indicates that in reviewing FFJ's banking relationship with NWB, he noted that FFJ had been authorized a $10 million short term revolving credit line and an additional $5 million credit line for letters of credit and trade acceptances. He explains that over the past ten years FFJ would routinely pay off its short term revolving line of credit after the Christmas season and would reactivate the borrowing in March to finance the new season inventory buildups.

Mr. Browde represents that he has also reviewed FFJ's position as a guarantor[4] on certain debt obligations. He states that these guarantees represent FFJ's involvement in the following ventures for which FFJ is jointly and severally liable:

(1) *Guarantor of debt between Mr. and Mrs. Alan Fortunoff and S. Marsh & Sons, Inc. (S. Marsh), an affiliated company, and NWB.* Mr. Browde represents that this loan, in the original principal amount of $9 million, is being amortized over a seven year period with annual principal payments ranging from $1 million to $1.5 million. In addition, he states that the schedule of debt repayment for S. Marsh is satisfied from the internal cash flow of FFJ and that the interest rate is based upon the lender's prime rate or a margin over the London Interbank Offered Rate (the LIBOR), whichever is more favorable to the borrowers. Currently, he notes, the interest rate is 6.25 percent.

Mr. Browde explains that S. Marsh has fixed assets in the form of unencumbered land, a building and merchandise inventory amounting to $6 million. This amount, added to the personal holdings of Mr. and Mrs. Fortunoff, comprise the primary security behind this obligation.

Mr. Browde has confirmed that a $2 million repayment of this indebtedness was made on December 31, 1991 in a timely manner. He says the payment was made out of operating revenue. At present, the outstanding principal balance of the loan is $7 million.

(2) *Guarantor of debt secured by the Woodbridge and Westbury Properties.* Mr. Browde explains that FFJ guaranteed mortgages to a banking consortium (the Banking Consortium) comprised of NWB, Citibank, N.A. and First Fidelity Bank, N.A., New Jersey, on real property in the vicinity of Fortunoff's Westbury, Long Island, New York store (approximately $53.6 million)[5] and the Fortunoff store located in Woodbridge, New Jersey (approximately $10.2 million). Mr. Browde explains that the debt to the Banking Consortium is the primary obligation of the property owners, WPIC and Westbury Property Sales Associates (WPSA) and that it is secured by mortgages on the Woodbridge and Westbury Properties.

Mr. Browde states that the lending arrangement with the Banking Consortium requires the payment of interest only on the debt through December 31, 1992. Such interest rate, he explains, is based upon the Banking Consortium's prime rate or, at the borrowers' option, a rate based upon the LIBOR, or whichever rate is more favorable to the borrowers. Again, he notes that the interest rate for these underlying loan obligations is 6.25 percent.

Mr. Browde states that there is annual amortization of principal in the amount of $1.5 million in 1993 and 1994. Beginning in March 1995, he explains that to the extent there is any principal balance remaining, the existing terms of the loans require repayment in 13 substantially equal quarterly payments of approximately $3.9 million.

Mr. Browde explains that all required payments of interest on these obligations have been made on a timely basis. Because a large parcel of the Westbury Property has been sold to the Price Club, net revenues to WPIC and WPSA exceed expenses by approximately $2.5 million. Therefore, Mr. Browde believes WPIC and WPSA are fully capable of meeting required amortization when it begins in 1993.

Mr. Browde explains that WPIC and WPSA are involved in active negotiations to sell other parcels of the Westbury Property to third parties who will act as developers for the property. These sales transactions are expected to serve as the source of repayment of all the outstanding principal amount of the loans and are expected to be completed before the more rapid amortization in March 1995. If the loans are not then fully paid, he explains that amortization of principal may be financed, in whole or in part, from the cash flow of WPSA and WPIC. Further, because the value of the Westbury Property presently exceeds the debt it secures by more than $41 million, Mr. Browde believes this favorable 61 percent loan to value ratio will offer the parties a significant opportunity to refinance and extend the terms of the debt repayment should it be required.

Mr. Browde states that the guarantees will continue in effect as long as there is any amount outstanding and due to the lenders. If there is a payment default, he explains that the lenders may proceed to enforce the debt directly against FFJ, as guarantor, without proceeding against any collateral securing the debt or exhausting any other remedies against the borrower. In practice, Mr. Browde states that lenders typically proceed against a borrower and its collateral security before seeking to enforce a third party guarantee.

Mr. Browde represents that the FFJ guarantee agreement respecting the loan securing the Westbury Property contains a very favorable subrogation provision which would entitle it to recover against WPIC and WPSA, not only the amounts it has paid under the guarantee but an assignment of the Banking Consortium's interests in the guaranteed obligations. Mr. Browde states that this provision has the effect of placing FFJ in the same position as the current bank lenders, including an assignment of the mortgages on the Westbury Property. Thus, in the event that WPIC and WPSA default on the bank loans and FFJ is required to pay the same, Mr. Browde explains that FFJ would not only have recourse against the property owners for the amount paid under FFJ's guarantee agreement, but its position would be secured by a mortgage on the Westbury Property which has a current appraised value that exceeds by approximately $41 million the amount of debt it secures.

Mr. Browde considers the likelihood of a payment default by WPIC and WPSA as being very remote since WPIC and WPSA have been repaying their loan obligations in a timely manner and he believes they are fully capable of meeting required amortization when it begins in 1993. Of particular significance to Mr. Browde is the reduction in the debt that is secured by the Westbury Property from approximately $89.9 million to approximately $53.6 million.

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[4] Other guarantors include, Mr. and Mrs. Fortunoff, Ms. Rachel Sands and Messrs. Elliot and Isidore Mayrock.

[5] Mr. Browde states that the original principal balance of $89,856,000 was reduced in April 1992 when WPIC and WPSA sold 31 acres of the Westbury Property to the Price Club for $41.8 million. After taxes and fees, Mr. Browde explains that $36,289,000 of the debt was repaid to the Banking Consortium, leaving FFJ presently as a guarantor of the remaining debt in the amount of $53,567,000.

II. Guarantees

As security for its obligations under the Amended Lease, FFJ proposes to obtain a $550,000 irrevocable letter of credit in favor of the Plans. The Letter of Credit will be issued by a nationally-recognized commercial bank located in New York for a term of one year beginning on the effective date of the transfer of title to the Property by M. Fortunoff to the Plans. The Letter of Credit will provide that Mr. Browde, on behalf of the Plans, may draw upon amounts available thereunder if FFJ defaults in its rental payments under the Amended Lease and such default continues for more than ten days after notice of such default is given.

In addition, to secure the payment and performance of all of FFJ's obligations to the Plans under the Amended Lease, M. Fortunoff will enter into an escrow agreement with the Plans and establish a special escrow account (the Escrow Account) over which it will have no withdrawing power or authority. M. Fortunoff will deliver to the law firm of McMillan, Rather, Bennett & Rigano, P.C. (the Escrow Agent), a total payment of $1.65 million (the Escrow Amount) which will be held and disbursed solely in accordance with the terms of the Escrow Agreement. Of the total payment placed in the Escrow Account (1) $1.65 million will represent the Escrow Amount beginning on the date that title to the Property is transferred to the Plans (the Transfer Date) through the second anniversary date thereof; (2) $1.1 million will represent the Escrow Amount from the Transfer Date through the third anniversary thereof; and (3) $550,000, or such higher amount as is determined by Mr. Browde to be the fair rental value of the Property under applicable provisions of the Amended Lease, will represent the Escrow Amount from the Transfer Date through the sixth anniversary thereof.[6] If, at any time, the Escrow Account has been depleted so that amounts then required under the Escrow Agreement to be in the custody of the Escrow Agent are not then held in escrow, M. Fortunoff will be required to deliver to the Escrow Agent amounts necessary to pay such shortfall, in full.

All escrowed funds will be placed in an interest-bearing account with a federally or New York State chartered banking institution having net assets of at least $2.5 billion or capital and capital surplus of not less than $10 million, by the Escrow Agent. The funds may be invested in short-term instruments such securities, certificates of deposit, repurchase agreements or commercial paper.

The Escrow Agreement permits the Escrow Agent to make a disbursement of $550,000 to M. Fortunoff after 1994 provided Mr. Browde informs the Escrow Agent that there has been no default under the Amended Lease. After 1995, the Escrow Agreement permits the Escrow Agent to deliver, to M. Fortunoff, the lesser of (1) the difference between the annual Base Rent for the immediately following Amended Lease year and the balance of the Escrow Account or (2) $550,000 if Mr. Browde again notifies the Escrow Agent that there has been no default under the Amended Lease. Finally, after 1999, the Escrow Agreement will permit the Escrow Agent to deliver the balance of the Escrow Account to M. Fortunoff if Mr. Browde informs the Escrow Agent that there has been no default under the Amended Lease.

If during the initial six year term of the Escrow Agreement the Escrow Agent receives notice from Mr. Browde that a default under the Amended Lease has occurred, the Escrow Agent is required not to release the appropriate Escrow Amount. Rather, the Escrow Agreement will be extended and it will continue until the end of the term of the Amended Lease. At the end of such renewal term, if the Escrow Agent receives notice from Mr. Browde that there exists no event of default under the Amended Lease, the Escrow Agent will deliver the balance of the Escrow Account to M. Fortunoff, subject to any claims of Mr. Browde.

The Escrow Agreement further entitles Mr. Browde to exercise certain remedies on behalf of the Plans if FFJ defaults under the Amended Lease. In the event of such a default, the Escrow Agreement requires Mr. Browde to deliver certificates to the Escrow Agent, M. Fortunoff and FFJ specifying the exact nature of the default and the anticipated amount of damages. Ten days after delivery of such certificates, and from time to time thereafter (but not more than twice monthly), until the default is cured or the Escrow Account is depleted, Mr. Browde must instruct the Escrow Agent to deliver to the Plans such amounts as are necessary to reimburse the Plans for any losses or damages the Plans have sustained as a result of such default. The Escrow Agent is further required to deliver such portion of the Escrow Account as is specified in Mr. Browde's certificates upon presentment of same, without offset or deductions of any kind.

Mr. Browde states that there are several significant elements to the way the escrow has been structured that provide important protection to the Plans. He notes that both the Escrow Account and the Letter of Credit would be available to the Plans in the event of a default by FFJ under the Amended Lease, particularly during the first year of the Amended Lease. In addition, he represents that creditors of FFJ could claim no interest in the Escrow Account since the funds are deposited by M. Fortunoff and because M. Fortunoff has a separate corporate existence from that of FFJ. Further, Mr. Browde explains that no creditor of M. Fortunoff could claim an interest in the Escrow Account until the term of the escrow expired since M. Fortunoff would have only a reversionary interest in it.

Mr. Browde views the Escrow Account as being somewhat analogous to the Letter of Credit because only he, on behalf of the Plan beneficiaries, would be entitled to draw upon the amounts made available by the issuing bank. Mr. Browde explains that neither FFJ nor its creditors could seek to obtain funds that would be available under the Letter of Credit because the contract with the issuing bank would permit only the beneficiaries to draw upon such reserves. As an additional similarity between the Escrow Account and the Letter of Credit, Mr. Browde points out that M. Fortunoff is like a bank issuing a letter of credit in the sense that M. Fortunoff is making its funds available only to him, on behalf of the Plans, and only in the event of a default under the Amended Lease.

The Department has considered the concerns expressed by the three individuals who had requested a hearing and the applicant's written response addressing such concerns, and, on the basis of the materials provided, has determined not to hold a public hearing. Accordingly, after careful consideration of the entire exemption record, including the written comments submitted by interested persons, the review and analysis of the transactions by Mr. Browde and the guarantees, the Department has decided to grant the proposed exemption as described herein.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Department of Labor, telephone (202) 219–8881. (This is not a toll-free number.)

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[6] The difference in the Escrow Amount during each predesignated period is attributed to disbursements made by the Escrow Agent to M. Fortunoff of $550,000.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of January 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–2674 Filed 2–4–93; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 22, 1993. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–93–6). Employee Career Development Records.
2. Department of Commerce, National Institute of Standards and Technology (N1–167–92–1). Comprehensive records schedule.
3. Department of Energy, Bonneville Power Administration (N1–305–92–1). Routine housekeeping files.
4. Department of State, Bureau of Public Affairs (N1–59–92–15). Routine and facilitative records of the Office of the Historian.
5. Department of State, Bureau of Politico-Military Affairs (N1–59–92–32). Records of the Office of Defense Trade Controls.
6. Department of Treasury, Synthetic Fuels Corporation (N1–56–91–5). Electronic and textual indexes to SFC Central Project Files.
7. National Archives and Records Administration (N2–101–93–1). Comptroller of the Currency records relating to Insolvent Banks, 1909–1953.
8. Interstate Commerce Commission (N1–134–93–3). Bureau of Traffic tariff files and copies of Postal Service contracts for mail delivery.
9. Railroad Retirement Board (N1–184–93–1). Routine records of the Office of Public Affairs.
10. Railroad Retirement Board (N1–184–93–2). Actuarial Valuation Data Summaries.

Dated: January 26, 1993.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 93–2741 Filed 2–4–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–010)]

Aerospace Safety Advisory Panel; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public

Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: March 17, 1993, 1 p.m. to 2:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 C Street, SW., room 9H40, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur V. Palmer, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–0914).

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will present its annual report to the NASA Administrator and Deputy Administrator. This is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. The major subjects covered will be the National Space Transportation System, Space Station, and Aeronautical Operations. The meeting will be open to the public up to the capacity of the room (approximately 50 persons including members of the Panel). The agenda for the meeting is presentation of the Panel's findings and recommendations.

Dated: January 29, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–2687 Filed 2–4–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meeting

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATE AND TIME: Friday, February 12, 1993, 9 a.m.–4 p.m.

PLACE: Embassy Suites Hotel, 1250 22nd Street, NW., Delegate Room, Washington, DC.

TYPE OF MEETING. Open.

FOR FURTHER INFORMATION CONTACT: Roy Widdus, Ph.D., Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The agenda for the Commission meeting will include discussions of the Commission's activities for the remainder of FY 1993.

Dated: February 1, 1993.

Roy Widdus,

Executive Director.

[FR Doc. 93–2715 Filed 2–4–93; 8:45 am]

BILLING CODE 6820–CN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Museum Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions: Historical Section) to the National Council on the Arts will be held on March 9–11, 1993 from 9 a.m.–5:30 p.m. in room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 9 from 9 a.m.–10 a.m. The topics will be introductory remarks and policy discussion.

The remaining portions of this meeting on March 9 from 10 a.m.–5:30 p.m. and March 10–11 from 9 a.m.–5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 28, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2719 Filed 2–4–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Committee of Visitors of the Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 26, 1993, 8:30 a.m.–5 p.m.

Place: Room 543 and 536, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. John R. Lehmann, Deputy Division Director, Microelectronic Information Processing Systems Division, rm 414, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7373.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Microelectronic Systems Architecture Program, the Experimental Systems Program, and the Systems Prototyping and Fabrication Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: February 1, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2675 Filed 2–4–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Environmental Protection Agency

National Profile on Commercially Generated Low-Level Radioactive Mixed Waste—NUREG/CR-5938

AGENCY: U.S. Nuclear Regulatory Commission and U.S. Environmental Protection Agency.

ACTION: Notice of availability of national profile on commercially generated low-level radioactive mixed waste—NUREG/CR-5938.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) are jointly issuing the National Profile on Commercially Generated Low-Level Radioactive Mixed Waste, NUREG/CR-5938. NUREG/CR-5938 presents the results of a joint NRC/EPA project to determine the volumes, characteristics, and treatability of mixed hazardous and low-level radioactive waste generated in 1990 by licensed nuclear facilities in the United States.

BACKGROUND: Low-level radioactive mixed waste is hazardous waste as defined in the Resource Conservation and Recovery Act of 1976, as amended, and low-level radioactive waste subject to the Atomic Energy Act of 1954, as amended. The National Profile is the result of a three-year project sponsored by NRC and EPA to determine, on a national basis, the volumes, characteristics, and treatability of commercially generated mixed waste for 1990. The National Profile was developed for the agencies by the Oak Ridge National Laboratory (ORNL). The National Profile is based on a review of existing data from State and compact surveys of mixed waste generators and a survey of 1326 licensed nuclear facilities conducted by ORNL in 1991 and 1992. The National Profile was developed to assist States, low-level waste regional compacts, private developers, and Federal agencies in making decisions concerning the management and regulation of mixed waste generated by licensed facilities.

Based on the results of the survey, approximately 140,000 cubic feet of mixed waste were generated in 1990. The industrial generator category (e.g., commercial radiopharmacies, waste brokers and waste management facilities, fuel cycle facilities, and manufacturers of devices utilizing radioactive material) produced the largest amount of mixed waste (50,000 cubic feet), and the nuclear utilities produced the least (14,000 cubic feet). The academic generator category produced approximately 29,000 cubic feet of mixed waste, the NRC-licensed government generator category produced approximately 27,000 cubic feet, and the medical generator category produced approximately 20,000 cubic feet.

Liquid scintillation fluids (LSF) comprised the largest portion of mixed waste generated in 1990, at over 71% of the total. Organic wastes, such as wastes containing chlorofluorocarbons (CFCs) and oil, made up 18%. Mixed waste containing toxic metals, such as lead, mercury, cadmium, and chromium, made up 3%. The "other" mixed wastes made up about 8% and was comprised of generally complex waste streams containing multiple components that were not easily delineated as single waste streams.

The prevalent isotopes in the mixed waste streams, although not necessarily in order of their prevalence, are: C-14, H-3, P-32, S-35, Co-60, I-125, Cs-137 and 134, and Cr-51.

In addition, the Profile also identified approximately 75,000 cubic feet of mixed waste in storage as of December 31, 1990, composed primarily of cadmium waste (35 percent), followed by LSF (17 percent) and CFC wastes (12 percent). The National Profile indicated that the industrial generator category was storing the largest amount of mixed waste, approximately 57 percent of the total (primarily waste contaminated with cadmium). Nuclear utilities were storing approximately 29 percent (primarily CFCs, waste oil, and lead), academic institutions were storing approximately 7 percent, NRC-licensed government facilities approximately 4 percent, and medical institutions were storing approximately 3 percent of the total mixed waste in storage at the end of 1990.

The National Profile also indicated that a significant portion of commercially generated mixed waste may be treated using existing commercial treatment facilities, particularly for LSF, which was the predominant mixed waste stream reported. However, the National Profile reported that an additional 12,000 cubic feet of treatment capacity is needed to treat certain types of mixed waste generated in 1990 and in storage as of December 31, 1990. It should be noted that this estimate did not consider how current and future use of commercial mixed waste treatment capacity by the Department of Energy will affect the availability of treatment capacity for commercial generators.

Copies of NUREG CR-5938 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, telephone (703) 487-4600. A copy is also available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Mixed Waste Project Manager, Mail Stop 5-E-4, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2566; or Susan Jones, Environmental Protection Specialist, Mail Code 5303-W, Permits and State Programs Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (703) 308-8762.

Dated at Rockville, MD this 19th day of January 1993.

For the U.S. Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

Dated at Washington, DC this 28th day of January 1993.

For the Environmental Protection Agency.

Sylvia K. Lowrance,

Director, Office of Solid Waste.

[FR Doc. 93-2724 Filed 2-4-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49 issued to Northeast Nuclear Energy Company, (the licensee), for operation of the Millestone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The proposed amendment would revise the Millestone Unit No. 3 Technical Specifications, Section 4.7.10.e, by extending the surveillance requirement frequency for the snubber functional tests by allowing a one-time extension to the current 18-month surveillance, plus the additional 25 percent allowed by Technical Specification 4.0.2.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

> The proposed change does not involve an SHC because the change would not:
>
> 1. Involve a significant increase in the probability or consequences of an accident previously evaluated.
>
> This Technical Specification change will have a negligible effect upon the probability of occurrence of accidents previously evaluated in the Safety Analysis Report. Although the snubber functional test cycle is being lengthened, nearly the same level of confidence as that associated with the Technical Specification required schedule will be maintained. The testing of 100 percent of the small snubbers population, along with replacement of failed units, provided a significantly improved baseline with which to gauge the reliability of the snubber population.
>
> Increasing the functional test interval for snubbers will neither have an effect upon the consequences of an accident evaluated in the Safety Analysis Report, nor will it cause new consequences to occur. As stated previously, an adequate level of confidence in the reliability of the snubber population will be maintained.
>
> 2. Create the possibility of a new or different kind of accident from any previously evaluated.
>
> The snubber failure modes neither increase beyond required confidence levels relating to snubber population reliability, nor change due to the variation in the functional test interval. Therefore, there is no possibility of a new accident being created. Also, an increase in the functional test interval will not create a malfunction of a different type than previously evaluated. No new equipment is being added to the plant and no change is being made in the way existing equipment is being operated and maintained.
>
> 3. Involve a significant reduction in a margin of safety.
>
> The type of testing performed and the actions taken if a snubber were to fail its functional test remain unchanged. The margin of safety, inherent to the Technical Specifications and relating to snubber surveillance requirements, will remain virtually unchanged. This conclusion is based upon the fact that the proposed testing schedule defined in the Technical Specifications provides nearly the same margin of confidence as the present schedule. The Technical Specification margin of safety remains unchanged. In addition, there is no impact on the consequences of any accident, there can be no impact on any of the protective boundaries, and therefore, no impact on the safety limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 8, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resource Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry and Howard, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 15, 1993, and supplemental information dated January 21, 1993, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resource Center, Thames Valley State Technical College, 574 New London Turnpike, Norwick, Connecticut 06360.

Dated at Rockville, Maryland, this 1st day of February 1993.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate 1-4, Division of Reactor Projects—I-II, Office of Nuclear Reactor Regulation

[FR Doc. 93-2725 Filed 2-4-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Exemption

I.

In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit 3).

Northeast Nuclear Energy Company (the licensee) is the holder of Facility Operating License No. NPF-49, which authorizes operation of Millstone Nuclear Power Station, Unit No. 3. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor located at the licensee's site in New London County, Connecticut.

II.

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that the primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J. More specifically the following sections require that:

Section III.D.2.(a), "Type B Tests"

Type B tests, except tests for air locks, shall be performed during reactor shutdown for refueling or other convenient intervals but in no case at intervals greater than 2 years.

Section III.D.3. "Type C Tests"

Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

III.

A. Exemption for Temporary Relief

By letter dated November 18, 1992, the licensee requested a one-time schedular exemption for the local leak rate tests (LLRTs) from the requirements of 10 CFR 50, appendix J, Sections III.D.2(a) and III.D.3 to accommodate a schedule change for the next refueling outage. The request for exemption, if granted, would exceed the required Type B and C test interval by approximately 10 months. In addition, the licensee proposed Technical Specification (TS) changes to reflect the above cited exemption request. The staff's evaluation of the licensee's exemption request is provided in the Safety Evaluation dated January 29, 1993, supporting Amendment No. 75, and is summarized below.

At Millstone Unit 3 there are 84 Type B penetrations which require Type B testing. The licensee plans to test all of these penetrations in accordance with the schedule required by appendix J, except for the fuel transfer canal blind flange that cannot be tested at power. A schedular exemption was requested for the fuel transfer canal blind flange, which was last tested on March 18, 1991.

There are 68 mechanical penetrations that require Type C testing. All but 37 of these were tested when opportunities occurred during outages in the last year. Schedular exemption for testing the remaining 37 penetrations were requested because they either cannot be tested during plant operation, or would cause a degradation in safety if tested during plant operation. All of these penetrations were tested during the 1991 refueling outage.

The Technical Specifications contain a combined leakage rate limit for all penetrations and valves subject to Type B and C testing. The last measurement of combined Type B and C leakage during the 1991 refueling outage was 37.5% of the Technical Specification limit. The projected leak rate at the end of the 10-month period, during which this exemption from Type B and C testing applies, would be less than 50% of Technical Specification limits for combined Type B and C leakage.

Based on the foregoing, the NRC staff concludes that a schedular exemption is technically justified.

B. 10 CFR 50.12 Determinations for Special Circumstances

On January 22, 1991, and February 5, 1991, the licensee (Northeast Nuclear Energy Company) commenced the most recent containment LLRTs in accordance with the above Type B and C periodic testing requirements, respectively, for the Millstone Unit 3 during the 1991 refueling outage. As a result of an unusually long maintenance outage due to the service water system work and erosion/corrosion work during 1991, and two limited duration outages in 1992, the licensee has rescheduled the next refueling outage from November 1992 to approximately September 1993. With the new outage schedule, the opportunity for performing the required tests would exceed the required interval by about 10 months.

At Millstone Unit 3, there are 84 Type B penetrations which require Type B testing. Of the 84 penetrations, 80 are electrical penetrations which can be tested at power. The licensee is conducting Type B testing of these penetrations and plans to complete the testing prior to January 22, 1993. Of the four remaining penetrations, two penetrations (the equipment hatch and equipment hatch manway) were tested on November 16, 1991 and January 28, 1992, respectively. The third penetration, the personnel air lock, is covered under TS Section 3.6.1.3 and is not the subject of this request. The fuel transfer canal blind flange which was tested (Type B) on March 18, 1991, is the only penetration that cannot be tested at power and will require an extension.

There are 68 mechanical penetrations that require Type C testing. In January, May and October 1992, while shut down, Type C testing was satisfactorily performed on 31 penetrations. This represents approximately 45% of the total Type C testing. The exemption request is only for the remaining penetrations (37) whose last Type C tests were performed during the last refueling outage.

The staff concludes that with the unplanned outages that have occurred, with the testing that has been performed to date, and with the licensee's commitment to perform additional testing during any forced outages of sufficient duration that may occur before the next refueling outage, the licensee's good faith efforts to comply with appendix J have been demonstrated.

The time interval of 24 months, specified in appendix J, was based, in part, on the expected degradation of components exposed to the environment resulting from a full 24 months of normal plant operation. The total exposure time for the containment penetration to normal plant operating environment will be only about 19 months with the requested exemption.

The 24-month interval requirement for Type B and C penetrations is intended to be often enough to prevent significant deterioration from occurring and long enough to permit the LLRTs to be performed during plant outages. In addition leak testing of the penetrations during plant shutdown is preferable because of the lower radiation exposure to plant personnel. Moreover, some penetrations, because of their intended functions, cannot be tested at power operation. For penetrations that cannot be tested during power operation or those that if tested during plant operation would cause a degradation in the plant's overall safety (e.g., the closing of a redundant line in a safety system), the increase in confidence of containment integrity following a successful test is not significant enough to justify a plant shutdown specifically to perform the LLRTs within the 24-month time period, in light of the above discussions.

IV.

Pursuant to 10 CFR 50.12 (a)(2)(v), the Commission will not consider granting a schedular exemption unless the licensee has made good faith efforts to comply with the regulation. The NRC staff believes that the licensee has taken prudent steps to improve the containment integrity and, if not for the change in refueling outage schedule caused by unexpected outages, would have complied with appendix J.

Based on our evaluation, the NRC staff has concluded that the licensee has made a good faith effort to comply with the requirements of appendix J and that the special circumstances as described in 10 CFR 50.12(a)(2)(v) exist in that the exemptions would provide only temporary relief from the applicable regulations. Therefore, the staff has determined that the schedular exemptions from 10 CFR part 50, appendix J should be granted.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

A temporary exemption is granted from the requirements of Sections III.D.2.(a) and III.D.3, which require a local leak rate test to be conducted at intervals not greater than 24 months. For good cause shown, this exemption extends that interval by approximately 10 months from February 5, 1993, to the next refueling outage, but no later than December 5, 1993.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will have no significant impact on the quality of the human environment (58 FR 5035).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 29th day of January 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2726 Filed 2–4–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030–05980 and 030–05982; License Nos. 37–00030–02 and 37–00030–08]

Order to Safety Light Corp. Prohibiting the Transfer of Assets and Requiring the Preservation of the Status Quo (Effective Immediately) and Demand for Information

In the matter of Safety Light Corporation; United States Radium Corporation; USR

Industries, Inc.; USR Chemical Products, Inc.; USR Metals, Inc.; USR Lighting, Inc.; U.S. Natural Resources, Inc.; Lime Ridge Industries, Inc.; Metreal, Inc.; (Bloomsburg Site Decommissioning and License Renewal Denials; Bloomsburg Site Decontamination)

I

Safety Light Corporation ("Safety Light" or "SLC") is a holder of License Nos. 37–00030–02 ("02 License") and 37–00030–08 ("08 License") issued on June 20, 1956, and August 5, 1969, respectively, by the Atomic Energy Commission, now the Nuclear Regulatory Commission ("NRC" or "Commission"), pursuant to 10 CFR part 30.[1]

The 02 License authorizes the possession of unspecified quantities of byproduct material in the form of contaminated facilities and equipment for purposes of decontamination, cleanup, and disposal of facilities and equipment previously used for research and development at the Licensees' site in Bloomsburg, Pennsylvania ("Bloomsburg site") under the 02 License. The 02 License was due to expire by its terms on February 29, 1984; Safety Light submitted an application dated January 27, 1984, to renew the 02 License. The 08 License authorizes the possession and use of various radioactive materials at the Bloomsburg site, principally tritium ("H–3"), for research and development, manufacture of various products containing H–3, and the distribution of those products to persons specifically licensed to possess them. The 08 License was last amended on January 8, 1987, and was due to expire by its terms on December 31, 1987; Safety Light submitted an application dated November 23, 1987, to renew the 08 License. Pursuant to 10 CFR 2.109 and 30.37, the renewal applications keep both the 02 and 08 Licenses in effect until the Commission makes a final determination with respect to each application.

II

On March 16, 1989, the NRC Staff issued to the Licensees an "Order Modifying Licenses and Demand for Information (Effective Immediately)" ("March 1989 Order") requiring, *inter alia*, that the Licensees control access to the Bloomsburg site, characterize the radiological contamination of the site, and, upon NRC Staff approval of a decontamination plan, decontaminate the site. On August 21, 1989, the NRC Staff issued to the Licensees an "Order Modifying Licenses (Effective Immediately)" ("August 1989 Order") requiring, *inter alia*, that the Licensees set up a trust to fund site characterization and deposit at least $1,000,000 into that trust on a specified schedule. On February 7, 1992, the NRC Staff denied the applications to renew both the 02 and 08 Licenses in a letter from Robert M. Bernero (Director, Office of Nuclear Material Safety and Safeguards) to Jack Miller (President, Safety Light Corporation), *et al.*, ("Denial"). Together with the Denial, on February 7, 1992, the Staff issued to the Licensees an "Order Establishing Criteria and Schedule for Decommissioning the Bloomsburg Site" ("February 1992 Order") that established criteria and a schedule for decommissioning the Bloomsburg Site and required, *inter alia*, that the Licensees satisfy the requirements of 10 CFR 30.36 for assuring that the site is decommissioned and suitable for release for unrestricted use.

Safety Light and USR Industries and its subsidiaries have requested hearings on each of the aforementioned NRC Staff Orders and the Denial, and those proceedings have been consolidated, as stated below, and are currently pending before the Atomic Safety and Licensing Board. The March 1989 and August 1989 Orders are being heard under ASLBP Nos. 89–590–01–OM and 90–598–01–OM–2 ("OM proceeding"), and the Denial and the February 1992 Order are being heard under ASLBP Nos. 92–659–01–ML and 92–664–02–ML–2 ("ML proceeding"). To date, the Licensees have controlled access and performed a part but not all of the characterization of the site (primarily involving the groundwater flow regime), but have not set up a trust fund for characterization and decontamination in the amount or in the form required by the August 1989 Order.

III

On November 12, 1992, Counsel for SLC transmitted a letter to the Chairman of the Licensing Board presiding over the ML proceeding, which stated, in pertinent part:

> This is to advise you of the present intention of Safety Light Corporation ("SLC") to sell to a Canadian Crown corporation, Shield Source, Inc. ("SSI"), two of its product lines at the Bloomsburg site, *i.e.*, aircraft markers and foils/targets, and certain related assets. This transaction will be completed before the end of the year. (Letter at 1).

The letter further informed the Board that "C.R. White is a principal stockholder of both SLC and SSI"; that the value of the product lines in question would be determined by "two independent appraisers"; and that the sale would have the following consequences:

> As a consequence of the sale of the two product lines, SLC will obtain a combination of cash and accounts receivable in exchange for its customer lists and some fully-depreciated on-site equipment at Bloomsburg. This sale will leave with SLC its dominant product line, *i.e.*, the production and sale of commercial exit signs.
>
> * * * * *
>
> The funds received from the sale of these two product lines will be used to pay down secured creditors consistent with obligations of SLC in its covenants to its bankers.

In response to this letter, on December 21, 1992, by regular mail and telefax, the Staff transmitted a Demand for Information, dated December 17, 1992 ("DFI"), to SLC and SLC's Counsel. The DFI sought detailed information about the proposed sale and required SLC to file its response within 10 days from the date of the DFI, *i.e.*, by December 28, 1992. On or about December 22, 1992, SLC's Counsel informed Staff Counsel that SLC's president, Mr. White, had informed him that the sale had taken place about ten days earlier. After considering this information and the November 12 letter's statement that SLC would still retain its "dominant product line", on or about December 23, 1992, Staff Counsel agreed to an extension of time for SLC to file its response to the DFI, permitting its response to be filed on January 5, 1993. On the same basis, Staff Counsel determined not to proceed with the filing of a motion in the OM and ML proceedings to stay the transfer, which would otherwise have been filed before execution of the Asset Purchase Agreement described below.

On January 5, 1993, SLC submitted its response to the DFI, in which it indicated that the sale had occurred on January 4, 1993, rather than in December 1992. SLC included in its response a copy of an Asset Purchase Agreement dated January 4, 1993 ("Agreement"), and other documents, including an appraisal of the assets being transferred. Prior to the Staff's receipt of SLC's response to the DFI, the Staff was unaware that the information previously provided by Mr. White, through Counsel, was incorrect. In addition, SLC's response to the DFI provided other information that was inconsistent with the letter of November 12, 1992. That response includes information that SLC seeks to have withheld from public disclosure, including financial information which demonstrates that the sale would divest from SLC the two product lines that contributed a substantial portion of SLC's gross profits in 1992. The Staff has not yet determined whether to withhold that information from public disclosure but is maintaining it as confidential until a determination is made; that information has been submitted in confidential form to the Licensing Board presiding over the OM and ML proceedings.

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[1] Holders of the 02 and 08 Licenses also include Lime Ridge Industries, Inc., Metreal, Inc., USR Industries, Inc. ("USR Industries"), and latter's subsidiaries, USR Chemical Products, Inc. USR Metals, Inc., USR Lighting, Inc., and U.S. Natural Resources, Inc. These companies and Safety Light will hereinafter collectively be denoted as "Licensees". This Order, however, is directed only to Safety Light, and does not impose any obligations on USR Industries and its subsidiaries, or any of the named companies other than Safety Light.

SLC's response to the DFI also indicated that the principals of the two corporations which are parties to the Asset Purchase Agreement are substantially identical: C. Richter White, who signed the agreement on SLC's behalf, is President of SLC and is stated to be the majority (60%) stockholder of that company and the sole (100%) stockholder of SSI; further, T. Edward Kyttle, who executed the Asset Purchase Agreement on behalf of SSI as its "President," has been identified by SLC as SLC's "general manager."

The Commission's regulations in 10 C.F.R. 30.9(a) provide that "[i]nformation provided to the Commission by an applicant for a license or by a licensee * * * shall be complete and accurate in all material respects." As described above, SLC has violated § 30.9 because, *inter alia*, it twice provided an inaccurate date for the execution of the Asset Purchase Agreement, such that the NRC Staff did not act to stay the Agreement prior to its execution. This information, as described above, was clearly material to the NRC. Also, the January 5 response to the DFI informed the Staff that the sale would divest SLC of the two product lines that contributed a substantial portion of the company's gross profits in 1992. In light of this disclosure, SLC's November 12, 1992, statement that the sale will leave SLC with its "dominant product line," a statement which was material to the NRC, was also inaccurate. Certain other statements by SLC in its Counsel's letter of November 12, 1992, were also shown to be inaccurate, upon examination of SLC's January 5 response to the DFI. Prior to SLC's submission of its response to the Staff's DFI on January 5, 1993, SLC did not disclose that the information it had previously provided concerning the timing, nature, and effect of the sale was incorrect.

Accordingly, on January 15, 1993, the NRC Staff filed with the Licensing Board presiding over both the OM and ML proceedings the "NRC Staff's Motion For Temporary Relief To Preserve The Status Quo And Protect The Licensing Board And Commission's Jurisdiction In These Proceedings By Prohibiting SLC From Taking Any Steps To Implement Its Announced Transfer, Or Any Transfer, Of Major Assets, *Pendente Lite*" ("Staff Motion"). The Staff Motion, which was filed under a claim of confidentiality based on SLC's pending request for non-disclosure, identified information in SLC's response to the DFI that is inconsistent with the letter of November 12, 1992. The Staff Motion requested the Board to take several actions, which would, in general, (1) prohibit SLC from implementing the Asset Purchase Agreement without prior Licensing Board approval, (2) prohibit SLC from entering into or completing any transaction which would materially affect the value of the company or its ability to comply with the Staff's outstanding Orders, and (3) require SLC to set aside all funds received or to be received as a result of the sale.

An oral argument on the Staff's Motion was held by the Licensing Board on January 19, 1993, at the conclusion of which the Licensing Board granted in part and denied in part the Staff's Motion, as set forth in the Board's Order of January 22, 1993 ("Board Order"). In its Order, the Licensing Board found that "the staff has demonstrated that the regulatory process, and hence the public interest, will be irreparably harmed by SLC's actions that are likely to dissipate its assets and reduce its ability to decontaminate and decommission the Bloomsburg site as required by the Commission's regulation." (Board Order at 4). Accordingly, the Board ordered that:

(1) SLC is prohibited from taking any steps to implement its asset purchase agreement of January 4, 1993, that will dissipate SLC's assets to any significant degree;

(2) SLC is prohibited from transferring or selling any other major assets other than in the normal course of business for full fair value;

(3) SLC is prohibited from entering into or completing any transaction that will materially affect its value or its ability to comply with the agency's outstanding orders;

(4) SLC shall set aside and preserve, in a separate account, any and all funds it may have received or will receive as a result of the January 4, 1993, sale of SLC's assets;

(5) SLC shall proceed with its efforts to obtain a second valuation by an independent appraiser (approved in advance by the staff) of the assets covered by the asset purchase agreement; and

(6) SLC shall provide the Board and the staff with forty-eight hours notice before taking any significant steps to implement any other provisions of its asset purchase agreement of January 4, 1993.

(*Id.* at 5.) The Board Order provided that the relief set forth above is to expire at 4:15 p.m. on January 29, 1993, and the Board indicated that any further relief which the Staff may seek should be the subject of an order issued under 10 CFR 2.202. (*Id.* at 6; Tr. 33–35).

IV

I conclude that further action, as indicated by the Licensing Board, is now required in order to prevent SLC from proceeding to take any further steps to implement its announced transfer of assets, or any other major transfer of assets that may reduce its ability to comply with the March and August 1989 Orders and the February 1992 Order, which, in general terms, require that SLC (a) characterize and decontaminate the Bloomsburg site, (b) set aside the sum of $1,000,000 to fund site characterization, and (c) commence decommissioning of its Bloomsburg site. On the basis of information provided by SLC, as described above, I lack the requisite reasonable assurance that SLC will be able to comply with Commission requirements, including future orders of the Licensing Board or the Commission making final determinations regarding the requirements of the NRC Staff's March and August 1989 and February 1992 Orders. Further, the entry of this Order is required in light of the several examples of inconsistent information provided by SLC to the Staff and Licensing Board relating to its transfer of assets, as more fully set forth above, and in light of the information received by the Staff that indicates that SLC may have contracted to receive less than full fair value in exchange for the assets to be transferred under the Agreement.

In view of the above, I have determined that the requirements of this Order are immediately needed in order to preserve the *status quo*, to prevent SLC's dissipation of assets required to comply with the Commission's orders and regulatory requirements which are necessary to protect the health and safety of the public, and protect the Commission's jurisdiction in these proceedings, as set forth below. Furthermore, pursuant to 10 CFR 2.202(a)(5), I find that the significance of the violations and conduct described above is such that the public health, safety and interest require that this Order be immediately effective. In accordance with the Board Order of

January 22, 1993, written notice of the Staff's intent to issue this Order was given to Safety Light and the Licensing Board on January 26, 1993.

V

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered, effective immediately, That:

A. Pending final agency action in the OM and ML proceedings, Safety Light Corporation is prohibited from taking any steps to implement its Asset Purchase Agreement of January 4, 1993, without prior NRC Staff approval;

B. Pending final agency action in the OM and ML proceedings, Safety Light Corporation is prohibited from transferring or selling any other major assets, other than in the normal course of business for full fair value, without prior NRC Staff approval;

C. Pending final agency action in the OM and ML proceedings, Safety Light Corporation is prohibited from entering into or completing any transaction which would materially affect the value of the company or its ability to comply with the Staff's outstanding Orders;

D. Pending final agency action in the OM and ML proceedings, Safety Light Corporation shall set aside and preserve, in a separate account, any and all funds it may have received or will receive as a result of the January 4, 1993, sale of SLC's assets, as previously ordered by the Licensing Board in its January 22, 1993, Order; and

E. Safety Light Corporation shall obtain and provide to the staff a second valuation of the assets covered by the Asset Purchase Agreement, to be performed by an independent appraiser approved in advance by the Staff.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by Safety Light Corporation of good cause.

Pursuant to section 223 of the Atomic Energy Act of 1954, as amended, any person who willfully violates, attempts to violate, or conspires to violate, any provision of this Order shall be subject to criminal prosecution as set forth in that section.

VI

In accordance with 10 CFR 2.202, Safety Light Corporation must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Director, Office of Nuclear Material Safety and Safeguards at the same address, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415, and to the Licensees if the answer or hearing request is by a person other than Safety Light Corporation. If a person other than Safety Light Corporation requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Safety Light Corporation or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), any person adversely affected by this Order, other than Safety Light Corporation, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. Pursuant to the Licensing Board's Order of January 22, 1993, any motion by Safety Light Corporation to set aside the immediate effectiveness of this Order shall be filed by 4:15 p.m. on Tuesday, February 2, 1993, and any hearing on Safety Light's set-aside motion will be held at 10 a.m. on Tuesday, February 9, 1992, at the Licensing Board's fifth floor hearing room, 4350 East-West Highway, Bethesda, Maryland.

In the absence of any request for hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

VII

In addition to issuance of this Order, the Commission requires further information from Safety Light in order to determine whether the Commission can have reasonable assurance that in the future Safety Light will conduct its activities in accordance with the Commission's requirements and will satisfy any requirements in any final agency action taken in the OM and ML proceedings.

Accordingly, pursuant to sections 161c, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's requirements in 10 CFR 2.204 and 10 CFR 30.32(b), in order for the Commission to determine whether Safety Light Corporation's license should be further modified, suspended, or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, Safety Light Corporation is required to submit to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within seven (7) days of the date of this Order and Demand for Information, the following information, in writing and under oath or affirmation:

A. A full description of all steps that have been taken to date to implement or consummate the "Asset Purchase Agreement" of January 4, 1993, as well as all such steps that are pending at this time or are contemplated to occur in the future; and

B. With respect to the separate account required by section V.D. of this Order and previously required by the Licensing Board's January 22, 1993, Order:

1. The name, address, and nature of the institution where the account is located;
2. The account number;
3. The names of the individuals with control over the account;
4. A record of transactions in the account; and
5. The account's current balance.

Copies shall also be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415.

After reviewing Safety Light Corporation's response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 29th day of January, 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

[FR Doc. 93-2727 Filed 2-4-93-8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment
(2) *Form(s) submitted:* G-19L
(3) *OMB Number:* 3220-0179
(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval
(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection
(6) *Frequency of response:* Annually
(7) *Respondents:* Individuals or households
(8) *Estimated annual number of respondents:* 6,000
(9) *Total annual responses:* 1
(10) *Average time per response:* .5 hour
(11) *Total annual reporting hours:* 3,000
(12) *Collection description:* Under Section 2(e)(3) of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the beneficiary works for a railroad or earns more than the prescribed amounts. The collection obtains earnings information needed by the Railroad Retirement Board for determining possible reductions in annuities because of LPE earnings.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312-751-4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092 and the OMB reviewer, Laura Oliven (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93-2728 Filed 2-4-93; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31794; File No. SR-AMEX-92-45]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of and Order Granting Accelerated Approval Relating to Minimum Fractions of Trading

January 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the American Stock Exchange, Inc. ("AMEX" or "Exchange"), on December 14, 1992, filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The AMEX proposes to add Commentary .01 to Rule 127 in order to provide that Portfolio Depository Receipts ("PDRs") listed and traded under AMEX Rule 1000 *et seq.* may be traded in fractions of 1/32's.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

AMEX Rule 127 provides parameters for the minimum fractional change for dealings in securities on the Exchange. Currently, the minimum fractional change for securities trading at $5.00 and above is ⅛ of $1.00 per share. The Exchange proposes to add Commentary .01 to Rule 127 to provide that Portfolio Depository Receipts traded under Rules 1000 *et seq.* shall trade with minimum fractional changes of 1/32. The Commission has granted to the Exchange the authority to list and trade an issuance of PDRs based on the Standard & Poor's ("S&P") 500 Stock Index, otherwise known as "SPDRs."[3]

The ability to trade in fractions of 1/32's is particularly important for open-end unit investment trust securities such as PDRs which can be expected to fluctuate in price according to fluctuations in the underlying index for the particular issuance. Trading in 1/32's is intended to avoid unnecessarily large price fluctuations based on the movements in the underlying index, which can be detrimental to the investing public. In addition, a narrower quotation spread should make such securities more useful instruments for institutional arbitrageurs and other market professionals who may hedge their positions in futures or other derivative markets.

(2) Basis

The AMEX believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is intended to promote just and equitable principles of trade, to facilitate transactions in securities, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1991).

[3] See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated approval pursuant to section 19(b)(2) of the Act. The Commission finds that the proposed rule change to permit the trading of PDRs in 1/32's is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, the requirements of sections 6(b) and 11A of the Act. The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Commission believes that the proposal is consistent with section 11A which requires the Commission to facilitate the establishment of a national market system. Pursuant to section 11A, a national market system should assure, among other things, fair competition between exchanges, economically efficient execution of securities transactions and the practicability of brokers executing investors' orders in the best market.

The Commission believes that market quality for PDRs should be enhanced by applying a minimum fractional change of 1/32, rather than the present 1/8, to PDR securities selling at $5.00 and above. The Commission believes that decreasing such trading variation should help to produce more accurate pricing of PDRs and can result in tighter quotations. In addition, trading PDRs in 1/32's will benefit the investing public by helping to soften price fluctuations that may occur when the underlying PDR index substantially moves.

The Commission further believes that the tighter quotation spreads resulting from trading PDR securities in 1/32's should allow customers to receive the best possible execution of their transactions in these securities. Although PDRs, and specifically, SPDRs, will initially be listed and traded by the AMEX, it is conceivable that other national securities exchanges or the National Association of Securities Dealers, Inc. ("NASD") could apply for authority to list and trade a PDR product. At the present time, however, the Intermarket Trading System ("ITS") is not capable of accommodating quotes in 1/32's.[4] Accordingly, if other securities exchanges and/or national securities associations file for permission to list and trade a PDR product, the Commission would at that time be required to re-evaluate the adequacy and sufficiency of ITS in conjunction with section 11A's statutory mandate to assure fair competition between the exchanges.[5]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because of the benefits that trading in 1/32's will provide for market participants trading PDRs, in general, and SPDRs, in particular. The Commission accordingly believes that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to File No. SR–AMEX–92–45 and should be submitted by February 26, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–AMEX–92–45) is approved.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2765 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31805; File No. SR–Amex–92–46]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Member Firm Use of Electronic Display Book

February 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has adopted a policy statement in connection with member firm use, on the Amex trading floor, of an electronic display book for equities being licensed from the New York Stock Exchange ("NYSE").

The text of the policy statement is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[4] Phone conversation between Keith Riley, Branch Chief, Division of Market Regulation, and Thomas Demchek, SIAC, on January 29, 1993.

[5] See Securities Exchange Act Release No. 31118 (August 28, 1992), 57 FR 40484.

[6] 15 U.S.C. 78s(b)(2) (1982).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has recently negotiated an agreement with the NYSE to license the NYSE's electronic display book for equities, for purposes of implementing an electronic display book on the Amex trading floor. The Exchange expects to begin deployment of the display book by the end of the first quarter of 1993.

The Amex Constitution[1] currently provides that the Exchange shall not be liable for any damages incurred by a member firm growing out of its use of the facilities afforded by the Exchange for the conduct of its business (which includes the use of the Exchange's trading systems), except as the Exchange may otherwise provide. It is recognized that liability for systems use is a risk not properly borne by the Exchange. In connection with the display book agreement, the NYSE is requiring that it also be protected from liability with regard to member firm use of the display book on the Amex floor.

Accordingly, the Exchange has adopted a policy statement, in connection with member firm use of the display book on the Amex trading floor, that disclaims NYSE liability for such member firm use of the system.[2] The policy statement will constitute a rule or regulation of the Exchange. Upon approval by the SEC, the policy statement will be sent to the membership.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is intended to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–46 and should be submitted by February 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2759 Filed 2–4–93; 8:45 am]

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[1] See Art. IV, Sec. 1(e) of the Amex Constitution.

[2] The Commission notes that this disclaimer would only limit NYSE liability for damages sustained by Amex members and member firms using the electronic display book on the Amex trading floor.

[Release No. 34–31800; File No. SR–CBOE–92–13]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the Standard & Poor's 100 and 500 Stock Indexes

February 1, 1993

I. Introduction

On June 26, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Standard & Poor's ("S&P") 100 and 500 Stock Indexes that will expire on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expirations" or "QIXs"). Currently, all equity and stock index options traded on the Exchange expire on the Saturday immediately following the third Friday of the expiration month. The CBOE intends to trade QIXs in addition to the existing S&P 100 ("OEX") and 500 ("SPX") Index options expiring at the middle of the month.

Notice of the proposed rule change, amended as of July 16, 1992, appeared in the **Federal Register** on August 18, 1992.[3] No comments were received on the proposed rule change. Thereafter, CBOE amended the proposal to revise applicable position limits.[4] Notice of that amendment appeared in the **Federal Register** on October 27, 1992.[5] No comments were received on the amendment. On January 15, 1993, the Exchange filed an additional amendment, Amendment No. 3, in order to conform the proposal to existing Chapter 24 of the CBOE's Rules and clarify position and exercise limits for QIXs. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to add subparagraph (c) to Rule 24.9 to provide for the listing of up to eight near-term quarterly expirations open for trading on OEX and SPX options. The CBOE would be permitted at any one time to have up to eight QIX OEX and eight QIX SPX options open for trading with expiration on the first business day of the month following the end of a calendar quarter.[6] Accordingly, this quarterly expiration feature will provide expirations approximately two weeks apart from existing OEX or SPX options expirations in the quarterly month expiration.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 31010 (August 7, 1992), 57 FR 37176.

[4] See Amendment No. 2, File No. SR–CBOE–92–13.

[5] See Securities Exchange Act Release No. 31330 (October 19, 1992), 57 FR 48643.

The proposed QIX options will trade simultaneously with, not independent of, currently listed and traded OEX and SPX options. The proposed QIX options will be subject to the same rules that presently govern the trading of existing OEX and SPX options contracts, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for the QIX options will be similar to the corresponding OEX and SPX options that presently trade on the Exchange. For example, QIX OEX will have American-style exercise, with the daily exercise settlement value based on the index value derived from the closing prices of component stocks. Similarly, QIX SPX will have European-style exercise and the exercise settlement value will be based upon the index value derived from the closing prices of component stocks on the last trading day prior to expiration.[7] In addition, the multiplier for QIX options in the discretion of the Exchange may be set at 500 rather than the customary 100.[8]

With regard to position and exercise limits, the CBOE proposes: (1) That QIXs on the S&P 500 Index ("QIX SPXs") be aggregated with and treated identically to A.M.-settled, European-style option contracts on the S&P 500 Index ("A.M.-settled SPXs") for all position limit purposes, including being subject to the 25,000 contract index arbitrage limit; and (2) that QIXs on the S&P 100 Index ("QIX OEXs") be treated like all other OEX options for all position limit purposes, except for the requirement that limits the number of contracts in the series of any broad-based index option with the nearest expiration ("telescoping requirement").[9] The number of contracts in any QIX position having a multiplier of 500 must be treated as equal to five times the actual number of contracts in the position for the purposes of position and exercise limits.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[10] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored quarterly portfolio hedge that may be more suitable to their investment needs. Specifically, by providing investors with the ability to use QIX options that settle based on the value of component stocks on the last business day of the calendar quarter, the CBOE proposal will allow investors increased flexibility to tailor their portfolio positions to satisfy their investment objectives. For instance, according to the CBOE, the performance of portfolio managers and institutional investors is judged on a quarterly basis.[11] Therefore, in the past, these investors have been forced to pursue "quarterly hedges" in the over-the-counter ("OTC") market employing forwards, options and/or swaps. Accordingly, the Commission believes the CBOE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs,[12] and will thereby promote competition among these markets.

In addition, the Commission believes that the CBOE proposal will help to promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in OEX and SPX options to quarterly calendar expirations. The attributes of the Exchange's OEX and SPX options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.[13]

The Commission also notes that the Exchange's existing rules applicable to stock index options, including among others, strike price interval, bid/ask differential, price continuity, and sales practice rules and position and exercise limits will apply to QIX options. In particular, QIX SPXs will be subject to a 45,000 contract limit under Rule 24.4(b), with a 25,000 contract limit for index arbitrage,[14] but no telescoping provision, and will be aggregated with A.M.-settled SPX contracts.[15] QIX OEXs under Rule 24.4(c) will be subject to a 25,000 contract limitation without the telescoping requirement, and will be aggregated with other OEX contracts. Accordingly, all S&P 100 options contract positions, including OEX and QIX OEX, are limited in total to a 25,000 position limit.[16]

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[6] Presently, options traded at the CBOE expire on the Saturday following the third Friday of the expiration month. The CBOE trades index options with expirations of up to one year in length that expire at three month intervals. The Exchange allows for up to six expiration months with none farther out than twelve months. In addition, the CBOE also trades long-term index options that may expire three years from listing named "LEAPS." The CBOE is not now proposing to list or trade QIX options with more than twelve months to expiration. Any such proposal would be filed with the Commission for review under section 19(b)(2) of the Act.

[7] Although closing price ("P.M.") settlement of SPXs are being phased-out in favor of opening price or A.M.-settlement consistent with Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376, March, June and December 1993 expirations will contain a P.M.-settled SPX contract as well as the A.M.-settled SPXs. QIXs, however, are by their terms P.M.-settled contracts expiring on non-expiration Fridays.

[8] The Exchange believes that increased contract size may be justified due to the larger portfolios now being managed by institutional investors. The CBOE's rules provide that position limits will be accordingly adjusted if the multiplier is 500 rather than 100. Initially, the Exchange intends to use only the 100 multiplier. The CBOE has stated that the Commission will be notified, and appropriate procedures or rule amendments filed and approved prior to trading options based on a 500 multiplier. See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, dated January 29, 1993.

[9] Unless provided otherwise in the CBOE's rules, the telescoping provision in CBOE Rule 24.4 limits the size of positions in near-term expiration months in broadbased stock index options to 15,000 contracts on the same side of the market.

[10] 15 U.S.C. 78f(b)(5) (1982).

[11] In addition, many investment strategies employed by these portfolio managers converge at the calendar quarter. Hence, traditional exchange-type expirations provide a less than perfect hedge for many institutions.

[12] According to the Exchange, the proliferation of the OTC options market in domestic indexes and equities is largely due to the availability of option contracts that expire on a calendar quarter basis.

[13] See File No. SR–OCC–91–27.

[14] Specifically, CBOE Rule 24.4(b) states that no more than 25,000 contracts may be used for the purpose of taking advantage of any differential in price between the S&P 500 Index and the securities underlying the S&P 500.

[15] The remaining closing price settlement of P.M.–SPX contracts (symbol of "NSX") will continue to be subject to Rule 24.4(a) limiting positions to 25,000 contracts with a telescoping provision of 15,000 contracts in the near term series. In any event, positions in all S&P 500 contracts, including A.M.-settled SPXs, P.M.-settled SPXs, and QIX SPXs are to be aggregated and cannot exceed the position and exercise limits established for the particular contract.

[16] Both QIX SPXs and QIX OEXs will be entitled to certain hedge exemptions from position limits under the CBOE's rules. QIX SPXs will be treated identically to A.M.-settled SPXs for purposes of the hedging exemptions from position and exercise limits in Interpretation .02 to Rule 24.4 (150,000 contract limit) and the facilitation exemption in Interpretation .03 to Rule 24.4 (250,000 contracts in

Continued

The Commission notes that QIX SPXs will be treated like A.M.-settled SPXs except for expiration settlement which will be based on the closing values of the component securities.[17] Although the Commission continues to believe that basing the settlement of index products on opening, as opposed to closing, prices on Expiration Fridays helps alleviate stock market volatility,[18] these concerns are reduced in the case of both QIX SPXs and QIX OEXs, since expiration of these stock index options will not correspond to the normal expiration of stock index option, stock index futures, and options on stock index futures. In particular, QIX SPXs and QIX OEXs will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September and December, thereby diminishing the impact that QIX SPXs and QIX OEXs could have on the market. Accordingly, the Commission preliminarily believes that QIX options will not compromise the protection of investors or have an adverse market effect. Of course, the Commission expects the CBOE to monitor the actual effect of QIXs once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the CBOE, the Commission believes that the CBOE and the Options Price Reporting Authority ("OPRA") will have adequate systems processing capacity to accommodate the additional options listed in connection with QIX options. Specifically, the Exchange represents that "CBOE and OPRA have the necessary systems capacity to support the new series which would result from introduction of QIX options." [19]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CBOE–92–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2760 Filed 2–4–93; 8:45 am]

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the aggregate and 135,000 contracts for a single account). QIX OEXs are subject to the 75,000 contract hedge exemption in Interpretation .01 to Rule 24.4, and, will not be eligible for any facilitation exemptions from position limits.

[17] QIX OEXs will follow the pattern of existing OEX contracts and also will be settled based on the closing prices of its component securities.

[18] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376.

[19] See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated January 29, 1993, incorporating a memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Charles J. Henry, CBOE, dated January 29, 1993.

[20] 15 U.S.C. 78s(b)(2) (1982).

[21] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–31798; File No. SR–MSTC–92–11]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Temporary Approval on an Accelerated Basis of a Proposed Rule Change Concerning the Institutional Participant Services Program

January 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on December 21, 1992, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by MSTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change on a temporary basis through January 31, 1994.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends the approval of (i) the Institutional Participant Services Program ("Program") and (ii) the Institutional Participant ("Institutions") category of participants.

II Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission has approved the Program on a temporary basis through January 31, 1992 ("Temporary Approval Period").[2] The rationale for initially approving the rule change on a temporary basis was to provide MSTC with the opportunity to formulate more definitive financial and operational standards for Institutions that desire to participate in the Program. Subsequently, on December 26, 1990, MSTC filed a proposed rule change [3] which requested permanent approval of the Program and proposed more definitive standards of participation and of financial and operational capabilities for Institutions.[4] In order to provide the Commission and MSTC with the opportunity to continue their studies of these standards while providing continuity of service to Institutions participating in the Program, MSTC requests that the Commission grant temporary approval of the proposed rule change on an accelerated basis under the terms of the Temporary Approval Orders through January 31, 1994. MSTC believes that the proposed rule change is consistent with section 17A of the Act [5] because it will promote the prompt and accurate clearance and settlement of securities transactions and help perfect the national system for the clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

MSTC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

MSTC has not received any comments from participants of the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release Nos. 27752 (March 1, 1990), 55 FR 8271 (File No. SR–MSTC–89–05); 28844 (February 1, 1991), 56 FR 5035 (File No. SR–MSTC–91–01); 29493 (July 26, 1991), 56 FR 36854 (File No. SR–MSTC–91–03); 30326 (January 31, 1992), 57 FR 4783 (File No. SR–MSTC–92–01); and 30981 (August 10, 1992), 57 FR 35616 (File No. SR–MSTC–92–06) (collectively referred to as "Temporary Approval Orders").

[3] File No. SR–MSTC–90–10.

[4] For a complete description of the services offered and the current standards of financial and operational capabilities for Institutions, refer to the Temporary Approval Orders.

[5] 15 U.S.C. 78q–1 (1988).

III Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and, in particular, with the requirements of sections 17A(b)(3) (A) and (F) of the Act.[6] Those sections require that the rules and organizational structure of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism for the national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MSTC's proposal will help achieve these requirements by providing Institutions with the opportunity to participate directly in the national market system through MSTC.

MSTC requests the Commission to find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. Such accelerated approval will permit MSTC to offer continuity of service to Institutions that currently participate in the Program while providing the Commission and MSTC with sufficient time to analyze the more definitive standards of participation and of financial and operational capabilities proposed by MSTC.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission does not anticipate that it will receive any significant negative comment on the proposed rule change in light of the fact that no comments were received on the proposals approved in the Temporary Approval Orders, which were identical in substance to this proposed rule change. Furthermore, the Commission notes that the Program has operated without incident during the Temporary Approval Period. Thus, accelerated approval of the proposed rule change will permit MSTC to provide continuity of service to those Institutions that currently participate in the Program while the Commission and MSTC continue to study MSTC's proposed permanent standards of participation and of financial and operational capabilities for such Institutions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–92–11 and should be submitted by February 26, 1993.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–MSTC–92–11) be, and hereby is, approved on an accelerated basis through January 31, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2764 Filed 2–4–93; 8:45 am]

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[6] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–31797; File No. SR–NYSE–92–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 104.10(6) Pertaining to Specialists' Liquidating Transactions

January 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends permanently Exchange Rule 104.10(6) pertaining to specialists' liquidating transactions. The Commission previously approved the amendments to Rule 104.10(6) on a pilot basis.[1]

The Exchange requests accelerated approval of the proposed rule change to enable the pilot procedures, which would otherwise expire on January 29, 1993, to continue on a permanent and uninterrupted basis.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*

The Exchange proposed to amend Rule 104.10(6) in File No. SR–NYSE–91–07. The proposed rule change, filed as a one-year pilot, amended Rule 104.10(6) to permit specialists to "reliquify" a dealer position by selling "long" on a zero-minus tick,[3] or by purchasing to cover a "short" position on a zero-plus tick,[4] without Floor Official approval. The proposed amendments also emphasized the specialist's affirmative role in providing stabilizing dealer participation to the marketplace where reliquification may be required to facilitate the maintenance of a fair and orderly market.

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[1] See Securities Exchange Act Release No. 29626 (August 29, 1991), 56 FR 43953 (September 5, 1991) ("1991 Approval Order") (order approving File No. SR–NYSE–91–07); Securities Exchange Act Release No. 31108 (August 27, 1992), 57 FR 40237 (September 2, 1992) ("August 1992 Approval Order") (order approving File No. SR–NYSE–92–18); Securities Exchange Act Release No. 31526 (November 27, 1992), 57 FR 57254 (December 3, 1992) ("November 1992 Approval Order") (order approving File No. SR–NYSE–92–35).

[2] *See* letter from Brian M. McNamara, Managing Director, Market Surveillance, NYSE, to Diana Luka-Hopson, Branch Chief, Commission, dated January 22, 1993.

[3] A zero minus tick is a price equal to the last sale if the last preceding transaction at a different price was at a higher price.

[4] A zero plus tick is a price equal to the last sale if the last preceding transaction at a different price was at a lower price.

The Commission granted temporary approval of the NYSE's proposal on a one-year pilot basis and requested that the Exchange submit a report evaluating the effects of the amendments.[5] The Commission also granted approval for a 90-day extension of the pilot until November 27, 1992 in order for the pilot to continue uninterrupted while the Exchange's request for permanent approval was being considered.[6] The Commission subsequently granted approval for a 60 day extension of the pilot until January 29, 1993 to enable the Commission to review the NYSE's use of the pilot program procedures and to enable the pilot to continue without interruption during the Commission's review.[7] The current pilot is scheduled to expire on January 29, 1993. The Exchange's reports submitted to the Commission concerning the pilot program noted that the amendments to the Rule appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market.

The Exchange is therefore seeking permanent approval of the amendments as described below. The Exchange is proposing to amend permanently Rule 104.10(6) to permit specialists to "reliquify" a dealer position by selling "long" inventory stock on a zero minus tick, or by purchasing to "cover" a "short" position on a zero plus tick, without Floor Official approval. The Exchange believes that this proposal will facilitate the specialist's market maintenance capability, particularly during unusual market conditions.

In addition to this change, the Exchange believes that it is appropriate to amend permanently Rule 104.10(6) to emphasize the specialist's affirmative role in providing stabilizing dealer participation to the marketplace, especially during periods of volatile or unusual market activity, involving significant price movement in a security, where reliquification may be required to facilitate the maintenance of a fair and orderly market. In this regard, Rule 104.10(6) would be amended to provide that:

—liquidations involving the principal selling of *any* stock on a direct minus tick,[8] or the purchasing of stock on a direct plus tick[9] will require Floor Official approval, and should be effected only in conjunction with the specialist's re-entering the market on the opposite side of the market from the liquidating transaction where the imbalance indicates that the immediate succeeding transactions would result in a lower (higher) price following the sale (purchase);

—during volatile or unusual market conditions involving significant price movement in a security, the specialist should re-enter the market following a liquidation transaction which was effected by selling stock on a direct minus or zero minus tick, or purchasing stock on a direct plus or zero plus tick and, at a minimum, participate as dealer to the extent of his usual level of dealer participation in the subject security;

—during such periods, a series of such liquidating or purchasing transactions effected within a brief period of time should be accompanied by the specialist's re-entry in the market and effecting transactions which reflect a significant degree of dealer participation.

The Exchange believes that the proposed amendments are consistent with the philosophy underlying the specialists negative obligations in that Rule 104 has always recognized that reliquifying transactions on destabilizing ticks may be appropriate under certain conditions.[10] The Exchange believes that the proposed amendments reflect the need to facilitate specialists' ability to maintain fair and orderly markets through reliquification. The proposed amendments also are consistent with the manner in which the Exchange has interpreted the specialist's responsibility to re-enter the market following reliquifying transactions.

The Exchange believes that the proposed amendments to Rule 104.10(6) strike an appropriate balance by ensuring that specialists have flexibility to liquidate or decrease positions, while at the same time emphasizing their responsibility to re-enter the market following reliquifying transactions.

(b) *Statutory Basis*

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with these objectives because it enhances the specialists' ability to reliquify and re-enter the market and reinforces the specialists' obligation to participate during volatile or unusual market conditions in a manner that is counter to the trend of the market and which cushions price movements in the specialists' stocks.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[5] See 1991 Approval Order, *supra* note 1.

[6] See August 1992 Approval Order, *supra* note 1.

[7] See November 1992 Approval Order, *supra* note 1.

[8] A minus tick is a price below the price of the last preceding sale.

[9] A plus tick is a price above the price of the last preceding sale.

[10] NYSE Rule 104, which is the primary NYSE rule governing the activities of its specialists, restricts a specialist's purchases or sales of his or her specialty stock to those dealings that are reasonably necessary to permit the specialist to maintain a fair and orderly market. Prior to Commission approval of the pilot procedures, Rule 104.10(6) provided, among other things, that transactions by a specialist to liquidate or decrease his or her position in a specialty stock must be affected in a reasonable and orderly manner in relation to general market conditions, the market conditions of the particular security, and the adequacy of the specialist's positions to the needs of the market. The Rule also provided that, unless a specialist has Floor Official approval, he or she should avoid liquidating all, or substantially all, of a position by selling stock at prices below the last different price (on a direct minus or zero minus tick) or by purchasing stock at prices above the last different price (on a direct plus or zero plus tick), unless the transaction is reasonably necessary in relation to the specialist's overall position in his or her specialty stocks. In addition, the Rule provided that, unless a specialist has Floor Official approval, he or she should avoid failing to re-enter the market where necessary, after effecting transactions such as those described above; and failing to maintain a fair and orderly market during liquidation.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–92–20 and should be submitted by February 26, 1993.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with sections 6(b)(5) and 11 of the Act.[11] The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission also believes that the proposal is consistent with section 11(b) of the Act and Rule 11b–1 thereunder,[12] which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets.

Both the Act and Exchange rules reflect the crucial role played by specialists in providing stability, liquidity, and continuity in the Exchange's auction market. Recognizing the importance of the specialist in the auction market, the Act and Exchange rules impose stringent obligations upon specialists.[13] Primary among these obligations are the requirements to maintain fair and orderly markets and to restrict specialist dealings to those that are "reasonably necessary" in order to maintain a fair and orderly market.[14]

The importance of specialist performance to the quality of Exchange markets was highlighted during the 1987 and 1989 market breaks. In the Division of Market Regulation's ("Division") report on the October 1987 Market Break ("1987 Market Break Report"), the Division examined specialist performance on the NYSE on October 19 and 20, 1987.[15] The Division found that, during the periods of the greatest volatility in 1987, particularly on October 19, 1987, NYSE specialists had to act as the primary, or sometimes the only, buyers for many of the specialty stocks because of the lack of buying interest by upstairs firms.[16] The increased volume of order flow, coupled with the lack of participation on the part of upstairs firms, resulted in NYSE specialists having to take large dealer positions.[17] Although many NYSE specialists appeared to perform well under the adverse conditions, specialist performance during this period varied widely.

The Division also examined NYSE specialist performance during the volatile conditions of October 13 and 16, 1989. The Division found that specialist performance during that time was similar in many respects to specialist performance during the October 1987 Market Break.[18] Specifically, the Division found that, during these two periods of extreme market volatility, specialists were confronted with extraordinary order imbalances that required unprecedented capital commitments.[19] As in October 1987, specialists as a whole on October 13, 1989, were substantial buyers in the face of heavy selling pressure, although performance varied among specialists.

Both the 1987 Market Break Report and the October 1989 Report reaffirmed the importance of specialist participation in countering market trends during periods of market volatility. At the same time, the reports emphasized the importance the Commission placed on the NYSE's ability to ensure that all specialists comply with their affirmative and negative market making obligations during such period.[20]

One area of specialist performance specifically reviewed by the October 1989 Report involved specialists' compliance with the negative obligations imposed by NYSE Rule 104.10(6)(i). Prior to the implementation of the NYSE's pilot program, that Rule stated that, unless the specialist has the prior approval of a Floor Official, he or she should avoid liquidating all or substantially all of a dealer position on a destabilizing tick (*i.e.*, purchases on plus or zero plus ticks and sales on minus or zero minus ticks) unless the transaction is reasonably necessary in relation to the specialist's overall position in the stocks in which he or she is registered. In the October 1989 Report, the Division requested that the NYSE examine the language of this rule, which appeared to provide specialists with unnecessarily broad latitude for effecting transactions on destabilizing ticks.

The proposed rule change is responsive to the request regarding Rule 104.10(6)(i) as well as the conclusions of the two market break reports. The NYSE, recognizing that market conditions may necessitate that a specialist participate heavily in a rapidly declining market, proposed amendments to Rule 104.10(6), initially on a pilot basis, to provide specialists with flexibility in liquidating positions in order to facilitate their ability to maintain fair and orderly markets, particularly during unusual market conditions. At the same time, the amendments were designed to strengthen the specialist's concomitant obligation to participate as dealer on the opposite side of the market after a liquidating transaction. As noted above, the Commission approved the proposed amendments as a one year pilot program, and subsequently extended the pilot on two occasions.[21]

The Exchange is requesting permanent approval of the pilot program procedures. Under the proposal, a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick only if such transactions are reasonably necessary for the maintenance of a fair and orderly market and only if the specialist has obtained the prior approval of a Floor Official. Liquidations on a zero minus or a zero plus tick, which prior to the implementation of the pilot program required Floor Official approval, could be effected under the proposed procedures without a Floor Official's approval, but would continue to be subject to the restriction that they be effected only when reasonably necessary to maintain a fair and orderly market. In addition, the specialist must maintain a fair and orderly market during the liquidation.

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[11] 15 U.S.C. 78f and 78k (1988).

[12] 17 CFR 240.11b–1 (1991).

[13] Rule 11b–1 under the Act, 17 CFR 240.11b–1 (1990); NYSE Rule 104.

[14] 17 CFR 240.11b–1(a)(2).

[15] See Division of Market Regulation, The October 1987 Market Break, February 1988, at xvii, 4–1.

[16] See 1987 Market Break Report, 4–123, 4–26 to 4–27. Generally, "upstairs firms," or block trading desks of large broker dealers (as opposed to specialists and other traders on the NYSE floor), can, at times, provide an additional source of liquidity for NYSE-listed issues through their trading activities. During the 1987 market break, however, particularly on October 19, very little buying was effected by upstairs firms, forcing specialists to be the contraside to large blocks of stock. See 1987 Market Break Report at 4–23 to 4–24, 4–27.

[17] See 1987 Market Break Report at 4–58.

[18] See Division of Market Regulation, Market Analysis of October 13 and 16, 1989, ("October 1989 Report") at 3–4, 33–44.

[19] See 1987 Market Break Report at 4–8; October 1989 Report, at 23–26.

[20] A specialist's dealer responsibilities consist of "affirmative" and "negative" obligations. In accordance with their affirmative obligations, specialists are obligated to trade for their own accounts to minimize order disparities and contribute to continuity and depth in the market. Conversely, pursuant to their negative obligations, specialists are precluded from trading for their own accounts unless such dealing is necessary for the maintenance of a fair and orderly market. In view of these obligations, the price trend in a security should be determined not by specialist trading, but by the movements of the incoming orders that initiate the trades.

[21] See 1991 Approval Order; August 1992 Approval Order and November 1992 Approval Order, *supra* note 1.

After the liquidation, a specialist would be required to re-enter the market on the opposite side of the market from the liquidating transaction to offset any imbalances between supply and demand. During any period of volatile or unusual market conditions resulting in a significant price movement in a specialist's specialty stock, the specialist's re-entry into the market must reflect, at a minimum, his or her usual level of dealer participation in the specialty stock. In addition, during such periods of volatile market conditions or unusual price movements, re-entry into the market following a series of transactions must reflect a significant level of dealer participation.

In our 1991 Approval Order,[22] the Commission requested that the NYSE submit a report setting forth the criteria developed by the Exchange to determine whether any reliquifications by specialists were necessary and appropriate in connection with fair and orderly markets. The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In both our August and November, 1992 Approval Orders,[23] the Commission requested that the NYSE continue to monitor the pilot and update its report where appropriate. In particular, the Commission asked the NYSE to report any non-compliance with the rule and the action the NYSE had taken as a result of such non-compliance.

The NYSE submitted its reports to the Commission on July 20, 1992, October 19, 1992 and January 25, 1993 concerning the pilot program. As noted above, in requesting permanent approval, the NYSE believes that the pilot program procedures appear to be working well in enabling specialists to reliquify appropriately to meet the needs of the market.

After careful review, the Commission believes that it is appropriate to approve the amendments to Rule 104.10(6) on a permanent basis. In making this determination, we note that the pilot period has provided the Commission and the Exchange an opportunity to monitor the operation of the amendments during unusual or volatile market conditions. The Commission believes that the experience with the pilot indicates that specialists, for the most part, have been meeting their obligations under the Rule and are properly assuming their responsibilities of reentering the market following liquifying transactions.

In summary, the Commission believes that the amendments to Rule 104.10(6) reinforce a specialist's obligation to maintain a fair and orderly market by providing stabilizing dealer participation to the marketplace, especially during periods of volative or unusual market activity. For example, during periods of high market volatility, not only would specialists continue to be obligated to temper disparities between supply and demand, but specialists would specifically have to re-enter the market at a specified rate after a liquidating transaction. Similarly, the amendments to Rule 104.10(6) reinforce the negative market making obligations of specialists. For example, a specialist is not permitted to reliquify in the absence of a large dealer position; rather he or she is able to do so only if reasonably necessary to enable him or her to maintain a fair and orderly market. Thus, the amendments to Rule 104.10(6) do not allow the specialist to use the rule as a vehicle for trading.

The Commission recognizes that, during future periods of market volatility, accompanied by increasing volume and selling pressure, specialists may be under extreme pressure to keep the markets orderly and continuous by entering the market as buyers. In these instances, the Commission believes that the amendments to Rule 104.10(6) should assist specialists in tempering sudden price movements and keeping any general price movements orderly, thereby furthering the maintenance of fair and orderly markets consistent with sections 6 and 11 under the Act.

The Commission believes that the Exchange has established adequate surveillance procedures and criteria which should allow the NYSE to monitor specialist compliance with Rule 104.10(6). More specifically, the Commission believes that the use of the NYSE's existing surveillance procedures should allow the Exchange to determine if specialists are meeting the requirements of the Rule. The Commission expects the NYSE to continue to monitor carefully compliance with the Rule's procedures as required under section 19(g) of the Act.[24] In particular, the Exchange should continue to ensure that specialists are meeting their market making obligations and appropriately re-entering the market as required under the Rule.[25]

Finally, as we discussed in our 1991 Approval Order, the NYSE provides statistics on the percentage of proprietary destabilizing transactions executed by specialists to the Market Performance and Allocation Committees as a guideline on specialist performance. As a result of the amendments to Rule 104.10(6), such statistics reflect zero plus and zero minus reliquification transactions separately, in conjunction with the overall stabilization percentage, in order to preserve the data's usefulness as an indicator of stabilizing participation. The Commission believes that including a review of destabilizing transactions by specialists into specialist performance reviews should help to ensure that specialists are undertaking these transactions only in situations where they are needed to maintain fair and orderly markets.

The Commission's finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof. This will permit the liquidating procedures to continue uninterrupted on a permanent basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[26]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the above-mentioned proposed rule change (SR–NYSE–92–20) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

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[22] See 1991 Approval Order, *supra* note 1.

[23] See August 1992 Approval Order, *supra* note 1 and November 1992 Approval Order, *supra* note 1.

[24] Section 19(g) of the Act requires every self-regulatory organization to comply with, and enforce compliance with, the Act, the rules thereunder, and its own rules.

[25] The Commission emphasizes that reliquifications are not precluded during periods of significant price movements, but they should be accompanied by the necessary dealer participation against the trend of the market, even in situations where continuity and depth reflect variations that may normally be experienced in the stock.

[26] No comments were received in connection with the proposed rule change which implemented these procedures. See 1991 Approval Order, *supra* note 1.

[27] 15 U.S.C. 78s(b)(2) (1988).

[28] 17 CFR 200.30–3(a)(12)(1991).

Margaret H. McFarland,
Deputy Secretary.
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[Release No. 34–31795; File No. SR–NYSE–93–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Decreases Affecting Transaction Charges, Reduction of the Odd-Lot Specialist Charge and Creation of a New Specialist Charge

January 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 73s(b)(1), notice is hereby given that on January 29, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange plans to institute, as of February 1, 1993, changes affecting Transaction Charges and System Processing Charges. A limitation on the proposed additional system credit [1] will cease to effective May 28, 1993, unless the Commission approves the limitation pursuant to an additional filing under Rule 19b–4 [2] or disapproves that limitation prior to May 28, 1993.[3]

The Exchange proposes to amend its charges, as follows:

	1992	1993
Transaction charges:		
Charge on floor brokerage commission earned	1.1%	0.0%
Credit on floor brokerage:		
Paid Out	1.2%	1.2%
Give-ups	1.1%	0.0%
*System credit on all executed orders from 100 to 2,099 shares	$0.30	$0.30
*Additional system credit on all individual and Agency executed market orders from 100 to 2,099 shares (I and A orders as defined by the Exchange for audit trail purposes).[4].		
System processing charges:		
Specialist Odd-Lot		
Charge- per share		
Odd Lots	$0.02	$0.004
Partial Round-Lots	$0.00135	$0.00135
**Specialist system charge per execution of system order on individual and agency market orders from 100 to 2,099 shares		$0.65

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide a more equitable distribution of the NYSE's overall charges among its constituents and to respond to overall competitive market conditions.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that this proposed fee change will not impose any burden competition that is not necessary or appropriate in the furtherance of the purposes of the Act. The fee change is intended to respond to competitive market conditions and to enhance the Exchange's competitive posture, thus furthering competition in the securities market. The additional credit is specifically targeted at increasing the number of individual and certain agency orders sent to the Exchange. The proposed fee change is also structured to maintain the current relationship between member proprietary and non-member dealer activities in Exchange-listed securities. In this regard, the Exchange is not seeking to give additional encouragement to members to send to the Exchange proprietary orders of competing market makers, which the Exchange believes would inappropriately promote the direct competitive activities of non-member market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–07 and should be submitted by February 26, 1993.

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[1] See, infra, note 4.

[2] *See* File No. SR–NYSE–93–08, noticed for comment in Securities Exchange Act Release No. 31796.

[3] The Commission notes that the Exchange will set up a reserve so that, in the event the limitation on the additional system credit, *see infra* note 4, does not become permanent, the amounts withheld thereunder can be distributed to the appropriate member firms.

[4] Orders with the following descriptions are excluded and not eligible for this credit:

An order of a member or member organization trading as agent for the account of a non-member competing market maker.

Competing Market Maker: A specialist or market maker registered as such on a registered stock exchange (other than the NYSE), or a market-maker bidding and offering over-the-counter, in a NYSE-traded security.

*Combined credits are limited to Total Transaction Charge.

**Total charges levied not to exceed $9 million per annum in aggregate.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2767 Filed 2–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31796; File No. SR–NYSE–93–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Permanent Approval of Limitation on Additional System Credit

January 29, 1993.

Pursuant to section 19(B)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 29, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the limitation affecting the additional system credit to the NYSE's transaction charges.[1] That limitation excludes, from the Individual and Agency market orders eligible for the additional system credit, those orders with the following descriptions:

An order of a member or member organization trading as agent for the account of a non-member competing market marker.

Competing Market Marker: a specialist or market maker registered as such on a registered stock exchange (other than the NYSE), or a market maker bidding and offering over-the-counter, in a NYSE-traded security.

The practical effect would be to maintain the current fee structure for the above defined orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to seek permanent approval of the additional system credit limitation, defined above, which would maintain the current fee structure for the defined orders.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under section 6(b)(4) that an Exchange have rules that provides for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that making permanent this proposed fee change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The fee change is intended to respond to competitive market conditions and to enhance the Exchange's competitive posture, thus furthering competition in the securities market. The additional credit is specifically targeted at increasing the number of individual and certain agency orders sent to the Exchange. The proposed fee change is also structured to maintain the current relationship between member proprietary and non-member dealer activities in Exchange-listed securities. In this regard, the Exchange is not seeking to give additional encouragement to members to send to the Exchange proprietary orders of competing market makers, which the Exchange believes would inappropriately promote the direct competitive activities of non-member market makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[1] The Commission notes that a proposed rule change filed by the NYSE to revise its transaction and system processing charges has become effective under Section 19(b)(3)(A) of the Act. Specifically, the rule provides for an additional system credit on all individual and Agency executed market orders from 100 to 2,099 shares, but excludes certain market participants from receiving the credit. *See* File No. SR–NYSE–93–07, Securities Exchange Act Release No. 31795. Under that filing, the limitation will cease to be effective on May 28, 1993, unless the Commission approves this proposal prior to that date. In the interim, the NYSE has created a reserve for the credits which would otherwise be distributed.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–08 and should be submitted by February 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2766 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31793; File No. SR–PSE–92–45]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Increase in Position and Exercise Limits for Options on the Wilshire Small Cap Index

January 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1992, the Pacific Stock Exchange, Inc. ("PSE or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend PSE Rule 7.6 to provide for an increase in the position and exercise limits currently available for options on the Wilshire Small Cap Index ("Wilshire Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the PSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

On November 3, 1992, the Commission approved an Exchange proposal to list and trade options on the Wilshire Index.[1] Under the Commission's approval order, the position and exercise limits for options on the Index are currently set at 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts in the series with the nearest expiration date.[2]

The Exchange now proposes to increase the position and exercise limits available on the Index to 37,500 contracts on the same side of the market, with no more than 22,500 of such contracts in the series with the nearest expiration date.[3] These proposed position limits are similar in terms of aggregate dollar value with those that the Commission recently approved for options on the Russell 2000 Index on the CBOE.[4]

The Exchange believes that the characteristics of the Index and the Russell 2000 are sufficiently similar to justify comparable position and exercise limits for both indexes. The Exchange notes that both indexes are capitalization weighted, have an exceptionally high correlation rate of 99.05% (taken on a quarterly basis), and are primarily comprised of domestic securities from the small capitalization market.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[1] Exchange Act Release No. 31397 (Nov. 3, 1992), 57 FR 53368.

[2] See also PSE rule 7.6(d)(1).

[3] Originally, the PSE proposed to increase the position and exercise limits for the Wilshire Index to 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the nearest expiration month, the same number of contracts that the Commission recently approved for options on the Russell 2000 Index ("Russell 2000") on the Chicago Board Options Exchange ("CBOE"). See *infra* note 4. As of January 28, 1993, the Wilshire Index had a value of 298.53 while the Russell 2000 closed at 227.19. Accordingly, because the value of the Russell 2000 is approximately 25% less than that of the Wilshire, the PSE amended its filing to request position and exercise limits that are comparable to the Russell 2000 Index in terms of aggregate dollar value. See letter from Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Stephen M. Youhn, Office of Options and Derivative Products Regulation, Division of Market Regulation, SEC, dated January 26, 1993.

[4] See Exchange Act Release No. 31382 (Oct. 30, 1992), 57 FR 52802.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2763 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–31804; File No. SR–PTC–92–14]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Participants Trust Company Relating to the Designation by PTC of Certain Securities Guaranteed by the United States Department of Veterans Affairs as Eligible Securities

February 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 14, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow PTC to designate certain securities guaranteed by the United States Department of Veterans Affairs ("Veterans Administration" or "VA") as eligible securities as permitted by Article I, Rule 2 of PTC's Rules ("VA Securities").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summeries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to allow PTC to designate certain securities guaranteed by the Veterans Administration as eligible securities as permitted by Article I, Rule 2 of PTC's Rules. The VA Securities are issued and guaranteed pursuant to 38 U.S.C. 3720 h(1) and (2).[2] The authority to guarantee new issues of securities had originally terminated on December 31, 1992.

In May, 1992, PTC filed a proposed rule change[3] regarding VA Securities issued during 1992 pursuant to the then current authorizing legislation which expired by its terms on December 31, 1992. The aforesaid authority has now been extended until December 31, 1995. In its present proposed rule change, PTC wishes to make final its designation of VA Securities as eligible for deposit in PTC on the understanding that securities so designated will only be eligible at PTC if issued with a Government guarantee under 38 U.S.C 3720 h(1) and (2) as it now exists or as hereafter amended.

On the closing for issuance of securites under this program, the issuing trust will receive an opinion of the General Counsel of the VA to the effect that the VA's obligations under the VA guarantee constitute absolute and unconditional general obligations of the United States, for which the full faith and credit of the United States is pledged.

PTC has been advised that the VA Securities will be REMIC's[4] issued by a trust and that there will be approximately three or four issues per year. Each issue will be comprised of a series of tranches each of which constitute a "Security" within the PTC definition of "Securities." The anticipated total face value amount of each securities issuance is approximately $350,000,000 to $500,000,000.

PTC's current system accommodates the VA Securities. With regard to processing, because the VA Securities are comparable to GNMA's, no substantive operational changes need to be made to PTC's computer processing system. For example, it is expected that there will be daily settlement of the VA Securities. Currently, a substantial portion of GNMA's settle daily. There will be a single monthly payment date for principal and interest ("P&I") on the VA Securities. GNMA I's currently pay on the 15th of the month and PTC distributes P&I on payment date plus one.

GNMA II's currently pay on the 20th of the month, and PTC pays on that date. Therefore, PTC's system is capable of making distributions of P&I on the same day as payment date. The VA Securities will be registered in the name of PTC's nominee, "MBSCC & Co.," and the physical certificates will be held in custody for PTC by a custodian bank, as is the case for GNMA Securities.

The volume of the VA Securities to be deposited at PTC will continue to be modest compared to the total face amount of GNMA Securities now on deposit at PTC[5] and is expected to have a comparably small impact on PTC's overall transaction volume. P&I distributions also continue to be modest compared to the multibillion dollar P&I distributions for GNMA I's. Accordingly, the VA Securities will have no meaningful impact on the capacity of PTC's transaction processing or P&I disbursement facilities.

The acceptance for deposit of the VA Security as an eligible security does not necessitate any change in PTC's Rules or affect the rights of its participants. As an eligible security, functionally and legally comparable to GNMA Securities, PTC's Rules and Procedures are applicable, without change, and govern PTC's and its Participants' rights and obligations with respect to the VA Securities. Finally, the fees imposed by PTC for providing depository services for VA Securities will be the same as those in effect for GNMA's.

Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions it is consistent with section 17A of the Act and the rules and regulations thereunder applicable to PTC.

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[1] 15 U.S.C. 78s(b)(1).

[2] As amended by Public Law 102–547, enacted on October 28, 1992.

[3] See SR–PTC–92–07, Securities Exchange Act Release No. 30792 (June 19, 1992), 57 FR 27495.

[4] A REMIC is a real estate mortgage investment conduit, a pass-through vehicle created under the Tax Reform Act of 1986 to issue multiclass mortgage-backed securities.

[5] The current total face amount of GNMA securities is now approximately $680 billion.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–92–14 and should be submitted by February 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2761 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

January 29, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Dr. Pepper/Seven-Up Companies, Inc. Common Stock, $.01 Par Value (File No. 7–10136)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2770 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 29, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Dr. Pepper/Seven-Up Companies, Inc. Common Stock, $.01 Par Value (File No. 7–10135)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2768 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 29, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Dr. Pepper/Seven-Up Companies, Inc. Common Stock, $0.01 Par Value (File No. 7–10134)

This security is listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before February 12, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2769 filed 2-4-93; 8:45am]

BILLING CODE 8010-01-M

[Rel. No. IC-19245; 812-8198]

First Transamerica Life Insurance Co., et al.; Application

January 29, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: First Transamerica Life Insurance Company ("Company"), Separate Account VA-2NLNY of First Transamerica Life Insurance Company (the "Variable Account") and Dreyfus Service Corporation ("Dreyfus").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain group variable annuity contracts (the "Contracts").

FILING DATE: The application was filed on December 1, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 23, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The First Transamerica Applicants, c/o James W. Dederer, Esq., First Transamerica Life Insurance Company, 575 Fifth Avenue, Twentieth Floor, New York, NY 10017. Dreyfus Service Corporation, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was originally incorporated under the laws of New York in 1986. It is a wholly-owned subsidiary of Transamerica Occidental Life Insurance Company, which is in turn an indirect subsidiary of Transamerica Corporation.

2. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account is divided into sub-accounts that will invest in shares of the Dreyfus Life and Annuity Index Fund, Inc., or one or more of the portfolios of the Dreyfus Variable Investment Fund. In addition, other portfolios or funds managed or distributed by Dreyfus or an affiliate may be made available.

3. Dreyfus will serve as the distributor and principal underwriter of the Contracts.

4. The Contracts are flexible multi-funded deferred group annuity contracts under which certificates can be purchased on a non-tax qualified basis or used to fund rollovers to individual retirement annuities qualifying for favorable tax treatment under Section 408(b) of the Internal Revenue Code of 1986. Each Certificate Owner will receive a certificate evidencing such participant's coverage under the Contract ("Certificate Owner"). The initial purchase payment for a certificate is $2,500 and additional payments of at least $500 may be made at any time before the annuity date.

5. The Contract offers a death benefit. Prior to the annuity date, the death benefit proceeds for each certificate are equal to the greater of (a) the Certificate Owner's account value or, (b) the sum of all purchase payments less withdrawals and any premium taxes.

6. Subject to certain restrictions, Certificate Owners may transfer all or part of their interest in a sub-account to another sub-account of the Variable Account. During the accumulation phase of the Contracts, transfers in excess of four per year will be subject to a transfer fee equal to the lesser of 2% of the amount transferred or $10. No transfer fee is charged during the annuitization phase.

7. During the accumulation phase and upon surrender of the Certificate, the Company will deduct an annual account fee for each certificate equal to the lesser of (a) 2% of a Certificate Owner's account value or (b) $25. The fee may be increased but will not exceed $50. After the annuity date an annual fee of $30 will be deducted in equal installments from each annuity payment under the variable payment option.

8. During the accumulation phase, the Company also will deduct a daily administrative charge from the assets of each sub-account of the Variable Account currently at an effective annual rate of 0.10% of the average net assets of the Variable Account. This charge may be increased but will not exceed 0.25%. If a variable annuity option is elected, the daily administrative charge during the annuitization phase will be set at an effective annual rate of 0.15%. The charge may be increased but will not exceed 0.25%.

9. Applicants represent that the Company does not anticipate any profit from the charges described in paragraphs 5-8 above and that the Company will deduct the administrative charges in reliance upon and in compliance with Rule 26a-1 under the 1940 Act.

10. Premium taxes relating to a particular certificate will be deducted from premiums, upon receipt of purchase payments, withdrawal, surrender, payment of death benefits, or annuitization in reliance upon Rule 26a-2 under the 1940 Act. No charges are currently made for federal, state, or local taxes other than premium taxes. However, the Company may deduct such taxes from the Fixed Account and the Variable Account in the future.

11. There are no charges or deductions for sales load. The Company will incur expenses relating to the sale of the Certificates. Those expenses will be paid from the Company's general assets.

12. The Company will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Variable Account and the Contracts. The charge is set at

an annual maximum rate of 0.80% of the net assets in the Variable Account. Of that amount, approximately 0.30% is estimated to be attributable to mortality risks, and approximately 0.50% is estimated to be attributable to expense risks. If a variable annuity payment option is elected, the charge during the annuitization phase will be 1.25%. Of that amount, approximately 0.85% is attributable to mortality risks and 0.40% is attributable to expense risks. The Company currently anticipates a profit from this charge. The mortality risk borne by the Company arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all annuitants or any individual annuitant may live. The Company also assumes a risk in connection with the payment of death benefits. The expense risk assumed by the Company is the risk that actual administrative costs will exceed the amount recovered through the various administrative charges described above.

Applicants' Legal Analysis and Conditions

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charge under the Contracts. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge under the certificates is consistent with the protection of investors because it is a reasonable and proper insurance charge. The Company also represents that the charge for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other Contract options. The Company will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

3. Applicants acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Certificate Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

4. Applicants represent that the Variable Account will invest only in underlying management investment companies which undertake, in the event such company adopts any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-2771 Filed 2-4-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19246; 812-8200]

First Transamerica Life Insurance Company, et al.; Application

January 29, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: First Transamerica Life Insurance Company ("Company"), Separate Account VA-2LNY of First Transamerica Life Insurance Company (the "Variable Account") and Dreyfus Service Corporation ("Dreyfus").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain variable annuity policies (the "Policy").

FILING DATE: The application was filed on December 1, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 23, 1993 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. The First Transamerica Applicants, c/o James W. Dederer, Esq., First Transamerica Life Insurance Company, 575 Fifth Avenue, Twentieth Floor, New York, NY 10017. Dreyfus Service Corporation, 200 Park Avenue, New York, NY 10166.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272-3046 or Wendell M. Faria, Deputy Chief, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company which was incorporated under the laws of New York in 1986. It is a wholly-owned subsidiary of Transamerica Occidental Life Insurance Company, which is in turn an indirect subsidiary of Transamerica Corporation.

2. The Variable Account is registered with the Commission as a unit investment trust under the 1940 Act. The Variable Account is divided into sub-accounts that will invest in shares of the Dreyfus Life and Annuity Index Fund, Inc. or one or more of the portfolios of the Dreyfus Variable Investment Fund. In addition, other portfolios or funds managed or distributed by Dreyfus or an affiliate may be made available.

3. Dreyfus will serve as the distributor and principal underwriter of the Policy.

4. The Policies are flexible multi-funded deferred annuity policies which can be purchased on a non-tax qualified basis or used to fund rollovers to individual retirement annuities qualifying for favorable tax treatment under section 408(b) of the Internal Revenue Code of 1986. The initial purchase payment for a Policy is $5,000 and additional payments of at least $500 may be made at any time before the annuity date. Initially, payments may be allocated to one or more sub-accounts of the Variable Account. The Company anticipates that, in the future, payments may be allocated to the sub-accounts of the Variable Account, one or more Guarantee Periods of the Fixed Account (if and when made available), or to a combination of these investment accounts.[1]

5. Subject to certain restrictions, Policy Owners may transfer all or part of their interest in a sub-account to another sub-account of the Variable Account or to the Fixed Account (if and when available). During the accumulation phase, a Policy Owner may make up to 18 transfers per Policy year, one of which may be to or from the Fixed Account. During the accumulation phase of the Policy, transfers in excess of six per year may be subject to a transfer fee equal to the lesser of 2% of the amount transferred or $10. Currently, no transfer fee is deducted. After annuity payments begin, if a variable annuity is selected, the Policy Owner may make four transfers among sub-accounts per Policy year. No transfer fee applies after the annuity date.

6. The Policy offers a death benefit. Prior to the annuity date, the death benefit proceeds are equal to the greater of (a) the Policy value, or (b) the sum of all purchase payments less withdrawals and any premium taxes. No contingent deferred sales load or market value adjustment is applied to amounts received as a death benefit.

7. During the accumulation phase and upon surrender of the Policy, the Company will deduct an annual Policy fee equal to the lesser of (a) 2% of the Policy value of (b) $30. The fee may be increased but is guaranteed not to exceed $60. After the annuity date an annual fee of $30 will be deducted in equal installments from each annuity payment.

8. The Company will also deduct a daily administrative charge from the assets of each sub-account of the Variable Account currently at an effective annual rate of 0.15% of the average net assets of the Variable Account. This charge may be increased but will not exceed 0.25%.

9. The Company reserves the right to impose an annual fee not to exceed $25 for administrative expenses associated with processing monthly withdrawals pursuant to a systematic withdrawal option offered under the Policy.

10. Applicants represent that the Company does not anticipate any profit from the charges described in paragraphs 5–9 above and that the Company will deduct the administrative charges in reliance upon and in compliance with Rule 26a–1 under the 1940 Act.

11. A contingent deferred sales charge of up to 6% of the amount withdrawn will be imposed on certain partial withdrawals from or surrender of a Policy. The percentage of the charge varies according to the number of Policy years between the Policy year in which a payment was credited to the Policy and the Policy year in which the withdrawal is made. The charge is equal to 6% until the second year after receipt of payment has been completed, 5% until 4 years are completed, 4% for the next two years, 2% after 6 complete years and 0% after 7 complete years. The amount of any withdrawal will be deemed to come first from purchase payments on a first in/first out basis until all purchase payments have been withdrawn. The Company guarantees that the aggregate contingent deferred sales charge will never exceed 6% of the total purchase payments. Beginning in the second Policy year, up to 10% of purchase payments held less than seven years may be withdrawn without a charge. Also, the contingent deferred sales charge will not be applied to death benefits or certain annuities.

12. Premium taxes relating to a particular Policy will be deducted from premiums, upon receipt of premiums, withdrawal, surrender, payment of death benefits, or annuitization. No charges are currently made for federal, state, or local taxes other than premium taxes. However, the Company may deduct such taxes from the Fixed Account and the Variable Account in the future.

13. The Company will impose a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Variable Account and the Policies. The charge is set at an annual maximum rate of 1.25% of the net assets in the Variable Account. Of that amount, approximately 0.65% is estimated to be attributable to mortality risks, and approximately 0.60% is estimated to be attributable to expense risks. The Company currently anticipates a profit from this charge. The mortality risk borne by the Company arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Policy) regardless of how long all annuitants or any individual annuitant may live. The Company also assumes a risk in connection with the payment of death benefits. The expense risk assumed by the Company is the risk that actual administrative costs will exceed the amount recovered through the various administrative charges described above.

Applicants' Legal Analysis and Conditions

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent relief is necessary to permit the deduction from the Variable Account of the mortality and expense risk charge under the Policy. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

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[1] For additional information concerning the Applicants and the policies, see Registration No. 33–55152 for the Variable Account which is incorporated by reference into the application.

2. Applicants submit that the Company is entitled to reasonable compensation for its assumption of mortality and expense risks and represent that the mortality and expense risk charge under the Policy is consistent with the protection of investors because it is a reasonable and proper insurance charge. The Company also represents that the charge of 1.25% for mortality and expense risks is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon the Company's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, death benefit guarantees, guaranteed annuity rates and other Policy options. The Company will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of its comparative survey.

3. Applicants acknowledge that the proceeds from the contingent deferred sales load may be insufficient to cover all costs relating to the distribution of the Policy. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed as being offset by distribution expenses not reimbursed by the contingent deferred sales charge. The Company has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Policy Owners. The basis for such conclusion is set forth in a memorandum which will be maintained by the Company at its administrative offices and will be available to the Commission.

4. The Company represents that the Variable Account will invest only in underlying management investment companies which undertake, in the event such company adopts any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b–1.

Conclusion

Applicants assert that for the reasons and upon the facts set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct the mortality and expense risk charge under the Policy meet the standards in section 6(c) of the 1940 Act. In this regard, Applicants assert that the exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2772 Filed 2–4–93; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2622]

Arizona and Contiguous Counties in Utah, Colorado and New Mexico; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on January 19, 1993, and an amendment thereto on January 26, I find that the Counties of Apache, Cochise, Coconino, Gila, Graham, Greenlee, Maricopa, Navajo, Pima, Pinal, Santa Cruz, and Yavapai in the State of Arizona constitute a disaster area as a result of damages caused by flooding beginning January 5, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on March 22, 1993, and for loans for economic injury until the close of business on October 19, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of LaPaz, Mohave, and Yuma in Arizona; Kane and San Juan Counties in Utah; Montezuma County in Colorado; and Catron, Cibola, Grant, Hidalgo, McKinley, and San Juan Counties in New Mexico may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 262306 and for economic injury the numbers are 783400 for Arizona; 783500 for Utah; 783600 for Colorado; and 783700 for New Mexico.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 28, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–2793 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2586]

Florida, Amendment #3; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated January 15, 1993, to the President's major disaster declaration of August 24, to extend the deadline for filing applications for physical damage. The new deadline is February 19, 1993.

The termination date for filing applications for economic injury remains the close of business on May 24, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 25, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–2794 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2596]

Hawaii, Amendment #3; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with an amendment dated January 19, 1993, to the President's major disaster declaration of September 12, 1992, to extend the deadline for filing applications for physical damage to February 13, 1993. All other information remains the same, i.e., the termination date for filing applications for economic injury is June 14, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 25, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–2795 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2624]

Massachusetts (And Contiguous Counties in New Hampshire); Declaration of Disaster Loan Area

Essex County and the contiguous counties of Middlesex and Suffolk in the State of Massachusetts and Hillsborough and Rockingham Counties in the State of New Hampshire constitute a disaster area as a result of damages caused by a winter storm and coastal flooding which occurred December 10–13, 1992. Applications for loans for physical damage may be filed until the close of business on March 29, 1993 and for economic injury until the close of business on October 26, 1993 at the U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 262411 for Massachusetts and 262511 for New Hampshire. For economic injury the numbers are 783800 for Massachusetts and 783900 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated January 26, 1993.

Dayton J. Watkins,

Acting Administrator.

[FR Doc. 93–2796 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2619]

New Jersey; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated December 23, 1992 and January 13, 1993 to the President's major disaster declaration of December 18, to include Salem County as a disaster area as a result of damages caused by a severe coastal storm, unusual high tides, heavy rain and riverine flooding, and to establish the incident period for this disaster as beginning on December 10, 1992 and continuing through December 17, 1992.

In addition, applications for economic injury loans from small businesses located in the contiguous county of New Castle, Delaware may be filed until the specified date at the aforementioned location.

The economic injury numbers are 782100 for New Jersey and 783300 for Delaware.

All other information remains the same, i.e., the termination date for filing applications for physical damage is February 16, 1993 and September 20, 1993 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 25, 1993.

Bernard Kulik,

Assistance Administrator for Disaster Assistance.

[FR Doc. 93–2797 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Southeast SBIC, Inc. (License No. 04/04–0256); Surrender of License

Notice is hereby given that Southeast SBIC, Inc., One Southeast Financial Center, Miami, Florida 33131 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Southeast SBIC, Inc., was licensed by the Small Business Administration on May 2, 1991.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on January 8, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 29, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–2697 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Westamco Investment Co.; Notice of License surrender

[License No. 09/14–0024]

Notice is hereby given that Westamco Investment Company, 8929 Wilshire Boulevard, suite 400, Beverly Hills, California 90211, has surrendered its license to operate as a small business investment company under section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act). Westamco Investment Company was licensed by the Small Business Administration on July 24, 1961.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 29, 1992 and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies).

Dated: January 22, 1993.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 93–2798 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Albuquerque District Advisory Council; Public Meeting

The U.S. Small Business Administration Albuquerque District Advisory Council will hold a public meeting at 9:30 a.m. on Monday, April 19, 1993 at the U.S. Small Business Administration, 625 Silver, SW., suite 320, Albuquerque, New Mexico, to discuss such matters as may be presented by members, staff of the U.S Small Business Administration, or others present.

For further information, write or call Mr. Tom Dowell, District Director, U.S. Small Business Administration, 625 Silver, SW., suite 320, Albuquerque, New Mexico 87102, (505) 766–1870.

Dated: January 25, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2799 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Columbia District Advisory Council; Public Meeting

The U.S. Small Business Administration Columbia District Advisory Council will hold a public meeting at 10 a.m. on Thursday, February 18, 1993 in the Daniel Management Center of the University of South Carolina, room 857, 1701 College Street, Columbia, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Elliot O. Cooper, District Director, U.S. Small Business Administration, P.O. Box 2786, Colombia, South Carolina 29202, (803) 765–5339.

Dated: February 2, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2800 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Concord District Advisory Council; Public Meeting

The U.S. Small Business Administration Concord District Advisory Council will hold a public meeting at 10 a.m. on Tuesday, February 16, 1993 in the Stewart Nelson Plaza building, Suite 202, 143 N. Main Street, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, Stewart Nelson Plaza, 143 N. Main Street, Concord, New Hampshire 03302–1257, (603) 225–1400.

Dated: January 25, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2801 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Des Moines District Advisory Council; Public Meeting

The U.S. Small Business Administration Des Moines District Advisory Council will hold a public meeting from 10 a.m. to 2 p.m. on Wednesday, February 24, 1993, at the Institute for Physical Research and Technology, located on the Iowa State University campus in Ames, Iowa, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Conrad E. Lawlor, District Director, U.S. Small Business Administration, room 749 Federal Building, 210 Walnut Street, Des Monies, Iowa 50309, (515) 284–4567.

Dated: January 27, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2802 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Helena District Advisory Council; Public Meeting

The U.S. Small Business Administration Helena District Advisory Council will hold a public meeting at 11 a.m. on Thursday, February 25, 1993 and adjourn at noon February 26th at the Montana Club, 24 West 6th Avenue, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Jo Alice Mospan, District Director, U.S. Small Business Administration, 301 South Park, Drawer 10054, Helena, Montana 59626–0054, (406) 449–5381.

Dated: January 25, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2803 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

Lower Rio Grande Valley District Advisory Council; Public Meeting

The U.S. Small Business Administration Lower Rio Grande Valley District Advisory Council will hold a public meeting at 2 p.m. on Thursday, February 25, 1993 at the University of Texas—Pan American Library Regency Room, 1201 West University Drive, Edinburg, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Miguel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren Street, Suite 500, Harlingen, Texas 78550, (210) 427–8625.

Dated: January 25, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–2804 Filed 2–4–93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Study Group 9 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 9 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting February 23, 1993, at the Federal Communication Commission, 1919 M Street, NW., Washington, DC in room 315 commencing at 10 a.m.

Study Group 9 deals with matters relating primarily to the study of radio relay systems. The purpose of the meeting is to discuss and establish the basis of preparations for a number of current and in-process actions affecting the interests of Study Group 9. These include, studies of sharing issues between the fixed service and new WARC 92 allocated satellite services, preparatory activities for the first Radiocommunication Assembly to be convened in November 1993, and planning for normal Study Group 9 Working Party activities.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Alex Latker, International Conference Staff, Common Carrier Bureau, Federal Communication Commission, Washington, DC 20554, phone (202) 632–3214.

Dated: February 1, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 93–2690 Filed 2–4–93; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–004]

National Offshore Safety Advisory Committee; Request for Applications for Membership

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Offshore Safety Advisory Committee (NOSAC).

This Committee advises the Secretary of Transportation on safety and rulemaking matters related to the offshore mineral and energy industries. The Committee consists of 14 regular members who have particular expertise, knowledge and experience regarding the transportation and other technology, equipment, and techniques that are used, or are being developed for use, in the exploration or recovery of offshore mineral resources. The Committee charter requires membership to be distributed among particular segments of the offshore industry, including representation from the general public and environmental interests. Five (5) members will be appointed for terms commencing in January 1994, one representing each of the following:

—Offshore Operations;
—Diving services related to offshore construction, inspection and maintenance;
—Pipelaying services related to offshore construction;
—Geophysical services related to offshore exploration and construction; and
—The General Public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women. The Committee will meet at least once a year in Washington, DC or another location selected by the Coast Guard. Members of the Committee serve without compensation (neither travel nor per diem) from the Federal Government.

DATES: Applications should be received no later than 31 May 1993. Application forms may be obtained by contacting the Executive Director at the address below.

ADDRESSES: Persons interested in applying should write to Commandant (G–MVI–4), room 1405, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: CDR M. M. Ashdown, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 1405, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001, (202) 267–2307.

Dated: January 28, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–2805 Filed 2–4–93; 8:45 am]

BILLING CODE 4910-14-M

[CGD 90–071]

RIN 2115–AD61

Tank Level or Pressure Monitoring Devices; Technical Feasibility Study

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: A technical feasibility study for Tank Level or Pressure Monitoring Devices is available to the public. The Coast Guard Office of Marine Safety, Security, and Environmental Protection (G–M) commissioned this study to gather technical documentation and analysis for rulemaking on this subject.

ADDRESSES: Copies of the study, entitled Tank Level Detection Devices For The Carriage Of Oil, are available for inspection at U.S. Coast Guard Headquarters, room 3406, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Copies of the study may be requested by telephone (202) 267–6740 or by facsimile (202) 267–4624. Please include the title of this study.

FOR FURTHER INFORMATION CONTACT: LCDR Michael B. Karr, Project Manager, G–MS–1, (202) 267–6756, Oil Pollution Act of 1990 (OPA 90) Staff, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION:

Background and Discussion

Section 4110 of OPA 90 requires the Secretary of Transportation to establish, by regulation, minimum standards for the monitoring of cargo tank levels on oil tankships and tank barges to prevent or detect leakage. An advance notice of proposed rulemaking (ANPRM) on Tank Level or Pressure Monitoring Devices, published May 7, 1991, solicited comments on how best to implement OPA 90 requirements for tank level or pressure monitoring devices (56 FR 21116). As discussed in the ANPRM, preliminary research indicates that existing level detectors are not sufficiently sensitive to detect leakage before a large discharge occurs. That assumption was verified by internationally recognized experts in the field of marine environmental protection and marine vessel design. Therefore, the Coast Guard commissioned a study to determine the availability of existing devices which could indicate small rates of leakage from a vessel's tanks or which could be modified to indicate small leakage rates.

Summary of the Study

The study identifies and describes types of liquid level detection devices now in use or available. It defines the operating environment, including various uncertainty factors inherent in that environment and limitations for each liquid level sensing system. The study evaluates the performance of the identified sensors, including potential false leak indications in a non-ruptured tank. It further develops hull failure and leak scenarios and evaluates the performance of the identified systems for given leak scenarios. The study also suggests an approach to developing a type approval standard.

The study found that a wide variety of liquid level sensing systems exists for both marine and shoreside applications. In addition, the study noted the severity of the operating environment in marine oil cargo tanks including factors of measurement uncertainty. While cargo stratification and deformation of tank boundaries degrade performance of liquid level sensing systems, the impact of other noise sources, such as ship motion, hull deformation, and dynamic loading stresses will vary depending on the type of sensor. The study indicated the large variation in the liquid level caused by sloshing in cargo tanks also makes measuring cargo levels difficult.

The study evaluated performance of sensors under both ideal conditions and those simulating environmental noise, excluding cargo sloshing. Although environmental noise may substantially degrade performance from that claimed by manufacturers and result in inaccurate indications, the study determined that attainable accuracy is expected to be within 1.0–2.0% of the actual level, varying with the system used and the noise effects on the cargo level indication or indicator. The study defined attainable accuracy as the limit of cargo level change outside of which the crew could be confident that the indicator signals the existence of a leak. An alert operator would respond (to a suspected leak) only when the sensor exceeds the appropriate level of attainable accuracy determined appropriate by crew experience.

The Coast Guard will use this study in development of a notice of proposed rulemaking on this subject.

Dated: January 28, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–2807 Filed 2–4–93; 8:45 am]

BILLING CODE 4910-14-M

[CGD 92-077]

Northwest Pacific Loran-C Transfer/Closure

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent.

SUMMARY: The Coast Guard intends to transfer operation and control of the Northwest Pacific Loran-C Chain to the Government of Japan by October 1, 1993 with the exception of the Loran-C station located at Barrigada, Guam, which will cease operation. This transfer date is 15 months prior to the termination date identified in the 1990 Federal Radionavigation Plan. By implementing. This accelerated transfer, the Coast Guard will realize an annual savings of 10 million dollars.

FOR FURTHER INFORMATION CONTACT: Commander Douglas S. Taggart, Chief, Radio Aids Management Branch (G-NRN-1), room 1413, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593-0001, phone (202) 267-0990.

SUPPLEMENTARY INFORMATION: The Northwest Pacific Loran-C Chain (Group Repetition Interval 9970), which was commissioned in 1963 in response to a Department of Defense requirement for a precise navigation system in the Far East, consists of Loran Stations Hokkaido (Japan), Gesashi (Japan), Marcus Island (Japan), Iwo Jima (Japan), Barrigada (Guam), and Loran Monitor Station Yokota (Japan). The Department of Defense requirement for Loran-C will end December 31, 1994. The Department of Defense has approved an agreement between U.S Forces Japan and the Government of Japan allowing the U.S Coast Guard to transfer operation of the Northwest Pacific Loran-C Chain to the Government of Japan by October 1, 1993 with the exception of the Loran-C station located at Barrigada, Guam, which will cease operation at 2400Z, June 30, 1993. The Government of Japan intends to continue operation of the remainder of the chain in support of its national users.

Loran-C system service for the continental U.S. and Alaska is expected to remain in operation through the year 2015 and will not be affected by this action.

Dated: January 29, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-2806 Filed 2-4-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0035

Form Number: IRS Forms 943, 943-PR, 943-A, and 943A-PR

Type of Review: Revision

Title: Employer's Annual Tax Return for Agricultural Employees

Description: Agricultural employers must prepare and file Form 943 (Puerto Rico only) to report and pay FICA taxes and (943 only) income tax voluntarily withheld. Agricultural employers may attach Form 943A and 943A-PR to Form 943 and 943-PR to show their tax liabilities for semiweekly periods. The information is used to verify that the correct tax has been paid.

Respondents: Farms, Businesses or other for-profit

Estimated Number of Respondents/Recordkeepers: 392,443

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
943	9 hrs., 20 min	22 min	1 hr., 28 min	16 min.
943 Mail Out	9 hrs., 5 min	22 min	1 hr., 28 min	16 min.
943 Over the Counter	9 hrs., 34 min	22 min	1 hr., 28 min	16 min.
943 Voucher	14 min			
943A	9 hrs., 20 min		9 min	
943A-PR	9 hrs., 20 min		9 min	
943-PR	8 hrs., 8 min	22 min	27 min	16 min.

Frequency of Response: Annually

Estimated Total Reporting/Recordkeeping Burden: 4,416,022 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-2742 Filed 2-4-93; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Savings Bonds Division

OMB Number: 1535-0001

Form Number: SB-60 and SB-60A
Type of Review: Extension
Title: Payroll Savings Report
Description: The total number of payroll savers is determined from Reports SB-60 and SB-60A completed by companies that offer the sale of Savings Bonds through payroll savings plans. Total number of savers is used in budget formulation and measures of program effectiveness.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 12,955
Estimated Burden Hours Per Respondent: 41 minutes
Frequency of Response: Semi-annually
Estimated Total Reporting Burden: 17,871 hours
Clearance Officer: Richard J. Schneebeli, (202) 377-7704, U.S. Savings Bonds Division, Room 8035, 800 K Street, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-2743 Filed 2-4-93; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

February 1, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0178
Form Number: ATF F 4483 (5300.5)
Type of Review: Extension
Title: Report of Firearms Transactions
Description: This form is used to evaluate Firearms transactions by licensees when the Regional Director (Compliance) determines the need to do so. It is prepared from existing records and submitted to the official.
Respondents: Businesses or other for-profit, Small business or other organizations
Estimated Number of Respondents: 250
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 250 hours

OMB Number: 1512-0369
Form Number: ATF REC 5300/1
Type of Review: Extension
Title: Licensed Firearms Manufacturers Records of Production, Disposition and Supporting Data
Description: Firearms manufacturers record in a permanent record all firearms manufactured and record their disposition. These records are vital to support ATF mission to inquire into the disposition of any firearm in the course of a criminal investigation.
Respondents: Businesses or other for-profit
Estimated Number of Recordkeepers: 1,380
Estimated Burden Hours Per Recordkeeper: 52 hours, 12 minutes
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 72,023 hours

Clearance Officer: Robert N. Hogarth, (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-2745 Filed 2-4-93; 8:45 am]

BILLING CODE 4810-31-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., February 10, 1993.

PLACE: Main Hearing Room, 800 North Capitol Street, NW., Washington, DC 20573–0001.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED: Portion open to the public:

1. Petition No. P7–92—Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A.—Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles.
2. Docket No. 92–31—Service Contracts—Consideration of Comments on Proposed Rule.

Portion closed to the public:

1. Trans-Atlantic Agreement Rate Activity.
2. Docket No. 90–13—Memphis Forwarding Company, Inc.—Possible Violations of Section 19(d)(4) of the Shipping Act of 1984—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–2874 Filed 2–3–93; 10:23 am]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 10, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2889 Filed 2–3–93; 10:24 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., February 16, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 19, 1993, Board meeting.
2. Labor Department briefing.
3. Review of Peat Marwick audit report entitled "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff."
4. Thrift Savings Plan activity report by the Executive Director.
5. Quarterly review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: February 2, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–2968 Filed 2–3–93; 2:18 pm]

BILLING CODE 6760-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, February 9, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Tuesday, February 9

4:30 p.m.
  Affirmation/Discussion and Vote (Public Meeting)
  a. Final Amendments to 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste" (Tentative)
  b. Clarification of Physical Protection Requirements at Fixed Sites

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 2, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–2874 Filed 2–3–93; 10:25 am]

BILLING CODE 6730-01-M

Corrections

Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-91-329]

United States Standards for Grades of Frozen Cauliflower

Correction

In proposed rule document 93-521 beginning on page 3816 in the issue of Monday, January 11, 1993, make the following correction:

Subpart—United States Standards for Grades of Frozen Cauliflower [Corrected]

On page 3817, in the table of contents, in the third column, the entry for Sec. 52.729 should read "Acceptance criteria."

BILLING CODE 1505-01-D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 275 and 283

[Amdt. No. 348]

Food Stamp Program; Hunger Prevention Act of 1988; Rules of Practice; Administrative Law Judges

Correction

In proposed rule document 93-1176 beginning on page 5188 in the issue of Tuesday, January 19, 1993, make the following corrections:

1. On page 5190, in the second column, in the last paragraph, in the first line, "Food Stamp" should read "Food Stamp Act".

2. On page 5194, in the first column, in the last paragraph, in the first line, "part" should read "party".

3. On page 5196, in the second column, in the first line, "§ 283.24" should read "§ 283.4".

4. On the same page, in the 3d column, in the 2d complete paragraph, in the 15th line, delete "The parties would be limited to 15 pages, excluding exhibits."

§ 283.3 [Corrected]

5. On page 5197, in the 3d column, in § 283.3, in the 10th paragraph, "*OC claim*" should read "*QC claim*".

§ 283.5 [Corrected]

6. On page 5198, in the 3d column, in § 283.5(c), in the 12th line, "§ 283.179(d)" should read "§ 283.17(d)".

§ 283.12 [Corrected]

7. On page 5201, in the third column, in § 283.12(b)(8)(iii), in the second line, "required" should read "inquired".

§ 283.15 [Corrected]

8. On page 5202, in the second column, in § 283.15(d)(1), in the fifth line, "guilty or" should read "guilty of".

§ 283.18 [Corrected]

9. On page 5204, in the first column, in § 283.18(a), in the third line, "several" should read "served"; in the fourth line, "part," should read "party,".

§ 283.21 [Corrected]

10. On page 5205, in the second column, in § 283.21(d), in the eighth line, "cause" should read "causes".

§ 283.30 [Corrected]

11. On page 5207, in the second column, in § 283.30, in the next to the last line, "2 days" should read "20 days".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8457]

RIN 1545-AP74

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

Correction

In rule document 92-30941 beginning on page 62192 in the issue of Wednesday, December 30, 1992, make the following corrections:

§ 1.132-1 [Corrected]

1. On page 62196, in the second column, in § 1.132-1(g), in the sixth line, delete "on".

§ 1.132-5 [Corrected]

2. On page 62198, in the first column, in § 1.132-5(r)(4), in the first line, "for" should read "from".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AE61

Regional Office Committees on Waivers and Compromises

Correction

In rule document 93-561 beginning on page 3840 in the issue of Tuesday, January 12, 1993, make the following correction:

§ 1.965 [Corrected]

1. On page 3841, in the 1st column, in § 1.965(b)(2), in the 10th line, "if undertaken" should read "is undertaken".

BILLING CODE 1505-01-D

federal register

Friday
February 5, 1993

Part II

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4552-3]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of Seventh Update of the Federal Agency Hazardous Waste Compliance Docket Pursuant to CERCLA Section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket that contains certain information regarding Federal facilities that manage hazardous waste or from which hazardous substances may be or have been released. (As defined by CERCLA 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every 6 months as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the sixth update of the docket (that is, facilities not previously listed on the docket and reported to EPA since the last update to the docket, 57 FR 31758, July 17, 1992, which was current as of March 1, 1992). EPA policy specifies that for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI), within 18 months of publication of this notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the docket additions list, this notice includes a section comprising revisions (that is, corrections and deletions) to the previous docket list and a new list of the facilities on the docket that have been evaluated and determined not to be appropriate for NPL listing at this time (the Site Evaluation Accomplished (SEA) list). At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1,930.

DATES: This list is current as of December 7, 1992.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline. Telephone: (800) 548-1016 toll free, or (703) 883-8577.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Revisions to the Previous Docket
III. Process for Compiling the Updated Docket
IV. Facilities Not Included
V. Information Contained on Docket Listing
VI. Facility Status Reporting

I. Introduction

The Federal Agency Hazardous Waste Compliance Docket ("docket") was required to be established under section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by SARA. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA Section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA Section 3010 requires waste generators, transporters, and TSD facilities to notify EPA of their hazardous waste activities; and RCRA Section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA Section 103(a) requires notification to the National Response Center (NRC) of a release; CERCLA Section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated or disposed and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves, among others, three major purposes: (1) To identify the universe of Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the NPL; (2) to compile and maintain the information submitted to EPA on these facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make this information available to the public.

The initial list of Federal facilities to be included in the docket was published on February 12, 1988 (53 FR 4280). Updates to the docket have been published on November 16, 1988 (53 FR 47364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); and December 12, 1991 (56 FR 64898); and July 17, 1992 (57 FR 31758). This notice constitutes the seventh update of the docket.

Today's notice is divided into four major sections: (1) Corrections, (2) Deletions, (3) Additions, and (4) the SEA list. The docket corrections section lists changes to information on facilities already listed on the docket. The deletions section lists facilities that EPA is deleting from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and are now being included on the docket. The SEA list is the list of all docket facilities to which EPA has assigned a status of Site Evaluation Accomplished.

The information submitted to EPA on each Federal facility is contained in the docket repository located in the EPA Regional Office of the region where the facility is found. (See 53 FR 4280 (February 12, 1988) for a description of the information required under these provisions.) Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. A complete national index of the information found in the Regional docket repositories is maintained at EPA Headquarters in Washington, DC, and made available to the public. The index for each Region is available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (800-548-1016) for information on repository locations and arrangements for reviewing and copying specific documents.

II. Revisions to the Previous Docket

1. Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. These changes vary from simple address and spelling changes to facility name and ownership corrections. In addition, some facility name changes were made to make the nomenclature consistent on the docket. Many are simply typographical errors. For each facility with a correction, the original entry as it appeared in the February 12, 1988, notice; or subsequent updates, is shown directly above the corrected entry for easy comparison.

2. Deletions

Today, 59 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in Federal ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted will no longer be subject to the requirements of CERCLA Section 120(d).

3. Additions

Today, 263 facilities are being added to the docket primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103). For all facilities being added in this section, it is EPA's policy that the responsible agency must complete the required PA, and, if warranted, an SI, within 18 months from the date of this publication.

Of the 263 facilities being added to the docket, 30 are facilities that have reported the release of a reportable quantity (RQ) of a hazardous substance to the NRC. Under Section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Release reports received by the NRC, the U.S. Coast Guard, and EPA are electronically transmitted to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket that have an ERNS report have the notation of "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are SQGs and have never generated more than 1,000 kg of hazardous waste in any month. If a facility has ever generated more than 1,000 kg of hazardous waste in any month (that is, is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs but have reported releases under CERCLA Section 103, or hazardous waste activities pursuant to another reporting mechanism, will be listed on the docket, and will undergo remedial site evaluation activities, such as a PA and, where appropriate, an SI. All such facilities will be listed on the docket regardless of whether they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is today adding to the docket are SQGs that had not been previously listed on the docket but have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, an SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a CERCLA Section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under section 103 in the docket. In general, section 103 requires certain persons to provide notice of certain releases of hazardous substances. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA Section 103 and are considered equivalent forms of notification for purposes of the docket. Thus, the Agency believes that facilities that have provided information equivalent to a CERCLA Section 103 notification, such as a Federal agency environmental restoration program report, should be included on the docket regardless of the absence of formal section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

EPA now includes privately owned, government-operated facilities (POGOs) on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016, and CERCLA section 103, which all impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal Government. This terminology clearly includes facilities that are operated by the Federal Government even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility is listed on the NPL, refers to the agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required by docket listing, is Executive Order 12580, which assigns this responsibility to the agency with "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody or control over a facility.

III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, Biennial Inventory of Federal Agency Hazardous Waste Activities, Resource Conservation and Recovery Information System (RCRIS), and Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS)—that contain Federal facility information submitted under the four provisions listed in CERCLA Section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the above databases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately owned facilities, that are not operated by the Federal government, may have been included. These problems are the result of historical procedures used to report and track Federal facility data; the Agency is working to resolve them. Federal agencies are requested to write to EPA's Docket Coordinator at the following address if revisions to this update information are necessary:
Federal Facilities Docket Coordinator,
Office of Federal Facilities Enforcement (OE–2261), U.S. EPA, 401 M Street, SW., Washington, DC 20460.

IV. Facilities Not Included

As explained in the original docket preamble (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, where appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket, with responsibility for conducting PAs and SIs resting with the current owner.

2. SQGs that have never produced more than 1,000 kg in any month and have not reported releases under CERCLA Section 103 or other hazardous waste activities under RCRA Section 3016.

3. Facilities that are solely transporters as reported under RCRA Section 3010.

V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities being deleted from the docket. The third section comprises corrections to the docket. Each facility listed as part of the update has been assigned a code that indicates a more specific reasons(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this seventh docket update must submit a PA, and, if warranted, an SI, to EPA within 18 months of the date of this publication. A PA must include existing information about a site and its surrounding environment, including a thorough examination of the human, food-chain, and environmental targets, the potential waste sources, and migration pathways. Based upon information in the PA, or other information coming to EPA's attention, EPA will determine whether a followup SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that is used to determine if further action or investigation is appropriate. This policy includes any facility changing responsible agencies. These reports should be submitted to the Federal Facilities Coordinator in the appropriate EPA Regional Office.

The facilities listed in each section are organized by State and then grouped alphabetically within each State by Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA, the EPA Region where the facility is located, and the correction codes.

The statutory provision(s) under which a facility reported are listed in a column titled "Reporting Mechanisms." Each Facility has its applicable mechanisms listed; for example: 3010,3016,103(c).

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800–548–1016 or 703–883–8577). As of today, the total number of Federal facilities that appear on the docket is 1,930.

VI. Facility Status Reporting

In response to numerous Federal agency requests, EPA has expanded the docket database to include information on the status of docket facilities. A prevalent concern has been the inability to identify facilities that, after submitting all necessary site assessment information, were found to warrant no further EPA involvement at this time. Accordingly, EPA has expanded the docket database to include a column indicating the facility's status. The status codes are as follows:

U=Undetermined
N=Site Evaluation Accomplished (SEA)
P=Currently Proposed for the NPL
F=Currently Final on the NPL
R=Removed from the Proposed NPL and No Longer Considered for the Final NPL
D=Deleted from the Final NPL

EPA has changed the site assessment recommendation No Further Remedial Action Planned (NFRAP) to SEA to denote a more positive attitude and to emphasize that the determination involves an affirmative effort on EPA's part toward evaluating sites.

SEA is a term used in the Superfund site assessment program to identify facilities where EPA has found that, based on currently available information, listing on the NPL is not likely and further assessment is not appropriate at this time. SEA status does not represent an EPA determination that there are no environmental threats present at the facility or that no further environmental response action of any kind is necessary. As stated, SEA status is intended to mean only that the facility does not appear to warrant NPL listing based on the information available to EPA at this time, and that therefore no further involvement by EPA in site assessment or cleanup at the facility is anticipated. However, additional CERCLA response actions by the agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility with SEA status.

The status information contained in the docket is the result of regional evaluation of information taken directly from CERCLIS. (CERCLIS is a database that helps EPA Headquarters and Regional personnel with site, program, and project management. It contains the official inventory of all CERCLA [NPL and non-NPL] sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal, and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional Docket Coordinators for review. The results of their reviews were incorporated into the status field in the docket. Subsequently, a list of all facilities with an SEA status (containing an "N" in the status field) was generated; this list is being published today.

Important limitations apply to this SEA status list. First, the information is accurate only as of December 7, 1992. Second, a facility's status may be subject to change at any time due to any number of factors, including new site information or changing EPA policies. Finally, the SEA status list is based on regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the agency responsible for the facility or EPA.

The status information in the docket will be reviewed and a new list of SEA facilities will be published at each docket update.

Dated: January 5, 1993.

Herbert H. Tate, Jr.,

Assistant Administrator for Enforcement.

I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code

Categories for Facility Deletion[*]

(1) Small Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/Entries Combined
(8) Does Not Fit Facility Definition (All Are Vessels)
(9) No Hazardous Waste (Responsible Agency Changed)
(10) Small Quantity Generator (Responsible Agency Changed)
(11) No Hazardous Waste (Temporary Storage Only)
(12) Not Federally Owned (Small Quantity Generator)
(13) Redundant Listing/Site on Facility (Agencies Will Coordinate)
(14) Small Quantity Generator (Never Actually Built)

Categories for Facility Addition

(15) Small Quantity Generator with Either a RCRA 3016 or CERCLA 103
(16) One Entry Being Split into Two/Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should be Included
(18) Facility Was a Site on a Facility That Was Disbanded, Now a Separate Facility
(19) Sites Were Combined into One Facility
(19A) New Facility

Categories for Corrections to Facility Information

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Agencies (New Responsible Agency Has 18 Months to Submit PA)

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[*] Further information on category definitions can be obtained by calling the Docket Hotline.

(22) Changing Responsible Agencies and Title (New Responsible Agency Has 18 Months to Submit PA)

(23) New Reporting Mechanism Added to Update

(24) Reporting Mechanism Determined to be Not Applicable after Regional File Review

FEDERAL FACILITIES DOCKET

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Canyon Creek RRS	T 7 S, R 6 E, Sec 15.	Big Delta	AK	99737		3016	19A
DERA-Kodiak Tracking Station.	Cape Chiniak Rd, end of.	Kodiak	AK			103c	19A
M–I Drilling Fluids Company-Anchorage.	721 W 1st Ave	Anchorage	AK	99501		3010	19A
Tongass National Forest: Thorne Bay Dump.		Thorne Bay	AK	99919	Agriculture	103c	19A
NOAA-St. Paul Island.	171′ 30′ 30″ Long W and 57′ 5′.	St. Paul Village	AK		Commerce	103c	19A
Anchorage Defense Fuel Support Point.	1217 Anchorage Port Road.	Anchorage	AK	99501	Defense	3016	19A
Fairbanks Defense Fuel Support Point.	Canol Service Road	Ft. Wainwright	AK	99703	Defense	3016	19A
PHS-Kanakanak Hospital.	2.5 MI SW of village	Dillingham	AK	99576	Health and Human Services.	103a	19A
FWS–Skilak Guard Station.		Soldotna	AK		Interior	103c 3016	19A
North East Cape St. Lawrence Island.	St. Lawrence Island 70 MI E of Savoonga.	Northeast Cape	AK	99769	Navy	103c	19A
St. Lawrence Island-Cargo Beach Site.	Cargo Beach	Northeast Cape	AK		Navy	103c	19A
Wales Naval Field Station.		Wales	AK	99783	Navy	103c	19A
FAA-Cape Yakataga Facility.	Cape Yakataga	Cape Yakataga	AK	99574	Transportation	3010 3016	19A
FAA–Skwentna Facility.	Skwentna Arprt Area.	Skwentna	AK	99667	Transportation	3010	19A
Summit Air Navigation Site.	Cantwell Pks Hwy 5 MI S Nav Aids.	Summit	AK	99729	Transportation	3016	19A
Percy Roy Farm	County Rd. 40	Pine Level	AL	36065		3016	19A
Martin-Gasden Air National Guard Station.	Gadsden Municipal Airport.	Gadsden	AL		Air Force	103c 3010	19A
Coosa River Storage Annex.		Talledega	AL	35160	Army	103c	19A
Rogersville Corp of Engineers.	Route 4 Box 305	Rogersville	AL	35652	Army	3010	19A
Trinity 500–KV Substation.	Woodall Road at Ipeco Road.	Decatur	AL	35601	Tennessee Valley Authority.	3010	19A
American Samoa Power.	American Samoa	American Samoa	AS			103c	19A
Casa Grande Valley Newspapers.	1104 N Pinal Ave	Casa Grande	AZ	85222		3010	19A
Casa Grande Valley Newspapers.	200 W Second St	Casa Grande	AZ	85222		3010	19A
Lockheed Aeromod Center Inc.	1555 E Aero Park Blvd.	Tucson	AZ	85706		3010	19A
Maricopa County Parks & Recreation Maintenance Yd.	41000 North 99th Avenue.	Phoenix	AZ	85027		3016	19A
Maricopa Water District Lands.	41000 North 99th Avenue.	Phoenix	AZ	85027		3016	19A
Triumph Air Repair Inc.	4010 S 43rd Pl	Phoenix	AZ	85040		3010	19A
Yuma Mesa Irrigation and Drainage District.	14329 S. Fourth Avenue.	Yuma	AZ	85365		3016	19A
Barry M. Goldwater Air Force Range.		Phoenix	AZ	85309	Air Force	103c	19A
Luke-El Mirage Road Landfill.	7011 N. El Mirage Road.	Glendale	AZ	85307	Air Force	3016	19A
BLM-Peoria Auto Fluff Site.	3707 N. 7th St., P.O. Box 16563—Phoenix.	Peoria	AZ		Interior	103c	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Standford #1	NR Ave I & County Highway.	Yuma	AZ	85365	Interior	103c	19A
Standford #2	Yavapai County	Yuma	AZ	86322	Interior	103c	19A
DEA-Ashfork	12 M. SE of Ashfork	Ashfork	AZ		Justice	103a	19A
DEA-Mesa	1764 North Mesa Drive.	Mesa	AZ		Justice	103a	19A
DEA-Phoenix	10609 N. 40th Street.	Phoenix	AZ		Justice	103a	19A
DEA-Sierra Vista	1031 East Acacia	Sierra Vista	AZ		Justice	103a	19A
Action Battery Manufacturing Company.	4700–02 W Rosecrans.	Hawthorne	CA	90250		3010	19A
BLM–ORYX Energy Company—Fellows.	Band Govt Lease Kern County.	Fellows	CA	93224		3010	19A
BLM–ORYX Energy Company—McKittrick.	Cal Federal "A" Lease Kern Co..	McKittrick	CA	93251		3010	19A
Express Cleaners	1170 Arnold Dr #140.	Martinez	CA	94553		3010	19A
Garage, State of California.	570 Ellis	San Francisco	CA	94109		3010	19A
General Chemical Company.	5568 Schaefer Ave	Chino	CA	91710		3010	19A
LAAFB-Fort MacArthur Annex.	2400 Pacific Avenue	San Pedro	CA	90731		3016	19A
Laxdual Corporation		Los Angeles	CA	90045		103c	19A
Lemon Grove Camera.	7848 Broadway	Lemon Grove	CA	92045		3010	19A
Lester Miller Farm	Miller Rd North of Hahn Road.	Arbuckle	CA	95912		3016	19A
Los Angeles County of, Mechanical Dept.	1100 N Eastern Ave	Los Angeles	CA	90063		3010	19A
ORYX Henry	OCSP0240 Plat. Henry Cont. Shelf.	Santa Barbara Channel.	CA	93013		3010	19A
Performance West Petroleum.	2065 Martin Ave #106.	Santa Clara	CA	95050		3010	19A
Prototype Concepts Inc.	1945 Placentia Ave	Costa Mesa	CA	92627		3010	19A
Radionics Inc	1800 Abbott	Salinas	CA	93901		3010	19A
San Gabriel Area 1 4 NPL Site.	San Gabriel Valley	Los Angeles	CA	90001		3010	19A
Santa Barbara County Roadyard.	4415 Cathedral Oakroad.	Santa Barbara	CA	93110		3010	19A
Angeles Nat'l Forest: Dillon Divide Midnight Dump.	Dillon Divide Off Little Tujunga Road.	San Fernando	CA		Agriculture	103a	19A
Port Hueneme Civil Engineering Laboratory.	Building 560	Port Hueneme	CA	93043	Corps Of Engineers, Civil.	103a	19A
Laboratory for Energy-Health Research (LEHR).	Old Davis Road	Davis	CA	95616	Energy	3016	19A
Geological Survey	345 Middlefield Road.	San Mateo	CA	94025	General Services Administration.	103c 3010	19A
FDA-Los Angeles	1521 W. Pico Blvd	Los Angeles	CA	90015	Health and Human Services.	3010	19A
Oakland City Housing.	1180 25th Avenue	Oakland	CA	94601	Housing and Urban Development.	3010	19A
BLM–A&W Smelter		Rosamund	CA		Interior	103c	19A
BLM-Coachella Landfill.		Indio	CA		Interior	103c	19A
BLM-Raintree Pesticide Dump.	S1 R10E T12N	Georgetown	CA		Interior	103a	19A
Herlong Munitions			CA		Interior	3016	19A
Carlsbad Narcotics Task Force.	2461 Impala	Carlsbad	CA	92008	Justice	103a	19A
Alameda Annex Naval Supply Center.		Alameda	CA	94501	Navy	103c	19A
Point Mugu Naval Air Station.	Naval Air Weapons Station.	Point Mugu	CA	93042	Navy	3016	19A
Pomona Industrial Reserve Ordnance Plant.	Pomona/Mission Boulevard.	Pomona	CA	91766	Navy	103c	19A
Port Hueneme Construction Batallion Center.	Building 1360 Neesa.	Port Hueneme	CA	93043	Navy	103a	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Stanislaus Landfill		Patterson	CA		Navy	103a	19A
Rockwell International Flight OPS.	5885 W Imperial Highway.	Los Angeles	CA	90245	Transportation	3010	19A
Robert H. Freytag Property.	3102 North Overland Trail.	La Porte	CO	80535		3016	19A
Bonanza Mining District.		Bonanza	CO	81149	Agriculture	103c	19A
Delta Airlines-Denver.	Stapleton Airport	Denver	CO	80238	Commerce	3010 103c	19A
BR-Taylor Reservoir			CO		Interior	103a	19A
Idaho Springs Mercury.			CO		Interior	3016	19A
Bloomfield Naval Weapons Industrial Reserve Plant.	Old Windsor Avenue, P.O. Box 2.	Bloomfield	CT	06002	Navy	103c	19A
U.S. Government Printing Office.	N Capitol & H Sts NW.	Washington	DC	20401		3010	19A
Washington Headquarters.	401 M St SW	Washington	DC	20460	EPA	3010	19A
Washington Headquarters.	600 Independence Ave SW.	Washington	DC	20546	NASA	3010	19A
Synthesis Technologies Inc.	835 Dawson Drive	Newark	DE	19713		3010	19A
Busick Farm	State Road 360	Madison	FL	32340		3016	19A
Osceola National Forest Site 2.	North of Highway 100.	Lake City	FL	32055	Agriculture	103c 3016	16
Osceola National Forest Site 3.	Cortez Road, South of Highway 90.	Lake City	FL	32055	Agriculture	3016 103c	16
Osceola National Forest Site 4.	West of Dirt Road, off Route 772.	Lake City	FL	32055	Agriculture	3016 103c	16
Osceola National Forest Site 5.	Hwy 90 to Osceola Forest Office.	Lake City	FL	32055	Agriculture	103c 3016	16
Osceola National Forest Site 6.	South of Hwy 90 on Possum Trot Road.	Lake City	FL	32055	Agriculture	3016 103c	16
Tallahassee Federal Correction Institution.	501 N.E. Capital Circle.	Tallahassee	FL	32311	Justice	103a	19A
Key West Naval Air Station—Demolition Key.	Public Works Office, Naval Air Station.	Key West	FL	33040	Navy	3005	19A
Brunswick Facility	Route 11	Brunswick	GA	30365	EPA	103a	19A
Atlanta Penitentiary	615 McDonough Blvd.	Atlanta	GA	30315	Justice	3016 103c	19A
Federal Law Enforcement Training Center.	GA State Rd 303	Glynco	GA	31524	Treasury	3005 3010 3016	19A
Queen Emmalani Tower.	Queen & South Street.	Honolulu, Oahu	HI	96813		103c	19A
Sandia National Laboratories-Kauai Test Facility.	U.S. Navy Pacific Missile Range.	Kekaha	HI	96796		3016	19A
Kapalama Military Reservation.	Sand Island Access Road.	Oahu Island	HI	96898	Army	103c	19A
Kilauea Military Reservation.	Highway 11, 28 M Marker.	Hawaii National Park.	HI	96718	Army	103c	19A
Pohakuloa Training Area.	Saddle Road, Central Part of Island.	Pohakuloa	HI	96556	Army	103c	19A
Kahoolawe Island		Maui	HI	96732	Navy	103c	19A
Pearl Harbor Naval Complex.		Pearl Harbor	HI	96860	Navy	103c	19A
Kanehoe Coast Guard Omega Station.	Haiku Valley	Kaneohe	HI	96744	Transportation	103c	19A
Des Moines Bulk Mail Center.	4000 NW 109th Street.	Urbandale	IA	50395	Postal Service	3016	19A
Boise National Forest: Missouri Mine.	Idaho City Dist.		ID		Agriculture	3016	19A
Payette National Forest: Cinnabar Mine.	Krassel Dist		ID		Agriculture	3016	19A
BLM-Hoff Road Site	T2S R32E Sect 35 SW of SW.	Blackfoot	ID	83221	Interior	3010	19A
Carrico Elmer Drum Site.	Locust St and Bernard.	Washington	IN	47501		3010	19A
Industrial Fuels and Asphalt.	4240 White Oak Ave.	Hammond	IN	46327		3010	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Wayne/Hoosier National Forest: Branchville Site.		Bedford	IN	47421	Agriculture	103c	19A
Lexington Federal Correctional Institution.	3301 Leestown Rd	Lexington	KY	40511	Justice	3005 3010	19A
C. Ezell Property	Route 1 Box 69	Sandheimer	LA	71276		3016	19A
Claiborn Range, England Air Force Base.	LA Hwy 488 13M SW of Alexandria.	Alexandria	LA	71301	Agriculture	3010	19A
Baton Rouge Depot	2695 N. Sherwood Forest Drive.	Baton Rouge	LA	70814	Defense	3016	19A
DEA-Hamilton Residence.	Lakeshore Drive	Hamilton	MA		Justice	103a	19A
DEA-Video Corner Bourne National Cemetery.	68 Humphrey Street MA National Cemetery.	Swampscott Bourne	MA	02532	Veterans Administration.	3016	19A
Brockton Medical Center.	940 Belmont Street	Brockton	MA	02401	Veterans Administration.	3016	19A
West Roxbury Medical Center.	1400 VFW Parkway	W. Roxbury	MA	02132	Veterans Administration.	3016	19A
Ace Professional Finishing Co.	1113 Old N Point Rd Bldg H.	Baltimore	MD	21222		3010	19A
Bainbridge Naval Training Center.	US Highway 222	Bainbridge	MD	21904		103c	19A
Fort Holabird Crime Records Center.	Corner of Oakland and Detroit Avenue.	Baltimore	MD	21222		103c	19A
Kaiser Aluminum & Chemical Corporation.	2000 Halethorpe Ave.	Baltimore	MD	21227		3010	19A
Glenndale Plant Germplasm Quarantine Fac.	11601 Old Pond Road.	Glenn Dale	MD	20769	Agriculture	103c	19A
Granite Control	2845 Hernwood Road.	Woodstock	MD	21163	Defense	103c	19A
NSA (FANX I, II, III)	Elkridge Landing Rd	Linthicum	MD	21090	Defense	3010	19A
NIH–NIA Gerontology Research.	4940 Eastern Avenue.	Baltimore	MD	21224	Health and Human Services.	3010 103c	19A
Bangor Maine Air National Guard-BIA.	Bangor Int'l Arprt Rt 222/Geofrey Blvd.	Bangor	ME	04401	Air Force	103c	19A
Togus Medical Center.	Route 17	Togus	ME	04330	Veterans Administration.	3016	19A
Mt. Clemens Naval Air Facility.		Mt Clemens	MI	48043	Transportation	103c 3010	19A
August Bauer Farm	Rt. 1 Box 213	Fanbault	MN	55021		3016	19A
USEDA CO USACE	812 First Ave	Two Harbors	MN	55616	Army	3010	19A
Fort Snelling National Cemetery, Minneapolis.	7601 34th Avenue South.	Minneapolis	MN	55450	Veterans Administration.	3016	19A
DEA–St. Louis	120 South Central	St Louis	MO	63105	Justice	3010	19A
Bilbo Pennington Property.	Rt. 2	Sumner	MS	38957		3016	19A
FS-Regional Field Service Facility.	14th and Catlin	Missoula	MT	59807	Agriculture	103a	19A
Kootenai National Forest: Libby Airport Wood Trea.	Libby Airport	Libby	MT	59923	Agriculture	3016	19A
Great Falls Montana Air National Guard.	International Airport	Great Falls	MT	59401	Air Force	3010	19A
Precious Metals Plating.	Star Route Box 85	Bonner	MT		Housing and Urban Development.	103c	19A
Grant-Kohrs Ranch	¼ Mile North of Deer Lodge.	Deer Lodge	MT	59722	Interior	3010	19A
Lyons Station	45 Mi. So of Ennis on Hwy 287.	Ennis	MT	59749	Interior	3010	19A
Tuscon/Herbrew Academy.	NW ¼ Section 28, T 37N, R 9W.		MT		Interior	103c	19A
West Fork Ranger Station.	15 Miles South of Darby, Mt on.	West Fork RS	MT	59829	Interior	3010	19A
Ted Smith Property	State Route 1903	Parkton	NC	28371		3016	19A
Manchester Medical Center Ash Dump.	718 Smyth Road	Manchester	NH	03104	Veterans Administration.	103c	19A
Sgt. Joyce Kilmer Army Reserve Center.	Bldg 1007 Kilmer USAR Center.	Edison	NJ	08817	Army	3010	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Princeton Plasma Physics Laboratory.	Forrestal Campus	Princeton	NJ		Energy	103c 3010	19A
Waste Isolation Pilot Plant.	30 Miles E of Carlsbad/Jal Hwy.	Carlsbad	NM	88221		3016	19A
Gila National Forest	Forest Route 701 3.5 Mi E of Hwy 180.	Alma	NM	88039	Agriculture	103c	19A
BLM-Eddy Potash	3071 Potash Mine Road.	Carlsbad	NM	88220	Interior	3016	19A
Assayers Laboratories.	2155 Last Chance Rd.	Elko	NV	89801		3010	19A
Yucca Mountain Site Characterization Project.	FOC—Area 25	Mercury	NV	89023		3016	19A
BLM-Henderson Lead Contamination Soil Site.	T215, R63E, Sec 26, 27, 34, 35.	Henderson	NV	89015	Interior	103c	19A
BLM-Sandy Valley Landfill Site.	2 Miles NE	Sandy Valley	NV	89119	Interior	103c	19A
BLM-Silverado Mill Site.			NV		Interior	3016	19A
Alex Rogowski Property.	RFD 2 Box 334	Goshen	NY	10924		3016	19A
Dresden Naval Underwater Systems Center.	Seneca Lake Field Station.	Dresden	NY	14441		3010	19A
Far Rockaway Postal Service.	1836 Mott Ave	Far Rockaway	NY	11691		3010	19A
General Electric-Johnson City.	600 Main St	Johnson City	NY	13790		3010	19A
McLvor Alice Estate of.	823 McLvor Rd	Oaks Corners	NY	14518		3010	19A
Solitech Inc Wide Beach Site.	10848 Lake Shore Road.	Irving	NY	14081		3010	19A
West Valley Demonstration Project.	Rock Springs Road	West Valley	NY	14171		3005 3010 3016	19A
Womens Rights N H P.	116 to 122 Fall St	Seneca Falls	NY	13148		3010	19A
Bronx Organizational Maintenance Shop #30 & #31.	29 West Kingsbridge Road.	Bronx	NY	10468	Air Force	3010	19A
Bronx Organizational Maintenance Shop #31.	29 W. Kingsbridge Road.	Bronx	NY	10468	Air Force	3010	19A
Brooklyn Organizational Maintenance Shop #23.	355 Marcy Avenue	Brooklyn	NY	11206	Air Force	3010	19A
Brooklyn Organizational Maintenance Shop #24.	14 Street 8th Avenue.	Brooklyn	NY	11215	Air Force	3010	19A
Brooklyn Organizational Maintenance Shop #40.	1579 Bedford Avenue.	Brooklyn	NY	11225	Air Force	3010	19A
Carthage Organizational Maintenance Shop #14.	1 Park Drive	Carthage	NY	13619	Air Force	3010	19A
Farmingdale Organizational Maintenance Shop #43.	25 Baiting Place Road.	Farmingdale	NY	11735	Air Force	3010	19A
Peekskill Organizational Maintenance Shop #21 NYAR.	955 Washington Street.	Peekskill	NY	10566	Air Force	3010	19A
Peekskill Organizational Maintenance Shop #29.	Camp Smith	Peekskill	NY	10566	Air Force	3010	19A
Staten Island Organizational Maintenance Shop #36.	321 Manor Road	Staten Island	NY	10314	Air Force	3010	19A
Stewart Air National Guard Base.	Stewart International Airport.	Newburgh	NY	12550	Air Force	103c	19A
Syracuse Organizational Maintenance Shop #5.	1055 E. Genesee Street.	Syracuse	NY	13210	Air Force	3010	19A
Valhalla Organizational Maintenance Shop #22 HHC10.	Dana Road	Valhalla	NY	10595	Air Force	3010	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Westhampton Beach Air National Guard Facility.	Suffolk County Airport.	Westhampton Beach.	NY	11978	Air Force	3010	19A
Whitehall Organizational Maintenance Shop #15.	62 Poultney St	Whitehall	NY	12887	Air Force	3010	19A
Niagara Falls Facility	9400 Porter Road	Niagara Falls	NY		Army	103a	19A
FBP-Brooklyn	830 Third Ave Bldg 1.	Brooklyn	NY	11232	Justice	3010	19A
Binghamton Post Office.	115 Henry Street	Binghamton	NY	13902	Postal Service	3010	19A
Hicksville Post Office.	260 Engineers Drive	Hicksville	NY	11802	Postal Service	3010	19A
Aeroquip INOAC	1410 Motor Dr	Fremont	OH	43420		3010	19A
Krejci Dump Site	814 Hines Hill Rd	Boston Heights	OH	44236		3010	19A
Shenango Disposal Site, ORP.			OH		Corps of Engineers, Civil.	3016	19A
Perry Nuclear Power Plant.		Perry	OH		Energy	103a	19A
Lone Mountain Pollution Control Facility.	Junction Hwy 281 & 412.	Waynoka	OK			103a	19A
Atlas Missle Site #10		Mangum	OK	73554	Air Force	103c	19A
Atlas Missle Site #3		Snyder	OK	73566	Air Force	103c	19A
Atlas Missle Site #4		Cache	OK	73527	Air Force	103c	19A
Atlas Missle Site #5		Manitou	OK	73555	Air Force	103c	19A
Atlas Missle Site #6		Manitou	OK	73555	Air Force	103c	19A
Atlas Missle Site #8		Olustee	OK	73560	Air Force	103c	19A
Atlas Missle Site #9		Hollis	OK	73550	Air Force	103c	19A
National Institute for Petroleum & Energy Research.	220 N Virginia Ave	Bartlesville	OK	74003	Energy	3010	19A
Portland 3 Mile Canyon Site.	184 1.2 MI W of Exit 147.	Arlington	OR	97812	Corps of Engineers, Civil.	3010	19A
Portland Moorings USAED.	8010 NW St Helens Rd.	Portland	OR	97210	Corps of Engineers, Civil.	3010	19A
BPA–Celilo Converter Station.	3920 Columbia View Dr E.	The Dalles	OR	97058	Energy	3010	19A
BPA—Oregon City	16885 Eaden Road	Oregon City	OR	97045	Energy	103a	19A
Allegheny County Department of Maintenance.	Old Freeport Rd Blawnox Gar.	Pittsburgh	PA	15238		3010	19A
Port Clinton Site	Rt 61	Port Clinton	PA	19549		3010	19A
Tennessee Gas Pipeline.	Turkey Run (Station 319).	Wyalusing	PA	18853		3010	19A
911th Tactical Airlift Group.	Greater Pittsburgh Intl Airpt.	Pittsburgh	PA	15231	Air Force	3010	19A
Pittsburgh Air National Gaurd.	Greater Pittsburgh Intnl Airpt.	Pittsburgh	PA	15231	Air Force	3010	19A
Keystone Training Area.	Greenwood Twp	Geneva	PA	16316	Army	103c	19A
Amtrak-Lancaster C&S.	55 McGovern Ave	Lancaster	PA	17602	Transportation	3010	19A
Aqueduct & Sewer Authority.	Road 3 Km 14.3 Barrio Obrero Station.	Santurce	PR	00916		103a	19A
Coventry Nike Control Area.	Off Read School House Road.	Coventry	RI	02816	Army	103c	19A
Hutto-Green Warehouse.	Pascalias St. & Valley Dr.	Blackville	SC	29817		3016	19A
Southern Architectural Woodwork.	7402 Fairfield Rd	Columbia	SC	29203		3010	19A
McEntire Air National Guard Base.	Mailstop 8	Eastover	SC	29044	Air Force	103c	19A
Hub City Inc	524 13th St West	Brookings	SD	57006		3010	19A
Fort Randall Project	Box 19	Pickstown	SD	57367	Corps of Engineers, Civil.	3010	19A
WAPA-Pierre Hydroelectric Plant.	I-90	Pierre	SD	57501	Corps of Engineers, Civil.	103a	19A
Fort Randall Project-Corps of Engineers.	Fort Randall Power Plant.	Pickstown	SD	57367	Corps of Engineers-Civil Works.	3010	19A
Pierre Hydroelectric Plant.	I-90	Pierre	SD	57501	Energy	103a	19A
McGhee Tyson Air National Guard Base.	McGhee Tyson Airport.	Knoxville	TN	37901	Air Force	103c 3010	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Ensley Engineer Yard-Corps of Engineers.	1726 Mithchell Rd	Memphis	TN	38109	Corps of Engineers-Civil Works.	3010	19A
Chickamauga Hydro Plant.	TN Hwy 153	Chattanooga	TN	37401	Tennessee Valley Authority.	3010	19A
Capital Wire & Cable.	910 10th St	Plano	TX	75086		3010	19A
Off-Specification Fertilizer Site.	Rural Walker County.		TX			3016	19A
Cotton Insects Research Laboratory.		Brownsville	TX	78520	Agriculture	103c	19A
Federal Grain Union Equity.	2631 Tidal Rd	Deer Park	TX	77536	Agriculture	3010	19A
Honey Bee Research Laboratory.		Weslaco	TX	78520	Agriculture	103c	19A
Atlas Missle Site #7		Odell	TX	79247	Air Force	103c	19A
Fort Worth Facility	10 M. SW Carswell AFB Radial 270 & 240.	Fort Worth	TX	76024	Air Force	103a	19A
Houston Army Reserve Center 02 (AMSA 4).	7077 Perimeter Park Drive.	Houston	TX	77041	Army	3010	19A
Ingleside Naval Air Station.	FM 1069 5 M S of City.	Ingleside	TX	78362	Navy	3010	19A
American Fork Canyon/Uinta National.		Pleasant Grove	UT	84601		103c	19A
Salt Lake City Medical Center.	500 Foothill Boulevard.	Salt Lake City	UT	84148	Veterans Administration.	3016	19A
Fauquier County Landfill.	Route 674	Fauquier	VA	22186		103c	19A
Goodwin Junkyard	Route 659 Kings Cove Road/Box 98.	Carrollton	VA	22314		103c 3010	19A
Lynn Haven Bay Site.		Lynn Haven Shores	VA	23451		103c	19A
Manchester Tank & Equipment Co.	Air Park Dr Rte 684	Petersburg	VA	23803		3010	19A
Strategic Systems Program Off.	1931 Jefferson Davis Hwy CM #3.	Arlington	VA	22202		3010	19A
Sutton Enterprises Inc.	1067 "A" Alexandria Lane.	Chesapeake	VA	23320		103c/3010	19A
Herndon Office	925 Springvale Road.	Herndon	VA	22070	Defense Mapping Agency.	103c	19A
Danville Housing Authority.	651 Cardinal Place	Danville	VA	24541	Housing and Urban Development.	3010	19A
Danville Housing Authority.	317 Grant St	Danville	VA	24541	Housing and Urban Development.	3010	19A
Defense Communication Agency.	South Courthouse Road.	Arlington	VA	22204	Navy	103c 3010	19A
Norfolk Facility	200 Ligon Street	Norfolk	VA		Navy	103a	19A
Norfolk Naval Aviation Depot.		Norfolk	VA		Navy	103a	19A
Southeastern Public Service.		Portsmouth	VA		Navy	103a	19A
LMC Farms	Rt. #1 Box 363	Mubton	WA	98935		3016	19A
Spokane Industrial Park.		Spokane	WA	99216		103c	19A
Okanagan National Forest: Alder Crk.		Twisp	WA	98856	Agriculture	103c	19A
Okanagan National Forest: Boneparte.		Chesaw	WA	98844	Agriculture	103c	19A
Okanagan National Forest: Eight Mile Ranch.		Winthrop	WA	98862	Agriculture	103c	19A
Okanagan National Forest: Kerr.		Conconully	WA	98819	Agriculture	103c	19A
Okanagan National Forest: Lost Lake.		Chesaw	WA	98844	Agriculture	103c	19A
Okanagan National Forest: Minnie Mine.			WA		Agriculture	3016	19A
Okanagan National Forest: Twisp.		Twisp	WA	98856	Agriculture	103c	19A
Wenatchee National Forest: Stelko.		Ardenvoir	WA	98811	Agriculture	103c	19A
Centralia Army National Guard.	309 Byrd Street	Centralia	WA	98531	Army	3010	19A
Ephrata Army National Guard.	1st & East Street Corner.	Ephrata	WA	98823	Army	3010	19A

FEDERAL FACILITIES DOCKET—Continued

[Docket Additions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Montesano Army National Guard.	298 Clemons Road	Montesano	WA	98430	Army	3010	19A
Yakima Army National Guard.	1702 Pacific Highway.	Yakima	WA	98901	Army	3010	19A
BPA-Bake Oven Substation.	Bake Oven Road	Maupin	WA		Energy	103c	19A
BPA-Cosmopolis	Arcadia Drive	Cosmopolis	WA	98537	Energy	103a	19A
BPA-Monroe	25414 Old Pipeline Road.	Monroe	WA	98272	Energy	103a	19A
BPA-Port Angeles	1400 E Park Street	Port Angeles	WA	98362	Energy	103a	19A
Seattle Navy Facility	Pier 90	Seattle	WA	98698	Navy	103a	19A
West Virginia Air National Guard.	Yeager Airport	Charleston	WV	25311	Transportation	103c 3010	19A
Martinsburg Hospital	Route 9	Martinsburg	WV	25401	Veterans Administration.	103c	19A
BLM-Indian Creek Drums.		Near Buffalo	WY	82834	Interior	103c	19A
BLM-N.W. Pipeline Barrel Sp.	SE ¼ NW ¼ Sec 18 T16N R92W.	Carbon	WY	82324	Interior	3010	19A

FEDERAL FACILITIES DOCKET

[Docket Deletions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
Indian Point/Duncan Canal	Kupreanof Island—Indian Point.		AK		Agriculture	3016 103c	6
Fort Greely		Fort Greely	AK	98733	Army	3016 103c	6
Elson Lagoon	East of Barrow	Barrow	AK	99723	Navy	103c	2
Gustavas Airport		Gustavas	AK	99826	Transportation	3016 103c	2
FWS-Hope Wildlife Area	4 Miles North off Hwy 32	Hope	AR	71801	Interior	103c	2
BIA-River Site #2	T3S R63 Sec 3	Gila River Indian Resv.	AZ	85247	Interior	103c	2
BIA-Teecnospos Dip Vat	US Hwy 160 Board Sch	Teecnospos	AZ		Interior	103c	6
Angeles National Forest	Los Pinetos Storage Rt 1	Saugus	CA	91350	Agriculture	103c 3010	1
Cleveland National Forest	12500 Pomerado Rd	San Diego	CA	92131	Agriculture	103c 3010	1
FS-California Copper Company.	Sec 1–5,9,10,12,25 T21N R13E.	Quincy	CA		Agriculture	103c	4
National Marine Fisheries Service.	3150 Paradise Dr	Tiburon	CA		Commerce	103c	1
BLM-Horse Corrals	Hwy 395 @ Viewland, 6 Mi NW of Wendel.	Wendel	CA	96136	Interior	103c	6
BLM-Kern Valley Sanitary Landfill.	T25S, R33E, N½ SW¼ Sec 35, MDM.	Kernville	CA		Interior	103c	6
Pasadena Postal Service	600 N Lincoln Ave	Pasadena	CA	91109	Postal Service	3010	1
Maritime Administration Suisun Bay Res Flt.	Lake Herman Rd Foot/Suison B.	Benicia	CA	94510	Transportation	3010	8
BR-Engineering & Research Center.	Denver Federal Center, Bldg. 56.	Denver	CO	80225	Interior	3005 3010 103c	1
FWS-Bombay Hook National Wildlife Refuge.	Marshtown Road	Little Creek	DE	19977	Interior	103c	6
Gulf Breeze Environmental Research Laboratory.	Sabine Island	Gulf Breeze	FL	32561	EPA	3010 3016	1
NPS-Big Cypress National Preserve.	Star Route LL 11	Ochopee	FL	33943	Interior	3010	11
Atlantic Fleet Weapons Training Facility.	US Naval Station	FPO Miami	FL	34051	Navy	3016	6
Fort Lauderdale Naval Underwater Systems Center.	1650 Southwest 39th Street	Fort Lauderdale	FL	33315	Navy	3010	1
W. Palm Beach Naval Underwater Systems Center.	801 Clematis Street	W. Palm Beach	FL	33402	Navy	3010	1
BLM-Feedlot Dump	T4SR3E SEC 26	Grandview	ID	83624	Interior	103c	3
Bureau of the Census	2255 Enterprise Dr	Westchester	IL	60153	Commerce	3010	1
Jeffersonville Federal Center	1201 E. 10th Street	Jeffersonville	IN	47130	Commerce	3010 3016	1
Site D11 Power Plant		Paducah	KY		Energy	103a	6
Kisatchie Work Center			LA		Agriculture	3016	4
Tom Nevers Head Naval Facility.	S E section	Nantucket	MA		Navy	103c	3
Pittsfield Post Office	212 Fenn Street	Pittsfield	MA	01201	Postal Service	3010	1
Springfield Post Office	1883 Main Street	Springfield	MA	01101	Postal Service	3010	1
Lincoln Park Post Office	1515 Fort St	Lincoln Park	MI	48146	Postal Service	3010	1
Saginaw Post Office	1233 S Washington	Saginaw	MI	48605	Postal Service	3010	1
Troy Postal Service	2844 Livernois	Troy	MI	48099	Postal Service	3010	1
Superior National Forest	Box 338	Duluth	MN	55801	Agriculture	3016	3
FS-QS Midwestern Laboratory.	4300 Goodfellow	St Louis	MO		Agriculture	3010 103c	1

FEDERAL FACILITIES DOCKET—Continued

[Docket Deletions]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
SEA IFA Research Laboratory.	3505 25th Avenue, P.O. Box 3209.	Gulfport	MS	39503	Agriculture	3005 3010 103c	1
NAD Burn Pit/Yard Dump	Sec 6 T6N R8W	Clay Center	NE	68933	Agriculture	103c	7
Nike Missile Battery	Cross Keys Rd	Sicklerville	NJ	08012	General Services Admin	3010	1
Fairton Federal Correctional Institution.	Fairton-Millville Rd	Fairton	NJ	08320	Justice	3010	1
Mid-State Correctional Facility.	Range Road	Wrightstown	NJ	08562	Justice	3010	1
New York International & Bulk Mail Center.	80 County Road	Jersey City	NJ	07307	Postal Service	3010	1
Bronx Naval & Marine Corps Reserve Center.	Fort Schuyler	Bronx	NY	10465	Army	3010	1
Bullville Army Reserve Center.	Route 17K	Bullville	NY	10915	Army	3010	10
Ronkonkoma Army Aviation Support Facility.	Hangar A. MacArthur Airport	Ronkonkoma	NY	11779	Army	3010	1
Freeport Naval Reserve Center.	112 Hanse Ave	Freeport	NY	11520	Navy	3010	1
Syracuse Naval Reserve Center.	5803 East Molloy Rd	Mattydale	NY	13211	Navy	3010	1
Plant #36	Shepard Lane	Evendale	OH	45241	Air Force	103c	3
Isabela Naval Communication Station.	PR–2 KM 116.2	Isabela	PR	00662	Navy	3010	1
Providence Medical Center	Chalkstone Avenue	Providence	RI	02908	Veterans Administration	3010	1
NPS-Tour Boat Facility	Concord St at end of Calhoun St.	Charleston	SC		Interior	103c	6
BIA-Pine Ridge Reservation	#118,119,59. Sec 12 T35N R45W.	Pine Ridge	SD	57770	Interior	3010	2
Concord Substation	Davidson Road	Chattanooga	TN	37402	Tennessee Valley Authority	103a	1
Fort Payne 46KV Substation	Godfrey Avenue	Fort Payne	TN		Tennessee Valley Authority	103a	1
Unidentified Site	US Forest Service Property	Huntsville	TX		Agriculture	103c	4
NOAA-Manchester Field Station.	7305 Beach St Drive East	Port Orchard	WA		Commerce	103c	4
Jackson Park Housing	Naval Hospital Bremerton	Bremerton	WA	98314	Navy	3016	6
North Bend Undersea Warfare Engineering Station.	T23N R9E S28 NE¼	North Bend	WA	98045	Navy	3010	2
Rawley Coast Guard Housing	Rte 3 Hwy 0	Two Rivers	WI	54241	Transportation	3010	4
BLM-Wyoming State Office	2515 Warren Ave	Cheyenne	WY	82003	Interior	3010	4

FEDERAL FACILITIES DOCKET

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C Cape Lisburne Air Force Station.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	20A
O Cape Lisburne Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	
C Dewline Site Collinson.	290 miles SE of Barrow.	Barrow	AK	99723	Air Force	103c	22
O BLM–Collinson Point Dewline Site.	290 miles SE of Barrow.	Barrow	AK	99723	Interior	103c	
C Dewline Site LIZ–2	Kasegalik Lagoon-Chukchi Sea.	Point Lay	AK	99766	Air Force	3010 103c 3016	[illegible]
O Dewline Site LIZ–2	Kasegalik Lagoon-Chukchi Sea.	Point Lay	AK	99766	Air Force	3010 103c	
C Dewline Site LIZ–3	Kuk River & Chukchi Sea.	Wainwright	AK	99782	Air Force	3010 103c 3016	20A, 23
O Dewline Site L1Z–3	Kuk River & Chukchi Sea.	Wainwright	AK	99782	Air Force	3010 103c	
C Gold King Creek RRS.	T8S R2W Sec 22, 27	Valdez	AK	99686	Air Force	103c 3010 3016	23
O Gold King Creek RRS.	T8S R2W Sec 22, 27	Valdez	AK	99686	Air Force	103c	
C Kotzebue White Alice Site.	11 ACW/CC	Elmendorf AFB	AK	99506	Air Force	103c 3016 3010	20A
O Kotzebue White Alice Site.	NW Corner of Baldwin Peninsula.	Kotzebue	AK	99752	Air Force	103c 3016 3010	
C Tatalina Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c 3016	23
O Tatalina Air Force Station.	11 TCW/CC	Elmendorf AFB	AK	99506	Air Force	3010 103c	
C Fort Greely	Fort Greely Airport	Delta Junction	AK	99737	Corps of Engineers, Civil.	103c 3016	20A
O Big Delta	Fort Greely Airport	Delta Junction	AK	99737	Corps of Engineers, Civil.	103c 3016	

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C BLM–Chandalar Dump.	T16S, R11E, Sec 9	Umiat Meridian	AK	99723	Interior	103c	20A
O BLM–Chandalar Dump.	T16S, R11E, Sec 9	Umiat Meridian	AK		Interior	103c	
C BLM–Fort Egbert Dump.	T1S, R33E, Sec 31	Eagle	AK	99738	Interior	103c	20A
O BLM–Fort Egbert Dump.	T1S, R32E, Sec 31	Fairbanks Meridian	AK		Interior	103c	
C BLM–Puntilla Air Navigation Site.	Puntilla Lake	Puntilla Lake	AK	99999	Interior	3016 103c	20A
O BLM–Duntilla Air Navigation Site.	Duntilla Lake	Duntilla Lake	AK	99990	Interior	3016 103c	
C FWS–Swanson River Oil.	Sid Hill Road	Soldotna	AK	99669–2139	Interior	3016 103c	20A
O FWS–Kenai National Wildlife Refuge.	Sid Hill Road	Soldotna	AK	99669–2139	Interior	3016 103c	
C NPS–Bering Land Bridge National Preserve.	P.O. Box 220	Nome	AK	99762	Interior	103c	20A
O NPS–Bering Land Bridge National Preserve.	Box 220	Nome	AK	99762	Interior	103c	
C Adak Naval Air Station.	51–54N, 176–45W	Adak Island	AK	99589	Navy	3005 3010 3016 103c 103a.	23
O Adak Naval Air Station.	51–54N, 176–45W	Adak Island	AK	99589	Navy	3005 3010 3016 103c	
C FAA–Air Route Traffic Center.	5400 Davis Highway	Anchorage	AK		Transportation	103c 3010	23
O FAA–Air Route Traffic Center.	5400 Davis Highway	Anchorage	AK		Transportation	103c	
C FAA–Middleton Island.	Middleton Island-NOR		AK		Transportation	3016 103c	20A
O Middleton Island	Middleton Island-NOR		AK		Transportation	3016 103c	
C FAA–Northway Staging Field.	Northway Village	Northway Village	AK	99764	Transportation	3016 103c 3010	23
O FAA–Northway Staging Field.	Northway Village	Northway Village	AK	99764	Transportation	3016 103c	
C Maxwell Air Force Base.	3800 Air Base Group Dee.	Maxwell AFB	AL	36112	Air Force	3010 103c 3016	23
O Maxwell Air Force Base.	3800 Air Base Group Dee.	Maxwell AFB	AL	36112	Air Force	3010 103c	
C Redstone Arsenal Missile Command.	CMDR USAMICOM DRSMI–K.	Huntsville	AL	35898	Army	3005 3010 3016 103c 103a.	20A
O Redstone Arsenal Missile Command.	CMDR USAMICOM DRSMI–K.	Huntsville	AL	35898	Army	3005 3010 3016 103c 103a.	
C National Air Radiation Environment Laboratory.	1504 Avenue A	Montgomery	AL	36115–2601	EPA	103c	20A
O ORP, EERF	1890 Federal Drive	Montgomery	AL	36109	EPA	103c	
C Wheeler Hydropower Plant.	Rt 2	Town Creek	AL	35672	Tennessee Valley Authority.	3010 103a	23
O Wheeler Hydropower Plant.	Rt 2	Town Creek	AL	35672	Tennessee Valley Authority.	3010	
C Williams Air Force Base.	82 ABG/DE	Williams Air Force Base.	AZ	85240	Air Force	3005 3010 3016 103c 103a.	23
O Williams Air Force Base.	82 ABG/DE	Williams Air Force Base.	AZ	85240	Air Force	3005 3010 3016 103c	
C Plant #42 (Rockwell International).	2501 E Ave. P	Palmdale	CA	93550–0678	Air Force	3005 3010 3016 103c	20A
O Plant #42 (Rockwell International).	20th St. & E Ave. O&M.	Palmdale	CA	93550–0678	Air Force	3005 3010 3016 103c	
C Riverbank Army Ammunition Depot.	5300 Claus Rd	Riverbank	CA	95367–0678	Army	3005 3010 3016 103 103a.	23c
O Riverbank Army Ammunition Depot.	5300 Claus Rd	Riverbank	CA	95367–0678	Army	3005 3010 3016 103c	
C Lawrence Livermore National Laboratory.	7000 East Ave	Livermore	CA	94550	Energy	3005 3010 3016 103c 103a.	23
O Lawrence Livermore National Laboratory.	7000 East Ave	Livermore	CA	94550	Energy	3005 3010 3016 103c	
C BLM-Adin Transfer Station.	1 mi SE of Adin; T.39N, R9E, Sec 27.	Adin	CA		Interior	103c 3016	23
O BLM-Adin Transfer Station.	1 mi SE of Adin; T.39N, R9E, Sec 27.	Adin	CA		Interior	103c	
C BLM-Aurora Canyon Millsite.	Nearest City Bridgeport.	Bridgeport	CA	93517	Interior	103c	23
O BLM-Aurora Canyon Millsite.	Nearest City Bridgeport.	Bridgeport	CA		Interior	103c	

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C	BLM-Blackrock Mine.	T3S, R31E, Sec 13 & 14 MDM.	Bishop	CA	93514	Interior	103c 3016	23,20A
O	BLM-Blackrock Mine.	Nearest City Bishop	Bishop	CA		Interior	103c	
C	BLM-Bodie Mine	T4N, R21E, Sec 9&8 MDM.	Bridgeport	CA	93517	Interior	103c 3016	23,20A
O	BLM-Bodie Mine	Nearest City Bridgeport.	Bridgeport	CA		Interior	103c	
C	BLM-Duck Flat	T36NR19E Sec7NWSE.		CA		Interior	103c 3016	23
O	BLM-Duck Flat	T36NR19E Sec7NWSE.		CA		Interior	103c	
C	BLM-Kem Valley Landfill.	T25S, R33E, Sec 35, N½SW¼MDM.	Kem County	CA		Interior	103c 3016	23,20A
O	BLM-Kem Valley Landfill.		Kem County	CA		Interior	103c	
C	BLM-Rinconda Mine	S½, Sec 21, T30S, R14E, Mt Diablo.	San Luis Obispo County.	CA		Interior	103c 3016	23
O	BLM-Rinconda Mine.	S½, Sec 21, T30S, R14E, Mt Diablo.	San Luis Obispo County.	CA		Interior	103c	
C	BLM-Salambo Mine	T25, R15E, Sec 32, NE¼, MDM.	Coulterville	CA	95311	Interior	103c 3016	23,20A
O	BLM-Salambo Mine	Nearest City Coulterville.	Coulterville	CA		Interior	103c	
C	BLM-Susanville Horse Corrals Site.	T29NR15ESec9 6 mi NW of Susanville.	Susanville	CA	96130	Interior	103c 3016	23,20A
O	BLM-Susanville Site	T29NR15ESec9 6 mi NW of Susanville.	Susanville	CA	96130	Interior	103c	
C	BLM-Swansea Site	T 16S,R. 37E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA		Interior	103c 3016	23
O	BLM-Swansea Site	T 16S,R.37E., Sec 24, SE SW, Mt Diablo M.	Keeler	CA		Interior	103c	
C	Alameda Naval Air Station.	W End City of Alameda.	Alameda	CA	93550	Navy	3005 3010 3016 103c 103a.	23
O	Alameda Naval Air Station.	W End City of Alameda.	Alameda	CA	93550	Navy	3005 3010 3016 103c	
C	El Toro Marine Corps Air Station.	EEPB FAC Mgmt Dept.	Santa Ana	CA	92709	Navy	3005 3010 3016 103c 103a.	23
O	El Toro Marine Corps Air Station.	EEPB FAC Mgmt Dept.	Santa Ana	CA	92709	Navy	3005 3010 3016 103c	
C	Long Beach Naval Shipyard.	Terminal Island Naval Complex.	Long Beach	CA	90822	Navy	3005 3010 3016 103c 103a.	23
O	Long Beach Naval Shipyard.	Terminal Island Naval Complex.	Long Beach	CA	90822	Navy	3005 3010 3016 103c	
C	Monterey Naval Postgraduate School.	Del Monte Ave	Monterey	CA	93943	Navy	3010 3016	23
O	Monterey Naval Postgraduate School.	Del Monte Ave	Monterey	CA	93943	Navy	3010	
C	North Island Naval Air Station-Sere Camp/Wames.	P.O. Box 14	San Diego	CA		Navy	103c 3016	23
O	North Island Naval Air Station-Sere Camp/Wames.	P.O. Box 14	San Diego	CA		Navy	103c	
C	San Diego Naval Submarine Base.	140 Sylvester Rd, Naval Station Building 545.	San Diego	CA	92106	Navy	3010 3016 103c 103a	23
O	San Diego Naval Submarine Base.	140 Sylvester Rd, Naval Station Building 545.	San Diego	CA	92106	Navy	3010 3016 103c	
C	San Francisco Postal Service Vehicle Maintenance.	1300 Evans Ave	San Francisco	CA	94188–9721	Postal Service	103c 3010	20A
O	San Francisco Postal Service Vehicle Maintenance.	1300 Evans Ave	San Francisco	CA		Postal Service	103c 3010	
C	Rocky Mountain Arsenal.	Immed. N. Stapleton Intl Arpt.	Commerce City	CO	80022	Army	3005 3010 3016 103c 103a.	23
O	Rocky Mountain Arsenal.	Immed. N. Stapleton Intl Arpt.	Commerce City	CO	80022	Army	3005 3010 3016 103c.	
C	Knolls Atomic Power Laboratory-Windsor Site.	Prospect Hill Road	Windsor	CT	06095	Energy	3005 3010 3016 103c 103a.	23
O	Knolls Atomic Power Laboratory-Windsor Site.	Prospect Hill Road	Windsor	CT	06095	Energy	3005 3010 3016 103c.	

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station.	East Lyme	CT	06357	Navy	3010 3016	23
O East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station.	East Lyme	CT	06357	Navy	3010	
C National Arboretum	3501 New York Avenue NE.	Washington	DC	20002	Agriculture	103c 3016	23
O National Arboretum	3501 New York Avenue NE.	Washington	DC	20002	Agriculture	103c	
C Walter Reed Army Medical Center.	6825 16th Street, NW	Washington	DC	20307–5001	Army	3016 103c 103a	23, 20A
O Walter Reed Army Medical Center.	16th Street, NW	Washington	DC	20307–5001	Army	3016	
C U.S. Soldiers and Airmens Home.	Michigan Ave. N.E.	Washington	DC	20317	Defense	3010 3016 103c	23, 20A
O Soldiers and Airmens Home.	Michigan Ave. N.E.	Washington	DC	20317	Defense	3010 3016	
C Customs Field Office.	1200 Pennsylvania Avenue.	Washington	DC	20004	General Services Admin.	3010 103c	23
O Customs Field Office.	1200 Pennsylvania Avenue.	Washington	DC	20004	General Services Admin.	3010	
C Washington Office	2nd and M Street, SE	Washington	DC	20407	General Services Admin.	3010 103c	23, 20A
O Washington	2nd and M Street, SW	Washington	DC	20407	General Services Admin.	3010	
C Anacostia Naval Station.	South Capital St/Anacostia Dr.	Washington	DC	20374	Navy	3010 103c 3016	23
O Anacostia Naval Station.	South Capital St/Anacostia Dr.	Washington	DC	20374	Navy	3010	
C Washington Naval Security Station.	3801 Nebraska Ave NW.	Washington	DC	20390	Navy	3010 103c	23
O Washington Naval Security Station.	3801 Nebraska Ave NW.	Washington	DC	20390	Navy	3010	
C Lewes Naval Facility.	Dept of the Navy	Lewes	DE	19958	Navy	3010 103c	23
O Lewes Naval Facility.	Dept of the Navy	Lewes	DE	19958	Navy	3010	
C Oscecola National Forest: Site 1.	Highway 100	Lake City	FL	32055	Agriculture	3016 103c	23, 20A
O Osceola National Forest.	National Forests of Florida.	Unicorporated Lake City.	FL	32055	Agriculture	3016	
C Cape Canaveral Air Force Base.	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a.	23
O Cape Canaveral Air Force Base.	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c.	
C Palatka Army Maintenance Support Activity–55M.	4300 St Johns Ave	Palatka	FL	32077	Army	3010 3005	23
O Palatka Army Maintenance Support Activity–55M.	4300 St Johns Ave	Palatka	FL	32077	Army	3010	
C Jacksonville Naval Supply Center.	P.O. Box 26938	Jacksonville	FL	32226–6938	Navy	103c 3005	20A
O Jacksonville Navy Fuel Depot.	Somers Road	Jacksonville	FL	32208	Navy	103c 3005	
C NTTC Corry Station		Pensacola	FL		Navy	103c 103a	23
O NTTC Corry Station		Pensacola	FL		Navy	103c	
C Panama City Coastal Systems Station.	Hwy 98 Code 6310MC.	Panama City	FL	32407	Navy	3005 3010 3016	20A
O Panama City Navy Coastal Systems Center.	Hwy 98 Code 6310MC.	Panama City	FL	32407	Navy	3005 3010 3016	
C Saufley Field NAS			FL		Navy	103c 3010	20A
O Saufley Field NETPSA.			FL		Navy	103c 3010	
C Augusta Army Maintenance Support Activity–54G.	3311 Wrightsboro Rd	Augusta	GA	30904	Army	3010 3005	23
O Augusta Army Maintenance Support Activity–54G.	3311 Wrightsboro Rd	Augusta	GA	30904	Army	3010	
C Fort Gordon and National Signal Center.	ATZHFE EC	Fort Gordon	GA	30905	Army	3005 3010 3016 103c 103a.	23
O Fort Gordon and National Signal Center.	ATZHFE EC	Fort Gordon	GA	30905	Army	3005 3010 3016 103c	

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C Guam Naval Supply Depot.	Sumay Drive Supply Depot.	Naval Station	GU	96630	Navy	3010 3016	23
O Guam Naval Supply Depot.	Sumay Drive Supply Depot.	Naval Station	GU	96630	Navy	3010	
C Kaala Air Force Station.	Taxiway 5 & Kamakahi St.	Honolulu	HI	96653	Air Force	103c 3016	20A
O Kaala Air Force Station.	Taxiway 5 & Kamakahi St.	Honolulu	HI		Air Force	103c 3016	
C Johnston Atoll National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850	Army	3010 3016	21
O Johnston Atoll National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850	Air Force	3010 3016	
C Lualualei Naval Magazine.	Naval Magazine Demilitarization Furnace.	Westloch	HI	96860	Navy	3005 3010 3016 103c 103a.	23
O Lualualei Naval Magazine.	Naval Magazine Demilitarization Furnace.	Westloch	HI	96860	Navy	3005 3010 3016 103c	
C Pearl Harbor Naval Shipyard.		Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c 103a.	23
O Pearl Harbor Naval Shipyard.		Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c	
C Pearl Harbor Navy Public Works Center.	Naval Station Area	Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c 103a.	23
O Pearl Harbor Navy Public Works Center.	Naval Station Area	Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c	
C FWS-Howland Island National Wildlife Refuge.	Lat 1 N, Long 170 W .	1 N, 170 W	HQ		Interior	3016 103c	23
O FWS-Howland Island National Wildlife Refuge.	Lat 1 N, Long 170 W .	1 N, 170 W	HQ		Interior	3016	
C Iowa Army Ammunition Plant.	Hwy 79 off Middletown Road.	Middletown	IA	52638	Army	3005 3010 3016 103c 103a.	23
O Iowa Army Ammunition Plant.	Hwy 79 off Middletown Road.	Middletown	IA	52638	Army	3005 3010 3016 103c	
C BLM-Browns Gulch	T6S R7E Sec 10 W½	Bruneau	ID		Interior	103c	20A
O BLM-Browns Gulch	T6S R7E Sec 10 W½		ID		Interior	103c	
C BLM-Castleford Butte.	T10S R12E Sec 23	Castleford	ID		Interior	103c	20A
O BLM-Castleford Butte.	T10S R12E Sec 23		ID		Interior	103c	
C BLM-Montview	T8N R34E Sec 22 NWNW E of city.	Montview	ID		Interior	103c	20A
O BLM-Montview	T8N R34E Sec 22 NWNW.		ID		Interior	103c	
C BLM-Warrior Road .	T35N R1W Sec 11 Nearest City Kona.	Kona	ID		Interior	103c	20A
O BLM-Warrior Road .	T3S R1W Sec 11		ID		Interior	103c	
C Lawrenceville COE-Chicago District.	P.O. Box 195, Route 4.	Lawrenceville	IL	62439	Army	3010	20A
O Lawrenceville COE-Chicago District.	Rte 4 P O Box 195	Lawrenceville	IL	62439	Army	3010	
C Hanscom Air Force Base.	3245 ABG/DEEV	Bedford	MA	01731	Air Force	3005 3010 3016 103c 103a.	23
O Hanscom Air Force Base.	3245 ABG/DEEV	Bedford	MA	01731	Air Force	3005 3010 3016 103c	
C Chelsea Postal Service Incoming Mail Center.	307 Becham St	Chelsea	MA	02150	Postal Service	103c	20A
O Chelsea Postal Service Incoming Mail Center.	307 Becham St	Chelsea	MA		Postal Service	103c	
C Lowell Postal Service.	Post Office Square	Lowell	MA	01853	Postal Service	103c 3010	23, 20A
O Lowell Postal Service.	Post Office Square	Lowell	MA		Postal Service	103c	
C Martin's Airport Air National Guard.	Eastern Ave and Wilson Point Rd.	Baltimore	MD	21220–2788	Air Force	103c 3016	20A
O Martin's Airport Air National Guard.	Eastern Ave and Wilson Point Rd.	Baltimore	MD		Air Force	103c 3016	
C Aberdeen Proving Ground.	Attn STEAP-FE-M	Aberdeen	MD	21005	Army	3005 3010 3016 103c 103a.	23
O Aberdeen Proving Ground.	Attn STEAP-FE-M	Aberdeen	MD	21005	Army	3005 3010 3016 103c	
C Adelphi Laboratory Center.	2800 Powder Mill Rd .	Adelphi	MD	20783	Army	3005 3010 3016 103c	20A
O Harry Diamond Laboratories-Adelphi.	2800 Powder Mill Rd .	Adelphi	MD	20783	Army	3005 3010 3016 103c	

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C Blossom Point Field Test Facility.	Blossom Point Rd	La Plata	MD	20646	Army	3016 103c	23, 20A
O Harry Diamond Laboratories-Blossom Point Facility.	Blossom Point Rd	La Plata	MD		Army	3016	
C National Institute of Standards and Technology.	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010 103c	20A
O National Bureau of Standards.	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010 103c	
C Oxford National Marine Fisheries Service.	US Dept of Marine Fisheries, Oxford Laboratory.	Oxford	MD		Commerce	103c	23
O Oxford National Marine Fisheries Service.	US Dept of Marine Fisheries, Oxford Laboratory.	Oxford	MD		Commerce		
C Defense National Stockpile Center.	710 Ordnance Rd	Baltimore	MD	21226	Defense Logistics Agency.	3005 3010 3016 103c	23, 22
O Curtis Bay Depot	710 Ordnance Road	Baltimore	MD	21226	General Services Admin.	3005 3010 3016	
C NCI-Frederick Cancer Research.	Fort Detrick	Frederick	MD	21701	Health and Human Services.	3010 3016 103c	23
O NCI-Frederick Cancer Research.	Fort Detrick	Frederick	MD	21701	Health and Human Services.	3010 3016	
C NIH-Bethesda	9000 Rockville Pike	Bethesda	MD	20892	Health and Human Services.	3005 3010 3016 103c 103a.	23
O NIH-Bethesda	9000 Rockville Pike	Bethesda	MD	20892	Health and Human Services.	3005 3010 3016 103c	
C FWS-Patuxent Wildlife Research Center.	Rt. 197 at Powdermill Road.	Laurel	MD	20708	Interior	3016 103c	21
O FWS-Patuxent Wildlife Research Center.	Rt. 197 at Powdermill Road.	Laurel	MD	20708	Interior	3016	
C Patuxent Wildlife Research Center.	Rt. 197 and Powdermill Road.	Laurel	MD	20708	Interior	103c 3010	21, 23
O Patuxent Wildlife Research Center.	Rt. 197 and Powdermill Road.	Laurel	MD	20708	Agriculture	103c, 3010	
C Goddard Space Flight Center.	Greenbelt Road	Greenbelt	MD	20771	NASA	3010 103c	23
O Goddard Space Flight Center.	Greenbelt Road	Greenbelt	MD	20771	NASA	3010	
C Indian Head Division, Naval Surface Warfare Center.	Rte 210 Maryland	Indian Head	MD	20640	Navy	3005 3010 3016 103c 103a.	20A
O Indian Head Naval Ordnance Station.	Rte 210 Maryland	Indian Head	MD	20640	Navy	3005 3010 3016 103c 103a.	
C National Naval Medical Center.	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016 103c	23
O National Naval Medical Center.	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016	
C Saint Inigoes Naval Electronic System Eng Activity.	St. Inigoes	Saint Inigoes	MD	20684	Navy	3010 103c	23
O Saint Inigoes Naval Electronic System Eng Activity.	St. Inigoes	Saint Inigoes	MD	20684	Navy	3010	
C Washington Naval Communication Unit.	Dangerfield & Commo Rd.	Clinton	MD	20735	Navy	3010 103c	23
O Washington Naval Communication Unit.	Dangerfield & Commo Rd.	Clinton	MD	20735	Navy	3010	
C White Oak Naval Surface Warfare Center.	10901 New Hampshire Ave.	Silver Spring	MD	20903	Navy	3005 3010 3016 103c 103a.	23
O White Oak Naval Surface Warfare Center.	10901 New Hamsphire Ave.	Silver Spring	MD	20903	Navy	3005 3010 3016 103c	
C Loring Air Force Base.	42CSG/CC	Limestone	ME	04751	Air Force	3005 3010 3016 103c 103a.	23
O Loring Air Force Base.	42CSG/CC	Limestone	ME	04751	Air Force	3005 3010 3016 103c	
C Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	Navy	3005 3010 3016 103c 103a.	23
O Portsmouth Naval Shipyard.	Seavy Island	Kittery	ME	03904	Navy	3005 3010 3016 103c	
C Wurtsmith Air Force Base.	379 Combat Support Group/CC.	Oscoda	MI	48753	Air Force	3005 3010 3016 103c 103a.	23
O Wurtsmith Air Force Base.	379 Combat Support Group/CC.	Oscoda	MI	48753	Air Force	3005 3010 3016 103c	
C Camp Grayling	I–75	Grayling	MI	49738	Army	103c	20A

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
O Camp Grayling	I–75	Grayling	MI		Army	103c	
C Pontiac Storage Facility.	871 South Boulevard	Pontiac	MI	48503	Army	103c	20A
O Pontiac Storage Facility.	Address unreported	Pontiac	MI		Army	103c	
C Chippewa National Forest.	Rural Rt 3, Box 244	Cass Lake	MN	56633	Agriculture	3016 3010	23
O Chippewa National Forest.	Rural Rt 3, Box 244	Cass Lake	MN	56633	Agriculture	3016	
C Atkins Farm	1.5 Mi W on Hwy 16 Then S ¾ mi.	Canton	MO	63435	Agriculture	103c	23
O Atkins Farm	1.5 Mi W on Hwy 16 Then S ¾ mi.	Canton	MO		Agriculture	103c	
C Mark Twain National Forest.	401 Fairgrounds Road	Rolla	MO	65401	Agriculture	103c 3010	23
O Mark Twain National Forest.	401 Fairgrounds Road	Rolla	MO	65401	Agriculture	103c	
C MO Aviation Classification & Repair Activity Depot.	2501 Lester Jones Ave.	Springfield	MO	65803	Army	103c 3010	20A, 23
O MO-AVCRAD	2501 Lester Jones Ave.	Springfield	MO		Army	103c	
C Weldon Springs Ordnance Works (former).	Hwy 94 South	St. Charles	MO	63301	Army	3016 103c	20A
O Weldon Springs Training Area, Ft. Leonardwood.	Hwy 94 South	St. Charles	MO	63301	Army	3016 103c	
C Weldon Springs Ordnance Works (former).	St Hwy 94 2 Mi S of US 40.	St. Charles	MO	63301	Energy	3010 3016 103c	20A
O Weldon Springs Quarry/Pint/Pits.	St Hwy 94 2 Mi S of US 40.	St. Charles	MO	63301	Energy	3010 3016 103c	
C DeSoto National Forest Access Roads.	100 W. Capitol St., Suite 1141.	Jackson	MS	39269	Agriculture	103c 3016	23
O DeSoto National Forest Access Roads.	100 W. Capitol St., Suite 1141.	Jackson	MS	39269	Agriculture	103c	
C Fort Keogh Livestock and Range Research Laboratory.	Route 1, Box 2021	Miles City	MT	59301	Agriculture	3016,103c	23
O Fort Keogh Livestock and Range Research Laboratory.	Route 1, Box 2021	Miles City	MT	59301	Agriculture	3016	
C Glasgow Air Force Base.	19 Miles N.W. of Glasgow.	Glasgow	MT		Air Force	103c	20A
O Glasgow Air Force Base.			MT		Air Force	103c	
C BLM-Illegal Airstrip John Greytak.	Section 6 T11N R27E	Flatwillow	MT		Interior	103c	20A
O BLM-Illegal Airstrip John Greytak.	T11NR27ESec6		MT		Interior	103c	
C BR-Hungry Horse Dam.	Edge of Hungry Horse	Hungry Horse	MT	59919	Interior	3010 103c	23
O BR-Hungry Horse Dam.	Edge of Hungry Horse	Hungry Horse	MT	59919	Interior	3010	
C Nantahala National Forest-Graham County Landfill.	North of Snowbird Mountain.	Robbinsville	NC		Agriculture	3016 103c	20A, 23
O Nantahala National Forest.	Post & Otis Streets P.O. Box 2750.	Asheville	NC	28802	Agriculture	3016	
C Nantahala National Forest-Swain County Landfill.	SR 1311	Bryson City	NC	28713	Agriculture	103c	20A
O Nantahala National Forest Landfill.	Post & Otis Streets, Box 2750.	Asheville	NC	28802	Agriculture	103c	
C Technology Center	HWY 54 & Alexander Drive.	Research Triangle Park.	NC	27711	EPA	3005 3010 3016	23
O Technology Center	HWY 54 & Alexander Drive.	Research Triangle Park.	NC	27711	EPA	3005 3010	
C Holloman Air Force Base.	833 CSG/DE	Holloman AFB	NM	88330	Air Force	3005 3010 3016 103c 103a.	23
O Holloman Air Force Base.	833 CSG/DE	Holloman AFB	NM	88330	Air Force	3005 3010 3016 103c	
C Ross Aviation, Inc	Hangar 481	Kirtland AFB	NM	87117	Energy	103c 3016	23
O Ross Aviation, Inc	Hangar 481	Kirtland AFB	NM	87117	Energy	103c	
C BLM–AMAX Chemical.	Eddy County	Artesia	NM	88201	Interior	103c 3016	23
O BLM–AMAX Chemical.	Eddy County	Artesia	NM	88201	Interior	103c	

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
C BLM-Blanco Landfill	T29NR10WSec13	Blanco	NM	87412	Interior	103c 3016	23
O BLM-Blanco Landfill	T29NR10WSec13	Blanco	NM	87412	Interior	103c	
C BLM-Blue Canyon Allotment.	T20SR5WSec8	Hatch	NM	87937	Interior	103c 3016	23
O BLM-Blue Canyon Allotment.	T20SR5WSec8	Hatch	NM	87937	Interior	103c	
C BLM-Carlsbad Landfill.	T21SR27E Sec27NMPH.	Carlsbad	NM		Interior	103c 3016	23
O BLM-Carlsbad Landfill.	T21SR27E Sec27NMPH.	Carlsbad	NM		Interior	103c	
C BLM-Chaparral Landfill.	T26SR5ESec14	Chaparral	NM		Interior	103c 3016	23
O BLM-Chaparral Landfill.	T26SR5ESec14	Chaparral	NM		Interior	103c	
C BLM-Duval Company.	20 Miles East of Carlsbad.	Carlsbad	NM	88220	Interior	103c 3016	23
O BLM-Duval Company.	20 Miles East of Carlsbad.	Carlsbad	NM	88220	Interior	103c	
C BLM-Hatch Landfill	T14SR3WSec4LOT1	Hatch	NM	87937	Interior	103c 3016	23
O BLM-Hatch Landfill	T14SR3WSec4LOT1	Hatch	NM	87937	Interior	103c	
C BLM-Hill Landfill	T22SR1E Secs3&4NMPH.	Hill	NM		Interior	103c 3016	23
O BLM-Hill Landfill	T22SR1E Secs3&4NMPH.	Hill	NM		Interior	103c	
C BLM-Hyde Mine	35/32/46 & 108/41/26	Gallup	NM	87301	Interior	103c 3016	23
O BLM Hyde Mine	35/32/46 & 108/41/26	Gallup	NM	87301	Interior	103c.	
C BLM-I&W Oil Service Roswell.	T20SR31ESec17, 18	Loving	NM	87415	Interior	103c 3016	23
O BLM-I&W Oil Service Roswell.	T20SR31ESec17, 18	Loving	NM	87415	Interior	103c.	
C BLM-International Mineral and Chemical.	P.O. Box 71	Carlsbad	NM	88220	Interior	103c 3016	23
O BLM-International Mineral and Chemical.	P.O. Box 71	Carlsbad	NM	88220	Interior	103c.	
C BLM-La Mesa	T25 SR 2E Sec34	La Mesa	NM	88044	Interior	103c 3016	23
O BLM-La Mesa	T25 SR 2E Sec34	La Mesa	NM	88044	Interior	103c.	
C BLM-Lemitar Landfill.	T2SR1W Secs13&24	Lemitar	NM		Interior	103c 3016	23
O BLM-Lemitar Landfill.	T2SR1WSecs13&24	Lemitar	NM		Interior	103c.	
C BLM-Mesquite Landfill.	T24SR3ESec29NMPH	Mesquite	NM		Interior	103c 3016	23
O BLM-Mesquite Landfill.	T24SR3ESec29NMPH	Mesquite	NM		Interior	103c.	
C BLM-Orogrande Landfill.	T22SR8E Sec14SWSESW.	Orogrande	NM		Interior	103c 3016	23
O BLM-Orogrande Landfill.	T22SR8E Sec14SWSESW.	Orogrande	NM		Interior	103c.	
C BLM-Potash Company of America (PCA).	Eddy County	Carlsbad	NM	88220	Interior	103c 3016	23
O BLM-Potash Company of America (PCA).	Eddy County	Carlsbad	NM	88220	Interior	103c.	
C BLM-San Antonio Landfill.	T5SR1E Sec6NMPH	San Antonia	NM		Interior	103c 3016	23
O BLM-San Antonio Landfill.	T5SR1E Sec6NMPH	San Antonia	NM		Interior	103c.	
C BLM-Standard Transpipe Corp..	T17SR9E Sec18,19	Alamogardo	NM	88310	Interior	103c 3016	23
O BLM-Standard Transpipe Corp..	T17SR9E Sec18,19	Alamogardo	NM	88310	Interior	103c.	
C BLM-Thoreau Landfill.	T14NR13W Sec20NMPH.	Thoreau	NM		Interior	103c 3016	23
O BLM-Thoreau Landfill.	T14NR13W Sec20NMPH.	Thoreau	NM		Interior	103c.	
C BLM-Truth or Consequences Landfill.	T13SR4W Sec22NMPH.	Truth or Consequences.	NM		Interior	103c 3016	23
O BLM-Truth or Consequences Landfill.	T13SR4W Sec22NMPH.	Truth or Consequences.	NM		Interior	103c.	
C BLM-Velarde Landfill.	T22NR9E Sec20NMPH.	Velarde	NM	87582	Interior	103c 3016	23
O BLM-Velarde Landfill.	T22NR9E Sec20NMPH.	Velarde	NM	87582	Interior	103c.	
C BLM-Waterflow Landfill.	T30 NR 16W Sec35	Waterflow	NM	87421	Interior	103c 3016	23
O BLM-Waterflow Landfill.	T30 NR 16W Sec35	Waterflow	NM	87421	Interior	103c.	
C Cal West	West Frontage Road	Lemitar	NM	87801	Small Business Admin	3005 3010 103c	23

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
O Cal West	West Frontage Road	Lemitar	NM	87801	Small Business Admin	3005 3010.	
C Nellis Air Force Base.	554 OSW/DE	Nellis AFB	NV	89191	Air Force	3005 3010 3016 103c 103a.	23
O Nellis Air Force Base.	554 OSW/DE	Nellis AFB	NV	89191	Air Force	3005 3010 3016 103c.	
C Tonopah Test Range (Sandia National Laboratory).	P.O. Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a 3016.	23
O Tonopah Test Range (Sandia National Laboratory).	P.O. Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a	
C BLM-American Borate Company.	T18SR49ESec1	Nye	NV	89020	Interior	103c	20A
O BLM-American Borate Company.	T18SR49ESec1	Nye	NV		Interior	103c	
C Watervliet Arsenal	Broadway	Watervliet	NY	12189	Army	3005 3010 3016 103a	23
O Watervliet Arsenal	Broadway	Watervliet	NY	12189	Army	3005 3010 3016	
C Fisher's Island Naval Underwater Systems Center.	Fisher's Island	Fisher's Island	NY	06380	Navy	3010 3016	23
O Fisher's Island Naval Underwater Systems Center.	Fisher's Island	Fisher's Island	NY	06380	Navy	3010	
C West Sayville IFS Transmitter.	Cherry Ave	West Sayville	NY	11796	Transportation	3010 3016	23
O West Sayville IFS Transmitter.	Cherry Ave	West Sayville	NY	11796	Transportation	3010	
C Rickenbacker Air National Guard Base.	Rickenbacker ANGB	Rickenbacker ANGB	OH	43217	Army	103c	20A
O Rickenbacker Air National Guard Base.	Rickenbacker ANGB	Rickenbacker ANGB	OH		Army	103c	
C Fernald Environmental Management Project.	7400 Willy Road Hamilton County.	Fernald	OH	45030	Energy	3005 3010 3016 103c 103a.	20A
O Feed Material Production Center.	7400 Willy Road Hamilton County.	Fernald	OH	45030	Energy	3005 3010 3016 103c 103a.	
C Plant Sciences and Water Conservation Laboratory.	1301 N. Western RD	Stillwater	OK	74076	Agriculture	3016 103c	20A, 23
O Plant Sciences and Water Conservation Laboratory.	1301 N. Western RD	PO Box 1029 Stillwater.	OK	74076	Agriculture	3016	
C FS-Willamette National Forest.	Highway 126 35 MI E OF CY.	Eugene	OR	97440	Agriculture	3016 103c	20A
O FS-Willamette National Forest.	Box 10607	Eugene	OR	97440	Agriculture	3016 103c	
C Ochoco National Forest.	Highway 26 12 MI E OF CY.	Prineville	OR	97754	Agriculture	103c	20A
O Ochoco National Forest.	T14S R20E WM Sec 20 SW¼.	Ochoco National Forest.	OR		Agriculture	103c	
C Willamette Falls Locks.	West Linn	West Linn	OR	97068	Corps of Engineers, Civil.	103c 3016	20A
O Willamette	West Linn	West Linn	OR	97068	Corps of Engineers, Civil.	103c 3016	
C Defense Distribution Region East.	Harrisburg	New Cumberland	PA	17070	Defense Logistics Agency.	3005 3010 3016 103c	22
O New Cumberland Army Depot.	Harrisburg	New Cumberland	PA	17070	Army	3005 3010 3016 103c	
C Bettis Atomic Power Laboratory.	PO Box 109 Bettis RD	West Mifflin Borough	PA	15122–0109	Energy	3005 3010 3016 103c	23
O Bettis Atomic Power Laboratory.	PO Box 109 Bettis RD	West Mifflin Borough	PA	15122–0109	Energy	3005 3010 3016	
C PETC	PO Box 10940	Pittsburgh	PA	15236	Energy	3010 103c	23
O PETC	PO Box 10940	Pittsburgh	PA	15236	Energy	3010.	
C Pittsburgh Postal Service.	7th & Grant Streets	Pittsburgh	PA		General Services Administration.	103a	21
O Pittsburgh Postal Service.	7th & Grant Streets	Pittsburgh	PA		Postal Service	103a	
C BM-Bruceton	626 Cochrans Mill	Bruceton	PA	15025	Interior	3010 103c	23
O BM-Bruceton	626 Cochrans Mill	Bruceton	PA	15025	Interior	3010	
C FWS-John Heinz National Wildlife Refuge.	Off Folcroft Ave	Folcroft	PA	19032	Interior	3016 103c	20A
O FWS-Tinicum National Environmental Center.	Off Folcroft Ave	Folcroft	PA	19032	Interior	3016 103c	
C Philadephia Navy Aviation Supply Office.	700 Robbins Ave	Philadelphia	PA	19111	Navy	3010 103c	23

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
O Philadelphia Navy Aviation Supply Office.	700 Robbins Aves	Philadelphia	PA	19111	Navy	3010	
C Warminster Naval Air Warfare Center.	NAVFAC-Northdiv.Code 114.	Warminster	PA	19112	Navy	3005 3010 3016 103c	20A
O Warminster Naval Air Defence Command.	NAVFAC-Northdiv.Code 114.	Warminster	PA	19112	Navy	3005 3010 3016 103c	
C Philadelphia Medical Center.	University and Woodland Ave.	Philadelphia	PA	19104	Veterans Administration.	3010 103a 3016	23
O Philadephia Medical Center.	University and Woodland Ave.	Philadephia	PA	19104	Veterans Administration.	3010 103a	
C Atlantic Fleet Weapons Training Fac. Inner Range.		Vieques	PR	00765	Defense	3005 3010 3016	23
O Atlantic Fleet Weapons Training Fac. Inner Range.		Vieques	PR	00765	Defense	3005 3010	
C Davisville Naval Construction Battalion Center.	Off Quionessett Rd	North Kingstown	RI	02871	Navy	3016 103c 103a	23
O Davisville Naval Construction Battalion Center.	Off Quionessett Rd	North Kingstown	RI	02871	Navy	3016 103c	
C Myrtle Beach Air Force Base.	354 CSG/DE	Myrtle Beach	SC	29577	Air Force	3005 3010 3016 103a	23
O Myrtle Beach Air Force Base.	354 CSG/DE	Myrtle Beach	SC	29577	Air Force	3005 3010 3016	
C Training Center and Fort Jackson.	Jackson Blvd	Fort Jackson	SC	29207	Army	3005 3010 3016 103a	23
O Training Center and Fort Jackson.	Jackson Blvd	Fort Jackson	SC	29207	Army	3005 3010 3016	
C NPS-Charleston Harbor Site.	Int. of Concord & Calhoun Streets.	Charleston	SC	29402	Interior	103c	20A
O NPS-Charleston Harbor Site.		Charleston	SC		Interior	103c	
C Beaufort Marine Corps Air Station.	Lafrene Road	Beaufort	SC	29904	Navy	3005 3010 3016 103c 103a.	23
O Beaufort Marine Corps Air Station.	Lafrene Road	Beaufort	SC	29904	Navy	3005 3010 3016 103c.	
C Parris Island Marine Corps Recruit Depot.	Marine Corps Recruit Depot.	Parris Island	SC	29905	Navy	3005 3010 3016 103a	23
O Parris Island Marine Corps Recruit Depot.	Marine Corps Recruit Depot.	Parris Island	SC	29905	Navy	3005 3010 3016	
C Allen Fossil Plant	2574 Plant Rd.	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c 103a.	20A
O Allen Fossil Plant (Allen Steam Plant).	2574 Plant Rd.	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c 103a.	
C Johnsonville Steam Plant.	US Hwy 70 E	New Johnsonville	TN	37134	Tennessee Valley Authority.	103c 3010 103a 3005	23
O Johnsonville Steam Plant.	US Hwy 70 E	New Johnsonville	TN	37134	Tennessee Valley Authority.	103c 3010 103a	
C Knoxville Garage	4216 Greenway	Knoxville	TN	37902	Tennessee Valley Authority.	103c 3010 3005	23
O Knoxville Garage	4216 Greenway	Knoxville	TN	37902	Tennessee Valley Authority.	103c 3010	
C Conservation and Production Research Laboratory.	½ Mile W., T–40 S.	Bushland	TX	79012	Agriculture	3016 103c	23
O Conservation and Production Research Laboratory.	½ Mile W., T–40 S.	Bushland	TX	79012	Agriculture	3016	
C Dyess Air Force Base.	96 CSG/CC	Abilene	TX	79607	Air Force	3005 3010 3016 103c 103a.	23
O Dyess Air Force Base.	96 CSG/CC	Abilene	TX	79607	Air Force	3005 3010 3016 103c	
C Kelly Air Force Base.	SA–ALC/EM	San Antonio	TX	78241	Air Force	3005 3010 3016 103c 103a.	23
O Kelly Air Force Base.	SA–ALC/EM	San Antonio	TX	78241	Air Force	3005 3010 3016 103c	
C Corpus Christi Naval Air Station.	Ocean Drive & Saipan St Bldg 22 Public Works Dpt.	Corpus Christi	TX	78419	Navy	3005 3010 3016 103c 103a.	23
O Corpus Christi Naval Air Station.	Ocean Drive & Saipan St Bldg 22 Public Works Dpt.	Corpus Christi	TX	78419	Navy	3005 3010 3016 103c	
C Arlington	File Repository 1232 SE.	Arlington	VA	22202	Commerce	3010 103c	23

FEDERAL FACILITIES DOCKET—Continued

[Docket Corrections]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction codes
O Arlington	File Repository 1232 SE.	Arlington	VA	22202	Commerce	3010	
C John H. Kerr Reservoir.	Route 1, Box 76ervoir	Boydton	VA	23917–9801	Corps of Engineers, Civil.	3010 103c 3016	23
O John H. Kerr Reservoir.	Route 1, Box 76ervoir	Boydton	VA	23917–9801	Corps of Engineers, Civil.	3010 103c	
C Chesapeake Naval Security Group Activity.	Northwest	Chesapeake	VA		Navy	103c 3010	23
O Chesapeake Naval Security Group Activity.	Northwest	Chesapeake	VA		Navy	103c	
C Portsmouth Naval Hospital.	US Navy	Portsmouth	VA	23708	Navy	3010 3016 103c	23
O Portsmouth Naval Hospital.	US Navy	Portsmouth	VA	23708	Navy	3010 3016	
C Williamsburg Naval Supply Center Cheatham Annex.	Naval Supply Center, Norf.	Williamsburg	VA	23185	Navy	3005 3010 3016 103c	23
O Williamsburg Naval Supply Center Cheatham Annex.	Naval Supply Center, Norf.	Williamsburg	VA	23185	Navy	3005 3010 3016	
C Yorktown Naval Supply Center.	Naval Supply Cntr. Fuel D.	Yorktown	VA	23690	Navy	3005 3010 103c 3016	23
O Yorktown Naval Supply Center.	Naval Supply Cntr. Fuel D.	Yorktown	VA	23690	Navy	3005 3010 103c	
C Washington National Airport.	Alexandria	Alexandria AMA 124	VA	20001	Transportation	3005 3010 3016 103c	23
O Washington National Airport.	Alexandria	Alexandria AMA 124	VA	20001	Transportation	3005 3010 3016	
C Columbia Basin Project AEC Zone 2,4–D Site.	321 C St. NW	Ephrata	WA	98823	Energy	3016	20A
O Columbia Basin Project AEC Zone 2,4–D Site.			WA		Energy	3016	
C BR-Smith Wasteway.	5 Mi. E. of Pasco	Pasco	WA		Interior	3016 103c	20A, 23
O BLM-Smith Wasteway.			WA		Interior	3016	
C Bangor Submarine Base.	Clear Creek Rd	Bremerton	WA	98315–5000	Navy	3005 3010 3016 103c 103a.	23
O Bangor Submarine Base.	Clear Creek Rd	Bremerton	WA	98315–5000	Navy	3005 3010 3016 103c	
C Jackson Park Housing.	Boone Rd	Bremerton	WA	98312	Navy	3010 3016	23, 20A
O Bremerton Regional Medical Center.	Boone Rd	Bremerton	WA	98312	Navy	3010	
C Keyport Naval Undersea Warfare Eng Station.	Code 073 Hwy 308, E End.	Keyport	WA	98345	Navy	3005 3010 3016 103c 103a.	23
O Keyport Naval Undersea Warfare Eng Station.	Code 073 Hwy 308, E End.	Keyport	WA	98345	Navy	3005 3010 3016 103c	
C Winfield Locks & Dams.	RFD #1 Box 530	Red House	WV	25168	Corps of Engineers, Civil.	103c 3010	20A
O Windfield Locks & Dams.	RFD #1 Box 530	Red House	WV	25168	Corps of Engineers, Civil.	103c 3010	
C Allegany Ballistics Laboratory.	West Virginia Secondary Route 9.	Rocket Center	WV	26726	Navy	3005 3010 3016 103c	20A
O Allegheny Ballistics Laboratory.	West Virginia Secondary Route 9.	Rocket Center	WV	26726	Navy	3005 3010 3016 103c	

FEDERAL FACILITIES DOCKET

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM-Red Devil Mine Waste Ponds.	L61–10–12 L149–56–48		AK		Interior	3016 103c
BLM-Sagwon Airstrip	T5R4ESec10–11	Sagwon	AK	99513	Interior	3016 103c
Dewline Site Bar-Main	Barter Isl., ½ mi E of NE Shr.	Kaktovik	AK	99747	Air Force	103c
Dewline Site LIZ–2	Kasegalik Lagoon-Chukchi Sea.	Point Lay	AK	99766	Air Force	3010 103c 3016
Dewline Site LIZ–3	Kuk River & Chukchi Sea	Wainwright	AK	99782	Air Force	3010 103c 3016

FEDERAL FACILITIES DOCKET—Continued

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Dewline Site POW–1	Lonely, Pitt Point, E of Smith Bay.	Lonely	AK	99999	Air Force	3010 103c
Dewline Site POW–2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99590	Air Force	3010 103c
Dewline Site POW–MAIN	Point Barrow Between N Salt Lagoon & Imikpuk.	Point Barrow Station	AK	99723	Air Force	3010 103c
FWS-Brownlow Point Dewline Site.	Barrow, 265 mi SE	Barrow	AK	99723	Interior	103c 3016
FWS-Demarcation Point Dewline.	Barrow, 380 mi SE	Barrow	AK	99723	Interior	103c 3016
Aviation Center and Fort Rucker.	Bldg 1404	Fort Rucker #36362–5000.	AL	36362	Army	3005 3010 3016 103c
Bellefonte Nuclear Plant	Off US Hwy 72	Hollywood	AL	36401	Tennessee Valley Authority.	3005 3010 103c
Browns Ferry Nuclear Plant.	US Hwy 72	Athens	AL	35611	Tennessee Valley Authority.	3010
Colbert Fossil Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	Tennessee Valley Authority.	3005 3010 103c
Guntersville Hydropower Plant.	Off US Hwy 431, 11 mi. NW of Guntersville.	Guntersville	AL	35976	Tennessee Valley Authority.	3010
Maxwell Air Force Base	3800 Air Base Group Dee.	Maxwell AFB	AL	36112	Air Force	3010 103c 3016
Muscle Shoals Power Stores.	AL Hwy 133	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103a
National Fertilizer and Environmental Research Center.	Wilson Dam Road	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103c
Redstone Arsenal Missile Command.	Cmdr USAMICOM DRSMI–K.	Huntsville	AL	35898	Army	3005 3010 3016 103c 103a
Widows Creek Fossil Plant	Off US Hwy 72 W	Stevenson	AL	35772	Tennessee Valley Authority.	3005 3010 103c
Wilson Hydropower Plant	AL Hwy 133	Florence	AL	35660	Tennessee Valley Authority.	3010
Guam Naval Magazine	Apra Hbr Hts Area by Fena Resv.	Apra Harbor	AQ	96910	Navy	103c
Combustion Research Facility.	Nctr Bldg. 45	Jefferson #72070	AR	72079	EPA	3005 3010 3016
Eaker Air Force Base	97 CSG/DEEV	Eaker AFB	AR	72315–5000	Air Force	3005 3010 3016 103c
Fort Chaffee	Building 239	Fort Chaffee	AR	72905	Army	3005 3010 3016 103c
FWS-Hope Wildlife Area	4 miles north off Hwy 32	Hope	AR	71801	Interior	103c
Millwood Reservation	Route 1	Ashdown	AR		Corps of Engineers, Civil	103c
Fort Huachuca	RCRA Units	Fort Huachuca	AZ	85613	Army	3010 3016 103c 103a
Sky Harbor International Airport.	2001 S. 32nd St	Phoenix	AZ	85034	Air Force	3010
Civil Engineering Laboratory.	NCBC	Port Hueneme	CA	93043	Navy	3010 103a
Crows Landing Naval Air Logistics Force.	NALF Crows Landing	Crows Landing	CA	95313	Navy	3010 3016
Fallbrook Naval Weapons Station Annex.	Seal Beach	Fallbrook	CA	92028	Navy	103c
Imperial Beach Naval Communications Station.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beanch	CA	92032	Navy	3005 3010 103c 103a
Lawrence Berkeley Laboratory.	1 Cyclotron Rd	Berkeley	CA	94720	Energy	3005 3010 3016
Norwalk Defense Fuel Supply Center.	15306 Norwalk Blvd	Norwalk	CA	90650	Defense Logistics Agency.	3010 3016 103c
Oakland Naval Regional Medical Center.	8750 Mountain Blvd	Oakland	CA	94627	Navy	3010 103c
Plant #19	4297 Pacific Coast Hwy	San Diego	CA	92101–5001	Air Force	103c 3016 3010
Point Sur Naval Facility	Naval Facility Point Sur	Big Sur	CA	93920	Navy	3010
San Diego Naval Facilities Engineering Command.	Western Division	San Diego	CA	92136	Navy	103c
Sierra National Forest	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c 3016
Skaggs Island Naval Security Group Activity.	Skaggs Island	Sonoma	CA	95476	Navy	3010 3016
Stanford Linear Accelerator Center.	2575 Sandhill Rd	Menlo Park	CA	94305	Energy	3010 3016 103c 103a
BLM-Fremont	T46NR12ESec19	Cirle Pad	CO		Interior	103c
BLM-Montrose County Dump.	T48NR19WSec22	Montrose	CO		Interior	103c
BLM-Placerville Tram Site	T44NR11WSec35 Hwy 62.	Placerville	CO	81430	Interior	103c
BLM-San Miguel Landfill #1.	T44NR15WSec26	Naturita	CO		Interior	103c
BLM-San Miguel Landfill #2.	T44NR17WSec 18	Slick Rock	CO		Interior	103c
BLM-Sawpit Tram Site (ore storage).	T43NR10WSec 18	Saw Pit	CO	81435	Interior	103c

FEDERAL FACILITIES DOCKET—Continued
[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
BLM-Town of Mesa Landfill.	T19SR96WSec 22	Moline	CO		Interior	103c
BR-Loveland	910 Van Buren	Loveland	CO	80537	Interior	3010 103c
Central Direct Fed. Division Materials-FHWA.	6th St., Bldg. 52, DFC	Denver	CO	80225	Transportation	3005 3010 103c
Colorado Springs Academy.	AFA/DE	Colorado Springs	CO	80840	Air Force	3010 103c
Denver Bulk Mail Center	7755 E. 56th Ave	Denver	CO	80238	Postal Service	3016 103c
Fort Carson	DFAE Bldg. 304, AFZC–FE–EQ.	Ft. Carson	CO	80913	Army	3005 3010 3016 103c
Grand Junction Projects Office.	3597 B–¾ Rd PO2567	Grand Junction	CO	81502–5504	Energy	3016 103c
GS-Denver, NWQL	5293 Ward Rd	Denver	CO	80225	Interior	3010
National Enforcement Investigation Center.	DFC	Denver	CO	80225	EPA	3010
NPS-Denver Service Center.	755 Parfet St., Box 25287.	Denver	CO	80225	Interior	3016 103c
Peterson Air Force Base	1003 SSG/CC	Peterson AFB	CO	80914	Air Force	3005 3010 103c
Solar Energy Research Institute.	1617 Cole Blvd	Golden	CO	80401	Energy	3005 3010 3016 103c
Transportation Test Center	21 Miles NE Pueblo Mem Airport.	Dot Test Track Rd	CO	81001	Transportation	3005 3010 3016
WAPA-Power Operations	1800 S. Rio Grande Ave	Montrose	CO	81401	Energy	103c
East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station	East Lyme	CT	06357	Navy	3010 3016
Knolls Atomic Power Laboratory-Windsor Site.	Prospect Hill Road	Windsor	CT	06095	Energy	3005 3010 3016 103c 103a
New London Naval Underwater Systems Center.	New London Laboratory	New London	CT	06320	Navy	3010 103c
Stratford Engine Plant	550 South Main Street	Stratford	CT	06497	Army	3005 3010 3016
Bureau of Engraving & Printing.	14th & C Sts SW	Washington	DC	20228	Treasury	3005 3010 103c 103a
Customs Field Office	1200 Pennsylvania Avenue.	Washington	DC	20004	General Services Admin	3010 103c
Fort McNair	350 P Street, S.W	Washington	DC	20319	Army	3010 103c
U.S. Soldiers and Airmens Home.	Michigan Ave. N.E	Washington	DC	20317	Defense	3010 3016 103c
Washington Naval Research Laboratory.	4555 Overlook Ave	Washington	DC	20375	Navy	3005 3010 3016 103c 103a
Canal Site	Main St, North St Georges.	Newcastle	DE	19733	Corps of Engineers, Civil	3016 103c
AFA 49–A Orlando	8601 Ave. B McCoy NTC Annex.	Orlando	FL	32812	Army	3005 3010
Avon Park Air Force Base	56 Combat Support Group/DE.	MacDill AFB	FL	33608	Air Force	3005 3010 3016
BLM-Olustee Dump	Hwy 90 & Olustee Battlefield R.	Olustee	FL		Interior	103c
Cape Canaveral Air Force Base.	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a
Colonel Frank M. Williams Army Reserve Center.	11700 NW 27th Ave	Miami	FL	33167	Army	3005 3010
Eglin Air Force Base	3200 SPTW/DEV	Eglin AFB	FL	32542	Air Force	3005 3010 3016 103c 103a
Fort Lauderdale Naval Underwater Systems Center.	1650 Southwest 39th Street.	Fort Lauderdale	FL	33315	Navy	3010
Gulf Breeze Environmental Research Laboratory.	Sabine Island	Gulf Breeze	FL	32561	EPA	3010 3016
Hurlburt Field	834 CSG/CC	Hurlburt Field	FL	32544	Air Force	3005 3010 103c
Kennedy Space Center	NASA Mail Code DF–EMS.	Kennedy Space Center	FL	32899	NASA	3005 3010 3016 103c 103a
Key West Coast Guard Station.		Key West	FL	33040	Transportation	3010
Key West Naval Air Station.	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c
Lt. Clarence Lovejoy Army Reserve Center.	4823 N Hubert Ave	Tampa	FL	33614	Army	3005 3010
Lynn Haven Defense Fuel Support Point.	W End of 10th Street	Lynn Haven	FL	32444	Defense Logistics Agency.	3010 3016 103c
MacDill Air Force Base	56 Combat Support Group/DE.	MacDill AFB	FL	33608	Air Force	3005 3010 3016 103c
Mayport Naval Air Station	PO Box 265 Naval Station.	Mayport	FL	32228	Navy	3005 3010 3016 103c 103a
Miami Beach Coast Guard Base.	100 Macarthur Cswy	Miami Beach	FL	33139	Transportation	3005 3010
NPS-Everglades National Park.	Route 9336	Homestead	FL	33030	Interior	3010
Osceola National Forest Site 1.	Highway 100	Lake City	FL	32055	Agriculture	3016 103c

FEDERAL FACILITIES DOCKET—Continued
[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Palatka Army Maintenance Support Activity-55M.	4300 St. Johns Ave	Palatka	FL	32077	Army	3010 3005
Panama City Coastal Systems Station.	Hwy 98 Code 6310MC	Panama City	FL	32407	Navy	3005 3010 3016
Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a
Pinellas Plant	7887 Bryan Dairy Rd	Largo	FL	34649–2900	Energy	3005 3010 3016
St. Petersburg Coast Guard Station.	600 8th Ave SE	St. Petersburg	FL	33701	Transportation	3010
Tampa Defense Fuel Support Point.	Box 13736	Tampa	FL	33611	Defense Logistics Agency.	3010 3016 103c
Tyndall Air Force Base	4756 CSG/DE	Tyndall AFB	FL	32403	Air Force	3005 3010 3016 103c
W. Palm Beach Naval Underwater Systems Center.	801 Clematis Street	W. Palm Beach	FL	33402	Navy	3010
Wildlife Research Field Station.	2820 E. University Ave	Gainesville	FL	32601	Agriculture	103c
Atlanta Medical Center	1670 Clairmont Road	Decatur	GA	30033	Veterans Administration	3005 3010 3016
Augusta Army Maintenance Support Activity-54G.	3311 Wrightsboro Rd	Augusta	GA	30904	Army	3010 3005
Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069	Air Force	3016 103c
Fort Gillem	Attn AFZK–EH–C	Forest Park	GA	30330	Army	3005 3010 3016 103c
Fort Gordon and National Signal Center.	ATZHFE EC	Fort Gordon	GA	30905	Army	3005 3010 3016 103c 103a
Fort Stewart	24th Infantry Div AFZP–DEN–E.	Fort Stewart	GA	31314	Army	3005 3010 3016 103c
Hunter Army Airfield	24th Infantry Div AFZP–DEN–E.	Fort Stewart	GA	31314	Army	3005 3010 3016 103c
Kings Bay Naval Submarine Base.	GA State Hwy Spur	Kings Bay	GA	31547	Navy	3005 3010 3016 103c 103a
Moody Air Force Base	347 CSG/DE	Moody AFB	GA	31669	Air Force	3005 3010 3016 103c
Plant #6 (Lockheed)	86 S Cobb Drive Zone 54	Marietta	GA	30063	Air Force	3005 3010 3016
Guam Naval Hospital	Naval Hosp Guam	Naval Hosp Guam	GU	96638	Navy	103c
Pearl Harbor Naval Submarine Base.		Pearl Harbor	HI	96860	Navy	3010 103a
Pearl Harbor Naval Supply Center.	Naval Base	Pearl Harbor	HI	96860	Navy	3005 3010 103c 3016
Pearl Harbor Navy Public Works Center.	Naval Station Area	Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c 103a
WAPA-Hinton	PO Box 1012	Hinton	IA	51024	Energy	3005 3010 3016
BLM-Blue Dome Unauthorized Dump.	T10NR30ESec30	Blue Dome	ID	83464	Interior	103c
BLM-Central Cove Landfill	T3NR4WSec8,9	Caldwell	ID		Interior	3016 103c
BLM-Champaigne Creek Mine.	T3N R24E Sec15	Grouse	ID	83242	Interior	3016 103c
BLM-Delamar Silver Mine	T.15.S.R.35.E	Owyhee	ID		Interior	103c
BLM-Elk City	T29NR8ESec23	Elk City	ID	83525	Interior	3016 103c
BLM-Howe Dumpsite	T6NR29ESec31	Howe	ID	83244	Interior	103c
BLM-Menan Unauthorized Dump.	T6NR38ESec26&27	Madison	ID		Interior	103c
BLM Morgan's Pasture	T1N R35E Sec 33 & 34	Shelly	ID	83274	Interior	3010 103c
BLM-Owyhee Co. Grandview Landfill.	T6SR4ESec14	Bruneau	ID	83604	Interior	103c
BLM-Owyhee Co. Marsing/Homedale Landfill.	Johnson Rd. T4N R5W S32 SW¼.	Marsing-Homedale	ID	83639	Interior	103c
BLM-Owyhee Co. Wilson Creek Landfill.	T1SR34ESec13	Marsing	ID	83639	Interior	103c
BLM-Pesticide Dump Site, Reynolds.	T2SR3W Sec31	Reynolds	ID	83650	Interior	103c
BLM-Pesticide Dumpsite Sec. 5.	Boise Dist Sec. 5	Murphy	ID	83650	Interior	103c
BLM-Pullman Mine	T29N R4W S14	Cottonwood	ID	83522	Interior	103c
BLM-Springfield Dumpsite	T3SR32ESec12	Springfield	ID	83277	Interior	103c
BLM-Springfield Unauthorized Dumpsite.	T35NR32ESec15	Springfield	ID	83277	Interior	103c
BR-Minidoka Dam	Rt. 4, Box 292	Rupert	ID	83350	Interior	3010 3016
Danville Medical Center Hospital.	1900 E Main St	Danville	IL		Veterans Administration	103c
Fermi National Accelerator Laboratory.	Route 16 & 59 Kane County.	Batavia	IL	60510	Energy	3005 3010 3016 103c
Former Jeffersonville Quartermaster Depot.	Located on Segrams Property, Clark County.	Jeffersonville	IN	47130	Army	3016 103c
New Haven Defense Logistics Agency Depot.	State Rt. 14	New Haven	IN	46774	Defense Logistics Agency.	3010
Atchison Defense Industrial Plant Equipment Facility.	Old Rte 1	Atchison	KS	66002	Army	103c

FEDERAL FACILITIES DOCKET—Continued

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Region 7, Environmental Services Division Lab.	25 Funston Road	Kansas City	KS	66115	EPA	3005 3010 3016 103c
Fort Campbell	AFZB–FE–ECE	Fort Campbell	KY	42223	Army	3005 3010 3016 103c
Lexington Blue Grass Depot Activity.	US Hwy 421	Richmond	KY	40475	Army	3005 103c
Lexington-Bluegrass Army Depot.	Haley Rd	Lexington	KY	40511	Army	3005 3010 3016 103c 103a
Louisville Naval Ordnance Station.	Southside Dr. MDS 42	Louisville	KY	40214	Navy	3005 3010 3016
Paducah Gaseous Diffusion Plant.	PO Box 1410 Hobbs Road.	Paducah	KY	42001	Energy	3005 3010 3016 103c
FWS-Lacassine National Wildlife Refuge.	Route 1	Lake Arthur	LA	70549	Interior	103c
Martin Marietta Aerospace	13800 Old Gentilly Road	New Orleans	LA	70129	NASA	3005 3010 3016 103c
New Orleans Naval Air Station.	32 Belle Chase Hwy	Belle Chasse	LA	70037	Navy	3010 103c 103a
SPR-Weeks Island	2 mi NW of Cypremont	Cypremont	LA	70560	Energy	103c
SPR-West Hackberry Site	3.8 mi W of Hackberry, Hwy 390.	Hackberry	LA		Energy	103c
Bedford Hospital Wells 76 & 77.	Westview Street	Lexington	MA	02173	Veterans Administration	3010 103c
Boston Postal Service	135 A Street	Boston	MA	02210	Postal Service	3010
Woods Hole Coast Guard Base.	Little Harbor Road	Falmouth	MA	02543	Transportation	3010
Adelphi Laboratory Center	2800 Powder Mill Rd	Adelphi	MD	20783	Army	3005 3010 3016 103c
Annapolis Naval Academy	Annapolis Naval Complex	Annapolis	MD	21402	Navy	3005 3010 3016 103c
Defense National Stockpile Center.	710 Ordnance Road	Baltimore	MD	21226	Defense Logistics Agency.	3005 3010 3016 103c
Goddard Space Flight Center.	Greenbelt Road	Greenbelt	MD	20771	NASA	3010 103c
National Institute of Standards and Technology.	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010 103c
National Naval Medical Center.	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016 103c
NIH-Bethesda	9000 Rockville Pike	Bethesda	MD	20892	Health and Human Services.	3005 3010 3016 103c 103a
Casco Bay Defense Fuel Support Point.	Rt 123	South Harpswell Neck	ME	04079	Defense Logistics Agency.	3010 3016 103c
Gouldsboro Naval Security Group Activity.	Bldg 41 (operations site)	Gouldsboro	ME	04624	Navy	103c
Seal Island	C/O Seal Island National Wildlife Refuge.	Milbridge	ME	04658	Defense	103c
Searsport Defense Fuel Support Point.	Trundy Road Box 112	Searsport	ME	04974	Defense Logistics Agency.	3010 3016 103c
Winterharbor Naval Security Group Activity.	Route 186	Winterharbor	ME	04693	Navy	3010 103c
Ann Arbor Motor Vehicle Emission Laboratory.	2565 Plymouth Road	Ann Arbor	MI	48105	EPA	3010
Harrisville Defense Fuel Support Point.	US Hwy 23	Harrisville	MI	48740	Defense	103c
Tank Automotive Command.	6501 E. 11 Mile Rd, Macomb County.	Warren	MI	48090	Army	3005 3010 3016 103c
Minneapolis-St. Paul Bulk Mail Center.	3165 S. Lexington Ave	St. Paul	MN	55121	Postal Service	3010
BM-Rolla Research Center	1300 Bishop Ave	Rolla	MO	65401	Interior	103c
Defense Mapping Agency—FEE.	3200 S. Second Street	St. Louis	MO	63118	Defense Mapping Agency	3010
Defense Mapping Agency—FEE.	8900 S. Broadway	St. Louis	MO	63118	Defense Mapping Agency	3010
MO Aviation Classification & Repair Activity Depot.	2501 Lester Jones Ave	Springfield	MO	65803	Army	103c 3010
Mobile Incinerator	SE¼NW¼NW¼ Sec 20	McDowell	MO	65769	EPA	3010 103c
Schuster Farm	Sec 58 S17 T55N R33W	Gower	MO		Agriculture	103c
St. Louis	1222 Spruce	St. Louis	MO	63103	General Services Admin.	3005 3010
Engineering Environmental Waterway Laboratory.	PO Box 631	Vicksburg	MS	39180	Army	3005 3010 3016 103c
John C. Stennis Space Center.	SSC Bldg. 1100	Stennis Space Center	MS	39529	NASA	3005 3010 3016 103c
BLM-Jet Fuel Refinery Site.	T14NR31E 4 mi E of Mosby.	Mosby	MT		Interior	103c
BLM-Roundup Landfill	1.5 miles northwest of Roundup.	Roundup	MT		Interior	103c
BLM-Sluice Gulch Leaking Adit.	T6SR15WSec5		MT		Interior	103c
BLM-Thorium City Waste Dump.	T105R15WSec21, 22, 27, 28.	Grant	MT	59734–3016	Interior	3016 103c
BLM-Tungsten Mill Tailings.	T45W8WSec4, 5, 9	Glen	MT	59732	Interior	103c
FWS-Charles M. Russell Refuge.	T21N, R2E, Sec. 15	Turkey Joe Landing	MT	59457	Interior	3010 103c

FEDERAL FACILITIES DOCKET—Continued

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Malmstrom Air Force Base	Facility 1501 Perimeter Rd.	Great Falls	MT	59402	Air Force	3005 3010 3016 103c 103a
Albemarle Army Reserve Center.	1816 E. Main St	Albemarle	NC	28001	Army	3010 103c
Asheville Army Reserve Center.	224 Louisiana	Asheville	NC	28806	Army	3010 103c
Brevard Army Reserve Center.	E. French Broad St	Brevard	NC	28712	Army	3010 103c
Charlotte #1 Army Reserve Center.	1300 Westover Dr	Charlotte	NC	28205	Army	3010 103c
Cherry Point Marine Corps Air Station.	NC Hwy 101	Cherry Point	NC	28533	Navy	3005 3010 3016 103c
Durham #1 Army Reserve Center.	1228 Carrol St	Durham	NC	27701	Army	3010 103c
Durham #2 Army Reserve Center.	724 Foster St	Durham	NC	27701	Army	3010 103c
Fort Macon Coast Guard Station.	PO Box 237	Atlantic Beach	NC	28512	Transportation	3010 103c
Garner Army Reserve Center.	2017 Garner St	Garner	NC	27529	Army	3010 103c
Greensboro Army Reserve Center.	1120 Church St	Greensboro	NC	27405	Army	3010 103c
Greenville Army Reserve Center.	1391 N. Mem Dr	Greenville	NC	27834	Army	3010 103c
Hickory Army Reserve Center.	1500 12th Street NW	Hickory	NC	28601	Army	3010 103c
High Point Army Reserve Center.	156 Parris Ave	High Point	NC	28307	Army	3010 103c
Lumberton Army Reserve Center.	1400 Carthage Rd	Lumberton	NC	28358	Army	3010 103c
Morehead City Army Reserve Center.	405 Fisher St	Morehead City	NC	28557	Army	3010 103c
Nantahala National Forest-Swain County Landfill.	SR 1311	Bryson City	NC	28713	Agriculture	103c
National Institute of Environmental Health Science.	S on Alexander Dr	Research Triangle Park	NC	27709	Health and Human Services.	3005 3010 103c
National Marine Fisheries Service.	Pivers Island off US Hwy 70 West.	Beaufort	NC	28512	Commerce	3010 3016
Pope Air Force Base	317 CSG/CC	Pope AFB	NC	28308	Air Force	3005 3010 103c 3016
Raleigh Army Reserve Center.	3115 Western Blvd	Raleigh	NC	27606	Army	3005 3010 103c
Rocky Mount Army Reserve Center.	804 Fairview Rd	Rocky Mount	NC	28701	Army	3010 103c
Salisbury Army Reserve Center.	1825 Woodleaf Rd, PO Box 1927.	Salisbury	NC	28114	Army	3010 103c
Seymour Johnson Air Force Base.	4 CSG/DE	Seymour Johnson AFB	NC	27531	Air Force	3005 3010 3016 103c
Technology Center	Hwy 54 & Alexander Drive.	Research Triangle Park	NC	27711	EPA	3005 3010 3016
Wilmington Army Reserve Center.	2144 Lakeshore Dr	Wilmington	NC	28401	Army	3010 103c
Concrete Missile Early Warning Station.	DET 1 57 AD/DE	Concrete	ND	58221	Army	103c 3010 3005
Grand Forks Defense Fuel Support Point.	Grand Forks AFB 42D Street.	Grand Forks	ND	58201	Defense Logistics Agency.	3010 3016 103c
Minot Air Force Base	41 CSG/CC	Minot AFB	ND	58705	Air Force	3005 3010 3016 103c
North Dakota Agricultural Experiment Station.	1605 W. College St	Fargo	ND	58105	Agriculture	3010 3016 103c
Lincoln Naval Reserve Center.	1625 N 10th St	Lincoln	NE	68508	Navy	103c
Omaha Naval and Marine Corps Reserve Center.	Fort Omaha	Omaha	NE	68102	Navy	103c
Section 5 Impoundment	SW¼NW¼SE¼ of Sec 5.	Glenvil Township	NE		Agriculture	103c
Newington Defense Fuel Support Point.	Patterson Lane	Newington	NH	03801	Defense Logistics Agency.	3010 3016 103c
Bayonne Military Ocean Terminal.	Foot of 32nd Street	Bayonne	NJ	07002	Army	3005 3010 3016 103c 103a
East Orange Medical Center.	Tremont Ave	East Orange	NJ	07019	Veterans Administration	3010
Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c
FWS-Great Swamp National Wildlife Refuge.	RD 1, Box 152	Basking Ridge	NJ	07920	Interior	3016 103c
Hillsborough Supply Depot	Route 206	Hillsborough TWP	NJ	08853	Veterans Administration	103c
Lyons Medical Center	Knollcraft Road	Lyons	NJ	07939	Veterans Administration	3010 103c
NOAA/NMFS/NEFC	Sandy Hook Laboratory	Highlands	NJ	07732	Commerce	3005 3010
NPS-Gateway National Recreational Area.	Fort Hancock	Sandy Hook—Brooklyn	NJ	07732	Interior	3010 3016 103c

FEDERAL FACILITIES DOCKET—Continued

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
SFC NV Brittan Army Reserve Center.	39th and Federal Street	Camden	NJ	08105	Army	3010
Somerville Depot	Route 206	Somerville	NJ	08876	General Services Administration.	103c
Storck Army Reserve Center.	Shore Road	Northfield	NJ	08225	Army	3010
Stryker Reserve Center	2150 Nottingham Way	Trenton	NJ	08619	Army	3010
BLM-Flora Vista Landfill	T30NR12WSec3	Flora Vista	NM	87415	Interior	3016 103c
BLM-Hyde Mine	35/32/46 & 108/41/26	Gallup	NM	87301	Interior	103c 3016
BLM-South Farmington Sanitary Landfill.	T29NR13WSec20	Farmington	NM	87401	Interior	3016 103c
BLM-Standard Transpipe Corp.	T17SR9ESec18,19	Alamogardo	NM	88310	Interior	103c 3016
BLM-Waterflow Landfill	T30 NR 16W Sec35	Waterflow	NM	87421	Interior	103c 3016
Cibola National Forest	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c
Fort Wingate Depot Activity.	10 Miles East of Gallup on I–10.	Gallup	NM	87310	Army	3005 3010 3016 103c
Gasbuggy	T29N, R4W S36; 55 M E. of Farmington.	Dulce (NEAR)	NM		Energy	103c
La Bajada Mine	1.25 mi upstream from La Bajada.	La Bajada	NM		Agriculture	103c
Lovelace Inhalation Toxicology Research Institute.	Bldg. 9200, Kirtland AFB East.	Albuquerque	NM	87185	Energy	103c 3016
BLM-Henderson Landfill	T21S R63E Section 28, 29.	Henderson	NV		Interior	103c
BLM-Rio Tinto Copper Mine.	Sec 10 & 11 T45N R53E MDM.	Mountain City	NV	89831	Interior	103c
Tonopah Test Range (Sandia National Laboratory).	PO Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a 3016
Aids to Navigation Team	7063 Lighthouse Drive	Saugerties	NY	12477	Transportation	3010
Bellmore Maintenance Facility.	2755 Maple Ave	Bellmore	NY	11710	Army	3010
BLM-Pennsylvania Ave/Fountain Ave Landfills.	Pennsylvania Ave, Shore Pkwy.	Brooklyn	NY	11207	Interior	3010
Brooklyn Information Agency.	29th & 3rd Ave, Door 15	Brooklyn	NY	11232	General Services Admin	3010
Brooklyn Naval and Marine Corps Reserve Center.	Floyd Bennett Field	Brooklyn	NY	11234	Navy	103c
Colonie Interim Storage Site.	1130 Central Ave	Colonie	NY	12205	Energy	3005 3010 3016
Emmanuel Cellard Federal Bldg. 225CA.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Admin	3010
Federal Building	252 7th Ave	New York	NY	10001	General Services Admin	3010
Fort Hamilton	Ft Hamilton	Brooklyn	NY	11252	Army	3010 103c
Fort Totten	Bayside	Queens	NY	11359	Army	3010 103c
FWS-Iroquois National Wildlife Refuge.	Casey Rd	Alabama	NY	14003	Interior	3016 103c
FWS-Montezuma National Wildlife Refuge.	3395 Route 5 & 20 East	Seneca Falls	NY	13148	Interior	3010 3016 103c
Hancock Field	Taft and Thompson Roads.	North Syracuse	NY	13212	Air Force	3010 3016 103c
Merchandise Control Sales Section.	6 World Trade Center	New York	NY	10048	General Services Admin	3010
Mitchel Field Housing Facility.	NAVSTA New York Housing Office, Bldg. 19, West Road, Mitchel Field.	Garden City	NY	11530	Navy	103c
Mitchel Manor Housing Facility.	NAVSTA New York Housing Office, 85 A Mitchel Avenue.	East Meadow	NY	11554	Navy	103c
New York	201 Varick St	New York	NY	10014	General Services Admin	3010
New York Naval Station	207 Flushing Ave	Brooklyn	NY	11251	Navy	3010 103c
Niagara Falls Air Force Reserve Facility.	914 TAG/DE PO Box F LaSalle Station.	Niagara Falls IAP	NY	14304	Air Force	3005 3010 3016 103c
NPS-Gateway National Recreational Area.	Floyd Bennett Field	Brooklyn	NY	11234	Interior	103c
Plant #38	Porter & Balmer Rds	Porter Twp	NY	14131	Air Force	3005 3010 3016 103c
Plum Island Animal Disease Center.	Plum Island	Orient Point	NY	11957	Agriculture	3016 103c
Roosevelt Army Reserve Center.	101 Oak St	Hempstead	NY	11550	Army	3010
Support Center Governor's Island.	C/O US Coast Guard Group.	Governor's Island	NY	10004	Transportation	3010 103c
Verona Defense Fuel Support Point.	Main St	Verona	NY	13478	Defense Logistics Agency.	3010 3016 103c
Watervliet Arsenal	Broadway	Watervliet	NY	12189	Army	3005 3010 3016 103c

FEDERAL FACILITIES DOCKET—Continued

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
West Point Military Academy.	Stewart Army Subpost	West Point	NY	10996	Army	3016
West Point Military Academy.	RT 9W—Bldg 733	West Point	NY	10996	Army	3005 3010 3016 103c
Andrew W. Breidenbach Environmental Research Center.	26 W. St. Clair Street	Cincinnati	OH	45268	EPA	3005 3010 3016
Center Hill Hazardous Waste Engrg Research Lab.	5595 Center Hill Road	Cincinnati	OH	45268	EPA	3005 3010 3016
Cincinnati Defense Fuel Support Plant.	4820 River Rd Hamilton County.	Cincinnati	OH	45233	Defense Logistics Agency.	3010 3016 103c
Columbus Defense Construction Supply Center.	3990 E. Broad St. Franklin County.	Columbus	OH	43215	Army	3005 3010 3016 103c
Electronic Supply Center	1507 Wilmington Pike, Montgomery County.	Dayton	OH	45444	Defense	3010 3016 103c
Lima Defense Plant Representative Office.	Defense Logistics Agency, DPRO General Dynamics—Lima, 1155 Buckeye Rd.	Lima	OH	45804–1898	Army	3010 3016 103c
Testing and Evaluation Facility.	1600 Gest Street	Cincinnati	OH	45203	EPA	3005 3010 3016
BIA-Caddo County Landfill #1.	SE/4 Sec7 T5N R11W SW/4 Sec8.	Apache	OK		Interior	103c
BLM-Minexco Millsite	T9SR42ESec8	Baker	OR	97814	Interior	3016 103c
BLM-Slides Dump Site	T15SR46Sec35,LOTS1,2	Ontario	OR	97914	Interior	3016 103c
Willamette Falls Locks	West Linn	West Linn	OR	97068	Corps of Engineers, Civil	103c 3016
Bettis Atomic Power Laboratory.	P.O. Box 109 Bettis Rd	West Mifflin Borough	PA	15122–0109	Energy	3005 3010 3016 103c
Chas Kelly Support Center	US Army	Oakdale	PA	15071	Army	3010 103c
Greater Pittsburgh International Airport.	911 TAG/DE	Pittsburgh	PA	15231	Air Force	3016 103c
NPS-Gettysburg National Military Park.	RD 1	Gettysburg	PA	17325	Interior	103c
NPS-Valley Forge National Historic Park.	Rte 23	Valley Forge	PA	19481	Interior	103c 3010
Philadelphia Defense Personnel Support Center.	2800 S 20th St	Philadelphia	PA	19101	Army	3005 3010 3016
Borinquen Coast Guard Air Station.	Ramey Air Force Base	Aquadilla	PR	00604	Transportation	3010 103c
Camp Garcia #1	Vieques	Vieques	PR	00765	Navy	103c
Ceiba Naval Station	Roosevelt Roads	Ceiba	PR	00635	Navy	3005 3010 3016 103c
Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c
Roosevelt Roads Naval Station.	Villa Verde St., Drydock and Repair Facility.	Miramar	PR	00903	Navy	3005 3010 3016
Beavertail Point Radar Station.	OFF Beavertail Rd	Jamestown	RI	02835	Defense	3016
Beaufort Marine Corps Air Station.	Lafrene Road	Beaufort	SC	29904	Navy	3005 3010 3016 103c 103a
Beaufort Naval Hospital	SC Highway 280	Beaufort	SC	29902	Navy	3010
Charleston Naval Shipyard	Viaduct Road	Charleston	SC	29408	Navy	3005 3010 3016
Charleston Air Force Base	437 ABG/CC	Charleston AFB	SC	29404	Air Force	3005 3010 3016 103c
Charleston Defense Fuel Supply Point.	N Rhett Ave	Hanahan	SC	29406	Defense Logistics Agency.	3010 3016
Charleston Naval Weapons Station South Annex.	Remount Road	North Charleston	SC	29406	Navy	103c
Myrtle Beach Air Force Base.	354 CSG/DE	Myrtle Beach	SC	29577	Air Force	3005 3010 3016 103a
Parris Island Marine Corps Recruit Depot.	Marine Corps Recruit Depot.	Parris Island	SC	29905	Navy	3005 3010 3016 103a
Shaw Air Force Base	363 CSG/DE	Shaw AFB	SC	29152	Air Force	3005 3010 3016 103c
Training Center and Fort Jackson.	Jackson Blvd	Fort Jackson	SC	29207	Army	3005 3010 3016 103a
Silver King Mines Inc	US Hwy. 18	Edgemont	SD	57735	Tennessee Valley Authority.	3010 103c
Allen Fossil Plant	2574 Plant Rd	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c 103a
Arnold Engineering Development Center.	TN Hwy 127	Arnold Air Force Base	TN	37389 3010	Air Force	3005 3010 3016 103c 103a
Bull Run Fossil Plant	Edgemoor Rd., 6 mi SE of Oak Ridge.	Oak Ridge	TN	37930	Tennessee Valley Authority.	3010
Cumberland Fossil Plant	TN Highway 149 South	Cumberland City	TN	37050	Tennessee Valley Authority.	3010
Hartsville Site	TN Hwy 25	Hartsville	TN	37050	Tennessee Valley Authority.	3010
Holston Army Ammunition Plant.	West Stone Drive	Kingsport	TN	37660	Army	3005 3010 3016 103c
John Sevier Fossil Plant	TN Hwy 70E	Rogersville	TN	37134	Tennessee Valley Authority.	3005 3010 103c

FEDERAL FACILITIES DOCKET—Continued

[SEA Status Facilities]

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism
Kingston Fossil Plant	Off I-40 East	Kingston	TN	37763	Tennessee Valley Authority.	3005 3010 103c
Memphis Naval Air Station	Millington-Arlington Road	Millington	TN	38054	Navy	3005 3010 3016 103c
Sequoyah Nuclear Plant	Hixson Pike Rd	Daisys	TN	37319	Tennessee Valley Authority.	3005 3010 103c
Watts Bar Nuclear Plant	TN Hwy 68	Spring City	TN	37381	Tennessee Valley Authority.	3005 3010 103c
Air Defense Center & Fort Bliss.	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a
Canyon Lake Recreation Area.	North Side of Canyon Lake (By Dam).	San Antonio	TX	78234	Army	103c
Corpus Christi Army Maintenance Support Activity.	2022 Saratoga	Corpus Christi	TX	78415	Army	3005 3010 103c
Dyess Air Force Base	96 CSG/CC	Abilene	TX	79607	Air Force	3005 3010 3016 103c 103a
Galveston Coast Guard Base.	Ferry Road	Galveston	TX	77550	Transportation	3010
Houston Laboratory	6608 Hornwood Dr	Houston	TX	77074	EPA	3010 103c
L.B. Johnson Space Center.	2101 NASA Road	Houston	TX	77058	NASA	3005 3010 3016 103a
NPS-Padre Island National Seashore Bone Yard.	Park Road 22	Corpus Christi	TX	78418	Interior	3010 3016 103c
Unidentified Site	US Forest Service Property.	Huntsville	TX		Agriculture	103c
BLM-Chevron Red Wash Unit.	T7SR7ESec22	Vernal	UT	84078	Interior	3016 103c
BLM-Desert Mound Mine	T35NR13WSec35	Cedar City	UT	84720	Interior	3016 103c
BLM-Frye Canyon Tailing	T36SR16ESec34	Hite	UT	84511	Interior	3016 103c
BLM-Ore Buying Station-MOAB.	T26SR22E Sec6PARCLABC.	MOAB	UT	84532	Interior	3016 103c
Arlington Hall Station	US Army	Warrenton	VA	22186	Army	3010 103c
Arlington Marine Corps Battalion Headquarters Arl.	Henderson Hall	Arlington	VA	22214	Navy	103c
Oyster Point Development Corp.	610 Thimble Shoals Blvd	Newport News	VA	23601	Air Force	103c
Roanoke Navy and Marine Corps Reserve.	5301 Barnes Ave	Roanoke	VA	24019	Navy	3010 103c
BLM-Enlo Powerhouse aka Similkameen.	T40NR27ESec13	Oroville	WA	98844	Interior	103c
BR-Grand Coulee Dam Project.	PO Box 620	Grand Coulee	WA	99133	Interior	3010 3016
FS-Forest Production Laboratory.	502 Walnut Street	Madison	WI	53705	Agriculture	3005 3010
WAPA-Casper Field BR	W of Mt View on Spider Rd.	Mills	WY	82644	Energy	103c

[FR Doc. 93-1052 Filed 2-4-93; 8:45 am]

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federal register

Friday
February 5, 1993

Part III

Department of Transportation

Coast Guard

33 CFR Part 150, et al.
Response Plans; Interim Final Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 150 and 154

[CGD 91–036]

RIN 2115–AD62

Response Plans for Marine Transportation-Related Facilities

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is establishing regulations requiring response plans for marine transportation-related (MTR) facilities including deepwater ports, certain Coast Guard-regulated onshore facilities, marinas, tank trucks, and railroad tank cars. This interim final rule (IFR) also establishes additional response plan requirements for facilities located in Prince William Sound, Alaska, permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA). This IFR addresses all MTR facilities that could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the United States, adjoining shorelines, or the exclusive economic zone. Regulations requiring facility response plans and discharge removal equipment are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990. The purpose of requiring facility response plans and discharge removal equipment is to enhance private sector planning and response capabilities to minimize the environmental impact of spilled oil.

DATES: Effective Date. This interim final rule is effective February 5, 1993, except for §§ 154.1110 through 154.1140 of subpart G. Sections 154.1110 through 154.1140 are effective August 18, 1993.

The Director of the **Federal Register** approves as of February 5, 1993, the incorporation by reference of certain publications listed in the regulations.

Comment Closing Date. Comments on this interim final rule, as requested below, must be received on or before April 6, 1993.

ADDRESSES: Comments must be in writing and may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–036), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (202) 267–1477. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rule. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection in room B–718, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Walter (Bud) Hunt, Project Manager, Oil Pollution Act (OPA 90) Staff, (G–MS–1), (202) 267–6740. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, this interim final rule is being issued without a prior notice of proposed rulemaking and it becomes effective on February 5, 1993. Timely exercise of the Coast Guard's statutory responsibilities under the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) requires this action and to do otherwise would be contrary to the public interest.

Section 4202(a) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)) to establish requirements for marine transportation-related (MTR) facility response plans. Section 4202(b)(4) of OPA 90 specifies an implementation schedule for these provisions. MTR facility response plans must be submitted to the Coast Guard by February 18, 1993, and MTR facilities must be operating in compliance with their plans by August 18, 1993. MTR facilities not complying with these dates are prohibited from handling, storing, or transporting oil after the applicable dates. OPA 90 also established a statutory deadline for the publication of regulations to implement response plan requirements. These regulations were to be published by August 18, 1992. Because of the statutory deadline for submission of response plans and the need to assist the regulated community to prepare response plans, any further delays in issuing these regulations would create a hardship on the regulated community and prevent timely enforcement of the response plan provisions of OPA 90. Therefore, it has been determined that good cause exists for omitting prior notice and comment on the proposed rule and making the rule effective immediately.

The Coast Guard did publish an advance notice of proposed rulemaking (ANPRM) on these regulations in the March 11, 1992 **Federal Register** (57 FR 8708). The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM posed questions for public comment. The Coast Guard received 116 comments. Each of the comment letters was considered in developing these regulations.

Request for Comments

Although a further opportunity for public comment had not been provided prior to issuing this interim final rule, additional public input is now requested. The Coast Guard is particularly interested in comments that are based on experience gained in preparing response plans that meet the requirements of this rule.

Accordingly, persons wishing to comment may do so by submitting written comments to the address listed under **ADDRESSES.** Commenters should include their names and addresses, identify this rulemaking (CGD 91–036) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope.

Comments should be submitted on or before the Comment Closing Date listed in the "**DATES**" section in this preamble in order to receive timely consideration; however late comments will be considered to the extent practicable. The rule may be changed based upon the comments received.

The Coast Guard plans no public hearing at this time. Persons may request a public hearing by writing to the Marine Safety Council at the address under "**ADDRESSES.**" Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Lieutenant

Commander Walter (Bud) Hunt, Project Manager, and Jacqueline Sullivan, Project Counsel, Oil Pollution Act (OPA 90) Staff, (G–MS–1).

Background and Purpose

In recent years several catastrophic oil spills have threatened the marine environment of the United States. Among these were the EXXON VALDEZ in Prince William Sound, Alaska, the AMERICAN TRADER in California's coastal waters, the MEGA BORG in the Gulf of Mexico, and the major discharge from the Ashland Oil Terminal into the Monongahela River at Floreffe, Pennsylvania. These spills had extensive impact on the marine environment, including the loss of fish and wildlife.

In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380). Section 4202(a) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)). It set out the requirements for facility response plans and periodic inspections of discharge-removal equipment in sections 311 (j)(5) and (j)(6), respectively. Section 4202(b)(4) of OPA 90 established an implementation schedule for these provisions.

As amended, section 311(j)(5) of the FWPCA requires owners or operators of certain facilities to submit response plans to the President. This requirement applies to facilities that could reasonably be expected to cause substantial harm to the environment by discharging oil or a hazardous substance into or on the navigable waters of the United States, adjoining shorelines, or the exclusive economic zone.

As amended, section 311(j)(5) also directs the President to issue regulations implementing the new FWPCA requirements for facility response plans. This authority has been delegated by Executive Order 12777 (3 CFR, 1991 Comp.; 56 FR 54757) to the Administrator of the Environmental Protection Agency (EPA), the Secretary of the Department of the Interior (DOI), and the Secretary of the Department of Transportation (DOT).

Under Executive Order 12777, the EPA is drafting regulations for non-transportation-related fixed onshore facilities. DOI's Minerals Management Service is drafting regulations for response plans for non-transportation-related offshore facilities and transportation-related pipelines linking oil production platforms to onshore facilities. The DOT is drafting regulations for transportation-related onshore facilities, and deepwater ports subject to the Deepwater Ports Act of 1974, as amended (33 U.S.C. 1501, *et seq.*). The Secretary of Transportation, in 49 CFR 1.46(m) (57 FR 8581; Mar. 11, 1992), further delegated the authority for regulating MTR facilities to the Commandant of the Coast Guard. Thus, the Coast Guard has drafted these regulations for MTR facilities. The Research and Special Programs Administration will issue separate regulations for non-marine transportation-related onshore facilities. Since several Federal agencies are drafting regulations requiring facility response plans, these agencies have been meeting to discuss and coordinate development of the regulations.

This rule addresses only MTR facilities that handle, store, or transport oil. Response plans for MTR facilities that handle, store, or transport hazardous substances will be the subject of a separate rulemaking at a later time.

A separate NPRM has been published in the **Federal Register** addressing vessel response plans. See CGD 91–034/CGD 90–068, (57 FR 27514, June 19, 1992).

Section 311(j)(5) of the FWPCA requires the preparation and submission of response plans from all onshore facilities that could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. Response plans submitted for those onshore facilities that could cause significant and substantial harm to the environment by such discharges must meet additional review and approval requirements. OPA 90 does not define the distinction between "substantial harm" and "significant and substantial."

The OPA 90 Conference Report (Report 101–653) states that the President is to develop nationwide criteria to determine those facilities which could reasonably be expected to cause substantial harm to the environment and are therefore required to submit plans. The report also states that the criteria should result in a broad requirement for facility owners or operators to prepare and submit response plans.

OPA 90 mandated several deadlines for MTR facility response plans. After February 18, 1993, an MTR facility required to have a response plan may not handle, store, or transport oil unless a plan has been submitted to the Coast Guard. After August 18, 1993, a facility required to have a response plan may not handle, store, or transport oil unless it is operating in compliance with the plan, and in the case of a facility for which a response plan must be reviewed, it has been approved by the Coast Guard.

The Coast Guard will authorize an MTR facility which could reasonably be expected to cause significant and substantial harm to the environment and has submitted a response plan to continue to operate for up to 2 years from plan submission without agency approval of the response plan. However, the owner or operator of the facility must certify that he or she has ensured by contract or other means acceptable to the Coast Guard the availability of private personnel and equipment adequate to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge.

Section 311(j)(5) of the FWPCA requires that, in a facility response plan, an owner or operator identify and ensure by contract or other means approved by the President the availability of private personnel and equipment sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate or prevent substantial threat of such a discharge. A worst case discharge for a facility is defined in section 311(a)(24) of the FWPCA, as amended by section 4201 of OPA 90, as the largest foreseeable discharge in adverse weather conditions. The statute does not further define a "foreseeable discharge" or "adverse weather."

A major objective of the OPA 90 amendments to section 311(j)(5) of the FWPCA is to create a national planning and response system. Certain worst case discharges, such as those also involving a fire or explosion at the facility, could require the use of both private and public response resources.

Section 5005 of OPA 90 establishes requirements for response plans for MTR facilities located in Prince William Sound, Alaska, which are permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651, *et seq.*). This section requires a level of preparedness for facilities in Prince William Sound which is in addition to the requirements of section 311(j) of the FWPCA. These statutory requirements are intended to provide an even greater margin of safety in Prince William Sound by requiring prepositioned response equipment; an oil spill removal organization; special training for residents; periodic inspections, testing, and certification of response equipment; and exercises for the trained personnel and spill removal equipment.

Response Plans for Marine Transportation-related (MTR) Facilities

Marine transportation-related facilities are defined in the rule as any onshore facility, including piping and any structure used to transfer oil to or from a vessel, and any deepwater port subject to regulation under 33 CFR part 150.

Substantial Harm Facilities

This rule requires the owners or operators of all MTR facilities which could reasonably be expected to cause substantial harm to the environment to prepare and submit a response plan. Generally, fixed and mobile facilities (tank trucks and railroad tank cars) that are used, or intended to be used for, transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more, fall within this substantial harm category.

Fixed and mobile MTR facilities that are capable of transferring oil, in bulk, only to or from a vessel with a capacity of less than 250 barrels (such as marinas and tank trucks fueling recreational vessels) could not reasonably be expected to cause substantial harm to the environment and will not be required to prepare and submit response plans. However, if the COTP determines that a worst case discharge from a specific facility could reasonably be expected to cause substantial harm to the environment, that facility will be required to prepare and submit a response plan to the COTP.

The Coast Guard believes that mobile facilities that are used for, or intended to be used for, transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more are as reasonably likely to cause substantial harm to the environment as are fixed facilities when conducting oil transfer operations to vessels. When mobile MTR facilities conduct operations alongside or over navigable waters, discharges from these operations are likely to enter the water before effective containment actions can be initiated on the shore or pier.

Mobile facilities that are used for, or intended to be used for transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more are classified as substantial harm facilities. These facilities, which under 33 CFR 154 are already required to have an operations manual and a valid letter of adequacy issued by the cognizant COTP, will be required to prepare and submit response plans but will not be required to execute a formal contract for pollution response resources. These response plans will be required to identify response contractors or response resources they are likely to employ in the event of a worst case discharge. They will also be required to store limited amounts of containment boom and sorbent materials that will be required to be ready for deployment within 1 hour after notification of a discharge of oil. This reduced response planning standard recognizes that these mobile MTR facilities represent a lesser threat to the environment than large fixed MTR facilities.

Significant and Substantial Harm Facilities

This rule requires the owners or operators of deepwater ports and large fixed MTR facilities that could reasonably be expected to cause significant and substantial harm to the environment in the event of a worst case discharge to prepare and submit their response plans for approval by the Coast Guard. Large fixed MTR facilities are those facilities that are capable of transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more. These facilities may operate for up to 2 years pending approval of a submitted response plan provided that the facility owner or operator certifies that private personnel and equipment are available, by contract or other approved means, to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of a discharge.

The Coast Guard is placing most fixed MTR facilities regulated under 33 CFR 154.100(a) in the category of significant and substantial harm. Section 154.100(a) makes part 154 applicable to each fixed facility that is capable of transferring oil in bulk to or from a vessel with a capacity of 250 or more barrels. These facilities are placed in this category based on their proximity to navigable waters, adjoining shorelines, or the exclusive economic zone; their oil storage capacity; and the nature of their operations.

Deepwater ports, regulated under 33 CFR part 150, are also covered by the rule. As an offshore facility, a deepwater port must prepare and submit a response plan for review and approval under section 311(j)(5). For MTR facilities that can be reasonably expected to cause significant and substantial harm, the rule provides that once the Coast Guard has reviewed a plan, it will return for amendment any plan that does not meet the requirements set forth under the provisions of the amended section 311(j)(5) of the FWPCA. It also requires the Coast Guard to approve any plan that does comply with those provisions.

Adjustments to Facility Classification

The rule will permit any MTR facility owner or operator believing that his or her facility would not cause substantial or significant and substantial harm as a result of a worst case discharge of oil, to request the cognizant Coast Guard Captain of the Port (COTP) to reclassify the facility. The COTP, when reviewing this information, will consider factors such as the type and age of the facility, spill history, location of public and commercial water intakes, and other relevant factors. A procedure is included for appealing the COTP determination.

Equipment Availability and Criteria

This rule establishes the criteria for worst case discharge and requires MTR facilities to identify private personnel and equipment available, by contract or other approved means, sufficient to remove, to the maximum extent practicable, a worst case discharge and to mitigate and prevent a substantial threat of such a discharge. Separate guidance is being developed that includes inspection requirements for the major pieces of equipment required to contain and clean up oil discharges.

The Coast Guard proposed, in its vessel response plan NPRM (57 FR 27514, June 19, 1992), certain criteria for determining the amount of equipment required to respond to a discharge of oil. Many comments were received by the Coast Guard on the criteria proposed in the vessel response plan NPRM. The criteria in that NPRM have been modified and where appropriate, this rule uses the same criteria for facility response plans to provide consistency between the two regulations. The criteria provide guidelines and standards for non-persistent oils and Group II through Group IV persistent oils which both the MTR facility owner or operator and the Coast Guard COTP will apply in determining whether a facility has sufficient equipment to respond to a specified spill scenario.

This rule requires that a response plan for an MTR facility identify only private response resources. These resources will comprise the majority of personnel and equipment available for the national planning and response system. Furthermore, the equipment, training, and experience of these organizations will be essential to any successful pollution response effort. The integration and coordination of public and private response resources will be addressed in the applicable Area Contingency Plans.

This rule also addresses response plan requirements for TAPAA facilities in Prince William Sound, Alaska. These additional requirements appear in Subpart G of this rule.

Advance Notice of Proposed Rulemaking

The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on this rule in the March 11, 1992 **Federal Register** (57 FR 8708). The ANPRM discussed the background, statutory requirements of section 311(j) of the FWPCA, and possible regulatory approaches. In addition, the ANPRM posed questions for public comment. The Coast Guard received 116 comments. Each of the comment letters was considered in developing this rule.

Though there is a wide disparity of positions in the comments on the MTR facilities response plan ANPRM, a number of issues seem to have engendered the most concern.

A recurring concern expressed in the responses was the need to avoid conflicting regulations. Many commenters from industry feel that existing Spill Prevention, Control, and Countermeasures (SPCC) plans required by EPA under 40 CFR 112 and operations manuals required by the Coast Guard under 33 CFR 154 are completely adequate and that further requirements will constitute over-regulation. State government agencies expressed concern that the new regulations may conflict with existing or pending State regulations, despite the statutory requirement that Federal laws and regulations not preempt State response planning laws. Many comments reflected a desire for the new regulations to be flexible.

The Coast Guard believes that this rule provides the maximum flexibility practicable in establishing requirements for response plans. The Federalism section of this IFR contains a discussion on the issue of preemption.

Comments from private terminal operators called for regulations that were less stringent than State regulations. Members of industry expressed concern that they will be required to prepare for circumstances which are simply too unlikely to occur. They feel that this will cost too much and some small facilities are concerned that they may not be able to comply. Some mentioned that they may be able to acquire the required equipment but may not have the manpower at the facility to deploy it.

All response plans must meet the statutory requirements set out in OPA 90. However, this IFR does provide for reduced requirements for mobile MTR facilities, fixed facilities that handle, store, or transport Group V petroleum oils, and fixed facilities that handle, store, or transport non-petroleum oils.

Many comments address the lack of definition of the terms "substantial harm" to the environment and "significant and substantial harm" to the environment, "average most probable discharge," and "worst case discharge." The definition of these terms will substantially affect them.

Accordingly, the Coast Guard has provided definitions for these terms in this IFR and provided for individual determinations, where appropriate.

Many commenters stated that the Coast Guard should require all plans to be submitted, reviewed, and approved. However, OPA 90 specifically requires only significant and substantial harm facilities to submit response plans for review and approval. Facilities which fall in the category of substantial harm must still submit response plans to the Coast Guard; but those plans do not require formal approval. They may be reviewed by the COTP and deficiencies will need to be corrected.

Some comments mentioned that a good way to increase prevention efforts would be to provide incentives in the form of less stringent response requirements. Most agreed that the qualified individual identified in the plan should be on a local level, and that multiple-terminal operators should have some kind of local response plan even if they maintain a corporate plan as well. Most comments requested that one lead agency be responsible for approving plans and that the Coast Guard is probably the most appropriate agency. Several mentioned that facilities handling edible oil should be exempt from the regulations. They also felt that the regulations should be consistent with the vessel response plan regulations and the area contingency plans. Some requested public hearings, particularly in Alaska.

There was a great deal of disagreement about the certification of contractors and equipment, and frequency of drills. Commenters also disagreed over whether facility response personnel should be required to do more than just control and report a spill. There were comments on whether the response plan should be an annex to the operations manual or a separate document in itself. Many disagreed about the possibility of lending equipment; most think some lending should be allowed, although that would be impossible for some areas, such as American Samoa and Alaska, particularly during bad weather.

Louisiana Offshore Oil Port Inc. (LOOP) provided comments on the ANPRM regarding the application of OPA 90-mandated response planning requirements to its facility. LOOP INC. contends that the response plan regulations should not apply to LOOP as it is regulated under the Deepwater Port Act (DPA) of 1974 (33 U.S.C. 1501–1524). As a deepwater port, the Coast Guard recognizes that LOOP is regulated under 33 CFR part 150 and must prepare an operations manual in accordance with 150.105. However, section 311(j)(5) of the FWPCA, as amended by 4202(b)(4) of OPA 90, requires all offshore facilities to prepare and submit response plans to the President. Deepwater ports are included in the statutory definition of offshore facilities. The authority to impose response plan requirements on deepwater ports was specifically delegated to DOT under section 2(d)(2) of Executive Order 12777 (56 FR 54757; Oct. 22, 1991). This authority was subsequently delegated to the Coast Guard (57 FR 8581; March 11, 1992). These facilities must prepare response plans meeting the requirements of section 311(j)(5) of the FWPCA and the Coast Guard must review the plans and approve them when they meet the requirements for a response plan.

Recommendations of Oil Spill Response Plan Negotiated Rulemaking Committee

To gather information for the Vessel Response Plan NPRM, the Coast Guard established an Oil Spill Response Plan Negotiated Rulemaking Committee (56 FR 58202, November 18, 1991). Meeting dates of the Committee were published on January 10, 1992 (57 FR 1139). Committee sessions were held between January 8th and March 27th, 1992. After its last meeting, the Committee provided the Coast Guard with a final report.

The Coast Guard used information in this final report to develop the vessel response plan NPRM. To maintain consistency between the two regulations, this rule uses certain concepts contained in the vessel response plan NPRM. Thus, this rule contains certain conclusions found in the Committee's final report.

Copies of the Committee's final report and all documents considered by the Committee during its meetings are in the public docket for that rulemaking (CGD 91–034).

Navigation and Vessel Inspection Circular 7–92, Interim Guidelines for Development and Review of Response Plans for Marine Transportation-Related Facilities Including Deepwater Ports

Given the statutory deadline for the submission of response plans by facility owners or operators, the Coast Guard promulgated Navigation and Vessel Inspection Circular (NVIC) 7–92 dated September 23, 1992. The NVIC provided guidance to the marine industry for preparing response plans for certain facilities, as required by the OPA 90 amendments to the FWPCA. The Coast Guard will accept a response plan based on the NVIC to meet the February 18, 1993 submission deadline, as well as a response plan meeting this interim final rule. The owner or operator of a facility that submits a response plan based on the NVIC, shall so indicate that in a letter accompanying the plan submission. Only then will the plan be reviewed for approval based on the provisions contained in the NVIC. However, any response plan submitted after February 18, 1993 must meet the requirements of this interim final rule. After August 18, 1993, all facilities must be operating in compliance with their plan and "significant and substantial harm" facilities must have an approved plan or have been authorized by the Coast Guard in writing to operate pending approval of a submitted plan.

Discussion of Amendments

To implement the requirements of section 311(j)(5) of the FWPCA, as amended, the Coast Guard is defining those MTR facilities required to prepare and submit oil spill response plans and establishing the format and the content of those plans. These plans are necessary to ensure the availability of sufficient spill response resources. The following is a section-by-section summary of the rule.

33 CFR Part 150, Subpart A—General

Section 150.129 Response Plans

This rule amends 33 CFR part 150 to require the owner or operator of a deepwater port to prepare and submit a response plan to the COTP. As an offshore facility, a deepwater port must prepare and submit a response plan under section 311(j)(5). The response plan must be prepared and submitted for review and approval in accordance with 33 CFR part 154, subpart F. The Coast Guard has previously addressed the contention of LOOP INC. that OPA 90 response planning regulations should not be applied to that facility.

33 CFR Part 154, Subpart A—Response Plans

Section 154.100 Applicability

The rule amends § 154.100 by revising paragraph (a) and adding paragraph (c). Paragraph (a) is revised to clarify that only those mobile facilities that are actually being used or are intended to be used to transfer oil, in bulk, to or from a vessel with a capacity of 250 barrels or more are required to prepare and submit facility response plans. The revision to paragraph (a) and addition of paragraph (c) allows the COTP to apply this subpart to all MTR facilities not originally categorized as "substantial harm" facilities as defined in subpart F.

Section 154.106 Incorporation by Reference

This section incorporates by reference four standard test methods developed by the American Society for Testing and Materials (ASTM). These test methods are acceptable means to evaluate the performance capabilities of oil booms and recovery devices for purposes of §§ 154.1045, 154.1047, and 154.1049 as discussed below. ASTM is in the process of updating these standards as well as developing new standards for response equipment performance evaluation. The Coast Guard is an active participant in this process and will revise this section as necessary to reflect applicable standards subsequently adopted by ASTM and determined appropriate by the Coast Guard.

33 CFR Part 154, Subpart F—Response Plans

Section 154.1010 Purpose

This section describes the purpose of this rule and notes that the requirements set forth in the rule are for planning purposes only. The requirements are not performance standards. They are intended to be used by an MTR facility owner or operator to develop a plan for responding to the facility's worst case discharge in adverse weather to the maximum extent practicable. Actual conditions during a spill event may not permit the arrival of the resources within the prescribed timelines; however, actual conditions may also permit faster response times in some situations.

The development of a response plan and the necessary training and drills to ensure its proper implementation, is a means that prepares the MTR facility owner or operator for an emergency situation. The response plans are not to help government response agencies better prepare, but, to help ensure the facility owner or operator is prepared. The intent is to have the owner or operator critically review the potential risk to the marine environment for an accidental oil discharge from the facility. The requirements for these plans are intended to focus owners and operators on: the risk to the marine environment; what actions they can employ to mitigate the risk; and considering the risk, development of a plan that aggressively responds to a spill from the facility. The response plan requirements are intended to ensure that the facility owner or operator has asked himself or herself the hard questions of: What is the risk? What private sector resources are available? Where and how do I rapidly address and resolve the problems this spill has caused to the marine environment?

Section 154.1015 Applicability

The requirements of this subpart apply to MTR facilities that handle, store, or transport oil, in bulk, and that could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. These facilities must prepare and submit a facility response plan to the COTP. Significant and substantial harm facilities must also have their response plans approved by the COTP. Significant and substantial harm facilities represent a subset of the facilities that are designated as substantial harm facilities. Fixed MTR facilities that are capable of transferring oil, in bulk, to or from vessel with a capacity of 250 barrels or more could reasonably be expected to cause significant and substantial harm to the environment.

The rule provides that mobile MTR facilities capable of transferring oil to or from vessels with a capacity of 250 or more barrels of oil could reasonably be expected to cause substantial harm to the environment in the event of a worst case discharge of oil. These facilities must prepare and submit a facility response plan to the COTP.

The Coast Guard made these initial determinations based on the facility's capacity and proximity to navigable waters, adjoining shorelines, or the exclusive economic zone. However, a facility owner or operator who does not agree with the initial classification may request review of the facility's classification by the COTP in accordance with 33 CFR 154.1075. The COTP will review information on the facility and other relevant factors to determine if the facility could reasonably be expected to cause substantial or significant and substantial harm to the environment by a worst case discharge from the facility. The COTP determination may be appealed to the District Commander and Commandant.

Section 154.1016 Upgrade Facility Classification

This section provides the COTP with the authority to apply the requirements of subpart F to any facility that is not specified as a substantial harm or significant and substantial harm facility in § 154.1015. This section also provides the COTP with the authority to reclassify any substantial harm facility to a significant and substantial harm facility.

The COTP may determine that a specific fixed MTR facility capable of transferring oil only to or from vessels with a capacity of less than 250 barrels, such as a marina, and therefore subject to regulation under 33 CFR 154.100(b), could reasonably be expected to cause substantial harm to the environment. The COTP may also determine that a specific mobile MTR facility capable of transferring oil to or from vessels with a capacity of less than 250 barrels could also reasonably be expected to cause substantial harm to the environment. The Coast Guard expects that COTPs will infrequently reclassify facilities in this manner.

This section provides that reclassification of facilities will be based on a consideration of all relevant factors including, but not limited to, the type and quantity of oils handled in bulk, facility spill history, age of facility, proximity to public and commercial water supply intakes, and proximity to areas of economic importance and environmental sensitivity. Facility owners or operators may also appeal this reclassification in accordance with § 154.1075 in this IFR.

Section 154.1017 Response Plan Submission Requirements

This section requires any significant and substantial harm facility specified in § 154.1015(c) to prepare and submit a response plan that meets the requirements of §§ 154.1030, 154.1035, and 154.1045, 154.1047, or 154.1049, as appropriate, to the COTP for review and approval. It also requires any substantial harm facility specified in § 154.1015(b) to prepare and submit a response plan to the COTP that meets the requirements of §§ 154.1030, 154.1040, and 154.1045, 154.1047, or 154.1049, as appropriate. Additionally, a mobile facility must prepare and submit a response plan that meets the requirements of § 154.1041.

Section 154.1020 Definitions

This section adds definitions that are based on the FWPCA, other regulations, or devised by the Coast Guard to define terms used in subpart F. The following definitions are only applicable to this subpart.

Adverse weather. The definition was proposed in the Vessel Response Plan NPRM. Adverse weather means the weather conditions to be used during the planning process to identify equipment and systems required for the response plan. The specific weather conditions for planning are found in §§ 154.1045, 154.1047, and 154.1049.

Average most probable discharge. The definition is based on a review of historical facility spill data. This review showed that, from 1985 to 1989, 95 percent of the oil spills from facilities in the coastal zone were 50 barrels (2100 gallons) or less. This includes all facility discharges including spills from routine operations. The definition uses the lesser of 50 barrels or 1 percent of the worst case discharge as the average most probable spill. Using the lesser of the two values will lessen the regulatory burden on small volume facilities while maintaining sufficient response planning.

Captain of the Port (COTP) Zone. The definition describes the area specified in 33 CFR Part 3 and, where applicable, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Contract or other approved means. The definition means the five methods described in § 154.1028.

Exclusive economic zone (EEZ). The definition is based on section 1001(8) of OPA 90. It describes this zone as defined in Presidential Proclamation 5030 of March 10, 1983. This zone extends 200 miles from the territorial sea baseline unless a maritime boundary with another country is closer than 200 miles.

Facility that could reasonably be expected to cause significant and substantial harm. The definition describes a fixed MTR facility which must prepare and submit a response plan to the COTP for review and approval. In general, this facility is capable of transferring oil in bulk to or from a vessel with a capacity of 250 barrels or more and is typically a large fixed MTR facility. This category also includes any facility specifically designated by the COTP in § 154.1016.

Facility that could reasonably be expected to cause substantial harm. The definition describes an MTR facility which must prepare and submit a response plan to the COTP. In general, this facility is a mobile facility that is used or intended to be used to transfer oil, in bulk, to or from a vessel with a capacity of 250 barrels or more. This category also includes any facility specifically designated by the COTP in § 154.1016.

Great Lakes. The definition was taken from 46 CFR 10.103.

Higher volume port area. The Coast Guard has identified ports within which it believes greater response capability is necessary. The Coast Guard based its determination on a study of relative volumes of persistent and non-persistent oil handled, stored, or transported in the port areas. The Coast Guard evaluated the 1987 and 1988 U.S. Army Corps of Engineers reports on "Waterborne Commerce of the United States." These reports provide statistics for 34 port areas. The volumes of persistent and non-persistent oils were compiled for the listed ports. Analysis of this data indicated that 15 port areas had oil volumes significantly greater than others. The decision to choose 15 port areas was based on the distinct break that occurs between ports areas at the point selected. A report describing the methodology used for this determination is in the public docket.

Inland area. The definition is based on the existing boundaries used in 33 CFR part 80 and 46 CFR part 7. It defines a boundary for identifying response times and determining equipment operability criteria.

Marine transportation-related facility. The definition includes any onshore facility, including piping and any structures used for the transfer of oil to or from a vessel, and any deepwater port subject to regulation under 33 CFR part 150. Included in this definition are large fixed onshore facilities, small fixed onshore facilities (such as marinas), mobile facilities (tank trucks and railroad tank cars), and deepwater ports.

The definition of the transportation-related portion of the facility and the non-transportation-related portion is provided in the 1971 Memorandum of Understanding between the Environmental Protection Agency and the Department of Transportation. In this section of the IFR the Coast Guard further defines the marine-transportation-related portion of the facility. For the purpose of response planning, the Coast Guard has identified the first valve inside the secondary containment as separating the marine transportation-related segment of the facility from the non-transportation-related segment. For below ground storage tanks or tanks without secondary containment the separation between facilities may be a valve or pump located on or adjacent to the tanks. The definition also provides for the COTP and the appropriate Federal official to agree to a specific location or point on the facility to be used to separate the marine transportation-related portion from the non-transportation-related portion of the facility.

Maximum extent practicable. The definition is derived from the Vessel Response Plan NPRM definition. It is the planned capability to respond to a worst case discharge in adverse weather. The appropriateness of this planned capability is limited by available technology and the practical and technical limits on an individual facility owner or operator. Specific criteria for determining this capability are described in §§ 154.1045, 154.1047, and 154.1049.

Maximum most probable discharge. The definition is based on historical spill data which showed that, from 1985 to 1989, 99 percent of the oil spills from facilities in the coastal zone were approximately 1,200 barrels or less. The definition establishes the maximum most probable discharge volume as 1,200 barrels or 10 percent of the volume of the worst case discharge, whichever is less. Using the lesser of the two values will lessen the regulatory burden on small volume facilities while maintaining sufficient response planning.

Nearshore area. The definition is the area extending from the boundaries established in 33 CFR part 80 and 46 CFR part 7 seaward 12 miles. It defines a boundary of an area used for identifying response times and determining equipment operability criteria. This area, because it is close to shore, requires planning for rapid response times and protective actions.

Non-persistent or Group I oil. To provide consistency between this rule and the vessel response plan rulemaking, the definition is drawn from the International Oil Pollution Compensation Fund guidelines. These guidelines use distillation percentages to distinguish between the physical characteristics of persistent and non-persistent oils. Non-persistent oils tend to be more volatile and evaporate very rapidly. The response equipment and methods required for these oils are typically different than those required for persistent oils. While each type of oil must be evaluated, generally gasoline, naphtha, kerosene, jet fuel, gas oil, automotive diesel, and number 2 diesel fuel will meet this definition. The International Tanker Owners Pollution Federation (ITOPF) classifies non-persistent oils as Group I as indicated in appendix C of this part. The Coast Guard is soliciting comments on these classifications of non-persistent oils.

Non-petroleum oil. The definition means oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

Ocean. The definition is used to determine response plan equipment operability criteria for all waters seaward of inland areas.

Offshore area. The definition is taken from the Vessel Response Plan NPRM. It defines the boundaries of an area generally located beyond 12 nautical miles to 50 nautical miles from boundaries established in 33 CFR part 80 and 46 CFR part 7. It is used for identifying response times and determining equipment operability criteria. This area is farther from shore than the nearshore area and thus the risk to the shoreline is reduced. The reduced risk for this area is reflected in the planning criteria for MTR facilities.

Oil. The definition means oil of any kind or in any form, including, but not limited to, petroleum oil, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil.

Oil spill removal organization. The definition includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources established in a geographic area to provide required response resources.

Operating area. The definition is used to define the geographic location in which a facility is handling, storing, or transporting oil. The five operating areas are Rivers and canals, Inland area, Nearshore, Great Lakes, and Offshore. These areas are further defined in the rule. The operating area classification may not be changed by the COTP.

Operating environment. This term is used to define the conditions in which the response equipment is designed to function. The four operating environments are Rivers and canals, Inland area, Great Lakes, or Oceans. These areas are further defined in the rule. The COTP may reclassify a specific body of water in the ACP to better reflect conditions expected to be encountered during response activities. See § 154.1045 for additional information on reclassification.

Operating in compliance with the plan. This term means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means, and conducting the necessary training and drills.

Persistent oil. The definition is the same as that proposed in the vessel response plan NPRM. It recognizes that persistent oils tend to emulsify and do not dissipate as rapidly as non-persistent oils. This affects the equipment and methods required to respond to the discharge. The definition covers all oils that do not meet the criteria for classification as non-persistent oils. Persistent oil includes marine diesel, number 4 and 6 oils, lubricating oils, asphalt, other residual fuel oils, and crude oil. The ITOPF classifies these as Group II, Group III, Group IV, or Group V. It reflects the variability in dissipation and emulsification of persistent oils. The Coast Guard is soliciting comments on these classifications of persistent oil.

Qualified individual and alternate qualified individual. The definition means a person located in the United States who meets the requirements of § 154.1026.

Response activities. The definition refers to any actions necessary to minimize or mitigate damage to the public health and welfare and environment caused by an oil spill. These activities include, but are not limited to, the containment and removal of oil from the land, water and shorelines and the temporary storage and disposal of recovered oil.

Response resources. The definition describes the personnel, equipment, supplies, and any other capability a facility owner or operator may need in order to perform the response activities identified in the response plan.

Rivers and canals. The definition is taken from the vessel response plan NPRM. It defines a boundary in the inland area where shallow draft vessels primarily operate. It is in this rule for use in identifying response times and determining equipment operability criteria. The definition uses the controlled navigable depth of 12 feet or less as the method of identifying these waterways. Most of these waterways are in protected areas and reflect conditions different from those found in other waterways. The use of 12 feet or less limits the waterways covered by this definition to those where non-oceangoing vessels operate, such as the Intracoastal Waterways, Western Rivers Systems, and other similar areas. It is included in this rule in an attempt to maintain consistency between this rule and the proposed rule on vessel response plan requirements. The Coast Guard is soliciting comments on whether this is a reasonable method to differentiate between bodies of water that have different response plan factors.

Spill management team. The definition describes the personnel that will staff the organizational structure that a facility owner or operator must identify in a response plan. This team will manage the response actions of the facility owner or operator and the oil spill removal organizations identified in a plan.

Substantial threat of a discharge. The definition is included because facility owners or operators are required to plan for incidents that may not result in an oil discharge. This definition is consistent with the definition used in the Coast Guard's proposed vessel response plan rulemaking and is intended to establish a similar level of threatened discharge for a vessel and a facility and maintain consistency between the two regulations.

Worst case discharge. The definition means, in the case of an onshore facility and deepwater port, the largest forseeable discharge in adverse weather conditions meeting the requirements of § 154.1029.

Section 154.1025 Operating Restrictions and Interim Operating Authorization

The owner or operator of any facility classified or designated by the COTP as a facility that could reasonably be expected to cause substantial harm or significant and substantial harm to the environment under this subpart shall submit a response plan. The owner or operator of a facility that could reasonably be expected to cause significant and substantial harm to the environment is required to have a response plan approved by the Coast Guard before the facility may handle, store, or transport oil.

Section 4202(b)(4) of OPA 90 implements this requirement in two steps. Response plans must be submitted no later than February 18, 1993, for MTR facilities operating prior to that date. Such facilities must be operating in full compliance with their submitted response plan by August 18, 1993. An MTR facility beginning operations between February 18 and August 18, 1993, must submit a response plan prior to handling, storing, or transporting oil, and must also be operating in compliance with their submitted response plan by August 18, 1993. New MTR facilities beginning operations after August 18, 1993, must prepare and submit response plans not less than 60 days prior to handling, storing, or transporting oil.

While the above dates implement the statutory requirements for MTR facilities to operate with either submitted or approved response plans, section 311(j)(5)(F) of the FWPCA allows the Coast Guard to authorize an MTR facility requiring plan approval to operate for up to 2 years after a plan is submitted for approval if the owner or operator provides written certification that he or she has identified private personnel and equipment available, by contract or other approved means, to respond, to the maximum extent practicable, to a worst case discharge. This provides an interim period in which the facility may continue to operate while the plan approval process is completed, and recognizes that the Coast Guard may be unable to complete the plan review and approval process before August 18, 1993. Any deficiencies noted in the submitted plan shall be corrected in accordance with § 154.1070.

This interim rule provides this 2-year authorization to operate, from the date of submission of plans requiring approval, if the owner or operator certifies that he or she has identified response resources available, by contract or other approved means, required by this subpart. This certification will normally occur as part of the initial plan submission, but because all required response resources may not be in place by the February 18, 1993 deadline for submission of plans, MTR facility owners or operators may submit this certification separately prior to August 18, 1993, or they may note the response resources that are not in place when they submit their plan in February 1993. Information contained in the plan does not need to be repeated.

The Coast Guard is still studying the issue of whether the two-year operating provision allowed for in 311(j)(5) of the FWPCA is for initial submission only, or if it will also apply to future plan revisions and required resubmissions. The Coast Guard intends to clarify this issue prior to publishing the Final Rule.

Under the rule, an MTR facility may not continue to operate if the Coast Guard determines that the response resources included in the certification do not substantially meet the requirements of this subpart, the identified response resources are no longer covered by a contract or other approved agreement with the facility owner or operator, the facility is not operating in compliance with the submitted plan, or the 2-year period expires.

Section 154.1026 Qualified Individual and Alternate Qualified Individual

This section of the rule describes the specific requirements that must be met for the primary and alternate qualified individual(s). Section 311(j)(5) of the FWPCA specifies that anyone acting in this capacity must have the full authority to implement removal action. The qualified individual must be located in the United States, be available on a 24-hour basis, and have full written authority to: (1) Activate and contract with response resource(s) identified in the plan, and if necessary, contract with response resources not identified in the plan; (2) serve as liaison with the Federal On-Scene Coordinator (OSC); and (3) obligate funds for response activities.

The rule provides for both a primary and an alternate qualified individual. These individuals must speak and understand English and be able to arrive at the facility in a reasonable time. Identifying a qualified individual in the response plan does not preclude the facility owner or operator from substituting other qualified persons from a higher organizational level during a larger, more significant spill. While the term qualified individual is used, the facility's owner or operator may also designate an organization to carry out these responsibilities. However, the designated organization must have identified specific individuals to act as the qualified individual and the alternate. The facility owner or operator must identify the organization and its 24-hour contact number(s) in the response plan.

A person does not become a responsible party under the FWPCA by being designated a qualified individual for response plan purposes. Under 311(c)(4), a person other than a responsible party is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the National Response Plan or as otherwise directed by the President. Notwithstanding, such a person whose acts or omissions are grossly negligent, or who engages in willful misconduct may, as a result, become liable for the resulting removal costs or damages. The qualified individual is not, however, responsible for the adequacy of response plans prepared by the owner or operator, nor is the qualified individual responsible for contracting response resources beyond the authority delegated from the owner or operator.

The Coast Guard does not wish to restrain the appropriate activities of a qualified individual or to hamper plan preparers in identifying such individuals. However, the Coast Guard has no authority to grant immunity to any person, including qualified individuals designated for response plan purposes.

Section 154.1028 Methods of Ensuring the Availability of Response Resources by Contract or Other Approved Means

This section provides five methods that a facility owner or operator can use to establish evidence of compliance. The first three methods are a written contractual agreement, certification by the owner or operator of their response capabilities, or active membership in a local or regional spill removal organization.

The fourth method of identifying response resources requires the written acknowledgment of an arrangement for response resources between the facility owner or operator and the response contractor or oil spill removal organization. This written agreement clearly identifies the resources and services to be provided in response to a discharge and that these resources are available in the specified response times. The identified resources are subject to the same verification as other plan requirements including drills, tests, and response times. This method is provided as an alternative for use by all MTR facilities for ensuring the availability of response resources.

The fifth method is acceptable for substantial harm facilities and for MTR facilities that handle, store, or transport Group V persistent oils and non-persistent oils. This method entails identifying an oil spill removal organization or response contractor that is willing to respond to a discharge from the facility. It requires the oil spill removal organization or response contractor to supply a letter to the facility stating that they are willing to respond to a discharge at the facility and that they have specified resources. Although this method does not establish a contract between the facility owner or operator and the response contractor, normal market forces provide sufficient assurance, for planning purposes, that resources will be available to respond to the discharge that could reasonably be expected from the facilities. This method of identifying response resources reduces the potentially high economic impact on segments of the marine industry which provide essential services to the marine community while addressing the harm that could reasonably be expected to the environment in the event of a discharge from these facilities.

Section 154.1029 Worst Case Discharge

This section addresses MTR facilities or, more commonly, the MTR segment of a complex facility as defined in § 154.1020. A complex facility is a facility which is regulated under Section 311(j) of the FWPCA by two or more Federal agencies. It generally consists of an MTR segment and a non-transportation-related segment. The Coast Guard recognizes that the storage tanks located in the non-transportation-related segment of the facility may provide a larger worst case discharge than the transportation-related portion of the facility. However, since the EPA is tasked with regulating the non-transportation-related portion of the facility under E.O. 12777, the Coast Guard will concentrate on the marine transportation-related segment which represents the most immediate threat of discharge.

The Coast Guard is concerned about the worst case discharge that is reasonably foreseeable from the MTR facility or the dock and piping used to convey oil to the non-transportation-related portion of the facility. The worst case discharge scenario accounts for the time to detect the spill and the time to secure the operation. It also accounts for the residual oil that remains in the piping after the operation has been shut down. It also assumes that all pipelines between the dock and storage tank will fail. When preparing a worst case discharge scenario for the MTR facility, the owner or operator will attempt to limit the discharge volume by relying upon fail-safe features designed into the operation such as leak detection and mechanical methods of isolating segments of the pipeline. It is the Coast Guard's experience that these features do not always work as expected or that the required human interface with these features is lacking at the most critical time. The use of any single valve in a pipeline to create smaller segments should not be a factor in preparing for a worst case discharge. Facility owners or operators should plan for the discharge of not less than two segments of any single pipeline, one on each side of the valve. For planning purposes, where a valve or valves are used to create smaller piping segments, these two segments must be segments with the largest volume in the MTR portion of the piping. Where no intermediate valves are present in the piping, the worst case discharge must deal with the entire volume of oil in the piping.

The COTP has the discretion to accept that a facility can operate only a limited number of the total pipelines at a dock at a time. In those circumstances, the worst case discharge must include the drainage volume from the piping normally not in use in addition to the drainage volume and volume of oil discharged during discovery and shut down of the oil discharge from the operating piping.

The use of remote pressure loss devices should not be relied upon to alert the facility owner or operator to the loss of oil from the pipeline. Human monitoring and surveillance of the pipeline should also be a factor when estimating the time to discover and secure a discharge.

The Coast Guard is soliciting comments on these definitions of a worst case discharge.

The EPA is also preparing a definition of worst case discharge for the purposes of response planning for the non-transportation-related portion of the facility. This definition will appear in a separate rulemaking by the EPA.

Section 154.1030 General Response Plan Contents

This section of the rule lists the general requirements for all response plans. Response plans must be prepared in English. The general response plan requirements include seven sections: introduction; emergency response action plan; hazard evaluation; discussion of spill scenarios; training and drills; plan review and update procedures; and appendices for additional information. Facility owners or operators are encouraged to use checklists, flowcharts, and other methods to facilitate the use of response plans in an emergency.

The required response plans must address the responsibilities of facility personnel to notify appropriate government and company officials and to minimize or mitigate an oil discharge from the facility; management of the response by the facility owner or operator; and pre-spill identification of response resources by the facility owner or operator. The facility owner or operator is also required to list all sensitive areas that may be impacted by a worst case discharge. In addition to identifying the sensitive areas that a worst case discharge from the facility could impact, the plan must describe in detail response strategies for protecting and cleaning these areas. The responsible Coast Guard COTP will evaluate these strategies and determine if the plan adequately addresses protective measures to safeguard the areas identified.

The Coast Guard encourages facility owners or operators to submit response plans in a specific format. Since many MTR facility owners or operators already have response plans, the rule provides for acceptance of existing plans in a different format if the plan is supplemented with a cross-reference section identifying the location of the applicable sections to facilitate review and use in an emergency. The plan must include all the information required in §§ 154.1035, 154.1040, and 154.1041, as appropriate. In addition to the information required in each section of the response plan, it may contain additional appropriate information.

A response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and applicable Area Contingency Plans (ACP). The Coast Guard will review the plan for consistency. Section 154.1045 requires the MTR facility owner or operator to identify certain response resources listed in the ACP that are available, by contract or other approved means, by February 1998.

The Coast Guard recognizes that many areas will not have completed their ACP before the response plans required under this rule are submitted. Existing local contingency plans (LCPs) already address certain response scenarios including sensitive environmental areas and protection strategies. Until ACPs are completed, existing LCPs will serve as the foundation for initial facility response plan review. A facility response plan submitted after February 18, 1993 need only be consistent with the ACP or LCP in effect 6 months prior to the response plan submission. Approved plans will not be subject to revision for the sole purpose of ensuring consistency with an ACP completed after August 18, 1992. Copies of the current ACP or LCP are available from the Coast Guard OSC.

Section 154.1035 Specific Requirements for Facilities That Could Reasonably Be Expected To Cause Significant and Substantial Harm to the Environment

Introduction and plan content. The introduction section requires information on the MTR facility including: identification of the owner or operator, a description of the geographic area covered, table of contents, and record of page changes.

Emergency Response Action Plan. The emergency response action plan section contains 5 subsections which discuss notification procedures, spill mitigation procedures, response activities, areas sensitive to oil spills, and waste disposal.

The notification procedures subsection contains information on notifications that must be made in the event of an oil discharge. This subsection of the plan must summarize notification requirements, identify notification responsibilities, and outline the information which would be provided. It will contain the procedures for notifying the qualified individual designated to represent the facility's owner or operator. Much of this information can be provided in checklist format.

The notification procedures subsection must contain a copy of the notification sheet listing information to be supplied to the National Response Center (NRC) when making the notification required under 33 CFR 153.203. The information on the notification sheet includes the following: involved parties, incident description, materials released, remedial action, impact, additional information, and caller notification. Much of this information is available and can be prepared prior to any spill at the facility. By collecting this information in advance of actual notification, the notification process will be faster and provide accurate information.

The facility's spill mitigation procedures subsection shall summarize the actions to be taken by facility personnel in the case of an actual discharge or substantial threat of an oil discharge. Checklists or other simple procedures are appropriate for this subsection. This subsection requires the facility owner or operator to identify personnel actions necessary to: assess the problem or situation; do an emergency shutdown of the affected operation, including the sequence of steps to stop operations; and transfer oil within the facility during an emergency. It requires a listing of equipment and the responsibilities of facility personnel in responding to an average most probable discharge. It also lists the volume of oil discharged during an average most probable discharge, maximum most probable discharge, and a worst case discharge.

The facility's response activities subsection requires the facility owner or operator to address actions taken to manage the response to an actual or threatened discharge. This section addresses facility personnel responsibilities to initiate response actions; responsibilities and authorities of the designated qualified individual and alternate qualified individual; and procedures for coordinating response actions with those of the predesignated Federal On-Scene Coordinator. It also identifies the organizational structure that would be used to manage response efforts. Recognizing the need for an organizational infrastructure, the rule requires that each response plan contain certain organizational elements that are essential to the successful management of a response operation. The rule does not require the use of the Incident Command System (ICS). It allows the facility owner or operator to develop his or her own organizational structure provided that the organizational elements listed are addressed. The structure must be compatible with the organization embodied in the NCP. Some owners or operators will be able to staff their organizational structure with in-house response resources; others will rely on contracted support. Either method is acceptable. The rule requires identification of the personnel necessary to staff this organizational structure for the first 7 days of a response.

The facility's response activities subsection also requires that the response plan identify the response resources that are available, by contract or other approved means, as described in § 154.1028, to respond to the average most probable discharge, maximum most probable discharge and worst case discharge, to the maximum extent practicable. Section 154.1045 of the rule describes the procedures for determining these response resources.

This subsection also requires that the facility owner or operator identify the location of equipment, personnel, and support services available to meet response resource requirements. The Coast Guard will establish a process for response contractor classification in a separate guidance document and will incorporate any provisions that affect these requirements in the rules for response plans for MTR facilities.

The sensitive areas subsection requires the owner or operator to: List the areas of economic importance and environmental sensitivity that could be impacted by a spill; include a map showing these areas and depicting response actions; and describe these actions. Appendix D of this subpart contains information which will assist the facility owner or operator in defining the sensitive areas that might be impacted by a spill from the facility. Additional information on sensitive areas will be provided in the Area Contingency Plans required by OPA 90.

The rule also requires that specific amounts of equipment be under contract, to protect sensitive areas within specified distances of the facility. In lieu of the specified distances, the response plan may specify protection for fewer sensitive areas provided that an oil spill trajectory analysis predicting reduced areas of impact is provided in the plan. Response equipment would be necessary to protect sensitive areas in this reduced area. However, based on historical information or a spill trajectory, the COTP may require that additional sensitive areas also be protected. The response plan would also identify equipment for other sensitive areas that may be impacted. This equipment would not have to be under contract. Notwithstanding the response equipment operating criteria listed in Table 1 Appendix C, the equipment specified to protect sensitive areas must be appropriate for use in and around the areas to be protected.

A final subsection in the Facility's Emergency Response Action Plan section will outline the procedures for the disposal of wastes generated as a result of a response to a discharge. The facility owner or operator shall provide information on the location of appropriate disposal sites and plan disposal activities.

Hazard Evaluation. This section in the CFR is reserved for future development. At this time, facility owners and operators need not develop any planning materials for this section.

Spill Scenarios. This section in the CFR is reserved for future development. At this time, facility owners and operators need not develop any planning materials for this section.

Training and Drills. The rule requires response plans to include a section to address training and drills. Training procedures and programs will ensure that all personnel with responsibilities under the plan are trained as specified in § 154.1050. Personnel training for specific mitigation or response actions may vary greatly and the response plan must take this into account. The drill program of the owner or operator will list and describe the drills which the facility owner or operator will carry out to ensure that the plan will function in an emergency as specified in § 154.1055.

Plan review and update procedures. This section is required to address review and update of the plan by the MTR facility owner or operator. This includes meeting the requirements of § 154.1065, as well a describing the procedures for review after plan use to evaluate effectiveness.

Appendices. The response plan must contain an appendix with specified facility information. This appendix will contain a physical description of the facility and diagrams of the facility layouts. It must also identify the first valve on facility piping separating the transportation-related from the non-transportation related segment of the facility. In this appendix, it may be appropriate to include information concerning leak detection systems, piping and tank integrity testing program(s), security during an emergency spill response, and the relationship between this response plan and other programs or response plans. The appendix must also contain material safety data sheets for oils and hazardous materials handled at the facility, and identify hazards likely to be encountered if oils and hazardous substances come in contact. The appendix must also contain firefighting procedures and extinguishing agents effective with fires involving the oil(s) and hazardous materials handled, stored, or transported at the facility.

A separate appendix will also be provided for a listing of contacts which may provide assistance during a response. This is required as a separate appendix since it is likely to require routine revisions. The list of contacts shall include: Federal, State, and local government agencies, the qualified individual, and the providers of the identified response resources which are available by contract or other approved means.

Also required are separate appendices for a list of response equipment, a communications plan, a site-specific safety and health plan, and a list of definitions and acronyms. It will not be necessary to list response equipment when using an oil spill removal organization classified by the Coast Guard. The contractor classification program is under development and guidance is in preparation.

Section 154.1040 Specific Requirements for Facilities That Could Reasonably be Expected to Cause Substantial Harm to the Environment

This section is similar to the specific response plan requirements detailed in § 154.1035. The requirements in § 154.1040 were developed to lessen the regulatory burden and economic impact on substantial harm facilities—a category which consists primarily of mobile facilities. The requirements differ by not requiring contracts with oil spill removal organizations, not requiring an organizational structure to manage response actions, and requiring only 200 feet of containment boom for initial response to an oil discharge. The rule includes a requirement for a substantial harm facility owner or operator to have on file a letter from an oil spill removal organization stating that they will respond to an average most probable, maximum most probable, and worst case discharge from the facility. It is not intended that this letter infer a contractual agreement between the parties but that the facility owner or operator has identified specific response resources and that those resources will respond to discharges from the facility. The Coast Guard does not anticipate that the spill response contractor will charge the facility owner or operator a retainer fee. This is more relaxed than the requirements in §§ 154.1035 and 154.1045 which require that a contractual agreement exist between the facility owner or operator and the response contractor(s) or oil spill removal organization(s).

Section 154.1040 also requires reduced amounts of containment boom relative to the amounts required in § 154.1035. It also specifies that adequate sorbent material shall be maintained for initial response. While the relaxed response planning standards in § 154.1040 lessen the regulatory burden, they provide for adequate planning to minimize the impact on the environment in the event of a worst case discharge from a substantial harm facility.

Section 154.1041 Specific Response Information to be Maintained on Mobile MTR Facilities

This section describes the response plan information to be carried aboard mobile MTR facilities. The nature of operations of these facilities makes it impractical to require the operator of a mobile facility to maintain a copy of a comprehensive response plan in each mobile facility for which he or she is responsible. This is particularly true for railroad tank cars. Thus, the operator of a mobile facility is required only to maintain certain information from the response plan which identifies the manner in which a response to an oil discharge will be conducted; identifies who will respond to a discharge; and identifies the persons and agencies to be notified of an oil discharge. The facility owner or operator is required to maintain the comprehensive plan.

Section 154.1045 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Group I Through IV Petroleum Oils

This section describes response resource requirements for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable. Appendix C contains a detailed explanation of the requirements. This section reflects the similarities in physical properties exhibited by Groups I through IV oils which results in their floating on water. Examples of these groups of petroleum oils range from gasoline to most crude oils and heavy bunker oil. Petroleum oils which are likely to sink due to their physical properties and non-petroleum oils are handled separately in §§ 154.1047 and 154.1049, respectively.

Section 311(j)(5) of the FWPCA requires planning for the worst case discharge only. This rule requires the planners to address the average most probable and the maximum most probable discharges which are more likely to occur than the worst case discharge. Dealing with smaller discharges may require equipment that is not appropriately planned for when only worst case discharges are addressed. Section 311(j)(1) of the FWPCA, which addresses prevention and containment of oil discharges from facilities, authorizes the Coast Guard to require planning for these smaller discharge volumes.

The rule allows the MTR facility owner or operator to rely on equipment available at other facilities, provided its use has been arranged by contract or other approved means and it can arrive within the required response times. The rule does not discourage the lending of equipment. However the owner or operator of a facility remains responsible for having response equipment at the facility in the appropriate time. The COTP may determine that mobilizing response resources to an area beyond the response time specified in the regulation may invalidate the plan.

The rule requires a "significant and substantial harm" facility owner or operator to provide 1,000 feet of containment boom or containment boom equal to twice the length of the largest vessel that regularly conducts oil transfers at the facility, whichever is greater. The containment boom length of twice the length of the vessel is taken from the vessel response plan notice of proposed rulemaking. The Coast Guard is requiring facility owners or operators to contract for response resouces for average most probable discharges from the facility. This requirement is consistent with 33 CFR 154.545 which already requires facilities to have access to discharge containment equipment to control an oil discharge whether from a vessel or facility.

The Coast Guard is requiring an approach to planning for the worst case discharges which considers the following factors: the loss of some oil to the environment due to evaporation and natural dissipation based on the type of oil; emulsification which may affect the quantity of material to be recovered; provisions for close-to-shore response, shoreline protection, shoreline cleanup capabilities, and firefighting capabilities; and limits of available response technologies and private removal capabilities.

Caps on the Quantity of Planned Response Resources for Group I through IV Petroleum Oils

The Coast Guard is placing a cap on the quantity of response resources which individual owners or operators are required to contract for in advance. This in no way limits the amount of resources which owners or operators may have to provide during an actual spill response. This recognizes the limits of currently available technology and private removal capabilities. Recognizing the importance of early arrival of response equipment at the scene of a discharge and the need for tiering equipment arriving at the scene to reflect local, regional, and national response capabilities, the Coast Guard is requiring that equipment mobilization occur within the first 3 days of a discharge, when oil recovery is most likely. The Coast Guard is also requiring that the owner or operator identify additional response resources above the Tier 3 cap when the worst case discharge planning volume exceeds the cap for the contracted response resources. These additional resources must be capable of arriving on scene not later than the time indicated in the Tier 3 response times in section 154.1045. No contract or other approved means is required to ensure the availability of these resources.

The rule provides that the caps established for contracted response resources are increased at appropriate intervals that roughly correspond with response plan review periods. This takes into account future developments in such things as: increased availability of mechanical recovery devices; improved equipment efficiencies or designs; improved technology to address large spill volumes; high rate response techniques such as dispersants and in-situ burning, when approved by the Regional Response Team; and other techniques, such as bioremediation, if quantifiable.

The rule states that the Coast Guard will initiate a review of the scheduled increase in caps before the effective date of the scheduled increase. The purpose of the review is for the Coast Guard to determine if the scheduled increase remains practicable. The Coast Guard will also establish the specific cap for the next scheduled 5 year interval. All future increases will become effective as scheduled unless the Coast Guard determines that they are not practicable.

Determining and Evaluating Required Response Resources

The rule describes the methods to be followed to determine the response resources that must be identified for response to an average most probable, maximum most probable, and worst case discharge from the facility to the maximum extent practicable. It requires that facility owners or operators consider weather conditions during preparation of a plan. Many of these conditions are area-specific and require the owner or operator to refer to the applicable ACP for information on ice conditions, debris, temperature ranges, and weather-related visibility in which response resources must function. The rule refers to Table 1 of Appendix C of this part for evaluating the operability of booms and oil recovery devices. These criteria are based on information from the "World Catalog of Oil Spill Response Products—Third Edition." Table 1 uses significant wave height as the primary criteria for evaluating operability of recovery equipment in different environments. Additional design criteria are included for booms. The criteria are used to evaluate equipment operability under specified conditions. They reflect conditions that may limit mechanical recovery, but would not necessarily limit other response methods or affect normal operations of a facility.

Identified equipment must be capable of operating safely in the significant wave height criteria in Table 1 of Appendix C. The criteria reflect limitations of equipment design, rather than limitations imposed by the specific operating environment. Because these criteria may not reflect the actual conditions in a given geographic area, the COTP may reclassify specific bodies of war within his or her COTP zone to a more or less stringent operating environment to reflect actual conditions. A body of water may be reclassified as a more stringent operating environment when prevailing wave conditions exceed the significant wave height criteria over 35 percent of the year. A body of water may be reclassified as a less stringent operating environment if prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment over 35 percent of the year. It is anticipated that reclassifications will be identified in the ACP. The classification for a given body of water affects requirements for response equipment. The Coast Guard solicits comments on the use of 35 percent as the standard for reclassifying an operating environment.

Average Most Probable Discharge

The rule requires all MTR facility owners or operators to identify response resources for the average most probable discharge, including sufficient boom and an appropriate means of deploying it. They must account for the possibility of multiple discharges during transfers. Response plans must also identify the availability of oil recovery equipment and sufficient storage capacity capable of arriving at a spill within 2 hours of discovery of the discharge.

Appendix C of this part contains procedures for determining these response resources. The rule requires MTR facility owners or operators to have response resources either at the facility or available under contract or other approved means, to meet the 2 hours response time. This will ensure the prompt availability of equipment where it is most commonly needed.

Maximum Most Probable Discharge

Section 154.1045 sets the level of response resources that must be identified and available, by contract or other aproved means, to respond to a facility's maximum most probable discharge. The rule addresses approximately 99 percent of the discharges from MTR facilities. It establishes the maximum most probable discharge at 1,200 barrels or 10 percent of the worst case discharge, whichever is lower. In higher volume port areas and the Great Lakes, these response resources must be capable of arriving at the scene of a discharge within 6 hours of its discovery and within 12 hours in all other river and canal, inland, nearshore, and offshore areas. Response plans must identify sufficient containment boom, oil recovery devices, and oil storage capacity for this planning volume. Appendix C of this part contains procedures for determining the amount of response resources to meet the requirements.

Worst Case Discharge

The rule requires MTR facility owners or operators to identify sufficient response resources to respond to a worst case discharge to the maximum extent practicable. Appendix C of this part contains detailed information for calculating the planning volume for each response tier, as discussed below, and for determining the response resources which must be identified to meet these requirements. Response plans must specify the location, type, and quantity of response resources.

The requirements for response to a worst case discharge to the maximum extent practicable are based on tiering of response resources. The rule establishes three tiers which will allow for the identification of response resources from outside the area of the facility to meet the requirements. On-scene arrival times for each tier are as follows: for higher volume port areas (except TAPAA facilities located in Prince William Sound) and the Great Lakes, the Tier 1 of response resources must be capable of arriving at the scene of a discharge within 6 hours of its discovery. Response resources for Tier 2 must be capable of arriving within 30 hours and Tier 3 within 54 hours. These time limits do not apply in Prince William Sound because § 154.1135 of this rule establishes separate response times for the Sound. For all other areas, Tier 1 response resources must be capable of arriving on scene within 12 hours from the time a spill is discovered. Response resources for Tier 2 must be capable of arriving within 36 hours and Tier 3 within 60 hours. The plan must account for notification, mobilization, and travel time. The Coast Guard is soliciting comments on this approach to tiering response resources.

The Coast Guard, recognizing the value of planning for rapid arrival of response resources to the scene, is establishing maximum arrival times. Although this treats response resources that are capable of arriving early the same as those arriving just before the end of the maximum time limit, the Coast Guard recognizes that it is in the best interest of the facility owner or operator to have these resources on scene as early as possible. The Coast Guard solicits comments on methods to recognize the early arrival of oil recovery devices and other response equipment.

Notification and Initial Mobilization of Response Resources

Notification of Tier 1 resources must occur within 30 minutes of the discovery of a discharge, and such resources must be capable of being mobilized within a 2-hour period after notification. While all resources must be "capable" of being mobilized within that period, the plan can account for resources not needed in the initial stages of a response, such as temporary storage capacity. For example, a storage barge required to sustain on-water oil recovery operations after 8 hours need not be mobilized within 2 hours. These planning criteria apply only to the Tier 1 resources. Tier 2 and Tier 3 resources must be mobilized as necessary to arrive on scene within the specified time. These times are not performance standards, rather they are planning criteria that must be considered when identifying resources.

Alternative Response Techniques

The Coast Guard recognizes the value of alternative response techniques such as dispersant application and in-situ burning. It also realizes that these techniques are not usually allowed in areas that would be impacted by discharges from most onshore facilities. As a consequence, the rule provides that MTR facilities located in areas with preapproval for year-round dispersant use, handling Groups II or III persistent petroleum oils, may identify dispersant resources in their response plans. To receive credit for up to 25 percent of the required on water recovery capability, the dispersant resources must be identified by the facility owner or operator and further ensure their availability through contract or other approved means. This provision applies to the Louisiana Offshore Oil Port (LOOP) and single point mooring buoys where petroleum product is transferred from a vessel to an onshore facility. The dispersants must be appropriate for the type of oil handled by the facility and be available in sufficient quantities to treat 25 percent of the worst case discharge. Dispersant resources must be capable of arriving on scene within 12 hours of discovery of a discharge. The requirement to plan for the use of dispersants is consistent with those of the Minerals Management Service for outer continental shelf exploration and production activities under 30 CFR 250.42. The identification of resources required to use dispersants does not imply that their use will be approved during a spill response. The existing NCP provides specific procedures for the authorization of dispersants or other chemical countermeasures during a spill and it is anticipated that the revised NCP will have similar provisions. Many areas have been identified by the Regional Response Team for the use of dispersants with approval from the Federal On-Scene Coordinator under certain conditions.

The Coast Guard has included the use of dispersants as a planning option for other facilities because it believes that dispersants may have a role in responsing to a worst case discharge from some MTR facilities. This may also provide incentives for the expansion of dispersant capability in the United States. The listing of dispersants in a response plan does not constitute an approval by the Federal On-Scene Coordinator to use dispersants.

Under certain circumstances, the dispersant capability may be used as credit against worst case discharge resource requirements. Appendix C of this part contains information on circumstances under which plan credit may occur.

Firefighting Capability

The Coast Guard considers firefighting capability important in dealing with a worst case discharge. It also recognizes that many MTR facilities maintain firefighting resources at the facility or can rely upon local industrial and government firefighting agencies. The rule requires MTR facility owners or operators to contract for firefighting resources if the facility does not have access to sufficient local firefighting resources. It will also provide for an in-house expert to work with the fire department for the facility's oil fires and to also verify that sufficient well-trained firefighting resources are available with a reasonable response time for a worst case scenario. The rule does not establish specific response times or equipment requirements. The Coast Guard is soliciting comments on this approach to response planning.

Protection of Sensitive Areas

The rule requires an MTR facility owner or operator to identify response resources that are available, by contract or other approved means, for protection of sensitive areas as well as for shoreline clean-up. Resources for these activities must be identified in advance. Since a facility owner or operator is planning for up to a worst case discharge scenario, he or she must be able to evaluate those sensitive areas that may be affected by a worst case discharge from the facility. A facility owner or operator shall also be able to accurately identify the areas that require special concern or response. Thus, the rule requires the facility owner or operator to list all areas of economic importance and environmental sensitivity identified in the ACP which are potentially impacted in the first 3, 4, or 6 days, depending on the geographic area, after a discharge. The owner or operator must describe in the response plan all response actions and appropriate equipment necessary to protect these areas. These actions must be depicted on a map or chart with a legend of these activities. The rule also requires the facility owner or operator to contract for response resources to protect sensitive areas that are lesser distances from the facility that may be affected. For example, a facility owner or operator will be required to determine the amount and type of boom required to protect areas of environmental sensitivity and economic importance and will also be required to contract for or have under employment sufficient support resources such as personnel, boats, anchoring equipment, etc. to deploy this equipment in affected areas. The owner or operator, after evaluating the oil movement and if the circumstances warranted it, could propose the moving of boom from one area to another. This could reduce his or her inventory, but still provide adequate protection for the area of potential impact. The Coast Guard retains final authority to decide if the facility is adequately providing protection of sensitive areas and sufficient cleanup resources and could require additional resources.

The Coast Guard solicits comments on the use of a 3 day (Rivers and canals), 4 day (Nearshore, Inland, Great Lakes), and 6 day (Offshore) planning requirement for protection of areas of environmental sensitivity and economic importance.

Shoreline Clean-Up

The rule also requires MTR facility owners or operators to identify response resources that are available, by contract or other approved means, that are capable of carrying out shoreline cleanup operations. In lieu of a contract, a facility owner or operator is permitted to enter into a written agreement with a response contractor or oil spill removal organization that specifically identifies the services and response resources to be provided for a shoreline clean-up.

Because it is difficult to determine the amount of oil that would most likely impact the shoreline, and therefore the required response resources in advance, the Coast Guard requires the use of a qualitative evaluation based on a planning volume of oil that could reach the shoreline. This evaluation method takes into account the area in which a facility operates and the type and volumes of oil handled. Table 2 of Appendix C of this part includes factors to be considered for potential shoreline impact that are used in determining the planning volume. Appendix C of this part also describes how this planning volume is calculated. The Coast Guard solicits comments on alternative methods to evaluate the quantity of required shoreline cleanup capability.

The requirement to identify or contract for specified quantities of boom, support equipment, and shoreline cleanup capability that becomes effective on February 18, 1993, serves as an interim requirement until February 18, 1998. As noted, accurate identification of response resources required to perform shoreline protection or cleanup must be based on the area potentially affected. This information may be further developed in an ACP. In February 1998, the 5-year anniversary established for response plan resubmission will begin to occur for many MTR facilities. When in place, the ACP will help identify the response capability necessary to implement geographic-specific response strategies. A facility owner or operator is required to identify response resources that are available, by contract or other approved means, to provide the capability identified in the applicable ACP. The rule indicates that this requirement must be met by any facility that submits or resubmits a response plan 6 months after the appropriate ACP has identified these response resources.

The Coast Guard has established in this rule a limit, or cap, to the response resources that a facility owner or operator must contract for in advance. The intent of contracting in advance is to ensure that adequate capability exists to respond to oil spills. In many areas of the country, adequate capability may not currently exist. Requiring contracts provides incentives for the private sector to expand capabilities in these areas. It is not practicable or always necessary to require facility owners or operators to contract in advance with every response resource that exists in a given area. There are areas of the country, primarily the larger ports, where the total capability may exceed the caps. It must be recognized that these contracts ensure a baseline capability, but do not limit the response resources that would be brought to an actual oil discharge. Facility owners or operators will be expected to activate the response resources necessary for the particular circumstances of the spill, even if they exceed the response resources identified in the plan.

Table 5 in appendix C of this part of the rule lists the caps for 1993 and 1998. These caps are based on the effective daily recovery rate (as calculated using the procedure in appendix C of this part) of response resources that must be identified in a response plan. They are based on an assessment of response capability that, in the Coast Guard's opinion, can be provided nationwide by 1993. The Coast Guard will conduct an evaluation of the February 1998 cap increase before it becomes effective to determine if it remains practicable. At that time the Coast Guard will also establish a cap for 2003. Setting nationwide criteria is intended to provide an incentive to improve overall response capability in the United States. While some areas of the country may have capability that exceeds the caps, the 25 percent increase in these caps from 1992 to 1998 will provide an incentive for those areas to expand capability. The 5-year interval is intended to correspond with the required resubmittal interval for response plans. The Coast Guard solicits comments on whether fixed dates should be utilized for this increase to be in place, or whether it should be tied to the date when an individual facility owner must resubmit his or her plan after the effective date of the cap increase. The Coast Guard also solicits comments on the specific caps for 1993 and 1998.

Section 154.1047 Response Plan Development and Evaluation Criteria for Facilities that Handle, Store, or Transport Group V Petroleum Oils

This section of the rule requires that owners or operators of facilities that handle, store, or transport Group V petroleum oils must identify procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. The owner or operator must ensure the availability of this equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that they will respond to a worst case discharge from the facility. It is not intended that this letter infer a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

Unlike the rules for Groups I through IV petroleum oils, the Coast Guard has not specified the required amount of response equipment. Petroleum oils in Group V are considered sinking oils due to their physical characteristics. Traditional response techniques of containing the spread of oil on the surface of the water are often ineffective. The owner or operator of an MTR facility handling these oils must identify strategies for responding to such discharges and sources of equipment and supplies necessary to locate, recover, or mitigate such discharges. The rule lists the types of equipment that must be identified in the response plan and specifies the response times for this equipment to arrive at the facility.

The Coast Guard solicits information that may be useful in determining the types and quantities of equipment necessary to respond to a discharge of Group V petroleum oils. It also requests information on new or innovative response techniques that will be appropriate for sinking oils.

The rule also requires the owner or operator of an MTR facility that handles, stores, or transports Group V persistent oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources.

Section 154.1049 Response Plan Development and Evaluation Criteria for Facilities That Handle, Store, or Transport Non-Petroleum Oils

This section of the rule requires that owners or operators of MTR facilities that handle, store or transport non-petroleum oils identify the procedures and equipment necessary to respond to a worst case discharge of these oils to the maximum extent practicable. The rule does not include specific requirements for identifying the amount of response resources. As with Group V persistent oils, the owner or operator must ensure the availability of this equipment through contract or other approved means. At a minimum, the owner or operator of the facility must obtain a letter from an oil spill removal organization stating that they will respond to a worst case discharge from the facility. It is not intended that this letter infer a formal contractual agreement between the parties but that the owner or operator has identified specific response resources and that those resources will respond to a worst case discharge from the facility.

The rule also requires the owner or operator of an MTR facility that handles, stores, or transports non-petroleum oils to contract for firefighting resources should the facility not have access to sufficient local firefighting resources.

The Coast Guard solicits information that may be useful in determining the types and quantities of response equipment necessary to respond to a discharge of non-petroleum oils. It also requests information on new or innovative response techniques that will be appropriate for non-petroleum oils. The Coast Guard is considering developing information on removal capacity, emulsification factors, and recovery resource mobilization factors similar to those factors contained in appendix C for Groups I through IV oils.

Section 154.1050 Training

This section of the rule describes the training requirements that an owner or operator of an MTR facility must identify in the plan. The rule does not require training in specific subjects or minimum training periods. Rather, it requires the owner or operator to identify in the plan the training programs he or she will establish or adopt to train any persons with responsibilities in the response plan. The training will vary widely based on those responsibilities. For example, an operations manager may need different training than the person responsible for deploying boom, just as the qualified individual will need different training than the cleanup manager of the spill management team. The Coast Guard solicits comments on whether there should be more specific requirements for training programs.

The rule requires an MTR facility owner or operator to ensure that records of this training are maintained for 3 years. Records on the facility personnel's training must be maintained at the facility. Records for the oil spill removal organization's training must be maintained by the organization and available to the facility's management personnel, the qualified individual, and to Coast Guard personnel. This recognizes that a facility owner or operator may rely on a private contractor or cooperative to meet his or her responsibilities. There is no need to maintain duplicate records. All records must be available for inspection by the Coast Guard.

The rule also clearly indicates that an MTR facility owner or operator is not relieved from complying with applicable training standards issued by the U.S. Occupational Safety and Health Administration (OSHA). OSHA has issued regulations in 29 CFR 1910.120 that set minimum training requirements based on the task that a responder carries out. These requirements vary from 8 hours to 48 hours of classroom training, plus added requirements for field training. These requirements should be taken into account in the training program of the facility owner or operator. The owner or operator must also identify methods of training any volunteers or casual laborers employed during a response to comply with the requirements of 29 CFR 1910.120.

Section 154.1055 Drills

The rule requires that an MTR facility owner or operator identify a planned drill program in the response plan. This must include both announced and unannounced drills conducted by the owner or operator as necessary to ensure that a response plan will function in an emergency.

The rule specifies a minimum frequency for drills to be held for the facility's personnel, the spill management team, and the oil spill removal organization with responsibilities under the plan. The Coast Guard solicits comments on the frequency of these drills.

The rule does not require drills to cover specific sections of a response plan. Instead, it allows the facility owner or operator to tailor drills to exercise either components of a plan or an entire plan and to exercise those components of the response plan that are most appropriate. The facility owner or operator is required to conduct drills at least every 3 years to exercise the entire plan.

The rule requires that any drills conducted by the facility be documented. A record of these drills must be maintained at the facility and made available to the Coast Guard for inspection.

The rule also requires that facility owners or operators participate in unannounced drills conducted by the COTP or Area Committee. Section 311(j)(7) of the FWPCA requires that the Coast Guard periodically conduct unannounced drills of removal capability in areas designated for development of ACPs. The Coast Guard will involve vessels and facilities in these drills. These drills will be infrequent. A facility owner or operator selected to participate in such a drill will be expected to activate the spill management team and oil spill removal organizations identified in the plan to the extent required by the COTP. The cost of activating these response resources must be borne by the owner or operator. A facility owner or operator will not be required to participate in a COTP drill if the facility owner or operator has participated in an unannounced Federal or State oil spill response drill in the past 24 months; however the facility owner or operator will be required to provide records of the drill to the COTP. The Coast Guard anticipates holding up to 12 such drills per year throughout the country, of which only approximately half will involve facilities.

Finally, the rule allows MTR facility owners or operators to take credit for drills in which their spill management team or identified oil spill response organization(s) participate. The Coast Guard recognizes that many facility owners or operators will rely on the same response resources. There is no need for these resources to be exercised continually to meet the requirements of individual owners or operators. Documented drills involving identified response resources can be used to meet the requirements of this section. This will also apply to companies operating with multiple facilities. Participation in one drill held by a common spill management team will meet the requirement for all facilities utilizing that team.

Section 154.1057 Inspection and Maintenance of Response Resources

The rule requires that a facility owner or operator required to submit a response plan ensure that containment booms, skimmers, vessels, and other major equipment listed in the plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations and best commercial practice.

The rule states that Coast Guard inspectors may visit oil spill removal organizations (OSROs) whose equipment and personnel are listed in response plans to verify that the equipment inventories exist as represented and that the records of inspection and maintenance reflect the actual condition of the equipment. They may also inspect equipment and require operational tests of equipment to verify readiness.

Section 154.1060 Submission and Approval Procedures

This section of the rule outlines the procedures for submission and approval of response plans. The owner or operator of an MTR facility is required to submit two English-language copies. These will be submitted directly to the COTP of the zone in which the facility is located. Response plans for a substantial harm facility may be examined for any obvious deficiencies or omissions. Response plans for significant and substantial harm facilities will be reviewed and subject to the approval of the COTP. COTPs will have the discretion to include members of the Area Committee in plan review. For the response zones where the EPA Regional Administrator is the Federal On-Scene Coordinator, the COTP may consult with the EPA to determine if the Regional Administrator has any comments or reservations prior to COTP approval of a plan.

The Coast Guard will acknowledge receipt of all response plans when they are received. One copy of a response plan for a significant and substantial harm facility that has been approved will be returned with an approval letter. The returned copy of the plan must remain and be maintained at the facility. Plan approvals are valid for up to 5 years. Plans submitted before the required response resources are in place may receive conditional approval subject to availability of the required resources. The Coast Guard will retain one copy for use, if necessary, during a response involving the facility.

If a plan for a significant and substantial harm facility is not approved or a plan for a substantial harm facility has deficiencies or omissions, the Coast Guard will explain the deficiencies. The facility owner or operator will have 30 days to submit a revised plan. The facility may continue to handle, store, or transport oil as cargo during this period provided that the certification of the availability of the required response resources remains valid. However, the time allowed to resolve deficiencies noted in the plan will be in accordance with section 154.1070.

Section 154.1065 Plan Revision and Amendment Procedures

This section of the rule requires that MTR facility response plans be reviewed annually by the facility owner or operator to ensure that plan information is current. A letter documenting this review must be submitted to the Coast Guard.

Certain changes in facility operations require plan resubmission and require the Coast Guard to reexamine or reapprove the response plan. These include: a change in the facility's configuration that significantly affects the plan information, such as a reconstruction or piping reconfiguration; a change in the type of oil handled, stored, or transported (differing oils have different response resource requirements); a change in the identity, capability, or availability of the response resources identified and available by contract or other approved means; a change in the facility's operating area that includes ports or geographic areas not covered by a previously approved plan; and other changes that significantly affect plan implementation. If no other revisions occur, a plan must be resubmitted within 5 years of the previous submission or, where appropriate, approval by the COTP.

Plan revisions that affect only names or phone numbers do not require resubmission for reapproval. However, all plan holders, including the Coast Guard, must receive such revisions as they occur.

Facility owners or operators must revise a plan whenever the Coast Guard determines that it does not meet the requirements of this subpart. Facility owners or operators will receive a written notice of deficiencies requiring revision. Section 154.1070 discusses the time allowed to correct deficiencies in the plan and required equipment.

Section 154.1070 Deficiencies

This section of the rule provides that the COTP will notify the owner or operator of the facility in writing of any deficiencies noted during a review of the response plan, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with the response plan. The COTP has discretion in specifying the time in which any deficiency must be corrected. It also specifies the time in which a deficiency may be appealed and also allows the operator to request a stay from the COTP decision pending appeal of that decision. All appeals shall follow the procedures discussed in the appeal process in section 154.1075.

Section 154.1075 Appeal Process

This section provides a process for appealing deficiency determinations or COTP decisions. It includes a process for the owner or operator of a facility to seek COTP review of the regulatory classification that a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment. It provides for appeals of a noted deficiency or decision to the COTP, District Commander, and the Commandant.

When seeking review of the regulatory classification of a facility, the owner or operator shall identify factors in writing to the COTP relevant to a change in facility classification. These factors are contained in paragraph 154.1016(b) and include, but are not limited to, the following: proximity to navigable waters; type and quantity of oils handled in bulk; facility spill history; age of facility; and proximity to areas of economic importance or environmental sensitivity.

Subpart G—Additional Response Plan Requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) Facilities Operating in Prince William Sound, Alaska

Section 154.1110 Purpose and Applicability

The requirements of this subpart establish additional oil spill response planning requirements for an MTR facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA). They will ensure that adequate response equipment is rapidly on scene in the event of a future oil spill, and that the residents in Prince William Sound are appropriately trained in oil spill removal and containment techniques. These requirements provide a greater level of preparedness above and beyond the requirements of subpart F.

This subpart provides requirements and criteria for use in response plan development and in identifying response resources. The requirements do not establish performance standards to be met during an oil spill. These requirements are in addition to those found in subpart F. Information pertaining to submission and approval procedures, plan revision and amendment procedures, deficiencies, and the appeal process are contained in §§ 154.1060, 154,1065, 154.1070, and 154.1075, respectively.

Section 154.1125 Additional Response Plan Requirements

This section describes what must be included in a response plan appendix for Prince William Sound for TAPAA facilities. The appendix is required to identify the oil spill removal organization; drill procedures for the required response resources; procedures for testing and certifying of response equipment; and type and location of prepositioned equipment.

The oil spill removal organization will consist of trained personnel capable of responding to a worst case discharge, to the maximum extend practicable. It must identify personnel to be trained in the communities and hatcheries specified in the rule. General training is to be provided in oil spill removal and containment techniques and specific training is required for the individual response resources provided. The training will allow local residents to assist in the cleanup and containment of oil spills and provide a means of protecting their property and economic interests.

The oil spill removal organization must evaluate each of the communities and hatcheries listed in § 154.1125 to determine the personnel necessary to be trained as well as the property and sensitive areas requiring protection. Response strategies and assumptions then need to be developed. These strategies need to reflect the practical limitations of personnel and response equipment available.

Section 5005(a)(2) of OPA 90 requires an MTR facility permitted under TAPAA to establish an oil spill removal organization that can "immediately remove," to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels, whichever is greater. In OPA 90, the term "immediately remove" is used to assess the number of trained personnel needed by an oil spill removal organization. The Coast Guard considers the phrases "to the maximum extent practicable" and "immediately remove" to be incompatible in the sense that a worst case discharge can rarely be immediately removed because of the maximum practicable limitations in present day cleanup technology and the limited number of residents available to respond to an oil spill in Prince William Sound. Immediately is not used in this subpart to describe the number of trained personnel needed by an oil spill removal organization. The Coast Guard believe that the timetable established, given the nature of the area and the resources available, is an appropriate implementation of "immediately."

The drills required by this subpart are in addition to the requirements of subpart F. The two required drills are to ensure that the oil spill removal organization and the additional equipment and personnel required by this subpart remain in a state of readiness to respond adequately to a worst case discharge to the maximum extent practicable.

Certification of prepositioned equipment is the responsibility of facility owners or operators. The method for periodic certification of equipment required by OPA 90 has yet to be determined. The Coast Guard is requiring the use of an independent entity to perform this function. The Coast Guard solicits comments on this approach.

Section 154.1130 Requirements for Prepositioned Response Equipment

This section of the rule requires response resources in addition to the requirements in § 154.1045. This section establishes an additional planning tier for Prince William Sound and reduces the response times in § 154.1045. This additional tier requires prepositioned on-water recovery equipment and storage capacity with a minimum effective daily recovery rate of 30,000 barrels to be capable of being on scene within 2 hours notification of a discharge and on-water recovery equipment with a minimum effective daily recovery rate of 40,000 barrels capable of being on scene within 18 hours of the notification of a discharge. In addition, it requires on-water storage capacity of 100,000 barrels for recovered oily material to be capable of being on scene within 2 hours of notification of a discharge and the storage capacity of 300,000 barrels capable of being on scene within 12 hours of notification of a discharge.

The additional response equipment for communities and hatcheries identified in § 154.1125 will enhance the ability of the local residents to contain and remove oil and to protect their property. The prepositioning of equipment improves the timeliness of a spill response, and therefore, the effectiveness of a cleanup operation. The requirement for permanent buoys at strategic locations will provide midchannel anchor points for protective booming of property and environmentally sensitive areas.

Section 154.1135 Response Plan Development and Evaluation Criteria

This section of the rule provides response times for the response resources required by § 154.1045. In accordance with these response times, an owner or operator of an MTR facility permitted under TAPAA is required to plan for 70,000 barrels/day of on-water recovery capability to be on scene within 36 hours. In any other port in the United States, the planning requirement will be effective recovery capacity of up to 40,000 barrels/day to arrive on scene within 54 hours in a higher volume port area, and within 60 hours in all other areas.

Section 154.1140 TAPAA Facility Contracting With a Vessel

This section of the rule allows the owner or operator of a TAPAA facility to contract with a vessel to meet some or all of the requirements of the vessel response requirements under subpart G of 33 CFR part 155, by contract or other approved means. The COTP will determine the extent to which the contractual arrangement satisfies the vessel's requirements.

Appendix C to Part 154—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

This appendix contains the procedures for an owner or operator of a facility which handles, stores, or transports Group I non-persistent oils and Group II, III, and IV persistent oils to determine the response resources that must be identified and available, by contract or other approved means, to respond to the average most probable, maximum most probable, and worst case discharge to the maximum extent practicable. The procedure is based on similar requirements in the vessel response plan NPRM for determining response resources.

A facility owner or operator must use the procedures described in the appendix to determine the planning volumes for Group I non-persistent oils and Groups II, III, and IV persistent oils and identify specific response resources. A number of assumptions are used to determine these volumes.

The procedures used for these calculations are based on the facility's location and type of oil (Group I non-persistent or persistent Groups II–IV) handled, stored, or transported. The Coast Guard solicits comments on this classification for petroleum oils.

The appendix describes the procedures for determining: whether equipment identified in a response plan is acceptable to meet the requirements of this rule; the response resources required to plan for the average most probable discharge, the maximum most probable discharge, and the worst case discharge; effective daily recovery rates for oil recovery devices; the calculation of the worst case discharge planning volume; availability of high-rate response methods; and additional equipment necessary to sustain response operations. Each of these procedures provides further detail on the requirements found in § 154.1045. The Coast Guard solicits comments on these procedures.

The Coast Guard recognizes that actual recovery rates are affected by a number of variables. The rule allows the use of two methods for determining the rating of equipment identified to meet the planning capabilities required. The Coast Guard differentiated between rope and belt-type devices and other designs to reflect the difference in these devices from others when determining recovery rates.

The appendix includes tables providing the factors necessary to determine the resource requirements. Table 1 lists the operating criteria for oil recovery devices and booms. It uses significant wave height for classifying equipment identified in a response plan. Such equipment must be designed to function in the conditions listed for the applicable operating environment. During plan evaluation, the Coast Guard will assess whether equipment identified in a plan meets these criteria.

Table 2 provides factors needed to calculate the planning volumes for response resource identification. The table is divided into three geographic areas and four oil types. Because loss to the environment, potential for shoreline impact, and potential for on water recovery varies by the oil type and location, a factor is included for each. The factors are based on estimates of the oil behavior when it enters the environment: a percentage would be lost due to natural dispersion; a percentage would reach the shoreline; and a percentage would remain for on water recovery. In the inland/nearshore and offshore portions of the table, the percentages do not add up to 100 percent. This reflects an adjustment in the on water percentage to increase the quantity of response resources that are planned for mobilization within the first 3 days of the response. Because the oil may rapidly impact the shoreline in these areas, quick mobilization is essential. The table also includes a sustainability period. This was used to calculate the resource mobilization factors in Table 4. It does not reflect how long it would take to complete a clean-up. During an actual response, facility owners or operators will be required to sustain the clean-up operation until release by the Federal OSC. The Coast Guard solicits comments on the specific factors in this table.

Table 3 lists emulsification factors for the four oil groups. The factors represent the increase in volume expected due to emulsification. This increase must be considered when planning for response resources, oil storage and disposal capacity, etc. Oil emulsification affects both the weathering rate and the volume of oily material that facility owners or operators must plan to recover. The tendency for certain oils to form an emulsion is based primarily on the oil's viscosity at the ambient temperature and chemical composition. Because this varies widely, the table uses oil groups based on specific gravity. Some oils form very stable emulsions; others emulsify, then naturally separate. The individual factors reflect the general behavior of oils in a group, and do not reflect any one particular oil. The Coast Guard solicits comments on these factors, as well as whether there is an alternative method for determining these factors.

Table 4 lists the response resource mobilization factors for the operating areas or geographic locations where facilities are located and where response planning is required. These factors reflect the tiering of on water oil recovery capacity that must be mobilized within the first 3 days of an incident to maximize the potential for oil recovery. These factors were derived using the sustainability periods in Table 2 for the respective operating area. Each factor reflects a percentage of the total on water recovery requirement. To accomplish the planned for on water oil recovery within the sustainability period, this capacity must be on scene within the time specified for the applicable tier.

Table 5 lists the caps on response resources that facility owners or operators must identify and have available by contract or other approved means. The cap reflects an estimate of capability that is considered a practical nationwide target to be met in 1993. Providing the response resources necessary to meet these caps will require a significant expansion of response capabilities in most areas of the country. Some areas may currently have response resources in place or planned that will exceed these caps. The caps serve as a minimum capability that must be available throughout the

United States. The cap for rivers is lower to reflect a practical limit on response capability available in these areas in 1993.

The caps listed in Table 5 are scheduled to increase 25 percent in 1998 to create incentives for both an increase in the quantity of equipment available and improvements in spill response technology. The caps for 2003 will be developed after further review as required in § 154.1045(n). The Coast Guard solicits comments on these effective daily recovery rates 1993 and 1998.

Appendix D to Part 154—Interim Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans

This appendix contains procedures and information intended to identify areas near a facility which would require special protection. The procedures are provided to assist owners and operators of MTR facilities in completing certain portions of the response plan required by Subparts F and G of 33 CFR Part 154. The information will help the facility owner or operator determine if his or her facility is located near areas which will require special planning consideration.

The areas selected have been placed on a list for their ecological significance or their importance to human survival, such as drinking water protection, or economic productivity, such as cooling water intakes. The areas are important economically or environmentally sensitive and subject to deleterious effects from oil discharges.

The areas have been identified by several Federal agencies collectively charged with response planning requirements mandated in the Oil Pollution Act of 1990 (OPA) and subsequent revisions to the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). Because the response plans must be consistent with the requirements of the NCP and Area Contingency Plans, the coordinated interagency effort is intended to ensure that planning requirements are not conflicting. Furthermore, a coordinated effort will facilitate the development of a workable and enforceable definition that reflects the different concerns and broad experience of the participating agencies. The Coast Guard has derived the definition of environmentally sensitive areas from the combined resources and input of the workgroup.

As part of response planning for a facility, the owner or operator must provide information on whether a spill at the facility could adversely impact any sensitive area. The COTP will consider this information in determining whether the facility will be classified as a substantial harm facility or a significant and substantial harm facility. For Group II through IV persistent oil calculations, the facility owner or operator must use the distance from the facility that oil could move in 48 hours at maximum current for a non-tidal environment, and for tidal waters, 15 miles down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide must be used. For Group I non-persistent oil, 24 hours and 5 miles respectively must be used. Facilities which provide evidence to the appropriate COTP that the area specified above is too great an area to consider for sensitive area planning can have the area reduced by the COTP. An example of evidence acceptable to support this claim is a spill trajectory modeling of a worst case discharge that demonstrates that oil would not reach sensitive areas beyond a certain point before it is cleaned up or is otherwise unlikely to impact the area. In a case where this type of evidence is presented to the COTP, the COTP may reduce the planning area to the areas in which it is demonstrated that impacts could be anticipated. The Coast Guard solicits comments on the procedure and distances utilized, as well as on the areas identified.

The definition of environmentally sensitive areas contained in this rule was developed from the sensitive environments identified by EPA's Hazard Ranking System (HRS). To help MTR facility owners and operators recognize sensitive areas for response planning purposes, the Coast Guard has included the name of Federal, State, and local agencies which may be helpful in identifying or supplying information about the sensitive areas.

The Coast Guard requests comments on the definition of economically important or environmentally sensitive areas. The Coast Guard solicits comment on whether certain areas on the list should not be considered in identifying sensitive environments.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 154.106 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

Executive Order 12291 (46 13197, February 19, 1981) requires that agencies develop a regulatory analysis for any rule having major economic consequences on the national economy, individual industries, geographic regions, or levels of government. To assist with making this determination, a series of questions was asked in the ANPRM to solicit information from the public on the potential economic impact of these regulations.

The Coast Guard considers these regulations to be non-major under Executive Order 12291. It is a significant rule using a number of criteria under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). This rule was estimated to cost the oil transportation industry and the general public $43.7 million on an annualized basis. The annualized cost, which is a constant amount that equilibrates an uneven flow of cost over time, was estimated over a 10 year period using a ten percent discount rate. This rule may also affect the way the oil industry does business in the United States and may generate substantial public interest and controversy. These regulations will also impact cleanup contractors, oil spill cooperatives, and other not-for-profit cleanup organizations.

The rule contains requirements for MTR facility response plans. it also contains additional requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) facilities operating in Prince William Sound, Alaska. The impact of these requirements has been analyzed separately and is summarized below.

A draft Regulatory Impact Analysis (RIA) for MTR facility response plans is available in the docket for inspection or copying, as indicated under ADDRESSES. It has also been placed in a separate docket (CGD 91–047) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90.

Marine Transportation-related Facility Response Plans

In performing the regulatory impact analysis, four response plan alternatives for determining applicability of the regulations were considered. These four alternatives are: (1) MTR facilities capable of transferring oil in bulk to or from a vessel with a minimum capacity of 10,500 gallons classified in the significant and substantial harm category with a very small number of additional facilities classified in the substantial harm category plus mobile facilities; (2) all MTR facilities capable of transferring oil in bulk to or from a vessel with a minimum capacity of 10,500 gallons classified in the significant and substantial harm category with ten percent of the additional facilities classified in the substantial harm category; (3) all MTR facilities capable of transferring oil in bulk to or from a vessel with a minimum capacity of 10,500 gallons including mobile facilities which handle, store, or transport Groups II through IV persistent oil classified in the significant and substantial harm category. All other facilities capable of transferring oil in bulk including marinas which handle, store, or transport Group I non-persistent oil only to or from vessels with a capacity of less than 250 barrels and mobile facilities which handle, store, or transport Group I non-persistent oil classified in the substantial harm category; and (4) the Coast Guard not promulgating regulations for MTR facilities.

Industry Profile

There are approximately 3,580 MTR facilities which will be required to prepare response plans under this rule. These facilities can be divided into six general categories: (1) petroleum bulk stations and terminals, (2) petroleum refineries, (3) government installations, (4) oil production facilities, (5) electric utility plants, and (6) mobile facilities such as tank trucks and railroad tank cars transferring to or from vessels with a capacity of 250 or more barrels.

For the purpose of analyzing this rule, the MTR facilities can be subdivided by storage capacity. The storage capacity groupings used to analyze this rule were: (a) less than 10,500 gallons, (b) 10,500 to 42,000 gallons, (c) 42,001 to one million gallons, and (d) more than one million gallons. There are an estimated 400 companies operating Coast Guard-regulated mobile facilities with a capacity of less than 8,000 gallons. This places them in group (a). There are 40 petroleum bulk oil stations or terminals that store between 10,500 and 42,000 gallons at their facility, placing them in group (b). Between 1,200 and 1,418 marine transportation-related facilities store between 42,001 and one million gallons which places them in group (c) and between 1,472 and 2,190 facilities that store over one million gallons or will fall into group (d).

Costs

In the aggregate, the requirement for facility response plans will result in substantial costs to the facilities affected. If all the costs for MTR facilities affected by this rule are attributed to the Coast Guard's regulations, the present value cost of this regulation for the first 10 years is estimated at $268.5 million. In the first year, most of this cost is attributable to conducting training and drilling evaluations (as defined in the regulatory impact analysis) and arranging for or providing adequate response capability. In subsequent years, the majority of the cost is attributable to conducting drills and retaining the response capability. The incremental cost of the entire regulation is $63 million for 1992, but declines to $40 million annually in subsequent years. However, since many of these facilities are complexes which are being jointly regulated by the Coast Guard and the EPA and the total costs are already accounted for under EPA's forthcoming proposed facility response plan regulation, these costs could be reduced to reflect this fact. Thus, total present value costs for Coast Guard facility response plans will be $79 million and incremental costs will be $19 million for the first full year and $12 million for subsequent years.

For individual facility owners or operators, the cost of compliance may vary widely. Although it is generally more costly for large companies to comply with the regulation, the cost will most likely be a small part of their overall operating budget. The estimated first year cost per company for group (a), mobile facilities, and per facility for group (b), small bulk terminals, is under $6,000; for group (c), oil production wells and medium bulk facilities, is between $9,000 and $16,000; and for group (d), large facilities, is $25,000. In subsequent years these figures are: $3,000; $4,700 to $11,000; and $16,000 respectively.

Summary of Benefits

The principal benefit of the response plan requirement for MTR facilities is the increased preparedness for pollution incidents. This results in a corresponding reduction in natural resource damages and cleanup costs. Facility response plans are expected to reduce the damages caused by oil spills and thus the cost by: (1) minimizing oil outflow volumes when an incident occurs, (2) preventing spilled oil from reaching sensitive habitats, and (3) mobilizing an effective and timely response to spills.

The potential benefits of facility response plans were calculated by analyzing historical spill data. Using this information, an assessment was made of the effectiveness planning may have in reducing outflows, cleanup costs, and damages.

Quantifying benefits of avoided natural resource damages associated with the facility response plan regulations is difficult. The ideal methodology will be to conduct a multiple case study of historical spill data that included natural resource damage assessments. The results will represent the range of benefits from avoided natural resource damages. This could not be done for two reasons. First, there are a limited number of claims actually settled which established a resource damage and restoration claim. Second, although models and methodologies are being developed which may better quantify natural resource damages, there is a lack of standardized models to do these assessments.

The Coast Guard is undertaking further work to refine and expand its database of oil spill cleanup and damage cost information and is further studying the matter of natural resource damage valuation, which is currently the subject of comprehensive research and evaluation by NOAA. This will facilitate the development of more accurate, representative and consistent spill-unit values to serve as the basis for reevaluating the benefits estimates in this and other regulatory evaluations undertaken for the implementation of OPA 90.

In the absence of more detailed studies, benefits are estimated based on the incremental volume of spilled oil that will be recovered due to compliance with this regulation. The estimated number of discounted barrels (using a ten percent discount rate) of oil recovered over a ten year period is 201,956 barrels. The cost effectiveness ratio (costs divided by benefits) is $1,330 per barrel of oil recovered.

After the development of the RIA but prior to the publication of this IFR, the Office of Management and Budget (OMB) issued new guidance on preparation of benefit-cost analyses (Circular No. A–94, 57 FR 53519, November 10, 1992). The Coast Guard will use that guidance in preparing the RIA for the final rule.

Similarly, as discussed in the "Costs" portion of the RIA where most of the costs are attributed to EPA, most of the benefits are accounted for under EPA's forthcoming proposed facility response plan regulation. If EPA benefits are deducted, the remaining benefits will be minimal as the majority of facilities are already EPA regulated facilities.

Additional Response Plans Requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) Facilities Operating in Prince William Sound, Alaska Industry Profile

At present, there is only one Trans-Alaska Pipeline (TAPAA) facility operating in Prince William Sound. This facility is the Valdez Marine Terminal which is operated by Alyeska Pipeline

Service Company. This facility transfers approximately 700 million barrels annually to approximately 900 tankers.

Additional Response Plan Requirements for Certain Facilities Operating in Prince William Sound, Alaska

The increase in unit cost of handling, storing, and transporting crude petroleum oil to comply with section 5005 of OPA 90 is relatively small. This can easily be absorbed by the Alyeska Pipeline Service Company.

Summary of Costs and Benefits

Overall industry costs for complying with additional response planning requirements were previously discussed in the Draft Regulatory Evaluation for Prince William Sound, Alaska referenced in the Vessel Response Plan NPRM published in the Federal Register on June 19, 1992 (57 FR 27514). While this specifically addressed requirements for certain vessels in Prince William Sound, Alaska, it also included the costs and benefits incurred by the sole TAPAA facility located in Prince William Sound. The costs of complying with section 5005 of OPA 90 are estimated to be $232 million for the 10-year period, 1993 through 2002. The benefits include the quick recovery of spilled oil from the environment and subsequent reduction in net impact of the spill. The regulations for Prince William Sound are estimated to increase the volume of recovered oil by 25 percent for crude oil.

A copy of the draft Regulatory Evaluation for Prince William Sound is available in the docket for inspection or copying, as indicated under ADDRESSES.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard has examined the impact of this rule on small entities. Its analysis indicates that the majority of small businesses subject to this regulation should be able to absorb the estimated compliance costs without experiencing significant adverse economic effects. The Coast Guard certifies under the Regulatory Flexibility Act of 1980 that this rule will not have significant impact on a substantial number of small entities.

An Initial Regulatory Flexibility Analysis discussing the impact of this rule on small entities is available in the docket for inspection or copying, as indicated under ADDRESSES.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB reviews each regulation that contains collection of information requirements to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other similar requirements. The collection of information requirements for this rule have been submitted to OMB for review and approval and OMB approval is expected prior to February 18, 1993. The collection of information requirements for each subpart of the rule are discussed separately.

Subpart F—Response Plans

This rule contains collections of information requirements in the following sections: Sections 154.1025 (Operating restrictions and interim operating requirements); 154.1030 (General response plan requirements, specifically in the development of response resources and the identification of sensitive areas); 154.1050 (Training); 154.1055 (Drills); 154.1060 (Submission and approval procedures); and 154.1065 (Plan revision and amendment procedures).

The reporting and recordkeeping requirements associated with this rule are being submitted to OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

DOT No: 2115; OMB CONTROL NO: XXXX

Administration: U.S. Coast Guard.

Title: Response Plans for Marine Transportation-related Facilities.

Need for Information: This information is necessary to ensure that MTR facilities are adequately prepared to respond to an oil spill.

Use: The purpose of the OPA 90 amendments to section 311 of the FWPCA was to increase the preparedness for oil spills and to minimize the impact of the oil spills when they do occur. Without the requirements for response plans for MTR facilities, it is probable that some operators will not maintain the necessary internal resources (effective planning, training, drilling, etc.) or external resources (adequate response capability) to meet the requirements of these amendments. The collection of information requirements help ensure and monitor, through the submission and recurring update of response plans, that these facilities have appropriate response plans and response resources.

Submission of MTR facility response plans to the U.S. Coast Guard for approval, the verification of an approved plan during routine inspections, and the maintenance of training and drill records is believed to be the most efficacious way to ensure compliance.

Frequency: Response plan submitted every 5 years; notice of reviews completed annually; updates as necessary.

Burden Estimate: A onetime burden for industry of 327,000 hours for reporting and an annual recordkeeping burden of 65,000 hours.

Respondents: 3,580.

Average Burden Hours per Respondent: Onetime reporting burden of 91.33 hours and an annual recordkeeping burden of 18.1 hours. Subsequent years reporting will be an average of 4.5 hours.

Subpart G—Additional Response Plan Requirements for Trans-Alaska Pipeline Authorization Act (TAPAA) Facilities Operating in Prince William Sound, Alaska

This rule contains collection of information requirements in the following sections: Sections 154.1120 (Operating restrictions and interim operating authorization) and 154.1125 (Additional response plan requirements).

The reporting and recordkeeping requirements associated with this rule are being submitted to OMB for approval in accordance with 44 U.S.C. chapter 35. The following particulars apply:

DOT No: 2115; OMB CONTROL NO: XXXX

Administration: U.S. COAST GUARD

Title: Additional Response Plan Requirements for the Trans-Alaska Pipeline Act (TAPAA) Facilities Operating in Prince William Sound, Alaska.

Need for Information: This rule ensures that a facility owner or operator will provide a response plan appendix that addresses: prepositioned oil spill containment and removal equipment; oil spill removal organizations; training of local residents in oil spill containment and removal techniques; drills; and periodic testing and certification of equipment.

Use: The purpose of OPA 90 is to reduce the number of oil spills in U.S. waters and minimize the impact when they do occur. The additional requirements in section 5005 of OPA 90 for trained personnel and prepositioned response equipment reflect the particular environmental sensitivity of Prince William Sound. Without the requirements for facilities operating in Prince William Sound, it is unlikely that sufficient response resources will be available or properly maintained to clean up a spill. The requirement establishes oil and spill removal organizations and requires prepositioned response equipment to ensure a greater level of preparedness and rapid response in the event of a spill.

Frequency: Records of personnel training and equipment maintenance, inspection, and testing will be maintained as necessary. Training and drill plans will be submitted yearly. Drills will take place twice a year.

Burden Estimate: 370 hours a year for reporting and 100 hours a year for recordkeeping.

Respondents: 1.

Average Burden Hours Per Respondent: 370 hours reporting and 100 hours of recordkeeping per year.

The Coast Guard has submitted the requirements to OMB for review, as required by the Paperwork Reduction Act.

The Coast Guard believes that the detailed information listed in § 154.1035 is essential in order to evaluate objectively the adequacy of a response plan. However, the Coast Guard is also working to set in place supplementary procedures that could reduce some of these requirements. To this end, on December 4, 1992, it promulgated Navigation and Vessel Inspection Circular 12–92, entitled "Guidelines for the Classification and Inspection of Oil Spill Response Organizations (OSROs).

There may be cases where owners or operators submitting response plans will not have adequate information regarding the oil spill removal organization(s) or the private personnel and equipment or both by February 18, 1993, to meet all the specific requirements in this interim final rule. In the initial submittal, they should acknowledge what information is lacking, explain why, and request a waiver with regard to submittal of such information. Upon good cause shown in the waiver request, the Coast Guard may grant a waiver for a reasonable period, not to extend beyond August 18, 1993, for submittal of information regarding the oil spill removal organization(s) or the private personnel and equipment or both.

Where owners or operators believe the existing information burdens are unduly burdensome, the Coast Guard actively solicits suggestions for amendments that will reduce information collection burdens while meeting the requirements of OPA 90 and the need for adequate information for plan review and discharge response. Persons commenting on the collection of information requirements should submit their comments both to OMB and to the Coast Guard, as indicated under **ADDRESSES.**

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 (October 26, 1987), and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

During the discussions of the Negotiated Rulemaking Committee, several States expressed concern about the issue of preemption. Some States, including Alaska, Washington, and Florida, have already issued regulations requiring oil spill response plans for facilities. The Coast Guard has evaluated the federalism issue in light of the statutory requirement for facility response plans and the accompanying provision which dictates that State law shall not be preempted. These regulations establish minimum requirements which may be supplemented by the States. However, a State may not adopt regulations inconsistent with Federal regulations. State law will be preempted by these regulations only to the extent that compliance with the State law will preclude owners or operators of facilities from complying with these requirements.

Section 311(o)(2) of the FWPCA explicitly preserves the authority of any State to impose its own requirements or standards with respect to the liability of persons involved in the removal of oil. Further, section 311(o)(3) of the FWPCA indicates that nothing in section 311 shall affect any State or local law not in conflict with anything therein.

The Supreme Court has held that a State may not issue a regulation which actually conflicts with a Federal statute or regulation. A conflict will be found "where compliance with Federal and State regulations is a physical impossibility." *Florida Lime and Avocado Growers* v. *Paul*, 373 U.S. 132.

Impossibility of compliance must be distinguished from inconsistency in Federal and State laws. For example, if a Federal regulation indicates several ways in which a requirement may be satisfied, a State may limit the methods available, but not preclude compliance by its regulations.

Executive Order 12612 and sections 311(o)(2) and (3) of the FWPCA emphasize the goal of preserving the authority of the States in pollution prevention and response. In *Askew* v. *American Waterways Operators, Inc.*, 93 S.Ct. 1590 (1973), the Supreme Court stated that "sea-to-shore pollution [is] historically within the reach of the police power of the States." (Id at 1601.) Hence, the Court has clearly preserved the authority of the States to regulate in this area, as long as State law is not in direct conflict with Federal law.

Section 311(j)(5) of the FWPCA specifically directs the President to issue these regulations. It is certified that the policies contained herein have been assessed in light of the principles of the Federalism Executive Order. Because this rule is being issued in response to a statutory mandate, the Coast Guard has determined that this action accords fully with the Executive Order.

Environment

The Coast Guard has prepared a preliminary Environmental Assessment (EA) for this action in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Coast Guard policy (COMDTINST M16475.1B) implementing the procedural provisions of the National Environmental Policy Act (NEPA).

The EA discusses the environmental consequences of the action and alternatives, including the no-action alternative. The response planning requirements implemented under the preferred alternative are expected to enhance the effectiveness of a facility's spill response in a number of ways, including reducing the amount of oil that is released from the source, preventing oil from affecting sensitive environments once it is spilled, and increasing the amount of oil that is recovered. The preferred alternative is estimated to reduce the amount released from MTR facilities that affect the environment by approximately 1.4 million gallons, or 30 percent of all oil spilled from these facilities. The overall result will be reduction in water, land, and air pollution from oil spills at MTR facilities.

The preliminary EA is available in the public docket as noted under **ADDRESSES.** After receipt of all comments to this IFR and the EA, the Coast Guard will make a final decision on the need to draft an Environmental Impact Statement (EIS) for this rule.

List of Subjects

33 CFR Part 150

Harbors, Marine safety, Navigation, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 154

Fire prevention, Oil pollution, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the U.S. Coast Guard amends 33 CFR parts 150 and 154 as follows:

PART 150—OPERATIONS

1. The authority citation for 33 CFR part 150 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2), 1509; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46.

2. Section 150.129 is added to subpart A to read as follows:

Subpart A—General

* * * * *

§ 150.129 Response plans.

(a) The owner or operator of a deepwater port shall prepare and submit a response plan meeting the requirements of subpart F of part 154 for review and approval by the cognizant Captain of the Port (COTP).

(b) A response plan must be submitted to the cognizant COTP by February 18, 1993 or not less than 60 days before the port begins operation, which ever is later.

3. The authority citation for Part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

4 and 5. Section 154.100 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 154.100 Applicability.

(a) Unless otherwise indicated, this part applies to each fixed facility that is capable of transferring oil or hazardous material, in bulk, to or from a vessel with a capacity of 250 barrels or more. This part also applies to each mobile facility that is used, or intended to be used to transfer oil or hazardous material, in bulk, to or from a vessel with a capacity of 250 barrels or more. This part does not apply to the facility when it is in caretaker status (i.e., is not operational); except that, § 154.735 continues to apply if the facility's storage tanks or piping are not gas free.

* * * * *

(c) Upon a determination by the COTP under § 154.1016 that an MTR facility, as defined in subpart F, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone, subpart F of this part is applicable to the facility.

6. Section 154.106 is amended by revising paragraph (a) and amending paragraph (b) by revising the entry for the American Society for Testing and Materials (ASTM) to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and the material must be available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G–MEP), room 2100, 2100 Second Street, SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) * * *

American Society for Testing and Materials (ASTM) 1916 Race Street, Philadelphia, PA 19103.

ASTM F 631–80 (Reapproved 1985); Standard Method for Testing Full Scale Advancing Spill Removal Devices.	Appendix C.
ASTM F 715–81 (Reapproved 1986); Standard Methods of Testing Spill Control Barrier Membrane Materials.	Appendix C.
ASTM F 808–83 (1988); Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments.	Appendix C.
ASTM F 989–86, Standard Test Methods for Spill Control Barrier Tension Members.	Appendix C.
ASTM F–1122 (1987); Standard Specifications for Quick Disconnect Couplings.	154.500.

* * * * *

7. Part 154 is amended by adding new subparts F and G to read as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

* * * * *

Subpart F—Response Plans

Sec.
154.1010 Purpose.
154.1015 Applicability.
154.1016 Upgrading facility classification.
154.1017 Response plan submission requirements.
154.1020 Definitions.
154.1025 Operating restrictions and interim operating authorization.
154.1026 Qualified individual and alternate qualified individual.
154.1028 Methods of ensuring the availability of response resources by contract or other approved means.
154.1029 Worst case discharge.
154.1030 General response plan contents.
154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.
154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.
154.1041 Specific response information to be maintained on mobile MTR facilities.
154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.
154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.
154.1049 Response plan development and evaluation criteria for facilities that handle, store, or transport non-petroleum oils.
154.1050 Training.
154.1055 Drills.
154.1057 Inspection and maintenance of response resources.
154.1060 Submission and approval procedures.
154.1065 Plan revision and amendment procedures.
154.1070 Deficiencies.
154.1075 Appeal process.

Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

154.1110 Purpose and applicability.
154.1115 Definitions.
154.1120 Operating restrictions and interim operating authorization.
154.1125 Additional response plan requirements.
154.1130 Requirements for prepositioned response equipment.
154.1135 Response plan development and evaluation criteria.
154.1140 TAPAA facility contracting with a vessel.

Subpart F—Response Plans

§ 154.1010 Purpose.

(a) This subpart establishes oil spill response plan requirements for all marine transportation-related (MTR) facilities (hereafter also referred to as facilities), that could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. These requirements specify criteria to be used during the planning process to determine the appropriate response resources. The specific criteria for response resources and their arrival times are not performance standards. The criteria are based on a set of assumptions that may not exist during an actual oil spill incident.

§ 154.1015 Applicability.

(a) This subpart applies to all MTR facilities that because of their location could reasonably be expected to cause at least substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone.

(b) The following MTR facilities that handle, store, or transport oil, in bulk, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and are classified as substantial harm MTR facilities:

(1) Fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more and deepwater ports;

(2) Mobile MTR facilities used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(3) Those MTR facilities specifically designated by the COTP under § 154.1016.

(c) The following MTR facilities that handle, store, or transport oil in bulk could not only reasonably be expected to cause substantial harm, but also significant and substantial harm, to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone and are classified as significant and substantial harm MTR facilities:

(1) Fixed MTR onshore facilities capable of transferring oil to or from a vessel with a capacity of 250 barrels or more and deepwater ports; and

(2) Those MTR facilities specifically designated by the COTP under § 154.1016.

(d) An MTR facility owner or operator who believes the facility is improperly classified may request review and reclassification in accordance with § 154.1075.

§ 154.1016 Upgrading facility classification.

(a) The COTP may upgrade the classification of:

(1) An MTR facility not specified in § 154.1015 (b) or (c) to a facility that could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines and therefore is subject to the requirements of this subpart; or

(2) An MTR facility specified in § 154.1015(b) to a facility that could reasonably be expected to cause significant and substantial harm to the environment.

(b) COTP upgrading of a facility classification will be based on a consideration of all relevant factors including, but not limited to: type and quantity of oils handled in bulk; facility spill history; age of facility; proximity to public and commercial water supply intakes; proximity to navigable waters based on the definition of navigable waters in 33 CFR 2.05–25; and proximity to areas of economic importance or environmental sensitivity.

§ 154.1017 Response plan submission requirements.

(a) The owner or operator of an MTR facility identified only in § 154.1015(b) or designated by the COTP as a substantial harm facility must prepare and submit to the cognizant COTP a response plan that meets the requirements of §§ 154.1030, 154.1040, and 154.1045, 154.1047, or 154.1049, as appropriate. This applies to:

(1) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more; and

(2) A fixed MTR facility specifically designated as a substantial harm facility by the COTP under § 154.1016.

(b) The owner or operator of an MTR facility identified in § 154.1015(c) or designated by the COTP as a significant and substantial harm facility must prepare and submit for the review and approval of the cognizant COTP a response plan that meets the requirements of §§ 154.30, 154.1035, and 154.1045, 154.1047, or 154.1049, as appropriate. This applies to:

(1) A fixed MTR facility capable of transferring oil, in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) An MTR facility specifically designated as a significant and substantial harm facility by the COTP under § 154.1016.

(c) In addition to the requirements in paragraphs (a) and (b) of this section, the response plan for a mobile MTR facility should meet the requirements of § 154.1041.

§ 154.1020 Definitions.

Except as otherwise defined in this section, the definition in 33 CFR 154.105 apply to this subpart.

Adverse weather means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in §§ 154.1045, 154.1047, or 154.1049, as appropriate, ice conditions, temperatures, weather-related visibility, and currents within the COTP zone in which the systems or equipment are intended to function.

Average most probable discharge means a discharge of the lesser of 50 barrels or 1 percent of the volume of the worst case discharge.

Captain of the Port (COTP) Zone means a zone specified in 33 CFR part 3 and, where applicable, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Exclusive economic zone (EEZ) means the zone contiguous to the territorial sea of the United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Facility that could reasonably be expected to cause significant and substantial harm means any MTR facility (including piping and any structures that are used for the transfer of oil between a vessel and facility) classified as a "significant and substantial harm" facility under § 154.1015(c) including a facility specifically designated by the COTP under § 154.1016(a).

Facility that could reasonably be expected to cause substantial harm means any MTR facility classified as a "substantial harm" facility under § 154.1015(b) including a facility specifically designated by the COTP under § 154.1016(a).

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Higher volume port area means the following ports:

(1) Boston, MA.

(2) New York, NY.

(3) Delaware Bay and River to Philadelphia, PA.

(4) St. Croix, VI.

(5) Pascagoula, MS.

(6) Mississippi River from Southwest Pass, LA. to Baton Rouge, LA.

(7) Louisiana Offshore Oil Port (LOOP), LA.

(8) Lake Charles, LA.

(9) Sabine-Neches River, TX.

(10) Galveston Bay and Houston Ship Channel, TX.

(11) Corpus Christi, TX.

(12) Los Angeles/Long Beach Harbor, CA.

(13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.

(14) Straits of Juan De Fuca from Port Angeles, WA, to and including Puget Sound, WA.

(15) Prince William Sound, AK.

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

Marine transportation-related facility (MTR facility) means any offshore facility or segment of a complex regulated under section 311(j) of the Federal Water Pollution Control Act (FWPCA) by two or more Federal agencies, including piping and any structure used or intended to be used to transfer oil to or from a vessel, subject to regulation under this part and any deepwater port subject to regulation under part 150 of this chapter. For a facility or segment of a complex regulated by two or more Federal agencies under section 311(j) of the FWPCA, the MTR portion of the complex extends from the facility oil transfer system's connection with the vessel to the first valve inside the secondary containment surrounding tanks in the non-transportation-related portion of the facility or, in the absence of secondary containment, to the valve or manifold adjacent to the tanks comprising the non-transportation-related portion of the facility, unless another location has otherwise been agreed to by the COTP and the appropriate Federal official.

Maximum extent practicable means the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the criteria in this subpart or in a specific plan approved by the cognizant COTP.

Maximum most probable discharge means a discharge of the lesser of 1,200 barrels or 10 percent of the volume of a worst case discharge.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter.

Non-persistent or Group I oil means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions—

(1) At least 50% of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(2) At least 95% of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

Non-petroleum oil means oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

Ocean means the offshore area and nearshore area as defined in this subpart.

Offshore area means the area beyond 12 nautical miles measured from the boundary lines defined in 46 CFR part 7 extending seaward to 50 nautical miles, except in the Gulf of Mexico. In the Gulf of Mexico, it is the area beyond 12 nautical miles of the line of demarcation (COLREG lines) defined in §§ 80.740 through 80.850 of this chapter extending seaward to 50 nautical miles.

Oil means oil of any kind or in any form, including, but not limited to, petroleum oil, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil.

Oil spill removal organization means an entity that provides response resources.

On-Scene Coordinator (OSC) means the definition in the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300).

Operating area means Rivers and Canals, Inland, Nearshore, Great Lakes, or Offshore geographic location(s) in which a facility is handling, storing, or transporting oil.

Operating environment means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

Operating in compliance with the plan means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means, and conducting the necessary training and drills.

Persistent oil means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

(1) Group II—specific gravity less than .85.

(2) Group III—specific gravity between .85 and less than .95.

(3) Group IV—specific gravity .95 or greater.

(4) Group V—specific gravity greater than 1.0.

Qualified individual and alternate qualified individual means a person located in the United States who meets the requirements of § 154.1026.

Response activities means the containment and removal of oil from the land, water, and shorelines, the temporary storage and disposal of recovered oil, or the taking of other actions as necessary to minimize or mitigate damage to the public health or welfare or the environment.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

Rivers and canals means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that has a project depth of 12 feet or less.

Spill management team means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

Substantial threat of a discharge means any incident or condition involving a facility that may create a risk of discharge of oil. Such incidents include, but are not limited to storage tank or piping failures, above ground or underground leaks, fires, explosions, flooding, spills contained within the facility, or other similar occurrences.

Worst case discharge means in the case of an onshore facility and deepwater port, the largest foreseeable discharge in adverse weather conditions meeting the requirements of § 154.1029.

§ 154.1025 Operating restrictions and interim operating authorization.

(a) The owner or operator of each MTR facility to which this subpart applies shall submit a response plan meeting the requirements listed in § 154.1030. After February 18, 1993, a facility may not handle, store, or transport oil unless a response plan has been submitted to the COTP.

(b) After August 18, 1993, no facility subject to this subpart may handle, store, or transport oil unless it is operating in full compliance with a submitted response plan. After August 18, 1993, no facility categorized under paragraph 154.1015(c) as a significant and substantial harm facility may handle, store, or transport oil unless the submitted response plan has been approved by the COTP. After August 18, 1993, an owner or operator of each new facility to which this subpart applies must submit a response plan meeting the requirements listed in § 154.1017 not less than 60 days prior to handling, storing, or transporting oil. Where applicable, the response plan shall be submitted along with the letter of intent required under § 154.110.

(c) Notwithstanding the requirements of paragraph (b) of this section, a facility categorized under paragraph 154.1015(c) as a significant and substantial harm facility may continue to handle, store, or transport oil for 2 years after the date of submission of a response plan, pending approval of that plan. To continue to handle, store, or transport oil without a plan approved by the COTP, the facility owner or operator shall certify in writing to the COTP that the owner or operator has ensured, by contract or other approved means as described in § 154.1028(a)(1 through 4), the availability of the necessary private personnel and equipment to respond, to the maximum extent practicable to a worst case discharge or substantial threat of such a discharge from the facility. Provided that the cognizant COTP is satisfied with the certification of response resources provided by the owner or operator of the facility, the COTP shall provide written authorization for the facility to handle, store, or transport oil while the submitted response plan is being reviewed. Pending approval of the submitted response plan, deficiencies noted by the COTP must be corrected in accordance with § 154.1070.

(d) After August 18, 1993, a facility may not continue to handle, store, or transport oil if—

(1) The COTP determines that the response resources identified in the facility's certification statement or referenced response plan do not substantially meet the requirements of this subpart;

(2) The contracts or agreements cited in the facility's certification statement or referenced response plans are no longer valid;

(3) The facility is not operating in compliance with the submitted plan;

(4) The response plan has not been resubmitted or approved within the last 5 years; or

(5) The period of the authorization under paragraph (c) of this section has expired.

§ 154.1026 Qualified individual and alternate qualified individual.

(a) The response plan must identify a qualified individual and at least one alternate that meet the requirements of this section.

(b) The qualified individual and alternate must:

(1) Speak fluent English;

(2) Be available on a 24-hour basis and be able to arrive at the facility in a reasonable time;

(3) Be familiar with the implementation of the facility response plan; and

(4) Be trained in the responsibilities of the qualified individual under the response plan.

(c) The owner or operator shall provide each qualified individual and alternate qualified individual identified in the plan with a document designating them as a qualified individual and specifying their full authority to:

(1) Activate and engage in contracting with oil spill removal organization(s);

(2) Act as a liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligate funds required to carry out response activities.

(d) The owner or operator of a facility may designate an organization to fulfill the role of the qualified individual and the alternate qualified individual. The organization must then identify a qualified individual and at least one alternate qualified individual who meet the requirements of this section. The facility owner or operator is required to list in the response plan the organization, the person identified as the qualified individual, and the person or person(s) identified as the alternate qualified individual(s).

(e) The qualified individual is not responsible for—

(1) The adequacy of response plans prepared by the owner or operator; or

(2) Contracting or obligating funds for response resources beyond the authority contained in their designation from the owner or operator of the facility.

(f) The liability of a qualified individual is considered to be in accordance with the provisions of 33 USC 1321(c)(4).

§ 154.1028 Methods of ensuring the availability of response resources by contract or other approved means.

(a) When required in this subpart, the availability of response resources must be ensured by the following methods:

(1) A written contractural agreement with an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas;

(2) Certification by the facility owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the facility owner or operator, and are available within stipulated response times in the specified geographic areas;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the specified geographic areas;

(4) A document which—

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill removal organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills; and

(iv) Is referenced in the response plan; or

(v) The identification of an oil spill removal organization with specified equipment and personnel available within stipulated response times in specified geographic areas. The organization must provide written consent to being identified in the plan.

(b) The contracts and documents required in paragraph (a) of this section must be retained at the facility and must be produced for review upon request by the COTP.

§ 154.1029 Worst case discharge.

(a) The response plan must use the appropriate criteria in this section to develop the worst case discharge.

(b) For the MTR segment of a facility, not less than—

(1) Where applicable, the loss of the entire capacity of all in-line and breakout tank(s) needed for the continuous operation of the pipelines used for the purposes of handling or transporting oil, in bulk, to or from a vessel regardless of the presence of secondary containment; plus

(2) The discharge from all piping carrying oil between the marine transfer manifold and the non-transportation-related portion of the facility. The discharge from each pipe is calculated as follows: The maximum time to discover the release from the pipe in hours, plus the maximum time to shut down flow from the pipe in hours (based on historic discharge data or the best estimate in the absence of historic discharge data for the facility) multiplied by the maximum flow rate expressed in barrels per hour (based on the maximum relief valve setting or maximum system pressure when relief valves are not provided) plus the total line drainage volume expressed in barrels for the pipe between the marine

manifold and the non-transportation-related portion of the facility; and

(c) For a mobile facility it means the loss of the entire contents of the container in which the oil is stored or transported.

§ 154.1030 General response plan contents.

(a) The plan must be written in English.

(b) A response plan must be divided into the sections listed in this paragraph (b) and formatted in the order specified herein unless noted otherwise. It must also have some easily found marker identifying each section listed below. The following are the sections and subsections of a facility response plan:

(1) Introduction and plan contents.
(2) Emergency response action plan:
(i) Notification procedures.
(ii) Facility's spill mitigation procedures.
(iii) Facility's response activities.
(iv) Sensitive areas.
(v) Disposal plan.
(3) Hazard evaluation. [Reserved.]
(4) Spill scenarios. [Reserved.]
(5) Training and drills:
(i) Training procedures.
(ii) Drill procedures.
(6) Plan review and update procedures.
(7) Appendices:
(i) Facility-specific information.
(ii) List of contacts.
(iii) Equipment lists and records.
(iv) Communications plan.
(v) Site-specific safety and health plan.
(vi) List of acronyms and definitions.
(vii) A geographic-specific appendix for each zone in which a mobile facility operates.

(c) The required contents for each section and subsection of the plan are contained in §§ 154.1035, 154.1040, and 154.1041, as appropriate.

(d) The sections and subsections of response plans submitted to the COTP must contain at a minimum all the information required in §§ 154.1035, 154.1040, and 154.1041, as appropriate. It may contain other appropriate sections, subsections, or information that are required by other Federal, State, and local agencies.

(e) For initial and subsequent submission, a plan that does not follow the format specified in paragraph (b) of this section must be supplemented with a cross-reference section to identify the location of the applicable sections required by this subpart.

(f) The information contained in a response plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) covering the area in which the facility operates and that are in effect at the time of submission of the response plan. If the NCP or ACP has been revised within 6 months prior to the date of submission, the response plan may be based on the prior NCP or ACP.

§ 154.1035 Specific requirements for facilities that could reasonably be expected to cause significant and substantial harm to the environment.

(a) *Introduction and plan content.* This section of the plan must include facility and plan information as follows:

(1) The facility's name, street address, city, county, state, ZIP code, facility telephone number, and telefacsimile number, if so equipped. Include mailing address if different from street address.

(2) The facility's location described in a manner that could aid both a reviewer and a responder in locating the specific facility covered by the plan, such as, river mile or location from a known landmark that would appear on a map or chart.

(3) The name, address, and procedures for contacting the facility's owner or operator on a 24-hour basis.

(4) A table of contents.

(5) During the period that the submitted plan does not have to conform to the format contained in this subpart, a cross index, if appropriate.

(6) A record of change(s) to record information on plan updates.

(b) *Emergency Response Action Plan.* This section of the plan must be organized in the subsections described in this paragraph (b):

(1) Notification procedures.

(i) This subsection must contain a prioritized list identifying the person(s), including name, telephone number, and their role in the plan, to be notified of a discharge or substantial threat of a discharge of oil. The telephone number need not be provided if it is listed separately in the list of contacts required in the plan. This Notification Procedures listing must include—

(A) Facility response personnel, the spill management team, oil spill removal organizations, and the qualified individual(s) and the designated alternate(s); and

(B) Federal, State, or local agencies, as required.

(ii) This subsection must include a form, such as that depicted in Figure 1, which contains information to be provided in the initial and follow-up notifications to Federal, State, and local agencies. The form shall include notification of the National Response Center as required in part 153 of this chapter. Copies of the form also must be placed at the location(s) from which notification may be made. The initial notification form must include space for the information contained in Figure 1. The form must contain a prominent statement that initial notification must not be delayed pending collection of all information.

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FIGURE 1

INFORMATION ON DISCHARGE *

Involved Parties

(A) Reporting Party	(B) Suspected Responsible Party
Name	Name
Phones ( ) -	Phones ( ) -
Company	Company
Position	Organization Type: Private citizen Private enterprise Public utility Local government State government Federal government
Address	
Address	
City	City
State	State
Zip	Zip

Were Materials Discharged (Y/N)?
Calling for Responsible Party (Y/N)?

Incident Description

Source and/or Cause of Incident

Date - - Time :
Cause

Incident Address/Location Nearest City

Distance from City
Storage Tank Container Type- Above ground (Y/N) Below ground (Y/N) Unknown
Tank Capacity Facility Capacity
Latitude Degrees
Longitude Degrees
Mile Post or River Mile

Materials

Discharged Quantity	Unit of Measure	Discharged Material	Quantity in Water

Response Action

Actions Taken to Correct or Mitigate Incident

Impact

Number of Injuries Number of Fatalities
Were there Evacuations (Y/N/U)? Number Evacuated
Was there any Damage (Y/N/U)? Damage in Dollars

Additional Information

Any information about the Incident not recorded elsewhere in the report

Caller Notifications

USCG EPA STATE OTHER

* IT IS NOT NECESSARY TO WAIT FOR ALL INFORMATION BEFORE CALLING NRC.

NATIONAL RESPONSE CENTER - 1-800-424-8802

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(2) Facility's spill mitigation procedures.

(i) This subsection must describe the volume(s) of persistent and non-persistent oil groups that would be involved in the—

(A) Average most probable discharge from the MTR facility;

(B) Maximum most probable discharge from the MTR facility;

(C) Worst case discharge from the MTR facility; and

(D) Where applicable, the worst case discharge from the non-transportation-related facility. This must be the same volume provided in the response plan for the non-transportation-related facility.

(ii) This subsection must contain prioritized procedures for facility personnel to mitigate or prevent any discharge or substantial threat of a discharge of oil resulting from operational activities associated with internal or external facility transfers including specific procedures to shut down affected operations. Facility personnel responsible for performing specified procedures to mitigate or prevent any discharge or potential discharge shall be identified by job title. A copy of these procedures shall be maintained at the facility operations center. These procedures must address actions to be taken by facility personnel in the event of a discharge, potential discharge, or emergency involving the following equipment and scenarios:

(A) Failure of manifold, mechanical loading arm, other transfer equipment, or hoses, as appropriate;

(B) Tank overfill;

(C) Tank failure;

(D) Piping rupture;

(E) Piping leak, both under pressure and not under pressure, if applicable;

(F) Explosion or fire; and

(G) Equipment failure (e.g. pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers.)

(iii) This subsection must contain a listing of equipment and the responsibilities of facility personnel to mitigate an average most probable discharge.

(3) Facility's response activities.

(i) This subsection must contain a description of the facility personnel's responsibilities to initiate a response and supervise response resources pending the arrival of the qualified individual.

(ii) This subsection must contain a description of the responsibilities and authority of the qualified individual and alternate as required in § 154.1026.

(iii) This subsection must describe the facility or corporate organizational structure that will be used to manage the response actions, including—

(A) Command and control;

(B) Public information;

(C) Safety;

(D) Liaison with government agencies;

(E) Spill Operations;

(F) Planning;

(G) Logistics support; and

(H) Finance.

(iv) This subsection must identify the oil spill removal organization(s) and the spill management team available, by contract or other approved means as described in § 154.1028(a)(1–4). The oil spill removal organization and the spill management team must—

(A) Be capable of responding to the following spill scenarios:

(*1*) Average most probable discharge;

(*2*) Maximum most probable discharge; and

(*3*) Worst case discharge to the maximum extent practicable; and

(B) Be capable of providing the following response resources:

(*1*) Equipment and supplies to meet the requirements of §§ 154.1045, 154.1047, or 154.1049, as appropriate; and

(*2*) Trained personnel necessary to continue operation of the equipment and staff of the oil spill removal organization and spill management team for the first 7 days of the response.

(v) For mobile facilities that operate in more than one COTP zone, the plan must identify the oil spill removal organization and the spill management team in the applicable geographic-specific appendix. The oil spill removal organization(s) and the spill management team discussed in paragraph (b)(3)(iv)(A) of this section must be included for each COTP zone in which the facility will handle, store, or transport oil in bulk.

(4) Sensitive areas.

(i) This section of the response plan must identify areas of economic importance and environmental sensitivity as identified in the ACP which are potentially impacted by a worst case discharge. Appendix D of this subpart is provided as guidance for identifying economically important and environmentally sensitive areas. This guidance shall be used until the ACP required under section 311(j)(4) of the FWPCA identifying areas of economic importance and environmental sensitivity has been promulgated. Additions or deletions in the areas of economic importance and environmental sensitivity contained in the ACP, when available, shall be included in the annual update of the response plan.

(ii) For a worst case discharge from the facility, this section of the response plan must—

(A) List all areas of economic importance and environmental sensitivity identified in the ACP which are potentially impacted by a discharge of persistent oils, nonpersistent oils, or non-petroleum oils.

(B) Describe all the response actions that the facility anticipates taking to protect these economically important and environmentally sensitive areas.

(C) Contain a map or chart showing the location of those areas of economic importance and environmental sensitivity which are potentially impacted. The map or chart shall also depict each response action that the facility anticipates taking to protect these areas. A legend of activities must be included on the map page.

(iii) For a worst case discharge, this section of the response plan must identify appropriate equipment and required personnel to protect areas of environmental sensitivity and economic importance as follows:

(A) Identify the appropriate equipment and required personnel to protect all areas of economic importance and environmental sensitivity in the ACP for the distance the persistent oils, non-persistent oils, or non-petroleum oils are likely to travel in the noted geographic area(s) and number of days listed in Table 2 of appendix C of this part.

(B) Identify the appropriate equipment and required personnel available, by contract or other approved means as described in § 154.1028, to protect areas of environmental sensitivity and economic importance as follows:

(*1*) For persistent oils and non-petroleum oils discharged into non-tidal waters, the distance from the facility reached in 48 hours at maximum current.

(*2*) For persistent and non-petroleum oils discharged into tidal waters, 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

(*3*) For non-persistent oils discharged into non-tidal waters, the distance from the facility reached in 24 hours at maximum current.

(*4*) For non-persistent oils discharged into tidal waters, 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

(*5*) For persistent oils, non-persistent oils, or non-petroleum oils a spill trajectory or model may be substituted for the distances listed in non-tidal and tidal waters.

(6) Based on historical information or a spill trajectory or model, the COTP may require that additional areas of economic importance or environmental sensitivity also be protected.

(5) *Disposal plan.* This subsection must describe any actions to be taken or procedures to be used to ensure that all recovered oil and oil contaminated debris produced as a result of any discharge are disposed according to Federal, State, or local requirements.

(c) *Hazard Evaluation.* [Reserved.]

(d) *Discussion of Spill Scenarios.* [Reserved.]

(e) *Training and Drills.* This section of the response plan must be divided into the following two subsections:

(1) Training procedures. This subsection must describe the training procedures and programs of the facility owner or operator to meet the requirements in § 154.1050.

(2) Drill procedures. This subsection must describe the drill program to be carried out by the facility owner or operator to meet the requirements in § 154.1055.

(f) *Plan review and update procedures.* This section of the response plan must address the procedures to be followed by the facility owner or operator to meet the requirements of § 154.1065 and the procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(g) *Appendices.* This section of the response plan must include the appendices described in this paragraph (g).

(1) *Facility-specific information.* This appendix must contain a description of the facility's principal characteristics.

(i) There must be a physical description of the facility including a plan of the facility showing the mooring areas, transfer locations, control stations, locations of safety equipment, and the location and capacities of all piping and storage tanks.

(ii) The appendix must identify the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously.

(iii) The appendix must identify the first valve(s) on facility piping separating the transportation-related portion of the facility from the non-transportation-related portion of the facility, if any. For piping leading to a manifold located on a dock serving tank vessels, this valve is the first valve inside the secondary containment required by 40 CFR part 112.

(iv) The appendix must contain information on the oil(s) and hazardous material handled, stored, or transported at the facility in bulk. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, 33 CFR 154.310(a)(5) or an equivalent will meet this requirement. This information can be maintained separately providing it is readily available and the appendix identifies its location. This information must include—

(A) The generic of chemical name;

(B) A description of the appearance and odor;

(C) The physical and chemical characteristics;

(D) The hazards involved in handling the oil(s) and hazardous materials. This shall include hazards likely to be encountered if the oil(s) and hazardous materials come in contact as a result of a discharge; and

(E) A list of firefighting procedures and extinguishing agents effective with fires involving the oil(s) and hazardous materials.

(v) The appendix may contain any other information which the facility owner or operator determines to be pertinent to an oil spill response.

(2) *List of contacts.* This appendix must include information on 24-hour contact of key individuals and organizations. If more appropriate, this information may be specified in a geographic-specific appendix. The list must include—

(i) The primary and alternate qualified individual(s) for the facility;

(ii) The contact(s) identified under paragraph (b)(3)(iv) of this section for activation of the response resources; and

(iii) Appropriate Federal, State, and local officials.

(3) *Equipment list and records.* This appendix must include the information specified in this paragraph (g)(3).

(i) The appendix must contain a list of equipment and facility personnel required to respond to an average most probable discharge, as defined in § 154.1020. The appendix must also list the location of the equipment.

(ii) The appendix must contain a detailed listing of all the major equipment identified in the plan as belonging to an oil spill removal organization(s) that is available, by contract or other approved means as described in § 154.1028(a) (1 through 4), to respond to a worst case discharge, as defined in § 154.1020. The detailed listing of all major equipment may be located in a separate document referenced by the plan. Either the appendix or the separate document referenced in the plan must provide the location of the major response equipment.

(iii) It is not necessary to list response equipment from oil spill removal organization(s) when the organization has been classified by the Coast Guard and their capacity has been determined to equal or exceed the response capability needed by the facility. For oil spill removal organization(s) classified by the Coast Guard, the classification must be noted in this section of the response plan. When it is necessary for the appendix to contain a listing of response equipment, it shall include all of the following items that are identified in the response plan: skimmers; booms; dispersant application, in-situ burning, bioremediation equipment and supplies, and other equipment used to apply other chemical agents on the NCP Product Schedule (if applicable); communications, firefighting, and beach cleaning equipment; boats and motors; disposal and storage equipment; and heavy equipment. The list must include for each piece of equipment—

(A) The type, make, model, and year of manufacture listed on the nameplate of the equipment;

(B) For oil recovery devices, the effective daily recovery rate, as determined using section 6 of Appendix C of this part;

(C) For containment boom, the overall boom height (draft and freeboard) and type of end connectors;

(D) The spill scenario in which the equipment will be used or for which it is contracted;

(E) The total daily capacity for storage and disposal of recovered oil;

(F) For communication equipment, the type and amount of equipment intended for use during response activities. Where applicable, the primary and secondary radio frequencies must be specified.

(G) Location of the equipment; and

(H) The date of the last inspection by the oil spill removal organization(s).

(4) *Communications plan.* This appendix must describe the primary and alternate method of communication during discharges, including communications at the facility and at remote locations within the areas covered by the response plan. The appendix may refer to additional communications packages provided by the oil spill removal organization. This may reference another existing plan or document.

(5) *Site-specific safety and health plan.* This appendix must describe the safety and health plan to be implemented for any response location(s). It must provide as much detailed information as is practicable in advance of an actual discharge. This appendix may reference another

existing plan required under 29 CFR 1910.120.

(6) *List of acronyms and definitions.* This appendix must list all acronyms used in the response plan including any terms or acronyms used by Federal, State, or local governments and any operational terms commonly used at the facility. This appendix must include all definitions that are critical to understanding the response plan.

§ 154.1040 Specific requirements for facilities that could reasonably be expected to cause substantial harm to the environment.

(a) A facility that, under § 154.1015, could reasonably be expected to cause substantial harm to the environment shall submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The facility's response activities section of the response plan need not list the facility or corporate organizational structure that will be used to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator of a facility must ensure the availability of response resources required to be identified in § 154.1035(b)(3)(iv) by contract or other approved means described in § 154.1028.

(d) A facility owner or operator must have at least 200 feet of containment boom immediately available to respond to the average most probable discharge in lieu of the quantity of containment boom specified in § 154.1045(c)(1). Based on site-specific or facility-specific information, the COTP may specify that additional quantities of containment boom are immediately available. In addition, there must be adequate sorbent material for initial response to an average most probable discharge. If the facility is a fixed facility, the containment boom and sorbent material must be located at the facility. If the facility is a mobile facility, the containment boom and sorbent must be available locally and be at the site of the discharge within 1 hour of its discovery.

§ 154.1041 Specific response information to be maintained on mobile MTR facilities.

(a) Each mobile MTR facility must carry the following information as contained in the response plan when performing transfer operations:

(1) A description of response activities for a discharge which may occur during transfer operations. This may be a narrative description or a list of procedures to be followed in the event of a discharge.

(2) Identity of response resources to respond to a discharge from the mobile MTR facility.

(3) List of the appropriate persons and agencies (including the telephone numbers) to be contacted in regard to a discharge and its handling, including the National Response Center.

(b) The owner or operator of the mobile facility must also retain the information in this section at the principal place of business.

§ 154.1045 Response plan development and evaluation criteria for facilities that handle, store, or transport Group I through Group IV petroleum oils.

(a) The owner or operator of a facility that handles, stores, or transports Group I through Group IV petroleum oils must use the criteria in this section to evaluate response resources identified in the response plan for the specified operating environment.

(1) The criteria in Table 1 of Appendix C of this part are to be used solely for identification of appropriate equipment in a response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment and are not conditions that would limit response actions or affect normal facility operations.

(2) The response resources must be evaluated considering limitations for the COTP zones in which the facility operates, including but not limited to—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges;

(iv) Weather-related visibility; and

(v) Other appropriate environmental conditions as determined by the COTP.

(3) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified by the COTP in the applicable ACP. Reclassifications may be to—

(i) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35% of the year; or

(ii) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35% of the year.

(b) Response equipment must—

(1) Meet or exceed the operating criteria listed in Table 1 of Appendix C of this part;

(2) Function in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(c) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to respond to the facility's average most probable discharge. The response resources must include, at a minimum—

(1) 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater, and the means of deploying and anchoring the boom available at the facility within 1 hour of the detection of a spill; and

(2) Oil recovery devices and recovered oil storage capacity capable of being at the facility within 2 hours of the discovery of an oil discharge from a facility.

(d) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources that are available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to respond to a discharge up to the facility's maximum most probable discharge volume.

(1) These response resources must be positioned such that they can arrive at the scene of a discharge within the following specified times:

(i) For an average most probable discharge, the times specified in paragraphs (c)(1) and (c)(2) of this section.

(ii) In higher volume port areas and the Great Lakes, response resources must be capable of arriving on scene within 6 hours of the discovery of an oil discharge from a facility.

(iii) In all other locations, response resources must be capable of arriving on scene within 12 hours of the discovery of an oil discharge from a facility.

(2) The response resources must include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume.

(3) The response resources must be appropriate for each group of oil identified in § 154.1020 that is handled, stored, or transported by the facility.

(4) The COTP may determine that mobilizing response resources to an area beyond the response times indicated in paragraph (d) of this section invalidates the response plan.

(e) The response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify the response resources that are available, by contract or other approved means as described in § 154.1028(a) (1 through 4), to respond to the worst case discharge volume of oil to the maximum extent practicable.

(1) The location of these response resources must be suitable to meet the response times identified for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for—

(i) The volume of the facility's worst case discharge;

(ii) Group(s) of oil as identified in § 154.1020 that are handled, stored, or transported by the facility; and

(iii) The geographic area(s) in which the facility operates.

(3) The response resources must include sufficient boom, oil recovery devices, and storage capacity to recover the worst case discharge planning volumes.

(4) The guidelines in Appendix C of this part must be used for calculating the quantity of response resources required to respond at each tier to the worst case discharge to the maximum extent practicable.

(5) When determining response resources necessary to meet the requirements of this section, a portion of those resources must be capable of use in close-to-shore response activities in shallow water. The following percentages of the response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth.

(i) Offshore—10 percent.

(ii) Nearshore/Inland/Great Lakes/Rivers and canals—20 percent.

(f) Response equipment identified in a response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must be capable of arriving on scene within the times specified in this paragraph (f) for the applicable response tier in a higher volume port area, Great Lakes, and in other areas. Response times for these tiers from the time of discovery of a discharge are:

	Tier 1	Tier 2	Tier 3
Higher volume port area (except for a TAPAA facility located in Prince William Sound, see § 154.1135).	6 hrs	30 hrs	54 hrs.
Great Lakes ..	12 hrs	36 hrs	60 hrs.
All other river and canal, inland, nearshore, and offshore areas.	12 hrs	36 hrs	60 hrs.

(g) For the purposes of arranging for response resources for a facility that handles, stores, or transports Group I through Group IV petroleum oils, by contract or other approved means as described in § 154.1028(a) (1 through 4), response equipment identified for Tier 1 plan credit must be capable of being mobilized and enroute to the scene of a discharge within 2 hours of notification. The notification procedures identified in the plan must provide for notification and authorization of mobilization of identified Tier 1 response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(h) Response resources identified for Tier 2 and Tier 3 plan credit must be capable of arriving on scene within the time specified for the applicable tier.

(i) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports Group II or III persistent petroleum oils may request a credit for up to 25 percent of the on-water recovery capability set forth by this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1028(a)(1 through 4), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit will be based on the volumes of the dispersant available to sustain operations at the manufacturers' recommended dosage rates. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable Area Contingency Plan.

(j) A response plan for a facility that handles, stores, or transports Group I through Group IV petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that cannot rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028(a)(1 through 4), the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

(k) The response plan for a facility that handles, stores, or transports Group I through IV petroleum oils must identify equipment and required personnel available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to protect areas of environmental sensitivity or economic importance.

(1) Except as set out in paragraph (k)(2) of this section, the identified response resources must include the quantities of boom sufficient to protect areas of environmental sensitivity or economic importance as required by § 154.1035(b)(4).

(2) For a facility response plan submitted or resubmitted 6 months or more after the appropriate Area Contingency Plan has identified the required resources and response methods to be used in areas of environmental sensitivity or economic importance, the resources and response methods must be those identified in the appropriate Area Contingency Plan.

(l) The response plan for a facility that handles, stores, or transports Groups I through IV petroleum oils must identify an oil spill removal organization(s) with response resources that are available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to effect a shoreline clean-up operation commensurate with the quantity of emulsified oil to be planned for in shoreline clean-up operations.

(1) Except as required in paragraph (l)(2) of this section, the shoreline clean-up response resources required must be determined as described in Appendix C of this part.

(2) For a facility response plan submitted or resubmitted 6 months or more after the appropriate Area Contingency Plan has identified the required shoreline clean-up resources and methods, shoreline clean-up response resources and methods must be those identified in the ACP.

(m) Appendix C of this part describes the procedures to determine the maximum extent practicable quantity of response resources that must be identified and available, by contract or other approved means as described in § 154.1028(a)(1 through 4), for the maximum most probable discharge volume, and for each worst case discharge response tier.

(1) Included in Appendix C of this part is a cap that recognizes the practical and technical limits of response capabilities that an individual facility owner or operator can be expected to contract for in advance.

(2) Table 5 in Appendix C of this part lists the caps that will apply in February 18, 1993 and February 18, 1998. Depending on the quantity and type of petroleum oil handled by the facility and the facility's geographic area of operations, the resource capability caps in this table may be reached. The owner or operator of a facility whose estimated recovery capacity exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The identified resources must be capable of arriving on scene not later than the Tier 3 response times in this section. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recover the volume above the response capability cap for the specific facility, as specified in Table 5 in Appendix C of this part, it is not necessary to list specific quantities of equipment.

(n) The Coast Guard will initiate a review of cap increases and other requirements contained within this subpart that are scheduled to be phased in over time. Any changes in the requirements of this section will occur through a public notice and comment process.

(1) During this review, the Coast Guard will determine if the scheduled increase for February 1988 remains practicable, and will also establish a specific cap for 2003. The review will include but is not limited to—

(i) Increases in skimming efficiencies and design technology;

(ii) Oil tracking technology;

(iii) High rate response techniques;

(iv) Other applicable response technologies; and

(v) Increases in the availability of private response resources.

(2) All scheduled future requirements will take effect unless the Coast Guard determines that they are not practicable. Scheduled changes will be effective in February 1998 and 2003 unless the review of the additional requirements has not been completed by the Coast Guard. If this occurs, the additional requirements will not be effective until 90 days after publication of a **Federal Register** notice with the results of the review.

§ 154.1047 Response plan development and evaluation criteria for facilities that handle, store, or transport Group V petroleum oils.

(a) An owner or operator of a facility that handles, stores, or transports Group V petroleum oils must provide information in his or her response plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of Group V petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports Group V petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of Appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the Area Contingency Plans for the COTP zones in which the facility operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports Group V petroleum oil must identify the response resources that are available by contract or other approved means as described in § 154.1028. The equipment identified in a response plan must include—

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

(d) Response resources identified in a response plan for a facility that handles, stores, or transports Group V petroleum oils under paragraph (c) of this section must be capable of being deployed within 24 hours of discovery of a discharge to the area where the facility is operating.

(e) A response plan for a facility that handles, stores, or transports Group V petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028, the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department for petroleum fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

§ 154.1049 Response plan development and evaluation criteria for facilities that handle, store, or transport non-petroleum oils.

(a) An owner or operator of a facility that handles, stores, or transports non-petroleum oil must provide information in his or her plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a facility that handles, stores, or transports non-petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the facility operates using the criteria in Table 1 of Appendix C of this part. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the Area Contingency Plans for the COTP zone in which the facility is located, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports non-petroleum oil must identify the response resources that are available by contract or other approved means as described in § 154.1028. The equipment identified in a response plan must include—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of non-petroleum oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the applicable Tier response times in § 154.1045(f) of this subpart.

(e) A response plan for a facility that handles, stores, or transports non-petroleum oils must identify response resources with firefighting capability. The owner or operator of a facility that does not have adequate firefighting resources located at the facility or that can not rely on sufficient local firefighting resources must identify and ensure, by contract or other approved means as described in § 154.1028, the availability of adequate firefighting resources. The response plan must also identify an individual located at the facility to work with the fire department on non-petroleum oil fires. This individual shall also verify that sufficient well-trained firefighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual as defined in § 154.1020 and identified in the response plan or another appropriate individual located at the facility.

§ 154.1050 Training.

(a) A response plan submitted to meet the requirements of §§ 154.1035 or 154.1040, as appropriate, must identify the training to be provided to each individual with responsibilities under the plan. A facility owner or operator must identify the method of training any volunteers or casual laborers employed during a response to comply with the requirements of 29 CFR 1910.120.

(b) A facility owner or operator shall ensure the maintenance of records sufficient to document training of facility personnel and shall make them available for inspection upon request by the U.S. Coast Guard. Records for facility personnel must be maintained at the facility for 3 years.

(c) Where applicable, a facility owner or operator shall ensure that an oil spill removal organization identified in a response plan to meet the requirements of this subpart maintains records sufficient to document training for the organization's personnel and shall make them available for inspection upon request by the facility's management personnel, the qualified individual, and U.S. Coast Guard. Records must be maintained for 3 years following completion of training.

(d) The facility owner or operator remains responsible for ensuring that all private response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

§ 154.1055 Drills.

(a) A response plan submitted by an owner or operator of an MTR facility must contain details on the type and frequency of drills. The response plan must provide for both announced and unannounced drills. The following are the required drill frequencies for facilities covered by this subpart:

(1) Facility personnel and qualified individual notification drills must be conducted monthly.

(2) Facility equipment deployment drills must be conducted semiannually. An unannounced annual drill, in which equipment is deployed, may be credited towards one of the semiannual drills.

(3) Spill management team tabletop drills must be conducted yearly.

(4) A facility owner or operator shall plan for an annual unannounced drill. During this drill, the oil spill removal organizational and spill management team identified in the facility's response plan shall be activated. The unannounced drill shall include deployment of major response equipment at the facility or other appropriate staging area. Facility equipment deployed during this unannounced drill may be credited towards the semiannual deployment drill required in paragraph (a)(2) of this section. A facility owner or operator may take credit for any unannounced oil spill response drill required by a Federal or State agency provided that this unannounced drill meets the requirements of this section for exercising the oil spill removal organization, spill management team and major response equipment.

(5) A facility owner or operator shall participate to the extent requested in any unannounced drills conducted by the cognizant COTP. A facility owner or operator need not participate in a COTP drill if the facility has participated in an unannounced Federal or State oil spill response drill within the past 24 months; the facility owner or operator shall immediately provide records of this drill to the COTP.

(6) A facility owner or operator shall ensure that the response resources identified in the plan participate in annual deployment drills.

(b) Drills may be designed by the facility owner or operator to exercise either components of or the entire response plan. The facility owner or operator shall conduct a drill that exercises the entire plan at least once every 3 years.

(c) A facility owner or operator shall ensure that records sufficient to document drills for facility personnel and the spill management team are maintained for 3 years following completion of drills.

(d) The facility owner, operator, or qualified individual designated in the response plan shall ensure that records sufficient to document the drills of the oil spill removal organization and response resources identified in the response plan are maintained 3 years following the completion of drills.

(e) The requirements for drilling the spill management team in paragraphs (a)(3) and (a)(5) of this section are met if the oil spill removal organization identified in the response plan is drilled during the period noted. The facility owner or operator shall maintain records of these drills and make them available to the COTP.

§ 154.1057 Inspection and maintenance of response resources.

(a) A facility owner or operator required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations, and best commercial practices; and

(2) All inspection and maintenance is documented and that these records are maintained for three years.

(b) For equipment which must be inspected and maintained under this section the Coast Guard may—

(1) Verify that the equipment inventories exist as represented;

(2) Verify the existences of records required under this section;

(3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and

(4) Inspect and require operational tests of equipment.

(c) This section does not apply to containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan and ensured available from an oil spill removal organization through the written consent required under § 154.1028(a)(5).

§ 154.1060 Submission and approval procedures.

(a) The owner or operator of a facility to which this subpart applies shall submit two copies of a facility response plan meeting the requirements of this subpart to the COTP for initial review and, if appropriate, approval.

(b) For an MTR facility that is also regulated under 40 CFR part 112 and is located in the inland response zone where the EPA Regional Administrator is the predesignated Federal On-Scene Coordinator prior to any final approval.

(c) For an MTR facility that is also required to prepare a response plan under 40 CFR part 112, if the COTP determines that the plan meets all requirements of this subpart and the EPA Regional Administrator raises no objection to the response plan contents, the COTP will notify the facility owner or operator by returning one copy of the approved plan to the owner or operator along with an approval letter. The plan will be valid for a period of up to 5 years from the date of approval.

(d) If during review of a response plan submitted for initial review or pentennial review the COTP determines that the plan does not meet the requirements of this subpart, the COTP will return one copy of the plan to the facility owner or operator along with an explanation of the response plan's deficiencies. A revised plan must be resubmitted to the COTP within 30 days of receipt of the letter describing the deficiencies. Any deficiencies noted in the submitted plan must be corrected in accordance with § 154.1070.

(e) The facility owner or operator and the qualified individual and the alternative qualified individual shall each maintain a copy of the most current response plan submitted to the COTP.

§ 154.1065 Plan revision and amendment procedures.

(a) A facility response plan must be reviewed annually by the facility owner or operator. The review shall incorporate any changes in the listings of economically important or environmentally sensitive areas identified in the ACP in effect 6 months prior to plan review.

(1) This review must occur within 1 month of the anniversary date of COTP approval of the plan.

(2) The facility owner or operator shall submit any amendments of the response plan to the COTP for information or approval. If no changes are required, the facility owner or operator shall send a letter to the COTP indicating that the plan remains valid with no changes. A copy of this letter must be included in the front of each copy of the response plan and indicated in the record of changes page.

(3) Any required changes must be entered in the plan and noted on the record of changes page.

(b) Revisions or amendments to either a previously submitted or approved response plan must be submitted to the COTP by the facility's owner or operator for inclusion in the existing plan or for approval, whichever is appropriate, whenever there is—

(1) A change in the facility's configuration that significantly affects the information included in the response plan;

(2) A change in the type of oil (oil group) handled, stored, or transported that affects the required response resources;

(3) A change in the name(s) and/or capabilities of the oil spill removal organization required by § 154.1045;

(4) A change in the facility's emergency response procedures;

(5) A change in the facility's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A facility may not operate in an area not covered in a previously approved plan unless the revised plan is approved or interim operating approval is received under § 154.1025;

(6) Any other changes that significantly affect the implementation of the plan; or

(7) Five years from the date of COTP approval.

(c) The COTP may require a facility owner or operator to revise a response plan at any time as a result of a compliance inspection if the COTP determines that the response plan does not meet the requirements of this subpart or as a result of inadequacies noted in the response plan during an actual pollution incident at the facility.

(d) Except as required in paragraph (b) of this section, amendments to personnel and telephone number lists included in the response plan do not require COTP approval. The COTP and all other holders of the response plan shall be advised of the revisions and provided a copy of the revisions as they occur.

§ 154.1070 Deficiencies.

(a) The cognizant COTP will notify the facility owner or operator in writing of any deficiencies noted during review of a response plan, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with this subpart.

(b) Deficiencies shall be corrected within the time period specified in the written notice provided by the COTP. The owner or operator of an MTR facility who disagrees with a deficiency issued by the COTP may appeal the deficiency to the cognizant COTP within 7 days or the time specified by the COTP to correct the deficiency, whichever is less. This time commences from the date of receipt of the COTP notice. The owner or operator may request a stay from the COTP decision pending appeal in accordance with § 154.1075.

(c) If the facility owner or operator fails to correct any deficiencies or submit a written appeal, the COTP may invoke the provisions of § 154.1025 prohibiting the facility from storing, handling, or transporting oil.

§ 154.1075 Appeal process.

(a) Any owner or operator of a facility who desires to appeal the classification that a facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment, must submit a written request to the cognizant COTP requesting review and reclassification by the COTP. The facility owner or operator shall identify those factors to be considered by the COTP. The factors to be considered by the COTP regarding reclassification of a facility include, but are not limited to, those listed in § 154.1016(b). After considering all relevant material presented by the facility owner or operator and any additional material available to the COTP, the COTP will notify the facility owner or operator of the decision on the reclassification of the facility.

(b) Any facility owner or operator directly affected by an initial determination or action of the COTP may submit a written request to the cognizant COTP requesting review and reconsideration of the COTP's decision or action. The facility owner or operator shall identify those factors to be considered by the COTP in making his or her decision on reconsideration.

(c) Within 10 days of the COTP's decision under paragraph (b) of this section, the facility owner or operator may appeal the decision of the COTP to the District Commander. This appeal shall be made in writing via the cognizant COTP to the District Commander of the district in which the office of the COTP is located.

(d) Within 30 days of the District Commander's decision, the facility owner or operator may formally appeal the decision of the District Commander. This appeal shall be submitted in writing to Commandant (G–MEP) via the District Commander.

(e) When considering an appeal, the COTP, District Commander, or Commandant may stay the effect of the decision or action being appealed pending the determination of the appeal.

Subpart G—Additional Response Plan Requirements for a Trans-Alaska Pipeline Authorization Act (TAPAA) Facility Operating in Prince William Sound, Alaska

§ 154.1110 Purpose and applicability.

(a) This subpart establishes oil spill response planning requirements for a facility permitted under the Trans-Alaska Pipeline Authorization Act, (TAPAA) in addition to the requirements of subpart F of this part. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) The information required by this subpart must be included in the Prince William Sound facility-specific appendix to the facility response plan required by subpart F of this part.

§ 154.1115 Definitions.

Except as provided in this section, the definitions in § 154.105 and § 154.1020 apply to this subpart. As used in this subpart—

Crude oil means any liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

Non-crude oil means any oil other than crude oil.

Prince William Sound means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rocks.

§ 154.1120 Operating restrictions and interim operating authorization.

The owner or operator of a TAPAA facility may not operate in Prince William Sound, Alaska, unless the requirements of this subpart as well as § 154.1025 have been met. The owner or operator of a TAPAA facility shall certify to the COTP that he or she has provided, through an oil spill removal organization required by § 154.1125, the necessary response resources to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater, in Prince William Sound.

§ 154.1125 Additional response plan requirements.

(a) The owner or operator of a TAPAA facility shall include the following information in the Prince William Sound appendix to the response plan required by subpart F of this part:

(1) *Oil spill removal organization.* Identification of an oil spill removal organization that shall—

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment for personnel, including local residents and fishermen, from the following locations in Prince William Sound:

(A) Valdez;

(B) Tatitlek;

(C) Cordova;

(D) Whittier;

(E) Chenega;

(F) Fish hatcheries located at Port San Juan, Main Bay, Esther Island, Cannery Creek, and Solomon Gulch;

(G) Other locations in Prince William Sound, to be determined by the COTP.

(iii) Provide a plan for training, in addition to the personnel listed in paragraph (a)(1)(ii) of this section, sufficient numbers of trained personnel to remove, to the maximum extent practicable, a worst case discharge; and

(iv) Address the responsibilities required in § 154.1035(b)(3)(iii).

(2) *Drills.* Identification of drill procedures that must—

(i) Provide for two drills of the oil spill removal organization each year that test the ability of the prepositioned equipment and trained personnel required under this subpart to perform effectively;

(ii) Consist of both announced and unannounced drills; and

(iii) Include design(s) for drills that test either the entire appendix or individual component(s).

(3) *Testing, inspection, and certification.* Identification of a testing, inspection, and certification program for the prepositioned response equipment required in § 154.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer's recommended procedures, to include—

(A) Start-up and running under load all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal for inspection of no less than one-third of required boom from storage annually, such that all boom will have been removed and inspected within a period of 3 years; and

(ii) Records of equipment tests and inspection.

(iii) Use of an independent entity to certify that the equipment is on-site and in good operating condition and that required tests and inspections have been performed. The independent entity must have appropriate training and expertise to provide this certification.

(4) *Prepositioned response equipment.* Identification and location of the prepositioned response equipment required in § 154.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator of a TAPAA facility shall submit to the COTP a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the COTP.

§ 154.1130 Requirements for prepositioned response equipment.

The owner or operator of a TAPAA facility shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by §§ 154.1035, 154.1045, or 154.1050:

(a) On-water recovery equipment with a minimum effective daily recovery rate of 30,000 barrels capable of being on scene within 2 hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels for recovered oily material capable of being on scene within 2 hours of notification of a discharge.

(c) On-water recovery equipment with a minimum effective daily recovery rate of 40,000 barrels capable of being on scene within 18 hours of notification of discharge.

(d) On-water storage capacity of 300,000 barrels for recovered oily material capable of being on scene within 12 hours of notification of a discharge.

(e) On-water recovery devices and storage equipment located in communities at strategic locations; and

(f) Equipment as identified below, for the locations identified in § 154.1125 (a)(1)(ii) sufficient for the protection of the environment in these locations:

(1) Boom appropriate for the specific locations.

(2) Sufficient boats to deploy boom and sorbents.

(3) Sorbent materials.

(4) Personnel protective clothing and equipment.

(5) Survival equipment.

(6) First aid supplies.

(7) Buckets, shovels, and various other tools.

(8) Decontamination equipment.

(9) Shoreline cleanup equipment.

(10) Mooring equipment.

(11) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom.

(12) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

§ 154.1135 Response plan development and evaluation criteria.

The following response times must be used in determining the on scene arrival time in Prince William Sound for the response resources required by § 154.1045:

	Tier 1 (hours)	Tier 2 (hours)	Tier 3 (hours)
Prince William Sound Area	12	24	36

§ 154.1140 TAPAA facility contracting with a vessel.

The owner or operator of a TAPAA facility may contract with a vessel owner or operator to meet some or all of the requirements of subpart G of part 155 of this chapter. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

8. Part 154 is amended by adding an appendix C and an appendix D reading as follows:

Appendix C of Part 154—Guidelines for Determining and Evaluating Required Response Resources for Facility Response Plans

1. Purpose

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subpart F of this part. These guidelines will be used by the facility owner or operator in preparing the response plan and by the Captain of the Port (COTP) when reviewing them.

2. Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area. These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location.

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for response plan credit, a facility owner or operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in Table 1 of this appendix should be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.3.1 The Coast Guard may require documentation that the boom identified in a response plan meets the criteria in Table 1. Absent acceptable documentation, the Coast Guard may require that the boom be tested to demonstrate that it meets the criteria in Table 1. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by the Coast Guard.

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in the specified operating environment must be designed to function in the same conditions. For example, boats which deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator must refer to the applicable local contingency plan or ACP, as appropriate, to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The local contingency plan or ACP will also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subparts F and G of this part establish response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel time of response resources identified to meet the maximum most probable discharge and Tier 1 worst case discharge requirements. Tier 2 and 3 response resources must be notified and mobilized as necessary to meet the requirements for arrival on scene in accordance with §§ 154.1045, 154.1047, or 154.1049, as appropriate, and § 154.1135. An on water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the facility owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturers make and model. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft plus freeboard) should be included. A facility owner or operator is responsible for ensuring that identified boom has compatible connectors.

3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 A facility owner or operator shall identify sufficient response resources available, through contract or other approved means as described in § 154.1028(a)(1 through 4), to respond to the average most probable discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 The response resources must include:

3.2.1 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater, and a means deploying it within 1 hour of the discovery of a spill.

3.2.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in an average most probable discharge or greater available at the facility within two hours of the detection of an oil discharge.

3.2.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

4. Determining Response Resources Required for the Maximum Most Probable Discharge

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to respond to discharges up to the maximum most probable discharge volume for that facility. This will require response resources capable of containing and collecting up to 1,200 barrels of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Oil recovery devices identified to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 6 hours in higher volume port areas (as defined in § 154.1020) and the Great Lakes and within 12 hours in all other areas.

4.3 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery capacity for oil recovery devices must equal 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the plan must identify sufficient quantity of containment boom available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to arrive within the required response times for oil collection and containment and for protection of sensitive areas. While the regulation does not set required quantities of boom for oil collection and containment, the response plan must identify and ensure, by contract or other approved means as described in § 154.1028(a)(1 through 4), the availability of the boom identified in the plan for this purpose.

4.5 The plan must indicate the availability of temporary storage capacity to meet the guidelines of section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area:

The facility's worst case discharge volume is 20,000 barrels. Ten percent of this is 2,000 barrels. Since this is greater than 1,200 barrels, 1,200 barrels are used as the planning volume. The effective daily recovery capacity must be 50 percent of this, or 600 barrels per day. The ability of oil recovery devices to meet this capacity will be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on scene must equal twice the daily recovery rate as indicated in section 9 of this appendix, or 1,200 barrels per day. This is the information the facility owner or operator will use to identify and ensure the availability of, through contract or other approved means as described in § 154.1028(a)(1 through 4), the required response resources. The facility owner will also need to identify how much boom is available for use.

5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure the availability of, by contract or other approved means, as described in § 154.1028(a)(1 through 4), sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill response resources identified in the response plan and available through contract or other approved means, as described in § 154.1028(a)(1 through 4), to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the times specified for the applicable response tiers listed in § 154.1045.

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources that must be used to fulfill the requirements for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable response capability caps in Table 5 of this appendix shall identify sources of additional equipment, their locations, and the arrangements made to obtain this equipment during a response. The owner or operator of a facility whose calculated planning volume exceeds the applicable contracting caps in Table 5 shall identify sources of additional equipment equal to twice the cap listed in Tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap must be capable of arriving on scene not later than the Tier 3 response times in § 154.1045. No contract is required. While general listings of available response equipment may be used to identify additional sources, a response plan must identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing Coast Guard classified oil spill removal organization(s) which have sufficient removal capacity to recovery the volume above the response capability cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.4 A facility owner or operator shall identify the availability of temporary storage capacity to meet the requirements of Section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Offshore—10 percent

(ii) Nearshore/inland/Great Lakes/ rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 154.1028(a)(1 through 4), to arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. A facility owner or operator shall also identify sufficient quantities of oil containment boom to protect areas of environmental sensitivity or economic importance for the number of days and geographic areas specified in Table 2. Paragraphs 154.1035(b)(4)(iii) and 154.1040(a), as appropriate, shall be used to determine the amount of containment boom required, through contract or other approved means as described in § 154.1028(a)(1 through 4), to protect areas of environmental sensitivity or economic importance.

5.7 A facility owner or operator must also identify, through contract or other approved means as described in § 154.1028(a)(1 through 4), the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that must be planned for is calculated through the application of factors contained in Tables 2 and 3. The volume calculated from these tables is intended to assist the facility owner or operator in identifying a contractor with sufficient resources and expertise. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

6. Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a facility owner or operator must be identified by manufacturer, model, and effective daily recovery capacity. These rates must be used to determine whether there is sufficient capacity to meet the applicable planning criteria for the average most probable discharge, maximum most probable discharge, and worst case discharge to the maximum extent practicable.

6.2 For the purposes of determining the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery capacity:

$R=T\times 24\text{ hours}\times E$

R—Effective daily recovery capacity

T—Throughput rate in barrels per hour (nameplate capacity)

E—20% Efficiency factor (or lower factor as determined by Coast Guard)

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate will be calculated using the pump capacity.

6.2.3 For belt or mop type devices, the throughput rate will be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be ¼ inch.

6.2.4 Facility owners or operators including oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in paragraph 6.3.2 of this appendix.

6.3 As an alternative to 6.2, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using ASTM F 631, ASTM F 808, or an equivalent test approved by the Coast Guard.

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$R=D\times U$

R—Effective daily recovery capacity

D—Average Oil Recovery Rate in barrels per hour (Item 26 in ASTM F 808; Item 13.1.15 in ASTM F 631; or actual performance data)

U—Hours per day that a facility owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator proposing a different effective daily recovery rate for use in a response plan shall provide data for the oil recovery devices listed. The following is an example of these calculations:

A weir skimmer identified in a response plan has a manufacturer's rate throughput at the pump of 267 gallons per minute (gpm).

267 gpm=381 barrels per hour

$R=381\times 24\times .2=1829$ barrels per day

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner or operator identifies sufficient response resources available to support operations 12 hour per day.

220 gpm=314 barrels per hour

$R=314\times 12=3768$ barrels per day

The facility owner or operator will be able to use the higher rate if sufficient temporary oil storage capacity is available. Determinations of alternative efficiency factors under paragraph 6.2 or alternative effective daily recovery capacities under paragraph 6.3 of this appendix will be made by Commandant, (G–MEP–6), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. Response contractors or equipment manufacturers may submit required information on behalf of multiple facility owners or operators directly in lieu of including the request with the response plan submission.

7. Calculating the Worst Case Discharge Planning Volumes

7.1 The facility owner or operator shall plan for a response to a facility's worst case discharge. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a facility owner or operator for determining required on-water recovery capacity:

7.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the type of petroleum oil handled, stored, or transported at the facility [non-persistent (Group I) or persistent (Groups II, III, IV)]; and the facility's specific operating area. Facilities which handle, store, or transport oil from different petroleum oil groups must calculate each group separately. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. This table divides the volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume must be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities which handle, store, or transport oil from different petroleum groups must assume that the oil groups resulting in the largest on-water recovery volume will be stored in the tank or tanks identified as constituting the worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 6, 30, and 54 hours of the discovery of an oil discharge. For all other river, inland, nearshore, offshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier must be used to identify response resources necessary to sustain operations in the applicable operating area. The equipment must be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator must identify and ensure the availability, through contract or other approved means as described in

§ 154.1028(a)(1 through 4), of sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 154.1028(a)(1 through 4), only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in 154.1045(m). The owner or operator of a facility whose planning volume exceeds the cap in 1993 must make arrangements to identify and ensure the availability, through contract or other approved means as described in § 154.1028(a)(1 through 4), of the additional capacity in 1998 or 2003, as appropriate. For a facility that handles, stores, or transports multiple groups of oil, the required effective daily recovery capacity for each group is calculated before applying the cap.

7.3 The following procedures must be used to calculate the planning volume for identifying shoreline cleanup capacity:

7.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the type of petroleum oil handled, stored, or transported at the facility [non-persistent (Group I) or persistent (Groups II, III, or IV)]; and the operating area(s) in which the facility operates. For a facility storing oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total planning volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2.

7.3.3 The resulting volume will be used to identify an oil spill removal organization with the appropriate shoreline clean-up capability.

7.3.4 The following is an example of the procedure described above:

A facility receives oil from barges via a dock located on a bay and transported by piping to storage tanks. The facility handles #6 oil (specify gravity .96) and stores the oil in tanks where it is held prior to being burned in an electric generating plant. The MTR segment of the facility has six 18 inch diameter pipelines running one mile from the dock-side manifold to several storage tanks which are located in the non-transportation-related portion of the facility. Although the facility piping has a normal working pressure of 100 pounds per square inch, the piping has a maximum allowable working pressure (MAWP) of 150 pounds per square inch. At MAWP, the pumping system can move 10,000 barrels (bbls) of #6 oil every hour through each pipeline. The facility has a roving watchman who is required to drive the length of the piping every two hours when the facility is receiving oil from a barge. The facility operator estimates that it will take approximately 10 minutes to secure pumping operations when a discharge is discovered. Using the definition of worse case discharge provided in § 154.1029(b)(ii), the following calculation is provided:

2 hours + 0.17 hour × 10,000 bbls per hour	= 21,700 bbls
Piping volume=37,322 cu ft + 5.6 cu ft/bbl	= +6,664 bbls
Discharge volume per pipe	28,364 bbls
Number of pipelines	×6

Total worst case discharge from MTR facility=170,184 bbls

Worst case discharge: 170,184 bbls. Group IV oil

Emulsification factor (from Table 3): 1.4

Operating Area impacted: Inland

Planned % oil onshore recovery (from Table 2): Inland 70%

Planned % on-water recovery (from Table 2): Inland 50%

Planning volumes for onshore recovery: Inland 170,184 × .7 x 1.4 = 166,780 bbls.

Conclusion: The facility owner or operator must contract with a response resource capable of managing a 166,784 barrel shoreline cleanup.

Planning volumes for on water recovery: Inland 170,184 × .5 × 1.4 = 119,128 bbls.

Determine required resources for on-water recovery for each tier using mobilization factors (from Table 4):

			Tier 1	Tier 2	Tier 3
Inland	119,128	×	.15	.25	.40
	equals barrels per day (bpd)				
Inland			17,869	29,782	47,652

Conclusion: Since the requirements for all tiers for inland exceed the caps, the facility owner will only need to contract for 10,000 bpd for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Sources for the remaining 7,652 bpd required for Tier 3 will need to be identified in the response plan but not contracted for.

20% of the capability for Inland, for all tiers, must be capable of operating in water with a depth of 6 feet or less.

The facility owner or operator will also be required to identify or ensure, by contract or other approved means as described in § 154.1028(a)(1 through 4), sufficient response resources required under 154.1035(b)(4) and 154.1045(k) to protect areas of environmental sensitivity and economic importance identified in the response plan for the worst case discharge from the facility.

The COTP has the discretion to accept that a facility can operate only a limited number of the total pipelines at a dock at a time. In those circumstances, the worst case discharge must include the drainage volume from the piping normally not in use in addition to the drainage volume and volume of oil discharged during recovery and shut down of the oil discharge from the operating piping.

8. Determining the Availability of Alternatives Response Methods

8.1 Response plans for facilities that handle, store, or transport Groups II or III persistent oils that operate in an area with year-round pre-approval for dispersant use may receive credit for up to 25 percent of their required on-water recovery capacity in 1993 if the availability of these resources is ensured by contract or other approved means as described in § 154.1028(a)(1 through 4). For response plan credit, these resources must be capable of being on-scene within 12 hours of a discharge.

8.2 To receive credit against any required on-water recover capacity a response plan must identify the locations of dispersant stockpiles, methods of shipping to a staging area, and appropriate aircraft, vessels, or facilities to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the dosage rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule that is maintained by the U.S. Environmental Protection Agency. (Some States have a list of approved dispersants and within State waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan for credit must be located where it can be mobilized to shoreside staging areas to meet the time requirements in section 8.1 of this appendix. Sufficient equipment capacity and sources of appropriate dispersants should be identified to sustain dispersant application operations for at least 3 days.

8.2.3 Credit against on-water recovery capacity in pre-approved areas will be based on the ability to treat oil at a rate equivalent to this credit. For example, a 2,500 bbl. credit against the Tier 1 10,000 bbl. on-water cap would require the facility owner or operator to demonstrate the ability to treat 2,500 bbls/day of oil at the manufacturers recommended dosage rate. Assuming a dosage rate of 10:1, the plan would need to show stockpiles and sources of 250 bbls. of dispersants at a rate of 250 bbls. per day and the ability to apply the dispersant at that daily rate for 3 days in the geographic area in which the facility is located. Similar data would need to be provided for any additional credit against Tier 2 and 3 resources.

8.3 In addition to the equipment and supplies required, a facility owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable regional plans and ACPs.

8.4 Identification of the response resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable regional plan or ACP. A facility owner or operator who operates a facility in areas with year-round pre-approval of dispersant can reduce the required on-water recovery capacity for 1993 up to 25 percent. A facility owner or operator may reduce the required on water recovery cap increase for 1998 and 2003 up to 50 percent by identifying pre-approved alternative response methods.

8.5 In addition to the credit identified above, a facility owner or operator that operates a year round area pre-approved for dispersant use may reduce their required on water recovery cap increase for 1998 and 2003 by up to 50% by identifying non-mechanical methods.

8.6 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993.

9. Additional Equipment Necessary to Sustain Response Operations

9.1 A facility owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these response resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery rate required on scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

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TABLE 1

RESPONSE RESOURCE OPERATING CRITERIA

OIL RECOVERY DEVICES

Operating Environment	Significant Wave Height[1]	Sea State
Rivers and Canals	≤1 foot	1
Inland	≤3 feet	2
Great Lakes	≤4 feet	2-3
Ocean	≤6 feet	3-4

BOOM

Boom Property	Use			
	Rivers & Canals	Inland	Great Lakes	Ocean
Significant Wave[1] Height	≤1	≤3	≤4	≤6
Sea State	1	2	2-3	3-4
Boom height - in. (draft plus freeboard)	6-18	18-42	18-42	≥42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength - lbs.	4,500	15-20,000	15-20,000	≥20,000
Skirt Fabric Tensile Strength - lbs.	200	300	300	500
Skirt Fabric Tear Strength - lbs.	100	100	100	125

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[1] Oil recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

Spill Location	Rivers and canals			Nearshore/Inland Great Lakes			Offshore		
Sustainability of on-water oil recovery	3 Days			4 Days			6 Days		
Oil Group	% Natural Dissipation	% Recovered Floating Oil	% Oil On Shore	% Natural Dissipation	% Recovered Floating Oil	% Oil On Shore	% Natural Dissipation	% Recovered Floating Oil	% Oil On Shore
1 Non-persistent oils	80	10	10	80	20	10	95	5	/
2 Light crudes	40	15	45	50	50	30	75	25	5
3 Medium crudes and fuels	20	15	65	30	50	50	60	40	20
4 Heavy crudes and fuels	5	20	75	10	50	70	50	40	30

Table 2 Removal Capacity Planning Table

TABLE 3

EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS

NON-PERSISTENT OIL	
GROUP I	1.0
PERSISTENT OIL	
GROUP II	1.8
GROUP III	2.0
GROUP IV	1.4

TABLE 4

ON WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Operating Area	Tier 1	Tier 2	Tier 3
Rivers & Canals	.30	.40	.60
Inland/Nearshore/ Great Lakes	.15	.25	.40
Offshore	.10	.165	.21

Note: These mobilization factors are for total response resources mobilized, not incremental response resources.

TABLE 5

RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
February 18, 1993			
All except rivers & canals, Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day
Rivers & canals	1,500 bbls/day	3,000 bbls/day	6,000 bbls/day
February 18, 1998			
All except rivers & canals, Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day
Great Lakes	6.35K bbls/day	12.3K bbls/day	25K bbls/day
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day
February 18, 2003			
All except rivers & canals, Great Lakes	TBD	TBD	TBD
Great Lakes	TBD	TBD	TBD
Rivers & canals	TBD	TBD	TBD

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.

TBD = To be determined

BILLING CODE 4910-14-C

Appendix D of Part 154—Interim Guidelines for Determining Economically Important and Environmentally Sensitive Areas for Facility Response Plans

1. Purpose

Since the Coast Guard is using the facility's potential to impact sensitive areas as a factor in determining whether a facility could reasonably be expected to cause substantial harm or significant and substantial harm, it is necessary for facility owners or operators to be able to correctly identify sensitive areas. Sensitive areas will require more stringent protective measures than other areas in the event of a discharge. These guidelines will help facility owners or operators identify the areas that affect the classification of their facilities and the areas which require increased awareness during the planning process.

These guidelines will serve as interim guidelines until the area committees have identified sensitive areas in the Area Contingency Plans (ACP).

2. Identifying Sensitive Areas Potentially Impacted by a Worst Case Discharge From a Facility

Proximity to environmentally sensitive areas has been identified as a factor in the substantial harm evaluation. To assist owners or operators in identifying these areas, environmentally sensitive areas may include a variety of areas, such as: wetlands, National and State parks, critical habitats for endangered and threatened species, wilderness and natural areas, marine sanctuaries, conservation areas, preserves, wildlife areas, scenic and wild rivers, seashore and lakeshore recreational areas, and critical biological resource areas.

Other environmental areas that may be considered by the Coast Guard to determine whether a facility poses significant and substantial harm to the environment include: Federal and State lands that are research natural areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats, such as: aquaculture sites, bird nesting areas, designated migratory routes, and designated seasonal habitats. The Coast Guard may determine, on a case-by-case basis, that additional areas that possess ecological significance are considered to be environmentally sensitive for the purposes of this regulation.

The Commandant in consultation with EPA's Regional Administrator may determine, on a case-by-case basis, that areas not contained in this appendix but that possess ecological value are considered to be sensitive environments for purposes of this regulation.

Dated: January 19, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93–1708 Filed 2–1–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 155

[CGD 91–034]

RIN 2115–AD81

Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is establishing regulations requiring response plans for certain vessels that carry oil in bulk as cargo and additional requirements for certain vessels operating in Prince William Sound, Alaska. These regulations are mandated by the Federal Water Pollution Control Act (FWPCA), as amended by the Oil Pollution Act of 1990 (OPA 90). The purpose of these requirements is to improve response capabilities and minimize the impact of oil spills from these vessels.

DATES: This rule is effective February 5, 1993, except for §§ 155.1110 through 155.1150 of subpart E. Sections 155.1110 through 155.1150 are effective August 18, 1993. The Director of the Federal Register approves as of February 5, 1993, the incorporation by reference of certain publications listed in the regulations. Comments on the interim final rule must be received by April 6, 1993.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 91–034), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Comments on collection of information requirements must also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

When submitting comments, include your name and address, identify both this rulemaking (91–034) and the specific section of the rulemaking to which each comment applies, and give the reason for the comment. If you want acknowledgement of receipt of comments, enclosed a stamped, self-addressed postcard or envelope.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of the docket and will be available for inspection and copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gary Greene, Project Manager, Oil Pollution Act of 1990 (OPA 90) Staff, (202) 267–6739. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Request for comments

The Coast Guard is soliciting comments on portions of the interim final rule where we have made major changes based on our review of comments received on the proposed rule (57 FR 27514, June 19, 1992). The Coast Guard encourages the submission of written data, views, or arguments on the following issues:

1. Section 155.1015: The new exemption, under certain circumstances, for foreign flag vessels transiting the exclusive economic zone and territorial seas.
2. Section 155.1020: Definition of Contract or other approved means. The new "other approved means" for ensuring the availability of response resources, and the new situations in which the owner or operator may obtain written consent from an oil spill removal organization to ensure the availability of response resources.
3. Section 155.1050(f)(6): The new requirements for owners or operators to plan for close-to-shore response activities in shallow water.
4. Section 155.1050(g): The revised response times for the Great Lakes area.
5. Section 155.1050(k): The revised requirements for owners or operators to ensure the availability of dispersants.
6. Section 155.1052: The new section which establishes response plan requirements and criteria for vessels carrying group V petroleum oil (specific gravity greater than 1) as a primary cargo.
7. Section 155.1054: The new section which establishes response plan requirements and criteria for vessels carrying non-petroleum oil as a primary cargo.
8. Section 155.1062: The new section which establishes requirements for the inspection and maintenance of certain response resources.
9. Section 155.1130: The revised requirements for on-water removal capability.
10. Appendix B, Table 6: The new caps for the Great Lakes area.

While comments are specifically requested on the above issues, all comments on any issues raised by this rulemaking will be considered.

Drafting Information

The principal persons involved in drafting this document are Commander Glenn Wiltshire, Project Manager, Lieutenant Commander Gary Greene, Project Manager, and Joan Tilghman, Project Counsel, OPA 90 Staff.

Background and Purpose

The Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1321(j)(5), requires the owner or operator of a tank vessel, as defined under 46 U.S.C. 2101, or a facility to prepare and submit to the President a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance. Worst case discharge is defined in section 311(a)(24) of the FWPCA as the loss of the entire cargo in adverse weather conditions.

Since the publication of the notice of proposed rulemaking, Congress passed the Coast Guard Authorization Act of 1992 (Pub. L. 102–587, November 4, 1992). Section 5209(b) of the Act provides that the following vessels are deemed not to be tank vessels for the purposes of any law:

(1) An offshore supply vessel.

(2) A fishing or fish tender vessel of not more than 750 gross tons that transfers without charge to a fishing vessel owned by the same person.

The result of the Reauthorization Act is that the vessels described are not tank vessels for the purposes of the FWPCA and the vessel response plan requirements. We have revised the applicability section of the interim final rule accordingly.

The vessel response plan requirements are applicable to all vessels certificated under 46 CFR subchapter D, vessels that have a Certificate of Compliance or Tank Vessel Examination Letter, other certificated vessels that are permitted to carry limited quantities of oil, and uninspected vessels that carry oil in bulk as cargo or cargo residue. The requirements are also applicable to vessels carrying oil in bulk as cargo or cargo residue pursuant to an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35, and dedicated response vessels carrying oil in bulk as cargo or cargo residue outside a response area.

For the purposes of the interim final rule, we are using the definition of oil that is contained in section 311(a)(1) of the FWPCA. Oil includes but is not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredge spoils. This definition includes animal and vegetable oils in addition to petroleum oil.

Section 311(j)(5)(C) of the FWPCA requires that response plans must: (1) Be consistent with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and Area Contingency Plans (ACPs); (2) identify the qualified individual with full authority to implement removal actions, and require immediate communications between that individual and the appropriate Federal official and the oil spill removal organizations providing personnel and equipment; (3) identify and ensure the availability of, by contract or other approved means, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and to mitigate or prevent a substantial threat of such a discharge; (4) describe the training, equipment testing, periodic unannounced drills, and response actions of persons on the vessel to be carried out under the plan to ensure the safety of the vessel and to mitigate or prevent the discharge, or the substantial threat of a discharge; and (5) be updated periodically and resubmitted for approval of each significant change.

A major objective of the OPA 90 amendments to section 311(j)(5) of the FWPCA is to create a system in which private parties supply the bulk of equipment and personnel needed for an oil spill response in a given area. A worst case discharge will likely require the use of both private and public resources. However, the vessel response plan (VRP) is required to identify private resources. The integration and coordination of public and private response resources will be addressed in the applicable Area Contingency Plans.

Section 311(j)(5)(D) of the FWPCA requires the President to promptly review vessel response plans, require amendments to any plan that does not meet the requirements of section 311(j)(5), and approve any plan that complies with section 311(j)(5). The President also must review each response plan periodically thereafter. The President delegated the authority to review and approve vessel response plans to the Secretary of the Department of Transportation (DOT) on October 18, 1991 by Executive Order 12777 (56 FR 54757). The Secretary further delegated this authority to the Commandant of the Coast Guard on March 3, 1992 in 46 CFR 1.46(m) (57 FR 8581).

Section 311(j)(5) of the FWPCA and section 4202(b)(4) of OPA 90 set the implementation schedule for these provisions. After February 18, 1993, a vessel required to prepare and submit a response plan may not handle, store, or transport oil unless a plan has been submitted for approval. After August 18, 1993, a vessel required to prepare and submit a response plan may not perform any of these functions unless it is operating in compliance with that plan.

After submission of a plan, but prior to its approval, a vessel may continue operations for up to 2 years if the owner or operator of the vessel certifies the availability of private personnel and equipment sufficient to respond to a worst case discharge and the owner or operator has received written authorization for continued operations from the Coast Guard. Written authorization is required because section 311(j)(5) of the FWPCA states that a vessel permitted to continue operations for up to two years as described above must be authorized to do so.

Although OPA 90 requires response plans for oil or hazardous substance spills, section 4202(b)(4) establishes an implementation schedule only for submission and approval of oil spill response plans. Response plans for hazardous substance spills will be the subject of a separate rulemaking.

Section 5005 of OPA 90 sets oil spill removal requirements for Prince William Sound (PWS), Alaska in addition to those in section 311(j)(5) of the FWPCA. When Congress passed OPA 90, section 5005 applied to all vessels operating in Prince William Sound. However, Congress amended section 5005 of OPA 90 on October 5, 1992, by changing which vessels are subject to the additional requirements for PWS. The only vessels to which section 5005 of OPA 90, as amended by section 354 of the DOT Appropriations Act (Pub. L. 102–388, October 5, 1993) now applies are tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651 *et seq.*).

Section 5005 provides an even greater margin of safety for PWS by requiring vessel response plans to provide for: Prepositioning response equipment; establishing an oil spill removal organization with trained personnel to protect property and economic interests; special training for residents in PWS; performing periodic testing and certification of response equipment; and exercising required trained personnel and spill removal equipment.

This rulemaking does not address the requirements of section 311(j)(6) of the FWPCA for the carriage and inspection of discharge-removal equipment. The Coast Guard published a notice of proposed rulemaking (NPRM) on "Requirements for Vessels to Carry Discharge-Removal Equipment" in the **Federal Register** on September 29, 1992 (57 FR 44912). The requirements for facility response plans are contained in a separate interim final rule published elsewhere in this issue of the **Federal Register**.

Regulatory History

The Coast Guard published an advance notice of proposed rulemaking (ANPRM) on this project in the August 30, 1991, **Federal Register** (56 FR 43534). The ANPRM discussed the background and requirements of section 311(j) of the FWPCA and possible regulatory approaches. The ANPRM raised 59 questions for public comment, and the Coast Guard received 172 comments which were considered in developing the NPRM.

In addition to accepting written comments concerning the development of proposed regulations for vessel response plans, a public workshop was held in Washington, DC on November 14, 1991. A total of 196 persons participated in the workshop. During the workshop, the Coast Guard summarized the written comments received in response to the ANPRM and solicited additional input on specific issues.

Because of the need for additional information to assist with the development of the proposed rule, the Coast Guard published a Notice of Intent to Form a Negotiated Rulemaking Committee on November 18, 1991 (56 FR 58202). Based on the comments received on that notice, the Coast Guard established the Oil Spill Response Plan Negotiated Rulemaking Committee (the Committee). A notice announcing the establishment of the Committee was published in the **Federal Register** on January 10, 1992 (57 FR 1139). Twenty-six organizations participated on the Committee. The Coast Guard was a member of the Committee.

Committee sessions were held between January 8 and March 27, 1992. The Committee was charged with considering five issues: (1) Definition of "maximum extent practicable;" (2) definition of "adverse weather" for purposes of determining recovery capacity of removal equipment; (3) applicability of requirements to various categories of vessels that carry oil in bulk as cargo; (4) contractor certification; and (5) carriage of discharge removal equipment. The Committee considered a number of options and alternatives during its discussions that were not included in their recommendations. The consensus recommendations included in the final report of the Committee reflect the agreement of all Committee members and were used when drafting the proposed rule. The Coast Guard expects to issue guidance on contractor classification and has published an NPRM on discharge-removal equipment carriage (57 FR 44912, September 29, 1992). Copies of the final Committee report and all documents considered by the Committee during its meetings are available in the public docket for this rulemaking.

On June 19, 1992, the Coast Guard published an NPRM entitled Vessel Response Plans in the **Federal Register** (57 FR 27514). A correction notice concerning portions of the NPRM was published on July 1, 1992 in the **Federal Register** (57 FR 29354). By the close of the comment period on August 3, 1992, the Coast Guard received 246 letters commenting on the proposal, all of which it considered in developing this interim final rule. Additional comments have been received since the close of the comment period, and they have been considered to the extent possible in developing this interim final rule.

One letter requested that the Coast Guard conduct a public hearing on this proposed rule. A public hearing was not held because the Coast Guard determined that there was sufficient opportunity to make oral presentations during the public workshop and the Committee meetings.

The Committee reconvened August 18–20, 1992, after the close of the public comment period on the NPRM, to review the comments received on their recommendations. The Committee did not reach consensus on any additional recommendations during the final meeting and made no amendments to the final Committee report. However, the Committee meeting did create a forum for some members and the public to discuss unresolved issues and provide additional information on the Committee's earlier recommendations. All documents considered by the Committee during the final meeting are available in the public docket for this rulemaking.

Given the statutory deadline for the submission of response plans by vessel owners or operators, the Coast Guard released NVIC No. 8–92 on September 23, 1992. Change 1 to NVIC No. 8–92 was released on December 4, 1992. The NVIC and Change 1 to the NVIC provided guidance to the marine industry for preparing response plans for certain vessels, as required by the OPA 90 amendments to the FWPCA. The Coast Guard will accept a response plan based on the NVIC to meet the February 18, 1993 deadline, as well as a response plan meeting this interim final rule. The owner or operator who submits a response plan for a vessel based on the NVIC must so indicate that in a letter accompanying the plan submission. This plan will be reviewed for approval based on the provisions contained in the Navigation and Inspection Circular (NVIC). Any response plan submitted after February 18, 1993 must meet the requirements of this interim final rule. After August 18, 1993, all vessels must be operating in compliance with an approved plan or be authorized in writing by the Coast Guard to operate pending approval of a submitted plan.

To receive this interim authorization from the Coast Guard, a vessel owner or operator must certify to the Coast Guard that he or she has ensured by contract or other approved means, the availability of private personnel and equipment necessary to respond, to the maximum extent practicable, to a worst case discharge or a substantial threat of such a discharge.

Discussion of Comments and Changes

Discussion of General Issues

Many comments were concerned with the possible application of the planning criteria included in the proposed rule as performance standards in a post-response enforcement action or litigation. As indicated in both the preamble and §§ 155.1010 and 155.1110 of the proposed rule, this rulemaking establishes planning criteria to be used by vessel owners or operators to develop their Federal response plans. The criteria were derived from a number of assumptions that may not be applicable when a spill occurs. The Coast Guard does not intend to use these criteria to measure performance during a spill response. However, these are requirements in the interim final rule (e.g., training and drills) where the Coast Guard does expect the vessel owner or operator to ensure performance. See the "Federalism" section of this preamble for further discussion on this issue.

Many comments expressed concern that the requirements in the proposed rule were inconsistent with and went well beyond the requirements of MARPOL Annex I, Regulation 26. Regulation 26 requires certain vessels to have shipboard emergency plans that address at least four areas: Procedures for reporting oil pollution incidents; a listing of authorities to be notified; a detailed description of immediate actions to be taken by the vessel's crew to reduce or control an oil discharge; and procedures for coordinating shipboard activities with national and local authorities. The requirements of section 311(j)(5) of the FWPCA exceed those of Regulation 26, but the Coast Guard has minimized inconsistencies to the maximum extent practicable.

In a response plan, section 311(j)(5) of the FWPCA requires vessel owners or operators to also: Identify and ensure, through contract or other approved means, the availability of necessary private response resources; describe training and drills; identify a qualified individual with specific authority and responsibilities; and address periodic plan updates. Under the FWPCA, the Coast Guard cannot allow vessels that meet only Regulation 26 standards to handle, store, or transport oil in waters subject to U.S. jurisdiction.

OPA 90 requires owners or operators to submit response plans by February 18, 1993. However, MARPOL Annex I, Regulation 26 is not fully effective until April 4, 1995. To minimize the burden on foreign flag vessel owners or operators who must prepare both an IMO shipboard emergency plan and a U.S. response plan, the Coast Guard has revised the response plan format provisions to allow greater flexibility in combining these two plans into one document.

Numerous comments noted that the proposed rule requires them to plan for a potential discharge of fuel or bunker in addition to oil carried in bulk as cargo, and that this exceeds the requirements of OPA 90. For U.S. flag vessels, the Coast Guard intended the vessel response plan required by OPA 90 to satisfy the requirements of IMO Regulation 26 and reduce the overall burden on the owner or operator. After further consideration, the Coast Guard has determined that this may place an undue burden on those U.S. vessels that do not have to comply with IMO Regulation 26. Therefore, the Coast Guard has amended § 155.1030 of the interim final rule to allow an owner or operator to address the additional provisions of Regulation 26 if desired. The requirement for an owner or operator to plan for the discharge of fuel has been eliminated from the interim final rule. Any U.S. vessel owner or operator who wants to have the 311(j) plan considered for compliance with IMO Regulation 26 should inform the Coast Guard of this fact in writing at the time of plan submission. Although the Coast Guard has not determined how IMO Regulation 26 will be implemented for all vessels, we anticipate that a plan prepared following the guidance contained in § 155.1030(j) will meet the minimum requirements of Regulation 26. When the Coast Guard issues a letter approving a response plan, the letter will indicate whether it complies with Regulation 26, for entry into port states, if the owner or operator has included in the plan the expanded provisions of § 155.1030(j).

Many comments stated that it was impossible for owners or operators to meet the statutory deadlines for submitting and complying with vessel response plans because the Coast Guard would not have published the regulations by August 18, 1992. OPA 90 requires owners or operators to submit vessel response plans by February 18, 1993; the Coast Guard has no discretion to change that date.

As discussed in "Regulatory History," the Coast Guard promulgated NVIC No. 8–92 dated September 15, 1992, and Change 1 to NVIC No. 8–92 dated December 4, 1992, to provide guidance to the marine industry for preparing response plans. The submission by February 18, 1993, of a response plan based on the NVIC will be accepted by the Coast Guard for the initial vessel response plan submission.

The additional OPA 90 section 5005 requirements for Prince William Sound have no statutory deadlines. Therefore, the Coast Guard has determined that it is appropriate to delay the implementation of these requirements until 180 days after the effective date of the interim final rule.

Many comments expressed concern that an owner or operator could not submit a vessel response plan until the NCP is revised and the ACPs are completed, as required by OPA 90. The Coast Guard recognizes that the NCP and the ACPs will not be revised or completed prior to the initial submission of vessel response plans on February 18, 1993. In NVIC No. 8–92, the Coast Guard announced that it will evaluate whether a response plan is consistent with the NCP by using the existing NCP published in 40 CFR part 300. Because the ACPs are in various stages of development, we will use the local oil and hazardous substances contingency plans (LCPs) in effect on August 18, 1992 to evaluate whether a response plan submitted to meet the February 18, 1993 deadline is consistent with the ACP. Copies of the LCPs are available from the cognizant COTP.

The Coast Guard expects all ACPs to be completed within the next year. A vessel response plan submitted after the NCP is revised or the applicable ACP has been completed must eventually be consistent with these documents. We have revised § 155.1030 to allow an owner or operator submitting a response plan for approval or reapproval to be consistent with the applicable plan (NCP/ACP) in effect 6 months prior to the response plan submission date. The 6-month period provides sufficient time for owners or operators to prepare their response plans before submitting them to the Coast Guard. This provision would not prevent an owner or operator from voluntarily conforming to a more recent NCP or ACP if one existed.

The interim final rule does not require an owner or operator to immediately resubmit their response plan if the NCP or applicable ACP is updated. The owner or operator would include any new information required in the NCP or ACP only when submitting the plan for reapproval. Likewise, an update would not be required as the result of the annual review which the owner or operator is required to conduct.

In the NPRM, we solicited public comment on whether the requirements for manned vessels carrying oil as primary cargo, unmanned tank barges, and vessels carrying oil as secondary cargo should be contained in separate sections or one section of the rule. Seven comments stated that combining the response plan requirements for all vessel types in one section would make it difficult for owners or operators to locate the requirements for their vessel type. These comments also argued that separate sections would allow the requirements for one vessel type to change without affecting the requirements for other vessels. The Coast Guard agrees that separate sections for each vessel type will make the rule easier to read and facilitate compliance with the requirements and has retained that format in the interim final rule.

Some comments argued that we have exceeded our statutory authority under the FWPCA in setting requirements for the average most probable discharge (AMPD) and maximum most probable discharge (MMPD) because section 311(j)(5) of the FWPCA requires planning for the worst case discharge only.

The Coast Guard's authority to regulate is broader than OPA 90. Section 311(j)(1)(C) of the FWPCA authorizes the Coast Guard to require planning for discharges other than the worst case. Because the Committee recommended that the NPRM address operational discharges as well as the worst case discharge, we are using our authority to require planning for spills other than a worst case discharge.

A number of comments were concerned that the requirements of this interim final rule are not appropriate for remote areas such as the Aleutian Islands and other areas of Alaska, Guam, American Samoa, and other remote areas in the Pacific. The Coast Guard has considered these comments but has not revised the interim final rule because OPA 90 sets requirements for vessels and not for specific operating areas. Further, this interim final rule establishes national criteria to ensure that response planning is not tied to specific locations or ports with existing response capability but would result in the ability to respond to discharges anywhere in U.S. waters and the exclusive economic zone (EEZ).

In any event, a vessel owner or operator can address the specifics of response capabilities in remote areas through the existing exemption process included in 33 CFR 155.130. This section allows a vessel owner or operator to submit a written request to the Commandant in those situations where compliance with a regulation is economically or physically impractical, no alternative procedures or methods for compliance exist, and the likelihood of a discharge occurring as a result of the exemption is minimal.

In its request, the vessel owner or operator should identify what resources would be available to respond to discharges in remote areas, response times for those resources, and any other appropriate information. The owner or operator should also identify the location and estimated response time of all resources necessary to meet the applicable resource requirements of the interim final rule. This listing will likely include resources that cannot meet the various response time requirements.

One comment recommended that "planned" vessel routing should be the criteria for determining required resources, and that an owner or operator should not have to plan for every eventuality. This comment expressed specific concern that the master of a vessel would not be permitted to deviate from the planned route for the safety of the vessel or crew, due to weather or some other unplanned condition if the vessel response plan did not cover the geographic area into which the master chose to deviate.

"Planned" routing is already the underlying criteria of the vessel response plan. The Coast Guard disagrees that a master would be prohibited from diverting into an area with a higher planning standard when required for the safety of his vessel or crew.

During the course of this rulemaking, the Coast Guard has received a number of comments stating that the vessel response plan interim final rule should not—under any circumstances—apply to vessels which carry oil as a secondary cargo. Most of the comments advance various reasons why secondary carriers do not meet the definition of "tank vessel." The Coast Guard disagrees. OPA 90 states that the response plan requirements apply to a "tank vessel" as that term is defined in 46 U.S.C. 2101. According to section 2101, a tank vessel is a vessel that, among other things, carriers oil in bulk as cargo. Section 2101 does not differentiate between primary and secondary uses of the vessel.

Some comments stated that the Coast Guard does not treat secondary carriers as "tank vessels" in regulations issued under 46 U.S.C. chapter 37. This comment is true. However, statutory exemptions in title 46 United States Code that exclude some tank vessels from regulations issued under that authority do not apply to regulations issued under the FWPCA.

At least one comment stated that it is not clear whether Congress intended to capture secondary carriers within the vessel response plan requirements, and that the Coast Guard has authority under the FWPCA to exempt secondary carriers from the definition of "tank vessel." The Coast Guard believes that the statutory language is clear. Congress could have referred to another definition to limit the scope of these requirements, but it chose the broad definition in 46 U.S.C. 2101. This is an unambiguous statement, and we see nothing in the statute or the legislative history to support a contrary conclusion.

Some comments stated that the Coast Guard could exempt secondary carriers from the interim final rule by defining the terms "bulk" and "cargo" to exclude a minimum amount of oil. The Coast Guard believes that, consistent with the purposes of OPA 90, it has no discretion to exempt a carrier by defining terms to exclude tank vessels carrying a minimum amount of oil from the requirement to comply with the vessel response plan rules. Further, there is little justification for distinguishing between specific quantities of oil which may be in tanks, all posing pollution risks, from time to time. The statute requires a tank vessel to have a plan even if it carries only oil residue—a minimum amount.

Some comments stated that requiring a secondary carrier to have a response plan will create inconsistencies with existing regulations. As we stated earlier, some secondary carriers would fall outside of regulations issued under 46 U.S.C. chapter 37, but within the scope of the FWPCA which is codified in 33 United States Code. Each statute requires a separate regulatory scheme, and the response plan rules simply do not affect rules issued under title 46.

Although we recognize that OPA 90 includes secondary carriers, the Coast Guard believes that the relative risk from these kinds of vessels is less than the risk from tank vessels carrying oil as primary cargo. We have exercised what discretion we do have to establish reduced requirements for secondary carriers, to reflect this lesser risk.

The Coast Guard received a number of comments arguing that services such as firefighting and salvage typically are provided by public entities, and that vessel owners and operators should be able to identify these public resources in their plans, reasoning that spill response essentially is a private and public partnership. Section 311(j)(5)(C)(iii) of the FWPCA states that a response plan must identify and ensure the availability of private personnel and equipment to respond to a spill. Although the Coast Guard agrees that both private and public resources likely will be used in the event of an actual spill, we think the statute is unambiguous in requiring the vessel response plans to address and develop private spill response resource capability.

Numerous comments recommended that the Coast Guard and not vessel owners or operators be responsible for certifying or approving shore-based spill response contractors. The Coast Guard is not requiring owners or operators to "certify" shore-based spill response contractors. However, section 311(j)(5) of the FWPCA requires an owner or operator of a tank vessel to prepare and submit plans which, among other things, identify, and ensure by contract or other means approved by the President, the availability of, private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge.

Numerous comments also noted that the requirement to list all of the required response equipment in the geographic-specific appendix will be a considerable paperwork burden. To facilitate the preparation and review of vessel response plans, the Coast Guard intends to provide guidance on a voluntary process for classifying oil spill removal organizations by their estimated capacity to contain and remove oil from the water and to protect shorelines. Vessel owners or operators who must prepare and submit response plans may identify a Coast Guard-classified oil spill removal organization with the capacity to meet the owner's or operator's planning volumes, instead of listing each item of equipment.

Section 155.140 Incorporation by Reference

The NPRM proposed incorporating by reference six documents from the American Society for Testing and Materials (ASTM), International Maritime Organization (IMO), and the Oil Companies International Marine Forum (OCIMF). The Coast Guard has decided not to incorporate by reference IMO Resolution A.648(16), "General Principles for Ship Reporting Systems and Ship Reporting Requirements, Including Guidelines for Reporting Incidents Involving Dangerous Goods, Harmful Substances, and/or Marine Pollutants," because we have revised the notification procedures in §§ 155.1035 and 155.1045 to include all of the relevant information recommended by IMO.

Nine comments were received related to the incorporation by reference section. One comment recommended incorporation of ASTM standards to the extent possible. The Coast Guard retained in the interim final rule the ASTM standards applicable to boom and oil recovery devices.

Several comments recommended that the Coast Guard incorporate additional publications by reference. Three comments recommended that the "International Safety Guide for Oil Tankers and Terminals" published by the International Chamber of Shipping (ICS) and OCIMF be incorporated by reference for safety and cargo information. One comment recommended that the OCIMF document "Peril at Sea and Salvage—A Guide for Masters" be incorporated as a reference for emergency towing procedures. One comment recommended that the OCIMF booklets "Effective Mooring Guidelines" and "Safe Mooring of Large Ships at Piers and Sea Islands" be incorporated for vessel operations. One comment recommended that the "Incident Command System" manual published by Fire Protection Publications be incorporated to address response organization and incident management, and multiple comments recommended that use of this system be required.

The Coast Guard believes that all of the referenced documents may be useful for a vessel owner or operator preparing a response plan. However, we are not going to incorporate these documents by reference because they are intended to be guides, not required standards. We believe that owners or operators should have maximum flexibility in structuring the incident command system and developing procedures for salvage, mooring, and towing. Because the interim final rule already covers subject matter addressed in the international safety guide, we are not incorporating it by reference.

One comment recommended that International Maritime Organization (IMO) Resolution A.648(16) and the OCIMF Ship-to-Ship Transfer Guide not apply to "cargo vessels" operating on the outer continental shelf. As previously discussed, we are no longer incorporating the IMO Resolution by reference. The OCIMF Ship-to-Ship Transfer Guide would apply only to primary cargo carriers as defined in the interim final rule. Most "cargo vessels" would be classified as secondary carriers for purposes of this interim final rule, therefore the Guide would not apply.

Two comments questioned whether the OCIMF Ship-to-Ship Transfer Guide should apply to barge transfers, with another comment specifically noting that the Guide did not address barge transfers. The Coast Guard agrees and has removed the specific requirement in § 155.1040(d)(5)(i) for unmanned tank barge lightering plans to be consistent with the Guide.

One comment recommended incorporating ASTM Standard F 625-92, "Standard Practice for Describing Environmental Conditions Relevant to Spill Control Systems," submitted for reapproval in 1992, in place of Table 1 of appendix B. The Coast Guard agrees that this proposed ASTM standard contains similar information, but will defer determining whether to incorporate the standard by reference until it becomes a consensus standard.

Section 155.1010 Purpose

This section describes the purpose of the vessel response plan rules and notes that the requirements for response resources and the arrival times for these resources, as set forth in the interim final rule, are for planning purposes only.

Several comments suggested that the purpose statement be clarified to ensure that the response planning criteria do not become performance criteria, but one comment stated that the rule was already clear in this regard. Another comment wanted the rule changed to become a performance standard.

Due to the many variables that often occur during spills, the Coast Guard does not agree that performance criteria are appropriate. No one can predict what will happen during an actual spill. So that the interim final rule more clearly states that the specific criteria for response resources and their arrival times are not performance standards, the Coast Guard has deleted the phrase "meant to be" in the purpose statement.

Several comments were concerned that not meeting the planning criteria during an actual spill response may subject them to unlimited liability under 33 U.S.C. 2704(c)(1)(B). The response plans themselves are intended to be planning documents and not to prescribe specific performance criteria. However, circumstances may arise in which the violation of the interim final rule would appropriately lead to a denial of an entitlement to limit liability under 33 U.S.C. 2704(c)(1)(B). Because the facts associated with such circumstances may vary greatly, it would not be possible to describe them in meaningful detail in the purpose statement.

Section 155.1015 Applicability

As discussed in the "Background and Purpose" section of the preamble, offshore supply vessels and certain fishing and fish tender vessels are no longer subject to the requirements of the interim final rule. Section 155.1015 has been revised accordingly.

The Coast Guard has made minor revisions to this section of the interim final rule to make it consistent with the definition of tank vessel in 46 U.S.C. 2101. The changes are for consistency only and do not change the substance of this section.

The Coast Guard has amended paragraph 155.1015(b) to make its text consistent with applicability statements for lightering operations in other Coast Guard regulations.

A number of comments stated that the Coast Guard cannot extend the applicability to vessels on innocent passage through the territorial waters of the United States. Insofar as the concept of "territorial waters" includes the internal waters, the principle of innocent passage does not apply to such waters. Concerning the territorial sea, paragraph 4 of Article 211 of the 1982 United Nations Convention on the Law of the Sea, which reflects customary international law, provides:

> Coastal States may, in the exercise of their sovereignty within their territorial sea, adopt laws and regulations for the prevention, reduction, and control of marine pollution from foreign vessels, including vessels exercising the right of innocent passage. Such laws and regulations shall, in accordance with Part II, section 3, not hamper innocent passage of foreign vessels.

To avoid the possibility of hampering foreign flag vessels exercising innocent passage in the territorial sea, we have revised the applicability provision of the interim final rule to exempt these vessels.

A number of comments challenged the Coast Guard's authority to require vessel response plans for foreign flag vessels conducting lightering operations in the EEZ. OPA 90 amended 46 U.S.C. 3715 to assure that the delivering vessel in a lightering operation in the marine environment comply with section 311(j) of the FWPCA, including response plan requirements. As amended, 46 U.S.C. 3715(a)(4) allows oil which has been transferred in such a lightering to be then transferred in a port or place subject to the jurisdiction of the United States only if, at the time of the first transfer, both the delivering vessel and receiving vessel had on board evidence of compliance with section 311(j) of the FWPCA.

Under 46 U.S.C. 2101, the "marine environment" means, among other things, the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority. Before 1986, the "fishery conservation zone" was the area in which the U.S. asserted the major portion of this jurisdiction, and the outer boundary was a line drawn in such a manner that each point on it (was) 200 nautical miles from the baseline from which the territorial sea is measured (16 U.S.C.A. 1811). The U.S. Code was amended in 1986 (Pub. L. 99–659) to incorporate the "exclusive economic zone" (EEZ) as the measurement for the area subject to this portion of the exclusive fishery management authority. The seaward boundary of the EEZ in turn is defined in Presidential Proclamation 5030 to extend out to 200 nautical miles (3 CFR, 1983 Comp., p. 22, 48 FR 10605, March 10, 1983).

One comment stated that these regulations should apply to all large vessels (not just tank vessels) because the amount of fuel they carry also poses a significant threat to the environment. The Coast Guard agrees that vessels other than tank vessels pose a threat to the environment and vessel owners or operators should plan for a response action in the event of a casualty or discharge. However, OPA 90 addresses only the greater threat posed by tank vessels, as defined under 46 U.S.C. 2101. Other vessels subject to MARPOL Regulation 26, including vessels carrying oil as cargo and fuel, will be subject to a separate Coast Guard rulemaking to implement MARPOL Regulation 26 requirements.

The Regulation 26 requirements will not be fully implemented until April 4, 1995. The Coast Guard decided not to combine these two rulemakings because of the differences in required plan content and implementation dates. However, as noted in the general discussion, the owner or operator of a U.S. flag tank vessel may address the provisions of Regulation 26 in the plan submitted to comply with this interim final rule. Although determinations on the implementation of Regulation 26 have not been made, the Coast Guard anticipates that a plan prepared following the guidance contained in § 155.1030 will meet the OPA 90 and the minimum MARPOL Regulation 26 requirements.

One comment stated that the proposed rule as constructed would not apply to foreign flag vessels. The interim final rule applies to certain defined tank vessels, certain vessels operating on the navigable waters of the U.S., vessels transferring oil in bulk as cargo in a port or place subject to the jurisdiction of the U.S., and vessels conducting bulk oil lightering operations in the marine environment where the oil is destined to a port or place subject to U.S. jurisdiction. Therefore, a foreign flag vessel engaged in these activities is subject to this interim final rule.

Another comment requested clarification on whether a tanker discharging cargo, loading ballast, and cleaning tanks outside the 200 mile EEZ would be exempt from the requirements. If in the above scenario the vessel handles, stores, or transports oil in bulk as cargo or cargo residue on the navigable waters of the United States, the vessel would be subject to the interim final rule. A vessel placed in ballast after discharging bulk oil will most likely have cargo residue remaining aboard.

Some comments were concerned about the impact on Canadian ships transiting the boundary waters between the United States and Canada (particularly the Great Lakes and the Strait of Juan de Fuca). These comments argued that requiring vessels in those waters to carry both a U.S. and a Canadian response plan for the same voyage imposes an unreasonable burden, and that it will restrict free access to Canadian ports.

Canada has yet to promulgate response plan requirements. Therefore, it is impossible to determine a number of important related questions, such as: (1) The degree to which compliance with Canadian rules may or may not be adequate to meet the U.S. statutory requirements; (2) how the Canadian rules will treat vessels navigating through Canadian waters enroute to U.S. ports; and (3) how great a burden would be placed on vessels that would have to comply with the requirements of both countries.

There is no authority for the Coast Guard to waive the vessel response requirements for vessels transiting the internal waters of the United States enroute to or from Canadian ports. However, we understand that, currently, the Canadian Government is developing vessel response plan requirements to provide protection to Canada's waters. The Coast Guard plans to work closely with appropriate Canadian officials in an attempt to reach a solution which will minimize the burdens of meeting both United States and Canadian requirements, while at the same time fully meeting statutory requirements, and providing protection to the waters, of each country.

A number of comments stated that the rule should apply only to traditional tank vessels that carry a minimum amount of oil. The comments suggested specifically excluding vessels such as dry cargo ships that carry oil in deep tanks, MARAD prepositioned ships, secondary carriers, and other vessels that are small and pose a minimum environmental threat. These comments stated that these vessels will be adequately covered under MARPOL Regulation 26. Many of the comments noted the disproportionate economic impact that this rule will have on small vessel owners and operators.

Although the Coast Guard solicited comments in the NPRM on whether oil should be considered as cargo only if a minimum quantity is carried, we have since determined that OPA 90 allows us no discretion to establish a specific minimum quantity to define cargo. Under 46 U.S.C. 2101(39), a tank vessel is a vessel that, among other things, carries oil in bulk as cargo or as cargo residue. Because cargo residue is include in this definition, it is inappropriate to establish a minimum amount of oil that would be consistent with this definition. The Coast Guard has revised the definition of cargo. The new definition makes it clear that oil carried solely for use aboard the vessel or by the vessel's machinery, boats, helicopters, or towed vessel is not cargo. Also, oil transferred between a towing vessel and a vessel in its tow is not cargo. See the previous preamble discussion on vessels carrying oil as a secondary cargo under "Discussion of general issues."

Two comments stated that vessels carrying oil-based drilling muds should be exempted from the rule. The FWPCA includes oil-based drilling mud in the definition of oil. As previously discussed, if the vessel is an offshore supply vessel (OSV) it is no longer considered a "tank vessel" and would therefore not be subject to the requirements of this interim final rule. Further, oil-based drilling mud on board Mobile Offshore Drilling Units (MODUs) is not considered cargo because it is for use by the drilling machinery carried aboard the vessel.

One comment stated that public vessels and private vessels pose similar risks to the environment, and therefore, public vessels should be included in the scope of this rule. The exemption for public vessels is statutory and the Coast Guard cannot make them subject to the interim final rule.

One comment expressed concern that certain vessels moored at an offshore facility may be required to simultaneously possess a vessel response plan prepared under the interim final rule and an oil spill response plan prepared under the rules issued by the Minerals Management Service (MMS). The Coast Guard intends to continue to work closely with MMS to minimize any duplication between the two Agencies' response plan requirements.

A number of comments addressed various issues pertaining to "dedicated response vessels." Most supported classifying dedicated response vessels as secondary carriers although many wanted the status of dedicated response vessels more clearly stated in the rule.

Section 155.1015 exempts dedicated response vessels in response areas from preparing a vessel response plan. The definition of a vessel carrying oil as a secondary cargo has been amended to specifically include dedicated response vessels transporting oil outside of a response area.

Three comments suggested that we amend § 155.1015(d) to state more clearly when certain U.S. vessels, not operating in U.S. waters, are exempt from certain portions of the rule. The Coast Guard agrees and has amended that section of the interim final rule as suggested. As discussed in the guidelines for implementing IMO Regulation 26, the roles of national authorities may vary widely from port State to port State, as may the responsibility for discharge response. We have therefore determined that requiring a U.S. based qualified individual and a shore based spill management team for certain U.S. vessels operating beyond the exclusive economic zone of the U.S. was not appropriate and have revised this section of the interim final rule accordingly.

Section 155.1020 Definitions

There were a number of comments received on the proposed definitions. Most of these comments agreed or did not take issue with the definitions proposed in the NPRM. The following text addresses only those definitions which were the subject of substantive comment and definitions which the Coast Guard changed or added.

One comment suggested that we define "contingency and response plans." Because this interim final rule specifies what a response plan must contain, the Coast Guard has determined that defining a "response plan" is unnecessary. A response plan differs from a contingency plan because the former contains vessel-specific information. Area Committees will develop contingency plans, and the contingency plans will include planning requirements for a variety of spill scenarios and responders.

Average most probable discharge. The Coast Guard received three comments questioning the use of 50 barrels (bbls) for the planning volume for this type of spill. One comment specifically addressed reducing the volume for the Great Lakes area, citing 5 bbls as the average spill for the area.

The Committee used data from the Marine Safety Information System for the years 1984 to 1989, the most current data available, to establish the 50 bbl planning volume. The Coast Guard has determined that 50 bbls is a reasonable volume for planning for an average most probable discharge because it is based on national operational spill data and an evaluation of historical trends in smaller size spills.

The definition has been revised to make it clear that the average most probable discharge means a discharge from a vessel that occurs during oil transfer operations.

Bulk. Three comments stated that marine portable tanks should not be included in this definition because they carry mainly lube oil for the vessel. One questioned if oil recovered from a skimmer and stored in a portable floating tank would be considered "bulk oil." One other comment questioned if oil transported in over-the-road portable containers is considered bulk oil for the purposes of this interim final rule.

Oil carried in a marine portable tank or an over-the-road tank is considered "bulk" only if the oil is transferred into and out of the tank while it is on the vessel. That vessel would have to carry a response plan. Oil recovered from a skimmer and stored in a portable floating tank other than on the vessel also is not "bulk" for the purpose of this interim final rule because it is not an integral or independent tank onboard the vessel.

Captain of the Port (COTP) Zone. A number of comments requested that we clarify the geographic area covered by a COTP zone. The Coast Guard has defined "COTP zone" in this section as a zone specified in 33 CFR part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ). The boundaries of the seaward extension of some zones are not defined in 33 CFR part 3, but the Coast Guard will be revising this part. In the meantime, details on the location of the boundaries may be obtained by writing to the following address: Commandant (G–MEP–6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

Cargo. A number of comments suggested defining "cargo" as a minimum amount of oil carried by a vessel. Most suggested establishing 250 barrels as the minimum threshold because lesser amounts do not pose a significant threat to the environment. Other comments stated that lubricating oils, hydraulic fluids, and helicopter fuel should be exempt from this definition. Two comments suggested rewording the definition to exempt oil that is transferred between a towing vessel and its tow.

In the preamble discussion on "Applicability," we have addressed the question of whether a minimum quantity of oil should be excluded from the definition of cargo. The Coast Guard has revised the definition to make it clear that oil is not "cargo" if it is carried solely for use aboard the vessel; for use by the vessel's machinery or boats; or transferred between a vessel and a vessel in its tow. The Coast Guard agrees that limited quantities of fuel for use by helicopters carried onboard should be regulated in the same manner as fuel for use by small boats carried onboard. The Coast Guard amended the interim final rule to exclude from the definition of cargo, oil carried in integral tanks, marine portable tanks, or independent tanks for use by helicopters carried onboard and directly supporting the vessel's primary operations.

For vessels of opportunity, one comment suggested deleting the term "emergency" from the definition to make it clear that these vessels never carry cargo. The Coast Guard agrees, and has revised the definition accordingly.

This subpart does not apply to dedicated response vessels that are conducting response operations in a response area or to vessels of opportunity. Consequently, it is not necessary to specifically exempt the oil transported by these vessels from the definition of cargo. We have revised the definition of cargo in the interim final rule by eliminating these two exemptions:

Contract or other approved means. The Coast Guard received 16 letters discussing aspects of this definition. Most comments said that the definition of "other approved means" was too restrictive, depriving vessel owners and operators of a chance to ensure that the required resources are available through means less rigid than a formal contract. However, there were a few comments suggesting that we should require contracts "or a more legally binding and fully detailed self-certification process' in every instance. In discussions at the last Committee session, most of the members suggested we should consider any means acceptable to "ensure" the availability of response resources if the owner or operator and the resource provider create a document that: (1) Clearly identifies the goods and services to be provided; (2) sets out the parties' acknowledgement that the resource provider intends to commit its resources in the event of a response; and (3) permits the Coast Guard to verify the response resources identified through tests, inspection, and exercise.

The Coast Guard agrees with the comments that "other means approved by the President" implies that there are permissible alternatives to contracts. We believe that a document which contains the three elements listed above provides acceptable assurance that the response resource provider has the capability to respond. We have required further that the owners or operator's agreement with the resource provider be referenced in the response plan.

The Coast Guard also revised the definition so that written consent of an oil spill removal organization, with specified equipment and personnel which are available within stipulated response times in the specified geographic areas, is "other approved means" for a vessel to meet the resource requirements in §§ 155.1052(c) and 155.1054(c).

Great Lakes. The definition of the Great Lakes has been changed to be consistent with 33 CFR 160.203.

Maximum Extent Practicable. The Coast Guard received 30 comments on the definition of "maximum extent practicable" (MEP). The greatest number of comments stated that the definition was too vague, and needed to be better defined. These comments did not say what the writers considered "vague," nor did they offer alternative definitions. The Coast Guard has revised the definition to clarify and better reflect the meaning of "maximum extent practicable."

Regarding a number of comments stating that the definition did not reflect the Committee consensus, the Coast Guard notes that its regulatory negotiation agreement committed the Coast Guard to capturing the substance and effect of the Committee's recommendations, and we believe we have in this instance.

Many comments on this definition addressed the question of whether the Coast Guard must consider costs as an essential element of the concept of "practicability." There were comments supporting and opposing the proposition. The Coast Guard believes that we have discretion to determine whether to include cost as an element of MEP, and we have used that discretion to factor costs into the definition. For example, in determining what is "practicable," the interim final rule sets caps on the amount of on-water response resources for which a vessel owner or operator must contract or ensure by other approved means.

The interim final rule also sets out less onerous planning requirements for secondary carriers as a recognition of the reduced risk of potential damage posed by these carriers, and indexes by volume of bulk oil carried the level of detail of the response plan and drill frequency. The interim final rules tier arrival times for response resources so that a vessel owner or operator does not have to plan for all required resources to be located in the area where the vessel is operating.

Some comments stated that MEP should not assume an instant release of the entire cargo. The Coast Guard did not assume an instant release, but a rapid one. At the same time, however, we did not include release rate as a separate factor in calculating planning volumes because the FWPCA requires vessel owners and operators to plan for a worst case discharge. Further, adding a release rate factor to the calculations would also add another level of complexity.

Nonpersistent or Group I oil. One comment stated that the rule must specify what oils fall within this definition. Three comments were opposed to classifying non-petroleum oils as non-persistent because OPA does not address these oils and the response for these oils would be different from petroleum oil or petroleum-based oils. In addition, one comment indicated that the specific gravity criteria for petroleum oils was not applicable to non-petroleum oils and suggested using distillation characteristics.

Because specific gravity criteria do not apply to non-petroleum oils, the Coast Guard agrees that non-petroleum oils should be excluded from the definition of "non-persistent" or "group I" oil. Therefore, we have deleted this portion of the definition. The Coast Guard disagrees that a list of all non-persistent oils should be included in the definition because the characteristics provided are sufficient guidelines to help owners or operators establish whether an oil is non-persistent.

Oil spill removal organization. This definition was amended to alleviate some concerns that it was too narrow, seeming to apply only to existing organizations in certain locations.

On-scene Coordinator. One comment suggested that we define this term to make the rule more clear. The Coast Guard has added a definition of on-scene coordinator that is consistent with the definition in 33 CFR V part 153.

Operating in compliance with the plan. The Coast Guard has added this definition to clarify what this term means.

Operator or vessel operator. Two comments supported the concept that the operator of a towing vessel is not the "operator" of the vessel being towed within the meaning of OPA 90. Two comments were opposed to the definition. One of those suggested deleting the language "but not limited to" because it is inconsistent with the definition of operator under the FWPCA.

The FWPCA does not define the term "operator." "Owner or operator" is the term defined in the FWPCA most nearly applicable to the vessel response plan definition of "operator or vessel operator." In the FWPCA, "owner or operator" is defined with respect to a vessel as "any person owning, operating, or chartering (a vessel) by demise." If we eliminate the words "but not limited to" from the definition of "operator or vessel operator," we may leave the impression that only an owner or demise charter could be an operator under the interim final rule, and that interpretation would be too narrow. For reasons stated in the NPRM, the Coast Guard continues to agree that a towing vessel operator should not fall within the definition. Therefore, we have not amended the definition.

Further, this definition and the definition of "owner or vessel owner" apply only in these vessel response plan regulations, and are inapplicable to any other regulation or statute.

Persistent oils. Four comments objected to the proposed three classes of persistent oils because the Committee only recommended using persistent and non-persistent oils and because two categories of oil (persistent and non-persistent) are sufficient planning tools for selecting equipment and gauging dissipation. Three comments agreed with the proposal because it avoids penalizing vessels that carry less persistent oils and requires a different level of planning for heavier oils. Two comments added that non-petroleum edible oils should be in their own category because they are biodegradable and have no toxic residuals.

As discussed in the NPRM, the Committee originally recommended using two oil categories: Persistent and non-persistent. They also recommended that the Coast Guard consider the relative persistence of oils and emulsification. We divided persistent oil into four groups, based on a protocol developed by the International Tanker Owners Pollution Federation (ITOPF) to account for the differences in persistence. We have defined oil in five groups: Non-persistent and four other groups based on their specific gravity. Because specific gravity criteria does not apply to non-petroleum oils, non-petroleum oils have been deleted from this definition as suggested.

One comment stated that oil-based mud should not be classified as "oil" because it does not behave like an oil product, is difficult to recover from the water, and historically has not been spilled very much. Section 311 of the FWPCA defines "oil" to be oil of any kind or in any form, which includes oil-based mud. The Coast Guard does not have the authority to define "oil" differently for the purpose of that statute.

Qualified individual and alternate qualified individual. The Coast Guard has revised the definition of qualified individual to state that the qualified individual and alternate qualified individual means a shore-based representative of the vessel owner or operator who meets the requirements of § 155.1026. In the NPRM, we proposed requiring an owner or operator to designate an alternate qualified individual. The Coast Guard has retained this requirement in the interim final rule and has revised the definition to be consistent with this requirement. The designation of an alternate qualified individual is necessary to provide a reasonable assurance of 24-hour availability. Additionally, if an alternate qualified individual were not identified, the owner or operator would have to notify the Coast Guard every time the primary qualified individual went on vacation or was otherwise unavailable. The interim final rule does not limit the number of alternate qualified individuals whom an owner or operator may designate.

We have added a new § 155.1026, which includes the requirements for the qualified individual and alternate qualified individual that were previously listed in the proposed definition. The Coast Guard determined that the proposed definition contained substantive requirements that would be more appropriately placed in a separate section of the interim final rule.

Some comments stated that we should allow the qualified individuals for Canadian flag vessels to be based in Canada. The Coast Guard has determined that Canadian vessels may identify Canadian-based qualified individuals if these individuals meet the same requirements for U.S.-based individuals under § 155.1026(b). This provision only applies to Canadian flag vessels while they are operating on the Great Lakes, the Strait of Juan de Fuca, and Puget Sound, WA. In any other environment, the qualified individual must be based in the United States. The close proximity, reliable communication, and the common water boundary shared by the United States and Canada create a unique situation, which allows a Canadian-based qualified individual to be as effective as a U.S.-based qualified individual.

Several comments objected to the requirement for qualified individuals to have "unconditional" authority to implement the vessel response plan. These comments argued that vessel owners or operators will have difficulty identifying qualified individuals with unconditional authority without making them potentially liable for spill cleanup. The Coast Guard has revised new § 155.1026 of the interim final rule to better describe the authority and responsibilities of the qualified individual. The requirement for "unconditional authority" has been eliminated from § 155.1026.

Of the 44 comments the Coast Guard received on this definition, most asked us to clarify in the interim final rule that a "qualified individual" also is a person exempt from liability for response actions under section 311(c)(4) (33 U.S.C. 1321(c)(4)) of the FWPCA. These comments stated that the failure to identify the qualified individual as a person exempt from liability will hamper the efforts of vessel owners and operators to identify persons with the required qualifications.

A person does not become a responsible party under the FWPCA by being designated a qualified individual for response plan purposes. Under section 1321(c)(4), a person other than a responsible party is not liable for removal costs or damages which result from actions taken or omitted in the course of rendering care, assistance, or advice consistent with the NCP or as otherwise directed by the President. Notwithstanding, such a person whose acts or omissions are grossly negligent, or who engages in willful misconduct may, as a result, become liable for the resulting removal costs or damages. The qualified individual is not, however, responsible for the adequacy of response plans prepared by the owner or operator, nor is the qualified individual responsible for contracting response resources beyond the full authority delegated from the owner or operator.

The Coast Guard does not wish to restrain the appropriate activities of a qualified individual and an alternate qualified individual to hamper owners or operators in identifying such individuals. However, the Coast Guard has no authority to grant immunity to any person, including qualified individuals designated for response plan purposes.

To better define the responsibilities of the qualified individual, the Coast Guard has revised the proposed rule by adding to § 155.1026 a paragraph which states that the qualified individual is not responsible for the adequacy of the response plans, nor for contracting response resources beyond the authority delegated from the owner or operator.

A new section has also been added which allows the vessel's owner or operator to designate an organization to carry out the responsibilities of the qualified individual. However, the designated organization must have identified specific individuals to act as the qualified individual and the alternate. Finally, the proposed rule has been revised to require the qualified individual to be familiar with the implementation of the vessel response plan and to be trained in the responsibilities of the qualified individual under the response plan.

Response Activities. The Coast Guard has revised this definition in the interim final rule by adding the words "public health or welfare." This revision strengthens the definition and makes it consistent with the definition of "removal" contained in section 311(a) of the FWPCA.

Response Area. One comment stated that the proposed definition does not reflect the negotiated rulemaking agreement because the definition encompasses a much greater (or potentially much smaller) area than that contemplated by the Committee. That comment stated that the response area should be determined on a case by case basis by the Federal on-scene coordinator (OSC) during an actual spill. Another comment suggested that the definition should make it clear that the "response area" may encompass more than one COTP zone.

The Committee recommended using "planning sectors" to define the areas in which dedicated response vessels could operate without a response plan, but the Committee did not suggest a definition. The Coast Guard has reconsidered the definition and agrees with the comment that a "response area" should be determined case by case, depending upon the exigencies of a spill. The Federal OSC is the person with the expertise and authority to make this determination. Therefore, we have revised this definition by stating that the Federal OSC determines what constitutes the response area. The revised definition allows a Federal OSC the flexibility to define the response area as necessary, based on the actual spill size and location.

Rivers and canals. Several comments opposed defining rivers and canals as 12 feet or less in depth because many rivers are greater than 12 feet in depth. One comment recommended that the depth should be increased to 30 feet. The Coast Guard proposed that rivers and canals be defined as 12 feet deep or less because we intended the definition to only cover narrow, inland bodies of water that are reasonably protected and typically have wave heights of one foot or less. It was also our intent to limit this definition to those areas where only shallow draft vessels would operate.

Creation of the limited definition for rivers and canals permitted the development of unique oil spill planning requirements for shallow draft vessels that transit these waters. The Coast Guard disagrees with the recommendation to increase the depth from 12 feet to 30 feet because it would change the characteristics of the operating environment upon which the planning requirements for rivers and canals was based.

Other comments requested that we clarify the term "controlled navigable depth," and one suggested using the "authorized depth." The Coast Guard has revised the definition by deleting the term "controlled navigable depth" and replacing it with "project depth." The project depth is indicated on most navigational charts and represents the design dredging depth of channels maintained by the U.S. Army Corps of Engineers. Unlike the "controlled navigable depth" that may change frequently due to shoaling, the "project depth" is a fixed design standard independent of the actual depth existing in the channel.

Spill management team. One comment requested that the Coast Guard make it clear whether this function can be fulfilled by an organization outside the COTP zone of the spill. The interim final rule does not prevent the spill management team from being located outside of the response area, as long as the plan remains functional for the area where the vessel is operating. Under § 155.1030, the plan must identify a team for each COTP zone, but the plan may identify the same team for all zones.

Substantial threat of a discharge. Two comments objected to using "fuel" in the definition because OPA 90 does not specifically address fuel. MARPOL Regulation 26 recommends that certain vessels carrying oil as "fuel" or as "cargo" carry an approved oil pollution emergency plan. If the owner or operator intends the plan to satisfy the MARPOL Regulation 26 recommendations, the plan should address oil carried as fuel, as well as oil carried as cargo.

Tanker. The Coast Guard added the definition of tanker which is consistent with the definition in 46 U.S.C. 2101.

Vessels carrying oil as primary cargo. In response to comments, the Coast Guard has amended the definition to clarify that it includes only vessels carrying oil in bulk as cargo and has included cargo residue in the definition to make it consistent with § 155.1015.

Vessels carrying oil as secondary cargo. In response to comments, the Coast Guard has amended the definition to clarify that it includes only vessels carrying oil in bulk as cargo or cargo residue. This definition has also been amended to eliminate the possibility that a vessel carrying oil as primary cargo could simultaneously be considered a vessel carrying oil as a secondary cargo. For further discussion on these vessels, see "Discussion of general issues."

Vessel of opportunity. One comment stated that the preamble to the NPRM implied that a vessel of opportunity must carry a response plan if it operated outside of the response area. The Coast Guard agrees that the preamble is misleading, but § 155.1015 specifically exempts vessels of opportunity from the requirements of this subpart. The definition in the interim final rule is clear that these vessels must be engaged in response activities, but it does not limit vessel operations to the response area. The definition has been changed to clarify that a vessel carrying oil as a primary cargo is excluded from the definition.

Section 155.1025 Operating Restrictions and Interim Operating Authorization

The Coast Guard received twenty-one comments on this section. Two comments agreed with the NPRM, one requested clarification on single voyages, and the remainder suggested revisions. The following summarizes the suggestions and the Coast Guard's reasons for accepting or rejecting them. The Coast Guard made minor changes to the interim final rule for clarification.

The Coast Guard has amended paragraph 155.1025(a)(3) to make its text consistent with applicability statements for lightering operations in other Coast Guard regulations.

Three comments recommended that the Coast Guard and not vessel owners or operators be responsible for certifying or approving shore-based spill response contractors. The regulations do not require such a certification or approval. To avail themselves of the provision contained in § 155.1025(c), an owner or operator must simply certify to the Coast Guard that they have identified and ensured the availability of, through contract or other approved means, the response resource required by the interim final rule.

Several comments asked how an owner or operator could certify on February 18, 1993, that the required response resources would be in place on August 18, 1993, when they are not currently in place. If an owner or operator has made reasonable arrangements, such as a contract with an oil spill removal organization, for the necessary response capability to be available for use no later than August 18, 1993, the owner or operator may properly certify, on or before February 18, 1993, that it has identified and ensured the availability of the necessary private response resources. The certification should be submitted with the response plan. It is not necessary to list in the certification those resources that are not currently in place. However, all necessary response resources must be in place by August 18, 1993 for the vessel to continue to operate past that date.

As discussed in the NPRM, the certification can be submitted either at the time of plan submission or in a separate submittal. The Coast Guard encourages owners or operators to submit the certification with the plan. The vessel will not be permitted to continue to operate past August 18, 1993 unless the owner or operator has received written authorization from the Coast Guard to do so. By including the certification at the time of plan submission, the owner or operator can assure receipt of the required written Coast Guard authorization in a timely manner.

The Coast Guard is still studying the issue of whether the two-year provision provided for in section 311(j)(5) of the FWPCA is for initial submissions only or if it will also apply to future plan revisions and required resubmissions. The Coast Guard intends to clarify this issue prior to publishing the final rule.

Five comments suggest an extension of the February 18, 1993 deadline for filing plans until the ACP and NCP are updated. The Coast Guard has no authority to extend the statutory deadline. Plans submitted by the February 18, 1993 deadline must be consistent with the local contingency plans (LCPs) and the NCP in effect on August 18, 1992. Vessel owners or operators will not have to modify their plans until the five-year review solely for the purpose of making their plans consistent with a subsequently issued ACP or an updated NCP.

The remaining comments deal with the single-voyage exemption. The proposed rule permits the COTP to authorize a vessel to make one voyage to transport or handle oil in a port or geographic area not covered by a response plan if the vessel owner or operator certifies that they have met certain criteria. After further consideration, the Coast Guard has determined that the term "geographic area" is not specific enough, and may lead to confusion over where and when this provision applies. The Coast Guard has revised the interim final rule by eliminating the words "or geographic area" from paragraph 155.1025(e). For the purposes of the single voyage exemption provision, the Coast Guard will consider an offshore lightering area to be a port.

One comment asks whether the exemption is an annual exemption; it is not. Each vessel owner or operator is allowed a total of one exemption for each port. An owner or operator may request single voyage exemptions for multiple ports. For example, a vessel owner or operator could request and receive a separate single voyage exemption for each of several ports contained within one COTP zone.

Another comment asks whether individual COTP's have the authority to allow inland barges without plans to enter ports unexpectedly. A vessel in distress is entitled to seek safe harbor, subject to appropriate controls imposed by the COTP which may be less than all requirements of these regulations. Otherwise, the requirements of the regulations, including response plan requirements, apply.

One comment suggested that single-voyage exemptions should not be granted. Another supported the exemption only for foreign vessels, if the Secretary of DOT reviewed and approved the vessel's manning, qualification, and watchstanding standards. The Coast Guard has determined that a single-voyage exemption is warranted because it will allow vessels a one-time opportunity to call on a port for which they have not submitted a geographic-specific appendix. However, these vessels must have a response plan that meets all of the VRP requirements (except for the applicable geographic-specific appendix) or have a plan approved by the flag state as meeting the requirements of MARPOL Regulation 26; and have designated a qualified individual and ensured the availability of response resources.

Two comments suggested that the exemption will be of little help to vessel owners and operators, because they are still required to ensure response resources. Section 311 of the FWPCA does not provide an exemption for vessels making a one-time call on a port. The Coast Guard has provided the maximum flexibility for these vessels to meet the statutory requirements to ensure the availability of response resources.

One comment suggested that vessels visiting ports infrequently should be subject to the same exemption as those making a single voyage. The Coast Guard disagrees. The exemption is intended for a truly unexpected diversion, for which it is unreasonable to require an owner or operator to plan in advance.

Another comment mentioned that it will be a significant administrative burden to maintain geographic-specific information aboard a vessel that visits numerous ports. The Coast Guard believes that it is appropriate to have all area specific information contained in one section of the plan and carried onboard. This will facilitate reference for the vessel crew during an emergency and assist the local COTP in reviewing the information during routine boardings.

One comment suggested that owners or operators of time-charter vessels in service before February 18, 1993, with an approved response plan should have 90 days to submit a new geographic-specific appendix if a vessel changes its regular port of call. The comment suggested that the vessel be allowed to operate during that 90 days. The Coast Guard disagrees. The interim final rule already permits the COTP to grant a single-voyage exemption in such cases.

Section 155.1026 Qualified Individual and Alternate Qualified Individual

The Coast Guard has added this section to set out the requirements for the qualified individual and the alternate qualified individual. To clarify the interim final rule, we have incorporated in this section the substantive information previously included in the definition of qualified individual.

Section 155.1030 General Response Plan Requirements

This section of the interim final rule outlines general response plan requirements for all vessels. Most comments on this section addressed the plan format and where the plan must be located.

A new section has been added to the interim final rule that describes the procedure that an owner or operator can follow to address the provisions of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL). See "Discussion of general issues" for additional details.

One comment stated that copies of the plans should be kept at Coast Guard Marine Safety Offices and Coast Guard District offices to ensure that information is readily available to State and Federal agencies in case a spill occurs. The Coast Guard will retain a copy of the plans at one central location and believes that one copy is sufficient. Response plans must include procedures for coordinating with State and Federal agencies, but these plans are for the vessel owner or operator and its agents or employees who will have primary responsibility to mitigate and clean up a spill.

One comment stated that the Coast Guard should write a model plan that vessel owners could modify for their vessels. As discussed, response plans are for the owner or operator and its agents or employees. Therefore, we think it appropriate to give owners or operators as much flexibility as reasonably possible to determine what level of complexity and substance addresses their needs. A "cookbook" plan would unnecessarily restrict these owners or operators from devising the best plans for their operations and may unnecessarily increase their paperwork burden.

One comment stated that the plans should identify who to call for protection of environmentally sensitive areas and identify protection strategies.

The Coast Guard does not agree because that information is included already in the LCPs and will be included in the ACPs.

One comment objected to the wording used in proposed paragraph 155.1030(a) concerning the requirement for plans to be written in a language understood by "crew members responsible for carrying out the plan," because the wording implies that crew members must carry out the plan. The Coast Guard has changed the text of this paragraph to require the plan to be written in English and in a language understood by those crew members "with responsibilities under the plan."

Two comments stated that on-board plans should be concise and deal with only those issues specific to the ship. One other comment stated that a detailed and complex plan would be useless to shipboard personnel in an emergency. The Coast Guard agrees that only certain portions of the plan are needed for shipboard response operations.

Consequently, to minimize the paperwork burden on vessel crew members and to help ensure that the plan is useful during a spill, the Coast Guard has amended § 155.1030 to divide the plan into shipboard and shore components. The interim final rule specifies what must be in each component and requires the vessel to carry the shipboard component. The plan must include all of the required sections, but the owner or operator can tailor the length and complexity of the plan as appropriate for the vessel's operations.

One comment stated that the plan should identify communication methods and spill-tracking equipment and procedures. The Coast Guard already requires the owner or operator to identify their response command and control organizational structure in the plan. Communication procedures are an integral part of that structure. The ACPs will address equipment and procedures for spill-tracking, and the Coast Guard is studying the issue as the Committee recommended.

One comment recommended that the vessel response plans should assure the compatibility of communications among all responding private parties and agencies. The Coast Guard agrees that efficient and reliable communications is essential during an oil spill recovery operation. However, it is not possible for each vessel owner or operator to establish a common communications plan with all parties that may respond to an oil spill. This is the role of the NCP, ACPs, and OSC during a spill.

One comment stated that the Coast Guard should require vessel owners or operators to distribute to company personnel a separate document that summarizes key notification and response information. The Coast Guard is requiring owners or operators to use checklists and diagrams in certain parts of their plan. The Coast Guard believes owners or operators should have the flexibility to distribute this information to company personnel as necessary and has not made this a requirement. Requiring distribution of lists or diagrams may increase the paperwork burden on organizations with relatively limited operations.

One comment stated that the Coast Guard should require a vessel owner or operator to include in each plan, a letter authorizing the qualified individual to commit response resources when a plan is activated. The Coast Guard believes requiring an owner or operator to submit an unconditional letter of commitment creates a redundant requirement. An owner or operator already must name a qualified individual who must be notified in the event of a spill. That individual must have the authority to commit response resources.

One comment stated that the rule should require the qualified individual to implement the response plan and activate all resources for a worst case discharge unless the OSC says otherwise. The Coast Guard has sufficient authority to direct the responsible party to clean up a spill. The response plan is largely a planning document, covering such items as preparation of lists and compilation of data, training, and drills. The resources used in the event of an actual spill will depend on the specifics of the incident.

One comment stated that a dedicated response vessel should not be required to have a response plan if the vessel is released from its dedicated area to respond to a spill in another area, and is not transporting oil to or from the spill site. The Coast Guard agrees. A dedicated response vessel is only required to have a shipboard response plan when operating outside a response area and carrying oil in bulk as cargo.

Several comments stated that it was impossible to make the vessel response plans consistent with the unrevised NCP and incomplete ACPs. Most of these comments argued that the Coast Guard should delay the filing deadline for vessel response plans until the NCP and ACPs are finished.

The Coast Guard already has addressed this issue under "Discussion of general issues." In the absence of the revised NCP and completed ACPs, the Coast Guard will evaluate response plans based on the existing NCP published in 40 CFR part 300 and the ACP in effect on August 18, 1992.

There were a number of comments suggesting that we consider the proper content, format, and other issues when developing the ACPs. These comments are beyond the scope of this rulemaking.

In the NPRM, we proposed that a response plan that was completed prior to the effective date of the rule follow any format so long as the plan was supplemented with a cross-reference section to identify the location of the applicable sections required in the rule. The Coast Guard revised the interim final rule to clarify that the cross-reference section must address all required information and not simply the sections.

One comment indicated that owners or operators cannot "complete" their plans before they are submitted because the rule will require some elements that are not yet finalized. The Coast Guard agrees and changed the provision to address plans submitted on or before February 18, 1993.

The purpose of this provision is to reduce the initial burden on owners or operators who already have begun developing a response plan. The Coast Guard eliminated the requirement that a plan completed prior to the effective date of the interim final rule and using a cross reference must be submitted in the required format at the next required resubmission date. The Coast Guard intends to work with the various States to develop a universal format by the time the 5 year resubmittal is due. At that time, a plan utilizing a cross-reference section may be required to be resubmitted in a universal formal. See "Discussion of general issues" for information on submitting response plans based on the NVIC.

Several comments opposed a strict format and suggested allowing companies flexibility to create plans that fit their operation. These comments also suggested allowing owners or operators to submit a State approved plan to meet Federal requirements. Four comments stated that the Coast Guard should allow owners or operators to use their own or a State plan format if they cross-reference the format required under the VRP rules.

The Coast Guard made a number of small changes to the interim final rule to provide an owner or operator with more flexibility in organizing and submitting their plan. We have deleted the proposed requirement for the plan sections to be in a specific order. We added a provision to allow an owner or operator with multiple vessels to submit one plan with separate vessel-specific appendices to satisfy the plan requirements for each of its vessels.

The revised interim final rule will permit the owner or operator to insert sections as necessary to satisfy any additional State or IMO requirements. However, the required sections and specific information required in those sections must remain distinct, and the appendix or table of contents must provide sufficient detail on the location of these distinct sections. As many comments recognized, this standard format will ease the administrative burden in reviewing the plans and create uniformity for responders who may not be familiar with a particular plan.

Three comments argued that the plan format was inconsistent with the recommendations of MARPOL Regulation 26. Three other comments stated that the plan format was useful in implementing Regulation 26 of MARPOL. The Coast Guard recognizes that OPA 90 plan standards exceed MARPOL standards but does not believe that these requirements are inconsistent with Regulation 26 standards. U.S. courts have recognized that Congress may direct the Coast Guard to set a stricter standard than the international standard as a condition of port entry. Although these requirements meet and exceed the MARPOL recommendations, the Coast Guard believes they are a logical extension of the IMO concept.

After reviewing the NPRM, the Coast Guard amended § 155.1030 by adding the requirement for the vessel owner or operator to maintain and make available copies of the submitted and approved plan. This provision was previously in § 155.1065, but we have determined that it is placed more appropriately in § 155.1030(i). This section has been revised to make it clear that it is the responsibility of the owner or operator to ensure that the qualified individual is provided with a current copy of the entire plan.

Sections 155.1035(a), 155.1040(b), and 155.1045(b) General Information and Introduction

The Coast Guard revised §§ 155.1035(a), 155.1040(b), and 155.1045(b) to require the call sign to be included in the response plan for each vessel covered by the plan. The Coast Guard is adopting this requirement to reflect a recommendation in the MARPOL Regulation 26 emergency plan guidelines.

The Coast Guard has moved the requirement in §§ 155.1035(a) and 155.1040(b) for owners and operators to identify the geographic areas covered by the plan to the appropriate geographic-specific appendix.

Sections 155.1035(b), 155.1040(c), and 155.1045(c) Notification Procedures

Several comments addressed the type and extent of the notification requirements. Four expressed concerns that the amount of notification requirements are cumbersome, and stated that the vessel owner or operator should have to report the discharge only to the National Response Center or the Coast Guard. Some of these comments also suggested including the requirements for State and local reports only in the Area Contingency Plans. One comment suggested that the Coast Guard maintain a centralized list of all notification requirements, with the COTP and Area Committees updating the list.

Two other comments stated that MARPOL Regulation 26 requirements should be used for contacts because a proposed notification checklist could be confusing in a disaster. Finally, one comment opposed descriptions of notification requirements and primary and secondary communication methods because descriptions are unnecessary and add complexity to the requirements.

The interim final rule requires that only the qualified individual be notified. However, other statutes and regulations establish oil spill reporting requirements, and the Coast Guard believes that owners or operators should set procedures for these notifications in their response plans. To minimize the burden on vessel owners and operators and facilitate rapid notification of a spill, most of this information can be provided in a checklist, which is consistent with MARPOL Regulation 26. To clarify that we need only a listing of notification procedures, we deleted the requirements in proposed §§ 155.1035(b)(2), 155.1040(c)(2), and 155.1045(c)(2) for owners or operators to "discuss" in the response plans notification requirements that apply in the vessel's area of operation.

The Coast Guard also revised the interim final rule to eliminate the requirement for response plans to include local notification requirements and for this information to be duplicated in the geographic-specific appendix. Under the revised notification sections, a response plan must describe primary communications methods for all vessel types and secondary methods if they are available.

To ensure consistency with IMO Resolution A648(16), the Coast Guard has revised the interim final rule to require response plans to include various additional items that must be identified in the initial notification and to establish guidelines for follow-up reports.

Sections 155.1035(c), 155.1040(d), and 155.1045(d) Shipboard Spill Mitigation Procedures

Two comments disagreed with the use of the term "fuel" in § 155.1035(c) because OPA 90 refers to "cargo" and not "fuel." The Coast Guard has deleted the term fuel from these sections. See the preamble discussion of "General issues" and "Section 155.1030" for further information on how U.S. vessels can meet the MARPOL Regulation 26 requirements.

To make § 155.1035 consistent with § 155.1040, the Coast Guard has moved to § 155.1035(j) (vessel-specific appendix) the requirement in § 155.1035(c)(1) for the response plan to identify the volumes of cargo that would be involved in the maximum most probable discharge and the worst case discharge. We have revised this provision to require that the response plan also identify the type(s) of oil cargo involved.

A few comments stated that owners or operators should not have to identify responsibilities of named personnel in the plan under proposed § 155.1035(c). Because identifying individual personnel responsibilities is cumbersome and goes beyond OPA 90, these comments suggested using a checkoff sheet.

Section 311(j)(5)(C)(iv) of the FWPCA states that in a response plan, the owner or operator must describe "the response actions of persons on the vessel." Section 155.1035(c) states that an owner or operator must identify the vessel crew's responsibilities by job title for these scenarios: transfer system leak, tank overflow, or suspected cargo tank, fuel tank, or hull leak.

Two comments opposed the requirement in § 155.1035(c) for the response plan to detail crew responsibilities for keeping records on and sampling of spilled products. The comments stated that vessel crews do not presently sample spilled products, and they objected to exposing personnel to safety and health hazards. The comments also noted that spill sampling is a government enforcement responsibility.

Section 155.1035(c) does not require or recommend that the crew take spill samples. We have revised the interim final rule to require owners or operators to identify only those procedures that the vessel already has in place for spill sampling. The interim final rule is also consistent with MARPOL, which recommends that response plans include crew responsibilities, if any, for recordkeeping and sampling of spilled products.

One comment stated that the plans should include spill mitigation requirements for owners or operators to carry sorbent boom and to train crew members how to deploy the boom. Another comment stated that the onboard equipment requirements should be kept to a minimum. The Coast Guard is developing a separate rule to set out the types and amounts of equipment which must be onboard a vessel.

One comment stated that the vessel owner or operator should maintain the information on the availability, location, and contact numbers for lightering equipment because this information will benefit shore-based personnel more than shipboard personnel. The Coast Guard agrees and has deleted this requirement from §§ 155.1035(c) and 155.1040(d), and added it to §§ 155.1035(e) and 155.1040(f), the list of contacts section of the response plan. If more appropriate, the information may be included in the geographic-specific appendix and referenced in the list of contacts.

Sections 155.1035(d), 155.1040(e), and 155.1045(e) Shore-Based Resources

A number of comments stated that the vessel crew should not be responsible for supervising shore-based resources because their primary goal is to ensure the safety of the crew, vessel, and cargo. These comments recommended that the crew "advise" rather than "supervise" shore-based resources pending the arrival of the qualified individual. Many also argued that it is the Coast Guard's responsibility to remove a spill.

The interim final rule does not require the crew to supervise shore-based operations. We revised the interim final rule to clarify that crew responsibilities for supervising shore-based resources should be identified in the plan only if the owner or operator assigns such responsibilities to the crew. The Coast Guard has also deleted the term "pending arrival of qualified individual" to eliminate the perception that the qualified individual must be on scene. Under section 311 of the FWPCA, the Coast Guard has authority to ensure the effective and immediate removal of a spill, but it remains the owner's or operator's responsibility to remove the spill.

To ensure that the crew is aware of any responsibilities they may have to initiate a response and supervise shore-based resources, the Coast Guard has determined that this information should be kept onboard the vessel. We have deleted the requirement to identify these responsibilities from §§ 155.1035(d), 155.1040(e), and 155.1045(e) and added it to §§ 155.1035(c), 155.1040(d), and 155.1045(d) (shipboard spill mitigation).

Two comments stated that the requirements for shore-based response activities go beyond the scope of the onboard plan and do not need to be carried on the vessel. The Coast Guard agrees and will allow response plans to be divided into shipboard and shore components. The vessel does not have to carry the section on shore-based resources.

Five comments stated that the interim final rule should clarify who sets up the command center because setting up the command center is beyond the facilities and resources available to many independent shipowners. These comments felt that the command center was the Coast Guard's responsibility.

The interim final rule does not require that the vessel owner or operator set up a command center, but a command center may be part of the organizational structure of a response plan. The Coast Guard has determined that the owner or operator should identify the organizational structure that will be used to manage the response actions.

Many comments stated that the Coast Guard should require the use of the Incident Command System (ICS) under the National Interagency Incident Management System (NIIMS). These comments argued that NIIMS would facilitate cleanup efforts by creating a standard management system and allowing the operator to draw upon local community resources. One comment stated that we should not require the use of the NIIMS ICS.

The interim final rule does not require the use of the NIIMS ICS, but vessel owners and operators may choose to use this system or any organizational structure, as long as the response plan identifies the structure and the structure addresses the elements required in the interim final rule.

One comment stated that the number of shore-based management teams should be limited to one per COTP zone and these teams should be ad hoc committees to Area Committees. Some suggested that Federal, State, and private resources should fund the ad hoc committees. The comment rationalized that such a team would be used to working together and could coordinate with the OSC during spills to support area plan process, reduce costs, manage the qualified individual, and increase efficiency.

It is the responsibility of the vessel owners or operators to set up spill management teams. The Coast Guard will not specify the number of teams or fund the teams. The Area Committee membership is limited to members of Federal, State, and local governments. The COTP will determine the types and numbers of subcommittees involved in the Area Committee planning process.

Two comments stated that the requirements to identify oil spill removal organizations and list equipment and supplies in this section of the response plan duplicate the requirements for the geographic-specific appendix and § 155.1050. The comments suggested deleting the provisions under shore-based response activities in §§ 155.1035, 155.1040, and 155.1045 because they are unnecessary.

The Coast Guard agrees the requirements are duplicative and has revised the interim final rule so that a vessel owner or operator needs to identify these resources only in the geographic-specific appendix. We revised the interim final rule by deleting proposed §§ 155.1035(d)(6), 155.1040(e)(5), and 155.1045(e)(5), and by clarifying the existing requirements in §§ 155.1035(i), 155.1040(j), and 155.1045(j). Section 155.1050 is not duplicative because it defines the operating criteria of required response resources.

Some comments also expressed concern about the owner or operator having to identify sufficient resources to staff the oil spill removal organization for seven days. Three comments objected to this provision because owners will not have resources to run a major response for seven days. One comment suggested including this provision in a supplement or annex to a plan to reduce the burden of updating and reapproving the plan each time the personnel identification changes.

The Coast Guard is not requiring the owner or operator to name specific individuals of the oil spill management team or oil spill removal organizations in the response plan. The plan must contain a list with the name and number of the organization(s) that will supply personnel to staff a response for seven days, and the owner or operator must ensure that this organization has adequate resources to staff the response. To clarify the requirements, we now instruct the owner or operator to list the "sources of" trained personnel in the plan. Personnel changes are not "significant," therefore, the Coast Guard does not require the plan to be reapproved if personnel changes occur. However, the owner or operator must update the plan and send the changes in sources to the Coast Guard.

Two comments stated that the Coast Guard should list approved oil spill response organizations in the rule. Other comments stated that the Coast Guard should ensure that resources are available and capable. One comment disagreed with the need for pre-contracting resources.

Under section 311(j)(5), the responsible party must ensure, through contract or other approved means, that sufficient resources are available to respond to a worst case discharge or threat of such a discharge. The Coast Guard is not responsible for securing or listing the services available for the owner or operator. The Coast Guard expects to issue guidance on classification of oil spill removal organizations.

One comment stated that the rule should define "OSC" because the response plan must provide for coordination with that official. Another comment indicated the need for responders to coordinate with other levels of government that have responsibilities during a spill, not just the OSC.

The Coast Guard agrees and has added a definition of "OSC" to the interim final rule. The OSC's responsibilities include coordination with other appropriate government agencies. We have revised the interim final rule to make it clear that the plan must identify the qualified individual's responsibilities for immediate communication with the OSC.

Sections 155.1035(e), 155.1040(f), 155.1045(f) List of Contacts

Two comments disagreed with the requirement to list phone numbers (except for the qualified individual) in a public document because of privacy concerns. The comments suggested that the numbers could be "blacked out" in copies sent to Coast Guard. The Coast Guard disagrees. We believe that the phone numbers are essential to the overall effectiveness of the plan. We are not requiring that the 24-hour contact number be a personal or home phone number.

One comment stated that requiring owners or operators to update their response plan each time the vessel's insurance representative or agent changes is an unreasonable burden. The Coast Guard does not anticipate that keeping current the insurance representatives and vessel agent information will be a large burden. This requirement is consistent with MARPOL Regulation 26 and is generally known by vessel personnel. The Coast Guard will not require that the plan be reapproved whenever that information changes.

One comment disagreed with listing an alternate for the qualified individual because most owners will designate more than one qualified individual. The Coast Guard has determined that identifying an alternate will ensure that a qualified individual is accessible if the primary qualified individual cannot be reached.

One comment stated that Protection and Indemnity (P and I) Clubs publish lists of correspondents who are available to act for and assist shipowners, but it will be difficult for the vessel owner or operator to identify representatives of the individual P and I Clubs.

The proposed rule had a requirement to identify the vessel's P and I Club representative and a separate requirement to identify other applicable insurance representatives. Realizing that a P and I Club is one of many types of insurers, the interim final rule combines these two requirements together. The Coast Guard recognizes that individual P and I Club representatives may not exist for each vessel. In this situation, it would be permissible for an owner or operator to include a listing of the P and I Club organizational contact.

Sections 155.1035 (f) and (g), 155.1040 (g) and (h), and 155.1045 (g) and (h) Drills and Training

Sections 155.1055 and 155.1060 set out specific training and drill requirements. Two comments stated that the requirements for "drills" and "training" in §§ 155.1035, 155.1040, and 155.045 duplicate the requirements in §§ 155.1055 and 155.1060. The requirements in §§ 155.1035 and 155.1040 are not redundant because they only require that drill and training procedures be included in the vessel response plan. Section 155.1045 has unique training and drill requirements that do not reference §§ 155.1055 and 155.1060.

Sections 155.1035(i), 155.1040(j), 155.1045(j) Geographic-Specific Appendices

The Coast Guard has added two provisions to §§ 155.1035(i) and 155.1040(j) to facilitate plan preparation and review. First, as discussed in the preamble discussion of "Sections 155.1035(a) and 155.1040(b)," we have included the requirement for the plan to identify geographic areas covered by the plan. The owner or operator need only list the general area(s) (i.e., port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, or open ocean) in which the vessel intends to handle, store, or transport oil. This allows an owner or operator the flexibility to plan only for those areas of the COTP zone in which the vessel will transit.

Second, the Coast Guard has added a requirement to identify the volume and type of oil on which the required level of response resources are calculated. This information must be included only if it differs from that identified in §§ 155.1035(j) and 155.1040(k). This provision allows the owner or operator to plan only for the quantity of oil actually handled, stored, or transported within the applicable COTP zone.

The Coast Guard received a number of comments on geographic-specific appendices. One comment agreed that plans should contain a geographic-specific appendix because ACPs cannot anticipate all available resources. The appendices should be consistent with ACPs. Another comment expressed concerns that having such an appendix implies that the rule will be applied inconsistently. This comment stated that plans must be consistent within the U.S. and with the international Oil Pollution Emergency Plans (OPEPs).

To ensure consistency among the plans, the Coast Guard will review the plans centrally and will provide COTPs with standard guidance for developing the ACPs.

One comment stated that if a vessel stays in the open ocean, it should not need an appendix. The Coast Guard disagrees. The information contained in the geographic-specific appendix is important for an effective response and for plan review.

One comment stated that developing a geographic-specific appendix is onerous for vessels operating on the spot market. Section 155.1025 allows a vessel a single-voyage exemption to this requirement for vessels making only one voyage to a port.

Three comments stated that some of these requirements duplicate those for shore-based response activities and suggested that they should be deleted. The Coast Guard deleted the duplicate provisions under shore-based response activities and made it clear that the appendix must identify the oil spill removal organizations which will provide the equipment and supplies required in §§ 155.1050, 155.1052, and 155.1054, as applicable.

We added §§ 155.1035(i)(7) and 155.1040(j)(7) to require the owner or operator to list in the appendix the response resources and related information required in the response plan. As an alternative, we added §§ 155.1035(i)(8) and 155.1040(j)(8) to allow owners or operators to identify only the organization(s) and their applicable classification if the organization(s) have been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel. This alternative may reduce the burden on owners or operators in detailing their response resources. The Coast Guard is currently developing guidance for classifying oil spill removal organizations.

To be consistent with the requirements in §§ 155.1050, 155.1052, and 155.1054, the Coast Guard has added a paragraph to §§ 155.1035(i) and 155.1040(j) requiring the appendix to contain a separate list of identified companies that will provide salvage, vessel firefighting, lightering, and, if applicable, dispersant capabilities.

One comment stated that these appendices will cause plans to be out of date continuously. The Coast Guard requires owners or operators to amend their plan and submit for approval only significant changes to the plan. The appendices should change very infrequently.

One comment opposed requiring owners or operators to identify response resources for every geographic zone. The comment stated that owners or operators should rely on local response contractors who can identify environmentally sensitive locations and describe the best response strategies for these areas. OPA 90 requires owners or operators to plan for any area in which their vessel(s) will handle, store, or transport oil. Further, owners or operators must identify response resources in their plans. The ACP will identify response strategies.

Section 155.1035(j) and 155.1040(k) Vessel-Specific Appendices

One comment stated that the requirement under vessel-specific information for vessels to maintain damage stability data conflicts with the option for either the shore-based personnel or vessel personnel to maintain the data. We have revised the requirements to allow owners or operators to maintain the damage stability data apart from the plan if the plan identifies the location of the data.

Two comments opposed identifying the location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo and fuel aboard the vessel. The interim final rule allows vessels to use Material Safety Data Sheets (MSDSs) to meet this requirement. Some stated that vessels do not usually carry MSDSs for fuel because its hazards are well-understood. Other comments stated that safety data sheets are not available for physical, chemical characteristics, or health and safety hazards for different crudes. Those comments proposed referencing the International Safety Guide for Oil Tankers and Terminals (ISGOTT) by OCIMF and requiring the cargo owner to supply the information on the cargo or fuel before it is taken aboard.

Vessels already are required under 33 CFR 155.750 to carry information on their cargo. Sections 155.1035(j) and 155.1040(k) will ensure that a plan user will know where to find this information. The Coast Guard has revised the interim final rule by deleting the requirement for owners or operators to identify this information for fuel. The interim final rule requires the plan to state only the location of this information for the oil cargo and the location of the cargo and fuel stowage plan. ISGOTT does not provide the detail of cargo information necessary to satisfy this requirement.

Section 155.1040 Requirements for Unmanned Tank Barges

Most comments supported requiring the barge to carry a checklist with emergency information. However, a few stated that towing vessels should also carry plans or written information for each barge they tow to facilitate access to those plans in the event of a spill. Others opposed dividing the plans for unmanned barges into a two part format because first responders would need access to the entire plan.

The Coast Guard has determined that requiring the towing vessel to carry individual plans for each barge it may tow is unreasonably burdensome. The owner or operator of the barge must inform the towing vessel operator of the plan location and any responsibilities the towing vessel operator may have under the plan. These plans are intended for use by the towing vessel's crew and spill management team, who will coordinate with the first responders.

A few comments objected to the requirements for barges to provide damage stability, emergency towing, and salvage plans. Others said that barges should not have to maintain a barge diagram or create lines plans or tables of offsets for the response plan.

The interim final rule requires the vessel owner or operator to provide emergency towing plans, damage stability information, lines plans, or tables of offsets only if they are available. If these documents already exist, the plan must reference the existing manual and note where the manual is located. The Coast Guard has determined that a tank barge plan must state the location of general arrangement plans, midship section plans, and tank tables. The Coast Guard revised § 155.1040 to make these requirements clear.

Three comments stated that a barge plan should not have to identify lightering resources because of the cost to barge owners or operators. One comment indicated that barges already have transfer procedures and these should not be repeated in the vessel response plans.

The Coast Guard has determined that barge owners or operators need to identify lightering resources because barges pose a risk to the environment similar to tankers. The response plan may reference any existing vessel transfer procedure that meets the requirements of the interim final rule. We have deleted the requirement for barges to follow the OCIMF Guide because the Guide does not specifically address barge operations.

One comment stated that the requirement to identify procedures for certain casualties was too cumbersome, and the circumstances, not the type of casualty, will ultimately dictate appropriate procedures. The Coast Guard recognizes that the incident circumstances will ultimately dictate appropriate response, but it has determined that identifying procedures for responding to various casualties is an important planning tool.

One comment opposes any implication in the interim final rule that the tankerman may have responsibility to mitigate spills because the barge owner or operator is the responsible party. Under 46 CFR 35.35, the tankerman is the person in charge of an unmanned barge during a transfer operation; and in an emergency, the tankerman must judge and pursue the most effective action to rectify the conditions causing the emergency. However, the barge owner or operator remains the responsible party.

One comment stated the requirement in proposed § 155.1040(e)(1) to identify the responsibilities of the towing vessel's crew duplicates the requirements under spill mitigation. The Coast Guard has moved the requirement for identifying crew responsibilities from § 155.1040(e)(1) to § 155.1040(d)(8). Section 155.1040(d)(8) states that the responsibilities need to be identified only if the vessel owner or operator requires the towing vessel crew to take action under the plan during a response.

We have revised § 155.1040(k)(2) to require that the response plan also identify the type(s) of oil cargo in addition to the volumes of oil cargo involved in the maximum most probable discharge and worst case discharge.

Section 155.1045 Requirements for Vessels Carrying Oil As a Secondary Cargo

A number of comments disagreed with using 50% of the fuel capacity plus the cargo tank volume to derive the cargo volume for which an owner or operator must plan. Most comments said that 25% of the fuel capacity is a more appropriate amount to use for this calculation.

Based on the data these comments presented, the Coast Guard agrees. Based on an evaluation of actual transfer data, we changed paragraph 155.1045(a). For vessels that transfer a portion of their fuel as cargo, 25% of the fuel capacity of the vessel plus the capacity of any cargo tank(s) will be assumed to be the cargo volume for determining applicable response plan requirements, unless the vessel owner or operator indicates otherwise. If the actual volume transferred is greater than 25%, the interim final rule requires the owner or operator to plan for the greater volume. A vessel owner or operator may use a volume less than 25% if the owner or operator submits historical data showing that the vessel transfers a lower percentage of its fuel capacity as cargo between refuelings.

A number of comments addressed the issue of non-contractual written agreements with shore-based responders. Some opposed non-contractual written agreements, recognizing that contractors need incentive to maintain and improve their response capability. These comments stated that an owner or operator should not have to obtain letters of consent because the owner or operator already must provide a list of contractors in the response plan.

OPA 90 specifically requires owners or operators to identify and ensure the availability of response resources through contract or other approved means. The Coast Guard has determined that for secondary carriers, a written letter of consent constitutes "other approved means" to ensure the availability of the response resources. The interim final rule does not preclude these vessel owners or operators from contracting for these resources. (See the preamble discussion on the definition of "contract or other approved means" for further information.)

In proposed § 155.1045(j)(3), the Coast Guard required that response plans for vessels carrying oil as a secondary cargo list the required response resources. We have revised § 155.1045(j)(3) to require that the geographic-specific appendix list the oil spill removal organizations available to respond to the vessel's worst case discharge. The identified oil spill removal organizations must be capable of commencing oil spill containment and on-water recovery within the tier 1 response times.

One comment opposed requiring refresher training because already trained individuals would have to drill even if the individuals were not assigned to a vessel. Other comments argued that maintaining training records on the vessel imposes an undue burden on the vessel crew and only a logbook should be required onboard.

The interim final rule requires refresher training only as necessary. We have revised the interim final rule by adding a provision that allows the owner or operator to count documented work experience toward training. Only individuals onboard the vessel at the time of a drill must participate in the drill. We also have revised the interim final rule so that drill records may be maintained on the vessel, at the U.S. location of the spill management team, or with the qualified individual. However, the plan must specify the location of the records.

Paragraph 155.1045(i) of the proposed rule discusses the procedures for plan review and update. The Coast Guard has determined it appropriate to expand this paragraph in the interim final rule and include a new provision for revising the plan to address deficiencies identified by the Coast Guard. A provision has also been added to provide an appeals process for owners or operators. The title of this paragraph has been renamed "Plan revision, update, and appeal procedures."

The Coast Guard has revised paragraph (i) to require resubmission of the plan for approval 6 months before the end of the Coast Guard approval period. This replaces the proposed requirement for resubmission exactly five years from date of approval. The Coast Guard has also revised this paragraph to require, under certain circumstances, a resubmission of the plan when there is a change in the owner or operator of the vessel.

Section 155.1050 Response Plan Development and Evaluation Criteria for Vessels Carrying Groups I Through IV Petroleum Oil as a Primary Cargo

The Coast Guard has renamed this section and made many changes to the text to limit § 155.1050 to vessels that carry group I through IV petroleum oil as a primary cargo. We have done this to account for the new sections §§ 155.1052 and 155.1054, which address primary carriers of new group V petroleum oil and non-petroleum oils respectively. Some comments questioned whether § 155.1050 applied to vessels that carry oil as a secondary cargo. Only portions of § 155.1050 apply to secondary carriers, and these portions are specifically referenced in § 155.1045(j).

Section 155.1050(a)

This paragraph directs the vessel owner or operator to use specific criteria to evaluate the operability of response resources identified in a response plan under certain conditions. Six comments were received on this paragraph and the corresponding section in appendix B. Two comments requested that we make it clear that owners or operators should use the referenced criteria only for planning purposes and should not consider the criteria as limitations on the equipment used during a response.

Evaluating equipment under § 155.1050(a) is intended only to identify that equipment which the owner or operator expects to operate in the significant wave heights in Table 1. It does not restrict certain equipment to the geographic areas specified in the plan. Paragraph (a)(1)(ii) of the interim final rule has been modified to reflect better the intended use of the criteria.

For evaluating equipment, one comment recommended that we consider the categories of calm water, protected water, and open water as used in the "World Catalog of Oil Spill Response Products—Third Edition" instead of the geographic-based criteria. ASTM is also considering this approach. The Coast Guard has determined that the World Catalog approach is burdensome because it would require all bodies of water to be evaluated before the owner or operator would know what type equipment would be required. The classification based on the four geographic areas (ocean, inland, river, Great Lakes) sets a baseline that an owner or operator can use without additional action. The procedures that allow the COTP to reclassify specified bodies of water using significant wave height frequency will address variations in conditions similar to those addressed by the World Catalog.

Section 155.1050(b)

Six comments addressed the criteria included in paragraph (a)(3) of the NPRM for the COTP to reclassify a body of water to a more or less stringent operating environment that better reflects the local conditions. These comments requested that we clarify the process for reclassifying bodies of water;

how affected interests would be notified and involved in the process; and when the reclassifications might happen. One comment requested that we reclassify Prince William Sound from "inland" to "ocean."

To make this provision clear in the interim final rule, we have included this provision in a renumbered paragraph (b). (**Note:** Because we have added a new paragraph to § 155.1050, proposed paragraphs (b) through (p) have been renumbered as paragraphs (c) through (q) in the interim final rule. The preamble discussion will refer to the paragraphs as numbered in the interim final rule.)

Paragraph (b) allows the COTP to evaluate bodies of water using historical data available from the National Weather Service, port authorities, or other sources, and reclassify a body of water or any portion of a body of water. The COTP will give information to potentially affected entities by including the reclassification in the area contingency plan, by responding to specific inquiries, and by informing the maritime community through appropriate local methods.

Four comments offered alternative percentages to the criteria included in the proposed rule. Some suggested using the more stringent operating environment if prevailing wave heights exceeded the significant wave height criteria in Table 1 for more than 5 percent of the year. Others wanted the COTP to reclassify a less stringent operating environment if the prevailing wave heights were less than the significant wave height criteria in Table 1 for more than 65 percent of the year. Some comments were confused about how the COTP would reclassify a body of water from a stringent operating environment to a less stringent operating environment.

The Coast Guard has retained the percentages from the proposed rule. The 35 percent threshold provides balance between anticipated area environmental conditions and equipment available to operate in those conditions. Setting a lower threshold would require new areas to stockpile equipment with the capability of operating in unlikely conditions.

Regarding reclassification to a less stringent operating environment, a COTP could reclassify an area only if the significant wave heights in the area do not exceed the wave heights for a less stringent operating environment for more than 35 percent of the year. For example, to reclassify a body of water from ocean to inland, the significant wave heights in the body of water could not exceed 3 feet over 35 percent of the year. The COTP would use a similar approach in reclassifying an area to a more stringent environment.

Note also that any COTP reclassification of a body of water affects only the type of equipment that an owner or operator must identify in a plan for a given area in which a vessel may operate, and does not affect the other planning criteria.

Section 155.1050(c)

This new paragraph includes the proposed requirement for an owner or operator to identify only that equipment in a response plan meeting the specific design criteria included in Table 1 of appendix B. The identified equipment must be capable of functioning in the applicable operating environment. The Coast Guard received one comment on this paragraph. This comment requested we make it clear that Table 1 of appendix B criteria are used for planning and not equipment operations. The Coast Guard agrees and has deleted the reference to "operating" in subparagraph (c)(1) of the interim final rule.

A new requirement has been added to new paragraph (c) of the interim final rule requiring response equipment to be appropriate for the petroleum oil carried. "Appropriate" in this paragraph means the response equipment identified must be capable of performing its assigned task and not be in violation of any existing regulations. For example, any certificated recovery vessel identified for credit in the vessel response plan, must be certificated for recovery of the grade of oil spilled. This requirement was contained in § 155.1050(e)(2)(3) of the proposed rule, and has been moved to paragraph (c) to consolidate the discussion of response equipment in one location and to make it applicable to all spill scenarios.

Section 155.1050(d)

This paragraph requires an owner or operator of a vessel carrying oil as a primary cargo to identify resources for a response to the average most probable discharge (50 barrels) at the point of an oil transfer. We received twenty comments on this paragraph and the corresponding section in appendix B. Five comments supported the requirement as proposed. Three comments opposed the requirement arguing, among other things, that the cost to comply was unreasonable, that providing resources in remote areas was difficult, and that addressing a discharge other than a worst case discharge was beyond our authority under OPA 90.

One comment argued that planning for an average most probable discharge should not be subject to the statutory deadlines in OPA 90 because planning for anything less than the worst case discharge goes beyond the OPA 90 mandate. The deadline for complying remains the same in the interim final rule as in the proposed rule. Applying the same implementation dates for the worst case discharge and the average most probable discharge reduces the burden on the marine transportation industry to comply with the requirements of this interim final rule. Having different implementation dates would add to the burden by requiring multiple submission dates for plan components. See the preamble discussion under "Discussion of general issues" for Coast Guard authority to require planning for an average most probable discharge.

The Coast Guard received seven comments concerning subparagraph (d)(1) requirements for containment boom, oil recovery devices, and temporary storage capacity to be available at or near the point of oil transfer within specified time frames. One comment recommended excluding transfers of non-persistent oils from this requirement because the characteristics of these oils may hamper oil containment and recovery. The Coast Guard disagrees. When discharged, non-persistent oils tend to dissipate more rapidly than persistent oils, but in many instances, spills of such products can be contained and recovered. Even if the containment equipment is not used for recovering the spilled product, responders could use the boom to protect sensitive areas or to minimize the spread of the product.

One comment stated that subparagraph (d)(1) does not apply to unmanned barges. This is incorrect. The provision applies to all vessels carrying groups I through IV petroleum oil as a primary cargo, including unmanned tank barges. Subparagraph (d)(1) also applies to transfers of oil from a barge or tanker to another vessel for use as fuel because the fuel is "cargo" for the delivering vessel.

One comment indicated that it might be impossible to meet the proposed response times on inland rivers. The Coast Guard believes that compliance will be the same in inland rivers as in other areas of the country. Therefore, we have not changed the requirement in the interim final rule.

Two comments indicated that it was unclear how long it could be for the necessary containment boom to be on scene and recommended one hour be used. The Coast Guard agrees and has modified subparagraph (d)(1)(i) in the interim final rule to state that an owner or operator must plan for deploying the containment boom at the site of oil transfer operations within one hour of detection of an oil discharge. The equipment must be sited to meet this criteria.

Three comments were received concerning equipment sharing by multiple vessels in a lightering area as proposed in subparagraph (d)(2). Two comments asked that this provision be extended to multiple vessels moored at a common facility and one comment asked whether equipment could be staged to cover transfers involving vessels at nearby facilities. The Coast Guard has modified the language in the interim final rule to permit the use of common equipment for any location with multiple vessel transfers, whether at a facility or in a lightering area. The purpose of the requirement is to ensure that the equipment is available and deployable at the point of oil transfer within the indicated times. If the equipment is located so that it can arrive within those times, then the planning criteria have been met.

Eight comments were received concerning proposed subparagraph (c)(3) that authorizes a vessel owner or operator to contract with a facility to provide the average most probable discharge response capability. Four comments indicated that the facility, not the vessel, involved in the transfer should be required to provide the response capability. Three comments also supported this, further noting that response resources were limited on the inland river system and the facility at which the transfer occurs should provide the average most probable capability. One comment supported the requirement as proposed, noting that many facilities are not equipped to provide this capability, but should be able to contract with a vessel.

The Coast Guard considered these comments. In the interim final rule, we are not requiring the owner or operator of a vessel conducting transfer operations at a facility required to submit a response plan under 33 CFR 154.1017 to identify and ensure the availability of response resources to respond to an average most probable discharge. The Coast Guard has determined that it is not necessary to require both the facility and vessel owners or operators to plan for resources to respond to an average most probable discharge. Requiring the facility to plan for and ensure the availability of these resources is consistent with 33 CFR 154.545, which already requires facilities to have access to discharge containment equipment to control an oil discharge from operations from that facility. If the facility has identified these response resources, the Coast Guard believes that they will be readily available to respond to an average most probable discharge from the vessel occurring during transfer operations.

Section 155.1050(e)

This paragraph addresses the requirements for the vessel response plan to identify the response resources to prepare for the maximum most probable discharge (MMPD) (2500 barrels or 10% of the cargo capacity, whichever is less). Fifty-nine comments were received on this paragraph and the corresponding section appendix B. Two comments supported the requirement as proposed.

Three comments opposed the requirement arguing, among other things, that the cost to comply was unreasonable, providing resources in remote areas was difficult, and addressing a discharge other than a worst case discharge was beyond our authority under OPA 90. See the preamble discussion of these issues under "Section 155.1050(c)" and "Discussion of general issues."

Two comments specifically opposed applying the requirement in remote areas of Alaska and the islands in the Pacific. For reasons stated earlier in the preamble discussion of "Discussion of general issues," the Coast Guard made no changes to the interim final rule to address remote areas.

One comment asked whether the owner or operator needed to identify and ensure separate resources to respond to a maximum most probable discharge and a worst case discharge. Response resources identified in a response plan must reflect a continuum in capability to respond to anything from minor operational discharges up to worst case discharges. With the exception of the Great Lakes, the response times for the maximum most probable discharge are the same as those for a tier 1 worst case discharge. Therefore, the Coast Guard does not require an owner or operator to identify separate resources for a maximum most probable discharge and a worst case discharge, unless the identified tier 1 oil spill removal organization is limited by charter or contractual agreement to responding to discharges that exceed the owner's or operator's MMPD planning volume.

On the Great Lakes, the response times for a MMPD are less than those for a tier 1 worst case discharge (WCD). The owner or operator will have to take into consideration the different response times when identifying resources for a MMPD and a WCD.

Nineteen comments addressed the response times in subparagraph (e)(1). Of these, many recommended that the times be reduced to periods ranging from 2 hours to 6 hours in higher volume port areas and 12 hours in all other areas. Others supported the times as proposed. Except for the open ocean, the Coast Guard has retained the times as proposed. The response times represent the maximum time needed for resources to arrive on scene at the farthest distance from port in the geographic planning area. The closer a vessel is operating to a port, the quicker the response resources should arrive on scene.

We received four comments on the open ocean response times. One comment believed that on-water recovery capability should not be required in the open ocean, eliminating the need for a response time. One comment supported the time as proposed, and one comment believed that travel time to the open ocean should be measured from shore and not from 50 miles offshore.

The Coast Guard has revised the interim final rule to indicate that the response time for open ocean areas will be 24 hours plus travel time from shore. This travel time is measured from the closest shoreline area; not the closest port, effectively adding 5–10 hours (depending on travel speed assumptions) to the response times in these areas. This change should further increase the incentive for vessel owners to operate their vessels greater than 50 miles from shore.

Seven comments stated that the Great Lakes should be treated like all other water bodies and allowed a 24-hour maximum response time for the MMPD because the spill history and oil traffic in the Great Lakes is completely different from that in higher volume port areas. The Coast Guard disagrees and retained the 12-hour requirement for response to a maximum most probable discharge. The Great Lakes are unique, self-contained, bodies of fresh water especially vulnerable to spills. Because spills occur infrequently, it is especially important that the response capability be available to respond rapidly. The maximum most probable discharge response capability provides a base capability that can be deployed rapidly to the scene of a discharge to mitigate its effects.

One comment asked that we make it clear that the response time clock starts to run when the responsible party discovers the discharge and not a third party. Another comment asked that the response time be measured from the notification of the response resources, not from discovery of the discharge.

We did not change the proposed requirement that for planning, the response time clock starts at discovery of a spill by a person with responsibility under the plan to initiate notice and to mobilize resources. To encourage planners to incorporate provisions in the plan for rapid notice, discovery is the baseline for measuring response times. During the planning and resource identification process, owners or operators must factor in the time necessary to notify the identified oil spill removal organizations.

Two comments stated that requiring the response plan to include specific information on the oil recovery devices identified for response plan credit is burdensome. The Coast Guard believes that this information is necessary for plan review. As discussed under "General Issues," the Coast Guard is considering classifying oil spill removal organizations to minimize the burden on owners or operators.

The Coast Guard received thirty-nine comments concerning the condition in subparagraph (e)(5) for the MMPD response resources to remain prepositioned in an area, unless the COTP approves moving the identified response resources to the scene of another spill outside the area. One comment stated that the response plan should remain valid only if the owner or operator identified and ensured other sources of response capability to replace the released resources.

Thirty-five comments were concerned with the vessel owner's or operator's potential liability if the Coast Guard "directed" response resources to another spill, and some requested that we make it clear that a vessel owner or operator would not have additional liability under OPA 90 if the response was delayed because the COTP approved resources for use in another spill. One comment challenged the COTP's authority to disapprove the movement of private equipment. Three comments also asked that we require the COTP to identify public and private resources available when the COTP "approves" moving response resources.

The Coast Guard modified subparagraph (e)(5) in the interim final rule to address these concerns. The required resources must be capable of meeting the planned arrival times in subparagraph (e)(1) of this section, but the resources may be located in an adjacent COTP zone. Our intention in requiring the COTP to "approve" the mobilization of equipment to another spill was to keep the COTP apprised of the port's overall readiness and ability to respond to discharges; it was not intended to control the movement of equipment. We have made this clear by changing the interim final rule to require that the COTP be "notified" whenever the identified response resources are not capable of meeting planned arrival times.

If the COTP is notified, a vessel response plan will remain valid. The Coast Guard will not require a vessel owner or operator to identify alternate sources of response resources. However, it may be prudent for a vessel owner or operator to plan for alternate sources of spill response capability with a response resource identified in the plan. We cannot exclude owners or operators from their statutory responsibility to clean up a spill or from potential liability if their identified resources are unavailable.

Section 155.1050(f)

This paragraph requires response plans to identify and ensure the availability, through contract or other approved means, of resources necessary to respond to the worst case discharge volume of the oil cargo to the maximum extent practicable.

Three comments supported the general approach for determining equipment requirements for responding to a worst case discharge. Nine comments argued that there is no precedent for a worst case discharge and therefore it is unnecessary to plan for one. Numerous comments suggested that the vessel response plan should plan for cleaning up a "maximum most probable spill" rather than the worst case discharge. One comment suggested that a most likely spill scenario of ⅓ the dead weight tonnage would be reasonable. Another comment recommended that all planning factors in appendix B be revised down because the discharge will not be instantaneous.

Six comments recommended that the Coast Guard give various types of credit against response capability required for a worst case discharge. For example, five comments recommended that up to a 50% credit be given for double hulls. One comment recommended that credit should be given for all preventative measures, not just double hulls.

As amended by OPA 90, section 311(j)(5)(C) of the FWPCA requires an owner or operator to prepare and submit a plan that identifies and ensures the availability of, by contract or other approved means, private personnel and equipment necessary to remove, to the maximum extent practicable, a worst case discharge. A worst case discharge is defined as "a discharge in adverse weather of a vessel's entire cargo."

The Coast Guard acknowledges that there are many valuable actions and measures that can be taken that reduce the likelihood of an accident occurring, or that potentially reduce the volume of oil that may be spilled after a grounding or collision. These include double hulls, measures to improve navigation, and measures to reduce human error such as training and manning procedures. However, it is difficult to quantify the benefit of these measures, and they do not guarantee that a worst case discharge will not still occur. Therefore it is still necessary to plan for a worst case discharge, and to identify adequate spill response resources. Under certain conditions, the Coast Guard will grant credit against on-water recovery capability for dispersants, effectively replacing oil-recovery equipment (skimmers, containment, and temporary oil storage) with a mitigating technology (dispersants). Applying the credit will not diminish the on-water spill recovery capability.

One comment suggested that vessels planning for the Great Lakes area should receive credit against required response capability because most major spills on the Great Lakes have historically occurred in locks where containment equipment already exists. The Coast Guard does not agree with this recommendation. Although a lock may provide a high level of oil spill containment, a vessel spends a relatively short transit time inside a lock. The probability of a spill occurring while the vessel is outside of a lock is much greater, and therefore it would be inappropriate to rely on locks for oil spill containment.

One comment specifically asked if the resources required by § 155.1050(f) have to be retained within the applicable geographic area. There is no requirement that the equipment identified in a vessel response plan to respond to a worst case discharge must remain within the geographic area. The resources necessary to respond to a worst case discharge must be located to meet the response times for the applicable geographic area(s).

Twelve comments recommended that the rule direct the owner or operator to plan for nearshore spills. Several comments suggested that an owner or operator plan for spill response equipment capable of operating in 6 to 12 feet of water. The Coast Guard agrees and has added a new subparagraph to § 155.1050(f) describing the requirements for close-to-shore response activities in shallow water. The amount of equipment required to be capable of operating in waters of 6 feet or less diminishes as the distance from shore increases. The requirement reflects that for open ocean spills, there will usually be time to obtain oil spill recovery equipment with shallow water capability before the spill arrives in shallow water.

For higher volume ports, one comment recommended oil spill removal capability of 20,000 bbl per day on vessels capable of operating in 12 feet of water or less. The Coast Guard did not adopt this recommendation because it is excessive for this planning area and inconsistent with the response capability caps.

One comment recommended that the planning criteria for a worst case discharge should not apply to chemical tankers carrying less than 5,000 metric tons of petroleum oil as cargo because these tankers are typically double-hulled and highly subdivided with small cargo tanks. The comment argued alternatively that if owners or operators were required to plan for these tankers, the vessel response plan should be deferred until the rules for hazardous substances are developed. The statute is explicit that chemical tankers carrying oil in bulk as cargo must prepare and submit a vessel response plan under the requirements of this interim final rule.

One comment recommended that we exempt vessels carrying non-persistent edible oil from the planning requirements for a worst case discharge because these vessels do not pose a significant threat to the environment. The Coast Guard disagrees that non-persistent petroleum oils do not pose a significant threat to the environment.

One comment suggested that vessels carrying edible oils should be subject to reduced requirements because edible oils pose less relative risks to the environment. The Coast Guard disagrees. There is insufficient data to support a finding that a spill of a large quantity of edible oil will have less adverse impact on the environment than a spill of other kinds of oil. A new section has been added to the interim final rule in recognition of the unique characteristics of non-petroleum oils. Section 155.1054 specifies the response plan development and evaluation criteria for vessels carrying non-petroleum oils as a primary cargo.

One comment asked that we clarify the circumstances in which an owner or operator can ensure the availability of resources necessary to respond to a worst case discharge with written consent from a response organization.

We have revised the definition of "contract or other approved means" in § 155.1020 to indicate clearly that written consent of an oil spill removal organization is an acceptable alternative under the 9 situations described in § 155.1020.

Section 155.1050(g)

This paragraph sets out three tiers of response times for the worst case discharge response resources to arrive on scene. Tiering resources allows the owner or operator to identify resources outside the geographic area to meet the requirements.

Three comments supported the response times and the tiering of equipment. Six comments argued that the response times were too long. Most comments recommended that all geographic-specific response times be reduced by half. One comment requested clarification and rationale for the response time frames.

The Coast Guard does not concur with the recommendations to decrease the response times. The response times, although not specifically recommended by the Committee, are based largely on discussions of the Committee. It must be possible to have the required response equipment arrive on scene within the stated response times, and these times take into account the outermost boundaries of the applicable area. For locations closer to shore within the applicable area, the achievable response time may be less than the required response time.

The Coast Guard believes that the response times are appropriate because they represent the planned arrival time at the outermost boundaries of the applicable area and recognize the need to cascade additional equipment as time progresses.

For example, in a higher volume port area, the equipment required for tier 1 must be capable of arriving on scene within 12 hours at a location 50 miles seaward of the entrance to the higher volume port. For a vessel operating in the offshore area (12 to 50 miles from the shore), the equipment required for tier 1 must be capable of arriving on scene at the most distant point of this zone in which the vessel plans to transit, within 24 hours of discovery of a discharge. Resources for tiers 2 and 3 must be capable of arriving in 24-hour increments. This approach ensures a steady stream of spill response resources arriving during the first 3 days of the spill when oil recovery is most likely. The 24-hour interval permits resources to cascade in from increasingly distant locations.

One comment recommended a 6-hour response time for rivers and the nearshore area. Another comment recommended that rivers should have shorter response times because longer response times may result in the progression of oil into drinking water intakes.

Six comments stated that a worst case discharge would not be instantaneous, and therefore the required clean up resources could be planned for over a 30 day period (the vessel response plan has a 3 to 10 day planning window). One comment further argued that because the worst case discharge would not be instantaneous, response times should be directly related to the size of the vessel. One comment stated that historically less than 30% of tanker capacity is instantaneously discharged. Numerous comments noted that the tiered response times for the worst case discharge ignored the Committee's recommendation that the Coast Guard consider that a worst case discharge from any vessel is likely to occur over time and not instantaneously.

There is historical precedent for the near instantaneous discharge of a vessel's entire cargo. However, the Coast Guard acknowledges that a worst case discharge is more likely to occur over time, and has established the response tiers accordingly. The Committee recognized the importance of early equipment arrival at the scene of a discharge and recommended that equipment mobilization occur within the first 3 days of a discharge when oil recovery is most likely. The tiered response times accomplishes this Committee recommendation and requires the vessel owner or operator to plan for the early arrival of equipment.

Two comments recommended that the tiered response times should be measured from notification instead of discovery of the discharge, and one argued that the response times should be increased by 30 minutes to allow for notification. The Coast Guard believes that measuring the response times from the time of discovery will encourage owners or operators to establish expedient spill reporting procedures. The Coast Guard does not agree with the recommendation that the response time tiers should be increased to take into consideration the 30 minutes allowed for notification, because we have already factored the time required for notification and mobilization into the tiered response times.

One comment recommended that owners or operators should be able to calculate the travel time for open ocean response resources from shore rather than from a point 50 miles from shore. The comment argued that this would encourage vessels to stay fifty miles or more offshore and, therefore minimize potential harm to the shoreline from an oil spill. The Coast Guard concurs and has revised § 155.1050(e), § 155.1050(g), and section 7.2.3 of appendix B to allow greater travel time for open ocean response resources.

One comment stated that the term "tier" has a different meaning in certain industry publications, and suggested that we use a different term in § 155.1050 to avoid confusion. The Coast Guard believes that no confusion exists within the context of this regulation and has not changed the interim final rule. We are establishing a consistent national standard and believe that adjusting terms to accommodate specific publications would create greater confusion in the interim final rule.

In the proposed rule, the Coast Guard solicited comments on whether to grant credit for the early arrival of oil recovery devices and other response equipment when determining overall capability required to be planned for. Four comments were received. Three comments stated that we should grant credit for the early arrival of equipment, but their proposed methodologies were either too general or would increase greatly the complexity in calculating required equipment. In the absence of a workable recommendation, the Coast Guard has decided not to recognize or give credit for the early arrival on-scene of oil recovery devices.

Response time tiers were the source of confusion for readers of the NPRM. The tiered response times in § 155.1050(g) apply only to the boom, oil recovery devices, and storage capacity identified for responding to a worst case discharge. The response time tiers do not apply to dispersants, salvage and firefighting resources, shoreline protection or cleanup resources, or any other types of oil spill recovery equipment or supplies. The Coast Guard has amended § 155.1050 to clarify these points.

Section 155.1050(h)

This paragraph identifies 14 areas designated as higher volume port areas. The Coast Guard selected these areas based on a weighted index of oil volumes and vessel traffic.

One comment requested clarification on how the area 50 nautical miles seaward of the entrance will be measured. The distance is measured as an arc from the entrance(s) to the higher volume port area. For most higher volume port areas, this distance will be measured from the appropriate COLREG demarcation, entrance buoy, or natural entrance into the port. For Prince William Sound, this distance would be measured from Seal Rock to be consistent with the definition of the Sound in subpart E.

Section 155.1050(h) also has been revised to accommodate those higher volume port areas with multiple entrances from the sea. In these areas, an owner or operator must plan for multiple 50 nautical mile entrance arcs.

One comment stated that certain parts of the Sacramento and Delaware Rivers extend far upstream into areas that, although still navigable, do not experience high volumes of traffic. The Coast Guard agrees with this observation and has amended § 155.1050(h) to create upstream boundaries for both these higher volume port areas. In redefining the description for the port of San Francisco and adjacent high volume traffic areas, we deleted the Sacramento River and replaced it with a more representative description of the higher volume port area. The Coast Guard established these upstream boundaries in consultation with the local COTPs and based the boundaries on observed traffic volumes and the location of primary shore-based facilities.

One comment observed that in the geographic boundary of the proposed higher volume port area of the Strait of Juan De Fuca and Puget Sound, WA, response equipment could not arrive at a point 50 miles seaward from the entrance to the Strait within the planning response times for a higher volume port area. The comment recommended that the geographic point from which 50 miles seaward is measured be the pilot station off Port Angeles, WA. The Coast Guard concurs with this recommendation and has revised § 155.1050(h) to make Port Angeles, WA the reference point for measuring the 50 nautical mile seaward arc for the Strait. We did this by revising the geographic description of the higher volume port area.

This change reflects the unique geography of the Strait of Juan De Fuca, including the lack of deep water ports in the western portion of the Strait and the practical limits on the transit speed of dedicated response vessels. Further, this designation is consistent with the designation of Port Angeles as the point at which State pilotage is required.

One comment observed that although the Louisiana Offshore Oil Port (LOOP) was not designated as a higher volume port area in the proposed rule, LOOP was indirectly captured as a higher volume port area because it is within the 50-mile seaward radius of the Mississippi River higher volume port area. The comment recommended that LOOP be exempted from the increased planning standards for higher volume port areas. The Coast Guard concurs with this recommendation and has amended § 155.1050(h)(6) accordingly.

Two comments recommended designating Cook Inlet, AK as a higher volume port area based on the environmental sensitivity, tidal range, ice, currents, and other risks in that area. One comment noted that the designation of higher volume ports ignored the issue of environmental sensitivity. That comment also recommended that the ACPs have the responsibility for determining response capability. For a uniform national standard, the Coast Guard continues to believe that the overall volume of shipped oil—and not environmental sensitivity—is the best indicator of those areas requiring an enhanced standard for response equipment. The ACPs may contain additional strategies based on unique local considerations, including environmental sensitivity.

One comment recommended that we designate the Florida Straits as a higher volume port area because virtually all the oil transported to or from seven of the fifteen identified higher volume port areas will transit within 50 miles of the environmentally sensitive Florida Straits. The Coast Guard does not have the data to support or refute this recommendation, and the comment does not supply a source for this assertion. The Coast Guard is conducting a study to determine if there is a need to establish Tanker Exclusion Zones (TEZs) in various areas, including the Florida Straits. In a TEZ, tankers must remain a predetermined distance offshore from environmentally sensitive areas.

Ten comments recommended that the Great Lakes should not be considered a higher volume port area. The Great Lakes are not a higher volume port area under these rules. The Great Lakes response times are based on considerations different from those used in determining the higher volume port areas. The response times for the Great Lakes have been revised as previously discussed in the preamble.

Section 155.1050 (i) and (j)

These sections describe the notification and mobilization criteria for tier 1, 2, and 3 resources. One comment asked that we require that all tier 1 resources to be "capable" of being mobilized within 2 hours after notification, but not require all to arrive on scene in the initial stages of a response. For example, an owner or operator must plan to mobilize temporary storage resources within 2 hours, but may not need them on scene until oil recovery has started. The Coast

Guard believes that the interim final rule as written is clear.

One comment stated that we should not require the same response for a threat of a spill as for a worst case discharge, and recommended deleting the phrase "* * * or substantial threat of discharge." The Coast Guard disagrees. The statute directs owners or operators to plan for "a worst case discharge or a substantial threat of such a discharge," and does not provide for reduced planning requirements for situations involving the substantial threat of a discharge.

Section 155.1050(k)

In the NPRM, we proposed requiring vessels carrying group II or III persistent oils as a primary cargo in offshore and open ocean areas to identify and ensure, through contract or other approved means, the availability of resources to apply dispersants. The NPRM also required the resources to be capable of arriving at the scene of a discharge within 24 hours.

We received a total of 68 comments on these proposed requirements. Most of the comments opposed the requirement to contract for dispersant capability in advance. The concerns ranged from the high cost of providing the necessary capability with no assurance of approval for use; the lack of existing capability to provide the volumes of dispersants proposed; the inability to meet the required response times in remote areas; and the general uncertainty of receiving approval for the use of dispersants during a spill response.

One comment supported the use of dispersants as a high-rate response strategy, essential during a response to a worst case discharge volume. Four comments supported planning for dispersant use, but opposed any requirement for contracting for capability until the decision making process under the National Contingency Plan was revised to improve the likelihood of approval for use. Twenty comments supported contracting for dispersant use only after pre-approval is received for an area. As discussed below, the Coast Guard has deleted the general requirement for vessels to contract for dispersant capability.

Twelve comments addressed the issue of credits for dispersants against response plan on-water oil recovery capacity requirements. Five comments supported the ability to receive a credit for dispersant capability in pre-approved areas. Three comments believed that any vessel that contracts for dispersant capability should be allowed to use that capability as a credit against on-water recovery capacity. Four comments objected to a credit for dispersant capability. Two comments argued that not enough information was available about dispersant effectiveness to make decisions on their use, and two comments opposed reducing the on-water requirements for any reason.

Thirteen comments addressed the proposed volumes of dispersant capability required and the response times. Eight comments indicated that the requirement to provide dispersant capability for the largest storage tank was unrealistic due to the massive volumes of dispersants that would be required. Some comments suggested a study be conducted to determine a practical volume of dispersant capability to plan for. Others suggested that the vessel owner or operator be allowed to decide what quantity of dispersants to plan for. As discussed below, the Coast Guard has modified the volume of oil to be used for planning in the interim final rule.

Five comments addressed the response times. All noted that allowing 24 hours of dispersant capability to arrive on scene was too long since dispersants are most effective early in a spill while the oil is still fresh and unweathered. Recommended arrival times on scene ranged from 6 hours to an unspecified time less than 24 hours. The Coast Guard agrees and has modified the interim final rule to require that dispersants be capable of being on scene within 12 hours of discovery of a discharge.

The Coast Guard has considered the comments and modified the interim final rule to delete the requirement for all vessels carrying group II or III petroleum oil in offshore and open ocean areas to contract for dispersant capability. The interim final rule provides that such vessels operating in any area with year-round pre-approval for dispersant use may identify in their response plan and ensure, through contract or other approved means, the availability of the necessary resources to apply dispersants. No vessel is required to provide this capability. Vessels operating in such areas may request a credit for up to 25 percent of their on-water oil recovery capacity for each worst case discharge tier required under this interim final rule if the owner or operator can document in its plan the availability of the necessary dispersant stockpiles, application equipment, and monitoring capability. The credit will be given only if the vessel owner or operator can identify sources of dispersant supplies to provide the equivalent daily dispersant application rate. The credit will only apply in those pre-approval areas; the owner or operator would still have to identify full mechanical recovery capacity in all other areas that the vessel operates.

The Coast Guard believes that such a credit in pre-approved areas is appropriate for those areas where the regional response team has considered the use of dispersants and made a decision to pre-authorize their year-round use as a primary response method. The interim final rule also retains the language indicating that identification of dispersant capability in a response plan provides no assurance that their use will be authorized during a spill response.

Section 155.1050(l)

As proposed, this paragraph requires vessel owners or operators to identify in their response plans and ensure, through contract or other approved means, the availability of private response resources for salvage and vessel firefighting. We received 66 comments on the proposed requirements for salvage in subparagraph (l)(1), and 68 comments on the proposed requirements for vessel firefighting capability in subparagraph (l)(2).

Most comments received on salvage capability opposed the requirement to contract in advance for the capability. Some reasons for opposing the requirement were that there was little existing capability in the United States, that contracting for this capability in advance was too expensive, and that such a requirement was inconsistent with the historical practice of arranging for such services when needed.

A few comments supported directing an owner or operator to identify potential sources of salvage capability, but opposed requiring them to contract in advance. One comment suggested that the United States government provide the required capability and charge vessels on a per visit basis. One comment noted that the Marine Board of the National Academy of Sciences is conducting a study on the status of the salvage industry in the United States and recommended that we delay any requirement for salvage and firefighting until the study is completed in 1993. Six comments supported only identifying sources of firefighting capability. Eleven comments supported the proposed requirement to contract for salvage capability, with some noting that requiring contracts for salvage capability could result in expanding salvage resources in the U.S. Two of those comments recommended specific salvage resource capabilities that should be identified, noting that it was better to have no salvage resources rather than inadequate prepared resources.

Most comments on vessel firefighting opposed any requirement to contract for the capability. Thirty-five comments said that vessel firefighting was best left to local port (in most cases public) firefighting capabilities. Two comments challenged the Coast Guard's position that public resources could not be identified to meet the requirement.

Many comments were also concerned that private vessel firefighting capability in the United States is limited and that contracting for such capability in advance would be prohibitive. Eleven comments supported only identifying sources of firefighting capability. Eleven comments supported the proposed requirement to contract for private vessel firefighting capability in advance, and two recommended that we specify response times ranging from 12 to 36 hours and specify equipment.

In response to these comments, the Coast Guard has modified the requirements both for salvage and marine firefighting capability in the interim final rule. The Coast Guard has retained the requirement for a vessel owner or operator to identify private salvage and vessel firefighting capability in their response plan because this approach is consistent with Congressional intent that a vessel owner or operator plan for the resources that may be necessary to remove, prevent, or mitigate the effects of a worst case discharge or threat of such a discharge.

The Coast Guard does not agree that an owner or operator may identify public resources in a vessel response plan. First, public firefighting resources that are available within port areas may not be available to fight a fire aboard a vessel. Second, in most instances, these public firefighters will respond only to fires within the immediate port area; a vessel operating offshore and transiting from port to port may not be protected by such resources. Third, a private citizen cannot ensure the availability of a public resource. For these reasons, the Coast Guard retains the requirement that an owner or operator must identify private marine firefighting resources for each COTP zone in which the vessel operates. United States Navy salvage resources also are public resources, and whether these resources are available depends on their specific location and assignments.

The Coast Guard recognizes that public resources may be employed during an actual incident. The Area Contingency Plan will identify available public resources, the process to access those resources, and the integration of both public and private capability.

The Coast Guard has revised the interim final rule to permit an owner or operator to list private salvage or marine firefighting capability in a response plan if the salvage or firefighting resource provider gives its written consent. The resource provider's written consent is necessary to ensure that the provider has the necessary capability, and is willing to provide it in a response to an incident involving the owner's or operator's vessel. The plan does not need to include this written document. The certification by the vessel owner or operator that it has obtained written consent is sufficient for plan review. However, the Coast Guard may request a copy of this written consent during plan review.

The Coast Guard has left it up to vessel owners or operators to evaluate available salvage and firefighting resources and determine what capabilities they will need for their plan. In reviewing a response plan, the Coast Guard will assess whether the identified companies are capable of providing the necessary capability.

The Coast Guard recognizes that private salvage and marine firefighting capability is currently limited in the United States. Consequently, the interim final rule does not require owners or operators to specify response times for the resources identified in plans submitted before 1998. However, we have revised the interim final rule to require plans submitted or resubmitted for approval after March 1998 to identify salvage and firefighting resources and plan to deploy them to a port nearest the water area where the vessel operates within 24 hours of notification. The Coast Guard has determined that delaying this requirement until 1998 provides sufficient time for the industry to assess the existing capability fully and to take steps to address any shortfalls.

Section 155.1050(m)

As proposed, this paragraph requires a vessel owner or operator to identify in the response plan and ensure, through contract or other approved means, the availability of fendering, transfer hoses, and lightering pumps necessary to perform vessel-to-vessel lightering in an emergency within specified response times. We received 42 comments addressing this proposed requirement.

One comment specifically supported the requirement as proposed. One comment supported it, but recommended that we require owners or operators to contract in advance for mooring masters. Thirty-six comments said that identifying and ensuring the availability of lightering capability was too costly and burdensome. Some comments also believed that requiring a contract went beyond the recommendations of the Committee. The Coast Guard asked the Committee for additional input on this issue, but received differing views on what the Committee meant when it made its lightering recommendation. The Coast Guard has determined that this requirement is necessary and appropriate to meet the statutory intent that the availability of such resources be ensured.

We have reduced the burden of complying with this requirement by changing the definition of "contract or other approved means." The burden has been reduced further for tank barges that operate on rivers and canals by authorizing the barge owner or operator simply to identify resources in a response plan to meet this requirement with the written consent of the resource provider.

Four comments stated that extending the requirements to tank barges was inconsistent with the Committee recommendations. The Coast Guard reviewed the Committee's work and found no Committee determination to exclude tank barges from all lightering requirements. The Coast Guard believes that planning for lightering capability is as necessary for transfers from tank barges in an emergency as it is for transfers from other vessels. The Coast Guard has retained the requirement for tank barges in the interim final rule.

Six comments addressed what equipment arrangements should be planned in advance. Two comments recommended that we not require owners or operators to list specific equipment because the equipment needed will depend on the incident. Two comments recommended pumps ranging from a capacity to lighter the largest cargo tank in 24 hours to lightering the entire vessel in 96 hours. The Coast Guard has determined that the requirement for owners or operators to identify lightering equipment capable of off-loading the vessel's largest cargo tank in 24 hours of continuous operation results in sufficient pumping capacity for most emergency lightering situations. We also believe that a required pumping capacity will provide a basis for the owner or operator and the Coast Guard to evaluate lightering capability more effectively.

The Coast Guard has made three other revisions to this paragraph in the interim final rule. First, a plan for a tanker loading cargo at a TAPAA facility in Prince William Sound, Alaska does not need to address the response times in subparagraph (m)(2)(i) for inland waters, because a separate response time for this capability is included in § 155.1130(h). Second, subparagraph (m)(2)(ii) has been revised to include a response time of 18 hours for rivers and canals. Third, the Coast Guard inadvertently did not address rivers and canals in the NPRM and believes that using the 18-hour response time for these areas is reasonable and practical. The Coast Guard has revised the interim final rule to permit barges operating in rivers and canals areas to meet the requirements of this paragraph by ensuring availability of response resources through written consent from the oil spill removal organization.

Section 155.1050(n)

This paragraph requires planning for boom for shoreline protection according to criteria set out in Table 2 of appendix B.

In Table 2 of appendix B, the Coast Guard proposed a minimum amount of boom for shoreline protection based on the general environment in which the vessel operates. The Coast Guard considered setting a planning requirement for boom based on vessel size, but discarded that approach because equipment necessary to protect shoreline areas is generally the same regardless of the size of the vessel that may be the source of the discharge. A discharge from a larger vessel has the potential to affect more shoreline area than one from a smaller vessel. However, in general, there is not a one-for-one relationship between the quantity of oil spilled and the number of miles of shoreline contaminated.

We received many comments on the best way to determine how much boom to require for shoreline cleanup. Six comments agreed that until the ACPs are published, owners or operators should plan for an amount of boom based on the geographic area of vessel operation rather than vessel size. Nearly an equal number of comments argued that an owner or operator should plan for protective boom based on vessel size, cargo capacity, and type of cargo. None of the comments suggested a methodology to account for these factors.

Many comments addressed the quantity of boom proposed in Table 2 of appendix B. Two comments supported the proposed quantity. Two comments argued that 30,000 feet of boom for persistent oils in the nearshore and inland areas was excessive. Two comments recommended that vessels with less risk of a spill should have to plan for a lesser quantity of boom for shoreline protection. One comment recommended requiring 50,000 feet of boom in higher volume port areas. One comment recommended that an owner or operator plan for sufficient boom to encircle the vessel only. Five comments recommended that there should be no planning requirements for shoreline protection until publication of the ACPs.

The Coast Guard has determined that it is appropriate to require a minimum level of response equipment based on the vessel's area of operation and believes that the quantity of boom specified in Table 2 of appendix B is reasonable.

The Coast Guard has determined not to tie adjustments to the boom requirements to the ACP, because the ACPs will set mostly response strategy rather than response resource requirements. However, we agree with the Committee that the methodology for determining an appropriate planning quantity of boom for shoreline protection is sound—look to the geographic-specific area of a potential spill. Therefore, the Coast Guard has deleted the instruction to adjust the boom planning amount according to the applicable ACP. Instead, when an Area Committee articulates a shoreline protection response strategy in its ACP, the Coast Guard may propose to adjust the boom requirements in 33 CFR part 155 accordingly.

We received three comments on boom requirements for rivers. One comment noted that it is impossible to protect a large section of river shoreline. For persistent oils, one comment questioned by an owner or operator must plan for more boom nearshore than for rivers. One comment asked that we require only a minimum quantity of boom until the ACPs are developed because the locks and dams help contain a spill, and boom is used largely to facilitate recovery by diverting oil into slow-moving water.

The Coast Guard recognizes that shoreline protection in rivers and canals may require different strategies than other areas. Although it may be difficult to protect river shoreline, boom is still required to protect sensitive areas, deflect oil from impacting the shoreline, or collecting it in other less sensitive areas. Locks and dams may be part of this overall strategy, but they are not sufficient by themselves because they may be far apart and not optimally located for the particular spill scenario.

The amount of boom required in Table 2 reflects the relative amount of shoreline that must be protected from persistent and non-persistent oils. The relative difference in boom quantities between nearshore and river areas is based on the differences in shoreline protection strategies employed in rivers and the fact that a spill occurring in the nearshore area (up to 12 miles off shore) has the opportunity to spread and impact a large section of shoreline as it travels towards the shore.

For non-persistent oils discharged into a river operating area, it is likely that the oil will encounter shoreline before it has dissipated into the air and water column. In the nearshore operating area, a larger amount of non-persistent oil is likely to dissipate before encountering shoreline. Consequently, more shoreline is likely to be affected in the river operating area than in the nearshore area.

In Table 2 of appendix B, the Coast Guard has eliminated the requirement that an owner or operator must identify shoreline protection boom in a plan for a vessel that operates in the open ocean and carries persistent oil, and for a vessel that operates offshore and carries non-persistent oils. This change reflects the low relative risk that oil discharged from these vessels will impact shorelines. For reasons stated earlier in this discussion, we have eliminated Table 2 references to the ACPs.

Many comments recommended that for shoreline protection requirements, vessels using the Louisiana Offshore Oil Port (LOOP) and vessels lightering in the open ocean (greater than 50 miles offshore) should be treated the same. Under the proposed rule, an owner or operator does not have to plan for shoreline protection for vessels transiting or lightering more than 50 miles offshore. The comments stated that using LOOP was a preferred alternative to lightering in the open ocean, and that the proposed rule would be a disincentive for vessels to use LOOP. The comments noted that offshore lightering of large tankers require off-taking shuttle ships to transport the crude oil from the lightering area into the inland waters for final unloading at terminals and refineries, and that this increase in traffic on inland waters increases the risk of collisions and groundings and resulting oil spills. The comments point out that LOOP offloads the large tankers offshore and delivers the crude oil via buried pipeline, thus eliminating the shuttle ship traffic and attendant risk of collisions, groundings, and oil spills. We received similar comments on § 155.1050(o) for planning for shoreline clean-up operations.

For the reasons stated in the comments, and because Congress wishes to encourage the use of deep-water ports, the Coast Guard agrees that regarding shoreline protection, vessels using LOOP should be treated the same as vessels lightering in the open ocean. Consequently, the Coast Guard has changed this section of the interim final rule to allow vessels under certain circumstances to call at LOOP without having to ensure the availability of shoreline protection resources through contract or other approved means. This provision applies only when the vessel is approaching or departing the LOOP terminal within the LOOP Shipping Safety Fairway, and when either moored at the terminal or anchored in the designated anchorage area. Making this opportunity available only when a vessel is using this obstruction free Safety Fairway will provide an extra measure of safety for these vessels.

Two comments noted that Table 2 of appendix B did not include the Great Lakes and requested clarification on whether the Great Lakes should be in the table. We have revised Table 2 of appendix B to include the Great Lakes in the nearshore and inland classification because oil spilled and not recovered on the Great Lakes, like oil spilled in any essentially closed system, in highly likely to come ashore.

Two comments expressed concern that this section established a performance standard rather than a planning standard. One comment recommended we revise this section to make it clear that it is a planning standard only, and another comment requested a revision to make it clear that the owner or operator is ultimately responsible for shoreline protection and cleanup, irrespective of the amount of response equipment for which the owner or operator must plan.

The appendix B criteria referenced in this section are for planning purposes only. Section 155.1010 already clearly makes this point.

Six comments are received on how the ACP strategies for shoreline protection should be phased in to replace the temporary requirements of Table 2 of appendix B. Two comments agreed that the ACP requirements should be phased in by 1998, as proposed in the NPRM. All other comments recommended that the ACP requirements become effective at some calculable time after the publication of the applicable ACPs. The recommended phase-in time ranged from immediately to three years.

For the reasons stated earlier in this discussion, the Coast Guard has decided against using the ACPs to set adjustments for response resource requirements. The Coast Guard will evaluate the shoreline protection response strategy provided for in the various ACPs when they are issued and may adjust vessel response plan requirements as warranted.

Many comments confused requirements under this section for protective boom with requirements under §§ 155.1050 (d) through (f) for containment boom. Any owner or operator of a vessel subject to these regulations must plan for a quantity of containment boom and a quantity of protective boom.

For determining the planning amount of protective boom, the owner or operator of a vessel carrying group I through IV petroleum oil as primary cargo must use Table 2 for the geographic area where the vessel operates. For containment boom, these owners or operators should identify sufficient boom to handle the average most probable discharge, the maximum most probable discharge, and a worst case discharge.

One comment questioned whether an ACP can revise a regulatory requirement without complying with the notice and comment requirements of the Administrative Procedure Act. For reasons stated earlier in this discussion, this comment is moot.

Section 155.1050(o)

This paragraph establishes the requirement to plan for shoreline cleanup operations. It is impossible to articulate detailed requirements for shoreline response resources in advance, because the need for these resources is intricately connected to the geography of the shore and its environmental sensitivity. Therefore, the NPRM proposed to use a qualitative evaluation based on a planning volume of oil that could reach the shoreline.

Four comments supported the qualitative planning approach. Two comments argued that the requirements were too vague and that it was unclear how the Coast Guard would evaluate shoreline cleanup resources. Three comments expressed concern that it was either impracticable or infeasible to plan to simultaneously cleanup vast reaches of shoreline. One comment recommended that the applicable ACPs address shoreline cleanup requirements—not the vessel response plan rules.

The vessel response plan rules give an owner or operator maximum flexibility to develop an operations strategy for shoreline clean up, restrained only by the NCP and the local plan in any area where its vessels operate. Appendix B supplies a formula by which an owner or operator may calculate a volume of emulsified oil that may reach the shore. The Coast Guard will evaluate the sufficiency of shoreline response planning based on the planning volume and the strategic consistency with the NCP and any applicable local plan.

The owner or operator must identify and ensure by contract or other approved means, an oil spill removal organization who is capable of conducting a shoreline cleanup based on the planned worst case volume of emulsified oil that will reach the shore. Using our criteria, the Coast Guard does not believe an owner or operator will have to plan for the simultaneous cleanup of all shoreline along the vessel's planned route.

One comment expressed concern that the regulation would require an excessive number of contracts and asked whether an owner or operator could rely upon one principal contractor and require that principal to contract for any necessary, specialized equipment. The Coast Guard has set out an approved means other than a contract by which an owner or operator can ensure the availability of required resources. The owner or operator is free to make whatever arrangements it chooses as long as it ensures the required resources by contract or other approved means.

Nine comments recommended that there should be no requirement to contract for shoreline cleanup operations because the required equipment is generic, not specialized, generally available, and there is no urgency to immediately clean up the oil once it impacts the shoreline. The Coast Guard disagrees. The statute clearly requires an owner or operator of a vessel to ensure that private resources are available, by contract or other approved means, to "remove" to the maximum extent practicable a worst case discharge. In the statute "removal" or "remove" refers to the containment and removal of oil from the water or shorelines. The Coast Guard contends that the interim final rule properly reflects the statutory requirement to contract for resources to remove oil from the shoreline. Because we have added an "approved means" other than a contract, an owner or operator may ensure the availability of these resources without a contract.

One comment stated that we should require vessels operating in the open ocean to contract for shoreline cleanup operations. The NPRM exempted these vessels from the requirement to contract for this capability. The Coast Guard has made every effort to require only that level of planning which is appropriate for a reasonably likely spill scenario.

For oil discharged from a vessel greater than 50 miles from shore, it is unlikely that the spill will impact shorelines before the oil sinks, evaporates, or is recovered. If conditions are such that the oil could foreseeably threaten the shoreline, there will be sufficient time to arrange for the necessary resources. For these reasons, the Coast Guard has eliminated the requirement for a response plan of a vessel operating in the open ocean to identify an oil spill removal organization capable of conducting shoreline cleanup operations.

One comment requested to know if the tier response times described in § 155.1050(g) apply to shoreline cleanup operations. The response time tiers do not apply to planning for shoreline clean-up. There are no response times in the interim final rule associated with planning for shoreline clean-up.

For the reasons cited in the discussion of shoreline protection under "Section 155.1050(n)," the Coast Guard has determined not to tie future adjustments of the shoreline cleanup requirements to the ACPs. We have eliminated this provision in the interim final rule. The Coast Guard will evaluate the ACPs when they are issued and may amend the vessel response plan rules as warranted.

For the same reasons cited in the discussion of shoreline protection under "Section 155.1050(n)," the Coast Guard has determined that regarding shoreline cleanup requirements, vessels using LOOP should be treated the same as vessels lightering in the open ocean. Consequently, the Coast Guard has revised this section to allow vessels to call at LOOP under certain circumstances without having to ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations. This provision applies only when the vessel is approaching or departing the LOOP terminal within the LOOP Shipping Safety Fairway, and when either moored at the terminal or anchored in the designated anchorage area. Making this opportunity available only when a vessel is using this obstruction free Safety Fairway will provide an extra measure of safety for these vessels.

Section 155.1050(p)

This section and Table 6 of appendix B establish limits on the amount of response resources required. Many comments expressed uncertainty and confusion over the purpose and use of caps. The purpose of the caps is to recognize a practicable level of on-water removal capacity which an owner or operator reasonably can be required to ensure through contract or other approved means in planning for a worst case discharge.

Caps apply only to on-water recovery capacity for a worst case discharge, and not to other types of response resources or discharges. Further, caps apply only to vessels carrying group I through IV petroleum oil as a primary cargo.

We received over 200 comments on caps. Over 40 comments recommended that there be no caps, and that the owner or operator be required to identify and contract for whatever equipment is required to respond to an immediate discharge of a vessel's entire cargo in adverse weather. One comment noted that the caps do not adequately address the worst case discharge scenario, and that the manufacturers of oil spill recovery equipment have the capacity to deliver additional equipment before 1993.

Another comment strongly opposed the concept of caps, and argued that market availability of spill response resources should determine what is practicable. The comment argued that the caps may discourage growth of the oil spill response equipment industry.

The majority of the comments supported the basic concept of caps, but varied widely on an appropriate level for caps. Approximately 150 comments recommended that they be doubled, but did not address the issue of whether it was practicable for an owner or operator to plan a response for so great a quantity of oil. One comment stated that the current 1993 caps failed to set an equipment requirement based on the definition of "maximum extent practicable," and therefore was not in keeping with the intent of Congress. Several comments stated that in certain areas of the country, oil spill resources already exceed the proposed 1993 caps. Another comment argued that the proposed caps are too low because they would supersede the calculated worst case discharge planning volumes as determined in appendix B for 99% of all crude carriers. Several comments recommended that the caps should be set higher to establish ambitious targets for improving private response capability or to force an increase in those resources.

One comment observed that the proposed caps for 1993 were reasonable based on current manufacturing capacity, but that within 3 years it would be reasonable for manufacturers to triple the available equipment. One comment recommended that the five year cap increases should not be greater than 25%.

A number of comments supported the proposed caps as a reasonable method of recognizing technological and practical limitations, and one comment noted that without caps, complying with the regulations would be impracticable.

Through caps, the Coast Guard has established a quantity of oil for which a response is practicable given 1993 technology and response resources. Through two rulemaking documents and various public meetings, including Committee meetings, the Coast Guard sought data from environmentalists, industry, State governments, the general public, and response contractors on how we could assess what is practicable in 1993.

We learned that it is impracticable in 1993 to instruct a vessel owner or operator to plan for the discharge of a vessel's entire cargo for several reasons. First, in many geographic areas of the U.S., on-water recovery capability and containment and protection resources simply do not exist at any price for responding to a large spill—especially from a very large crude carrier or ultra large crude carrier. Second, we believe Congress did intend to encourage both developing and enlarging the response community, but not at the price of a significant adverse economic impact to oil markets. When we assess all these factors, the Coast Guard continues to believe that, with the exception of the Great Lakes, the proposed caps represent imperfect, but reasonable and practicable quantities to plan for given technology, existing capability, and costs.

The Coast Guard recognizes that in certain geographic areas the existing response capabilities already exceed the 1993 caps. The Coast Guard has established a nationwide standard rather than attempting to establish unique caps for every port or geographic region, because there is neither the time nor sufficient Federal resources to take account of the peculiarities of each port and region.

The caps also reflect that inherent in the concept of practicability is an acknowledgment of a reasonable and practicable limit to the amount of resources that can be constructively used during the first stages of a spill response. Therefore, the caps place a practical limit on the amount of response resources for which an owner or operator must ensure the availability of in advance, by contract or other approved means. Vessel owners or operators will be expected to activate the response resources necessary for the particular circumstances of the spill, regardless of what has been ensured by contract or other approved means.

Many comments recommended that caps for the Great Lakes should be lower than proposed. Some suggested that the Great Lakes caps should be the same as those for rivers and canals. The reasons were that the risk of spills on the Great Lakes is small as demonstrated by historical spill data; that most tankers transiting the Great Lakes have small cargo capacities and are double-hulled; and that adequate private response capability does not exist in the Great Lakes. Many argued that a relatively small number of vessels would have to share the costs of establishing and maintaining response equipment to respond up to the cap for a number of prepositioned sites large enough to cover the Great Lakes.

The Coast Guard agrees the caps for the Great Lakes should be reduced. The size of the Great Lakes and the relatively small number of affected vessels makes it impracticable for owners or operators to plan for the proposed level of private spill response capability. Therefore, the Coast Guard has revised Table 3 of appendix B and set a response capability cap for the Great Lakes based on the available private removal capability and the unique environment of the Great Lakes. For these reasons and other reasons discussed earlier in the preamble, we have also adjusted the response times for the Great Lakes in § 155.1050(g).

We received a great number of comments on the proposed cap increases for 1998 and 2003. Many argued that it was impractical and premature to establish cap increases and that a number of issues needed to be considered before increasing the caps, including changes or advances in: Oil spill recovery equipment; spill management techniques; daily sustainability factors; bioremediation techniques; and other research and development initiatives.

Some argued that setting cap increases now ignores benefits that OPA 90 will bring. One comment recommended that cap increases should be used as an incentive for research and development, and not as an instrument to add automatically to the quantity of equipment and other response resources. Several comments supported leaving the cap increases in the rule because fixed dates and quantities give ample notice of what will be required and encourage market forces to make greater response resource capability available.

The Coast Guard agrees with setting the 1998 cap now to provide a clear upper target for which the vessel owners or operators and the oil equipment response industry must plan. An increase of 25% will encourage the industry to increase its response capability. Consequently, it facilitates meeting this important goal of OPA 90.

Establishing caps for 2003 may be premature. Therefore, the caps for 2003 in Table 6 of appendix B have been eliminated and replaced with an entry indicating that they will be determined later. Section 155.1050(q) establishes the procedure for developing the 2003 cap.

Four comments noted that the Committee did not agree to either automatic or specific cap increases and argued that 25% cap increases were arbitrary. One of these comments further stated that setting future caps today is counterproductive and against the spirit of the Committee recommendation.

The Coast Guard believes that the proposed cap increases capture the substance and effect of the Committee recommendation. The Committee recommended response capability caps increase at appropriate intervals that roughly correspond to the review period for response plans. They also recommended factors that should be considered when evaluating the ability to meet this increase. The Committee recommendation left to the Coast Guard what the caps should be set at in 1993 and how this increase should be approached. The 25% cap increase selected by the Coast Guard falls within the range of values discussed by the Committee, and reflects what the Coast Guard believes is obtainable and desirable for 1998 and beyond. These caps also recognize the practical limit of how much equipment needs to be pre-contracted for and how much equipment can be productively deployed during the initial response. For the reasons discussed in other sections of the preamble, the Coast Guard did not consider public resources and the possible benefits of other provisions of OPA 90 in determining what was practicable.

Proposed section 5.3 of appendix B required the owner or operator whose vessel's calculated effective daily recovery capacity exceeds the applicable contracting caps in Table 6 of the appendix to identify sources of additional equipment. Several comments questioned the practicality of identifying additional resources beyond the caps, and requested we clarify how much more equipment had to be identified. Some comments interpreted proposed section 5.3 of appendix B to require the identification of equipment capable of responding to the entire worst case discharge planning volume and argued that sufficient capability did not exist to respond within the specified response time.

The Coast Guard agrees that this requirement was ambiguous, and has clarified the requirement in the interim final rule. Section 155.1050(p) of the interim final rule requires the owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, to identify sources of additional equipment equal to twice the cap listed in tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The equipment so identified must be capable of arriving on scene no later than the tier 3 response times contained in § 155.1050(g). No contract is required for this equipment.

The Coast Guard concurred with a recommendation of the Committee that we evaluate the proposed cap increases before they become effective to determine if they remain practicable. The Coast Guard proposed to conduct these evaluations through a public notice and comment process approximately two years before the cap increases become effective.

Several comments supported this evaluation process, but one comment recommended that we conduct a review just before the effective date of the increase rather than two years in advance. Another comment opposed having the Coast Guard waive the proposed increases if they are found impracticable. The Coast Guard will review the proposed caps before their effective date to determine if they remain practicable. We have codified this approach in new § 155.1050(q). During this review, we will consider recent developments in oil spill recovery and reduce the caps if it is impracticable to plan a response for that quantity of oil.

Section 155.1050(q)

This new section establishes a procedure for systematic Coast Guard review of proposed cap increases and phased-in requirements for firefighting and salvage capabilities.

During the last session of the Committee, some members expressed concern that the scheduled cap increases for 1998 and 2003 would occur without benefit of a Coast Guard review. To address this concern, the Coast Guard has added language to this section that makes the effective date of the cap increase either the scheduled date (February 18, 1998 and 18 February 2003), or 90 days after public notification of the results of the review, whichever occurs later.

Section 155.1052

The Coast Guard has included a new § 155.1052 in the interim final rule. This new section covers the specific response plan development and evaluation criteria for vessels carrying group V petroleum oil as a primary cargo. This new section was created to address concerns of some comments that many of the criteria proposed in § 155.1050 and appendix B were not applicable to petroleum oils such as asphalt and carbon black that, because of their specific gravity, would sink when discharged. The Coast Guard agrees and has included in this new section applicable portions of § 155.1050. The only portion of appendix B that remains applicable are sections 2.1 through 2.4 and Table 1.

Paragraph (a) of this section requires the owner or operator of a vessel that carries a group V petroleum oil as a primary cargo to include in their response plan procedures and strategies and sources of response resources that would be necessary to locate, contain, recover, or mitigate the effects of such oils. Because these oils behave differently than those that float, the response plan needs to address specific methods for responding to such spills.

Paragraph (b) of this section parallels the requirements in § 155.1050(a) that any equipment identified in the response plan to meet the requirements of this section be capable of operating in the specific conditions expected in the geographic area that the vessel will operate. The specifics of this requirement were discussed in the preamble to the proposed rule.

Paragraph (c) requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of response resources appropriate for oils that sink. The owner or operator may ensure the availability of these response resources by using the fifth element contained within the definition of "contract or other approved means." For details, see the preamble discussion of "Section 155.1020 Definitions."

The types of equipment include those necessary for locating, containing, and recovering oil from the water column or the bottom. Unlike the specific criteria for determining the quantity of resources included in § 155.1050, this section does not require minimum quantities of resources. The Coast Guard intends to evaluate information submitted by the vessel owner or operator to determine whether the resources identified are consistent with the volume of such oil carried as cargo.

Paragraph (d) of this section requires that the resources identified in a response plan be capable of being deployed to the port nearest the area where the vessel is operating within 24 hours. Because of the variability in the types of resources that may be required, the Coast Guard has determined that this is a better approach for these unique oils than using the specific response times that vary by location, as required in § 155.1050.

Paragraph (e) of this section requires that the vessel owner or operator identify in their response plan and ensure, through contract or other approved means, the availability of salvage and vessel firefighting capability. Paragraph (f) provides for the phased implementation of this requirement. These requirements parallel those in § 155.1050(l). The previous preamble discussion for that section also applies to this section.

Paragraph (g) of this section requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of certain equipment necessary to conduct vessel-to-vessel lightering in an emergency. This requirement parallels that in § 155.1050(m). The previous preamble discussion for that section also applies to this section.

The Coast Guard has not included a requirement to identify resources in the response plan for the average most probable and maximum most probable discharge. The resources identified in the plan will be expected to be capable of responding to any size spill up to and including the worst case discharge.

The Coast Guard has determined that the requirements of this new section are within the scope of those included in the proposed rule. However, because the specific provisions were not included in the proposed rule, the Coast Guard solicits comments on the specific provisions of this section. All comments will be considered and this section may be revised based on these comments.

Section 155.1054

The Coast Guard has included a new section 155.1054 in the interim final rule. This new section covers the specific response plan development and evaluation criteria for vessels carrying non-petroleum oil as a primary cargo. This new section was created to address concerns of some commenters that many of the criteria proposed in § 155.1050 and appendix B were not applicable to non-petroleum oils, such as edible oils.

One comment suggested that vessels carrying edible oils should be subject to reduced requirements because edible oils pose less relative risks to the environment. The Coast Guard disagrees. There is insufficient data to support a finding that a spill of a large quantity of edible oil will have less adverse impact on the environment than a spill of other kinds of oil. However, the Coast Guard acknowledges that non-petroleum oil may behave differently from a petroleum or petroleum-based oil.

The Coast Guard conducted a literature search on these oils and was unable to find much information on their behavior when spilled, their environmental persistence, or tendency to emulsify. Because it was unable to verify that the criteria and methodology used for petroleum oils would apply to non-petroleum oils, the Coast Guard has determined that the specific factors (natural dissipation, emulsification) included in appendix B for petroleum oils would not be applicable. Thus, a new section to address these oils has been added, and it includes applicable portions of § 155.1050. The only portion of appendix B that remains applicable are section 2.1 through 2.4 and Table 1.

Paragraph (a) of this section requires the owner or operator of a vessel that carries non-petroleum oil as a primary cargo to include in their response plan procedures and strategies and sources of response resources that would be necessary to contain, recover, or mitigate the effects of such oils. Because these oils may behave differently than petroleum oils when spilled, the response plan needs to address specific methods for responding to such spills.

Paragraph (b) of this section parallels the requirements in § 155.1050(a) that any equipment identified in the response plan to meet the requirements of this section be capable of operating in the specific conditions expected in the geographic area where the vessel will operate. The specifics of this requirement were discussed in the preamble to the proposed rule.

Paragraph (c) requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of response resources appropriate for the non-petroleum oils carried as cargo. The owner or operator may ensure the availability of these response resources by using the fifth element contained within the definition of "contract or other approved means." For details, see the preamble discussion of "Section 155.1020 Definitions."

The types of equipment include those necessary for containing and recovering these oils from the water and to protect shorelines from impact. Unlike the specific criteria for determining the quantity of resources included in § 155.1050, this section does not require minimum quantities of resources. The Coast Guard intends to evaluate information submitted by the vessel owner or operator to determine whether the resources identified are consistent with the volume of such oil carried as cargo.

Paragraph (d) of this section requires that the resources identified in a response plan be capable of commencing an effective on-scene response within the applicable tier 1 response times in § 155.1050(g).

Paragraph (e) of this section requires that the vessel owner or operator identify in their response plan and ensure, through contract or other approved means, the availability of salvage and vessel firefighting capability. Paragraph (f) provides for the phased implementation of this requirement. These requirements parallel those in § 155.1050(l). The previous preamble discussion for that section also applies to this section.

Paragraph (g) of this section requires that the vessel owner or operator identify in the response plan and ensure, through contract or other approved means, the availability of certain equipment necessary to conduct vessel-to-vessel lightering in an emergency. This requirement parallels that in § 155.1050(m). The previous preamble discussion for that section also applies to this section.

The Coast Guard has not included a requirement to identify resources in the response plan for the average most probable and maximum most probable discharge. The resources identified in the plan will be expected to be capable of responding to any size spill up to and including the worst case discharge.

The Coast Guard has determined that the requirements of this new section are within the scope of those included in the proposed rule. However, because the specific provisions were not included in the proposed rule, the Coast Guard solicits comments on the specific provisions of this section. All comments will be considered and this section may be revised based on these comments.

Section 155.1055 Training

The Coast Guard received twenty-six comments on this section. Four comments agreed with the NPRM, and the remainder suggest revisions.

One comment suggested that it is impossible to train in advance the thousands of workers needed to clean up a major spill and to keep records on them. The Coast Guard has clarified the interim final rule by requiring that vessel owners and operators identify in the response plan the training to be provided only to specific individuals. For manned vessels carrying oil as a primary cargo, these individuals are members of the vessel crew having responsibilities under the plan, the qualified individual, and the spill management team. For unmanned tank barges carrying oil as a primary cargo, these individuals are the spill management team, the qualified individual, and other personnel with specific responsibilities under the plan.

Eleven comments stated that the owner or operator should not be responsible for training shore-based personnel. The comments recommend that either the Coast Guard or the response contractors should be responsible for training of these personnel. Several of these comments also stated that it is not possible for the owner or operator to check every contractor employee for compliance with the OSHA training requirements.

The owner or operator is not required to personally conduct any training. However, the owner or operator remains responsible for ensuring the training of the qualified individual, shore maintenance team, vessel crew with responsibilities under the plan, and other appropriate personnel, and ensuring that any oil spill removal organizations it identifies in the vessel response plan are capable of actually providing the resources identified in the plan. Part of these resources are the trained personnel to operate the response equipment. It is the responsibility of the owner or operator to ensure the availability of records sufficient to document any training.

The Coast Guard has revised § 155.1055 by adding a new paragraph (d) to make it clear that it is necessary to ensure the availability of training records.

Several comments noted that the Coast Guard is already developing rules for certification and approval of shorebased contractors for oil recovery, and stated that it was therefore not necessary for the owner or operator to ensure the training of contractors which will already be certified by the Coast Guard. The Coast Guard is developing a voluntary system for classifying oil spill response organizations by equipment capacity. The Coast Guard will assess whether an oil spill response organization has or has access to sufficient trained personnel to operate its equipment. However, Coast Guard classification of an oil spill removal organization cannot relieve the owner or operator of their ultimate statutory responsibility to ensure the adequacy of the spill response resources identified in a response plan.

One comment noted that it will be very difficult for foreigners to meet the OSHA training requirements. It was not clear if the comment was concerned about vessel personnel or shore-based personnel. As noted in the preamble to the ANPRM, the OSHA training requirements only apply to shore-based personnel and not to the vessel's crew.

In the NPRM, the Coast Guard requested comments on whether to include specific training requirements in the interim final rule. Only one comment suggested that they should be specific. One noted that training standards should be developed once a database is created based on early training records. One comment suggested that if requirements are specified, they must take into account the wide variety of vessels and cargo, and four suggested that specific requirements are impossible because of that variety.

The majority of comments addressing this issue gave reasons against creating strict training guidelines. One comment noted that more training may cause difficult contractual labor problems. Another suggested that traditional maritime skills will suffice. One comment mentioned that specifics should not be required because no legislation can ensure their effectiveness. Another mentioned that the Coast Guard should simply review the training plans together with the remainder of the response plan when the latter is submitted for review and approval.

The Coast Guard agrees that specific training requirements are inappropriate. The interim final rule grants vessel owners or operators maximum flexibility in choosing the training appropriate for their vessels and crew. Three comments mentioned that some companies already have training programs for specific vessels, cargos, or specific jobs. Nothing in the interim final rule prevents an owner or operator from identifying an existing training program to satisfy all or part of the training requirements of this section. Based on the comments, the Coast Guard has also amended the interim final rule to permit a vessel owner or operator to identifying equivalent work experience which fulfills specific training requirements.

Three comments suggest that training records should not be required to be kept aboard ship because personnel rotate too quickly, and the paperwork would be excessive. The Coast Guard agrees. We have revised the interim final rule to allow the records to be kept aboard the vessel, with the qualified individual, or at a U.S. location of the spill management team. The response plan must specify the chosen location.

Section 155.1060 Drills

The interim final rule requires a vessel owner or operator to have a drill program which ensures that persons with responsibility under the response plan are prepared to fulfill their responsibilities. This program must include both announced and unannounced drills conducted by the vessel owner or operator as necessary to ensure that a response plan will function in an emergency. The interim final rule does not require drills to cover specific sections of a response plan. Because response plans are to ensure that responsible parties are prepared for spill emergencies, the interim final rule allows a vessel owner or operator to tailor drills to exercise either components of a plan, or an entire plan, and to exercise those sections of the response plan that the owner or operator believes are most appropriate.

The interim final rule specifies a minimum frequency for drills for both the vessel's crew and the shore-based personnel with responsibilities under the plan. Additionally, a vessel owner or operator is required to conduct a drill which exercises the entire plan at least once every 3 years. This minimum frequency in no way intimates that vessel owners or operators may not need additional drills. Vessel owners or operators are required to conduct drills "as necessary" to ensure the response plan will work as intended.

The Coast Guard has revised §§ 155.1055 and 155.1060 to clarify that the owner or operator is required only to "ensure" the oil spill removal organization(s) conducts an annual drill and is adequately trained.

Several comments suggested that higher volume port areas should have at least one drill per year. We encourage this, but will not mandate it for vessel owners or operators. Each Area Committee will look at its drill program and take steps to enhance the overall port spill readiness posture. Coast Guard unannounced drills will also be conducted in all port areas on a sporadic basis, approximately twelve per year.

Some comments suggested that the Coast Guard verify oil spill removal organization drills and equipment deployment drills, and inform vessel owners and operators of the results. Although the Coast Guard intends to participate in about twelve unannounced drills a year, it will not "verify" the results. The thrust of OPA 90 is to develop private sector responsibility for all aspects of oil spill response planning. However, the Coast Guard's assessment of any drill it observes will be publicly available. Vessel owners or operators retain responsibility for implementation of their response plans and need to drill the various entities with responsibilities in the plan to the extent necessary to implement the plan. Accordingly, the interim final rule does not implement this suggestion.

Several comments said that the monthly shipboard emergency procedures and qualified individual notification drills requirements are too burdensome on industry. Considering crew turnovers, the routine unavailability of all members of the crew, and our experience with firefighting, lifesaving, and other shipboard emergency drills, the Coast Guard does not concur that these drills should happen less than once per month. The initial actions by a ship's crew to handle an emergency, and the notification of the qualified individual, can be critical to mitigate the effects of a spill, and vessel owners or operators need to ensure these events happen as planned.

Additional comments suggested that the drill requirements for unannounced drills will be too burdensome for vessel owners or operators, and that credit should be given for participation in other unannounced drills. Section 311(j)(7) of the FWPCA requires that the Coast Guard periodically conduct unannounced drills of removal capability in areas designated for development of Area Contingency Plans. The Coast Guard will involve vessels and facilities in these drills. These drills will be infrequent. A vessel owner or operator selected to participate in such a drill will be expected to activate the spill management team and oil spill removal organizations identified in the plan to the extent required by the COTP. The cost of activating these resources must be borne by the vessel owner or operator. The Coast Guard anticipates holding up to 12 drills per year throughout the country.

While the probability of any one vessel being involved in a drill is low, the Coast Guard has eased the potential burden of unannounced drills by allowing credit for participation in an unannounced Federal or State oil spill response drill within the last twenty-four months. To take advantage of this credit, the vessel owner or operator must immediately provide records of the unannounced drill to the Captain of the Port who is directing them to participate in a subsequent unannounced drill. This should allow the drill to proceed with other participants. The Coast Guard also does not envision that vessel operations will be significantly impacted when an unannounced drill does happen. Unannounced drills will be designed to stress response systems, including that of potential responsible parties. The focus of unannounced drills will be on those entities which the vessel owner or operator has identified to carry out its response plan, not the vessel itself.

One comment suggested that drill credit should be given for training. This is inappropriate because training and drills serve different purposes. Drills test the response organization of the potentially responsible party. They should be designed to stress the entire response system, or portions of the system. Training supplies individuals having assigned tasks with basic response knowledge and skills, and is a prerequisite for an effective drill.

Several comments stated that the owners or operators should not have to keep records of drills performed by shore-based personnel. The Coast Guard agrees that drill records need not be kept with the vessel owner or operator, but records still need to be maintained and available for Coast Guard examination. We have revised the interim final rule to require the records to be maintained, but they may be kept at the United States location of either the qualified individual, the spill management team, the vessel owner or operator, or the response organization. The response plan must specify the location of the drill records.

To further ease the potential burden of these rules, while still ensuring that response plans can be implemented as designed, the interim final rule allows vessel owners or operators to take credit for drills in which their spill management team or identified oil spill response organization(s) participate for the areas in which the vessel operates. The Coast Guard recognizes that many vessel owners and operators will rely on the same response resources. There is no need for these resources to be exercised continually to meet the requirements of individual owners and operators. Documented drills involving identified response resources can be used to meet the requirements of this section. This would also apply to vessel owners or operators with multiple vessels. Participation in one drill held by a common spill management team will meet the requirement for all vessels utilizing that team.

Section 155.1062 Inspection and Maintenance of Response Resources

OPA 90 amended the FWPCA to require the periodic inspection of containment booms, skimmers, vessels, and other major equipment used to remove discharges. (See 311(j)(6).) These requirements were not included in the NPRM, and the Coast Guard has since determined that it is appropriate to implement them through this rulemaking.

A new § 155.1062 of the interim final rule requires vessel owners or operators to ensure that containment booms, skimmers, vessels, and other major equipment listed in a vessel response plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations and best commercial practices.

The Coast Guard may visit equipment locations listed in response plans to verify that the equipment inventories exist as represented and that the records of inspection and maintenance reflect the actual condition of the equipment. The Coast Guard may also inspect and require operational tests of equipment to verify readiness.

The Coast Guard considers these requirements to be a logical extension of the vessel response plan requirements contained in the NPRM. The Coast Guard assumes that responsible owners or operators would already require the periodic inspection and maintenance of the response equipment identified in their response plan. Otherwise they could not ensure that the equipment they have identified in their plan is capable of responding to a discharge.

The Coast Guard solicits comments on the specific provisions of this section. All comments will be considered, and this section may be revised based on these comments.

Section 155.1065 Plan Submission, Approval, and Appeal Procedures

There were 16 comments on this section. A number of these comments addressed the issue of who should review the plans. Three comments agreed that the Coast Guard should centralize the review of plans. One comment stated that plan review should be delegated by the Coast Guard to the individual States and that the Area Committees formed under section 4202(a) of OPA 90 should be involved in plan review. This comment also stated that a Coast Guard requirement for review was a duplication of effort because some States already require plans to be submitted and approved.

The Coast Guard has determined that the initial review and approval of plans will be done at Coast Guard Headquarters. A centralized review by the Coast Guard will ensure the consistency of administrative review. The Coast Guard cannot delegate a Federal function to an individual State. To eliminate any duplication of effort, States should consider accepting plans approved by the Coast Guard rather than requiring a separate submission to and review by the State.

The Coast Guard does not agree that Area Committees should be involved in the review and approval of vessel response plans. Area Committees were formed by Congress to develop Area Contingency Plans in conjunction with State and local officials to ensure effective preplanning for joint response efforts. Because at least one Area Committee will be formed to focus on local issues for each Captain of the Port zone, there will be a large number of Area Committees. Review by any number of Area Committees will be cumbersome and unnecessary.

Five comments stated that Regional Citizens Advisory Councils (RCACs) should be involved in the plan review. Section 5002(d)(6)(D) of OPA 90 requires that the RCACs of Prince William Sound and Cook Inlet should review the adequacy of contingency plans for crude oil tankers operating in these areas. The Coast Guard will coordinate with the appropriate RCAC the review of plans submitted by the vessels using those two areas.

One comment suggested that the interim final rule should include the address to which plans should be sent. The Coast Guard agrees and has provided the address in the interim final rule.

Two comments stated that there should be a time limit for the Coast Guard to approve the plans; 60 days was suggested. The Coast Guard anticipates a large initial influx of plans to approve and has determined that a 60-day time limit would be difficult for the Coast Guard to meet and, because the vessel will be permitted to continue to operate during the review period, would be unnecessarily restrictive. Section 155.1025 allows a vessel to continue to operate for up to two years after the date of submission of a response plan, pending approval of that plan, as long as the owner or operator certifies that resources have been identified and ensured available to respond to a worst case discharge. This provision effectively allows the Coast Guard two years to approve the plans without adversely affecting vessel operations.

Two comments stated that the Coast Guard should allow for appeals if a plan is disapproved. The Coast Guard has determined that appeals will be allowed and has added paragraph (d) in this section to specify how to appeal to the Chief, Office of Marine Safety, Security and Environmental Protection.

Five comments argued that more than 30 days is needed to correct deficiencies and resubmit the plan or corrected portions of the plan. The Coast Guard agrees and will provide up to 45 days depending on the scope of the deficiency. The person submitting the plan will be notified of the time frame allowed to correct the deficiency.

One comment noted that requiring vessels to carry and maintain the entire response plan was unnecessary. The comment stated that a vessel master should only maintain and have available those sections of the plan that contain information applicable to the vessel. The Coast Guard agrees that vessels should carry only those portions of the response plan that are applicable to shipboard operations or that the master may need to know. The sections of the plan that will be required to be carried on the vessel are identified in § 155.1030.

Section 155.1065 describes submission and approval procedures. In the NPRM, paragraph 155.1065(d) describes where the response plan must be kept and requires the master and qualified individual to maintain the plan. Because proposed paragraph 155.1065(d) is not pertinent to submission and approval procedures, that paragraph has been moved to § 155.1030, General response plan requirements.

The Coast Guard has added two new provisions to this section of the interim final rule. First, we revised § 155.1065(a) to require response plans submitted on or after August 18, 1993 to be submitted at least 60 days before the vessel intends to handle, store, transport, transfer, or lighter oil. This will provide the Coast Guard sufficient time to review the plan for compliance with the interim final rule. Second, the Coast Guard has added a provision for handling significant plan deficiencies for vessels temporarily authorized to operate without an approved plan pending final Coast Guard approval.

Section 155.1070 Plan Review, Revision, Amendment, and Appeal Procedures for Vessels Carrying Oil as a Primary Cargo

The Coast Guard has revised the title of this section to make it clear that the provisions only apply to vessels carrying oil as a primary cargo. For vessels carrying oil as a secondary cargo the provisions of § 155.1045(i) apply. We have also revised paragraph (c) of this section to require a resubmission of the plan when, under certain circumstances, there is a change in the owner or operator of the vessel.

There were 20 comments on this section. More than half of the comments stated that the time provided to correct deficiencies or submit appeals was insufficient. Many felt that the 3 day period permitted to correct deficiencies involving the identification of a qualified individual or response resources was particularly restrictive.

The Coast Guard wants deficiencies to be corrected quickly. Having a qualified individual and response resources ready and available to respond is a basic requirement that vessel owners or operators must meet in order to store, transfer, or handle oil in areas subject to the jurisdiction of the United States. The Coast Guard has determined that instead of fixed time periods during which deficiencies should be corrected, the COTP issuing the deficiency notice will determine the time allowed to correct the deficiency. The time allowed may range from immediate to longer periods depending on the significance of the deficiency. A provision has also been added to the interim final rule that requires the vessel owner or operator to notify the Coast Guard office that issued the deficiency whenever a deficiency has been corrected.

Owners of foreign vessels stated that they should be required to correct deficiencies only prior to the vessel's next visit to U.S. waters and not within the specified time frames. The Coast Guard recognizes that foreign vessels in waters not subject to U.S. jurisdiction do not need to correct the deficiencies unless they intend to return to U.S. waters. Foreign flag vessels must correct identified deficiencies before they return to U.S. waters or within the deadlines stated by the COTP if they continue to operate in areas subject to U.S. jurisdiction.

The Coast Guard has revised the interim final rule to require resubmission of the plan for approval 6 months before the end of the Coast Guard approval period. The approval period will be up to five years. This replaces the proposed requirement for resubmission exactly five years from date of approval.

Three comments stated that the proposed rule did not address what will happen if the Coast Guard did not complete the review of a plan submitted for its required 5 year review and the 5 year period expired during the review time. The comments were concerned that the vessel would not be allowed to operate between expiration and reapproval because it would no longer have an approved plan. As discussed above, the interim final rule has been revised to require resubmission of the plan for approval 6 months before the end of the Coast Guard approval period. Six months will provide sufficient time for the Coast Guard to review and reapprove the plan. The level of effort required by the Coast Guard to reapprove a plan should be considerably less than that required for the initial review of a new response plan.

One comment stated that the requirement to report an annual review is an excessive paperwork burden. The Coast Guard agrees and will only require that the annual review be noted on the page where changes to the plan are recorded.

One comment stated that reviews of plans should coincide with other State requirements, and therefore be resubmitted every 3 years rather than every 5 years, as proposed. The Coast Guard believes that the required annual review and the requirement for owners or operators to resubmit the plans for approval whenever there is a significant change is sufficient to ensure that the plans remain current for the approval period. Reapproval every 3 years would create an excessive burden with little benefit.

Four comments suggested revising the conditions in paragraph 155.1070(b) that trigger the need for a plan to be amended so that only significant changes would require a plan revision. The Coast Guard agrees that plans must be revised or amended only when significant changes are made and has revised the wording of the paragraph to make this clear.

One comment stated that the Coast Guard did not explain what guidelines it would use when considering appeals. The Coast Guard intends to use the requirements set forth in the interim final rule to guide its determination on whether or not a plan is deficient.

Subpart E—Additional Response Plan Requirements for Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Section 155.1110 Purpose and Applicability

Since the publication of the proposed rule, section 352 of the FY93 DOT Appropriations Act amended section 5005 of OPA 90. The amendment changed which vessels operating within Prince William Sound (PWS) are subject to the additional response planning requirements of this subpart E.

Only tankers loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 1651 *et seq.*) must comply with this subpart. Vessels operating on PWS that do not load cargo at a TAPAA facility and all tank barges operating on PWS are no longer subject to this subpart. Military Sealift Command (MSC) chartered vessels which off-load cargo at Whittier, AK are not subject to subpart E. Any public comments received on the applicability of the subpart to non-crude carriers have not been addressed in the preamble.

The Coast Guard revised subpart E by eliminating the definition of crude oil and non-crude oil, replacing all references to "vessel" with "tanker," and eliminating the requirements for vessels carrying non-crude oil. We also added the definition of "tanker" to § 155.1020 of subpart D.

Section 155.1115 Definitions

One comment recommended that the criteria for certifying equipment should not be based on the manufacturers' specifications. The comment reasoned that there is no review or approval process for manufacturer specifications, and therefore they are not necessarily correct or obtainable. The Coast Guard agrees and has revised the definition of "certification of equipment" by changing the criteria to be that the equipment must be in good operating condition. The new definition was incorporated in § 155.1125(a)(3)(iii) and was deleted from § 155.1115.

Section 155.1120 Operating Restrictions and Interim Operating Authorization

Four comments were received. Two recommended that approval of vessel response plans must be contingent on funding of citizens' advisory programs. The Coast Guard disagrees. There is no statutory basis to require this. Three comments stated that the owner or operator should be required to do more than simply "identify" the necessary response resources to remove a worst case discharge or 200,000 bbls in Prince William Sound. Because section 5005 of OPA 90 requires pre-positioned equipment within Price William Sound, it is reasonable to establish a higher standard. The Coast Guard has changed the term "identified" to "provided."

Section 155.1125 Additional Response Plan Requirements

One comment recommended an area-wide cooperative to serve as a single response organization. While the Coast Guard may agree that such an approach is logical, it does not have the discretion to mandate it. The Coast Guard amended the language of § 155.1125(a)(1)(ii) to state that training programs should include local residents and fishermen.

Numerous comments stated that it was not practicable to require the oil spill removal organization to, among other things, consist of sufficient numbers of trained personnel to remove a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater. The Coast Guard agrees and has amended § 155.1125(a)(1)(iii) to require that the oil spill removal organization identified in a response plan must consist of sufficient numbers of trained personnel with appropriate technical skills to respond to a worst case discharge, and has added a new § 155.1125(a)(iv) to require the identified oil spill removal organization to provide a plan for training sufficient numbers of additional personnel.

The oil spill removal organization should have in their employment, or under contract, a sufficient number of skilled personnel who can handle the technical aspects of responding to a worst case discharge. However, the unskilled laborers that will be required to respond to a worst case discharge can be trained in relatively short order and therefore do not need to be in the continual employment of the oil spill removal organization. It is the Coast Guard's opinion that this is a reasonable way of assuring that the desired number of trained individuals are available when needed. This change does not affect the requirement of § 155.1125(a)(1)(ii) to actually train personnel from certain locations in Prince William Sound.

The same comment recommended that a 200,000 bbl response capability should be available throughout Alaska. Section 5005 of OPA 90 only extends certain additional response plan requirements to Price William Sound.

One comment recommended that certification of equipment should be performed by contractual arrangement either through Coast Guard or State inspections or through routine updates of inventory requirements. In response to this, the Coast Guard added § 155.1125(a)(3)(iii) to state that an independent entity, with appropriate training and expertise, should certify that equipment is on-site and in good operating condition.

The Coast Guard has amended § 155.1125(a)(1)(ii) to remove the formal names of fish hatcheries listed in proposed § 155.1125(a)(1)(ii) (F)–(J). This action was taken because of the possibility of names changing or new hatcheries opening. By specifying the areas, rather than the names, the Coast Guard believes it has strengthened the applicability of the rulemaking.

There was a comment that training should be limited to on-water recovery and that training drills be limited to those people identified as having initial response duties in the response plan. The Coast Guard disagrees with both suggestions. To assure an effective spill response capability, all aspects of oil spill removal need to be addressed through training.

Another comment recommended that separate response criteria should be adopted for low density traffic areas. This issue has been addressed in other sections of the preamble.

Section 155.1130 Requirements for Pre-Positioned Response Equipment

One comment recommended that 200,000 bbl crude storage capacity be available within six hours of notification of discharge and 450,000 within 24 hours. Another recommended on-water crude oil recovery equipment with minimum daily recovery rate of 300,000 bbls/day within six hours; on-water storage capacity of 300,000 bbls/day within six hours; and additional storage of 600,000 bbls/day within 12 hours.

Based on these comments and upon review of oil spill recovery equipment that currently exists within Prince William Sound, the Coast Guard has amended this section. Section 155.1130(c) now requires additional on-water recovery equipment with a minimum daily recovery capacity of 40,000 barrels capable of being on-scene within 18 hours of notification of discharge. This revision brings the total required on-water daily capacity to 80,000 barrels after 18 hours, and 110,000 barrels at the end of 36 hours.

Numerous comments were received expressing the opinion that the proposed Federal response requirements were far below the limits mandated by the State of Alaska, and that the Federal standards should be raised to those of the State. This issue has been addressed in other sections of the preamble.

One comment recommended that shoreline protection equipment should include intermediate transfer devices to transfer large volumes of oil of various viscosities under various temperatures. Section 2.1 of appendix B already requires that all equipment identified in a response plan must be capable of operating in the conditions expected in the geographic area in which a vessel operates. This would include considering the effect of temperature on the viscosity of the oil that must be recovered.

Section 9.2 of appendix B also requires a vessel owner or operator to evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from the equipment identified in the plan. It is the opinion of the Coast Guard that this issue is already adequately addressed in the interim final rule, and additional requirements are not needed.

All comments received opposed the requirement in the proposed rule for two escort vessels, each fitted with skimming and onboard storage capabilities, for each oil-laden vessel transit. Based upon these comments, and a review of the statutory language, the Coast Guard has amended the requirement to state that of the two escort vessels, only one must be equipped with skimming and storage capabilities.

One comment noted that the lightering provisions in proposed §§ 155.1130 (f) and (h) were inconsistent with § 155.1035(c)(5) because they contained conflicting guidance on the required arrival times. Section 155.1050 has been amended to eliminate this conflict.

One comment recommended that the lightering resources should be sufficient to remove the entire cargo within 96 hours. The Coast Guard agrees that some planning standard should be provided. Section 155.1050(m) has been revised to require that the response plans identify sufficient portable pumps and ancillary equipment necessary to off load the vessel's largest cargo tank in 24 hours of continuous operation.

One comment recommended that it was not necessary to require the pre-positioning of skimmers at specific locations so long as the six-hour response requirement contained in § 155.1130(a) was met. The Coast Guard agrees that the owners or operators of tankers should be provided the flexibility to preposition this equipment in those locations that provide the best overall protection for Prince William Sound.

The existing requirement that a certain quantity of on-water recovery equipment must be capable of being on-scene within six hours of notification of a discharge will adequately guarantee an appropriate response capability for those locations identified in § 155.1125. A new § 155.1130(e) was added to require that on-water recovery devices and storage equipment be located in communities and at strategic locations within the Sound to meet the specified arrival times. Proposed § 155.1130(d)(1) of the NPRM was deleted.

One comment stated that the proposed rule imposed requirements that were impossible to meet, especially the identification of shoreline cleanup capabilities for Prince William Sound within 36 hours of a worst case discharge. The comment recommended that shoreline capability should not be addressed in the regulation, because shoreline cleanup methods would be decided upon by the spiller, Coast Guard, and the State of Alaska on an incident-specific basis. The Coast Guard disagrees with this interpretation of the proposed rule. Section 155.1050 requires the owner or operator of certain vessels to identify and ensure the availability of an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified oil to be planned for in shoreline cleanup operations. There are no specific time frames for this organization to be on scene or within which the cleanup operation must be completed. The Coast Guard acknowledges that the actual resources used to respond to a spill will depend on the specific circumstances encountered. This does not diminish the desirability of having the owner or operator pre-identify through his vessel response plan which resources he intends to utilize in the event of a spill.

Section 115.1135 Response Plan Development and Evaluation Criteria

Only two comments were received. One supported the tiered response requirements, and the other said that response times were meaningless in Prince William Sound and recommended deleting the section. The tiered response times contained in this section replace those contained in proposed § 155.1050(g) for tankers subject to the requirements of subpart E. They require a more rapid response and an accelerated tiering of resources to satisfy the statutory requirements of section 5005 of OPA 90.

Section 155.1140 Special Consideration for Vessels Contracting with a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Three comments were received. Two protested the special consideration given to TAPS-trade tankers. One recommended that the provision be deleted until the Coast Guard can justify the implication that Alyeska's Ship Escort Response Vessel System (SERVS) meets the requirements of section 5005 of OPA 90 and only when Alyeska's response capability and contracts had met certification regulations.

The other comment agreed with this objection and asked that we consider other alternatives, such as the planned Alaska Nearshore Response Strike Teams and the concept of an Alaskan Coastal Community Cooperative. In addition, the COTP should be given more guidance and should be required to consult with the RCAC before making decisions. The third comment agreed with the section, saying that vessels could contract with Alyeska to meet any requirements of subpart E.

The Coast Guard disagrees that special consideration is being given to TAPAA trade tankers or to SERVs. Any vessel in any geographic location is permitted to contract with any capable organization, including marine transportation-related facilities, to ensure the availability of certain equipment or capabilities that is required to be identified in a vessel response plan. It will be up to the discretion of these various organizations (including any marine transportation related facility) whether they want to get into the business of being an oil spill removal organization. Section 155.1130 was included in subpart E to make it clear that each vessel owner or operator does not have to establish its own oil spill removal organization.

Section 155.1135 does not automatically pre-qualify SERVs as being capable of providing all or some of the requirements of either subpart D or E. The resources and capabilities of SERVs must be evaluated as would any other oil spill removal organization. The COTP will utilize the guidance contained in the IFR to evaluate the equipment and abilities of a facility permitted under the Trans-Alaska Pipeline Act.

The Coast Guard has amended this section to clarify the intent and purpose of this section. It has removed the words "Special consideration for * * *" from the title to eliminate the impression that this is a provision only applicable to certain vessels or facilities. It has also been changed to make it clear that an owner or operator may contract with a facility permitted under the Trans-Alaska Pipeline Act to meet some or all of the requirements of this subpart.

Section 155.1145 Submission and Approval Procedures

One comment stated that the plan approval process did not include RCAC approval as set forth in OPA 90 5002(d). The Coast Guard appreciates the importance of RCAC review of response plans under section 5002(d) of OPA 90 for vessels in Prince William Sound and the role of RCACs in advising, monitoring, and making recommendations to industry and the government. However, we do not believe that section 5002 grants authority for a RCAC to approve a vessel response plan.

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans

We received many comments concerning Appendix B. One comment maintained that nothing in the appendix could be binding because it was not part of the rule.

The Coast Guard does not agree. Section 5 U.S.C. 552 sets out the minimum procedure that the Coast Guard must follow in issuing a rule. The Coast Guard's obligation under this law is to give interested parties notice which "affords (them) a reasonable opportunity to participate in the rulemaking process" (*Illinois Commerce Commission* v. *I.C.C.*, 776 F.2d 355 (D.C. Cir. 1985). This decision updated an ICC regulation published in the Code of Federal Regulations as an appendix, because "the proposal was clear on its face and the complainant had a full opportunity to address it." Further, Code of Federal Regulation format encourages the use of an appendix in a regulation when its use will improve the quality or utility of a regulation. Using an appendix is also appropriate for providing supplemental, background, or explanatory information or for detailed text or evaluation procedures which must be used with regulatory text.

Appendix B, Section 1

As proposed, this section of the appendix describes the purpose and use of the appendix. We received no comments on this section. However, the Coast Guard revised this paragraph to make it clear that the guidelines in the appendix also apply to evaluating response resources identified under subpart E. Subpart E sets out additional requirements for Prince William Sound, Alaska.

Appendix B, Section 2

This section of the appendix gives guidance and sets out procedures for an owner or operator to evaluate the readiness and operability of equipment to be identified in a response plan. We received seven comments on this section.

Two comments supported paragraph 2.1, which requires that equipment identified in a response plan be operable in the geographic area where the vessel operates. When we said in the proposed rule that an owner or operator must identify equipment "designed" for the geographic area where the vessel operates, we did not mean to exclude equipment designed for an area more demanding than the vessel's operating area. One comment questioned our use of the term "designed" in this context. We have revised the interim final rule to state that equipment identified in a response plan must be "capable" of operating in the applicable area.

The Coast Guard has revised section 2.4 of the interim final rule to include procedures for demonstrating that the boom identified in a vessel response plan meets the criteria of Table 1. Demonstration will only be required if there is doubt over the suitability of the identified boom. The Coast Guard has also revised paragraph 2.6 to make it clear that the equipment evaluation criteria in the appendix also apply to the requirements in subpart E.

We received two comments concerning the on-water speed to be used for response planning. Both agreed that the proposed 10 knots was beyond the speed capability of towed barges and many self-propelled skimmers. The Coast Guard agrees. Therefore, we have reduced the on-water transit speed for response planning to 5 knots. The vessel owner or operator may provide information to show that a higher transit speed is appropriate for the specific response resources identified in a plan.

Four comments addressed section 2.7 of the proposed appendix. Two comments stated that the requirement to identify overall boom height should note that the term meant draft plus freeboard as was included in Table 1. The Coast Guard agrees and has added the specific reference in the paragraph.

Two comments addressed the requirements for providing information on response equipment, one stating that we asked for too much, and another stating that we asked for too little. The Coast Guard has required only that information which is necessary to evaluate whether the owner or operator has identified equipment in a response plan that reasonably correlates with the planning volume in quantity and capability and with the area where the vessel operates. Asking for more information would impose a burden not commensurate with the benefit.

The Coast Guard has also changed the term "effective daily recovery rate" to "effective daily recovery capacity," so that people understand we are establishing a planning standard—not a performance standard.

One comment stated it was inappropriate for the vessel owner or operator to be responsible for ensuring compatible connectors for boom, recommending that we require response contractors to do this. The FWPCA states that the owner or operator must ensure the availability of resources. Any requirements in the interim final rule are placed on those owners or operators. The vessel owner or operator and an oil spill response resource can settle this issue.

Appendix B, Section 3

This section of the proposed appendix provides information for determining the response resources required for the average most probable discharge. Three comments addressed this section, although many comments made on the proposed requirements in § 155.1050(d) apply to this section of the appendix.

Three comments questioned the amount of containment boom required to be available for deployment. As proposed, the interim final rule requires boom twice the length of the vessel. One comment believed that the amount should be less than the length of the vessel, but did not specify a length. One comment recommended that 1000 feet be the maximum amount required, and another said we should require boom sufficient to encircle two vessel(s) involved in a transfer.

The amount of boom required is based on an estimate of how much boom would be needed for initial containment of a 50 barrel oil discharge either alongside or between two vessels involved in an oil transfer operation. Because we want to require only that amount of boom for which it is practicable to plan, we will not revise this provision. A 50 barrel spill is the average most probable discharge (AMPD) volume.

One comment recommended that we increase the required oil recovery capacity in proposed paragraph 3.1.2 to 200 barrels per day. No change was made to the interim final rule. The 50 barrel per day recovery capacity reflects the average most probable discharge volume.

The Coast Guard has also deleted the requirement in the proposed paragraph 3.1.2 for vessels carrying oil as a secondary cargo to identify sources of equipment. We received many comments concerning the burden imposed on secondary carriers to identify these resources. Data provided indicated that the total volume of oil transferred by secondary carriers frequently was less than 50 barrels, and the transfers occurred in remote areas. Therefore, identifying recovery capacity for a 50 barrel spill may constitute planning for a discharge of the vessel's entire cargo.

Thus, § 155.1050 and this paragraph have been revised to delete the requirement for a secondary carrier to identify resources sufficient to respond to the average most probable discharge. However, we kept the requirement in § 155.1045(j)(3) for a secondary carrier to identify an oil spill removal organization in the area or areas where its vessels operate.

The Coast Guard has revised paragraph 3.1 to make it clear that an owner or operator must arrange for resources identified in a response plan to address the average most probable discharge through contract or other approved means. This phrase was left out of the proposed rule inadvertently.

The Coast Guard has revised paragraph 3.1.1 to require that the containment boom identified in the response plan be capable of being deployed at the site of oil transfer operations within 1 hour of spill detection. This revision parallels a change in § 155.1050(d).

Appendix B, Section 4

This section of the proposed appendix provides information for determining the resources required for response to the maximum most probable discharge volume. We received three comments concerning this section. One comment fully supported the requirement as written. One comment recommended that the section be revised to make it clear that an owner or operator had to ensure this capability by contract or other approved means. The Coast Guard has so revised paragraph 4.1. This phrase was left out of the proposed rule inadvertently.

One comment recommended that we require additional storage capacity under paragraph 4.5 if the effective daily recovery capacity is limited by available storage capacity. No change has been made in the interim final rule. the purpose of the provision is to inform owners or operators that the Coast Guard will use available storage capacity in evaluating whether the response plan indicates sufficient capacity for the maximum most probable discharge planning volume. The vessel owner or operator will still need to identify storage capacity to meet the provisions of section 9.2 (twice the effective daily recovery capacity or less under certain circumstances) to have its response plan approved.

In addition to the above changes, the Coast Guard has made many other changes in the interim final rule to be consistent with revisions made to § 155.1050. We have revised the travel times for open ocean in paragraph 4.3 to match the revisions made in § 155.1050(e), and changed paragraph 4.4 to make it clear that the vessel owner or operator must ensure the availability of oil collection and containment boom through contract or other approved means.

Appendix B, Section 5

As proposed, this section of the appendix describes the methodology for determining the response resources required for the worst case discharge to the maximum extent practicable.

A number of format and content changes have been made to this section. As previously noted, the discussion of caps contained in section 5.3 of the proposed rule has been revised and moved to 155.1050(p). Section 5 has been renumbered to accommodate two new subsections. Section 5.5 has been added to describe the process for determining what percentage of on-water response equipment must be capable of operating in waters of 6 feet or less in support of close-to-shore response activities. Section 5.7 has been added to describe the process for determining the volume of emulsified oil that may impact the shoreline during a spill.

Section 5.6 has been revised to make it clear that boom is required for both shoreline protection and for oil containment and collection. Table 2 of Appendix B identifies specific quantities of boom for shoreline protection. The quantity of boom that is required for oil containment and collection is not explicitly stated, and is left to the owner or operator to determine based on the specific recovery equipment and strategies that will be employed. However, in both instances the boom's availability must be ensured through contract or other approved means.

Several comments were received concerning the basic planning methodology. Three comments supported the simple process by which vessel owners will plan for the worst case discharge. An equal number of comments argued that the calculations and procedures are too complicated and confusing.

The Coast Guard disagrees that the calculations are too complicated. Although numerous sequential steps must be followed, none of the individual calculations require more than simple arithmetic and the applications of factors contained in various tables. The example contained in section 7.3 has been modified to better explain the calculations and the use of the various tables.

Two comments recommended that the process be simplified by precalculating the requirements and placing them into one table. The Coast Guard has conducted a preliminary analysis and determined that it would require at least 16 tables to cover all of the needed information. However, these table(s) would become extremely complicated and difficult to maintain when the issues of caps, cap increases, and the identification of equipment above the caps were taken into consideration. If upon further review the Coast Guard deems it practicable and useful to prepare such tables, it will do so through a NVIC or some other form of policy guidance document, rather than in a rulemaking. This approach would provide the desired simplification, while preserving in the regulation the actual methodology of how the specific numbers were calculated.

Appendix B, Section 6

This section of the proposed appendix provides information for determining the effective daily recovery capacity for oil recovery devices. We received thirteen comments on this section.

One comment was concerned that the use of the term "effective daily recovery rate" could be misinterpreted as a performance standard and recommended that it be changed to "effective daily recovery capacity." Another comment said the "effective daily recovery rate" could be divided by 24 hours to obtain an "effective hourly recovery rate" for use in determining temporary storage capacity required.

The "effective daily recovery rate" is used as a planning criteria for determining whether sufficient on-water recovery capacity has been identified in a response plan and does not equate to an expected hourly recovery rate. An owner or operator must determine temporary storage capacity using an assumption of the number of hours per day that the oil recovery devices identified in a response plan can sustain operations. The factors used to estimate the daily rates include time of skimming, encounter rates, and other factors. To eliminate confusion, the Coast Guard has revised the phrase "effective daily recovery rate" to "effective daily recovery capacity" throughout the interim final rule.

Six comments were concerned that the method in paragraph 6.2 for calculating effective daily recovery capacities oversimplified the many complex factors by which you can assess the efficiency and effectiveness of oil recovery operations. Some of those comments stated that the method favors certain types of oil recovery devices and requested we use some alternative method to rate these devices. Others stated that the 20% derating factor was too low for some devices and too high for others. One comment said that oil encounter rate was the critical variable in oil recovery device performance and it should be a factor in determining the effective daily recovery rate.

The Coast Guard has considered these comments and has retained the methodology in the interim final rule. The effective daily recovery rate accounts for a number of variables, and facilitates identifying relative capacities of different recovery devices. The resulting "effective daily recovery capacity" will not predict how a device will perform during an actual response; there are too many variables to make such a prediction. The purpose of calculating an "effective daily recovery capacity" is to help an owner or operator plan for ensuring that there are sufficient oil recovery devices available to initiate a response action.

One comment asked that section 6.2.1 be revised to allow the Coast Guard to increase the standard efficiency factor above 20% if performance data supported an increase. The Coast Guard has determined that this change is unnecessary. Oil spill recovery technology is dynamic, and the Coast Guard may amend these rules whenever new information warrants making a change. In the meantime, if a vessel owner or operator can document that an oil recovery device has an effective daily recovery capacity greater than the formula in section 6.2.1 reflects, the owner or operator is free to submit data to document this different capacity under section 6.3.

Five comments were confused about the method proposed in section 6.2.3 for calculating throughput for mop or belt type oil recovery devices. After further review, the Coast Guard has determined that there are too many differences in these devices to develop a standard formula. Therefore, we have revised section 6.2.3 to indicate that an owner or operator should base the throughput rate on manufacturer's data for nameplate rated capacity. A new section 6.2.4 has been added so that a vessel owner or operator may submit data to support an alternative method for calculating a throughput rating if the vessel owner or operator includes in their response plan oil recovery devices, with capacities that cannot be measured using pump capacity (i.e., vacuum devices).

One comment stated that the formula in section 6.3.1 failed to account for equipment breakdowns, oil encounter rates, or the time needed to empty storage devices. Although all these factors affect performance during a response, the Coast Guard does not consider them applicable for use in this regulation, because effective daily recovery capacity is a planning criteria. These same factors will affect all devices the same, thus adding an additional derating for them is not appropriate for response planning.

Regarding temporary storage capacity, the Coast Guard notes that the effective daily recovery capacity of an oil recovery device identified in a response plan is limited by the available temporary storage capacity which will sustain that device. In addition, the Coast Guard believes that the number of hours per day that recovery device operations can be sustained under spill conditions will account for these variables.

Two comments were concerned that decisions related to reducing the standard 20% derating factor would be arbitrary and recommended a central review location rather than having each COTP deciding. The Coast Guard agrees and has added a new section 6.5 indicating that the Commandant will make determinations of alternative efficiency factors under section 6.2 or alternative effective daily recovery capacity ratings under section 6.3.

One comment said that because an equipment manufacturer or response contractor is in the best position to provide the specific information in support of an alternative effective daily recovery capacity for a given oil recovery device, the vessel owner or operator should not have to provide the information. The Coast Guard agrees that the necessary information likely will come from the equipment manufacturer, but the responsibility to prepare and submit a response plan with the necessary information lies with the vessel owner or operator. However, the Coast Guard has included in the new section 6.5 a provision that allows an equipment manufacturer or response contractor to submit information directly to the Coast Guard on behalf of multiple vessel owners or operators that identify such equipment in their response plans.

Appendix B, Section 7

As proposed, this section of the appendix provides the procedure for calculating the worst case discharge planning volumes.

Section 7.2.3 has been changed to reflect the addition of unique response times for the Great Lakes. This section has also been amended to reflect the changes made in the calculation of the additional travel time permitted for spill resources responding to a spill in the open ocean area. As previously noted in the preamble, the assumed transit speed has been reduced from 10 kts to 5 kts, and the point of measurement has been changed from the point 50 miles from shore to the shoreline.

One comment stated that it was burdensome to require the owner or operator of a vessel that carries varying amounts of different types of oil to calculate the planning volume for each type of oil separately. The comment reasoned that the owner or operator would need to continually recalculate and possibly resubmit the vessel response plan for each trip if the quantity, mix, or type of oil changed from the previous trip.

It is permissible for an owner or operator of a vessel to create and submit a vessel response plan for each unique configuration of cargo their vessel may carry. However the Coast Guard suggests, that in the situation where the cargo mix changes frequently, the owner or operator of the vessel submit one vessel response plan based on the vessel cargo loading scheme that results in the largest foreseeable required planning volume. A vessel response plan submitted and approved using this planning volume, would also cover any situations that resulted in a lesser level of planning. It would remain the responsibility of the owner or operator to recalculate the required planning volume and the resulting on-water recovery capacity as necessary to assure that the submitted vessel response plan is adequate. The Coast Guard does not consider these calculations to be overly burdensome.

Section 7.2.4 has been clarified to indicate that for a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and added together before applying the caps contained in Table 6.

Only two specific comments on the example provided in section 7.4 of Appendix B were received. One stated the example was confusing, the other noted that the examples was incorrect because the owner or operator would be required to contract with an oil spill removal organization capable of conducting shoreline cleanup operations only if the vessel came closer to shore than 12 miles and not 50 miles as stated in the example.

The Coast Guard has revised the example to make it easier to understand and to incorporate the revised planning factors used in this interim final rule. The example was correct in that when a vessel operates closer than 50 miles from shore the owner or operator must identify and ensure the availability of an oil spill removal organization capable of effecting a shoreline cleanup operation.

In the calculation for planning volumes for onshore recovery, the calculation for open ocean has been eliminated. This reflects the elimination of the open ocean requirement for shoreline cleanup planning contained in § 155.1050(o)(1) of the proposed rule. The paragraph following the onshore recovery calculations also has been revised accordingly.

A new paragraph has been added after the last table of calculations to discuss the new requirement for a certain percentage of on-water recovery capability to be capable of operating in water with a depth of 6 feet or less. This calculation must be done for all tiers and for all applicable geographic areas.

Appendix B, Section 8

This section of the proposed appendix provided information for evaluating high-rate response methods (for example, dispersants, in-situ burning) in a response plan. We received fifteen comments on this section. Most of these comments repeated issues raised and addressed in our discussion on proposed § 155.1050(k), and will not be repeated here.

Throughout Appendix B, we have revised the requirements for dispersant planning, response times, and methodology for receiving plan credit just as we did in § 155.1050(k).

The Coast Guard has revised section 8.2.2 of appendix B by adding section 8.2.3 to provide information on how we will assess whether to recognize a credit against required on-water recovery capability. Any dispersant capability identified for plan credit must include sufficient resources to sustain that capability for at least three days at the rate proposed for plan credit. This time period reflects the generally accepted "window of opportunity" to disperse oil before it becomes too weathered for dispersants to be effective. Section 8.2.3 provides an example of how this credit would be calculated and applied against tier 1, 2, or 3 resource requirements.

The Coast Guard has added a new section 8.5 to make it clear that any credit against a portion of the 1993 or 2003 cap increases based on dispersant capability will apply only to vessels that operate in areas where using dispersants has been pre-authorized by the Regional Response Team.

We received seven comments on using in-situ burning as a high-rate response method. As proposed, the rule would not allow an owner or operator to use in-situ burning as a response strategy for reducing required oil recovery capability in 1993. Four comments recommended that a vessel owner or operator receive a credit of up to 25 percent against mechanical recovery capacity for in-situ burning. None of the comments suggested what in-situ burning capability should be demonstrated to obtain this credit. One comment suggested that all owners or operators identify resources for in-situ burning and for required mechanical recovery and dispersant capability. Three comments recommended that the Coast Guard study in-situ burning as a viable response option. These comments did not address using a credit against mechanical recovery as an incentive for developing this capability.

The Coast Guard will not permit an owner or operator to use in-situ burning as a planning response strategy for 1993. The use of in-situ burning is still being studied. The Coast Guard has added language to the renumbered section 8.6 (proposed 8.5) to indicate that we will evaluate in-situ burning as a permissible response strategy for capability increases required in 1998.

One comment opposed using bioremediation as an acceptable emergency response strategy, indicating that there was no evidence it was effective for treating floating oil. The Coast Guard continues to evaluate all potential high-rate response methods for use in spill response, but did not include bioremediation in appendix B because its effectiveness for use in emergency response is uncertain. Responders have used this technique mostly for shoreline treatment as part of the later stages of a shoreline cleanup. If new data show bioremediation or any other high-rate response method to be effective for emergency response, the Coast Guard will consider their application to response planning.

Appendix B, Section 9

This section of the proposed appendix provides information for determining the resources for which an owner or operator must plan to sustain response operations. The section covers trained personnel, temporary storage capacity, and other support equipment required for a response. We received thirty comments on this section.

One comment recommended that vessel response plans should require sorbent boom in addition to containment boom in a quantity sufficient to encircle the containment boom. The comment also recommended that the vessel owners or operators should plan for enough sorbents to sorb the statistically average shipboard spill. Section 9.1 already requires the vessel owner or operator to ensure that a sufficient quantity of sorbent material is available to sustain response operations to completion, and the Coast Guard believes that sorbent material includes sorbent boom. However, we have revised section 9.1 to explicitly mention sorbent boom.

Section 155.1050(o) requires certain owners or operators to identify and ensure the availability of shoreline cleanup resources in an amount commensurate with the planning volume of emulsified oil. The Coast Guard fully expects owners or operators to consider whether a resource has sorbent material and sorbent boom in determining if the resource is capable of effecting a shoreline cleanup operation.

In the NPRM on Discharge-Removal Equipment for Vessels Carrying Oil, we proposed requiring certain vessels to carry sorbent material. The Coast Guard believes that the section 9 requirements and the proposed equipment carriage requirements will ensure that sufficient sorbents are available to respond to a spill, and that no further requirements for sorbents are necessary.

Two comments supported the provision in section 9.1 that the vessel owner or operator also ensure the availability of support equipment and supplies to sustain response operations. One comment recommended that the support equipment also be capable of use in the same operating conditions as the oil recovery devices, boom, and temporary storage capability. The Coast Guard has revised this section in the interim final rule to state explicitly that the support equipment must be suitable for use with the primary equipment (oil recovery devices, boom, and temporary storage capability) identified in the response plan. The Coast Guard also has revised the last sentence of section 9.1 to make it clear that an owner or operator does not need to supply detailed information on the support equipment capability in the response plan.

Four comments supported the requirement in section 9.2 that an owner or operator identify temporary storage capability in the response plan. Three of those comments recommended that owners or operators plan for a defined initial storage capacity to arrive with an oil recovery device. One comment recommended that we evaluate oil recovery devices and temporary storage as a system. The Coast Guard has determined that requiring an owner or operator to identify a defined volume of storage capacity during the initial response is unnecessary. An owner or operator should match storage capacity to the types and quantities of oil recovery devices identified in the plan.

For example, each oil recovery device must have sufficient temporary storage capacity matched to its expected recovery capacity. If the planned response strategy is to operate ten such devices independently, each must have separate storage capacity. This storage capacity does not have to be dedicated for a given device. Most oil recovery devices have limited storage capacity because they are designed principally for recovery and emptied into a larger storage device. Although this is acceptable, the vessel owner or operator must assess how much time it takes to transfer oil from a recovery device to a storage device in calculating the effective daily recovery capacity.

Twenty-three comments opposed the requirement under section 9.2 to contract for temporary storage capacity as being too costly. The Coast Guard added an alternate approved means by which an owner or operator may ensure the availability of resources for which it must plan.

Five comments opposed requiring owners or operators to identify daily temporary storage capacity equivalent to double the effective daily recovery capacity, and recommended that storage capacity be equivalent to recovery capacity if the capability to decant water from the storage device exists. One comment recommended that the Coast Guard allow either twice the daily recovery rate or a lesser volume if the owner or operator provides a waste stream analysis to show that a volume less than the section 9.2 volume would need to be stored daily.

The Coast Guard has considered these comments and retained the requirement for storage capacity to equal twice the recovery capacity. All oil recovery devices collect some water with the oily material, and the volume of this water varies with the design of the device and the thickness of the oil on the water's surface. The factor of 2 accounts for recovering a volume of water with the recovered oil. In addition, we have revised section 9.2 so that a vessel owner or operator may identify storage capacity for less than the section 9.2 volume, if the owner or operator provides a waste stream analysis to show that the efficiencies of its identified recovery devices, the ability to decant water from the storage devices, or the availability of alternative storage or disposal locations in the area where the vessel operates result in reducing the volume of material requiring temporary storage.

Two comments requested that the vessel owner or operator be responsible for arranging for disposal of recovered product, and not the oil spill removal organization identified in a response plan. Section 9.3 as proposed reflected industry practice that the spill response contractor arrange for the disposal on behalf of the responsible party. However, because OPA 90 makes the vessel owner or operator responsible for ensuring that its plan addresses disposal, we have revised the interim final rule to make that clear.

Appendix B, Table 1

As proposed, this table provided operating and design criteria to use in evaluating oil recovery devices and booms identified in a response plan. Table 1 is based on information for equipment selection in the 'World Catalog of Oil Spill Response Products—Third Edition." The American Society of Testing and Material (ASTM) used the World Catalog as the starting point for its pending oil recovery equipment standard. We received five comments on this table.

One comment recommended that we delete the Great Lakes data from the table and apply river or inland criteria for the Great Lakes. The Coast Guard disagrees. The Great Lakes criteria derive from unique conditions there. The equipment operating and design criteria are consistent with World Catalog specifications for oil recovery operations in areas like the Great Lakes. Nothing in the comment indicated that this data was incorrect.

Four comments provided various drafts of the ASTM standard for boom performance and standard environmental conditions. The draft standard has categories of information and criteria similar to the VRP rule. Because ASTM has yet to reach consensus on this standard, the Coast Guard has determined it premature to incorporate all or any part of the draft ASTM standard. The Coast Guard is involved in the ASTM committee developing these standards, and we note the similarities between the ASTM drafts and this rule. The Coast Guard will consider the need to change Table 1 once the final ASTM standards are published.

The Coast Guard has made 3 minor changes to Table 1 in the interim final rule. The term "rivers" was changed to "rivers and canals" to be consistent with the use of this term throughout the interim final rule. We changed the symbol used to describe significant wave height from "less than" (<) to "less than or equal to" (≤) to clarify better the intended meaning of significant wave height.

A footnote was added to the table to explain that the oil recovery device and boom must be at least capable of operating in a significant wave height up to and including the value listed in the table for each environment. The lower value for permissible boom height for rivers and canals has been decreased from 10 inches to 6 inches. This change was based on further assessment of available boom types and potential uses within the operating environment.

One comment was concerned that existing stockpiles of boom would be unusable in the open ocean area because the proposed boom heights are greater than boom heights used routinely in open ocean responses. Although the Coast Guard recognizes the comment's concern, the boom height reflects the statutory requirement to plan for responding to a worst case discharge in adverse weather. For ocean areas, "adverse weather" could be seas with significant wave heights of up to 6 feet.

Appendix B, Table 2

Table 2 sets out shoreline protection requirements. The Table has been revised to reflect the changes discussed in the preamble for § 155.1050(n): Eliminating all requirements to identify boom, adding the Great Lakes to the nearshore and inland category for both persistent and non-persistent oils.

Appendix B, Table 3

This table sets out factors needed to calculate the planning volumes for response resource identification. Because of loss to the environment, potential for shoreline impact, and potential for on-water recovery varies by the oil type and location, we have included a factor (percentage) for each.

One comment recommended that Table 3 should have a separate category for edible oils. Another comment recommended that the table should have a separate category for asphalt because it sinks and can't be recovered by conventional methods. The Coast Guard has revised the rule in recognition of the unique characteristics both of nonpetroleum oils and of oils heavier than water. We have addressed issues and comments for these oils in the preamble discussion of §§ 155.1052 and 155.1054. Table 3 is inapplicable.

Eight comments argued that the percentages in the table have no technical basis, that there is no justification for the wide variances in the additive values, and that the percentages for a specific geographic area should not exceed 100% when summed together.

The values in Table 3 were drawn from deliberations among the Negotiated Rulemaking Committee. They are based on the general behavior of oil that has been observed during actual discharges. The variances in values reflect the amount of oil most likely to be available for recovery.

As noted in the preamble to the NPRM, in the inland, nearshore, and offshore portions of the table, the percentages do not add up to 100%. This reflects an adjustment in the on water percentage to increase the quantity of resources that are planned for mobilization in the first 3 days of the response. Because the oil may rapidly impact the shoreline in these areas, quick mobilization is essential.

One comment expressed concern that having the percentages exceed 100% could be construed as setting a performance standard. The Coast Guard disagrees. The preamble to the NPRM clearly stated why the percentages exceeded 100%. Additionally, we have restated in many places in both the IFR and this preamble that these are not performance standards.

One comment noted that the percentages should not exceed 100% because the effect of emulsification has already been taken into consideration. The Coast Guard disagrees. The application of an emulsification factor recognizes the very real fact that the volume of oil that must be recovered may increase due to the effects of emulsification. The intended purpose of having the percentages exceed 100% was to increase the quantity of on water resources that are planned for mobilization in the first 3 days of the response. The two issues are not directly related.

One comment recommended that the percentages in the table for "recovered floating oil" should be increased because oil which comes onshore has the potential of becoming floating oil again through either tidal or human action. The Coast Guard concurs that this is a possibility, but does not agree that it is a phenomenon that can realistically be taken into consideration. It is not practical to estimate the amount of oil that will reenter the water after it has been deposited on the shore line. Additionally, tidal ranges vary widely making the establishment of one national standard difficult.

One comment recommended that if emulsification is taken into consideration, then evaporation should also be taken into consideration as recommended by the Committee. The effect of evaporation is included in Table 3. The percentage attributed to natural dissipation is not explicitly used to determine the planning volume for on water recovery capacity or shoreline cleanup capacity. However, the relative effect of natural dissipation in different environments and for different oil groups was taken into consideration when determining what percentage of the planning volume would be available for on-water or on shore recovery.

Numerous comments noted that the Great Lakes were not included in any of the spill locations contained in Table 3 of the proposed rule. This oversight has been corrected in the interim final rule. The Great Lakes have been expressly added to the nearshore and inland category.

Table 3 of the proposed rule included percentages for oil on shore for the open ocean. However, § 155.1050(o) exempts vessel response plans for vessels operating in the open ocean areas from having to plan for shoreline cleanup. To avoid any confusion that Table 3 contradicts the intent of § 155.1050(o) the appropriate entries in table 3 have been annotated to indicate that they are included in the table for continuity, and that no planning is required.

Appendix B, Table 4

Twelve comments addressed the emulsification factors listed in table four. Two comments supported the factors used in the table but the others stated that the levels were too high for a variety of reasons. Case histories, distance from shore, type of water body, fresh water, weather and temperature variables, and discharge rates were all cited as factors that should be considered when setting the emulsification factors. Two comments indicated that the scientific data is insufficient or not available to support the high emulsification factors listed.

Numerous comments argued that emulsification is already taken into consideration through the 20% rating factor applied to oil recovery devices in section 6 of appendix B. The Coast Guard disagrees. The emulsification factors listed in Table 4 are to account for emulsification that occurs to the oil prior to the oil being encountered by the skimming equipment. The 20% rating factor includes, among other things, consideration of the efficiency of the actual skimming device to remove oily material from water. The two issues are unrelated.

One comment recommended that the plan holder should have the option of demonstrating that a lower factor is appropriate. The Coast Guard disagrees. This would introduce an unnecessary level of detail and not be consistent with the desired practicality of maintaining one nationwide standard.

The Coast Guard recognizes that emulsification depends on a variety of factors. The proposed Table 4 values were derived from ITOPF data and reflected the maximum amount of emulsification that could occur over a prolonged period of time in environmental conditions that favored the emulsification process. There was no other method suggested to account for the variables although the Coast Guard has been convinced by the comments that the emulsification factors listed in Table 4 of the NPRM were too high. Consequently, the emulsification factors in Table 4 have been revised. All of the factors that were greater than 1 in the original table have been reduced.

Appendix B, Table 5

Seven comments discussed Table 5, Mobilization Factors. One comment supported the factors, one comment stated the factors were too low at the beginning of the operation, and one comment stated the factors were too high for river operations. Three comments stated the table should be deleted because the mobilization factors created a performance standard and not a planning standard. One comment suggested incorporating Table 5 with Table 4 to simplify this portion of the rule.

Table 5 provides mobilization factors to assist in planning for the recovery of a worst case discharge. The Coast Guard recognizes that oil recovery operations are most effective in the initial stages but also acknowledges that it is unrealistic to plan for the majority of the response equipment to be immediately available. In rivers, where spills are spread rapidly, it is most important to plan for a strong initial response to contain and recover a spill and consequently these planning factors are higher than for other areas. The Coast Guard recognizes that the wording of the preamble that explained Table 5 in the NPRM could have been misunderstood to constitute a performance factor. However, the Coast Guard has indicated repeatedly elsewhere in this rule that this rule sets forth planning criteria and does not establish performance standards. The Coast Guard believes that this table is fairly straightforward and although one comment suggested a way to simplify it, no one commented that it is confusing. Consequently, Table 5 has not been changed.

Appendix B, Table 6

Table 6 provides response capability caps by geographic area. The Table has been revised to reflect the changes discussed in the preamble for § 155.1050(p). Specifically, a unique cap has been created for the Great Lakes, and all explicit caps for 2003 have been eliminated and replaced with the comment that they will be determined in the future. The caps for 2003 will be established during the Coast Guard review of the proposed caps for 1998. For consistency and continuity, the effective date of the caps has been changed from March 18th to February 18th for 1993, 1998, and 2003.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 155.140 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as indicated in that section.

Regulatory Evaluation

This interim final rule is major under Executive Order 12291 and is significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

This rulemaking will cost the oil transportation industry and the general public more than $100 million annually. It may also affect domestic and international shipments of oil to and from the United States and may generate substantial public interest and controversy. These regulations will also impact cleanup contractors, oil spill cooperatives, and other not-for-profit cleanup organizations.

The interim final rule contains requirements for vessel response plans, as well as additional requirements for certain vessels operating in Prince William Sound, Alaska. The impact of these requirements has been analyzed separately and is summarized below.

In the NPRM, the Coast Guard solicited public comment on the draft Regulatory Impact Analysis (RIA) for vessel response plans and the draft Regulatory Evaluation (RE) for Prince William Sound. A summary of the public comments received appear later in this discussion.

The Coast Guard has revised the RIA and RE based on public comments received, revisions made to the IFR, and two recent legislative changes which significantly affected the applicability of the interim final rule. As discussed in the "Regulatory History" section of the preamble, OSVs and certain fish vessels and fish tenders are no longer required to prepare vessel response plans, and the additional requirements for PWS now apply only to tankers loading cargo at a TAPs facility. Both changes will reduce the number of entities affected.

The Interim Final RIA and Interim Final RE are available in the docket for inspection or copying, as indicated under "ADDRESSES." They have also been placed in a separate docket (CGD 91–047) established to facilitate review of the programmatic RIA for titles IV and V of OPA 90.

Vessel Response Plans

In performing the regulatory impact analysis, the following four response plan alternatives were considered:

(1) No requirements,

(2) Comprehensive requirements for all tank vessels,

(3) Reduced requirements for vessels carrying oil as a secondary cargo, and

(4) Reduced requirements for inland barges only.

In response to public comments on the Draft RIA, and to reflect changes and improvements in cost estimates, numerous modifications have been made to the Interim Final RIA. Principal changes made include:

- Estimates of the costs of qualified individuals have been included.
- Estimates of costs for spill response capabilities in the Great Lakes have been developed.
- Impacts on costs of the future increases in contracting caps have been assessed.
- Revised cost data for major cost items have been incorporated.
- Cost/benefit has been calculated in terms of the cost per barrel of oil saved.
- Discount rate has been reduced from 10 percent to 7 percent, reflecting the latest OMB guidelines.
- Off Shore Supply Vessels have been eliminated from the Industry Profile and subsequent analysis.

VRP Industry Profile

The vessels that are subject to these requirements are divided into four distinct groupings: (1) Oil tankships in international trade, (2) coastal trading U.S. tankships and tank barges, (3) inland tank barges, and (4) other vessels not certificated under 46 CFR subchapter D, which carry oil in bulk as a secondary cargo. The distinct industry groups comprise the majority of these other vessels. They are certain fishing vessels and certain towing vessels.

Approximately 363 companies owning 1,050 vessels constitute the international tankship sector. The number of vessels held by any one company varies from 1 to over 50 vessels. The assets of the publicly held tankship operating firms vary from $28 million to $95 billion.

The coastal fleet consists of U.S. owned tankships and coastal trading tank barges. The coastal fleet is comprised of 147 tankships owned by 28 companies and 190 tank barges owned by 52 companies. The number of vessels owned by any one company varies from 1 to over 10 vessels. The assets of the independent, publicly-held companies engaged in operating the coastal fleet vary from $50 million to over $1 billion.

The inland barge fleet is comprised of 409 companies with 3,461 active barges. Of these, 219 companies own only 1 vessel or 6 percent of the fleet. The assets of publicly traded firms in this industry vary from $23 million to $13 billion.

The fishing vessel industry consists of 5,422 vessels owned by 4,587 companies. In addition, 22,371 documented fishing vessels are owned by individuals. The vast majority of these are owners or operators of one vessel. Approximately 80 to 100 of these vessels or 0.4 percent will potentially be impacted by this regulation because they carry oil as a secondary cargo. Virtually all of these vessels are privately owned.

The towing vessel industry consists of 5,703 vessels owned by 2,156 companies. Of these, two companies own over 50 vessels while 1,357 owners have only one vessel. Approximately 2.5 percent of the fleet or 150 vessels are engaged in the transfer of oil to other vessels. This interim final rule would not be applicable to the majority of these vessels because the oil carried would not be considered cargo due to the nature of their operation.

VRP Costs

In the aggregate, the requirement for vessel response plans will result in substantial costs to the industries affected. The present value cost of this regulation for the period 1992 through 2015 is estimated at $2.7 billion. The bulk of this cost entails large capital and operating expenditures to ensure adequate shore-based response capability. This accounts for 53 percent of the total incremental cost, or $1.4 billion. The next most costly items are drills and training with costs of $410 million for the 24-year period examined, or 15 percent of the total cost. The incremental cost of the entire regulation is $318 million for 1992, but declines to $226 million annually for the period 2005 through 2015.

For individual tankship or coastal trading tank barge owners or operators, the cost of compliance will vary slightly. The owners or operators of large fleets can spread the costs of response plan development over many vessels. The annual cost per vessel to major oil companies is estimated to be $6,500 per vessel. However, the small independent operators are not placed at a significant cost disadvantage over larger independent operators, as they have been able to find cost effective means to develop and maintain plans. The cost to small independent vessels owners or operators is estimated to be $8,900 per vessel.

For individual inland tank barge owners or operators, however, the cost per tank barge will vary widely according to the number of barges owned. Large operators are expected to gain economies of scale on a cost-per-barge basis, as they are able to spread the costs of plan development, maintenance, revision, and drills over a larger number of barges. For companies with more than 80 barges, the annual cost is estimated to be less than $2,900 per barge for development and maintenance of the plan, drill costs, and inland response capability. In contrast, the cost for companies with 1 to 9 barges is estimated between $7,500 and $17,300 per barge per year. The wide variance of costs within the inland tank barge industry is a direct result of fleet size.

For fleets of approximately equal size, the annual costs per tank barge is expected to be lower than the annual costs per tank vessel. This is due to a number of factors including reduced drill frequency, no requirement for comprehensive on-board response plans, and the ability to prepare one vessel-specific appendix for a large number of nearly identical barges. Additionally, it is expected that most barge owners or operators will submit one basic plan with separate vessel specific and geographic specific appendices.

The costs for certain fishing vessel and certain towing vessel owners or operators are estimated to be about $1,000 per year. As with other vessels, there would be economies of scale for owners or operators of multiple vessels.

VRP Summary of Benefits

The principal benefit of the vessel response plan requirement is a potential reduction in oil spilled with a corresponding reduction in natural resource damages and cleanup costs. Vessel response plans are expected to influence: Oil outflow volumes when an incident occurs; spill preparedness; and response management. The requirements of the interim final rule should result in: improved notification and communications; quicker mobilization and reduced response times; and clearer procedures and guidelines for onboard transfers, lightering, and towing. The potential benefits of vessel response plans were calculated by conducting detailed analyses of historical cases and by assessing the effectiveness they might have had in reducing outflows, cleanup costs, and damages. This analysis showed that VRPs can be expected to result in environmental improvements ranging from 7 to 22 percent.

Quantifying benefits of avoided natural resource damages associated with the vessel response plan regulations is difficult. The ideal methodology would be to conduct a multiple case study of historical spill data that would include natural resource damage assessments. The results would represent the range of benefits from avoided natural resource damages. This could not be done for two reasons. First, there are a limited number of claims actually settled which established a resource damage and restoration claim. Second, although models and methodologies are being developed which may better quantify natural resource damages, there is a lack of standardized models to do these assessments.

The Coast Guard is undertaking further work to refine and expand its database of oil spill cleanup and damage cost information and is further studying the matter of natural resource damage valuation, which is currently the subject of comprehensive research and evaluation by NOAA. This will facilitate development of more accurate, representative and consistent spill-unit values to serve as the basis for reevaluating benefit estimates in this and other regulatory evaluations undertaken for the implementation of OPA 90.

Public Comments on the Draft VRP RIA

Several comments stated that the VRP requirements cannot be analyzed in isolation of other requirements contained in OPA 90, particularly the double hull requirement. The Coast Guard acknowledges that some of the rules required by sections IV and V of OPA will interact with each other. For example, the beneficial impact of the double hull rule is the reduced amount of oil spilled after certain groundings or collisions. This reduction in the volume of oil spilled may reduce the calculated "cost effectiveness" of vessel response plans for these vessels.

The Coast Guard intends to conduct a comprehensive, programmatic RIA for all title IV and V OPA rules. This comprehensive RIA will evaluate the interaction of the rules relative to each other, and assess their impacts in total. However, since the rules will be developed and issued individually over several years, each rule will undergo an interim evaluation against a baseline that assumes no other OPA 90 requirements are implemented.

Several comments also stated that the RIA did not take into consideration macroeconomic impacts and the fact that current economic market conditions are poor. The RIA considers the costs of this rule on GNP, inflation, employment and balance of payments. It also takes into consideration economic conditions when examining the impact of this rule.

Many comments argued that the RIA underestimated costs. The oil spill response industry is undergoing a significant change as a result of OPA 90. New corporations are emerging in response to these regulations. When new industries develop, costs are initially high as companies gear up and buy new equipment. As demand increases and economies of scale are created, costs tend to drop. For example, the Marine Preservation Association which funds the Marine Spill Response Corporation (MSRC) has reduced its annual dues for vessel owners and operators from $50,000 to $10,000. In addition, the Natural Resource Corporation (NRC) offers vessel owners and operators spill response contracts on a per voyage basis. In the near future, with more companies entering the spill response market, costs of contracting should continue to decline as a result of intensified competition.

Comments noted that the RIA did not capture certain cost elements, including the costs of cap increases in 1998 and 2003, the cost of recruiting, training, and drilling qualified individuals and response teams, the additional costs of NRC, the cost of establishing Great Lakes spill capabilities, and the cost of assessing contractor capability. One comment stated that the cost of company specific table-top drills were underestimated. Another comment stated that the costs to the inland barge industry were underestimated. In response to the comments, additional analysis has been included in the Interim Final RIA to evaluate these costs. Several cost estimates were increased, and incremental costs assumptions were reviewed, in light of additional cost information provided in the comments.

Several comments presented arguments concerning which industry costs should be included in the cost calculations. Several comments argued that costs incurred prior to, but in anticipation of, OPA 90 should be included in the calculations. Others argued that it was incorrect to include costs for response activities that preceded passage of OPA 90. The Coast Guard determined that it was appropriate to include in the RIA those costs that industry spent in anticipation of the rule. The Coast Guard considered that after the Exxon Valdez spill, there was strong sentiment in Congress for developing comprehensive spill prevention regulations, resulting in promulgation of OPA 90. Industry, anticipating this action, took many preliminary actions including the development of MSRC. The Coast Guard could have begun costing this rule using a later date. However, the cost/benefit ratio of this rule is not dependent on where the RIA chose to begin costing. If the cost projections began in a later year, related benefit estimates would be reduced. The ratio of costs to benefits would be relatively unaffected by choice of the year costing begins.

One comment noted that the costs incurred by oil spill cooperatives should be included in the RIA. The interim final RIA has been revised to include the appropriate incremental portion of cooperatives budgets that can be directly accredited to the VRP requirements.

Several comments noted that the RIA did not account for firefighting, salvage and lightering costs. The interim final rule permits the owner or operator of a vessel to meet the firefighting and salvage requirements by obtaining the written consent of the provider before listing the provider in the VRP as an available resource. The interim final rule also permits the owner or operator of a barge which operates on rivers and canals to meet the lightering requirements by obtaining the written consent of the provider. These are changes from the NPRM, which required the more rigorous forms of "contract or other approved means." The interim final RIA concludes that due to competition in the salvage and firefighting industry, salvage and firefighting companies will not charge retainer fees for a listing in a vessel response plan. The interim final rule does not require advance contracting for dedicated lightering vessels. Therefore, the RIA is correct in not including these costs.

Several comments noted that the RIA did not include the costs of dispersants. The interim final rule does not require the owner or operator of a vessel to ensure through contract or other approved means the availability of dispersants. Rather, the identification of dispersants is optional in certain areas where year-round use of dispersants has been approved. Because identification of dispersants is allowed but not required, the cost of dispersants has correctly been omitted from the RIA.

One comment noted that costs are inaccurate because the full impact of the NCP and ACPs on the vessel response plans are unknown. In NVIC No. 8–92, the Coast Guard announced that it will evaluate whether a response plan is consistent with the NCP by using the existing NCP published in 40 CFR part

300. Further, the local oil and hazardous substances contingency plans in effect on August 18, 1992 will be used to evaluate whether or not a response plan submitted to meet the February 18, 1993 deadline is consistent with the ACP. The Coast Guard does not anticipate significant additional costs in making a vessel response plan consistent with the revised NCP and ACPs. However, if there are significant costs, they will be captured in the final RIA.

Several comments stated that the Coast Guard should have considered costs in the determination of "Maximum Extent Possible". As previously discussed in "Section 155.1020 Definitions" the Coast Guard did consider costs in the development of this rule making.

A few comments claimed that the costs of training were underestimated. The Coast Guard has used the best available data on training costs and believes the RIA is accurate.

One comment stated that the costs of revisions of names and phone numbers was not included in the draft RIA. Another comment stated that the costs of making copies were underestimated. It is anticipated that these costs will be small and are adequately captured in the paperwork costs and effort estimates.

Several comments stated that the benefit estimates used in the draft RIA were too low, specifically the natural resource damage assessment (NRDA) estimates. Others stated the NRDA estimates were too high. The interim final RIA does not place a dollar value on the benefits of avoided natural resource damages associated with the vessel response plan regulations. The Coast Guard has determined that there are insufficient data and no standardized models with which to reliably value these benefits. The Coast Guard and NOAA are conducting further research and evaluation to facilitate the development of more accurate, representative and consistent spill-unit values to serve as the basis for reevaluating the benefits estimates.

For purposes of the interim final RIA, benefits have been estimated on the basis of the volume of oil spills prevented. This provides the basis for a "cost effectiveness" analysis rather than a benefit-cost assessment. The Coast Guard and OMB have determined that this is the most appropriate approach until revised NRDA estimates can be developed.

One comment stated that using historical spill data underestimates the benefits of the regulation because the historical costs do not take into consideration the new liability regimes established in FWPCA as amended by OPA 90. As discussed above, there is an ongoing effort to improve the estimation of benefits. Another comment stated that the draft RIA overestimated future spill volumes. The Coast Guard believes using historical spill data is the most accurate method currently available to estimate future spills.

Several comments thought that the effectiveness rates for vessel response plans are too high. The potential benefits of VRPs were quantified by conducting detailed analysis of historical cases and assessing the effectiveness VRPs might have had in reducing outflows, cleanup costs, and damages. This analysis showed that VRPs can be expected to result in environmental improvements ranging from 7 to 22 percent. The interim final RIA used an effectiveness measure of 15 percent. The Coast Guard considers this to be a reasonable measure, based on the best information currently available.

One comment noted that the RIA did not include the benefits of positive job gains in the oil spill recovery industry. The Coast Guard was unable to precisely estimate the number of jobs that will be developed as a result of this rule. To the extent that jobs are in fact being created, this will have a positive effect on employment in some parts of the country.

One comment noted that the time horizons for benefits estimates were too short. The Coast Guard and OMB commonly use a 10 year horizon for the analysis of costs and benefits. The vessel response plan RIA uses a 23 year time horizon. This time horizon was chosen for this rule to coincide with the time horizon used with the double hull rule.

Additional Response Plans Requirements for Certain Vessels Operating in Prince William Sound, Alaska

PWS Industry Profile

Vessel traffic in Prince William Sound is dominated by large crude tankers calling at the Trans-Alaska Pipeline (TAPS) terminal near Valdez, Alaska. The terminal is operated by the Alyeska Pipeline Service Company, a consortium of seven major oil companies. This trade consists of approximately 900 tanker loadings accounting for approximately 700 million barrels of Alaskan North Slope crude annually. However, North Slope oil production is now declining and is expected to continue to drop about 6–7% per year. The vast majority of tankers calling at the TAPs terminal are U.S. flagged, single hulled vessels. The operators are large oil companies, including Alyeska consortium members and independent U.S. vessel operators.

Tankers loading cargo at a TAPS facility are the only vessels subject to the special requirements of section 5005 of OPA 90. The draft RE addressed all tank vessels operating on PWS, including barges and relatively small, single-hull tankships. As previously discussed, the interim final rule now applies only to tankers loading at a TAPS facility. Other vessels have been eliminated from the PWS Industry Profile and subsequent analysis in the interim final RE.

PWS Costs

Over the 10-year period (1993–2002), costs for compliance for TAPS vessels will be $232 million. It is estimated that compliance with section 5005 will cost tankers loading cargo at a TAPs facility an average of $47,000 for each cargo load transferred and transported in the Sound during the 10-year period. This will increase unit cost per barrel by approximately 6 cents (or 0.15 cents per gallon). This small price increase would likely have a negligible impact on this market.

PWS Summary of Benefits

OPA 90 places additional requirements on the spill response capability of tankers loading cargo at a TAPS facility. These added requirements are intended to provide additional response capability to protect the unique, environmentally sensitive area of PWS. Specifically, section 5005 of OPA 90 requires: Prepositioned response equipment; establishment of an oil spill removal organization; training of local citizens and fish hatchery employees in oil spill removal techniques; periodic testing and certification of equipment; and exercises to test the capability of the equipment and trained personnel.

Prepositioned equipment, including escort response vessels, improves the effectiveness of offensive operations (i.e., containment and recovery of oil in the general vicinity of the spill site). Prepositioning serves to put containment and removal capability on scene very rapidly, making the response more effective. It has been estimated that prepositioned equipment alone has the capability of recovering up to 256,000 barrels of crude in the first three days following a spill. Quick recovery of oil from the environment has the effect of reducing the net size of the spill, thereby reducing environmental and other harmful consequences, the amount of the shoreline threatened, and overall cleanup costs.

Quantified benefits for the TAPs traffic in present value were estimated in total barrels of oil recovered. Oil spillage during the period 1993–2002 is projected to be about 285,000 barrels of crude and is based on spill probabilities for the types of vessels and numbers of movements characteristic of TAPS traffic. Of that spillage, it is estimated that prepositioned equipment can recover nearly 58,000 barrels of oil in the three days following a spill.

There are additional benefits which are not quantifiable. Effectiveness of defense operations is enhanced both by the training of citizens and hatchery employees so they may assist in nearshore and onshore operations, and by prepositioning containment and cleanup equipment near where it would be utilized. Also, area drills are expected to improve the proficiency of both offensive and defensive operations.

For the TAPs traffic, quantified benefits in present value from the regulations are estimated at approximately 42,000 barrels of oil recovered over the 10-year study period. Discounted costs over the same period amount to $164 million. This regulation is therefore expected to cost $3,899 for every barrel of oil recovered.

Public Comments on the Draft PWS RE

Most comments questioned the assumptions underlying the costs and benefits. Many of the comments received on the draft VRP RIA may also be applicable to the PWS RE. Several comments were received on the cost and benefits of extending the requirements of Section 5005 of OPA 90 to Non-Taps vessels. As previously noted, non-TAPs vessels are no longer subject to the additional requirements of Section 5005.

One comment stated that the RE significantly underestimated the cost of compliance by failing to consider the costs of response resources that have been added since 1989 to meet the requirements of Section 5005 of OPA 90 and similar legislation in Alaska. Two comments stated that the cost associated with a proposed regulation should be measured from the time of the rule, not from an earlier point, and that the cost that should be assessed to Section 5005 are those that will be incurred after the rules are finalized. As previously discussed in the public comments regarding the VRP RIA, the Coast Guard has included in the RE those costs that industry spent after the Exxon Valdez spill in anticipation of the rule.

One comment stated that the RE has obscured an accurate cost-benefit analysis by including the cost of existing prepositioned response equipment already required by State law and already procured by PWS vessel operators. This comment stated that the costs of implementing the regulations for Section 5005 should be zero because the Federal regulations would impose no additional major expenses to private business beyond what has already been incurred. Another comment argued that no costs should be attributed to the Federal regulations because of the existence of the State of Alaska's regulations.

There is no guarantee that Alaska's state laws will not be amended or repealed in the future. If the Coast Guard were to regard the OPA 90 requirements as having no costs, because of already implemented State response programs, then it would also have to conclude there are no benefits, either. Therefore, the Coast Guard does not agree that the costs should be decreased.

One comment noted that the draft RE did not consider the human health effects in PWS including the psychological and social effects on the community. There are no specific costs and the Coast Guard was unable to quantify these benefits. To the extent that this rule would improve human health, the identifiable benefits would thus outweigh costs.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard has considered whether this interim final rule would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This evaluation was carried out as part of the Interim Final RIA and the Interim Final RE for this interim final rule. Copies are available in the docket for inspection or copying where indicated under "ADDRESSES."

Small Entity Impact of Vessel Response Plans

The impact of vessel response plan requirements will be distributed differently across various sectors of the U.S. waterborne oil transportation industry. There are a number of companies meeting the definition of a small business operating in each sector of the industry.

Some small owners or operators of international flag tankers, which call infrequently in U.S. waters, may choose to discontinue U.S. trade. However, they will be able to use their vessels in other trades. The requirements are not expected to place more burdensome financial strains on these operators than on larger independent operators.

Small operators of coastal tankers and tank barges will incur a minor competitive disadvantage versus larger operators. However, the requirement for a response plan, by itself, should not force these companies to exit the business.

These regulations may impact noticeably on small operators of inland barges. The cost to develop plans for the inland barge fleet is considerably lower than for coastal barges. However, costs spread over one or two barges in an individual firm's fleet may comprise a comparatively higher percentage of the total cost of operating these barges. This regulation may further contribute to the current consolidation taking place within this industry. The Coast Guard anticipates that many of these smaller operators will share the costs of plan development on an industry-wide basis, thus reducing their individual costs.

The annual cost of compliance for certain fishing vessels and towing vessels that carry oil in bulk as a secondary cargo is expected to be approximately $1,000. Although the cost per gallon of oil carried as cargo may be relatively high, the total annual cost is relatively small. A number of these operators (particularly of tug/tow boats) may cease to carry oil in bulk as cargo. This would not necessarily prevent them from continuing to operate in their capacity as tug/tow boats. The interim final rule subjects these vessels to reduced requirements in accordance with the recommendation of the Negotiated Rulemaking Committee. It is estimated that the costs to meet these reduced response plan requirements for secondary carriers is 10 percent of the cost to meet the comprehensive standards if the latter were required.

Although the Initial Regulatory Flexibility Analysis indicates that some small businesses may be impacted, the Coast Guard believes that the existing exemption provisions contained in § 155.130 will minimize the impact on small entities. Section 155.130 allows for exemptions or partial exemptions from compliance with any requirement in 33 CFR 155 if among other things, compliance with a specific requirement is economically impractical. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Public Comments With Respect to Small Entities

Several vessel owners on the Great Lakes stated that small businesses would be disproportionately impacted because of the small number of vessel owners available on the Great Lakes to share the costs of supporting the needed oil spill response infrastructure. This situation is aggravated by the large size and relative remoteness of the Great Lakes, and the lack of a preexisting oil spill response network prior to the passage of OPA 90. Several comments were also received from the asphalt industry located on the Great Lakes who stated that the cost of the VRP requirements may require them to abandon the use of small barges to transport asphalt. It is believed that some of the affected barge owners would fall within the classification of small entities.

After considering all comments received on the NPRM, we reassessed our proposed requirements for the Great Lakes. As a result, the interim final rule has been revised to lower the planning requirements for vessels carrying groups I through IV petroleum oil as a primary cargo on the Great Lakes. The worst case discharge caps have been reduced by 50 percent and the corresponding response times have been increased by 6 hours.

The interim final rule also establishes unique planning criteria for vessels carrying group V oil as a primary cargo. The planning requirements for group V oils, which includes asphalt, take into consideration the unique characteristics of these oils and also recognizes that existing response capabilities for these oils are not as well developed as for other oil groups. Caps do not apply to Group V oils. Additionally, most of the required response equipment can be identified in the VRP with the written consent of the provider, eliminating the more costly types of "contract or other approved means". Most of the equipment that must be identified must only be capable of being deployed with 24 hours of discovery of the spill to the nearest port, rather than being on-scene within a shorter time frame.

Taken collectively, the Coast Guard believes that these changes to the interim final rule will reduce at least partly the burden on small entities operating within the Great Lakes. For those vessel owners and operators who still find it physically or economically impracticable to comply with the VRP regulations, they will be permitted under 33 CFR 155.130 to request a compliance exemption from portions of the requirements.

A number of comments were concerned that the cost of the VRP requirements for vessels operating in remote areas might be prohibitively high. The identified areas include the Aleutian Islands and other areas of Alaska, Guam, American Samoa, and other remote areas in the Pacific. It is believed that a number of the vessel owners operating in these remote areas are small entities. As noted above, these small entities will be permitted under 33 CFR 155.130 to request a compliance exemption from portions of the requirements.

Small Entity Impact of Additional Response Plan Requirements for Certain Vessels Operating in Prince William Sound, Alaska

Many operators of TAPS vessels are subsidiaries of large, integrated petroleum companies, such as ARCO Marine, Chevron Shipping, and Exxon Shipping. While other operators are independent ocean carriers, none could be identified whose current employment (including that of corporate affiliates) was below the 500-employee threshold used by the Small Business Administration for identification of small enterprises in deep-sea freight transportation.

Because it expects the impact of section 5005 of OPA 90 to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection of information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The OMB approvals for each subpart of the interim final rule are discussed separately.

Subpart D Vessel Response Plans

The section numbers are §§ 155.1025, 155.1035, 155.1045, 155.1055, 155.1060, 155.1065, and 155.1070, and the corresponding OMB Control Number 2115–0595. This is a provisional approval which expires on September 30, 1993. The Coast Guard has made several changes to the interim final rule that will reduce the information collection burdens. These changes have been discussed in the preamble. The Coast Guard will consider comments received in response to the interim final rule and may further revise the final rule to reduce the paperwork burden. Final approval will be obtained from OMB prior to publication of the final rule.

As indicated elsewhere in the preamble, commenters submitted extensive comments on the paperwork burden in the rule to OMB and to the docket. Many commenters believe that the paperwork cost burdens were underestimated and as a result, the interim final RIA currently estimates approximately $29 million in initial year costs to the industry (approximately 10 percent of the total first year costs).

Given the statutory deadline for February 18, 1993, it has been difficult to assess the validity of all comments received that would serve to balance the cost of reporting and recordkeeping against the practical utility of the information to the Coast Guard for plan review and by affected companies and individuals in responding to discharges. Many commenters, for example, questioned the usefulness of detailed information required in initial response plans—the detailed list in § 154.1035 of equipment by location, make, model, and effectively daily recovery rates, for example. Where such requirements have been retained in this interim final rule, the Coast Guard believes the information is essential in order to evaluate objectively the adequacy of a response plan. However, the Coast Guard is also working to set in place supplementary procedures that could reduce some of these requirements. To this end, on December 4, 1992, it promulgated Navigation and Vessel Inspection Circular (NVIC) 12–92 entitled, "Guidelines for the Classification and Inspection of Oil Spill Removal Organizations (OSROs)."

There may be cases where owners or operators submitting response plans will not have adequate information regarding the oil spill removal organization(s) or the private personnel and equipment or both by February 18, 1993, to meet all the specific requirements in this interim final rule. In the initial submittal, they should acknowledge what information is lacking, explain why, and request a waiver with regard to submittal of such information. Upon good cause shown in the waiver request, the Coast Guard may grant a waiver for a reasonable period, not to extend beyond August 18, 1993, for submittal of information regarding the oil spill removal organization(s) or the private personnel and equipment or both.

Where owners or operators believe the existing information burdens continue to be unduly burdensome, the Coast Guard actively solicits comments and suggestions for further amendments that will reduce information collection burdens while meeting the requirements of OPA 90 and the need for adequate information for plan review and discharge response.

Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under "ADDRESSES".

Subpart E Additional Requirements for Certain Vessels Operating in Prince William Sound, Alaska

The section numbers are §§ 155.1125 and 155.1130, and the corresponding OMB Control Number 2115–0594.

As discussed in the "Regulatory History" section of the preamble the additional requirements for PWS now apply only to tankers loading cargo at a TAPs facility. Non-Taps vessels are no longer subject to these additional requirements. As a result, only one oil spill removal organization will be required to provide the additional requirements of this subpart. The effect on the Collection of Information Requirements is a reduction in the number of respondents from 2 to 1, and a reduction in the overall burden estimate. The Coast Guard has submitted a revised collection of information request to OMB reflecting this reduced burden.

Federalism

The Coast Guard has analyzed this interim final rule according to the principles and criteria contained in Executive Order 12612 (Federalism, October 26, 1987), and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The Coast Guard received four letters addressing the issue of State-Federal jurisdiction in oil spill contingency planning.

Four comments expressed concern that State planning requirements may overlap, be inconsistent with, or be more stringent than Federal requirements; and encouraged the Coast Guard either to evaluate Federal and State regulations periodically for consistency so that there would not be "conflicting" requirements, or prepare a Federalism Assessment to address issues arising from concurrent State and Federal jurisdiction. The Federalism Executive Order and the FWPCA emphasize the President's and Congress's intent to preserve State authority to address matters of pollution prevention and response. Executive Order 12612 directs a Federal Executive branch agency (which includes the Coast Guard) to encourage states to develop their own policies to achieve program objectives. Consequently, a Federalism Assessment would be necessary only if the vessel response plan rules unduly impinged on a State's authority to establish its own regulatory structure, or imposed undue costs on a State.

The FWPCA provides convincing evidence of Congress's intent that, within three miles of shore, the protection of the marine environment should be a collaborative Federal and State effort. *Chevron et al* v. *Hammond, Governor of the State of Alaska et al,* 726 F2d 483, cert. den., 471 U.S. 1140, 105 S.Ct. 2686 (9th Cir. 1984). For example, section 402 of the statute (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System, a regulatory program for regulating the discharge of pollutants into U.S. navigable waters. Minimum Federal standards apply to the discharge of certain pollutants, but the States have authority to establish and administer their own permit systems and to set standards stricter than the Federal ones. 33 U.S.C. sections 1342(b), 1370. Further, in the Declaration of Goals and Policy contained in section 101 of the FWPCA (33 U.S.C. 1251), Congress states that it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution of land and water resources.

United States courts have long recognized the rights of States to make both U.S.-flag and foreign-flag vessels conform to "reasonable, nondiscriminatory conservation and environmental protection measures * * * imposed by a State." *Ray* v. *Atlantic Richfield,* 435 U.S. 151, at 164, 98 S.Ct. 988, at 997 (1973) (citations omitted). Also, section 311(o)(3) of the FWPCA contains express nonpreemption language. Therefore, a State standard setting more stringent planning requirements for tank vessel owners and operators in the regulating State's waters is encouraged under the FWPCA and is valid as long as the State requirement does not preclude compliance with the Federal requirements. Similarly, if a State chose to establish performance requirements for response to an oil spill, the Federal vessel response plan rules would not preclude that option. The Federal vessel response plan rules preempt State rules only to the extent that State rules may make it impossible to comply with Federal requirements. *Florida Lime and Avocado Growers* v. *Paul,* 373 U.S. 132, 83 S.Ct. 1210 (1963).

Two comments asked us to make it clear that the Federal On Scene Coordinator has ultimate authority to direct a Federally-managed spill response. Because we do not address performance criteria in the event of an actual response, this issue is beyond the scope of the vessel response plan rulemaking. The subject is better raised in the context of the Coast Guard and Environmental Protection Agency efforts to revise the National Contingency Plan.

One comment expressed concern that although the Coast Guard intends the vessel response plan rules to set out planning standards, a State may make the standard a performance standard. The comment cites § 88.46.070 Revised Code of Washington (West 1992) as an example of a State statute that allows the State to compel specific performance from an owner or operator under the Federal plan. The Washington State law says that any State-approved prevention or contingency plan is legally binding on the persons submitting it, and may be enforced in the State courts. The interpretation of Washington State laws and regulations is a matter for judicial resolution and is outside the scope of these regulations.

One comment noted that its existing response plans cost approximately $3,400 per vessel, that the State of Virginia charged $3,353 for plan review, and that a State review should be unnecessary once a plan is approved at the Federal level. The Coast Guard has addressed the cost of the vessel response plan rules in its Regulatory Impact Analysis. We note, however, that Congress has encouraged a State-Federal partnership regarding oil pollution prevention and response, and that the Coast Guard has not proposed a user fee for review of Federal response plans.

Environment

The Coast Guard prepared a preliminary Environmental Assessment (EA) for requirements under 311(j) of the FWPCA, and a separate one for Prince William Sound requirements under 5005. These documents were prepared in accordance with the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Commandant Instruction M16475.1B implementing the provisions of the National Environmental Policy Act (NEPA).

The Prince William Sound EA was revised entirely when section 352 of the Department of Transportation Appropriations Act dated 6 October 1992, in effect, made section 5005 of OPA 90 inapplicable to non-TAPS-trade vessels. The original language of section

5005 created special response plan provisions applicable to all tank vessels operating in Prince William Sound, including non-TAPS vessels. The EA prepared for 311(j) requirements was amended when section 5209(b) of the Coast Guard Authorization Act of 1992 date 4 November 1992, declared offshore supply vessels and certain fishing vessels not to be "tank vessels" for purposes of implementing the vessel response plan rule. We received no comments on the EAs.

The Coast Guard has identified and studied the relevant environmental issues and alternatives, and based on its assessment, does not expect this interim final rule to result in a significant impact on the quality of the human environment. Therefore, Findings of No Significant Impact (FONSIs) have been prepared. The revised and amended EAs and the FONSIs are available in the public docket. They will be revised if necessary based on the final rule.

List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the U.S. Coast Guard amends 33 CFR part 155 as follows:

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. §§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, and 155.1010–155.1070 also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

2. Section 155.140 is added to subpart A of part 155 to read as follows:

§ 155.140 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Marine Environmental Protection Division (G–MEP), room 2100, 2100 Second Street, SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

American Society for Testing and Materials (ASTM) 1916 Race Street, Philadelphia, PA 19103.

ASTM F 631–80 (Reapproved 1985), Standard Method for Testing Full Scale Advancing Spill Removal Devices.	Appendix B.
ASTM F 715–81 (Reapproved 1986), Standard Methods of Testing Spill Control Barrier Membrane Materials.	Appendix B.
ASTM F 808–83 (1988), Standard Guide for Collecting Skimmer Performance Data in Uncontrolled Environments.	Appendix B.
ASTM F 989–86, Standard Test Methods for Spill Control Barrier Tension Members.	Appendix B.

Oil Companies International Marine Forum (OCIMF) 6th Floor, Portland House, Stag Place, London SW1E 5BH England.

Ship to Ship Transfer Guide (Petroleum), Second Edition, 1988	155.1035

3. Part 155 is amended by adding new subparts D and E to read as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

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Subpart D—Response Plans

Sec.
155.1010 Purpose.
155.1015 Applicability.
155.1020 Definitions.
155.1025 Operating restrictions and interim operating authorization.
155.1026 Qualified individual and alternate qualified individual.
155.1030 General response plan requirements.
155.1035 Resonse plan requirements for manned vessels carrying oil as a primary cargo.
155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.
155.1045 Response plan requirements for vessels carrying oil as a secondary cargo.
155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.
155.1052 Response plan development and evaluation criteria for vessels carrying group V petroleum oil as a primary cargo.
155.1054 Response plan development and evaluation criteria for vessels carrying non-petroleum oil as a primary cargo.
155.1055 Training.
155.1060 Drills.
155.1062 Inspection and maintenance of response resources.
155.1065 Plan submission, approval, and appeal procedures.
155.1070 Plan review, revision, amendment, and appeal procedures for vessels carrying oil as a primary cargo.

Subpart E—Additional Response Plan Requirements for Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

Sec.
155.1110 Purpose and applicability.
155.1115 Definitions.
155.1120 Operating restrictions and interim operating authorization.
155.1125 Additional response plan requirements.
155.1130 Requirements for prepositioned response equipment.
155.1135 Response plan development and evaluation criteria.
155.1140 Tankers contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.
155.1145 Submission and approval procedures.
155.1150 Plan revision and amendment procedures.

Subpart D—Response Plans

§ 155.1010 Purpose.

The purpose of this subpart is to establish requirements for oil spill response plans for certain vessels. The planning criteria in this subpart are intended for use in response plan development and the identification of resources necessary to respond to the oil spill scenarios prescribed during the planning process. The development of a response plan prepares the vessel owner or operator and the vessel's crew to respond to an oil spill. The specific criteria for response resources and their arrival times are not performance standards. They are planning criteria based on a set of assumptions that may not exist during an actual oil spill incident.

§ 155.1015 Applicability.

(a) Except as provided in paragraph (c) of this section, this subpart applies to each vessel that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that—

(1) Is a vessel of the United States;

(2) Operates on the navigable waters of the United States; or

(3) Transfers oil in a port or place subject to the jurisdiction of the United States.

(b) This subpart also applies to vessels which engage in oil lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States.

(c) This subpart does not apply to the following types of vessels:

(1) Public vessels and vessels deemed public vessels under 14 U.S.C. 827.

(2) Vessels that, although constructed or adapted to carry oil in bulk as cargo or cargo residue, are not storing or carrying oil in bulk as cargo or cargo residue.

(3) Dedicated response vessels when conducting response operations in a response area.

(4) Vessels of opportunity.

(5) Offshore supply vessels as defined in 46 U.S.C. 2101.

(6) Fishing or fishing tender vessels as defined in 46 U.S.C. 2101 of not more than 750 gross tons that transfer oil in bulk, without charge, to a fishing vessel owned by the same person who owns the transferring vessel.

(7) Foreign flag vessels engaged in innocent passage.

(d) Vessels of the United States covered by this subpart that are not operating within the navigable waters or the exclusive economic zone of the United States must meet all requirements of this subpart except for—

(1) Identifying and ensuring, through contract or other approved means, the availability of response resources including the shore based spill management team;

(2) Providing the geographic-specific appendices required in §§ 155.1035, 155.1040, or 155.1045, as appropriate;

(3) Identifying and designating a qualified individual and alternate qualified individual required in § 155.1026.

(e) A foreign flag vessel transiting internal waters of the United States en route to or from a Canadian port is not required to have a United States approved vessel response plan if the vessel—

(1) Is not conducting lightering or other oil transfer operations;

(2) Is not proceeding to or from a United States port or place;

(3) Submits to the United States Coast Guard a vessel response plan which has been approved by the Canadian Government under criteria which are substantially similar to those contained in this subpart; and

(4) Certifies in writing to the United States Coast Guard that—

(i) The Canadian Government has approved the plan;

(ii) The plan covers all geographic areas in the United States in which the vessel intends to transport oil in bulk as cargo; and

(iii) The identified spill response resources are capable and available to respond to a discharge of oil in United States waters.

§ 155.1020 Definitions.

Except as otherwise defined in this section, the definitions in § 155.110 apply to this subpart. For the purposes of this subpart only, the term:

Adverse weather means the weather conditions that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height, ice, temperature, weather-related visibility, and currents within the Captain of the Port (COTP) zone in which the systems or equipment are intended to function.

Average most probable discharge means a discharge of 50 barrels of oil from the vessel during oil transfer operations.

Bulk means any volume of oil carried in an integral tank of the vessel and oil transferred to or from a marine portable tank or independent tank while on board a vessel.

Captain of the Port (COTP) Zone means a zone specified in 33 CFR part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Cargo means oil that is transported to and off-loaded at a destination by a vessel. It does not include—

(1) Oil carried in integral tanks, marine portable tanks, or independent tanks for use by machinery, helicopters, and boats carried aboard the vessel, or for use by helicopters that are directly supporting the vessel's primary operations; or

(2) Oil transferred between a towing vessel and a vessel in its tow to operate installed machinery.

Contract or other approved means includes—

(1) A written contractual agreement between a vessel owner or operator and an oil spill removal organization. The agreement must identify and ensure the availability of specified personnel and equipment required under this subpart within stipulated response times in the specified geographic areas;

(2) Certification by the vessel owner or operator that specified personnel and equipment required under this subpart are owned, operated, or under the direct control of the vessel owner or operator, and are available within stipulated response times in the specified geographic areas;

(3) Active membership in a local or regional oil spill removal organization that has identified specified personnel and equipment required under this subpart that are available to respond to a discharge within stipulated response times in the specified geographic areas;

(4) A document which—

(i) Identifies the personnel, equipment, and services capable of being provided by the oil spill removal organization within stipulated response times in the specified geographic areas;

(ii) Sets out the parties' acknowledgment that the oil spill response organization intends to commit the resources in the event of a response;

(iii) Permits the Coast Guard to verify the availability of the identified response resources through tests, inspections, and drills; and

(iv) Is referenced in the response plan; or

(5) With the written consent of the oil spill removal organization, the identification of an oil spill removal organization with specified equipment and personnel which are available within stipulated response times in the specified geographic areas. This paragraph is another approved means only for—

(i) A vessel carrying oil as secondary cargo to meet the requirements under § 155.1045(j)(3);

(ii) A barge operating on rivers and canals to meet the requirements for lightering capability under §§ 155.1050(m), 155.1052(g), and 155.1054(g);

(iii) A vessel to meet the salvage and firefighting requirements in §§ 155.1050(l), 155.1052(f), and 155.1054(f); and

(iv) A vessel to meet the resource requirements in §§ 155.1052(c) and 155.1054(c).

Dedicated response vessel means a vessel whose service is limited exclusively to oil and hazardous substance spill response-related activities, including spill recovery and transport, response-related escorting, deployment of spill response equipment, supplies, and personnel, and spill response-related training, testing, drills, and research.

Exclusive economic zone means the zone contiguous to the territorial sea of United States extending to a distance up to 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Higher volume port area means an area specified in § 155.1050(h).

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes or rivers and canals.

Maximum extent practicable means the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets criteria in this subpart or in a specific plan approved by the Coast Guard.

Maximum most probable discharge means a discharge of—

(1) 2,500 barrels of oil for vessels with an oil cargo capacity equal to or greater than 25,000 barrels; or

(2) 10% of the vessel's oil cargo capacity for vessels with a capacity of less than 25,000 barrels.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area extending seaward 12 miles from the line of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter.

Non-persistent or Group I oil means a petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions—

(1) At least 50% of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(2) At least 95% of which by volume, distill at a temperature of 370 degrees C (700 degrees F).

Non-petroleum oil means oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

Ocean means the open ocean, offshore area, and nearshore area as defined in this subpart.

Offshore area means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

Oil spill removal organization means an entity that provides response resources.

On-scene coordinator or OSC means the Federal official predesignated by the Coast Guard or Environmental Protection Agency to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) as published in 40 CFR part 300.

Open ocean means the area from 38 nautical miles seaward of the outer boundary of the nearshore area, to the seaward boundary of the exclusive economic zone.

Operating in compliance with the plan means operating in compliance with the provisions of this subpart including, ensuring the availability of the response resources by contract or other approved means and conducting the necessary training and drills.

Operator or vessel operator means any person, including, but not limited to, an owner or a demise charterer, responsible for operation of a vessel. The operator of a towing vessel is not, per se, considered the operator of a vessel being towed.

Owner or vessel owner means any person holding legal or equitable title to a vessel; provided, however, that a person holding legal or equitable title to a vessel solely as security is not the owner. In a case where a Certificate of Documentation has been issued, the owner is the person or persons whose name or names appear on the vessel's Certificate of Documentation provided, however, that where a Certificate of Documentation has been issued in the name of a president or secretary of an incorporated company under 46 U.S.C. 15, such incorporated company is the owner.

Persistent oil means a petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. For the purposes of this subpart, persistent oils are further classified based on specific gravity as follows:

(1) Group II—specific gravity less than .85.

(2) Group III—specific gravity between .85 and less than .95.

(3) Group IV—specific gravity .95 to and including 1.0.

(4) Group V—specific gravity greater than 1.0.

Qualified individual alternate qualified individual means a shore-based representative of a vessel owner or operator who meets the requirements of 33 CFR 155.1026.

Response area means the area designated by the Federal On-Scene Coordinator in which spill response activities are occurring.

Response resources means the personnel, equipment, supplies, and other capability necessary to perform the response activities identified in a response plan.

Rivers and canals means bodies of water confined within the outer boundaries of the inland area, including the Intracoastal Waterways and other waterways artificially created for navigation, that have a project depth of 12 feet or less.

Spill management team means the personnel identified to staff the organizational structure identified in a response plan to manage response plan implementation.

Substantial threat of such a discharge means any incident involving a vessel that may create a significant risk of discharge of cargo oil. Such incidents include, but are not limited to groundings, standings, collisions, hull damage, fire, explosion, loss of propulsion, flooding, on-deck spills, or other similar occurrences.

Tanker means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

Vessels carrying oil as a primary cargo means all vessels except dedicated response vessels carrying oil in bulk as cargo or cargo residue that have a Certificate of Inspection issued under 46 CFR subchapter D, Certification of Compliance, or Tank Vessel Examination Letter.

Vessels carrying oil as a secondary cargo means vessels, other than vessels carrying oil as a primary cargo, carrying oil in bulk as cargo or cargo residue pursuant to a permit issued under 46 CFR subchapter D (30.01–5), 46 CFR subchapter H (70.50–30), or 46 CFR subchapter I (90.05–35), an International Oil Pollution Prevention (IOPP) or Noxious Liquid Substance (NLS) certificate required by 33 CFR 151.33 or 151.35; a dedicated response vessel carrying oil as cargo outside a response area; or any uninspected vessel that carries oil in bulk as cargo or cargo residue.

Vessel of opportunity means a vessel engaged in spill response activities that is normally and substantially involved in activities other than spill response and not a vessel carrying oil as a primary cargo.

Worst case discharge means a discharge in adverse weather conditions of a vessel's entire oil cargo.

§ 155.1025 Operating restrictions and interim operating authorization.

(a) Beginning on February 19, 1993, the owner or operator of each vessel to which this subpart applies shall submit or have submitted a response plan meeting the requirements of § 155.1030 prior to—

(1) Handling, storing, or transporting oil on the navigable waters of the United States;

(2) Transferring oil in any other port or place subject to U.S. jurisdiction; or

(3) Engaging in lightering operations in the marine environment beyond the baseline from which the territorial sea is measured, when the cargo lightered is destined for a port or place subject to the jurisdiction of the United States.

(b) Beginning on August 18, 1993, vessels subject to this subpart may not perform the functions listed in paragraph (a) of this section unless operating in compliance with a plan approved under § 155.1065.

(c) Notwithstanding the requirements of paragraph (b) of this section, a vessel may continue to handle, store, transport, transfer, or lighter oil for 2 years after the date of submission of a response plan, pending approval of that plan, if the vessel owner or operator has received written authorization for continued operations from the U.S. Coast Guard. To receive this authorization, the vessel owner or operator must certify in writing to the U.S. Coast Guard that the owner or operator has identified and ensured the availability of, through contract or other approved means, the necessary private response resources to respond, to the maximum extent practicable, to a worst case discharge or substantial threat of such a discharge from their vessel as described in §§ 155.1050, 155.1052, or 155.1054, as appropriate.

(d) With respect to paragraph (c) of this section, a vessel may not continue to handle, store, transport, transfer, or lighter oil if—

(1) The U.S. Coast Guard determines that the response resources identified in the vessel's certification statement do not meet the requirements of this subpart;

(2) The contracts or agreements cited in the vessel's certification statement are no longer valid;

(3) The vessel is not operating in compliance with the submitted plan; or

(4) The period of this authorization expires.

(e) An owner or operator of a vessel may be authorized by the applicable COTP to have that vessel make one voyage to transport or handle oil in a port not covered by the vessel's response plan. All requirements of this subpart must be met for any subsequent voyages to that port. To be authorized, the vessel owner or operator shall certify to the COTP in writing, prior to the vessel's entry into the COTP zone, that—

(1) A response plan meeting the requirements of this subpart (except for the applicable geographic specific appendix) or a shipboard oil pollution emergency plan approved by the flag state that meets the requirements of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78), is aboard the vessel;

(2) The vessel owner or operator has identified and informed the vessel master and the COTP of the designated qualified individual prior to the vessel's entry into the COTP zone; and

(3) The vessel owner or operator has identified and ensured the availability of, through contract or other approved means, the private response resources necessary to respond, to the maximum extent practicable under the criteria in §§ 155.1050, 155.1052, or 155.1054, as appropriate, to a worst case discharge or substantial threat of discharge from the vessel in the applicable COTP zone.

§ 155.1026 Qualified individual and alternate qualified individual.

(a) The response plan must identify a qualified individual and at least one alternate who meet the requirements of this section.

(b) The qualified individual and alternate—

(1) speak fluent English;

(2) Except as set out in paragraph (c) of this section, be located in the United States;

(3) Be available on a 24-hour basis;

(4) Be familiar with the implementation of the vessel response plan; and

(5) Be trained in the responsibilities of the qualified individual under the response plan.

(c) For Canadian flag vessels while operating on the Great Lakes or the Strait of Juan de Fuca and Puget Sound, WA, the qualified individual may be located in Canada if he or she meets all other requirements in paragraph (b) of this section.

(d) The owner or operator shall provide each qualified individual and alternate qualified individual identified in the plan with a document designating them as a qualified individual and specifying their full authority to—

(1) Activate and engage in contracting with oil spill removal organization(s);

(2) Act as a liaison with the predesignated Federal On-Scene Coordinator (OSC); and

(3) Obligate funds required to carry out response activities.

(e) The owner or operator of a vessel may designate an organization to fulfill the role of the qualified individual and alternate qualified individual. The organization must then identify a qualified individual and at least one alternate qualified individual who meet the requirements of this section. The vessel owner or operator is required to list in the response plan the organization, the person identified as the qualified individual, the person or persons identified as the alternate qualified individual(s).

(f) The qualified individual is not responsible for—

(1) The adequacy of response plans prepared by the owner or operator; or

(2) Contracting or obligating funds for response resources beyond the full authority contained in their designation from the owner or operator of the vessel.

(g) The liability of a qualified individual is considered to be in accordance with the provisions of 33 U.S.C. 1321(c)(4).

§ 155.1030 General response plan requirements.

(a) The plan must cover all geographic areas of the United States in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas.

(b) The plan must be written in English and, if applicable, in a language that is understood by the crew members with responsibilities under the plan.

(c) A response plan for a vessel carrying oil as a primary or a secondary cargo under §§ 155.1035 and 155.1045 and a response plan for an unmanned tank barge under § 155.1040 must be divided into the following sections:

(1) General information and introduction.

(2) Notification procedures.

(3) Shipboard spill mitigation procedures.

(4) Shore-based response activities.

(5) List of contacts.

(6) Training procedures.

(7) Drill procedures.

(8) Plan review and update procedures.

(9) Onboard notification checklist and emergency procedures (unmanned tank barges only).

(10) Geographic-specific appendix for each COTP zone in which the vessel operates.

(11) For vessels carrying oil as a primary cargo and unmanned tank barges, an appendix for vessel-specific information for each vessel covered by the plan.

(d) A vessel owner or operator with multiple vessels may submit one plan with a separate vessel-specific appendix for each vessel covered by the plan and a separate geographic-specific appendix for each COTP zone in which the vessel(s) will operate.

(e) The required contents for each section of the plan are contained in §§ 155.1035, 155.1040, and 155.1045 as applicable to the type or service of the vessel.

(f) The response plan for a dedicated response vessel operating outside of the response area must follow the same format as that for a vessel carrying oil as a secondary cargo under § 155.1045.

(g) A response plan must be divided into the sections described in paragraph (c) of this section unless the plan was submitted on or before February 18, 1993. A plan submitted on or before February 18, 1993 that is not divided into the sections described in paragraph (c) of this section must be supplemented with a cross-reference table to identify the location of the information required by this subpart.

(h) The information contained in a response plan must be consistent with the—

(1) National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300) and the Area Contingency Plan(s) (ACP) in effect on the date six months prior to the submission date of the response plan; or

(2) More recent NCP and ACP(s).

(i) Copies of the submitted and approved response plan must be available as follows:

(1) The owner or operator of all vessels, except for unmanned tank barges, shall ensure that one English language copy of the plan sections listed in paragraph (c) (1), (2), (3), (5), (10) and (11) of this section and the U.S. Coast Guard approval letter are maintained aboard the vessel. If applicable, additional copies of the required plan sections must be in the language understood by crew members with responsibilities under the plan and maintained aboard the vessel. The owner or operator of all unmanned tank barges shall ensure that one English language copy of the plan section listed in paragraph (c)(9) of this section and the U.S. Coast Guard approval letter are maintained aboard the barge.

(2) The vessel owner or operator shall maintain a current copy of the entire plan, and ensure that each person identified as a qualified individual and alternate qualified individual in the plan has a current copy of the entire plan.

(j) An owner or operator may address the provisions of Regulation 26 of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL) if the owner or operator—

(1) Develops a vessel response plan under § 155.1030 and §§ 155.1035, 155.1040, or 155.1045 of subpart D, as applicable;

(2) Expands the plan to cover discharges of all oils defined under MARPOL, including fuel oil (bunker) carried onboard. The owner or operator is not required to include these additional oils in calculating the planning volumes that are used to determine the quantity of response resources that the owner or operator must ensure through contract or other approved means;

(3) Provides the information on authorities or persons to be contacted in the event of an oil pollution incident as required by Regulation 26. This information must include—

(i) An appendix containing coastal State contacts for those coastal States the exclusive economic zone of which the vessel regularly transits. The appendix should list those agencies or officials of administrations responsible for receiving and processing pollution incident reports; and

(ii) An appendix of port contacts for those ports at which the vessel regularly calls; and

(4) Expands the plan to include the procedures and point of contact on the ship for coordinating shipboard activities with national and local authorities in combating an oil spill incident. The plan should address the need to contact the coastal State for authorization prior to undertaking mitigating actions.

§ 155.1035 Response plan requirements for manned vessels carrying oil as a primary cargo.

(a) *General information and introduction.* This section of the response plan must include—

(1) The vessel's name, country or registry, call sign, and official number. If the plan covers multiple vessels, this information must be provided for each vessel;

(2) The name, address, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) A list of the COTP zones in which the vessel intends to handle, store, or transport oil;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page to record information on plan reviews, updates or revisions.

(b) *Notification procedures.* This section of the response plan must include the following notification information:

(1) A checklist with all notifications in order of priority to be made by shipboard or shore-based personnel and the information required for those notifications. Notifications must include those required by—

(i) MARPOL 73/78 and 33 CFR part 153; and

(ii) Any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to vessel location, the persons to be notified also must be identified in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel.

(3) The procedures for notifying the qualified individual(s) designated by the vessel's owner or operator.

(4) Descriptions of the primary and, if available, secondary communications methods by which the notifications will be made.

(5) The information that is to be provided in the initial and any followup notifications required by paragraph (b)(1) of this section.

(i) The initial notification may be submitted in accordance with IMO Resolution A648(16) "General Principles for Ship Reporting Systems and Ship Reporting Requirements". It must include at least the following information:

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil onboard;

(H) Nature and detail of defects, deficiencies, and damage (e.g. grounding, collision, hull failure, etc.);

(I) Details of pollution, including estimate of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel; and

(N) Number of crew and details of injuries, if any.

(ii) After the transmission of the initial notification, as much as possible of the information essential for the protection of the marine environment as is appropriate to the incident must be reported in a follow-up report. This information must include—

(A) Additional details on the type of cargo onboard;

(B) Additional details on the condition of the vessel and ability of transfer cargo, ballast, and fuel;

(C) Additional details on the quantity, extent and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship.

(6) Identification of the person(s) to be notified of a vessel casualty potentially affecting the seaworthiness of a vessel and the information to be provided by the vessel's crew to shore-based personnel to facilitate the assessment of damage stability and stress.

(c) *Shipboard spill mitigation procedures.* This section of the response plan must include—

(1) Procedures for the crew to mitigate or prevent any discharge or a substantial threat of such discharge of oil resulting from shipboard operational activities associated with internal or external cargo transfers. Responsibilities of vessel personnel should be identified by job title. These procedures must address personnel actions in the event of a—

(i) Transfer system leak;

(ii) Tank overflow; or

(iii) Suspected cargo tank or hull leak;

(2) Procedures in the order of priority for the crew to mitigate or prevent any discharge or a substantial threat of such a discharge in the event of the following casualties or emergencies:

(i) Grounding or stranding.

(ii) Collision.

(iii) Explosion or fire, or both.

(iv) Hull failure.

(v) Excessive list.

(vi) Equipment failure (e.g. main propulsion, steering gear, etc.).

(3) Damage stability and hull stress considerations when performing shipboard mitigation measures. This section must identify and describe—

(i) Activities in which the crew is trained and qualified to execute absent shore-based support or advice; and

(ii) The information to be collected by the vessel's crew to facilitate shore-based assistance;

(4) Location of vessel plans necessary to perform salvage, stability, and hull stress assessments. A copy of these plans must be maintained ashore by either the vessel owner or operator or the vessel's recognized classification society unless the vessel has prearranged for a shore-based damage stability and residual strength calculation program with the vessel's baseline strength and stability characteristics pre-entered. The response plan must indicate the shore location and 24-hour access procedures of the calculation program or the following plans:

(i) General arrangement plan.

(ii) Midship section plan.

(iii) Lines plan or table of offsets.

(iv) Tank tables.

(v) Load line assignment.

(vi) Light ship characteristics;

(5) The procedures for both internal and ship-to-ship transfers of cargo in an emergency:

(i) The format and content of the ship-to-ship transfer procedures must be consistent with the Ship to Ship Transfer Guide (Petroleum) published jointly by the International Chamber of Shipping and the Oil Companies International Marine Forum (OCIMF).

(ii) The procedures must identify the response resources necessary to carry out the transfers, including—

(A) Fendering equipment (ship-to-ship only);

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment;

(D) Lightering and mooring masters (ship-to-ship only); and

(E) Vessel and barge brokers (ship-to-ship only).

(iii) Reference can be made to a separate oil transfer procedure and lightering plan carried aboard the vessel, provided that safety considerations are summarized in the response plan.

(iv) The location of all equipment and fittings, if any, carried aboard the vessel to perform such transfers must be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment aboard the vessel;

(7) The location, crew responsibilities, and procedures for use of shipboard equipment which may be carried to mitigate an oil discharge;

(8) The crew responsibilities, if any, for recordkeeping and sampling of spilled oil. Any requirements for sampling must address safety procedures to be followed by the crew; and

(9) The crew's responsibilities, if any, to initiate a response and to supervise shore-based response resources.

(d) *Shore-based response activities.* This section of the response plan must include the following information:

(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal OSC and notification of the oil spill removal organization(s) identified in the plan.

(2) If applicable, procedures for transferring responsibility for direction of response activities from vessel personnel to the shore-based spill management team.

(3) The procedures for coordinating the actions of the vessel owner or operator or qualified individual with the predesignated Federal On-Scene Coordinator responsible for overseeing or directing those actions.

(4) The organizational structure that will be used to manage the response actions, including—

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill response operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance.

(5) The responsibilities and duties of each oil spill management team member within the organizational structure identified in paragraph (d)(4) of this section.

(e) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plans or, if more appropriate, in a geographic-specific appendix and referenced in this section of the plan:

(1) Vessel owner or operator.

(2) Qualified individual and alternate qualified individual for the vessel's area of operation.

(3) Applicable insurance representatives or surveyors for the vessel's area of operation.

(4) The vessel's local agent(s) for the vessel's area of operation.

(5) Person(s) to notify for activation of the oil spill removal organization(s) and the spill management team for the three spill scenarios identified in paragraph (i)(5) of this section for the vessel's area of operation.

(6) Person(s) to obtain the equipment listed in paragraph (c)(5)(ii) of this section.

(f) *Training procedures.* This section of the response plan must address the training procedures and programs of the vessel owner or operator to meet the requirements in § 155.1055.

(g) *Drill procedures.* This section of the response plan must address the drill program to be carried out by the vessel owner or operator to meet the requirements in § 155.1060.

(h) *Plan review and update procedures.* This section of the response plan must address—

(1) The procedures to be followed by the vessel owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(i) *Geographic-specific appendices for each COTP zone in which a vessel operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendices must include the following information:

(1) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the vessel intends to handle, store, or transport oil within the applicable COTP zone.

(2) The volume and type of oil on which the required level of response resources are calculated if different from that identified in § 155.1035(j)(3).

(3) Required Federal or State notifications applicable to the geographic areas in which a vessel operates.

(4) Identification of the qualified individuals.

(5) Identification of the oil spill removal organization(s) and the spill management team that are identified and ensured available, through contract or other approved means, to respond to the following spill scenarios:

(i) Average most probable discharge.

(ii) Maximum most probable discharge.

(iii) Worst case discharge.

(6) The organization(s) identified to meet the requirements of paragraph (i)(5) of this section must be capable of providing the equipment and supplies necessary to meet the requirements of §§ 155.1050, 155.1052, and 155.1054, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization(s) and spill management team identified for the first 7 days of the response.

(7) The appendix must list the response resources and related information required under §§ 155.1050, 155.1052, 155.1054, and 155.1125 and appendix B of this part, as appropriate.

(8) If an oil spill removal organization(s) has been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel, the appendix may identify only the organization and their applicable classification and not the information required in paragraph (i)(7) of this section.

(9) The appendix must also separately list the companies identified to provide the salvage, vessel firefighting, lightering, and, if applicable, dispersant capabilities required in this subpart.

(j) *Appendices for vessel-specific information.* This section of the response plan must include for each vessel covered by the plan the following information:

(1) List of the vessel's principal characteristics.

(2) Capacities of all cargo, fuel, lube oil, ballast, and fresh water tanks.

(3) The total volume and type(s) of oil cargo that would be involved in the—

(i) Maximum most probable discharge; and

(ii) Worst case discharge.

(4) Diagrams showing location of all tanks.

(5) General arrangement plan (can be maintained separately aboard the vessel providing the response plan identifies the location).

(6) Midships section plan (can be maintained separately aboard the vessel providing the response plan identifies the location).

(7) Cargo and fuel piping diagrams and pumping plan, as applicable (can be maintained separately aboard the vessel providing the response plan identifies the location).

(8) Damage stability data (can be maintained separately providing the response plan identifies the location).

(9) Location of cargo and fuel stowage plan for vessel (normally maintained separately aboard the vessel).

(10) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo aboard the vessel. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent will meet this requirement and can be maintained separately.

§ 155.1040 Response plan requirements for unmanned tank barges carrying oil as a primary cargo.

(a) *Onboard notification checklist and emergency procedures.* This portion of the response plan must be maintained in the documentation container aboard the unmanned barge. The complete response plan, including the additional sections described in paragraphs (b) through (k) of this section may be maintained elsewhere. The owner or operator of an unmanned tank barge subject to this section shall provide the personnel of the towing vessel, fleeting area, or facility that the barge may be moored at with the information required by this paragraph (a) and the responsibilities that the plan indicates will be carried out by these personnel. The onboard notification checklist and emergency procedures must include—

(1) The name, address, and procedure for contacting the vessel's owner or operator on a 24-hour basis;

(2) The name and procedures for contacting a primary qualified individual and at least one alternate on a 24-hour basis;

(3) The toll-free number of the National Response Center;

(4) The list of information to be provided in the notification by the reporting personnel; and

(5) A statement of responsibilities of and actions to be taken by reporting personnel after an oil discharge or substantial threat of such discharge.

(b) *General information and introduction.* This section of the response plan must include—

(1) A list of tank barges covered by the plan and their official numbers;

(2) The name, address, and procedures for contacting the barge's owner or operator on a 24-hour basis;

(3) A list of the COTP zones in which the tank barges covered by the plan intend to handle, store, or transport oil;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page used to record information on plan reviews, updates or revisions.

(c) *Notification procedures.* This section of the response plan must include the following notification information:

(1) A checklist with all notifications in the order of priority and the information required for those notifications to be made by the—

(i) Towing vessel;

(ii) Vessel owner or operator; or

(iii) Qualified individual.

The checklist must include notifications required by 33 CFR part 153 and any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of a discharge of oil. If the notifications vary due to the location of the barge, the persons to be notified also must be identified in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by the towing vessel; and

(ii) The individual(s) or organization(s) to be notified by the barge owner or operator.

(3) The procedures for notifying the qualified individuals designated by the barge's owner or operator.

(4) Identification of the primary and, if available, secondary communications methods by which the notifications will be made.

(5) The information that is to be provided in the initial and any follow-up notifications required by paragraph (c)(1) of this section.

(i) The initial notification information must include at least the following information:

(A) Towing vessel name (if applicable);

(B) Tank barge name, country of registry, and official number;

(C) Date and time of the incident;

(D) Location of the incident;

(E) Course, speed, and intended track of towing vessel (if applicable);

(F) Radio station(s) frequencies guarded by towing vessel (if applicable);

(G) Date and time of next report;

(H) Type and quantity of oil onboard;

(I) Nature and details of defects, deficiencies, and damage (e.g., grounding, collision, hull failure etc.);

(J) Details of pollution, including estimate of oil discharged or threat of discharge;

(K) Weather and sea conditions on scene;

(L) Barge size and type;

(M) Actions taken or planned by persons on scene;

(N) Current condition of the barge; and

(O) Details of injuries, if any.

(ii) After the transmission of the initial notification, as much as possible of the information essential for the protection of the marine environment as is appropriate to the incident must be reported in a follow-up report. This information must include:

(A) Additional details on the type of cargo onboard;

(B) Additional details on the condition of the barge and ability to transfer cargo, ballast, and fuel;

(C) Additional details on the quantity, extent and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship.

(d) *Shipboard spill mitigation procedures.* This section of the response plan must include—

(1) Procedures to be followed by the tankerman, as defined in 46 CFR 35.35–1, to mitigate or prevent any discharge or a substantial threat of such a discharge of oil resulting from operational activities and casualties. These procedures must address personnel actions in the event of a—

(i) Transfer system leak;

(ii) Tank overflow; or

(iii) Suspected cargo tank or hull leak;

(2) Procedures in the order of priority for the towing vessel or barge owner or operator to mitigate or prevent any discharge or a substantial threat of such a discharge of oil in the event of the following casualties or emergencies:

(i) Grounding or stranding.

(ii) Collision.

(iii) Explosion or fire, or both.

(iv) Hull failure.

(v) Excessive list.

(3) Damage stability, if applicable, and hull stress considerations when performing onboard mitigation measures. This section must identify and describe—

(i) Activities in which the towing vessel crew or tankerman is trained and qualified to execute absent shore-based support or advice;

(ii) The individuals who shall be notified of a casualty potentially affecting the seaworthiness of the barge; and

(iii) The information that must be provided by the towing vessel to facilitate the assessment of damage stability and stress;

(4) Location of barge plans necessary to perform salvage, stability, and hull stress assessments. A copy of these barge plans must be maintained ashore by either the barge owner or operator or the vessel's recognized classification society. The response plan must indicate the shore location and 24-hour access procedures of the following plans:

(i) General arrangement plan.

(ii) Midship section plan.

(iii) Lines plan or table of offsets, as available.

(iv) Tank tables;

(5) The procedures for both internal and ship-to-ship transfers of cargo in an emergency;

(i) The procedures must identify the response resources necessary to carry out the transfers, including—

(A) Fendering equipment (ship-to-ship only);

(B) Transfer hoses and connection equipment;

(C) Portable pumps and ancillary equipment; and

(D) Lightering vessels (ship-to-ship only).

(ii) Reference can be made to separate oil transfer procedures or a lightering plan provided that safety considerations are summarized in the response plan.

(iii) The location of all equipment and fittings, if any, to perform such transfers must be identified;

(6) The procedures and arrangements for emergency towing, including the rigging and operation of any emergency towing equipment aboard the barge;

(7) The location and procedures for use of equipment stowed aboard either the barge or towing vessel to mitigate an oil discharge; and

(8) The responsibilities of the towing vessel crew and facility or fleeting area personnel, if any, to initiate a response and supervise shore-based response resources.

(e) *Shore-based response activities.* This section of the response plan must include the following information:

(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal On-Scene Coordinator (OSC) and notification of the oil spill removal organization(s) identified in the plan.

(2) The procedures for coordinating the actions of the barge owner or operator or qualified individual with the action of the predesignated Federal OSC responsible for overseeing or directing those actions.

(3) The organizational structure that will manage the barge owner or operator's response actions including—

(i) Command and control;

(ii) Public information;

(iii) Safety;

(iv) Liaison with government agencies;

(v) Spill response operations;

(vi) Planning;

(vii) Logistics support; and

(viii) Finance.

(4) The responsibilities and duties of each oil spill management team member within the organizational structure identified in paragraph (e)(3) of this section.

(f) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals and organizations must be included in this section of the response plan or, if more appropriate, in a geographic-specific appendix and referenced in this section of the plan:

(1) Barge owner or operator.

(2) Qualified individual and alternate qualified individual for the tank barge's area of operation.

(3) Applicable insurance representatives or surveyors for the barge's area(s) of operation.

(4) Person(s) to notify for activation of the response resources identified in paragraph (j)(5) of this section for the barge's area(s) of operation.

(5) Person(s) to obtain the equipment listed in paragraph (d)(5)(ii) of this section.

(g) *Training procedures.* This section of the response plan must address the training procedures and programs of the barge owner or operator to meet the requirements in § 155.1055.

(h) *Drill procedures.* This section of the response plan must address the drill program carried out by the barge owner or operator to meet the requirements in § 155.1060.

(i) *Plan review and update procedures.* This section of the response plan must address—

(1) The procedures to be followed by the barge owner or operator to meet the requirements of § 155.1070; and

(2) The procedures to be followed for any post-discharge review of the plan to evaluate and validate its effectiveness.

(j) *Geographic-specific appendices for each COTP zone in which a tank barge operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendices must include the following information:

(1) A list of the geographic areas (port areas, rivers and canals, Great Lakes, inland, nearshore, offshore, and open ocean areas) in which the barge intends to handle, store, or transport oil within the applicable COTP zone.

(2) The volume and type of oil on which the required level of response resources are calculated if different from that identified in § 155.1040(k)(2).

(3) Required Federal or State notifications applicable to the geographic areas in which the barge operates.

(4) Identification of the qualified individuals.

(5) Identification of the oil spill removal organization(s) and spill management team that are identified and ensured available, through contract or other approved means, to provide the response resources necessary to respond to the following spill scenarios;

(i) An average most probable discharge.

(ii) A maximum most probable discharge.

(iii) A worst case discharge to the maximum extent practicable.

(6) The organization(s) identified to meet the provisions of paragraph (j)(5) of this section must be capable of providing the equipment and supplies necessary to meet the provisions of §§ 155.1050, 155.1052, and 155.1054 of this subpart, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization(s) and spill management team identified for the first seven days of the response.

(7) The appendix must list the response resources and related information required under §§ 155.1050, 155.1052, 155.1054 and appendix B of this part, as appropriate.

(8) If the oil spill removal organization(s) providing the necessary response resources has been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel, the appendix may identify only the organization and their applicable classification and not the information required in paragraph (j)(7) of this section.

(9) The appendix must also separately list the companies identified to provide the salvage, barge firefighting, lightering, and, if applicable, dispersant capabilities required in this subpart.

(k) *Appendices for barge-specific information.* Because many of the tank barges covered by a response plan may be of the same design, this information does not need to be repeated provided the plan identifies the tank barges to which the same information would apply. The information must be part of the response plan unless specifically noted. This section of the plan must include for each barge covered by the plan the following information:

(1) Capacities of all cargo, fuel, lube oil, and ballast tanks.

(2) The total volumes and types(s) of oil cargo that would be involved in the—

(i) Maximum most probable discharge; and

(ii) Worst case discharge.

(3) Diagrams showing location of all tanks aboard the barge.

(4) General arrangement plan (can be maintained separately providing that the location is identified).

(5) Midships section plan (can be maintained separately providing that the location is identified).

(6) The organization(s) identified to meet the provisions of paragraph (j)(5) of this section must be capable of providing the equipment and supplies necessary to meet the provisions of §§ 155.1050, 155.1052, and 155.1054 of this subpart, as appropriate, and sources of trained personnel to continue operation of the equipment and staff the oil spill removal organization(s) and spill management team identified for the first seven days of the response.

(7) Damage stability data, if applicable.

(8) Location of cargo and fuel stowage plan for barge(s) (normally maintained separately).

(9) Location of information on the name, description, physical and chemical characteristics, health and safety hazards, and spill and firefighting procedures for the oil cargo aboard the barge. A material safety data sheet meeting the requirements of 29 CFR 1910.1200, cargo information required by 33 CFR 154.310, or equivalent will meet this requirement and can be maintained separately.

§ 155.1045 Response plan requirements for vessels carrying oil as a secondary cargo.

(a) The vessel owner or operator must develop their plan based on the total volume of oil carried in bulk as cargo. For vessels that transfer a portion of their fuel as cargo, 25% of the fuel capacity of the vessel plus the capacity of any oil cargo tank(s) will be assumed to be the cargo volume for determining applicable response plan requirements unless the vessel owner or operator indicates otherwise. A vessel owner or operator can use a volume less than 25% if he or she submits historical data with the plan that substantiates the transfer of a lower percentage of its fuel capacity between refuelings.

(b) *General information and introduction.* This section of the response plan must include—

(1) The vessel's name, country of registry, call sign, and official number. If the plan covers multiple vessels, this information must be provided for each vessel;

(2) The name, address, and procedures for contacting the vessel's owner or operator on a 24-hour basis;

(3) Identification of the geographic areas covered by the plan. The plan must identify the COTP zones that it covers. The plan must cover all COTP zones in which the vessel intends to handle, store, or transport oil, including port areas and offshore transit areas within the exclusive economic zone. A geographic-specific appendix must be included for each COTP zone identified;

(4) A table of contents or index of sufficient detail to permit personnel with responsibilities under the response plan to locate the specific sections of the plan; and

(5) A record of change(s) page used to record information on plan updates or revisions.

(c) *Notification procedures.* This section of the response plan must include the following notification information:

(1) A checklist with all notifications in the order of priority to be made by shipboard or shore-based personnel and the information required for those notifications. Notifications must include those required by—

(i) MARPOL 73/78 and 33 CFR part 153; and

(ii) Any applicable State.

(2) Identification of the person(s) to be notified of a discharge or substantial threat of discharge of oil. If notifications vary due to vessel location, the person(s) to be notified also must be identified in a geographic-specific appendix. This section must separately identify—

(i) The individual(s) or organization(s) to be notified by shipboard personnel; and

(ii) The individual(s) or organization(s) to be notified by shore-based personnel.

(3) The procedures for notifying the qualified individual and alternate qualified individual.

(4) Descriptions of the primary and, if available, secondary communication methods by which the notifications will be made.

(5) The information that is to be provided in the initial and any follow-up notifications required by paragraph (c)(1) of this section.

(i) The initial notification may be submitted in accordance with IMO Resolution A648(16) "General Principles for Ship Reporting Systems and Ship Reporting Requirements". It must include at least the following information:

(A) Vessel name, country of registry, call sign, and official number (if any);

(B) Date and time of the incident;

(C) Location of the incident;

(D) Course, speed, and intended track of vessel;

(E) Radio station(s) and frequencies guarded;

(F) Date and time of next report;

(G) Type and quantity of oil onboard;

(H) Nature and detail of defects, deficiencies, and damage (e.g. grounding, collision, hull failure etc.);

(I) Details of pollution, including estimate of oil discharged or threat of discharge;

(J) Weather and sea conditions on scene;

(K) Ship size and type;

(L) Actions taken or planned by persons on scene;

(M) Current conditions of the vessel; and

(N) Number of crew and details of injuries, if any.

(ii) After the transmission of the initial notification, as much as possible of the information essential for the protection of the marine environment as is appropriate to the incident must be reported in a follow-up report. This information must include:

(A) Additional details on the type of cargo onboard;

(B) Additional details on the condition of the vessel and ability to transfer cargo, ballast, and fuel;

(C) Additional details on the quantity, extent and movement of the pollution and whether the discharge is continuing;

(D) Any changes in the on-scene weather or sea conditions; and

(E) Actions being taken with regard to the discharge and the movement of the ship.

(d) *Shipboard spill mitigation procedures.* This section of the response plan must identify the vessel's total volumes of oil carried in bulk as cargo and meet the applicable requirements of this paragraph (d).

(1) For vessels carrying 100 barrels or less of oil in bulk as cargo, the plan must include a basic emergency action checklist for vessel personnel including notification and actions to be taken to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel.

(2) For vessels carrying over 100, but less than 1,000 barrels of oil in bulk as cargo, the plan must include—

(i) General information on actions to be taken by vessel personnel to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel due to operational activities or casualties;

(ii) General information on damage control procedures to be followed by vessel personnel;

(iii) General information on procedures for internal or external transfer of oil in bulk as cargo in an emergency; and

(iv) Procedures for use of any equipment carried aboard the vessel for spill mitigation.

(3) For vessels carrying from 1,000 to 5,000 barrels of oil in bulk as cargo, the plan must include—

(i) Detailed information on actions to be taken by vessel personnel to prevent or mitigate any discharge or substantial threat of such a discharge of oil from the vessel due to operational activities or casualties;

(ii) Detailed information on damage control procedures to be followed by vessel personnel;

(iii) Detailed procedures for internal or external transfer of oil in bulk as cargo in an emergency; and

(iv) Procedures for use of any equipment carried aboard the vessel for spill mitigation.

(4) For vessels carrying over 5,000 barrels of oil as a secondary cargo, the plan must provide the information required by § 155.1035(c) for shipboard spill mitigation procedures.

(5) For all vessels, the plan must include responsibilities and actions to be taken by vessel personnel, if any, to initiate a response and supervise shore-based response resources.

(e) *Shore-based response activities.* This section of the response plan must include the following information:

(1) The qualified individual's responsibilities and authority, including immediate communication with the Federal OSC and notification of the oil spill removal organization(s) identified in the plan.

(2) The procedures for coordinating the actions of the vessel owner or operator with the actions of the predesignated Federal OSC responsible for overseeing or directing those actions.

(3) The spill management team to be used by the vessel owner or operator to manage response plan implementation.

(f) *List of contacts.* The name, location, and 24-hour contact information for the following key individuals or organizations must be included in this section of the response plan or, if more appropriate, in a geographic-specific appendix and referenced in this section of the plan:

(1) Vessel owner or operator, and, if applicable, charterer.

(2) Qualified individual and alternate qualified individual for the vessel's area of operation.

(3) Vessel's local agent(s), if applicable, for the vessel's area of operation.

(4) Applicable insurance representatives or surveyors for the vessel's area of operation.

(5) Person(s) to notify for activation of the oil spill removal organization(s) identified in paragraph (j)(3) of this section for the vessel's area of operation.

(g) *Training procedures.* This section of the response plan must address the training procedures and programs of the vessel owner or operator. The vessel owner or operator shall ensure that—

(1) All personnel with responsibilities under the plan receive training in their assignments and refresher training as necessary, and participate in drills required under paragraph (h) of this section. Documented work experience can be used instead of training; and

(2) Records of this training are maintained aboard the vessel, at the U.S. location of the spill management team, or with the qualified individual. The plan must specify where the records are located.

(h) *Drill procedures.* This section of the response plan must address the drill program carried out by the vessel owner or operator to evaluate the ability of vessel and shore-based personnel to perform their identified functions in the plan. The required drill frequency for each category of vessel is as follows:

(1) For vessels carrying 100 barrels or less of oil as cargo—

(i) Onboard spill mitigation procedures and qualified individual notification drills must be conducted annually; and

(ii) Shore-based oil spill removal organization drills must be conducted biennially.

(2) For vessels carrying over 100 barrels and up to 5,000 barrels of oil in bulk as cargo—

(i) Onboard emergency procedures and qualified individual notification drills must be conducted quarterly; and

(ii) Shore-based oil spill removal organization drills must be conducted annually.

(3) Vessels carrying over 5,000 barrels of oil in bulk as cargo mut meet the drill requirements of § 155.1060.

(i) *Plan review, update, and appeal procedures.*

(1) The owner or operator of a vessel covered by this section shall resubmit the plan to the U.S. Coast Guard for approval—

(i) Whenever there is a significant change in the vessel's configuration affecting the cargo capacity or layout of the vessel;

(ii) Six months before the end of the Coast Guard approval period identified in § 155.1065(b); and

(iii) Whenever there is a change in the owner or operator of the vessel, if that owner or operator provided the certifying statement required by § 155.1065(a). If this occurs, a new statement certifying that the plan continues to meet the applicable requirements of subparts D and E of this part must be submitted.

(2) The owner or operator of a vessel covered by this section shall notify the U.S. Coast Guard and other plan holders, and provide updated information as appropriate when significant changes occur in any of the following:

(i) Cargo systems.

(ii) Operating area.

(iii) Qualified individuals.

(iv) Identified response resources.

(v) Emergency response procedure.

(vi) Nature of vessel's operations.

(3) The U.S. Coast Guard may require a vessel owner or operator to revise a response plan at any time if it is determined that the response plan does not meet the requirements of this subpart. The U.S. Coast Guard will notify the vessel owner or operator in writing of any deficiencies.

(i) Deficiencies must be corrected within the time period specified in the written notice provided by the Coast Guard. If deficiencies are not corrected within the specified time period, the plan will be declared invalid and any further storage, transfer, handling, transporting or lightering of oil in areas subject to the jurisdiction of the United States will be in violation of section 311(j)(5)(E) of the FWPCA.

(ii) A vessel owner or operator must advise the U.S. Coast Guard office that provided the initial notice when a deficiency has been corrected.

(4) A vessel owner or operator who disagrees with a deficiency determination may submit a request for reconsideration within the time period required for compliance or within 7 days from the date of receipt of the U.S. Coast Guard notice, whichever is less. After considering all relevant material presented, the U.S. Coast Guard will notify the vessel owner or operator of the final decision.

(i) Unless the vessel owner or operator petitions for a review of the U.S. Coast Guard decision, the vessel's owner or operator must correct the response plan deficiencies within the period specified in the Coast Guard's final determination.

(ii) If the vessel owner or operator petitions the District Commander, the effective date of the U.S. Coast Guard notice may be delayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing, via the U.S. Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

(j) *Geographic-specific appendices for each COTP zone in which a vessel operates.* A geographic-specific appendix must be included for each COTP zone identified. The appendix must include the following information:

(1) Required Federal or State notifications applicable to the geographic areas in which a vessel operates.

(2) Identification of the qualified individuals.

(3) A list of the oil spill removal organization(s) available to respond to the vessel's worst case oil discharge in each COTP zone in which a vessel operates. The oil spill removal organization(s) identified must be capable of commencing oil spill containment and on-water recovery within the response times listed for tier 1 in § 155.1050(g) of this subpart; providing temporary storage of recovered oil; and conducting shoreline protection and cleanup operations. An oil spill removal organization may not be identified in the plan unless the organization has provided written consent to being identified in the plan as an available resource.

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

(a) The following criteria must be used to evaluate the operability of response resources identified in the response plan for the specified operating environment:

(1) Table 1 of appendix B of this part.

(i) The criteria in table 1 of appendix B of this part are to be used solely for identification of appropriate equipment in a response plan.

(ii) These criteria reflect conditions used for planning purposes to select mechanical response equipment and are not conditions that would limit response actions or affect normal vessel operations.

(2) Limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(b) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be identified in the applicable Area Contingency Plan. Reclassifications may be to—

(1) A more stringent operating environment if the prevailing wave conditions exceed the significant wave height criteria during more than 35% of the year; or

(2) A less stringent operating environment if the prevailing wave conditions do not exceed the significant wave height criteria for the less stringent operating environment during more than 35% of the year.

(c) Response equipment must—

(1) Meet or exceed the criteria listed in table 1 of appendix B of this part;

(2) Be capable of functioning in the applicable operating environment; and

(3) Be appropriate for the petroleum oil carried.

(d) The owner or operator of a vessel that carries groups I through IV petroleum oil as a primary cargo shall identify in the response plan and ensure the availability of, through contract or other approved means, the response resources that will respond to the vessel's average most probable discharge.

(1) For a vessel that carries groups I through IV petroleum oil as its primary cargo, the response resources must include—

(i) Containment boom in a quantity equal to twice the length of the largest vessel involved in the transfer and capable of being deployed at the site of oil transfer operations within one hour of detection of a spill; and

(ii) Oil recovery devices and recovered oil storage capacity capable of being at the transfer area within two hours of the detection of a spill during transfer operations.

(2) For locations of multiple vessel transfer operations, a vessel may identify the same equipment as identified by other vessels, provided that each vessel has ensured access to the equipment through contract or other approved means.

(3) The owner or operator of a vessel conducting transfer operations at a facility required to submit a response plan under 33 CFR 154.1017 is not required to identify and ensure the availability of the response resources

required in paragraph (d)(1) of this section.

(e) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to a discharge up to the vessel's maximum most probable discharge volume.

(1) These resources must be positioned such that they can arrive at the scene of a discharge within—

(i) 12 hours of the discovery of a discharge in higher volume port areas and the Great Lakes;

(ii) 24 hours of the discovery of a discharge in all rivers and canals, inland, nearshore and offshore areas; and

(iii) 24 hours of the discovery of a discharge plus travel time from shore for open ocean areas.

(2) The necessary response resources include sufficient containment boom, oil recovery devices, and storage capacity for any recovery of up to the maximum most probable discharge planning volume.

(3) The response plan must identify the storage location, make, model, and effective daily recovery capacity of each oil recovery device that is identified for plan credit.

(4) The response resources identified for responding to a maximum most probable discharge must be positioned to be capable of meeting the planned arrival times in this paragraph (e). The COTP with jurisdiction over the area in which the vessel is operating must be notified whenever the identified response resources are not capable of meeting the planned arrival times.

(f) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the response resources necessary to respond to the worst case discharge volume of the oil cargo to the maximum extent practicable.

(1) The location of these resources must be suitable to meet the response times identified for the applicable geographic area(s) of operation and response tier.

(2) The response resources must be appropriate for—

(i) The capacity of the vessel;

(ii) Group(s) of petroleum oil carried as cargo; and

(iii) The geographic area(s) of vessel operation.

(3) The resources must include sufficient boom, oil recovery devices, and storage capacity to recover the planning volumes.

(4) The response plan must identify the storage location, make, model, and effective daily recovery capacity of each oil recovery device that is identified for plan credit.

(5) The guidelines in appendix B to part 155 of this chapter must be used for calculating the quantity of response resources required to respond at each tier to the worst case discharge to the maximum extent practicable.

(6) When determining response resources necessary to meet the requirements of paragraph (f), a portion of those resources must be capable of use in close-to-shore response activities in shallow water. The following percentages of the response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Open ocean—none.

(ii) Offshore—10 percent.

(iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

(g) Response equipment identified to respond to a worst case discharge must be capable of arriving on scene within the times specified in paragraph (g) for the applicable response tier in a higher volume port area, Great Lakes, and in other areas. Response times for these tiers from the time of discovery of a discharge are:

	Tier 1	Tier 2	Tier 3
Higher volume port area (except tankers in Prince William Sound covered by § 155.1135).	12 hrs	36 hrs	60 hrs.
Great lakes	18 hrs	42 hrs	66 hrs.
All other rivers & canals, inland, nearshore, and offshore areas.	24 hrs	48 hrs	72 hrs.
Open Ocean (plus travel time from shore).	24 hrs+	48 hrs+	72 hrs+

(h) The following areas are designated as higher volume port areas. These areas include any water area within 50 nautical miles seaward of the entrance(s) to the specified port:

(1) Boston, MA.

(2) New York, NY.

(3) Delaware Bay and River to Philadelphia, PA.

(4) St. Croix, VI.

(5) Pascagoula, MS.

(6) Mississippi River from Southwest Pass, LA to Baton Rouge, LA. Note: Vessels destined for, departing from, or offloading at the Louisiana Offshore Oil Port are not considered to be operating in this higher volume port area.

(7) Lake Charles, LA.

(8) Sabine-Neches River, TX.

(9) Galveston Bay and Houston Ship Channel, TX.

(10) Corpus Christi, TX.

(11) Los Angeles/Long Beach Harbor, CA.

(12) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA.

(13) Strait of Juan De Fuca at Port Angeles, WA, to and including Puget Sound, WA.

(14) Prince William Sound, AK.

(i) For the purposes of arranging for response resources through contract or other approved means, response equipment identified for tier 1 plan credit must be capable of being mobilized and en route to the scene of a discharge within two hours of notification. The notification procedures identified in the plan must provide for notification and authorization for mobilization of identified tier 1 response resources—

(1) Either directly or through the qualified individual; and

(2) Within 30 minutes of a discovery of a discharge or substantial threat of discharge.

(j) Response resources identified for tier 2 and tier 3 plan credit must be capable of arriving on scene within the time listed for the applicable tier.

(k) The response plan for a vessel carrying group II or III persistent petroleum oils as a primary cargo that operates in areas with year-round pre-approval for dispersant use may request a credit against up to 25 percent of the on-water oil recovery capability for each worst case discharge tier necessary to meet the requirements of this subpart in 1993. To receive this credit, the vessel owner or operator shall identify in the response plan and ensure, through contract or other approved means, the availability of necessary resources to apply dispersants appropriate for the type of oil carried and to monitor the effectiveness of the dispersants. The extent of the credit will be based on the volumes of dispersant available to sustain operations at manufacturers' recommended dosage rates. Resources identified for plan credit must be capable of being on scene within 12 hours of discovery of a discharge.

Note: Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the National Contingency Plan and the applicable Area Contingency Plan.

(l)(1) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, the following resources:

(i) A salvage company with expertise and equipment.

(ii) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel will operate.

(2) Vessel owners or operators must identify intended sources of the resources required under paragraph (l)(1) of this section capable of being deployed to the areas that the vessel will operate in. Provider(s) of these services may not be listed in the plan unless they have provided written consent to be listed in the plan as an available resource.

(3) To meet this requirement in a response plan submitted for reapproval on or after February 18, 1998, the identified resources must be capable of being deployed to the port nearest to the area that the vessel operates within 24 hours of notification.

(m) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, certain response resources required by § 155.1035(c)(5)(ii) or § 155.1040(d)(5)(i), as appropriate.

(1) These resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation.

(2) These resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland (except tankers in Prince William Sound covered by (§ 155.1130), nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters and rivers and canals—18 hours.

(iii) Open ocean waters—36 hours.

(3) For barges operating on rivers and canals as defined in this subpart, the requirements of this paragraph (m) may be met by listing resources capable of meeting the response times in paragraph (m)(2) of this section. Such resources may not be identified in a plan unless the response organization has provided written consent to be listed in a plan as an available resource.

(n) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo must identify in the response plan and ensure the availability of, through contract or other approved means, response resources necessary to perform shoreline protection operations.

(1) The response resources must include the quantities of boom listed in table 2 of appendix B of this part, based on the areas in which the vessel operates.

(2) Vessels that intend to offload their cargo at the Louisiana Offshore Oil Port (LOOP) marine terminal are not required to comply with the requirements of this paragraph (m) when they are within the offshore area and under one of the following conditions:

(i) Approaching or departing the LOOP marine terminal within the LOOP Shipping Safety Fairway, as defined in 33 CFR 166.200.

(ii) Moored at the LOOP marine terminal for the purposes of cargo transfer operations or anchored in the designated anchorage area awaiting discharge.

(o) The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo that operates in offshore, nearshore, inland, or rivers and canal areas, the response plan must identify and ensure the availability of, through contract or other approved means, an oil spill removal organization capable of effecting a shoreline cleanup operation commensurate with the quantity of emulsified petroleum oil to be planned for in shoreline cleanup operations.

(1) The shoreline cleanup resources required must be determined as described in appendix B of this part.

(2) Vessels that intend to offload their cargo at the Louisiana Offshore Oil Port (LOOP) marine terminal are not required to comply with the requirements of this paragraph (o) when they are within the offshore area and under one of the following conditions:

(i) Approaching or departing the LOOP marine terminal within the LOOP Shipping Safety Fairway as defined in 33 CFR 166.200.

(ii) Moored at the LOOP marine terminal for the purposes of cargo transfer operations or anchored in the designated anchorage area awaiting discharge.

(p) Appendix B of this part sets out caps that recognize the practical and technical limits of response capabilities that an individual vessel owner or operator can contract for in advance. Table 6 in appendix B lists the contracting caps that will apply on February 18, 1993 and February 18, 1998. Caps for 2003 will be developed during a subsequent review process. The owner or operator of a vessel carrying groups I through IV petroleum oil as a primary cargo, whose required daily recovery capacity exceeds the applicable contracting caps in Table 6, shall identify sources of additional equipment equal to twice the cap listed in tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The equipment so identified, must be capable of arriving on scene no later than the tier 3 response times contained in § 155.1050(g). A response plan must identify the specific sources, locations, and quantities of this additional equipment. No contract is required.

(q) The Coast Guard will initiate a review of cap increases and other requirements contained within this subpart that are scheduled to be phased in over time. Any changes in the requirements of this section will occur through a public notice and comment process.

(1) During this review, the Coast Guard will determine if the scheduled increase remains practicable, and will also establish a specific cap for 2003. The review shall include but is not limited to:

(i) Increases in skimming efficiencies and design technology.

(ii) Oil tracking technology.

(iii) High rate response techniques.

(iv) Other applicable response technologies.

(v) Increases in the availability of private response resources.

(2) All scheduled future requirements will take effect unless the Coast Guard determines that they are not practicable. Scheduled changes will be effective on February 18, 1998 and 2003 unless the review of the additional requirements have not been completed by the Coast Guard. If this occurs, the changes will not be effective until 90 days after publication of a **Federal Register** Notice with the results of the review.

§ 155.1052 Response plan development and evaluation criteria for vessels carrying group V petroleum oil as a primary cargo.

(a) Owners and operators of vessels that carry group V petroleum oil as a primary cargo must provide information in their plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of group V petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

(b) An owner or operator of a vessel carrying group V petroleum oil as a primary cargo must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the vessel operates using the criteria in table 1 of appendix B of this part. When evaluating the operability of equipment, the vessel owner or operator must consider limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a vessel carrying group V petroleum oil as a primary cargo must identify in the response plan and ensure, through contract or other approved means, the availability of required equipment, including—

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of being deployed within 24 hours of discovery of a discharge to the port nearest the area where the vessel is operating. An oil spill removal organization may not be listed in the plan unless the oil spill removal organization has provided written consent to be listed in the plan as an available resource.

(e) The owner or operator of a vessel carrying group V petroleum oil as a primary cargo shall identify in the response plan and ensure the availability of the following resources through contract or other approved means—

(1) A salvage company with appropriate expertise and equipment; and

(2) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel is operating.

(f) Vessel owners or operators must identify intended sources of the resources required under paragraph (e) of this section capable of being deployed to the areas that the vessel will operate in. A company may not be listed in the plan unless the company has provided written consent to be listed in the plan as an available resource. To meet this requirement in a response plan submitted for approval or reapproval on or after February 18, 1998, the vessel owner or operator must identify both the intended sources of this capability and demonstrate that the resources are capable of being deployed to the port nearest to the area where the vessel operates within 24 hours of discovery of a discharge.

(g) The owner or operator of a vessel carrying group V petroleum oil as a primary cargo shall identify in the response plan and ensure the availability of certain resources required by §§ 155.1035(c)(5)(ii) and 155.1040(d)(5)(i) as applicable, through contract or other approved means.

(1) Resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation.

(2) Resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland, nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters and rivers and canals—18 hours.

(iii) Open ocean waters—36 hours.

(3) For barges operating in rivers and canals as defined in this subpart, the requirements of this paragraph (g) may be met by listing resources capable of being deployed in an area within the response times in subparagraph (2) of this paragraph. A vessel owner or operator may not identify such resources in a plan unless the response organization has provided written consent to be identified in a plan as an available resource.

§ 155.1054 Response plan development and evaluation criteria for vessels carrying non-petroleum oil as a primary cargo.

(a) Owners and operators of vessels that carry non-petroleum oil as a primary cargo must provide information in their plan that identifies—

(1) Procedures and strategies for responding to a worst case discharge of non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to contain, recover, and mitigate such a discharge.

(b) An owner or operator of a vessel carrying non-petroleum oil as a primary cargo must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) in which the vessel operates using the criteria in table 1 of appendix B of this part. When evaluating the operability of equipment, the vessel owner or operator must consider limitations that are identified in the Area Contingency Plans for the COTP zones in which the vessel operates, including—

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

(c) The owner or operator of a vessel carrying non-petroleum oil as a primary cargo must identify in the response plan and ensure, through contract or other approved means, the availability of required equipment including—

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of non-petroleum oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of non-petroleum oil carried.

(d) Response resources identified in a response plan under paragraph (c) of this section must be capable of commencing an effective on-scene response within the applicable tier 1 response times in § 155.1050(g) of this subpart. An oil spill removal organization may not be listed in the plan unless the oil spill removal organization has provided written consent to be listed in the plan as an available resource.

(e) The owner or operator of a vessel carrying non-petroleum oil as a primary cargo must identify in the response plan and ensure the availability of the following resources through contract or other approved means:

(1) A salvage company with appropriate expertise and equipment.

(2) A company with vessel firefighting capability that will respond to casualties in the area(s) in which the vessel is operating.

(f) Vessel owners or operators must identify intended sources of the resources required under paragraph (e) of this section capable of being deployed to the areas that the vessel will operate in. A company may not be listed in the plan unless the company has provided written consent to be listed in the plan as an available resource. To meet this requirement in a response plan submitted for approval or reapproval on or after February 18, 1998, the vessel owner or operator must identify both the intended sources of this capability and demonstrate that the resources are capable of being deployed to the port nearest to the area where the vessel operates within 24 hours of discovery of a discharge.

(g) The owner or operator of a vessel carrying non-petroleum oil as a primary cargo must identify in the response plan and ensure the availability of certain resources required by § 155.1035(c)(5)(ii) and § 155.1040(d)(5)(i) as applicable, through contract or other approved means.

(1) Resources must include—

(i) Fendering equipment;

(ii) Transfer hoses and connection equipment; and

(iii) Portable pumps and ancillary equipment necessary to offload the vessel's largest cargo tank in 24 hours of continuous operation.

(2) Resources must be capable of reaching the locations in which the vessel operates within the stated times following notification:

(i) Inland, nearshore, and Great Lakes waters—12 hours.

(ii) Offshore waters and rivers and canals—18 hours.

(iii) Open ocean waters—36 hours.

(3) For barges operating in rivers and canals as defined in this subpart, the requirements of this paragraph (g) may be met by listing resources capable of being deployed in an area within the response times in paragraph (g)(2) of this section. A vessel owner or operator may not identify such resources in a plan unless the response organization has provided written consent to be identified in a plan as an available resource.

§ 155.1055 Training.

(a) A response plan submitted to meet the requirements of § 155.1035 must identify the training to be provided to members of the vessel crew having responsibilities under the plan, the qualified individual, and the spill management team. A response plan submitted to meet the requirements of § 155.1040 must identify the training to be provided to the spill management team, the qualified individual, and other personnel in § 155.1040 with specific responsibilities under the plan. The training program must differentiate between that training provided to vessel personnel and that training provided to shore-based personnel.

(b) A vessel owner or operator shall ensure the maintenance of records sufficient to document this training and make them available for inspection upon request by the U.S. Coast Guard. Records must be maintained for 3 years following completion of training. The response plan must identify the location of training records, which must be—

(1) Aboard the vessel;

(2) With the qualified individual; or

(3) At a U.S. location of the spill management team.

(c) A vessel owner or operator may identify equivalent work experience which fulfills specific training requirements.

(d) The vessel owner or operator shall ensure that any oil spill removal organization identified in a response plan to meet the requirements of this part maintain records sufficient to document training for the organization's personnel. These records must be available for inspection upon request by the U.S. Coast Guard. Records must be maintained for 3 years following completion of training.

(e) Nothing in this section relieves the vessel owner or operator from the responsibility to ensure that all private shore-based response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1910.120.

§ 155.1060 Drills.

(a) A vessel owner or operator required by §§ 155.1035 and 155.1040 to have a response plan shall conduct drills as necessary to ensure that the plan will function in an emergency. Both announced and unannounced drills must be included. The response plan submitted to meet the requirements of this subpart must identify the planned drill program. The following are the required drill frequencies for vessels covered by this section:

(1) Manned vessel onboard emergency procedures and qualified individual notification drills must be conducted monthly.

(2) Unmanned barge emergency procedures and notification of the qualified individual drills must be conducted quarterly.

(3) Shore-based spill management team tabletop drills must be conducted yearly.

(4) Oil spill removal organization field equipment deployment drills must be conducted yearly.

(b) Drills may be designed by the vessel owner or operator to exercise either components of or the entire response plan. The vessel owner or operator shall conduct a drill that exercises the entire plan at least once every three years.

(c) The vessel owner or operator shall ensure the maintenance of adequate records of drills. The following records are required:

(1) All drills conducted aboard the vessel must be documented in the ship's log.

(2) Records of any off-vessel drills of the response organization and resources identified in the response plan must be maintained at the United States location of either the qualified individual, spill management team, the vessel owner or operator, or the response organization. Response plans must indicate the location of these records.

(3) Records must be maintained and available to the Coast Guard for three years following completion of the drills.

(d) A vessel owner or operator shall participate in unannounced drills as directed by the applicable COTP. During these drills, the oil spill removal organization and spill management team identified in the vessel's response plan shall be activated to the extent required by the COTP. A vessel owner or operator need not participate if he or she has participated in an unannounced Federal or State oil spill response drill within the last 24 months, and the vessel owner or operator shall immediately provide records of this drill to the Coast Guard COTP.

(e) The requirements in paragraphs (a)(3) and (a)(4) of this section are met if the oil spill removal organization identified in the response plan participates in an equipment deployment exercise and is drilled during the period required to conduct such drills.

§ 155.1062 Inspection and maintenance of response resources.

(a) The owner or operator of a vessel required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, in accordance with manufacturer's recommendations and best commercial practices; and

(2) All inspections and maintenance are documented and that these records are maintained for three years.

(b) For equipment which must be inspected and maintained under this section the Coast Guard may—

(1) Verify that the equipment inventories exist as represented;

(2) Verify the existence of records required under this section;

(3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and

(4) Inspect and require operational tests of equipment.

(c) This section does not apply to containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan and ensured available through the written consent of an Oil Spill Removal Organization, as provided for in the definition of "contract or other approved means."

§ 155.1065 Plan submission, approval, and appeal procedures.

(a) An owner or operator of a vessel to which this subpart applies shall submit two complete English language copies of a vessel response plan to Commandant (G-MEP-6), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. All plans submitted on or after August 19, 1993 must be submitted at least 60 days before the vessel intends to handle, store, transport, transfer, or lighter oil in areas subject to the jurisdiction of the United States. The owner or operator shall include a statement certifying that the plan meets the applicable requirements of subparts D and E of this part.

(b) If the U.S. Coast Guard determines that the plan meets all requirements of this subpart, the U.S. Coast Guard will notify the vessel owner or operator and return one copy of the approved plan along with an approval letter. The plan will be valid for a period of up to five years from the date of approval.

(c) If the U.S. Coast Guard reviews the plan and determines that it does not meet all of the requirements, the U.S. Coast Guard will notify the vessel owner or operator of the response plan's deficiencies. The vessel owner or operator must then resubmit two copies of the revised plan, or corrected portions of the plan, within 45 days.

(d) For those vessels temporarily authorized under § 155.1025 to operate without an approved plan pending formal Coast Guard approval, the deficiency provisions of § 155.1070 (c) and (d) will also apply.

(e) Within 21 days of notification that a plan is not approved, the vessel owner or operator may appeal that determination to the Chief, Office of Marine Safety, Security and Environmental Protection. This appeal must be submitted in writing to Commandant (G-M), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

§ 155.1070 Plan review, revision, amendment, and appeal procedures for vessels carrying oil as a primary cargo.

(a) A vessel response plan must be reviewed annually by the owner or operator.

(1) This review must occur within one month of the anniversary date of U.S. Coast Guard approval of the plan.

(2) The owner or operator shall submit any plan amendments to the U.S. Coast Guard for information or approval.

(3) Any required changes must be entered in the plan and noted on the record of changes page. The completion of the annual review must also be noted on the record of changes page.

(b) The entire plan must be resubmitted to the Coast Guard for re-approval 6 months before the end of the Coast Guard approval period identified in § 155.1065(b).

(c) Revisions or amendments to an approved response plan must be submitted for approval by the vessel's owner or operator whenever there is—

(1) A change in the owner or operator of the vessel, if that owner or operator provided the certifying statement required by § 155.1065(a). If this occurs, a new statement certifying that the plan continues to meet the applicable requirements of subparts D and E of this part must be submitted;

(2) A change in the vessel's operating area that includes ports or geographic area(s) not covered by the previously approved plan. A vessel may operate in an area not covered in a previously approved plan if a new geographic-specific appendix is submitted for approval and the vessel's owner or operator provides the certification required in § 155.1025(c);

(3) A significant change in the vessel's configuration that affects the information included in the response plan;

(4) A change in the type of oil cargo carried aboard (oil group) that affects the required response resources;

(5) A change in the identification of the oil spill removal organization(s) required by § 155.1050, 155.1052 or 155.1054, as appropriate;

(6) A significant change in the vessels's emergency response procedures; or

(7) Any other significant changes that affect the implementation of the plan.

(d) The U.S. Coast Guard may require a vessel owner or operator to revise a response plan at any time if it is determined that the response plan does not meet the requirements of this subpart. The U.S. Coast Guard will notify the vessel owner or operator in writing of any deficiencies.

(1) Deficiencies must be corrected within the time period specified in the written notice provided by the Coast Guard or the plan will be declared invalid and any further storage, transfer, handling, transporting or lightering of oil in areas subject to the jurisdiction of the United States will be in violation of section 311(j)(5)(E) of the FWPCA.

(2) Vessel owners or operators must advise the U.S. Coast Guard office that provided the initial notice when a deficiency has been corrected.

(e) A vessel owner or operator who disagrees with a deficiency determination may submit a request for reconsideration within the time period required for compliance or within 7 days from the date of receipt of the U.S. Coast Guard notice, whichever is less. After considering all relevant material presented, the U.S. Coast Guard will notify the vessel owner or operator of the final decision.

(1) Unless the vessel owner or operator petitions for a review of the U.S. Coast Guard decision, the vessel's owner or operator must correct the response plan deficiencies within the period specified in the Coast Guard's final determination.

(2) If the vessel owner or operator petitions the District Commander, the effective date of the U.S. Coast Guard notice may be delayed pending a decision by the District Commander. Petitions to the District Commander must be submitted in writing, via the U.S. Coast Guard official who issued the requirement to amend the response plan, within five days of receipt of the notice.

(f) Except as required in paragraph (c) of this section, amendments to personnel and telephone number lists included in the response plan do not require prior U.S. Coast Guard approval. The U.S. Coast Guard and all other holders of the response plan shall be advised of the revisions and provided a copy of the revisions as they occur.

Subpart E—Additional Response Plan Requirements for Tankers Loading Cargo at a Facility Permitted Under the Trans-Alaska Pipeline Authorization Act

§ 155.1110 Purpose and applicability.

(a) This subpart establishes oil spill response planning requirements for an owner or operator of a tanker loading cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act (TAPAA) (43 U.S.C. 165 *et seq.*) in Prince William Sound, Alaska, in addition to the requirements of subpart D of this part. The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process; they are not performance standards.

(b) The information required in this subpart must be included in a Prince William Sound geographic-specific appendix to the vessel response plan required by subpart D of this part.

§ 155.1115 Definitions.

Except as provided in this section, the definitions in § 155.1015 apply to this subpart.

Prince William Sound means all State and Federal waters within Prince William Sound, Alaska, including the approach to Hinchinbrook Entrance out to and encompassing Seal Rock.

§ 155.1120 Operating restrictions and interim operating authorization.

The owner or operator of a tanker to which this subpart applies may not load cargo at a facility permitted under the Trans-Alaska Pipeline Authorization Act unless the requirements of this subpart and § 155.1025 have been met. The owner or operator of such a tanker shall certify to the U.S. Coast Guard that they have provided, through an oil spill removal organization required by § 155.1125, the necessary response resources to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater, in Prince William Sound, AK.

§ 155.1125 Additional response plan requirements.

(a) The owner or operator of a tanker subject to this subpart shall include the requirements of this section in the Prince William Sound geographic-specific appendix required by subpart D of this part.

(1) The response plan must include identification of an oil spill removal organization that shall—

(i) Perform response activities;

(ii) Provide oil spill removal and containment training, including training in the operation of prepositioned equipment, for personnel, including local residents and fishermen, from the following locations in Prince William Sound—

(A) Valdez;

(B) Tatitlek;

(C) Cordova;

(D) Whittier;

(E) Chenega;

(F) Fish hatcheries located at Port San Juan, Main Bay, Esther Island, Cannery Creek, and Solomon Gulch; and

(G) Other locations in Prince William Sound, to be determined by the COTP;

(iii) Consist of sufficient numbers of trained personnel with the necessary technical skills to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater;

(iv) Provide a plan for training sufficient numbers of additional personnel to remove, to the maximum extent practicable, a worst case discharge or a discharge of 200,000 barrels of oil, whichever is greater; and

(v) Address the responsibilities required in § 155.1035(d)(4).

(2) The response plan must include drill procedures that must—

(i) Provide two drills of the oil spill removal organization each year to ensure prepositioned equipment and trained personnel required under this subpart perform effectively;

(ii) Provide for both announced and unannounced drills; and

(iii) Provide for drills that test either the entire appendix or individual components.

(3) The response plan must identify a testing, inspection, and certification program for the prepositioned response equipment required in § 155.1130 that must provide for—

(i) Annual testing and equipment inspection in accordance with the manufacturer's recommended procedures, to include—

(A) Start-up and running under load of all electrical motors, pumps, power packs, air compressors, internal combustion engines, and oil recovery devices; and

(B) Removal of no less than one-third of required boom from storage annually, such that all boom will have been removed and examined within a period of three years;

(ii) Records of equipment tests and inspection; and

(iii) Use of an independent entity to certify that the equipment is on-site and in good operating condition and that required tests and inspections have been performed. The independent entity must have appropriate training and expertise to provide this certification.

(4) The response plan must identify and give the location of the prepositioned response equipment required in § 155.1130 including the make, model, and effective daily recovery rate of each oil recovery resource.

(b) The owner or operator shall submit to the COTP for approval, no later than September 30th of each calendar year, a schedule for the training and drills required by the geographic-specific appendix for Prince William Sound for the following calendar year.

(c) All records required by this section must be available for inspection by the U.S. Coast Guard and must be maintained for a period of 3 years.

§ 155.1130 Requirements for prepositioned response equipment.

Except as permitted under § 155.1140, the owner or operator of a tanker subject to this subpart shall provide the following prepositioned response equipment, located within Prince William Sound, in addition to that required by § 155.1035:

(a) On-water recovery equipment with a minimum effective daily recovery capacity of 30,000 barrels, capable of being on scene within 6 hours of notification of a discharge.

(b) On-water storage capacity of 100,000 barrels, capable of being on scene within 6 hours of notification of a discharge.

(c) Additional on-water recovery equipment with a minimum effective daily recovery capacity of 40,000 barrels capable of being on scene within 18 hours of notification of a discharge.

(d) On-water storage capacity of 300,000 barrels for recovered oily material, capable of being on scene within 24 hours of notification of a discharge.

(e) On-water oil recovery devices and storage equipment located in communities and at strategic locations.

(f) Equipment as identified below, for the locations identified in § 155.1125(a)(1)(ii), sufficient for the protection of the environment in these locations—

(1) Boom appropriate for the specific locations;

(2) Sufficient boats to deploy boom and sorbents;

(3) Sorbents including booms, sweeps, pads, blankets, drums and plastic bags;

(4) Personnel protective clothing and equipment;

(5) Survival equipment;

(6) First aid supplies;

(7) Buckets, shovels, and various other tools;

(8) Decontamination equipment;

(9) Shoreline cleanup equipment;

(10) Mooring equipment;

(11) Anchored buoys at appropriate locations to facilitate the positioning of defensive boom; and

(12) Other appropriate removal equipment for the protection of the environment as identified by the COTP.

(g) For each oil-laden tanker, two escort vessels, one of which is fitted with skimming an onboard storage capabilities practicable for the oil recovery planned for a cleanup operation, as identified by the oil spill removal organization.

(h) Ligthering resources required in § 155.1050(m) capable of arriving on scene within 6 hours of notification of a discharge.

§ 155.1135 Response plan development and evaluation criteria.

For tankers subject to this subpart, the following response times must be used in determining the on-scene arrival time in Prince William Sound, for the response resources required by § 155.1050:

	Tier 1	Tier 2	Tier 3
Prince William Sound.	12 hrs ...	24 hrs ...	36 hrs.

§ 155.1140 Tankers contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act.

A tanker owner or operator may meet some or all of the requirements of this subpart by contracting with a facility permitted under the Trans-Alaska Pipeline Authorization Act. The extent to which these requirements are met by the contractual arrangement will be determined by the COTP.

§ 155.1145 Submission and approval procedures.

An appendix prepared under this subpart must be submitted and approved in accordance with § 155.1065.

§ 155.1150 Plan revision and amendment procedures.

An appendix prepared and submitted under this subpart must be revised and amended, as necessary, in accordance with § 155.1070.

4. Part 155 is amended by adding an appendix B to read as follows:

Appendix B to Part 155—Guidelines for Determining and Evaluating Required Response Resources for Vessel Response Plans

1. Purpose

1.1 The purpose of this appendix is to describe the procedures for identifying response resources to meet the requirements of subparts D and E of this part. These guidelines will be used by the vessel owner or operator in preparing the response plan and by the Coast Guard to review vessel response plans.

2. Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be capable of operating in the conditions expected in the geographic area in which a vessel operates. These conditions vary widely based on the location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in every geographic location.

2.2 Vessels storing, handling, or transporting oil in more than one operating environment as indicated in table 1 must identify equipment capable of successfully functioning in each operating environment. For example, vessels moving from the ocean to a river port must identify appropriate equipment designed to meet the criteria for ocean, inland, and rivers and canals. This may be equipment that is designed to operate in all of these environments or, more likely, different equipment designed for use in each area.

2.3 When identifying equipment for response plan credit, a vessel owner or operator must consider the inherent limitations in the operability of equipment components and response systems. The criteria in table 1 must be used for evaluating the operability in a given environment. These criteria reflect the general conditions in certain operating areas.

2.4 Table 1 lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in a geographic area must be designed to function in the same conditions. For example, boats which deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment. The Coast Guard may require documentation that the boom identified in a response plan meets the criteria in table 1. Absent acceptable documentation, the Coast Guard may require that the boom be tested to demonstrate that it meets the criteria in table 1. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by the Coast Guard.

2.5 A vessel owner or operator must refer to the applicable Area Contingency Plan to determine if ice, debris, and weather-related visibility are significant factors in evaluating the operability of equipment. The Area Contingency Plan will also identify the average temperature ranges expected in a geographic area in which a vessel operates. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 The requirements of subparts D and E of this part establish response resource mobilization and response times. The location that the vessel operates farthest from the storage location of the response resources must be used to determine whether the resources are capable of arriving on scene within the time required. A vessel owner or operator shall include the time for notification, mobilization, and travel time of resources identified to meet the maximum most probable discharge and tier 1 worst case discharge requirements. Tier 2 and 3 resources must be notified and mobilized as necessary to meet the requirements for arrival on scene. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed unless the vessel owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the vessel owner or operator shall list the storage location, quantity, and manufacturer's make and model, unless the oil spill removal organization(s) providing the necessary response resources has been evaluated by the Coast Guard and their capability has been determined to equal or exceed the response capability needed by the vessel. For oil recovery devices, the effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft plus freeboard) must be included. A vessel owner or operator is responsible for ensuring that identified boom has compatible connectors.

3. Determining Response Resources Required for the Average Most Probable Discharge

3.1 A vessel owner or operator shall identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the 50 barrel average most probable discharge at the point of an oil transfer involving a vessel that carries oil as a primary cargo. The equipment must be designed to function in the operating environment at the point of oil transfer. These resources must include:

3.1.1 Containment boom in a quantity equal to twice the length of the largest vessel involved in the transfer capable of being deployed within 1 hour of the detection of a spill at the site of oil transfer operations.

3.1.2 Oil recovery devices with an effective recovery capacity of 50 barrels per day or greater available at the transfer site within two hours of the detection of an oil discharge.

3.1.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

4. Determining Response Resources Required for the Maximum Most Probable Discharge

4.1 A vessel owner or operator shall identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to discharges up to the maximum most probable discharge volume for that vessel. This will require resources capable of containing and collecting up to 2,500 barrels of oil. All equipment identified must be designed to operate in the applicable operating environment specified in table 1.

4.2 To determine the maximum most probable discharge volume to be used for planning, use the lesser of—

4.2.1 2500 barrels; or

4.2.2 10% of the total oil cargo capacity.

4.3 Oil recovery devices necessary to meet the applicable maximum most probable discharge volume planning criteria must be located such that they arrive on scene within 12 hours of the discovery of a discharge in higher volume port areas and the Great Lakes, 24 hours in all other rivers and canals, inland, nearshore, and offshore areas, and 24 hours plus travel time from shore in all open ocean areas.

4.3.1 Because rapid control, containment, and removal of oil is critical to reduce spill impact, the effective daily recovery capacity for oil recovery devices must equal 50% of the planning volume applicable for the vessel as determined in section 4.2 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.4 In addition to oil recovery capacity, the vessel owner or operator must identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom available within the required response times for oil collection and containment, and for protection of shoreline areas. While the regulation does not set required quantities of boom for oil collection and containment, the owner or operator of a vessel must still identify in a response plan and ensure, through contract or other approved means, the availability of the boom identified in the plan for this purpose.

4.5 The plan must indicate the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, the effective daily recovery capacity must be derated to the limits of the available storage capacity.

4.6 The following is an example of a maximum most probable discharge volume planning calculation for equipment identification in a higher volume port area:

The vessel's cargo capacity is 10,000 barrels, thus the planning volume is 10 percent or 1,000 barrels. The effective daily recovery capacity must be 50% of this, or 500 barrels per day. The ability of oil recovery devices to meet this capacity will be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on scene must equal twice the daily recovery capacity as indicated in section 9 of this appendix, or 1000 barrels per day. This is the information the vessel owner or operator would use to identify and ensure the availability of, through contract or other approved means, the required response resources. The vessel owner would also need to identify how much boom was available for use.

5. Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A vessel owner or operator shall identify and ensure, by contract or other approved means, that sufficient response resources are available to respond to the worst case discharge of oil cargo to the maximum extent practicable. Section 7 of this appendix describes the method to determine the required response resources.

5.2 Oil spill recovery devices identified to meet the applicable worst case discharge planning volume must be located such that they can arrive at the scene of a discharge within the time specified for the applicable response tier listed in § 155.1050(g).

5.3 The effective daily recovery capacity for oil recovery devices identified in a response plan must be determined using the criteria in section 6 of this appendix. A vessel owner or operator shall identify the storage locations of all equipment that must be used to fulfill the requirements for each tier.

5.4 A vessel owner or operator shall identify the availability of temporary storage capacity to meet the requirements of section 9.2 of this appendix. If available storage capacity is insufficient to meet this requirement, then the effective daily recovery capacity must be derated to the limits of the available storage capacity.

5.5 When selecting response resources necessary to meet the response plan requirements, the vessel owner or operator must ensure that a portion of those resources are capable of being used in close-to-shore response activities in shallow water. The following percentages of the on-water response equipment identified for the applicable geographic area must be capable of operating in waters of 6 feet or less depth:

(i) Open ocean—none.

(ii) Offshore—10 percent.

(iii) Nearshore, inland, Great Lakes, and rivers and canals—20 percent.

5.6 In addition to oil spill recovery devices and temporary storage capacity, a vessel owner or operator shall identify in the response plan and ensure the availability of, through contract or other approved means, sufficient boom that can arrive on scene within the required response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the specific recovery equipment and strategies employed. Table 2 lists the minimum quantities of additional boom required for shoreline protection that a vessel owner or operator shall identify in the response plan and ensure the availability of through contract or other approved means.

5.7 A vessel or operator shall also identify in the response plan and ensure, by contract or other approved means, the availability of an oil spill removal organization capable of responding to a shoreline cleanup operation involving the calculated volume of emulsified oil that might impact the affected shoreline. The volume of oil that should be planned for is calculated through the application of factors contained in tables 3 and 4. The volume calculated from these tables is intended to assist the vessel owner or operator in identifying a contractor with sufficient resources. This planning volume is not used explicitly to determine a required amount of equipment and personnel.

6. Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a vessel owner or operator must be identified by manufacturer, model, and effective daily recovery capacity. These capacities must be used to determine whether there is sufficient total capacity to meet the applicable planning criteria for the average most probable discharge; maximum most probable discharge; and worst case discharge to the maximum extent practicable.

6.2 For the purposes of determining the effective daily recovery capacity of oil recovery devices, the following method will be used. This method considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The Coast Guard may assign a lower efficiency factor to equipment listed in a response plan if it determines that such a reduction is warranted.

6.2.1 The following formula must be used to calculate the effective daily recovery capacity:

$R=T\times24\times E$

R—Effective daily recovery capacity
T—Throughput rate in barrels per hour (nameplate capacity)
E—20% efficiency factor (or lower factor as determined by the Coast Guard)

6.2.2 For those devices in which the pump limits the throughout of liquid, throughput rate will be calculated using the pump capacity.

6.2.3 For belt or mop type devices, the throughput rate will be calculated using data provided by the manufacturer on the nameplate rated capacity for the device.

6.2.4 Vessel owners or operators including in the response plan oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop capacity may provide information to support an alternative method of calculation. This information must be submitted following the procedures in paragraph 6.5 of this appendix.

6.3 As an alternative to section 6.2 of this appendix, a vessel owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using ASTM F 631, ASTM F808, or an equivalent test approved by the Coast Guard.

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$R=D\times U$

R—Effective daily recovery capacity
D—Average Oil Recovery Rate in barrels per hour (Item 26 in ASTM F 808; Item 13.1.15 in ASTM F 631; or actual performance data)
U—Hours per day that a vessel owner or operator can document capability to operate equipment under spill conditions. Ten hours per day must be used unless a vessel owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.4 A vessel owner or operator submitting a response plan shall provide data that supports the effective daily recovery capacities for the oil recovery devices listed. The following is an example of these calculations:

A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).
267 gpm=381 barrels per hour
$R=381\times24\times.2=1{,}829$ barrels per day

After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The vessel owner or operator identifies sufficient resources available to support operations 12 hours per day.
220 gpm=314 barrels per hour
$R=314\times12=3{,}768$ barrels per day

A vessel owner or operator will be able to use the higher capacity if sufficient temporary oil storage capacity is available.

6.5 Determinations of alternative efficiency factors under paragraph 6.2 or alternative effective daily recovery capacities under paragraph 6.3 of this appendix will be made by Commandant (G–MEP–6), Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593. Oil spill removal organizations or equipment manufacturers may submit required information on behalf of multiple vessels owners or operators.

7. Calculating the Worst Case Discharge Planning Volumes

7.1 A vessel owner or operator shall plan for a response to a vessel's worst case discharge volume of oil cargo. The planning for on-water recovery must take into account a loss of some oil to the environment due to evaporations and natural dissipation, potential increases in volume due to emulsification, and the potential for deposit of some oil on the shoreline.

7.2 The following procedures must be used to calculate the planning volume used by a vessel owner or operator for determining required on-water recovery capacity:

7.2.1 The following must be determined: The total volume of oil cargo carried, the appropriate cargo group for the type of petroleum oil carried [persistent (groups II, III, IV) or non-persistent (group I)], and the geographic area(s) in which the vessel operates. For vessels carrying mixed cargoes from different petroleum oil groups, each group must be calculated separately. This information is to be used with table 3 to determine the percentages of the total cargo volume to be used for removal capacity planning. This table divides the cargo volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume must be adjusted using the appropriate emulsification factor found in table 4.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in table 5 from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted for to arrive on scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they can arrive on scene within 12, 36, and 60 hours of the discovery of an oil discharge. For the Great Lakes, these tiers are 18, 42, and 66 hours. For all other rivers and canals, inland, nearshore, offshore areas these tiers are 24, 48, and 72 hours. For the open ocean area, these tiers are 24, 48, and 72 hours with an additional travel time allowance of one hour for every additional 5 nautical miles from shore.

7.2.4 The resulting on-water recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable geographic area. The equipment must be capable of sustaining operations for the time period specified in table 3. A vessel owner or operator shall identify and ensure the availability of, through contract or other approved means, sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap described in table 6, then a vessel owner or operator must contract only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in § 155.1050(p). The owner or operator of a vessel whose planning volume exceeds the cap in 1993 should plan for additional capacity to be under contract by 1998 or 2003, as appropriate. For a vessel that carries multiple groups of oil, the required effective daily recovery capacity for each group is calculated and summed before applying the cap.

7.3 The following procedures must be used to calculate the planning volume for identifying shoreline cleanup capacity:

7.3.1 The following must be determined: the total volume of oil cargo carried; the appropriate cargo group for the type of petroleum oil carried [persistent (groups II, III, IV) or non-persistent (group I)]; and the geographic area(s) in which the vessel operates. For a vessel carrying cargoes from different oil groups, each group must be calculated separately. Using this information, table 3 must be used to determine the percentages of the total cargo volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2 of this appendix.

7.3.3 The resulting volume will be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.4 The following is an example of the procedure described above:

A vessel with a 100,000 barrel capacity for #6 oil (specific gravity .96) will move from a higher volume port area to another area. The vessel's route will be 70 miles from shore.

Cargo carried: 100,000 bbls. Group IV oil
Emulsification factor (from Table 4): 1.4
Areas transited: Inland, Nearshore, Offshore, Open ocean
Planned % on-water recovery (from Table 3): Inland 50%; Nearshore 50%; Offshore 40%; Open ocean 20%
Planned % oil onshore recovery (from Table 3): inland 70%; Nearshore 70%; Offshore 30%; Open ocean 30%

General formula to determine planning volume:

(planning volume) = (capacity) × (% from table 3) × (emulsification factor from table 4)

Planning volumes for on water recovery:
Inland 100,000×.5×1.4=70,000 bbls
Nearshore 100,000×.5×1.4=70,000 bbls
Offshore 100,000×.4× 1.4=56,000 bbls
Open ocean 100,000×.2× 1.4=28,000 bbls

Planning volumes for on shore recovery:
Inland 100,000×.7×1.4=98,000 bbls
Nearshore 100,000×.77× 1.4=98,000 bbls
Offshore 100,000×.3×1.4=42,000 bbls

The vessel owner or operator must contract with a response resource capable of managing a 98,000 barrel shoreline cleanup in those areas where the vessel comes closer than 50 miles to shore.

Determine required resources for on water recovery for each tier using mobilization factors: (Barrel per day on water recovery requirements) = (on water planning volume as calculated above) × (mobilization factor from table 5).

			Tier 1	Tier 2	Tier 3
Inland/Nearshore	70,000	×	.15	.25	.40
Offshore	56,000	×	.10	.165	.21
Open ocean	28,000	×	.06	.10	.12
			equals (barrels per day)		
Inland/Nearshore			10,500	17,500	28,000
Offshore			5,600	9,240	11,760
Open ocean			1,680	2,800	3,360

Since the requirements for tier 1 for inland and nearshore exceed the caps, the vessel owner would only need to contract for 10,000 bpd for tier 1. No additional equipment would be required to be identified because the required tier 3 resources are below the tier 3 caps.

10% of the on-water recovery capability for off shore, and 20% of the capability for inland/nearshore, for all tiers, must be capable of operating in water with a depth of 6 feet or less.

The vessel owner or operator would also be required to identify or contract for quantities of boom identified in table 2 for the areas in which the vessel operates.

8. Determining the Availability of High-Rate Response Methods

8.1 Response plans for a vessel carrying group II or III persistent oil as a primary cargo that operates in an area with year-round pre-approval for dispersant use may receive credit for up to 25 percent of their required on-water recovery capacity in that area in 1993 if the availability of these resources are ensured by contract or other approved means. For response plan credit, these resources must be capable of being on scene within 12 hours of the discovery of a discharge.

8.2 To receive credit against any required on-water recovery capacity, a response plan must identify the locations of dispersant stockpiles, methods of transporting to a shoreside staging area, and appropriate aircraft or vessels to apply the dispersant and monitor its effectiveness at the scene of an oil discharge.

8.2.1 Sufficient volumes of dispersants must be available to treat the oil at the dosage rate recommended by the dispersant manufacturer. Dispersants identified in a response plan must be on the NCP Product Schedule maintained by the U.S. Environmental Protection Agency. (Some States have a list of approved dispersants and within State waters only they can be used.)

8.2.2 Dispersant application equipment identified in a response plan for credit must be located such that it can be mobilized to shoreside staging areas to meet the time requirements in 8.1 of this appendix. Sufficient equipment capacity and sources of appropriate dispersants must be identified to sustain dispersant operations for at least 3 days.

8.2.3 Credit against on-water recovery capacity in pre-approved areas will be based on the ability to treat oil at a rate equivalent to this credit. For example, a 2,500 bbls/day credit against the tier one 10,000 bbls/day on-water cap would require the vessel owner or operator to demonstrate the ability to treat 2,500 bbls/day of oil at the manufacturers' recommended dosage rate. Assuming a dosage rate of 10:1, the plan would need to show stockpiles and sources of 750 bbls of dispersants that would be available on scene at a rate of 250 bbls per day and the ability to apply the dispersant at that daily rate for 3 days in the area in which the vessel operates. Similar data would need to be provided for any additional credit against tier 2 and 3 resources.

8.3 In addition to the equipment and supplies required, a vessel owner or operator shall identify a source of support to conduct the monitoring and post-use effectiveness evaluation required by applicable Local and Area Contingency Plans.

8.4 Identification of the resources for dispersant application does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable Local or Area Contingency Plan.

8.5 In addition to the credit identified above, a vessel owner or operator that operates in an area pre-approved for dispersant use may reduce their required on water recovery cap increase for 1998 and 2003 by up to 50% by identifying non-mechanical methods.

8.6 The use of in-situ burning as a non-mechanical response method is still being studied. Because limitations and uncertainties remain for the use of this method, it may not be used to reduce required oil recovery capacity in 1993. Use of this or other alternative high-rate methods for a portion of the required cap increase in 1998 will be determined during the cap increase review 1996.

9. Additional Equipment Necessary To Sustain Response Operations

9.1 A vessel owner or operator is responsible for ensuring that sufficient numbers of trained personnel and boats, aerial spotting aircraft, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A vessel owner or operator is not required to list these resources in the response plan, but shall certify their availability.

9.2 A vessel owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery capacity required on scene. This temporary storage capacity may be reduced if a vessel owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant water, or the availability of alternative temporary storage or disposal locations in the area(s) the vessel will operate will reduce the overall volume of oily material storage requirements.

9.3 A vessel owner or operator shall ensure that their planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable Area Contingency Plan.

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TABLE 1

RESPONSE RESOURCE OPERATING CRITERIA

OIL RECOVERY DEVICES

Operating Environment	Significant Wave Height[1]	Sea State
Rivers & Canals	≤ 1 foot	1
Inland	≤ 3 feet	2
Great Lakes	≤ 4 feet	2-3
Ocean	≤ 6 feet	3-4

BOOM

Boom Property	Use			
	Rivers & Canals	Inland	Great Lakes	Ocean
Significant Wave[1] Height (feet)	≤1	≤3	≤4	≤6
Sea State	1	2	2-3	3-4
Boom height - in. (draft plus freeboard)	6-18	18-42	18-42	>42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength - lbs.	4,500	15-20,000	15-20,000	>20,000
Skirt Fabric Tensile Strength - lbs.	200	300	300	500
Skirt Fabric Tear Strength - lbs.	100	100	100	125

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[1] Oil recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2

Shoreline Protection Requirements

PERSISTENT OILS

Location	Boom ensured by contract or other approved means (ft.)	Availability hours	
		Higher Volume Port Area	Other Areas
Open Ocean	/	/	/
Offshore	15,000	24	48
Nearshore/ Inland/ Great Lakes	30,000	12	24
Rivers & Canals	25,000	12	24
NON-PERSISTENT OILS			
Open Ocean	/	/	/
Offshore	/	/	/
Nearshore/ Inland/ Great Lakes	10,000	12	24
Rivers & canals	15,000	12	24

Spill Location	Nearshore/Inland/ Great Lakes			River		
Sustainability of on-water oil recovery	4 days			3 days		
Oil Group	% Natural Dissipation	% Recovered Floating oil	% Oil on shore	% Natural Dissipation	% Recovered Floating oil	% Oil on shore
I Non-persistent oils	80	20	10	80	10	10
II Light crudes and fuels	50	50	30	40	15	45
III Medium crudes and fuels	30	50	50	20	15	65
IV Heavy crudes /residual fuels	10	50	70	5	20	75

Note: Percentage may not sum to 100; reflects enhanced on-water recovery capacity

Table 3 Removal Capacity Planning Table

Spill Location	Open ocean			Offshore		
Sustainability of on-water oil recovery	10 days			6 days		
Oil Group	% Natural Dissipation	% Recovered Floating oil	% Oil on shore	% Natural Dissipation	% Recovered Floating oil	% Oil on shore
I Non-persistent oils	100	/	/	95	5	/
II Light crudes	90	10	/	75	25	5
III Medium crudes and fuels	75	20	[5]*	60	40	20
IV Heavy crudes /residual fuels	50	20	[30]*	50	40	30

* Included in table for continuity; no planning required.

Table 3 Removal Capacity Planning Table

TABLE 4

EMULSIFICATION FACTORS FOR PETROLEUM OIL CARGO GROUPS

NON-PERSISTENT OIL	
GROUP I	1.0
PERSISTENT OIL	
GROUP II	1.8
GROUP III	2.0
GROUP IV	1.4

TABLE 5

ON-WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Area	Tier 1	Tier 2	Tier 3
Rivers & Canals	.30	.40	.60
Inland/Nearshore/Great Lakes	.15	.25	.40
Offshore	.10	.165	.21
Ocean	.06	.10	.12

Note: These mobilization factors are for total resources mobilized, not incremental resources.

TABLE 6

RESPONSE CAPABILITY CAPS BY GEOGRAPHIC AREA

	Tier 1	Tier 2	Tier 3
February 18 1993			
All except rivers & canals & Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day
Rivers & canals	1,500 bbls/day	3,000 bbls/day	6,000 bbls/day
February 18 1998			
All except rivers & canals, & Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day
Great Lakes	6.35K bbls/day	12.3K bbls/d	25K bbls/day
Rivers & canals	1,875 bbls/day	3,750 bbls/day	7,500 bbls/day
February 18 2003			
All except rivers & canals, & Great Lakes	TBD	TBD	TBD
Great Lakes	TBD	TBD	TBD
Rivers & canals	TBD	TBD	TBD

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.

TBD = To Be Determined

BILLING CODE 4910-14-C

Dated: January 19, 1993.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 93-1709 Filed 2-1-93; 12:33 pm]

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federal register

Friday
February 5, 1993

Part IV

The President

Memorandums of January 22, 1993—The Title X "Gag Rule", Federal Funding of Fetal Tissue Transplantation Research, and Importation of RU–486

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Federal Register
Vol. 58, No. 23
Friday, February 5, 1993

Presidential Documents

Title 3—

The President

Memorandum of January 22, 1993

The Title X "Gag Rule"

Memorandum for the Secretary of Health and Human Services

Title X of the Public Health Services Act provides Federal funding for family planning clinics to provide services for low-income patients. The Act specifies that Title X funds may not be used for the performance of abortions, but places no restrictions on the ability of clinics that receive Title X funds to provide abortion counseling and referrals or to perform abortions using non-Title X funds. During the first 18 years of the program, medical professionals at Title X clinics provided complete, uncensored information, including nondirective abortion counseling. In February 1988, the Department of Health and Human Services adopted regulations, which have become known as the "Gag Rule," prohibiting Title X recipients from providing their patients with information, counseling, or referrals concerning abortion. Subsequent attempts by the Bush Administration to modify the Gag Rule and ensuing litigation have created confusion and uncertainty about the current legal status of the regulations.

The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.

For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the "notice and comment" procedures of the Administrative Procedure Act. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the **Federal Register** new proposed regulations for public comment.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93-2973
Filed 2-3-93; 1:16 pm]
Billing code 3195-01-M

Editorial note: The Secretary of Health and Human Services is publishing documents relating to this memorandum in Part V of this issue. For the President's remarks on signing this memorandum, see p. 85 of the *Weekly Compilation of Presidential Documents.*

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Presidential Documents

Memorandum of January 22, 1993

Federal Funding of Fetal Tissue Transplantation Research

Memorandum for the Secretary of Health and Human Services

On March 22, 1988, the Assistant Secretary for Health of Health and Human Services ("HHS") imposed a temporary moratorium on Federal funding of research involving transplantation of fetal tissue from induced abortions. Contrary to the recommendations of a National Institutes of Health advisory panel, on November 2, 1989, the Secretary of Health and Human Services extended the moratorium indefinitely. This moratorium has significantly hampered the development of possible treatments for individuals afflicted with serious diseases and disorders, such as Parkinson's disease, Alzheimer's disease, diabetes, and leukemia. Accordingly, I hereby direct that you immediately lift the moratorium.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93-2974
Filed 2-3-93; 1:17 pm]
Billing code 3195-01-M

Editorial note: The Secretary of Health and Human Services is publishing a document relating to this memorandum in Part V of this issue. For the President's remarks on signing this memorandum, see p. 85 of the *Weekly Compilation of Presidential Documents.*

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Presidential Documents

Memorandum of January 22, 1993

Importation of RU–486

Memorandum for the Secretary of Health and Human Services

In Import Alert 66–47, the Food and Drug Administration ("FDA") excluded the drug Mifepristine—commonly known as RU–486—from the list of drugs that individuals can import into the United States for their "personal use," although the drugs have not yet been approved for distribution by the FDA. (*See* FDA Regulatory Procedures Manual, Chapter 9–71.) Import Alert 66–47 effectively bans the importation into this Nation of a drug that is used in other nations as a nonsurgical means of abortion.

I am informed that in excluding RU–486 from the personal use importation exemption, the FDA appears to have based its decision on factors other than an assessment of the possible health and safety risks of the drug. Accordingly, I hereby direct that you promptly instruct the FDA to determine whether there is sufficient evidence to warrant exclusion of RU–486 from the list of drugs that qualify for the personal use importation exemption. Furthermore, if the FDA concludes that RU–486 meets the criteria for the personal use importation exemption, I direct that you immediately take steps to rescind Import Alert 66–47.

In addition, I direct that you promptly assess initiatives by which the Department of Health and Human Services can promote the testing, licensing, and manufacturing in the United States of RU–486 or other antiprogestins.

You are hereby authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 22, 1993.

[FR Doc. 93–2975
Filed 2–3–93; 1:20 pm]
Billing code 3195–01–M

Editorial note: The Secretary of Health and Human Services is publishing a document relating to this memorandum in Part V of this issue. For the President's remarks on signing this memorandum, see p. 85 of the *Weekly Compilation of Presidential Documents.*

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federal register

Friday
February 5, 1993

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 59

Standards of Compliance for Abortion-Related Services in Family Planning Service Projects; "Gag Rule" Suspension; Rule and Proposed Rule

Office of the Secretary

Family Planning Service Projects; Transplantation of Human Fetal Tissue and Importation of the Drug Mifepristine; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Standards of Compliance for Abortion-Related Services in Family Planning Service Projects

AGENCY: Public Health Service, DHHS.

ACTION: Interim rule: suspension of effectiveness.

SUMMARY: This Interim rule suspends the rules issued in 1988 establishing standards for compliance by family planning services projects assisted under Title X of the Public Health Service Act with the statutory provision prohibiting abortion as a method of family planning in programs funded under that title. The rules, popularly known as the "Gag Rule", have been the focus of much litigation and controversy, and because the Secretary believes that the Rule inappropriately restricts grantees, she accordingly suspends them and, elsewhere in this issue of the **Federal Register**, proposes to return the program to the regulatory provisions and compliance standards operative prior to their issuance. This action is also consistent with a Memorandum issued by the President on January 22, 1993. During the pendency of the proposed rulemaking, the compliance standards that were in effect prior to the issuance of the Gag Rule will be used to administer the program.

EFFECTIVE DATE: February 5, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Bennett, 202–690–8335.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services below suspends the rules issued on February 2, 1988. 53 FR 2922. Those rules, popularly known as the "Gag Rule," established standards for compliance by family planning services projects funded under Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, with the statutory prohibition on the use of funds under that title "in programs where abortion is a method of family planning." 42 U.S.C. 300a–6. The prior history of the controversy surrounding sec. 300a–6 is fully described in the preamble to the 1988 rules.

Since their issuance, the February 2, 1988 rules have been the focus of much litigation and controversy. Although they were upheld by the Supreme Court in *Rust* v. *Sullivan*, 111 S.Ct. 1759 (1991), a subsequent interpretation of the rules by the Bush Administration, under which physicians would have been permitted to counsel and refer Title X patients for abortion counseling and referral but other project employees would not have been permitted to do so, was recently held to be impermissible by the United States Court of Appeals for the District of Columbia Circuit. *National Family Planning and Reproductive Health Ass'n.* v. *Sullivan*, 979 F.2d 227 (D.C. Cir. 1992). This recent decision, together with the change of Administrations, has left the current status of the 1988 Title X rules unclear.

On January 22, 1993, President Clinton sent to the Secretary a memorandum on this matter, which is published elsewhere in this issue.

The Secretary's action herein is based, in part, upon her conclusion that the "Gag Rule" is an inappropriate implementation of the Title X statute because it unduly restricts the information and other services provided to individuals under this program. Therefore, the Secretary suspends the 1988 rules and announces that, on an interim basis, the agency's nonregulatory compliance standards that existed prior to February 2, 1988, including those set out in the 1981 Family Planning Guidelines, will be used to administer the Family Planning Program.

Under these compliance standards, Title X projects would be required, in the event of an unplanned pregnancy and where the patient requests such action, to provide nondirective counseling to the patient on options relating to her pregnancy, including abortion, and to refer her for abortion, if that is the option she selects. However, consistent with the prior long-standing Departmental interpretation of the statute, Title X projects would not be permitted to promote or encourage abortion as a method of family planning, such as engaging in pro-choice litigation or lobbying activities. Title X projects would also be required to maintain a separation (that is more than a mere exercise in bookkeeping) of their project activities from any activities in which they engage that promote or encourage abortion as a method of family planning.

As noted in the President's memorandum, these compliance standards were in effect for a considerable period of time prior to 1988, and the Department believes that they are generally well-understood within the Title X provider community.

Notice and comment and delay in effective date are waived for good cause and because delay would be impracticable and unnecessary and contrary to the public interest. The issues involved in this matter are well known and have been extensively debated. Based on that record, it is the conclusion of the Secretary that: (1) Repeated attempts by the Bush and Reagan Administrations to enforce and modify the "Gag Rule" have created considerable confusion about the status of the regulations and the policy underlying them and, therefore, a substantial health risk to potential recipients of Title X program services; (2) suspension of the regulation, though tantamount to a statement of enforcement policy, is preferable because it provides clearer guidance and more certainty to the grantees and to women making family planning decisions; (3) the 1988 regulation would require many grantees to make extensive and expensive alterations in their physical facilities and organizational structures. To require those changes in the face of the proposed reversal of those rules is impracticable and contrary to the public interest; (4) evidence exists that the continued failure to provide women with complete and accurate medical information will result in significant health risks. The Notice of Proposed Rulemaking being contemporaneously published will give those with differing views on the matter an opportunity to rebut this conclusion. In the interim, the Secretary believes that it is important not to continue the embargo of important health information; (5) the original interpretation of section 1008, which prohibited the use of Title X funds in programs where abortion is a method of family planning, did not include a prohibition on non-directive counseling on abortion; moreover, Congress's repeated attempts—vetoed by President Bush—to amend Title X to eliminate the restrictions justify suspension of the Rule while the regulations are being revised to further the purposes of Title X, as required by statute. For all of these reasons, as well as the reasons set out in the President's Memorandum, this Interim Rule is effective upon publication. Regional officials are being informed of this action, and will notify all present Title X grantees of the suspension of the 1988 rules.

List of Subjects in 42 CFR Part 59

Family planning—birth control, Grant programs—health, Health facilities, Low-income families.

Dated: January 29, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: February 1, 1993.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, the Secretary amends subpart A of 42 CFR part 59 as follows:

PART 59—[AMENDED]

1. The authority for subpart A of part 59 continues to read as follows:

Authority: 42 U.S.C. 300a–4.

§ 59.2 [Suspended]

2. The following definitions in § 59.2 are suspended: The definitions of "Family planning", "Grantee", "Prenatal care", "Program", "Project", "Title X", "Title X program", and "Title X project."

§§ 59.7–59.10 [Suspended]

3. Sections 59.7 through 59.10 are suspended.

4. Additionally, the miscellaneous amendments to § 59.5 on 53 FR 2944, paragraphs 3 and 4, and the miscellaneous amendments appearing on 53 FR 2946, paragraph 6, are suspended.

[FR Doc. 93–2732 Filed 2–3–93; 1:18 pm]

BILLING CODE 4160-17-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 59

Standards of Compliance for Abortion-Related Services in Family Planning Service Projects

AGENCY: Public Health Service, DHHS.

ACTION: Proposed rule.

SUMMARY: This document proposes revocation of the rules issued in 1988 establishing standards for compliance by family planning services projects assisted under Title X of the Public Health Service Act with the statutory provision prohibiting abortion as a method of family planning in programs funded under that title. The rules, popularly known as the "Gag Rule", have been the focus of much litigation and controversy, and because the Secretary believes that the Rule inappropriately restricts grantees, she accordingly proposes below to revoke them and return the program to the compliance standards operative prior to their issuance. This action is also consistent with a memorandum issued by the President on January 22, 1993.

DATES: Comments must be received on or before April 6, 1993.

ADDRESSES: Comments must be in writing, and must be sent to: Mr. Gerald Bennett, Acting Deputy Assistant Secretary for Population Affairs, Department of Health and Human Services, P.O. Box 23783, Washington, DC 20026–3783.

Comments will be available for public inspection during normal business hours at this address. PHS will take appropriate steps, where necessary, to afford individuals with disabilities and equal opportunity to comment.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Bennett, 202–690–8335.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services proposes below rules revoking the rules issued on February 2, 1988. 53 FR 2922. Those rules, popularly known as the "Gag Rule," established standards for compliance by family planning services projects funded under Title X of the Public Health Service, 42 U.S.C. 300, *et seq.*, with the statutory prohibition on the use of funds under that title "in programs where abortion is a method of family planning." 42 U.S.C. 300a–6. The prior history of the controversy surrounding sec. 300a–6 is fully described in the preamble to the 1988 rules.

Since their issuance, the February 2, 1988 rules have been the focus of much litigation and controversy. Although they were upheld by the Supreme Court in *Rust* v. *Sullivan*, 111 S.Ct. 1759 (1991), a subsequent interpretation of the rules by the Bush Administration, under which physicians would have been permitted to counsel and refer Title X patients for abortion counseling and referral but other project employees would not have been permitted to do so, was recently held to be impermissible by the United States Court of Appeals for the District of Columbia Circuit. *National Family Planning and Reproductive Health Ass'n.* v. *Sullivan*, 979 F.2d 227 (D.C. Cir. 1992). This recent decision, together with the change of Administrations, has left the current status of the Title X rules unclear.

On January 22, 1993, President Clinton sent to the Secretary a memorandum on this matter, which is published elsewhere in this issue.

The Secretary's action herein is based, in part, upon her conclusion that the "Gag Rule" is an inappropriate implementation of the Title X statute because it unduly restricts the information and other services provided to individuals under this program. Therefore, the Secretary proposes below to revoke the 1988 rules and to readopt the Title X rules as they existed prior to February 2, 1988. The Secretary believes that the prior rules provide an appropriate approach to implementing Title X. In addition, the Secretary intends to reinstate the compliance standards that existed prior to that date, including those set out in the 1981 Family Planning Guidelines and in individual policy interpretations. (These compliance standards are being used on an interim basis because of the suspension of the "Gag Rule" discussed below.) Under these compliance standards, Title X projects would be required, in the event of an unplanned pregnancy and where the patient requests such action, to provide nondirective counseling to the patient on all options relating to her pregnancy, including abortion, and to refer her for abortion, if that is the option she selects. However, consistent with the long-standing Departmental interpretation of the statute, Title X projects would not be permitted to promote or encourage abortion as a method of family planning, such as by engaging in pro-choice litigation or lobbying activities. Title X projects would also be required to maintain a separation (that is more than a mere exercise in bookkeeping) of their project activities from any activities that promote or encourage abortion as a method of family planning.

As noted in the President's memorandum, these regulations and compliance standards were in effect for a considerable period of time prior to 1988, and the Department believes that they are generally well-understood within the Title X provider community. The rules proposed below are thus the Title X rules as in effect on February 1, 1988. It is recognized that some of the other regulations cross-referenced in the rules below may no longer be operative or citations may need to be updated. However, such housekeeping details will be addressed in the final rules.

The Secretary solicits comment on the proposals described above and suggestions for alternatives that will be consistent with the statute while promoting the interests of public health. Due to the considerations outlined in the President's memorandum, the Secretary's determination that the 1988 rules do not represent good public health policy, and due to the confusion and hardship caused by the 1988 rules, the Secretary has also, for the duration of the rulemaking period, suspended the 1988 rules. This action is being implemented pursuant to an Interim Rule which has been published separately in the **Federal Register**. Regional officials are being informed of this action, and will notify all present Title X grantees of the suspension of the 1988 rules.

Regulatory Flexibility Act and Executive Order 12291

The proposed rules would generally lessen the existing procedural and reporting requirements for covered entities. The Department has determined that the impact would not approach the annual $100 million threshold for major economic consequences as defined in E.O. 12291. Therefore, a regulatory impact analysis is not required.

Consistent with the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

E.O. 12612 requires that a Federalism Assessment be prepared in any cases in which proposed policies have significant federalism implications as defined in the Executive Order. Among the types of actions which can have such implications are federal regulatory actions which preempt State law. The Department does not intend or interpret the rules proposed below as imposing additional costs or burdens on the States or preempting State laws, nor are the rules inconsistent with any of the principles, criteria or requirements established by this Executive Order. In fact, it is anticipated that the rules will lessen present reporting and other burdens and costs. Therefore, these proposed rules would comply with E.O. 12612.

Paperwork Reduction Act of 1980

This proposed rule contains no information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980.

Family Impact

The proposed rules have been reviewed in conformance with E. O. 12606. The proposed rules below would get Title X clinics out of the middle of the abortion decision, returning it to the decision-making processes of the title X clients and their families and enable them to act in what they have determined to be their own best interests. It would thus promote the stability of the family, support parental influence, reduce governmental intrusion on family activities, enhance the role and autonomy of the family in decision-making, and require less Federal involvement in monitoring activities than would the present rules. The rules below also support the message to young people that they should engage in responsible decision-making about their reproductive health and choices.

List of Subjects in 42 CFR Part 59

Family planning—birth control, Grant programs—health, Health facilities, Low-income families.

Dated: January 29, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: February 1, 1993.

Donna E. Shalala,

Secretary.

PART 59—[AMENDED]

For the reasons set out in the preamble, it is proposed to revise subpart A of 42 CFR part 49 to read as follows:

Subpart A—Project Grants for Family Planning Services

Sec.
59.1 To what programs do these regulations apply?
59.2 Definitions.
59.3 Who is eligible to apply for a family planning services grant?
59.4 How does one apply for a family planning services grant?
59.5 What requirements must be met by a family planning project?
59.6 What procedures apply to assure the suitability of informational and educational material?
59.7 What criteria will the Department of Health and Human Services (HHS) use to decide which family planning services projects to fund and in what amount?
59.8 How is a grant awarded?
59.9 For what purposes may grant funds be used?
59.10 What other HHS regulations apply to grants under this subpart?
59.11 Confidentiality.
59.12 Inventions or discoveries.
59.13 Additional conditions.

Subpart A—Project Grants for Family Planning Services

Authority: 42 U.S.C. 300a–4.

§ 59.1 To what programs do these regulations apply?

The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.

§ 59.2 Definitions.

As used in this supbart:

Act means the Public Health Service Act, as amended.

Family means a social unit composed of one person, or two or more persons living together, as a household.

Low income family means a family whose total annual income does not exceed 100 percent of the most recent Community Services Administration Income Poverty Guidelines (45 CFR 1060.2). *Low income family* also includes members of families whose annual family income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example, unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources.

Nonprofit, as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefit, or may lawfully benefit, any private shareholder or individual.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

State means one of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, Northern Marianas, or the Trust Territory of the Pacific Islands.

§ 59.3 Who is eligible to apply for a family planning services grant?

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

§ 59.4 How does one apply for a family planning services grant?

(a) Application for a grant under this subpart shall be made on an authorized form.

(b) An individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including the regulations of this subpart, must sign the application.

(c) The application shall contain—

(1) A description, satisfactory to the Secretary, of the project and how it will meet the requirements of this subpart;

(2) A budget and justification of the amount of grant funds requested;

(3) A description of the standards and qualifications which will be required for all personnel and for all facilities to be used by the project; and

(4) Such other pertinent information as the Secretary may require.

§ 59.5 What requirements must be met by a family planning project?

(a) Each project supported under this part must:

(1) Provide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents). If an organization offers only a single method of family planning, such as natural family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.

(2) Provide services without subjecting individuals to any coercion to accept services or to employ or not to employ any particular methods of family planning. Acceptance of services must be solely on a voluntary basis and may not be made a prerequisite to eligibility for, or receipt of, any other service, assistance from or participation in any other program of the applicant.[1]

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[1] Section 205 of Pub. L. 94–63 states that any (1) officer or employee of the United States, (2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or

Continued

(3) Provide services in a manner which protects the dignity of the individual.

(4) Provide services without regard to religion, race, color, national origin, handicapping condition, age, sex, number of pregnancies, or marital status.

(5) Not provide abortions as a method of family planning.

(6) Provide that priority in the provision of services will be given to persons from low-income families.

(7) Provide that no charge will be made for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a Government agency) which is authorized to or is under legal obligation to pay this charge.

(8) Provide that charges will be made for services to persons other than those from low-income families in accordance with a schedule of discounts based on ability to pay, except that charges to persons from families whose annual income exceeds 250 percent of the levels set forth in the most recent CSA Income Poverty Guidelines (45 CFR 1060.2) will be made in accordance with a schedule of fees designed to recover the reasonable cost of providing services.

(9) If a third party (including a Government agency) is authorized or legally obligated to pay for services, all reasonable efforts must be made to obtain the third-party payment without application of any discounts. Where the cost of services is to be reimbursed under title XIX or title XX of the Social Security Act, a written agreement with the title XIX or title XX agency is required.

(10) (i) Provide that if an application relates to consolidation of service areas or health resources or would otherwise affect the operations of local or regional entities, the applicant must document that these entities have been given, to the maximum feasible extent, an opportunity to participate in the development of the application. Local and regional entities include existing or potential subgrantees which have previously provided or proposed to provide family planning services to the area proposed to be served by the applicant.

(ii) Provide an opportunity for maximum participation by existing or potential subgrantees in the ongoing policy decisionmaking of the project.

(11) Provide for an Advisory Committee as required by § 59.6.

(b) In addition to the requirements of paragraph (a) of this section, each project must meet each of the following requirements unless the Secretary determines that the project has established good cause for its omission. Each project must:

(1) Provide for medical services related to family planning (including physician's consultation, examination prescription, and continuing supervision, laboratory examination, contraceptive supplies) and necessary referral to other medical facilities when medically indicated, and provide for the effective usage of contraceptive devices and practices.

(2) Provide for social services related to family planning, including counseling, referral to and from other social and medical services agencies, and any ancillary services which may be necessary to facilitate clinic attendance.

(3) Provide for informational and educational programs designed to (i) achieve community understanding of the objectives of the program, (ii) inform the community of the availability of services, and (iii) promote continued participation in the project by persons to whom family planning services may be beneficial.

(4) Provide for orientation and in-service training for all project personnel.

(5) Provide services without the imposition of any durational residency requirement or requirement that the patient be referred by a physician.

(6) Provide that family planning medical services will be performed under the direction of a physician with special training or experience in family planning.

(7) Provide that all services purchased for project participants will be authorized by the project director or his designee on the project staff.

(8) Provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other Federal programs.

(9) Provide that if family planning services are provided by contract or other similar arrangements with actual providers of services, services will be provided in accordance with a plan which establishes rates and method of payment for medical care. These payments must be made under agreements with a schedule of rates and payment procedures maintained by the grantee. The grantee must be prepared to substantiate that these rates are reasonable and necessary.

(10) Provide, to the maximum feasible extent, an opportunity for participation in the development, implementation, and evaluation of the project by persons broadly representative of all significant elements of the population to be served, and by others in the community knowledgeable about the community's needs for family planning services.

§ 59.6 What procedures apply to assure the suitability of informational and educational material?

(a) A grant under this section may be made only upon assurances satisfactory to the Secretary that the project shall provide for the review and approval of informational and educational materials developed or made available under the project by an Advisory Committee prior to their distribution, to assure that the materials are suitable for the population or community to which they are to be made available and the purposes of title X of the Act. The project shall not disseminate any such materials which are not approved by the Advisory Committee.

(b) The Advisory Committee referred to in paragraph (a) of this section shall be established as follows:

(1) *Size.* The Committee shall consist of no fewer than five but not more than nine members, except that this provision may be waived by the Secretary for good cause shown.

(2) *Composition.* The Committee shall include individuals broadly representative (in terms of demographic factors such as race, color, national origin, handicapped condition, sex, and age) of population or community for which the materials are intended.

(3) *Function.* In reviewing materials, the Advisory Committee shall:

(i) Consider the educational and cultural backgrounds of individuals to whom the materials are addressed;

(ii) Consider the standards of the population or community to be served with respect to such materials;

(iii) Review the content of the material to assure that the information is factually correct;

(iv) Determine whether the material is suitable for the population or community to which it is to be made available; and

(v) Establish a written record of its determinations.

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supervises the administration of any program receiving Federal financial assistance, or (3) person who receives, under any program receiving Federal assistance, compensation for services, who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

§ 59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amount?

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will in the Department's judgment best promote the purposes of section 1001 of the Act, taking into account:

(1) The number of patients and, in particular, the number of low-income patients to be served;

(2) The extent to which family planning services are needed locally;

(3) The relative need of the applicant;

(4) The capacity of the applicant to make rapid and effective use of the Federal assistance;

(5) The adequacy of the applicant's facilities and staff;

(6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and

(7) The degree to which the project plan adequately provides for the requirements set forth in these regulations.

(b) The Secretary shall determine the amount of any award on the basis of his estimate of the sum necessary for the performance of the project. No grant may be made for less than 90 percent of the project's costs, as so estimated, unless the grant is to be made for a project which was supported, under section 1001, for less than 90 percent of its costs in fiscal year 1975. In that case, the grant shall not be for less than the percentage of costs covered by the grant in fiscal year 1975.

(c) No grant may be made for an amount equal to 100 percent of the project's estimated costs.

§ 59.8 How is a grant awarded?

(a) The notice of grant award specifies how long HHS intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years.

(b) Generally the grant will initially be for 1 year and subsequent continuation awards will also be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices, and the availability of funds. In all cases, continuation awards require a determination by HHS that continued funding is in the best interest of the Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 59.9 For what purpose may grant funds be used?

Any funds granted under this subpart shall be expended solely for the purpose for which the funds were granted in accordance with the approved application and budget, the regulations of this subpart, the terms and conditions of the award, and the applicable cost principles prescribed in subpart Q of 45 CFR part 74.

§ 59.10 What other HHS regulations apply to grants under this subpart?

Attention is drawn to the following HHS Department-wide regulations which apply to grants under this subpart. These include:

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure
42 CFR Part 122, Subpart E—Health Systems Agency review of certain proposed uses of Federal health funds
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 19—Limitations on payment or reimbursement for drugs
45 CFR Part 74—Administration of grants
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 59.11 Confidentiality.

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual's consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

§ 59.12 Inventions or discoveries.

(a) A project grant award is subject to the regulations of HHS as set forth in 45 CFR parts 6 and 8, as amended. These regulations shall apply to any activity of the project for which grant funds are used, whether the activity is part of an approved project or is an unexpected byproduct of that project.

(b) The grantee and the Secretary shall take appropriate measures to assure that no contracts, assignments, or other arrangements inconsistent with the grant obligation are continued or entered into and that all personnel involved in the grant activity are aware of and comply with such obligations.

§ 59.13 Additional conditions.

The Secretary may, with respect to any grant, impose additional conditions prior to or at the time of any award, when in the Department's judgment these conditions are necessary to assure or protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

[FR Doc. 93–2733 Filed 2–3–93; 1:18 pm]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Actions Regarding Family Planning Service Projects, Transplantation of Human Fetal Tissue, and Importation of the Drug Mifepristine

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In accordance with directives of President Clinton dated January 22, 1993, I have today ordered that the following actions be taken:

(1) The Standard of Compliance for Abortion-Related Services in Family Planning Service Projects (the "Gag Rule") is to be suspended, pending the publication of regulations to formally rescind the rule.

(2) The temporary moratorium imposed March 22, 1988, by the Assistant Secretary for Health and continued by the previous Secretary on November 2, 1989, prohibiting Federal funding of research involving transplantation of human fetal tissue from induced abortions, is to be rescinded.

(3) Food and Drug Administration Import Alert 66–47, importation of the drug Mifepristine ("RU–486") is to be immediately and thoroughly reviewed regarding the health and safety implications of potential import of the drug for personal use.

FOR FURTHER INFORMATION CONTACT: Audrey Manley, M.D., M.P.H., Acting Assistant Secretary for Health, Public Health, Public Health Service (202) 690–7694.

SUPPLEMENTARY INFORMATION: *The Standard of Compliance for Abortion-Related Services in Family Planning Service Projects (the "Gag Rule")*—In documents printed elsewhere in this issue of the **Federal Register**, the amendments to 42 CFR part 59, subpart A, published on February 2, 1988 (53 FR 2922)—commonly referred to as the "Gag Rule"—are suspended and new regulations are proposed to govern the Family Planning program established under Title X of the Public Health Service Act.

Federal Funding of Fetal Tissue Transplantation Research—This notice advises the public that the PHS is directed to rescind the moratorium imposed on March 22, 1988 which prohibits Federal funding of research involving transplantation of human fetal tissue from induced abortions. Such funding may be provided, subject to the procedures and protections which govern Federal support of biomedical research, and subject to guidelines as recommended by a National Institutes Health advisory committee. Interim guidelines are to be prepared immediately by the Director of the National Institutes of Health, as recommended by the committee, to assure that Federal support of such research does not encourage the choice of induced abortion.

FDA Alert 66–47 Excluding Importation of the Drug Mifepristine ("RU–486")—The FDA has been directed to initiate immediate and thorough review, directed at the health and safety implications of potential import of the drug for personal use. Findings of the review are to be reported promptly to the Secretary. If sufficient evidence does not exist to warrant exclusion of the RU–486 from the list of drugs that qualify for the personal use importation exemption, this import alert shall be rescinded. At the same time, FDA is directed to promptly assess initiatives to promote testing of RU–486 or other antiprogestins in the United States, and, as appropriate, licensing and manufacturing in this country, and report on options to the Assistant Secretary for Health and the Secretary.

The President's memoranda are published in Part IV of this **Federal Register** issue.

Donna E. Shalala,

Secretary.

[FR Doc. 93–2738 Filed 2–3–93; 1:18 pm]

BILLING CODE 4150-04-M

federal register

Friday
February 5, 1993

Part VI

Environmental Protection Agency

Request for Comment on Petition to Modify Policy on Pesticide Tolerances; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP–260053; FRL–4185–1]

Pesticides; Request for Comment on Petition to Modify EPA Policy on Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt and availability of petition.

SUMMARY: This document announces the receipt of and solicits comments on a petition which asks that EPA change its policies related to establishing tolerances for raw and processed foods under the Federal Food, Drug and Cosmetic Act (FFDCA). This petition is of interest in light of a recent court decision involving the Delaney clause of the FFDCA which requires EPA to revoke tolerances for certain cancer-causing pesticides in processed foods. EPA's current policy is that it will generally not allow a pesticide to be used on any raw commodity where a food additive regulation for a food processed from that commodity is barred by the FFDCA. The petition challenges this policy as illegal and unsound and also challenges how EPA determines whether a food additive regulation is needed. This notice seeks comment on this issue and also describes and seeks comments on other issues and policies EPA must consider in determining which pesticide uses are affected by the court ruling in *Les* v. *Reilly*, 968 F.2d 985 (9th Cir.).

DATES: Written comments, identified by the document control number [OPP–260053] must be received on or before April 6, 1993.

ADDRESSES: By mail, requests for copies of the petition and comments should be forwarded to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Copies of the petition will be available for public inspection from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, at the Public Docket and Freedom of Information Section, Field Operations Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Otherwise, all written comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Lisa Engstrom, Office of Pesticide Programs (H7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 703–308–8031.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the Federal Register. By modem dial (202) 512–1387 or call (202) 512–1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

I. Introduction

A. Statutory and Regulatory Framework

Under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), pesticides must be registered with the EPA before they may be sold, distributed, or used in the United States. To qualify for registration, a pesticide must, among other things, perform its intended function without causing "unreasonable adverse effects to the environment." (7 U.S.C. 136a(c)(5)). The term "unreasonable adverse effects" is defined as "any unreasonable risk to man or the environment taking into account the economic, social and environmental costs and benefits of the use of any pesticide." (7 U.S.C. 136(bb)). Thus, FIFRA requires EPA to balance the risks and benefits of a pesticide in determining whether or not to grant, or retain, a pesticide registration.

The Federal Food, Drug and Cosmetic Act (FFDCA) [21 U.S.C. 301 *et seq*.], authorizes the establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RAC) in section 408, and the promulgation of food additive regulations for pesticide residues in processed foods under section 409 of that Act [21 U.S.C. 346(a), 348].

Under section 408, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409. Section 409 tolerances are required, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, no section 409 tolerance is required if any pesticide residue in a processed food resulting from use on a raw agricultural commodity is below the tolerance for that pesticide in or on the RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food form. Thus, a section 409 tolerance is only necessary to prevent foods from being deemed adulterated when the concentration of the pesticide residue in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Federal Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

To establish a tolerance or an exemption for pesticide residues on raw agricultural commodities under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" [21 U.S.C. 346a(b)]. In reaching this determination, the Agency is directed to consider, among other relevant factors: (1) the necessity for the production of an adequate, wholesome and economical food supply; (2) other ways in which the consumer may be affected by the pesticide; and (3) the usefulness of the pesticide for which a tolerance is sought. Thus, section 408 of the FFDCA requires the Agency to balance risks against benefits in determining whether to establish tolerances.

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" [21 U.S.C. 348(c)(3)]. Section 409 also contains the Delaney clause, which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals. [21 U.S.C. 348(c)(5)]. Unlike FIFRA registrations and section 408 tolerances, a literal interpretation of the Delaney clause creates a "zero risk" standard that does not consider a risk/benefit balance in setting tolerances.

To coordinate the administration of each of these statutory provisions, EPA has specified that FIFRA registrations for food-use pesticides will not be approved until all tolerance and food additive regulations associated with the use have been obtained. 40 CFR 152.112(g). In addition, it is EPA's current policy that a section 408 raw food tolerance generally will not be established or maintained if a section 409 food additive tolerance for the same pesticide residue in the resulting processed food is needed but cannot be approved (53 FR 41104, 41108, October 19, 1988). This policy, which is also referred to in this document as the "EPA's coordination policy," is discussed further in Units II and III of this notice.

B. EPA's Tolerance Setting Process

In setting both 408 and 409 tolerances, EPA reviews residue chemistry and toxicology data. To be acceptable, tolerances must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a raw agricultural commodity based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues.

EPA's policy concerning when a section 409 tolerance is needed turns on whether there is a possibility that the processing of a raw agricultural commodity containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance. As discussed in Part III of this notice, EPA considers several factors in evaluating processing studies to determine when a 409 tolerance is needed. When a 409 tolerance is needed, the level of the food additive regulation is determined by multiplying the raw food tolerance level by the greatest degree of concentration measured in the processing study. Thus, theoretically, residues in processed food should not exceed the level of the food additive regulation even when the residue in the raw food which was processed is at or near the tolerance level.

C. Background of Proceedings

In February 1985, EPA commissioned the Board on Agriculture of the National Research Council/National Academy of Sciences (NAS) to examine the impact of the conflicting standards for regulating pesticides discussed above. In the report, "Regulating Pesticides in Food: The Delaney Paradox" (NAS, May 29, 1987), NAS recommended that the "zero-risk" Delaney clause be replaced by a "negligible risk" standard for both raw and processed foods. The NAS thought a negligible risk standard could dramatically reduce total dietary exposure to carcinogenic pesticides with a modest reduction of benefits.

Following recommendations from the NAS report, EPA published in the **Federal Register** (53 FR 41104, October 19, 1988) a policy statement announcing that it would treat the Delaney clause as subject to a de minimis exception where the human dietary risk from residues of the pesticide is, at most, negligible. The de minimis exception to the Delaney clause is premised on case law holding that an administrative agency ordinarily has the inherent authority to avoid applying the terms of a statute literally when to do so would yield pointless results. The 1988 policy statement further asserted that a legislative change would be the only way to reconcile the statutory standards fully.

In 1989, President Bush announced a comprehensive legislative proposal addressing pesticides and food safety including, among other things, a provision which would eliminate the long-standing inconsistency in the laws governing pesticide residues in food and establish instead a negligible risk standard for all food. This proposal was consistent with the NAS recommendation and would have eliminated the conflict which is subject of the petition discussed in this notice. Although Congress has considered a number of food safety bills, no legislation has passed.

On May 25, 1989, the State of California, the Natural Resources Defense Council, Public Citizen, the AFL-CIO, and several individuals filed a petition ("California petition") requesting that EPA revoke several food additive regulations and challenging EPA's *de minimis* interpretation of the Delaney clause. The petition, which sought a "zero risk" interpretation of the Delaney clause, requested that EPA revoke the following food additive regulations: trifluralin (spearmint and peppermint oils), benomyl (raisins and tomato products), phosmet (cottonseed oil), mancozeb (raisins, and brans of barley, oats, rye and wheat), dicofol (dried tea), DDVP (packaged and bagged nonperishable processed foods and dried figs), and chlordimeform (dried prunes) (54 FR 27700, June 30, 1989). The petitioners argued that these food additive regulations should be revoked because the seven pesticides to which the regulations apply are animal carcinogens, and thus may not continue in effect due to the Delaney clause.

EPA responded to the California petition on April 18, 1990 (55 FR 17560, April 25, 1990). EPA agreed to revoke several food additive regulations for which there were no longer any registered pesticide uses. EPA declined, however, to revoke the remaining food additive regulations based on determinations that either:

1. The food additive posed *de minimis* risk and that the Delaney clause contained an exception for pesticides posing a *de minimis* risk.
2. There was insufficient information to determine whether the food additive regulation posed a *de minimis* risk and EPA believed that data to be submitted in the future would show the risk from the food additive to be *de minimis*.
3. Action under FFDCA was appropriately withheld pending completion of an ongoing FIFRA proceeding, such as a Special Review, which is a detailed assessment of the costs and benefits associated with the registered uses of a pesticide.

On May 22, 1990, the petitioners filed objections to EPA's response. Again, the petitioners' central objection was that EPA had incorrectly interpreted section 409 by reading a *de minimis* exception into the Delaney clause. The petitioners also contended that an ongoing review of a pesticide under FIFRA did not provide grounds for refusing to rule on their petition. Although under the FFDCA the petitioners could have requested an administrative hearing on the petition denial, they specifically asserted that no hearing was necessary since their objections involved strictly legal issues. EPA requested public comments on the petitioners' objections (55 FR 26498, June 28, 1990).

On February 25, 1991, EPA (1) rejected the petitioners' request to revoke the food additive regulation for trifluralin on spearmint and peppermint oils and for benomyl on raisins and tomato products, finding that these regulations posed a trivial risk, thereby falling within the *de minimis* exception to the Delaney clause; (2) denied the petitioners' request to revoke the food additive regulations for mancozeb on raisins and bran of barley, oats, rye and wheat pending the ongoing FIFRA Special Review; (3) rejected the request to revoke the phosmet food additive regulation on cottonseed oil noting that it was expecting further data on the carcinogenicity of phosmet; (4) noted that the food additive regulation for chlordimeform on dried prunes had been revoked on October 25, 1989 (54 FR 43424); and (5) stated it would propose to revoke the food additive regulations for dicofol on dried tea and DDVP on packaged and bagged nonperishable processed foods. On October 3, 1991, EPA proposed to revoke the DDVP and dicofol food additive regulations (56 FR 50190). On May 13, 1992, EPA issued an additional order on the California petition addressing the mancozeb food additive regulations because the Special Review of mancozeb had been completed. This order denied the petition as to the mancozeb food additive regulations, finding that each of them posed a *de minimis* risk (57 FR 20481, May 18, 1992).

D. The Ninth Circuit Decision

The petitioners challenged EPA's February 25, 1991 Final Order in the U.S. Court of Appeals, Ninth Circuit. On July 8, 1992 , in *Les v. Reilly*, 968 F.2d 985 (9th Cir.), the court overturned EPA's interpretation that the Delaney clause contains an exception for pesticide uses that present no more than a *de minimis* cancer risk. The court ruled that food additive regulations are barred for any pesticides that are animal or human carcinogens. Although the court's ruling immediately affects only the pesticides involved in the petition, under the court's interpretation of the Delaney clause, food additive regulations will have to be revoked or denied for dozens of pesticide uses that either have or need such regulations.

EPA disagrees with the Ninth Circuit's decision and continues to believe that a *de minimis* exception is appropriate both as a legal matter and as a matter of public policy. EPA asked the Department of Justice (DOJ) to petition the Supreme Court for a writ of certiorari on behalf of EPA. The Solicitor General in DOJ makes decisions concerning whether cases involving Federal agencies will be appealed to the Supreme Court. The Solicitor General ultimately decided against petitioning the Supreme Court to review this case. The Solicitor General concluded that this case was not one of the small number of Federal cases, from among many presented each year for possible Supreme Court action, that merited a petition for certiorari.

The National Agricultural Chemicals Association (NACA), which intervened in the case supporting EPA's position, has filed a petition with the Supreme Court for a writ of certiorari asking the Supreme Court to overturn the Circuit Court's decision. For the moment, the effect of the Ninth Circuit's decision has been stayed by the filing of NACA's petition with the Supreme Court. EPA does not know when the Supreme Court will rule on NACA's petition. If the Supreme Court does not agree to hear NACA's petition, or uphold's the Ninth Circuit's decision, EPA will be required to revoke the tolerances that were the subject of the California petition. EPA is prepared to act promptly after any adverse Supreme Court action.

E. Other Judicial Action Involving the Delaney Clause

The same parties which petitioned EPA to revoke several existing 409 tolerances as violative of the Delaney clause have also filed suit seeking to compel EPA action on data showing that various pesticides concentrate during processing on certain foods. The plaintiffs contend that the FFDCA, and specifically the Delaney clause, requires EPA to revoke section 408 tolerances for all pesticide uses for which processing studies show concentration in a processed food form. The plaintiffs are seeking an injunction from the court ordering EPA to take prompt action to revoke all affected 408 tolerances. At present, the Court is considering motions by both the plaintiffs and EPA that the case should be decided without a trial, based on each side's legal arguments.

II. NFPA Petition

On September 11, 1992, several groups representing pesticide users and food processors (National Food Processors Association (NFPA), the United Fresh Fruit and Vegetable Association, the Florida Fruit and Vegetable Association, the Northwest Horticultural Council and the Western Growers Association) filed a petition (hereafter referred to as the "NFPA petition") with EPA requesting that section 408 tolerances remain effective for pesticides when, under the *Les* decision, the associated section 409 tolerances could not be established or would be revoked because the pesticides to which the tolerances relate induce cancer in animals or man. The NFPA petition characterizes EPA's coordination policy as the "EPA concentration policy." The "Summary and Conclusions" section of the petition, which summarizes its contents, is quoted below. (A full copy of the petition and its attachments are available as described in the ADDRESSES section of this document.)

> ### A. *The EPA Concentration Policy is Unlawful*
>
> 1. The EPA policy is in direct conflict with the contemporaneous and consistent construction of the 1958 food additive amendments by the Federal Food and Drug Administration (FDA), which was closely involved in the drafting and Congressional consideration of the amendments and which was responsible for administering sections 408 and 409 from 1958 until 1970. Moreover, because the EPA consistently relies on its extra statutory concentration policy as a basis for denying or revoking section 408 tolerances, the policy is in effect an unlawful substantive regulation that has never been proposed for public comment or published as a rule in the Code of Federal Regulations.
>
> 2. The EPA policy unlawfully incorporates the Delaney Clause of section 409 into section 408 for commodities that may concentrate during processing. EPA's risk assessment procedures under the general safety provision of section 408 should govern the determination of whether a pesticide can be approved for use on an agricultural crop, regardless of whether processing of the commodity may result in some concentration.
>
> 3. The EPA policy unlawfully disregards the requirement in section 408 that it "give appropriate consideration * * * to the necessity for the production of an adequate, wholesome and economical food supply," since the policy automatically results in the denial or revocation of section 408 tolerances for some pesticides that are important in the production of food and that satisfy the safety standards of section 408.
>
> 4. The EPA concentration policy unlawfully ignores the language and intent of the flow-through provision of section 402(a)(2)(C). The Agency policy totally disregards the explicit Congressional directive that a pesticide residue in a processed food is lawful under the flow through provision if the level of the "residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity" (emphasis added).
>
> ### B. *The EPA Concentration Policy is Not Necessary to Protect the Public Health or to Avoid Uncertainty in the Marketplace*
>
> 1. Because raw product pesticide tolerances that are subject to revocation on the basis of the EPA concentration policy have previously been found to satisfy the safety standard of section 408, the policy cannot be justified on public health or safety grounds.
>
> 2. FDA and industry pesticide residue data demonstrate that actual residue levels in agricultural commodities and in processed foods are well below section 408 tolerances. As recognized in the language of the flow-through provision itself, pesticide residues are typically reduced during shipment, handling, cleaning and processing of agricultural commodities.
>
> 3. EPA's sole publicly stated justification for its concentration policy is that growers and processors would be unsure which pesticides to use and which crops to purchase, since some raw products containing lawful residues might concentrate on processing and the residue in the processed product might exceed the raw product tolerance. Actual experience demonstrates, however, that growers and processors take great care to maintain pesticide residues at the lowest feasible levels, and that processors can and will produce finished products that are in full compliance with section 402(a)(2)(C).
>
> ### C. *The EPA Concentration Policy is Contrary to the Public Interest*
>
> 1. The EPA policy will force the Agency to prohibit the use on food of beneficial

pesticides that pose trivial risks, encouraging the use of alternatives that may be more harmful.

2. The EPA policy will compel the Agency to prohibit the use on food of numerous valuable and safe pesticides, thereby reducing the availability and increasing the cost to consumers of nutritious fruit, vegetable, and grain products. Continued adherence to the EPA policy is likely to have a particularly adverse impact on minor crops for which relatively few effective pesticides are registered.

III. Issues Raised in the NFPA Petition

If the *Les* decision stands, EPA will begin taking action to comply with the Ninth Circuit's decision. The NFPA petition raises several issues EPA should consider when determining which pesticide uses are subject to the Delaney clause. EPA believes that public comment on these issues, which are summarized below, will be beneficial. Therefore, EPA is soliciting comments on the issues raised in or by the NFPA petition.

A. EPA's Coordination Policy

Several issues under consideration arise from or are related to EPA's policy for coordinating FFDCA sections 408 and 409 ("coordination policy"). Under current policy, where data show that a section 409 food additive regulation is required but cannot be established, or that an existing section 409 tolerance must be revoked, EPA has generally not granted the section 408 tolerance for the associated raw agricultural commodity. Permitting the use of a pesticide where subsequent processing may yield a food with residues above the 408 tolerance, but where no food additive regulation has been established, could produce food that is adulterated. Continuing this policy in light of the *Les* decision may lead to the revocation of the section 408 tolerances associated with the affected food additive regulations. EPA is seeking comment on what relationship, if any, should be maintained between section 408 and 409 approvals and what goals EPA should pursue with such a policy. In particular, EPA is interested in receiving comments on whether EPA's current policy (if maintained) should be modified to allow 408 tolerances when for example, (1) treated raw agricultural commodities could be segregated and sent to the fresh market; (2) significant economic impacts on pesticide users and consumers would result if the 408 tolerances were revoked; or (3) the risks from residues on the raw commodities would be very small.

B. Concentration of Residues

EPA's current policy is that a section 409 food additive regulation is needed when there is a possibility that the processing of a raw food containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance. If residues in the raw commodity are at or near the tolerance level, there is a possibility of over-tolerance residues in processed food where a processing study shows that concentration of residues occurs through the processing of raw agricultural commodities. Each decision on whether concentration occurs is based on a careful review of scientific data from a processing study. In evaluating whether a processing study shows concentration of residues in the processed food, EPA considers such factors as: (1) the variability in the residue data; and (2) the variability in the analytical method. In the past, taking these factors into account, EPA has concluded in some cases that concentration in the range of 10% requires a section 409 food additive regulation.

EPA solicits comment on its policy regarding when a food additive regulation is needed. Additionally, EPA solicits comment on whether there are additional or different factors it should consider in determining whether, upon processing, there is a possibility of residues exceeding the raw food tolerance.

C. "Ready-to-Eat" Classification

Enforcement of a section 409 tolerance for pesticide residues carried over from a raw commodity into a processed food is directed to food which is considered "ready-to-eat." [See paragraph A.4. of the NFPA petition summary in Unit II of this document.] Section 402(a)(2)(C) provides that a section 409 tolerance is not necessary when the concentration of a pesticide in a processed food when ready to eat is not greater than the associated section 408 tolerance. The Agency has not previously issued guidance on what constitutes a "ready-to-eat" processed food. EPA's general approach to that phrase has been that "ready-to-eat" food is processed food or feed available to the consumer or food processor. EPA has not interpreted the phrase "ready-to-eat" to mean necessarily ready for immediate consumption without any further mixing, cooking, or other preparation by the consumer. Thus, EPA has set food additive regulations for foods such as flour and tomato paste as well as for apple juice and potato chips. In setting food additive regulations on such commodities as flour and tomato paste, EPA has not considered whether the residue level of the pesticide in, for example, pizza, breads, cakes, or spaghetti sauce is likely to be greater than the corresponding raw food tolerances. EPA requests comment on this policy.

EPA requests that if any commenter advocates a narrow interpretation of the phrase "ready-to-eat" which excludes certain processed food forms, the commenter also address the feasibility of implementing such an interpretation for foods deemed not "ready-to-eat." The comment should address the consequences both for EPA in establishing tolerances and for FDA and USDA in enforcing the FFDCA.

D. Cancelling Affected FIFRA Registrations

Just as EPA attempts to coordinate its regulatory decisions under sections 408 and 409 of the FFDCA, EPA also attempts to coordinate its regulatory actions under FIFRA and the FFDCA; therefore, EPA does not permit registration under FIFRA of a pesticide whose use would result in adulterated food (40 CFR 152.112(g)). Under this coordination policy, as currently implemented, EPA does not register FIFRA uses or set section 408 tolerances where section 409 food additive regulations are needed for a pesticide use but cannot be established. Therefore, current policy dictates that generally, when a section 409 tolerance must be revoked, EPA should not only revoke the associated section 408 tolerance, but it should cancel the FIFRA registration for that use as well. Although not explicitly mentioned in the NFPA petition, this issue is related to the policies EPA must consider when determining what regulatory actions to take with respect to what pesticide uses affected by the Ninth Circuit's decision. EPA requests comment on this aspect of its policy. In particular, if commenters support continuing registrations and section 408 tolerances for pesticides that need section 409 tolerances, but are barred by the Delaney clause, EPA requests comments on whether, and what type of, warning statements would be appropriate on pesticide labels for affected uses.

IV. Related Issues for EPA Consideration in Future Regulation of Residues in Raw and Processed Foods

In addition to the issues specifically raised in or by the NFPA petition, there are other issues EPA must consider when determining which pesticides will be affected by the *Les* decision. EPA has outlined those issues below for the purpose of soliciting public comment. If the *Les* decision is upheld, these issues will assume greater significance in EPA's regulation of pesticide residues.

A. The DES Proviso

The Delaney clause contains an exception to the prohibition of additives found to induce cancer for substances used: as an ingredient of feed for animals which are raised for food production, if the Secretary finds (i) that, under the conditions of use and feeding specified in proposed labeling and reasonably certain to be followed in practice, such additive will not adversely affect the animals for which such feed is intended, and (ii) that no residue of the additive will be found (by methods of examination prescribed or approved by the Secretary by regulations * * *) in any edible portion of such animal after slaughter or in any food yielded by or derived from the living animal. (21 U.S.C. 1348(c)(3)).

This provision is commonly referred to as the DES proviso because it was adopted in response to the use of the animal drug diethylstilbestrol (DES). FDA interprets the "no residue" language in the DES proviso to mean residues of the pesticide in the food which pose an upper-bound lifetime cancer risk of 1 in 1 million or less. 21 CFR 500.84. FDA's interpretation is not based on a *de minimis* interpretation, but on the principle of statutory construction that every provision of a statute must be given an effect. See 52 FR 49572. A literal application of the "no residue" requirement would, as a practical matter, make the DES proviso inoperable because given the increased sophistication of analytical methods, FDA has been unable to conclude that no trace of any given substance will remain in edible products. Id.

EPA solicits comment on the application of the DES proviso to pesticide residues in animal feeds, particularly in light of the *Les* decision.

B. Constituents Policy

Both EPA and FDA interpret the term "additive" in the Delaney clause to refer to the added substance as a whole and not to contaminants or impurities in the substance. Thus, if a constituent of a food additive such as a contaminant or impurity has been found to induce cancer, but the parent additive has not, the FDA and EPA have not invoked the Delaney clause, but rather have evaluated the parent (including risk from the constituents) under the general safety clause of the FFDCA. EPA does not regard deliberately added active or inert ingredients, and/or metabolites thereof, as candidates for consideration under the constituents policy, rather, EPA regards these substances as subject to the Delaney clause. EPA solicits comment on this interpretation of the term "additive" in the Delaney clause.

C. Section 18 Emergency Exemptions

Section 18 of FIFRA permits EPA to exempt State governments or Federal agencies from the requirements of FIFRA when EPA determines that an emergency situation exists and that the emergency use of the pesticide will not result in unreasonable adverse effects to the environment. The section 18 regulations require that, in deciding whether to issue an emergency exemption, EPA give "due consideration * * * to the progress which has been made toward registration of the proposed use, if a repeated specific or public health exemption is sought" (40 CFR 166.25(b)(2)). Because of EPA's coordination policy, whereby EPA will not register a use or establish a section 408 tolerance if concentration during processing indicates that a section 409 tolerance is required, but prohibited by Delaney, EPA could not make the finding of sufficient progress toward registration in cases where a food additive regulation is needed, but would be barred by the Delaney clause. If the *Les* decision is upheld, EPA will alert appropriate State and Federal agencies that EPA may not grant exemptions for uses that trigger Delaney clause concerns.

EPA seeks comment on this issue and on the impact of the potential elimination of the *de minimis* policy and retention of the coordination policy on the Agency's granting of FIFRA section 18 exemptions.

D. Regulatory Impacts

EPA is required under Executive Order 12291 to assess the benefits and costs to society which would result from revocation of tolerances affected by the court's decision, as well as from other regulatory actions which these revocations may trigger under current EPA policy. EPA has not undertaken a systematic assessment of the costs and benefits under EPA's policy, or the impacts associated with the policy changes suggested in the NFPA petition. While the degree of disruption will depend on which policies EPA ultimately uses, preliminary analyses suggest that section 409 tolerance revocations, coupled with current EPA policy, would significantly affect production of some agricultural commodities. These impacts may result in income loss to users, a reduction in the quality and quantity of affected crops, and increases in consumer prices. In many instances, impacts are expected to be concentrated in different geographic regions as affected by each region's degree of dependence on specific pesticides. There is also the possibility that some alternatives to affected pesticides may pose higher human (non-cancer) or environmental risks than the risks posed by the affected pesticides.

The Agency will conduct an assessment of the costs and benefits to society as a part of any regulatory action involving the Delaney clause and EPA's coordination policy. EPA has identified information, which is presented below, it believes would be useful to conduct this assessment. EPA requests comments on whether and what types of additional information would be useful to fully assess the costs and benefits of revoking affected tolerances.

Specifically, EPA believes information would be useful regarding the nature and extent of use (namely percent of crop treated, number of acre treatments applied annually, typical rate of application, and time of application) of pesticides and uses affected by the Delaney clause, pests controlled, likely alternative chemical and non-chemical controls, relative efficacy or performance of alternatives, the economic impacts to different sectors of the economy (e.g. crop producers, food processors and final consumers), and the impacts on imports and foreign competition which would result from the revocation of tolerances and food additive regulations on affected commodities and processed food products. EPA will also find its useful to consider the comparative risks of likely alternatives to affected pesticides. EPA will also consider information on the percent of each affected processed food product which has pesticide residues above the current associated section 408 tolerance, as well as information on the number of current users who would be affected if only section 409 tolerances were revoked.

Information on the timing of issuing tolerance revocations and effective dates would be useful in conducting the regulatory impact assessments once a decision to revoke is announced. EPA would find useful information, by both commodity and processed food, on the time of year for both pesticide use and crop harvest, the timing of processing in relation to harvest, and the length of time following harvest for both the raw agricultural commodities and different processed food products to clear domestic channels of trade. EPA will conduct an assessment using both typical and worst case estimates, as well as consideration of regional impacts. This latter information will be helpful to EPA in assessing the impact to growers who use the pesticides prior to the revocation and in analyzing the extent of any dislocation resulting from the revocations.

E. Determining the Level for Section 408 Tolerances

As noted in Unit I of this notice, EPA sets section 408 tolerances based on the highest levels observed in controlled field trials. EPA's current policy is to include all data points reflecting the maximum application rate and minimum preharvest interval allowed on the label since crops could be legally treated in this manner. This tolerance setting procedure reduces the chances of a crop treated according to label directions having illegal residues. On some occasions, EPA has discarded one or more of the higher residue values in a particular set of data when there is evidence of extremely unusual weather conditions, misapplication of the pesticide, or the possibility of samples being switched after harvest. It is relatively rare that such discarding occurs when EPA establishes tolerances. On the other hand, international organizations such as the Codex Alimentarius often discard higher residue values such that their maximum residue limits (MRL's) tend to be lower than U.S. tolerances. EPA's approach has thus been occasionally criticized as producing section 408 tolerances that are unnecessarily high.

If EPA were to change its current policy and exclude these high residue values, EPA would sometimes set lower tolerances. As a consequence, residues would more often exceed tolerance levels in both raw and processed foods. However, it should be noted that there are other factors which more frequently account for the U.S. tolerances being higher than Codex MRL's. For example, the use patterns of the pesticide often differ in the United States and EPA includes residues of metabolites in tolerances more often than the international organizations.

EPA requests comments on the present policy used to establish section 408 tolerances. In particular, the Agency asks commenters to address the relationship between EPA's use of high residue values in setting section 408 tolerances and policies regarding when there is sufficient concentration of residues during processing to require a section 409 tolerance. Finally, EPA asks that comments address the advantages and disadvantages of changing the current policy on high residue values to follow more closely the approach used by the Codex Alimetarius.

V. Conclusion

The issues described above are among the considerations raised by the Ninth Ciruit's ruling on the Delaney clause and the NFPA petition. If the *Les* decision is upheld, EPA may solicit further comment on these issues, as well as other issues which are raised by the conflicts in the legislative scheme governing pesticides. In view of the complexity, interrelatedness, and number of the considerations arising from *Les*, and the NFPA petition, however, EPA believes these matters to be of sufficient public concern that EPA should begin soliciting comment at this time. EPA is not including a list of potentially affected pesticides in this notice. Instead, EPA expects to release a list of potentially affected pesticides at a later date, either prior to or as part of future regulatory actions. The Agency will consider public comment submitted in response to this notice in focusing and refining its discussion in future notices or actions involving the Delaney clause.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

[FR Doc. 93-2701 Filed 2-4-93; 8:45 am]

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To increase the number of weeks for which benefits are payable under the Emergency Unemployment Compensation Act of 1991, and for other purposes.	102–244	106 Stat. 4; 26 USC 3304 note.
Omnibus Insular Areas Act of 1992	102–247	106 Stat. 36; 16 USC 410tt–4.
To provide for the designation of the Flower Garden Banks National Marine Sanctuary.	102–251	106 Stat. 60; 16 USC 1433 note.
Generic Drug Enforcement Act of 1992	102–282	106 Stat. 155; 21 USC 335a.
Child Abuse, Domestic Violence, Adoption and Family Services Act of 1992.	102–295	106 Stat. 187; 42 USC 10414.
Medical Device Amendments of 1992	102–300	106 Stat. 238; 21 USC 360l note.
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Voting Rights Language Assistance Act of 1992	102–344	106 Stat. 922; 42 USC 1973aa–1a.
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Dire Emergency Supplemental Appropriations Act, 1992, Including Disaster Assistance To Meet the Present Emergencies Arising From the Consequences of Hurricane Andrew, Typhoon Omar, Hurricane Iniki, and Other Natural Disasters, and Additional Assistance to Distressed Communities.	102–368	106 Stat. 1119; 16 USC 1433 note. 106 Stat. 1150.
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Department of the Interior and Related Agencies Appropriations Act, 1993.	102–381	106 Stat. 1419; 16 USC 1612 note.
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To amend the Solid Waste Disposal Act to clarify provisions concerning the application of certain requirements and sanctions to Federal facilities.	102–386	106 Stat. 1511; 42 USC 6939c.
Department of Transportation and Related Agencies Appropriations Act, 1993.	102–388	106 Stat. 1546.
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993.	102–389	106 Stat. 1580, 1594.
To provide for the minting of commemorative coins to support the 1996 Atlanta Centennial Olympic Games and the programs of the United States Olympic Committee, to reauthorize and reform the United States Mint, and for other purposes.	102–390	106 Stat. 1631; 31 USC 5112.
Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993.	102–391	106 Stat. 1675.
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To promote the conservation of wild exotic birds, to provide for the Great Lakes Fish and Wildlife Tissue Bank, to reauthorize the Fish and Wildlife Conservation Act of 1980, to reauthorize the African Elephant Conservation Act, and for other purposes.	102–440	106 Stat. 2227; 16 USC 4905. 106 Stat. 2228; 16 USC 4906. 106 Stat. 2229; 16 USC 4908, 4909.
National Defense Authorization Act for Fiscal Year 1993	102–484	106 Stat. 2453; 10 USC 2410e. 106 Stat. 2756; 29 USC 1662d–1 note. 106 Stat. 2769.
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To make technical amendments to certain Federal Indian statutes.	102–497	106 Stat. 3260; 42 USC 4368b.
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To establish the Keweenaw National Historical Park, and for other purposes.	102–543	106 Stat. 3570; 16 USC 410yy–2.
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To authorize and direct the Secretary of the Interior to convey certain lands in Livingston Parish, Louisiana, and for other purposes.	102–562	106 Stat. 4235; 16 USC 431 note.
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To amend the Federal Food, Drug, and Cosmetic Act to authorize human drug application, prescription drug establishment, and prescription drug product fees and for other purposes.	102–571	106 Stat. 4496; 21 USC 379h.
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To amend the Juvenile Justice and Delinquency Prevention Act of 1974 to authorize appropriations for fiscal years 1993, 1994, 1995, and 1996, and for other purposes.	102–586	106 Stat. 4985; 42 USC 5614.
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Monday
February 8, 1993

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For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 5 at 9:00 a.m.

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Proclamation 6527 of February 3, 1993

National Women and Girls in Sports Day, 1993

By the President of the United States of America

A Proclamation

In 1972, Title IX was passed requiring colleges receiving government funds to provide equitable athletic programs for women, thus markedly expanding sports opportunities for women. As we enter the third decade of this law, it is fitting and proper that we recognize the importance of the skills gained through fitness and athletic experiences.

Sports and fitness activities greatly enhance emotional and physical well-being. Additionally, the communication and cooperation skills learned through athletic experiences play a key role in an individual's contributions at home, at work, and to society. At the same time, the bonds built through athletics help to break down the barriers of racism and prejudice.

Unfortunately, while the history of women in sports is rich and long, there has been limited national recognition of the significance of women's athletic achievements. The number of women in leadership positions as coaches, officials, and administrators has declined drastically over the years. Athletic opportunities for male students at the high school and collegiate level remain significantly greater than those for female students.

With the promise of a bright future, female athletes serve as a source of pride and unity for the United States. They represent the best of performance and dedication and serve as valuable role models to younger citizens.

The Congress, by House Joint Resolution 546, has designated February 4, 1993, as "National Women and Girls in Sports Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim February 4, 1993, as National Women and Girls in Sports Day. I urge all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.

William J. Clinton

[FR Doc. 93-3096
Filed 2-4-93; 2:11 pm]
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Federal Register
Vol. 58, No. 24
Monday, February 8, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice to Waive the Nonmanufacturer Rule for photographic film and video cassette recorders.

SUMMARY: The Small Business Administration (SBA) is establishing waivers of the Nonmanufacturer Rule for photographic film and video cassette recorders. The basis for waivers of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal government. The effect of these waivers is to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program for these items.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC, 20416, Tel: (703) 695–2435.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the products of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations which implement this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal procurement market. To be considered available to participate in the Federal procurement market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual, and the second is the Product and Service Code established by the Federal Procurement Data System.

The SBA was asked to process requests for waivers of the Nonmanufacturer Rule for photographic film and video cassette recorders. SBA searched the Procurement Automated Source System (PASS) and Thomas Register, and published a notice seeking potential sources in the Commerce Business Daily. In addition, SBA published a notice of intent to grant a waiver of the Nonmanufacturer Rule in the **Federal Register** on December 15, 1992 (57 FR 59312). After a 15-day comment period, one comment was received but no small businesses were identified.

The one comment received recommended that we waive the class of products of photographic film covered by PSC 6750 (photographic supplies with a subcategory of unprocessed photographic film) instead of PSC 6770 (processed photographic film) listed in the notice. The class of products is intended by the SBA to include unexposed, unprocessed photographic film. Thus, the suggestion is incorporated in this notice.

Based on the above information, SBA is establishing waivers for photographic film (SIC code 3861, PSC code 6750) and video cassette recorders (SIC code 3651, PSC code 5836) pursuant to statutory authority under Public Law 100–656, Section 303(h). These waivers will be in effect indefinitely, but are subject to periodic review by the SBA.

Dated: January 25, 1993.

Robert J. Moffitt,

Associate Administrator for Procurement Assistance.

[FR Doc. 93–2689 Filed 2–5–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ASW–17; Amendment 39–8280; AD 92–13–10]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 204B, 205A, 205A–1, 205B, 212, and 412 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI), Model 204B, 205A, 205A–1, 205B, 212, and 412 helicopters. This action requires replacement of certain tail rotor driveshaft hanger bearings and an interim daily inspection until replacement bearings are installed. This amendment is prompted by a fatal accident involving a BHTI Model 412 helicopter that experienced a tail rotor driveshaft bearing failure. The actions specified in this AD are intended to prevent possible failure of a tail rotor driveshaft hanger bearing, which could result in failure of the tail rotor driveshaft and subsequent loss of control of the helicopter.

DATES: Effective February 23, 1993.

Comments for inclusion in the Rules Docket must be received by March 15, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–17, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

The applicable service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket, 4400 Blue Mound Road, room 158, Bldg. 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott A. Horn, FAA, Rotorcraft Certification Office, ASW–170, 4400 Blue Mound Road, Fort Worth, Texas 76193–0170, telephone (817) 624–5177, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION: On November 18, 1991, the FAA issued Priority Letter AD 91–24–16, applicable to certain BHTI Model 204B, 205A, 205A–1, 205B, 212, and 412 helicopters that requires a daily inspection of the tail rotor drive shaft hanger bearings. That action was prompted by a fatal accident involving a BHTI Model 412 helicopter that experienced a tail rotor driveshaft bearing failure. Inspections performed as part of the ongoing investigation found metal particles from the manufacturing process in the bearings. That condition, if not corrected, could result in possible failure of the tail rotor driveshaft and subsequent loss of control of the helicopter.

The manufacturer has informed the FAA that sufficient parts are now available to support parts replacement in the fleet. After careful review of the available data, including the notification of availability of bearings free of contamination, the FAA has determined that air safety and the public interest require the adoption of a superseding rule that requires replacement of contaminated bearings. Therefore, that priority letter is being superseded by this final rule to require replacement of contaminated bearings within the next 100 hours' time in service.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–17." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92–13–10 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–8280.

Docket No. 92–ASW–17. Supersedes Priority Letter AD 91–24–16, issued November 18, 1991, Docket No. 91–ASW–30.

Applicability: All BHTI Model 204B, 205A, 205A–1, 205B, 212, and 412 helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible failure of a tail rotor driveshaft hanger bearing that could result in failure of the tail rotor driveshaft and subsequent loss of tail rotor control, accomplish the following:

(a) Before further flight, after the effective date of this AD, determine the serial number (S/N) etched on the seal area of the tail rotor driveshaft hanger bearings, part number (P/N) 204–040–623–003 or 005. If the bearing has no permanently marked S/N, has a P/N 204–040–623–003 with S/N T0001 through T1743 or N4000 and subsequent, or has a P/N 204–040–623–005 with S/N NC3000 and subsequent; no further action is required by this AD.

(b) Within the next 100 hours' time in service after the effective date of this AD, replace the tail rotor driveshaft hanger bearings and bearing assemblies as follows in accordance with the applicable BHTI maintenance, repair, and overhaul manuals:

(1) For the Model 204B helicopters, remove each P/N 204–040–623–005 bearing that has a S/N with a prefix of T or N; replace with a P/N 204–040–623–005 bearing that has no S/N or a S/N of NC3000 and subsequent. This paragraph applies to parts with a prefix of N, but not with a prefix of NC.

(2) For the Model 205A, 205A–1 and 212 helicopters, accomplish the following:

(i) Remove each P/N 204–040–623–003 bearing that has a S/N T1744 and subsequent or N0001 through N3999; replace with a P/N 204–040–623–003 bearing that has no S/N, a S/N from T0001 through T1743 or a S/N of N4000 and subsequent.

(ii) Remove each bearing with P/N 204–040–623–005 that has a S/N prefix of T or N; replace with a P/N 204–040–623–005 bearing that has no S/N or a S/N of NC3000 and subsequent.

(3) For the Model 205B and 412 helicopters, remove each P/N 204–040–623–003 bearing that has a S/N T1744 and subsequent or N0001 through N3999; replace with a P/N 204–040–623–003 bearing that has no S/N, a S/N T0001 through T1743, or S/N of N4000 and subsequent.

(c) Before the first flight of each day, until the driveshaft hanger bearing is replaced in accordance with paragraph (b), accomplish the following inspection of the tail rotor driveshaft and tail rotor driveshaft hanger assemblies:

(1) Visually inspect the tail rotor driveshaft hanger bearings for grease leakage that continues for more than 10 hours' time in service after installation of a new bearing.

(2) Visually inspect the tail rotor driveshafts and driveshaft hanger assemblies for security and damage.

(3) Visually inspect the tail rotor driveshaft hanger assembly for an overheat condition and overheat indicator stripes for discoloration.

(4) Rotate the tail rotor driveshaft by hand while feeling the tail rotor driveshaft bearing housing for bearing binding or roughness.

(d) Before further flight, replace the tail rotor driveshaft hanger bearings with an airworthy part in accordance with the applicable BHTI maintenance, repair and overhaul manuals if the bearing assemblies exhibit signs of overheating, roughness or continued grease leakage.

(e) This AD supersedes Priority Letter AD 91–24–16, issued November 18, 1991, Docket No. 91–ASW–30.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, FAA, 4400 Blue Mound Road, Fort Worth, Texas. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(g) Special flight permits may be issued in accordance with FAR § 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective February 23, 1993.

Issued in Fort Worth, Texas, on January 15, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–2980 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–117–AD; Amendment 39–8490; AD 93–02–08]

Airworthiness Directives; Boeing Model 727 Series Airplanes Equipped With Bendix Brakes Fitted With NASCO Rotors Installed in Accordance With Supplemental Type Certificate (STC) SA3948NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, which requires that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this AD are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by this AD are intended to prevent the loss of brake effectiveness during a high energy RTO.

EFFECTIVE DATE: Effective March 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Gfrerer, Aerospace Engineer, Mechanical/Environmental and Crashworthiness Section, ANM–131L, FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806; telephone (310) 988–5338; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes was published in the **Federal Register** on September 23, 1992 (57 FR 43944). (A correction to that proposal was published in the **Federal Register** on October 2, 1992 (57 FR 45584).) That action proposed to require that certain landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this AD are not met, and that the new wear limits be incorporated into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Two commenters request (1) that the use of brake configurations with NASCO rotors be restricted until a clear reconciliation between airline service patterns and dynamometer tests is made, and (2) that brake wear pins be reduced by 25 percent to improve the margins of wear for estimated airline service pattern variation and replacement part variation. The commenters note that critical brake characteristics (including machined-to-worn brakes, rotor segment shrinkage, lining cup distortion, wear distribution, multi-tour reuse of rotors, total worn rotor stack weight, brake lining, rotor wear patterns, and mechanical integrity) must be known for the entire on-aircraft service life of a brake design in order to use dynamometer test results successfully to determine the worn-condition capability of the brakes. The FAA does not concur. The items listed previously have been evaluated and a comparison testing program has been performed. Results of the evaluation and testing revealed that NASCO rotors performed acceptably.

Two commenters, Allied-Signal Aerospace Company (Bendix Wheels and Brakes Division) and Boeing Commercial Airplane Group, voice objection to their names and part numbers appearing on brake assemblies once NASCO rotors have been installed. The commenters state that the modified brakes no longer represent the original design and are not a part of these companies' control number specifications. The FAA does not concur. The FAA's current policy is that, when a part is modified, the original placard and part number remain in place and a second placard is added identifying the name of the manufacturer that performed the modification and stating the approval means. In this case, NASCO permanently attached a placard to the brake housing listing the company's name, the rotor part number, the airplane on which the part would be installed, and the Supplemental Type Certificate (STC) number.

One commenter requests that the FAA acknowledge (1) that the proposed rule is not intended to address an unsafe condition that is unique only to NASCO rotor-equipped brakes, and (2) that the wear limits for NASCO rotor-equipped brakes are identical to those of Bendix rotor-equipped brakes, which are required by AD 92–12–08 (57 FR 29194, July 1, 1992). The commenter notes that although the notice makes reference to prior rulemaking that addressed the subject of brake wear limits, the notice does not explain clearly that this AD is a continuation of an earlier process applicable to all transport category airplanes, rather than a response to a safety condition inherent to NASCO rotor-equipped brakes. The commenter states further that the notice fails to explain that NASCO rotor-equipped brakes are not affected any differently than the original equipment manufacturers' brakes. The commenter also indicates that the brake wear limit for Bendix brakes equipped with NASCO rotors installed on Boeing Model 727 series airplanes is identical to the wear limit for the original Bendix brake installed on those airplanes.

The FAA agrees that some clarification on these points is appropriate. The FAA has not received any reports of incidents involving NASCO rotor-equipped brakes. The incident that prompted rulemaking action to address worn brakes on all transport category airplanes heavier than 75,000 pounds involved a McDonnell Douglas Model DC–10 series airplane. In that incident, a Model DC–10 executed a rejected takeoff and was unable to stop on the runway due to the worn condition of its brakes. The unsafe condition addressed in this AD is not unique to NASCO rotor-equipped brakes. The FAA also acknowledges that results of tests performed by NASCO have shown that the maximum allowable wear limit for Bendix brakes equipped with NASCO rotors that are installed on Boeing Model 727 series airplanes is identical to that of the Bendix brakes originally installed on that airplane model.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 690 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 375 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) will be approximately $3,160 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,432,500, or $3,820 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–02–08. Boeing: Amendment 39–8490. Docket 92–NM–117–AD.

Applicability: Model 727 series airplanes equipped with Bendix brakes fitted with NASCO rotors installed in accordance with Supplemental Type Certificate (STC) SA3948NM; and equipped with the brake part numbers identified in paragraph (a) of this AD; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, inspect brakes having the brake part numbers specified below for wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake within this limit.

BENDIX BRAKES FITTED WITH NASCO ROTORS INSTALLED IN ACCORDANCE WITH STC SA3948NM

Bendix P/N	Boeing P/N	Maximum wear limit (inches)
2601182–5	10–61287–22	1.8
2601182–6	10–61287–23	1.7

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD, into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on March 15, 1993.

Issued in Renton, Washington, on February 1, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2981 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–07–AD; Amendment 39–8491; AD 92–27–11 R1]

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to McDonnell Douglas Model MD–11 and MD–11F series airplanes, that currently requires a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists

between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts. This amendment revises the required measurement for the minimum proper clearance between the fire shutoff handles, cover assembly, and rub strips in the flight compartment. This amendment is prompted by an error that appeared in the published version of the existing AD. The actions specified in this AD are intended to prevent inhibited operation of the engine emergency fire extinguisher system.

DATES: Effective February 8, 1993.

The incorporation by reference of certain publications listed in the regulation was previously approved by the Director of the Federal Register as of January 13, 1993 (57 FR 61791, December 29, 1992).

Comments for inclusion in the rules docket must be received on or before April 9, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–07–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Vakili, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5262; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 17, 1992, the FAA issued AD 92–27–11, Amendment 39–8446 (57 FR 61791, December 29, 1992), which is applicable to McDonnell Douglas Model MD–11 and MD–11F series airplanes. That AD requires a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts. That action was prompted by a report that the engine fire extinguisher switches would not actuate, due to interference between fire shutoff handles and the cover assembly in the flight compartment. The actions specified in that AD are intended to prevent inhibited operation of the engine emergency fire extinguisher system.

Since the issuance of that AD, the FAA has been notified of an error that appeared in the published version of the AD document. Due to a typographical error, the measurement for the minimum proper clearance between the fire shutoff handles, cover assembly, and rub strips in the flight compartment was incorrectly indicated as "0.30 inch" in paragraph (a) of the AD. The correct measurement is "0.03 inch." It is necessary to revise the AD to specify this correct measurement in order to ensure that proper clearance between these items is obtained on all affected airplanes. Improper clearance could hinder the rotation of the fire shutoff handles. This condition, if not corrected, could result in inhibited operation of the engine emergency fire extinguisher system.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 92–27–11 to require that proper clearance of 0.03 inch (0.76 mm) be obtained between the fire shutoff handles, cover assembly, and rub strips in the flight compartment. This AD continues to require a functional inspection for proper actuation of the fire bottle switch; a visual inspection of the fire shutoff handle cover assembly to verify whether proper clearance exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment; and modification of discrepant parts.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–07–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8446 (57 FR 61791, December 29, 1992), and by adding a new airworthiness directive (AD), amendment 39–8491, to read as follows:

92–27–11 R1. McDonnell Douglas: Amendment 39–8491. Docket 93–NM–07–AD. Revises AD 92–27–11, Amendment 39–8446.

Applicability: McDonnell Douglas Model MD–11 and MD–11F series airplanes; as listed in McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inhibited operation of the engine emergency fire extinguisher system, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a functional inspection for proper actuation of the fire bottle switch, and a visual inspection of the fire shutoff handle cover assembly to verify whether a minimum clearance of 0.030 inch (0.76 mm) exists between the fire shutoff handles, cover assembly, and rub strips in the flight compartment, in accordance with the Accomplishment Instructions of McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992.

(1) If any fire bottle switch actuates (audible click), and if any handle clearance is found to be 0.030 inch (0.76 mm) or greater, no further action is necessary; or

(2) If any fire bottle switch does not actuate (click is not audible), and/or any handle clearance is not found to be 0.030 inch (0.76 mm) or greater, prior to further flight, trim the cover assembly handle cutout and rub strips to achieve a clearance of 0.030 inch (0.76 mm) or greater, and repeat the functional inspection requirements for proper switch actuation in accordance with paragraph (a) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The functional inspection and trim shall be done in accordance with McDonnell Douglas MD–11 Alert Service Bulletin A76–3, dated November 17, 1992. This incorporation by reference was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of January 13, 1993 (57 FR 61791, December 29, 1992). Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 8, 1993.

Issued in Renton, Washington, on February 1, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2982 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 92–ASO–2]

Establishment of VOR Federal Airway V–373; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes VOR Federal Airway V–373 from Greensboro, NC, direct to Sand Hills, NC. Currently, there is no airway between those terminal areas, causing circuitous routing for operations between them. This action will improve flight planning and save fuel.

EFFECTIVE DATE: 0901 UTC, April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On September 21, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish V–373 between Greensboro, NC, and Sand Hills, NC (57 FR 33908). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Domestic VOR Federal airways are published in § 71.123 of FAA Order 7400.7A, dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes V–373 between Greensboro, NC, and Sand Hills, NC. Currently, there is no airway between these terminals, thereby, causing a circuitous routing for operations between them. This action will improve flight planning and save fuel.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–373 [New]

From Greensboro, NC, to Sand Hills, NC.

* * * * *

Issued in Washington, DC, on January 28, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–2926 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27127; Amdt. No. 1530]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5.

Materials incorporated by reference are available for examination or purchase as stated above.

The large number or SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on January 29, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective April 1, 1993*

Jonesboro, AR, Jonesboro Muni, VOR RWY 23, Amdt. 9
Paragould, AR, Kirk Field, VOR RWY 4, Amdt. 3
Paragould, AR, Kirk Field, NDB RWY 4, Amdt. 4
Miami, FL, Dade-Collier Training and Transition, NDB RWY 9, Amdt. 12
Miami, FL, Dade-Collier Training and Transition, ILS RWY 9, Amdt. 13
Jesup, GA, Jesup-Wayne County, NDB RWY 10, Amdt. 1
Jesup, GA, Jesup-Wayne County, NDB RWY 28, Amdt. 2
Moultrie, GA, Moultrie Muni, VOR RWY 4, Amdt. 13, CANCELLED
Kahului, HI, Kahului, LOC/DME (BC) RWY 20, Amdt. 12, CANCELLED

* * * *Effective March 4, 1993*

Rochester, NY, Greater Rochester Intl, ILS RWY 22, Amdt. 5
Rochester, NY, Greater Rochester Intl, RADAR 1, Amdt. 14
Blacksburg, VA, Virginia Tech, LOC RWY 12, Amdt. 3
Seattle, WA, Seattle-Tacoma Intl, ILS RWY 16R, Amdt. 11
Watertown, WI, Watertown Muni, NDB RWY 5, Orig.
Watertown, WI, Watertown Muni, NDB RWY 23, Orig.
Watertown, WI, Watertown Muni, NDB RWY 5, Amdt. 2, CANCELLED
Watertown, WI, Watertown Muni, NDB RWY 23, Amdt. 4, CANCELLED
Watertown, WI, Watertown Muni, VOR/DME RNAV RWY 5, Amdt. 2

* * * *Effective January 15, 1993*

Auburn-Lewiston, ME, Auburn-Lewiston Muni, ILS RWY 04, Amdt. 8

[FR Doc. 93–2923 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 3c

[Docket No. RM93–6–000]

Repeal of Certain Standards of Conduct Provisions in Part 3c

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Final rule.

SUMMARY: The Commission is deleting portions of its regulations on Standards of Conduct for Commission employees. As of February 3, 1993, new standards of conduct issued by the Office of Government Ethics (OGE), applicable to the entire Executive Branch, will become effective. The portions of the Commission's current standards superseded by OGE's regulations are hereby repealed.

EFFECTIVE DATE: This final rule is effective February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Arnold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 9 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426.

(Issued February 2, 1993)

I. Introduction

The Federal Energy Regulatory Commission (Commission) is deleting most of the standards of conduct for Commission employees in Part 3c of its regulations.[1] These standards are repealed and superseded by government-wide standards of conduct regulations issued by the Office of Government Ethics (OGE), effective February 3, 1993.[2] With the deletion of most part 3c provisions, there is no further need to retain separate subparts for employees, special employees, and Commissioners. The remaining provisions will therefore be combined and made applicable to all Commission officers and employees.

II. Background and Discussion

For many years, officers and employees of the executive branch of the Federal Government have been governed by "a jumble of differing and sometimes-conflicting agency-specific conduct regulations."[3] The Commission's individual standards of conduct for employees (subpart A), special employees (subpart B), and Commissioners (subpart C) are codified in part 3c (18 CFR part 3c) of the regulations.

Early in 1989, the President's Commission on Federal Ethics Law Reform recommended that the system of individual agency ethics regulations be replaced by uniform, government-wide regulations. On April 12, 1989, President Bush issued Executive Order No. 12674, directing OGE to establish a single, comprehensive set of executive branch standards of ethical conduct. Subsequently, the Ethics Reform Act of 1989 (Pub. L. No. 101–194, November 30, 1989) named OGE as "supervising ethics office" for all executive branch employees in connection with the financial disclosure requirements, and authorized OGE to adopt government-wide regulations covering gifts to Federal employees, limitation on outside employment and honoraria, and other ethics issues.

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[1] 18 CFR part 3c.

[2] 57 FR 35005, Aug. 7, 1992.

[3] Statement of Stephen D. Potts, Director of the Office of Government Ethics, August 6, 1992.

On August 7, 1992, OGE issued a final rule establishing uniform standards of conduct for all executive branch employees.[4] The rule covers a broad range of ethical concerns, including gifts from outside sources, conflicting financial interests and disqualification requirements, limitations on outside activities, seeking other employment, and misuse of a government position. The rule will be effective on February 3, 1993, and, upon becoming effective, will supersede most individual agency standards of conduct. To avoid confusion as to which standards are applicable, OGE has instructed agencies to repeal all their superseded ethics regulations so that they can be removed from the Code of Federal Regulations. Accordingly, effective February 3, 1993, the Commission will repeal nearly all of its standards of conduct in part 3c because they will be superseded by OGE regulations.[5]

There are several exceptions. OGE regulations permit an agency to supplement government-wide ethics regulation if it determines a supplemental regulation is "necessary and appropriate" in view of its program and operations. 5 CFR 2635.105. Supplemental regulations require the concurrence of OGE. OGE has emphasized that such regulations should be used sparingly, for the purpose of meeting particularized needs or concerns of specific agencies; they may not be used to negate or revoke the OGE regulations. Specifically, OGE regulations are meant to establish uniform rules of conduct for all executive branch employees, rather than simply create a "floor" upon which agencies are free to place their own stricter standards.[6] "The uniformity required by the Executive order cannot be achieved if agencies can pick and choose which provisions they adopt or override." 57 FR 35010. Also, agencies may retain regulations or instructions which, apart from OGE regulations, they have independent authority to issue.

Consistent with these exceptions, the Commission will retain the following existing provisions: (1) The prohibition against ownership or purchase of the securities of a jurisdictional company (currently sections 3c.5(b)(3)(i), 3c.106(d)(4)(i), and 3c.204(b)(2)); the provisions barring the disclosure of information acquired during the course of an examination of books or other accounts (existing sections 3c.6(d), 3c.107(b)(3)) and 3c.205(b)(3)); and the prohibition against disclosure of the nature and time of any proposed Commission action (sections 3c.6(e), 3c.107(b)(4), and 3c.205(b)(4)).

OGE's final rule explicitly recognizes that agencies may adopt supplemental regulations prohibiting or restricting employees from acquiring certain financial interests or classes of financial interests. 5 CFR 2635.403(a). Until a supplemental regulation can be adopted, OGE is allowing existing prohibitions against financial interests to continue in effect for up to one year beyond the February 3, 1993 effective date of OGE regulations. Further, apart from OGE regulations, Commissioners and certain senior Commission staff members are barred by statute from owning shares of energy companies. (Section 602(a) of the DOE Act, 42 U.S.C. 7212(a)). Therefore, the existing Commission prohibition against the ownership of securities of jurisdictional companies will be retained until such time as the Commission can consider the need for a supplemental regulation to deal with this issue. However, no purpose would be served in retaining the detailed financial reporting requirements contained in sections 3c.5 and 3c.7. These requirements adopted by our predecessor, the Federal Power Commission, before passage of the DOE Act and the Ethics in Government Act of 1978, describe long out-of-date forms and procedures that were replaced more than a decade ago by current financial reporting requirements.[7]

The other surviving provisions are being retained on the basis of independent statutory authority. The prohibition against the disclosure of audit materials merely summarizes statutory provisions in section 301(b) of the Federal Power Act (16 U.S. 825(c)) and section 8(b) of the Natural Gas Act (15 U.S.C. 717g). The requirement that Commission employees must treat information about proposed Commission action as confidential is a rule of agency practice and procedure. It is founded on the Commission's statutory authority to adopt such procedural and administrative rules as are necessary to exercise its functions. (42 U.S.C. 7171(f)). Both requirements are also fully consistent with OGE's rules governing the use of nonpublic information. 5 CFR 2635.703.

Finally, the Commission is eliminating the three separate subparts of part 3c (covering employees, special employees, and Commissioners, respectively) and is combining them into one unit. With the elimination of most provisions of part 3c, there is no longer a need for the three separate subparts. For purposes of the remaining provisions the term "employee" (as in OGE's regulations) will refer to Commissioners and all members of the staff.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[9] The Commission therefore certifies that, pursuant to section 605(b) of the RFA, the deletion of these standards of conduct provisions will not have a significant economic impact on a substantial number of small entities. This is a procedural rule affecting Federal employees. It does not impact small entities as defined in the RFA.

IV. Environmental Statement

The Commission concludes that issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[10] This rule is procedural in nature and therefore falls within the categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.[11]

V. Information Collection Statement

The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.[12] However, this rule contains no information collection requirements and therefore is not subject to OMB approval.

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[4] OGE earlier issued an interim rule dealing with the prohibition on honoraria, and limits on outside earned income and employment by certain senior noncareer employees. 5 CFR part 2636, 56 FR 1721–1730, January 7, 1991.

[5] Commission employees are also subject to some of the Conduct of Employees regulations of the Department of Energy, 10 CFR part 1010 et seq. This rule makes no change in those regulations.

[6] 57 FR 35009–35010.

[7] Current financial disclosure procedures are detailed in Commission Administrative Directive AD 11–1A, adopted July 15, 1988.

[8] 5 U.S.C. 601–612.

[9] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is independently owned and operated and which is not dominant in its field of operation. 15 U.S.C. 632(a).

[10] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[11] See 18 CFR 380.4(a)(1).

VI. Administrative Findings and Effective Date

The Administrative Procedure Act (APA)[13] requires rulemakings to be published in the **Federal Register**. The APA generally mandates that an opportunity for comment be provided when an agency promulgates regulations. Notice and comment are not required, however, where a rule relates to agency personnel or agency organization, procedure or practice or when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[14] The Commission finds that notice and comment are unnecessary for this rulemaking. The Commission is merely deleting regulations that will be superseded by OGE's government-wide regulations.

This final rule relates to agency personnel and agency organization, procedure or practice. It deletes regulations no longer valid after OGE's regulations become effective, making no substantive changes. The Commission, therefore, finds good cause to make this rule effective upon the effective date of 5 CFR part 2635, February 3, 1993.

List of Subjects in 18 CFR Part 3c

Conflict of interests.

In consideration of the foregoing, the Commission amends part 3c of chapter I of title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 3c—STANDARDS OF CONDUCT

1. The authority citation for Part 3c is revised to read as follows:

Authority: 5 U.S.C. 7351, 7353, App.; 15 U.S.C. 717g; 16 U.S.C. 825(c); 42 U.S.C. 7211–7218; E.O. 12674, 54 FR 15159, 3 CFR 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105.

§§ 3c.1—3c.4r, 3c.—7 3c.11 [Removed]; §§ 3c.5 and 3c.6 [Amended]

2. The following sections are removed: §§ 3c.1 through 3c.5(b)(2), § 3c.5(b)(3)(ii) through 3c.5(e), § 3c.6 (a) through (c) and (f) through (j), and §§ 3c.7 through 3c.11.

§ 3c.5 [Amended]

3. Section 3c.5(b)(3)(i) is retained and redesignated as § 3c.1.

§ 3c.6 [Amended]

4. Section 3c.6 (d) and (e) is retained and redesignated as § 3c.2 (a) and (b).

Subpart B (§§ 3c.101–3c.112)—[Removed]

5. Subpart B, consisting of sections 3c.101 through 3c.112, is removed.

Subpart C (§§ 3c.201–3c.206)—[Removed]

6. Subpart C, consisting of sections 3c.201 through 3c.206, is removed.

[FR Doc. 93–2936 Filed 2–5–93; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 381

[Docket No. RM92–3–001]

Annual Update of Commission Filing Fees

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order dismissing rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is dismissing a request for rehearing of its annual updating of its filing fees. The request for rehearing objected to the updated filing fee for applications under section 203 of the Federal Power Act, 16 U.S.C. 824b, which fee now has been eliminated entirely.

EFFECTIVE DATE: This order is effective January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence Greenfield, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone: (202) 208–0415.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, at 941 North Capitol Street, NE., Washington, DC 20426. The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Order Dismissing Rehearing

Issued January 22, 1993.

On May 15, 1992, UtiliCorp United Inc. (UtiliCorp) filed a request for rehearing of the Commission's order issued in this proceeding on April 16, 1992. Annual Update of Commission Filing Fees, 57 FR 15224 (April 27, 1992), III FERC Stats. & Regs. ¶ 30,941 (1992). For the reasons given below, UtiliCorp's request for rehearing will be dismissed.

Background

On April 16, 1992, the Commission, through its designee the Executive Director, updated its filing fees pursuant to 18 FR 381.104. The filing fees updated included the filing fee for applications under section 203 of the Federal Power Act, 16 U.S.C. 824b (1988)—which increased from $14,530 to $16,620. Compare 18 CFR 381.509 with III FERC Stats. & Regs. at 30,491.

On rehearing, UtiliCorp argues that the Commission erred by charging all section 203 applications—both major merger applications and other, simpler applications (such as dispositions of transformers or transmission lines)—the same filing fee. UtiliCorp argues that the costs of major merger applications are spread over the filing fees for all section 203 applications, driving up the filing fees for all such applications. UtiliCorp urges the Commission to reform its filing fees for section 203 applications to differentiate between major merger applications and other, simpler section 203 applications.

Discussion

The gravamen of UtiliCorp's request for rehearing is not the updating of the filing fees generally, or even the updating of the filing fees for section 203 applications. Rather, it is that the Commission has (and has always had) a single filing fee applicable to all section 203 applications. A proceeding involving the annual updating of the filing fees is not an appropriate forum to raise an objection to the charging of a single filing fee for all section 203 applications.

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[12] 5 CFR part 1320.

[13] 5 U.S.C. 551–559.

[14] 5 U.S.C. 553(b)(B).

In addition, effective on January 4, 1993, the Commission eliminated its filing fees for various applications including section 203 applications.[1] This action effectively moots UtiliCorp's request for rehearing.[2]

Accordingly, for the reasons given above, UtiliCorp's request for rehearing will be dismissed.

The Commission Orders

UtiliCorp's request for rehearing is hereby dismissed.

By the Commission.

Linwood A. Watson, Jr.,
Acting Secretary

[FR Doc. 93–2935 Filed 2–5–93; 8:45 am]

BILLING CODE 6701-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 254

RIN 1010–AB81

Spill-Response Plans for Offshore Facilities Including State Submerged Lands and Pipelines

AGENCY: Minerals Management Service, Interior.

ACTION: Interim final rule.

SUMMARY: The Federal Water Pollution Control Act (FWPCA) as amended by the Oil Pollution Act of 1990 (OPA) requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. After that date, a facility for which a response plan is required by the act may not handle, store, or transport oil unless a response plan has been submitted. This interim rule establishes requirements for spill-response plans for offshore facilities including associated pipelines. The interim rule provides necessary guidance to operators for preparing and submitting spill-response plans that are required as a condition of operation beyond the February 18, 1993, statutory deadline.

EFFECTIVE DATE: This interim rule is effective February 18, 1993. This interim rule will expire on February 18, 1995, or when superseded by a final rule.

FOR FURTHER INFORMATION CONTACT: Lawrence H. Ake or John V. Mirabella, Engineering and Technology Division, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: In August 1990, Congress passed OPA which amended section 311(j) of the FWPCA by strengthening provisions concerning oil-spill prevention efforts and spill-response capability.

Under Executive Order (E.O.) 12777, the Minerals Management Service (MMS) has responsibility under FWPCA for issuing regulations requiring owners or operators of offshore facilities to prepare and submit spill-response plans. The FWPCA requires that by February 18, 1993, owners or operators of offshore facilities, including associated pipelines, prepare and submit response plans and ensure the availability of private personnel and equipment to contain discharges of oil and hazardous substances. The new authorities apply to all offshore areas including State submerged lands but not to deepwater ports subject to the Deepwater Ports Act (33 U.S.C. 1501 *et seq.*).

An advance notice of proposed rulemaking (ANPR) was published in the **Federal Register** on August 12, 1992 (57 FR 36032). That notice informed the public that MMS is preparing to develop regulations governing the establishment of procedures, methods, and equipment to prevent and to contain discharges of oil and hazardous substances under section 311(j)(1)(C) of FWPCA; preparation and submission of response plans under section 311(j)(5) of FWPCA and section 4202(b)(4) of OPA; and periodic inspection of containment booms and response equipment under section 311(j)(6)(A) of FWPCA. The notice also solicited information concerning the development of these requirements. The MMS is proceeding with review and analysis of comments received and will shortly begin development and publication of a proposed rule covering all aspects of these requirements.

Of immediate concern, however, is the need to allow owners and operators of facilities to operate under an approved spill-response plan as soon as possible. This need is dictated by a mandate of OPA that owners or operators of facilities submit response plans by February 18, 1993. Failure to do so will mean that a facility cannot be used to handle, store, or transport oil until the owner or operator submits a plan. To meet this date, MMS has developed interim rules that will ensure that spill-response plans of sufficient quality are being developed as well as provide a means for facility owners to comply with the February 18, 1993, deadline. This process will ensure that spill-response plans are in place at the earliest possible date and that the beneficial environmental effects of spill-response plans can be realized while more extensive regulations to implement OPA are being developed.

The MMS has established an expiration date for the interim rule of February 18, 1995. During the time that the interim rule is in effect, it will allow for an orderly submission and processing of spill-response plans. The MMS will also use this time period for completion of the final rule.

In developing these interim rules on spill-response plans, MMS has taken full advantage of the fact that requirements which meet most of the goals of OPA are already in place under State or Federal laws. The MMS, for example, currently requires a comprehensive oil-spill contingency plan (OSCP) from lessees operating in the Outer Continental Shelf (OSC). Several coastal States currently have requirements for spill-response plans as well, and other States plan to issue requirements in the near future. These requirements were developed in response to the same concerns that prompted passage of OPA.

The OPA requires that spill-response plans identify and ensure the availability of private personnel and equipment necessary to respond to a worst case discharge. For the purpose of this interim rule, MMS is considering a continuous oil spill from a facility (e.g., well blowout) to be a worst case discharge. This is consistent with current requirements for OSCP's contained in MMS regulations. The MMS requested comments on the definition of a worst case discharge in the ANPR published August 12, 1992, and may modify the definition based on those comments when final regulations are published.

These interim rules will ensure that plans will be reviewed under one set of regulations regardless of where the facility is located. The interim rules will not require owners and operators now in compliance with MMS regulations at 30 CFR 250.42 to submit new documentation for facilities located in the OCS. Mobile drilling unit operations will be covered by lessee response plans.

Those with MMS approved OSCP's for facilities in the OCS may now expand those plans to include facilities in State waters of the same geographic area. Owners and operators of facilities in State waters with plans approved by the State are required to submit a copy of the plan to MMS as well as information pertaining to the approval. Comprehensive requirements for developing and submitting spill-response plans are given for owners and operators that do not fall in either of these categories.

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[1] Elimination of Certain Filing Fees in parts 346 and 381, Order No. 548, 58 FR 2968 (Jan. 7, 1993). III FERC Stats. & Regs. ¶____(1993).

[2] On March 11, 1992, UtiliCorp filed a motion in Docket No. RM91–9–000, the 1991 filing fee updating proceeding, asking that the Commission reopen that proceeding for the same reasons given here. The elimination of the filing fee for section 203 applications moots this motion as well.

The requirements addressing other aspects of the August 12, 1992, notice (e.g., spill prevention, equipment inspection, spills of hazardous materials) will be addressed later in other proposed regulations.

Author

This document was prepared by John V. Mirabella and Larry H. Ake, Engineering and Technology Division, MMS.

E.O. 12291

The Department of the Interior (DOI) has determined that this interim rule does not meet the criteria for a major rule under E.O. 12291.

The rule will have virtually no effect on platform facilities in Federal waters which make up over 75 percent of the population of offshore platforms. Many facilities in State waters will be able to meet the requirements of the interim rule by making minor modifications to existing plans. The MMS estimates that less than 10 percent of offshore platform facilities will need new plans.

Pipeline facilities in both Federal and State waters will need to develop spill-response plans for the first time. Most right-of-way holders, however, are affiliated with producing companies and can meet the requirements of the interim rule by making modifications to existing plans.

The MMS estimates that fewer than 550 plans will need to be submitted at a cost of approximately $5,500,000, far below the threshold of $100,000,000 for a major rule.

Regulatory Flexibility Act

The DOI has determined that this interim rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Administrative Procedure Act

The MMS has determined, in accordance with 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act, that a notice of proposed rulemaking is not required and is impracticable in the issuance of this rule. The interim rule is needed to provide guidance to owners and operators of offshore facilities concerning the preparation and submittal of spill-response plans. Plans are required to be submitted by February 18, 1993, by the FWPCA as amended by OPA. Absent any rulemaking, the OPA itself imposes the obligation to submit spill-response plans. This interim rule merely interprets the statutory provision in providing that plans already in existence for spill-response satisfy the OPA requirements until a new rulemaking occurs. For the remaining facilities that previously did not have spill-response plan submission responsibility, good cause exists for this interim rule because those operators of facilities must, under the OPA, submit plans or else face shutdown after February 18, 1993. This interim rule provides the guidance for those plans until the agency is able to develop further guidance after notice and comment. Absent guidance from this interim rule, the public interest and health and safety goals of the OPA would not be met.

The MMS has determined, in accordance with 5 U.S.C. 553(d)(2), that this deadline presents a good cause to waive the normal 30-day waiting period for the rule to become effective. The interim rule will allow owners and operators of offshore facilities to continue operations during notice and comment and the development of final rules.

Paperwork Reduction Act

The collections of information contained at 30 CFR 254.4 in this rule and submitted in accordance with 30 CFR 250.42 have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0057.

The collection of information contained at 30 CFR 254.5 in this rule has been approved by OMB under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0091. Public reporting burden for this collection of information is estimated to average 48 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the above collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 2300, 381 Elden Street, Herndon, Virginia 22070–4817, and the Office of Management and Budget, Paperwork Reduction Project (1010–0091), Washington, DC 20503.

E.O. 12778

The DOI has certified to OMB that this interim regulation meets the applicable standards provided in sections 2(a) and 2(b)(2) of E.O. 12778.

National Environmental Policy Act

The MMS has examined the interim rulemaking and has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

List of Subjects in 30 CFR Part 254

Continental shelf, Environmental protection, Oil and gas development and production, Oil and gas exploration, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 6, 1993.

Richard Roldan,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble, 30 CFR ch. II, subchapter B—Offshore, is amended as follows:

1. Part 254 is added to read as follows:

PART 254—SPILL-RESPONSE PLANS FOR OFFSHORE FACILITIES INCLUDING STATE SUBMERGED LANDS AND PIPELINES

Sec.
254.0 Authority for information collection.
254.1 Definitions.
254.2 General requirements.
254.3 Submission of information.
254.4 Offshore facilities in Federal waters.
254.5 Offshore facilities in State waters.
254.6 Compliance with plan.
254.7 Determination of adequacy

Authority: 33 U.S.C. 1321.

§ 254.0 Authority for information collection.

The information collection requirements in 30 CFR part 254 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0091. The information is being collected to inform the Minerals Management Service (MMS) of operator and lessee preparations for response to potential pollution of the offshore environment.

The requirement to respond is mandatory. The public reporting burden for this collection of information is estimated to average 48 hours per response including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burdens indicated for a specific information collection or any other aspect of the collection of information pursuant to the provisions of this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer; Minerals Management Service; Mail Stop 2300; 381 Elden Street; Herndon, Virginia 22070–4817 and the Office of Management and Budget; Paperwork Reduction Project 1010–0091; Washington, DC 20503.

§ 254.1 Definitions.

For the purposes of this part:

Facility means any structure or group of structures which are used for one or more of the following purposes: Exploring for, drilling for, producing, storing, processing, or transporting oil. The term excludes deepwater ports and their associated pipelines but includes other pipelines used for one or more of these purposes.

Offshore means the area seaward of the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the area seaward of the line marking the limit of inland waters.

Oil means hydrocarbons produced at the wellhead in liquid form (includes distillates or condensate associated with produced natural gas), as well as oil of any kind or in any form, including but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Operator means the individual, partnership, firm, or corporation having control or management of operations on the leased area where the facility is located or the holder of a right of use and easement granted under applicable State law or the Outer Continental Shelf Lands Act, as amended, for the area in which the facility is located.

Pipeline means new and existing pipe and any equipment, appurtenance, or building used or intended for use in the transportation of oil. Pipelines do not include vessels such as barges or shuttle tankers used to transport oil from offshore facilities.

Regional Supervisor means the MMS officer with responsibility and authority for operations or other designated program functions within an MMS Region.

§ 254.2 General requirements.

(a) Not later than February 18, 1993, all offshore facilities shall have submitted a spill-response plan, thereby meeting the provisions of § 254.4 or § 254.5 of this part.

(b) Compliance with this part may be achieved by a lessee, by an operator on behalf of a lessee, or by a pipeline right-of-way holder.

(c) The spill-response plans may be for a single lease or facility, or for a group of leases or facilities of a single operator or pipeline right-of-way holder, including affiliates which are located in the same geographic area.

(d) The spill-response plans submitted to the Minerals Management Service (MMS) shall be reviewed and updated annually, with all modifications submitted to the MMS office of original submission. The spill-response plans originally submitted to a State shall be updated in accordance with the requirements of the State.

§ 254.3 Submission of information.

Information submitted pursuant to this section shall be sent to the appropriate MMS office listed below.

(a) For facilities offshore Alaska:

Minerals Management Service, Regional Supervisor, Field Operations, Alaska OCS Region, 949 East 36th Avenue, Anchorage, AK 99508–4302

(b) For offshore facilities in the Atlantic Ocean:

Minerals Management Service, Regional Director, Atlantic OCS Region, 381 Elden Street, Herndon, VA 22070–4817

(c) For offshore facilities in the Gulf of Mexico:

Minerals Management Service, Regional Supervisor, Field Operations, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394

(d) For offshore facilities in the Pacific Ocean (except offshore Alaska):

Minerals Management Service, Regional Supervisor, Field Operations, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010–6064

§ 254.4 Offshore facilities in Federal waters.

Lessees or facility operators of offshore facilities in Federal waters shall develop, submit, and maintain an oil-spill contingency plan (OSCP) prepared in accordance with 30 CFR 250.42. Any plan that does not provide for response equipment testing or response drills shall be amended, and the amendment shall be submitted to MMS by February 18, 1993.

§ 254.5 Offshore facilities in State waters.

Operators of offshore facilities in State waters shall be in compliance with paragraphs (a), (b) or (c) of this section.

(a) Amend an OSCP approved by MMS to include facilities in State waters of the same geographic area;

(b) Provide a copy of a spill-response plan that has been submitted to a State agency for approval as well as the following information:

(1) A list of the offshore facilities and leases covered by the plan.

(2) Name and address of agency to which the plan was submitted.

(3) Date plan was submitted.

(4) If the plan received formal approval, the name of the approving organization, the date of approval, and a copy of the approval letter if one was issued.

(5) Identification of any regulations or standards under which the plan was prepared; or

(c) Submit an oil-spill response plan (OSRP) to the appropriate MMS office identified in 30 CFR 254.3. The OSRP shall contain the following:

(1) A summary of available oil-spill trajectory analyses which are specific to the area of operations. The summaries shall specify those environmentally sensitive areas which may be impacted and strategies to be used for their protection.

(2) Identification of response equipment and response times together with materials, support vessels, and procedures to be employed in responding to a worst case discharge and spills of short duration and limited maximum volume (e.g., tank overflows, hose failures). For the purposes of this section, a capability to respond to a worst case discharge requires the ability to respond to a continuous oil spill (e.g., well blowout). Response equipment and strategies shall be suitable for anticipated environmental conditions in the area of operations.

(3) A dispersant-use plan including an inventory of the dispersants which might be proposed for use, a summary of toxicity data for each dispersant, a description of the types of oil on which each dispersant is effective, a description of dispersant application equipment and procedures, and an outline of the procedures to be followed in obtaining approval for dispersant use.

(4) Provisions for response drills and for inspecting, testing, and maintaining response equipment.

(5) Procedures for the purpose of early detection and timely notification of an oil spill, including a current list of names, telephone numbers, and addresses of the responsible persons and alternates who are to receive notification of an oil spill and the names, telephone numbers, and addresses of regulatory organizations and agencies to be notified when an oil spill is discovered.

(6) An inventory of applicable equipment, materials, and supplies

which is available locally and regionally.

(7) Well-defined and specific actions to be taken after discovery of an oil spill including the following:

(i) Designation (by name or position) of an oil-spill response operating team comprised of trained personnel available within a specified response time and a description of the training that such personnel will receive;

(ii) Designation (by name or position) of a trained spill-response coordinator who is charged with the responsibility and is delegated commensurate authority for directing and coordinating response operations; and

(iii) A planned location for a spill-response operations center and a reliable communications system for directing the coordinated overall response operations.

(8) Provisions for disposal of recovered oil, oil-contaminated material, and other oily wastes.

(9) Provisions for monitoring and predicting spill movement.

(10) In Alaskan waters only, provisions for ignition of an uncontrollable oil spill and the guidelines to be followed in making the decision to ignite.

§ 254.6 Compliance with plan.

Responsible parties or their authorized representatives shall conduct operations in accordance with all plans submitted or referenced pursuant to this part.

§ 254.7 Determination of adequacy.

If the Regional Supervisor determines at any time that a response plan submitted to MMS or a State is inadequate, the Regional Supervisor will specify deficiencies in the plan, and the responsible party shall take the actions necessary to modify the plan.

[FR Doc. 93–2995 Filed 2–4–93; 10:06 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–96]

Special Local Regulations for Marine Events; The Great Chesapeake Bay Swim Event, Chesapeake Bay, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.507 for the Great Chesapeake Bay Swim Event to be held on June 13, 1993. These special local regulations are needed to provide for the safety of participants and spectators on the navigable waters during this event. The effect will be to restrict general navigation in the regulated area for the safety of participants in the swim, and their attending personnel.

EFFECTIVE DATES: The regulations in 33 CFR 100.507 become effective from 6:30 a.m. until 1 p.m., on June 13, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Baltimore (410) 576–8516.

DRAFTING INFORMATION: The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

DISCUSSION: Mr. Charles Nabit, a representative of the March of Dimes, submitted an application on October 8, 1992 to hold the Great Chesapeake Bay Swim Event on June 13, 1993. Approximately 600 swimmers will start from Sandy Point State Park and swim between the William P. Lane Jr. Memorial Twin Bridges to the Eastern Shore. This is the type of event contemplated by these regulations and the safety of the participants depends upon control of vessel traffic, therefore the regulations in 33 CFR 100.507 are implemented. During the swim itself, all vessel traffic will have to be stopped, however vessel traffic will be permitted to transit the regulated area as the swim progresses, so commercial traffic should not be severely disrupted.

Dated: January 29, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–2958 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–4591–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Pioneer Sand Company Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Pioneer Sand Company Superfund Site (the Site) in Pensacola, Florida, from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Florida have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Florida have determined that remedial actions conducted at the Site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Patsy Goldberg, Remedial Project Manager, South Superfund Remedial Branch, Waste Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347–2643, or Betty Winter, Community Relations Coordinator, at the same address and phone number as noted above.

ADDRESSES: Comprehensive information on this Site is available at the following addresses:

EPA Region IV Public Docket; U.S. Environmental Protection Agency, Region IV; 345 Courtland Street, NE., Atlanta, Georgia 30365, Hours: Mon–Fri 8 a.m.–4 p.m.

and

West Florida Regional Library, 200 West Gregory Street, Pensacola, Florida, Hours: M–TH 9 a.m.–8 p.m., Fri–Sat 9 a.m.–5 p.m., Sun 1–5 p.m.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Pioneer Sand Company Superfund Site, Pensacola, Florida

A Notice of Intent to Delete for this Site was published December 1, 1992 (57 CFR 56882). The closing date for comments on the Notice of Intent to Delete was January 1, 1992. EPA received one comment letter from the U.S. Navy, one of two settlors named in the Consent Decree for the Site. The settlor was concerned that the delisting of the Site one and one half years after cleanup might impose additional financial burdens in the event that the

Site should be restored to the NPL. In its response, EPA cites the section in the National Contingency Plan (NCP) that allows for restoration of the Site to the NPL without application of the Hazardous Ranking Scoring (HRS) process. EPA's detailed response to the comment can be found in the Responsiveness Summary filed in the EPA, Region IV Deletion Docket.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3). Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR part 300

Air pollution control, Hazardous waste.

Dated: January 28, 1993

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended under Florida by removing the site for "Pioneer Sand Company Site, Warrington"; and by revising the total number of sites, "1,081" to read "1,080".

Donald Guinyard,

Acting Regional Administrator, USEPA Region 4.

[FR Doc. 93–2956 Filed 2–5–93; 8:45 am]

BILLING CODE 6560-50-M

Proposed Rules

Federal Register
Vol. 58, No. 24
Monday, February 8, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–61–AD]

Airworthiness Directives; Cessna T210 Series Airplanes Modified by Supplemental Type Certificate SA2231CE or Supplemental Type Certificate SA3203NM

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Cessna T210 series airplanes equipped with a turbocharged Continental TSIO–520R engine and intercooler installation in accordance with Supplemental Type Certificate (STC) SA2231CE or STC SA3203NM. The proposed action would require inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature. One of the affected airplanes lost engine power at high altitude because hot air from the turbocharger caused the Gates air induction hose to split. The actions specified by the proposed AD are intended to prevent air induction hose failure, which could result in loss of engine power.

DATES: Comments must be received on or before April 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–61–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Information that relates to the proposed AD may be examined at the Rules Docket at the address above. Parts needed as a result of the proposed AD may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710; Telephone (909) 393–0884.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806; Telephone (310) 988–5265; Facsimile (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92–CE–61–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–61–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Supplemental Type Certificate (STC) SA2231CE and STC SA3203NM incorporate The Aircraftsman intercooler installation on Cessna Models T210K, T210L, T210M, and T210N airplanes equipped with a turbocharged Continental TSIO–520R engine. Air induction hoses, Gates part number (P/N) 20987 and P/N 21370, were approved as part of these STC approvals. These hoses route the exit (hot) air from the turbocharger to the intercooler. The maximum heat resistant temperature of these hoses is 257 degrees Fahrenheit, and the hose is not designed to handle air temperatures exiting the aircraft turbocharger. One of the affected airplanes lost engine power at high altitude because hot air from the turbocharger caused the Gates air induction hose to split.

The intercooler installation also allows the use of The Aircraftsman induction hose, P/N MW1118, which is designed to handle the high turbocharger exit air temperatures.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent air induction hose failure, which could result in loss of engine power.

Since the condition described is likely to exist or develop in other Cessna T210 series airplanes of the same type design that are equipped with a turbocharged Continental TSIO–520R engine and intercooler installation in accordance with STC SA2231CE or STC SA3203NM, the proposed AD would require inspecting the air induction hose to determine whether a Gates hose (part number 20987 or 21370) is installed, and replacing any such hose with The Aircraftsman hose (part number MW1118), which is designed to handle the high turbocharger exit air temperature.

The FAA estimates that 390 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $135 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $74,100.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Cessna Aircraft Company: Docket No. 92–CE–61–AD.

Applicability: The following model airplanes (all serial numbers) equipped with a Continental TSIO–520R engine and intercooler installation in accordance with the applicable supplemental type certificate (STC), certificated in any category:

Model	Modified by STC
T210K	SA2231CE
T210L	SA2231CE
T210M	SA3203NM
T210N	SA3203NM

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent air induction hose failure, which could result in loss of engine power, accomplish the following:

(a) Visually inspect between the turbocharger and intercooler to determine whether a Gates air induction hose, part number (P/N) 20987 or P/N 21370, is installed. If a Gates hose is installed, prior to further flight, accomplish the following: (1) Loosen the two AN737–TW clamps and remove the Gates hose. (2) Install The Aircraftsman hose, P/N MW1118, and tighten the two AN737–TW clamps. (b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished. (c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, FAA, 3229 E. Spring Street, Long Beach, California 90806. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may examine any information referred to herein upon request to the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Parts needed as a result of this action may be obtained from The Aircraftsman, 7000 Merrill Avenue, Hangar/Box P100, Chino, California 91710.

Issued in Kansas City, Missouri, on February 1, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2983 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–NM–242–AD]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. This proposal would require modification of the windshield support structure-to-aft window frame attachment at frame 4. This proposal is prompted by the results of fatigue tests, which revealed cracking in the windshield support structure at the aft window frame attachment points. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could lead to reduced structural integrity of the windshield support structure and potential loss of the windshield.

DATES: Comments must be received by April 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–242–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–242–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Génerale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere-Falcon 900 series airplanes. The DGAC advises that during fatigue testing on a Dassault Aviation Model Mystere-Falcon 900 series airplane, cracks were found in the windshield support structure-to-aft window frame attachment points. These cracks were due to the deformation of the structural elements within this area. Fatigue cracking in this area, if not detected and corrected, could lead to reduced structural integrity of the windshield support structure and potential loss of the windshield.

Dassault Aviation has issued Service Bulletin F900–53–12 (F900–91) and Appendix 1 to that service bulletin, both dated July 8, 1992, which describe procedures for accomplishing Modification F900 M613. This modification entails installing a doubler on the window frame and the windshield support structure at frame 4; installing shims at the bottom of the window frame recesses; and changing the type of fasteners. Accomplishing this modification would reduce deformation between the support structure and the window frame by mechanically reinforcing the attachment zone. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–139–011(B), dated July 8, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the windshield support structure-to-aft window frame attachment at frame 4. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 45 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,750, or $2,475 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 92–NM–242–AD.

Applicability: Model Mystere-Falcon 900 series airplanes; serial numbers 1 through 9, inclusive; and 11 through 20, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the windshield support structure and potential loss of the windshield, accomplish the following:

(a) For airplane serial number 1: Prior to the accumulation of 3,750 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the windshield support structure-to-aft window frame attachment at frame 4 on the right-hand and left-hand sides, in accordance with Dassault Aviation Service Bulletin F900–53–12 (F900–91) and Appendix 1 to that service bulletin, both dated July 8, 1992.

(b) For airplanes having serial numbers 2 through 9, inclusive, and 11 through 20, inclusive: Modify the windshield support structure-to-aft window frame attachment at frame 4 on the right-hand and left-hand sides, in accordance with Dassault Aviation Service Bulletin F900–53–12 (F900–91) and Appendix 1 to that service bulletin, both dated July 8, 1992; and at the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to the accumulation of 3,750 total landings, or within 6 years since date of manufacture, whichever occurs first.

(2) Within 6 months after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 2, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–2868 Filed 2–8–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–19–92]

RIN 1545–AR15

Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed Income Tax Regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner.

DATES: The public hearing originally scheduled for Tuesday, February 16, 1993, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986, as amended. A notice of proposed rulemaking and public hearing appearing in the **Federal Register** for Tuesday, December 29, 1992 (57 FR 61852), announced that the public hearing on proposed amendments under section 42 of the Internal Revenue Code of 1986 would be held on Tuesday, February 16, 1993, beginning at 10 a.m., in the IRS Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Tuesday February 16, 1993, has been cancelled.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–2985 Filed 2–5–93; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 26 and 301

[PS–73–88; PS–32–90]

RIN 1545–AL75; 1545–AO69

Generation-Skipping Transfer Tax; Extension of Time for Public Comments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of extension of time for public comments.

SUMMARY: This document provides notice of an extension of time for submitting public comments concerning the notices of proposed rulemaking relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code. The extended deadline for submission of comments is March 31, 1993.

DATES: Written comments must be received by March 31, 1993.

ADDRESSES: Submissions should be sent to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS–73–88; PS–32–90], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John B. Franklin, 202–622–3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On Thursday, December 24, 1992, the Internal Revenue Service published in the **Federal Register**, a notice of proposed rulemaking (PS–32–90) (57 FR 61353) relating to the liability for the generation-skipping transfer tax when a direct skip occurs at death with respect to property held in a trust arrangement, and a notice of proposed rulemaking (PS–73–88) (57 FR 61356) relating to the generation-skipping transfer tax imposed under chapter 13 of the Internal Revenue Code. These proposed regulations stated that the public comments were to be received by February 1, 1993. This document extends the period for the submission of comments on the proposed regulations to March 31, 1993.

Dale D. Goode,

Federal Register Liaison Officer, Ass't Chief Counsel (Corporate).

[FR Doc. 93–2688 Filed 2–5–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–93–01]

Drawbridge Operation Regulations; Eureka Slough, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North coast railroad, the Coast Guard proposes a change to the regulation for the North Coast Railroad Bridge crossing over Eureka Slough, mile 0.3 in Eureka, California. The change would eliminate openings of the draw for the passage of vessels. The bridge is presently required to open on 24 hours advance notice, but has not opened for vessels for at least eight years. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 25, 1993.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Bldg. 10 room 214, Coast Guard Island, Alameda, CA 94501–5100, or may be delivered to room 214 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (510) 437–3514. Commander (oan-br) maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Bldg. 10 room 214, Coast Guard Island Alameda.

FOR FURTHER INFORMATION CONTACT: Jerry P. Olmes, Bridge Administrator, Eleventh Coast Guard District at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 11–93–01) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (oan-br) at the address under "ADDRESSES." The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Jerry P. Olmes, Project Officer, and Lieutenant Commander Craig M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Background and Purpose

In early 1985, the Eureka Southern Railroad purchased the bridge and rail line from the Northwestern Pacific Railroad. Since that date there have been no requests to open the railroad bridge. The North Coast Railroad, successor to the Eureka Southern Railroad, now requests to be relieved of the burden of maintaining the bridge as a movable bridge.

Discussion of Proposed Amendment

The proposed amendment would eliminate the requirement that the bridge open for the passage of vessels.

The railroad bridge crosses Eureka Slough approximately 0.3 miles upstream of the slough's confluence with Arcata Bay, the northerly arm of Humboldt Bay. Historically, the slough was used for hauling logs to mills at Eureka. Although there has been no log hauling on the slough for many years, the slough is used occasionally by small motorized fishing boats, and until recently, a few commercial fishing boats moored at the mouth of the slough. No vessel requests for opening the draw have been received since 1985. There are no navigation improvements upstream of the railroad bridge, and all other bridges on the waterway are fixed bridges. The railroad bridge is quite low. It has vertical clearances of 4 ft. above Mean High Water and 11 ft. above Mean Lower Low Water. These clearances are more restrictive than vertical clearances of the U.S. Highway 101 bridge, 1,000 feet upstream of the railroad bridge, which provides 16 ft. above Mean High Water and 22.7 ft. above Mean Lower Low Water.

Economic Assessment and Certification

This proposed rulemaking is not major under Executive Order 12291 on Federal Regulation and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection of information or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.155 is revised to read as follows:

§117.115 Eureka Slough.

The draw of the North Coast Railroad bridge, mile 0.3 at Eureka, need not be opened for the passage of vessels.

Dated: January 25, 1993.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–2959 Filed 2–5–93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 11–92–10]

Drawbridge Operation Regulations Mokelumne River, California

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the California Department of Transportation (CALTRANS), the Coast Guard proposes to establish a drawbridge operation regulation for the Mokelumne River Bridge. This highway 12 drawbridge crosses the Mokelumne River at mile (3.0) east of Isleton, California. The regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on weekends and holidays from May through October. This proposal is being made because vehicular traffic at peak periods has increased. This action should accommodate the needs of Highway 12 traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before March 25, 1993.

ADDRESSES: Comments may be mailed to Commander (oan-br), Eleventh Coast Guard District, Building 10, Room 214, Coast Guard Island, Alameda, CA 94501–5100, or be delivered to the same address between 7 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (510) 437–3514.

FOR FURTHER INFORMATION CONTACT: Susan Worden, Bridge Administrator, Bridge Section, Aids to Navigation Branch at (510) 437–3514.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and this rulemaking (CGD 11–92–10); and give reason(s) for concurrence and/or recommend changes to the proposal. The Coast Guard requests that multipage comments and attachments be submitted unbound, or if bound that a second copy be submitted. Those desiring acknowledged receipt may enclose a self-addressed stamped envelope or post card.

The Coast Guard solicited comments during the test period in 1988 and during the summers of 1990–1992. We received seven comments; four supporting the regulation, and three opposing it. Those comments previously submitted will be entered into the record for this rulemaking and given careful consideration in the Coast Guard decision.

The Commander, Eleventh Coast Guard District will also evaluate all communications received during the comment period and determine a course of final action on this proposal. The proposed regulations may be changed in light of the comments received.

Drafting Information

The principal persons involved in drafting this document are Susan Worden, Project Officer, and Lieutenant Commander Craig M. Juckniess, Project Attorney, Eleventh Coast Guard District Legal Office.

Backgound and Purpose

Highway 12 is a major east-west highway in the Sacramento-San Joaquin River Delta in northern California. It crosses three major recreational waterways over drawbridges: The Sacramento River at Rio Vista, the Mokelumne River east of Isleton, and Little Potato Slough at Terminous. In the vicinity of the Rio Vista Bridge, the highway volume is 1,100 vehicles per hour on holiday weekends according to a 1988 CALTRANS survey. Traffic backups on this two land road are sometimes 8 miles long. Drawbridge openings exacerbate highway traffic congestion. The other two drawbridges on Highway 12 provide 18 and 35 feet clearance over Mean High Water (MHW) in the closed position. They accommodate most recreational boats without a need for bridge openings. The Mokelumne River Bridge is the lowest drawbridge on Highway 12, with 7 feet vertical clearance over MHW in the closed position. This bridge must open for most recreational boats transiting this waterway, which is one of the busiest waterways in the Delta.

Discussion of Proposed Amendments

The present regulation requires the Mokelumne River Bridge to open on call from 6 a.m. until 10 p.m. during the summer. The proposed regulation will limit openings for recreational vessels to three times an hour during peak highway traffic periods on summer weekends and holidays. Those peak periods are from 10 a.m. to 2 p.m. Saturdays and from 11 a.m. to 6 p.m. Sundays and holidays. Openings for commercial vessels are infrequent on weekends and holidays, and because it is less safe for larger commercial vessels to stop or maneuver in shallower channels, they are excluded from the regulation and will be provided openings upon signal.

The temporary regulation was tested in August-September of 1988, and implemented on a temporary basis in 1990, 1991 and 1992. During those previous trials, it reduced highway congestion without adverse effect on navigation. Comments were solicited during the trials, and in 1988, the Coast Guard received two supporting letters from a business firm and a recreational boat operator and one opposing letter from a yacht club. In 1990, the Coast Guard received two supporting letters, one from the same business firm and one from another business firm, and one opposing letter from a marina operator. No comments were received in 1991. In 1992 we received one opposing letter from a recreational boat operator. The yacht club letter expressed concern about the possible hazard to vessels waiting for openings during adverse weather conditions or congestion. The marina operator expressed concern for the safety of vessels using his fuel dock near the bridge. The recreational boat operator preferred 10–15 minutes intervals instead of 20 minute intervals between openings because of possible vessel congestion and maneuvering problems. Coast Guard staff observed bridge operation through peak hours and concluded that there is adequate room for recreational vessels to safely await bridge openings, and, that adjacent levees adequately shelter waiting vessels from the strong afternoon winds. The regulation had no noticeable effect on vessels' safe maneuvering or vessels using nearby fuel docks while waiting for bridge openings. Under the permanent regulation, during peak traffic periods, the bridge was often open to vessel traffic for more than 30 minutes each hour and some accumulated highway traffic did not clear the bridge between openings. The proposed regulation did allow all waiting vehicles to clear the bridge between bridge openings and provided a smoother flow of overland traffic.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Vehicular traffic flow will be enhanced and no vessels will be prevented from using the waterway. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection of information or recordkeeping requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed with this docket and is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

The Coast Guard proposes to amend part 117 of title 33 Code of the Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

Subpart B—Specific Requirements

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.175 is amended by revising paragraph (a) to read as follows:

§ 117.175 Mokelumne River.

(a) The draw of the California Department of Transportation highway bridge, Mokelumne River mile 3.0 shall open upon signal as follows:

(1) From 1 November through 30 April from 9 a.m. to 5 p.m.

(2) From 1 May through 31 October from 6 a.m. to 10 p.m., except that during the following periods the draw need only open for recreational vessels on the hour, 20 minutes past the hour, and 40 minutes past the hour:

Saturdays—10 a.m. until 2 p.m.
Sundays—11 a.m. until 6 p.m.
Memorial Day; 4th of July; and Labor Day—11 a.m. until 6 p.m.

(3) At all other times the draw shall open on signal if at least 4 hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(4) Emergency vessels of the United States, state or commercial vessels engaged in rescue or emergency salvage operations, and vessels in distress shall be passed as soon as possible but no later than one hour after notice is given.

* * * * *

Dated: January 25, 1993.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–2960 Filed 2–5–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Baltimore, MD, Regulation 93–05–03]

Safety Zone Regulation: U.S. Naval Academy, Annapolis, MD, on the Severn River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is considering a proposal to establish a safety zone for the purpose of the 14th Safety at Sea Seminar at Annapolis Maryland, for the U.S. Naval Academy Sailing Squadron. The seminar will consist of a pyrotechnic display; a helicopter rescue and a sail training craft maneuver demonstration. The seminar will be held between the Route 450 Old Severn River bridge, south to Triton Point and Worthington Basin at the U.S. Naval Marine Engineering Laboratory on the Severn River. The safety zone is necessary to control small craft and commercial vessel traffic and to provide for the safety of life and property U.S. navigable waters from the hazards associated with the seminar. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: Comments must be received on or before March 10, 1993.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 S. Gay Street, Baltimore, Maryland 21202–0004. Comments may also be hand delivered to the above address. The comments and other materials referenced in this notice will be available for inspection and copying at the above address in room 343. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mark Williams at U.S. Coast Guard Marine Safety Office, 40 S. Gay Street, Baltimore, Maryland, 21202–0004, (410) 962–5104.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data and arguments. Persons submitting comments should include their names and addresses, identify this notice (93–05–03) and the specific section of the proposal to which their comments apply, as well as give reasons for each comment.

The regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this regulation are Lieutenant Junior Grade Mark R. Williams, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Commander Keith B. Letourneau, project attorney Fifth Coast Guard District Legal Staff.

Background and Purpose

On December 1, 1992, an application was received by U.S. Coast Guard Group Baltimore from the U.S. Naval Academy Sailing Squadron, requesting a safety zone while the 14th Safety at Sea Seminar is held at the U.S. Naval Academy, Annapolis Maryland, to take place on April 3, 1993 and April 4, 1993. As part of their application, the U.S. Naval Academy Sailing Squadron requested the Coast Guard provide control of spectator and commercial traffic during the seminar.

Discussion of Proposed Regulation

The 14th Safety at Sea Seminar will be conducted within the area bounded by lines drawn from the Route 450 Old Severn River Bridge, south to Triton Point and Worthington Basin at the U.S. Naval Marine Engineering Laboratory, in the Severn River, Maryland. This safety zone will encompass an area from the Route 450 old Severn River Bridge located at latitude 38 degrees 59 minutes North, longitude 76 degrees 29 minutes West, south to Triton Point, located at latitude 38 degrees 58 minutes North, longitude 76 degrees 28 minutes West, thence across to Worthington Basin, located at latitude 38 degrees 59 minutes North, longitude 76 degrees 28 minutes West, and finally back to the Route 450 old Severn River Bridge.

This regulation is necessary to ensure the safety of participants, spectator craft and to provide for the safety of life and property on U.S. navigable waters during the event. Since the main channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

This regulation is issued under 33 U.S.C. 1225 & 1231 as set out in the authority citation for all of part 165.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be minimal, therefore a full regulatory evaluation is unnecessary.

The Coast Guard also considered the impact of this regulation on small entities and concluded that such impact is expected to be minimal. Therefore the Coast Guard certifies under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231: 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section § 165.T5104, is added to read as follows:

§ 165.T5104 Safety Zone: U.S. Naval Academy, Annapolis MD, Severn River.

(a) *Location.* The following area is a safety zone: From the Route 450 Old Severn River Bridge, located at Latitude 38 degrees 59 minutes North, Longitude 76 degrees 29 minutes West, south, to Triton Point, located at Latitude 38 degrees 58 minutes 53 seconds North, Longitude 76 degrees 28 minutes West, across to Worthington Basin, located at Latitude 38 degrees 59 minutes North, Longitude 76 degrees 28 minutes West, and north to the Route 450 Old Severn River Bridge located at Latitude 38 degrees 59 minutes North, Longitude 76 degrees 29 minutes West. The safety zone includes the area inside of lines drawn between these four points.

(b) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office Baltimore, Maryland.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(2) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5104.

(3) The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channels 16 and 82A.

(4) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Effective date.* This regulation is effective from 12 p.m. April 3, 1993, to 1:30 p.m. April 3, 1993, and again on April 4, 1993, encompassing the same area description and running from 12 p.m. until 1:30 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: February 2, 1993.

R. L. Edmiston,

Captain, U. S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 93–2961 Filed 2–5–93; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL 4592–1]

Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of two public meetings of the Hazardous Waste Manifest Rulemaking Committee. The meetings are open to the public without advance registration.

The purpose of the meetings is to continue to work on revising the uniform national hazardous waste manifest form and rule.

DATES: The Committee meetings will be held on February 25, 1993 from 10:30 a.m. to 6 p.m. and February 26, 1993 from 9 a.m. to 4 p.m. The above dates reflect a change in dates from the ones mentioned in the December **Federal Register** notice. The Committee will also meet on March 29, 1993 from 10 a.m. to 6 p.m. and March 30, 1993 from 9 a.m. to 4 p.m.

ADDRESSES: Location of both the February and March meetings will be the National Governor's Association, Hall of States, 444 North Capitol St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Weslund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2745. Persons needing further information on procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Program, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–5495, or Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street, NW., Suite 500, Washington, DC 20037, (202) 778–9533.

Dated: February 2, 1993.

Deborah Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–2957 Filed 2–5–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 93–03]

Filing of Tariffs and Service Contracts; Implementation of Section 502 of Public Law 102–582

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") is proposing to amend its regulations governing the filing of tariffs and service contracts in order to implement section 502 of Public Law 102–582, which requires certain tariff data to be electronically filed into the Commission's Automated Tariff Filing and Information System and requires this data to be made available without restriction to the public. Additionally, a user-agreement approach is proposed to implement the new law's requirement that the Commission impose a per-minute fee for secondary (remote) electronic access to the tariff data.

DATES: Written comments in response to this notice (original and 15 copies) must submitted (actually received at the Commission) by March 10, 1993.

ADDRESSES: Send written comments to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT: John Robert Ewers, Deputy Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001.

SUPPLEMENTARY INFORMATION: On November 2, 1992, the President signed the "High Seas Driftnet Fisheries Enforcement Act," Public Law 102–582. Section 502 of this Act ("Section 502" at 46 U.S.C. app. 1707a) relates to the Federal Maritime Commission's ("Commission" or "FMC") own "Automated Tariff Filing and Information System" ("ATFI"). In order to implement Section 502, this proceeding proposes to amend the appropriate provisions of 46 CFR part 514, *Tariffs and Service Contracts.*

Tariff Form and Availability

Subsection (b)(1) of Section 502 provides that notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

The filing requirement of Section 502 does not include marine-terminal-operator tariffs, which are currently required to be filed pursuant to the Shipping Act, 1916, 46 U.S.C. app. 801, *et seq.* and the Shipping Act of 1984, 46 U.S.C. app. 1701, *et seq.*, and implementing provisions. These filing requirements will, therefore, be retained in part 514, even though the implementation of Section 502's user charges will reflect this omission. See the discussion under: "Fees; Enforcement."

Subsection (b)(2) provides that the Commission shall make available electronically to any person, without time, quantity, or other limitation, both at the Commission headquarters and through appropriate access from remote terminals—

> All tariff information, and all essential terms of service contracts, filed in the Commission's Automated Tariff Filing and Information System database; and
>
> All tariff information in the System enhanced electronically by the Commission at any time.

Additionally, subsection (i) of section 502 repeals the remote retrieval restrictions of section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c).[1]

Accordingly, as required by section 502, the "remote-retrieval restriction" of automatic logoff from the system after a certain period of time (e.g., 30 minutes), will be removed from §§ 514.12(a)(1) and 514.20(c)(2)(ii). At the same time, however, reasonable system accommodations of access must be retained, such as, the 10-minute logoff for inactivity under § 514.20(c)(2)(i); prohibition of access when the system is down; and reasonable, temporary procedures to provide fair and equal access by more retrievers than the system can handle during severe and unusual surges.

Filing Schedule

Subsection (c) of Section 502 provides that new tariffs and new essential terms of service contracts shall be filed electronically not later than July 1, 1992. All other tariffs, amendments to tariffs, and essential terms of service contracts shall be filed not later than September 1, 1992.

When Section 502 was signed on November 2, 1992, both deadline dates in section 502(c), i.e., July 1, 1992, and September 1, 1992, had long since passed. By Supplemental Report No. 2 and Notice of August 12, 1992, in Docket No. 90–23, the Commission had established a phase-in schedule, which continued during most of 1993, for the required electronic filing of tariff data. Both the Commission and the industry needed and relied upon this implementation plan for the orderly electronic filing and acceptance of tariff data into ATFI. The industry's need for and reliance upon the previous schedule became immediately apparent in comments to the proposed rule in Docket No. 90–23; were verified through direct contact with industry, such as in an oral comment session with the Commission; and were later corroborated again through, *inter alia,* the comments submitted by ANERA and IAFC in that proceeding.

For this reason, the Commission, on December 14, 1992, issued a Notice ("December Notice") to apprise the public of when the Commission would be capable of accepting electronically-filed tariff data. See the **Federal Register** of December 17, 1992, 57 FR 60000. In developing the December Notice, the Commission took into consideration the terms of Section 502, as well as what is actually possible with regard to implementation by both the Commission and the industry, which has to file the tariff data. In pertinent part, the December Notice provides:

> Notwithstanding the language of the statute, February 22, 1993, is the earliest possible date the Federal Maritime Commission * * * will be prepared to accept electronically filed tariff data. In Supplemental Report No. 3 and Notice * * * in Docket No. 90–23, Automated Tariff Filing and Information System (ATFI), the Commission today has published a revised phase-in schedule for the mandatory electronic filing/conversion of tariff data into ATFI. That schedule establishes, according to specified trade areas, the dates during 1993 by which carriers and conferences must convert and file their tariffs electronically. As indicated in that Report, paper tariffs covering the described trade areas which are not converted by the prescribed "complete" date, will be subject to cancellation by order of the Commission in a show cause proceeding. As additionally indicated in that Report, filers must notify the ATFI Hot Line at (703) 883–8350 ten (10) days before beginning to convert a full tariff.

Under the implementation plan developed separately by the Commission, all effective tariff data required to be filed by the Shipping Acts will eventually, and as soon as possible, be electronically filed into and electronically accessible on the ATFI system.

Fees; Enforcement

Subsections (d) and (e) of Section 502 provide that the Commission shall charge, beginning July 1 of the fiscal year 1992 and in fiscal years 1993, 1994, and 1995—

> a fee of 46 cents for each minute of remote computer access by any individual of the information available electronically under this section; and for electronic copies of the Automated Tariff Filing and Information System database (in bulk), or any portion of the database, a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment; and for a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute the database is subsequently accessed by computer by any individual. A Federal agency is exempt from paying a fee under this subsection. The Commission shall use systems controls or other appropriate methods to enforce subsection (d).

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[1] Section 2 of the Act of August 16, 1989 (46 App. U.S.C. 1111c), provided that the Federal Maritime Commission shall require that complete and updated electronic copies of the Automated Tariff Filing and Information data base are made available (in bulk) in a timely and nondiscriminatory fashion, and the Commission shall assess reasonable fees for this service consistent with section 552 of title 5, United States Code; the Commission shall impose reasonable controls on the system to limit remote access usage by any one person; and the Commission shall provide that any information from the Automated Tariff Filing and Information System that is made available to the public may be used, resold, or disseminated by any person without restriction and without payment of additional fees or royalties.

The Commission has already indicated in the analysis of subsection (c) that it cannot implement retroactive dates. Thus, charging a fee beginning on July 1, 1992, for electronic access to data that cannot be filed by July 1, 1992, is impossible. Again, the Commission will do what it can, that is, establish section 502's user fees through normal regulatory mechanisms; in this case, rulemaking.

Except for the secondary access user charge (a fee for each minute the database is subsequently accessed under subsection (d)(1)(B)(ii)), section 502 provides substantially the same user charges as §§ 514.21(g) and 514.21(j). To implement section 502, therefore, we propose changing the "50 cents per minute of connect time" in § 514.21(g) to "46 cents per minute connect time," as provided in subsection (d)(1)(A) of section 502.

For the purchase of database tapes under subsection (d)(1)(B)(i) of section 502, there appears to be no need to change the per-tape charge in § 514.21(j), since it is based on the "marginal cost of distribution." The language in section 502, providing for a fee reflecting the cost of providing those copies, including the cost of duplication, distribution, and dedicated equipment will be added to § 514.21(j) for added clarification. The Commission will continue with its plans to make available the full ATFI database tapes, rather than attempt to break the database down into logical, discrete portions (e.g., foreign, domestic, etc.) for sale to the public. (Periodic updates of just those portions of the entire database which are being revised still are being planned for distribution.)

The secondary use fee in section 502(d)(1)(B)(ii), heretofore not intended in the ATFI project, apparently is required from anyone who electronically accesses ATFI data from a private entity which has obtained the data from ATFI. This is 46 cents for each minute of that access, payable to the Commission. Additionally, secondary use under section 502 also would include access by any employee of the individual who obtained the electronic data, as well as the individual's own subsequent electronic inspection of the data. Because the section 502 user fees do not apply to printed data (on paper), subsequent inspection of screen-printed data on paper would not require a per-minute fee. The language of section 502 on this subject is being added to § 514.21(g).

The Commission intends to use system controls, as referred to in subsection (e) of section 502, to enforce the collection of user fees for all items or services listed in § 514.21. Secondary or subsequent use of ATFI data on other terminals by other individuals, however, cannot be readily monitored and reported by ATFI. Similarly, an "honors-system" approach, whereby every user would be responsible for keeping track of his/her own usage and remitting the appropriate use charge to the Commission, would not appear to be effective, although commenters may be able to propose viable alternatives.

Accordingly, it now appears that the most appropriate way for the Commission to enforce collection of the secondary use fee is through the primary user, i.e., anyone who obtains the data from ATFI and resells it to others. An ATFI User Agreement is proposed for this purpose under new paragraph (l)(3) of § 514.21, and is set forth in full at new Exhibit 2 to part 514. Under the user-agreement approach, the person most able to monitor the use of the data for user-fee purposes is required to do so. The Commission is advised that the user-agreement approach requires that the data covered by the user agreement be the property of the Commission, as recited in section A.3 (Rights in Data) of the user agreement. The public is especially invited to comment on this aspect of the user agreement.

As required under subsection (d)(2) of section 502, Federal agencies will be exempt from paying the access fees under new § 514.21(l)(1). As mentioned in the analysis under subsection (b)(1) of section 502, marine terminal tariff data will be exempt from the secondary use fee under new paragraph (l)(2) of § 514.21.

Penalties

Subsection (f) of section 502 provides that a person failing to pay a fee established under subsection (d) is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. A person that willfully fails to pay a fee established under subsection (d) commits a class A misdemeanor.

Section 502 does not authorize the Commission to assess or collect these penalties. Accordingly, part 514 will merely include reference to these penalties in paragraphs (g) and (j) of § 514.21.

Automatic Filing Implementation

Subsection (g)(1) of section 502 provides that software that provides for the electronic filing of data in the Automated Tariff Filing and Information System shall be submitted to the Commission for certification. Not later than fourteen days after a person submits software to the Commission for certification, the Commission shall certify the software if it provides for the electronic filing of data; and publish in the Federal Register notice of that certification.

Certification of batch filing capability, which includes the certification of any software associated with an applicant's certification, is already provided for in § 514.8(l) and no rule change appears to be necessary. The user fee for batch filing certification under § 514.21(e), is retained unchanged.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the proposed rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. This is because firms that have traditionally used third party vendors or directly contacted carriers for rate information will most likely continue to use the same sources. Furthermore, the Commission believes that these entities' use of third party vendors will not produce the same increased costs as use of ATFI because these vendors will be able to establish tariff databases independent of ATFI, thereby drawing users away from ATFI and into less expensive arrangements. Any residual ATFI usage on the part of small entities will be limited and will not involve a substantial number of small entities. However, even if third party vendors were not to establish databases independent of ATFI, the Commission believes that the proposed rule will still not have a significant economic impact on a substantial number of small entities because the proposed rule is the least impact alternative on small entities available to the Commission under Public Law 102–582.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended. Public reporting burden for this collection of information is estimated to take 25 hours per month, or 300 hours per year, per respondent. This collection of information includes the time for reviewing instructions and contract clauses, completing and reviewing the collection of information, and collecting and reporting receipts. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and record keeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

By the Commission.

Joseph C. Polking,

Secretary.

Therefore, for the reasons set forth in the preamble, and pursuant to 5 U.S.C. 552 and 553; U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; section 2(b) of Public Law 101–92, and section 502 of Public Law 102–582; part 514 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 514—TARIFFS AND SERVICE CONTRACTS

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Section 514.12(a)(1) introductory text is revised to read as follows:

§514.12 Governing and general reference tariffs.

* * * * *

(a) * * *

(1) *Types.* Due to ATFI's "linkage" design feature, whereby tariff items at rules level (location groups, inland rate tables and algorithms in rules), can be electronically referenced and made applicable from one tariff (governing) to another (governed), a filer may create and use only the following types of governing tariffs, or combinations thereof, which shall accompany governed tariffs in the ATFI electronic format:

* * * * *

3. Section 514.20(c)(2) is revised to read as follows:

§514.20 Retrieval.

* * * * *

(c) * * *

(1) * * *

(2) *Automatic logoff.* All retrievers will be automatically logged off after 10 minutes of inactivity.

* * * * *

4. In § 514.21, paragraphs (g) and (j) are revised, and a new paragraph (l) is added, to read as follows.

§514.21 User charges.

* * * * *

(g) *Remote electronic retrieval* (§ 514.20(c)(3)). (1) The fees for remote electronic access to ATFI electronic data are:

(i) A fee of 46 cents for each minute of remote computer access directly to the ATFI database by any individual; and

(ii) For a person operating or maintaining information in a database that has multiple tariff or service contract information, obtained directly or indirectly from the Commission, a fee of 46 cents for each minute that database is subsequently accessed by computer by any individual.

(2) Section 502 of Public Law 102–582 (46 U.S.C. app. 1707a(f)) provides for a civil penalty of not more than $5,000 for each violation of failure to pay a fee under this section, and that a person that willfully fails to pay a fee under this section commits a class A misdemeanor.

* * * * *

(j) *Database tapes* (§ 514.20(d)). (1) The fees for subscriber tapes, similar to other fees in this section, reflect the cost of providing those copies, including the cost of duplication, distribution, and user-dedicated equipment, and are:

(i) Initial set of full database tapes: $300.

(ii) Daily updates: $25 each.

(iii) Weekly updates: $50 each.

(iv) Monthly updates: $100 each.

(2) Section 502 of Public Law 102–582 (46 U.S.C. app. 1707a(f)) provides for a civil penalty of not more than $5,000 for each violation of failure to pay a fee under this section, and that a person that willfully fails to pay a fee under this section commits a class A misdemeanor.

* * * * *

(l) *Exceptions and enforcement.* (1) A Federal agency is exempt from paying a fee under paragraphs (g) and (j) of this section.

(2) Marine terminal tariff data is not subject to a secondary use fee under paragraph (g)(2) of this section.

(3) In addition to the requirement to promptly pay user charges for all services/products received under this section, every individual desiring to purchase any tape under paragraphs (j) or (k) of this section must first execute the ATFI User Agreement set forth as Exhibit 2 to Part 514 and comply with all provisions thereof, including the submission of a model of its charging system under section C.5 of that agreement.

5. Exhibit 2 to Part 514, the ATFI User Agreement, is added to read as follows:

Exhibit 2 to Part 514

Federal Maritime Commission Automated Tariff Filing and Information System ("ATFI") User Agreement

AGREEMENT entered into between the FEDERAL MARITIME COMMISSION (hereinafter "FMC"), pursuant to 46 U.S.C. app. 1707a, and:

Firm Name: ____________________

Address: ____________________

____

____

Contact: ____________________

Telephone: ____________________

(hereinafter "User").

A. Use Provisions

1. **Use.** During the term of this Agreement, subject to the terms and conditions hereof, FMC grants User the non-exclusive, non-transferable, limited right to access, through magnetic tape media, all tariff information and all essential terms of service contracts ("data") filed in the FMC's Automated Tariff Filing and Information System database ("ATFI"). FMC shall make such magnetic tape(s) available to User pursuant to 46 CFR § 514.21(k), and the schedule(s) published under 46 CFR §§ 514.21(j)(1) through 514.21(j)(4).

2. **Limitation of Use.** No part of the ATFI data may be copied, downloaded, published, transmitted, transferred or otherwise used, in any form or by any means, without prior written permission from the FMC, except as follows:

(a) User may access ATFI data contained in the magnetic tapes for its own use subject to the charges set forth in Part C.

(b) User may permit other persons to access electronically the data in its possession and shall pay the FMC user charges set forth in Part C, for such use by others.

(c) By use of the "Print Screen" function, User may print the data obtained electronically from ATFI, and may permit others who electronically access the data in its possession to print the data only through the use of the "Print Screen" function, all subject to the user charges set forth in Part C.

3. **Rights in Data.** Except for the license granted herein, all right, title and interest in ATFI data are and shall continue to be the exclusive property of FMC to the fullest extent permitted by law.

4. **Disclaimer of Warranties and Limitation of Liability.** ATFI data are provided "as is," without warranty of any kind, express or implied, including, but not limited to the warranties of performance, merchantability and fitness for a particular purpose. User shall make no claim(s) for damages relating to ATFI data. FMC's entire liability and the User's exclusive remedy shall be the replacement of any defective magnetic tapes which are returned to the FMC with a copy of the User's receipt. FMC has no liability whatsoever to User for any claim(s) relating in any way to:

(a) User's inability or failure to access or use data properly or completely; or

(b) Any lost profits, consequential, incidental or other special damages relating in whole or in part to User's rights hereunder or use of or inability to use data, even if FMC has been advised of the possibility of such damages.

B. General Provisions

1. **Responsibility for Certain Matters.** User shall be responsible for all access to and use of ATFI data by User's personnel or by means of User's equipment, whether or not User has knowledge of or authorizes such access or use.

2. **Term and Termination.** This agreement shall become effective on the date executed by the FMC, and shall continue in force until terminated by either party upon at least thirty (30) days prior written notice of termination to the other party. Notwithstanding the foregoing, either party may terminate this agreement immediately upon giving written notice of termination to the other party if the other party commits a material breach thereof. The FMC may suspend or terminate furnishing ATFI data tapes to User, after written notice, if User commits a material breach of this Agreement. Upon termination of this agreement, the Commission may require the User to immediately:

(a) Deliver to the FMC all previously obtained magnetic tapes of ATFI;

(b) Destroy all ATFI data in its possession in whatever form; and

(c) Provide written certification to the FMC that the actions described in subsections (a) and (b) of this section B.2 have been accomplished.

3. **Effect of Agreement.** This Agreement embodies the entire understanding between the parties with respect to the use of ATFI data, and supersedes any and all prior understandings and agreements, oral or written, relating thereto.

4. **Force Majeure.** FMC's obligations under this agreement are subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

5. **Notices.** Except as otherwise specifically provided herein, all notices required to be given to the FMC shall be in writing, addressed to Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001. Notice to User shall be at the address set forth above.

6. **Governing Law.** This agreement shall be governed by and construed under federal law. Any and all proceedings relating to the subject matter of this agreement shall be maintained in the Federal District Court for the District of Columbia, which court shall have exclusive jurisdiction for such purpose. User hereby submits to the jurisdiction of the Federal District Court for the District of Columbia and waives service of process except by regular mail.

7. **Other Provisions.** Neither this agreement nor any part thereof shall be assigned, sublicensed or otherwise transferred by User without prior written consent from the FMC. Should any provision of this agreement be held to be void, invalid, unenforceable or illegal by a court, the validity and enforceability of the other provisions shall not be affected thereby. Failure of a party to enforce any provision of this agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision. The headings and captions contained in this agreement are for convenience only and do not constitute a part thereof.

C. Charges

1. **Charges Payable by User.** Charges payable by User for access to the ATFI data contained on the magnetic tapes are forty-six U.S. cents (46¢/$00.46) per minute, or any portion thereof.

2. **Modification of Charges.** Charges for use of the data are prescribed by 46 U.S.C. app. 1707a(d). In the event the charges in such law are modified, the User will be promptly notified and the User agrees to pay the charges as modified unless it terminates under section B.2., hereof.

3. **Billing and Payment.** Within ten (10) calendar days after the end of each month, beginning ________, User shall transmit to the Office of Budget and Financial Management, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, a report of all usage of ATFI data listed by user, date and minutes used. User shall simultaneously transmit payment (to "the Federal Maritime Commission") for such usage at the rate of 46 cents (46¢/$00.46) per minute. If payment is not made when due, User may thereafter be assessed interest, penalties and administrative costs associated with collection of late payments in accordance with the Federal Claims Collection Standards, 4 CFR 102.13. FMC intends to utilize the provisions of the Debt Collection Act, 5 U.S.C. 5514, including disclosure to consumer reporting agencies, to ensure prompt payment. FMC reserves the right to suspend or terminate furnishing ATFI data tapes to User if payment is not made when due.

4. **Recordkeeping.** The User shall maintain, for a period of three (3) years during, and after termination of, this agreement, books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) sufficient to reflect properly the charges to be paid under this agreement, including, specifically, all records of access granted, fees charged, and payments made to User and remittances to FMC. The FMC or its representatives shall have the right to examine and audit all of the User's books, records, documents, and other data, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, applications software, data base management software, utilities, etc.) for the purpose of evaluating the accuracy and completeness of the reports required by sections C.3, above. The right of examination shall extend to all documents and other data, regardless of form, necessary to permit adequate evaluation of the reports submitted, along with the computations used.

5. **Accounting System.** Prior to obtaining magnetic tapes of ATFI data, User shall submit to the FMC a model of the charging system it intends to use to comply with sections C.3 and C.4, to enable the FMC to determine whether such system is sufficient to provide accurate and complete reports as required herein. The FMC shall have up to sixty (60) calendar days after submission to evaluate such system and its approval will be assumed unless the FMC otherwise formally notifies the applicant within the sixty-calendar-day period. Magnetic tapes of ATFI shall not be made available to User until its charging system is approved by FMC.

D. Penalties

1. **Civil Penalties.** Civil penalties may be imposed for refusal to pay the required user fee. See 46 U.S.C. app. 1707a(*f*)(1).

2. **Criminal Penalties.** Criminal penalties may be imposed for refusal to pay the required user fee. See 46 U.S.C. app. 1707a(*f*)(2).

3. **Enforcement.** The Department of Justice will be responsible for enforcement of violations of this agreement.

Federal Maritime Commission

By ____________________
Title ____________________
Date ____________________

User

Signature ____________________
Title ____________________
Date ____________________

[FR Doc. 93-2832 Filed 2-5-93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. 48637; Notice No. 93-8]

Procedures for Transportation Workplace Drug Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of pilot project on proposed Management Information System (MIS) forms and submission procedures; request for participation.

SUMMARY: On December 15, 1992, the Department of Transportation (DOT) issued Notices of Proposed Rulemaking (NPRM) to require DOT regulated employers to submit an annual report summarizing the results of their drug and alcohol testing programs for each calendar year. These reports are designed to provide DOT with program evaluation and compliance information. This notice establishes a pilot project on the proposed reporting forms and submission procedures.

EFFECTIVE DATE: This notice establishes April 1, 1993, as the date selected employers would submit the reporting forms to the appropriate Operating Administration as a voluntary preimplementation assessment of the proposed reporting system.

ADDRESSES: Send written requests to participate in the pilot project to: Office of the Secretary, Drug Enforcement and Program Compliance, Department of Transportation, 400 7th Street, SW., room 9404, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Donna Smith or Lamar Allen, (202) 366-3784.

SUPPLEMENTARY INFORMATION: The December 1, 1989, Final Rule, 49 CFR part 40, Procedures for Transportation Workplace Drug Testing Programs, did not include requirements for collecting standard data for program evaluation and compliance. The December 15, 1992 NPRM issued by the Office of the Secretary proposes to add § 40.81 and § 40.83 to 49 CFR part 40 establishing a Management Information System (MIS) to collect anti-drug program data. The operating administrations (FAA, FHWA, FRA, FTA, RSPA and USCG) also published NPRMs on December 15 that proposed to require employers to maintain and submit annually as required, data to the appropriate operating administration. Each NPRM includes a proposed reporting form specific for the particular regulated industry. The results and findings from this pilot project will be shared with each operating administration to use in the development of their particular rule. Through this notice the Department is requesting employers to volunteer to test the use of the reporting forms and the submission process. The information submitted would be used to evaluate the forms and submission process only. The information provided would not be used for compliance or enforcement actions. The data submitted should be based on realistic employer data and will be used for research purposes only, and not attributed to a specific employer. The pilot project is designed to review the reporting form and not the accuracy of the submitted data. Employers willing to participate should contact the Department no later than March 1, 1993, by telephone or letter to the contact persons listed above. If there are insufficient volunteers the Department will specifically request additional participation. Information and data on the forms and the submission process derived from this pilot project will be placed in the NPRM dockets. Employer names will not be associated with any data.

Issued this 1st day of February, 1993, at Washington, DC.

Donna R. Smith,

Acting Director, Office of Drug Enforcement and Program Compliance.

[FR Doc. 93-2903 Filed 2-5-93; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. 92-28; Notice 2]

RIN 2127-AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Standard No. 201, Occupant Protection in Interior Impact, to require passenger cars and light trucks, buses and multipurpose passenger vehicles to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The proposed amendments would add procedures and performance requirements for a new in-vehicle component test. Insofar as this rulemaking applies to passenger cars, it is required by the NHTSA Authorization Act of 1991.

DATES: *Comment closing date:* Comments on this notice must be received by NHTSA no later than April 9, 1993.

Proposed effective date: The agency is considering a single effective date for full implementation of the new requirements of the first September 1 that occurs following either approximately a two or three year period beginning with the publication of a final rule in the **Federal Register**. The agency is also considering a phase-in of the new requirements, beginning one to two years after publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-4924).

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I. Background

A. Existing Standard

For many years, Standard No. 201, Occupant Protection in Interior Impact, has specified requirements for passenger cars and LTV's to afford protection for occupants in interior impacts. (The term "LTV's" refers to trucks, buses and multipurpose passenger vehicles with a GVWR of 10,000 pounds or less.) The interior areas presently covered by the standard include the instrument panel, seat backs, interior compartment doors (such as the door of a glove box), sun visors, and armrests.

A significant number of occupant injuries and fatalities result from head impacts with upper interior components not covered by Standard No. 201. NHTSA, therefore, initiated a research program in the mid-1980's to support upgrading the current standard to provide occupant protection in these impacts.

B. August 1988 ANPRMs

On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712, 31716) two ANPRM's which addressed the issue of improved head impact protection, among others. One of the ANPRM's covered passenger cars, the other, LTVs. NHTSA noted that almost one-half of all fatalities in passenger car side impacts, and a large number of LTV side impact fatalities, occur as a result of head injuries. The agency indicated that, while many head injuries occur as a result of ejection from the vehicle, a high percentage occur due to head/face impacts with vehicle interior components, such as the pillars and rails supporting the roof.

NHTSA stated that it believed that various techniques, including the use of padding, may be available to reduce the severity of, and in some cases prevent, many head injuries. In particular, the agency stated that it believed the following three techniques are of particular promise: (1) Padding the A, B and C pillars, roof rail components and window frames with hard rubber or high density foam materials, (2) Eliminating sharp angle, thin edge design features in the component areas where head impacts are most likely to occur, and (3) Reducing the local stiffness of the component areas where head impacts are most likely to occur (without compromising the overall structural integrity of the roof-pillar structures).

The agency indicated that there are a number of possible approaches to expressing performance requirements and that various devices could be used to measure the severity of impact that would be experienced by the head in real world crashes by specified component tests. NHTSA noted that one possible performance requirement would place limits on head acceleration during specified component tests using a headform impactor which is freely propelled into, and rebounds from, the component being tested.

C. Comments on ANPRMs

NHTSA received numerous comments on improved head impact protection, including ones from many car and LTV manufacturers. While a number of manufacturers indicated that they agreed that efforts are needed to improve head impact protection, they also expressed a number of concerns.

Some manufacturers stated that additional research was needed about head injury mechanisms and injury criteria. General Motors (GM) stated that the addition of padding to the roof rails, headers or pillars might reduce the impact forces on a headform during a test. It stated further, however, that it is possible a more complete look at the overall dynamics of a vehicle crash, occupant kinematics, and factors controlling injury causation might, in specific instances, dictate the use of other countermeasures which better address real world crashes. Ford commented that the Head Injury Criterion (HIC, the injury criterion used in Standard No. 208) may be an appropriate injury criterion, but that, in order to be meaningful, it should be uniquely developed for oblique and/or side impacts.

Chrysler stated that, before proceeding to an NPRM, NHTSA should conduct a well-defined analysis of the entire head injury/interior contact issue. That company stated that the analyses used in the Preliminary Regulatory Impact Analysis PRIA accompanying the ANPRM's were out-of-date as they did not reflect increased seat belt usage and the automatic restraint requirements of Standard No. 208, Occupant Crash Protection.

Several manufacturers expressed concerns about possible safety tradeoffs. GM stated that the addition of padding might increase neck injuries by allowing pocketing of the head and thereby generating neck loads not previously associated with a more rigid impact surface. That company stated that the type of free motion headform tests conducted during NHTSA's research program would not allow the determination of neck loads and their effect on head kinematics. GM suggested that the agency consider the use of other test devices, such as using the upper torso of a Hybrid III dummy in a subsystems test configuration.

Mercedes-Benz commented that restriction of head travel can increase thoracic loading and stated that the effects of padding should be analyzed to ensure that head injury risk is not decreased at the expense of increasing thorax injury risk.

Ford stated that it believes there may be some potential for increasing energy absorption in the pillar areas, but emphasized that any new regulation should not require designs that decrease the driver's field of view. Several other manufacturers also expressed concern that padding of the pillars could obscure the driver's field of view and create a safety risk. Some manufacturers stated that pillars cannot be reduced in thickness, for purposes of accommodating additional padding while maintaining field of view, without compromising structural strength.

A number of manufacturers expressed concerns about public acceptance. GM commented that NHTSA should evaluate all potential vehicle countermeasures in terms of anticipated public acceptance. It indicated that the agency must anticipate consumer response to even seemingly mundane design changes such as the addition of padding. That company stated that the likelihood of a consumer response strongly suggests that requirements should be performance oriented and not restrict manufacturers to use of specific designs.

Toyota stated that adding padding on the roof side rails and B pillars would reduce occupant space, causing passengers to feel "closed in," and also adversely affect ease of entry and exit. That company stated that such problems could be mitigated by widening the vehicle body and other design changes, but that this would entail major design changes and a sharp drop in fuel economy. Subaru commented that a requirement for additional padding would favor larger model designs and could indirectly regulate the overall size of passenger cars.

Several manufacturers, including BMW, Mitsubishi and Volkswagen, urged NHTSA to base any head impact protection requirements on Europe's Regulation No. 21. BMW noted that Regulation No. 21 defines head impact areas and mandates the use of energy-absorbing materials in those zones.

The Recreation Vehicle Industry Association (RVIA) and the National Truck Equipment Association (NTEA) expressed concerns about the possible impacts of new head impact protection requirements on final stage manufacturers. RVIA stated that recreation vehicles and other LTVs already provide considerably more protection to occupants than passengers cars do because they are structurally stronger and their occupants are seated above impact areas. It argued that additional requirements for head protection are not justified for these vehicles.

The Insurance Institute for Highway Safety (IIHS) commented that it believes that rulemaking to reduce the risk of head injuries is long overdue. It stated that HIC is the appropriate measure for assessing severity of blunt impact, but noted that the response of a Hybrid III dummy head is significantly different for side impacts than for frontal impacts. IIHS urged that a tolerance level lower than HIC 1000 (Standard No. 208's performance limit for frontal crashes) be adopted for side impact tests.

D. Statutory Requirement for Rulemaking

The NHTSA Authorization Act of 1991 requires the agency to address several vehicle safety subjects through rulemaking. One of these subjects, set forth in section 2503(5) of the Act, is improved head impact protection from interior components of passenger cars, i.e., roof rails, pillars and front headers.

On June 5, 1992, NHTSA published in the **Federal Register** (57 FR 24008) a notice of intent announcing that it would publish a notice of proposed rulemaking (NPRM) on improved head impact protection by January 31, 1993. As discussed in that document, section 2502(b)(2)(A) of the Act generally provided that NHTSA must publish, no later than May 31, 1992, an advance notice of proposed rulemaking (ANPRM) or an NPRM on this subject. However, the section also provided that the deadline could be extended to January 31, 1993 if the agency was unable to meet the earlier deadline. The June 1992 notice explained why NHTSA needed additional time to publish an NPRM.

NHTSA is issuing today's NPRM in accordance with section 2502(b)(2)(A) of the Act. While the agency was only required to address improved head impact protection for passenger cars, the agency is also proposing requirements for LTV's.

Section 2502(b)(2)(B)(iii) of the Act generally provides that this rulemaking action (as it applies to passenger cars) must be completed within 24 months of publishing the NPRM. Upon publication of justification, NHTSA may delay the date for completion for not more than six months. Under the Act, the rulemaking will be considered completed when NHTSA promulgates a final rule with standards on improved head injury protection.

II. Summary of Proposal

NHTSA is proposing to amend Standard No. 201 to require passenger cars and LTV's to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. The proposed amendments would add procedures and performance requirements for a new in-vehicle component test.

Under the proposed test procedure, a modified Hybrid III dummy head, referred to as a free motion headform or FMH, is launched from inside the vehicle and propelled freely through the air so that its forehead strikes the selected target component (e.g., pillar, side rail or header) at impact speeds of up to 15 mph. The proposed amendments would require passenger cars and LTV's not to exceed specified HIC limits when any of their specified components are impacted.

The agency is proposing two alternatives regarding performance limits. The first is a single, across-the-board limit of HIC(d) 1000 for all specified upper interior components. The second is a two-tiered limit of HIC(d) 1000 for the forward and rearward upper interior components (front header, rear header and A-pillar) and HIC(d) 800 for side upper interior components (side rails and pillars other than the A-pillars) and the middle portion of the roof.

III. Safety Problem

NHTSA has analyzed the incidence of head injury due to contact with vehicle interior components during crashes. The agency estimates that head impacts with the pillars, roof side rails, windshield header, and rear header result in nearly 3,000 passenger car occupant fatalities and more than 400 LTV occupant fatalities per year. Such head impacts also result in nearly 6,000 serious (but non-fatal) passenger car occupant injuries (AIS 3 or greater), and more than 800 serious LTV occupant injuries. (The AIS or Abbreviated Injury Scale is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal.) In making these estimates, the agency counted cases where the head injury was the most serious injury and where there was no injury of the same AIS level.

The agency has also made estimates of the distribution of fatalities and serious injuries by point of contact. These estimates are presented in Table I.

TABLE I.—SERIOUS HEAD INJURIES/ FATALITIES BY IMPACT POINT

	AIS 3–5	Fatal
Passenger cars:		
A-pillar	3071	1530
B-pillar	888	429
Roof side rails	980	463
Front header	937	473
Rear header	22	12
Other pillar	76	36
Total	5974	2942
LTVs:		
A-pillar	493	246
B-pillar	34	17
Roof side rails	134	63
Front header	164	82
Rear header	3	1
Other pillar	0	0
Total	828	408

The vast majority of these fatalities and serious injuries are attributable to impacts with upper interior components in the front of the vehicle, i.e., components from the B-pillar forward. NHTSA estimates that 2895 of the 2942 passenger car fatalities, and 407 of the 408 LTV fatalities in various crash modes, occur in head impacts with components in the front of the vehicle occupant compartment.

NHTSA's fatality and injury estimates are primarily derived from a 1991 agency paper entitled "Serious Head Injury in Light Passenger Vehicles from Rail, Header, and Pillar Contact," by Partyka. The Partyka paper used 1988–89 data from the National Accident Sampling System (NASS) and 1989 data from the Fatal Accident Reporting System (FARS). Partyka analyzed the distribution of these injuries by point of impact. A hard copy analysis of the data indicated that several cases coded as side window frame impacts were actually apparent contacts against other components. Therefore, the distribution of impacts against various components was revised. The resulting data are presented in the table above. The PRIA for this NPRM provides additional information concerning the derivation of the agency's estimates, as well as additional breakdowns of the estimates.

The agency notes that there are not a sufficient number of real-world cases of occupant head injuries in air bag equipped vehicles to estimate the impacts of air bags on potential head injuries. NHTSA does not expect that air-bags would reduce injuries from striking the B-pillar or roof side rails, given the relative location of the air bags and those parts of the vehicle interior.

IV. Proposed Test Procedure

NHTSA is proposing a test procedure which simulates a passenger car or LTV occupant's head striking an upper interior component, in the same manner that would occur during a crash. Under the procedure, a modified Hybrid III dummy head is launched from inside the vehicle and travels freely through the air so that its forehead strikes the selected target component (e.g., pillar, side rail or header). The head, referred to as a free motion headform or FMH, is instrumented with accelerometers for measurement of head acceleration during the impact. These measurements are then used to calculate the specified injury criterion, HIC.

A. Propulsion Unit

The proposed test procedure specifies that upper interior components are impacted by an FMH at any speed up to and including 15 miles per hour. NHTSA is not proposing to specify a specific method for propelling the FMH, since the means of propulsion (as opposed to impact conditions) does not affect test results. However, it is likely that manufacturers will use a method similar to that used in NHTSA's research program.

The propulsion unit used in NHTSA's research was developed by GM. It is a pneumatic impactor that uses compressed nitrogen, built up to a high pressure. The headform is held on by a magnet. When the nitrogen is released, it pushes a piston forward about three inches and the headform is pushed off the magnet into free flight. The impact velocities achieved by the propulsion unit are very repeatable. The propulsion unit is articulated to allow it to be positioned for firing at nearly any angle within the vehicle.

B. Free Motion Headform

NHTSA is proposing specifications and qualification requirements for the FMH, which would be set forth in a new subpart L of part 572. The specifications consist of a drawing package containing all of the technical details of the FMH parts and FMH assembly. In addition, there is an FMH user's manual which sets forth disassembly, inspection, and assembly procedures.

NHTSA believes that these drawings and specifications would ensure that the headforms vary little in their construction. Performance criteria would serve as calibration checks and further assure the uniformity of headform assembly, construction, and instrumentation. As a result, the repeatability of performance in impact testing would be ensured.

The FMH was developed as part of NHTSA's research program, and is essentially a modified Hybrid III dummy head. The modifications include replacing the Hybrid III skull cap with a steel skullcap plate, which allows the FMH to be mounted to the propulsion unit by means of a magnet. In addition, the skullcap plate serves to hold the headskin in place during testing. Unlike the headskin of an earlier version of the FMH, the headskin of the FMH specified in this proposal is not glued in place. Finally, the nose of the Hybrid III head was removed, to eliminate interference during testing. The FMH is instrumented with a set of tri-axial accelerometers, positioned to measure the acceleration of the center of gravity, which permit the measurement of HIC.

NHTSA believes that the FMH has two advantages over more traditional guided headforms. First, since the FMH does not utilize a guiding mechanism, it can simulate the glancing and nonperpendicular impacts experienced in real world crashes. Second, the FMH could be equipped with rotational accelerometers if desired. NHTSA is not at this time proposing any performance requirements concerning head rotational motion, since it does not have sufficient biomechanical data to support specific requirements. However, if manufacturers voluntarily add additional instrumentation to the FMH, they can measure head rotational motion during impacts and utilize the information in designing their vehicles.

NHTSA notes that there are alternative free motion headforms that could be considered for rulemaking purposes. The agency has developed a featureless headform, and Ford has developed a hemispherical headform. While the agency is not aware of any problems with either of these headforms, it does not have the test data for these headforms that would be necessary to support rulemaking. Moreover, the time needed to generate such test data would significantly delay the safety benefits offered by this rulemaking. Finally, the agency does not believe that these alternative headforms offer any significant advantages over the proposed FMH. Therefore, the agency is not proposing to specify either of the alternative headforms, although it may investigate, for the proposed FMH, the possibility of molding a head skin without facial features.

C. Biofidelity

Biofidelity is a measure of how well a test device duplicates the responses of a human being in an impact. The Hybrid III dummy is specified in Standard No. 208. Its biofidelity in frontal impacts is well accepted, particularly for forehead impacts. Therefore, NHTSA's primary concern, in developing a component test using the FMH, was whether the FMH responses (for forehead impacts) correlate to those of a Hybrid III dummy subjected to similar impact loading in sled tests, and whether this correlation holds up for impacts with components that are representative of a wide range of passenger vehicles. The responses examined by the agency were HIC and peak head resultant acceleration.

NHTSA conducted a series of tests and analyses to determine the relationships between the Hybrid III dummy responses and the FMH responses. First, the agency conducted tests consisting of impacts into actual and simulated vehicle upper interior structures at various angles. NHTSA conducted these tests both using the full Hybrid III dummy and using the FMH, and for both the baseline and padded conditions.

The results of the comparison tests indicate that the FMH responses followed the same trends as, and were very close in value to, the whole dummy head responses at impact speeds of 15 mph and 20 mph.

NHTSA then performed analytical modeling of the FMH and the Hybrid III dummy, to examine the correlation between the tests and the head responses. The results of the modeling reinforce the results of the comparison by testing.

While there is a strong relationship between the HIC responses obtained using the FMH and full Hybrid III dummy, the results are not identical. However, NHTSA developed a transform function or conversion factor, using test data from simulated structure testing of the FMH and the full dummy. This transform function can be used to translate FMH responses into full Hybrid III dummy responses. NHTSA believes that the full dummy responses are representative of a human, based on the accepted biofidelity of the Hybrid III dummy. The transform function is:

Full Dummy HIC or HIC(d)=0.75446 (FMH HIC)+166.4.

D. Repeatability and Reproducibility

NHTSA has evaluated the repeatability and reproducibility of the proposed test procedure, with particular focus on the FMH responses. Repeatability refers in this context to the control of variation of FMH responses in replicate tests using the same FMH, while reproducibility refers to control of variation of FMH responses in replicate tests using different FMHs. The agency considers ±10 percent to be an acceptable range of variability and a measure of good repeatability or reproducibility, while ±5 percent is considered to be highly acceptable variability and an indicator of excellent repeatability or reproducibility.

As a starting point, the agency notes that it has previously determined that the Hybrid III head, as a component of the full Hybrid III dummy, has highly acceptable variability or excellent repeatability and reproducibility. There is no reason to believe that these characteristics would change because of the minor changes made in the FMH design or because the FMH is separately propelled against a vehicle interior structure.

In evaluating repeatability, NHTSA first conducted a series of simulated structures tests. These tests were designed to provide a controlled impact environment so that any variability was limited to the FMH test equipment and the test procedure. The agency conducted tests for different impact speeds, impact angles, and degrees of structure stiffness.

The agency found that the average percent variation for HIC and peak head resultant acceleration was generally highly acceptable, for both baseline and padded test conditions. NHTSA measured average percent variation for 12 different sets of test conditions. Eight of the average percent variations measured were less than five percent, and the other four only slightly exceeded five percent. NHTSA notes that these tests were conducted with an early version of the FMH which included the Hybrid III nose and glued headskin. Given the minor nature of the subsequent design changes, however, the agency believes that the test data are representative of the proposed FMH.

NHTSA also evaluated FMH repeatability in 27 pairs of full scale vehicle tests. Thirteen of the tests were conducted using the interior of a 1987 Volkswagen Golf; the other 14 were performed using a 1989 Dodge B–150 van. The agency conducted tests for baseline and padded conditions and for different vehicle components at varying angles. The tests were conducted at 15 mph and used the proposed FMH. The overall average percent variation for both HIC and peak head acceleration, across both vehicles, was acceptable (below 10 percent).

In order to evaluate reproducibility, the agency conducted another series of simulated structures tests. NHTSA modified four Hybrid III heads to be FMHs, consistent with the specifications proposed in this document. The agency conducted baseline and padded tests for different impact speeds, impact angles, and degrees of structure stiffness. The test results showed that the reproducibility of the FMH is acceptable.

NHTSA also combined FMH response data from three different test series and time periods to measure variability. Data from five simulated structure tests, using the proposed FMH, conducted by the agency in 1991 and 1992 to measure padding effectiveness were combined with data from five earlier tests which were identical except that the earlier version of the FMH was used. Four of the five sets of data showed acceptable reproducibility with variability at 10 percent or less. The variability was, however, higher than for the simulated structure tests discussed above. The fifth set had variability of 14.89 percent. NHTSA believes that the higher variability in these sets of data may have been due to differences between the earlier and later FMH designs or variations in stiffness of the materials used for the simulated structures, which were purchased between 1989 and 1992

Based on the above tests and analyses, which are described in more detail in the PRIA, NHTSA has tentatively concluded that the repeatability and reproducibility of the proposed test procedure are sufficient for this rulemaking.

E. Qualification Tests

NHTSA has explained in dummy rulemakings that before a test dummy can be used in a vehicle crash test, it must be examined to determine whether it conforms to all of the specifications set out in the blueprints for the dummy. In addition, the dummy must be carefully examined to ensure that it has been correctly assembled. Finally, the test dummy must pass a series of qualification tests. The purpose of a qualification test is to measure the performance of the test dummy in a well-controlled laboratory impact test to determine whether the test responses are within specifications and thus the test dummy will provide objective test results.

These same points are relevant to the proposed FMH, since it is an anthropomorphic test device and is, as noted above, essentially the head of a Hybrid III dummy. NHTSA is proposing the same qualification test for the FMH that applies to the Hybrid III dummy head, a drop test. In this test, acceleration is measured when the FMH is dropped from a height of 14.8 inches. The proposed limits are that the acceleration shall not be less than 225g and not more than 275g. In addition, the acceleration/time curve for the test must be unimodal to the extent that oscillations occurring after the main acceleration pulse are less than ten percent (zero to peak) of the main pulse, and the lateral acceleration vector may not exceed 15g (zero to peak).

F. Temperature Sensitivity/Time Between Tests

Changes in temperature can affect the responses of anthropomorphic test devices. Therefore, it is important to specify a test temperature range, while ensuring that the range is practicable. The proposed test procedure specifies that the FMH be placed in a controlled temperature environment for at least four hours within a 66–78 °F. temperature range before an impact test. In addition, the FMH is to be maintained within this temperature range during a test.

The proposed temperature range is the same as that specified in part 572 for the Hybrid III dummy head drop test. It is also the same as that specified in Standard No. 208 for crash tests using the part 572 Subpart B dummy and in Standard No. 214 for crash tests using the SID dummy. NHTSA notes that Standard No. 208 specifies a narrower temperature range for crash tests using the Hybrid III dummy. The agency adopted a narrower temperature range in Standard No. 208 because the Hybrid III dummy chest is particularly sensitive to temperature change. The narrower temperature range is not relevant to the proposed FMH, since it is based only on the Hybrid III head.

Part 572 specifies that there should be at least three hours between successive head drop tests on the same Hybrid III dummy head. The waiting period permits resilient materials to return to their undeformed state, thereby ensuring their proper response characteristics. Since the proposed FMH is based on the Hybrid III dummy head, NHTSA believes that there should also be a waiting period between successive tests (drop tests and/or impact tests) using a single FMH. The proposed regulatory text specifies a three hour period since that is the period specified for the Hybrid III dummy head. The agency specifically requests comments, however, on whether some shorter period would be sufficient, as a shorter period would facilitate conducting a larger number of tests per day. Depending on the comments, NHTSA may specify a waiting period of less than three hours.

G. Impact Speed

In developing the proposed test procedure, the agency examined data in the National Accident Sampling System (NASS) to determine the mean delta V by AIS injury level due to impact with the vehicle A-pillar, front header, and side rails. Delta V represents the total velocity change of the struck vehicle during a crash. The agency then analyzed laboratory data to estimate the head contact velocity into the vehicle upper interior components associated with that vehicle delta V.

Under the agency's proposal, performance requirements would need to be met when a vehicle's upper interior components are impacted by an FMH at any speed up to and including 15 mph. The 15 mph speed corresponds to an average injury level between AIS 2 and AIS 3, or essentially the onset of serious injury. It is also the test speed that is generally specified for the existing requirements of Standard No. 201. Finally, the agency's testing indicates that there may be a practicability problem with higher test speeds, such as 20 mph, as it may not be possible to meet the proposed performance limits (HIC 1000 or HIC 800) at such speeds without using unacceptably thick padding.

H. Impact Configuration; Target Areas

In real-world crashes, an occupant's head may strike the upper interior of the vehicle at any of many different places and at any of many different angles. The agency is therefore proposing to require that vehicles meet specified HIC(d) limits when any portion of a number of specified upper interior surface areas is impacted by the FMH, at any of a range of specified angles.

As noted above, NHTSA is concerned about head impacts with the vehicle's upper interior structure, i.e., the pillars, the headers, and the side roof rails, and the roof.

The agency is not addressing head impacts with glazing in this rulemaking. Impacts with glazing are usually not as serious as impacts with structure, since structure is generally much stiffer than glazing. In addition, padding cannot be used as a countermeasure for head impacts with glazing.

The agency's proposal defines the specific areas on the upper interior components which would be required to meet HIC(d) limits. The areas are referred to as the pillar impact zones, front and rear header impact zones, side rail impact zones, and upper roof impact zone.

The pillar impact zones, front and rear header impact zones, and side rail impact zones are defined to include the named components themselves (structure and accompanying molding and attached components) and adjacent areas of the roof. Those remaining, middle portions of the roof comprise the upper roof impact zone.

In order to define where the other impact zones end and the upper roof impact zone begins, the proposal defines an upper roof zone plane. All interior surfaces of the vehicle above this plane would be included in the upper roof impact zone. NHTSA is proposing to define the upper roof zone plane as the horizontal plane passing through a point 0.5 inch below the highest point of the vehicle roof interior. The agency specifically requests comments on whether this proposed definition appropriately distinguishes the other upper interior components from the middle area of the roof, and on the practicability of demarcating these regions.

The header and side rail impact zones generally include the interior surface area from the border between the identified component and adjacent glazing such as the windshield, rear window, or side window glazing, to the upper limit horizontal plane. The pillar impact zones generally include the entire interior surface area of the pillar, from the lowest level of any adjacent daylight opening (but not lower than six inches (152.4 mm) above the driver's seating reference point), and the vehicle interior surface that is immediately above the pillar and is between the adjacent header and/or side rail impact zones.

For each impact zone, the proposed test procedure defines a range of angles at which the FMH would strike that zone. These angles are referred to as approach angles, since they are the angles at which the FMH would approach the impact zones. The ranges are expressed using a specified orthogonal reference system. The direction of travel by the FMH would be required to be within the specified ranges.

The proposed ranges of approach angles are generally broad. This reflects the fact that an occupant's head may impact a vehicle's upper interior components at many different angles.

The agency is proposing a somewhat narrower range of horizontal approach angles for the A-pillars. Given that the A-pillars are located well forward and somewhat to the side of the driver and other front seat occupants, the range of likely horizontal angles at which an occupant's head is likely to strike the A-pillars is narrower than for most other upper interior components. For example, an occupant's head is unlikely to strike the A-pillar from a direction that is perpendicular to the side of the vehicle.

NHTSA is proposing the widest possible range of approach angles, i.e., any angle, for the upper roof impact zone. This reflects the fact that an occupant's head may strike the roof at any angle during a rollover.

The agency notes that its research indicates that, using the proposed test procedure, FMH impacts with the middle areas of the roof (which comprise the upper roof impact zone) generally result in low HIC(d) readings. This is because these areas are usually less stiff than the other upper interior components. Since a significant number of serious head injuries resulting from impacts with the roof occur in rollovers when the occupant head strikes the roof when it is in contact with the ground, NHTSA believes that it might be appropriate to develop a test procedure which replicates that condition. However, the agency does not have sufficient information to propose such a procedure at this time. NHTSA believes that the requirements that it is proposing would ensure that head impact protection is provided at least in those areas of the roof where there are hard points, e.g., support structure, hard sunroof frames, etc. The agency believes that relatively few vehicles will need any changes to meet the proposed requirements for the upper roof impact zone.

NHTSA notes that, in some cases, it may be difficult to determine precisely where one impact zone ends and another begins. In cars with sloping roofs, for example, it is difficult to determine where the A-pillar ends and the side roof rail begins, because the A-pillar appears to merge into the roof rail. The inability to clearly differentiate between the various impact zones could create problems to the extent that different approach angles or different performance requirements apply to the different impact zones. The agency currently contemplates that areas of the vehicle interior surface that come within the definitions of more than one impact zone would be required to meet the requirements specified for all such zones. NHTSA requests comments on this issue.

Under the proposed test procedure, the area of the vehicle to be impacted by the FMH, i.e., any part of the front header impact zone, the rear header impact zone, the side rail impact zones, the pillar zones, and the upper roof impact zone, is marked with a solid target circle 0.5 inch in diameter, using any transferable opaque coloring medium. The FMH is launched from any location inside the vehicle that is consistent with the approach angle limits and other test specifications. The FMH must travel through the air for a distance of at least one inch before making contact with the vehicle interior surface.

The first contact between the FMH and the vehicle interior surface must be between the forehead of the FMH and the target location on the vehicle, without any interference. More specifically, at the time of initial contact between the FMH and the vehicle, a specified portion of the FMH's forehead (headform impact zone) must contact some portion of the target circle, and no portion of the FMH may contact any part of the vehicle outside the specified impact zones. The agency is proposing that the forehead of the FMH make first contact with the vehicle interior surface because the FMH has been determined to have biofidelity in frontal impacts. Subsequent contacts outside the forehead impact zone and with other portions of the vehicle interior surface are permitted, as the FMH is free to rotate after the first contact.

NHTSA believes that it may be appropriate to include a definition of "initial contact" in Standard No. 201 or otherwise specify the time during which interference must not occur, since there may not be a practical difference between interference that occurs at the exact moment of initial contact and interference that occurs immediately after that time but prior to peak acceleration on the FMH. One problem with specifying an interval of time during which interference must not occur is that the interval between the exact moment of initial contact and peak acceleration on the FMH will vary considerably depending on the surface being impacted. The agency requests comments on this issue. Depending on the comments, the agency may include a definition of initial contact or other relevant specification concerning this issue in a final rule.

NHTSA also requests comments on how the time of initial contact can most appropriately be ascertained. One possibility would be to place an event marker switch behind the target circle. Would such a procedure affect the responses of the FHM? Is there any other procedure that would be more appropriate? Depending on the comments, the agency may specify a procedure for determining the time of initial contact in a final rule.

NHTSA notes that it is not possible to conduct the specified test procedure for some portions of the specified impact zones, since other parts of the vehicle, e.g., the windshield or instrument panel, would interfere with the test. Such portions of the impact zones would not be subject to any performance requirements.

I. Exclusions

In the preceding section, NHTSA discusses the areas of a vehicle's interior surface that would generally be required to meet HIC(d) limits. However, the agency believes that certain portions of these areas should be excluded from the requirements under certain circumstances since head impacts with such areas are very unlikely in real world crashes.

An obvious area which the agency believes should be excluded is that portion of the cargo area of vans that is not close to any designated seating position. The agency is proposing that a vehicle need not meet the proposed HIC(d) limits for any part of a vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position. The 36 inch value is based on the normal position of the head relative to the seating reference point and the possible movement of the head rearward in a crash. The agency believes this would be the maximum value of the distance for the location of the rearward plane behind the seating reference point but seeks comment on whether a lesser distance is more appropriate or cost-effective. NHTSA requests comments on whether the 36 inch distance would ensure that protection is provided for a vehicle's upper interior areas that an occupant's head is likely to impact (an occupant's head may be located behind the seating reference point), while avoiding requiring padding in areas that are so far behind occupant seating positions that they are very unlikely to be struck by occupants. Commenters are requested to supply data, to the extent available, on the benefits and costs of different values. Depending on the comments, the agency may select a distance different from 36 inches for a final rule.

NHTSA also requests comments on whether there are other areas which should be excluded from the proposed requirements. One such possible exclusion would be components along the side walkway of passenger vans, since occupants are not seated directly next to such components.

Another possible exclusion would be components in the rear of the vehicle, i.e., components behind a vehicle's front seat area. The agency notes that, of the approximately 1100 passenger car occupant fatalities that would be prevented by the proposed requirements, only about 35 would be rear seat occupants. Moreover, of the approximately 300 LTV occupant fatalities that would be prevented, only one would be a rear seat occupant. While a very small percentage of the benefits are for rear seat occupants, a large percentage of the costs are due to modifications required in the rear seating areas. Nearly half the costs of the proposed rule are related to modifications of the rear seat area but fewer than three percent of the benefits are.

As discussed in the agency's Preliminary Regulatory Impact Analysis (PRIA), NHTSA estimates the costs per equivalent life saved for the front seat area of passenger cars at $148,000 to $223,000, and for the front seat area of LTV's at $579,000 to $741,000 (using a seven percent annual discount rate). However, the agency estimates the costs per equivalent life saved for the rear seat area of passenger cars at $5.3 million to $9.1 million, and for the rear seat area of LTV's at $139 million to $211 million (also using a seven percent annual discount rate).

These estimates are based on equivalent lives saved both for passengers who are wearing and for those who are not wearing seat belts. Data presented in the PRIA show that for LTV's, a single unrestrained passenger accounts for the one equivalent fatality in LTV's on which the estimates of rear seat area costs per life saved are based. For passenger cars, about 61 percent of equivalent lives saved are attributable to incidents in which occupants are not wearing seat belts. With increased use of these occupant protection devices, the incremental benefits of this proposal would likely diminish and costs per life saved calculations would be accordingly higher.

In requesting comments on the possibility of excluding rear seating areas from the proposed requirements, for passenger cars and/or LTV's, NHTSA notes that it is possible that new integrated designs might result in much lower costs than the add-on padding designs reflected in the agency's cost estimates. However, such designs might require additional leadtime. The agency also requests comments on whether a longer leadtime for rear seating areas of passenger cars and/or LTV's should be provided.

If NHTSA should decide to exclude rear seating areas in a final rule, it contemplates an approach similar to that discussed above with respect to the cargo area of vans. More specifically, the agency would likely specify that a vehicle need not meet the proposed HIC(d) limits for any part of a vehicle located rearward of a specified distance behind the seating reference point of the designated seating position of the driver. NHTSA requests comments on whether a 36 inch distance would be appropriate.

The agency notes that some possible exclusions are reflected in S4.2 of the proposed regulatory text. For the convenience of commenters, the proposed regulatory text shows two alternative versions of S4.2. The first alternative would exclude for, all vehicles, any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position. The second alternative would be the same as the first for passenger cars, but, for trucks, buses and multipurpose passenger vehicles, would exclude any part of the vehicle located rearward of a vertical transverse plane 36 inches (914 mm) behind the seating reference point of the designated seating position for the driver. While the regulatory text shows two alternatives, NHTSA emphasizes it is also considering other alternatives, including, as discussed in this document, other possible exclusions.

The agency also requests comments on whether any particular types of vehicles, such as walk-in vans, should be excluded. NHTSA requests that commenters favoring the exclusion of additional vehicle areas or types of vehicles provide a specific rationale for any suggested exclusion and, to the extent possible, a precise, objective definition of any area to be excluded. Depending on the comments, the agency may, in a final rule, exclude certain vehicle areas or types of vehicles.

NHTSA also requests comments on whether there are any types of components that should be excluded. The agency is particularly interested in comments concerning the possible exclusion of window frames that go up and down with the window. The agency requests that any commenters favoring the exclusion of certain types of components address whether it is practicable to meet the proposed requirements for such components and the need or desirability of providing such components (e.g., whether window frames are needed to obtain the safety benefits associated with glass-plastic glazing).

J. Multiple Impacts

One of the advantages of an in-vehicle component test procedure is that multiple areas of a single vehicle can be tested during a compliance test. NHTSA recognizes, however, it is not appropriate to test the exact same area of a vehicle more than one time, since some damage may occur during a test. The agency is therefore proposing that a vehicle being tested may be impacted multiple times, but that no impact target is to be closer than six inches, in any direction, to a prior impact target.

V. Performance Requirements

For many years, NHTSA has used a Head Injury Criterion (HIC) of 1000 as the performance limit specified in Standard No. 208 for frontal crashes. The HIC 1000 limit is also specified in Standard No. 213, Children Restraints.

In this rulemaking, NHTSA is proposing to require passenger cars and LTV's not to exceed specified HIC(d) limits when any of the specified upper interior components are impacted by the FMH in accordance with the specified test procedure. As indicated above, HIC(d) is calculated using the FMH, HIC and represents the HIC that would be experienced by a full dummy or actual vehicle occupant.

The agency is proposing two alternatives regarding performance limits. The first is a single, across-the-board limit of HIC(d) 1000 for all specific upper interior components. The second is a two-tiered limit of HIC(d) 1000 for the forward and rearward upper interior components (front header, rear header and A-pillar) and HIC(d) 800 for side upper interior components (side rails and pillars other than the A-pillars) and the upper roof.

NHTSA has determined in other rulemaking that HIC 1000 is the appropriate performance limit for frontal head impacts. The agency is proposing a lower HIC limit for the side upper interior components as part of the second alternative because research shows that the side of the head is more susceptible to injury than the front of the head, i.e., the head injury tolerance threshold is lower in lateral impacts than in frontal impacts. As discussed in the PRIA, some research has indicted that a lateral HIC limit that is 80 percent of a frontal HIC limit is appropriate.

NHTSA does not disagree with those commenters on the ANPRM which indicated that it would be desirable if a unique injury criterion were developed for lateral impacts. However, the existing biomechanical data are not adequate to develop such a criterion. Further, it would take many years of research to develop such data. In the meantime, the agency believes that significant safety benefits can be obtained by using HIC as a performance limit for lateral impacts. The agency specifically requests comment on the appropriateness of the HIC(d) 800 limit for lateral and roof impacts and whether it is generally equivalent to HIC(d) 1000 in frontal impacts in terms of head injury risks.

NHTSA requests comments also on the two alternative performance proposals generally. The agency notes that, as discussed below, the practical difference between the two alternatives consists of differences in the thickness of padding that would likely be require to meet them. While NHTSA believes that the 1000 HIC alternative could likely be met for almost all vehicles and components with the addition of one inch or less of padding, the 800/1000 HIC alternative could require 1½ inches of padding for a substantial number of vehicles. The agency requests comments on the practicability of then 800/1000 HIC alternative, including whether the need for thicker padding could create problems related to consumer acceptance and reduced visibility and whether there are alternative countermeasures (e.g., different kinds of padding or integrated structure and padding designs) that would enable manufacturers to meet the 800/100 HIC alternative without using thicker padding.

VI. Feasibility of the Countermeasures

NHTSA has performed a substantial number of tests to examine the existing level of upper interior head impact protection for many cars and LTV's, as determined by HIC measurements in tests using the FMH, and to evaluate the effectiveness of padding to improve that protection. The agency's effectiveness estimates indicate the percent by which the addition of a given amount of padding will reduce HIC measurements.

The PRIA presents data from baseline and padded tests for nine different passenger cars and six different LTV's. NHTSA used these data to estimate the effectiveness, in 15 mph impacts, of one inch of padding for A-pillars, B-pillars, the front header and side rails.

For A-pillars, the agency determined that there is a good mathematical relationship between baseline HIC and the amount by which HIC is reduced as a result of adding an inch of padding. This relationship is expressed in the following formula: Effectiveness=0.0278 (HIC(d))+1.009. The use of this formula can be illustrated using the following example. Assume that baseline HIC(d) is 1200. The effectiveness of one inch of padding is 34.369 percent. (Effectiveness=(0.0278×1200)+1.009, or 34.369.)

For the other structures, the mathematical relationship between baseline HIC and the amount by which

HIC is reduced by adding an inch of padding is not as clear. The agency therefore calculated average effectiveness estimates for those components. NHTSA estimates the effectiveness of one inch of padding for the other components at 30.9 percent for the B-pillar, 35.3 percent for the front header, and 54 percent for the roof side rail.

NHTSA examined data from simulated structure tests to analyze the relative effectiveness of ½ inch padding as compared to 1 inch padding. The agency determined that ½ inch of padding is 65.8 percent as effective as one inch of padding. This 65.8 percent figure can be applied to the agency's effectiveness estimates for the A-pillar, B-pillar, front header, and side rail. By way of example, since the agency estimates the effectiveness of adding one inch of padding to the B-pillar at 30.9 percent, the effectiveness of adding one-half inch of padding to the same component is 65.8 percent of 30.9 percent, or 20.3 percent.

The agency has also evaluated the effectiveness of 1½ inch padding. Based on tests for two vehicles, the agency estimates the effectiveness of 1½ inches of padding on the B-pillar to be 41.4 percent.

NHTSA has test data which can be used to estimate effectiveness for A-pillars, B-pillars, the front header, and side rails only. The agency believes, however, based on constructional similarities, that the front header is representative of the rear header and overhead consoles, that the B-pillar is representative of C-pillars and shoulder belt anchorages, and that the roof side rail is representative of sliding doors, hatchback and back doors, heater ducts, interior sliding door rails, and coat hooks.

The PRIA presents estimates of the thickness of padding that would need to be added to the various components of the nine cars and six LTV's that were tested by the agency, in order for those vehicles to meet the two proposed alternative performance limits. Many of the vehicles do not require any added padding on certain components, since the baseline tests measured HIC(d)'s below 800 and 1000.

By way of example, five of the nine cars do not require any additional padding on the A-pillar to achieve HIC(d)'s under 1000; three need ½ inch of padding and one needs 1 inch of padding. Four of the cars do not need any additional padding on the B-pillars to achieve HIC(d)'s under 1000; five need either ½ or 1 inch of padding. Seven of the cars do not need additional padding on the front header to achieve HIC(d)'s under 1000; two require either ½ or 1 inch of padding. Five of the cars do not need additional padding on the side rails to achieve HIC(d) under 1000; four need either ½ or 1 inch of padding.

NHTSA's testing shows that HIC(d) levels under 1000 can generally be achieved for cars and LTV's by the addition of ½ or 1 inch of padding. In only one vehicle tested, an LTV, was more than 1 inch of padding needed. That vehicle needed 1½ inches of padding on the A-pillar.

The agency's testing indicates that 1½ inches of padding may be needed to achieve HIC(d) levels under 800. For five out of nine cars and two out of six LTV's tested, 1½ inches of padding was needed on the B-pillar.

In summary, NHTSA's testing shows that it is possible to develop "production feasible" countermeasures that can reduce potential head injury from impacts with upper interior components of passenger cars and LTV's. While NHTSA's analysis focuses on the addition of padding, the agency notes that, as indicated by some of the commenters on the ANPRM, there are other potential countermeasures. Ford, for example, cited the possibility of using a thin sheet metal design. Since the agency is proposing broad performance requirements, manufacturers would be free to use any countermeasures that would enable their vehicles to meet the specified requirements.

VII. Estimate of Vehicle Fleet Improvement Needed for Compliance

NHTSA used the results from the tests of the production vehicles, discussed in the previous section, to estimate the percentage of the passenger car and LTV fleets that would need padding to meet the two proposed alternative performance limits. These estimates are presented in Tables II and III.

TABLE II.—PERCENT OF PASSENGER CAR FLEET NEEDING PADDING

	A-pillar	B-pillar	Front header	Side rail
Alternative 1—HIC 1000:				
None	55.6	44.5	77.8	55.6
½"	33.3	22.2	11.1	33.3
1"	11.1	33.3	11.1	11.1
1½"	0	0	0	0
Alternative 2—HIC 800/1000:				
None	55.6	0	77.8	33.3
½"	33.3	44.4	11.1	44.5
1"	11.1	0	11.1	11.1
1½"	0	55.6	0	11.1

TABLE III.—PERCENT OF LTV FLEET NEEDING PADDING

	A-pillar	B-pillar	Front header	Side rail
Alternative 1—HIC 1000:				
None	0	33.3	66.6	50.0
½"	16.7	33.3	16.7	16.7
1"	66.6	33.4	16.7	33.3
1½"	16.7	0	0	0
Alternative 2—HIC 800/1000:				
None	0	0	66.6	0
½"	16.7	33.3	16.7	66.7
1"	66.6	33.3	16.7	33.3
1½"	16.7	33.4	0	0

VIII. Costs

In preparing cost estimates, the agency looked at the average number of square inches of the upper interior components that may need padding in passenger cars and light trucks, and the cost and weight of that padding. In order to determine the area that may need padding, the agency measured the relevant components on a representative sample of passenger cars, utility vehicles, pickup trucks and vans. The vehicles included 25 passenger cars, four utility vehicles, five pickup trucks and four vans.

NHTSA generally assumed that 4.5-inch-wide padding would be needed to cover the underlying structure of the front and rear headers and the roof side rails. However, when interior molding in these areas was wider than 4.5 inches, the agency assumed that the manufacturer would use padding as wide as the current molding. In all other areas of the vehicle, actual measurements were used. The agency also assumed that cargo vans would not need any padding behind the B-pillar, since the agency is proposing that a vehicle need not meet the proposed HIC(d) limits for any part of a vehicle located more than 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position.

The PRIA presents a breakdown, by vehicle type, of the average square inches of padding that may be needed for the following components: Windshield header, overhead console, A-pillar, B-pillar, roof side rail—front to back of B-pillar, front shoulder belt, roof side rail—back, C-pillar, D-pillar, E-pillar, F-pillar, rear shoulder belt, hatchback/backdoor, sliding door, heater duct/interior sliding door rail, coat hooks, and rear header. The total average area that may require padding is 1,710 square inches for passenger cars, 2,772 square inches for vans, 2,319 square inches for utility vehicles, and 1,383 square inches for pickup trucks. The total average area for all LTV's that may require padding is 1,933 square inches.

NHTSA estimates the supplier cost (per square inch) of ½-inch polyurethane padding at $0.015, the cost of 1-inch polyurethane padding at $0.02, and the cost of 1½-inch padding at $0.025. The agency derived the consumer cost for padding by marking up the supplier cost estimates by the following three factors: 20 percent markup by the padding supplier to the manufacturer, 33 percent markup by the manufacturer to the dealer, and 14 percent markup by the dealer to the consumer. This results in a total markup for 81.9 percent, making the consumer cost of ½-inch padding $0.027 per square inch, the cost of 1-inch padding $0.036, and the cost of 1½-inch padding $0.045.

If all relevant upper interior components of passenger cars required the addition of ½-inch padding, the consumer cost (of padding alone) would be $46.17, and if 1-inch padding were required, the cost would be $61.56. For LTV's, the corresponding cost figures would be $52.19 and $69.59, respectively.

As discussed above, however, many vehicles do not require additional padding on some components, since the HIC(d) for those components is already below 800 and 1000. The agency estimated the average cost of padding needed to meet the two proposed alternatives by multiplying the percent of the fleet needing different thicknesses of padding on the various components under each of the alternatives by the average square inches of those components, and then multiplying by the cost of each of the padding thicknesses. NHTSA's estimates of the average cost of needed padding, and the weight of that padding, are set forth in Table IV.

TABLE IV.—ESTIMATED AVERAGE COST AND WEIGHT OF NEEDED PADDING

Alternative 1—HIC 1000:		
Passenger cars	$22.91	2.13 lbs.
Utility vehicles	41.10	4.08 lbs.
Pickup trucks	25.68	2.57 lbs.
Vans	48.38	5.16 lbs.
All LTV's	35.37	3.54 lbs.
Alternative 2—HIC 800/1000:		
Passenger cars	38.65	4.08 lbs.
Utility vehicles	63.02	6.42 lbs.
Pickup trucks	36.24	3.80 lbs.
Vans	80.53	8.16 lbs.
All LTV's	52.98	5.41 lbs.

In estimating total cost impacts, the lifetime fuel costs of carrying the extra weight of the added padding should also be considered. Taking fuel costs into account, the PRIA provides the following estimates of total vehicle costs:

TABLE V.—TOTAL PER VEHICLE AVERAGE COSTS INCLUDING LIFETIME FUEL PENALTY COST

Alternative 1—HIC 1000:	
Passenger cars	$25.51
Utility vehicles	46.54
Pickup trucks	29.11
Vans	55.27
All LTV's	40.09
Alternative 2—HIC 800/1000:	
Passenger cars	43.63
Utility vehicles	71.59
Pickup trucks	41.31
Vans	91.42
All LTV's	60.20

Another possible cost relates to secondary weight. Secondary weight refers to weight increases in other parts of the vehicle which might be made to compensate for the additional "primary" weight, i.e., the weight of the added padding. For example, these secondary weight increases could include increases in vehicle structure to maintain load-carrying ability. To illustrate the potential impact of secondary weight, the PRIA calculates costs using a theoretical weight factor of 0.7 pounds of secondary weight for each pound of primary weight that is added to the vehicle. The resulting estimates of total vehicle costs are as follows:

TABLE VI.—TOTAL PER VEHICLE AVERAGE COSTS INCLUDING LIFETIME FUEL PENALTY COST AND SECONDARY WEIGHT

Alternative 1—HIC 1000:	
Passenger cars	$28.57
Utility vehicles	52.73
Pickup trucks	33.00
Vans	63.09
All LTV's	45.46
Alternative 2—HIC 800/1000:	
Passenger cars	49.49
Utility vehicles	81.31
Pickup trucks	47.07
Vans	103.77
All LTV's	68.41

In addition to the costs associated with designing and producing the countermeasures needed to meet the proposed performance requirements, today's proposed rule would also result in some test equipment costs. NHTSA estimates the cost of a new FMH at $2840 to $2970, and the cost of a propulsion unit to launch the FMH at $30,000 to $35,000.

There are also costs associated with calibrating the FMH, purchasing replacement parts, instrumentation, and performing tests. The agency estimates total testing costs for a particular model at between $1485 and $3165. On a per vehicle basis, the testing costs are negligible.

IX. Benefits

As discussed above, NHTSA has conducted tests of 15 production vehicles, nine passenger cars and six LTV's, using the test conditions and FMH proposed today. To evaluate the effects of meeting the two alternative performance proposals, HIC(d) 1000 and HIC(d) 800/1000, the agency analyzed the probability of head injury for each of the vehicles in the tests using the HIC and compared this to the level of injury that would occur under each of the alternative proposals. Based on the assumption that the production vehicles tested by NHTSA are representative of the total fleets of new cars and LTV's, NHTSA calculated the estimated benefits of the two alternative performance proposals.

In estimating benefits, NHTSA assumed that all components exceeding the proposed maximum HIC(d) (1000 or 800) would be modified by adding the amount of padding (½ inch, 1 inch or 1½ inch) needed to reduce HIC(d) below the specified level (1000 or 800) while all components having values less than the proposed maximum would not be modified. Thus, the modified components were assigned new, lower HIC values, while the unmodified components retained the original values. Injury distributions were then recalculated using the altered HIC(d) values. Results are shown in Table VII. The specific methodology for deriving these estimates is set forth in chapter IV of the PRIA.

TABLE VII.—REDUCTIONS IN MODERATE TO CRITICAL HEAD INJURIES/FATALITIES

	AIS 2–6	Fatal
Alternative 1—HIC 1000:		
Passenger cars	708 to 575	892 to 1,114.
LTV's	116 to 108	291 to 276.
Total	824 to 683	1,143 to 1,390.
Alternative 2—HIC 800/1000:		
Passenger cars	572 to 1,188	1,054 to 1,323.
LTV's	269 to 290	311 to 291.
Total	841 to 1,478	1,365 to 1,614.

X. Leadtime; Effective Date

In its rulemaking establishing dynamic side impact requirements for passenger cars, NHTSA addressed the leadtime associated with padding countermeasures. The agency estimated that, for vehicles needing "padding only" countermeasures, the normal leadtime to design, tool and test such things as new interior trim panels and armrests is approximately 14 to 18 months. The agency recognized that greater leadtime would be required for countermeasures involving structure and padding. See 55 FR 45722, 45748, October 30, 1990.

NHTSA believes that its estimate of 14 to 18 months normal leadtime for padding countermeasures is an appropriate starting point for considering the leadtime needed for this rulemaking. Given this required leadtime, the agency believes that, if a single effective date were established for full implementation of the proposed requirements, the earliest possible date would be the first September 1 approximately two years after issuance of a final rule.

It is possible that somewhat longer leadtime could be required for this rulemaking. First, since the requirements would apply to both passenger cars and LTV's, a very large number of models could require changes. In addition, a large number of structures in each model could require changes. Manufacturers have limited engineering resources and testing facilities, which cannot be used simultaneously for all models. Second, manufacturers may adopt countermeasures other than padding for some vehicles. Therefore, NHTSA is also considering a later effective date, the first September 1 approximately three years after issuance of a final rule.

The agency also seeks comments on whether a phase-in, starting one to two years after issuance of a final rule, would be more acceptable. If so, comments are sought on the length of the phase-in and the percentages of a manufacturer's fleet to be affected each year. The agency contemplates that, if it were to adopt a phase-in, it would establish reporting and rcordkeeping requirements similar to those adopted for the phase-in of the dynamic side impact requirements for passenger cars. See 55 FR 45768, October 30, 1990.

XI. Effect on Visibility

Several commenters on the ANPRM expressed concern that the addition of padding to a vehicle's pillars could obscure the driver's field of view and create a safety risk. NHTSA is aware that it has long been a concern that padding the A-pillar on the driver's side of the vehicle could affect the forward vision obscuration angle of that pillar. Since the A-pillar on the passenger's side is much farther away, it is less likely to create a problem. The agency does not believe that padding the front and rear headers, side roof rails, other pillars or roof areas raise issues relating to obscuring forward vision.

This issue is not an easy one to analyze because of a general lack of specific, objective forward visibility requirements or recommendations. In 1988, the European Economic Community (EEC) proposed that the angle of binocular obscuration (as viewed with both eyes) of each A-pillar should not exceed six degrees. While this proposal was recently withdrawn because of lack of support, the agency believes it can be used to help analyze this issue.

The Department of Transportation's Volpe National Transportation Systems Center (VNTSC) conducted a study using data from 16 recent passenger car models to (1) determine how much padding can be added to A-pillars without increasing the obscuration of the field of view and (2) compute the binocular obscuration according to the EEC procedure. The study showed that each vehicle had a blind envelope area in the center of the A-pillar surface where padding could be added without obstructing the driver's view. NHTSA notes that it is generally not necessary to add padding to the areas of the A-pillar surface that are immediately adjacent to the windshield, since the FMH cannot impact those areas without interference. Thus, the blind area in which padding can be added generally coincides with the area that is subject to HIC(d) limits.

The EEC binocular obstruction angle was computed using both baseline and padded A-pillars. A 1-inch thick padding was added on top of the A-pillar trim surface starting with the A-pillar/door frame intersection and covering a 50 degree segment. Twelve of the 16 vehicles would meet the EEC's proposed six degree specification with or without padding. The other four vehicles were above six degrees in both cases.

Two vehicles did show a large increase (50 percent) in forward obscuration angles when padding was added to their A-pillars. However, NHTSA believes that tapered padding could be used to solve this problem. Since the FMH could not strike the areas of the A-pillar that are immediately adjacent to the windshield, padding could be used which is relatively thick in the middle and tapered toward the windshield.

The agency notes that the VNTSC study showed "worst case" results. First, padding was added directly on top of the existing trim. Manufacturers can, however, remove trim and replace it with padding that is directly applied to a substrate material which is designed to be congruent with the A-pillar structure, or integrate the energy-absorbing material and the support structure design. Second, lesser thicknesses of padding could have been applied, depending on a vehicle's baseline performance. Third, tapered padding can be used in many instances.

NHTSA has tentatively concluded that padding of at least 1 inch in thickness could be carefully designed, shaped, constructed and installed so that it would not have a significant effect on the driver's forward field of vision. Further, manufacturers are likely to develop "clean sheet" designs that integrate structure and padding, thus diminishing the possible problems. Also, the areas of "opaque coatings" used around the perimeter of current windshields could accommodate a certain thickness of padding so that the padding has no effect on visibility. The agency invites comments on these tentative conclusions.

XII. Consumer Reaction to Padding

The addition of padding to a vehicle's upper interior components could result in consumer acceptance problems if it either reduced driver visibility or otherwise interfered with the driving task or occupant comfort. For the reasons discussed in the preceding section, the agency does not believe that the addition of padding of at least 1 inch in thickness will create visibility problems.

In its rulemaking to establish dynamic side impact requirements for passenger cars, NHTSA reported the results of a study conducted to evaluate consumer reaction to side door padding. Based on the results of that study, the agency concluded that the majority of the population in smaller than average cars would be able to drive normally and ride in comfort with up to 3 inches of additional side door padding, and that consumers would accept the concept of such increased side door padding.

While the agency does not have a similar study concerning the addition of padding to upper interior components, it sees no reason why consumers would not accept such additional padding unless it affected their ability to drive normally and ride in comfort. NHTSA believes that the addition of 1 inch or 1½ inch padding to the upper interior components would have only a negligible effect on occupant space and would not affect the ability of a majority of the population in smaller than average cars to be able to drive normally and ride in comfort. It is possible, for a very small number of tall drivers who already find it difficult to drive and ride in smaller than average cars, that the addition of any amount of padding could exacerbate that difficulty. The agency notes, however, as it did in the preceding section, that manufacturers are likely to develop "clean sheet" designs that integrate structure and padding, thus diminishing any possible problem. The agency invites comments on this issue.

XIII. Risk of Neck Injury

Commenters on the ANPRM expressed concern that the addition of padding might increase neck injuries by allowing pocketing of the head and thereby generating increased neck loads. In light of this concern, NHTSA examined the results of 19 paired sets of sled tests (baseline and padded) using a Hybrid III dummy with an upper neck load cell. The agency looked at shear force, XY moment, and axial force, which were recorded by the upper neck load cell. The agency also looked at maximum neck rotation, estimated from test films. Finally, the agency looked at combined shear and axial force, XY moment, rotation, and XYZ resultant force.

Since there is no established neck injury criterion to determine what level of neck response translates into injuries, the agency examined the direction of each of the measured neck responses to determine whether the addition of padding directionally increased or decreased the severity of the measurements. For each of the responses examined by the agency, with the exception of shear force, the responses either decreased in severity or were essentially unchanged in between 69 and 90 percent of the tests. For shear force, the impact of padding on neck response was mixed, with about as many cases with padding where the responses increased (32 percent) as decreased (26 percent).

NHTSA has tentatively concluded that the addition of padding will not generally increase the risk of neck injury. The agency invites comments on this tentative conclusion.

XIV. Final Stage Manufacturers

There is a specialized class of small businesses involved in the final stage manufacture of vehicles manufactured in two or more stages, and/or in the conversion or alteration of completed, previously certified new vehicles. Final stage manufacturers and alterers purchase pickup truck cab-chassis or finished pickups and add equipment for special purposes, such as towing equipment and dump truck bodies; cutaway vans to make van boxes, motor homes, or other vehicles; finished vans or vans without seats for van conversions; and stripped chassis to make motor homes and many other special types of vehicles.

Under NHTSA's certification regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that modifies or converts a previously certified new vehicle before its first sale to a consumer is a vehicle alterer under the agency's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. Throughout the rest of this preamble, the term "final stage manufacturer" is used to refer to both final stage manufacturers and alterers.

NHTSA's regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what limitations must be observed for the completed vehicle to comply with safety standards. The final stage manufacturer can then base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer.

For the requirements proposed by this NPRM, to the extent that a final stage manufacturer does not make changes or additions to a vehicle that affect the upper interior components, it could base its certification on the fact that it stayed within the limits set by the incomplete vehicle manufacturer. In many cases, however, final stage manufacturers do make changes or additions that affect the upper interior components. In these cases, the final stage manufacturers would need to make any necessary design changes, such as adding padding, to enable them to certify that the vehicle complies with Standard No. 201.

Even where final stage manufacturers need to make design changes, NHTSA does not believe that the proposed requirements would be burdensome. Since the agency is proposing a component test, a final stage manufacturer could test, or sponsor a test, of a padded component outside the vehicle on a test fixture, to the extent such testing may be needed to support certification. As discussed in the PRIA, the costs to run eight such tests, which might be typical of the number needed for most vehicles, would be about $840. To reduce certification costs, manufacturer associations could also sponsor generic tests to determine the amount and type of padding needed for basic structures that would be used by a number of final stage manufacturers.

XV. International Harmonization

Several commenters, particularly import manufacturers, urged NHTSA to base its head impact protection requirements on Europe's Regulation 21. That regulation defines head impact areas and specifies performance requirements that necessitate the use of energy-absorbing materials in those zones. The performance requirements include ones prescribing g levels in impacts using a hemispherical test device.

NHTSA does not consider the European approach to be a substitute for this rulemaking. Many of the upper interior components being specified in this proposal are not included in Regulation 21. Moreover, the agency believes that performance requirements prescribing g levels in impacts using a hemispherical test device are less likely to ensure appropriate head impact protection than ones specifying HIC limits in a test procedure using an FMH based on the Hybrid III dummy head.

XVI. Amending Existing Requirements of Standard No. 201

As indicated above, Standard No. 201 currently specifies requirements for the instrument panel, seat backs, interior compartment doors (such as the door of a glove box), sun visors, and armrests. For several of these items, the standard specifies an acceleration limit when the item is impacted by a 15-pound 6.5-inch diameter headform. NHTSA requests comments on whether the standard's existing impact test requirements should be replaced by ones along the lines being proposed for the upper interior components, e.g., a limit of HIC(d) 1000 when the item is impacted by the FMH. Depending on the comments, the agency may adopt such a change in a final rule.

The agency also requests comments on whether the existing requirements for sun visors should be retained, since sun visors would generally be tested as part of the front header impact zone under the requirements being proposed today. If the agency decides not to retain those requirements, should front header impact zone be defined to include all sun visors, including ones which might be mounted in other areas?

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

XVII. Rulemaking Analyses and Notices

A. Executive Order 12291 (Federal Regulation) and DOT Regulatory Polices and Procedures

NHTSA has considered the impacts of this rulemaking action and determined that it is major within the meaning of Executive Order 12291, and significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has prepared a Preliminary Regulatory Impact Analysis describing the economic and other effects of this rulemaking action. Summary discussions of many of those effects are provided above. For persons wishing to examine the full analysis, a copy is being placed in the docket.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

The primary cost effect of the proposed requirements would be on manufacturers of passenger cars and LTV's. Final stage manufacturers are generally small businesses. In many cases, these companies would need to make design changes, such as adding padding, to enable them to certify that a vehicle complies with Standard No. 201. However, NHTSA believes that the proposed requirements would not be burdensome for final stage manufacturers. The costs of adding padding are not large. Further, since the agency is proposing a component test, a final stage manufacturer could test, or sponsor a test, of a padded component outside of the vehicle on a test fixture, to the extent such testing may be needed to support certification. Manufacturer associations could also sponsor generic tests to determine the amount and type of padding needed for basic structures that would be used by a number of final stage manufacturers, to reduce certification costs.

Other entities which would qualify as small businesses, small organizations and governmental units would be affected by this rule to the extent that they purchase passenger cars and LTV's. They will not be significantly affected, since the potential cost increases associated with this action should only slightly affect the purchase price of new motor vehicles.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposal in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

XVIII. Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, 49 CFR parts 571 and 572 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.201 would be amended by revising S3 and by adding S2.1 and S4 through S7.3 to read as follows:

§ 571.201 Standard No. 201, Occupant protection in interior impact.

* * * * *

S2.1 *Definitions.*

A-pillar means any pillar that is, in whole or part, forward of a transverse vertical plane passing through the seating reference point of the driver's seat.

Forehead impact zone means a part of the free motion headform surface area that is determined in accordance with the procedure set forth in S6.8 through S6.8.6.

Free motion headform means a test device which conforms to the specifications of part 572, subpart L of this chapter.

Front header means any structure or component, other than glazing, which is along the front of the upper interior compartment and is above the windshield, including but not limited to the horizontal beam structure, sun visors, overhead consoles, and accompanying molding at the edge of the roof along the top of the windshield.

Front header impact zone means those parts of the vehicle interior surface along or above the front header, that are within the area from the line where the windshield glazing meets the header to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface.

Pillar means any structure other than glazing, including accompanying moldings, attached components such as safety belt anchorages and coat hooks, and the vertical portion of door frames, which:

(1) Supports either a roof or any other structure (such as a roll bar) that is higher than the driver's head, or

(2) Is located along the side edge of a window or between two windows.

Pillar impact zone means those parts of the vehicle interior surface along or above each pillar, that are within any of the following areas:

(1) The entire interior surface of each pillar, from the lowest level of any adjacent daylight opening or, if there is no adjacent daylight opening, from the lowest level of the nearest daylight opening, but in no instance less than six inches (152.4 mm) above the driver's seating reference point;

(2) The vehicle interior surface immediately above the pillar that is between the adjacent header and/or side rail impact zones.

Rear header means any structure or component, other than glazing, which is along the rear of the upper interior compartment and is between and/or supported by pillars, including but not limited to the horizontal beam structure and accompanying molding and attached components at the edge of the roof along the top of the back window.

Rear header impact zone means those parts of the vehicle interior surface along or above the rear header, that are within the area from the line where the rear window glazing meets the header to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface.

Side rail means any structure or component, other than glazing, along either side of the vehicle which is supported by pillars, including but not limited to the horizontal beam structure at each edge of the roof, accompanying moldings and attached components, and the horizontal portion of door frames.

Side rail impact zone means those parts of the vehicle interior surface along or above each side rail, that are within any of the following areas:

(1) The area from the line where the glazing meets the side rail to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface;

(2) For side rails that are not above glazing, the area from the lowest portion of the side rail to the line formed by the intersection between the upper limit horizontal plane and the vehicle interior surface.

Upper roof zone plane means a horizontal plane passing through a point 0.5 inch (12.7 mm) below the highest point of the vehicle roof interior.

Upper roof impact zone means any part of the vehicle interior surface, other than glazing, that is above the upper roof zone plane.

S3. Each vehicle shall meet the requirements specified in S3.1 through S3.5.2. Each vehicle manufactured on or after September 1, [the year of the effective date would be inserted in a final rule] shall, in addition, meet the requirements specified in S4 through S7.3.

* * * * *

S4. *Free motion headform test requirements.*

S4.1 Subject to S4.2, when tested under the conditions of S6, each vehicle shall meet the requirements of S5 when any portion of the front header impact zone, rear header impact zone, the side rail impact zones, the pillar zones, and the upper roof impact zone is impacted by a free motion headform at any speed up to and including 15 miles per hour. If a portion of the vehicle comes with the definitions for more than one of these impact zones, it shall meet the specified requirements for each of those impact zones. The requirements do not apply to any area of the impact zones that cannot be tested under the onditions of S6.

Alternative One for S4.2

S4.2 A vehicle need not meet the requirements of S4.1 for—

(a) any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position.

(b) [Reserved]

Alternative Two for S4.2

S4.2 A vehicle need not meet the requirements of S4.1 for—

(a) in the case of passenger cars, any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the vehicle's rearmost designated seating position.

(b) in the case of trucks, buses, and multipurpose passenger vehicles, any part of the vehicle located rearward of a vertical transverse plane 36 inches (914.4 mm) behind the seating reference point of the designated seating position for the driver.

S5. The HIC(d) shall not exceed [two alternatives are being considered: 1000 for all impact zones, or 1000 for the front header, rear header and A-pillar impact zones, and 800 for the side rail, upper roof, and other pillar impact zones] when calculated in accordance with the following formula:

HIC(d) = 0.75446 (free motion headform HIC) + 166.4

The free motion headform HIC is calculated in accordance with the following formula:

$$[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a\,dt]^{2.5}(t_2-t_1)$$

The term *a* is resultant acceleration expressed as a multiple of *g* (the acceleration of gravity), and t1 and t2 are any two points in time during the impact which are separated by not more than a 36 millisecond tie interval.

S6. *Test conditions.*

S6.1 *Vehicle test attitude.*

S6.1.1 The vehicle is supported off its suspension at an attitude determined in accordance with S6.1.2.

S6.1.2 Directly above each wheel opening, determine the vertical distance between a level surface and a standard reference point on the test vehicle's body under the following conditions. Each vehicle is loaded to its unloaded vehicle weight, plus its rated cargo and luggage capacity, secured in the luggage area. The load placed in the cargo area is centered over the longitudinal centerline of the vehicle. The vehicle is filled to 100 percent of all fluid capacities, and all tires are inflated to the manufacturer's specifications listed on the vehicle's tire placard.

S6.2 *Windows.* Movable vehicle windows are placed in any of the following positions: Fully open, fully closed.

S6.3 *Convertible tops.* The top, if any, of convertibles and open-body type vehicles is in the closed passenger compartment configuration.

S6.4 *Doors.* Doors, including any rear hatchback or tailgate, are fully closed and latched but not locked.

S6.5 *Sun visors.* Each sun visor is placed in any position where one side of the visor is in contact with the vehicle interior surface (windshield, side rail, front header, roof, etc.).

S6.6 *Steering wheel and seats.* The steering wheel and seats may be removed from the vehicle.

S6.7 *Headform.*

S6.7.1 The headform used for testing conforms to the specifications of part 572, subpart L of this chapter.

S6.7.2 The stablilized temperature of the headform at the time of a test is at any temperature between 66 °F. and 78 °F.

S6.8 *Determination of forehead impact zone.* The forehead impact zone of the headform is determined according to the procedure specified in S6.8.1 through S6.8.6.

S6.8.1 Position the headform so that the baseplate of the skull is horizontal. The midsagittal plane of the headform is designated as Plane S.

S6.8.2 From the center of the threaded hole on top of the headform, draw a 2.75 inch (69.85 mm) line forward toward the forehead, coincident with Plane S along the contour of the outer skin of the headform. The front end of the line is designated as Point P. From Point P, draw a 4.0 inch (101.6 mm) line forward toward the forehead, coincident with Plane S along the contour of the outer skin of the headform. The front end of the line is designated as Point O.

S6.8.3 Draw a 5.0 inch (127 mm) line which is coincident with a horizontal plane along the contour of the outer skin of the forehead from left to right through Point O so that the line is bisected at Point O. The end of the line on the left side of the headform is designated as Point 1 and the end on the right as Point 2.

S6.8.4 Draw another 5.0 inch (127 mm) line which is coincident with a horizontal plane along the contour of the outer skin of the forehead through Point P so that the line is bisected at Point P. The end of the line on the left side of the headform is designated as Point 3 and the end on the right as Point 4.

S6.8.5 Draw a line from Point 1 to Point 3 along the contour of the outer skin of the headform using a flexible steel tape. Using the same method, draw a line from Point 2 to Point 4.

S6.8.6 The forehead impact zone is the rectangular area on the FMH forehead bounded by lines 1–O–2 and 3–P–4, and 1–3 and 2–4.

S6.9 *Marking of target circle.* The area of the vehicle to be impacted by the headform is marked with a solid circle 0.5 inch (12.7 mm) in diameter, using any transferable opaque coloring medium.

S6.10 *Impact configuration.*

S6.10.1 The headform is launched from any location inside the vehicle that is consistent with other test conditions. At the time of launch, the midsagittal plane of the headform is vertical.

S6.10.2 The headform travels freely through the air, along a velocity vector that is perpendicular to the headform's skull cap plate, not less than one inch before making any contact with the vehicle.

S6.10.3 At the time of initial contact between the headform and the vehicle interior surface—

(a) Some portion of the forehead impact zone of the headform contacts some portion of the target circle.

(b) No portion of the headform contacts any part of the vehicle outside the impact zones specified in S4.1.

S6.10.4 The direction of travel of the headform is within the limits specified in Table I, using the orthogonal reference system specified in S7.

TABLE I.—APPROACH ANGLE LIMITS

[In degrees]

Impact zones	Horizontal angle	Vertical angle
Front header	105 to 255	0 to 50.
Rear header	285 to 75	0 to 50.
Left side rail	195 to 345	0 to 50.
Right side rail	15 to 165	0 to 50.
Left A-pillar	195 to 255	0 to 50.
Right A-pillar	105 to 165	0 to 50.
Left pillars other than A-pillar.	195 to 345	0 to 50.
Right pillars other than A-pillar.	15 to 165	0 to 50.
Upper roof	Any	Any.

S6.11 *Multiple impacts.* A vehicle being tested may be impacted multiple times. However, successive impacts are at least 30 minutes apart. In addition, no impact is closer than six inches, in any direction, to a prior impact. The six-inch distance is measured, in the case of a prior test which conformed to S6.10.3, from the center of the target circle for that test to the center of the target circle for the new test. If a prior test did not conform to S6.10.3 (e.g., because the headform missed the target circle), the six-inch distance is measured from the center portion of the area of actual initial contact in that test between the headform and the vehicle to the center of the target circle for the new test.

S7. The test conditions in S6.10.4 concerning the direction of approach of the headform are expressed in terms of ranges of horizontal and vertical angles, using the reference system specified in S7.1 through S7.3.

S7.1 An orthogonal reference system consisting of X, Y and Z axes is used to define the direction of approach of the headform. The origin of the reference system is the center of gravity of the headform at the time immediately prior to launch for each test. The X–Z plane is the vertical longitudinal zero plane and is parallel to the longitudinal centerline of the vehicle. The X–Y plane is the horizontal zero plane parallel to the ground. The Y–Z plane is the vertical transverse zero plane that is perpendicular to the X–Y and Y–Z planes. The X coordinate is negative forward of the Y–Z plane and positive to the rear. The Y coordinate is negative to the left of the X–Z plane and positive to the right. The Z coordinate is negative below the X–Y plane and positive above it. (See Figure 1.)

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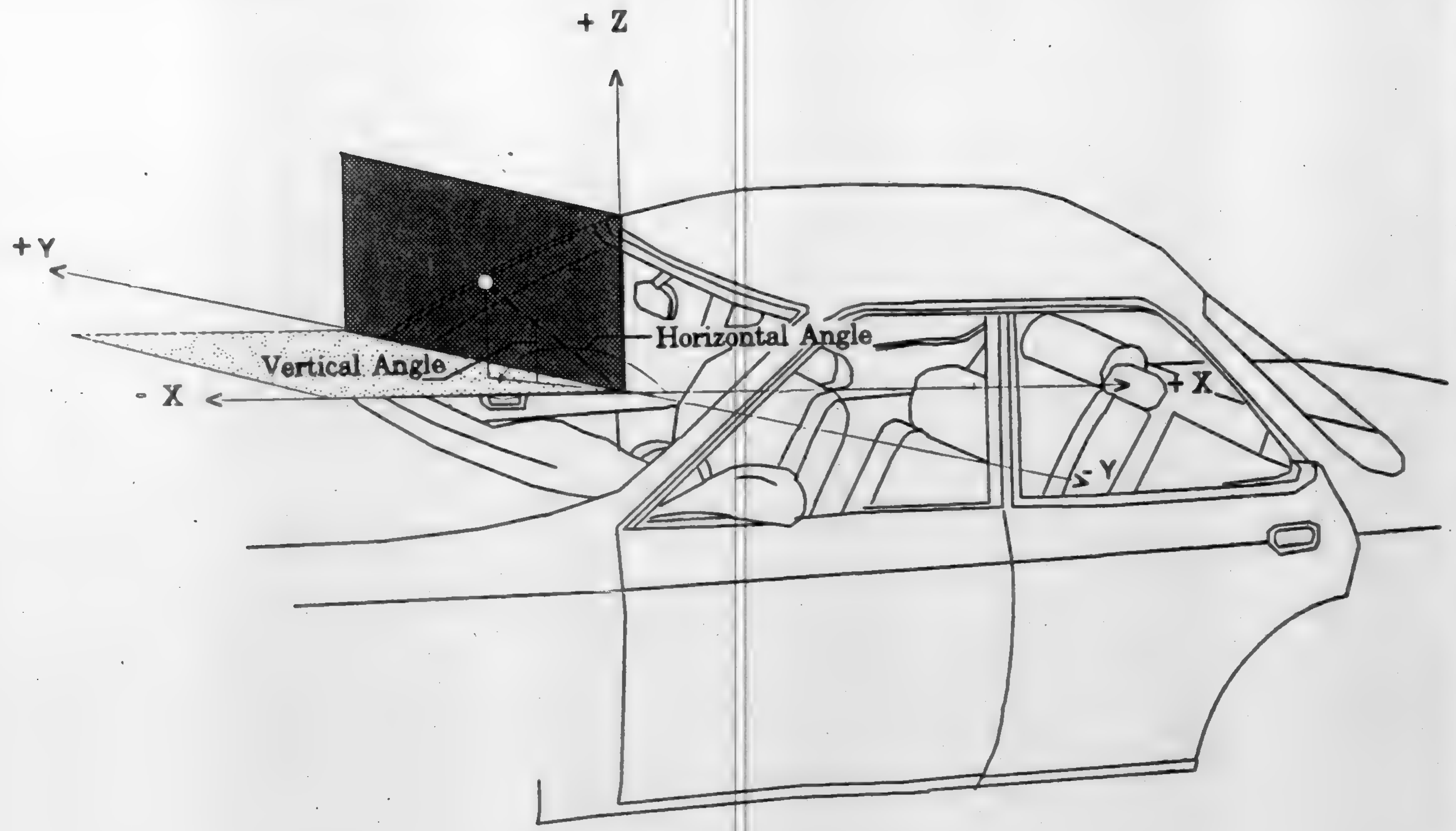
+ Z
+Y
Horizontal Angle
Vertical Angle
- X
+X
-Y

FIGURE 1 -- ORTHOGONAL REFERENCE SYSTEM

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S7.2 The horizontal approach angle is the angle between the X axis and the headform impact velocity vector projected onto the horizontal zero plane, measured in the horizontal zero plane in the counter-clockwise direction. A 0 degree horizontal vector and a 360 degree horizontal vector point in the positive X direction; a 90 degree horizontal vector points in the positive Y direction; a 180 degree horizontal vector points in the negative X direction; and a 270 horizontal degree vector points in the negative Y direction. (See Figure 1.)

S7.3 The vertical approach angle is the angle between the horizontal plane and the velocity vector, measured in the midsagittal plane of the headform. A 0 degree vertical vector in Table I coincides with the horizontal plane and a 50 degree vertical vector in Table I makes a 50 degree upward angle with that plane.

PART 572—ANTHROPOMORPHIC TEST DEVICES

3. The authority citation for part 572 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

4. The title of part 572 would be revised to read as set forth above.

5. Section 572.1 would be revised to read as follows:

§ 572.1 Scope.

This part describes the anthropomorphic test devices that are to be used for compliance testing of motor vehicles and motor vehicle equipment with motor vehicle safety standards.

6. A new subpart L, consisting of §§ 572.100 through 572.103, would be added to read as follows:

Subpart L—Free Motion Headform

Sec.
572.100 Incorporated materials.
572.101 General description.
572.102 Drop test.
572.103 Test conditions and instrumentation.

Subpart L—Free Motion Headform

§ 572.100 Incorporated materials.

(a) The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this part by reference. These materials are thereby made part of this regulation. The Director of the Federal Register has approved the materials incorporated by reference. For materials subject to change, only the specific version approved by the Director of the Federal Register and specified in the regulation is incorporated. A notice of any change will be published in the **Federal Register.** As a convenience to the reader, the materials incorporated by reference are listed in the Finding Aid Table found at the end of this volume of the Code of Federal Regulations.

(b) The drawings and specifications incorporated in this part by reference are available for examination in the general reference section of Docket 92–28, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Copies may be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street NW., Washington, DC 20005, telephone (202) 628–6667 or (202) 408–8789. The drawings and specifications are also on file in the reference library of the Office of the Federal Register, National Archives and Records Administration, Washington, DC.

§ 572.101 General description.

(a) The free motion headform consists of the component assembly which is shown in drawing 92041–001, and shall conform to each of the drawings subtended therein (incorporated by reference; see § 572.100).

(b) Disassembly, inspection, and assembly procedures, and sign convention for the signal outputs of the free motion headform accelerometers, are set forth in the Free Motion Headform User's Manual (incorporated by reference; see § 572.100).

(c) The structural properties of the headform are such that it conforms to this part in every respect both before and after being used in the vehicle test specified in Standard No. 201 of this chapter (§ 571.201).

§ 572.102 Drop test.

(a) When the headform is dropped from a height of 14.8 inches in accordance with paragraph (b) of this section, the peak resultant accelerations at the location of the accelerometers mounted in the head in accordance with § 572.101 shall not be less than 225g, and not more than 275g. The acceleration/time curve for the test shall be unimodal to the extent that oscillations occurring after the main acceleration pulse are less than ten percent (zero to peak) of the main pulse. The lateral acceleration vector shall not exceed 15g (zero to peak).

(b) *Test procedure.*

(1) Soak the headform in a test environment at any temperature between 66 degrees F to 78 degrees F and at a relative humidity from 10 percent to 70 percent for a period of at least four hours prior to its use in a test.

(2) Clean the headform's skin surface and the surface of the impact plate with 1,1,1 Trichloroethane or equivalent.

(3) Suspend the headform, as shown in Figure 50. Position the forehead below the chin such that the skull cap plate is at an angle of 28.5±0.5 degrees with the impact surface when the midsagittal plane is vertical.

(4) Drop the headform from the specified height by means that ensure instant release into a rigidly supported flat horizontal steel plate, which is 2 inches thick and 2 feet square. The plate shall have a clean, dry surface and any microfinish of not less than 8 microinches 203.2×10^{-6} mm (rms) and not more than 80 microinches 2032×10^{-6} mm (rms).

(5) Allow at least 3 hours between successive tests on the same headform.

§ 572.103 Test conditions and instrumentation.

(a) Headform accelerometers shall have dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572 S4 and be mounted in the headform as shown in drawing 92041–001.

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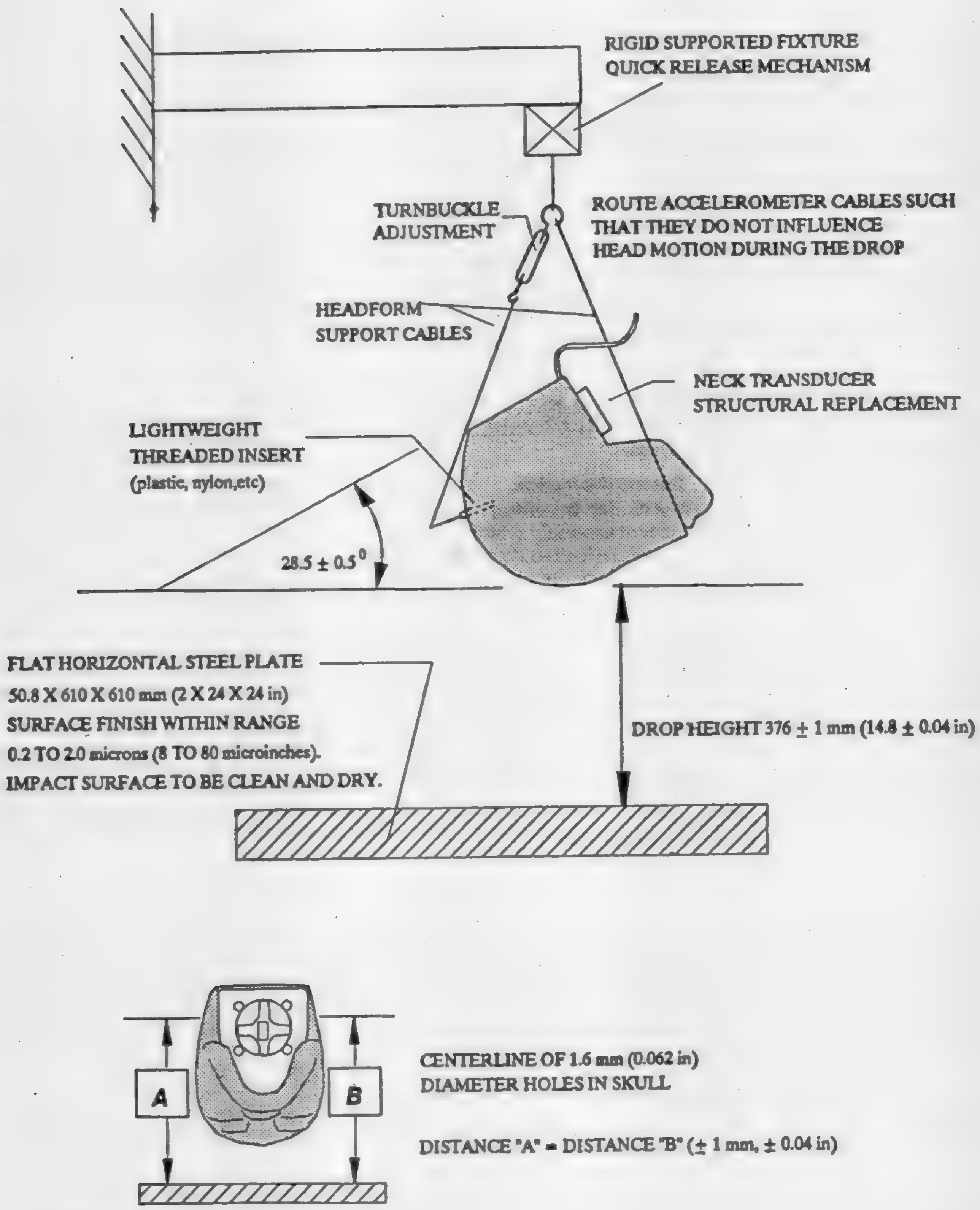
Figure 50

HEADFORM DROP TEST

Set-up Specifications


RIGID SUPPORTED FIXTURE
QUICK RELEASE MECHANISM
TURNBUCKLE ADJUSTMENT
ROUTE ACCELEROMETER CABLES SUCH THAT THEY DO NOT INFLUENCE HEAD MOTION DURING THE DROP
HEADFORM SUPPORT CABLES
NECK TRANSDUCER STRUCTURAL REPLACEMENT
LIGHTWEIGHT THREADED INSERT (plastic, nylon,etc)
28.5 ± 0.5°
FLAT HORIZONTAL STEEL PLATE
50.8 X 610 X 610 mm (2 X 24 X 24 in)
SURFACE FINISH WITHIN RANGE
0.2 TO 2.0 microns (8 TO 80 microinches).
IMPACT SURFACE TO BE CLEAN AND DRY.
DROP HEIGHT 376 ± 1 mm (14.8 ± 0.04 in)
A
B
CENTERLINE OF 1.6 mm (0.062 in) DIAMETER HOLES IN SKULL
DISTANCE "A" = DISTANCE "B" (± 1 mm, ± 0.04 in)

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(b) The outputs of accelerometers installed in the headform are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, Oct 1988, "Instrumentation for Impact Tests," Class 1000.

(c) Coordinate signs for instrumentation polarity conform to the sign convention shown in the document incorporated by § 572.101(b).

(d) The mountings for accelerometers shall have no resonant frequency within a range of 3 times the frequency range of the applicable channel class.

(e) Surfaces of the headform are not painted except as specified in this part or in drawings subtended by this part.

Issued on February 1, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–2779 Filed 2–2–93; 4:33 pm]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 930223–3023]

RIN 0648–AE93

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce requests public comments on a proposed rule to implement Amendment 7 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 7, upon which public comment has previously been requested, would, if approved by the Secretary of Commerce, authorize the imposition of management measures on the Pacific Coast groundfish fishery to reduce the bycatch of salmon and other non-groundfish species. Under Amendment 7, regulations could be issued to reduce mortality of non-groundfish species when a conservation problem has been identified or in response to the requirements of the Endangered Species Act (ESA) or other applicable law.

DATES: Written comments on Amendment 7 and the proposed rule must be received on or before March 22, 1993.

ADDRESSES: Comments should be sent to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115–0070, or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213. Copies of the environmental assessment/regulatory impact review may be obtained from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 310–980–4040, or Lawrence D. Six at 503–326–6352.

SUPPLEMENTARY INFORMATION: The domestic groundfish fishery in the Exclusive Economic Zone of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of California, Oregon, and Washington is managed under the FMP. The FMP was developed by the Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), and approved by the Secretary of Commerce (Secretary). Implementing regulations appear at 50 CFR part 663.

The Council prepared Amendment 7 to the FMP under the provisions of the Magnuson Act and formal review by the Secretary began on December 22, 1992. A notice announcing the availability of Amendment 7 and requesting public comments was filed with the Office of the Federal Register on January 7, 1993 (58 FR 4146, January 13, 1993).

The FMP amendment process for Amendment 7 was initiated at the July 8–10, 1992, Council meeting to address the lack of authority in the FMP to regulate groundfish fishing activities for the purposes of reducing the bycatch of non-groundfish species or meeting the requirements of the ESA or other applicable law. At this meeting the Council recommended alternatives for analysis. Further Council discussions were conducted at its September 15–18, 1992, meeting. A draft amendment was prepared and distributed to interested persons for review on October 27, 1992. Comments were invited, and a public hearing was held on November 9, 1992, in Eureka, California (57 FR 48510, October 26, 1992).

After considering the comments received on the draft amendment at the public hearing and Council meetings, and from its Groundfish Management Team, Groundfish Advisory Subpanel, and Scientific and Statistical Committee, the Council, at its November 17–20, 1992, meeting, made its final selection of the preferred alternative which would alter the status quo and require regulatory changes to the appendix to 50 CFR part 663.

The purpose of Amendment 7 is to authorize the imposition of management measures for reducing the bycatch of non-groundfish species. Such measures could be applied to the entire groundfish fishery or any segment of the fishery. The Council has already demonstrated the need for such measures. At its March 9–13, 1992, meeting, the Council recommended management restrictions for the Pacific whiting fishery with the intent of minimizing that fishery's impact on Pacific salmon stocks, particularly Sacramento River winter-run chinook salmon and Klamath River fall chinook salmon. Lacking the authority in the FMP to implement these restrictions, the Council requested the Secretary implement emergency regulations which were effective for 90 days beginning April 16, 1992 (57 FR 14663, April 22, 1992), then extended for a second 90-day period ending October 19, 1992 (57 FR 32924, July 24, 1992). At its November 17–20, 1992, meeting, the Council recommended similar management restrictions for the Pacific whiting fishery in 1993. Because emergency rules are not intended to address issues that are likely to persist from year to year, as is the case with salmon bycatch in the Pacific whiting fishery, the Council initiated the FMP amendment process.

At present there are adequate data only to support management measures for the Pacific whiting fishery. In developing Amendment 7, the Council considered two alternatives to address the problem of non-groundfish bycatch: limited authority applicable only to the Pacific whiting fishery, or the generic authority to manage any segment or all of the groundfish fishery. The Council concluded that the management authority should be broad enough to authorize actions for any segment of the groundfish fishery. The Council also concluded that such authority is necessary to provide timely response to requirements under applicable law, such as to ensure groundfish operations will not likely jeopardize a non-groundfish species listed as threatened or endangered under the ESA.

NMFS issued a biological opinion under the ESA on August 28, 1992, on the impacts of fishing conducted under the FMP on Sacramento River winter-run chinook salmon and Snake River sockeye and spring/summer chinook salmon. The incidental take statement in the biological opinion requires the prohibition of targeted harvest of Pacific whiting shoreward of 100 fathoms in the Eureka area. Therefore, the Council recommended Amendment 7 in order to allow the Council and NMFS to develop regulations that are consistent with the biological opinion without requiring an FMP amendment or emergency regulations.

The amendment would add a new management objective under the conservation goal and establish a regulatory process (framework) to recommend specific management measures. The Council could begin at any time the process of establishing or adjusting management measures to reduce fishing mortality of a non-groundfish species when a conservation concern has been identified for that species and the best scientific information has shown the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health. The Council would then review the information and refer it to appropriate technical advisory groups for evaluation. If the Council were to determine, based on this review, that management measures might be necessary to respond to conservation problems facing a non-groundfish species, or to address requirements of the ESA, Marine Mammal Protection Act, other relevant Federal natural resource law or policy, or international agreement, such measures could be recommended to the Regional Director of NMFS. If approved, the measures would be implemented in accordance with existing procedures. Some measures could be designated as "routine" which would allow adjustment at a single Council meeting (see section III.B.(a) of the appendix to 50 CFR part 663).

Actions taken under this new authority would be designed to minimize disruption to the groundfish fishery and not preclude achievement of a quota, harvest guideline, or allocation of groundfish, consistent with the goal to minimize bycatch or the requirements of other applicable law. Amendment 7 would not authorize management measures whose primary purpose would be to allocate catch among gear types or fishermen or to achieve other allocation objectives.

The Council considered comments by groundfish fishing representatives who recommended that management measures be considered under the new authority only if the groundfish fishery had caused or significantly contributed to the conservation problems facing a non-groundfish species. The Council rejected this recommendation because all contributors to a problem must share in the burden of its solution. However, to guard against measures being imposed that would not help obtain a solution, the Council incorporated language in the amendment to ensure that any management measures imposed on the fishery have a measurable effect on the ability of the non-groundfish species to maintain its long-term reproductive health. In doing this, the Council recognized that in many, and perhaps most, cases, it would be impossible to quantitatively demonstrate such an effect, and in such cases a qualitative assessment would suffice.

Amendment 7 would require changes to the regulatory language in the appendix to 50 CFR part 663. While the amendment itself would not impose any specific management measures, the Council has recommended the imposition of specific measures for the Pacific whiting fishery in 1993 under the amendment.

Classification

Section 304(a)(1)(D) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment for this amendment that concludes there will be no significant impact on the environment as a result of this rule. The environmental assessment has been incorporated in the Amendment 7 document and may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination was based on the regulatory impact review prepared by the Council that demonstrates that the rule will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete in domestic or export markets. No quantitative estimate of economic impacts is possible since no management measures are proposed by this action. The impacts of any specific regulations implemented under the proposed authority will be analyzed as part of the implementation process. The regulatory impact review has been incorporated in the Amendment 7 document and may be obtained from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require that this proposed rule be published 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order. Because it is subject to a statutory deadline, this proposed rule is not subject to the regulatory review requirements of the January 22, 1993, Memorandum for the Heads and Acting Heads of Agencies described in Section 1(d) of Executive Order 12291 (58 FR 6074, January 25, 1993).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This certification is based on the regulatory impact review incorporated in the Amendment 7 document. Virtually no economic impacts would result from implementation of this rule since no management measures are proposed by this action. As a result, a regulatory flexibility analysis was not prepared.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of California, Oregon, and Washington. NMFS has submitted this determination for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

NMFS has issued biological opinions under the ESA on August 10, 1990, November 26, 1991, and August 28, 1992, regarding the impacts of the groundfish fisheries on the species being considered. The Assistant Administrator determined that current groundfish operations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This action falls within the scope of those biological opinions.

The Regional Director determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 2, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The Appendix is amended by adding to the index a new entry for III.B.(d) to read "(d) Management Measures to Protect Non-Groundfish Species" and adding to the Appendix a new section III.B.(d) to read as follows:

Appendix to Part 663—Groundfish Management Procedures

* * * * *

III. * * *

B. * * *

(d) Management Measures to Protect Non-Groundfish Species

Where conservation problems have been identified for non-groundfish species and the best scientific information shows that the groundfish fishery has a direct impact on the ability of that species to maintain its long-term reproductive health, the Council may recommend management measures to control the impacts of groundfish fishing on those species. If approved by the Regional Director, management measures may be imposed on the groundfish fishery to reduce fishing mortality of a non-groundfish species. Such measures shall be designed to minimize disruption of the groundfish fishery, and may not preclude achievement of a quota, harvest guideline, or allocation of groundfish, if any, unless such action is required by other applicable law. Allocation may not be the primary intention of any such management measure.

Section 6.1 of the FMP lists nine principal measures that have been most useful in controlling fishing mortality: Mesh size, landing limits and trip frequency limits, quotas, escape panels or ports, size limits, bag limits, time/area closures, other forms of effort control, and allocation. While actions taken under this section III.B.(d) are not limited to these measures, any of these measures may be employed to control fishing impacts on non-groundfish species when a conservation concern is clearly identified. The process for implementing and adjusting such measures may be initiated at any time. In addition, actions under this section III.B(d) may be designated as "routine" (see section III.B.(a)).

Generally, the Council will initiate an action under this section when a state or Federal resource management agency or the Council's Salmon Technical Team (STT) presents the Council with information substantiating its concern for a particular species. The Council will review the information and refer it to the Scientific and Statistical Committee, GMT, STT, or other appropriate technical advisory group for evaluation. If the Council determines, based on this review, that management measures are necessary to prevent harm to a non-groundfish species facing conservation problems to or address requirements of the Endangered Species Act, Marine Mammal Protection Act, other relevant Federal natural resource law or policy, or international agreement, it may recommend appropriate management measures. If approved by the Regional Director, the measures will be implemented in accordance with the procedures identified in section III.B. The intention of the measures may be to share conservation burdens while minimizing disruption of the groundfish fishery, but under no circumstances may the intention be simply to provide more fish to a different user group or to achieve other allocation objectives.

* * * * *

[FR Doc. 93–2867 Filed 2–3–93; 11:16 am]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 58, No. 24

Monday, February 8, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States.

Committee on Rulemaking

Date: Monday, February 22, 1993

Time: 3:30 p.m.

Location: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037 (Library, 5th Floor).

Agenda: The Committee will meet to further discuss a report by Jerry Mashaw on ossification of the rulemaking process.

Contact: Kevin L. Jessar, 202–254–7020.

Attendance at the committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact person's mailing address is: Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: 202–254–7020.

Dated: February 3, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–2994 Filed 2–5–93; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held February 24 & 25, 1993, in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session February 24, 9 a.m.–10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session February 24, 10 a.m.–4 p.m.

2. Election of Chairmen.
3. Work plan for 1993.
4. Discussion of subcommittees in relation to work plan.
5. Discussion of disk drive controls.
6. Discussion on graphics equipment controls.
7. Discussion on assembly controls.

General Session February 25, 9 a.m.–12 p.m.

8. Clarification of CTP formula.
9. Changing the connectivity factor for Computing Elements (CEs) not sharing main memory.
10. Discussion on processors connected by a network.

Executive Session February 25, 1 p.m.–4 p.m.

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW. Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: February 2, 1993.

Lee Ann Carpenter,

Acting Director, Technical Advisory Committee Unit.

[FR Doc. 93–2892 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Docket 2–93]

Foreign-Trade Zone 2—New Orleans, LA; Application for Permanent Subzone, Equitable Shipyard Facility (Trinity Marine Group, Inc.), New Orleans, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Commissioners of the Port of New Orleans (the Port), grantee of FTZ 2, requesting permanent special-purpose subzone status at the Equitable Shipyard shipbuilding facility located in New Orleans, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade

Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 21, 1993.

The shipyard (38 acres/500 employees) is located on the Inner Harbor-Navigation Canal at 4325 France Road, New Orleans Parish, Louisiana. The facility, which is owned by the Port and operated by Trinity Marine Group, Inc. (TMG), Gulfport, Mississippi, is used in the construction, repair and conversion of commercial and military vessels for domestic and international customers. Foreign components used at the Equitable yard include propulsion nozzles, marine gear, switchboards, pump units, winches, alarm cable, and anchors.

The Board approved temporary subzone status for the shipyard in 1992 (Subzone 2G, Board Order 573, 57 FR 13695, 4–17–92) for a period ending April 1, 1994, for the purpose of completing construction of a vessel that was transferred from FTZ Subzone 92A in Escatawpa, Mississippi. This application requests authority for permanent subzone status at the shipyard, subject to the standard shipyard restriction which limits zone procedures in regard to steel mill products.

Zone procedures will help TMG reduce production costs and compete internationally for new contracts. Most of the foreign-sourced components are subject to duties, which range from 2.0 to 5.7 percent, while the finished products—oceangoing vessels—are duty free.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 9, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 26, 1993).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 432 World Trade Center, 2 Canal Street, New Orleans, LA 71030.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: January 26, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–2839 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 1–93]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone; SmithKline Beecham Pharmaceutical Plant, Cidra, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical manufacturing facilities of the SmithKline Beecham Company (SBC) in Cidra, Puerto Rico, within the San Juan Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 15, 1993.

SBC's plant (500,000 square feet) is located at Road #172, Km. 9.1, 35 miles south of San Juan. The facilities (600 employees) are used to produce a wide range of pharmaceutical products including gastrointestinals, antibiotics, cardiovasculars, antihistamines, analgesics, arthritis medications, hematinics, and neurologicals.

Zone procedures would exempt SBC from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (3.4%–6.9%) with regard to two foreign ingredients: Nabumetone (duty rate—11 percent) and paroxetine (duty rate—6.9 percent). The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 9, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 26, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, Room G–55, Federal Building, Chardon Avenue, San Juan, Puerto Rico 00918.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 26, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–2840 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A–351–820, A–729–801]

Initiation of Antidumping Duty Investigations: Ferrosilicon From Brazil and Egypt

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1756.

INITIATION OF INVESTIGATIONS:

The Petitions

On January 12, 1993, we received petitions filed in proper form by AIMCOR, Alabama Silicon, Inc., American Alloys, Inc., Globe Metallurgical, Inc., Silicon Metaltech Inc., United Autoworkers of America Local 523, United Steelworkers of America Locals 12646, 2528, 5171 and 3081, and Oil, Chemical & Atomic Workers Local 389 (petitioners). In accordance with 19 CFR 353.12, the petitioners allege that ferrosilicon from Brazil and Egypt is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petitions because they are interested parties, as defined under sections 771(9)(C) and 771(9)(D) of the Act, and because the petitions were filed on behalf of the U.S.

industry producing, manufacturing or reselling the like product subject to these investigations and on behalf of certified unions representing the employees of U.S. ferrosilicon producers. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, these petitions, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Period of Investigation

The period of investigation is July 1, through December 31, 1992.

Scope of Investigations

The product covered by these investigations is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of these investigations. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing by weight not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Brazil

Petitioners based their estimate of U.S. Price (USP) on the U.S. f.o.b. import value of ferrosilicon imported from Brazil in July, August, September and November 1992. Petitioners made no adjustments to the estimated USP. We have deducted from USP an amount for foreign inland freight based on information provided by petitioners from the public version of the Department's current administrative review of silicon metal from Brazil.

Petitioners based their estimate of foreign market value on three home market prices for comparable periods obtained during 1992, for subject merchandise sold by certain producers exporting to the United States. Petitioners have stated that one of the prices includes shipping and packing. Petitioners could not identify the costs associated with shipping and packing. However, we have deducted foreign inland freight on that specific sale based on information provided by petitioners from the public version of the Department's current administrative review of silicon metal from Brazil.

Petitioner alleged home market sales below cost of production (COP) with respect to the subject merchandise for all Brazilian producers and exporters named in the petition. These allegations are based on a comparison of home market prices for three foreign producers named in the petition with cost of production (COP). COP was based on the COP of an efficient producer, AIMCOR, one of the petitioners in this investigation. Adjustments were made for known differences in material costs and labor. We adjusted petitioners' calculation to correct a conversion factor used for two inputs. Constructed value was calculated in the same manner, however, we used 10 percent for general expenses and eight percent for profit, pursuant to section 773(e)(1)(B) of the Act. We did not add an amount for packing because petitioner stated that usually the merchandise is shipped in bulk in both markets, thereby incurring no packing costs.

The Department is initiating COP investigations for the three companies where petitioners provided company-specific home market prices, contingent on whether these companies become respondents in this investigation. The Department will not initiate a COP investigation for those companies and exporters where petitioners did not provide company-specific home market prices.

Egypt

Petitioners based their estimate of USP on the U.S. f.o.b. import value of ferrosilicon imported from Egypt in June 1992. Petitioners made no adjustments to the estimated USP.

Petitioners based their estimate of foreign market value on home market prices obtained during July through December, 1992, for subject merchandise sold by an Egyptian producer exporting to the United States. Petitioners made no adjustments to the estimated foreign market value because they stated that they were unable to obtain information regarding transportation and packing costs.

Based on a comparison of USPs, adjusted for foreign inland freight in Brazil, and foreign market value, petitioners allege dumping margins ranging from 13.07% to 23.45% for ferrosilicon from Brazil and 52.41% to 90.50% for Egypt.

Based on a comparison of USP and foreign market value based on CV, petitioners allege dumping margins ranging from 64.17% to 89.52% for ferrosilicon from Brazil. Based on adjustments made to material costs for two inputs and deletion of packing costs, the revised constructed value margins range from 24.43% to 34.73%.

Initiation of Investigations

We have examined the petitions on ferrosilicon from Brazil and Egypt and have found that the petitions meet the requirements of section 732(c) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of ferrosilicon from the above-referenced countries are being, or are likely to be, sold in the United States at less than fair value.

ITC Notification

Section 732(d) of the Act requires us to notify the International Trade

Commission (ITC) of these actions and we have done so.

Preliminary Determinations by the ITC

The ITC will determine by February 26, 1993, whether there is a reasonable indication that imports of ferrosilicon from Brazil and Egypt are materially injuring, or threaten material injury to, a U.S. industry. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed to conclusion in accordance with the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: February 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2978 Filed 2-5-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-201-806]

Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From Mexico

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Final determination.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Will Sjoberg or Robin Gray, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-3793.

Final Determination of Sales at Less Than Fair Value

We determine that steel wire rope from Mexico is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

The Department made a preliminary determination in this investigation on September 22, 1992 (57 FR 43704). On September 24, 1992, the respondent, Grupo Industrial Camesa, S.A. de C.V. ("Camesa"), requested that the Department disclose the calculations and methodology used in its preliminary determination. However, since the Department used best information available ("BIA") as the basis for its preliminary determination, there were no calculations or methodology to disclose. On October 1, 1992, the petitioner, The Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers, requested to participate in any public hearing that may be requested by the respondent. No public hearing was requested by respondent.

On October 2, 1992 the respondent requested a postponement of the final determination 60 days from November 30, 1992, until January 29, 1993. In its letter of October 6, 1992, the petitioner objected to the respondent's request for a postponement. On October 15, 1992, the respondent filed a letter defending its request for an extension. The Department saw no compelling reason to deny the respondent's request, and postponed the final determination until January 29, 1993 (57 FR 49455).

On November 10, 1992, the respondent and petitioner submitted case briefs. Petitioner filed a rebuttal brief on November 16, 1992.

Scope of Investigation

This investigation covers imports of steel wire rope from Mexico. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Excluded from these investigations is stainless steel wire rope, i.e., ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under Harmonized Tariff Schedule ("HTS") subheading 7312.10.6000.

Imports of these products are currently classifiable under the following HTS subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of these proceedings remains dispositive.

Period of Investigation

This investigation covers sales of the subject merchandise by Camesa during the period from November 1, 1991 through April 30, 1992.

Best Information Available

For our preliminary determination, we used BIA for Camesa as required by section 776(c) of the Act, because respondent failed to meet the deadline for responding to sections B and C of the Department's questionnaire.

Section 353.37(b) of the Department's regulations (19 CFR 357.37(b) (1992)) provides that the Department may take into account whether a party fails to provide requested information, or otherwise significantly impedes the Department's investigation in determining what is BIA. As BIA, we used petitioner's information as described below.

Verification

No verification took place because the respondent failed to adequately respond to the Department's questionnaire.

Interested Party Comments

Comment 1

The respondent, Camesa, objects to the Department's strict adherence to filing deadlines which ultimately culminated in the Department's use of BIA to calculate the preliminary antidumping margin. Camesa admits error in not filing their questionnaire response but states that the basis for the error was "an oversight by Camesa's counsel."

Camesa supports its argument by citing the parallel investigation of steel wire rope from Korea (Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Steel Wire Rope From Korea ("the Korean case"), 57 FR 45035 (September 3, 1992)). Camesa alleges that in the Korean case, the Department both accepted petitioner's sales at below cost ("COP") allegation subsequent to the Department's deadline and granted a retroactive extension for filing the COP allegation. Camesa states the Department should remedy its allegedly inconsistent actions.

The petitioner agrees with the Department's use of BIA due to the respondent's failure to submit a timely questionnaire response.

Department's Position

Deadlines for responses to the Department's questionnaires are set in accordance with § 353.31(b)(2) of the Department's regulations, which authorizes the Department to "specify the time limit for response." Section 353.31(b) further provides that "ordinarily the [Department] will not extend the time limit stated in the questionnaire or request for other factual information. *Before the time limit expires,* the recipient of the [Department's] request may request an extension (emphasis added)." In the present case, respondent failed to request a timely extension for responding to sections B and C of the Department's questionnaire. Only after the deadline had passed did Camesa request an extension of the questionnaire deadline. Thus, the Department correctly denied this request as untimely.

Unlike the situation presented in this investigation, the petitioner in the parallel Korean case did not miss the relevant deadline. Given the Department's postponement of the preliminary determination in accordance with § 353.15(c), the petitioner's COP allegation was filed no later than 45 days before the scheduled date for the preliminary determination, the deadline set forth in § 353.312(c)(1)(i) of the Department's regulations. Thus, the Department's acceptance of the COP allegation did not constitute a "retroactive extension" as alleged by the respondent.

Comment 2

Camesa argues that it did cooperate with the Department during the investigation and therefore, the preliminary margin, based on the highest margin included in the petition, was erroneous. Camesa supports its argument by citing the facts surrounding the Department's refusal to extend the deadline for filing sections B and C of the questionnaire response. Camesa states that it submitted an "extensive and complete response to section A of the questionnaire that totalled well over 300 pages." Furthermore, Camesa states that it did attempt to obtain an extension of the deadline for submitting the response to sections B and C. Camesa cites the Department's refusal to extend that deadline as the reason why Camesa did not submit the response. According to Camesa, given that fact, the Department cannot characterize this as a case "in which the respondent has willfully refused to respond to the Department's questionnaire." Consequently, Camesa should be characterized as a cooperative respondent.

The petitioner agrees with the Department's selection of the highest rate alleged in the petition as the basis for BIA in this situation. In support of its position, the petitioner states that both the statute and the regulations warrant the use of BIA when a party does not respond to the Department's request for factual information in a timely manner (citing 19 U.S.C., 1677e(c); 19 CFR 353.37(a)). As for what constitutes BIA in a particular situation, the petitioner cites § 353.37(b) of the Department's regulations which provides "[i]f an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is best information available."

Petitioner argues that the actions taken in the preliminary determination are consistent with the Department's own administrative practice. They cite Sodium Thiosulfate from the Federal Republic of Germany and the United Kingdom, Final Determinations of Sales at Less Than Fair Value, 55 FR 51749 (December 17, 1990), wherein the Department used the highest margin alleged in the petition as the basis of BIA despite the fact that respondent's failure to "respond was a result of its 'modest level of involvement in the U.S. market, not because it attempted to impede the Department's investigation.'" Petitioner further alleges that selecting the highest rate alleged in the petition is consistent with Department practice even though respondent provided "some" information (citing Steel Wire Rope from Mexico, Final Determination of Sales at Less Than Fair Value, 56 FR 31098 (July 9, 1991)).

The petitioner states that not only are the Department's actions consistent with prior administrative practice but judicial precedent as well. They cite *Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990), wherein the Court of Appeals for the Federal Circuit affirmed the Department's "selection of the highest margin available where timely and sufficient responses are not submitted." The petitioner also cites *Allied-Signal Aerospace Co.* v. *United States* ("*Allied-Signal*"), 16 CIT ________, Slip Op. 92–157 (September 17, 1992), where the Court of International Trade ("CIT") upheld the Department's decision to select the highest margin among other companies' rates from the prior investigation as BIA, rather than the highest margin for other companies involved in the subject review.

Department's Position

The Department disagrees with the respondent. We determine that using the highest margin contained in the petition as BIA is consistent with the Act, the Department's regulations, and the administrative and judicial precedent, noted above. In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents who did not cooperate in an investigation. See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan, 57 FR 53705, 53708 (November 12, 1992).

Camesa's complete failure to reply to sections B and C of the Department's questionnaire has been determined by the Department to constitute uncooperative behavior. Camesa's response to section A, in no way, gave the Department any basis to estimate the actual dumping margins during the POI. Therefore, in accordance with Department practice, we are applying the higher of (1) the highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan, 57 FR 53705, 53708 (November 12, 1992). Because Camesa was the only respondent in the investigation, we are applying the highest margin alleged in the petition, as adjusted (see Department Position to Comment 3).

Comment 3

Camesa argues that there is no evidence in the petition to support the highest dumping margin alleged by the petitioner, and cites the previous investigation, decided a year and a half ago, in which the Department assigned a dumping margin of only 52.46 percent. Noting the disparity between the margin alleged in the current petition (133.83 percent) and the margin alleged a year and a half ago on the same product, Camesa states the dumping allegations found in the current petition are "seriously flawed."

Camesa questions whether the petition correctly deducted a distributor mark-up from Camesa's alleged U.S. prices, "even though the petition clearly indicates that the alleged U.S. prices represented prices that *Camesa* received from its unrelated distributor customers, not the prices received by a Camesa distributor from its customers." (emphasis in the original).

Camesa argues that the petition both overstates the U.S. credit expense by applying a Mexican peso interest rate to the difference between the credit terms on U.S. and home market sales and by using an "improper" Mexican peso rate to calculate the U.S. credit expense. Camesa states that this methodology is erroneous due to "the fact that higher prices result in a higher credit expense" and if Camesa was actually dumping, "the credit expense on home-market sales would be higher than the credit expense on U.S. sales (for an equivalent credit period)." Camesa states that because its U.S. prices were denominated in U.S. dollars, the U.S. credit expense should have been calculated using a U.S. dollar interest rate ("which was significantly lower than the Mexican peso interest rate").

Finally, Camesa argues that the calculation found in petition "seriously understates Camesa's home-market discounts." Camesa alleges that the petition is inconsistent by both "ignoring a number of additional discounts offered by Camesa on home-market sales" (documented in section A of its questionnaire response) and in calculating the alleged margin using a discount rate of 28.5 percent when, "according to the petition, most of Camesa's home-market distributors receive discounts of 37 percent."

The petitioner submits that its allegations were based on both "affidavits from industry participants and a comprehensive report from an outside consultant." Petitioner states that, "[n]otwithstanding these facts," the Court of International Trade has determined that, "the information that Commerce ultimately selects as the best information available is 'not necessarily accurate information, it is information which becomes usable because a respondent has failed to provide accurate information.'" (*Allied-Signal*, Slip Op. at 6, *citing Association Columbiana de Exportadores de Flores* v. *United States*, 13 CIT 13, 28, 704 F. Supp. 1114, 1126 (1989), *appeal after remand*, 13 CIT 526, 717 F. Supp. 834 (1989), *aff'd*, 901 F.2d 1089 (Fed. Cir. 1990), *cert. denied sub nom. Floramerica, S.A.* v. *United States*, 111 S.Ct. 136 (1990).

Department's Position

We agree, in part, with Camesa. Because Camesa is prohibited by law from commenting on the methodology in the petition prior to initiation (see: 19 CFR 353.12(i) and *Roses, Inc.* v. *United States*, 706 F.2d 1563 (Fed. Cir. 1983), we believe that it is appropriate for the Department to give Camesa a limited opportunity to comment on that methodology, even where it is receiving a margin based entirely on BIA. In this situation, however, Camesa's rights are strictly limited to those comments that it can support without submitting any information on its costs or prices for the record. To allow Camesa selectively to submit such information where it has not submitted an adequate questionnaire response would permit Camesa to manipulate the outcome of the investigation. This would defeat the purpose of the BIA rule, which is to permit the calculation of accurate dumping margins by providing respondents with an incentive to cooperate fully in dumping and countervailing duty proceedings. See: *Rhone Poulenc* v. *United States*, 899 F.2d 1185 (Fed. Cir. 1990). Thus, Camesa is restricted to identifying clerical and methodological errors in the petition on the basis of public information. It may not submit factual information from its records to rebut the facts represented in the petition.

The Department agrees with Camesa in that petitioner incorrectly deducted distributor mark-up Camesa's alleged U.S. prices. The petitioner used Camesa's price to distributors as its basis for U.S. price. Therefore, no deduction for distributor mark-up is necessary. The Department has adjusted its analysis accordingly.

The Department's practice in analyzing credit expenses is to make a circumstance of sale adjustment for a *bona fide* difference in credit expenses incurred in the United States and home market. Notwithstanding the fact that petitioner alleged that such a difference existed, petitioner incorrectly limited its adjustment to FMV and did not provide the requisite information for U.S. credit. Therefore, the Department has disallowed any credit adjustment.

The Department disagrees with Camesa's contention that the petition understates its home market discounts in that the discount rate of 28.5 percent is an average of the rates presented. However, the Department is unable to confirm Camesa's allegation that the petition states, "most of Camesa's home market distributors receive discounts of 37 percent." Thus, no changes in the petitioner's methodology needed to be made.

As for the petitioner "ignoring" discounts offered by Camesa on its home market sales (documented in section A), the Department realizes that a petitioner must use information reasonably available at the time that the petition is submitted. At the time that the original petition was filed, section A of Camesa's questionnaire response was not on the record. Finally, Camesa cannot now rely on selectively reported data with respect to this issue. Therefore, the Department will not further adjust for discounts described in section A of the questionnaire response.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of steel wire rope from Mexico, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse for consumption on or after September 22, 1992, the date of publication of our preliminary determination in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or bond equal to the estimated dumping margin as shown below. The suspension of liquidation will remain in effect until further notice. The average dumping margins are as follows:

Manufacturer/producer/exporter	Margin (percent)
Camesa, S.A. de C.V	111.68
All others	111.68

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Compliance, Import Administration.

Within 45 days from publication of this final notice, the ITC will determine whether these imports are materially injuring or threatening material injury to the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or canceled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on steel wire rope from Mexico, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: January 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2838 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–559–806]

Preliminary Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager, Ross L. Cotjanle, or Carole Showers, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone (202) 482–5055, 482–3534, 482–3217, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine, in accordance with section 733 of the Tariff Act of 1930, as amended ("the Act"), that imports of certain portable electric typewriters ("PETs") from Singapore are being, or are likely to be, sold in the United States at less than fair value. The estimated margin is shown in the "Suspension of Liquidation" section of this notice. Also, the Department preliminarily determines that critical circumstances do not exist. If this investigation proceeds normally, we will make our final determination by April 14, 1993.

Case History

Since the publication of our notice announcing the resumption of this proceeding (57 FR 60796, December 22, 1992), the following events have occurred:

On December 30, 1992, the United States Court of International Trade ("CIT") in Slip. Op. 92–232 denied Smith Corona's Application for a Stay Pending Appeal. On January 8, 1993, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise, within the meaning of section 733(e) of the Act. On January 12, and January 26, 1993, respondent and petitioner, respectively, filed submissions regarding whether the petition in this proceeding was filed "on behalf of" the relevant U.S. industry.

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (*see* 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is November 1, 1990, through April 30, 1991.

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother has filed on behalf of the domestic industry.

With respect to Brother's status as an interested party, on September 3, 1992, the CIT, in Slip. Op. 92–152, reversed the Department's determination of September 25, 1991, that Brother was not an interested party and did not have standing to file a petition against PETs from Singapore. The CIT's decision has been appealed, but while the appeal is being decided, the Department has been directed to determine whether the petition in this proceeding was filed "on behalf of" the domestic industry and, if so, to proceed with the investigation (Slip. Op. 92–211, Nov. 30, 1992). For the reasons discussed below, we determine that Brother has filed its petition on behalf of the U.S. industry.

On April 29, 1991, Smith Corona identified itself as a domestic producer of PETs in opposition to the petition filed by Brother. Where a domestic industry member opposing a petition provides a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing party, or parties, do, in fact, represent a majority of the domestic industry. Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19005 (May 3, 1989) ("Antifriction Bearings"). Therefore, on May 17, 1991, we issued a standing questionnaire to Smith Corona to ascertain: (1) the extent of Smith Corona's relationship with the exporter of the subject merchandise; (2) the extent to which Smith Corona is an importer of the allegedly dumped merchandise; and, (3) the share of domestic production and sales accounted for by Smith Corona.

After our review of Smith Corona's June 6, 1991 response to the standing questionnaire, we determined that more information was needed to complete our analysis. Therefore, on August 14, 1991, we asked both Smith Corona and Brother to submit to the Department the same U.S. production and sales data which they had submitted to the ITC. The ITC format was instructive because it required the parties to report production and sales data separately for both PETs/portable automatic typewriters ("PATs") and portable electronic word processors ("PEWPs").

Based on the production and sales data submitted, we computed the respective shares of U.S. production and sales held by Smith Corona and Brother. These calculations show that the opponent of the petition, Smith Corona, does not represent a majority of U.S. production or sales (measured by volume or value). Therefore, consistent with the policy articulated in

Antifriction Bearings, we determine that the petition was filed on behalf of the U.S. industry.

In Antifriction Bearings, the Department went on to discuss whether the domestic industry should be defined to exclude related parties or importers for standing purposes, as permitted by section 771(4)(B). On prior occasions, the Department has excluded such firms from the industry. See, for example, Fabricated Automotive Glass From Mexico: Final Determination of Sales at Less Than Fair Value, 50 FR 1906 (January 14, 1985). The Department pointed out in Antifriction Bearings that the firms in opposition were wholly-owned subsidiaries of the responding companies. In this proceeding, we note that the exporter is a wholly-owned subsidiary of Smith Corona. We further note that imports of the subject merchandise account for more than fifty percent of Smith Corona's sales of this product. Under the test applied in Frozen Concentrated Orange Juice From Brazil; Final Determination of Sales at Less Than Fair Value, 52 FR 8324 (March 17, 1987), this would lead us to conclude that, while Smith Corona is a U.S. manufacturer of PETs, its interests in this specific investigation are closely tied to imports of the allegedly dumped PETs, and thus run counter to the imposition of antidumping duties on imports of PETs from Singapore. Therefore, we may not consider Smith Corona a member of the domestic industry in this proceeding.

In its submission of January 12, 1993, Smith Corona has asked the Department to adjust the production figures for Brother and Smith Corona to account for the value added by the two companies in the United States (*i.e.*, to weight the production figures according to the percentage of U.S. value-added). In Smith Corona's view, such an adjustment will reflect the underlying U.S. employment and investment of the two companies and, hence, yield a more accurate measure of domestic production.

We are not persuaded that we should make the novel adjustment requested by Smith Corona. Smith Corona has not cited, nor can we find, any precedent for defining a U.S. industry in terms of the U.S. value added to its product. Nor do we find any statutory basis for doing so. The legislative history indicates that the standing criteria by which we determine Brother's standing should be applied "to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation" S. Rep. No. 249, 96th Cong., 1st Sess., 63. In this instance, Brother is a U.S. producer representing a substantial share of the industry's output and Brother clearly has a "stake" in the outcome of the proceeding. Hence, the standing criteria may not be used to defeat Brother's claim for protection from imports that are alleged to be unfairly traded.

Such or Similar Comparisons

We established one such or similar category of merchandise in accordance with section 771(16) of the Act: portable electric typewriters. For all PETs, comparisons were made on the basis of: (1) Type of PET; (2) memory capacity; (3) display screen; (4) display capacity; (5) printing mechanism; and (6) dictionary features. We used third country sales as the bases for foreign market value ("FMV") for Smith Corona (PTE), Ltd. ("SCPTE"), as described below in the "Foreign Market Value" section of this notice.

In its responses, SCPTE based its selection of similar merchandise on the criteria listed above plus three additional factors. SCPTE did not demonstrate, however, that the additional criteria resulted in more appropriate comparisons. Therefore, for purposes of our preliminary determination, we have rejected the additional factors identified by SCPTE and made our selection of similar merchandise solely on the basis of the criteria identified by the Department in its questionnaire. Accordingly, we revised the concordance submitted by SCPTE.

Because there was no identical merchandise sold in the third country market to compare to sales of merchandise in the United States, sales of the most similar merchandise based on the characteristics described above were used. In determining which merchandise was similar, we limited our comparisons to products sold in the third country that had difference in merchandise adjustments which were less than 20 percent of the total cost of manufacturing for the U.S. merchandise.

Fair Value Comparisons

To determine whether sales of PETs from Singapore to the United States were made at less than fair value, we compared United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

In calculating USP, the Department used purchase price, as defined in section 772 of the Act, for certain sales because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price ("ESP") methodology was not indicated by other circumstances. We also based USP on ESP, in accordance with section 772(c) of the Act, for those sales which were made to unrelated parties after importation into the United States.

We calculated purchase price based on packed, delivered, duty-paid prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization and handling, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, and a sales allowance discount in accordance with section 772(d)(2) of the Act.

Where USP was based on ESP, we calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, advertising accrual rebates, promotional allowances, prep allowances, warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(e) of the Act.

We have included in our USP calculations certain sales transactions reported by SCPTE in a separate database as "Exceptions." Those transactions include closeout sales, sales of discontinued models, employee sales, consignment sales, and free goods. Closeout sales and sales of discontinued models are properly included in our calculation of USP because the Department does not ignore U.S. sales on the basis of obsolescence. See Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review; 56 FR 14072 (April 5, 1991). Although SCPTE argued that "employee sales" are sales to related parties and should not be included in the USP analysis, the Department's practice is to include this type of transaction in our analysis. See, Television Receiving Sets, Monochrome and Color, From Japan; Final Results of Administrative Review of Antidumping

Finding 46 FR 30163 (June 5, 1981). Furthermore, respondent has not demonstrated that consignment sales and free goods should be excluded from the Department's calculation of USP. Certain U.S. sales transactions with sale dates outside the POI were excluded.

In addition, for certain U.S. sales, SCPTE did not report a payment date or a credit expense. For purposes of this determination, we have assigned to these transactions the original date of the Department's scheduled preliminary determination, September 25, 1991, as the date of payment and have used that date in the calculation of a U.S. credit expense. See Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, From the United Kingdom 56 FR 32172 (July 15, 1991).

Foreign Market Value

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of such or similar merchandise to the volume of third country sales of such or similar merchandise, in accordance with section 773(a)(1) of the Act. SCPTE's home market sales were less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 353.48 of the Department's regulations.

In accordance with section 773(a)(1)(B) of the Act, we calculated FMV based on third country sales.

In selecting which third country market to use for comparison purposes, we followed 19 CFR 353.49(b). Accordingly, we selected the United Kingdom (UK) because (1) it had the largest volume of sales to any third country, and (2) the market, in terms of organization and development, is most like the United States. The Department did not base its selection of the UK on the first factor listed in the regulation, because the Department had no information with which to compare the similarity of the merchandise sold to other third country markets to the merchandise sold in the United States. Furthermore, we determined that the volume of sales to the UK market was adequate within the meaning of 19 CFR 353.49(b)(1) because the sales of such or similar merchandise exceeded five percent of the volume sold to the United States.

We calculated FMV based on packed, delivered prices to unrelated customers in the UK. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, UK inland freight (UK warehouse to customer), rebates, other allowances, cash discounts, and a customer specific discount. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Where USP was based on purchase price, we made adjustments to FMV for differences in circumstances of sale. We adjusted for differences in credit, warranties, co-op advertising, advertising accruals, promotional allowances, and royalties in accordance with 19 CFR 353.56.

For comparisons involving ESP transactions, we made further deductions for third country indirect selling expenses, including warehousing, inventory carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of UK sales, and UK indirect selling expenses, capped by the sum of commissions paid and indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

We have excluded sample sales in calculating FMV because Section 773 of the Tariff Act of 1930, as amended, requires that FMV be based on sales made in the ordinary course of trade. These sample sales in the UK were transferred free of charge. Therefore, we consider these sample sales not to be in the ordinary course of trade and have disregarded them in the calculation of FMV. See, Antifriction Bearings, at 19087.

Currency Conversions

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PETs from Singapore. Section 733(e)(1) of the Act provides that there is a reasonable basis to believe or suspect that critical circumstances exist if:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

With respect to Section 733(e)(1)(A)(i) of the Act regarding a history of dumping, petitioner cites the Department's outstanding antidumping order on Portable Electric Typewriters from Japan. However, an outstanding dumping determination involving a class or kind of merchandise from another country does not show a history of dumping of the merchandise subject to this investigation. If, however, another country had an outstanding order on PETs from Singapore, this could be used to establish a history of dumping in accordance with section 733(e)(1)(A)(i) of the Act. Because the Department has no knowledge that such an order has ever existed, there is no history of dumping of this class or kind of merchandise pursuant to Section 733(e)(1)(A)(i) of the Act.

Under section 733(e)(1)(A)(ii) of the Act, the Department examines the magnitude of the dumping margins in the investigation, since it is the standard practice to impute knowledge of dumping when the margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales prices sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping.

In this investigation, there were both purchase price and exporter's sales price sales. Accordingly, we weight-averaged the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, respectively, to arrive at a benchmark for imputing knowledge. Because the preliminary dumping margin for Smith Corona does not exceed the benchmark, we find no basis for concluding that the importers knew or should have known that this company was selling the subject merchandise at less than fair value.

Since there is no history of dumping of the subject merchandise and no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, the Department does not need to consider whether imports have been massive pursuant to 19 CFR 353.16(a)(2). Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of the subject merchandise from Singapore.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of PETs from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Smith Corona PTE Ltd	16.02
All Others	16.02

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of PETs from Singapore are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 29, 1993, and rebuttal briefs no later than April 5, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on April 7, 1993, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2833 Filed 2–5–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–818]

Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

FINAL DETERMINATION: The Department of Commerce ("the Department") determines that sulfur dyes, including sulfur vat dyes, from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673d). The Department also determines that critical circumstances exist for all exporters except Sinochem International Chemicals Company, Ltd. ("SICC"). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Period of Investigation

The period of investigation ("POI") is November 1, 1991, through April 31, 1992.

Case History

Since our affirmative preliminary determination on September 17, 1992 (57 FR 44165, September 24, 1992), the following events have occurred.

On September 18, 1992, respondents, Kwong Fat Hong Chemicals, Ltd. ("KFC"), Sinochem Shandong Import and Export Corporation ("Sinochem Shandong"), and SICC, submitted responses to the Department's market oriented industry ("MOI") questionnaire on behalf of Tianjin Bohai Dyes Factory ("Tianjin"), Wuhan Sulfur Dyestuff Factory ("Wuhan") and Handan Dyes Factory ("Handan").

On September 28, 1992, we received an allegation of clerical errors in the preliminary determination. We determined that the allegations did not involve clerical errors.

On October 1, 1992, respondents requested an extension of time in which to submit publicly available published information ("PI"). We granted the extension until November 9, 1992. We received a timely submission containing PI from respondents. On October 2, 1992, the petitioner, Sandoz Chemicals Corporation, submitted an allegation that KFC's home market and third country sales are below the cost of production. On October 8, and December 9, 1992, respondents submitted comments opposing petitioner's sales below cost allegation.

On October 2, 1992, we received a request from respondents to postpone the final determination pursuant to 19 CFR 353.20, and on October 23, 1992, we published a notice of postponement of final antidumping duty determination in this investigation (57 FR 48356).

Also on October 2, 1992, petitioner requested a public hearing. On October 6, 1992, KFC, Sinochem Shandong, SICC, respondents and C.H. Patrick & Company, Inc. ("CHP") and International Technical Services, Ltd. ("Intertech"), importers also requested a public hearing.

On October 7, 1992, respondents submitted a response to the market rates questionnaire on behalf of the Ministry of Foreign Economic Relations and Trade (MOFERT). On November 4, 1992, we requested that MOFERT provide us with background information on the sulfur dye industry in the PRC. On November 17, 1992, MOFERT submitted its response to our November 4, 1992, request.

From November 23 through December 11, 1992, the Department conducted verifications in Hong Kong and the PRC of the questionnaire responses submitted by respondents.

On January 15, 1993, petitioners, respondents and CHP submitted case briefs. On January 19, 1993, respondents and petitioner submitted rebuttal briefs. At the request of the Department, petitioner submitted a supplemental brief on January 19 and on January 21, 1993, respondents submitted comments rebutting this brief. A public hearing was held on January 21, 1993.

Scope of Investigation

The merchandise subject to this investigation is sulfur dyes, including sulfur vat dyes. Sulfur dyes are synthetic, organic, coloring matter containing sulfur. Sulfur dyes are obtained by high temperature sulfurization of organic material containing hydroxy, nitro or amino groups, or by reaction of sulfur and/or alkaline sulfide with aromatic hydrocarbons. For purposes of this investigation, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 46, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur dyes are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms. The sulfur dyes subject to this investigation are classifiable under subheadings 3204.15.10, 3204.15.20, 3204.15.30, 3204.15.35, 3204.15.40, 3204.15.50, 3204.19.30, 3204.19.40 and 3204.19.50 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Separate Rates

In our preliminary determination, we stated that the final decision as to whether Sinochem Shandong and SICC should receive company-specific rates would depend upon successful verification of the factual assertions made by respondents and relied upon in the preliminary determination.

Based on our findings at verification, we have determined that Sinochem Shandong and SICC have demonstrated, pursuant to the test enunciated in the Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"), that they are entitled to separate rates. Unless a respondent demonstrates entitlement to a separate, company-specific rate pursuant to the test enunciated in Sparklers, we will presume that they are subject to a single rate. (See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) ("Butt-weld")). In this instance the PRC government did not adequately respond to our questionnaire. In particular, it failed to identify all sulfur dye producers as requested by the questionnaire. Therefore, pursuant to section 776(c) of the Act, we used the rate set forth in the petition as best information available ("BIA") when calculating the "All Other" rate in accordance with the two-tiered BIA methodology, outlined in Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the People's Republic of China, 57 FR 9409, 9410, (March 18, 1992)) ("Sulfanilic Acid").

Fair Value Comparisons

To determine whether sales of sulfur dyes, including sulfur vat dyes, from the PRC to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales prices methodology, in those instances, was not otherwise indicated.

For Sinochem Shandong and SICC, we calculated purchase price based on packed c.i.f. prices from the respective trading companies to unrelated customers. We made deductions, where appropriate, for foreign inland freight, ocean freight, and marine insurance. We also made deductions for a trade discount. Consistent with the preliminary determination, we continued to use, as BIA, the highest inland freight amount in the PRC calculated for the distances from factory to port for Shandong and SICC. The inland freight expense was based on a quoted truck freight rate contained in a public, June 1992, cable from the U.S. embassy in India. See Surrogate Country section below.

For KFC, we calculated purchase price based on packed c.i.f. prices from KFC to unrelated customers. We deducted foreign inland freight, ocean freight, marine insurance, drayage, other expenses, and a third party surcharge.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine foreign market value using factors of production methodology if (1) the merchandise is exported from a non-market economy ("NME"), and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

In past cases (*e.g.*, Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts From the People's Republic of China, ("Lug Nuts") 56 FR 46153 (September 10, 1991), and Sparklers), and indeed in every case conducted by the Department involving the PRC, the PRC has been treated as an NME. In this case, none of the parties to this proceeding has suggested that the PRC is no longer an NME. However, respondents claim that their raw materials and labor inputs used in the production of the subject merchandise are market driven, and, therefore, that the sulfur dyes, including sulfur vat dyes, industry in the PRC is a MOI.

The Department has previously interpreted section 773(c)(1)(B) of the Act to mean that FMV can be based on an NME exporter's prices or costs, despite the fact that the country may otherwise be considered an NME, if sufficient market forces are at work (see *Lug Nuts* and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, ("Fans") 56 FR 55271 (October 25, 1991).

In the preliminary determination in this investigation, the Department stated the criteria that would be used for determining whether a MOI exists in an economy which otherwise is considered to be non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the

input, the share of state-required production must be insignificant.

If these conditions are not met, pursuant to 19 CFR 353.52, the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with section 773(c) (3) and (4) of the Act.

The responding trading companies and factories have submitted information in support of their MOI claim. These firms account for approximately 35 percent of PRC production and 30 percent of exports to the United States during the POI. While the above firms have attempted to provide information in support of their MOI claim, the PRC government has been less than cooperative in this case. The PRC government failed to respond to the MOI questionnaire when we first issued it, and also failed to respond to our "Mini-section A" questionnaire which seeks to identify producers. Even though the PRC government did eventually respond to a portion of our "MOI questionnaire", it did so only after we made it clear to them that unless it responded we would not even consider the MOI claim being made by the responding companies. We determined that it would not be possible to adequately evaluate an MOI claim without full government cooperation.

The PRC government's lack of timely and complete cooperation has left us with insufficient information to reasonably evaluate the market orientation of the PRC sulfur dye industry as a whole. Most important is the fact that we have detailed information on only 35 percent of the industry which consists solely of voluntary respondents. Because the PRC government failed to cooperate in the beginning of the investigation, we were unable to identify and select additional companies to investigate in order to have a large and more representative group of companies with which to evaluate the entire industry.

The PRC government has provided some information regarding the question of government controlled production, so called "in-plan" production, of vat dyes and some inputs. The PRC government has also provided some information as to the identity of the other producers. However, the information submitted in the government questionnaire response, and the information provided at verification, are inadequate regarding all three elements of the MOI test. The specific deficiencies are: (1) The list of in-plan products provided by the PRC government which shows that vat dyes and their inputs are not in-plan is not time-specific and does not clearly cover the POI; (2) the PRC government has not provided sufficient data on the extent of state ownership of the remaining 65 percent of the sulfur dye industry; and (3) the PRC government has not provided any information on whether market prices are paid for the inputs of the suppliers of the 65 percent of the industry which is non-responding. For all of the above reasons, we determine that there is an insufficient basis for finding a MOI in this case.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product ("GNP"), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated August 6, 1992.) Because India fulfills the requirements outlined in the statute, India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise. We have used only Indian surrogate value for purposes of the final determination.

We valued the factors of production in accordance with the hierarchy for preferred input values set forth in Butt-Weld. We first used Indian published material before resorting to unclassified information contained in U.S. government cables, or the public cost of production questionnaire response of Atul, a respondent in a companion case involving India, which was submitted on the record in this case ("Atul's response").

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for respondents. The factors used to produce sulfur dyes include materials, labor, and energy. We verified the production information of three of the factories which submitted information on behalf of KFC, Sinochem Shandong, and SICC.

To value dinitrochlorobenzene ("DNCB"), sodium sulphide, and sodium hydroxide, we used published, publicly available information from Chemicals Weekly, and also Chemical Business in the case of sodium hydroxide, as provided in respondents' November 9, 1992, submission. (See Comment 1 for a complete discussion of this issue). To value sulfur, we used published, publicly available information from the Monthly Statistics of the Foreign Trade of India (March 1988) as in the preliminary determination. We adjusted the factor values for the POI using wholesale price indices published by the International Monetary Fund.

To value labor rates, we used unskilled and skilled labor rates, including benefits, obtained from the U.S. embassy in India, as was done in the preliminary determination. We adjusted the unskilled wage rate to account for the number of hours in an Indian work week based on information contained in the published source, Country Reports on Human Rights Practices for 1990, which was submitted to the U.S. Senate Committee on Foreign Relations in February 1991.

To calculate FMV, the reported factors of production were multiplied by the appropriate Indian values for the various components. With the exception of DNCB for Tianjin, we added an amount for the delivery of inputs to the factory to arrive at a delivered cost of materials. We calculated the truck freight rate based on June 1992 information obtained from the U.S. embassy in India. Based upon the wholesale price indices available, we did not adjust this figure. We calculated train freight rates based on a December 1989 cable from the U.S. embassy in India. We adjusted the figures for the POI using wholesale price indices published by the International Monetary Fund.

We valued factory overhead, SG&A, and profit based upon information provided by respondents in their November 9, 1992, submission. (See Comment 1 for a complete discussion of this issue).

We also added, where appropriate, an amount for packing labor based on the appropriate Indian skilled and unskilled wage rates, and an amount for packing materials based on Indian prices obtained from the public record of the concurrent investigation of sulfur dyes, including sulfur vat dyes, from India, in order to arrive at a constructed FMV for one metric ton of sulfur dye. (For a complete analysis of surrogate values, see our concurrence memorandum dated January 22, 1993.)

Critical Circumstances

Petitioner alleged that "critical circumstances" existed with respect to imports of sulfur dyes, including sulfur vat dyes, from the PRC. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

> (A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or
>
> (ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and
>
> (B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding criterion (A)(ii) above, we normally consider margins of 25 percent or more in the case of purchase price comparisons, and 15 percent or more in the case of exporter sales price comparisons, sufficient to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

Regarding (A) above, the margins found for Sinochem Shandong, SICC, and KFC are all over 25 percent, and accordingly, we can impute knowledge.

Regarding (B) above, for Sinochem Shandong, its imports increased by over 15 percent between the period November 1, 1991 through March 31, 1992 and the period April 1 through August 31, 1992 ("the comparison periods"), and thus have increased massively. For SICC, its imports increased by less than 15 percent between the comparison periods, and thus have not increased massively. For KFC, because KFC did not provide the monthly shipment information requested in the questionnaire, we find that its imports are massive based on BIA.

In accordance with section 735(a)(3) of the Act, we determine that critical circumstances exist with respect to imports from Sinochem Shandong and KFC, and that critical circumstances do not exist with respect to imports from SICC. With respect to the firms covered by the "All Other" rate, because that dumping margin is sufficient to impute knowledge of dumping, and because we have determined that imports of sulfur dyes, including sulfur vat dyes, have been massive over a relatively short time for at least two firms, we determine that critical circumstances also exist for "all other" firms.

Currency Conversion

When calculating foreign market value, we made currency conversions in accordance with 19 CFR 353.60(a).

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1

Respondents state that the Department should use the PI provided in respondents' November 9, 1992, submission for valuing the factors of production in a surrogate economy. Specifically, respondents argue that the Department should use the internal prices in India, the surrogate country of first choice, for DNCB, sodium hydroxide, sodium sulfide and many of the other raw material inputs used to produce the subject merchandise. Respondents avow that since neither of the Chinese sulfur black producers use imported inputs, the Department should not rely on import statistics to value the factors of production in this case. Regarding DNCB, respondents state that the Department should not use the inflated German import value that was used in the preliminary determination. Respondents also state that, since neither Chinese nor Indian sulfur black producers use imported DNCB for production, neither should the Department use imported figures. On these bases, respondents urge the Department to use the domestic cost of DNCB in India, or the price of DNCB in China, to reflect the true cost of DNCB. Regarding sodium hydroxide, respondents also argue that the Department should use the PI submitted by respondents in its November 9, 1992, submission.

Regarding overhead, respondents claim that the Department double counted energy and diesel fuel based upon the items included at Atul's factory overhead. Respondents argue that we should use the overhead rate they calculated based on Atul's response.

Regarding selling, general and administrative expenses ("SG&A"), respondents argue that we should use the rate they calculated based on Atul's response.

Petitioner states that there is nothing in the record which supports respondents' statement that Indian sulfur dye producers do not use imported inputs. Petitioner claims that the record states that one Indian sulfur black producer produces DNCB for its sulfur black production. Petitioner submits that the Department's reliance on Indian import statistics is proper because they are inherently reliable and are based upon actual prices. Petitioner claims that respondents' assertion that the submitted prices are "actual domestic prices for the inputs" is incorrect. Petitioner contends that the publications submitted on the record by respondents refute any contention that these prices are "actual prices," and that the prices are not actual because they are not firm quotes. Petitioner asserts that the publications note that, with respect to DNCB, the prices are without tax and excise, which is not insubstantial in India. Petitioner estimates that tax and excise can equal 40 percent or more of the sales price. Petitioner states that respondents should have submitted updated import statistics or an alternative inflation factor rather than now complain about the inflation factor used in the preliminary determination.

Regarding profit and factory overhead, petitioner submits that in the preliminary determination, the Department relied upon a previous investigation of the Indian chemicals industry which is more reliable than publications with respect to the chemicals and pharmaceutical industries as suggested by respondents.

Regarding electricity, water, and coal, petitioner states that respondents incorrectly assert that the amounts for these items are already included in the factory overhead of the one producer in the surrogate country. Petitioner argues that respondents cannot make such overbroad claims regarding the practice in India based upon one producer.

DOC Position

In our preliminary determination we relied on data obtained from the following sources: (1) Indian import statistics, (2) an OECD report, and (3) cables from the U.S. embassies in India and Pakistan. In accordance with our recently enunciated practice we invited interested parties to submit PI in a timely fashion. (*see* DAS Sailer memorandum dated September 10, 1992). Respondents' counsel submitted such information for most factor inputs and also submitted the public version of the COP questionnaire response submitted by an Indian producer in the companion case involving Indian sulfur dyes. Respondents' PI consisted of information from the following sources: (1) Three Indian chemical business publications, and (2) an Indian government study.

In accordance with our hierarchy of preferred surrogate factor value sources articulated in Butt Weld, we have used respondents' PI for inputs which were not valued using PI in the preliminary determination. However, for some inputs, we have both Indian import statistics (which were used in the preliminary determination) and respondents' PI. Thus, we must decide which source of PI is preferable. Respondents' data are more current than the import statistics used in the preliminary determination. In addition, we have observed that the average Indian import value for certain material inputs can vary, sometimes significantly, based on the country of origin, or the quantity of the shipment, and if based on a basket category, the type of merchandise. This indicates that the import statistics may be sensitive to differences in quality, technical specifications, and quantity. In this case, the industry publications in the surrogate country have the advantage of being immune from at least some of these difficulties. Moreover, respondents have provided us with two sources of date with approximately comparable prices leading us to question the import statistics in this case. Accordingly, we have used respondents' PI to value material costs.

Concerning petitioner's arguments about taxes, the record of this case is not dispositive regarding whether any taxes are, or should be paid, the manner in which they would be paid, or how such payment should be incorporated into the factor values used. Moreover, the fact that a publication issues a disclaimer regarding the prices published therein does not invalidate those prices as a reasonable barometer of market conditions. Rather, such disclaimers serve merely to protect the publication from liability. Accordingly, we have used the values as reported in respondents' PI.

Regarding factory overhead, respondents submitted an Indian government study containing data relevant to overhead calculations. However, respondents calculated a fixed overhead ratio of 6.56 percent based solely on depreciation expenses. Our review of the study revealed that there was detailed information on repairs and maintenance, two categories of expenses that are traditionally considered to be overhead expenses. Moreover, the study contained information on energy costs, which, if included with the other expenses, yields an overhead rate of 19.13 percent of materials and labor. We note that the public cost of production response of Atul, an Indian producer of the subject merchandise, reveals a similar overhead rate, inclusive of energy, of 18.55 percent of materials and labor. The recalculated rate of 19.13 percent is preferable because it is more current, clearly identifies the expenses included, and is similar to the rate calculated for a known producer of the subject merchandise in India. Hence, we determined that the recalculated rate of 19.13 percent overhead rate is the most appropriate choice for the final determination.

Regarding selling, general and administrative expenses (SG&A), respondents calculated a SG&A rate of 13.95 percent of cost of manufacture based on Atul's response. However, this calculation involves only general expenses and ignores selling expenses. We recalculated the SG&A rate to include selling expenses, which yielded a rate of 24.14 percent. The recalculated rate is preferable because it is more current than the figure used in the preliminary determination and is based on the experience of a known producer of the subject merchandise in a surrogate country. Moreover, neither the 24.13 recalculated rate nor the rate used in the preliminary determination is PI. Hence, we used the recalculated rate for the final determination.

Finally, regarding profit, as with SG&A, we relied on Atul's response. However, we recalculated respondents' calculations because respondents used net, rather than gross, profit. The recalculated profit rate of 8.87 was greater than the statutory minimum.

Comment 2

Petitioner states that KFC's sales in Hong Kong cannot be used as a basis for FMV as the criteria in 19 U.S.C. 1677b(f) have not been met. According to petitioner, 19 U.S.C. 1677b(f) provides that, only under specifically defined circumstances may an intermediate country be considered the "country from which the merchandise is exported" and foreign market value based on the price in the intermediate country. Petitioner also notes that the Department's regulations specifically provide in 19 CFR 353.46(c) that where merchandise is transshipped through a third country, the Secretary may not, except under CFR 353.47, calculate foreign market value based on the price at which the merchandise is sold in the "country of transshipment." Accordingly, petitioner argues that, under the statutory and regulatory scheme, an intermediate country is considered a "country of transshipment" pursuant to 19 CFR 353.46(c) unless the statutory criteria of 19 U.S.C. 1677b(f) are met. Specifically, petitioner notes that KFC purchases sulfur dyes from the exporter/agent and not from the manufacturer or producer and, therefore, does not satisfy the first criterion of section 1677b(f).

Petitioner states that the second criterion of the statute, which requires a lack of knowledge by the producer or manufacturer of "the country" to which the reseller intends to export the merchandise, has not been met, as Wuhan, the PRC producer, has admitted its knowledge of the country to which KFC, the Hong Kong reseller, intended to export the merchandise, *i.e.*, Hong Kong. Petitioner concludes, based on the statutory language, "such country shall be treated, for purposes of this section, as the country from which the merchandise was exported," that the intermediate country will be considered the country of exportation and FMV determined on that basis. Thus, the country referred to in the second criterion of the statute is the same one referred to in the concluding passage (*i.e.*, the intermediate country), not the United States.

Thus, petitioner argues that in this case, the second statutory criterion requires that Wuhan, as the PRC manufacturer or producer, be unaware that the reseller, KFC, intended to export the merchandise from the PRC to the alleged intermediate country, Hong Kong. Petitioner claims that Wuhan had knowledge of KFC's intent to export the merchandise to Hong Kong and thus, as the second criterion of the statute is not satisfied by Wuhan, the statute requires the Department to treat the PRC, not Hong Kong, as the country of exportation.

Petitioner states that for an intermediate country to be treated as the country from which the merchandise was exported, both the statute and regulations require that the merchandise "enter the commerce of such country.", However, petitioner claims that KFC's sulfur dyes do not enter the commerce of Hong Kong. Petitioner contends that the terms "enters the commerce of such country" in 19 U.S.C. 1677b(f)(4) and "enters the commerce of the intermediate country" in 19 CFR 353.47(c) require that the merchandise under consideration be sold or offered for consumption in the intermediate country. Petitioner claims that since the statutory and regulatory criteria have not been met in the instant investigation, Hong Kong cannot be considered "the country from which the merchandise was exported" instead, it is merely a country of transshipment. Petitioner claims that this is a classic case of transshipment where the merchandise exported to the United States was not even warehoused in Hong Kong. Rather, the goods were placed on a truck at the PRC warehouse and shipped directly to the port in Hong Kong for shipment to the United States. Petitioner argues that at the point of exportation from the PRC the merchandise was destined for the United States. The merchandise, therefore, never entered the commerce of Hong Kong; rather, the merchandise was merely transshipped though Hong Kong.

Respondents claim that the Department verified that KFC meets all of the statutory requirements of the intermediate country provision. Specifically, respondents state that: (1) KFC, a Hong Kong reseller, purchases the merchandise, from the manufacturer or producer of the merchandise in the PRC; (2) the producer, the exporter of the merchandise, and KFC's agent in China do not know (at the time of the sale to KFC) the country to which KFC intends to export the merchandise (*e.g.*, United States); (3) KFC exports sulfur black dye to countries other than the United States; (4) KFC's sulfur black enters the commerce of Hong Kong, but is not substantially transformed in Hong Kong; and (5) KFC's sulfur black is subsequently exported to the United States. As such, respondents claim that KFC should be considered an intermediate country reseller pursuant to the Act. Respondents state that KFC, not the PRC producer or exporter, sells the sulfur black dye and sets the price to the United States and is the source of any dumping. Respondents state that since KFC has the sales organization, the relationships with customers, and sells from inventory out of its warehouses, the Chinese parties (*i.e.*, producers, exporters and the agent) do not and cannot know the ultimate destination of the merchandise at the time of sale to KFC.

Respondents state that when KFC imports sulfur dye into Hong Kong, pursuant to Hong Kong law, it must file an import declaration and items destined for transshipment are not required to be declared. Respondents state that when KFC files an import declaration with the Hong Kong government, it "enters" the sulfur black into the commerce of Hong Kong. Respondents claim that the sulfur dyes could be sold in Hong Kong, and some of the sulfur dyes, in fact, were sold in Hong Kong.

Respondents state that the sulfur dyes KFC sells to the United States are also exported to countries other than the United States. Respondents claim that KFC does not alter the sulfur black dye in any manner after it is purchased from the Chinese producer and imported into Hong Kong. Respondents contend that the sulfur dyes are subsequently exported to the United States.

Respondents cite numerous cases in which the Department considered the reseller provision where the reseller is located in the intermediate country, not the home market. Respondents state that the petitioner's circumvention argument is without merit as KFC's exports from Hong Kong are presently subject to estimated duty deposits, and if a dumping order is issued, KFC would be involved in any administrative review. Respondents refute petitioner's argument that the PRC producer sells to the middleman (*i.e*, the exporter and/or agent) because KFC is the only party that takes title to the merchandise, not the exporter, nor the agent. Finally, respondents state that petitioner intentionally misconstrued the statutory language so as to write the intermediate country reseller provision out of the statute or in the alternative, to attempt to confuse the Department so that it will find that KFC does not meet this provision.

Respondents state that it makes sense to interpret the statute as Congress intended it to be interpreted as the Department has done in the past. Respondents state that when the statute is examined, it is clear that the term "such country" refers to the intermediate country, but the term "the country" or "a country" refers to the countries to which the reseller in the intermediate country intends to export. Respondents state that Congress passed the intermediate country reseller provision to cover the situation where the reseller in the intermediate country is the source of the dumping because the reseller, not the companies in the home market, knows where the merchandise is being exported.

DOC Position

We agree with petitioner that KFC's exports to the United States do not enter the commerce of Hong Kong and, as such, KFC does not qualify under section 733(f)(4) the Act. We treated KFC as an intermediate country reseller under 773(f) in the preliminary determination based on KFC's characterization of these sales in its questionnaire response which appeared to satisfy the five requirements of section 773(f) of the Act. We determined, in fact, that the method of sale and distribution for KFC's sales to the United States is more accurately described as transshipment.

At verification we learned that KFC's characterization of this information in its questionnaire response was not entirely accurate. Specifically, the following things became clear: (1) Customers in both Hong Kong and the United States purchase dyes produced in different PRC factories; (2) the one Hong Kong customer of KFC purchased dye from a different PRC factory than the United States customer; (3) all merchandise exported to the United States was shipped from the PRC factory to KFC's rented warehouse in Shenzen, PRC; (4) all merchandise sold in Hong Kong was shipped from a different PRC factory, through the Shenzen warehouse, to KFC Hong Kong warehouse; (5) the merchandise bound for sale in Hong Kong was sold from inventory from KFC's Hong Kong warehouse; and (6) the merchandise bound for the United States was put on a truck in KFC's rented warehouse in Shenzen and trucked through Hong Kong directly to the port for shipment. Thus, from verification, we determined that the merchandise exported to the United States was shipped from the factory in the PRC to a warehouse in the PRC where it was, eventually, reloaded on a truck and driven directly to the port in Hong Kong for shipment to the United States. The above pattern of sale and distribution is most accurately characterized as transshipment.

Counsel for respondents argues that there is a "contingency of diversion" into the commerce of Hong Kong for the merchandise exported to the United States based on the fact that KFC files a document with Hong Kong Customs which would allow KFC to sell this merchandise in Hong Kong if it wanted to. Counsel states that there is a separate Hong Kong customs document for transshipment which KFC could use if they were merely transshipping.

However, verification clearly showed that KFC's exports to the United States were transshipped through Hong Kong. The fact the KFC files a customs document which would allow it to sell the merchandise in Hong Kong is not, in and of itself, sufficient evidence that this merchandise entered the commerce of Hong Kong. In a recent case, Preliminary Determination of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan, 58 FR 79 (January 4, 1993), we relied partially on the fact that merchandise entered a bonded warehouse as evidence the merchandise did not enter the commerce of that country. However, the fact that KFC does not store the sulfur dyes which are bound for export to the United States in a bonded warehouse in Hong Kong does not by itself demonstrate that the merchandise enters the commerce of Hong Kong. We must examine all of the evidence on the record to determine whether merchandise enters the commerce of a country. In this case, KFC's sales to the United States are clearly transshipments which do not enter the commerce of Hong Kong, and as such, do not merit consideration under section 773(f) of the Act.

Accordingly, we do not reach petitioner's arguments regarding the interpretation of section 773(f) of the Act or KFC's sales in Hong Kong.

Comment 3

Respondents state that all factors were verified at Wuhan and although some reported factors differed from the amount verified, the differences were minor in most cases and adequately explained.

Regarding Wuhan, petitioner requests that the Department ignore the factors of production reported by respondents and use BIA or the factors verified and summarized at page seven of the verification report. Petitioner suggests that the Department resort to BIA for the input factors for skilled and unskilled packing labor as these items were not verified.

Petitioner notes a discrepancy between the amount KFC reports as Wuhan-produced sulfur dyes and the amount Wuhan reported produced during the POI. Petitioner concludes that some of the U.S. sales consist of sulfur dyes produced by factories other than Wuhan. Petitioner claims that it is significant that no invoices from Wuhan were produced at verification by either KFC, the agent, or the exporter. Petitioner states that KFC cannot demonstrate to the Department that the merchandise it sold to the United States was, in fact, produced by Wuhan. Finally, petitioner alleges that the unresolved conflict between the amounts reported by Wuhan and that sold to the United States together with the Department's inability to verify that the dyes exported to the United States were produced by Wuhan should result in the Department's resort to BIA. Petitioner urges the Department to reject KFC's oral representations and use the rate in the petition as BIA for the final determination.

DOC Position

We disagree with petitioner. The verification report spells out the mistakes in the information submitted by Wuhan which were noted at verification. The noted mistakes, when taken together, did not represent a verification failure meriting the use of BIA. Rather, we have followed our practice of correcting errors found at verification as long as those errors are not comprehensive nor do they exhibit a systematic misstatement of fact. Thus, we used the information in Wuhan's questionnaire response corrected for errors noted at verification.

Comment 4

Respondents state that the Department should treat Sinochem Shandong's claimed commission as a commission rather than as a discount as was done in the preliminary determination. Respondents state that it provided documentation at verification supporting the fact that the amount claimed is a commission. Respondents claim that its customer calls the amount a discount because it is advantageous for the customer to do so.

DOC Position

We disagree with respondents. A commission is a payment to a sales representative for engaging in sales activity on behalf of the seller. A discount is a reduction in price to a customer. That customer may well turn around and resell the merchandise; however, such resale would not change the discount into a commission. The entity that received this payment was a customer—not a salesman—who subsequently resold the merchandise. Accordingly, we determine that this payment is properly treated as a discount.

Comment 5

Respondents request that the Department offset the cost of raw materials by the revenue earned on the sale of sodium thiosulfate by the PRC factory during the POI.

DOC Position

We have not granted this adjustment. Respondents have not adequately demonstrated how the production and sale of sodium thiosulfate does, or could be used to, offset the material cost reported for production of the subject merchandise. In any event, only the quantity of material inputs used to produce the subject merchandise is relevant under the Act's factors methodology, not an NME producer's costs or alleged offsets.

Comment 6

Respondents request that, since the Department verified that Tianjin uses 25 kg. drums for packing, the Department value drums at one-half of the public price reported by Atul, the Indian respondent because the Indian drums are 50 kg.

DOC Position

We agree with respondents. At the preliminary determination we used the 50 kg. value because Tianjin's questionnaire response was unclear as to whether it used 25 or 50 kg. drums. At verification we determined that Tianjin did use 25 kg. drums.

Comment 7

Respondents argue that the Department, in its instructions to U.S. Customs, should not explicitly limit the application of the margin calculated for a given exporter (*e.g.*, SICC) solely to export transactions involving that exporter and its supplying factory (*e.g.*, Handan).

Petitioner states that, assuming a low margin for KFC compared to the other exporters, the factories would sell to the United States through KFC rather than thorough exporters having relatively higher dumping margins, thus circumventing an antidumping duty order. Further, petitioner states that because KFC was unable to submit invoices from the factories, the Department could not verify that the merchandise actually sold to the United States was the same as that reported by KFC.

DOC Position

We disagree with respondents. The LTFV margins for specific exporters, who qualified for separate rates in this case, are calculated based upon two factors: (1) FMV based on the factors of production of the PRC factory which supplied the specific exporter, valued in a surrogate country, and (2) USP based on the specific exporter's prices to unrelated customers in the United States. Any margin calculated using these two bases would only be representative of transactions involving these two parties and are only to be applied to imports of the listed manufacturer or producer which are exported by the listed exporter. Thus, any transaction covering other producers or other exporters would be covered by the "all others" rate.

Comment 8

Petitioner submits that the margin for KFC will exceed 25 percent and, following its administrative practice, the Department must impute knowledge of dumping by the importers pursuant to section 773(e)(1)(a)(ii) of the Act and determine that critical circumstances exist for KFC.

Respondents state that the Department has verified that neither SICC nor Sinochem Shandong's exports were massive after the petition was filed.

DOC Position

We agree with petitioner. See the Critical Circumstances section of this notice.

Comment 9

Petitioner states that the summary of the January 4, 1993, verification report regarding market rates and state control makes clear that these issues have been discussed previously with PRC officials. Petitioner asserts that the documents submitted during verification do not fully comply with the requests of the Department to substantiate the market and separate rate claims and, therefore, respondents' claim for separate rates and utilization of Chinese market prices should be rejected.

Respondents state that the Department should use actual Chinese costs to calculate costs in this case because the Chinese government for the first time has placed documentary evidence on the record of this investigation that the product subject to investigation and the raw material inputs are not subject to any state-mandated prices under the mandatory or the guidance plan.

Respondents state that the prices for the product subject to investigation and all the chemical inputs are freely set by the producers based on supply and demand in the Chinese market. Respondents state that there is virtually no government involvement in setting prices or amounts to be produced, the sulfur dyes industry is characterized by collective ownership, and market-determined prices are paid for all significant inputs and for an all but insignificant proportion of all the inputs accounting for the total value of sulfur black. Respondents also state that the Department verified that market prices were paid for all inputs and there was no state-required production for the inputs. Regarding labor, respondents state the factories are able to hire and fire workers based on the companies' needs and their workers' performances.

DOC Position

We disagree with respondents. See the **Separate Rates** and **Foreign Market Value** sections of this notice.

Comment 10

In determining the extent of state-required production in the input industries, respondents state that coal, electricity and foreign inland freight should not be included. Respondents claim that the Department should exclude coal, electricity and freight because these inputs represent an insignificant proportion of the total value according to the preliminary determination. Respondents further state that, should the Department determine that market prices can be used, then the Chinese market prices for coal, electricity and freight rates should be used to calculate the Chinese costs of production.

DOC Position

This issue is moot because we rejected the MOI claim for other reasons. See the **Foreign Market Value** section of this notice.

Comment 11

Petitioner contends that the sales dates reported by Sinochem Shandong are incorrect and the Department should use as BIA the rate provided in the petition as the sales reported are not within the POI.

Respondents submit that the terms of Sinochem Shandong's contract are not set until the merchandise is actually shipped. Respondents request that, as reported, the Department use the shipment date as the date of sale in the final determination.

DOC Position

We agree with respondents. We examined respondents' date of sale methodology at verification and determined that it was reasonable.

Comment 12

Petitioner contends that the Department should reject Tianjin's response and use BIA for the factors of production determination as the verification report is replete with discrepancies that taint the entire submission. Petitioner claims that respondents' eleventh hour disclosure of the true nature of the transactions resulted in the lack of any possibility of reviewing Tianjin's response for completeness. Petitioner submits that there were substantial discrepancies in Tianjin's submitted information including four different calculations in its labor hours, with the last version submitted at verification with amounts substantially below those reported in the three prior submissions. Petitioner states that the Department should reject as untimely its submission at verification regarding labor hours. In addition, petitioner states that the Department was unable to verify the division of the workers between production/packing and skilled/unskilled and, therefore, the submission at verification could not be substantiated. Finally, petitioner states that the inability of the Department to conduct a completeness test regarding Tianjin (and the failure to verify any data of the reseller) and the discrepancies permeating Tianjin's reported data requires the rejection of the response and the use of BIA as a basis of determining FMV.

Regarding labor, respondents state that Tianjin did not provide new labor factors at verification. Respondents state that the Department's verifier was provided with an exhibit which showed three calculation errors that had been made in the September 8, 1992, response. Respondents state that the only difference between the exhibit and the September submission were due to clerical calculation errors. Respondents request that the Department use the labor hours so calculated by the Department at verification in the final determination.

Respondents state that when petitioner quotes from the Tianjin verification report that "TDF has understated costs for all raw material inputs," the petitioner is referring to the market prices of the inputs, not the factors of production. Respondents also state that the factors provided by Tianjin were identical to the information provided in Tianjin's books and records. Therefore, respondents request that the Department accept the raw material input data supplied by the respondents.

Respondents state that petitioner claims, without basis, that the verifier could not perform a completeness test because respondents' November 9, 1992, submission was untimely. Respondents submit that there is no statement by the verifier that indicated that the November submission was untimely or resulted in the verifier being precluded from doing a completeness test. Respondents request that the Department use the data reported in the November submission in the final determination.

DOC Position

We disagree with petitioner. The verification report spells out the mistakes in the information submitted by Tianjin which were noted at verification. The noted mistakes, when taken together, do not represent a verification failure meriting the use of BIA. Rather, we have followed our practice of correcting errors found at verification as long as those errors are not comprehensive or exhibit a systematic misstatement of fact. Thus, we used the information in Tianjin's questionnaire response corrected for errors noted at verification.

Comment 13

Regarding SICC, petitioner states that the Department was unable to verify the reported marine insurance for respondents' U.S. sales. Petitioner states that the formula requested to demonstrate how the marine insurance premium schedule would result in the marine insurance expense reported was never provided at verification. Petitioner suggests that as the respondents have failed to provide the requested information, the Department should resort to BIA for the marine insurance on respondents' U.S. sales.

Respondents state that at verification of SICC's producer, SICC provided a marine insurance premium schedule which includes the formula for marine insurance premiums. Respondents note that the insurance premiums reported were estimates slightly higher than the formula in the schedule. Respondents request that, since the formula was provided, the Department use the formula for SICC marine insurance for the final determination or use the average marine insurance as verified at Sinochem Shandong.

DOC Position

We agree with petitioners. Unlike the types of errors noted at verification discussed in comments 3 and 12, this was an error where information requested was not provided. Thus, this charge could not be verified. As BIA we have used the higher of the estimated amounts reported in the questionnaire response or the alleged amounts respondents indicated.

Comment 14

Petitioner states that the sales dates reported by SICC are incorrect, and the Department should use as BIA the rate provided in the petition as the reported U.S. sales are not within the POI.

Respondents state that the date of sale reported by SICC was the shipment date because the contract did not fix both price and quantity at the contract date. Respondents submit that additional information was provided at verification to support the claim that the shipment date was the earliest date at which both quantity and price were fixed. As such, respondents request that the Department use the shipment date as the date of sale as reported.

DOC Position

We agree with respondents. At verification we examined respondents' date of sale methodology and determined that it was reasonable.

Comment 15

Regarding Handan, petitioner states that the correct amount for water per metric ton of sulfur black noted in the verification report should be used.

DOC Position

This issue is moot because we have used a factory overhead rate that includes an amount for water. Hence, we do not need to value water separately.

Comment 16

Petitioner argues that because the Department did not verify certain information at the Jinan factory, an input supplier, the Department should draw adverse inferences about factor value information related to Jinan.

Respondents state that to infer that Tianjin should be penalized because the Department did not verify additional parties, such as Jinan, is unwarranted. Respondents argue that for the petitioner to ask the Department to use BIA because each item was not examined to the petitioner's satisfaction is absurd. Respondents request that the Department disregard petitioner's inaccurate and untrue arguments.

DOC Position

We agree with respondents. Given the time and resource constraints in an AD case involving an NME where a MOI claim is being evaluated, we must limit the number of suppliers, and supplier's suppliers, we visit during verification. Accordingly, no adverse inferences are warranted.

Comment 17

Petitioner states that the Department should substitute the verified marine insurance and freight for the estimated amounts reported in Sinochem Shandong's response.

Respondents agree with petitioner but suggest that the Department use the average verified marine insurance and freight.

DOC Position

We agree with petitioner.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of sulfur dyes, including sulfur vat dyes, from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer or producer/exporter	Margin percent	Critical circumstances
Sinochem Shandong/Tianjin.	34.96	Yes.
SICC/Handan	102.46	No.
KFC/Wuhan	191.00	Yes.
All others	213.16	Yes.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20.

Dated: February 1, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–2841 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 92–097R. *Applicant:* Massachusetts Institute of Technology, Department of Chemistry, 77 Massachusetts Avenue, Cambridge, MA 02139. *Instrument:* Stopped Flow Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* Original notice of this resubmitted application was published in the FEDERAL REGISTER of September 3, 1992.

Docket Number: 92–176. *Applicant:* Mayo Clinic, 200 First Street, S.W., Rochester, MN 55905. *Instrument:* Electron Microscope, Model CM 10. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be available to all researchers at the clinic to characterize human tissue specimens and to determine pathology. In addition to standard tissue preparation techniques, methods for immunocytochemical localization of antigens will be employed. The instrument will also be used for training in TEM operation for graduate and medical students and residents. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–179. *Applicant:* National Institute of Standards and Technology, Acquisition and Assistance Division, Building 301, Gaithersburg, MD 20899. *Instrument:* Thermal Neutron Chopper System. *Manufacturer:* Uranit, Germany. *Intended Use:* The instrument will be used for studies of a wide variety of chemical, biological and metallurgical samples, typically in the form of powders or crystals, at room temperature or at low temperatures. Experiments will consist of neutron scattering measurements using time-of-flight technique to determine the amount of energy transferred to the sample by the neutron when it is scattered. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–180. *Applicant:* Good Samaritan Hospital and Medical Center, Robert S. Dow Neurological Sciences Institute, 1120 N.W. 20th Avenue, Portland, OR 97202-1595. *Instrument:* Motion Analysis System, Model Elite. *Manufacturer:* Bioengineering Technology and Systems, Italy. *Intended Use:* The instrument will be used in continuing research to determine how the central nervous system controls and coordinates limb movement and movement sequences in humans. Sample experiments include targeted limb movements in total darkness, and disturbing the posture of a subject who is balancing in the dark. In addition, the instrument will be used to teach trainees how to record and analyze human limb movement. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–181. *Applicant:* Purdue University, West Lafayette, IN 47904. *Instrument:* Electron Paramagnetic Resonance Spectrometer System, Model ESP 300E-10/7. *Manufacturer:* Bruker Instruments, Germany. *Intended Use:* The instrument will be used for studies of free radicals or paramagnetic materials which may be present in the gas, liquid or solid phase. The experimental objective of these studies is to determine the exact chemical structure and nature of the chemical bonding in the material under investigation. Specialized experiments may be used to determine the rate of reaction of unstable materials containing free radical species. The concentration of these species may be determined for analytical purposes. The instrument will also be used in CHM courses 698 (M.S. Research) and 699 (Ph.D. Research) to provide fundamental background in EPR spectroscopy as used in an independent research application. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92-182. *Applicant:* Rockefeller University, 1230 York Avenue, New York, NY 10021. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for biological research on the structures of assemblies of biological macromolecules. The materials to be studied will consist of complexes of proteins and nucleic acids (DNA and RNA) which have been biochemically purified at different stages of the processes of transcription (the synthesis of RNA from DNA). *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–183. *Applicant:* Department of Health and Human Services/PHS/NIH/NCI/DCPC/EDCOP/BPRB, 5516 Nicholson Lane, Kensington, MD 20895. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* Perkin-Elmer/Sciex, Canada. *Intended Use:* The instrument will be used for studies of native proteins, synthetic peptides, synthetic oligonucleotides and glycoproteins/peptides. The properties to be studied include the amino acid sequence of native proteins and synthetic peptides, nucleotide sequence, post-translational modifications and blocking groups of native proteins. *Application Received by Commissioner of Customs:* December 8, 1992.

Docket Number: 92–184. *Applicant:* University of Illinois at Chicago, Department of Chemistry (m/c 111), 801 W. Taylor Street, Room 4500, Chicago, IL 60607–7061. *Instrument:* Excimer-pumped Dye Lasers, Models LEXtra 50 and LPD 3002. *Manufacturer:* Lambda Physik, Germany. *Intended Use:* The instrument will be used to detect hydrogen chloride (HC1) molecules generated in photodissociation reactions. The instrument will be incorporated into an existing apparatus. HC1 molecules will be generated in a molecular beam machine, utilizing an already existing laser to dissociate gaseous molecules in the beam. The new laser will then be used to ionize the fragment HC1, which will be detected by a mass spectrometer. *Application Received by Commissioner of Customs:* December 9, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–2842 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-F

Vanderbilt University; Notice of Decision on Application for Duty-free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

DECISION: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

REASONS: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 92–079. *Applicant:* Vanderbilt University, School of Medicine, 23rd Avenue South at Pierce, Nashville, TN 37232–6600. *Instrument:* Micromanipulator, Model MM–113–L. *Manufacturer:* Narishige, Japan. *Date of Denial without Prejudice to Resubmission:* October 27, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–2844 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 92–083R. *Applicant:* Washington University, One Brookings Drive, St. Louis, MO 63130. *Instrument:* Two Micromanipulators, Models WR-89-R and MM-113-R. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* Original notice of this resubmitted application was published in the **Federal Register** of July 9, 1992.

Docket Number: 92–185. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Mass Spectrometer, Model VG Sector 54. *Manufacturer:* VG Instruments, United Kingdom. *Intended Use:* The instrument will be used for studies of a variety of metals and compounds containing uranium, plutonium, boron, lithium, americium, curium, and other elements of interest in the nuclear field. *Application Received by Commissioner of Customs:* December 18, 1992.

Docket Number: 92–186. *Applicant:* University of Arkansas, Department of Chemistry, Fayetteville, AR 72701. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX.1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used for investigating the kinetics of the reactions of NADH model compounds with various carbonyl hydride acceptors in order to gain insight into the mechanisms of corresponding enzyme catalyzed reactions. *Application Received by Commissioner of Customs:* December 17, 1992.

Docket Number: 92–187. *Applicant:* Mary Free Bed Hospital and Rehabilitation Center, 235 Wealthy Street, S.E., Grand Rapids, MI 49503. *Instrument:* Kinematic Analysis Instrumentation, Model Elite 3D. *Manufacturer:* BTS Bioengineering Technology and Systems, Italy. *Intended Use:* The instrument will be used for studies of human patients with cerebral palsy and congenital or traumatic amputation. Research questions involve how to improve abnormal gait with a variety of therapy techniques (physical therapy), orthoses (braces), tendon lengthening or shortening, bone surgery or prostheses (artificial limbs). In addition, the instrument will be used in physical therapy courses for thesis research in the motion analysis laboratory. *Application Received by Commissioner of Customs:* December 15, 1992.

Docket Number: 92–188. *Applicant:* University of California, Santa Barbara, Department of Geological Sciences, Santa Barbara, CA 93106-9630. *Instrument:* Electron Microprobe, Model SX-50. *Manufacturer:* Cameca Instruments, Inc., France. *Intended Use:* The instrument will be used for quantitative elemental microanalysis of polished rock and mineral specimens, ceramics, mineral particulates, metals and composite materials. Electron microprobe data will be used to determine various physical parameters (pressure, temperature, water content, solubilities) attendant to geologic processes in the earth's crust mantle. In addition, the instrument will be used for educational purposes in the courses: GEOL 128 "Advanced Mineralogy," GEOL 227 "Mineral Paragenesis" and GEOL 227L "Laboratory, Mineral Paragenesis." *Application Received by Commissioner of Customs:* December 18, 1992.

Docket Number: 92–189. *Applicant:* Scripps Clinic and Research Foundation, Scripps Research Institute, 10666 North Torrey Pines Road, La Jolla, CA 92037. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used in fundamental biological research involving peptides and proteins. Almost all of the research involves the identification of a post-translational modification and the precise location of that modified residue within the amino acid sequence of the peptide and/or protein. In particular, the research projects will make routine use of the most advanced commercially currently available reverse phase HPLC methods for the separation and direct introduction of proteins and peptides into the mass spectrometer. *Application Received by Commissioner of Customs:* December 18, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–2843 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DS-F

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Technical Team will hold a public meeting on February 16–19, 1993, at the Council's office (address below).

The meeting will begin on February 16 at 10 a.m. to draft the 1993 stock status report. This report will be distributed to the public about March 1, 1993, and reviewed at the Council meeting in Burlingame, California on March 9.

Oral or written statements pertaining to salmon abundance projections will be accepted at appropriate times during the meeting session.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: February 2, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–2866 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-22-M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Modification No. 1 to Permit No. 732 (P423A).

SUMMARY: On February 25, 1991, notice was published in the **Federal Register** (56 FR 7683) that Permit No. 732 had been issued to Dr. Mary L. Moser and Mr. Steve W. Ross.

Notice is hereby given that on February 2, 1993, as authorized by the provisions of the Endangered Species Act (16 U.S.C. 1531–1543) and the regulations governing endangered fish and wildlife (50 CFR parts 217–222), the National Marine Fisheries Service modified Permit No. 732 to extend the effective date through March 31, 1996.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit; (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

This Modification became effective upon signature.

The Permit and Modification documentation are available for review in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, MD 20910 (301/713–2289); and

Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: February 2, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2955 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTIONS: Issuance of Scientific Research Permit (P523).

On November 20, 1992, notice was published in the **Federal Register** (57 FR 54771) that an application had been filed by Adam Frankel, University of Hawaii at Manoa, Department of Oceanography, 1000 Pope Road, Honolulu, HI 96822, for a permit to approach up to 1000 humpback whales (*Megaptera novaeangliae*) annually over a five-year period during the course of acoustic playback experiments and photo-identification, observational studies.

Notice is hereby given that on February 1, 1993, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a permit to the above applicant to harass the species/numbers of marine mammals described above during the 1993 field season, subject to certain conditions set forth therein.

Issuance of this permit, as required by the Endangered Species Act of 1973, is based on the findings that the permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the Act. This permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The permit and associated documents are available for review, by appointment, in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90801–4213 (310/980–4016); and

Coordinator, Pacific Area Office, Southwest Region, National Marine Fisheries Service, NOAA, 2570 Dole Street, Honolulu, HI 96822–2396 (808/955–8831).

Dated: February 1, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2971 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Request for Modification of Permit No. 782 (P771#61).

Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, Northwest Region, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115–0070, requested a modification to Permit No. 782, issued on May 26, 1992 (57 FR 24597), as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782 currently authorizes studies of immune response in California sea lions. The applicant is now requesting authorization to recapture 50 of 200 previously immunized animals for further evaluation of the competence of their immune systems.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20910 (301/713–2289);

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700—Building 1, Seattle, WA 98115–0070 (206/526–6150); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016).

Dated: February 2, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2972 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

February 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56328, published on November 27, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on February 9, 1993, you are directed to amend the directive dated November 20, 1992 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
340/640	1,410,750 dozen.
341	3,160,655 dozen of which not more than 2,012,499 dozen shall be in Category 341–Y [2].
369–S [3]	480,000 kilograms.
641	990,200 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–2921 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit and Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

February 2, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and guaranteed access levels.

EFFECTIVE DATE: February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the 1993 guaranteed access levels for Categories 352/652 and 632. Also, in a Memorandum of Understanding dated January 15, 1993, the Governments of the United States and Jamaica agreed to convert the 1993 designated consultation level for Categories 352/652 to a specific limit at an increased level.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60512, published on December 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 2, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on February 9, 1993, you are directed to amend the December 15, 1992 directive to increase the limit for Categories 352/652 to 1,500,000 dozen [1].

Also, you are directed to increase the guaranteed access levels for the following categories:

Category	Amended guaranteed access level
352/652	8,000,000 dozen.
632	4,500,000 dozen pairs.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–2920 Filed 2–5–93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

OMB Clearance Request for Cost Impact Proposals

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44

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[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

U.S.C. ch. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection system pertaining to cost impact proposals submitted under cost Accounting Standards Administration requirements.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, Office of Management and Budget, New Executive Office Building, room 3235, 1725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230-5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions of changes in cost accounting practices and also to provide information on CAS-covered subcontractors.

The information is used by contracting officers to ensure that the contractors and subcontractors comply with pertinent CAS requirements.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *644;* responses per respondent, *2.27;* total annual responses, *1,462;* hours per response, *200;* and total response burden hours, *292,400.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of Office of Management and Budget applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington DC 20405, telephone (202) 501-4755. Please cite OMB clearance request regarding Cost Accounting Standards Administration, in all correspondence.

Dated: January 27, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 93-2855 Filed 2-5-93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Nuclear Agency

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Nuclear Agency will meet in closed session on February 18-19 at Lawrence Livermore National Laboratory, El Segundo, California and on March 4-5, 1993 at 1700 N. Moore Street, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the technology base program and technology application programs of the Defense Nuclear Agency (DNA) to determine the impact on national security of the possible cessation of underground nuclear weapons effects testing, and the planned reduction in developing new nuclear-survivable weapon systems.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 2, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 93-2834 Filed 2-5-93; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Global Surveillance; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Global Surveillance will meet in closed session on February 16-17, May 4-5, and July 7-8, 1993, in the Washington, DC area.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Director, Defense Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine and make recommendations on the global surveillance needs of the DoD for the future including: operational needs, systems architecture, system elements, and technologies.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 2, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-2835 Filed 2-5-93; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board; Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on March 10-11, May 12-13, and October 20-21, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: February 2, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93-2836 Filed 2-5-93; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board Meeting

The Mid Course Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 3 March 1993, at Huntsville, AL from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 93–2888 Filed 2–5–93; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

The Cruise Missile Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 18–19 March 1993, at The ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2885 Filed 2–5–93; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The Boost Phase Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 24 March 1993, at the ANSER Corporation, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2886 Filed 2–5–93; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on March 25–26, 1993, at The ANSER Corporation, Crystal Gateway 3, 1215 Jefferson Davis Highway, Arlington, VA from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2934 Filed 2–5–93; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board Meeting

The Mid Course Panel of the USAF Scientific Advisory Board's Committee on Options for Theater Air Defense will meet on 12 April 1993, at San Antonio, TX from 8 a.m. to 5 p.m.

The purpose of this meeting will be to receive briefings and gather information on issues related to theater air defense.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–2887 Filed 2–5–93; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Notice of Announcement of Dates, Locations, and Times for Public Scoping Meetings on the Programmatic Environmental Impact Statement for the Ground-Water Restoration Phase of the Uranium Mill Tailings Remedial Action Project

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) announced on November 18, 1992, (57 FR 54374–7) its intent to prepare a programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) to assess the potential environmental consequences of the alternatives for conducting a ground-water compliance program for inactive mill tailings sites under the Uranium Mill Tailings Radiation Control Act (UMTRCA), and to conduct a series of public scoping meetings. This **Federal Register** Notice supplements the November 18, 1992, issuance and provides the dates and locations for the public scoping meetings to be held in February, March, and April 1993.

DATES: The public is invited to submit comments on the scope of the Uranium Mill Tailings Remedial Action (UMTRA) Ground-Water PEIS. A total of 13 public scoping meetings are scheduled to be held to receive comments on the PEIS from December 1992 through April 1993. Two scoping meetings were conducted in December 1992; the dates and locations of the 11 remaining public scoping meetings are provided below under Locations of Public Scoping Meetings. The specific meeting places and times of the scoping meetings will be announced in local media at least 15 days before each planned meeting. To ensure consideration in preparation of the PEIS, comments should be postmarked by April 23, 1993. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Written comments on the scope of the UMTRA Ground-Water PEIS, requests to speak at the scoping meetings, and questions concerning the UMTRA Project should be directed to: Mr. Albert Chernoff, Project Manager, UMTRA Project Officer, U.S. Department of Energy, 5301 Central Avenue, NE., suite 1720, Albuquerque, New Mexico 87108, (505) 845–4628, Fax comments to: (505) 845–4023.

FOR FURTHER INFORMATION: For further information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: For the reader's convenience, the following summary is repeated from the Notice of Intent DOE published on November 18, 1992 (57 FR 54374–7), from which further details may be obtained.

Background

The purpose of the UMTRA Ground-Water PEIS is to develop a strategy for determining the appropriate ground-water compliance method(s) to be implemented at the 24 UMTRA Project sites. The UMTRA Ground-Water PEIS will include discussions of the potential methods of complying with the U.S. Environmental Protection Agency's ground-water cleanup standards, such as restoring ground water to background levels; restoring ground water to health-based levels referred to as maximum concentration limits; restoring ground water to less restrictive alternate concentration levels that would still protect human health and the environment; and applying site-specific supplemental standards. The PEIS will evaluate a range of ground-water remediation approaches and technologies, ranging from passive remediation methods such as natural flushing to active methods such as extraction and treatment of the contaminated ground water. The PEIS will assess the programmatic environmental impacts, including cumulative impacts, associated with the different alternatives. DOE intends to prepare additional NEPA documents [i.e., environmental assessments (EAs)] for UMTRA Project sites where ground-water compliance actions will be needed as specified in the PEIS Record of Decision (ROD). The EAs will tier off the PEIS and will incorporate other existing NEPA documents and technical reports by reference. These EAs will provide site-specific analyses of environmental issues such as floodplains and wetlands, cultural resources, threatened and endangered species, etc.

Public Scoping Meetings and Invitation to Comment

DOE is committed to providing opportunities for public involvement by individuals and organizations in this and other DOE planning activities. The public scoping process began with the November 18, 1992, **Federal Register** announcement that DOE will prepare a PEIS to assess the potential environmental consequences of the alternatives for conducting a ground-water compliance program for inactive mill tailings sites under UMTRCA. To ensure that a full range of issues related to ground-water compliance at the UMTRA Project sites is addressed, DOE invites oral and written comments on the proposed scope of the UMTRA Ground-Water PEIS from all interested parties. Written comments can be submitted without attending a public scoping meeting by sending the comments to the location specified above under **ADDRESSES**. Written comments will also be accepted at the scoping meeting. Written and oral comments will be given equal weight in defining the scope of the PEIS and issues to be addressed. As previously mentioned, to ensure consideration in preparation of the PEIS, written comments should be postmarked by April 23, 1993.

Comments received after this date will be considered to the extent practicable.

The scoping meetings will begin with a welcome and introduction, followed by short presentations by DOE officials on the PEIS process and the UMTRA Project. Interested individuals and organization spokespersons will then have an opportunity to present oral comments to DOE representatives. DOE will not conduct the scoping meetings as evidentiary hearings and will not cross-examine the speakers. However, DOE representatives may ask questions for clarification. Individuals requesting to speak on behalf of an organization must identify the organization. To ensure that all who wish to speak have an opportunity, a 5-minute limit will be imposed on each individual speaker and a 10-minute limit on speakers representing organizations. Comments will be recorded and will become part of the scoping meeting record. Speakers are encouraged to provide a written copy of their oral comments for the record during the meeting.

Before the public scoping meetings, DOE will conduct informal orientation meetings designed to facilitate the maximum possible interchange between the public and DOE. At these meetings, the public will be given a brief overview of the ground-water compliance phase of the UMTRA Project. The meetings will then be opened up to all participants for discussion. The dates, times, and locations of these meetings will be announced in the local media.

After the public scoping process is complete, an UMTRA Ground-Water PEIS Implementation Plan (IP) will be prepared and made available to the public. The IP will record the results of the scoping process and describe the alternatives and issues to be evaluated in the UMTRA Ground-Water Project PEIS. DOE intends to complete the draft PEIS by late 1993. Availability of the draft PEIS will be announced in the **Federal Register**, and public comments will be solicited. Comments on the draft PEIS will be considered in identifying and evaluating issues and alternatives and in preparing the final UMTRA Ground-Water Project PEIS. DOE expects to issue the final PEIS, including responses to public comments received on the draft PEIS, by late 1994. DOE will select a remedial action alternative in the ROD to be issued no sooner than 30 days after the final PEIS is issued. Following completion of the UMTRA Ground-Water Project PEIS and ROD, a Mitigation Action Plan (MAP) that addresses mitigation commitments expressed in the ROD will be prepared. No action directed by the ROD that is the subject of a mitigation commitment will take place before the MAP is prepared.

When completed, copies of the scoping meeting transcripts, the IP, and major references used in preparing the UMTRA Ground-Water PEIS will be available at the DOE Public Reading Room, DOE National Atomic Museum, Kirtland Air Force Base, Building 20358, Albuquerque, NM 87185–5400, Monday through Friday, during business hours (9 a.m. to 5 p.m.). The transcript of each scoping meeting will also be made available for inspection at the DOE Freedom of Information Reading Room (room 1E–190), Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, during business hours (9 a.m. to 4 p.m.).

Those persons who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft PEIS for review and comment should notify Mr. Albert Chernoff at the address listed above.

Location of Public Scoping Meetings

Public scoping meetings will be held in 13 locations; the first two scoping meetings were held in Falls City, Texas, and Durango, Colorado, on December 8, 1992, and December 10, 1992, respectively.

The 11 remaining public scoping meetings will be held at the locations and dates provided below. Times and specific meeting places will be announced in the local public media at least 15 days in advance of the planned meetings.

Gunnison, Colorado—February 24, 1993
Riverton, Wyoming—March 9, 1993

Bowman, North Dakota—March 18, 1993
Window Rock, Arizona—March 23, 1993
Tuba City, Arizona—March 24, 1993
Moenkopi, Arizona—March 25, 1993
Canonsburg, Pennsylvania—April 1, 1993
Rifle, Colorado—April 6, 1993
Grand Junction, Colorado—April 8, 1993
Salt Lake City, Utah—April 13, 1993
Lakeview, Oregon—April 15, 1993

Issued in Washington, DC, this 3d day of February, 1993.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93-2967 Filed 2-5-93; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. QF87-429-002]

Onondaga Cogeneration Limited Partnership; Supplement to Filing

February 2, 1993.

On January 29, 1993, Onondaga Cogeneration Limited Partnership (Applicant) tendered for filing a second supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by February 19, 1993, and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2942 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-338-000, et al.]

Rochester Gas & Electric Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 29, 1993.

Take notice that the following filings have been made with the Commission:

1. Rochester Gas and Electric Corp.

[Docket No. ER93-338-000]

Take notice that on January 25, 1993, Rochester Gas and Electric Corporation, a member of the New York Power Pool (NYPP), filed with the Commission the Station 80 Capacitor Facilities Agreement between itself and the other members of NYPP. Under this Agreement, Rochester will purchase, own, install, operate and maintain a 345 kV capacitor bank and associated facilities (Capacitor) installed on the 345 kV bus of the Station 80 terminal of the NYPP cross-state 345 kV transmission system, will be reimbursed for the annual charges on the Capacitor and for expenses incurred by it in the installation, maintenance and operation thereof.

Rochester requests that the proposed amendment be made effective as of January 1, 1991, and states that all parties to the Agreement have agreed to the proposed effective date. Rochester further states that copies of the filing were served on the parties and on the New York State Public Service Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corp.

[Docket Nos. ER93-238-000, ER93-239-000, ER93-240-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on January 25, 1993, tendered for filing amendments to its filing of the Forecast 1993 Cost Reports in the referenced dockets to reflect a return on common equity of 10.9% in all three cost repairs.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PSI Energy, Inc.

[Docket No. ER92-653-000]

Take notice that PSI Energy, Inc. (PSI) and Indianapolis Power & Light Company (IP&L) on January 25, 1993, tendered for filing amended Service Schedules to the FERC Filing in Docket No. ER92-653-000 to comply with a Letter Order dated October 27, 1992.

Copies of the filing were served on Indianapolis Power and Light Company and the Indiana Utility Regulatory Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Electric Power Co.

[Docket No. ER93-21-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on January 26, 1993, tendered for filing an amendment to its October 14 filing in this docket. The amendment contains cost documentation and a one-line diagram in response to the Director of the Division of Application's deficiency letter dated December 31, 1992.

Wisconsin Electric renews its request for an effective date of December 14, 1990. Wisconsin Electric is authorized to state that Wisconsin Public Service Corporation (WPS) joins in the requested effective date.

Copies of the filing have been served on WPS, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: February 12, 1993, in accordance with Standard paragraph E at the end of this notice.

5. Iowa Power Inc.

[Docket No. ER92-228-000]

Take notice that on January 7, 1993, Iowa Power Inc. (Iowa Power) tendered for filing the third amendment to the original filing for this docket dated January 27, 1992.

Iowa Power states that the third amendment to the filing provides for a fully executed Exhibit F of the General Facilities Agreement between Midwest Power and Central Iowa Power Cooperative (CIPCO).

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Yankee Atomic Power Co.

[Docket Nos. ER93-85-001 and EL93-7-001]

Take notice that on January 21, 1993 Connecticut Yankee Atomic Power Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corp.

[Docket No. ER93-333-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk) on January 19, 1993, tendered for filing an agreement between Niagara Mohawk and Northeast Utilities Services Company (NUSCO) dated December 10, 1992 providing for certain transmission services to NUSCO.

An effective date of March 22, 1993 is proposed.

Copies of this filing were served upon NUSCO and the New York State Public Service Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Co.

[Docket No. ER93-183-000]

Take notice that on January 1, 1993, Puget Sound Power & Light Company (Puget) tendered for filing information relating to service under Rate Schedule FERC No. 78 or construction, relocation, operation, maintenance or ownership of facilities by Puget or the City of Seattle (Seattle). A copy of the filing was served upon Seattle.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Big Three Industries, Inc.

[Docket No. QF93-40-000]

On January 15, 1993, Big Three Industries, Inc. of 3535 West 12th Street, Houston, Texas 77008, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located in Port Neches, Texas, and will consist of a combustion turbine generator and a supplementary fired heat recovery boiler (HRB). Steam recovered from the HRB will be used by Texaco Chemical Corp. for manufacturing of basic chemicals. The electric power production capacity of the facility will be approximately 38 MW. The Primary energy source will be natural gas. Construction of the facility commenced in December 1, 1992.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Rye Patch Limited Partnership

[Docket No. QF92-186-002]

On January 21, 1993, Rye Patch Limited Partnership of Building One, Suite 255, 4000 Kruse Way Place, Lake Oswego, Oregon 97035, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The geothermal small power production facility will be located near Lovelock, in Pershing County, Nevada. The net electric power production will be approximately 15 MW. The primary energy source will be geothermal brine and steam.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Orlando CoGen Limited, L.P.

[Docket No. QF91-233-003]

On January 22, 1993, Orlando CoGen Limited, L.P. 7201 Hamilton Boulevard, Allentown, Pennsylvania 18195-1501, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Orange County, Florida. The Commission previously certified the facility as a qualifying cogneration facility, Orlando CoGen Limited, L.P., 58 FERC ¶ 62,166 (1992). The instant request for recertification is due to a change in ownership. Through subsidiaries, UtiliCorp United Inc., an electric utility will have a 50% interest in the facility.

Comment date: March 10, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Arizona Public Service Company

[Docket No. ER93-337-000]

Take notice that on January 25, 1993, Arizona Public Service Company (APS) tendered for filing revised estimated load and contract demand Exhibits applicable under the following rate schedules:

APS-FPC/ FERC No.	Customer	Exhibit name
66	San Carlos Irrigation Project.	Exhibit "A".
140	Electrical District No. 8.	Exhibit "II".
143	Tonopah Irrigation District.	Exhibit "II".
153	Harquahala Valley Power District.	Exhibit "II".
155	Buckeye Water Cons. & Drainage District.	Exhibit "II".
158	Roosevelt Irrigation District.	Exhibit "II".
166	Maricopa Water District.	Exhibit "II".

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

A copy of this filing has been served on the above customers and the Arizona Corporation Commission.

Comment date: February 12, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-2862 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93-173-000, et al.]

Williams Natural Gas Co. et al.; Natural Gas Certificate Filings

January 29, 1993.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Co.

[Docket No. CP93-173-000]

Take notice that on January 22, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93-173-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to abandon the sale of gas for resale to The Town of Gate, Oklahoma, in Beaver County, Oklahoma, under its blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG states that The Town of Gate has requested cancellation of its firm sales agreement under WNG's Rate

Schedule F. It is stated that the most recent annual volume of gas delivered to The Town of Gate for resale was 4,643 dekatherms with a peak day volume of 950 dekatherms. It is further stated that annual transportation volumes for the same period were 4,805 dekatherms with a peak day volume of 510 dekatherms.

WNG states that The Town of Gate has an existing firm transportation agreement which will take the place of the resale sales agreement effective January 1, 1993. It is stated that the firm transportation agreement was reported in Docket No. ST92–988–000. It is further stated that all facilities will remain in place and will be available for the delivery of transportation gas.

Comment date: March 16, 1993, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP93–181–000]

Take notice that on January 26, 1993, Arkla Energy Resources (AER), a division of Arkla, Inc. (Arkla), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP93–181–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate six existing intrastate pipeline interconnections as jurisdictional facilities under its blanket certificates issued in Docket Nos. CP88–820–000, CP82–384–000 and CP82–348–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER states that it seeks authority to operate, under subpart G of part 284 of the Commission's Regulations, the following six existing interconnections with intrastate pipelines which were initially constructed solely to provide services authorized under section 311 of the Natural Gas Policy Act and Subpart B of the Commission Regulations: (1) An interconnection with Louisiana Intrastate Gas Corporation located in Section 32, Township 20 North, Range 4 East, Ouachita Parish, Louisiana constructed at a cost of $51,844.40; (2) an interconnection with Concord Pipeline located in Section 39, Township 20 North, Range 4 East, Ouachita Parish, Louisiana constructed at a cost of $97,058.98; (3) an interconnection with Intersearch Gas Corporation located in A–3 Gray B. King Survey, Wood County, Texas constructed at a cost of $17,836.63; (4) an interconnection with Red River Pipeline located in Section 27, Block M–1, H&GN Survey, Hemphill County, Texas constructed at a cost of $2,357,823.27; (5) an interconnection with Pine Pipeline Company located in Section 23, Township 18 North, Range 2 East, Ouachita Parish, Louisiana constructed at a cost of $163,554.95; and (6) an interconnection with Delhi Gas Pipeline Corporation located in Section 25, Township 14 North, Range 15 West, Custer County, Oklahoma constructed at a cost of $7,824.28.

Comment date: March 16, 1993, in accordance with Standard Paragraph G at the end of this notice.

3. Columbia Gas Transmission Corp.

[Docket No. CP93–164–000]

Take notice that on January 21, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP93–164–000 a request pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon certain natural gas facilities, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia states that it would abandon from service a leased 880–horsepower compressor unit located in Suffolk, Virginia. It is stated that the unit was originally installed for standby service by Commonwealth Gas Pipeline Corporation, Columbia's predecessor. It is also stated that the need for standby service was eliminated with completion of Columbia's line between its Petersburg Compressor Station and Emporia Compressor Station.

It is estimated said proposal would reduce Columbia's lease expenses by $9,500 per month. It is further stated the execution of said proposal would cost approximately $90,000. Columbia is proposing to charge said cost to an expense account.

Comment date: February 19, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Colorado Interstate Gas Co. and Questar Pipeline Co.

[Docket No. CP93–182–000]

Take notice that on January 26, 1993, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, and Questar Pipeline Company (Questar), P.O. Box 11450, Salt Lake City, Utah 84147, filed jointly in Docket No. CP93–182–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain services involving the transportation and exchange of natural gas,[1] all as more fully set forth in the application on file with the Commission and open to public inspection.

CIG and Questar propose to abandon the services performed by the parties pursuant to an agreement dated December 8, 1980, on file as CIG's Rate Schedule X–49 and Questar's Rate Schedule X–32. It is stated that the agreement provides for the transportation and exchange of natural gas supplies which are remote from each party's transmission system but which are located in the vicinity of the other party's transmission system. It is further stated that the parties have agreed to terminate the agreement on the expiration of the primary term, April 1, 1993, and to replace any required transportation services provided thereunder with open-access transportation services. Also, it is stated that this abandonment proposal is consistent with Questar's settlement negotiations in Docket No. RP91–140. CIG and Questar thus request that abandonment authorization be made effective on April 1, 1993.

It is stated that no facilities are proposed to be abandoned.

Comment date: February 19, 1993, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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[1] See 21 FERC ¶ 6 ,197 (1982).

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2863 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-661-023]

Algonquin Gas Transmission Co.; Notice of Application

February 2, 1993.

Take notice that on February 1, 1993, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed an application under section 7(c) of the Natural Gas Act requesting authority to amend a certificate of public convenience and necessity issued to it on June 26, 1990, in Docket No. CP89-661-000 and 001 (51 FERC ¶ 61,359 (1990)) and on October 9, 1991, in Docket No. CP89-661-004 (57 FERC ¶ 61,048 (1991)). Algonquinproposes to substitute 18-inch pipe for 24-inch pipe previously authorized for the Providence Harbor crossing and to make minor modifications to the meter station at the Manchester Street electric generating station of New England Power Company (NEP) in Providence, Rhode Island, if necessary, to compensate for any discernible reduction in pressure on the harbor crossing from the use of 18-inch pipe. A copy of Algonquin's application is on file at the Commission and is open for public inspection.

Algonquin has been authorized to construct a 3.9 mile, 24-inch lateral for service to NEP at its Manchester Street electric generating station. The Manchester Street lateral includes a 4,000 foot segment that runs underneath Providence Harbor. As a result of problems encountered by Algonquin in reaming a 36-inch hole underneath Providence Harbor in order to accommodate the 24-inch pipeline, Algonquin has decided to substitute 18-inch pipe for the 24-inch pipe originally authorized for the crossing. According to Algonquin, the modifications will still allow certificated service to NEP, thus enabling Algonquin to deliver full contract volumes at 350 psig.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2940 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-31-000]

Arkla Energy Resources; Notice of Annual PGA Filing

February 2, 1993.

Take notice that on January 29, 1993, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of the following revised tariff sheets to become effective April 1, 1993:

Rate Schedule No. X-28

Original Volume No. 3
Twenty-Second Revised Sheet No. 185.1

Rate Schedule No. G-2

Second Revised Volume No. 1
Seventeenth Revised Sheet No. 11

Rate Schedule No. CD

Second Revised Volume No. 1
Seventeenth Revised Sheet No. 16

These tariff sheets reflect AER's fifth Annual PGA filing made pursuant to the Commission's rules under Order Nos. 483 and 483-A.

The proposed changes reflect a decrease in AER's system cost of $994,573.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before February 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2939 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-70-000]

Black Marlin Pipeline Co.; Proposed Changes to FERC Gas Tariff

February 2, 1993.

Take notice that on January 29, 1993 Black Marlin Pipeline Company (Black Marlin) tendered for filing to become part of its FERC Gas Tariff the following tariff sheet to be effective March 1, 1993:

Third Revised Sheet No. 4

Black Marlin states that it is making this filing to (1) provide an increase in rates for its transportation services and (2) effectuate a Straight Fixed Variable cost classification, allocation, and rate design.

The tariff sheet filed herein reflects rates necessary to recover annual operating costs which Black Marlin expects to incur in performing service under its existing rate schedules, utilizing a base period ended October 31, 1992, adjusted for known and measurable changes anticipated to occur during the nine-month period ending July 31, 1993.

The proposed rates are based on an overall cost of service for Black Marlin's jurisdictional services of $3.85 million (exclusive of the cost of service associated with Black Marlin's onshore

311 facilities and Webb County), as compared to a cost of service of $3.57 million underlying the currently effective rates. Absent the instant rate case, Black Marlin would realize a revenue deficiency of $1.4 million as indicated by comparing the proposed rates with the currently effective rates applied to the test period volumes.

The major reasons for the proposed rate increase are (1) increases in operation and maintenance expenses; (2) an increase in Black Marlin's return on its net investment; and (3) a decrease in test period annual throughput to 27,042,046 based on known and measurable declines in the deliverability in the production area to which Black Marlin is connected.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2948 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-4-63-000 and TM93-4-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that on January 29, 1993, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Fortieth Revised Sheet No. 8
Fortieth Revised Sheet No. 9

Carnegie states that pursuant to Sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect changes in its projected purchased gas costs and projected Account No. 858 costs.

The revised rates are proposed to become effective March 1, 1993, and reflect the following changes from Carnegie's last quarterly PGA filing in Docket No. TQ93-2-63-000, which the Commission approved by Letter Order issued on November 24, 1992: a $0.2431 per dth decrease in the demand rate, a $0.7175 per dth decrease in the commodity rate, and a $0.0080 per dth decrease in the DCA rate of its CDS and LVWS rate schedules; a $0.7255 per dth decrease in the maximum commodity rate and a $0.7175 per Dth decrease in the minimum commodity rate under Rate Schedule SEGSS. The revised tariff sheets also reflect a TCA rate increase of $0.0514 per Dth, from $0.1202 per Dth to $0.1716 per Dth, as compared to Carnegie's most recent TCA filing in Docket No. TM93-2-63-000, filed on October 30, 1992 in conjunction with Carnegie's last quarterly PGA.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 93-2949 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-5-027]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on January 22, 1993, filed the following tariff sheet for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Twenty-Second Revised Sheet No. 34

The Commission's June 5, 1990 Order (51 FERC ¶ 61,267) certificated the final portion of the APEC Project involving the construction and operation of CNG's North Summit Storage Pool.

CNG states that the purpose of this filing is to comply with Ordering Paragraph (M) of the Commission's Order of June 5, 1990, by changing the currently effective Rate Schedule GSS-II initial rates to reflect the actual cost of the North Summit base gas.

CNG states that copies of this filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2945 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-69-000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on January 27, 1993, submitted Sixth Revised Sheet No. 38, for filing in First Revised Volume No. 1 of CNG's FERC Gas Tariff.

CNG states that this tariff sheet is proposed to become effective on February 28, 1993. CNG requests waiver of § 154.22, of the Commission's Regulations, as well as any other waivers as may be required to permit this tariff sheet to become effective as proposed.

CNG states that the purpose of this filing is to recover seventy-five percent of $461,054 in take-or-pay costs paid to producer suppliers. CNG will absorb twenty-five percent of these take-or-pay costs, recover an equivalent twenty-five percent of such costs through a directly-billed charge for one month, and recover the remaining fifty percent of such costs from commodity throughput. CNG states that directly billed costs will be allocated to each sales customer, in accordance with provisions of CNG's Settlement in Docket No. RP88-217.

CNG states that copies of this filing were served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 and 385.211. All motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2946 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–3–22–000]

CNG Transmission Corp., Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that CNG Transmission Corporation ("CNG"), on January 29, 1993, pursuant to section 4 of the Natural Gas Act, part 154 of the Commission's Regulations, and Section 12 of the General Terms and Conditions of CNG's tariff, tendered for filing Tenth Revised Sheet No. 44, for First Revised Volume No. 1 of its FERC Gas Tariff.

CNG requests an effective date for the proposed tariff sheet of February 28, 1993.

CNG states that the purpose of this filing is to flow through to CNG's customers changes in take-or-pay costs allocated to CNG by Tennessee Gas Pipeline Company ("Tennessee"). On December 1, 1992, Tennessee filed tariff sheets in Docket Nos. RP93–37–000, RP93–37–001, and TM93–2–9–000, in part to recover fifty percent of an additional $2 million in take-or-pay settlement costs, including interest. By order issued December 31, 1992, the Commission approved Tennessee's tariff sheets, subject to refund and conditions, effective January 1, 1993.

CNG states that copies of this filing have been mailed to CNG's customers and interested state commissions. Also, copies of this filing are available during regular business hours at CNG's main offices in Clarksburg, West Virginia.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2947 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TF93–4–21–000 and TQ93–3–21–001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 29, 1993, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to become effective:

February 1, 1993

Thirty-third Revised Sheet No. 26
Twenty-sixth Revised Sheet No. 26.1
Thirty-first Revised Sheet No. 26A
Twenty-sixth Revised Sheet No. 26A.1
Twenty-sixth Revised Sheet No. 26B
Twenty-first Revised Sheet No. 26B.1
Twenty-eighth Revised Sheet No. 26C
Fifteenth Revised Sheet No. 26C.1
Twenty-second Revised Sheet No. 26D
Twenty-ninth Revised Sheet No. 163

The instant filing reflects revisions to Columbia's filed-for rates for (i) an Interim Purchased Gas Adjustment (PGA) and (ii) the elimination of certain surcharges pursuant to ordering Paragraph (C) of the Commission's January 28, 1993 order in Docket Nos. TQ93–3–21–000 and TM93–8–21–000.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2950 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–3–24–000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

February 2, 1993.

Take notice that Equitrans, Inc. (Equitrans) on January 29, 1993, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective March 1, 1993.

Second Revised Sub Forty-Second Revised Sheet No. 10
Third Revised Thirtieth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's Regulations and Section 19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing to the purchased gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.0356 per dekatherm (Dth) and a decrease in the commodity cost of $0.6378 per Dth. The purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.5993 per Dth.

Pursuant to § 154.51 of the Commission's Regulations, Equitrans requests that the Commission grant any waivers necessary to permit the tariff sheets contained herein to become effective on March 1, 1993.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2951 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-53-000]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that K N Energy, Inc. ("K N") on January 29, 1993 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1-B to reflect changes in the Current Adjustment. The filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.1751)	$(0.1751)
D1 Demand	0.0002	0.0003
D2 Demand	0.0039	0.0053
WPS Demand	0.0004	0.0006
IOR Commodity	(0.1710)	0.1695)

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending May 31, 1993. The proposed effective date for the rate changes is March 1, 1993.

K N states that copies of the filing have been served to K N's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before February 9, 1993, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2952 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-15-000]

Mid Louisiana Gas Co.; Notice of Proposed Change of Rates

February 2, 1993.

Take notice that Mid Louisiana Gas Company ("Mid Louisiana") on January 29, 1993, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheet to become effective March 1, 1993:

Superseding

Ninety-Fifth Revised Sheet No. 3a
Ninety-Fourth Revised Sheet No. 3a

Mid Louisiana states that the purpose of the filing of Ninety-Fifth Revised Sheet No. 3a is to reflect a $0.2832 per MCF decrease in its current cost of gas.

This filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff. Copies of this filing have been mailed to Mid Louisiana's Jurisdictional Customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a Petition to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All such petitions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a Petition to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2938 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-6-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

February 2, 1993.

Take notice that on January 29, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing Sixth Revised Eighty-Third Revised Sheet No. 4, and Sixth Revised Forty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective February 1, 1993. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that Sixth Revised Eighty-Third Revised Sheet No. 4 and Sixth Revised Forty-Second Revised Sheet No. 4.1 reflect a decrease of 36.90 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed on December 30, 1992 to be effective January 1, 1993, in Docket No. TQ93-5-25-000. MRT also states that since the December 30, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-2943 Filed 2-5-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-7-25-000]

Mississippi River Transmission Corp.; Rate Change Filing

February 2, 1993.

Take notice that on January 29, 1993 Mississippi River Transmission Corporation (MRT) tendered for filing Seventh Revised Eighty-Third Revised Sheet No. 4, and Seventh Revised Forty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised

Volume No. 1 to be effective March 1, 1993.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and Paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that it is also adjusting the level of Account No. 858 expenses included in the average commodity cost of gas pursuant to the Transportation Cost Recovery Mechanism set forth in Article V of the Stipulation and Agreement in Docket No. RP89–248 approved by Commission order dated August 7, 1991. MRT states that the impact of the instant filing on its Rate Schedule CD–1 rates is an increase of 10.89 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA effective February 1, 1993 in Docket No. TQ93–6–25–000.

MRT states that a copy of the filing is being mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2944 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–55–000]

Questar Pipeline Co.; Notice of Rate Change

February 2, 1993.

Take notice that on January 29, 1993, Questar Pipeline Company tendered for filing and acceptance to be effective March 1, 1993, Twenty-Fourth Revised Sheet No. 12, to Original Volume No. 1 of its FERC Gas Tariff.

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD–1 effective March 1, 1993.

Questar states that the Twenty-Fourth Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.54292/Dth which is $0.18072/Dth higher than the currently effective rate of $2.36220/Dth. The demand base cost of purchased gas remained unchanged at $0.00000/Dth.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company, the Utah Public Service Commission and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2937 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–17–000]

Tennessee Gas Pipeline Co.; Settlement Conference

February 2, 1993.

In the Commission's order issued on December 3, 1992, in the above-captioned proceeding, the Commission held that the filing raises issues for which a settlement conference is to be reconvened. All parties should come prepared to discuss settlement, and the parties should be represented by principals who have the authority to commit to a settlement. The conference to address the issues has been scheduled for Thursday, February 11, 1993, at 2 p.m., in room 2402–A, at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2941 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–30–000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that Trunkline Gas Company (Trunkline) on January 29, 1993 tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1:

Ninety-Ninth Revised Sheet No. 3–A

The proposed effective date of this revised tariff sheet is March 1, 1993.

Trunkline states that the instant filing reflects a commodity rate increase of 1.38¢ per Dt in the projected purchased gas cost component.

Trunkline states that the tariff sheet is being filed in accordance with § 154.308 (quarterly PGA filing) of the Commission's Regulations and pursuant to Section 18 (Purchase Gas Adjustment Clause) of the General Terms and Conditions in Trunkline's FERC Gas Tariff, Original Volume No. 1. Trunkline states that copies of this filing have been served on all jurisdictional sales customers and applicable state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2954 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–2–56–000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

February 2, 1993.

Take notice that Valero Interstate Transmission Company ("Vitco"), on January 29, 1993 tendered for filing the following tariff sheet as required by Orders 483 and 483–A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2

8th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483–A. The change in rates to Rate Schedule S–3 includes a decrease in purchased gas cost of $1.0628 per MMBtu as compared to the previously scheduled quarterly PGA filing in Docket No. TQ93–1–56.

The proposed effective date of the above filing in March 1, 1993. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by March 1, 1993.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–2953 Filed 2–5–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4546–5]

Proposed Settlement; Asbestos NESHAP

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

Editorial Note: This document, appearing at page 59997 in the **Federal Register** of December 17, 1992, was incorrectly described in that issue's table of contents. For this reason, the document is republished in full text below. In addition, the 30-day comment period has been recalculated; see "DATES" caption.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, notice is hereby given of a proposed Settlement Agreement conditionally entered into by the United States Environmental Protection Agency ("EPA") on November 30, 1992, in litigation concerning the National Emission Standards for Hazardous Air Pollutants for Asbestos ("Asbestos NESHAP") (40 CFR 61.141–61.159). For a period of thirty days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. EPA or the Department of Justice is authorized under section 113(g) to withdraw its consent to the Settlement Agreement if appropriate in light of the public comments.

DATES: Written comments on the Settlement Agreement must be received by March 10, 1993.

ADDRESSES: Written comments should be sent preferably in triplicate, to Michael Horowitz, Air and Radiation Division (LE–132A), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–8883. Copies of the Settlement Agreement are available from Michael Horowitz at the same address. A copy of the settlement has been lodged with the Clerk of the United States Court of Appeals for the District of Columbia Circuit.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Ripp (703) 308–8727 at the United States Environmental Protection Agency, Office of Air Quality Planning and Standards, Stationary Source Compliance Division.

SUPPLEMENTARY INFORMATION: In *Safe Buildings Alliance* v. *U.S. Environmental Protection Agency,* No. 91–1034 (D.C. Cir.), the petitioner seeks review of EPA's November 20, 1990 Final Rule amending the national emission standard for asbestos under section 112 of the Clean Air Act, 55 FR 48406 (Nov. 20, 1990), codified at 40 CFR part 61. EPA and the petitioner have entered into a conditional Settlement Agreement that includes a Notice of Clarification that will be published in the **Federal Register** if this Settlement Agreement is made final.

Section 113(g) of the Clean Air Act (42 U.S.C. 7413(g)) requires, with exceptions not pertinent here, that EPA publish notice of settlement agreements in the **Federal Register** and provide a reasonable opportunity for public comment. EPA or the Department of Justice may withhold consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate or inconsistent with the requirements of the Clean Air Act.

Dated: December 3, 1992.

Raymond B. Ludwiszewski,

Acting General Counsel.

[FR Doc. 92–30654 Filed 12–16–92; 8:45 am]

BILLING CODE 1505–01–M

[FRL–4591–9]

Science Advisory Board Ecological Processes and Effects Committee Biotechnology Research Review Subcommittee; Open Meeting

Pursuant to the Federal Advisory Committees Act, Public Law 92–463, notice is hereby given that the Biotechnology Research Review Subcommittee (the Subcommittee) of the Ecological Processes and Effects Committee of the Science Advisory Board will meet on February 18–19, 1993, at the EPA Environmental Research Laboratory, 1 Sabine Drive, Gulf Breeze, FL 32561–5299. The meeting is open to the public, and will begin on both days at 8:30 a.m. and end no later than 5 p.m. on February 19. Seating at the meeting will be on a first come basis.

Background

The Subcommittee will meet to review the research program for Environmental Releases of Biotechnology Products, including the on-going research program and a revised Research Issue Plan. As part of the Charge to the Subcommittee, the Agency has requested that the SAB answer the following questions:

1. Has the scientific productivity been consistent with available resources and responsive to the mission of the program?
2. Has the extramural portion of the program been used effectively to fill knowledge gaps and supplement in-house expertise?
3. Has there been sufficient interaction with other research programs (nationally and/or internationally) to ensure top level scientific exchange and minimize redundant efforts?
4. Have the research results demonstrated an effective level of project integration?
5. Considering current approaches to assessing environmental releases of biotechnology products, vis a vis the burgeoning industry, is the research plan consistent with the state of the science, and does it reflect appropriate balance in research on effects, detection, gene transfer, and survival?
6. Does the proposed research plan identify appropriate knowledge gaps and priority research needs?

7. Is the proposed research on genetically engineered plants with pesticidal activity appropriately focused? What other research in this area should be considered?

Availability of Documents and Information

Single copies of background documents for this review are available from Dr. Robert Menzer, U.S. EPA, Environmental Research Laboratory, 1 Sabine Drive, Gulf Breeze, FL 32561–5299, telephone (904) 934–9208. For additional information concerning this meeting or to obtain a draft agenda, please contact Ms. Stephanie Sanzone, Designated Federal Official, or Mrs. Marcia Jolly, Staff Secretary, at (202) 260–6552, Ecological Processes and Effects Committee, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Anyone wishing to make a presentation at the meeting must notify Mrs. Jolly and forward twenty-five copies of a written statement to her no later than February 10, 1993. Oral comments to the Subcommittee will be limited to five minutes per individual, and should not be repetitive of previously submitted written statements.

Dated: January 21, 1993.

Samuel R. Rondberg,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–2962 Filed 2–5–93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks).

Form Number: FFIEC 031, 032, 033, 034.

OMB Number: 3064–0052.

Expiration Date of OMB Clearance: December 31, 1993.

Respondents: Insured state nonmember commercial and savings banks.

Frequency of Response: Quarterly.

Number of Respondents: 7,495.

Number of Responses per Respondent: 4.

Total Annual Responses: 29,980.

Average Number of Hours per Response: 24.6.

Total Annual Burden Hours: 737,424.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0052, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before March 10, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: These revisions to the Consolidated Reports of Condition and Income (Insured State Nonmember Commercial and Savings Banks) are summarized as follows.

(1) New items would be added to Schedule RC–N, "Past Due and Nonaccrual Loans, Leases, and Other Assets," to collect data on loans and leases that are past due 30 through 89 days, past due 90 days or more, or are in nonaccrual status but are wholly or partially guaranteed by the U.S. Government. The items in which banks currently report the totals for their past due and nonaccrual assets would be deleted.

(2) A memorandum item would be added to schedule RC–F, "Other Assets," for "Deferred tax assets disallowed for regulatory capital purposes."

(3) An item would be added to schedule RC–M, "Memoranda," for "Intangible assets that have been grandfathered for regulatory capital purposes" to replace two items on intangibles that have been applicable only to national banks.

Dated: February 2, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–2847 Filed 2–5–93; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Guidance Memorandum RG–2, Guidelines for Regional Implementation of FEMA's Rule, 44 CFR Part 352; Availability

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of availability.

SUMMARY: The Federal Emergency Management Agency (FEMA) draft Guidance Memorandum (GM) RG–2 is available to all interested parties for review and comment. This document provides FEMA policies and procedures for FEMA Regional Office implementation of Executive Order 12657 to ensure that offsite radiological emergency planning and preparedness are in place to meet the Nuclear Regulatory Commission's (NRC) licensing requirements for commercial nuclear power plants where State and local governments decline or fail to participate adequately in such planning and preparedness.

DATES: Comments should be sent to FEMA before May 14, 1993.

ADDRESSES: Comments on these documents should be addressed to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. Please refer to "Guidance Memorandum RG–2" in your response.

FOR FURTHER INFORMATION CONTACT: William F. McNutt, Office of Technological Hazards, State and Local Programs and Support, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2857.

SUPPLEMENTARY INFORMATION: The FEMA rule that provides policies and procedures for implementing Executive Order 12657 was published August 2, 1989, 54 FR 31925, and is codified at 44 CFR part 352. Guidance for FEMA Regional Office implementation of this rule is necessary to comply with this Executive Order and to carry out FEMA's responsibilities under 44 CFR part 352. Copies are being distributed to all FEMA Regions, the NRC's commercial nuclear power plant licensees, and other REP Program constituents for their review and comment.

As mandated by this Executive Order, 44 CFR part 352 sets forth major new responsibilities for FEMA Headquarters and Regions when an NRC licensee or applicant provides written certification of nonparticipation or inadequate participation by State and local governments in offsite planning and preparedness. This draft GM RG–2 outlines the FEMA Regional Office responsibilities under the new rule and establishes policies and procedures to be followed when consulting, coordinating and interacting with FEMA Headquarters, other Federal agencies, NRC licensees or applicants and State and local government regarding situations where the provisions of 44 CFR part 352 need to be implemented.

Policies and procedures are described in the GM for the following functions: (1) Processing licensee letters of certification and requests for Federal assistance, (2) providing recommended determinations to FEMA Headquarters, (3) coordinating the provisions of Federal technical assistance to licensees and participating State and local governments, (4) evaluating licensee offsite radiological emergency planning and procedures, and (5) making arrangements for the provision of Federal compensatory facilities and resources.

Comments received by FEMA on this document will be considered and incorporated, as appropriate, into the development of the final published GM RG–2.

Dated: February 1, 1993.

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–2932 Filed 2–5–93; 8:45 am]

BILLING CODE 6718-20-M

FEDERAL MARITIME COMMISSION

Asia North America Eastbound Rate Agreement et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–076.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.,
Hapag-Lloyd Aktiengesellschaft,
Kawasaki Kisen Kaisha, Ltd.,
A.P. Moller-Maersk Line,
Mitsui O.S.K. Lines, Ltd.,
Neptune Orient Lines, Ltd.,
Nippon Yusen Kaisha Line,
Orient Overseas Container Line, Ltd.,
Sea-Land Service, Inc.

Synopsis: The proposed amendment deletes Hapag-Lloyd Aktiengesellschaft as a party to the subcontinent trade section of the Agreement. It also modifies the provisions governing payment of fees and expenses as specified in Appendices B and D.

Agreement No.: 202–010776–077.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.,
Hapag-Lloyd Aktiengesellschaft,
Kawasaki Kisen Kaisha, Ltd.,
A.P. Moller-Maersk Line,
Mitsui O.S.K. Lines, Ltd.,
Neptune Orient Lines, Ltd.,
Nippon Yusen Kaisha Line,
Orient Overseas Container Line, Ltd.,
Sea-Land Service, Inc.

Synopsis: The proposed amendment revises the rules governing the participation of new members in existing Agreement service contracts.

Agreement No.: 224–004070–007.

Title: San Francisco/Stevedoring Services of America Terminal Agreement.

Parties:

San Francisco Port Commission,
Stevedoring Services of America.

Synopsis: The amendment extends the term of the Agreement until April 30, 1993.

By Order of the Federal Maritime Commission.

Dated: February 2, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2831 Filed 2–5–93; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed; Alabama State Docks Dept. and Mobile Independent Stevedoring Inc., et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200731.

Title: Alabama State Docks Department and Mobile Independent Stevedoring, Inc.

Parties:

Alabama State Docks Department
Mobile Independent Stevedoring, Inc. ("Mobile")

Agent: E.G. Browning, Jr., General Manager, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633.

Synopsis: The Agreement provides for Mobile to perform cargo and freight handling services at the Port. The term is for two five year segments.

Agreement No.: 224–200732.

Title: Alabama State Docks Department and Murray Stevedoring Company, Inc.

Parties:

Alabama State Docks Department
Murray Stevedoring Company, Inc. ("Murray")

Agent: E.G. Browning, Jr., General Manager, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633.

Synopsis: The Agreement provides for Murray to perform cargo and freight handling services at the Port. The term is for two five year segments.

Agreement Nos.: (1) 224–200729, (2) 224–200730, (3) 224–200733, (4) 224–200734, (5) 224–200735, (6) 224–200736, (7) 224–200737.

Title:

(1) Alabama State Docks Department/ Cooper T. Smith Terminal

Agreement
(2) Alabama State Docks Department/ Golden Stevedoring Terminal Agreement
(3) Alabama State Docks Department/ Premier Stevedoring Terminal Agreement
(4) Alabama State Docks Department/ Ryan-Walsh Terminal Agreement
(5) Alabama State Docks Department/ Southern Cargo Handlers Terminal Agreement
(6) Alabama State Docks Department/ Southern International Terminal Agreement
(7) Alabama State Docks Department/ Strachan Shipping Terminal Agreement

Parties:

Alabama State Docks Department ("Department") and
(1) Cooper T. Smith Co., Inc.
(2) Golden Stevedoring Company, Inc.
(3) Premier Stevedoring, Inc.
(4) Ryan-Walsh Stevedoring, Inc.
(5) Southern Cargo Handlers, Inc.
(6) The Southern International Service Co., Inc. (SISCO)
(7) Strachan Shipping Company

Agent: E.G. Browning, Jr., General Manager, General Cargo Marketing and Operations, Alabama State Docks Department, P.O. Box 1588, Mobile, Alabama 36633.

Synopsis: The Agreements permit the individual parties to perform cargo and freight handling service at the Department's facilities at the Port of Mobile.

Dated: February 2, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2864 Filed 2–5–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

CommFirst Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 5, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *CommFirst Bancorporation, Inc.*, South Sioux City, Nebraska; to become a bank holding company by acquiring Y.B. Corporation, South Sioux City, Nebraska, and thereby indirectly acquire Nebraska State Bank, South Sioux City, Nebraska, and to acquire Buya Corporation, South Sioux City, Nebraska, and thereby indirectly acquire Wakefield National Bank, Wakefield, Nebraska.

2. *CRACO, Inc.*, Vinita, Oklahoma; to become a bank holding company by acquiring First National Bank and Trust Company, Vinita, Oklahoma.

3. *Dickinson Financial Corporation*, Kansas City, Missouri; to merge with Army National Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Army National Bank, Ft. Leavenworth, Kansas.

4. *FNBR Holding Corp.*, Meeker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of the Rockies, Meeker, Colorado.

Board of Governors of the Federal Reserve System, February 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2893 Filed 2–5–93; 8:45 am]

BILLING CODE 6210-01-F

Crestar Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Crestar Financial Corporation*, Richmond, Virginia; to acquire CFS Financial Corporation, Fairfax, Virginia, and thereby engage in operating a thrift institution pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Virginia.

Board of Governors of the Federal Reserve System, February 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–2894 Filed 2–5–93; 8:45 am]

BILLING CODE 6210-01-F

Thomas D. Flanagan, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 1, 1993.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Thomas D. Flanagan, Barrington, Illinois; to acquire 12.48 percent of the voting shares of Premier Financial Services, Inc., Freeport, Illinois, and thereby indirectly acquire First Bank North, Freeport, Illinois, and First Bank South, Dixon, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Doyl Earl Brown, Wynne, Arkansas; to acquire 15.03 percent of the voting shares of First National Corporation of Wynne, Wynne, Arkansas, as the result of a stock redemption, and thereby indirectly acquire First National Bank of Wynne, Wynne, Arkansas.

Board of Governors of the Federal Reserve System, February 2, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-2895 Filed 2-5-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Health; Parallel Track Policy

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, the authority vested in the Secretary of Health and Human Services under title 45 CFR, part 46, Protection of Human Subjects, § 46.101(i) concerning waiver of part 46 as amended. This delegation is limited to research studies which are being considered in connection with the Public Health Services policy for an expanded availability of investigational new drugs through a parallel track mechanism.

This delegation is effective immediately.

Dated: January 15, 1993.

Louis W. Sullivan,

Secretary.

[FR Doc. 93-2845 Filed 2-5-93; 8:45 am]

BILLING CODE 4160-17-M

Agency for Health Care Policy and Research

Public Meeting on the Clinical Practice Guideline for Screening for Alzheimer's and Related Dementias

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline for Screening for Alzheimer's and Related Dementias. The guideline is being developed by a private-sector panel of health care experts and consumers. The panel is supported by AHCPR.

A Notice announcing that AHCPR was arranging for the development of this clinical guideline was published in the **Federal Register** on November 26, 1991 (56 FR 59950). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to address the guideline for Screening for Alzheimer's and Related Dementias and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Meeting: Screening for Alzheimer's and Related Dementias, Monday, April 12, 1993, From 1 p.m. to 5 p.m., Hyatt Regency Washington, 400 New Jersey Avenue, NW., Washington, DC 20001, Meeting Room—Capitol Room, Phone: 202-737-1234.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) added a new Title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services (See 42 U.S.C. 299-299c-6 and 1320b-12). The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102-410) enacted on October 13, 1992, amended certain provisions of the Act.

In keeping with its legislative mandate, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b-1(b)), as amended by Public Law 102-410, requires that the guidelines:

1. Be based on the best available research and professional judgment;

2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;

3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing the quality and appropriateness of medical care;

4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and

5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b-3(a)), as amended by Public Law 102-410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;

2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments;

4. Reduce clinically significant variations in the outcomes of health care services and procedures; and

5. Affect costs associated with the prevention, diagnosis, treatment, or management of the condition(s).

Also, in accordance with Title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for the development of guidelines.

Arrangements for the April 12, 1993 Public Meeting on Clinical Practice Guidelines for Screening for Alzheimer's and Related Dementias

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with Demie Lyons, N.P., Mikalix and Company, the AHCPR contractor providing support to the panel, at the address set out below by March 12, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Ms. Lyons by March 12, 1993. If more requests to make oral statements are received than can be accommodated between 1 p.m. and 5 p.m. on April 12, 1993, the chairpersons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guidelines.

If sign language interpretation, or other reasonable accommodations for disability, is needed please contact Ms. Lyons at the address below by March 12, 1993.

Registration should be made with, and written materials submitted to, Ms. Lyons, Mikalix and Company, at the following address: Mikalix and Company, Attn: Demie Lyons, N.P., 404 Wyman Street, Suite 375, Waltham, Massachusetts 02154–1210, Phone: 617–290–0090, Fax: 617–290–0180.

Dated: January 25, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–2849 Filed 2–5–93; 8:45 am]

BILLING CODE 4160–90–M

Public Meeting on the Clinical Practice Guideline for Diagnosis and Treatment of Chest Pain Due to Unstable Angina With The National Heart, Lung, and Blood Institute

The Agency for Health Care Policy and Research (AHCPR) and the National Heart, Lung, and Blood Institute (NHLBI) announce that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline for diagnosis and treatment of chest pain due to unstable angina. The guideline is being developed by a non-profit contractor of AHCPR with the assistance of a panel of experts and health care consumers.

A Notice announcing that AHCPR and NHLBI were interested in awarding three contracts for development of clinical practice guidelines on diagnosis and treatment of chest pain due to unstable angina, cardiac rehabilitation, diagnosis and management of cardiac dysrhythmias was published in the **Federal Register** on May 18, 1992 (57 FR 21118). That notice invited nominations, on behalf of the contractors, for panels of experts and consumers to assist in the development of the guidelines. AHCPR has awarded two contracts, unstable angina and cardiac rehabilitation.

A public meeting to address the guideline for the diagnosis and treatment of unstable angina and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Thursday, April 8, 1993, From: 4 p.m. to 10 p.m., American College of Cardiology, Heart House, 9111 Old Georgetown Road, Bethesda, MD 20814, Phone No.: 301–987–5400.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. (Sec. 42 U.S.C. 299–299c–6 and 1320b–12.) The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, amended certain provisions of the Act.

In keeping with its legislative mandates, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment—specific or condition—specific forms appropriate for use in clinical practice, educational programs, and reviewing quality and appropriateness of medical care.
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for development of guidelines.

Arrangements for the April 8, 1993 Public Meeting on Diagnosis and Treatment of Chest Pain Due to Unstable Angina

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with the Duke University Medical Center, the AHCPR non-profit contractor developing the guideline, at the address set out below by March 1, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Duke University Medical Center by March 1, 1993. If more requests to make oral statements are received than can be accommodated between 4 p.m. and 10 p.m. on April 8, 1993, the chairperson will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guidelines.

If sign language interpretation or other reasonable accommodations for disability is needed, please contact Duke University Medical Center by March 1, 1993, at the address below.

Registration should be made with and written materials submitted to the following address: Duke University Medical Center, Attn: Nancy Archibald, P.O. Box 2986, Durham, North Carolina 27710; Phone No.: 919–684–6077; Fax No.: 919–684–5700.

Dated: January 22, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–2848 Filed 2–5–93; 8:45 am]

BILLING CODE 4160-90-M

Public Meeting on the Clinical Practice Guideline for Quality Determinants of Mammography

The Agency for Health Care Policy and Research (AHCPR) announces that a public meeting will be held to receive comments and information pertaining to the development of the clinical practice guideline for quality determinants of mammography. The guideline is being developed by a private-sector panel of health care experts and consumers.

A Notice announcing that AHCPR was arranging for the development of this clinical guideline was published in the **Federal Register** June 4, 1991 (56 FR 25430). That notice invited nominations for experts and consumers to serve on the panel that is developing the guideline.

A public meeting to address the guideline for quality determinants of mammography and to provide an opportunity for interested parties to contribute relevant information and comments will be held as follows: Meeting: Quality Determinants of Mammography, Monday, March 8, 1993, From 9 a.m. to Noon, Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814, Phone: 301–897–9400.

Background

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) added a new Title IX to the Public Health Service Act (the Act), which established the Agency for Health Care Policy and Research (AHCPR) to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services (See 42 U.S.C. 299–299c–6 and 1320b–12). The Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410) enacted on October 13, 1992, amended certain provisions of the Act.

In keeping with its legislative mandate, AHCPR is arranging for the development and periodic review and updating of clinically relevant guidelines that may be used by physicians, educators, other health care practitioners, and consumers to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically.

Section 912 of the Act (42 U.S.C. 299b–1(b)), as amended by Public Law 102–410, requires that the guidelines:

1. Be based on the best available research and professional judgment;
2. Be presented in formats appropriate for use by physicians, other health care practitioners, medical educators, medical review organizations, and consumers;
3. Be presented in treatment-specific or condition-specific forms appropriate for use in clinical practice, educational programs, and reviewing the quality and appropriateness of medical care;
4. Include information on the risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s); and
5. Include information on the costs of alternative strategies for prevention, diagnosis, treatment, and management of the particular health condition(s), where cost information is available and reliable.

Section 914 of the Act (42 U.S.C. 299b–3(a)), as amended by Public Law 102–410, identifies factors to be considered in establishing priorities for guidelines, including the extent to which the guidelines would:

1. Improve methods for disease prevention;
2. Improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;
3. Reduce clinically significant variations among clinicians in the particular services and procedures utilized in making diagnoses and providing treatments; and
4. Reduce clinically significant variations in the outcomes of health care services and procedures.

Also, in accordance with Title IX of the PHS Act and section 1142 of the Social Security Act, the Administrator is to assure that the needs and priorities of the Medicare program are reflected appropriately in the agenda and priorities for the development of guidelines.

Arrangements for the March 8, 1993 Public Meeting on Clinical Practice Guidelines for the Development of Quality Determinants of Mammography

Representatives of organizations and other individuals are invited to provide relevant written comments and information and make a brief (5 minutes or less) oral statement to the panel. Individuals and representatives who would like to attend must register with Ms. Mary Madison, Mikalix and Company, the AHCPR contractor providing support to the panel, at the address set out below by February 24, 1993, and indicate whether they plan to make an oral statement. A copy of the oral statement, comments, and information should be submitted to Ms. Mary Madison, Mikalix and Company, by February 24, 1993. If more requests to make oral statements are received than can be accommodated between 9 a.m. and Noon on March 8, 1993, the chairpersons will allocate speaking time in a manner which ensures, to the extent possible, that a range of views of health care professionals, consumers, product manufacturers, and pharmaceutical manufacturers is presented. Those who cannot be granted their requested speaking time because of time constraints are assured that their written comments will be considered in developing the guidelines.

If sign language interpretation, or other reasonable accommodations for disability, is needed, please contact Mikalix and Company at the address below by February 24, 1993.

Registration should be made with, and written materials submitted to: Mikalix and Company, Attention: Ms. Mary Madison, 404 Wyman Street, Suite 375, Waltham, Massachusetts 02154–1210, Phone: 617–290–0090, Fax: 617–290–0180.

Dated: January 25, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–2850 Filed 2–5–93; 8:45 am]

BILLING CODE 4160-90-M

Agency for Toxic Substances and Disease Registry

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HT (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 56 FR 48805, dated September 26, 1991) is amended to reflect the order of succession.

After *Section HT-B, Organization and Functions,* insert the following:

Section HT–C, Order of Succession. During the absence or disability of the Administrator, Agency for toxic Substances and Disease Registry, or in the event of a vacancy in that office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession: (1) Deputy Administrator, (2) Assistant Administrator, (3) Deputy Assistant Administrator.

Dated: January 15, 1993.

Louis W. Sullivan,

Secretary.

[FR Doc. 93–2846 Filed 2–5–93; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 58 FR 3963, dated January 12, 1993) is amended to reflect the following organizational changes within the International Health Program Office: (1) Establishment of the Bilateral Health Activity, the International Emergency and Refugee Activity, and the International Visitors Activity; and (2) abolishment of the Division of International Liaison.

Section HC–B, Organization and Functions, is hereby amended as follows:

1. After the functional statement for the *Office of Administrative Services (HCG14), Office of the Director (HCG1), International Health Program Office (HCG),* insert the following:

Bilateral Health Activity (HCG15). (1) Provides assistance to Director, International Health Program Office (IHPO), in his role as the Associate Director for International Health, Centers for Disease Control and Prevention (CDC), in the development and official clearance of CDC bilateral health agreements; (2) provides assistance to the other component of CDC in the development and monitoring of bilateral health activities, including projects conducted under the Special Foreign Currency Program (SFCP/PL–480); (3) coordinates the development, processing and official clearance of CDC cable notifications; (4) provides visa and passport services to CDC international travelers; (5) coordinates CDC response to short-term consultancy requests received by the PHS Office of International Health from international organizations; (6) develops consolidated briefing materials on CDC international health activities; (7) coordinates and monitors the utilization of the CDC portion of the PHS Office of International Health Contract for Logistical Support Services.

International Emergency and Refugee Activity (HCG16). (1) Provides staff support to IHPO, and to the Associate Director for International Health, CDC, in directing and coordinating international activities throughout CDC; (2) maintains liaison with the PHS Office of International Health and with other multilateral, governmental, and non-governmental organizations concerned with international health; (3) provides liaison and coordination of CDC involvement with national and international agencies in response to request for assistance in emergency and non-emergency situations outside the United States; (4) serves as the focus for the WHO–CDC Collaborating Center for Disaster Preparedness and Response; (5) coordinates CDC refugee assistance activities and serves as the focal point between CDC and the United Nations High Commissioner for Refugees and the Department of State's Bureau of Refugee Programs in collaboration with the Division of Technical Support; (6) coordinates responses to requests from WHO and its regional offices for assistance in dealing with HIV/AIDS and other short-term technical assistance requests of a non-emergency nature; (7) provides coordination and implementation of CDC staff international capacity development initiatives.

International Visitors Activity (HCG17). (1) Receives, orients, and coordinates schedules and housing of international visitors to the CDC; (2) coordinates within CDC and with external organizations long- and short-term training of visitors; (3) determines requirements for and monitors health insurance for guest researchers; (4) produces reports for the Office of International Health and CDC on international visitors; (5) maintains archives and disseminates foreign trip reports filed by CDC staff; (6) collaborates with course provider in the organization and management of the international track of the EIS course and on other training activities for health professionals from developing countries.

2. Delete in its entirety the functional statement for the *Division of International Liaison (HCG2), International Health Program Office (HCG).*

Dated: January 27, 1993.

William L. Roper,

Director, Centers for Disease Control and Prevention.

[FR Doc. 93–2882 Filed 2–5–93; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Committee on Rural Health

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Dena S. Puskin, Sc.D. Acting Executive Secretary, National Advisory Committee on Rural Health, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0836.

Dated: February 2, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–2852 Filed 2–5–93; 8:45 am]

BILLING CODE 4160-15-M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services, Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS)

ACTION: Notice

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954–0770, 205–538–0012/800–247–3893
Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300
Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745
Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257
American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, suite 250, Las Vegas, NV 89119–5412, 702–733–7866
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787
Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016
Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900
California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209–221–5655/800–448–7600
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810
Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020
Clinical Pathology Facility, Inc. 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917
CompuChem Laboratories, Inc., A subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093
CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab)
Damon Clinical Laboratories, 8300 Esters Blvd., suite 900, Irving, TX 75063, 214–929–0535
Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006
Drug Labs of Texas, 15201 I–10 East, suite 125, Channelview, TX 77530, 713–457–3784
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, suite 308, Pompano Beach, FL 33062, 305–946–4324
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516–625–9800
ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.)
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267
Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI)
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766
Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818–718–0115/800–331–8670 (outside CA)/800–464–7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories)
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc. 2356 North

Lincoln Avenue, Chicago, IL 60614, 312–880–6900 (name changed: formerly Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab)

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC)

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100/800–572–3734 (inside VA)/800–336–0391 (outside VA)

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250

Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (name changed: formerly Nichols Institute)

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361

Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134

Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680

Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400

PDLA, Inc. (Precision); 5 Industrial Park Drive, Oxford, MS 38655, 601–236–5600/800–237–7352

PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352

PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory)

Physicians Reference Laboratory Toxicology Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070

Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272

Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211

Puckett Laboratory, 4200 Mamie Street, Hattiesburg, MS 39402, 601–264–3856/800–844–8378

Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400

Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170

Roche Biomedical Laboratories, 1957 Lakeside Parkway, suite 542, Tucker, GA 30084, 404–939–4811

Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286

Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986

Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788

S.E.D. Medical Laboratories, 500 Walter NE, suite 500, Albuquerque, NM 87102, 505–848–8800

Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520

SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905

SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories)

South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176

St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052

St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory has voluntarily withdrawn from the National Laboratory Certification Program, effective February 1, 1993:

Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414–433–7485

Michele W. Applegate,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–2991 Filed 2–5–93; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF THE INTERIOR

Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization, Public Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 101–512, the Office of the Assistant Secretary—Indian Affairs is announcing the forthcoming meeting of the Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization (Task Force).

DATES: February 23–25, 1993, 8 a.m. to 5:30 p.m.; the Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Vienna, Virginia. The meeting of the Task Force is open to the public.

FOR FURTHER INFORMATION CONTACT: Veronica L. Murdock, Designated Federal Officer, Office of the Assistant Secretary—Indian Affairs; MS 4140 MIB; 1849 C Street NW., Washington, DC 20240; Telephone number (202) 208–4173.

SUPPLEMENTARY INFORMATION: Joint Tribal/BIA/DOI Advisory Task Force on Bureau of Indian Affairs Reorganization in joint sponsorship with the National Congress of American Indians, the Tribal Forum, the National Center for Policy Development, the Intertribal Monitoring Association on Trust Funds, the Native American Rights Fund, and the Intertribal Agriculture Council will conduct a National Indian Policy Forum at this meeting. In addition, the Task Force will elect its tribal Co-Chairman and will receive reports from its work groups covering their activities since the last general meeting. Public attendance and participation in this meeting are encouraged, and the public will be asked to participate with the sponsoring organizations in developing national Indian policy recommendations for communication to the Secretary of the Interior.

Dated: February 2, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93-2997 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AK-050-4710-01]

Alaska, Paxson Campground Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of campground fee.

SUMMARY: Notice is hereby given that campground fees will be charged at Paxson Campground, Mile 175 Richardson Highway in the Glennallen District, Alaska. This is in accordance with 36 CFR 71.3.

DATES: This action is effective as of June 1, 1993.

ADDRESSES: For further information contact Gene R. Keith, Bureau of Land Management (BLM), Glennallen District Office, Mile 186.5 Glenn Highway, PO Box 147, Glennallen, Alaska 99588; Telephone (907) 822-3217.

FOR FURTHER INFORMATION CONTACT: Larry Kajdan, (907) 822-3217.

SUPPLEMENTARY INFORMATION: Paxson Campground has been upgraded and meets the fee requirements established under 36 CFR 71.3. A daily fee will be charged for each campsite occupied. The fee amount will vary depending on services provided and will be posted at the fee collection station. These fees are established to maintain public lands administered by the Bureau of Land Management in Alaska.

Gene R. Keith,

District Manager.

[FR Doc. 93-2884 Filed 2-5-93; 8:45 am]

BILLING CODE 4310-JA-M

[MT-930-4410-02]

Availability of the Draft Big Dry Resource Management Plan/Environmental Impact Statement; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 202(c) of the National Environmental Policy Act of 1969, the draft resource management plan/environmental impact statement has been prepared for the Big Dry Resource Area planning area. The resource management plan/environmental impact statement describes and analyzes future options for approximately 1.7 million surface acres and 7.6 million acres of federal minerals managed by the Bureau of Land Management. These acres are located in all or portions of Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Prairie, Richland, Roosevelt, Rosebud, Sheridan, and Wibaux Counties. The resource management plan/environmental impact statement provides a comprehensive plan for managing federal resources administered by the Bureau of Land Management.

PUBLIC PARTICIPATION: Reading copies will be available at each public library located in the above counties. Copies will be available from the Miles City District Office, P.O. Box 940, Miles City, Montana 59301, phone 406-232-4331, and the Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, phone 406-232-7000. Public reading copies will be available for review at the following Bureau of Land Management locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets NW., Washington, DC 20240.

External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107.

Written comments on the draft resource management plan/environmental impact statement will be accepted until (90 days following the date the Environmental Protection Agency publishes the Notice of Filing of the Draft in the **Federal Register**). Comments can be mailed or submitted at nine public meetings to be held:

Date	Location	Time
May 3, 1993	Wolf Point, MT	7 p.m.
May 4, 1993	Sidney, MT	7 p.m.
May 5, 1993	Jordan, MT	7 p.m.
May 6, 1993	Circle, MT	7 p.m.
May 10, 1993	Glendive, MT	7 p.m.
May 11, 1993	Terry, MT	7 p.m.
May 12, 1993	Baker, MT	7 p.m.
May 13, 1993	Forsyth, MT	7 p.m.
May 17, 1993	Miles City, MT	7 p.m.

ADDRESSES: Written comments on the document should be addressed to: Chuck Frost, District Manager, Bureau of Land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Al Kutt, Resource Management Plan/Environmental Impact Statement Team Lead, Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, 406-232-7000.

SUPPLEMENTARY INFORMATION: The draft resource management plan/environmental impact statement analyzes four alternatives to resolve two issues: Special management designations and resource accessibility and availability. Each alternative represents a complete management plan. The alternatives can be summarized as: (1) Current management or no action; (2) resource protection; (3) resource production; and (4) the preferred alternative, which is a combination of the previous three.

The resource management plan/environmental impact statement evaluates 17 areas of critical environmental concern nominations. Ten areas would be designated as areas of critical environmental concern. Four areas met the relevance and importance criteria, but would not be designated as areas of critical environmental concern. Three areas did not meet the relevance and/or importance criteria.

The Big Sheep Mountain cultural site (360 public surface acres) in Prairie County would be designated an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Hoe cultural site (144 public surface acres) in Prairie County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Jordan Bison Kill cultural site (160 public surface acres) in Garfield County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Powder River Depot cultural site (1,386 public surface acres) in Prairie County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting their area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a non-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed on 1,215 acres, and rights-of-way construction would be avoided. There would be a 171-acre special recreation management area within this area of critical environmental concern which would be managed for recreation. Livestock grazing would be excluded from the recreation area

The Seline cultural site (80 public surface acres) in Dawson County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect cultural resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The Bug Creek paleontological site (3,840 public surface acres) in McCone County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect paleontological resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals would not be available for leasing, coal would be available for leasing, oil and gas leasing would be allowed subject to lease terms, geophysical exploration would be permitted, livestock grazing would be allowed, and rights-of-way construction would be allowed.

The Hell Creek paleontological site (19,169 public surface acres) in Garfield County would be designated as an area of critical envornmental concern. This area would be managed to enhance and protect paleontological resources. Management actions affecting this area are: Off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals would not be available for leasing, coal would be available for leasing, oil and gas leasing would be allowed subject to lease terms, geophysical exploration would be permitted, livestock grazing would be allowed, and right-of-way construction would be allowed.

The Sand Arroyo paleontological site (9,056 public surface acres) in McCone County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect paleontological resources. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable material would not be available for leasing, coal would be available for leasing, oil and gas leasing would be allowed subject to lease terms, geophysical exploration would be permitted, livestock grazing would be allowed, and rights-of-way construction would be allowed.

The black-footed ferret area (1,151 public surface acres) in Custer and Prairie Counties would be designated as an area of critical environmental concern. This area would be managed to make habitat available for the reintroduction of the black-footed ferret. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be available for entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a controlled surface use stipulation, geophysical exploration would not be permitted, livestock grazing would be allowed, and rights-of-way construction would be avoided.

The piping plover site (16 public surface acres) in Sheridan County would be designated as an area of critical environmental concern. This area would be managed to enhance and protect piping plover habitat. Management actions affecting this area are: off-road vehicle travel would be limited to existing roads and trails, locatable minerals would be withdrawn from entry, mineral material sales and permits would not be allowed, nonenergy leasable minerals would not be available for leasing, the site is unsuitable for coal development, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would not be permitted, livestock grazing would not be allowed, and rights-of-way construction would be avoided.

The National Park Service has designated the Yellowstone and Missouri Rivers as part of the Lewis and Clark National Historic Trail. The public lands along these rivers were not designated as areas of critical environmental concern because present management adequately protects them, and they are not contiguous.

The Ash Creek Divide paleontological site contains paleontological resources in the Hell Creek formation. The objectives for this site can be met without special management attention.

Bald eagle habitat meets the relevance and importance criteria, but would not be designated as areas of critical environmental concern. Currently, there are no known bald eagle nesting sites on public lands in the planning area.

Least tern habitat meets the relevance and importance criteria, but would not be designated as areas of critical environmental concern. Currently, there are no known least tern nesting sites on public lands in the planning area.

The resource management plan/environmental impact statement evaluated 96 rivers and streams in the planning area to determine if any were eligible to be studied for possible inclusion into the National Wild and Scenic River System. All 96 rivers and streams were determined to be ineligible for further study. They would be unmanageable due to the lack of public lands along the shoreline.

Public participation has occurred throughout the resource management plan process. A notice of intent was filed in the **Federal Register** on October 3, 1989. Public meetings, mailings, and briefings were conducted to solicit comments and ideas. All of the comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of areas of critical environmental concern and the requirements of the Final Revised U.S. Department of the Interior—U.S. Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (47 FR 39454).

Dated: January 26, 1993.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93–2854 Filed 2–5–93; 8:45 am]

BILLING CODE 4310–DN–M

[WY–040–03–4410–01]

Meeting of Rock Springs District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting agenda for the Rock Springs District Advisory Council.

SUMMARY: This notice sets forth the agenda and schedule for the next meeting of the Rock Springs District Advisory Council.

DATES: March 3, 1993, 9 a.m. until 3:30 p.m.

ADDRESSES: Rock Springs District Office, Bureau of Land Management, Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869, (307) 382–5350.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will be limited to:

1. Introduction and opening remarks.
2. Review minutes of the last meeting.
3. Election of officers.
4. Review of public comments on the Green River Resource Management Plan.
5. Planning and environmental analysis update.
6. Minerals program update.
7. District wildlife program update.

The meeting is open to the public. Interested persons may make oral statements to the Council between 2:30 and 3:30 p.m. on March 3, 1993, or file written statements for the Council's consideration. Anyone wishing to make an oral statement should notify the District Manager at the above address by March 1, 1993.

John S. McKee,

Associate District Manager.

[FR Doc. 93–2860 Filed 2–5–93; 8:45 am]

BILLING CODE 4310–22–M

[ID–943–03–4210–05; IDI–2267]

Order Providing for Opening of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order opens lands reconveyed to the United States to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: March 10, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. The following described lands have been reconveyed to the United States pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, 869–4):

Boise Meridian

T. 9 N., R. 27 E.,
Sec. 4, E½SE¼SE¼NW¼.

The area described contains 5 acres in Butte County.

2. At 9 a.m. on March 10, 1993, the reconveyed lands described above will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 10, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on March 10, 1993, the reconveyed private lands described above will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 26, 1993.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–2730 Filed 2–5–93; 8:45 am]

BILLING CODE 4310–GG–M

[WY–930–4210–04; WYW 117481]

Notice of Conveyance; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of public land in Fremont County for private land in Fremont County.

SUMMARY: This notice advises the public of completion of an exchange of Federal surface and mineral estate (excluding oil and gas), for private surface and mineral estate (excluding oil and gas), between the United States, Bureau of Land Management, and Roy J. Steers, Jr., and Elsie G. Steers, under the authority of Section 206 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1716.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, Bureau of Land Management, Wyoming State Office, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82001, 307–775–6115.

SUPPLEMENTARY INFORMATION: The Federal surface and mineral estate (excluding oil and gas), of the following described land has been conveyed to Roy J. Steers, Jr., and Elsie G. Steers, of Lander, Wyoming:

Sixth Principal Meridian, Wyoming

T. 33 N., R. 101 W.,
Sec. 21, NE1/4NE1/4, NE1/4SE1/4.

The land described contains 80.00 acres.

1. In exchange for the Federal surface and mineral estate (excluding oil and gas), described above, the United States acquired the following described surface and mineral estate (excluding oil and gas):

Sixth Principal Meridian, Wyoming

T. 33 N., R. 101 W.,
Sec. 17, SE1/4NW1/4, NE1/4SW1/4.

The land described contains 80.00 acres.

2. The fair market value of the private land conveyed to the United States is

$14,000.00. The fair market value of the Federal land conveyed to Steers', is $14,000.00.

3. At 9 a.m. on March 11, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m., March 11, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 9 a.m. on March 11, 1993, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 27, 1993.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 93–2736 Filed 2–5–93; 8:45 am]

BILLING CODE 4310–22–M

[AK–050–4710–01]

Camping Stay Limits for Public Lands; Glennallen District

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limits for public lands in the Glennallen District, Glennallen, Alaska.

SUMMARY: Person(s) may camp within a designated campground or on public land, not closed or otherwise restricted to camping, within the Glennallen District for a total period of not more than fourteen (14) days during any sixty (60) day period. The 60 day period will begin the first full day the site is occupied following a previous 60-day period. The 14-day limit may be reached either through a number of separate visits or through a period of continuous occupation on public lands. Following the fourteen (14) day period, person(s) may not relocate within a distance of ten (10) miles of the site that was just previously occupied until completion of the sixty (60) day period. Under special circumstances and upon request, the authorized officer may give written permission for extension to the fourteen-day limit.

DATES: This camping stay limit is effective June 1, 1993.

ADDRESSES: For further information contact Gene R. Keith, Bureau of Land Management (BLM), Glennallen District Office, Mile 186.5 Glenn Highway, PO Box 147, Glennallen, Alaska 99588; Telephone (907) 822–3217.

FOR FURTHER INFORMATION CONTACT: Larry Kajdan, (907) 822–3217.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long term unauthorized occupancy being conducted under the guise of camping within campgrounds and on undeveloped public lands in the Glennallen District. Of equal importance is the problem of long-term camping which precludes equal opportunities for other members of the public to camp in the area which creates user conflicts. Authority for this camping stay limit is contained in CFR title 43, chapter II, part 8360, subparts 8364.1, 8365.1–2.

Gene R. Keith,

District Manager.

[FR Doc. 93–2883 Filed 2–5–93; 8:45 am]

BILLING CODE 4310–JA–M

National Park Service

Draft Rock Creek Park Tennis Center Environmental Impact Statement, Washington, DC

AGENCY: National Park Service (Interior).

ACTION: Notice to distribute the Draft Environmental Impact Statement for public comment.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces the release of the draft Rock Creek Park Tennis Center Environmental Impact Statement (EIS) for the Rock Creek Tennis Stadium. The document will be on public review until April 9, 1993. Public meetings will be held at the Rock Creek Nature Center, 5200 Glover Road, NW., Washington, DC, on March 9 and 10 at 7:30 p.m. to 10 p.m. and on the afternoon of March 10 at 2 p.m. to 4:30 p.m.

The draft EIS presents seven alternatives for future management and use of the Rock Creek Tennis Stadium. Alternative 1 allows the use of the tennis stadium for amateur and league events, only. Alternative 2 (NPS preferred alternative) allows for only one professional tennis tournament a year, in addition to amateur and league events. Alternative 3 (the no-action alternative) provides for two professional tennis tournaments a year held at the tennis stadium, in addition to amateur and league events. In Alternative 4, two professional tennis tournaments a year can be held at the stadium, in addition to amateur and league events, with impact mitigation. Alternative 5 provides for more than two professional tennis tournaments a year, and amateur and league events held at the tennis stadium. Alternative 6 allows the use of the tennis stadium for a variety of uses, including amateur and professional tennis, circuses, concerts, ice skating shows, and volleyball tournaments. Alternative 7 relocates the professional tennis tournaments and removes the stadium. In this alternative, the NPS would continue to support the Washington Tennis Foundation outreach programs in Rock Creek Park. An element common to all alternatives is the possible change of jurisdiction of the tennis stadium to the District of Columbia.

For copies of the draft EIS, please contact: Superintendent Rock Creek Park, at 5000 Glover Road, NW., Washington, DC 20015, or call 202–426–6832. Copies can also be reviewed at the Rock Creek Nature Center.

Again, the review period for this document ends April 9, 1993. All review comments must be postmarked no later than April 9, 1993.

Dated: February 3, 1993.

Burnice T. Kearny,

Acting Regional Director, National Capital Region.

[FR Doc. 93–2979 Filed 2–5–93; 8:45 am]

BILLING CODE 4310–70–M

Completion of Inventory of Native American Human Remains from Navajo County, AZ, in the Possession of the California Department of Parks and Recreation

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of the inventory of human remains from Navajo County, Arizona, in the possession of the California Department of Parks and Recreation. Representatives of culturally affiliated Indian tribes are advised that these human remains will be retained by the Department at its headquarters facility until March 9, 1993, after which they may be repatriated to the culturally affiliated group.

The detailed inventory and assessment of these human remains has been made by the California Department of Parks and Recreation curatorial and archeological staff, contract specialists in physical anthropology and prehistoric archeology, and representatives of the Hopi Tribe.

The human remains consist of twenty unburned bones from one burial. There were no associated funerary objects. Records related to the original recovery of these remains and their acquisition by the California Department of Parks and Recreation are scant. The remains were originally part of the Hall Collection of Anthropology of North America, parts of which were acquired by the department in 1972. Accession records indicate the remains were recovered from an "ancient burial mound" located northeast of Winslow, Arizona, and identified as the remains of "Pueblo Indians."

Attribution of the remains as Puebloan and their recovery from a site located northeast of Winslow, Arizona, implies that they are culturally affiliated with the Hopi Tribe. The Hopi Tribe traces its ancestry directly from the Puebloan residents of northeast Arizona. The area northeast of Winslow, Arizona, has been recognized as part of Hopi aboriginal territory by the U.S. Indian Claims Commission.

Based on the above mentioned information, officials of the California Department of Parks and Recreation have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and the Hopi Tribe.

This notice has been sent off to officials of the Hopi Tribe. Representatives of any other Indian Tribe which believes itself to be culturally affiliated with these human remains should contact Pauline Grenbeaux Spear, Committee on Repatriation, P.O. 942896, Sacramento CA 94296–0001, (916) 324–6800 before March 9, 1993.

Dated: February 3, 1993.

Veletta Canouts,

Acting Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 93–2920 Filed 2–5–93; 8:45 am]

BILLING CODE 4310-70-M

Notice of Completion of Inventory of Native American Human Remains from Oahu, Hawaii, Formerly in the Possession of the Museum of Anthropology, University of Oregon in Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003 (d), of the completion of the inventory of human remains from Oahu, Hawaii, formerly in the possession of the Museum of Anthropology, University of Oregon, Eugene, Oregon.

The detailed inventory and assessment of the two sets of human remains from Oahu has been made by the museum staff and representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, a nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii and recognized under 25 U.S.C. 3001 (6) to provide guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

The two sets of remains were given to the museum in 1940 by a private collector. Accession records indicate the remains came from the island of Oahu, Hawaii.

The human remains identified as 11–108 are very well preserved and nearly complete. They represent an adult female aged between 30 and 40 years at death. While precise identification of cultural affiliation is difficult, an assignment of this individual to the Mongoloid group can be made based on the intermediate grade alveolar prognathism and nasal shape, narrowing of the nasal bone at the nasal bridge, prominent forward-projecting cheek bones, straight facial profile, circular orbits, and a moderately wide plate. There are no morphological features evident that would suggest that the remains are anything other than those of a Hawaiian.

The human remains identified as 11–107 are nearly complete and represent an unknown sex juvenile aged between 3 and 5 years at death. Precise cultural affiliation of this juvenile is not possible. However, no morphological features evident in the remains would suggest that they are anything other than those of a Hawaiian.

Based on the above mentioned information, officials of the Museum of Anthropology, University of Oregon, have determined pursuant to 25 U.S.C. (2) that there is a relationship of shared group identity which can be reasonably traced between these remains and present-day Native Hawaiian organizations.

Representatives of culturally affiliated Native Hawaiian organizations are advised that the human remains have been transferred to representatives of Hui Mālama I Nā Kūpuna 'O Hawai'i Nei who have agreed to delay reinterment until [thirty days following the publication date of this notice], after which they may be reinterred. This notice has been sent of officials of the Office of Hawaiian Affairs. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Don E. Dumond, Museum of Anthropology, University of Oregon, Eugene, OR 97403, telephone: (503) 346–5120, and Edward Ayau, Hui Mālama I Nā Kūpuna 'O Hawai'i Nei, P.O. Box 190, Hale 'iwa HI 96712–0190 (808) 587–0010, before March 10, 1993.

Dated: February 3, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist, Chief, Archeological Assistance Division.

[FR Doc. 93–2930 Filed 2–5–93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Notice of Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Bob Evans Farms, Inc., 3776 South High Street, Columbus, OH 43207–0863.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of Incorporation:

a. Mrs. Giles Country Kitchens, Inc., Incorporated in State of Virginia.

b. Owens Country Sausage, Inc., Incorporated in State of Texas.

c. Hickory Specialties, Inc., Incorporated in State of Tennessee.

B. 1. The parent corporation is Spartan Stores, Inc. and the address of the principal office is: 850 76th Street, SW., P.O. Box 8700, Grand Rapids, Michigan 49518.

2. Wholly-owned subsidiaries which will participate in the operations, and their States of Incorporation:

a. Valuland, Inc., a Michigan corporation.

b. L & L/Jiroch Distributing Company, Inc., a Michigan corporation.

c. Market Development Corporation, a Michigan corporation.

d. Shield Insurance Services, Inc., a Michigan corporation.

e. United Wholesale Grocery Company, a Michigan corporation.

f. Capistar, Inc., a Michigan corporation.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2905 Filed 2–5–93; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–167 (Sub-No. 1110X)]

Consolidated Rail Corporation; Abandonment Exemption Between Gates and Brockport, NY

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments to abandon approximately 12.1 miles of rail line between milepost ±4.5 at Gates, and milepost ±16.6 at Brockport, in Monroe County, NY.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7, 49 CFR 1105.8, 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on March 10, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 18, 1993.[3] Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by March 1, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box. 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by February 12, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–2904 Filed 2–5–93; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay including environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that on January 19, 1993, a proposed consent decree in *United States* v. *American Steel Drum Services, et al.*, was lodged with the United States District Court for the Northern District of Ohio. This action was brought, pursuant to Sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.*, ("CERCLA"), for the recovery of costs expended by the United States and penalties incurred by Defendant's in connection with the cleanup of American Steel Drum Services Company Superfund site ("Site") located in Bedford, Ohio.

Under the decree, 2 defendants will pay $115,000 to the Hazardous Substances Superfund to reimburse the United States for response costs and penalties incurred at the Site in connection with emergency cleanup and removal activities at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to the *United States* v. *American Steel Drum Services, et al.*, DJ Ref. #90–11–3–344.

The proposed consent decree may be examined at the Office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 4414–2600 and at the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Blvd., 3rd Floor, Chicago, Illinois 60604. Copies of the proposed consent decree may also be examined at the U.S. Department of Justice, Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consents may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $20.25 (twenty-five cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2879 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *AVX Corporation, et al.*, Civil Action No. 93-10104-K, was lodged on January 20, 1993, with the United States District Court for the District of Massachusetts. The proposed consent decree concerns the cleanup of a hazardous waste site known as the Sullivan's Ledge Site, which is located in New Bedford, Massachusetts. The proposed consent decree requires fifteen defendants to perform the remedy for the second operable unit at the site, and to reimburse EPA for 50% of the oversight costs for the remedy. The present worth value of these activities is estimated by EPA to be $2.95 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AVX Corporation, et al.*, D.J. reference #90-11-2-388B.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $55.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2878 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Amendment to Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed First Amendment to Consent Decree *United States* v. *Acushnet Company, et al.*, Civil Action No. 91-10706-K, was lodged on January 22, 1993, with the United States District Court for the District of Massachusetts. The original Consent Decree that is the subject of this proposed amendment (the "1991 decree") concerns the cleanup of a hazardous waste site known as the Sullivan's Ledge Site, which is located in New Bedford, Massachusetts. The 1991 decree was entered on June 11, 1991. The 1991 decree requires fourteen defendants to perform the remedy for the first operable unit at the Site.

The amendment is being proposed in connection with the proposed consent decree in *United States* v. *AVX Corporation, et al.*, Civil Action No. 93-10104-K, notice of which is being given separately. This new consent decree concerns the cleanup of the second operable unit of the Sullivan's Ledge Site. The amendment of the 1991 decree is being proposed in order to facilitate the coordination of the cleanup being performed at the first operable unit of the Site pursuant to the 1991 decree with the cleanup being performed at the second operable unit pursuant to the new decree. This is accomplished primarily through modification of the Statement of Work ("SOW"), which is incorporated into the 1991 decree by operation of Paragraph 3. These modifications to the SOW modify the activities under the 1991 decree to include certain activities necessary for the coordination of the two operable unit remedies, and revise the work sequence obligations accordingly.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Acushnet Company, et al.*, D.J. reference #90-11-2-388.

The proposed First Amendment to Consent Decree may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005. In requesting a copy, please enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2881 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 8, 1993 a Consent Decree in *United States* v. *The Town of Bedford, et al.*, 90 Civ. 4652, was lodged with the United States District Court for the Southern District of New York. The proposed Consent Decree requires seven defendants in this action under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, to partially reimburse the United States a total of $1,171,000.00 for costs incurred by the United States in connection with the Katonah Municipal Well Superfund Site (the "Katonah Site"), located in the Town of Bedford, New York. In 1990, the United States entered into a Remedial Design/Remedial Action consent decree with the Town of Bedford in *United States* v. *Town of Bedford*, 89 Civ. 6481, wherein the Town of Bedford became obligated to conduct the remedial action at the Katonah Site, pay certain future oversight costs, and perform long term monitoring at the Site.

The settling defendants in the proposed consent decree are: the Town of Bedford, Gilman Realty Corp., Katonah Shopping Center Associates, Village Cleaners and Tailors, Inc.,

Nicola Fiumara, Giuseppe (Joseph) Tomasssi, and Honebon's Cleaners.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Town of Bedford et al.* (S.D.N.Y.) and DOJ Ref. No. 90–11–2–310A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Southern District of New York, 100 Church Street, New York, New York 10007; at the Region II Office of the U.S. Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Degree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree, please enclose a check in the amount of $5.50 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–2877 Filed 2–5–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 19, 1993, a proposed partial Consent Decree in *United States* v. *Jonathan W. Bankert Jr., et al.* (Civil Action No. IP91–1181C) was lodged in the United States District Court for the Southern District of Indiana. The Complaint filed by the United States, on behalf of the United States Environmental Protection Agency, alleged claims against a number of defendants, including White Metal Rolling & Stamping Corp. and Industrial Plating, Inc., under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), for costs incurred by the United States in responding to the release or threat of release of hazardous substances at the Northside Sanitary Landfill site in Zionsville, Boone County, Indiana ("the Northside Site"). The partial Consent Decree requires defendants White Metal and Industrial Plating collectively to pay approximately $79,000, plus interest, to reimburse the Superfund for response costs incurred by the United States in connection with the Northside Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Jonathan W. Bankert Jr., et al.* and to DJ # 90–11–2–48H.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Indiana, 274 United States Courthouse, 46 East Ohio Street, Indianapolis, Indiana 46204; (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and (3) the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. For a copy of the Consent Decree please enclose a check in the amount of $3.50 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–2860 Filed 2–5–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Order Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 42 U.S.C. 9622 and with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Remedial Design/Remedial Action Consent Decree in *United States* v. *Chrysler Corp., et al.*, No. 93CV70202, has been lodged with the United States District Court for the Eastern District of Michigan, on January 19, 1993. The proposed Consent Decree concerns cleanup of the Carter Industrials, Inc. Superfund Site (the "Carter Site"), a hazardous waste site located at or near 4690 Humboldt Street in Detroit, Wayne County, Michigan.

The proposed Consent Decree requires fourteen defendants to perform a cleanup at the Carter Site and to pay certain costs that the United States Environmental Protection Agency has incurred in connection with the Carter Site. In tandem with operation and maintenance work, the main components of the remedy that will be implemented include the following actions: (1) Decontamination and dispoal of contaminated structures; (2) low-temperature thermal desorption ("LTTD") of soils contaminated with polychlorinated biphenyls ("PCBs") at levels greater than 10 parts per million ("ppm"); (3) off-site incineration of PCB-containing oils and organic material that will be recovered from the treated soils; (4) an on-site containment cell for residue from the LTTD system, and untreated PCB-contaminanted soils, that contain less than 10 ppm PCBs; and (5) on-site/off-site restoration of excavated soil areas.

Under the proposed Consent Decree, the Settling Defendants also would reimburse $2,931,225.00 of the costs that the United States has incurred in connection with the Carter Industrials Site.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chrysler Corp., et al.*, D.J. Ref. 90–11–2–194C.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Michigan, 817 Federal Building, 231 West Lafayette, Detroit, Michigan 48226, at the Office of Regional Counsel, United States Environmental Protection Agency, Region 5, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please specify the documents required, together with a check payable to the "Consent Decree Library" for the appropriate amount, as follows:

Consent Decree only ($.25 per page reproduction costs): $23.50.

Consent Decree with appendices: $60.00.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2872 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on January 15, 1993, a proposed Consent Decree in *United States* versus *Martin Garabedian and Violent Garabedian, as Trustee of The Boundary Hill Trust,* Civil Action No. 93-10086-WF, was lodged with the United States District Court for the District of Massachusetts resolving the matter. The proposed Consent Decree concerns the response to releases and threatened releases of hazardous substances at the Garabedian Superfund Site located in Methuen, Massachusetts and Pelham and Salem, New Hampshire pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*

The proposed Consent Decree provides for a total payment by Defendants of $170,000, which includes the Defendants' reimbursement of $103,582, representing 100% of the response costs incurred by EPA at the Site, including interest, and an additional payment by Defendants of $66,412 in civil penalties and punitive damages for failure to comply with the Section 106 Administrative Order.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* versus *Martin Garabedian and Violet Garabedian, as Trustee of the Boundary Hill Trust,* D.O.J. Ref. No. 90-11-2-845.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Massachusetts, 1107 J.W. McCormack Post Office and Courthouse, Boston, Massachusetts, 02109; at the Region I Office of the Environmental Protection Agency, JFK Federal Building, Boston, Massachusetts, 02203; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005 (202-624-0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC, 20005. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2875 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Agreed Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on January 19, 1993 a proposed Agreed Order in *United States* v. *GTE North Inc. and Manley Motor Sales,* Action No. 90-C-20302, was lodged in the United States District Court for the Northern District of Illinois. The Agreed Order addresses the hazardous waste contamination at the Belvidere No. 1 Municipal Landfill site in Belvidere, Boone County, Illinois ("the Belvidere Site"). The Agreed Order consolidates the First and Second Claims for Relief of *United States* v. *GTE North Inc. and Manley Motor Sales,* Action No. 90-C-20302, as amended, and *United States, State of Illinois* v. *City of Belvidere, et al.,* Action No. 89-C-20015. The Agreed Order also amends the Consent Decree entered by the Court in *United States, State of Illinois* v. *City of Belvidere, et al.,* Action No. 89-C-20015, on April 12, 1989. The Agreed Order requires the defendant GTE North, Inc. to implement the remedial action selected and cleanup standards set forth in the Record of Decision and Scope of Work for the Belvidere Site. Additionally, the defendant GTE North, Inc. is required to reimburse the United States for $575,000, plus interest, in unrecovered past costs incurred by U.S. Environmental Protection Agency at the Belvidere Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Agreed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *GTE North Inc. and Manley Motor Sales,* D.J. Ref. No. 90-11-3-248A.

The proposed Agreed Order may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Illinois, 211 South Court Street, Rockford, Illinois, 61101 (contact Assistant United States Attorney James Zuba); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590 (contact Assistant Regional Counsel John Tielsch); and (3) at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, (202) 347-2072. Copies of the proposed Agreed Order may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, telephone (202) 347-7829. For a copy of the Agreed Order please enclose a check in the amount of $1.25 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 93-2876 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 10, 1992, two proposed Consent Decrees in *United States* v. *Lore Fiano, et al.,* Civil No. 2:91CV00814, were lodged with the United States District Court for the District of Connecticut. The proposed Consent Decrees settle the United States' claims that the defendants had violated provisions of the National Emission Standards for Hazardous Air Pollutants for Asbestos ("NESHAP") promulgated pursuant to the Clean Air Act.

Under the terms of the Consent Decrees, settling defendants will pay a total of $68,250 in civil penalties, comply with the asbestos NESHAP and the Clean Air Act in the future, and undertake certain additional activities as part of a remedial program.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Section Chief of the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Loro Fiano*, D.O.J. Ref. 90-5-2-1-1602.

The proposed Consent Decrees may be examined at the Region I Office of the Environmental Protection Agency, 1 Congress Street, 10th Floor, Boston, Massachusetts 02203. Copies of the Consent Decrees may be examined at the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005 (202 624-0892). A copy of the proposed Consent Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G St., NW., 4th Floor, Washington, DC 20005 (202 624-0892). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.75 per Decree (25 cents per page reproduction cost) made payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2865 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

In accordance with the policy of the Department of Justice, notice is hereby given that on January 19, 1993 two proposed consent decrees in *United States* v. *Jennie Muir, et al.*, were lodged with the United States District Court for the Eastern District of Michigan. This action was brought, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 *et seq.* ("CERCLA"), for the recovery of costs expended by the United States in connection with the cleanup of the MCI, Inc. Superfund site ("Site") located in Detroit, Wayne County, Michigan.

Under the first decree, 39 defendants will pay $963,395.70 to the Hazardous Substances Superfund to reimburse the United States for response costs incurred at the Site in connection with emergency cleanup and removal activities at the Site. Under the second decree an additional 10 defendants will pay $38,986.00 to the Hazardous Substances Superfund to reimburse the United States for additional response costs incurred at the Site.

The Department of Justice will receive comments relating to the proposed consent decrees for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Jennie Muir, et al.*, DJ Ref. #90-11-3-824B.

The proposed consent decrees may be examined at the office of the United States Attorney, 231 Lafayette, 8th Floor, Detroit, Michigan 48226, and at the Region V Office of the Environmental Protection Agency, 111 West Jackson Blvd., 3d floor, Chicago, Illinois 60604. Copies of the proposed consent decrees may also be examined at the Consent Decree Library, 1120 G. Street NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $20.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 93-2859 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that on January 20, 1993, a proposed Consent Decree in *United States* v. *Niagara Transformer Corporation*, Civil No. 89-1358A, was lodged with the United States District Court for the Western District of New York. The proposed Consent Decree settles the United States' claims for response costs against Bell Aerospace Textron, General Electric Company, General Motors Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Union Carbide Corporation.

The complaint in the Niagara Transformer action was filed pursuant to CERCLA to recover costs incurred by EPA in taking response actions at the Wide Beach Development Superfund Site in Brant, New York.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Niagara Transformer Corporation*, D.O.J. Ref. 90-11-3-417.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 68 Court Street, Buffalo, New York, 14202, the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202-624-0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction cost) made payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2873 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Consortium for Advanced Manufacturing-International, Inc.

Notice is hereby given that, on January 5, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Consortium for Advanced Manufacturing-International, Inc. (formerly Computer Aided Manufacturing-International, Inc.) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Computer Aided Manufacturing-International, Inc. (CAM-I) has changed its corporate name to Consortium for Advanced Manufacturing-International, Inc. The current industrial member companies in the United States are:

Allied-Signal-Kansas City Div., Kansas City, MO; Arthur Andersen, Los Angeles, CA; The Boeing Company, Seattle, WA; Caterpiller, Inc., Peoria, IL; Clark Equipment Co., South Bend, IN; Deloitte & Touche, Boston, MA; Department of Defense, Washington, DC; Eastman Kodak Company, Rochester, NY; Electronic Data Systems, Warren, MI; Emerson Electric, St. Louis, MO; Ernst & Young, Cleveland, OH; General Dynamics-Ft. Worth Div., Ft. Worth, TX; General Electric, Schenectady, NY; Goldstar, Changwon City, KOREA; Grumman Aerospace, Bethpage, NY; Harris Corporation, Melbourne, FL; Honeywell, Inc., Minneapolis, MN; Hughes Aircraft Co., El Segundo, CA; IBM Corporation, Boca Raton, FL; KPMG Peat Marwick, Palo Alto, CA; LTV Aerospace & Defense Co., Dallas, TX; Martin Marietta Energy Sys., Oak Ridge, TN; McDonnell Douglas Corp., St. Louis, MO; National SemiConductor, Santa Clara, CA; NIES, Canberra City, AUSTRALIA; Northrop Corp., Hawthorne, CA; Price Waterhouse, Cleveland, OH; Procter & Gamble Co., Cincinnati, OH; Texas Instruments, Plano, TX; U.S. Air Force, Dayton, OH; U.S. Navy, Alexandria, VA; and Westinghouse Electric Corporation, Columbia, MD. The current industrial member companies in Europe are: Aerospatiale, Paris, FRANCE; Groupe Bull, Paris, FRANCE; CTE/ITM, Genoa, ITALY; Coopers & Lybrand, Deloitte, London, ENGLAND: Eurosept, Boulogne, FRANCE; Finmeccanica, Rome, ITALY; IBM Eurocoordination, Parris, FRANCE; IPL-TNO, Apeldoorn, THE NETHERLANDS; IVF Swedish Institute, Goteborg, SWEDEN; Lucas Engineering, Solihull, West Midlands, ENGLAND; Messerschmitt-Bolkow-Blohm, Munich, GERMANY; Nuove Pignone, Florence, ITALY; Phillips International, Eindhoven, THE NETHERLANDS; Telos Management, Milan, ITALY; and Valmet Corporation, Helsinki, FINLAND. Current industrial member companies in the Pacific region are: Fuji Electric, Tokyo, JAPAN; Fujitsu, Ltd., Kawasaki, JAPAN; Hitachi, Ltd., Yokohama, JAPAN; and Honda Engineering, Sayama City, JAPAN. Current educational members in the United States are; Arizona State Univ., Tempe, AZ; Brigham Young Univ., Provo, UT; California Polytechnic, San Luis Obispo, CA; Carnegie Mellon Univ., Pittsburgh, PA; Illinois Institute of Technology, Chicago, IL; Massachusetts Inst. of Tech., Cambridge, MA; Merrick School of Business, Baltimore, MD; North Carolina State, Raleigh, NC; North Texas State, Denton, TX; Oklahoma State Univ., Stillwater, OK; Portland State Univ., Portland, OR; Purdue Univ., Ft. Wayne, IN; Rensselaer Polytechnic, Troy, NY; Stanford Univ., Stanford, CA; Univ. California (UCLA), Los Angeles, CA; Univ. of Maryland, Baltimore, MD; Univ. of Massachusetts, Amherst, MA; Univ. of Minnesota, Minneapolis, MN; Univ. of Missouri-Rolla, Rolla, MO; Univ. of New Hampshire, Durham, NH; Univ. of San Francisco, San Francisco, CA; Univ. of Southern California, Los Angeles, CA; Univ. of Texas, Arlington, Arlington, TX; Univ. of Texas, Austin, Austin, TX; Univ. of Texas, El Paso, El Paso, TX; and Univ. of Waterloo, Waterloo, CANADA. Current educational members in Europe are: Cranfield Institute of Tech., Poole, ENGLAND; Groupe H.E.C., Jouy-en-Josas, FRANCE; Helsinki Univ. of Technology, Espoo, FINLAND; Katholieke Universiteit Leuven, Heverlee, BELGIUM; Loughborough Univ. of Tech., Leicestershire, ENGLAND; Politechnico di Milano, Milan, ITALY; Royal Institute of Stockholm, Stockholm, SWEDEN; Tech. Institute of Aachen, Aachen, GERMANY; Univ. Frederciana Karlsruhe, Karlsruhe, GERMANY; Univ. of Trondheim, Norway, Trondheim, NORWAY; and Univ. of Twente, Twente, THE NETHERLANDS. The current educational members in the Pacific region are Kyoto Univ., Kyoto, JAPAN; and Kobe Univ., Kobe, JAPAN.

The Intelligent Manufacturing Management Program has been discontinued, and the Quality Customer/Quality Supplier Program (QCQS) has been added.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open and the Consortium for Advanced Manufacturing-International, Inc, intends to file additional written notification disclosing all changes in membership.

On December 28, 1984, Computer Aided Manufacturing-International, Inc. (CAM-I), now known as Consortium for Advanced Manufacturing-International, Inc., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 24, 1985 (50 FR 3425-3426).

The last notification was filed with the Department on January 2, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 2, 1992 (57 FR 11337).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-2856 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Smart House Project

Notice is hereby given that, on January 5, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Smart House, L.P., has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership of the Smart House Project ("the Project"). The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following party is now participating in the Project: Xantech Corporation, Sylmar, CA. The following parties are no longer involved in the Project: Arkla, Inc.; BellSouth Services; Columbia Gas Distribution Companies; Consolidated Natural Gas Company; Consumers Power Company; Delmarva Power & Light Company; Florida Power & Light Company; Halstead Industries; Houston Lighting & Power Company; National Rural Electric Cooperative Association; Northern Illinois Gas Company; Oglethorpe Power Corporation; Oklahoma Natural Gas Company; Pacific Gas & Electric Company; Pittway Corporation; Portland General Electric Company; Public Service Company of Colorado; Sears, Roebuck & Co.; Southern California Edison Company; Universal Electronics Inc.; Virginia Power Company; WaterFurnace International Inc.; Wisconsin Electric Power Company. No other changes have been made in either the membership or planned activity of the Project.

Participants of the Project are developing a coordinated home control and energy distribution system containing integral telecommunications and advanced safety features.

On June 14, 1985, the predecessor in interest to Smart House, L.P., filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 10, 1985 (50 FR 41428).

The last notification was filed with the Department on October 5, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 17, 1992 (57 FR 60005).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-2857 Filed 2-5-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Spray Drift Task Force

Notice is hereby given that, on January 13, 1993, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Spray Drift Task Force has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Spray Drift Task Force Joint Data Development Agreement. The notice was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the change consists of the addition of Agro-Gor Corporation, a division of Agrico Chemical Company, New Orleans, LA.

No other changes have been made in either the membership, corporate name or planned activities of the venture.

On May 15, 1990, the Spray Drift Task Force filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of July 5, 1990 (55 FR 27701). The last notification was filed with the Department on April 27, 1992. A notice was published in the **Federal Register** on May 22, 1992 (57 FR 21824).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–2858 Filed 2–5–93; 8:45 am]

BILLING CODE 4410-01-M

Immigration And Naturalization Service

[AG Order No. 1680–93]

Termination of Designation of Lebanon Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice terminates the Attorney General's designation of Lebanon under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act (Act). Accordingly, eligible aliens who are nationals of Lebanon, or who have no nationality and who last habitually resided in Lebanon, will lose their eligibility for Temporary Protected Status.

EFFECTIVE DATE: The termination of the Temporary Protected Status designation for Lebanon is effective April 9, 1993.

FOR FURTHER INFORMATION CONTACT: Kathryn A. Kazalonis, Senior Immigration Examiner, Immigration and Naturalization Service, room 7223, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232, (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals of a foreign state designated by the Attorney General, or who have no nationality and last habitually resided in that state. The Attorney General so designates a state, or a part thereof, upon finding that the state is experiencing ongoing armed civil strife, environmental disaster, or certain other extraordinary and temporary conditions.

On March 21, 1991, the Attorney General designated Lebanon for Temporary Protected Status for a period of 12 months. 56 FR 12746. On January 20, 1992, the Attorney General extended the designation of Lebanon under the Temporary Protected Status program for an additional 12 months until March 28, 1993. 57 FR 2931.

Section 244A(b)(3) of the Act requires the Attorney General to review, at least 60 days before the end of the initial period of designation or any extended period of designation, the conditions in a state designated under section 244A(b)(3). The section also requires the Attorney General to determine whether the requirements for such designation continue to be met, and to terminate a state's designation when the Attorney General determines that those requirements are not met. In this notice, the Attorney General terminates the designation of Lebanon, pursuant to section 244A(b)(3) of the Act.

Notice of Termination of Designation of Lebanon Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I find, after consultation with the appropriate agencies of the United States Government, that the extraordinary and temporary conditions found to exist in Lebanon on March 21, 1991, and on January 20, 1992, are not presently in existence. The United States embassy in Beirut reports that the security situation for Lebanese citizens is steadily improving. The Lebanese government's amnesty law specifically protects Lebanese citizens from prosecution for virtually all actions taken during the war years, and the majority of Lebanese go about their daily activity without hindrance. While the few persons who might still encounter difficulties in Lebanon due to their affiliations could apply for asylum, we believe that Temporary Protected Status is no longer appropriate for Lebanese citizens in general.

Accordingly, it is ordered that the designation of Lebanon for Temporary Protected Status is terminated effective 60 days after publication of this notice in the **Federal Register**.

Dated: January 27, 1993.

Stuart M. Gerson,

Acting Attorney General.

[FR Doc. 93–2861 Filed 2–5–93; 8:45 am]

BILLING CODE 4410-01-M

Office of Justice Programs

Office for Victims of Crime

Discretionary Grant Program and Application Information for Fiscal Year 1993; Correction

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Correction.

SUMMARY: In the public announcement of availability of the funds and application information under the Discretionary Grant Program beginning on page 5416 in the issue of Thursday, January 21, 1993, make the following correction:

On page 5417 in the third column in the first paragraph, the fourth sentence should read: "At least 70 percent of the grant funds is to be allotted for the purchase of workshop presentations from the list; or in special cases, other workshop presentations may be purchased with OVC approval."

Dated: January 29, 1993.

Carolyn Hightower,

Acting Director, Office for Victims of Crime.

[FR Doc. 93–2906 Filed 2–5–93; 8:45 am]

BILLING CODE 4410-18-P

Office for Victims of Crime

FY 1993 Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program Application Kit; Correction

AGENCY: Office for Victims of Crime, Office of Justice Programs, Justice.

ACTION: Correction.

SUMMARY: In the public announcement of the availability of FY 1993 Assistance to Victims of Federal Crime in Indian Country Discretionary Grant Program Application Kit beginning on page 584 in the issue of Wednesday, January 6, 1993, make the following correction:

On page 584, in the second column, the Summary paragraph should include Florida and Oklahoma. The Summary paragraph should read, "The Office for Victims of Crime (OVC) is publishing this Notice of availability of the FY 1993 Discretionary Grant Application Kit for the State agencies appointed by the Governors in Alabama, Colorado, Florida, Iowa, Louisiana, Mississippi, Nebraska, North Carolina, Oklahoma, and Texas."

Dated: January 29, 1993.

Carolyn A. Hightower,

Acting Director, Office for Victims of Crime.

[FR Doc. 93–2907 Filed 2–5–93; 8:45 am]

BILLING CODE 4410-18-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Arts in Education Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2897 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

Challenge/Advancement Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Challenge/Advancement Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance with the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2898 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR Part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2899 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

Design Arts Advisory Panel; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR paragraph 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended [20 U.S.C. 959(a)(4)], notice is hereby given that renewal of the Design Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2900 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

Expansion Arts Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR Part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2901 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

Folk Arts Advisory Panel: Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Folk Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2902 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

Literature Advisory Panel; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2908 Filed 2–8–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Media Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Media Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated; February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2909 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Museum Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Museum Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) Policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2910 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Music Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4), notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2911 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Opera-Musical Theater Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR par. 101–6), and under the authority of Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Opera-Musical Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2913 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Presenting and Commissioning Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Presenting and Commissioning Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2914 Filed 2–5–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Office for Public Partnership Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of

1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Office for Public Partnership Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2912 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Theater Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)), notice is hereby given that renewal of the Theater Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with the respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) Policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Dated: February 2, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2915 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts; Visual Arts Advisory Panel; Renewal

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101–6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959 (a)(4)), notice is hereby given that renewal of the Visual Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until February 2, 1995. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: (a) Applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and (b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and with the Library of Congress.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–2916 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL FOUNDATION ON THE ARTS AND SCIENCES

Folk Arts Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (National Heritage Fellowships Section) to the National Council on the Arts will meet on March 3–4, 1993 from 9 a.m.–6:30 p.m. and March 5 from 9 a.m.–4 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: February 2, 1993.

Yvonne M. Sabine,

Panel Operations; National Endowment for the Arts.

[FR Doc. 93–2896 Filed 2–5–93; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

February 3, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On January 4, 1993 the National Science Foundation published a notice in the Federal Register of permit applications received. A permit was issued to Sean Turner on February 2, 1993.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–2900 Filed 2–5–93; 8:45 am]

BILLING CODE 7555-01-M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Science Foundation

ACTION: Statement of organization, functions and delegations of authority.

SUBJECT: In accordance with the Administrative Procedures Act (5 U.S.C. 551 *et seq.*), this notice replaces the Statement of Organization last published at 56 FR 40917–40926 of August 16, 1991.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Modestine Rogers, National Science Foundation, Division of Human Resource Management, 1800 G Street, NW., room 208, Washington, DC 20550, telephone (202) 357–9441.

Dated: February 2, 1993.

John F. Wilkinson,

Acting Division Director, Division of Human Resource Management.

I. Creation and Authority.

The National Science Foundation (NSF) is an independent agency of the U.S. Government, established by the National Science Foundation Act of 1950, as amended, and related legislation, 42 U.S.C. 1861 *et seq.*, and was given additional authority by the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885), and title I of the Education for Economic Security Act (20 U.S.C. 3911 to 3922). The Foundation consists of the National Science Board of 24 part-time members and a Director (who also serves as *ex officio* National Science Board member), each appointed by the President with the advice and consent of the U.S. Senate. Other senior officials include a Deputy Director who is appointed by the President with the advice and consent of the U.S. Senate, and eight Assistant Directors.

The Foundation's organic legislation authorizes it to engage in the following activities:

A. Initiate and support, through grants and contracts, scientific and engineering research and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating its research and educational programs with other Federal and non-Federal programs.

F. Maintain a current register of scientific and technical personnel, and in other ways provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other Federal agencies.

G. Determine the total amount of Federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and engineering. Strengthen research and education in the sciences and engineering, including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others under-represented in science and technology.

II. Overview of Operations

A. *General Procedures, Forms, Descriptions of Programs.* NSF supports basic and applied research and education in the sciences and engineering. The Foundation accomplishes its mission primarily through the award of grants and other agreements to universities, colleges, and other nonprofit organizations, as well as to individuals and profit-making organizations. In instances where NSF has a specially assigned mission, or where services are being procured, contracts are used rather than grants. Ordinarily grants are made on the basis of merit after a review process involving several qualified outside commentators drawn from the scientific, educational, and industrial communities.

B. *Honorary Awards.* The National Science Foundation annually presents the Alan T. Waterman Award to an outstanding young scientist or engineer for support of research and study. From time to time, the National Science Board presents the Vannevar Bush Award to a person who, through public service activities in science and technology, has made an outstanding contribution toward the welfare of the Nation. The two awards are designed to encourage individuals to seek to achieve the Nation's objectives in scientific and engineering research and education. The Foundation also provides support for the President's Committee on the National Medal of Science.

III. Organization

The Foundation is organized along functional and disciplinary lines corresponding to program support of science, engineering, and science and engineering education.

A. *National Science Board (NSB).* The National Science Board is composed of 25 members, including the Director of the Foundation *ex officio*. Members serve for 6-year terms and are selected because of their distinguished service in the fields of the basic, medical, or social sciences, engineering, agriculture, education, public affairs, or research management. They are chosen in such a way as to be representative of scientific and engineering leadership in all areas of the Nation. The officers of the Board, the Chair and Vice Chair, are elected by the Board from among its members for 2-year terms. The Board exercises authority granted it by the NSF Act, including establishing policies for carrying out the purposes of the Act. Meetings of the Board are governed by the Government in the Sunshine Act (Public Law 94–409) and the Board's Sunshine Act (45 CFR 614). The policies of the Board on the support of science and engineering and development of human resources are generally implemented through the various programs of the Foundation. The National Science Board is required by statute to render a biennial report on indicators of the state of science and engineering to the President for submission to the Congress.

The NSB Office is responsible for operating and representing the National Science Board, identifying policy issues for consideration by the Board, developing congressional testimony for Board members, and providing liaison between the Board and the Director and his staff.

B. *Office of Inspector General (OIG).* OIG is responsible for audit and oversight of the financial, administrative, and programmatic aspects of NSF's activities. OIG is the focal point of contact with other Federal audit organizations in the Executive Branch and with GAO. OIG is organized with four subordinate components: External Audit, Internal Audit, Oversight, and Investigations.

C. *Director.* The Director of the National Science Foundation is Chief Executive Officer of the Foundation and serves *ex officio* as a member of the National Science Board and as Chairman of its Executive Committee. The Director is responsible for the execution of the Foundation's programs in accordance with the NSF Act and other provisions of law. The Director is also responsible for duties delegated to him by the Board and for recommending policies to the Board. The Director is assisted by a Deputy Director who is appointed by the President, with the advice and consent of the Senate. The Assistant to the Director for Science and Technology serves as science advisor to the Director providing broad policy-level advice, assistance and support on a wide range of scientific and policy matters relevant to the mission of the Foundation.

IV. Activities of the Foundation

The activities of the Foundation are carried out by a number of Foundation components reporting to the Director through their respective senior officers.

A. Staff Offices

1. *Office of Equal Opportunity Programs (OEO).* OEO is responsible for providing a leadership role in the Agency's efforts to increase the participation and development of all individuals, especially the underrepresented, in all aspects of its science and engineering activities both internally and externally. The Office provides assistance to management in developing, maintaining, and carrying out a continuing Agency-wide affirmative action program and for developing all other aspects of the Agency's equal opportunity programs.

2. *Office of Legislative and Public Affairs (OLPA).* OLPA is responsible for representing the Foundation, the Director, and key associates in relationships with the Congress, the communications media and the public, various academic groups and professional societies, institutions, and other NSF clientele. Legislative responsibilities include providing the coordination, analysis, liaison, and other assistance necessary for the annual congressional consideration of the NSF budget as well as all science and technology related legislative issues and providing information and advice to the Director and key NSF staff on interactions with the Congress. Public affairs and communications responsibilities include informing and educating the general and specialized publics about NSF programs, activities, and services; maintaining relations with the public and news media (both print and electronic media); preparing and issuing reports, audio-visual materials, and publications that serve the general and specialized publics; and responding to both Freedom of Information Act requests and general inquiries from the public. The Office is also responsible for coordinating special projects and activities such as National Science and Technology Week; overseeing the work of the NSF Historian; and approving and coordinating publications created by other NSF offices, in accordance with OMB requirements.

3. *Office of Planning and Assessment (OPA).* OPA provides the Director, the National Science Board, and senior NSF staff with studies, assessments, and analyses of NSF programs and activities and the science and engineering research and education capabilities of the Nation. Specifically, OPA (a) conducts post-performance evaluations of NSF programs and activities, evaluating their contributions to scientific, technological, and educational progress, and, as appropriate, recommending alternative programs or approaches; (b) provides analyses of NSF budgeting and programmatic data as inputs for strategic planning exercises; (c) analyzes science and engineering infrastructure, funding, and personnel data to estimate the effects of alternative policies; (d) assists NSF line managers in the design and implementation of evaluation and assessment plans for their activities and programs; and (e) monitors operations of the merit review system by assessing the integrity of the award decision process and providing the Director with regular reports on the efficacy of the system.

4. *Office of Polar Programs (OPP).* OPP is responsible for funding and management of the U.S. Antarctic Research Program and for support of a small Arctic Research Program. It also provides staff assistance to plan and coordinate Federal research support in the Arctic. The U.S. Antarctic Research Program aims at extending knowledge of Antarctica, including its glaciers and geology, the surrounding ice and oceans, its lower and upper atmosphere, and terrestrial and marine biota. International cooperation contributes to research objectives, to environmental protection, and to strengthening the Antarctic Treaty system. Much polar research relates environmental processes to a global context. As in the Antarctic, the Arctic Research Program supports science spanning the full spectrum of the environment from the ocean bottom through the sea ice cover and out into space where the first interactions of solar radiation with the earth's atmosphere begin. Studies of glaciers and land-based ecosystems also are supported. In addition, the Office has major responsibilities for NSF implementation of the Arctic Research and Policy Act of 1984 that calls for the development and implementation of national policies and research plans and more extensive coordination of planning and budgeting by Federal agencies.

5. *Office of Science and Technology Infrastructure (OSTI).* OSTI was established in the Office of the Director (1) to provide leadership, coordination, and oversight for the Foundation's Science and Technology Centers; (2) to support academic research facilities modernization and major state-of-the-art research instrumentation; and (3) to help stimulate other sectors (i.e., industry and the States) to support and participate in these efforts.

6. *Office of the General Counsel (OGC).* OGC provides legal advice to the Director, the National Science Board, and NSF staff and represents them in legal matters, including the development of laws and regulations likely to affect the NSF, science, or the use of science. OGC also prepares and coordinates NSF comments on proposed legislation.

B. Offices and Directorates

1. *Office of Budget, Finance, and Award Management (BFA)*

a. *Director, Office of Budget, Finance, and Award Management.* The Director, BFA, who is also the Chief Financial Officer, is the principal adviser to the Director on all financial matters, including resource allocation and management of the Foundation, and is directly responsible for a wide range of activities comprising NSF's budget, finance, and grant and contract operations. This responsibility includes the management of (1) budget operations and development of operating plans; (2) program and special analyses; (3) the financial accounting of all Foundation operations; and (4) the administration of grants and procurements. As CFO, the Director provides leadership over the full range of financial management issues, including financial planning, financial statement preparation, and performance measurement. The CFO's responsibilities in this capacity include the formulation and development of the Foundation's budget and presentation of the budget to the Office of Management and Budget and to the Congress.

b. *Division of Budget (BD).* The Budget Division is responsible for supporting the Foundation's resource planning and management activities, and for the integration and translation of plans into resource requests. This includes presenting and defending the Agency's budget requests to OMB and to the Congress; coordinating the development of long range financial and resource plans for the Foundation, providing independent analysis of programmatic issues; reviewing action and information items prepared for NSB consideration; analyzing budget and program plans developed for the Federal Coordinating Council for Science, Engineering and Technology (FCCSET); developing and maintaining budget/management procedures, data bases and monitoring systems for providing budget control, including outlay forecasts, on behalf of the Director; developing and managing the annual operating plans of the Foundation's major fund accounts; and managing the Foundation's Salaries and Expenses budget, including the FTE allocation and utilization processes.

c. *Division of Financial Management (DFM).* DFM is responsible for the development, coordination, and direction of financial management policies, programs, and operations, and for the design of modern automated business management systems. DFM provides funds control, payroll and disbursing services, and maintains accounting systems to manage the financial aspects of Foundation operations and to produce timely and accurate data for financial management and budgetary purposes.

d. *Division of Grants and Contracts (DGC).* DGC is responsible for the award process for all Agency grants, contracts, cooperative agreements and other arrangements which consist of over 20,000 award transactions annually. This responsibility encompasses: negotiation, issuance, administration and close out of such awards in accordance with relevant laws, regulations, Executive Orders, OMB Circulars, Foundation policy and procedures, and sound business practices; negotiation of indirect cost rates, management of indirect costs, and cost analysis; review, negotiation and resolution of all audits and related reviews of NSF funded grants, contracts, and other agreements; tracking and reporting on NSF assistance and procurement activities; coordinating responses to FOIA requests related to awards and proposals; grant, contract and research administration policy development and coordination, including responsibility for maintaining the NSF Grant Policy Manual, Grants for Research and Education in Science and Engineering (GRESE), and the Proposal and Award Manual; oversight of all agency procurement activities through the functions of the Procurement Executive and the Competition Advocate; and representing NSF with other Federal agencies and external organizations in matters relating to grant, contract and research administration activities.

2. Office of Information and Resource Management (IRM)

a. *Director, Office of Information and Resource Management.* The Director, IRM, serves as the principal advisor to the Director, NSF, on all administrative and general management activities of the National Science Foundation. This responsibility encompasses: information systems, human resource management and employee-oriented programs, health services, management analysis, and general administrative and logistic support functions.

b. *Division of Administrative Services (DAS).* DAS is responsible for the management and direction of official travel services and conference arrangements; procurement, issuance and maintenance of supplies, materials, and equipment; space management; telecommunications and building maintenance; records disposition; mail and messenger services; property accountability; warehouse management; document and building security; printing, typesetting, graphics, reproduction and binding services; information management and dissemination; publications distribution and storage; and the NSF Library and NSF Information Center, which is the official agency Reading Room.

c. *Division of Human Resource Management (HRM).* HRM is responsible for planning, developing, and implementing the human resource management program of the Foundation to provide for the effective acquisition, retention, motivation, development, and use of NSF personnel. The Division is also responsible for the Committee Management Program.

d. *Division of Information Systems (DIS).* DIS is responsible for development, operation, maintenance, and oversight of automated systems that provide management information and support program and administrative staff activities throughout the Foundation's business cycle.

3. Directorate for Biological Sciences (BIO)

a. *Assistant Director for Biological Sciences.* The Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the biological sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of four divisions reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each division, headed by a Division Director, is subdivided into programs. In addition to supporting research projects, divisions may support dissertations, research conferences and workshops, meetings, and the organization or development of specialized research facilities and equipment.

b. *Division of Biological Instrumentation and Resources (BIR).* BIR was established in response to the need for a coordinated activity of infrastructure and research resource programs. The Division is responsible for both internal and external infrastructure activities, including support for instrumentation and instrument development, biological facilities centers, and other biology facility programs, and also includes the coordination of all cross-directorate programs, maintenance and improvement of all BIO ADP systems and information management, as well as training for automated systems.

c. *Division of Environmental Biology (DEB).* DEB supports research on systematics and on biological systems above the level of organisms as well as the interaction of organisms with the environment. This encompasses areas such as population genetics, evolutionary processes and patterns, biological surveys and inventories, chemical ecology, microbial ecology, organism-to-organism interactions, mathematical modeling of ecological systems, nutrient dynamics, and long-term studies in environmental biology. The Division especially seeks to introduce state-of-the-art technology to address complex ecological questions.

d. *Division of Integrative Biology and Neuroscience (IBN).* IBN is responsible for supporting research on biological systems above the cell level in order to advance understanding of the development and functioning of organisms. This includes support of research on developmental mechanisms, integrative plant biology (e.g., plant metabolism, physiology, and plant-microbe interactions), animal behavior and ecology, and neuroscience.

e. *Division of Molecular and Cellular Biosciences (MCB).* MCB is responsible for supporting research in the fields of molecular and cellular biology. This includes support in areas such as macromolecular structure and function and synthesis, genome structure and function and regulation of gene expression, cellular and organelle structure, function and biogenesis, cellular communication and regulation, and microbial biology. The Division supports a limited number of postdoctoral research fellowships in plant biology at the molecular, cellular, and whole plant levels.

4. Directorate for Computer and Information Science and Engineering (CISE)

a. *Assistant Director for Computer and Information Science and Engineering.* The Assistant Director serves as the principal advisor to the Director, within the framework of statutory and NSB authority, in computer and information sciences and engineering. Development and implementation of research and facilities support policies, annual programs and budgets, long-range plans, and the establishment of research priorities to further national goals and strengthen the scientific research potential are responsibilities of the Assistant Director. One office and five divisions, each dealing with a substantive area, report to the Assistant Director. In addition to the specific areas, support is provided for appropriate conferences, symposia, and research workshops in the areas for which it has responsibility.

b. *Office of Cross-Disciplinary Activities (CDA).* CDA is responsible for centralizing intra-divisional activities such as those relating to infrastructure building; for providing a central focus for activities between CISE and industry, other governmental agencies, professional societies, and international organizations; and for proposing and initiating new cross-divisional programs. The Office manages and coordinates cross-divisional targeted activities and programs including Science and Technology Centers, NSF Young Investigator Awards, Research Initiation in Computer and Information Science and Engineering, Research Experiences for Undergraduates, Minority Research Initiation, Research Opportunities for Women, Ethics and Values Studies, and the like.

c. *Division of Advanced Scientific Computing (ASC).* ASC provides researchers access to advanced computational facilities located at several centers, provides a variety of services and training opportunities to new users, supports research on new algorithms, peripheral devices, and innovative supercomputing systems. The Centers program is devoted to delivering needed advanced computational services to the academic research community and to maintaining and improving supercomputer performance at the facilities. The New Technologies program is responsible for research and development and implementation of novel systems for increasing the future power and expanding the horizon of computational capabilities for frontier scientific and engineering research.

d. *Division of Computer and Computation Research (CCR).* CCR is responsible for research in several broad areas including theories of computation, numerical, symbolic and algebraic computation, computer and software systems architectures, graphics, operating systems, programming languages, program semantics, theorem proving and other aspects of software systems science and software engineering. The Division also provides experimental facilities for research in computer and information science and engineering, and special-purpose equipment for research.

e. *Division of Information, Robotics and Intelligent Systems (IRIS).* IRIS is responsible for research on the representation and utilization of knowledge, database design and implementation, robotics and machine intelligence, perception and cognition, machine-human interface design, and social science and engineering research fundamental to understanding the social and economic consequences of the wide use of information technologies. It also provides for experimenting with real time systems.

f. *Division of Microelectronic Information Processing Systems (MIPS).* MIPS is responsible for research on the design, fabrication and testing of microelectronic integrated systems. This encompasses VLSI architecture, simulation, circuit theory and signal processing; and the development and testing of prototypes of novel computer and information processing systems. It also provides access, for research and education purposes, to a fast turnaround service for implementing microelectronic components, circuits and systems.

g. *Division of Networking and Communications Research and Infrastructure (NCRI).* NCRI has both a research-support and an infrastructural role. The Division is responsible for NSF's Networking and Communications Research program which emphasizes topics such as information theory, coding and coded modulation, and storage channels; network management and control, protocol design, and interface architectures; internetworking, network security, and fundamental limits of networks. In addition, the Division supports NSFNET, a computer network for the nation's research and education community that currently interconnects several thousand U.S. educational institutions, government facilities and laboratories, and industrial firms. As part of the President's High Performance Computing and Communications program, NCRI also fulfills NSF's role in coordinating the broad deployment of the Interagency Interim National Research and Education Network.

5. Directorate for Education and Human Resources (EHR)

a. *Assistant Director for Education and Human Resources.* The Assistant Director is responsible for the initiation of and support for programs to strengthen U.S. science and engineering education and related activities at all levels and to maintain the vitality of such efforts. This responsibility includes improving science and mathematics education opportunities for all students and addressing the long-term development of a strong human resource base to meet the needs of science and technology. The Directorate has five major long-range goals: (1) To help ensure that a high-quality precollege education in science is available to every child in the United States, thereby enabling those who are interested and talented to pursue technical careers; (2) to help ensure the best possible professional education in science and engineering; (3) to help ensure that college-level opportunities are available to broaden the science backgrounds of nonspecialists; (4) to support informal science education programs for the public; and (5) to assist in the development of science and engineering research and education capability throughout the nation.

b. *Office of Systemic Reform (OSR).* OSR supports a small number of reform efforts aimed at enhancing science, engineering and mathematics research and education activities in states and other geographic regions.

c. *Division of Elementary, Secondary and Informal Science Education (ESIE).*

ESIE provides a cohesive and comprehensive set of education and human resources activities designed to improve K–12 science, mathematics, and technology education. These activities are developed to enhance the education of all students and of teachers, to stimulate and support their interests in mathematics and science, to strengthen the educational foundations for those students who are attracted to science, mathematics, or engineering careers, and to inform the general public about these fields.

d. *Division of Graduate Education and Research Development (GERD).* GERD promotes the early career development of scientists and engineers, and thereby helps to assure a steady flow of high-ability students through the educational and research training systems of the nation. This objective is addressed through the use of fellowship and traineeship mechanisms, as well as through programs aimed at advancing the careers of women in science and engineering.

e. *Division of Human Resource Development (HRD).* HRD addresses the issue of increasing the participation of minorities, women, and persons with disabilities in science, mathematics, and engineering careers. Its goal is to increase the representation of minorities in science and engineering at all educational levels; strengthen the research and training capabilities of academic institutions with significant minority enrollments; and develop strategies for increasing the number of women and persons with disabilities participating in science and engineering.

f. *Division of Research, Evaluation, and Dissemination (RED).* RED provides research, data, and analyses to the Directorate for program monitoring, evaluation, and management, and for use in formulating policy options for providing national leadership in the reform of science, engineering, and mathematics education.

g. *Division of Undergraduate Education (DUE).* DUE is responsible for contributing to the improvement of science, mathematics, and engineering education in the Nation's colleges and universities. Its goal is to provide leadership and support for the health of the U.S. undergraduate education enterprise through programs developed to improve curriculum and laboratory offerings; upgrade instructional science equipment; enhance college and university teaching; and improve undergraduate professional preparation of future elementary and secondary school teachers of science and mathematics.

6. Directorate for Engineering (ENG)

a. *Assistant Director for Engineering.* The Assistant Director participates with the Director in planning, analyzing, and evaluating activities and in establishing and maintaining an effective liaison with the Congress, other Federal agencies, the educational and scientific communities, professional societies, and other interested parties. The overall mission of NSF's Engineering (ENG) Directorate is to promote the progress of engineering and technology, thereby contributing to national prosperity and security. Specifically, ENG seeks to strengthen the engineering science base, which provides the foundation for engineering education, research, technological innovation and practice; to develop a knowledge base for technology-driven areas such as design and manufacturing; to encourage technological innovation through the support of research in emerging areas; to promote the cross-disciplinary research approach through the support of research groups and centers; to improve the quality of engineering education in order to attract the most capable students to the engineering profession and produce first-rate engineers; and to provide additional opportunities for minorities, women, and the disabled through programs to remove barriers and provide incentives for full participation in education and research.

b. *Division of Biological and Critical Systems (BCS).* BCS is composed of three sections: Bioengineering, Environmental and Ocean Systems, and Hazard Mitigation Research. Bioengineering concerns the application of engineering methods to problems in the life and health sciences and the development of new engineering technologies through knowledge of the living system. Environmental and Ocean Systems focuses on the contaminant interactions that threaten the quality of land, water, and air and research into the use of coastal ocean space, advanced sensing and measurement techniques, structures, and vehicles. Hazard Mitigation Research targets Earthquake Hazard Mitigation and Natural and Man-Made Hazard Mitigation. In addition to research into engineering, planning, and societal aspects of earthquake hazard reduction, support is provided for engineering research to reduce the social impacts of such phenomena as strong winds, landslides, expansive soils, floods, and drought.

c. *Division of Chemical and Thermal Systems (CTS).* CTS funds research that strengthens the engineering base for technologies involving chemical, thermal and flow processes. The processes are important in areas like microelectronics, specialty chemicals, pharmaceuticals, energy production and transfer, molecular engineering of advanced materials, and chemical processing of hazardous waste.

d. *Division of Design and Manufacturing Systems (DDM).* DDM seeks to develop and expand the scientific foundations of design, manufacturing and computer-integrated engineering across a broad spectrum of American industry. This long-term effort is needed: to deepen our understanding of the processes, operations and systems that comprise our manufacturing base; to render this base more competitive; and to make it responsive to new needs and receptive to innovation. Complementing this effort is support of the development of operations research methodologies that underlie the full range of engineering production systems.

e. *Division of Electrical and Communications Systems (ECS).* ECS supports fundamental engineering research on the conceptualization, analysis, design, and fabrication of materials, devices, systems, and phenomena that involve electrical, electronic, electromechanical or optical technologies. The Division also provides funding for the development of analytical methods and computational algorithms for technology utilization that supports the full range of engineering disciplines. Through the Emerging Technology Initiation program, the Division also supports selected, innovation engineering technologies that cut across traditional disciplinary boundaries. The goal of the ECS Division is to enhance the knowledge base and academic infrastructure in relevant research areas, which contribute to the development, manufacture, and deployment of engineering products and systems that benefit the nation's economy, national security, and overall societal welfare.

f. *Division of Engineering Education and Centers (EEC).* EEC supports research aimed at enhancing our country's economic well-being and industrial competitiveness through new paradigms to improve the quality of engineering education and research. EEC seeks to yield well-educated, professionally oriented engineers who are internationally competitive and able to assume broad leadership roles in industry and academe specifically and in society generally.

Additionally the EEC subactivity supports university-based research centers across a spectrum of technologies essential to U.S. economic competitiveness. The Engineering

Research Centers Program addresses fundamental research issues, educates engineering students using a cross-disciplinary team approach, and provides for the long-term involvement of industry in planning, research, and education.

g. *Division of Industrial Innovation Interface (III).* III provides a focus for small business activities of the National Science Foundation. Opportunities are provided under the Small Business Innovation Research Program for small science and technology-based firms to perform research projects leading to more rapid commercialization of new ideas, products, and processes. In addition, the Division supports the management of the Technological Innovation Program, an interdisciplinary program, aimed at managing the innovation process and improving the speed and efficiency of bringing research results to the market.

h. *Division of Mechanical and Structural Systems (MSS).* MSS seeks to improve and expand fundamental engineering knowledge in the broad areas of mechanics, structures, and materials engineering. Research is supported that will improve existing industrial processes and create new technology in areas such as the formulation and processing of novel engineering materials, the performance and service life of machines and equipment, and more efficient construction techniques for large scale structures.

7. Directorate for Geosciences (GEO)

a. *Assistant Director for Geosciences.* The Assistant Director is the principal advisor to the Director in the development and implementation of research, facilities, and instrumentation support policies; annual programs and budgets; long-range plans and the establishment of research priorities to further national scientific goals, strengthen the scientific potential of global geosciences, and enhance the basic programs in atmospheric, earth, and ocean sciences within the framework of statutory and National Science Board authority. The Geosciences Directorate is composed of three divisions that report to the Assistant Director. The divisions are structured primarily along disciplinary and functional lines. Each division is managed by a Division Director and is subdivided into sections and programs as required for appropriate management and oversight. In addition to the specific areas of research, facilities, and instrumentation support described below, the divisions maintain close liaison with mission-oriented Federal agencies that support similar or complementary areas of research and provide NSF representation on standing interagency committees and joint advisory and planning groups.

b. *Division of Atmospheric Sciences (ATM).* The objective of ATM is to improve fundamental knowledge of the behavior of the earth's atmosphere. The Division provides support for basic research on the physics and chemistry of the earth's atmosphere and its response to solar and terrestrial influences including those of the hydrosphere and biosphere. This research is relevant to national needs of improved prediction and understanding of weather, climate, and the global environmental system. It also provides basic knowledge that can be used to support applications by mission-oriented agencies. The Division supports the National Center for Atmospheric Research (NCAR), our country's major research center in atmospheric sciences. NCAR is engaged in large-scale atmospheric research projects including those requiring the use of aircraft, specialized instruments, powerful computers, and data archival systems. NCAR's state-of-the-art facilities are utilized by universities and Federal agencies such as the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Federal Aviation Administration. Support also is provided for upper atmospheric research facilities comprising four large incoherent-scatter radar systems in a longitudinal chain from Greenland to Peru that permit scientists to investigate the local and global upper atmosphere.

c. *Division of Earth Sciences (EAR).* The objective of EAR is to increase understanding of the solid earth—its composition and structure, its historical evolution, and the dynamic processes, both internal and external, which formed and continue to modify its features. The Division supports basic research across the broad nature of geoscience disciplines including: research on the fundamental nature of earthquakes; research on hydrothermal and magmatic systems and their relationship to mineral deposits; research on earth history as reflected by rock stratigraphy, the fossil record, and other evidence of both cataclysmic and gradual events; research on the structures and properties of rocks and minerals at the pressures and temperatures existing within the earth; research on volcanoes and their historical patterns of eruption; and research on surface and ground water physical and chemical processes in hydrology. The Division seeks to provide earth scientists in U.S. universities and colleges with essential research instrumentation and provides support for the development of new kinds of instruments or the adaptation of existing instruments for new uses in the geosciences. The Division also supports medium to large scale projects designed to bring important new tools and approaches into the hands of university-based earth scientists that offer an opportunity to improve dramatically our understanding of the continental lithosphere through the major advances brought about by the application of plate tectonic theory to the study of the continental crust and lithosphere.

d. *Division of Ocean Sciences (OCE).* OCE supports research to improve understanding of the ocean, the ocean floor, and their relationships to human activities. The Division's research programs foster exploration in all aspects of ocean sciences to improve our understanding of the complex interactions of physical, chemical, geological, and biological processes in the ocean and at its boundaries. The Division also supports operations of ships and specialized facilities and equipment needed by U.S. oceanographers to conduct research; and supports U.S. scientists participating in the ocean drilling program and manages the drilling program as an international enterprise, thereby ensuring the financial and scientific participation of scientists from partner nations in jointly sponsored scientific and operational activities.

8. Directorate for Mathematical and Physical Sciences (MPS)

a. *Assistant Director for Mathematical and Physical Sciences.* The Assistant Director serves as an advisor to the Director in the development of long-range plans, annual programs, and research policy in the areas of mathematical and physical sciences, as established under statutory and National Science Board authority; and is responsible for developing and carrying out a program to accomplish the Foundation's research support mission in these areas. Five divisions report to the Assistant Director for Mathematical and Physical Sciences. Each division is headed by a Division Director and generally is subdivided on a disciplinary or functional basis into sections and/or programs. In addition to the specific areas of support discussed below, each division supports appropriate conferences, symposia, and research workshops in the areas of science for which it has responsibility.

b. *Division of Astronomical Sciences (AST).* AST seeks to increase our understanding of the physical nature of the universe, particularly that of the solar system, individual stars, star clusters, galaxies, and special objects in space such as molecular clouds and quasars. Through its astronomy project support programs, the Division supports researchers in all areas of ground-based astronomy, including research on the sun, the solar system, the structure and evolution of the stars, stellar distances and motions, the composition and distribution of interstellar gas and dust, and galaxies and quasars. Also, support is provided for research programs of several major university observatories and for the development and acquisition of new instrumentation incorporating the latest technology for the detection and analysis of radiation through the electromagnetic spectrum. In addition, the Division provides developmental and operational support for three National Astronomy Centers, operated and managed by nonprofit organizations or universities, under contract to NSF. The Centers provide a variety of optical, infrared, radio and other specialized instrumentation, on a competitive basis, to scientists throughout the Nation. Scientific and support staff are maintained at the Centers to support the research programs of visiting scientists, to develop advanced instrumentation, and to participate in national research programs.

c. *Division of Chemistry (CHEM).* CHEM is responsible for the support of fundamental research in all areas of chemistry, to improve understanding and make possible new applications of chemistry beneficial to other sciences, engineering and technology. The broad subfields supported are organic and macromolecular chemistry, physical chemistry, analytical and surface chemistry, and inorganic, bioinorganic and organometallic chemistry. Special programs exist to assist departments and individual investigators in acquiring advanced instrumentation critical to modern chemical inquiry, and to support interdisciplinary research areas such as the chemistry of life processes and materials chemistry.

d. *Division of Materials Research (DMR).* DMR is responsible for the support of multidisciplinary research designed to gain a deeper understanding of the properties of materials in terms of their composition, structure and processing history and the interactions between their constituents. The broad subfields supported are condensed matter physics; metals, ceramics, and electronics; national facilities and instrumentation; materials theory; and materials research laboratories and groups. DMR also has responsibility for the Office of Special Programs in Materials which administers the Science and Technology Centers, cross-directorate programs, education and human resource activities, and FCCSET initiatives.

e. *Division of Mathematical Sciences (DMS).* DMS is responsible for providing research support in mathematics and statistics, and in their applications to other sciences. The Division has special programs to support conferences, to provide support for postdoctoral fellows, and to assist groups of researchers in acquiring computational equipment. In addition the Division is interested in supporting interdisciplinary groups of researchers developing computational algorithms to be used in studying problems in science and engineering.

f. *Division of Physics (PHY).* PHY is responsible for development of new knowledge about the existence, structure, and interactions of the various forms of matter and energy, and about the basic forces that govern these interactions. The ultimate goal is to understand and predict the effects of nature on a scale ranging from the microscopic to the cosmic. The Division supports research to advance knowledge in the areas of elementary particle physics; nuclear physics; atomic, molecular, and optical physics; and gravitational physics. Both experimental and theoretical studies are required to produce fuller understanding in each of the areas of interest. The research supported is balanced with respect to the scientific areas as well as to the types of research thrusts for certain fields or for major new projects. Examples include development of new techniques and instrumentation; university-based accelerator laboratories, some of which provide centralized facilities for outside user groups; university-based research groups performing experiments at their own laboratories or at centralized facilities; and theoretical interpretation, exploration, and prediction.

9. Directorate for Social, Behavioral and Economic Sciences (SBE)

a. *Assistant Director for Social, Behavioral and Economic Sciences.* The Assistant Director serves as principal advisor to the Director in the development of long-range plans, annual programs, and research policy in the social, behavioral and economic sciences as established by statute and the National Science Board authority. The Assistant Director is also responsible for developing and implementing programs to strengthen scientific research potential in these sciences. The Directorate, composed of three divisions reporting to the Assistant Director, is structured primarily on a disciplinary basis. Each division, headed by a Division Director, is subdivided into disciplinary programs. In addition to supporting research projects, divisions may support dissertations, data collection and analyses, research conferences and workshops, meetings, and the organization or development of specialized research facilities and equipment. The Directorate also supports research on history and philosophy of science and ethics and values in science.

b. *Division of International Programs (INT).* INT administers programs for international cooperative scientific activities, including joint research projects, seminars, and scientific visits. It facilitates U.S. scientists' access to unique facilities and sites abroad and provides support for Joint Commissions and other U.S. international scientific efforts. INT also supports U.S. participation in selected multilateral scientific organizations and coordinates other National Science Foundation programs with international aspects.

c. *Division of Science Resources Studies (SRS).* SRS is responsible for development and maintenance of a data base dealing with the characteristics, magnitude, and utilization of the Nation's human and financial resources for science and technology (S&T) activities. Studies and analyses provide information on scientific, engineering, and technical personnel, science education, scientific institutions, the funding of S&T activities, the nature and relationship of different types of research and development (R&D) activities, the economic impact of R&D, and related topics. The Division also supports studies designed to develop new or improved techniques for analyzing S&T resources data and new or improved indicators of the inputs, outputs, and impacts of S&T activities.

d. *Division of Social, Behavioral, and Economic Research (SBER).* SBER seeks to develop basic scientific knowledge of human behavior, interaction, and decision making, as well as social and economic systems, organizations, and institutions. Research support is provided in the fields of anthropology, archaeology, cognitive science, decision and management sciences, economics, geography, political science, psychology, sociology, and related areas. The Division also provides support for measurement and methodological work, improvement of the quality and accessibility of social and economic data resources, and the preservation and accessibility of systematic anthropological collections.

V. Information for Guidance to the Public

A. General

1. *Inquiries and Transaction of Business.* All inquiries, submittals, or requests should be addressed to the National Science Foundation, Washington, DC 20550. Members of the public may visit Foundation offices at 1800 G Street, NW., Washington, DC. during business hours, 8:30 a.m. to 5 p.m., Monday through Friday. The Division of Human Resource Management has a Telephonic Device for the Deaf (TDD) which assists individuals with hearing impairment in obtaining information about NSF programs or employment. The TDD is available Monday through Friday on (202) 357–7492. The information provided below indicates the offices members of the public should contact for specific information.

Individuals uncertain about which office to contact may write to the Foundation's mailing address or visit the National Science Foundation, Information Center, Room 232, or the Public Affairs office, room 527, Washington, DC 20550.

2. *Availability of Information.* Persons desiring to obtain information, including documents, may submit a request by telephone or in writing to the Public Affairs office (202) 357–9498, the NSF Information Center (202) 357–1110, or other Foundation units or, where applicable, in writing under terms of the NSF Freedom of Information Act regulations, 45 CFR part 612, or the NSF Privacy Act regulations, 45 CFR part 613. All documents will be made available, except for those which fall within the exemptions specified in the law.

- Freedom of Information Act (FOIA) requests from the public for Agency records should be clearly identified as "FOIA REQUEST" and addressed to FOIA Officer, Office of Legislative and Public Affairs, National Science Foundation, 1800 G Street, NW., room 527, Washington, DC 20550.
- Privacy Act inquiries allow anyone to obtain personal records legally available under the Privacy Act of 1974. Individuals may submit a request to the NSF Privacy Act Officer, 1800 G Street, NW., room 501, Washington, DC 20550.

B. *Pertinent Publications.* The Foundation and the National Science Board publish a variety of booklets and other materials describing the programs and procedures of the Foundation and assessing the status of science in the Nation. Unless otherwise indicated, all publications and forms may be obtained by calling (202) 357–7861, by faxing requests to 703–644–4278, or by writing: National Science Foundation, Attn: Forms and Publications, 1800 G Street, NW., room 233A, Washington, DC 20550.

The booklet, Publications of the National Science Foundation (NSF 92–73), provides a listing of NSF publications available to the public, with prices where they apply. The following are key publications of the Foundation.

1. *About the NSF* (NSF 91–38) is a flyer for the general public that briefly describes NSF programs and activities.

2. *Grants for Research and Education in Science and Engineering* (NSF 92–89) provides basic guidelines and instructions for investigators applying to the Foundation for scientific and engineering research project support and for other closely related programs, such as the support of foreign travel, conferences, symposia, and specialized research equipment and facilities. Complete details are given on application procedures. The brochure also provides information on the merit review of proposals for support.

3. *NSF Grant Policy Manual* (NSF 88–47, as revised) is a compendium of basic NSF grant administration policies and procedures generally applicable to most types of NSF grants and to most categories of recipients. The Manual includes fiscal regulations regarding expenditure reporting and use of NSF granted funds and other specific administrative procedures and policies. This Manual is updated periodically and is available only by subscription from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402–9371. These subscription rules and prices are subject to change by GPO.

4. *Guide to Programs* (NSF 92–78) contains general information for individuals interested in participating in NSF support programs. Program listings describe the principal characteristics and basic purpose of each activity, as well as eligibility requirements, closing dates (where applicable), and the address to obtain more information, brochures, or application forms.

5. *NSF Bulletin* is a monthly publication (except July and August) that summarizes program announcements, deadlines and target dates for proposal submissions, and other NSF activities.

6. *Program Announcements and Solicitations* provide detailed information about the Foundation's programs. Specifically, they describe the areas of research funded by individual Programs and provide guidelines for the preparation and submission of research proposals. They also contain descriptions of various Program publications.

7. *NSF Annual Report* (NSF 92–1) is an annual presentation to the President, for submission to the Congress, highlighting the activities of the Foundation for the prior fiscal year. The report reflects accomplishments in research support activities and in science and engineering education, along with recent NSF policy or program initiatives and trends. Appendices contain other data on Foundation staff and National Science Board members and patents and financial reports. The report covering activities of the previous fiscal year is available mid-year.

8. *National Science Board Reports* contain assessments of the status and health of science and engineering. A report on indicators of the state of science and engineering in the United States is rendered biennially to the President for submission to the Congress. Other reports on policy matters related to science and engineering and education in science and engineering are provided from time to time.

9. *Antarctic Journal of the United States,* a quarterly magazine, and the Annual Review issue of the Antarctic Journal are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

10. *Important Notices* are the primary means of general communication by the Director, NSF, with organizations receiving or eligible for NSF support. These notices convey important announcements of NSF policies and procedures or other subjects determined to be of interest to the academic community and to other selected audiences.

11. *Internal Issuances* are the Foundation's system for communication within the Agency on matters of policy, procedures, and general information. The internal issuances are published to establish organizations, define missions, set objectives, assign responsibilities, delegate or limit authorities, establish program guidelines, delineate basic requirements affecting activities of the Foundation, and serve other internal needs.

C. *Sources for Specific Subjects.* For information concerning the following topics, contact the offices listed below.

1. *Contracts.* The Foundation publicizes contracting and subcontracting opportunities in the *Commerce Business Daily* and other appropriate publications. Organizations seeking to undertake contract work for the Foundation may contact the Division of Grants and Contracts, (202) 357–0469, room 1140, or the Division of Administrative Services, (202) 357–7922, room 248, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

2. *Small Business.* Information concerning NSF research and procurement opportunities for small, disadvantaged, or women-owned businesses may be obtained from the Office of Small Business Research and Development/Office of Small and Disadvantaged Business Utilization, (202) 653–5335, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

3. *Engineering Information Resources.* Information concerning engineering resources may be obtained from the Office of the Assistant Director for Engineering, National Science Foundation, 1800 G Street NW., room 525, Washington, DC 20550.

4. *National Science Board Activities.* Schedules of Board meetings, agendas, and summary minutes of the open meetings of the Board may be obtained from the NSB Office, (202) 357–9582, National Science Foundation, 1800 G Street NW., room 545, Washington, DC 20550.

5. *NSF Advisory Committee Activities.* Summary of meeting minutes may be obtained from the contacts listed in the Notice of Meetings published in the **Federal Register**. General information about the Foundation's advisory groups may be obtained from the Committee Management Officer, Division of Human Resource Management, National Science Foundation, 1800 G Street NW., room 208, Washington, DC 20550, (202) 357–7363.

6. *Employment.* Inquiries may be directed to the National Science Foundation, Division of Human Resource Management, (202) 357–7840, 1800 G Street NW., room 208, Washington, DC 20550. The NSF Job Information Hotline can be accessed 24 hours a day in the Washington, DC metropolitan area by dialing (202) 357–7735; outside Washington, DC, dial 1–800–628–1487. Hearing impaired individuals can call Monday–Friday to access a Telephonic Device for the Deaf (TDD). The TDD number is (202) 357–7492. The National Science Foundation is an equal opportunity employer.

D. Other Access to Information

1. *Reading Room.* Records are available for public inspection and copying in the NSF Information Center, National Science Foundation, 1800 G Street, NW., room 232, Washington, DC 20550. Telephone (202) 357–9000.

2. *Science and Technology Information System (STIS).* NSF has an electronic dissemination system that provides easy access to NSF publications and other information. The full text of publications can be searched online and copied from the system. There is no charge for connect time and no need to register for a password. The service is available 24 hours a day, except for maintenance periods. Up to 10 people can be on the system simultaneously. For more information and instructions to use STIS, request "STIS—The Science and Technology Information System" (flyer), NSF 91–10, or the "STIS—User Manual," NSF 91–19. Information can also be obtained by calling (202) 357–7861 or writing: National Science Foundation, Attn: Forms and Publications, 1800 G Street, NW., room 233A, Washington, DC 20550.

[FR Doc. 93–2933 Filed 2–5–93; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Notification of Upcoming Meetings in the High-Level Waste Pre-Licensing Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Weekly notification of upcoming meetings in the high-level waste pre-licensing program to become bi-weekly notification.

SUMMARY: On August 27, 1984, the Nuclear Regulatory Commission published a **Federal Register** Notice (49 FR 33946) regarding the sending out of a weekly notice of upcoming meetings in the high-level waste pre-licensing program. In keeping with the Agency's Task Force on Paper Reduction and the Reduction in Paper Act of 1980, this mailing will now be sent on a bi-weekly basis.

FOR FURTHER INFORMATION CONTACT: Anne Garcia, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 504–2438.

Dated at Rockville, Maryland this 29th day of January, 1993.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–2919 Filed 2–5–93; 8:45 am]

BILLING CODE 7590–01–M

Issuance of Partial Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has issued a Partial Director's Decision concerning a petition dated July 21, 1992, supplemented by an addendum dated August 12, 1992, and an "appeal" request dated September 3, 1992, filed by the Nuclear Information and Resource Service, et al. (Petitioners). The Petitioners requested NRC enforcement action against Gulf States Utilities' (GSU) River Bend Station, demanding that the operating license be suspended until the licensee can demonstrate, through independent testing, that it meets NRC's fire protection regulations (appendix R to 10 CFR part 50). In addition, the Petitioners demanded that the NRC staff immediately issue Generic Letter (GL) 92-XX, draft issued February 11, 1992, and close any nuclear power plant for which the licensee cannot prove, through independent testing, that it meets fire protection regulations until it does meet them. The addendum of August 12, 1992, requested immediate action related to the Comanche Peak Unit 1, Shearon Harris, Fermi-2, Ginna, WNP-2, and Robinson nuclear facilities, and requested the suspension of the construction permit for Comanche Peak Unit 2. The Petitioners' "appeal" dated September 3, 1992, of the initial staff denial of the requested relief removed Ginna and Robinson from the Petitioners' request for enforcement action and added Brunswick Units 1 and 2.

By letter dated August 19, 1992, the Petitioners were informed that the request for emergency relief was denied and appropriate action would be taken on the specific issues they raised. By letter dated November 9, 1992, the Petitioners were further informed by the Secretary of the Commission that the "appeal" had been referred to the Director, NRR, for appropriate consideration in conjunction with review of the issues raised in the petition and addendum.

The petition, addendum and "appeal" were considered under the provisions of

10 CFR 2.206 of the NRC's regulations. Notice of receipt of the petition dated July 21, 1992, and addendum dated August 12, 1992, was published in the **Federal Register** on August 26, 1992 (57 FR 38702).

The Petitioners alleged a number of deficiencies concerning Thermo-Lag material including failure of Thermo-Lag fire barrier during 1-hour and 3-hour fire endurance tests, deficiencies in procedures for installation, nonconformance with NRC regulations, the combustibility of the material, ampacity miscalculations, the lack of seismic tests, the failure to pass hose stream tests, the high toxicity of substances emitted from the ignited material, and the declaration by at least one utility (GSU) of the material as inoperable at its River Bend Station. The Petitioners also alleged that a fire watch cannot substitute for an effective fire barrier indefinitely and that the NRC staff has not adequately analyzed the use of fire watches.

On December 17, 1992, the NRC staff issued Genric Letter 92–08, "Thermo-Lag 330–1 Fire Barriers." To the extent that Petitioners sought issuance of Generic Letter 92-XX, this relief is granted.

The Director has determined that the Petitioners' remaining requests should be denied for the reasons set forth in the "Partial Director's Decision Pursuant to 10 CFR 2.206" (DD–93–03), which is available for inspection and copying in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Rooms for Comanche Peak, Shearon Harris, Fermi-2, Brunswick, River Bend, and WNP-2.

On December 15, 1992, the Nuclear Information and Resource Service (NIRS) filed another Petition pursuant to 10 CFR 2.206 raising additional issues regarding Thermo-Lag fire barrier material. The December 15, 1992 NIRS Petition will be considered as a supplement to the Petition submitted by NIRS and others on July 21, 1992. The issues raised in the December 15, 1992 submittal will be addressed in a Final Director's Decision to be issued within a reasonable time.

A copy of the Decision will be filed with the Secretary for Commission review in accordance with 10 CFR 2.206(c). The Decision will become the final action of the Commission 25 days after issuance unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 1st day of February 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–2918 Filed 2–5–93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–333, License No. DPR–59 EA 92–033]

New York Power Authority, FitzPatrick Nuclear Power Plant, Scriba, New York; Order Imposing Civil Monetary Penalties

I

The New York Power Authority (Licensee), previously named the Power Authority of the State of New York at the time of issuance of the license on October 17, 1974, is the holder of License No. DPR–59 issued by the Nuclear Regulatory Commission (NRC). The license authorizes the Licensee to operate the FitzPatrick nuclear power plant in Scriba, New York, in accordance with the conditions specified therein.

II

Inspections of the Licensee's activities were conducted at the facility between December 2, 1991, and May 1, 1992. The results of these inspections indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated September 15, 1992. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice on October 15, 1992. In its response, the Licensee admitted the violations, but requested full mitigation for the civil penalties for the reasons stated in the Appendix.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee has not provided an adequate basis for full mitigation of the proposed penalties. However, the NRC staff has decided, for the reasons given in the Appendix, to exercise broad discretion and partially mitigate the proposed penalties.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the amount of $300,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether on the basis of the violations admitted by the licensee, this Order should be sustained.

Dated at Rockville, Maryland this 29th day of January 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research.

Appendix—Evaluations and Conclusions

On September 15, 1992, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violation identified during NRC inspections. New York Power Authority (Licensee) responded to the Notice on October 15, 1992. In its response, the licensee admitted the violations, but contended that full mitigation of the civil penalties is warranted. The NRC's evaluation and conclusion regarding the licensee's request are as follows:

1. Summary of Licensee's Response Requesting Mitigation of the Civil Penalties

In its response, the licensee stated that the NRC Enforcement Policy (10 CFR part 2, Appendix C) notes that the NRC may exercise discretion to reduce the amount of a proposed civil penalty, notwithstanding the outcome of the normal assessment process, to ensure that the penalty reflects the NRC's concern and conveys the appropriate message. While the licensee did not deny the actual violations and also acknowledged that the NRC exercised such discretion in limiting the civil penalty for each of the five violations or problems, the licensee contended that the actual collective regulatory impact of the proposed penalties is still disproportionate to the current situation at FitzPatrick. In support of its contention, the licensee stated that (1) the violations resulted from, and were symptomatic of, the same underlying causes of an overall performance decline at FitzPatrick; (2) the licensee has undertaken comprehensive measures to address that past decline, the root causes, and contributing factors, including development and implementation of a comprehensive program to correct the root causes of the performance decline; and (3) the licensee believes that enforcement action designed to send a message at this late date is neither timely, necessary, nor warranted, noting that the related costs and other actions by the NRC have already sent a clear message to the Licensee and the industry, and imposition of the penalty would not convey any additional message and would only have a punitive effect upon the licensee.

The licensee further noted that it had already paid a substantial price for the decline in performance, stating that FitzPatrick (1) voluntarily shut down the facility for nearly a year to improve operations and address specific concerns, such as those related to fire protection, and this shutdown and the resulting improvement plan have resulted in significant costs to the Licensee; (2) was included on the NRC Watch List, resulting in increased NRC scrutiny, adverse public perception, and a shift in licensee resources to FitzPatrick improvement programs; and (3) was the subject of senior management changes to improve management control of plant operations, including a new site management team and organizational structure at the Resident Manager, General Manager, Technical Services Superintendent, and Headquarters Fire Protection supervisory levels.

The licensee also maintained that specific enforcement discretion, pursuant to section VII.B(3) of the existing Enforcement Policy, was applicable to the fire protection and Appendix R violations, stating that they were identified during the extended shutdown. In support of that specific request, the licensee, stated that the shutdown was due in part to the licensee's identification of programmatic Appendix R and fire protection violations, which reflected the licensee's desire to implement a comprehensive program to correct these conditions, including a complete safe shutdown reanalysis and numerous plant modifications, the violations were not willful, and the licensee had agreed to correct these deficiencies prior to restart. The licensee also asserted that the appendix R/fire protection violations at FitzPatrick are similar to those noted at the Boston Edison Company's Pilgrim Nuclear Power Station (Reference: EA 88–283), where enforcement discretion was exercised for fire protection-related violations identified during an extended shut down, and no violation was cited. Therefore, the licensee claims that it had met all of the required criteria set forth in Section VII.B of the policy for the exercise of enforcement discretion, and such discretion would not be unprecedented, and contended that the proposed civil penalties for the fire protection and Appendix R violations should be fully mitigated.

Furthermore, the licensee also asserts that the civil penalty for the violation of 10 CFR 50.9 (providing inaccurate information to the NRC) should be mitigated because it was not willful, and the licensee is implementing measures to provide additional accuracy.

2. NRC Evaluation of Licensee's Response Requesting Mitigation of the Civil Penalties

The NRC has evaluated the licensee's response, and based upon that evaluation, concludes that partial mitigation of the proposed civil penalties is warranted. However, the NRC has determined that full mitigation of the $500,000 is not warranted.

The NRC acknowledges the licensee's general arguments that the underlying causes of the violations in the Notice were symptoms of the same overall performance decline that led to the shutdown at FitzPatrick. The NRC also recognizes that extensive corrective actions have been taken, and significant costs have been incurred as a result of the extended shutdown and related corrective actions. However, the NRC staff concluded in assessing the proposed civil penalty that a pervasive and longstanding decline in performance existed at the FitzPatrick facility, and that the New York Power Authority management did not act promptly to identify and correct this condition. Although the licensee's arguments for mitigation are partially persuasive, the NRC maintains that issuance of a significant enforcement action is warranted to (1) emphasize the need for the corrective actions taken or planned to be longlasting, and (2) to send a clear message to both this licensee, in particular, and the industry, in general, that in addition to the costs of corrective actions, licensees also face the additional costs of enforcement sanctions for significant safety violations or problems. As to the licensee's argument that this is not needed, the licensee did not heed the message to avoid performance problems following the extended shutdowns of other plants such as Peach Bottom, Nine Mile Point, Pilgrim and Calvert Cliffs. This penalty is issued to emphasize that while corrective action is important, it is also important for licensees to prevent significant performance problems from occurring. In addition, the NRC determined that full mitigation of the civil penalty amount was not warranted because of the number, nature, and egregiousness of the violations described in this action, and to further emphasize that conditions such as that which existed at FitzPatrick cannot and will not be tolerated by the NRC.

The NRC also recognizes the licensee's specific arguments for mitigation of the penalties associated with the fire protection and Appendix R requirements. With respect to the fire protection program deficiencies (which included the fire brigade training, as well as the failure to correct promptly the deficiencies identified in Quality Assurance audits dating back to 1983), these program violations were identified by the NRC and broad in scope (unlike the situation that existed at Pilgrim, which the licensee references in its response). In particular, though QA audits were identifying deficiencies related to fire protection at the facility for an extended period of time, licensee management failed to act on that information to determine the true scope of the problem and implement appropriate corrective actions in a timely manner. Therefore, full mitigation of the civil penalty is inappropriate. With respect to the appendix R deficiencies, the NRC acknowledges that they were identified by a licensee contractor prior to the NRC Diagnostic Evaluation Team (DET) inspection in September and October 1991. However, the licensee audits of 1982 and 1985 were inadequate to identify these deficiencies. In addition, the licensee's review of the additional regulatory guidance provided in Generic Letters 85–01 and 86–10 was also insufficient to identify the deficiencies. Due to the significance of the appendix R violations, their longstanding nature and the prior opportunities the licensee had to identify and correct them, the NRC has decided not to fully mitigate the civil penalty.

With regard to the violation of 10 CFR 50.9 for incomplete and inaccurate information, the NRC recognizes that the violation was not willful and that the licensee has now implemented corrective action. Had the violation been willful or the licensee failed to develop appropriate corrective action to address the problem, the NRC would have considered taking stronger actions. Because the NRC identified the inaccurate information which the licensee's review process should have identified, no enforcement discretion on this basis is deemed warranted.

3. NRC Conclusion

The NRC has concluded that the violations occurred as stated and that the licensee has not provided an adequate basis to warrant full mitigation of the civil penalties. However, in recognition of the extensive corrective action taken by the licensee, as exemplified by the deliberate startup process, management changes and recent improved performance, the NRC has concluded that partial mitigation of the proposed civil penalties is warranted. These positive actions on the part of the licensee are sufficiently significant that the NRC has exercised broad discretion under the Enforcement Policy to reduce the amount of the civil penalties to $300,000.

[FR Doc. 93–2917 Filed 2–5–93; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31821; File No. SR–NASD–92–45]

Self-Regulatory Organizations; Amendments to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Rules for Quotations and Transaction Reporting for High Yield Securities Including Bonds Quoted in the Fixed Income Pricing System

February 4, 1993.

Pursuasnt to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 3, 1993 the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the Amendment No. 1 to the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the amendment to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing amendments to the regulatory requirements for members that participate in the high yield fixed income securities market. The proposed amendments clarify certain definitions contained in the rules and certain obligations of members. The trade reporting rules require members to report transactions in all high yield bonds traded over-the-counter to the NASD for regulatory purposes, and also require real-time trade reporting for securities included in the Fixed Income Pricing System ("FIPS"). FIPS has been developed to facilitate the collection, processing and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high yield fixed income securities. FIPS also provides for hourly dissemination of high/low trading ranges and accumulated volume in each bond quoted in the system.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is amending its proposed regulatory requirements for members that participate in the high yield fixed income securities market. The amendments respond to comments from members on the proposed rules which require members to report transactions in all high yield bonds traded over-the-counter to the NASD for regulatory purposes, and also require real-time quotations and trade reporting for securities included in FIPS.[1] The FIPS system has been developed to facilitate the collection, processing and dissemination of real-time, firm quotations for 30 to 50 of the most liquid bonds in the top tier of high yield fixed income securities. FIPS also provides for hourly dissemination of high/low trading ranges and accumulated volume in each bond quoted in the system.

Specifically, the amendments clarify the following points:

1. The term "high yield security" refers to securities rated BB+ or lower by Standard & Poor's and does not include convertible debt securities or medium term notes within the definition;
2. The term "par value" has been changed to "face amount" to more accurately reflect bond usage;
3. Since FIPS dealers may enter and maintain one-sided quotations in a bond, their obligations have been modified to reflect that such dealers must be willing to "buy *or* sell" securities at their quotes, rather than "buy *and* sell" at their quotes;
4. Since FIPS participants are required to display a firm price and a minimum size of 100 bonds, the amendments clarify that the price quoted is a round lot price and that members may charge odd-lot differentials for transactions of less than 100 bonds;
5. Members may report transactions to the NASD using each bond's unique identifier developed by the Association or by using the CUSIP number assigned to the bond;
6. There is no requirement to report zero volume if there have been no transactions in a bond on a given day; and
7. Definitions of cross and riskless principal transactions have been added.

The NASD believes that these amendments serve to clarify the obligations of members participating in the system. In addition, the NASD notes that other recommendations made by Merrill have either been incorporated into the FIPS system already, or are in the process of being reviewed by the staff and members. For example, Merrill suggests that the FIPS system maintain an on-line data base listing the participant brokers and dealers—the FIPS functionality will include such broker and dealer information; and Merrill recommends that FIPS be more of an open system that will interface with main frame computers or other vendor systems—FIPS is available for member local area network systems and the NASD is in the process of meeting with vendors to ascertain the feasibility of integrating FIPS functionality within their systems. Merrill also comments on withdrawing bonds from the system, on the effect of quotation halts on member trading, and on the ramifications for dealers that withdraw their quotas from the system. The NASD has already specified in the rules that when bonds have matured or been called, they will be immediately removed from the system—additional information on such withdrawals will be broadcast to members on the FIPS news screen. Quotation halts do not automatically prohibit trading in the bonds but rather serve to alert members and the public that news is out on the issuer. Finally, members withdrawing their quotations from the system for regulatory purposes will be permitted to reenter quotes, but the NASD believes that the obligation to quote continuously in each security in which the member is acting as dealer prohibits other, non-regulatory, withdrawals from the system.

Additional comments have been received regarding the trade reporting protocols (i.e., to require all transactions to be reported by all members or to require sell side reporting regardless of which member is a participant in the FIPS system) and the NASD is currently evaluating these recommendations in light of surveillance requirements. If the reporting requirements are to be changed, the NASD will submit another Rule 19b–4 proposal to the SEC for review prior to start up of the FIPS system.

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[1] See letter to Jonathan G. Katz, Secretary, SEC from Dennis Greeley, Merrill Lynch (December 28, 1992). See also letters to Selwyn Notelovitz, Branch Chief, SEC and Elizabeth MacGregor, Branch Chief, SEC from Richard Ketchum, Executive Vice President and Chief Operating Officer, NASD responding to other comments submitted to the SEC (January 28, 1993 and February 1, 1993, respectively).

The NASD also notes that references in the initial rule proposal to a universe of 50 high yield bonds for quotations and real-time trade reporting in the FIPS system is not an upper limit of the system. Initially, the NASD anticipates that approximately 35 high yield bonds will be included in the system, and that list will grow to 50 bonds by the end of the first year of operation. The FIPS system has not been designed to limit the number of bonds to 50, however, and if experience in the high yield bond market demonstrates that the liquidity is present to support additional bonds, more issues could be added. Finally, in the rule proposal the NASD has committed to review the list of eligible bonds "periodically." Initially, the NASD anticipates that this review will occur quarterly, but as time and experience with the system grow, the NASD may elect to review the securities on a semi-annual basis, and will alert the SEC to such a change.

The NASD believes the proposed rule change is consistent with sections 11A and 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system." Section 11A(a)(1)(C)(iii) states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. The FIPS system will increase transparency in the high yield market by providing participants and investors with real-time, firm quotations in the most liquid bonds, and will facilitate surveillance of the market with real-time trade reporting requirements pertaining to FIPS securities and end-of-day trade reporting requirements for all other OTC transactions in high yield bonds.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NASD worked with the Ad Hoc Committee on Transparency in the High Yield Market and with the NASD Fixed Income Committee in developing these rules and procedures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3069 Filed 2–4–93; 1:45 pm]

BILLING CODE 8010-01-M

[Release No. IC–19247; File No. 812–8126]

Security First Life Insurance Co., et al.; Application for Amended Order

February 1, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Security First Life Insurance Company ("Security First Life"), Security First Life Separate Account A (the "Separate Account"), and Security First Financial, Inc.

RELEVANT 1940 ACT SECTIONS: Sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek to amend an order, that currently permits them to deduct a mortality and expense risk charge from the assets of the Separate Account, to reflect the inclusion of an asset-based administrative fee in connection with the offer and sale of certain individual deferred variable annuity contracts.

FILING DATES: The application was filed on October 13, 1992 and amended on January 21, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 26, 1993, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, c/o Routier, Mackey and Johnson, P.C., 1700 K Street, NW., suite 1003, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Counsel, at (202) 504–2802, or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security First Life is a stock life insurance company founded in 1960 and organized under the laws of the State of Delaware. Security First Life is authorized to transact the business of life insurance, including annuities, and is presently admitted to do business in forty-eight states and the District of Columbia.

2. By resolution of its Board of Directors on May 29, 1980, Security First Life established the Separate Account under the Delaware Insurance Code as a funding vehicle for certain group variable annuity contracts. In 1986, the Separate Account also began funding individual flexible payment deferred annuity contracts (the "Contracts"). The Separate Account has been registered as a unit investment trust under the 1940 Act since 1982. The Separate Account is divided into multiple series of accumulation and annuity units, with each series investing in the shares of a registered open-end management company, or series thereof. Some of those underlying mutual funds are available solely in connection with variable annuity contracts sold to certain tax-qualified plans.

3. Security First Financial, Inc., a broker-dealer registered under the Securities Exchange Act of 1934 and a member of the National Association of Securities Dealers, Inc., is the principal underwriter for the Contracts. Security First Financial, Inc. is a Delaware corporation and an affiliate of Security First Life.

4. The Contracts may be issued to plans qualifying for special tax treatment as individual retirement annuities, section 403(b) tax-sheltered annuities, section 457 deferred compensation plans, money purchase pension plans, and profit-sharing plans. The Contracts also may be issued pursuant to retirement plans that do not qualify for special tax treatment and to individuals seeking to accumulate funds for retirement, whether or not such individuals are otherwise participating in retirement plans. Purchase payments under the Contracts may be made to the general account of Security First Life, the Separate Account, or may be allocated between them. The minimum initial purchase payment is $1,000, and each additional purchase payment must be at least $100. There is no initial sales charge, although a contingent deferred sales charge may be deducted in the event the Contract owner requests a full or partial withdrawal. The contingent deferred sales charge is based on a graduated table of charges, starting at 7% of purchase payments credited within one year of the withdrawal, and decreasing by 1% per year for purchase payments credited earlier. No contingent deferred sales charge will be made for that part of the first withdrawal in a Contract year that does not exceed 10% of the Contract owner's interest in the Separate Account and 10% of his or her interest in the General Account.

5. On May 28, 1982, the Commission issued an order (the "Order") to Security First Life, the Separate Account and Security First Financial, Inc. exempting them from the provisions of sections 26(a) and 27(c)(2) of the 1940 Act to the extent necessary to allow Security First Life to deduct from the Separate Account's assets certain mortality and expense risk charges. At that time, the Separate Account funded only group variable annuity contracts.

6. On December 4, 1986, the Order was amended (the "Amended Order"), exempting Applicants from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to allow Security First Life to deduct from the Separate Account's assets a mortality and expense risk charge with respect to the individual flexible payment deferred annuity contracts. The mortality risk component of that charge is computed at an annual rate of .80% of the assets of the Separate Account, and is deducted daily from each series in proportion to that series' assets. The expense risk component of the charge is computed at an annual rate of .45% of the assets of the Separate Account, and is deducted daily from each series in proportion to that series' assets.

7. Applicants request that the Amended Order be further amended with respect to the individual flexible payment deferred annuity contracts. Specifically, it is proposed that those Contracts, which presently do not impose an administrative fee, be modified to include such a fee. Applicants state that unlike the vast majority of variable annuity contracts now on the market, the Contracts assess no annual administrative charge and no charge for administrative services. Applicants now propose that an administrative fee of .15% of the assets of the Separate Account be imposed on newly-issued Contracts. The amount of this fee will be guaranteed not to be increased by Security First Life.

Applicants' Legal Analysis

1. Section 27(c)(2) of the 1940 Act prohibits any registered investment company issuing periodic payment plan certificates, and any depositor of or underwriter for such company, from selling any such certificate unless, among other things, the proceeds of all payments on such certificates (excluding sales loads) are held by a qualified trustee or custodian under an indenture or agreement containing, in substance, the provisions required by sections 26(a)(2) and 26(a)(3) for trust indentures of unit investment trusts. Among the provisions required to be included in such an indenture or agreement is the proviso in section 26(a)(2)(C) that permits the trustee or custodian to deduct from the assets of the trust as an expense only bookkeeping and other administrative services charges not exceeding such reasonable amount as the Commission may prescribe. Thus, a mortality and expense risk charge is not the type of expense permitted by section 26(a)(2)(C), and an exemptive order must be obtained to deduct such a charge.

2. In 1986, the Applicants were granted an order exempting them from sections 26(a)(2)(C) and 27(c)(2) to allow Security First Life to deduct a mortality and expense risk charge from the Separate Account's assets in connection with the issuance of the Contracts.

3. Applicants contend that the imposition of an administrative fee of .15% of the assets of the Separate Account should not affect the validity of the Amended Order issued in 1986. Under Rule 26a–1 under the 1940 Act, such fees can be deducted without the necessity of an exemptive order, so long as the amount of the fee meets the Rule's "at cost" standard. Applicants represent that the administrative fee is assessed at cost with no anticipation of profit. Therefore, Applicants contend that no exemptive order is required for Security First Life to deduct the administrative fee. However, to preclude any argument that the absence of any administrative charge was crucial to the Commission's grant of the Amended Order, Applicants request that the Amended Order be further amended to grant an exemption from sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to allow Security First Life to impose the administrative fee described above on the newly-issued Contracts.

Conclusion

Applicants submit that the foregoing facts and representations provide substantial assurance that the relief requested under sections 26(a)(2)(C) and 27(c)(2) is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–2966 Filed 2–5–93; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1–10428]

Issuer Delisting; Application to Withdraw From Listing and Registration; Sunrise Technologies, Inc., Common Stock, No Par Value

February 2, 1993.

Sunrise Technologies, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE" or "Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Common Stock is currently listed on the PSE and traded on the National Market System of the National Association of Securities Dealers Automated Quotation System ("NASDAQ/NMS").

According to the Company, the Board of Directors of the Company unanimously consented to withdraw the Company's Common Stock from listing on the Exchange and to retain the listing of such Common Stock on the NASDAQ/NMS. The decision of the Board is based, in part, upon the belief that the costs associated with listing the Common Stock on the Exchange and NASDAQ/NMS outweigh the benefits to the Company and its shareholders associated with such dual listing.

Any interested person may, on or before February 24, 1993, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–2965 Filed 2–5–93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss general aviation operations issues.

DATES: The meeting will be held on March 5, 1993, at 2 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, on the fifth floor, room 5B.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Myres, Flight Standards Service (AFS–850), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8150; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aviation Rulemaking Advisory Committee to be held on March 5, 1993, at FAA Headquarters, 800 Independence Avenue, SW., Washington, DC, on the fifth floor, room 5B. The agenda for this meeting will include progress reports from the IFR Fuel Reserve, Operations over the High Seas, Minimum Safe Operating Altitude, and Experimental/Restricted Category Operations Working Groups.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, DC, on February 2, 1993.

Ron Myres,

Assistant Executive Director for General Aviation Operations Aviation Rulemaking Advisory Committee.

[FR Doc. 93–2924 Filed 2–5–93; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on March 4, 1993, at 9 a.m.

ADDRESSES: The meeting will be held at FAA Headquarters in the MacCracken Room, 10th Floor, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mrs. Marlene Vermillion, Flight Standards Service (AFS–200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 4, 1993, at the FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the Air Carrier Working Group and the Cabin Safety Working Group.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on February 2, 1993.

David R. Harrington,

Assistant Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–2925 Filed 2–5–93; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent to Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Capital Airport, Springfield, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 10, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration. Chicago Airports District Office, 2300 East Devon Ave., room 258, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bruce E. Carter, Director of Aviation, of the Springfield Airport Authority at the following address:

Capital Airport, Springfield Airport Authority, Springfield, Illinois 62707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Springfield Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Louis H. Yates, Manager, Chicago Airports District Office, 2300 East Devon Ave., room 258, Des Plaines, Illinois 60018, (312) 694–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Capital Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 26, 1993, the FAA determined that the application to use the revenue from a PFC submitted by Springfield Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1993.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00

Proposed charge effective date: June 1, 1992

Proposed charge effective date: May 1, 1994

Total estimated PFC revenue: $641.056

Brief description of proposed project(s):

1. Aircraft Rescue Firefighting Vehicle
2. Overlay Runway 18/36
3. Rehabilitate Taxiway A
4. Edge Lighting Improvements
5. Taxiway CA Overlay
6. Snow Removal Equip Building (Site Work and Phases I and II)
7. Acquisition of Boucher Property
8. Acquisition of Niehaus Property
9. Acquisition of Richardson Property
10. Acquisition of Miller Property
11. Acquisition of Bramblett Property
12. Acquisition of Harris Property
13. Snow Removal Equipment
14. Airfield Signage (Phase II)
15. Security/Access Modifications to meet FAR part 107.14 Requirements and Replace Airport Perimeter Fencing
16. Environmental Assessment for Runway 12/30 Extension
17. Extension of Runway 12/30
18. Newly Required FAA Signage

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On Demand Air Taxis.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield Airport Authority.

Issued in Des Plaines, Illinois on January 29, 1993.

James H. Washington,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 93–2928 Filed 2–5–93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 12]

Surety Companies Acceptable on Federal Bonds; Suspension of Authority; Ranger Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to Ranger Insurance Company, of Houston, TX, under the United States Code, title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is hereby suspended, effective February 3, 1993. The suspension will remain in effect until further notice.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29389, July 1, 1992. Federal bond-approving officers should annotate their reference copies of Treasury Circular 570 to reflect the suspension.

With respect to any bonds currently in force with Ranger Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6507.

Dated: February 1, 1993.

Charles F. Schwan, III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 93–2837 Filed 2–5–93; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on February 10 in Room 600, 301 4th Street, SW., Washington DC from 10–12 p.m.

The Commission will discuss findings from their oversight visits to the East-West Center, CINCPAC and USIA's posts in Asia.

FOR FURTHER INFORMATION: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: February 3, 1993.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 93–2976 Filed 2–5–93; 8:45 am]

BILLING CODE [illegible]

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–49), U.S.C. 552B:

DATE AND TIME: February 10, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 973rd Meeting—February 10, 1993, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 7481–061, NYSD Limited Partnership

CAH–2.
Project No. 1473–006, Montana Power Company, Granite County, Montana

CAH–3.
Omitted

CAH–4.
Docket No. 9607–003, JDJ Energy Company, Inc.

CAH–5.
Project No. 11182–001, Cowlitz Basin 1 Limited Partnership
Project No. 11183–001, Cowlitz Basin 2 Limited Partnership
Project No. 11184–001, Cowlitz Basin 3 Limited Partnership
Project No. 11185–001, Cowlitz Basin 4 Limited Partnership
Project No. 11186–001, Cowlitz Basin 5 Limited Partnership
Project No. 11187–001, Cowlitz Basin 6 Limited Partnership
Project No. 11188–001, Cowlitz Basin 7 Limited Partnership
Project No. 11189–001, Cowlitz Basin 8 Limited Partnership
Project No. 11190–001, Cowlitz Basin 9 Limited Partnership
Project No. 11191–001, Cowlitz Basin 10 Limited Partnership

CAH–6.
Omitted

CAH–7.
Omitted

CAH–8.
Project No. 11060–001, Eagle Mountain Energy Company

CAH–9.
Project No. 8369–019, Village of Saranac Lake, New York

CAH–10.
Omitted

Consent Agenda—Electric

CAE–1.
Docket Nos. ER92–611–000, ER92–664–000, ER92–843–000 and ER93–45–000, Entergy Power, Inc.

CAE–2.
Docket Nos. ER93–229–000 and EL93–18–000, Florida Power Corporation

CAE–3.
Omitted

CAE–4.
Docket Nos. EF92–5172–000 and 001, United States Department of Energy—Western Area Power Administration (Salt Lake City Area Intergrated Projects)

CAE–5.
Docket Nos. ER91–150–010 and ER91–570–007, Southern Company Services, Inc.

CAE–6.
Docket No. ER91–565–002, New England Power Company

CAE–7.
Docket No. ER93–17–001, Maine Public Service Company

CAE–8.
Docket No. ER92–764–001, New England Power Company
Docket No. ER92–766–001, Northeast Utilities Service Company

CAE–9.
Docket No. EL92–37–001, Doswell Limited Partnership
Docket No. EL92–43–001, Doswell Limited Partnership v. Virginia Electric and Power Company

CAE–10.
Docket No. EG93–6–000, Bald Eagle Power Company, Inc.

CAE–11.
Docket No. EG93–7–000, Richmond Power Enterprises, L.P.
Docket No. EG93–8–000, Entergy Richmond Power Corporation
Docket No. EG93–9–000, Entergy Power Development Corporation

CAE–12.
Docket No. PL–93–2–001, Prior Notice and Filing Requirements Under Part II of the Federal Power Act

CAE–13.
Docket No. ER93–251–000, Wisconsin Electric Power Company

Consent Miscellaneous

CAM–1.
Docket No. PL93–1–001, Post-Employment Benefits Other Than Pensions

Consent Agenda—Oil and Gas

CAG–1.
Docket Nos. RP92–166–004, 005 and 007, Panhandle Eastern Pipe Line Company

CAG–2.
Docket No. RP93–60–000, National Fuel Gas Supply Corporation

CAG–3.
Docket Nos. TQ92–5–1–005, 007, TQ92–6–1–000, TQ93–1–1–000, TQ93–2–1–000, TA93–1–1–000 and RP92–237–000, Alabama-Tennessee Natural Gas Company

CAG–4.
Docket No. RP85–202–006, Trunkline Gas Company

CAG–5.
Docket No. RP85–203–007 and RP88–203–006, Panhandle Eastern Pipe Line Company

CAG–6.
Docket No. RP85–148–000, Transcontinental Gas Pipeline Corporation

CAG–7.
Docket No. RP93–36–001, Natural Gas Pipeline Company of America

CAG–8.
Docket No. RP93–23–002, Transcontinental Gas Pipe Line Corporation

CAG–9.
Docket No. RP88–67–062 (Phase II PCBs), Texas Eastern Transmission Corporation

CAG–10.
Omitted

CAG–11.
Docket No. RP91–137–010, Transcontinental Gas Pipe Line Corporation

CAG–12.
Omitted

CAG–13.
Docket No. RP92–166–008, Panhandle Eastern Pipe Line Company

CAG–14.
Docket No. PR92–19–000, Delhi Gas Pipeline Corporation

CAG–15.
Docket No. PR92–20–000, Supenn Pipeline

CAG–16.
Docket Nos. TQ89–1–46–040, 025, 026, 005, RP86–165–000, *et al.* and RP86–166–000, *et al.*, Kentucky West Virginia Gas Company
Docket No. CP92–639–000, Columbia Gas Transmission Corporation and Inland Gas Company

CAG–17.
Docket No. RP85–181–005, Texas Gas Transmission Corporation

CAG–18.
Docket Nos. RP85–203–011 and RP88–203–009, Panhandle Eastern Pipe Line Company

Docket No. RP85-202-009, Trunkline Gas Company

CAG-19.

Docket Nos. RP85-170-000 and 007, Texas Eastern Transmission Corporation

CAG-20.

Omitted

CAG-21.

Docket No. RS92-5-001, Columbia Gas Transmission Corporation

Docket No. RS92-6-001, Columbia Gas Transmission Company

CAG-22.

Docket Nos. RP93-6-001 and RS92-75-001, Paiute Pipeline Company

CAG-23.

Docket No. RS92-22-003, Panhandle Eastern Pipe Line Company

CAG-24.

Omitted

CAG-25.

Omitted

CAG-26.

Docket No. CP91-1110-000, Colorado Interstate Gas Company

CAG-27.

Docket No. CP92-241-007, Kern River Gas Transmission Company

CAG-28.

Docket No. CP91-2704-003, Blue Lake Gas Storage Company

Docket No. CP91-2705-002, ANR Pipeline Company

Docket No. CP91-2730-002, ANR Storage Company

CAG-29.

Omitted

CAG-30.

Docket No. CP82-487-036, Williston Basin Interstate Pipeline Company

CAG-31.

Docket No. CP92-661-000, Freeport-McMoRan, Inc. and Aquilla Energy Marketing Corporation v. K N Energy, Inc.

Docket No. CP92-519-000, K N Energy, Inc.

CAG-32.

Docket No. CP93-117-000, San Diego Gas & Electric Company

CAG-33.

Docket No. RS92-60-007, El Paso Natural Gas Company

CAG-34.

Docket Nos. RP92162-000 and 005, Superior Offshore Pipeline Company

Hydro Agenda

H-1.

Reserved

Electric Agenda

E-1.

Docket No. RM93-1-000, Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status. Final Rule.

E-2.

Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR-1.

Reserved

II. Restructuring Matters

RS-1.

Docket Nos. RS92-10-000, RP92-134-000, RP93-15-000, 001, RP93-1-000, CP71-273-000 and CP90-1090-000, Southern Natural Gas Company. Order on compliance filing.

RS-2.

Docket No. RS92-38-000, Gulf States Transmission Corporation. Order on compliance filing.

RS-3.

Docket No. RS92-4-000, Colorado Interstate Gas Company. Order on compliance with restructuring rule.

RS-4.

Docket No. RS92-13-000, Williston Basin Interstate Pipeline Company. Order on compliance with restructuring rule.

RS-5.

Docket No. RS92-7-000, Michigan Gas Storage Company. Order on compliance with restructuring rule.

RS-6.

Docket No. RS92-17-000, Iroquois Gas Transmission System, L.P. Order on compliance with restructuring rule.

RS-7.

Docket Nos. RS92-28-000, 001, 003, 004, RP93-14-002 and CP93-77-000, Algonquin Gas Transmission Company. Order on compliance with restructuring rule and on stipulation and agreement.

RS-8.

Docket No. RS92-45-000, Natural Gas Pipeline Company of America. Order on compliance plan.

III. Producer Matters

PF-1.

Reserved

IV. Pipeline Certificate Matters

PC-1.

Reserved

Dated: February 3, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-3070 Filed 2-4-93; 2:19 pm]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, February 11, 1993

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 11, 1993, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau, and Subject

1—Common Carrier—Title: Policies and Rules Concerning Interstate Pay-Per-Call Services. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking and Notice of Inquiry* concerning the provision of interstate pay-per-call services to conform with the requirements of the Telephone Disclosure and Dispute Resolution Act.

1—Common Carrier—Title: Policies and Rules Concerning Interstate 900 Telecommunications Services (CC Docket No. 91-65). Summary: The Commission will consider adoption of an *Order on Reconsideration* regarding various petitions for reconsideration governing the provision of interstate 900 services.

2—Common Carrier—Title: Amendment of the Commission's Rules Regarding Regulation of International Receive-Only Earth Stations (RM-7931). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* concerning the licensing of international receive-only earth stations.

3—Mass Media—Title: Amendment of the Commission's Rules With Regard to the Instructional Television Fixed Service (ITFS). Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* regarding an ITFS window filing procedure.

4—Mass Media—Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992—Direct Broadcast Satellite Public Service Obligations. Summary: The Commission will consider adoption of a *Notice of Proposed Rulemaking* regarding the application of public interest requirements and non-commercial educational and informational programming carriage obligations to direct broadcast satellite (DBS) services.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued February 4, 1993.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-3104 Filed 2-4-93; 2:48 pm]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 11, 1993.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Steel Branch Mining Company*, Docket No. WEVA 91-2077, etc. (Issues include whether the judge erred in finding Steele Branch violated 30 CFR § 77.404(a), and § 50.11(b).)

2. *Energy West Mining Company*, Docket No. WEST 91-83-R. (Issues include whether the judge erred in finding Energy West violated 30 CFR § 50.20.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 C.F.R § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/800–877–8339 Toll Free.

Dated: February 3, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–3107 Filed 2–4–93; 3:04 pm]

BILLING CODE 6735-01-M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act

(Public Law 94–409) [5 U.S.C. Section 552b]

DATE AND TIME: Thursday, February 4, 1993, 1:00 p.m., Eastern Daylight Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Closed—Meeting.

MATTER CONSIDERED: Discussion by the National Commissioners involving one case pursuant to a reference under 28 C.F.R. Section 2.17. This case was originally heard by an examiner panel wherein the inmate of Federal prison applied for parole. This is an emergency meeting which requires immediate consideration by the Commission because of the statutory deadline involved in the case.

AGENCY CONTACT: Jeffrey Kostbar, Case Analyst, National Appeals Board, United States Parole Commission, (301) 492–5968.

Dated: February 4, 1993.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 93–3101 Filed 2–4–93; 2:47 pm]

BILLING CODE 4410-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-88-202]

United States Standards for Grades of Canned Green Beans and Canned Waxed Beans

Correction

In rule document 93-930 beginning on page 4295 in the issue of Thursday, January 14, 1993, make the following correction:

§ 52.449 [Corrected]

1. On page 4299, in the second column, in § 52.449(c)(1)(iii), in the first line, "reasonably" should read "fairly".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-03-4210-04; M81796]

Realty Action: Exchange, MT

Correction

In notice document 92-30244 beginning on page 59120 in the issue of Monday, December 14, 1992, make the following correction:

1. On page 59121, in the first column, under *Powell County*, in land description T. 10 N., R. 9 W., in the last line, "NE¼,SW¼," should read "NE¼SW¼,".

BILLING CODE 1505-01-D

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February 8, 1993

Part II

Environmental Protection Agency

National Pollutant Discharge Elimination System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4552-8]

National Pollutant Discharge Elimination System General Permit and Reporting Requirements for Discharges From Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency.

ACTION: Region 6 public notice of the final permitting decision. General NPDES permits for discharges from confined animal feeding operations.

SUMMARY: Pursuant to sections 301, 304 (b) and (c), and 306 (b) and (c) of the Clean Water Act (CWA) 40 CFR 122.23 defines concentrated animal feeding operations as point sources subject to the NPDES permit program. 40 CFR part 122, appendix B lists the criteria for determining a Concentrated Animal Feeding Operation (CAFOs) (§ 122.23). 40 CFR part 412 establishes the effluent limitation guidelines for Feedlots pursuant to sections 306 (b) and (c) of the Clean Water Act.

This is to give notice that the U.S. Environmental Protection Agency, Region 6, has made a final permitting decision and will issue the following Permits under the National Pollutant Discharge Elimination System. The permits will become effective 30 days after the date of this Public Notice. Any substantial changes from the Draft Permit are cited.

This notice of the issuance of separate general permits for concentrated animal feeding operations in four States (Louisiana, New Mexico, Oklahoma, and Texas) without authorized NPDES State programs; on Indian lands in New Mexico and Oklahoma. Separate general permits are being noticed for each State.

DATES: The permit will become effective on March 10, 1993.

ADDRESSES: The issuance is based on a final staff review of the administrative record and comments received. A Response to Comments is available by writing to: Ellen Caldwell, Permits Branch of Water Division (6W–PS), U.S. Environmental Protection Agency, Region 6, 1445 Ross Ave., suite 1200, Dallas, Texas 75202 (214) 655–7190. The public record is located at EPA Region 6, and is available upon written request. Requests for copies of the public record should be addressed to Ellen Caldwell at the address above. A reasonable fee may be charged for copying. Further information including the administrative record may be viewed at the above address between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell, (214) 655–7190.

SUPPLEMENTARY INFORMATION:

Contents of this Preamble

Part I. Changes to the Draft Permit.
Part II. Responsiveness Summary
Part III. Economic Impact
Part IV. Effect of Additional Federal Regulations
  A. National Environmental Policy Act
  B. Executive Order 12291
  C. Paperwork Reduction Act
  D. Regulatory Flexibility Act

U.S. Environmental Protection Agency—Region 6, Public Notice of the Final Permitting Decision.

Part I. Changes to the Draft Permit

Based on information received during the public comment period the Agency had made minor changes to the conditions in the draft permit. The following are changes which were made to the draft permit which was proposed July 22, 1992 (57 FR 32475):

1. Under Part I, Section B.1. Existing Facilities and Section D., owners or operators of concentrated animal feeding operations (CAFO), as defined in 40 CFR part 122 appendix B, are authorized under the terms and conditions of this general permit upon submission of a notice of intent (NOI). This NOI form has been included as appendix B of this general permit.

2. Under Part I, Section B.4. Expanding Facilities, facilities expanding operations to more than the number of animals specified in 40 CFR part 122 appendix B(a) will be required to submit a new NOI prior to construction of the expansion.

3. To comply with statutory requirements in 40 CFR 122.49; Part I of the general permit, Section C. Limitations on Coverage has been changed to limit from permit coverage: CAFOs which adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat; CAFOs which adversely affect properties listed or eligible for listing in the National Register of Historic Places.

4. Item 4. of Part I. Section C. has been changed to limit from coverage CAFOs that discharge all their runoff and waste water to a publicly owned sanitary sewer system.

5. The term "waters of the U.S." has been clarified in various parts of this general permit, listing the defined waters in 40 CFR 122.2. This regulatory definition applies for every reference to waters of the U.S. in this general permit.

6. Part III, Section B. has been clarified to state more clearly that when provisions in an approved Soil Conservation Service (SCS) plan are substituted for a applicable Best Management Practices (BMP) or portions of the Pollution Prevention Plan (PPP), the PPP must refer to the appropriate section of the SCS plan and a copy of this SCS plan must be kept on site.

7. Date log requirements indicating monthly inspection of the retention facility have been changed to quarterly inspections.

8. Requirements for manure which is sold or given to other persons for use have been moved from Part III, Section B. to Part III, Section B.2.f.(2)(J). These requirements have been changed to require the permittee to maintain a log of manure sold in wet tons, dry tons, or cubic yards and the permittee must make available to the hauler any nutrient sample analysis from that year.

9. Requirements for Retention Capacity Calculations, Retention Facility Embankments, Retention Facility Dewatering, and permanent markers have been moved from Part III, Section B.1. to Part III, Section B.2.f.(2) (B), (C), (D), and (E) respectively. Slight changes have been made in these items for clarification.

10. The requirement that facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations has been added to Part III, Section B.1.b.

11. Part III, Section B.d. has been modified that new facilities shall not be built in a water of the U.S.

12. Part III, Section B.f. has been changed to clarify that water retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

13. Part III, Section B.g. has been modified that facilities shall not locate waste water retention facilities, holding pens or waste/wastewater disposal sites closer to water wells than specified by State requirements.

14. Part III, Section B.i. has been modified that waste handling, treatment, and management shall not result in the contamination of drinking water.

15. Part III, Section B.1. has been modified to require the proper disposal time of dead animals to be three (3) days instead of 24 hours.

16. Items n. and o. of Part III, Section B. have been moved from the Pollution Prevention Plans.

17. Part III, Section B.2.a. has been changed to clarify that the Pollution Prevention Plan may refer to the Soil Conservation Service plan when the SCS plan documentation contains equivalent requirements for the facility.

18. The schedule for completion of Pollution Prevention Plans has been modified in Part III, Section B.2.b. to separate large facilities, medium facilities, and small facilities with different time requirements for completion.

19. The time requirement for changes in a Pollution Prevention Plan which does not meet minimum requirements after notification by the Director has been changed from 30 to 90 days in Part III, Section B.2.d.

20. Part III, Section B.2.f.(2)(F) has included a requirement that a rain gauge shall be kept on site and properly maintained and that log of all measurable rainfall events shall be kept with the Pollution Prevention Plan. This also replaces the requirement in the draft general permit in Part IV, Monitoring and Reporting Requirements, that requires information from the nearest available weather station concerning precipitation events.

21. Under Part III, Section B.2.f.(2)(H)(a), documentation of no hydrologic connection has been simplified and condensed; no longer requiring depth to ground water, thickness and lithology of the uppermost aquifer, and a piezometric map. This item now allows for documentation of no hydrologic connection to be certified by a qualified ground water scientist.

22. Site-specific conditions are now considered in the design of liner construction in Part III, Section B.2.f.(2)(H)(b).

23. The requirement for liner inspection has been removed from Part III, Section B.2.f.(2)(H)(c).

24. Part III, Section B.2.f.(2)(H)(c) now includes the requirement that no trees shall be allowed to grow within the potential distance of the root zone.

25. These requirements: Documentation of liner maintenance shall be kept with the Pollution Prevention Plan. The permittee shall have a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years, or once every permit term whichever comes first; have been added to Part III, Section B.2.f.(2)(H)(c).

26. Part III, Section B.2.f.(2)(H)(c) has been changed to only require the installation of a leak detection system or monitoring wells when notified by the Director that the potential exists for the contamination of surface waters or drinking water. Documentation of compliance with the notification and all sampling data must be kept with the Pollution Prevention Plan.

27. "It shall be considered 'Proper Operation and Maintenance' for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge waste waters to land application sites for filtering prior to discharging to waters of the U.S." has been added as Part III, Section B.2.f.(2)(I)(e).

28. "The operator shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility" has been added to Part III, Section B.2.f.(2)(I)(h) to provide protection from land disposal or application of waste water.

29. Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards has been added as Part III, Section B.2.f.(2)(I)(h).

30. Part III, Section B.2.f.(2)(J) requires: (1) A description of waste handling procedures and equipment availability; (2) the calculations and assumptions used for determining land application rates; and (3) any nutrient analysis data if laboratory analysis is done to be included in the Pollution Prevention Plan if manure is land applied.

31. Storage and/or surface disposal of manure in the 100-year flood plain or near water courses is allowed if protected by adequate berms or other structures; Part III, Section B.2.f.(2)(J)(a). The clarification: The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited, has also been added.

32. "Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards", has been added as Part III, Section B.2.f.(2)(J)(i).

33. The item on good housekeeping requirements has been removed from Part III, Section B.2. Pollution Prevention Plan requirements.

34. The requirements for the evaluation of Recommended Management Practices listed in Appendix A has been removed Part III, Section B.2. Pollution Prevention Plan requirements.

35. Discharge sampling requirements have been modified based on CAFO size to separate large facilities, medium facilities, and small facilities with different schedules for analysis in Part IV, Section A.5.

36. Analysis requirements for total phosphorus, total Kjeldahl nitrogen and nitrate nitrogen have been removed from Part IV, Section A.7.

37. Items for Anticipated Noncompliance, Other Noncompliance Reporting, Bypass of Treatment Facilities, and Upset Conditions have been removed from Part IV.

38. Items regarding Toxic Pollutants and Oil and Hazardous Substance Liability have been removed from Part V.

39. Definitions for Agronomic rates, Best Available Technology, Best Conventional Technology, Hydrologic connection, and Qualified groundwater scientist have been added to, and the definition for Bypass has been removed from Part VII.

40. The definition for Concentrated animal feeding operation has been clarified in Part VII.

Part II. Responsiveness Summary

Many issues, questions and comments were submitted to the Agency during the public comment period. Below is a summary of the issues raised and the Agency's responses.

A. Corrections and General Permitting Issues

1. Several commenters requested corrections of language in the fact sheet published with the proposed permit. A fact sheet is published to explain the permitting decisions used to develop a proposed permit. A responsiveness summary or a response to comments accompanies the final permit and serves as the explanation of the permitting decisions made in response to the comments received. Because the fact sheet will not be published again, corrections to it will not be necessary. Where the comments illustrate confusion or misunderstanding of issues or terms explained in the fact sheet, they will be addressed in the responsiveness summary under the appropriate subject heading.

2. Almost all commenters requested answers in writing to the questions, comments, and concerns which they submitted. Unfortunately many comments were received with no return address. It is the administrative responsibility of EPA to provide a responsiveness summary to all persons that provided comments during the public hearing process or public comment period (40 CFR 124.17). EPA regrets that it will not be able to send a response to comments to those commenters that neglected to provide the Agency with a return address; however, the publication of this responsiveness summary will serve to inform those persons of the Agency's decisions.

3. Many of the comments received express concern that the only reason that Region 6 is issuing the permit is in response to special interest groups opposed to the dairy industry in Texas. The commenters are concerned that EPA will be swayed in its permitting decisions by portions of reports which were taken out of context to reflect a worst case scenario. These persons requested that Region 6 not rush its efforts for the Region to use all available sources of information to develop a reasonable general permit. A few persons questioned whether Region 6 would really listen and consider the testimony and comments made at the public hearings which were held in each state.

EPA reviews all documents referred to in comments which are submitted during the comment period. EPA weighs all scientific and factual information, and other comments whether submitted in writing during the comment period, or as testimony during the public hearing process as required in 40 CFR 124.11 and 124.12.

4. Many persons pointed out that farmers are natural conservationists, and as such are natural environmentalists. Some persons opposed the permit because they believed that agriculture was being blamed for "naturally occurring circumstances". Many persons were concerned with the perception of agriculture as a source of pollution that would accompany the issuance of this permit. These commenters suggest that the private citizens which operate these facilities are more familiar with what is "Proper Operation and Management" of a CAFO than EPA, and that they can make better determinations about the protection of the natural resources of the land and water.

While EPA agrees with the commenters that most farmers are good natural conservationists, it is apparent from the growing body of information that water quality problems exist which are attributable to animal waste management. Reasons for this may vary, however, it is EPA's responsibility to regulate all point sources of pollution under the authority of the Clean Water Act. These facilities are included in the definition of a point source in part 502 of the Act. Region 6 believes that the requirements reflected in the final general permit do coincide with the good management practices already established in the agricultural community, and will not prove too burdensome for those operators which have established good environmental practices.

5. The Region received several comments expressing the need for a permit to be available for unpermitted CAFOs to be compliant with the Clean Water Act. CAFOs in Region 6 may be discharging in violation of the Clean Water Act. Region 6 believes that the first step in improving water quality and Clean Water Act compliance is to provide a permitting vehicle which will be protective for the environment and cost effective for the operators of CAFOs.

6. While many commenters and producer groups endorse the Region's use of a general permit, some commenters question the need for a permitting program in Region 6 states. Many persons questioned if any water quality problems exist in Region 6 which are associated with animal wastes or CAFOs. Many commenters suggested that EPA exhaust all state delegation activities before issuing a general permit. These commenters stated that they believed it would cause confusion over jurisdiction if there were both state and federal level regulation with which to comply.

Region 6 believes that the time for federal permitting action in the four states administered by this Region is past due. EPA Region 6 carries the burden of a large permitting program and must prioritize its workload. The most important aspect of this priority system is the impairment of water quality. It has become apparent that animal wastes are one of the major contributors to water quality problems in many watersheds across the nation. In Region 6 the water quality inventories which are complied by the state water quality agencies show a significant number of water bodies which are being impaired by the contribution of animal wastes. In Texas there are at least four segments of state river basins which are not meeting the standards set by the state. Of the water bodies which are listed as impaired in Oklahoma the waters impaired by CAFOs total 5 lake segments out of 21, and 10 river segments out of 42. In addition, Oklahoma has documented several fish kills associated with CAFO runoff. Oklahoma collects more specific information on CAFO associated water quality problems which may explain the higher numbers. Several segments of the Lake Pontchartrain Basin in Louisiana are impaired by CAFOs, as well as two other river basins in that state. New Mexico, which has fewer surface waters, has more documentation on groundwater contamination problems, however, CAFO impairment of the Pecos River Basin is being tracked by the state.

EPA agrees with the commenters inclination toward the delegation of the NPDES program authority to the States of Region 6. Section 402(b) of the Act allows states to request authority to administer the NPDES program in lieu of the EPA. This means that States must interpret and apply national standards through day-to-day program actions and mount a vigorous program of compliance and enforcement. To assume delegation a formal program package consisting of a Memorandum of Agreement, a Program Description, the Attorney General's Statement and a letter from the Governor must be submitted to the Region. The Region must carefully review the package for statutory completeness. Currently there are 39 states which have been authorized the NPDES program. Of the 39 states, the one State in Region 6 to have been authorized is the State of Arkansas. At the present time, EPA has not received an approvable program from any of the remaining four states, Louisiana, Texas, Oklahoma, and New Mexico. Region 6 is continuing to work closely with states in the Region, assisting them in their efforts to assume the NPDES program. Until the State has assumed authority for the NPDES permitting program, the permittee will be responsible for compliance with both State and Federal requirements. States which administer the NPDES program must control CAFOs with the same degree of stringency and in a manner consistent with the federal regulations.

7. Several of the comments received suggested that this permit was more stringent than the federal regulations. A few persons questioned why the four States in Region 6 would be subject to the general permit and not the other States in the nation. Region 6 has developed a general permit which reflects the federal program requirements which exist now. These requirements include a technology standard which was implemented in

1974, and the minimum technology standard for storm water permits (a Pollution Prevention Plan) which was established in 1991. The permit also includes Best Management Practices which the Agency believes are necessary to protect water quality from improper management of animal wastes. EPA would like to remind the public that a federally administered permit must include compliance with some federal programs which are not required of state administered permits (e.g. the requirement of an environmental review and possible Environmental Impact Statement under the National Environmental Policy Act). Additionally, Region 6 is only authorized to permit facilities in Texas, Louisiana, Oklahoma and New Mexico. Region 6 oversees the program administered by Arkansas.

8. Many commenters from Oklahoma were concerned with EPA's authority to regulate CAFO facilities in their state because the state does not recognize CAFOs as a point source. Many commenters and producer groups questioned why EPA would have the need to regulate facilities which were already sufficiently regulated under existing state programs. Many commenters stated that the permit was more stringent than the state requirements. These commenters further requested that EPA simply adopt the existing state program or permit instead of using the proposed general permit; and that the permit should contain only the state water quality standards and requirements.

Section 502 of the Clean Water Act includes concentrated animal feeding operations in the definition of point sources to be regulated by EPA through NPDES permits. This requirement of federal law is reflected in the definitions at 40 CFR 122.23 and Appendix B which define concentrated animal feeding operations as a point source.

Section 301 of the Act clearly states that EPA cannot be less stringent than currently defined in the national technology standards. However, it should be noted that any more stringent state treatment standards are required to be included in NPDES permits by this section of the Clean Water Act. EPA must, at a minimum, include the technology standards established by the Agency.

9. Many of the comments provided by operators, producer groups, and state agricultural agencies request that EPA use the information and services available through the USDA Soil Conservation Service and state Agriculture Departments and Extension Services in the development of the permit. Many persons expressed the opinion that the states had developed sound water quality management programs and that Region 6 should use them. Additionally, some commenters suggested that EPA should consult with the varying state agencies before proposing any new programs in that state.

During the comment period and in the process of final decision making, EPA has consulted with both the regulated community and agricultural agencies in all the States. In addition EPA has consulted the expertise of the USDA Soil Conservation Service and the U.S. Fish and Wildlife.

10. Several comments requested that the general permits for the four States be the same in regards to the requirements in the permit to provide economic equity. Conversely, many persons expressed doubt about EPA's ability to provide a general permit which would take into account the diversity of locale, geography, and climatic conditions that exist in Region 6. Some concerned citizens question EPA's use of a general permit for and its ability to protect water quality.

In developing this general permit, Region 6 has tried to maintain consistent requirements for each of the four states. However, where more stringent state standards exist and are needed to protect water quality in that state, specific state language or requirements have been included in the general permit. Region 6 has also tried to include requirements which will be protective of the environment while allowing for site specific variation when it is appropriate to provide adequate environmental protection. EPA has included management practices and pollution prevention requirements to insure the protectiveness of the general permit while at the same time has allowed for site specific variation where it can be documented as appropriate. The permit provides for the protection of water quality and site specific flexibility.

11. A few commenters stated the opinion that shorter, clearer permits which were easier to comply with would produce more compliance, and therefore, provide more environmental protection. Many commenters suggested that EPA use incentives for environmental protection instead of burdensome regulations.

Region 6 has worked with the public, the regulated producer groups, state and federal agencies to insure that this permit will be protective of water quality and will still be clear to the permittee. In addition, Region 6 has made a considerable effort through workshops/public hearings and this responsiveness summary that the regulated public understand the permit conditions. Region 6 believes that the regulated public will understand and comply with the terms of this general permit.

12. Many owner/operators and producer groups requested that the permit be re-proposed as draft or submitted to the CAFO industry to review prior to final issuance. When EPA makes substantial changes to the permit requirements, the Agency may elect to provide an additional public comment period on the changes. EPA has made only minor changes to the draft permit. Region 6 has attempted to make both the format and the language of the permit clearer. The requirements of "no discharge", Best Management Practices and the documentation of a Pollution Plan remain the same. EPA will not be re-proposing a draft permit. The permit will become final 30 days after the date of publication in the **Federal Register**.

13. Some person were concerned that more government professionals would have to be hired at considerable salaries to enforce the requirements in the permit. Others suggested the EPA should utilize the idea proposed in Texas to utilize state health inspectors for water quality assessment. Health inspector's on average, visit these facilities once per month.

Congress authorizes EPA's operating budget. EPA assumes the responsibility of apportioning its' budget to best address society's challenges to water quality. Information from the States will help Region 6 determine its inspection priorities.

14. Many comments were received expressing concern that many of the water quality problems associated with animal feeding operations were a result of smaller, unregulated facilities. Many commenters note that these guidelines and requirements apply to the larger facilities, and requested that EPA develop regulatory guidelines for small facilities which do not fall under the regulation of this permit. Several concerned citizens expressed the opinion that the Bosque River Basin watershed was over populated by dairy and cattle operations; and that this concentrations of operations was unique to this watershed. These citizens requested that this watershed be excluded from the general permit and be required to obtain individual permits in order to protect surface water and ground water resources.

EPA agrees that, of the watersheds which are impaired by animal wastes, the majority of the operations in those watersheds are not specifically listed as point sources in 40 CFR 122.23. This may indicate that non-point source facilities are significant contributors to water quality impairments. However small facilities can be designated as a "point source" by the Director after a site assessment has been done, and can be regulated using this permit or another permitting action.

EPA does not believe that the Bosque River watershed is unique in Region 6. There are several watersheds in Region 6 which are heavily populated by animal feeding operations and which have impaired water quality. A review of these watersheds with State water quality officials indicates that the water quality impairment is likely to result of many factors. These factors would include the number, types and sizes of facilities, the nature of the watershed, the climatic conditions of the area, as well as, contributions from unregulated facilities and non-compliance problems. EPA believes that the first step in protecting the water quality in these watersheds and others in the Region from water quality impairments from animal wastes is the issue of this general permit. This will provide stringent requirements which are protective of water quality, and at the same time provides EPA with a strong enforcement tool against non-compliance. EPA points out that the issuance of this general permit does not preclude the Director from requiring facilities on the Bosque watershed to apply for an individual permit. Region 6 is also concerned about the animal waste contributions of the non-point sources on regional watersheds. For this reason Region 6 is an active participant of the national workgroup to study EPA's activities and its regulation of CAFOs.

15. Many commenters questioned why Region 6 has "linked" the Storm Water NPDES program with Concentrated Animal Feeding Operations (CAFOs). Several operators and producer associations believe that CAFOs are exempt from the Storm Water Program because their Standard Industrial Classification (SIC) code is 0211. Several commenters requested clarification of the reference to the Storm Water Program which requires facilities covered by the program to "at a minimum obtain coverage under a general permit promulgated for storm water".

The regulations which were published November 16, 1990 (55 FR 47990) require specific industries to apply for NPDES permits which cover storm water discharges. The final regulation listed 14 categories of industries which have "storm water discharges associated with industrial activity" which require permitting. Category 1 of the storm water regulations included all facilities which have National Effluent Guidelines. Feedlots (facilities with concentrations of 1000 animal units or more) have National Effluent Guidelines listed at 40 CFR 412. These facilities were required to apply for their storm water related discharges on or before October 1, 1992 or gain coverage under a permit which has been issued to cover storm water discharge requirements. EPA has included the technology requirements published for storm water discharges in the general permit for CAFOs. This general permit includes permitting requirements based on the effluent guidelines for process waters (all produced waters and runoff from the areas of animal confinement) and Pollution Prevention Plan to address requirements for all storm water related discharges. This general permit satisfies all permitting requirements for the feedlot industry and CAFOs.

16. Several comments received requested a definition of storm water runoff. Storm water runoff includes runoff caused by rainfall, snowmelt, or drainage which flows overland instead of percolation into the soils due to saturation. This term is no longer included in the CAFO general permit.

17. Many commenters who understood the coverage and technology requirements of the storm water program were concerned that the storm water permitting strategy as outlined by EPA would cause storm water minimum requirements to be in the process of change for several years, and that this would require that the regulated public under this program to be "shooting at a moving target" when trying to construct or meet permitting requirements.

It is true that the requirements for storm water discharges from many industries are still being developed. However, the technology standard applied to feedlot operations is very protective of water quality and has been in place since 1974.

18. Many commenters noted that the economic analysis for the national effluent guidelines was done twenty years ago. Several persons stated that the original cost of construction was estimated at $24,000–28,000, and that the cost of constructing the same structures today are much higher (estimated at $100,000). Many persons requested that an economic analysis be done to determine the cost of the proposed permit requirements. The regulated public expressed concern that the cost of compliance with the permit technology and recordkeeping requirements would be a serious burden on the family owned facilities. Several commenters noted that the cost of the Texas permitting program had cost dairies up to $200 per cow. They estimated that the requirements in the proposed permit would cost dairies $300 per cow. Many persons expressed the opinion that the state regulatory programs were adequate; and that a federal permit was duplication and a waste of tax dollars. A few commenters point out that the Labor Statistics Board noted the agriculture industry as having a 5% increase in employment while all other industries have dropped. These commenters state that agribusiness supports many employees and related businesses, and an economic impact on the dairy industry will have an economic impact on the national economy. Commenters asked if the Agency had taken into account the effect this permit would have on small businesses. These commenters reminded EPA of the current Administrations efforts to reduce the regulatory burden on small business. They explain that this additional cost of doing business would drive up costs and have a detrimental effect on the nations economy.

Challenges to the requirements established in effluent guidelines must be made when the guidelines are publicly noticed. In issuing a permitting action, EPA is under no obligation to defend either the technology or the economic analysis done in establishing an existing effluent guideline or new source performance standard. However, Region 6 has provided information in this responsiveness summary which compares the current status of the economic impact to the economic analysis which was published with the guidelines. Region 6 has also made an attempt to include the impact of the required Best Management Practices and Pollution Prevention Plan. The July 22, 1992 draft notice summarized EPA's belief that this permit would be more economically beneficial to the regulated community than the individual application process.

The Clean Water Act requires that EPA consider a "no discharge" technology where it is feasible when establishing effluent guidelines for industries. In the economic analysis that was done in the early 1970's it was established that the waste products generated by concentrated animal feeding operations were reusable resources and need not be discharged into waters of the U.S. The original economic analysis for construction of the basic technology was done when the BAT requirements for the national effluent guidelines (40 CFR part 412) were published in February of 1974.

Several commenters indicated that the original economic analysis was no longer realistic to determine economic impacts on Concentrated Animal Feeding Operations. In addition, several commenters felt that the cost of these draft requirements would be so burdensome as to force them to discontinue their operations. Several commenters felt that the economic impact of discontinuing these operations would be even more severe for the communities in which they operate. In response, the Agency performed updated cost estimates (using November 1992 dollar values) for the improvements required for various concentrated animal feeding operations, using installation and cost information provided by the Soil Conservation Service, Tarleton State University Institute for Applied Research, and the Texas Agricultural Extension Service.

These comparisons indicate that the costs originally developed were reasonable and realistic for today. Table 1 gives a summary of these cost estimates, with a range of approximate values, from basic, minimum requirements to full installation of all best available technology, for various operations.

TABLE 1—APPROXIMATE COST ESTIMATES FOR WASTE STORAGE PONDS, DIVERSIONS AND MONITORING

Type of operation	Cost for medium size operation	Cost for large size operation
Dairy	200 head—$20,000.	700 head—$65,000.
Beef	300 head—$40,000.	1,000 head—$70,000.
Swine	750 head—$40,000.	2,500 head—$65,000.
Poultry	9,000 birds—$85,000.	100,000 birds—$165,000.

The cost estimates developed when the original regulations were promulgated in 1974 were approximately $24,000 to $28,000 for installation of a comparable "no discharge technology" type of system. These costs established in 1974, when extrapolated to 1992 dollars using the standard Engineering News Record cost indexes for construction of this type of waste management facility, increased to approximately $98,000. The cost estimates shown in Table 1 were developed from current cost information (1992 dollars) for these types of facilities. This comparison clearly shows that the cost estimates are well within the original estimates for the installation of the required technology.

Information has been received from other environmental professionals, currently engaged in providing these services, on the costs associated with improvements based on the requirements of the draft regulations. This information indicates that these cost estimates are within the range of reasonable and realistic costs for these types of available technology. One report prepared by an individual had costs for specific items that were up to ten times the current costs for these available services, and had many items listed in their costs estimates (e.g. on-site dewatering equipment, application prepared by an engineer, plastic covers for manure piles, etc.) that are not required under the requirements of this final permit. Even with all of these extra unnecessary costs added into the estimate, the economic impact was an increase of less than 4 percent over current costs under existing state regulations.

EPA provides economic analyses in establishing a requirement of a new technology. EPA is not required to provide an economic analysis for the best management practices (BMP's) or recordkeeping included in permits to insure the compliance with effluent limitations and a record of that compliance. However, Region 6 recognizes that the cost of compliance with the management practices and recordkeeping requirements of the permit constitute an additional cost to the permittee. Region 6 has made a sincere effort to reduce the burden of these requirements by reducing and/or modifying many of these where water quality will not be compromised.

The pollution prevention plan required by the final permit will have several components, including a site map of the facility (existing maps or U.S.G.S. maps may be used), a list of the potential pollutant sources, size of retention capacity and site specific factors, construction specifications, information on direct hydrologic connections, land application rates and calculations, waste handling procedures, and recordkeeping requirements. Cost estimates provided by environmental professionals for drawing this information together and developing a pollution prevention plan range begin at approximately $2500 and increase, depending on the amount of work involved. However, these estimates were based on the Pollution Prevention Plan (PPP) which was published with the proposed permit which included more documentation than the PPP in the final permit.

Region 6 believes that some of the documentation and all of the recordkeeping can be prepared by the operator at little expense. Much of this information is already required by state specific programs, and therefore the pollution prevention plan is a vehicle to compile the pertinent information and determine the additional measures that will be required to reach compliance with this final permit. There is no requirement that a Professional Engineer prepare the pollution prevention plan. It may be prepared by a representative of the Soil Conservation Service, an Engineer or other environmental professional, or, in many cases, the facility operator himself. The pollution prevention plan must include all components listed in the requirements of this final permit, much of which will be provided by the facility operator anyway. The facility operator may choose to compile this information and develop the pollution prevention plan himself, thus reducing the cost even further. The recordkeeping requirements are for documentation of ongoing implementation of this final permit, and should be done by the facility operator and staff. The cost of additional outside professionals should not be required to provide this information. Several commenters indicated that no other state or region had requirements as strict as those required in the draft permit. In response, the Agency believes that the requirements listed in the draft permit reflect the regulations as they are now in place, and as they have been since the national effluent guidelines were promulgated in 1974. Many of the best management practices and pollution prevention plan requirements reflect the best technology available as developed in 1991 in the storm water program.

In addition, there are several states that have requirements as strict or even stricter than the minimum requirements set forth in the draft permit. In a report, "Livestock and Poultry Waste Management: Problems and Solutions," prepared for the Office of Policy, Planning and Evaluation, U.S. Environmental Protection Agency, in May 1991, summaries of several state programs indicate that Ohio, Oregon and Florida all have programs that reflect more stringent requirements. Additional states, such as California and Kansas, also have requirements as strict or stricter than the Agency's requirements for this permit.

While EPA does not wish to place an economic burden on the meat, poultry, and dairy industries, it must remind the regulated public that permitting responsibility and the retention technology for these industries were established as regulations almost 20 years ago. Those facilities which remain unpermitted and without the retention capacity to retain the 25 year, 24 hour storm event have been in violation of federal law since 1976 or for the life of their business, which ever came later. These facilities which have been noncompliant with the requirements of the regulations and the Clean Water Act have enjoyed an economic benefit over other facilities which have complied with the established requirements.

19. Many commenters expressed concerns over how this permit conforms with the Paperwork Reduction Act and the Regulatory Flexibility Act. Some commenters questioned how the Agency could state that this permit would be less paperwork and how it would create an economic benefit for the regulated community. In addition, several commenters were concerned about the effect of this permit on small businesses.

EPA's action in today's permit does not require EPA to perform additional activities under the Paperwork Reduction Act. The Agency notes that, while some paperwork is required in order to meet the requirements of this final permit, it is substantially less than the amount of paperwork required to file an application and comply with an individual National Permit Discharge Elimination System (NPDES) permit. Permits are required for these facilities under the Clean Water Act of 1972, and the two vehicles available for permitting are this General Permit and an individual permit. Individual permitting is very time-consuming for both the applicant and the Agency, and requires much more paperwork, effort and expense for the applicant. In addition, the documentation requirements of the General Permit for pollution prevention activities are the minimum acceptable requirements to the Agency for any industrial permit for CAFOs and would also be included in any individual permit issued for a concentrated animal feeding operation. Thus, compliance with this final permit does reflect the principles of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as well as providing an economic benefit in the form of reduced costs for application and compliance. The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES effluent guidelines and the storm water programs under provisions of the Clean Water Act.

Section of the Regulatory Flexibility Act, requires that the Agency assess the impact of rules on small entities. The regulatory definition of Concentrated Animal Feeding Operations promulgated by EPA in 1976 (40 CFR part 122, appendix B) addresses medium and large operations (300 slaughter cattle, 200 dairy cattle, 750 swine, 150 horses, 3000 sheep or lambs, 16,000 turkeys, 9000 laying hens or broilers, 1500 ducks, or 300 animal units, or more). Therefore, this permit excludes small businesses with operations of less than these numbers of animals, unless specifically designated by the Director. The Director would evaluate these factors as well as potential impacts to water quality of surface waters of the U.S. or significant contributions of pollutants to those waters, in the designation process.

B. Comments on Part I of the General Permit—Coverage and Eligibility

1. From the comments received it is apparent that many persons may be confused about the definition of a Concentrated Animal Feeding Operation as a point source of pollutants requiring an NPDES permit. Some comments questioned if pasture areas were subject to regulation.

The regulatory definition found at 40 CFR 122.23 and part 122 appendix B encompasses all animal operations which have industrial characteristics. The definition "concentrated animal feeding operation" includes the number of animals confined; the length of time the animals are confined at the facility; and the type of the confinement. The definition does not include areas of the facility where crops or forage crops are maintained throughout the growing season. The definition is included in the Part VII. of the general permit.

2. Several comments received voiced disagreement with the appropriateness of the phrase "confined in pasture operations".

Confined in pasture operations represents the restriction of pastured animals by a fence, wall, natural impasse or other such barrier to prevent these animals from free movement off of property or pasture. Confinement of animals on pasture lands are not regulated under this permit. This general permit regulated the pollutants from areas where animals are confined in concentrated situations.

3. Many persons requested that EPA explain the significance of the "Alta Verde" court decision, and how that relates to the exemption from NPDES requirements for those facilities which do not discharge. Some persons believe that the decision in this case removes the incentive for facilities to "over build" to avoid permitting requirements, and therefore, the extra environmental protection of a system that truly never discharges. Several commenters believed that the retention capacity design to contain the 25 year, 24 hour storm event excluded a facility from NPDES permitting requirements.

It is not within the scope of EPA's authority to determine the significance of the courts ruling in the *Alta Verde* case. In the *Alta Verde* case the courts ruled that a retention structure which was built to retain all runoff from the 25 year, 24 hour storm event was not exempted from obtaining an NPDES permit, and that all discharges from such a facility would be considered in violation unless in compliance with an NPDES permit. Region 6 believes the *Alta Verde* case corroborates the explanation given by Region 6 in the preamble of the proposed permit published July 22, 1992 (57 FR 32475). Where a facility has built a retention system which has the capacity to retain the 25 year, 24 hour storm event, and the facility maintains that capacity properly, any discharges due to the occurrence of extreme rainfall events will not be a violation of the Clean Water Act if those discharges are in compliance with an NPDES permit. The regulations at 40 CFR part 122 appendix B state that if a facility discharges only in the event of the 25 year, 24 hour storm event, then the facility is not considered to be a point source discharger. This means the only discharges which can be discharged without violating the CWA are those in compliance with an NPDES permit, or as a result of the statistical event which happens only about once every 25 years. The Court in *Alta Verde* ruled that the design capacity of the retention structure is irrelevant in determining Clean Water Act jurisdiction. It is not possible for a facility to predict with certainty the design capacity needed to retain the volume from largest secession of chronic rainfall events that may occur between 25 year, 24 hour events (approximately a 25 year period).

4. Many persons requested clarification on whether the definition includes stockyards facilities. These commenters contend that these operations do not generate much wastes and that the requirements in the permit would put an economic hardship on these businesses. Several commenters requested that EPA add the word "consecutive" to the reference to 45 days in the definition. One commenter requested that the definition be changed to include facilities on which animals were fed and maintained for 29 days out of a 12 month period.

The definition requires EPA to regulate facilities through NPDES permitting if animals are on the facility for 45 days or more out of a 12 month period. Region 6 believes strongly that it is clearly the intent of the regulation to include feedyards and stock yards which have animals maintained and fed for 45 days a year at the facilities. It is irrelevant whether they are the same animals for the 45 day duration, or whether it is a consecutive 45 days. It is beyond the scope of Region 6's authority to amend a promulgated regulation.

5. Many persons and producer groups requested clarification on the terms "continuous flow watering systems" and "liquid manure handling systems" to determine which poultry operations will be subject to permitting under NPDES.

Poultry facilities which have no discharge at all to waters of the U.S. are not point sources under the regulatory definition (40 CFR 122.23 and 122 appendix B) and are not required to obtain NPDES permits. This describes poultry houses which are exclusively under roof, which have no liquid or fluid wastewaters, and which removes or distributes all solid wastes and manure to proper agricultural uses shortly after collection. However, Region 6 believes that facilities which are described in the regulatory definition as a point source, i.e., have a process water discharge, must have an NPDES permit. This includes those facilities which stockpile or land dispose of manure such that rainwater or the adjacent watercourse removes significant amounts of pollutants to waters of the U.S. These facilities have, in fact, established a crude liquid manure handling system and are considered to be point source dischargers if the number of animals confined at the facility meets the regulatory definition of concentrated animal feeding operations.

6. Many persons supported the concept of general permit coverage with the no submittal of a notice of intent to the Director. However, many persons, state and federal agencies expressed concern that EPA would not have a record of the permittees for enforcement of the permit. Many commenters stated that if EPA was not going to track the permittees directly, it should not impose the program and leave CAFO regulation up to the states.

Region 6 agrees that a Notice of Intent is an appropriate tool in confirming which facilities are covered by the terms and conditions of the general permit. Region 6 is including a NOI form as appendix B of the general permit. EPA believes this will enhance the Region's ability to track and enforce the terms of the general permit.

7. Many persons requested that facilities which have applied to Region 6 for an NPDES permit prior to the issuance of the general permit be granted coverage under the permit when it is issued. And, that the coverage extend retroactively back to the date the application was submitted.

In accordance with Part I.B.3. of the general permit facilities which have applied for an NPDES permit will be covered automatically by this permit. However, EPA cannot extend the authority of an NPDES permit into the past and is not able to cover facilities from the time of application. The Clean Water Act requires that any discharge be in accordance with an NPDES permit. This is why a permit application is to be filed 180 days prior to discharging into waters of the U.S.

8. Many comments expressed concern that permit coverage was only for a five year term. Facility owners and bankers stated that it would be impossible for facilities to obtain loans on a facility if its environmental requirements could change in five years. Sections 402(b)(1)(B) of the Clean Water Act and U.S. Code section 1342(b)(1)(B) requires that permits under NPDES be issued for a fixed term not to exceed five (5) years. Federal regulations found at 40 CFR 122.46(a) clearly state that NPDES permits are effective for a fixed term not to exceed 5 years. EPA can require that a permit be renewed more frequently, but cannot extend the duration beyond the 5 years. All NPDES permittees, which include many different categories of industries, have addressed the budgetary concerns of meeting permit limitations which may change after a 5 year term since the inception of the NPDES program in 1972.

9. Several comments were received regarding the coverage of duck facilities after 1974. The commenters felt this only added confusion to the requirements and further, that they had no knowledge of any duck facilities in any of the four states covered by the permit. EPA has reason to believe that there are some duck breeding facilities in the Region. In addition, this general permit will provide requirements for any new facilities which may begin operation in the future.

10. The U.S. Fish and Wildlife Service requested that EPA participate in a meeting to discuss and evaluate environmental impact data gathered by the Fish and Wildlife Service. While being supportive of the general permit, Fish and Wildlife suggested additional permitting requirements to insure the protection of endangered and threatened species and their habitat.

EPA met with and discussed data obtained by the U.S. Fish and Wildlife Service and discussed several permitting requirements to insure impacts to endangered and threatened species were addressed. Region 6 included several requirements to the final permit to insure compliance with the Endangered and Threatened Species Act. No facility can gain coverage under this general permit if there would be any adverse impacts to an endangered or threatened species or their habitat. Several permit requirements were added in response to comments by several entities and agencies. It was the Best Professional Judgement of EPA that these requirements be included in the permit to insure that all impacts be properly addressed. Among these are: 1. The permittee will immediately report any fish or bird kills to the Fish and Wildlife office nearest to the facility; 2. A site specific rain gauge will be required to establish permit compliance; 3. Notice of intent be required of the facilities to be covered; and 4. The use of pasture or crop lands to "filter" discharges prior to entering a water of the U.S. be allowed as a management practice for those facilities which are in danger of imminent discharge, even in the event of saturated conditions. EPA believes that the conditions of the final permit will be effective in preventing discharges and management practices from affecting fish and wildlife, including endangered species.

11. Many persons were confused with the terms used in the Agency's decision under the National Environmental Policy Act (NEPA); and terms used in the coverage portion of the general permit to describe the requirement of an environmental review prior to coverage for new facilities with Performance Standards for New Pollutant Sources (40 CFR Part 412). The terms commented on were: environmental review; environmental assessment or environmental evaluation; and environmental impact statement.

The term "environmental review" will be included in the permit's definition section to give a regulatory definition of the process the Agency uses in its evaluation under the National Environmental Policy Act. The terms "review", "assessment", and "evaluation" are distinct phases associated with the NEPA process, their meaning being the same as would appear in a common dictionary. However, the following definitions are provided to clarify the terms as used by EPA.

An *environmental review* is defined at 40 CFR 6.101(c) as the process whereby an evaluation of the environmental information provided by the permit applicant is undertaken by EPA to identify and evaluate the related environmental impacts to determine if there will be an significant impact to the environment from the new facility. The EPA is required by law to conduct this environmental review prior to issuing any permit to a facility with New Source Performance Standards. These standards have been through the regulatory review process and apply to any facility constructed after the standard became a regulation. The Agency is prohibited from permitting any discharge with new source standards unless the review has been done and a finding has been made.

The terms *environmental assessment and environmental evaluation* are defined at 40 CFR 6.105(d) as concise public documents for which EPA is responsible and are prepared to provide sufficient data and analysis to determine whether an *Environmental Impact Statement* (EIS) or *Finding of No Significant Impact* (FNSI or FONSI) is required. When the environmental review indicates that there are no significant impacts anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable. The public is allowed to comment on the Agency's finding, and to provide information either supporting the FNSI or to the contrary during the permit public comment period.

The Agency, however, may determine that it must prepare a *Notice of Intent and Environmental Impact Statement.* This process is described at 40 CFR 6.105(e). When the environmental review indicates that a significant impact may occur and significant adverse impacts cannot be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the **Federal Register**. Draft and final EIS shall be prepared and disseminated. The final EIS shall list any mitigation measures necessary to make the alternative environmentally acceptable.

EPA would like to caution operators that the decisions described above must go to Public Notice for a minimum of 30 days prior to a final decision being made. The entire process can take several months to complete. An Environmental assessment and review should be initiated by the permittee several months in advance of constructing a new facility or expansion of a facility to over 100 animal units (part a. of the regulatory definition at 40 CFR part 122 appendix B or, part a. of the regulatory definition that is included in Part VII. of this permit).

12. Many persons commented on the need for an Environmental Impact Statement for discharges from CAFOs. Some comments questioned the need for an Environmental Impact Statement (EIS) indicating that the cost of an EIS would place a severe economic burden on the regulated facilities. Many persons expressed concern that the economic burden would discourage new businesses or expansion of existing businesses.

The Agency is required by law to prepare an EIS where it finds that significant environmental impacts may occur as a result of the new facility. In this case, all CAFOs with 1000 animal units or more (part a. of the regulatory definition that is included in Part VII. of this permit) that have been constructed since February of 1974 are considered to be the "new sources" which have new source performance standards. The EPA is mandated to regulate in accordance with the authority provided to it by Congress and is not authorized to circumvent the law regardless of its economic impact.

13. Some comments expressed disagreement with the Finding Of No Significant Impact which was published with the proposed general permit. Some of these comments cited water quality reports for the Erath and Bosque County areas. The commenters believed that due to the concentration of CAFOs in this area the water quality impacts from discharges from the retainment structures would constitute a significant impact and that CAFOs on the Bosque River Basin watershed should be evaluated in an Environmental Impact Statement. Several letters expressed the opinion that EPA had not sufficiently evaluated the potential impacts in this watershed, and had made judgments based on insufficient study of the known water quality problems in the area. In addition, these commenters stated the opinion that EPA's use of a general permit to regulate all CAFOs was inappropriate. These commenters believe that Erath County, Texas should be excluded from the general permit. It was the stated opinion of these commenters that EPA had not adequately addressed water quality, drinking water aquifers, closure of facilities, and odor control.

While EPA agrees with commenters that animal wastes have had an impact on this watershed (see answer A. 14.), Region 6 believes that the Finding of No Significant Impact is appropriate for the facilities which are already in operation and which will be compliant with the permit requirements. The permit requirements are considered to mitigate for any water quality impacts since the new source performance standards were developed to insure an environmentally safe discharge and the effluent limits of no discharge take into account the state water quality standards for the receiving stream.

In preparing the proposed permit, a list of possible impacts from CAFO facilities was compiled from various sources to determine the potential environmental impacts from concentrated animal feeding and maintenance operation activities. Among these impacts are: (1) Surface water quality impacts from discharges and the handling of the wastes generated at the site; (2) groundwater impacts caused by seepage from the retention lagoons and over-application of the wastes to land; (3) endangerment to public health by the contamination of drinking water by the animal wastes which are generated at these facilities; (4) public health nuisance caused by odors and the resulting attraction of insects to the area; (5) adverse effects to endangered species and other wildlife by the location or by the land application, disposal, or management of the animal wastes; and (6) air quality impacts from the contribution of methane and other gases which are associated with the management and storage of animal wastes.

These impacts were evaluated in the development phase of writing the draft general permit. The general permit proposed in July included many requirements to mitigate or control the environmental impacts associated with CAFOs. Based on the information mentioned above, the Agency evaluated agricultural information, state water quality inventories and reports, and national information on water quality problems associated with animal waste management. It was the finding of the Environmental Services Division at Region 6, that the conditions of the permit and the effluent guidelines provided adequate requirements to control, or mitigate all significant impacts from Concentrated Animal Feeding Operations which were already constructed and operating.

It is the finding of Region 6 that the most frequent water quality and environmental impacts are those associated with the land disposal of wastes generated by CAFO facilities. EPA has included specific requirements in the proposed permit to regulate the waste disposal activities. Additionally, the environmental assessment indicates that overflows from the wastewater containments can be controlled by frequent removal of concentrated wastewaters and diversion of rain waters. Also, discharges from properly operated facilities contain significantly less pollutants than a facility which has been improperly operated and wastes have been allowed to accumulate in the retention structure. Region 6 believes that it is the accumulation of wastes which would result in a more concentrated and frequent discharge that would cause environmental damage. The proposed permit includes the necessary mitigation recordkeeping and monitoring to determine if the discharges are in compliance with the permit requirements for proper operation and management.

The Clean Water does not give EPA the specific authority to address ground water and facility closure requirements for CAFOs (see answer D.25. for a discussion of the closure requirements). However, Region 6 believes that the pollution prevention and required management practices under the permit are protective of ground water quality. To the extent that there is protection under more stringent State statutes, the permit protects drinking water. The permit provides stringent requirements which are protective of water quality, and at the same time provides EPA with a strong enforcement tool against non-compliance.

Region 6 is aware that these facilities have contributed to significant water quality problems in areas where these facilities are concentrated on a particular watershed. EPA has considered all available information to determine if more stringent permit conditions are needed. Region 6 believes that the water quality impairments in the Bosque River Basin are mostly attributable to non-point sources and non-compliance with the current state program. It is the finding of this Agency that facilities which are operating in compliance with this general permit will not have a significant impact on the environment. It is the determination of this Agency that the permit conditions of "no discharge" coupled with the required best management practices and pollution prevention will be protective of State water quality standards. If facilities covered by this general permit are found to contribute to water quality impairments the permit may be reopened to include more stringent program elements, or the facilities may be required to apply for individual site specific water quality based permits.

14. One commenter requested that EPA place strict siting requirements in the permit which would eliminate all CAFOs in the Region.

EPA does not have the authority to require a six mile separation from all private residences and public buildings and areas, nor does the Clean Water Act provide the authority to EPA to eliminate business. The authority under which EPA operates, is limited to the regulation of discharges of pollutants to surface waters of the U.S.

15. Many comments were received requesting EPA define such terms as "alternative general permit" "individual permit" and "this general permit" which are used in Part I.D. of the general permit. These terms were in the proposed general permit preamble, fact sheet, and permit. The section of the permit containing the bulk of these terms has been restructured for clarification. EPA regrets any confusion about the regulatory language in this part of the general permit. Where ever the term 'this permit' appears it means this general permit which was proposed on July 22, 1992. General permit is a term which describes a permit which is intended to cover a large group of permittees with one permit; this avoids the administrative and resource burdens involved in individual permit issuance. Alternative general permit, alternative NPDES general permit, and individual NPDES permit all refer to a permitting action separate from this general permit which may be required in the vent that coverage by this permit is not adequate.

Simply stated this provision means that EPA has the authority, based on its judgement, to determine the appropriateness of this general permit with regards to any particular facility. If, based on site specific conditions, or water quality concerns, EPA believes that this general permit does not provide adequate requirements, EPA can require the facility to apply for an individual permit, or a different general permit. An application for an individual permit requires site specific information so that a more site specific permit can be developed which addresses the water quality concerns at that individual facility. Or, it may be the determination of EPA that a different general permit would provide more appropriate controls for the facility. If this is the case, the Director could require the facility owner/operator to apply for, and then comply with the other general permit.

C. Comments on Part II of the General Permit—Effluent Limitations

1. Many comments received requested information on the technical information used to develop the Effluent Guidelines for feedlots, and the basis for the application of these guidelines to concentrated animal feeding operations. The information requested is contained in the Development Document for Effluent Limitations and New Source Performance Standards—Feedlot Point Source Category. Published January 1974. This document is no longer for sale through the U.S. Government Printing Office, but can be reviewed at a Government Repository Library. Most large city libraries, State libraries, and University libraries provide an area for government documents, and as such are Government Repository libraries. In preparation of a permit for feedlots EPA must, at a minimum include the technology requirements established in the effluent guidelines. The effluent guidelines apply to all CAFOs of 1000 animal units or more (feedlots). Region 6, in preparation of the proposed permit, reviewed possible permitting requirements which would be protective of State water quality standards. It was the best professional judgement of EPA that the effluent guidelines would be minimum technology requirement which could be placed in a general permit which would be protective of water quality. Therefore, EPA has applied the effluent guideline technology to all facilities covered under the general permit. While this may appear to some persons to be placing a more stringent requirement on the facilities which have less than 1000 animal units, these smaller facilities have the permitting option of applying for a site specific individual permit. It is the belief of Region 6 that the cost of other treatment options which would be protective of water quality would be more expensive than the requirements in the general permit. It is the opinion of Region 6 that this general permit provides the most cost effective permitting option for facilities under 1000 animal units which are subject to Clean Water Act requirements.

2. Several comments received requested that the terms BAT and BCT be defined in the general permit. BAT, Best Available Technology applies to the control of toxic pollutants and pollutants which are not classified as toxic or conventional pollutants. BAT control of these pollutants is achievable through application of production processes and available methods, systems, and techniques. For this permit the required BAT, as described in 40 CFR 412.13, requires that there be no discharge of process waste water pollutants to navigable waters. The design standard requires the retention of all wastewaters and runoff from a 25 year, 24 hour storm event, and the proper operation and maintenance of the retention capacity. BCT, Best Practicable Control Technology applies to the control of conventional pollutants. The limitations established

in 40 CFR 412.22 define the quality and quantity of pollutants or pollutant properties, which may be discharged by a point source (CAFO) subject to the provisions of this subpart after application of BCT. The BAT requirement of "no discharge" meets all BCT standards for the control of conventional pollutants. EPA has included a definition of these terms in the definition section of the general permit (part VI).

3. Several comments were received requesting a definition of a 25-year, 24-hour storm event. This term is defined in part VII of this final permit. 25-year, 24-hour storm event is defined as the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments or equivalent regional or state rainfall probability information developed therefrom. This means that this storm event has a probability of occurring once every 25 years and includes the maximum precipitation occurring over a 24 hour period.

4. Several persons requested that EPA define "chronic" or "catastrophic" rainfall events. The terms chronic and catastrophic rainfall appear in the effluent guidelines requirement at 40 CFR part 412.

These refer to events which may result in an overflow of the required retention structure. Catastrophic rainfall conditions would mean any single event which would total the volume of the 25 year, 24 hour storm event. Catastrophic conditions could also include tornados, hurricanes or other catastrophic conditions which could cause overflow due to winds or mechanical damage. Chronic rainfall would be that series of wet weather conditions which would not provide opportunity for dewatering and which total the volume of the 25 year, 24 hour storm event.

5. Several concerned citizens were confused about the required technology established in the National Effluent Guidelines. It is the understanding of these citizens that properly sized facilities should discharge only in the event of the 25 year, 24 hour storm event. The effluent guidelines establish a requirement of "no discharge of process waste water pollutants from the facility". However, the guideline provides for no limitation to be placed on overflows from retention structures which are properly constructed and operated to maintain the capacity of the 25 year, 24 hour storm event. If chronic or catastrophic rainfall cause an overflow from a facility which has been operated to maintain the required volume capacity, then that overflow is in compliance with effluent guidelines and this permit.

A facility which only discharges in the case of the actual 25 year, 24 hour storm event is excluded from the definition of concentrated animal feeding operation (40 CFR 122.23 and part 122 appendix B) and is, therefore, not considered a point source discharger subject to NPDES permit requirements under the Act.

6. Several commenters were concerned that the National Effluent Standards for CAFOs were more stringent than the State Standards. The Clean Water Act requires that States set water quality standards. Where these state standards are more stringent than the national technology requirements, EPA is required to use the more stringent standard. EPA cannot be less stringent than the national technology standard in the development of NPDES permits. (Also see answers A.4–9.)

7. Several comments received requested a definition of "all process waste water". Process waste water refers to any process generated waste water and any precipitation which comes into contact with any manure, litter, or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animal or poultry or direct products (e.g., milk, eggs). Process generated waste water is defined as water directly or indirectly used in the operation of a CAFO for any or all of the following including but not limited to: Spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other feedlot facilities; direct contact swimming, washing, or spray cooling of animals; and dust control. This definition is included in the definition section of the CAFO general permit, part VII.

8. The U.S. Fish and Wildlife Service submitted comments expressing concern that playa lakes are being used as animal waste retention ponds at many CAFOs in the western U.S. to the detriment of migratory birds which use the same playas for loafing, feeding, and breeding. Many other commenters also questioned the use of playa lakes as retention structures for CAFOs, essentially contending they are waters of the U.S. to which the permit should prohibit discharges. Other commenters disagreed, however, noting that cleaning out a playa lake and building a new retention structure at the same facility would be very costly and probably would not provide any environmental benefit. One commenter stated the use of a playa lake is more environmentally sound because they are naturally lined with caliche and clay which protects ground water.

There is merit to each of these concerns. Many small playa lakes have historically been used as retention units by CAFOs with varying degree of environmental effect. Some have been rendered unfit for some of the uses which uncontaminated lakes enjoy. Conversely, some may have been improved, i.e., but for their use as a retention basin they would be dry much of the year and thus lack significant value as wildlife habitat. Some may have both adverse and beneficial effects on wildlife. In some instances, moreover, constructing an artificial retention pond to eliminate the use of the playa for wastewater retention might impose a severe economic burden on a CAFO operator without any significant environmental benefit. Wildlife currently attracted to the playa because of the wastewater it contains might well begin frequenting the artificial retention pond.

Moreover, there are difficult jurisdictional issues associated with playa lakes which EPA Region 6 cannot, as a practical matter, resolve in issuing these general permits. In accordance with EPA's regulatory definition of "waters of the U.S. at 40 CFR 122.2, a playa lake is a water of the U.S. if its "use, degradation or destruction could affect interstate or foreign commerce * * *." There are various types of commerce which may be affected by the degradation of many playa lakes, but EPA has to date asserted jurisdiction over them only on a case-by-case basis, generally in the context of enforcement actions. It is fair to say, however, that EPA Region 6 generally regards playa lakes supporting significant migratory bird use to the waters of the U.S.

40 CFR 122.2, however, also excludes "waste treatment systems" from its definition of "waters of the U.S." Although a portion of that regulation prohibits the use of naturally occurring waters from the ambit of the waste treatment system exclusion, that same portion has been stayed since July 1980, when EPA indicated it would "promptly" reconsider issues associated with the prohibition. See 45 FR 48680. Accordingly, a specific playa may be a waste treatment system over which EPA does not assert jurisdiction even though it would otherwise be a water of the U.S. Until the Agency promulgates a regulatory clarification, determining whether or not a specific playa is a water of the U.S. or a waste treatment system is another case-by-case process.

Moreover, because many playas are hydrologically isolated from other waters of the U.S., a *sine quo non* for a waste treatment system, there are many cases in which the jurisdictional issue is a close one.

Because dischargers are responsible for compliance with CWA section 301(a) regardless of whether or not EPA has made a prior determination on the jurisdictional status of a particular receiving water, EPA may occasionally bring an enforcement action for unauthorized discharges to a water body the discharger regarded as its waste treatment system. Although each case must be determined individually, EPA Region 6 may consider the following non-exclusive factors in deciding whether specific playas are treatment systems or waters of the U.S.:

a. *Hydrologic separation.* At a minimum, all waste treatment systems must segregate wastewater from other waters of the U.S., allowing the operator to maintain dominion over the waste prior to its discharge to waters of the U.S. In the case of playas which are naturally segregated from other waters, capacity of the playa thus becomes an important consideration. Using more playa than reasonably necessary for treating or retaining anticipated volumes of wastewater indicates the operator has not attempted to segregate its wastewater from other waters of the U.S., e.g., through construction of a watertight berm across the playa.

b. *Public access and multiple dischargers.* A surface water used or susceptible to use by various parties is rarely a waste treatment system because such use may interfere with or be incompatible with its use as a waste treatment system. Accordingly, a playa over which the discharger cannot or does not exercise exclusive control will generally be regarded as a water of the U.S., not a waste treatment system. It should be noted that discharges are a type of use. Because one wastestream may interfere with another's treatment, a playa receiving more than one entity's discharge is probably no entity's waste treatment system, but a water of the U.S. This might not apply to the case of two CAFOs with the same operations and wastes discharging to the same playa.

c. *Physical modifications.* Physical alteration of a natural playa to improve its ability to function as a waste treatment system provides an indication of waste treatment system status. As a corollary of sorts to the first factor listed above, for instance, increasing the capacity of a playa to accommodate waste treatment needs is a strong indication that the resulting surface water body is a waste treatment system, not a water of the U.S.

d. *Other waste treatment options.* The existence of a proven, practical, and preferable alternative treatment method for the waste stream at issue militates against a finding that a surface water body is a waste treatment system. Disposal via deep injection well, for example, is a proven method commonly used by onshore oil and gas operators for complying with EPA effluent guidelines applicable to produced water. Hence, EPA would be unlikely to find a playa lake was an oil and gas operator's waste treatment system. In the case of a CAFO, however, surface retention basins may sometimes be the only treatment/disposal option available.

e. *Consistency with state law.* Some states have adopted laws restricting or prohibiting the use of naturally occurring waters as waste treatment systems. If finding a water body is a waste treatment system is inconsistent with such laws, EPA Region 6 will consider it a water of the U.S. A state law or decision to allow use of a natural water body as a waste treatment system is not, however, a determinative factor in an EPA decision on the same issue.

f. *Individual Section 404 permit.* If the U.S. Army Corps of Engineers has issued a permit for the discharge of dredged or fill material to a playa lake incidental to a playa's use as a waste treatment system, EPA Region 6 will probably consider it a waste treatment system. The existence of a nationwide or general permit authorizing such work in a playa, however, will be given little if any weight because neither EPA nor state water quality agencies have an opportunity to consider individual waterbodies in connection with the issuance of such a permit.

EPA reiterates that these factors are neither exclusive nor regulatory; they are simply examples of the sort of factors EPA will probably apply in making individual determinations. Their application in the context of an administrative or judicial enforcement action may thus be challenged in that enforcement action. In an effort to place permittees on notice that discharges to playas may be considered discharges to waters of the U.S., however, EPA has amended the proposed permits' references to "waters of the U.S." by adding exemplary language regarding rivers, streams, lakes, wetlands, and playa lakes.

Even if a specific playa is clearly a waste treatment system, the operators of that system should make every effort to avoid damage to wildlife resources, such as migratory birds. Many migratory birds protected by the Migratory Bird Treaty Act and/or the Endangered Species Act may frequent surface water bodies, regardless of their jurisdictional status under the Clean Water Act. Harming such protected birds by operating a treatment system may subject the operator to significant criminal liability under those laws.

D. Comments on Part III of the General Permit—Special Conditions, Management Practices, and Other Non-Numeric Limitations

1. Many persons were concerned with the phrase "other than discharges associated with proper operation and maintenance of the CAFO" in Part III.A. Prohibitions. Several comments stated that pesticides should be considered as proper O&M, and that the dilution of pesticides in the ponds would render them harmless. The State of Texas asked if the disposal of "off spec" milk could be discharged to the retention structure.

The Agency wishes to stress that the retention technology with the allowance to overflow in extreme rainfall conditions can only be applied to the wastes associated with the operation and maintenance of a concentrated animal feeding operation. The disposal of other wastes in the ponds would be a violation of the regulatory requirement. The authority for this requirement is established in 40 CFR 122.45(h). The disposal of "off spec" milk is a part of the operation and maintenance of a dairy facility. Also, the use of pesticides, cleansers, disinfectants are common and often necessary to the operation of any animal feeding operation. Region 6 cautions operators to use pesticides judiciously and in accordance with label requirements. Where appropriate the operator should limit the use of pesticides, and use those which are more readily degraded. This could limit pesticide impacts on the environment and limit the need to do expensive pesticide testing if the retention structure should need to discharge. Region 6 does not believe that the dilution of pesticides in the retention structures will render them harmless. Many pesticides are very toxic to fish and wildlife in the parts per trillion range and do not break down readily.

Two examples of activities and wastes which are excluded by this provision are as follows: 1. The introduction of human wastewaters into the retention structure. The discharge and/or land application of materials that are potentially contaminated with human pathogens are covered by regulatory requirements in section 405 of the Clean Water Act. 2. The act of any operator to accept any outside waste (waste not generated at the CAFO) to be introduced into the retention structure.

2. Several persons commented on the requirement to structurally restrict uncontaminated waters which may run on to the facility. Also many persons question the requirement for the facilities to be protected from flood if located in a floodplain. The Agency believes that unrestricted flow through the facility area would result in unnecessary and unplanned large volumes of water which would have to be retained. The Agency believes this practice would lead to frequent non-compliance. The Agency also believes that the protection from flood waters is consistent with the no discharge requirement for facilities which are located in floodplains. This provision applies to all waste management areas except the land application of wastes as an agricultural practice. Properly applied, animal wastes provide no more environmental risk than chemical fertilizers which would be used on the same land.

3. Several comments received concerned the placement of a waste retention facility near water wells. Many commenters requested EPA reword the requirement to clarify their intent. Several States requested that the distances reflect State health department standards.

EPA has clarified the Best Management Practice referring to the proximity of waste management facilities to water wells. (Part III.B.1.g.) It is EPA's responsibility to include any State requirement which would be more protective of public health in permitting actions. EPA agrees with States that these should be in accordance with the specific distances cited in the State's health codes, therefore, the best management practices restricting the placement of retention and waste handling facilities near public and private water wells has been changed to refer to the State's requirements.

4. Many persons and producer groups, especially groups from States outside Region 6, question EPA's authority to protect ground water in an NPDES permit. Clean Water Act specifically refers to ground water in three sections, however it does not give clear authority to EPA to regulate ground water quality through NPDES permits. Where States have requirements to protect ground water, or specifically refer to them as waters of the State which are to be protected in an approved Water Quality Management Plan, EPA is fully within its authority to protect ground water quality. EPA is authorized by section 301 of the Act include any more stringent state treatment standard or requirement. Region 6 has not included requirements to specifically protect ground water quality. The permit does, however, protect the sources of surface water from the leakage of pollutants through the unlined retention structures. This requirement along with best management requirements for the proper waste handling and disposal will have the added environmental benefit of providing some ground water protection. The permit also includes provisions which relate to the protection of public health from the contamination of drinking water as reflected in State Standards.

For clarification all mention of ground water protection has been removed from the general permit.

5. Many commenters objected to the requirement of recordkeeping in the general permit. Many people stated that it was too burdensome and that paperwork would not protect the environment. Several persons and producer groups supported some of the required recordkeeping. Specifically, logs of water levels, structural integrity inspections, and logs of manure removal from the facility. Several concerned citizens suggested that facilities should also keep records of all pesticide usage at the facility. Many persons stated the opinion that the recordkeeping requirements be eliminated and be replaced by annual or semi-annual inspections by EPA. Several Commenters believed that the inclusion of BMPs and the requirements in the Pollution Prevention Plan were beyond the scope of EPA's authority.

EPA has simplified and clarified the recordkeeping requirements in the permit. The records required are those which facilities must have to show compliance with the national standards. Many of the record requirements are provided by the USDA Soil Conservation Service. Region 6 does not believe that the recordkeeping required to document all pesticide usage is necessary to protect water quality. The permit requires that the permittee use pesticides in accordance with label requirements. In this was the use has already been regulated by EPA. The permit also requires the permittee to sample all discharges to waters of the U.S. for any pesticide which may be present in the discharge.

Region 6 regulates and permits close to 100,000 permittees. The staff required to do semi-annual inspections at every permitted facility in Region 6 would require a substantial increase to EPA's budget. This expenditure would have to be placed on the taxpayer in order to save the operators of facilities from the burden of their compliance recordkeeping. EPA does not agree that this is an appropriate use of tax dollars.

The Clean Water Act gives EPA broad authority to develop permit conditions necessary to meet effluent guidelines and water quality standards. Specifically, sections 401(a) (1) and (2) of the Act give EPA authority to prescribe conditions for permits to assure compliance with applicable regulations. Further, EPA has the authority to impose Best Management Practices (BMPs) as permit conditions to ensure that technology-based effluent limitations are properly implemented in permits. Additionally, it is EPA's best professional judgement that the BMPs and pollution prevention requirements are needed in the permit to protect for water quality.

Tracing EPA's statutory and regulatory authority to control wastewater discharges from CAFOs, federal regulations found at 40 CFR 122.44 state that NPDES permits must include technology-based effluent limitations based on limitations promulgated under section 301 of the Clean Water Act. Effluent limitations have been imposed on CAFOs by federal regulations found at 40 CFR part 412. The regulations at 40 CFR 122.44(k) state NPDES permit shall include Best Management Practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible or these practices are reasonably necessary to achieve effluent limitations and standards or to carry out the intent of the Clean Water Act. The regulations described for CAFOs at 40 CFR part 412 are not expressed as numeric limitations, and are clearly effluent limitations which can be implemented by the use of BMPs. EPA therefore believes that it has authority to require BMPs as a condition of the general CAFO permit and believes BMPs to be the appropriate vehicle for the protection of water quality.

6. Many comments were received requesting a compliance schedule for the development of the plan and compliance with provisions. EPA agrees that the smaller facilities under the general permit will require more time to prepare a plan. Facilities under 1000 animal units must be compliant with this provision as outlined in the schedule in Part III.B.2.a. of the final permit.

7. Many comments received requested that the permit allow Soil Conservation Service animal waste management plans to replace the pollution prevention documentation. Other commenters request that documentation of compliance with the waste management

provisions, retention structure design and construction, and liner determinations from the SCS be considered compliance with the pollution prevention requirements.

The proposed permit contained language which allowed documentation under SCS plans to substitute for parts of the pollution prevention plan. The Agency has amended the permit to include more specific language (in Part III.B.2.) concerning the substitution of SCS documentation/decisions for the permit requirements.

8. A few commenters questioned who would be considered "qualified personnel" for purposes of development of a Pollution Prevention Plan and responsibility for compliance with the provisions and recordkeeping. The owner or operator of the facility is responsible for designating this task to an employee, or doing it themselves. If the task is designated to a person other than the permittee, it is the permittees responsibility to determine the qualifications of the employee to understand and comply with the requirements. This person must be named in the plan.

9. A few persons objected to the requirement that all sampling data be kept on site. Sampling data is part of the permit compliance record of the and must be kept at the facility. EPA does not believe this places any burden on the permittee and allows EPA to evaluate permit compliance.

10. Most commenters were concerned with the requirement to have all of the necessary dewatering equipment "on site". The equipment is expensive and is often shared by several operators in close vicinity of one another. The commenters suggested the language be changed to say "available". Region 6 agrees that the requirement to have the equipment on site would be unnecessarily burdensome to small operations and is not necessary to proper operation and maintenance. The permit language has been changed to reflect the availability of the equipment. However, the permit now requires that the permittee document the availability of the equipment in the Pollution Prevention Plan.

11. Several persons and State agencies commented that the information from the nearest weather station might not accurately reflect the rainfall at the facility. These comments suggest that a rain gauge should be kept on site and the rainfall from any measurable event be recorded and kept with the pollution prevention plan. EPA agrees with the comment and has included the requirement in the final permit.

12. A few commenters asked if the requirement for erosion controls were necessary. These commenters believed this requirement would not result in further environmental protection. Increased sediment entering the pond structures could reduce the storage capacity and could result in noncompliance with the no discharge requirement.

13. Several comments requested that existing facilities be "grandfathered" or exempted from structural requirements, liners, and construction specifications. EPA agrees with commenters that structures which exist and exhibit good maintenance and structural integrity should be exempt from the construction specifications. It is not EPA's intent that these facilities be reconstructed. However, documentation of appropriate retention capacity and liner assessment will be required by all facilities in accordance with the terms of the permit.

14. Some comments requested that the requirement for grass or riprap to stabilize the walls of the retention structures, be changed to allow for other means of stabilization. The comments stated that in very cold or dry conditions grass would not survive and riprap was a very expensive alternative. The commenters stated that other methods could be used to prevent deterioration and that the Agency should allow for this flexibility.

The Agency agrees with this position and has simply required that the structures be stabilized against erosion and deterioration.

15. Several comments note that the design capacity must take into account the volume of wet manure, and suggests that this is too broad a statement. The commenters suggest that this be changed to the volume of manure which will enter the pond. It is the Agency's intent that only the volume of manure which will would reasonably be expected to enter the retention structure would have to be accounted for. The language in the final permit has been changed to reflect only the manure to be retained in the structure.

16. Many comments questioned the requirement of liners to protect from hydrologic connection. Many commenters believed that this requirement was to protect ground water. Over most of EPA Region 6 surface water flow is sustained throughout much of the year by ground water inflow. As a result, contaminants which leak from containment structures to the ground water will typically move underground toward local streams and rivers where they will be discharged and affect water quality. EPA has included a liner requirement specifically where there is potential for pond leakage to impair surface waters. Region 6 strongly believes this is consistent with the effluent guideline requirement of a "no discharge" technology. It is EPA's position that a discharge through the bottom of the retention structure constitutes a violation of the required technology requirement if significant pollutants from that discharge reach a surface water. Also, see answer D.4.

17. Several comments received requested clarification of hydrologic connection, and how this could be documented. Hydrologic connection refers to the interflow and exchange between surface water and ground water. In the context of this permit, the intent of the reduction of hydrologic connection is to reduce ground water as a flow path which would result in the transfer of pollutant materials from CAFO containment structures to surface waters. This definition has been included in the definition section of the CAFO general permit, Part VII. The conditions in the general permit have been simplified to allow a professional determination that hydrological connection does not occur to the degree that surface water contamination would result.

18. Many comments requested that the "liner requirement" apply only to new facilities. The commenters state that these facilities have a "biological seal" which prevents leakage. These persons note studies by Texas A&M which show facilities which are properly maintained seldom leak. EPA agrees that the process of plugging and gleisation may provide appropriate sealing of a pond under certain conditions, however, the permit requires the permittee to have specific documentation on site that a liner is not necessary.

19. Many commenters request that the hydraulic conductivity and thickness requirements (1×10^{-7}, and 1.5 feet) in the permit language change to be consistent with the Soil Conservation Service technical standards for liner construction. EPA agrees with the commenters that the technical determinations made by the SCS or by another professional using SCS Technical Notes 716 and 717 (or the current equivalent technical criteria) would protect for hydrologic connection. These determinations take into account the site specific variables. Additionally, a professional will not design the facility in structurally unstable area or on unstable soils. Where site specific conditions are not assessed by a professional, EPA believes that the more conservative requirement

of 1.5 feet of material compacted to 1×10^{-7} hydraulic conductivity (or its equivalent in an alternate material) is appropriate.

20. Many comments were made on the liner maintenance requirements of liner inspection and monitoring wells. The commenters included many State and Federal agricultural agencies as well as State water quality professionals. The Agency has reevaluated its proposed requirements of liner inspections and monitoring wells. EPA agrees with the agricultural professional that liner inspections would result in structural and biological damage to the liners. This requirement has been removed from the final permit. EPA also agrees with the water quality professionals that the indiscriminate drilling of monitoring wells for every facility could result in the contamination of ground water and drinking water aquifers. EPA also recognizes the States' concern that specific facilities may have the potential to leak and contaminate State waters. The final permit requires only those facilities which have been notified by the State or the Director to install monitoring wells to check for liner integrity.

21. Many commenters were concerned with the concept of agronomic rates, and the requirement that manures and wastewaters must be land applied at rates which consider the nutrient crop uptake. Many comments suggest that the land application be limited to available nitrogen. Many commenters requested a definition of "agronomic rates". Several persons noted the "slow release" nature of manure and requested that we take this into account. EPA agrees with the commenters that plant needs define agronomic rates. It is not EPA's intent to prescribe the specifics of agricultural use of wastes, but to insure that the rates used are consistent with EPA water quality goals and good agricultural practices. Where agricultural practices include high application rates of phosphorus near water bodies which are phosphorus impaired, it is EPA's intent that appropriate cultural practices be used to limit the potential runoff of nutrients.

22. Many commenters stated that manure was more environmentally safe than chemical fertilizers. However, some commenters believed the manure and waste products should be tested for nutrient content. Many comments stated that manure records should be kept in whatever unit of measure the farmer wanted. One commenter asked if weigh tickets would be required with the log of manure hauled away. EPA agrees that, properly used, manure is a more environmentally favorable fertilizer source than chemical fertilizers. However, it has been the finding that the improper or over application of animal wastes has impaired watersheds in each of the Region's States. EPA believes the removal of large quantities of wastes should be logged only (no weigh tickets are required by the permit). The permit has been changed to allow other appropriate units of measure.

Where the manure is analyzed, this information will be made available to the hauler. EPA will not *require* that manures and wastes be analyzed, however, the permittee must use appropriate information about the nutrient content of the wastes to determine and document land application rates at the facility.

23. Many persons objected to the requirement that stock piles of manure or land disposal sites would have to be protected from flooding if placed in the 100 year floodplain; and manure was not to be stockpiled near water courses. Many persons believed this restricted the ability of the operator to compost the manures to be used on the field.

Region 6 believes that these requirements are consistent with the no discharge requirement of the national standard. Significant amounts of manure, placed in floodplains and near water courses, could be discharged during rainfall or high water events. The permit requires the permittee protect against such occurrences. Region 6 does not believe this will substantially impair the permittees ability to compost wastes at the facility. The permittee can compost manures in locations away from water courses and transport the composted manure to the field when it is to be land applied.

24. Many concerned persons criticized EPA for not including adequate odor controls in the general permit. EPA's authority under the Clean Water Act does not extend to odor control at these facilities. Region 6 believes that the requirements in the permit do require the best management of the waste products from such facilities, and therefore, will reduce to the maximum extent possible problems which result in excessive odors.

25. Several commenters believed the permit should include requirements for "closure" of a facility. These citizens believe that these facilities constitute an extremely mobile industry and that when environmental regulations tighten, these facilities move to new locations leaving significant wastes behind exposed to runoff.

EPA has no specific authority to regulate the closure of these facilities. However, it should be noted, and the regulated community should be aware that CAFO facilities with over 1000 animal units are considered to "have storm water discharges associated with industry activity". In accordance with regulations published in the **Federal Register** on November 16, 1990 (55 FR 47990 Definition 14) all facilities or inactive sites where significant materials remain exposed to storm water must have a NPDES storm water permit. Therefore, sites vacated by large CAFO facilities will be required to remain permitted until all significant materials are removed.

E. Comments on Part IV of the General Permit—Monitoring and Reporting Requirements

A range of comments were received on the requirement for discharges and overflows from the retention structures to be sampled and analyzed. Some commenters rejected the need for any sampling, many provided information or stated opinions on which parameters should be analyzed, but most commenters questioned the need to test for fecal coliform bacteria. The U.S. Fish and Wildlife Service suggested the discharges be analyzed for metals, pesticide, hormone and antibiotic contamination. The Service also requested that permittees be required to do instream studies to determine if these contaminants were being released.

EPA agrees that the full scope of sampling may not be necessary to track the detrimental effects of a discharge. Additionally, review of State water quality inventories and information from water quality experts indicates that chronic eutrophication in watersheds is related to the improper or over application of wastes and not to the discharge from a properly operated facility. For this reason, Region 6 has included only those chemical parameters which are likely to produce acute effects as the result of a discharge. EPA is also concerned with the protection of human health which relates to the fecal bacteria discharged into the surface water. The parameters which must be analyzed are BOD, TSS, ammonia nitrogen, fecal coliform bacteria, and any pesticide that could reasonably be in the discharge.

EPA must develop permit conditions which satisfy the intent of the Clean Water Act. As described in 40 CFR 122.48, EPA shall specify reporting requirements in permits which are based upon the impact of the regulated activity. Fecal coliforms, excreted in mammalian feces, are clearly a parameter pertinent and applicable to the "activity" of a confined animal feeding operation.

EPA has included many of the permit requirements suggested by the U.S. Fish and Wildlife Service. Region 6 agrees with Fish and Wildlife that immediate notification will allow the Agency the option to study the impacts of discharges. However, the data which the Service has collected are specific to geographic area and relate to pond sediments (mostly from historical waste management). Where this data may indicate that there are metals present in sediments of particular retention systems, EPA does not believe the body of data which exists at this present time indicates the potential for discharge of significant amount of metals from these facilities under rainfall conditions. EPA is unaware of any approved method to test for hormones or antibiotics in wastewaters. Region 6 believes further data could be gathered in the next five years. If this data indicated metals in discharges from CAFO facilities, EPA can address metals in this permit when it is reissued. The permit already requires that permittees analyze the sample for pesticides which may be in the discharge.

F. Comments on Part V of the General Permit—Standard Permit Requirements

Many persons remarked that several requirements in this part of the permit related to industrial dischargers and do not relate to CAFOs, and these items should be deleted from the final permit to avoid confusion. The Agency agrees with the commenters that much of the standard permitting language is directed at activities not found at a CAFO. Therefore, Region 6 has removed those sections of the standard permitting language which do not pertain to CAFOs. Items for Anticipated Noncompliance, Other Noncompliance Reporting, Bypass of Treatment Facilities, and Upset Conditions have been removed from Part IV. Items regarding Toxic Pollutants and Oil and Hazardous Substance Liability have been removed from Part V.

G. Comments on Part VI of the General Permit—Reopener Clause

The Department of the Interior Fish and Wildlife Service requested that the Agency include in the Reopener that the Agency would undergo a consultation with U.S. Fish and Wildlife if the permit is reopened. EPA is required to work with other regulatory agencies and often consult on permitting actions. It is not necessary to notify the permittee of all administrative activities which are undertaken when permits are reopened, only the reason the permit may be reopened. Therefore this will not be included in the final permit.

H. Comments on Part VII of the General Permit—Definitions

Many requests were received by EPA on words, term and phrases which the public requested defined or clarified. The Agency has provided clarifications in this responsiveness summary in the responses to comments for that particular section of the permit where the term was used. In addition, EPA has included several definitions to the final general permit. These are: "Agronomic Rates", "Best Available Technology" (BAT), "Best Conventional Technology" (BCT), "Hydrologic connection", "Process wastewater", "Qualified groundwater scientist".

Several persons point out that the term 10-year, 24-hour storm event is never mentioned in the general permit. This term has been deleted from the final general permit.

I. Comments on the Appendices of the General Permit

Most of the persons commenting on the general permit were opposed to the "Recommended Best Management Practices", manure nutrient information, and crop nutrient information that was published with the proposed permit. Many persons believed that more user-friendly and up-to-date information was available through State and Federal agencies which work with the agricultural community.

EPA agrees with the commenters and has removed such information from the final permit. The Agency has replaced it with listings of information sources and agencies to assist operators in the proper operation and management of CAFO facilities, and a listing of publications which were submitted by State and Federal agencies.

Part III. Economic Impact

EPA believes that this general permit will be economically beneficial to the regulated community, in that it provides an economic alternative to the individual application process the facilities covered by this permit would otherwise have to face. The requirements are consistent with those already imposed by effective Federal regulations and State requirements.

An economic analysis was done when the BAT requirements for the national effluent guidelines (40 CFR part 412) were published. Region 6 believes that the same economic and technology rationale would apply to the smaller facilities covered by this permit. Also, Region 6 believes that this permit is the most economical permitting option available to the smaller facilities with NPDES application requirements. Region 6 has also provided a comparison analysis in the Responsiveness Summary to show the applicability of the 1974 analysis.

If, however, any smaller facilities believe that this economic analysis for the guidelines containment technology would not apply to their facility and that they would be able to achieve necessary water quality requirements of the receiving stream, through the use of biological or equivalent treatment systems, those smaller facilities may apply for individual permit coverage.

Part IV. Compliance With Other Federal Regulations

A. National Environmental Policy Act

Finding of No Significant Impact

To All Interested Government Agencies and Public Groups: Pursuant to the requirements of section 511(c) of the Clean Water Act and the environmental review procedures of the U.S. Environmental Protection Agency (EPA) at 40 CFR part 6, "Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act" for the National Pollutant Discharge Elimination System (NPDES) New Source Program, the EPA has conducted a general environmental review of the following action:

1. *Action.* Issuance of General NPDES Permit for New Source Concentrated Animal Feeding Operations (CAFO), defined in 40 CFR part 122 appendix B and 40 CFR part 412, and located in all parts of the State. The discharge of process wastewater from these facilities is subject to the requirements of 40 CFR 122.23 and 40 CFR part 412, and to the application of the new source performance standards promulgated on February 14, 1974, under the NPDES permit program.

2. *Environmental Effects Generally Associated with CAFOs.* A summary of the potential impacts from CAFOs on the environment and the mitigating affects of the permit requirements were published with the proposed permit (57 FR 32475).

3. *Finding.* On the basis of an additional review of the impacts commonly associated with CAFO operations, information and comments received during the public comment period, and other available information, the EPA has made a final decision that the issuance of the General NPDES Permit will not result in any significant adverse environmental impacts and that

an Environmental Impact Statement (EIS) is not required. This Finding of No Significant Impact (FNSI) covers CAFO facilities in place and operating at the time of issuance of the General Permit. Applicants for CAFO facilities proposed after the issuance of the General Permit shall submit an appropriate EID and undergo environmental review prior to the start of construction. Comments regarding this decision not to prepare an EIS are discussed in the attached Responsiveness Summary.

New CAFO subject to National Effluent Guidelines (40 CFR Part 412) will be required to complete an Environmental Review with the Agency prior to coverage under the permit. New facilities are any CAFO not in operation as of the issuance date of these general permits. These facilities, prior to construction must complete an environmental review with this Agency. The initial form to start the process of an environmental review has been provided in appendix C of the permit. The permittee must have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by the Agency, as a condition of coverage under the permit. This documentation must be retained on site.

B. Endangered Species Act

The final permits published today will authorize no discharge other than upsets and bypasses, which are relatively infrequent occurrences. Accordingly, EPA Region 6 determines that issuance of these permits is unlikely to adversely affect any listed threatened or endangered species or designated critical habitat. EPA Region 6 has submitted copies of these permits to the U.S. Fish & Wildlife Service. EPA Region 6 consulted the U.S. Fish & Wildlife Service regarding this determination. EPA has addressed all of U.S. Fish & Wildlife Service concerns. Part I of this document outlines changes which were made to the final permit. The Responsiveness Summary in Part II explains the Agency's final permitting decisions with respect to the concerns raised by the U.S. Fish & Wildlife Service.

C. Executive Order 12291

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order.

D. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this general permit under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under provisions of the Clean Water Act.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No Regulatory Flexibility Analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's general permit would generally make the NPDES regulations more flexible and less burdensome for permittees. This permit does not apply to small animal feeding operations unless specifically designated by the Director. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments, if promulgated, and that these general permits, when issued, will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: January 5, 1993.

B.J. Wynne,

Regional Administrator.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Louisiana

[General Permit No.: LAG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of New Mexico

[General Permit No.: NMG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Oklahoma

[General Permit No.: OKG010000]

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act."

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

Authorization to Discharge Under the National Pollutant Discharge Elimination System for Storm Water Discharges From Concentrated Animal Feeding Operations in the State of Texas.

[General Permit No.: TXG010000].

In compliance with the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act".

Owners and operators of Concentrated Animal Feeding Operations except those sites excluded from coverage in Part I of this permit, are authorized to discharge in accordance with effluent limitations, monitoring requirements, and other provisions set forth herein.

A copy of this general permit must be kept at the site of the concentrated animal feeding operations.

This permit will become effective on March 10, 1993.

This permit and the authorization to discharge under the National Pollutant Discharge Elimination System shall expire at midnight, on March 10, 1998.

Signed this fifth day of January, 1993.

Myron O. Knudson, P.E.,

Water Management Director, Region 6.

NPDES General Permit for Discharges From Concentrated Animal Feeding Operations

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Part I. Coverage Under This Permit

A. Permit Area

The permit covers all areas administered by Region 6 in the States of Louisiana, New Mexico, Oklahoma and Texas.

B. Coverage and Eligibility

Unless excluded from coverage in accordance with paragraph C or D below, owners or operators of animal feeding operations that are defined in 40 CFR part 122 appendix B as concentrated animal feeding operations, and are subject to the requirements 40 CFR 122.23 are eligible for coverage under this permit.

1. *Existing Facilities.* Owners or operators of existing Concentrated Animal Feeding Operations (CAFOs) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent (NOI) [1] to gain coverage under this permit. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit.

2. *CAFOs With Expired Permits or Pending Applications.* Upon the submittal of a Notice of Intent [1] all facilities which have expired permits and have reapplied in accordance with 40 CFR 122.21(d); and all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are automatically covered by the terms of this permit. A permittee may request to be excluded from coverage by this permit by applying for an individual permit in accordance with 40 CFR 122.28(b)(3)(iii).

3. *New Facilities.* Owners or operators of new Concentrated Animal Feeding Operations (CAFOs) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent [1] to gain coverage under this permit. The owner or operator of a new CAFOs must submit a Notice of Intent five (5) business days prior to any discharge from the Concentrated Animal Feeding Operation. Permittees must retain on site a copy of the permit and the pollution prevention plan as required by this permit. Additional requirements for new facilities are as follows:

a. Requirements for New CAFOs with more than the number of animals specified in 40 CFR part 122 appendix B(a) [2] (or definition 7.a. of this permit). New Concentrated Animal Feeding Operation facilities subject to National Effluent Guidelines (40 CFR part 412) shall, prior to constructing, complete the form provided in appendix C of this permit. The form must be sent to: Mr. Hector Pena (6E–FF), U.S. EPA Region 6, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202.

b. The permittee shall have documentation of "No Significant Impact" or a completed Environmental Impact Statement, in accordance with an environmental review conducted by this Agency, as a condition of coverage under this permit. This documentation shall be obtained and retained on site prior to the submittal of the Notice of Intent.

4. *Expanding Facilities.*[3] Facilities intending to expand operations to more than the number of animals specified in 40 CFR part 122 appendix B(a) (or definition 7.a. of this permit) will be subject to 40 CFR part 412 and will be required, prior to construction of the expansion, to submit a new notice of intent and to complete the form provided in appendix C of this permit. The form must be sent to the address in paragraph I.B.3.a (above). The permittee shall have documentation of "No Significant Impact" or a Completed Environmental Impact Statement, in accordance with an environment review conducted by this Agency, as a condition of coverage under this permit. This documentation shall be obtained and retained on site prior to the submittal of the notice of intent.

5. *Other Animal Feeding Operations.* All other animal feeding operation are encouraged to comply with the terms and conditions of this permit.

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[1] The Notice of Intent Form is included in this permit as appendix B.

[3] The provisions in Part I.B.3.&4. are requirements of Federal programs under the National Environmental Policy Act of 1969 and will not apply to such facilities once authority for the NPDES program has been assumed by the state agency.

C. Limitations on Coverage

The following discharges from Concentrated Animal Feeding Operations (CAFOs) are not covered by this permit:

1. Concentrated Animal Feeding Operations that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard, and which have been notified by the Director to file for an individual or alternative general permit in accordance with part I.D (below) of this permit.
2. Concentrated Animal Feeding Operations which adversely affects a listed or proposed to be listed endangered or threatened species or its critical habitat.
3. Concentrated Animal Feeding Operations which adversely affects properties listed or eligible for listing in the National Register of Historic Places.
4. Concentrated Animal Feeding Operations that discharge all their runoff and wastewater to a publicly owned sanitary sewer system which discharges in accordance with an NPDES permit.
5. Concentrated Duck feeding operations established prior to 1974.

D. Requiring an Individual Permit or an Alternative General Permit

1. The Director may require any person authorized by this permit to apply for and obtain either an individual NPDES permit or an alternative NPDES general permit as provided in 40 CFR 122.28(b)(2)(i). The Director will notify the owner or operator in writing that a permit application is required. If an owner or operator fails to submit in a timely manner an individual NPDES permit application required by the Director, then the applicability of the general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit as provided in 40 CFR 122.28(b)(2)(iii). The owner or operator shall submit an individual application (Form 1 and Form 2B) to the Director with reasons supporting the request.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit or on the date of approval for coverage under the alternative general permit. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Director.

E. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit a Notice of Intent (NOI) to be covered to the Director. The form for the Notice of Intent for this permit is in appendix B of this permit. Notifications must be made within 90 days of issuance of this permit or upon completion of new facility. The Notice of Intent Form (or photocopy thereof) shall be signed by the owner or other signatory authority in accordance with Part VI.I. (Signatory Requirements), and a copy shall be retained on site in accordance with Part VI.D. (Retention of Records) of this permit. The address for Notice of Intent submission to EPA is:

U.S. EPA Region 6,
6W—EA General Permits,
P.O. Box 50625,
Dallas, Texas 75270.

2. A copy of the Notice of Intent must also be sent to the state agency where the Concentrated Animal Feeding Operation is located:

Louisiana: Gary Aydell, Administrator, Water Pollution Control Division, State of Louisiana, Dept. of Environmental Quality, P.O. Box 82215, Baton Rouge, LA. 70884–2215

Texas: Texas Water Commission, Agriculture Department, P.O. Box 13087, Austin, TX. 78711–3087

Oklahoma: State of Oklahoma, Department of Agriculture, 2800 N. Lincoln Blvd., Oklahoma City, OK. 73105–4298

New Mexico: Chief, Water Quality Bureau, New Mexico Environmental Department, 1190 St. Francis Blvd., P.O. Box 26110, Santa Fe, NM. 87502

F. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance. The conditions of an expired permit continues in force until the effective date of a new permit (40 CFR 122.6).

Part II. Effluent Limitations

A. Discharge Limitations For All Categories Other Than Duck Facilities Established Prior to 1974

1. The following limitations establish the quantity or quality of pollutants or pollutant properties which may be discharged by a Concentrated Animal Feeding Operation in compliance with this permit after application of the best available technology economically achievable or new source performance standards: There shall be no discharge of process waste water pollutants to waters of the U.S. (including lakes, rivers, streams, wetlands and playa lakes as defined in 40 CFR 122.2) except in accordance with Part II.B of this permit.

2. Limitations established for concentrated duck feeding operations which began operations after the establishment of New Source Performance Standards in 1974 are subject to the new source performance standard: There shall be no discharge of process waste water pollutants to waters of the U.S. (including streams, rivers, lakes, wetlands, and playa lakes as defined in 40 CFR 122.2) except as specified in Part II.B. of this permit.

B. Releases in Excess of the 25 year, 24-hr Storm Event

Process waste pollutants in the overflow may be discharged to waters of the U.S. whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from detention structures constructed and maintained to contain the 25 year, 24 hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and proper maintenance. Retention structures shall contain all process wastewaters plus the 25 year, 24 hour storm event.

Part III. Special Conditions, Management Practices, and Other Non-Numeric Limitations

A. Prohibition on Unauthorized Substances

All discharges to containment structures shall be composed entirely of wastewaters from the proper operation and maintenance of a Concentrated Animal Feeding Operation and the precipitation from the animal feeding operation areas. The disposal of any materials (other than discharges associated with proper operation and maintenance of the CAFO) into the containment structures are prohibited by this permit.

B. Proper Operation and Maintenance Requirements

The facilities covered by this permit are required to document the attainment of Best Available Technology (BAT) and Best Conventional Technology (BCT), and all Best Management Practices (BMPs) used to comply with the effluent limitations in this permit. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in Part III.B.2. of this permit and shall be made available to the Director upon request. Where applicable, equivalent measures contained in a site specific Animal Waste Management Plan prepared by the U.S. Department of Agriculture Soil Conservation Service (SCS), may be substituted for the Best Management Practices and Pollution Prevention Plan requirements in this Part of the permit. Where provisions in the Soil Conservation Service plan are substituted for applicable Best Management Practices or portions of the Pollution Prevention Plan, the Pollution Prevention Plan must refer to the appropriate section of the Soil Conservation Service plan. If the pollution prevention plan contains reference to the Soil Conservation Service plan, a copy of the Soil Conservation Service plan must be kept on site.

1. *Best Management Practices.* The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations owners/operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a Soil Conservation Service plan are equivalent or more protective the permittee may refer to the Soil Conservation Service plan as documentation of compliance with the Best Management Practices required by this permit.

a. Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and all other wastes which will enter or be stored in the retention structure.

b. Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.

c. Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25 year, 24-hr. rainfall event occurs.

d. New facilities shall not be built in a water of the U.S. (including streams, rivers, lakes, wetlands, and playa lakes as defined in 40 CFR 122.2).

e. No waters of the U.S. shall come into direct contact with the animals confined on the Concentrated Animal Feeding Operation. Fences may be used to restrict such access.

f. Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

g. There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater disposal sites shall not be located closer to public or private water wells than the distances specified by State regulations or health codes or State issued permits for that facility.

h. Waste handling, treatment, and management shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plant, fish or wildlife.

i. Waste handling, treatment, and management shall not create an environmental or a public health hazard; shall not result in the contamination of drinking water; shall conform with State guidelines and/or regulations for the protection of surface water quality.

j. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent significant pollutants from being discharged to waters of the United States.

k. The operator shall prevent the discharge of pesticide contaminated waters into waters of the United States All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any significant pollutants from entering the waters of the United States.

l. Dead animals shall be properly disposed of within three (3) days unless otherwise provided for by the Director. Animals shall be disposed of in a manner to prevent contamination of surface waters of the United States or create a public health hazard.

m. Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.

n. Appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant shall be taken. Where potential spills can occur materials handling procedures and storage shall be specified. Procedures for cleaning up spills shall be identified and the necessary equipment to implement a cleanup shall be available to personnel.

o. Special requirements for discharges through municipal separate storm sewer systems serving a population of 100,000 or more. Facilities discharging through a municipal separate storm system serving a population of 100,000 population or more shall comply with applicable requirements in the municipality's storm water management program. Concentrated Animal Feeding Operation facilities must comply with the requirements in the municipal storm water management program developed under an NPDES permit issued for the discharge of the municipal separate storm sewer system that receives the CAFO facility's discharge, provided the operator of the CAFO has been notified of such conditions.

2. *Pollution Prevention Plans.* A pollution prevention plan shall be developed for each facility covered by this permit. Pollution prevention plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit pollutants in runoff. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit. The plan shall identify a specific individual(s) at the facility who is responsible for developing the implementation, maintenance, and revision of the pollution prevention plan. The activities

and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

a. Where a Soil Conservation Service plan[3] has been prepared for the facility, the pollution prevention plan may refer to the Soil Conservation Service plan when the Soil Conservation Service plan documentation contains equivalent requirements for the facility. When the permittee uses a Soil Conservation Service plan as partial completion of the pollution plan, the Soil Conservation Service plan must be kept on site. Design and construction criteria developed by the Soil Conservation Service can be substituted for the documentation of design capacity and construction requirements Part III D.2.f. of the Pollution Prevention Plan provided the required inspection logs and water level logs (sections f(2)(A) and f(2)(D) respectively) are kept with the Soil Conservation Service plan. Waste management plans developed by the Soil Conservation Service can be substituted for the documentation of application rate calculations in sections f(2) (H) and (I).

b. Unless otherwise directed by the permitting authority: Large facilities (those with 1000 animal units or more) shall have on site and implement a Pollution Prevention Plan or its equivalent within 365 days (1 year) of the issuance date of this permit. Medium facilities (those with less than 1000 animal units but with 300 or more) shall have on site and implement a Pollution Prevention Plan or its equivalent within two (2) years of the issuance date of this permit. Small facilities (those under 300 animal units which have been designated by the Director as a point source) shall have on site and implement a Pollution Prevention Plan or its equivalent within three (3) years of the designation by the Director. New facilities shall have and implement a Pollution Prevention Plan or its equivalent prior to the submission of a Notice of Intent to be covered by this permit.

c. The plan shall be signed by the owner or other signatory authority in accordance with part IV.I. (Signatory Requirements), and be retained on site in accordance with part IV.D. (Retention of Records) of this permit. The plan shall be updated as appropriate.

d. If the plan is reviewed by the Director, or authorized representative, the Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. After such notification from the Director, or authorized representative, the permittee shall make changes to the plan within 90 days after such notification unless otherwise provided by the Director.

e. The permittee shall amend the plan prior to any change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges from Concentrated Animal Feeding Operations. Amendments to the plan may be reviewed by the Director or authorized representative.

f. The plan shall include, at a minimum, the following items:

(1) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to runoff from the facility. Each plan shall identify activities and materials which may potentially be pollutant sources. Each plan shall include:

(A) A site map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.

(B) A list of significant materials that are used, stored or disposed of at the Concentrated Animal Feeding Operation (such as pesticides, cleaning agents, fuels etc.). And a list of any significant spills of these materials at the facility after the issuance date of this permit, or for new facilities, since date of operation.

(C) All existing sampling data.

(2) *Waste Management Controls.* The Pollution Prevention Plan for each facility shall include a description of management controls appropriate for the facility, and the permittee must implement such controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants at the facility.

(A) The plan shall include the location and a description of existing structural and non-structural controls. Structural controls shall be inspected at least four times per year for structural integrity and maintenance. The plan shall include dates for inspection of the retention facility, and a log of the findings of such inspections.

(B) *Retention Capacity Calculations.* The plan must include documentation of existing retention facility capacity and the assumptions and calculations used in determining the appropriate volume capacity. The retention capacity shall be based upon the 25-year 24-hour rainfall event and the facility design should include a top freeboard of two feet and in no case less than one foot. Retention facilities shall be sized based upon the following volumes:

(i) The runoff volume from open lot surfaces plus

(ii) The runoff volume from areas between open lot surfaces and the retention facilities plus

(iii) The rainfall multiplied by the area of the retention facility and wastes basin plus

(iv) The volume of rainfall from any roofed area that is directed into the retention facilities plus

(v) All wastes and process generated wastewater produced during a period of time not less than 21 days or the amount specified in the State Water Quality Management Plan including: (1) Volume of wet manure that will enter pond plus; (2) volume of water used for manure/waste removal plus; (3) volume of cleanup/washwater plus; (4) other water such as drinking water that enters the retention facilities.

Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the Pollution Prevention Plan.

(C) *Retention Facility Embankments.* The plan shall include a description of the design standards for the retention facility embankments. The following minimum design standards are required for construction and/or modification of a retention facility: Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees. The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content. Site specific variation in embankment construction must be accompanied by compaction testing, certification by a Professional Engineer, or be in accordance with Soil Conservation Service design standards. Compaction tests must be certified by a Professional Engineer. All embankment walls shall be stabilized to prevent erosion or deterioration.

(D) *Retention Facility Dewatering.* The plan must include a schedule for liquid waste removal. A date log indicating weekly inspection of wastewater level in retention facility, including specific measurement of wastewater level will be kept with the plan. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year rainfall event. The operator shall restore freeboard for a 25-year rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the freeboard required to accommodate the rainfall and runoff resulting from the 25-year rainfall event.

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[3] SCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the Soil Conservation Service to contain adequate management practices. To insure the protection of water quality, the Soil Conservation Service has determined that SCS plans prepared prior to 1989 must be renewed with the Soil Conservation Service or waste management professional before December 1995. SCS has determined that all plans should be reviewed every five (5) years to insure proper management of wastes.

(E) A permanent marker (measuring device) shall be maintained in the wastewater retention facilities to show the volume required for a 25-year rainfall event within the containment ponds. The marker shall be visible from the top of the levee.

(F) A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the Pollution Prevention Plan.

(G) Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility shall insure that all construction and design is in accordance with good engineering practices. Where site specific variations are warranted, the permittee must document these variations and their appropriateness to the plan. Existing facilities which have been properly maintained and show no signs of structural breakage will be considered to be properly constructed. Structures built in accordance with site specific Soil Conservation Service plans and specifications will be considered to be in compliance with the design and capacity requirements of this permit if the site specific conditions are the same as those used by the Soil Conservation Service to develop the plan (numbers of animals, runoff area, wastes generated, etc.). All retention structure design and construction shall, at a minimum, be in accordance with the technical standards developed by the USDA Soil Conservation Service. The permittee must use those standards that are current at the time of construction.

(H) *Liner Requirement.* The permittee shall include in the plan, site specific documentation that no significant hydrologic connection exists between the contained wastewater and surface waters of the United States. Where the permittee cannot document that no significant hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters.

(i) *Documentation of No Liner Requirement.* The permittee can document lack of hydrologic connection by either: (1) Documenting that there will be no significant leakage from the retention structure; or (2) documenting that any leakage from the retention structure would not migrate to surface waters. This documentation should be certified by a Professional Engineer or qualified groundwater scientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described below. Documentation that leakage will not migrate to a surface water must include maps showing ground water flow paths, or that the leakage enters a confined environment. A written determination by an SCS engineer, a Professional Engineer, or qualified groundwater scientist that a liner is not needed to prevent leakage of significant amounts of pollutants into surface waters via perched or ground waters will be considered documentation that no significant hydrologic connection exists.

(ii) *Liner Construction.* Site-specific conditions should be considered in the design and construction of liners. Soil Conservation Service liner requirements or liners constructed and maintained in accordance with Soil Conservation Service design specifications in Technical Note 716 (or its current equivalent) shall be considered to prevent hydrologic connection which could result in the contamination of surface waters. Liners for retention structures should be constructed in accordance with good engineering practices. Where no site-specific assessment has been done by a Soil Conservation Service, Professional Engineer, or qualified groundwater scientist the liner shall be constructed to have hydraulic conductivities no greater than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.

(iii) *Liner Maintenance.* Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No trees shall be allowed to grow within the potential distance of the root zone. Any mechanical or structural damage to the liner will be evaluated by a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist within 30 days of the damage. Documentation of liner maintenance shall be kept with the Pollution Prevention Plan. The permittee shall have a Soil Conservation Service engineer, Professional Engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years. If notified by the State or the Director that the potential exists for the contamination of surface waters or drinking water, the permittee shall install a leak detection system or monitoring wells in accordance with that notice. Documentation of compliance with the notification must be kept with the Pollution Prevention Plan, as well as all sampling data. Data from the monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.

(I) *Wastewater Removal and Land Application.* Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The Pollution Prevention Plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized for disposal of wastewater, the following requirements shall apply:

(i) The discharge or drainage of irrigated wastewater is prohibited where it will result in a discharge to water of the U.S.

(ii) When irrigation disposal of wastewater is used, facilities shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters should be based on the available nitrogen content, however, where local water quality is threatened by phosphorus, the permittee should limit the application rate to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(iii) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events (unless to filter wastewaters from retention structures which are going to overflow directly to a water of the U.S.).

(iv) Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site, contamination of ground or surface water, and the occurrence of nuisance conditions such as odors and flies.

(v) It shall be considered "Proper Operation and Maintenance" for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge wastewaters to land application sites for filtering prior to discharging to waters of the U.S.

(vi) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this permit and the pollution prevention plan.

(vii) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this permit.

(viii) Disposal of wastewaters shall not cause or contribute to the taking of any endangered or threatened species of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied, and which could reasonably have resulted from waste management at the facility.

(ix) Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards.

(J) *Manure and Pond Solids Handling and Land Application.* Storage and land application of manure shall not cause a discharge of significant pollutants to waters of the United States or cause a water quality violation in waters of the United States. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas.

(i) Where the permittee decides to land apply manures and pond solids that plan shall include: (1) a description of waste handling procedures and equipment availability; (2) the calculations and assumptions used for determining land application rates; and (3) any nutrient analysis data if laboratory analysis is done. Land application rates of wastes should be based on the available nitrogen content of the solid waste. However, where local water quality is threatened by phosphorous, the application rate should be limited to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(ii) If the waste (manure) is sold or given to other persons for disposal, the permittee must maintain a log of: date of removal from the feedlot; name of hauler; and amount, in wet tons, dry tons or cubic yards, of waste removed from the feedlot. (Incidental amounts, given away by the pick-up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the premittee must make available to the hauler any nutrient sample analysis from that year.

(iii) The procedures documented in the pollution prevention plan must ensure that the handling and disposal of wastes comply with the following requirements:

(a) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain or near water courses is prohibited unless protected buy adequate berms or other structures. The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited.

(b) Runoff from manure storage piles must be retained on site.

(c) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events.

(d) Waste manure shall be applied to suitable and at appropriate times and rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications to shall be response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions.

(e) Disposal of manure shall not cause or contribute to the taking of any endangered or threatened specie of plant, fish, or wildlife; nor shall such disposal interfere with or cause harm to migratory birds. The operator shall notify the appropriate fish and wildlife agency in the event of a fish, wildlife, or migratory bird/endangered species kill or die-off on or near retention ponds or in fields where waste has been applied.

(f) All necessary practices to minimize waste manure transport to water courses shall be utilized and documented to the plan.

(g) Edge-of-field, grassed strips shall be used to separate water courses from runoff carrying eroded soil and manure particles. Land subject to excessive erosion shall be avoided.

(h) Where land application sites are isolated from surface waters and no potential exists for runoff to reach a water of the U.S., application rates may exceed nutrient crop uptake rates as provided in an approved state program. No land application under this section shall cause or contribute to a violation of water quality standards.

(3) *Preventive Maintenance.* The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with schedule and plan of operation to ensure compliance with this permit. The permittee shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (cleaning separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

(4) *Sediment and Erosion Prevention.* The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters of the U.S. the Pollution Prevention Plan shall identify measures used to limit erosion and pollutant runoff.

(5) *Employee Training.* Where employees are responsible for work activities which relate to permit compliance, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all

levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topic as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the pollution prevention plan shall identify periodic dates for such training.

(6) *Inspection and Recordkeeping.* The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.

(A) *Recordkeeping and Internal Reporting Procedures.* Incidents such as spills, or other discharges, along with other information describing the pollution potential and quantity of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on site for a minimum of three years.

(B) *Visual Inspections.* The authorized person shall inspect designated equipment and facility areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. A follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.

(C) *Site Inspection.* A complete inspection of the facility shall be done and a report made documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants are being implemented and are adequate. Records documenting significant observation made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three years.

3. *Other Legal Requirements.* No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State or local.

Part IV. Monitoring and Reporting Requirements

A. Discharge Notification

If, for any reason, there is a discharge to a water of the U.S., the permittee is required to make verbal notification to EPA at (214) 655–6593, and to notify the Director and the State in writing within 14 working days of the discharge from the retention facility. In addition the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

1. A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the flow and volume discharged.

2. The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge.

3. If caused by a precipitation event(s), information from the onsite rain gauge concerning the size of the precipitation event.

4. Unless otherwise directed by the permitting authority: Large facilities (those with 1000 animal units or more) shall sample and analyze all discharges from retention facilities. Medium facilities (those with less than 1000 animal units but with 300 or more) shall sample and analyze all discharges, but at a maximum required frequency of once/year. Small facilities (those under 300 animal units which have been designated by the Director as a point source) shall sample and analyze all discharges, but at a maximum required frequency of once per permit term. Sample analysis shall be documented to the Pollution Prevention Plan.

5. Samples shall consist of grab samples taken from the over-flow or discharges from the retention structure. A minimum of one sample shall be taken from the initial discharge (within 30 minutes). The sample shall be taken and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR part 136. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.

6. Sample analysis of the discharge must, at a minimum, include the following: Fecal Coliform bacteria; 5-day Biochemical Oxygen Demand (BOD5); Total Suspended Solids (TSS); ammonia nitrogen; and any pesticide which the operator has reason to believe could be in the discharge.

7. Sampling Waiver. In lieu of discharge sampling data the permittee must document description of why discharge samples could not be collected when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Once dangerous conditions have passed, the permittee shall collect a sample from the retention structure pond or lagoon. The sample shall be analyzed in accordance with Part IV.A.6. & 7. (above).

B. Written Notification

All discharge information and data will be made available to the Director upon request. Signed copies of monitoring reports shall be submitted to the Director if requested at the address specified in the request.

C. Penalties for Falsification of Reports

The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

D. Retention of Records

The permittee shall retain copies of all records required by this permit for a period of at least three years from the date reported. This period may be extended by request of the Director at any time.

E. Availability of Reports

In addition to data determined to be confidential under 40 CFR part 2, information submitted to EPA may be claimed as confidential by the submitter. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. As required by the Act, however, Notices of Intent, permits, the effluent data shall not be considered confidential and any claims of confidentiality for this information will be denied.

F. Planned Changes

The permittee shall document to the Pollution Prevention Plan as soon as possible, any planned physical alterations or additions to the permitted facility. The permittee must insure that any change or facility expansion will not result in a discharge in violation of this permit.

G. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

H. Other Information

When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he shall promptly submit such facts or information.

I. Signatory Requirements

All reports or information submitted to the Director shall be signed and certified.

1. All reports or information shall be signed by the facility owner or operator/manager where the authority to sign documents has been assigned or delegated to the operator/manager.

a. For facilities owned by a corporation: by a responsible corporate officer. For the purpose of this permit, a responsible corporate officer means (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation.

b. For a facilities owned by a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For facilities owned by a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is duly authorized representative only if the authorization is made in writing by a person describe above, and the authorization specifies either an individual or a position having responsibility for the overall operation.

3. *Certification.* Any person signing a document under this section shall make the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Part V. Standard Requirements

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for loss of authorization to discharge under this general permit; or for denial of a permit renewal application.

B. Inspection and Entry

The permittee shall allow the Director, or an authorized representative of EPA including the State, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit:

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

C. Toxic Pollutants

The permittee shall comply with effluent standards of prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

D. Penalties for Violation of Permit Conditions

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 319, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation is subject to a fine of not less than $2,500, nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or both.

E. Continuation of the Expired General Permit

An expired general permit continues in force and effect until a new general permit is issued.

F. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

H. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

I. Penalties for Falsification of Monitoring Systems and Reports

The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Part V.D. (Penalties for Violation of Permit Conditions) of this permit.

J. Property Rights

The issuance of this permit does not convey and property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

L. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by section 510 of the Act.

M. Permit Actions

This permit may be modified, revoked or reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition

Part VI. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent than those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

Part VII. Definitions

25-Year 24-Hour Rainfall Event means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

Agronomic Rates means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.

Animal feeding operation means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0. 1000 animal units will refer to group a. in definition number 8. 300 animal units (but less than 1000) will refer to group b. in definition number 8.

Best Available Technology ("BAT") means the best available technology which is economically achievable established under 301(b) and 402 of the Act. The criteria and standards for imposing technology-based treatment requirements are listed in 40 CFR 125.3.

Best Conventional Technology ("BCT") means the best conventional pollutant control technology which is economically achievable established under 301(b) and 402 of the Act. The criteria and standards for imposing technology-based treatment requirements are listed in 40 CFR 125.3.

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States". Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Concentrated Animal Feeding Operation means an "animal feeding operation" which meets the criteria in 40 CFR part 122, appendix B, or which the Director designates as a significant contributor of pollution pursuant to 40 CFR 122.23. Animal feeding operations defined as "concentrated" in 40 CFR part 122 appendix B are as follows:

a. New and existing operations which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

1. 1,000 slaughter or feeder cattle;
2. 700 mature dairy cattle (whether milkers or dry cows);
3. 2,500 swine weighing over 55 pounds;
4. 500 horses;
5. 10,000 sheep or lambs;
6. 55,000 turkeys;
7, 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
8. 30,000 laying hens or broilers when facility has liquid manure handling system;
9. 5,000 ducks; or
10. 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep;

b. New and existing operations which discharge pollutants into navigable waters either through a man-made ditch, flushing system, or other similar man-made device, or directly into waters of the United States, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

1. 300 slaughter or feeder cattle;
2. 200 mature dairy cattle (whether milkers or dry cows);
3. 750 swine weighing over 55 pounds;
4. 150 horses;
5. 3,000 sheep or lambs;
6. 16,000 turkeys;
7. 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
8. 9,000 laying hens or broilers when the facility has a liquid manure handling system;
9. 1,500 ducks; or
10. 300 animal units (from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep).

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.

Control Facility means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, and runoff from the feedlot area.

Environmental Review means the process whereby an evaluation of the environmental information provided by the permit applicant is undertaken by EPA to identify and evaluate the related environmental impacts to determine if there will be a significant impact to the environment from the new facility (40 CFR 6.101(c)).

Feedlot means a concentrated, confined animal or poultry growing operation for meat, milk, or egg production, or stabling, in pens or houses wherein the animals or poultry are fed at the place of confinement and crop or forage growth or production is not sustained in the area of confinement, and is subject to 40 CFR part 412.

Groundwater means any subsurface waters.

Hydrologic Connection means the interflow and exchange between surface impoundments and surface water through an underground corridor or groundwater. In the context of this permit, the reduction of hydrologic connection is to reduce the groundwater flow contact resulting in the transfer of pollutant materials from Concentrated Animal Feeding Operation containment structures into surface waters.

Land Application means the removal of wastewater and waste solids from a control facility and distribution to, or incorporation into, the soil mantle primarily for disposal purposes.

Liner means any barrier in the form of a layer, membrane or blanket, installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters of the United States.

Process Wastewater means any process generated wastewater directly or indirectly used in the operation of a feedlot (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control) and any precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

Retention Facility or *Retention Structures* means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewaters and manures.

Severe Property Damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

The Act means the Federal Water Pollution Control Act as amended, also known as the Clean Water Act, found at 33 U.S.C. 1251 *et seq.*

Toxic Pollutants mean any pollutant listed as toxic under section 307(a)(1) of the Act.

Qualified Groundwater Scientist means a scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contamination fate and transport, and corrective action (40 CFR 258.50(f)).

Appendix A—State Specific Permit Language for the State of New Mexico

This NPDES permit is intended to protect surface waters resources that are "waters of the United States" from contamination resulting from concentrated animal feeding operations through either surface of subsurface conveyance. This permit is not intended to protect ground water resources from contamination. Compliance with this permit does not absolve the permittee from the need to comply with New Mexico Water Quality Control Commission Regulations for the protection of ground water. For information on these state regulations please contact the new Mexico Environment Department, Groundwater Protection and Remediation Bureau, P.O. Box 26110, Santa Fe, New Mexico 87502 or all (505) 827–2900.

State Specific Permit Language for the State of Oklahoma

Part I.C. Limitations on Coverage. The following point source discharges are not authorized by this general permit:

7. "New" Concentrated Animal Feeding Operations commencing after the effective date of the Oklahoma Water Quality Standards (Oklahoma Annotated Code Title 785, (Chapter 45) effective date June 25, 1992) to the following waters:
   a. Waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;
   b. Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and
   c. Waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

State Specific Permit Language for the State of Texas

Part IV.

A. Discharge Notification. If, for any reason, there is a discharge, the permittee is required to notify the Director in writing within 14 days of the discharge from the retention facility. Written notification of discharges from retention structures to waters of the U.S. shall be reported to the State within five (5) working days. In addition the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

BILLING CODE 6560-50-M

APPENDIX B

NOTICE OF INTENT (NOI) to be Covered by the General Permit for Concentrated Animal Feeding Operations

This notification shall not be made to EPA, Region 6 if prohibited from coverage under Part I.C. of this permit.

Name and Address of Facility (include County or Parish): ____________

Telephone Number: ____________

Name of Operator: ____________

Name, Address and Telephone Number of Owner (if different): ____________

Numbers and Type(s) of animals confined at the facility (e.g. feeder pigs, dairy cows, etc.): ____________

Total acreage occupied by the facility: ____________

Latitude and Longitude Location of the Facility:

LATITUDE ____ degrees ____ minutes ____ seconds
LONGITUDE ____ degrees ____ minutes ____ seconds

Receiving stream (if known): ____________

State Permit Number (if applicable): ____________

Signature:

____________ ____________
Signature must be in accordance with Part IV.I of the General Permit Date Signed

NOTICE OF TERMINATION (NOT)

NPDES Permit Number: ______________________________

State Permit Number (if applicable): ____________________

Date NOI was submitted: ____________________________

Name and Address of Facility (include County or Parish): ________
____
____
____
____
____

Telephone Number: __________________________________

Name of Operator: __________________________________

The following information is required only if changes have been made to the facility since the submittal of the Notice of Intent:

Name and Address of Owner (if different): ______________
____
____
____
____

Numbers and Type(s) of animals confined at the facility (e.g. feeder pigs, dairy cows, etc.): ______________________
____
____
____

Total acreage occupied by the facility: ________________
Latitude and Longitude Location of the Facility:
LATITUDE ____ degrees ____ minutes ____ seconds
LONGITUDE ____ degrees ____ minutes ____ seconds
Receiving Stream if known): ______________________

Reason for the termination of permit coverage: ______________
____
____
____
____
____
____

(Add attached sheets if necessary.)

Signature:

______________________________ ____________________
Signature must be in accordance with Part IV.I of the General Permit. Date Signed

APPENDIX C

BASIC FORMAT FOR ENVIRONMENTAL ASSESSMENT

This is the basic format for the Environmental Assessment prepared by EPA Region 6 from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

A. General Information
  1. Name of applicant
  2. Type of facil
  3. Location of facility
  4. Product manufactured

B. Description Summaries
  1. Describe the proposed facility and construction activity
  2. Describe all ancillary construction not directly involved with the production processes
  3. Describe briefly the manufacturing processes and procedures
  4. Describe the plant site, its history, and the general area

C. Environmental Concerns
  1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
  2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area or floodplain is affected)
  3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included)
  4. Coastal Zone Management and Wild and Scenic Rivers
  5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
  6. Air, Water and Land Issues: quality, effects, usage levels, municipal services used, discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved.
  7. Biota concerns: floral, faunal, aquatic resources, inventories and effects
  8. Community Infrastructures available and resulting effects: social, economic, health, safety, educational, recreational, housing, transportation and road resources

BASIC ENVIRONMENTAL INFORMATION DOCUMENT GUIDELINES FOR NEW SOURCE CATEGORY INDUSTRIES - EPA REGION 6

I General Information

A. Name of Applicant and Proposed Facility. ______________________________

B Description of Site and Location: ______________________________

C Description of Project, Product and Process: ______________________________

APPENDIX D

CONTACTS AND REFERENCE MATERIALS

To report kills or determine impacts on endangered or threatened species, contact the Fish and Wildlife Service Office nearest you that is listed below:

Fish & Wildlife Service

Regional Office
500 Gold Avenue, SW
P.O. Box 1305
Albuquerque, NM 87103
(505) 766-2914

Field Office
3530 Pan American Highway NE
Suite D
Albuquerque, NM 87107
(505) 883-7877

Field Office
711 Stadium Drive East
Suite 252
Arlington, TX 76011
(817) 885-7830

Field Office
611 East 6th Street
4th Floor
Austin, TX 78701
(512) 482-5436

Field Office
17629 El Camino Real
Suite 211
Houston, TX 77058
(713) 286-8282

Field Office
c/o Corpus Christi State University
Campus Box 338
6300 Ocean Drive
Corpus Christi, TX 78412
(512) 888-3346

Field Office
222 South Houston, Suite A
Tulsa, OK 74127
(918) 581-7458

Field Office
825 Caliste Saloom
Brandywine II, Suite 102
Lafayette, LA 70508
(318) 264-6630

For General Information and Reference Materials, please contact the appropriate State Agency listed below:

Louisiana

Louisiana Cooperative Extension Service
Louisiana State University
Knapp Hall
Baton Rouge, LA 70803-1900
(504) 388-6998

Louisiana Department of Environmental Quality
Office of Water Resources
P.O. Box 82215
Baton Rouge, LA 70884-2215
(504) 765-0585

Louisiana Department of Agriculture and Forestry
P.O. Box 94302
Baton Rouge, LA 70804-9302
(504) 922-1234

Soil Conservation Service
U. S. Department of Agriculture
3737 Government Street
Alexandria, LA 71302
(318) 473-7751

New Mexico

New Mexico Cooperative Extension Service
New Mexico State University
P.O. Box 3AE
Las Cruces, NM 88003
(505) 646-6404

New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502
(505) 827-2850

New Mexico Department of Agriculture
Box 30005, Department 3189
Las Cruces, NM 88003-0005
(505) 646-3007

Soil Conservation Service
U. S. Department of Agriculture
517 Gold Avenue SW, Room 3301
Albuquerque, NM 87102-3157
(505) 766-2173

Oklahoma

Oklahoma Cooperative Extension
Service
Oklahoma State University
214 Agricultural Hall
Stillwater, OK 74078-0469
(405) 744-5425

Oklahoma Department of Agriculture
2800 N. Lincoln Blvd.
Oklahoma City, OK 73105-4298
(405) 521-3864

Oklahoma Conservation Commission
2800 N. Nincoln Blvd., Room 160
Oklahoma City, OK 73105
(405) 521-2384

Soil Conservation Service
U.S. Department of Agriculture
USDA Agricultural Center Bldg.
Stillwater, OK 74074
(405) 624-4488

Texas

Texas Agricultural Extension Service
Texas A & M University
303 Agricultural Engineering Bldg.
College Station, TX 77843-2121
(409) 845-7451

Texas Water Commission
Agricultural Section
P.O. Box 13087
Austin, TX 78711-3087
(512) 475-4573

Texas Department of Agriculture
P.O. Box 12847
Austin, TX 78711
(512) 463-7476

Texas State Soil and Water
Conservation Board
311 North 5th
Temple, TX 76503
(817) 773-2250

Soil Conservation Service
U. S. Department of Agriculture
W.R. Poage Bldg.
101 S. Main Street
Temple, TX 76501-7682
(817) 774-1261

REFERENCE MATERIALS

Following is a list of available sources for reference material on proper operations and maintenance of concentrated animal feeding operations. Also included are sources for reference of preferred management practices as recognized by the agricultural industry.

GENERAL REFERENCES

National Engineering Handbook Part 651, Agricultural Waste Management Field Handbook (1992) P.O. Box 2890, Washington, D.C. 20013.

Livestock Waste Facilities Handbook, MPWS-18, Extension Agricultural Engineer (1985) University of Missouri, Columbia, MO 65211.

STANDARDS 1992, Standards, Engineering Practices and Data, 39th Edition (1992) American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085-9659.

"25 Year, 24 Hour Rainfall (Inches)," Technical Paper 40, United States Department of Commerce, Weather Bureau, Washington, D.C.

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"Swine Lagoon Effluent Applied to Coastal Bermudagrass: I. Forage Yield, Quality, and Element Removal," J.C. Burns, P.W. Westerman, L.D. King, G.A. Cummings, M.R. Overcash, L.Goode (1985). Journal of Environmental Quality, 14:9-14.

"Effectiveness of Forest and Grass Buffer Strips in Improving the Water Quality of Manure Polluted Runoff," R.C. Doyle, G.S. Stanton (1977). ASAE Paper 77-2501, St. Joseph, MI 49085.

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"Animal Waste Utilization on Cropland and Pastureland. A Manual for Evaluation Agronomic and environmental Effects," United States Department of Agriculture (1979). Sci. and Educ. Adm. Util. Res. Rep. 6.

"Site Selection as Related to Utilization and Disposal of Organic Wastes," J.E. Witty, K.W. Flach (1977). American Society of Agron., Soils for Management of Organic Wastes and Wastewaters, Chapter 13.

WASTE CHARACTERISTICS

"Soil Nutrient Content of Manures in an Arid Climate," R.M. Arrington, C.E. Pachek (1980). Proceedings of Fourth International Symposium on Agricultural Waste, Amarillo, Texas.

"Livestock Waste Characterization-a New Approach," C.L.Barth (1985). Agricultural Waste Utilization and Management, Proceedings of the Fifth International Symposium of Agricultural Wastes, ASAE, St. Joseph, MI, p. 286.

"Available Nutrients in Livestock Waste," P.W. Westerman, L.M. Safley, Jr., J.C. Barker, G.M. Chescheir, III (1985). Agricultural Waste Utilization and Management, Proceedings of the Fifth International Symposium of Agricultural Wastes, ASAE, St. Joseph, MI, p. 285.

WASTE MANAGEMENT PRACTICES

"Vegetative Filter Treatment of Dairy Milkhouse Wastewater," C.B. Schwer, J.C. Clausen (1989). Environmental Quality, 18:446-451.

"Cattle Feedlot Waste Management Practices for Water and Air Pollution Control," Dr. J.M. Sweeten (1990). Texas Agricultural Extension Service, B-1671.

"Dairy Manure Handling Systems and Equipment," Dr. J.M. Sweeten (1983). Texas Agricultural Extension Service, B-1446.

"Pollution Control for Dairy Farms," Dr. J.M. Sweeten (1982). Texas Agricultural Extension Service, B-1366.

"Waste Management System," SCS Conservation Practice Standard, Code 312 (1979). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Storage Pond," SCS Conservation Practice Standard, Code 425 (1979). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

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"Waste Storage Structure," SCS Conservation Practice Standard, Code 313 (1980). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Filter Strip," SCS Conservation Practice Standard, Code 393 (1982). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Pond Sealing or Lining," SCS Conservation Practice Standard, Code 521 (1984) United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Waste Treatment Lagoon," SCS Conservation Practice Standard, Code 359 (1984). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Diversion," SCS Conservation Practice Standard, Code 362 (1985). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Guide on Design, Operation and Management of Anaerobic Lagoons," Technical Note Ser. 711, SNTC (1985). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Interim Engineering Standard for Swine and Poultry Disposal Pit," SNTC (1987). United States Department of Agriculture. Soil Conservation Service, Washington, D.C.

"Interim Standard for Dead Poultry Composting," (1989). United States Department of Agriculture. Soil Conservation Service, Auburn, Alabama.

"Design and Construction Guidelines for Considering Seepage from Agricultural Waste Storage Ponds and Treatment lagoons," Technical Note Ser. 716 (1990). United States Department of Agriculture. Soil Conservation Service, Fort Worth, Texas.

REFERENCES FOR OKLAHOMA

Oklahoma Soil Fertility Handbook, 1st Edition (1977). Oklahoma State University Cooperative Extension Service in cooperation with the Oklahoma Plant Food Education Society.

"Oklahoma Facts: Land Application of Livestock Manure," Fact Sheet 1710. Oklahoma State University Cooperative Extension Service.

"Oklahoma Facts: OSU Soil Test Calibrations," Fact Sheet 2225. Oklahoma State University Cooperative Extension Service.

Livestock Waste Facilities Handbook, MWPS-18. Midwest Plan Service, Iowa State University, Ames, Iowa 50011.

REFERENCES FOR TEXAS

"25 Year, 24 Hour Rainfall (Inches)," Technical Paper 40, United States Department of Commerce, Weather Bureau, Washington, D.C.

"Minimum Storage Period in Days," Texas Water Development Board, Report No. 64, Austin, Texas.

"Prediction of Runoff from Feedlots Using Soil Cover Complex Processes," National Engineering Handbook, Section 4, United States Department of Agriculture, Washington, D.C.

[FR Doc. 93-1050 Filed 2-5-93; 8:45 am]

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federal register

Monday
February 8, 1993

Part III

Environmental Protection Agency

40 CFR Parts 700, 720, 721 and 723

Premanufacture Notification; Revisions of Notification Regulations, Exemptions for Chemicals in Quantities of 1,000 Kilograms or Less, and for Polymers, and Amendment to Expedited Process for Issuing Significant New Use Rules; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 700 and 723

[OPPTS-50596; FRL-3860-4]

RIN 2070-AC14

Premanufacture Notification Exemption; Revision of Exemption for Chemical Substances Manufactured in Quantities of 1,000 Kilograms or Less Per Year; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that persons notify EPA before they manufacture or import a new chemical substance for commercial purposes. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule to exempt the manufacturer or importer of any new chemical substance from the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will not present an unreasonable risk of injury to health or the environment. EPA is proposing to amend the current TSCA section 5(h)(4) limited exemption defined at 40 CFR 723.50 for persons who manufacture certain chemical substances in quantities of 1,000 kilograms or less per year. This proposed amendment would increase the volume limit to 10,000 kilograms or less a year. Also, this notice proposes to add a new section 5(h)(4) exemption category for certain chemical substances with low environmental releases and human exposures. To ensure that these chemical substances will not present an unreasonable risk, EPA has included procedural safeguards, including a 30-day review, and other conditions in the exemption.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (Phone: 202-260-1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS-50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE-G-004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543-B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS-50593, 50594, and 50595, is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect, and ASCII.

The exemption for chemical substances manufactured in quantities of 1,000 kilograms or less per year became effective on August 26, 1985. The supporting rationale and background for that exemption were published at 50 FR 16477, April 26, 1985 and 47 FR 33896, August 4, 1982. While general background information is presented here, readers should also consult the preambles for those notices for further information on the objectives and rationale for the rule and the basis for the TSCA section 5(h)(4) "will not present an unreasonable risk" finding.

I. Background

A. Authority

Section 5(a)(1) of TSCA (15 U.S.C. 2604 (a)(1)) requires any person who intends to manufacture or import a new chemical substance to notify EPA 90 days before manufacture or importation begins. Section 5(h)(4) of TSCA (15 U.S.C. 2604 (h)(4)) allows the Administrator, by rule, to grant an exemption from any or all of the requirements of section 5 if he or she determines that the manufacture, processing, distribution, use, or disposal of a substance will not present an unreasonable risk of injury to health or the environment.

B. History

In early 1981, EPA received a petition from the Chemical Manufacturers Association (CMA) requesting exemptions from certain provisions of section 5 of TSCA for: (1) Site-limited intermediates; (2) chemical substances produced in quantities of 25,000 pounds or less per year; and (3) polymers whose precursor monomers are on the TSCA Inventory. On August 4, 1982, EPA proposed regulations for site-limited intermediates and for chemical substances produced in quantities of 1,000 and 10,000 kilograms or less per year (47 FR 33920). Also on April 4, 1982 (47 FR 33924), EPA proposed regulations for exempting certain polymers, and promulgated final regulations on November 21, 1984 (49 FR 46066). Final regulations for chemical substances produced in quantities of less than 1,000 kilograms per year were promulgated by the Agency on April 26, 1985 (50 FR 16477). Based on public comments, and the requirements under section 5(h)(4) of TSCA, the Agency decided to exempt only chemical substances produced in quantities of 1,000 kilograms or less per year from full section 5(a)(1) premanufacturing review. The Agency determined that it could not exempt site-limited intermediates or the 10,000 kilograms category chemical substances without requiring certain procedural safeguards designed to ensure low risk, such as requiring manufacturers to obtain a qualified expert review of their exemption application prior to submission. Industry commenters stated these procedural safeguards were overly burdensome. EPA decided it could not reduce those safeguards given its level of experience in 1985 and still make the required section 5(h)(4) findings that activities associated with the exempted chemical substance would not present an unreasonable risk.

In the 8 years since the low volume exemption was promulgated, EPA has enhanced its technical assessment capabilities considerably. For example, in searching for chemical analogues to assist in the review of the potential toxicity of a new chemical substance, the Agency is now able to perform automated chemical substructure searches. EPA toxicologists can now, as a result, quickly locate available toxicity data on chemicals with reactive substructures analogous to those of the new substances under review. With this and other enhancements to the review process developed since the new chemicals program began in 1977, the Agency believes that the production volume ceiling for the low volume exemption can now be raised to 10,000 kilograms or less per year and that a new exemption for low release and exposure chemicals can be promulgated without compromising the Agency's ability to identify and protect against substances that may present an unreasonable risk of injury to human health or the environment.

For a more extensive review of the history of the low volume and the site-limited intermediate exemptions, please refer to the **Federal Register** notices cited earlier in Unit I. of this preamble.

II. Discussion of the Proposed Amendments

1. *Chemical substances manufactured at 10,000 kg or less per year.* The Agency is proposing that manufacturers of all chemical substances manufactured in quantities of 10,000 kilograms or less per year will be eligible to apply for a new exemption category. (Note that throughout 40 CFR parts 721 and 723, the term "manufacturer" is defined in TSCA section 3(8), 15 U.S.C. 2602(8), to include persons who import the specified chemical substance, and the term "manufacture" is defined to include importation.) Upon approval, manufacturers will be permitted to manufacture up to 10,000 kilograms during every 1– year period beginning on the date of review period expiration.

As with the current exemption, chemical substances will not be approved under the exemption if the Agency believes that they or their reasonably anticipated metabolites, environmental transformation products, byproducts, or impurities raise a concern for serious acute or chronic human health effects or significant environmental effects under reasonably anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal. Any submitted exemption notice will be denied if the Agency is unable to affirmatively find that manufacture, processing, distribution, use, and disposal of the exempted substance will not present an unreasonable risk of injury to human health or the environment.

The proposal provides that manufacturers requesting this exemption must submit notices 30 days prior to commencement of manufacture or import. EPA believes that the extra 9 days over the current 21–day review period will be needed to perform risk assessments for the increased number of submissions received under this expanded low volume exemption and the low release and exposure exemption category described below.

Also in keeping with the current exemption, where manufacturers provide information on human exposure controls or environmental release controls to support the exemption notice, the manufacturers must maintain those controls throughout the duration of the exemption. Exemption notices containing inadequate human exposure or environmental release controls may be conditionally denied until the submitters provide sufficient information regarding exposure controls. Manufacturers are also bound to the manufacturing sites and uses approved in their exemptions.

The Agency is proposing to modify the restriction that only one low volume exemption holder be allowed for any given substance. Under the proposal, subsequent manufacturers of a substance for which one manufacturer already holds an exemption will be permitted to submit an exemption notice; however, subsequent manufacturers must, in addition to the normal requirements, affirmatively demonstrate that approval of their exemptions will not result in additional environmental releases and human exposures which, in the aggregate, will undermine the Agency's previous determination that the manufacturing, processing, and use of the low volume substance will not present an unreasonable risk of injury to human health or the environment. Subsequent manufacturers unable to make this affirmative showing will be required to submit either a full premanufacture notice or an application under another exemption prior to commencement of commercial manufacture. To prevent companies from applying for an exemption merely to preclude a potential competitor's exemption, the Agency is proposing to require submitters to certify that they will commence commercial manufacture of the chemical substance under the exemption within 1 year of the expiration of the review period. This certification must accompany submission of the exemption notice. If manufacture does not commence within 1 year, the submitter must withdraw the exemption in writing within 1 year of the expiration of the review period.

In accordance with current practice under the present 1,000 kilogram exemption, the Agency will generally perform the risk assessment under the new exemption as if the total amount permissible under the exemption (10,000 kgs) were being produced. However, EPA is proposing to permit submitters wishing their exemptions to be reviewed based upon annual production volumes lower than 10,000 kilograms to so indicate in their initial exemption notice. Submitters who so elect, however, would be bound by their election. Submitters who subsequently wished to increase their maximum production volume under the exemption would be required to submit a new exemption notice and cross-reference the original exemption number on the cover of the notice. If the new exemption is granted, it would supersede the previous exemption.

Regarding the transition period between the existing and proposed exemption, the Agency will continue to accept exemption notices under the terms of the current 1,000 kilogram or less exemption category until the final rule altering this exemption category becomes effective. At that time, the existing 1,000 kilogram exemption category would no longer be available. All exemptions previously granted under the 1,000 kilogram exemption will remain binding and effective under the superseded provisions of 40 CFR 723.50 even though such provisions will no longer be contained in the Code of Federal Regulations; however, the proposed exemption does not contain a separate 1,000 kilogram or less category. A manufacturer or importer who was granted an exemption under the prior 1,000 kilogram per year or less exemption will be allowed to submit a new exemption notice to increase the production volume up to 10,000 kilograms per year for the same chemical substance. If a manufacturer does apply for the 10,000 kilogram exemption, its notice will be reviewed for unreasonable risk at the increased production volume. A new risk assessment will be performed based on the information submitted in the new notice. A submitter of a subsequent 10,000 kilogram exemption will be allowed to continue to manufacture under the terms of the 1,000 kilogram exemption until a regulatory decision is made on the new exemption notice. If the new notice is granted, it will supersede the 1,000 kilogram exemption.

2. *Low release and exposure chemicals.* In connection with the Agency's overall pollution prevention strategy, EPA is proposing to add a new exemption category for chemical substances with low environmental releases and low human exposures during their manufacture, processing, and use. All manufacturers and importers of new chemical substances subject to PMN requirements meeting the stated release and exposure criteria would be eligible to apply for this low release and exposure (LoREX) exemption, regardless of production volume. The LoREX exemption is intended to encourage companies to

develop manufacturing, processing, and use techniques which minimize exposures to workers, consumers, the general public, and the environment.

As with the low volume exemption, the Agency is proposing to require that the uses and manufacturing sites be restricted to those approved in the exemption notice, and that submitters also be bound to the approved release and exposure controls. EPA believes that these binding provisions of the LoREX exemption will, in many instances, prove to be an effective substitute to regulation under section 5(e) of TSCA. Thus, EPA expects this new exemption category to significantly reduce the administrative costs presently devoted to section 5(e) consent order development and review, and to permit manufacturers to commence commercial production of their new products more quickly, while ensuring against unreasonable risk to human health or the environment.

Potential submitters should be mindful that the principal focus of this exemption is on release and exposure, not toxicity. In light of this, the Agency will apply the release and exposure criteria strictly, and, although it will consider any relevant toxicological data submitted, it will be unable to conduct a thorough review of that data in many cases within the 30–day review period. A primary goal of this exemption is to minimize the time and resources required to review new chemical substance submissions; to the extent that the Agency must undertake detailed examination of the inherent toxicity of a given chemical substance, that goal is compromised and a PMN notice would be more appropriate.

To satisfy the required section 5(h)(4) findings of unreasonable risk, the submitter would first have to meet the eligibility criteria in the following Table 1 indicating that exposure to the substance, and hence the risk presented by the substance, is low:

TABLE 1.—PROPOSED LOW RELEASE/EXPOSURE (LOREX) ELIGIBILITY CRITERIA[1]

Type of Exposure or Release	Eligibility Criteria for Exemption
Human Exposure	
General Population Exposure.	
Dermal:	None
Inhalation:	None[2]
Drinking Water:	<1 mg/yr[3]
Consumer Exposure.	
Dermal:	None
Inhalation:	None
Worker Exposure.	
Dermal:	None
Inhalation:	None, unless adequate protection provided
Environmental Release	
Ambient Surface Water Releases.	No releases resulting in surface water concentrations above 1 ppb[4]
Ambient Air Releases	No incineration releases above 1 μg/m³ maximum annual average concentration [5]
Land/Groundwater Releases.	No releases to landfill unless submitter demonstrates that the exempted substance has negligible ground-water migration potential

[1] This table lists the minimum criteria required to apply for the exemption. Based on the review of the notice, lower concentrations may be required by the Agency for substances with potential for carcinogenic, neurotoxic, or other effects.

[2] No inhalation exposure permitted except as provided under the ambient air incineration criteria.

[3] Estimated average dosage resulting from drinking water exposures in streams with maximum allowable concentration permitted under ambient surface water criteria (1 ppm).

[4] Concentration to be calculated using methods prescribed in 40 CFR 721.90.

[5] Using following formula: (kg/day release after treatment) X (release days/year) X 9.68 X 10^{4} μg/m³.

To satisfy the human exposure side of the eligibility criteria, the submitter would have to show that there are no exposures to consumers or the general public (except as provided under the surface water and ambient air criteria) inherent in the proposed manufacturing, processing, or uses of the substance, and that any worker exposure which is likely to occur will be adequately controlled through use of engineering controls, work practices, and/or personal protective equipment.

In terms of environmental releases, LoREX eligibility criteria for releases to three environmental media are proposed. In assessing the potential for environmental release, the submitter should consider all routine releases from manufacture, processing, and use, including releases associated with cleaning of equipment and from disposal or cleaning of containers and packaging. For ambient surface water, the Agency is proposing that submitters either (1) prevent all direct and indirect releases of the exempted substance to surface waters; or (2) demonstrate that any releases to water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90. Based on Agency worst case assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criteria in nearly every case; therefore, compliance with the drinking water exposure criteria will be presumed from compliance with the 1 ppb surface water level. The Agency will reserve the right, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other serious chronic effects are raised, or under conditions where actual drinking water exposures are likely to significantly exceed the 1 mg/yr dosage.

The proposed LoREX eligibility criterion for maximum annual average ambient air release concentration from incineration is 1 μg/m³. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criteria, submitters would calculate exposure levels using the method described in Table 1. As with drinking water exposures, the Agency may require lower air release levels in individual cases if concerns for chronic health effects are raised for the exempted substance.

For land/groundwater disposal, EPA is proposing that LoREX substances not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the groundwater migration potential of the substance is negligible. To make such a demonstration, a submitter will be required to provide data on the biodegradation and leaching potential of the exempted substance, or other data which clearly establishes that significant releases to groundwater will not occur. EPA suggests the following core set of tests to establish groundwater migration potential:

(a) An inherent biodegradability in soil test (40 CFR 796.3400).

(b) An anaerobic biodegradability of organic chemicals test (40 CFR 796.3140).

(c) Depending on the substance's chemical properties, either a sediment and soil adsorption isotherm test (40 CFR 796.2750) or a soil adsorption isotherm test (40 CFR 796.2700).

Although it is difficult to state in advance precisely what combinations of results from the above testing would clearly establish that the groundwater migration potential of a chemical substance is "negligible", some broad parameters may be given. For example, manufacturers who perform soil adsorption testing that result in values for the logarithm of the soil adsorption coefficient ("log K_{oc}") of their new chemical substances of 4.5 or greater will generally be found to have satisfied the "negligible groundwater migration potential" standard, unless persistent in the environment. Similarly, biodegradation test data demonstrating half-lives of chemical substances of under 1 week, or complete degradation in under 2 weeks, would satisfy the LoRex criterion in most instances. Hydrolysis data showing that a chemical substance hydrolyzes at a rapid rate would also generally be accepted by the Agency. Chemical substances which do not show either a 4.5 or greater Log K_{oc} value alone or a half-life of under 1 week alone may nonetheless qualify for the LoRex exemption if the two values in combination, or together with other relevant data, support a conclusion that significant amounts of the substances will not reach aquifers.

EPA invites public comment on this and other generic criteria which might be useful in the groundwater migration determination. The Agency also intends to continue encouraging initiation of any testing. Such consultation frequently results in more relevant data and can often lower the submitters' test costs. Upon approval of a LoREX exemption, the submitter would be bound to the continuous use of the exposure and release controls described in the approved exemption, as well as the listed uses and manufacturing sites. The Agency will deny an exemption notice notwithstanding satisfaction of the exposure-based exemption criteria if it believes it cannot support the affirmative finding required under section 5(h)(4) of TSCA that the manufacture, processing, distribution, use, and disposal of the chemical substance, under the conditions described in the notice, will not present an unreasonable risk to human health and the environment.

EPA solicits comment on whether the LoRex exemption criteria are set at a reasonable level to allow new chemical substances with de minimis releases and exposures to qualify for the exemption. Are there alternative exemption criteria that would represent a reasonable proxy for de minimis exposure?

3. *Exemption notices.* To simplify the submission of low volume (LVE) and LoREX exemptions, and Agency review of them, EPA is proposing to require use of the PMN form (EPA Form 7710–25). Thus, submitters should supply the usual PMN information on chemical identity, impurities, trade names, production volume, uses, manufacturing sites, environmental release, and worker exposure. Given the importance of release and exposure information to the disposition of LVE and LoREX exemption notices, submitters should include as much information on these subjects as possible, including, where applicable, such items as an assessment of the potential for dermal and inhalation exposure, including magnitude, frequency, and duration; specific respirators used (e.g., NIOSH/MSHA-certified 19C Type C supplied-air respirator operated in pressure demand or positive pressure mode and equipped with a full face piece); specific information on the dermal protective equipment used (including any information on permeation); other control methods used (including information on their effectiveness); environmental release controls (including information on their efficiency); as well as details on work practices, standard operating procedures, etc. In assessing the potential for exposure, the submitter would be required to consider all routine worker activities during manufacture, processing, and use, including operations such as materials transfer, drumming, packaging or loading and associated unloading operations, sampling, etc. In assessing the potential for environmental release, the submitter would consider all routine releases during manufacture, processing, and use, including releases from processing, cleaning of equipment, disposal of empty containers, "off-spec" materials, processing waste, samples, etc.

Bald statements such as "glove boxes will be used" or "the chemical will be manufactured in a closed system" would be insufficient to document that worker exposure requirements of the LoREX exemption have been satisfied. For example, even manufacturing facilities controlling reactor operations via isolated control rooms may still involve potential worker exposures during such operations as sampling and drumming. Additional controls may be needed for these operations. Also, the efficiencies of such engineering controls as glove boxes or local exhaust ventilation (LEV) will vary according to manufacturer design, installation method, and user operations. Factors which may affect the operating efficiency of LEV include hood-to-source location, worker intervention, equipment installation, maintenance practices, and cross drafts. Because of such factors, actual efficiency may be lower than that claimed by the equipment manufacturer. Ventilation systems should be designed and operated in accordance with Occupational Safety and Health Administration (OSHA) standards such as 29 CFR 1910.94, and current recommendations of the manual Industrial Ventilation by the American Conference of Governmental Industrial Hygienists, and ANSI Z9.2 Fundamentals Governing the Design and Operation of Local Exhaust Systems published by the American National Standards Institute. The submitter would provide as much information as possible to demonstrate the effectiveness or efficiency of control methods, and procedures used to maintain the stated effectiveness of efficiency over time, as well as details on programs for worker safety training and hazard communication.

To the extent it is known or reasonably ascertainable by the submitter, physical and chemical property information for the chemical substance (e.g., vapor pressure, melting point, boiling point) would also be required under these proposed exemptions. This information would be listed on the last page of the PMN form. In EPA's experience, such information is generally available and would be helpful in assessing exposure controls and better characterizing the potential risk of the chemical substance.

The Agency believes use of the PMN form would prove beneficial to both it and industry, and seeks comments from experienced PMN and LVE submitters on this point. By providing a standard format for the required information, EPA expects to decrease the frequency with which it would have to conditionally deny incomplete exemption notices, thereby decreasing the length of time submitters would have to wait for disposition of their exemption notices and the Agency resources devoted to reviews.

Submissions not containing all of the required information would be declared incomplete. To reinitiate a notice which has been declared incomplete, a submitter would have to submit a complete new exemption notice form containing all the required information; partial submissions sent to EPA to supplement notices declared incomplete would not be accepted. Photocopied pages from previously submitted exemption forms would be accepted provided that the certifications page contains an original signature.

The proposal retains the provision which requires manufacturers of substances produced under the exemption to submit to EPA any test data or other information they obtain which indicates that the substance may not qualify for the exemption. The proposal also adopts the current PMN requirement that requires submission of any new information of which the manufacturer obtains possession, control, or knowledge during the review period if that information materially adds to, changes, or otherwise makes significantly more complete the information included in the notice.

4. *EPA review of notices*. EPA is proposing, and requesting comment on, the requirement that submitters submit exemption notices 30 days prior to intended manufacture of the low volume or LoREX substance. The Agency believes that an increase from 21 days to 30 days will be necessary in order to accommodate the projected increase in number of exemption notices under the higher low volume ceiling and new LoREX category. EPA is aware a longer exemption review period may make the exemptions less attractive; however, it believes that the modest increase to 30 days proposed is imperative to conduct the type of reviews necessary to support the legal finding that the exempted substance will not present an unreasonable risk of injury to human health or the environment. Moreover, EPA believes that the existence of these two exemptions categories would, on average, significantly expedite the introduction of many new products into the marketplace.

5. *Determination that a chemical substance will be denied the exemption— a. During the review period*. Under this proposal, EPA would determine that a substance is ineligible for the low volume or LoREX exemptions if it finds that the new chemical substance does not meet the terms of the exemption, or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30–day review period. Such issues that may require further review include serious acute or chronic human health effects or significant environmental effects under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal.

If EPA determines during the review period that an exemption notice should be denied, the Agency will notify the manufacturer by telephone that the substance is denied the exemption. The submitter will subsequently be notified by letter The letter will explain the reasons for EPA's determination. The submitter will then have the option of resubmitting the exemption notice with explanatory or additional information, submitting a PMN, or not manufacturing the chemical substance.

b. *After the review period expires*. The Agency is proposing to amend the current provisions relating to revocation of exemptions after expiration of the review period. Under the proposal, a revocation could be affected if EPA, based on new information, determines that it can no longer support the "no unreasonable risk" finding required under section 5(h)(4) of the Act. This is a change from the corresponding provision of the current exemption which permits revocations whenever EPA determines that the substance "does not meet the terms of this section."

6. *Inventory status*. For the expanded low volume exemption category for substances produced in quantities up to 10,000 kilograms/year, the Agency is proposing to continue the policy of not adding such substances to the TSCA section 8(a) Inventory of existing chemical substances. Similarly, EPA is proposing to not add substances produced under the LoREX exemption to the 8(a) Inventory. Therefore, subsequent manufacturers of chemical substances for which exemptions have been granted to other companies under these two categories will be required to submit independent exemption notices or PMNs before commencing nonexempted commercial production of those substances.

7. *Recordkeeping*. The proposed rule would require manufacturers and importers to maintain records on (a) the production volumes of the chemical substance for which an exemption was granted, and (b) documentation of information in the exemption notices and compliance with the terms of the exemption. The records would be maintained for 5 years after the date of their preparation. These records would be kept at the submitter's manufacturing site(s). Recordkeeping at the site of manufacture is a new requirement. The Agency has found that it has been difficult to determine compliance with the regulations when records are not kept at the site. Also under this proposal, EPA would have the authority to require the manufacturer of an exempt substance to submit copies of these records to EPA upon written request. Manufacturers would be required to provide these records within 15 days of the written notification by EPA. This section in the proposed rule is intended to supplement the inspection and subpoena authorities of section 11 of TSCA.

8. *User fees*. Section 26(b) of TSCA authorizes EPA to require, by rule, the payment of a reasonable fee from any person required to submit data under section 4 or 5 of TSCA. Currently, EPA requires a user fee for PMNs, certain PMN exemption notices, and significant new use notices submitted under TSCA section 5(e) and 5(h). EPA is proposing to amend 40 CFR part 700 to require manufacturers and importers to pay fees for low volume and LoREX exemption notices. Currently, there is no such user fee requirement associated with the low volume exemption. The proposed fee would be $100 for small business concerns, and $2,500 for all others.

The fee for PMNs, certain exemption notices, and SNURs was originally promulgated on August 17, 1988. The supporting rationale and background for this rule is published in the **Federal Register** of April 20, 1987 (52 FR 12940) and the **Federal Register** of August 17, 1988 (53 FR 31248). These two documents should be consulted for further information on the objectives and rationale for the user fee rule.

9. *Customer notification*. The Agency is proposing to retain the requirement that manufacturers notify processors and industrial users of the use restrictions and of any controls specified in the exemption notice. Such notification may be given by means of a container labeling system, written notification, or any other method that adequately informs recipients of the applicable use restrictions or controls. As with the existing LVE, the proposal also requires that manufacturers (a) immediately cease distribution to any customers who violate use or control restrictions, and (b) notify the Agency within 15 days of learning of such violations.

To ensure compliance with the LoREX criterion, the proposal requires further that LoREX exemption holders distribute LoREX substances only to persons who agree in writing to not further distribute the substances until they have been reacted or otherwise rendered into a physical form or state in which releases and exposures above the LoREX criterion will not occur. The Agency recognizes that this distribution restriction may be problematic for manufacturers of some substances used in multi-tiered markets, but believes that some form of control over distribution is necessary. Commenters are encouraged to suggest alternative methods EPA might employ to ensure that distribution of the LoREX substance beyond manufacturers' customers will not present an unreasonable risk to human health or the environment.

10. *Transfer of exemptions*. Current Agency policy generally does not recognize transfer of exemption rights between manufacturers; however, given the increased frequency over the last several years of corporate mergers,

acquisitions, buy-outs, technology transfers, and other forms of corporate succession, EPA believes that it is appropriate to reevaluate its exemption transfer policies in light of the proposed amendments and requests comments on this issue.

III. Rationale

A. Chemical Substances Manufactured at 10,000 Kilograms or Less Per Year

To better utilize its limited resources and lessen regulatory burdens on industry, the Agency undertook an examination of the review process for PMNs and PMN exemption notices to determine whether it was advisable to expand the categories of new chemical substances eligible for PMN exemptions. One of the first exemptions identified through this examination was the current exemption for new chemical substances manufactured in quantities of 1,000 kilograms or less per year. EPA believed that significant resource savings could be realized if the ceiling for the exemption could be raised to a level which would expand the pool of eligible new chemical substances while still permitting the Agency to make the requisite "will not present an unreasonable risk" statutory finding.

Those familiar with the PMN program will recall that in 1982 when the current low volume exemption ("LVE") was originally proposed (47 FR 33920), the Agency included a separate category for chemical substances manufactured in quantities of 10,000 kilograms or less per year. However, that portion of the proposal was never promulgated. This was due mainly to uncertainty over the number and types of notices that would be received under the higher volume category, and also to an inability to reconcile industry concerns over some of the additional safeguards imposed upon the higher volume category and the Agency's belief that such safeguards were necessary (see the discussion in Unit I. of this preamble).

With the benefit of 8 years of experience under the 1,000 kilogram exemption category and the Agency's enhanced ability to gauge toxicity of new chemical substances based upon structural activity relationships, EPA is confident that it can now review a larger pool of chemical substances under the low volume exemption and identify within an abbreviated review period those substances which may pose an unreasonable risk to human health or the environment.

The basic rationale for proposing an expansion of the low volume exemption category is the same as that for proposing the exemption initially: chemical substances produced in lower quantities generally involve correspondingly lower human exposures and environmental releases, and consequently, present generally less risk than high volume substances. Beyond this, the Agency believes that the low volume exemption has been a very successful regulatory mechanism as measured by the level of EPA administrative resources needed to implement it and the relative burden it places on manufacturers. Because of this success, EPA believes that both its interests and the interests of industry and the public will be served by enlarging the portion of new chemical substances which may be manufactured under the exemption.

B. Low Release and Exposure (LoREX) Chemical Substances

In addition to the production volume-based category described above, EPA is proposing establishment of a new TSCA section 5(h)(4) exemption category based on low levels of environmental release of, and human exposure to the new chemical substance. Eligibility would be independent of production volume level.

The Agency believes that the concept of basing an exemption on low release and exposure offers several potential advantages over a volume-based exemption. First, an exposure-driven exemption generally provides a more direct gauge on the magnitude of risk presented by a given new chemical substance. Production volume alone is only an indirect indicator of exposures and releases. Secondly, EPA believes that the existence of a LoREX exemption will encourage pollution prevention (source reduction) techniques by rewarding manufacturers able to meet the low release and exposure criteria with more timely regulatory decisions, and in many cases, with less burdensome regulatory controls. Such a result would entail substantial time and resource savings for both EPA and industry.

1. *LoREX criteria* — a. *Human exposure*. In determining the appropriate criteria for defining the types and/or levels of exposure which should constitute "low exposure" to humans, EPA considered three distinct populations: workers, consumers, and the general population. EPA believes that, for purposes of this exposure-based exemption, any direct exposures to the latter two groups would be, in the context of an abbreviated review period, inconsistent with the Agency's statutory obligation under section 5(h)(4) to affirmatively find that the exempted substances will not present an unreasonable risk to human health. Therefore, the Agency believes that any consumer and/or general population exposures (other than the negligible drinking water and ambient air exposures discussed later in this preamble) should automatically disqualify new chemical substances from LoREX exemption eligibility.

Exposures to workers, on the other hand, are fundamentally different than consumer and general population exposures in that they may be more readily monitored and controlled through engineering controls, workplace practices, and/or protective equipment requirements. Therefore, the Agency believes that it may, consistent with its section 5(h)(4) obligation, approve a high percentage of LoREX exemption notices where appropriate control measures are instituted in the workplace.

Workplace exposures may occur through inhalation, dermal contact, or ingestion. For dermal/ingestion exposures, the Agency believes it most appropriate to require manufacturers applying for a LoREX exemption to comply with the general dermal exposure requirements used in section 5(e) consent orders; namely, to require all workers reasonably likely to be exposed to LoREX substances to be provided with, and required to wear, chemical protective equipment which provides a barrier to prevent all dermal exposure to the substance. Chemical protective clothing used to provide this barrier must be demonstrated to be impervious to the substance under the expected conditions of use and duration of exposure. Such demonstration could be accomplished under 40 CFR 721.63(a)(3)(i)-(ii) by actually testing the material used to make the chemical protective clothing and/or by evaluating the specifications from the manufacturer or supplier of the chemical protective clothing to establish that the chemical protective clothing will be impervious to the exempted substance alone and in likely combination with other chemical substances in the work area.

Regarding inhalation exposure, the Agency will expect submitters for LoREX exemption notices to have (1) identified the workplace operations where inhalation exposure is likely to occur; (2) assessed the magnitude, frequency, and duration of potential exposure; (3) assessed the effectiveness of the various exposure controls; and (4) selected the method or combination of methods that will provide workers with the appropriate protection for the given workplace. While the Agency strongly encourages submitters to reduce workplace exposures at their source, where feasible, submitters could also support a claim of low worker inhalation exposure based on the use of appropriate respiratory protection equipment. The Agency believes it most appropriate for a submitter to comply with the general requirements regarding respiratory protection used in TSCA section 5(e) consent orders, which stipulate the use of respiratory protection in accordance with the National Institute of Occupational Safety and Health (NIOSH) regulations at 30 CFR part 11, and the Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.134. Similarly, the inherent physical or chemical properties of the substance submitted for an exemption may form the basis of a low exposure claim, as in a nonvolatile dye manufactured, processed, and used only in solution, such that inhalation to particulates will not occur.

b. *Environmental release*— i. *Water releases*. The proposed LoREX water release eligibility criterion of <1 ppb surface water concentration was established on the basis of EPA's experience in conducting environmental risk assessments on PMN substances. The concentration level is to be estimated by the submitter using the method described in 40 CFR 721.90. Based on EPA's 14 years of PMN experience, aquatic toxicity concern levels have only very rarely been established at levels below 1 ppb. Thus, EPA is confident that the vast majority of LoREX exemption notices satisfying this criterion will not present an unreasonable risk of acute or chronic aquatic toxicity, and that the Agency's risk assessment capabilities will identify those few exemptions which may require more strict concentration levels to protect against potential aquatic risks.

ii. *Air releases*. The proposed LoREX air release eligibility criterion of 1 $\mu g/m^3$ was, like the ambient surface water criterion, selected on the basis of experience gained in conducting risk assessments on over 18,000 PMN chemical substances since 1978. At this maximum annual average concentration, EPA believes that, using worst case estimates, the maximum human exposures downwind from incinerators will be toxicologically insignificant for most of the chemical substances it is likely to review under the LoREX exemption. As noted above, however, the Agency may require individual submitters to adhere to lower release levels for substances for which chronic toxicity concerns are raised during the risk assessment.

The proposed methodology for calculating maximum annual average concentration (see Table 1, footnote 5) to be used by exemption notice submitters was based on computer modeling similar to that used by the Agency in the PMN review process. Those interested in more detail on this methodology should consult the docket.

Submitters should also be aware that, although the proposal has not established generic eligibility criteria for fugitive air emissions unrelated to incineration, the Agency will review the potential for such emissions on a case-by-case basis, and will deny exemptions if the air emissions reach such levels as to undermine the Agency's ability to conclude that the substances in question will not present an unreasonable risk.

iii. *Land/groundwater releases*. The Agency is proposing to exclude from eligibility all chemical substances which will be disposed of via landfill unless the submitter demonstrates that the exempted substance has negligible ground-water migration potential. This "zero release" standard was deemed most appropriate because the Agency was unable to develop a broadly applicable method for estimating groundwater concentrations of chemical substances based on landfill disposal volume. Given the many variables involved in making such estimates (e.g., migration rates, biodegradation rates, sediment/soil adsorption rates), EPA does not believe it will be possible to develop a generic model for estimating groundwater concentrations for a significant number of substances with sufficient reliability to support the requisite "no unreasonable risk" finding. Consequently, the Agency believes that, in the context of an abbreviated review period, where in-depth case-by-case assessments of groundwater leaching potential are infeasible, prudence dictates that zero release be the primary standard.

Potential LoREX exemption submitters with no viable alternatives to landfill disposal would be given the option under the proposal of demonstrating to the Agency's satisfaction that their substance will not migrate to groundwater. A list of suggested tests to establish groundwater migration potential is contained in Unit II.A.2. of this preamble. If such a demonstration is made, a submitter would be permitted to landfill excess quantities of the exemption substance up to the amounts approved in its exemption. In all cases, however, the Agency strongly encourages submitters to strive for total elimination of releases through employment of the best available pollution prevention (source reduction) techniques.

IV. Major Alternatives Considered

A. Maximum Annual Production Limit

As an alternative to the 10,000 kilogram annual production limit proposed in this notice, the Agency considered raising the low volume production ceiling to either (1) 5,000 kilograms; or (2) 25,000 kilograms with a toxicity testing requirement.

Based on PMN data, EPA estimated that a 5,000 kilogram ceiling would increase the pool of chemical substances eligible from the current 1,000 kilogram exemption by 10 percent, or 21 percent of all PMN submissions. Although this increase is not insignificant, the Agency believes that it would not utilize this exemption to the extent possible, and that a higher volume ceiling, benefiting both EPA, the public, and industry, could be proposed consistent with the Agency's statutory mandate to make the "no unreasonable risk" finding; thus, EPA favored the 10,000 kilogram alternative over the 5,000 kilogram alternative.

The 25,000 kilogram option, with a "minimum toxicity data set" requirement, was also considered by the Agency during development of the proposed rule. This higher volume ceiling was projected to encompass approximately 38 percent of all new chemical submissions, a 27 percent increase over the number of submissions under the current exemption. Although EPA believes that increasing the maximum volume to this level could potentially save both it and industry considerable time and resources for a large number of new chemical substances, this option raised a number of concerns. Chief among those concerns was the cost of testing. If the Agency were to require LVE submitters to conduct the same "core set" of health and ecotoxicity testing it now requires of submitters of high volume/high exposure PMN substances under its "exposure-based" criteria pursuant to section 5(e)(1)(A)(ii)(II) of TSCA, the average per chemical cost of such testing would be over $50,000. Even if such a data development requirement were delayed until a specified volume of the chemical substance was produced, there is considerable uncertainty over how many potential submitters would find that form of an exemption preferable to a PMN submission. On the other hand, if EPA were to scale back the data development requirements, there is doubt that the Agency could make the requisite "no unreasonable risk" finding for many of the submissions. Consequently, in light of these uncertainties, EPA determined that it would be inadvisable at this time to propose a new low volume category for substances produced in the 10,000 to 25,000 kilogram range.

B. Site-limited Intermediates

The Agency originally proposed a site-limited intermediate (SLI) exemption category in 1982 but, as with the proposed 10,000 kilogram low volume category, never promulgated a rule for that category due to industry criticism of the proposed procedural safeguards and EPA's uncertainties over making the "no unreasonable risk" finding for this class of substances without such safeguards. EPA considered reproposing the SLI exemption category in this rulemaking, but decided against doing so mainly because it believes that most, if not all, SLI chemicals which would be approved under an SLI exemption would fall within the scope of the LoREX exemption category; therefore, the Agency believes that a separate SLI exemption is unnecessary. Nevertheless, EPA is outlining the parameters of an SLI exemption alternative in this section to solicit public comment on this concept.

If proposed as a separate exemption category, the SLI exemption would be available to all domestic manufacturers of chemical substances satisfying the definition of "site-limited intermediates", independent of annual production volume. Under the 1982 proposal, an "intermediate" was defined as "any chemical substance which is (1) used as a reactant in the intentional manufacture of another chemical substance, and (2) is consumed in whole or in part in that reaction"; and a "site-limited intermediate" was defined as an "isolated intermediate which is manufactured, processed, and used only at the site of manufacture and not intentionally distributed outside that site except as waste which will be delivered for disposal in accordance with applicable government laws and regulations, or for burning as a fuel".

As with the low volume and LoREX exemption categories, the Agency would conduct a risk assessment of the SLI based upon the information submitted by the manufacturer, and would approve the exemption only upon a finding that the substance would not present an unreasonable risk to human health or the environment. Certain hazard or exposure concerns identified during the 30-day review period would be grounds for a denial of the exemption notice. For example, significant human exposures or releases that could not be adequately mitigated through controls or waste treatment would prevent the Agency from making the requisite "will not present an unreasonable risk" finding.

The Agency believes, as it did in 1982, that site-limited intermediates as a class may be considered low risk because they are largely consumed in chemical reactions and thus do not generally leave the site of manufacture, either in emissions, waste or final products, except in relatively small amounts. Moreover, to the extent that workers may be exposed to SLIs at manufacturing sites prior to initiation of the chemical reaction, such exposures can typically be adequately controlled through employment of protective equipment, engineering controls, and/or workplace practices. However, as stated above, the Agency is not convinced at this time of the need for both an SLI exemption category and a LoREX exemption category. Therefore, The Agency will consider promulgating a separate exemption category for SLIs in the final rule only if either (1) the LoREX category is substantially altered in the final rule, or (2) public comment convinces EPA that there could be a significant number of low risk SLIs which would not satisfy the LoREX eligibility criteria.

V. Alternatives and Request for Public Comment

EPA requests comments and data on all aspects of this proposal, including provisions of § 732.50 that EPA has proposed to retain unchanged from the 1985 exemption. EPA will consider all comments and data received during the comment period and may amend any provision of § 723.50 where appropriate, based on these comments.

VI. Regulatory Analysis

A. Summary of Risk Assessment

1. *10,000 kilogram/year chemical substances.* To assess the risk associated with raising the ceiling for chemical substances eligible for the low volume exemption from 1,000 kilograms/year to 10,000 kilograms/year, the Agency relied primarily upon the risk assessment developed to support the 1985 final low volume rule, along with the earlier version used to support the 1982 proposed low volume and site-limited intermediate rules.

a. *Exposure assessment.* The exposure assessment illustrates that, while low production volume in itself limits potential for exposure and environmental release, manufacture, processing, and use of such chemicals can in some circumstances result in significant exposures at both the 1,000 and 10,000 kilogram annual production levels.

i. *Occupational exposure.* Based on PMN data, the number of workers exposed during manufacturing ranged from an average of about four for chemical substances manufactured in quantities of 1,000 kilograms or less per year to an average of about eight for chemical substances manufactured in quantities of 10,000 kilograms or less per year. Duration of exposure associated with manufacture averaged about 5 hours per day at both production levels, and the average number of days of production per year was 62.

Only a limited number of PMNs included estimates of workplace concentration. The average concentrations associated with manufacture were most often in the ranges of 0 to 1 and 1 to 10 mg/m^3 for airborne solids and in the 1 to 10 ppm range for vapors. EPA's evaluation of OSHA data (USEPA, OTS "Site-Limited Intermediate Exemption: Occupational Exposure and Environmental Release Assessment." March 19, 1982) indicated a time weighted average (TWA) of 6 ppm, with a maximum value of 72 ppm for vapors. EPA believes that data obtained from OSHA monitoring activities provide more reliable estimates of workplace concentrations.

EPA's analysis of processing and use of low volume chemicals indicated that the wide variety of possible processing and use operations can result in a wider range and higher level of exposures than typically associated with manufacturing operations. The average number of workers exposed during processing and use operations exceeded the average numbers typically exposed during manufacturing. The number ranged from an average of 12 workers for a chemical processed in quantities of 1,000 kilograms or less per year to an average of 141 workers for chemicals processed or used in quantities of 10,000 kilograms or less per year.

ii. *Consumer exposure.* Consumer exposures were assessed for five use scenarios: photographic chemicals used in home darkrooms; spray adhesives; paints; dyes; and fragrances used in soaps and detergents. The use scenarios, which reflected actual uses reported in PMNs, were selected to represent divergent and potentially significant exposure situations. In these scenarios, the individual lifetime average daily exposures were estimated to range from 0.0016 mg/kg/day for a fragrance in soap to negligible levels for dyed fabrics.

According to EPA's analysis, many of the consumer use scenarios could result in relatively large numbers of consumers exposed. The numbers of consumers potentially exposed at the 10,000 kilogram production level ranged from 76,000,000 for a fragrance in shampoo to 98,000 for a spray adhesive. Because the concentration of a new chemical substance in a final product remains constant, the production volume is likely to affect only the number of consumers exposed, not the exposure level to each individual. Therefore, the number of consumers exposed at the 10,000 kilogram production limit is about 10 times the number that would be exposed at the 1,000 kilogram limit.

b. *Environmental release.* Environmental release from manufacturing and the resultant environmental concentrations were estimated for low volume chemicals. EPA relied on PMN data in estimating the duration and frequency of releases. However, PMN projections of the amount released were considered less reliable than other sources of information.

The exposure analysis indicated that the average quantity released to water is 0.08 percent of the production volume, with an upper bound of 0.4 percent. Amounts released to air average 0.03 percent of production volume, with a 0.2 percent upper bound. However, some processing and industrial uses result in more substantial release rates, with a range from 0.3 to 25 percent of the production volume released to water. Discharges of a new low volume chemical from a single site processing 10,000 kilograms of the chemical were estimated to produce environmental concentrations ranging from less than 0.0005 to 5.2 ppm in a receiving stream whose stream dilution factor was equal the national median for streams receiving effluent from industrial facilities.

In some cases, such as detergent additives, environmental release from consumer uses equaled the total production volume; however, the actual magnitude of environmental exposure was determined to be insignificant due to the low production volume, the wide distribution of release, and the small amount of new chemical typically contained in each consumer product.

c. *Risk under exemption conditions.* There are several elements of the proposed exemption amendment that would significantly reduce risks to human health and the environment.

Chemical substances with carcinogenic, teratogenic, neurotoxic, and other chronic effects appear to present the greatest risks even at relatively low exposures. The proposed provisions which permit the Agency to deny exemptions for substances which may present unreasonable risks for those effects should significantly reduce the likelihood that chemicals that present such risks would be manufactured under the amended exemption. If the exemptions for such chemicals are denied, or if their submitters are required to resubmit their exemption notices to provide for more stringent release and exposure controls, the range of potential risks would be substantially below the high end of EPA's estimates.

In addition, under the proposed amendments, EPA would continue to review all exemption notices during the 30–day review period. This review will help ensure that manufacturers choose appropriate safeguards to control risks, as well as provide a screen to identify chemicals that do not qualify for the exemption.

2. *Low release and exposure chemical substances.* The risk associated with a given substance is a function of both the inherent toxicity of the substance and the exposure of the relevant organism to the substance. Therefore, to the extent that releases and exposures are maintained below certain critical levels, potential risks presented by the substance are minimal. In order to assess the potential risk associated with the proposed LoREX exemption, the Agency evaluated the proposed exposure and release criteria in the context of its experience conducting risk assessments on over 18,000 new chemical substances in the PMN program over the last 12 years. Based on this experience, EPA tailored its LoREX exemption criteria in a manner to exclude from eligibility the large majority of chemical substances which may present significant human or environmental risks under conditions of manufacturing, processing, and use. For those substances which meet the eligibility criteria but may nevertheless present significant risks due to unusually high predicted toxicity levels, the Agency will either deny the exemptions or condition approval upon satisfaction of stricter exposure and release requirements.

a. *Human exposure.* Due to the wide range of potential consumer and general population exposures which are possible from the universe of new chemical products, the Agency concluded that it could not develop any meaningful consumer or general population exposure criteria which would consistently screen out those substances which would present significant risks from direct dermal or inhalation exposures. Consequently, EPA has proposed to exclude from LoREX exemption eligibility all new chemical substances which entail any direct consumer or general population exposure (except for negligible drinking water and ambient air exposures discussed in Unit A.2.b. of this preamble) New chemical substances intended for use in paints, soaps, dyes, and other consumer products, therefore, would have to be reviewed by the Agency in a full PMN notice or under one of the other applicable PMN exemptions.

Under the proposed LoREX criteria applicable to workers, only those chemical substances with no dermal exposures and no unprotected inhalation exposures to workers will be eligible to apply for the exemption. Therefore, to the extent that pollution prevention practices, the required methods of control, engineering controls, protective equipment, work practices, etc., will maintain inhalation and dermal exposure below critical levels, potential risks presented by the exempted chemical substances will be minimal.

b. *Environmental release.* In terms of environmental releases, LoREX eligibility criteria for releases to three environmental media are proposed. For ambient surface water, the Agency is proposing that submitters either (i) prevent all direct and indirect releases of the exempted substance to surface waters; or (ii) demonstrate that any releases to water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90. Based on Agency worst case assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criterion in nearly every case; therefore, compliance with the drinking water exposure criterion will be presumed from compliance with the 1 ppb surface water level. The Agency will reserve the right, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other effects are raised, or under conditions where actual drinking water exposures are likely to significantly exceed the 1 mg/yr dosage.

The LoREX eligibility criterion for maximum annual average ambient air release concentration from incineration is 1 μg/m^3. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criteria, submitters would calculate exposure levels using the method described in Table 1. As with drinking water exposures, the Agency may require lower air release levels in individual cases if concerns for chronic health effects are raised for the exempted substance.

For land/groundwater disposal, EPA is proposing that a LoREX substance not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the substance will not migrate to groundwater. To make such a demonstration, a submitter would be required to provide data on the biodegradation and leaching potential of the exempted substance, or other data that clearly establish that releases to groundwater will not occur. EPA suggests the following core set of tests to establish groundwater migration potential: (1) An inherent biodegradability in soil test (40 CFR 796.3400); (2) an anaerobic biodegradability of organic chemicals test (40 CFR 796.3140); and (3) depending on the substance's chemical properties, either a sediment and soil adsorption isotherm test (40 CFR 796.2750) or a soil adsorption isotherm test (40 CFR 796.2700). EPA strongly suggests that submitters contact the EPA Prenotice Coordinator (telephone: (202) 260–1745) for guidance prior to commencement of the above testing.

Upon approval of a LoREX exemption, the submitter would be bound to the continuous use of the exposure and release controls described in the approved exemption notice, as well as the listed uses and manufacturing sites. The Agency would deny an exemption notice notwithstanding satisfaction of the exposure-based exemption criteria if it believes it cannot support the affirmative finding required under section 5(h)(4) of TSCA that the manufacture, processing, distribution, use, and disposal of the chemical substance, under the conditions described in the notice, will not present an unreasonable risk to human health or the environment.

VII. Economic Impact

The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to Section 5 regulations, namely the Polymer Amendment, the Procedural Amendment, and the Non-5(e) Significant New Use Rule Amendment. Because these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

The costs and benefits associated with this proposed amendment are partially quantified; many of the benefits are unquantified but are expected to be of significant importance. Considering only the quantified costs and benefits, there is a cost savings in most instances. Assuming either 1,000, 2,000, or 3,000 annual Section 5 submissions, the savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	(0.2)–0.4	1.3–1.5
2,000	(0.4)–0.7	2.5–3.1
3,000	(0.5)–1.0	3.8–4.8

This proposed amendment affects the low volume exemption and establishes a low release/low exposure exemption (LoREX). Industry costs associated with the proposed amendment to the low volume exemption are reporting costs, delay costs, and a user fee. Per submission reporting costs are increased due to the more comprehensive submission requirements. Delay costs for those substances which qualify for the current exemption are slightly higher, while delay costs are significantly reduced for those substances which currently must submit a full PMN submission but would qualify for the proposed exemption. Delay costs are the costs associated with the delayed introduction of the substance into the market due to Section 5 regulations. In addition, a user fee has been added to the amendment.

Industry costs associated with the proposed LoREX exemption are also reporting costs, delay costs, and a user fee. Because this would be a new exemption, all of the submitters would have originally been required to submit a full PMN submission and would already be required to pay a user fee. Also, the reporting requirements are only slightly more than current requirements.

Unquantified benefits associated with this proposed amendment include increased voluntary use of pollution prevention practices by submitters and a greater emphasis on the use of low risk chemicals.

The Agency's complete economic analysis is available in the public record for this rule (OPTS–50596).

VIII. Finding of No Unreasonable Risk

1. *Statutory background*. Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance will not present an unreasonable risk of injury to human health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical substance may be taken for a category of such substances. Under this proposal, EPA will be exempting chemical substances with production volumes less than or equal to 10,000 kilograms/year and chemical substances with low human exposure and low release to the environment. For each of these categories, as discussed below, EPA has made a finding that, as a general matter, chemical substances eligible for the exemptions will not present an unreasonable risk of injury when manufactured, processed, used, distributed in commerce, or disposed of under the terms of the proposed exemptions.

The term "unreasonable risk" is not defined in TSCA. The legislative history, however, indicates that unreasonable risk involves the balancing of the probability that harm will occur and the magnitude and severity of that harm against the effect of the proposed regulatory action on the availability to society of the benefits of the chemical substance.

2. *Risks*. In making the "no unreasonable risk" finding under TSCA section 5(h)(4), EPA first considered the risk posed by granting each of the exemptions. Risk is the combination of the hazard presented by a chemical substance and the exposure of humans or the environment to the substances. EPA's determination of the reasonableness of risk involves a consideration of factors such as environmental effects, distribution, and fate of the chemical substance in the environment, disposal methods, waste water treatment, use of protective equipment and engineering controls, use patterns, and market potential of the chemical substance. These variables are difficult to quantify and standardize, thereby requiring EPA to supplement available data with its professional judgment.

EPA's preliminary determination of no unreasonable risk is based on consideration of (i) the limitations on risk that would result from the safeguards built into the rule, including

Agency review; (ii) the limitations on risk resulting from the restriction of exemptions to chemical substances manufactured at volumes of 10,000 kg/yr or less and to low exposure/low release chemical substances; (iii) the benefits to industry and the public provided by chemical substances manufactured under the exemption; and (iv) the benefits to the public and the Agency from the Agency's enhanced ability to utilize its limited resources on reviewing chemical substances and uses of high risk and concern. EPA recognizes that, even with the safeguards imposed by this rule, the proposed approach would not ensure that there would be no risk from chemicals manufactured under the exemption. The statute does not define no unreasonable risk to be zero risk. Rather, it defines no unreasonable risk as a balancing of risk and benefit. Because of the safeguards in the proposed rule, the requirement that the provisions of the approved exemption are binding on the submitter, and the restricted nature of the exemption categories, EPA believes that risks are not likely to be any greater than if the full PMN process were completed. Furthermore, the new chemical substances provide benefits to industry and to the public. These benefits are an important element in the finding of no unreasonable risk.

The proposed conditions of these exemptions are designed to mitigate risk, largely by the use of: (i) the reviews conducted by the Agency to assess whether the new chemical substances may cause chronic or acute human health or environmental effects; and (ii) the binding nature of the provisions of exemption notices, including the controls placed on exposure through worker protection requirements. For the LVE, EPA determined that risks would generally be low because low production volume chemicals typically are not expected to result in high exposure to humans or the environment. Similarly, the eligibility criteria for the LoREX exemption directly limit permissible releases of and exposures to the exempted substance. In addition to the general finding of low release/exposure, and therefore low risk for these categories, the restrictions and safeguards built into the proposed exemptions will ensure that the risks presented by the exempt substances are low. For example, worker protection requirements and release restrictions imposed through the terms of the exemptions will minimize exposure, and therefore, risk.

a. *EPA review.* Within the 30–day review period, EPA is confident that it can identify chemical substances posing potential risks requiring more detailed and comprehensive review. EPA's abbreviated review plays an important role in the exemptions and in the finding of no unreasonable risk. EPA is proposing to lengthen the review period from 21 to 30 days to ensure that staff resources will be sufficient to review the increased number of exemption notices expected under the amended rule and the increased amount of information required of each notice. Information submitted will include production volume, hazard information, descriptions of the manufacturing, processing, and uses, releases to the environment, and certain physical/chemical data which EPA will assess in making a determination of risk. During this period, the Agency will have sufficient time to identify any problems that were likely to have been identified in a full PMN review. If EPA determines that a new chemical substance is not eligible for an exemption, manufacture could not begin. The manufacturer would then be required to comply with TSCA section 5(a)(1) before the substance could be manufactured for commercial purposes by submitting a full PMN to the Agency.

b. *New information and EPA revocation.* In addition to these safeguards, the proposed rule contains several other provisions that will further limit the possibility that exempted substances will present significant risks. Most important, the proposed rule establishes procedures for revocation of the exemption if EPA later determines that the substance may present an unreasonable risk. In addition, EPA would have the authority to require documents relevant to an exemption from the manufacturer (in addition to the information provided in the exemption notice), and the manufacturer would be required to submit promptly to EPA any new data indicating that a substance is ineligible. These provisions will ensure that eligibility for and continuation of the exemption will be determined on the basis of the best available information, regardless of when the information becomes available.

3. *Benefits.* EPA believes that these proposed exemptions will allow many manufacturers to introduce new chemical substances in commerce much more rapidly than via the PMN process. The time and resource savings will also benefit EPA which will, by utilizing its limited assets more efficiently, be able to apply more staff time to reviewing higher risk chemical substances and uses.

4. *Pollution prevention considerations.* The proposed LoREX exemption is expected to further the Agency's pollution prevention efforts by encouraging development of manufacturing processes and technologies which reduce chemical releases and exposures at their source. Such reductions not only limit potential risks to people and the environment, but also many times produce significant long-term cost savings to industry through the recapture and reuse of substances which would otherwise have been released into workplaces or the environment.

5. *Risk/benefit balance.* As discussed above, EPA has determined that the risk presented by exempting these chemical substances is low. At the same time, there are significant benefits to be achieved by the exemptions, which encourage innovation and permit manufacturers to introduce new chemicals into commerce more rapidly. Thus, EPA has determined that, as a general matter, the risks associated with low volume substances and low release/low exposure substances are outweighed by the benefits to society of exempting these substances from full PMN review.

6. *Exclusion.* Despite the low risk generally associated with low volume and low release/low exposure substances, EPA recognizes that for some substances that may meet the general requirement for these exemptions, it may not be possible to make a finding of no unreasonable risk. For example, a highly toxic chemical may present an unreasonable risk even if exposure to the chemical is low Likewise, a low production volume chemical may present an unreasonable risk if it is hazardous and is manufactured or processed in a manner that would result in high human exposure or high release to the environment. Thus, although EPA is making a general "no unreasonable risk" finding for categories of chemical substances, EPA will continue to evaluate exemption notices on a case-by-case basis to determine if individual substances should be excluded from the general exemption categories based on the potential risks presented by those substances. For a further discussion of how EPA will determine when to exclude an individual substance from the general exemptions see Unit III. of this proposal.

IX. Rulemaking Record

Interested persons may submit written comments regarding this proposal to the TSCA Document Control Officer (TS–790), Office of Prevention, Pesticides, and Toxics, 401 M St., SW., Washington, DC 20460. Commenters representing corporations or trade associations must submit three copies of all comments; individuals may submit single copies of comments. The comments must be identified with the document control number "[OPTS–50596]".

EPA has established a record for this rulemaking (docket control number OPTS–50596). The record includes basic information considered by the Agency in developing this proposed rule. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

X. Other Regulatory Requirements

A. Executive Order 12991

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices.

This proposed regulation was submitted to the Office of management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the notice submitters were small firms, since the rule would generally reduce the burden and cost of full PMN requirements for such businesses.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012.

The public reporting burden for this collection of information is estimated to vary from 96 to 116 hours per response, with an average of 106 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 700 and 723

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

Dated: January 19, 1993.

William K. Reilly,
Administrator.

Therefore, 40 CFR chapter I, is proposed to be amended as follows:

PART 700 — [AMENDED]

1. In part 700:

a. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625.

a. In § 700.43 by revising the definition of "Exemption notice" to read as follows:

§ 700.43 Definitions.

* * * * *

Exemption notice means any notice submitted to EPA under § § 723.50 or 723.175 of this chapter.

* * * * *

b. In § 700.45 by revising paragraph (c) and the parenthetical text at the end of § 700.45 to read as follows:

§ 700.45 Fee payments.

* * * * *

(c) Persons are exempt from remitting any fee for submissions under § 720.38 of this chapter.

* * * * *

(Approved by the Office of Management and Budget under control number 2070–0012).

PART 723 — [AMENDED]

2. In part 723:

a. The authority citation for part 723 would continue to read as follows:

Authority: 15 U.S.C. 2604.

b. By revising § 723.50 to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and certain chemical substances with low environmental releases and human exposures.

(a) *Purpose and scope.* (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of (i) certain chemical substances manufactured in quantities of 10,000 kilograms or less per year, and (ii) certain chemical substances with low environmental releases and human exposures.

(2) To manufacture a new chemical substance under the terms of this exemption a manufacturer must:

(i) Submit a notice of intent to manufacture 30 days before manufacture begins, as required under paragraph (e) of this section.

(ii) Comply with all other provisions of this section.

(b) *Definitions.* The following definitions apply to this subpart.

Act means the Toxic Substances Control Act (15 U.S.C. 2601 et seq).

Category of chemical substances has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625(c)(2)).

Environment has the same meaning as in section 3 of the Act (15 U.S.C. 2602).

Environmental transformation product means any chemical substance resulting from the action of environmental processes on a parent compound that changes the molecular identity of the parent compound.

Metabolite means a chemical entity produced by one or more enzymatic or nonenzymatic reactions as a result of exposure of an organism to a chemical substance.

Serious acute effects means human disease processes or other adverse effects that have short latency periods for development, result from short-term exposure, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

Serious chronic effects means human disease processes or other adverse effects that have long latency periods for development, result from long-term exposure, are long-term illnesses, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

Significant environmental effects means:

(1) Any irreversible damage to biological, commercial, or agricultural resources of importance to society;

(2) Any reversible damage to biological, commercial, or agricultural resources of importance to society if the damage persists beyond a single generation of the damaged resource or beyond a single year; or

(3) Any known or reasonably anticipated loss of members of an endangered or threatened species. Endangered or threatened species are those species identified as such by the Secretary of the Interior in accordance with the Endangered Species Act, as amended (16 U.S.C. 1531).

The terms *byproduct, EPA, importer, impurity, known to or reasonably ascertainable, manufacture, new chemical substance, person, and test data* have the same meanings as in § 720.3 of this chapter.

(c) *Exemption categories.* This exemption applies to (1) manufacturers of each new chemical substance manufactured in quantities of 10,000 kilograms or less per year under the terms of this exemption, and (2) any manufacturer of a new chemical substance satisfying all of the low environmental releases and human exposure eligibility criterion in the following Table 1:

TABLE 1.—PROPOSED LOW RELEASE/EXPOSURE (LOREX) ELIGIBILITY CRITERIA[1]

Type of Exposure or Release	Eligibility Criteria for Exemption
Human Exposure	
General Population Exposure.	
Dermal:	None
Inhalation:	None[2]
Drinking Water:	<1 mg/yr[3]
Consumer Exposure.	
Dermal:	None
Inhalation:	None
Worker Exposure.	
Dermal:	None
Inhalation:	None, unless adequate protection provided
Environmental Release	
Ambient Surface Water Releases.	No releases resulting in surface water concentrations above 1 ppb[4]
Ambient Air Releases	No incineration releases above 1 µg/m³ maximum annual average concentration[5]
Land/Groundwater Releases.	No releases to landfill unless submitter demonstrates that the exempted substance has negligible ground-water migration potential

[1] This table lists the minimum criteria required to apply for the exemption. Based on the review of the notice, lower concentrations may be required by the Agency for substances with potential for carcinogenic, neurotoxic, or other effects.

[2] No inhalation exposure permitted except as provided under the ambient air incineration criteria.

[3] Estimated average dosage resulting from drinking water exposures in streams with maximum allowable concentration permitted under ambient surface water criteria (1 ppm).

[4] Concentration to be calculated using methods prescribed in 40 CFR 721.90.

[5] Using following formula: (kg/day release after treatment) X (release days/year) X 9.68 X 10^{4} µg/m³.

Manufacturers of chemical substances that qualify for an exemption under both paragraph (c)(1) and (c)(2) of this section may apply for either exemption, but not both.

(d) *Chemical substances that cannot be manufactured under this exemption.* A new chemical substance cannot be manufactured under this section, notwithstanding satisfaction of the criterion of paragraphs (c)(1) or (c)(2) of this section, if EPA determines, in accordance with paragraph (g) of this section, that the substance, any reasonably anticipated metabolites, environmental transformation products, or byproducts of the substance, or any reasonably anticipated impurities in the substance may cause, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance—

(1) Serious acute (lethal or sublethal) effects.

(2) Serious chronic (including carcinogenic and teratogenic) effects.

(3) Significant environmental effects.

(e) *Exemption notice.* (1) The manufacturer must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. The notice must be sent in writing to: TSCA Document Control Officer (TS-790), Rm. L–100, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The date of submission will be the date on which the notice is received by the TSCA Document Control Officer. EPA will acknowledge the receipt of the notice by letter. The letter will identify the date on which the review period begins. The notice shall be submitted using EPA Form No. 7710–25 ("the PMN form"), which may be obtained from EPA by calling or writing the Environmental Assistance Division, TS–799, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460. The notice shall contain all of the information on chemical identity, impurities, trade names, production volume, uses, manufacturing sites, environmental release, and worker exposure required under §§ 720.45 and 720.50 of this chapter. The following additional information shall also be included:

(i) *Type and category of notice.* The manufacturer must clearly indicate on the first page of the PMN form that the submission is a TSCA section 5(h)(4) exemption notice, and must indicate whether the notice is being submitted under paragraph (c)(1) or (c)(2) of this section.

(ii) *Production volume.* (A) Manufacturers submitting an exemption under paragraph (c)(1) of this section will be assumed, for purposes of conducting the EPA's risk assessment, to be manufacturing at an annual production volume of 10,000 kilograms. Manufacturers who intend to manufacture an exempted substance at annual volumes of less than 10,000 kilograms and wish EPA to conduct its risk assessment based upon such lesser annual production level rather than a 10,000–kilograms level, may so designate; however, manufacturers who opt to designate annual production levels below 10,000 kilograms shall not manufacture more than the designated amount of the exempted substance unless a new exemption notice for a higher (up to 10,000 kgs) manufacturing volume is submitted to, and approved by, EPA.

(B) Manufacturers submitting an exemption under paragraph (c)(2) of this section shall list the estimated maximum amount to be manufactured during the first year of production and the estimated maximum amount to be manufactured during any 12–month period during the first 3 years of production.

(iii) *Exposure and release information.* The manufacturer must include a description of each type of manufacturing, processing, and use operation involving the new chemical substance, including identification of the manufacturing site and the estimated number of processing or use sites, situations in which worker exposure to and/or environmental release of the new chemical substance may occur, the number of workers exposed and the magnitude, duration, and frequency of exposure and environmental release, and the controls, work practices, or equipment which limit worker exposure and environmental release. Where a manufacturer provides worker exposure or environmental release control descriptions to support the exemption notice, the manufacturer must maintain those controls throughout the period of the exemption. Where the physical form of the new chemical substance contributes to the control of human exposures, (e.g., a non-volatile liquid form rather than a powder form), the manufacturer must continue manufacturing, processing, and/or using the new chemical substance in the physical form described. Where another manufacturer holds an exemption for the new chemical substance under this section, the manufacturer submitting a notice for the additional exemption under this section must also demonstrate that the additional human exposure to, and/or environmental release of, the new chemical substance resulting from its manufactured volumes will not present an unreasonable risk of injury to human health or the environment.

(iv) *Certification.* In addition to the certifications required in the PMN form, the following certifications shall be included in submissions under this section. The manufacturer must certify that:

(A) The manufacturer intends to manufacture or import the new chemical substance for commercial purposes, other than in small quantities solely for research and development, under the terms of this section.

(B) The manufacturer is familiar with the terms of this section and will comply with those terms, including the requirements to employ the controls, work practices, or equipment to control exposure to and release of the exempted substance which is described in the exemption notice.

(C) The new chemical substance for which the notice is submitted meets all applicable exemption conditions.

(D) For substances manufactured under paragraph (c)(1) of this section, the manufacturer:

(*1*) Intends to commence manufacture of the exempted substance for commercial purposes within 1 year of the date of the expiration of the 30–day review period, and will withdraw the exemption in the event that such manufacture is not commenced within that time.

(*2*) Will comply with any applicable production volume limitations in accordance with paragraph (e)(1)(ii) of this section.

(2) *Sanitized copy of notice.* (i) The manufacturer must make all claims of confidentiality in accordance with paragraph (k) of this section. If any information is claimed confidential, the manufacturer must submit a second copy of the notice, with all information claimed as confidential deleted, in accordance with paragraph (k)(3) of this section.

(ii) If the manufacturer does not provide the second copy, the submission will be considered incomplete.

(3) *Incomplete notices.* If EPA receives a submission which does not include all of the information required under paragraph (e) of this section, the submission will be determined to be incomplete by EPA. To reinitiate an exemption notice which has been declared incomplete, a manufacturer must submit a completely new exemption notice form containing all the required information; partial submissions sent to EPA to supplement notices declared incomplete will not be accepted. Photocopied pages from previously submitted exemption forms will be accepted provided that the certifications page contains an original dated signature.

(f) *Review period.* EPA will review the notice submitted under paragraph (e) of this section to determine whether the new chemical substance is eligible for the exemption. The review period will end 30 days after receipt of the notice by the TSCA Document Control Officer. Upon expiration of the 30–day review period, if EPA has taken no action, the manufacturer may consider its exemption approved and begin to manufacture the new chemical substance under the terms described in its notice and in this section.

(g) *Notice of ineligibility*—(1) *During the review period.* If the EPA determines during the review period that the new chemical substance does not meet the terms of this section, that the new chemical substance meets one or more of the exclusions set forth in paragraph (d) of this section, or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30–day review period, EPA will notify the manufacturer by telephone that the substance is not eligible. This telephone notification will subsequently be confirmed by certified letter that identifies the reason(s) for the ineligibility determination. The manufacturer may not begin manufacture of the new chemical substance without complying with section 5(a)(1) of the Act.

(2) *After the review period.* (i) If at any time after the review period specified in paragraph (f) of this section, EPA obtains information through a TSCA section 8(e) report or through any other source indicating that the new chemical substance does not meet the terms of this section, or that any of the exclusions set forth in paragraph (d) of this section may be applicable, EPA shall notify the manufacturer of that substance, by certified mail, that its exemption under this section will be revoked.

(ii) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (g)(2)(i) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time the notification was received if the manufacturer submits written objections to EPA within 15 days of receipt of the notification. Such written objections must state the reasons why the manufacturer believes that the substance will not present an unreasonable risk of injury to health or the environment. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final determination under paragraph (g)(2)(iii) of this section.

(iii) EPA will consider any objections submitted under paragraph (g)(2)(ii) of this section and will make a final determination on whether to revoke the exemption. EPA will notify the manufacturer of the final determination by certified mail within 15 days of receipt of the objections submitted under paragraph (g)(2)(ii) of this section.

(iv) Within 24 hours of receipt of a final determination from EPA that an exemption is revoked, the manufacturer of the substance for which the exemption was revoked shall cease all manufacturing, processing, distribution in commerce, and use of that substance. The manufacturer may not resume manufacture, processing, distribution in commerce, or use until it submits a premanufacture notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(v) Action under this paragraph does not preclude action under sections 7, 15, 16, and 17 of the Act.

(h) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify for the exemption, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information. If, during the notice review period, the submitter obtains possession, control, or knowledge of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the notice, the submitter must send that information to the address listed on the notice form within 10 days of receiving the new information, but no later than 5 days before the end of the notice review period. The new submission must clearly identify the submitter and the exemption notice to which the new information is related. If the new information becomes available during the last 5 days of the notice review period, the submitter must immediately inform its EPA contact for that notice by telephone.

(i) *Changes in manufacturing site, use, human exposure and environmental release controls, and certain manufacturing volumes.* (1) Chemical substances manufactured under this section must be manufactured at the site or sites described, under the human exposure and environmental release controls described, and for the uses described in the approved exemption. Chemical substances manufactured under paragraph (c)(1) of this section and in specific annual production volumes designated pursuant to paragraph (e)(1)(ii) of this section must not exceed the 10,000 kilograms per year volume, or the designated volume, whichever is applicable.

(2) Any person who manufactures a new chemical substance under paragraph (c)(1) or (c)(2) of this section must comply with the provisions of this section, including submission of a new notice under paragraph (e) of this section, before:

(i) Manufacturing the new chemical substance at a site that was not approved in a previous exemption notice.

(ii) Manufacturing the new chemical substance for a use that was not approved in a previous exemption notice.

(iii) Manufacturing the new chemical substance without employing the human exposure and environmental release controls approved in a previous exemption notice.

(iv) Manufacturing the chemical substance in annual production volumes above any volume specified under paragraph (e)(1)(ii) of this section.

(3) In an exemption notice informing EPA of a change in site, worker protection or environmental release controls, or use, the manufacturer is not required to provide the same information submitted to EPA in a previous exemption notice on that chemical substance. The new exemption notice, however, must indicate the identity of the new chemical substance; the manufacturer's name; the name and telephone number of a technical contact; and location of the new site, worker protection or environmental release controls, or use information. The notice must also include the EPA-designated exemption number of the previous submission and a new certification by the manufacturer, as described in paragraph (e)(1)(iv) of this section.

(j) *Customer notification.* (1) Manufacturers of new chemical substances described in paragraphs (c)(1) and (c)(2) of this section must notify processors and industrial users that the substance can be used only for the uses specified in the exemption notice. The manufacturer must also inform processors and industrial users of any controls specified in the exemption notice. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, or any other method that adequately informs them of use restrictions or controls.

(2) A manufacturer of a new chemical substance described in paragraph (c)(2) of this section may distribute the chemical substance only to other persons who agree in writing to not further distribute the substance until it has been reacted or otherwise rendered into a physical form or state in which releases and exposures above the paragraph (c)(2) eligibility criteria will not occur.

(3) If the manufacturer learns that a direct or indirect customer is processing or using the exempt substance in violation of use restrictions or without imposing prescribed worker protection or environmental release controls, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately. The manufacturer must also report this action to EPA within 15 days under paragraph (h) of this section. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the chemical substance to the customer may resume.

(k) *Confidentiality.* (1) If the manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with "CONFIDENTIAL" or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in 40 CFR part 2. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph must provide a generic chemical name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the submitter will be subject to EPA review and approval in accordance with the procedures specified in § 720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice with all information claimed as confidential deleted. EPA will place the second copy in the public file.

(l) *Determination of first manufacturer of a new chemical substance.* (1) A person who intends to manufacture a new chemical substance under paragraph (c)(1) of this section may determine whether that particular substance is already being manufactured under that section and, therefore, subject to the requirements of paragraph (e)(1)(iii) of this section, by submitting a notice on the substance under paragraph (e) of this section. EPA will inform the manufacturer within the 30–day review period whether another person is already manufacturing the substance under the exemption.

(2) Alternatively, the manufacturer may ask EPA whether another manufacturer is already producing the new chemical substance under this section. EPA will respond to this inquiry only if EPA determines that the manufacturer making the inquiry has shown a bona fide intent to manufacture in accordance with the procedures set out in 40 CFR 720.25(b)(2) through (b)(9).

(3) If EPA determines that the manufacturer has not shown a bona fide intent to manufacture the new substance under the terms of this section, EPA will promptly notify the manufacturer. The manufacturer may then submit a notice

under paragraph (e) of this section or a notice under section 5(a)(1) of the Act.

(4) If EPA determines that the manufacturer has shown a bona fide intent to manufacture the new chemical substance under the terms of this section, EPA will promptly inform the manufacturer whether the substance is being manufactured under this section. If the substance is not being manufactured under this section, the manufacturer may submit a notice under paragraph (e) of this section. If the new chemical substance is being manufactured under this section, the manufacturer may submit a notice under paragraph (e) of this section if the manufacturer can demonstrate that the additional human exposure to, and/or environmental release of, the new chemical substance resulting from its manufactured volumes will not present an unreasonable risk of injury to human health or the environment. If such demonstration cannot be made, the manufacturer must submit a notice under section 5(a)(1) of the Act or one of the other section 5 exemptions.

(m) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of § 723.50 (as in effect on [insert date 1 day before effective date of final rule]) shall either continue to comply with those requirements or apply for a new exemption pursuant to this section. If a new exemption for a chemical substance is granted under this exemption, the prior exemption for such substance shall be void.

(n) *Recordkeeping.* (1) Each manufacturer of a new chemical substance described in paragraph (c) of this section must maintain records of the annual production volume of the new chemical substance under the exemption and documentation of information in the exemption notice and compliance with the terms of this section. Such records must be retained at each facility owned or controlled by the exemption holder where the exempted substance is manufactured or processed. Records maintained under this paragraph must be retained for 5 years after the date of their preparation.

(2) Any person who manufactures a new chemical substance under the terms of this section must, upon request of a duly designated representative of EPA, permit such person at all reasonable times to have access to and to copy records kept under paragraph (n)(1) of this section.

(3) The manufacturer must submit the records listed in paragraph (n)(1) of this section to EPA upon written request. Manufacturers must provide these records within 15 working days of receipt of such request.

(o) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Submitting materially misleading or false information in connection with the requirements of any provision of this section is a violation of this section and therefore a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(4) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section, or act to seize any chemical substance manufactured or processed in violation of this section, or take other action under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 1616).

[FR Doc. 93–2773 Filed 2–5–93; 8:45 am]

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40 CFR Parts 720

[OPPTS–50593;FRL–3869–9]

RIN 2070–AC14

Premanufacture Notification; Revisions of Premanufacture Notification Regulations; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) mandates that the Environmental Protection Agency (EPA, or the Agency) review the potential health and environmental effects of new chemical substances prior to their manufacture or import and take action to prevent unreasonable risks before they occur. Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. Since 1979, EPA has reviewed over 20,000 section 5 notices for new chemical substances. During the intervening years, EPA has implemented a number of non-regulatory initiatives which have enabled the Agency to review a growing number of new chemical substances. In order to achieve further efficiencies and resource savings for both EPA and submitters of section 5 notices, the Agency is proposing a number of regulatory initiatives to reduce the administrative costs/burdens of the section 5 new chemicals program. These proposals would allow EPA to concentrate its limited resources on identifying and controlling those chemical substances most likely to present an unreasonable risk of injury to health and the environment.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (Phone: 202–260–1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS–50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE–G–004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS–50594, 50595, and 50596 is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512–1387 or call (202) 512–1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect, and ASCII.

EPA published its final premanufacture notification (PMN) rule (40 CFR part 720) on May 13, 1983 (48 FR 21722) and subsequently amended certain parts of the rule on September 13, 1983 (48 FR 41132) and April 22, 1986 (51 FR 15096).

I. Background

A. Authority

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. For the purposes of TSCA, a new chemical substance is one that is not listed in the Master File of the TSCA Chemical Substance Inventory ("the Inventory"), which consists of substances reported under the Inventory Reporting Regulations (40 CFR part 710) of 1977 and also added via Notices of Commencement of Manufacture or Import (NOC)(40 CFR 720.102) from submitters of premanufacture notices (PMN).

B. History/Rationale

In this document EPA is proposing to amend the Premanufacture Notification (PMN) Rule to reduce the costs of administering the New Chemicals Program and to implement other efficiencies for EPA and submitters. A discussion of the basis for these proposed amendments follows:

1. *Submission of correct chemical identities in section 5 notices and Bona Fide Inventory search notices.* Based on the information reported to EPA, each substance in the Inventory is accurately and uniquely identified by a chemical name that is both systematic and descriptive (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name). For each of the substances whose identities have not been claimed as confidential business information (CBI) by its submitter, a Chemical Abstracts Service Registry Number (CASRN) is also assigned to further identify that substance in the Inventory.

Since the compilation of the Inventory in 1979, EPA has routinely conducted Inventory searches to determine whether each substance newly reported in a PMN or a Bona Fide Notice is already listed. Whenever the Agency can quickly determine that a reported substance is already included in the Inventory, a submitter of a Bona Fide Notice does not have to file a PMN. Similarly, rapid searches of the Inventory may preclude submitters of section 5 notices from waiting for PMN review periods to expire. This may result in considerable time and resource savings for both industry and EPA, and eliminate the expenditure of resources to review or estimate the properties of such substances.

For both PMNs and Bona Fide Notices, a submitter must provide chemical identity information that EPA considers sufficient to accurately describe the substance in question. For PMNs, these requirements are specified at § 720.45(a), and the corresponding requirements for Bona Fide Notices are stipulated at § 720.25(b)(2)(i). An accurate chemical identity is not only necessary for determining whether a substance is included in the Inventory, but also to accurately assess the risk of a new substance and ensure that the substance EPA reviews is precisely the substance the submitter intends to manufacture or import.

Over the past 13 years of the PMN program, EPA has spent a considerable amount of time and resources developing the precise chemical identification data on PMN and Bona Fide Notice substances that are necessary for searching the Inventory and accurately assessing risk. The Agency's resource expenditure on a PMN or Bona Fide Notice is significant even when the chemical identity information is reported correctly. However, at least 25 percent of the submitted notices contain errors, discrepancies, or ambiguities in the reported chemical identity information. The process of identifying and notifying submitters of these problems, requesting and receiving acceptable corrections for the originally submitted information, and keeping track of the delays and suspensions of notice reviews during the correction process multiplies the Agency's initial review burden and utilizes an excessive amount of limited Agency resources.

Therefore, the Agency is proposing to require that submitters of section 5 notices and Bona Fide Notices provide for each reported substance the most currently valid CA Index Name or CA Preferred Name that is consistent with TSCA Inventory listings for similar substances, in order to reduce delays caused by incorrect or ambiguous chemical identities, to expedite Inventory searches, and to save resources. EPA believes this proposed requirement would benefit submitters as well as the Agency.

One of the principal benefits of this proposed amendment to submitters of new chemical notices is that the percentage of cases currently delayed or suspended due to chemical identity problems would be significantly reduced, since submitters would have resolved most of the chemical identity problems, discrepancies, and uncertainties before reporting substances to EPA. A lower percentage of cases being delayed or suspended would not only correspond to a reduction in the number of technical inquiries and requests for additional information from EPA, but also decrease the administrative burdens involving suspended submissions that are currently borne by both the chemical industry and EPA. In addition, significant reductions in chemical identity problems and administrative delays would enable the Agency to issue more rapid responses to Bona Fide Notices.

The currently valid CA names to be required up front from submitters under this proposal would almost always be consistent with TSCA Inventory listings for similar substances, since Chemical Abstracts Service (CAS), the authority on CA nomenclature, assisted EPA in developing chemical nomenclature for the Inventory. The Agency has, to a large extent, adopted CAS' nomenclature conventions. Submitters can consequently benefit from this consistency by being able to know before the start of the Notice review period just how the Agency will identify their substances for TSCA purposes. This knowledge would assist PMN submitters who wish to prepare chemical product literature at an earlier time that identifies the substance to potential customers, and in the case of importers, to the U.S. Customs Service. In addition, this information would help reduce the need to submit PMN corrections or chemical identity amendments.

By establishing correct chemical identities before submitting Notices to EPA, submitters could also more capably conduct their own searches in public sources of Inventory data. As a result, they would be able to determine more often when substances are already included in the Inventory, thus avoiding the submission of unnecessary Notices.

Submitters' early knowledge of correct substance identities would also enhance the chemical industry's compliance efforts with TSCA regulations. A number of submitters in the past have at some point found themselves out of compliance with TSCA by failing to submit PMNs or Inventory correction requests for certain substances they incorrectly thought were on the Inventory. The chance of a submitter inadvertently violating TSCA due to his/her confusion about how EPA would identify a particular substance would be largely reduced if submitters knew firsthand how their substances would most likely be identified for Inventory purposes.

EPA would also derive considerable benefits from this proposal. The Agency would no longer have to devote such extensive resources toward determining correct chemical identities and the most appropriate Inventory descriptions of substances reported in PMNs and in Bona Fide Notices. The current resource expenditure, already significant for each notice containing correct chemical information, is multiplied when the chemical identity information provided by submitters is incorrect, incomplete, or ambiguous.

This proposed amendment would also facilitate and lower the Agency's cost of searching the Inventory for newly reported substances. Since the Inventory has been continually developed based on CA nomenclature, Inventory searches would be easier to perform and more likely to identify matching listings with the use of correct CA nomenclature and CASRNs provided by submitters.

In order to reduce the chance that persons would unknowingly submit incorrect chemical names, this proposal would encourage submitters to obtain correct chemical identity information directly from CAS before reporting substances in PMNs and Bona Fide Notices. However, since the proposal allows submitters to obtain the specified chemical names from any source, persons would not be required to obtain this information from CAS.

2. *Revision of the Bona Fide Notice requirements for requesting Inventory searches.* Manufacturers and importers are responsible for determining whether a substance is a new chemical substance under TSCA and therefore whether they are subject to the section 5(a) notice requirements. The published TSCA Chemical Substance Inventory: 1985 Edition and the 1990 Supplement to the 1985 Edition Of The TSCA Inventory can often be used to determine whether specific chemical substances are already included in the non-confidential portion of the Inventory. Computer tapes containing chemical names listed in the Inventory, which are updated on a semi-annual basis and which the public can purchase from the National Technical Information Service (NTIS), can be used as alternatives to the printed Inventory editions for this purpose. In addition, persons may also choose to conduct searches of the non-confidential portion of the Inventory by accessing the services of any of several commercial or government databases containing Inventory substance information. In 1986, EPA discontinued its service of responding to public requests for routine searches of the non-confidential portion of the Inventory. However, the Agency continues to respond to written inquiries regarding complex chemical identification issues or clarification of Inventory nomenclature or listing policies.

Substances for which the chemical identities are claimed as CBI are listed by TSCA accession numbers and generic chemical names in the publicly available Inventory. Each generic name describes a possible set of similar substances in order to serve as a masked identity for a specific confidential chemical substance. If a chemical substance is listed on the public Inventory under a generic chemical name, it is usually difficult for the public to determine whether a specific substance consistent with that generic name is really a new or existing substance under TSCA. It has always been the Agency's responsibility under the statute to protect from public disclosure any information reported under TSCA that submitters claim as CBI. EPA protects each confidential substance identity by publishing only the generic chemical name chosen or agreed to by its submitter.

To enable a person to know if a given substance matches a confidential chemical substance identity listed in the Inventory, EPA established procedures at § 720.25(b) to inform persons whether a substance they intend to manufacture or import is already included in the Inventory, or whether the substance is considered a new chemical substance subject to the section 5(a) notification requirements. Under these procedures, a person requesting this information from EPA first must demonstrate a bona fide intent to manufacture or import the substance by submitting in writing the information required at § 720.25(b)(2). EPA will not honor any other request to search the confidential portion of the Inventory, since EPA can only disclose the existence of a confidential Inventory substance to a third party upon the Agency's receipt of a Bona Fide Notice, as stipulated in the Inventory Reporting Regulations and the PMN Rule, at § 710.7(g)(1) and § 720.25(b)(1), respectively.

Over the past several years, the number of Bona Fide Notices submitted to EPA has steadily increased. Of the Bona Fide Notice substances not found in the Inventory, approximately half have not been subsequently reported in PMNs by the submitters. This phenomenon is unexpected since in the Bona Fide Notice submitters included signed certification statements of their intention to manufacture or import these substances for commercial purposes. Further, there are a growing number of Bona Fide Notices which are found to be incomplete for which submitters fail to subsequently provide complete information, long after EPA notifies them that the minimum information requirements have not been met. These circumstances imply that many Bona Fide Notice submitters may not have a demonstrable intent to manufacture or import these substances.

Although EPA understands that changing business situations can nullify a company's commercial intentions, it is likely that many submitters have reported their bona fide intent prematurely, perhaps before they have sufficiently assessed the technical viability, marketability, or profitability of the substance. The Agency believes that submitters should have reached positive decisions on these and other criteria before genuinely possessing bona fide intentions to commercialize substances. Alternatively, many other submitters may have conditionally intended to commercialize certain substances, depending on whether or not the substances were already included in the Inventory. EPA believes that neither of these circumstances is consistent with a bona fide intent to manufacture or import under TSCA, according to the spirit and intent of §§ 710.7(g)(1) and 720.25(b)(1).

In an attempt to promote the submission of Bona Fide Notices that reflect serious commercial intentions, EPA proposes to amend the PMN Rule and the Inventory Reporting Regulations by revising the requirements for Bona Fide Notices, such that the submitted information would more clearly demonstrate a genuine intention to manufacture or import a given substance for a commercial purpose. The Agency believes that the amended provisions of this proposal represent a well-balanced tradeoff from the existing information requirements and will help to ensure the integrity of the Bona Fide Notice program. The amended provisions would not require submitters to generate any new information that they would not already be likely to know at the time they truly have bona fide intentions. The required information concerns basic business and technical questions that any submitter would have already answered in order to make an informed decision to manufacture or import a substance. If one has not already invested the time and effort to seriously think about and answer the types of questions posed by the amended provisions, the Agency believes that it is highly unlikely that this person has established a bona fide intent to manufacture or import the substance. Thus, the revised provisions should not constitute an increased burden to submitters, since persons with a demonstrable bona fide intent should have already answered these questions before a manufacturing or importing decision is reached, and would be able to benefit from or utilize the information developed and obtained in responding to the questions.

EPA believes that these amended revisions would also improve the Agency's ability to protect the CBI of persons submitting notices under TSCA. It has always been the responsibility of EPA to protect from public disclosure any information reported under TSCA that submitters claim as CBI. According to § § 710.7(g) and 720.25(b), a specific chemical identity listed in the confidential Inventory can only be disclosed to a third party if that person has demonstrated a bona fide intent to manufacture or import the substance for a commercial purpose. Under the present provisions, however, there is the chance that some CBI may be disclosed to Bona Fide Notice submitters that, unknown to EPA, do not have genuine intentions to commercialize substances. Requiring Bona Fide Notice submitters to provide the information requested by the proposed amendments would improve the Agency's ability to protect the CBI of the original submitters of Inventory-listed substances by enabling the EPA to be more selective about which Bona Fide Notice submitters are entitled to receive specific CBI concerning Inventory-listed substances. Consequently, all submitters of PMNs for substances subsequently added to the Inventory or initial Inventory reporting forms could benefit from the resulting enhanced integrity of the Bona Fide Notice program. In addition, EPA would not have to spend significant resources processing notices that do not represent serious commercial intentions.

3. *Amendment of the "Two Percent Rule" for polymers to allow submitters greater flexibility in determining the amount of monomer or other reactant used in the manufacture of a polymer.* The PMN rule requires reporting new polymers on the basis of the amounts of monomers and other reactants used in the reaction, "as charged" to the reaction vessel, and on the dry weight of the polymer manufactured. This approach, which has been in effect since the Inventory reporting regulations were published on December 23, 1977 (42 FR 64572), was adopted because the Agency and the regulated community believed it would be difficult to identify the exact amount of monomers or reactants incorporated in the final polymer. The method of reporting the percent composition of monomers and other reactants "as charged" was viewed as a reasonable approach by chemical and polymer industries.

Due to advanced analytical capabilities developed over the intervening years, certain polymer manufacturers have asked EPA to revise the current "Two Percent Rule" to allow manufacturers the option of determining the amounts of monomers and other reactants that are "in chemically combined form" (incorporated) in a polymer as an alternative to the current practice of requiring reporting based on the amounts added (charged) to the reaction vessel. EPA has considered industry's request and is proposing an amendment to the "Two Percent Rule" to allow this optional reporting procedure. The Agency believes that allowing submitters to report on the basis of amounts incorporated in the polymer could provide a better indicator of physical, chemical, and toxicological properties of polymers. At the same time, this would allow manufacturers greater flexibility in commercial innovation, reduce the number of unnecessary PMNs representing slight variations in polymer composition, and provide greater consistency with international reporting policies. However, as will be described below, the Agency believes there are certain drawbacks and burdens involved in using the method of computation based on incorporated amounts of monomers and reactants.

Under the proposal, manufacturers would still be allowed to use the "amounts charged" method to determine the polymer chemical identity. However, they would also have the option of determining the amounts incorporated in the manufactured polymer. If a company chooses the latter method, EPA believes that it is reasonable to require that such manufacturers maintain in their records analytical data that demonstrate that the amounts of monomers and other reactants incorporated in the manufactured polymer have been accurately determined. This will allow the Agency and the company to verify compliance in a straightforward manner.

EPA recognizes that it was a matter of convenience, rather than one of science, to have thus far required reporting of the amounts of polymer reactants charged rather than the amounts incorporated; the former method requires only "bookkeeping", while the latter may require extensive and expensive analytical work.

After nearly 13 years of experience with the Inventory and PMN reporting rules, however, chemical manufacturers and EPA reviewers have come to realize that the convenience of the "amount charged" approach has drawbacks. In particular, the current approach of identifying many polymers based on monomers and reactants charged to the reactor in quantities significantly larger than the amounts found to be incorporated in the polymer does not properly represent the physical, chemical, and toxicological properties of the polymer.

Under the PMN rule, inefficiently incorporated reactants, reactants charged in large excess, and reactants with other functions besides their reactant ones are often likely to produce reportable polymers, even though the degree of chemical incorporation may be less than or equal to 2 percent. For example, free-radical initiators are often charged in quantities greater than 2 percent in order to start many polymer chains simultaneously and limit the amount of high-molecular-weight polymer produced. Chemical incorporation is inefficient, since many processes other than chain initiation can consume the initiator. The weight of the final polymer that can be attributed to fragments originating from the initiator is often less than two percent by weight. A manufacturer may use many different initiators, all charged at greater than 2 percent, to produce what would be the same polymer if the "incorporated" method of computation was used. The result has been what many manufacturers believe to be excess reporting. Similar problems arise with solvents that have reactive functions, and with neutralizing agents used in excess of their salt-forming capacities. Technical details concerning the "Two Percent Rule" are contained in the paper entitled, "Supporting Document on Computation of Weight Percent of Reactants", which is available in the public docket for this document [OPPTS–50593].

Since the Agency has always believed the actual content of a polymer to be a better indicator of its physical, chemical, and toxicological properties, and settled upon the "amount charged" method of computation as a matter of convenience to industry, it now seems reasonable, in the light of experience, to allow the submitter to optionally use the amounts of monomers and other reactants incorporated, basing the computation on the "imputed charge" as described in the public docket for this document. Therefore, EPA is proposing an amendment to allow optional use of the method to determine percentage composition based on the amounts of reactants present in chemically combined form in the polymer.

The use of the "incorporated" method may have regulatory consequences. The percentage of chemical incorporation of a given reactant, and its "imputed charge" value, could possibly change and result in the need to submit an additional section 5 notice if there was a modification in the manufacturing process, either inadvertent or intentional, even if there was no change in the amounts and identities of the reactants charged to the reaction vessel. Changes in reaction temperature, in the type of catalyst or solvent used, or in the method and/or order of charging the reactants to the reaction vessel are examples of such processing modifications that could possibly affect the degree of chemical incorporation and the "imputed charge" of a given reactant when the charged amounts of reactants remain unchanged. Such a change could hypothetically cause the weight percentage of a minor reactant to increase from less than or equal to 2 percent to above 2 percent, resulting in the automatic requirement that this reactant be included in the Inventory description of the polymer. If this reactant was not originally intended to be included in the polymer identity for TSCA purposes, the processing change could result in the isolation of a different, reportable polymer substance before a section 5 notice was submitted. Consequently, persons could find themselves in violation of the PMN Rule, even though the charged amounts of the reactants had never been changed. Compared to using the "as charged" method, it would be more difficult to prevent this type of potential TSCA violation when the computation method based on incorporation is used. Thus, the potential regulatory liability to industry could increase to the extent that the "incorporated" method is used.

The proposed amendments make clear that an Inventory correction request or a PMN correction request received after the end of the notice review period will not be allowed to cover a new polymer identity that may occur if a processing change causes the "imputed charge" value of a reactant to increase from less than or equal to 2 percent to above 2 percent, when reported percent composition data are based on amounts incorporated. In addition, an Inventory correction request or a PMN correction request received by EPA after the end of the notice review period will not be allowed to cover a change in the TSCA chemical identity of a polymer that may occur if a submitter changes computation methods from the "incorporated" method to the "charged" method, or vice versa. A chemical identity correction request of this type will only be accepted if this request is received by EPA during the applicable section 5 notice review period.

4. *Submission of multiple photocopies of section 5 notices.* EPA, in order to complete its review of each section 5 notice within statutory timeframes, must currently make multiple copies of the PMN form and any accompanying documents to make them available to many technical reviewers in the Agency simultaneously. Making these copies presents difficulties in terms of time and expense to the Agency. For example, some documents received are in non-standard sizes, or have other characteristics that make photocopying difficult. Further, duplication of documents containing CBI requires special handling procedures. These problems lead to inevitable time delays for staff access to documents. Therefore, the Agency is proposing an amendment to require that, in addition to the original copy of the section 5 notice and attachment(s), plus one sanitized copy in which CBI has been deleted, submitters provide EPA with two additional copies of the notice itself that include all continuation sheets for information required in the notice and two additional copies of test data, other data, and any optional information provided as attachments to the notice. EPA believes that this proposal will expedite the PMN review process by allowing reviewers to have access to the documents in a more timely manner and enabling the Agency to shift resources from photocopying services to scientific reviews.

5. *Electronic transmission of section 5 notices.* EPA is proposing to amend § 720.40 to allow reporting via magnetic or other electronic media. Because the Agency is still in the early stages of planning for reception of electronic submissions, it is premature to specify a format. However, the Agency is developing standardized electronic reporting formats and mechanisms such as submission by magnetic tapes, diskettes, and electronic forms. EPA believes that transmission of submissions via electronic media may be quicker than mail, if Electronic Data Interchange (EDI) is adopted as a transmission mechanism. In any case, direct loading of data to a computer system is more efficient than keystroke data entry and ensures data quality. Readers are referred to the **Federal Register** of July 30, 1990 (55 FR 31030) for further discussion of the Agency's policy on electronic reporting.

6. *Standard form for Notices of Commencement (NOC).* Manufacturers and importers are required at § 720.102(b) to submit a NOC to EPA's Document Control Officer within 30 calendar days of the first day of manufacture or import for a commercial purpose. The NOC must be submitted by the PMN submitter. Currently, there is no required reporting form for a NOC. Although EPA provides a voluntary one-page NOC form to submitters with PMN receipt acknowledgement letters, submitters may use any type of letter or form that includes the necessary information. Many submitters routinely use the NOC form, and its use has simplified EPA's receipt of NOC information. In cases where the voluntary NOC form is not used, a significant number of NOCs has created difficulty because they were not recognized as NOCs or contained confusing, missing, or unnecessary information. These problems have resulted in a waste of time and resources for both submitters and EPA personnel who must prepare or review these notices.

EPA is proposing the mandatory use of a one-page NOC form, which the Agency believes would enable all NOC submitters to benefit from the simple, quick NOC process that users of the voluntary form already possess. The required use of such a form would also reduce EPA processing time for NOCs.

C. Other Initiatives Being Considered

The Agency is also considering the following initiatives but is not proposing any additional PMN rule amendments at this time.

1. *Development of requirements that all reporting facilities provide certain information about their geographic location.* To date, for PMN reporting purposes, the Agency has requested the street address of manufacturing, processing, and use facilities under the control of the submitter. The Agency is currently considering developing requirements for an EPA-wide policy which would require that all facilities reporting under any EPA-administered program provide certain information about their geographic location beyond the general street address. This information would assist environmental analyses and allow data to be integrated based on specific locational information. In addition, this approach would promote enhanced use of EPA's extensive resources for cross-media environmental analysis and management decisions. The policy is expected to include: latitude/longitude coordinates, specific method used, a text description of location, and an estimate of accuracy. In order to incorporate this policy into the PMN rule, the Agency has established a workgroup to analyze and propose requirements for this type of specific information in section 5 notices in order to better describe the sites of manufacture and processing of a new chemical substance. The Agency is requesting comments on whether this

information should be included in all section 5 notices and NOCs.

At some future date, the reporting forms for all section 5 submissions may be revised to provide space for the entry of latitude/longitude coordinates for each site of manufacture, importation, or processing under the submitter's control, an indication of the specific method used to determine coordinates, a text description, and an estimate of accuracy. Many companies already report this data under other EPA rules, so providing this data would not be unduly burdensome. Also, it need only be determined once per facility, as the latitude/longitude coordinates presumably wouldn't change. Possible issues include the definition of "facility", as the site of research and development activity may be different than that of manufacture or importation. The possible need to submit additional and/or updated locational data with the NOC is also being studied.

2. *Enhanced review of all confidential claims submitted to the Agency.* The Agency is not proposing to amend the language of the rule pertaining to CBI. However, EPA is giving notice that it intends to review each PMN submission containing a CBI claim and make appropriate determinations on the validity of that claim. This higher level of scrutiny arises from EPA's conclusion that claims for CBI protections are being used indiscriminately without regard to statutory or regulatory restrictions. Because of this, and the need to handle all claimed material as CBI until such claims are verified, withdrawn, or rejected, CBI procedures consume an inordinately large amount of Agency resources that may not be justified.

EPA requests that PMN submitters carefully review and tailor each CBI claim so that only that information which must be confidential is claimed CBI. Submitters should review the statutory CBI provisions contained in TSCA section 14, the general CBI regulatory provisions contained in 40 CFR chapter I, § 2.201, et seq. and the specific PMN CBI regulatory provisions contained in 40 CFR 720.80, et seq. before making any confidentiality claims.

Furthermore, if a submitter chooses to submit a CBI claim in a PMN (or other section 5 notice), the submitter must provide a copy of the submission (including all health and safety data) for the public file with all confidential data deleted as required at § 720.80(b)(2). The failure to comply with this requirement may result in the PMN being declared incomplete in accordance with § 720.65. If the submission is declared incomplete the notice review period for the PMN substance will not begin until the matter is rectified.

The confidentiality provisions of the Rule take into consideration the various requirements of the Act, including the need: (1) To provide nonconfidential material to the public, (2) to give EPA information it needs to respond to Freedom of Information Act (FOIA) requests, (3) to allow persons to assert claims of confidentiality, and (4) to reduce uncertainty about the criteria EPA will use in making confidentiality determinations.

The regulated community is reminded that confidentiality claims asserted in the PMN, including those for chemical identity, will be reviewed in accordance with the procedures set forth in 40 CFR part 2, subpart B.

Concerning chemical identity information included in health and safety studies provided in the PMN, the Agency considers the specific chemical identity always to be part of a health and safety study even when it does not appear in the study. As such, under TSCA section 14(b), EPA may not withhold from the public the data from health and safety studies, including specific chemical identity. The only exception to this policy is if disclosure would reveal confidential processes used in the manufacturing or processing of a chemical substance or mixture, or reveal the proportions of a mixture, or if the specific chemical identity is wholly unnecessary to interpret the health and safety studies. This issue was previously discussed in the final PMN rule of May 13, 1983 (48 FR 21739–21740). Specific language regarding EPA's authority to deny certain claims for confidentiality in a health and safety study appears at 40 CFR 720.90.

Lastly, with regard to CBI claims filed in a NOC, submitters are reminded that under no circumstances may they assert a CBI claim for chemical identity in an NOC if the submitted chemical identity was not claimed CBI in the PMN.

CBI claims asserted for chemical identities submitted in PMNs are not automatically renewed upon Notice of Commencement. EPA, consistent with the NOC regulations at §§ 720.102 and 720.85(b), requires CBI assertions for the chemical identity of a substance to be fully substantiated upon Notice of Commencement. Despite the existence of a CBI claim for chemical identity in the NOC, the chemical identity will be placed on the public Inventory without further notice from EPA if not accompanied by appropriate substantiation of this CBI claim.

II. Discussion of Proposed Amendments

1. *Correct chemical identity.* EPA is proposing to amend § 720.45(a) of the PMN rule to require that submitters of section 5 notices and Bona Fide Notices provide the most currently valid Chemical Abstracts (CA) Index Name or CA Preferred Name for each reported substance that is consistent with TSCA Inventory listings for similar substances. This proposal will require that a currently valid Chemical Abstracts Service Registry Number (CASRN) consistent with this CA Name also be reported for the substance if it already exists for that substance. Under the current PMN Rule, CA nomenclature is indicated as a preferred, but not a required, chemical naming system for PMN reporting. Therefore, submitters can presently identify the PMN substance using alternative nomenclature. The proposal would retain all of the other chemical identity information required at § 720.45(a), including molecular formula and chemical structure information. However, for substances not able to be characterized by a single chemical structure, the submitted structural diagram must be as complete as one can reasonably ascertain. Failure to fully comply with the chemical identification elements of this requirement would result in the notice being declared incomplete by EPA pursuant to § 720.65(c)(1). Such incomplete notices will not be processed or reviewed by the Agency until the chemical identification requirement is satisfied.

Although a CAS Registry Number (CASRN) is not routinely required for a reported substance if a CASRN is not already available, and though the proposal only requires that CASRNs be reported for substances that already have them, EPA strongly recommends that submitters provide CASRNs for all reported substances, especially when the chemical identity is not being claimed as CBI. Having more substances reported with CASRNs would save EPA resources involved with chemical review and Inventory searching. Submitters would provide a CA Index Name or CA Preferred Name that is consistent with the application of the 9th Collective Index (9CI) of CA nomenclature rules and conventions. Whether to report a CA Index Name or Preferred name for a substance depends on how well-defined the chemical identity of the substance is with respect to the existence of a definite molecular formula to describe it; any given substance can only be properly assigned either a CA Index Name or a CA Preferred Name, according to CA nomenclature policies. A CA Index name is assigned to any substance having a known molecular formula, whereas a CA Preferred Name is given to any substance having no definite molecular formula.

For well-defined substances appropriately named using CA Index nomenclature, the specific chemical name chosen as most accurately describing the substance should be based on all that the submitter can reasonably ascertain about its chemical structure, including, where applicable, the degree of structural specificity of the substance (i.e., whether or not specific isomers are intended to be produced in a reaction). For poorly defined substances properly named using CA Preferred nomenclature, the specific name of choice should be based on the submitter's knowledge of the identities of the chemical precursors used, the sources of the reactants (i.e., synthetic, isolated or obtained by processing from certain naturally occurring materials, etc.), the nature of the reaction, and the types of chemical substances constituting the product combination, etc.

For any type of substance reported, one needs to consider whether there are any impurities or byproducts of no commercial value existing in the product composition in order to know which product components are reportable. Impurities or byproducts of no commercial value are not considered reportable substances under TSCA.

When more than one substance results from a reaction, one should determine whether or not the product combination can be viewed for TSCA purposes as a mixture of separately reportable substances. For example, when the intended product combination is known to always be completely composed of a specific number of identified substances that do not react with one another, the combination can be represented as a mixture under TSCA. If this is not the case, then a single chemical name must be used to collectively describe the product combination as one substance.

Concerning the degree of chemical structure information that can be reasonably ascertained for a given substance, submitters should understand that, for TSCA Inventory purposes, all substances are categorized by EPA into two groups according to the degree of certainty about the chemical structure of a substance: Class 1 and Class 2. Class 1 substances are those of precisely known chemical composition for which a single, complete structural diagram can be drawn. Class 2 substances are those having chemical compositions not completely definite or known and, therefore, they cannot be characterized by definite, complete chemical structure diagrams. This proposal would require complete structural diagrams to be provided for Class 1 substances; Class 2 substances would require partial structure diagrams that are as complete as can be ascertained from the Class 2 chemical identity.

This proposed chemical identification requirement could be satisfied if the submitter uses the services of CAS, or the services of another chemical information organization, service bureau, or consultant that the submitter considers capable of generating correct CA names, chemical structure diagrams or molecular formulae where appropriate, and obtaining necessary CASRNs. Alternatively, the submitter could search publicly available databases to retrieve this information, if available, or attempt to generate a name without assistance from another person or organization, if the submitter has sufficient knowledge about CA 9CI nomenclature rules and conventions and about how similar substances should be named for the Inventory. Information describing CA nomenclature rules and conventions can be obtained from CAS. Printed copies of the non-confidential Inventory can be purchased from the Government Printing Office, and computer tapes containing this Inventory information can be purchased from the National Technical Information Service (NTIS).

Regardless of who or which mechanism the submitter uses to determine correct chemical identifications, in order to obtain the currently correct chemical names for substances before reporting them to EPA in section 5 notices or Bona Fide Notices, submitters would be expected to provide the party generating the CA nomenclature with the same chemical identity information that the submitter would have to send to EPA if reporting the substance in a PMN: the same types of information, levels of detail, and degrees of specificity, etc. The party assigning a chemical identity for the purpose of a substance being reported in a PMN or Bona Fide Notice should ensure that the name choice reflects the current CA nomenclature rules and conventions, as well as how similar substances are named for the Inventory, or else the chemical name will be incorrect and the notice could be declared incomplete by the Agency.

In order to meet the proposed requirement, submitters could choose between two optional methods of obtaining the chemical identification of any substance to be reported. These alternatives are described below as Method 1 and Method 2. Submitters would need to indicate in each notice which of the two methods is being used.

Method 1. A submitter using this method would obtain the correct chemical identification directly from CAS prior to submitting a notice to EPA. EPA understands that CAS would set up and operate a special extension of CAS Registry Services for identifying substances to be submitted under TSCA. CAS would provide such services pursuant to arrangements between CAS and persons informing CAS that their substances will be reported to EPA in a PMN, an exemption application, or in a Bona Fide Notice.

Submitters would call or write CAS directly for complete instructions on how to use the special extension of CAS Registry Services for TSCA submitters.

Submitters would be required to provide a copy of the chemical identification report obtained from CAS along with the completed PMN, to verify that they obtained the information directly from CAS.

EPA believes that most submitters would find it advantageous to utilize the services of CAS to meet this requirement. CAS is generally recognized as a world authority on substance identity, and is the ultimate source of the most current and correct CA nomenclature and CAS Registry Numbers. Furthermore, only CAS can generate new CAS Registry Numbers. CAS also developed the nomenclature conventions that are widely used by other organizations throughout the world, and has, since 1977, assisted EPA in the development of the TSCA Inventory and the identification of the Inventory's substances. Many submitters of section 5 notices have been voluntarily obtaining chemical identities from CAS on a routine basis before reporting substances to EPA, thereby benefitting from the early recognition and resolution of chemical identity uncertainties. Furthermore, due to CAS' familiarity with TSCA Inventory and nomenclature policies, EPA believes that chemical names and other chemical identity information assigned by CAS according to this method would almost always be acceptable to the Agency. For these reasons, EPA would strongly recommend that submitters use the services of CAS to satisfy the amended provisions.

Submitters should note, however, that if EPA disagrees with the identification assigned by CAS to a given substance, the Agency reserves the right to be the final authority on how a reported substance should be named and represented for the Inventory. In the rare event EPA does not agree with a chemical name, CASRN, chemical structure or molecular formula provided to a submitter by CAS for TSCA purposes according to Method 1, EPA would work with CAS under an existing technical support contract to either modify the submitted chemical identity when necessary or confirm that the CAS' identification is most appropriate, to ensure that a correct TSCA description is assigned. Using Method 1, there would be no delay or additional cost to the submitter resulting from an identification error by CAS or an identity verification request by EPA, and the review period would continue uninterrupted. EPA would assume responsibility for resolving chemical identity problems occurring when Method 1 is used.

Method 2. Using this method a submitter may obtain the required chemical identity information from any chemical information organization, service bureau, or consultant, from someone on the submitter's staff, or can retrieve or develop the proper CA identifications himself/herself. EPA emphasizes that with this method submitters would need to provide for each substance a correct CA Index or Preferred Name and other chemical identity information, as stipulated under § 720.45(a), that are consistent with Inventory listings for similar substances. It would be the submitter's responsibility under Method 2 to seek the required information from a source the submitter believes to be sufficiently knowledgeable about CA nomenclature conventions and TSCA Inventory listings.

In contrast to Method 1, if a submitter uses Method 2 and reports any chemical identity information that is considered incorrect by EPA, the submitter, not the Agency, would be considered responsible for correcting the chemical identification. EPA would declare such a notice incomplete under § 720.65(c)(1) and would not further process or review it until the submitter provides the fully correct chemical identity information stipulated under the proposed amendment.

Concerning the task of generating correct CA nomenclature, it should be noted that there are many chemical names on the CAS Registry File, particularly CA Preferred Names used for indefinitely described substances, that are not appropriate for uniquely identifying substances on the Inventory. Thus, the application of just the CA nomenclature rules to name a new substance would not guarantee an acceptable chemical name for TSCA purposes. One must also be familiar with the ways in which similar substances are listed in the Inventory.

Regardless which method is chosen by a submitter for properly identifying a reported substance, EPA remains the final authority in naming new substances under TSCA.

In order for submitters to have ample time to become familiar with the process of obtaining chemical identity information from CAS, another chemical information service, or a consulting party for obtaining chemical identifications, it is recommended that submitters contact their chosen source at least 1 or 2 months before the intended submission date of a notice. This is especially important the first time one would have to report under this proposed amendment.

EPA would also caution submitters, however, not to obtain or develop a chemical identification more than several months ahead of when they intend to submit a notice for the substance to the Agency. Due to occasional changes or modifications in CA nomenclature rules and conventions, a CA name that was not recently obtained or developed could represent obsolete CA nomenclature and, therefore, be incorrect or inappropriate for Inventory listing purposes by the time a notice is submitted. The Agency occasionally updates its Inventory listings for existing substances having identities that are affected by revised CA names and changes or modifications in CA nomenclature rules and conventions.

EPA anticipates that many submitters would consider chemical identity information and/or submitter identity information given to CAS (by Method 1) or another third party (by Method 2) to be confidential or trade secret information. It is the position of EPA that no information can qualify as TSCA-CBI until it is received by EPA in a notice reported under a provision of TSCA. Therefore, provisions for handling any confidential information first submitted to CAS or another outside party must be arranged directly with that party. Submitters should not assume that CAS or another outside party is required to adhere to EPA-regulated TSCA-CBI procedures regarding the possession, handling, labelling, storage, tracking, auditing, or other processing of this information.

However, based on currently available information, it is EPA's understanding that any confidential, proprietary, or trade secret information that CAS would receive by Method 1 of this proposal prior to it being reported to EPA would be handled in accordance with the long-established security procedures and policies that CAS has implemented to safeguard any confidential information provided by its customers. A considerable number of large corporations and government agencies appear to have entrusted their confidential substance information to CAS for database building and ongoing search/retrieval projects. There have also been many customers of CAS Registry Services, including submitters of section 5 notices, who have submitted their confidential substance descriptions for assignment of CA names or retrieval of existing CASRNs. Thus, it appears that CAS has had considerable experience in meeting the expectations of outside organizations for protecting their confidential information.

When submitting a chemical to CAS or any other information service, a submitter who indicates that the substance identity is confidential information should be aware that a CASRN for that substance may already exist due to CAS' prior knowledge from another source of the existence of that substance. In such a case, the chemical identity will already have been assigned a CASRN and placed by CAS in its publicly accessible files. Based on its knowledge of CAS' procedures, EPA believes that CAS currently does not place the substance identity into the publicly available CAS Registry File, if not already present there, when a submitter has requested confidential treatment of the information. However, EPA cannot ensure that CAS will continue this practice in the future, nor can EPA ensure how other services handle this type of information. As always, it is ultimately the submitter's responsibility to ensure that the information service it chooses to employ properly protects the confidentiality of its data, and does not utilize this information for its own gain against the wishes of the submitter.

Submitters choosing to use Method 2 should inquire how any other information service, consultant or party receiving their confidential information will handle, protect, and use such information.

Submitters sometimes do not possess complete chemical identity information about a substance they intend to import because of the proprietary chemical identity claims of certain foreign chemical exporters. In such situations, when the foreign exporter will not disclose confidential chemical identity information to the importer who submits a section 5 notice or Bona Fide Notice, submitters would be expected to request that the foreign exporting party follow the procedures specified by either Method 1 or Method 2. The chemical identity information could then be provided directly to EPA by the foreign supplier as a joint submission or as a letter of support which references the importer's notice and PMN User Fee TS Identification Number, according to 40 CFR part 700.

Some submitters of section 5 notices or Bona Fide Notices only know part of the chemical identity of their substances, because they contain or are manufactured from purchased substances having specific chemical identities that may be claimed confidential by the supplier. In such cases, the submitter typically identifies the substance only by tradename, generic chemical name, or in terms of partial composition information listed in a Material Safety Data Sheet (MSDS) or in other product literature.

In this situation, due to the complexity and logistical obstacles to generating correct CA nomenclature and other chemical identity information for a substance based on multiple submissions from different sources, EPA is not asking either the submitter or the chemical supplier to first develop or obtain a correct CA chemical identification of the given substance. Rather, the notice submitter would first report whatever is known about the substance identity to EPA in the section 5 notice or Bona Fide Notice, and would arrange for the supplier of the proprietary substance to send a letter of support containing the specific chemical identity of the supplied chemical directly to EPA, referencing the submitter's notice and User Fee TS Identification Number, if appropriate. The letter of support must contain the same PMN User Fee TS identification number used in the notice, so that EPA can be sure of properly linking the two submissions. EPA would not start the statutory review period until it receives all parts of a joint notice, or all necessary supporting documents providing chemical identity information for a notice.

2. *Revised requirements for Bona Fide Notices.* The Agency is proposing to amend § 720.25 to revise certain provisions of the procedures to establish a bona fide intent. The proposal would reduce or simplify existing analytical information requirements, modify or clarify other existing information requirements, and request three other types of information in notices. This section, with its amendments, would supersede the corresponding section of the Inventory Reporting Regulations [§ 710.7(g)].

Concerning the information currently required at § 720.25(b)(2) to establish a bona fide intent, the proposal would eliminate the need for elemental analysis data [§ 720.25(b)(2)(iv)] while reducing and simplifying the other analytical information requirements [§ 720.25(b)(2)(v)]. Two other parts of this section, regarding chemical identity information, and the description of research and development (R&D) activities and use [§ 720.25(b)(2)(i) and (iii), respectively] would be modified and/or clarified. There are three new information requirements that ask about the most probable manufacturing site and process to be used, as well as an approximate date when the submitter would be likely to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that the proposal represents a balanced trade-off of requirements between the existing and amended provisions, which will enable persons to better demonstrate a bona fide intent while the Agency is better able to protect the CBI of the original submitters of Inventory substances. The additional information or data requested in the proposed amendment is easily ascertainable by the submitter, and would likely have been already determined by the time the submitter has a bona fide intent to manufacture or import a substance for a commercial purpose. Persons who have not obtained the information or made decisions about the substance requested by the proposed requirements would not appear to be at the proper commercial product development stage to have a true bona fide intent concerning this substance. According to § 720.25(b)(2)(i) of the proposed amendments, submitters of a Bona Fide Notice must provide, as stipulated in the amended provisions of § 720.45(a), a currently correct CA Index Name or CA Preferred Name, whichever is appropriate, a currently correct CASRN if the substance already has a CASRN assigned to it, plus a molecular formula and a complete or partial chemical structure diagram if they are known or reasonably ascertainable, as stated earlier in this Unit of the preamble. Having the currently correct CA identification for a substance is important to EPA, because the reporting of incorrect, inconsistent, ambiguous, or obsolete chemical names, molecular formulae or chemical structure information, or names that are not CA Index or CA Preferred Names, causes extra resources to be spent by EPA establishing the best descriptions for substances under TSCA, searching the Inventory, and performing risk assessments. Failure to fully comply with the chemical identification elements of this requirement would result in the notice being declared incomplete by EPA.

The proposed amendment would modify the current requirement for a description of R&D activities conducted to date on the substance and the purpose for manufacturing or importing it [§ 720.25(b)(2)(iii)]. Since two different types of information are requested in this section and many submitters have in the past inadvertently omitted one of them in their notices, EPA proposes to make the requirements clearer by separating its requests for descriptions of R&D activities and purpose for which the submitter will manufacture or import the substance into different parts of the amended rule text [§ § 720.25(b)(2)(iii) and 720.25(b)(2)(iv), respectively]. In § 720.25(b)(2)(iii)(A), EPA elaborates on its information request by listing some of the general types of R&D activities that should be reported. In addition, the year in which R&D was started by the submitter on the substance is also requested. EPA believes that these modifications will serve to better enable the submitter to indicate the scope and length of its commitment towards developing the substance for commercial use. EPA would prefer that this information be briefly stated in a few sentences.

In § 720.25(b)(2)(iii)(B), EPA would provide an alternative reporting requirement for importers who do not perform R&D activities on the substance and have no knowledge of R&D activities that may have been conducted outside of the United States. Such importers would be allowed, in lieu of presenting research or development information, to indicate for how long, and in which country, a given substance has been in commerce outside of the United States, as well as to state whether they believe that the substance has already been used outside of the United States for the same commercial application(s) intended by the submitter. This alternative requirement would be similar to the current, informal EPA practice allowing such a prospective importer to satisfy § 720.25(b)(2)(iii) by providing certain information on foreign commercial activity of the substance.

In 40 CFR 720.25(b)(2)(iv), for clarity, the term "purpose" has been replaced by the phrase "major intended application or use" because some submitters have misunderstood the type of information being requested and have not provided a description of the intended end use.

EPA is proposing to simplify the analytical data requirements at § 720.25(b)(2)(v) to reflect the current practice of most submitters to provide an infrared spectrum to characterize the chemical substance. The proposal will require an infrared spectrum, unless infrared analysis is not suitable for the substance or does not yield good structural information for the substance. As an alternative in such cases, the proposal requires one to submit a spectrum or instrumental readout from another method of spectral or instrumental analysis that yields better structural or compositional information.

Section 720.25(b)(2)(vi) of the proposed amendment consists of a minor but new information requirement to estimate the month and year in which the person would intend to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that a Bona Fide Notice submitter would have already thought about a future timeframe for reporting the substance under section 5 if it is a new chemical substance. The intent of this requirement is not to legally bind the submitter to a certain date for submission of a PMN. However, the information would be one of many factors which will help EPA to determine whether the person has demonstrated a bona fide intent. Also, if EPA could anticipate how many Bona Fide Notice submitters may report their substances in PMNs in a given year, the Agency may be able to better allocate resources for reviewing them.

Section 720.25(b)(2)(vii) of the proposal is a new requirement requesting the address of any one site under the submitter's control where the substance is anticipated to most likely be manufactured or processed in the future for a commercial purpose.

Section 720.25(b)(2)(viii) of the proposal is a new requirement by which a manufacturer must briefly describe the most probable manufacturing process that the submitter would use to produce commercial quantities of the substance. Importers would have the alternative of briefly describing how the substance would most likely be processed or used at a site controlled by the submitter, or if no processing or use of the substance is anticipated to occur at a submitter-controlled facility, a submitter could just state that such commercial activity is not expected to occur. This information is not intended to be legally binding, but rather to assist EPA in determining whether the submitter appears to have serious intentions for commercializing the substance in question.

The Agency would also like to make clearer the procedure a submitter intending to import the substance should use to allow a foreign manufacturer or supplier to provide confidential chemical identity information directly to EPA in order to complete a notice when the chemical identity is considered the proprietary information of the foreign party and cannot be disclosed to the submitter. As indicated by the proposed modification to § 720.25(b)(3), it is the importer's responsibility to make all of the contacts and arrangements with the foreign party for the timely transfer of this information to EPA in such a manner that EPA can easily link the information to the importer's notice.

The proposed amendments to § 720.25(b)(3) also indicate chemical identification requirements when submitters of substances to be manufactured or imported cannot possess full knowledge of the chemical identity of the substance to be reported because a purchased reactant or component used in the reported material has a confidential chemical identity that is the proprietary information of the supplier. Only in such a situation involving confidential trademarked or tradenamed reactants or starting materials, due to the complexity and logistical obstacles involved in generating correct CA identifications for substances based on multiple submissions from different sources, does the proposal allow the notice submitter to report directly to EPA all that is known about the substance identity. However, as previously discussed in Unit II of this preamble, the submitter must coordinate with the supplier to ensure that the remaining specific chemical identity information is sent by the supplier directly to EPA in a timely manner, in order to complete the notice and initiate review by EPA.

Further, EPA is proposing language in § 720.25(b)(9) to describe what constitutes an incomplete Bona Fide Notice, and how EPA would handle one. When an incomplete notice is received and identified as such, EPA will immediately return the notice directly to the submitter. The submitter would then have to resubmit the completed notice, in its entirety, in order to have EPA perform the Inventory search and respond to the notice.

3. *"Two percent rule" for polymers.* Under this proposal, the Agency would amend § 720.45(a) of the PMN rule and §§ 723.250(f)(2)(iv) and 723.250(o)(1) of the Polymer Exemption rule to allow a manufacturer the option of reporting monomers and other reactants on the basis of (a) the "amount charged" to the reaction vessel, which is the sole method currently allowed, or (b) the amount reacted and incorporated in the manufactured polymer. The proposed changes to § 723.250 are included in another action published elsewhere in this issue of the Federal Register. The current language in this regulation does not specify a basis for determining the percentage of monomer or reactant. However, as discussed earlier in this notice (Unit I.B.3 of this preamble), it has been EPA policy to require the percent (by weight) of a monomer or other reactant to be determined on the basis of the amount charged to the reactor, as a percentage of the dry weight of the manufactured polymer.

Concerning the use of the "incorporated" method, the percentage of chemical incorporation of a given reactant, and its "imputed charge" value, could possibly change if there was a modification in the manufacturing process, such as a change in reaction temperature or the method and/or order of charging reactants, etc. Such changes, which could be inadvertent as well as intentional, could possibly cause the weight percentage of a minor reactant to change from less than or equal to 2 percent to above 2 percent. If this reactant was not originally intended to be included in the polymer identity for TSCA purposes, the processing change could result in the isolation of a different, reportable polymer substance before a section 5 notice was submitted.

EPA emphasizes that a request to correct an initial Inventory reporting form (an Inventory correction request) or a section 5 notice (a PMN correction request) for which the review period has expired will not be accepted for the purpose of adding to the Inventory or to the Agency's PMN substance database, respectively, a new polymer identity that may occur if (1) a processing change causes the "imputed charge" value of a reactant to increase from less than or equal to 2 percent to above 2 percent, when reported percent composition data is based on amounts incorporated, or (2) the submitter changes from the "incorporation" to the "charged" computation method, or vice versa. If a different polymer is isolated under these circumstances that is not already in the Inventory, that polymer is subject to the PMN reporting requirements before it can be manufactured or imported for distribution in commerce.

4. *Multiple photocopies of section 5 submissions.* This proposed amendment to the PMN rule consists of a change in submission criteria at § 720.40(d)(2) that will require submitters to provide EPA

with one original and two copies of section 5 notices, in addition to a sanitized copy in which CBI has been deleted. Submitters would also be required to provide one original and two additional copies of any test data.

5. *Electronic transmission of section 5 notices*. This proposed amendment to the PMN rule at § 720.40(a) is designed to promote the use of electronic media for data submission. EPA is investigating the use of magnetic tape, floppy diskettes and electronic data interchange as means to submit information. In making this proposal, EPA is participating in a nation-wide trend toward reducing reliance on paper for information transfer. EPA has already taken steps in TSCA and other program areas to encourage electronic submission, and wishes to expand this effort to the PMN review program.

Information may be submitted electronically (on magnetic or other media) once EPA publishes a format for electronic submissions. Pilot projects using electronic submissions for the Inventory Update Rule and Toxic Release Inventory Rule will be used as a base line for enhancements to developing a standard Agency-wide format. Such submissions must meet this format and all other media specifications published by EPA. Persons submitting electronically must still complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25; if attachments are submitted, the List of Attachments and all attachments must be submitted on paper.

6. *Mandatory form for Notice of Commencement (NOC)*. Under the proposal, all PMN submitters would be required to use a standard one-page form to submit a NOC. In addition, the NOC information requirements at § 720.102(c), have been slightly expanded; however, all information can be provided on the one-page standard form.

The proposal would require every NOC received at EPA on or after the effective date of the final rule amendments to contain the required information on the new standard NOC reporting form. This form would automatically be provided to each PMN submitter as an attachment to EPA's acknowledgement of PMN receipt letter sent to submitters shortly after each PMN is received. Many submitters currently use a similar, voluntary form mailed to them, to report the required information.

The current NOC information reporting requirements include specific chemical identity, PMN number, the date when manufacture or import commences, and substantiation of CBI claims for chemical identity. This CBI substantiation is required by the time a NOC is submitted. Failure to provide written substantiation of a confidentiality claim for the chemical identity with the NOC, as required under 40 CFR 720.85, may result in a waiver of the confidentiality claim and disclosure of the chemical identity to the public.

Some additional information is required under the proposal to make it easier for EPA not only to process NOCs but to verify that submitters are reporting information in NOCs that is consistent with specific PMNs for the substances in question. EPA expects that this additional information would occasionally identify cases in which submitters mistakenly reported the wrong PMN case number in the NOC, or erroneously listed a substance identity that is very different from that which they intended to commence. In addition, the new requirements would enable submitters to provide certain updated information that may no longer be correct or appropriate as reported in the PMN.

In addition to the current NOC reporting requirements, EPA is proposing to amend NOC reporting to require that complete submitter identity information, including the name and address of the submitter, the name and dated signature of the authorized official, and the name and phone number of a technical contact in the United States, be provided on the form.

The amended NOC provisions would also now require a generic chemical name, which could either be the same generic name provided in the PMN, a generic name as revised by the submitter, as long as it masks no more of the chemical identity than the original generic name provided, or an improved or corrected generic name agreed to via negotiation with EPA.

Since one's intention to initially manufacture or import a substance sometimes changes between the time of PMN submission and NOC, the proposal requires submitters to specify in the NOC whether commencement occurred via manufacture or importation and the address of the site(s) under the control of the submitter at which manufacture commenced.

In addition to reasserting a CBI claim for chemical identity, the proposal requests a clear indication of whether the submitter identity is also claimed as confidential. Confidentiality claims can only be asserted by the submitter if the corresponding claims were made in the PMN.

All of the above proposed amendments to information requirements for NOCs involve information that the submitter already would know by the time manufacture or importation of the substance has commenced. Consequently, providing this information in the NOC would not constitute a significant reporting burden. EPA will consider an NOC incomplete if it is not submitted on the new form with all the required information.

III. Alternatives Considered

1. *Correct chemical identity*— a. *Alternative 1*. One alternative proposal being considered by EPA consists of requiring all submitters of section 5 notices and Bona Fide notices to obtain the correct chemical identity information directly from the Chemical Abstracts Service (CAS) using Method 1 as discussed in Unit II of this preamble.

EPA is considering this alternative proposal because the Agency believes that too much incorrect and incomplete chemical identity information may continue to be submitted in notices under the Agency's preferred proposal which allows a submitter to use other sources for chemical identity information (Method 1 or Method 2). The Agency believes that the level of EPA resource savings expected from mandatory use of the special extension of CAS Registry Services, which would require only minimal Agency screening and review of chemical identities in notices, cannot be achieved if submitters do not obtain substance identifications directly from CAS. Although EPA expects that most submitters will use CAS Registry Services for the reasons stated in Unit II of this preamble, the Agency realizes that in cases where submitters use alternative sources, EPA staff would have to invest significant resources to screen the quality of information. Further, the Agency would like to minimize the administrative burdens involved with notice suspensions, delays, submitter contact, and additional paperwork needed to properly amend notices that may be determined to be incomplete on the basis of incorrect chemical identity.

b. *Alternative 2*. This alternative is the same as EPA's preferred approach, allowing the use of Method 1 or Method 2 to obtain correct chemical identity information, except that submitters would have to obtain and report CASRNs for all substance identities that they do not claim as CBI, in addition to reporting CASRNs for all substances to which CASRNs have already been assigned.

Although having more substances reported with CASRNs under this alternative would save some EPA resources involved with chemical review and Inventory searching, the Agency recognizes that this approach could inadvertently discourage submitters from reporting substances without CBI claims for chemical identity as often as they should. Since EPA encourages and expects submitters to use CBI claims only when necessary, the Agency does not favor the use of this approach.

2. *"Two Percent Rule" for polymers—a. Alternative 1.* Retain the current "two percent rule" based on the weight of monomer or other reactants "charged" to the reactor.

EPA considered this alternative because it is much easier to calculate the weight of monomer or reactant "charged" to the reactor instead of analytically determining the actual composition of the polymer. The typical percentages of monomers or other reactants "as charged" could be directly calculated from batch records, and these calculations could be routinely made, if necessary, by people who do not have scientific training. The simplicity of this type of calculation also reduces the burden of chemical identity review for the Agency.

In addition, EPA and industry have been using this method of calculation and Inventory listing for 13 years. Consequently, Inventory consistency would be enhanced concerning what polymer listings actually represent.

This method also provides less chance of error, which would prevent significant increases in EPA's enforcement/compliance monitoring burden and liability to industry. By using the percent incorporated method, submitters could inadvertently fail to comply with section 5 of TSCA due to some processing change (other than the amounts of charged reactants) varying the incorporated percentages. For example, if the percent of a certain monomer incorporated in the polymer was determined to be just slightly under 2 percent, the monomer's percent incorporation could possibly increase above 2 percent due to some processing change, such as a modest variation in reaction temperature. If the submitter had reported that this monomer was not to be included in the chemical identity of the polymer, he/she would be in violation of the PMN Rule whenever the percent incorporation of that monomer exceeded 2 percent, if the new chemical identity including that monomer is not already in the Inventory. Such a technical violation of TSCA would not be easy to prevent or detect.

The Agency also believes that this method correlates reasonably well with the percent incorporation of most monomers.

However, the Agency is aware that the current method of reporting polymers provides industry with less flexibility and innovation capabilities since it may require PMN reporting for even minor changes in manufacturing processes. There may be relatively poor correlation between the percent charged versus incorporation, particularly for non-monomer reactants. Bases, acids, or other reactants are often charged at much more than stoichiometric amounts in order to achieve a certain pH, to drive the reaction to completion, or to generate more polymer chains with lower molecular weight, etc. Finally, EPA believed that it should take industry's request for revision of the "Two Percent Rule" under consideration, in line with the advances in analytical techniques for determining percent "incorporated", the desire to "harmonize" to the extent reasonable the Agency's polymer reporting requirements with other international reporting requirements, and the Agency's belief that allowing percent "incorporation" more accurately reflects the physical, chemical, and toxicological properties of polymers.

b. *Alternative 2.* Change to a 5 percent rule based on the amount charged.

EPA considered this option because it accommodates most typical use levels of reactants such as free radical initiators, chain transfer agents, salt forming reactants, etc. It would also allow industry more flexibility to modify existing polymers without submitting PMNs, thereby, significantly reducing EPA's reviewing burden. Historically, industry originally requested this level during the development of the Inventory reporting regulations.

EPA believes that this option would require that the Agency review the toxicological implications resulting from this alternative since the potential for chemically modifying polymer structures is increased somewhat when a monomer or reactant is increased from 2 to 5 percent, causing a larger potential variation in physical and chemical properties. Further, this method may allow monomers with reactant functional groups at levels that currently concern the Agency, e.g., cationic polymers. This method would not correlate chemical identity with percent incorporation as well as the EPA proposed amendment. Finally, this approach would not be consistent with the Agency's goal of harmonizing to the extent possible EPA's method of reporting polymers with other international reporting practices.

EPA requests comments on these alternatives, in particular, on the difficulty of obtaining accurate, reliable data using the percent "incorporated" method and the percentage of polymer submissions in which this method would be used.

IV. Economic Analysis

EPA has evaluated the potential costs of the proposed amendments for potential submitters of section 5 notices. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50593).

The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These proposals would amend the Polymer Exemption Rule, the Low Volume Exemption Rule, and the Expedited Follow-up Rule. As these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

The costs and benefits associated with this proposed amendment are partially quantified; many of the benefits are unquantified but are considered to be of significant importance. Considering only the quantified costs and benefits, there is a slight cost increase for industry and a slight cost savings for government. Assuming either 1,000, 2,000, or 3,000 annual section 5 submissions, the savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	(-0.1)	0.1
2,000	(-0.3)	0.2
3,000	(-0.4)	0.2–0.3

The aspects of the proposed amendment that have the greatest quantified cost impact on industry are the change in requirements for a bona fide TSCA Inventory search request and the requirement to provide correct chemical identification. Both requirements are expected to enable the Agency to more effectively utilize resources, thereby providing better service to industry. One of the major unquantified benefits of this proposal is the flexibility allowed industry by the changes to the "Two Percent Rule," which allows industry to make minor compositional changes, providing more manufacturing control to the submitter and possibly reducing the number of section 5 submissions. Another unquantified change is the requirement to use a standardized form for notice of commencements (NOCs), the impact of which is expected to be minimal as most submitters are already using the form.

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50593). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the Polymer Exemption notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012.

The public reporting burden for this collection of information is estimated to vary from 18 to 21 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 720

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Recordkeeping and reporting requirements.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, part 720 is proposed to be amended as follows:

PART 720 — [AMENDED]

1. The authority citation for part 720 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2613.

2. Section 720.25 is amended by revising paragraphs (a), (b)(1), (2)(i), (2)(iii), (2)(iv), (2)(v), (3), and by adding paragraphs (b)(2)(vi), (2)(vii), (2)(viii), and (b)(9) to read as follows:

§ 720.25 Determining whether a chemical substance is on the Inventory.

(a) A new chemical substance is any chemical substance that is not currently listed on the TSCA Chemical Substance Inventory.

(b)(1) A chemical substance is listed in the publicly accessible Inventory by a specific chemical name (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name) and a Chemical Abstracts Service (CAS) Registry Number if its identity is not confidential information. A confidential chemical substance, on the other hand, is listed in the public Inventory by a TSCA Accession Number and a generic chemical name that masks the specific substance identity. The confidential substance is listed by its specific chemical name only in the confidential portion of the Inventory. A person who intends to manufacture or import a chemical substance not listed by specific chemical name in the publicly available Inventory may ask EPA whether the substance is included in the confidential Inventory. EPA will answer such an inquiry only if EPA determines that the person has a bona fide intent to manufacture or import the chemical substance for commercial purposes.

(2) * * *

(i) The specific chemical identity of the substance that the person intends to manufacture or import, using the most current, correct Chemical Abstracts (CA) name and the other correct chemical identity information stipulated in § 720.45(a).

* * * * *

(iii)(A) A brief description of the research and development activities conducted to date, including the year in which the person first started to conduct research or development activity on this substance, and the general types of research and development activities conducted thus far (e.g. synthesis, substance isolation/purification, formulating, product development, process development, end-use application, toxicity testing, etc.). The person must also indicate whether any pilot plant or production-scale plant evaluations have been conducted involving the manufacture or processing of this substance.

(B) If an importer is unable to provide the information requested in paragraph (b)(2)(iii)(A) of this section from the foreign manufacturer or supplier, the following information may be submitted:

(*1*) A brief statement indicating how long the substance has been in commercial use outside of the United States,

(*2*) The name of a country in which it has been commercially used,

(*3*) Whether or not the submitter believes that the substance has already been used commercially, in any country, for the same purpose or application that the submitter is intending.

(iv) A specific description of the major intended application or use of the substance.

(v) An infrared spectrum of the substance, or alternative spectra or other data which identifies the substance if infrared analysis is not suitable for the substance or does not yield a reasonable amount of structural information. When using alternative spectra or instrumental analysis, submit a spectrum or instrumental readout verifying use of that method.

(vi) The estimated date (month/year) in which the person intends to submit a Premanufacture Notice (PMN) for this substance if EPA informs the notice submitter that the substance is not on the Inventory.

(vii) The address of the facility under the control of the submitter at which the manufacture or processing of the substance would most likely occur.

(viii)(A) For substances intended to be manufactured in the United States, a description of the most probable manufacturing process that would be used by the submitter to produce the substance for non-exempt commercial purposes.

(B) For substances intended to be imported, a brief description of how the submitter is most likely to process or use the substance for a commercial purpose. If the importer does not expect to process or use the substance at any facility under his control, a statement to this effect should be included along with a description of how the substance will be processed or used at sites controlled by others, if this information is known or reasonably ascertainable.

(3)(i) If an importer cannot provide all the information required by paragraph (b)(2) of this section because it is claimed confidential by its foreign manufacturer or supplier, the foreign manufacturer or supplier may supply the required information directly to EPA and reference the importer's notice. If the appropriate supporting document from the foreign party is not received within 30 days after EPA receives the submitter's notice, the notice will be considered incomplete.

(ii) If a submitter cannot provide all of the required information as stipulated in § 720.45(a) because the new chemical substance is manufactured using a reactant that has a specific chemical identity claimed as confidential by its supplier, the notice must contain chemical identity information that is as complete as can be known by the submitter. In addition, a letter of support for the notice must then be sent to EPA by the chemical supplier of the confidential reactant, providing the specific chemical identity of this proprietary reactant. The letter of support must reference the submitter's notice, including the PMN User Fee Identification Number chosen by the submitter for this notice, if applicable. If the appropriate supporting document from the supplier is not received within 30 days after EPA receives the submitter's notice, the notice will be considered incomplete.

* * * * *

(9) If the required chemical identity information has not been reported correctly or completely in the notice (except as provided under paragraph (b)(3)(ii) of this section) or if any other required data or information has been omitted or is incomplete, EPA will consider the whole notice to be incomplete. As soon as an incomplete notice is identified as such by EPA, the Agency will immediately return the notice directly to the submitter. The submitter must then resubmit the whole, completed Bona Fide Notice to EPA in order to have the Agency perform the desired Inventory search and respond to the notice.

* * * * *

3. Section 720.40 is amended by revising paragraphs (a) and (d) to read as follows:

§ 720.40 General.

(a) *Use of the notice form; electronic submissions.* (1) Each person who is required by subpart B of this part to submit a notice must complete, sign, and submit a notice containing the information in the form and manner specified in this paragraph. The information submitted and all attachments (unless the attachment appears in the open scientific literature) must be in English. All information submitted must be true and correct.

(2) Information may be submitted on paper, or electronically, as follows:

(i) Information submitted on paper must be submitted in the form and manner set forth in EPA Form No. 7710–25, which is available from the Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Information which is not submitted on a photocopy of the form (e.g., on a form created by commercial form-making software) must be in a format pre-approved by the Agency.

(ii) Information may be submitted electronically (on magnetic or other media) if and when EPA has published a format for electronic submissions. Such submissions must meet this format and all other media specifications published by EPA. Persons submitting electronically must still complete and submit on paper the Certification and Submitter Identification sections of Form 7710–25; if attachments are submitted, the List of Attachments and all attachments must be submitted on paper.

* * * * *

(d) *General notice requirements.* (1) Each person who submits a notice must provide the information described in § 720.45 and specified on the notice form, to the extent such information is known to or reasonably ascertainable by the submitter. In accordance with § 720.50, the notice must also include any test data in the submitter's possession or control, and descriptions of other data which are known to or reasonably ascertainable by the submitter and which concern the health and environmental effects of the new chemical substance.

(2) A person who submits a notice to EPA under this part must provide to EPA an original notice and two copies of the notice itself and two additional copies of all test data and any optional information attached to the notice form.

4. Section 720.45 is amended by revising paragraph (a) to read as follows:

§ 720.45 Information that must be included in the notice form.

* * * * *

(a)(1) The specific chemical identity of the substance that the person intends to manufacture or import, which includes the following:

(i) The currently correct Chemical Abstracts (CA) name for the substance, based on the 9th Collective Index (9CI) of CA nomenclature conventions, and consistent with listings for similar substances in the TSCA Chemical Substance Inventory (the Inventory). For each substance having a chemical composition that can be represented by a specific, complete chemical structure diagram (a Class 1 substance), a CA Index Name must be provided. For each chemical substance that cannot be fully represented by a complete, specific chemical structure diagram (a Class 2 substance), or if the substance is a polymer, a CA Index Name or CA Preferred Name must be provided (whichever is appropriate based on Chemical Abstracts Service (CAS) 9CI nomenclature rules and conventions),

(ii) The currently correct CAS Registry Number (CASRN) for the substance if a CASRN already exists for the substance in the CAS Registry File,

(iii) The correct molecular formula, for each Class 1 substance and any Class 2 substance for which a definite molecular formula is known or reasonably ascertainable,

(iv) A complete, correct chemical structure diagram for each Class 1 substance; a correct partial chemical structure diagram for a Class 2 substance or polymer, as complete as can be known, if one can be reasonably ascertained.

(2) For polymers, the submitter must also report the following:

(i) The specific chemical name and CAS Registry Number (if available) of each monomer and other reactant used, at any weight percent, to manufacture the polymer. Tradenames or generic names of chemical reactants or monomers are not acceptable as substitutes for specific chemical names.

(ii) The typical percent of each monomer and other reactant in the polymer (by weight percent of total polymer), and the maximum residual amount of each monomer present in the polymer.

(iii) The reactants used at 2 weight percent or less (based on the dry weight of the polymer manufactured) that should be included as part of the polymer description on the Inventory, where the weight percent is based on either (A) the weight of reactant charged to the reaction vessel, or (B) the weight of chemically combined (incorporated) reactant in the polymer.

(iv) The submitter must specify which method of computation is used; that is, whether the calculation is based on the weight of reactants "as charged" or "as incorporated." If the submitter specifies on the basis of incorporated weights of reactants in the polymer, analytical data to support this determination must be maintained at the site of manufacture. The "percent (by weight)" of a monomer or other reactant is the weight of the reactant expressed as a percentage of the weight of the polymeric chemical substance manufactured. If the submitter uses the "as charged" method of computation, the weight of a reactant consists of its full amount charged to the reaction vessel. If the optional "incorporated" method of reporting is used, the weight of a reactant is the minimum weight of that reactant required by theory to account for the actual weight of reactant or reactant unit chemically incorporated into the polymeric substance manufactured.

(v) Measured or estimated values of the minimum number-average molecular weight of the polymer and the amount of low molecular weight species below 500 and below 1,000 molecular weight, with a description of how the measured or estimated values were obtained.

(3) Submitters must use one of the following two methods to develop or obtain the specified chemical identity information and identify the method used in the notice:

(i) *Method 1.* Using this method, the submitter would obtain the correct chemical identity information required by § 720.45(a)(1) directly from CAS prior to submitting a notice to EPA.

(ii) *Method 2.* A submitter using this method can obtain the correct chemical identity information required by § 720.45(a)(1) from any source, as long as the information is consistent with Inventory listings for similar substances. This section of the notice will be incomplete according to § 720.65(c)(1)(vi) if the submitter uses Method 2 and any chemical identity information is considered incorrect by EPA.

(4) If an importer submitting the notice cannot provide all the information stipulated at § 720.45(a) because it is claimed as confidential by the foreign manufacturer or supplier of the substance, the importer must have the foreign supplier follow the procedures at § 720.45(a)(3) and provide the correct chemical identity information stipulated in § 720.45(a) directly to EPA in a joint submission or as a letter of support to the notice, which clearly references the importer's notice and PMN User Fee Identification Number. The statutory review process will start upon receipt of complete, correct information from the foreign party.

(5) If a manufacturer cannot provide all the information stipulated in § 720.45(a) because the new chemical substance is manufactured using a reactant having a specific chemical identity claimed as confidential by its supplier, the manufacturer must submit a notice directly to EPA containing all the information known by the manufacturer about the chemical identity. In addition, the supplier of any confidential reactant must submit a letter of support directly to EPA providing the specific chemical identity of the confidential reactant. The letter of support must reference the notice submitter's name and PMN User Fee Identification Number. The statutory review period will commence upon receipt of both the notice and letter of support.

5. Section 720.80 is amended by revising paragraph (b)(2) to read as follows:

§ 720.80 General provisions.

* * * * *

(b) * * *

(2) If any information is claimed as confidential, the person must submit two copies of each notice form (or electronic submission) and any attachments.

(i) One copy of the form (or electronic submission) and attachments must be complete. In that copy, the submitter must designate that information which is claimed as confidential in the manner prescribed on the notice form (or in EPA's electronic submission instructions).

(ii) The second copy must be complete except that all information claimed as confidential in the first copy must be deleted. EPA will place the second copy in the public file. Once this copy has been in the public file for more than 30 days, any information contained within the copy will be presumed to be in the public domain.

(iii) If the submitter does not provide the second copy, or information in a health and safety study (except data claimed as confidential in accordance with § 720.90(b)) is deleted from the second copy, the submission will be deemed incomplete and the notice review period will not begin until EPA receives the second copy or the health and safety study information is included, in accordance with § 720.65(c)(1)(vi).

* * * * *

6. Section 720.102 is amended by revising paragraphs (c) to read as follows:

§ 720.102 Notice of commencement of manufacture or import.

* * * * *

(c) *Information to be reported on form.* (1) The notice must be submitted on EPA (Form 7710—) (Form number to be assigned), which is available from the Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The form must be signed and dated by the submitting person or authorized official. All information specified on the form must be provided. The notice must contain the following information:

(i) The specific chemical identity.

(ii) A generic chemical name (if the chemical identity is claimed as confidential by the submitter).

(iii) The premanufacture notice (PMN) number.

(iv) The date when the submitter commenced manufacture or import for a commercial purpose (indicating whether the substance was initially manufactured in the United States or imported).

(v) The name and address of the submitter.

(vi) The name of the authorized official.

(vii) The name and phone number of a technical contact in the United States.

(viii) The address of the site(s) under the control of the submitter where commencement of manufacture occurred.

(ix) Clear indications of whether or not the chemical identity and/or the name of the submitter is presently claimed as confidential by the submitter.

(2) If the submitter claims the chemical identity confidential, and wants the identity to be listed on the confidential Inventory, the claim must

be reasserted and substantiated in accordance with § 720.85(b). Otherwise, EPA will list the specific chemical identity on the public Inventory. Submitters who did not claim the chemical identity or submitter identity to be confidential in the PMN cannot claim either of these identities as confidential in the Notice of Commencement.

[FR Doc. 93–2774 Filed 2–5–93; 8:45 am]

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40 CFR Part 721

[OPPTS–50595; FRL3890–3]

RIN 2070–AC14

Toxic Substances; Significant New Use Rules; Proposed Amendment to Expedited Process for Issuing Significant New Use Rules; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 5(a)(2) of the Toxic Substances Control Act (TSCA), EPA is proposing an amendment to the notification requirements for selected new chemicals (40 CFR 721.170(c)(1)) that would authorize EPA to impose any of the provisions in 40 CFR part 721 subpart B and other provisions not included in subpart B using expedited rulemaking procedures to promulgate "significant new use" rules (SNURs) for substances not subject to section 5(e) Orders. Currently, the notification requirements in § 721.170(c)(1) limit the type of activities which EPA can designate as a significant new use by expedited rulemaking without first issuing a section 5(e) Order. This proposed amendment would allow EPA to promulgate expedited SNURs for certain substances without issuing a section 5(e) Order for the substance, and thereby facilitate EPA's ability to efficiently and expeditiously regulate new chemical substances.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (Phone: 202–260–1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS–50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE–G–004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS–50593, 50594, and 50596, is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publcation in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect and ASCII.

SNURs require persons to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities designated by the SNUR as a significant new use. The supporting rationale and background for SNURs are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). The enumerated factors pertain to the potential for increased manufacturing and processing volume, increased exposure, and anticipated methods of manufacture, processing, distribution and disposal. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to SNURs, recordkeeping requirements, exemptions to reporting requirements, and applicability of SNURs to uses occurring before the effective date of a SNUR. Rules on user fees appear at 40 CFR part 700. Persons subject to a SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Discussion of Proposed Amendment

A. Section 5 of TSCA

Section 5(a)(1) of TSCA requires submission of written notice to EPA at least 90 days before commencement of commercial manufacture or import of a "new chemical substance" (which is a substance not listed on the TSCA Chemical Substance Inventory maintained pursuant to section 8(b)) and before manufacture or processing of any chemical substance for an activity which EPA determines, by rule, constitutes a "significant new use." Upon receipt of such a premanufacture notice (PMN) or significant new use notice (SNUN), if EPA determines that there is insufficient information to evaluate the human health and environmental effects of the substance, and that the substance may present an unreasonable risk of injury to health or the environment, or that the substance will be produced in substantial quantities and may be anticipated to enter the environment in substantial quantities or there may be significant or substantial human exposure, then EPA may issue an Order under section 5(e) of TSCA to prohibit or limit activities associated with the substance.

After a company commences commercial manufacture or import of a PMN substance and submits a notice of commencement (NOC) of manufacture within 30 days as required by 40 CFR 720.102, EPA adds the substance to the TSCA section 8(b) Inventory. The substance is then no longer a "new chemical substance," as defined by section 3(a) of TSCA, the manufacture of which would require submission of a PMN. The requirements of a section 5(e) Order apply only to the company who submitted the notice, whereas a SNUR applies to all manufacturers and processors of the substance. Consequently, once a substance subject to a section 5(e) Order is listed on the TSCA section 8(b) Inventory, any other company may manufacture the substance without being required to notify EPA or comply with any other restrictions under section 5 of TSCA, unless EPA promulgates a SNUR pursuant to section 5(a)(2) of TSCA.

Therefore, EPA has adopted a policy that when the Agency has raised concerns for a substance and has regulated that substance under a section 5(e) Consent Order, EPA develops a SNUR concurrently with the Consent Order. The SNUR defines a significant new use so as to require reporting to EPA before a manufacturer (including importers) or processor undertakes activities inconsistent with provisions of the Consent Order. In this manner, the Agency will have an opportunity to review those activities before they occur because, under section 5(a)(1)(B) of TSCA, any company wishing to undertake the activities designated in the SNUR must submit a SNUN to EPA at least 90 days before doing so. Ordinary "notice and comment" rulemaking procedures to develop a SNUR require more time than development of a Consent Order. However, the Agency can promulgate SNURs using the expedited procedures for SNUR development at 40 CFR 721.160 or 721.170 (54 FR 31298, July 27, 1989). Using these expedited procedures, EPA can generally promulgate a SNUR within a time frame similar to that necessary to issue a section 5(e) Order.

B. Expansion of Activities Available for Designation as Significant New Uses in Expedited Non-5(e) SNURs

EPA's ability to promulgate SNURs efficiently and expeditiously has been facilitated by EPA's New Chemical Follow-up Rule (also known as the "Generic SNUR"), published on July 27, 1989 (54 FR 31298; 40 CFR 721.50 – 721.185). The Generic SNUR established a generic list of standard significant new use designations and established that EPA would generally promulgate substance-specific SNURs using expedited rulemaking procedures instead of the standard "notice and comment" rulemaking. (See also the proposed rule at 52 FR 15594, April 29, 1987.) This rule was designed to, among other things, reduce the time between EPA's completion of the PMN review and promulgation of a SNUR.

EPA is exploring additional ways to speed Agency action on new chemical substances and conserve Agency resources in the TSCA section 5 program. Among these proposed activities is this amendment to expand the types of expedited SNURs for new chemical substances that EPA may promulgate directly without first issuing section 5(e) Orders (hereafter referred to as "non–5(e) SNURs") under 40 CFR 721.170. Whereas a section 5(e) Order applies only to the original PMN submitter who signs the Order, a SNUR applies to all manufacturers and processors of the chemical substance. The reporting requirements of a non–5(e) SNUR apply also to the original PMN submitter (because, without a section 5(e) Order, the PMN submitter is not exempted by 40 CFR 721.45(i)). Since only one Agency action is required instead of two, and fewer EPA resources are necessary to obtain similar regulatory results, a non–5(e) SNUR is more efficient than a combination of section 5(e) Order and "5(e)-SNUR" (under 40 CFR 721.160) to regulate new chemical substances.

A non–5(e) SNUR is typically appropriate for PMNs on chemical substances expected to be toxic but where the PMN indicates the submitter's intention to limit activities, implement control measures, or otherwise adequately mitigate human exposures and environmental releases. Activities described in such PMNs may not present an unreasonable risk of injury to human health or the environment so as to warrant the issuance of an Order under section 5(e) of TSCA, but deviations from the described activities may present an unreasonable risk warranting the imposition of regulatory controls via a section 5(e) Order. In those cases, a non–5(e) SNUR may be the least burdensome regulatory alternative for the Agency to pursue, as it will allow the PMN submitter to proceed with planned activities while requiring notification to, and review by, EPA for activities which have not been reviewed.

Based on experience gained from issuing over 200 SNURs under expedited follow-up procedures, EPA is proposing an amendment to 40 CFR 721.170(c)(1) that would authorize EPA to designate any of the provisions in 40 CFR part 721 subpart B using expedited rulemaking procedures to promulgate non–5(e) SNURs. EPA may currently use the more time-consuming notice and comment rulemaking to promulgate non–5(e) SNURs containing any of the significant new use designations in subpart B. However, section 721.170(c) currently limits the types of activities in subpart B which EPA can designate as a significant new use by expedited rulemaking without first issuing a section 5(e) Order. Significant new use designations available for expedited non–5(e) SNURs are currently limited to environmental release activities and certain industrial, commercial, or consumer activities. However, other important designations, such as protection in the workplace and hazard communication, currently may not be promulgated in non–5(e) SNURs via expedited rulemaking procedures. The absence of hazard communication provisions in current expedited non–5(e) SNURs may result in failure to inform persons handling substances of their potential risks and proper precautionary measures to protect against such risks. Furthermore, a large percentage of the new chemical substances that EPA regulates under section 5(e) are regulated to control workplace exposures. However, worker protection activities currently may not be designated as significant new uses in expedited non–5(e) SNURs. EPA should be able to select from all the possible designations in subpart B, in order to respond appropriately to the unique characteristics of the various new chemical substances which EPA reviews under section 5 of TSCA.

EPA already has the authority to designate hazard communication and worker protection provisions either by promulgating SNURs using notice and comment rulemaking procedures or by issuing a section 5(e) Order and promulgating an expedited "5(e)SNUR." However, this proposed amendment would enable EPA to designate hazard communication and worker protection provisions by promulgating SNURs using expedited rulemaking procedures and without issuing a section 5(e) Order.

In addition, this proposed amendment would authorize EPA to promulgate expedited non–5(e) SNURs with provisions not currently listed in subpart B. Occasionally, EPA has promulgated expedited 5(e)–SNURs containing provisions not in subpart B when necessary to match the terms of the section 5(e) Order. An example of a non-subpart B provision that EPA sometimes includes in a chemical-specific expedited SNUR is a provision that allows a specified amount of removal credit for a specified wastewater treatment technology, since the standard provision at 40 CFR 721.91(a)(4) does not account for wastewater treatment removal.

Similarly, EPA may occasionally use expedited procedures to promulgate non–5(e) SNURs containing provisions not included in subpart B when the provision is necessary to match the information contained in the PMN. EPA uses expedited rulemaking to promulgate SNURs with a non-subpart B provision only when the provision represents a relatively minor deviation from the standard provisions in subpart B such that EPA does not anticipate a high likelihood of public interest in commenting on the provision. See 54 FR 31305, July 27, 1989. Nevertheless, as discussed below, the expedited procedures still provide interested parties an opportunity to comment on the SNUR.

C. Opportunity for Comment

The expedited rulemaking procedure for the Generic SNUR is based on EPA's experience which has demonstrated that very few comments on SNURs are submitted. (See, e.g., 52 FR 15596, April 29, 1987; 54 FR 31299, July 27, 1989.) However, the process EPA is proposing here is not intended to limit opportunity for public comment.

The current limitations in 40 CFR 721.170(c)(1) were contained in the original proposal of the Generic SNUR (52 FR 15596, April 29, 1987). As originally proposed, the Generic SNUR provided for immediately effective final SNURs. However, the final version of the Generic SNUR, as described below, "significantly changes the proposed approach to provide a greater opportunity for public comment" (54 FR 31299, July 27, 1989). EPA now believes that, given the expanded comment opportunity in the final Generic SNUR, the subpart B provisions available for expedited non-5(e) SNURs should be expanded.

Pursuant to the final Generic SNUR, EPA generally uses "direct final" rulemaking to promulgate follow-up SNURs on new chemical substances. Under direct final rulemaking procedures, EPA publishes the rule in the final rule section of the **Federal Register** and the SNUR automatically becomes effective 60 days from publication unless, within 30 days after publication, EPA receives written notice that someone wishes to submit adverse or critical comments. If EPA receives such a notice, EPA will withdraw the final SNUR and propose the rule in the proposed rule section of the **Federal Register**, establishing a 30–day comment period. This procedure allows opportunity for public comment before a SNUR becomes effective, without unnecessarily delaying the rulemaking if no comments are likely to be submitted.

Furthermore, according to the current § 721.170(d)(2), at least 7 days before expiration of the PMN review period, EPA must notify the PMN submitter of the Agency's human health or environmental concerns and the activities under consideration for designation as a significant new use. This procedure provides ample notice to the person most likely to have an interest in providing comment (the PMN submitter). Thus, the expanded non–5(e) SNUR process proposed herein will still provide notice and opportunity for comment to all persons through the **Federal Register** and individual notice to the PMN submitter before the SNUR is published.

D. Timing of Section 5 Regulation

Generally, when a PMN substance is targeted for regulation under a section 5(e) Order, the statutory 90–day review period must be suspended to allow sufficient time for Order development, review, and approval. In such cases, the PMN submiter may not commence production of the substance until the Order has been executed and all suspensions of the review period have expired. This process normally takes 3 to 6 months. In contrast, a PMN substance targeted for regulation under a non-5(e) SNUR does not generally require suspension of the review period beyond the initial 90 days because the specific use identified in the PMN does not present an unreasonable risk; rather, it is other potential uses of the PMN substance for which the Agency has concerns and for which the non-5(e) is developed. Consequently, PMN submitters of non-5(e) regulated substances may generally begin commercial production on the 91st day after submission of the PMN.

IV. Economic Analysis

The Agency's complete economic analysis is available in the public record for this rulemaking (OPPTS–50595). The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These proposals would amend the PMN rule, the Low Volume Exemption Rule, and the Polymer Exemption Rule. As these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

This non–5(e) SNUR amendment would eliminate the need to develop a section 5(e) Consent Order in those cases where EPA determines that activities described in the PMN submission will not present unreasonable risk. The major industry benefit is the avoidance of the delay and costs associated with negotiating a Consent Order; generally, the submitter will be able to commence commercial manufacture immediately after the PMN review period. The submitter, along with other manufacturers and processors, will be bound by the expedited SNUR.

Industry savings from this amendment due to the avoidance of Consent Orders have not been quantified. Annual government savings are estimated to range from $240,000 to $960,000, depending on the number of submissions (range used was 1,000 to 3,000 annually).

V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50595). The record includes basic information considered by the Agency in developing this proposed rule. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et seq., and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: January 19, 1993.

William K. Reilly,
Administrator

Therefore, 40 CFR Chapter I, part 721 is proposed to be amended as follows:

PART 721 — [AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By revising § 721.170(c)(1) to read as follows:

§ 721.170 Notification requirements for selected new chemical substances that have completed premanufacture review.

* * * * *

(c) * * * (1) When EPA decides to establish significant new use reporting requirements under this section, EPA may designate as a significant new use any one or more of the activities set forth in subpart B of this part, as well as activities not listed in subpart B of this part. In addition, EPA may designate specific recordkeeping requirements described under subpart C of this part that are applicable to the substance.

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[FR Doc. 93–2775 Filed 2–5–93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 723

[OPPTS–50594 ;FRL–3890–1]

RIN 2070–AC14

Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment. This proposed rule would amend the polymer exemption rule at 40 CFR 723.250 to expand the criteria for eligible polymers, reduce the information requirements, and change the timing of reporting. These proposed amendments reflect criteria developed and used by EPA to assess the hazards associated with new polymeric substances. EPA has included procedural safeguards and other conditions in the proposed exemption to ensure that these polymers will not present an unreasonable risk.

DATES: Comments must be received by April 9, 1993. If requested, EPA will conduct public hearings on the proposed rule amendments. Requests to make an oral presentation must be received by April 9, 1993.

ADDRESSES: All comments and requests to speak at the public hearing must be sent to: TSCA Document Control Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, DC 20460, (Phone: 202–260–1532).

Comments should include the docket control number. The docket control number for this amendment is OPPTS–50594. Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if CBI is involved). Comments on this proposed rule will be placed in the rulemaking record and will be available in the TSCA Public Docket Office, Rm. NE–G–004 at the above address between 8 a.m. and 12 noon and 1 p.m. and 4 p.m., Monday through Friday, excluding public holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document, along with three other related documents, OPPTS–50593, 50595, and 50596 is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512–1387 or call (202) 512–1530 for disks or paper copies. This document and the three related documents are available in Postscript, Wordperfect, and ASCII.

The polymer exemption rule was originally promulgated on November 21, 1984. The supporting rationale and background for that exemption was published at 49 FR 46066 on November 21, 1984 and 46 FR 54688 on November 3, 1981. Consult those documents for further information on the objectives, rationale, and procedures for the rule and the basis for the finding that polymers eligible for exemption will not present an unreasonable risk.

I. Background

A. Statutory Authority

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. A new chemical substance is any substance that is not on the inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment.

B. History

In 1984, the Agency published a TSCA section 5(h)(4) rule granting an exemption for persons who manufacture or import certain polymers, set out at 40 CFR 723.250. This rule was developed in response to petitions by chemical industry groups. Notice of receipt of the petitions from industry groups was published at 46 FR 54688 on November 3, 1981. The proposed exemption rule was published at 47 FR 33924 on August 4, 1982 and the final exemption rule was published at 49 FR 46066 on November 21, 1984.

Since promulgation of the 1984 polymer exemption rule (the "1984 exemption"), the Agency has reviewed over 9,000 polymers in the 90–day premanufacture notification (PMN) review process and over 1,500 polymers submitted as polymer exemption notices. In the course of performing hazard and risk assessments for these polymers, the Agency has established informal guidelines for identifying polymeric substances that do not present an unreasonable risk to human health or the environment. These guidelines are based on (1) an ongoing review of the available literature on the toxicity of polymers, (2) analyses of various samples of the PMN polymer data base, (3) information provided by outside groups during and subsequent to development of the 1984 exemption, and (4) the professional judgment of EPA staff scientists.

The Agency would like to bring the 1984 polymer exemption criteria into closer alignment with the internal criteria currently being used to assess hazards of polymers. The Agency believes that expansion of the 1984 exemption criteria would increase the number of polymeric substances eligible for exemption and would result in resource savings to industry and the EPA without decreasing or compromising the level of risk reduction/management afforded by a 90–day review of these same substances. The Agency is also proposing to reduce the information requirements, limit the Agency review, and change the timing of notice of manufacture for these "low risk" polymers. Overall, these amendments constitute a substantial revision of the existing rule.

II. Proposed Amendments

A. Summary of Proposed Amendments

1. *Definition of exemption category.* To be considered for exemption, substances must meet the definition of polymer in the rule. EPA is proposing to amend the definition of "polymer" to adopt the exact wording of the international definition of polymer which was agreed upon at the Organization of Economic Cooperation and Development (OECD) Expert Group Meetings on Polymers held in Toronto, Canada in January, 1990 and in Paris, France, in October, 1991. The definition is based on the 1984 polymer exemption definition with minor modifications. As with the current definition, the amended definition ensures that exempt substances have the structural characteristics common to the category of substances on which EPA has based its no unreasonable risk finding.

2. *Classes of polymers ineligible for exemption.* Section 723.250(d) of the 1984 exemption established certain classes of polymers that are ineligible for exemption. As with the 1984 exemption, polymers that degrade, decompose, or depolymerize would remain ineligible for exemption under this proposal. In addition, polymers that are prepared from monomers or other reactants that are not on the TSCA Inventory, and water-absorbing polymers with molecular weights (MW) equal to or greater than 10,000 daltons would be added to the list of ineligible polymers. This proposal would amend certain restrictions contained in the 1984 exemption for cationic polymers and polymers that contain certain particular elements. Under the proposal, the restriction on polymers that contain certain reactive functional groups that are intended or reasonably anticipated to undergo further reaction would be moved from paragraph (d) and included as part of the eligibility criteria for polymers with MW equal to or greater than 1,000 and less than 10,000 at § 723.250(e)(1). Finally, the following classes of polymers would no longer be ineligible for exemption: (a) polymers that contain less than 32 percent carbon; (b) biopolymers, their synthetic equivalents, and modifications and derivatives of biopolymers; and (c) polymers made from reactants that contain halogen atoms or cyano groups.

3. *Polymers eligible for the exemption.* Polymers with number-average MW greater than 1,000 and polyesters that are made from a specified list of reactants would remain eligible for exemption. However, under this proposal, the Agency would set limits on oligomer content and reactive functional groups for polymers with number-average MW equal to or greater than 1,000 and less than 10,000. In addition, polymers with number-average MW equal to or greater than 10,000 and restricted oligomer content would also be eligible for exemption, with certain restrictions relating to potential inhalation exposure of respirable water-insoluble polymer particles. Polyesters would remain eligible.

4. *General provisions.* To qualify for this exemption, manufacturers and importers would be required to submit an abbreviated notice within 30–calendar days after first manufacture or import of an eligible polymer instead of 21 days prior to manufacture (import) as required in the 1984 exemption. In this preamble and under the rule, references to "manufacture" and "manufacturer" include "import" and "importer", respectively, as defined in the PMN rule and as referenced in this rule.

Submission of specific information on the polymer would still be required, although the Agency proposes to eliminate certain data requirements, including information on production volume, use, residual reactant content, impurities, and byproducts.

With the elimination of the obligation to report many data elements, the use of EPA Form 7710–25 would not be required. In its place, the Agency would require submission of an abbreviated form which would limit the information requirements to the following elements: (a) submitter identification (company name, name of authorized official technical contact, telephone number of technical contact, site of manufacture or import), (b) date of commencement of manufacture or import, (c) type of polymer exemption, (d) chemical identity, and (e) certification that the polymer meets the conditions of the exemption and that submitters will provide worker protection or appropriate engineering controls to mitigate worker exposure where exposure to high MW water-insoluble polymers in respirable particle size is possible.

Under the proposal, polymer identity would be described by a Chemical Abstracts (CA) Index Name or CA Preferred Name in conformance with chemical identity requirements for all section 5 notices being proposed today in the **Federal Register** in a separate action under 40 CFR part 720. As required with the submission of all section 5 notices, submitters must provide all health and safety data in their possession or control with their notice.

Under the proposal, the Agency would maintain a separate list of exempted polymers for information retrieval purposes, but would no longer add these substances to the Inventory. Under the 1984 exemption, substances are added to the Inventory after receipt of a Notice of Commencement of Manufacture or Import. Such substances are listed with restrictions on residual monomers, reactants, and low MW species, as reported in the notice, and can only be manufactured within those prescribed limits.

As with the 1984 exemption, submitters would be required to maintain certain records. Under the proposal, submitters would be required to maintain a copy of the exemption notice at the reported site of manufacture or import, along with information that demonstrates compliance with the exemption, including analytical data that substantiates the submitter's claim of eligibility under criteria established for minimum number average MW and restricted oligomer content.

B. Discussion of the Proposal

The proposed rule adopts many of the provisions of the 1984 polymer exemption. However, as discussed above, some of the provisions of the 1984 exemption have been amended in light of the Agency's experience gained by its review of over 10,000 new polymeric substances. A discussion of these changes follows:

1. *Definition of polymer.* Under the proposal, the definition of polymer in the 1984 exemption would be revised to conform with the international definition of polymer recently adopted by OECD Member Countries, including the United States, Canada, Japan, and the Commission of European Communities. The revised definition retains the meaning and purpose of the 1984 exemption definition of polymer. The term "monomer unit", which would replace the non-standard term "internal subunit", would continue to define a grouping that is linked to two or more other molecules. Consequently, polymer molecules, defined as containing "at least three monomer units which are covalently bound to at least one other monomer unit or other reactant", would continue to require at least four precursor units, as in the current definition. The difference is that, under the proposal, at least three of the units must be internal, as opposed to only two in the current version; further, one of the non-internal groupings could come from an "other reactant" as well as from a monomer. The first change is slightly more restrictive and the second slightly less restrictive than the present definition. The net effect of the change, made to simplify agreement with protocols of the OECD, is expected to be minimal. "Monomer" and "reactant" would remain as defined in the 1984 exemption, and are consistent with the terms used for purposes of Inventory reporting and premanufacture notification, wherein "reactants" includes monomers, chain transfer and cross-linking agents, monofunctional groups that act as modifiers, and other end groups if they are incorporated into the polymer molecule.

2. *Polymers ineligible for exemption.* (a) *Exclusion of certain polymers that are cationic or anticipated to become cationic in aquatic environments.* The Agency continues to have ecotoxicity concerns for cationic polymers with specific characteristics. However, under the proposal the Agency would modify the current restriction on cationic polymers at § 723.250(d)(1) to provide that certain cationic polymers will be eligible for exemption if (i) the polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (for example, polymers that will be used as ion exchange beads), or (ii) the equivalent weight of cationic groups (e.g., amine, phosphonium, sulfonium) in the polymer is equal to or greater than 5,000. Equivalent weight means the ratio of the MW to the number of cationic functional groups.

The proposed modifications are based on the following considerations: (1) The Agency has concluded that if a cationic polymer is not soluble or dispersible in water, it will not be available in the aquatic environment to cause toxicity to aquatic organisms and (2) the Agency has found that polymers with a cationic functional group equivalent weight of 5,000 or greater do not have sufficient cationic characteristics to cause the environmental effects seen in materials that have higher cationic charge densities. There are many cationic polymers that are submitted as PMNs and receive low hazard ratings for health or environmental effects, but are not eligible for the polymer exemption as it is currently written. The above modifications would increase the number of polymers eligible for this exemption, without compromising the level of risk assessment/management these polymers would otherwise receive in a full 90–day PMN review.

The Agency is taking this opportunity to clarify an issue that has caused confusion to companies submitting polymer exemption notices in the past: For purposes of the 1984 polymer exemption, the Agency considers all amines (primary, secondary, tertiary amine, and quaternary ammonium) as groups that are cationic or anticipated to become cationic in aquatic environments. Based on the definition of "cationic polymer" in the 1984 exemption, any polymer that contains even one amine group is excluded from exemption. As a result, many polymers with very high amine equivalent weights (that is, very low amine content), such as polyamides, are excluded from the 1984 exemption. Under this proposal, polymers containing cationic functional groups may be eligible for exemption if the total equivalent weight of cationic groups is 5,000 or greater. All amine containing polymers with amine equivalent weights of less than 5,000 would be excluded from eligibility under this category.

(b) *Exclusion of polymers with certain weight content of certain elements.* The rule would continue to exclude from eligibility for exemption polymers containing certain levels of particular elements if they are present as an integral part of the polymer structure, or present as counterions in the polymer.

Elemental limitations were defined in the 1984 exemption and the Agency believes that the discussion and rationale for many of the elemental limitations in the 1984 exemption rule preamble and 1982 proposed rule are, in general, appropriate for this proposed rule. However, the Agency is proposing to expand the list of allowable elements set out at § 723.250(d)(2)(ii)(B) and (C) to include chlorine, bromine, and iodine as the monatomic counterions; and fluorine, chlorine, bromine, and iodine as covalently bound to carbon. Currently, the Agency's internal review criteria do not identify concerns for polymers based solely on the fact that the above mentioned halogens are present in a polymeric substance as a covalently bound substituent or as a counterion. Therefore, the EPA believes it appropriate to allow for these elements to be present in exemptible polymers. The provisions at proposed § 723.250(e)(1) would exclude reactive functional groups, including reactive halogen containing groups, and would continue to limit the exemptible substances to those determined to be of lowest concern. The Agency solicits comment on and suggestions (with rationale) for these and any other elements to be added to these categories.

(c) *Exclusion of polymers that degrade, decompose, or depolymerize.* The rule would continue the exclusion at § 723.250(d)(3) for polymers that are designed or reasonably anticipated to substantially degrade, decompose, or depolymerize, including those polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so. The Agency believes that such polymers are likely to degrade to low MW species and/or residual reactants which present some of the major risks associated with such polymers. The 1984 exemption contains this same provision, and discussions on the topic can be found in the 1984 exemption rule and the 1982 proposed rule. The Agency believes the discussion and rationale for excluding polymers that may degrade, decompose, or depolymerize is appropriate for this proposed rule as well.

(d) *Exclusion of polymers that are prepared from monomers or other reactants that are not already on the TSCA inventory.* Under the proposal, polymers that are prepared from monomers or other reactants that are not on the TSCA Inventory would be ineligible for exemption at § 723.250(d)(4). Hazard concerns for polymers are often based on a concern for residual monomers or other reactants in the polymer. Under the proposal, information on levels of residual monomers or other reactants would no longer be required on the notice form. Instead, the evaluation and regulation of any potential risks posed by existing chemicals that may be present as residuals in the polymer would be addressed by a separate EPA program under other TSCA authorities such as section 4 and section 6. Accordingly, the Agency proposes to restrict this exemption to those polymers manufactured using only Inventory-listed constituent monomers, chain transfer agents, initiators, or other substances that are present as an integral part of the polymer structure or are present as counterions in the polymer. Consequently, the Agency will still have the option of reviewing polymers that contain new chemical monomers or other reactants through the full PMN process and regulating any new substances of concern that may be present as residual monomers or reactants.

(e) *Exclusion of water-absorbing polymers with number-average MW equal to or greater than 10,000 daltons.* Under the proposal, water-absorbing polymers having MW of 10,000 daltons or greater would be ineligible for the exemption at § 723.250(d)(5). A water-absorbing polymer is defined as a polymeric substance that, either in whole or in part, increases its volume when in contact with water. EPA believes that this category of polymers should not be eligible for the polymer exemption based on TSCA section 8(e) data recently received by the Agency on a water-absorbing polyacrylate polymer with a MW in excess of 1 million daltons. Preliminary data report squamous cell carcinoma and bronchio-alveolar carcinomas in a 2–year inhalation study in rats. The exposure concentrations were 0.05, 0.2, and 0.8 mg/m^3 . Preliminary pathology reports state that cancer was observed in the two highest concentrations. Since this polymer has a MW in excess of 1 million daltons, no remaining reactive functionalities, and no residuals with MW less than 1,000 daltons, the Agency believes that the water-absorbing properties of the polymer may have a role in the carcinogenicity findings. Based on the toxicity data that have been received by EPA to date, the Agency is unable to establish an exact MW limit for water-absorbing polymers. However, the Agency believes that it is reasonable to set the number-average MW exclusion for water-absorbing polymers at 10,000 daltons. As discussed later in this Unit, polymers with a number-average MW of less than 10,000, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards.

3. *Elimination of specific exclusions contained in the 1984 exemption.* In the current proposal, the Agency has removed three of the exclusion criteria present in the 1984 exemption at § 723.250(d)(2), (4), and (5) including (a) polymers containing less than 32 percent carbon, (b) biopolymers, and (c) polymers manufactured from reactants containing halogen atoms or cyano groups. A discussion on why these limitations were removed is presented below.

a. *Polymers containing less than 32 percent carbon.* The 1984 rule at § 723 250(d)(2) excludes from exemption eligible polymers with less than 32 percent carbon by weight. This exclusion was intended to limit availability of the exemption to the types of polymers that have been frequently reviewed in the New Chemicals Program. The requirement that polymers must contain greater than 32 percent carbon was an added safeguard to prevent exotic, or unfamiliar, types of polymers from being eligible for the exemption. Based on its experience reviewing over 10,000 section 5 notices for polymers since 1979, EPA has seen very few polymers with less than 32 percent carbon and those notices seen have been rated as of low concern.

The Agency now believes that the other criteria that must be met for a substance to qualify for the polymer exemptions will provide sufficient restriction to the types of polymers that would be eligible for exemption, and therefore removal of the 32 percent carbon limitation is justified.

b. *Biopolymers.* The 1984 rule excludes from exemption eligibility at § 723.250(d)(4) biopolymers, synthetic equivalents of biopolymers, and derivatives and modifications of biopolymers. The Agency now believes that this condition can be removed entirely. Biopolymers were originally excluded from the polymer exemption based on EPA's limited experience with these compounds, the variety of substances within the class, and the potential wide range of uses for such polymers. The number of biopolymers reviewed as full PMNs has been small, and therefore EPA still has only limited experience with these compounds. However, EPA has had sufficient experience with many other classes of polymers to believe that biopolymers that meet the exemption criteria will not pose an unreasonable risk of injury to human health or the environment. The Agency believes that biopolymers that may be of concern, such as proteins and antibodies, would not be eligible for the polymer exemption due to the fact that they would not fall within the polymer definition in the exemption because they have a discrete MW. In order to be a "polymer", polymer molecules must be distributed over a wide range of MW. As an example, the highly toxic protein ricin has a definite structure and a discrete MW and would therefore not be eligible for the polymer exemption.

c. *Polymers manufactured from reactants containing halogen atoms or cyano groups.* Based on an analysis of health and ecotoxicity concerns for polymers received as non-exempt PMNs subject to the 90–day review, the Agency now believes that this requirement is unnecessarily restrictive and should be eliminated altogether.

The Agency's intent in excluding polymers that contain halogen or cyano groups from exemption eligibility was, as stated in the polymer exemption rule of 1984, to "exclude polymers that contain low MW species or residual substances composed of halogen atoms or cyano groups". Information from the PMN database shows that when the content of low MW species of cyano- or halogen-containing polymers is below the levels specified by the proposed eligibility requirements for polymers with number-average MW of 1,000 or greater and less than 10,000 (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000), the EPA, in general, has low concern for the polymer. Further, EPA also has low concern for polymers with MW of 10,000 or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000). Since, in the proposed exemption, eligible polymers may be made only from Inventory-listed monomers or other reactants, any remaining concerns over residual monomers can be dealt with under other TSCA authorities such as section 6. The proposed exemption criteria address the Agency's concerns for all low MW species including those containing halogen or cyano groups. It is hoped that the benefit of allowing manufacturers to commence production of more polymers eligible for exemption will provide incentive to submitters to manufacture materials with low concentrations of oligomeric species.

Further, as a matter of policy, EPA has not taken action on a PMN polymer under section 5(e) when the only concern was for an existing chemical present as unreacted monomer, i.e., residual monomer. Under this proposal, only polymers manufactured from Inventory-listed monomers would be eligible for exemption. Since the proposed criteria would restrict low MW species and any residual monomers would be existing chemical substances that would be addressed by a separate EPA program, the Agency believes that a separate exclusion from polymer exemption eligibility for halogen- and cyano- containing polymers is no longer necessary. The Agency believes that concerns for residual monomers in general and specifically those containing halogen or cyano groups would best be handled by an existing chemicals program initiative, and not on a case-by-case basis under section 5 in the new chemicals program.

4. *Polymers eligible for the exemption (§ 723.250).* The Agency is proposing to amend the exemption criteria for polymers of 1,000 MW or greater by establishing two MW ranges with restricted oligomer content. Section 723.250(e)(1) would set out exemption criteria for polymers with number-average MW equal to or greater than 1,000 and less than 10,000, while § 723.250(e)(2) would set out criteria for polymers with number-average MW equal to or greater than 10,000. The exemption criteria for polyester polymers manufactured using certain specified precursors would be retained under this proposal and redesignated at § 723.250(e)(3). Under the proposal, polymers eligible for exemption include the following:

a. *Polymers with number-average MW equal to or greater than 1,000 and less than 10,000.* Section 723.250(e)(1) would exempt polymers with number average MW equal to or greater than 1,000 and less than 10,000 (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000) provided the polymer also meets the following criterion: the polymer may not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction as specified in § 723.250(e)(1)(ii).

i. *Restrictions on number average MW and oligomer content.* As stated in the preamble language to the 1984 exemption published in the **Federal Register** on November 21, 1984 (49 FR 46081) the selection of MW as a risk-limiting criterion rests on two principles. First, a chemical must be absorbed by an organism in order to cause an adverse health or ecological effect, other than direct contact effects. Secondly, the ability of a molecule to pass through membranes and therefore be absorbed by organisms generally decreases with increasing MW (size).

Based on these principles, the Agency believes that low MW species content provides an appropriate indication of the concerns that EPA has for polymers, namely, the content of potentially absorbable low MW compounds. The proposal would include restrictions on the percentage of low MW components directly derived from the monomers or other reactants for § 723.250(e)(1) polymers. The proposed criteria would require that oligomer content be less than 10 percent below MW 500 and less than 25 percent below MW 1,000. These values are based on a retrospective study conducted on over 100 polymers rated as having low concern, including their accompanying test data, an assessment of their potential to cause human health effects and environmental toxicity, and a rating of the expected amount of toxicity. This study, entitled "Evaluation of Tentative Terminations in New Chemical Review," is available in the public docket for this rulemaking (OPPTS–50594).

The 1984 polymer exemption requires companies to supply information on low MW species content, but these data are not part of the criteria for eligibility. Based on the 1984 polymer exemption, companies are legally bound to manufacture polymers with equal to or less than the percent of low MW species and residual monomer concentrations reported in the polymer exemption notice for a new substance. If a company desires to manufacture a polymer with higher amounts of low MW species or residual reactants than were reported in the polymer exemption notice, then a second polymer exemption application or a PMN must be filed. In the proposed approach, companies would be free to manufacture a polymer for which they had filed a polymer exemption notice with any MW characteristics or residual reactant content desired, as long as the percentages of low MW species did not exceed the levels specified in the exemption criteria.

ii. *Restriction on reactive functional groups.* The rule would exclude from eligibility under the § 723.250(e)(1) criterion certain polymers that contain reactive functional groups that are intended or can reasonably be anticipated to undergo further reaction. The rule also would amend certain restrictions in the 1984 exemption.

As discussed in the 1984 exemption and the 1982 proposed rule, polymers that contain reactive functional groups may be capable of reacting with tissues or other chemical constituents of living organisms. Absorption of polymers containing reactive functional groups is also plausible since reactive groups often cause sufficient irritation to disrupt normal cell membrane barriers and facilitate penetration.

Consistent with § 723.250(d)(6)(ii) of the 1984 exemption, polymers that contain certain reactive functional groups that generally lack reactivity in biological settings would still be eligible for the exemption under this proposal. Therefore, under § 723.250(e)(1)(ii)(A) of the proposal, polymers containing only the following reactive and/or other functional groups would remain eligible for the exemption: carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups that are considered "ordinary", butenedioic acid groups, and those containing conjugated olefinic groups contained in naturally-occurring fats, oils, and carboxylic acids. Further, based on the Agency's experience in reviewing polymers since the 1984 exemption was promulgated, EPA now believes that the following groups generally lack or have low adverse reactivity in biological settings, and is therefore proposing to add them to the above list: blocked isocyanates (including ketoxime-blocked isocyanates) thiols, unconjugated nitrile groups, and halogens (except reactive halogen-containing groups such as benzylic or allylic halides).

iii. *Approach to establishing other reactive functional group equivalent weights*. In the 1984 exemption, the Agency established equivalent weight criteria which allowed low concentrations of reactive functional groups to be present in the polymer molecules. At that time it was believed that a level of less than 1 gram-formula weight of reactive functional groups in 10,000 grams of polymer was sufficient to ensure that the reactive functional group was substantially diluted by polymeric material. Based on the Agency's experience in reviewing polymers since the 1984 exemption was promulgated, EPA now believes that the reactive functional group equivalent weight of 10,000 can be lowered to 5,000. In addition, the Agency is also proposing to establish allowable equivalent weights at 1,000 for the combined weight of certain polymer reactive functional groups other than those in § 723.250(e)(1)(ii)(A), which would not have an equivalent weight limit, based on the Agency's lower level of concern for these reactive groups. These groups would include the following: acid halides; acid anhydrides; aldehydes; hemiacetals; methylolamides, -amines or -ureas; greater than C2 alkoxysilanes; allyl ethers, conjugated olefins; cyanates; epoxides; imines; and unsubstituted positions *ortho or para* to phenolichydroxyl.

All other reactive functional groups would be required to have a combined equivalent weight of 5,000 or greater, including pendant acrylates and methacrylates, aziridines, carbodiimides, halosilanes, hydrosilanes, hydrazines, isocyanates, isothiocyanates, *alpha* or *beta* lactones, methoxy or ethoxy silanes, vinyl sulfones or analogous compounds and any reactive functional group not listed at § 723.250(e)(1)(ii)(A) or (B).

This proposal would increase the number of polymers eligible for exemption under this category; however, the added complexity of this approach may not be justified relative to the number of additional polymers that might be made eligible. Specifically, the Agency is concerned that smaller businesses or those with limited technical resources would have trouble interpreting the exemption criteria for reactive functional groups, if the groups are complicated, and may choose not to use the exemption for eligible polymers. Such persons would, of course, have the option of using 5,000 as the equivalent weight if they are uncertain whether a particular reactive functional group is listed under § 723.250(e)(1)(ii)(A) and (B). Therefore, the Agency is seeking comment on this approach and the alternative one discussed later in this document.

EPA believes that restrictions on reactive functional groups are not necessary for polymers with a number-average MW equal to or greater than 10,000 because polymers of this size would not be expected to be absorbed by biological systems.

b. *Polymers with number-average MW equal to 10,000 or greater*. Section 723.250(e)(2) would exempt polymers with number average MW equal to 10,000 or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000), provided the submitter evaluates the potential for inhalation exposure to respirable particles of water-insoluble polymers and provides adequate notification and appropriate protective measures, if warranted, as specified at § 723.250(e)(2)(i) through (e)(2)(v) of the proposed rule. The Agency is proposing to establish a separate category for polymers with number-average MW equal to or greater than 10,000 because this category of polymers is not readily absorbable by any route of exposure; further, low MW species below 500 and 1,000 will be restricted under this proposal. EPA does, however, have a concern for potential effects that may be caused by inhalation of respirable particles of water-insoluble high MW polymers. In the 1984 exemption, the Agency discussed its concern for potential health risks such as the development of fibrosis of the lung or other pulmonary effects that may result upon inhalation of polymers in particulate form. At that time the Agency believed that such exposure to polymer particulates was generally limited and expected to be of low concern. The Agency now believes that it may be inappropriate to make a "no unreasonable risk" finding for high MW water-insoluble polymers without requiring evaluation of potential exposure to respirable particles of such polymers. Thus far, the Agency has no data to warrant any concern for inhalation toxicity for water soluble polymers.

The Agency has received TSCA section 8(e) data that report irreversible lung damage on experimental animals when respirable size water-insoluble polymer aerosols are inhaled. Pulmonary damage induced by inhalation exposure to the subject polymers includes chronic inflammatory response, lymphoid hyperplasia in mediastinal or bronchial lymph nodes, nodular histiocytosis in mediastinal or bronchial lymph nodes, fibrotic alveolar lesions, interstitial fibrosis and alveolar tumors. The data also demonstrate that the onset of the polymer-induced damage may be delayed for as long as 6 months after exposure. The toxicity may be a result of "overloading" the clearance mechanisms of the lung; however, at this time the Agency does not have sufficient toxicity data to either confirm or discount the "overload" theory. The Agency does not have sufficient data to determine the precise MW and/or structural considerations that may facilitate the mechanisms causing toxicity, although data received to date indicate that lung toxicity is produced by water-insoluble polymers with a MW as low as 70,000 and at respirable concentrations as low as 4 mg/m^3.

In light of these data, EPA has concerns for lung effects from water-insoluble polymers with MW of 70,000 or greater. Although to date EPA has no inhalation data on polymers eligible for the proposed exemption with MW of less than 70,000, adverse lung effects resulting from inhalation exposure to water-insoluble polymers with MW of 10,000–70,000 cannot be ruled out. Substances in the 10,000–70,000 MW range are, in general, not readily absorbed by any route of exposure. Thus if alternative lung clearance mechanisms are overloaded, lung toxicity would be expected to occur. Polymers with a MW of less than 10,000, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards. Further, EPA does not expect water-soluble polymers to exhibit lung toxicity because they are expected to rapidly clear the respiratory tract and therefore not cause an overloading effect. The Agency requests comment on the MW range anticipated to produce toxicity.

Currently, the New Chemicals Program, in response to the TSCA section 8(e) data referenced above, is more rigorously evaluating the inhalation exposure potential of water-insoluble polymers with MW greater than or equal to 70,000 that are submitted as PMNs or polymer exemption applications. in cases where the manufacturing, processing, or use of such polymers is expected to result in exposure to respirable particles, the Agency would use its regulatory authority under section 5(e) to limit human exposure. Under section 5(e) of

TSCA, the Agency can limit or control the activities associated with a chemical substance if such activities may present an unreasonable risk to human health or the environment.

Under today's proposal, polymers ranging from 10,000–70,000 daltons (with the exception of water-absorbing polymers ineligible at § 723.250(d)(5)) would be eligible for the exemption, provided the manufacturer evaluates potential inhalation exposure, and if such exposure exists, implements certain procedural safeguards to control inhalation exposure. This approach would allow the Agency to make a determination for purposes of section 5(h)(4) of TSCA that this category of polymers will not present an unreasonable risk to human health or the environment. Further, until more definitive data on the inhalation toxicity of high MW polymers are submitted to EPA for review, the Agency believes that the additional requirements for this MW range are a reasonable response to the TSCA section 8(e) data received.

The Agency has considered several alternatives for dealing with potential lung effects in the context of the polymer exemption which are described in Unit III of this preamble. Under the proposal, manufacturers of water-insoluble polymers with MW of 10,000 or greater would be required to certify that they are aware of the potential for harmful lung effects upon inhalation of certain high MW polymers, and would provide, at a minimum, worker protection in the form of a NIOSH-approved category 21C, 23C, or equivalent respirators if there is a potential for inhalation exposure to any respirable particulates of the exempted polymer. Alternatively, manufacturers could insure that workplace respirable dust does not exceed 0.5 mg/m^3, as an 8–hour TWA based on present data, to reduce worker exposure. Manufacturers would be required to notify processors and industrial users of potential inhalation exposures and would be required to cease distribution to customers who failed to provide the prescribed worker protection measures.

The Agency believes that a level of 0.5 mg/m^3 will provide an adequate margin of safety in light of the data and that this level is technologically feasible. The Agency requests comment on typical airborne concentrations, particle sizes and respirable content of commercial products.

The Occupational Safety and Health Administration (OSHA) Permissible Exposure Limit (PEL) for respirable particulates, not otherwise regulated is 5 mg/m^3 (29 CFR 1910.1000) as an 8–hour time-weighted average (TWA). EPA assumes that companies are in compliance with the OSHA PEL and are controlling employee exposure to 5 mg/m^3 or below by using engineering controls, respiratory protection, etc., as required by the standard. However, in light of the data noted above, EPA believes it is reasonable to require a lower limit for respirable particulates of water-insoluble polymers. To achieve compliance with the 0.5 mg/m^3 exposure limit proposed by EPA, additional engineering controls, work practices, good housekeeping practices, or different respiratory protection may be needed. EPA prefers the use of process changes, engineering controls, and work practices to reduce inhalation exposure to acceptable levels, and believes that in many cases, companies already in compliance with the OSHA PEL of 5 mg/m^3 would be able to achieve the 0.5 mg/m^3 exposure limit by modifying and improving the existing work practices, housekeeping, and maintenance practices, to reduce the amount of dust generated, or by upgrading engineering controls or respiratory protection currently used. However, EPA realizes that the OSHA PEL does not apply to all workplaces and that there are different PELs for different industry groups such as construction. EPA requests comments and information on typical airborne concentrations of respirable high MW polymers and airborne particle size distributions measured in the workplace, and on process changes, engineering controls, work practices, etc., that would be needed to meet the exposure limit of 0.5 mg/m^3 for respirable particulates of high MW polymers.

Examples of process changes to reduce inhalation exposure include manufacturing, processing, and using materials in solution, in pellet form, or as a wet cake instead of drying the material and handling it as a powder or in other particulate forms. Application methods other than spray application (e.g., roller coating, dip coating , etc.) can also reduce inhalation exposure as the potential for aerosol generation is reduced. In addition, good housekeeping practices, appropriate maintenance and good work practices, (e.g., wet mopping or vacuuming spills instead of dry sweeping, repair of leaks as soon as possible, etc.) can also reduce the amount of dust generated, and the potential for inhalation exposure.

Where engineering controls are employed as an alternative to respirators, the initial exposure assessment must be sufficient to insure that the airborne concentration of respirable high MW polymers does not exceed 0.5 mg/m^3. In such cases, EPA recommends but would not require personal monitoring and requests comments on appropriate collection devices. Respirable cyclone dust samplers which are commonly used to differentiate the respirable fraction from larger particles in the aerosol may be inappropriate for high MW polymer materials. The performance of the 10 mm plastic cyclone (which is commonly used to collect respirable dust) has been criticized because an electric charge can accumulate on the plastic and distort the collection characteristics. EPA encourages the use of an impactor or other suitable collection device for sample collection for high MW polymer materials and is interested in comments.

c. *Polyester polymers manufactured solely from reactants listed at § 723.250(e)(3).* The Agency has had sufficient experience in reviewing polymer exemption notices for polyester polymers that are prepared using reactants specified in the 1984 exemption rule that the Agency does not believe such polymers represent a risk to human health or the environment. Accordingly, the Agency believes that these polyester polymers should continue to be eligible for exemption. The only change EPA is proposing to this exemption is the deletion of a footnote that would no longer be applicable, because under the proposal all monomers and reactants used to manufacture the polymer must be on the TSCA Inventory.

There are many polyester polymer reactants that are not included in the 1984 polyester exemption list, and the Agency has had requests to expand the list. Except for the chemicals currently listed in the 1984 exemption rule, the Agency has no experience in evaluating polyester reactants in a shortened review period. Therefore, the Agency cannot make a "no unreasonable risk" finding for "new" polyester reactants without conducting a limited review of the polymers that contain the "new" reactants.

The Agency solicits comment on the relative merit of expanding the list of polyester reactants and also requests suggestions and supporting data for adding other polyester reactants to the current list. Potential health or environmental effects of these reactants will be evaluated by the Agency and any low concern reactants may be added to the list in the final rule. However, in the case of anhydrides, which were inadvertently listed in the title of di and tri basic acid reactants in the 1984 exemption, but not included as specific reactants, EPA still does not believe that a "no unreasonable risk" finding can be made for this class of substances that are used as reactants for polyester polymers. Certain anhydrides are known to be respiratory and/or dermal sensitizers and cause such effects at concentrations as low as 50 mg/m^3. Based on these concerns, the Agency believes it cannot justify the addition of anhydrides to the list of polyester reactants.

5. *Determination of eligibility*. The Agency believes that, when a polymer is manufactured under the terms of the proposed exemption, it is reasonable for the manufacturer to take on a greater burden to demonstrate eligibility than under the 1984 exemption because EPA is proposing to eliminate its premanufacturing review of these notices. Under the 1984 exemption, the Agency did not require that submitters perform analytical measurements of the physical and chemical properties of polymers, but allowed manufacturers to determine compliance with the exemption conditions on whatever basis deemed appropriate by the manufacturer. These included using past experience by correlating observed or measured values of the properties of similar polymers to the polymer in question, using stoichiometric relationships based on knowledge of the starting materials and expected reactions, or using knowledge or process and purification steps.

Under this proposal, the Agency would no longer review the exemption notices, prior to manufacture of the exempted polymer. Consequently, the Agency expects the manufacturer to take the steps necessary to ensure that a chemical substance is eligible for exemption. Therefore, the Agency believes that it is necessary to require that a manufacturer maintain appropriate data to demonstrate that a substance meets the eligibility criteria for § 723.250(e)(1) and (e)(2) to ensure compliance with the exemption. This requirement would not apply to the polyester exemption at paragraph (e)(3), since this category does not impose a minimum number-average MW or restrict oligomer content as criteria for eligibility.

Under § 723.250(l)(2)(ii)(C) and (D) of the proposal, the Agency would require that manufacturers of exempt substances at (e)(1) and (e)(2) maintain appropriate analytical data to demonstrate that the polymer meets the minimum number average MW and corresponding restrictions on oligomer content. The Agency would not specify a particular analytical method to demonstrate compliance with the eligibility criteria, but would allow the manufacturer to use an appropriate method of analysis that generates the data to verify compliance with the criteria, such as gel permeation chromatography or vapor pressure osmometry. Performance of such analysis would be required prior to commencement of manufacture or import in accordance with the exemption.

EPA expects that if conditions, such as reaction temperature or sources for feedstock change, manufacturers will take steps to determine the effect of such a change so as to ensure continued compliance with the exemption. The rule would require that manufacturers maintain, at the site of manufacture, records demonstrating a substance's eligibility, along with a copy of the notice submitted to the Agency upon commencement of manufacture of the exempted substance. Manufacturers must follow the provisions of the exemption for research and development (R&D) activities during the period of evaluation of eligibility of a substance under the exemption criteria prior to actual manufacture under the exemption provisions. Such R&D activities would be subject to the R&D procedural and recordkeeping provisions in the PMN rule at § 720.36 and § 720.78, respectively.

6. *Timing of notification*. The notice procedure being proposed at § 723.250(f) would require that the notice be filed within 30 days after manufacture or importation for commercial purposes instead of 21 days prior to manufacture of an eligible polymer as under the current exemption. This would allow EPA to capture some basic information on the exempted polymers and their manufacturers/importers with minimal reporting burden on the submitter. EPA recognizes that one of the major benefits of this exemption is that it allows companies to respond more rapidly to market demand and to introduce new chemical substances more quickly into commerce.

7. *Information requirements*. The Agency is proposing to amend § 723.250(f) to eliminate certain data elements. To accommodate the abbreviated information requirements, the Agency is proposing to replace EPA Form No.7710–25 at § 723.250(f)(1) with a modified form. Some of the 1984 exemption information requirements at § 723.250(f)(2) will remain the same, including manufacturer's name, type of exemption, generic chemical identity, and test data and other data. Other provisions of the notice contents in the 1984 exemption at § 723.250(f)(2) would be revised as follows:

a. *Site of manufacture*. The Agency is proposing to amend this requirement at § 723.250(f)(2)(iii) to also include site of import for an imported exempt polymer.

b. *Chemical identity*. The proposal would amend the chemical identity information requirements at § 723.250(f)(2)(iv)(A) to require a Chemical Abstracts (CA) Index Name or CA Preferred Name, CAS Registry number (or EPA Inventory accession or PMN number) for each reactant used at greater than 2 percent (by weight) to manufacture the polymer, or alternatively, incorporated at greater than 2 percent (by weight) in the polymer. Elsewhere in today's **Federal Register**, EPA is proposing to amend the "Two Percent Rule" to allow submitters greater flexibility in determining the amount of monomer or reactant used in the manufacture of a polymer. Manufacturers who choose to use the "incorporated" method, would be required at § 723.250(f)(2)(iv)(A) to maintain appropriate analytical data to demonstrate compliance with the "Two Percent Rule". Any reactant charged to the reactor at greater than 2 percent (by weight) must be identified in the polymer name unless data are developed to ensure that the reactant is incorporated at 2 percent or less in the polymer. The proposal will eliminate the requirement for maximum percentage composition for each monomer or other reactant used to manufacture the polymer, and manufacturers would no longer be required to specify any reactants used at 2 weight percent or less in the manufacture of the polymer unless the manufacturer wishes to include such reactants as part of the polymer chemical identity. Further discussion on the "Two Percent Rule" rule appears below.

Under the proposal, the manufacturer would also be required at § 723.250(l)(2)(iv)(C) to provide the CA Index Name or CA Preferred Name for the polymer and any CAS Registry Number that exists for the polymer. This requirement would be consistent with the Agency's proposal published elsewhere in today's **Federal Register** to require that submitters use CAS nomenclature in all section 5 notices.

Under the proposal, number-average MW, maximum weight percent of each monomer or other reactant that will be present as residual in the polymer as manufactured for commercial purposes, and impurity information will no longer be required on the notice form. However, under § 723.250(l)(2)(C) and (D), the manufacturer would be required to maintain appropriate analytical data to demonstrate that an exempted polymer at § 723.250(e)(1) or (e)(2) meets the specific number-average MW and restricted oligomer content criteria, as discussed above under Unit II.B.5 of this preamble. This proposal would allow the company to make the polymer with MW ranges, or residual reactant concentrations, etc., as the company desires, provided that these values fall within the exemption criteria.

Further, production volume and category of use would no longer be required since the exemption criteria are based primarily on a "low hazard" determination of the eligible polymer itself and do not require an exposure evaluation, except in the case of inhalation exposure to water-insoluble high MW polymers as discussed elsewhere in this document.

c. *Certification*. This requirement would be amended to require certification at § 723.250(f)(2)(vii)(E) that the manufacturer of a water-insoluble polymer with a number average MW equal to or greater than 10,000 is aware of the potential for harmful lung effects upon inhalation of respirable particles of certain high MW polymers and would comply with the evaluation and notification requirements at § 723.250(e)(2). Certification that the person submitting the notice has provided a currently correct chemical identity for the polymer using CAS nomenclature would also be required under the proposal at § 723.250(f)(2)(vii)(F).

8. *Two percent rule for polymers*. In a separate regulatory action, the Agency is proposing to amend the "Two Percent Rule" for polymers to allow submitters greater flexibility in determining the amount of monomer or reactant used in the manufacture of a polymer. EPA believes that allowing submitters to report on the basis of amount incorporated in the polymer as an alternative to the current practice of requiring reporting based on the amount "charged" to the reactor will provide a better indicator of physical, chemical, and toxicological properties of polymers. At the same time, this will allow manufacturers greater flexibility in commercial innovation, reduce the number of PMNs representing slight variations in polymer composition, and provide greater consistency with international reporting policies. Further discussion of this issue is contained in the proposed PMN rule amendments being published elsewhere in this issue of the **Federal Register**.

9. *Receipt and review of notice*. Under paragraph (g), the Agency would continue to announce receipt of exemption notices in the **Federal Register**. However, the Agency would no longer review the exemption notice since the proposal would require submission of the notice within 30 days of manufacture of an exempted substance under terms of the exemption. In order to ensure compliance with the provisions of this exemption, the Agency expects to include as part of its on-going inspection process, an examination of pertinent records documenting compliance with the exemption requirements.

10. *Recordkeeping*. EPA believes that recordkeeping requirements are an essential component of an effective exemption enforcement program and would retain and modify this provision in the proposed rule at § 723.250(l). Documentation of information in the notice would be used by enforcement personnel to determine compliance. The recordkeeping requirements would be amended at § 723.250(l)(2)(i) to require that the manufacturer maintain a copy of the completed exemption form at the reported site of manufacture or the site of import. Under the provisions of the exemption, the manufacturer would also be required at § 723.250(l)(2)(ii)(C) and (D) to maintain documentation which demonstrates that the first commercial batch of polymer manufactured for commercial purposes under the exemption meets the eligibility criteria for minimum number average MW and restricted oligomer content for (e)(1) and (e)(2) polymers. The proposed regulations at § 723.250(l)(2)(ii)(D) would also require the generation of subsequent documentation to ensure compliance with the exemption if conditions occur, such as reaction temperature or sources for feedstock change, which result in a significant change in the manufacturing process. Further, manufacturers using the method of incorporation for determining compliance with the "Two Percent Rule" would be required to maintain documentation at § 723.250(l)(2)(ii)(E).

Under the proposal, the manufacturer would further be required at § 723.250(l)(2)(iv) to maintain documentation of the nature and method of notification of risk of inhalation toxicity for water-insoluble polymers with number average MW equal to or greater than 10,000 as specified at § 723.250(e)(2)(iii) and (iv).

11. *Inspections*. Under the proposal, EPA would continue to periodically inspect all companies which have submitted TSCA section 5 notices, including exemptions. Those submitters with violations may be inspected more frequently.

To determine compliance with the exemption, the EPA inspector will focus on the information in the exemption notice and the company's records, including the analytical data documenting the substance's eligibility under the exemption.

12. *Revocation*. The proposed rule includes provisions to revoke the exemption for an exempted polymer and require a full PMN review if, subsequent to granting the exemption, EPA obtains information indicating that a particular polymer or category of polymers may present an unreasonable risk of injury to health or the environment. As new data are developed for certain polymers or category of polymers (such as the toxicity of high MW polymers), the Agency may conclude that an exempt polymer causes unacceptable risks. This is a change from the corresponding provision at § 723.250(p) The current provision contains two separate provisions for notification of ineligibility, one that is applicable during the period from notice submission until commencement of manufacture, and a second that applies after commencement of manufacture. To reflect the proposed elimination of the 21–day review period, the proposed revocation provision would provide a single procedure.

Under this proposed rule, if the polymer were eligible for exemption, the polymer would not be listed on the Inventory of existing substances. As a result, manufacture of the substance by anyone other than the company submitting the exemption application is precluded. Since the exempted polymer would still be a "new" chemical substance, revocation of exemption status under the terms of the proposed rule would be accomplished directly, without utilizing other TSCA authorities.

13. *Confidentiality*. The proposed rule at § 723.250(h) has retained essentially the same provisions for confidentiality as the 1984 exemption and the final premanufacture notice rule (§ § 720.80, 720.85, and 720.90), including a requirement that submitters provide a sanitized copy of the exemption notice in which all confidential information has been deleted. Please consult the preamble to the 1984 exemption (49 FR 46080) for a further discussion of this issue.

14. *Inventory status of exempted polymer*. The TSCA Chemical Substance Inventory (Inventory) is a list of substances that are manufactured, imported, or distributed for a commercial purpose in the United States. Unless specifically excluded from TSCA reporting requirements, a substance not already included on the Inventory must undergo PMN review at least 90 days before commercial manufacture or importation can begin.

Upon the completion of the 90–day review period, a Notice of Commencement (NOC) must be submitted within 30 days following the commencement of manufacture or importation of the PMN substance for a commercial purpose. Since polymers which meet the exemption criteria would not be subject to PMN review, they would not be included on the Inventory. Instead, EPA would maintain an independent polymer exemption file. By not being included on the Inventory, exempted polymers will not be considered to be "existing" chemical substances under TSCA. All persons who intend to manufacture or import a polymer under the conditions specified in the exemption criteria would be required to submit an exemption notice, regardless of whether the polymer is already included in the special exemption file. If a manufacturer wishes to manufacture a polymer outside the scope of the proposed exemption criteria, a PMN or other section 5 notice will be required. In the case of a PMN, a polymer is added to the Inventory only upon the receipt of a NOC by EPA. Therefore, it is possible that a given polymer could be listed both in the special polymer exemption file and on the Inventory. Polymers that were reviewed under the 1984 polymer exemption rule and included on the Inventory would remain on the Inventory, with the restrictions concerning low MW species content and maximum residual amounts of reactants specified for each exempted polymer still in force.

15. *Transition period between proposed and final rule.* The Agency will continue to accept polymer exemption notices under the terms of the 1984 exemption at 40 CFR 723.250 until the effective date of any final rule that amends this section. At that time, all exemptions granted by EPA under the terms of the 1984 polymer exemption regulations will remain in effect; however, no new exemptions will be granted under the 1984 polymer exemption rules. Submitters who were granted an exemption under the terms of the 1984 exemption have the option of manufacturing under those terms or of submitting a new exemption notice under the amended regulations.

If an exemption holder continues to follow the 1984 exemption rules, the NOC requirements apply and the exempt polymer will continue to be listed on the Inventory with exclusion criteria, exemption category restrictions, and residual monomer and low MW species content limitations. The exemption holder and any subsequent manufacturers of the polymer must comply with these criteria, or submit a new exemption notice or PMN.

III. Alternatives and Request for Public Comment

EPA requests comments and data on all aspects of this proposal, including provisions of § 723.250 that EPA has proposed to retain unchanged from the 1984 exemption. EPA will consider all comments and data received during the comment period and may amend any provision of § 723.250 where appropriate, based on these comments. Additionally, EPA requests comment on the specific issues and options outlined below.

A. Other Polymers Considered for Exemption

1. *Polymer salts.* The Agency has also considered a proposal to exempt certain salts of polymers that are listed on the TSCA inventory.

During FY 1990, EPA reviewed over 500 PMNs on salts of TSCA Inventory-listed polymers that were submitted by chemical manufacturers. As a result of the Agency's analysis of the health and environmental concerns associated with these polymer salts, EPA determined that in these cases polymer salts generally represented a low hazard, based on structure/activity analysis. In the few cases where potential health and/or environmental concerns were identified in a preliminary review, the Agency determined that the concerns were based on an analysis of the corresponding existing chemical substance (amine or other basic components) used to manufacture the polymer salt, and not on the polymer salt itself. EPA took no action to regulate these salts during the PMN review period. The results of this review support the Agency's view that polymer salts of Inventory-listed polymers as described above, generally present a low risk to health and the environment. Further, Agency concerns associated with the amine or other basic component could be addressed through mechanisms other than requiring new chemical reporting.

The Agency does, however, realize that there exist many polymers listed on the Inventory that have never been subject to the scrutiny of the new chemical substance review. Because of that fact, it is difficult to make the determination that these polymers will not present an unreasonable risk to human health or the environment. It follows, therefore, that the salts of these Inventory listed polymers would have the same uncertainty associated with them. However, EPA believes that many polymer salts would be eligible for exemption under the criteria being proposed in Unit II of this preamble. The Agency invites comments on the treatment of salts of existing polymers as a separate category within the context of this rule.

2. *Other polymers.* EPA considered an option of an expedited 21–day review of all polymers not meeting the exemption criteria which could actually be extended to 90 days if necessary. EPA did not propose this option because these polymers could potentially present significant risk, based on EPA's review of these polymers over the past 10 years. Therefore, these polymers could not be adequately reviewed in the 21–day time frame. EPA believes that a closer examination of the conditions of manufacturing, processing, distribution, use, and disposal during a full 90–day PMN review period is therefore necessary.

B. Notification and Timing of Submission

The Agency considered several options regarding the submission requirements and timing of submission of a polymer exemption application, as discussed below:

1. *No reporting.* The Agency considered an exemption which did not require a manufacturer to notify EPA that a polymer was being manufactured under the exemption, similar to the R&D exemption. As with the exemption for small quantities manufactured solely for R&D at § 720.36, recordkeeping would be required to verify compliance with the exemption criteria. This approach would allow the manufacture of polymers meeting the exemption criteria without the submission of a section 5 PMN or an exemption notice. It would require that manufacturers of such polymers maintain extensive records to verify compliance with the exemption criteria. However, the Agency believes that this approach would eliminate any direct mechanism for monitoring compliance since the Agency would not know the identity of the manufacturer or polymer being produced under the exemption.

2. *Notification on the first day of manufacture.* This option would require that a company submit an abbreviated notice post-marked on the first day of manufacture. The Agency considered this option because it would assure timely reporting, which would aid monitoring and enforcement of the exemption. However, based on comments previously received from the Chemical Manufacturers Association (CMA) on the timing of the NOC, EPA recognizes that requiring notices to be submitted on the same day of

manufacture would be difficult because of "coordination difficulties or the press of other business." (48 FR 41140, September 13, 1983). As stated at that time, EPA believes that companies should be allowed some latitude in when they submit NOCs and that notices submitted a short time after manufacture begins should be accepted. However, under the proposed recordkeeping requirements, EPA believes that under the ambit of the R&D provisions, all information required to support a substance's eligibility under the exemption, including analytical data demonstrating eligibility of § 723.250(e)(1) and (e)(2) polymers, would have to be available prior to first manufacture of an exempted polymer for commercial purposes.

3. *Retention of 21–day premanufacture notification.* As with the current exemption, eligible polymers meeting the exemption criteria would be subject to a 21–day review prior to the commencement of manufacture. EPA believes that such a reporting requirement would require the continuing use of substantial EPA resources to review the data. The Agency believes that this review period is unnecessary, based on EPA's finding that polymers that meet these exemption criteria will not present an unreasonable risk. By not reviewing this category, the Agency can focus its limited resources on those chemicals which pose a significant risk to society. The Agency also considered an option of requiring a 5–day pre-manufacture notification. However, a 5–day period may not provide sufficient time to acknowledge that a submission has been received, raising inquiries from submitters as to official commencement dates.

In order to ensure that companies correctly determine which polymers meet the exemption criteria, the Agency is developing a comprehensive technical support document. This will assist the company to establish that the polymer meets the terms of the exemption.

C. Eligibility Criteria

1. *Functional group equivalent weight.* The Agency also considered the alternative of standardizing the criterion for certain reactive functional groups at § 723.250(e)(1)(ii)(B) at 5,000 equivalent weight instead of establishing both a 1,000 and a 5,000 limit based on the Agency's level of concern. Under the Agency's current internal review policy, polymers with a combined reactive functional group equivalent weight of greater than 5,000 are considered of low concern with respect to both health and environmental effects. While the concern for all of the listed reactive functional groups does not warrant this high 5,000 equivalent weight value, this approach would be a more straight forward threshold for the determination of eligibility for this exemption.

The group-specific values that EPA has proposed, however, correspond much better with the actual levels of concern for the individual reactive functional groups. By employing this method, the Agency feels it allows manufacturers the flexibility of producing more polymers which are of low risk without stringent requirements imposed for the sake of simplicity. The Agency solicits comment on the merits of both approaches. As stated above, the Agency is particularly interested in hearing from small businesses and others about the complicated nature of the first approach.

2. *Residual monomer content.* EPA also considered an option which would have retained the existing requirements that submitters provide such information as number average MW and residual monomer concentration. This requirement would enable EPA to evaluate on a random, periodic basis, information received in support of the certification that a submitter has met the specific exemption criteria for polymers, or to require more information in cases where the Agency may have some specific concerns or questions about the polymer. However, EPA believes that this reporting requirement would complicate the exemption scheme by placing an unnecessary burden on both EPA and submitter resources.

D. Inhalation toxicity

Inhalation concerns for high MW water-insoluble polymers are addressed in the criteria for polymer exemption and EPA is proposing to require that submitters certify that they acknowledge the concerns for inhalation toxicity for some water-insoluble polymers and will employ either worker protection or manufacturing controls to minimize exposure to respirable dust to the extent possible. Several alternatives have also been considered and EPA requests public comment and supporting data on the advantages and detriments of the options. The Agency solicits comments on the following alternatives:

1. *No restrictions on water-insoluble polymers with MW of 10,000 or greater.* EPA considered the alternative of not setting any restrictions on water-insoluble polymers with MW of 10,000 daltons or greater. The data base on polymer inhalation toxicity on water-insoluble polymers is extremely small; therefore it is difficult to characterize a limited data set as representative of all high MW polymers. To impose general regulatory restrictions based on a limited set of very specific data may not be justified. Further, there is a lack of test data on the specific factors which cause the toxicological effect. Without being able to identify the properties of a chemical(s) responsible for the toxic effect, it may be difficult to justify restrictions on the category of high MW polymers. The EPA would like to receive and/or encourage the development of data on the inhalation toxicity of higher MW polymers to establish the generality of the effect and the need for regulatory exposure limits under the polymer exemption.

Therefore, the EPA requests comment on the need to control exposure to water-insoluble polymers with MW of 10,000 daltons or greater in the polymer exemption rule. EPA also requests that any available negative inhalation toxicity data on higher MW polymers be forwarded to the Agency as part of public comment. Of course, persons must submit any positive data indicating "substantial risk" to human health or the environment under TSCA section 8(e).

2. *Promulgate a section 4 test rule for high MW polymers.* EPA considered the alternative of using other TSCA authority, e.g. a section 4 test rule, instead of limiting the exemption. The observed lung toxicity may be a physical effect, which to date, cannot be correlated with chemical-specific characteristics of any class of polymers, except water-absorbable polymers with MW of 1 million daltons or greater. EPA recognizes that PMN occurs on a chemical-specific basis and the lung toxicity caused by respirable dust may not be a chemical-specific phenomenon. Therefore, it is difficult for EPA to define a specific chemical category of concern or an appropriate test battery, at this time.

3. *Exclude polymers from eligibility for exemption if it is reasonably anticipated that there may be inhalation exposure in manufacturing, processing, or use.* Because the data received by EPA on inhalation toxicity are so limited and narrow of scope, and because EPA considered that the concerns could be mitigated by the exemption criteria discussed above, this alternative was considered to be an inappropriate burden relative to the magnitude of the known risk.

EPA requests comments on all alternatives considered in dealing with inhalation concerns along with any supporting data available on inhalation toxicity of polymers.

E. Polymers Containing High Cationic Functional Group

The Agency considered allowing, under the exemption, polymers which contain high percentages of amine (low amine equivalent weight) in their structures that would be restricted at § 723.250(d)(1). The main concern for cationic polymers is for ecotoxicity, specifically, aquatic toxicity. There has been a significant amount of data collected to demonstrate that for the category of polymers with a high amine content, equivalent weight of 425 or less, there is sufficient mitigation of the risk, through the mechanism of humic acid binding, to render this polymer class of low concern for ecotoxicity. The Agency believes that these data sufficiently support the conclusion that high amine content polymers, as specified above, will not pose an environmental risk for aquatic toxicity.

EPA has, however, recently received data, through the provisions of section 8(e) of TSCA, with regard to toxicological studies performed on a polymer with high cationic functional group content. The test results demonstrated lethality in standard eye irritation tests in rabbits and has resulted in concerns for acute lethality as demonstrated by this polymer. The subject polymer met all provisions of the proposed polymer exemption and would have qualified for exemption if the low cationic functional group equivalent weight (high cationic content) provision was incorporated as part of the exemption criteria. It is for this reason that EPA feels that it would be inappropriate to include the high cationic functional group content allowance at this time. EPA is reviewing this category of polymers to attempt to delineate the parameters which may be responsible for this unusual effect. EPA requests any available standard rabbit eye irritation data on these types of polymers. EPA invites comment from the public on this class of polymers and the provisions in this rule for addressing them.

IV. Regulatory Analysis

A. Summary of Risk Assessment

1. *Introduction*. The Agency has decided to expand the applicability of the polymer exemption rule because EPA has determined that many of these substances are of low concern due to their lack of reactivity and their molecular size. The experience gained by the Agency from reviewing over 5,000 polymer submissions since the original polymer exemption rule in 1984 (49 FR 46066) has assisted in formulating the new set of criteria which will define what substances qualify for the polymer exemption. The hazards analysis for this proposed rule provides the evaluation of the information relevent to the Agency's conclusions that (a) polymers eligible for this exemption are generally of low risk and (b) sufficient information exists on the potential toxicity of polymers with certain characteristics to warrant their exclusion from the exemption.

2. *Approach to risk analysis*. The Agency based its risk analysis on (a) the effect MW has on the overall risk a chemical poses, (b) the specific concerns the Agency has had in the past from polymers submitted as PMNs, and (c) toxicological data available on particular chemicals.

The selection of MW as a risk-limiting criterion rests on two well-known and accepted principles of toxicology. The first principle is that, in general, in order to cause an adverse health or ecological effect, a chemical must first be absorbed by the organism. The second is that absorption of a chemical gradually decreases with increasing MW (size). Based on these two principles, the Agency reasoned that potential risks should generally be expected to decrease with increasing MW.

The second risk-limiting criterion is based on historical data gathered by the Agency in the course of reviewing several thousand polymers and identifying the concerns. This historical data gradually evolved into a set of internal Agency criteria for identifying either hazardous or high-risk substances. These internal criteria provide the basis for the proposed polymer exemption requirements that are set forth in this proposal.

3. *Limitations to approach*. The Agency realizes that there are limitations to the general rule that high MW substances will not be readily absorbed and therefore, will be of low concern. It is for these outlying cases that there are exclusions to this proposed exemption for certain polymers that remain subject to PMN. The Agency has reviewed a number of classes of chemicals to assess these risks. An EPA memorandum dated February 1, 1991, which discusses the environmental effects of polymers, is available in the public docket for this document (OPPTS–50594).

4. *Environmental risks*. The Agency has evaluated a large number of polymers for their ecotoxicity in the course of reviewing PMNs. The identified environmental risks have formed the basis for several of the exclusions from the exemption to mitigate these risks. The environmental risk posed by polymers in general can be categorized both by MW characteristics as well as electronic properties. All polymers are divided into four classes depending on the type of electronic charge of the polymer: nonionic (neutral); anionic (negative charge); cationic (positive charge); and amphoteric (mixture of positive and negative charges on same molecule) polymers. The risk these different categories may pose is related both to electronic charge and MW.

a. *Polymers with MW less than 1,000 daltons*. Polymers with a MW of less than 1,000 that possess some degree of water solubility may be of concern. These polymers tend to exhibit much of the same behavior as polymers whose MW is greater than 1,000. These polymers are also of concern due to their potential to be absorbed through biological membranes and cause systemic effects.

b. *Polymers with MW greater than 1,000 daltons*. Polymers with MW greater than 1,000 are only considered a hazard for ecotoxicity when they are water soluble (or self-dispersing). They are not expected to be absorbed through biological membranes, and are expected to assert their toxicity by affecting the outer membranes of aquatic organisms or the near environment of the organism (e.g., over-chelation of nutrient elements). Insoluble polymers are not expected to be toxic unless they are ground up into fine particles. The toxicity of finely ground particles is due to indirect (physical) toxicity (e.g., the clogging of respiratory organs such as gills). Effects of this type only occur at high concentrations, i.e., acute toxicity values of greater than 1000.0 mg/L and chronic toxicity values of greater than 50.0 mg/L. The toxicity of finely ground insoluble polymers does not depend upon the chemical structure of the polymer.

i. *Anionic (negatively charged) polymers*. Polyanionic polymers which have a MW greater than 1,000 and which are water soluble (miscible or self-dispersing) are of concern for aquatic toxicity. Polyanionic polymers are divided into three subclasses: poly(carboxylic acids), poly(aromatic sulfonates), and poly(aliphatic sulfonates).

Poly(carboxylic acids) are of concern only for their toxicity to green algae. Toxicity to algae is moderate with toxicity values ranging from 1 to 100 mg/L (ppm). It appears that the mode of toxic action of these poly(carboxylic acids) is over-chelation of nutrient elements needed by algae for growth. When enough calcium (as divalent cation) is added to a polymer to satisfy its anionic charges, toxicity to algae is mitigated.

Poly(aromatic sulfonate) polymers with MW greater than 1,000 may be of moderate concern for acute toxicity towards fish and green algae. Polymers in this class have the following characteristic monomers: sulfonated phenols, sulfonated cresols, sulfonated diphenolsulfones, sulfonated diphenyloxides, and sulfonated diphenylsulfones.

Poly(aromatic sulfonate) polymers which have been shown to have low toxicity (i.e., acute toxicity values greater than 100.0 mg/L) or are highly suspected of having low toxicity are composed of the following monomers: benzene sulfonates and sulfonated naphthalene. The Agency does not have enough test data for these polymers to draw any firm conclusions about their toxicity. However, it is suspected that if these polymers show toxicity to aquatic organisms it will be to algae as was observed for the poly(carboxylic acid) polymers.

ii. *Polycationic (positively charged) polymers*. Polycationic polymers include polyamines (primary amines, secondary amines, and tertiary amines); quaternary amines; polysulfoniums; and polyphosphoniums. Polymers which are considered to have the potential for environmental toxicity have MW greater than 1,000 and are water soluble (miscible or self-dispersing). Polymers based on polyglucosamines (i.e., chitosan) are much less toxic than predicted and are no longer of concern.

For polycationic polymers, aquatic toxicity in clean water (i.e., total organic carbon [TOC] < 2 mg/L) increases exponentially with increasing cationic charge density, i.e., protonated and/or quaternarized-N, S or P. Charge density is measured as percent amine-N for nitrogen-based polymers, equivalent weight of N, S, or P, or number of cations per 1,000 MW. Toxicity to aquatic organisms increases exponentially until about 2.5 cations per 1,000 MW (or 3.5 percent amine-nitrogen or an equivalent weight = 400), thereafter, toxicity becomes asymptotic.

5. *Inhalation toxicity*. Health concerns exist for certain types of high MW polymers that have been found to produce lung toxicity if inhaled. The Agency has received several TSCA section 8(e) and other submissions that report irreversible lung damage in experimental animals when respirable size polymer aerosols are inhaled. The data also demonstrated that the onset of the polymer-induced damage may be delayed for as long as 6 months after exposure. Observed toxicity may be a result of "overloading" the clearance mechanisms of the lung; however, at this time the Agency does not have sufficient toxicity data to either confirm or discount the "overload" theory. The Agency does not have sufficient data to determine the precise MW and/or structural considerations that may facilitate the mechanisms causing toxicity, although data received indicate that lung toxicity is produced by certain polymers with MW as low as 70,000 and at respirable concentrations as low as 4 mg/m^3.

The Agency is considering how to deal with potential lung effects in the context of the polymer exemption. Because the 1984 polymer exemption criteria, and the criteria now being considered, are based on structural and compositional characteristics of polymers, it would be difficult or impossible to address concerns for the observed lung effects within the scope of these criteria.

Accordingly, EPA is proposing to require manufactures to provide notice of potential risks and also is proposing a revocation procedure, as described more fully in Unit II of this preamble.

B. Summary of Regulatory Impact Analysis

EPA has evaluated the potential costs of the proposed amendments for potential submitters of section 5 exemption notices. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50594).

The regulatory impact analysis estimates the costs and benefits attributable to the proposed regulation. In this case, the analysis also contains estimates for the three additional proposed amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These proposals would amend the PMN rule, the Low Volume Exemption Rule, and the Expedited Follow-up rule. As these proposed regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the proposal with respect to the current regulation.

The costs and benefits associated with these proposed amendments are partially quantified; many of the benefits are unquantified but are expected to be of significant importance. Considering only the quantified costs and benefits, there is a cost savings. Since the number of section 5 submissions received by the Agency varies, this analysis used three scenarios, assuming either 1,000, 2,000, or 3,000 annual submissions, to reflect the expected range of submissions. The savings as compared to the current regulation are estimated to be:

Annual Number of Submissions	Annual Cost Savings ($ Million)	
	Industry	Government
1,000	3.7–5.6	1.0–1.3
2,000	7.4–11.2	2.1–2.6
3,000	11.1–16.8	3.1–3.9

The industry costs associated with these amendments are reporting costs, delay costs, and a user fee. Reporting costs are reduced from the current situation due to a reduction in submission requirements. Delay costs, defined as the cost of delayed introduction of the substance into the market due to section 5 regulations, are also reduced due to the elimination of the 21–day pre-manufacture notification requirement. The user fee remains the same. In addition, the amendment makes a larger number of polymers eligible for the exemption, further reducing the reporting and delay costs for those substances.

The unquantified benefits include increased flexibility for industry due to the expanded exemption criteria. The amendments would require workplace controls for those polymers likely to pose a respirable health risk, allowing the submitter to utilize pollution prevention techniques and protect the health of their workers without the delay and effort required for a section 5(e) Order.

C. EPA's Approach to Making the No Unreasonable Risk Finding

1. *Statutory background*. Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance, or any combination of such activities, will not present an unreasonable risk of injury to health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical may be taken for a category of such substances.

While TSCA does not contain a definition of "unreasonable risk," the legislative history indicates that the determination of unreasonable risk requires a balancing of the considerations of both the severity and the probability that harm will occur against the effect of the proposed regulatory action on the availability to society of the benefits of the chemical substance [H.R. 1341, 94th Cong., 2nd Session, 14 (1976)]. This analysis can include an estimate of factors such as market potential, the effect of the regulation on promoting or hindering the economic appeal of a substance, environmental effects, and many other factors which are difficult to define and quantify precisely. EPA must rely not only on data available to it, but also on its professional judgment. Congress recognized that the implementation of the unreasonable risk standard "will vary on the specific regulatory authority which the Administrator seeks to exercise" [Ibid.].

2. *EPA's approach*. In determining whether the category of substances manufactured under the exemption presents an unreasonable risk of injury to human health or the environment, the Agency considers more than just the inherent risks presented by the overall category of polymers. The Agency also considers the extent to which specific, automatic exclusions for polymers having certain characteristics affect the risks as well as the degree to which the development of specific polymeric criteria, have mitigated such potential risks. EPA analyzes to what extent the exemption criteria diminish or address potential risk.

The proposed polymer exemption will modify the requirements for eligible polymers from the current polymer exemption requirements and the general PMN requirements. EPA therefore compares the risks posed by the exemption with the risks which would have resulted from the same category of substances, if that category of substances had been subject to full notice submission requirements and 90–day EPA review or, where applicable, the reporting requirements of the current polymer exemption and the abbreviated 21–day review. Certainly it is not possible to eliminate all risks associated with the manufacture, processing, use, and disposal of a new chemical substance nor was this Congress' intent.

3. *Application of no unreasonable risk factors*. The following is an explanation of the consideration of factors relevant to the no unreasonable risk finding. The design of the proposed polymer exemption together with intrinsic properties of polymers significantly limit the risks of injury to human health or the environment that exempt polymers may present. Polymers as a general class are relatively unreactive and are not easily absorbed by bodily tissue. This proposal would exclude from eligibility, polymers with characteristics which would cast significant doubt on EPA's conclusions regarding low toxicity. EPA's conclusions regarding low toxicity potential for polymers that meet the proposed criteria are supported by the available data as well as EPA's professional judgement gathered over the course of reviewing over 10,000 polymers under the PMN and current polymer exemption requirements.

Under the proposed rule, certain polymers would be automatically ineligible for the polymer exemption. EPA has excluded those polymers for which: (a) The Agency still has insufficient data and review experience to find that they will not present an unreasonable risk, or (b) the Agency has found that, under certain conditions, polymers may present risk, thereby requiring a closer examination of the conditions of manufacturing, processing, distribution, use, and disposal during a full 90–day PMN review. This level of analysis would be necessary to make an appropriate determination about risk.

In 1982, when the Risk Analysis and Evaluation of PMN Regulatory Decisions for Polymers was performed for the original polymer rule, the Agency determined that high MW (MW) polymers containing small amounts of low MW species were not considered an unreasonable risk to humans or the environment. Extensive discussion on this topic can be found in the 1982 proposed polymer exemption rule and the preamble to the final rule promulgated in 1984. The Agency has assumed that monomers would be of greater concern than oligomers, and that oligomers would be of greater concern than polymers based on the probability that the monomer would be more readily absorbed and, on a weight basis, be more reactive than the resulting oligomer or polymer.

In the 1982 proposal, the Agency proposed to allow polymers with MW greater than 20,000 to be manufactured without any premanufacture review by EPA but determined in the final rule that an abbreviated review period was necessary due to concerns for unreacted monomers and low MW species. The Agency is now proposing a modified version of this option, based on the review and hazard assessment of PMN polymers received over the last 7 years. The Agency now believes that it has sufficient experience with high MW polymers such that a "no unreasonable risk" finding may be made for certain of these substances.

As part of its risk assessment and in determining which type of polymer would be the most appropriate subject of an exemption at that time, EPA analyzed its existing database of polymers which had been submitted as full PMNs. Of the 266 polymer PMNs received by the Agency between March 17 and December 31, 1981, 7 were subject to preliminary review and none received formal Agency regulation under section 5(e) or section 5(f) of TSCA. These 266 polymers constitute a significant percentage of the 553 PMNs received during this period. In addition, of the 13 polymer PMNs that would have been eligible for review under the then proposed exemption, 11 were dropped by the Agency after abbreviated review on the basis of chemical/physical property data.

Over the past 13 years, the Agency has reviewed approximately 10,000 polymers in the New Chemicals Program. (Approximately 50 percent of all PMNs are polymers.) Of these 10,000, the majority of the polymers that would have qualified for the proposed polymer exemption rule have consistently been characterized as posing low concern for both adverse health and environmental effects by the Agency. The characteristics of a significant number of polymers are such that they are either not absorbed by biological systems or do not interact with biological systems. Furthermore, these polymers do not degrade to toxic species in the environment. However, based on data received by the Agency and referenced above, there is a second category of polymers which may pose a risk which the Agency believes can nonetheless be controlled through the use of process changes, engineering controls or use of personal protective equipment.

As a class, the Agency considers polymers to be among the safest chemical substances known. Based on over 13 years experience with the review and evaluation of new polymers, the Agency has established specific criteria which define low-risk polymeric substances. For example, the low MW species, reactive functional group, and the cationic limitations serve as such criteria. Many of these proposed criteria are outgrowths of the criteria used to determine eligibility under the current polymer exemption that has been in effect since 1984. Further, the Agency uses these identical criteria to identify low-risk polymers in its PMN review process.

The current polymer exemption, which uses the same types of criteria as the proposed exemption criteria to determine eligibility, requires a 21–day review period. The Agency believes that this review period for polymers that meet the proposed exemption criteria is unnecessary based on EPA's finding that polymers which meet these exemption criteria put a sufficient bound on risk so that EPA review would not result in any additional protection. As a result, the Agency can then refocus its limited resources from this category of low risk concerns to those chemicals which, by comparison, may pose a considerable risk to society. Of the 1,371 polymers reviewed under the existing polymer exemption, only 1 polymer raised a concern of unreasonable risk based on ecotoxicity concern for significant releases; however, the case was dropped from review after receipt of algal test results which mitigated the Agency's concerns.

To further characterize the risk of the polymers that would be eligible for the proposed polymer exemption, the database of TSCA section 8(e)/FYI submissions was reviewed. Section 8(e) of TSCA requires that information on chemical substances which present a substantial risk of injury to human health or the environment be submitted to the Agency. A review of approximately 1,300 section 8(e) submissions revealed that, while polymers were the subject of 72 submissions, only 4 of the chemical substances identified in these 8(e) submissions would have been eligible for today's proposed polymer exemption (assuming the proposed worker protection provisions were not taken into consideration). The remaining 68 would be excluded from the proposed exemption due to MW considerations, restricted constituents and/or an excess amount below the MW of 500 or 1,000.

As discussed in Unit II of this preamble, the data received by the Agency on the six referenced submissions indicate that inhalation of respirable particles of certain of these polymers resulted in irreversible lung damage to experimental animals. In response to these new data, the Agency convened a Workshop to analyze the data to characterize the toxicity and chemical structures which may be responsible for the reported toxicity. The proceedings of the workshop are available in the Public Docket at OPPTS–50594.

Based on the small size of this data set and the uncertainty of the cause of identified effects, the Agency is not willing at this time to draw any broad scientific conclusions for a class of compounds that numbers well over the 30,000 currently listed on the TSCA Inventory. As discussed in Unit II of this preamble, the Agency is proposing to exclude from the exemption, polymers having MW of 10,000 daltons or greater that are water-absorbing in response to TSCA section 8(e) data received by EPA. In addition, under the proposal, procedural safeguards to control inhalation exposure would be imposed on water-insoluble polymers having MW of 10,000 or greater if there is a potential for inhalation exposure to respirable particles. Chemicals other than these polymers which cause similar effects are generally insoluble particles of inorganic materials, such as titanium dioxide, which have no obvious chemical similarity to the subject polymers. However, if there is a potential for inhalation exposure to any respirable particles of water-insoluble polymers of MW greater than or equal to 10,000 daltons, the Agency believes it cannot make an affirmative finding that the activities associated with eligible polymers will not present an unreasonable risk of injury to human health and the environment unless respiratory protection or other workplace controls are used.

4. *Mitigation of potential risks.* In order to mitigate potential risks if the potential for inhalation exposure exists, the Agency has determined that: (a) By requiring manufacturers and importers to notify persons in its employ of the potential inhalation toxicity of respirable particles; (b) by requiring exposed workers to use respirators in accordance with applicable OSHA and National Institute for Occupational Safety and Health (NIOSH) requirements, or, in the alternative, by maintaining a specified workplace inhalation exposure level; (c) by requiring subsequent risk notification to processors and industrial users; (d) inclusion of strong revocation procedures; and (e) by the exclusions and terms of the exemption itself, the "no unreasonable risk" finding can in fact be made on a classwide basis for purposes of this exemption. These provisions are more fully described in Unit II of this preamble. The Agency believes that the exclusions and conditions are sufficient to mitigate risk, particularly when compared to the benefits, in toto, of encouraging further development of comparatively lower risk classes of chemicals with significant consumer exposure, such as polymers.

Because of the safeguards in the proposed rule, the requirement that the information provided in submissions are binding on the submitter, and the restricted nature of the exemption categories, EPA believes that risks are not likely to be any greater than if PMNs are filed and reviewed by EPA. Furthermore, the new polymers provide benefits to industry and to the public, which comprise an important element in the finding of no unreasonable risk.

In addition to the exclusions described in the proposed rule, the Agency in § 723.250(e)(2) is proposing the adoption of notification requirements which are similar to provisions in the R&D exemption at § 720.36(c) if there is potential inhalation exposure to respirable particles of high MW water-insoluble polymers. These would include notification of risks related to inhalation concerns raised by section 8(e) data, by the manufacturer of the exempt polymer [see 40 CFR 720.36 and 720.78]. The rule would require manufacturers to evaluate information which would lead the manufacturer to believe there is a potential risk of inhalation exposure to the substance based on respirable particulates, and would require the manufacturer to notify employees and persons to whom the polymer is distributed of any risk identified during the review. Such notification would help to address the concerns raised by the section 8(e) data which indicated irreversible lung damage in experimental animals.

At the present time, a 2–year chronic inhalation bioassay would be recommended to fully evaluate the potential for lung toxicity from exposure to high MW polymers. The Agency encourages manufacturers and importers to develop and conduct appropriate toxicity testing to determine the lung toxicity from inhalation exposure to respirable polymer dusts. The docket for the proposed rule details the concerns for inhalation toxicity and raises awareness regarding the potential inhalation risks associated with certain polymers. The Agency is attempting to address the concerns raised by the section 8(e) data regarding inhalation toxicity in the proposed rule and in the PMN program. If EPA determines in the future that concerns for these polymers are mitigated or modified, it will consider revising the exemption to either delete or modify the workplace control limitations currently in the proposed rule, as appropriate, and consistent with its statutory mandate to make a "no unreasonable risk" finding.

The Agency believes that notification through labeling; notice where actual exposure is expected to occur; individual written notice or use of any other method which adequately informs persons of potential inhalation risk which EPA has reason to believe may be associated with the substance; will mitigate risk to potentially exposed populations, thereby enabling EPA to make the necessary no unreasonable risk finding.

Despite the low risk generally associated with the types of polymers that would qualify for this exemption, EPA recognizes that as the scientific community, and EPA, gain a better understanding of these substances and the potential risks associated with them, new risks may be identified. Although EPA does not currently have any information indicating that any particular polymers or categories of polymers that meet the proposed criteria for this exemption may present an unreasonable risk, it is possible that in the future EPA will obtain such information. To minimize any potential risks posed by this exemption, EPA is proposing a provision in this polymer exemption rule that would enable EPA to revoke exemptions where EPA obtains information indicating that a particular polymer or category of polymers may present an unreasonable risk of injury to health or the environment.

The Agency has proposed revocation language in the polymer exemption which would allow EPA to revoke the exemption for an exempted polymer and require a full PMN review, should the Agency obtain new information that identifies a hazard that results in a "may present" an unreasonable risk finding. Such a determination could be based on any new information, or when the body of toxicity data permits a sound scientific judgment regarding the mechanisms of lung toxicity or the structural guidelines for the toxicity referenced above.

If a polymer were eligible for the proposed polymer exemption, the polymer would not be listed on the Inventory, thereby precluding manufacture by any one other than the company submitting the exemption notice. Furthermore, based on information received on the substance itself, or analog data, the exemption status could be revoked at any time if information becomes available which results in a finding that the polymer may present an unreasonable risk to human health or the environment.

5. *Benefits*. The following discussion describes the benefits of this proposal in a qualitative manner; for a more quantitative approach, see the economic analysis discussion in Unit IV.B of this preamble. It is reasonable to assume that a newly developed polymer will either possess a new function or serve an existing function more efficiently or less expensively. The reduction in delay for that polymer to be introduced into commerce is a benefit to both manufacturers and the general public, who will have access to the substance in a more timely manner.

A consideration of which benefits to analyze would encompass more than the costs associated with or from having to submit the polymer as a full PMN. Rather, any benefit analysis undertaken by the Agency would include a consideration of the broader benefits of reduction of costs to society by providing a less burdensome alternative for polymer manufacturers, including a reduction in the burden associated with both full PMN and current polymer exemption requirements. EPA's unreasonable risk determination may be based on the effects from provision of the substances on society beyond those benefits attributable to the substance itself.

Some of the costs directly attributable to the substance include the preparation of the PMN or polymer exemption form as well as the delay in the commercial market introduction of the new chemical substance. On the other hand, there are broad societal benefits which are not directly attributable to any one chemical substance or category of substances. Such benefits would include a reduction in Agency review resources being dedicated to a category of compounds determined to be of low risk, and a concomitant shift in concentration of those resources to substances of greater known concern. While factors such as these are not of the type that EPA would take into account when making an individual control decision on a new chemical substance, they have a significant effect on society which is directly linked to EPA's exercise of its exemption authority, and are appropriately considered in a section 5(h)(4) unreasonable risk finding for a category of substances. The costs of reporting requirements will also be lessened due to the limited informational requirements imposed under the proposed polymer exemption. These savings are detailed in the Regulatory Impact Analysis report which is available in the public docket for this rulemaking (docket control number OPPTS–50594).

In addition, if the exemption is used to its greatest advantage, more than 31 percent of the resources allocated to the PMN burden could be shifted from this category of low concern to those chemicals which are considered to pose a considerably greater risk to society by comparison. Finally, manufacturers of these polymeric substances will be given greater flexibility provided they meet the terms of the criteria of the exemption.

In view of the expansive and continually increasing use of polymers in commerce, encouraging industry to expand the use of low hazard polymers can result in significant benefits to society. In general, such low hazard polymers function as replacements for heavy metals, many of which can cause detrimental human health effects to multiple organ systems as well as permanently contaminating the ecosystem with subsequent damage to the flora and fauna. The benefit of encouraging low hazard chemical substances in place of known hazards touch on all aspects of human activity and the environment including less hazardous work place environments, safer products available for the consumer, and materials that will not decompose to toxic products in the disposal sites. Such benefits outweigh risks which may be associated with inhalation of an as yet undefined subset of polymers, taking into consideration the exposure controls included in this proposal.

6. *Risk/benefit balance*. Determining the presence or absence of an unreasonable risk requires balancing of the benefits and risks posed by a regulatory action. EPA has determined that the risks are low based on the inherent properties of this class of substances; the additional safeguards built into the eligibility criteria; and the exposure controls included to mitigate any risks. EPA, of course recognizes its authority to revoke any exemption when and if information becomes available to it which would warrant such action.

EPA believes that the benefits of this proposed action are quite significant. Promoting the development of this category of polymeric substances by reducing the regulatory burden in both reporting requirements and in eliminating the delay of these products into commerce will have clear benefits to society. The added benefit of concentrating limited resources on substances which have a greater potential to present significant risks rather than a category such as polymers which have a minimal potential for significant risk is difficult to quantify, but is considered substantial nonetheless.

Given the above analysis, EPA concludes that the polymers covered by the proposed revision of the polymer exemption rule will not present an unreasonable risk of injury to human health or the environment.

V. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50594). The record includes basic information considered by the Agency in developing this proposed rule. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located at EPA Headquarters in Rm. NE–G004, 401 M St., SW., Washington, DC.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the polymer exception notice submitters were small firms. They will have reduced burdens compared to the PMN process and the existing exemption.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012.

The public reporting burden for this collection of information is estimated to vary from 10 to 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The public reporting burden for a PMN submission is estimated to vary from 95 to 110 hours; the burden for the 1984 polymer exemption is estimated to vary from 29.5 to 40 hours.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Hazardous materials, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: January 19, 1993.

William K. Reilly,

Administrator.

Therefore, 40 CFR chapter I, subchapter R, part 723 is proposed to be amended as follows:

PART 723—[AMENDED]

1. The authority citation for part 723 would continue to read as follows:

Authority: 15 U.S.C. 2604

2. By revising § 723.250 to read as follows:

§ 723.250 Polymers.

(a) *Purpose and scope.* (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers.

(2) To manufacture a new chemical substance under the terms of this section, a manufacturer must:

(i) Determine that the substance meets the definition of polymer in paragraph (b) of this section.

(ii) Determine that the substance is not specifically excluded by paragraph (d) of this section.

(iii) Ensure that the substance meets the exemption criteria of paragraph (e) of this section.

(iv) Submit a notice as required under paragraph (f) of this section.

(v) Comply with the recordkeeping requirements of paragraph (l) of this section.

(b) *Definitions.* In addition to the definitions under section 3 of the Act, 15 U.S.C. 2602, the following definitions apply to this part.

Act means the Toxic Substances Control Act (115 U.S.C. 2601 et seq.).

Biopolymer means a polymer directly produced by living or once-living cells or cellular components.

Category of chemical substances has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

Cationic polymer means a polymer that contains a net positively charged atom(s) or associated groups of atoms covalently linked to its polymer molecule.

Chemical substance, Director, EPA, importer, impurity, Inventory, known to or reasonably ascertainable, manufacture, manufacturer, mixture, new chemical, person, possession or control, process and test data have the same meanings as in § 720.3 of this chapter.

Internal monomer unit means a monomer unit that is covalently bonded to at least two other monomer units. Internal monomer units of polymer molecules are chemically derived from monomer molecules that have formed covalent bonds between two or more other monomer molecules.

Monomer means a chemical substance that has the capacity to form chemical bonds between two or more other molecules.

Monomer Unit means the reacted form of the monomer in a polymer bonded to two or more other molecules.

Number-average molecular weight means the arithmetic average (mean) of the molecular weight of all molecules in a polymer.

Polyester means a chemical substance that meets the definition of polymer and whose polymer molecules contain at least two carboxylic acid ester linkages, at least one of which links internal monomer units together.

Polymer means a chemical substance consisting of molecules characterized by the sequence of one or more types of monomer units and comprising a simple weight majority of molecules containing at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant and which consists of less than a simple weight majority of molecules of the same molecular weight. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units.

Polymer molecule means a molecule which includes at least 3 covalently bound monomer units, at least two of which are internal monomer units.

Reactant means a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition.

Reactive functional group means an atom or associated group of atoms in a chemical substance that is intended or can reasonably be anticipated to undergo facile chemical reaction.

Reasonably anticipated means that a knowledgeable person would expect a given physical or chemical composition or characteristic to occur based on such factors as the nature of the precursors used to manufacture the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions.

(c) *Applicability.* This section applies to manufacturers of new chemical substances that otherwise must submit a premanufacture notice to EPA under § 720.22 of this chapter. New substances are eligible for exemption under this section if they meet the definition of "polymer" in paragraph (b) of this section, and the criteria in paragraph (e) of this section, and if they are not excluded from the exemption under paragraph (d) of this section.

(d) *Polymers that cannot be manufactured under this section*— (1) *Cationic polymers.* A polymer cannot be manufactured under this section if the polymer is a cationic polymer as defined under paragraph (b) of this section or if the polymer is reasonably anticipated to become a cationic polymer in a natural aquatic environment (e.g., rivers, lakes) unless:

(i) The polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (for example, polymers that will be used as ion exchange beads), or

(ii) The combined functional group equivalent weight of cationic groups in the polymer is equal to or greater than 5,000.

(2) *Elemental limitations.* (i) A polymer manufactured under this section must contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

(ii) A polymer cannot be manufactured under this section if it contains as an integral part of its composition, except as impurities, any elements other than the following:

(A) The elements listed in paragraph (d)(2)(i) of this section.

(B) Sodium, magnesium, aluminum, potassium, calcium, chlorine, bromine, and iodine as the monatomic counterions Na+, Mg+2, Al+3, K+, Ca+2, Cl-, Br-, or I-.

(C) Fluorine, chlorine, bromine, and iodine covalently bound to carbon.

(D) Less than 0.20 weight percent of any combination of the atomic elements lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium.

(3) *Polymers which degrade, decompose, or depolymerize.* A polymer cannot be manufactured under this section if the polymer is designed or is reasonably anticipated to substantially degrade, decompose, or depolymerize.

(4) *Polymers manufactured or imported from monomers and reactants not on the TSCA Chemical Substance Inventory.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported comprises monomers and/or other reactants not already included on the TSCA Chemical Substance Inventory.

(5) *Water absorbing polymers with number average molecular weight (MW) 10,000 and greater.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported is considered a water absorbing polymer and has a number average MW greater than or equal to 10,000. A water-absorbing polymer is a polymeric substance that, either in whole or in part, increases its volume when in contact with water. A polymer that is partially water soluble and partially water-absorbing shall be considered water-absorbing for the purposes of this section.

(e) *Exemption criteria.* To be manufactured under this section, the polymer must meet one of the following criteria:

(1) *Polymers with number average MW greater than or equal to 1,000 and less than 10,000 (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000).* (i) The polymer must have a number average MW greater than or equal to 1,000 and less than 10,000 and contain less than 10 percent oligomeric material below MW 500 and less than 25 percent oligomeric material below MW 1,000.

(ii) A polymer cannot be manufactured under this paragraph if the polymer contains reactive functional groups that are intended or reasonably anticipated to undergo further reaction unless it meets one of the following criteria:

(A) The polymer contains no or only the following reactive functional groups: carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups that are considered "ordinary", butenedioic acid groups, those conjugated olefinic groups contained in naturally-occurring fats, oils, and carboxylic acids, blocked isocyanates (including ketoxime-blocked isocyanates), thiols, unconjugated nitrile groups, and halogens (except that reactive halogen-containing groups such as benzylic or allylic halides would not be included).

(B) The polymer has a combined reactive group equivalent weight greater than or equal to 1,000 for the following reactive functional groups: acid halides; acid anhydrides; aldehydes, hemiacetals; methylolamides, - amines or, - ureas; < C2 alkoxysilanes; allyl ethers; conjugated olefins; cyanates; epoxides; imines; or unsubstituted positions *ortho* or *para* to phenolic hydroxyl.

(C) If any reactive functional groups not included in paragraph (e)(1)(ii)(A) or (B) of this section are present, the combined reactive group equivalent weight, including any groups listed in paragraph (e)(1)(ii)(B), must be greater than or equal to 5,000.

(2) *Polymers with number average MW greater than or equal to 10,000 (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000).* The polymer must have a number average MW greater than or equal to 10,000 and contain less than 2 percent oligomeric material below MW 500 and less than 5 percent oligomeric material below MW 1000. In addition, for all water insoluble polymers greater than or equal to 10,000 MW to be manufactured under the terms of this section, the manufacturer must:

(i) Notify persons in its employ of the following if there is a potential for their inhalation exposure to any respirable particulates of the substance as identified under paragraph (e)(2)(ii) of this section:

(A) The potential for harmful lung effects upon inhalation of respirable particulates of the substance.

(B) The requirements of paragraph (e)(2)(iv) of this section. The notification must be in accordance with paragraph (e)(2)(iii) of this section.

(ii) Evaluate the potential for inhalation exposure to any respirable particulates of this substance.

(iii) Notify each person in its employ that may be potentially exposed to any respirable particulates of this substance by means of a container labeling system, conspicuous placement of notices in areas where exposure may occur, written notification, or any other form of notification which adequately informs persons of the potential inhalation exposure as determined under paragraph (e)(2)(ii) of this section, the potential for harmful lung effects upon inhalation of respirable particulates of the substance, and the requirements of paragraph (e)(2)(iv) of this section.

(iv) Provide to, and require to wear, each person in its employ that may be potentially exposed to any respirable particulates of the substance the following respiratory protection:

(A) At a minimum, a Category 21C or 23C respirator equipped with a high efficiency filter, selected in accordance with the National Institute for Occupational Safety and Health (NIOSH) Respirator Decision Logic (DHHS/NIOSH Publication No. 87–108 or current version) and used in accordance with 29 CFR 1910.134 and 30 CFR part 11. Respirators shall be selected such that employee exposure to respirable dust, mist, or aerosol of this substance via inhalation does not exceed 0.5 mg/m^3 in any 8–hour work shift of a 40–hour work week.

(B) Employees are not required to wear respirators if alternate controls in the workplace are provided so that inhalation exposure to respirable dust, mist, or aerosol of the new chemical substance in the workplace during manufacture, processing, and use does not exceed 0.5 mg/m^3 in any 8–hour work shift of a 40–hour work week. Process changes, work practices, good housekeeping, and maintenance practices can effectively reduce exposure to airborne respirable polymer materials. Examples of process changes that can reduce exposure include using the substance in solution, in pellet form, or as a wet cake. Application methods other than spray applications that can reduce airborne respirable exposures include roller coating, dip coating, etc. Good housekeeping may include such practices as wet mopping or vacuuming spills instead of dry sweeping and the repair of leaks as soon as possible.

(v) Provide in writing to processors and industrial users to whom it directly distributes the polymer a notice of potential inhalation exposure to any respirable particulates of the substance if such a determination is made in accordance with paragraph (e)(2)(ii) of this section and the potential for harmful lung effects upon inhalation of respirable particulates of the substance. The manufacturer must also inform processors and industrial users of respirator or alternate workplace controls specified in paragraph (e)(2)(iv) of this section so that inhalation exposure to respirable dust, mist, or aerosol of the new substance in the workplace during processing or use does not exceed 0.5 mg/m^3 in any 8–hour work shift of a 40–hour work week. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, material safety data sheet, or any other method that adequately informs them of inhalation exposure potential to any respirable particulates of the substance, the potential for harmful lung effects upon exposure to respirable particulates of the substance, and the use of respirator or alternate workplace controls. If the manufacturer learns that a customer is processing or using the substance in violation of prescribed respirator or alternate workplace controls, the manufacturer must cease distribution of the substance to the customer immediately. The manufacturer must also report this action to EPA within 15 working days of receipt of this information under paragraph (i) of this section.

(3) *Polyester polymers.* The polymer is a polyester as defined in paragraph (b) of this section and is manufactured solely from one or more of the reactants in the following Table 1:

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE

Reactant	CAS No.
Monobasic Acids and Natural Oils	
Benzoic acid	65–85–0
Coconut oil	[1]8001–31–8
Corn oil	[1]8001–30–7
Cottonseed oil	[1]8001–29–4
Dodecanoic acid	143–07–7
Fatty acids, coco	[1]61788–47–4
Fatty acids, linseed oil	[1]68424–45–3
Fatty acids, safflower oil	
Fatty acids, soya	[1]68308–53–2
Fatty acids, sunflower oil	[1]84625–38–7
Fatty acids, tall-oil	[1]61790–12–3
Fatty acids, tall-oil, conjugated	
Fatty acids, vegetable oil	[1]61788–66–7
Heptanoic acid	111–14–8
Hexanoic acid	142–62–1
Hexanoic acid, 3,3,5-trimethyl-	3302–10–1
Linseed oil	[1]8001–26–1
Nonanoic acid	112–05–0
Oils, Cannabis	
Oils, anchovy	
Oils, babassu palm	
Oils, herring	[1]68153–06–0
Oils, menhaden	[1]8002–50–4
Oils, oiticica	[1]8016–35–1
Oils, palm kernel	[1]8023–79–8
Oils, perilla	[1]68132–21–8
Oils, walnut	[1]8024–09–7
Oils, sardine	
Safflower oil	[1]8001–23–8
Soybean oil	[1]8001–22–7
Sunflower oil	[1]8001–21–6
Tung oil	[1]8001–20–5
Di and Tri Basic Acids:	
1,2-Benzenedicarboxylic acid	88–99–3
1,3-Benzenedicarboxylic acid	121–91–5
1,4-Benzenedicarboxylic acid	100–21–0
1,2,4-Benzenetricarboxylic acid	528–44–9
Butanedioic acid	110–15–6
2-Butenedioic acid (E)	110–17–8

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE—Continued

Reactant	CAS No.
Decanedioic acid	111-20-6
Hexanedioic acid	124-04-9
Nonanedioic acid	123-99-9
Polyols	
1,3-Butanediol	107-88-0
1,4-Butanediol	110-63-4
1,4-Cyclohexanedimethanol	105-08-8
1,2-Ethanediol	107-21-1
1,6-Hexanediol	629-11-8
1,3-Pentanediol, 2,2,4-trimethyl-	144-19-4
1,2-Propanediol,	57-55-6
1,3-Propanediol, 2,2-bis(hydroxymethyl)-	115-77-5
1,3-Propanediol, 2,2-dimethyl-	126-30-7
1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)-	77-99-6
1,3-Propanediol, 2-(hydroxymethyl)-2-methyl-	77-85-0
1,2,3-Propanetriol	56-81-5
1,2,3-Propanetriol, homopolymer	25618-55-7
2-Propen-1-ol, polymer with ethenylbenzene	25119-62-4
Modifiers	
Acetic acid, 2,2'-oxybis-	110-99-6
1-Butanol	[2]71-36-3
Cyclohexanol	108-93-0
Cyclohexanol, 4,4'-(1-methylethylidene)bis-	80-04-6
Ethanol, 2-(2-butoxyethoxy)-	112-34-5
1-Hexanol	111-27-3
Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane	[1]72318-84-4
1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7- (1-methylethyl)-	13393-93-6
Phenol, 4,4'-(1-methylethylidene)bis, polymer with 2,2'- [(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane]	25036-25-3
Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated	[1]68440-65-3
Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated	[1]68957-04-0
Siloxanes and Silicones, Me Ph, methoxy Ph, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated	[1]68957-08-2
Silsesquioxanes, Ph Pr	[1]68037-90-1

[1] Chemical substance of unknown or variable composition, complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.

[2] These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

(f) *Exemption notice.* An exemption notice must be submitted to EPA no later than 30 days after commencement of manufacture for commercial purposes.

(1) *Notice form.* The information set forth in paragraph (f)(2) of this section must be submitted on EPA Form No.7710-?? (Form number to be assigned) as identified below.

(2) *Contents of exemption notice.* For substances exempt under paragraph (e) of this section the notice must include to the extent known to or reasonably ascertainable by the manufacturer:

(i) *Manufacturer's name.* This includes the name and address of the manufacturer and the name and telephone number of a technical contact in the United States.

(ii) *Type of exemption.* A designation on page 1 of the notice, of whether the manufacturer is claiming an exemption under paragraph (e)(1), (e)(2), or (e)(3) of this section.

(iii) *Site of manufacture.* The name and street address of the site of first manufacture or import.

(iv) *Chemical identity information.* (A) The identity by specific chemical name and CAS Registry Number (or EPA assigned Accession Number) of each "reactant", as that term is defined in paragraph (b) of this section, used at greater than two weight percent in the manufacture of the polymer. The manufacturer may determine whether a reactant is used at greater than two weight percent according to either the weight of the reactant charged to the reaction vessel or the weight of the chemically combined (incorporated) reactant in the polymer. Manufacturers who choose the "incorporated" method must maintain analytical data to demonstrate compliance with this paragraph.

(B) A representative structural diagram, as complete as can be known, of the polymer.

(C) The currently correct Chemical Abstracts (CA) Index name for the polymeric substance or the CA preferred name (whichever is appropriate based on Chemical Abstract Service (CAS) 9th Collective Index nomenclature rules and conventions).

(D) The currently correct CAS Registry Number (CASRN) for the polymeric substance if a CASRN already exists for the substance in the CAS Registry File.

(v) *Generic chemical identity.* If the chemical identity provided under this section is claimed as confidential information under paragraph (h) of this section, the notice must provide a non-confidential description of this information which is only as generic as necessary to protect the confidentiality of the information.

(vi) *Test data and other data.* Test data on the polymer in the possession or control of the manufacturer, a description of other data concerning the health and environmental effects of the polymer that are known to or reasonably ascertainable by the manufacturer, and a description of data on related chemicals, as required in § 720.50 of this chapter. (Identify as an attachment to the notice.)

(vii) *Date of first manufacture or import.* The date of first manufacture or import of the substance under the terms of this exemption.

(viii) *Certification.* A certification that:

(A) The notice includes all test data and other data required.

(B) The person submitting the notice manufactured or imported the polymer for a commercial purpose other than for research and development.

(C) All information provided in the notice is complete and truthful as of the date of submission.

(D) The new chemical substance meets the definition of a polymer, is not specifically excluded from the exemption, and meets the conditions of the exemption. (Certification on page 1 of exemption form, plus the statement required by paragraph (f)(2)(viii)(D) of this section.)

(E) The person submitting the notice for a water insoluble polymer with a number average MW of 10,000 or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000) is aware of the potential for harmful lung effects upon inhalation of respirable particulates of certain high molecular weight polymers as described in this chapter and has complied with paragraph (e)(2) of this section.

(F) The person submitting the notice is providing a correct chemical identification of this substance using Chemical Abstract Services (CAS) nomenclature as required under paragraph (f)(2)(iv) of this section.

(G) The Company named in Part 1 of the form has remitted the fee specified at 40 CFR 700.45(b) or, the Company named in Part 1 of the form is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).

(ix) *List of attachments.* The notice must include a list of attachments submitted with the notice.

(g) *Notice procedures.* The following sections of 40 CFR part 720 of this chapter apply to the handling of notices under this section.

(1) Section 720.25 Determining whether a chemical substance is on the Inventory.

(2) Section 720.40 General. (Notice Form, paragraphs (g) and (h).

(3) Section 720.57 Imports.

(4) Section 720.70 Notice in the **Federal Register**.

(5) Section 720.80 General Provisions.

(6) Section 720.90 Data from health and safety studies.

(7) Section 720.95 Public file.

(h) *Confidentiality.* (1) If the manufacturer submits to EPA under this section information which it claims as confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA in the manner prescribed on the notice form or by bracketing, and stamping "CONFIDENTIAL" any attachment. Any information so identified will be treated in accordance with the procedures in part 2 of this chapter. Any information not claimed confidential at the time of submission may be made available to the public without further notice. A submitter may assert a claim of confidentiality for the chemical identity only if the submitter believes that public disclosure of the fact that anyone manufactures or imports the new chemical substance for commercial purposes would reveal confidential business information.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph must provide a generic name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the submitter will be subject to EPA review and approval in accordance with the procedures specified in § 720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by the EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice except that all information claimed as confidential in the first copy must be deleted. EPA will place the second copy in the public file.

(i) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify for the exemption, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information.

(j) *Notification of receipt of notice.* EPA will file for publication with the Office of the Federal Register, a notice of receipt by means of paragraph (g)(4) of this section. This notice does not constitute a finding by EPA that the notice, as submitted, is in compliance with this section. EPA will consider a person to have submitted the notice on the date the notice is received by the Document Control Officer for the Office of Pollution Prevention and Toxics. The exemption notice must be "postmarked" or hand-delivered by the 30th day after manufacture has commenced under the terms of this exemption.

(k) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of this section shall either continue to comply with those requirements or submit a new exemption notice pursuant to this section. If an exemption holder continues to follow the superseded regulations, the Notice of Commencement requirements apply and the exempt polymer will continue to be listed on the Inventory with exclusion criteria, exemption category restrictions, and residual monomer and low molecular weight species content limitations.

(l) *Recordkeeping.* (1) A manufacturer of a new polymer under paragraphs (e)(1), (e)(2), or (e)(3) of this section, must retain the records described in this paragraph at the manufacturing site for a period of 5 years from the final date of manufacture.

(2) The records must include the following to demonstrate compliance with the terms of this section:

(i) A copy of the exemption notice.

(ii) Documentation of any other information provided in the limited premanufacture notice, including:

(A) Information to demonstrate that the new polymer is not specifically excluded from the exemption.

(B) Information to demonstrate that the new polymer meets the exemption criteria in paragraphs (e)(1), (e)(2), or (e)(3) of this section including:

(*1*) Detailed batch records including reaction conditions (i.e., temperature, time, etc.) and amount of materials charged to the reactor and appropriate analytical test results for the first batch of the polymer manufactured for distribution in commerce and the initial batch manufactured for distribution in commerce immediately following any change in the polymer manufacturing process that may alter the eligibility of the polymer to meet the criteria at paragraphs (e)(1), (e)(2) or (e)(3) of this section as certified in the exemption notice.

(*2*) An explanation of the submitter's determination that the polymer is exempt under this section. Sufficient written explanation may include conclusions based on: Analytical data, analogies to other similar engineering or chemical processes, or extrapolations from R&D information on the polymer. A new written explanation must be made each time there is a change in manufacturing process that may alter the eligibility of the polymer to meet the criteria at paragraphs (e)(1), (e)(2), or (e)(3) of this section.

(C) If applicable, analytical data to demonstrate that the first batch of new polymer manufactured for commercial purposes under the exemption, and the initial batch manufactured subsequent to a change in manufacturing process that may alter the eligibility of the polymer to meet the criteria at paragraphs (e)(1) or (e)(2) of this section, meets the number-average MW exemption criteria in paragraphs (e)(1) or (e)(2) of this section. The analytical tests may include gel permeation chromatography (GPC), vapor pressure osmometry (VPO), or other such tests which will demonstrate that the polymer meets the number-average MW criterion.

(D) If applicable, analytical data to demonstrate that the first batch of new polymer manufactured for commercial purposes under the terms of the exemption, and the initial batch manufactured subsequent to a change in manufacturing process that may alter the eligibility of the polymer to meet the criteria in paragraphs (e)(1) or (e)(2) of this section, meets the low MW content criteria in paragraphs (e)(1) or (e)(2) of this section.

(E) If applicable, analytical data required in paragraph (f)(2)(iv)(A) of this section to make an "as incorporated" basis determination for reporting reactants used at greater than 2 weight percent in the manufacture of the polymer.

(iii) Documentation of the nature and method of notification under paragraph (e)(2)(i) of this section including copies of any labels or written notices used.

(iv) If notification is required under paragraph (e)(2)(v) of this section, the names and addresses of any persons other than the manufacturer or importer to whom the substance is distributed and copies of the written notification required under that paragraph.

(v) Records that demonstrate compliance with the requirements of paragraph (e)(2) of this section. Records must demonstrate use of the required respirators under paragraph (e)(2) of this section or information to demonstrate that sufficient workplace controls are in place such that inhalation exposure does not exceed 0.5 mg/m^3 in any 8-hour work shift of a 40-hour work week. Records of any additional results of personal exposure monitoring and any additional information related to worker's occupational exposure which the manufacturer may possess must also be maintained and made available to EPA if requested.

(3) The manufacturer must submit the records listed in paragraph (l)(2) of this section to EPA upon written request by EPA. The manufacturer must provide these records within 15 working days of receipt of this request. In addition, any person who manufactures a new chemical substance under the terms of this section, upon request of EPA, must permit such person at all reasonable times to have access to and to copy these records.

(m) *Submission of information.* Information submitted to EPA under this section must be sent in writing to: Document Control Officer (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(n) *Compliance.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) A person who manufactures or imports a new chemical substance and fails to comply with paragraph (f) of this section is in violation of section 15 of the Act.

(3) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this section and section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(6) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirements of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(7) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 2616).

(o) *Inspections.* EPA will conduct inspections under section 11 of the Act to assure compliance with section 5 and this section, to verify that information submitted to EPA under this section is true and correct, and to audit data submitted to EPA under this section.

(p) *Revocation of exemption.* (1) If at any time after an exemption application has been received under the terms of this section, EPA obtains information (through a TSCA section 8(e) report or through any other source) indicating to EPA that a particular polymer (or category of polymers that includes such polymer) or a reasonably anticipated metabolite or environmental transformation product of the substance may present an unreasonable risk of injury to human health or the environment, EPA shall notify the manufacturer of that polymer, by certified mail, that its exemption under this section will be revoked. The criteria for revocation of the exemption are that the polymer substance or a reasonably anticipated metabolite or environmental transformation product of the substance:

(i) May cause significant chronic effects, including carcinogenic, developmental or reproductive effects, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the substance.

(ii) May cause significant acute effects (lethal or sublethal) under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new substance.

(iii) May cause significant environmental effects under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the substance.

(2) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (p)(1) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the notification and if the manufacturer submits written objections to EPA within 15 days of receipt of the notification. Such written objections must state the reasons why the manufacturer believes that the polymer will not present an unreasonable risk of injury to health or the environment. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final determination under paragraph (p)(3) of this section.

(3) EPA will consider any objections submitted under paragraph (p)(2) of this section and will make a final determination on whether to revoke the exemption. EPA will notify the manufacturer of the final determination by certified mail within 15 days of receipt of the objections submitted under paragraph (p)(2) of this section.

(4) Within 24 hours of receipt of a final determination from EPA that an exemption is revoked, the manufacturer of the substance for which the exemption was revoked shall cease all manufacturing, processing, distribution in commerce, and use of that substance. The manufacturer may not resume manufacture, processing, distribution in commerce, or use until it submits a premanufacture notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(5) Action under this paragraph does not preclude action under any other applicable sections of the Act.

[FR Doc. 93–2776 Filed 2–5–93; 8:45 am]

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Monday
February 8, 1993

Part IV

Environmental Protection Agency

40 CFR Part 305

CERCLA Hearing Procedures for Claims Against the Superfund; Interim Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 305

[FRL–4195–6]

RIN 2050–AC26

CERCLA Administrative Hearing Procedures for Claims Asserted Against the Superfund

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating an interim final rule with request for comments to implement section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA section 112 outlines procedures for payments of claims authorized pursuant to CERCLA section 111. Furthermore, EPA uses the procedures authorized by CERCLA section 112 to reimburse parties for response costs incurred pursuant to CERCLA section 122. EPA reimburses the parties through payment of claims asserted against the Hazardous Substance Superfund (the Fund). The claims authority allows EPA to reimburse a person for the costs incurred for responding to an actual or threatened release of hazardous substances, pollutants, or contaminants if that person has received prior approval (preauthorization) from EPA to conduct a response action. If EPA denies all or part of a claim against the Fund for the costs incurred in conducting a preauthorized response action, the adversely affected claimant may request an administrative hearing to review that decision. This interim final rule establishes procedures to request such a hearing and governs the course of the proceeding following the request.

DATES: This interim final rule is effective February 8, 1993. Comments on the interim final rule must be submitted on or before 4 p.m. Eastern time on April 9, 1993.

ADDRESSES: Written comments on the interim final rule may be mailed or hand-delivered, in triplicate, to the Superfund Docket, located at the United States Environmental Protection Agency, 401 M Street, SW., room 2427, Washington, DC 20460. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection by appointment only (Telephone—202–260–3046) between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Site Control Division, (Mail Code—5203G), 401 M Street, SW., Washington, DC 20460; Telephone—703–603–8769. An alternative contact is the Superfund Hotline; 1–800–424–9346 (TDD 800–553–7672), or in the Washington, DC, area, (703) 920–9810 (TDD 703–486–3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
II. Discussion of Interim Final Rule
III. Summary of Supporting Analyses

I. Background

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or the Act) (Pub. L. No. 96–510), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub.L. No. 99–499), 42 U.S.C. 9601 *et seq.*, establishes broad authority for EPA to respond to actual or threatened releases of hazardous substances, and to actual or threatened releases of pollutants or contaminants that pose an imminent and substantial danger to the public health or welfare. CERCLA imposes liability on certain persons associated with releases of hazardous substances and provides authority to undertake enforcement, abatement, and cost recovery actions against responsible persons. The Act also established the Hazardous Substance Superfund (the Fund), which the Federal Government may use to respond to releases and to pay certain costs. The Fund also may be used to reimburse certain persons for costs incurred in responding to releases or threatened releases.

Section 111 of CERCLA governs the uses of the Fund, which is established under section 517 of SARA. Section 111(a) of CERCLA authorizes EPA to use the Fund to pay response claims. The procedures established today apply to such claims. These procedures are not applicable to claims for reimbursement under CERCLA section 106(a) for response actions performed by a potentially responsible party under an administrative order issued pursuant to that section, claims for reimbursement pursuant to CERCLA section 123, nor to any other claims for reimbursement for activities conducted under CERCLA.

There are two categories of response claims. The first category is authorized by CERCLA section 111(a)(2). Pursuant to that section EPA may reimburse "other persons," who are generally private non-governmental parties, for necessary response costs they have incurred as a result of carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300; 55 FR 8666, March 8, 1990) in responding to a release, or threat of a release, of a hazardous substance, pollutant or contaminant. "Other persons" may be persons other than the Federal Government, a State, or local government (unless the State or local government is also a potentially responsible party (PRP) covered by an order or consent decree under CERCLA section 122). Also, pursuant to 40 CFR 300.700(d)(iii), persons operating under a procurement contract or assistance agreement with the United States with respect to matters covered by that contract or assistance agreement, unless specifically provided therein, are excluded from the claims authority provided by CERCLA section 111(a)(2). Claimants may receive reimbursement of CERCLA section 111(a)(2) response costs only if EPA has preauthorized the response action pursuant to 40 CFR 300.700(d).

The second category of response claims, authorized by CERCLA section 122(b)(1), involves a settlement in which a PRP conducts a response action and EPA agrees to reimburse the party from the Fund for a portion of the response costs incurred, with interest. CERCLA section 122(a) authorizes the President to enter into an agreement with any person to perform any response action if the President determines that such action will be done properly by such person. CERCLA section 122(b) authorizes the President to provide in such agreements that he will reimburse the parties to the agreement, with interest, for certain costs of actions under the agreement that the parties have agreed to perform but which the President has agreed to finance. EPA reimburses the parties through payment of claims asserted against the Fund. The general procedures for a person filing a claim with the Agency and the evaluation of the response claim by EPA are set forth at 40 CFR part 307.

Section 112 of CERCLA outlines the procedures for asserting a response claim against the Fund for reimbursement of costs incurred in conducting a response action. Claims filed pursuant to CERCLA section

111(a)(2) are governed by CERCLA section 112. EPA will also utilize the procedures authorized by CERCLA section 112 to satisfy reimbursements authorized by CERCLA section 122(b)(1). Both categories of claims for response action require EPA's prior approval or "preauthorization."

The process of preauthorization is implemented through subpart H of 40 CFR part 300. Section 40 CFR 300.700(d) provides a process under which EPA may, in its discretion, preauthorize Fund reimbursement for necessary response costs incurred by private parties as a result of carrying out the NCP. In order to qualify for preauthorization, the requesting party must establish, *inter alia*, that the action will be "consistent with the NCP." This showing should be site-specific, based on an evaluation of the list of potentially applicable NCP provisions. Further, where a PRP seeks preauthorization, the NCP provides that the action must be carried out pursuant to an order or settlement agreement with EPA. In both cases, "consistency with the NCP" for purposes of CERCLA section 107(a)(4)(B) would include any site-specific requirements necessitated by the preauthorization or enforcement processes.

If the Assistant Administrator or the Regional Administrator, who serves as the "Claims Official," or his delegatee denies all or part of a claim against the Fund for the costs incurred in conducting a preauthorized response action, the adversely affected claimant may make a request to the Administrator or his delegatee for an administrative hearing to review that decision. This interim final rule establishes procedures to request the administrative hearing and governs the course of such a proceeding.

II. Discussion of Interim Final Rule

A. EPA's Approach to Drafting the Rule.

Today, EPA is establishing procedures for a person to request an administrative hearing and for EPA to conduct such hearing in the event that a claimant is dissatisfied with the EPA Claims Official's decision to deny all or part of a claim. The interim final rule is modeled after 40 CFR part 22: "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." EPA chose 40 CFR part 22 as a model because it incorporates well-established principles of administrative procedure familiar to the regulated community and the Government. Because this rule falls under the grants, benefits and contracts exemption of section 553 of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), the Agency is not required to solicit public comment before the rule becomes effective. In addition, the Agency may make the rule effective immediately upon publication. The interim final approach is designed to allow the Agency to use these procedures to resolve disputed response claims immediately, while soliciting public comments. Public comments are invited and should be sent to the address listed in the "Address" section above. Comments received by April 9, 1993 will be considered and the Agency will at that point determine the necessity for a final rule.

B. Discussion of Interim Final Procedures.

Pursuant to section 9(e) of Executive Order 12580, 52 FR 2923, 3 CFR part 193 (1988), the President delegated to the Administrator of EPA (the Administrator) the functions vested in him by section 112 of the Act for all response claims presented pursuant to section 111 of the Act. Furthermore, EPA will use the procedures authorized by CERCLA section 112 to reimburse parties for response costs incurred pursuant to CERCLA section 122.

EPA may preauthorize an entire response action, a stage of a response action (e.g., remedial design, construction), an operable unit (i.e., a discrete action that comprises an incremental step toward comprehensively addressing site problems), or a stage of an operable unit.

After the response action is preauthorized, a person may begin that response action. After the response action (or stage or operable unit, as appropriate) is completed, pursuant to CERCLA section 112(a), that person must first present any claim for reimbursement to any known PRPs before submitting a claim against the Fund for reimbursement of necessary response costs incurred. If the claim is not satisfied within 60 days of presentation to those parties, the claimant may present it to EPA. However, EPA will not consider any claim against the Fund during the pendency of a court action by a claimant to recover costs which are the subject of the claim. CERCLA section 112(a). Sections 111(a)(2), 112(b), and 122(b) of CERCLA, which are implemented by regulations set forth at 40 CFR part 307, provide the procedures for filing and evaluating such response claims.

40 CFR part 307 provides that the EPA Claims Official must first determine that a claim is "perfected." A claim is perfected when the Claims Official determines that it is substantiated by all the documentation required to justify the amounts sought. After all required documentation is submitted, the Claims Official evaluates the claim. If he denies all or part of the claim, a claimant may make a request to the Administrator for an administrative hearing pursuant to CERCLA section 112(b). Any such request must be made within 30 days after the claimant receives notice of the Claims Official's decision.

The administrative hearing process consists of two phases, an informal review, and the formal administrative hearing process. The informal review is the first part of the administrative hearing process and is conducted by the Administrator, who serves as the Review Officer, or his delegatee, who has authority to resolve claims. Informal review provides a low-cost opportunity for the Review Officer to review Claims Officials' decisions for national consistency and consider extenuating circumstances. If the claimant is dissatisfied with the decision of the Review Officer, the claimant may notify him and he must immediately refer the matter to the Chief Administrative Law Judge to initiate the formal administrative hearing process. The Chief Administrative Law Judge, in turn, will assign an Administrative Law Judge (ALJ) to hear the matter as the Presiding Officer.

The second phase of the administrative hearing process begins when the dispute has been assigned to an ALJ and he takes jurisdiction over the case. The ALJ must render a written final order within 90 days of taking jurisdiction unless all parties agree in writing to an extension, or unless the Presiding Officer, upon motion or *sua sponte*, extends the time limit in which to issue a final order. The Presiding Officer may extend the period in which to issue a final order for up to 60 days. An extension by the Presiding Officer does not preclude an extension by agreement of the parties, nor does an extension by agreement of all parties preclude an extension by the Presiding Officer.

For CERCLA response claims, the ALJ will conduct a trial- type hearing considering all relevant legal and factual matters, including the terms and conditions of the Preauthorization Decision Document (PDD), and consent decree or administrative order on consent, as appropriate. The PDD will be relevant to a number of factors the ALJ will consider including: (1) The parties involved; (2) the response work to be performed; (3) he stage of that work at which a claim for reimbursement may be submitted; (4) the expected cost of the response work; and (5) the percentage of eligible costs that EPA will reimburse from the Fund. After the administrative hearing, the ALJ will issue a final order disposing of these issues.

After the ALJ has issued a final order in the proceeding, no further administrative review is available. Pursuant to CERCLA section 112(b)(5), either the claimant who filed the Request for a Hearing or EPA may appeal the final order. Such appeal must be made to the appropriate Federal district court within 30 days of notification of the final order. The court can overturn the final order only if it is an arbitrary or capricious abuse of discretion. CERCLA section 112(b)(5). If neither party appeals, EPA must pay any award due within 20 days after the expiration of the appeal period for any final order. If an award is granted by a Federal district court on appeal, the award must be paid within 20 days after a final judicial order.

III. Summary of Supporting Analyses

Proposed and final rules issued by Federal Agencies are subject to several statutes and executive orders. These include Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order 12291

Rulemaking procedures under Executive Order 12291 require that regulations be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to Executive Order 12291, major rules are regulations that are likely to result in:

1. An annual effect on the economy of $100 million or more;
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA has determined that this interim final rule is a non-major rule under Executive Order 12291 because it will not result in any of the impacts identified above. Therefore, the Agency has not prepared a regulatory impact analysis for this regulation. This interim final rule has been submitted to OMB for review under Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant economic impact on a substantial number of small entities." EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because all authorized costs and expenses are payable from the Fund. Further, this interim final rule imposes no capital expenditures, nor any compliance requirements on any business.

C. Paperwork Reduction Act

The interim final rule contains no information collection requirements which require approval by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 305

Administrative practice and procedures, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: January 13, 1993.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding part 305 to read as follows:

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPERFUND

Subpart A—General

Sec.

305.1 Scope.
305.2 Use of number and gender.
305.3 Definitions.
305.4 Powers and duties of the Review Officer and the Presiding Officer; disqualification.
305.5 Filing, service, and form of pleadings and documents.
305.6 Computation and extension of time.
305.7 Ex parte discussion of proceeding.
305.8 Examination of documents filed.

Subpart B—Parties and Appearances

305.10 Appearances.
305.11 Consolidation and severance.

Subpart C—Prehearing Procedures

305.20 Request for a hearing; contents.
305.21 Amendment of request for a hearing; withdrawal.
305.22 Answer to the request for a hearing.
305.23 Motions.
305.24 Default order.
305.25 Informal settlement; voluntary agreement.
305.26 Prehearing conference.
305.27 Accelerated order; order to dismiss.

Subpart D—Hearing Procedure

305.30 Scheduling the hearing.
305.31 Evidence.
305.32 Objections and offers of proof.
305.33 Burden of presentation; burden of persuasion.
305.34 Filing the transcript.
305.35 Proposed findings, conclusions, and order.
305.36 Final order; costs.

Authority: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

Subpart A—General

§ 305.1 Scope.

(a)(1) This part governs all administrative proceedings for the total or partial denial of response claims asserted against the Hazardous Substance Superfund (the Fund) pursuant to sections 111(a)(2) and 122(b)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 *et seq.*

(2) Sections 111(a)(2) and 122(b)(1) of CERCLA authorize EPA, among other things, to use the Fund to reimburse certain persons who file claims for eligible response costs incurred in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. In the event that the Claims Official declines to pay all or part of a claim, a claimant may request an administrative hearing pursuant to § 305.4(a) within 30 days after receiving notice of the Claims Official's decision. The procedures governing such a proceeding are set forth in this part.

(b) Procedural questions arising at any stage of the proceeding which are not addressed in this part shall be resolved at the discretion of the Claims Official, the Review Officer, or the Presiding Officer, as appropriate.

§ 305.2 Use of number and gender.

As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine, as the case may require.

§ 305.3 Definitions.

(a) The following definitions apply to this part:

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105.

Agency or *EPA* means the United States Environmental Protection Agency.

CERCLA or *the Act* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601 *et seq.*

Claim means a demand in writing for a sum certain, which is presented to the Fund in accordance with CERCLA sections 111 and 112.

Claimant means any person who presents a claim to the Fund for reimbursement under CERCLA section 112(b)(1).

Claims Official means the Assistant Administrator or the Regional Administrator or his delegatee who makes the initial decision awarding or denying a claim in whole or in part.

Confidential business information or *CBI* means business information for which a person has made a "business confidentiality claim" as defined in 40 CFR 2.201(h) and in accordance with all applicable provisions in 40 CFR part 2, subpart B, except insofar as the Administrator has denied the claim pursuant to the procedures in 40 CFR part 2, subpart B.

Final order means the decision of the Review Officer which has become final in accordance with § 305.4(a), or of the Presiding Officer, or in the case of a voluntary agreement (see § 305.25) of the parties, disposing of all legal and factual matters presented in the Request for a Hearing. A final order made by the Review Officer or the Presiding Officer shall contain findings of fact, conclusions of law, as well as the reasons therefore, and an order for an award of a sum certain, or an explanation of why no award is granted. The final order may consist of one or more of the following documents: the findings of fact, conclusions of law, and order of the Review Officer or the Presiding Officer; a voluntary agreement; an accelerated order; or a default order, if the default order provides for dismissal of the Request for a Hearing with prejudice. A final order is the final administrative decision of the Agency and (with the exception of a voluntary agreement) is appealable to the Federal district court for the district where the release or threat of release took place.

Fund or *Superfund* means the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

Hearing means a hearing on the record open to the public and conducted under this part.

Hearing Clerk means the Hearing Clerk, A-110, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460.

National Contingency Plan or *NCP* means the National Oil and Hazardous Substances Pollution Contingency Plan developed under section 311(c) of the Clean Water Act and revised pursuant to section 105 of CERCLA (40 CFR part 300).

Party means EPA or any person that participates in a proceeding under this part as a Requestor.

Preauthorization means EPA's prior approval to submit a claim against the Fund for necessary response costs incurred as a result of carrying out the NCP.

Presiding Officer means the Administrative Law Judge designated by the Chief Administrative Law Judge, or the Chief Administrative Law Judge himself, in the absence of such designation, to conduct a hearing pursuant to this part.

Proceeding means the entire process of review of a claim conducted pursuant to this part that is initiated by a Request for a Hearing. A hearing is part of a proceeding.

Request for a Hearing means a written notice requesting an administrative hearing of the total or partial denial of a claim by the Claims Official. Such hearing shall be governed by this part.

Requestor is the party who files a Request for a Hearing.

Review Officer means the EPA Administrator or his delegatee who is authorized to exercise all powers and duties prescribed or delegated under the Act or this part to him.

Voluntary agreement (see § 305.25) means a written communication, signed by all the parties or their counsel or representatives, containing an order acceptable to both the Requestor and EPA. A voluntary agreement shall state that, for purposes of this proceeding, EPA consents to the award of a sum certain to the Requestor or such other consideration as the parties deem appropriate. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

(b) Terms defined in CERCLA or in 40 CFR part 300 and not defined in this part are used consistent with the meanings given in CERCLA or 40 CFR part 300.

§ 305.4 Powers and duties of the Review Officer and the Presiding Officer; disqualification.

(a) *Review Officer.* The Review Officer is authorized to receive Requests for a Hearing; attempt to promote settlement; make the decision of the Agency on the claim if the claimant does not request referral of the Request for a Hearing to the Chief Administrative Law Judge; and refer a Request for a Hearing to the Chief Administrative Law Judge when necessary. The Review Officer shall make the decision of the Agency on the claim in writing and shall serve the Requestor and the Claims Official with a copy of his decision. The Review Officer may, *sua sponte*, without ruling on the merits of the Request for a Hearing, refer it to the Chief Adminstrative Law Judge for decision. If the Requestor is not satisfied with the decision of the Review Officer, he may, within 10 days of service of such decision, request that the Review Officer refer the Request for a Hearing to the Chief Administrative Law Judge. The Requestor shall also serve such notice on the Claims Official. Otherwise the decision of the Review Officer is a final order. When referring a matter to the Chief Administrative Law Judge, the Review Officer shall include the Request for a Hearing, a copy of his decision, and any other pertinent documents. The Review Officer also shall notify the Requestor, the Hearing Clerk, and the Claims Official when he refers a Request for a Hearing to the Chief Administrative Law Judge. The Hearing Clerk, shall, upon receipt of the relevant documents, establish a file for the hearing. Thereafter, a copy of all pleadings must be filed with the Hearing Clerk. This requirement is in addition to the applicable service of documentation requirements contained in §305.5(b)(2). The Review Officer shall exercise all other powers and duties prescribed or delegated to him under the Act or this part.

(b) *Presiding Officer.* Upon receipt from the Review Officer of the Request for a Hearing, the Chief Administrative Law Judge shall designate himself or another Administrative Law Judge as Presiding Officer and shall transmit all documents related to the Request for a Hearing to the Presiding Officer. The Presiding Officer shall then notify the parties of his assignment pursuant to § 305.4(c). The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under this part;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations;

(4) Examine witnesses and receive documentary or other evidence;

(5) Order a party, or an officer or agent thereof, for good cause, upon motion, or *sua sponte*, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of law and fact;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Extend the time limit for a final order in the hearing for a period not to exceed 60 days;

(10) Render findings of fact, conclusions of law, and a final order;

(11) Assess costs of the proceeding pursuant to § 305.36(b);

(12) Do all other acts and take all measures necessary for the maintenance of order and for the efficient and impartial adjudication of issues arising in proceedings governed by this part; and

(13) Resolve all disputes based on the evidence and applicable law; See § 305.31 concerning evidence.

(c) The Presiding Officer shall notify the parties that the Request for a Hearing has been assigned to him, and that he has received the case file from the Chief Administrative Law Judge. After ruling on any objections to jurisdiction, or final disposition of any objections to disqualification, the Presiding Officer shall render a final order within 90 days after he affirmatively accepts such jurisdiction. The Presiding Officer shall render a final order within the allotted time, unless all parties agree in writing to an extension, or unless, in his discretion, either upon motion of a party or *sua sponte*, he allows an extension of time not to exceed 60 days. If all parties agree in writing to an extension of the time period within which the Presiding Officer must issue a final order, the extension shall be for the period agreed to in writing by all parties. There are no limits to such periods other than that to which the parties have agreed in writing. An agreement by the parties to extend the time limit does not preclude the Presiding Officer from extending the time limit to issue a final order *sua sponte* or upon motion of a party, nor does an extension by the Presiding Officer preclude the parties from agreeing to an extension.

(d) *Disqualification; withdrawal.* (1) Neither the Review Officer nor the Presiding Officer may perform functions provided for in this part regarding any matter in which he: has a financial interest; or has any relationship with a party or with the subject matter that would make it inappropriate for him to act. A party shall, by motion presented within 5 days after receiving notice of the assignment of the Presiding Officer, make any objection to his assignment. Otherwise, any objections to the qualifications of the Presiding Officer are waived, unless such objections arise after the time for presenting objections allowed by this paragraph. In such case, any objection must be made within 5 days of the time within which it arose. Either party may appeal the Presiding Officer's ruling on a motion to disqualify him to the Chief Administrative Law Judge. The Chief Administrative Law Judge shall rule on such motion in a timely fashion. When the Chief Administrative Law Judge is the Presiding Officer, he shall refer any challenge to his qualification to hear the case to another Administrative Law Judge for decision. The Review Officer or the Presiding Officer may at any time withdraw from any proceeding in which he deems himself disqualified or unable to act for any reason.

(2) If the Review Officer or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. The Administrator shall appoint a new Review Officer. The Chief Administrative Law Judge shall assign a new Presiding Officer from among the available Administrative Law Judges.

(3) The Chief Administrative Law Judge shall have the power to rule on motions for disqualification as described in paragraph (d)(1) of this section and may, at any stage in the hearing, reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and will not prejudice the parties.

§ 305.5 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) The original and one copy of the Request for a Hearing shall be served on the Review Officer. Service on the Review Officer shall be made in the manner prescribed by paragraph (b) of this section. The Requestor shall serve his Request for a Hearing on the Review Officer within 30 days of receipt of the Claims Official's decision. The Review Officer shall promptly notify the Claims Official of receipt of a Request for a Hearing and shall provide him a copy of such request. The original of all other pleadings and documents shall be filed with the appropriate official and a copy served on each party.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with a party, the original of the correspondence shall be sent to the Hearing Clerk, a copy shall be maintained by the Presiding Officer in the duplicate file, and a copy shall be sent to all parties. A party who corresponds directly with the Presiding Officer shall, in addition to serving all other parties, send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this paragraph.

(b) *Service of pleadings and documents* (1) *Service of Request for a Hearing.* Service of a signed original Request for a Hearing with copy thereof may be made on the Review Officer either personally or by certified mail, return receipt requested. The Review Officer shall assign a docket number to the Request for a Hearing, and shall notify the Requestor, the Hearing Clerk, and the Claims Official of such docket number.

(2) *Service of documents other than the Request for a Hearing.* (i) All documents other than the Request for a Hearing may be served on the appropriate official personally or by certified mail, return receipt requested, or by first class mail, postage pre-paid. After initiation of the hearing, a party serving any document must also submit a copy of such document to the Hearing Clerk.

(ii) Service upon the Claims Official, the Review Officer, or the Hearing Clerk shall be made by delivering two copies of the document to the appropriate official in the manner prescribed in paragraph (b)(2)(i) of this section.

(iii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to an action under a common name shall be made in the manner prescribed in paragraph (b)(2)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the document in the manner prescribed by the law of the State for the service of process on any such persons, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by personal service or certified mail, as prescribed by paragraph (b)(1) of this section, directed to the Chief Executive Officer thereof;

(B) If upon a State or local officer, by personal service or certified mail, as prescribed by paragraph (b)(1) of this section, to such officer.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the Presiding Officer, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the Requestor, the docket number assigned by the Review Officer, and the official to whom the document is directed. All pleadings greater than ten pages in length, and all legal briefs, shall contain a table of contents and a table of citations with page references.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter, or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any party shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the appropriate official, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under this part.

(5) The Claims Official, Review Officer, Presiding Officer, or Hearing Clerk may refuse to file any document which does not comply with paragraph (c) of this section. Written notice of such refusal, stating the reasons therefore, shall be promptly given to the party submitting the document. Such party may amend and resubmit any document refused for filing, if such amendment and resubmission is timely. If, for good cause shown, amendment and resubmission is not timely, a party may request an extension of the time in which to submit a document to the appropriate official.

(d) *Confidential Business Information.* (1) Any person filing or serving any pleading or document under this part containing information claimed as Confidential Business Information (CBI) shall assert the claim as specified in 40 CFR 2.203(b). The failure to assert a CBI claim in accordance with this section, at the time the pleading or document is filed or served, shall constitute a waiver of any rights to assert any CBI claim with respect to the business information in the pleading or document.

(2) Any pleading or document containing CBI shall be filed in a double envelope. The outside envelope should not mention that CBI is contained. The inside envelope shall specify the envelope contains CBI.

(3) For each original or copy of each pleading or document filed or served which contains CBI, the person shall submit two versions.

(i) One version must be complete. In that version, the person shall mark the specific information claimed as CBI pursuant to this section.

(ii) The CBI must be deleted in the second version, and all information claimed as CBI must be indicated in such version, as well as the nature of the information claimed as CBI, and the fact that another version containing the CBI has been filed pursuant to this section.

(4) The Hearing Clerk shall not accept for filing any CBI pleading or document which does not comply with the requirements of paragraphs (d)(2) and (3) of this section.

(5) All claims of CBI, and all information entitled to treatment as CBI, shall be governed by the provisions of 40 CFR part 2, subpart B, for CERCLA, as well as any other EPA regulatory provisions affecting the confidentiality of the information.

§ 305.6 Computation and extension of time.

(a) *Computation.* In computing any period of time described or allowed in this part, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or Federal legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extension of time.* The Presiding Officer, or Review Officer as appropriate, may grant an extension of time for the filing of any pleading, document or motion upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service of the Request for a Hearing is complete when the return receipt is signed by the Review Officer. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, 5 days shall be added to the time allowed by this part for the filing of a responsive pleading or document.

§ 305.7 Ex parte discussion of proceeding.

At no time after the Request for a Hearing is referred to the Presiding Officer shall the Presiding Officer discuss *ex parte* the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performed a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any *ex parte* memorandum or other communication addressed to the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as an argument made in the proceeding and shall be served upon all other parties. Any other party shall be given the opportunity to reply to such memorandum or communication.

§ 305.8 Examination of documents filed.

(a) *Inspection of Documents.* Subject to the provisions of law restricting public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Claims Official, Review Officer, or Hearing Clerk, as appropriate.

(b) *Costs.* The cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents. The Agency may waive this cost in appropriate cases.

Subpart B—Parties and Appearances

§ 305.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 305.11 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or *sua sponte*, consolidate any or all matters at issue in two or more proceedings docketed under this part where:

(1) There exist common parties or common questions of fact or law;

(2) Consolidation would expedite and simplify consideration of the issues; and

(3) Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(b) *Severance.* The Presiding Officer may, by motion or *sua sponte*, for good cause shown, order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 305.20 Request for a hearing; contents.

(a) Within 30 days after receiving notice that the Claims Official has declined to pay all or part of a claim, the claimant may file a Request for a Hearing with the Review Officer. The Request for a Hearing shall contain:

(1) A statement of the authority for the Request for a Hearing;

(2) A concise statement of the reasons that the Requestor disputes the Claims Official's denial of all or part of the claim;

(3) A request for an administrative hearing concerning the Claims Official's total or partial denial of his claim pursuant to this part; and

(4) A statement of amount that the Requestor demands to be awarded from the Fund.

(b) The Requestor must file with the Request for a Hearing two copies of:

(1) The Preauthorization Decision Document for the response work that is the subject of the claim;

(2) The claim filed with EPA pursuant to CERCLA section 111(a)(2) or 122(b)(1); and

(3) The written notice from the Claims Official denying all or part of the claim.

§ 305.21 Amendment of request for a hearing; withdrawal.

(a) *Amendment of Request for a Hearing.* The Requestor may amend the Request for a Hearing once as a matter of right at any time before the answer is filed. Otherwise the Requestor may amend the Request for a Hearing only upon motion granted by the Presiding Officer. The Claims Official shall have 10 additional days from the date of service of the amended claim to file his answer.

(b) *Withdrawal of Request for a Hearing.* The Requestor may withdraw the Request for a Hearing, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal without prejudice before the filing of an answer, or after the filing of an answer, the Requestor may withdraw the Request for a Hearing, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer. In no case may a Request for a Hearing be filed more than 30 days after the Requestor has received notice that the Claims Official has declined to pay all or part of a claim.

§ 305.22 Answer to the request for a hearing.

(a) *General.* The Claims Official shall file an original and one copy of a written answer to the Request for a Hearing with the Hearing Clerk when he: contests any material fact upon which the Request for a Hearing is based; contends that the amount of money demanded in the Request for a Hearing is inappropriate; or contends that he is entitled to judgment as a matter of law. Any such answer to the Request for a Hearing must be filed with the Hearing Clerk and served on all parties within 15 days after the Presiding Officer has assumed jurisdiction over the case as provided by § 305.4(d).

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny, or explain each of the factual allegations in the Request for a Hearing with regard to which the Claims Official has any knowledge. When the Claims Official has no knowledge of a particular allegation and so states, the allegation is deemed denied. The answer shall also state:

(1) The circumstances or arguments which are alleged to constitute the grounds of defense; and

(2) The facts which the Claims Official intends to place at issue.

(c) *Failure to admit, deny, or explain.* Failure of the Claims Official to admit, deny or explain any material factual allegation contained in the claim constitutes an admission of the allegation.

(d) *Amendment of the answer.* The Claims Official may amend the answer to the Request for a Hearing upon motion granted by the Presiding Officer.

§ 305.23 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall: be in writing; state the grounds therefor with particularity; set forth the relief sought and a proposed order; and be accompanied by an affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 305.5(b)(2)(i).

(b) *Response to motions.* A party's response to any written motion must be filed within 10 days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer may set a shorter time for response, or make such other orders concerning the disposition of motions as he deems appropriate.

(c) *Decision.* The Presiding Officer, or Chief Administrative Law Judge, in the absence of a Presiding Officer, shall rule on all motions. Oral argument on motions will be permitted in the discretion of the Presiding Officer. See § 305.4(a) concerning motions to extend the time limit for final orders.

§ 305.24 Default order.

(a) *Default.* A party may be found to be in default: after motion, upon failure of the Claims Official to file a timely answer to the Request for a Hearing; after motion or *sua sponte*, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or after motion or *sua sponte*, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of failure to appear at a hearing shall be made against the Claims Official unless the Requestor presents sufficient evidence to the Presiding Officer to establish a prima facie case in support of his claim. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have 10 days from service to reply to the motion. Default by the Claims Official constitutes, for purposes of the pending action only, an admission of all facts alleged in the claim and a waiver of his right to a hearing on such factual allegations. Default by the Requestor may result in the dismissal of the Request for a Hearing with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. The default order shall constitute the final order in the proceeding, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order; conclusions regarding all material issues of law; costs to be assessed pursuant to § 305.36, if applicable; and, the amount to be awarded the claimant, if any.

(d) *Setting aside a default order.* For good cause shown, the Presiding Officer may set aside a default order.

§ 305.25 Informal settlement; voluntary agreement.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. Settlement conferences shall not affect the Claims Official's obligation to file a timely answer under § 305.22.

(b) *Voluntary agreement.* The voluntary agreement shall state that, for the purpose of this proceeding, the Claims Official consents to the award of a sum certain to the Requestor or in the case of no award, that both parties agree to settle the matter. The voluntary agreement shall include an order acceptable to both the Requestor and EPA, and shall be signed by all parties or their counsel or representatives. A voluntary agreement is effective without approval of the Presiding Officer and is a final order as defined in this part.

§ 305.26 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to the pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties: the names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony; and copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or *sua sponte.* The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference and shall serve that summary on all parties in the manner provided in § 305.5(b)(2). The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of the prehearing conference.* The prehearing conference shall be held in the county where the release occurred, in the city in which the EPA Regional Office is located (in the Region where the release or threat of release occurred), or in Washington, DC, unless the Presiding Officer determines that there is good cause to hold it at another location or by telephone.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or *sua sponte,* may direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Discovery shall include any of the methods described in rule 26(a) of the Federal Rules of Civil Procedure.

(2) The parties may conduct any mutually agreed upon discovery without participation or determination of the Presiding Officer except that such voluntary discovery may be subject to such time limitations as the Presiding Officer deems appropriate.

(3) Except as provided by paragraphs (b) and (f)(2) of this section, further discovery, under this section, shall be permitted only pursuant to order of the Presiding Officer. Any party to the proceeding desiring an order of discovery shall make a motion therefore. Such motion shall set forth:

(i) The circumstances warranting the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The method of discovery sought, including, where relevant, the proposed time and place where the discovery will be conducted.

(4) The Presiding Officer shall issue an order for discovery only upon a showing of good cause and upon a determination:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

If the Presiding Officer determines that the motion should be granted, he shall issue an order for such discovery together with the conditions and terms thereof.

(5) The Presiding Officer shall order depositions upon oral questions only upon a finding that:

(i) The information sought cannot be obtained by alternative methods of discovery; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation by a witness at the hearing.

(6) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to:

(i) The inference that the information to be discovered would be adverse to the party from whom the information was sought; or

(ii) The issuance of a default order under § 305.24(a).

(g) *Interpreters.* The Presiding Officer shall make the necessary arrangements for the services of an interpreter upon the motion of a party or *sua sponte.* The cost of the interpreter shall normally be borne by the party requesting the service, but the Presiding Officer may apportion the cost among the parties as justice demands.

§ 305.27 Accelerated order, order to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or *sua sponte,* may at any time render an accelerated order in favor of the Requestor or the Claims Official as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and the party is entitled to judgment as a matter of law, as to all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the Claims Official, may at any time dismiss a Request for a Hearing without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the Requestor.

(b) *Effect.* (1) If an accelerated order or an order to dismiss is issued as to all the issues in the proceeding, the order constitutes the final order of the Presiding Officer, and shall be filed with the Hearing Clerk.

(2) If an accelerated order or an order to dismiss is rendered on less than all issues in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 305.30 Scheduling the hearing.

(a) *Filing of answer.* When an answer is filed, the Hearing Clerk shall forward such answer to the Presiding Officer.

(b) *Notice of hearing.* The Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than 20 days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method of determining the location of a prehearing conference under § 305.26(d).

§ 305.31 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that evidence which would be excluded in the Federal courts under Rule 408 of the Federal Rules of Evidence (28 U.S.C. Appendix) is not admissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall follow the provisions regarding confidential business information of 40 CFR part 2, subpart B for CERCLA. The commercial or trade secret status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental final order to address questions of law or fact which arise out of that portion of the evidence which is confidential or which includes trade secrets. For the purpose of recording the hearing, the court reporter shall be considered "a person under contract or subcontract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act" pursuant to 40 CFR 2.301(h)(2); unless the affected business, as defined in 40 CFR 2.201(d), agrees to some other procedures approved by the Presiding Officer.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the Presiding Officer. A party shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Verified statements.* The Presiding Officer may admit and insert into the record as evidence, in lieu of oral testimony, statements of fact or opinions prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits and other statements where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits and other verified written statements of witnesses who are unavailable. The term "unavailable" shall have the meaning accorded to it by rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter which may be judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 305.32 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion into the record of the documents or exhibits excluded.

§ 305.33 Burden of presentation; burden of persuasion.

The Requestor has the burden of going forward with his case and of proving that the amount demanded in the Request for a Hearing is justified. Accordingly, the Requestor bears the burdens of presentation and persuasion. Following the establishment of a prima facie case, the Claims Official shall have the burden of presenting and of going forward with any defense to the allegations set forth in the Request for a Hearing. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 305.34 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Hearing Clerk shall notify all the parties of the availability of the transcript and shall furnish the Requestor with a copy of the transcript upon payment of the cost of reproduction, unless a Requestor can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript ordered to be kept confidential by the Presiding Officer. Any party may file a motion to correct the transcript in accordance with the provision of § 305.23.

§ 305.35 Proposed findings, conclusions, and order.

Within 20 days after the parties are notified of the availability of the transcript, any party may submit for the consideration of the Presiding Officer proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a time by which reply briefs may be submitted. The Presiding Officer may by order extend the time or change the schedule of such submissions or allow further submissions as may be appropriate. All submissions shall be in writing, shall be served upon all parties, and shall contain references to the record for all proposed findings of fact and appropriate citations for authorities relied upon.

§ 305.36 Final order; costs.

(a) *Filing and content.* The Presiding Officer shall issue and file with the Hearing Clerk a final order as soon as practicable after the period for filing reply briefs under § 305.35 has expired, but within the time allowed for issuance of a final order as prescribed by § 305.4(d). The final order shall contain his findings of fact, conclusions of law, as well as the reasons therefor, and an order for an award for a sum certain, or an explanation of why no award is granted.

(b) *Costs.* If the Presiding Officer concludes in writing that the Request for a Hearing was frivolous, he may direct the Hearing Clerk to assess all or part of the costs of the proceeding against the Requestor. In such case, the Hearing Clerk shall assess such costs as directed by the Presiding Officer, and shall serve notice of such direction and the amount of such costs on all parties. No later than 5 days after receipt of notice of assessment of costs, the Requestor may move that the Presiding Officer review the assessment of costs by the Hearing Clerk. The Presiding Officer may uphold, reverse, or modify the action of the Hearing Clerk in assessing costs.

[FR Doc. 93-2702 Filed 2-5-93; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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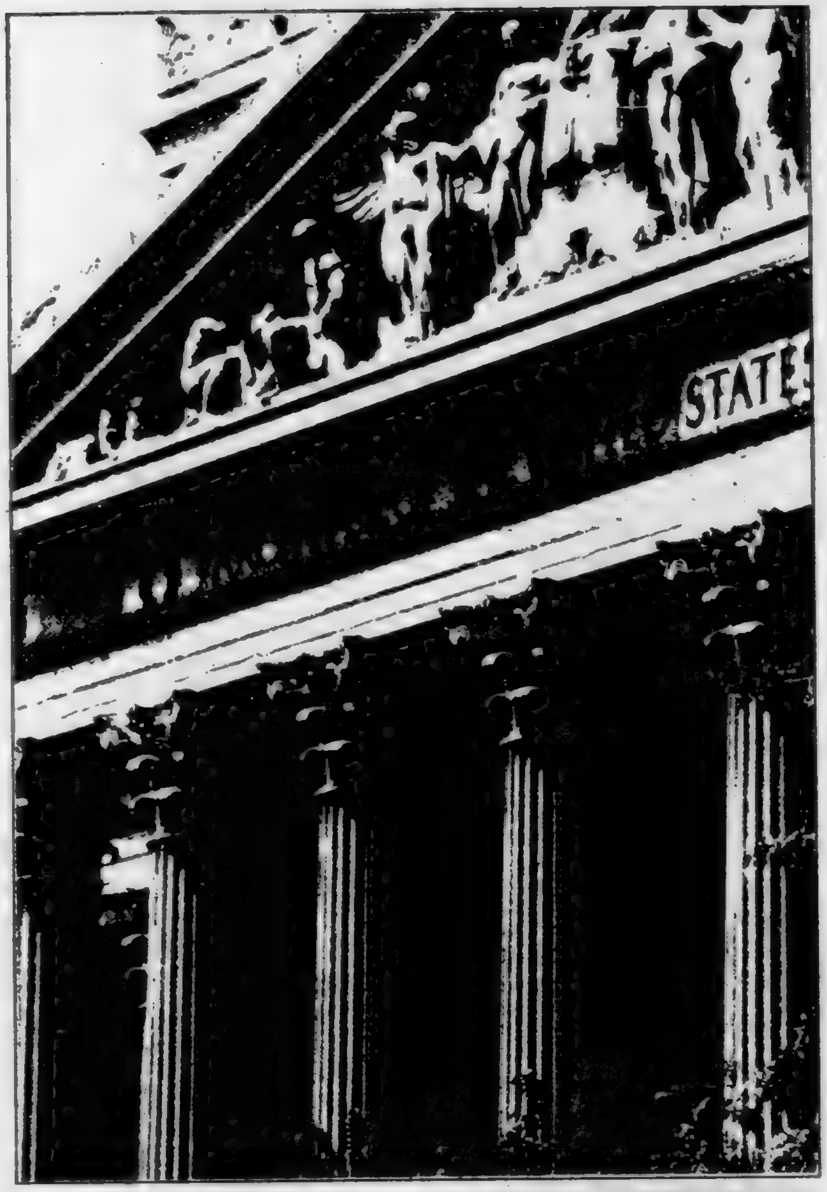

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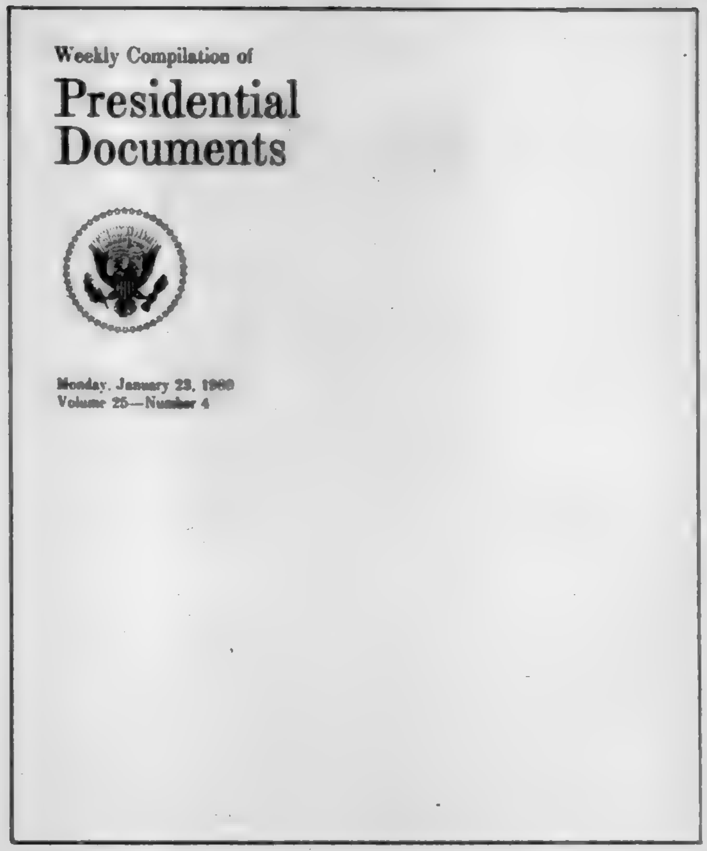
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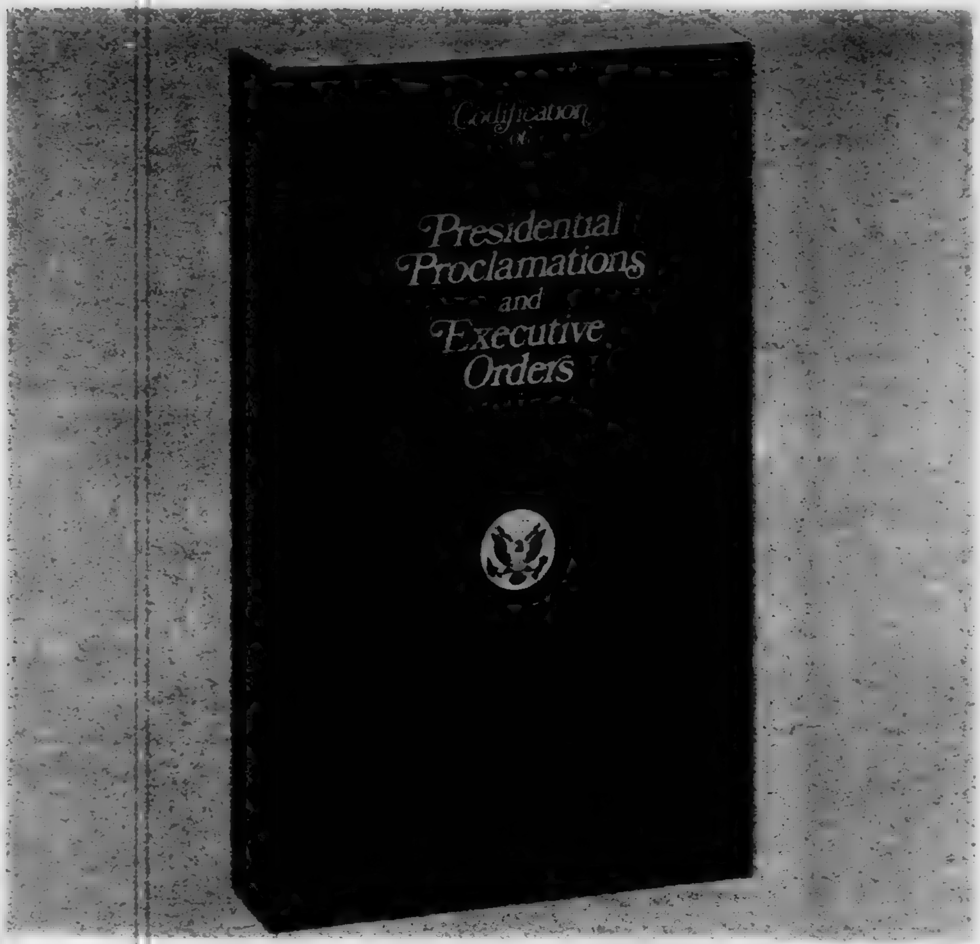
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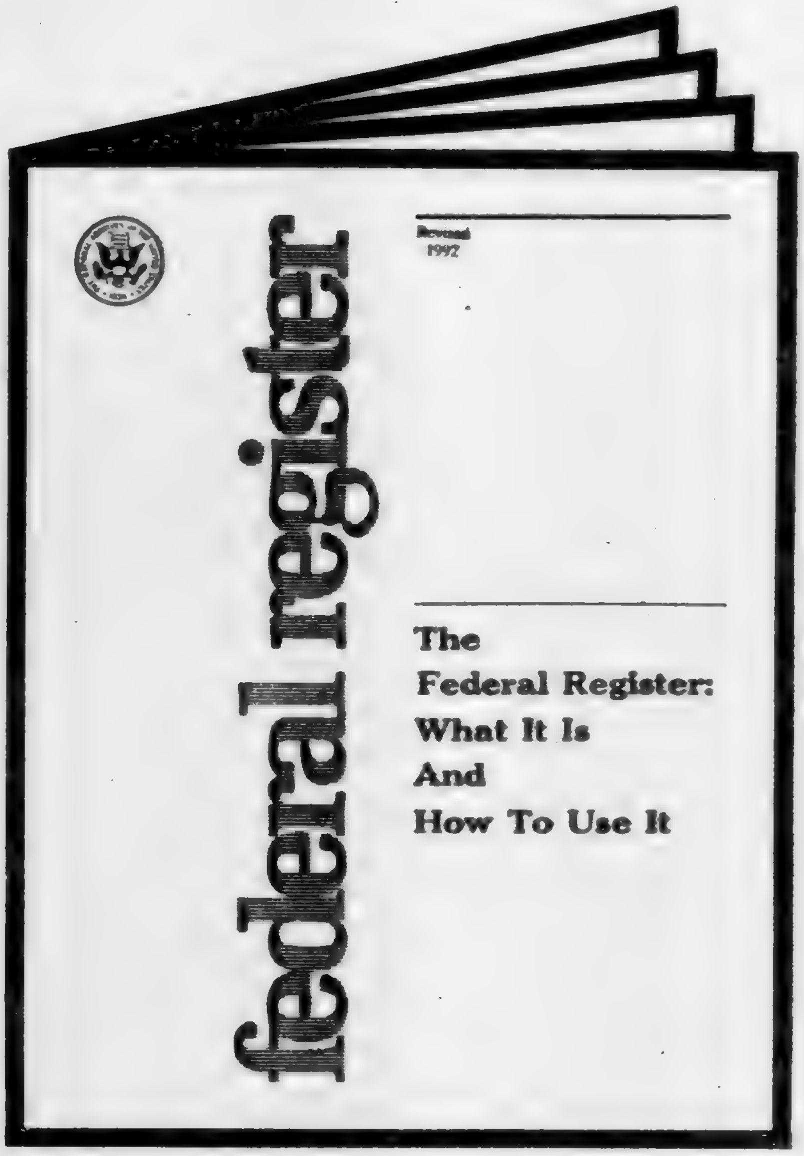
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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 25
Tuesday, February 9, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 30, 36, 40, 51, 70 and 170

RIN 3150–AC98

Licenses and Radiation Safety Requirements for Irradiators

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations by establishing a new part 36 to specify radiation safety requirements and licensing requirements for the use of licensed radioactive materials in irradiators. Irradiators use gamma radiation to irradiate products to change their characteristics in some way. The safety requirements apply to panoramic irradiators (those in which the material being irradiated is in air in a room that is accessible to personnel when the source is shielded) and underwater irradiators in which the source always remains shielded under water and the product is irradiated under water. The rule does not cover self-contained dry-source-storage irradiator devices, medical uses of sealed sources (such as teletherapy), or nondestructive testing (such as industrial radiography).

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen A. McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–3757.

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I. Background

In response to the Commission's concern over irradiator use, the NRC conducted a review of its safety requirements and policies governing irradiators. Material pertinent to irradiators was contained in various sources including portions of NRC's regulations, a regulatory guide, and specific license conditions.

On December 4, 1990 (55 FR 50008), the NRC published a proposed rule that would specify the radiation safety requirements applicable to the use of licensed material in irradiators. The proposed rule was intended to enhance the efficiency of the regulatory process governing irradiators by consolidating, clarifying, and standardizing the requirements for current and future irradiators.

Irradiators use gamma radiation to irradiate products in order to change their characteristics in some way. Irradiators are used for a variety of purposes in research, industry, and other fields. The supplementary information section of the proposed rule contained a detailed discussion of the uses of irradiators, operating experience with irradiators, and the number and types of accidents involving irradiators.

The 90-day public comment period expired on March 4, 1991. The comment period was not formally extended. However, people who requested an extension were assured that comments received by April 15 would be given full consideration, and, in fact, those comments were given full consideration. The NRC also held a public meeting on February 12 and 13, 1991, to discuss the proposed rule. The meeting was held to provide interested persons an opportunity to better understand the rule and also to allow the NRC staff to hear the concerns of the public.

The transcript of the public meeting, which is available for inspection and copying in the NRC Public Document Room, and the 33 written public comments were reviewed in developing the final rule. The significant issues raised by public comment and NRC's response to these comments are discussed in Section IV of this supplementary information. Section IV presents section by section discussion of the regulation.

Because of the variety of designs, four general categories of irradiators have been defined by the American National Standards Institute (ANSI) in Standard N13.10, "Safe Design and Use Of Panoramic Wet Source Storage Gamma Irradiators (Category IV)." These categories are as follows:

Category I—Self-contained, Dry-source-storage Irradiators

This type of irradiator is built as a self-contained device. The sealed sources are completely enclosed within a shield constructed of solid materials. Human access to the sealed sources and to the space subject to irradiation is not physically possible. The physical size of the device, the space subject to irradiation, the source strength, or all three are generally not large.

This rule does not cover self-contained dry-source-storage irradiators (Category I) for several reasons. First, they are devices that the licensee usually purchases without participating in their design and manufacture. Because safety features are designed into them, self-contained irradiators present less potential hazard and they are considered to be adequately addressed by existing requirements. This type of irradiator (Category I) would continue to be licensed under the general requirements of 10 CFR 30.33. Licensees may continue to use the criteria in Regulatory Guide 10.9, Revision 1, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Irradiators," December 1988, and the "Standard Review Plan for Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators," December 1988.

Category II—Panoramic, Dry-source-storage Irradiators

This category includes irradiators in which the sealed sources are stored in a shield constructed of solid materials and are fully shielded when not in use. Irradiations occur in air within a room accessible to personnel only while the sources are shielded. This category also includes certain beam-type irradiators in which the source remains partially shielded. Irradiators of this type are covered by the rule.

Category III—Underwater Irradiators

This category includes irradiators in which the sealed sources are always in a storage pool and are shielded at all times. Human access to the sealed sources and the space subject to irradiation is not physically possible without entering the pool. Irradiators of this type are covered by the rule.

Category IV—Panoramic, Wet-source-storage Irradiators

This category includes irradiators in which the sealed sources are in a storage pool containing water and are fully shielded when not in use. Irradiations occur in air within a room made inaccessible to personnel by an entry control system while the sources are exposed. Irradiators of this type are covered by the rule.

The NRC's regulation uses the terms "panoramic irradiator" and "pool irradiator." "Panoramic irradiators" include Category II and IV irradiators. "Pool irradiators" include Category III and IV irradiators.

II. Need for a Rule

Before the adoption of part 36, irradiators were licensed primarily under: (1) The general provisions of 10 CFR 30.33, which requires that "equipment and facilities are adequate" and that the "applicant is qualified by training and experience"; (2) the general requirements of part 20; for example, dose limits and the need for "adequate" surveys; and (3) the specific requirements in 10 CFR 20.203(c)(6) and (7) (or the new 10 CFR 20.1603) that deal with access control requirements for panoramic irradiators. There was also a draft regulatory guide FC 403–4, "Guide for the Preparation of Applications for Licenses for the Use of Panoramic Dry Source-Storage Irradiators, Self-Contained Wet Source-Storage Irradiators, and Panoramic Wet Source-Storage Irradiators," that was published in January 1985. However, the scope of the proposed guide was limited, and many subjects were not covered or were covered in a way now considered obsolete.

Although the safety requirements and policies for irradiators were generally understood and agreed upon and were incorporated on a case-by-case basis in the licenses for operating irradiators, they were not contained in a single comprehensive document. This rule consolidates, clarifies, and standardizes the requirements for the licensing and operation of current and future irradiators.

There are also some areas in which either technology is changing or NRC policy is evolving. This rule provides comprehensive and up-to-date requirements in these areas.

Several commenters misunderstood the effect of the rule. The issue in the rulemaking is not whether irradiators should be licensed or whether they should continue to be licensed. Instead, the issue is whether to license them under a formal, detailed, comprehensive set of regulations as was proposed or whether to continue licensing on a case-by-case basis with relatively few specific requirements contained in formal regulations. The NRC's decision is to adopt a comprehensive, formal set of regulations.

III. The Use of WESF Sources in Irradiators

WESF (Waste Encapsulation and Storage Facility) sources are sealed sources containing cesium-137 that were produced at the U.S. Department of Energy's Hanford facility. The Department of Energy had leased this type of source to four commercial irradiators in the United States. In June 1988, a WESF source leaked at an irradiator operated by Radiation Sterilizers, Inc., in Decatur, Georgia.

A Department of Energy board investigated the cause of the leak but has not yet identified the cause of the failure (Interim Report of the DOE Type B Investigation Group, DOE Report DOE/ORO–914, July 1990).

Subsequently, the NRC decided that the long-term use of WESF sources is unacceptable in commercial facilities licensed by NRC and that the sources currently being used should therefore be removed and returned to the Department of Energy. In February 1991, the two remaining irradiators still using WESF capsules were notified of the NRC decision. Both facilities requested that the Department of Energy remove the WESF sources as soon as it could do so. Thus, for the purposes of this rulemaking, the WESF source issue is closed.

As a consequence, this final rule was written to require that irradiators use radioactive materials that are as insoluble and nondispersible as practical (typically cobalt–60).

IV. Summary of the Requirements and the Resolution of Comments on the Requirements

This discussion summarizes by section the major requirements in the regulation and discusses the substantive comments on the requirements of the irradiator rule and how they were resolved. The bases and origins of the requirements are also explained.

Authority Citation

The authority citation was changed by moving the content of the second paragraph of the proposed citation into a new § 36.93, "Criminal penalties." This was done to be consistent with a proposed rule, "Clarification of Statutory Authority for Purposes of Criminal Enforcement," (57 FR 222, January 3, 1992).

Subpart A—General Provisions

Section 36.1 Purpose and Scope

This section describes the types of irradiators covered in the rule. The rule covers panoramic wet-source-storage, panoramic drysource-storage, and underwater irradiators that can deliver a dose of 5 grays (500 rads) or greater in 1 hour at a distance of 1 meter, either in air or under water as appropriate for the irradiator type. The dose rate criterion is taken from the access control requirements in the new standards for protection against radiation published in the **Federal Register** on May 21, 1991 (56 FR 23360). See 10 CFR 20.1003, Definitions, "Very High Radiation Area." A cobalt-60 source of approximately 1.5×10^{13} becquerels (400 curies) would deliver this dose in air if the source were small with little self-absorption. For underwater irradiators, the source activity to deliver a 5-gray (500-rad) dose at 1 meter is about 10 times larger than if the exposures were performed in air.

Some commenters suggested that small university or research irradiators should be excluded from the rule or be excluded from some of the rule's requirements because they have lower activity sources and are used less often than commercial production irradiators.

In general, this suggestion was not adopted, although in certain specific areas an attempt was made to allow more flexibility in operating a small university or research irradiator. While university and research irradiators have lower activity sources, there is still a significant potential hazard. In addition, the safety records of universities in handling radioactive materials are not substantially different from those of commercial facilities, suggesting that a similar set of regulations may be appropriate for each.

Commenters noted that some medical facilities have converted teletherapy machines from human use to the irradiation of materials and suggested it would be appropriate to allow these machines to continue to be licensed under part 35. The NRC did not accept this suggestion. Teletherapy machines converted to irradiate materials present hazards similar in nature to other irradiators and thus should meet similar safety standards. However, a paragraph was added to § 36.17 stating that the NRC would consider certain exemptions for those devices.

Section 36.2 Definitions

This section defines terms that are used in the new part 36.

Section 36.5 Interpretations

This section explains that the only interpretations of the regulations that are binding are written interpretations by NRC's General Counsel.

Section 36.8 Information Collection Requirements: OMB Approval

This section explains that the information collection requirements of part 36 have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980 (44 U.S. 3501 et seq.).

Subpart B—Specific Licensing Requirements

Section 36.11 Application for a Specific License

This section states how to apply for a license and where the application must be sent.

Section 36.13 Specific Licenses for Irradiators

This section describes information that must be included in a license application if it is to be approved by the Commission.

The applicant's proposed activities must be for a purpose authorized by the Atomic Energy Act of 1954 as amended. This is a standard requirement for all types of licenses.

The applicant's proposed equipment and facilities must be adequate to protect the health of workers and the public and minimize danger to life and property. The applicant must be qualified by training and experience to use the radioactive material for the purpose requested and in a manner that protects health and minimizes danger to life and property. These are standard requirements for all NRC licensees.

The application must describe the training for irradiator operators and the qualifications of the instructors. Some commenters recommended that the regulation specify a minimum number of hours of safety training. The NRC decided that establishing a specific number of hours for formal classroom training is not critical and represents too rigid an approach to regulation. Instead, the NRC will review the training proposed by the applicant as part of the license application.

The application must contain an outline of the operating and emergency procedures that describes the important radiation safety aspects of the procedures. Some commenters supported the idea of submitting only the outline of the procedures while others preferred submitting complete procedures. The NRC decided to require an outline that describes the operating and emergency procedures in broad terms that specifically state the radiation safety aspects of the procedures rather than to require the complete operating and emergency procedures. In addition, if specific procedures were submitted with the license application, then minor changes that the facility might need to make from time to time (for example, improving procedures based on what is learned from operating experience) would require NRC review prior to implementation. This could unnecessarily hamper the safety of facility operation. Detailed procedures would be available to inspectors for reference during facility operation however. Procedures could be changed by the licensee under the conditions described in § 36.53. Records on changes in procedures have to be retained for 3 years for inspection by the NRC (§ 36.81(d)).

The application must describe the radiation safety responsibilities and authorities of the radiation safety officer and those management personnel who have important radiation safety responsibilities or authorities. The applicant must also describe the qualifications of the radiation safety officer. These requirements are used to judge whether the applicant's personnel are qualified to handle radioactive materials safely.

Some commenters suggested that the rule contain specific requirements for the qualifications and training of the radiation safety officer, such as the amount of formal radiation safety training, the amount of on-the-job training, the length and type of previous experience, and the amount of formal education. The NRC decided not to specify minimum qualifications in the rule to allow flexibility in evaluating qualifications. Instead, it was decided that final determination of adequacy will be based on the actual qualifications of specific individuals on a case-by-case basis based on previous experience in reviewing such qualifications. This would allow the license reviewer the flexibility to consider the strengths and weaknesses of a specific individual in making the determination.

The comment was made that the rule should require that the radiation safety officer be independent from both sales and production organizations and should have the authority to cease operations. The NRC does not believe that it is necessary for the radiation safety officer to be totally independent of the sales and production organizations or that the authority to suspend operations should be rigidly fixed in the rule. The NRC believes that this suggested proposal is too rigid. The NRC believes that the authority and responsibility of the radiation safety officer is something that can and should be evaluated as part of the licensing process on a case-by-case basis based on previous NRC experience in making this type of determination.

Applications to operate panoramic irradiators must describe the access control system. Applications also must contain information on how sealed sources would be tested for leakage and contamination.

The applicant must also describe the frequency of the inspection and maintenance checks required by § 36.61. Guidelines on the frequency of checks may be included in future NRC licensing guides.

The applicant must submit information on loading and unloading sources. If the applicant intends to load and unload sources, the applicant must show that the personnel assigned to the task are qualified and trained to do so safely and that procedures are adequate to protect health and safety. The applicant may also have the loading and unloading done by another organization that the NRC or an Agreement State has specifically authorized to do loading or unloading. Most organizations that would do the loading and unloading have a license from the NRC or an Agreement State authorizing them to load and unload sources. If the qualifications of the organization have not been previously reviewed, they would then be reviewed as part of the current license application.

Section 36.15 Start of Construction

This section as proposed would have prohibited the start of construction of an irradiator before a license was issued. This proposed requirement was criticized by Agreement State regulatory agencies, who did not want to issue a license until construction was well underway or largely complete. Irradiator companies also objected because they thought the lead time would cause a severe financial burden.

Therefore, the rule was changed to require that an application and required fee be submitted before start of construction rather than requiring that the license be issued before start of construction. The object of the requirement is to allow regulatory agencies to inspect the construction of the facility as it is built. The revised wording accomplishes that objective.

Section 36.17 Applications for Exemptions

This section describes the circumstances in which the NRC may grant an exemption to a requirement in part 36.

Some commenters stated that licensees using teletherapy machines for medical treatment should be able to change their use to irradiate materials without changing the requirements that they must meet. The NRC did not specifically adopt this comment because a teletherapy machine used to irradiate materials presents potential hazards that are the same as those from any other dry-source-storage panoramic irradiator. However, a new paragraph has been added to § 36.17 stating that the NRC is willing to consider exemptions as long as the proposed alternative provides an adequate level of safety.

Section 36.19 Request for Written Statements

This section codifies a requirement (found in Section 182 of the Atomic Energy Act) that the licensee must supply any additional information required by NRC to assure that health and safety will be protected.

Subpart C—Design and Performance Requirements for Irradiators

Section 36.21 Performance Criteria for Sealed Sources

This section lists performance criteria required for sealed sources used in irradiators. Normally the tests used to demonstrate that the criteria can be met are conducted by the source manufacturer, not the irradiator licensee. The manufacturer then applies to the NRC or an Agreement State agency for approval for use in irradiators. If this procedure has been followed, the licensee need only note the manufacturer's name and model of the sources in its license application to demonstrate that the requirement is met.

A number of commenters objected to allowing the use of cesium-137 in wet-source-storage irradiators. The requirement that the radioactive material in the sources be as insoluble (if used in wet-source-storage irradiators) and nondispersible as practical was not included in the proposed rule, although comment was sought on whether the use of cesium-137 should be permitted in irradiators in view of its solubility. The NRC has decided not to approve further use of cesium sources, although the term "as practical" would allow the NRC to make an exception where justified to the NRC. In addition, a requirement was added that source encapsulation must be of corrosion resistant materials such as 316L or 321 stainless steel or equivalent for sources to be used in pools. Since this has been a de facto requirement for meeting § 32.210, this requirement should have no impact.

The performance criteria required by the rule were taken from American National Standard N43.6–1977, "Classification of Sealed Radioactive Sources" (formerly numbered N542–1977) (Available for purchase from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.) The NRC has used this standard for many years and generally is satisfied with the performance of the sealed sources that meet the standard. Nonetheless, there is a requirement in part 36 that sealed sources installed after July 1, 1993, also be doubly encapsulated and use radioactive material that is as insoluble and nondispersible as practical. Double encapsulation provides additional protection in case one of the welds in the source is defective. Most of the approved sources currently in use are doubly encapsulated.

The temperature test specifies an upper temperature of 600 °C. The temperature specified in American National Standard N43.6–1977 is 400 °C. However, American National Standard N43.10 changed the temperature to 600 °C after several fires occurred at panoramic wet-source-storage irradiators.

The rule does not specify any requirements for sealed sources installed prior to July 1, 1993. Sources previously installed were approved by NRC on a case-by-case basis under § 32.210, a review which includes consideration of the criteria in American National Standard N542–1977. Licensees may continue to use sources that were previously approved.

Several commenters stated that the performance criteria in this section by themselves are not sufficient to establish the adequacy of the performance of sealed sources in irradiators. The NRC agrees with the comment but notes that the criteria in the section are not the only criteria that the sealed sources must meet. The adequacy of sealed sources is reviewed and approved by NRC under § 32.210 of its regulations. The § 32.210 review is very extensive and considers many factors that could affect the integrity of the sealed sources, including their manufacture and conditions of use, on a case-by-case basis. Because of the large number of factors that must be considered and the special circumstances that could arise, it is not possible to establish specific criteria beyond the basic framework in § 36.21. The NRC believes that this method of sealed source review is adequate. Therefore, no additional changes in § 36.21 were necessary.

Section 36.23 Access Control

This section states requirements for systems intended to prevent entry into the radiation room of a panoramic irradiator while the source is exposed.

The requirements were taken largely from 10 CFR 20.203 (c)(6) and (c)(7), but an attempt was made to simplify the wording.

For panoramic irradiators, a primary access control system and an independent backup access control system are required. In addition, operational requirements for preventing a person from being in the radiation room while the source is exposed are contained in § 36.67, "entering and leaving the radiation room."

The door or barrier that serves as the primary access control system must have controls that would (1) prevent the source from being moved out of its shielded position if the door or barrier were open and (2) cause the source to return to its shielded position if the door or barrier were opened while the source was exposed.

The backup access control system must be able to detect entry while the source is exposed. If entry is detected, the system must (1) automatically cause the source to return to its shielded position and (2) activate audible and visible alarms.

In addition, the rule requires a radiation monitor in the radiation room of panoramic irradiators to detect high radiation levels. The radiation monitor would have alarms and an interlock on the personnel access door. This requirement is not contained in the existing § 20.203(c). The purpose is to provide an additional level of protection in case of some failure of the source movement mechanism combined with a failure of the operator to make the required radiation survey upon entry into the radiation room.

Comments were made about how fast the sources must return to the shielded position. The phrase used in § 20.203(c)(6) concerning reduction of radiation levels upon entry is worded so that an individual could not receive "a dose in excess of 100 mrem in one hour." This requirement has been changed in § 36.23 to state that the sources must return promptly to the fully shielded position.

The requirement for a door or other physical barrier applies to each entrance of the radiation room of a panoramic irradiator whether intended for personnel access or intended only for product entrance or exit. Panoramic irradiators with a conveyor system could meet the requirement by providing such small clearances around the product carriers that a person could not squeeze through or by using barriers that would require unusual exertion to bypass. A photoelectric system cannot be considered a physical barrier. The requirement is that the door or barrier must prevent inadvertent entry, not that it need prevent a deliberate and determined effort to bypass the barrier. The purpose of this requirement is to prevent a reasonably prudent person from carelessly, inattentively, or accidentally entering the radiation room while the source is exposed.

This section also requires an independent backup access control system on panoramic irradiators. The purpose of the backup system is to provide a redundant means of preventing a person from being accidentally exposed to the source. In case of a failure of the interlocks on the door or barrier combined with a failure to follow operating procedures, the backup system should warn the person entering the radiation room of the danger and automatically cause the sources to return to their shielded position. The backup system could use photo-electric cells in an entrance maze, pressure mats on the floor, or similar means to detect a person entering the radiation room while the source is exposed. The system must also alert another person of the entry. That person must be prepared to render or summon assistance. This provision prevents the operation of the panoramic irradiator without a second person being available to render or summon assistance. The proposed rule contained a statement that the irradiator could not operate if the access control requirements were not met. The statement was deleted because it is unnecessary. Operation of the facility without meeting the requirements of the section would always be a violation of the regulations.

This section also contains requirements for underwater irradiators. For example, the pool must be within an area surrounded by a personnel access barrier with an intrusion alarm when the facility is not operating.

Section 36.25 Shielding

This section specifies maximum dose rates in normally occupied areas outside the radiation room of a panoramic irradiator. The maximum dose rate of 0.02 millisievert (2 millirems) per hour is considered practical to achieve. Areas with higher levels would have to be locked, roped off, or posted.

The comment was made that some areas that are normally not occupied, such as the equipment access area on the roof of the irradiator, normally have radiation dose rates well above 0.02 millisievert (2 millirems) per hour. Therefore, the final rule was changed to permit radiation levels outside the shield to exceed 0.02 millisievert (2 millirems) per hour in areas not normally occupied as long as the areas were locked, roped off, or posted.

For measurements to determine compliance with the requirement, the final rule specifies 30 cm as the distance from the shield to the detector. This distance is selected because at that distance the dose would be a whole-body-dose. The maximum area of 100 square centimeters for averaging dose effectively establishes a maximum detector size.

The section does not require that the NRC approve the shield design. Instead the regulations contain only a performance requirement on maximum dose rate outside the shield. The requirements apply to the completed shield.

The section also specifies maximum radiation dose levels outside the shielding of dry-source-storage irradiators. The levels are considered practical and adequate to maintain doses to workers as low as is reasonably achievable.

Section 36.27 Fire Protection

The heat generated by irradiation can cause combustible materials to catch fire. The requirements in this section are intended to prevent fires, detect fires if they occur, and allow fires to be extinguished without entry of personnel into the radiation room.

The requirements for fire detection and sprinklers or other systems to extinguish a fire at a panoramic irradiator were taken from the ANSI Category IV Standard. The fire extinguishing system does not have to be automatically activated. In response to public comments, a requirement for a shut-off valve to control flooding was added.

Overall, fires are considered to present relatively little hazard to irradiators. Radiation rooms use little combustible material in their construction, and irradiation of flammable and explosive materials is prohibited (by § 36.69) without specific NRC approval. The products being irradiated are likely to be combustible, but there is not likely to be present a sufficient quantity of combustible material to result in prolonged high-temperature fires. Thus, the temperature reached if a fire were to occur is not likely to be high enough to melt or rupture the stainless steel capsules containing the radioactive sources. Therefore, the NRC would not expect a fire to cause loss of encapsulation even if the fire were not controlled and the sources were not dropped into a source-storage pool.

The fire extinguishing system is required because a fire could disable the access control system or could prevent the sources from being shielded, thereby lowering the margin of safety. The fire extinguishing system must be operable without entry into the room. During a fire, there would be no means of assuring that the access control systems and source position indicators were operating properly. Also, no one could be sure that the mechanism that returns the source to the shielded position had operated properly.

Section 36.29 Radiation Monitors

This section requires a radiation monitor to detect radioactive sources on the exiting product. The requirement was taken from 10 CFR 20.203(c)(6)(viii). The purpose of this requirement is to detect sources that have somehow become loose from the source rack and are being carried out with the product and to stop them from being carried out of the radiation room.

This section also requires a monitor over the pool at underwater irradiators.

The comment was made that irradiated products should be routinely monitored for radioactive contamination. The NRC did not adopt this suggestion because no need for product monitoring on a routine basis was identified. The suggestion was apparently prompted by the leaking of a WESF capsule containing soluble cesium. However, even in that situation no known exposure of the public occurred. The NRC considers the monitoring required by § 36.59 to be adequate to prevent excessive radiation exposures from contaminated products in the event of a source leak.

A requirement in the proposed § 36.29 for a means to detect radioactive contamination in pool water at pool irradiators was moved to § 36.59(b) so that the subject of detection of leaking sources would be combined into a single section instead of being split up unnecessarily. This was done to improve the clarity of the rule.

Section 36.31 Control of Source Movement

This section contains requirements for the control of source movement at a panoramic irradiator. Generally, the requirements are taken from the ANSI Category IV Standard.

A proposed requirement specifying a color-code system for irradiator controls was deleted. Upon reconsideration of the proposed requirement, the NRC decided that it was of minor safety significance.

Section 36.33 Irradiator Pools

For facilities licensed after July 1, 1993, the rule would require either: (1) A stainless steel pool liner (or a liner metallurgically compatible with other components in the pool) or (2) construction so there is a low likelihood of substantial leakage. The purpose of the requirement is to reduce the likelihood of pool leakage. It is desirable to control pool leakage in case the pool water should become contaminated. Backfitting is not required because modifying an existing pool would be prohibitively expensive and any gain in safety would be marginal, especially since cobalt-60 has very low solubility. Older facilities sometimes used concrete pools, sometimes lined with tiles, but usually without stainless steel liners or other ways to reduce the likelihood of leakage.

A comment was made that "substantial leakage" should be defined. The comment was not adopted. The requirement is a design standard, not an operating limit. It means the pool should be designed to prevent large leaks, which could create a radiation safety hazard.

One comment suggested that pools have a means of detecting water leakage from pools more sensitive than monitoring water loss. Examples of more sensitive systems include requiring the use of a double-lined pool or channels at welds with a means to detect water leaking from the pool. The NRC decided that it would be adequate to monitor pool water loss and unnecessary to have a more sensitive means of detecting leaks. In normal circumstances, a pool leak is not a safety concern because pool water contains little or no radioactive material. If a source leak occurred while the pool had a leak that was too small to be detected, some contaminated water could escape from the pool. Experience with cobalt-60 has shown that pool contamination levels do not increase significantly because of the very low solubility in water of cobalt-60. Therefore, the NRC does not consider that a pool leak system more sensitive than that required in the rule is necessary.

The proposed rule required both a means to replenish water that is lost and a low-water level indicator. In response to public comments, a requirement for a high water level indicator was added. The means to replenish the water does not have to be automatic. An indicator is needed even if the replenishment is automatic in case the system to replenish the water does not work. In response to a comment, a requirement for an audible alarm in the water level indicators was deleted as unnecessary. Changes in water level are expected to occur slowly and to have safety significance only after a prolonged time.

The requirement for a cover or railing to prevent workers from falling into the pool is taken from the ANSI Category IV Standard.

The rule requires a water purification system. The purposes of the purification system are to prevent the pool water from becoming cloudy and reducing visibility and from becoming corrosive and thus corroding the stainless steel sealed sources or the source rack. If the water is clear, it should be possible to visually inspect the sources and the source rack. Thus, the sources and the source rack could be inspected for damage, and the location of the sources could be checked to make sure they are in their proper positions. The criterion for design basis conductivity during normal operation is explained in the discussion on 10 CFR 36.63.

The 0.02 millisievert (2 millirems) per hour limit on the dose rates for poles and long-handled tools to be used in irradiator pools is imposed to require prevention of radiation "streaming." Hollow and low density poles and tools can have either vent holes to allow shielding water to enter or sufficient bends to prevent radiation levels at handling areas of the tools from exceeding 0.02 millisievert (2 millirems) per hour.

Section 36.35 Source Rack Protection

This section requires a barrier to prevent the moving products from hitting the source rack or the mechanism that raises and lowers the sources.

Section 36.37 Power Failures

This section requires automatic source retraction for loss of power for more than 10 seconds at a panoramic irradiator. The retraction must be accomplished without offsite power. Backup power is not required as long as loss of power will cause the source to return to its shielded position, for example, the source returns to the shielded position due to gravity.

Section 36.39 Design Requirements

This section describes design requirements for irradiators constructed after July 1, 1993. Included in the section is a requirement that all irradiators must have shielding walls constructed of reinforced concrete designed to meet generally accepted building code requirements for reinforced concrete. This provides adequate protection against moderate earthquakes, tornadoes, and other hazards. The requirement to meet generally accepted building code requirements for reinforced concrete was intentionally left general to allow licensees flexibility in complying with local building codes. Irradiator shield walls by their nature are inherently strong, stable structures so that there was no need to provide very specific requirements.

In addition, irradiators built in seismic areas must have radiation shields designed to retain their integrity in an earthquake. Seismic areas are defined in § 36.2 as any area where the probability of a horizontal acceleration in rock exceeding 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the U.S. Geological Survey. The NRC selected 250 years to include some areas that could have a large earthquake even if large earthquakes would seldom occur.

Maps of the United States showing these seismic areas are published by the U.S. Geological Survey (see S. T. Algermissen, et al., "Probabilistic Estimates of Maximum Acceleration and Velocity in Rock in the Contiguous United States," United States Department of the Interior, Geological Survey, Open-File Report 82–1033, 1982. This report may be purchased for $24.50 from: U.S. Geological Survey, Books and Report Sales, Box 25425, Denver, Colorado 80224. Prepayment is required). Minor updates of this report are possible as new geological information becomes available.

Studies of irradiator shield designs have shown that the shields are inherently able to withstand large earthquakes. ANSI determined that reinforced concrete shields constructed to meet generally accepted building code requirements for reinforced concrete (for example, American Concrete Institute Standard ACI 318–89. "Building Code Requirements for Reinforced Concrete," available for purchase from the American Concrete Institute, Box 19150, Redford Station, Detroit, Michigan 48219) can withstand an earthquake with an acceleration in rock of 0.3 times the acceleration of gravity plus any multiplication of acceleration that would occur due to soil. Therefore, there are no seismic requirements for irradiators located where accelerations in rock are not likely to exceed 0.3 times the acceleration of gravity.

The intent of the final rule is that shield walls in seismic areas would have to retain their integrity in the event of an earthquake by requiring that they be designed to meet the seismic requirements of local building codes or other appropriate sources. Local building codes in seismic areas are likely to specify requirements for things such as: spacing of reinforcing bars; how to tie reinforcing bars together; preferred arrangements for reinforcing bars; and requirements for joining reinforcing bars to floor slabs. If local building codes do not contain seismic requirements, "other appropriate sources" could include: American Concrete Institute Standard ACI 318–89, "Building Code Requirements for Reinforced Concrete," Chapter 21, "Special Provisions for Seismic Design."

NRC also considered a comment favoring requirements for a seismic detector to automatically start the mechanism that causes the sources to return to their fully shielded position. As typically installed and as envisioned, the return mechanisms have not been designed to be fully reliable in the event of an earthquake. The NRC does not consider an automatic return necessary because shield walls must be designed to provide adequate shielding to protect workers and the public in the event of an earthquake. Thus, there would be no imminent hazard. The NRC does require that licensees have an emergency procedure for responding to earthquakes (§ 36.53(b)(9)). Therefore, NRC concluded that automatic source return is not necessary to protect public health and safety.

The NRC also considered a comment on whether there should be design requirements for shield integrity against tornadoes. The NRC decided that there was no need for special design requirements because the shielding by its very nature (about six feet thick reinforced concrete) is inherently resistant to tornadoes.

The comment was made that only wiring with insulation that is relatively resistant to radiation should be used in the radiation room. The NRC agreed with this comment and added a design requirement that electrical wiring and electrical equipment in the radiation room be selected to minimize failures due to prolonged exposure to radiation.

A comment was made concerning the location of radiation monitors to detect contamination in § 36.39(e). The comment indicated that it might not be possible to identify the exact "spot at which the highest radiation levels would be expected." The NRC agreed and revised the wording of this paragraph to allow more flexibility in locating the radiation monitor.

In § 36.39(f), a requirement was added that the design of the source holder must avoid corrosion-promoting crevices. (The word "crevices" is used in the technical sense as understood by metallurgists.) Crevices can strongly promote corrosion in even the cleanest water.

Section 36.41 Construction Monitoring and Acceptance Testing

This section describes checks that the licensee must make before sources are loaded to be sure the facility was constructed as designed and that alarms, controls, interlocks, and instruments operate properly.

The comment was made that the section does not address changes made in the facility after the granting of a license. That issue is dealt with in the license for the facility. It is a standard condition of licenses that facilities must be operated in accordance with the statements made in the license application. A license amendment would be necessary for any modifications making substantive changes from what was described in the license application. The NRC believes that to be the appropriate method to handle this issue.

A comment was made that the paragraph on computer controllers should explicitly address multiple simultaneous faults and also computer controllers in which a single computer controls both the process and access safety. The NRC believes that its regulations are adequate as written. The requirements include the access control system described in § 36.23 and, in particular, the independent backup system described in § 36.23(b), the acceptance testing in § 36.41(j), and the periodic operability checks in § 36.61(a)(1). A comment suggested that no modifications to software should be made without licensing Agency approval. The NRC did not adopt this suggestion. The NRC does not believe that review of software modifications would be a useful, productive, or effective use of NRC staff time. Rather, the responsibility for a proper operating computer system rests with the licensee.

Subpart D—Operation of the Irradiator

Section 36.51 Training

This section contains safety training requirements for irradiator operators. The emphasis is on practical knowledge directly necessary for the job, rather than theoretical principles.

The subjects that an irradiator operator must be trained in are:

(1) The fundamentals of radiation protection as they apply to irradiators. The goal here is to provide the individual with the necessary foundation to perform his or her task safely and to help the individual worker understand the basis for the safety requirements and procedures that will be taught.

(2) The requirements of parts 19 and 36 of NRC regulations. The operator is not expected to be an expert on NRC regulations or to be able to determine whether a given procedure is adequate to meet NRC regulations. Instead, operators should be instructed on NRC requirements that are directly applicable to their responsibilities.

(3) The operation of the irradiator. The objective is to help the person understand the operating and emergency procedures, not to make the individual an engineer.

(4) Licensee operating and emergency procedures that the individual will perform. This is the most important part of the training because the safe operation of the irradiator depends on the procedures being followed correctly. The objective is that the operator be able to correctly perform the procedures that he will be expected to perform. The training does not have to include procedures that the individual will not perform. For example, if the individual will not perform leak tests, the individual need not be trained in the procedure.

(5) Case histories of accidents and problems involving irradiators. The individual should be taught about situations that could lead to trouble. Instruction material on accidents is often difficult to obtain. However, NUREG–1345, "Review of Events at Large Pool-Type Irradiators," should provide some relevant information. Copies of NUREG 1345 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Also, NRC

Information Notice No. 91–14, "Recent Safety-Related Incidents at Large Irradiators," can be used as a source of information.

Comments suggested that the rule should specify minimum hours of classroom training and on-the-job training for irradiator operators. In order to provide flexibility, the final rule does not specify how many hours of classroom training and on-the-job training are necessary to become an irradiator operator. This is intentional. A license applicant would describe the training program in its license application. The NRC would review the numbers of hours proposed by the applicant as part of the license application.

Comments suggested that the rule should specify the training and qualifications required for the radiation safety officer. The final rule also does not specify the training or qualifications needed by the radiation safety officer. This is also to allow flexibility. The license applicant would describe the minimum training, experience and qualifications of the radiation safety officer in its license application. A review would then be conducted on a case-by-case basis.

The NRC considered whether the regulation should include training requirements for other types of workers such as package handlers and maintenance workers. The NRC concluded that the general training requirements specified in § 19.12, "Instructions to workers," are suitable for other types of workers and, therefore, additional or more specific requirements are not necessary.

Paragraphs (f) and (g) allow oral tests following training given to certain workers (who are not operators). The comment was made that the tests should be written. The NRC did not adopt this comment. In this case the training is very minimal and could be very informal, such as a one-on-one discussion. In view of the informal and limited nature of the training, oral testing seems adequate.

Section 36.53 Operating and Emergency Procedures

This section lists the specific operating and emergency procedures that a licensee must have. The section also lists requirements for changing these procedures. Operators must be instructed in a changed procedure before it may be put into use. Changes in procedures that do not reduce the safety of the facility, are consistent with the outline submitted in the license application, and have been reviewed and approved by the radiation safety officer do not have to be approved by NRC nor must changed procedures of this type be reported to NRC. However, documentation on the changes must be retained for inspection by NRC (§ 36.81(d)). In response to a public comment, a requirement was added to require an emergency procedure in case of a jam of an automatic conveyor system.

One comment suggested that there should be written emergency procedures describing how to identify an individual leaking source, how it would be isolated and removed from an irradiator, the equipment that would be used, and how the facility would be restored to a noncontaminated state. The NRC did not accept the suggestion. The final rule requires an emergency procedure for dealing with a leaking source (§ 36.53(b)). The final rule also requires monitoring of personnel, facilities, equipment, and products if a leaking source is detected (§ 36.59(c)). After the emergency, the facility would enter a decontamination phase. Decontamination procedures could be developed at that time based on the specific situation.

A comment suggested that there should be written procedures on how to repair malfunctions. The NRC did not accept this comment. There are so many possible kinds of repairs that might be needed and so many different ways that the repairs could be done that it is not feasible to have written procedures addressing each situation. The NRC believes that repairs should be done by qualified personnel using their judgment and skills to respond to each particular situation.

Section 36.55 Personnel Monitoring

This section contains the personnel monitoring requirements for irradiator operators and other people entering the radiation room of a panoramic irradiator.

A commenter argued that this section is not needed because personnel monitoring requirements in § 20.1502, "Conditions requiring individual monitoring of external and internal occupational dose," are adequate for irradiators. Section 20.1502 requires the use of individual monitoring devices for anyone likely to receive in excess of 10 percent of an applicable dose limit. At irradiators, as currently designed and operated, operators are unlikely to exceed 10 percent of a dose limit. Therefore, § 20.1502 might not require any use of personnel dosimeters at irradiators. Nevertheless, the use of dosimeters by operators ensures that there is a dose measurement in case there is an unexpected entry into the radiation room while the source is exposed.

Film badge and thermoluminescent dosimeter (TLD) processors must be accredited for high energy photons in the normal and accident dose ranges. Paragraph (c) of § 20.1501, "General," requires that film badges and TLDs must be processed by an accredited processor for the types of radiation that would be encountered. For irradiators, the radiation type is high energy photons in both the normal and accident dose ranges. In the "American National Standard for Dosimetry-Personnel Dosimetry Performance—Criteria for Testing," ANSI N13.11–1983, the normal dose range is 0.3 to 10 millisieverts (0.03 to 10 rems) and the accident dose range is 0.1 to 5 grays (10 to 500 rads).

For groups of visitors, two people who enter the radiation room would have to wear dosimeters. The people wearing the dosimeters could be employees. Two dosimeters are required rather than one because occasionally a single reading could be misleading.

Section 36.57 Radiation Surveys

Radiation surveys to verify shield adequacy must be done every 3 years. They should also be done after new sources have been added or when modifications to the facility have been made that might increase dose rates outside the shield. If a licensee has performed surveys prior to the effective date of the rule that are adequate to demonstrate compliance with the requirements in § 36.25, the next survey would not have to be done for 3 years from the previous survey or until new sources were added or the facility modified. If the previous surveys were not adequate to demonstrate compliance with § 36.25, the surveys described in § 36.57 would have to be performed when the rule became effective.

A comment suggested a semiannual survey meter calibration frequency. An annual survey instrument calibration is recommended in American National Standard N323–1978, "Radiation Protection Instrumentation Test and Calibration." The NRC considers modern survey meters reliable and stable, making more frequent calibrations unnecessary.

The accuracy requirement for survey meter calibration is ±20 percent. In the past, the NRC has specified accuracy requirements of ±10 percent for some uses and ±20 percent for other uses. Modern survey meters can fairly easily be calibrated to be accurate to ±20 percent on all scales over their entire range of dose rates. At irradiators, survey meters are most frequently used to determine whether dose rates in the entrance maze are the normally-occurring very low dose rates or are many times higher than normal. For these purposes, a survey meter accurate to ±20 percent is acceptable.

Another use of the survey meter is to verify that the dose rates outside the shielding wall and at the restricted area boundary are in compliance with NRC limits. These measurements are done infrequently. The most important purpose of these measurements is to check that the shielding contains no voids or poorly designed penetrations. Another purpose is to verify that limits on dose rates are not exceeded. A quantitative measurement is needed rather than a qualitative yes or no indication to verify that dose rate limits are not exceeded. However, at most facilities it has been found that the actual dose rates outside shield walls and at restricted area boundaries are far below the regulatory limits. Therefore, a highly accurate, quantitative measurement is not normally needed. Accuracy of ±20 percent is normally adequate to verify compliance.

It is possible that a measured dose rate might be very close to a limit. In those special situations, the licensee might need a measurement more accurate than ±20 percent. Thus, the accuracy requirement of ±20 percent in the regulations does not mean that the licensee would never need a measurement more accurate than ±20 percent. Rather, the regulation means that the ordinary, routine, periodic calibration need only be within ±20 percent.

A comment suggested that high range survey meters should be required. The NRC decided not to require high range survey meters (i.e., those that could measure dose rates in the radiation room while the source is exposed) because the NRC could not see a need for quantitative measurements of high doses. Upon entry to the maze of a radiation room, the dose rates would be relatively low if sources were exposed because of the shielding provided by the structure. The person entering should survey at a low range and exit if radiation is detected. Normal range survey meters are adequate and appropriate for that function. There is no need or use for quantitative high range measurements.

A comment on a related subject suggested required survey meters that do not saturate at high radiation dose rates. The NRC agreed with this suggestion and added a requirement to use survey meters that do not saturate.

Section 36.57 also requires that deionizing resins be monitored for radioactivity before release. A comment suggested prohibiting the return of deionizing resins to suppliers for recycling because irradiator sources could have small amounts of radioactive contamination on their surfaces due to manufacturing processes. Some of this contamination could be collected in the resins. Thus, resins could contain small amounts of radioactivity.

Instead, the rule requires an approach to monitoring very low quantities of radioactivity using survey instruments that has been used for medical waste. (See Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Use Programs," Appendix R). The guide is available for inspection and copying for a fee at the Commission's Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5825 Port Royal Road, Springfield, VA 22161.)

The requirement in the regulation is that before releasing resins, they must be monitored in an area with a background radiation level less than 0.5 microsievert (0.05 millirem) per hour. Radiation levels from the resin must not be detectable above background radiation levels. The survey meter must be capable of detecting radiation levels of 0.5 microsievert (0.05 millirem) per hour.

Calculations show that the maximum dose rates that could go undetected correspond to concentrations of radioactivity in resins that would be below the effluent limits for water in 10 CFR part 20, Appendix B to §§ 20.1001–20.2401. If the resins were regenerated, the amount of backwash solution that would remove the radioactive material from the resins would dilute the concentration of the material by at least a factor of 20, based on the volumes of water used in regeneration. If mixed with other resins, the dilution would be that much larger. Thus, concentrations in the waste stream from regeneration, if any, would be far below the water effluent concentrations in 10 CFR part 20, Appendix B, to § 20.1001–20.2401. The Commission considers this approach adequate to protect public health and safety and has therefore not adopted the commenter's recommendation.

Section 36.59 Detection of Leaking Sources

This section describes how and when leak testing of sealed sources must be done. There are different requirements for dry-source-storage and wet-source-storage sources.

The requirements for dry-source-storage sources are similar to those contained in Regulatory Guide 10.9, Revision 1, "Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source—Storage Irradiators." Although termed a "leak test," the test performed is a "contamination test." A positive indication does not necessarily indicate leakage. It could indicate surface contamination deposited during the manufacturing process.

A level of about 200 becquerels (0.005 microcurie) on a dry wipe is the level of contamination considered to indicate a leaking or contaminated source. (The value of 0.005 microcurie is represented as 200 becquerels in SI units rather than the more arithmetically precise value of 185 becquerels. The reason this value is used to represent no contamination is an order-of-magnitude value that should be stated with no more than one significant figure since a greater precision has no physical significance.)

Traditionally, the level for irradiator sources has been about 2000 becquerels (0.05 microcurie); however, previous manufacturing processes caused considerable surface contamination and irradiator sources could not be cleaned to below 2000 becquerels (0.05 microcurie). Detection of quantities below 2000 becquerels (0.05 microcurie) was difficult. Source manufacturing techniques have improved so that sources now have less surface contamination, and instruments have improved so it is possible to detect 200 becquerels (0.005 microcurie) of activity. Thus, the NRC believes it is now practical to meet a contamination level of 200 becquerels (0.005 microcurie).

The 200-becquerel (0.005-microcurie) quantity serves to alert the licensee that there might be leakage. If any leakage is discovered, the source must be removed from service.

Leak testing of sources used in pools by wipe-testing the sources is not highly sensitive or effective. The final rule requires that radioactive contamination be monitored each day the irradiator operates either by monitors on a pool water circulating system or by analysis of pool water. There are two basic methods for monitoring a pool water circulating system. One method is to use a very sensitive detector, such as a sodium iodide detector, to look at a sample of water. The other method is to use a less sensitive detector, such as a geigermuller detector, to look at a filter/demineralizer where radioactive material would be concentrated and would build up. Both methods are acceptable.

One comment suggested that pool water should be monitored for contamination continuously. The NRC did not accept this suggestion because the monitoring frequency in the proposed rule (each day of operation) seemed adequate to avoid worker overexposures and overexposures of the public from contamination on products because significant leaks would still be discovered in time for effective protective actions.

The NRC considered whether water purification systems should be shielded. The NRC concluded that the buildup of radiation from cobalt-60 sources would be so slow that shielding would not be necessary.

One comment suggested the NRC should specify appropriate contamination levels for cleanup. The NRC did not do that in this rule. NRC's policy on this subject is being considered by NRC on a generic basis.

Section 36.61 Inspection and Maintenance

Inspection and maintenance includes the items that the licensee must periodically check to assure proper operation of the facility. The frequency of checks is not stated in the regulations because the frequency will be site-specific depending on the design of the facility. The frequency of checks must be described in the license application, as required in § 36.13(h).

A commenter suggested that the frequency of checks on the access control system, probably the most important safety feature of an irradiator, should be specified in the regulations. The NRC concluded that there is too much variation in irradiator design and operation to specify a frequency that would apply in all cases. Therefore, the NRC decided that the applicant should propose a frequency in the license application. This approach allows flexibility and at the same time allows the NRC to approve a frequency of checks that it considers adequate for a specific facility. Although not specifically stated in the regulations, the NRC expects a general check of the access control system each day the irradiator operates. The daily check, however, would not necessarily have to include a check of all components. The licensee could tailor the test to the particular facility.

Section 36.61(a)(3) requires a check of the operability of the radiation monitor on the pool water circulating system with a radiation check source. The monitor is used to detect radiation levels that are above normal, rather than to make quantitative measurements of dose. For this purpose, simple operability checks are appropriate.

The rule requires that malfunctions and defects be repaired "without undue delay." The criterion, "without undue delay," was chosen to provide the licensee with leeway in making some repairs. This provision was intentional. Sometimes it may be necessary to obtain a special part, piece of equipment, or particular skilled labor that may not be readily available. The NRC intended to allow the licensee wide latitude and flexibility in making some noncritical repairs. As long as reasonable effort had been made, the licensee would meet the requirement. Note, however, that some repairs would not be subject to this latitude given in this section. For example, 10 CFR 36.23 requires an operable access control system. Operating the irradiator with an inoperable system would immediately be a violation of 10 CFR 36.23.

Section 36.63 Pool Water Purity

This section requires that the licensee run water purification systems in irradiator pools sufficiently to maintain pool water conductivity below 20 microsiemens (micromhos) per centimeter. If water conductivity exceeds 20 microsiemens (micromhos) per centimeter, the licensee must take corrective actions.

The proposed rule used a conductivity of 10 rather than 20 microsiemens per centimeter. Some commenters said that there was no need for a conductivity as low as 10 microsiemens per centimeter and that 10 was very difficult to maintain. Another commenter said that underwater irradiators should not have to maintain pool conductivity below 10 microsiemens per centimeter because (1) the sources remain under water and do not cycle thermally, (2) they do not cause impurities to concentrate on the surface when water evaporates in the air, and (3) conductivity is not a good measure of the corrosive potential because the impurities introduced are monomers and proteins, not chlorides.

The purpose of maintaining clean water is to reduce corrosion of the sources and to keep the water clear. Clear water is desirable so that the sources and source rack can be inspected visually to check their condition. The NRC considers conductivity to be a good method of checking the purity of the water in irradiator pools. Analysis of pool water for chloride ions would be a better measurement of corrosion potential, but the analysis is more difficult than conductivity measurements.

The decision to change from the proposed rule value of 10 to the final rule value of 20 microsiemens per centimeter is based in large part on recent studies conducted at Argonne National Laboratory and Savannah River Laboratory. The studies were performed to determine the cycle crack growth rate, the stress corrosion cracking resistance, and the pitting resistance of stainless steels in water environments similar to those at irradiators and in the temperature range from 50°C to 150°C. The temperature in irradiator pools is generally below 40°, which is a less corrosive condition. The experiments used 316NG (a nuclear grade version of 316L used for most irradiator sources and 316LN stainless steels. Other stabilized stainless steels occasionally used for irradiator sources, such as 321, are expected to behave similarly to the 316 grades studied.

The studies indicated that, in water environments at 50° to 150°C containing up to 3 parts per million chloride and conductivity of 20 microsiemens per centimeter, the 316L stainless steels are resistant to stress corrosion cracking and pitting corrosion and do not show enhanced cyclic crack growth rates. The studies indicate that the 316L grades of stainless steel will be resistant to corrosion even at higher chloride concentrations and conductivities. Tests currently underway at Argonne National Laboratory will determine the threshold levels of chloride required to induce pitting corrosion.

Thus, the final rule endorses a conductivity value of 20 microsiemens per centimeter as adequate to prevent corrosion. There are likely to be unavoidable events that will occasionally cause pool conductivities to rise from time to time, but higher conductivities for limited times are not likely to initiate corrosion problems.

The final rule requires that pool water conductivity be checked frequently enough, but no less than weekly, to assure that the conductivity remains below 20 microsiemens per centimeter. This can be done by taking frequent measurements such as daily or by less frequent measurements combined with commonly-used statistical process control methods. For example, control charts can be used to demonstrate that the process is in control and fluctuating within a range that is always below the limit. Similarly, trend analysis can be used to identify significant upward trends in conductivity that are likely to result in a conductivity exceeding 20 microsiemens per centimeter.

Section 36.65 Attendance During Operation

This section describes how an irradiator must be attended during operation. A considerable number of comments objected to the proposed requirements as excessive.

A suggestion was made that panoramic irradiators with automatic conveyor systems should be able to operate with only an operator present and an automatic telephone dialing device for responding to alarms. Another suggestion was made that the irradiator should be able to operate unattended but with an automatic telephone dialing device. The NRC did not accept these suggestions because automatic conveyor systems have enough malfunctions to require that an operator should be present at the site. The NRC further believes that the operator should have some type of backup in case of a problem.

The final rule requires another person onsite in addition to the operator for responding to alarms at a panoramic irradiator when product movement is involved. The term "onsite" was intended to give flexibility to the licensee. Thus, for example, for a research irradiator at a university, the person could be a guard located on campus but not in the building containing the irradiator.

A phrase in the proposed § 36.65(c) stating that static irradiations can be conducted only if the personnel access barrier is locked and all required alarms operable was deleted because it was redundant.

Section 36.67 Entering and Leaving the Radiation Room

This section describes the requirements for first entering the radiation room of a panoramic irradiator after an irradiation and for leaving the radiation room and locking it up before an irradiation. It also covers entry to the pool area of an underwater irradiator during a power failure.

Section 36.69 Irradiation of Explosive or Flammable Materials

The final rule prohibits the irradiation of explosive materials or more than small quantities of flammable materials unless the licensee has prior written authorization from the NRC. The reason for these prohibitions is that irradiation can cause chemical reactions that would cause a fire or explosion of flammable or explosive materials.

Flammable materials are those with a flash point temperature below 140°F. The flash point of 140°F was taken from the ANSI Category IV Standard. The flash point is the lowest temperature at which a substance will volatilize to yield sufficient vapor to form a flammable gaseous mixture with air, demonstrable through the production of a flash on contact with a small open flame. The flash points of common substances are tabulated in various engineering handbooks and manuals, for example, "Accident Prevention Manual for Industrial Operations," National Safety Council, Chicago, 1974, and "Handbook of Laboratory Safety," Second edition, Chemical Rubber Company, 1971. Examples of common flammable materials with a flash point below 140°F are: Acetone, benzene, most alcohols, number two fuel oil, gasoline, kerosene, toluene, turpentine, and any flammable gas.

Subpart E—Records

Section 36.81 Records and Retention Periods

The records that a licensee must maintain and their retention periods are specified in a single section, § 36.81. Thus, the licensee has a convenient "check list" to use to make sure that all records required by part 36 are kept.

Section 36.83 Reports

Since the proposed rule concerning irradiators was published, an amendment of part 30 (§ 30.50) expanded the reporting requirements for all part 30 licensees including irradiators. (56 FR 40757, August 16, 1991). It was therefore necessary to reevaluate the section in light of the new part 30 reporting requirements.

The proposed section listed certain irradiator-specific events to be reported that were considered to have safety significance. After comparing the events listed in the proposed section with the requirements of 10 CFR 30.50, it was concluded that 10 CFR 30.50 will require reporting of some significant events that could occur at irradiators. However, to remove any ambiguity and be sure that significant events would be reported, the NRC decided to retain the list of irradiator-specific events. However, the timing and contents of reports were made consistent with those in § 30.50 by referencing that section.

In addition, a requirement to report pool conductivity exceeding 100 microsiemens per centimeter was added. If pool conductivities approach valves at which corrosion might start to occur, the NRC wants to be informed so that it can monitor the problem.

Subpart F—Enforcement

Section 36.91 Violations

This section is provided to inform licensees and the public of legal actions the NRC can take against violations of the regulations. The wording of the section was changed to be consistent with a proposed rule on, "Clarification of Statutory Authority for Purposes of Criminal Enforcement" (57 FR 222, January 3, 1992).

Section 36.93 Criminal Penalties

This section was created from the last paragraph on the proposed § 36.91. The wording is consistent with that in the proposed rule on "Clarification of Statutory Authority for Purposes of Criminal Enforcement" (57 FR 222, January 3, 1992).

V. Other Issues

Certain other issues that were considered in response to public comments are discussed here.

A. Siting, Zoning, Land Use, and Building Code Requirements

The NRC recognizes that many areas have zoning, land use, and building code requirements that would apply to irradiators. It is the responsibility of the applicant or licensee to assure that any proposed facility meets the zoning, land use, and building code requirements of the local and State governments having jurisdiction over the intended site. The granting of an NRC license does not override applicable local zoning, land use, or building requirements. The rule was revised to reflect this. The applicant is advised to consult with the State and local governments before starting construction to assure that the facility would meet all State and local siting, zoning, and land use requirements. The NRC may review facility siting, on a case by case basis, if a unique threat is involved which may not be addressed by State and local requirements. Some commenters were concerned with the large number of curies of radioactive material that are contained in irradiators. Some commenters compared the number of curies with the radioactive inventory at nuclear research reactors. These comparisons are not strictly relevant because the radioactive materials in irradiators are not volatile like the noble gases and iodines produced in a reactor and because irradiators do not have a driving force equivalent to the decay heat from a reactor to expel the materials from the facility.

The NRC believes that an irradiator meeting the requirements in the new Part 36 would present no greater hazard or nuisance to its neighbors than other industrial facilities, because there is little likelihood of such an irradiator causing radiation exposures offsite in excess of NRC's part 20 limits for unrestricted areas. All irradiator experience to date indicates that irradiators do not present a threat to people outside the facility. Therefore, the NRC believes that, in general, irradiators can be located anywhere that local governments would permit an industrial facility to be built.

The NRC considered whether there should be siting requirements dealing with possible flooding of the irradiator or tidal waves. The NRC decided that no siting requirements with respect to possible flooding or tidal waves could be justified on a health and safety basis because flooding of the facility would not destroy the integrity of the shielding walls. Section 36.39 contains a requirement that shielding walls of panoramic irradiators must be constructed of reinforced concrete designed to meet generally accepted building code requirements for reinforced concrete. With this type of construction, shielding and sources are well protected from being carried off or damaged by a flood or wave. Furthermore, the final rule includes a requirement to have emergency procedures for coping with natural phenomena, which would include floods, so that the irradiator can be safely shut down and repaired. Flooding of the facility would undoubtedly result in the need for a time-consuming and expensive repair of flood damage, but no particular radiation hazard would be involved during repair of flood damage because sources could be safely stored during the repairs. Thus, while it may be in the licensee's own economic interest to avoid siting an irradiator at a location subject to flooding, flooding would not create a health and safety hazard.

The NRC also considered whether seismic zones should be considered in siting requirements. The NRC decided that irradiators could be built in any area of the country, but that irradiators in seismic areas (as defined in § 36.2) would need shielding walls designed to withstand an earthquake.

If an irradiator were subject to a large earthquake, the potential damage of radiological significance would be to the integrity of its concrete shielding. Analyses of reinforced concrete irradiator shields designed to meet generally accepted building code requirements for reinforced concrete have shown they are inherently quite robust and resistant to damage from moderate-size earthquakes. To protect against large earthquakes, the NRC decided to include requirements that radiation shields in seismic areas be designed to retain their integrity after a large earthquake. Also, all irradiators must have an emergency procedure for earthquakes.

B. Decommissioning

The NRC considered what design requirements were needed to facilitate decommissioning of the facility. Normally, decommissioning of facilities handling sealed sources is relatively simple, because there would be no radioactive contamination present. However, contamination could be present if leakage of the sources did occur. Thus, the NRC included requirements in the rule to facilitate decommissioning. Periodic leak tests of dry-storage sources and monitoring of the pool water are required to allow early detection of the leakage before large amounts of material have leaked out. With early detection of leakage, a leaking source could be identified and isolated. The pool walls should prevent contamination from leaking out of the pool if contamination occurred. The pool must also have a liner or a surface relatively easy to decontaminate. Thus, for an irradiator built in accordance with the rule, there should be no undue difficulty in decontamination.

The subjects of financial assurance and recordkeeping for decommissioning are dealt with in another section of the regulations (10 CFR 30.35) and thus are not included in part 36.

Comments suggested that the rule contain a requirement for financial assurance of ability to pay for the cleanup of accidents. This subject is currently being considered by NRC on a generic basis for all NRC materials licensees. Therefore, that subject is not covered in this rulemaking.

C. Aircraft Crashes

The NRC considered whether there should be a prohibition against locating irradiators near airports because of risk of radiation overexposures caused by an airplane crash. The NRC has concluded that a prohibition against placing an irradiator where other types of occupied buildings could be placed is not justified on safety grounds. The radioactive sources in an irradiator would be relatively protected from damage because they are generally contained within 6-foot thick reinforced-concrete walls and are encapsulated in steel. Even if a source were damaged as a result of an airplane crash, large quantities of radioactivity are unlikely to be spread from the immediate vicinity of the source rack because the sources are not volatile. With this protection, the radiological consequences of an airplane crash at an irradiator would not substantially increase the seriousness of the accident. Therefore, NRC will allow the construction of an irradiator at any location at which local authorities would allow other occupied buildings to be built.

D. Pool Water Coolers

There was a comment that pool water coolers should be required. Pool water coolers would lower water temperatures, reduce evaporation, reduce the need for makeup water, and reduce humidity in the air of the radiation room. High humidity can cause personnel discomfort or degrade cardboard packaging of the irradiated product but does not create a health and safety problem. In addition, high water temperature decreases the effectiveness of some demineralizers making it more difficult to maintain the required pool water purity. As a practical matter, irradiators with large inventories of radioactive sources are likely to have pool coolers. However, the coolers are not necessary to protect health and safety. Therefore, the NRC saw no regulatory need to require the use of pool water coolers.

E. Noxious Gas Control

Irradiators can produce ozone in concentrations exceeding those permitted by regulations of the Occupational Safety and Health Administration (OSHA) at 29 CFR 1910.1000, "Air Contaminants." Nitrogen oxides can also be produced, although concentrations would not be expected to exceed OSHA's limits. To control these noxious gases, irradiators with large sources are typically equipped with ventilation systems to exhaust the gases before personnel entry.

OSHA regulates exposure to ozone and other noxious gases in the workplace, and the U.S. Environmental Protection Agency regulates emissions offsite. If NRC personnel note a problem with noxious gases at an irradiator during inspection, the NRC will notify OSHA of the problem under the terms of a "Memorandum of Understanding Between the Nuclear Regulatory Commission and the Occupational Safety and Health Administration; Worker Protection at NRC-Licensed Facilities" (53 FR 43590; October 31, 1988).

F. Use of HEPA Filters

A comment was made that the air exhaust ducts from the radiation room should be equipped with HEPA (high efficiency particulate absolute) filters to prevent the spread of contamination in case of a leaking source. The NRC has decided that HEPA filters are not necessary at irradiators to protect health and safety. The comment was made in the context of the leaking cesium-137 WESF source that occurred in Georgia in 1988. However, the NRC has decided that WESF sources should not be used in irradiators, and cobalt-60 is used in a far less dispersible form. In addition, in the Georgia accident there was little escape of cesium-137 from the building and no known dose to the public. Thus, the Georgia accident would support the view that HEPA filters are not necessary.

VI. Agreement State Compatibility

The rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency between Federal and State safety requirements. This rule is assigned a level of compatibility which would allow the Agreement States to adopt additional requirements based on local concerns or experience.

VII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. The action codifies in a rule the licensing requirements and policies on irradiators. The issue in this action is not whether to license or permit the operation of irradiators. This action concerns whether to codify the radiation safety requirements for irradiators in a regulation or whether to take no action and thus continue to license irradiators on a case-by-case basis. This action is directed to improving the regulatory, licensing, inspection, and enforcement framework relating to these irradiators and will not affect the quality of the human environment. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies are available without charge upon written request from Distribution Section, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

VIII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0158.

Public reporting burden for this collection of information is estimated to average 750 hours per year per licensee, including the time required reviewing instructions, searching existing data sources, gathering and maintaining the data needed and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0158), Office of Management and Budget, Washington, DC 20503.

IX. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the requirements in the rule. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained without charge upon written request from: Distribution Section, Office of Administration, USNRC, Washington, DC 20555.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities.

Currently, there are roughly 70 to 80 irradiators that are covered by the rule. Of those irradiators, there are currently about 40 irradiators in the U.S. with sources greater than 9×10^{15} becquerels (250,000 curies) up to a maximum of 1.1×10^{18} becquerels (30,000,000 curies). Several additional irradiators are either under construction or proposed for construction in Agreement States. In addition, there are irradiators with sources smaller than 9×10^{15} becquerels (250,000 curies) that would be subject to the rule. Thus, the total number of facilities affected by the rule is roughly 70 to 80.

The NRC currently defines a small business as a business having less than $3.5 million in annual receipts. Some of the licensees that are affected by this rule might be small entities. However, the actual financial impacts of the rule are quite small. A survey of irradiators performed for the previously mentioned Regulatory Analysis indicated that, with minor exceptions, all surveyed licensees are in compliance with most of the requirements of the rule. The rule contains options such that the six licensees found not to be in full compliance with the requirements could limit their incremental costs to $5,000 or less, estimated as part of the previously mentioned Regulatory Analysis. These costs are not considered significant.

Thus, the rule will not impose a significant economic impact on small entities, as defined in the Regulatory Flexibility Act of 1980, because the requirements do not substantially differ from current licensing requirements.

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and therefore that a backfit analysis is not required for this rule. The rule does not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 19

Criminal penalty, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 30

Byproduct material, Criminal penalty, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 36

Byproduct material, Criminal penalty, Nuclear materials, Reporting and recordkeeping requirements, Scientific equipment, Security measures.

10 CFR Part 40

Criminal penalty, Government contracts, Hazardous materials—transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalty, Hazardous materials—transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 170

Byproduct material, Non-payment penalty, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting 10 CFR part 36 and making the conforming amendments to 10 CFR parts 19, 20, 30, 40, 51, 70, and 170 as follows.

1. Part 36 is added to 10 CFR chapter I to read as follows:

PART 36—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS

Subpart A—General Provisions

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36.1 Purpose and scope.
36.2 Definitions.
36.5 Interpretations.
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Subpart C—Design and Performance Requirements for Irradiators

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36.23 Access control.
36.25 Shielding.
36.27 Fire protection.
36.29 Radiation monitors.
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36.33 Irradiator pools.
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Subpart D—Operation of Irradiators

36.51 Training.
36.53 Operating and emergency procedures.
36.55 Personnel monitoring.
36.57 Radiation surveys.
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36.61 Inspection and maintenance.
36.63 Pool water purity.
36.65 Attendance during operation.
36.67 Entering and leaving the radiation room.
36.69 Irradiation of explosive or flammable materials.

Subpart E—Records

36.81 Records and retention periods.
36.83 Reports.

Subpart F—Enforcement

36.91 Violations.
36.93 Criminal penalties.

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Subpart A—General Provisions

§ 36.1 Purpose and scope.

(a) This part contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. This part also contains radiation safety requirements for operating irradiators. The requirements of this part are in addition to other requirements of this chapter. In particular, the provisions of parts 19, 20, 21, 30, 71, 170, and 171 of this chapter apply to applications and licenses subject to this part. Nothing in this part relieves the licensee from complying with other applicable Federal, State and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

(b) The regulations in this part apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to underwater irradiators in which both the source and the product being irradiated are under water. Irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type, are covered by this part.

(c) The regulations in this part do not apply to self-contained dry-source-storage irradiators (those in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel), medical radiology or teletherapy, radiography (the irradiation of materials for nondestructive testing purposes), gauging, or open-field (agricultural) irradiations.

§ 36.2 Definitions.

Annually means either (1) at intervals not to exceed 1 year or (2) once per year, at about the same time each year (plus or minus 1 month).

Doubly encapsulated sealed source means a sealed source in which the radioactive material is sealed within a capsule and that capsule is sealed within another capsule.

Irradiator means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding 5 grays (500 rads) per hour exist at 1 meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

Irradiator operator means an individual who has successfully completed the training and testing described in § 36.51 and is authorized by the terms of the license to operate the irradiator without a supervisor present.

Panoramic dry-source-storage irradiator means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage irradiators in which only a narrow beam of radiation is produced for performing irradiations.

Panoramic irradiator means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

Panoramic wet-source-storage irradiator means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

Pool irradiator means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

Product conveyor system means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

Radiation room means a shielded room in which irradiations take place. Underwater irradiators do not have radiation rooms.

Radiation safety officer means an individual with responsibility for the overall radiation safety program at the facility.

Sealed source means any byproduct material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the byproduct material.

Seismic area means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the U.S. Geological Survey.

Underwater irradiator means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

§ 36.5 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 36.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements contained in this part under control number 3150–0158.

(b) The approved information collection requirements contained in this part appear in §§ 36.11, 36.13, 36.17, 36.19, 36.21(a)(1), 36.81, and 36.83.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and the control numbers under which they are approved are as follows:

(1) In § 36.11, NRC Form 313 is approved under control number 3150–0120.

(2) [Reserved]

Subpart B—Specific Licensing Requirements

§ 36.11 Application for a specific license.

A person, as defined in § 30.4 of this chapter, may file an application for a specific license authorizing the use of sealed sources in an irradiator on Form NRC 313, "Application for Material License." Each application for a license, other than a license exempted from part 170 of this chapter, must be accompanied by the fee prescribed in § 170.31 of this chapter. The application and one copy must be sent to the appropriate NRC Regional Office listed in Appendix D to part 20 of this chapter.

§ 36.13 Specific licenses for irradiators.

The Commission will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section.

(a) The applicant shall satisfy the general requirements specified in § 30.33 of this chapter and the requirements contained in this part.

(b) The application must describe the training provided to irradiator operators including—

(1) Classroom training;

(2) On-the-job or simulator training;

(3) Safety reviews;

(4) Means employed by the applicant to test each operator's understanding of the Commission's regulations and licensing requirements and the irradiator operating and emergency procedures; and

(5) Minimum training and experience of personnel who may provide training.

(c) The application must include an outline of the written operating and emergency procedures listed in § 36.53 that describes the radiation safety aspects of the procedures.

(d) The application must describe the organizational structure for managing the irradiator, specifically the radiation safety responsibilities and authorities of the radiation safety officer and those management personnel who have important radiation safety responsibilities or authorities. In particular, the application must specify who, within the management structure, has the authority to stop unsafe operations. The application must also describe the training and experience required for the position of radiation safety officer.

(e) The application must include a description of the access control systems required by § 36.23, the radiation monitors required by § 36.29, the method of detecting leaking sources required by § 36.59 including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

(f) If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the Commission. The description must include the—

(1) Instruments to be used;

(2) Methods of performing the analysis; and

(3) Pertinent experience of the individual who analyzes the samples.

(g) If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization specifically authorized by the Commission or an Agreement State to load or unload irradiator sources.

(h) The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by § 36.61.

§ 36.15 Start of construction.

The applicant may not begin construction of a new irradiator prior to the submission to NRC of both an application for a license for the irradiator and the fee required by § 170.31. As used in this section, the term "construction" includes the construction of any portion of the permanent irradiator structure on the site but does not include: Engineering and design work, purchase of a site, site surveys or soil testing, site preparation, site excavation, construction of warehouse or auxiliary structures, and other similar tasks. Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the Atomic Energy Act of 1954, as amended, and rules, regulations, and orders issued under the Act.

§ 36.17 Applications for exemptions.

(a) The Commission may, upon application of any interested person or upon its own initiative, grant any exemptions from the requirements in this part that it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

(b) Any application for a license or for amendment of a license authorizing use of a teletherapy-type unit for irradiation of materials or objects may include proposed alternatives for the requirements of this part. The Commission will approve the proposed alternatives if the applicant provides adequate rationale for the proposed alternatives and demonstrates that they are likely to provide an adequate level of safety for workers and the public.

§ 36.19 Request for written statements.

(a) After the filing of the original application, the Commission may request further information necessary to enable the Commission to determine whether the application should be granted or denied.

(b) Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the Commission's request, submit written statements to enable the Commission to determine whether the license should be modified, suspended, or revoked.

Subpart C—Design and Performance Requirements for Irradiators

§ 36.21 Performance criteria for sealed sources.

(a) *Requirements.* Sealed sources installed after July 1, 1993:

(1) Must have a certificate of registration issued under 10 CFR 32.210;

(2) Must be doubly encapsulated;

(3) Must use radioactive material that is as nondispersible as practical and that is as insoluble as practical if the source is used in a wet-source-storage or wet-source-change irradiator;

(4) Must be encapsulated in a material resistant to general corrosion and to localized corrosion, such as 316L stainless steel or other material with equivalent resistance if the sources are for use in irradiator pools; and

(5) In prototype testing of the sealed source, must have been leak tested and found leak-free after each of the tests described in paragraphs (b) through (g) of this section.

(b) *Temperature.* The test source must be held at −40°C for 20 minutes, 600°C for 1 hour, and then be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.

(c) *Pressure.* The test source must be twice subjected for at least 5 minutes to an external pressure (absolute) of 2 million newtons per square meter.

(d) *Impact.* A 2-kilogram steel weight, 2.5 centimeters in diameter, must be dropped from a height of 1 meter onto the test source.

(e) *Vibration.* The test source must be subjected 3 times for 10 minutes each to vibrations sweeping from 25 hertz to 500 hertz with a peak amplitude of 5 times the acceleration of gravity. In addition, each test source must be vibrated for 30 minutes at each resonant frequency found.

(f) *Puncture.* A 50-gram weight and pin, 0.3-centimeter pin diameter, must be dropped from a height of 1 meter onto the test source.

(g) *Bend.* If the length of the source is more than 15 times larger than the minimum cross-sectional dimension, the test source must be subjected to a force of 2000 newtons at its center equidistant from two support cylinders, the distance between which is 10 times the minimum cross-sectional dimension of the source.

§ 36.23 Access control.

(a) Each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel if the sources are not in the shielded position. Product conveyor systems may serve as barriers as long as they reliably and consistently function as a barrier. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return promptly to their shielded position. The personnel entrance door or barrier must have a lock that is operated by the same key used to move the sources. The doors and barriers must not prevent any individual in the radiation room from leaving.

(b) In addition, each entrance to a radiation room at a panoramic irradiator must have an independent backup access control to detect personnel entry while the sources are exposed. Detection of entry while the sources are exposed must cause the sources to return to their fully shielded position and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is onsite of the entry. That individual shall be trained on how to respond to the alarm and prepared to promptly render or summon assistance.

(c) A radiation monitor must be provided to detect the presence of high radiation levels in the radiation room of a panoramic irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access when radiation levels are high. Attempted personnel entry while the monitor measures high radiation levels, must activate the alarm described in paragraph (b) of this section. The monitor may be located in the entrance (normally referred to as the maze) but not in the direct radiation beam.

(d) Before the sources move from their shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.

(e) Each radiation room at a panoramic irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

(f) Each radiation room of a panoramic irradiator must contain a control that prevents the sources from moving from the shielded position unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

(g) Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must have a sign bearing the radiation symbol and the words, "Caution (or danger) radioactive material." Panoramic irradiators must also have a sign stating "High radiation area," but the sign may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

(h) If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. This requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

(i) Underwater irradiators must have a personnel access barrier around the pool which must be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm must alert an individual (not necessarily onsite) who is prepared to respond or summon assistance.

§ 36.25 Shielding.

(a) The radiation dose rate in areas that are normally occupied during operation of a panoramic irradiator may not exceed 0.02 millisievert (2 millirems) per hour at any location 30 centimeters or more from the wall of the room when the sources are exposed. The dose rate must be averaged over an area not to exceed 100 square centimeters having no linear dimension greater than 20 cm. Areas where the radiation dose rate exceeds 0.02 millisievert (2 millirems) per hour must be locked, roped off, or posted.

(b) The radiation dose at 30 centimeters over the edge of the pool of a pool irradiator may not exceed 0.02 millisievert (2 millirems) per hour when the sources are in the fully shielded position.

(c) The radiation dose rate at 1 meter from the shield of a dry-source-storage panoramic irradiator when the source is shielded may not exceed 0.02 millisievert (2 millirems) per hour and at 5 centimeters from the shield may not exceed 0.2 millisievert (20 millirems) per hour.

§ 36.27 Fire protection.

(a) The radiation room at a panoramic irradiator must have heat and smoke detectors. The detectors must activate an audible alarm. The alarm must be capable of alerting a person who is prepared to summon assistance promptly. The sources must automatically become fully shielded if a fire is detected.

(b) The radiation room at a panoramic irradiator must be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room. The system for the radiation room must have a shut-off valve to control flooding into unrestricted areas.

§ 36.29 Radiation monitors.

(a) Irradiators with automatic product conveyor systems must have a radiation monitor with an audible alarm located to detect loose radioactive sources that are carried toward the product exit. If the monitor detects a source, an alarm must sound and product conveyors must stop automatically. The alarm must be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed stationary tube are exempt from the requirements of this paragraph.

(b) Underwater irradiators that are not in a shielded radiation room must have a radiation monitor over the pool to detect abnormal radiation levels. The monitor must have an audible alarm and a visible indicator at entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm must be capable of alerting an individual who is prepared to respond promptly.

§ 36.31 Control of source movement.

(a) The mechanism that moves the sources of a panoramic irradiator must require a key to actuate. Actuation of the mechanism must cause an audible signal to indicate that the sources are leaving the shielded position. Only one key may be in use at any time, and only operators or facility management may possess it. The key must be attached to a portable radiation survey meter by a chain or cable. The lock for source control must be designed so that the key may not be removed if the sources are in an unshielded position. The door to the radiation room must require the same key.

(b) The console of a panoramic irradiator must have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit, and when the sources are exposed.

(c) The control console of a panoramic irradiator must have a control that promptly returns the sources to the shielded position.

(d) Each control for a panoramic irradiator must be clearly marked as to its function.

§ 36.33 Irradiator pools.

(a) For licenses initially issued after July 1, 1993, irradiator pools must either:

(1) Have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool; or

(2) Be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination. In either case, the licensee shall have a method to safely store the sources during repairs of the pool.

(b) For licenses initially issued after July 1, 1993, irradiator pools must have no outlets more than 0.5 meter below the normal low water level that could allow water to drain out of the pool. Pipes that have intakes more than 0.5 meter below the normal low water level and that could act as siphons must have siphon breakers to prevent the siphoning of pool water.

(c) A means must be provided to replenish water losses from the pool.

(d) A visible indicator must be provided in a clearly visible location to indicate if the pool water level is below the normal low water level or above the normal high water level.

(e) Irradiator pools must be equipped with a purification system designed to be capable of maintaining the water during normal operation at a conductivity of 20 microsiemens per centimeter or less and with a clarity so that the sources can be seen clearly.

(f) A physical barrier, such as a railing or cover, must be used around or over irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection, and service operations.

(g) If long-handled tools or poles are used in irradiator pools, the radiation dose rate on the handling areas of the tools may not exceed 0.02 millisievert (2 millirems) per hour.

§ 36.35 Source rack protection.

If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack must be protected by a barrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

§ 36.37 Power failures.

(a) If electrical power at a panoramic irradiator is lost for longer than 10 seconds, the sources must automatically return to the shielded position.

(b) The lock on the door of the radiation room of a panoramic irradiator may not be deactivated by a power failure.

(c) During a power failure, the area of any irradiator where sources are located may be entered only when using an operable and calibrated radiation survey meter.

§ 36.39 Design requirements.

Irradiators whose construction begins after July 1, 1993, must meet the design requirements of this section.

(a) *Shielding.* For panoramic irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete and design the walls, wall penetrations, and entranceways to meet the radiation shielding requirements of § 36.25. If the irradiator will use more than 2×10^{17} becquerels (5 million curies) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

(b) *Foundations.* For panoramic irradiators, the licensee shall design the foundation, with consideration given to soil characteristics, to ensure it is adequate to support the weight of the facility shield walls.

(c) *Pool integrity.* For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all outlets or pipes meet the requirements of § 36.33(b), and that metal components are metallurgically compatible with other components in the pool.

(d) *Water handling system.* For pool irradiators, the licensee shall verify that the design of the water purification system is adequate to meet the requirements of § 36.33(e). The system must be designed so that water leaking from the system does not drain to unrestricted areas without being monitored.

(e) *Radiation monitors.* For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by § 36.29(a). The licensee shall verify that the product conveyor is designed to stop before a source on the product conveyor would cause a radiation overexposure to any person. For pool irradiators, if the licensee uses radiation monitors to detect contamination under § 36.59(b), the licensee shall verify that the design of radiation monitoring systems to detect pool contamination includes sensitive detectors located close to where contamination is likely to concentrate.

(f) *Source rack.* For pool irradiators, the licensee shall verify that there are no crevices on the source or between the source and source holder that would promote corrosion on a critical area of the source. For panoramic irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack and that source rack drops due to failure of cables (or alternate means of support) will not cause loss of integrity of sealed sources. For panoramic irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it with minimal risk to personnel.

(g) *Access control.* For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system will meet the requirements of § 36.23.

(h) *Fire protection.* For panoramic irradiators, the licensee shall verify that the number, location, and spacing of the smoke and heat detectors are appropriate to detect fires and that the detectors are protected from mechanical and radiation damage. The licensee shall verify that the design of the fire extinguishing system provides the necessary discharge patterns, densities, and flow characteristics for complete coverage of the radiation room and that the system is protected from mechanical and radiation damage.

(i) *Source return.* For panoramic irradiators, the licensee shall verify that the source rack will automatically return to the fully shielded position if offsite power is lost for more than 10 seconds.

(j) *Seismic.* For panoramic irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in the event of an earthquake by designing to the seismic requirements of an appropriate source such as American Concrete Institute Standard ACI 318–89, "Building Code Requirements for Reinforced Concrete," Chapter 21, "Special Provisions for Seismic Design," or local building codes, if current.

(k) *Wiring.* For panoramic irradiators, the licensee shall verify that electrical wiring and electrical equipment in the radiation room are selected to minimize failures due to prolonged exposure to radiation.

§ 36.41 Construction monitoring and acceptance testing.

The requirements of this section must be met for irradiators whose construction begins after July 1, 1993. The requirements must be met prior to loading sources.

(a) *Shielding.* For panoramic irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

(b) *Foundations.* For panoramic irradiators, the licensee shall monitor the construction of the foundations to verify that their construction meets design specifications.

(c) *Pool integrity.* For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that outlets and pipes meet the requirements of § 36.33(b).

(d) *Water handling system.* For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter, and the water level indicators operate properly.

(e) *Radiation monitors.* For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on the product conveyor system and the related alarms and interlocks required by § 36.29(a). For pool irradiators, the licensee shall verify the proper operation of the radiation monitors and the related alarm if used to meet § 36.59(b). For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms, and interlocks required by § 36.29(b).

(f) *Source rack.* For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing must include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements in § 36.35 are met for protection of the source rack and the mechanism that moves the rack; testing must include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves the rack from moving product carriers.

(g) *Access control.* For panoramic irradiators, the licensee shall test the completed access control system to assure that it functions as designed and that all alarms, controls, and interlocks work properly.

(h) *Fire protection.* For panoramic irradiators, the licensee shall test the ability of the heat and smoke detectors to detect a fire, to activate alarms, and to cause the source rack to automatically become fully shielded. The licensee shall test the operability of the fire extinguishing system.

(i) *Source return.* For panoramic irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without offsite power.

(j) *Computer systems.* For panoramic irradiators that use a computer system to control the access control system, the licensee shall verify that the access control system will operate properly if offsite power is lost and shall verify that the computer has security features that prevent an irradiator operator from commanding the computer to override the access control system when it is required to be operable.

(k) *Wiring.* For panoramic irradiators, the licensee shall verify that the electrical wiring and electrical equipment that were installed meet the design specifications.

Subpart D—Operation of Irradiators

§ 36.51 Training.

(a) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must be instructed in:

(1) The fundamentals of radiation protection applied to irradiators (including the differences between external radiation and radioactive contamination, units of radiation dose, NRC dose limits, why large radiation doses must be avoided, how shielding and access controls prevent large doses, how an irradiator is designed to prevent contamination, the proper use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator);

(2) The requirements of parts 19 and 36 of NRC regulations that are relevant to the irradiator;

(3) The operation of the irradiator;

(4) Those operating and emergency procedures listed in § 36.53 that the individual is responsible for performing; and

(5) Case histories of accidents or problems involving irradiators.

(b) Before an individual is permitted to operate an irradiator without a supervisor present, the individual shall pass a written test on the instruction received consisting primarily of questions based on the licensee's operating and emergency procedures that the individual is responsible for performing and other operations necessary to safely operate the irradiator without supervision.

(c) Before an individual is permitted to operate an irradiator without a supervisor present, the individual must have received on-the-job training or simulator training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those portions of the operating and emergency procedures that he or she is to perform.

(d) The licensee shall conduct safety reviews for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review must include, to the extent appropriate, each of the following—

(1) Changes in operating and emergency procedures since the last review, if any;

(2) Changes in regulations and license conditions since the last review, if any;

(3) Reports on recent accidents, mistakes, or problems that have occurred at irradiators, if any;

(4) Relevant results of inspections of operator safety performance;

(5) Relevant results of the facility's inspection and maintenance checks; and

(6) A drill to practice an emergency or abnormal event procedure.

(e) The licensee shall evaluate the safety performance of each irradiator operator at least annually to ensure that regulations, license conditions, and operating and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator and shall instruct the operator on how to correct any mistakes or deficiencies observed.

(f) Individuals who will be permitted unescorted access to the radiation room of the irradiator or the area around the pool of an underwater irradiator, but who have not received the training required for operators and the radiation safety officer, shall be instructed and tested in any precautions they should take to avoid radiation exposure, any procedures or parts of procedures listed in § 36.53 that they are expected to perform or comply with, and their proper response to alarms required in this part. Tests may be oral.

(g) Individuals who must be prepared to respond to alarms required by § 36.23(b), § 36.23(i), § 36.27(a), § 36.29(a), § 36.29(b), and § 36.59(b) shall be trained and tested on how to respond. Each individual shall be retested at least once a year. Tests may be oral.

§ 36.53 Operating and emergency procedures.

(a) The licensee shall have and follow written operating procedures for—

(1) Operation of the irradiator, including entering and leaving the radiation room;

(2) Use of personnel dosimeters;

(3) Surveying the shielding of panoramic irradiators;

(4) Monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;

(5) Leak testing of sources;

(6) Inspection and maintenance checks required by § 36.61;

(7) Loading, unloading, and repositioning sources, if the operations will be performed by the licensee; and

(8) Inspection of movable shielding required by § 36.23(h), if applicable.

(b) The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for—

(1) Sources stuck in the unshielded position;

(2) Personnel overexposures;

(3) A radiation alarm from the product exit portal monitor or pool monitor;

(4) Detection of leaking sources, pool contamination, or alarm caused by contamination of pool water;

(5) A low or high water level indicator, an abnormal water loss, or leakage from the source storage pool;

(6) A prolonged loss of electrical power;

(7) A fire alarm or explosion in the radiation room;

(8) An alarm indicating unauthorized entry into the radiation room, area around pool, or another alarmed area;

(9) Natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility; and

(10) The jamming of automatic conveyor systems.

(c) The licensee may revise operating and emergency procedures without Commission approval only if all of the following conditions are met:

(1) The revisions do not reduce the safety of the facility,

(2) The revisions are consistent with the outline or summary of procedures submitted with the license application,

(3) The revisions have been reviewed and approved by the radiation safety officer, and

(4) The users or operators are instructed and tested on the revised procedures before they are put into use.

§ 36.55 Personnel monitoring.

(a) Irradiator operators shall wear either a film badge or a thermoluminescent dosimeter (TLD) while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The film badge or TLD processor must be accredited by the National Voluntary Laboratory Accreditation Program for high energy photons in the normal and accident dose ranges (see 10 CFR 20.1501(c)). Each film badge or TLD must be assigned to and worn by only one individual. Film badges must be processed at least monthly, and TLDs must be processed at least quarterly.

(b) Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of this paragraph, a check of their response to radiation must be done at least annually. Acceptable dosimeters must read within plus or minus 30 percent of the true radiation dose.

§ 36.57 Radiation surveys.

(a) A radiation survey of the area outside the shielding of the radiation room of a panoramic irradiator must be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool of pool irradiators must be conducted after the sources are loaded but before the facility starts to operate. Additional radiation surveys of the shielding must be performed at intervals not to exceed 3 years and before resuming operation after addition of new sources or any modification to the radiation room shielding or structure that might increase dose rates.

(b) If the radiation levels specified in § 36.25 are exceeded, the facility must be modified to comply with the requirements in § 36.25.

(c) Portable radiation survey meters must be calibrated at least annually to an accuracy of ±20 percent for the gamma energy of the sources in use. The calibration must be done at two points on each scale or, for digital instruments, at one point per decade over the range that will be used. Portable radiation survey meters must be of a type that does not saturate and read zero at high radiation dose rates.

(d) Water from the irradiator pool, other potentially contaminated liquids, and sediments from pool vacuuming must be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations must not exceed those specified in 10 CFR part 20, Table 2, Column 2 or Table 3 of Appendix B, "Annual Limits on Intake (ALIs) and Derived Air Concentrations (DACs) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sewerage."

(e) Before releasing resins for unrestricted use, they must be monitored before release in an area with a background level less than 0.5 microsievert (0.05 millirem) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter used must be capable of detecting radiation levels of 0.5 microsievert (0.05 millirem) per hour.

§ 36.59 Detection of leaking sources.

(a) Each dry-source-storage sealed source must be tested for leakage at intervals not to exceed 6 months using a leak test kit or method approved by the Commission or an Agreement State. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested. The test must be capable of detecting the presence of 200 becquerels (0.005 microcurie) of radioactive material and must be performed by a person approved by the Commission or an Agreement State to perform the test.

(b) For pool irradiators, sources may not be put into the pool unless the licensee tests the sources for leaks or has a certificate from a transferor that leak test has been done within the 6 months before the transfer. Water from the pool must be checked for contamination each day the irradiator operates. The check may be done either by using a radiation monitor on a pool water circulating system or by analysis of a sample of pool water. If a check for contamination is done by analysis of a sample of pool water, the results of the analysis must be available within 24 hours. If the licensee uses a radiation monitor on a pool water circulating system, the detection of above normal radiation levels must activate an alarm. The alarm set-point must be set as low as practical, but high enough to avoid false alarms. The licensee may reset the alarm set-point to a higher level if necessary to operate the pool water purification system to clean up contamination in the pool if specifically provided for in written emergency procedures.

(c) If a leaking source is detected, the licensee shall arrange to remove the leaking source from service and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities, and irradiated product for radioactive contamination. No product may be shipped until the product has been checked and found free of contamination. If a product has been shipped that may have been inadvertently contaminated, the licensee shall arrange to locate and survey that product for contamination. If any personnel are found to be contaminated, decontamination must be performed promptly. If contaminated equipment, facilities, or products are found, the licensee shall arrange to have them decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. If a pool is contaminated, the licensee shall arrange to clean the pool until the contamination levels do not exceed the appropriate concentration in Table 2, Column 2, Appendix B to §§ 20.1001 to 20.2401 of part 20. (See 10 CFR 30.50 for reporting requirements.)

§ 36.61 Inspection and maintenance.

(a) The licensee shall perform inspection and maintenance checks that include, as a minimum, each of the following at the frequency specified in the license or license application:

(1) Operability of each aspect of the access control system required by § 36.23.

(2) Functioning of the source position indicator required by § 36.31(b).

(3) Operability of the radiation monitor for radioactive contamination in pool water required by § 36.59(b) using a radiation check source, if applicable.

(4) Operability of the over-pool radiation monitor at underwater irradiators as required by § 36.29(b).

(5) Operability of the product exit monitor required by § 36.29(a).

(6) Operability of the emergency source return control required by § 36.31(c).

(7) Leak-tightness of systems through which pool water circulates (visual inspection).

(8) Operability of the heat and smoke detectors and extinguisher system required by § 36.27 (but without turning extinguishers on).

(9) Operability of the means of pool water replenishment required by § 36.33(c).

(10) Operability of the indicators of high and low pool water levels required by § 36.33(d).

(11) Operability of the intrusion alarm required by § 36.23(i), if applicable.

(12) Functioning and wear of the system, mechanisms, and cables used to raise and lower sources.

(13) Condition of the barrier to prevent products from hitting the sources or source mechanism as required by § 36.35.

(14) Amount of water added to the pool to determine if the pool is leaking.

(15) Electrical wiring on required safety systems for radiation damage.

(16) Pool water conductivity measurements and analysis as required by § 36.63(b).

(b) Malfunctions and defects found during inspection and maintenance checks must be repaired without undue delay.

§ 36.63 Pool water purity.

(a) Pool water purification system must be run sufficiently to maintain the conductivity of the pool water below 20 microsiemens per centimeter under normal circumstances. If pool water conductivity rises above 20 microsiemens per centimeter, the licensee shall take prompt actions to lower the pool water conductivity and shall take corrective actions to prevent future recurrences.

(b) The licensee shall measure the pool water conductivity frequently enough, but no less than weekly, to assure that the conductivity remains below 20 microsiemens per centimeter. Conductivity meters must be calibrated at least annually.

§ 36.65 Attendance during operation.

(a) Both an irradiator operator and at least one other individual, who is trained on how to respond and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present onsite:

(1) Whenever the irradiator is operated using an automatic product conveyor system; and

(2) Whenever the product is moved into or out of the radiation room when the irradiator is operated in a batch mode.

(b) At a panoramic irradiator at which static irradiations (no movement of the product) are occurring, a person who has received the training on how to respond to alarms described in § 36.51(g) must be onsite.

(c) At an underwater irradiator, an irradiator operator must be present at the facility whenever the product is moved into or out of the pool. Individuals who move the product into or out of the pool of an underwater irradiator need not be qualified as irradiator operators; however, they must have received the training described in § 36.51 (f) and (g). Static irradiations may be performed without a person present at the facility.

§ 36.67 Entering and leaving the radiation room.

(a) Upon first entering the radiation room of a panoramic irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The operator shall check the functioning of the survey meter with a radiation check source prior to entry.

(b) Before exiting from and locking the door to the radiation room of a panoramic irradiator prior to a planned irradiation, the irradiator operator shall:

(1) Visually inspect the entire radiation room to verify that no one else is in it; and

(2) Activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

(c) During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter unless the over-the-pool monitor required by § 36.29(b) is operating with backup power.

§ 36.69 Irradiation of explosive or flammable materials.

(a) Irradiation of explosive material is prohibited unless the licensee has received prior written authorization from the Commission. Authorization will not be granted unless the licensee can demonstrate that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems, or cause radiation overexposures of personnel.

(b) Irradiation of more than small quantities of flammable material (flash point below 140 °F) is prohibited in panoramic irradiators unless the licensee has received prior written authorization from the Commission. Authorization will not be granted unless the licensee can demonstrate that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

Subpart E—Records

§ 36.81 Records and retention periods.

The licensee shall maintain the following records at the irradiator for the periods specified.

(a) A copy of the license, license conditions, documents incorporated into a license by reference, and amendments thereto until superseded by new documents or until the Commission terminates the license for documents not superseded.

(b) Records of each individual's training, tests, and safety reviews provided to meet the requirements of § 36.51(a), (b), (c), (d), (f), and (g) until 3 years after the individual terminates work.

(c) Records of the annual evaluations of the safety performance of irradiator operators required by § 36.51(e) for 3 years after the evaluation.

(d) A copy of the current operating and emergency procedures required by § 36.53 until superseded or the Commission terminates the license. Records of the radiation safety officer's review and approval of changes in procedures as required by § 36.53(c)(3) retained for 3 years from the date of the change.

(e) Film badge and TLD results required by § 36.55 until the Commission terminates the license.

(f) Records of radiation surveys required by § 36.57 for 3 years from the date of the survey.

(g) Records of radiation survey meter calibrations required by § 36.57 and pool water conductivity meter calibrations required by § 36.63(b) until 3 years from the date of calibration.

(h) Records of the results of leak tests required by § 36.59(a) and the results of contamination checks required by § 36.59(b) for 3 years from the date of each test.

(i) Records of inspection and maintenance checks required by § 36.61 for 3 years.

(j) Records of major malfunctions, significant defects, operating difficulties or irregularities, and major operating problems that involve required radiation safety equipment for 3 years after repairs are completed.

(k) Records of the receipt, transfer and disposal, of all licensed sealed sources as required by § 30.51 and § 30.41.

(l) Records on the design checks required by § 36.39 and the construction control checks as required by § 36.41 until the license is terminated. The records must be signed and dated. The title or qualification of the person signing must be included.

(m) Records related to decommissioning of the irradiator as required by § 30.35(g).

§ 36.83 Reports.

(a) In addition to the reporting requirements in other parts of NRC regulations, the licensee shall report the following events if not reported under other parts of NRC regulations:

(1) Source stuck in an unshielded position.

(2) Any fire or explosion in a radiation room.

(3) Damage to the source racks.

(4) Failure of the cable or drive mechanism used to move the source racks.

(5) Inoperability of the access control system.

(6) Detection of radiation source by the product exit monitor.

(7) Detection of radioactive contamination attributable to licensed radioactive material.

(8) Structural damage to the pool liner or walls.

(9) Abnormal water loss or leakage from the source storage pool.

(10) Pool water conductivity exceeding 100 microsiemens per centimeter.

(b) The report must include a telephone report within 24 hours as described in § 30.50(c)(1), and a written report within 30 days as described in § 30.50(c)(2).

Subpart F—Enforcement

§ 36.91 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended; or

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act:

(1) For violations of—

(i) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Atomic Energy Act of 1954, as amended;

(ii) Section 206 of the Energy Reorganization Act;

(iii) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1)(i) of this section;

(iv) Any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1)(i) of this section.

(2) For any violation for which a license may be revoked under section 186 of the Atomic Energy Act of 1954, as amended.

§ 36.93 Criminal penalties.

(a) Section 223 of the Atomic Energy Act of 1954, as amended, provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. For purposes of section 223, all the regulations in part 36 are issued under one or more of sections 161b, 161i, or 161o, except for the sections listed in paragraph (b) of this section.

(b) The regulations in part 36 that are not issued under Sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 36.1, 36.2, 36.5, 36.8, 36.11, 36.13, 36.17, 36.19, 36.91, and 36.93.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS AND INVESTIGATIONS

2. The authority citation for part 19 continues to read, in part, as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)* * *.

§ 19.2 [Amended]

3. Section 19.2 is amended by changing "35" to "36."

§ 19.3 [Amended]

4. In § 19.3 the definition *License* is amended by changing "35" to "36" in the first sentence.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

5. The authority citation for part 20 continues to read, in part, as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 20.2 [Amended]

6. Section 20.2 is amended by changing "35" to "36."

§ 20.3 [Amended]

7. Section 20.3(a)(9) is amended by changing "35" to "36."

§ 20.203 [Amended]

8. In § 20.203, paragraphs (c)(6) and (c)(7) are removed.

§ 20.1002 [Amended]

9. Section 20.1002 is amended by changing "35" to "36."

§ 20.1003 [Amended]

10. In 20.1003, the definition of *license* is amended by changing "35" to "36."

§ 20.1603 [Removed]

11. Section 20.1603 is removed.

§ 20.2109 [Removed]

12. Section 20.2109 is removed.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

13. The authority citation for part 30 continues to read, in part, as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841) * * *.

§ 30.4 [Amended]

14. In § 30.4, the definition of *License*, is amended by changing "35" to "36."

§ 30.5 [Amended]

15. Section 30.5 is amended by changing "35" to "36."

§ 30.6 [Amended]

16. In § 30.6, paragraphs (a) introductory text and (b)(1) introductory text are amended by changing "35" to "36."

§ 30.11 [Amended]

17. In § 30.11, paragraph (a) is amended by changing "35" to "36."

§ 30.13 [Amended]

18. Section 30.13 is amended by changing "35" to "36."

§ 30.14 [Amended]

19. In § 30.14, paragraph (a) is amended by changing "35" to "36," and paragraph (c) is amended by adding ", 36" after "33, 34."

§ 30.15 [Amended]

20. In § 30.15, the introductory text of paragraph (a) is amended by changing "35" to "36."

§ 30.16 [Amended]

21. Section 30.16 is amended by changing "35" to "36."

§ 30.18 [Amended]

22. In § 30.18, paragraph (a) is amended by adding ", 36" after "30 through 34."

§ 30.19 [Amended]

23. In § 30.19, paragraph (a) is amended by changing "35" to "36."

§ 30.20 [Amended]

24. In § 30.20, paragraph (a) is amended by changing "35" to "36."

§ 30.31 [Amended]

25. Section 30.31 is amended by changing "35" to "36."

§ 30.33 [Amended]

26. Section 30.33, paragraph (a)(4) is amended by changing "35" to "36."

§ 30.34 [Amended]

27. Section 30.34, paragraphs (a) and (b) are amended by changing "35" to "36"; paragraph (c) is amended by changing "35" to "36" in the first and the second sentences; paragraphs (d) and (e) introductory text are amended by changing "35" to "36."

§ 30.39 [Amended]

28. Section 30.39 is amended by changing "35" to "36."

§ 30.51 [Amended]

29. In § 30.51, paragraphs (a) introductory text, (b), and (c)(1) are amended by changing "35" to "36 and 39" and paragraph (c)(2) is amended by changing "35" to "36" in all three locations.

§ 30.53 [Amended]

30. The introductory text of § 30.53 is amended by changing "35" to "36."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

31. The authority citation for part 40 continues to read, in part, as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242 as amended (42 U.S.C. 5841)* * *.

§ 40.5 [Amended]

32. In § 40.5, paragraph (b)(1) is amended by changing "35" to "36" in the first sentence.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

33. The authority citation for part 51 continues to read, as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201 as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

§ 51.22 [Amended]

34. In § 51.22, paragraphs (c)(3), (c)(10) and (c)(14) are amended by adding "36," after "34, 35."

§ 51.60 [Amended]

35. In § 51.60, paragraph (a) is amended by adding "36," after "34, 35."

§ 51.66 [Amended]

36. In § 51.66, paragraph (a) is amended by adding "36," after "34, 35."

§ 51.68 [Amended]

37. Section 51.68 is amended by adding "36," after "34, 35,".

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

38. The authority citation for part 70 continues to read, in part, as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

§ 70.5 [Amended]

39. In § 70.5, paragraph (b)(1) introductory text is amended by changing "35" to "36."

§ 70.20a [Amended]

40. In § 70.20a, paragraph (b) is amended by changing "35" to "36."

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

41. The authority citation for part 170 continues to read, as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

§ 170.2 [Amended]

42. In § 170.2, paragraph (a) is amended by changing "35" to "36."

Dated at Rockville, Maryland, this 28th day of January, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 93–2493 Filed 2–8–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–62–AD; Amendment 39–8496; AD 93–02–13]

Airworthiness Directives; Piper Aircraft Corporation PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 92–26–02, which currently requires inspecting the engine baffle seals on Piper Aircraft Corporation (Piper) PA–31 series airplanes, and, if found improperly positioned, either reinforcing the baffle seals or installing thicker baffle material. The notice of proposed rulemaking (NPRM) that preceded AD 92–26–02 proposed repetitive inspections of these baffle seals. However, the final rule of this AD inadvertently omitted the repetitive inspection requirement for baffle seals found properly positioned. This action incorporates this repetitive inspection requirement as well as maintaining the actions of the current AD. The actions specified by this AD are intended to prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures.

DATES: Effective March 15, 1993.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of January 22, 1992.

ADDRESSES: Service information that applies to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: On November 24, 1992, the FAA issued AD 92–26–02, Amendment 39–8429 (57 FR 57096, December 3, 1992), which applies to certain Piper PA–31 series airplanes. As written, this action currently requires inspecting the engine baffle seals to ensure they are positioned properly; and if found improperly positioned, (1) either reinforcing the baffle seals in accordance with Piper Service Bulletin (SB) No. 693, dated July 28, 1980; or installing thicker baffle material in accordance with Piper Kit 764 093 as referenced in Piper Service Letter No. 875, dated May 11, 1981, or an FAA-approved equivalent; and (2) reinspecting at certain intervals. AD 92–26–02 superseded AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980).

The FAA's intent, as proposed in the notice of proposed rulemaking (NPRM) that preceded AD 92–26–02, was to require repetitive inspections of these baffle seals regardless of whether the baffle seals were found improperly positioned. However, this repetitive inspection requirement was inadvertently omitted from the final rule. The FAA has determined that further AD action should be taken to include this requirement.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA–31 series airplanes of the same type design, this action supersedes AD 92–26–02 with a new AD that (1) maintains the inspection, reinforcement, and installation requirements of AD 92–26–02; and (2) incorporates the requirement of repetitively inspecting the baffle seals even if positioned properly.

This action supersedes a previous action to correct an error in a final rule by including a repetitive inspection requirement of the baffle seals, which was already proposed in an NPRM. Since this action does not impose any additional burden (financial or otherwise) upon the public other than that proposed in the NPRM that preceded AD 92–26–02 and there were no comments as a result of that NPRM regarding the repetitive inspection requirement, it is found that notice and public procedure are hereon unnecessary.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–26–02, Amendment 39–8429 (57 FR 57096, December 3, 1992), and by adding the following new airworthiness directive:

93–02–13 Piper Aircraft Corporation: Amendment 39–8496; Docket 92–CE–62–AD. Supersedes AD 92–26–02; Amendment 39–8429.

Applicability: Model PA–31, PA–31–300, and PA–31–325 airplanes (serial numbers 31–2 through 31–8012089), and Model PA–31–350 airplanes (serial numbers 31–5001 through 31–8052199), certificated in any category.

Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80–20–04, Amendment 39–3925, or AD 92–26–02, Amendment 39–8429), and thereafter as indicated.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, accomplish one of the following:

(1) Reinforce the seals in accordance with the instructions in Piper Service Bulletin No. 693, dated July 28, 1980, and reinspect the engine baffle seals as specified in paragraph (a) of this AD at intervals not to exceed 50 hours TIS.

(2) Install thicker baffle seals in accordance with Piper Kit 764 093 as referenced in Piper Service Letter 875, dated May 11, 1981, or an FAA-approved equivalent, unless already accomplished, and reinspect the engine baffle seals as specified in paragraph (a) of this AD at intervals not to exceed 100 hours TIS.

Note 1: The accomplishment of the baffle seals reinforcement or installation in accordance with paragraph (b)(1) or (b)(2), respectively, does not eliminate the repetitive inspection requirement of this AD.

(c) If baffle seals are properly positioned (not blown back), within the next 50 hours TIS, accomplish one of the following:

(1) Reinspect the engine baffle seals as specified in paragraph (a) of this AD, and continue to reinspect thereafter at intervals not to exceed 50 hours TIS; or

(2) Install thicker baffle seals in accordance with Piper Kit 764 093 as referenced in Piper Service Letter 875, dated May 11, 1981, or an FAA-approved equivalent, unless already accomplished, and reinspect the engine baffle seals as specified in paragraph (a) of this AD at intervals not to exceed 100 hours TIS.

(d) The inspections required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) The reinforcement required by this AD shall be done in accordance with Piper Service Bulletin No. 693, dated July 28, 1980. The installation required by this AD shall be done in accordance with Piper Kit 764 093 as referenced in Piper Service Letter No. 875, dated May 11, 1981. This incorporation by reference was previously approved on January 22, 1992, by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39–8496) supersedes AD 92–26–02, Amendment 39–8429.

(i) This amendment (39–8496) becomes effective on March 15, 1993.

Issued in Kansas City, Missouri, on February 1, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–3021 Filed 2–8–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 90–AWA–11]

Establishment of the Bangor International Airport Airport Radar Service Area; ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes an Airport Radar Service Area (ARSA) at the Bangor International Airport, Bangor, ME. Bangor International Airport is a public airport with an operating control tower serviced by a Level II Radar Approach Control Facility. Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Additionally, aircraft operating within or up to 10,000 feet mean sea level (MSL) directly over the ARSA must be equipped with an altitude encoding (Mode C) transponder absent any exemption or waiver. Implementation of ARSA procedures at the affected location promotes the efficient control of air traffic and reduces the risk of midair collision in terminal areas.

DATES: Effective date: 0901 u.t.c., April 1, 1993.

Comments must be received on or before April 5, 1993.

ADDRESSES: Send comments on the final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–10], Airspace Docket No. 90–AWA–11, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, 12 New England Executive Park, Burlington, MA 01803.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is inviting comments to this final rule because the rule differs in one minor aspect from what was proposed. Specifically, in the original notice of proposed rulemaking, the FAA proposed to exclude the Brewer Airport from the Bangor ARSA surface area. The comments should be limited to the inclusion of the Brewer Airport in the ARSA surface area.

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as candidates for replacement of TRSA's. Of the four, Model B airspace, since redesignated "ARSA," was recommended by a consensus of the NAR Task Group.

The FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (48 FR 34286; July 28, 1983), proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these two airports on a temporary basis by SFAR No. 45 (48 FR 50038; October 28, 1983) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX; Columbus, OH; and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures are in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for establishing ARSA's at locations other than those already in the TRSA replacement program. The task group recommended that these criteria include traffic mix, traffic flow and density, airport configuration, geographical features, collision-risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are published via the FAA directives system. The FAA has established ARSA's at 120 locations under a paced implementation plan to replace TRSA's.

On February 14, 1990, the FAA held an informal airspace meeting for local users to discuss the possible establishment of an ARSA at Bangor. On February 19, 1991, the FAA proposed to designate an ARSA at Bangor International Airport, ME, (56 FR 6584). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Eight written comments were received.

Discussion of Comments

The Air Transport Association of America (ATA) and the Air Line Pilots Association (ALPA) concurred with the ARSA as proposed. ALPA expressed concern for pilots navigating in the area because the proposed ARSA's configuration was centered on the geographic position of the airport. ALPA suggested that the physical location of the Bangor VHF omnidirectional range/tactical air navigation (VORTAC) complicates navigation around and through this airspace. The Bangor VORTAC is located 2.8 miles northwest of the airport. ALPA recommended that the VORTAC be relocated to the airport to improve navigation and to better define the lateral boundaries of the ARSA. The FAA has no immediate plans to relocate the Bangor VORTAC, but will continue to monitor the situation to determine if such action would be warranted.

Several commenters suggested that establishing an ARSA at Bangor International Airport is not necessary. These commenters questioned the benefits of replacing the TRSA with an ARSA. They expressed the opinion that the amount of traffic operating to and from the Bangor Airport was too small to support or justify establishing an ARSA.

The ARSA program is designed to keep ATC informed of all aircraft within the ARSA airspace; therefore, participation is mandatory. This requirement differs from the operation of the TRSA program which is based on pilot's voluntary participation. In addition to the basic radar services, the ARSA's services will include: (1) Sequencing of all aircraft to the primary airport; (2) standard instrument flight rules (IFR) services to IFR aircraft; (3) separation, traffic advisories, and safety alerts between IFR and visual flight rules (VFR) aircraft; and (4) mandatory traffic advisories and safety alerts between VFR aircraft. By contrast, the services provided in a TRSA are basic radar, sequencing, and separation (Stage III Service), if pilots volunteer to participate in this program.

The minimum criteria to establish an ARSA are an airport with an operational airport traffic control tower served by a radar approach control, and one of the following: (1) 75,000 annual instrument operations count at the primary airport; (2) 100,000 annual instrument operations count at the primary and secondary airports in the terminal area hub; or (3) 250,000 annual enplaned passengers at the primary airport. Bangor International Airport reported 72,432 annual instrument operations at the primary airport in fiscal year 1991. The enplaned passenger count was reported as 1,144,584 for the calendar year 1991. Prior to initiating this rulemaking action, the FAA fully considered all nonrulemaking alternatives which provide for an acceptable level of safety. A thorough analysis of the terminal area, adjacent airspace, and IFR as compared to VFR traffic flow was conducted to determine the potential benefits of establishing the ARSA. The results of the FAA's evaluation supported the decision to establish the ARSA.

Several commenters suggested that establishing an ARSA at Bangor International Airport would probably cause several private airports to close, have a negative impact on general aviation (GA) business, and impede access to satellite airports such as Brewer and Lucky Landing. The FAA believes that this action will not have a negative impact on the GA business in the Bangor area because of the ARSA design. The Bangor ARSA is designed to accommodate aviation activity at these airports and to assure pilots adequate access to them. Although the lateral boundary of the Bangor ARSA encompasses the primary airport and the Brewer Airport within the surface area, the Lucky Landing Airport is outside of the surface area and beneath 1,500-foot shelf. While the Brewer Airport was not excluded, the FAA believes that the impact of the airport being within the ARSA surface area will be mitigated by the few locally based aircraft operators being exempted from certain costly equipment requirements such as a Mode C transponder. Such exemptions would be defined in a Letter of Agreement between the Bangor Air Traffic Control Tower and locally based aircraft operators.

Two commenters support a climb/descent corridor concept in lieu of the ARSA for Bangor. The standard configuration for an ARSA normally consists of the airspace from the surface to 4,000 feet within a 5-mile radius of the airport and from 1,200 feet to 4,000 feet within a 10-mile radius of the airport. To implement the climb/descent corridors concept in an ARSA environment would substantially increase the amount of "regulatory" airspace beyond the ARSA's standard 10-mile radius. The primary concern in any airspace action is to provide the highest degree of safety while preserving the most efficient use of the available terminal airspace. Because climb/descent corridors would unduly increase the "regulatory" airspace, this solution would not make the most efficient use of the available terminal airspace.

All comments were fully considered before developing the final design contained in this rule. The FAA believes that the final ARSA design best meets ATC and user requirements and promotes the safe and efficient use of airspace.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes an ARSA at Bangor International Airport, ME. Bangor International Airport is a public airport with an operating control tower serviced by a Level II Radar Approach Control Facility. Establishment of this ARSA requires that pilots maintain two-way radio communication with ATC while in the ARSA. It will also require that aircraft within the ARSA be equipped with Mode C transponder, absent an exemption or waiver. Implementation of ARSA procedures at the affected location will promote the efficient control of air traffic and reduce the risk of midair collision in terminal areas.

The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Airport radar service areas are published in § 71.501 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1. The ARSA listed in this document will be published subsequently in the Order.

Additionally, to maintain congruency with the ARSA surface area, the Bangor, ME, Control Zone is also being changed with this final rule. Since ARSA's are more restrictive than control zones, changing of the control zone is inconsequential, and the public would not be particularly interested in this change; therefore, the FAA is adopting this modification of the control zone without prior notice and public process. Moreover, control zones will cease to exist effective September 16, 1993. Control zones are published in § 71.171 of FAA Order 7400.7A dated November 2, 1992, and effective November 27, 1992, which is incorporated by reference in 14 CFR 71.1.

The rule is as originally proposed except for the inclusion of the Brewer Airport within the ARSA surface area and minor editorial changes. Brewer Airport was proposed to be excluded in accordance with the guidance given, during the national airspace review conducted in conjunction with the Airspace Reclassification Program, to the FAA Regional Project Teams to exclude satellite airports from control zones and ARSA's to the maximum extent practicable. However, one parameter or condition associated with the exclusion was that aircraft operations being conducted under instrument flight rules (IFR) could not be adversely impacted. During the review and rulemaking process, the changes to the Bangor Control Zone were resized and the airspace around the Brewer Airport was excluded from the surface area of the control zone and the proposed ARSA. The potential impact of the exclusion of the Brewer Airport was recognized during the final review process associated with the publication of the Halifax Sectional Aeronautical Chart scheduled for April 1, 1993. This exclusion could adversely affect IFR traffic at Bangor International Airport, the primary airport for which the airspace is designed and regulated.

Specifically, the runway orientation at Brewer Airport is 01/19 and approach end of Runway 19 is located 2.8 nautical miles southeast of the Bangor International Airport and directly on the final approach course to Runway 33. If Brewer were to continue to be excluded from the Bangor Control Zone and ARSA, it would allow aircraft operating in and out of Brewer, below 700 feet mean sea level, to operate with as little as one statute mile flight visibility and clear of clouds instead of the more stringent three miles of flight visibility and 500 feet below, 1,000 feet above, and 2,000 feet horizontally from clouds appropriate for VFR operations within proximity to concentrated IFR operations. Additionally, the exclusion would allow aircraft operations without any communications with the Bangor Air Traffic Control Tower (ATCT). The Brewer runways and the proximity to Bangor International IFR arrivals to Runway 33 or IFR departures from Runway 15 pose the potential for a significant compromise to aviation safety, especially during the spring and summer months when the transient aircraft activity at Brewer increases. Compounding the situation is the fact that Bangor International serves as a weather and refueling alternate for trans-Atlantic arrivals to the United States.

Therefore, the FAA has decided to resolve the potential safety problem by eliminating the exclusion and making Brewer Airport part of the Bangor Control Zone and ARSA surface area. Correspondingly, the legal description of the airspace is being changed with this final rule. Although the final rule is not identical to the original proposal, the FAA does not view the change to include Brewer Airport within the ARSA surface area as sufficiently substantial to require the issuance of an amended proposal prior to adopting a final rule. Moreover, the anticipated increase in traffic at Bangor as the summer season approaches dictates that, in the interest of safety, the ARSA be established without further delay. Nevertheless, since this action differs from what was originally proposed, the FAA is soliciting additional comments and will review any comments received in conjunction with the action to include Brewer Airport within the ARSA surface area to determine if any further amendment is appropriate.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed estimates of the potential economic consequences of this rule. This summary and the evaluation quantify, to the extent practicable, estimated costs of this rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to have an annual effect on the economy of $100 million or more, result in a major increase in consumer costs, have a significant adverse effect on competition, or be highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. For more detailed economic information than this summary contains, the reader should consult the regulatory evaluation contained in the docket.

Costs

The FAA has determined that establishing the Bangor ARSA will impose a one-time FAA administrative cost of $500 (discounted, 1990 dollars). For the aviation community (namely, aircraft operators and fixed based operators), the final rule will impose only negligible costs. The potential costs of the Bangor ARSA are discussed below.

1. *Potential FAA Administrative Costs (air traffic controller staffing, controller training, and facility equipment costs).*

For the Bangor ARSA (and the ARSA program in general), the FAA does not expect to incur any additional costs for ATC staffing, training, or facility equipment. The FAA is confident that it can handle any additional traffic that will participate in radar services at the ARSA with personnel at the current authorized staffing level.

The FAA expects to be able to train its controller force at Bangor in ARSA procedures during regularly scheduled briefing sessions. Thus, no additional training costs are expected. Minor modifications of the computer software used to operate radar equipment may be necessary. Previously adopted plans to replace or modify older equipment may be rescheduled to accommodate the ARSA program. However, no significant additional equipment requirements are anticipated. By implementing the ARSA, modification of terminal radar procedures at Bangor will make more efficient use of existing resources.

2. *Other Potential FAA Administrative Costs (revision of charts, notification of the public, and pilot education).*

When ARSA's are established, sectional charts need revision to incorporate the new ARSA airspace boundaries. The FAA revises the sectional charts every six months whether a new ARSA is established or not. Changes of airspace designation depictions are made routinely during charting cycles, and can be considered an ordinary operating cost. Therefore, the FAA does not expect to incur any additional charting costs as a result of the Bangor ARSA. Pilots will not incur any additional costs obtaining a revised sectional chart depicting the Bangor ARSA because they are already required to use the most current version.

The FAA holds an informal public meeting at each proposed ARSA location. These meetings provide pilots with the best opportunity to learn how an ARSA works and how it will affect local operations. The expenses associated with these public meetings are incurred regardless of whether an ARSA is ultimately established. Thus, they are more appropriately considered routine FAA costs. However, any subsequent public information costs related to the Bangor ARSA will be strictly attributed to this rule. The FAA will distribute a Letter to Airmen to all pilots residing within 50 miles of the Bangor ARSA and issue an Advisory Circular that will explain the operation and airspace configuration of the ARSA. The combined Letter to Airmen and Advisory Circular will cost approximately $500 (discounted). Any further public information dissemination will be nominal.

FAA district offices throughout the country conduct aviation safety seminars on a regular basis. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, including operations within ARSA's, and do not involve additional costs. Also, no significant costs are expected as a result of the user meetings that will be held following implementation of the ARSA. The FAA customarily organizes these meetings to get reactions from users on local ARSA operations. The meetings are held at public or other facilities free of charge or at a nominal cost. Because local FAA facility personnel conduct these meetings, no travel, per diem, or overtime costs are incurred for regional or headquarters personnel.

3. *Potential Costs to the Aviation Community (circumnavigation, delays, and radio communications equipment).*

The FAA anticipates that some pilots who currently transit the terminal area without establishing radio communications or participating in Stage III services may choose to circumnavigate the Bangor ARSA. However, the FAA contends that these operators could circumnavigate the ARSA without significantly deviating from their regular flight path. They could also remain clear of the ARSA by flying above the ceiling (4,200 feet MSL) or under the various floors (which range from 700 to 2,000 feet MSL). The FAA estimates that this rule will have a negligible, if any, cost impact on nonparticipating GA aircraft operators because of the small deviations from current flight paths that these operators would make.

The FAA recognizes that delays might develop at Bangor following the initial establishment of the ARSA. The additional traffic that ATC will handle due to the mandatory pilot participation in radar services within the ARSA could result in minor delays to aircraft operations. However, these potential delays are typically transitional in nature. The FAA contends that any potential delay problems will be more than offset by the increased flexibility afforded controllers in handling traffic as a result of ARSA separation standards. This has been the experience at the older ARSA's and at the newer ones. The FAA expects a smooth transition process which has characterized the establishment of most ARSA sites to date.

The FAA assumes that aircraft operating in the vicinity of the Bangor ARSA already have two-way radio communications capability and, therefore, the radio requirement is not expected to impose any additional costs. Nevertheless, the FAA has made an effort to minimize any potential radio installation costs by providing cutouts along the floor of the ARSA. In addition, procedural agreements between ATC and affected satellite airports could avoid imposing radio installation costs on operators at these airports.

Because participation in the ARSA radar services is mandatory, airports located within the 5-nautical-mile core might lose customers to airports outside of the core. The FAA endeavors to exclude satellite airports located within the core of an ARSA where safety would not be substantially compromised. This avoids any adverse impact on their operations and simplifies ATC coordination responsibilities between the primary and those satellite airports. In some cases, the same purposes were achieved through Letters of Agreement between ATC and the affected airports by establishing special procedures for aircraft operators. In this manner, the FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports that could result from the ARSA program. Similarly, the FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities. It will do this through local agreements between ATC facilities and the affected organizations that will set forth special procedures to accommodate these activities. The FAA utilizes such arrangements extensively in implementing ARSA's. Because, in the case of Brewer, the runway orientation and proximity of the two airports does not allow for exclusion, the FAA anticipates that any impact on users of Brewer will be mitigated through letters of agreement with ATC as safety allows.

4. *Mode C and Traffic Alert and Collision Avoidance System (TCAS) Rules.*

The Bangor ARSA will be subject to Phase II of the Mode C Rule (14 CFR 91.215), which went into effect for ARSA's on December 30, 1990. The Mode C Rule states that all aircraft, unless exempt, must be equipped with an operable transponder with altitude encoding capability when operating in and above an ARSA. The Mode C Rule affects all aircraft operating in and up to 10,000 feet MSL above an ARSA within the upward extension of its lateral confines. The requirement also applies to any ARSA (or Class C airspace effective September 16, 1993) designated in the future.

Some aircraft operators may have to acquire or upgrade to a Mode C transponder as a result of establishing the Bangor ARSA. However, the cost of acquiring a Mode C transponder for all GA aircraft in the U.S. was accounted for by the Mode C Rule (55 FR 50302; December 5, 1990). The Mode C Rule assumed a worst-case scenario that all operators of GA aircraft without a Mode C transponder will acquire such equipment. The FAA contends that GA operators will acquire Mode C transponders to avoid having to circumnavigate the increasing amount of airspace that requires Mode C transponders. Thus, any Mode C acquisition costs, as a result of the establishment of the Bangor ARSA or any other ARSA, have already been attributed entirely to the Mode C Rule.

The FAA has also adopted regulations requiring certain aircraft operators to install a traffic alert collision avoidance system (TCAS), which alerts air carriers to the presence of other aircraft from the signal emitted by Mode C transponders. TCAS issues traffic advisories that indicate the position of other aircraft in the proximity; later generation TCAS equipment also provides conflict resolution advisories as to what evasive actions are not appropriate for avoiding potential midair collisions. The TCAS Rule (54 FR 940, January 30, 1989) will not contribute to the potential costs of the Bangor ARSA, but it will contribute to the potential safety benefits which are discussed below.

Benefits

The potential benefits of the Bangor ARSA will be enhanced aviation safety (in terms of a lowered risk of midair collisions) and improved operational efficiency (in terms of higher air traffic controller productivity with existing resources). These potential benefits are difficult to quantify. Thus, such benefits have been analyzed in qualitative terms, as explained in the following sections.

The National Airspace Review (NAR) Task Group (1982) found that airspace users, especially GA users, encountered significant problems with terminal radar services. Different levels of radar service offered within terminal areas caused confusion, and users were not always certain of what restrictions and privileges applied. The standardization and simplification of operating procedures provided by ARSA's are expected to alleviate many of these problems. As both pilots and controllers become more familiar with ARSA operating procedures, all IFR and VFR traffic is expected to move as efficiently and expeditiously as it did under Stage III (TRSA) service. These benefits of the ARSA program cannot be specifically attributed to individual airports, but rather will result from the overall improvements realized in terminal area ATC procedures as ARSA's are implemented throughout the country. Establishment of the Bangor ARSA will contribute to these overall improvements.

The Bangor ARSA will generate potential safety benefits in the form of reducing the risk of midair collisions due to increased positive control of airspace around Bangor. Based on factors that indicate an increased probability of a midair collision at Bangor, the FAA is establishing an ARSA there to prevent an incident. These factors are the increased volume of aircraft operations an passenger enplanements.

Another factor is increased complexity of aircraft operations at Bangor. Complexity refers to air traffic conditions resulting from a mix of controlled and uncontrolled aircraft that vary widely in speed and maneuverability. As this mix increases, so does the potential for a midair collision.

The ARSA program has the potential for reducing the risk of a midair collision by reducing the number of near-midair collisions (NMAC's). In a study of NMAC data, the FAA's Office of Aviation Safety (ASF) found that approximately 15 percent of reported NMAC's occurred in TRSA airspace. This study found that about half of all NMAC's occurred in the 1,000 to 5,000 feet altitude range, which is closely comparable to the altitudes where pilot participation will be mandatory in the ARSA. This study also found that over 85 percent of NMAC's occurred in VFR conditions when visibility was 5 miles or greater. Finally, the study found that the largest number of NMAC reports are associated with IFR operations under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. The mandatory participation requirements of the ARSA and the radar services provided by ATC to VFR as well as IFR pilots will help alleviate such conflicts.

A NAR Task Group study conducted by Engineering & Economic Research, Inc., reviewed NMAC data of Austin and Columbus during the 1978 to 1984 period. The study found that the presence of the ARSA reduced the probability of NMAC occurrence by 38 percent at Austin and 33 percent at Columbus. Another FAA study estimated that the potential for NMAC's could be reduced by about 44 percent through establishing an ARSA. Since near midair and actual midair collisions result from similar causal factors, a reduction in NMAC's as a result of the ARSA program suggests a reduction in actual midair collisions as well.

A 1984 study of the ARSA confirmation sites by the FAA's Office of Aviation Policy and Plans included a detailed analysis to determine if replacing a TRSA with an ARSA might reduce the risk of a midair collision. The collision risk analysis was based upon the experience at Columbus, which provided recorded radar data through Automated Radar Terminal System ARTS III–A extraction. The study focused on conditions of fairly heavy VFR activity in the terminal radar area since the ARSA affects procedures used to handle VFR traffic. The analysis examined the intersections of flight paths before and after the ARSA was installed because the replacement of a TRSA with an ARSA might alter the routes of travel, particularly for aircraft that did not previously participate in the TRSA. The flight path analysis focused on the areas immediately around, under, and over the ARSA, and ascertained that installation of the ARSA did not compress traffic. The study concluded that the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk.

The FAA reviewed National Transportation Safety Board (NTSB) midair collision records for the period of January 1978 and October 1984. This review indicated that the establishment of an ARSA, in place of a TRSA, could greatly reduce the risk of midair collisions. Because the circumstances observed at the Columbus test site may not be the same at other TRSA locations, the 75 percent reduction in midair collision risk measured there may not be achieved at the ARSA sites. Therefore, the FAA estimates that the implementation of the ARSA program will reduce the risk of midair collision by only 50 percent at TRSA locations. Establishing ARSA's at congested airports currently providing Stage II radar service will also reduce midair collision risk.

A reduction of midair collisions by 50 percent could result in the prevention of one midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $150,000, resulting from the prevention of a minor, non-fatal accident between GA aircraft, to $250 million or more, resulting from the prevention of a midair collision involving a passenger jet airplane. Establishment of the Bangor ARSA will contribute to this improvement in aviation safety.

The benefit of a reduction in the risk of midair collisions from establishing an ARSA cannot be attributed entirely to the ARSA program. An indeterminant amount of the benefits must be credited to the interaction of the ARSA (and the ARSA program in general) with the Mode C Rule, which in turn interacts with the TCAS Rule. This is because the Bangor ARSA benefits, as well as benefits from other designated airspace actions that require Mode C transponders, cannot be separated from the benefits of the Mode C and TCAS Rules. The terminal control area (TCA) and ARSA programs (including the Bangor ARSA), plus the Mode C and TCAS Rules, share benefits and costs totaling $2.1 billion and $843.1 million respectively.

Comparison of Costs and Benefits

The Bangor ARSA will impose a cost of $500 on the agency. When this cost estimate of $500 is added to the total cost of the ARSA and TCA programs and the Mode C Rule and TCAS Rule, the costs will still be less than their total potential safety benefits. This rule will also generate benefits in the form of enhanced operational efficiency. In addition, this rule will not impose any appreciable cost on the aviation community. Thus, the FAA believes that this rule will be cost-beneficial.

International Trade Impact Analysis

The rule will only affect U.S. terminal airspace operating procedures at and in the vicinity of Bangor, ME. The rule will not create a competitive trade advantage or disadvantage for foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade advantage or disadvantage in either the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

Under FAA Order 2100.14A, entitled Regulatory Flexibility Criteria and Guidance, a rule has "significant economic impact" when the annualized net compliance cost to an entity, adjusted for inflation, is greater than or equal to the threshold cost level for that entity. A "substantial number" of small entities means not fewer than eleven and more than one-third of all small entities subject to a proposed or existing rule.

For the purpose of this evaluation, the small entities that will be potentially affected by the rule are fixed-base operators, flight schools, agricultural operators, and other small aviation businesses located at Bangor International Airport and the two satellite airports in or bordering the 5-nautical-mile ARSA inner core. The mandatory participation within the ARSA for aircraft sequencing and separation along with unique conditions around Bangor could potentially impose certain costs on users. Some of the users and activities that may be affected are local fixed-base operators and airport operators, flight training, crop dusting, soaring, ballooning, parachuting, ultralight, and banner towing operators. However, the FAA, to the extent practicable, will employ exclusions, cutouts, and special procedures to alleviate any adverse impacts. The FAA will also develop special procedures to accommodate these activities through local agreements between ATC and the affected organizations. For these reasons, the FAA does not expect any such adverse impacts to occur as a result of this ARSA. The FAA expects that any delay problems that may initially develop following implementation of the ARSA will be transitory, and therefore no lasting adverse impact should result.

The FAA has determined that this rule will not result in a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required under the terms of the RFA.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is also certified that this rule does not require preparation of a Regulatory Flexibility Analysis under the RFA.

List of Subjects in 14 CFR Part 71

Airport radar service areas, Aviation safety, Control zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A, Compilation of Regulations, dated November 2, 1992, and effective November 27, 1992, is amended as follows:

Section 71.171 Designation of Control Zones

* * * * *

ANE ME CZ Bangor, ME [Revised]
Bangor International Airport
(lat. 44°48′27″ N., long. 68°49′41″ W.)
Bangor VORTAC
(lat. 44°50′31″ N., long. 68°52′26″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport; and that airspace extending upward from the surface within 1.5 miles each side of the Bangor VORTAC 135° radial extending from the 5-mile radius to 9 miles southeast of the VORTAC; and that airspace within 3.1 miles each side of the VORTAC 318° radial extending from the 5-mile radius to 7.2 miles northwest of the VORTAC.

* * * * *

Section 71.501 Designation of Airport Radar Service Areas

* * * * *

ANE ME ARS Bangor, ME [New]
Bangor International Airport
(lat. 44°48′27″ N., long. 68°49′41″ W.)
Bangor VORTAC
(lat. 44°50′31″ N., long. 68°52′26″ W.)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Bangor International Airport; and that airspace extending upward from 2,000 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 111° radial of the Bangor VORTAC clockwise to the 232° radial of the VORTAC; and that airspace extending upward from 1,500 feet MSL to and including 4,200 feet MSL within a 10-mile radius of the airport from the 232° radial of the VORTAC clockwise to the 111° radial of the VORTAC. This airport radar service area is effective during the specific days and hours of operation of the Bangor Tower and Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on February 1, 1993.

Harold W. Becker,

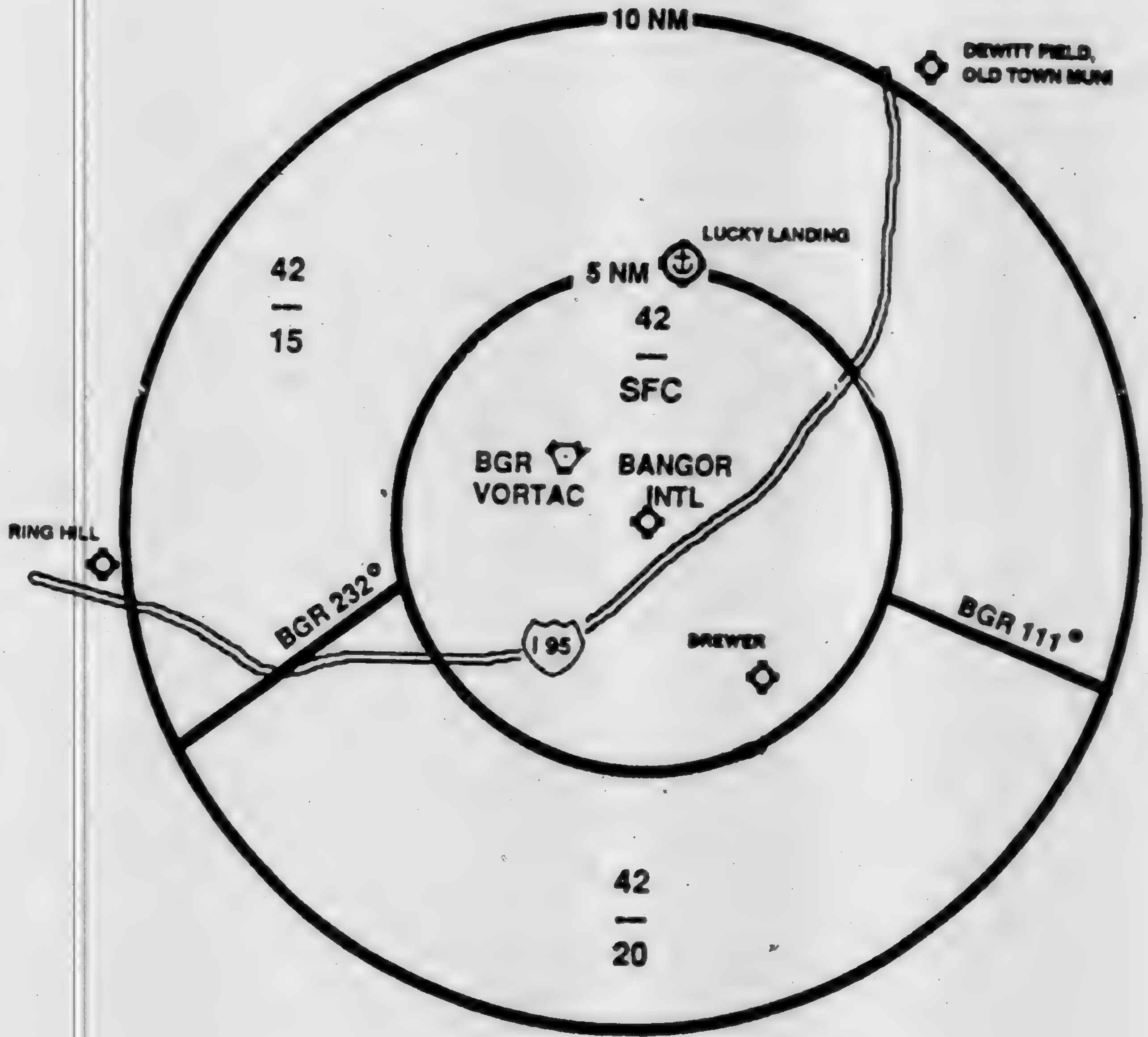
Manager, Airspace-Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

BANGOR, MAINE
AIRPORT RADAR SERVICE AREA

BANGOR INTERNATIONAL AIRPORT
FIELD ELEVATION - 192 FEET

(Not to be used for navigation)


10 NM
DEWITT FIELD,
OLD TOWN MUNI
LUCKY LANDING
5 NM
42
—
15
42
—
SFC
BGR
VORTAC
BANGOR
INTL
RING HILL
BGR 232°
BGR 111°
95
BREWER
42
—
20

Graphic prepared by the
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Cartographic Standards Section
(ATP - 220)

[FR Doc. 93-2927 Filed 2-8-93; 8:45 am]

BILLING CODE 4910-13-C

14 CFR Part 97

[Docket No. 27128; Amdt. No. 1531]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on January 29, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach

Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49 (b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
01/12/93	NY	Poughkeepsie	Dutchess County	FDC 3/0201	VOR/DME Rwy 6 Amdt 5. This Correct NOTAM in TL–93–03.
01/14/93	MN	Worthington	Worthington Muni	FDC 3/0194	VOR Rwy 11 Amdt 1.
01/14/93	MN	Worthington	Worthington Muni	FDC 3/0195	VOR Rwy 17 Amdt 8.
01/14/93	MN	Worthington	Worthington Muni	FDC 3/0196	VOR Rwy 35 Amdt 4.
01/14/93	MN	Worthington	Worthington Muni	FDC 3/0197	VOR/DME Rwy 29 Amdt 2.
01/14/93	MO	Dexter	Dexter Muni	FDC 3/0203	NDB Rwy 36 Orig.
01/15/93	AL	Anniston	Anniston Metropolitan	FDC 3/0228	ILS Rwy 5 Amdt 1A.
01/15/93	ME	Auburn-Lewiston	Auburn-Lewiston Muni	FDC 3/0230	ILS Rwy 4 Amdt 7.
01/19/93	OK	Cushing	Cushing Muni	FDC 3/0264	NDB Rwy 35 Amdt 3.
01/19/93	OK	Elk City	Elk City Muni	FDC 3/0266	RNAV Rwy 17 Amdt 2.
01/19/93	OK	Frederick	Frederick Muni	FDC 3/0258	NDB Rwy 35L Amdt 1.
01/19/93	OK	Gage	Gage	FDC 3/0259	VOR–A Amdt 9.
01/19/93	OK	Madill	Madill Muni	FDC 3/0260	VOR/DME–A Amdt 2.
01/19/93	OK	Medford	Medford Muni	FDC 3/0261	NDB Rwy 17 Amdt 1.
01/19/93	OK	Muskogee	David Field	FDC 3/0265	VOR Rwy 31 Amdt 2.
01/19/93	OK	Norman	University of Oklahoma Westheimer Airpark.	FDC 3/0262	LOC Rwy 3 Amdt 3.
01/19/93	OK	Norman	University of Oklahoma Westheimer Airpark.	FDC 3/0268	NDB Rwy 3 Amdt 5.
01/19/93	OK	Oklahoma City	Sundance Airpark	FDC 3/0269	VOR Rwy 17 Orig.
01/19/93	OK	Oklahoma City	Sundance Airpark	FDC 3/0270	RNAV Rwy 35 Orig.
01/21/93	AL	Dothan	Dothan	FDC 3/0305	VOR Rwy 13 Amdt 3.
01/21/93	AL	Dothan	Dothan	FDC 3/0306	LOC BC Rwy 13 Amdt 6.
01/21/93	AL	Dothan	Dothan	FDC 3/0307	ILS Rwy 31 Amdt 7.
01/21/93	OK	Norman	University of Oklahoma Westheimer Airpark.	FDC 3/0296	RNAV Rwy 3 Orig.
01/22/93	TX	Orange	Orange County	FDC 3/0318	VOR/DME Rwy 21 Amdt 1.
01/25/93	LA	New Orleans	New Orleans Intl/Moisant Field	FDC 3/0338	ILS Rwy 10 Cat III Orig.
01/26/93	MN	Albert Lea	Albert Lea Muni	FDC 3/0353	VOR Rwy 16 Amdt 9A.
01/26/93	MN	Albert Lea	Albert Lea Muni	FDC 3/0355	VOR/DME Rwy 34 Amdt 2A.
01/26/93	MN	Fairmont	Fairmont Muni	FDC 3/0356	VOR Rwy 31 Amdt 7.
01/26/93	MN	Fairmont	Fairmont Muni	FDC 3/0357	VOR/DME Rwy 13 Amdt 1.
01/26/93	MN	Fairmont	Fairmont Muni	FDC 3/0358	VOR/DME Rwy 31 Amdt 1.
01/26/93	MN	Fairmont	Fairmont Muni	FDC 3/0359	VOR Rwy 13 Amdt 4.
01/26/93	MN	Faribault	Faribault Muni	FDC 3/0349	VOR–A Amdt 3.
01/26/93	MN	Faribault	Faribault Muni	FDC 3/0351	VOR/DME RNAV Rwy 12 Amdt 3.
01/26/93	MN	Jackson	Jackson Muni	FDC 3/0350	NDB Rwy 13 Amdt 7.
01/26/93	MN	Springfield	Springfield Muni	FDC 3/0348	VOR/DME Rwy 13 Amdt 2.
01/26/93	MN	Waseca	Waseca Muni	FDC 3/0346	NDB Rwy 15 Amdt 3.
01/26/93	MN	Windom	Windom Muni	FDC 3/0360	NDB Rwy 17 Amdt 4.
01/26/93	MN	Winona	Winona Muni-Max Conrad Field	FDC 3/0352	VOR–A Amdt 11.
01/26/93	MN	Winona	Winona Muni-Max Conrad Field	FDC 3/0354	VOR Rwy 29 Amdt 14A.
01/27/93	CA	Santa Ana	John Wayne-Orange County	FDC 3/0373	NDB Rwy 19R Orig.
01/27/93	CA	Santa Ana	John Wayne-Orange County	FDC 3/0374	LOC BC Rwy 1L Amdt 10.
01/27/93	CA	Santa Ana	John Wayne-Orange County	FDC 3/0375	LDA Rwy 19R Amdt 1.
01/27/93	MN	Waseca	Waseca Muni	FDC 3/0380	VOR–A Amdt 3.

[FR Doc. 93–2922 Filed 2–8–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8430]

RIN 1545–AQ07

Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to Treasury Decision 8430, which was published in the **Federal Register** for Wednesday, September 2, 1992 (57 FR 40118). The final regulations relate to the requirement that State allocation plans provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 of the Internal Revenue Code.

EFFECTIVE DATE: June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman, (202) 622–3040 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections provide rules under section 42 of the Internal Revenue Code requiring State and local housing credit agencies to report any noncompliance to the Internal Revenue Service.

Need for Correction

As published, T.D. 8430 contains errors which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 8430), which was the subject of FR Doc. 92–21156, is corrected as follows:

1. On page 40122, column 2, § 1.42–5(c)(2)(i), line 1, the language "(i) require that the Agency review the" is corrected to read "(i) Require that the Agency review the".

2. On page 40122, column 2, § 1.42–5(c)(2)(ii), line 1 the language "(ii) contain at least one of the" is corrected to read "(ii) Contain at least one of the".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–3093 Filed 2–8–93; 8:45 am]

BILLING CODE 4830-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1017, 1018, 1312, 1313 and 1314

[Ex Parte No. 506]

Fee Billing and Debt Collection

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting regulations which codify the Commission's existing procedure for handling tariff filing fees and insurance service fee account procedures and policies, and which establish debt collection regulations that the Commission will use to collect debts owed to the Commission by entities and individuals who are not current or former Federal government employees. These procedures will enable the Commission to improve its collection of debts.

EFFECTIVE DATE: April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 927–5493 (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: On September 10, 1992, the Commission published a notice of proposed rulemaking (NPR) in this proceeding at 57 FR 41459 which proposed regulations which would codify the Commission's tariff filing fees and insurance service fee account procedures and policies. The Commission also proposed regulations which establish the procedures that the Commission would follow to collect debts that are owed to it by entities or persons who are not current or former Government employees. These debt collection regulations are based upon the Federal Claims Collection Standards (FCCS) issued jointly by the General Accounting Office (GAO) and the U.S. Department of Justice (DOJ) at 4 CFR parts 101–105 and the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. 3720A) that authorize agencies to report discharge debts to the Internal Revenue Service (IRS) and to effect administrative offset against Federal tax refunds due to debtors. The Commission also proposed to codify its procedures for handling returned checks and adopting a new fee for handling such matters. The Commission received comments from the Associations of American Railroads and the Director of the Credit Administration Division of the Department of the Treasury's Financial Management Service on behalf of the Department of Treasury.

In order to facilitate data entry for the tariff filing fee collection system, these regulations provide a standard format for information submitted in tariff and contract transmittal letters.

The Commission is adopting these proposed regulations. The final regulations also outline in more specific detail the procedures the Commission will use in referring a debt to the IRS for offset against the debtor's Federal income tax refund.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Regulatory Flexibility Analysis

The Commission affirms its preliminary conclusion that the adoption of these regulations will not have a significant effect on a substantial number of small entities because these regulations codify the Commission's existing fee policies and adopt debt collection regulations, which are based on the FCCS issued jointly by GAO and DOJ.

Energy and Environmental Considerations

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1017

Credit, Government employees.

49 CFR Part 1018

Administrative offset, Claims.

49 CFR Part 1312

Freight forwarders, Motor carriers, Moving of household goods, Pipelines, Railroads, Tariffs.

49 CFR Part 1313

Administrative practice and procedure, Agricultural commodities, Forests and forest products, Railroads.

49 CFR Part 1314

Freight forwarders, Motor carriers, Railroads, Tariffs.

Decided: January 26, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. Section 1002.1 is amended by revising paragraph (f)(11) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(f) * * *

(11) Interest charges will be assessed on any unpaid bill starting on the date

specified in the bill, at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. The Debt Collection Act, 5 U.S.C. 5514 (1982), including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Commission's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

* * * * *

3. In § 1002.2 paragraphs (a) and (b) are revised and a new paragraph (g) is added to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* (1) Except as specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, all filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing.

(i) When emergency temporary operating authority (Item 9) and emergency temporary operating authority extensions (Item 10) are initiated by telegram or telephone, the fee or fees are due when the OP–1 application is submitted to the appropriate Commission regional office.

(ii) the filing fee for tariffs, rate schedules, and contracts including supplements (Item 74) may be charged to tariff filing fee accounts established by the Commission in accordance with paragraph (a)(2) of this section.

(iii) The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Commission in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* Form ICC–1032 must be submitted to the Commission's Budget and Fiscal Office to establish a tariff filing fee account or an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 49 CFR 1018.30.

(ii) The Debt Collection Act, including disclosure to the consumer reporting agencies and the use of collection agencies, as prescribed in the Commission's Debt Collection Regulations in 49 CFR part 1018, will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Chief, Budget and Fiscal Office, room 1330, Interstate Commerce Commission, Washington, DC 20423:

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) Fees will be payable to the Interstate Commerce Commission by a check drawn upon funds deposited in a bank or other financial institution in the United States, a money order payable in U.S. currency, or a credit card (VISA or MASTERCARD).

(b) Any filing, other than a tariff filing, that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section. However, the Commission may find that a tariff which is submitted without the appropriate filing fee is deficient and reject the tariff filing, if the filer repeatedly fails to submit the appropriate filing fee after the Commission has advised the filer of the proper filing fee and tariff filing procedures.

* * * * *

(g) *Returned check policy.* (1) If a check submitted to the Commission for a filing or service fee is dishonored by a bank or financial institution on which it is drawn, the Commission will notify the person who submitted the check that:

(i) All work will be suspended on the filing or proceeding, other than a tariff filing, until the check is made good;

(ii) A returned check charge of $6.00 and any bank charges incurred by the Commission as a result of the dishonored check must be submitted with the filing fee which is outstanding; and

(iii) If payment is not made within the time specified by the Commission, the proceeding will be dismissed or the filing may be rejected.

(2) If a person repeatedly submits dishonored checks to the Commission for filing fees, the Commission may notify the person that all future filing feeds must be submitted in the form of a certified or cashier's check or a money order.

PART 1017—DEBT COLLECTION—COLLECTION BY OFFSET FROM INDEBTED GOVERNMENT AND FORMER GOVERNMENT EMPLOYEES

4. The authority citation for part 1017 continues to read as follows:

Authority: 31 U.S.C. 3716, 5 U.S.C. 5514; Pub. L. 97–365; 4 CFR parts 101–105; 5 CFR part 550.

5. Section 1017.1 is amended by adding a new paragraph (e) to read as follows:

§ 1017.1 Purpose and scope.

* * * * *

(e) The Commission's regulations governing debt collection for entities and individuals who are not current or former government employees are contained in 49 CFR part 1018.

6. Part 1018 is added to read as follows:

PART 1018—DEBT COLLECTION

Subpart A—Application and Coverage

Sec.

1018.1 Application.
1018.2 Definitions.
1018.3 Communications.
1018.4 Claims that are covered.
1018.5 Monetary limitation on Commission authority.
1018.6 Omissions not a defense.
1018.7 Conversion claims.
1018.8 Subdivision of claims.

Subpart B—Administrative Collection of Claims

1018.20 Written demand for payment.
1018.21 Telephone inquiries and investigations.
1018.22 Personal interviews.
1018.23 Use of consumer reporting agencies.
1018.24 Contact with the debtor's employing agency.
1018.25 Sanctions.
1018.26 Disputed debts.
1018.27 Contracting for collection services.
1018.28 Collection by administrative offset.
1018.29 Payments.
1018.30 Interest, penalties, and administrative costs.
1018.31 Use of credit reports.
1018.32 Bankruptcy claims.
1018.33 Use and disclosure of mailing addresses.
1018.34 Additional administrative collection action.

Subpart C—Compromise of a Claim

1018.50 When a claim may be compromised.
1018.51 Reasons for compromising of a claim.

1018.52 Restrictions on the compromise of a claim.
1018.53 Finality of a compromise.

Subpart D—Suspension or Termination of Collection Action

1018.60 When collection action may be suspended or terminated.
1018.61 Reasons for suspending collection action.
1018.62 Reasons for terminating collection action.
1018.63 Termination of collection action.
1018.64 Transfer of a claim.

Subpart E—Referral of a Claim

1018.70 Prompt referral.
1018.71 Referral of a compromise offer.
1018.72 Referral to the Department of Justice.

Subpart F—Internal Revenue Service Procedure

1018.80 Reporting discharged debts to the Internal Revenue Service

Subpart G—Tax Refund Offset

1018.90 Purpose.
1018.91 Applicability and scope.
1018.92 Administrative charges.
1018.93 Notice requriement before offset.
1018.94 Review within the Commission.
1018.95 Commission determination.
1018.96 Stay of offset.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 *et seq.;* 5 U.S.C. 553; 4 CFR parts 101–105; 49 U.S.C. 10321.

Subpart A—Application and Coverage

§ 1018.1 Application.

(a) This part applies to claims for the payment of debts owed to the United States Government in the form of money or property and unless a different procedure is specified in a statute, regulation, or a contractual agreement with the Commission, prescribes procedures by which the Commission:

(1) Collects, compromises, suspends, and terminates collection actions for claims;

(2) Determines and collects interest and other charges on these claims; and

(3) Refers unpaid claims to the General Accounting Office (GAO) and the Department of Justice (DOJ) for litigation.

(b) The following are examples of the kinds of debts to which special statutory and administrative procedures apply:

(1) A claim against an employee for erroneous payment of pay and allowances subject to waiver under 5 U.S.C. 5584 and other claims against employees which are handled under 49 CFR part 1017.

(2) A claim involving the payment of civil penalties or forfeitures which may arise under provisions of the Interstate Commerce Act or legislation supplemental thereto. Those claims are handled under procedures set forth in 49 CFR part 1021.

(3) A claim involved in a case pending before any Federal Contract Appeals Board or Grant Appeals Board. However, nothing in this part prevents negotiation and settlement of a claim pending before a Board.

§ 1018.2 Definitions.

(a) *Administrative offset* means withholding money payable by the United States to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Claim* and *debt* are used synonymously and interchangeably for purposes of this part. These terms refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States by any person, organization, or entity except another Federal agency.

(c) *Delinquent.* A debt is considered delinquent if it has not been paid by the date specified in the initial written demand for payment or applicable contractual agreement with the Commission, unless other satisfactory payment arrangements have been made by that date. If the debtor fails to satisfy an obligation under a payment agreement with the Commission after other payment arrangements have been made, the debt becomes a delinquent debt.

(d) *Payment in full* means payment of the total debt due the United States, including any interest, penalty, and administrative costs of collection assessed against the debtor.

§ 1018.3 Communications.

Unless otherwise specified, all communications concerning the regulations in this part should be addressed to Chief, Budget and Fiscal Office, Interstate Commerce Commission, room 1330, Washington, DC 20423.

§ 1018.4 Claims that are covered.

(a) These procedures generally apply to any claim for payment of a debt which:

(1) Results from activities of the Commission including fees imposed under 49 CFR part 1002; or

(2) Is referred to the Commission for collection.

(b) These procedures do not apply to:

(1) A claim based on a civil monetary penalty for violation of a requirement of the Interstate Commerce Act or an order or regulation of the Commission unless 49 CFR part 1021 provides otherwise;

(2) A claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor, or any other party having an interest in the claim;

(3) A claim between Federal agencies; and

(4) A claim once it becomes subject to salary offset which is governed by 5 U.S.C. 5514.

§ 1018.5 Monetary limitation on Commission authority.

The Commission's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures is limited by 31 U.S.C. 3711(a) to claims that:

(a) Have not been referred to another Federal agency, including the GAO, for further collection action; and

(b) Do not exceed $100,000, exclusive of interest, penalties, and administrative costs (the monetary limitation).

§ 1018.6 Omissions not a defense.

(a) The failure of the Commission to include in this part any provision of the Federal Claims Collection Standards, 4 CFR parts 101 through 105, does not prevent the Commission from applying these provisions.

(b) A debtor may not use the failure of the Commission to comply with any provision of this part or the Federal Claims Collection Standards as a defense to the debt.

§ 1018.7 Conversion claims.

These procedures are directed primarily to the recovery of money on behalf of the Government. The Commission may demand:

(a) The return of specific property; or

(b) Either the return of property or the payment of its value.

§ 1018.8 Subdivision of claims.

The Commission shall consider a debtor's liability arising from a particular transaction or contract as a single claim in determining whether the claim is less than the monetary limitation for the purpose of compromising or suspending or terminating collection action. A claim may not be subdivided to avoid the monetary limitation established by 31 U.S.C. 3711(a)(2) and § 1018.5 of this part.

Subpart B—Administrative Collection of Claims

§ 1018.20 Written demand for payment.

(a) The Commission shall make appropriate written demand upon the debtor for payment of money in terms which specify:

(1) The basis for the indebtedness and the right of the debtor to request review within the Commission;

(2) The amount claimed;

(3) The date by which payment is to be made, which normally should not be more than 30 days from the date that the initial demand letter statement was mailed, unless otherwise specified by contractual agreement, established by Federal statute or regulation, or agreed to under a payment agreement;

(4) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13 and 49 CFR 1018.30); and

(5) The applicable policy for reporting and delinquent debt to consumer reporting agencies.

(b) The Commission normally shall send three progressively stronger written demands at not more than 30-day intervals, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay, or that sending a further demand is futile. Depending upon the circumstances of the particular case, the second and third demands may:

(1) Offer or seek to confer with the debtor;

(2) State the amount of the interest and penalties that will be added on a daily basis, as well as the administrative costs that will be added to the debt until the debt is paid; and

(3) State that the authorized collection procedures include any procedure authorized in this part including:

(i) Contacts with the debtor's employer when the debtor is employed by the Federal Government or is a member of the military establishment or the Coast Guard;

(ii) Possible referral of the debt to a private agency for collection;

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidelines and standards contained in 4 CFR 102.5 and the Commission's procedures set forth in § 1018.23 of this part;

(iv) The suspension or revocation of a license or other remedy under § 1018.25 of this part;

(v) Installment payments possibly requiring security; and

(vi) The right to refer claims to GAO or DOJ for litigation.

(c) The failure to state in a letter of demand a matter described in § 1018.20 is not a defense for a debtor and does not prevent the Commission from proceeding with respect to that matter.

§ 1018.21 Telephone inquiries and investigations.

(a) If a debtor has not responded to one or more written demands, the Commission shall make reasonable efforts by telephone to determine the debtor's intentions. If the debtor cannot be reached by telephone at the debtor's place of employment, the Commission may telephone the debtor at his or her residence between 8 a.m. and 9 p.m.

(b) The Commission may undertake an investigation to locate a debtor, if the whereabouts of a debtor is a problem, or if a debtor cannot be contacted by telephone. The Commission may also send a representative to a debtor's place of employment if the debtor cannot be contacted by phone or the debtor does not respond to written demands by the Commission for payment of claims.

(c) The Commission under 15 U.S.C. 1681(f) may obtain consumer credit information from private firms, including name, address, former address, place of employment, and former place of employment of a debtor.

§ 1018.22 Personal interviews.

(a) The Commission may seek an interview with the debtor at the offices of the Commission when:

(1) A matter involved in the claim needs clarification;

(2) Information is needed concerning the debtor's circumstances; or

(3) An agreement of payment might be negotiated.

(b) The Commission shall grant an interview with a debtor upon the debtor's request. The Commission will not reimburse a debtor's interview expenses.

§ 1018.23 Use of consumer reporting agencies.

(a) In addition to assessing interest, penalties, and administrative costs under § 1018.30 of this part, the Commission may report a debt that has been delinquent for 90 days to a consumer reporting agency, if all the conditions of this paragraph are met.

(1) The debtor has not:

(i) Paid or agreed to pay the debt under a written payment plan that has been signed by the debtor and agreed to by the Commission; or

(ii) Filed for review of the debt under § 1018.23(a)(2)(iv) of this section.

(2) The Commission has included a notification in the third written demand (see § 1018.20(b)) to the debtor stating:

(i) That the account has been reviewed and payment of the debt is delinquent;

(ii) That, within not less than 60 days after the date of notification, the Commission intends to disclose to a consumer reporting agency that the individual is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has the right to a complete explanation of the debt (if that has not already been given), to dispute information on Commission records about the debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

(3) The Commission has sent at least one written demand by either registered or certified mail with the notification described in paragraph (a)(2) of this section.

(4) The Commission has reconsidered its initial decision on the debt when the debtor has requested a review under § 1018.23(a)(2)(iv).

(5) The Commission has taken reasonable action to locate a debtor for whom the Commission does not have a current address to send the notifications provided for in paragraph (a)(2) of this section.

(b) If there is a substantial change in the condition or amount of the debt, the Commission shall:

(1) Promptly disclose that fact(s) to each consumer reporting agency to which the original disclosure was made;

(2) Promptly verify or correct information about the debt, on request of a consumer reporting agency for verification of any or all information so disclosed by the Commission; and

(3) Obtain satisfactory assurances from each consumer reporting agency that they are complying with all applicable Federal, state, and local laws relating to its use of consumer credit information.

(c) The information the Commission discloses to the consumer reporting agency is limited to:

(1) Information necessary to establish the identity of the individual debtor, including name, address, and taxpayer identification number;

(2) The amount, status, and history of the debt; and

(3) The Commission activity under which the claim arose.

§ 1018.24 Contact with the debtor's employing agency.

If a debtor is employed by the Federal government or is a member of the military establishment or the Coast Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, the Commission shall contact the employing agency to arrange with the debtor for payment of the indebtedness by allotment or otherwise.

§ 1018.25 Sanctions.

(a) *Closure of accounts.* If a tariff filing fee or insurance filing fee account is past due more than 90 days, the Commission will freeze the account until the account is made current. The Commission will notify the account holder that the account has been frozen and that until the account balance including any applicable interest, penalties, and administrative costs are paid, all future filings, must be accompanied by a certified or cashier's check or a money order. The Commission reserves the right to refuse to maintain an account which is repeatedly delinquent.

(b) *Suspension or revocation of tariff or insurance filing privileges.* If the account holder fails to satisfy all claims for tariff or insurance filing fees including applicable interest, penalties, and the administrative costs of collection of the debt, the Commission may suspend or prohibit a tariff or insurance filing fee account holder from submitting tariff or insurance filings in its own name or on behalf of others.

(c) *Suspension or revocation of certificates, licenses, or permits granted by the Commission.* The Commission may suspend or revoke any certificates, permits, or licenses which the Commission has granted to an account holder or other debtor for any inexcusable, prolonged, or repeated failure or refusal to pay a delinquent debt.

(d) *Procedures for suspension or revocation of filing privileges or certificates, licenses, or permits for failure to pay tariff or insurance filing fees.* Before suspending or revoking an account holder's privilege to submit tariff or insurance filings or suspending or revoking any certificate, license, or permit which the Commission has granted to any account holder, the Commission shall issue to the account holder an order to show cause why the tariff or insurance filing privilege or any certificate, license, or permit should not be suspended or revoked. The Commission shall allow the debtor no more than 30 days to pay the debt in full including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The Commission may suspend or revoke any certificate, license, permit, approval or filing privilege at the end of this period upon a finding of willful noncompliance with the Commission's order. If any certificate, license, permit, or filing privilege is revoked under this authority of this part, a new application with appropriate fees must be made to the Commission, and all previous delinquent debts of the debtor to the Commission must be paid before the Commission will consider such application.

(e) *Other sanctions.* The remedies and sanctions available to the Commission in this area are not exclusive. The Commission may impose other sanctions, where permitted by law for any inexcusable, prolonged, or repeated failure of a debtor to pay such claim. In such cases, the Commission will provide notice and a hearing, as required by law, to the debtor prior to the imposition of any such sanctions.

§ 1018.26 Disputed debts.

(a) A debtor who disputes a debt shall explain why the debt is incorrect in fact or law within 30 days from the date that the initial demand letter was mailed. The debtor may support the explanation by submitting affidavits, statements certified under penalty of perjury, canceled checks, or other relevant evidence.

(b) The Commission may extend the interest waiver period as described in § 1018.30(j) pending a final determination of the existence or amount of the debt.

(c) The Commission may investigate the facts involved in the dispute and if necessary, the Commission may arrange for a conference at which the debtor may present evidence and arguments in support of the debtor's positions.

§ 1018.27 Contracting for collection services.

The Commission may contract for collection services in order to recover delinquent debts. However, the Commission retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the Commission shall contract in accordance with 4 CFR 102.6.

§ 1018.28 Collection by administrative offset.

(a) The Commission may administratively undertake collection by offset on each claim which is liquidated or certain in amount in accordance with the guidelines and the standards contained in 4 CFR 102.2, 102.3, and 102.4 and 5 U.S.C. 5514, as applicable. The Commission may not initiate administrative offset to collect a debt more than 10 years after the Government's right to the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the Commission.

(b) Collection by administrative offset of amounts payable from the Civil Service Retirement and Disability Fund, the Federal Employees Retirement System, or other similar fund is made pursuant to 4 CFR 102.4 and the provisions of paragraph (d) of this section.

(c) Salary offset is governed by 5 U.S.C. 5514.

(d) The following procedures apply when the Commission seeks to collect a debt by offset against any payment to be made to a debtor or against the assets of a holder of a certificate, permit, license, or authorization issued by the Commission.

(1) Before the offset is made, the Commission shall provide the debtor written notice of the nature and amount of the debt and:

(i) Notice of the Commission's intent to collect the debt by offset;

(ii) An opportunity to inspect and copy Commission records pertaining to the debt;

(iii) An opportunity to request reconsideration of the debt by the Commission, or if provided for by statute, waiver of the debt;

(iv) An opportunity to enter into a written agreement with the Commission to repay or pay the debt, as the case may be;

(v) An explanation of the debtor's rights under this subpart; and

(vi) An opportunity for a hearing when required under the provisions of 4 CFR 102.3(c).

(2) If the Commission learns that other agencies of the Government are holding funds payable to the debtor, the Commission shall provide the other agencies with written certification that the debt is owed to the Commission and that the Commission has complied with the provisions of 4 CFR 102.3. The Commission shall request that funds which are due the debtor and which are necessary to offset the debt to the Commission be transferred to the Commission.

(3) The Commission may accept a repayment or payment agreement, as appropriate, in lieu of offset, but will do so only after balancing the Government's interest in collecting the debts against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, the Commission may accept a repayment or payment agreement in lieu of offset only if the debtor is able to establish under sworn affidavit or statement certified under penalty of perjury that offset would result in financial hardship or would result in undue financial hardship or would be against equity and good conscience.

(4) Administrative offset is not authorized with respect to:

(i) Debts owed by any State or local government;

(ii) Debts once they become subject to the salary offset provisions of 5 U.S.C. 5514; or

(iii) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute.

(5) The Commission reserves the right to take any other action in respect to offset as is permitted under 4 CFR 102.3.

(e) The Commission shall make appropriate use of the cooperative efforts of other agencies including the Army Holdup List in effecting collections by offset. The Army Holdup List is a list of contractors indebted to the United States.

§ 1018.29 Payments.

(a) *Payment in full.* The Commission shall make every effort to collect a claim in full before it becomes delinquent. The Commission shall impose charges for interest, penalties, and administrative costs as specified in § 1018.30.

(b) *Payment in installments.* If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement certified under penalty of perjury to be true and correct that application for a loan to enable the debtor to pay the claim in full was rejected. Except for a claim described at 5 U.S.C. 5514, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

(1) Installment note forms including confess-judgement notes may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financial Statement transferring to the United States a security interest in the assets until the debt is discharged.

(2) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied among those debts, the Commission shall follow that designation. If the debtor does not designate the application of the payment, the Commission shall apply the payment to the various debts in accordance with the best interest of the United States as determined by the facts and circumstances of the particular case.

(c) *To whom payment is made.* Payment of a debt is made by check, money order, or credit card (VISA or MASTERCARD) payable to the Interstate Commerce Commission and mailed or delivered to the Budget and Fiscal Office, room 1330, Interstate Commerce Commission, Washington, DC 20423, unless payment is:

(1) Made pursuant to arrangements with the GAO or DOJ;

(2) Ordered by a Court of the United States; or

(3) Otherwise directed in any other part of this chapter.

§ 1018.30 Interest, penalties, and administrative costs.

(a) The Commission shall assess interest, penalties, and administrative costs on debts owed to the United States Government in accordance with the guidance provided under the Federal Claims Collection Standards, 4 CFR 102.13 unless otherwise directed by statute, regulation, or contract.

(b) Before assessing any charges on delinquent debts, the Commission shall mail a written notice to debtor explaining its requirements concerning these charges under 4 CFR 102.2 and 102.13.

(c) Interest begins to accrue from the date on which the initial invoice is first mailed to the debtor unless a different date is specified on a statute, regulation, or contract.

(d) The Commission shall assess interest based upon the rate of the current value of funds to the United States Treasury (the Treasury tax and loan account rate) prescribed by statute, regulation, or contract.

(e) Interest is computed only on the principal of the debt, and the interest rate remains fixed for the duration of the indebtedness, unless the debtor defaults on a repayment agreement and seeks to enter into a new agreement.

(f) The Commission shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to the delinquency.

(g) The Commission shall assess a penalty charge of six percent a year on any portion of a debt that is delinquent for more than 90 days. The charge accrues retroactively to the date that the debt became delinquent.

(h) Amounts received by the Commission as partial or installment payments are applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(i) The Commission shall waive collection of interest on the debt or any portion of the debt which is paid in full within 30 days after the date on which interest began to accrue.

(j) The Commission may waive interest during the periods a debt disputed under § 1018.26 is under investigation or review before the Commission. This additional waiver is not automatic and must be requested before the expiration of the initial 30-day waiver period. The Commission may grant the additional waiver only when it finds merit in the explanation the debtor has submitted under § 1018.26.

(k) The Commission may waive the collection of interest, penalties, and administrative costs if it finds that one or more of the following conditions exists:

(1) The debtor is unable to pay any significant sum toward the debt within a reasonable time;

(2) Collection of interest, penalties, and administrative costs will jeopardize collection of the principal of the debt;

(3) The Commission is unable to enforce collection in full within a reasonable time by enforced collection proceedings; or

(4) Collection would be against equity and good conscience or not in the best interest of the United States, including the situation in which an administrative offset or installment payment agreement is in effect.

§ 1018.31 Use of credit reports.

The Commission may institute a credit investigation of the debtor at any time following receipt of knowledge of the debt in order to aid the Commission in making appropriate determinations as to:

(a) The collection and compromise of a debt;

(b) The collection of interest, penalties, and administrative costs;

(c) The use of administrative offset;

(d) The use of other collection methods; and

(e) The likelihood of collecting the debt.

§ 1018.32 Bankruptcy claims.

When the Commission receives information that a debtor has filed a petition in bankruptcy or is the subject of a bankruptcy proceeding, it shall suspend all collection actions against the debtor in accordance with 11 U.S.C. 362 and shall furnish information concerning the debt owed the United States to the Department of Justice's Nationwide Central Intake Facility to permit the filing of a claim.

§ 1018.33 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part, the Commission may send a written request to the Secretary of the Treasury (or designee) in order to obtain a debtor's mailing address from the records of the Internal Revenue Service.

(b) The Commission may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors, in order to facilitate the collection or compromise of debts under this part, except that a mailing address may be disclosed to a consumer reporting agency only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) The Commission and its agents, including consumer reporting agencies and collection services, must comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

§ 1018.34 Additional administrative collection action.

Nothing contained in this part is intended to preclude any other administrative remedy which may be available.

Subpart C—Compromise of a Claim

1018.50 When a claim may be compromised.

The Commission may compromise a claim not in excess of the monetary limitation if it has not been referred to GAO or DOJ for litigation. Only the Comptroller General of the United States or designee may affect the compromise of a claim that arises out of the exceptions made by the GAO in that account of an accountable officer, including a claim against the payee, prior to its referral by GAO for litigation.

§ 1018.51 Reasons for compromising a claim.

(a) A claim may be compromised for one or more reasons set forth below:

(1) The full amount cannot be collected because:

(i) The debtor is unable to pay the full amount within a reasonable time; or

(ii) The debtor refuses to pay the claim in full, and the Government is unable to enforce collection in full within a reasonable time; or

(2) There is a real doubt concerning the Government's ability to prove its case in Court for the full amount claimed, either because of the legal issues involved or a bona fide dispute as to the facts; or

(3) The costs of collecting the claim do not justify the enforced collection of the full amount. The Commission shall apply this reason for compromise in accordance with the guidelines in 4 CFR 103.4.

(b) The Commission shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts which are acceptable in compromise in accordance with the Federal Claims Collection Standards, 4 CFR part 103.

(c) Compromises payable in installments are discouraged, but, if necessary, must be in the form of a legally enforceable agreement for the reinstatement of the prior indebtedness less sums paid thereon. The agreement also must provide that in the event of default:

(1) The entire balance of the debt becomes immediately due and payable; and

(2) The Government has the right to enforce any security agreement.

§ 1018.52 Restrictions on the compromise of a claim.

(a) The Commission may not accept a percentage of a debtor's profits or stock in a debtor's corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration is given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

(b) If two or more debtors are jointly or severally liable, collection action is not withheld against one debtor until the other or others pay their share. The amount of a compromise with one debtor is not considered a precedent or binding in determining the amount which will be required from other debtors jointly and severally liable on the claim.

§ 1018.53 Finality of a compromise.

An offer of compromise must be in writing and signed by the debtor. An offer of compromise which is accepted by the Commission is final and conclusive on the debtor and on all officials, agencies and courts of the United States, unless obtained by fraud, misrepresentation, the presentation of a false claim, or mutual mistake of fact.

Subpart D—Suspension or Termination of Collection Action

§ 1018.60 When collection action may be suspended or terminated.

The Commission may suspend or terminate collection action on a claim not in excess of the monetary limitation, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments, if any, if it has not been referred to GAO or DOJ for litigation.

§ 1018.61 Reasons for suspending collection action.

Collection action may be suspended temporarily:

(a) When the debtor cannot be located after diligent efforts, and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim considering the size of the claim and the amount which may be realized on it; or

(b) When the debtor owns no substantial equity in realty and is unable to make payments on the Government's claim or effect a compromise on it at the time, but the debtor's future prospects justify retention of the claim for periodic review and action:

(1) The applicable statute of limitations has been tolled or started anew; or

(2) Future collection can be effected by offset notwithstanding the statute of limitations.

§ 1018.62 Reasons for terminating collection action.

Collection action may be terminated:

(a) When it becomes clear that the Government cannot collect or enforce collection of any significant sum from the debtor having due regard for the judicial remedies available to the Government, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law;

(b) When the debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has run, and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim; or

(c) When it is likely that the cost of the collection action will exceed the amount recoverable.

§ 1018.63 Termination of collection action.

Collection action shall be terminated:

(a) Whenever it is determined that the claim is legally without merit; or

(b) When it is determined that the evidence necessary to prove the claim cannot be produced, or necessary witnesses are unavailable, and efforts to induce voluntary payments have been unavailing.

§ 1018.64 Transfer of a claim.

The Commission may refer a claim to GAO when there is doubt as to whether or not a collection action should be suspended or terminated.

Subpart E—Referral of a Claim

§ 1018.70 Prompt referral.

(a) A claim which requires enforced collection is referred to GAO or DOJ for litigation. A referral is made as early as possible consistent with aggressive collection action and, in, any event, well within the time required to bring a timely suit against the debtor. Ordinarily, referrals are made within 1 year of the Commission's final determination of the fact and the amount of the debt.

(b) When the merits of the Commission's claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination of collection actions is in doubt, the Commission shall refer the matter to GAO for resolution and instruction prior to proceeding with collection actions and/or referral to DOJ for litigation.

(c) The Commission may refer a claim to GAO or DOJ even though the termination of collection activity might otherwise be given consideration under § 1018.63 if:

(1) A significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment; or

(2) Recovery of a judgement is a prerequisite to the imposition of administrative sanctions, such as suspension or revocation of a license or privilege of participating in a Government sponsored program.

(d) Once a claim has been referred to GAO or DOJ under this subpart, the Commission shall refrain from any contact with the debtor and shall direct the debtor to GAO or DOJ as appropriate, when questions concerning the claim are raised by the debtor. The Commission shall immediately advise GAO or DOJ, as appropriate, of any payments by the debtor.

§ 1018.71 Referral of a compromise offer.

The Commission may refer a debtor's firm written offer of compromise which is substantial in amount to GAO or to DOJ if the Commission is uncertain whether the offer should be accepted.

§ 1018.72 Referral to the Department of Justice.

(a) Claims for which the gross original amount is over $500,000 must be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $500,000 or less must be referred to the Department of Justice's Nationwide Central Intake Facility.

(b) A claim of less than $600, exclusive of interest, is not referred for litigation unless:

(1) Referral is important to a significant enforcement policy; or

(2) The debtor has the clear ability to pay the claim, and the government can effectively enforce payment.

(c) A claim on which the Commission holds a judgment is referred to DOJ for further action if renewal of the judgment lien or enforced collection proceedings are justified under the criteria discussed in this part.

(d) Claims must be referred to the Department of Justice in the manner prescribed by 4 CFR 105.2. Care must be taken to preserve all files, records, and exhibits on claims referred under paragraphs (a) and (b) of this section.

Subpart F—Internal Revenue Service Procedure

§ 1018.80 Reporting discharged debts to the Internal Revenue Service.

When the Commission discharges a debt for less than the full value of the indebtedness, it will report the outstanding balance discharged, not including interest to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the IRS, when:

(a) The principal amount of the debt not in dispute is $600 or more;

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the tax year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

Subpart G—Tax Refund Offset

§ 1018.90 Purpose.

This subpart establishes procedures for the Commission to refer past-due debts to the Internal Revenue Service (IRS) for the offset against the income tax refunds of persons owing debts to the Commission. It specifies the Commission's procedures and the rights of the debtor applicable to claims for the payment of debts owed to the Commission.

§ 1018.91 Applicability and scope.

(a) These regulations implement 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the Government of the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the Government of the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least 3 months but has not been delinquent for more than 10 years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Commission against amounts payable to or on behalf of the debtor by or on behalf of the Commission.

(4) With respect to which the Commission has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and has determined that an amount of such debt is past-due and legally enforceable.

(5) Has been disclosed by the Commission to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which the Commission has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations codified at 26 CFR 301.6402–6T relating to the eligibility of a debt for tax return offset have been satisfied.

§ 1018.92 Administrative charges.

In accordance with 49 CFR 1018.30, all administrative charges incurred in connection with the referral of the debts to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 1018.93 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after the Commission makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. The Commission's notice of intention to collect by IRS tax refund offset (Notice of intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of the

Commission's Notice of Intent, the Commission intends to collect the debt by requesting that the IRS reduce any amount payable to the debtor as Federal Income tax refunds an amount equal to amount of the debt including all accumulated interest and other charges;

(c) That the debtor has the right to present evidence that all or part of the debt is not past-due or legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 1018.94 Review within the Commission.

(a) *Notification by Debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice.

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable.

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by the Commission.

(c) *Review of the evidence.* The Commission will consider all available evidence related to the debt. Within 30 days, if feasible, the Commission will notify the debtor whether the Commission has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable.

§ 1018.95 Commission determination.

(a) Following review of the evidence, the Commission will issue a written decision which will include the supporting rationale for the decision.

(b) If the Commission either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If the Commission cancels its original determination, the debt will not be referred to IRS.

§ 1018.96 Stay of offset.

If the debtor timely notifies the Commission that the debtor is exercising the right described in § 1018.94(a) of this subpart, any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING, AND FILING OF TARIFFS, SCHEDULES, AND RELATED DOCUMENTS

7. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

8. Section 1312.4 is amended by redesignating existing paragraph (b)(2) as paragraph (b)(2)(i) and adding a new paragraph (b)(2)(ii) to read as follows:

§ 1312.4 Filing tariffs.

* * * * *

(b) * * *

(2)(i) * * *

(2)(ii) A letter of transmittal shall clearly indicate in the upper left-hand corner thereof:

(A) The assigned alpha code of the carrier or agent issuing the tariff publication(s);

(B) The number of series transmitted;

(C) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(D) The tariff transmittal number, if the filer utilizes transmittal numbers. If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

PART 1313—RAILROAD CONTRACTS ENTERED INTO PURSUANT TO 49 U.S.C. 10713

9. The authority citation for part 1313 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10713; 5 U.S.C. 553.

10. Section 1313.7 is amended by adding a new sentence to the end of paragraph (a)(6) and by adding paragraphs (a)(6)(i) through (iv) to that section to read as follows:

§ 1313.7 Contract filing, title pages and numbering.

(a) * * *

(6) * * * Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(i) The assigned alpha code of the issuing carrier;

(ii) The number of series transmitted;

(iii) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(iv) The transmittal number if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

PART 1314—REGULATIONS FOR THE PUBLICATION, POSTING, AND FILING OF TARIFFS AND RELATED DOCUMENTS

11. The authority citation for part 1314 continues to read as follows:

Authority: 49 U.S.C. 10321, 10708, 10761, and 10762; 5 U.S.C. 553.

12. Section 1314.4 is amended by adding a new sentence to the end of paragraph (a) and by adding paragraphs (a)(1) through (4) to that section to read as follows:

§ 1314.4 Filing of tariffs.

(a) * * * Each transmittal letter shall clearly indicate in the upper left-hand corner thereof:

(1) The assigned alpha code of the issuing carrier;

(2) The number of series transmitted;

(3) The filing fee enclosed, the account number to be billed, or the credit card to be charged; and

(4) The transmittal number if the filer utilizes transmittal numbers.

If the filing fee is charged to a credit card, the information must include the credit card number and expiration date, and an authorized signature.

* * * * *

[FR Doc. 93-3074 Filed 2-8-93; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–56]

Richard P. Grill; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM 50–56) submitted by Richard P. Grill on August 16, 1991. The petitioner requested that the NRC amend 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," and issue new regulations, as necessary, to add lightning induced and other electrical transients to the required list of phenomena licensed nuclear power plants and other nuclear facilities must be designed to safely withstand. The petition is being denied because the design and construction of existing nuclear power plants adequately protect plant electrical systems from the effect of electrical transients, and there is no evidence at this time that electrical systems and components were not designed to withstand the effects of electrical transients in such a manner as to require additional generic regulatory action.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, the NRC internal report "Report on the Sources and Effects of Electrical Transients on the Electrical Systems of Commercial Nuclear Power Plants," and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Chris Rourk, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3938.

SUPPLEMENTARY INFORMATION:

I. The Petition
II. Basis for the Petitioner's Request
III. Public Comments on the Petition
IV. Reasons for Denial

I. The Petition

In a letter dated August 16, 1991, Mr. Richard Grill filed a petition for rulemaking with the NRC. The petition requested that the NRC take the following actions:

(1) Amend the regulations or issue new regulations as necessary to add lightning-induced and other electrical transients to the required list of phenomena licensed nuclear power plants and other nuclear facilities must be designed to safely withstand.

(2) Perform a comprehensive study to determine the current state of knowledge of electrical transients.

(3) Perform a study to identify and quantify potential consequences on licensed nuclear facilities from electrical transients,

(4) Require each licensed facility to be analyzed and modified as necessary to prevent the compromise of safety-related electrical systems by electrical transients,

(5) Develop regulatory guidance for the protection of safety-related control systems from electrical transients, and

(6) Determine why this issue was not addressed and resolved in the past.

II. Basis for the Petitioner's Request

The petitioner asserts that (1) because of the complexity of the electrical systems in nuclear facilities, there is a need for explicit requirements for protection of electrical systems from electrical transients in the provisions of appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR part 50, (2) inadequacies exist in the analysis of the electrical system of each licensed facility regarding the effects of electrical transients, and (3) a large number of alternative paths for the entry of electrical transients into the safety-related electrical systems exist that can only be discovered by performing a thorough and rigorous analysis of the entire electrical system. In support of his position, the petitioner states that the Defense Nuclear Agency (DNA) and the Defense Communications Agency (DCA) have developed computer programs that can be used to analyze the effects of nuclear electromagnetic pulse (EMP) on electrical systems. The petition states that these programs can be used to determine the effect of electrical transients on safety-related electrical systems in NRC-licensed facilities.

The petition also refers to a draft regulatory guide that was issued for public comment in 1979. This draft guide concerned the protection of nuclear power plants from lightning. The petition requests information on the reasons the regulatory guide was never issued, even though a draft of it had been issued for public comment.

The petition also refers to potential improprieties in the manner that the petitioner was treated by the NRC and its predecessor, the Atomic Energy Commission in the 1970s. These references are separable from the safety questions raised by the petition.

III. Public Comments on the Petition

A notice of receipt of the petition for rulemaking was published in the **Federal Register** on December 23, 1991 (56 FR 66377). Interested persons were invited to submit written comments or suggestions concerning the petition by February 21, 1992. The NRC received four comments in response to the notice: two from private citizens, one from a citizens group, and one from a public utility. Three of the commenters supported the petition. The main reasons cited by the commenters who supported the petition were:

One commenter feels that the changes in world conditions increase the likelihood of a nuclear device detonation and that nuclear power plants must be hardened against EMP from nuclear explosions.

One commenter believes that efforts by the national defense agencies to harden equipment from the effects of nuclear EMP indicate that similar efforts are required of civilian nuclear power plants.

One commenter, a citizen group, believes that electrical transients in nuclear power plants present a safety hazard, based upon NRC generic communications regarding operational events caused by radio frequency interference (RFI), lightning, geomagnetically induced currents (GIC), and battery failure. In addition, they believe that the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities program should have included a review of the potential effects of lightning for all licensees, not just those licensees who have experienced adverse plant effects from lightning besides loss of offsite power.

Two of the above three commenters support the petition because of the perceived delicate nature of solid-state electronic devices, and the belief that these devices will not be adequately protected in the absence of regulation by the NRC.

One commenter, a public utility, was opposed to the petition because research has not yet proven the need for any rulemaking, or the extent of rulemaking if a need is shown. If the order of proposed actions in the petition were accepted, licensees would be required to take actions prior to the issuance of any guidance.

IV. Reasons for Denial

The NRC has considered the petition, the public comments received, and other information and has concluded that the issues raised in the petition, though valid concerns, do not warrant new staff regulatory positions for existing plants. The following discussions address the issues raised in the petition.

Upon receipt of the petition from Richard Grill, the NRC staff reviewed all the General Design Criteria of appendix A to 10 CFR part 50 to determine whether any of them, not just those cited in the petition (Criteria 2, 13, 14, 17, 18, 19, 21, 22, 23, 24, 29, 63, and 64), should be modified as requested. Design Criterion 2 states that "Structures, systems and components important to safety shall be designed to withstand the effects of natural phenomena such as earthquakes, tornados, hurricanes, * * * without loss of capability to perform their safety functions." Although lightning is not specifically identified, it is implicitly included in the natural phenomena for which protection must be provided. Criterion 4 states that "Structures, systems and components important to safety shall be designed to accommodate the effects of and be compatible with the environmental conditions associated with normal operation, maintenance, testing * * *. These structures systems and components shall be appropriately protected against dynamic effects * * * and from events and conditions outside the nuclear power unit." The environmental conditions cited implicitly include electrical transients and their sources. Also, qualification of safety-related systems and components for the applicable environmental conditions is required for conformance with this criterion. Design Criteria 2 and 4 apply to all safety-related instrumentation, control, and power systems. Therefore, the staff finds that there is no need to modify any of the General Design Criteria in order to assure that the effects of electrical transients are considered in the design of these systems.

The NRC licensing review of operating plants for conformance to General Design Criteria 2 and 4 in regard to protection against lightning, switching surges, and other electrical transient phenomena was based on the knowledge that: (1) Established industry design standards and practices were being applied in the design of the electrical control and instrumentation systems; (2) the great majority of electrical systems and components in nuclear power plants were qualified for operability in the electromagnetic environment of these plants on the basis of prior operational experience in similar industry applications; and (3) the equipment and systems deemed to be particularly vulnerable, such as those utilizing solid state components and circuitry, were required to be qualified for operability in the electromagnetic environment by appropriate type testing before being approved for nuclear power plants.

The NRC next thoroughly reviewed the technical literature regarding sources of electrical transients. This review and other bases for the staff's conclusions are documented in an internal NRC report entitled "Report on the Sources and Effects of Electrical Transients on the Electrical Systems of Commercial Nuclear Power Plant," which is available for public inspection or copying in the NRC Public Document Room. It was determined that potentially dangerous electrical transients are not generally transmitted to electrical systems or components in the power generation plant from the power transmission system. There are only four physical mechanisms by which an electrical transient can be transmitted to an electrical system or component, all of which are well documented in the technical literature and are generally considered in the design of nuclear safety-related electrical systems. First, the transient may enter via a transmission line that carries power or data to or from the system or component. Second, the transient can enter via capacitive (electric field) coupling of the system or component to the source of the transient. Third, the transient can enter via inductive (magnetic field) coupling of the system or component to the source of the transient. Finally, the transient can be caused by ionized particles impinging on the system or component. The NRC finds that the present consideration of these effects is sufficient to assure safe operation of nuclear power plants with analyses conducted on a system- or component-specific basis. There is no need to perform a comprehensive analysis of the entire electrical system of a nuclear power plant.

Based on a review of the technical literature, it appears that analyses of components and systems have been conducted and have effectively prevented electrical transients from significantly affecting the operation of nuclear power plants for the electromechanical controls-based systems typically employed at licensed U.S. nuclear power plants. In addition, the NRC has required licensees to perform additional testing of solid-state controls components and systems which specifically targeted the potential for problems to be caused by electrical transients. These considerations provide a sufficient basis for the NRC to conclude that electrical transients have been adequately considered in the licensing of existing nuclear power plants.

The NRC then reviewed 177 operating events that were attributed to lightning from 1980 to 1991, a period representing approximately 967 operating years, to determine whether any of these events might indicate that nuclear safety-related electrical systems and components have not been adequately protected from power line transients, capacitively coupled transients, and magnetically coupled transients. This review is also contained in the previously referenced internal report. Ten of these events were also analyzed in NUREG/CR-3591, "Precursors to Potential Severe Core Damage Accidents," vol. 1, July 1984, and NUREG/CR-4674, "Precursors to Potential Severe Core Damage Accidents," vol. 2, December 1986; vol. 6, May 1988; vol. 8, July 1989; vol. 12, August 1990. None of these incidents resulted in a significant risk of core damage. Based on this review, it was determined that the existing level of protection against electrical transients is sufficient to protect against failure of nuclear safety-related electrical systems. It should be noted that the electrical transients created by lightning can be more severe than any other source of electrical transient except nuclear EMP.

The effect of nuclear EMP on nuclear safety-related electrical systems has been studied by the NRC. This investigation is documented in NUREG/CR-3069, "Interaction of Electromagnetic Pulse with Commercial Nuclear Power Plant Systems," February 1983. It was determined that a high-altitude nuclear explosion would not prevent the safe shutdown of a nuclear power plant. Therefore, it is not necessary to analyze nuclear safety-related electrical systems with the programs developed by the DNA and DCA. In addition, these programs were written to determine the effects of ionizing radiation on electrical systems and components, an effect known as system generated EMP (SGEMP). A civilian nuclear power plant would only be exposed to SGEMP in the event of a near or direct strike with a nuclear weapon. Nuclear power plants are not required to be designed to survive the effects of a near or direct nuclear weapon strike.

Some of the petitioner's concerns will be further addressed in the individual plant IPEEE reviews. Because the NRC has previously determined that additional regulation of lightning protection is not cost-justified, lightning is not required to be specifically considered in the IPEEE program unless there have been plant-specific effects. For those licensees where, based on operating experience, lightning strikes are likely to cause more than just loss of offsite power, further examination of lightning effects is expected, including a determination of whether any plant modifications are required. Licensees have been notified of this position by Supplement 4 to Generic Letter 88–20, which includes NUREG–1407, "Procedural and Submittal Guidance for the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities," June 1991, as guidance. However, operating events which have been studied to date have not revealed any significant concerns. Therefore, there is no need to extend the IPEEE review to consider other potential effects besides loss of offsite power to plants which have had no operating experience with such effects, as requested by one commenter.

The on-going staff reviews of advanced light water designs are more focused in regard to the application of General Design Criteria 2 and 4 in the review of these designs for protection against electrical transient phenomena. The NRC staff is reviewing the advanced designs against the Electric Power Research Institute's (EPRI) requirements that address lightning protection, grounding, surge withstand capability, electromagnetic interference (EMI) and electrostatic discharge. EPRI's requirements are based upon good engineering practices and established industry standards. The NRC staff is also evaluating the above criteria for inclusion in the "Inspection, Tests, Analyses, and Acceptance Criteria/Design Acceptance Criteria (ITAAC/DAC)" verification programs that will be implemented on advanced designs. More information on this subject is provided in SECY–92–53, "Use of the Design Acceptance Criteria during 10 CFR Part 52 Design Acceptance Reviews," which is also available in the NRC Public Document Room.

Copies of NUREG–1407, NUREG/CR–3591, NUREG/CR–4674, and NUREG/CR–3069 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

The petitioner also requested the reason that the Draft Regulatory Guide RS 705–4, "Lightning Protection for Nuclear Power Plants," was never issued in final form. The Advisory Committee for Reactor Safeguards (ACRS) requested on February 3, 1981, that a risk assessment be performed to determine whether the draft regulatory guide would be cost effective. This risk analysis indicated that implementation of the guide would not be cost effective. In addition, measurements of surge arrester current magnitude which are reported in the technical literature indicate that there is no apparent basis for the position adopted in the guide that a 120,000-ampere surge arrestor is required to protect nuclear safety-related electrical systems and components from power line transients. For example, one study (Gaibrois, G.L., "Lightning Current Magnitude Through Distribution Arresters," IEEE Transactions on Power Apparatus and Systems, Vol. PAS–100, No. 3 March 1981) indicates that 0.07% of measured surge arrester currents exceeded 100,000 amperes for a sample size of 2488 distribution surge arresters. These currents would be higher than transmission line surge arrester currents because distribution lines do not typically have shield wires. Implementation of the draft regulatory guide would have imposed an economic burden on licensees, and the staff did not find sufficient safety benefit to justify such a burden on them or their ratepayers.

On the matter of the potential improprieties in the treatment of the petitioner or his concerns by the NRC or its predecessor, the questions raised have been referred to the Office of the Inspector General for appropriate consideration and disposition.

For the reasons cited above, the NRC denies the petition. Dated at Rockville, Maryland this 8th day of January 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 93–3037 Filed 2–8–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–226–AD]

Airworthiness Directives; Airbus Industrie Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Industrie Model A300, A310, and A300–600 series airplanes. This proposal would require a one-time operational test to detect potential ball bearing failure of the electric motor that drives the hydraulic fire shut off valve (FSOV) actuator and to detect subsequent FSOV malfunction, and replacement of discrepant FSOV's. This proposal is prompted by reports of operational failure of hydraulic FSOV's during maintenance checks. The actions specified by the proposed AD are intended to prevent jamming of the hydraulic FSOV actuator, which could result in the inability to isolate hydraulic fluid from an engine fire.

DATES: Comments must be received by April 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–226–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A300, A310, and A300–600 series airplanes. The DGAC advises that, during production of these airplanes, ball bearings may have been incorrectly installed on the shaft of the electrical motor that drives the hydraulic fire shut off valve (FSOV) actuator. During functional testing after delivery, some FSOV's failed to operate correctly; some valves failed to close, others failed to reopen. An investigation conducted by the airplane manufacturer revealed that the FSOV's did not operate correctly because the electric motor was not able to drive the FSOV actuator. Further investigation revealed that degradation of a ball bearing inside the electric motor had led to the jamming of the motor and the actuator, which prohibited the valve from opening or closing.

The serial numbers of the affected FSOV's are similar, all of the failures occurred early in the FSOV life, and, apparently, the installation of FSOV's on airplanes has not changed. In light of these factors, the subject failures appear to be related to a problem that may have occurred during manufacture of the FSOV. Considering that the electrical motor passed further extensive and severe vibration testing without reproducing the failure, early bearing degradation has been attributed to a problem occurring during manufacture. Failure of the bearing, if not corrected, could result in the jamming of the hydraulic FSOV actuator, and the inability to isolate hydraulic fluid from an engine fire.

Airbus has issued Industrie All Operator Telex (AOT) 29–07, dated August 28, 1992, which describes procedures for a one-time operational test to detect potential ball bearing failure of the electric motor which drives the hydraulic FSOV actuator and subsequent FSOV malfunction, and replacement of discrepant FSOV's. The DGAC classified this AOT as mandatory and issued French Airworthiness Directive 92–217–134(B), dated October 14, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time operational test to detect potential ball bearing failure of the electric motor that drives the hydraulic FSOV actuator, and replacement of discrepant FSOV's. The actions would be required to be accomplished in accordance with the AOT described previously.

The FAA estimates that 91 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,005, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 92–NM–226–AD.

Applicability: Model A300, A310, and A300–600 series airplanes, as listed in Airbus Industrie All Operators Telex (AOT) 29–07, dated August 28, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the hydraulic fire shut off valve (FSOV) actuator, which could result in the inability to isolate hydraulic fluid from an engine fire, accomplish the following:

(a) For airplanes having any hydraulic FSOV that has not ever been functionally tested in accordance with Maintenance Planning Document (MPD) Task Number 29–11–33–0503–1 (for Model A300 series airplanes) or MPD Task Number 29–11–33–01–1 (for Model A310 and A300–600 series airplanes): Within 450 hours time-in-service after the effective date of this AD, perform a one-time operational test to detect potential bearing failure of the electric motor that drives the hydraulic FSOV actuator, and to detect FSOV malfunction, in accordance with Airbus Industrie All Operator Telex (AOT) 29–07, dated August 28, 1992.

(1) If any FSOV fails the operational test, prior to further flight, replace that FSOV in accordance with the AOT.

(2) If a FSOV passes the operational test, no further action is necessary for that FSOV.

(b) For airplanes having any hydraulic FSOV that has been functionally tested only once in accordance with MPD Task Number 29–11–33–0503–1 (for Model A300 series airplanes) or MPD Task Number 29–11–33–01–01 (for Model A310 and A300–600 series airplanes): Within 900 hours time-in-service after the effective date of this AD, perform a one-time operational test to detect potential bearing failure of the electric motor that drives the hydraulic FSOV actuator, and to detect FSOV malfunction, in accordance with Airbus Industrie All Operator Telex (AOT) 29–07, dated August 28, 1992.

(1) If any FSOV fails the operational test, prior to further flight, replace that FSOV in accordance with the AOT.

(2) If a FSOV passes the operational test, no further action is necessary for that FSOV.

(c) For airplanes having any hydraulic FSOV that has been functionally tested two or more times in accordance with MPD Task Number 29–11–33–0503–1 (for Model A300 series airplanes) or MPD Task Number 29–11–33–01–01 (for Model A310 and A300–600 series airplanes): No further action is required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 3, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–3028 Filed 2–8–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL–709–88]

RIN 1545–AM70

Levy and Distraint; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains a correction to a proposed regulation (GL–709–88), which was published in the **Federal Register** for Friday, December 11, 1992 (57 FR 58760) regarding the authority to collect taxes by means of levy and distraint.

FOR FURTHER INFORMATION CONTACT: Susan B. Watson, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction provides rules under sections 6331 and 6332 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulation contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (GL–709–88), which was the subject of FR Doc. 92–29633, is corrected as follows:

On page 58762, column 2, § 301.6331–1(a)(1), line 7, the language "Similarly, a levy on reaches property in" is corrected to read "Similarly, a levy only reaches property in".

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–3094 Filed 2–8–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 870

Abandoned Mine Reclamation Fund—Fee Collection and Coal Production Reporting, Reclamation Fee, Basis for Coal Weight Determination

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior (DOI) published a proposed rule that would address the determination of coal weight for reclamation fee purposes when a person operating a coal preparation plant purchases run-of-mine coal from an operator on an estimated coal basis and cleans the coal prior to resale or use. The revised rule would clarify recordkeeping requirements for a coal operator and a person operating a coal preparation plant to document the basis of the transaction. OSM has received requests for public hearings on the proposed rule and is announcing that a public hearing will be held.

DATES: A public hearing is scheduled for February 23, 1993, in Big Stone Gap, Virginia. The hearing will begin at 9 a.m. local time.

ADDRESSES: The public hearing will be held in the lecture hall of the Dawlton/Cantrell Building at the Mountain Empire Community College, Highway 23 South, Big Stone Gap, Virginia.

FOR FURTHER INFORMATION CONTACT: Jane E. Robinson, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–2826.

SUPPLEMENTARY INFORMATION: OSM published a proposed rule on December 29, 1992, (57 FR 61116) that would amend its regulations governing how the weight of each ton of coal produced is determined for reclamation fee purposes. The existing regulations require an operator to pay AML fees on the actual gross weight of the coal at the time of the first transaction (sale, transfer of ownership, or use) involving the coal. Current regulations allow an operator to take a calculated weight reduction for excess moisture. All other impurities not removed before the first transaction must be included in the gross weight for AML fee computation purposes. This regulation has been in effect basically unchanged since 1977. The proposed rule would make the weight determination consistent with the normal business practice between a coal operator and a person operating a coal preparation plant when run-of-mine coal is purchased on an estimated clean coal basis and cleaned prior to resale or use. The proposal would define the records an operator and person operating a coal preparation plant must maintain to document the basis of coal sales and purchases.

OSM has scheduled a public hearing on the Basis for Coal Weight Determination proposed rule in Big Stone Gap, Virginia. The hearing will be held on February 23, 1993, and will begin at 9 a.m. local time. The hearing will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a written copy of their testimony.

Dated: February 4, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–3089 Filed 2–8–93; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[IN10–1–5189, IN10–2–5190; FRL–4592–S]

Approval and Promulgation of Implementation Plans; Approval and Promulgation of Designation of Areas for Air Quality Planning Purposes; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve a request by Indiana to revise area designations for Total Suspended Particulate (TSP) from nonattainment to attainment. USEPA is also proposing to approve the Indiana Group III plan (plan) for the area being redesignated. USEPA's action is based upon requests which were submitted by the State on November 16, 1988, and supplemented on September 10, 1992, to satisfy the requirements of the Clean Air Act (Act).

DATES: Comments on this redesignation and on USEPA's proposed action must be received by March 11, 1993.

ADDRESSES: Copies of the plan, redesignation request and other materials relating to this rulemaking are available at the following addresses for review: (It is recommended that you telephone Gustavo Felix at (312) 353–6009, before visiting the Region 5 office.) United States Environmental Protection Agency, Region 5, Regulation Development Branch (5AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments on this proposed rule should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (5AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gustavo Felix, (312) 353–6009.

SUPPLEMENTARY INFORMATION: In 1971 the USEPA promulgated primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter, measured as "total suspended particulate matter" or "TSP". The primary standards were set at 260 micrograms per cubic meter ($\mu g/m^3$), 24-hour average not to be exceeded more than once per year, and 75 $\mu g/m^3$, annual geometric mean. The secondary standard, also measured as TSP, was set at 150 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year.

On July 1, 1987 (52 FR 24634), USEPA promulgated changes to the particulate matter (PM) standards. Specifically, USEPA replaced (1) TSP as the indicator for determining attainment of PM standards with a new indicator that consists of measuring only particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); (2) the 24-hour primary TSP standard with a 24-hour PM_{10} standard of 150 $\mu g/m^3$, with no more than one expected exceedance per year; (3) the annual primary TSP standard with a PM_{10} standard of 50 $\mu g/m^3$; and (4) the secondary TSP standards with 24-hour and annual PM_{10} standards that are identical in all respect to the primary standards.

The new PM_{10} indicator was selected since it includes all the particles small enough to cause the adverse health effects associated with breathing particle-laden air. These smaller particles are detrimental to human respiratory health due to their ability to penetrate the sensitive alveolar regions of the lung.

Group Designations

Because PM_{10} air quality data was lacking in most areas of the country, USEPA could not designate areas as attainment or nonattainment. Instead, USEPA developed an analysis using historical ambient TSP data and any available PM_{10} data to classify all counties in the nation into one of three groups based upon the statistical probabilities of not attaining the new PM_{10} standards. USEPA has classified areas as follows: (1) Areas with a probability of not attaining the PM_{10} standard of at least 95 percent as "Group I", (2) areas with a probability of not attaining the PM_{10} standard of between 20 and 95 percent as "Group II", and (3) areas with a probability of not attaining the PM_{10} standard of less than 20 percent as "Group III". The groupings were published in the **Federal Register** on August 7, 1987 (See 52 FR 29383).

Group Requirements

For Group I areas, a State Implementation Plan (SIP) is required with sufficient PM_{10} control strategies included to demonstrate attainment and maintenance of the standard. For Group II areas, the State must submit a "committal" SIP that supplements the existing TSP SIP with enforceable commitments. Specific commitments should include plans to collect and analyze PM_{10} ambient air quality data and to report violations to the appropriate USEPA Regional Office. Requirements for Group III areas are listed below. A full SIP revision would be required for a Group II or Group III area exceeding the PM_{10} 24-hour standard or the PM_{10} annual standard. For more detail on Group requirements see the July 1, 1987, **Federal Register** at 52 FR 24681.

Group III PM_{10} Plan Requirements

For Group III areas, USEPA agrees that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. States are only required to revise the Prevention of Significant Deterioration (PSD) /New Source Review (NSR) and air monitoring portions of their SIP (See 52 FR 24681). States must identify all measures the State relies on to control and maintain the PM_{10} particulate air quality standards in Group III areas. As discussed later in this notice, the State's submittal satisfies these requirements. At the State's request, USEPA proposes to approve the plan as satisfying the Group III Plan requirements.

TSP Redesignation Requirements

On November 15, 1990, Congress enacted the Clean Air Act Amendments of 1990. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Under these Amendments, section 107(d)(4)(B) expressly provides that any designation for PM (measured in terms of TSP) that the Administrator promulgated pursuant to section 107(d), prior to the date of enactment of the 1990 Act Amendments, shall remain in effect for purposes of implementing the maximum allowable concentrations of PM (measured in terms of TSP) pursuant to the Prevention of Significant Deterioration (PSD) provisions in section 163(b), until the Administrator determines that such designation is no longer necessary for that purpose.

Section 110(1) of the Amendments requires that SIP revisions not interfere with any applicable requirements of the Act. For example, the revision must not interfere with the requirement of the Act to ensure maintenance of the PM$_{10}$ NAAQS [see, e.g., section 110 (a)(1)]. Similarly, there are section 110(1) implications if the State TSP plan for an area contains provisions which relax emission limitations in the plan automatically upon approval of a TSP redesignation by USEPA. For this reason, USEPA may not redesignate an area unless USEPA has adequate assurance that the modifications flowing from the redesignation will not interfere with any requirement of the Act, such as maintenance of the PM$_{10}$ NAAQS. Thus, if a TSP plan revision either submitted to USEPA for approval or automatically occurring upon redesignation would result in a significant increase in PM emissions then, prior to approval of either action, air quality analyses should be conducted to assess the potential impact of continued maintenance of the PM$_{10}$ NAAQS.

It should be noted that USEPA believes that TSP redesignations are not subject to the detailed redesignation requirements in section 107(d)(3). They are, however, subject to the Administrative Procedure Act's notice-and-comment rulemaking requirements. See the May 20, 1992 memo from Joseph Paise, Acting Chief, SO$_2$/Particulate Matter Programs Branch, to the Air Branch Chiefs on "TSP Redesignation Requests".

On November 16, 1988, and on September 10, 1992, the Indiana Department of Environmental Management (IDEM) submitted information in support of a request to redesignate for TSP from nonattainment to attainment the following areas:

Marion County—all of Marion County except the area of Washington Township east of Fall Creek and the area of Franklin Township south of Thompson Road and east of Five Points Road which are already in attainment
Clark County—Jeffersonville Township
Dearborn County—Lawrenceburg Township
Dubois County—Bainbridge Township
St. Joseph County—the area north of Kern Road and east of Pine Road
Vanderburgh County—Evansville/Pidgeon Township
Vigo County—the area within a 0.5 kilometer radius circle centered at UTM Coordinates Zone 16 East 464.52 km North 4369.21 km

Indiana's submittal also includes a list of control measures for PM$_{10}$ which are necessary for the attainment and maintenance of the PM$_{10}$ NAAQS. These measures include the State's air monitoring provisions (326–IAC–1–3–2), its air monitoring network for PM$_{10}$ its list of possible additional sites, the State's PSD rules, and all measures which the State relies upon to control and maintain PM$_{10}$ air quality levels in the above listed areas. The following control measures, which are part of title 325 of the Indiana Administrative Code (325 IAC), are listed below with the date that the measures were federally approved:

EXISTING STATE IMPLEMENTATION PLAN PARTICULATE MATTER CONTROL STRATEGY

Rule	Applicability	Date approved
2	Permit Review Rules	*2/16/82
5–1	Opacity Limitations	6/17/87
6–1–1 to 6–1–6	Nonattainment Area Limitations	7/16/82
6–1–8	Dearborn County	7/16/82
6–1–9	Dubois County	7/16/82
6–1–12	Marion County	7/16/82
6–1–13	Vigo County	7/16/82
6–1–14	Wayne County	7/16/82
6–1–15	Howard County	7/16/82
6–1–16	Vanderburgh County	7/16/82
6–1–17	Clark County	7/16/92
6–1–18	St. Joseph County	7/16/82
6–2	Particulate Emissions Limitations for Sources of Indirect Heating	5/17/85
6–3	Process Operations	7/16/82
6–4	Fugitive Dust Emissions	**10/28/75
11–1	Existing Foundries	5/31/72
11–4	Fiberglass Insulation Manufacturing	***11/5/81
11–5	Fluoride Emission Limitations for Existing Primary Aluminum Plants	11/27/81

*Approved with exception of Prevention of Significant Deterioration rules.
**Approved with exception of enforcement by visible emissions determinations.
***Certain amenoments to the rule were approved on 4/3/84.

Analysis of State Submittal

Indiana's submittal consists of permits and rules that have already been federally approved (except for its PSD rules.) It identifies federally enforceable control measures Indiana is uing to maintain the attachment status of the above listed areas. The emissions reduction/air quality maintenance performance of the federally approved rules in this package has already been established.

While Indiana lacks a federally approved PSD rule, USEPA has delegated to the State full authority to implement the Federal PSD/NSR program.

The permit portion of the submittal consists of operating and construction permits for Citizens Gas and Coke. Certain emission limitations and compliance techniques contained in the operating permits for the three coke oven batteries located at Citizens Gas and Coke Utility were approved by USEPA on February 18, 1987 (52 FR 4902), and are federally enforceable. While USEPA disapproved an oven door visible emissions limit and a Total Dissolved Solids content limit in quench makeup water for coke oven Battery Number One in the February 18, 1987 rulemaking, a 1978 federally enforceable construction permit imposes acceptable limits on oven door visible emissions and quench makeup water content.

As stated before, if a TSP plan relaxation occurs automatically upon a redesignation, then an air quality analyses must be conducted to assess the potential impact. Rules 325 IAC 6–1–1 to 6–1–6[1] list specific control measures for nonattainment areas. These rules, which were federally approved on July 16, 1982, apply to all those areas that IDEM has requested USEPA to redesignate to attainment. Even though these areas would be redesignated to attainment on the Federal level for PSD/NSR applications, Rules IAC 6–1–1 to 6–1–6 still apply to Clark, Dearborn, Dubois, Marion, St. Joseph, Vanderburgh, and Vigo County. Without these rules, a SIP relaxation would occur and USEPA would not be able to approve the redesignation request to attainment. If Rules IAC 6–1–1 to 6–1–6 are to no longer apply to these areas upon redesignation, the State must submit an air quality analyses following USEPA guidelines, that shows attainment of the PM_{10} NAAQS without the rules. Otherwise USEPA must deny the State's redesignation request.

The same analogy applies to Rule 325 IAC 5–1, which was approved on June 17, 1987 (see 52 FR 23032). Rule IAC 5–1 sets a mandatory 40 percent opacity limit for "attainment areas" and a 30 percent opacity limit for "nonattainment areas". The 30 percent opacity limit is intended for TSP nonattainment areas. Even though these areas would be redesignated to attainment on the Federal level for PSD/NSR applications, Rule IAC 5–1 must still impose a 30 percent opacity limit to Clark, Dearborn, Dubois, Marion, St. Joseph, Vanderburgh, and Vigo County.

Indiana is currently in the process of modifying the State rules to clarify that these counties must continue to meet the 30 percent opacity limit even after they are redesignated as attainment for TSP. USEPA will not finally approve this redesignation until this clarification is part of the Indiana State Rules. USEPA will disapprove the redesignation request without further proposal if these clarifications are not made.

Proposed Rulemaking Action and Solicitation of Public Comment

As previously noted, Indiana's plan submittal consists of control measures that have been previously approved as part of the SIP except for the State's PSD rules. However, the State of Indiana has full delegated authority to implement the Federal PSD/NST program. USEPA proposes to approve these control measures as satisfying the Group III Plan requirements.

USEPA is also proposing to approve Indiana's TSP redesignation request upon clarification that the 30 percent opacity limit of Rule IAC 5–1 continue to apply to Clark, Dearborn, Dubois, Marion, St. Joseph, Vanderburgh, and Vigo County. IAC Rules 6–1–1 to 6–1–7 continue to apply these counties.

Public comments are solicited on the proposed plan and requested redesignation and on USEPA's proposal to approve these requests. Public comments received by March 11, 1993 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waive until such time as it rules on USEPA's request.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

List of Subjects

40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Air pollution control, Particulate matter.

Note—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401–7671(q).

Dated: January 29, 1993.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 93–3065 Filed 2–8–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR PART 43

[CC Docket No. 93–5; FCC 93–18]

Elimination of Certain Pension and Benefit Reporting Requirements and Amendment of the Form 10–K Filing Requirement

AGENCY: Federal Communications Commission.

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[1] USEPA is currently rulemaking on Indiana's request to recodify 325 IAC to 326 IAC.

ACTION: Proposed rule.

SUMMARY: This proposal would eliminate the pension and benefit plan documents and data which dominant communications common carriers are required to file. It also would raise the reporting threshold for holding companies so that only holding companies which control common carriers with more than $100 million in annual revenues would have to file Form 10–Ks with the Commission. This proposal was initiated by the Commission. The effect of this proposal is that it will eliminate an unnecessary regulatory burden on the carriers and promote economic growth; and make the requirements in § 43.21(c) consistent with requirements in other paragraphs of § 43.21.

DATES: Comments must be submitted on or before March 22, 1993, and reply comments on or before April 6, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington,DC 20554.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Ackerman, Federal Communications Commission, Accounting and Audits Division, Common Carrier Bureau, Washington, DC 20554, (202) 634–1861.

SUPPLEMENTARY INFORMATION: This summary of the Commission's Notice of Proposed Rulemaking, CC Docket No. 93–5, adopted January 11, 1993, and released February 2, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 231), 1919 M Street, NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc. 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. The following collection of information contained in this proposal has been submitted to the Office of Management and Budget for review under section 350(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt (202) 395–4814, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB Number:

Title: Section 43.42 Reports on pensions and benefits.

Action: Elimination.

OMB Number:

Title: Section 43.21 Annual reports of carriers and certain affiliates, paragraph (c).

Action: Raise the threshold for reporting Form 10–Ks by holding companies.

Respondents: Holding companies of communications common carriers.

Frequency of Response: Annual.

Estimated Annual Response: 17 responses; 1360 hours total; 80 hours per response.

Needs and Uses: Amendment is needed to make the requirements in paragraph (c) consistent with requirements in other paragraphs in § 43.21.

Summary of Notice of Proposed Rulemaking

1. The Commission proposes to eliminate § 43.42, Reports on pensions and benefits under part 43 of our Rules, Reports of Communications Common Carriers and Certain Affiliates. This item is part of the Commission's Regulatory Reform Program to evaluate existing regulations and to accelerate action on initiatives that will eliminate any unnecessary regulatory burden and promote economic growth. The Commission also proposes to amend § 43.21(c) by raising the reporting limit for companies which control common carriers and which are required under § 43.21(c) to file Annual Report Form 10–K with the Commission.

Regulatory Flexibility Analysis

2. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), our analysis is as follows;

3. *Reason for Action.* This action would eliminate an unnecessary regulatory burden on the communications common carriers.

4. *Objectives.* The action is being taken to evaluate existing regulations and to accelerate action on initiatives that will eliminate any unnecessary regulatory burden and promote economic growth.

5. *Legal Basis.* The action is authorized under sections 4, 218, 219, 220 and 303 of the Communication Act of 1934, as amended, 47 U.S.C. 154, 218, 219, 220, and 303.

6. *Reporting, Recordkeeping and Other Compliance Requirements.* This action will eliminate reporting requirements of communications common carriers and raise the standards to file Form 10–K.

7. *Federal Rules which Overlap, Duplicate, or Conflict with this Proposal.* None.

8. *Description, Potential Impact, and Number of Small Entities Involved.* This proposal will not put a significant economic impact on a substantial number of small business entities. Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by the Regulatory Flexibility Act of 1980. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease the burden imposed on the public by eliminating the requirement to file pension and benefit information and raising the standard to file Form 10–K. Implementation of any new or modified requirements will be subject to approval by the Office of Management and Budget as prescribed by the Paperwork Reduction Act.

Ordering Clause

9. *Accordingly, it is ordered that,* Pursuant to sections 4, 218, 219, 220 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 218, 219, 220, and 303, notice is hereby given of proposed amendments to §§ 43.21(c) and 43.42 of the Commission's Rules, 47 CFR 43.21(c) and 43.42 as described below.

List of Subjects in 47 CFR Part 43

Communications common carriers, Pensions and benefits. Reporting and recordkeeping requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 43 of chapter 1 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 43—REPORTS OF COMMUNICATIONS COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: Sec 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Paragraph (c) of § 43.21 is revised to read as follows:

§ 43.21 Annual reports of carriers and certain affiliates.

* * * * *

(c) Each company, not of itself a communication common carrier, that directly or indirectly controls any communication common carrier having annual revenues in excess of $100 million shall file annually with the Commission, not later than the date prescribed by the Securities and Exchange Commission for its purposes, two complete copies of any annual report Forms 10–K (or any superseding form) filed with that Commission.

§ 43.42 [Removed]

* * * * *

3. Section 43.42 is removed.

[FR Doc. 93–2989 Filed 2–8–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 25
Tuesday, February 9, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Deep Seabed Mining Regulations for Exploration Licenses.

Agency Form Number: None but requirements are found at 15 CFR part 970.

OMB Approval Number: 0648–0145.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 80 hours.

Number of Respondents: 4.

Avg Hours Per Response: 20 hours.

Needs and Uses: The Deep Seabed Hard Minerals Resources Act authorizes NOAA to issue to eligible U.S. citizens licenses for exploration and permits for the commercial recovery of deep seabed hard mineral resources. The information required under this collection is used for issuing exploration licenses for deep seabed mining. However, no applications are anticipated in the next few years. Once a license is issued, monitoring of the licensees takes place. At present there are four deep seabed mining consortia that have received licenses who submit annual reports on their activities. The information is used by NOAA to determine if there has been any environmental effects from the exploration.

Affected Public: Businesses or other for–profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ron Minsk, (202) 395–3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: February 3, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR. Doc. 93–3034 Filed 2–8–93; 8:45 am]

BILLING CODE 3510-CW-F

Bureau of Export Administration

Action Affecting Export Privileges; Yuzo Oshima and The Sound You Company

In the Matter of: Yuzo Oshima and The Sound You Company, Ltd., both with an address at: Tatsuno-Nishitenma Building 3–1–6, Nishitenma Kita-ku, Osaka, Japan, Respondents.

Order Renewing Temporary Denial of Export Privileges

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 and Supp. 1992)) (Act),[1] has asked the Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to Yuzo Oshima (Oshima) and The Sound You Company, Ltd. (Sound You). The initial temporary denial order (TDO) was issued on February 11, 1991 for 180 days (56 FR 7007, February 21, 1991). It was renewed on August 8, 1991 for 180 days (56 FR 40599, August 15, 1991), on February 4, 1992 for 180 days (57 FR 5126, February 12, 1992) and again on July 31, 1992 for 180 days (57 FR 35564, August 10, 1992.[2] Without renewal, the TDO is scheduled to expire on January 31, 1993.

In its renewal request of January 11, 1993, the Department asserts, as it did in its initial request for a TDO, that, as a result of its investigation, the Department has reason to believe that, during the period from February 20, 1990 to February 5, 1991, Oshima and Sound You tried to obtain Intel CPU-386 microprocessors, controlled for reasons of national security at all relevant times, so that they could export that equipment from the United States to North Korea, without first obtaining the required validated license.

In its renewal request of January 11, 1993, the Department also stated that nothing the Department had learned since the time of that initial request has given it reason to believe that its initial suspicions were inaccurate. Indeed, the Department noted that, on February 6, 1991, it separately charged Oshima and Sound You with violating the Regulations based on the same set of facts as those that originally formed the basis for the original and subsequent TDOs. The Department further noted that, although no final decision had yet been issued in connection with the charges against Oshima and Sound You, it continues to believe that the violations Oshima and Sound You are suspected of having committed were deliberate and covert and are likely to occur again unless the TDO naming Oshima and Sound You as denied parties is renewed. In addition, the Department believes that, pending final resolution of the administrative actions the Department has initiated against Oshima and Sound You, renewal of the TDO is necessary to give notice to companies in the United States and abroad that they should cease dealing with Oshima and Sound You in transactions involving U.S.-origin goods.

No opposition was filed in response to the Department's request for renewal. Therefore, based on the showing made by the Department, I find that an order temporarily denying the export privileges of Yuzo Oshima and The Sound You Company Ltd. is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with Yuzo Oshima and The Sound You Company, Ltd. in goods and technical data subject to the Act and the Regulations, in order to reduce the substantial likelihood that Yuzo Oshima and The Sound You Company, Ltd. will continue to engage in activities that are in violation of the Act and the Regulations.

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[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) invoked the International Emergency Economic Power Act (50 U.S.C.A. §§ 1701–1706 (1991)), continuing in effect the Regulations, and, to the extent permitted by law, the provisions of the Act.

[2] Although the TDO renewal was signed on July 31, 1992, it did not become effective until August 2, 1992, the date the third TDO issued in this matter expired.

Accordingly, it is hereby

Ordered

I. All outstanding individual validated licenses in which Oshima or Sound You appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Oshima's and Sound You's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. For a period of 180 days from the effective date of this order, Yuzo Oshima and The Sound You Company Ltd., both with an address at Tatsuno-Nishitenma Building, 3–1–6, Nishitenma, Kita-ku, Osaka, Japan, and all successors, assignees, officers, partners, representatives, agents, and employees, hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or aboard involving any commodity or technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity:

(i) As a party or as a representative of a party to any export license application submitted to the Department;

(ii) In preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining from the Department or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodity or technical data exported or to be exported from the United States, and subject to the Regulations; and

(v) In financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 788.3(c), any person, firm, corporation, or business organization related to Oshima and/or Sound You by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(b) In any reexport thereof; or

(c) In any other transaction which is subject to the Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. In accordance with the provisions of § 788.19(e) of the Regulations, either respondent may, at any time, appeal this temporary denial order by filing with the Administrative Law Judge/Export Controls, U.S. Department of Commerce, room H–4017, 14th Street and Constitution Avenue, NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order is effective on January 31, 1993 and shall remain in effect for 180 days from that date.

VII. In accordance with the provisions of § 788.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Either respondent may oppose a request to renew this temporary denial order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order shall be served on each respondent and this order shall be published in the **Federal Register**.

Dated: January 29, 1993.

Douglas E. Levin,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 93–3015 Filed 2–8–93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Request for an Extraordinary Challenge Committee

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Request for an Extraordinary Challenge Committee Respecting Live Swine from Canada, Secretariat File No. USA–91–1904–03.

SUMMARY: On January 21, 1993, the Office of the United States Trade Representative filed a Request for an Extraordinary Challenge Committee to review issues raised by the May 19, 1992 and October 30, 1992 decisions of the Binational Panel that reviewed the final results of an administrative review and the redetermination pursuant to remand made by the International Trade Administration, U.S. Department of Commerce respecting Live Swine from Canada, Secretariat file No. USA–91–1904–03.

The Binational Secretariat has assigned file number ECC–93–1904–01USA to this Request. Copies of the Request and the Panel decisions are available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904.13 of the Agreement, where a Party alleges that a binational panel has seriously departed from a fundamental rule of procedure, has manifestly exceeded its powers, authority or jurisdiction or that a member of the panel has materially violated the Code of Conduct established pursuant to Article 1910, and further alleges that any of these actions have materially affected the panel's decision and threaten the integrity of the binational panel review process, that Party may request that an Extraordinary Challenge Committee be established under the procedure set out in Annex 1904.13 of the Agreement.

Under Annex 1904.13 of the Agreement the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Extraordinary Challenge Committees ("ECC Rules"). These ECC Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53222). The ECC Rules give effect to the provisions of Chapter Nineteen of the Agreement with respect to Extraordinary Challenge Committee proceedings conducted pursuant to Article 1904 of the Agreement. The ECC Rules are intended to result in decisions typically within 30 days after the establishment of the Extraordinary Challenge Committee. The Extraordinary Challenge Committee proceeding in this matter will be conducted in accordance with these ECC Rules.

Background

On June 21, 1991, the Department of Commerce (Commerce) published its final determination in the fourth administrative review of the countervailing duty (CVD) order respecting Live Swine from Canada. Requests for Panel Review were filed as required by the Article 1904 Panel Rules, and a Binational Panel was convened to review the final determination.

On May 19, 1992, the Binational Panel remanded Commerce's final determination for reconsideration in accordance with the Panel's instructions. The Panel required Commerce to better explain the basis for its *de facto* specificity determinations regarding Tripartite and FISI subsidy programs. In reexamining its decision, Commerce was instructed to expressly consider each of the enumerated factors contained in Commerce's proposed regulations as well as other factors not specifically enumerated. Further, the Panel required Commerce to reexamine its determinations regarding the categorization of the number of commodities produced in Canada and Quebec, and to indicate evidence in the record supporting those determinations. The Panel also instructed Commerce to determine a separate rate for weanlings based on the evidence in the administrative record. Commerce was given 60 days to take action consistent with the Panel decision.

On July 20, 1992, Commerce issued its redetermination. Commerce confirmed its determination that both Tripartite and FISI were *de facto* specific. That redetermination was challenged and a review by the binational panel was ordered pursuant to Rule 75 of the Article 1904 Panel Rules.

On October 30, 1992, the Panel issued its second decision. The panel held that Commerce had not complied with the Panel's first order, and that "further remand for further analysis would frustrate the purpose of finality under the FTA." The Panel held that on remand Commerce was required to find both Tripartite and FISI "not countervailable."

The Panel also held that Commerce's refusal to determine a separate, product-specific CVD rate for weanlings was contrary to law. The Panel ordered Commerce to grant weanlings such a rate on remand, and stated that to the extent the record did not contain sufficient information to calculate a precise product-based rate, Commerce should rely on "Best Information Available."

On November 19, 1992, Commerce issued its second redetermination. Stating that it was "conform[ing] its findings with the Panel's instructions," Commerce removed both the Tripartite and FISI benefits from the calculation of the subsidy rate for the period of review. Commerce also constructed a separate rate for weanlings based on best information available. The Panel affirmed the Second Determination on Remand in an Order pursuant to Rules 75(5) and 74 on December 21, 1992.

Request for an Extraordinary Challenge Committee

On January 21, 1993, the United States Trade Representative filed a Request for an Extraordinary Challenge Committee on behalf of the United State Government in its capacity as a Party to the United States-Canada Free-Trade Agreement, with the United States Secretary of the FTA Binational Secretariat. The Request alleges that the Binational Panel, in its first decision in this proceeding, seriously departed from a fundamental rule of procedure or manifestly exceeded its powers, authority or jurisdiction in one instance; and, in its second decision, that the Panel seriously departed from a fundamental rule of procedure or manifestly exceeded its powers, authority or jurisdiction in three instances. The United States also alleges that, in each instance, the Panel's actions materially affected the panel review process; and threaten the integrity of the binational panel review process.

Rule 37 of the ECC Rules requires that Notices of Appearance in this proceeding must be filed with the United States Secretary within ten days after the Request is filed (by February 1, 1993). Under Rule 38 of the ECC Rules, briefs must be filed with the United States Secretary within 21 days of the filing of the Request (by February 11, 1993).

Dated: February 3, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-3032 Filed 2-8-93; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for scientific research permit (P513).

Notice is hereby given that the Columbia River Inter-Tribal Fish Commission has applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Part 217-227).

The applicant requests authorization to conduct five studies on listed Snake River spring/summer chinook salmon (*Oncorhynchus nerka*). The studies include: (1) Juvenile chinook surveys involving potential harassment of 9,100 juveniles and capture and handling of 900 juveniles; (2) Wild/hatchery chinook monitoring in the Imnaha River system involving handling and marking of 4,300 juveniles and handling and PIT tagging of 5,000 juveniles; (3) Spawning ground surveys involving potential harassment of 320 adults and a take of 500 carcasses; (4) Scale pattern stock identification involving capture and handling of 191 adults; and (5) Cryopreservation of spring/summer chinook gametes from Big Creek (tributary to the Middle Fork Salmon River) involving the capture and handling of 10 adults. These numbers are requested annually for a duration of four years.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Services, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: February 3, 1993.

Patricia A. Montanio,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–3026 Filed 2–8–93; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Receipt of Applications for Permit (P129J), (P60) and (P63B).

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), and the regulations governing endangered fish and wildlife (50 CFR Part 217–222), as appropriate.

Bruce R. Mate, Ph.D., Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5296 (129J)

The Applicant requests a Permit to tag and biopsy sample up to 50 each of blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), humpback whale (*Megaptera novaeangliae*) and gray whale (*Eschrichtius robustus*) over a five-year period along the western coast of the United States (CA, OR, WA, AK, HI). No more than 15 whales of each species will be tagged and biopsy sampled in any one year and up to 200 of each species may be approached annually during the tagging process. Tagged animals will be re-approached an average of 10 times for subsequent behavioral observation and tag evaluation.

Smithsonian Institution, National Zoological Park, Washington, D.C. 20008 (P6°O')

The Applicant requests permission to import body tissues (worldwide) from an unspecified number of pinnipeds of all species (except walrus) over a five-year period. Samples will include, but are not limited to blood, skin, milk, blubber, and bone. The purpose of this work is to provide fundamental knowledge toward an improved understanding of the ecology and evolution of reproductive strategies in seals, and to serve as a base of information for use in conservation and the maintenance of biodiversity in these marine mammals.

Robert Elsner, Ph.D., Institute of Marine Science, University of Alaska, Fairbanks, AK 99775–1080 (P63B)

Authorization is requested to import, from Sweden, tissue specimens obtained from harp seals (*Phoca groenlandica*) and hooded seals (*Cystophora cristata*). The heart samples are processed for histological studies at the Department of Zoology, University of Lund. The samples are microscope slides that consist of 4–6 tissue slices, 5 to 20 microns thick and mounted on glass slides. Up to 200 slides will be imported over a one-year period.

ADDRESSES: Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East-West Hwy., room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice.

Documents submitted in connection with all of the above applications are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289); and

(P63B): Director, Alaska Region, National Marine Fisheries Service, NOAA, Federal Annex, 9109 Mendenhall Mall Rd., suite 6 Juneau, AK 99802 (907/586–7221);

(P129J): Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–6150);

Dated: February 2, 1993.

Michael F. Tillman,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–2970 Filed 2–8–93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Impact Statement for Proposed Deep-Draft Dredging at Military Ocean Terminal, Sunny Point, NC

AGENCY: Department of Defense, United States Army.

ACTION: Notice of intent.

SUMMARY: The Military Ocean Terminal, Sunny Point, located along the west bank of the Cape Fear River in southeastern North Carolina, is 25 miles south of Wilmington and five miles north of Southport. The proposed improvements consist of dredging to deepen the south and center basins and their entrance channels from 34 feet mean low water (m.l.w.) to 38 feet m.l.w., plus 2 feet of overdepth, and to widen these entrance channels from 300 feet to 400 feet. Also, a portion of the center basin will be widened from 800–1,000 feet wide to 1,500 feet wide. Existing permanent navigation facilities require improvements to provide sufficient depth and width to allow the safe passage and maneuvering of modern deep-draft vessels and to permit loading them to their designed capacity and draft. Dredged material disposal will likely be at the Wilmington Ocean Dredged Material Disposal Site, although other reasonable alternatives will be considered. Any modification of this proposed plan will be addressed, as appropriate, during preparation of the Environmental Impact Statement.

Significant resources which may occur in the area and be impacted by the proposed plan include endangered species; estuarine, marine, and terrestrial habitat; estuarine, marine, and terrestrial life; historic properties; water quality; recreational and esthetic resources; and wetlands.

Alternatives:

a. No Action/Maintaining status quo.

b. Improvement of existing navigation facilities.

Scoping Process: Federal, State, and local officials; conservation groups; and interested businesses, groups, and individuals are invited to comment on the proposed project. Comments received as a result of this notice will be used to assist in identifying potential impacts to the quality of the environment.

ADDRESSES: Written comments may be forwarded to: District Engineer, U.S. Army Corps of Engineers, Wilmington District (Attention: Mr. Philip Payonk), P.O. Box 1890, Wilmington, North Carolina 28402–1890. Comments should be received within 20 days of the publication of this notice in the **Federal Register** to ensure timely consideration.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Payonk, (919) 251–4589.

Dated: February 2, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 93–3031 Filed 2–8–93; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.170]

Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: To provide fellowships for doctoral study in the arts, humanities, and social sciences to individuals of superior ability selected on the basis of demonstrated achievement and exceptional promise. This program supports National Education Goal 5 which calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Individuals who, at the time of application, are eligible to begin or have begun graduate study at the doctoral level at an accredited institution of higher education.

Deadline for Transmittal of Applications: March 15, 1993.

Applications Available: February 12, 1993.

Available Funds: $1,186,371.

Estimated Range of Awards: $9,000–$23,000 per fellowship.

Estimated Average Size of Awards: $21,000 per fellowship.

Estimated Number of Awards: 56 fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, except for subparts C and D, and §§ 75.580 through 75.592 of subpart E, 77, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 650.

SUPPLEMENTARY INFORMATION: The authorizing statute for the program permits the Jacob K. Javits Fellows Program Fellowship Board (Javits Board) to establish general policies for the program, identify eligible academic fields, and establish general criteria for distributing of fellowships among those fields. The program regulations permit the Javits Board to establish criteria for the selection of fellows annually and, on an annual basis, to select specific fields of study within the humanities, arts, and social sciences, as well as the number of fellows in each field for which fellowships will be awarded. For FY 1993, the Javits Board has determined that 60 percent of the fellowship awards will be made to eligible applicants who have earned no graduate degree credit hours prior to the date of application and that 40 percent of the awards will be available to eligible applicants regardless of earned graduate degree credit hours. The Javits Board also has determined that FY 1993 fellowships in each of these two categories will be awarded as follows: A minimum of 15 percent of fellowships to applicants in the arts, a minimum of 40 percent to applicants in the humanities, and a minimum of 25 percent to applicants in the social sciences.

For Applications Contact: The Jacob K. Javits Fellowship Program, P.O. Box 84, Washington, DC 20044. Telephone: 1–800–433–3243. Individuals who are hearing-impaired may call: TDD 301–369–0518.

FOR FURTHER INFORMATION CONTACT: Diana Hayman, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20201–5251. Telephone: (202) 708–9415. Individuals who are hearing-impaired may call the Federal Dual Part Relay Service at 1–800–877–3889 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1134, 1134h–1134k–1.

Dated: February 3, 1993.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 93–3022 Filed 2–8–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No.: 84.165A]

Magnet Schools Assistance Program; New Awards

AGENCY: Department of Education.

ACTION: Notice extending the closing date for new awards under the Magnet Schools Assistance Program for fiscal year (FY) 1993.

SUMMARY: On December 24, 1992, the Department of Education published in the **Federal Register** a notice inviting applications under the Magnet Schools Assistance Program for FY 1993. The purpose of this notice is to extend the closing date for transmittal of applications from February 19, 1993 to March 1, 1993, to provide applicants additional time to submit applications. Applicants that have already submitted applications will be able to supplement or revise their applications up to March 1, 1993. Three copies of any supplementary materials or of a revised application must be transmitted to the Application Control Center by March 1, 1993. The Intergovernmental Review Date is also extended from April 20, 1993 to April 30, 1993.

Applicants are reminded that a local educational agency that is implementing a plan required by a court, State agency or official of competent jurisdiction must have approval for any modification of its desegregation plan from the court, agency or official that originally approved the plan. The deadline for transmittal of proof of approval of modifications by the appropriate court, agency, or official remains March 26, 1993.

FOR APPLICATIONS OR INFORMATION CONTACT: Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 2059, Washington, DC 20202–6246. Telephone (202) 401–0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 3021–3032.

Dated: February 2, 1993.

Mary Jean LeTendre,

Acting Assistant Secretary, Elementary and Secondary Education.

[FR Doc. 93–3023 Filed 2–8–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ID–2296–001, et al.]

William W. Johnson, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. William W. Johnson

[Docket No. ID–2298–001]

February 1, 1993.

Take notice that on January 19, 1993, William W. Johnson (Applicant) filed an application pursuant to section 305(b) of the Federal Power Act to holding the following positions:

Director, ALLTEL Corporation.
Director, Duke Power Company.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Indeck-Yerkes Limited Partnership

[Docket No. QF87–265–002]

February 1, 1993.

On January 26, 1993, Indeck-Yerkes Limited Partnership tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogneration facility.

Comment date: February 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Consumers Power Company

Docket Nos. ER92–331–001 and ER92–332–001]

February 1, 1993.

Take notice that on January 12, 1993, Consumers Power Company (Consumers) tendered for filing additional information in the above-referenced dockets in response to the Commission's letter order issued on November 12, 1992.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Union Pacific Energy Company

[Docket No. QF93–41–000]

February 1, 1993.

On January 22, 1993, Union Pacific Energy Company, Post Office Box 1317, Wilmington, California 90748–1317, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be located within the bounds of Union Pacific Resources Company's Wilmington oil field in Wilmington, California. The facility will consist of three ORMAT binary turbines which use recirculation iso-pentane systems to extract waste heat from the fluids produced in surrounding oil fields. The electric power production capacity of the facility will be approximately 10 MW.

Comment date: 30 days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

5. South Carolina Electric & Gas Company

[Docket No. EL93–17–000]

February 1, 1993.

Take notice that on January 22, 1993, South Carolina Electric & Gas Company (the Company) tendered for filing a request for exemption from § 35.19a of the Commission's regulation under the Federal Power Act (18 CFR 35.19a).

With the proposed exemption, the Company would avoid refunding to its customers more interest than it will receive for a refund by the Department of Energy concerning spent nuclear fuel disposal costs.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Delmarva Power & Light Company

[Docket No. ER93–340–000]

February 1, 1993.

Take notice that on January 26, 1993, Delmarva Power and Light Company (DPL) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between Baltimore Gas and Electric Company (BC) and DPL dated January 25, 1993. This contract sets forth the terms under which DPL and BC will exchange PJM installed capacity credits. In order to optimize the economic advantages to both DPL and BC, DPL requests the Commission to waive its customary notice period and allow this Agreement to become effective on February 27, 1993.

DPL states that a copy of this filing has been served by mail upon BC, the Delaware Public Service Commission, the Maryland Public Service Commission, and the Virginia State Corporation Commission.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Electric Company; Boston Edison Company; Montaup Electric Company

[Docket No. ER93–326–000]

February 1, 1993.

Take notice that on January 14, 1993, Commonwealth Electric Company (Commonwealth) tendered for filing on behalf of itself, Montaup Electric Company and Boston Edison Company supplemental data pertaining to their applicable investments, and carrying charges including local tax rates, for the twelve-month period ending December 31, 1991. Commonwealth states that this supplemental data is submitted pursuant to a letter in Docket No. E–7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rates schedules have previously been similarly supplemented for the calendar years 1972 through 1990.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, New England Power Company and the Massachusetts Department of Public Utilities.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Cambridge Electric Light Company

[Docket No. ER93–336–000]

February 1, 1993.

Take notice that on January 21, 1993, Cambridge Electric Light Company (Cambridge) filed a notice with the Federal Energy Regulatory Commission under 18 CFR 35.15 of the cancellation, effective April 30, 1993, of the Service Agreement for Supply of Partial Requirements Service to the Town of Belmont, Massachusetts (Belmont). However, with the concurrence of Belmont, Cambridge states that the date of termination is extended from April 30, 1993 until the effective date of a new Net Requirements Power Supply Agreement between the parties, as described in the Addendum attached to the Notice, or, in the absence of such agreement, the effective date of a replacement rate schedule to be filed by Cambridge no later than March 1, 1993.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light

[Docket Nos. ER93–156–000, ER93–158–000, ER93–163–000, ER93–164–000, ER93–165–000, ER93–166–000, ER93–169–000, ER93–172–000, ER93–173–000, ER93–175–000, ER93–176–000, ER93–177–000, ER93–178–000, ER93–179–000, ER93–180–000, ER93–181–000, ER93–182–000, ER93–184–000, ER93–185–000, ER93–186–000, ER93–187–000, and ER93–190–000]

February 1, 1993

Take notice that on January 4, 1993, Puget Sound Power & Light Company (Puget) tendered for filing additional information in connection with the above-referenced dockets.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Service Company

[Docket No. ER93–311–000]

February 1, 1993.

Take notice that on January 8, 1993, New England Power Service Company (NEPS) tendered for filing revised copies of a Service Agreement between New England Power (NE) and Fitchburg Gas and Electric Light Company (FG&E) for transmission service under NEP's FERC Electric Tariff No. 3.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Central Illinois Public Service Company

[Docket No. ER93–108–000]

February 1, 1993.

Take notice that on January 26, 1993, Central Illinois Public Service Company (CIPS) tendered for filing additional information to its original filing filed in this docket on November 3, 1992.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Power Company

[Docket No. ER93–329–000]

February 1, 1993.

Take notice that on January 15, 1993, Ohio Power Company (Ohio) tendered for filing Supplemental Schedules XVI, XVII, and XVIII, dated November 1, 1992 to the Agreement, dated April 1, 1974, between American Municipal Power-Ohio, Inc. and OPCO.

Comment date: February 16, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–3078 Filed 2–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM87–5–011]

Natural Gas Data Collection System; Revision to the FERC Form No. 592 Marketing Affiliates of Interstate Pipelines Record Formats and Hardcopy Filing Requirements

February 3, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of revised instructions to the FERC Form No. 592, Marketing Affiliates of Interstate Pipelines Hard Copy Filing Requirements and Record Formats.

SUMMARY: The FERC Form No. 592, Marketing Affiliates of Interstate Pipelines, is intended to capture information in support of monitoring activities of interstate pipelines that conduct transportation, sales, and/or storage transactions with affiliated marketers and to prevent discrimination in regard to these activities.

On April 8, 1992, the Commission issued Order No. 636 in Docket Nos. RM91–11–000 and RM87–34–065. In that order the Commission found that unbundling gas sales from transportation services does not eliminate the potential for pipelines to favor their marketing affiliates. Thus, the Commission extended the Form No. 592 reporting requirements to pipelines providing unbundled gas sales service (including gas storage service) with transportation separately provided.

In Order No. 497–D issued December 4, 1992, the Docket Nos. RM87–5–001 and CP87–338–002, the Commission extended the "sunset date" of the Form No. 592 one year to December 31, 1993. This order also established that unless further case-specific action is taken by the Commission, commencing 90 days after the Commission has determined that a pipeline is in full compliance with the requirements of Order No. 636, the pipeline will no longer be required to submit the FERC Form No. 592. However, the pipeline must continue to maintain and to provide its affiliated transportation log information on the Order No. 636 electronic bulletin board.

DATES: The revised hard copy and electronic filing instructions and record formats are available on February 3, 1993.

ADDRESSES: Requests for the documents should be directed to: Reference and Information Center, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., room 3308, Washington, DC 20426, (202) 208–1371.

FOR FURTHER INFORMATION CONTACT: For general information contact Bill Anderson at (202) 208–2221.

SUPPLEMENTARY INFORMATION: Those who must file the FERC Form No. 592 are generically defined in the General Information Section of Record Formats and electronic filing instructions, paragraph II. Pipelines that must file include those interstate pipelines that transport natural gas for others pursuant to subpart B, G, or H of part 284 or pursuant to subparts A or E of part 157 if the interstate pipeline:

- Is affiliated in any way with a marketing or brokering affiliate, or
- Holds a blanket sales certificate under subpart J of part 284.

A pipeline that does not conduct any transactions with its affiliated marketer or its pipeline blanket sales operating unit does not have to file.

Specific changes to the electronic Record Formats and Hard Copy instructions are listed in the Appendix.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set at full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208–1397. For access at 9600 baud, dial (202) 208–1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208–2474. The notice will be available on CIPS for 30 days from the date of issuance of the notice.

In addition to publishing the text of this notice in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The revised filing instructions and formats are available from the Commission's copy contractor, LaDorn Energy Information Services ((202) 898–1151 or (800) 676–FERC), located in room 3106, 941 North Capitol Street, NE., Washington, DC 20426. The revised electronic Record Formats and instructions and the Hardcopy instructions are also available in hardcopy format at 30 cents per page.

Lois D. Cashell,
Secretary.

APPENDIX—REVISIONS TO THE ELECTRONIC RECORD FORMATS AND INSTRUCTIONS FERC FORM NO. 592

Page No.	Sch.ID/ record No.	Description of change
6		Item 6.a. Footnote description changed.
7		Item 8. New definition.
8		Item 7. Change of definition.
10		Item 19. New definition.
11	X1	Record Format No. 03, title changed.
14	X1/02	New code added to date item 18.
15	X1/02	Data item 21 description changed.
15	X1/02	New code added to data item 25.
17	X1/02	New Data item 33b added.
17	X1/02	New Data item 33c added.
19	X1/03	Record now collects storage/withdrawal information.
19	X1/03	New code added to item: Node ID.
19	X1/03	Data item 34/35 name revised to "Point ID No. 1—10".
20	X1/03	Note 3 changed.
21	X1/04	Item 36 comment changed.
21	X1/04	Item 37 comment changed.
22	X1/04	New Data item 42–53 added.
22	X1/04	New Note 4a added.

REVISIONS TO THE HARDCOPY FILING REQUIREMENTS FERC FORM NO. 592

Page No.	Description of change
3	Item 3.a Footnote description changed.
7	New code added to data item 18.
8	Data item 21 description changed.
9	New Data items 33b and 33c added.
11	New Data items 42–53 added.
14	Data item 21 header change.
14	Data items 33b and 33c added to hardcopy layout.
15	Record Format No. 03, title changed.
16	Data items 42 thru 53 added to hardcopy layout.

[FR Doc. 93–3077 Filed 2–8–93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP93–171–000, et al.]

High Island Offshore System, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. High Island Offshore System

[Docket No. CP93–174–000]

February 1, 1993.

Take notice that on January 22, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed an application pursuant to section (7)(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for ANR Pipeline Company (ANR).

In its application, HIOS proposes to terminate the firm transportation service which HIOS is rendering in accordance with HIOS' Rate Schedule T–1, as well as associated interruptible overrun transportation service rendered in accordance with HIOS' Rate Schedule I. HIOS proposes to terminate these services at the end of the primary term of Rate Schedule T–1, effective March 31, 1993, in accordance with the terms of such rate schedule and in accordance with timely notices given by ANR to HIOS.

HIOS requests that the abandonment be conditioned upon ANR's remaining subject to and liable for any transition costs, exit fees, or other similar charges that are imposed as a result of HIOS' restructuring pursuant to Order Nos. 636, *et seq.*

Comment date: February 16, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company; Continental Gas Storage, L.P.

[Docket No. CP93–183–000]

February 1, 1993.

Take notice that on January 27, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, and Continental Gas Storage, L.P. (Continental), One Ward Parkway, suite 138, Kansas City, Missouri 64112, jointly referred to as Applicants, filed in Docket No. CP93–183–000, a joint application requesting permission and approval for Northern to abandon by sale to Continental certain liquefied natural gas (LNG) facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicants indicate that they are a party to an agreement whereby, Northern, while retaining the operation and sole use of its LNG facilities in the same manner it has in the past, would sell the LNG facilities and appurtenances to Continental for $27.5 million. In return, Northern would pay Continental a base standby fee of $5,400,000 per year, for an initial period of ten (10) years, and would continue to assume the operating and maintenance costs associated with the facilities, as indicated by Applicants. Applicants' specific facilities are located near Wrenshall, Minnesota (Wrenshall facility) and the Garner facilities located in Garner, Iowa.

Applicants are also requesting that the Commission issue an order disclaiming jurisdiction over Continental once the sale takes place and Continental assumes possession of the LNG facilities.

It is further asserted that the conveyance of the LNG facilities would have no impact on the service Northern provides to its customers.

Comment date: February 22, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Portal Municipal Gas

[Docket No. CP93–185–000]

February 1, 1993.

Take notice that on January 27, 1993, Portal Municipal Gas (Portal), Box 204, Portal, ND 58772, filed an application pursuant to section 3 of the Natural Gas Act, Executive Order No. 10485, as amended by Executive Order No. 12038; and Delegation order No. 0204–112 of the Secretary of Energy. Portal seeks authority for a Presidential Permit for the point of entry for the importation of natural gas and authority to construct, operate, maintain and connect a natural gas pipeline extending from Canadian pipeline facilities at the Canadian border to the City of Portal, North Dakota, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the connecting pipeline will consist of 2400 feet of 3" pipeline, and a metering system and emergency shut down devices. The proposed pipeline will transport up to 65 Mcf per day for a 20 year term. An estimated cost of the facilities is $85,000.00. It may be financed by Many Islands Pipeline, a Canadian company ($50,000.00), and Portal's customers ($35,000.00). The Applicant requests that FERC grant this application on an expedited basis.

Comment date: March 18, 1993, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP93–184–000]

February 2, 1993.

Take notice that on January 27, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–184–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the firm transportation service provided to Northern Natural Gas Company (Northern Natural) pursuant to Tennessee's Rate Schedules T–100 and T–126, and to abandon the T–100 and T–126 rate schedules, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that on January 21, 1980, the Commission issued a certificate in Docket No. CP79–477 authorizing Tennessee to transport up to 7,500 Mcf per day of natural gas on a firm basis for Northern Natural from West Cameron Block 192, Offshore Louisiana to delivery points in Jefferson and Terrebonne Parishes, Louisiana and Kinder, Louisiana pursuant to Tennessee's Rate Schedule T–100. Tennessee also states that on April 9, 1982, the Commission issued a certificate in Docket No. CP82–114 authorizing Tennessee to transport up to 70,000 Mcf per day of natural gas on a firm basis for Northern Natural from West Cameron Block 192, Offshore Louisiana to delivery points in Louisiana and Texas pursuant to Tennessee's Rate Schedule T–126. According to Tennessee, Northern Natural has requested that Tennessee abandon both rate schedules in their entirety. Tennessee indicates that because both rate schedules have been inactive for some time, it proposes herein to abandon them.

Comment date: February 23, 1993, in accordance with Standard Paragraph F at the end of the notice.

5. Williams Natural Gas Company

[Docket No. CP93–179–000]

February 2, 1993.

Take notice that on January 25, 1993, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP93–179–000 a request pursuant to §§ 157.205 and 157–216(b) of the Commission's Regulations for authorization to abandon the sale of natural gas for resale to the Town of Orlando in Oklahoma under Williams' blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that the Town of Orlando has requested cancellation of their firm sales agreement under Williams' Rate Schedule F. It is also stated that an existing firm transportation agreement would remain in effect and that the facilities would be left in place for the delivery of transportation gas.

Comment date: March 19, 1993, in accordance with Standard Paragraph G at the end of this notice.

6. Tennessee Gas Pipeline Company

[Docket No. CP93–177–000]

February 2, 1993.

Take notice that on January 25, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–177–000 a request pursuant to § 284.212 of the Commission's Regulations under the Natural Gas Act for authorization to add a new delivery point for deliveries of natural gas presently authorized for the City of Holyoke Gas and Electric Department (Holyoke) under its blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to authorization granted in Docket Nos. CP88–171–000, et al., Tennessee provides transportation service of up to 14,450 Dth of natural gas per day for Capitol District Energy Center Cogeneration Associates (CDECCA) and on January 21, 1993, CDECCA assigned up to 1,800 Dth per day of such firm transportation capacity to Holyoke.

It is also stated that Tennessee seeks authorization under § 157.212 for an additional delivery point for the delivery of gas to Holyoke. This second delivery point, which would be used to deliver a maximum daily quantity of 1,800 Dth to Holyoke, would be located on Tennessee's system in Hampden County, Massachusetts. It is asserted that the total volumes delivered to National Fuel would not exceed presently authorized volumes.

Comment date: March 19, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–3079 Filed 2–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD93–04011T; Kansas–6]

State of Kansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

February 3, 1993.

Take notice that on February 1, 1993, the State Corporation Commission of the State of Kansas (Kansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mississippian Chat Formation underlying a portion of Reno and Stafford Counties, Kansas qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described on the attached appendix.

The notice of determination also contains Kansas' findings that the referenced portion of the Mississippian Chat Foundation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206 at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Reno. County, Kansas

Township 24 South, Range 10 West
  Sec. 18–19: All;
  Sec. 30–31: W/2.
Township 25 South, Range 10 West
  Sec. 6: NW/4

Stafford County, Kansas

Township 24 South, Range 11 West
  Sec. 24: S/2
  Sec. 25: All
  Sec. 26: SE/4
  Sec. 35: E/2
  Sec. 36: All
Township 25 South, Range 11 West
  Sec. 1: N/2
  Sec. 2: NE/4

[FR Doc. 93–3080 Filed 2–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–13–000]

InterAmerican Energy Leasing Co.; Filing

February 2, 1993.

On January 27, 1993, InterAmerican Energy Leasing Company (InterAmerican) filed an Application under section 32 of the Public Utility Holding Company Act of 1935, as amended seeking determination by the Commission that InterAmerican is an exempt wholesale generator. InterAmerican will own an electric generating facility consisting of two gas-fired combustion turbines with an estimated generating capacity of 100 MW. The power generated by this facility will be sold entirely outside the United States.

Any person desiring to be heard or objecting to the determination of exempt wholesale generator status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 22, 1993, and must be served upon InterAmerican. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–3003 Filed 2–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA82–1–21–033; RP92–215–002]

Columbia Gas Transmission Corp.; Proposed Changed In FERC Gas Tariff

February 3, 1993.

Take notice that Columbia Gas Transmission Corporation (Columbia) on January 28, 1993, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 1993:

Thirty-second Revised Sheet No. 26
Twenty-fifth Revised Sheet No. 26.1
Thirtieth Revised Sheet No. 26A
Twenty-fifth Revised Sheet No. 26A.1

On July 31, 1992, Columbia filed in Docket No. RP9.215 revised tariff sheets pursuant to Article IV of the Stipulation and Agreement approved in Columbia Gas Transmission Corporation, 31 FRC ¶61,307 (1985) to implement a Weighted Average Cost Of Gas (WACOG) commodity surcharge of $0.08 per Dth to become effective September 1, 1992.

On August 31, 1992, the Commission accepted and allowed the tariff sheets to go into effect on September 1, 1992, subject to refund and the outcome of a technical conference that was to be convened within 60 days of the issuance of the suspension order.

By the Commission's order dated January 21, 1993, Columbia was directed to file revised tariff sheets to eliminate the WACOG commodity surcharge and to make refunds for all WACOG surcharge collections.

By the instant filing Columbia is eliminating from its tariff sheets the WACOG commodity surcharge of $0.08 per Dth as directed by Paragraph B of the Commission's January 21, 1993 order. This filing is made without prejudice, and Columbia specifically reserves the right, to seek rehearing of the Commission's January 21, 1993 order, and, if such rehearing is denied, to seek Court review of the orders rejecting the subject WACOG surcharge filing.

Columbia states that copies of the filing were served on Columbia's jurisdictional customers and interested state commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–3081 Filed 2–8–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91-229-017]

Panhandle Eastern Pipe Line Co.; Compliance Filing

February 3, 1993.

Take notice that on February 1, 1993, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the *pro forma* sheets as listed on Appendix A attached to the filing.

Panhandle states that the *pro forma* tariff sheets are in compliance with the Commission's December 22, 1992 Order Accepting Compliance Filings with Conditions. The *pro forma* tariff sheets conform to the various requirements of applicable Commission orders issued in connection with this filing. In addition, the rates included in the *pro forma* tariff sheets reflect Panhandle's amended application in Docket No. CP90-1050-000.

Certain other factors also are reflected in the rates included in the *pro forma* tariff sheets, to conform to the requirements of other applicable Commission orders, including: (i) Changes to the allocation of gathering cost between sales and transportation and (ii) changes to the classification of fixed costs for the return on equity and related taxes required by the Commission's October 9, 1992 Order Granting Rehearing in Part and Denying Rehearing in Part in Docket no. RP91-229-008, and (iii) changes to the backhaul rate for certain specified transportation services to be equal to one-half the forward haul rate as required by the Commission's June 1, 1992 Order on Report Filed Pursuant to Opinion No. 369 and Motion Rate and Compliance Filing.

Panhandle states that the filing also includes the modifications and additional supporting material related to Panhandle's mileage study as required by the Commission's order of December 22, 1992.

Panhandle states that copies of the filing are being mailed to the customers, interested state regulatory agencies, and parties in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-3082 Filed 2-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-5-17-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 3, 1993.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on February 1, 1993 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the tariff sheets listed on Appendix A and Appendix B to the filing, which reflect an out-of-cycle PGA rate increase.

The proposed effective date of these revised tariff sheets is February 1, 1993.

Texas Eastern states that as a result of the Commission's August 31, 1992, termination, effective November 1, 1992, of Texas Eastern's Gas Supply Inventory Reservation Charge ("GSIRC") in light of Order No. 636, Texas Eastern has no mechanism other than the PGA currently in place to recover gas supply costs attributable to contracts entered into in order to meet its customer demand, and Texas Eastern's customers no longer have any economic incentive to purchase gas from Texas Eastern. Consequently, Texas Eastern states that its sales have plummeted, and that the decline in sales directly impacts Texas Eastern's WACOG.

Texas Eastern states that the change proposed in this out-of-cycle PGA filing is a demand sales rate decrease of $0.078/dth and a commodity sales rate increase of $6.8308/dth. The proposed sales rate changes are based upon the change in Texas Eastern's projected unit cost of purchased gas for the period February 1, 1993 through March 31, 1993, since Texas Eastern anticipates that the implementation of Order No. 636 will be effective on April 1, 1993, on Texas Eastern's system. The demand decrease is due to reduced demand charges from ProGas. The commodity increase is necessitated by the continued deterioration of Texas Eastern's sales as a result of the Commission's elimination of Texas Eastern GSIRC in light of Order No. 636. The continued slide in sales has increased the proportion of "must-take" gas as a percentage of total purchases. Since "must take" gas is, generally, higher priced Texas Eastern's WACOG has increased as a result. Texas Eastern states that it has noted in its PGA filings of December 31, 1992, in Docket Nos. TA93-1-17-001 and TQ93-3-17, January 7, 1993, in Docket No. TF93-3-17 and January 8, 1993, in Docket No. TQ93-4-17, that short term and long term efforts to secure gas supplies at the lowest reasonable cost consistent with contractual obligations and security of supply for the customers cannot offset the continuing WACOG increase caused by the loss of sales, and that only increased purchases of gas from Texas Eastern can reverse this trend.

Texas Eastern notes in connection with this filing that on January 26, 1993, it filed a motion requesting that the Commission continue in effect the PGA rates approved effective January 8, 1993, and that the Commission not place in effect Texas Eastern's annual or substitute annual PGA in Docket Nos. TA93-1-17 and TQ93-3-17 or its out-of-cycle filing in Docket No. TQ93-4-17, subject to being permitted to include the unrecovered gas costs in Account No. 191 for recovery in accordance with Order No. 636. Texas Eastern states that its January 26 request is in accord with the Commission's invitation in Order No. 636 B to develop creative approaches for dealing with Account No. 191 and also recognizes the very short time frame prior to implementation of Order No. 636 on its system. Texas Eastern states that if its January 26 motion is granted on terms requested by Texas Eastern, it will withdraw the instant filing.

Texas Eastern states that copies of its filing have been served on all Authorized Purchasers of Natural Gas from Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-3083 Filed 2-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-34-001]

Transwestern Pipeline Co.; Compliance Filing

February 3, 1993.

Take notice that Transwestern Pipeline Company ("Transwestern") on January 29, 1993 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume, No. 1, the following tariff sheets:

Effective January 1, 1993

Substitute 63rd Revised Sheet No. 6
Substitute 9th Revised Sheet No. 6C
Substitute Original Sheet No. 6D
Substitute 7th Revised Sheet No. 29A
Substitute 4th Revised Sheet No. 51A
Substitute 2nd Revised Sheet No. 93

Transwestern states that the tariff sheets referenced above with an effective date of January 1, 1993 are being filed to comply with the Commission's Order issued December 31, 1992 in Docket No. RP93-34-000. The Order required Transwestern to refile revised tariff sheets within thirty (30) days to remove the restriction on a firm shipper's use of alternate receipt and delivery points not within the same zone as a shipper's primary points, to eliminate the Income Tax Tracker, and to make typographical corrections. In addition, the Order required Transwestern to refile to revise its rates to reflect the removal of any costs associated with facilities which has not been placed in service as of December 31, 1992. Pursuant to the Commission's Order, Transwestern submitted the instant filing.

Transwestern requests waiver of any Commission Regulation and its tariff provisions as may be required to allow the tariff sheets referenced above to become effective on January 1, 1993.

Transwestern states that copies of the filing were served on its jurisdictional customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-3084 Filed 2-8-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-165-011]

Trunkline Gas Co.; Interim Settlement Rate Filing

February 3, 1993.

Take notice that on January 25, 1993, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 and Volume No. 2, as set forth in Appendices A and B to the filing, to be effective February 1, 1993.

Trunkline states that this filing is in compliance with the Stipulation and Agreement also filed January 25, 1993 in this proceeding. Trunkline states that a condition for the effectiveness of these tariff sheets is that the Commission's order authorizes Trunkline:

(i) To reinstitute the Docket No. RP92-165-000 rates and charges (including fuel reimbursement) which were permitted to become effective in this proceeding prior to this Stipulation, albeit subject to refund, as adjusted for subsequent PGA or similar revisions, if the Stipulation does not become effective; and

(ii) For each Rate Schedule under which a customer received service, to recover from each customer the revenues which the customer would have provided to Trunkline had it been charged the just and reasonable rates which the Commission determines for the services such customer received, rather than the amounts which it was charged under the Interim Settlement Rates. In such event:

(A) To the extent necessary to recover such revenues, Trunkline shall be permitted to retain all or any portion of the refunds to which the customer otherwise would have become entitled for services provided during the effectiveness of rates in Docket No. RP92-165-000, and if such amounts shall not be sufficient to recover such revenues, during the effectiveness of rates in Docket Nos. RP89-160-000, et al. The retention of such amounts by Trunkline shall be reflected in and shall be a part of Trunkline's final calculation of refunds in this proceeding. Refunds retained for service to a customer under one Rate Schedule shall not be applied to offset or reduce an underrecovery for the customer for service under another Rate Schedule.

(B) To the extent there is any insufficiency in the amount recovered from a customer by such means, Trunkline is to be permitted to surcharge any or all of the Docket No. RP92-165-000 rates applicable to service to such a customer so long as the applicable base tariff rate and the amount of the surcharge do not exceed the base rates which became effective in this proceeding prior to this Stipulation, albeit subject to refund. Surcharges assessed for service to a customer under one Rate Schedule are not to be used to offset or reduce an underrecovery to such customer under another Rate Schedule.

(iii) The foregoing conditions that they will not impair a negotiated discounted rate.

Trunkline states that it has served a copy of the filing on its jurisdictional customers, interested state commissions and parties to the proceeding in the above-referenced docket number.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before February 10, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 93-3085 Filed 2-8-93; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Floodplain/Wetland Involvement for the Summit-Watertown 115-Kilovolt Transmission Line Rebuild Project

AGENCY: Department of Energy (DOE).

ACTION: Notice of floodplain and wetland involvement.

SUMMARY: DOE proposes to rebuild a high 115-kilovolt (kV) transmission line in floodplains and wetlands in Roberts, Grant, and Coddington Counties, South Dakota. In accordance with 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Public comments or suggestions concerning the floodplain involvement of Western Area Power Administration's (Western) proposed action are invited. Written comments are due no later than February 24, 1993.

ADDRESSES: Comments or suggestions should be sent to: Mr. Jim Davies, Area Manager, Billings Area Office, Western Area Power Administration, 2525 Fourth Avenue North, P.O. Box 35800, Billings, MT 59107–5800. (406) 657–6532.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Mr. Ted Anderson, Environmental Specialist, Billings Area Office, Western Area Power Administration, 2525 Fourth Avenue North, P.O. Box 35800, Billings, MT 59107–5800. (406) 657–6575.

FOR FURTHER INFORMATION ON GENERAL DOE ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western is proposing to rebuild the existing 115–kV Summit-Watertown Transmission Line. The line which would be rebuilt in Roberts, Grant, and Coddington Counties, South Dakota, is approximately 30-miles long and extends from the Summit Substation to the Watertown Substation. Western has determined that this proposed project would involve activities within a floodplain area. Approximately 77 percent of the proposed project area has been mapped by the Federal Emergency Management Agency (FEMA). According to FEMA maps, about 7 percent of the existing transmission line in the mapped area lies within identified 100-year floodplains. Additionally, several palustrine and riverine wetlands may be spanned by the proposed action. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements at 10 CFR part 1022, DOE will prepare a floodplain and wetlands assessment for the proposed action.

A floodplain and wetlands assessment will be part of the environmental assessment (EA) which Western is preparing for the proposed project in accordance with the National Environmental Policy Act. The floodplain statement of findings will be included in any finding of no significant impact that is issued following the completion of the EA or included in a final EIS, as appropriate.

Issued at Golden, CO, January 26, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–3091 Filed 2–8–93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4557–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 11, 1993.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Ms. Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for Petroleum Refineries (Subpart J)–Reporting and Recordkeeping Requirements (EPA ICR No. 1054.05; OMB No. 2060–0022). This is a request for renewal of a currently approved information collection. This request consolidates all burden estimates for Subpart J, so that the information requirements for Fluid Catalytic Cracking Unit Regenerators that were approved separately under OMB No. 2060–0180 (EPA ICR No. 1164) are now included in this renewal.

Abstract: Owners or operators of petroleum refineries must provide EPA, or the delegated State regulatory authority, with one-time notifications and reports, and must keep records, as required of all facilities subject to the general NSPS requirements. In addition, facilities subject to this subpart must install a continuous monitoring system (CMS) and must notify EPA or the state regulatory authority of the date upon which demonstration of the CMS performance commences. Owners or operators must report all periods of emissions in excess of the standard. The notifications and reports enable EPA or the delegated authority to determine that best demonstrated technology is installed and properly operated and maintained and to schedule inspections.

Burden Statement: The public reporting burden for this collection of information is estimated to average 5 hours per response for reporting, and 87.5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of petroleum refineries.

Estimated Number of Respondents: 146.

Estimated Number of Responses per Respondent: 7.

Estimated Total Annual Burden on Respondents: 18,103 hours.

Frequency of Collection: Quarterly with excess emissions, and semiannually with no excess emissions.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street, SW.,Washington, DC, 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: January 28, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–2997 Filed 2–8–93; 8:45 am]

BILLING CODE 6560-50-F

[FRL–4557–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202)2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

OMB Approvals

EPA ICR No.0586.06; Toxic Substances Control Act (TSCA) section

8(A) Preliminary Assessment Information Rule (PAIR); was approved 11/13/92; OMB No. 2070–0054; expires 11/30/94.

EPA ICR No. 1442.03; Land Disposal Restrictions; was approved 11/25/92; OMB No. 2050–0085; expires 11/30/95.

EPA ICR No. 1621.01; Survey of Consumer and Commercial Product Manufacturers under section 183(E) of the Clean Air Act; was approved 12/03/92; OMB No. 2060–0248; expires 07/31/93.

EPA ICR No. 1500.02; National Estuary Program; was approved 12/14/92; OMB No. 2040–0138; expires 12/31/95.

EPA ICR No. 0746.02; New Source Performance Standards for Calciners and Dryers in Mineral Industries, Reporting and Recordkeeping; was approved 12/14/92; OMB No. 2060–0251; expires 12/31/95.

EPA ICR No. 1069.04; Standards of Performance for Iron and Steel Plants (Basic Oxygen Process Furnaces)—NSPS Subpart N, NA; was approved 12/14/92; OMB No. 2060–0029; expires 12/31/95.

EPA ICR No. 0292.04; President's Environmental Youth Awards Program; was approved 12/16/92; OMB No. 2090–0007; expires 12/31/95.

EPA ICR No. 1286.03; Used Oil Management Standards; was approved 12/21/92; OMB No. 2050–0124; expires 12/31/95.EPA ICR No. 1246.03; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; was approved 12/28/92; OMB No. 2070–0072; expires 12/31/95.

EPA ICR No. 1365.02; Asbestos-Containing Materials in Schools Rule; was approved 12/28/92; OMB No. 2070–0091; expires 12/31/94.

OMB Disapproval

EPA ICR No. 1620.01; Data Acquisition for List 3 Inert Ingredients; was disapproved 12/01/92.

OMB Extensions of Expiration Dates

EPA ICR No. 1560; National Water Quality Inventory Reports and Identification of Water Quality Limited Waters; OMB No. 2040–0071; expiration date extended to 02/28/93.

EPA ICR No. 0982; Standards of Performance for New Stationary Sources Metallic Mineral Processing Plants (NSPS Subpart LL); OMB No. 2060–0016; expiration date extended to 03/31/93.

EPA ICR No. 0922; Data Call-In/Special Review Chemicals and Generic Data Program; OMB No 2070–0057; expiration date extended to 03/31/93.

EPA ICR No 1504; Phases 4 and 5 of the Pesticide Registration Process; OMB No. 2070–0107; expiration date extended to 03/31/93.

EPA ICR No. 1080; National Emission Standards for Hazardous Air Pollutants, Amendment to Benzene Rule for Coke By-Product Recovery Plants; OMB No. 2060–0185; expiration date extended to 03/31/93.

EPA ICR No. 1188; Significant New Use Rules for Existing Chemicals; OMB No. 2070–0038; expiration date extended to 05/31/93.

Dated: January 28, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–2998 Filed 2–8–93; 8:45 am]

BILLING CODE [illegible]

[AMS–FRL–4592–9]

Air Pollution Control; Motor Vehicle Emission Factors—Notice of Model Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of revised highway motor vehicle emission factor model.

SUMMARY: Section 130 of the Clean Air Act Amendments of 1990 required EPA to review, and if necessary, revise the emission factors used to estimate emissions of volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NOx) from area and mobile sources. In November 1991, EPA released the MOBILE4.1 highway vehicle emission factor model, which fulfilled this requirement and was used by States and others with the responsibility for preparing 1990 base year emission inventories. The MOBILE4.1 model was designed to provide the most accurate possible emission factors for calendar year 1990, and did not include many of the provisions of the 1990 Clean Air Act Amendments affecting vehicles and fuels in future years. Today's notice announces the completion and availability of another update to the highway vehicle emission factor model, MOBILE5, which includes those provisions of the Act not included in MOBILE4.1. MOBILE5 will be the model used by States and others to develop projection per year (future) emission inventories under the Act.

DATES: MOBILE5 was completed on December 4, 1992. This date appears on and in all copies of the program distributed by EPA.

FOR FURTHER INFORMATION CONTACT: Air Quality Analysis Branch, Emission Planning and Strategies Division, Office of Mobile Sources, National Vehicles and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105 Telephone: (313) 668–4325.

SUPPLEMENTARY INFORMATION: Section 130 of the Clean Air Act (CAA), as amended by the CAA Amendments of 1990, requires EPA to "review and, if necessary, revise the * * * emission factors used * * * to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants * * * including mobile sources." EPA's estimates of highway vehicle emission factors are developed using a program which calculates emission factors for eight types of highway vehicles over a range of user-specified conditions (e.g., average speed, ambient temperature). The previous version of this model, MOBILE4.1, was released in final form in November 1991. This notice announces completion of EPA's second review and revision of the model since the passage of the 1990 CAA Amendments. The model revision, MOBILE5, is now available for use.

The MOBILE4.1 emission factor model was used by States and other government units to develop base year (1990) emission inventories for all ozone and/or CO nonattainment areas. These base year emission inventories were due to be submitted to EPA by November 15, 1992. As discussed in the notice of availability of the previous version of the model (56 FR 42053, August 26, 1992), MOBILE4.1 included all of the model revisions believed to be of critical importance to the development of the most accurate possible 1990 emission factors, and hence inventories, but did not include all of the new vehicle and fuel requirements of the 1990 CAA Amendments. Such requirements affecting CO emissions, however, were included in MOBILE4.1 due to the accelerated schedule imposed on CO nonattainment areas (relative to ozone nonattainment areas) for development and submission to EPA of attainment demonstrations, which include future year projected emission inventories. Thus, the Federal Tier 1 exhaust emission standard for CO, and the cold temperature CO standard, were included in MOBILE4.1, while modeling of other Tier 1 tailpipe standards and other provisions of the Act affecting vehicles and fuels were deferred until MOBILE5.

As is generally true when the MOBILE model is updated, there have been a number of revisions to the emission factors beyond those resulting from modeling of future vehicle and fuel requirements. Perhaps most significantly, the basic emission rate equations (BERs) used to describe emissions of each pollutant from each vehicle type/emission control technology combination have been revised on the basis of data obtained from IM240 testing. The results of this testing, which provides EPA with vastly larger sample sizes than are possible in the more conventional emission factor data collection program, have resulted in revisions to the BERs for all pollutants for all 1981 and later model year light-duty vehicles and light-duty trucks. The new BERs reflect that in-use emissions deterioration (increase in emissions with increasing age/odometer mileage of the vehicle) is greater than was assumed in earlier versions of the model, and thus show higher emissions.

The IM240 testing program also provides EPA with data on the in-use rates of failure of vehicles to pass functional tests (purge and pressure checks) of the evaporative emission control system, and on the emission levels associated with failure to pass one or both of these tests. The resulting data have allowed the evaporative emission factors for light-duty vehicles and light-duty trucks to be revised to reflect the observed rates of failure on these tests, and these revisions are also incorporated into MOBILE5.

While not exhaustive, the more significant of the revisions to MOBILE5 (relative to MOBILE4.1) are listed below:

- The basic emission rate equations for all three pollutants, for all 1981 and later model year light-duty vehicles and light-duty trucks, have been revised on the basis of data collected from IM240 testing.
- The evaporative emission rates for 1981 and later model year light-duty vehicles and light-duty trucks have also been revised on the basis of data collected from IM240 testing, to reflect the in-use rates of failure on functional (purge and pressure) tests of evaporative emission control systems, and the emission levels associated with failure to pass one or both of these tests.
- The impact of oxygenated fuels on exhaust and evaporative hydrocarbon emissions is included in the model (MOBILE4.1 included only the effects on exhaust carbon monoxide emissions).
- The Federal Tier 1 exhaust emission standards for all pollutants are included in the model (as noted above, MOBILE4.1 contained only the CO standards).
- The ability to model the effects of reformulated gasoline, which is mandated by the Act for the most severe ozone nonattainment areas and may be "opted into" by other areas, is included in the model.
- The ability to model the effects of participation in the California low-emitting vehicle (LEV) program, including transitional and zero-emitting vehicles, has been included in the model.
- The speed correction factors for 1981 and later model year light-duty vehicles and light-duty trucks have been updated over the mid and high ranges of average speed (19.6–65 mph).
- The annual mileage accumulation rates for most vehicle types have been updated, as have the registration distributions by age applied to truck categories.
- The option to have emission factors calculated as of July 1 of a given year has been added to the model (MOBILE4.1 only calculated emission factors as of January 1).

Additional information on the revisions that have been made to the MOBILE model is provided in the documentation. One result of these and other revisions to the MOBILE model is that the emission factors calculated for calendar year 1990 using MOBILE5 are different from those calculated using MOBILE4.1.

MOBILE5 is available for three computer platforms: mainframe, IBM (and clone) PCs, and Macintosh desktop computers. The user document provided is applicable for all three cases. Copies of the model were supplied to all EPA Regional Offices for distribution to State, local, and regional government agencies with responsibility for preparing emission inventories for submission to EPA. MOBILE5 was installed on the Technology Transfer Network (TTN) computer bulletin board system (BBS), maintained by EPA's Office of Air Quality Planning and Standards (OAQPS), and is available there to all interested free of charge. The model and related files (documentation, example input and output files) are available from the Technology Transfer Network (TTN) computer bulletin board system (BBS) maintained by EPA's Office of Air Quality Planning and Standards (OAQPS) in North Carolina. There is no charge for access to the BBS, provided that one is a registered user. To become a registered user, contact OAQPS at (919) 541–5384. The MOBILE5 model also will be made available through the National Technical Information Service (NTIS) within six to eight weeks of this notice.

With the release of MOBILE5, MOBILE4.1 should be considered superseded. At this time, EPA does not anticipate further official releases of updated versions of the MOBILE model for the next 24 to 36 months.

Dated: February 3, 1993.

Michael H. Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–3068 Filed 2–8–93; 8:45 am]

BILLING CODE [illegible]

[FRL–4592–7]

Office of Exploratory Research; Experimental Program To Stimulate Competitive Research (EPSCoR)

AGENCY: U.S. Environmental Protection Agency

ACTION: Request for Applications (RFA), OER/EPSCoR–93.

SUMMARY: The Office of Exploratory Research (OER) of the Environmental Protection Agency (EPA), in supporting academic research in the areas of environmental science and engineering (S&E), announces interest in receiving special research-grant-assistance applications for support of an Experimental Program to Stimulate Competitive Research (EPSCoR). Only those previously chosen by the National Science Foundation (NSF) for participation in the EPSCoR program are eligible to request support for these special research grants to improve and enhance nationally competitive environmental research programs conducted by academic institutions within their State. Approximately $0.8 million will be available for grant awards under the EPA/EPSCoR program in Fiscal Year 1993 for research in environmentally related S&E disciplines.

DATES: The original and fifteen copies of the application must be received no later than 4:30 p.m., Eastern local time April 30, 1993. No electronic submissions of formal applications will be accepted.

ADDRESSES: The applications must be sent to Research Grants Staff, Attention: OER/EPSCoR–93, Office of Exploratory Research (RD–675), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The phone number is (202) 260–7443.

Application kits may be obtained from: Grants Operations Branch (PM–216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The phone number is (202) 260–9266.

FOR FURTHER INFORMATION CONTACT: Dr. Deran Pashayan, Research Grants Staff, Office of Exploratory Research (RD–675), Office of Research and

Development, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The phone number is (202) 260–2606.

I. Background

In Fiscal Year 1993, EPA will be implementing a second-phase research EPSCoR program with a total funding of $0.8 million. Selection for awards will be made from a merit-based competition for special research grants. Eligibility for these special research grants will be restricted to the designated NSF/EPSCoR statewide committees for the following States and Commonwealth: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico. The major EPA/EPSCoR program goals are to improve the quality of the environmental S&E research and researchers at academic institutions within these States and to create lasting improvements in the State's scientific and technical infrastructure through increased funding for environmental research, education, and related activities.

II. Scope

In Fiscal Year 1991, EPA awarded the nineteen EPSCoR participants planning grants to prepare comprehensive six-year environmental research and human resource development plans. The purpose of the planning grants was to help the States assess existing weaknesses and strengths in environmental research areas and design strategies for promoting and enhancing their environmental S&E research programs. The results of this planning effort should be used in preparing these EPSCoR research grant proposals. Each State committee may submit only one application, requesting from EPA a maximum of $200,000 per year not to exceed 3 years. The application must include a minimum cost share of 50 percent of the total project from non-Federal sources. EPA encourages the States to provide more than the minimum non-Federal match if the additional money will enhance the capability of their academic institutions to increase their national competitiveness.

A complete EPA/EPSCoR proposal will consist of two parts: (I) A Strategic Improvement Plan (SIP) to enhance academic research competitiveness and (II) individual S&E environmental research (SEERs) projects. Part (I), SIP projects, and Part (II), SEER projects, are described in greater detail below:

Part I: Strategic Improvement Plan

In Part I of the application, the SIP will include a narrative description of the following: (1) The State's strategic plan to increase the ability of its academic institutions to compete successfully for Federal resources to conduct environmental S&E research; (2) the proposed SIP goals and activities and a timetable for achieving them; (3) the rationale for selecting specific SIP activities and the relationship of them to State and academic goals; (4) the nature and extent of expected improvements; (5) a plan for monitoring and assessing program achievements; (6) a brief description and rationale of the proposed SEER projects; and (7) a management plan that includes a discussion of the role and duties of the EPA/EPSCoR Project Manager. Part I should include a résumé (not to exceed two pages) for the EPA/EPSCoR Project Manager focusing on positions held in education and a bibliography of most recent related publications. Résumés for all other key members supporting EPSCoR management or oversite activities will be limited to one page. Part I should also include all forms required in the grant assistance application kit: itemized budgets; a one-page abstract that describes the entire EPA/EPSCoR proposal; a table of contents; and a narrative section (including any attachments, appendices and reference lists for the narrative section) which must not exceed 16 pages and which must be consecutively numbered. (See special instructions section in V for general format information and guidelines on preparation of the itemized budgets.)

Part II: S&E Environmental Research (SEER) Projects

The SEER projects must be focused on investigative research that advances the state of knowledge in environmental S&E. Proposals that are routine monitoring, state-of-the-art surveys, literature reviews, development or commercialization of proven concepts, or the preparation of materials and documents including design or instruction manuals will not be considered.

The SEER projects will be evaluated during a stage I review according to their scientific merit; utility; qualification of investigators, especially in producing peer-reviewed journal articles; availability/adequacy of facilities and equipment; and the potential of this research to be supported with Federal funds beyond the award period of the project.

In Part II, the face page of each SEER project should include the following: (1) Title of the application; (2) name and telephone number of the principal investigator (PI); (3) lead institution name and address; (4) participating institutions; (5) names, departments, and institutions of research collaborators; and (6) total cost (Federal and non-Federal match) of the research by project year. The narrative section of each SEER project must include the following information: (1) A summary of the project not to exceed one page; (2) a description of the individual project including the objectives to be accomplished, results and benefits expected, and scientific approach; (3) rationale for project selection and the relationship of the project to State and institutional plans to improve research competitiveness; and (4) the relationship of the projects to the institutional plans for the development of human resources in S&E at the undergraduate, graduate, and faculty levels to be supported by EPA/EPSCoR funds; (e.g., should include plans for attracting and involving high-quality personnel, including women, minorities, and persons with disabilities).

The research projects must be ones that have not been successful in obtaining Federal support, but have the potential to become nationally competitive. Due to funding considerations, each EPSCoR proposal is limited to a maximum of three SEER projects. Résumés must not exceed one page for each investigator, including the PI, and should focus on education, positions held, and most recent or related publications. Excluding the face page, a one-page summary, itemized budgets, and résumés, the narrative section (including any attachments, appendices and reference lists for the narrative section) for each SEER must not exceed 10 pages, which must be consecutively numbered. (See special instructions section in V for general format information and guidelines on preparation of itemized budgets.)

III. Mechanism of Support

Assistance under this research grant will be through the EPA's Research Grants Program. Responsibility for the planning, direction, and execution of the proposed activity in the research grant will be solely that of the applicant if approved by EPA for funding. A single award will be made to the organization (grantee) submitting the research-grant-assistance application for the statewide NSF/EPSCoR Committee who will serve as financial agent for the total project. Although approximately $0.8 million is available in Fiscal Year 1993 to provide the first year of support for successful awarders, support beyond the first year will depend on the availability of funds appropriated for this purpose.

IV. Application

Each application will consist of Application for Federal Assistance forms (standard forms (SF) 424 and 424A). All certification (drug-free workplace, etc.) forms must be signed and included with the application. Application forms, instructions, and other pertinent information are contained in the Federal grant application kit.

V. Special Instructions to the Applicant

1. All narrative sections of this application must use regular size type—no smaller than elite standard on 8½ by 11-inch pages. Attachments, appendices, reference lists, tables, graphs, and figures to support the narrative section may be included but must be considered within the page limitations identified for Part I and Part II, respectively.

2. Applications must be identified by printing "OER/EPSCoR-93" in the upper right-hand corner of SF-424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.

3. In lieu of the Catalog of Federal Domestic Assistance Number requested in block 10 of SF-424, use the identifier "Office of Exploratory Research."

4. Each EPA/EPSCoR, in Part I, and each SEER project in Part II must be contained in unbound, separable documents either stapled or firmly clipped together. While a cover letter may be attached to Part I, it will be removed before it is sent to the reviewers.

5. A detailed, annual itemized budget for the total EPA/EPSCoR application must appear in Part I and use the subcategories identified on SF-424A, line 6, entitled "Object Class Categories." The itemized budgets should separately identify the requested Federal amount and the cost share. For each institution or organization that is participating as a subcontractor to the applicant, a separate, itemized budget sheet should be prepared using the same subcategories. The total resources for all contractors must appear on line 6h of SF-424A.

In Part II, itemized budgets should reflect the Federal and non-Federal match per each institution involved for each year of a given SEER project. The total cost per year of each SEER should appear on the cover page in Part II.

6. Applications containing proprietary or other types of confidential information will not be considered.

7. Applications not meeting the specific requirements and guidelines identified in this solicitation may be returned without review and may not be considered for this competition.

VI. Application Review/Awards

All applications in response to this solicitation will be evaluated through a two-stage, competitive merit-review process. The first stage involves the evaluation of the technical SEER projects by S&E peer reviewers. The results of the first stage review will be used by an ad hoc panel of experts who will be responsible for providing a total evaluation of each complete application (SIP plus SEER projects) as a basis for recommending agency approval or disapproval. In reviewing the application, the ad hoc panel will use the following criteria:

- The SIP's appropriateness and relevance; its compatibility with EPSCoR objectives; and its potential for effecting significant and lasting improvements in academic research competitiveness within the award period.
- The impact of the non-Federal match (i.e., State, institutional, and private sector) on the project's success.
- The overall assessment of the scientific and technical merit of the proposed SEER projects for each proposal and the likelihood that they may, as an entity in themselves, become nationally competitive.
- The quality of the program management plan including program leadership and expertise, the proposed benchmarks of success, and the monitoring and assessment plan to measure project effectiveness.

EPA is solely responsible for the selection of the awardees. This decision will be made from the merit-based peer reviews process and relevance to environmental research.

VII. Application Submission

The original and fifteen copies of the application must be received no later than 4:30 p.m. Eastern local time, April 30, 1993 to be considered. No electronic submissions of formal applications will be accepted. The applications must be submitted by an NSF/EPSCoR Statewide committee through a fiscal agent, empowered to accept Federal grants, which agrees to act on behalf of the State in this endeavor. No more than one application may be submitted from each State's NSF/EPSCoR committee. Research-grant-assistance applications must be submitted to Research Grants Staff, Attention: OER/EPSCoR-93, Office of Exploratory Research (RD-675), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The phone number is (202) 260-7443.

Dated: January 27, 1993.

Robert Papetti,

Director, Research Grants Staff.

[FR Doc. 93-3067 Filed 2-8-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4593-1]

Access to Confidential Business Information by Leonard G. Birnbaum and Company, KPMG Peat Marwick, and American Power Jet Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is authorizing its contractor, Leonard G. Birnbaum and Company (LGB), of Alexandria, Virginia, and LGB's two subcontractors, KPMG Peat Marwick of Washington, DC, and American Power Jet Company of Williamsburg, Virginia, to have access to information, which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), and under the requirements of the contracts between EPA and its contractors. LGB and its subcontractors will have access to such information for the purpose of performing a financial statement audit for EPA. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning this notice must be submitted on or before February 17, 1993.

ADDRESSES: Interested persons may submit written comments to: Melissa Heist, Divisional Inspector General for Audit, Financial Audit Division, Office of Inspector General (A-109), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Melissa Heist, (202) 260-1479.

SUPPLEMENTARY INFORMATION: Under EPA Contract No. 68-W2-0020, LGB, an independent public accountant, and its subcontractors, KPMG Peat Marwick and American Power Jet Company, will provide audit services to EPA's Office of Inspector General. Specifically, LGB and its subcontractors will perform a financial statement audit of certain EPA trust funds to determine (1) whether EPA's financial statements are fairly presented, as required by the Chief Financial Officers Act, and (2) whether the Hazardous Substance Superfund is being properly administered, as required by section 111(k) of CERCLA. In performing the audit, employees of LGB and its subcontractors will have access to documents submitted by EPA contractors, including, but not limited to, contractor invoices and vouchers, contractor supporting documents for such invoices and vouchers, EPA project officers' and receiving officials' approval forms, and the contracts themselves. These documents include materials submitted to EPA under section 104 of CERCLA and under the requirements of the contracts between EPA and its contractors. Some of these documents may contain information claimed or determined to be CBI.

Pursuant to EPA's regulations at 40 CFR part 2, subpart B, EPA has determined that LGB, KPMG Peat Marwick, and American Power Jet Company require access to CBI to perform the work required under the contract. In accordance with those regulations, EPA is providing at least five working days' notice for comments before LGB and its subcontractors are given access to CBI.

Under the contract, EPA requires LGB and its subcontractors to protect CBI. When LGB has completed the audit, it will return the documents to EPA.

Dated: February 3, 1993.

John C. Martin,

Inspector General.

[FR Doc. 93–3073 Filed 2–8–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4555–5]

Operating Industries, Inc. Site; Proposed Administrative Settlement

AGENCY: Environmential Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, notice is hereby given of the administration settlement entered into by EPA Region IX; the State of California, on behalf of the Department of Toxic Substances Control, and the California Hazardous Substance Account; and the United States Department of the Navy on behalf of the Long Beach Naval Facility, for the Operating Industries, Inc. Superfund Site in Monterey Park, California. The proposed settlement was entered into under the authority granted EPA in CERCLA, and provides for the recovery of federal and state past response costs incurred at or in connection with the Site through December 31, 1990, work undertaken at the Site by non-federal potentially responsible parties for three operable units, and oversight costs incurred by EPA for the performance of that work.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or consideration which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA 94105, Attention: Steven Armsey, Regional Hearing Clerk.

DATES: Comments must be submitted on or before March 11, 1993.

ADDRESSES: A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, U.S. EPA Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference the Operating Industries, Inc. Site and EPA Docket No. 92–19.

FOR FURTHER INFORMATION CONTACT: Katherine Shine, Assistant Regional Counsel, (RC–3–1), U.S. EPA, Region IX, 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744–1338.

Dated: December 21, 1992.

Keith Takata,

Acting Director, Hazardous Waste Management Division.

[FR Doc. 93–2786 Filed 2–8–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44595; FRL–4186–5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on tributyl phosphate (TBP) (CAS No. 126–73–8) and p-phenylenediamines (p-pda) (CAS No. 106–50–3), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

Test data for TBP were submitted by the Tributyl Phosphate Task Force affiliated with the Synthetic Organic Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.4360. They were received by EPA on December 29, 1992. The submissions describe the pharmacokinetics of TBP in rats. Section I contains the distribution, metabolism, and excretion of ^{14}C-tributyl phosphate following I.V., oral, and dermal administration; section II contains the blood levels following I.V., oral, and dermal administration. Another study contains the absorption, distribution and excretion of ^{14}C-tributyl phosphate in Yucatan^{R} minipigs. Health effects testing is required by this test rule. This chemical is used in aircraft hydraulic fluids; for extraction and separation processes in the Plutonium Uranium Reduction Extraction process; as a defoamer in the paper industry; in textile sizers, inks, and lacquers; and as a plasticizer.

Test data for p-pda were submitted by E. I. Du Pont de Nemours and Company pursuant to a test rule at 40 CFR 799.3300. The submissions were received by EPA on December 29, 1992. The submissions describe the static-renewal acute 48-hr EC_{50} of p-pda to fed *Daphnia magna*, and the flow-through 21-day toxicity of p-pda to water fleas, *Daphnia magna*. Environmental effects testing is required by this test rule. This chemical is used in aramid fibers, rubber and plastic antioxidants, photographic chemicals, dye intermediates, corrosion inhibitors and pesticides.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–

44595]. This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: February 2, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–3063 Filed 2–9–93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL ELECTION COMMISSION

[Notice 1993–5]

Filing Dates for the Texas Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for a special election.

SUMMARY: Texas has scheduled a special election to fill the United States Senate seat vacated by the recent resignation of Senator Lloyd Bentsen. There are two possible elections, but only one may be necessary. If no candidate wins a majority of votes in the Special General Election, the two top vote-getters, regardless of party affiliation will participate in a Special Runoff, which will be set by the Governor.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Public Information Office, 999 E Street, NW., Washington, DC 20463. Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Texas Special General Election and all other political committees not filing monthly which support candidates in the Special Election shall file a 12-day Pre-Special Report on April 19, 1993, with coverage dates from the last report filed or date of first activity, through April 11, 1993. If there is a majority winner, committees must also file a Post-General Report on June 1, 1993, with coverage dates from April 12, 1993, through May 21, 1993, and a Mid-year Report on July 31, 1993, with coverage dates from May 22, 1993, through June 30, 1993.

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION

Report	Period covered	Reg./cert. mailing date*	Filing date
If only one election (05/01) is held, committees must file:			
Pre-General	01/01/93**–04/11/93	04/16/93	04/19/93
Post-General	04/12/93–05/21/93	06/01/93	06/01/93
Mid-Year	05/22/93–06/30/93	07/31/93	07/31/93
If two elections are held, all committees involved in only the general election (05/01) must file:			
Pre-General	01/01/93**–04/11/93	04/16/93	04/19/93
Mid-Year	04/12/93–06/30/93	07/31/93	07/31/93

*Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

**The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

Dated: February 4, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–3040 Filed 2–8–93; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Tampa Port Authority/Starlite Cruises, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200624–002.

Title: Tampa Port Authority/Starlite Cruises Agreement.

Parties:

Tampa Port Authority ("Port")
Jo-Dim Investment Trust S.A. c/o
Regency Maritime Corporation

Synopsis: The subject modification (1) incorporates the new corporate and vessel name under which Starlite Cruises, Inc. does business; (2) cancels amendment No. 1 to the Agreement which provides for a joint marketing effort by Starlite and the Port; (3) provides for reduced wharfage and dockage charges on two-day cruises; and (4) requires a minimum of eight sailings per month.

Agreement No.: 203–011399

Title: Pacific Information Systems Agreement

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaiha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed Agreement is a cooperative working arrangement which permits the parties to create a research and development program intended to develop information systems that will facilitate customers' access to and use of the carriers' freight transportation services in the trade between the United States and foreign ports and points.

Agreement No.: 203–011400

Title: Cunard/Effjohn Commercial Management Agreement

Parties:

Effjohn International B.V. ("Effjohn")
Cunard Line Limited ("Cunard")

Synopsis: The proposed Agreement permits Cunard to provide selected sales, marketing and related services for Effjohn's vessels in the trade between the United States and worldwide. The parties have requested a shortened review period.

Dated: February 3, 1993.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–2999 Filed 2–8–93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Notice is hereby given of the submission of proposed information collection to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act and under OMB regulations on Controlling Paperwork Burdens on the Public. A copy of the proposed information collection and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in this notice.

DATES: Comments on this proposed revision to information collection are welcome and should be submitted on or before March 9, 1993.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer: Mary M. McLaughlin—Division of Research and Statistics (202–452–3829); for the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer: Gary Waxman—Office of Information and Regulatory Affairs (202–395–7340), Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Request for OMB Approval To Revise the Following Report

1. *Report title:* Report of Condition and Income

Agency form number: FFIEC 031–034.
OMB Docket number: 7100–0036.
Frequency: Quarterly.
Reporters: State member banks.
Annual reporting hours: 161,310.
Estimated average house per response: 40.9.
Number of respondents: 986.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 324) and is given partial confidential treatment.

On a quarterly basis, state member banks are required to file detailed schedules of assets, liabilities, and capital in the form of a condition report and summary statement; detailed schedule of operating income and expense, sources and disposition of income, and changes in equity capital in the form of an income statement; and a variety of supporting schedules. Data are used for supervisory and monetary policy purposes. The proposed changes affect several existing Call Report schedules; the proposed changes are as follows:

1. New items would be added to Schedule RC–N, "Past Due and Nonaccrual Loans, Leases, and Other Assets," to collect data on loans and leases that are past due 30 through 89 days, past due 90 days or more, or are in nonaccrual status but are wholly or partially guaranteed by the U.S. Government. The items in which banks currently report the totals for their past due and nonaccrual assets are being deleted.
2. A memorandum item would be added to Schedule RC–F, "Other Assets," for "Deferred tax assets disallowed for regulatory capital purposes."
3. An item would be added to Schedule RC–M, "Memoranda," for "Intangible assets that have been grandfathered for regulatory capital purposes" to replace two items on intangible that have been applicable only to national banks.

Board of Governors of the Federal Reserve System, February 3, 1993.

Williams W. Wiles,

Secretary of the Board.

[FR Doc. 93–3033 Filed 2–8–93; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Administration (CAIR), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090–0163, Information Collections Specific to a Contract or Contracting Action (not required by regulation). This information collection is used to grant or approve leases, issue bid invitations, negotiate sales, purchase equipment, obtain analytical services, and operate facilities.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Acquisition contracts (Estimates based on FY–92 data in the GSA Procurement Data System):

Purchase under $25,000 reported in summary on SF–281: 835,640 actions × 5 minutes per action=69,637 hours per annum. Solicitation stage (nonschedule contracts reported on SF–279): 14,482 solicitations × average of 3 responses=43,446 @ .25 hours per response=10,862 hours per annum. Contract stage (nonschedule contracts reported on SF–279): 14,482 contracts × 1 hour per contract=14,482 hours per annum. Modifications and Orders (nonschedule contracts reported on SF–279): 96,326 mods and orders × .25 hours per response=24,082 hours per annum. Federal Schedule Contracts (Basic contract reported on SF–279): 3,915 contracts × 1.5 hours=5,873 hours per annum. Grand total of hours for acquisition contracts: 124,936.

Disposal contracts: Real Property, Invitations for Bids for Federal Surplus Real and Related Personal Property, Solicitations for Advertising (Business Service Center Auctioneer, Broker or Appraisal Services), and Negotiated Sales Transactions: 670 Reporting hours.

Leases: 3,300 Recordkeeping hours + 52,250 Reporting=55,550 Total hours.

Interagency Training Center: Telephone Solicitations for Training Instructors for Workshops and Telephone Solicitations for Conferences or Meeting Facilities: 200 Reporting hours.

FOR FURTHER INFORMATION CONTACT: Mary L. Cunningham, (202) 501–2691.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: January 27, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–3011 Filed 2–8–93; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Auditory Effects of Exposure to Noise and Industrial Chemicals; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) and the Pan American Health Organization announce the following meeting.

Name: Auditory Effects of Exposure to Noise and Industrial Chemicals.

Time and Dates: 9 a.m.–4 p.m. February 16–17, 1993.

Place: Robert A. Taft Laboratories, Main Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to provide an overview of key studies of hearing loss from exposure to noise and industrial chemicals and to solicit individual input to be used in the development of a protocol for the study of hearing sensitivity in workers exposed to noise and chemicals. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Derek E. Dunn, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C27, Cincinnati, Ohio 45226, telephone 513/533–8281.

Dated: February 3, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–3029 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-19-M

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH) Meeting.

Times and Dates: 9 a.m.–4:30 p.m., February 24, 1993; 9 a.m.–12 noon, February 25, 1993.

Place: Terrace Garden Inn-Buckhead, Sunflower Room, 3405 Lenox Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available.

Purpose: The board provides guidance on NIOSH research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be Discussed: The agenda will include the NIOSH Director's report; legislative and budget update; review and discussion of the NIOSH programs on fiber research, surveillance, and psychological disorders; presentation on a new vision for NIOSH; and an overview of a planned workshop on engineering controls for infectious agents. Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Roy M. Fleming, Sc.D., Executive Secretary, Office of the Director, NIOSH, CDC, 1600 Clifton Road, NE., Mailstop D–30, Atlanta, Georgia 30333, telephone 404/639–3343.

Dated: February 3, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–3030 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Advisory Committees; Filing of Annual Reports

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESSES: Copies are available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, 301–443–1751.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (5 U.S.C. App. 2) and 21 CFR 14.60(c), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period October 1, 1991, through September 30, 1992:

Center for Biologics Evaluation and Research: Biological Response Modifiers Advisory Committee, Blood Products Advisory Committee, Vaccines and Related Biological Products Advisory Committee.

Center for Drug Evaluation and Research: Anesthetic and Life Support Drugs Advisory Committee, Antiviral Drugs Advisory Committee, Arthritis Advisory Committee, Cardiovascular and Renal Drugs Advisory Committee, Drug Abuse Advisory Committee, Gastrointestinal Drugs Advisory Committee, Generic Drugs Advisory Committee, Medical Imaging Drugs Advisory Committee, Oncologic Drugs Advisory Committee, Peripheral and Central Nervous System Drugs Advisory Committee.

Center for Veterinary Medicine: Veterinary Medicine Advisory Committee.

National Center for Toxicological Research: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants (Ranch Hand Advisory Committee).

Annual reports are available for public inspection at: (1) The Library of Congress, Newspaper and Current Periodical Reading Room, rm. 133, Madison Bldg., 101 Independence Ave. SE., Washington, DC; and (2) the Dockets Management Branch (HFA–305), rm.1–23, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 21, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–3045 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92E–0379]

Determination of Regulatory Review Period for Purposes of Patent Extension; Producil®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined

the regulatory review period for Producil® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John S. Ensign, Office of Health Affairs (HFV–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product Producil® (efrotomycin). Producil® is indicated for increased weight gain when incorporated into complete swine feeds at 3.6 to 14.5 grams per ton; in addition, it is indicated for improved feed efficiency when incorporated into complete swine feeds at 3.6 grams per ton. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Producil® (U.S. Patent No. 4,024,251) from Merck & Co., Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated October 26, 1992, advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of Producil® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Producil® is 5,186 days. Of this time, 2,965 days occurred during the testing phase of the regulatory review period, while 2,221 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective*: May 15, 1978. FDA has verified the applicant's claim that the investigational new animal drug application (INADA) became effective on May 15, 1978.
2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the Federal Food, Drug, and Cosmetic Act*: June 26, 1986. The applicant claims that June 23, 1986, was the date the new animal drug application (NADA) for Producil® (NADA 140–818) was submitted. However, a review of FDA records reveals that the date of FDA's official acknowledgment letter assigning a number to NADA 140–818 was June 26, 1986, which is considered to be the submission date for the NADA.
3. *The date the application was approved*: July 24, 1992. FDA has verified the applicant's claim that NADA 140–818 was approved on July 24, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,095 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 8, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–3042 Filed 2–8–93; 8:45 am]

BILLING CODE 4160–01–F

Board of Tea Experts; Rechartering

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rechartering of the Board of Tea Experts by the Commissioner of Food and Drugs or designee. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. App. 2).

DATES: Authority for this board will expire on January 3, 1995, unless the Commissioner or designee formally determines that rechartering is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 12420 Parklawn Dr., Rockville MD 20857, 301–443–2765.

Dated: January 21, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–3044 Filed 2–8–93; 8:45 am]

BILLING CODE 4160–01–F

Technical Electronic Product Radiation Safety Standards Committee; Recharter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration announces the rechartering of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC), by the Commissioner of Food and Drugs or designee. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. App. 2).

DATES: The new charter for this committee will extend to December 24, 1994.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA-306), Food and Drug Administration, 12420 Parklawn Dr., Rockville MD 20857, 301–443–2765.

Dated: January 21, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–3046 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N–0491]

Manna Pro Corp.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Manna Pro Corp. The NADA provides for the use of a nicarbazin Type A article for making tylosin Type C chicken feeds. The sponsor requested the withdrawal of approval.

EFFECTIVE DATE: February 19, 1993.

FOR FURTHER INFORMATION CONTACT: Vitolis E. Vengris, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: Manna Pro Corp., P.O. Box 11851, Fresno, CA 93775, is the sponsor of NADA 10–175, which provides for the use of a nicarbazin Type A article for making tylosin Type C chicken feeds. In its letter dated October 9, 1992, the sponsor requested that FDA withdraw approval of the NADA because the product is no longer marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 10–175 and all supplements and amendments thereto is hereby withdrawn, effective February 19, 1993.

Dated: January 28, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93–3048 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92F–0475]

SCM Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that SCM Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of phosphorylated tall oil fatty acids as pigment dispersants in polymeric films intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 3B4350) has been filed by SCM Chemicals, c/o 1100 G St. NW., Washington, DC 20001. The petition proposes to amend the food additive regulations to provide for the safe use of phosphorylated tall oil fatty acids as pigment dispersants in polymeric films intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 13, 1993.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–3049 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N–0499]

Lyphomed, Division of Fujisawa USA, Inc.; Withdrawal of Approval of 10 Abbreviated New Drug Applications; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice of withdrawal of 10 Abbreviated New Drug Applications that appeared in the **Federal Register** of January 7, 1993 (58 FR 3027). The document was published with an incorrect date of signature. This document corrects that error.

SUPPLEMENTARY INFORMATION: In FR Doc. 93–242, appearing on page 3027, in the **Federal Register** of January 7, 1993, the following correction is made: On page 3028, in the first column, the date line that appears above the signature, which now reads "December 15, 1991." is corrected to read "December 15, 1992."

Dated: January 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–3047 Filed 2–8–93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92E–0427]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZEBETA®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZEBETA® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term

Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZEBETA® (bisoprolol fumarate). ZEBETA® is indicated in the management of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZEBETA® (U.S. Patent No. 4,258,062) from E. Merck GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated November 13, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZEBETA® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZEBETA® is 2,874 days. Of this time, 1,778 days occurred during the testing phase of the regulatory review period, while 1,096 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: September 19, 1984. The applicant claims September 16, 1984, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 19, 1984, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: August 1, 1989. The applicant claims July 28, 1989, as the date the new drug application (NDA) for ZEBETA® (NDA 19–982) was filed. However, FDA records indicate that NDA 19–982 was submitted on August 1, 1989.

3. *The date the application was approved*: July 31, 1992. FDA has verified the applicant's claim that NDA 19–982 was approved on July 31, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 9, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 21, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–3050 Filed 2–8–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 92E–0471]

Determination of Regulatory Review Period for Purposes of Patent Extension; Suprane™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Suprane™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Suprane™. Suprane™ (desflurane) is indicated as an inhalation agent for induction or maintenance of anesthesia for inpatient and outpatient surgery in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Suprane™ (U.S. Patent No. 4,762,856) from Anaquest, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated December 15, 1992, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Suprane™ represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Suprane™ is 1,369 days. Of this time, 771 days occurred during the testing phase of the regulatory review period, while 598 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: December 21, 1988. FDA has verified the applicant's claim that December 21, 1988, was the date the investigational new drug application became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: January 30, 1991. FDA has verified the applicant's claim that January 30, 1991, was the date the new drug application (NDA) for Suprane™ (NDA 20–118) was initially submitted.

3. *The date the application was approved*: September 18, 1992. FDA has verified the applicant's claim that NDA 20–118 was approved on September 18, 1992.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 406 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 12, 1993, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 8, 1993, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 21, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–3043 Filed 2–8–93; 8:45 am]

BILLING CODE 4160–01–F

Report of the FDA Task Force on International Harmonization; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled "Report of the FDA Task Force on International Harmonization." This report provides an overview of FDA's international activities and describes the importance of international harmonization efforts as they affect the safety, effectiveness, and quality of products regulated by FDA.

ADDRESSES: The "Report of the FDA Task Force on International Harmonization" may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB93–128155 and include payment of $52 for each copy of the document. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650.

FOR FURTHER INFORMATION CONTACT: Merton V. Smith, Office of Health Affairs (HFY–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4480.

SUPPLEMENTARY INFORMATION: In December 1991, the Commissioner of Food and Drugs formed the FDA Task Force on International Harmonization to assess the goals, scope, and direction of FDA's participation in international harmonization. Following an indepth study of FDA international activities, including the interviewing of many FDA constituency groups, the task force made eight recommendations for enhancing FDA's international programs.

This report provides an overview of FDA's current international harmonization efforts, describes the importance of assuring consistent scientifically based standards for food, drugs, human biologics, medical devices, and radiation emitting products, and it relates these efforts to the protection of public health. The report also documents the pressures, incentives, and broad public support for active FDA participation in international harmonization programs.

The report is available for purchase from NTIS (address above).

Dated: January 29, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–3041 Filed 2–8–93; 8:45 am]

BILLING CODE 4160–01–F

Public Health Service

Preventive Health Amendments of 1992; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority from the Secretary to the Assistant Secretary for Health on January 14, 1981 (46 FR 10016), the Assistant Secretary for Health has delegated to the Director, Centers for Disease Control and Prevention, with authority to redelegate, all the authorities pertaining to the National Foundation for the Centers for Disease Control and Prevention under part N, title III of the Public Health Service Act (42 U.S.C. 241 *et seq.*), as amended. This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon date of signature. In addition, I have affirmed and ratified any actions taken by the Director, Centers for Disease Control and Prevention or his subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: January 5, 1993.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 93-3060 Filed 2-8-93; 8:45 am]

BILLING CODE 4160-18-M

Title V of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of December 16, 1992, from the Secretary of Health and Human Services to the Assistant Secretary for Health, I have delegated to the Administrator, Substance Abuse and Mental Health Services Administration (SAMHSA), with the authority to redelegate, the authorities vested in the Secretary under Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended, as they pertain to the Substance Abuse and Mental Health Services Administration. This delegation excludes the authority to promulgate regulations, submit reports to the Congress or a congressional committee, establish advisory committees, and appoint members to advisory committees.

This delegation supersedes the August 7, 1985, delegation of authority from the Acting Assistant Secretary for Health to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration under title V of the Public Health Service Act, as Amended.

This delegation became effective upon the date of signature. In addition, I have affirmed and ratified any actions taken by the Administrator, SAMHSA, or subordinates which, in effect, involved the exercise of the authorities delegated herein prior to the effective date of the delegation.

Dated: February 1, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

[FR Doc. 93-3061 Filed 2-8-93; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496-7735; fax 301/402-0220). A signed Confidentiality Agreement will be required to receive copies of the patent applications. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

07/312,001	Genes for Human Chromosomal Protein HMG-14 and HMG-17.
07/418,283	Quick Color Test to Detect Lead Release from Glaze and Enamel Coatings (U.S. Patent No. 5,010,020).
07/530,980	Laminin A Chain Deduced Amino Acid Sequence, Expression Vectors and Active Synthetic Peptides.
07/546,449	Enhancement of Musculature in Animals [for treatment of muscle degenerative diseases] (see also 07/620,415).
07/582,080	Human Esophageal Epithelial Cell Lines.
07/584,758	Use of Arsenite to Reversibly Block Steroid Binding to Glucocorticoid Receptors in the Presence of Other Steroid Receptors.
07/616,250	Avidin and Streptavidin Modified Water-Soluble Polymers such as Polyacrylamide, and the Use Thereof in the Construction of Soluable Multivalent Macromolecular Conjugates [for coating tumor cells].
07/620,415	Enhancement of Musculature in Animals [in transgenic farm animals such as pigs] (see also 07/546,449).
07/645,356	New Plasmid Constructions for High Level Production of Eukaryotic Proteins.
07/675,105	Synthetic Oligonucleotide for Translational Control of Eukaryotic Genes.
07/698,233	Sensitive Method for Localizing Chromosomal Breakpoints [for Burkitt's Lymphoma].
07/709,794	Use of Bovine Adrenal Medullary Endothelial Cells as a Source of Connective Tissue Proteins.
07/715,850	Amino Acid Derivatized and Bromoacetyl Modified Peptides for the Preparation of Synthetic Peptide Polymers, Conjugated Peptides, and Cyclic Peptides.
07/742,077	CO2—Independent Growth Medium for Maintenance and Propagation of Cells.
07/743,072	Desk Top Spectrum Analyzer [for x-ray spectra].
07/751,892	Method for Discriminating and Identifying Alleles in Complexes Loci [for typing of tissue prior to transplantation].
07/752,899	Adeno-Associated Virus (AAV)—Based Eucaryotic Vectors.
07/759,568	Cloning of cDNA Encoding a Functional Human Interleukin-8 Receptor.
07/784,085	New Techniques for Producing Site-Directed Mutagenesis of Cloned DNA.
07/789,456	Polyacrylamide Gels with Improved Detection of Proteins.
07/798,918	Nucleotide and Amino Acid Sequence of Phemphigus Vulgaris Antigen and Methods of Use.
07/799,828	Twenty-Seven Highly Informative Microsatellite Repeat Polymorphic DNA Markers.
07/804,663	Method of Preparation of Template for DNA Sequencing.
07/815,749	Cytoplasmic Tail of CD3E.
07/815,882	Novel Monoclonal Antibody Against Human Platelets.
07/815,906	Novel [antibody/DNA] Conjugate and Method for Integration of Foreign DNA into Cells.
07/818,450	Sensitive Yeast System for Detection of Aneuploidy and Identification of Targets.
07/830,446	Mammalian HNRNP Complex A1 and Method for Large-Scale Overproduction in E. coli.
07/840,625	Immortalized Human Bronchial Epithelial Cell Line.
07/844,873	Cell Culture Medium for Human Liver Epithelial Cell Line.
07/847,298	Vectors for Ligation-Independent Cloning and Methods for Using Same.
07/849,344	Catalyst for Preparing Polyacrylamide Gel Which Improves the Detection of Biomaterials by Silver Staining.
07/858,747	Method to Eliminate Inhibitory/Instability Regions from mRNA.
07/860,233	Novel System for Isolating and Producing New Genes, Gene Products and DNA Sequences.
07/862,081	Method of Inducing Epidermal Papillomas in Transgenic Animals.
07/862,987	Control and/or Prevention of Binding of NFKAPPAB/REL/DORSAL (NRD) Family Proteins to DNA.
07/864,982	Cloning and Expression of Complementary DNAs for Multiple Members of the Human Cytochrome P450IIC Subfamily.
07/866,950	New Member of the Nuclear Hormone Receptor Superfamily and a cNDA Clone Thereof.

07/869,818	Immortalized Human Cell Lines Containing Exogenous Cytochrome P450 Genes.
07/869,912	Method for Identifying and Expressing Proteins that Recognize and Adhere to Specific Probes.
07/871,608	Efficient Method for Identifiable Expression of Nonselectable Genes.
07/876,289	Development of a Vector to Target Gene Expression to the Epidermis of Transgenic Animals.
07/877,519	Bystander Effect Tumoricidal Therapy.
07/879,165	Human Liver Epithelial Cell Line and Culture Media Therefor.
07/879,619	Organ of Corti cDNA Library and Products Therefrom.
07/886,204	Targeting Gene Expression to Living Tissue Using Jet Injection.
07/891,962	Modified Adeno-Associated Virus Vector Capable of Expression From a Novel Promoter.
07/897,391	Phosphonoalkyl Phenylalanine Compounds Suitably Protected for Use in Peptide Synthesis.
07/897,577	A Sensitive Yeast Genetic System for Identifying Agents Causing Double Stranded DNA Damage.
07/902,786	Efficient Directional Genetic Cloning System.
07/905,204	Feeder Cells for Monoclonal Antibody Production.
07/906,861	Method of Inhibiting Viral Replication.
07/908,814	Method for Estimating mRNA Content by Filter Hybridization to a Polythymidylate Probe.
07/914,284	A Chimeric Protein That Has a Human RHO Motif and Deoxyribonuclease Activity.
07/915,884	Type Alpha Platelet-Derived Growth Factor Receptor Gene.
07/920,013	Method for the Fluorescent Detection of a DNA Sequence in Real Time.
07/922,723	Five Highly Informative Microsatellite Repeat Polymorphic DNA Markers (see also 07/799,828).
07/929,204	A PCR Control Template for the Quantitation of Laminin mRNA.

Dated: January 25, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93-2993 Filed 2-8-93; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given to amend the meeting notice of the National Cancer Advisory Board and its Subcommittees which was published in the **Federal Register** (58 FR 5998) on January 25, 1993 to allow two additional subcommittee meetings.

The Clinical Investigation Task Force will meet at 6 p.m. on Sunday, February 7, 1993 at the Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD. The Subcommittee on Information and Cancer Control for the year 2000 will meet on February 8, 1993 from 12 p.m.-1 p.m. at the National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meetings will be open to the public. Attendance by the public will be limited to the space available.

Dated: February 1, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93-2992 Filed 2-8-93; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N-93-3573]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

Angela Antonelli, OMB Desk, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

Joan Campion, Rules Docket Clerk, Department of HUD, 451 7th Street, SW., Room 10276, Washington, DC 20410

FOR FURTHER INFORMATION CONTACT: Kay Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for expedited processing, an information collection package with respect to a Notice of Fund Availability (NOFA) for HUD's Grant Program for Lead-based Paint Hazard Reduction in Priority Housing. HUD is requesting a 10-day OMB review of this information collection.

The funds for this technical assistance were appropriated by the VA, HUD and IAA Act of 1993 (Public Law 102-389 approved October 6, 1992).

HUD intends to provide $93,000,000 under the NOFA to state and local governments in two categories. Category I provides $90,000,000 in grants to states and local governments for lead-based hazard reduction in priority housing, and Category II up to $3,000,000 for grants to states for assistance in implementing a state certification program, after state enabling legislation has been passed.

The NOFA describes: (1) The nature and scope of eligible activities; (2) the application process and the factors that HUD will use in evaluating all application; and (3) the selection and approval procedures for both Categories.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35);

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submission will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507, Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 14, 1993.

Ronald Morony,

Deputy Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Proposal: Notice of Funding Availability for 1993–HUD's Grant Program for Lead-Based Paint Hazard Reduction in Priority Housing.

Office: Office of Lead-Based Paint Abatement and Poisoning Prevention.

Description of the Need for the Information and Its Proposed Use: This information collection is required in connection with the issuance of a Notice of Fund Availability, which announces the availability of $93,000,000 for grants in two Categories: for lead-based paint hazard reduction in priority housing, and for implementing state certification programs.

Form Number: None.

Respondents: State and local governments.

Frequency of Submission: One time only.

Reporting Burden:

	Number of respondents	x	Frequency of Response	=	Hours per response	=	Burden hours
Application	Cat. I 100		1		80		8,000
Development	Cat. II 25		1		15		375

Total Estimated Burden Hours: 8,375.

Status: New.

Contract: Ellis G. Goldman, HUD (202) 755–1822, Angela Antonelli, OMB (202) 395–6880.

Supporting Statement for Information Collection

The items in the NOFA that impose information collection requirements are attached.

A. Justification

1. The HUD Appropriations Act, Public Law 102–389 directs the Department of Housing and Urban Development to conduct a grant program for state and local governments for lead-based paint hazard reduction in priority housing. The collection of information from applicants is necessary to determine the most capable grantee in a competitive grant process to be announced in a Notice of Fund Availability (NOFA).

2. The information provided by the applicants will be reviewed and evaluated against the ranking factors contained in the NOFA for possible funding. The applicants will be notified of their selection or rejection. The information is necessary so that the applicants can apply and compete for funding opportunities.

3. The Department has not considered the use of improved technology since there is no other way to obtain the information except directly from the resident groups.

4. There will be no duplication of information.

5. There is no similar information already available which could be used or modified for this purpose.

6. Not applicable.

7. The information will be collected on a one-time basis.

8. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.6.

9. There has been no outside consultation on this information collected.

10. No assurance of confidentiality is provided.

11. No sensitive questions are asked.

12. The Department estimates that there will not be any additional cost to the Federal Government. The applications will be reviewed in accordance with HUD's existing review requirements. Annual cost of the respondent is estimated to be minimal since the applications submission will be prepared by State and local government personnel already preparing or dealing with such information.

13. The Department estimated that the information requirements of the proposed NOFA will have the following reporting burdens.

	Number of respondents	x	Frequency of response	=	Hours per response	=	Burden hours
Application	Cat I 100		1		80		8,000
Development	Cat II 25		1		15		375
Total Reporting Burden							8,375

14. Not Applicable.

15. The Department does not plan to publish the information collected in this NOFA for statistical use.

Following are excerpts from an as-yet unpublished funding notice dealing with Lead-Based Paint Hazard Reduction in Priority Housing. The purpose of publishing these excerpts is to afford the public notice of the kinds of information collections that will be involved in the application process. Today's document is not a funding announcement.

Department of Housing and Urban Development

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

January 13, 1993.

[Docket No. ___FR ___]

Notification of Funding Availability for Lead-Based Paint Hazard Reduction in Priority Housing

* * * * *

1. Introduction

Agency: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

Action: Notice of funding availability.

Summary: This notice announces the availability of two categories of grant funding: Category I, for approximately $90,000,000, for a grant program for states and local governments to undertake lead-based paint hazard reduction in priority housing, and Category II for up to $3,000,000 in FY 1993 and $3,000,000 in FY 1994 (authorized, but subject to appropriations) for grants to states for assistance in implementing a state certification program, after state enabling legislation has been passed. Approximately 20–25 grants of $1 million–$6 million will be awarded under Category I; approximately 15 to

18 grants of up to $200,000 will be awarded under Category II in FY 1993, and a like number in FY 1994, subject to appropriations. The total grant sum requested by applicants in either category is intended to be the total for all years of the proposed project. There will be no incremental or year-by-year funding. This document includes information concerning the following:

1.1. The purpose of the NOFA, eligibility, available amounts, and selection criteria;

1.2. Application processing, including how to apply and how selections will be made; and

1.3. A checklist of steps and exhibits involved in the application process.

Appendices to the NOFA identify relevant regulations and guidelines referenced throughout the NOFA, define Administrative Costs, provide a sample diagram for showing applicant's sources and uses of the grant funds, provide a budget form, set forth requirements for a State Certification Program, list eligible HUD housing programs, and provide requirements for CHAS.

DATES: To be considered for funding for Category I, an original and two copies of the completed application must be received at the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), at the address listed below, no later than 3 p.m. (Eastern Time), on ______. The date for applications for Category II grants is 3 p.m. (Eastern Time) ______, at the same address. The application deadlines are firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after its deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems. Please see section 5 for Category I grants, and section 8 for Category II grants for further information on what constitutes proper submission of an application.

ADDRESSES: Application kits for this two-category NOFA may be obtained from the Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street, SW., Washington, DC 20410, or by phoning 1–800 RID LEAD (not a toll-free number). Completed applications should be submitted to this same address.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street, SW., Washington, DC 20410, telephone 1–800–RID LEAD (not a toll-free number); TDD numbers for the hearing-impaired are: (202) 708–9300 Not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number.

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3.2 **Background**

Lead is a powerful toxicant that attacks the central nervous system and is particularly damaging to the neurological development of young children. Pregnant women can transfer lead through the placenta to the fetus. Lead-based paint (LBP) is one of the major sources of lead in the environment. In addition to paint, lead may be found in dust, soil, drinking water, food, emissions from leaded gasoline combustion, and industrial emissions. Current human exposure to lead is found by testing blood for the presence of lead.

Based upon a national survey conducted in 1990, for HUD's Comprehensive and Workable Plan report, approximately 57 million privately owned and occupied housing units built before 1980 have some lead-based paint inside or outside the dwelling. The 57 million units represent just over half of the nation's existing housing stock. The 57 million units also represent 74 percent of the dwellings built before 1980. The percentages for dwellings having lead-based paint rise to 80 percent of dwellings built before 1960, and to 90 percent of those built before 1940. In addition, the older homes show a greater concentration of lead in the paint and more areas with lead-based paint.

An estimated 9.9 million of the 57 million units are occupied by families with children under the age of six, who are most at risk. Of these, about 3.8 million units have hazards requiring prompt attention, such as peeling lead-based paint, excessive amounts of lead dust, or both. Approximately half of these units are occupied by families with incomes lower than the national median.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act (LBPPPA) and certain amendments to the LBPPPA in 1987 and 1988. The recently enacted residential Lead-Based Paint Hazard Reduction Act of 1992 (P.L. 102–550) provided major new initiatives and more detailed requirements for this NOFA. (Also see Appendix A for a list identifying relevant Federal regulations and guidelines referred to in this NOFA.)

In April, 1989 HUD and the EPA executed a Memorandum of Understanding (MOU) on Lead-Based Paint. This MOU has become the basis for Federal interagency cooperation including a HUD-EPA Interagency Task Force on Lead-Based Paint.

In December, 1990, HUD submitted to Congress a Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing. The plan described the magnitude of the problem and set forth a comprehensive strategy for reducing this threat.

In 1990, HUD developed the first set of guidelines to be used nationally for abating lead paint in public housing (See Appendix A). They are now being used in the public housing modernization program. Updates to take account of new knowledge and new technology are now underway.

Working together on the Interagency Task Force, EPA with assistance from HUD and CDC, recently began operating a National Clearinghouse and Tollfree Hotline on lead poisoning, 1–800–LEADFYI.

Grant awards for the NOFA dated July 6, 1992 for this program were recently announced. Ten States and cities were selected for negotiation of grants totalling approximately $45 million dollars for lead-based paint testing and abatement.

3.3 *Allocation Amounts.*

Included in the Department's FY 1993 appropriations for assisted housing is $90,000,000 for Category I grants to States and units of general local government that have an approved Comprehensive Housing Affordability Strategy (CHAS) to evaluate and reduce lead-based paint hazards in "priority housing."

Because lead-based paint is a national problem, it is critical that these funds be used in a manner that maximizes the number of housing units in which lead-hazard reduction occurs, that stimulates cost-effective State and local approaches that can be replicated in as many settings as possible, and that disperses the grants as widely as possible across the nation. HUD expects to award 20 to 25 grants of $1 million to $6 million each.

3.4 *Eligibility.*

The Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X") specifies the following eligibility requirements for participation in Category I grants to evaluate and reduce lead-based paint hazards in priority housing:

3.4.1. *Eligible Applicants*—A State or unit of local government that has an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) is eligible to apply for a grant under Category I. In order to assure the widest geographical participation in this program, awardees, including subawardees under such awards that are units of local government and that are assigned the utilization of 30 percent or more of the total grant awards, under the fiscal year 1992 NOFA (issued July 6, 1992) funding round shall not be eligible to apply in this FY 1993 round, but shall be eligible for future rounds. That is; current and future awardees shall not be eligible to apply for the funding round immediately following any round in which they have received a Category I type of award, but after that skipped round, they will again become eligible for future rounds. States are eligible to apply for Category II grant awards, whether or not they have received a Category I award in any round.

3.4.2. *Capability*—Applicants shall demonstrate the capability to identify housing units with significant lead-based paint hazards, to oversee the safe and effective conduct of the hazard reduction, and to assure the future availability of hazard-reduced units to low- and moderate-income persons.

3.4.3. *Eligible Housing Units*—See Priority Housing, definition 2.17 and Appendix B for the enumeration of eligible HUD housing programs that may include priority housing units.

3.4.4. *Certified Performers*—Funds shall be available only for projects conducted by contractors and inspectors who are certified and workers who are trained through a federally or State-accredited program at least as protective as the Federal Certification Program standards outlined in Appendix E.

3.5 *Program Objectives and Requirements.*

3.5.1 *The purposes of this program include:*

3.5.1.1 to implement a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as widely and expeditiously as possible;

3.5.1.2 to encourage effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction;

3.5.1.3 to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards;

3.5.2 *Number of Category I grants to be awarded.* Approximately 20–25 grants, with a total grant sum of $1 million—$6 million each, will be awarded. The awards are intended to cover the total cost of the project over its multi-year life.

3.5.3 *Funding.* Grantees shall be reimbursed, in accordance with a schedule to be included with the applicant's proposal and approved by HUD. (See Section VII, Administrative Provisions, of this NOFA.)

3.5.4 *Limitations on the Use of Assistance.*

3.5.4.1 Category I grant funds are to be used to evaluate and reduce the hazards of lead-based paint in residential units constructed prior to 1978. However, if the jurisdiction has banned the sale or use of lead-based paint prior to 1978, the applicant jurisdiction may request the Department to designate an earlier date. These units must be "priority housing" as defined in this NOFA.

3.5.4.2 Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties located in the Coastal Barriers Resources System.

3.5.4.3 Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used for lead-based paint detection or hazard reduction activities on properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

3.5.4.3.1 The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding such hazards; and

3.5.4.3.2 Flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act. Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

3.5.4.4 The National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. (470) and the regulations at 36 CFR part 800 apply to the abatement activities that are to be undertaken pursuant to this NOFA. HUD is responsible for satisfying the obligations to make a historic preservation finding under section 106 of the NHPA and the regulations. Recipients are to assist HUD in making the required findings by providing information to support the determinatin. This information includes the address of the property, and either a complete description of the activities to be carried out or an indication that no external changes are proposed and the property is not listed on the National Register of Historic Places or eligible for inclusion on the National Register as required by section 106 of the NHPA. In the alternative, the recipients may provide evidence of consultation with the State Historic Preservation Officer (SHPO).

3.5.5 *Eligible Activities.* The following activities are eligible for support under the grant program:

3.5.5.1 *Direct Project Elements* (whether activities of the Grantee, or subgrantees or other sub-recipients):

3.5.5.1.1. Inspection and testing of housing constructed prior to 1978 to determine the presence of lead-based paint or lead dust through the use of portable X-ray fluorescence analyzers or approved laboratory analyses and through wipe testing.

3.5.5.1.2. Abatement of lead-based paint hazards by means of removal, enclosure, encapsulation, or replacement methods.

3.5.5.1.3. Less-than-full-abatement techniques for programs that apply a differentiated set of resources to each unit, dependent upon conditions of the unit and the extent of hazards.

3.5.5.1.4. Temporary relocation of families and individuals during the period in which hazard reduction is conducted and until the time the affected unit receives clearance for reoccupancy.

3.5.5.1.5. Blood testing of children under the age of six residing in units undergoing inspection or hazard reduction.

3.5.5.1.6. Blood testing and air sampling to protect the health of the hazard-reduction workers, supervisors, and contractors.

3.5.5.1.7. Other housing rehabilitation activities under this program that are specifically required to carry out effective abatement and without which the abatement could not be effected. Grant funds from this program may also be used for reducing lead-based paint hazard-reduction component in conjunction with other housing rehabilitation programs.

3.5.5.1.8. Pre- and post-hazard reduction wipe testing.

3.5.5.1.9. Engineering and architectural costs that are necessary to, and in direct support of, abatement.

3.5.5.1.10. Interim control of lead-based paint hazards in priority housing.

3.5.5.1.11. Establishment of a community education program on lead hazards.

3.5.5.1.12. Liability insurance for lead-hazard reduction activities.

3.5.5.1.13. Data collection, analysis, evaluation, and preparation of a case study at the conclusion of grant activities. This direct project activity includes compiling and delivering such data as may be required by HUD's independent evaluation and research program. For estimating purposes, applicant shall devote 5 percent of the total grant sum for this purpose. Note that this function is *not* part of the 10 percent limit for administrative costs.

3.5.5.2 *Support Elements:*

3.5.5.2.1 Administrative costs of the grantee (maximum of 10%; (see Appendix B for definition.)

3.5.5.2.2 Program planning and management cost of subgrantees and other subrecipients.

3.5.5.2.3 For Local Governments only:

3.5.5.2.3.1 Contributions to the state for the establishment of State data-collection mechanisms to collect and publish data on the extent of all public and private lead-hazard reduction activities in the State, including numbers and dollar volume of activities and number and kinds of certified performers.

3.5.5.2.3.2 Contributions to the State for the establishment of State funding mechanisms to assist testing and abatement efforts, with particular emphasis on assistance to priority housing.

3.5.5.2.3.3 Contributions to the State and/or county for the State and/or County Government to design and develop standard land-record mechanisms to be used by county government to record permanently, property-by-property, the completion and approval of lead-hazard testing and reduction activities, so that future occupants or purchasers may have certain knowledge of the lead-hazard condition of the property. The land-record mechanism should include an identification of the lead-hazard reduction method; permanent abatement, partial abatement, or interim control, and should trigger a notice to housing inspection officials upon the occurance of the expected expiration of the effectiveness of a less-than-permanent abatement method.

3.5.5.2.4 To State government only: The three supplemental activities immediately above may be undertaken as eligible direct project activities.

3.5.6. *Ineligible Activities.*

3.5.6.1. Capital Equipment. Grant funds shall not be used to purchase capital equipment, except for X-ray fluorescence analyzers, (XRF) when it can be demonstrated there are no analyzers available locally. If purchased, the XRF's shall remain the property of the grantee at the conclusion of the project. Funds can be used, however, to rent equipment specifically for the abatement project. If leased equipment, other than XRFs, becomes the property of the grantee as the result of a lease arrangement, the leased equipment becomes the property of the Federal government at the end of the grant period. However, that form of lease arrangement should be avoided whenever a less expensive straight-lease arrangement is possible.

3.5.6.2. Medical Treatment. Grant funds cannot be used for chelation or other medical treatment costs. Funds used to cover these costs may be counted as part of the required local matching contribution, but must be obtained from other sources.

3.5.7. *Project Design Standards and Requirements.*

Grantees will be afforded considerable latitude in designing and implementing the methods of lead-based paint hazard reduction to be employed in their jurisdictions. HUD is interested in promoting innovative and creative approaches that result in the reduction of this health threat for the maximum number of low- and moderate-income residents, and that demonstrate replicable techniques that are better, faster, less expensive, or more effective than current practices. Flexibility will be allowed within the parameters established below. It is critical that procedures for all phases of testing and abatement be clearly established in writing in the planning stage and thereafter adhered to by all applicants, recipients, and their contractors. It is only in this manner that research and evaluation of the safety and cost-effectiveness of the methods employed can be undertaken.

Proposed methods requiring a variance from the standards or procedures cited below will be considered on their merits in a separate HUD review and approval process after the grant award is made, and a specific justification has been presented. If a grant application is dependent on a variation from the procedures cited below, but otherwise is of award quality, it will be made as a conditional grant, subject to approval of the request for variation. When such a request is made, either in the application or during the planning phase, HUD intends to consult with experts from both the public and private sector as part of its final determination. This is especially true with regard to any proposed modifications that may have the potential adversely to affect the health of residents or workers.

Grantees will be required to collect the data necessary to document the various methods employed in order to determine the relative cost and effectiveness of these methods in reducing lead-based paint hazards. Pre- and post-abatement environmental sampling and blood testing of children under the age of six shall be a major determinant of effectiveness.

In developing the application cost proposal, applicants shall include costs for the following testing cycle for each dwelling that will undergo lead-based paint detection and hazard reduction.

XRF (or AAS) testing—pretest every room or area in each dwelling unit planned for hazard abatement;

Blood testing—(a) pretest each occupant child under six years;

(b) post-test each occupant child under six years;

Dust testing—(a) pretest every room or area in each unit;

(b) clearance testing prior to occupancy in every unit;

(c) 6 month post-test;

(d) 12 month post-test.

All testing and sampling for testing shall conform to the HUD Interim Guidelines. Note that it is particularly important to provide this full cycle of testing for less-than-full-abatement hazard reduction, even though the testing itself may become a substantial part of the cost per unit. It will be from this testing that we will be able to establish standards and expectations for the effective period of lead-safe conditions before the potential recurrence of any active lead hazard.

The following guidance is provided to applicants:

3.5.7.1. *Required Thresholds for Hazard Reduction.* While the Department's Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing (see Appendix A) employ two hazard-reduction thresholds, one milligram per square centimeter (1.0 mg/cm^2) or 0.5 percent by weight, applicants may utilize other thresholds, provided that the alternative threshold, with adequate justification, is accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and discuss cost savings and benefits expected to result from using the proposed approach.

3.5.7.2 *Surfaces to be abated.* HUD's Interim Guidelines currently require the abatement of all interior and exterior surfaces having a lead content above the permitted threshold. However, in accordance with the new guidance from Title X, the applicant may choose to abate fewer surfaces or apply any other partial-abatement or hazard-reduction techniques, provided that an adequate rationale is presented and accepted by HUD. The rationale must state why the applicant believes the proposed approach will support the new Title X concept by providing satisfactory health protection for occupants and at the same time providing cost savings or other benefits from the proposed approach.

3.5.7.3 *Clean-up.* The applicant may employ post-abatement clean-up procedures that differ from the procedures in the HUD Interim Guidelines, provided that an adequate justification is established and accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and discuss cost savings and benefits expected to result from using the proposed approach.

3.5.7.4 *Waste disposal.* The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*) (RCRA), administered by the Environmental Protection Agency (EPA), shall govern all waste disposal resulting from abatement.

3.5.7.5 *Worker Protection.* The applicant shall observe the procedures for worker protection established in Chapter Eight of the Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, published by HUD and revised, May 1991. (See Appendix A.) Should OSHA publish more stringent requirements prior to the start of actual abatement work at any individual project site, those standards shall govern.

3.5.7.6 *Uniform Relocation Act.*

3.5.7.5.1 The applicant shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). These policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

3.5.7.5.2 No displacement (a permanent, involuntary move) is anticipated. However, to preclude avoidable claims for relocation assistance, all occupants (owner and tenants) shall, as soon as feasible, be notified in writing that they will not be displaced by the lead-based paint abatement program.

3.5.7.5.3 Residential occupants who will not be required to move permanently may be required to relocate temporarily to permit the lead-based paint abatement program to be carried out. All conditions of the temporary relocation must be reasonable. At a minimum, the tenant shall be provided:

3.5.7.5.3.1 Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at that housing; and

3.5.7.5.3.2 Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; and the reimbursement provisions of subparagraph 3.5.7.5.3.1 of this paragraph.

3.5.7.5.4. The policy regarding temporary relocation costs for owner-occupants who elect to participate in abatement is a matter of grantee discretion. But in any event, such owner-occupants may not occupy their dwellings during lead-hazard reduction activities.

3.5.7.7. *Post-abatement clearance.* Grantees shall be required to meet the post-abatement wipe-test clearance thresholds contained in the HUD Interim Guidelines (see Appendix A). Wipe tests shall be conducted by an independent certified inspector and results verified by an accredited laboratory. Rental units shall not be reoccupied until acceptable clearance levels are achieved. Owner-occupants shall not reoccupy their dwellings until acceptable clearance levels are achieved.

3.5.7.8. *Prohibited Abatement Methods.* Abatement methods that will not be allowed are: open-flame burning, dry scraping, uncontrolled abrasive blasting, or machine sanding without HEPA attachments. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, and suitable clean-up.

3.6 *Environmental Review.*

Because it is likely for many applicants that at the time of application submission, only neighborhoods or other locators of the housing to be abated will be known, rather than specific properties, the Department has determined that it will perform an environmental review in accordance with 24 CFR part 50 at the time each property is proposed for abatement under the grant, rather than before HUD approval of the grant.

HUD's environmental review will be limited to satisfying its obligation to make an historic preservation finding under section 106 of the National Historic Preservation Act and the implementing regulations. HUD has determined that lead-based paint abatement falls within a categorical exclusion (see 24 CFR 50.20(c)) from review under the National Environmental Policy Act and is not subject to the remaining authorities listed in 24 CFR 50.4, with the exception of the funding limitations under the Coastal Barrier Resources Act and the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The applicant is responsible for compliance with these funding limitations and flood insurance purchase requirements, as discussed in section 3.5.4. "Limitations on the Use of Assistance," of this NOFA.

3.7. *Rating Factors.*

HUD will use the following technical and financial criteria to rate and rank applications received in response to this NOFA. The technical criteria and financial criteria will be rated separately. When the technical quality of an application has been rated, the strength, quality, and completeness of its financial and resources plan will be used to assess how well the technical plan is likely to be carried out, viewed against the resources available for implementation. The composite scores of technical and financial strengths will then be used to provide an overall rating for the application.

3.7.1 *Technical quality Rating Factors*

The total number of points for the technical quality rating factors is 100 points.

3.7.1.1 *Strategy. (40 points)*—The quality of the proposed lead-based paint hazard reduction strategy. Strategies that promote new or innovative, cost-effective methods will be awarded a higher number of quality rating points than those of otherwise equal quality that propose only conventional testing and hazard-reduction techniques. The strategy should include:

3.7.1.1.1 The hazard-reduction program, including selection of subgrantees and other subrecipients, abatement/hazard reduction methods, financing, community education, temporary relocation, and the degree to which the strategy focuses on households in "priority housing" with children under the age of 6 (13 points);

3.7.1.1.2 The identification of priority housing to be inspected, tested, and treated. Housing recently inspected (within 12 months of grant) and identified as having lead-based paint prior to the date of the grant may be included (10 points);

3.7.1.1.3 A rationale as to why the testing and hazard-reduction methods proposed for the housing units selected in this project are more cost-effective when compared with other available methods (relate treatment to level of hazard) (10 points);

3.7.1.1.4 A program for blood screening of young children and, if necessary, referral for medical treatment (7 points);

3.7.1.2 *Applicant capacity and Commitment to Hazard Reduction. (40 points)*—The capacity of the applicant to initiate and carry out the lead-based paint testing and hazard-reduction program successfully within the time frames set forth in Table 1. "PROGRAM DEADLINES". Elements to be considered include:

3.7.1.2.1 Demonstrated knowledge and experience of the proposed project manager in planning and managing large and complex interdisciplinary programs involving housing rehabilitation, public health, and environmental management. The percentage of time of the project Manager to be devoted to this project is a significant factor, and must be disclosed in the application. (15 points);

3.7.1.2.2 Demonstrated knowledge and experience of the staff assigned to this project in carrying out these undertakings, including the percentage of time each person will devote to the project (15 points).

3.7.1.2.3 Institutional Capacity—experience and continuing capacity of jurisdiction to initiate and implement similar environmental and housing projects. Applicant should describe previous related efforts and current agency(s) capacity (10 points).

Table 1.—CATEGORY I GRANTS; PROGRAM DEADLINES

State cert. status	Allowed time				
	Legislation enacted	Grace period	Planning period	Conduct testing and abatement	Total time for program
A. Existing legislation	n/a	n/a	6 mo	18 mo	24 mo.
B. Enact legislation	12 mo	n/a	6 mo	18 mo	36 mo.
C. Fail to enact legislation	12 mo	6 mo	6 mo	18 mo	42 mo.
D. Enact but fail to implement	12 mo	6 mo	6 mo	18 mo	42 mo.

3.7.1.3 *Extent of Applicant's matching Contribution (10 points)*

At a minimum, the applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. That contribution may be in cash or in kind. In-kind contributions shall be given a monetary value. Federal funds may be considered part of the matching contribution, but only when they are specifically dedicated to an integral part of this project. This rating factor provides points only for the *net* matching funds that *exceed* the minimum required amount. Each source of contributions, both for the required minimum and supplemental amount, shall be made in a letter of commitment from the funding entity, whether a public or private source, and shall describe the contributed resources that will be used in the program. Absence of required letters offering specific details will result in a reduced rating.

3.7.1.4. *Community and Private Sector Participation (10 points)*

The extent to which the applicant has enlisted the broad participation of neighborhood, community, and non-governmental organizations, the private sector, and other governmental units, through consultation, employment, or other activities, as evidenced by the names and proposed roles of such participants and letters of commitment. Absence of required letters under this rating will result in a reduced rating.

3.7.2 *Financial and other Resources (0.1 to 1.0 multiples).*

3.7.2.1. This rating factor does not carry a separate rating score. Instead, this factor is applied as a multiplier for each of the technical sub-ratings, yielding a composite rating that measures the technical quality of the proposal and a judgment about whether resources available to carry out the technical proposal are sufficient, but not excessive.

3.7.2.2. This rating factor will be used to rate the applicant's proposed allocation of financial, staffing, and other resources for the total project and for each of the major subtasks of the project. It will examine whether the allocations are balanced and reasonable for the proposed purposes. These shall be sufficient in detail to explain and justify the proposed sub-tasks as well as the overall project. The budget and staffing allocations shall cover all years of the project. This program will not use year-by-year or incremental awards. Applicant's apportionment of grant funds and other resources shall be consistent with and support the strategy rated under 3.7.1.1 above.

3.7.2.3. There will be separate multiplier factors for each technical quality rating factor. The highest multiplier will be 1.0, preserving the full technical quality rating in the composite rating. Lower multipliers will serve to reduce the technical quality rating in the composite score.

3.7.2.4. For example, under technical rating factor 3.7.1.2.1. (experience of the proposed project manager), the proposed manager may possess outstanding technical and managerial skills. The quality of the person may merit the full 20 points available. But an examination of the budget and staffing plan may show that the person is only available 15 percent of the time. The financial multiplier may then be only 0.2 or 0.3, depending on the quality of the full-time deputy manager, and the composite score would then be 4 or 6 points (20 technical points × 0.2 or 0.3 multipliers).

3.7.2.5. For another example, under technical rating factor 3.7.1.3 (matching contributions) the proposal may show expected matching funds to be 70 or 80 percent of the total grant sum sought, well above the minimum 10 per cent matching requirement. That matching pledge may carry a technical rating of the full 10 points. However, an examination of the letters of commitment may reveal that more than half of the excess matching funds are dependent on private, voluntary, fund-raising drives not yet undertaken. And the financial plan may show that only half the pledge amounts are expected to be available by the time needed. The financial multiplier might then be 0.5 yielding a composite score of 5 (10 technical points × 0.5).

4. Category I Grants: Application Process

4.1 *Submitting Applications For Category I Grants.*

The applicant shall submit its technical proposal and its financial proposal (management and budget plan) in separable sections, so they maybe reviewed independently.

To be considered for funding under a Category I Grant, an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3:00 p.m. (Eastern Time) on Electronic (FAX or equivalent transmittal) application is *NOT* an acceptable transmittal mode.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this factor into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, equipment breakdown, or delivery-related problems.

HUD will review each Category I application to determine whether it meets all of the threshold criteria established under section 4.2 of this NOFA. Non-responsive applications will be declared ineligible for further consideration. Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors in section 3.7 of this NOFA.

HUD intends to fund the highest ranked applications with the limits of funding availability, but reserves the right to advance other eligible applicants in funding rank if necessary to assure geographic diversity, broaden the range of hazard-reduction alternatives to be tested, or enhance data reliability.

4.2 *Application Threshold Requirements for Category I Grants.*

4.2.1 *Purpose.* The application must be for funds to evaluate and reduce lead hazards in Priority Housing. (See Appendix D for program-by-program listing of eligible and noneligible HUD-associated housing programs.)

4.2.2 *Eligible Applicants.* A State or unit of local government that has an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705) that includes a lead-hazard reduction element. (Instructions for preparing a lead-hazard reduction element will be found in appendix G). A certification that the CHAS has been filed, and a copy of the lead-hazard reduction element shall be required threshold submissions in the application. Applicants shall file duplicate copies of the lead-hazard-reduction element to their CHAS with the HUD Office of Affordable Housing Programs, Office of Community Planning and Development (CPD), simultaneously with the application to this NOFA.

The Department recognizes that applicants will have filed their FY 1993 CHAS (due: 10/1/93 to 12/31/93) before the publication of this NOFA, and that the requirement for the preparation and filing of the new lead-hazard reduction element to their CHAS (under the newly enacted "Title X") will be out of order with regular CHAS filing procedures. Nevertheless, the applicant must prepare the new element for inclusion in this NOFA to meet the Title X threshold requirement. The applicant must simultaneously fill a copy with the HUD Office of Affordable Housing Programs, CPD, which has the responsibility for CHAS requirements.

4.2.3 *Financial responsibility.* For purposes of this program, HUD has determined that all eligible governmental entities are deemed to meet the requirements for accounting and financial responsibility. The applicant shall be responsible for the performance of all consortium members, partners, contractors, joint venture participants, subgrantees, and other subrecipients.

4.2.4 *Commitment to focus on identification of significant hazard housing.* The applicant must demonstrate a commitment to focus its efforts on the identification of housing units with significant lead-based paint hazards, particularly among dwellings for lower income families, so as to concentrate its resources on the greatest needs first.

4.2.5 *Safe and effective conduct of the abatement.* The applicant must demonstrate willingness and readiness to oversee the safe and effective conduct of the hazard-reduction work, as provided in the application kit.

4.2.6 *Contractor certification program requirement.* Each applicant must carry out its hazard reduction program under an operational State-accredited or Federal certification/training program that is at least as protective as the Federal Certification Program standards outlined in Appendix E. It is suggested that any state applicant or the state government of any local-government applicant should examine the support and will be available under Category II grants (see section 8. and appendix E of this NOFA).

4.2.6.1 To receive a grant, applicants must use contractors certified and workers trained within a State that currently has a lead-based paint certification/training program. If the State in which the applicant is located has such a program, furnish copies of the enabling statues and regulations, as well as other appropriate documentation (e.g., certificates and licenses), as proof thereof.

4.2.6.2 Other applicants may be approved for a grant with the following provisions:

4.2.6.2.1 An applicant shall furnish at the time of application, letters of intent to establish and implement a certification program. The enabling legislation shall be enacted within 12 months of the Category I application date, and the designated agency implementing the program shall have complete initial training sessions within 18 months from the date of the Category I application date. Letters of intent shall be from the Governor of the State and an authorized representative of the legislative body in the State. The letters shall set forth their plans to make a good faith effort to enact, within 12 months of the Category I application date, enabling legislation that would establish or designate an appropriate department of office, to put an operating staff in place, and to promulgate appropriate regulations and complete the initial training sessions within 18 months of the Category I application date. These letters of intent shall be carried over to the grant agreement and become part of the grantee's assurance under it. (Note that the 12 month and 18 month implementation periods for this NOFA have a start date that is relatively earlier than for the previous NOFA funding round. The shorter compliance period conforms to Title X, which sets an April 28, 1994 deadline for publication of Federal certification program requirements.)

4.2.6.2.2 There may be local government applicants in States that have furnished letters of intent and have made a good faith effort to carry out that intent, but whose State governments have been unable to comply with the 12 month or 18 month time table. Such local governments may, with HUD approval, have the option of using workers and contractors certified or licensed under accredited programs of other States. After the occurrence of such an event, the local government applicant shall have an additional 6 months to arrange for the use of such workers contractors and to commence the actual on-site testing and abatement activities.

4.2.6.2.3 Except as provided in subparagraph 4.2.6.2.2. of this paragraph, if the commitment to establish a certification/training program is not fulfilled within the stated time, the conditional grant agreement shall immediately terminate.

4.2.7 *Continued Availability of Hazard Reduced Housing to Lower Income Families.* Units in which lead hazards have been treated under this program shall be occupied by and continue to be available to low- and moderate-income residents as defined under Section 215 of the Cranston-Gonzalez National Affordable Housing Act, (see Definition 2.17. "Priority Housing.")

4.2.8 *Cooperation With Related Research and Evaluation.* Applicants shall cooperate fully with any research or evaluation sponsored by HUD and associated with this grant program, including preservation of the data and records of the project and compiling requested information in formats provided by the researchers or evaluators. Such cooperation may also include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in applicant's original proposal. Participant data shall be subject to Privacy Act protections. (See eligible activity 3.5.5.1.13 for information on how to budget for this function.)

V. Category I Grants: Application Checklist

5.1 *Applicant Data.*

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

5.1.1. The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, partners, major subcontractors, or joint venture participants contributing resources to the project, similar information shall also be provided for each of them.

5.1.2. Proof of State accreditation requirements for lead-based paint certification/training programs applicable to the contractors, inspectors, and workers that will be sued by the applicant, or letters of intent from both the Governor and an authorized representative of the legislative body stating that a good faith effort will be made to have a certification/training program authorized within 12 months, and operational within 18 months, of the Category I Grant application date (see Section 4.2.6. of this NOFA regarding this requirement).

5.1.3. Evidence of the applicant's commitment to eliminating or reducing significant lead-based paint hazards in housing as detailed in the strategy.

5.1.4. A detailed description of the funding mechanism, selection process, and other proposed activities grantee plans to use to assist the direct performers of hazard reduction activities under this grant.

5.1.5. A management and task budget plan that includes a summary diagram showing the source and use of all Grant Funds. (No form is provided because each application is unique. The plan shall detail the proposed costs and schedules for starting and completing each task or major subset of project activities. There shall be a HUD budget form HUD-442 (Appendix D) filed for each major subset of project activities that is funded by the grant. The HUD-442 budget spreadsheet shall show a column for each year and a total column for all years. *All* major subsets should be estimated even though not precisely known. There shall be a separate subset estimate for the overall grant management element, "Administrative Costs." The budget shall include not more than 10 percent for administrative costs and not less than 90 percent for direct project activities. The activity "data collection" shall be among the major subsets of activities for which a HUD-442 is required. Allow approximately 5 percent of the total grant sum requested for the project as an estimate for the data collection task. In addition to the HUD-442 for the major activities, there shall be a summary HUD-442 derived from the sum of the individual activity HUD-442s, and totaling, year-by-year and total of all years, to the overall grant sum requested. Estimates are not required for activities fully funded by local matching funds, but they should show as lump amounts in the Source and Use diagram.

5.1.6. An applicant shall submit its technical proposal and its financial proposal (management and budget plan) in separable sections, so they may be reviewed independently.

5.1.7. Evidence of a continuing capacity of the applicant to undertake a lead-based paint testing and abatement program safely and effectively.

5.1.8. Information itemizing what constitutes the applicant's matching contribution, including values placed on donated in-kind services and letters or other evidence of commitment from donors, and the amounts and sources of coordinated resources.

5.1.9 Information on the names and proposed roles of local participating community- or neighborhood-based groups or organizations, including local businesses.

5.1.10. A completed Form HUD-2880, Applicant/Recipient Disclosure/Update Report, where applicable (see Section 9.4.2. of this NOFA).

5.1.11. Certification and Assurances

4.1.12. A copy of applicant's lead-hazard reduction element for its Comprehensive Housing Affordability Strategy (CHAS).

5.2 *Proposed Activities.*

5.2.1. *Affected population to be served.* The applicant shall describe the size and general characteristics of the pre-1978 housing stock—"target housing"—within its jurisdiction, including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of six in these units. Vacant housing that will be occupied by low-income renters should be included in this description. Maps should be included. (First preference shall be given to "priority housing" units, constructed before 1978 that are occupied by children under the age of six and that have deteriorating lead-based paint or excessive levels of lead dust.)

In addition, as a measure of its ongoing commitment to lead-based paint programs, the applicant shall provide information on the number of children diagnosed as being lead poisoned within the previous five years and the remedial measures that were taken to respond to these diagnoses.

5.2.2. *Discussion of Lead-Based Paint activities.* The applicant shall provide a reasoned discussion of the proposed hazard reduction activities, including, but not limited to, information on the following:

5.2.2.1. Overall hazard reduction strategy, including priority setting;

5.2.2.2. Specific neighborhoods, census tracts or other locators of the housing units targeted for abatement (area and local maps shall be included);

5.2.2.3. Inspection and testing of all Lead-Based Paint a hazard housing to be treated as part of this project;

5.2.2.4. Blood testing of children under the age of six, and medical referral for children found to have elevated blood-lead levels;

5.2.2.5. Hazard-reduction methods, including interim controls, in-place-management, less than full abatement, and full abatement. Include lead-based paint hazard reductions in housing undergoing renovation funded by other sources, but included as part of this project.

5.2.2.6. Community education;

5.2.2.7. Relocation;

5.2.2.8. Coordination and integration with public health and housing programs to effect lead-based paint hazard reduction;

5.2.2.9. Data collection, documentation, and evaluation;

5.2.2.10. Mechanisms that the applicant proposes to employ to provide financial assistance to low- and moderate-income owners and low-income renters under this grant program for abatement. The applicant may provide the services through a variety of programs, including grants, equity, loans, investment, or seed money for non-profit performers revolving loan funds, loan funds, loan guarantees, interest write-downs, or other forms of assistance that may be approved by the Department. Program income from loan repayments may be used only for hazard-reduction -related activities; and

5.2.2.11. Management and staffing of the project, including extent of time commitments and areas of specialization and expertise.

5.3. *Certifications and Assurances.*

5.3.1. The application shall contain an assurance that the applicant will comply with the environmental laws and authorities at 24 CFR 50.4, and that it will:

5.3.1.1. Supply information necessary for HUD to perform any required environmental review of each property;

5.3.1.2. Carry out mitigating measures required by HUD or select alternate eligible property; and

5.3.1.3. Not commit to or carry out any program activities for any property until HUD approval is received.

5.3.2. The application shall contain a certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; implementing regulations at 49 CFR part 24; and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

5.3.3. The application shall be in compliance with Federal civil rights laws and requirements.

5.3.4. The application shall contain assurances that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19), Executive Order 11063, and Title VI of the Civil Rights Act of 1964, pertaining to equal opportunity and nondiscrimination in housing, and to all regulations issued in accordance with these authorities.

5.3.5. The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities.

5.3.6. The applicant shall assure that it will conduct dust-wipe testing in all units in which lead-hazard reduction occurs both prior to and immediately after the hazard-reduction treatment, and that the applicant will conduct dust-wipe testing at 6 and 12 months after abatement.

5.3.7. The applicant shall assure that it will test and record the blood-lead level of all children under the age of six occupying affected units prior to abatement. The applicant shall also assure that it will test and record blood-lead levels of affected children at six months and at one year after abatement is completed. Abatement of a unit shall not commence until blood-lead tests have been administered to children under the age of six occupying the unit. Children determined to have elevated blood-lead levels, using the Center for Disease Control October 1991 Guidelines (see Appendix A to this NOFA), shall be provided appropriate medical treatment as set forth by the Centers for Disease Control. If there is an existing, funded program, the costs of blood testing and medical follow-up are eligible for inclusion in the computation of the local matching contribution.

5.3.8. The applicant shall assure that it will cooperate with any federally sponsored or endorsed monitoring or evaluation efforts carried out in conjunction with the grantee's lead-based paint activities under this program. This includes providing documentation in the formats requested of the practices and costs of all testing, inspection, and hazard-reduction work, as well as comparative costs and cost-effectiveness where a claim for an innovative or improved method has be made. This may also include compiling certain relevant local demographic, dwelling unit, and participant data that may not have been contemplated in applicant's project activities, in order to meet HUD's research and evaluation needs. Participant data shall be subject to Privacy Act protection.

5.3.9. The applicant shall assure that this application represents an expansion of the delivery of testing and abatement services *and does not replace existing resources* dedicated to any ongoing project.

5.3.10. The application shall contain any other assurances that HUD has included under this NOFA.

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7.4. *Reports.* The applicant shall submit to the Secretary a report for any fiscal year in which the applicant expends grant funds. The reports shall be due 6 weeks after the end of the Federal Fiscal Year (September 30). The report shall:

7.4.1. describe the use of the amounts received;

7.4.2. state the number of risk assessments and the number of inspections conducted in residential dwellings;

7.4.3. state the number of residential dwellings in which lead-based paint hazards have been abated by method of abatement;

7.4.4. state the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls; and

7.4.5. provide any other information that the Secretary determines to be appropriate.

8. *Category II Grants: Purpose and Substantive Description*

(Category II grants are restricted to State applicants seeking assistance in establishing and implementing a State Certification Program. State applicants may apply under either Category I or II, or both. State applicants may apply, even though they were selected for awards in the FY 1992 round of awards for Category I type grants. That is, the "skip-a-year" between awards requirement for Category I does not apply to Category II.)

8.1. *Definition and Authority*

Category II grants are to assist applicant State governments (and the Virgin Islands, Puerto Rico, and the District of Columbia) in establishing and implementing State Certification Programs, once they have enacted enabling legislation acceptable to HUD and consistent with the currently identified elements of the Environmental Protection Agency's (EPA) Model State Plan, as listed in appendix E, and as being developed under section 402 & 404 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. (See appendix E for an extended discussion of program elements). Up to $3,000,000 will be available in FY 1993, and $3,000,000 is authorized for FY 1994, subject to appropriations. Approximately 15 to 18 grants, not to exceed $200,000 each are expected to be awarded in FY 1993, and a like number in FY 1994, subject to appropriations.

Category II grants are authorized under Section 1011, Subsection (g), of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Public Law 102–550, (also known as "Title X"), signed into law October 28, 1992.

8.2. *Background.*

To assure safe and effective performance of the work, Congress has required that performance of lead-hazard testing and lead-hazard reduction activities under this grant program shall be performed by certified contractors, supervisors, workers, and inspectors (see the FY 1992 and the FY 1993 HUD Appropriation Acts and section 1014 of Title X). Section 402, of subtitle B, of title X sets April 28, 1994 as the deadline for the promulgation of a Model State Program which contains certification and accreditation standards.

Appendix E entitled "Elements of a State Certification Program" provides a description of the currently identified minimum basic elements which should be included in legislation. Nevertheless, HUD advises States that are establishing or revising such programs that EPA is actively developing regulations that will define in detail the requirements for an acceptable state program. States must realize that EPA may add additional basic legislative requirements to the final Model State Program. In addition, EPA's regulations will contain detailed requirements for Certification/Accreditation Training, as well as work practice standards for conducting lead-based paint activities as mandated by title X. For background, see section 402 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Title X"), Public Law 102–550, signed into law October 28, 1992. Note that section 404(d) of title X sets April 28, 1994 as the deadline for publication by EPA of a model State Certification Program, and that section 402(a)(1) of title X sets the same date for promulgation of final regulations on certification, and under section 1012(n) of title X, two years after promulgation of final regulations any funding available through title X (including these grants) is cut off if there is no EPA approved state certification program.

HUD urges these States to watch for EPA's initial guidance on this subject, planned for mid-1993 publication. HUD funding of lead-based paint hazard reduction activities beyond this current round for Category I grants, will be conditioned on State conformance to EPA regulations concerning certification, rather than the outline in appendix E.

Because the technology and research findings in the lead-hazard field are evolving so swiftly, and because both HUD and EPA seek to aid States achieve an acceptable program without time-consuming reworking of legislation, HUD and EPA urge States to draft enabling legislation that avoids detailed standard setting or other overly prescriptive provisions, and that permits such detailed requirements to be developed and promulgated at the regulatory level, with suitable legislative oversight.

For further information on this subject, including technical assistance, interested states may contact EPA's Chemical Management Division, Attention Ms. Gina Bushong, at (202) 260–3790 or HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention, Attention Ellis Goldman at (202) 755–1822.

State certification programs that are at least as protective as the Federal requirements established in EPA's regulations will continue to be accepted after April 28, 1994. By 1996, in the absence of an EPA approved State program, lead-based paint related Federal funding, such as this grant program, will be terminated until an EPA approved certification program can be implemented in such States. Category II grants are intended to help States achieve that safe-performance goal, and to help avoid any period of ineligibility for this program.

Lead-based paint hazard-reduction activities present substantial hazards to workers and supervisors, to occupants and neighboring residents (particularly children under age six and pregnant women), and to inspectors and others who must visit the site during the course of the work. If improperly carried out, the work may result in substantially greater hazards than previously existed. For these reasons, it is required that the work be performed only by thoroughly trained and licensed or certified workers, supervisors, contractors, inspectors and other contributing to the work. Those considerations underscore the need for the early establishment of certification programs.

It has been the traditional role of the States and local governments to provide the oversight and protection for the public against the general hazards of construction, and it is HUD's policy to draw upon this source of knowledge and expertise in providing the needed oversight and protection for the public against the hazards of lead-based paint and the work of reducing those hazards. In cooperation with HUD, the Environmental Protection Agency (EPA) has been assigned by Congress the responsibility for promulgating rules and standards governing protection against lead hazards in both residential and commercial property.

Accordingly, it is HUD policy to encourage and assist States planning to develop a Certification Program that will assure proper oversight and supervision to providers of lead-based paint hazard reduction services. Category II Grants provide incentives and support to States that take that course.

Just as many building-inspection departments are self-supporting, or partially self-supporting from permits and license fees, it is expected that State-lead-based paint certification programs can become at least partially self-supporting. During the start-up of such efforts, however, there may be a period before such revenues achieve expected levels. The Category II Grants are intended to help States bridge that gap, by providing the initial seed money for the implementation and staffing of certification programs.

States will become eligible to apply for Stage One of Category II grants upon enactment of State Certification legislation satisfactory to HUD and EPA. (See Appendix E for discussion of currently identified elements.) This also includes States that may already have enacted legislation by the time of this NOFA. States will be eligible to submit an application to HUD for funding of up to $200,000 for the implementation of their State Certification Programs.

8.3 *Allocation Amounts.*

Up to $3,000,000 shall be available for approximately 15 to 18 grants, not to exceed $200,000 each, for fiscal year 1993. A like amount and number are authorized under Title X, but subject to appropriations for FY 1994.

8.4. *Eligibility.*

Eligible applicants are the governments of the 50 States, the Virgin Islands, Puerto Rico, and the District of Columbia, that have passed satisfactory enabling legislation for a State certification program, and that have an approved Comprehensive Housing Affordability Strategy (CHAS).

Eligibility shall be on a first-come, first-served basis in the order of the dates on which acceptable state legislation is signed into law, until the funds of Category II of this NOFA are exhausted.

8.5. *Program Objectives and Requirements.*

8.5.1. *Purposes of Program:* to implement a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as widely and expeditiously as possible.

8.5.2. *Application Cycle.*

8.5.2.1. *Background.*

For all but a handful of States, the enactment of an acceptable state certification program and the implementation of an acceptable agency plan will be several months to a year or more from the publication of this NOFA. Publication of detailed regulations are likely to take place up to six months after that. In addition, funding for FY 1994 has been authorized but not yet appropriated. For those reasons, the application cycle for Category II grants has been divided into two parts, well-separated from the Category I application date, to ease the application burden on interested States.

8.5.2.2. *Two Stages.*

There will be the initial application for grant, once satisfactory enabling legislation has been signed into law. That application will include the text of the act, a program implementation plan, a budget, and a request for one-half of the total grant sum shown in the budget. There will be a secondary application that includes the text of promulgated regulations, detailing the functions of the agency, and an application for the balance of the grant sum.

8.5.2.2.1. *Stage One: Filing the Enabling Act and Grant Application.*

States that do not have an existing statute or that have existing legislation that is not consistent with the currently identified elements of a state certification program (see Appendix E for definition and discussion) may file a formal grant application at any time after such an enabling statute, or amendment to existing legislation, is signed into law, but not sooner than 9:00 a.m. (Eastern time) Tuesday, August 16, 1993.

The application shall include: the text of the statute, an implementation plan that establishes or designates an agency, or agencies, to carry out the function and promulgate the detailed regulations to do so, and a proposed budget on HUD form HUD442 (Appendix D). The implementation plan must include: (1) a proposed schedule for regulation development; (2) the plan to-address potential conflicts in overall state program design if enabling status are significantly prescriptive; (3) delineation of Agency responsibilities; (4) key contacts. Upon acceptance by HUD and EPA of the statute, the implementation plan, and the budget, the State may apply for one-half its total grant sum.

States that have *existing* enabling legislation that is consistent with the currently identified elements of a satisfactory State program may file a formal grant application at any time after 9:00 a.m. (Eastern time).

8.5.2.2.2. *Stage Two: Filing the Enabling Regulations.*

States that have filed an acceptable enabling statute and grant application under Stage One, may file the enabling regulations and request the final half of the grant sum at any time after April 28, 1994.

States that had existing legislation that has to be amended to be consistent with Appendix E under Stage One, may file the related amending regulations and request for the final half of the grant sum at any time after April 28, 1994.

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8.5.7. *Application Requirements.*

Those interested states shall file a stage-one application after passage of appropriate enabling legislation. The time and date of the application are not critical, because the rank order of applications for consideration shall be based upon the date the enabling legislation is signed into law. In order to keep the application and review periods well separated between Category I and Category II grants, no Stage-one grant should be made at an earlier date than Tuesday, August 16, 1993, but thereafter an application may be filed at any time once satisfactory enabling legislation has been passed.

Those filing a Stage-One application shall include a copy of the enacted or amended state legislation, together with a detailed implementation plan described in section 8.5.2.2.1 of this NOFA and budget and staffing plans for carrying out the implementation. Staffing plans may be in a format suitable for the applicant; no Federal form is required. The budget shall be on a HUD form HUD442, (See Appendix D). The application shall contain the assurances described in Section 5.3, subsections 5.3.3, 5.3.4, 5.3.5 and 5.3.10. Upon review and approval of the application, a grant agreement will be negotiated, and the first half of the funding made available.

8.5.8 *Reports.*

Category II Grant Awardees shall comply with the "Reports" subsection (Section 7.4.) for Category I Grants. Should an awardee have both a Category I and a Category II grant, a copy of the Category I grant reports may be filed in satisfaction of this Category II grant requirement.

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9.4. *Section 102 of the HUD Reform Act—Documentation and Public Access Requirements—Applicant/Recipient Disclosures:*

9.4.1. *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

9.4.2. *Disclosures.* HUD will made available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

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Appendix A—Relevant Federal Regulations and Guidelines

To Secure Any Of The Documents Listed, Call The Listed Telephone Number (generally not toll-free).

Regulations:

1. Worker Protection: General Industry Lead Standard, 29 CFR 1910.1025 (OSHA regulations); phone (202) 755–1822.
2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations); phone 1–800–424–9346.

Guidelines:

1. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; HUD, revised May, 1991 (phone (202) 755–1822):

Post Abatement Clearance, No More Than

200 Micrograms/Sq. Ft. (Floors)
500 Micrograms/Sq. Ft. (Window Sills)
800 Micrograms/Sq. Ft. (Window Wells)

2. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; phone (202) 708–0336.
3. Preventing Lead Poisoning In Young Children; Centers for Disease Control, October 1991 (phone (404) 488–4880).

Information on Content of State-accredited Contractor Certification and Worker Training Programs:

Contact: EPA Office of Pollution Prevention and Toxics, Division of Environmental Assistance; phone (202) 260–3790.

CDC CLASSES OF BLOOD LEAD LEVELS IN CHILDREN

Class	Concentration (ug/dL)	Comment
I	<9	Child is not considered to be lead-poisoned.
IIA	10–14	Large number or proportion of children with blood lead levels in this range should trigger community-wide childhood lead poisoning prevention activities. Children in this range may need to be rescreened more frequently.
IIB	15–19	Child should receive nutritional and educational interventions and more frequent screening. If the blood lead level persists, environmental investigation and intervention should be done.
III	20–44	Child should receive environmental evaluation and remediation and a medical evaluation; may need pharmacologic treatment of lead poisoning.
IV	45–69	Child will need both medical and environmental interventions, including chelation therapy.
V	>70	Child is a medical emergency. Medical and environmental management must begin immediately.

Program Administration Costs

Payment of reasonable administrative costs, related to the planning and administration of lead-hazard reduction activities assisted in whole or in part with funds provided under this NOFA, are eligible costs for reimbursement as part of this NOFA. Such administrative costs do not include staff and overhead costs directly arising from specific program activities eligible under NOFA Section II.F.(5), because those costs are eligible as a direct part of project activities.

The grantee may elect to serve solely as a conduit to subgrantees, who will in turn perform the direct program activities eligible under NOFA section II.F.(5), or the grantee may elect to perform all or a part of the direct program activities itself. In either case, not more than 10 percent of the total grant sum may be devoted to administrative costs, and not less than 90 of the total grant sum shall be devoted to direct program activities.

Reasonable costs for the prime grantee's overall program management, coordination, monitoring, and evaluation are eligible administrative costs. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category, the recipient may either include the entire salary, wages, and related costs allocable to the program for each person whose primary responsibilities with regard to the program involve program activities assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The grantee may use only one of these methods during this program. Program administration includes the following types of activities:

(a) Preparing grantee program budgets and schedules, and amendments thereto;

(b) Developing systems for the selection and award of funding to subgrantees and other subrecipients;

(c) Developing suitable agreements for use with subgrantees and other subrecipients to carry out program activities;

(d) Monitoring program activities for progress and compliance with program requirements;

(e) Developing systems for assuring compliance with program requirements;

(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;

(g) Evaluating program results against stated objectives; and

(h) Coordinating the resolution of audit and monitoring findings;

(i) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i).

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including services directly allocable to the program, such as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for and directly related to the administration of the program, including such goods and services as rental of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

* * * * *

BILLING CODE 4210-01-M

APPENDIX D

PAGE OF PAGES

Form Approved OMB No. 63-R-1499

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT **BASELINE COST PLAN** *(See Instructions on reverse)*	1. HUD APPROVAL *(GTR Signature)*	5. ☐ ORIGINAL BASELINE PLAN, or ☐ REVISED BASELINE PLAN #________	6. DATE PLAN SIGNED BY CONTRACTOR *(39d)*	11. CONTRACT NUMBER
12. CONTRACT TITLE	2. GTR NAME	14. ORIGINAL CONTRACT COMPLETION DATE	18. ORIGINAL CONTRACT COST AT COMPLETION	
	3. DATE OF HUD APPROVAL	15. CURRENT CONTRACT COMPLETION DATE *(Through Mod #)*	19. CURRENT CONTRACT COST AT COMPLETION *(Through Mod #)*	
13. CONTRACTOR *(Name, Address and Zip Code)*	4. GTM NAME	16. PROPOSED COMPLETION DATE	20. PROPOSED COST AT COMPLETION	

26. IDENT. NO.	27. ACCOUNT/SUB-ACCOUNT LIST	28. CALENDAR YEARS ——→ 29. PERIODS ——→														30. LINE TOTALS
	TOTALS		a.	b.	c.	d.	e.	f.	g.	h.	i.	j.	k.	l.	m.	n.

38. PERSON PREPARING PLAN	a. NAME AND INITIALS	b. DATE PREPARED	39. CONTRACTOR OFFICIAL CERTIFYING PLAN	a. NAME	b. SIGNATURE	c. TITLE	d. DATE SIGNED	REC'D AT HUD

HUD–442 (6-76)

BILLING CODE 4210-01-C

Appendix E—Elements of a State Certification Program

Congress has assigned Federal responsibility to the Environmental Protection Agency (EPA) for the definition, implementation, and oversight of State Certification Programs for workers, contractors, and inspectors engaged in the detection and reduction of lead-based paint hazards. The Department of Housing and Urban Development (HUD) has a strong interest in the strength and rigor of the EPA program, because HUD must rely on the effectiveness of the EPA program to assure the safe detection and reduction of those lead-based paint hazards.

In October 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act. This legislation requires EPA to promulgate regulations governing the accreditation of training programs, the certification of contractors and the training of workers engaged in lead-based paint activities. These regulations must contain work practice standards. Finally, EPA must develop a model State program containing procedures for States to gain EPA approval of their programs.

Under the statute, lead-based paint activities are defined as:

1. In the case of target housing; risk assessment, inspection, and abatement; and

2. In the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure; identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

EPA is currently developing the regulations required under this new legislation. However, since EPA's regulations are not currently available, States that commit to develop appropriate accreditation and certification programs as required by this NOFA are encouraged to enact broad enabling statutes. Legislation that is overly prescriptive may need to be modified in order to be acceptable under EPA's upcoming regulations.

HUD and EPA can, however, at this time define a minimum set of basic elements that *must* be contained in the enabling legislation. They are enumerated in #1 below. HUD and EPA also believe that additional elements should be included in legislation. These are identified in #2 below.

1. The enabling statute, at a minimum, shall contain the following elements:

a. *Agency.* Establish an agency, or agencies, or designate an existing State agency, or agencies, to implement the State program.

b. *Certification.* Authorize and direct the agency, or agencies, to promulgate regulations requiring the certification of contractors, that offer to perform lead-hazard detection or lead-hazard reduction services.

c. *Worker Training.* Authorize and direct the agency, or agencies, to promulgate regulations setting training requirements for workers, inspectors, and other persons directly and substantially involved in the performance of lead-based paint activities. Such regulations shall establish minimum acceptable levels of training, and periodic refresher training for each class of workers, and require that training shall be provided by accredited training providers.

d. *Accreditation of Training Providers.* Authorize and direct the agency, or agencies, to promulgate regulations to establish the accreditation of training programs. The legislation shall require that the regulations cover the following: (i) Minimum requirements for the accreditation of training providers; (ii) minimum training curriculum requirements; (iii) minimum training hour requirements; (iv) minimum hands-on training requirements; (v) minimum trainee competency and proficiency requirements; and (vi) minimum requirements for training program quality control.

e. *Standards.* Authorize and direct the agency, or agencies, to promulgate regulations establishing standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

f. *Compliance.* Authorize and direct the agency, or agencies, to promulgate regulations that will require any activity, involving lead-hazard detection or lead-hazard reduction procedures, to comply with agency regulations and to use certified and accredited personnel.

g. *Enforcement.* Authorize and direct the agency, or agencies, to promulgate regulations that provide for the enforcement of the State Certification Program, and that establish suitable sanctions, both civil and criminal, for those who fail to comply with program requirements. The regulations shall include provisions for the decertification and deaccreditation of programs and personnel.

h. *Federal Funding Eligibility.* Authorize and direct the agency, or agencies, to revise its regulations and procedures from time to time to assure that State lead-hazard activities continue to be eligible for Federal funding, by meeting the State certification program standards and other requirements that may from time to time be promulgated by EPA, HUD, and such other Federal agencies as may have jurisdiction over lead hazards.

i. *Reciprocity.* Authorize the agency, or agencies, to establish liaison with the other states having a State Certification Program to assure the maximum consistency of program requirements, in order to facilitate reciprocity of certification and accreditation among the several States;

2. In addition to the mandatory elements present in #1 above, HUD and EPA strongly recommend that the enabling legislation include:

a. *Staffing.* Authorize and direct the agency, or agencies, to dedicate suitable staff and to acquire suitable space, equipment, supplies and other items necessary for the operations of the program.

b. *Fees.* Authorize the agency, or agencies, to collect such fees for certification, accreditation, and other reviews as State policy may determine to be necessary to help support the activities of the agency or agencies.

c. *Laboratory Oversight.* Authorize and direct the agency, or agencies, to cooperate with EPA in any joint oversight procedures EPA may propose for laboratories accredited under the EPA laboratory accreditation program for laboratories that offer to provide lead analysis services.

d. *Data Collection.* Authorize the agency, or agencies, to establish a unit for the collection and analysis of data on lead-hazard detection and lead-hazard reduction activities in the State, and on the certification, accreditation, and enforcement activities of the agency.

e. *Public Education.* Authorize the agency, or agencies, in cooperation with other relevant agencies of the State, to conduct programs of public education on the nature and consequences of lead hazards and on the need for lead-hazard reduction activities to be conducted under careful supervision and by certified and accredited personnel in order to assure the public safety.

[FR Doc. 93–3006 Filed 2–8–93; 8:45 am]

BILLING CODE 4210-01-M

Office of Administration

[Docket No. N-93-3571]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 29, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Wood Destroying Insect Information-Existing Construction

Office: Housing

Description of the Need for the Information and its Proposed Use: Form HUD–92053 is used by HUD as evidence that a property to be financed with FHA insurance is free of wood destroying insects. A mortgage will not be insured until HUD is satisfied that the property has been inspected and found free of infestation.

Form Number: HUD–92053

Respondents: Businesses of Other For-Profit and Small Businesses of Organizations

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92053	1		1		1		1

Total Estimated Burden Hours: 1

Status: Extension

Contact: Larry D. Toler, HUD, (202) 708–2720; Angela Antonelli, OMB, (202) 395–6880.

Dated: January 29, 1993.

[FR Doc. 93–3007 Filed 2–8–93; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N–93–3572]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 2, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Proposal: Request for Release of Documents/ACH Debit Authorization.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: The documents provide for the release of mortgage documents held by the pool custodian, and show evidence that the issuers have established a central account with a designated custodian in connection with the issuance of mortgage-backed securities.

Form Number: HUD–11708 and 11709–A.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information collection	1,250		192		.017		4,080

Total Estimated Burden Hours: 4,080.

Status: Reinstatement.

Contact: Brenda Countee, HUD, (202) 708–2234; Charles Clark, HUD, (202) 708–2234; Angela Antonelli, OMB, (202) 395–6880.

[FR Doc. 93–3008 Filed 2–8–93; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. D–93–1016; FR–3453–D–01]

Office of the Manager, Pittsburgh Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective January 19, 1993.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392. Phone number (215) 597–2655. (This is not a toll-free number.)

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager
2. Director, Housing Management Division
3. Chief Counsel
4. Director, Public Housing Division
5. Director, Housing Development Division
6. Director, Community Planning and Development Division

This Designation supersedes the designation effective August 24, 1987 (52 FR 34423).

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: January 19, 1993.

Concur:

Harry W. Staller,

Deputy Regional Administrator-Regional Housing Commissioner, Region III.

Choice Edwards,

Manager, Pittsburgh Office.

[FR Doc. 93–3010 Filed 2–8–93; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. D–93–1015; FR–3452–D–01]

Acting Assistant Secretary for Fair Housing and Equal Opportunity; Order of Succession

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of order of succession.

SUMMARY: This Order of Succession revises the order of officials who shall serve as Acting Assistant Secretary for Fair Housing and Equal Opportunity.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne D. Taylor, Management Analyst, Office of Fair Housing and Equal Opportunity, Administrative Support Division, room 5124, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC (202) 708–2701. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The following Order of Succession is being revised due to an administrative decision in the Office of Fair Housing and Equal Opportunity.

Section A. Order of Succession. Each of the officials listed below is designated to act as Assistant Secretary for Fair Housing and Equal Opportunity, in the case of absence or vacancy in such position. The named officials shall serve in the order set forth.

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity;
(2) Director, Office of Investigations;
(3) Director, Office of Affirmative Action and Equal Employment Opportunity;
(4) Director, Office of Fair Housing Assistance and Voluntary Programs;
(5) Director, Office of Program Standards and Evaluation;
(6) Director, Office of Management and Field Coordination;
(7) Director, Office of Program Training and Technical Assistance.

Section B. Authorization. Each head of an organizational unit of Fair Housing and Equal Opportunity is authorized to designate an employee under his or her jurisdiction to serve as acting head during the absence of the head of the unit. An official serving in an acting position under this section does not hold that position for purposes of the Order of Succession set forth in Section A.

Section C. Functions. The official serving in an acting capacity under this Order of Succession shall have all the powers, functions, and duties assigned to such position.

Section D. Supersedure. This Order of Succession supersedes the Designation published on May 11, 1992 at 57 FR 20125.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d). (Under the Designation at 57 FR 20125, effective at the date of execution of this Order of Succession, the General Deputy Assistant Secretary for Fair Housing and Equal Opportunity serves as the Assistant Secretary for Fair Housing and Equal Opportunity in the absence of the Assistant Secretary for Fair Housing and Equal Opportunity).

Dated: January 29, 1993.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–3009 Filed 2–8–93; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Assistant Secretary—Indian Affairs

Tribal Self-Governance Planning and Negotiation Grants; Office of Self-Governance

ACTION: Announcement of availability of competitive planning/negotiation grants and negotiation grants for federally recognized tribes.

SUMMARY: The Office of Self-Governance announces the availability of approximately $340,000 in grant funds to continue the planning and negotiations process in FY 1993. The total amount identified is broken down as follows: (1) $240,000 for negotiation grants for tribes which are planning to enter negotiations; (2) $100,000 for tribes to enter the project in the planning stage and to complete negotiation. This provision is to support the amendment, Public Law 102–184, which expands the number of tribes which can enter the demonstration project from 20 to 30.

The Tribal Self-Governance Demonstration Project is designed to promote self-determination by allowing tribes to assume more control of Bureau of Indian Affairs programs and services through agreements negotiated with the Department of the Interior (Department).

The planning grant allows a tribe to gather information to determine the current types and amounts of programs, services, and funding levels available within its service area and to plan for the types, amounts of programs, services and funding to be made available to the tribe under the agreement. Negotiation grants provide tribes with funds to help cover the expenses involved in preparing for and actually negotiating with the Department.

At the time of this announcement, eighteen compacts have been signed. Selection to fill the twelve slots which remain will be based on the criteria and procedures outlined in this announcement. All tribes wishing to be considered for participation in the grant program for self-governance, including those that have previously contacted the Office of Self-Governance, must respond to this announcement.

DATES: Applications must be received by:

1. The closing date for submission of applications for initial planning/negotiation grants is March 26, 1993.

2. The closing date for submission of applications for negotiation grants is April 12, 1993; however, awards may be made prior to that deadline.

FOR FURTHER INFORMATION CONTACT: William Lavell (202) 219–0240, U.S. Department of the Interior, Office of Self-Governance, 1849 C Street NW. (MS–RM 2548–MIB), Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The following announcement of procedures for the application for and awarding of planning and negotiation grants under the Indian Tribal Self-Governance Demonstration Project is made as an exception to the policy of the Department of the Interior on rule making. See Public Participation in Rule Making, 36 FR 8336 (1971). This exception is made in accordance with 5 U.S.C. 553(6) because it would be impracticable to follow the policy for the following reasons. The Select Committee on Indian Affairs directed, in S. Rep. No. 199, 102d Cong., 1st Sess. page 6 (1991) that the Office of Self-Governance should expedite the process of awarding self-governance planning and negotiation grants to eligible tribes; new money was made available for additional tribes to plan and negotiate for possible implementation in the 1994 demonstration project cycle. This is necessary to provide participating tribes with a full two years of operation under the demonstration project. Without this exception, this result could not be accomplished. Accordingly, the grants for 1993 will be made on the bases stated in this announcement.

A. Purpose of Program

The purpose of the program is to provide grants which provide planning and negotiation resources to tribes interested in participating in the Tribal Self-Governance Demonstration Project as authorized by title III of Public Law 100–472. Public Law 102–184, which amends title III, has increased the number of tribes which can participate from 20 to 30, and requires tribes which wish to enter the program to participate in a planning process.

The Office will entertain proposals to select up to two additional tribes to enter the planning stage. These will be selected through a competitive process. Since there is a statutory cap of thirty tribes, it is possible that not all of those who have been awarded planning grants will be able to enter the program in the demonstration phase. However, the opportunity to participate may be available later should the program become permanent, and the planning process itself should be valuable to a participating tribe. The requirement for a geographical representation of tribes in the Project will be a major factor in the selection of tribes with preference being given to tribes from areas which are not represented or are under-represented in the program.

Planning/negotiation grants will be awarded on a competitive basis to tribes meeting the eligibility criteria and other provisions contained in this announcement. Applications not meeting all provisions of this announcement will be considered unresponsive and will not be reviewed for funding. The applicant will be so notified and such determination by the Office of Self-Governance regarding the non-responsiveness of any application received shall be final for the Department.

Based upon evidence of successful completion of initial planning activities and a decision by the tribal governing body to proceed with the program, a negotiation grant, not to exceed $20,000, may be awarded to a tribe upon submission of an appropriate application as specified in this announcement. Other tribes which have completed planning activities in previous years but which have not received a negotiation grant, may also be accepted for an award based on the discretionary decision of the Director, Office of Self-Governance.

There may be other tribes which have previously received negotiations grants, but chose not to negotiate. These tribes may still be considered for one of the remaining slots in the program. Such tribes should submit a request for consideration to the Director, Office of Self-Governance, providing a planning report which follows the guidelines for negotiation grant applicants. Such tribes are not eligible for a second negotiation grant and will not be afforded any preference over other tribes for one of the remaining slots in the Project.

Every applicant should indicate at what point it anticipates being ready to negotiate a compact, assuming that a favorable decision is made to proceed. There is a limited demonstration period set for this program; therefore, preference for negotiation grants will be given to those tribes who would most likely be ready to negotiate an agreement commencing in FY 1994. Likewise, preference will be given to planning grant applicants which anticipate a readiness to negotiate an agreement with an effective date of no later than January of 1994.

B. Eligibility Criteria

1. Planning negotiation Grants: To be considered for a planning/negotiation grant under this announcement, an applicant must:

a. Be a federally recognized tribe as defined in Public Law 93–638, as amended.

b. Formally request, through a final governing body action, a planning grant for the purpose of participation in the Tribal Self-Governance Demonstration Project.

c. Have operated two or more Public Law 93–638 mature contracts.

d. Furnish organization-wide single audit reports as prescribed by Public Law 96–502, the Single Audit Act of 1984, for the previous three years which contain no significant or material audit exceptions.

2. Negotiation Grants: To be considered eligible for a negotiation grant under this announcement, an applicant must:

a. Be a federally recognized tribe as defined in Public Law 93–638, as amended.

b. Formally request, through final governing body action, a grant for the purpose of negotiating for a self-governance compact for BIA programs and services.

c. Have successfully completed a planning project specifically relating to self-governance or currently be engaged in such a planning activity. A report on such activities should accompany the application.

d. Have not previously received a grant for self-governance negotiations.

C. Grant Period

Grants under this announcement shall be for a period of six months or less.

D. Funds Available

a. Planning negotiation Grants—A maximum of $100,000 is available to fund a maximum of two grants at approximately $50,000 each.

b. Negotiation Grants—A maximum of $240,000 is available to fund approximately twelve negotiation grants at approximately $20,000 each.

E. Application Process

Applications under this announcement shall be on an SF–424 and shall contain a narrative description of proposed grant activities as well as a line item budget and budget justification. General guidelines for the grant applications are as follows:

1. Planning negotiation Grants. Applications should contain background information on the tribe and its circumstances. Applicants should not only provide a description of what they will accomplish under the grant but also discuss their expectations of what they can contribute to the demonstration. A key component of the proposal should be to conduct activities which lead to greater understanding of BIA programs, services, and funding levels; and to explore programmatic alternatives which will better meet the needs of tribal members. The proposal should also contain a timeframe for negotiations and include negotiations expenses. No additional funds are expected to be available for negotiation expenses.

Prior planning activity for self-governance shall be considered in the review process, but this consideration shall not guarantee selection.

2. Negotiation Grants. Applications should be brief and contain summary material of what was learned or is being learned during the planning project. The application should give a specific narrative of the direction the tribe wishes to take in the project and proposed timeliness for negotiations. Where possible, tribes should note any unique and/or beneficial contributions which they can make to the program.

F. Other Conditions

The statute requires the Office of Self-Governance to achieve geographical representation to include tribes in different areas of the country as well as tribes of different sizes and circumstances. Selection of the remaining twelve slots will comply with the statutory requirement of geographical balance. It is further the intention of the Office to include in the Project those tribes with the greatest potential for success. Since this is a demonstration project, it is necessary to exercise a great deal of discretion in administration of the program to achieve the most valuable information possible from the involvement of a limited number of tribes.

G. Application Review and Approval Process

1. Planning negotiation Grants. Applications submitted under this announcement will be subject to a competitive review and evaluation. The Office of Self-Governance will review and rate the applications according to the criteria identified in this announcement and statutory requirements. Incomplete applications or applications which do not conform to the terms of this announcement will not be reviewed but will be returned to the sender as unresponsive. The Office will make its recommendations concerning awards to the Self-Governance Demonstration Project Council which in turn will review the work of the Office and make its recommendations on selection to the Assistant Secretary—Indian Affairs. The Assistant Secretary will then make the final awards.

Tribes receiving planning grants should also use their grants for negotiations. This intention should be clearly stated in their applications. However, actual decisions from a grantee to move forward into the negotiations phase will not be accepted until at least two months after the grant award is made, in order to ensure compliance with the statutory requirement that a tribe must have participated in a planning process as a precondition to entering the program.

Applications will be reviewed according to the following criteria:

a. The goals/objectives of the grant are, wherever possible, measurable, consistent with the goal of the program and the terms of this announcement, and achievable as demonstrated by an implementation schedule. (25 points)

b. Grant objectives are fully and clearly described, reflect the needs of the tribal members, and can be accomplished with the resources available. (15 points)

c. There is evidence that the tribe has the capability to perform the tasks identified; i.e., the application includes résumés and position descriptions of key staff. (15 points)

d. The application includes substantial geographical information concerning the tribe and provides a discussion of the benefits which would accrue to the Demonstration Project as a result of including the tribe in the program. Geographical circumstances of the tribe which are not well-represented by other tribes in the program should be cited. (25 points)

e. A line-item budget is submitted with a detailed justification for all expenditures. All costs identified shall be reasonable and allowable in accordance with OMB Circular A–87, Cost Principles for State and Local Governments. (20 points)

In making final selections, the Assistant Secretary—Indian Affairs will consider the ranking factor along with the geographical factor.

2. Negotiation Grants

Only a limited number of tribes are eligible to apply for negotiation grants. Successful completion of a planning project is a prerequisite to eligibility for a negotiation grant. There is no guarantee that awards will be made to tribes simply because they are eligible to apply. The requirement for geographical representation may preclude the selection of a tribe even though it has successfully completed a planning project. Additionally, an award of a negotiation grant does not guarantee that a compact will be entered into since an agreement may not be reached. However, the award of such a grant does signal a willingness of the Department to negotiate in good faith with the tribe.

The application of a tribe for a negotiation grant should include the following:

a. Reports on the planning activity which has occurred.

b. A request from the tribal governing body to enter into negotiations for a self-governance agreement. Such a request shall be made through a final governing body action, and be taken within the six months immediately preceding the date of the tribe's application.

c. A brief narrative of the proposed activities under the grant and a budget which details the costs to be incurred.

d. A description of the benefits which would accrue to the Demonstration Project as a result of the tribe being selected and a statement of tribal expectations of the project.

H. Submission of Applications

1. The closing date for submission of applications for initial planning/negotiation grants is March 26, 1993.

2. The closing date for submission of applications for negotiation grants is April 12, 1993; however, awards may be made prior to that deadline.

3. Applications may be mailed or hand-delivered.

4. Applications which are mailed must be postmarked no later than the deadline date.

5. Late applications will be regarded as unresponsive to this announcement.

6. The address to which applications must be mailed or hand-delivered is as follows: Director, Office of Self-Governance, Department of the Interior, 1849 C Street, NW., MS/RM–2548–MIB, Washington, DC 20240.

Dated: February 2, 1993.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–3054 Filed 2–8–93; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[CA–050–4310–06, CACA–27838]

Realty Action: Proposed Land Exchange in Lake, Colusa, Napa, Yolo and Mendocino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to notice of Realty Action CA–27838, In Lake County, California.

SUMMARY: The Notice of Realty Action for exchange CA–27838 published on Wednesday, May 1, 1991, in Volume 56, No. 84 of the **Federal Register** is hereby amended to include the following private lands found suitable for acquisition by exchange and to allow the Clear Lake Resource Area to utilize federal lands identified for exchange under Serial Number CA–24896 and CA–28683 in the Hollister Resource Area for acquisition by exchange in the Cache Creek Management Area and to allow the Hollister Resource Area to utilize federal lands identified for exchange under the original Serial Number CA–27838.

Mount Diablo Meridian

T. 14 N., R. 5 W.
  Sec. 28: Lots 3–6, SWNE, SESW, W2SE.
  Sec. 29: Lots 2–5, SWSE.
  Sec. 30: W2NE, SENE.
  Sec. 31: SENE, NESE.
  Sec. 32: NENE.
  Sec. 34: SW.
Containing 880 acres, more or less.

FOR FURTHER INFORMATION CONTACT: Acting, Clear Lake Resource Area Manager, Bureau of Land Management, 555 Leslie Street, Ukiah, California 95482; Phone (707) 462–3873.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the BLM, Acting, Clear Lake Resource Area Manager, at the address shown above. Comments should specify the legal description (Township, Range, Section, and Subsection) of the specific parcel affected by the comment. Any adverse comments will be evaluated by the Bureau, which may sustain, vacate, or modify this realty action and State Director will issue a final determination. In the absence of any adverse comments, this action will become the final determination of the Department of Interior.

Robert Menendez,

Acting, Clear Lake Resource Area Manager.

[FR Doc. 93–3053 Filed 2–8–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–56715]

Notice of Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: R&PP lease/purchase of Public Lands Clark County.

SUMMARY: The following described public land in Sandy Valley, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Clark County School District proposes to use the land, which is adjacent to the existing Sandy Valley Elementary School, for expansion purposes.

Mount Diablo Meridian, Nevada

T. 24 S., R. 57 E.,
  Section 32, N½SE¼NE¼SW¼
Containing 5 acres more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area and would be in the public interest.

The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement for streets, roads, pubic utilities and flood control purposes in accordance with the transportation plan for Clark County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or purchase under the Recreation and Public Purpose Act, leasing under the mineral leasing laws and disposals under the mineral material laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manger, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The land will not be offered for lease/purchase until after the classification becomes effective.

Dated: January 26, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–3014 Filed 2–8–93; 8:45 am]

BILLING CODE 4310–HC–M

[CA–940–4210–06; CACA 31089]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

February 1, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 1,620.74 acres of National Forest System lands for protection of the Jordan Creek/Bower Cave Special Interest Area. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for meeting should be received on or before May 10, 1993.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On November 2, 1992, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Stanislaus National Forest

T. 2 S., R. 17 E.,
  Sec. 13, S½SW¼, S½SE¼NW¼, S½NE¼, E½NE¼SW¼, NW¼NE¼SW¼, and SE¼;
  Sec. 14, N½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
  Sec. 15, SE¼NE¼ and NE¼SE¼;
  Sec. 23, lot 1;
  Sec. 24, lot 1, NE¼NE¼, NW¼NE¼, NE¼NW¼, N½SE¼SE¼, and E½SW¼SE¼.
T. 2 S., R. 18 E.,
  Sec. 18, lots 3 and 4, and SW¼SE¼SW¼;
  Sec. 19, lots 1, 2, and 3, NE¼SW¼, N½SE¼, E½NW¼, and W½NE¼;
  Sec. 20, SW¼SW¼ and SW¼NW¼SW¼;
  Sec. 20, N½NW¼ and W½NE¼.

The areas described aggregate 1,620.74 acres in Mariposa County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register** the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93–3052 Filed 2–8–93; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Proposed Guidelines on African Elephant Sport-hunted Trophy Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed guidelines.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces proposed guidelines for issuance of Scientific Authority advice on permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) for the import of sport-hunted African elephant trophies. Existing guidelines would be clarified with respect to situations involving issuance of permits for the importation of sport-hunted African elephant trophies. Specifically, these guidelines provide guidance concerning factors that the Service would consider when evaluating management programs and elephant populations in specific countries to ensure that the activity will enhance the survival of the species.

DATES: The Service will consider comments received by June 9, 1993 on the proposed guidelines.

ADDRESSES: Comments may be submitted to the Chief, Office of Scientific Authority; Mail Stop: Arlington Square, room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 (Fax number 703–358–2276). Express and messenger-delivered mail should be addressed to the Office of Scientific Authority, room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203. Comments and other information received will be available for public inspection by appointment from 8 a.m. to 4 p.m. Monday through Friday, at the Arlington, Virginia address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

At the seventh meeting of the CITES Conference of the Parties, held on October 9–20, 1989, the Party nations voted to transfer the African elephant from Appendix II to Appendix I, and this action became effective on January 18, 1990. As a result of this action, permits for the importation of the sport-hunted African elephant trophies are required under CITES.

Under CITES, Appendix I import permits can be issued if the Scientific Authority has advised the Office of Management Authority that the import will be for purposes not detrimental to the survival of the species. At the second meeting of the Conference of the Parties in 1979, the Parties adopted resolution Conf. 2.11 on "Trade in Hunting Trophies of Species Listed in Appendix I." The resolution calls for the Scientific Authority to conduct a "comprehensive examination concerning the question of whether the importation is serving a purpose which is not detrimental to the survival of the species" including whether the killing of the animals whose trophies are intended for import would enhance the survival of the species.

In reviewing permit applications for the importation of sport-hunted African elephant trophies, the Service believes that the size and stability of the African elephant population in the country in which harvested, the ability of the country to implement management programs for the African elephant, and the benefit of sport hunting to survival of the elephant should be considered in issuing the Service's determinations. This has been discussed in the January 28, 1982, final rule (47 FR 4204) that reclassified certain populations of the leopard (*Panthera pardus*) from endangered to threatened.

Issuance of Scientific Authority Advice

The Service believes that its existing regulations and guidelines under the Act and the Convention have been sufficient for issuance of import permits for sport-hunted African elephant trophies. The U.S. Scientific Authority has issued a general "non-determent" advice covering African elephant trophies lawfully taken on or after January 18, 1990, and originating from South Africa or Zimbabwe. Nevertheless, Safari Club International has filed suit in the United States District Court for the District of Columbia challenging the procedural and substantive adequacy of the guidelines, *see Safari Club International* v. *Lujan*, Civ. No. 91–2523 (D.D.C., filed Oct. 8, 1991). The Service, while vigorously defending its guidelines and the scientific authority advice issued to date, is interested in voluntarily seeking public review and comments on its guidelines, and it is hoped that this process will yield useful comments on the biological criteria needed for permit application to satisfy the requirements of CITES.

At the hearing on Safari Club's motion for a preliminary injunction, the district judge raised concerns over possible "unreasonable delay" in agency action on pending permit applications. Although the Service had taken the initial position in this case that no further Scientific Authority advice would be issued pending the public review process on the guidelines, the Service had noted the Court's concerns and believes that the record may be sufficient to approve imports for additional applications during the public process. Since approvals could be granted (in appropriate instances) on the existing administrative record and guidelines for these applications, without harm to Safari Club's membership, the Service believes that it would be advisable to continue to evaluate pending permit applications, and has continued to do so. Thus, on December 23, 1991, after export quotas for ivory tusks from Namibia and Tanzania were communicated to the Service, the U.S. Scientific Authority issued advice that has allowed the import of sport-hunted African elephant trophies from those countries. Thus, the Service's decision to seek public review and comment on the African elephant trophy guidelines will not affect the issuance of permits to import such trophies. After a review of all comments received, the Service plans to make a decision on the proposed guidelines. A notice of its decision will be published in the **Federal Register**.

Components of Management Plan

The guidelines were prepared to provide guidance as to the components of an effective management plan and are considered to be consistent with other Service efforts to promote long-term management of the African elephant. The criterion for an increasing or stable population encompasses the concept that a country may establish a population goal based on habitat carrying capacity or other long-term considerations, and, in being managed towards that goal, the population may actually decrease in absolute numbers. This assessment and the determination that the population is sufficient to sustain sport hunting includes an evaluation that the information on the population size and distribution is sufficiently reliable to make these determinations.

With regard to the evaluation of an effective management program, the Service seeks assurance that there are both appropriate laws, as well as an effective implementation of these laws and management programs. Therefore, the guidelines list several factors to consider in assessing the management programs, and the Scientific Authority's advice would be based on a comprehensive, yet reasonable, examination of these factors.

Proposed Guidelines

Scientific Authority advice on African elephant trophy import under CITES Article III.3(a) will be developed on a country-by-country basis in accordance with the resolution Conf. 2.11 on trophies adopted by the Conference of the Parties, and guidelines developed to implement this resolution. The Service will advise in favor of trophy imports from a particular country only when there is sufficient information to show that sport-hunting of African elephants can reasonably be expected to enhance the survival for the species in that country. Such a determination includes:

1. Clear evidence that the sport hunting activities enhance the survival of the species.

2. Information establishing that the population is increasing or stable and sufficient to allow a limited harvest.

3. Existence of an effective management program for the African elephant in that country, and factors to consider in making this determination include:

a. Whether there are national laws which (1) protect wildlife species including the African elephant and its habitat, (2) clearly assign the responsibility for elephant management to appropriate agency(s) and (3) provide regulations controlling all forms of legal harvest of elephants including sport-hunting of the species. [If take is allowed by regional or local units of government, the harvest level should be reviewed and approved at the national level.]

b. Whether an infrastructure exists in the range country that enables that country to scientifically manage wildlife and elephants as important natural resources. And, that management is based on a conservation program that includes the following elements.

(1) A management goal for elephants that describes the size and sex-age composition of the elephant herd which the range country wishes to attain and maintain within its borders;

(2) A demonstrated capability to control poaching and the illegal killing of elephants in those areas in which sport-hunting is permitted.

(3) Routine biological surveys to determine the composition and condition of managed elephant herds and habitats;

(4) An ability to implement a strategy to identify, preserve and manage habitats to achieve elephant population goals.

(5) Harvest management strategies to allow the range state to attain and maintain designated numbers of elephants; and

(6) A system to control and monitor the take of elephants by the (a) maintenance of a licensing or permit system for persons who take or process the species or parts thereof, (b) existence of a standardized, mandatory system under which all lawfully taken elephants are tagged or otherwise made reliably identifiable, (c) assurance that this marking system effectively prohibits the transport, in any way, of unmarked specimens or parts, and (d) existence of mandatory export permit system in full compliance with CITES permit system.

CITES-sanctioned Quotas

The African Elephant Conservation Act, among other things, allows for the import of sport-hunted African elephant trophies provided they have been "legally taken in an ivory producing country that has submitted an ivory quota." Before permit application for the importation of sport-hunted African elephant trophies will be reviewed, the country in which the specimens are harvested must have submitted an ivory export quota for the year of export to the CITES Secretariat, and confirmation of receipt of this quota must be received by the Service. In addition to having an import permit, before an importation can occur the importer must have a valid CITES export permit from the country of origin, and the ivory specimens being imported must be marked in accordance with the CITES Ivory Country Marking System (see also importation and marking requirements contained in the revised African Elephant special rule (57 FR 35486, Aug. 10, 1992)).

Comments Solicited

The Service requests comments on these proposed guidelines, including comments on both substance and format. The final decision on this proposal will take into consideration the comments and any additional information received, and such consideration might lead to final guidelines that differ from this proposal.

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, and Mr. Marshall P. Jones, Chief, Office of Management Authority under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 20, 1991.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

Note: This document was received at the Office of the Federal Register on February 4, 1993.

[FR Doc. 93-3087 Filed 2-4-93; 2:00 pm]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 30, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by February 24, 1993.

Antoinette J. Lee,

Acting Chief of Registration, National Register.

ARKANSAS

Benton County

Juhre, Charles, House (Benton County MPS), 406 N. 4th St., Rogers, 93000091

Clark County

Sandidge, June, House, 811 Cherry St., Gurdon, 93000093

Columbia County

Caraway Hall, Southern Arkansas University, Adjacent to E. Lane Dr., Magnolia, 93000088

Garland County

Belding—Gaines Cemetery, US 270, Hot Springs vicinity, 93000089

Lafayette County

Lafayette County Courthouse, Bounded by Third, Spruce, Fourth and Maple Sts., Lewisville, 93000085

Logan County

Anhalt Barn, Co. Rd. 68, New Blaine vicinity, 93000087

Lonoke County

Woodlawn School Building, NW of jct. of Bizzell Rd. and AR 31, Woodlawn, 93000086

Montgomery County

Norman Town Square, Bounded by AR 8 and 8th, Gurdon and 7th Sts., Norman, 93000092

Polk County

Foster, C. E., House, AR 88 N. side, W of jct. with AR 272, Mena vicinity, 93000084

Pope County

Galla Creek Bridge, Old AR 64 over Galla Cr., Pottsville, 93000090

Pulaski County

Argenta Historic District, Roughly, Melrose Cir. and Willow St. S to W. 4th St., and Main St. from W. 6th St. to W. 3rd St., North Little Rock, 93000094

FLORIDA

Orange County

Ryan & Company Lumber Yard, 215 E. Fifth St., Apopka, 93000074

MISSISSIPPI

Jackson County

DeJean House, (Pascagoula MPS), 3603 Frederic St., Pascagoula, 93000082

Lafayette County

Sand Spring Presbyterian Church, Jct. of Co. Rts. 354 and 399 in Orwood, NW of Water Valley, Water Valley vicinity, 93000083

NEBRASKA

Douglas County

Robinson, Lizzie, House, 2864 Corby St., Omaha, 93000058

Kearney County

Carpenter, Eddie Eugene and Harriet Cotton, Farmstead, Approximately 0.5 mi. W of Lowell, Lowell vicinity, 93000059

Otoe County

Kregel Wind Mill Company, 1416 Central Ave., Nebraska City, 93000061

Pierce County

Plainview Carnegie Library (Carnegie Libraries in Nebraska MPS), 102 S. Main St., Plainview, 93000056

Seward County

Zimmerer, John and Philomena Sand, House, 316 N. Sixth St., Seward, 93000060

OHIO

Cuyahoga County

Gleason, Edmund Farm (Boundary Increase) (Agricultural Resources of the Cuyahoga Valley MPS), 7243 Canal Rd., Valley View vicinity, 93000075

Vaughn, Richard, Farm (Agricultural Resources of the Cuyahoga Valley MPS), 9570 Riverview Rd., Brecksville vicinity, 93000081

Summit County

Brown—Bender Farm (Boundary Increase) (Agricultural Resources of the Cuyahoga Valley MPS), 3491 Akron—Peninsula Rd., Cuyahoga Falls vicinity, 93000076

Cranz, Edward, Farm (Agricultural Resources of the Cuyahoga Valley MPS), 2780 Oak Hill Dr., Peninsula vicinity 93000077

Cranz, William and Eugene, Farm (Agricultural Resources of the Cuyahoga Valley MPS), 2401 Ira Rd., Peninsula vicinity, 93000078

Duffy, Michael, Farm (Agricultural Resources of the Cuyahoga Valley MPS), 4965 Quick Rd., Peninsula vicinity, 93000079

Hunt—Wilke Farm (Agricultural Resources of the Cuyahoga Valley MPS), 2049 Bolanz Rd., Cuyahoga Falls vicinity, 93000080

PENNSYLVANIA

Allegheny County

Tuberculosis Hospital of Pittsburgh, 2851 Bedford Ave., Pittsburgh, 93000073

York County

Schultz, Martin, House, 155 Emig St., Hallam, 93000057

TEXAS

Anderson County

Howard House, 1011 N. Perry St., Palestine. 93000072

UTAH

Salt Lake County

Smith, George Albert, House, 1302 E. Yale Ave., Salt Lake City, 93000066

Utah County

Bank of American Fork, 5 E. Main St., American Fork, 93000065

Harrington Elementary School, 50 N. Center St., American Fork, 93000064

Washington County

Isom, Samuel and Elizabeth, House, 188 S. 100 West, Hurricane, 93000063

Leeds CCC Camp Historic District, 96 W. Mulberry, Leeds, 93000062

WISCONSIN

Dane County

Leonard, William Ellery, House, 2015 Adams St., Madison, 93000071

La Crosse County

Zeisler, George, Building, 201 Pearl St., La Crosse, 93000069

Outagamie County

Geenen, William and Susanna, House, 416 N. Sidney St., Kimberly, 93000070

Walworth County

Smith and Meadows Store Buildings, 2888-2890 Main St., East Troy, 93000067

Winnebago County

Waterman, S. H., House, 1141 Algoma Blvd., Oshkosh, 93000068

[FR Doc. 93-2931 Filed 2-8-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT AND COOPERATION AGENCY

Agency for International Development

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: Agency for International Development (A.I.D.).

ACTION: Renewal of advisory committee.

SUMMARY: The Administrator of A.I.D. has determined that it is in the public interest to renew the Charter of the Advisory Committee on Voluntary Foreign Aid. The Committee serves as a link between the U.S. Government and private voluntary organizations (PVOs) active in humanitarian assistance and development abroad. A.I.D. seeks the Committee's advice on broad policy-related issues involving the A.I.D./PVO relationship; particularly those issues of long-term importance to maintaining an effective and mutually beneficial partnership.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Krull, FHA/PVC/ACVFA, room 711, SA–8, Agency for International Development, Washington, DC 20523–0804; (703) 351–0204.

Dated: February 3, 1993.

Jan Miller,

Assistant General Counsel for Employee and Public Affairs.

[FR Doc. 93–2990 Filed 2–8–93; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32222]

Atlantic & Gulf Railroad—Operation Exemption—Albany Bridge Co., Inc.; Exemption

Gulf and Ohio Railways, Inc. (G&OR), d/b/a Atlantic & Gulf Railroad (A&GR), has filed a verified notice under 49 CFR 1150 subpart D—Exempt Transactions to exempt its operation of a railroad bridge and related track owned by Albany Bridge Company, Inc. (ABC). The bridge (about 3,470 feet in length) and related track are located between the point of switch at track chaining station 5473+20 and track chaining station 5438+50 in Albany, GA. The exemption became effective December 22, 1992, and the parties expected to enter into an agreement on that date.

ABC acquired the involved properties from South Carolina Central Railroad Company, Inc., d/b/a Georgia Great Southern Division (GGS) in Finance Docket No. 32207, Albany Bridge Company, Inc.—Acquisition and Operation Exemption—South Carolina Central Railroad Company, Inc., d/b/a Georgia Great Southern Division (not printed), served and published in the Federal Register (58 FR 4182) on January 13, 1993.

H. Peter and Linda C. Claussen, noncarrier individuals, were granted an exemption to continue to control ABC, on its becoming a carrier, in Finance Docket No. 32208, H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Albany Bridge Company, Inc. (not printed), served January 27, 1993.

The involved properties connect with track already operated by A&GR.[1] Before selling them to ABC, GGS used the properties to enter A&GR's Albany rail yard for interchange. As part of the sale agreement, GGS retained a perpetual right to use the properties for interchanging traffic with A&GR and GGS assigned to A&GR the agreement under which CSX Transportation, Inc., was granted trackage rights over the involved properties.

Any comments must be filed with the Commission and served on Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: February 3, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–3075 Filed 2–8–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–117 (Sub-No. 6)]

Elgin, Joliet and Eastern Railway Co.—Abandonment—Will County, IL; Findings

The Commission has found that the public convenience and necessity permit Elgin, Joliet and Eastern Railway Company to abandon its Rockdale Branch, from milepost J 3.40 at Rockdale Junction to milepost J 9.92 at Rockdale, a distance of 6.52 miles in Will County, IL. The certificate will be issued 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that the assistance would fully compensate the railroad.

Requests for public use conditions must be filed with the Commission and the applicant within 10 days after publication.

Any financial assistance offer must be filed with the Commission and applicants no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2). Decided: February 2, 1993.

By the Commission, Chairman Philbin, Vice Chairman Simmons, Commissioners Phillips, McDonald, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–3076 Filed 2–8–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

City of New Albany, IN; Notice of Lodging of Proposed Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed consent decree in *United States and State of Indiana* v. *City of New Albany, Indiana,* Civil Action No. 90–46–C (S.D. Ind.), is available to the public for review and comment. The proposed consent decree resolves litigation in this matter with respect to the alleged violations by the City of New Albany, Indiana ("New Albany") of effluent limitations in its National Pollutant Discharge Elimination System ("NPDES") permit; of New Albany's pretreatment program; of the Clean Water Act, 33 U.S.C. 1251 *et seq.;* and of an Administrative Order that the United States Environmental Protection Agency issued to New Albany in 1988 concerning such violations. The NPDES permit was issued pursuant to the Clean Water Act, 33 U.S.C. 1342, in connection with operations at the municipal wastewater treatment facility ("POTW") in New Albany, Indiana.

The decree has been lodged with the United States District Court for the Southern District of Indiana, Ohio, Southern Division. It sets forth two "Phases" of compliance and remedial programs that Albany must follow. So that New Albany complies with effluent limits and other aspects of its NPDES permit and the Act, injunctive relief required under the proposed decree includes planning, construction and operation of a modified and expanded POTW; immediate sludge management measures; control of bypassing and overflows in connection with the POTW; sewer rehabilitation work; and comprehensive implementation of an approved pretreatment program.

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[1] G&OR, under the trade name Mississippi Delta Railroad, leases and operates a 50-mile rail line between Swan Lake and Lula, MS. G&OR, under the A&GR trade name, operates about 36 miles of rail line between Thomasville and Camilla, GA, as well as about 41 miles of rail line leased by G&OR running north from Camilla to Albany, and then east to Sylvester, GA.

The decree also provides that New Albany shall pay a civil penalty of $175,000, plus interest, in installments to the United States Treasury (in the base amount of $140,000) and the Indiana Department of Environmental Management (in the base amount of $35,000).

The Department of Justice will receive comments relating to the proposed decree for 30 days from the date of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Indiana* v. *City of New Albany, Indiana*, D.J. Ref. No. 90-5-1-1-3884. The decree may be examined without charge at the office of the United States Attorney for the Southern District of Indiana, Civil Division at 220 United States Courthouse, Columbus, Ohio 43215; at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004 [Telephone: (202) 347-7829]. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2870 Filed 2-8-93; 8:45 am]

BILLING CODE 4410-01-M

Ohio Utilities Co.; Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Ohio Utilities Company*, Civil Action No. 2-91-813 (S.D. Ohio) was lodged on January 15, 1993 with the United States District Court for the Southern District of Ohio. The decree resolves claims against Citizens Utilities Company of Ohio, formerly known as Ohio Utilities Company, under sections 309(b) and 309(d) of the Clean Water Act, 42 U.S.C. 1319 (b) and (d), based on violations of defendant's National Pollutant Discharge Elimination System ("NPDES") permits for its Blacklick Estates wastewater treatment plant in Franklin County, Ohio. The proposed decree requires defendant to operate and maintain the Blacklick plant to ensure compliance with its current NPDES permit, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and all regulations promulgated thereunder; to conduct an infiltration and inflow analysis and sewer system evaluation survey report (the "I/I Report") on the collecting sewer system for the area served by the Blacklick plant; to implement the remedial measures identified by the I/I Report and approved by EPA to correct the effects of any excess infiltration and inflow on the operation of Blacklick; and to pay a civil penalty in the amount of $400,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ohio Utilities Company*, D.J. reference #90-5-1-1-3689.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, 280 North High Street, 4th Floor, Columbus, Ohio 43215; the Region V Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, 202-347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93-2871 Filed 2-8-93; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated April 27, 1992, and published in the **Federal Register** on May 1, 1992, (57 FR 18907), Bridgeway Trading Corporation, 7401 Metro Blvd., suite 480, Minneapolis, Minnesota 55439, made application to the Drug Enforcement Administration to be registered as an importer of Marihuana (7360), a basic class of controlled substance listed in Schedule I.

No request for a hearing has been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 28, 1993

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93-3001 Filed 2-8-93; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 19, 1992, Dupont Pharmaceuticals, the Dupont Merck, Pharmaceutical Company, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Thebaine (9333)	II
Oxymorphine (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United

States Department of Justice, Washington, DC 20537. Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: January 28, 1993.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–3002 Filed 2–8–93; 8:45 am]

BILLING CODE 4410-09-M

Office of Justice Programs; Bureau of Justice Statistics

FY 1993 Statistical Programs

AGENCY: Office of Justice Programs, Bureau of Justice Statistics.

ACTION: Public announcement of the availability of the publication, Bureau of Justice Statistics, Fiscal Year 1993 Statistical Programs.

SUMMARY: The Bureau of Justice Statistics (BJS) is publishing this Notice of the availability of its publication, Bureau of Justice Statistics, Fiscal Year 1993 Statistical Programs. This publication provides summary descriptions for Bureau of Justice Statistics FY 1993 ongoing programs conducted in-house with data collection activities performed by the Bureau of the Census and other organizations. Additionally, the document includes detailed descriptions of two FY 1993 programs for which applications may be made: the State Statistical Analysis Centers and Information Network program and the BJS Visiting Research Fellowship program. Application and administrative information relating to application content, required certifications, and financial, civil rights, and audit requirements for these two programs is included within the publication.

DATES: All proposals responding to the programs included in the publication, Fiscal Year 1993 Statistical Programs, must be postmarked by the specific due dates indicated in this publication.

ADDRESSES: Bureau of Justice Statistics, Room 1142, 633 Indiana Avenue, N.W., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Maureen A. Henneberg, Fiscal and Management Unit, Bureau of Justice Statistics, at the above address. Telephone: (202) 616–3282. To obtain this publication, contact the Bureau of Justice Statistics Clearinghouse toll-free number at 1–800–732–3277, or write to the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

The Bureau of Justice Statistics announces the following two programs for which applications may be made: The State Statistical Analysis Centers and Information Network program and the BJS Visiting Research Fellowship program. The State Statistical Analysis Center program has a single eligible applicant agency within each State. The State Statistical Analysis Centers are the eligible award recipients. In most cases, the recipient of the BJS Visiting Research Fellowship should hold an advanced degree in statistics or one of the social sciences or related disciplines, and/or have relevant and substantial experience in justice-related issues, the application of quantitative research techniques, and report writing.

Lawrence A. Greenfeld,

Acting Director.

[FR Doc. 93–3013 Filed 2–8–93; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 19, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 19, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of January, 1993.

Violet Thompson,

Deputy Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Vassar Fibercoating & Metalizing (AIW)	Vassar, MI	01/25/93	01/01/93	28,235	Auto Interior Trim.
Amerada Hess Corp. (wkrs)	Tulsa, OK	01/25/93	01/15/93	28,236	Crude Oil, Natural Gas & Liquids.
Andrews Savings and Loan Assoc. (wkrs)	Andrews, TX	01/25/93	01/15/93	28,237	Saving & Loan Services.
Baker Hughes/ICO, Inc. (co)	Houston, TX	01/25/93	01/12/93	28,238	Pipe Coating, Inspection.
Big Yank (ACTWU)	Tyrone, PA	01/25/93	10/19/92	28,239	Men's Jeans.
Mayronne Drilling Mud & Chemical (wkrs)	Harvey, LA	01/25/93	01/05/93	28,240	Oil Drilling Contractor.
Mayronne Co. (The) (wkrs)	Harvey, LA	01/25/93	01/05/93	28,241	Oil Drilling Contractor.
Tetley, Inc. (IBT)	Morris Plains, NJ	01/25/93	01/14/93	28,242	Tea.
St. Joseph Leather Goods (LGPN)	Gloversville, NY	01/25/93	01/20/93	28,243	Leather Wallets.
B & E Manufacturing (wkrs)	Branson West, MO	01/25/93	01/11/93	28,244	T-Shirts.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Abex/NWL Aerospace Div. (OCAW)	Oxnard, CA	01/25/93	01/15/93	26,245	Aerospace Components.
Echo Bay Minerals Road (co)	Republic, WA	01/25/93	01/11/93	28,246	Gold Ore and Silver By-Products.
Anadarko Petroleum Corp. (wkrs)	Oklahoma City, OK	01/25/93	01/10/93	28,247	Oil and Gas.
A.E. Erickson Enterprises, Inc. (wkrs)	Renton, WA	01/25/93	12/23/92	28,248	Cedar Shakes and Shingles.
Texaco Oil Co. (EOIU)	Velma, OK	01/25/93	01/11/93	28,249	Crude Oil.
Dana Corp, Spicer Transmission (UAW)	Toledo, OH	01/25/93	01/12/93	28,250	Truck Transmissions.
General Dynamics (wkrs)	Sterling Heights, MI	01/25/93	01/04/93	28,251	Mil Bottle Tanks.
Jackie's Quality Catering (co)	Orem, UT	01/25/93	01/13/93	28,252	Catering Services.
Southern Mechanical (wkrs)	Frankston, TX	01/25/93	12/28/92	28,253	Industrial Equipment.
Welchem, Inc. (wkrs)	Gillette, WY	01/25/93	01/19/93	28,254	Oilfield Chemicals.
Grace Offshore Co. (co)	New Orleans, LA	01/25/93	01/15/93	28,255	Oil and Gas.
Grace Offshore Co. (co)	Houma, LA	01/25/93	01/15/93	28,256	Oil and Gas.
Grace Offshore Co. (co)	New Iberia, LA	01/25/93	01/15/93	28,257	Oil and Gas.
Texaco, Inc., (EPTD) (wkrs)	Houston, TX	01/25/93	01/12/93	28,258	Oil, Gas, and By-Products.
Maxim Engineers, Inc. (wkrs)	Dallas, TX	01/25/93	01/10/93	28,259	Environmental Impact Studies.

[FR Doc. 93-3086 Filed 2-8-93; 8:45 am]

BILLING CODE 4510-30-M

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Regarding the Attestation Process: Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-219-5263 (this is not a toll-free number).

Regarding the Complaint Process: Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the ADDRESSES section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the ADDRESSES section of this notice.

Signed at Washington, DC, this 2d day of February, 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[01/01/93 to 01/31/93]

CEO name/facility name/address	State	Approval date
Mr. Matthew Luger, Kivel Care Center, 3020 North 36th Street, Phoenix, 85018, 602-956-3110	AZ	01/25/93
Sr. St. Joan Willert, Carondelet Health Care Corp., Tucson, 85703, 602-721-3828	AZ	01/25/93
Mr. John V. Fenton, Brotman Medical Center, 2838 Delmas Terrance, Culver City, 90232, 213-836-7000	CA	01/06/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[01/01/93 to 01/31/93]

CEO name/facility name/address	State	Approval date
Mark A. Meyers, AMI Garden Grove Hospital and Medical Center, Garden Grove, 92643, 714–537–5160	CA	01/06/93
Mr. Michael Kerr, Lakewood Reg'l Med. Ctr., 3700 E. South Street, Lakewood, 90712, 310–531–2550	CA	01/06/93
Anthony Glenn Padama, Brier Oak Terrace Care Center, 5154 Sunset Blvd., Los Angeles, 90027, 213–663–3951	CA	01/06/93
Mr. Russell Stromberg, Centinela Hospital Med. Ctr., 555 East Hardy Street, Inglewood, 90307, 213–419–3624	CA	01/13/93
Mr. Bruce Perry, Fresno Community Hospital and Medical Center, Fresno, 93701, 209–442–6000	CA	01/14/93
Mr. Frank Puglisi, Merrithew Memorial Hosp., 2500 Alhambra Avenue, Martinez, 94553, 510–370–5130	CA	01/14/93
Mr. Albert C. Mour, Eisenhower Medical Ctr., 39000 Bob Hope Dr., Rancho Mirage, 92270, 619–340–3911	CA	01/14/93
Ralph G. Pollock, The Rehab. Inst. at Santa Barbara, Santa Barbara, 93110, 805–683–7140	CA	01/14/93
Mr. David Friedman, Broadway Manor Conval. Hosp., 605 W. Broadway, Glendale, 91204, 818–246–7174	CA	01/14/93
Mr. Bruce Perry, Sierra Community Hospital, 2025 E. Dakota, Fresno, 93726, 209–221–5600	CA	01/14/93
Mr. Bruce Perry, Clovis Community Hospital, 2755 Herndon, Clovis, 93612, 209–323–4000	CA	01/14/93
Mr. Sheldon S. King, Cedars-Sinai Med. Ctr., 8700 Beverly Blvd., Los Angeles, 90048, 310–855–5000	CA	01/25/93
Mr. C. Larry Carr, Bakersfield Mem. Hosp., 420 34th Street, Bakersfield, 93301, 805–327–1792	CA	01/25/93
Mr. Brian Hintergardt, Coalinga Reg'l Med. Ctr., 1191 Phelps Avenue, Coalinga, 93210, 209–935–6400	CA	01/25/93
Mr. Joel Bergenfeld, Century City Hospital, 2070 Century Park East, Los Angeles, 90067, 310–201–6660	CA	01/26/93
Mr. Edward Renford, Martin Luther King Jr./Drew Medical Ctr., Los Angeles, 90059, 213–603–5201	CA	01/26/93
Mr. Jerry Buckingham U. of Southern California Med., 1200 North State Street, Los Angeles, 90033, 213–240–8123	CA	01/26/93
Mr. Chris DiCicco, Doctors Medical Ctr., 1441 Florida Avenue, Modesto, 95350, 209–58–1211	CA	01/29/93
Robert Trautman, Calexico Hospital, c/o Intercontinental Nursing Svcs., San Diego, 92154, (619) 357–1191	CA	01/29/93
Mr. John P. Yeros, Nurse Source Health Care Services, Inc., Denver, 80209, 303–394–2900	CO	01/14/93
Mr. Garrell Mullaney, Fairfield Hills Hospital, Box 5525, Newtown, 06470, 203–426–2531	CT	01/14/93
Mr. Joseph A. Zaccagnino, Yale New Haven Hospital, 20 York Street, New Haven, 06504, 203–785–2414	CT	01/26/93
Mr. Kevin E. Lofton, Howard University Hosp., 2041 Georgia Avenue, N.W., Washington, 20060, 202–865–1521	DC	01/15/93
NAT West, Boca Raton Community Hospital, 800 Meadows Road, Boca Ration, 33486, 407–395–7100	FL	01/05/93
Mr. Jesse Dunwoody, Southpoint Manor, Med. Income Properties, 1, Ltd., Miami Beach, 33139, 305–672–1771	FL	01/06/93
Mr. Ralph L. Stacey, Riverside Care Center, Stacey Health Care Ctrs., Inc., Miami, 33128, 305–326–1236	FL	01/06/93
Stephen Sutherlin, Humhosco, Inc., t/a Humana Hospital/Northside, St. Petersburg, 33709, 813–521–5073	FL	01/08/93
Mr. Kenneth W. Thompson, Brooksville Reg'l. Hospital, 55 Ponce de Leon Blvd., Brooksville, 34605, 904–544–6150	FL	01/15/93
Mr. Martin E. Casper, Greynolds Park Manor, Inc., 17400 West Dixie Highway, North Miami Beach, 33160, 305–944–2361	FL	01/26/93
Mr. Rene Zarate, TGC Home Health/Polycare Division, Winter Haven, Winter Haven, FL, 33830, 813–683–5574	FL	01/26/93
Ms. Sherry Brunner, Bon Secours Hosp.-Villa Maria Nsg. Ctr., North Miami, 33161, 305–891–8850	FL	01/26/93
Mr. Ralph R. Aleman, Victoria Hospital Partnership, 955 N.W. Third Street, Miami, 33128, 305–545–8050	FL	01/29/93
Mr. D. Wayne Bracklin, SMH Homestead Hospital, 160 NW 13 Street, Homestead, 33030, 305–248–3232	FL	01/29/93
Mr. Thomas Gilbert, Shallowford Hospital, 4575 N. Shallowford Rd., Dunwoody, 30338, 404–454–2028	GA	01/25/93
Mr. Kenneth C. Owens, Green Acres Care, Beverly Enterprises, Inc., Gooding, 83330, 206–696–3914	ID	01/06/93
Denton C. John, D.D.S., Oneida County Hospital, 150 North 200 West, Malad City, 83252, 208–766–2231	ID	01/06/93
Mr. Kenneth C. Owens, Skyline Health Care, Beverly Enterprises, Inc., Pocatello, 83201, 206–696–3914	ID	01/15/93
Mr. Kenneth C. Owens, Magic Valley Manor, Beverly Enterprises, Inc., Wendell, 83335, 206–696–3914	ID	01/25/93
Mr. Kenneth C. Owens, Payette Lake Care, Beverly Enterprises, Inc., McCall, 83638, 206–696–3914	ID	01/25/93
Mr. Kenneth C. Owens, Harral's Nursing, Beverly Enterprises, Inc., Buhl, 83316, 206–696–3914	ID	01/25/93
Ms. Robin McElroy, The Lincoln Home, Inc., 150 N. 27th St., Belleville, 62223, 618–235–6600	IL	01/06/93
Mr. Hugh Caneday, Morgan View Terrace, Ltd., 1024 W. Walnut, Jacksonville, 62650, 217–245–5175	IL	01/06/93
Mr. Herman Frey, Burnham Terrace, Ltd., 14500 S. Manistee, Burnham, 60633, 708–862–1260	IL	01/06/93
Ms. Sandra Berger, Yorkdale Healthcare Centre, Ltd., Rockford, 61103, 815–964–4611	IL	01/06/93
Ms. Shirley Dunn, Evergreen Nursing and Convalescent Centre, Effingham, 62401, 217–347–7121	IL	01/08/93
Mr. Benn Greenspan, Mt. Sinai Hosp. Med. Ctr., 15th at California Avenue, Chicago, 60608, 312–650–6653	IL	01/13/93
Ms. Denise Martin Community Care Ctr., Inc., 4314 S. Wabash Ave., Chicago, 60653, 312–538–8300	IL	01/14/93
Mr. Howard L. Wengrow, All American Nursing Home, 5448 N. Broadway, Chicago, 60640, 312–334–2224	IL	01/14/93
Mr. Howard L. Wengrow, Hickory Nursing Pavilion, Inc., 9246 S. Roberts Rd., Hickory Hills, 60457, 708–598–4040	IL	01/14/93
Ms. Kathleen Stumpe, St. Martha Manor, 4621 North Racine Avenue, Chicago, 60640, 312–784–2300	IL	01/25/93
Mr. Charles Stumpf, Sacred Heart Home, 1550 South Albany Avenue, Chicago, 60623, 312–277–6868	IL	01/25/93
Mr. Marvin Mermelstein, Parklane Nursing Centre, 9125 South Pulaski, Evergreen Pk., 60642, 708–425–3400	IL	01/25/93
Mr. Jeffrey Webster, Arbour Health Care Ctr., 1512 W. Estes, Chicago, 60626, 312–465–7751	IL	01/26/93
Robert L. Johnson, Appalachian Regional Healthcare, P.O. Box 8086; 1220 Harrodsburg Road, Lexington, 40533, 606–281–2440	KY	01/06/93
Mr. Frank Butler, U. of Kentucky Hospital, 800 Rose Street, Lexington, 40536, 606–233–5000	KY	01/08/93
Mr. Robert L. Johnson, ARH Regional Med. Ctr., Appalachian Reg'l. Healthcare, Inc., Hazard, 41701, 606–281–2440	KY	01/25/93
Mr. Pat Holland, Britthaven of Louisville, 9600 Lamborne Blvd., Louisville, 40272, 502–935–0935	KY	01/25/93
David F. Fine, Admin. of the Tulane Education DBA as Tulane Univ. Med. Ctr. Hospital, New Orleans, 70112, 504–588–5471	LA	01/06/93
James Braxder, Baton Rouge General Medical Ctr., 3600 Florida Blvd., Baton Rouge, 70821, 504–387–7660	LA	01/06/93
Mr. Robert C. Davidge, Our Lady of the Lake Hospital, Inc., Baton Rouge, 70808, 504–765–8803	LA	01/14/93
Paul A. Marks, Memorial Sloan-Kettering Cancer, 1275 York Avenue, New York, 10021, 212–639–3952	LU	01/15/93
Mr. Thomas G. Doherty, NYCHH Corp.—Queens Hospital, Immigration Unit, New York, 10013, 212–566–7322	LU	01/29/93
Mr. William F. Lane, Holy Family Hospital, 70 East Street, Methuen, 01844, 508–687–0151	MA	01/08/93
Mr. Lawrence Beck, The Good Samaritan Hospital of Maryland, Baltimore, 21239, 410–532–8000	MD	01/26/93
Ms. Kathleen Bouchard, Cary Medical Center, 37 Van Buren Road, Caribou, 04736, 207–498–3111	ME	01/14/93
Ms. Ronnette Cox, Conval. Ctr. of Lee County, 714 Westover Drive, Sanford, 27330, 919–775–5404	NC	01/25/93
Mr. Glenn Potter, Britthaven of Louisburg, Route 3, Box 8, Louisburg, 27549, 919–496–7222	NC	01/29/93
Clara Kim, International Nurses Registry, 3 Van Allen Court, Wayne, 07470, 201–633–8591	NJ	01/06/93
Mr. Lester M. Bornstein, Newark Beth Israel Med. Ctr., 201 Lyons Avenue, Newark, 07112, 201–926–7000	NJ	01/08/93
Mr. Scott L. Goldberg, Mt. Laurel Convalescent Ctr., Church Road, Mt. Laurel, 08054, 609–235–7100	NJ	01/14/93
Ms. Patricia Radke, Freehold Rehab. & Nursing Ctr., 3419 US Hwy 9, Freehold, 07728, 908–780–0660	NJ	01/29/93
Ms. Filomena Acevedo, DNS Inc. of New York, 6 E. 45th Street, New York City, 10017, 212–883–6877	NY	01/06/93
Siegmundo Hirsch, Ph.D., Rockville Nursing Ctr., Inc., 41 Maine Avenue, Rockville Centre, 11570, 516–536–7730	NY	01/08/93
James Davis, Amsterdam Nursing Home Corp., 1060 Amsterdam Avenue, New York, 10025, 212–678–2600	NY	01/13/93
Mr. Jacob Reingold, Hebrew Home for the Aged at Riverside/Palisade Nur. Home, Bronx, 10471, 212–549–8700	NY	01/14/93
Mr. Thomas G. Doherty, Bellevue Hospital—NYC Health and Hospitals, New York, 10013, 212–566–7322	NY	01/25/93
John W. Rowe, M.D., The Mount Sinai Hospital, One Gustave L. Levy Place, New York, 10029, 212–241–8875	NY	01/25/93
Thomas G. Doherty, Goldwater Hospital, New York City Health & Hospitals Corp., New York, 10013, 212–788–3485	NY	01/25/93
Mr. Henry Otshin, Astoria General Hosp., 25–10 30th Avenue, Long Island City, 11102, 718–932–1000	NY	01/26/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[01/01/93 to 01/31/93]

CEO name/facility name/address	State	Approval date
Mr. Kenneth C. Owens, King City Conval. Ctr., Beverly Enterprises, Inc., Tigard, 97223, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Powellhurst Nursing, Beverly Enterprises, Inc., Portland, 97236, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Corvallis Care, Beverly Enterprises, Inc., Corvallis, 97330, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Hillside Heights, Beverly Enterprises, Inc., Eugene, 97401, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Tigard Care Center, Beverly Enterprises, Inc., Tigard, 97224, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Linn Care Center, Beverly Enterprises, Inc., Albany, 97321, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Centennial Health Care, Beverly Enterprises, Inc., Portland, 97233, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Green Valley Care Ctr., Beverly Enterprises, Inc., Eugene, 97401, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Ivorena Care Center, Beverly Enterprises, Inc., Eugene, 97402, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Mountain View Conval., Beverly Enterprises, Inc., Oregon City, 97045, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Gladstone Convalescent, Beverly Enterprises, Inc., Gladstone, 97027, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Cedarwood Care Center, Beverly Enterprises, Inc., Independence, 97351, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Camelot Care Center, Beverly Enterprises, Inc., Forest Grove, 97116, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Capitol View, Beverly Enterprises, Inc., Salem, 97304, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Forest View, Beverly Enterprises, Inc., Forest Grove, 97116, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Raleigh Care Center, Beverly Enterprises, Inc., Portland, 97225, 206-696-3914	OR	01/15/93
Mr. Kenneth C. Owens, Laurelhurst Care, Beverly Enterprises, Inc., Portland, 97214, 206-696-3914	OR	01/25/93
Mr. Daniel Frost, Liberty Nursing and Rehab. Ctr., Allentown, 18104, 214-432-4351	PA	01/26/93
Mr. James B. Edwards, Med. U., of South Carolina, 171 Ashley Avenue, Charleston, 29425, 803-792-4582	SC	01/06/93
Mrs. Joyce Foley, McHarry Medical College, 1005 D. B. Todd Blvd., Nashville, 37208, 615-327-6628	TN	01/28/93
Mr. Marion T. Philpot, Tarrant County Hospital District, Fort Worth, 78104, 817-927-1036	TX	01/08/93
Mr. David B. Dildy, East Texas Med. Ctr.-Tyler, 1000 S. Beckham, Tyler, 75701, 903-531-8016	TX	01/13/93
Mr. Thomas Kennedy, Rolling Plains Memorial Hosp., Nolan County Hosp. Dist., Sweetwater, 79556, 915-235-1701	TX	01/14/93
Sister M. Fatima McCarthy, St. Elizabeth Hospital, 2830 Calder Avenue, Beaumont, 77702, 409-899-7165	TX	01/14/93
Ron J. Anderson, M.D., Parkland Memorial Hospital, Dallas County Hosp. Dist., Dallas, 75235, 214-590-8011	TX	01/14/93
Ms. Jolyn West Scheirman, JWS Health Consultants, Inc., 3730 Kirby Drive, Houston, 77098, 713-522-5355	TX	01/25/93
Mr. Charles N. Butts, East Texas Med. Ctr.—Pittsburg, 414 Quitman Street, Pittsburg, 75686, 903-856-6663	TX	01/25/93
Mr. Walter J. Ornsteen, AMI Twelve Oaks Hospital, 4200 Portsmouth, Houston, 77027, 713-623-2500	TX	01/29/93
Mr. Gerald R. Brink, Riverside Reg'l. Med. Ctr., 500 J. Clyde Morris Blvd., Newport News, 23601, 804-594-2025	VA	01/26/93
Mr. Charles V. Rice, International Health Services, 5160 Parkstone Dr., Suite 140, Chantilly, 22021, 703-222-3900	VA	01/27/93
Mr. Kenneth C. Owens, Benson Heights, 22410 Benson Road SE., Kent, 98031, 206-696-3914	WA	01/06/93
Mr. Kenneth C. Owens, Pleasant Acres, Beverly Enterprises, Inc., Everett, 98203, 206-696-3914	WA	01/06/93
Mr. Kenneth C. Owens, Palouse Hills Conval. Ctr., Beverly Enterprises, Inc., Pullman, 99163, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Lilac City Conval., Beverly Enterprises, Inc., Spokane, 99207, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Hillcrest Convalescent, Beverly Enterprises, Inc., Pasco, 99301, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Monarch Care Center, Beverly Enterprises, Inc., Seattle, 98198, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Willapa Harbor, Beverly Enterprises, Inc., Raymond, 98577, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Wildwood Health, Beverly Enterprises, Inc., Puyallup, 98371, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Meadow Glade Manor, Beverly Enterprises, Inc., Battle Ground, 98604, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Sherwood Terrace Nursing Home, Tacoma, 98444, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Mansion House Conval. Ctr., Beverly Enterprises, Inc., Spokane, 99207, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Rose Vista, Beverly Enterprises, Inc., Vancouver, 98661, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Wedgewood Rehab. Ctr., Beverly Enterprises, Inc., Seattle, 98114, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Clearview Manor, Beverly Enterprises, Inc., Tacoma, 98404, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Renton Terrace, Beverly Enterprises, Inc., Renton, 98055, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Midway Manor Conval. Ctr., Beverly Enterprises, Inc., Des Moines, 98661, 206-696-3914	WA	01/15/93
Mr. Kenneth C. Owens, Highland Terrace, P.O. Box 1148, Camas, 98607, 206-696-3914	WA	01/25/93
Mr. Kenneth C. Owens, Pinewood Terrace, Beverly Enterprises, Inc., Colville, 99114, 206-696-3914	WA	01/25/93
Mr. Kenneth C. Owens, Othello Convalescent, Beverly Enterprises, Inc., Othello, 99344, 206-696-3914	WA	01/25/93
Ms. Debra Barth, Caravilla, P.O. Box 75, Beloit, 63512, 608-365-8877	WI	01/06/93
Ms. Jane C. Elliott, Bel Air Health Care Ctr., 9350 W. Fond du Lac Ave., Milwaukee, 58225, 414-438-4360	WI	01/29/93
Total Attestations: 135.		

[FR Doc. 93-3088 Filed 2-8-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-014]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by March 11, 1993. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: D.A. Gerstner, NASA Agency Clearance Officer, Code JTD, NASA Headquarters, Washington, DC 20546; Office of Management Budget, Paperwork Reduction Project (2700–xxxx), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 358-1375.

Reports

Title: Survey of Community Response to Sonic Booms

OMB Number: None
Type of Request: New
Frequency of Report: One-time only
Type of Respondent: Individuals or households, Farms
Number of Respondents: 1,200
Responses Per Respondent: 13
Total Annual Responses: 15,600
Hours Per Response: 0.2
Total Annual Burden: 3,120
Abstract-Need/Uses: Information is needed on the responses of people to sonic booms for the development of supersonic jet transport aircraft. Community residents in rural areas subjected to sonic booms will be interviewed concerning their responses to these forms.

Dated: February 1, 1993.

D.A. Gerstner,

Chief, IRM Policy and Acquisition Management Office.

[FR Doc. 93-3057 Filed 2-8-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-013]

NASA Advisory Council Task Force on Benchmarking of U.S. Aeronautical Facilities; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting cancellation.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 5034, Notice Number 93-001, January 19, 1993.

PREVIOUSLY ANNOUNCED DATES OF MEETING: February 9, 1993, 8 a.m. to 4:30 p.m. Meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23665, 804/864-8686.

Dated: February 2, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-3056 Filed 2-8-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-011]

NASA Advisory Council, Space Science and Applications Advisory Subcommittee, Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 5762, Notice Number 93-003, January 22, 1993.

PREVIOUSLY ANNOUNCED DATES AND ADDRESSES OF MEETING: February 11, 1993, 8 a.m. to 5 p.m.; and February 12, 1993, 8 a.m. to 5 p.m.; National Aeronautics and Space Administration, room MIC-5, 300 E Street, SW., Washington, DC 20546.

CHANGES IN THE MEETING: The meeting dates have been changed to February 25, 1993, 8 a.m. to 5 p.m.; and February 26, 1993, 8 a.m. to 5 p.m. The meeting location has been changed to National Aeronautics and Space Administration, room MIC-7, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. George L. Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1544.

Dated: February 1, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-3051 Filed 2-8-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-012]

NASA Advisory Council, Space Science and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Station Science and Applications Advisory Subcommittee (SSSAAS).

DATES: February 23, 1993, 8 a.m. to 9:30 p.m.; February 24, 1993, 8 a.m. to 5 p.m.; and February 25, 1993, 8 a.m. to noon.

ADDRESSES: The Holiday Inn NASA, 1300 NASA Road 1, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code SM, National Aeronautics and Space Administration, Washington, DC 20546 (202/358-2150).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status of Life Sciences Planning
—Status of Microgravity Science Planning
—Responses to Prior SSSAAS Recommendations
—Update of Space Station Freedom (SSF) Data/Communications Capabilities
—Status of Attached Payload Planning
—SSF Follow-on Enhancements
—Preparation of SSSAAS Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: February 1, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-3055 Filed 2-8-93; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-446]

Comanche Peak Steam Electric Station, Unit 2; Texas Utilities Electric Co.; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-88 (the license) to Texas Utilities Electric Company (the licensee). This license authorizes operation of the Comanche Peak Steam Electric Station, Unit 2 (the facility), by the licensee at reactor core power levels not in excess 170 megawatts thermal in accordance with the provisions of the license, the Technical Specifications, and the Environmental Protection Plan.

Comanche Peak Stream Electric Station, Unit 2, is a pressurized water nuclear reactor located in the licensee's site in Somervell County, Texas, approximately 40 miles southwest of Fort Worth, Texas.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license authorizing full power operation was published in the **Federal Register** on February 5, 1979 (44 FR 6995).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (NUREG–0775) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on January 19, 1993 (58 FR 5035 and 58 FR 5036).

For further details with respect to this action, see (1) Facility Operating License No. NPF–88, with Technical Specifications (NUREG–1468), Environmental Protection Plan, and Antitrust Conditions; (2) the report to the Advisory Committee on Reactor Safeguards dated November 17, 1981; (3) the Commission's Safety Evaluation Report (NUREG–0797) dated July 1981; Supplement No. 1 dated October 1981, Supplement No. 2 dated January 1982; Supplement No. 3 dated March 1983; Supplement No. 4 dated November 1983[1]; Supplement No. 6 dated November 1984; Supplement No. 7 dated January 1985, Supplement No. 8 dated February 1985; Supplement No. 9 dated March 1985; Supplement No. 10 dated April 1985; Supplement No. 11 dated May 1985; Supplement No. 12 dated October 1985; Supplement No. 13 dated May 1986; Supplement No. 14 dated March 1988; Supplement No. 15 dated July 1988; Supplement No. 16 dated July 1988; Supplement Nos. 17 through 20 dated November 1988; Supplement No. 21 dated April 1989; Supplement No. 22 dated January 1990; Supplement No. 23 dated February 1990; Supplement No. 24 dated April 1990, Supplement No. 25 dated September 1992; and Supplement No. 26 dated February 1993; (4) the Final Safety Analysis Report through Amendment No. 87 dated December 18, 1992; (5) the Environmental Report through Amendment No. 3 dated January 8, 1981; and (6) the Final Environmental Statement dated September 1981, supplemented October 1989.

These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. A copy of Facility Operating License No. NPF–88 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III/IV/V. Copies of the Safety Evaluation Report and its Supplements 1 through 26 (NUREG–0797) and the Technical Specifications (NUREG–1468) may be purchased by calling (202) 512–2249 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982.

Dated at Rockville, Maryland, this 2d day of February 1993.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–3035 Filed 2–8–93; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will convene a meeting of members of the Advisory Committee on the Medical Uses of Isotopes (ACMUI), to provide the attending members an opportunity to prepare for a meeting with the Chairman and the NRC Commissioners. These members will meet with the Commission on February 22, 1993, at 9 a.m., in the Commissioners' Conference Room in NRC's One White Flint Building. This meeting will be Noticed separately.

There will be no formal agenda for this meeting. Some of the topics addressed may include, but are not limited to: medical issues raised in recent newspaper articles, NRC policies regarding reporting and followup of medical misadministrations; uniformity of policy between the NRC and Agreement States' programs on patient notification; and adequacy of radiation safety officer training. NRC staff will provide supplemental information and other support at the ACMUI's request.

DATES: The meeting will be held from 2 p.m. to 6 p.m. on Sunday, February 21, 1993.

Location: The U.S. Nuclear Regulatory Commission, One White Flint North, Rooms 1–F–7 and 9, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Larry W. Camper, Office of Nuclear Material Safety and Safeguards, MS 6–H–3, U.S. Nuclear Regulatory Commission., Washington, DC 20555, Telephone 301–504–3417.

Conduct of the Meeting

Barry Siegel, M.D. will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting.

1. Persons may submit written comments by sending a reproducible copy to the Secretary of the Commission (Attn: Advisory Committee Management Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555). Comments must be received by February 17, 1993, to ensure consideration at the meeting. The transcript of the meeting will be kept open until February 24, 1993, for inclusion of written comments.

2. Persons who wish to make oral statements should inform Mr. Camper, in writing, by February 12, 1993. The Chairman will rule on requests to make oral statements. Given the nature and duration of this meeting, the Chairman may determine that oral statements will not be permitted. Opportunity for members of the public to make oral statements will be based on the order in which requests are received. In general, oral statements should be limited to approximately 5 minutes. Oral statements must be supplemented by detailed written statements, for the record. Rulings on who may speak, the order of presentation, and time allotments may be obtained by calling Mr. Camper, 301–504–3417, between 9 a.m. and 5 p.m. e.s.t., on February 18, 1993.

3. At the meeting, questions from attendees other than committee members, NRC consultants, and NRC staff will be permitted at the discretion of the Chairman.

4. The transcript, minutes of the meeting, and written comments will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW., Lower Level, Washington, DC 20555 on or about March 12, 1993.

5. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily section 161a) the Federal Advisory Act (5 U.S.C. App.) and the Commission's regulations in title 10, Code of Federal Regulations, part 7.

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[1] Supplement No. 5 was never issued.

Dated: February 3, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–3038 Filed 2–8–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co.; Notice of Withdrawal of Applications for Amendments to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Portland General Electric Company (the licensee) to withdraw its March 13, 1992 (LCA 220) and October 15, 1992 (LCA 224) applications for amendments to Facility Operating License No. NPF–1 for Trojan Nuclear Plant, located in Columbia County, Oregon.

The proposed amendments would have revised the Trojan Technical Specification (TS) 3.4.9.1, "Pressure/Temperature Limits," and associated Bases, to indicate a maximum heat-up rate of 60 degrees Fahrenheit in any 1-hour period, revise associated TS Figures 3.4–2 and 3.4–3 regarding pressure/temperature curves (LCA 220), and revise requirements governing the testing frequencies and allowed outage times for analog instrumentation and digital logic systems of the Reactor Trip System and Engineered Safety Features Actuation System.

The Commission had previously issued Notices of Consideration of Issuance of Amendment published in the **Federal Register** on April 1, 1992 (57 FR 11114) and November 12, 1992 (57 FR 53788). However, by letter dated January 14, 1993, the licensee withdrew the proposed changes.

For further details with respect to this action, see the applications for amendments dated March 13, 1992 and October 15, 1992, and the licensee's letter dated January 14, 1993, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Branford Price Miller Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 2d day of February, 1993.

For the Nuclear Regulatory Commission.

Ramin R. Assa,

Acting Project Manager, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–3036 Filed 2–8–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31817; File No. 265–18]

Market Transactions Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of cancellation of meeting of the Securities and Exchange Commission ("Commission") Market Transactions Advisory Committee.

SUMMARY: This is to give notice that the meeting of the Securities and Exchange Commission Market Transactions Advisory Committee scheduled for February 10, 1993, in room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. has been cancelled.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Division of Market Regulation at (202) 504–2542, or Ari Burstein, Division of Market Regulation at (202) 504–2933; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app. 10a, the Securities and Exchange Commission Market Transactions Advisory Committee hereby gives notice that the meeting scheduled for February 10, 1993, in room 1C30 at the Commission's main offices, 450 Fifth Street, NW., Washington, DC, beginning at 10 a.m. has been cancelled.

Dated: February 3, 1993.

Jonathan G. Katz,

Advisory Committee Management Officer.

[FR Doc. 93–3071 Filed 2–8–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31810; File No. SR–PTC–92–12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Participants Trust Company Relating to a Modification to PTC's Procedures To Permit the Collateral Loan Facility To Be Used for Transfers From a Limited Purpose Account

February 2, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On February 1, 1993, PTC filed Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule filing is to modify PTC's Procedures to permit the Collateral Loan Facility to be used for transfers from a Limited Purpose Account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule filing is to modify PTC's Collateral Loan Facility ("CLF") Procedures to permit the CLF to be used to transfer a security interest in securities from a Limited Purpose Account ("LPA"). PTC's CLF Procedures provide for the bulk movement of a security interest in securities from specified accounts of a Participant to the Pledgee Account of another Participant. Currently, the Procedures only permit the CLF to be used for transfers from Proprietary and Agency Accounts. PTC has received requests from some of its Participants who are interested in using the CLF for transfers from LPAs.

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[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 clarified the reasons for the requirement that all Collateral Loan Facility transfers from a Limited Purpose Account must be free deliveries and not versus payment. Letter from Carol A. Jameson, Assistant Counsel, PTC, to Christine Sibille, Attorney, Commission (January 22, 1993).

Although the CLF Procedures currently do not list the LPA among the accounts from which securities may be transferred to a Pledgee Account, PTC's Rules[3] do permit a transfer of securities from an LPA of a Limited Purpose Participant (other than a Warehouse Lender or Special Clearing Participant) to a Pledgee Account. Given the limitation in the CLF Procedures, such a transfer currently can be made only via an individual securities movement (an "STX" transfer). In reviewing its Rules and Procedures in this regard, PTC has not identified a business or legal reason for not permitting the CLF movement out of an LPA.

The LPA is used largely by Collateralized Mortgage Obligation ("CMO") trustees to hold the collateral underlying the CMO. Currently, due to the prohibition against using the CLF to transfer securities in bulk from an LPA to a Pledgee Account in order to accomplish overnight financing while the CMO collateral is being accumulated but before the CMO closing, trustees must deposit securities into another account (e.g., an Agency Account), transfer the securities via CLF to the Pledgee Account of the overnight lender, then upon loan repayment transfer the securities back to the Agency Account for subsequent transfer to the LPA. This procedure is costly and labor intensive on the part of the Participant due to the fact that securities must be moved pool by pool to the LPA. Alternatively, it is understood that Participants may use "trust receipt" financing to perfect a security interest in securities in an LPA for these overnight loans. PTC understands that "trust receipt" financing is thought by some lenders to be less desirable than movement of the security interest to the lender's Pledgee Account to perfect security interests in the PTC-based collateral.

PTC proposes to modify the CLF Procedures to add the LPA as a type of an account from which transfers via CLF can be made, provided such transfers are free (*i.e.*, not versus payment). This limitation is necessary because, pursuant to the Participant Operating Guide, securities transferred via CLF must be returned to the LPA in the same method (free or versus payment) that they were transferred. Since under PTC's Rules[4] securities may not be redelivered to an LPA versus payment, the modified Procedures are limited to free deliveries.

Using the CLF technology to accomplish overnight or term bulk financing for CMO transactions, rather than individual movements of collateral among numerous accounts, is desirable in that it uses most fully the CPA prior to the CMO closing. To date, the LPA has been an effective method for holding CMO collateral free of PTC's liens. The proposed rule change therefore will further enhance the utility of the LPA to CMO trustees and, ultimately, investors. The proposed rule change also modifies the CLF Procedures to delete certain information. Such material is contained in other documents, such as the Participant Operating Guide and, therefore, is not necessary in these Procedures.

(b) Since the proposed rule change provides for the prompt and accurate clearance and settlement of securities transactions, it is consistent with section 17A of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from Participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–PTC–92–12 and should be submitted by March 2, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–3000 Filed 2–8–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 29, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48614

Date filed: January 25, 1993

Parties: Members of the International Air Transport Association

Subject:

Comp Reso/C 0462 dated February 11, 1991

Reso 025b as it pertains to Area TC1

Proposed Effective Date: Upon Government Approval

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[3] Article II, Rule 13, section 1(a)(iii)(E).

[4] Article II, rule 13, section 1 of PTC's Rules authorizes free transfers to securities only (i.e., not versus payment) from a Pledgee Account into an LPA.

Docket Number: 48615
Date filed: January 25, 1993
Parties: Members of the International Air Transport Association
Subject:
Comp Reso/C 0521 dated September 15, 1992
Reso 003rr as it pertains to Area TC1
Proposed Effective Date: Upon Government Approval

Docket Number: 48616
Date filed: January 25, 1993
Parties: Members of the International Air Transport Association
Subject:
TC1 Reso/C 0242 dated May 3, 1991
TC1 (USA & US Territories) Cargo Resos—R–1 to R–6
Proposed Effective Date: Upon Government Approval

Docket Number: 48617
Date filed: January 25, 1993
Parties: Members of the International Air Transport Association
Subject:
TC31 Reso/P 0961 dated November 13, 1992
North & Central Pacific Areawide—R–1 to R–4
TC31 Reso/P 0962 dated November 13, 1992
TC3-Central/South America resos—R–5 to R–16
TC31 Reso/P 0963 dated November 13, 1992
TC3 (except Japan)-North America—R–17 to R–30
TC31 Reso/P 0964 dated November 13, 1992
Japan-North America resos—R–31 to R–46
Proposed Effective Date: April 1, 1993

Docket Number: 48623
Date filed: January 28, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1464 dated December 1, 1992 South Atlantic-Europ/Middle East—r–1 to r–21
TC12 Reso/P 1465 dated November 27, 1992 South Atlantic Africa—r–22 to r–33
Proposed Effective Date: April 1, 1993

Docket Number: 48624
Date filed: January 28, 1993
Parties: Members of the International Air Transport Association
Subject: TC Reso/P 1297 dated September 25, 1992 Europe-Middle East reso—r–1 to r–27
Proposed Effective Date: April 1, 1993

Docket Number: 48629
Date filed: January 29, 1993
Parties: Members of the International Air Transport Association
Subject:
TC2 Meet/P 0316 dated January 27, 1993—Minutes
TC2 Reso/P 1342 dated December 1, 1992
Europe-Africa Areawide—r–1
TC2 Reso/P 1343 dated December 1, 1992
TC2 Fares 1352 dated December 15, 1992—Tables
Europe-Central Africa—r–2 to r–23
TC2 Reso/P 1344 dated December 1, 1992
TC2 Fares 1251 dated December 11, 1992—Tables
Europe-Libya—r–24 to r–31
TC2 Reso/P 1345 dated December 1, 1992
TC2 Fares 1256 dated December 18, 1992—Tables
Europe-Southern Africa—r–32 to r–50
TC2 Reso/P 1346 dated December 1, 1992
TC2 Fares 1255 dated December 15, 1992—Tables
Europe-Eastern Africa—r–51 to r–74
TC2 Reso/P 1347 dated December 8, 1992
TC2 Fares 1254 dated December 15, 1992—Tables
Europe-Indian Ocean Islands—r–75 to r–96
TC2 Reso/P 1348 dated December 8, 1992—r–97 to r–111
TC2 Reso/P 1352 dated December 18, 1992—r–112
TC2 Fares 1258 dated December 29, 1992—Tables
Europe-Western Africa
Proposed Effective Date: April 1, 1993

Docket Number: 48627
Date filed: January 29, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex Reso 024f—Sweden
Proposed Effective Date: February 20, 1993

Docket Number: 48628
Date filed: January 29, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1447 dated October 16, 1992 North Atlantic-Africa resos—r–1 to 4–20
Proposed Effective Date: April 1, 1993

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–3017 Filed 2–8–93; 8:45 am]
BILLING CODE 4910-62-M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 29, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48620.

Date filed: January 27, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 24, 1993.

Description: Application of Continental Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 171 authorizing CMI to provide scheduled foreign air transportation of persons, property and mail between Guam and Osaka, Japan. CMI also requests the right to combine its Guam-Osaka authority with its existing Saipan-Osaka authority so it can co-terminalize Guam and Saipan on flights serving Osaka.

Docket Number: 48621.

Date filed: January 28, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 25, 1993.

Description: Application of Leisure International Airways Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a Foreign Air Carrier Permit to perform charter foreign air transportation of persons, property and mail between a point or points in the United Kingdom and a point or points in the United States.

Docket Number: 48630.

Date filed: January 29, 1993.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 26, 1993.

Description: Application of Japan Universal System Transport Co., Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations applies for a Foreign Air Carrier Permit to engage in foreign charter air transportation of property and mail between points in Japan and points in the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–3016 Filed 2–8–93; 8:45 am]
BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement: Westmoreland County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Westmoreland County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

John A. Gerner, P.E., District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108–1086, Telephone: (717) 782–3411.

George W. Tanner, P.E., District Liaison Engineer, Pennsylvania Department of Transportation, P.O. Box 459, North Gallatin Avenue Extension, Uniontown, Pennsylvania 15401, Telephone: (412) 439–7315

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PADOT), will prepare an Environmental Impact Statement (EIS) for improvement of a portion of State Route (S.R.) 0711 between U.S. Route 30 and the Village of Oak Grove, Pennsylvania. The proposed project will begin at the intersection of S.R. 0711 and U.S. 0030 in the Borough of Ligonier, Pennsylvania and extend in a northerly direction for approximately two (2) miles to a point on S.R. 0711 south of the Village of Oak Grove, Pennsylvania. Improvements in the study area are considered necessary to adequately provide for a safe and efficient transportation system to serve the existing and future transportation needs of the project area.

A phased approach will be utilized to complete the preliminary design studies for this proposed highway project. Included in the first phase of the preliminary engineering and environmental studies will be a detailed needs analysis, an environmental overview, and a preliminary alternatives analysis. The second and final phase will include a detailed environmental analysis of alternatives which are recommended for further study as a result of the first phase studies.

Alternatives under consideration will include but are not limited to: (1) Taking no action; (2) Transportation System Management (TSM) improvements to the existing S.R. 0711, (3) upgrading of existing S.R. 0711 and; (4) constructing a highway on a new location (either east or west of Ligonier, Pennsylvania). Additional alternatives may be evaluated based on the findings and recommendations of the Phase 1 studies and public and agency involvement process. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

During the preparation of the EIS, the following subject areas will be investigated: Traffic; air quality; noise and vibration; surface water resources; aquatic environments; floodplains, groundwater; soils and geology; wetlands; vegetation and wildlife; endangered species; agricultural lands assessment; visual; socioeconomics and land use; construction impacts; energy; municipal, industrial, and hazardous waste facilities; historic and archaeological structures and sites; section 4(f) evaluation; wild and scenic rivers; natural and wild areas and national natural landmarks.

Information describing the proposed action and study process (EIS Plan of Study) will be sent to appropriate federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this project to solicit comments. A series of public meetings will be held in the area between the spring of 1993 and the summer of 1994.

Public notices of the time and place of these meetings and any required public hearings will be given in a timely fashion. The Draft EIS will be available for agency and public review and comment prior to the public hearing. Public involvement and interagency coordination will be maintained throughout both phases of the study process. A formal scoping meeting will be held upon request.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on January 29, 1993.

George L. Hannon,

Assistant Division Administrator, Harrisburg, Pennsylvania.

[FR Doc. 93–3012 Filed 2–8–93; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 7–93]

Treasury Bonds of February 2023 (CUSIP No. 912810 EP 9)

Washington, February 3, 1993.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Bonds. The Bonds will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may also be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Bonds are stated in the offering announcement. The Bonds will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Bonds will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2 The Bonds will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. and 2.2. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.4. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306) as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering anouncement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Bonds being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Bonds to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Bonds specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, the tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment B to this circular.

6.2. Attachment B also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment C to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.6. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.7. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.8. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachments A, B, and C, and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) Bank Holding Companies and Subsidiaries—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) Banks and Branches—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) Thrift Institutions and Branches—

A thrift institution, such as a savings and loan association, credit union, savings bank, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) Corporations and Subsidiaries—

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) Families—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) Partnerships—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) Guardians, Custodians, or other Fiduciaries—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) Trusts—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, and (c) the IRS employer identification number (not social security account number).

(9) Political Subdivisions—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) Mutual Funds—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) Money Market Funds—

A money market fund (includes all funds that have a common management).

(12) Investment Agents/Money Managers—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) Pension Funds—

A pension fund (includes all funds that comprise it, whether or not separately administered.)

Notes: The definitions do not reflect all bidder situations. "Single bidder' is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Attachment B—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of February 15, 2023, CUSIP No. 912810 EP 9

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2023 due February 15, 2023, CUSIP No. 912803 BB 8.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) Due:	
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1
Aug. 15, 2003	CJ 7
Feb. 15, 2004	CK 4
Aug. 15, 2004	CL 2
Feb. 15, 2005	CM 0
Aug. 15, 2005	CN 8
Feb. 15, 2006	CP 3
Aug. 15, 2006	CQ 1
Feb. 15, 2007	CR 9
Aug. 15, 2007	CS 7
Feb. 15, 2008	CT 5
Aug. 15, 2008	CU 2
Feb. 15, 2009	CV 0
Aug. 15, 2009	CW 8
Feb. 15, 2010	CX 6
Aug. 15, 2010	CY 4
Feb. 15, 2011	CZ 1
Aug. 15, 2011	DA 5
Feb. 15, 2012	BD 3
Aug. 15, 2012	DC 1
Feb. 15, 2013	DD 9
Aug. 15, 2013	DE 7
Feb. 15, 2014	DF 4
Aug. 15, 2014	DG 2
Feb. 15, 2015	DH 0
Aug. 15, 2015	JT 8
Feb. 15, 2016	KG 4
Aug. 15, 2016	KJ 6
Feb. 15, 2017	KL 3
Aug. 15, 2017	KN 9
Feb. 15, 2018	KQ 2
Aug. 15, 2018	KS 8
Feb. 15, 2019	KU 3
Aug. 15, 2019	KW 9
Feb. 15, 2020	KY 5
Aug. 15, 2020	LA 6
Feb. 15, 2021	LC 2
Aug. 15, 2021	LE 8
Feb. 15, 2022	LG 3
Aug. 15, 2022	LJ 7
Feb. 15, 2023	LL 2

BILLING CODE 4810-40-M

ATTACHMENT C

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON (%)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

BILLING CODE 4810-40-C

Treasury February Quarterly Financing

The Treasury will raise about $10,025 million of new cash and refund $25,472 million of securities maturing February 15, 1993, by issuing $15,500 million of 3-year notes, $10,750 million of 10-year notes, and $9,250 million of 30-year bonds. The $25,472 million of maturing securities are those held by the public, including $2,059 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $35,500 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,878 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC FEBRUARY 1993 QUARTERLY FINANCING

[February 3, 1993]

Amount offered to the public	$15,500 million	$10,750 million	$9,250 million.
Description of security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series X–1996 (CUSIP No. 912827 J6 0).	Series A–2003 (CUSIP No. 912827 J7 8).	Bonds of February 2023 (CUSIP No. 912810 EP 9).
CUSIP Nos. for STRIPS components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	February 16, 1993	February 16, 1993 (to be dated February 15, 1993).	February 16, 1993 (to be dated February 15, 1993).
Maturity date	February 15, 1996	February 15, 2003	February 15, 2003.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	August 15 and February 15	August 15 and February 15	August 15 and February 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key dates:			
Receipt of tenders	Tuesday, February 9, 1993	Wednesday, February 10, 1993	Thursday, February 11, 1993.
(a) noncompetitive	Prior to 12:00 noon, EST	Prior to 12:00 noon, EST	Prior to 12:00 noon, EST.
(b) competitive	Prior to 1:00 p.m., EST	Prior to 1:00 p.m., EST	Prior to 1:00 p.m., EST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Tuesday, February 16, 1993	Tuesday, February 16, 1993	Tuesday, February 16, 1993.
(b) readily-collectible check	Thursday, February 11, 1993	Thursday, February 11, 1993	Thursday, February 11, 1993.

[FR Doc. 93–3018 Filed 2–4–93; 10:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 6–93]

Treasury Notes of February 15, 2003, Series A–2003 (CUSIP No. 912827 J7 8)

Washington, February 3, 1993.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agent for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest

Components are set forth in Section 6 of this circular. Subsections 2.1. and 2.2. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.4. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids fro the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder had been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7 must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: Each future semiannual interest payment (referred to as an Interest Components and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment B to this circular.

6.2. Attachment B also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3. For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment C to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.6. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.7. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.8. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A, B, and C, and the offering announcement are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) Bank Holding Companies and Subsidiaries—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) Banks and Branches—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) Thrift Institutions and Branches—

A thrift institution, such as a savings and loan association, credit union, savings bank, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) Corporations and Subsidiaries—

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) Families—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) Partnerships—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) Guardians, Custodians, or other Fiduciaries—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) Trusts—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, and (c) the IRS employer identification number (not social security account number).

(9) Political Subdivisions—

(a) state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) Mutual Funds—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) Money Market Funds—

A money market fund (includes all funds that have a common management).

(12) Investment Agents/Money Managers—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) Pension Funds—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Attachment B—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of February 15, 2003, Series A–2003, CUSIP No. 912827 J7 8

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series A–2003 due February 15, 2003, CUSIP No. 912820 BF 3.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury Interest (TINT) Due:	
Aug. 15, 1993	BN 9
Feb. 15, 1994	BP 4
Aug. 15, 1994	BQ 2
Feb. 15, 1995	BR 0
Aug. 15, 1995	BS 8
Feb. 15, 1996	BT 6
Aug. 15, 1996	BU 3
Feb. 15, 1997	BV 1
Aug. 15, 1997	BW 9
Feb. 15, 1998	BX 7
Aug. 15, 1998	BY 5
Feb. 15, 1999	BZ 2
Aug. 15, 1999	CA 6
Feb. 15, 2000	CB 4
Aug. 15, 2000	CC 2
Feb. 15, 2001	CD 0
Aug. 15, 2001	CE 8
Feb. 15, 2002	CF 5
Aug. 15, 2002	CG 3
Feb. 15, 2003	CH 1

BILLING CODE 4810-40-M

ATTACHMENT C

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1000.

COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)	COUPON ($)	MINIMUM FACE ($)	INTEREST PAYMENT ($)
5.000	40000.00	1000.00	10.125	1600000.00	81000.00	15.250	800000.00	61000.00
5.125	1600000.00	41000.00	10.250	800000.00	41000.00	15.375	1600000.00	123000.00
5.250	800000.00	21000.00	10.375	1600000.00	83000.00	15.500	400000.00	31000.00
5.375	1600000.00	43000.00	10.500	400000.00	21000.00	15.625	64000.00	5000.00
5.500	400000.00	11000.00	10.625	320000.00	17000.00	15.750	800000.00	63000.00
5.625	320000.00	9000.00	10.750	800000.00	43000.00	15.875	1600000.00	127000.00
5.750	800000.00	23000.00	10.875	1600000.00	87000.00	16.000	25000.00	2000.00
5.875	1600000.00	47000.00	11.000	200000.00	11000.00	16.125	1600000.00	129000.00
6.000	100000.00	3000.00	11.125	1600000.00	89000.00	16.250	160000.00	13000.00
6.125	1600000.00	49000.00	11.250	160000.00	9000.00	16.375	1600000.00	131000.00
6.250	32000.00	1000.00	11.375	1600000.00	91000.00	16.500	400000.00	33000.00
6.375	1600000.00	51000.00	11.500	400000.00	23000.00	16.625	1600000.00	133000.00
6.500	400000.00	13000.00	11.625	1600000.00	93000.00	16.750	800000.00	67000.00
6.625	1600000.00	53000.00	11.750	800000.00	47000.00	16.875	320000.00	27000.00
6.750	800000.00	27000.00	11.875	320000.00	19000.00	17.000	200000.00	17000.00
6.875	320000.00	11000.00	12.000	50000.00	3000.00	17.125	1600000.00	137000.00
7.000	200000.00	7000.00	12.125	1600000.00	97000.00	17.250	800000.00	69000.00
7.125	1600000.00	57000.00	12.250	800000.00	49000.00	17.375	1600000.00	139000.00
7.250	800000.00	29000.00	12.375	1600000.00	99000.00	17.500	80000.00	7000.00
7.375	1600000.00	59000.00	12.500	16000.00	1000.00	17.625	1600000.00	141000.00
7.500	80000.00	3000.00	12.625	1600000.00	101000.00	17.750	800000.00	71000.00
7.625	1600000.00	61000.00	12.750	800000.00	51000.00	17.875	1600000.00	143000.00
7.750	800000.00	31000.00	12.875	1600000.00	103000.00	18.000	100000.00	9000.00
7.875	1600000.00	63000.00	13.000	200000.00	13000.00	18.125	320000.00	29000.00
8.000	25000.00	1000.00	13.125	320000.00	21000.00	18.250	800000.00	73000.00
8.125	320000.00	13000.00	13.250	800000.00	53000.00	18.375	1600000.00	147000.00
8.250	800000.00	33000.00	13.375	1600000.00	107000.00	18.500	400000.00	37000.00
8.375	1600000.00	67000.00	13.500	400000.00	27000.00	18.625	1600000.00	149000.00
8.500	400000.00	17000.00	13.625	1600000.00	109000.00	18.750	32000.00	3000.00
8.625	1600000.00	69000.00	13.750	160000.00	11000.00	18.875	1600000.00	151000.00
8.750	160000.00	7000.00	13.875	1600000.00	111000.00	19.000	200000.00	19000.00
8.875	1600000.00	71000.00	14.000	100000.00	7000.00	19.125	1600000.00	153000.00
9.000	200000.00	9000.00	14.125	1600000.00	113000.00	19.250	800000.00	77000.00
9.125	1600000.00	73000.00	14.250	800000.00	57000.00	19.375	320000.00	31000.00
9.250	800000.00	37000.00	14.375	320000.00	23000.00	19.500	400000.00	39000.00
9.375	64000.00	3000.00	14.500	400000.00	29000.00	19.625	1600000.00	157000.00
9.500	400000.00	19000.00	14.625	1600000.00	117000.00	19.750	800000.00	79000.00
9.625	1600000.00	77000.00	14.750	800000.00	59000.00	19.875	1600000.00	159000.00
9.750	800000.00	39000.00	14.875	1600000.00	119000.00	20.000	10000.00	1000.00
9.875	1600000.00	79000.00	15.000	40000.00	3000.00	20.125	1600000.00	161000.00
10.000	20000.00	1000.00	15.125	1600000.00	121000.00	20.250	800000.00	81000.00

BILLING CODE 4810-40-C

Treasury February Quarterly Financing

The Treasury will raise about $10,025 million of new cash and refund $25,472 million of securities maturing February 15, 1993, by issuing $15,000 million of 3-year notes, $10,750 million of 10-year notes, and $9,250 million of 30-year bonds. The $25,472 million of maturing securities are those held by the public, including $2,059 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $35,500 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,878 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC FEBRUARY 1993 QUARTERLY FINANCING

[February 3, 1993]

Amount offered to the public	$15,000 million	$10,750 million	$9,250 million.
Description of Security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series X–1996 (CUSIP No. 912827 J6 0).	Series A–2003 (CUSIP No. 912827 J7 8).	Bonds of February 2023 (CUSIP No. 912810 EP 9).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	February 16, 1993	February 16, 1993 (to be dated February 15, 1993).	February 16, 1993 (to be dated February 15, 1993).
Maturity date	February 15, 1996	February 15, 2003	February 15, 2023.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	August 15 and February 15	August 15 and February 15	August 15 and February 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key dates:			
Receipt of tenders	Tuesday, February 9, 1993	Wednesday, February 10, 1993	Thursday, February 11, 1993.
(a) noncompetitive	prior to 12:00 noon, EST	prior to 12:00 noon, EST	prior to 12:00 noon, EST.
(b) competitive	prior to 1:00 p.m., EST	prior to 1:00 p.m., EST	prior to 1:00 p.m., EST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Tuesday, February 16, 1993	Tuesday, February 16, 1993	Tuesday, February 16, 1993.
(b) readily-collectible check	Thursday, February 11, 1993	Thursday, February 11, 1993	Thursday, February 11, 1993.

[FR Doc. 93–3019 Filed 2–4–93; 10:45 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 5–93]

Treasury Notes of February 15, 1996, Series X–1996 (CUSIP No. 912827 J6 0)

Washington, February 3, 1993.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 of title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2–86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For non-competitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting non-competitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No Later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration on the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

Gerald Murphy,
Fiscal Assistant Secretary.

Attachment A—Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) Bank Holding Companies and Subsidiaries—

A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) Banks and Branches—

A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) Thrift Institutions and Branches—

A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) Corporations and Subsidiaries—

A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) Families—

A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household.)

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is not recognized as a separate bidder.)

(6) Parternships—

Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) Guardians, Custodians, or other Fiduciaries—

A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) Trusts—

A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) Political Subdivisions—

(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) Mutual funds—

A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) Money Market Funds—

A money market fund (includes all funds that have a common management).

(12) Investment Agents/Money Managers—

An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) Pension Funds—

A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219–3350).

Treasury February Quarterly Financing

The Treasury will raise about $10,025 million of new cash and refund $25,472 million of securities maturing February 15, 1993, by issuing $15,500 million of 3-year notes, $10,750 million of 10-year notes, and $9,250 million of 30-year bonds. The $25,472 million of maturing securities are those held by the public, including $2,059 million held, as of today, by Federal Reserve Banks as agents for foreign and international monetary authorities.

The three issues totaling $35,500 million are being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $4,878 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

The 10-year note and 30-year bond being offered today will be eligible for the STRIPS program.

Details about each of the new securities are given in the attached highlights of the offering and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC FEBRUARY 1993 QUARTERLY FINANCING

[February 3, 1993]

Amount offered to the public	$15,500 million	$10,750 million	$9,250 million.
Description of security:			
Term and type of security	3-year notes	10-year notes	30-year bonds.
Series and CUSIP designation	Series X–1996 (CUSIP No. 912827 J6 0).	Series A–2003 (CUSIP No. 912827 J7 8).	Bonds of February 2023 (CUSIP No. 912810 EP 9).
CUSIP Nos. for STRIPS Components.	Not applicable	Listed in Attachment B of offering circular.	Listed in Attachment B of offering circular.
Issue date	February 16, 1993	February 16, 1993 (to be dated February 15, 1993).	February 16, 1993 (to be dated February 15, 1993).
Maturity date	February 15, 1996	February 15, 2003	February 15, 2023.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction	To be determined after auction.
Interest payment dates	August 15 and February 15	August 15 and February 15	August 15 and February 15.
Minimum denomination available	$5,000	$1,000	$1,000.
Amount required for STRIPS	Not applicable	To be determined after auction	To be determined after auction.
Terms of sale:			
Method of sale	Yield auction	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor.	None	To be determined after auction	To be determined after auction.
Key dates:			
Receipt of tenders	Tuesday, February 9, 1993	Wednesday, February 10, 1993	Thursday, February 11, 1993.
(a) noncompetitive	Prior to 12:00 noon, EST	Prior to 12:00 noon, EST	Prior to 12:00 noon, EST.
(b) competitive	Prior to 1:00 p.m., EST	Prior to 1:00 p.m., EST	Prior to 1:00 p.m., EST.
Settlement (final payment due from institutions):			
(a) funds immediately available to the Treasury.	Tuesday, February 16, 1993	Tuesday, February 16, 1993	Tuesday, February 16, 1993.
(b) readily-collectible check	Thursday, February 11, 1993	Thursday, February 11, 1993	Thursday, February 11, 1993.

[FR Doc. 93-3020 Filed 2-4-93; 10:45 am]

BILLING CODE 4810-40-M

Public Information Collection Requirements Submitted to OMB for Review

February 3, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510-0043

Form Number: TFS-133 and TFS-135

Type of Review: Extension

Title: Notice of Reclamation Electronic Funds Transfer, Federal Recurring Payments (TFS-133) Request for Debit, Electronic Funds Transfer, Federal Recurring Payments (TFS-135)

Description: A program agency authorizes Treasury to recover payments that have been issued after the death of the beneficiary. TFS 133 is used by Treasury to notify the financial organization (FO) of the FO's accountability concerning the funds. When the FO's do not respond to the TFS 133, Treasury then prepares TFS 135 and sends it to the Federal Reserve Bank which services the FO to request the FRB to debit the account of the FO.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 55,000

Estimated Burden Hours Per Response: 12 minutes

Frequency of Response: Other (as needed)

Estimated Total Reporting Burden: 91,993 hours

Clearance Officer: Jacqueline R. Perry, (301) 344-8577, Financial Management Service, 3361-L 75th Avenue, Landover, MD 20785

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-3058 Filed 2-8-93; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection Requirements Submitted to OMB for Review

February 3, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0181

Form Number: IRS Form 4768

Type of Review: Revision

Title: Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes

Description: Form 4768 is used by estates to request an extension of time to file an estate (and GST) tax return and/or to pay the estate (and GST) taxes and explain why the extension should be granted. IRS uses the information to decide whether the extension should be granted.

Respondents: Individuals or households, Businesses or other for-profit

Estimated Number of Respondents/Recordkeepers: 18,500

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 minutes

Learning about the law or the form—16 minutes

Preparing the form—21 minutes

Copying, assembling, and sending the form to the IRS—20 minutes

Frequency of Response: On occasion

Estimated Total Reporting/Recordkeeping Burden: 21,645 hours

Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Officer of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-3059 Filed 2-8-93; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: February 1, 1993.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

New Collection

1. Customer Service Survey, VA Form 26-0185, and Lender Survey, VA Form 26-0186
2. The proposed surveys will be used by VA to determine how effectively and efficiently the agency is delivering home loan guaranty benefits to eligible veterans. This information

will further be used to assess areas of weakness and how best to improve VA home loan guaranty program

3. 836 hours (567 hours for VA Form 26–0185 and 269 hours for VA Form 26–0186)
4. 18 minutes average (15 minutes for VA Form 26–0185 and 30 minutes for VA Form 26–0186)
5. On occasion
6. Individuals or households—Businesses or other for-profit—Small businesses or organizations
7. 2,803 respondents (2,266 for VA Form 26–0185 and 537 for VA Form 26–0186).

[FR Doc. 93–2987 Filed 2–8–93; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, VA Clearance Officer (723), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: February 1, 1993.

By direction of the Secretary.

Frank E. Lalley,

Associate Deputy Assistant Secretary for Information Resources Policies and Oversight.

Extension

1. Gravesite Reservation Survey, VA Form Letter 40–12
2. This form is used to determine whether individuals holding gravesite reservations in national cemeteries wish to continue the reservation and whether their eligibility for the reservation has been affected.
3. Individuals or households
4. 3,704 hours
5. 5 minutes
6. Biennially
7. 44,441 respondents.

[FR Doc. 93–2986 Filed 2–8–93; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 25
Tuesday, February 9, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 11, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

B. *New Business*

1. *Regulations.*
a. Assessments and Apportionment of Operating Expenses (Final).
b. Reorganization Authorities for System Institutions (Proposed).
2. *Other.*
a. Letter of Intent Relating to Intended Merger of the FICB of Jackson into the Farm Credit Bank of Columbia.

Closed Session[1]

A. *New Business*

1. Enforcement Actions.

Date: February 5, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–3193 Filed 2–5–93; 2:53 pm]

BILLING CODE 6705–01–P

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[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 7295.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: February 10, 1993—10:00 a.m.

CHANGE IN THE MEETING: The following items have been withdrawn from the meeting.

Open Session

1. Petition No. P7–92—Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A.—Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles.
2. Docket No. 92–31—Service Contracts—Consideration of Comments on Proposed Rule.

Closed Session

1. Trans-Atlantic Agreement Rate Activity.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 93–3146 Filed 2–5–93; 11:40 am]

BILLING CODE 6730–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–93–03]

TIME AND DATE: February 19, 1993 at 2:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDER:

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–469 (Remand) (Certain High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan)—briefing and vote
5. Outstanding action jacket requests
   1. OMS–93–001, concerning changing the design of standard report covers and establishing cover policy
6. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Issued: February 4, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–3110 Filed 2–5–93; 9:47 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Jasper R. Clay, Jr., Vice Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at one o'clock p.m. on Thursday, February 4, 1993 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The purpose of this meeting was to decide a case which had been referred to the National Commissioners pursuant to 28 CFR Section 2.17. This was an emergency meeting which required immediate consideration by the Commission in order to meet the statutory deadline. In addition, four Commissioners were present constituting a quorum when a vote to close the meeting was submitted.

Upon motion duly made, seconded, and carried, the following Commissioners voted that Commission business required immediate consideration of the matters discussed and that the meeting be closed: Jasper Clay, Jr., Edward F. Reilly, Jr., Vincent Fechtel, Jr., and John R. Simpson.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: February 4, 1993.

Jasper R. Clay, Jr.,

Vice Chairman, U.S. Parole Commission.

[FR Doc. 93–3197 Filed 2–5–93; 3:08 pm]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

AMENDMENT TO PREVIOUS ANNOUNCEMENT: 58 FR 6573, January 29, 1993.

TIME AND DATE OF MEETING: Unchanged.

CHANGES IN THE MEETING: None.

The agency name in the Sunshine Act notice, published on page 6573 should have read "National Science Foundation/National Science Board."

CONTACT PERSON FOR MORE INFORMATION: Linda L. Boutchyard, Staff Assistant, Telephone: (202) 357–9763.

Marta Cehelsky,

Executive Officer.

[FR Doc. 93–3114 Filed 2–5–93; 2:17 pm]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, February 17, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5732A—Aviation Accident Report: Uncontrolled Collision With Terrain USAir Flight 405, Fokker F–28, LaGuardia Airport, Flushing, New York, March 22, 1992.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: February 5, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–3178 Filed 2–5–93; 1:59 pm]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 8, 15, 22, and March 1, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 8

Monday, February 8

10:00 a.m.
Briefing by IIT on Loss of Iridium-192 Source and Therapy Misadministration at Indiana Regional Cancer Center, Indiana, PA., November 16, 1992 (Public Meeting)
(Contact: Carl Paperiello, 708–790–5517)

2:00 p.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Jim McDermott, 301–492–4661)

Tuesday, February 9

2:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: William Bateman, 301–504–1711)

4:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Amendments to 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste" (Tentative)
(Contact: Janet Lambert, 301–492–3857)
b. Clarification of Physical Protection Requirements at Fixed Sites
(Contact: Sandra Frattali, 301–492–3773)

Week of February 15—Tentative

Thursday, February 18

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)

Friday, February 19

10:00 a.m.
Briefing on Status of Nuclear Safety Issues in Eastern Europe and Former Soviet Union (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)

2:00 p.m.
Briefing on Status of Issues and Approach to GEIS Rulemaking for Part 51 (Public Meeting)
(Contact: Donald Cleary, 301–492–3936)

4:00 p.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7)

Week of February 22—Tentative

Monday, February 22

9:00 a.m.
Briefing by Advisory Committee on Medical Uses of Isotopes (Public Meeting)
(Contact: John Glenn, 301–504–3415)

Friday, February 26

9:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: Richard Major, 301–492–8109)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of March 1—Tentative

Tuesday, March 2

2:00 p.m.
Briefing on NRC Financial Management Matters (Public Meeting)
(Contact: Ron Scroggins, 301–492–4750)

Wednesday, March 3

10:00 a.m.
Briefing by NARUC on Issues Associated with Nuclear Power Plant Operations and HLW Programs (Public Meeting)
(Contact: Spiros Droggitis, 301–504–2367)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing on Activities of Nuclear Waste Technical Review Board (Public Meeting)
(Contact: Seth Coplan, 301–504–1850)

Thursday, March 4

2:00 p.m.
Briefing on License Renewal Issues (Public Meeting)
(Contact: William Travers, 301–504–1117)

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioners Curtiss and de Planque were not present) on February 3, 1993, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Commission Response to Emergency Motion to Stay Issuance of a Low-Power Operating License for Comanche Peak Unit 2" (Public Meeting) be held on February 3, 1993, and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: February 5, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–3188 Filed 2–5–93; 2:18 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 58, No. 25
Tuesday, February 9, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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[Docket Nos. 91-1-89SCD, 91-5-90SCD, 92-2-91SCD]

Consolidated 1989–91 Satellite Carrier Royalty Distribution Proceeding

Correction

In notice document 92–31604 beginning on page 62422 in the issue of Wednesday, December 30, 1992, make the following corrections:

1. On page 62422, in the third column, in footnote 2, in the second line, "tribunal" should read "Tribunal".

2. On page 62424, in the 2d column, in the 15th line, "our" should read "out".

3. On page 62427, in the third column, under *II. Fundamental Fairness*, the first paragraph should have appeared at the end of footnote 9 in the second column.

4. On page 62428, in the 2d column, in the 2d full paragraph, the 16th to 18th lines should read as set forth below:

"but, significantly, *the Act required that the new rates must apply only to the signals affected by the FCC's change.*[17]"

5. On the same page, in the 3d column, in the 11th line, "The" should not be indented; and in the 9th line from the bottom, "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-57-89]

RIN 1545-AN73

Consolidated Returns—Alternative Minimum Tax

Correction

In proposed rule document 92–31086 beginning on page 62251 in the issue of Wednesday, December 30, 1992, make the following corrections:

§ 1.1502–55 [Corrected]

1. On page 62260, in the first column, in § 1.1502–55(e)(1)(ii), in Example 1, in the sixth and seventh lines, insert "$100. The separate ATNOLs for P and S1 are determined by" between "AMTI of" and "computing".

2. On page 62262, in § 1.1502–55(g)(4), in the table, in the first entry, "$3,300" should appear beneath the heading "RT"; "$5,050" should appear beneath the heading "AMT"; and "$5,300" should appear beneath the heading "ACE".

3. On the same page, in the first column, § 1.1502–55(h)(3)(i)(B) is correctly designated.

4. On page 62263, in the third column, in § 1.1502–55(h)(6)(v), in the seventh line, "of" should read "or".

5. On page 62264, in the second column, in § 1.1502–55(h)(6)(v), in Example 1, in paragraph (iii), in the second line, "*adjustment*" should read "*adjusted*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-17-90]

RIN 1545-AO57

Reporting Requirements for Recipients of Points Paid on Residential Mortgages

Correction

In proposed rule document 92–31187 beginning on page 62526 in the issue of Thursday, December 31, 1992, make the following corrections:

§ 1.6050H–1 [Corrected]

1. On page 62529, in the second column, in § 1.6050H–1(e)(2), in the first line, "(1)" should read "(i)".

2. On page 62530, in the second column, in § 1.6050H–1(f)(4)(i)(F), in the fourth line, "section 163(b)(3)(B)(ii)" should read "section 163(h)(3)(B)(ii)".

BILLING CODE 1505-01-D

federal register

Tuesday
February 9, 1993

Part II

Environmental Protection Agency

Sodium Pentachlorophenate (Sodium Salt of Pentachlorophenol) Non-wood Uses; Final Determination to Terminate Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/30F; FRL-4179-3]

Sodium Pentachlorophenate (Sodium Salt of Pentachlorophenol) Non-wood Uses: Final Determination to Terminate Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Decision to Terminate Special Review.

SUMMARY: This notice announces the Agency's decision to terminate the Special Review for the non-wood, biocide uses of the sodium salt of pentachlorophenol, hereafter referred to as sodium pentachlorophenate. This determination is based on the decision by all registrants to voluntarily cancel or otherwise discontinue their registrations of products containing sodium pentachlorophenate. The Agency does not believe that it is necessary to continue the Special Review for a pesticide for which all uses have been canceled.

FOR FURTHER INFORMATION CONTACT: Jacqueline T. McQueen, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Third Floor, North (WF31N3), Crystal Station 1, 2800 Crystal Drive, Arlington, Virginia (703) 308-8164.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

This document presents the Agency's decision to terminate the Special Review for the remaining non-wood biocide uses of sodium pentachlorophenate. This decision is based on the fact that all registrants of sodium pentachlorophenate requested voluntary cancellation of registrations for their products or they were canceled because of failure to pay the required reregistration maintenance fees.

I. Introduction

Pentachlorophenol and its derivatives, including sodium pentachlorophenate, have been registered in the United States for more than 40 years. A Special Review for pentachlorophenol and its derivatives for all uses of products containing this active ingredient was initiated in October 1978. The Special Review was based on the Agency's concern of potential fetotoxicity, teratogenicity and carcinogenicity from exposure to this chemical. The major use for pentachlorophenol is wood preservation. Sodium pentachlorophenate is used as a biocide to control microorganisms in cooling towers, paper mills and oil well operations. Sodium pentachlorophenate is also used in wood preservation as a sapstain control agent. The registrations affected by this notice are for the non-wood biocide uses and do not include the registrations of sodium pentachlorophenate for sapstain control.

II. Regulatory History

In October 1978, EPA issued Notices of Rebuttable Presumption Against Registration (RPAR), now known as Special Review, for all pesticide products containing creosote, coal tar and coal tar neutral oils, inorganic arsenicals and pentachlorophenol and its derivatives, including its sodium and potassium salts (43 FR 48443). The initiation of the Special Review for pentachlorophenol and its derivatives was based on validated studies indicating its developmental toxicity. The population at risk included mixers, loaders and applicators. The Position Document 1 (PD 1) issued with that notice described these studies in detail.

Subsequent studies received by the Agency indicated that pentachlorophenol and its derivatives contained two contaminants; chlorinated dibenzo-p-dioxins (HCDD) and hexachlorobenzene (HCB). Studies conducted with experimental laboratory animals had shown these chemicals to be carcinogenic, thus a presumption of carcinogenicity was added to the risk concerns for workers using pentachlorophenol and its derivatives. On December 12, 1984, the Agency published in the **Federal Register** (49 FR 48368), a preliminary determination (PD 2/3) which addressed the risks and benefits of all non-wood uses of pentachlorophenol and its derivatives, including sodium pentachlorophenate. In this document, the Agency proposed cancellation of all non-wood uses of sodium pentachlorophenate except for the uses in paper mills and oil well operations. For these, the Agency proposed modification of the terms and conditions for continuing the registrations. (The PD 2/3 for the wood uses of pentachlorophenol was published in January, 1981).

Following the issuance of the PD 2/3, the Agency received further human health and ecological effects information on pentachlorophenol and its derivatives. Based on this new information, EPA proposed, before the Scientific Advisory Panel (SAP), in its Draft Position Document 4 to cancel all non-wood uses of pentachlorophenol and its derivatives, including sodium pentachlorophenate. The SAP concurred with the Agency's assessment of the toxicity of pentachlorophenol and its derivatives to aquatic biota, and agreed with the Agency's concern about the potential hazard to ecological and human health from exposure to these non-wood uses. The SAP also indicated that the data and data analysis for the ecological risks presented by the Agency for the oil well operations and paper mill uses were inconclusive. For these uses, the SAP suggested a reevaluation of potential exposure to aquatic biota.

To address the SAP's concerns regarding the oil well operations and paper mill uses, the Agency decided to issue a Data Call-In Notice (DCI) under FIFRA section 3 to all registrants of products containing pentachlorophenol and its derivatives for these non-wood biocide uses. Also, as a result of questions raised at the SAP hearing about the Agency's assessment of the cooling tower uses, the Agency reviewed its assessment and determined that it would request additional data for these uses.

For all non-wood uses except the uses in cooling towers, paper mills and oil well operations, the Agency issued a final determination on January 21, 1987 (52 FR 2282). This notice canceled all non-wood uses of pentachlorophenol and its derivatives, including sodium pentachlorophenate, except these three remaining biocide uses.

In January 1992, EPA issued a comprehensive DCI for pentachlorophenol and its derivatives, which included the requirements for use, exposure, and ecological data needed for the Special Review of the three remaining biocide uses. During the 90-day comment period for this DCI, three of the four remaining registrants for sodium pentachlorophenate submitted requests to voluntarily cancel the registrations for their products. These registrations were canceled on November 3, 1992. The notice of receipt to cancel these registrations was published in the **Federal Register** on June 3, 1992 (57 FR 23401). The fourth and last registrant failed to pay the required maintenance fees. This registration was canceled on November 30, 1992. The cancellation notice was published on December 16, 1992 (57 FR 59874).

III. Agency Decision

This notice terminates the Special Review for the remaining non-wood biocide uses, and completes the Special Review for all non-wood uses of pentachlorophenol and its derivatives, including sodium pentachlorophenate.

IV. Availability of Public Docket

The Agency has established a public docket for terminating the Special Review for sodium pentachlorophenate. This docket will include this notice and any other notices pertinent to the Special Review of sodium pentachlorophenate. It will also include the Agency's final decision regarding the termination of the Special Review for sodium pentachlorophenate and any other documents containing pertinent information that is not considered confidential business information. In addition, it will include written comments or other material submitted in response to initiation of the Special Review and a current index of material in the public docket.

Dated: December 29, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-1676 Filed 2-8-93; 8:45 am]

BILLING CODE 6560-50-F

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federal register

Tuesday
February 9, 1993

Part III

Federal Trade Commission

16 CFR Part 305

Labeling and Advertising of Consumer Appliances; Energy Costs and Consumption Information; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") seeks comment on a proposal to add pool heaters, instantaneous water heaters and heat pump water heaters to the list of products covered by the Commission's Appliance Labeling Rule ("Rule"), and to modify certain aspects of that Rule. These actions are being taken because amendments to the Energy Policy and Conservation Act have added pool heaters to the list of covered products for which the Commission must consider labeling requirements; and, because the Department of Energy has recently promulgated test procedures for the two types of water heaters, which triggers an obligation under the Energy Policy and Conservation Act for the Commission to consider labeling requirements for them.

DATES: Written comments must be submitted on or before April 26, 1993.

Persons desiring a public hearing on the proposed amendments should advise the Presiding Officer by no later than March 2, 1993. If hearings are scheduled, the date and time of the hearings, as well as the date for submission of prepared witness statements and exhibits, will be announced in a subsequent Notice.

ADDRESSES: Written comments and requests for public hearings should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202–326–3642. Written comments should be submitted, when feasible and not burdensome, in five copies.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Pool Heaters

The National Appliance Energy Conservation Act ("NAECA 87")[1–2] amended the Energy Policy and Conservation Act ("EPCA")[3] by, among other things, adding pool heaters (which include spa and hot tub heaters and heaters for similar application—for convenience, the Commission will refer to these products as "pool heaters") to the list of appliances for which the Department of Energy ("DOE") must establish minimum efficiency standards and testing procedures. Section 324(b)(1)(B) of EPCA (42 U.S.C. 6294(b)(1)(B)) requires the Commission to promulgate labeling requirements under the Appliance Labeling Rule for any covered products for which DOE has prescribed a test procedure. The Commission solicits comments today on whether (and, if so, how) pool heaters should be labeled under the Rule.

B. Instantaneous Water Heaters and Heat Pump Water Heaters

NAECA 87 also amended the EPCA definition for water heaters to include two additional types of water heaters not previously covered—instantaneous water heaters and heat pump water heaters. In 1989, DOE amended its definition for water heaters to include the NAECA 87 amendments, which added instantaneous and heat pump water heaters to the list of products for which DOE must develop test procedures and minimum efficiency standards.[4] In 1990, DOE promulgated test procedures for some (but not all) of the different kinds of these new products that are currently being produced.[5] Previously, DOE's definition (and test procedure) for water heaters applied only to conventional storage-type heaters. The Commission's labeling rule, like the previous version of the DOE rule, defines water heaters only as storage-type units. Thus, these products do not come within the Rule's current definition of water heater. The Commission, therefore, solicits comment on whether (and, if so, how) the Rule should be amended to cover these additional types of water heaters.

C. Procedural Issues

As required by section 336(a)(1) of EPCA (42 U.S.C. 6306(a)(1))[6], this rulemaking is being conducted pursuant to section 553 of the Administrative Procedure Act.[7] Section 553(b)(3) of the APA provides the Commission with the option of publishing the substance of a proposed rule instead of specific proposed rule language. The Commission seeks comment on the substance only of today's proposed amendments to the Rule.

II. Regulatory and Statutory Analysis

Section 324(b)(1)(B) of EPCA provides that, once DOE prescribes a proposed test procedure under section 323(b) (42 U.S.C. 6293(b))[8] applicable to a product category covered under EPCA, the Commission must publish a proposed labeling rule applicable to that category. This was the case with the products covered by the Rule originally in 1977, and with central air conditioners after DOE issued a test for them in 1979. Because of DOE's actions regarding pool heaters, as discussed in Part III, below, the Commission is commencing this proceeding to consider labeling rules for pool heaters.

In addition to prescribing complete new tests for new product categories, DOE regularly amends its general product definitions and makes technical modifications, as well as substantive revisions, to its existing test procedures. As discussed in part IV, below, DOE has amended its definition for water heater in § 430.2 of subpart A (General Provisions) of its rules,[9] which heretofore included only conventional storage-type products, to include instantaneous water heaters and heat pump water heaters. Further, DOE has amended Appendix E to subpart B of part 430—the test procedure for these products—so the energy usage of most of these new products can be determined. Because DOE has added new types of water heaters to its definition of the water heater product category in subpart A, *and* prescribed test procedures applicable to these products in subpart B, the Commission is initiating this rulemaking proceeding to consider whether to require labels for these water heaters.

III. Pool Heaters

Section 321(a)(25) of EPCA (42 U.S.C. 6291(a)(25)) defines "pool heater" as follows:

> (25) The term "pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

The DOE definition in § 430.2 is identical, and the test procedure

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[1–2] Pub. L. 100–12, 101 Stat. 103 (1987).

[3] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6291 *et seq.* (Dec. 22, 1975).

[4] 54 FR 6062, 6075 (Feb. 7, 1989).

[5] 55 FR 42162, 42169–77 (Oct. 17, 1990).

[6] 42 U.S.C. 6306(a)(1).

[7] ("APA"), 5 U.S.C. 553.

[8] Section 323(b) gives DOE the authority (1) to prescribe test procedures for new products, and (2) to amend existing test procedures if amended test procedures would more accurately or fully measure energy consumption.

[9] The applicable DOE rules are codified at 10 CFR part 430. The language in § 305.3 of the Commission's Rule (Description of covered products to which this part applies) is based on the definitions in § 430.2 of subpart A of DOE's rules.

(Appendix P) contains no further definition.

Sections 324 (a)(1) and (b)(5) of EPCA (42 U.S.C. 6294 (a)(1) and (b)(5)) direct the Commission to prescribe a labeling rule for the categories of products listed in section 322(a) (42 U.S.C. 6292(a)), including pool heaters, unless it determines that labeling the product is "not technologically or economically feasible."[10] The Commission asks for comment on this issue, emphasizing that the question is whether *labeling* pool heaters would be economically or technologically infeasible (as distinct from testing, which manufacturers and importers must already do in order to comply with DOE's minimum efficiency standards program. See 10 CFR 430.62).

The EPCA/DOE definition of pool heaters is not limited to products of any particular fuel type. The DOE test, however, covers only gas- and oil-fired products.[11] Research by Commission staff indicates that, although the majority of pool heaters are currently gas-fired (with some oil-fired), there are also electric resistance and heat pump pool heaters being manufactured. Because the DOE test covers only gas- and oil-fired pool heaters, the Commission will consider, in this proceeding, only whether to label these two types of products. The Rule's coverage is necessarily limited by the definitions and test procedures in subpart B of DOE's rules (i.e., in the absence of a DOE test procedure for determining energy usage, compliance with the Rule is impossible).[12]

The Commission proposes to amend the Rule to include the definition of pool heaters as that term is defined in EPCA and by DOE (in § 430.2 of subpart A). The definition will be followed, however, by a proviso stating that the Rule's application is limited to those products within the definition for which there is a DOE-prescribed test for measuring energy usage. The Commission believes that a proviso of this type is more appropriate and efficient than trying to capture, in the Rule's product definition, all the exceptions and limitations that can result from language in the DOE subpart B test procedure definitions and/or the test procedure itself.[13] Any manufacturer who must comply with the Commission's Rule also must comply with DOE's regulation, so the lack of specificity in the Commission's Rule will not have any adverse effects on manufacturers. The Commission solicits comment on this proposed definition approach.

The minimum efficiency standard for pool heaters established by NAECA 87 does not create any size or capacity subcategory beyond "pool heaters."[14] The Commission solicits information on whether, for purposes of ranges of comparability under the Commission's Rule,[15] there should be one category encompassing both fuel types, or two categories, one for each of the two fuel types—oil-fired and gas-fired models—for which there is currently an applicable DOE test procedure.

Industry representatives have informed Commission staff that pool heaters are sometimes not seen by consumers before purchase. They are often purchased as the result of a pool installation professional's recommendation and are ordered from industry brochures or specification sheets. The Commission, therefore, solicits comment on whether it should require a "conventional" product-specific label approach for these products or another labeling format. "Conventional" product-specific labels contain all the required energy use information and are used for refrigerators, refrigerator-freezers and freezers, water heaters, dishwashers, clothes washers and room air conditioners.[16] It may be more useful, however, to require that pool heaters be labeled with a label like the one required for central air conditioners,[17] and being considered for furnaces.[18] For central air conditioners, the Commission requires a product-specific label, but with only some of the required energy usage information. Other required information must be disclosed on separate fact sheets or in an industry-produced directory.

IV. Instantaneous Water Heaters and Heat Pump Water Heaters

DOE's amendments now bring instantaneous water heaters and heat pump water heaters within its definition of water heater.

Specifically, in § 430.2 of the definitions in subpart A of its rules, DOE now defines "water heater" as follows:

(d) "Water heater" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(1) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(2) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(3) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls

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[10] During the original rulemaking, the Commission determined that clothes dryers, television sets, kitchen ranges and ovens, humidifiers and dehumidifiers and home heating equipment other than furnaces should be exempted from the requirements of the Rule on this basis and, in some cases, because labeling them would not assist consumers in making purchasing decisions (under section 324 of EPCA, this criterion is not a basis for exempting pool heaters from labeling requirements). (44 FR 66466, 66467–66469).

[11] The energy usage measurement that applies to pool heaters is established in EPCA as the "thermal efficiency." See section 321(a)(26) (42 U.S.C. 6291(a)(26)). According to this definition, the thermal efficiency of pool heaters must be measured in accordance with an industry standard that applies only to gas-fired pool heaters. The DOE test requires that the industry test be used, but contains a methodology for determining the thermal efficiency of oil-fired products, as well. See 10 CFR part 430, subpart B, Appendix P.

[12] If DOE amends the test procedure to include electric resistance and/or heat pump pool heaters, then the Commission will initiate a rulemaking proceeding to consider whether the Rule should be amended to cover these products.

[13] Moreover, the DOE rule sections that create those further limitations are often subject to minor revisions by DOE. For example, from time to time DOE may amend its Subpart B definitions or test procedures in ways that do not substantively affect the Commission's Rule. Attempting to track all such changes would be needlessly burdensome for the Commission.

[14] See section 325(e)(2) of EPCA (42 U.S.C. 6295(e)(2)).

[15] Under the Rule, each required label on a covered appliance must show, in addition to the energy usage of the appliance itself, a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model.

[16] See 16 CFR 305.11(a)(5). The required information includes: the name of the manufacturer, the model number and capacity of the product, the energy usage of the product, the appropriate range of energy usage for similarly sized products, a grid enabling consumers to determine cost of operation based on local utility rates, and a statement that the information is based on U.S. government tests.

[17] 16 CFR 305.11(a)(5)(iii) and (c): The label on the product discloses the energy efficiency of the labeled unit and the range of efficiencies for all similar products, and it directs consumers to ask for further information on fact sheets or in directories; the fact sheets and directories must disclose information on cost of operation.

[18] 53 FR 22106, 22107–22109 (June 13, 1988).

necessary for the device to perform its function.[19]

In Section 1 (Definitions) of Appendix E to subpart B, which is the test procedure for water heaters, DOE further defines some of the different types of water heaters as follows:

1.9 Gas fueled storage water heater means a water heater which utilizes gas as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180 °F with an input of 75,000 Btu per hour or less and a manufacturers specified storage capacity of not less than 20 gallons nor more than 100 gallons.

1.10 Electric storage water heater means a water heater which utilizes electricity as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180 °F with an input of 12 kilowatts or less and a manufacturers specified storage capacity of not less than 20 gallons nor more than 120 gallons.

1.11 Oil storage water heater means a water heater which utilizes oil as the energy source and which is designed to heat and store water at a thermostatically controlled temperature of less than 180 °F with an energy input of 105,000 Btu per hour or less, and which has a manufacturers specified storage capacity of 50 gallons or less.

1.12 Gas fueled instantaneous water heat means a water heater which utilizes gas as the energy source controlled manually or automatically by a water flow activated control or a combination of water flow and thermostatic control, which is designed to deliver water at a controlled temperature of less than 180 °F, and which has an input greater than 50,000 Btu per hour and less than 200,000 Btu per hour, and a manufacturers specified storage capacity of less than 2 gallons.

1.13 Heat pump water heater means a water heater which utilizes electricity as the energy source with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, and which is designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all auxiliary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

The Commission proposes to adopt the definition that appears in § 430.2 of DOE's rule, but with a proviso, like the one proposed for pool heaters, that states that the Rule's requirements are limited to those products for which there is a DOE-prescribed test procedure.[20] This will allow the Commission to avoid repeating the definition limitations in DOE's appendix E to subpart B, as well as the further limitations created by the test procedure itself. The Commission solicits comments on this proposed approach to amending the Rule's definition for water heater.

A. Instantaneous Water Heaters

These products heat water as it is needed, rather than heating it in a tank and keeping it hot while storing it. An advantage to this approach to water heating is that there is no standby loss with the associated increased cost and loss of efficiency.[21] As the above definitions indicate, instantaneous water heaters can heat water by means of oil, natural gas or electric resistance, although there are few, if any, oil-fired instantaneous water heaters in production. The DOE test procedure presently contains test methodologies for only gas- and oil-fired models and not for electric.[22]

Electric instantaneous water heaters (for which labeling rules are not being proposed) are usually small and for limited point-of-use, as in for a particular sink or shower. Gas-fired instantaneous water heaters can be larger and can be used for whole-house applications in small houses. Since the physical size of gas-fired instantaneous water heaters (they are often no larger than from one to three cubic feet) is usually significantly smaller than most conventional water heaters, the currently required 5 and 5/16 inches by 7 and 3/8 inches label could be too large to fit on some of the smaller models, due to physical space limitations. There is also the possibility that the surface temperature of the products may affect label adhesion. The Commission solicits comment, therefore, on whether the type of product label currently required for water heaters is appropriate for these products and, if not, what would be better.

The Commission also seeks comment about whether to include these products among the three existing water heater ranges (one range each for electric, gas [including propane] and oil water heaters), or to establish a separate range category. The current ranges of comparability for water heaters are categorized on the basis of first-hour rating.[23] Engineering staff at DOE have told Commission staff that, even though instantaneous water heaters have no storage tank, there is a method for calculating the equivalent of a first-hour rating for these products. Because of this, instantaneous water heaters could be included in the existing ranges and could be considered with conventional water heaters for range purposes. But, with no storage tanks, the instantaneous water heaters are so different from conventional water heaters that a separate category might be more helpful to consumers. The Commission solicits public comment, therefore, on whether instantaneous water heaters should be included in the existing water heater ranges.

B. Heat Pump Water Heaters

A heat pump water heater is similar to a small room air conditioner. It extracts heat from the air around it but, instead of exhausting it to the outside, uses the heat to increase the temperature of the water in a conventional storage tank. It exhausts the resulting cool air into the surrounding area.

Heat pump water heaters are marketed in two ways. They can be sold as an integral unit that includes the heat pump and the storage tank, or they can be sold without a tank and hooked up with an existing water heater with the conventional heating system shut off. For those instances in which the heat pump water heater is sold without a tank, the DOE test calls for measurement of energy use with the heat pump water heater connected to a 47-gallon capacity storage tank. Thus, even when no tank is to be sold with the heat pump water heater, manufacturers will be able to determine the energy use figure to put on the label for comparative shopping purposes. The product's efficiency, however, could be affected by the size of the tank with which it is coupled. The Commission seeks comment, therefore, on whether the label should include a statement that determination of the heat pump water heater's efficiency is based on use with a 47-gallon tank and that its efficiency in the home may vary according to the size of the storage tank to which it is connected.

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[19] 10 CFR 430.2. This definition is substantially identical to the definition in section 321(a)(27) of EPCA (42 U.S.C. 6291(a)(27)).

[20] This would replace the definition of water heater now in the Commission's Rule at 16 CFR 305.3(d)(1–3).

[21] Standby loss refers to the energy that is used to keep water hot in the storage tank of a storage type water heater while hot water is not being used.

[22] See 10 CFR part 430, subpart B, appendix E. If DOE were to prescribe a test procedure for electric instantaneous water heaters, the Commission would initiate a rulemaking proceeding to consider labeling them.

[23] The DOE test defines "First Hour Rating" as the amount of hot water the water heater can supply in one hour of operation. See 10 CFR part 430, subpart B, appendix E, 1.5.

Finally, the amended DOE test contains a provision by which a first-hour rating for these products can be calculated. Like instantaneous water heaters, therefore, heat pump water heaters could be included in the conventional water heater ranges. The Commission seeks comment on whether it would be more helpful to consumers to include heat pump water heaters with conventional water heaters or to create a separate range category for them.

Section A—Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this document because the Commission presently believes that the amendments, if promulgated, "will not have a significant economic impact on a substantial number of small entities" (5 U.S.C. 605).

The Commission has indications from members of the pool and spa manufacturing industry that not many companies produce pool and spa heaters. Of those that do, most are not "small entities" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR part 121.

The Commission further understands that the market for heat pump water heaters is small, and that only a few companies, two of which are large entities, produce these products at present. The Commission also has information that most instantaneous water heaters are produced abroad, and are imported by a very small number of small-sized importing firms.

Because the amendments are not likely to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act and the rules implementing it, the Commission concludes, based on the information presently available, that a regulatory analysis is not now necessary. The Commission requests, however, information on whether the proposed amendments would have a significant impact on a substantial number of small entities. After reviewing any comments received on this subject, the Commission will decide whether the preparation of a final regulatory flexibility analysis is appropriate.

In light of the above, the Commission certifies, under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments proposed today would not, if promulgated, have a significant impact on a substantial number of small entities.

Section B—Paperwork Reduction Act

The proposed amendments would expand the Appliance Labeling Rule's existing recordkeeping and reporting requirements to include manufacturers of products not heretofore covered. However, the manufacturers would not have to maintain records beyond what they must already do in the ordinary course of business to comply with the reporting and recordkeeping requirements of DOE's minimum efficiency standards program. In addition, although the affected companies would have to report annually to the Commission the energy usage of the covered products they manufacture or import, the Commission estimates that no more than 50 companies would be affected, and that it would take each company fewer than 10 hours to comply. Because the resulting increase in burden hours would be *de minimis*, the Commission is not requesting that the Office of Management and Budget adjust the existing clearance for the Appliance Labeling Rule (OMB No. 3084–0069) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). To substantiate the accuracy of its reporting burden estimate, however, the Commission requests comment on the extent of the reporting burden associated with these amendments.

Section C—Invitation to Comment

Interested persons are hereby notified that they may comment on any issue of fact, law or policy that may bear upon the proposed rules. Although the Commission welcomes comments on any aspect of the proposed rules, the Commission is particularly interested in comments on the questions in Section D, below. All comments and testimony should be referenced specifically to either the Commission's questions or the section of the proposed rules being discussed.

The Commission requests that commenters provide representative factual data. Individual firms' experiences are relevant to the extent they typify industry experience, in general, or that of similar-sized firms. Comments opposing the proposed rules or specific provisions should, if possible, suggest a specific alternative. Proposals for alternative regulations should include reasons and data that indicate why the alternatives would better serve the purposes of the proposed rules. Comments should be supported by a full discussion of all the relevant facts and/or be based directly on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting these proposed rules as final rules, consideration will be given to any written comments timely submitted to the Presiding Officer and on the record of the hearing, if one is held. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission Regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

Section D—Questions and Issues

Interested persons are invited to address any questions of fact, law or policy that they believe may bear upon the proposed labeling rules for pool heaters, instantaneous water heaters and heat pump water heaters. The questions concerning issues upon which the Commission particularly desires comment, however, are listed below for the public's convenience.

(1) Pool heaters. (a) Sections 324(a)(1) and (b)(5) of EPCA (42 U.S.C. 6294(a)(1) and (b)(5)) direct the Commission to prescribe a labeling rule for the categories of products listed in section 322(a) (42 U.S.C. 6292(a)), including pool heaters, unless it determines that labeling the product is "not technologically or economically feasible." Would *labeling* (as distinct from testing) pool heaters be economically or technologically infeasible? If so, please explain in detail.

(b) The Commission solicits comment on whether it should adopt DOE's definition for pool heaters in section 430.2 of Subpart A of DOE's rules, but add a proviso stating that application of the Commission's Rule is limited to those products within the definition for which there is a DOE-prescribed test for measuring energy usage.

(c) Should pool heaters be grouped into one category or two—a category each for oil-fired and gas-fired models—for purposes of ranges of comparability under the Commission's Rule? If pool heater labeling rules are adopted, what effect, if any, would the lack of an approved test procedure for electric models have upon consumers' ability to select a pool heater?

(d) Should the Commission require a conventional label for pool heaters (i.e., like the labels required for refrigerators, refrigerator-freezers and freezers)? Would it be more appropriate to require a simplified, product specific label for pool heaters (like the ones required for central air conditioners) and to permit disclosure of more comprehensive information on a separate fact sheet or in an industry-produced directory? Whatever form of label is used (if pool heater labeling rules are adopted), should the required measure of energy consumption disclosed be thermal efficiency, without additional cost information, or should it be the annual operating cost of the product or some other disclosure? Is it technically or economically feasible to disclose estimated annual operating cost, or is this information not likely to assist consumers in making purchasing decisions? Please explain your response.

(e) The Commission requests information about the pool heater industry, including the number and size of companies that produce, import and/or market these products. Will the amendments proposed today have a significant economic impact on a substantial number of small entities in this industry?

(f) The Commission requests comment, particularly quantitative estimates, about the amount of time it would take to comply with the reporting requirements associated with these amendments.

(2) Instantaneous water heaters. (a) The Commission solicits comment on whether it should adopt the definition for water heaters (including instantaneous water heaters) that appears in § 430.2 of DOE's rules (see section IV, above) but with a proviso, like the one proposed for pool heaters, that states that the Rule's requirements are limited to those products for which there is a DOE-prescribed test procedure.

(b) Would *labeling* (as distinct from testing) instantaneous water heaters be economically or technologically infeasible? If so, please explain.

(c) Is the currently required 5 and 9/16 inches by 7 and 3/8 inches label size appropriate for instantaneous water heaters? If not, what type and size of label would be appropriate? Would the surface temperature of these products affect label adhesion, and, if so, how should this be addressed?

(d) Should the Commission include instantaneous water heaters in the existing water heater ranges of comparability or create a separate range category for them? If instantaneous water heater label rules are adopted, what effect, if any, would the lack of an approved test procedure for electric models have upon consumers' ability to select an instantaneous water heater? Should the energy usage of instantaneous water heaters be expressed as an estimated annual operating cost, as it presently is for conventional water heaters, or should their energy usage be expressed as an energy factor? Would it be technically or economically feasible to disclose estimated annual operating cost, or would this information not be likely to assist consumers in making purchasing decisions? Please explain your response.

(e) The Commission requests information about the instantaneous water heater industry, including the number and size of companies that produce, import and/or market these products. Will the amendments proposed today have a significant economic impact on a substantial number of small entities in this industry?

(f) The Commission requests comment, particularly quantitative estimates, about the amount of time it would take to comply with the reporting requirements associated with these amendments.

(3) *Heat pump water heaters.* (a) Should the Commission adopt the definition for water heaters (including heat pump water heaters) that appears in section 430.2 of DOE's rules (see section IV, above) but with a proviso, like the definitions proposed for pool heaters and instantaneous water heaters, that states that the Rule's requirements are limited to those products for which there is a DOE-prescribed test procedure?

(b) Would *labeling* heat pump water heaters (as distinct from testing them) be economically or technologically infeasible? If this is the case, please explain.

(c) Should the Commission require that a label for heat pump water heaters contain a statement that the efficiency of heat pump water heaters could be affected by the size of the tank with which they are coupled?

(d) Should the Commission include heat pump water heaters in the existing water heater ranges of comparability or create a separate range category for them? Should the energy usage of heat pump water heaters be expressed as an estimated annual operating cost, as it presently is for conventional water heaters, or should their energy usage be expressed as an energy factor? Is it technically or economically feasible to disclose estimated annual operating cost, or is this information not likely to assist consumers in making purchasing decisions? Please explain your response.

(e) The Commission requests information about the heat pump water heater industry, including the number and size of companies that produce, import and/or market these products. Will the amendments proposed today have a significant economic impact on a substantial number of small entities in this industry?

(f) The Commission requests comment, particularly quantitative estimates, about the amount of time it would take to comply with the reporting requirements associated with these amendments.

Section E—Public Hearings

Persons desiring a public hearing on the proposed amendments should notify the Presiding Officer by no later than March 2, 1993. If there is interest in a hearing, it will take place in room 532 of the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, Northwest, Washington, DC, at a time and date that will be announced in a subsequent notice. If a hearing is held, persons desiring an appointment to testify will be required to submit to the Presiding Officer a complete statement in advance. This will be entered into the record in full. However, as a general rule, oral statements should not exceed ten minutes. There will be no opportunity for interested persons to cross-examine witnesses. Further instructions to witnesses will be contained in the notice announcing the hearing.

Section F—Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with Henry B. Cabell, the Presiding Officer, who is responsible for the orderly conduct of the proceeding and who shall have all powers necessary to that end, including the authority to rule on all motions or petitions filed.

Applications for review of a ruling will not be entertained by the Commission prior to its review of the record unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

Section G—Post-Comment Period or Post-Hearing Procedures

Interested persons will be afforded 20 days after the close of the hearing, or the close of the comment period if no hearing is held, to file rebuttal submissions, which must be based only upon identified, properly cited matters already in the record. The Presiding Officer will reject all submissions that are essentially additional written comments, rather than rebuttal. If a hearing is held, the 20-day rebuttal period will commence when the final transcript of the hearing is placed on the public record by the Presiding Officer.

After the close of the rebuttal period, the staff will analyze the evidence on the record and submit a recommendation for the final rule.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–2672 Filed 2–8–93; 8:45 am]

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Tuesday
February 9, 1993

Part IV

Department of Education

34 CFR Part 8

Demands for Testimony or Records in Legal Proceedings; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 8

RIN 1880–AA45

Demands for Testimony or Records in Legal Proceedings

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the departmental regulations for Demands for Testimony or Records in Legal Proceedings to add the Office of Management and Budget (OMB) control number for one section of the regulations. This section contains information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: These regulations are effective February 9, 1993.

FOR FURTHER INFORMATION CONTACT: Rob Wexler, U.S. Department of Education, Office of the General Counsel, 400 Maryland Avenue, SW., room 5119, FOB–6, Washington, DC 20202–2243. Telephone: (202) 401–3690. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On August 5, 1992, at 57 FR 34646–34648, final regulations were published in the **Federal Register** by adding a new part 8.

The effective date of § 8.3 of the regulations was delayed until information collection requirements contained in that section were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB has now approved the information collection requirements.

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest.

List of Subjects in 34 CFR Part 8

Administrative practice and procedure, Availability of information, Education Department, Freedom of Information Act.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: February 3, 1993.

Richard W. Riley,
Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending part 8 as follows:

PART 8—DEMANDS FOR TESTIMONY OR RECORDS IN LEGAL PROCEEDINGS

1. The authority citation for part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 20 U.S.C. 3474, unless otherwise noted.

§ 8.3 [Amended]

2. Section 8.3(a) is amended by adding at the end of that paragraph "(Approved by the Office of Management and Budget under control number 1801–0002)."

[FR Doc. 93–3025 Filed 2–8–93; 8:45 am]

BILLING CODE 4000–01–U

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Vol. 58, No. 25

Tuesday, February 9, 1993

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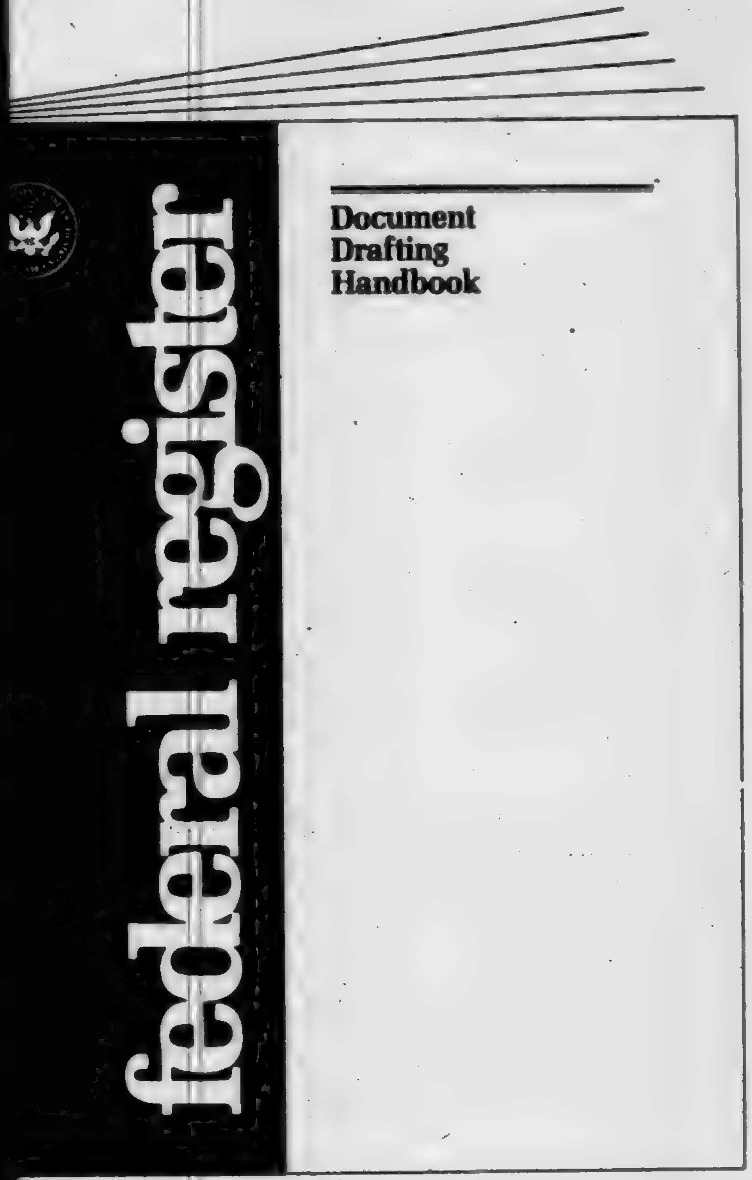

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103d Congress, 1st Session, 1993

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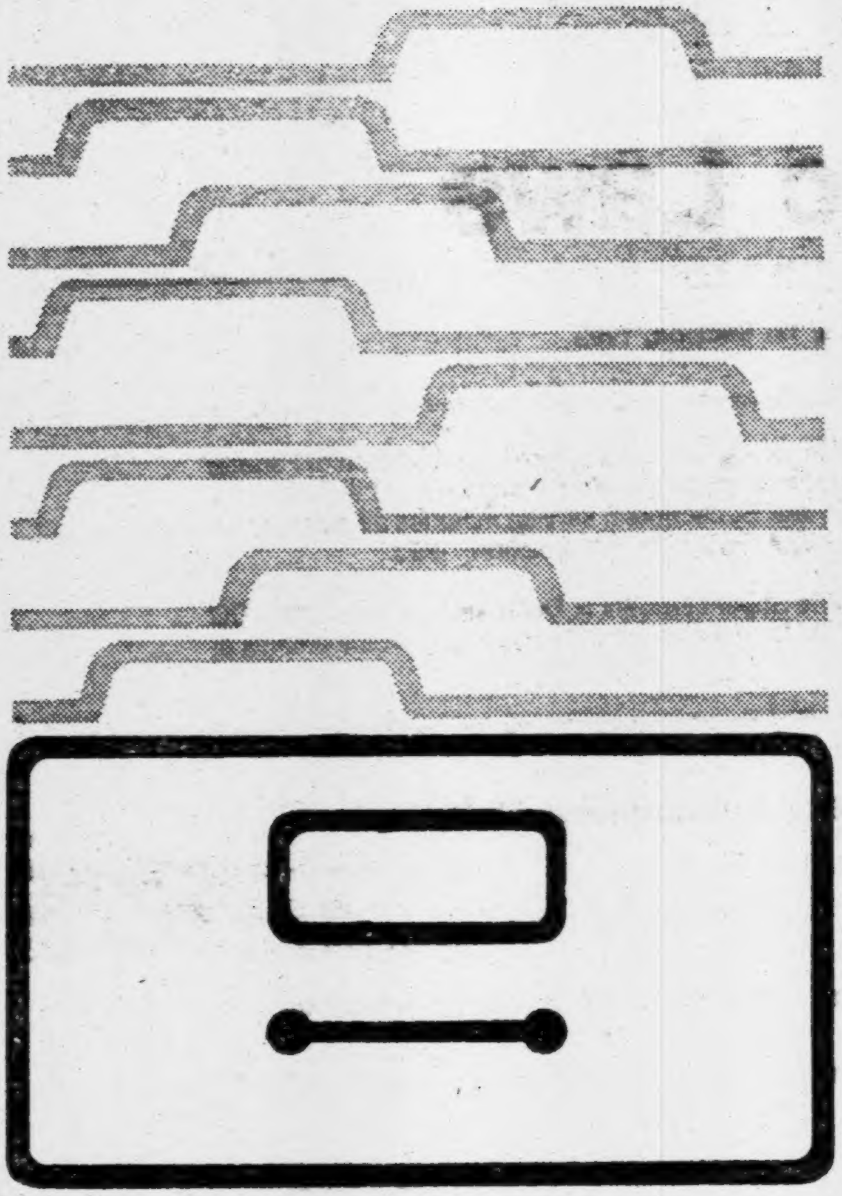

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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